

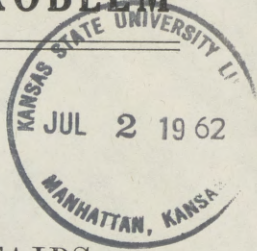
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INDIAN HEIRSHIP LAND PROBLEM

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON INDIAN AFFAIRS

OF THE

COMMITTEE ON

INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 2899

A BILL RELATING TO THE INDIAN HEIRSHIP LAND PROBLEM

APRIL 2 AND 3, 1962

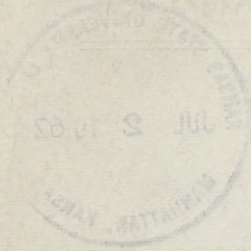
PART 2

(The hearings of Part 1 on the Indian Heirship Land Problem were held on August 9 and 10, 1961, on which dates testimony was heard on S. 1392)

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INDIAN HEIRSHIP LAND PROBLEM

MONDAY, APRIL 2, 1962

U.S. SENATE,
SUBCOMMITTEE ON INDIAN AFFAIRS
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to call, at 10 a.m., in room 3110, New Senate Office Building, Senator Frank Church (Idaho) presiding.

Present: Senators Frank Church (Idaho) (chairman of the subcommittee), and Quentin N. Burdick (North Dakota).

Also present: Stewart French, chief counsel; James H. Gamble, professional staff member; and Jerry T. Verkler, chief clerk.

Senator CHURCH. The meeting will come to order.

This morning we are beginning the second phase of our hearings on legislation to resolve the Indian heirship land problem. The bill under consideration today, and upon which we shall take testimony, is S. 2899. This proposal was introduced on February 26, 1962, and early in March several thousand copies of the bill were mailed to tribes, attorneys for tribes, and Indian organizations.

So that the record will be complete, I should like to outline what the subcommittee has already done by way of examining the heirship land problem.

In an effort to learn all the facts relating to the multiple ownership of Indian land, the staffs of the Senate and House Committees on Interior and Insular Affairs, in conjunction with the specialists of the Library of Congress, made extensive studies of the problem, beginning in 1959. In 1960 two heirship land survey reports were published by the House and Senate. These documents contain the most complete and up-to-date information on what the heirship problems are and where the problems exist. The reports also reflect suggested solutions by Indian owners of these lands, as well as those responsible for administering them.

Briefly stated, the heirship problem arises from the fact that the United States holds in trust for Indians about 41,000 tracts of allotted land—approximately 6 million acres—that are in fractionated ownership. Multiple ownership arose when, upon the death of the original allottee, his or her estate was probated and the heirs were given undivided interests in the tract. Through the years successive probates have taken place affecting the same tract until at the present time there may be more than 200 heirs holding fractional interests in a single piece of trust land. Understandably, this fractionation of ownership has created serious problems for the heirs themselves, the

tribes, as well as those charged with administering trust land. And the problem is growing rapidly.

On March 21, 1961, I introduced S. 1392, a bill intended to alleviate this worsening situation. Using that bill as a vehicle, hearings were held in August 1961, in order to obtain more information about heirship land. Valuable testimony was received from many sources and the hearings were printed and widely distributed for the information of Indian tribes and organizations.

With the information gained from the congressional studies, plus the expert advice of Government agencies, Indian groups and others, I had a new bill prepared, S. 2899. This bill contains some of the features of S. 1392, because they met the test of the earlier hearings. In other respects it is substantially different.

I stated on the floor of the Senate at the time of introducing S. 2899 that—

In drafting this bill every effort has been made to formulate and authorize an effective program to alleviate the heirship land problem consistent with the constitutional rights of the individual Indian owners of these lands. Particular attention has been given in designing this legislation to maximize the opportunity to return multiply owned land to individual Indian ownership, or to tribal ownership, in a trust status. In other words, recognition is given to the desirability of retaining the land base as an economic resource for our Indian citizens.

While it is extremely difficult to arrive at the critical balance between the indiscriminate disposal by Indians of their land as opposed to an effective solution to the heirship problem, I believe this has been accomplished. The language of this new measure, in my opinion, gives the Secretary of the Interior sufficient latitude to solve the problem but allows him enough discretion to protect the best interests of each Indian owner.

I was happy to schedule these proceedings at a time corresponding with the meeting of the Executive Council of the National Congress of American Indians. Many representatives of Indian tribes are in the city for the occasion, and we want to give them every opportunity to testify on S. 2899. I am sure the committee will benefit from their experience and knowledge of the heirship problem, and their recommendations will be given every consideration.

We have received reports on S. 2899 from the Department of the Interior, Department of Justice, General Accounting Office, and the Bureau of the Budget suggesting amendments. Without objection, copies of information sent to Indian tribes on March 8, together with the text of the bill and the executive department reports, will be inserted in the record following my remarks.

(S. 2899 and the reports referred to follow :)

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
March 8, 1962.

DEAR SIR(S) : Knowing of your deep interest in the subject, I am taking this opportunity to call to your attention a new bill I have introduced relating to the Indian heirship land problem. On March 21, 1961, I introduced S. 1392, a bill relating to the Indian heirship land problem. At the time I emphasized that S. 1392 was a vehicle for the purpose of exploring further the viewpoints and wishes of the people most affected by the problem. During the hearings on S. 1392, valuable testimony was received from Members of the Senate and House, the Interior Department, Justice Department, General Accounting Office, Indian organizations, and Indian tribes.

The testimony and documents submitted by interested parties were studied and used as the basis for drafting a new bill (S. 2899) that I introduced on the

26th of February to take the place of S. 1392. Enclosed are copies of the new bill and the discussion from the Congressional Record at the time of introduction.

The Indian Affairs Subcommittee has scheduled hearings on S. 2899 for Monday and Tuesday, April 2 and 3, beginning at 10 a.m. in room 3110, New Senate Office Building. Should you care to submit a written statement or send a representative to testify, please contact Mr. James H. Gamble, of the committee staff, so that an appropriate witness list may be prepared.

Sincerely yours,

FRANK CHURCH, *U.S. Senator.*

[An excerpt from the Congressional Record, Feb. 26, 1962]

INDIAN HEIRSHIP LAND PROBLEM

Mr. CHURCH. Mr. President, I send to the desk for appropriate reference a bill relating to the Indian heirship land problem.

Mr. President, in March 21, 1961, I introduced S. 1392, a bill relating to the Indian heirship land problem. At that time, I explained that the United States holds in trust for Indians about 41,000 tracts of allotted land—approximately 6 million acres—that are fractionated ownership. This situation arose when, upon the death of the original allottee, his or her estate was probated and the heirs were given undivided interests in the tract. Through the years, successive probates have taken place affecting the same tract until at the present time there may be anywhere from 2 to 200 heirs holding fractional interests in a piece of trust land.

This fractionation of ownership has created serious problems for the heirs themselves, the tribes, and the Bureau of Indian Affairs which has responsibility for managing trust land.

In an effort to learn all the facts relating to the multiple ownership of Indian land, the staffs of the Senate and House Committee on Interior and Insular Affairs, in conjunction with the specialists of the Library of Congress, made extensive studies of the problem, beginning in 1959. In 1961, two heirship land survey reports were published by the House and Senate. These documents contain the most complete and up-to-date information on what the heirship problems are and where the problems exist. The reports also reflect suggested solutions by Indian owners of these lands, as well as those responsible for administering them.

Based on these studies, I sponsored S. 1392, a bill intended to help alleviate this worsening situation. At the time, I emphasized that S. 1392 was a vehicle for the purpose of exploring further the viewpoints and wishes of the people most affected by this problem. My first step following the introduction of S. 1392 was to have copies of the bill, and the explanation thereof, mailed to all Indian tribes, interested organizations, and agencies of the Federal Government, for their comments and recommendations. Hearings were held on S. 1392 by the Subcommittee on Indian Affairs, of which I am chairman, on August 9 and 10, 1961, and valuable testimony was received from Members of the Senate and House, the Interior Department, Justice Department, General Accounting Office, Indian organizations, and Indian tribes. Several thousand copies of the printed hearings were distributed to interested parties.

Mr. President, with the information gained from the congressional studies, plus the expert advice of Government agencies, Indian tribes, and organizations at the hearings, I have had prepared the bill which I am introducing today. The new bill contains some of the features of S. 1392, because they met the test of the hearings. In other respects it is substantially different.

In drafting this bill every effort has been made to formulate and authorize an effective program to alleviate the heirship land problem consistent with the constitutional rights of the individual Indian owners of these lands. Particular attention has been given in designing this legislation to maximize the opportunity to return multiply owned land to individual Indian ownership, or to tribal ownership, in a trust status. In other words, recognition is given to the desirability of retaining the land base as an economic resource for our Indian citizens. While it is extremely difficult to arrive at the critical balance between the indiscriminate disposal by Indians of their land as opposed to an effective solution to the heirship problem, I believe this has been accomplished. The language of this new measure, in my opinion, gives the Secretary of the Interior sufficient latitude to solve the problem but allows him enough discretion to protect the best interests of each Indian owner.

It is intended that additional hearings will be held on this new proposal in the near future. Indian tribes and others will be given advance notice of hearing dates when they have been scheduled. I feel sure that, with the cooperation of all of those who have a vital interest in this matter, we will be able to report corrective legislation to the Senate during this session of the Congress.

Mr. President, I ask unanimous consent that the text of the bill I am introducing today may be printed in full following these brief remarks.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the Record, as requested by the Senator from Idaho.

The bill (S. 2899) relating to the Indian heirship land problem, introduced by Mr. Church, was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

The bill (S. 2899), introduced by Mr. Church, is as follows:

* * * * *

Mr. ANDERSON. Mr. President, will the Senator yield?

Mr. CHURCH. I am very happy to yield to the distinguished chairman of the Committee on Interior and Insular Affairs.

Mr. ANDERSON. I want to commend the Senator from Idaho for a very fine piece of work. Year by year a study has been made of the heirship problem, but nothing ever comes of it. These last couple of years two huge volumes of testimony were taken. I think the Senate and House Committees on the Interior together made the most substantial study that has been made of the problem perhaps in the history of the country. I wish to strongly commend the Senator from Idaho for his work in this matter. We had the report of the task force that looked into the Indian problem. It made a great many recommendations, but I thought perhaps it had overlooked, or at least minimized, the two great questions that seem to exist in Indian affairs; namely, the problem of termination, and that of heirship. We are going to have the problem of termination for perhaps 50 years more, but we might be able to whip one of those two problems, and we will be able to get it done with the kind of work similar to that which has been done by the Senator from Idaho.

I admire the fine legal qualities he brings to this problem, but I also admire the determination he has shown in trying to bring a solution to it. It is a very difficult problem. It is, from the taxpayers' standpoint, a very important piece of work, because if the heirship problem can be solved and these patches of land which are not now being farmed or grazed can be put to farming or grazing, many Indians who are now on relief or under special care of the Government will be free.

I, therefore, wish to commend the Senator from Idaho and tell him, as chairman of the full committee, I am proud of the work he has done in the subcommittee and am very grateful for the task he has undertaken. If the people of the country knew of the extent of the legal problems with which he has wrestled, he would be receiving many commendatory remarks from around the Nation.

Mr. CHURCH. I thank the Senator from New Mexico for his kind remarks.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. CHURCH. I yield to the distinguished majority leader.

Mr. MANSFIELD. I want to join the distinguished Senator from New Mexico, chairman of the Committee on Interior and Insular Affairs, in commending the Senator from Idaho (Mr. Church) for the statement he has just made. We know the Senator from Idaho has been a champion of the American Indian, not only since he entered Congress but long before he joined us in the Senate.

The distinguished Senator from New Mexico has put his finger on the two most important problems. The first is the question of termination, which will be a long time in being concluded satisfactorily. The other is the question of Indian heirships. Both of these questions are problems in my State of Montana, and throughout the West, and, for that matter, throughout the country.

So I sincerely hope the firm foundation which has been laid by the Senator from Idaho, who is chairman of the subcommittee handling the Indian affairs, will be built on, as Colonel Glenn said in the other body today, on a brick-by-brick basis until a pyramid is built.

I join the distinguished Senator from New Mexico, chairman of the full committee, in extending my commendation for the fine work already done by the Senator from Idaho and the great maturity he has shown in facing up to this most vexing problem.

Mr. CHURCH. I thank the Senator very much. I would add that, from the very beginning in the Committee on Interior and Insular Affairs, I have had not only the interest but the invariable support of our distinguished chairman (Mr. Anderson), who was the first to point out to me the gravity of this problem, and through whose leadership and inspiration I hope the committee can finally come forward with a legislative solution to a problem that is getting worse every year. It involves over 6 million acres now, and if we do nothing in the next few years it will involve 12 million acres of land, all to the loss of the Indians and the taxpayers as well.

I hope this bill will be the vehicle through which Congress moves on to solve this problem.

[S. 2899, 87th Cong., 2d sess.]

A BILL Relating to the Indian heirship land problem

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) any owner of an interest in any land where all of the undivided interests are in a trust or restricted status may request the Secretary of the Interior (hereinafter referred to as the "Secretary"), and the Secretary is hereby authorized, to partition the land in kind or to sell the land if partition is not practicable and a sale would be in the best interests of the Indian owners.

(b) When any of the undivided interests in a tract of land is in an unrestricted status, any owner of a trust or restricted interest may request the Secretary, and the Secretary is hereby authorized, to sell all trust or restricted interests if a sale would be in the best interests of the Indian owners. The Secretary may also sell the unrestricted interests if authorized to do so by a power of attorney from the owner of the unrestricted interests.

SEC. 2. Whenever the Secretary, after receiving a request to partition or sell any tract of land under subsection (b) of section 1 of this Act, is unable after due effort to obtain the approval of any owner of an unrestricted interest in such tract, he shall, upon the request of any owner of an undivided interest therein, consent to judicial partition or sale of such tract if in his judgment such action is in the best interests of the Indian owners. Where such consent is granted, jurisdiction over the land is hereby conferred on any State court of competent jurisdiction to hear and determine the partition or sale proceedings and to render judgment for partition in kind or judicial sale in accordance with the law of the State wherein the lands are situated. The United States shall be an indispensable party to any such proceeding with the right of removal of the cause to the United States district court for the district in which the land is located, following the procedure in title 28, United States Code, section 1446. The proceeds of sale of the trust or restricted interests shall be paid to the Secretary for distribution unless he waives this requirement as to any of the owners thereof. If the land so partitioned or sold is acquired by an individual Indian or an Indian tribe, title thereto may be taken in a trust status.

SEC. 3. (a) If, with respect to any land transferred pursuant to this Act there is in existence an exemption from taxation which constitutes a vested property right, such exemption shall continue in force and effect until it terminates by virtue of its own limitations.

(b) No sale made under this Act shall include any mineral estate that has been reserved to any Indian tribe by any provision of law.

SEC. 4. For the purposes of this Act, the Secretary of the Interior is authorized to represent any Indian owner (1) who is a minor, (2) who is non compos mentis, (3) whose ownership interest in a decedent's estate has not been determined, or (4) who cannot be located by the Secretary after a reasonable and diligent search and the giving of notice by publication.

SEC. 5. The Secretary shall give actual or constructive notice and provide an opportunity for a hearing before partitioning in kind or selling land pursuant to this Act. All sales of lands made by the Secretary pursuant to this Act shall be by competitive bid, except that a sale may be made to one of the owners of an interest in the land, or to the tribe within whose reservation or approved consolidation area the land is located, at not less than the appraised value of the land if none of the owners after reasonable notice objects. If a timely objection is made, the sale shall be by sealed competitive bid: *Provided*, That if the high bid is not made by one of the Indian owners of an undivided interest, or

by the tribe on whose reservation the land is located, any of the Indian owners or the tribe shall have the right to meet the high bid. If the tribe and one or more of the owners, or more than one of the owners but not the tribe, elect to meet the high bid, the Secretary shall solicit new bids limited to the parties exercising the election. Subsequent sale shall be for not less than the amount of the previous high bid. No sale shall be made at a price less than the appraised value of the land. Title to any land purchased by a tribe may be taken in trust for the tribe if it is located within the boundaries of the reservation or within the approved tribal consolidation area. Title to any land purchased by an individual Indian may be taken in a trust status.

SEC. 6. (a) In order to assist tribes that wish to purchase land offered for sale under the provisions of this Act, the Secretary is authorized to make a loan to any tribe under the conditions stated below, provided the tribe does not have funds available in an amount that is adequate to make the purchase and is unable to obtain a loan from any other source. Such loans shall be made from the revolving funds referred to in section 10 of this Act.

(b) The amount of the loan shall not exceed the appraised value of the land plus the value of any other property the tribe may mortgage or pledge as security for the loan.

(c) The tribe shall give to the United States a mortgage on the land purchased by the tribe with the loan, and on any other tribal property which the Secretary deems necessary to adequately secure the loan.

(d) A loan shall be for a term of not to exceed thirty years, and shall bear interest at a rate to be determined by the Secretary. A loan need not require repayment in equal installments, but it shall require repayment according to a schedule that will fully amortize the loan within the time specified. In the event of a default in the repayment of the loan, the Secretary of the Interior shall take such action as he deems necessary to protect the interests of the United States. If during the period of repayment the tribe is awarded a money judgment against the United States in excess of the unpaid balance of the loan, and if the payment of any installment on the loan is in default, the installment(s) in default shall be collected from the appropriation to satisfy the judgment.

(e) Before a loan is made under this Act the tribe shall submit for the approval of the Secretary of the Interior a master plan for the use of all lands to be purchased. No plan shall be considered by the Secretary unless it has been first considered at a general meeting of tribal members called for that purpose and approved by a majority of the adult members present and voting at that meeting. Any tribe preparing a plan may call upon the Secretary for technical assistance, and the Secretary shall render such assistance as may be necessary. Such plan shall include provisions for consolidation of holdings of the tribe, or acquisition of sufficient lands in conjunction with those held to permit reasonable economic utilization of the land and repayment of the loan. Such plan may be revised from time to time with the approval of the Secretary.

(f) The cost of managing any land purchased by a tribe pursuant to this Act shall be borne by the tribe and not by the United States.

SEC. 7. Any tribe that adopts with the approval of the Secretary a plan pursuant to subsection 6(e) of this Act, or any other plan that does not involve a loan from the United States but which provides for the consolidation, management, use, or disposition of tribal land, is hereby authorized, with the approval of the Secretary, notwithstanding any provision of the tribal constitution or other provision of law, to sell any tribal land or other property in furtherance of such plan.

SEC. 8. The Secretary shall approve no plan pursuant to this Act that contains any provision that will prohibit or delay a termination of Federal trust responsibilities with respect to the land during the term of the plan.

SEC. 9. This Act shall not repeal any authority of the Secretary under other law, but it shall supersede any limitation on the authority of the Secretary that is inconsistent with this Act.

SEC. 10. (a) All funds that are now or hereafter a part of the revolving fund authorized by the Act of June 18, 1934 (48 Stat. 986), the Act of June 26, 1936 (49 Stat. 1968), and the Act of April 19, 1950 (64 Stat. 44), as amended and supplemented, including sums received in settlement of debts of livestock pursuant to the Act of May 24, 1950 (64 Stat. 190), sums collected in repayment of loans heretofore or hereafter made, shall hereafter be available for loans to organizations of Indians, Eskimos, and Aleuts (hereinafter referred to as Indians), having a form of organization that is satisfactory to the Secretary,

and to individual Indians of one-quarter degree or more of Indian blood who are not members of or eligible for membership in an organization that is making loans to its members, for any purpose that will promote the economic development of such organizations and their members, or the individual Indian borrowers.

(b) The appropriation authorization in section 10 of the Act of June 18, 1934 (48 Stat. 986), as amended by the Act of September 15, 1961 (75 Stat. 520), is hereby amended by increasing it from \$20,000,000 to \$50,000,000.

SEC. 11. (a) In order to prevent the problem of multiple ownership of undivided interests in any tract of land held in trust by the United States for an individual Indian, or held by an individual Indian subject to a restriction against alienation imposed by the United States, and at the same time provide maximum opportunity to retain such lands for use by Indians, the provisions of this section shall apply notwithstanding any other provision of law.

(b) When all interests in trust or restricted land are owned by one person other than an Indian tribe, and the title is transferred after the date of this Act but during the lifetime of the owner to two or more persons, the title shall be transferred in an unrestricted status.

(c) When all interests in trust or restricted land are owned by one person other than an Indian tribe, and the title is transferred after the date of this Act by devise or inheritance—

(1) if there is only one devisee or heir the title may be transferred in a trust or restricted status if such status is otherwise permitted by law,

(2) If there is more than one devisee or heir the Secretary shall notify each devisee or heir of his right to seek a partition or sale of the land in accordance with the provisions of this Act. If a partition or sale is not requested and approved within a reasonable time, as determined by the Secretary, the Secretary shall issue to the devisees or heirs an unrestricted deed or patent to the land. The transfer of the title upon the death of the decedent shall be subject to the provisions of this Act.

SEC. 12. The Secretary is authorized to execute such patents, deeds, orders, or other instruments as may be necessary or appropriate to carry out the provisions of this Act.

SEC. 13. The terms "owner" and "owners" as used herein include, wherever applicable, any tribe, band, group, community, or pueblo of Indians, Eskimos, or Aleuts, and also include any federally chartered organizations of Indians, Eskimos, or Aleuts.

SEC. 14. (a) Sections 1 through 12 of this Act shall become effective one year after the date of its enactment.

(b) The Secretary shall, prior to the effective date of sections 1 through 12 of this Act, notify in writing each Indian tribe, and each owner of an undivided interest in Indian trust or restricted land, of the rights of such tribe or owner under this Act.

(c) The Secretary shall, prior to the conclusion of any probate proceeding conducted on or after the effective date of sections 1 through 12 of this Act, notify each heir or devisee having an interest in such proceedings of his rights under this Act.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 28, 1962.

HON. CLINTON P. ANDERSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR ANDERSON: Your committee has requested a report on S. 2899, a bill relating to the Indian heirship land problem.

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

The Indian heirship land problem is well known to the members of this committee, and has been described in considerable detail in prior reports from this Department during the past several years. In view of the recent comprehensive congressional studies that have been made, both in the Senate and in the House of Representatives, we shall not review here the entire problem but shall address our remarks to the specific provisions of the bill.

The amendments which we recommend are enclosed with this report.

1. Section 1(a) of the bill authorizes any owner of an undivided interest in trust or restricted land to ask the Secretary to partition the land in kind

or to sell the land if partition is not practical. The Secretary is authorized to comply with the request if he believes it would be in the best interests of the Indian owners.

Our first amendment will require the owners of a majority interest, rather than any one owner, to make the request. Bearing in mind that a large majority of the allotments in multiple ownership have fewer than six owners and that the management and disposition of these tracts presents no major problem under our present authority, we believe that the majority principle should govern with respect to this class of heirship land. Our present authorities generally require consent of all the owners. Therefore, our amendment represents a considerable liberalization of present authority and would in our opinion be adequate to permit the purpose of the bill to be accomplished with respect to this class of heirship land.

On the other hand we have a number of tracts which, because of the length of time since their allotment, have been fractionated to the point where as many as 100 owners may be involved and the largest remaining interest is so small that effective owner consent is completely unrealistic. In cases of this kind it is logical to assume that not even one of the owners might be retaining sufficient interest in the tract to cause him to initiate action for a sale. We believe the Secretary should be authorized to proceed in these cases without a request of even one owner.

Our amendment 2 would therefore add a new section 1(c) to authorize the Secretary to partition or sell a tract of heirship land when in his judgment the benefit of continued Indian ownership does not justify continued administration by the United States. He could take such action without any Indian consent or request.

This approach allows the Secretary to perform his trust responsibility effectively, without having to wait for at least one of the owners to make a request. At the same time, it avoids the difficulties that would arise if he were compelled to act upon the request of any one owner, regardless of the ownership interest represented by that person.

Our amendment 3 would add to section 1(a) language to authorize the Secretary to partition part of the land in kind and sell the remainder. In its present form, the section authorizes only a partition or a sale—not a combination of the two. In some instances a partition in kind of the interest of one Indian and a sale of the remainder might be the most desirable course of action.

Our amendment 4 provides that the decision to partition or sell must be made after considering the interests of both the Indian owners and the Indian tribe involved. The sale of an allotment in some instance might have a drastic impact upon the welfare of the tribe, and the tribe's interest, including its ability to purchase the allotment, should be considered in any realistic determination.

2. Section 1(b) provides for a partition or sale by the Secretary when some of the undivided interests are in an unrestricted status. If the Secretary obtains a power of attorney from the unrestricted owners he may sell the entire interest in the land. If he does not obtain a power of attorney he may sell only the restricted Indian interests.

Our amendment 5 permits the action to be taken upon the request of the owners of a majority of the trust or restricted interest, rather than upon the request of a single owner. The reasons are the same as those explained above in the case of the first amendment.

Our amendment 6 is a technical one. The section authorizes the Secretary to sell the land. It should authorize either a partition or sale if he has the necessary power of attorney.

3. Our amendment 7 adds a new section 1(d) which will prevent an undivided interest in a tract of land that is now entirely trust or restricted, from passing into an unrestricted status by devise or inheritance. If an undivided interest is acquired by a non-Indian or an alien Indian it will remain subject to the jurisdiction of the Secretary for the purposes of this act. The taxable status of the inherited interest, however, will not be affected. This provision is highly desirable in order to exercise adequate management controls over the restricted Indian interests.

4. Section 2 provides for a judicial partition or sale when consent to an administrative sale cannot be obtained from the owner of an unrestricted interest. The Secretary is required to consent to a judicial proceeding upon the request of any one owner if in his judgment such action would be in the best interests of the Indian owners.

We believe that the request for a judicial proceeding should be made by the owners of a majority interest in the land, rather than by any one owner, and that when exercising his judgment the Secretary should consider the best interests of both the Indian owners and the tribe involved. The reasons are the same as those explained above in connection with administrative sales.

Our amendments 8 and 9 will make these two changes.

5. Section 3 contains savings provisions to protect vested tax exemptions and mineral rights. We concur in its provisions.

6. Section 4 allows the Secretary to represent minors and certain other categories of Indians for the purposes of this act. We concur in its provisions.

7. Section 5 prescribes the procedures to be followed when making administrative partitions or sales. One requirement is that actual or constructive notice be given. For purposes of clarity, we suggest that constructive notice be changed to notice by publication.

Our amendment 10 makes this change.

The section permits negotiated sales at not less than the appraised price to one of the coowners or to the tribe if none of the coowners objects. We suggest that sales to a State or local government also be included in this authorization.

Our amendment 11 makes this change.

The section prohibits a sale by competitive bid at a price that is less than the appraised value. An appraisal is a tool of management and it cannot be precise enough to fix the price of a commodity when exposed to a competitive market. The market is a better indicator of value than is an appraisal. We, therefore, recommend that the rigidity of the section be relaxed so that the Secretary may make a sale if he determines that the price is not inconsistent with the appraisal and in his judgment is the highest price that may be obtained under the circumstances. This is the standard that is now contained in the Department's regulations, and we believe it is a good one.

Our amendment 12 makes this change.

8. Section 6 authorizes loans to Indian tribes for the purpose of helping them finance the acquisition of heirship land when it is offered for sale, if the land is needed for a tribal program. We strongly endorse this section, but recommend three amendments with respect to the conditions of a loan.

Our amendment 13 deletes the requirement that a loan must be for a term that does not exceed 30 years. Loans will be made out of the regular revolving loan fund, and there is now no statutory limitation on the term of any loan that may be made. It would be unwise in our opinion to prescribe an arbitrary statutory term because the term must depend upon the circumstances. In some circumstances a land acquisition loan can be amortized in 30 years but in others it cannot.

Our amendment 14 deletes the requirement that no tribal plan for land acquisition loans may be considered by the Secretary unless it has been first considered at a general meeting of tribal members called for that purpose and approved by a majority of the adult members present and voting at that meeting. We feel that this provision is inconsistent with the policy of dealing with Indian tribes through their elected representatives. A provision of this kind will tend to break down representative tribal government.

Our amendment 15 deletes the requirement that the cost of managing any land purchased by a tribe pursuant to this act shall be borne by the tribe and not by the United States. This requirement is unrealistic and very probably impossible to comply with, since tribal purchases as defined elsewhere in the act are for "consolidation of any holdings of the tribe, or acquisition of sufficient lands in conjunction with those held to permit the reasonable economic utilization of the land and repayment of the loan." It would be impossible to segregate the purchased land for the purpose of determining management costs. Some of the tribes already bear the major expense of administering their tribal lands.

9. Section 7 authorizes any tribe, with the approval of the Secretary, to sell any tribal land in furtherance of an approved plan for the consolidation, management, use, or disposition of tribal land. We concur in this provision, but recommend two amendments.

Our amendment 16 deletes the provision that authorizes a tribe to sell tribal land "notwithstanding any provision of the tribal constitution * * *". The constitutions of many tribes prohibit or withhold authority to dispose of tribal land even though disposition might be authorized by statutory law. We believe that the proper method of remedying this situation is for the tribes to amend

their constitutions if they wish to dispose of their land. Any other course would serve to weaken the tribal organization to such a degree that the whole purpose of the bill in this respect would be defeated.

Our amendment 17 permits the tribes to sell or encumber tribal property in furtherance of an approved tribal plan. The bill only authorizes sales.

10. Section 8 directs the Secretary to approve no plan that contains any provision that will prohibit or delay a termination of Federal trust responsibilities with respect to the land during the term of the plan. Although we acknowledge that the Secretary cannot contravene this implicit power of the Congress, it must be understood that there will result from the provisions of this law contracts between the United States and the tribes, and no subsequent trust termination acts should abrogate them unilaterally. Rather, provision will have to be made for the conversion of the agreements to a mutually agreeable nontrust arrangement for recoupment of the obligations to the United States. Under the circumstances, we believe the Congress should consider the superfluity of this section, and possibly delete it entirely.

11. Section 9 provides that the authority granted by the act is cumulative, but supersedes any inconsistent provision of law that is now on the books. This is a desirable provision.

12. Section 10 consolidates the revolving loan funds and increases the appropriation authorization from \$20 to \$50 million. We recommend this provision.

13. Section 11 provides that when land which is now in single ownership is transferred to another single owner the title may be retained in a trust status. If, however, the transfer is to multiple owners the land must either be partitioned or sold under the terms of the act, or the title must be transferred in an unrestricted status.

Our amendment 18 deletes this section because we think it is unreasonable. The section would effectively prevent land that is now in single ownership from going into an heirship status in trust, but it would do so in a most arbitrary and unrealistic way. We do not understand that the purpose of heirship legislation is to liquidate Indian trust titles. Liquidation would be an easy way to resolve the land title problem, but it would completely ignore the legitimate needs of the Indian people. With the amendments which we have recommended, we believe that the provisions of this act can be accomplished without this section. In consideration of the urgent need to assist the Indian people in realistic development, the economic effect of the advantages accruing to trust land is an important one and must be carefully considered.

14. Sections 12 and 13 contain formal provisions that raise no questions.

15. Section 14(a) defers the effective date of the act for 1 year after it is enacted. We urge the retention of this provision in order to allow sufficient time to put the loan program into operation. The loan program will be necessary before many tribes can take advantage of the authority to acquire heirship lands that may be offered for sale.

16. Section 15(b) requires the Secretary, during the 1-year period before the act becomes effective, to notify each owner of an undivided interest in trust or restricted land, and each tribe, of their rights under the act.

Our amendment 19 deletes this provision because compliance would be virtually impossible. We do not have mailing addresses of all owners of interests in Indian lands. That is one of our problems. Your committee experienced the difficulties involved in contacting these owners when mailing out its questionnaire. You "culled" 50,000 names from the lists of names furnished by the reservation superintendents, after deleting the names of minors and heirs with no known addresses. After this culling process 10 percent of the questionnaires still could not be delivered. Even if we were able to deliver the notices to a large number of the Indians concerned, the problem of explaining the law in meaningful terms in a written communication, which many of them could not read, would also be practically an insoluble one.

17. The bill omits one section which we believe is very important. The bill relates to only one part of the heirship problem—that is, the part which is designed to reduce the number of owners of undivided interests by partitioning or selling the land. This is important, but it is no more important than the problem of effective management tools for the lands that are not partitioned or sold. In many respects, the latter is the more important problem.

If the Secretary is to perform his trust responsibilities in a reasonably effective manner, it is most important that he have adequate authority to lease the lands, grant rights-of-way across them, and make timber sales without obtaining the consent of the multiple owners when the fractionization of ownership interests makes it impractical to obtain that consent. Without this management tool he is powerless. The grant of sales authority is only a partial remedy because sale or partition of the land is not always the best solution.

Our amendment 20 adds a new section at the end of the bill which grants the management authority that is sorely needed. We urge that the amendment be adopted.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

PROPOSED AMENDMENTS TO S. 2899

1. On page 1, line 3, delete "any owner of an interest" and substitute "the owners of a majority interest".
2. On page 2, between lines 6 and 7, insert a new subsection (c) as follows:
"(c) When the Secretary determines that, because of the multiplicity of owners, the benefit of the continued ownership by the Indian owners is not sufficient to justify the continued administration by the United States and he has not received a request for partition or sale pursuant to subsection (a) or (b) of this section, he is authorized to sell, under the provisions of this Act, such interests as fall under his jurisdiction."
3. On page 1, line 7, after "kind" insert ", or to partition part of the land in kind and sell the remainder,".
4. On page 1, line 9, delete the period and add "and the tribe involved."
5. On page 1, line 11, delete "any owner of a" and substitute "the owners of a majority of the".
6. On page 2, lines 4 to 6, delete the last sentence and substitute "The Secretary may also partition the land in kind, partition part of the land in kind and sell the remainder, or sell all interests if authorized to partition or sell the unrestricted interests by a power of attorney from the owner of the unrestricted interests."
7. On page 2, between lines 6 and 7, insert a new subsection (d) as follows:
"(d) Where the entire interest in land is held in trust or restricted status on the effective date of this Act, any undivided trust or restricted interest acquired thereafter by inheritance or devise by a non-Indian or alien Indian shall remain in a restricted status for the purposes of partition, sale, or management under the provisions of this Act: *Provided*, That nothing contained in this subsection shall affect the taxability of such undivided interests in such lands."
8. On page 2, line 11, delete "any owner of an undivided" and substitute "the owners of a majority".
9. On page 2, line 14, delete the period and add "and the tribe involved."
10. On page 3, line 20, delete "actual or constructive notice" and substitute "actual notice or notice by publication".
11. On page 4, line 2, after the comma insert "or to a State or local government,".
12. On page 4, line 14, after "No" insert "competitive" and on line 15 change the period to a comma and add "unless the Secretary determines that such price is not inconsistent therewith and in his judgment is the highest price that may be obtained under the circumstances."
13. On page 5, lines 11 and 12, delete "be for a term of not to exceed 30 years, and shall".
14. On page 6, lines 3 to 7, delete "No plan shall be considered by the Secretary unless it has been first considered at a general meeting of tribal members called for that purpose and approved by a majority of the adult members present and voting at that meeting."
15. On page 6, lines 16 to 18, delete the entire subsection (f).
16. On page 7, line 1, delete "provision of the tribal constitution or".
17. On page 7, line 2, after "sell" insert "or encumber".
18. On pages 8 and 9, delete all of section 11, and renumber the succeeding sections.

19. On pages 9 and 10, delete subsection 14 (b) in its entirety.

20. On page 10 add a new section as follows:

"SEC. —. Whenever the Secretary determines that fractionization of ownership interest is preventing the proper discharge of his trust responsibilities for any lands or undivided interests therein for which he would otherwise be authorized by law to execute or approve a grant of right-of-way, contract for the sale of timber, or lease for the trust or restricted interests, he is hereby authorized, in his discretion and without the request or consent of the owners, (a) to execute a lease for the use of such lands, (b) to execute a contract for the sale of any of the timber on such lands, or (c) to grant a right-of-way or easement over such lands."

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., March 30, 1962.

HON. CLINTON P. ANDERSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on the bill S. 2899, relating to the Indian heirship land problem.

The bill is designed to aid in the solution of the problem of the administration of Indian trust or restricted allotments resulting from the fractionation among multiple owners of the beneficial interest therein under the statutes governing the descent and distribution of such allotments (36 Stat. 855, as amended, 28 U.S.C. 372 and 373).

The subject of this legislation is not a matter for which the Department of Justice has primary responsibility, and accordingly we make no recommendation as to its enactment. However, there are certain considerations to which attention is invited.

Section 5 of the bill provides that the Secretary of the Interior shall give actual or "constructive" notice, as well as an opportunity for hearing, before he partitions or sells land pursuant to the act. Questions of statutory construction may arise as to what form of notice may constitute "constructive" notice within the meaning of this section. Such questions may be avoided by substituting for the phrase "actual or constructive notice" the phrase "actual notice or notice by publication" or such other phraseology as will appropriately define the form or forms of notice that Congress considers adequate for "constructive" notice.

In a number of places in the bill reference is made to "appraised value" of land or "value" of property. For example, see page 4, lines 2 and 15, and page 5, lines 4 and 5. If it is intended that such value should be the "fair market value" as determined by the Secretary on the basis of an independent appraisal, it is suggested that the bill make this clear.

Since approval of the plan for the use of the lands to be purchased as a prerequisite to a loan from the revolving fund would be required by a majority only of the adult tribal members present and voting at a general meeting, it is suggested that the language "upon due notice to all adult members of the tribe" be inserted following the word "purpose" on page 6, line 6.

Since it is our understanding that this legislation is not intended to apply to the Indians of Oklahoma, it is suggested that the Osage and Five Civilized Tribes of that State should be excepted from provisions of the bill.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

BYRON R. WHITE,
Deputy Attorney General.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., March 30, 1962.

HON. CLINTON P. ANDERSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Bureau of the Budget on S. 2899, a bill relating to the Indian heirship land problem.

Section 1 of the bill authorizes the Secretary of the Interior to partition or sell the undivided Indian interest in any trust or restricted Indian land upon the request of an Indian owner, unless the Secretary finds that such a sale or partition would not be in the best interests of the Indian owners. Section 2 provides for a judicial partition or sale when consent cannot be obtained from the owner of an unrestricted interest. Upon the request of any one owner the Secretary is required to consent to a judicial proceeding if in his judgment such action is in the best interests of the Indian owners. The remaining sections of the bill contain conditions for the implementation of the first and second sections. In addition, section 10 provides for the consolidation of the existing revolving loan funds and increases the appropriation authorization from \$20 million to \$50 million.

The Department of the Interior, in a report that is being submitted to your committee recommends a number of substantive and technical amendments to the bill. The Department of Justice is also recommending a number of technical amendments.

Subject to your consideration of the amendments recommended by the Departments of Interior and Justice, the Bureau of the Budget would not object to the enactment of S. 2899.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 30, 1962.

HON. CLINTON P. ANDERSON,
*Chairman, Committee on Interior and Insular Affairs,
U.S. Senate.*

DEAR MR. CHAIRMAN: By letter dated February 28, 1962, acknowledged March 1, you requested our comments on S. 2899, 87th Congress, which relates to the Indian heirship land problem.

As you know, our Office has consistently emphasized the need for legislation to resolve this problem. In our report to the Congress, B-114868, March 2, 1961, on the review of certain aspects of the program for the termination of Federal supervision over Indian affairs, we pointed out that the need continues to exist and recommended that the Congress enact appropriate legislation. In our report dated April 27, 1961, to you, we urged enactment of S. 1392, 87th Congress, which, in addition to dealing with the heirship problem with which S. 2899 is concerned, also contained provisions which would result in the termination of the trust status that now exists between the United States and part of its Indian population. Our views remain the same.

With specific reference to the provisions of S. 2899, we have the following comments to make. Unlike S. 1392, S. 2899 does not contain specific provisions which would alleviate the heirship problem with respect to oil, gas, or other minerals that may be reserved to an Indian owner in a partition or sale of heirship lands. We feel that the committee may wish to consider adding a provision relating to such mineral estates.

Section 1 of S. 2899 would have the Secretary of the Interior partition or sell lands, if in the best interests of the Indian owners, when requested to do so by any owner of a trust or restricted interest in the land. However, section 1 only authorizes the Secretary to take such actions. Compare this authorization with the authorization and direction contained in section 1 of S. 1392. The failure to include the word "directed" in S. 2899 when compared with its inclusion in S. 1392 could raise the presumption that his actions on partition and sale are solely within his discretion.

Throughout the remaining sections of S. 2899, the mandate is clear inasmuch as the language reads that the Secretary shall take this or that action. Therefore, the committee may wish to clarify its position as to the meaning of the authorizing language of section 1 by revising such language so as to be consistent with the clear mandates provided for in the latter sections.

Section 5 of S. 2899 gives any of the Indian owners of an undivided interest or the tribe on whose reservation the land is located the right to meet the highest bid received in sealed competitive bidding. As drafted, this language could dis-

courage potential bidders from participating in the sealed bid proceedings because their best price would stand only if not met by one of the eligible Indian owners or tribe. We suggest that the overall result would be that the Indian owners will not, in every case, get the best possible price for their land since the high bidder is precluded from participating in the second bidding procedure.

We feel that a provision should be added which would give the highest bidder in sealed bid proceedings the right to demand an auction of the land starting at his sealed-bid price which was met by an Indian or tribe. Provision could be made limiting participation in such auction to the highest bidder and the Indian or tribe which met the highest sealed bid. This, we feel, would accomplish two desirable results. First, it would encourage bidders to submit bids and to bid high in the sealed-bid proceedings. Secondly, it would give more assurance that the Indian owners will receive the highest possible price for their land.

Section 5 does not specify who is to appraise the land to determine its value. The committee may deem it desirable to authorize and direct the Secretary to have these appraisals made and to charge the cost of such appraisals to the owners of the land.

Section 10(a) provides that "All funds that are * * * a part of the revolving fund authorized by the act of June 18, 1934 (48 Stat. 986), the act of June 26, 1936 (49 Stat. 1968), and the act of April 19, 1950 (64 Stat. 44) * * * including sums received in settlement of debts of livestock pursuant to the act of May 24, 1950 (64 Stat. 190) * * * shall hereafter be available for loans to organizations of Indians * * * and to individual Indians * * * for any purpose that will promote the economic development of such organizations or the individual Indian borrowers." We would like to point out that this language will permit the loan funds authorized by the cited acts to be used to make loans to organizations of Indians or to individual Indians without regard to the limitations spelled out in the cited acts on the amounts authorized for loans to particular Indians.

We feel that the overall result of the enactment of S. 2899 will be of value in attacking the heirship problem. Therefore, our Office, subject to the foregoing comments, indorses S. 2899.

Sincerely yours,

JOSEPH CAMPBELL,

Comptroller General of the United States.

Senator CHURCH. Our first witness today will be the Commissioner of Indian Affairs, Mr. Philleo Nash, accompanied by the Deputy Commissioner, John O. Crow; Martin Mangan, Assistant Commissioner; and Lewis Sigler, Office of Legislative Counsel, Department of the Interior.

If you gentlemen would like to come forward we can hear you together this morning.

Mr. Commissioner, welcome.

STATEMENT OF HON. PHILLEO NASH, COMMISSIONER OF INDIAN AFFAIRS; ACCOMPANIED BY JOHN O. CROW, DEPUTY COMMISSIONER OF INDIAN AFFAIRS; MARTIN P. MANGAN, ASSISTANT COMMISSIONER OF INDIAN AFFAIRS; AND LEWIS A. SIGLER, ASSISTANT LEGISLATIVE COUNSEL, DEPARTMENT OF THE INTERIOR

Mr. NASH. Mr. Chairman and Senator Burdick, I have brought with me a statement which is of enough length so that, unless the committee wishes, I will not take up the committee's time by reading it in full but rather to speak from it and give the highlights if the committee is agreeable.

Senator CHURCH. That will be satisfactory.

The full text of the prepared statement will be included in the record.

(The statement referred to follows:)

STATEMENT OF HON. PHILLEO NASH, COMMISSIONER OF INDIAN AFFAIRS

Mr. Chairman and members of the committee, my name is Philleo Nash. I am Commissioner of Indian Affairs, and I am here today to present the report of the Department of the Interior on S. 2899 and to answer questions. I have brought with me the Deputy Commissioner, Mr. Crow; the Assistant Commissioner for Legislation, Mr. Martin Mangan; and Mr. Lewis Sigler, the Assistant Legislative Counsel for the Department.

Before presenting the report I should like to have the committee's permission to make a general statement in which I might outline the heirship problem as the Bureau of Indian Affairs views it.

This committee's report (Indian Heirship Land Survey, Senate Committee on Interior and Insular Affairs, pts. I and II, 86th Cong., 1st sess.) and a companion study from the House Committee on Interior and Insular Affairs, together have set forth in very complete terms the factual situation of lands in multiple-ownership status. In round numbers the problem (as of June 30, 1961) is as follows: The total Indian land estate is 53 million acres. Of this, 12 million acres is owned by individual Indians. Of that approximately one-half is in multiple-ownership (6 million acres). Of this approximately one-half, or 3 million acres, is owned by from two to five heirs, and the other half by six or more heirs.

Every members of this committee is familiar with instances in which parcels are owned by more than 100 heirs, so that in order to calculate the fractional interests it is necessary to use least common denominators in 12 figures, or trillionths. Such instances are spectacular and are the cause of much consternation, but from the management standpoint they do not represent the major problem.

Without attempting to minimize the existing problem, we feel that the real problem of heirship is in the future. It is capable of becoming a monster that will consume the usefulness of the land and, in the long run, deprive the Indian owner of productive real estate. At present, multiple ownership is fundamentally a real estate management problem.

1. It raises questions of cost because the management of multitudinous small ownership interests may become exorbitant.

2. The necessity for obtaining the consents of many and dispersed owners make leasing less attractive, and so brings reduced rentals to the Indian owners.

3. Lands in badly fractionated ownership are most often the fallow lands, particularly in those cases where no one interest is large enough to induce any owner to make use of it himself, or even to prompt the owners to cooperate in leasing the land.

4. These problems are subject to a geometric progression as more and more land come into heirship status and the number of undivided ownership interests increases from generation to generation.

It is the purpose of these prefatory remarks to attempt some measurement of the dimensions of these problems and to examine the available administrative remedies before going on to the analysis of the proposed legislation. I want to make clear here, however, that we have not in the past nor are we now doing everything that can be done under existing authority to combat the heirship problem. I wish to assure the committee that the Department of the Interior shares its concern and is determined to use all means, legislative and administrative, to solve the problem.

As to the first problem I have enumerated, the Federal Government cannot afford waste in any of its operations, and so it is necessary to examine the cost of managing heirship properties very closely. The expense is often exaggerated in Bureau of Indian Affairs operations real estate management is provided for under the activity "Management of Indian Trust Property." Appropriations for this activity, both in dollars and as a percentage of the total Bureau from the year 1952 to 1961 are set forth in the table below:

INDIAN TRUST PROPERTY

Land management—appropriated funds

Fiscal year	Total bureau	Management of Indian trust property	Percentage of total
1952.....	\$71,868,912	\$1,247,083	1.74
1953.....	87,080,407	1,346,100	1.55
1954.....	84,122,760	1,346,100	1.60
1955.....	91,112,460	1,645,000	1.81
1956.....	79,703,498	2,101,139	2.64
1957.....	87,737,500	3,190,000	3.64
1958.....	107,743,000	3,003,311	2.79
1959.....	125,849,500	3,246,900	2.58
1960.....	115,777,000	3,498,311	3.02
1961.....	126,186,000	4,516,311	3.58

Since all land management activities, including operation of title plants, evaluation, surface and subsurface leasing, appraisal, sales, purchases, consolidations (etc.), are carried under this heading, it is plain that substantially less than the total amount is chargeable to the heirship status of the lands in question. In spite of the heirship complication, the Realty Branch, by an expenditure of \$4.5 million in fiscal year 1961, obtained for the Indian owners \$44.4 million in oil and gas income; \$3¼ million from mineral leases other than oil and gas, and \$11 million from surface leases. The cost of management includes the cost of distributing this income to the Indian owners, including the individual heirship interests.

Concerning problem number two, a potential loss to the Indian owners may arise from the relative unattractiveness of land in multiple ownership to potential lessees. On my trips to the Indian country, I have repeatedly asked realty officers what this factor is worth. All are agreed that multiple ownership leases bring in substantially less rent than single ownership leases, but none were prepared to give any hard and fast figure. A typical experience was that in the Lower Colorado River area last week when I was told that the maximum rental obtained this year was \$71 per acre per year of irrigable land and the minimum figure was \$30, depending upon the quality of the land leased. Multiple heirship land brought from \$10 to \$15 an acre less than comparable land in single ownership. Perhaps other factors mitigated for this result, I just don't know. I am just gaining experience in this area, but I am beginning to feel that the loss in income to the Indian owners may be one of the most costly features of the heirship problem from the economic standpoint, and it is to this aspect of the problem that we intend to devote major attention.

Now for problem three—unproductive lands. Reference to the House committee's report on Indian heirship land will show that about 500,000 acres, or approximately 4 percent, of all individually owned land was nonproductive principally or solely by reason of multiple ownership. This figure alone represents a very serious loss of income to the Indian owners. Every possible means to bring the land into production by management devices that will circumvent the problems presented by multiple undivided ownership interests should be used to further the Indians' economic development. I cannot emphasize strongly enough that recovering this lost income is a management responsibility, to be worked out in cooperation with the Indian owners when feasible. We have some management tools; we need additional ones for which we are asking in the departmental report on S. 2899.

No. 4—the geometric progression or runaway problem. The heirship problem is, of course, an outgrowth of the policy of allotment which prevailed throughout the latter half of the last century and which received its fullest, though not its only, impetus in the General Allotment Act of February 8, 1887 (24 Stat. 388). Some reservations had been allotted by special acts as early as 1805. Allotments were made with greatest frequency in the decades immediately after 1887.

Allotments in some considerable number were made as recently as the 1920's, and a few are being made even now—at Palm Springs, for instance. Allotments were largely stopped by the Indian Reorganization Act of 1934, but had come to a sharp decline even in the latter part of the 1920's, due to several factors including the realization that the dwindling size of the allotments foredoomed the allottees to an uneconomic operation.

Since relatively little new land has been added to the Indian land base in recent years, and the number of heirs has increased from generation to generation, it is apparent that the number of heirship interests is bound to increase geometrically from one generation to the next, and the fractionation of interests will result in larger bookkeeping costs, and proportionately greater Federal expenditures for decreasing benefits to the individual Indians.

The principal remedies that are open to reduce the problem of fractional ownership now, and keep it from getting larger in the future, are partition, sale, and exchange. Escheat was considered and rejected by the Congress at the time the Indian Reorganization Act was under discussion.

Partition, in the Bureau's judgment, is not a practical solution. In the past century, allotments were made in acreages that were even then the minimum on which a single elementary family could subsist. From the economic standpoint, it would have been difficult to partition most allotments on the death of the original allottees. Now, two to five generations later, even larger units are necessary for economic operation so that partition among heirs would result in uneconomical holdings.

Sale, if it were to be widespread, and to non-Indian owners, is open to two objections. Nearly 90 million acres was lost between the end of the treaty-making period (1871) and the end of the allotment period in the late 1920's. Public indignation at the loss of this amount of land was largely responsible for the Meriam study and the reforms introduced by the Rhoades, Scattergood, Collier, and succeeding administrations. Furthermore, the data from the recent House committee heirship study (pp. 6 and 30), indicates that 14.6 percent of the heirs who responded to the questions were living on heirship land. Outright sale of these homesteads would have a disruptive, unsettling impact. Yet, if partition is not practicable, the only choice is sale of the property or continued fractionation. It is this dilemma that your committee is most commendably attempting to resolve.

The principle of exchange is one to which some Indian tribes have devoted themselves off and on since 1934. Under this program a tribe seeks an exchange of ownership interests in quest of consolidation of holdings, unitization, and an end to fractionation of ownership interests. The trust status of the lands is preserved and manageable holdings are increased.

The Bureau of Indian Affairs has recently approved such a pilot plan on the Pine Ridge Reservation in South Dakota. Under this program the tribe and the Bureau will cooperate to facilitate exchange of ownership interests. This program originated with the tribe; and the Bureau is most interested in helping to make this pilot program work. It is my understanding that tribal representatives are here today to testify on their proposed land consolidation program, and since it is basically their program, I prefer to leave the discussion of it to them. I will content myself merely by saying that the Bureau has a hopeful attitude toward the possibilities of this program.

Partition, sale, and exchange all have difficulties connected with them. What remains? Land is the Indians' principal property asset and the Bureau's principal management problem. Fractionation to us is merely one in a long list of special management problems connected with the administration of Indian Affairs. We are guided by certain premises that underlie everything we do:

1. As trustees we must be prudent managers.
2. We are trustees for both tribes and individuals.
3. We have a responsibility to the people of the United States as well as to our trust beneficiaries.
4. We are bound by statutes and other congressional and court directives in all we do.

Since partition will not work, and exchange is a relatively limited tool, sale under conditions that protect the Indian interest and leasing under improved management practices are all that remain to the Bureau under existing authorities. These authorities are usable but tangled and not always adequate, and we are recommending amendments of the proposed heirship bill to improve them. Let me discuss them now.

For more than 50 years the Congress has authorized the sale of allotted lands in heirship status. For instance, the act of May 27, 1906 (32 Stat. 275; U.S.C. 379) provided for sales of allotted trust or restricted land by the adult heirs or allottee and in the case of minors, by a guardian appointed by a proper court subject to the approval of the Secretary of the Interior. Later, under statutes enacted in 1907 and 1908 the allottees themselves were authorized to sell their lands with the approval of the Secretary.

The master statute, however, is the act of June 25, 1910 (36 Stat. 855; 25 U.S.C. 372). Basically this act provides the authority under which the Secretary determines the heirship and, as amended, approves the wills of deceased Indians who die as the owners of trust or restricted property. But, significantly, the act also provides that if the Secretary decides the heirs are competent to manage their own affairs, he shall issue a fee patent to them; or, if he determines that one or more of the heirs is incompetent to manage his own affairs, he may cause the land to be sold. The same act provides that if the Secretary finds the lands are capable of partition, he may cause the shares of the heirs who are competent to be set aside on their request and he may issue fee patents to them. Elsewhere in the same act there is authority for the Secretary to make rules and regulations concerning the sale of allotted lands under this or any other act, and to make sales by deferred payment.

The act of May 18, 1916 (39 Stat. 127; 25 U.S.C. 378), broadened the Secretary's authority to partition heirship lands. The Indian Reorganization Act (act of June 18, 1934; 48 Stat. 984) prohibits sales of lands except to Indian tribes and to individual Indians in certain cases. The effect of this act for those tribes which are subject to its provisions, was to limit the Secretary's authority under the 1910 act to sell heirship land to tribes and to individual Indians in a trust status.

The act of May 14, 1948 (62 Stat. 236), removed the limitation on sales imposed by the Indian Reorganization Act and the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967), but required that all owners of the land make application for or consent to the sale.

It is this combination of enactments that chiefly provides this department with its management tools for dealing with the problem of multiple heirship, through programs of sale and/or partition. However, in order to interpret accurately existing authorities and their applicability in given situations, it is necessary to distinguish between trust and restricted land. In the former case (trust land), the fee title is in the United States and the beneficial title is in the Indians. In the latter case (restricted fee lands) the fee title is in the Indian subject to a Federal restriction against alienation or encumbrance. Trust lands are held under a trust patent or deed with title taken in the United States in trust for the Indian. Restricted fee lands are held under a restricted fee patent issued to the original allottee or under a deed whereby lands were purchased for the Indian with the insertion of a clause in the deed restricting alienation or encumbrance.

Bearing in mind that lands may be in trust or restricted fee condition, that the lands may be subject to the terms of the Indian Reorganization Act or not, or that they may be public domain allotments; then the following is the application of the Secretary's powers: Trust lands on reservations not subject to the provisions of the Indian Reorganization Act and public domain allotments can be sold or partitioned by the Secretary without the consent of the owners if one or more of the heirs is deemed incapable of managing his own affairs. Trust lands on IRA reservations and restricted fee lands on all reservations require the consent of the owner to either sale or partition.

It is principally because of the complications arising out of these limitations that the existing authority has not been used to a greater degree. Sale unquestionably has value as a means for dealing with the problem of multiple ownership, but history teaches us that land sales conducted without regard to the total Indian economy means the quick exit of Indian lands from Indian ownership. The Bureau, therefore, regards as essential that three conditions be attached to the sale of lands in multiple-ownership status:

1. Coowners be given preferential status as buyers.
2. Tribes also be given a preferential status as buyers.
3. Under certain conditions, that the Secretary be authorized to initiate transfer actions when lands are in heirship status. This is merely a modification of power the Secretary has had since 1910.

To give purchase preference rights to the tribes and to the Indian coowners when they do not have money with which to make such purchases is meaningless and a travesty. But much good can be done with an increase in the revolving loan fund so that loans may be made to the tribes and individuals for the purchase of land. (Because of the complications involved in applying the 1910, 1916, 1934, and 1948 statutes, we in the Bureau deem it desirable to renew and restate the authority provided in those acts in the pending legislation and are offering appropriate amendments.) The authority we are recommending departs from existing statutes only in degree. It will simplify our management

functions to have this authority, provided tribes and coowners are given preferential purchasing rights and are provided with the necessary means of purchase.

An additional management tool is sorely needed by the Department. Present law and regulations are cumbersome with respect to three real estate management matters that affect the use, though not necessarily the sale, of heirship lands. The act of June 25, 1910, requires the consent of all of the owners of a tract of land before standing timber can be sold. The result has been a difficult and cumbersome management program with respect to the harvest of timber on allotted lands in multiple ownership. Our management programs are being brought up to date on tribal land with the cooperation of tribal authorities; but the requirement that each owner consent to a sale of standing timber has hampered timber operations and will eventually make timber sales on allotted lands virtually impossible. We propose that the Secretary be given power to sell standing timber without consent of the owners if fractionation of ownership interests is preventing the proper discharge of his trust responsibilities.

The act of July 8, 1940 (54 Stat. 745, 25 U.S.C. 380), authorizes the Secretary to lease heirship land without the consent of the owners when the heirs or devisees have not been able or willing to give their consent over a 3-month period. This authority (referred to throughout the Bureau as 90-day leasing authority) has been used effectively to gain income through the lease of lands in multiple heirship status. But the 90-day period is at times awkward and is reported, as mentioned above, to have a depressing effect on the rental income of the lands. Since the 90-day waiting period is hardly more than a conventional nod to the principle of consent it seems more practical to us to permit the Secretary to execute leases on land in multiple heirship status without being required to obtain the owners' consent where fractionation is diminishing income. I repeat the experience of real estate managers throughout the Bureau: Lessees offer substantially lower rentals on lands where they must contact multiple owners. If the Secretary had authority to lease this land without necessarily obtaining each owner's consent there would be a substantial net gain to Indian income.

Rights-of-way over individually owned land held in multiple ownership may be granted by the Secretary pursuant to the act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 324-328). We propose that this power be amended in the present act to include grants of rights-of-way without the consent of the owners if there are so many owners that it is impracticable to obtain their consent.

In conclusion, we welcome the committee's interest in a legislative solution of the heirship problem. We have some management tools with which to seek an administrative solution and we intend to use them more than they have been used in the past. Additional legislative authority would be helpful to the Bureau, and money would be helpful to the tribes.

Trusteeship over Indian lands has been the principal protective device by which the Indian estate has been retained in Indian ownership to its present extent. Indians, individually and tribally, are developing themselves to the point where they can take better economic advantage of their landed estate. We believe they are now at a point where they themselves desire to make more use, in the fullest and best economic sense, of the lands they possess. It would be tragic indeed if the authorities we are seeking and which we are recommending to you should result in land sales in advance of the readiness of tribes and coowners to purchase. Economic development requires land in manageable units. We seek additional authorities only with this objective in view. Other aspects of the fractionation problem we can endure easier than we can contemplate the exit of substantial acreages of Indian land from Indian ownership. This we are determined to prevent.

Mr. NASH. Mr. Chairman, this committee's report and companion study from the House Committee on Interior and Insular Affairs together have set forth in very complete terms the factual situation of lands in multiple-ownership status.

In round numbers the problem as of June 30, 1961, is as follows: the total Indian land estate is 53 million acres. Of this, 12 million acres is owned by individual Indians, and of that approximately one-half is in multiple ownership, that is, about 6 million acres is in multiple ownership. Of this amount again approximately one-half, or 3 million acres, is owned by from two to five heirs and the other half by six or more heirs.

Mr. Chairman, every member of this committee is familiar with instances in which parcels are owned by more than 100 heirs, so that in order to calculate the fractional interests it is necessary to use least common denominators in 12 figures, or trillionths. Such instances are spectacular and are the cause of much consternation, but from the management standpoint, which is what I wish to address myself to this morning, they do not represent the major problem.

At present multiple ownership is fundamentally a real estate management problem. I am not attempting to minimize the existing problem, and the future problem is one that we very much have to concern ourselves with, but speaking as Commissioner of the Bureau I have to view it from the standpoint of the duties that are assigned our Bureau under law, and from this management standpoint the questions that are raised, as I see it, are fundamentally the following, Mr. Chairman:

First, it raises the question of cost because there is always the possibility that the management of numerous small interests may become exorbitant in terms of the return and in terms of the total management effort.

Second, the necessity for obtaining the consent of numerous dispersed owners makes leasing less attractive, and so brings reduced rentals to the Indian owners, and this is the problem that seems to me to be the major one.

I am just in the process of getting familiar with this side of it, but I think that the cost of managing these fractional interests is very easy to exaggerate and that less attention has been directed to the loss of income to the Indian owners by the relative unattractiveness of these leases than ought to be the case, and I am going to develop that a little bit in my testimony.

The third point, of course, is that lands in badly fractionated ownership are most often the fallow lands, particularly in those cases where no one ownership interest is big enough to induce any one owner to make use of it himself or to prompt him and others to be cooperative in leasing the lands.

As your committee study pointed out, there are approximately 500,000 such acres that are idle chiefly or solely because of the numerous ownerships.

Then, of course, No. 4 is the problem for the future, which is that there is a geometric progression of heirship interests from generation to generation so that no matter how large or small the problem looms at this particular moment, it is bound to be much greater in succeeding years.

I would like to start right out in these prefatory remarks, Mr. Chairman, by stating freely that in the 6 months I have been Commissioner we have begun to seize this problem. We have made only a beginning.

I am satisfied that in years past there has not been a complete and full use of the authorities that were available to us.

I am also, however, becoming familiar with the fact that these authorities are rather tangled and to some extent conflict with each other so that it is not a simple administrative problem to make the full use of the existing authorities which we freely admit ought to be done and which we intend to move into.

If I may, Mr. Chairman, I would like to take up the first problem, the cost to the Federal Government of managing these multitudinous interests.

The Federal Government cannot afford waste in any of its operations and it is obligatory on me, I think, to examine the cost of heirship properties very closely, but I feel that the expense has often been exaggerated and therefore I have inserted in this statement, Mr. Chairman, a summary table.

In the Bureau of Indian Affairs, the real estate management function is provided for under the activity "Management of Indian trust property."

The table I have set out there in the sheet which you have lists the appropriations for this activity by dollars and as a percentage of the total Bureau appropriations from the year 1952 through 1961, fiscal years in all cases.

You will note that the third column in this table headed "MITP" or "Management of Indian trust properties," has fluctuated from \$1.2 million to \$4½ million over this 10-year period. While it has been increasing all the time in dollar amounts, the percentage of the total has never exceeded 3.6 percent of all the Bureau expenditures. All land-management activities, Mr. Chairman, including the operation of our title plants, the appraisal function, the leasing not only of surface lands but of subsurface minerals, oil and gas, and hard rock minerals, the selling and the purchasing of land, consolidations, are carried under this heading, so that it is plain that substantially less than the total amount, which in the last fiscal year was \$4½ million, was chargeable to the heirship status of the lands in question.

Substantial portions of this money would have to be spent even if there were no fractional heirship problem.

In spite of the complication of heirship, which we all must recognize is a very serious complication, the Realty Branch, by an expenditure of \$4½ million in the last fiscal year, obtained for the Indian owners \$44.4 million in oil and gas income, \$3¼ million from mineral leases other than oil and gas, and \$11 million from surface leases. Because this cost of management includes the cost of distributing this income to the Indian owners, including the individual heirship interests, I am highlighting the total amount.

Our whole Indian individual money account system, the banking system by which we distribute money to the Indian owners, is provided for in this amount.

I do not regard this, Mr. Chairman, as an unreasonable management expense in terms of the income produced for the Indian owners.

We wish to reduce it. We wish to maximize the income, but I am desirous of keeping the problem in scale.

Concerning problem No. 2, a potential loss to the Indian owners may arise from the relative unattractiveness of land in multiple ownership to potential lessees. This is a problem, Mr. Chairman, with which I am just becoming familiar.

I would like to tell you about a recent trip to the lower Colorado River about 10 days ago.

While I was there, I queried the local subagent as to the prices that leased lands were bringing in this very rich irrigated area. The prime lease was \$71 an acre per year for a very desirable tract and

the lowest price was \$31. This, of course, represents lands of different value for agricultural purposes.

I asked the subagent how much difference is there if you are dealing with multiple ownership lands, because these are all heirship lands, and one where you have a single account.

He said, "From \$10 to \$15 an acre."

This is merely one example, but it illustrates the problem that I think is more acute than the cost factor; namely, that you cannot get the price for land which has multiple owners that you can get for a single ownership tract.

Senator BURDICK. Mr. Chairman, why is that a fact?

Mr. NASH. I think because in many cases the lessee has to make his own individual contract with the lessors. We attempt as far as possible to have lease money paid direct to the Indian lessors. This means an increased management cost to the prospective lessee and he just is not going to pay as much.

Senator BURDICK. Let us assume that I want to contact Indians on a piece of land. How many do I have to contact under present regulations to make a lease?

Mr. NASH. Under present regulations you have to contact all of them. After 90 days, if it is determined that it is impossible to make the contacts or obtain the consent of all of them, the representative of the Department can go ahead and make the lease under the so-called 90-day leasing authority. This is a management tool which has not been used as much as I think it ought to have been, but it also represents a situation where the lessee is not going to pay as much.

Senator BURDICK. It is still possible to lease the land, then?

Mr. NASH. Yes.

Senator BURDICK. Why should that land be leased for less than the land that is leased from an individual owner if it is comparable land in quality?

Mr. NASH. I think the lessee just regards it as much more of a nuisance.

Senator BURDICK. I see; the 90-day delay and the other things?

Mr. NASH. The 90-day delay, and of course I imagine that in a good many instances it is more than that.

John, do you want to comment on this?

One of the reasons I asked Mr. Crow to comment is because he not only has the experience of having been a superintendent, but as Chief of the Realty Branch before and assistant to the Assistant Commissioner for Resource Management he has a lot of technical familiarity with this problem.

Mr. CROW. Yes, the present terms of the leasing authority is found in an act of Congress in 1948 and this provides that Indians may negotiate leases on their lands subject to approval of the Department.

Every effort is made to follow this out by allowing Indians to negotiate their leases.

The authority also provides that if the heirs are unable to agree within the 90-day period, then we may make the lease.

The principal drawback, as the Commissioner has said, is that the prospective lessee considers it a considerable hardship and nuisance to have to deal with individual undivided owners of a tract of land. This results in several bad practices that we know have grown up.

Senator BURDICK. Tract A is owned by an individual Indian and tract B is in multiple ownership, both of comparable quality. Why, at the end of the 90-day period, does not tract B get the same rental as tract A?

Mr. CROW. They do. If we make an office lease of the heirship land, then we use the same principles that we would in a single ownership tract.

Senator BURDICK. The Commissioner says that the fractionated land brings less rental.

Mr. CROW. Yes, sir; but by far the greatest number of leases that are approved on heirship land are negotiated leases between the lessee and the owners.

Senator CHURCH. In the case of negotiated leases, do your present regulations require that all of the owners agree before a lease may be negotiated?

Mr. CROW. It requires that. It requires 100 percent agreement.

Senator CHURCH. Was there a time when certain allotted land on certain reservations under the regulations of the Department could be leased through a negotiated lease where a majority of the owners agreed? I refer to the study of the Senate committee on the heirship problem and I note here that with reference to Western Washington Agency, the statement is made that

Until 1954, the regulations permitted leases to be approved with 51 percent or more of the interests of the owners by signatures.

I was wondering why, if that was the case, now all owners must concur before a negotiated lease is approved? What accounts for the change?

Mr. CROW. Yes, Mr. Chairman, this is true. Prior to about 1954, our interpretation of the leasing authority did not require 100 percent agreement. About that time a case came up which required the Solicitor's Office to rule and they ruled that the language of the act meant all the owners. Since that time we have been required to do this.

Senator CHURCH. Could you supply us with a copy of the Solicitor's opinion upon which you base this unanimous-consent requirement?

Mr. CROW. Yes, sir; we will do that.

(Copy of opinion referred to follows:)

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 24, 1962.

HON. CLINTON P. ANDERSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR ANDERSON: At the time of the hearings on S. 2899 on April 2, 1962, we were requested to supply you with the rulings, interpretations, and pronouncements of policy which have tended to obscure the authority of the Secretary to lease individually owned land without the consent of all of the owners under the act of July 8, 1940 (54 Stat. 745, U.S.C. 380).

We are enclosing a copy of a Solicitor's ruling dated January 20, 1954, IA-116, concerning the power of the superintendent to grant leases, a copy of one of December 22, 1959, IA-1043, concerning the authority of the superintendent to execute leases on behalf of certain Indians, and a copy of a portion of the Indian Affairs Manual concerning surface leases and permits which deals with the authorities of the superintendent to lease individually owned land. Also en-

closed is a copy of a memorandum of February 16, 1959, addressed to all area directors, on this subject.

We think that it is clear from this material and from the information the subcommittee has obtained from our field officials, that there has been a lack of understanding as to the distinction between statutory requirements, regulatory requirements and statements of policy. The Federal Register of November 23, 1961 (26 F.R. 1096.6), contained a revision of the surface leasing regulations (25 CFR 131), which became final on December 23, 1961. It is believed that with this revision and a revision of the Bureau's leasing manual, there will be few questions as to the authority contained in the 1940 act.

We were also requested to furnish language relating the number of owners to the percentage of ownership necessary to initiate a partition or sale action. The following is suggested in compliance with this request. That—

“(a) The owners of not less than a 50 per centum interest in any land, where five or fewer persons own undivided interests, or the owners of not less than a 25 per centum interest in any land where six or more persons own undivided interests, where all of the undivided interests are in a trust or restricted status, may request the Secretary of the Interior (hereinafter referred to as the “Secretary”), and the Secretary is hereby authorized, to partition the land in kind, or to partition part of the land in kind and sell the remainder, or to sell the land if partition is not practicable and a sale would be in the best interests of the Indian owners and the tribe involved.

“(b) When any of the undivided interests in a tract of land is in an unrestricted status, the owners of not less than a 50 per centum interest in the remaining undivided trust or restricted interests, where five or fewer persons own such undivided interests, or the owners of not less than a 25 per centum interest in the remaining undivided trust or restricted interests, where six or more own such undivided interests, may request the Secretary, and the Secretary is hereby authorized, to sell all trust or restricted interests if a sale would be in the best interests of the Indian owners. The Secretary may also partition the land in kind, partition part of the land in kind and sell the remainder, or sell all interests if authorized to partition or sell the unrestricted interests by a power of attorney from the owner of the unrestricted interests.”

Sincerely yours,

JOHN A. CARVER, JR.,
Assistant Secretary of the Interior.

PETER DETHMAN

IA-116

Decided January 20, 1954

Indians—Lease of Restricted Indian Lands—Power of Superintendent to Grant Lease

Save as provided in the act of July 8, 1940 (54 Stat. 745, 25 U.S.C., 1946 ed., sec. 380), the superintendent of an Indian agency is without authority to execute or approve an agricultural lease on lands of a deceased Indian allottee, unless the lease has been executed by the Indian owners of the lands.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., January 20, 1954.

IA-116

PETER DETHMAN, BROCKTON, MONT.

Lease No. 2700

Fort Peck Reservation, Mont.

Appeal from order of Indian Commissioner reversing decision of Area Director reinstating the lease.

Affirmed.

APPEAL FROM THE COMMISSIONER OF INDIAN AFFAIRS

Peter Dethman has appealed from a decision of the Commissioner of Indian Affairs, dated August 6, 1953, reversing the order of reinstatement by the Area Director, involving a lease of restricted land on the Fort Peck Reservation owned by the heirs of Frank Longhair, deceased.

The facts relative to appellant's claim do not seem to be in dispute. Briefly, and in chronological order, they are as follows:

Mr. Peter Dethman appeared at the Fort Peck Agency office shortly prior to June 23, 1952, and made an inquiry of the superintendent about leasing a 160-acre tract of land. He was informed by the superintendent that the land was a part of the Frank Longhair estate and that, according to the records in the superintendent's office, the principal heirs were George Eder and Good Night Dog. He was informed that in order to obtain the lease he wanted he should negotiate the terms with these two persons. Acting in accordance with such information, Mr. Dethman negotiated and obtained a 5-year lease with these two heirs, which lease was formally written up and signed and attached to the signed acceptances of the two heirs. On June 24, 1952, the superintendent affixed his signature in the space provided for his approval. The lease was written on printed forms provided by the agency.

After the approval of the Dethman lease, on August 26, 1952, the superintendent wrote Mr. Dethman a letter informing him that Susie Gray Ear and Thene Gray Ear had a sizeable interest in the estate of Frank Longhair, deceased, and directed the lessee to account for payments made to the named lessors in the lease. Upon receipt of this letter, Mr. Dethman personally went to the agency and advised whoever was there in charge that he had not paid any rent directly to the lessors and that he would make all future payments at the agency office. In his written statement, Mr. Dethman adds: "I was told by Floyd Archiquette that the other heirs wanted to cancel my lease, but that my lease was valid and would stand."

Thereafter, during the period from August 26 to September 11, 1952, Mrs. Thene Gray Ear Buck Elk and Mrs. Susie Gray Ear Redboy, who together own an undivided one-half interest in the Frank Longhair estate, called at the agency office and insisted that a lease be written and approved for Mr. Carroll Benson of Froid, Montana. They filed with the superintendent copies of their acceptances of lessor in favor of a lease to Mr. Benson dated July 21, 1952. The lease they wanted to execute covered the identical land and was for the same term as the Dethman lease.

On September 11, 1952, the superintendent addressed a letter to Mr. Dethman, which reads in part as follows:

"Although your application is dated before Mr. Benson's and you have submitted payment of rental, bond and fee, their insistence on giving the lease to Mr. Benson will have to be recognized. Therefore, we are enclosing a cancellation form for lease No. 2700 for your signature, we are also returning your check in the amount of \$320.00 and a bond and fee refund check of \$338.00."

The record contains an undated letter from Mr. Dethman, stamped: "Received, Fort Peck Indian Agency, Oct. 14, 1952," in which Mr. Dethman noted that he was enclosing his cash bond and lease fee, and advised the superintendent that he had discussed the cancellation of his lease with the Billings Area Office, and that as a result of this discussion he had decided to appeal.

Notwithstanding the fact that an appeal was pending, the superintendent, on October 21, 1952, approved a lease of the same property to Mr. Carroll Benson.

After consideration of the above facts, the Area Director declared the Benson lease invalid and ordered the Dethman lease reinstated. Reversing this decision, the Commissioner of Indian Affairs held that both leases were invalid for the reason that in neither case was the unanimous consent of the lessors obtained, and for the further reason in the Benson lease that the superintendent acted without jurisdiction over the matter, the Dethman appeal being under consideration at the time it was approved.

The appeal being pursued only by Mr. Dethman, who is seeking reinstatement of lease No. 2700, it is not necessary to review the grounds for setting aside the Benson lease. The only question now presented for our consideration is the validity of the Dethman lease.

The act of March 3, 1921 (41 Stat. 1232, 25 U.S.C., 1946 ed., sec. 393), requires that leases of the type here involved be executed by the Indian owners of the land, subject only to the approval of the superintendent. Although provision is made in the act of July 8, 1940 (54 Stat. 745, 25 U.S.C., 1946 ed., sec. 380), for the execution of leases in certain exceptional situations by the superintendent, none of these exceptional situations appears to exist here. The superintendent did not in fact attempt to execute the lease. He merely approved it, and his approval was given on the erroneous assumption that the parties who executed the lease were the principal owners. In so doing, he exceeded his authority under the applicable statutes.

The decision of the Commissioner of Indian Affairs is, therefore, affirmed.

DOUGLAS MCKAY,
Secretary of the Interior.

APPEAL OF ORIE E. DOSDALL

Decided September 22, 1959

IA-1043

Indian Lands: Leases and Permits: Generally

A provision in the regulations giving the Superintendent authority to execute leases on behalf of Indians "who are non-residents and whose whereabouts are unknown to him" carries with it an implied obligation to make reasonable and diligent efforts to locate such persons and it is a question of fact as to whether such efforts were made.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., September 22, 1959.

IA-1043

ORIE E. DOSDALL

No. 17210-57.

Appeal from decision of Commissioner of Indian Affairs.

Affirmed.

APPEAL FROM THE BUREAU OF INDIAN AFFAIRS

Orie E. Dodsall of Pryor Star Route, Billings, Montana, has appealed to the Secretary of the Interior from a decision by the Commissioner of Indian Affairs dated January 8, 1959, holding that a lease identified as Contract No. 14-20-252-855, Crow Indian Reservation, Montana, is partially invalid. The contract had been approved by the Superintendent of the Crow Agency, and the case reached the Commissioner on the petition of Amanda Hansen, a non-Indian, who alleged that the lease had been executed without the signature of one of the Indians who was a necessary party thereto. Mrs. Hansen was a former lessee of the property in question and had sought unsuccessfully to negotiate the new lease herself.

The lease with which this controversy is concerned involves six allotments comprising 1,240 acres. Lawrence (Archie) Flatmouth had a minor undivided interest in three of these allotments which comprise a total of 640 acres. The Commissioner in his decision, which was in the form of a letter addressed to Mrs. Hansen's attorney, found that Mr. Flatmouth had not been notified of the lease proceedings and that the Superintendent had improperly committed his interests to the contract. The lease was declared invalid as to the three allotments in which Mr. Flatmouth held an interest, and it was directed that they be advertised for lease by sealed bids. Mr. Dodsall was given an opportunity to accept an amendment to the lease providing for the lesser acreage, but this he declined to do and the appeal to the Secretary followed.

Although we are primarily concerned here with the application of 25 CFR 131.7 which gives the Superintendent authority to grant leases or permits on behalf of certain classes of Indians, including "non-residents whose whereabouts are unknown to him", it must be determined whether, as an actual fact, Mr. Flatmouth falls into this particular classification.

Mrs. Hansen's original petition asking that the lease be declared void and the lands advertised for competitive bids was supported by an accompanying affidavit by Mr. Flatmouth. In this affidavit, Mr. Flatmouth stated that during the period of the lease negotiations his whereabouts were known to both the Superintendent and Mr. Dodsall and that Mr. Dodsall had contacted him on four separate occasions in an effort to get him to agree to the lease. He further stated that even though his whereabouts were known no letters or other form of notice in regard to the lease were received by him.

Although it would be desirable to have something in the record other than the affidavit to substantiate the claim that Mr. Flatmouth could have been properly notified of the lease proceedings, the parties do not appear to have made any great effort in this direction. It is significant that appellant in his various pleadings has not denied the truth of the allegations of the affidavits or made any effort to refute them. Rather, he bases his appeal on jurisdictional grounds and the claim that the equities of the situation are overwhelmingly in his favor.

It is apparent that the Superintendent made some effort to ascertain Mr. Flatmouth's whereabouts for the Superintendent reported that he had first been informed that Mr. Flatmouth was in the Veteran's Hospital, at Miles City,

Montana, only to learn later that he had not checked in at the hospital. However, it is indicated that the Commissioner did not consider this a full and complete effort for he states in his decision:

"The record does not contain any evidence that a form of acceptance of lease was mailed to Mr. Flatmouth at any address."

In view of these circumstances, we see no reason for disturbing the Commissioner's conclusion that Lawrence (Archie) Flatmouth was not an absentee.

Appellant also contends that because the Indians had not been able to agree on a lease during the three-month period immediately following the date when the lease was subject to renewal, the Superintendent was authorized to act under 25 CFR 131.7(b)(2), and 131.7(c), and to commit the minority interest to the negotiated lease without advertising. These particular provisions in the regulations have not been regarded as authority to permit the execution by the Superintendent of a negotiated lease, without advertising, covering the interest of an adult, mentally competent Indian, who is present on the reservation and capable of joining in the lease but unwilling to do so. It is quite apparent from the record that the Superintendent was well aware of the limitations upon his power in that respect, and it was recognized by him that in such a factual situation the lease would have to be advertised. In fact, the lease was executed by the Superintendent "for and on behalf of absentees, orphaned minors and undetermined estates * * *." He did not purport to invoke those particular regulations upon which appellant relies, but chose, as his negotiation of the lease clearly shows, to commit the interest of Lawrence (Archie) Flatmouth to the negotiated lease under authority of sec. 131.7(a)(2) of the regulations which relates to absentees. As we have demonstrated above, the Superintendent's action in this respect rested upon a misconception of the facts.

Therefore, the decision of the Commissioner, holding that the lease to Orie E. Dossdall is invalid in part, is affirmed and the appeal is dismissed.

ROGER ERNST,
Assistant Secretary of the Interior.

U. S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, D. C., February 16, 1959.

Memorandum

To: All area directors.

From: Commissioner, Bureau of Indian Affairs.

Subject: Approval of leases under 25 CFR 131.

It has come to our attention recently that instances still occur where leases are being approved covering lands in multiple ownership when those owning a majority interest in the land have signed a lease without an attempt being made to contact or get the signature of every individual owner.

Our regulations at 25 CFR 131.7 provide for handling leases and permits under these situations. No authority exists for a superintendent to summarily approve a lease or permit on the basis that the interests of the majority have been committed to the instrument. The regulation spells out the conditions under which the superintendent may act in behalf of Indians. The file in each case should reflect the status of each party signed for by the superintendent in order to establish the condition of authority under which the act was taken.

It is requested that these regulatory provisions be reviewed with your staff and agency offices to assure a uniform understanding hereafter.

E. JOETZ,
Assistant Commissioner.

RESOURCES—LAND (VOL. V, PT. IV SEC. 503.03)

CHAPTER 5. LEASES AND PERMITS (NONMINERAL)

.03 *Individual Leases and Permits.* Consonant with the objective of obtaining greater assumption of responsibility by the owner in the management of his land, 25 CFR 171.8 authorizes an adult Indian (other than one non compos mentis) to negotiate for himself or his minor children a lease or a permit for farm, farm pasture, and business purposes on Departmental approved forms. This authority

extends to adult heirs and devisees. When such a lease or permit is negotiated and executed by all of the adult owners, and parents having custody of the minor owners, such a lease or permit may be approved without advertising. The lease is subject to all pertinent parts of 25 CFR 171 and the approval of the Superintendent or Area Director.

When the owners are unable to complete negotiation of a lease or permit of their land Agency officials may render the necessary assistance. In such cases, when it appears that assistance by Agency officials would constitute negotiation of the lease, such as bargaining for the amount of the rental, selection of the lessee, or other material assistance, the lease shall be advertised for bids in the same manner as a lease of lands belonging to the persons referred to in 25 CFR 171.7 and to persons who have been determined to be irresponsible as set forth in 25 CFR 171.8 in order to assure that interested parties are informed as to the availability of the land for leasing, and the best return from the land may be obtained. The authority to waive advertisement for a lease or a permit to be granted by the Superintendent has been delegated to the Area Director.

The requirement of advertisement for a lease or permit should be waived only in specific instances, and only in unusual circumstances when advertisement would not be feasible.

In approving a lease or permit the approving officer should carefully consider the purposes for which it is proposed to grant a lease or permit and the general land use program of the reservation. A lease or permit for farming purposes should not be approved if the land is in a grazing area not suitable for farming purposes or such use of the land for farming will create a serious land use or land management problem. Consideration should be given to the effect of the lease upon the making of a livelihood by the owner and his family.

Section 25 CFR 171.8 provides that rentals shall be paid direct to the lessor or permitter, unless otherwise stated in the lease or permit. Prior to his approval of a lease, the officer in charge shall require the inclusion in a lease or permit of such provisions as may be necessary to protect the United States or the Indians with respect to any existing agreements, pursuant to the provisions in 25 CFR, for the payment of obligations by the lessor. When a lease provides for payment of the rentals direct to a lessor or permitter the lease should contain a provision to require the lessee, upon notice to him of the death of a lessor, to deposit any unpaid subsequent rental payments, as they become due, with the Agency for credit to the lessor's or permitter's estate. If such rentals have been paid in advance, the lessee should be required to show evidence of the rentals paid to the officer in charge. With respect to long term leases, it is advisable that such leases should provide for annual rental payments in preference to a single payment for the full term of the lease (See Section 504.01 of this Chapter).

.04 *Tribal Leases and Permits.*

A. When tribally-owned land is not needed for tribal purposes, the tribe through its authorized governing body may negotiate a lease or permit for farming, farm pasture, or business purposes subject to the approval of the Superintendent or other designated official of the Bureau of Indian Affairs. Section 503.03 of this Chapter on assistance by Bureau officials on individual leases and advertising is applicable to this section.

Senator BURDICK. Mr. Chairman, just one more question.

Mr. CROW, in order to get this perfectly clear in my mind, where the lease is negotiated there is a rental received and where the Bureau negotiates the lease after the 90-day period—

Mr. CROW. We do not negotiate. We advertise. In both cases, we advertise the lease.

Senator BURDICK. The lease that the Bureau acquires for the Indians is on terms less favorable?

Mr. NASH. More favorable.

Mr. CROW. More favorable.

Mr. NASH. Because the lessee has to deal only with a single manager.

Senator BURDICK. In other words, it is because of the numerous ownerships and the difficulty in making contacts with various owners

that the lessee will say, "Well, I'll give you so much less if you can get the lease," or something like that? It is because of the inconvenience to the lessee; is that it?

Mr. Crow. Inconvenient to the lessee.

Mr. NASH. Therefore, he is going to pay less and where we require him to go to all the owners to make his arrangements directly with them he pays substantially less.

If we had the authority to make these leases ourselves without the 90-day waiting period and without the obligation to go to every single one, we could substantially increase the Indian income.

Senator BURDICK. Then there is not a great disparity in the rental between a lease negotiated by an individual Indian and a lease entered into by the Bureau after 90 days in the same kind of land?

Mr. NASH. No, not in general. There are examples. I will not want the record to indicate that this was generally the case.

The Crow competent leases, for example, are bringing in substantially less rentals than the Office leases on the same reservation.

Senator CHURCH. I think it should be pointed out here that the House committee investigation on this particular point brought many testimonials on the part of Indian owners that they preferred to negotiate their own leases even though in given cases the return might be less than on a lease negotiated by the Bureau because they liked to manage their own land and they preferred to lease it to certain parties that the Bureau under its procedures might not lease the land to. In other words, they were exercising certain ownership rights.

If we now eliminate the 90-day period and confer upon the Bureau the right to move in immediately and lease the land as the Bureau sees fit, are we not substantially interfering with the right of Indian owners to exercise some prerogatives over the leasing of their own lands?

Mr. NASH. This is, of course, the reason why we have been following the practice.

They may also desire this because there is an opportunity for side negotiations, shall we say, between the individual and the lessee.

There are a good many evils connected with this practice, too.

This is a matter that we would have to weigh very carefully, but there is a substantial loss of income by the present regulations which, in our case, are pursuant to an interpretation by the Solicitor.

Mr. Crow. Mr. Chairman, I would like to add a little bit to that, if I may.

I assume you were looking at the apparent inconsistency between two of our recommended amendments, the one for majority interest and the other for no consent at all.

Where there remains enough of an interest on the part of the owners, where the undivided interest is not so small that consent is meaningful and actually gives that person some real incentive to negotiate, we are all for this and we much prefer that that class of leases be actually negotiated by the owners, but you mentioned earlier some of these rather horrible examples of 200 owners, and in those cases the largest remaining interest is so diluted that very little purpose is gained by this consent being exercised because it is not meaningful to the owner.

It is in those cases pending disposition under the other procedure in the bill that we would like to have this broad authority to lease and we

see that, in spite of all of the liberal provisions in your bill, there will be some tracts for one reason or another cannot be disposed of or put in single ownership immediately.

We have live interests in many of these that complicate the thing.

Senator CHURCH. I do not have any quarrel with the fact that much of this land will have to be leased rather than handled in any other way, but I do not see what real headway we make by eliminating the 90-day requirement.

I do not see where this represents a meaningful advance, the difference between doing it now and waiting 90 days before you can proceed to lease where the Indian owners themselves cannot agree.

It does not seem to me to be such a serious handicap in the management of this land, and maybe furnishes reasonable protection to the Indian owners.

Mr. NASH. Suppose we broke the problem into three levels.

If you are talking about 1 to 5 owners—I am not speaking from a factual survey, but just from an impression, commonsense—1 to 5 owners obviously present less of a problem to the lessee in making negotiations than 6 or more owners or, let us say, 6 to 10 or 11 owners.

It is when you get up around 25 and 30 and 35 and 40 owners that it begins to be an arduous problem and a very long delay, and at the end of 90 days you do not know whether satisfactory effort has been made to contact all of the owners and whether the regulations have been met in their entirety.

I do not think that this is a 90-day proposition in many cases, so that perhaps we are talking about the extreme cases where already the fractionation has proceeded to a point where the interests are small and the heirs are numerous but the lands may be very valuable.

Senator CHURCH. Go ahead with your testimony.

Mr. NASH. Continuing with problem 3 now of unproductive lands, reference to the House Committee's Report on Indian Heirship Land will show that about a half million acres, or approximately 4 percent of all individually owned land was nonproductive principally or solely by reason of multiple ownership.

In examining that report rather carefully, I noted that the responses to questionnaires included many, many references to land that was unproductive by reason of its location, by reason of soil conditions, by reason of not having been subjugated. In other words, there were many examples in here of unsatisfactory land from the rental standpoint or from the standpoint of production by the operator himself, so that I feel that this figure of 500,000 acres may well contain many examples of land which would remain in diminished production, or nonproductive even, if there were no heirship problem.

I think that an analysis of the responses to the questionnaires themselves would indicate this.

We are not in any sense minimizing the economic importance of 500,000 acres of land being out of production. In our economic development program we intend to take what steps we can to get as much as possible land like this into production, but I would not anticipate, even if we were to get a magical solution to the heirship problem tomorrow, that you would find that all of this 500,000 acres were to be put immediately into grazing or agricultural use.

The No. 4 problem, I think, has been very clearly stated by both committee reports and we could not agree with these findings more, and that is the geometric progression or runaway problem.

As we move from generation to generation, the number of heirship interests is not going to increase by addition but by multiplication, and we have to face the future and recognize that whatever problems we have now will be much more acute in years to come.

As both committee reports have pointed out, the heirship problem is a consequence of the Allotment Act of 1887. The greatest frequency of allotments were in the decade following 1887, but some were made as recently as the 1920's and a few are even being made now; Palm Springs, for example, in California.

The remedies that are open to reduce the problem of fractional ownership now and to keep it from getting larger in the future are, as we see it, three—partition, sale, and exchange.

The principal of this was considered and rejected by the Congress at the time the Indian Reorganization Act was under discussion. Partition, in our judgment, Mr. Chairman, is not a practical solution. When the allotments were made they were so small that they were the minimum upon which an elementary family could exist at that time. Today they are even more uneconomical. Even larger units are needed today than were needed two or five generations ago, so that partition among heirs will simply result in holdings so small that they would not provide well-being for a single family.

Sale, if it were to be widespread, and to non-Indian owners, is open to two objections. Nearly 90 million acres was lost between the end of the treatymaking period (1871) and the end of the allotment period in the late 1920's.

Public indignation at the loss of this amount of land was largely responsible for the Meriam study and the reforms introduced by the Rhoades, Scattergood, Collier, and succeeding administrations. Furthermore, the data from the recent House committee heirship study (pp. 6 and 30), indicates that 14.6 percent of the heirs who responded to the questions were living on heirship land. Outright sale of these homesteads would have a disruptive, unsettling impact. Yet, if partition is not practicable, and we do not think it is, the only choice is sale of the property or continued fractionation. It is this dilemma that your committee is most commendably attempting to resolve, and we are anxious to cooperate with you in resolving it.

Let me refer to the principle of exchange. This is one to which Indian tribes have devoted themselves off and on since 1934. Under this program a tribe seeks an exchange of ownership interests in quest of consolidation of holdings, unitization, and an end to fractionation of ownership interests. The trust status of the lands is preserved and manageable holdings are increased.

The Bureau of Indian Affairs has recently approved such a pilot plan on the Pine Ridge Reservation in South Dakota. Under this program the tribe and the Bureau will cooperate to facilitate exchange of ownership interests. This program originated with the Oglala Sioux Tribe.

It is my understanding that tribal representatives are here today to testify on their proposed land consolidation program, and since

it is basically their program, I prefer to leave the discussion of it to them.

I simply say that the Bureau has a very hopeful attitude toward the possibilities of this program and if it proves as effective as the tribal representatives believe it will be, we would most certainly attempt to apply it elsewhere.

If partition, sale, and exchange all have difficulties connected with them, what remains? Land is the Indians' principal property asset and the Bureau's principal management problem. Fractionation to us is merely one in a long list of special management problems connected with the administration of Indian affairs. We are guided by certain premises that underlie everything we do:

1. As trustees we must be prudent managers.
2. We are trustees for both tribes and individuals.
3. We have a responsibility to the people of the United States as well as to our trust beneficiaries.
4. We are bound by statutes and other congressional and court directives in all we do.

I should like now to discuss the principal management authorities which we feel are open to us as we attempt as real estate managers to cope with the heirship problem.

For more than 50 years the Congress has authorized the sale of allotted lands in heirship status. For instance, the act of May 27, 1906 (32 Stat 275; U.S.C. 379), provided for sales of allotted trust or restricted land by the adult heirs or allottee and in the case of minors, by a guardian appointed by a proper court subject to the approval of the Secretary of the Interior.

Other modifications were enacted in 1907 and 1908, but the master statute is the act of June 25, 1910.

I should like to discuss this in some detail.

Basically, Mr. Chairman, this act provides the authority under which the Secretary determines the heirship and, as amended, approves the wills of deceased Indians who die as the owners of trust or restricted property. But, significantly, the act also provides that if the Secretary decides the heirs are competent to manage their own affairs, he shall issue a fee patent to them; or, if he determines that one or more of the heirs is incompetent to manage his own affairs, he may cause the land to be sold.

We do not, of course, use this word "competent" or "incompetent" in the sense that it is used in non compos mentis. We are referring to capability of management, not to legal competence or incompetence.

The same act provides that if the Secretary finds the lands are capable of partition, he may cause the shares of the heirs who are competent to be set aside on their request and he may issue fee patents to them. Elsewhere in the same act there is authority for the Secretary to make rules and regulations concerning the sale of allotted lands under this or any other act, and to make sales by deferred payment.

The act of May 18, 1916 (39 Stat. 127; 25 U.S.C. 378) broadened the Secretary's authority to partition heirship lands. The Indian Reorganization Act (act of June 18, 1934; 48 Stat. 984) prohibits sales of lands except to Indian tribes and to individual Indians in certain cases. The effect of this act for those tribes which are subject to its provisions, and that means those who elected to do it, was to

limit the Secretary's authority under the 1910 act to sell heirship land to tribes and to individual Indians in a trust status.

The act of May 14, 1948 (62 Stat. 236) removed the limitation on sales imposed by the Indian Reorganization Act and the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967), but required that all owners of the land make application for or consent to the sale.

It is this combination of enactments that chiefly provides this Department with its management tools for dealing with the problem of multiple heirship, through programs of sale and/or partition. However, in order to interpret accurately existing authorities and their applicability in given situations, it is necessary to distinguish between trust and restricted land. In the former case (trust land), the fee title is in the United States and the beneficial title is in the Indians. In the latter case (restricted fee lands) the fee title is in the Indian subject to a Federal restriction against alienation or encumbrance. Trust lands are held under a trust patent or deed with title taken in the United States in trust for the Indian. Restricted fee lands are held under a restricted fee patent issued to the original allottee or under a deed whereby lands were purchased for the Indian with the insertion of a clause in the deed restricting alienation or encumbrance.

Bearing in mind that lands may be in trust or restricted fee condition, that the lands may be subject to the terms of the Indian Reorganization Act or not, or that they may be public domain allotments; then the following is the application of the Secretary's powers: Trust lands on reservations not subject to the provisions of the Indian Reorganization Act and public domain allotments can be sold or partitioned by the Secretary without the consent of the owners if one or more of the heirs is deemed incapable of managing his own affairs. Trust lands on Indian Reorganization Act reservations and restricted fee lands on all reservations require the consent of the owner to either sale or partition.

It is principally because of the complications arising out of these limitations that the existing authority has not been used to a greater degree. Sale unquestionably has value as a means for dealing with the problem of multiple ownership, but history teaches us that land sales conducted without regard to the total Indian economy means the quick exit of Indian lands from Indian ownership. The Bureau, therefore, regards as essential that three conditions be attached to the sale of lands in multiple-ownership status:

1. Co-owners be given preferential status as buyers.
2. Tribes also be given a preferential status as buyers.
3. Under certain conditions, that the Secretary be authorized to initiate transfer actions when lands are in heirship status. This we regard as merely a modification of power the Secretary has had since 1910.

Senator CHURCH. Mr. Commissioner, with respect to these recommendations, you said:

The Bureau, therefore, regards as essential that three conditions be attached to the sale of lands in multiple-ownership status.

1. Co-owners be given preferential status as buyers.

The bill we have under consideration gives co-owners preferential status as buyers.

2. Tribes also be given a preferential status as buyers.

The bill we have under consideration also gives tribes a preferential status as buyers.

The first two of these conditions are met by the present bill.

With respect to your third recommendation that under certain conditions the Secretary be authorized to initiate transfer actions when lands are in heirship status, I do not recall that we confer any additional authority on the Secretary by these actions in the pending bill, but I would like you to elucidate on that a little bit further.

Do you know of any provision in this bill that would confer that additional authority upon the Secretary?

Mr. NASH. No, sir, and in our suggested amendments we are recommending that a section 1(c) be added that would provide this power and it would also clarify the power that the Secretary already has, so that the conflicting elements of the 1910, 1916, 1934, and 1948 statutes would be resolved. It would, however, hedge the Secretary's powers in this proposed amendment with a good many restrictions so that the welfare of the tribes as well as of the individual owners be taken into account, that is, that he would be required to take them into account.

We then go on, Mr. Chairman, to deal with the question of the capability of individuals and tribes to use their purchase power.

We wish to point out, of course, that if the individual coowners or the tribes do not have money and these authorities are granted, then the power is useless and may even be dangerous in the sense that it may serve as an exit route to Indian ownership of the land.

This completes what I have to say with respect to the sale and purchase provisions.

We also feel, however, as I indicated earlier, that there is an additional management tool very badly needed by the Department, and in our departmental report, Mr. Chairman, we are recommending amendments to the proposed bill to provide this important management tool.

Present law and regulations are cumbersome with respect to three real estate management matters that affect the use, and, therefore, the income potential, though not necessarily the sale of heirship lands.

The act of June 25, 1910, requires the consent of all the owners before standing timber can be sold and thereafter harvested. The result has been a difficult and cumbersome management program with respect to the harvest of timber.

Our management programs with respect to timber are being brought up to date on tribal land with the cooperation of tribal authorities, but, the requirement that each owner consent to the sale of standing timber has hampered timber operations and will make timber sales on allotted lands virtually impossible as the heirship problem increases.

We propose, therefore, that the Secretary be given power to sell standing timber without consent of the owners if fractionation of ownership interests is preventing the proper discharge of his trust responsibilities.

Additionally, Mr. Chairman, the act of 1940, July 8, authorizes the Secretary to lease heirship land without the consent of the owners when the heirs or devisees have not been able or willing to give their consent over a 3-month period. This is the power that we were dis-

cussing with Senator Burdick earlier and, as indicated in that discussion, we feel that Indian income could be increased if the Secretary had authority to lease this land without necessarily obtaining each owner's consent where the multitude of the ownership interest is a cause of diminished income.

Senator CHURCH. All you are proposing here is just to eliminate the 90-day waiting period?

Mr. NASH. Yes, sir.

John, do you have anything on that?

Mr. CROW. That is right.

Mr. NASH. We are also going on to rights-of-way, which is new authority.

Mr. CROW. With respect to rights-of-way and timber sale there is no 90-day provision.

Mr. NASH. Only on surface leases.

Senator BURDICK. One question. Where you would eliminate the 90-day provision it would still be discretionary with the Bureau as to whether or not the individual Indians have some leeway, some chance to negotiate?

Mr. NASH. The Secretary would have to make an affirmative finding that the number of ownership interest was the cause of the land producing diminished income or being idle.

In other words, where the present system is working all right there would be no reason for the Secretary to intervene in this way.

We simply wish him to have this power as a management tool but he would have to make an affirmative finding in that regard.

Senator CHURCH. Does not the 90-day period put the Indian owners on notice that the Government intends to lease this land without their consent because they cannot agree to put it to any given use?

Mr. NASH. I am trying to look at it from a practical management standpoint, Mr. Chairman.

Senator CHURCH. I am trying to think about the rights of the Indians which I find that many tribal spokesmen even overlook; that is, the right of the individual Indian, and the Bureau ought not to overlook it.

It may be expedient in managing these lands to proceed to lease them whenever the Bureau decides that this is the best thing to do, but I do not think we can disregard the basic right of the Indian owners, but should give them some notice in advance of action of this kind to allow them to come to some agreement with respect to the land if that is possible.

That, I think, must have been the reason for putting the 90-day period into law in the first place.

Mr. NASH. Mr. Chairman, the 90-day period is actually such a perfunctory period, if you have a large number of owners who may be scattered all over the State and some of them in the armed services, that it hardly does more than pay lipservice to the requirement of notice.

Senator CHURCH. But it certainly gives more notice than no period.

Mr. NASH. The Secretary would be required to make the finding and is required to take the individual interest of the Indians into account.

I believe that could be provided by regulation.

As it is now the right is protected, but the income is not there and the potential for economic development is being lost.

Senator CHURCH. It is for this reason, of course, that we want to see the heirship problem solved before it becomes a quagmire into which the whole Indian people seep, and I get very little encouragement in our efforts to solve it, I must say, because every effort is thought to be some kind of conspiracy against the Indian people.

Of course, I do not think this subcommittee has a single member on it that is not a genuine friend of the Indian people, but I personally think that eliminating the 90-day waiting period contributes very little to more effective management and may jeopardize some Indian rights that ought to be safeguarded.

I am not impressed with that recommendation.

Senator BURDICK. Mr. Nash, could a middle course be explored to reduce the waiting period, not eliminate but reduce the waiting period?

Mr. NASH. From 90 days to some lesser period?

Senator BURDICK. Thirty or something like that.

Mr. NASH. John, from a management standpoint, what would that mean?

Mr. CROW. This, primarily, is a matter of additional expense, additional inconvenience, to people who are seeking to lease Indian land and those who have to manage it.

We put out a notice saying—

This period is beginning, and if you do not bring a lease in by the end of this 90 days, then we will proceed to lease it.

We give them another notice at the end of the 90 days.

It accomplishes very little, in our experience.

Senator BURDICK. I do not mean that. I mean use the 30-day period instead of 90 days, in lieu thereof.

Mr. CROW. I think the objection would be the same from our standpoint whether it would be 30 days or 90 days or 6 months.

I think our objection would be the same, bearing in mind that, as we have said, we do not want this authority to disturb presently satisfactory relationships between Indian owners and their lessees. We want it in those cases where we are having difficulty. It is a minor part of the total, but it is taking a disproportionate amount of our time, and money is spent for this.

Mr. NASH. With respect to the question of consent, Mr. Chairman, may I point out that we are talking here only about the lease, not about sale. If the provisions of any heirship remedy that might be worked out, whether under existing authorities or under new authorities, should come in advance of the capability of the tribes or the individual coowners to exercise their purchase options, we would then have a much more drastic remedy and a much greater evil from the standpoint of loss of land, then what we are talking about here is leasing where there are multitudinous owners and where the difficulties in obtaining consent or the positive inability to obtain consent prevent the land from being used or causes it to be used at reduced rentals.

As between the two remedies, the Bureau would vastly prefer the second and thinks that by regulation the Indian rights can be protected and might prevent sale under distressed circumstances.

Senator CHURCH. I just know that a basic rule of justice and fundamental rule of Anglo-Saxon law and the protection of individual rights is notice, and whenever you proceed upon the theory that big brother can do it best, if we just eliminate the encumbrances and provide a more efficient method, I think we get on very dangerous ground.

Besides, when you are considering the leasing of land for periods of 5 or 10 years, I cannot see where a notice period giving the Indian owners an opportunity to know in advance that the Bureau plans to lease this land and thus a chance to come to some agreement among themselves if that is possible really represents any substantial impediment to the efficient management of this land.

It is true there is quite a difference between a lease and a sale, but a lease that ties up land for 10 years is not an inconsiderable thing. For 10 years it has the effect of alienating the land from the owners and compensating them according to certain provisions of the lease, so it cannot be taken lightly.

Leasing is a very important alienation of ownership right.

Mr. NASH. On the other hand, the committee proposal, Mr. Chairman, also provides for one owner, no matter how small his ownership interest, to initiate partition proceedings and proposes that the trust relationship be severed and fee patent be issued as soon as ownership gets beyond one individual.

Senator CHURCH. That is not, I think, an accurate statement of the case. The bill provides that one Indian owner can initiate an action where the object is to put an end to the multiple ownership, but that action is under procedures that give the other Indian owners first preference rights to acquire, gives the Indian tribe first preference rights, provides \$30 million additional funds to the revolving fund to provide credit to the Indian tribes so that they can assert the rights, and otherwise does everything that seems reasonable and proper to protect the Indian interests.

What we are trying to do is not end trust lands.

What we are trying to do is end multiple ownership of trust lands, which not only increases administrative cost, but reduces the value of these lands and the income from these lands to the Indian people, and so I think that it is in that light that we ought to regard the bill, whatever amendments we may see fit to adopt.

The purpose of this bill is not in any way to jeopardize trust lands, but it is to try and alleviate a worsening problem of multiple ownership that is denying to the Indian people the proper value of these lands.

Mr. NASH. We, of course, Mr. Chairman, in no sense disagree with that as an objective.

The problem is how to arrive at it without running into the dangers that history tells us are present in the past remedies, and the danger, of course, is that in the effort to deal with the question of multiple ownership, you may create a situation in which desperate, needy, cash-hungry people will sell their land rather than hold on to it.

We are proposing improved management tools so that by the economic development route we may hopefully move them to a standard of living where this desperate need will not exist.

At this point, I think the remedies that come from the Anglo-Saxon common law tradition would be more pertinent.

In the meantime, we are rather apprehensive.

Senator CHURCH. You will have to make a better case to convince me that much will be accomplished by the elimination of the notice period when dealing with leases that may extend anywhere from 5 to 20 years.

I just do not see where the notice period is any real encumbrance.

Mr. NASH. We have with us, Mr. Chairman, the departmental report and because Deputy Commissioner Crow is very much versed in the technicalities of this problem, has had experience as a superintendent, and Chief of the Branch of Realty, I am going to ask him to present the departmental views as presented in the report which you have before you.

Mr. CROW. Mr. Chairman, appended to the executive communication is a list of 20 suggested amendments to S. 2899. I would like first to go through these rather briefly and summarize what occurs to us to be the major points of difference between our total amendments and the bill as introduced, if this seems satisfactory at this point.

Our amendments 1, 5, and 8 would change the provision where one owner could initiate action to a provision requiring a majority of the ownership interests to initiate action.

Our amendment No. 2 suggests a new provision which would become 1(c) and the Secretary, where he has not received a request for partition or sale, would be authorized to sell such tracts without consent.

Again, this envisions those extremely fractionated tracts where the remaining largest interest contained is so small that probably under the provisions of the bill otherwise, no one would have incentive to request partition or sale.

Of course, partition in this case would be most impractical.

Senator CHURCH. This does create some difficulty for me because, as you previously suggested, Mr. Crow, on the one hand you would amend the bill to provide that a single owner may not initiate a partition or sale and require that a majority of owners must do so or owners of the majority interest in the land must do so.

Then, on the other hand, you come around and say that the Secretary may initiate such an action with nobody's consent at all.

Mr. CROW. Yes, sir. I know we have a number of tracts where the allotment has been in existence for several generations. The number of owners exceed 100. The remaining share that anyone has in it is negligible.

Probably, under the provisions of the bill without this section in there, no initiative would be taken by anyone to get this converted into a usable asset.

Senator CHURCH. But what in this language would prevent the Secretary from making such a determination where there are only three owners, let us say, and instead of using that provision of the bill which would require a majority of them, should it be amended as you suggest to initiate the action, he turns to this subsection that you propose and makes the finding that is stated here and proceeds without anyone's consent?

Mr. CROW. First, I doubt very much if the Secretary could determine that three owners constituted a multiplicity.

Senator CHURCH. But that is left under the language entirely to the Secretary.

Mr. Crow. That is right.

Senator CHURCH. So that there is no protection in the law. Everything is left to the Secretary's discretion.

Mr. NASH. Of course, elsewhere in our list of amendments we are proposing, as required by law, that the tribe be included among those whose interests must be considered, so that the Secretary would first go to the co-owners and then to the tribe and the interests of the tribe would have to be protected by the Secretary under the provisions of this act.

Senator BURDICK. I think what the chairman is getting at is he wants a logical distinction between these two classes. Is it possible to make the distinction based upon a minimum so you can have a clear distinction?

Senator CHURCH. If you do not write the standards into the law and leave it all up to the good intentions of the administrators, then, though the administrators are good-intentioned men, there will be times when the discretion is abused and when the judgment is bad, and there is nothing in the law that protects fundamental rights.

That is why we try to write standards into the law.

Mr. Crow. Certainly standards could be written in here.

Senator CHURCH. I would think here if this was the approach we were to adopt, we would want to write into the law that where the number of owners is less than, say, six or fewer, or a dozen or fewer, a majority is required in order to initiate the action. Where the ownership is greater and the Secretary makes the determination that this excessive multiplicity of ownership is such as to justify his initiating the action, then in those cases he may do so, but I would certainly think that standards of that kind ought to be written in to give definite protection to the allottees.

Mr. NASH. We would not object to that, Mr. Chairman.

Mr. Crow. There is possibly one other standard that I can think of, and that is the situation of the remaining interest that any one person might have in the tract.

It is possible that someone might have a half interest in this tract and the other half is owned by other people, so I think this would be considered, too.

In any case, where one has a major interest in an undivided tract, I think that owner would have to be given a proportionate weight.

Senator CHURCH. Yes, I would agree with that. I wonder if you would prepare language along these lines that you could submit to the committee in connection with these first two proposed amendments.

Mr. Crow. We will do that.

(See letter previously submitted.)

Mr. Crow. Our amendments Nos. 3 and 6 would broaden the partition standards in section 1(a) and 1(b) to make it possible to make partition in kind for a part of the land and sell the remainder. It broadens the authority.

Our amendments Nos. 4 and 9 require that the interests of the tribe as well as the individual owners be considered in the determination to approve a sale.

Our amendment 7 proposes a new section designed to keep under the jurisdiction of the Secretary those nontrust interests undivided

which accrue subsequent to the date of the act and that jurisdiction only for the purpose of this act.

Our amendment 10 is a technical one and broadens the type of notice to be given.

Our suggested amendment 11 adds to those entities to whom negotiated sales may be made a State or local government. The reason for this is that many times a State, or a country, or a city may be desirous of obtaining a tract of this land and by their own laws and regulations are unable to compete competitively for it, so that this provides authority to negotiate with them.

Our amendment 12 would change the use of the appraisal in its connection with competitive sales. The new language brings the bill in agreement with our present practice and present regulations in that sales can be made even though they are not equal to or above the appraisal.

The appraisal here is not intended to fix value but merely to be a tool to administrators in their use in considering whether to approve a transaction.

Our amendment No. 13 would delete the limitation of 30 years on loans and bring this section in line with the revolving loan fund generally.

Senator CHURCH. What is the limitation?

Mr. CROW. There is no stated limitation.

Senator CHURCH. What are the longest loans you have extant at the moment?

Mr. CROW. I would hazard a guess, and a guess only, and if you would like a more accurate answer, we can furnish it, that we have none now that is longer than 20 years, but we are not making loans for the purchase of land generally.

Mr. NASH. We are pretty sure, Mr. Chairman, that there are parcels of land that a tribe might desire to purchase which you would not expect them to pay out in 30 years. If we were bound by the law we might easily get the tribe in a situation where they could not pay off the loan within the terms required, and yet it might be desirable to have that tract.

Senator CHURCH. You do not presently have any loans that exceed 30 years?

Mr. CROW. Not to my knowledge.

Senator CHURCH. You do have real estate loans?

Mr. CROW. We have a limited number.

Mr. NASH. Very few.

Senator CHURCH. The difficulty is when you get beyond 30 years on a real estate loan, if it bears any interest the buyer is spending all of his money in interest and retiring the capital and the loan principal becomes very difficult.

Mr. NASH. At the present time, Mr. Chairman, the law leaves it to the Secretary to define terms of payment, schedules of payment, and interest rates.

In practice, the interest rates that are being charged, and which the tribes have agreed to and individuals who have loans, are about even with the cost of the money, that is, there have been no extremely low interest rates and not very high ones.

I think it has been a successful experience, and what we are really asking here is that the flexibility that the Secretary has given not be disturbed to tailor a loan to a particular situation.

Mr. CROW. Our amendment 14 suggests that the wording be deleted that no plan shall be considered by the Secretary unless it has been first considered at a general meeting of tribal members called for that purpose and approved by a majority of the members present and voting.

Many of the tribal constitutions delegate this authority to the governing body, and if it does not this procedure would be followed anyway, the point being that this language should not be in there to the detriment of the tribal organization.

Senator CHURCH. You know, the reason that language was put in is because of some sad experiences we have had where the tribal council has taken action on a matter that profoundly affected the tribe and afterward the action of the tribal council has been repudiated upon the ground that it was not properly constituted, that it did not really have the consent of the Indian people, or that the provisions were irregular, and this becomes an endless source of continuing complaint to the Congress to rectify the wrong that was done, and for that reason it seemed wise to make some provision here that would, with certainty, refer a matter of such importance to the members of the tribe itself to pass upon, but we can discuss this further.

That was the reason the language was inserted in the first place. We have had such experiences and they have been very unfortunate and unhappy ones.

Mr. NASH. And we are familiar with them, Mr. Chairman.

The only point is that this particular language would in a number of important instances conflict with already approved tribal constitutions where this power has been delegated from the general council to some kind of executive committee, or business committee, or something of that kind, and we would propose to follow the constitutions of the tribes in carrying this into effect.

Mr. CROW. The tribes also in these instances have referendum provisions that can be exercised by the governing body.

If it wants to seek the opinion of the tribe it can do so.

Our amendment No. 15 deletes subsection 6(f) requiring that lands purchased under this act shall be managed at the expense of the tribe. We have no objection to this in principle, but we see no way of segregating these particular lands from other tribal holdings because one of the principal purposes of the bill in that respect is to allow tribes to consolidate, and we think it would be most unworkable to try to assess the cost of these lands when we may not be assessing all of the costs of the other lands.

Our amendment No. 16 is similar to 14 in that we recommend deletion of the words "provision of the tribal constitution." The bill now reads "notwithstanding these provisions of tribal constitution." Some of the tribal constitutions do not authorize the governing body to purchase land. The governing body, however, has recourse to amendment if it desires to have this authority included.

Our 17th amendment is a technical one and merely adds "or encumber" to the authority for sale of tribal lands.

Our amendment 18 recommends deletion of all of section 11. Section 11 provides that upon the conveyance of land now in single

ownership to two or more persons, the conveyance will be other than in trust.

I think the Commissioner touched on that in his discussion rather briefly.

Senator CHURCH. Let us check that out while we are about it.

Subsection (f) on page—

Mr. CROW. It is on pages 8 and 9. It starts on page 9.

Mr. NASH. It refers to section 11, line 8, on page 8, Mr. Chairman.

Senator CHURCH. I am looking at the committee print.

What are you going to do about the one problem that you have already testified represents the most serious aspect of this heirship problem; namely, the way it is expanding astronomically? Unless something is done to cut it off, it is going to get worse and worse. Everyone will end up blaming everyone else for the failure to act, and it seems to me if we are going to solve this problem something has to be done to prevent this from getting worse, and the purpose of section 11, of course, is addressed to that all-important aspect of the problem.

Mr. NASH. Mr. Chairman, we simply feel that the action proposed in section 11 is a very drastic one. The remedy is so extensive that in order to deal with the problem of fractionation you then wind up with the termination of the trust relationship and the issuance of the unrestricted deed or patent as soon as the ownership goes beyond one, although our experience tells us that the management problem, if the number of owners is in that scale, is not a serious one.

Senator CHURCH. What do you propose in the way of preventing this land from moving out of single ownership into multiple ownership? Do you have any substitute to propose?

Mr. NASH. Yes, sir; a combination of remedies which are included within our proposed amendments; first, sale to coowners and to tribes so that where you have excessively fractionated lands, there may be a transfer to other Indian owners or to the tribe.

Senator CHURCH. That would be done under the language of this bill, even with section 11 in it.

Mr. NASH. Second, where you have land which is so highly fractionated now that the Indian owners are incapable of acting through the available remedies because there are so many of them and their ownership interests are so small, that the Secretary be given the initiative.

We think that in certain of those cases the leasing authority that we are asking you to give the Secretary would provide for it to be income producing and that the management costs need not be excessive.

We think that in the course of time, and then by the use of relatively untried techniques, such as the exchange program of the Oglala Sioux, that it may be possible to consolidate the interests.

Taking all of these together with the economic development program we are proposing, we think would prevent this situation from multiplying, as the committee has pointed out, without such a drastic remedy.

Senator CHURCH. If we were to take all of your proposals and apply them, no sooner than one given problem has been corrected under your proposals but the Indian owner, let us say, dies and a new heirship problem is created all over again for that land if section 11 is stricken from this bill. In other words, I am afraid that your

remedies are so limited that if we were to apply them all we would be back here 5 years from now or 10 years from now looking at an heirship problem that has not been substantially improved but which is regrettably worse.

There will be more land in heirship than before and it will be less productive and the problem will be as unsolved as it is at this moment.

Mr. NASH. It seems to me, Mr. Chairman, that you can go two ways on this. You can go the way of economic development, which improves the capabilities of the individual and the tribes to resolve the problem by purchase.

Senator CHURCH. To the extent that the Indian tribes purchase this land back into tribal ownership that may be so, but to the extent that this land remains under allotments it seems to me that the remedies you are suggesting as amendments to this bill will not really do more than furnish a palliative and that even where it is applied the heirship problem will again be on your hands as soon as the present owner dies and that land again passes into heirship status.

I really think that the problem is sufficiently important to the well-being of the Indian people to call for remedies commensurate with the problem.

I seriously doubt that we would have that if we were to strike all of section 11.

It may be that this is not the best way to treat with the question of how you prevent single ownership land from moving into heirship status and this heirship problem will multiply, but to do nothing about it seems to me to simply ignore the most serious aspect of the problem which, by your own testimony, is the most serious aspect of the problem.

Mr. NASH. We would not, however, regard it as serious as the loss of Indian land that we fear through the application of section 11. That is why we are proposing this deletion.

We feel that we can deal with the problem of fractionation, given these additional management tools, better than all of us together can deal with the question of loss of Indian land which we think would come about through the application of section 11.

Senator BURDICK. Mr. Chairman.

Senator CHURCH. Yes.

Senator BURDICK. I am not clear on this yet. I follow you, Mr. Nash, but I also see the problem that the chairman raises. Suppose this land is sold from A to B and B has 12 children. Over a period of years where it is not sold to the tribe, you would have another problem; would you not?

Mr. NASH. Yes, sir. If the Indian continues not to make wills or if he does make a will but fails to choose among his children always to leave the land intestate—

Senator CHURCH. But that has been our experience today.

Mr. NASH. You are going to get a geometric progression, but we think that with the management tools that we are asking for here in the way of increased leasing authority, of improving the tribe's capability to buy, and the capability of the Secretary to initiate actions whereby the coowners would have a preferential purchase right, where loan money, credit, would be available for the purchase route, the land could at least remain in Indian ownership, whereas there is a

certainty by the application of section 11 that it will pass on out of Indian ownership because you are required to grant a fee patent.

Senator CHURCH. If you read section 11, it is only in the case of inter vivos sales where the land passes from single ownership into multiple ownership that a fee patent would be required.

In the case of death, which is the more serious problem, the same partitioning procedure and sale procedure is made available as it is in the first part of the bill. In other words, you would have the same preference right to other coowners, and preference right of Indian tribes, and so forth, to avoid having this land pass out of Indian ownership.

I understand your argument, but I simply think to leave this aspect of the problem unattended means that perhaps we are only fooling ourselves when we conclude that we are really solving the heirship problem.

I think that past experience makes dramatically clear that the amount of land in heirship will continue to grow if we ignore this aspect of the problem.

Mr. NASH. Our experience, for example, at Tulalip, is that partition or sale could be requested. Judicial partition is provided for by act of Congress and I think it is in the committee report, but the cost of those actions has been prohibitive. Very few actions have been brought under this.

This is why we think our experience indicates that this route would not be used.

Senator CHURCH. But in the example you give, the Indians had to pay for the proceedings. Under the provisions of this bill that cost would not fall to the Indian, so there is a difference. The Government would bear the cost.

Senator BURDICK. I would like to know how your tools apply. I do not quite follow you.

I see your objection to section 11 but I am trying to think what your tools would do. Indian A sells to Indian B. Indian B dies. He has 10 children, ages 2 to 14. What happens to those interests?

Mr. NASH. They can be purchased by the tribe. If the various economic development proposals are successful, the tribe will be better equipped than it is at present to make the purchase and consolidate its land holdings.

If the proposal at the Oglala Sioux Reservation for exchange operates, some tribes that do not have the wherewithal now may be able to make their money go further by operating exchange programs.

The coowners, with the initiative of the Secretary, may be able to agree among themselves better than they can now where the Secretary cannot initiate action. If the Secretary has the additional lease power that we are asking for, he may be able to effectuate a lease on better terms than at present so that there is somewhat more money to go around.

Senator BURDICK. Let us take the case a step further. Suppose you use tool No. 3 and it is leased and suppose the 14-year-old boy dies, himself, and let us take a case where there is an Indian boy that is 22 and he has a wife and he dies. What happens then?

Mr. NASH. In the case of our program?

Senator BURDICK. Yes.

Mr. NASH. We would then hope that the tribe would have the capability to buy, that the coowners would have the capability to buy, or we could lease on more effective terms.

Senator BURDICK. But if the tribe does not buy and if there is not one coowner to buy out the rest of the coowners and these tools are only permissive, then what happens to it?

Senator CHURCH. Besides, you cannot use your tools unless a majority of the owners concur under the bill and so it just seems to me that you are offering us a twig with which to go out and kill a giant, and you have to have that weapon big enough to take care of the giant or he is going to continue to grow.

Mr. NASH. We agree it is not a club. It is a small stick.

The history of the Indian land reform is that drastic remedies result in land lost. This is why we are reluctant to go that route.

Senator CHURCH. And you regard section 11 as too drastic, but you offer no substitute? You offer no substitute directed to it. You have other provisions, of course, that you have talked about and we are familiar with, but you offer no substitute directed to the question: How do you prevent land in single ownership from passing out of single ownership into multiple ownership either through inter vivos transactions or upon the death of the owners?

Mr. NASH. We are offering no alternative.

Senator CHURCH. You are offering no alternative to the suggested remedy in the bill.

Mr. NASH. That is correct, sir. This completes our testimony, does it not?

Mr. CROW. There are two more amendments.

Our amendment 19 would delete subsection 14(b). That section would apply only if section 11 were in the bill.

The last one is to add a new section, one which we discussed previously, the broader management authority.

Senator CHURCH. Gentlemen, I take it that with the amendments that you propose you endorse the pending bill?

Mr. NASH. Yes, sir. Our recommendation is that the bill be enacted if amended as suggested.

Senator CHURCH. Senator, do you have any questions?

Senator BURDICK. I wonder if you would elaborate on your amendment No. 7, Mr. Crow?

Mr. CROW. Yes, sir. The bill elsewhere deals with these non-restricted interests which accrue in these tracts only by use of powers of attorney. This amendment would prospectively retain those interests under the jurisdiction of the Secretary for the purposes of this act only.

It would permit us to sell, partition, or lease as though they were trust interests. It is prospective. It would not affect any of those that exist upon the passage of the act.

Senator BURDICK. Do I understand that in the future unrestricted interests would become restrictive?

Mr. CROW. No, sir, not for any purpose except the purposes that this act might bring to bear on the heirship problem. The interests would be taxable. They would in no sense be trusts except for the

authority to include that interest in a sale, or to include that interest in a lease.

Senator BURDICK. I see. This would take care of a mixed situation where you had restricted and unrestricted interest in one piece of land.

Mr. CROW. That is right, and this is a particularly troublesome problem that we have.

Mr. NASH. An Indian has a non-Indian wife or an alien Indian wife. He dies. There are children. The estate is undivided. From the management standpoint we want to be able to deal with it as a single entity.

Senator CHURCH. All right, gentlemen. Thank you very much for your testimony.

Mr. NASH. Thank you, Mr. Chairman.

Senator CHURCH. Our next witness is Mr. Marvin J. Sonosky, who is attorney for several Indian tribes and well known to this committee.

Mr. Sonosky.

STATEMENT OF MARVIN J. SONOSKY, ATTORNEY AT LAW, WASHINGTON, D.C., ON BEHALF OF SHOSHONE INDIAN TRIBE OF WYOMING, STANDING ROCK SIOUX TRIBE OF NORTH DAKOTA AND SOUTH DAKOTA, ROSEBUD SIOUX TRIBE AND CROW CREEK SIOUX TRIBE OF SOUTH DAKOTA, AND ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION IN MONTANA

Mr. SONOSKY. Mr. Chairman and Senator Burdick, my name is Marvin J. Sonosky, and I have offices at 1700 K Street in Washington.

I make this statement as general counsel for the Shoshone Indian Tribe of Wyoming, the Standing Rock Sioux Tribe of North Dakota and South Dakota, the Rosebud Sioux Tribe and the Crow Creek Sioux Tribe of South Dakota, and the Assiniboine and Sioux Tribes of the Fort Peck Reservation in Montana.

I have a statement, Mr. Chairman. I have my draft with me, but unfortunately the completed copies have not been delivered to me. However, I will have them here by this afternoon. I would like to have them received in the record with your permission.

Senator CHURCH. Very well, it will be inserted following your testimony.

Mr. SONOSKY. I appeared on behalf of these tribes at the hearing on S. 1392 held last August 9 and 10 and my statements and communications appear in the record of those hearings, and at that time I prepared a proposed bill on rather short notice and that also was printed in the hearings.

In conjunction with my study of S. 2899, there are changes that I would make in the draft of my own proposed bill which I set out as an appendix to this statement.

In view of the fact that I have been over with the committee the major features of the problem, I should just like to confine myself to the points with respect to S. 2899 which my tribes believe reflect deficiencies which the committee might further consider.

S. 2899 does not contain provisions to encourage the voluntary sale of trust land to a tribe. We heard the Commissioner testify this

morning with respect to management tools. It is our view that under existing law the Department, over the years, has always had broad and ample powers with which at least to prevent this fractionated heirship situation from reaching the aggravated state in which we find it today.

Those powers have been exercised in a minimum degree, depending on the particular administration and the particular time.

It is our feeling that the bill should contain an affirmative statement to encourage the voluntary sale of trust land because voluntary sale is going to be the major method of bringing fractionated interests into single ownership.

In the drafted bill that I submitted I suggested such a section and I have proposed amendments to that section which the committee may wish to consider.

Senator CHURCH. When you say "voluntary sales of trust land," you are referring to voluntary sales of multiple-owned lands to the tribe?

Mr. SONOSKY. Both. Even where the land is held in single ownership, if there is a voluntary sale to the tribe, you have solved for the future that fractionated heirship.

Senator CHURCH. But you are referring only to sales to the Indian tribes?

Mr. SONOSKY. Sales to the tribes; yes.

Senator CHURCH. You have prepared language that would accomplish this?

Mr. SONOSKY. Yes; and it is attached to my statement.

I must tell you about one of the features of the language.

You asked the Commissioner whether he had a concrete proposal. We think there are concrete proposals which can be considered under this voluntary section which have not been used.

On the Rosebud Reservation, and I hope that the president of the Rosebud Tribal Council will be here to testify on this to explain in more detail than I can, there is a situation where that tribe has succeeded over the years in large measure avoiding the fractionation. How? They have a tribal land enterprise under which they issue certificates of interest, not certificates of indebtedness. The tribe issues certificates of interest.

I am a member of the Rosebud Tribe. I own fractional interests in six or seven pieces of land, none of which is of too much value to me. I can sell those fractional interests to the tribe at the appraised value and in return I take certificates of interest.

What good are these certificates of interest to me? Under the charter of the tribe those certificates of interest bear dividends which are paid twice a year, and the tribe has paid dividends twice a year since 1951.

This enterprise commenced in 1943.

Now, in addition, I can take those certificates of interest and go to the tribe and say, "I have 100 certificates of interest here. I want a piece of land," and by depositing, not selling but depositing, the certificates of interest with the tribe, the tribe then gives me 160 acres of land or as much as my certificates will permit.

Senator BURDICK. Mr. Chairman.

At this point, Marvin, do the certificates of interest have any actual interest in real estate?

Mr. SONOSKY. No.

Senator BURDICK. They are just more or less a personal obligation of the tribe?

Mr. SONOSKY. It is a piece of personal property. It is like a share of stock, you might say, comparable to that, certificate of stock.

Senator BURDICK. But thereafter it does not encumber his interest in the land at all?

Mr. SONOSKY. Title to the land is in the tribe.

Now, instead of having 18 or 12—and this has happened—fractional interests in various pieces from his ancestors, he now has 1 piece of land he can use as long as he wants to, and the right to use that piece of land is descendable, so long as it is in the hands of a member of the tribe, and that does not involve fractionated heirship because it is a personal right.

While he is using that piece of land he cannot get dividends. What else does he get? He gets for his certificate of stock an overall equity in the entire holdings of the enterprise. When he sold his land, his land was appraised and that is how many shares of stock he got, but on that reservation that stock has gone from \$1 to the present value of \$2.98 a share. And it is now being reevaluated, which is done at regular intervals, so his stock interest has increased in value. He can sell his stock interest, with the approval of the superintendent, either to the tribe or to another member.

Senator BURDICK. Mr. Chairman, at this point, do we have any problem of fractionization of interest in the certificate?

Mr. SONOSKY. No, there is no problem of fractionization of interest in the certificate because all you do to the certificate is like you do to a check. You turn it over and endorse it.

We have had no problems, except going back again to our view that this is a management problem, when the tribe undertook this enterprise we got 800 tracts of land in which we had fractional interests and then began picking up these fractional interests in these 800 tracts and this went along fine and the tribe was making progress until suddenly management, meaning the Bureau of Indian Affairs, decided that this was interfering with their supervised sales of land, because you could not put up a piece of land for supervised sale that had the tribe in it with fractional interest. You could not sell it, and there were lots of non-Indian cattlemen and cattlemen associations who wanted that land put up, so they ordered the Rosebud Sioux to stop buying fractionated interests and would not permit them to buy any more, called it to a halt.

Today I heard the Commissioner testify that on Pine Ridge they are supporting this program.

On Pine Ridge they are going to purchase fractionated heirships.

Well, for heaven's sake, why can't we do it on Rosebud, where we have been doing it and have made tremendous progress, and continue forward? There is a concrete plan.

Senator CHURCH. In this connection, there is nothing under present law that would prevent tribes so disposed from adopting such a plan and proceeding with it, is there?

Mr. SONOSKY. Nothing whatsoever, except—

Senator CHURCH. The initiative here would fall to those tribes that are prepared to undertake such a plan and see it through, and through such a plan they could largely solve the problem for themselves?

Mr. SONOSKY. With the cooperation and help of the Bureau which, of course, must authorize this.

Senator CHURCH. I take it from Commissioner Nash's testimony that he would look with favor upon such a plan as this.

Mr. SONOSKY. I do, too, and I certainly shall repair to his office promptly to get this for Rosebud.

Senator BURDICK. Then why do we need any legislation on this subject?

Senator CHURCH. All Indian tribes are not responding to the problem in this manner.

Mr. SONOSKY. It has not been brought to their attention. It goes back to our point that there is an utter lack of aggressive administrative action. You have to move these programs. You just cannot sit quietly with them in Washington.

Tribes can be educated to these things. They can be told about it. A demonstration can be set up as to how it will work, but it has to take aggressive administrative action. I do not think you can cure that.

Senator BURDICK. Why do we need new legislation if you have all the tools now?

Mr. SONOSKY. We are convinced that you do not need new legislation of the nature that we have here. I think there are some additional powers that might be given the Secretary, but by and large this situation which we have could have been prevented in large measure and for the future can be prevented by tools such as we are talking about.

However, again all I am saying is we would like to see in the law these things spelled out so at least it would put some congressional compulsion on the Department.

Of course, it would require money for those tribes who do not have money, but it would not take near as much money as you have now.

The tribe can manage this thing with a relatively small amount of funds because they use certificates of interest.

I bring the attention of the committee to the fact that as we read S. 2899 it would encourage the sale of trust interests to the owner of unrestricted interests.

It may be that we misinterpret the language of sections 1(a) and 1(b).

As we read section 1(a), it means that where all the land is in trust the Secretary may sell or partition at the request of any owner, but where some interests are unrestricted, the Secretary may sell only the trust interests.

Senator CHURCH. No. The point there is that where part of the land is unrestricted, in other words, part of the land is held in fee, then in order to achieve a partition it is necessary to go to court action because the owner of the fee interest cannot be deprived of his fee interest without a court action to partition unless he agrees, if he agrees. That is the only reason for it.

Senator BURDICK. This is essentially the Commissioner's recommendation, amendment No. 7, is it not?

Mr. SONOSKY. I made a note of amendment No. 7.

We agree with most of the Commissioner's recommendations, by the way. I think so, a new section to keep the trust interests under control. I will pass that. This may be just my reading of the bill.

Senator CHURCH. Yes, sir.

Mr. SONOSKY. When you do move to partition in the State courts it does not confer any preference right under the bill on the tribe or on any Indian owner.

Senator CHURCH. We will check that out.

Mr. SONOSKY. It just goes by partition, and I cite in my statement a congressional precedent now on the books, 25 United States Code 355, where such a preference right is given in State court partition proceedings.

We notice also in the bill that the word "may" is used instead of "shall" and in the areas where the high bidder is an Indian or the tribe, the land may be taken in trust, and we would feel more comfortable if the bill said, "shall be taken in trust" so that the language would be mandatory.

We agree with the views expressed by the Commissioner that when you get into judicial partition the bill places a heavy burden on the sales and the costs, attorney fees, appraisement fees, and court costs, and that is a burden placed on the trust proceeds.

In the case of administrative sale or partition, it may be not, but when it goes on to the court on low value land it is going to take up a substantial percentage of the land.

We suggest that since the trust patent promised to deliver this land free and clear and since this is involuntary sale through no choice of the Indian, the proceeds from the sale of the land stand in lieu of the land and that they should come free and clear, and if we are going to have State court proceedings, the United States should assume the cost so that the full value, such as it may be, received from a judicial sale goes to the Indian.

We agree with the Commissioner, too, that the bill should give a preference right to the tribes in administrative sales. Even if the Indian owner is the high bidder, as we read the bill now, under section 5 if an Indian owner is the high bidder the tribe has no right, and this goes back to the point that has been made so many times to the committee, the fear that an individual Indian will be used as a strawman or a dummy, will be the high bidder using somebody else's money. He will take the land and then turn around if it is in trust and apply for a fee patent, which may not be denied him if he qualifies, and the tribe will find itself with a competitor in the form of a non-Indian cattleman in the middle of its consolidation area, and it has to have protection and the only way we can get the protection is to give a preference right to put the tribe on the same basis as any heir whenever land is put up for competitive sale.

I come back again to the thing that has bothered the Indians more than it has bothered the Department, and that is the fact that there still are no provisions in the bill to protect the proceeds from the land from old-age assistance and welfare claims, and I refresh the committee's memory by saying that in the Aberdeen area and the Billings area, which, according to Mr. Gamble, contained most of the land which is in this situation, there is a large percentage of Indian owners who would have the proceeds from the sale of their land taken from them and put into the hands of the State welfare department, so again the Indian would lose his land; he would not get anything out of it but a receipt possibly and this would be most unjust.

The question was raised awhile ago in the discussion here about leasing. I think what was said here is fairly true, that when Indians individually negotiate leases the price that is shown on the leases may be less than what the Bureau gets when it puts it up for competitive sale, but it does not follow that actually as much or more money is not paid by that lessor.

One of the reasons for it is this: that if the Indian negotiates a lease, before that lease is valid it has to be approved by the superintendent and, when he approves it, he writes a provision into the lease that says, "provided that the rental under this lease shall be paid to the superintendent." He then takes that rental and delivers it to the State welfare for payment of old-age assistance claims of an ancestor.

So you can see where the Indian might be willing to have a lesser amount put into a lease and receive some cash on the side from the lessor. I think that is what really happens. At least he gets that cash, and that accounts for the difference.

Indians prefer to negotiate their own leases. If they do not get to negotiate their own leases they really do not get anything out of it where there are welfare claims.

Senator CHURCH. Then would you agree that the 90-day notice period ought to be abrogated so that the Bureau can lease these lands without notice to the owners?

Mr. SONOSKY. No. I agree with the views expressed by the chairman and the tribes feel the same way, that they are made up of Indian people and these are their members. The members want to negotiate their own leases and they should be given that privilege.

It is their land and the Bureau does keep a hold on it by saying, "You can't negotiate for less than the fair value."

They have to approve them even when they are negotiated, so we want that left with the individual people, but the major point here is they need protection from the State welfare department.

I think there are other features in the bill which have been brought to your attention and which I shall pass over because I am sure the committee will take care of them.

We are unalterably opposed to section 11 because we feel that this section would amount to removing the trust from the land. This committee would not think of issuing a bill at this time to remove the trust from the land, but all this is, is a deferred-payment plan.

On the same thing, section 11 is within a generation or two. If it goes into force, all the land will be in fee, and it is difficult for Indian people to see that just because they are Indians they are required to deal with their land differently from non-Indians, so if I am an Indian father and I have two sons and I want to give one 160 acres I have to make up my mind. I have to give it to one of the boys if I want it in trust. I cannot give it to both of the boys because it will go into fee and it may not be susceptible of splitting. The same thing with wills or by devise.

Senator CHURCH. You understand, we would not have this problem at all if it were not for the fact that trust lands are trust lands and are not subject to the same effect of the operation of our tax laws and our laws of secession as fee land is.

I mean if Indian people wanted to have the same rights over their land as other people, they would have to hold their land in fee and it would be subject to taxes, and if taxes were not paid, it would be put up for sale and the same laws for secession and testacy would apply.

The only reason we have the problem is the Indian lands are not treated as other land, and normal operation of law which tends to keep other lands in single ownership does not apply where trust lands are concerned. Thus we are confronted with the problem, so I think you put the cart before the horse when you argue that.

Whatever objection there may be to section 1, I think it is not the objection you have raised with respect to the right of Indians to deal with their lands as other people deal with their lands, because the only way we can ever give the Indian complete equality is to have him hold the land the way the other people hold their land. Then he would be subject to the operation of the normal laws, but it has been this trust relationship that has caused the heirship problem to develop.

Mr. SONOSKY. Yes, Senator, I appreciate that, and I think perhaps you would have to go back into the history and the reason for the trust in the first place to the Indian. He does not look at it the same way as we might. He sees this trust as something that was not just donated to him, but something that he earned, and we see this trust somewhat in the same way.

I think it is a reflection of the national conscience in a sense that we gave it to them in trust, because we wanted to at least be sure that of all the land that we took from them they would have this little piece for themselves.

To the Indian as he sees it, this bill is going to take that away from him. As the committee sees it, it is a fractionated heirship problem that has to be solved. As the Indian sees it, it is trust land and you are going to take it out.

Senator CHURCH. It is section 11 that you fear would have that effect?

Mr. SONOSKY. It would certainly have that effect, yes; and the tribes feel very strongly about that one.

Senator CHURCH. I can see where it might in a situation where an Indian passes away and the land is to go to six or seven heirs. If that occasions a partition and sale of the land, any one of the heirs has first preference rights to acquire it and the Indian tribe has first preference over any non-Indian owner, so there is not a very big danger there, I would not think.

Where the land passes in an inter vivos transaction, from one owner to another or to two or more owners, there might be a problem because there that section requires that it pass in fee if it passes from single ownership into multiple ownership. I can see where the objection may apply there. But I cannot very well follow how Indian trust land would be put in jeopardy by operation of the other provisions of the section. Can you explain that to me?

Mr. SONOSKY. Yes, I think I can. You get the feeling of this if you have been on a reservation and watched how these things operate.

When we talk in this bill about the Secretary of the Interior having this discretion and this judgment, we know it is not the Secretary of the Interior. It is some GS 4 or 5 clerk on some reservation who makes these decisions, and he is subject to all kinds of external influences.

This bill says that if there is only one devisee or heir the title may be transferred in trust but if there are more than one devisee or heir the Secretary notifies them and if they do not ask for partition or sale within a reasonable time, he will issue an unrestricted deed or patent, so it starts out with the whole burden thrown on the Indian. The land will be in fee unless the Indian heir comes forward.

It is our experience that in that situation if the Indian knows he is going to get it in fee, and if by taking it in fee he can avoid paying his ancestors' debts and if by taking it in fee he can immediately get some side money from a nearby cattleman who will give it to him, he will, and the cattleman says, "Well, lay off, don't ask the Secretary for anything. Just get your patent. When it comes in I will pay you some money and you will be OK." The emphasis is the wrong way.

The committee may wish, if it feels it must keep this, to shift this thing so as to put the burden the other way, that this land continues in trust unless something happens which would justify removing it from trust.

Senator CHURCH. What if a provision were written in there to the effect that upon the probate of the estate the Secretary shall determine the question of competency. Where he determines there is incompetency, the trust shall continue. Where he determines there is competency the estate will pass a fee.

Mr. SONOSKY. It would depend upon the standard set in the law for what should be competency.

Certainly the standard that is now applied in the Bureau's manual, I think is no standard at all, the standard of whether they can manage their own business, which might consist of nothing more than going to the store and buying groceries but that standard is the one that is applied and it has resulted in large numbers of fee patents, and we spell out a standard in the draft of the bill which I drafted and which is before the committee, which could be made stronger, but at least it has something for whoever is going to sit in judgment to make a determination.

My tribes would oppose any effort to remove the trust, whether it be through the inheritance examiner or any other way, simply on the ground that there is more than one heir or more than one devisee, but if a standard is to be applied it should be applied by some one qualified and with the right of appeal, so that the administrative decision does not become final and, if the matter could be worked out, the right of appeal should be one independent of the agency making the decision.

Senator BURDICK. Mr. Sonosky, I can understand your objection to section 11, but there is more or less of a feeling there should be a halt brought to fractionization. What do you suggest as an alternative or some effective way of starting the wheels going around again?

Mr. SONOSKY. You will never stop them from going around again and I do not think we should try to just because these people are Indians. White people die and leave fractionated land.

Senator CHURCH. That argument does not hold. You know that. That argument does not hold because I think your main point here is that you would try to solve this problem by bringing this land into Indian ownership, into tribal ownership. That may be a solution to the problem, but the argument that we are imposing something upon the Indian people that we do not impose upon others is not a good

argument because others hold their land in fee and pay taxes on their land and are subject to the operation of laws that tend to keep this land in single ownership.

The Indians do not.

I just think that argument does not hold water. It may be that for good reason we want to keep this land in trust. I myself want to see this land kept in trust until Indian tribes reach that point where the trust relationship is no longer necessary or wanted, but as long as we have a trust relationship, then it does not make any sense to talk about treating the Indian owner just like every other owner, because he is in a different situation.

I think you see my point.

Mr. SONOSKY. I understand your point and I did not mean it in that sense.

What I meant was that there will never be a solution which will prevent fractionization. You are always going to have some.

I think of non-Indians, for example, in States like North Carolina, in the mountain districts of Tennessee, West Virginia, and Mississippi, where there has not been a probate in a hundred years, and when you go in to examine a title you indeed find fractionization, and oil companies will testify to that.

Senator BURDICK. I can take you out to North Dakota where we had oil for 10 years and it is already in the thousands.

Mr. SONOSKY. In the thousands.

What I was trying to say was this is not exclusively an Indian problem. It is a non-Indian problem.

We should not look for 100-percent solution, but your answer was my answer; that is, we can devise means of undoing what we did. This was all tribal land to start with.

Senator CHURCH. And you think the best answer is moving it back into tribal ownership?

Mr. SONOSKY. Move it back into tribal status and give support to the tribes so they can do it, but there is one major point here that I completely overlooked and Senator Burdick reminded me of it, and that is it makes no mention of protection of minerals. The mineral interests are going to go here, as this bill now reads.

The only reference it makes to minerals is that minerals which are now in the tribe stay in the tribe, but I am talking about the minerals which are in the individual's land.

We know that where there is production on mineral land there is not going to be any interest in selling that mineral land, but where there is no actual production and where it has speculative value, as in North Dakota, it is different.

There is land in North Dakota where lease brokers paid more per acre for the lease than the land surface rights were worth and it subsequently turned out that there was not anything there, but people pay for oil and gas leases because they think there is something there and that it has a value, but if you send an appraiser out to appraise it he will come back and say it has nominal value, 50 cents or a dollar an acre.

The Indian has 160 acres and he is better off holding his mineral rights on the chance that it will develop into something meaningful, when he is in an area that has oil and gas or mineral prospects; than

to let it go by the board, and there is no reason why mineral rights cannot be reserved. They are not giving any trouble in fractionization. If the mineral land is not producing, there are no records to be kept. There are no checks to be written.

If it is producing, it is of such wealth that it makes it worth while to keep records.

Senator Burdick mentioned the case of oil and gas leases. There are situations where oil companies have to issue on a single royalty lease a thousand or more checks every month; the interests are that fractionated, but they do it because the value is there.

From the standpoint of the individual Indian, here again the tribes could say, "Let the Indian give his minerals to the tribes, too, and we will solve your fractionated heirship problem on them," but the tribes are not saying that. They are saying, "These are our people. This is their property. It is better for them to hold those minerals for the little bit that they could get for them on the chance that they will come through."

We can get you chapter and verse.

On the Fort Peck and Wind River Reservations when the Bureau was pushing supervised sales not too many years ago, this land went up for supervised sales with an appraisal on the surface only and it sold for surface value. It was in an oil and gas area and some of those tracts which sold for nominal prices are today producing oil and gas lands. The Indians got nothing.

Later the Bureau changed its policy to permit the Indian to reserve the minerals, but I happen to know that the reason for that initial policy was administrative expediency, because I heard a realty officer say, "But if we reserve the minerals we will have the fractionated heirship problem," and the answer was, "Indeed you do or would, but you don't give away people's property because you don't want to keep books. This is your job."

The same thing will happen under S. 2899 unless we put something in there to reserve those minerals.

Senator BURDICK. Could they not be put in as an option with or without?

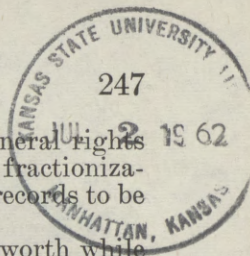
Senator CHURCH. Are you not saying that you are recommending that the owners of undivided interests retain the right to reserve mineral interests if they choose to do so?

Mr. SONOSKY. Yes, sir. As a matter of fact, my recommendation was very simple, limited to S. 2899 which now reads, under section 3(b):

No sale made under this act shall include any mineral estate that has been reserved to any Indian tribe by any provision of law.

I would just put a period after "estate" so it would read "No sale made under this act shall include any mineral estate." Just sell the surface rights. That is where your fractionated heirship problem is. It is not in the minerals.

Mr. Chairman, there is one other feature here that I do not know how to frame language to meet, but it is a problem of what is going to happen when this vast acreage is suddenly dumped on the market or when it is known to prospective land buyers that it will be available for dumping on the market. It is going to depress land values not only for Indians but for non-Indians in the whole area that is affected.



Senator CHURCH. I think that there is nothing in this bill that could possibly lead to a land dumping arrangement under any stretch of the imagination, because these are individual tracts and where action is going to be taken for partitioning or sale it is going to have to be upon the initiative of either individual or majority owners.

These tracts will be coming up one at a time for partition or for sale and there is nothing here that would suddenly make available a large amount of real estate, I would not think.

Mr. SONOSKY. Mr. Chairman, I must respectfully disagree with that because what will happen if this bill goes into effect without controls is that all the people will come in and file their applications for these sales. Everybody that is interested in selling will come in.

We speak from experience here because we know what happened in the supervised sales area.

Senator CHURCH. Could this be handled administratively?

Mr. SONOSKY. It could be. It could be, but at least in the experience we had it has not been.

How can we write a safeguard into it? I have given it some thought, but just how it can be done I do not know.

In Corson County, S. Dak., where in the course of a year there will be 30 transfers on the books, including mortgages, when the supervised sales program was going the Bureau put up at one time, and that is the way they operate—they do not put up a sale of one piece of land at a time; they cannot—put up at one time as many as 150 and 160 tracts of land. Now, that is dumping land on the market and affects the realty prices.

Senator CHURCH. I think that this is a matter that the administrators would have to take into consideration.

There is also, of course, provision in the bill that would not permit the sale of the land for anything substantially under the appraised values.

Mr. SONOSKY. Very good, and when the appraisers went out to appraise the value they took the prices that were paid at those forced sales as the standard of appraisal so the land values kept going down.

Senator CHURCH. Here again this is a problem of prudent administration.

Mr. SONOSKY. And what the Indians fear is that the future must be judged by the past. We know what happened in the past. We know how the test was made, and they are concerned about it.

Senator CHURCH. If you have any language you can think of that you think would be helpful on this phase of the question, we would be very happy to have it.

Mr. SONOSKY. Thank you, Mr. Chairman. I appreciate this opportunity to testify.

(The prepared statement of Mr. Sonosky is as follows:)

STATEMENT OF MARVIN J. SONOSKY, WASHINGTON, D.C.

This statement is made as general counsel for the Shoshone Indian Tribe of Wyoming, the Standing Rock Sioux Tribe of North Dakota and South Dakota, the Rosebud Sioux Tribe and the Crow Creek Sioux Tribe of South Dakota and the Assiniboine and Sioux Tribes of the Fort Peck Reservation in Montana.

I appeared on behalf of these tribes at the hearings on S. 1392 held on August 9 and 10, 1961, and my statements and communications to the subcommittee

appear in the printed hearings. At that time, I submitted a draft of proposed bill (hearings, pp. 160-163). That draft was prepared on short notice and in conjunction with my study of S. 2899 there are changes I would make in my draft, which are set out as an appendix to this statement.

I direct myself to the major points which we believe reflect objectionable deficiencies in the bill.

1. *The bill does not contain provisions to encourage the voluntary sale of trust land to a tribe.*—It should permit payment in cash, deferred payment, payment by certificates of stock and payment by tribal certificate of indebtedness, where the Indian owner consents.

The Secretary now has the power to accomplish these things. But there have been few signs of administrative activity on this front over the last 25 years or more. We are satisfied that much of the current problem can be resolved and in large measure future fractionalization can be avoided, by using the laws now on the books. It seems to us that if specific mention of means of encouraging voluntary sale were put in the law, there would be a congressional directive and compulsion to act placed on the Secretary.

Section 3 of the bill which I proposed at the August 1961 hearings covers voluntary sale (hearings, pp. 160-1). If consideration is given to such language, I would suggest amendment of my subsections 3(a), 3(c), and 3(d) mainly to include reference to tribally chartered corporations and stock certificates. (See Appendix to the statement.)

2. *The bill would encourage the sale of trust interests to the owners of unrestricted interests where the title is mixed.*—Where all of the land is in trust the Secretary may sell or partition, at the request of any owner of a trust interest (sec. 1(a)). But, where some of the interests are unrestricted the Secretary may sell only the trust interests at the request of any owner of a trust interest (sec. 1(b)). He may also sell the unrestricted interests but only if the owners agree. This opens the way to force the sale of the trust interests but not the fee interests. We see it as a device for selling trust interests to the owners of unrestricted interests, where the title is mixed. The emphasis should be the other way.

I try to accomplish this in my proposed draft as amended, by removing from the owner of the unrestricted interest power to initiate judicial partition and by requiring a majority trust interest to initiate such partition.

3. *The bill does not confer a preference right to meet the high bid in State court proceedings.*—Under S. 2899 neither the tribes nor individual Indian owners have a preference right to take the land at appraised value or to meet the high bid when the land is subjected to partition or sale in the State courts (sec. 2). There is statutory precedent for insuring such a preference right (25 U.S.C. 355). My proposed draft provides for this.

4. *The bill does not make it mandatory that land sold at judicial partition to the tribe or an Indian be taken in trust.*—Section 2 of the bill provides that if the land is sold in State court partition to the tribe or an Indian, title "may" be taken in trust. Section 6 also uses "may." The language should be mandatory. The word "shall" should be used. My proposed draft (secs. 5 and 6) provides for mandatory title in trust to the tribe, and to an Indian who does not meet the competency test.

5. *The bill places the burden of sales and partition costs on the trust land.*—Under S. 2899 the burden of court costs, appraisal fees, publication expenses and attorney fees would come out of the sales price of the land. This is not consistent with the Federal promise to deliver the land at the end of the trust period free and clear of all debt. The proceeds from the sale of the land stand in lieu of the land. They should not be diminished by substantial costs, expenses and fees on account of the Government's administrative failure in managing the trust. This is covered in my proposed draft as amended, by relieving the trust proceeds from any such costs and fees.

6. *The bill does not confer a preference right on the tribes in administrative sale, where an Indian owner of land, trust or nontrust, is the high bidder.*—Where administrative partition or sale is properly invoked under section 1, the sales procedure is specified in section 5. That section does not give the tribes a preference right to meet the high bid where an Indian owner of an interest in the land, trust or nontrust, is the high bidder. This opens up the field for an Indian to make a high bid acting on behalf of others who are anxious to get the land. The Indian bidder may be the owner of an unrestricted interest or this can be arranged. Even if the Indian bidder is the owner of a trust interest and would take title in trust, there is nothing to prevent

issuance of a fee patent to him immediately after the sale. S. 2899 would open the way to use Indian "dummy" or "strawman" bidders to prevent a consolidation plan from being effectively carried out and to remove land from tribal control.

7. *The bill does not contain provisions to protect the proceeds from the sale of trust lands from claims for old-age assistance and welfare.*—As matters now stand, State welfare departments hold large claims against interests in trust land for old-age assistance granted to ancestors of the present owners. The trust patents specify that land should be delivered free and clear of all debts. In violation of the trust agreement, the Bureau of Indian Affairs paid old-age assistance claims for the various State welfare departments out of income from leases and the proceeds from sales of trust land. Under S. 2899, an Indian's interest in trust land could be sold whether he wanted to sell it or not. It would only take the application of a single owner of an interest, no matter how small, in order to force the sale of the land. It seems highly unjust, particularly where the sale is involuntary, to sell the trust land, use the money to pay off debts incurred by the Indian owner's ancestors, and separate the Indian from his land for nothing but a receipt. It is even more unjust where both trust and unrestricted interests are involved because the entire claim would be paid out of the trust land while non-Indian heirs or Canadian Indian heirs would take free.

8. *The law should not apply to a tribe until it has a plan approved by the Secretary and funds with which to purchase land.*—The bill requires approval of a master plan for the use of all lands to be purchased by the tribe (sec. 6(b)). Section 10 of the bill authorizes an increase in revolving loan fund. S. 2899 would go into effect 1 year after its enactment (sec. 14(a)). It may well be that some tribes will not have their master land plan approved within a year. Also, funds may not be available within the year, even if money is appropriated. The law should not apply until funds to purchase land are available to the tribes and the tribal plan is approved. This is covered in my proposed draft of bill (sec. 9).

9. *The bill contains provisions designed to move land from trust to fee status simply to avoid administration of trust land held by more than one owner.*—section 11 of S. 2899 would, within a generation or two, put vast acreages of trust land into fee status, simply by requiring that the land go in fee where there is more than one heir or devisee. True, if one of the heirs or devisees so requests, the land may be put up for sale or partition. But, as a practical matter, in most instances, there will be no such requests and even where such a request is made, there still remains the danger that the land will pass out of trust ownership.

This feature of the bill is the most objectionable. It would destroy the trust land base on many reservations. It would result in scandal and high criticism sure to follow repeated instances of unlettered and inexperienced Indians separated from their lands through fraud and cheating. It would mean a large increase in the welfare rolls as soon as the first flush of income from the land sales evaporated. The costs to the United States would be tremendous. The savings in administering fractional interests would be ephemeral.

10. *The bill would interfere with the privilege of transferring trust land to members of the owner's family.*—Under section 11 of the bill a transfer to more than one person would require the land to be taken in fee. This, too, violates the trust agreement. It seems stiff and arbitrary to deny an Indian father or mother the privilege of giving a tract of trust land to two of their sons without having it go into fee status. To keep it in trust, the parents must give it to one child or the other. Section 11(b) provides a harsh remedy for the trustee to impose on his wards, in order to cover the trustee's administrative failures.

Section 11 should be eliminated from the bill.

11. *The provision for the cost of managing the land in section 6(f) requires clarification.*—This provision specifies that "the costs of managing any land purchased by a tribe pursuant to this act shall be borne by the tribe and not by the United States." Taken literally it would mean that costs for Federal services now rendered by the United States by foresters, graziers, soil conservationists, agriculturists, oil and gas engineers, geologists, minerals experts, etc., would be paid for by the tribes. We do not believe that was the intent. We think the provision should be eliminated since the Secretary now has ample power in this respect. Tribes presently pay all the costs of administering their own lands and land enterprises, exclusive of Federal services such as those noted above.

12. *The bill makes no provision for the protection of mineral interests.*—The bill would permit the sale of mineral interests. It contains no safeguards. Mineral values are difficult of appraisal. During the period when the Bureau of Indian Affairs was vigorously pursuing its policy of supervised sales, it was so anxious to move the land out of trust, it gave away the mineral values. On the Fort Peck and Wind River Reservations, known to be oil and gas country, individual allotments were sold, surface and minerals, for the appraised value of the surface rights only. There was no appraisal of the minerals. There were highly valuable oil and gas producing properties on some land so sold at supervised sale not too long ago. There was no reason why minerals should not have been reserved to the Indian owners except administrative expediency. Ultimately, the policy was changed, but not in time to help many Indians who got nothing for valuable mineral interests.

On Standing Rock and Rosebud Reservations there is speculative oil and gas value. Lease brokers have paid up to \$3 per acre and more for oil and gas lease acreage on the reservation. The question is not whether there is oil and gas present. Value is created because someone thinks there is oil and gas present. Such value on appraisal is nominal. It is not worth selling but it is worth keeping on the chance that future discovery will bring real wealth. Why should the Indian be forced to surrender his chance at mineral wealth, so that it will be easier for the Bureau of Indian Affairs to keep books?

Mineral interests have never been the cause of the evils S. 2899 is designed to alleviate—namely, economic use of the land and administrative expense of handling fractionated interests. If minerals are not productive, there is no income and no administrative problem. The presence of numerous ownership interests is not exclusive to trust lands. It is very common in the case of mineral interests. As any oil company can testify, there are instances where royalty interests in a lease are divided into hundreds of parts. Why should Indian owners of trust land have their mineral rights taken from them through involuntary sale, when there is no reason for depriving them of mineral interests and absolutely no harm in permitting them to retain their interests? S. 2899 should be limited to surface rights only. This can be accomplished by placing a period after the word "estate" in section 3(b) (p. 3, line 11) and striking the remainder of the section.

13. *Lands must not be dumped on the market in such quantity as to depress land values or to prevent the tribes from buying the land because of lack of funds.*—Under this bill, there is danger that large acreages of land would be dumped on the market at one time, since the land can be put on the market at the request of the owner of any trust interest in the land, no matter how small. The effect would be to depress the value of all land in the area. Also, there simply would not be funds available for the tribes to handle the purchase of large quantities, even if the \$50 million authorization were converted into actual appropriations.

APPENDIX. AMENDMENTS TO DRAFT OF BILL PREPARED BY MARVIN J. SONOSKY
RELATING TO THE INDIAN HEIRSHIP PROBLEM

(Printed in hearings, Senate Subcommittee on Indian Affairs, S. 1392, 87th
Cong., 1st sess., at pp. 160-163)

Amendment 1.—Amend section 3(a) of the draft to read as follows:

"(a) Provision for payment of the consideration for the land in cash, on a deferred payment plan, *by shares of stock issued by a corporation chartered by the tribe*, or by unsecured tribal certificates of indebtedness bearing interest on the principal sum at not to exceed 4 per centum per annum, or any combination thereof;"

Amendment 2.—Amend section 3(c) of the draft to read as follows:

"(c) Provision requiring that the full fair market rental value of the land be paid by any lessee, or if used for income producing purposes by the tribe, into a reserve fund for the redemption of tribal certificates of indebtedness or stock, or to pay dividends on stock;"

Amendment 3.—Amend section 3(d) of the draft to read as follows:

"(d) Provision making shares of stock or tribal certificates of indebtedness alienable only among members of the tribe with the consent of the Secretary and permitting such shares and certificates to be used by members of the tribe, where practicable, in lieu of cash to pay rentals or other debts owing to the tribe or for the purchase of the right to use and occupy tribal lands by a member of the tribe for a specified term of years or for life;"

Amendment 4.—Add a new section to follow section 3 of the draft to read as follows:

"SEC.—Any tribe that adopts with the approval of the Secretary a plan pursuant to the provisions of this Act, or any other plan that does not involve a loan from the United States but which provides for the consolidation, management, use, or disposition of tribal land, is hereby authorized, with the approval of the Secretary, notwithstanding any other provision of law or any provision of the tribal constitution or charter, to sell any tribal land or other property and to charter corporations in furtherance of such plan."

Amendment 5.—Amend section 4 of the draft by adding the phrase "not owned by a tribe" in the opening lines, so that such opening lines will read as follows: "SEC. 4. Whenever the Secretary determines that fractionation of ownership interests is preventing the effective use of any trust or restricted lands *not owned by the tribe, * * **"

Amendment 6.—Amend section 6 of the draft by amending the first sentence to read as follows:

"SEC. 6. When the Secretary of the Interior, after due effort, is unable to obtain powers of attorney to sell and convey all unrestricted interests in trust or restricted land, the Secretary, upon the request of the owners of a majority of the trust interests in such land, shall consent to judicial partition of the lands if in his judgment such action will be in the best interests of the Indian owners as a whole and the tribe on whose reservation the land is located or adjoins, and will not be detrimental to the Indian community."

Amendment 7.—Amend section 6 of the draft by adding a second proviso at the end as follows:

"*Provided further,* That no part of the costs, expenses of attorneys fees in such proceedings shall be charged against the proceeds from the trust land."

Amendment 8.—Add a new section to follow section 6 of the draft to read as follows:

"SEC. —. No involuntary sale under this Act shall include any mineral interests."

Senator CHURCH. Let us try and hear one more witness this morning before we adjourn for lunch.

Is there someone here who would have a special problem in coming back this afternoon who would like for that reason to testify now and whose testimony will not be too lengthy, since it is just about lunch time.

We would like to accommodate any person in those special circumstances.

Is there anyone on the witness list who would fit that situation?

What we are waiting for is permission to sit this afternoon. The Senate is in session and without the Senate's permission under the rules we cannot sit.

As soon as we get permission we will adjourn for lunch and Senator Burdick and I will spell one another this afternoon, since each of us has to be on the floor for a time.

However, because there are so many witnesses here, we would like to hold an afternoon session if we are permitted to do so.

Mr. Burnett, perhaps you would like to begin your presentation.

STATEMENT OF ROBERT BURNETTE, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. BURNETTE. Mr. Chairman, Senator Burdick, I am speaking in behalf of the National Congress of American Indians and all its tribal members and individual members.

The National Congress of American Indians wishes to express its appreciation to the committee to appear on behalf of the Indian people.

As the voice of the American Indian people we realize the responsibility we carry, therefore we are deeply concerned with the legislation before us today.

We recognize that an administrative problem exists because of the fractional ownership of trust land. At the same time we believe that the remedy suggested by S. 2899 goes beyond the need, and that there should be safeguards imposed. We have reviewed the report of the hearings held on August 9 and 10, 1961, and the ideas submitted to the subcommittee. The objectives of the legislation as we understand them are to obtain full economic benefits from the land and to bring to a halt excessive costs of administration.

We cannot agree that a new law is needed to obtain the greatest economic benefits from land owned in fractional interests. Imagination and aggressive management is needed. The Secretary has ample power now to protect and manage trust property. Good management does not depend on whether title is in one heir or many heirs. Too often the title status is used as an alibi for poor management.

It is true that the fractionated heirship problem presents a heavy administrative burden. But this is not the fault of the Indian and is not a reason for destroying the trust. Section 11 of S. 2899 would do this. The administrative failure to meet the fractionated heirship problem should not be used as a reason for removing the trust. In the Great Plains States section 11 would convert S. 2899 into a non-Indian cattleman's bill. We think the bill should encourage the voluntary sale of interests in trust land to the tribe. All possible means should be used to encourage this rather than emphasize forced sales.

We feel that mineral interests should not go by involuntary sale. There is no satisfactory way of insuring that the individual will get real value for his minerals in such a sale.

We think it would be unfair and unjust to charge old age assistance and State welfare claims against any proceeds from the sale of trust land. Indians would be forced to sell and lose their land without receiving anything.

We believe the provisions of the bill concerning administration or judicial partition and sale can go a long way toward solving the Bureau's problem of keeping records, if there are safeguards imposed to prevent the trust land base from being destroyed. To accomplish this the tribes must have a preference right to meet the high bid in any competitive sale whether by the Secretary of the Interior or by the State court. Land should not be permitted to go to partition in the State court without the consent of a majority of the trust interests. Title should be in trust to the tribe or Indian purchaser. No costs and fees should be charged against the proceeds from the sale of land at judicial partition.

Questions have been raised as to the meaning of section 6(f), concerning costs of managing lands, and section 8, which makes reference to termination. These sections should be clarified.

The bill if enacted ought not to affect a tribe until the Secretary certifies that it has an approved plan and funds available to purchase the land.

These are factors which we urge the committee to consider before acting.

Our people are generally unsophisticated and unprepared to compete with their non-Indian counterparts. The educational level of our Indian people is below normal because of the lack of opportunity. This is not to say that they are not intelligent but we must face the fact that not many of them can comprehend the issues or the problem confronting us today. We believe that evidence of this was reflected in the questionnaires returned to this committee.

The factor of economics throughout our poverty-stricken Indian areas compels careful thought. The best interests of the Indian landholders is not served by depressing the market by flooding it with trust land.

We recognize and respect the powers of Congress. You represent our people and we look to you for fair consideration of our views. We ask that you give weight to the judgment of Indian leaders who are most informed on the subject, many of whom have dedicated their lives to the advancement of their people.

Mr. Chairman, I would like to add that all of the tribes present in Washington have unanimously agreed that they object to the provisions of the bill as it is now stated and wish that it would be amended so that it would fit the situation much better.

Thank you for this opportunity.

Senator CHURCH. Thank you, Mr. Burnette.

We arranged the hearings, as you know, to correspond with the meetings of the National Congress of American Indians so that we could have a great many Indian leaders here to give us the benefit of their views and suggested amendments to this proposal.

Mr. BURNETTE. Yes. Thank you for that, Mr. Chairman.

Senator CHURCH. We are looking forward to hearing them and we appreciate your testimony.

Senator BURDICK. I want to thank Mr. Burnette for a very excellent statement, and I notice that the base of your objection is our much-talked-about section 11.

Mr. BURNETTE. Yes.

Senator BURDICK. In your statement you say:

if there are safeguards imposed to prevent the trust land base from being destroyed.

In other words, you believe section 11 will eventually destroy the trust base?

Mr. BURNETTE. Without doubt I believe it would within a short time.

Senator BURDICK. And your suggestion as an alternative is that more and more land should be voluntarily sold to the tribe and that the more land that is in tribal ownership, the less there is to descend by way of inheritance and so forth; is that right?

Mr. BURNETTE. Yes, that is true, because once it comes into the hands of the tribe it is there and there is no actual problem. Besides that, it is available to individuals to go ahead economically as is now the policy of the President and the Secretary of the Interior.

Senator BURDICK. As Mr. Sonosky testified, we do not need further legislation to do it?

Mr. BURNETTE. I agree with that. I testified last summer on S. 1329 that that was the case. This could take care of the whole situation. If each one of the tribes, the Secretary, and the Department, and

everyone would get together and work out this, I believe it could be worked out, and it is our own contention that it is going to take some time to do this.

It took some time to get into this situation and it will take some time to work out of it because of the problems involved.

Senator BURDICK. If we work out of the situation we will have the next time around a less difficult situation.

Mr. BURNETTE. Yes.

Senator BURDICK. Your constructive suggestion, then, is to increase voluntary sales to the tribe?

Mr. BURNETTE. Yes.

Senator BURDICK. Thank you.

Senator CHURCH. Thank you very much.

Mr. BURNETTE. Thank you, Mr. Chairman.

Senator CHURCH. We will adjourn now for lunch and return at 2 o'clock and continue the hearings at that time.

(Whereupon, at 12:35 p.m., the subcommittee recessed until 2 p.m.)

AFTERNOON SESSION

Senator CHURCH. The meeting will please come to order.

Our next witness is Mrs. Eileen Miguel and Mrs. Dora Prieto, accompanied by Mr. Ray Simpson, the attorney for the Agua Caliente Band of California.

STATEMENT OF MRS. EILEEN MIGUEL, CHAIRMAN, AGUA CALIENTE BAND, CALIFORNIA

Mrs. MIGUEL. My name is Eileen Miguel and I am chairman of the Agua Caliente Band.

We don't have a particular problem on this heirship in Palm Springs. After listening to different testimony and attending some of the hearings we can see the problems that the other tribes are having. We would like to just make some suggestions why this bill won't really help us. We have had such a short notice, we have not had a chance to have a meeting on the 2899.

So just a couple of days before we left, we had a chance to talk to a few of the members. It was the feeling of most of the members that maybe a few suggestions could be made. I think the largest multiple ownership that we have in Palm Springs is nine children. Other than that, everything is quite right.

One of the main things that I think should be done is to have the inheritance regulations either to coincide with the State regulations because we have the times, when the inheritance people come to listen they will take down testimony and then just use it, I imagine, the way they want.

We have had instances where an equal heir does not come into the heirship but they will recognize something else. Another thing that I have seen happen on my reservation, not in my particular town but have seen happen, an old man has a will and includes a person that I didn't think should have been entitled because I didn't think he was really—I don't know how to say that he was not in his right mind, he was a real, real old man, and I think he was taken advantage of. I

think these things should be looked into. I do believe that each tribe or band or group, whatever the different Indians are called, should work and all help toward these things and how we can have understanding. We don't have this. I don't think it is right that these things should continue to go on. I think that in our particular tribe that it would be good for us to go under the State law because now, since we have had an equalization program, we do have guardians and conservators which have been appointed by the superior court. With that I don't think we would have too big a problem but we could in the future if these are not straightened out. Another thing is that the inheritance people still recognize Indian custom marriages. This we do not have in our tribe but it has been recently that the inheritance people are recognizing this. I believe it was either 1955 or 1956 when the State legislature had a bill that was passed recognizing custom marriage and by resolution our tribal council opposed it. So we are on record from way back as not recognizing this. I think this is going to cause a lot of conflict, also, not for the people that are legally married and separated and don't get a legal divorce and then they live with somebody else and they are legalized and the heirs are not.

These are one of the main things that we think should be straightened out in the bill. Like I said, we don't have all this multiple-ownership problems like we have heard here today and at meetings.

We have another instance in the bill that I think our tribal attorney could better explain to you. This is on the appraisals of land if land has to be sold. Our reservation is so much different than other reservations because we are a large reservation in a sense not as big as some reservations or as many Indians but we are checkerboarded right in with the city. In fact, I always like to look at it like a reservation with the city of Palm Springs within us. We have our tribal attorney, Mr. Simpson, who will explain that and then we have another problem that our vice chairman would like also to explain.

Senator CHURCH. Thank you.

Mr. Simpson?

STATEMENT OF RAY SIMPSON, ATTORNEY FOR THE AGUA CALIENTE BAND, CALIFORNIA

Mr. SIMPSON. Mr. Chairman, the problem which Mrs. Miguel has referred to and which I will briefly comment upon as tribal attorney might help to improve the bill in our opinion.

That pertains to the appraisal. I believe that section 5 of the bill refers to the fact that if the land is to be sold it is to be sold for a fair appraisal. We would suggest that possibly this be modified to provide for a current appraisal and a definition for this setup.

On our Caliente Reservation we have had the problem several times, one specifically I am thinking of, where land was sold at the appraised value but the appraisal was 7 years old. In that particular case, they sold for \$36,000. Within 11 months, the purchaser turned around, having purchased the 5 acres, and sold 2 of it for over \$100,000.

This obviously was not unfairness by the Bureau. This was an archaic appraisal. The Bureau, by way of defense, later pointed out they had not really had made available to them the funds to conduct the appraisal.

In reading the bill which you have proposed which has considerable merit in certain areas, it seemed to us that if we spelled out a current appraisal which in no event shall be more than 1 year old and, in addition to that, some provision not only for increasing the revolving fund for the purchase of lands but for the cost dealing with an appraisal, because most of the Indians would not be in a position to do this, yet on the other hand, if a cost for a current appraisal can be set out in the bill, we believe this will insure greater fairness.

One last comment I would like to make, since we do not wish to consume too much time of the committee, that Mrs. Miguel and I have discussed regarding her point, is that since Agua Caliente does not face the problem dramatically at the moment but may in the future, we thought the bill should possibly be addressed in part to the question of prevention.

You talked about section 11 quite a bit this morning. You asked the question a number of times of people, if you opposed it, what alternative do you have?

Frankly, we don't have any panacea to answer the question but we do suggest this, that there be some effort made to permit tribes, perhaps in different States, to invoke State probate procedure in laws, particularly to avoid the conflict which now exists in part between Federal regulations and some of the State laws.

I will be specific by mentioning the case of an Indian in California who drafted a will which was in complete accord with the Federal regulations, the five copies executed, everything else set out in it. He subsequently decided that he wanted to change the will. He went to the attorney who drafted the will for him under the State law which met every requirement, in fact it was ultimately admitted to probate after the Indian's demise. In this last will and testament he left all of this property to one person. Now this will did not comply with all of the regulations set out by the Federal Government for disposing of Federal trust property. This will was not the same as the former will so the Federal Government, or the inheritance examiner determined in this one instance that the last will was valid for the purpose of revoking the former, which meant for the purpose of disposing of his property not held in trust was good in the State courts. But then the Federal Government had to proceed as though he had died intestate as to his trust property, which brought into being seven heirs and three of them could not be found. This certainly gave rise to the very type of problem you are concerned with today plus the fact that it voided the intent of the testament.

So, as we have discussed with several members in the tribe, because they do have conservators, they do have guardians, they operate a great deal under the State courts, we are not suggesting that there be a termination of Federal supervision but in this area that there be the uniformity regarding the administration pertaining to probates.

Senator CHURCH. Thank you very much, Mr. Simpson. I wonder if you would provide the committee with a proposed amendment dealing with the appraisal question?

Mr. SIMPSON. I shall be very happy to, sir.¹

¹ See appendix, p. 366.

Senator CHURCH. Your testimony with respect to the other points is clear in the record, but it would be helpful if we had written language along the lines of your recommendations that we can take into account at the proper time.

Now, Mrs. Prieto.

STATEMENT OF MRS. DORA PRIETO, VICE CHAIRMAN, AGUA CALIENTE BAND, CALIFORNIA

Mrs. PRIETO. I am vice chairman of the tribal council. As the other two have stated we are not opposed to the purpose of this bill but, if certain things are not defined clearly, it will cause grave problems. As the chairman stated, we were having our meetings on the other bill which covered the termination and we are pleased that in this bill you have deleted those paragraphs on the termination part.

Senator CHURCH. We are trying to make progress toward a solution. The testimony of the Indian people has been the most helpful of all. We hope that these hearings will be very productive.

Mrs. PRIETO. Since we were not notified of the hearings last summer, we would like to be on record as opposing any termination phrase that might be in here.

Of course, that includes section 11 which, in a sense, the way we interpret it, is termination.

Senator CHURCH. We will hold this record open so that if your tribe would like to furnish a written statement after you have had an opportunity to further reflect upon this bill, you will have time to do that. We will keep the record open for that purpose for several weeks anyway following this hearing.

Mr. MIGUEL. I wonder if I could read a telegram that I got at the hotel from the Morongo Reservation. It is very short. It is a reservation that was not notified of these hearings and I gave her one of the bills that was sent in your office. She sent it to Eileen Miguel at the Shoreham Hotel.

We, the Indians of Morongo Reservation, are strongly opposed to Senate bill 2899 relating to the Indian heirship land problem. The bill is a threat to the welfare of those Indians now living on this reservation with clear title to the land. Much of the land here owned by nonresidents is under multiple ownership which would be impractical for partition. The owner of a small portion of a parcel could thus force sale of the entire parcel. Non-Indians, with far greater financial resources, could easily outbid us for the very land which was given to us for our reservation.

The resulting land development of much of our reservation would seriously interfere with the lives of those Indians living here. We request that hearings on this issue be held in California.

Eileen, you are hereby authorized to read this before the committee.

It is signed by the Morongo Business Committee.

Senator CHURCH. Fine, we will include that as part of the record. Thank you very much.

Mr. SIMPSON. Senator, might I add 2 minutes to this?

Senator CHURCH. Yes, surely.

STATEMENT OF RAY SIMPSON—Resumed

Mr. SIMPSON. One thing which I think, by way of illustration, I appreciate the committee keeping in mind in reflection on section 11,

and Mrs. Prieto is perhaps an illustration of this. She's a mother of five sons. In 1959 the Congress passed an equalization law which stopped all further allotments. Three of her children are owners of rather valuable allotments. Her two youngest sons received no allotment of land whatsoever. She has expressed, as have a number of others since 80 percent of the tribe is made up of children—a rather disproportionate type of thing—she has expressed concern over the fact that section 11(B) would possibly place her in the position if she wanted to give, say, these two younger sons a portion of her allotment, that because of the fact that this would be to more than one that they would lose the trust status and, therefore, be deprived of a real advantage.

I am sure you appreciate this but with Agua Caliente, where there are no further areas of land available for allotment, this could be conceived of as a rather unfair impact upon the children and most of the members are children.

Senator CHURCH. Fine. Thank you.

Senator BURDICK. I missed the first part of your testimony. You may have covered this.

Do you agree with the witness who appeared this forenoon from the Sioux area of North and South Dakota that it would be beneficial to transfer so much land as possible voluntarily to the tribe itself?

Mr. SIMPSON. I believe this would be a good objective. In the particular area that we are from, Palm Springs, I feel this would be nigh onto impossible because of the very high value attached to the land there.

Certainly for other reservations I think this could be a very fine step.

Senator BURDICK. That is a partial alternative to section 11, then?

Mr. SIMPSON. Yes, it is.

Senator CHURCH. Thank you very much.

Mr. SIMPSON. Thank you.

Senator CHURCH. Our next witnesses are Mr. Hiram Owen and Mr. Melvin Robertson from South Dakota.

STATEMENT OF HIRAM OWEN, CHAIRMAN, SISSETON-WAHPETON SIOUX TRIBAL COUNCIL, OF SISSETON, S. DAK.

Mr. OWEN. Mr. Chairman, members of the committee, my name is Hiram Owen. I am the chairman of the Sisseton-Wahpeton Sioux Tribe at Sisseton, S. Dak.

I have here in my hand before me an instrument which can be compared to atomic energy. Harnessed and used correctly it can be of great benefit to man but, if it is not used correctly, it could mean destruction to mankind.

This bill here, if passed, would mean the destruction of our Indian people. We would like to be protected before this happens. We would like to see this bill altered so that it would require the principal owner or owners of fractionated land be the ones to start a sale or petition.

Now, another bad feature of this bill is the revolving loan fund which would increase it from \$20 to \$50 million. Now I am led to believe that there is already \$75 million applied for and approved for

different Indian programs. Now this would mean that if this bill passes, there would be no guarantee for the Indian tribe or the tribal council to buy any of the Indian land because we would have no guarantee that there would be money available for the tribes to start buying heirship fractionated land from our Indian people.

Senator CHURCH. I think in that connection you should know that the present revolving fund is only \$20 million. The purpose of this bill is to increase it from \$20 million to \$50 million in order that tribes might have money that they now do not have for land purchase programs.

Mr. OWEN. Now, when this bill passes, knowing my people, they will start selling their land regardless if the tribal council had any money or not because like all people they want money to try and better their economic status.

In a way it would do some good for some people but the majority of the people would lose their money, as soon as they were able to put their land on the market, they would put so much of it on that as in all cases when there is a surplus of goods pricing goes down.

So, naturally, the land prices would go down and they would not realize as much money as they had hoped to.

Senator BURDICK. Do you think that would be true if we should adopt the rule that a majority would have to petition for sale?

Mr. OWEN. I think it would cause the majority holders of any interest to hesitate to start. They would rather see a partition. The majority, or the guy that holds the most interest in any land, would naturally, I think, try to partition it so that he could use it to the best advantage. If he could not, then he would sell it to the tribe.

Senator BURDICK. Assuming that we adopt an amendment that would require half the ownership to start the procedure going, wouldn't that be some brake upon the type of sales you referred to?

Mr. OWEN. Yes. So, we would like to have some kind of guarantee that we would have the money available to start buying Indian land.

Now, our reservation is small. We only have approximately a little over 100,000 acres. When the Allotment Act was passed we had approximately 920,000 acres of land. There were 2,000 Sisseton Indians at that time who got the allotment of 160, 80, and 40, which brought it down to 300,000 acres that were allotted to our Indians. The surplus or the 600,000 went to the non-Indians.

In the early twenties we only had two-thirds of our 300,000 acres belonging to Indians. The rest of it went out of Indian ownership into non-Indian ownership.

We realize that something has to be done about this heirship problem. Like I say, if we can come up with a bill that would guarantee, foolproof guarantee, that the tribes would and could buy Indian land, it would be good.

Thank you very much.

Senator CHURCH. Thank you very much for your testimony. We are scheduled to hear next from Johnson Holy Rock and William Whirlwind Horse and their attorney, Richard Schifter.

You are the attorney for the tribe, are you not?

Mr. SCHIFTER. Yes.

Senator CHURCH. Would you like to appear with these gentlemen?

Mr. SCHIFTER. Yes, if I may.

We have organized our statements in such a way that I could lead off and Mr. Holy Rock will follow.

Senator CHURCH. Surely.

STATEMENT OF RICHARD SCHIFTER, WASHINGTON, D.C., REPRESENTING THE OGLALA SIOUX TRIBE, THE NEZ PERCE TRIBE, AND THE ASSOCIATION ON AMERICAN INDIAN AFFAIRS

Mr. SCHIFTER. Mr. Chairman, my name is Richard Schifter. I am an attorney with offices in Washington, D.C.

On behalf of the Oglala Sioux Tribe of South Dakota, the Nez Perce Tribe of Idaho, and the Association on American Indian Affairs I want to express my thanks to the subcommittee for giving us this second opportunity in less than a year to testify on the subject of fractionated heirship legislation.

It has been gratifying to note the careful consideration which the chairman of the subcommittee has given the earlier testimony, as a number of the suggestions which witnesses made with regard to S. 1392 have been incorporated into S. 2899. It is my hope that the further suggestions which are being made here today will receive similar consideration.

In a recent address to the executive council of the National Congress of American Indians, Mr. James Gamble quoted with approval excerpts from a description of the heirship problem contained in the March 1962 issue of Indian Affairs, newsletter of the Association on American Indian Affairs. I would like to call the entire text of this description to the committee's attention:

Contrary to statements sometimes heard, fractionation need not interfere with the utilization of Indian land. Most Indian allotments, including those owned by a single person, are too small to be utilized individually. A number of them are, therefore, usually grouped together by the local Indian Bureau superintendent to be leased out for use by Indians or non-Indians as an "economic unit." Where the owners of an heirship tract cannot agree on the manner in which the land is to be leased or where they cannot be found, the local superintendent may lease the land out on his own authority.

Thus the heirship problem is not primarily one of land utilization, but of cumbersome recordkeeping. Entries must be made as to the ownership of tiny fractions of interest in land and distributions must be made of the annual income received from the utilization of all fractional interests, including the very small ones.

The extreme cases, the sheer absurdity of the entire system, and the fact that the problem is increasing by geometric progression have caused Members of Congress to become greatly concerned with this matter and anxious to rectify it.

One most unfortunate aspect of the present situation is that except for a few isolated instances in which attempts at solving the problem have, been made, the Bureau of Indian Affairs, with the lack of positiveness and imagination which has traditionally characterized much of its officialdom, has stood idly by as the matter became worse. Oddly enough, on the few reservations in which executive authority was used to simplify the heirship problem, the experiments were successful. Yet no effort was made to launch a general nationwide attack on the condition.

The point which I wish to emphasize in quoting this text is that the heirship status of land does not seriously impede its utilization, unless we are concerned with mineral rights.

May I say in this connection, Mr. Chairman, that as far as the grazing areas of the Dakotas and Montana are concerned, I do not

believe that heirship status in anyway depresses the price which Indians receive, the lease rentals which Indians received. The Commissioner referred to the Colorado River Reservation this morning. I do not know the situation there. I do know that in the grazing areas it makes no difference whatever. The price for an allotment would be the same as the lease price.

As a matter of fact, the administrative burden and the cost of it is really not borne by the lessee.

Senator BURDICK. In other words, there is no disparity and no difference between the contract whether issued under negotiation with the Indians themselves?

Mr. SCHIFTER. Basically, Senator Burdick, in the grazing areas I am familiar with, particularly Pine Ridge Reservation, it is hardly possible to negotiate individual transactions on grazing land. The acreages are relatively so small, the economic units are so very much larger, that the only sensible way of doing it is to have an economic unit put together and lease that. As a matter of fact, I think the burden on the individual lessee would really be very great if he had to go out and start making these individual deals, not only from the heirship point of view but from the point of view of dealing with individual allottees, because after all the allotments are 180 acres and you can't run many head of cattle on 180 acres. As a matter of fact, it would be about 7 or 8.

Senator BURDICK. Of course, the discrepancies the Commissioner referred to were those negotiated by the Indians themselves as well as those negotiated by the Bureau?

Mr. SCHIFTER. Yes, I am further saying that he may have referred to areas other than the grazing area of the Dakotas and Montana. In those areas, as a matter of fact, your greatest acreages really are in those areas. There is no discrepancy. That is just a side point. The Interior Department has evidently concluded that it has ample statutory authority to issue regulations of the utilization of heirship land in case the heirs disagree. The regulation in question, 25 C.F.R. sec. 131.7(b), reads as follows:

The superintendent may grant leases or permits embracing inherited or devised restricted individual lands: (1) When the heirs or devisees of the decedents have not been determined, (2) when the heirs or devisees of the decedents have been determined and the lands are not in use by any of the heirs or devisees and the heirs or devisees have not been able during the 3-months' period immediately following the date on which a lease may be renewed to agree upon a lease by reason of the number of heirs, their absence from the reservation, or for any other cause.

May I point out here that the phrase here is—

three months immediately following the date on which a lease may be renewed.

That does not mean necessarily that the previous lease has expired and the 3 months following which the land lies idle. This could be a period prior to the expiration previously. So there need not be any intervening period and in the areas I am familiar with there isn't any.

May I say also in this connection I agree, Mr. Chairman, with the points that you made this morning with regard to the 90-day period.

The problem with which we are here concerned is, therefore, largely one of cumbersome recordkeeping and the cost of cumbersome administration. The additional cost which this problem creates for the

Government may very well amount to a few hundred thousand dollars annually. Undoubtedly the cost will increase as the heirship problem becomes increasingly complicated. This is the problem which we are here trying to solve.

The conclusions which we will reach in our search for a solution to this problem will necessarily depend on the policy assumptions with which we start.

May I say it seems to me that all legislation necessarily has to be related, all Indian legislation has to be related to these basic policy assumptions.

The assumptions I would suggest as a point of departure are:

(1) The experience of the last 12 years demonstrates that the economic and social ills of Indian reservation areas do not disappear if nothing is done about them.

(2) Out-migration alone won't solve the problem. In a free society there will always be people who cling to the familiar home environment, have children and thus perpetuate the community. During the decade of persistent efforts at relocation of Indians and deliberate abstention from any plans of reservation development, and, as a matter of fact, discouragement of reservation development, the reservation population did not decline.

(3) The problems of Indian reservation areas are in many ways similar to those of depressed coal mine areas in West Virginia, Pennsylvania, and Illinois, depressed textile areas in New England, or for that matter, underdeveloped and depressed areas in northeast Brazil, Iran, or Tunisia.

(4) The Indian Bureau's failure to concern itself with reservation development during the past decade resulted in serious hardship for the Indians of these reservations. The Bureau's policy has also been a serious detriment to our Western States, as the depressed economic and social conditions on the reservations have added to the problems of the affected State and local governments.

(5) The solution to the problems of economic and social disorganization on Indian reservations is to afford these reservations opportunities of economic development similar to those enjoyed by the more fortunate sections of our country. This proposed solution is similar to that offered by the Area Redevelopment Act or, for that matter, by our foreign assistance program.

(6) On some Indian reservations, land does not play a significant role in the future growth of the local economy. On others it is one of the foundation stones on which a healthier economy can be built. The development of a good land use pattern and the employment of local residents in the utilization of the land can in many areas be an important element in strengthening the local economy.

One conclusion must necessarily be reached from the foregoing premises: Where land can make a substantial contribution to the improvement of a reservation economy, every effort should be made to hold it in an ownership status which will make its effective utilization in the interest of reservation development possible. This means, in its essence, that the land should be held in Indian ownership.

It is against this background that we approach S. 2899. The bill may indeed help solve the administrative problems arising out of fractionated heirship. The question we must ask, however, is: Does

this bill compound the difficulties we might face in putting through the economic development program to which this administration has pledged itself? I would say that, although S. 2899 is a great improvement over S. 1392, the answer must still be "Yes." The bill would not have that result, however, if the following three defects could be removed from it:

(1) As now written, the bill would permit a single owner of an heirship interest to file a petition for sale. This, to be sure, is comparable to the provisions of our general law. However, the committee will certainly agree that nowhere in non-Indian real property holdings do we run into such minute undivided interests as we do in the case of Indian trust land. In non-Indian situations every owner who may want a partition will have a substantial interest in the land. There is no practical parallel in non-Indian real property situations for the grant to the holder of a single, minute interest in land of the right to force a sale.

Granting this right under the provisions of this bill could have the most serious consequences. Real estate speculators and others interested in acquiring Indian land could easily induce holders of small interests to file petitions for the sale of heirship tracts, perhaps by offering a small reward for such a favor. As a result, petitions requesting the sale of half or more than half of a reservation could soon be filed.

The Secretary may very well decide not to put all these tracts up for sale at once. However, even if sales are staggered, the impact on the Indian land base could easily be disastrous. The large backlog of applications, the large potential supply of land would undoubtedly have a depressing effect on the price of the land. Creating this sudden pressure for land sales may very well constitute a breach of the Federal Government's trust responsibility.

Mr. Chairman, in that connection this question was raised before and you raised some questions about it. I would like to make this clear.

In the first instance while I have full respect and confidence in the present Secretary and the present Commissioner, I agree with what Mr. Sonosky said this morning with regard to some of the land sales that took place in the 1950's. On the Pine Ridge Reservation with which I am familiar I know, too, that great blocks of land were put up for sale at one time. Sometimes more land than the local economy could absorb at that period. Beyond this, even if you could stagger it more appropriately, the fact that you have a backlog which may result in periodic offerings of land over the next 10 or 15 years must necessarily depress the price.

The significant point of difference between letting one single owner petition and having the majority interest petition is that in the majority situation you may have a genuine situation of people wanting to sell. In the situation in which you permit an individual to petition you may get into a situation where somebody is bribed by a prospective purchaser to force land for sale.

Senator CHURCH. You see this problem cured by requiring the agreement of a majority interest before such an action could be initiated?

Mr. SCHIFTER. I think so. There may still be problems created under those circumstances but I think they will be substantially smaller.

Senator CHURCH. What do you think of the Commissioner's recommendation this morning that such an action where the ownership is highly fractionated might be initiated by the Commissioner, himself, without any owner's consent?

Mr. SCHIFTER. I question that approach, Mr. Chairman. I see no real need for it at the present time. As a matter of fact, if the Commissioner used the existing administrative authority you can buy up individual tracts. The tribe could buy up individual interests, heirship interests in tracts, those that would be available. Over a period of time then try to buy the rest. Particularly if you have a majority interest requirement you might arrange it in such a way that over a period of time the tribe may acquire majority interest in a particular tract and it may itself petition this tract up for sale. I would certainly agree with your characterization of it.

As a matter of fact, I think it began in a situation in which perhaps the relationship between Indians and the Department of Interior was not as good as at the present time. It might be very dangerous if the Department of Interior—

Senator BURDICK. Even though it may apply to those who have a hundredth interest or more where it might be very difficult to get a majority even on a petition?

Mr. SCHIFTER. I would say this, Senator—

Senator BURDICK. It would not apply to any small number?

Mr. SCHIFTER. Yes. I would make this remark with regard to it. The basic concept I would like to discuss later on is very much in line with the remarks which have been made before about Indian tribes purchasing interests in tracts. In such a situation where the tribe purchases it, you don't really get into the problem that you have in other situations where you have to buy either the whole tract or nothing at all or all the interests or nothing else.

A tribe could easily acquire whatever is available at any particular time and if we say of the hundred heirs, 92 or 48 are willing to sell, well, we will just buy out whatever they have. At the point where you do get a majority together, including tribal, then you can petition it up for sale. I will say this, if you really get into a situation of more than a hundred heirs and they feel this power can be used I would say under those circumstances, well, perhaps there is some administrative justification.

I respectfully submit that this problem could easily be obviated if section 1 of S. 2899 were amended to allow petitions for sale only with the consent of the owners of a majority interest in a tract.

As now written, the bill envisages the preparation of tribal plans for land consolidation, the grants of tribal land purchase loans, and allows for a year's delay before its provision would go into effect. These are evidently considered necessary safeguards against the loss of land which is needed to support the local economy.

I submit that these safeguards are not adequate. The mere fact that an appropriation is authorized does not mean that it will actually be made or will be made in the full amount of the authorization. The year could pass, the land sales could start and the tribe, though it has

a plan and has set up a land consolidation area, does not have sufficient funds to purchase the land which is put up for sale.

I respectfully suggest, therefore, that the bill be amended to provide that where a land consolidation area has been created and approved, land lying within it be sold only with the consent of the tribe or if funds for tribal purchases have been made available.

It seems to me, Mr. Chairman, that such a provision would be crucial to avoid the kind of land loss that could occur under provisions of the present bill.

Senator CHURCH. Let me understand that. You say land within the consolidation area?

Mr. SCHIFTER. Within the consolidation area.

Senator CHURCH. You say that where a land consolidation area has been created and approved, land lying within it be sold only with the consent of the tribe?

Mr. SCHIFTER. Or if funds for tribal purchase have been made available.

Senator CHURCH. You meant that to be "or" and not "and"?

Mr. SCHIFTER. Yes, "or." In other words, if you give the tribe a chance to buy the land and it refuses to do so, I think in that case the tribe would have no defense to a sale to the outside.

(3) Under the provisions of section 11, land could upon the death of an allottee easily pass out of Indian ownership. I would, therefore, suggest that section 11 be amended to contain the same safeguards with regard to land located within a land consolidation area as I have suggested for section 1.

In connection with the questions you have asked this morning, Mr. Chairman, and Senator Burdick, it seems that the problem we are really facing here is to undo the damage done by Congress in the 1880's in passing the general allotment act. I think one of the things we ought to recognize is that we have a problem here which simply does not exist on the reservations which have not been allotted. They can work things out some, themselves. On the Laguna Reservation in Pueblo, N. Mex., somehow in the last few hundred years they have been able to work out ownership patterns of their own and land use on a highly individualistic farming basis.

It does not seem to create any administrative problems for the Bureau of Indian Affairs or for that matter, for the tribe. I recall last year in connection with the hearings, I believe there was an exchange between you, Senator Burdick, and Senator Case, in which I believe Senator Case suggested that that is socialistic. I think it is nothing of the sort. The fact of the matter is that if we think of the land-use patterns on some of these Indian reservations, the key to the whole problem is really the use of the land. We have individual Indian cattlemen leasing the land and operating as livestock owners. As a matter of fact, the way our tax laws are set up it is better for anyone to be leasing lands rather than owning it. It is not tied up and expenses including rentals are deductible.

So that I am sure many western ranchers will say the same thing with regard to BLM lands and others. It is not socialistic. So my point is that one long-range alternative in this situation is for the tribe to purchase land.

There is another matter here and that is that over a period of years those Indians who have established themselves in the cattle business and on the Pine Ridge Reservation—for example, there are about 120 families and there may very well be more that can be employed there—they continued gradually to consolidate their holdings and they make their own purchases. Now when you are dealing with a man who operates his own cattle business he has much more of a tendency to think in terms of passing his business, including his land, on to somebody who is going to continue it. I think there will be a much greater tendency there among these people who have the business to pick and choose among their children and make the necessary arrangements under which you do not get into a fractionated situation.

The real reason why you have had this great amount of fractionation is lack of interest; that land has not been related to use so far as Indians are concerned. If there were a landownership class under those circumstances ownership of land is not significantly different from, say, having a certificate of interest, a piece of paper. It is when you get into a land-use situation combined with landownership that there will be much more of a feeling for passing land on, as I say, to those among the children who will carry on the business.

Now, I would say therefore that we have, as far as the alternative to section 11 is concerned, a combination of those two things, a general gradual shift, I suppose, if the committee authorizes the appropriation for land purchases, toward consolidation of ownership in the tribe among those individuals who associate landownership with land use. This would, I think, substantially obviate the heirship problem or relate it basically to the kind of situation probated in States where you have other situations as well. I do want to repeat again, in case other members of the committee raise this, I see nothing socialistic about this. The tribes are operating on the same individual operation of the cattle business the way non-Indian ranchers operate on BLM lands or other Government-owned lands.

If amended along these lines, I believe S. 2899 could indeed be helpful in simplifying the fractionated heirship situation without creating conditions in which the baby is poured out with the bath water.

In analyzing the new authority which S. 2899 would grant for the simplification of heirship problems, it is well to keep in mind that ample authority to effect such simplification exists at present. The present Commissioner of Indian Affairs, who has been in office for only half a year, has made it clear that he will use his existing authority to the fullest possible extent. In this connection it will be of interest to the committee that the Oglala Sioux Tribe, the tribe with the largest fractionated heirship acreage in the country, has for the last year worked on an heirship land consolidation program. This program, developed with the active cooperation of the local Indian Bureau superintendent, was adopted by the tribal council and has been approved by the Bureau of Indian Affairs. Mr. Johnson Holy Rock, president of the Oglala Sioux Tribe, will explain its details.

It will demonstrate to you that with a will to do the job, some funds for land purchases, and existing authority for land transfers, a great deal can be done to ameliorate the heirship problem.

May I say, in conclusion, that I hope that in passing on this bill, the committee will act in harmony with the President's Indian pro-

gram, as contained in his letter of October 28, 1960, to Mr. Oliver LaFarge:

My administration would see to it that the Government of the United States discharges its moral obligation to our first Americans by inaugurating a comprehensive program for the improvement of their health, education, and economic well-being * * *. There would be protection of the Indian land base, credit assistance, and encouragement of tribal planning for economic development.

Thank you.

Senator CHURCH. Thank you, Mr. Schifter.

Now, Mr. Holy Rock, would you like to proceed with your testimony?

STATEMENT OF JOHNSON HOLY ROCK, PRESIDENT OF THE OGLALA SIOUX TRIBE OF THE PINE RIDGE INDIAN RESERVATION IN SOUTH DAKOTA

Mr. HOLY ROCK. Mr. Chairman and members of the committee, my name is Johnson Holy Rock. I am president of the Oglala Sioux Tribe of the Pine Ridge Indian Reservation in South Dakota. With me here today is Mr. William Whirlwind Horse, the president-elect of our tribe. Mr. Whirlwind Horse was elected president last January and will be inaugurated next week. He was elected on his first try for tribal office, so you can say that his appearance here today is valuable on-the-job training for him. His presence here also makes it clear that my remarks are the position of both the outgoing and the incoming administrations of the Oglala Sioux Tribe.

Our reservation is located in the southwestern part of South Dakota, near the Nebraska line. It is the second largest reservation in the country, both in size and population, second only to the Navajos. Our tribal membership is over 12,000. Almost 10,000 members live on the reservation. The reservation contains about 1,500,000 acres of trust land.

Our people are poor. Many of them depend for their meals on surplus food commodities, which are being distributed under a program set up by the tribe. Most of our people do not have adequate clothing, either for themselves or their children, and most of them do not have adequate homes. When a representative of the Public Housing Administration visited us last year, he wrote a report saying that at least 95 percent of the homes on the reservation are substandard. More than 90 percent do not have electricity.

So you can see that on our reservation every dollar of income counts. And income from the land is an important part of the income that comes to us. Most of our land is grassland, used to graze cattle. Livestock raising is an important business in our part of the country. Land is a source of income in two ways. First of all, we still have about 1,200,000 acres of trust land owned by individual members of the tribe. As grazing fees now run to a little over 60 cents an acre, this means in income to the tribal membership of almost three-quarters of a million dollars a year. Besides, we have about 120 Indian families in the business of livestock raising. Most of them are small operators, but they are self-supporting and are good examples to our people of how a man can pull himself up through hard work.

We are afraid of any law or policy which would result in land sales. It would cut down the income which our people receive in the way of rentals. As the big nonmember ranchers who live off the reservation always have more money than our people have to buy land, the land would go to them, so that less land would be available for leasing to our own members.

During the last 12 years we have seen what damage land sales can do. Under the policies adopted around 1950, a lot of land sales took place. Much of our reservation was lost forever as land passed out of trust status. This didn't make things easier for the Government. It made things harder. Many old people sold their land, but they could not use the money to go into business. They spent it and when the money was all spent, they were dependent on their relatives, the tribe, and the Government. Some people who sold their land later became squatters on school land. Others now make their homes at Rapid City, which now has a large Indian slum area. This is now a very serious problem to the Indians themselves, and also to the other people of Rapid City.

The Indian livestockman, too, loses out when the best land which is now available for leasing is picked up by a nonmember who runs a much larger herd than the Indian and who won't lease out any of the land.

It's because our land is important to our people and because we have seen the bad result of land sales, that we ask you not to pass a bill under which we are going to lose more land.

We know, of course, too what the heirship problem is. More than two-thirds of our individually owned trust land is in heirship status. That is more than 800,000 acres.

Practically all of that land is leased out and used, but I know that the bookkeeping is a problem. That is why our tribe has worked hard for the last year to come up with a plan which would help solve the problem. Our executive board has had many meetings to discuss this plan, we have worked with our superintendent, Mr. Towle, and with other people of his staff and with our attorneys. We then presented our plan to the council, which debated it and then approved it by a vote of 19 for and 1 against. I would hereby like to submit a copy of our program, resolution 62-6 for the records of this committee.

Senator BURDICK. The statement will be received and made a part of the record.

(The document referred to above follows:)

RESOLUTION No. 62-6

Resolution of the Oglala Sioux Tribal Council, Oglala Sioux Tribe (an unincorporated tribe)

RESOLUTION TO ADOPT THE LAND PROGRAM FOR THE OGLALA SIOUX TRIBE

Whereas the Oglala Sioux Tribal Council has by Resolution No. 61-68 which sets forth certain policies regarding land tenure and use program for the Pine Ridge Reservation; and

Whereas it is necessary that this resolution be further implemented by specific programs and objectives: Now therefore be it

Resolved by the Oglala Sioux Tribal Council in special session on this second day of March 1962, That the tribal council now adopts the attached document

as the land program for the Oglala Sioux Tribe, and further that this be an implementation to Resolution 61-68.

LAND PROGRAM, OGLALA SIOUX TRIBE

The Oglala Sioux people, through their elected council, has passed Resolution No. 61-68 which sets forth our thoughts regarding a land tenure and use program for the Pine Ridge Reservation. Our people believe that the status of their lands, the current stage of development of the resources, and the unique problems presented thereby make it essential that a specific program of future tenure and use be developed with them, without regard to general policy or practices which may be applicable to the lands of other Indian reservations.

Our people hark back to the purpose for which this reservation was established and members of the treaty council continue to remind their representatives that these lands were set aside as a home site for the Oglala Sioux people and that the intent was that the Oglala Sioux would always have a home, maintained in security under Government protection, on the lands of this reservation. They believe the Government pledged themselves to this objective. Our people believe that any problems relating to lands cannot and should not be divorced from the problems relating to people; that the concept of lands and people together should be inseparable; and that any problems which may arise should be resolved by insuring that the needs of people are kept paramount in any situation in which their lands are involved.

To this end, we believe there should be a definite plan for the full development of the land resources to provide a diversified economic opportunity for the people, to participate in programs leading to their self-development and self-support which alone will eventually make them self-sufficient.

This is the purpose expressed in the provisions of Resolution No. 61-68. Essential features of the proposed plan are as follows:

I. DESIGNATION OF ESSENTIAL RESOURCE AREAS

A. The Bureau of Indian Affairs shall make available skilled resource planning personnel, who will work with the established reservation planning committee of the tribe, to designate reservation land areas which have potential for maximum diversified economic use:

1. Grazing lands.
2. Agricultural lands.
3. Recreation sites.
4. Tourist attraction sites.
5. Other (commercial, industrial, etc.).

The results of this work without regard to land status will designate those areas which should be retained in Indian trust status to meet the needs of Indians who are not prepared to seek opportunities outside the reservation and who may develop social and economic capabilities by participating in constructive activity close to their homes.

B. Designate those areas which are not essential or adaptable to Indian use and which may be sold, exchanged, or otherwise disposed of to facilitate acquisition of other lands to be taken in trust for Indians.

II. CONSOLIDATION OF INHERITED INTERESTS IN LAND

A. The tribe and the Bureau working together through the Realty Branch of the Bureau, should immediately embark upon a program of consolidating the various undivided inherited interests of an individual into a contiguous tract of single ownership interest.

1. This can be accomplished through exchanges, sales with reinvestment of proceeds, or outright purchase of small minority interests.
2. In some cases where homes or homesites are not involved, an arrangement for temporary deposit of interests in a pool with subsequent selection of a single tract of equal acreage or value from the pooled lands which could include both tribal and allotted land.
3. The objective is to reduce the number of scattered inherited interests, bring them together in a tract which will be a usable entity and which may be managed in relation to the needs and desires of a single individual, rather than the multiple, often conflicting interests of numerous heirs.

4. Consolidation will eliminate the minute inherited interest of people who continue their ties to the reservation when in reality their tenuous hold would consist of only a few segregated acres of grazing land.

III. CONTINUE TRIBAL LAND ENTERPRISE

A. The tribe's land enterprise shall be continued and expanded to engage in the following functions:

1. Fulfill objectives of the reservation plan covering all land transactions.

2. Aid in the land consolidation program by using tribal lands where necessary to facilitate exchanges and sales of allotted lands.

3. Acquire lands within the "retain" area when individual ownership is not possible or feasible, or where tribal acquisition blocks out other lands already in tribal ownership.

4. Remove administrative restrictions and permit the enterprise to buy individual inherited interests in allotments when such sale is advantageous for the individual, without requiring all heirs to sell. Such interests could be used by the enterprise as trading acreage to aid in the consolidation program.

5. The enterprise shall be authorized to borrow additional funds from the Government as needed to finance land purchases on a feasible, economic repayment schedule:

(a) An additional \$600,000 shall be borrowed from the revolving credit fund to meet the current needs over the next 3 years. The repayment schedule will be modified to provide for larger annual repayments of principal and interest without extending the timetable.

(b) If needed in future years, the enterprise may borrow an additional \$1,200,000 by still further enlarging the annual repayments and extending the timetable an additional 10 years to 1993.

(c) The income from 50,000 acres of tribal land in addition to income from the purchased tracts is now pledged to the enterprise. It is estimated this income will be sufficient to furnish ample security for obligations undertaken by the enterprise and guarantee the economic feasibility of its operations. The tribe pledges the income from any additional acres of tribal land as may be needed to keep the enterprise in sound condition should factors in the general economy make such pledge necessary.

6. The enterprise shall be authorized to purchase lands on a deferred payment plan when such plan is negotiated with the seller and it is mutually advantageous to use this method of effecting payment.

7. Future purchases of the enterprise shall be confined to those areas designated by the planning committee and be in accord with an established plan of operations. The plan of operations would contemplate but not be limited to purchases starting with the smallest inherited interests and proceeding in ascending order.

8. The enterprise shall limit itself to land purchases, land exchanges, and debt service and shall not be concerned with the general management of tribal land.

9. Any undivided interest that may be devised or descend to a non-Indian or alien Indian shall be appraised and the cash value thereof shall be placed in special deposits by the enterprise to be distributed to the heirs as determined by the examiner of inheritance at official probate proceedings.

IV. CONCURRENT DEVELOPMENT PROGRAMS

A. The tribe is in process of formulating an overall economic development program to provide work opportunities for people and aid them in becoming self-supporting. Features of this program include the following:

1. Land utilization by tribal members in ranching and farming operations adapted to the needs and qualifications of participating families and under close supervision of the Extension Service.

2. Development of historic and scenic tourist sites and recreational areas in which tribal members will find employment catering to tourist needs.

3. Further industrial development, including the exploitation of large commercial clay deposits available for a pottery and ceramics enterprise.

4. Community and housing development providing employment and training in building trades.

5. Commercial development of stores and shops and allied services.

6. Encourage revival of native arts and crafts.

OBJECTIVES

Land is essential only as a base for the development of people. The development of the Oglala Sioux people has been retarded because there has been no consistent programs to aid the Indian people in the utilization of their lands, consequently, a large majority of the people have leased land out to others and have derived an income from the rental of the land. In most instances, this income is insufficient to provide for family needs. Without adequate income and without work opportunities to supplement this income, the Oglala Sioux have found themselves in a depressed economic condition. To alleviate distress in these circumstances, individuals have sought to sell their lands in order to provide funds on which to live. A conversion of capital assets into cash and living on the proceeds of principal has further depressed the individual's economic foundation. Several people have sold their entire land interests and are now existing in a precarious condition, largely the recipients of welfare programs. Of the proceeds of land sales that have been made, we estimate that more than 90 percent has been expended over a short period of time, which has been of no lasting benefit to the individual and has resulted in a depletion of Indian assets and loss of economic security.

Much of the land sold has passed out of Indian ownership. This gradual eroding of the Indian estate will eventually leave the Sioux society without a place to live and without adequate training in a means of making a livelihood. This situation cannot continue. The land base remaining to the Oglala Sioux people must be retained in Indian ownership and programs instituted which will permit people to engage in useful and constructive activity to provide the experience and training necessary to become self-supporting and self-sufficient. This could include the utilization of land by the Indian owners, if they so desire, or training in some useful skills that have a sale on the open market. The needs and aspirations of the people, as well as their aptitudes, will determine the type of program that should be instituted to aid in this development.

In order to determine the extent of self-utilization of lands, the program of consolidation of inherited interests above proposed will put lands into an area where they may be used by the Indian owner. He may then determine whether it is to his advantage to utilize the lands himself, to lease them out for whatever income he may derive, to participate in other opportunities offered through industrial and commercial development, or to learn a trade and become sufficiently skilled to accept work opportunities available. The heirship land status at Pine Ridge has not proceeded to a point where it is an insurmountable problem. There are only 577 tracts in which there are more than 15 heirs. There are only an additional 900 tracts in which there are more than five heirs. Therefore, an immediate attack upon the problem through the medium of consolidation would serve to get a large number of these tracts cleared of heirship status and a considerable portion of the land into usable tracts of single ownership. This would result in material reduction in the administrative workload in managing these allotments and this would be especially so if programs are instituted to have the lands used by the individual owners.

We believe that the proposal here advanced to consolidate land interests to provide for sales and exchanges of lands and acquisitions by the tribe represents the means by which Indian people can have some security in their social organizations and at the same time embrace an economic opportunity to improve their financial status. Much, if not all, of this program can be accomplished under existing laws and regulations. We request the Federal Government to review thoroughly this plan and to introduce whatever legislation might be necessary to implement it. We do not believe that the solution to the heirship problem at Pine Ridge rests in the sale of allotments, and especially the forced sale by request of the holder of a small inherited interest. We request the Federal Government to protect the Oglala Sioux in the remaining lands they have; to aid them in the formulation of programs which will assist in the economic development of the people, therefore, we specifically request that any legislation which does not fulfill the objectives proposed for the Oglala Sioux, that the Pine Ridge Reservation be specifically exempted from the provisions of such legislation.

NOTE.—This document certified by resolution 62-6 and attached thereto.

Mr. HOLY ROCK. I would also like to submit a copy of our attorney's memorandum to the Bureau of Indian Affairs concerning the way our program can be carried out.

Senator CHURCH. It may be received.
 (The document referred to above follows:)

STRASSER, SPIEGELBERG, KAMPELMAN & McLAUGHLIN,
 Washington, D.C., March 23, 1962.

PROPOSED PILOT PROJECT FOR THE CONSOLIDATION OF HEIRSHIP INTERESTS ON THE
 PINE RIDGE RESERVATION

BACKGROUND

The Pine Ridge Indian Reservation is the largest allotted Indian reservation in the country. The allotment process took place during 1906-08, which means that a considerable number of tracts are still in single ownership while many others have gone through the fractionation process during one or two generations.

Of the 8,474 original allotments, approximately 4,700, totaling 1,200,000 acres, are still in trust status. From the point of view of ownership, these figures break down approximately as follows:

	Number of allotments	Acreage
1 owner.....	2,000	400,000
2 to 5 owners.....	1,500	400,000
6 or more owners.....	1,200	400,000
Total.....	4,700	1,200,000

In addition, the reservation contains in excess of 300,000 acres of tribal land.

BASIC PROPOSAL AND PURPOSES

The Oglala Sioux Tribe has proposed that it be selected for a pilot heirship consolidation program. The pilot project will demonstrate that the heirship problem can be greatly ameliorated by effective use of existing administrative authority. It is to be the objective of the project—

- (1) To consolidate the heirship holdings of those individuals whose total interests in land are substantial enough that they could be exchanged for at least 40 acres of land in undivided ownership;
- (2) To provide for the tribe to buy out those heirs whose interests are not substantial enough to be exchanged for at least 40 acres of land in individual ownership.

CONSOLIDATION PROCEDURE

The office charged with carrying out the consolidation program will proceed with its job in the following manner:

- (1) In consultation with the tribe a list is to be drawn up of persons now holding substantial heirship interests and who are now using land for grazing or farming purposes or who are interested in becoming stockgrowers or farmers. Once the list is completed, the individuals will be contacted and asked whether they wish to have their land interests consolidated. Initially, only those persons will be contacted whose interests in land aggregate at least a one-half section. In appropriate cases, a wife's interest in land could be joined with that of the husband.
- (2) The tribe will set aside 6 to 10 areas of tribal land, located in differing portions of the reservation, which land will be available for exchange purposes. Every individual who agrees to consolidation will be allowed to select an appropriately sized tract of tribal land which will be conveyed to him while he conveys his heirship interests to the tribe.
- (3) In each case, an abstract of title, otherwise known as title status report, will be compiled with respect to each tract in which the person to be reallocated has an interest. The title status report will be prepared for the entire tract down to the next to the last transaction. The original of this report will be kept on file at the agency, a rider will be prepared showing the last transaction and its effect upon the individual concerned. A copy of the

report and the rider will then constitute an abstract of title for the tract involved. By preparing an abstract in this manner all subsequent transactions involving the particular tract will be greatly simplified because a complete abstract will be available.

(4) The acreage equivalent of the individual's heirship interest in each tract will be computed.

(5) A desk appraisal of each tract will be made on an acreage basis.

(6) The value of the individual's holdings in each tract will then be computed and the total value of his heirship holdings determined.

(7) A standard resolution from the tribe agreeing to accept the heirship interests involved and to relinquish the selected tribal land will be prepared and executed.

(8) Deeds for transferring the individual's interest in each of his tracts and the tribe's interest in its tracts will be prepared and executed.

(9) A letter of recommendation by the superintendent to the area office will be prepared.

(10) The abstracts of title, the desk appraisals, the tribal resolution, the application, and a letter of recommendation will be forwarded to the area office.

(11) At the same time as an abstract of title is prepared with respect to each of the tracts in which the individual to be consolidated holds an interest, a check will be made with respect to the other individuals holding interests in that tract. If any of these individuals have total lease income, from all of their heirship holdings on the reservation, which amounts to less than \$10 per year, they will be invited to convey their heirship holdings in the tract for which a title status report is already prepared to the tribe on the terms specified in (13) below.

(12) Reallotments will be made only in multiples of 40 acres. In cases where the tribe surrenders land of slightly greater value than the interests which it receives, it will execute a waiver, providing that the difference in value is less than 5 percent. In cases where the tribe surrenders land of lesser value, the individual beneficiary of the consolidation may waive the difference to the extent to which the regulations permit. In the absence of a waiver, compensation is to be arranged as indicated in (13) below.

(13) Where the tribe is to make a payment for a purchase under (10) or a value differential under (12) it will offer either—

(a) To convey to the individual an appropriate undivided fractional interest in one of the tracts of tribal land in Bennett County lying south of Route 18; upon receiving an undivided fractional interest, the individual would immediately agree to a sale of the tract, which sale would take place as soon as the last remaining tribal interest in the tract has been conveyed away; or

(b) To pay 25 percent down and the remainder in three equal annual installments.

REQUIRED CHANGES IN REGULATIONS

To carry out the foregoing program several changes in the regulations would be required:

1. 50 IAM 2.2.34(2) now prohibits the tribe from acquiring an undivided interest in a tract of heirship land. This regulation would have to be waived with respect to the Pine Ridge Reservation.

2. 25 C.F.R. 121.4, which requires an appraisal of all lands prior to an exchange, would have to be interpreted to authorize "desk appraisals." Field appraisals at the Pine Ridge Reservation are now running more than 6 months behind. Both the tribe and the agency officials believe that a desk appraisal would be fair. A desk appraisal consists of an analysis of aerial photographs, which are available for the entire reservation, a comprehensive soil analysis report, also available for the entire reservation, and an examination of the land management records showing current income, availability of water, and other pertinent factors. It is contemplated that a desk appraisal would not be used unless consented to by the tribe and the individuals involved.

3. 54 IAM 5.2.3A(2) now prohibits individuals from acquiring heirship interests in tracts in which they do not already hold an heirship interest. It would be useful if this regulation were waived with respect to the Pine Ridge Reservation for it would afford the possibility of accomplishing private exchanges and consolidations without the use of tribal land.

4. 54 IAM 2.2.1 E, which is the Commissioner's policy letter of May 12, 1958, restates that statutory rule that tribal lands cannot be sold. The area office has interpreted the policy statement to mean that tribal land cannot be exchanged for individual land of lower value, even if the difference in value is de minimis. The problem would arise in a situation where an heir had total interests equal in value to 319 acres of tribal lands which he wished to acquire. Even if the tribe were willing to exchange this 319-acre interest for 320 acres of tribal land, it could not do so, for the area office has ruled that in such an exchange the tribe would be "selling" 1 acre of tribal land. This interpretation of the area office stated in a letter to the tribe dated October 18, 1960 (Pine Ridge file OS-6489 (Fee) Tribe) is at variance with rulings of the Solicitor. The Solicitor has ruled that section 4 of the Wheeler-Howard Act: "authorizes exchanges of lands of equal value. The parties to the exchange may be two individual Indians, an Indian and a white man, an Indian and an Indian tribe, or a white man and an Indian tribe. The requirement of equality of value is substantially complied with if the difference is so small that both parties are ready to disregard it. It is arguable that an exchange transaction involving small cash payment to boot falls within the scope of section 4. I would suggest that 5 percent of the value of the land might be regarded as a safe margin within which the maximum, de minimis non curat lex, may operate." Memo. Sol. I.D., February 3, 1937.

It is respectfully requested that the area office be advised of this Solicitor's ruling and that the tribe be authorized to exchange tribal land for individual interests in heirship land of lower value, provided that the difference in value is less than 5 percent. Since appraising is not an exact science, it is felt that this small differential cannot be said to be a sale of tribal land.

REQUIRED ORGANIZATION AND PERSONNEL

To accomplish the foregoing pilot project on an expedited basis, it is suggested that the branch of realty of the Pine Ridge Agency be reorganized. Upon consultation with the superintendent, Mr. Leslie P. Towle, we were advised that he believes the most efficient organization to secure maximum output would be to set up a special heirship consolidation team, the head of which would report directly to him. It is contemplated that the present realty officer would remain in charge of the routine realty matters now handled at the agency. His principal assistant, Mr. Tom Conroy, would become head of the heirship consolidation team.

Mr. Conroy should have at his disposal at least three and perhaps more of the personnel which are now employed in the branch of realty at the Pine Ridge Agency. He would need in addition the following personnel:

- (1) Another realty officer trained in acquisition and disposal to help supervise exchanges;
- (2) An appraiser, assigned to the land operations branch, to make desk appraisals on all tracts to be exchanged;
- (3) Three legal clerk typists, GS-4 rating, to prepare and type title status reports, deeds, and other necessary documents;
- (4) A probate clerk, GS-5, to maintain all probate records to date. This position is normally staffed at the agency, but the position is presently vacant, and no funds were appropriated for it during this year.
- (5) A person to explain the program to potential applicants, answer questions, and to go out when necessary to secure consents and signatures.

REQUIRED FINANCIAL RESOURCES

This program can be initiated without an additional loan from the Federal Government at this time. As is evident, it is hoped that the greatest number of consolidations will take place through exchanges, without requiring the expenditure of funds by the tribe. Funds will be needed only to pay for small heirship interests and for value differentials. For this purpose the tribe is making available—

- (1) Tribal land in Bennett County, south of route 18, which lies outside the tribal land consolidation area. By exchanging heirship interests within the consolidation area for land in Bennett County, the tribe will make it possible for the tribal land in southern Bennett County to be sold and the proceeds to be used for land consolidation.

(2) \$100,000, constituting the last installment on the present tribal land purchase loan.

(3) Approximately \$20,000 of tribal funds, which have accrued in the land purchase account and are in excess of present needs for a repayment reserve.

It is hoped that, after the foregoing amounts have been exhausted, the success of the first phase of the program will fully justify an additional loan.

It is requested that the foregoing program be put into effect by the Bureau of Indian Affairs immediately. The Oglala Sioux Tribe stands ready to cooperate.

Respectfully submitted.

RICHARD SCHIFTER,
General Counsel, Oglala Sioux Tribe.

Mr. HOLY ROCK. I am very glad to see that the Bureau has approved this program, and I would hereby like to thank all the officials, from the realty officers at our agency to the superintendent and the Commissioner, who have been of help to us.

The principle which we want to follow in our heirship tract consolidation program is very simple: We have really two classes of heirship interest owners. First, there are those who have a number of substantial interests in a few tracts. If all these interests were consolidated, they would amount to something, particularly when a husband and wife consolidate their interest. The second class of people are those whose interests are so small that they would not amount to much if they were consolidated.

The principle which we would follow is simple. We would look for heirs who have substantial interests and find out whether they want to be consolidated. We think that most, if not all of them, will agree. Then we would arrange for an appraisal of all their interests and exchange these interests for a single tract of tribal land of equal value. Once the tribe has acquired an heirship interest in a particular tract, it would try to make a similar consolidation arrangement with any heir who has a substantial interest. The heirs with very small interests would be bought out, if they agree, on an installment plan, on which they receive 25 percent down and the remainder in installments over 3 years.

To make these purchases the tribe will use \$100,000 of a loan made from the Indian revolving loan fund under an agreement entered into in 1959 plus a surplus of \$20,000 which has built up in the tribal land purchase account. We are also setting aside some tribal land in southern Bennett County, outside our tribal land consolidation area, which we can exchange for heirship tracts inside the consolidation area with the understanding that the land outside the area can then be sold.

Under this program we can consolidate the largest acreages without expending any money. Only smaller areas will have to be purchased. This means that we will be able to stretch our money quite a bit. Under our land purchase program the income of all the newly purchased land plus the income of another 50,000 acres of tribal land is pledged to this purchase program and the repayment of our loan. Our program is financially sound, as can be shown by the fact that we have a \$20,000 surplus, which we want to invest in further land purchases. By that time, I am sure, we will have shown that we have invested our money wisely and that another loan is justified. As time goes on, the whole program will become self-supporting.

I want to add that this part of the testimony refers to that part of the bill where it is proposed to have an increase in the revolving credit fund but we realize that it will take a substantial amount of money in order to go into a land purchase program of this magnitude. So what we are saying here is that that is the method by which we can solve the problem and would be the less expensive.

I would like to make one final remark about our reservation. Land alone is not going to make our people self-supporting. We need other development. I suppose you have heard about the employment which the Wright-McGill factories brought. We hope there will be other income opportunities also. But income from land is going to be important on our reservation for a long time. I hope that your committee will keep this in mind.

We look at the heirship bill more from the economic development of our people rather than the solution to the problem, fractionation problem, because in any manner if the economic status of our people is overlooked, then actually what is proposed in the bill would not accomplish the development of our people as a whole.

Thank you.

Senator CHURCH. Thank you, Mr. Holy Rock.

Mr. Whirlwind Horse?

Mr. WHIRLWIND HORSE. I have no statement.

Senator BURDICK. Mr. Holy Rock, this morning Marvin Sonosky outlined the plan where they use certificates of interest in lieu of cash. Have you explored that possibility on your reservation?

Mr. HOLY ROCK. No, not at this point. Our program is one in exchange of value interest rather than a certificate issue.

Senator BURDICK. I am talking about the smaller interest. If you ran out of revolving fund money you could use certificates to pick up these small fractionated interests which you say are not large. Is that a supplemental way of getting interest in the hands of the tribe?

Mr. HOLY ROCK. I suppose that if the money was not available a process of that type could be adopted under our program also.

At the present moment what the program proposes is an exchange of interest. If the committee does not mind I have a map of our reservation showing the heirship area. I can show it to you very quickly.

Mr. SCHIFTER. May I give a further answer to Senator Burdick's question?

We thought that when it comes to trying to get voluntary sale arrangements, the best chance of getting one would be to have some cash available. We thought as a compromise really between the full cash payment and what Mr. Sonosky suggested this morning, pay 25 percent down and then over a period of years we pay the remaining 75 percent which would give us a chance really to build up income from the land over this period and make the whole transaction easier.

Senator BURDICK. Both methods have for their purpose the consolidation of the land in the hands of the tribe?

Mr. SCHIFTER. That is right. May I show two examples? They tried to run two cases through the machinery. Here is one man, for example, who has five different heirship interests. He would be consolidated and given a tract immediately adjoinning a tract that he now owns as his allotment.

Here is another case where a man has, I think, about 11 different heirship interests which would all be consolidated into one tract.

Senator CHURCH. Do you have the map, Mr. Holy Rock?

Mr. HOLY ROCK. All the brown area is heirship land. The white is single ownership. The red is non-Indian grazing land.

Senator CHURCH. The red is land in non-Indian ownership?

Mr. HOLY ROCK. Yes. Over in the central area in many areas the red is depleted in that many of our members of the tribe have been forced to take their land in fee status.

Senator CHURCH. So that these lands in here are Indian owned but in fee?

Mr. HOLY ROCK. Yes. The yellow areas are tribal lands. The light green areas are submarginal. The dark green are tribal timber. The purple areas are Government owned. One person having a minute interest could petition for distribution of the whole area.

Mr. SCHIFTER. Mr. Chairman, this is the Shannon County the tribe proposes for the land consolidation area plus a certain portion of Washabaugh County. This would be outside the land consolidation area, Bennett County. The tribe is willing to arrange for the exchange under which this goes up for sale. Most of this area and that area was alienated during the 1950's.

Senator CHURCH. I want to say that if all of the Indian tribes had shown the initiative that your tribe has shown in trying to come to grips with this problem we would not be faced with a steadily worsening picture across the country. You are to be very strongly commended. I hope your example will be followed by other Indian tribes as they try to deal with their own problems on their own reservations.

Mr. HOLY ROCK. Thank you.

Senator CHURCH. Thank you for coming.

Our next witnesses are Mr. Alex Saluskin, Robert B. Jim, Eagle Seelatsee, and Joe Meninick, and James B. Hovis, tribal attorney from the Yakima Tribal Council.

Gentlemen, we are pleased to have you. We would like you to proceed with your testimony. How would you like to arrange your testimony here?

Mr. SALUSKIN. Mr. Chairman, if there is adequate time we would certainly like to present full testimony in regard to this important subject.

At this time I would like to proceed with our tribal attorney, Mr. James B. Hovis, and following that we will then take in order, Robert Saluskin, Robert Jim, Eagle Seelatsee, and Joe Meninick.

Senator CHURCH. We would like to give you as much time as you need. Would you like to lead off with the testimony or would you like to have your attorney lead off?

Mr. SALUSKIN. I believe I will make the concluding remarks. We will let our attorney proceed at this time.

Senator CHURCH. Fine. Let me just explain that in the course of the testimony if either one of us needs to leave it is in order to check the matter that is pending on the floor. We may have to alternate back forth but all of your testimony will go into the record where it will be studied in printed form when the record is complete.

Mr. SALUSKIN. Thank you.

STATEMENT OF JAMES B. HOVIS, TRIBAL ATTORNEY OF THE
YAKIMA TRIBAL COUNCIL

Mr. HOVIS. Mr. Chairman, Senator Burdick, first I would like to file for the record our statement in regard to this matter. It is a lengthy one and therefore I will not read it.

Senator CHURCH. Very well, it will be included in the record in full at this point.

Mr. HOVIS. It analyzes the bill from our point of view section by section.

(The prepared statement referred to above is as follows:)

STATEMENT OF YAKIMA TRIBE IN OPPOSITION TO S. 2899

The Confederated Bands and Tribes of the Yakima Indian Nation of the State of Washington do oppose the passage of S. 2899. We do not take this action lightly because we recognize the problem. However, we think the solution is wrong. The reasons for our objections are set forth as follows:

Regarding section 1 and 2, we object to the provisions that provide that a single heir can bring about partition or sale of an heirship tract. This provision will encourage land sales and will destroy the Indians' land base. The Yakima Indians are very dependent upon their land base for their livelihood. This situation will exist until we have completed a program that will fully develop the Indian himself. It has been our experience, for example, that the welfare situation on the Yakima Reservation is not a serious problem because of the maintenance of this land base, and the percentage of recipients is about the same as the local non-Indian community. However, our experience even in this State, has shown us that Indians who have lost their land base cause a heavy load on public aid. Where the Indian land base has been destroyed, in some instances about 90 percent of these tribes are recipients of public aid. In this regard, partition brought about by one Indian will not be helpful. Partition will make sure that there are fewer interests in each allotment, but it will replace the multiple heirship problem with a problem of many small allotments which cannot be dealt with as a group, not economically farmed. Today's farmers find even an 80-acre allotment too small. Farm units will continue to be larger, not smaller, and any legislation which causes a handicap in dealing with larger units because of individual ownership as contrasted with tenants in common will create a problem, not decrease the existing problem. Simple solutions do not exist and it does not do any good to go from frying pan into the fire.

In regards to section 3, we have no objection to the provisions of this section.

In regards to section 4, we would agree that the Secretary must have this power if these people do not have a personal representative appointed by a court of competent jurisdiction. However, we would suggest that notice also should be given to each owner by letter addressed to his last known address. Notice by publication is not a particularly effective way of giving notice. We would, therefore, suggest that notice be given by publication and by letter to the last known address of the person involved.

In regards to section 5, it would appear to us that the priorities that are established are good ones. We would agree that first priority should go to an owner, not the tribe, for the appraised value. We also agree that it is equitable that if objection is filed to this matter, that the Indian owner or the tribe should have a preferential right to meet a high bid. Along this line, however, we believe that a moratorium against the sale of Indian lands be effective until loan funds are made available to the tribe and to the Indian owners to buy lands being sold, or being made available for sale. It doesn't do any good to provide a right to purchase this very desirable priority situation if funds are not available. This is very true in the light of the fact that only \$50 million is being provided for even though the committee's findings were that there is very substantial number of Indians who wish to sell their lands. The amount provided for should approximate the percentage that wish to sell against the all-over land value. It would appear that if this bill would pass, with its easy provision for sale, that the Yakima Tribe could use at least \$30 million by itself. It is also to be pointed out that this bill will not carry an automatic appropriation there is no assurance that Congress will provide necessary funds. It would,

therefore, appear that without adequate funds that this priority provision will do little, when you get right down to the practicalities of the situation, but provide a good smell to this legislation for those who are interested in protection of the Indian land base from indiscriminate raiding by non-Indian interests.

In regards to section 6, we oppose the determination of whether a land purchase program has support. We believe that the elected officials of the Tribe who are responsible to their constituents, will represent the wishes of the tribe. We also feel that the tribal leaders will be better able to understand what such a land purchase program means. Surely tribal support for the land purchase program can be determined without the cost and delay. Also, the Yakima Tribe has an approved master land purchase plan. At least existing plans should be brought within the purview of this bill. The bill also provides that loans can be made from the revolving loan fund only if the tribe does not have funds available in an amount to make the purchase, and is unable to obtain a loan from other sources. We do not believe that this is a wise provision because there is no existing legislation that would authorize a tribe to borrow from other sources. Also, any loan repayment and interest rates should be adjusted to earning capacity. Until Indians are trained to be more efficient, the grants and credits advanced should be on more lenient terms than those of loan companies and banks.

In regard to section 7, we believe this provision to be a good one, with the exception of our objection to the referendum requirement in section 6(e) of the bill.

In regard to section 8, we oppose any legislation that will forbid a plan that will prevent or delay a termination of Federal trust responsibilities. In many situations it will be for the best interests of the Indians and of the Federal Government that a delay of the termination of Federal trust responsibilities be accorded. If such a legislative prohibition as is set forth in section 7 is allowed to stand, it cannot but hamper an overall Indian program.

In regard to section 9, we are in favor of a section that would not interfere with our land purchase act, and we would wish that said act, being the act of July 28, 1955, be specifically exempted so there may not be a repeal by implication.

In regard to section 10, we do not believe that the amount of the revolving loan fund will be adequate to take care of existing and projected demand. Examination of the returns of your survey regarding the desire of the Indians to sell their lands, shows that there is a demand that would far exceed the demand of \$50 million. In order to give any protection of the Indian land base, adequate moneys must be available to the tribes so they can purchase individual lands from individual Indians wishing to sell. Also, there is a question as to whether tribes not organized under the Wheeler-Howard Act can borrow from this fund. This should be resolved and there should be no priority for other loans over a land purchase program.

In regard to section 11, we oppose the termination of Federal supervision over either individual allotments or tribal lands. We understand the effects of the multiple heirship problem. Serious students of Indian affairs at the Federal level are constantly bothered by this problem. They can see the cost of supervision rising as the number of tenants in common in individual allotments increase. We can, therefore, understand their termination of supervision as an easy and ready answer. However, just like every easy solution, it has a hole in it big enough to drive a wagon through. What we will do by the termination of Federal supervision is to destroy a system that has had some semblance of success and leave a void. True enough, Federal and tribal costs of such supervision would be ended, but there would be the same number of heirs as owners or tenants in common, with their divided or undivided interests in the same acreage, with the same productivity factors.

Therefore, we just have to ask this question—"who is going to take care of leasing this acreage now?" to see that the termination of Federal supervision is not the solution of this matter. At least under present regulations the signatures of all the owners are not required to lease this allotment, while under the State law every owner would have to sign in order to lease these lands. Because there would be no central agency to keep track of said minority interests and small acreage they undoubtedly would not be included in the probate of deceased members, to the end said lands would constantly be under a cloud. Where would a prospective lessee even find the names and addresses of the owners? We are sure that very few farmers would make any effort to lease the land under these

circumstances. Therefore, because of these factors, lands would go unleased, with a harmful result to the Indian owners and the area's economy as well. We have constantly been working toward what we feel is a more favorable solution. We are interested in amending our present land bill, the act of July 28, 1955, chapter 423 (25 U.S.C. A 608) by the enactment of S. 669. This bill was introduced by Senators Magnuson and Jackson on January 30, 1961, and would provide for the reduction in the percentage of the members consenting to the sale to the Yakima Tribe, so as to facilitate consolidation of heirship status lands. It also provides for certain other housekeeping provisions. It would seem to us that there must be a consolidation of multiple heirship lands by acquisition by a tribe before any termination of the Federal trust relationship is considered. To facilitate this consolidation loan moneys must be provided and we have such a bill pending before your committee, being S. 667, introduced by Senators Magnuson and Jackson on January 30, 1961. Also, it is our position that to terminate the trust relation without the consent of the Indians involved would be an impairment of the contract, and therefore unconstitutional. The words of the original trust patents set forth such an express trust and provide that the President of the United States may extend said trust period. Where an express trust is created it cannot be terminated without the consent of the beneficiaries of the trust, and your bill provides for such termination in the case of a probate, and otherwise, without obtaining such consent. We further find evidence of the establishment of such an express trust in the "Record of Official Proceedings at the Treaty Council in the Walla Walla Valley." The treaty itself and said record points out that the reservation shall be exclusively for Indians. It also points out that there was to be an agent "as long as there are people." This shows that there was consideration of such a trust relationship continuing as long as the Indian people kept their separate identity. May we point out that the termination of the trust or restricted status for those who are not able to handle their own decisions, is a waste of their assets which will soon be wasted.

While we can certainly understand the desire of some Members of Congress to propose such legislation as this, we are firmly of the opinion that this is putting the cart before the horse. It seems that most legislation tends toward dealing with material assets of the Indians. Generally speaking, while all of us have minor or major irritations with the Bureau of Indian Affairs and Indian laws, the material assets of the Indians are not too badly managed by the Government as trustees. However, there is not enough being done to make the Indian himself more productive and ready to take his place in society. As expensive as this may be, it would appear to us that this is the only solution to the problems that face us all. Until the Indian is made ready to manage his lands, and he is provided with the tools to do so by the consolidation of heirship interests, the termination of the trust responsibility cannot be anything but premature. We, therefore, petition you and your committee to place your emphasis on such a program.

It is agreed that sections 12, 13, and 14 are necessary sections, should this bill be enacted.

Respectfully submitted.

ALEX SALUSKIN,
EAGLE SEELATSEE,
ROBERT B. JIM,
JOE MENINICK,
Yakima Delegation.

Mr. Hovis. First, I must say that our approach to this matter is not one of just protecting the majority interests or protecting the minority interests but also of trying to protect our neighbor and our customers if you please, who rent land from us, as well.

We realize that as all of our people do, as the majority do, and also as our neighbors and customers do, so shall all the members of the tribe be dealt with equitably. Along that line I think we must look at this bill and this partition and the sale item in the light of today's activity. Farming is not what it used to be. I was thinking just the other day, one of the farmers from our great potato growing area had a potato digger recently purchased that is worth \$24,000. We are not any longer farming with 40 acres or 80 acres and a mule. It takes large expenditures in the farming business. This is a great concern

of ours, if you please, sir, in that if there is a partition in the smaller units or if there is a petition for sale of a smaller unit, who is going to take care of leasing them? Who is going to run around and try to put together a decent farming unit? I think in areas where the Indians themselves are farming on smaller areas or in larger areas there may be a different proposition but I do not think that this is true in a large majority of the Indian reservations.

I think most of the lands are farmed by lessees and, if there is a partition into smaller units so that these are then underneath the jurisdiction of the State courts, what will the title companies do. There will be no central place to which people can go to take care of their leasing and take care of these items to make a decent farm unit. I think of an example up in our great Columbia Basin where there were acreage limitations as to particular farm units and then the Senate and Congress has had to make them larger.

This is, I think, a real problem in regard to smaller units, not only of what it would do to the Indian people themselves but also what it does to our community. I think our approach in regard to this matter is an approach on a moderate or middle ground and along this line we feel that this bill is a tremendous departure from what it has been in the past. We notice every time, that we think that this problem has gone too long, that there has been little enough interest in it then, all of a sudden it is called to our attention, our collective attention, and we go a long ways. I think we ought to crawl before we walk and walk before we run regardless of this problem because when we have big changes we have big disruption of administration. Rightly or wrongly the Bureau can't handle the big change and we get more problems.

Now, our basic intent and the number one thing we look at in our tribe is first toward the retention of our land base. We have done a fine job on the retention of our land base in the State of Washington in the Yakima Tribe, which is located in the center of the State. Therefore, we find it has been quite helpful to our people. We do not have any worse welfare problem as far as our people being recipients than our neighbors in the surrounding community. However, we notice on the other side of the mountain, other reservations where the land base has not been maintained, the opposite is true.

For example, we can think of reservations within the State of Washington where the Indian people located on that reservation have disposed of their allotments. Up to 90 percent of them are recipients of one kind or another of State aid and welfare. We wish to retain our land base because we think this is the only thing that can help our people during this period.

Now, the question came up today about a multiple heirship allotment, receiving less revenue. I think we have to look at the practical side of it as well. I know the Bureau has statistics that would say this is true. But we might as well not call a horse a bale of hay and talk just exactly what happens out there on the reservation.

The more allottees you have, the more owners you have, it means the more side money you have to pay if you are a lessee. What I mean by side money is this: These people make a lease which is signed but where you have multiple interests most of these people are very poor and they come to lessees during various times of the year and

they want a sack of potatoes or some beef or \$5 or something to get along with. The more heirs you have coming to your place the more of a problem that is. That is one factor that causes this trouble.

A lessee understands this, it is just something that you live with. You can't turn people down when they are people renting land to you for a practical reason and also from a philanthropic point of view. This is, of course, one of the problems that keeps on the record rental from multiple heirships down.

Also there are Indians on the reservation that necessarily make a business of obtaining the signatures of lessees. A large portion of our tribe who reside on our reservation, live in two or three different places and it is just a lot of running around to get them to sign the lease. Some people do this. Most of the renters are paying the owners pretty generally as much for multiple heirship lands as they are paying for single ownership land on our reservation.

Now, I will tell you a bit of what we have done since 1955. We have been consolidating our heirship tracts. A law was passed in that year that gave us the right to purchase tracts within the reservation. Since that time we have purchased 179 tracts. It has cost us over \$2¼ million. We are devoting a half million dollars a year toward this purpose for tribal purchase and consolidation. Now we have pending before us today 78 tracts that need to be purchased and that the people wish to sell to the tribe. It is pending on our books. Today we don't have the money to do with and do for. We need money to make these purchases of key tracts.

I think along Mr. Sonosky's point of view this morning, I think a little too late we have recognized some of the problems in regard to this. We have been trying to push in the last few years a loan bill and land bill. The land bill for our particular tribe was introduced at the last session and it has been reintroduced this session by Senators Magnuson and Jackson and it provides for three quarters of the interests can sign. We think this is a step. If we take care of the demand that this will create then they will take care of the majority interest and go down the line.

We can take care of the people who wish to sell if we have loan funds, but the reports have not come out of Interior on these bills. Interior keeps talking about, well, we are going to take care of this problem in a bigger way. They say the Senate Interior Committee and also the House Interior Committee is interested in this, in the big picture, but in the meantime if we had had those bills it would have helped an awful lot in the last 3 years. The same thing is true with our bills we now have proposed, S. 668 and S. 669.

They filed a minority report in regard to our loan bill saying that they were going to get more money very shortly in the revolving loan fund. It took 2 or 3 years to get that done. Also, as soon as they got the money in said fund we found out that what they called productive enterprise rather than land consolidation have priority so now we are not able to borrow enough money from that fund to take care of the land consolidation that we want to do and that we must do on our reservation.

Along this line, I think that when you talk about \$50 million being authorized, that you are being very unrealistic in regard to the amount it will take to do this consolidation program.

As I read your reports you receive from around the country there are at least a third of the Indian people who wish to dispose of partial or all of their land. At least that is true on our reservation. On our reservation alone we could use \$30 million for land consolidation in the future to purchase those lands. So \$50 million is unrealistic to do this job on consolidation for tribal purchase.

Senator CHURCH. Would you try the land exchange program of the sort specified here as being a frugal and effective way?

Mr. HOVIS. We have tried land consolidation by exchange, yes. Usually, however, the people who wish to sell lands on our reservation are people who are in desperate means, Mr. Chairman, and also people who wish to move away or something of this kind or want to go ahead and get a lot of money in their pocket. Therefore, we find that the only way to take care of consolidation is to buy those lands. The people who are interested in interest and returns from land are pretty generally satisfied with the administration of the lands by our tribal agency.

Senator CHURCH. Then you think the plan we have discussed previously would not be a solution to your particular problems?

Mr. HOVIS. This interest about which we are talking, transfer of interest, we have not tried that. We had tried exchange of land but we have never tried giving interests in the whole. I would hate to say that this would not answer the problem but I think our solution is more of having more money available on loan for the purchase program. This is a safeguard we would like to have in this bill. More important than anything else is a moratorium against a land sale unless there are funds available for the purchase of those lands by the tribe. Particularly a large portion of our reservation is our timber assets. We hold 43 percent of the timberlands in our county and about half or over 50 percent cut, the timber to be cut is within our area.

Whenever we purchase these lands, of course, that takes considerable money to do it.

Senator BURDICK. Suppose the Congress could not get all the money that is really needed for land consolidation. Would you try to use a certificate of interest to group this land together until you got some money? I am not saying you are not going to get it but you have the hazards of Congress.

Mr. HOVIS. This, of course, is the thing that scares us to death about this bill, is that you authorize only \$50 million and, in the first place, we don't think that \$50 million could take care of the need. Your own facts and statistics together have shown that. Secondly, we have no assurance—I would be quite reluctant to believe that Congress is going to appropriate the money needed. You have to go through the appropriation procedure after the authorization. This is the thing that concerns us so much about that.

I do not think that on our particular reservation that the certificate of interest thing would work if the people had a right to sell their lands out, by advertised sale or by public sale. If there were no advertised sale or public sale maybe with a percentage down and the rest in the future, maybe this would work. But as long as they have the alternative where they can get all the money and only a portion here with a certificate for the future, I think they will take the cash deal every time.

If it is going to be on a voluntary basis I think it would cause a disposal of a lot of our lands from the Indian land base if we tried to follow that certificate procedure. I know if it was up to me and I had a chance to get only a portion by sale to the tribe and had a chance to get it all in advertised sale, I would seriously consider taking it all in one time.

Senator BURDICK. Could not the tribe carry on some informal program, this is a little bit of self-help program to supplement the cash program, the cash program was not strong enough or large enough?

Mr. Hovis. We surely tried to carry on an informational thing. However, a lot of our people who want to sell land, they are not looking to this type of procedure.

Secondly, when you are desperately in need, why, being talked to does not always answer the question. What you do is to take care of your immediate problems like food and shelter and hospital bills and things of that kind rather than thinking about the future of your children. That is an unfortunate thing. But that is a true thing. I would be misleading you, Senator, if I told you I thought this other program would be an answer.

Senator BURDICK. I did not maintain it was an answer but Mr. Sonosky suggested this morning that as another alternative or supplemental approach only.

Mr. Hovis. The thing of it is also that we are trying to manage this for the good of our community and for the good of the Indian people. In tract units, particularly up in the timber area, you get just one little tract in there that is not in trust out where the Bureau cannot deal with it, why, it can cause considerable difficulties in selling the entire timber tract. There is a problem that will happen to us if the people go out to petition to have these lands in nontrust status. It is just a key tract problem. If you don't keep these things together and manage them as a whole, it just redounds to everybody's detriment because people can't get rights-of-way through to the Indian timbers and it causes considerable difficulty.

It is a personal observation of mine that the more we look at this problem, and I assure you, sir, I don't pretend to be any kind of expert and know all the answers, when I first went to work on this job I had a lot of answers. I don't have them any more. But the more I look at his proposition, I am sure that our consolidation into tribal units where we can deal with this problem on a management basis and everybody who is a member of the tribe having a share of the whole is the only answer to this heirship consolidation problem.

I think that this is an answer that, as you said and Senator Church said this morning, that protects all interests. We do not wish to be in a position where the people who own these properties are not in a position to be able to dispose of them and get the money if they need it or if they want it and to take care of it. We don't wish to be in that position as a tribe. We want to protect that minority interest.

At the same time we realize that we have a very serious duty to protect the majority as well and not dispose of a key tract, say, in a grazing area or where there is a waterhole or in an allotted area or in an irrigated area where there is a farm unit. Or even up in the timbered area where there is an allotment where there would be right-of-

way problems. To be sold out of non-Indian or nontrust interest will cause it not to be properly managed for the good of the whole.

It, therefore, seems to us to do what we have been doing all this time is the only solution to protect both the minority and the majority interest and give the protection to our economic base in our community as well.

I guess section 11 is certainly one that is mentioned most in objections to this bill. The Bureau will talk today about the small percentage of the total cost of their program. This is true but I think we can foresee in the future it will be a larger cost. I certainly can see why there is so much concern about it. We just don't want to go from the frying pan into the fire. I think that everyone who looks at this from an Indian point of view realizes that in the future upon the various reservations there will be a termination of Federal supervision in regard to trust and allotted land. We hope this does not come until we are prepared. This is something that we wish to be prepared for. This is something that we are working for.

Here again we feel that the consolidation into the tribe's hands of these lands is an answer toward that. As I said before, to have these individual interest in small tracts or, if you please, tenants in common in a larger tract and this small interest be granted as a patent in fee or deed where these people cannot deal with those problems, is not an answer. At least today our lessees can go to the agency, they can find out who owns that particular piece of property, they can find out who the heirs are and they can find out their names and addresses and where they can be located. Now, if the trust status is removed from those properties and they are no longer administered by a central agency there will not be a place for Mr. Lessee, Mr. Farmer, to go talk to anybody about who owns that 80 over there or where they are located. He could go to a title company, all right, and find out who the heirs are but could not find out where they are located.

It would cause a tremendous unproductivity of our agriculture and our grazing land in the area because there would be no one to manage the property. As they go out of trust we have these small little parcels or we have undivided interest in these parcels and no longer in trust status so they are now taxed. Who is going to go around and collect from the various heirs the tax money? I think if we allow these things to go out of trust status before consolidation, we are creating for ourselves problems, that will make the ones we have today very small. I don't think that this trust termination is any solution.

The Indian people, of course, feel that this termination is a breach of faith and that they were promised this trust status by treaty. We also find, at least in our official proceedings of our treaty council, an inclination to believe that this trust status would continue.

Might I also state in regard to probate by State courts that we have a particular problem in our State of Washington and I think the same thing is true of Idaho and Dakota in that our State constitution, article 26 provides that the exclusive right over lands shall be retained by the Federal Government. I wonder whether our State courts could assume jurisdiction over this part of the act. State courts are, as our Federal courts are, tremendously overloaded with a backlog today. Also partition can easily be taken care of under

existing regulations. Also, I want to point out that I think our approach even though it may be bothering Congress a lot with our little problems, is an appropriate one in that every tribe differs a bit. Quite often, quite a bit.

I heard so much talk today about mineral rights. Well, we could care less in our area about mineral rights at the present time. Surveys by people in this field show us that we do not have any minerals there or any prospective minerals. Therefore, sometimes approaching these problems on a tribe-to-tribe basis is the only way it can be handled.

Also, the requirement, if you please, that any land purchase program be approved by the tribe as a whole. We have a land purchase program which has been approved, setting up certain standards, certain guidelines for the purchase of these lands. It has been approved. It is something we have been working under and doing a good job at. To require this to go back to be approved by the general council is something that should be excepted in the act where there are existing land purchase programs. Also, might I say, that to require this to be approved by all the people when you have representative type of government with people who are better able to understand the problems, is something I think the committee should consider.

Senator CHURCH. Fine, thank you very much.

Mr. SALUSKIN. Mr. Chairman, I would like to introduce Robert Jim, secretary of the Yakima Tribal Council.

STATEMENT OF ROBERT B. JIM, SECRETARY, YAKIMA TRIBAL COUNCIL

Mr. JIM. Thank you, Mr. Chairman.

First, as secretary of the Affiliated Tribes of Northwest Indians Tribes, I would like to read for the record the resolution passed by the executive board in Spokane, Wash., on March 16 and 17:

Moved that affiliated tribes of Northwest Indians in this duly called meeting of the executive committee go on record as opposing S. 2899 until such time as the different tribes express their recommendations to the Senate committee.

Motion passed and was unanimously accepted.

This is an organization of the Northwest tribes in Montana, Idaho, Oregon, and Washington.

The thought there was expressed and was voted unanimously by 12 tribes that this time of the hearing was too short and because of the major change from S. 1392, and it is a very important subject to all the people and especially the Indian people because it is directly related to their trust land base.

This motion is respectfully submitted.

Senator CHURCH. It will appear in the record just as you read it.

Mr. JIM. Now, as secretary of the Yakima Tribal Council, I am the secretary of the Yakima Tribal Council. We are a treaty tribe, of over 107 years ago, consisting of 1,200,000, approximately, acres of land.

We come to you as a delegation from my people who are descendants of treaties signed in our area 107 years ago, reserving certain lands in that trust status to my people in words to mean forever.

My people depend on this land base for many reasons. But they

are undereducated on the whole. We believe that certain provisions of this bill will be detrimental to their welfare. We on the Yakima Tribal Council have a program which will be explained by other delegates. That will be brought up by the chairman and our other delegates here.

Our program is to retain the trust status we need certain provisions to resell to other tribal members.

Our tribal program will be jeopardized by certain sections of this bill. The purpose of our act is to, No. 1, improve our management by consolidation, to consolidate the heirship. This is a problem recognized by tribal council and expressed as one of the grave problems in many statements here today by other delegates you have heard and we certainly agree that, without the land base, the Indians will be seriously considered to be put on welfare and other types of assistance, that have not been brought up to cope with this modern day living and until there is more emphasis and more of my people becoming educated to cope with that situation, we will not recommend the end of the trust status that is implied in this bill.

Also, I would like to hold in trust for the resale for tribal members. This is part of our overall long-range program.

No. 4, we would provide for the subsistence and education of our members. Many of our people who are the older direct descendents of our old treaty signers have holdings of timber and other heirship lands that cannot—they do not want the chance to sell, yet they do not have a substantial income to live off these lands.

Our program, as we have it, would provide for subsistence for a certain portion of these.

Now, we would ask that no action be taken on this bill, to give our tribal programs a chance to work and solve our general troubles that are different in each area.

We should not consider ending Indian trust status and especially with the consent of only one heir; they should have a majority or three-quarters or something, and take into consideration all of the heirs and give us that right to vote on it.

And also would request to make moneys available for our tribal program, giving our tribe a chance to maintain our land base as we ourselves request in the program.

I believe that is all I have, Mr. Chairman.

Thank you.

Senator CHURCH. Thank you very much, Mr. Jim.

Mr. SALUSKIN. Mr. Chairman, I would like to introduce Eagle Seelatsee at this time.

STATEMENT OF EAGLE SEELATSEE, MEMBER, YAKIMA INDIAN TRIBE

Mr. SEELATSEE. Thank you, Mr. Chairman.

My voice is not very good at this time.

Mr. Chairman, this problem has been kicked around for many years. It is going to be kicked around for some time. It has been our experience that where the Indian land base is disposed of, all the Indian people and the tribe are seriously handicapped. We do not have a serious problem on our reservation because we have retained our land

base, but I will say this in connection with that, Mr. Chairman, on this heirship property some of the families on our reservation depend on this very small piece of land where they gain a little rental money to put their children through school. Education is the thing that is going to solve the whole problem in time.

Therefore, we realize that this heirship problem is a problem to the Congress and the Indian Bureau and the Indians themselves, whereby when the treaties were made certain groups of our tribe in our area objected to taking allotment when the Allotment Act was passed. They said, "If you receive this allotment, in time you are going to lose all your property."

So I see the situation now coming up which was forecast a hundred years ago.

So I believe at this time whenever there is a law being proposed in Congress it should fit in with the thinking of the Indian himself, waiting for the day that he fits himself into society, which will take many years before he is up there, because he is largely dependent on the land that he owns and in his possession.

With that I come to my conclusion.

I thank you.

Senator CHURCH. Thank you very much.

Mr. SALUSKIN. The reason we would like to have a full delegation present their views in this matter is because we represent different segments of our reservation. So if one of these men does not testify up here, of course you will know what the critics will say at home. So, at this time, I would like to introduce Joe Meninick. He is also chairman of the legislative committee.

STATEMENT OF JOE MENINICK, CHAIRMAN, LEGISLATIVE COMMITTEE, YAKIMA INDIAN TRIBE

Mr. MENINICK. Thank you, Mr. Chairman.

Mr. Chairman and members of this committee, I am greatly honored today to be able to appear here in regard to this important subject, important not only to the Indian people but to the Congress itself.

The problem should have been realized way before today. I think the Congress and the Government should realize what they are getting into when they pass a law to allot parcels of land to Indian people throughout the reservations throughout the United States.

The Indian people opposed the Allotment Act and they opposed giving up and taking the land because it was against the wishes of their Creator. In making that, they so stated they shall not sell their land, nor shall they take a piece of land for their own, that the land was for everybody and that everybody shall share equally.

Today the problem has come where we are going to be forced to sell our land, whether an Indian wants to sell it or not.

On the Yakima Reservation, we have the problem of heirship, heirs who are non-Indians, and this situation has prevailed where these people have asked for fee patent to sell Indian land. They inherited this land from an Indian marriage and went and sold at public sale.

Today on our reservation in the Yakima area, 62 percent of the land is held by Indians. Most of the valuable land has gone out from Indian ownership because of the fact that the non-Indians were al-

lowed to sell without following the Bureau or the Indian Bureau regulations while, on the other hand, the Indians have had to follow some regulations prescribed by the Bureau and we thank the Bureau for that because in that way we have provided land in Indian ownership.

I would point out that the land base is an important feature and the basic feature to develop the economic life of the Indian people throughout the United States.

There are many programs designed to better the Indian and his way of life but he does not have the patience to live off it, and call it his own home and live as he has been taught to live through from time immemorial, that he would not integrate in the present society overnight.

The present program of the Bureau has a foresight to educate the younger people to go out through vocational training and other training and also in some instances higher education programs.

We in the Yakima Indian Reservation are proud that we can support our own program for higher education without looking upon the Federal Government. When our Indian children graduate from public schools we see to it that they get a scholarship from tribal funds. We do not ask the Government or the State government or any other government to subsidize the scholarship program. We are proud because we think that we can educate our people as well with our own money as we can with any other source money we might be able to get.

We are proud because I think when we educate our own people and send them out in the world to work in present society and the work of our own people at home we know that we will accomplish something that we would never accomplish otherwise.

I would like to speak in behalf of the Yakima Tribe in regard to S. 2899 as they see it and as they oppose it.

First, I think as they pointed out some of the bad features, and I would like to add here that in a statement made by the Commissioner of Indian Affairs this morning, speaking costwise and on the cost of administration of this heirship land status or ownership, the Yakima Tribe is proud to say that we have been able to support our own realty office from since 1947 when the Bureau of Indian Affairs had advised the Yakima Tribe that they would no longer pay the salaries of the realty personnel in the Yakima Indian Agency or would they no longer pay the salaries of the personnel that worked in the IIM agency where the Indians received their moneys that they get from lease rentals.

At that time, the Yakima Tribal Council set up an enterprise whereby the services that were rendered to the lessees they were charged a 5 percent fee of the total rental cost. So it cost the Government nothing whatsoever from 1947 and I am saying this because I think the impression might be left here that the Yakima Indian Agency has had the expense of Federal moneys to operate its land and lease program on the Yakima Reservation but it has not.

We will support our own personnel through this service fee charge of 5 percent.

The Government appropriates no moneys for it.

We charge each individual Indian who has an account at the IIM a certain percentage of the total amount of money they receive through

this agency or through this department. So, therefore, the salaries for the personnel in the IIM account is not paid by the Government but paid by the Indian people themselves who use the service. You can go and deposit your money in banks, you have to pay for the services for them to carry your money there. That is how we solve our problem out there.

I would like to get clear here today because the impression might be left by the Commissioner that the Yakima Reservation has been spending a lot of Government money, which is not true. I might say, however, that we have called attention of the Federal Government, the Bureau, to the fact that they are refusing to take care of their responsibilities as a trustee of these trust lands and trust funds.

Now, when these moneys were received and deposited and drawn on a check stamped the U.S. Treasury, we think that the Bureau and the Government should pay for the services that it is responsible to do.

Now I want to get clear at this time we do have a purchasing program as was mentioned here by the other delegates. As I understand, there is another tribe here as I heard a moment ago that has the same kind of program and if we were allowed and given an opportunity with enough sufficient funds without getting into our own reserves of the Yakima tribal funds—we have used up our reserves and we will operate like any other organization. Before the fiscal year 1963 we will operate in the red until we get our timber income or grazing income, then we begin to fill up our reserves again and we have enough money to appropriate for another fiscal year.

Our fiscal year programs amount to a million and a half a year of our own moneys that we derive from the sales of timber, grazing and lease of tribal lands to farmers.

I think this is the right approach to this very serious problem of multiple heirship. I think if the tribes were given the opportunity for enough funds to carry out these similar programs, I think that the Indians would be better off to take care of themselves on their own reservations than to depend on the States to take care of them through welfare funds.

In the State of Washington, as has been pointed out here, we do not receive any.

What little land holdings the Indian has is enough to make him feel that he does not need to go to the welfare people to get any welfare moneys. He is too proud because he owns a little piece of land and he is self-sufficient. He is proud as an Indian.

One more thing I will point out here, the tribes in the Yakima reservation have told the younger people that if we can consolidate the present heirship in one tribal ownership that this person or this child born today or tomorrow shall also have an interest in this particular 80 acres or 160 acres and shall be able to share in the per capita payment whenever that is made. I think if his parents are allowed to sell to a non-Indian and not the tribe then the entire revenue of the tribe is lost and to him also.

I think this program should be looked at so that we can keep all of the Indian lands in tribal ownership as it was in the beginning when the Yakima Indian Reservation was created and set aside. All the land within the reservation was tribally owned until the 1887 Allotment Act came and divided and brought in more people than was

identified in the treaty. We find today many of the allottees on the Yakima Reservation are not a Yakima Indian, are not a member of one of the bloods of 14 tribes, and in many cases these people came from the West Coast, from Oregon, California, even some from New York, and received allotment and in a few days, or a few months they got a fee patent and sold the land for probably \$2 or \$3 an acre.

Now, that causes us an administrative problem on the Reservation, especially in the timbered area, I might point out. In the timbered area we have the homestead lands. People homesteaded that were non-Indians for the purpose of logging our valuable timber. The non-Indians logged the area, left the country, and sold the land back to somebody or it was sold to the county for taxes.

Now, the problem of administration comes in in this regard, that when we have to make a grazing lease we have to combine all these allotments and lands into a large unit so that they will be attractive to people who are stockmen, sheepmen or cattlemen, and they bid for the grazing area.

If we can make them attractive with a very large unit we can get a big price for it.

The problem comes in when a non-Indian owns 160 acres and then 160 acres tribal land, 160 acres of individually owned, Indian-owned land, the administration there at the agency has a very serious problem then.

How do you go about to lease non-Indian attractive land that might be located within the center of tribal-owned land?

The tribe leases non-Indian-owned land from the non-Indian owners, whoever they may be, then we advertise the whole block or unit and we try to solve the problem of administration.

What would happen if we would continue to partition the 160 acres of individually owned land in the timbered area and raised the same situation that we find in one 160 acres where there is a non-Indian owner who may own one-third or one-sixth of the 160 acres and has inherited that from marriage into the tribe, if we ask to divide or partition the land, that is the problem, that will cause more serious problem of administration.

How do we go about leasing his share of the land to the grazing man or to sell his tract of timber, or whatever it might be, or if a right of way has to be put through for a road, how does he overcome the administration cost that will be brought up?

I think this bill should be seriously taken because I think it not only solves some of the problems, I think it might also create some administration problems.

So from this I would like to conclude my statement. I am very happy that I can take part in this testimony today.

Thank you.

Senator CHURCH. Thank you, Mr. Meninick.

Mr. SALUSKIN. Thank you, Mr. Chairman.

I believe I will make a very short observation here because I believe we have covered largely all areas of the proposed S. 2899 bill which deals with the heirship problem. I believe we all recognize the problem throughout the Nation that this has become a tremendous problem. I think in some areas particularly where they have allotted lands quite earlier than probably we have at Yakima Reservation, I believe there is a problem there, administratively.

As the speaker has said, we have our own program. We have run up against the need for additional finances to carry on our present program which is authorized under Public Law passed July 28, 1955. We have used \$500,000 of the tribal funds, which is budgeted annually, for the acquisition of these tribal lands. Certainly we have run against the problem of the 100-percent requirement of approval to sell lands.

We believe that just equitable requirement should be in here at 75 percent but not less than 51 percent at the very minimum on any tract of land regardless of size. We realize some allotments are in whole, let us say 160 acres or quarter section or whatever the rules given or regulations. On the Yakima we have a very diversified land. We have arable land, valued from probably \$100 to five, six, or seven hundred dollars per acre. We have the rangelands, at the very minimum not more than \$10 to probably \$25 per acre and timberland runs a great deal higher. I believe some of the lands we acquired cost the tribe in the neighborhood of \$71,000. That is because of the fact it was in the contract unit in our timber area and we have sold the timber so we did not lose any money on our investment.

But this allottee was in dire need of medical assistance. He needed help. Finally last summer he passed away. So we declared this, giving priority on the particular problems of this type at home.

Our program helps out the aged in a somewhat similar way.

In some cases where they have land, some income, yet have inadequate income to take care of them in their old age, sometimes they need their allotment and they would like to recommend, these oldtimers, where they sell their holdings to the tribe, and then in this regard we also consider that a priority for such an emergency.

As the other speaker said, these are incomes derived from timber sales and others, tribal incomes we have are from separate and special programs.

We are fortunate that the present land purchase program can take care of the land. If the application for loan be approved by Congress since our land is of great value, \$500,000 cannot purchase too many acres.

We are already progressing.

Under our program we definitely need the approval of our application for loan no matter in what way we are given the loan, either by special Yakima loan bill S. 677 or H.R. 3785, or by approving our loan application from the revolving fund loan account of September 15, 1961 (75 Stat. 520).

At the present time, our realty office can take care of the increase of the load on land sales application. Of course, as the previous speaker has said, we have been taking care of and defraying the expenses of the realty office, both salary of the personnel and the operation and expenses.

Very recently, the Government had provided extra personnel in the realty department as well as the appraisal department so the Government is now defraying partial expenses of our realty office.

We appreciate that, because we need the technicians there. We need an expert staff to appraise. Most generally the experience has been that the Bureau appraisers and independent appraisers are comparable, the one appraises the land not more than the other.

At one time we found the Yakima Tribe without the money because of the fact that half a million dollars was already obligated and when supervised land sales came about we just sat there on our hands and we could not offer a bid on some of these key tracts.

At that time we lost in the neighborhood of 7,000 acres of very valuable agricultural land.

Now, these things continue year after year. If we are not able to participate in the bidding or have the money to bid, then we will lose our land base. It is no good to have the preference right to meet a high bid, it is no good to have the right of law to be given preference because of the fact that we have interest in the land. If the land goes up for sale, we have not got the funds to participate.

Under all the privileges and the rights given by law we would still have lost our land base as far as our reservation is concerned.

I think this impact would be on all the Indian reservations throughout the United States.

I certainly believe and recommend that if this legislation could be modified to meet the protection of the Indian tribes that first of all the fund should be made available that as soon as the program of land acquisition is approved by the Secretary the money should be ready for them to take on the land acquisition. Without the money, we would lose our land faster than we have been in the past because if you reduce the requirements you take it down to where just a few will come up and say, "Well, I have land here. There are enough of us here who want to sell this land and the application will be filed. I would say in our case up there, the increase is about 20 times more than what we have already."

I thank you for giving us this opportunity. I hope we have conveyed our problem to you.

Senator CHURCH. Thank you, Mr. Saluskin. You certainly have given us the benefit of your tribal views. We appreciate that very much. We appreciate your coming.

You may be sure that all of your testimony will be given very careful consideration by the committee.

Mr. SALUSKIN. Thank you.

Senator CHURCH. I would like to announce that I have received an assortment of letters and resolutions from various tribes, some favorable to the pending bill, some unfavorable, and some suggesting amendments. They will be placed in the record in an appropriate place.¹

Senator CHURCH. Our next scheduled witness is Mr. Aljoe Agarde or Bennie Antelope, representing the Standing Rock Sioux Tribe.

Mr. SONOSKY. Mr. Chairman, if I may make a suggestion, Mrs. Dolly Akers, Mr. Kermit Smith, and Mr. Norman Hollow are representing Standing Rock Sioux and Mr. Cato Valandra represents the Rosebud Sioux. I represent the tribe. Their statements are very short. They can be heard, the five together.

Senator CHURCH. That is fine. We will be glad to expedite the committee work.

If you will name the witnesses as they come forward, I will be able to check them off the agenda here.

Mr. HOWARD. My name is Dan Howard.

Mr. SONOSKY. This is Mr. Kermit Smith, who is a member of the executive board of the Fort Peck Sioux Tribe, and Mrs. Dolly Akers,

¹ See appendix.

who is a member of the executive board, and Mr. Norman Hollow, member of the executive board of the Assiniboine and Sioux Tribes of the Fort Peck Reservation.

Mr. Cato Valandra is president of the Rosebud Tribal Council.

Mr. Kermit Smith is vice chairman of the Fort Peck Executive Board.

Senator CHURCH. Fine.

Mr. SONOSKY. We can proceed with Kermit Smith and then down the line. Each of the witnesses has a short prepared statement.

Senator CHURCH. Fine.

STATEMENT OF KERMIT SMITH, VICE CHAIRMAN, EXECUTIVE BOARD, ASSINIBOINE AND SIOUX TRIBE OF THE FORT PECK RESERVATION

Mr. SMITH. My name is Kermit Smith. I live at Wolf Point, Mont., and am vice chairman of the executive board of the Assiniboine and Sioux Tribes living on the Fort Peck Reservation. I am here to testify for the people of our reservation on S. 2899, a bill dealing with heirship land problems.

The other representatives of the Assiniboine and Sioux Tribes, Mrs. Akers and Mr. Hollow, and our attorney, Mr. Sonosky, also are here to testify on the bill before this subcommittee. Since their statements will not be on the same subject as mine, I would like to make clear that I know what they are planning to say and completely agree with it.

We on the Fort Peck Reservation are aware that badly fractionated heirship lands create many problems. In some cases, disputes among the heirs prevent the land from being used productively. This is also true since the property may have oil and gas or other mineral values, and some of the heirs cannot even be found to sign a lease. In other cases, the interests of the heirs are so small that all they want to do is sell for a few quick dollars, and the land is lost forever.

The point I would like to make is that many of these problems could be prevented very simply by the Bureau. In other words, we do not need a new law from Congress to correct a situation which is really not the Indian's fault. All we need is a little commonsense from the Bureau.

The first thing that can be done is on the matter of wills. Many of our people are not familiar with wills. The Bureau should start an educational program to tell the Indian people about the advantages of having a will and to encourage them to make one. What happens now is that when an Indian wants to make a will, the Bureau always can think of half a dozen reasons why it should not be done right away. Or there is so much redtape that the Indian gets discouraged. Then, when he is old or sick and wants to write a will, the Bureau says he can't because "he is no longer in his right mind." If the Bureau had a real program to encourage wills, we would not have heirship land in such badly fractionated status.

The second thing the Bureau could do is to allow the tribe to buy fractionated interests in land. Once the tribe owns an interest in the property, you can stop worrying about fractionated heirship. But the Bureau always has stopped tribes from buying up heirship interests. I am told here in Washington that this policy has changed

and that now we can buy part of the land, but I wish someone would tell our Superintendent about the new regulations. Here again, if the Bureau used a little common sense, we could lick the heirship problem ourselves without a new law.

This concludes my statement, Mr. Chairman.

Senator CHURCH. Thank you, Mr. Smith.

Senator BURDICK. Mr. Chairman, I think you should know that in 1924 while I was playing football and played against Wolf Point I got a broken arm out of the deal.

Senator CHURCH. Mrs. Akers.

**STATEMENT OF DOLLY AKERS, MEMBER, EXECUTIVE BOARD,
ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVA-
TION**

Mrs. AKERS. My name is Dolly Akers. I am a member of the executive board of the Assiniboine and Sioux Tribes living on the Fort Peck Reservation, Montana, and I am appearing before this subcommittee to testify on S. 2899 as an official delegate representing our people.

My statement will deal with just one small, but very important part of the heirship land problem—the matter of charging old-age assistance and welfare payments against the Indian, and not the non-Indian, owners of heirship land. This situation is basically unfair. But instead of correcting the situation, S. 2899 would make it even worse.

The other delegates here from the Fort Peck Reservation and our attorney, Mr. Sonosky, will talk about different sections of the bill before this subcommittee, and will point out how it fails in many ways to solve our real heirship land problems. Although I will not cover these same points in my statement, I want to go on record now as agreeing with their testimony.

The matter about which I am concerned comes up when an Indian, who has been receiving old-age assistance or welfare payments, dies and leaves trust property. The State then files a claim against his estate for the full amount of any money paid to him, which in most cases runs into several thousand dollars. Since the Indian's property is in trust, the State's claim cannot be a lien on the land and there is absolutely no way the State can enforce its claim.

If the Indian's heirs are non-Indian, they automatically take the property in fee, free of any welfare claims. In this case, therefore, the State Welfare Department cannot collect back a dime. The same thing is true if the heirs are Canadian Indians, which happens very frequently on our Reservation because we live so close to the Canadian border and many of our people live on the other side of the line. Under the law, Canadian Indians, even if they are our own people, are treated as if they were non-Indians and take the land in fee. Here again, the land cannot be subjected to any welfare claims, and the State cannot collect on its claim from the Canadian Indian heir.

Where the heirs are Indians, though, that is a different story. In that case, the Bureau holds the estate open, takes all the lease money and pays it over to the State. Our own people can go for years without receiving any income from their property, while the Bureau is

paying off the State on its unenforceable claims. If the heirs finally get disgusted and try to sell the land, the Bureau holds out of the sales price the total claim of the State. Quite frequently, the heirs are then left without the land and with only a receipt for the debt of their ancestors.

Is it any wonder then that the Indian heirs are not interested in leasing or selling fractionated heirship lands? As long as the Bureau is acting as a collection agent for the State, and the heirs will not get any of the proceeds, it makes just as good sense to let the property remain unproductive.

S. 2899 gives no consideration to this situation. The bill makes it easier to sell or divide up heirship lands, but makes no provision for guaranteeing the Indian owners that they ever will get anything for their property. I suggest, therefore, that this subcommittee add to the bill a new section, like the one drafted by our attorney, which would forbid using the money received from the sale of the land for paying old debts, whether owed to the State welfare department or anyone else.

Thank you.

Senator CHURCH. Thank you, Mrs. Akers. I think it would be helpful to the committee, Mr. Commissioner, if we had an explanation of the reason why the—I understand this information I was going to ask for has already been furnished and it is a part of the record so that we will have an opportunity to refer to it.

Mr. NASH. Yes, sir. That is available.

Senator CHURCH. We will review it and if there is anything more we want we will ask for it.

Mrs. AKERS. It is a very bad situation on our reservation.

Senator CHURCH. Mr. Norman Hollow.

STATEMENT OF NORMAN HOLLOW, MEMBER, EXECUTIVE BOARD, ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVA- TION

Mr. HOLLOW. My name is Norman Hollow. I am a member of the executive board of the Assiniboine and Sioux Tribes living on the Fort Peck Reservation, Montana. I come before this subcommittee as an official delegate to testify on S. 2899.

The bill this subcommittee is considering is an attempt to solve the heirship land problem. I realize that such a land problem exists. But I hope this subcommittee also will consider the new human problems this bill will create if it ever becomes law. You may be able to solve the heirship land problem with S. 2899, but, in my opinion, you will end up with a much worse Indian problem.

Section 1 of this bill would allow any owner of any interest in trust or restricted land to force its sale. I believe that if this is allowed, you will drive a large number of successful Indian farmers and ranchers right out of business.

Let me give you a personal example. When my parents died, my two sisters, my brother, and I inherited their property. My brother and sisters live off the reservation, while I use the land. I graze cattle, raise some quarter horses, and do a little grain farming. I am making a living, but I certainly am not getting rich.

One of my sisters wants to sell the land. She is making out fine where she lives, but wants to get some extra money. My brother, my other sister, and I, all want to keep the property. If section 1 of S. 2899 becomes law, we could not stop the sale. None of us have enough money to buy out my sister's interest, so the property would be put up at auction and sold to a non-Indian. I could not get another ranch for my share, so there I would be, out of business.

Maybe I could find another way to make a living. But a lot of other Indians couldn't. And there they would be, back on the welfare rolls, and another expense to the Government. In the long run, the United States will be paying a lot more for relief than it ever did to keep heirship land records.

I request, therefore, that if you are going to allow the land to be put up for sale, without the consent of all the owners, you should require at least a majority of the trust interests to agree.

In conclusion, I wish also to say that I agree with what our other Fort Peck representatives and Mr. Sonosky are testifying to on this bill.

I also wish to comment on item E of section 6 of the bill which calls for a master plan to be considered at an agency meeting of tribal members called for that purpose and approved by the majority of the adult members present and voting that meeting. As it was previously stated this afternoon some of the tribes testified that they have constitutional bylaws that grants them the authority to transact all the business of the various tribes. Fort Peck Reservation has a similar constitution and bylaw that grants us the right to do all the business for the tribe including the purchase as well as the sale of land. As a result of our constitution and bylaws we have land purchase program in operation, a program that intends to consolidate our Indian land holdings. Under this land purchase program we have purchased 80 tracts of land of which approximately 75 percent of the total purchases are purchases of complicated heirship land.

Therefore, I feel that tribes that do have the constitution and bylaws that grant them the authority to set up the machinery to purchase land should not be forced to abide by the provisions of section 6 (E). I am greatly impressed this afternoon to take part in this hearing and listening to a great many of my Indian people, especially the oldtimers, some of them who perhaps have traveled clear across this great Nation of ours to be present at this hearing and to express their views with reference to the bill under consideration. I want to thank the members of this committee for their patience and courtesy that you have extended to our Indian witnesses.

Senator CHURCH. Thank you, Mr. Hollow. We are glad to have you.

STATEMENT OF DAN HOWARD, MEMBER, TRIBAL COUNCIL, STANDING ROCK SIOUX TRIBE, NORTH DAKOTA AND SOUTH DAKOTA

Mr. HOWARD. Mr. Chairman, Senator Burdick, my name is Dan Howard. I reside near Lemmon, S. Dak. on the Standing Rock Sioux Reservation which is in both North Dakota and South Dakota. I am here with Mr. Aljoe Agard, chairman of the tribal council, Mr.

Charles Shelltrack, councilman from Cannonball, N. Dak., and Mr. Benjamin Antelope, tribal realty officer.

I heard Mr. James Gamble give a very fine report on this bill to the executive council of the National Congress of American Indians. He reported that there was more fractionated heirship land in the Aberdeen area than any other in the country. This is our area. I believe Mr. Gamble is right but we must remember, this did not come about through any fault of the Indian. For that reason when we try to do something about the problem we should watch out that it is not at the Indians' expense. We should not make it easy for the land to pass out of trust.

There are three things about the bill which bother our people the most. First, section 11 of the bill would soon have all the land in fee because when it passes into the hands of more than one owner, it goes into fee.

Second, the old-age assistance claims would come out of any money paid for the land when it is sold. On our reservation this affects many Indians. They would lose their land and get nothing for it.

Third, the tribal council wants a preference right to meet the high bid when land is forced to sale. At Standing Rock we have a large land purchase program worked out in consolidated areas. We have a large investment in land in those areas. We do not want our consolidated areas put in danger by being broken up through sales of land to non-Indian cattlemen in competition for our land. The tribe owes all of its members protection of the tribal investment. Congress should help by giving the tribe a preference right to purchase.

I could say more but I think I will end it there.

Senator CHURCH. I think that summarizes your point very well.

Senator BURDICK. Mr. Chairman, I am sure he can say more and say it very well.

STATEMENT OF CATO VALANDRA, PRESIDENT, TRIBAL COUNCIL, ROSEBUD SIOUX TRIBE, SOUTH DAKOTA

Mr. VALANDRA. Senator Church, Senator Burdick, and other members of the committee, my name is Cato Valandra. I am president of the tribal council of the Rosebud Sioux Tribe, South Dakota. I am here together with Mr. Antoine Roubideaux, secretary of the tribal council, and Mr. George Kills on Sight, chairman of the Tribal Land Enterprise. We are here to speak on behalf of our people in connection with the land heirship problem.

On the Rosebud Sioux Reservation, we think we have a plan for solving much of the fractionated heirship problem and, with the help of the United States, we believe that it could be substantially cleaned up. So far as I know, there is no other tribe in the United States which has used this plan, and I should like to tell the committee about it.

In 1943, we organized a Tribal Land Enterprise. One of the major purposes of the Tribal Land Enterprise as set out in its bylaws—and I have a copy of our constitution, bylaws, and corporate charter here, and would be glad to leave it with the committee—was to—

effect a plan to remedy the situation of increasing infractionation of ownership interests in allotted lands resulting from probate procedure.

We think we have had great success.

Without going into any of the technicalities, this is about how the plan works. Let us suppose a member of the Rosebud Sioux Tribe owns a fractionated interest and wants to sell it. He can sell it to the tribe under our plan for the appraised value. In return we give him certificates of interest. Once he gets the certificate of interest, he is entitled to certain benefits. He can hold the certificate of interest and collect dividends paid twice a year. The dividends depend on the income from the entire enterprise. We have paid dividends twice a year every year since 1953. In addition, as land values go up, the entire value of the Tribal Land Enterprise increases and the value of each certificate of interest increases. For example, the certificates of interest originally were valued at \$1 per share and they are now valued at \$2.98 per share and are in the process of being reevaluated.

Another benefit to the holder of a certificate of interest is that he may deposit these certificates of interest on a piece of tribal land. Thus, an individual member may have fractional interests and taking certificates of interest, he can turn around and obtain a single tract of tribal land for his use. As long as he uses that land he does not receive dividends, but he continues to own his certificates of interest and benefits by their increased value as the years go on.

An owner of certificates of interest can also sell his certificate either to other members, with the approval of the superintendent, or to the tribe, also with the approval of the superintendent.

When we first went into the Tribal Land Enterprise, we became part owners in some 800 tracts on the reservation and we continued to buy up fractionated interests in accordance with the objectives of our enterprise. Along about the time that the Bureau initiated the policy of supervised sales, it became very concerned over the fact that the tribe held interests in so many tracts of land, because it meant that it would not be able to put up for sale those tracts of land where the tribes had an interest. This didn't disturb the Indians very much but it did disturb certain white cattlemen and cattlemen's associations who were very anxious to buy this land. So the Bureau stopped us from buying any more fractionated interests. Of course, this slowed us down tremendously, because you cannot always buy land just because you are ready to buy. There must always be sellers who are ready to sell. In any event, we have been forced to abide by what the Bureau has told us.

We are continuing to work on the fractionated interests and have now over 200 tracts which are completely out of fractionated interest and in the tribe, and are still working on the remainder. If the Bureau had left us alone, and if the United States had given us only part of the money that it uses in administering fractionated interests to purchase them, we are prepared and can clear up the fractionated interest problem in our reservation over less time than it took to create the problem. As matters stands now, so far as we know, it still is the policy of the Bureau to refuse to permit the sale of fractionated interests except to other owners of fractionated interests. Until this policy is changed, the progress that we are making at Rosebud is being seriously slowed down.

I should like to suggest to the committee to consider the plan that we have worked out at Rosebud, with modifications which we could

recommend from our own experience, as a basis for clearing up the fractionated heirship problem without the necessity of removing the trust from the land.

That is about it.

I want to thank the subcommittee for giving us the opportunity of appearing before you.

Senator CHURCH. Thank you very much.

I think the plan you described is a very promising one. I hope that you can proceed with it. It would seem to me that it is in line with the Commissioner's own recommendations, but I do not know why the Bureau adopted the policy you referred to with respect to barring your tribal purchase of fractionated interests.

What was the reason for that decision?

Mr. VALANDRA. I imagine the only reason I can think of was to expedite the supervised sale of lands. That is the only reason I can think of because any time the tribe became the owner or a part owner of a fractionated interest in an allotment that allotment could not be sold.

The result was that they refused to let the tribe buy any more fractionated interest in the land.

The only ones they could buy in was ones that they already had an interest in.

Now we have cleared up over 200 tracts of the 800 we had. We have attempted to make a policy change.

Senator CHURCH. Have you taken it up lately with the Bureau?

Mr. VALANDRA. Yes, we have taken it up lately with the Bureau.

Senator BURDICK. Did you find any difficulty in having these people who held fractionated acres to accept your certificates in lieu of cash?

Mr. VALANDRA. We had a little difficulty several years ago but we are not having any more difficulty with that. The income from our land is being used to purchase the certificates. Now the fractionated acreages are real small. They are running to \$75, \$100, \$200, \$300. We issue certificates for the amount of the appraised value of that interest. They in turn, if they want to sell to other members of the tribe or they can hold the certificate or they can sell it to the tribe.

We find that the majority have been selling them back to the tribe. Every time the tribe buys the certificate they have eliminated a fractionated interest in the land. We have used quite a bit, a large portion I should say, of our Indian fund for the purchase of these certificates. We have other people who retain them and hold them for the dividends we give. They are paid twice a year on dividend payments.

If they own a large interest in the land they get \$4,000 or \$5,000 or \$6,000, some of them want to get it all at once. We work out a budget plan.

I think we are doing real well so far as we know. It was a management problem before; we realized that.

I remember in 1947 and 1948 when what we call the certificate was not worth too much money. The management was awfully loose. We had to tighten up. Internal control was needed. We have it all fixed up now so that we think we are operating pretty well.

The only problem we have is that we cannot buy our fractionated acreage.

Senator CHURCH. Under the present ruling?

Mr. VALANDRA. Under the present ruling.

Senator CHURCH. Thank you very much for your testimony.

Mr. SONOSKY. Mr. Chairman, I wonder at this time if I may introduce for the record the other members of the delegation from North Dakota in addition to Mr. Howard.

In addition to Mr. Howard, there is Mr. Aljoe Agarde, the chairman, and Mr. Charles Shelltrack from Cannonball, N. Dak., Mr. Benjamin Antelope, the realty officer.

Also from Rosebud Reservation in South Dakota there is Mr. Antoine Roubideaux, the secretary and former chairman, and Mr. George Kills on Sight who is president of the Tribal Land Enterprise, which as has been explained to you is a separate enterprise operating autonomously as a tribal council.

Mr. Chairman, I think the record should show that there was present here from North Dakota, Mr. Louis Goodhouse, who is chairman of the Sisseton-Wahpeton Band, Fort Totten, Devils Lake, N. Dak.

Also, who may not testify before the committee, I should like to introduce Mr. Jiggs Thompson and Mr. Clarence Thompson who are present and members of the Tribal Council of the Lower Brule Sioux Tribe of South Dakota.

Senator CHURCH. Thank you very much. It is nice to have you all here.

A number of witnesses have asked to have their testimony wait over until tomorrow. Some of them are not prepared to testify today. We have had the hearings scheduled today and tomorrow.

In conformity with that schedule, we will proceed to finish up the hearings tomorrow morning. We will hear from those witnesses at that time.

Is Hans Walker here?

Mr. WALKER. Mr. Chairman, we wish to reserve our testimony until tomorrow.

Senator Church.

Is there anyone else in the room who would like to be heard now instead of tomorrow morning?

Mr. PANNER. I will be glad to, Mr. Chairman, if I might.

STATEMENT OF OWEN PANNER, ATTORNEY FOR THE WARM SPRINGS TRIBE IN OREGON

Mr. PANNER. Senator Church, Senator Burdick, I am sorry, I am unscheduled here. I am an attorney for the Warm Springs Tribe in Oregon. We feared that we would not have a delegation here and at the last minute we were able to.

I do not have a written statement. I only have a few comments to make.

I am sorry to say that the heirship problem on our reservation is a serious one. It is one that we have struggled with as best we can. We had an experience with it when the Klamath termination took place because a number of the members of the Klamaths had interests in undivided land on our reservation. Unless they were acquired they would have gone into fee status. Fortunately, with the fine assistance from the Bureau and a good realty officer, we were able to buy up most of those interests that the Klamaths owned.

There are still, of course, numerous interests on the reservation not only undivided among our own members but members of other tribes.

Oregon State is presently engaged in an extensive survey and they are attempting to arrive at some solution the same as your committee is.

I am sorry to say that I have few constructive comments to make. We do have some reservations about the bill as many of the tribes who testified here do, though I am not as concerned as many of them have been, and I do not think our tribe is.

Basically, we have the same objection for the same worries. We feel that the ultimate solution to this problem is to bring these undivided interests into tribal ownership.

We have about concluded, after long worry with it, that that is the only solution to maintaining the reservation land base.

On the other hand, we agree that individuals who have an interest and who are in an unproductive land should be permitted to get out.

I am not satisfied that the certificated indebtedness is the answer or certificate of interest because generally land values in the West now are inflated to the point that they will not return a reasonable investment. This applies not only to the Indian reservation but other lands. Land is worth more than it will bring in income proportionately. So it is difficult to ask someone to take a certificate of interest when you cannot expect to repay them. I think we are only kidding ourselves if we think the Indian tribes are going to be able to pay a fair return on the fair market value of this land.

The particular things that I would like to comment on the bill other than what has been said are in connection with the powers that the tribe may be given under this. We have constitutional limitations now so that if the bill were enacted and the loan mechanism were set up, we would have extreme difficulty under our constitution in buying these lands. We cannot spend more than \$25,000 without vote of the people or change in our constitution. So we would like in section 7 to expand the language to include the power not only to sell any tribal land but to purchase any lands and to mortgage any lands irrespective of constitutional limitations.

We feel that if the committee should decide to report out a bill similar to this, that it should not become effective until the money is appropriated and some procedure set up so that it will be available to the tribe.

As Mr. Saluskin pointed out, the right to purchase first preference would not be effective unless we have the ability to pay it.

Also, I think in the appropriation portion of the bill it provides that the tribe will not have access to this money unless it has no other funds or cannot borrow from another source. I do not think a tribe should be required to spend all of its funds for land purchase and maintain no reserve for other purposes. In other words, I question the advisability of that provision.

I think that the tribe perhaps should be entitled to some other moneys that are allocated or planned for other purposes without having to spend them as a prerequisite to getting the loan.

I think in that connection also, it might be the land might be gone before we found out it was not available from some other source.

So I think that is a dangerous provision.

I think in section 11 the same as everyone else that there are serious problems. For example, a man could not even convey to a husband and wife under this provision and not have property go into fee status, which is certainly a difficult provision.

I realize the committee's problem in not wanting to fall back into this heirship thing but it seems to me that, if the mechanism is created for a fair partition so that the property can be left in trust under any circumstances, we will perhaps solve the problem.

As it stands now, I do not agree that we have all of the power necessary. I think perhaps a petition right on the part of either a majority interest in the property or perhaps even somewhat less, I do not know, would be fairest, it is difficult to say that some interest has a right in property and cannot get petition.

The basic problem, I think, is to give them the right to petition and yet assure the tribe of the ability and the means with which to acquire the land. If that is done, then I don't think section 11 is particularly important.

I believe this heirship thing can be cleared up.

Thank you, Mr. Chairman. I appreciate the opportunity to appear.

Senator CHURCH. Thank you very much for your testimony.

The committee will be adjourned now until 10 o'clock tomorrow morning. We hope to complete the hearings in the morning.

(Whereupon, at 5:05 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Tuesday, April 3, 1962.)

INDIAN HEIRSHIP LAND PROBLEMS

TUESDAY, APRIL 3, 1962

U.S. SENATE,
SUBCOMMITTEE ON INDIAN AFFAIRS OF THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10 a.m., in room 3110, New Senate Office Building, Senator Frank Church, Idaho (chairman of the subcommittee) presiding.

Present: Senators Frank Church, Idaho; Ernest Gruening, Alaska; and Quentin N. Burdick, North Dakota.

Also present: James H. Gamble, professional staff member.

Senator CHURCH. The meeting will come to order.

The committee will return to the consideration of yesterday's business and call upon Prof. B. Z. Wardy as our first witness this morning.

Mr. Wardy, will you please be seated?

Do you have a prepared statement?

STATEMENT OF B. Z. WARDY, RICHMOND, VA.

Mr. WARDY. I do not have a prepared statement, Senator.

I have in my hand here a Federal summons complaint to be served very shortly upon an official of the Bureau of Indian Affairs, among other things, for embezzlement of Indian funds resulting out of termination of trusteeship, very much along the lines of Senate S. 2899.

Senator CHURCH. Does your testimony bear upon S. 2899? That is the business that is now before this committee.

Mr. WARDY. Yes. I was asked to testify here by the Director of the National Congress of American Indians. However, I do not represent the National Congress, as such. I merely have a few things to illuminate upon this bill and make a statement very briefly.

I oppose the passage of the bill, especially section (c) thereof, for reasons as follows:

No. 1, in many cases Indians who hold this land under Federal supervision are really just faced with termination whether by the majority of the trustees or by the Secretary, according to section (c), and it infringes very much upon the religious beliefs of those Indians and is tantamount to transgression of the church. This hits an Indian on sacred grounds.

The Government, in continuing this jurisdiction upon them is acting in a way as a guard of a religious property. This sort of thing violates the spirit and the letter of the Constitution and, as I said

before, it is tantamount very much to the transgression of the church as far as that is concerned.

I believe this has not been referred to here before but this is an important consideration for many Indians affected.

No. 2, as to the restrictions which the Government has been having on this property up to now, these lands were not given to the Indians for free, but for a consideration. The consideration was that the remainder of the lands not so restricted become part of the United States. Of course, in consideration of this, the Government agreed that those restrictions will continue. Therefore, there exists here a perpetual obligation in the nature of a contract or a perpetual obligation in the nature of a quasi-contract. Termination restrictions not according to the Indian will means nothing else but infringement on the contract and an obligation of perpetual nature under the contract.

There exists a further thing here. The Indians who hold these lands are further obligated in a way toward other Indians. For example, if there is any tribe whatever, X, in which certain lands are continued under this trusteeship, they owe an obligation to the other Indians involved as well as coming generations of the Indians which, to the Indians, makes a lot of difference.

An act of removing restrictions without asking the Indian is again tantamount to interference with the obligation under the contract as far as the Indians involved.

Fourth and last, I am coming back here to this thing. Whenever you have two or more people who hold land in common it would very often mean that the Indian will be induced to dispose of his property under conditions perhaps not so satisfactory. This has given rise in the past to misappropriations of funds by those people who do the selling and do the bidding.

I would like to submit a prepared statement with regard to one Indian case in Oklahoma. The Muskogee area office in Muskogee, Okla., to date has put away Indian money which Congress appropriated as judgment for Indians' lands to the tune of about half a million dollars—with the connivance of the Indian Bureau and some officials thereof.

Senator CHURCH. Your statement regarding this case in Oklahoma will, of course, become a part of this record if you submit it.¹ You can be assured that this committee is also concerned about the preservation of Indian trust lands and we are hopeful only to be able to solve the problem of multiple ownership in a way that will not jeopardize the trust land.

We appreciate having your testimony.

Mr. WARDY. Thank you.

Senator CHURCH. Senator Metcalf, I did not realize that you were waiting to introduce some of your people.

STATEMENT OF HON. LEE METCALF, A U.S. SENATOR FROM THE STATE OF MONTANA

Senator METCALF. My witnesses just arrived, Mr. Chairman.

Senator CHURCH. Fine.

Senator METCALF. Mr. Ettien and Mr. Aronow.

¹ At the time of publication this statement had not been received.

Mr. Chairman, I would like to have permission to file some correspondence from Montana Indians and I will supply those for the record this afternoon.

Senator CHURCH. Very well.

(The correspondence referred to follows:)

FORT PECK INDIAN RESERVATION,
Wolf Point, Mont., March 28, 1962.

HON. LEE METCALF,
U.S. Senator from Montana,
Washington, D.C.

DEAR SENATOR METCALF: Please submit our protests to Senate bill 1392 introduced by Senator Frank Church of Idaho which is a bill to assist in solving the problem growing out of fractionated heirships. Although, there are some good features, what we are fearful of is that it goes beyond heirship problems and in fact we are very much afraid that it is in effect a termination bill.

It is possible under the bill for an Indian to dispose of all his land on which there is an heirship problem. One heir can force the sale of the land. Also in the case of a sale by the Government if there is not a good bid, there can be an auction, so it is easy to see the disadvantage of the Indian heir or the tribe that wants to buy the land.

We, the undersigned, therefore wish to go on record as opposing Senate bill 1392 and we believe that the Indian people should write their own bills on the heirship problem as the lands belong to them.

Respectfully yours,

HENRY BEGS HIS OWN.
FREDRICK WHITE HAWK.
MARY WHITE HAWK.
WAYNE CANTRELL.
CLARENCE FEAR BEAR.
LUCY FEAR BEAR.
NORMAN LAMBERT.

HARDIN, MONT., December 12, 1962.

DEAR SENATOR: I am trying to get an Indian lease sign up with 74 heirs. Two heirs live in North Dakota, one in Oklahoma and two in the northern part of Montana.

In this lease one of the heirs has ^{2963520/}10160640. Two each of the heirs have ^{1481760/}10160640 and on down to the bottom of the list. Seven heirs have ^{192/}10160640 each, part of 160 acre tract of farming land.

To get 100 percent of the signatures on this lease is a problem. I have 35 signatures on the lease and it has taken a year, and one of the heirs is wanting \$30 for signing, and the remaining are holding off account of this Indian, and if you pay one the rest is for a handout too.

I think 51 percent or over of the interest in the real estate or signatures would be enough signatures on a lease.

By the time a lessee gets all the signatures, posts a bond, pays for filing the lease, and pays a good going rent, this makes a high price lease without paying for signing.

Here is hoping for a change from the 100-percent signatures on an Indian lease.

Very truly yours,

E. F. HERMAN.

Senator METCALF. I have with me today representatives of several of the Montana Indian tribes. As the chairman knows, I have submitted over the years legislation which I thought would take care of this heirship problem that I feel is one of the gravest problems that we face in management of our Indian reservations. Many of us have had different ideas as to how this heirship problem should be managed and handled, and some of the witnesses from Montana are not in agreement.

My own position, Mr. Chairman, is that, and I will express it when this comes to the full committee, this has become so grievous and so vexing a problem that we must do something about it. It no longer is a time to argue over technicalities. Something just has to be done, and so I want to commend the chairman for getting the work done on an heirship bill and I feel that the different propositions that are going to be presented by my witnesses from Montana will be helpful to all of us in working this out.

Mr. Ettien and Mr. Aronow are representatives of Montana Indian tribes and then we have some other Indians themselves who are present and during the course of the testimony they may want to testify.

Mr. Aronow from Shelby, Mont.

Senator CHURCH. Mr. Aronow, you are very welcome. Come forward, please.

Senator METCALF. May I be excused?

Senator CHURCH. Certainly. Thank you, Senator, very much.

STATEMENT OF CEDOR B. ARONOW, SHELBY, MONT., GENERAL COUNSEL, BLACKFEET INDIAN TRIBE, BROWNING, MONT.

Mr. ARONOW. Mr. Chairman, my name is Cedor B. Aronow. I reside at Shelby, Mont., and I am general counsel for the Blackfeet Indian Tribe at Browning, Mont.

We recognize the problem of Indian heirship land and such problem exists on the Blackfeet Indian Reservation.

The chairman of this committee, Senator Church, is to be commended for the work and effort he has put into the bill. However, there are a few suggestions that the Blackfeet Tribe would like to make which it hopes might be helpful not only to it but other tribes as well.

Section 7 of the act permits the tribe to sell any tribal land or other property in furtherance of such plan. The Blackfeet tribal constitution and charter prohibits the tribe from the sale of land or interests in land.

Of course, the bill overrides the constitution and charter. However, the tribal business council which handles the affairs of the tribe, would be subjected to tremendous pressures to dispose of and sell its lands and the provisions allowing such sale to be contained in the plan would also be pressured tremendously. There would be many selfish interests that would come in and try to induce the council members and it might even become a matter of tribal politics on the election of council members, those that are pledged to dispose of tribal assets and lands.

We feel that the tribe should not be allowed to sell their lands, but for the purpose of consolidation of landholdings perhaps an exchange of lands ought to be allowed where the lands to be traded are of approximately equal value and appraisals have been made.

The act provides that it shall become effective 1 year after its enactment but there is no assurance that loan funds will be available within a year after the passage of the act and if there are no loan funds available much land may pass out of Indian or tribal ownership into non-Indian ownership and compound the evils of the "supervised sales" which policy the tribes, including the Blackfeet, fought bitterly and met determined opposition from the Indian Bureau.

Senator CHURCH. You want to be sure that the money is actually in the bank before the provisions of the law take effect?

Mr. ARONOW. Yes, sir. And it also may take quite a while to work out the plan, too.

We have had an experience in the past with Indian Bureau policy.

I might say this. Mr. Nash is in the room. There has been improvement.

Senator CHURCH. I am sure of that.

Mr. ARONOW. We are very hopeful, but Mr. Nash, I am sorry to say, may not live always and there may be other policies come into the Bureau.

We have made a rough estimate on the Blackfeet Reservation based on the 1955 report and at that time there was an indication that there were 520,834 acres of land in heirship status, and as near as we can tell—I mean it is a guess—I bet that's doubled by now.

As to the estimate as of June 28, 1955, the appraised valuation was \$8,260,000-odd and our estimate now at this time is it is about \$20 million.

The bill provides that there be funds available, I think \$50 million.

We have some information that the Yakima Indian Tribe over in the State of Washington estimates that their heirship land is worth about \$30 million. With the Blackfeet about \$20 million, there is no money left for any other tribe. We will use it all up. That is one of the problems.

We should have some safeguards so that features of the bill would not come into active use until after the plans had been approved, and they no doubt would require Bureau regulations to implement the law.

Then the human element enters in. These plans no doubt will have to go through many hands. There will be delays, suggestions, and different notions, so that it is going to take time, and then the Blackfeet had a past experience where it took them some 3 years to get a loan through for their revolving credit fund on their reservation. I do not know if that is any criterion of how long it may take to obtain these loans. The provisions of section 2 of the act give jurisdiction to the State courts to bring partition actions with the United States made a party defendant, but gives permission for removal to the Federal court, and, of course, the United States always has the right and as a practical matter they do ask for removal to the Federal court.

If the United States has any active part in these partition suits, then they might as well be filed in the Federal court nearest to the reservation and leave the State court out of it, because I am sure that State courts are not going to love us for a volume of work of this type, and many of the State courts are not too sympathetic to tribal problems.

I think that, where a partition action is brought and the land is going to be sold, the tribe should be given a preference right to purchase the land and the Federal court should be required to enforce the preference.

There is another problem that arises as a practical matter and I do not mean to imply that members of the tribe are dishonest or would do anything wrong, but they are human beings just like any one of us. There is always a bad apple in the barrel or a box. In all sales made under this act the tribe should have the preference right to pur-

chase, and I think we should go one step more and provide a rather severe penalty for any Indian exercising his preference right to buy and, say, within a year, maybe a year and a half, in effect buying it for a non-Indian and turning the land over, having the funds provided by a non-Indian.

We have had one instance of that on the Blackfeet Reservation. A number of years ago a rather prominent man in Montana induced an Indian to put together a large tract of land and the next thing we knew it passed into this man's ownership. Later he achieved some prominence in the political life of the State, but not necessarily with the support of the Blackfeet.

I think there ought to be some safeguards written into the bill along those lines and perhaps make it a crime for the non-Indian to induce the Indian to do it as well as the penalty for the Indian doing the thing. That might have a helpful effect.

It has been the policy of the Indian Bureau to allow claims for old-age assistance and welfare payments made by State welfare departments to elderly Indians who have died to collect the proceeds from the sale of these heirship lands regardless of whether or not they may be in a restricted or trust status. Sometimes this works quite a hardship.

Under the bill if there is more than one heir, two or three children, the land is automatically sold and when it is sold these claims are paid. There is not any opportunity given to work out any debt by income from the land or use of the land.

Likewise there have been instances where land owned by old Indians which has never been cultivated but is in its natural grass state under the supervised sales was sold and then they found there were old O. and M. maintenance charges for irrigation projects and they took all the money and the old Indian received nothing.

We have had a number of those instances and it seems that some protection ought to be given Indians from this highly immoral and unethical conduct on the part of the Government in those respects.

Where the heirs do not want the land sold and it is sold against their will involuntarily it just does not seem quite fair and quite right that all these claims are taken out and they are just given a receipt, a piece of paper; that is it.

As a directive to the Secretary of the Interior and to establish a policy lasting over the years or until Congress should otherwise direct, it would seem to me that it would be really helpful if the bill contained a provision directing the Secretary that he should encourage and assist the tribes in acquiring the ownership of heirship land and particularly where there is no opposition from the Indian owners of such land.

Section 11 of the bill seems to us to be unduly harsh in limiting the right to inherit land to only one heir. I do not know of any comparable provision in any of the laws of any of the States of the United States where such a limitation exists. It may be a matter of degree and, as a suggestion, if the committee feels it proper, the limitation may be on ownership of unplatted lands be limited to not less than 10 acres to each person. The reason I say 10 acres is it is easy to describe. It is a quarter of a quarter of a quarter section and it can be described by the legal mapping. This will allow as many as four people to own a 40-acre tract. Many of these heirship lands may be

a whole allotment of 320 acres and it does not seem quite fair that if two or three children inherited a 320-acre tract, then they must either partition or within a year have a fee patent issued. That would be regardless of the competence of these heirs.

If the Senate feels that there ought to be a limitation I would suggest the 10-acre limitation. I am taking that out of the air but at least one can describe it with reasonable certainty and ease. This limitation would lead to the liquidation of Indian holdings and it could be done at the whim of the Secretary, and it reminds me of the old story of the forced patents that were so highly criticized by the courts and by people that were acquainted with Indian affairs.

Then the other thing is if large quantities of these heirship lands should be put up for sale at one time it would be beyond the financial capabilities of the tribes to do much about it. The market price of these lands might be forced down to the disadvantage of the heirs, and it also would saturate the market.

I think there ought to be again some provision in the bill where a tribe could purchase the land not only for cash, but upon reasonable terms, such as are given in comparable land transactions outside of the reservation; that is, long-term contracts, or by the tribe issuing unsecured certificates of indebtedness perhaps, which could be negotiated at the bank.

I realize the difficulties that arise in the drafting of a bill of this type and the many problems, and I know there has been a lot of work gone into this. I do not want to be in the position where we come and say—

Senator CHURCH. Not at all. This is a very complex problem. All of us realize that. All of us want to see it solved, and this committee has been conducting these hearings for the very purpose of trying to work out legislation that will be satisfactory, knowing full well that any bill is going to be subject to very substantial revision that will be the product of these extended hearings and very careful consideration. That is the only way we will ever get it solved and we have already made one attempt with hearings last year. We are making the second attempt now.

We are going to consider the matter still further in the light of this testimony that we are taking now in order that ultimately we can work out a solution to a worsening problem that will plague the Indian people unless it is solved.

Mr. ARONOW. Thank you on behalf of the Blackfeet.

Senator CHURCH. Thank you very much for your testimony.

Mr. Ettien, did you want to testify?

STATEMENT OF J. CHAN ETTIEN, HARVE, MONT., ATTORNEY FOR FORT BELKNAP COMMUNITY COUNCIL

Mr. ETTIEN. Thank you, Mr. Chairman. I have a prepared statement. I will just touch on it because everything has been said in the last 2 days that will be said.

Senator, I have a map here of the Fort Belknop Reservation which I would just like to show the committee to give it an idea of the multiple ownership lands on the Fort Belknop Reservation. Most of the entire green area, the green allotments, is in multiownership and it is

estimated that over 60 percent of these allotments are in multiownership now and, as the chairman will notice, there are real dark blue tracts and these are State school sections.

There are only about 12 fee patents on the Fort Belknap Reservation so that the consolidated tribes of the Fort Belknap have an opportunity if they can hold these lands intact to keep the entire reservation as tribal owned or Indian owned, so they are concerned about features of the bill which force, as Mr. Aronow said, the patent.

The part of section 1 which provides that any undivided interest can move a sale of the land is what worries my people particularly.

Senator CHURCH. You would suggest that a majority be required?

Mr. ETTIEN. Yes, Mr. Chairman. That is the council's feeling on it, too.

I could point this out by showing that map. There are large blocks of allotted lands which are bordered on the reservation by large ranches and a larger rancher, which would be good business for him, could get these infinitesimal interests and force the sale of areas which would put blocks of allotted land up for sale and neither the individual nor the tribe could do much about it. It would break the reservation.

Going to section 5, Mr. Chairman, some question as to the mineral interests. There is no provision for reservation of the minerals, and the Crow, the Blackfeet, the Fort Belknap, and Fort Peck have all gas leases and I think some provision should be made for the allottees' interest as far as minerals are concerned.

Going to section 6, Mr. Chairman, there is a feeling of the committee that most tribes now have land enterprise programs, particularly the organized tribes that I know of, and I think probably they can take their existing land program, purchase program, and by some revision make it satisfactory for something to come under this bill, and my people feel that provision should be made in that section where the council itself can submit a revised land enterprise program rather than submitting it to the general bulk of the tribe, which is an expensive thing, and just bring it up to date.

Going to section 10, a question there, and as Mr. Aronow mentioned, the money. It is a far cry from authorization to appropriation and the time involved in tribes and individuals arranging credits on purchases. The bill itself in giving the Indian or the tribe the right to meet a high non-Indian bid gives no time for the tribe to arrange for financing or credit, which in almost all cases they have to have.

The Fort Belknap Council does not have money. These come in and elect an option right away and say, "I'll take this land," so that the bill indicates that it is not an automatic election. You would have to take it right away or you would lose it, so the bill should provide for some time where the tribe could arrange credit and take that election.

Section 11 is the question, as Mr. Aronow said, of forcing the patent. Again there are many Indian people who are not competent and this section actually would require a fee patent to a minor or even a person non compos mentis as I read it, so there should be some safeguard there.

One thing, Mr. Chairman, which I think might be advantageous, and I brought it up in connection with my remarks on section 14, is I think there should be some kind of an escheat provision or statute.

I do not know that there is particularly, but on these multiple interests where there are so many unknown heirs and heirs could not be located, it strikes me that there will be moneys from the sale of these lands which will just lay and no one will ever be able to use them, because the heirs themselves in a lot of cases won't know they have any rights; and if an escheat provision was put in where within a certain period if those moneys are not claimed they would go to a particular tribe involved, I think it would have advantage.

Senator CHURCH. You would propose that on not only the returns, but the land itself?

Mr. ETTIEN. Yes, even the land itself.

Senator CHURCH. That is an interesting suggestion. I do not believe that has been made before.

Mr. ETTIEN. I think if there were a lot of money involved, which there could well be, those moneys would be reinvested and loaned to the tribe or the council for the purchase of heirship lands so that that money could keep turning and provide additional credit.

Senator BURDICK. I came in late, but how would this escheat work? Who would the property escheat to?

Senator CHURCH. The tribe.

Mr. ETTIEN. I say the tribe, Senator, it is like the States have their escheat laws. It would go to the community or the people, in other words. I can see definitely in this heirship problem there are probably hundreds of Indian people who have interests that they do not even know about. As a matter of fact, I know there is a township in Montana and in Hill County which we call the Turtle Mountain Township and there were no allotments primarily to the Turtle Mountain people of Montana but there are small 40-acre allotments for Indians in Oklahoma, and on one particular piece that I tried to get a line on from a farmer in that area, we wrote all over Oklahoma but no one knew who they were or what they were, but that 40-acre tract is under Indian ownership.

Senator CHURCH. I was just going to say that we had a bill up here in this committee affecting the Nez Perce Indians in my State 2 or 3 years ago that had to do with some judgment money and the judgment money had been sitting down here in Government accounts for 60 years and they could not locate the people to whom this money was to go and for 60 years the Government kept accounts on it and for 60 years it kept accumulating interest and stayed in the Government depository of no value to anyone, and so finally we had to pass a special bill turning that money and the accumulated interest over to the tribe.

What you are proposing is that in circumstances like this where the real owners can no longer be found or located and money has accumulated, not only should there be a general provision that would turn that money over to the tribe, but we should consider also turning the land over to the tribe in those circumstances?

Mr. ETTIEN. Yes, Mr. Chairman.

Senator CHURCH. On the principle of escheat, but escheat to the tribe?

Mr. ETTIEN. Yes, sir.

Senator CHURCH. I think that is an interesting suggestion.

Senator BURDICK. Very interesting, but what about the restricted fee title? Could that escheat to the tribe?

Mr. ETTIEN. Well, Mr. Chairman, of course I am primarily thinking of the bill leading to the liquidation, your partition bill here, where it would be sold.

As I say, I know there must be thousands of Indian people that do not even know. They may be third generation children that do not know.

Senator BURDICK. I think the approach is fine, but I am trying to think of the legal objection there might be.

Mr. ETTIEN. Perhaps on the land itself, but as far as the proceeds, definitely I see no reason why they cannot escheat. As far as the trust, it was all originally tribal land to start with, Senator. I do not know why it could not revert with some kind of protective feature.

Senator BURDICK. It is a very interesting suggestion.

Senator CHURCH. We will look into it further.

Mr. ETTIEN. Thank you, Mr. Chairman. That is all I have.

(The prepared statement referred to follows:)

STATEMENT OF J. CHAN ETTIEN, HAVRE, MONT., ATTORNEY FOR FORT BELKNAP COMMUNITY COUNCIL, CONSOLIDATED ASSINIBOINE—GROS VENTRE INDIANS, FORT BELKNAP, MONT.

Mr. Richard King, chairman, and the members of the council wish to thank the subcommittee for this opportunity to present their views on S. 2899.

The council recognizes the vast amount of research and searching for solution of a most vexing problem, appreciates the sincerity of the Congress in its efforts toward these ends.

The Fort Belknap Indian Reservation was established in 1887 for the Gros Ventre and Assiniboine Indians who were living in that area. Allotments were made under the act of March 3, 1921 and 539,161.81 acres were allotted to 1,181 members of the two tribes. The usual allotment was 360 acres of grazing land and 40 acres of irrigable land. The rolls were closed November 30, 1921 and no allotments made after that date.

The Fort Belknap Indian Reservation is located in north central Montana in Blaine and Phillips Counties. It has a gross area of 622,917 acres and is more or less rectangular in shape, being about 25 miles wide (from east to west) and 40 miles long. It is bounded on the north by the Milk River, on the south by the Little Rocky Mountains and in the east and west by surveyed lines running north and south through Blaine and Phillips Counties.

The Fort Belknap Indian Community was organized under a constitution and bylaws ratified by the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation on October 19, 1935, and approved by the Secretary of the Interior on December 13, 1935, pursuant to section 16 of the act of June 18, 1934 (48 Stat. 984) as amended by the act of June 15, 1935 (49 Stat. 378). The corporate charter of the Fort Belknap Indian Community was submitted by the Acting Secretary of the Interior for ratification by the Fort Belknap Indian Community in a popular referendum to be held on August 25, 1937. The charter was ratified by a vote of 277 for and 158 against by members of the two tribes.

RESERVATION POPULATION

The Fort Belknap census as of April 1, 1960, report to the area director as requested estimated the tribal enrollment to be 3,200, the estimated resident families to be 278, with 1,344 individuals, with 80 families living in towns near the reservation with 325 individuals. These estimates were reached by actual counts from surplus commodity records and information from files of the Branch of Welfare, census records, and records of the Department of Public Welfare. Of the 1,344 persons, approximately 55 are enrolled at other agencies.

RESOURCES—LAND AND ITS USE

As of November 30, 1959, the community had in its name 128,705.98 acres and its members held 472,720.15 acres for a total of 601,429.13 acres held in trust for the community and members by the United States.

It is estimated that more than 60 percent of the allotments on the reservation are in multiownership, totaling in excess of 250,000 acres.

I have a map of the Fort Belknap Reservation. The areas shaded in light green are those of the deceased allottees and, with rare exception, are under multiownership. The blue sections are State school sections. The blue-green areas are fee patent. There are only about a dozen of these, and the consolidated tribes at Fort Belknap have a potential opportunity to hold the reservation, tribal or Indian ownership, which they desire to do.

Separately, these allotments do not furnish a capital base sufficient to support economic, agricultural units. With rare exception, the only instrumentality which can bring these allotments together for more profitable and beneficial use is the tribe. The council recognizes the need for solving the problem of multiownership but emphasizes that Congress should weigh its legislation on the matter in favor of continued Indian ownership, tribal or individual.

The council feels that an individual Indian, with an undivided interest, should have priority on purchase; that the tribe should always have an opportunity to get reservation lands before it passes from Indian ownership.

As to S. 2899

Section 1.—Section 1 of the bill should provide that only a majority of the land interest can petition a partition.

Allowing any single interest, no matter how infinitesimal, to force a sale, can definitely lead to destruction of the Indian land base.

As illustration: The Fort Belknap Reservation is bordered by many large ranches, whose owners have substantial resources.

Grazing land in Montana is at a premium and in demand.

As a matter of good business, an adjoining owner by judicious selection of negligible owner interests and the offer of very little money, could initiate the sale of large and solid areas of grazing lands.

Neither individual Indians nor the community, unless the Government provided credits, could prevent the land from passing into non-Indian ownership.

Section 2.—No one doubts the monumental book and recordkeeping burdens of multiownership, but the concept of section 2 could well make present problems seem a mere pain in the neck.

If the Department of Justice has not already described section 2's possibilities to the subcommittee, it undoubtedly will.

In Montana, judicial partition requires a trustee and appraisers. Each owner is entitled to his attorney, and the trustee must have his.

From the proceeds of sale are paid all fees and expenses of the trustee and appraisers, including attorney fees. Attorney fees of the parties are paid. In case of indebtedness to the Federal Government, irrigation charges and the like, that comes out. Very likely in Montana there could be State claims for old-age assistance to be satisfied.

As a Montanan, I don't see why the State should be required to help solve problems created by Congress.

If I were a State judge of a district including Indian lands, I would not be particularly thankful for the Federal Government's generosity in "conferring" these matters into my lap.

I suggest the subcommittee direct an inquiry to the State judges who would be affected by this bill. I am sure their reaction would be more cogent and expressive than anything said here.

And the United States as an indispensable party, what is to be the function of the United States in a judicial partition? It is not stated, but apparently to carry out its trust obligations.

The U.S. attorney in Montana has not more than a half dozen assistants. The U.S. attorney's staffs of other Western States are comparably limited.

Unless Congress provides the legal talent, section 2 will simply result in an inconceivable pileup of partition actions, and book and recordkeeping by clerks of court and U.S. attorney offices will compare with those now burdening the Bureau of Indian Affairs.

Going to the last section of section 2, the Fort Belknap councils want such lands to be taken in trust unless otherwise determined.

Section 3.—Section 3(b) raises the question of allottees' mineral interests. At least four of the Montana reservations contain oil and gas lands.

As S. 2899 now stands, partition sales will carry the minerals to the purchaser.

The potential liability of the United States under possible violation of its trust obligations to individual Indians creates an area of exploration which only the Government could fill.

Section 4.—Section 4 does not state but apparently covers both administrative and judicial partitions.

Section 5.—Section 5 speaks of "competitive bid" (line 24, p. 3, S. 2899), and "sealed competitive bid" (lines 4-5, p. 4, S. 2899).

Competitive bid is made by writing or by auction. There is a possible ambiguity in the use of these terms.

Section 5 gives the tribe or Indian right to meet the bid of a non-Indian and appears to require the election at the time of sale.

Tribal and Indian purchases of land almost invariably require credit financing, a time-consuming proceeding.

Some time mechanism should be provided in S. 2899 giving the tribe or Indians reasonable opportunity and time to arrange for purchase of the land.

The last two sentences of section 5 (lines 15-20, p. 4) provide for a trust title. The Fort Belknap Community Council wants title to be taken in trust unless otherwise determined.

The Fort Belknap Council wants the order of preference in noncompetitive sales to be, first, an interested owner, second, the tribe, and third, Indians.

Section 6.—The finance requirements of section 6(b)(c)(d) appear uniform with present credit, law, and regulations.

Subsection (d) requires that delinquent loan installments be satisfied from any judgments against the United States.

We ask that the Secretary of Interior be given some latitude to cover an installment which will be obviously paid but is temporarily delinquent.

Subsection 6(a) should include existing land enterprise programs, subject to revision, and avoiding wasteful and time consuming rehash.

Instead of requiring a tribal referendum, with resulting expense, community councils of organized tribes should be authorized to offer master plans. If the Secretary of Interior feels the proposed plan is too far reaching, let him ask for a referendum.

Section 7.—Section 7 should include existing plans.

In the light of rights conferred by tribal chapter and constitution, a question is raised as to the validity of section 7.

An interpretation and explanation should be made of the implications inherent and conceivable in the section.

Section 8.—Here again an explanation and interpretation should be made of the implication inherent and conceivable in its language.

We recommend that section 8 be stricken in its entirety.

Section 10.—Section 10 authorizes increase of the loan fund from \$20 to \$50 million.

There is often a long road from authorization to appropriation.

Further, it has been said there is an estimated \$300 million of multiownership lands.

Covetous action could initiate the sale of lands whose value would be greatly in excess of a tribe's or Indian's credit resources, and thus force a movement of the land into non-Indian ownership.

Section 11.—The Fort Belknap Council is unalterably opposed to the provisions of sections 11(b) and 11(c)(2).

Transfer without restriction under the described circumstances is mandatory, without consideration of the business competency of the transferee, and whether a minor or non compos mentis.

It is a simple fact of Indian life that many people who would come under these terms simply are not capable of handling their property with any semblance of business judgment.

Section 14.—Section 14(b)(c) are impossible of performance.

Evidence before this subcommittee indicates approximately 10,000 multi-owners whose whereabouts are completely unknown and probably unascertainable.

It necessarily follows that there are hundreds, probably thousands, of unknown heirs—people who don't even know they have an interest in Indian allotted lands.

This presents the desirability of an escheat provision.

Where proceeds of partition sale can't be distributed because of unknown or unlocated heirs, they should be invested in the land purchase program. If moneys are not claimed within a given time, they should escheat to the tribe or community.

A contingency fund of a reserve of ready money could be established to satisfy pending claims.

S. 2899 raises a question on tribal or community land which may have been considered by the subcommittee, or raised previously.

A tribal member has undivided equitable interest in such lands.

Under S. 2899, can a member petition a partition of tribal lands?

The Fort Belknap Consolidated Tribes are opposed to S. 2899.

The Fort Belknap council asks that the subcommittee introduce and support legislation on multiownership consistent with the intent and provisions of the bill drafted by Marvin J. Sonosky and printed at pages 160-163 of the August 9-10, 1961, hearings on S. 1392.

Senator CHURCH. Thank you very much.

Are there any more from the Montana group here that want to be heard? For a Senator from Idaho, I have kept my Idaho friends waiting for a long, long time here, and I notice they are coming up next on the list. I see Joe Garry is here, who is chairman of the Coeur d'Alene Tribal Council at Plummer, and Oswald George, who is the vice chairman, is here.

I wonder if you gentlemen would care to come forward?

STATEMENTS OF JOSEPH R. GARRY, CHAIRMAN, AND OSWALD C. GEORGE, VICE CHAIRMAN, COEUR D'ALENE TRIBAL COUNCIL, PLUMMER, IDAHO

Mr. GARRY. Thank you, Senator.

Senator CHURCH. Oswald, it is nice to have you. How would you like to handle your testimony? Would you like to proceed first, Joe?

Mr. GARRY. Yes; I think I will go on first.

Mr. Chairman and members of the committee, my name is Joseph R. Garry, chairman of the Coeur d'Alene Tribal Council, Plummer, Idaho. With me is Mr. Oswald C. George, vice chairman of the Coeur d'Alene Tribal Council of Plummer, Idaho.

First of all we wish to convey our gratitude on behalf of the people we represent to the chairman and members of this committee for giving us this time to express our views on this bill. This bill is important to all Indian tribes, particularly to those that have large areas of allotted lands.

I know this committee is sincere in its efforts to come up with a bill that will be suitable to most, if not all, of the tribes of this Nation. In this regard, we wish to express our thanks, also, to the chairman and his committee in allotting so much valuable time in his efforts to help relieve a situation that is becoming more and more serious to the Bureau of Indian Affairs as well as to the Indians themselves.

It is understandable, of course, that we are not favoring this bill in its entirety. And while it may be repetitious to reiterate some of the expressions already made by those who have already testified here, however, for the record we wish to express our views and our suggestions for some ideas that may be applicable for appropriate amendments. These ideas and suggestions are as follows:

Section 1, subsection (a): We are not in favor of any one owner of an interest to either request for partition and/or sale of any allotted land. There should be consideration given to the number of coholders in the land. The number is not given here, of course. It is just something to consider.

Senator CHURCH. Would you favor, Joe, the suggestion that has been made that a majority interest be required in order to initiate a proceeding?

Mr. GARRY. Yes. I think we have discussed that, and that would depend upon the number.

The majority holdings means, of course, not referring to the number.

Senator CHURCH. Majority interest.

Mr. GARRY. Majority interest; that is right. There should be consideration given there. In other words, consent of a majority interest should be considered.

We have no objection to a preferential right given to an Indian co-owner except that the tribe, if it so chooses, should have higher preference in the purchase of such fractionated lands.

Senator BURDICK. By "higher preference," you mean over and above that of the individual coowner?

Mr. GARRY. Yes. Our reason for suggesting this lies in the fact that the purchase of one coowner of such tracts of land would not spell the end of fractionated heirship problems.

Senator CHURCH. On his death you may have to start all over again.

Mr. GARRY. Yes; start all over again. In fact, it would only be the beginning of another cycle of future fractionation of undivided landownerships. Allowing the tribe to purchase these lands involved would necessitate, in some instances, for the tribe to obtain loan funds from the revolving credit fund. This would result, in my opinion, in the total and immediate solution of the problem.

Section 2, subsection (b): A suggested remedy to this particular part of the proposed legislation would be to force the sale of all unrestricted (fee patent), undivided shares to the tribe at their appraised values, thus restoring the trust. This provision then would automatically eliminate section 2 of this bill in its entirety.

Section 6, subsection (e): The Coeur d'Alene Tribal Council would suggest a change in language here whereby the authority to buy land including the authority to borrow and guarantee repayment of such loan be vested in the officially recognized governing body of any tribe as may be spelled out in the tribe's constitution. The reason for this suggestion is that the designated governing body in all tribes are not always vested in a general council and hence to specifically designate a general council would not be applicable in all cases. Some tribes have their tribal councils as governing bodies and others refer to general council. I believe there are still general council governing bodies in some tribes and there are still others that have a referendum.

Senator CHURCH. What are the words you would suggest there, Joe?

Mr. GARRY. That—

the authority to buy land, including the authority to borrow and guarantee repayment of such loans, should be vested in the officially recognized governing body of a tribe as may be spelled out in their constitution.

In other words, if their constitution says the governing body is the tribal council, then that should be it. If it is the general council, then that is the way it should be. In other words, I feel—as a side comment—that if the legislation were passed to designate a general council as the authority or as the body to decide on purchases or borrowing

money for land purchases, those tribes which do not have general council provisions in their constitution would necessarily have to change their constitution to be consistent with that provision of this bill.

Senator CHURCH. Would you eliminate the requirement in the bill that land consolidation programs be approved by a majority vote of the members?

Mr. GARRY. No, for expediency, I still depend on the governing body because, after all, your elections make that determination. They are just like you, Senator. They elect you here, Senator, and it is up to you to vote one way or the other.

Senator CHURCH. It certainly is.

Mr. GARRY. If we would have to have a referendum every time something comes up we would be in an awful mess.

Section 6, subsection (f) : Needs better clarification.

I think we heard that yesterday. While the management of lands may be borne by the tribe there still remains the responsibility of the Bureau treaties so maybe there should be a specific designation as to where the tribe's authority ends and where the Bureau's responsibility begins. They should be spelled out.

Section 8 is a familiar section. The Coeur d'Alene Tribal Council suggests the removal of this section from the bill in its entirety. I think one of the provisions of the task force report uses this, and I concur that anything that has relation to termination or any provision protecting the right to terminate later sort of scares the tribe into making plans.

Senator CHURCH. Is that section 8, or section 11?

Senator BURDICK. Section 8. It is more scare than substance.

Mr. GARRY. That is right.

Section 11: The Coeur d'Alene Tribal Council likewise suggests the removal of section 11 from the bill because it feels that the language of this section of the bill places greater emphasis on alienation of trust lands rather than the solution of the fractionated heirship problem.

I think the intent is not necessarily that, but it is just the wording. This in fact appears to be a process of piecemeal termination. The delegates here likewise agree with some previous statements made, particularly those by the Bureau of Indian Affairs, that there will never be a total solution of the heirship problem without jeopardizing the trust status of the tribe's land base.

As a general statement, we would like to say to the committee that at this point you may no doubt be wondering that after all of your time consuming effort to help solve a serious problem that the Indians are not even cooperating in this effort. You are, perhaps, wondering what do they want anyway.

In this connection I would like to say that as far as the Coeur d'Alene Tribal Council is concerned, one simple paragraph mentioned in your bill, if more specifically spelled out would be the key to at least 80 percent solution of the tribe's fractionated heirship problem. This is mentioned in section 6, subsection (e) with our suggested amendment. This has to do with the authority of the governing body to buy land either by using its own funds or by loan from the revolving credit fund. This solution could be accomplished even without forced sales on the Coeur d'Alene Reservation.

In other words, we would have enough voluntary requests for sale the minute this opportunity comes up and I believe 80 percent of our membership that have fractionated land would want to come up and get their settlement, because they are in need of cash. That is the kind of motivation for sales, hardship, and lack of employment, and so forth.

Finally, I would like to give my own personal observation on this matter of legislation. Certainly I can appreciate the difficulties that would be involved in satisfying all tribes and the department and bureau concerned. Any bill that may be introduced becomes the concern of a great number of interests.

At some point yesterday it was mentioned that the cattle organizations of the Midwest have had their selfish interests in similar bills introduced in previous years. For my part then as an individual representing a tribe, it would only be natural that my utmost desire would be to amend this bill so that only the tribe as a tribe and its members would be given the opportunity to acquire any lands that may be sold either forced or voluntary.

I see nothing wrong with this idea. After all, these lands belonged to the tribe in the first place. It is territory that is desired by every imaginable interests, including States and counties. The prior and superior right to buy and own these lands should be the people that owned them first.

Another thought to remember is that the purchase of these lands in trust and to continue them in trust would not be reducing existing tax valuation of any State or county. They did not have them in the first place so they are not going to miss them. In fact, the retention of these lands in Indian ownership through the presently planned programs of tribes would even help prosperity of the communities. In other words, you would be helping these merchants and people in small towns pay their taxes by retaining the lands in trust in Indian ownership.

If you want me to give some examples of that I will, but maybe I am taking too much of your time now.

Would you want the examples?

Senator CHURCH. You might give a couple, Joe, yes.

Mr. GARRY. The merchants in Plummer and other cities in the county have made the statement to me, "We want the land to stay in your ownership. If it is not in Indian ownership it is going to a big corporation. One man will take the place of 50 Indians living here. If the Indians had to give up the lands they would have to move out, and they are our best customers. The big people who farm on a large scale only make it because of the volume."

Senator CHURCH. And that area is large-scale farming area.

Mr. GARRY. Yes; that is right.

The big farmer, in the fall of the year, can take his truck and go to Spokane, Wash., and load up with groceries at a wholesale price for in the winter and store them in his basement. He has gasoline delivered to his home by a co-op and he gets it at a reduced price, with rebate, I think on taxes, too.

The people of 15 or 16 families that are living there, while they may be struggling for existence, any money that comes into their hands they spend it locally. They go to the grocery store, maybe

2 or 3 times a week and buy groceries from the local merchant. They buy their gasoline from the service station across the street and in that way the community continues its growth and development, and that is what we favor, too. Ozzie and I belong to the Area Redevelopment Organization. We are officers in their committees and I think we are interested in continual development of the community as well as the reservation.

In other words, the Coeur d'Alene Tribe and its council want to work with local communities to maintain prosperity in that area.

Senator, I thank you again.

Senator CHURCH. Thank you very much, Joe, for your testimony.

I want to say, Senator Burdick, that Joe Garry has been not only one of the leading Indian spokesmen in our State but he has been a member of our legislature and has been the president of the National Congress of the American Indians for how many terms, Joe?

Mr. GARRY. Six terms.

Senator BURDICK. I am well aware of Mr. Garry's fame and fortune. As a matter of fact, I put one of his speeches in the Record.

Senator CHURCH. And Ozzie is one of the very outstanding leaders of the Indians in northern Idaho, a longstanding acquaintance and friend of mine, so we are very pleased that you are both here.

Mr. GEORGE. Thank you, Mr. Chairman and members of the committee.

I have before me a written report here that I am supposed to make and what I am going to talk about evolves around this written report and I always think I talk better when I do not read something that is written, so I will submit this written report and what I have to say evolves around it. It is the nucleus or heart of what I am going to talk about.

Senator CHURCH. Fine. We will make your written statement a part of the record.

(The statement referred to follows:)

STATEMENT OF OSWALD C. GEORGE, VICE CHAIRMAN OF THE COEUR D'ALENE TRIBAL COUNCIL, PLUMMER, IDAHO, ON S. 2899

Mr. Chairman and members of the committee, my name is Oswald C. George, vice chairman of the Coeur d'Alene Tribal Council, Plummer, Idaho.

I am grateful for this chance to testify on this bill which every tribal leader thinks highly important. Our tribal council believes this bill important to our tribe because of the valuable lands involved, and certainly we would want the lands purchased by the tribe if they should become eligible for sale either by voluntary or forced method.

Our land base as a tribe is very small and should be enlarged, and I have always maintained that land is always the most important in the existence and progress of any tribe or nation. Land is the basis for all things, and I too agree if this bill contained nothing else, but to give the official governing body (the council in case of the Coeur d'Alene) the authority to buy land, we would be going a long way toward solving our fractionated heirship problems on the Coeur d'Alene Reservation.

Mr. GEORGE. Mr. Chairman, as we know, a bill is not a law, and you have given us this time and privilege of inserting our thoughts and our feelings. We are grateful for this because if the bill in its form had gone forward I am sure it would have not been any help to us.

I will go back into the land purchase program that was originally a program of the Coeur d'Alene Tribe. Sometime back we came into a case where lands went up for sale. Our Superintendent at that time

gave us, I think, 2 weeks' time to purchase this land before it was sold. It was up for bid and they gave us only 2 weeks' time, and the Superintendent at that time definitely knew that the tribe did not have a cent of money. It was true that we were awarded a claims judgment, but at the time we did not have the money yet, so that at that time Mr Garry and I came to Washington and attempted to borrow money from the revolving fund.

At the time we had Mr. Emmons, I believe, as the Commissioner, and we had a talk with him and about six of his associates in the room against Joe and I. They claimed they could not give us any money and all that, but eventually to our surprise we were allowed up to, I think, \$100,000. Incidentally, this purchase of land involved three tracts of land.

Going back we figured we had something wonderful that we at least prevented these three tracts of land going out of the Coeur d'Alene Tribe.

On getting back, we went through the process of appraising the land and this, mind you, without the help of the Indian Bureau. They did not come in and give us their appraisal as a comparison with our appraisal, so we had to hire our own appraisers, and on two tracts of land this apparently was with the approval of the Department because we did buy two tracts of land for the sum of \$80,000.

The third tract of land was a partial timber tract and the Department thought that we were not offering enough money, so that deal fell through. We did not buy that land.

Incidentally, that land is still unsold as far as it goes, but now comes the funny part of the deal. After they allowed us to purchase this land the Solicitor of the Indian Bureau came out with an opinion that the tribe did not have the authority or the power to purchase land. So that there we were. We had bought land, even though we did not have the authority.

Somehow, somewhere the deal went through anyway and we paid the money back to the revolving fund out of our claims case money. In fact, for a time they did not want to take the money because they figured it was something out of the way and they would not have the power to do these things, and yet they gave us 20 years, I think, to pay it back and all of this time we paid on a yearly basis this money that really amounts to money. It was just tremendous. But, anyway, now the Department has the money back. It is back in circulation in the revolving fund, but now we as a tribe do not have the power to purchase or sell land. We are not concerned with selling land. Our main thing is to purchase and retain those lands that are Indian lands.

I would like to say that our concern is not only with fractionated heirship lands but those lands that are perhaps even owned by one, because regardless of the state of the land, it is still Indian land and it still can go out of the tribe. The thing of going out of ownership is what I am concerned about.

Senator CHURCH. Let me ask you this question, Ozzie. When you say the tribe has not the authority to purchase lands, you do not refer to allotted lands, that is to say, lands that are now in the ownership of individual Indian allottees? The tribe has authority to buy that land, does it not?

Mr. GEORGE. Not at all.

Senator CHURCH. What is the reason for this? This is not a normal disability for the tribe?

Mr. GARRY. They refused to recognize the governing body of the tribal council simply because it is not spelled out. It just merely says "governing body." That is the reason I brought this out.

Mr. NASH (Commissioner, Bureau of Indian Affairs). Mr. Chairman, this goes to the language of the constitution. No one doubts the capability of the tribal body as a whole to purchase land if they are willing, but the constitution of this particular tribal group contains wording which the Solicitor of the Department has interpreted as meaning that the governing body was not empowered at the time the constitution was drafted with the power to purchase land.

Senator CHURCH. Has any effort been made to change the constitution, Joe, to correct that?

Mr. GARRY. Yes. Of course, I think the vote was taken at the wrong time because the membership still residing on the reservation thought the alternative to the development would be liquidation and total distribution of the funds, and consequently they ganged up and they were allowed to call an absentee ballot, and we might challenge that because our original agreement was it was to be by secret ballot and if you allowed an absentee ballot you destroyed the secrecy. The result was we lost.

Senator CHURCH. So you are still in the same situation?

Mr. GARRY. That is right. Dr. Nash will tell you that we have challenged, in a five-page brief by an attorney, the opinion of the Solicitor. How that is going to turn out, I do not know. Maybe Mr. Nash by now has some idea. I do not know.

Mr. GEORGE. Mr. Chairman, to continue further, I believe that most of the opposition has been to No. 11. As a landowner and with three children now I have luckily three tracts of land, but the only trouble is I am already part owner to one and the problem is now on my making the will.

On what is the answer to No. 11, my answer would be that if this bill went through as it is, my only alternative would be to will each one of my children one tract of land apiece and then I would instruct each one of my children to have one child. I do not know if they can follow that up or not.

I will end up with this as something to think of. It is true that fractionated heirship land is a problem, but it is even a greater problem to have a fractionated tribe as a whole. When you sell these lands out because each little piece is fractionated, you are also fractionating the tribe as a whole.

I have always maintained that our land is our bastion, as you would call it, or something to always fall back on. Without those lands an Indian is just a vagrant on the street.

I thank you, Mr. Chairman.

Senator CHURCH. Certainly, Ozzie. Thank you very much.

As you know, this committee is mindful of the importance of the Indian land base. We do not want to enact legislation that is going to jeopardize the Indian land base. What we are striving to do is to solve the problem of multiple ownership and your testimony and Joe's testimony will be very helpful in reworking this legislation to that end.

Mr. GEORGE. Thank you very much, Mr. Chairman.

Senator BURDICK. Mr. Chairman, I would like to ask Mr. Garry a question.

Do I understand your thesis is that the sales should be limited to the tribe?

Mr. GARRY. Not exclusively to the tribe, to members also, but that the tribe should occupy a higher preference. I do not exactly know how to interpret that, but assuming that the lands are to be put up for bid and assuming that one of them had the privilege to buy them, there should be an opportunity for a tribe to meet any bid. In other words, while the majority owners may have a preferential right, that is, have the right to purchase, but that some of the owners still think that they should get more for their land or that authority be further granted to supersede the appraisal or at least some of the other owners prefer to sell them to the tribe, there may be some dissatisfaction there. Then the tribe in this case should have the superior right.

One other thing this involuntary sale is going to create, is some dissatisfaction among our members, I know. A lot of them with even a sixth interest would get a lot of income from 160 acres of good farmland.

Here are seven or eight heirs and one of them owns half and he has the right to sell or at least the law would require him to sell and the provisions of this bill are such that he would have to sell in the course of a year. Then the other heirs are not going to be satisfied. There is a personal jealousy among themselves.

I think in order to maintain the peace after the victory and all that the tribes owning the land or having the preference to buy it rather than the individual might be the solution in more ways than one; in other words, first, of course, to end future fractionation; secondly, to maintain good feelings among tribal members.

Senator BURDICK. Would not that feeling among the tribal members be considerably reduced when you have a petition signed by the majority interests?

Mr. GARRY. Well, I am for majority. I do not know. Sometimes even then we have dissatisfaction.

Senator BURDICK. The thing is, though, that you would like to have the tribe have a prior option on any land put up for sale?

Mr. GARRY. I possibly prefer to strike out everything else and give the tribe the prior right to buy.

Senator BURDICK. I think your testimony was that would solve 80 percent of the problem.

Mr. GARRY. If you want to solve it I think that is the way it should be done. However, I have no objection to the other. I do not object strenuously, but my preference of the two would be the tribe.

Senator CHURCH. One of the complexities here is the constitutional one. We found in our earlier hearings in connection with some of the proposals made by the Indian Bureau that we cannot dispose of land on an involuntary basis, that is to say, when any owner objects you cannot dispose of land constitutionally unless the procedures guarantee the fair market value in a competitive situation in which the highest bid has an opportunity to be made, and so for that reason we have constitutional problems in dealing with this question.

One of the reasons why it is so complicated is because there are such serious constitutional problems involved, so what we are striving

to do is to make certain that the owners get the full value, but at the same time give preference to Indian people and to the tribe in the sale. However, there is that constitutional question that we cannot ignore.

Mr. GARRY. Maybe I should say one more thing here. Where there is a voluntary sale, where all of the members want to sell and are willing to sell, and sign a petition for such sale, and where you are sure that there would be no dissatisfaction, then I do not think it would matter too much to sell to one of the other members. That is what you call voluntary sale, but involuntary sale approved by a simple majority even may face some difficulties.

In that case the tribe should be given exclusive right where you cannot get a hundred percent signatures. The Coeur d'Alene situation is not going to be too difficult, because our fractionization is not too great yet but it will not be long before we will be faced with as serious problems as other tribes.

Senator CHURCH. Thank you very much.

Mr. GARRY. Thank you, Senator.

Senator CHURCH. Our next witnesses are Mr. Harrison Lott and Mr. Albert Ezekiel of the Nez Perce Tribe.

The Nez Perce Tribe, of course, has been famous from the days of Lewis and Clark and we are hopeful now that a development program is going to be launched that will be of great help to the Nez Perce people. I think we are making some progress on that.

STATEMENTS OF HARRISON LOTT AND ALBERT T. EZEKIEL, MEMBERS, EXECUTIVE COMMITTEE, NEZ PERCE TRIBE OF IDAHO

Mr. LOTT. Yes. I am very happy to be here this morning. In fact, we never expected to be because our chairman, Angus Wilson, could not make the trip because of that advisory committee that we are having, so we had to move fast to come here. He says, "I think you'll have to go and Mr. Ezekiel be your bodyguard."

Senator CHURCH. I am awfully happy you are here and I hope you will convey my regards to Angus.

Mr. LOTT. Thank you. I will.

Since Senator Burdick is here, I might say I have had a little experience with his father. During the time that we were in this fight over the most famous fishing place in the whole country, Celilo Falls, we were excluded by the Corps of Engineers and the Bureau of Indian Affairs on that and they told us we had no rights. Yet we came here. A lot of delegations were here from other reservations that had rights on their Celilo fishery, so we came without even the authority of the Portland office and the first thing, I had to contact Compton White, who was a Congressman from Idaho. Contacting him I told him my troubles, what we were here for, and I told him there was a bill known as the Celilo bill drafted in 1949 down in the Portland office of the Bureau of Indian Affairs which excludes us, and he said, "Well, what do you want to do about it?" I said, "We want to stop that bill. Is there any way we can stop it?"

He said, "I'll get busy right now." That was in his office. He said, "I am going to call my old friend, Congressman Burdick," and he got him on the phone and he said, "I have some delegates from the

State of Idaho who have some fishing problem, a big problem. There is a bill that is going to be introduced and all the delegates representing their districts are here with their council and attorneys."

"All right," he says, "we'll stop that. Don't worry." So that was it. That cut that whole bill out. I just wanted to tell Senator Burdick that.

Senator CHURCH. Senator Burdick's father was a lifelong friend of the Indian people.

Mr. LOTT. I know that.

Senator CHURCH. Senator Burdick has followed in his footsteps.

Mr. LOTT. I wish him a lot of success.

Senator BURDICK. Thank you.

Mr. LOTT. I have a copy here of what I have to say. I have listened to the testimony and there is some that I agree with, but if I had to be back, we have had many troubles on this very matter. In fact, we sent a delegation to Boise and Commissioner Emmons was down there and the Bureau director in Portland, and Homer Jenkins, I believe, represented Washington. Anyhow, he is a Bureau man, so they asked him about these fractionated allotments, what can be done. He said there was a bill, but then I think some of the States could not have money, could not borrow money from the Government or from the tribe, and I think Idaho was included in that, and if you care to see it I think it is right in here, Senator Church. Those were the men that were present.

With your permission, I will read my statement.

Senator CHURCH. Yes, please do.

Mr. LOTT. Mr. Chairman, my name is Harrison Lott. I am a member of the executive committee of the Nez Perce Tribe of Idaho. I am here today as a representative of the tribe. With me is Mr. Albert T. Ezekiel, who is also a member of the executive committee.

Our tribal attorney, Mr. Schifter, testified yesterday about some of the legal details of S. 2899. His testimony reflects our thinking and I don't want to repeat the points he made. I have also heard the testimony of many of the Indian witnesses and some of the lawyers. It sounds to me like most of them think about this bill pretty much the way we do. Now I just want to add a few words about the Nez Perce Tribe and about the importance of our land to us.

The Nez Perce Indians, a little over a hundred years ago, were one of the most important tribes of the Northwest. They owned the land from the Cascades to the Bitterroot Mountains. Today our homeland is a much smaller area, stretching from Lapwai to Kamiah, Idaho. Our land was diminished by the Treaty of 1865, the "Steel" Treaty of 1863, and the agreement of 1893. Then allotments were made and over the years more land has been sold off. Many allotments were lost because of the issuance of forced patents around 1917-18. Today less than 100,000 acres are left for us; but what is left of our homeland is important to us and the income from our land is also important to our tribal membership.

What we know is that if land is put up for sale, our tribal members won't have a chance of competing with the non-Indian. The only way by which we could keep the land in Indian ownership is if the tribe has the money to buy it. That is why we tried to set up a land consolidation program about 10 years ago. We set aside some of our

own money, which we wanted to use for land purchases. But the Bureau turned down our program at that time.

Last year we set up an advisory committee to our executive committee on which some non-Indian people serve, at no expense to the tribe. They include businessmen, a banker, a newspaperman, and other people who want to assist us in finding ways to better employment opportunities for our people.

One of the problems on which the advisory committee is working together with the executive committee is the question of the tribal and individual landholdings, including our important timber resources. We are trying to find ways of using all of our resources, including our land, better. We think that the heirship situation should be simplified, but not in such a way that the land is lost to us and that there is no more income from it for our members. For that reason we hope that S. 2899 will be amended in such a way that there is no danger of Indian land being sold off that is needed to help our people.

Thank you.

Senator CHURCH. We appreciate your testimony very much. You can be sure that we will want to make certain that the bill involves no danger to the Indian landholders. I think that you are to be commended for the effort that is now being made to get a development program underway.

You know, I had a chance to meet with you and to speak to the Advisory Committee when it was first set up and it is an excellent committee. It ought to be able to give counsel and advice that will be most helpful to you in getting that program launched.

Mr. LOTT. Yes. I certainly appreciate all you have done for us.

Senator CHURCH. Thank you so much for coming.

Senator BURDICK. Mr. Chairman, I would like to ask the witness a question.

On page 2 you said:

* * * we tried to set up a land consolidation program about 10 years ago.

Mr. LOTT. Yes, about 10 years ago.

Senator BURDICK (reading):

We set aside some of our own money, which we wanted to use for land purchases. But the Bureau turned down our program at that time.

What was their objection to this?

Mr. LOTT. No reason given. We came here. There were four delegates at that time. That was in 1951 and we sat in with the Bureau officials and they said that is a very good program, so we said we would set up a small fund just to start with and as our money accumulates we will have that much more. They told us to go ahead.

We set up our machinery back home with two clerks, one in the field and one in the office. So we advertised what we were going to do just to start, and then we got a letter from the Commissioner's Office that they will not go along with that program. I had letters, but I was so rushed I could not find them. I could find that letter, I am pretty sure.

Senator BURDICK. Then no consolidation has taken place in the last 10 years?

Mr. LOTT. No. This is under credit loans.

The purchase of land will be approved only to members who will operate the land themselves.

Now we have some old people who would like to purchase the land because they think that has been their home for years, but the Bureau takes a different attitude. They would rather sell it to a non-Indian, but these old people would have to operate this land according to the language of this.

We fought that with the Bureau but we lost.

Senator CHURCH. In connection with your present program, any land consolidation plan that you come forward with may receive different treatment under the new administration.

Mr. LOTT. I hope so. That is what I understand. I hope so.

Senator CHURCH. Thank you so much for your testimony.

Mr. Ezekiel, would you like to add anything?

Mr. EZEKIEL. No, Mr. Chairman, I have no comments.

Senator CHURCH. All right.

It is nice to see you both.

Mr. LOTT. Thank you.

Senator CHURCH. Mr. Hans Walker, will you and your group come forward to testify?

Senator BURDICK. Mr. Chairman, I certainly want to welcome Mr. Walker to the committee. Mr. Walker is our North Dakota Commissioner and Reverend Fox is from the Three Affiliated Tribes in my State.

I want to welcome them to the committee this morning.

STATEMENT OF ROBERT FOX, CHAIRMAN, THREE AFFILIATED TRIBES OF FORT BERTHOLD RESERVATION, N. DAK., ACCOMPANIED BY HANS WALKER, JR., COUNSEL

Mr. Fox. My name is Robert Fox. I am chairman of the Three Affiliated Tribes of the Fort Berthold Indian Reservation of North Dakota.

We are happy to be here before the subcommittee to testify on behalf of our Indian people, the Fort Berthold Reservation.

In our delegation there are Mr. John Wilkinson, who is the head of the land enterprise committee; Mr. James Hall, who is head of the soil conservation committee; and also our attorney, Mr. Hans Walker, Jr., who is also a tribal member.

Mr. Chairman, we are aware of the seriousness of the heirship land problem involved, but this is secondary. The seriousness of the problem as to what it would mean to our Indian people is our first concern.

It would mean a depletion of our land base.

Mr. Chairman, we are situated in a peculiar situation. Our reservation is divided into five parts and this was created by the construction of the Garrison Dam. In the provision where it mentions consolidation this would mean that in order to qualify under the present provision in the bill we would have to let one or two more areas alone in order to consolidate one area, and this would place us in a very embarrassing position, so if the bill were to become law as the provision states, we would be in an embarrassing position, so with this I will turn the chair over to our attorney, Hans Walker.

Senator CHURCH. Mr. Walker.

STATEMENT OF HANS WALKER, JR.

Mr. WALKER. Mr. Chairman, Senator Burdick, Senator Gruening, my name is Hans Walker, Jr. I am an attorney representing the Three Affiliated Tribes of the Fort Berthold Reservation in North Dakota and I am here presenting the views of those tribes with regard to S. 2899.

At the outset, I should like to state that many members of the Three Affiliated Tribes are opposed to S. 2899 but we are going to suggest amendments to this bill. This would imply that we would approve the bill with the amendments, but we wish to state that even though all the suggested amendments would be adopted, our approval would be conditioned upon the availability of the sufficient funds to carry out the provisions of this program.

Our fear is that sufficient funds will not be available.

The Three Affiliated Tribes have experienced on several other occasions the lack of funds to carry out programs.

The reply to our request for funds under the revolving loan fund has been repeatedly that funds are not available.

It would seem that even though the entire \$50 million were appropriated, this would not be sufficient to meet the need of all tribes with the fractionated interest problem.

It seems also that the revolving credit fund is being diverted from the purpose for which it was originally intended; that is, for the economic development of the reservations.

If we must use all the available resources for the retention of our land base, we would be neglecting an equally important phase of our economy; that is, the development of industry and business on our reservations.

We suggest, Mr. Chairman, that there be established a separate fund in a sufficient amount for the purpose of carrying out the provisions of this bill.

In regard to specific sections of S. 2899, we suggest the following:

Section 1(a): We support the suggestion made by Attorney Marvin J. Sonosky that the Secretary may partition or sell land (1) upon the request of the owner of not less than 25 percent of interest in the land or when more than 10 persons own interests or (2) upon the request of the owners of not less than 50-percent interest in such land or fewer than 10 persons own interest.

Section 1(b): This section provides for sale only. We suggest that provision be made for administrative partition. Such a provision is necessary because there is a question as to whether the State of North Dakota would have jurisdiction under section 2 of this bill.

The North Dakota constitution was amended on the second attempt pursuant to the grant of jurisdiction under Public Law 280. The constitution and amendment state that Indian lands shall remain under the absolute jurisdiction of the United States.

It does provide further that the legislative assembly may provide for a separate jurisdiction as may be delegated by act of Congress.

This seems to me jurisdiction other than that over land from the fact that this was derived from Public Law 280. There has been no legislation by the legislative assembly accepting jurisdiction.

Senator BURDICK. In other words, Hans, you think that any partition would have to take place in Federal court?

Mr. WALKER. Yes. This provides for removal to Federal court, not initiating in Federal court.

Section 3 (b) : Since there are producing oil wells within the boundaries of our reservation we are concerned over the right of individual mineral owners to preserve their interests.

Under the bill as it now stands, the holder of a minute interest could force the holder of a large interest to sell his interest.

The right to meet the high bid as a practical matter would not be available to him in competing for the purchase of mineral interests. The bidding for such interests could be highly competitive because of the depletion deduction from mineral royalty income for tax purposes.

We also point out that the tribe is interested in the land for agricultural purposes.

Senator BURDICK. I think your point is that the tribe is interested in the land for agricultural purposes, but if you did not separate the minerals on a public sale someone would be bidding high for that land because of the minerals, not because of the land?

Mr. WALKER. Yes, that is my point.

We probably also could not justify a plan as required in section 7 of the bill for the purchase of mineral interests.

If an individual owner were given the right to retain his interest, it would seem that the holders of the larger interest would do so where those interests were valuable.

Senator CHURCH. You mean the mineral interests now?

Mr. WALKER. Yes.

Senator CHURCH. I do not think the bill as presently read denies anyone the right to retain mineral interests, but it might be well to spell that out in such a way that there is no doubt about the matter. At least there was no intention to prohibit the retention of mineral interests by the drafters of this bill, but we should take another look at the question to see that that is perfectly clear.

Mr. WALKER. Section 6 (f) : We suggest the costs of managing land borne by the tribe be limited to those costs over and above the costs of those services provided by the United States.

Section 11 : We are opposed to the provisions of this section.

Senator CHURCH. This does not come as any surprise.

Mr. WALKER. This section prohibits any multiple conveyance or devise. It would seem that the committee might have considered at least providing for devisee or conveyance as joint tenants with the right of survivorship. This does not add to a heirship problem. In fact, we think that you might draft a bill with one paragraph saying that all future conveyances and devisees will be made as a joint tenant with the right of survivorship and this would take care of the whole problem. No, I did not really mean that.

Senator CHURCH. I wish there were something simple to take care of this whole problem.

Senator BURDICK. You draw that up.

Senator CHURCH. If you get one paragraph that will solve the heirship problem, we want to have it.

Senator BURDICK. Seriously, that is a very good suggestion. That would certainly limit it a lot. No matter how many joint tenants you had, there would be one in the end.

Mr. WALKER. That is right.

Senator BURDICK. That is a very good suggestion and it is worthy of consideration.

Mr. WALKER. Those were our views, Mr. Chairman.

Thank you.

Senator CHURCH. Thank you very much for your suggestions.

We have taken due note of them. We will give them serious attention.

Mr. WALKER. Thank you.

Senator CHURCH. Is Mr. Lawrence E. Lindley, general secretary of the Indian Rights Association of Philadelphia, here?

Mr. Lindley.

**STATEMENT OF LAWRENCE E. LINDLEY, GENERAL SECRETARY,
INDIAN RIGHTS ASSOCIATION, PHILADELPHIA, PA.**

Mr. LINDLEY. Mr. Chairman and members of the committee, I want to express appreciation for the opportunity of being heard here this morning. My name is Lawrence E. Lindley. I am general secretary of the Indian Rights Association, 1505 Race Street, Philadelphia, and appear here today on behalf of the association.

There will be quite a bit of repetition in the testimony that I have to offer, but I think I will get along faster if I just go ahead and give the statement that I have prepared.

Senator CHURCH. All right.

Mr. LINDLEY. The heirship land situation is widely recognized as one of the most difficult problems facing Indians and administrators having to do with Indian affairs. It is important that the policy that has been stated by the Interior Department with regard to the use and management of Indian trust and restricted lands be kept constantly to the fore. This policy, stated broadly, is to use the lands productively for the support and advancement of the Indian people and to find a solution to the heirship land problem that will allow the land to be used by the Indians to the maximum extent feasible.

The heirship land situation stems directly from the allotment policy which was generally opposed by the Indians. The policy was unilaterally imposed upon the Indians by the Federal Government. Thus, the Government has the responsibility to correct a situation that has been detrimental to the Indians.

The proposed bill S. 2899 is, in our judgment, a great improvement over S. 1392 on which I testified on August 10, 1961.

However there are in the present bill (S. 2899) some provisions that we fear may prove very harmful to the Indian community in which heirship land is located. I would like to point out these provisions, comment on them briefly and suggest changes that we feel should be made.

We believe the provision for sale of heirship land by the Secretary upon the request of one shareholder should be amended to provide that sale should be subject to a request for such sale, or consent to the sale, by a majority of the ownership of the given piece of land. The owner of a small share that had comparatively little value might press for a sale of a large tract of land with scant sense of responsibility or concern for other owners and for the tribe.

Instead of the simple provision, made in a number of places in the bill, that the Secretary may sell the land if—

a sale would be in the best interests of the Indian owners—

there should be the requirement that the Secretary may sell the land—

if he makes a positive finding that the sale would not be detrimental to the best interests of the Indian owners or to the local Indian community.

We feel that there are not adequate provisions in the bill to protect the interests of tribes that may wish to purchase heirship land as it is put up for sale. The authorization for an increase in the loan fund and the provision that the terms of the act shall not become effective for a year after enactment do not assure that funds will be available when tribes need to borrow money for land purchases. In view of the fact that authorization does not actually make money available, the bill should provide that the act shall not become effective in any given community unless and until funds are available to the tribe in question to purchase the heirship lands needed to protect its economy and to provide for its land development program.

Under certain conditions, which would include the consent of the persons selling land, there should be provision for tribes to buy land on deferred payment plans so that payments could be made out of income from the use of the land.

In some instances installment payments would have an advantage for the sellers of the land, as, for example, elderly Indians or others who need an income over a number of years.

We believe that the provisions of section 11 of the bill are not only not necessary but that they are harmful. The section points toward termination and is in direct conflict with that part of the purpose of the section stated as follows—

to provide maximum opportunity to retain such lands for use by the Indians.

Section 11 has to do with trust or restricted land owned by one individual at the time the act becomes effective. It provides that if title to such land is transferred after the date of this act, either during the lifetime of the owner or by devise or inheritance after his death, to two or more persons, it shall be in unrestricted status. (In the case of inheritance the heirs could ask for division or sale under the general provisions of this act, but if they failed to do so promptly the Secretary must issue an unrestricted deed or patent.)

Section 11 is not needed because the provisions for the sale of land in multiple ownership will continue indefinitely into the future. Perhaps that is assuming that the act would not be amended. In other words, any piece of land transferred in trust to two or more persons would immediately be subject to the sale provisions of this bill. The same would be true for land inherited by a number of heirs.

As we have pointed out repeatedly in other places, history shows that land from which trust protection is removed almost invariably passes out of Indian ownership. It should also be added that such land as would be legislated for in section 11 may well be key tracts that are an essential part of economic units owned by Indian individuals or tribes. We therefore urge that section 11 be stricken from the bill.

In conclusion I would again emphasize the importance of finding a solution to the heirship land problem that will allow the land to be

used to the fullest possible extent for the support and advancement of the Indian people.

Senator CHURCH. Thank you, Mr. Lindley.

Any questions, Senator?

Senator BURDICK. No.

Senator CHURCH. Is Mr. Lewis Goodhouse here, of the Sioux Tribe, and his delegation?

Senator BURDICK. Yes; he is here.

Senator CHURCH. We want to welcome you here, Mr. Goodhouse.

STATEMENT OF LEWIS GOODHOUSE, CHAIRMAN, SIOUX TRIBE OF FORT TOTTEN, N. DAK.

Mr. GOODHOUSE. Thank you.

Senator BURDICK. And I want to welcome you, too.

Mr. GOODHOUSE. My name is Lewis Goodhouse. I am chairman of the Sioux Tribe of Fort Totten, N. Dak.

Our reservation has a population of about 1,400. More than 37,000 acres, most of the reservation, is now in heirship status. More than half of that land is farmland; some of it is grazing land, some of it forest land. To our people the income from this heirship land is very important. That is why we don't want it to be sold off. If it is put up for sale, our people won't have the money to buy it. This means that the land is going to be bought by non-Indians. After that it would be that much harder for our own people to get by.

I would like to ask this committee to change this bill S. 2899 so that there won't be any danger of our land being sold off. We would like to simplify the heirship situation, but the only way to do it is to give our tribe a loan so that we can buy these heirship tracts when they come up for sale.

Our people don't have a chance to earn much money. I hope that this committee and the Indian Bureau will find ways for our people to earn more. But if the land is sold off, we are going to earn less and life is going to be much harder for everybody.

This is my statement.

Senator CHURCH. Thank you, Mr. Goodhouse, for your statement. Have you any questions?

Senator BURDICK. No; I think he states his position quite well.

Senator CHURCH. I think one of the best suggestions that has come out of this hearing for this committee to consider is that suggestion that would write into the bill a provision that the bill would not, whatever form the bill may take, take effect until money is actually available to implement it.

Senator BURDICK. That was brought out very clearly by Mr. Walker.

Senator CHURCH. Yes. That is something we will have to consider very carefully.

We appreciate your testimony very much, Mr. Goodhouse.

Mr. GOODHOUSE. Thank you.

Senator CHURCH. I understand there are members of the Crow Tribe here this morning that want to testify.

Would you gentlemen please come forward?

STATEMENT OF EDISON REAL BIRD, VICE CHAIRMAN; ACCOMPANIED BY PHILIP BEAUMONT, FORMER SECRETARY; EDWARD P. WHITEMAN, FORMER CHAIRMAN; ROBERT BENDS, DELEGATE; AND DONALD DEERNOSE, DELEGATE, CROW TRIBE OF INDIANS, AND AREA VICE PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. REAL BIRD. Mr. Chairman and members of the committee, my name is Edison Real Bird. I am vice chairman of the Crow Tribe of Indians and appear in my official capacity. The Crow Tribe has studied S. 2899 and by its Resolution 62-21, passed unanimously on February 2, authorized and directed me and the rest of the Crow tribal delegation to appear in opposition to the bill. The rest of our delegation, all of whom are present with me, are Philip Beaumont, a former secretary of the tribe; Edward P. Whiteman, a former chairman of the tribe; Robert Bends; and Donald Deernose, area vice president, National Congress of American Indians.

The tribe vigorously opposes S. 2899. We believe that the bill is vastly more far reaching than appears upon the surface. Ostensibly, the bill is merely intended to resolve administrative problems of undivided Indian heirships. But its practical effect will be a constant loss of lands within the reservation which will pass from Indian to non-Indian ownership.

The bill must be appraised in the light of the heritage and experience of the Crow Tribe. Our tribe is among those fortunate tribes of Indians living in their ancestral home. Our tribe is not rich and our reservation is neither extensive nor capable of producing great wealth. But it is our ancestral home and so long as we retain our present land base we can maintain our traditions and our heritage. We will have the spiritual base which the Crow Tribe needs. The more venturesome members of the Crow Tribe, now and as the years go by, may desire to leave our reservation and take their chances on competing in a white society. They have this opportunity. But there are now and will be in the future many Crow people who either cannot or do not wish to leave the reservation and attempt assimilation in non-Indian society. The Crow Tribe must maintain its ancestral homeland for the benefit of such people.

Bitter experience has taught us that we must constantly be on guard to preserve our heritage. Our most important responsibility is to preserve our home for ourselves and our children. We must resist any further encroachments upon our ancestral home. We must oppose all legislation whose practical effect will be the rapid displacement of Crow Indian families from the existing Crow Reservation and the substitution of non-Indian ownership for our traditional lands.

This honorable committee may be aware of portions of our Crow history. Our first treaty, that of Fort Laramie, was signed with the United States in 1851. The treaty recognized our ownership of extensive areas in Montana and Wyoming. Various subsequent treaties—for violation of which we have now been partially compensated—so reduced our lands that our present reservation is a mere 5 percent of our original treaty-guaranteed homeland.

The general allotment act providing for allotment of our reservation was passed in 1920. It included provisions designed to assure substantial Indian ownership of our reservation. Section 2 of this act—the Crow Allotment Act of 1920—made it a criminal offense for a non-Indian person to accept a deed which would make him the owner of more than certain limited amounts of agricultural or grazing lands. Any such deed was declared void. Today that law is still on the books. But there are large wheat and cattle companies owning over 100,000 acres of Crow Reservation lands. The Government has simply refused to enforce the law.

So you will see that this matter of land ownership is a problem as to which we Crows are very sensitive. We want to preserve our reservation in Indian ownership. We appraise any bill from that viewpoint. Will legislation help us preserve our reservation in Indian ownership? Or will it make it easier for non-Indians to acquire our lands? This is the standard to apply. We want to hang on to our own.

That is why we oppose this bill. It will not help us keep our land base. It will make it easier for non-Indians to acquire our lands. The bill purports merely to solve problems arising when land is left to more than one heir and at least one of the heirs desires the partition of the devised land. The bill would then permit the Secretary of the Interior to dispose of the land at public sale in order to meet the wishes of the heir who wants to reduce his inheritance to immediate cash.

But what appears upon the surface to be merely an attempt to solve heirship problems is obviously a blow at the integrity of our reservation. Indians have large families and in only a relatively short period of time the operations of this bill would require the sale of a great deal of land within the Crow Reservation. Inevitably, one of many heirs will desire cash. One alone can force a partition or sale. Inevitably, there will be many sales. Inevitably, land sold will pass on sale into non-Indian hands. As this process proceeds, we will lose our ancestral home and the spiritual base which we think is so vitally important.

We are well aware that the bill involves certain safeguards under which other Indians, or the tribe itself, are free to meet a high bid and thus retain the lands in ownership. This will not be availing. Indians seldom have ready cash.

Over a period of years we would not be able to compete with our economically stronger non-Indian neighbors at these public sales. Every time a landowning Indian died, it would create the strong possibility that his land would pass out of Indian ownership and into non-Indian hands.

The Crow Tribe is now operating under legislation which is satisfactory and which meets our desires and our situation. I refer to the acts of June 8, 1940 (54 Stat. 252) and July 1, 1948 (42 Stat. 1215) which give us the authority to buy heirship lands. From a recent claims judgment in favor of the Crow Tribe, we have set aside \$1 million for a purchase and resale program. The Crow Tribe now has adequate resources and credit to deal with any problems created in situations where some of the heirs of a deceased Indian landowner wish to capitalize immediately upon their asset. The Crow Tribe will

be prepared to buy fractionated heirships, where necessary, and to set up a program for disposing of lands on a basis giving preference to individual heirs of the deceased allottee.

We believe the situation on our reservation to be now satisfactory. We see no reason for altering it by new legislation. We are particularly opposed to altering this situation in the light of our very genuine fears about S. 2899. We think it would be a betrayal of our children to accept legislation whose clear effect would be to strip away land from Indian ownership and deliver it to non-Indian owners.

We agree with the testimony of others that section 11 is not in the interest of the Indians. This section forces unrestricted patents of lands without the consent of the owners, and again will result in increased non-Indian ownership. As a general rule individual members of the tribe are not financially equipped to litigate and protect their interests.

In all events, S. 2899 should not have compulsory general application. What is good for some Indian tribes, given their circumstances, might be very injurious to others. If there are tribes which desire legislation of this type, it should be readily possible to limit the application of the bill to those tribes who desire it. The Crows, as I have said, are opposed to it. They should not be required to accept what they do not believe fits their circumstances and what they genuinely fear.

That concludes my statement, Mr. Chairman, and I would like to introduce my former chairman of the Crow Tribal Council, who is a vice president, National Congress of American Indians, and a past president of the Affiliated Tribes of the Northwest, Mr. Edward P. Whiteman.

Senator CHURCH. Mr. Whiteman.

STATEMENT OF EDWARD P. WHITEMAN, VICE PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. WHITEMAN. Mr. Chairman and gentlemen of the committee, I certainly am grateful for this opportunity to appear before the committee and express the views of my people of the Crow Nation.

First of all, I would like to have it understood that under existing law, namely, the act of July 1, 1948 (62 Stat. 1215), the Secretary of the Interior does have ample authority to transfer the interests in inherited lands to the United States in trust for the Crow Tribe with the proviso that tribal funds of the Crow Tribe are available for payment of the purchase price.

I would personally feel that in order to implement any kind of the fractionated heirship bill before it became law, adequate funds should be set aside by each tribe for that particular purpose so that their interests would be protected.

Also, Mr. Chairman, I would like to state further that the Crow Tribe is presently seriously considering changing its constitution and bylaws so that the tribe will be in a position to acquire land as well as resale to the individual members of the tribe. Resales by implication will not be favored.

We feel that the existing laws which are applicable to the Crow Tribe should be maintained so that we can proceed accordingly.

Under the judgment funds recently made available to the Crow Tribe, we have set aside \$1 million in establishing the land purchase program. However, I personally feel that there will be additional amounts needed to further implement the purposes of the land purchase program and that in the future as we go along and as future developments occur, with respect to the use of tribal funds under our land purchase program, there will be a time when we will have to try to again use Federal funds to augment tribal funds.

With that, I conclude my statement, Mr. Chairman.

Thank you for this opportunity.

Senator CHURCH. Thank you very much for coming.

Mr. REAL BIRD. Mr. Chairman, I have a statement from my chairman of the Crow Tribe who is not able to be present due to other commitments at the reservation but here is a statement.

Senator CHURCH. We will include the statement in the record at this point.

Mr. REAL BIRD. This is a joint statement of all concurring in the statement I made.

Senator CHURCH. This statement has been signed and will be included in the record as read.

Thank you very much, gentlemen, for your testimony. We appreciate having you.

(The statement is as follows:)

STATEMENT OF JOHN B. CUMMINS, CHAIRMAN OF THE CROW TRIBAL COUNCIL OF MONTANA

MARCH 30, 1962.

COMMITTEE ON INDIAN AFFAIRS,
U.S. Senate,
Washington, D.C.

GENTLEMEN OF THE COMMITTEE: On behalf of the Crow Tribe of Indians, and as chairman of the Crow Indian Tribal Council, I find it necessary to make the following statements relating to S. 2899 which was introduced by Senator Church on February 26, 1962, in the Senate of the United States, 87th Congress, 2d session.

In the first place, I deem it necessary to call to your attention the provisions of the Crow Allotment Act of June 4, 1920 (41 Stat. 751), as amended by the act of May 26, 1926 (44 Stat. 658), and as further amended by the act of March 15, 1948, Public Law 444 of the 80th Congress. By virtue of the May 26, 1926, amendment, and the subsequent March 15, 1948, amendment, any Crow Indian classified as competent may lease his or her trust land or any part thereof or the trust lands of their minor children for farming and grazing purposes for a period of 5 and 10 years. These leases are commonly known as competent Indian leases and a large portion of the allotted lands on the Crow Indian Reservation are now leased under these competent leases. Further, under the aforesaid amendments, provision is made that leases on inherited or devised trust lands having five or less owners may lease the lands for 5- and 10-year periods under the conditions set forth in the statutes. Assuming that a tract of land was under a lease for a 10-year term and one Indian owner of an undivided interest in the lands consented to judicial partition or sale of the tract of land. Under section 2 of the proposed bill, S. 2899, judicial partition or sale of the tract of land could be forced while the 10-year lease was still in effect. The 10-year lease being in effect, it is evident that a sale under the partition proceedings would be greatly affected and the full value of the lands could not be obtained at a partition sale. This is true because bidders upon the land in most cases would not care to purchase the lands if there were a 10-year lease outstanding.

Therefore, it appears evident that a special fractionated heirship bill should be passed with respect to the Crow Indian Reservation in order to meet the aforesaid objections.

Next, under section 2 of the proposed bill, an owner of an undivided interest in allotted lands could force partition proceedings or judicial sale in accordance with the laws of the State of Montana, and require Indians to have their rights adjudicated in the State court. This is wholly against the provisions of the treaties which the Crow Tribe made with the United States, as it was never intended that a member of the tribe could be forced to have his rights adjudicated in a State court.

Under section 4 of the act, the Secretary of the Interior is authorized to represent any Indian owner, " * * * whose ownership interest in a decedent's estate has not been determined, * * *." Assuming that an Indian owned a large percentage of the interests in a tract of land as an heir or devisee. This would give the Secretary the right to proceed with the partition sale without the consent of such Indian owner merely because the title to the lands was in a decedent estate status.

Under the provisions of section 8 of the proposed bill, it is provided that the Secretary shall approve no plan pursuant to the act which contains any provision that will prohibit or delay a termination of Federal trust responsibilities with respect to the land during the term of the plan. We believe that there should be no provision of law which will force termination of Federal trust of Indian lands. In other words, we believe that the trust status of Indian-owned lands should always be maintained until the Indian owners elect to have the lands owned in a status other than a trust status.

Again, under subsection (2) of section 11 of the proposed act, the Secretary of the Interior could force the issuance of an unrestricted deed or patent to allotted lands against the will and wishes of heirs and devisees of a deceased Indian.

Therefore, we object to the bill for the reasons hereinbefore stated and we submit to the committee the necessity of enacting a special fractionated heirship bill relating to the Crow Indian Reservation.

Respectfully submitted.

JOHN B. CUMMINS,
Chairman of the Crow Indian Tribal Council.

Senator CHURCH. Is Mr. Donald R. Ames in the room?

Mr. AMES. Yes.

Senator CHURCH. Mr. Ames.

STATEMENT OF DONALD R. AMES, CHAIRMAN, BAD RIVER TRIBAL COUNCIL, BAD RIVER BAND OF CHIPPEWA INDIANS, ODANAH, WIS.

Mr. AMES. I do not have any fancy notes, but may I have your consent that I be able to extend and revise my remarks?

Senator CHURCH. Yes. In view of the fact that we are practically running out of time, if you would prefer to abbreviate your statement in oral form, then you will have adequate opportunity to extend your remarks and supply them in written form for the record, so it would accommodate the committee if you would do that.

Mr. AMES. Thank you, Senator. I have done this already, condensed my statement somewhat.

Senator CHURCH. Fine.

Mr. AMES. My name is Donald R. Ames. I am chairman of the Bad River Tribal Council, Bad River Band, Lake Superior Tribe of Chippewa Indians located in Odanah, Wis. I am also spokesman and secretary-treasurer of the Great Lakes Inter-Tribal Conference which has been formed within the past year representing Chippewa, Potawatomi, Oneida, Stockbridge, Winnebago, and Menominee Indians located in Wisconsin, Michigan, Illinois, Minnesota, and Iowa.

In regard to my testimony before you, I realized that all tribes would need to prepare for the eventual relinquishment of the Federal trust responsibility over the Indians.

To take as little of the committee's time as possible, I therefore prepared and condensed a statement that deals briefly with the past, present, and future, hoping to show to the committee wherein such testimony deals directly with the heirship problem that is before us today.

I wish to touch briefly on S. 2183, the submarginal lands bill, which I understand is not on the agenda, but I hope it will not be ruled immaterial or not germane.

Senator CHURCH. We are hoping to hold a hearing on that bill later this week, at which time your comments, if you are available, would be more pertinent than on this occasion.

Mr. AMES. Thank you.

Mr. Chairman, I must begin with an apology. I have been victimized with a misguided image. This image comes from the reading of the wrong section of the Sunday newspaper. The Sunday newspaper has at a certain section a cartoon entitled "Grin and Bear It," and this particular cartoon portrays any Congressman as a rather stout individual with the string necktie, pince-nez glasses at the end of his nose, and being a rather pompous individual.

In my first invitation into this highest echelon, Mr. Chairman, I was pleasantly surprised to meet our charming, cheerful, courageous, chivalrous, and compassionate Chairman Church, and this also goes for Senator Burdick and others. I feel that I know all of the members of the Interior and Insular Affairs Committee just from reading of its activity in the Congressional Record.

I know Mr. Metcalf better perhaps, although I have never met him, for his ceaseless efforts while in the other body to obtain constructive Indian legislation.

I am sure that throughout America all Indians felt a great loss in the death of Senator Murray, but we were heartened to learn that the people of the State of Montana saw fit to have Mr. Metcalf in the large void caused by his passing.

In the last session of Congress I have been appalled by the majority vote of this committee for resolution 12 which was an extension of House Concurrent Resolution 108. "HCR" means "horribly compulsive resolution."

It was then felt that hopes for obtaining any further coming beneficial legislation was gone. However, after closely studying and evaluating the hearings of this committee and S. 1392, and all the previous hearings, I then came to be aware of the tremendous effort this committee has put forth to find a practical and sensible solution to both the heirship problem and the Indian problem in general.

In coming here today I feel that these can be the golden years for Indian legislation. The first time any of my people came to Washington was in 1850 when my great-great-grandfather, Chief Buffalo, came to see President Fillmore to protest the Presidential removal order of that year. This order was a catalyst that came the closest to precipitating war between the then powerful Chippewa Nation and the Lummi. The Chippewas had always before fought on the side of the United States. That meeting resulted in the formation of our reservation.

Now, evidently it is apparent that this removal order is still in effect because it seems like I am the only representative here from this side of the Mississippi.

To successfully accomplish eventual termination, the first step would seem to be to adopt a sound and stable policy into law similar to that suggested by Mr. Wilkinson and appearing on page 182 of the S. 1392 hearings and already discussed here as the Indian point 4 program. Without such a law, and, Mr. Chairman, you touched on this yesterday, it is possible that future Congresses and administrations could revert to the ruthless interpretation of House Concurrent Resolution 108. To have that before a sound foundation is laid for termination would be disastrous.

The only persons who believe that the Indians cannot retain their true American heritage and culture are non-Indians.

Secondly, the economic base of each reservation must be secured through the enticement of industry on the reservation and through the development of existing human and natural resources.

The Operation Bootstrap bill, H.R. 313, introduced by Mr. Berry, may be a means to this end. By having worked on our reservations we will not lose our most able young people as they graduate from school and relocate in urban areas. They must be educated for the future complex administration of tribal enterprises.

Finally, then, the heirship problem will stand ready to be solved.

In reading between the lines of the hearings on S. 1392 there seemed to be a question by the committee of why in the almost 150 years existence of the Indian Bureau the trust responsibility over the Indians could not now be ended.

This question is more complex than I am qualified to answer, but I can give you a slight insight on the problems concerned on our own reservation. I will make allusions to the past administration of the Bureau, but please in no way take my remarks to include our present Secretary or Commissioner. It is my personal feeling that in his duties Dr. Nash will equal or surpass the stature of a John Collier. I do not say that just because he is from the State of Wisconsin. After the passage of the abominable Allotment Act it was not until in around 1890 that our people were approached on accepting the act. The lumber interests along with the Indian agent approached the destitute community with promises of great wealth to the individual from timber sales. The people leaped at the chance. Alloting the land then began.

This would not have been so bad except that the "agency farmer"—and that is in quotes—at the time was in cahoots with the head men of the tribe in charge of the standard under-the-table price of \$250 for the choicest allotments. This is substantiated in a book entitled "Indians in Wisconsin," published as a result of joint investigation by the Senate and the House in 1907 and 1909 headed by the late Senator Bob La Follette. There was recently uncovered a letter of that time to one of the head men from a man residing in St. Paul. That said in part: "Enclosed find check for \$250. Please pick out a good allotment for me that I can sell right away."

A new farmer who is a friend of the superintendent at that time was then later appointed who had been a longshoreman and knew as much about farming as Nikita Khrushchev. The timber money began coming in. The people of the reservation could only get their money from the agency with an approved voucher by the farmer. This money generally covered living expenses. And the people also were

urged to begin farming at this time. This was a fine idea except that the farmer did not know the first thing about farming, but he did, however, develop a system. When an Indian wished to purchase a team of horses he could see the horse dealer who had a previous arrangement with the farmer. A team worth \$500 could then be sold to the Indian for \$800 with the farmer being cut in on the extra profits.

This arrangement also prevailed when the Indian asked to build a house, a new barn, or buy machinery or livestock. Purebred cows and pigs were shipped in by the carload.

The farms prospered so long as the timber money kept rolling in and a false sense of security prevailed.

Allotment earnings as much as \$75,000 were not uncommon and that is per 80 acres, even though there appeared to be some collusion between the Indian agent, Government scalers, and lumber company whereby the allottees were not given the full timber scale.

The richest allottees had the fanciest homes and farms. There was no attempt by the farmer to teach economical farming practices to the Indian farmers nor an opportunity for the Indians to teach these nonexistent practices to their children.

In 1920, when all the choice timber was cut the logging operations that had been running night and day for almost 30 years ground to a standstill. So did the farmers. The people were again destitute.

Then in 1926 came the congressional approval for the Brookings Institution investigation that resulted in the Merriam survey. This piece of Indian legislation was the best in the history of America and it then resulted in the passage of the Indian Reorganization Act of 1934.

The self-governments then formed were governed by some of the older allottees or their children, many of whom had no formal education or experience in business administration.

In later years, what with World War II and other crises, an apathy developed in Washington toward helping the Indians help themselves. This apathy reached its lowest point in 1953 with the passage of the resolution.

The heirship bill before us today provides that with the purchase of such land a land-use program must be adopted and governed by the tribes. Who will govern this program? With 2 years of college, and I am considered the highest educated member of our tribal council, I know nothing of forestry or business management. We must train our best young people and not lose their potential in a relocation program. They must be skilled in accounting, bookkeeping, forestry, and business management. This will take a good many years.

In the meantime, however, we can do the best we can with the lands which we have purchased with our tribal funds in the past few years, such funds varying from zero to \$5,000.

We can begin right away with the sawmill on our few tribal acres if Dr. Nash will consent to amending existing forestry regulations.

Next, the releasing of 13,000 acres of submarginal land will help to prepare us to manage the larger land base expected with the passage of a constructive heirship bill. This bill would beneficially affect many reservations in the Great Lakes area as well as many tribes represented here today.

Since the news of S. 2183 has leaked out, we have been approached by a number of firms who are willing to put in sawmills and employ Indian labor.

The most economically beneficial of these efforts, of course, would be the acquisition of a plant that would make a finished product from our raw timber, thereby keeping an additional payroll on the reservation.

From the testimony already received and I want to compliment the committee for receiving the very many wonderful ideas, and I will not repeat them. It seems to me that the one major problem that concerns all tribes is conserving trust land in Indian ownership.

I would suggest an amendment in the form of a substitute that would contain a policy clause as suggested by Mr. Wilkinson to assure that future Congresses will not again revert to a House Current Resolution 108 and thereby be able to carry out the recommendations of the Meriam report.

Secondly, that the bill specify or emphasize land consolidation instead of partition or sale. The words "land sale" always signifies a deed with wings forever lost to tribal ownership.

Lastly, I would recommend that shares of stock be issued in exchange for land. Congressional approval would have to be had in the form of a loan to the tribes to back up the issuance of stock.

On the way in from Chicago I had the opportunity of sitting with a young man who informed me that when stock is issued dollar value must be in the Treasury to back up this issuance. I suppose that is similar to the issuance of a silver certificate as a dollar bill, as a silver dollar has to be in the Treasury.

In the hearings on 1392, one committee member thought that certificates of interest would not meet the just compensation requirement. The issuance of shares of stock, however, would satisfy this requirement and assure the share holders and their children of future income.

Mr. Chairman, I am not too familiar with the complexities of protocol concerning the Senate, but I feel that a simple bill can be presented that will meet the needs, and I say "simple" hopefully, of all tribes confronted by the heirship problem. Some will need financial backing from the revolving loan fund. Some will not.

I therefore suggest that inasmuch as we have so many delegates present today and with the concurrence of the committee we might meet immediately with the Commissioner, representatives of the Solicitor's Department, Mr. Gamble, tribal attorneys, and delegates, and attempt to draw up an amendment in the form of a statute that will guarantee our basic needs. By doing this right now it may eliminate additional hearings before your committee.

Thank you.

Senator CHURCH. Thank you very much, Mr. Ames. I am sure that while you and other Indian spokesmen are here in the city the Indian Bureau will be very receptive to any suggestions you have to make.

I want to say this: That the purpose of this committee from the beginning has been to try and find a solution to this vexing heirship problem that would not jeopardize the Indian land base and that would not constitute any threat to Indian trust property.

We commenced with a bill that had many defects. Our hearings demonstrated that last year. We utilized those hearings and the testimony of the Indian people to come up with another proposal on which we are conducting the hearings now. I think that there is general agreement that the pending bill eliminated many of the problems that the original bill contained, but it is also obvious from the hearings and from the testimony we have received from so many Indian tribes that there are serious defects in the present bill also.

I do not expect we will get the heirship problem solved this year. It has been a long time building. It will take careful and cautious legislation to solve it, but the only way we will ever get that kind of legislation is through this process.

On the basis of our testimony in the past 2 days, I think it is obvious that we need to give further consideration to the pending bill and that we need to carefully evaluate the many proposals that have been made, and I think it highly unlikely that we will take action in this session, but the hearings will, nevertheless, give us the basis for working further improvements into this legislation so that perhaps we can come up next year with a satisfactory bill that meets with the general approval of the Indian people and also will prove helpful in correcting this worsening heirship problem. That is how democracy functions, on the basis of hearings of this kind, and your testimony and the testimony of others yesterday and today has been most helpful to the committee.

We will also be in close contact with the Indian Bureau.

Mr. AMES. Thank you, sir.

Senator CHURCH. I have a problem. I am scheduled to speak on the Senate floor in just a few minutes to another matter and Senator Burdick has consented to chair this hearing this afternoon commencing at 2:30, at which time we would hope to hear the remaining witnesses.

As an accommodation to the Indian people who are here in the city at this time and as a preliminary to further hearings on the submarginal land bills, we want to hold a hearing this afternoon because a number of witnesses have asked to be heard on that subject while they are in town.

We will not hear the departmental witnesses or other witnesses who will follow at a later time, but we do want to accommodate those Indian people who would like to testify and who have asked to testify, and for that reason after the completion of the consideration of the heirship matter, the committee this afternoon under Senator Burdick will take up and consider the two pending submarginal bills, S. 2183 and S. 1925.

Therefore, any of you who would like to testify on either of those two bills are invited to do so.

There will be further hearings and further notice before the committee takes action on those bills.

How many witnesses are there who are still to be heard on the heirship matter?

Two. Can you come back this afternoon at 2:30 when Senator Burdick will continue these hearings?

Mr. MOSES. If you could just give us a few minutes I think we could introduce our delegation because our time is limited.

Senator CHURCH. I have a problem, too, in that I have to consider and we will continue the hearing for witnesses who have not yet been heard this afternoon, but how long will it take you to present your testimony at this time?

Mr. MOSES. Actually, I do not know what Mr. George has, but as far as I am concerned all we will need is about 5 minutes.

Senator CHURCH. All right, if you will come forward, we can give you 5 more minutes and then we will adjourn this morning and take up the matter again at 2:30 this afternoon.

STATEMENTS OF HARVEY MOSES, CHAIRMAN, AND FRANK GEORGE, DELEGATE, COLVILLE CONFEDERATED TRIBES OF THE STATE OF WASHINGTON

Mr. MOSES. Mr. Chairman, Mr. Gamble, my name is Harvey Moses, chairman of the Colville Confederated Tribes, State of Washington.

I am glad to say that we are one of the largest tribes probably in existence in the Northwest.

I would like to introduce the members of our delegation: Mrs. Shirley Palmer, Mr. Melvin Stensgar, and Mr. George, who is sitting next to me here.

I have a brief statement to make in reference to S. 2899 because time is of the essence. We have a long statement which would be repetitious of what perhaps has already been expressed and pretty much in the same line.

We realize that the heirship problem is getting to be a serious problem but, as other tribes, we do not agree with a number of portions of the bill which if enacted in its present form would tend to encourage the alienation of Indian properties.

I would like to comment briefly on several sections which we are particularly interested in.

One is section 1(a). We do not believe in giving just any one member the right to alienate the other members' properties, and as to the next section which dealt with tribal constitutions, actually we have a program on the Colville which is a land consolidation program and this program has been working pretty successfully; that is, with one exception, that we have had lack of funds, but the way your present section reads this would not help our cause because we do not have a general council on our reservation. We have to operate under the constitution and bylaws.

Actually, I believe those are the only two sections we are really concerned about, except that section 11 we do not go along with.

Mr. George?

Mr. GEORGE. Mr. Chairman, my name is Frank George from the Colville Confederated Tribes, but just briefly, I believe that we could say that we would like to associate ourselves with the testimony offered by Dr. Nash, the Commissioner of Indian Affairs, yesterday and also a very short statement that was made by Owen Panner, attorney for the Warm Springs Tribes, and that very much covers our feelings in this matter and, as Mr. Moses says, we are opposed to his section 11 and hope it is deleted by the Congress.

Thank you very much.

Senator CHURCH. Thank you very much, gentlemen.

I think I will not be able to wait now and if it will not inconvenience you people too much we will put this over until this afternoon because of the time factor.

Senator Burdick will preside and take your testimony at 2:30 this afternoon and then he will move on into the submarginal lands bill.

The meeting will be adjourned, then, until 2:30 this afternoon.

(Whereupon, at 12:35 p.m., the subcommittee adjourned, to reconvene at 2:30 p.m.)

AFTERNOON SESSION

Senator BURDICK (presiding). We will resume our hearings. Is William Howard Payne present?

STATEMENT OF WILLIAM HOWARD PAYNE, GENERAL COUNSEL TO THE CHEYENNE ARAPAHO INDIAN TRIBES OF OKLAHOMA AND CHEYENNE RIVER SIOUX TRIBE OF SOUTH DAKOTA; ACCOMPANIED BY CLARENCE RUNS AFTER, TREASURER OF THE TRIBAL COUNCIL

Mr. PAYNE. Mr. Chairman, I am William Howard Payne, appearing as general counsel to the Cheyenne-Arapaho Indian Tribes of Oklahoma and Cheyenne River Sioux Tribe of South Dakota.

These tribes express their heartfelt appreciation to your subcommittee for the wonderful factfinding effort that has gone into this work in this proposed legislation.

I know from my own experience of the past 25 or so years dealing with Indian matters that I don't believe heretofore I have seen such a massive factfinding effort as your subcommittee has accomplished, together with your professional staff.

The tribes I represent also express their very great appreciation for the report of the Commissioner of Indian Affairs. We feel that his report is marvelous, moving, sweeping, and comprehensive.

Generally speaking, the tribes I represent are in general accord with the report of the Commissioner of Indian Affairs and with the amendments for the most part presented by John Crow at yesterday morning's session.

We have here today a representative from the Cheyenne River Sioux Tribe, Mr. Clarence Runs After, who is treasurer of the tribal council, and we have Mr. Eugene Woolworth who will not be speaking before your committee today but Mr. Runs After has a few brief remarks following my own if it please the chairman.

The Cheyenne-Arapaho Tribes in Oklahoma formerly held 10 million acres of land in trust and other recognized title. For a period of some 47 or 48 years, which ended in 1938, the tribes were landless.

An effort began some time in the 1930's and after some 25 years and about five actions of the Congress, there is now in tribal ownership in Oklahoma by the Cheyenne-Arapahos some 10,000 acres of land.

For the same period, having tribally lost ownership in more than 10 million acres of land, there was an acreage something in excess of a half million acres in individual allotments.

In the period since those allotments were granted in 1891 to date, 80 percent of those allotments have gone into nontrust or fee simple status outside Indian ownership.

About 15 years ago, Chief Jesse Rowledge with the cooperation of the Bureau of Indian Affairs, the area office that existed at that time and the superintendent's office in Oklahoma, prepared a most comprehensive survey of heirship trust lands.

At that time he came to the Congress almost in a single voice and urged the Congress to help do something about the heirship problem.

At that time Chief Jesse Rowledge who was then chairman of the tribal council and is now revered and respected among his people, presented some 321 cases. He presented these cases showing that from 5 to 60 heirs were involved in the ownership of these 321 tracts, and one of the outstanding cases, Mr. Chairman, was the Bad Looking Estate and it was certainly very properly named. In the 15 years that have since elapsed it has even gotten worse looking.

I would like to present that for the record at this time by way of complementing these remarks.

Senator BURDICK. It may be received.

(The document referred to is as follows:)

Jesse Rowledge, Bad Looking Estate, allotment No. 1614, Arapaho allottee

Name	Born	Share	Name	Born	Share
Samuel Lefthand.....	1905	8235/466560	Orville Tallbear.....	1932	61/20736
Chester Lefthand.....	1899	8235/466560	Lucy Tallbear.....	1934	61/20736
George White Antelope..	1875	21060/466560	Marjorie Tallbear.....	1937	61/20736
Richard Boynton.....	1898	14040/466560	Guy Lumpmouth.....	1885	5/864
Nelson Franklin.....	1899	10980/466560	Lucy Lumpmouth.....	1902	5/864
George Franklin.....	1914	1891/69784	Agnes Rowledge.....	1919	5/1728
Emma S. Willow.....	1895	3744/466560	E. M. Rowledge.....	1921	5/1728
Kate S. Hat.....	1899	3744/466560	Veronica Moss Harris.....		5616/466560
John Big Eagle.....	1904	16740/466560	Susie Florence Antelope..		9765/466560
Custer Lumpmouth.....	1894	17480/466560	Ralph Antelope.....		9765/466560
Doty Lumpmouth.....	1920	20160/466560	John Paul White Bear.....	1909	15120/466560
Rose Lumpmouth.....	1921	20160	Minnie Short Teeth		
Cassie Shakespeare.....	1862	7488	White Bear.....	1894	15120/466560
Thomas Shakespeare.....	1897	12792	Frank Sneezy.....	1873	120781/629856
Joseph Shakespeare.....	1900	14976	Frances Sneezy.....	1903	6039/629856
Wilbur Tabor.....	1882	60480	Lulu J. Sweezy.....	1915	6039/629856
Ute.....	1856	28670	Charles Sweezy.....	1918	6039/629856
Lucy Medicine Grass			Julia M. Sweezy.....	1908	2013/629856
Rowledge.....	1895	32940	A. Samuel Sweezy.....	1927	1342/629856
Nellie Hake Antelope.....		9765	Frederick L. Sweezy.....	1932	1342/629856
Anna Blasbee Long Sioux.	1924	122/69984	Nester Whitmy.....		1560/466560
Charles Long Sioux.....	1928	122/69984	Nellie Blackbird Whitmy		1560/466560
Mattie Blind.....	1906	8235/466560	John Little.....		1560/466560
Lulu Blind.....	1914	8235/466560	Laura Johnson Com-		
Jessie Blind.....	1917	8235/466560	manche.....		780/466560
Heyden Blind.....	1921	8235/466560	Lucy Wolf.....		780/466560
Rosa Touching Ground..	1903	61/17496	William Bearing.....		390/466460
Randolph Tallbear.....	1924	61/20736	Charles Bearing.....		390/466560
Dewey Tallbear.....	1927	61/20736	Richard Bearing.....		390/466560
Russell Tallbear.....	1929	61/20736	Albert Bearing.....		390/466560

Mr. PAYNE. The Cheyenne-Arapaho tribes, for want of money, and this is for the most part the problem—this fractionated heirship business of an individual ownership and the problems created by it, is mostly one of money. However, in 1960 your good committee here and the Congress did return some 4,000 acres of land to the Cheyenne-Arapahos and they have been realizing some good income from the land as well as from 6,000 acres they held in tribal status before that.

Using that income and the borrowing power that the Cheyenne-Arapahos would have on this new part, it is possible that the

Cheyenne-Arapaho tribes of Oklahoma can solve their own problem if you can make money available on a loan basis through such legislation as has been proposed here in this pending bill and the amendments suggested by Mr. Crow.

The Cheyenne-Arapahos would urge you to give most serious attention to the proposed appropriation authorized by this bill.

The remainder of the language of the bill is, of course, if enacted that is, would cause greater interest and greater effort on the part of the Cheyenne-Arapahos in Oklahoma to liquidate their heirship land problem.

The money that might be borrowed to eliminate this problem with these two Oklahoma tribes would be secured for the most part and these individual allotments are substantial income-producing parcels and an average of 160 acres would probably sell for \$20,000 or \$25,000.

Even at that price, and I speak as having had some considerable experience in the condemnation of these very allotments by the Government and by the State and alienation and otherwise, loans that might be made by the Government, the repayment thereof would be secured.

Now most of these allotments on an investment basis such as I have mentioned will earn in excess of 5 percent on their investment if the money could be borrowed by these tribes to make these purchases and hold the land in tribal ownership and the money could be borrowed at 2 percent and the investment would earn an average of 5 percent or more.

So the tribe would come out in a very good shape as you can see. And let me say as to the Cheyenne River Sioux Tribe in South Dakota, this tribe has been engaging in a very large land purchase program in recent years by a special act of the Congress.

There again, the problem is mostly money with respect to the heirship involvements. The tribe, though it has spent a great deal of money which this Congress appropriated when it lost land along the Missouri River, has run out of money and has made recent application to the Bureau of Indian Affairs which has been rejected.

The Bureau of Indian Affairs has not closed the door to making further loans but the problem there is that money borrowed at 2 percent based upon the income derived through the tribal rehabilitation program simply will not pay out.

The Cheyenne River Sioux Tribe, as long as the great leadership of its present tribal council remains, is not, of course, interested in liquidating the tribe which they feel might come about if the recommendation of the Commissioner of Indian Affairs is not recognized wherein he suggests the elimination of section 11.

The two tribes, very briefly as I said, are in general accord with the recommendation and the amendments of the Commissioner of Indian Affairs.

I would, however, call to your attention the fact that if you are to commit to the jurisdiction of any court the subject matter of these heirship lands that that jurisdiction be committed to a Federal court and not to a State court. The reasons are obvious, and that has been far more ably expressed here than I could express it. That is about the only change that we would specifically call your attention to.

We also, however, would like to remind you and to urge you to give full attention to this proposal of escheat at least in Oklahoma under the laws of the State. I am not too sure what the situation is in South Dakota but this is the Congress and the Congress has jurisdiction over these lands and any consideration given by this committee by way of legislation would be welcomed by the Cheyenne River Sioux Tribe.

At this time I would like to assure the chairman that the Cheyenne River Sioux Tribe and the Cheyenne and Arapaho Tribes of Oklahoma feel they are in very good hands with the committee, having been before this committee for many years and myself personally over the past 25 years and my dealings in Indian affairs, I feel that they are in good hands with you, Mr. Chairman, because I worked with your father when he was a very aggressive member of the full standing committee on Indian Affairs in the House of Representatives for many years.

With that I would like to conclude unless there are some questions.

Senator BURDICK. I would like to ask you a question at this point.

As a lawyer, it is my understanding that escheat operates when there are no heirs and here we have a situation where there are heirs. Tell me how this peculiar method would operate.

Mr. PAYNE. Of course, if you cannot find the heir that would be a variation and there probably would be two considerable variations in the strict theory to that here suggested this morning.

There is much merit in my opinion in exploring, that as long as the Indians consent they can give their land to one more aggressive and more interested in operating it. But if you cannot find the Indians and there is a real effort made to find them without success and the known heirs, if they are in the majority, and their interest is there, it behooves all of us to explore the suggestion made this morning.

Senator BURDICK. In other words, on the theory if we can't find them they do not exist.

One more question. One of the witnesses that preceded you this morning before we recessed suggested the idea of joint tenancy. What do you think about that?

Mr. PAYNE. I do not know. I would not want to commit myself to such a suggestion unless you had a strict situation of trust protection.

Senator BURDICK. Thank you very much.

Mr. PAYNE. Mr. Clarence Runs After is treasurer of the Tribal Council of the Cheyenne River Sioux Tribe of South Dakota.

Mr. CLARENCE RUNS AFTER. Mr. Chairman and members of the committee, we feel land should not, which is used for our cattle, 80 percent of it, be put out for operation. We cannot afford to lose our land. We have purchased land through voluntary land sales, many of which are surplus land.

Please accept this resolution from the Cheyenne River Sioux Tribal Council.

Senator BURDICK. It may be received.

(The resolution is as follows:)

RESOLUTION No. E-31-62

Whereas the land and forestry committee met on March 27, 1962, to discuss bill S. 2899, relating to the Indian heirship problem, which was referred to said committee by the tribal council at the regular session held on March 8, 1962; and

Whereas the members of the land committee reviewed the bill as proposed by Senator Church concerning the alleviation of the heirship problem and several objectionable features were found listed as follows:

1. 1st paragraph of section 1 should read "and the Secretary is hereby authorized to partition the land in kind or to sell the land if partition is not practicable and a sale would be in the best interests of the Indian owners and the tribe.

2. The bill should limit the sale to tribes and eliminate any authorization for land to go out of Indian ownership by any method.

3. In section 2, who is going to stand the expense of court and appraisal costs?

4. Section 6(f): Clarification of statement of "cost of managing any land purchased by the tribe to be borne by the tribe. Does a T.L.E. program where in the past the tribes have furnished clerical assistance suffice, or does this mean that the tribe must take over the whole project? Would not the costs to the tribe be exorbitant?

5. Section 7: Would this part abrogate the constitution and bylaws?

6. Section 8: This feature is completely objectionable.

7. Section 11:

(b) Objectionable.

(1) Objectionable.

(2) Objectionable.

8. Section 14: It should be mandatory that before the bill becomes a law that the tribe have their plan approved and definitely not before funds are available to the tribe to buy land.

9. In the final analysis, is the heirship problem being resolved by this bill? Will not the responsible agencies still have an heirship problem with those mineral acres still owned by individuals, although the surface rights belong to the tribe?

Because of the fact that the bill has many loopholes for the alienation of Indian land and the fact that the Cheyenne River Sioux Tribe has a shortage of land now for the cattle operators now in business and a waiting list, it is the opinion of the land and forestry committee, that the bill should be objected to as a whole at the present time.

Now, therefore, be it

Resolved by the Executive Committee of the Cheyenne River Sioux Tribal Council, on this 29th day of March, 1962, acting in behalf of the Cheyenne River Sioux Tribal Council, That we hereby concur with the above-mentioned objections and opinions of the land and forestry committee on said bill S. 2899.

Senator BURDICK. Is it possible that your tribal members might be willing to buy up these very fractionated interests with the certificate of indebtedness or some kind of certificate in lieu of money?

Mr. CLARENCE RUNS AFTER. Yes, they suggest that we have purchased land and purchase it as we have been purchasing it. Just last month we purchased land and several wanted to sell their land and we had to get authority from the U.S. Tax Committee, for money to pay our debts.

Senator BURDICK. Yes, but I mean is it possible to work out some arrangement where they would not have to be paid in full for it at the time of sale either on a means by which they get a certificate or maybe a downpayment and several years to receive the money? Would they be interested in something like that?

Mr. CLARENCE RUNS AFTER. Some of our cattle operators are doing that.

Senator BURDICK. I see.

Mr. CLARENCE RUNS AFTER. They have it in trust.

Senator BURDICK. Thank you very much.

Mr. PAYNE. Thank you, Mr. Chairman.

Senator BURDICK. Are there any other witnesses that are interested in testifying on S. 2899?

STATEMENT OF EUGENE TRUST, MEMBER, CROW CREEK TRIBE, SOUTH DAKOTA

Mr. TRUST. We would like to submit a statement later.

Senator BURDICK. We would be very happy to receive your statement later.¹

Any other witnesses?

If not, this hearing will be closed.

(Whereupon, at 3 p.m., the subcommittee proceeded to other business.)

¹ At the time of publication (June 8, 1962) the statement had not been submitted.

APPENDIX

(The following statements, resolutions, and communications were ordered placed in the record by Senator Church:)

STATEMENT ON BEHALF OF THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION, PENDLETON, OREG., REGARDING THE INDIAN HEIRSHIP LAND PROBLEM AND S. 2899

On behalf of our client, the Confederated Tribes of the Umatilla Indian Reservation, Pendleton, Oreg., we submit to the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, U.S. Senate, the following statement regarding the Indian heirship land problem in general and S. 2899 in particular.

The Umatilla Indian Reservation was created under the treaty of June 9, 1855 (12 Stat. 945). Allotment of tribal lands on the Umatilla Reservation was permitted by the act of March 3, 1885 (23 Stat. 340), 2 years prior to the adoption of the General Allotment Act of February 8, 1887 (24 Stat. 388). Under the allotment system the Umatillas have seen most of the tribal lands pass from tribal to restricted individual Indian ownership and a substantial part of those lands pass from Indian to non-Indian ownership. Of those lands remaining in individual restricted ownership, almost all are in fractionated heirship status.

Thus, for the Umatillas the main alternatives have been multiple Indian ownership or no Indian ownership. Although they recognize that the "problem of multiple ownership of undivided interests" (sec. 11(a) of S. 2899) is serious and needs to be alleviated, they strongly prefer it to the other possibility.

There is today no practicable, realistic means by which any substantial number of Umatillas may acquire any lands, restricted or unrestricted, except by inheritance. They lack sufficient money themselves and cannot obtain the necessary financing with which to purchase such lands out of income.

On the other hand, and for similar reasons, the result of removing restrictions on alienation (including mortgaging to private lenders) and subjecting their lands to local taxation (including the tax foreclosure sale) has been to separate Indians from land ownership in favor of non-Indians.

If the extremely fractionated status of Indian interests in lands has been detrimental to the Indians and fostered absentee ownership, at least it has made it possible for them to retain some land base. The Umatillas believe that the problem should not be solved simply by providing these Indians with more money in a lump sum by a sale of such interests and eliminating a sustaining source of income; that is, the Indian heirship land problem should not be solved by eliminating Indian ownership of land.

The Umatillas have the following comments regarding S. 2899:

1. They are opposed to any program or measure for the acceleration of sales of heirship interests until a practicable means is devised whereby individual tribal members may acquire such interests.

2. The loan provisions of section 10(a) apply only to nonmembers and to tribes. Section 6(a) requires that before the tribe may obtain a loan thereunder to enable it to take advantage of its preferential right to match the high bid it must not have funds "available" which equal the purchase price. The Umatillas have funds "available" for some purchases, but they need them to help solve other serious problems. The result is that most sales under this bill would be to non-Indians. At the very least, tribal members should be made eligible for the loan program under the bill so that their bidding rights will be meaningful instead of illusory. And, if tribes are to help solve the problem by purchasing the lands from the multiple owners and reselling to one or a few individuals, they should be permitted to do so without sacrificing other important programs

and plans necessary to the proper functioning of the tribe. Accordingly, the loan provisions for tribes should be liberalized.

3. One of the effective ways to reduce the present heirship land problem is to allow the Indian owners themselves, subject to close supervision by the Secretary of the Interior, to exchange fractionated interests among themselves for the purpose of consolidation. The bill completely ignores this method. Sufficient protection to the present owners could be given if the Secretary were required to find that the exchanged interests are of a generally comparable value.

4. The Umatillas are especially opposed to section 11 of the bill. As a practical matter that section means that if consolidation is ever accomplished, so that there is only one Indian owner, the only ones to whom the land can be sold during that person's lifetime will be a single Indian or non-Indian. Further, upon the death of the Indian owner and in the absence of the changes above suggested, the lands will almost certainly pass into non-Indian ownership. It is feared that this section will discourage attempts at consolidation either by the tribe's purchases and resales or by individual Indians.

5. As presently worded, section 8 of the bill is subject to the interpretation that indirect effects of approved tribal plans which would delay termination are prohibited. Thus, if the success of one plan should require several years for its operation, its incidental effect may be to delay termination. Only provisions of approved plans which directly prevent or delay termination should be prohibited.

Respectfully submitted.

KING, MILLER, ANDERSON, NASH & YERKE,
By MARK C. McCLANAHAN,

*Legal Counsel for the Confederated Tribes of the Umatilla Indian
Reservation.*

YAKIMA INDIAN NATION, WASHINGTON,
March 28, 1962.

HON. FRANK CHURCH,
U.S. Senate, Washington, D.C.

DEAR SENATOR CHURCH: Received your letter and reply and your bill (S. 2899) relating to the Indian heirship land problem.

I note that your committee will conduct hearings on this matter on April 2 and 3. Though we are not Yakima tribal officials, please consider our views and comments on S. 2899. We believe that since we own considerable amount of fractionated lands, we feel that we should have something to say about our interest as tribal members. And if such legislation is approved by Congress, it would no doubt have direct effect concerning our interests.

We have also noted the prior bills of S. 607, S. 608, and S. 609, is embraced in your present legislation, which includes the objectives of those previous bills. Last year, we objected to those bills. The objectives and purposes contained in those bills and the present one which you have introduced was not submitted to the members of the Yakima Tribes, either for discussion or approval. It is this method we object to. Normally and democratically, such legislation of importance which would have direct effect on our interests, should always be referred to majority tribal referendum and consent. It is this individual and tribal interest we are concerned about. It is our lands which will be affected and not that of the Secretary or the Bureau of Indian Affairs.

We object to the following provisions contained in your bill, they are: (1) of subsection (b) of section 2, which confers State jurisdiction over Indian lands, (2) section 6 permits tribal funds to be expended for the purchase of fractionated Indian lands, which would no doubt dissipate Indian funds, and (3) section 10, concurs with the act of August 9, 1946, and with other Federal statutes, which has to do with the "blood degree eligibility" of the Indian, and is one that discriminates the rights of mixed-blood Indians and the fullbloods as well. Many Yakima Indians have either been removed or rejected from tribal membership and inheritance because of this so-called eligibility rule. Is it good business to use my own funds to purchase my own land? That's precisely what section 6 of your bill amounts to.

We trust that you will present our views on the above legislation before the committee.

We are,

Yours very truly,

AL GOUDY.
LAURETTA GOUDY.

DELLWO, RUDOLF & GRANT,
Spokane, Wash., March 20, 1962.

Re S. 2988, relating to the Indian heirship land problem.

HON. FRANK CHURCH,
U.S. Senate, Washington, D.C.

DEAR SENATOR CHURCH: I write as attorney for the Spokane and Coeur d'Alene Tribes of Indians with reference to S. 2899 introduced by you on February 26, 1962. I have not studied all the ramifications of the bill but feel that an immediate comment should be made as to one or two matters.

Your attention is directed to the first paragraph of the bill, which states "* * * any owner of an interest in any land * * *", etc. Then it provides that upon his (owner's) request the Secretary of the Interior can either partition or sell the land. This provision goes to the other extreme from what the present policy is. Now any owner of an interest in any trust land can prevent a sale or partition. The usual proposal has been that the holders of a majority or two thirds interest should have this right. I know of no respectable Indian spokesman that ever advocated that an owner of any interest, however small, should have this right. We have examples on the Coeur d'Alene Reservation where a single person or an integrated family holds substantially all of an inheritance and some stranger to the family holds an extremely small percentage interest. Such a holder of the small interest could in effect force a sale or partition of land which of its nature should be united both geographically and in ownership.

Section 11: In this section the bill attempts to discourage fractionated problems from increasing in the future. Certain provisions are made which, in our opinion, go to the other extreme. In section 11(b) you provide that if all the interests in trust are owned by one person other than an Indian tribe, and the title is transferred during the lifetime of the owner to two or more persons the title shall be transferred in an unrestricted status. There is no reason for this and it forecloses the parent, for example, from transferring his land to more than one of his children or in the alternative forces him to partition land which may not be practically partitioned.

In Section 11(c) the bill makes the same restriction on devises or inheritance, and a devise of a piece of land to one heir continues its trust or restricted status but if there is more than one devisee or heir the procedure is set up for partition or sale. This, again, as a practical matter, prevents a parent from devising his land jointly to his wife and children or in the alternative forces a partition or sale of land that he does not want to partition or sell. This results again in going from one extreme to the other. In seeking to discourage extremely fractionated inheritances, the bill goes to the other extreme and prevents even a reasonable amount of fractionating that is common to most estates on and off Indian reservations.

The bill also leaves many other questions completely unanswered. What about life estates followed by remainders? Or what about direct devises subject to a preliminary right of occupancy and to income? What about joint devises or sales to husband and wife?

These are some preliminary comments the members of the Coeur d'Alene Tribal Council wanted me to make. I believe the tribe plans to present a formal memorandum voicing its reaction in more detail.

Respectfully submitted.

ROBERT D. DELLWO.

MANDAREE, N. DAK., March 15, 1962.

HON. QUENTIN N. BURDICK,
Senate Office Building,
Washington, D.C.

DEAR SENATOR BURDICK: In the very near future, two members of the Tribal Business Council of the Fort Berthold Reservation, the chairman and another member, shall be in Washington, D.C., to be present at a hearing relative to the heirship status of Indian lands of this reservation.

An organization known as West Segment Land Owners Association do hereby object to any kind of action being taken on our heirship lands. It bears the earmarks of termination and we object to termination.

The two delegates may present a program of some kind which may cause our grazing lease fees to be lowered. The Indian agency here have encouraged the

leasing of our land for only 33 cents per head (cattle) per acre. We know of the white man leasing land for grazing for \$1.50 per head per acre. Our grazing lands are better.

We do hereby object to the program. We desire to increase our grazing fees to equal the conditions of today. If our demands are not heeded, we shall be obliged to cancel the leases.

We would appreciate a hasty action on the above matter.

Yours truly,

OSCAR BURR, *Member.*

SMITH & McRAE,
Bemidji, Minn., March 19, 1962.

Re bill S. 2899, Red Lake Band of Chippewa Indians.

HON. FRANK CHURCH,
U.S. Senator,
Washington, D.C.

DEAR SENATOR CHURCH: As general counsel for the Red Lake Band of Chippewa Indians, we enclose herewith a copy of a resolution adopted by the Red Lake Tribal Council as governing body of the Red Lake Band of Chippewa Indians expressing the concern of the council to the provisions of bill S. 2899. This concern arises from the belief that the language used in the bill may be construed to authorize the Secretary of Interior to partition or sell tribal lands upon request of a member of the band. Since the members of the Red Lake Band have always been, and are today, unalterably opposed to any legislation which may be deemed to open the door to an allotment of their lands, their governing body have asked me to write you explaining the reasons for their concern and requesting of you and of the Committee on Interior and Insular Affairs the addition of a section specifically excluding tribal lands of the Red Lake Band of Chippewa Indians from the provisions of S. 2899.

In order to determine whether or not the concern of the Red Lake Band is well founded, it is necessary to have in mind the nature of the tribal ownership of the land and the interest of the individual members therein. The title of the Red Lake Band to their reservation and other lands is founded upon aboriginal ownership recognized by the Federal Government. These lands have never been ceded by the band but are held and administered in trust by the Federal Government for the use and benefit of members of the band. The individual members of the band have no interest in tribal lands which can be alienated during their lifetimes or which passes to their heirs or devisees upon the deaths of such members. The individual member's "interest" in tribal lands is limited to a right of occupancy during his or her lifetime, a right to share during his or her lifetime in allotments of income derived from tribal lands, and a right to make certain uses of such lands subject to regulation by the tribal and Federal Governments.

The concern of the Red Lake Band arises primarily from the language used in S. 2899 at the beginning of the bill to the effect:

"That (a) any owner of an interest in any land where all of the undivided interests are in a trust or restricted status may request the Secretary of the Interior * * * and the Secretary is hereby authorized, to partition the land in kind or to sell the land if partition is not practicable and a sale would be in the best interest of the Indian owners."

Although a reading of the entire bill indicates that as used above "an interest in any land" is not intended to include the limited rights owned by a tribal member in lands owned by the tribe, the word "interest" is not specifically defined to exclude such rights or interest. Thus, the Red Lake Band of Chippewa Indians is objecting to the bill in its present form and are requesting the addition of a section specifically excluding from the operation of the bill all lands owned by it.

If you or the Committee on Interior and Insular Affairs wish further information regarding the legal status of lands owned by the Red Lake Band of Chippewa Indians, or if you feel that a personal appearance by a representative of the Red Lake Band will be necessary in order to secure consideration of the objection set forth above, we will appreciate being notified.

Respectfully,

SMITH & McRAE,
GORDON L. McRAE.

RED LAKE BAND OF CHIPPEWA INDIANS

RESOLUTION NO. 11-62

Whereas the Tribal Council of the Red Lake Band of Chippewa Indians is this date advised by the Honorable Frank Church, U.S. Senator, of a bill designated S. 2899, now being considered by the Committee on Interior and Insular Affairs; and

Whereas said bill has been carefully reviewed by the members of this council; and

Whereas it appears to this council that said bill may be construed to adversely affect tribal ownership by the Red Lake Band of Chippewa Indians to the Red Lake Indian Reservation and to the tribal lands held in trust by the U.S. Government for the use and benefit of tribal members; and

Whereas a specific exception of lands owned by the Red Lake Band of Chippewa Indians from the provisions of said bill designated S. 2899 may be made without thereby detracting from the purposes of said bill: Now, therefore, be it

Resolved, That the Committee on Interior and Insular Affairs be advised of the concern of the Red Lake Band of Chippewa Indians and be requested to specifically except from the provisions of the bill, S. 2899, all lands owned by the Red Lake Band of Chippewa Indians including, but not restricted to, the Red Lake Indian Reservation.

THE SHOSHONE-BANNOCK TRIBES

RESOLUTION

Whereas there has been introduced for consideration in the 87th Congress, 2d session, February 26, 1962, a bill, No. S. 2899, relating to Indian heirship land; and

Whereas, at a called meeting of the Shoshone Bannock Tribes at Eagle Lodge, Fort Hall Indian Reservation, Idaho, March 26, 1962, the members of the Shoshone-Bannock Tribes expressed general opposition to the bill; and

Whereas the bill provides for additional power to be vested in the Secretary of the Interior; and

Whereas the Secretary of the Interior already has sufficient power to assist and allow members of the tribes to resolve their heirship land difficulties through the medium of land sales to one another, exchanges with one another, deeding to one another, and failure to resolve the heirship land difficulty has been a matter of policy rather than a matter of insufficient power under the law; and

Whereas members of this tribe have gone on record over and over again against transfer to the State of our affairs and our lands and against Government termination, nevertheless this bill provides absolute piecemeal termination and transfer; and

Whereas, if passed, the bill would create untold pressures, both financial and greed by non-Indians, upon our people, and because so many of our people are poverty stricken they are in no position to enter into competition with non-Indians in the acquisition of Indian lands; and

Whereas, if passed, the bill would render an end to the hopes and desires of our people to become self-governing and financially independent; and

Whereas, in order to salvage and retain the reservation lands the tribe would be required, under this bill, to heavily indebted itself to the Government of the United States and give to the Government of the United States mortgages on the reservation lands in order to continue to retain what is already previously retained to the tribes by treaty and agreements heretofore made with the Government of the United States; and

Whereas, such mortgage to the Government of the United States and indebtedness in order to retain what is already retained under treaty and agreement would, under the provisions of the bill, suddenly place our people and our tribes in an "either-or" position—under existing economic difficulties we would either lose our lands through financial ruin, or be required to completely communalize the lands; and

Whereas the bill provides that funds will be loaned to individuals who are not members of, or eligible for membership, in our tribes and there is no provision whatever to ascertain whether such individuals would really be Shoshone-Bannock Indians, and such a provision is extremely dangerous to the Shoshone-

Bannock Tribes as well as to the Government of the United States, as individuals, particularly dark-skinned individuals, from other countries could infiltrate Fort Hall Reservation and create havoc, and the tribes would have no protection from such imposters: Now, therefore, be it

Resolved by the members of the Shoshone-Bannock Tribes, That the Shoshone-Bannock Tribes is opposed to the bill No. S. 2899, and that said bill is unjust and it will create far more difficulties than it would resolve.

ORDINANCE

Whereas on March 26, 1962, a called meeting of the Shoshone-Bannock Tribes was called in a regular manner and at which a quorum of over 100 qualified voters was present; and

Whereas one of the stated purposes of this meeting was to discuss with the voters Senate bill No. 2899, 87th Congress, 2d session, relating to the Indian heirship land problem; and

Whereas this bill was read and interpreted to the voters in the Shoshone or Bannock language with special discussions on points of interest; and

Whereas in addition to the authority given the Shoshone-Bannock Tribes through the Indian Reorganization Act, and its charter, constitution, and bylaws, article XI of our treaty with the U.S. Government made July 3, 1868, provides that no cession of reservation land shall be valid except by consent of the individual in case of individual ownership and a majority vote of the male members of the tribe where cession of tribal land is involved; and

Whereas, by a majority vote at the called meeting of the Shoshone-Bannock Tribes held on March 26, 1962, it was decided and as evidenced by Resolution 1547 to reject and oppose S. bill 2899 because:

1. The constitution of the Shoshone-Bannock Tribes now provides that heirship land and land belonging to members over 60 years of age may be purchased.

2. That with Indian office approval our constitution and credit plan of operation is sufficiently liberal to provide money through the revolving credit fund of the Indian Service with which heirship land and the land of the older people may be purchased and kept out of heirship status.

3. In 1947 the tribe working with the superintendent, developed their own land purchase program including a system of appraisals which was quite satisfactory and if this system was again recognized it would prevent the bottleneck and long delays in land transactions waiting for appraisals and processing through the area office.

4. That the Indian is basically a hay and grain farmer and the present crop control program unduly limits the operations of the Indian farmer.

Now, therefore, be it resolved by the Business Council of the Shoshone-Bannock Tribes, That in accordance with the wishes of the called meeting as evidenced in resolution of instruction 1547 this business council opposes and rejects the provisions of Senate bill 2899 relating to the Indian heirship problem.

Be it further resolved, That if the majority of the tribes in the United States should express a desire to have this bill be enacted into law, it is the firm position of the Shoshone-Bannock Tribes that they be excluded from this bill.

LAC COURTE OREILLES TRIBAL BUSINESS COMMITTEE,
Stone Lake, Wis., March 26, 1962.

HON. FRANK CHURCH,
U.S. Senate, Washington, D.C.

DEAR SENATOR CHURCH: The Lac Courte Oreilles Tribal Business Committee, which is the official governing body of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, wishes to express their endorsement of S. 2899 concerning the Indian heirship land problem.

Sincerely Yours,

JOE TREPANIA, *Chairman.*

LAKEPORT, CALIF., *March 28, 1962.*

Re Senate bill S. 2899 hearings, April 2 and 3, 1962.

JAMES H. GAMBLE,

Staff Member, Indian Affairs Subcommittee of Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SIR: This letter constitutes a statement in behalf of Big Valley Village Association, Lake County, Calif., which association was formed to manage and control community lands owned by approximately 67 former members of the Big Valley Committee of Pomo Indians here in Lake County relative to S. 2899 and any other legislation that this statement may relate to. It is asked that this statement be filed with the Indian Affairs Subcommittee and considered in connection with the hearings scheduled for April 2 and 3, 1962, of that committee.

On July 23, 1961, in a regular meeting of the members of Big Valley Committee of Pomo Indians in Lake County, at which approximately 40 of 67 members were present, a resolution was unanimously adopted forming the present Big Valley Village Association and expressing the opposition of our group to any further control, supervision, or management of Indian lands and former Indian lands by the U.S. Department of Interior or any other Federal or State agency. This sentiment of our group has remained unchanged since that time. We want to be on record opposing any trustee ownership arrangements or any arrangements by which a power of approval is given the Bureau of Indian Affairs or any other Federal or State governmental agency relative to the use and disposition of our lands.

We feel that we are qualified to manage our own affairs and fully capable of dealing with our community lands as well as with our individually deeded lands in the same manner as any other citizens of the United States.

We no longer want the paternal controls by governmental agencies exercised over us which have made us second-class citizens as in the past.

If it becomes necessary, we ask that you exclude us and our properties from the effect of any legislation which originates, continues, or perpetuates such governmental control.

The undersigned, Oscar John, constitutes the president and the undersigned, Katherine Ray, constitutes the present secretary-treasurer of Big Valley Village Association of Lake County, Calif.

The undersigned hereby declares under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of March 1962 in Lake County, Calif.

OSCAR JOHN,
President.

KATHERINE RAY,
Secretary-Treasurer.

PHIL N. CRAWFORD,
Attorney for Big Valley Village Association.

MANDAREE, N. DAK., *March 30, 1962.*

SENATOR Q. N. BURDICK: I want to express appreciation for the opportunity to submit a written statement on behalf of the West Segment Landowners Association of Mandaree, N. Dak., a bill relating to the Indian heirship land problems, under new bill (S. 2899). We hope this bill will be the vehicle through which Congress moves on to solve this problem and hereby urging our Senators and Congressmen in Washington, D.C., from North Dakota, to do everything possible in their power to secure passage of our recommendations as follows (to wit):

(1) Sale would be at an appraised fair market value; payments in installments over period of years out of income from the use of the land. This is a way in which land could be kept in Indian ownership.

(2) The tribe would have a preferred right to purchase the land at its appraised value and must be in the best interest of the Indian owners and should not be detrimental to the local community.

(3) Everything possible should be done to build up the Indian landholding and to help us use our land for the greatest possible benefit to our people themselves and not to lease to nonmembers but land utilized by Indians.

(4) The tribes obtains from the individuals heirs consolidating it and putting it back, but to the people for their use.

(5) We are in agreement with the provision of bill that provides for loans to the tribes and if tribes get this into its own hands and pass it on to the individual members for their use there would be no heirship problem in the future and it also provides protection for mineral rights if tribes have the ownership of the land.

(6) We object highly to the end of trust period stated in section 10 as January 1, 1964, and also object section 11 this act would become effective in 6 months; a least 3 years time be limited.

(7) We feel that our needs to be fulfilled and we are looking upon, our delegates in Washington, D.C., from North Dakota that the needs be met of the Indian people themselves and not to force something we don't want.

(8) We object to take heirship problems to the State courts. Indian does not stand chance because State have no jurisdiction in the first place and we have not adopted Public Law 280 which transfers jurisdiction.

(9) There is also a case on leasing, even in the case of leasing the Supreme Court has ruled that the United States or anyone else cannot arbitrarily lease any land without the consent of the landowner.

(10) If the Congress put enough protection and safeguard around us, we can get along but what concerns us is that in the hands of unfriendly administrators such as superintendents wanted to lease our heirship land for only 33 cents an acre, this is a grave danger and if we can get the safeguards written into the legislation then perhaps we can enjoy our constitutional rights as free Americans.

(11) We emphasize that under past practices Indian grazing land has not been rented for the full fair market rental value but substantially less and bureau fixes at a so-called minimum price which delights the non-Indian ranch owners, but does not help the Indian one bit and now tribal council wants to lease our lands for 30 cents an acre from 15 to 25 years and we object to that; this is harsh and unhuman action.

(12) That if we use this eminent domain procedure let that land pay back the United States with interest and it can pay back if we get the full fair market rental value, so we oppose to any program design by the tribal council for tribal cattle program and leasing lands for 30 cents an acre is too much to bear, and in this situation we see no alternative except for the landowners association to go and fight and we appreciate this opportunity to submit our views. We are writing this to you by direction of West Segment Land Owners Association of Mandaree, N. Dak., our organization which is approved by our tribal business council of our reservation.

Respectfully, we are,

OSCAR BURR.

THE MINNESOTA CHIPPEWA TRIBE,
Bemidji, Minn., April 6, 1962.

HON. CLINTON P. ANDERSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR SIR: These are changes recommended by the tribal executive committee at their meeting held March 29 and 30 at Bemidji, Minn., pertaining to Indian heirship land bill, S. 2899:

1. (a) We recommend that the bill permit negotiated sales at not less than the appraised price to one of the coowners or to the tribe if none of the coowners objects.

(b) If there are no objections by the heirs to sell the land and if the tribe or coowners are not interested in buying the land, we suggest that the land then be open to competitive bids.

2. Before any land can be sold it should be the wishes of the majority of the heirs or owners, rather than one owner's request.

3. When this land is sold to the tribe or one of the heirs, mineral rights should be transferred to same. If land is sold to any other source, mineral rights should be retained by the original owners.

4. Any land that is up for sale located in or adjacent to the reservation boundaries, the tribe or heirs should have the privilege to purchase at the appraised value.

Yours very truly,

HOWARD LAVOY, *Manager.*

WILKINSON, CRAGUN & BARKER,
Washington, D.C., April 4, 1962.

Re S. 2899, 87th Congress, 1st session.

Hon. FRANK CHURCH,
Chairman, Subcommittee on Indian Affairs,
U.S. Senate, Washington, D.C.

MY DEAR SENATOR CHURCH: This letter is written on behalf of the Quinaielt Indian Tribe of the Quinaielt Reservation, Wash., in response to your committee's request for views on the above bill to relieve the heirship land problem as relates to allotted and restricted lands held by individual Indians and their heirs. This firm is employed by the Quinaielt Tribe as tribal attorneys.

Probably no group is more aware of the problems posed by multiple ownership of allotted lands than are the people who are allotted on the Quinaielt Reservation; the matter was pointedly brought to light a few years ago in connection with the timber-policy investigations held by your subcommittee (the late Senator Neuberger was then chairman) in cooperation with the House Government Operations Committee, and a comprehensive report issued.

The Quinaielt Indian people sincerely appreciate the attention which your committee is giving this problem and the opportunity you have afforded them to make their views known. The views expressed herein were adopted as a result of the annual meeting of the Quinaielt Tribe and the meeting of its business committee on Saturday, March 31, 1962—unfortunately, too late to permit the presence of tribal representatives in Washington to avail themselves of the opportunity to appear personally which you so graciously extended.

Recognizing the many problems which reasonably require some relief, the Quinaielt Tribe nevertheless finds some fundamental objections to S. 2899 as proposed:

Sections 1 and 2.—The Quinaielt Tribe is concerned that any single owner of an inherited interest, no matter how de minimis his interest, can force a partition (or, more usually since he has too small an interest to partition in kind, a sale of the land). This is regarded as putting in the hands of what sometimes is an insignificant minority, with no substantial interest in the land itself, the dictation of the land's being sold to outsiders—considering the lack of ready cash of coowners or of the tribe (for the Quinaielt Tribe has very restricted resources). As a result the land would wind up going out of trust status and result in being lost to Indians.

It should be realized that one principal benefit, of trust status of these lands is the problem of taxation—with the inexorable certainty, with the lands subject to local taxation, as to Indians having no regular income, the county in which the lands are located will acquire the lands for defaulted taxes. Yet there is no excuse whatever for letting the local government tax the Indian lands, since the local government does not furnish services to Indians on the same basis as to the white population, and Indian taxes do not go, generally speaking, to do anything for the Indians concerned, but only for the white community. The Indians, assisted by the Federal Government, still have to furnish the community services which are furnished by State, county, and city governments to the white population; and those services rendered by the tribe are paid for out of tribal income. The tribe is as much a government as the State or county. There is no more excuse for taxing Indian-owned lands (and in effect sentencing them to be taken away from Indian ownership) than there is for permitting the tribes concerned to tax white-owned lands within the reservation.

Section 6.—So far as are concerned loans to permit tribal purchase of heirship lands, subparagraph (d) provides that the loan shall be for a term "not to exceed 30 years." Since on the Quinaielt Reservation practically all allotments are of timbered lands which have no value except for the harvest of timber every 40 or 50 years, this gives no reasonable chance to a tribe such as the Quinaielts, to pay out the loan on lands acquired where lands were recently cut over. The Quinaielts suggest that the loans should be for not to exceed 50 years, as the circumstances warrant, and certainly for up to 40 years as a bare minimum, considering the cutting cycle on the Olympic Peninsula.

Section 8.—This section is meaningless since this act could not stop future Congresses from bringing around termination no matter what it provided. But the committee should realize that the word "termination" is a dirty word so far as many Indian tribes are concerned and presents an unnecessary affront to the tribes. The Quinaielts recommend that the section be deleted from the bill.

Section 10.—The Quinaieit Tribe feels that revolving-loan fund provisions of section 10 are possibly better dealt with in collateral legislation. We are not informed as to the reasoning on this provision since we realize that many tribes take the view that entire operation of the bill ought to be conditioned on actual appropriation of money (let alone mere authorization as in the bill) which would enable the purchase of heirship lands either by the tribe or by individual Indians. We transmit to the committee the view of the Quinaieit Tribe on section 10 notwithstanding our own lack of information as to the ground upon which they feel the section should be made the subject of separate legislation.

Section 11.—This section is opposed by the Quinaieit Tribe, which would strike it en toto. The bill to no extent depends on this section—which provides a means for land's going out of trust status (see our remarks under sections 1 and 2 above). If other provisions of the bill are designed to cure the existing heirship-lands problem, then they will provide a continuing solution to the heirship problem as it arises, so that this section is totally unnecessary as a means of preventing heirship-lands problems. The section proposes either forcing a parent to decide between, say, one of two children, or prohibit the acquiring of title by husband and wife in trust, the alternative to which is the land's passing out of trust status. There is no accruing benefit to the tribe, the individuals concerned, or the United States; and the section is most offensive to the Quinaieit Tribe.

Very sincerely yours,

JOHN W. CRAGUN.

EL CAJON, CALIF., April 4, 1962.

Senator FRANK CHURCH,
Chairman, Senate Committee on Indian Affairs,
Senate Office Building, Washington, D.C.:

The Mission Indian Federation Inc., 500 enrolled Indians of southern California. Parties to the pending suit docket 80 oppose Senate bill 2899. The bill is against our constitutional rights and best interests. We are sending written statement to be included in printed hearings and urging both U.S. Senators to oppose this bill.

DAN PICO,
President, Mission Indian Federation Inc., Perris, Calif.

THE MISSION INDIAN FEDERATION, INC., OF CALIFORNIA,
Perris, Calif., April 5, 1962.

Re. S. 2889.

HON. FRANK CHURCH,
Chairman, Subcommittee on Indian Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Supplementing our night letter wire of April 4, 1962, we are herewith submitting formal written statement supporting our reasons for opposing Senate bill 2899, on which we have just learned hearings are being held.

As stated in our wire, this all-Indian organization is incorporated under the laws of California, and at the present time we have more than 500 Indian members. This Indian organization was first formed some 45 years ago—and its sole objective then as now, was and is today, the protection of our rights and welfare under law. The known record of our efforts in the defense of our rights as citizens and as the original first Americans, are recorded in the identifiable hearings and investigations of committees of Congress across the years even long before California became a State in 1850. Reliable historians claim that the area now known as California had an Indian population of from 400,000 to 700,000 when the white man came among our people previous to the war with Mexico, which ended in 1848. Today there are, we believe, less than 25,000.

Our forefathers occupied and owned every acre of the area known as California—its more than 100 million acres. On this claim let there be no question—the Supreme Court has so ruled—Indian title “is just as sound as the white man's deed.” This all-Indian organization initiated and sponsored the Indian suits pending before the Indian Claims Commission under docket 80. The area for which the descendants of the original 46 separate “identifiable bands” are

claiming compensation totals some 8,236,500 acres, which includes the lands of Los Angeles, Santa Monica, Long Beach, and east into the great Mojave Desert near the Colorado River, then south taking in Imperial Valley to the Mexican border, thence west to the Pacific Ocean near San Diego and then north to a point north of Santa Monica.

California Indians not wards of the Government

Our reason for making this claim: When California was admitted into the Union in 1850, the Constitution carried no provision, as was the custom required by Congress, reserving to the United States jurisdiction over Indian people of the State. The legal effect of this omission was that the Indians of the State of California were not subject to the jurisdiction of the Government. This matter was decided by the U.S. Supreme Court in the famous case—*U.S. v. McBratney*, 104 U.S., wherein the Court said:

"Whenever, upon the admission of a State into the Union, Congress has intended to exempt out of it an Indian reservation, or the sole and exclusive jurisdiction over that reservation, it has done so by express words. * * * The State of Colorado, by its admission into the Union by Congress, upon an equal footing with the original States in all respects whatever, without any such exception * * * has acquired criminal jurisdiction. * * * The courts of the United States have, therefore, no jurisdiction to punish crimes within that reservation."

We are quoting from the brief filed by the attorney general of California, Hon. Edmund G. Brown (now the Governor of California), in 1953, in behalf of the Indian mother, Mrs. Rosalie Acosta of Pala, San Diego County, Calif., in the Indian suit brought by the Mission Indian Federation against San Diego County, claiming that the Indian people of San Diego County were entitled to the benefits of all State welfare, medical care, etc., as such laws guaranteed to other California citizens.

The suit came before Superior Court Judge Hon. Arthur L. Mundo, and quickly resulted in a sweeping victory against the County of San Diego. The decision of Judge Mundo rendered on February 3, 1953 (No. 174462), was appealed, and upon our appeal to the attorney general of the State for his aid, Attorney General Brown filed his brief and joined in the contest before the California Appellate Court, and the result, as in the trial before Superior Court Judge Mundo, was a unanimous decision of the State's appellate court sustaining the victory before Judge Mundo (*Cal. Dis. Court of Appeal, 4th Civil No. 4821-1953*).

We again refer to the exhaustive brief and opinion of the attorney general of California, in support of our contentions that California Indians were not, and now are not wards of or subject to the jurisdiction of the Department of the Interior. We quote from the brief (pp. 14 and 15, 4th Civil No. 4821).

From Brief Attorney General Brown (pp. 14-15): "*In People v. Pratt*, 26 Cal. App. 2d 618, reference is made to retained jurisdiction in the United States Government to try and punish Indians. On page 622 it is said:

"There are certain Indian reservations in the United States over which the Federal Government has specifically retained jurisdiction to try and punish the Indian inhabitants thereof for violations of criminal laws. Where the enabling act of Congress admitting a State into the Union makes no reservation of jurisdiction with respect to Indian tribes therein, and upon the contrary when States are admitted "on an equality with the original States" the sole jurisdiction to try and punish Indians therein * * * is conferred upon the State courts. * * *"

"The Courts of the United States have, therefore, no jurisdiction to punish within that reservation."

The above quote from Attorney General Brown's brief, (pp. 14 and 15, California 4th Civil No. 4821-1953).

Now, we quote further from that brief (pp. 15-16).

"The language of the *McBratney* case would seem applicable to the case of the Mission Indians of California. The State was admitted into the Union 'upon an equal footing with the original States in all respects whatever' (9th U.S. Stats. at large, p. 452).

"In the absence of a limiting treaty obligation or Congressional enactment, each State has a right to exercise jurisdiction over Indian reservations within its boundaries (*People v. Martin*, 326 U.S. 496).

"The laws of California respecting inheritance and eminent domain are applicable to the Pala Reservation and the inhabitants thereof. (25 U.S.C. 372; 25 U.S.C. 357; *Oklahoma Tax Commission v. United States*, 319 U.S. 598.)"

We believe in law! We here simply quote from Supreme Court rulings which clearly show that the Secretary of the Interior (the Indian Bureau) has no jurisdiction in matters of inheritance. Indian citizens of California demand that all matters affecting inheritance be settled in the courts of law of California. This is not seeking a privilege, but a constitutional right, sustained by the Supreme Court.

California Indian people are fully qualified to handle all of their own affairs. Mr. William Zimmerman (one of the members of this "task force") when he was the Acting Indian Commissioner, was brought before a Senate committee to reply to the claim of Mission Indian delegates that all California Indians were on that date, February 8, 1947, fully qualified and competent to control their own affairs. Zimmerman was placed under oath (an unusual requirement) before being questioned by the chairman. That official, after examining the testimony of the delegates, admitted that the Mission Indians and all other Indian groups in the State, were fully qualified to be released from all forms of restrictions.

On page 17 of the brief filed in our behalf by Attorney General Edmund G. Brown—civil suit brought by the Mission Indian Federation against San Diego County in 1952-53—(4th Civil No. 4821) that official stated:

"Attorney General of California stated: "The Indians of San Diego County are completely self-supporting and do not receive any assistance from the U.S. Government as to their housing needs or for their daily subsistence."

Mr. Chairman, with but one or two exceptions, all of the Indian groups of southern California, are extremely poor, we do not have the necessary funds to employ an attorney to carry on our cause for justice in the courts at this time. Of this the staff of the Indian Bureau are aware. Our only hope to protect our rights from this latest scheme of the Indian Bureau as carefully set forth in the 10-page Senate bill 2899, now before your honorable committee, lies in your hands. We cannot possibly see how any Member of the Senate could be led into approving this proposed bill. The matter of inheritance has for many years been one of our most confusing problems. The whole policy of this Federal agency has been, and today continues to be, to use such matters—invariable caused by the Bureau itself—in persuading Congress to enact new laws which are intended to keep the Indian Bureau on the payroll.

In every official investigation into the manner under which the Indian Bureau has built up its own power over Indian life and property, the verdict has been the same—the Indian Bureau has but brought disgrace upon this Nation. Let any sane person examine the record rule under John Collier (and Zimmerman and Dr. S. A. Aberle, close associates of Collier) with his universally condemned Wheeler-Howard Act (California Indians rejected it, as did the Navajos), and it will be found that this Indian Bureau is the principal cause for most every Indian problem today. No California Indian would suffer if the Congress would immediately abolish the Indian Bureau in this State. Not one dollar, in our estimation, of the some \$5,872,320 Budget Bureau demands just for the California agency for the fiscal year starting July 1, 1962, is used for the actual benefit or welfare of any California group of Indians. The Indian Bureau is indeed a "surplus agency" in California.

Let us quote from the great speech of Senator William H. King, of Utah, for some 20 years a member of the Senate Committee on Indian Affairs, delivered in the Senate on February 8, 1933, just before John Collier was appointed Commissioner of Indian Affairs. That famous speech (Doc. No. 214-76 pp.) will live among the Indian race for decades, as the most complete exposure of the methods and practices of this un-American Federal agency.

Quoting from speech of Senator King, February 8, 1933 (Pub. Doc. 214) (referring to investigating committees (p. 3)):

"* * * Their findings and conclusions warrant a verdict that the Indians have been robbed, plundered, and despoiled of the greater part of their inheritance and subjected to cruel and inhuman treatment."

And then continuing his speech (p. 3) Senator King said:

"The Indian Bureau is a petrified, crystallized machine, indifferent to criticism, hostile to reforms, ambitious for authority, demanding increased appropriations and rapidly expanding personnel.

"As I shall show before concluding my remarks, the expenses of the Bureau have been greatly augmented during the past few years, the number of employees has been multiplied, and more than one-half of the stupendous sum taken from the Indians and from the Treasury of the United States annually has been consumed by the employees of the Indian Bureau."

In offering proof of the accuracy of his detailed charge of waste by the Indian Bureau, Senator King stated that for the year of 1933 the Bureau demanded a grand total of \$24,141,403, of which \$2,190,262 were to be taken from Indian trust funds. Senator King revealed in that famous speech gross waste, utter neglect of Indians and arbitrary drawing on Indian tribal funds far in excess of that approved by Congress. At that time, the Bureau reported that the total Indian population under its "care" was 194,331, and Senator King showed that the ratio of Bureau employees was 1 to 6, and continued through the years at the ratio of about 1 employee to less than 10 Indians.

In our estimation, based upon our own experience, this same Indian Bureau today follows the same policy. With the some \$262 million which the Bureau is demanding from the U.S. Treasury for the coming year, little real constructive benefit will reach the average Indian, because the goal of the staff who make the policy of the Bureau is the same today as it was when Senator King so clearly revealed its policy back in 1933. We repeat, California has found the solution. Our Indian Federation brought this test suit in the courts of San Diego in 1952-53, and which victory in favor of the Indians, was appealed to higher courts, and the victory in the Superior Court was unanimously confirmed. In our suit we brought out the fact that under the California constitution, the State and not the Federal Government, had full jurisdiction over Indian problems in the State, and specifically in the matter of inheritance. Surely Congress must realize that under that decision, Indian inheritance problems—all of them—can be solved in the courts of law exactly like the white man's inheritance problems are solved.

We, California Indian citizens, are entirely capable of taking care of our every problem, as we have in this statement clearly shown by documentary proof.

Congress must not approve this proposed bill, S. 2899. Great and irreparable wrong will be done the Indian people of California—and all other Indian groups and individuals—if this bill becomes law. We submit that the Congress does not have the legal right to grant the right to the Bureau of Indian Affairs, the power to "settle Indian inheritance" as this bill proposes. We have in this statement clearly shown that Congress itself is without legal authority to legislate away the rights of Indians of California—to take from our people the right to have inheritance matters settled in the Courts of California, as asserted by Attorney General Brown of California (Calif. 4th Civil No. 4821—p. 16).

We repeat, in the brief filed in behalf of the Indians, in the test suit filed by our Indian Federation against San Diego County the matter of Indian inheritance was mentioned, showing that the laws of California provided that such matters were to be settled in California courts. Attorney General Brown stated (p. 16) :

"The laws of California respecting inheritance and eminent domain are applicable to the Pala Reservation and the inhabitants thereof (25 U.S.C. 372; 25 U.S.C. 357; *Oklahoma Tax Commission v. United States*, 319 U.S. 598).

Senate bill 2899 proposes illegal confiscation of Indian property

This all-Indian organization of southern California is fully justified in reciting the past record of the Federal Indian Bureau. We are fully aware of the effects of S. 2899, if it becomes a law. In our opinion, the approval by Congress of this proposed bill is nothing short of confiscation of Indian assets without due process of law. This proposed bill is but a part of the power-grabbing policy of the administration's Interior Secretary, as outlined by the new Assistant Secretary of the Interior John A. Carver, Jr., in a speech he made in New York on April 17, 1961, at a meeting of an organization headed by Mr. Oliver La Farge. The remarks of Mr. Carver were carried in the Congressional Record of May 4, 1961, page 6799.

Before his appointment as Assistant Secretary of the Interior, Mr. Carver had served some 4 years on Capitol Hill on the staff of the Indian Affairs Committee of the Senate. In that capacity, Mr. Carver stated in his speech in New York, he thought he "knew quite a bit about American Indian Affairs. At that point (p. 6800) Mr. Carver stated as follows, quote :

"As Assistant Secretary of the Interior with direct supervision over and responsibility for the Bureau of Indian Affairs, I have had a great awakening. I have come to realize that I don't know really as much as I thought I did when I was on Capitol Hill."

Summing up our statement in opposing S. 2899

In summing up our statement in opposition to S. 2899, we can only briefly refer to the documented evidence given in detail in the preceding pages. We have shown in clear, unmistakable language which the layman can understand, that all inheritance matters of all California Indians can legally be solved under the laws of California.

That is the written opinion of former Attorney General of California, Hon. Edmund G. Brown (now our Governor), in his brief submitted in our behalf in the test suit brought against San Diego County in 1952-53. That supporting brief, clearly showed that inheritance matters of all California Indians, regardless of whether they resided on restricted Indian lands or outside among the general population, (as more than five-sixths of California Indians do live) are subject to the laws of California. The State appellate court (4th Civil No. 4812-1953 Calif.) quickly affirmed the decision of the Superior Court of San Diego County. And from that day (1953) every qualified Indian in the State received the full benefits of all California laws.

We, therefore, submit, as we have shown in the above pages of this statement, the Congress has no legal right to legislate away our rights guaranteed under the Constitution, in matters of settlement of "Indian Inheritance." It is but another subterfuge in order to get Congress to extend the autocratic power of this power-grabbing Indian Bureau. No California Indian would suffer if the Indian Bureau authority in California was immediately abolished.

The whole scheme of the Indian Bureau across the years, as it bypasses Congress and sets up its own dictatorial policy, continues to be demand for more power and larger budgets.

House Concurrent Resolution 108, unanimously approved in 1953, by Congress

Yes, Congress approved by unanimous vote House Concurrent Resolution 108, after several months extensive hearings, and clearly outlined its own plan for ending further Bureau wardship control of Indians and their property. Before them were the hearings and record of numerous investigations into Bureau rule—including the famous Senator King speech of February 8, 1933, and especially the outstanding report of the Senate Committee, No. 310 of 1943, which will long be remembered among Indians, because of its exposure and its recommendation for abolishment of the Indian Bureau, and transfer of its various services to States. That Report, No. 310, carried sound, simple, provisions, step by step how the abolishment should be carried out. Senate bill 2899 must not be approved by the Senate.

Respectfully,

DAN PICO,
President, Mission Indian Federation, Inc.

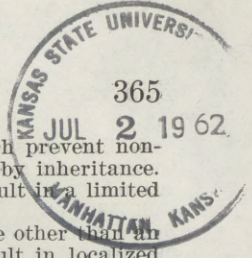
MORONGO RESERVATION,
Banning, Calif., April 30, 1962.

HON. CLINTON P. ANDERSON,
*Chairman, Committee on Interior and Insular Affairs,
Washington, D.C.*

DEAR MR. ANDERSON: We are in receipt of a copy of Senate bill 2899 introduced on February 26, 1962, by the Honorable Mr. Church, Senator from Idaho, and chairman of the Subcommittee on Indian Affairs of your committee. I am writing you to express the request of the Morongo Band, of Banning, Calif., that this bill not be enacted into law. We are aware of the complicated problems that are involved in Indian land heirship. We realize that it is necessary to take some strong steps to correct the difficulties arising out of the "fractionization of interests" in the ownership of Indian land. However, we feel that certain provisions of the bill would have a very definite effect of speeding up termination and this we oppose.

We have recently had assurances from Mr. Secretary Udall as well as many members of the Bureau of Indian Affairs and others that termination is no longer the policy of the Department of the Interior or the Bureau of Indian Affairs. We have been assured that the current policy is directed toward developing plans for reasonable economic development and utilization of Indian lands. Yet the provisions of section 11 of Senator Church's bill would result in termination of all individually held Indian lands in not more than two generations.

INDIAN HEIRSHIP LAND PROBLEM



Certainly there is no provision in the laws of the States which prevent non-Indians from passing on their land to several of their children by inheritance. But the provisions of section 11C of Mr. Church's bill would result in a limited termination if the decedent has more than one heir.

Presumably section 2 also means that if land is sold to anyone other than an individual Indian or to a tribe as a whole, such sale will result in localized termination. Unless the Congress proposes to continue the policy of termination, already clearly rejected by the Secretary of the Interior, it should refuse to pass this bill in its present form. Perhaps the bill can be corrected in some manner which will leave out the provisions threatening automatic termination and will still accomplish a much needed solution to the heirship problem.

As an alternative to killing the bill completely or amending out the termination features, the Morongo Band would like to request that if the bill is passed, the Morongo Band be expressly excluded from the provisions of the bill. It is not unusual for tribes with special circumstances to be excluded from the effect of Indian legislation; e.g., several tribes and tribal groups were exempted from the effect of Public Law 280. Most of us who live on the Morongo Reservation hold our allotments as individuals. For the most part, it is only those who are living off the reservation who have the "fractionated" type of ownership which the bill seeks to cure. Most of the Morongo Indians do not have sufficient funds to purchase lands which might be sold under the terms of Senator Church's bill. The tribe does not have funds with which to make such purchases either. The end result of the application of the bill to our reservation might very likely be to place non-Indians in ownership of lands which are spotted about throughout the reservation. The undesirable features of such a situation are too obvious to need explanation.

To summarize, the Morongo Tribal Business Committee, on behalf of the Morongo Band, feels that Senator Church's bill should be rejected by your committee unless it is carefully amended to remove the features which result in almost automatic termination. If your committee feels that the bill should be passed as it is, then we at Morongo ask to be specifically excluded from its application.

Respectfully yours,

MADELINE BALL,
Secretary, Morongo Tribal Business Committee.

RINCON BAND, SAN LUISENO INDIANS,
SAN DIEGO COUNTY,
Valley Center, Calif., April 30, 1962.

HON. FRANK CHURCH,
Chairman, Subcommittee on Indian Affairs,
Washington, D.C.

DEAR SENATOR CHURCH: The Tribal Business Committee of the Rincon Band, San Luiseno Indians, San Diego County, Calif., would like to express to your what we feel are inequities in legislation known as S. 2899 having to do with the Indian heirship land problem.

1. Where land authorized to be partitioned or sold by the Secretary of the Interior is acquired by an individual Indian or an Indian tribe, the provisions in this bill state that title thereto "may be taken in a trust status." We would like this wording changed to "shall be taken in a trust status." This would avoid giving the Secretary the right to make a decision that should be left to the Indian or Indian tribe.

2. Section 5 states that the Secretary shall give actual or *constructive* notice before partitioning or selling land. We believe the italicized words should be eliminated. There is no definition of constructive notice and it could well lead to sales or partitioning of land without owners being notified.

3. Where the bill speaks of "appraised value" of the land we believe should be changed to "current appraised value" and should mean an appraisal made within the past 12 months. If it is necessary to have an appraisal made, either because one has never been made, or having been made, it is obsolete, the cost of such appraisal should be borne by the U.S. Government, not the individual Indian or tribe.

4. Nothing shall be included in the bill to force the subject lands out of a trust status and on to the tax rolls.

5. The bill should provide that hearings shall be held in the area where the subject land is located so that interested parties may have the opportunity to attend.

6. The setting of an interest rate by the Secretary at his own discretion on loans to tribes is in error. Some other method of determining this rate should be inserted in the bill.

7. In the event of default in the repayment of the loan the Secretary may take whatever action he deems necessary to protect the interests of the United States. This may not be fair to the borrower. The terms of foreclosure, or other action, should be clearly spelled out before the contract is entered into.

8. We feel very strongly that that portion of section 11 which provides for land to go out of trust status should be eliminated.

We will appreciate your consideration of these opinions of our tribal business committee and urge your support of legislation that will be equitable to both the Indians and the U.S. Government.

Very truly yours,

LEO D. CALAC,

Chairman, Rincon Tribal Business Committee, Rincon Indian Reservation.

AGUA CALIENTE TRIBAL COUNCIL,
Palm Springs, Calif., April 16, 1962.

Hon. FRANK CHURCH,
U.S. Senate, Washington, D.C.

DEAR SENATOR CHURCH: Acting upon your suggestion when we recently met and discussed in Washington the merits of S. 2899 relating to the Indian heirship problem, I enclose two copies of a resolution passed by the Agua Caliente Band of Mission Indians on April 17, 1962, setting forth our views.

Sincerely yours,

EILEEN MIGUEL,

Chairman, Agua Caliente Tribal Council.

AGUA CALIENTE BAND OF MISSION INDIANS, PALM SPRINGS, CALIF., TRIBAL
RESOLUTION No. 62-1

Whereas hearings have heretofore been scheduled and held by the Senate Subcommittee on Indian Affairs on April 2 and 3, 1962, concerning that certain bill introduced by Senator Church, designated as S. 2899, relating to the Indian heirship land problem; and

Whereas the purpose of said bill is to bestow a benefit upon the Indian owners of fractionated titles in approximately 6 million acres of land for which no clear title can presently be obtained; and

Whereas the Agua Caliente Band of Mission Indians is in full accord with the purpose but believes that certain amendments or modifications of the proposed bill are imperative in order to avoid the aggravation of other problems now confronting Indians and to minimize the problem of multiple ownership in the future; and

Whereas Senator Church in his capacity as chairman of said committee has offered to keep the record open for an expression by the tribal members: Now, therefore, be it

Resolved, That in a duly called meeting of the tribe held at the office of the Bureau of Indian Affairs at Palm Springs, Calif., on April 17, 1962, members of the Agua Caliente Band of Mission Indians resolved to convey the following expressions respecting Senate bill 2899 to the Senate Subcommittee on Indian Affairs:

1. *Current appraisal*.—Section 5 be modified to expressly provide that when the phrase "the appraised value of the land" is used, that the modified language would be "the current appraised value of the land, said appraisal to be not more than one year old." This proposal is predicated upon the fact that in certain instances Indian lands have been sold for the appraised value when the appraisal was as much as 7 years old, thereby depriving the Indian owner of an obvious benefit. In addition, it must be noted with respect to the subject of appraisal that no provision whatsoever is included in S. 2899 for the expense of a current appraisal. Without such a provision, the requirement could become

meaningless or the bill could become inoperative. It is therefore strongly urged that a provision be added providing for the allocation of funds needed to in fact conduct a current appraisal.

2. *Master plan.*—In section 6(e) of S. 2899, it is stated that "before a loan is made under this Act, the Tribe shall submit for the approval of the Secretary of the Interior, a master plan for the use of all lands to be purchased." From an academic standpoint, this particular requirement has merit but from a practical standpoint, it means that the loan designed to assist tribes in the removal of land from multiple ownership to tribal ownership becomes a bit illusory because a master plan will cost money, and there is no provision in this bill for the requisite funds to procure a master plan. The Agua Caliente Band of Mission Indians has had some experience respecting this particular procedure in that they employed one of the Nation's leading engineering firms, Victor Gruen & Associates of Beverly Hills, who prepared a master plan for the use of one section of their land for a fee amounting to nearly \$15,000. This fee was in no way deemed excessive but many tribes would not be in a position to procure such a master plan due to a lack of finances; and, therefore, under the requirement specified in said section 6(e) would be precluded from securing the loan needed by them in order to take advantage of the intended benefit under this bill.

3. *Termination.*—Section 11 of the proposed bill is undoubtedly intended as a sincere effort to end the multiple-ownership problem. Unfortunately, it goes beyond the purpose of this bill in that it in practice will end multiple ownership. In light of the logical steps involved in an inheritance program, it becomes clear that said section 11 will serve as a termination of the present trust status enjoyed by Indian owners whenever their land involves multiple ownership. It is submitted that any fair bill will be restricted to the elimination of the multiple-ownership heir problems, and should not be designed to preclude the possibility of multiple ownership.

4. *Uniform inheritance laws.*—At the present time many multiple-ownership problems are rising from the fact that there is a lack of uniformity between Federal regulations and State probate laws. For instance, some States, such as California, do not recognize Indian custom marriages or common-law marriages. Notwithstanding this fact, Federal inheritance examiners have made decrees for distribution of trust land predicated upon a recognition of an alleged Indian custom marriage. Further complications have arisen regarding the validity of a will because the fact that a will is deemed adequate for admission to probate in the State of California does not mean that the same will will be treated as adequate for the disposition of trust property. As a consequence, an Indian might leave all of his property to one person in a will deemed valid in the Superior Court of California and have his designated beneficiary discover that the Federal Government does not consider the will sufficient for the purpose of passing title to trust property, thereby learning that a multiple ownership results in which the designated beneficiary does not even participate. Therefore, provisions should be included in S. 2899 providing the Indian with the right to elect to be bound by the inheritance laws of the State wherein he resides which would do much to eliminate the present confusion and the creation of many problems of multiple ownership in the future.

5. *Notification.*—Throughout S. 2899 requirements are imposed upon the Secretary of the Interior, or his duly authorized representative, to give notice to persons involved. In no instance does the method for giving such notice appear. Inasmuch as inadequate notification has proved to be a real problem for quite a number of years, it is suggested that all such notification be by registered mail, addressed to the last known address of the Indian involved and that an affidavit be filed with the return receipt requested whenever there is no response from the Indian, and that said affidavit shall fully detail what the Secretary or his duly authorized representative has in fact done to ascertain the whereabouts of the Indian owner, the reasonableness thereof to be a matter of determination by the Federal district court wherein the property involved is located. This is in part based upon the fact that many tribes throughout the Nation have not received notice of the hearings on S. 2899, there being at least 10 in southern California who have not been notified by any one except members of the Agua Caliente Band of Mission Indians.

AGUA CALIENTE BAND OF MISSION INDIANS,
By EILEEN MIGUEL, *Chairman, Tribal Council.*

Dated: April 17, 1962.

MOBRIDGE, S. DAK., *April 12, 1962.*

Senator CLINTON ANDERSON,
Washington, D.C.

DEAR SENATOR ANDERSON: In regard to hearings being held at this time in your committee that deal with the problem of Indian lands tied up in estates. This is a situation that does indeed warrant change, and it is difficult to understand why the National Congress of American Indians should oppose a bill that would remedy the situation.

Several Indians have talked with me about the ridiculous situation where they sometimes receive checks for as little as 8 cents, many receive checks for as little as \$1.

We all know this heirship land does not benefit the several scattered owners and generally creates a hardship to anyone trying to lease it.

If such lands could be sold and thus put on the tax rolls, it would benefit counties now hard pressed due to the large amount of nontaxable lands in their counties.

Sincerely,

A. C. SMITH.

WARNER SPRINGS, CALIF.

Senator CHURCH,
U.S. Senate, Washington, D.C.

HON. SENATOR CHURCH: I'm writing in regards to Indian heirship land problem bill S. 2899.

We wish to thank you for your interest in trying to straighten out Indian heirship problems, but we are opposed to this bill S. 2899 as it is now written as it does not solve problems, but creates more, especially section 11. This does not help the Indian in any way.

Therefore, we are opposed of this bill.

Sincerely,

BANNING TAYLOR,
Los Coyotes Reservation Spokesman.

LUMMI RESERVATION, WASH., *March 29, 1962.*

HON. HENRY M. JACKSON,
U.S. Senate,
Washington, D.C.

HON. WARREN G. MAGNUSON,
U.S. Senate,
Washington, D.C.

MY DEAR SENATORS: Reference is made to bill S. 2899 relating to the the Indian heirship land problem now in the Committee on Interior and Insular Affairs.

Please be advised that the Lummi Business Council has voiced objections to the following:

Page 1, line No. 3: We feel that one owner should not be able to request sale of any property because this would hold our land open to realtors and possibly one irresponsible interest holder, who could be influenced to sell for small sums of money.

Page 7, section 7: We recommend the deletion of this section, as we do not feel that any governing body should be allowed to sell tribal property.

Page 8, line 16: We do not feel that the title status of property should be limited, so as to discourage subdivision.

Page 8, line 25: Rather than "if there is only one devisee or heir" we would like to recommend the following: "if it is practical to be divided."

Page 9, line 3: We recommend deletion of this paragraph through line 11, because we have seen unrestricted deeds issued to many of our people who were not competent enough to successfully use their lands.

In the sections which provide for a revolving fund, it is the desire of this council to have funds made immediately available to the tribes who are unable to otherwise purchase land.

We are asking that you please use your influence and see that our wishes are made known to the committee at their hearings on April 2 and 3. Thanking you for your very kind cooperation in this matter, I am,

Sincerely yours,

FORREST L. KINLEY,
Chairman, Lummi Business Council.

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