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KINZUA DAM (SENECA INDIAN RELOCATION)

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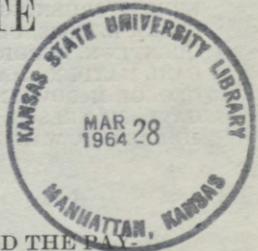
HEARING BEFORE THE SUBCOMMITTEE ON INDIAN AFFAIRS OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

EIGHTY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 1836 and H.R. 1794



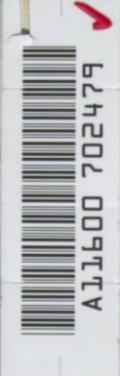
BILLS TO AUTHORIZE THE ACQUISITION OF AND THE PAY-
MENT FOR A FLOWAGE EASEMENT AND RIGHTS-OF-WAY
OVER LANDS WITHIN THE ALLEGANY INDIAN RESERVA-
TION IN NEW YORK, REQUIRED BY THE UNITED STATES
FOR THE ALLEGHENY RIVER (KINZUA DAM) PROJECT, TO
PROVIDE FOR THE RELOCATION, REHABILITATION, SO-
CIAL AND ECONOMIC DEVELOPMENT OF THE MEMBERS
OF THE SENECA NATION, AND FOR OTHER PURPOSES

MARCH 2, 1964

Printed for the use of the
Committee on Interior and Insular Affairs



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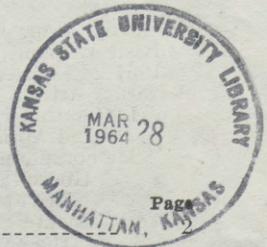
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GENERAL INFORMATION

The Flood Control Act, passed by Congress in 1936, was a comprehensive plan for the protection of Pittsburgh and reduction of flood heights in the Ohio Valley. The Allegheny Dam and Reservoir is a major step toward completion of this program. The project, now under construction, is located approximately 198 river miles above Pittsburgh, and about 9 miles above Warren, Pennsylvania. The reservoir will lie in portions of Pennsylvania and New York at reservoir full condition, extending from the dam site at Kinzua, Pennsylvania to Salamanca, New York, a distance of approximately 35 miles. The Allegheny Dam is scheduled for completion in 1965 at an estimated total cost of \$114,000,000. The benefits to be accrued from flood control, low water control and recreation, will amount to approximately \$6,271,000 annually, providing an economic ratio of 1.4 to 1.

FLOOD CONTROL

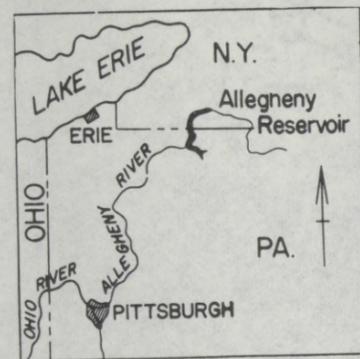
The primary purpose of the Allegheny Dam and Reservoir is to protect the Allegheny and Ohio valleys from flood damage by storing storm and snow melt runoff. It will provide flood protection in varying degree, not only for Pittsburgh and its industries, but also many other cities and industries located in the valleys of the Allegheny River and upper Ohio River. Warren, Pennsylvania will receive complete protection from floods originating in the 2,180 square mile watershed above the dam.

The Allegheny Dam, when completed, will be the largest dam in a nine dam system above Pittsburgh. The flood control capacity to be provided by the dam and reservoir is sufficient to store a flood about 2-1/2 times the size of the greatest flood of record at the dam site (60,500 c.f.s.). Operation of the reservoir will provide full control of such a flood and will substantially reduce all major floods in the 200 mile reach of the river below the dam.

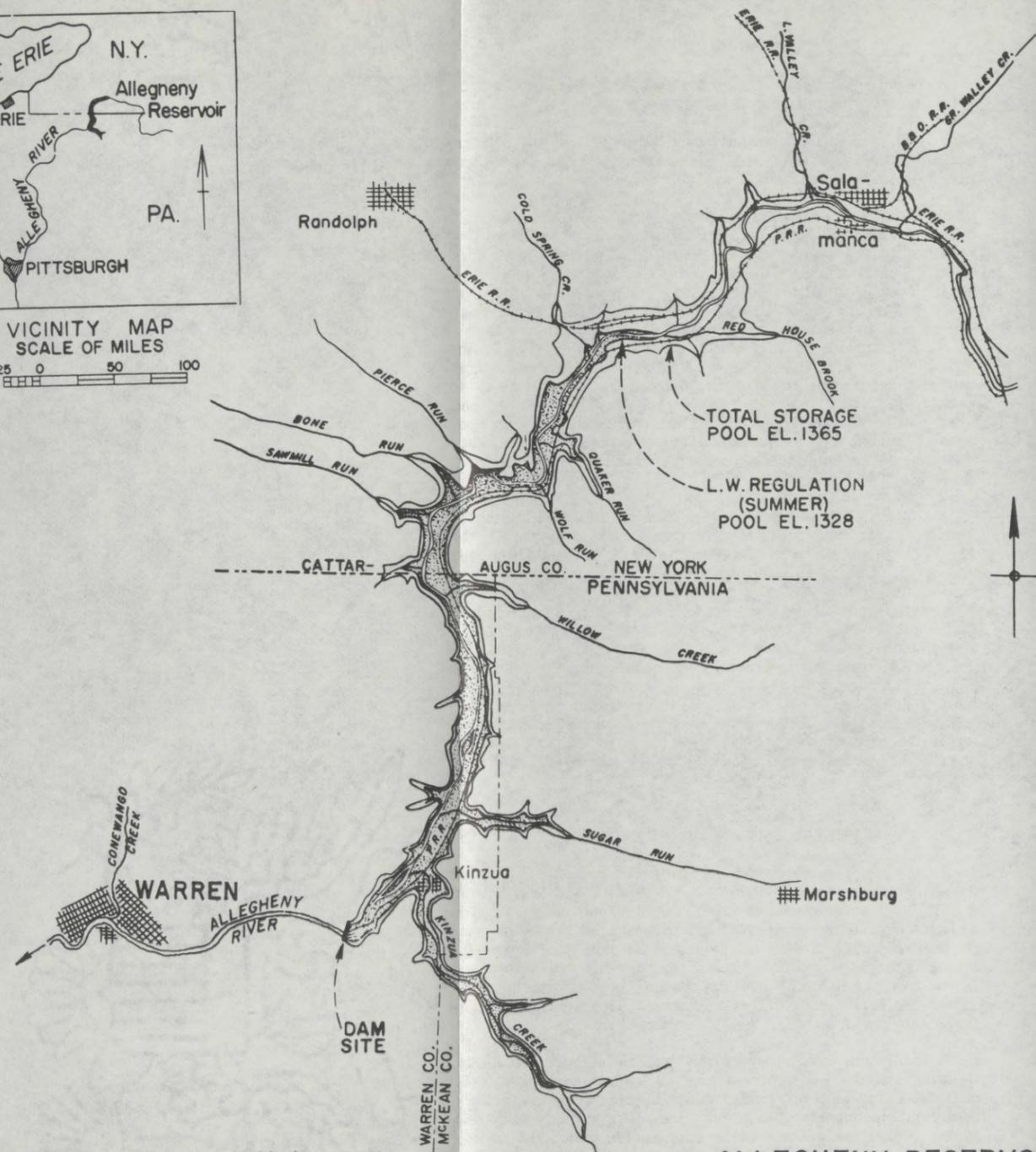
WATER SUPPLY

The Allegheny Dam was initially proposed for the single purpose of flood control. Following initial authorization, Congress extended the purposes of its authorization to include water resources development. Subsequent studies showed a tangible benefit to be derived from added storage allocated to provide low water control and the attendant benefit of pollution abatement.

Because the water of the upper Allegheny River is relatively pure and mineral free, its effect will be far reaching when used as a supplement to waters of the lower Allegheny in times of critical low flows. To municipal suppliers it will mean a reduction in treatment costs of water used for domestic consumption; to navigation interests it will mean reduced acid concentration resulting in less corrosion damage; and to industry, which uses about 3,000 MGD, it will mean increased efficiency of cooling operations through lowering of river water temperatures. Intangible benefits such as color, odor, and general health conditions of the river, improved by the addition of low flow control from the reservoir, cannot be assigned a monetary value but must be considered as important benefits resulting from this project.



VICINITY MAP
SCALE OF MILES
0 25 50 100



This map and information is provided by the U.S. Army Engineer, Pittsburgh District, Corps of Engineers, June, 1962.

ALLEGHENY RESERVOIR

SCALE OF MILES
0 1 2 3 4

CONSTRUCTION

The project as a whole is scheduled for completion in 1965 at an estimated cost of \$114,000,000.

During the construction period planning work will be continued, necessary lands will be acquired, and the reservoir area will be cleared.

Within the reservoir area there are approximately 60 miles of highway, 36 miles of railroad, and 31 miles of reservation roads, as well as 80 miles of power lines, 66 miles of communication lines, and 38 miles of pipe line. Many of these facilities will no longer be required since they serve properties which will be purchased for the reservoir. Others will be replaced by new facilities or by improving existing facilities. A three mile stretch of Pennsylvania Route No. 59 at the dam site is now being relocated under contract with the Commonwealth of Pennsylvania, and alteration of existing facilities to provide equivalent service has been under way since execution of a contract with the Pennsylvania Railroad in August 1960. Additional adjustments of existing facilities will be accomplished by contract during the construction period.

Construction of the concrete dam and earth fill embankment is under contract with direct supervision by the U. S. Army Engineer District, Pittsburgh, Pa., Corps of Engineers. Construction of these features is under way. The initial phase of the earth fill embankment, containing 450,000 cubic yards of selected and carefully compacted earth fill, was completed in the fall of 1961 by the Wm. A. Rupert Contracting Co. The Hunkin-Conkey Construction Co. of Cleveland, Ohio, general contractor for the project, has assembled plant and equipment, completed the first stage cofferdam, and is presently engaged in excavation preparatory to placing foundation concrete for the spillway section of the dam. Elsewhere in this folder are photographs of a construction model which show sequence of construction operations.

PUBLIC USE AND RECREATION

The large summer storage pool will provide a reservoir 27 miles long. At this stage, the reservoir will include more than 12,000 acres of water surface and 91 miles of shore line. Forest-covered mountains will provide a scenic backdrop for the bays, necks, coves, inlets and other points of interest along the irregular shore line. The reservoir will provide recreation in the form of hunting, boating, fishing, and swimming, providing the opportunity for vast numbers of Americans to enjoy the pleasures of nature.

Public use and access areas will be constructed along the shore of the reservoir to provide swimming beach areas, boat launching and servicing facilities, picnic areas, primitive camping opportunities, and other recreational pursuits. These recreation areas will be constructed under the overall coordination of the Corps of Engineers and will also include developments by the Allegheny State Park Commission and other state and federal agencies.

PROJECT DATA

| LOCATION | |
|--------------------------------------|--|
| Stream | Allegheny River |
| Miles above mouth | 198 |
| Watershed above dam, sq. mi. | 2,180 |
| DAM | |
| Type | Combined concrete and earth embankment |
| Height above stream bed | 179.0' |
| Length overall | 1,915.0' |
| Length earth | 1,112.5' |
| Length concrete | 802.5' |
| Length spillway | 210.0' |
| SPILLWAY | |
| Concrete gravity ogee section | 1 |
| Tainter gates 24'-4" high x 45' wide | 4 |
| Length of gated section | 210' |
| OUTLET WORKS | |
| Sluices (through the dam) | 8 |
| Low level | 6 |
| High level | 2 |
| Size 10'-0" high x 5'-8" wide | |
| RESERVOIR | |
| Length, miles | |
| Maximum pool | 35 |
| Summer pool | 27 |
| Winter pool | 18 |
| Area, acres: | |
| Maximum pool | 21,175 |
| Summer pool | 12,050 |
| Winter pool | 6,610 |
| Storage volume, acre feet*: | |
| Maximum pool | 1,180,000 |
| Summer pool | 549,000 |
| Winter pool | 239,800 |

* An acre-foot is a unit of volume representing the amount of water that covers one acre in extent to a depth of one foot or equivalent combination. One acre-foot equals 43,560 cubic feet or 325,850 gallons.

FLOW DATA

Maximum flow of record at dam site:
60,500 c.f.s., 8 March 1956

Reservoir design flood peak flow:
151,000 c.f.s. (natural conditions)

GENERAL INFORMATION

The flood control act passed by Congress in 1928 authorized a comprehensive plan for the protection of Pennsylvania from floods of high water in the Ohio Valley. The Allegheny River and Reservoir is a major step toward accomplishing this program. The project, now under construction, will protect approximately 150 miles from Pennsylvania and New York in portions of Pennsylvania and New York in Pennsylvania and New York. The Allegheny Dam is scheduled for completion in 1955. The estimated total cost of \$110,000,000. The project will be financed by the Federal Government and the State of Pennsylvania. The project will result in an economic gain of \$11,000,000,000 annually.

FLOOD CONTROL

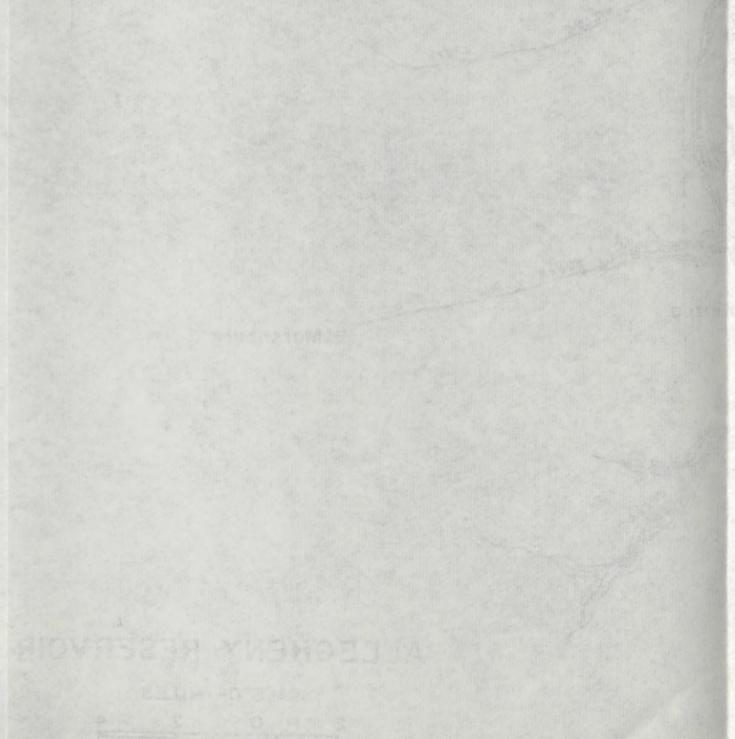
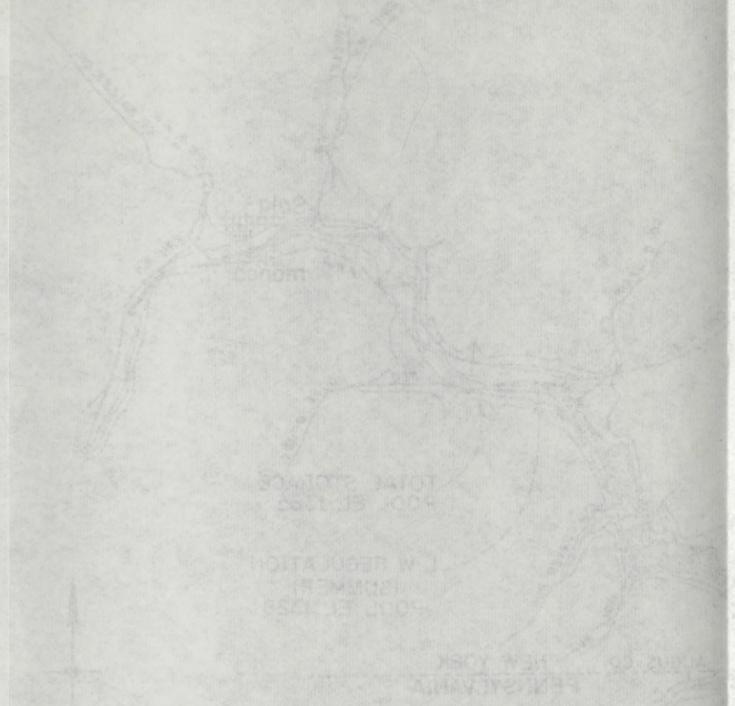
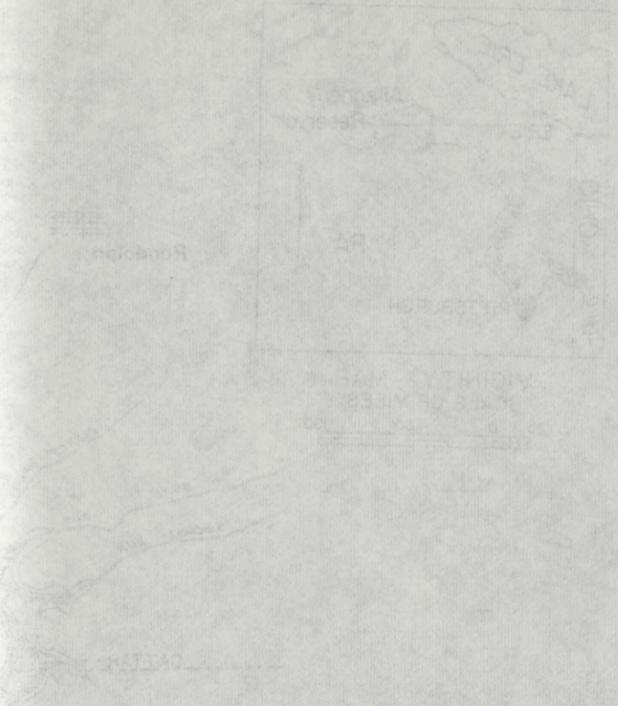
The primary purpose in the Allegheny Dam and Reservoir is to protect the Allegheny and Ohio valleys from the damage of flooding. The dam will provide protection in varying degrees, not only for Pennsylvania, but also for many other states and industries. In the valleys of the Allegheny River and upper Ohio River, Pennsylvania will receive complete protection from floods originating in the 1,100 square mile watershed above the dam.

The Allegheny Dam, when completed, will provide a dam in a new dam-gate above Pittsburgh. The dam will be capable of being raised to a flood about 3-1/2 times the normal flood of record at the dam site (100,000 cfs). The reservoir will provide full control of flood waters and will substantially reduce all major floods in the Allegheny River below the dam.

WATER SUPPLY

The Allegheny Dam was initially proposed for the purpose of flood control. Following initial studies, it was found that the dam would also provide a water supply for the purpose of the municipalities located in the Allegheny Valley. The dam will provide a water supply for the municipalities located in the Allegheny Valley. The dam will provide a water supply for the municipalities located in the Allegheny Valley.

Because the water of the upper Allegheny River is very pure and mineral free, the water will be used as a supplement to water of the Allegheny River in times of critical low flow. To maintain adequate water supply, a reduction in treatment costs of water will be necessary. The construction of this dam will result in a significant reduction in treatment costs. The dam will provide a water supply for the municipalities located in the Allegheny Valley. The dam will provide a water supply for the municipalities located in the Allegheny Valley.



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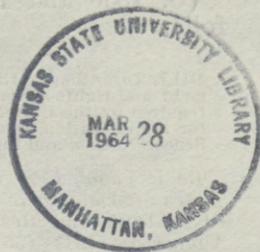
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KINZUA DAM
(Seneca Indian Relocation)



MONDAY, MARCH 2, 1964

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 (chairman of the subcommittee) presiding.

Present: Senators Frank Church (Idaho), Ernest Gruening (Alaska), Quentin N. Burdick (North Dakota), George S. McGovern (South Dakota), Milward L. Simpson (Wyoming), E. L. Mechem (New Mexico), and Peter H. Dominick (Colorado).

Also present: Senator Herbert S. Walters (Tennessee) and Representative James A. Haley (Florida).

Staff members present: Jerry T. Verkler, staff director; Stewart French, chief counsel; and James H. Gamble, professional staff member.

Senator CHURCH. The hearing will please come to order.

The purpose of the meeting of the Indian Affairs Subcommittee this morning is to take testimony on two important bills pending before us, S. 1836, introduced by Senator Javits for himself and other Senators, and H.R. 1794, a companion measure passed by the House on February 7 and referred to this committee on February 10, 1964.

The subject matter of the two bills is authorization for payments to the Seneca Indians for land to be taken in the State of New York for the construction of the Kinzua Dam and Reservoir project. We have received reports on S. 1836 from the Department of the Army, Department of the Interior, and the Bureau of the Budget during the past week and I will ask that they be inserted in the record following my brief remarks. We will also include H.R. 1794 and the accompanying House Report No. 1128.

It is my understanding that the Kinzua Dam will be completed in the not too distant future and it will be necessary for many Indians to move into other areas; hence the urgency of enacting a bill to authorize payments for lands to be taken and other funds to be used in reestablishing these Seneca families. I am sure all members of the committee are aware of the widespread interest in this legislation as evidenced by the volume of correspondence they have received.

(S. 1836 and Departmental reports and H.R. 1794 and report follow:)

[S. 1836, 88th Cong., 1st sess.]

A BILL To authorize the acquisition of and the payment for a flowage and clearing easement and rights-of-way over lands within the Allegheny Indian Reservation in New York, required by the United States for the Allegheny River (Kinzua Dam) project, to provide for the relocation, rehabilitation, social and economic development of the members of the Seneca Nation, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in furtherance of the Allegheny River Dam and Reservoir project authorized by the Flood Control Acts of August 18, 1941 (55 Stat. 638), and December 22, 1944 (58 Stat. 889), the United States hereby takes—

(a) the right, power, privilege and easement to clear, overflow, flood, and submerge lands within the Allegheny Indian Reservation up to one thousand three hundred and sixty-five feet above sea level, consisting of approximately ten thousand and ten acres, as delineated on the map referred to in section 14 hereof, for as long as required in the construction, operation, and maintenance of the Allegheny River project authorized under the aforesaid flood control Acts; and

(b) rights-of-way for the relocation of highways, railroads, telephone lines, and other public utilities across approximately five hundred acres of land within the Allegheny Indian Reservation, including lands below elevation one thousand three hundred and sixty-five feet, as also delineated on the map referred to in section 14 hereof, for as long as said rights-of-way are used for the purposes originally intended.

SEC. 2. In consideration for the flowage and clearing easement and rights-of-way acquired under section 1 of this Act, the United States will pay, out of the funds available for the Allegheny River project, and in accordance with the provisions of section 3 thereof—

(a) to the Seneca Nation, the amount of \$4,657,984, as compensation for the direct damages (including severance damages and damages involved in the increased difficulty or impossibility in exploiting subsurface rights as hereinafter provided in section 6, to lands within the Allegheny Indian Reservation caused by the aforesaid flowage easement and rights-of-way;

(b) to individual Seneca Indians a sum aggregating \$1,165,718, to be disbursed in accordance with the provisions of a schedule prepared pursuant to section 3(b) of this Act, as compensation for the taking of houses, barns, fences, wells, and other structures and improvements on lands within the Allegheny Indian Reservation; and

(c) to the Seneca Nation, the amount of \$2,697,350, in settlement of all other claims, rights and demands of the nation and its members, including indirect damages, arising out of the taking of property under this Act.

SEC. 3. (a) The payment authorized by section 2(a) of this Act shall be made directly to the Seneca Nation: *Provided*, That out of the funds so distributed to the nation a sum aggregating \$1,000,000 shall be paid to individual Seneca Indians in accordance with a schedule prepared by the Secretary of the Army, after certification by the nation. Said schedule shall reflect the amount agreed upon by the Secretary of the Army and the Seneca Nation, with the approval of the Secretary of the Interior, as compensation for the interests in lands within the taking area of said individual Seneca Indians.

(b) The payments authorized by section 2(b) of this Act shall be made directly to individual Seneca Indians in accordance with a schedule of property owners within the taking area prepared by the Secretary of the Army, after certification by the Seneca Nation. Said schedule shall reflect the amount agreed upon by the Secretary of the Army and the nation, with the approval of the Secretary of the Interior, as compensation for the homes, barns, fences, wells, and other structures and improvements within the taking area of said individual Seneca Indians.

(c) The payment authorized by section 2(c) of this Act shall be made directly to the Seneca Nation: *Provided*, That the nation, with the approval of the Secretary of the Interior, shall make available from the funds so distributed not to exceed \$135,050, to pay the expenses, costs, losses, and damages incurred by individual Seneca Indians as a result of moving themselves and their possessions, including dwellings and other buildings owned by members of the nation, on account of the acquisition by the United States of a flowage and clearing

easement and rights-of-way within the Allegany Reservation as authorized in section 1 of this Act.

(d) No part of the compensation provided for in section 2 of this Act shall be subject to any prior lien, debt, or claim of any nature whatsoever against the Seneca Nation or the individual Seneca Indians entitled to such compensation, except for the repayment of housing or resettlement loans made to individual Seneca Indians by a bank or other recognized lending institution, and also except for delinquent debts owed to the United States by the nation or delinquent debts owed to the United States or to the Seneca Nation by the individual Seneca Indian entitled to the compensation: *Provided*, That such compensation shall not be applied to the payment of individual delinquent debts to the United States unless the Secretary of the Interior first determines and certifies that no hardship will result from the payment of such delinquent debts.

Sec. 4. There is authorized to be appropriated the additional sum of which shall be deposited in the Treasury of the United States to the credit of the Seneca Nation and which shall draw interest on the principal at the rate of 4 per centum per annum until expended, for assistance designed to improve the economic, social, and educational conditions of enrolled members of the Seneca Nation, including, but not limited to, the following purposes:

(a) agricultural, commercial, and recreational development on the Allegheny, Cattaraugus, and Oil Springs Reservations;

(b) industrial development on the Seneca Reservations or within fifty miles of any exterior boundary of said reservations;

(c) relocation and resettlement, including the construction of roads, utilities, sanitation facilities, houses and related structures;

(d) the construction and maintenance of community buildings and other community facilities;

(e) an educational fund for scholarship loans and grants, vocational training and counseling services;

(f) the acquisition of lieu lands either within or adjacent to the Allegany Reservation, as authorized under section 13 of this Act; and

(g) a resurvey of the boundaries of the villages established pursuant to the Act of February 19, 1875 (18 Stat. 330), together with a title search to determine the current status and extent of all leases issued by the Seneca Nation therein.

The funds authorized by this section shall be expended in accordance with plans and programs approved by the Seneca Nation, after consultation with the Secretary of the Interior: *Provided*, That no part of such funds shall be used for per capita payments.

Sec. 5. The Secretary of the Army, out of funds appropriated for the Allegheny River project other than funds provided by this Act, is authorized and directed to relocate and reestablish within the Allegheny Reservation such Indian cemeteries, tribal monuments, graves, and shrines inside the taking area as the Seneca Nation or the next of kin shall select and designate: *Provided*, That reinterment of individual remains, though not entire cemeteries, outside the boundaries of the Allegheny Reservation also is authorized if so desired by the next of kin, but in such event reinterment to a site which exceeds the equivalent distance from the disinterment site to the farthest point at which reinterment could be made within the reservation boundaries will be made only if the next of kin agrees to pay the added cost.

Sec. 6. With the exception of sand and gravel, all minerals of any kind whatsoever, including oil and gas, within the flowage and clearing easement and rights-of-way acquired by the United States under this Act, are hereby reserved for the Seneca Nation. All sand and gravel within the taking area of the Allegheny River project lying under land now designated as elevation one thousand three hundred and forty feet or above, except lands subject to rights-of-way for highway or railroad purposes, also are reserved for the Seneca Nation. Notwithstanding the foregoing provisions of this section, the exploration and development of such minerals, including oil and gas, and sand and gravel, within the taking area shall be subject to all reasonable regulations of the Secretary of the Army necessary for the protection of the Allegheny River project.

Sec. 7. Members of the Seneca Nation shall have the right without charge to remain on and use the lands subject to the flowage and clearing easement and rights-of-way acquired by the United States under this Act until required to vacate at such times as may be fixed by the Secretary of the Army, with the approval of the Secretary of the Interior and after consultation with the Seneca

Nation: *Provided*, That the time for vacating in any event will not extend beyond June 30, 1965.

Sec. 8. Up to sixty days before the date for vacating the flowage and clearing easement and rights-of-way in accordance with section 7, the Seneca Nation on its common lands within the taking area for the Allegheny River project, and individual Seneca Indians on lands in which they have an interest as shown on the schedule described in section 3(a) of this Act, shall have the exclusive right, without charge, to harvest crops, to cut and remove all timber, to mine and remove sand and gravel, and to salvage improvements: *Provided*, That if such rights are not exercised or are waived by said individual Seneca Indians within the time prescribed, the nation may exercise their rights: *And provided further*, That the crops harvested, the timber cut, the sand and gravel removed, and the salvage permitted by this section shall not be construed to be compensation.

Sec. 9. The Seneca Nation shall have the right to use and occupy the taking area of the Allegheny River project within the Allegany Reservation for all purposes not inconsistent with the flowage and clearing easement and rights-of-way acquired by the United States under this Act, including, but not limited to, the right to lease such lands for farming and grazing purposes to members and nonmembers of the nation, the power to dispose of all minerals reserved under section 6 of this Act, the right to hunt and fish on such lands and the rights to regulate access to the shoreline of the reservoir: *Provided*, That public access to the shoreline shall be provided and no charge shall be made to the public therefor.

Sec. 10. The Secretary of the Treasury, upon certification by the Secretary of the Interior, shall reimburse the Seneca Nation for all fees and expenses incurred in relation to the Allegheny River project, including the cost of engineering and appraising services: *Provided*, That such reimbursable fees and expenses shall not exceed in the aggregate of \$250,000: *And provided further*, That attorney fees shall be paid under the terms of a contract approved by the Secretary of the Interior.

Sec. 11. (a) Any individual Seneca Indian who accepts the payment tendered to him pursuant to section 3(a) shall be deemed to waive and release any further claims, rights, or demands in his own name arising out of the taking of lands under this Act. Any individual Seneca Indian who accepts the payment tendered to him pursuant to section 3(b) shall be deemed to waive and release any further claims, rights or demands in his own name arising out of the taking of houses, barns, fences, wells, and other structures and improvements under this Act.

(b) Any individual Seneca Indian who has been duly tendered payment in accordance with the schedules prepared pursuant to section 3 (a) and (b) of this Act shall have the right to reject either or both of the sums so tendered by filing a notice of rejection with the Seneca Nation, Salamanca, New York, and with the Chief of Engineers, United States Army, District of Columbia, within one year from the date of enactment of this Act, or within ninety days after the tender is made, whichever date is later.

(c) For the purposes of this section, the Secretary of the Interior is authorized to represent any individual Seneca Indian entitled to payment who is a minor, or under any other legal disability, or who cannot be located after a reasonable and diligent search.

Sec. 12. (a) In all cases where a sum tendered in payment under section 3 (a) and (b) of this Act has been rejected by an individual Seneca Indian pursuant to section 11(b), jurisdiction shall be, and hereby is, conferred upon the United States District Court for the Western District of New York to determine just compensation in accordance, except as otherwise expressly provided herein, with the laws and procedures applicable to the determination of just compensation in condemnation proceedings. No court or statutory costs, but all other costs and expenses, including attorney's fees, shall be at the contesting individual's expense. Suit may be brought against the United States on behalf of any individual rejecting payment within one year after the date of the rejection.

(b) Where the sum rejected by an individual Seneca Indian has been tendered under section 3(a) of this Act, and a suit is filed pursuant to this section, the contesting individual shall serve a copy of the complaint upon the Seneca Nation within ten days after commencement of the action. Within sixty days after service upon it of the complaint, the Nation shall deposit in court the sum originally tendered to the plaintiff and, through the filing of an answer, may become a party to the suit. Any excess of the sum deposited over the amount

finally determined as just compensation shall be paid to the Seneca Nation. Any excess of the amount finally determined as just compensation over the sum deposited shall be paid by the United States.

(c) Where the sum rejected by an individual Seneca Indian has been tendered under section 3(b) of this Act, and a suit is filed pursuant to this section, the United States shall not assert as a defense that any interest in the property is owned by the Seneca Nation.

(d) For the purposes of this section, any individual Seneca Indian eligible to file suit, who is a minor or under any other legal disability, shall be represented by his legal guardian or, if no guardian has been appointed, by the Secretary of the Interior.

SEC. 13. The Secretary of the Interior is hereby authorized, with the funds provided under section 4(f) of this Act, to purchase or to acquire through condemnation proceedings lands, and interests in lands, within the Allegany Reservation, for the relocation of houses and community facilities or for recreational, commercial, or industrial development, or adjacent thereto, for recreational or commercial development.

SEC. 14. The flowage and clearing easement and rights-of-way acquired by the United States under section 1 of this Act are identified and delineated on a map entitled "Allegheny River Reservoir Within Allegany Indian Reservation, New York." Legal descriptions of the lands shown therein, and the estate taken, shall be prepared by the Secretary of the Army and attached hereto. The map and descriptions shall be filed among the land records of the Bureau of Indian Affairs in Washington, District of Columbia, and recorded in the office of the county clerk of Cattaraugus County, New York. A true and correct copy of the map and descriptions shall be furnished without cost to the Seneca Nation.

SEC. 15. Upon a determination by the Secretary of the Army that all or part of the flowage and clearing easement and rights-of-way acquired under section 1 of this Act no longer are necessary for purposes of the Allegheny River project, all right, title, and interests in such lands shall thereupon vest in the Seneca Nation.

SEC. 16. No part of any expenditures made by the United States under any of the provisions of this Act shall be charged by the United States as an offset or counterclaim against any claim, if any, of the Seneca Nation against the United States.

SEC. 17. All funds authorized by this Act paid to the Seneca Nation and individual Seneca Indians shall be exempt from all forms of State and Federal taxation.

SEC. 18. There is hereby authorized to be appropriated such amounts as may be necessary for the purposes of this Act.

DEPARTMENT OF THE ARMY,
Washington, D.C., February 24, 1964.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to S. 1836, 88th Congress, a bill to authorize the acquisition of and the payment for a flowage and clearing easement and rights-of-way over lands within the Allegany Indian Reservation in New York, required by the United States for the Allegheny Reservoir (Kinzua Dam) project, to provide for the relocation, rehabilitation, social and economic development of the members of the Seneca Nation, and for other purposes.

The Department of the Army has considered this bill, the purpose of which is generally as stated in the title. More specifically, this bill authorizes the taking by the United States of flowage, clearing, and rights-of-way easements over portions of the lands within the Allegany Indian Reservation as required for the Allegheny River Dam and Reservoir project; approximately 10,010 acres for flowage and clearing easements and approximately 500 acres for other easements. In consideration for this taking, the bill provides for payment out of project funds for (1) an amount of \$4,657,984 for direct damages to the Seneca Nation for the taking of surface and subsurface interest in land; (2) an amount of \$1,165,718 to individual Seneca Indians for the taking of improvements; (3)

an amount of \$2,697,350 for indirect damages including moving costs and settlement of all claims; and (4) the relocation of Indian cemeteries, tribal monuments, and shrines, together with funds for perpetual maintenance of two cemetery sites. Provision is also made to authorize appropriation of an unspecified amount to be expended by the Seneca Nation, after consultation with the Secretary of the Interior, for the purpose of rehabilitation of the Seneca Nation and Indians including (1) recreational, agricultural, and commercial development on the reservation lands; (2) industrial developments on the reservation or within 50 miles thereof; (3) community relocation and resettlement including roads, houses, and related facilities; (4) construction of community buildings and facilities; (5) an educational fund; (6) acquisition of lieu lands; and (7) a title search and boundary survey of the villages. An amount not exceeding \$250,000 is also authorized for reimbursement of the Seneca Nation for administrative and legal fees. In addition, it is also provided that (1) Indians and/or nation may, without charge, cut and remove all timber and salvage all improvements on lands being acquired; (2) all minerals including gas, oil, sand, and gravel are reserved; (3) the Seneca Nation shall have the right to use and occupy the taking area for all purposes not inconsistent with project purposes including the right to lease such lands, to issue hunting and fishing licenses, and the right to regulate access to the shoreline; (4) the Secretary of the Interior is authorized to purchase lieu lands out of funds provided for rehabilitation; (5) the boundaries, descriptions, and estates taken are to be delineated on maps by the Secretary of the Army and filed with the Bureau of Indian Affairs and the county clerk of Cattaraugus County; and (6) any lands subsequently not required for the project shall be revested, without charge, in the Seneca Nation.

In implementation of the President's directive, the Corps of Engineers, the Bureau of Indian Affairs, and the Seneca Nation of Indians, at a meeting on October 13, 1961, agreed upon procedural actions to be taken by the parties. Following respective actions to be taken by the parties, the Department of the Army, through the Corps of Engineers, was to draft proposed legislation on matters within the scope of the President's directive and beyond existing authorities. The drafting of legislation by the corps was not accomplished because of the Seneca Nation elected not to follow the agreed procedure and decided to bring directly to Congress the legislation desired by it.

We mention the matter of the Presidential directive because we think its basic feature should be adhered to; that is, that matters which can be done under existing authorities should be done under those authorities, and that special legislation should be confined to matters beyond existing statutory authorities. This is particularly so in this case in that the Department of Justice has advised this Department that the title of the Seneca Nation and the interests of the individual allottees are uncertain and are subject to various outstanding claims; that the Seneca Nation lacks the statutory authority to convey the required interests in land; that the proposed legislative taking does not assure the United States valid title; and that the United States should acquire these interests in land.

The Department of the Army, with the concurrence of the Seneca Nation, is now in the process of acquiring title to all required interests in these lands by condemnation; a number of such proceedings covering substantial areas have already been filed in the U.S. District Court for the Western District of New York together with funds in the estimated amount of just compensation; and it is planned to complete filing of suits on the remaining areas within the near future. This procedure has the advantage of making funds readily available to the Nation and its members; it does not preclude the continuation of negotiations of settlement; and serves to dispose of the title question by immediately vesting title to the said interests in the United States. Moreover, as to those tracts not settled by negotiation, the parties being in court have a procedure readily available for the determination of just compensation. In view of this procedure, the Department of the Army, as a general comment, recommends that this bill be appropriately amended to delete the legislative taking aspects from section 1.

The Allegheny Reservoir project was authorized as part of the comprehensive plan for flood control and other purposes in the Ohio River Basin by the act of June 28, 1938, as amended (52 Stat. 1215, 1217; 55 Stat. 646), and the Flood Control Acts of August 18, 1941 (55 Stat. 638), and December 22, 1944 (58 Stat. 889). The damsite is on the Allegheny River in the vicinity of Kinzua, Warren County, Pa., with the reservoir in Warren and McKean Counties, Pa., and Cat-

taraugus County, N.Y. Construction of this project, which is now underway by Chief of Engineers, is estimated to be completed in 1965. In this connection, the Corps of Engineers is in the process of acquiring fee and easement rights in approximately 26,000 acres of land in Pennsylvania and New York States. Included within the project are approximately 10,500 acres of land in the Alleghany Indian Reservation over which various easement rights will be required.

The matter of the adjustment of the Seneca Nation and its members to the situation caused by the Allegheny Reservoir project has had the attention of the President. Reference in this respect is made to the President's letter of August 9, 1961, to the President of the Seneca Nation. Pertinent excerpts of the President's letter are set forth on pages 22 and 23 of Senate Report 1097, 87th Congress, 1st session, public works appropriation bill, 1962.

Essentially, the President directed the departments and agencies of the Federal Government to take every action within their authority to assist the Seneca Nation and its members who must be relocated in adjusting to the new situation and to prepare recommendations if legislation were required to achieve his objectives.

First, with respect to this legislation in general, S. 1836 is similar in substance and structure to H.R. 1794, H.R. 3343, and H.R. 7354, on which the Subcommittee on Indian Affairs, House Committee on Interior and Insular Affairs, has held numerous hearings. As a result, the Department of the Army, the Department of the Interior, and the Seneca Nation have resolved many of their differences and have agreed upon recommended language revisions to all provisions in these bills; these have been reflected in an act, H.R. 1794, passed by the House of Representatives February 10, 1964.

Section 1 provides for a legislative taking of an easement merely to clear and flood subject lands to elevation 1,365 feet (mean sea level) and in general rights-of-way easements for highways, railroads, and other utilities. This section is objectionable for the following reasons:

(a) It appears inappropriate and confusing for Congress to enact a legislative taking act of interests in lands to which title previously has been vested in the United States by virtue of the aforementioned condemnation proceedings. It is recommended that this section be revised to delete the taking aspects and more accurately reflect the factual situation.

(b) As presently drafted, the estates taken are indefinite and do not provide adequately for the property rights or interests essential for the operation of this project. Here the Government is acquiring an easement; such estate is a limited right to use lands or property only for those purposes specifically set forth; all other rights are as a matter of law reserved to the owner. While this Department in this instance is amenable to departure from the normal policy of fee taking insofar as Indian reservation lands are concerned, the easement estates must be sufficiently comprehensive so as not to restrict the proper operation of this project for the purposes authorized. The most accurate descriptions of the estates required are as set forth in the aforesaid condemnation proceedings. Therefore, suggested amendments for sections 1 and 14 incorporating by reference these proceedings are attached.

Section 2 (a) and (b) provides as consideration for the taking, and as direct damages, the payment out of project funds for (a) the amount of \$4,657,984 to the Nation for land, including subsurface interests; and (b) the amount of \$1,165,718 to the individual Indians for buildings and other improvements on the lands. These amounts are objectionable since such are far in excess of this Department's appraisals, do not take into consideration the amounts deposited in the U.S. district court, nor reflect the negotiated agreements between the parties with respect to said condemnation proceedings.

It has been the purpose of the Corps of Engineers and the Seneca Nation to agree to the amount of direct damages by negotiations on an individual tract basis. To this end the parties conducted a series of negotiation conferences during 1963. As a result, agreement has been reached on the surface land value in an amount of \$666,285, on the value of improvements in the amount of \$522,775, and damage to oil and gas reserves in the amount of \$100,000. Major differences of opinion still exist between the several appraisal firms of the respective parties as to the value of the sand and gravel resources. As a consequence, the parties propose that value for this item be established in the condemnation proceedings presently pending in the U.S. district court.

In this connection, "direct damages" are considered to represent the fair market value of the land interests taken, based upon recognized appraisal concepts

established over the years by the courts in eminent domain proceedings. The Department of the Army believes that the traditional procedure of allowing the courts to determine just compensation, when the Government agency and the landowner cannot agree, is sound, and that Congress should not be called upon to establish disputed values by legislative act. By reason of the above, the parties have mutually agreed to recommend amendments to section 2 which would segregate payments to subsurface resources and provide appropriate credit to the United States of the amounts deposited in court; proposed amendments are attached.

Section 2(c) provides for payment of \$2,697,350 out of project funds in settlement of all other claims of the nation and its members, including indirect damages arising out of the taking of this property. These are special damages, the nature of which involve benefits in addition to payments normally allowed by the courts in accordance with a conventional determination of just compensation. The Department of the Army is aware that Congress has in the past enacted legislation providing such additional payments. However, this Department believes that items of this nature should not be chargeable to project funds; further, that should this committee favorably consider payment of this item, it is submitted such would more appropriately be included in the provisions of section 4 herein relating to rehabilitation.

Under the mutually established procedure for implementing the President's directive, it was agreed that the Seneca Nation was to advise the U.S. Army district engineer at Pittsburgh, Pa., as to the special damages due to the taking; thereafter, the Bureau of Indian Affairs was to evaluate the reasonableness of the claim and inform the Corps of Engineers of its recommendations. The Bureau of Indian Affairs has furnished the Corps of Engineers a tabulation of claims for special damages approximating \$1,142,350, exclusive of loss of river bottom and sand and gravel. This office is unable to evaluate the reasonableness of the amounts claimed; however, an analysis indicates that a number of these claims relate to rehabilitation items specifically authorized and funded under subsections (c) and (d) of section 4 of this bill; these items total \$323,675 which should, in any event, be deleted from the aforesaid tabulation and reflected if necessary in section 4. The remaining items comprise \$691,625 for loss of wild-life products and \$127,050 for moving costs; this latter item only is considered to be a proper project cost.

With respect to the balance of this \$2,697,350, it is understood such represents a claim in the amount of \$1,555,000 for loss to the Seneca Nation of sand and gravel deposits in the 993 acres in the bed of the Allegheny River within the reservation. This Department is opposed to payment for this item in its entirety by reason that (1) the Allegheny River being a navigable stream, the underlying lands have always been subject by law to the Government's paramount navigational servitude; (2) the Government is here not acquiring, nor does it need to acquire any additional interests in the bed of the river; (3) the enormity of the value assigned to this claim is without foundation under established market value appraisal concepts; and (4) such amount far exceeds prior Indian legislation of similar items wherein payment for loss of river bed was allowed of \$6 per acre. Accordingly, it is recommended that subsection 2(c) be amended by deleting "\$2,697,350" and substituting "\$127,050."

Section 4 authorizes the appropriation of an unspecified sum of money, to be expended under plans approved by the Seneca Nation and the Secretary of the Interior, designed to improve the economic, social, and educational conditions of all enrolled members of the Seneca Nation. This fund may be used for, but not limited to, various programs set forth in subsections (a) through (g) of this bill on which comments are hereinafter made. Recent hearings before the House Subcommittee on Indian Affairs indicate the Seneca Nation is requesting an aggregate sum approximating \$16,931,000. Such funds are not to be a charge against the project and relate to matters primarily within the purview of the Bureau of Indian Affairs, Department of the Interior. Accordingly, comments on the subsections hereunder are confined to those items which may directly or indirectly affect the operations of the project and responsibilities of the Department of the Army.

Section 4 (a) and (b) provides for recreational, commercial, and industrial development. In this connection, the President's letter to the president of the Seneca Nation stated that consideration would be given to a careful review of the recreational potential resulting from construction of the reservoir, and the manner in which the Seneca Nation could share in the benefits from developing

this potential and other related means. It was agreed with representatives at the joint meeting mentioned above that the Corps of Engineers would request the National Park Service of the Department of the Interior to make a study of the recreational potential of the reservoir project; and would then request the Bureau of Indian Affairs to determine how the Seneca Nation might share in the recreational potential.

At the request of the Corps of Engineers, the National Park Service prepared a report which proposed an extensive national type development estimated to cost approximately \$20 million and requiring the acquisition of extensive reservation lands not otherwise included within the reservoir taking line. A preliminary recreational study was also prepared by the U.S. Army district engineer to show how the Nation could commercialize the type of development normally provided at Corps of Engineers reservoir projects. Both of these reports were referred to the Bureau of Indian Affairs for consideration.

The corps also authorized the Bureau of Indian Affairs to contract on a reimbursable basis up to \$50,000, with a firm of their choice, to prepare a more detailed plan which would develop the recreational potential of the Allegany Indian Reservation and define the costs and economic advantage to the Nation. A study of this aspect was undertaken by the Brill Engineering Co. and a final report has recently been completed. The report indicates the economic benefits to the Seneca Nation from water-oriented recreational developments would be minimal. It recommends as the principal feature a Williamsburg historical-type development costing about \$29 million. There would be, among many things, a reception and information center, an auditorium, a library, the "Long House Motor Lodge" with lounges, swimming pools, Indian "sauna," cafeteria, shops, special recreation rooms, 50 tent cabins, Seneca Indian Village, living nature museum, 12 buildings having an early 19th century architectural style showing the Indian influence in America, buildings in French architectural tradition, buildings to provide a British atmosphere, and a London puppet theater similar to the one visited by the Iroquois chiefs in 1710. An appraisal of this concept of development from the viewpoint of national significance and economic or financial feasibility is not within the province of the Department of the Army. However, should this type of development be approved by the Congress, it should be considered as an investment not attributable or chargeable to the Allegheny Reservoir project.

The above concept of development has no direct relationship to the normal concept of outdoor recreational opportunities associated with water-oriented activities. The adjoining Allegheny State Park has been in the process of development since 1928 and provides a wide range of outdoor activity on its 65,000 acres. Similar opportunities exist in the adjoining 1 million acres of national forest land, and the deficiency of water recreation will be largely met in the downstream water areas of the Pennsylvania portion of the Allegheny Reservoir. Were the corps to provide for the water-related facilities in the New York portion of the reservoir, they would consist of boat-launching ramps, parking areas, and picnic areas augmenting the above-stated recreational facilities and opportunities in the other lands.

The Brill report also includes recommendations for the development of an industrial park on the Cattaraugus Indian Reservation at an estimated cost of \$4,438,000.

Section 4 (c) and (d) relates to the construction and development of two resettlement areas within the Allegany Reservation selected by the Seneca Nation. The estimated cost of housing, community facilities, utilities, etc., approximates \$2 million. Additionally, the Corps of Engineers has agreed to design and construct 5.5 miles of roads within these areas from project funds, after which the State of New York has agreed to assume future maintenance of the same.

It is understood that (1) the Nation has made application to the Community Facilities Administration for a fund of approximately \$393,400 to construct a common water system in the resettlement areas and the Nation would be obligated to repay only 25 percent of this amount; (2) the Nation expects that the power and telephone companies will install their facilities in the resettlement areas without connection charges; (3) the Public Housing Authority has authorized the construction of 60 dwellings on the Cattaraugus and Allegany Indian Reservation of which 25 dwellings will be constructed on the Allegany Reservation; and (4) the Seneca Nation has made application to the Community Facilities Administration for \$940,000 to construct two community buildings, one on each of the two reservations, with the Nation being obliged to repay 25 percent of

this amount. A review of the tabulation received from the Bureau of Indian Affairs mentioned above, in comparing some of the items in section 4, shows that some of the indirect damages provided in section 2(c) should be more appropriately charged under section 4.

Section 4(f) authorizes the acquisition of "lieu lands" for various purposes described in section 13. It is recognized that the President's letter to the President of the Seneca Nation provided for giving consideration to the possibility of the Federal Government securing a tract of land suitable for tribal purposes and uses contiguous to the remaining Seneca lands in exchange for the area to be flooded. Under the mutually established procedure for implementing the President's directive, it was agreed that the Seneca Council would inform the U.S. Army district engineer as to the extent and exact location of lieu lands desired by the Nation. The Corps of Engineers would then ask the Bureau of Indian Affairs whether those lands are "suitable for tribal purposes and uses contiguous to the remaining lands." It is understood that no "in lieu" lands will be requested.

Section 5 providing that the Secretary of the Army shall relocate cemeteries, graves, tribal monuments, and shrines is not objectionable to this Department. Agreement has been reached with the Seneca Nation for the Corps of Engineers to relocate approximately 3,000 graves to 2 selected sites at an estimated cost of \$600,000; the Nation is to form a cemetery corporation; and the Secretary of the Army is additionally to provide a fund to this corporation for perpetual care and maintenance of those reinterred; this is to be a lump-sum payment computed on the basis of \$14.40 for each reinterment and will approximate \$43,200. An appropriate amendment to reflect this procedure is attached.

Section 6 purports to reserve to the Seneca Nation all minerals, oil, and gas in the entire taking area, and sand and gravel above elevation 1340 feet mean sea level. This section is considered unnecessary and also does not accurately reflect the facts. Since the Government is here merely acquiring easement estates, all other interests (including subsurface resources) not inconsistent therewith, are, as a matter of law, reserved to the fee owners. However, should such provision be desired, this Department has no objection and there is attached an amendment more accurately defining the respective rights.

Section 7 affords the members of the Seneca Nation the right to remain on and use, without charge, the lands within the taking area, until required to vacate by the Secretary of the Army with approval of the Secretary of the Interior. This section in general is not objectionable to this Department. However, it should be recognized that the dates for vacating various areas must be in conformance with the construction requirements, and not one overall date of vacation. Reservoir clearings, construction of roads, railroads, utilities are proceeding pursuant to an established construction schedule which includes specified times for each feature. The current project schedule indicates that a partial closure of the dam will be effected in June 1964 with full closure of the dam beginning in October 1964, and final completion of the project in June 1965. Accordingly, it is recommended that January 1, 1965, be substituted for June 30, 1965, as the latest date for vacating, unless otherwise permitted by the Secretary of the Army. An appropriate amendment, agreed to by the Seneca Nation, is attached.

Section 8 provides a right for the Seneca Nation and the individual Indians, without charge, to cut and remove all timber and salvage improvements from their respective lands up to 60 days before the date for vacating the taking area in accordance with the provisions of section 7. This Department considers these rights to be a duplication in part to the payments provided in subsections 2 (a) and (b) and therefore objectionable. Additionally, the above comments as to section 7 are equally applicable here as to dates of removal. It should be clearly understood that these rights are subordinate to the construction requirements. An amendment clarifying the rights of the parties has been agreed to as attached.

Section 9 provides that the Seneca Nation shall have the right to use and occupy the taking area of the Allegheny Reservoir project for all purposes not inconsistent with the interests acquired by the United States, including the right to regulate access to the shoreline of the reservoir, with a proviso that public access shall be provided without charge. These provisions are susceptible to various interpretations which could result in confusion, interference, or restriction in the proper operation by the Corps of Engineers of this project for its authorized purposes. Moreover, this section is unnecessary if the primary purpose is merely to provide for use of the land areas. Since the United States is

here acquiring only easements, all other rights not inconsistent therewith remain with the owners as a matter of law. If the purpose is to effect uniform control in the Seneca Nation as a matter of management by elimination of any rights of the individual allottee, such would be of no concern to this Department. However, if it is desired to retain this section, this Department would have no objection provided it is amended to preclude the exercise of any control by the Seneca Nation of the water areas of the reservoir; an appropriate amendment agreed to by the Seneca Nation is attached.

Sections 11 and 12 provide procedures for a determination of the respective rights of the Seneca Nation and the individual Indians as to those instances wherein the individual Indian rejects the tender of payment under subsections 2 (a) and (c) (direct damages), by referral of the matter to the Federal district court. In this connection, as mentioned above, the Department of the Army is acquiring the real property interests for this project of all parties in the Allegheny Indian Reservation by institution of condemnation proceedings in the U. S. District Court for the Western District of New York. All parties will therefore be afforded an opportunity to present evidence as to value, their entitlement to compensation, and obtain an adjudication thereon. A number of the provisions of these sections are now inconsistent with this procedure. As a result of joint discussions between representatives of all parties, amendments reconciling these inconsistencies are attached and considered adequate for the primary purpose.

In addition to the foregoing comments on the major provisions, the Department of the Army joins with the Department of the Interior and the Seneca Nation in recommending certain minor changes in other sections of S. 1836 for the purposes of clarification of the legislative intent. Appropriate references and amendments in this respect are attached.

The full fiscal effect of this measure is difficult to evaluate by reason of the unspecified sum for rehabilitation (sec. 4). However, if enacted in its present form, the Department of the Army would be required to pay \$5,823,702 for direct damages; \$2,697,350 for indirect damages; \$43,200 for care of cemeteries, expend an estimated \$600,000 for cemetery reinterments, and \$500,000 for construction of resettlement roads. The rehabilitation items funded from other appropriations, under current Seneca Nation proposals aggregate upward of \$17 million.

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

Sincerely yours,

STEPHEN AILES,
Secretary of the Army.

DEPARTMENT OF THE ARMY PROPOSED AMENDMENT TO S. 1836

Title of the bill.—Page 1, delete “a flowage easement and rights-of-way over” and substitute “certain interests in”. Also delete “River” and substitute “Reservoir”.

Section 1.—Page 1, commencing with line 3, delete entire section through page 2, line 17, and substitute the following: “That in furtherance of the Allegheny Reservoir project authorized by the Flood Control Acts of June 28, 1938 (52 Stat. 1215), August 18, 1941 (55 Stat. 638), and December 22, 1944 (58 Stat. 889), payment shall be made as hereinafter set forth in this Act to the Seneca Nation and to the individual Seneca Indians for such easements, interests in land and other property within the Allegheny Indian Reservation, more particularly described in section 14 of this Act, as have been taken for the construction, operation, and maintenance of said project.”

Section 2.—Delete entire section commencing on page 2, line 18, through page 3, line 16, and substitute the following:

“SEC. 2. In consideration for the interests in land acquired as set forth in section 1 of this Act, the United States will pay, out of funds available for the Allegheny Reservoir project, and in accordance with the provisions of section 3 hereof—

“(a) to the Seneca Nation, the amount of \$666,285, as full compensation for the direct damages (including severance damages, but excluding damages caused by the increased difficulty or impossibility of developing or otherwise exploiting the subsurface resources retained by the Nation under section 6) to the lands within the Allegheny Indian Reservation caused by the acquisition of interests therein by the United States;”

"(b) to the Seneca Nation, the sum of \$100,000, as full compensation for the damages caused by the increased difficulty or impossibility of developing or otherwise exploiting the oil and gas subsurface resources retained by the nation under section 6 of this Act: *Provided, however*, That the Seneca Nation shall the right, in the condemnation proceedings instituted by the United States in the United States District Court for the Western District of New York, to seek an additional sum as just compensation due the nation for damages to the sand and gravel resources within the Allegheny Indian Reservation caused by the acquisition of interests in land therein by the United States: *Provided further*, That in the event the Seneca Nation seeks such additional compensation, the district court under section 1358, title 28, United States Code, shall have jurisdiction to determine the just compensation due to the nation for said damages.

"(c) to individual Seneca Indians, a sum aggregating \$522,775, to be disbursed in accordance with the provisions of a schedule prepared pursuant to section 3(c) of this Act, as full compensation for the taking of houses, barns, fences, wells, and other structures and improvements on lands within the Allegheny Indian Reservation; and

"(d) to the Seneca Nation, the amount of \$127,050, in full settlement of all other claims, rights, and demands of the nation and its members, including indirect damages and loss of access to the bed of the Allegheny River, arising out of the taking of property as set forth in section 1 of this Act, exclusive of the interest, if any, of the Seneca Nation in houses, structures, or other improvements within the Allegheny Indian Reservation claimed by nonmembers of the nation."

NOTE.—Corps objects to payment above \$127,050 as a project charge; however, if committee considers additional payments for indirect damages such should not exceed \$828,273.

"(e) In making payments under this section, the United States shall be entitled to a credit for all funds heretofore deposited in condemnation proceedings before the United States District Court for the Western District of New York as the estimated just compensation for the acquisition of interests in lands and other property belonging to the Seneca Nation or individual Seneca Indians in connection with the Allegheny Reservoir project."

Section 3.—(a) Page 3, line 20, delete "aggregating \$1,000,000" and substitute "not exceeding \$611,675". Page 4, after line 2, insert a new subsection (b) as follows, and renumber succeeding subsections:

"(b) The payment authorized by section 2(b) of this Act shall be made directly to the Seneca Nation: *Provided*, That if the nation through litigation recovers additional compensation for damages to its sand and gravel resources, the United States shall be entitled to a credit against that supplemental award in the amount paid to the nation under section 2(a) for damages to the surface of the lands on which such sand and gravel are located."

(b) On page 4, line 3, change subsection "(b)" to "(c)"; also on page 4, line 3, change "2(b)" to "2(c)".

(c) On page 4, line 13, change subsection "(c)" to "(d)"; also on page 4, line 13, change "2(c)" to "2(d)".

On page 4, line 17, change "\$135,050" to "\$127,050".

On page 4, lines 21 and 22, delete "a flowage and clearing easement and rights-of-way" and insert "interests in land".

(d) On page 4, line 24, change subsection "(d)" to "(e)".

On page 5, line 3, after the word "of" insert "development loans made to the Seneca Nation, or of".

Section 4.—On page 5, line 15, the amount of money is for insertion by the committee.

(f) On page 6, line 10, delete "lieu".

On page 6, line 11, delete "adjacent" and substitute "contiguous".

On page 6, line 20, after "Nation", delete the comma and the words "after consultation with" and substitute the word "and".

Section 5.—On page 6, line 24, delete "River" and substitute "Reservoir".

On page 7, line 12, delete the period after "cost", substitute a colon, and add the following: "And *provided further*, That the Secretary of the Army is authorized and directed to provide a trust fund in an amount computed on the basis of \$14.40 for each reinterment for the perpetual care and maintenance

of the graves for the reinterments at the two cemetery relocation sites selected by the Seneca Nation."

Section 6.—On page 7, commencing with line 13, delete the entire section and substitute the following revised section 6:

"SEC. 6. All minerals of any kind whatsoever, including oil and gas and sand and gravel, within the areas subjected to the interests in land acquired by the United States as set forth in section 1 of this Act, are hereby reserved to the Seneca Nation: *Provided*, That the exploration and development of such minerals, including oil and gas and sand and gravel, within the taking area shall be consistent with said interests in land and subject to all reasonable regulations of the Secretary of the Army necessary for the protection of the Allegheny Reservoir project."

Section 7.—On page 8, line 6, delete "flowage and clearing easement and rights-of-way" and substitute "interests in land".

On page 8, line 7, delete "under" and substitute "as set forth in section 1 of".

On page 8, line 12, delete "June 30, 1965." and substitute "January 1, 1965, unless the Secretary of the Army otherwise permits."

Section 8.—On page 8 make the following changes:

Line 14, delete "the flowage and clearing easement and rights-of-way".

Line 16, delete "River" and substitute "Reservoir".

Line 19, after "3(a)", insert "and (c)"; also delete "exclusive".

Line 24, after "nation", delete "may exercise their rights;" and substitute "shall have an additional thirty days within which to exercise their rights on its own behalf:"

Section 9.—On page 9 make the following changes:

Line 4, delete "River" and substitute "Reservoir".

Lines 6 and 7, delete "flowage and clearing easement and rights-of-way" and substitute "interests in land".

Line 7, delete "under" and substitute "as set forth in section 1 of".

Line 12, after "lands", insert "and to license hunting and fishing by nonmembers of the nation"; also change "rights" to "right".

Line 15, after "therefore", change the period to a colon and add: "*And provided further*, That the use by the public of the water areas of the Allegheny Reservoir project shall be pursuant to such rules and regulations as the Secretary of the Army may prescribe."

Section 10.—On page 9, line 19, delete "River" and substitute "Reservoir".

On page 9, line 20, delete the first proviso and substitute "*Provided*, That not more than \$250,000 is authorized to be appropriated for such reimbursable fees and expenses:"

Section 11(a).—On page 10, line 4, delete "lands under" and substitute "interests in land as set forth in section 1 of".

On page 10, line 6, change "(b)" to "(c)".

(b) On page 10, line 12, change "(b)" to "(c)".

On page 10, line 15, commencing with "and", delete remainder of subsection (b) and substitute the following: "the District Engineer, United States Army Engineer District, Pittsburgh, Pennsylvania, and the United States Attorney for the Western District of New York, Buffalo, New York, within ninety days after the tender is made."

Section 12(a).—On page 10, commencing on line 24, delete entire subsection (a) and substitute the following:

"Sec. 12. (a) Any individual Seneca Indian who, pursuant to section 11(b) of this Act, rejects a sum tendered in payment under section 3 (a) or (c), or both, shall have the right to litigate the issue of just compensation in the United States District Court for the Western District of New York. The court shall, except as otherwise expressly provided herein, determine just compensation in accordance with the laws and procedures applicable to the determination of just compensation in condemnation proceedings in the Federal courts. No court or statutory costs, but all other costs and expenses, including attorney's fees, shall be at the contesting individual's expense."

(b) On page 11, commencing on line 13, delete entire subsection (b) and substitute the following:

"(b) Where the sum rejected by an individual Seneca Indian has been tendered under section 3(a) of this Act, and the United States has instituted condemnation proceedings, the Seneca Nation within sixty days shall deposit in court the total amount paid to it pursuant to section 2(a), less any credit

given the United States under section 2(e) for the interests in land acquired by the United States which are the subject of the contesting individual's claims. Any excess of the sum so deposited over the amount finally determined as just compensation for the interests in land, if any, of the contesting individual shall be paid back to the Seneca Nation. If the amount finally determined as just compensation for all interests in land acquired by the United States which are the subject of the contesting individual's claim exceeds the sum deposited by the Seneca Nation, the difference shall be paid into court by the United States, and the total amount so paid and deposited shall be distributed as directed by the court."

(c) On page 12, line 2, change "3(b)" to "3(c)".

On page 12, line 3, delete "and a suit is filed pursuant to this section" and substitute "and the issue of just compensation is litigated."

(d) On page 12, line 9, delete "the Secretary of the Interior" and substitute "an attorney appointed by the Court."

Section 13.—On page 12, line 15, after the word "Reservation", delete the remainder of the section and substitute the following: "for the relocation of houses and community facilities, or for recreational, commercial, or industrial development, or contiguous to the Allegany Reservation, for recreational or commercial development. Any lands so acquired outside the existing reservation shall become a part of the reservation and have the same legal status as lands within the reservation."

Section 14.—On page 12, line 19, delete entire section and substitute a new section 14 as follows:

"Sec. 14. The interests in land required for the Allegheny Reservoir project within the Allegheny Indian Reservation are generally identified and delineated on a map entitled "Allegheny River Basin, Allegheny Reservoir, New York General Map". Detailed legal descriptions of the lands shown thereon, together with tract maps, are or shall be filed in condemnation proceedings which heretofore have been or hereafter shall be instituted by the United States in the United States District Court for the Western District of New York for the acquisition of easements, interests in land, and other property within the Allegheny Indian Reservation. The estates taken shall be as specifically set forth in the complaints filed in said proceedings, except insofar as the court may determine that the condemnation by the United States of any easement, interest in land, or other property identified therein for the construction of a limited access highway to be made a part of the New York State Southern Tier Expressway has not been authorized, in which even said estate shall not be taken. Copies of the final decree and other appropriate papers in said condemnation proceedings setting forth legal descriptions of the lands and the estates taken, together with identifying tract maps, shall be filed among the land records of the Bureau of Indian Affairs in Washington, District of Columbia, and recorded in the office of the county clerk of Cattaraugus County, New York. A true and correct copy of said papers shall be furnished by the Secretary of the Army without cost to the Seneca Nation."

Section 15.—On page 13, lines 8 and 9, delete "flowage and clearing easement and rights-of-way acquired under" and substitute "interests in land acquired as set forth in".

On page 13, line 10, delete "River" and substitute "Reservoir".

Section 16.—On page 13, line 17, delete the period after "States" and add the phrase "other than claims arising out of the acquisition of interests in land for the Allegheny Reservoir project."

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., February 24, 1964.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR JACKSON: This responds to your request for a report on S. 1836, a bill to authorize the acquisition of and the payment for a flowage and clearing easement and rights-of-way over lands within the Allegheny Indian Reservation in New York, required by the United States for the Allegheny River (Kinzoa Dam) project, to provide for the relocation, rehabilitation, social, and economic development of the members of the Seneca Nation, and for other purposes.

The Seneca Nation, the Corps of Engineers, and the Bureau of Indian Affairs have agreed on the language of a substitute bill, a copy of which is enclosed, the provisions of which are quite similar to those in S. 1836. We recommend the substitution of this language for that now contained in S. 1836, and its enactment in this form.

In brief, the bill provides as follows:

Section 1(a), as proposed by the Corps of Engineers and agreed to by the Seneca Nation, provides for the taking of easements over reservation land through court action, and does not provide for a legislative taking.

Section 2 details the payment to be made by the United States for the interests acquired in the land.

Section 2(a) provides for the payment of \$666,285 compensation for the direct damages to the land acquired. This figure was agreed to by the corps and the Seneca Nation, and represents only the surface value of the land taken. The parties were far apart on subsurface values.

Section 2(b) provides for the payment of \$100,000 for the increased difficulty of exploiting subsurface oil and gas resources. This figure was agreed to by the Seneca Nation and the Corps of Engineers. The Seneca Nation and the Corps of Engineers were far apart, however, regarding the value of subsurface sand and gravel, and agreed that the courts should determine the amount of compensation due therefor as a measure of direct damages.

Section 2(c) provides \$522,775 as full compensation to the individual Indians for the taking of their houses, barns, fences, wells, and other structures and improvements on their lands. This figure was negotiated by the Seneca Nation on behalf of its members with the Corps of Engineers; it is separated from the land values because of the relationship between the Seneca Indians, who own the improvements on the land, and the nation, which owns the land.

Section 2(d) provides for the payment to the Seneca Nation of \$1,033,275, as indirect damages, in settlement of all other claims that it may have. Both the Seneca Nation and the Corps of Engineers have agreed to it. The original Seneca estimate was \$1,242,250, but the corps' estimate was only \$824,273. As a result of negotiations, the Seneca Nation and the corps agreed on a compromise figure of \$1,033,225, which the Department of the Interior now recommends.

The original estimates of the Seneca Nation and the corps were as follows:

| | Seneca Nation | Corps |
|--|---------------|---------|
| Moving and reestablishing a long house, cookhouse, and shed | \$8,000 | ----- |
| Acquiring 450 acres of replacement land in the 2 relocation areas | 50,000 | ----- |
| Cost of domestic water at the 2 relocation sites | 100,000 | ----- |
| (The cost of these facilities has been estimated at \$410,000 by the Community Facilities Administration, which has authorized a \$306,000 grant; and the city of Salamanca also contributed \$10,000.) | | |
| 933 acres of river bottom sand and gravel appraised by Empire Appraisals Associates at \$100 an acre but by the corps at \$6 an acre | 93,300 | \$5,598 |
| (The corps claimed that the riverbed was under a servitude to the Government and, therefore, compensation was unnecessary.) | | |
| Rough site leveling | 155,500 | ----- |
| Site planning | 2,000 | ----- |
| Staking 1-acre lots | 7,775 | ----- |
| Topographical boundary survey | 7,000 | ----- |
| Loss of timber, wildlife products, fish, berries, herbs, etc., as set forth in table 19 of our Missouri River Basin report | 691,625 | 691,625 |
| Individual removal costs and loss of earnings | 127,050 | 127,050 |
| (Moving 4 complete sets of farm buildings, \$24,520; moving 3 sets of farm machinery, \$330; earnings loss of self-employed families, \$4,800; wage loss of 102 employed persons, \$71,400; moving 130 sets household equipment and furniture, \$13,000; moving 130 families and personal property, \$13,000.) | | |
| Total | 1,242,250 | 824,273 |

Section 2(d) also protects the Seneca Nation's interest in three minor claims in which the Federal Government has no direct interest. These claims concern (A) the interest of the Seneca Nation in the Red House School constructed on Seneca land by New York State and (B) two claims for the value of improvements built by non-Indians on Seneca land.

Section 2(e) grants a credit to the United States for all moneys deposited in condemnation proceedings to acquire the lands within the reservation.

Section 3 provides generally for the distribution of moneys authorized under section 2.

Section 3(a) provides that, out of the direct damage compensation paid the Seneca Nation for surface rights, a sum not exceeding \$611,675 shall be paid to the individual Indians as compensation for their interests in these lands. This sum was arrived at by deducting from the \$666,285 set forth in section 2(a) the sum of \$54,610, the agreed value of the Seneca Nation's share in the land assigned to the individual Indians. The Seneca Nation, on behalf of its members, negotiated this figure with the Corps of Engineers.

As hereinafter provided, the individuals can litigate the value of their own interests, but the Seneca Nation cannot further litigate with regard to its tribal interest in this land.

Section 3(b) provides for the payment to the Seneca Nation for direct damages to the land. Thirty-two tracts of land are believed to contain subsurface sand and gravel. If this is found to be so and the court awards compensation therefor, the mining of this land would be its highest and best use and its value would be based thereon. However, under section 2(b) the Government would have already paid the value of this land based on surface uses such as agriculture; and, as the land, if mined, would probably have little or no surface value, the Government would be entitled to a credit for what it had paid in consideration of such surface use.

Section 3(c) provides that payments to the individual Indians for their houses, barns, etc., shall be in accordance with a schedule prepared by the Secretary of the Army, certified by the Seneca Nation, and approved by the Secretary of the Interior.

Section 3(d) provides that, from the moneys paid the Seneca Nation for all indirect damages, not more than \$127,050 shall be paid to the individual Seneca Indians for losses occasioned by moving their dwellings and other buildings.

Section 3(e) provides that not any of the compensation shall be subject to any prior lien or claim against the Seneca Nation or the individual Indians. This will not apply to the repayment of housing or resettlement loans made to the individual Indians by a bank or other recognized lending institution; neither will it apply to delinquent debts owed the United States by the Seneca Nation or the individual Indian unless the Secretary of the Interior deems that hardship to individual Indians will result therefrom.

Section 4 authorizes to be appropriated \$16,931,000 for the benefit of the Seneca Nation for the purposes hereinafter enumerated.

(a) *Agricultural, commercial, and recreational development on the three Seneca reservations.*—The Bureau of Indian Affairs and the Corps of Engineers employed the Brill Engineering Corp. in association with the firm of Childs & Waters, planners in the field of recreation, to evaluate the recreational potential of the Allegany Reservation portion of the Kinzua Dam and Reservoir project.

The Brill report proposed a Williamsburg-type educational and historical exhibit on the Hotchkiss Plateau which would constitute a memorial and a tribute to Iroquoian culture, and demonstrate its contribution to colonial America and its impact on American, British, Canadian, and French ways of life. The amount estimated for the project was about \$30 million. The Seneca Nation endorses these recommendations. However, it recognizes that the cost of this legislation, pursuant to the ideas expressed in the Brill report, would be substantial and very much in excess of what was awarded to western tribes in similar circumstances—though in the West the disruption of the tribe was not nearly as severe as in the case of the Senecas, and the percentage of land lost was never as great as here, where the taking cuts the reservation in two and leaves little more than hillsides. Therefore, the nation suggests a figure of \$8 million for recreational purposes to be used as an initial stage in the development of the Brill recommendations, and that the balance required be secured from private foundations and public subscription sources, or as an alternative the moneys be used for a smaller development program. Such a program, however, must be a high standard recreational development in order to compete with the proposed national recreation area in Pennsylvania, the attractions of the Allegheny State Park in New York and proposed developments in nearby Cattaraugus and Warren Counties.

We estimate the cost of this lesser but still high standard development program as follows:

| HOTCHKISS PLATEAU | |
|---|------------------|
| Exhibit facilities: | |
| Indian village and stockade..... | \$300,000 |
| American Indian heritage: Indian place name exhibit; Indian influence on great events in American history; Indian influence on American food; the Indian art and literature; Indian trading post and country store: | |
| Construction..... | 1,100,000 |
| Contents..... | 1,500,000 |
| Information center, reception and administrative office building..... | 500,000 |
| Amphitheater (1,000 seats)..... | 135,000 |
| Motel and pool (75 units)..... | 600,000 |
| Cafeteria (150-seat capacity)..... | 200,000 |
| Snack bar..... | 12,000 |
| Retail shop, arts and crafts, etc..... | 100,000 |
| Automobile service station..... | 40,000 |
| Total | 4,487,000 |
| Service facilities: | |
| Roads, exhibit area..... | 100,000 |
| Water, treatment, storage, distribution..... | 100,000 |
| Sewage, collection and treatment..... | 106,000 |
| Dam..... | 150,000 |
| Pump works..... | 50,000 |
| Culverts and gutters..... | 15,000 |
| Electric distribution..... | 85,000 |
| Parking (2,000 cars)..... | 170,000 |
| Landscaping, paths, gardens, etc..... | 200,000 |
| Firehouse and truck..... | 75,000 |
| Maintenance, garage and equipment..... | 150,000 |
| Subtotal | 1,201,000 |
| Cost exhibit facilities..... | 4,487,000 |
| Subtotal | 5,688,000 |
| Architects' and engineers' fees..... | 568,800 |
| Contingencies..... | 853,200 |
| Grand total | 7,110,000 |

STATE LINE RUN PARK

| | |
|---|----------------|
| Marina (including permanent docks, 100 floating fiberglas berths, and gasoline and oil service facilities)..... | \$222,000 |
| Boat launching facilities..... | 13,500 |
| Motel and pool (30 units at \$7,000 per unit)..... | 210,000 |
| Restaurant..... | 36,000 |
| Automobile service station..... | 25,000 |
| Parking (400 cars)..... | 53,000 |
| Landscaping..... | 50,000 |
| Sewage disposal plant..... | 40,000 |
| Water treatment plant..... | 40,000 |
| Subtotal | 689,500 |
| Architectural and engineering fee (10 percent including supervision)..... | 68,950 |
| Contingencies (± 15 percent)..... | 103,425 |
| Total | 861,875 |

ALLEGANY RESERVATION SUMMARY

Development costs, recreation and exhibit facilities

| | |
|---|------------------|
| Hotchkiss Plateau exhibit: | |
| Exhibit facilities and public accommodations..... | \$4,487,000 |
| Service facilities and overhead..... | 2,623,000 |
| State Line Run Park..... | 861,875 |
| Total..... | 7,971,875 |

(b) *Industrial development on these reservations or within 50 miles thereof.*—

The Brill report indicates that the growth potential of an industrial park on the Cattaraugus Reservation is very good; and allowing 10 percent for contingencies, the total cost thereof is estimated at \$4,438,000.

The proposed industrial park would consist of a tract of 268 acres, divided into approximately 44 plant sites. Land would need to be acquired from assignees at about \$80 an acre for wooded land, \$150 for tilled land, at a total cost of \$31,000. Among other costs are: roads and railroad sidings; railroad warehouse; landscaping; maintenance office and miscellaneous buildings; and engineering and architectural fees, \$1,465,000; sewerage and water systems, \$914,000; and construction of buildings for industrial clients, \$2 million.

Operation and maintenance services, such as those frequently supplied by organized industrial districts, would provide employment for 60 persons on a full-time basis, with an annual payroll of approximately \$300,000 per year. This would include groundskeepers, water, sewerage, road, and street maintenance personnel, painters, warehousemen, carpenters, electricians, and fire protection personnel. It will be some years before this project is fully developed but, when completed, some 3,300 jobs will be created and the people of the surrounding communities as well as the Senecas will benefit thereby as it is anticipated that the new industries will have an annual payroll ranging from \$10 to \$18 million.

(c) *Relocation and resettlement of displaced families.*—This is an immediate and urgent problem. Architects' estimates have been obtained of the cost of constructing homes adequate to the needs of 130 individual families. They estimate that, in addition to the moneys to be paid by the Corps of Engineers for the homes flooded out, \$1,029,000 will be required. Construction of the new dwellings at two relocation sites, Jimersontown and Steamburg, must be undertaken as early as possible in 1964 and be ready for occupancy before the end of the year.

(d) *Construction and maintenance of community buildings and facilities.*—The Seneca Nation estimates \$970,000 as the cost of municipal buildings, which would house a dining hall, gymnasium, tribal offices, and serve as a meetingplace. Two are proposed by the Seneca Nation. One would be erected on the Allegany and the other on the Cattaraugus Reservation, 40 miles away. They would serve two separate communities and would help to restore the community life of the Senecas.

(e) *An educational fund for scholarship loans and grants, vocational training, and counseling services.*—The Senecas have placed primary emphasis on education in planning their rehabilitation program. They plan to establish an educational scholarship fund to finance vocational training, adult education, and higher education for Seneca youths. The Bureau of Indian Affairs has assisted the Senecas by furnishing the services of a specialist in educational programs. The cost of these educational programs has been estimated at \$2,300,000. This sum would provide for a 20-year scholarship program, beginning with 55 participants in 1964 and increasing gradually to 115 participants in 1983.

(f) *The acquisition of lands within or contiguous to the reservation for the relocation of houses and community facilities, or for recreational, commercial, or industrial development.*—No amount has been estimated for this purpose as there is no concrete proposal for such lands at the present time, and it is assumed that sufficient moneys will be available, if and when needed, for this purpose.

(g) *A resurvey of Seneca village boundaries and a title search of all leases issued therein.*—This section principally concerns Salamanca, which is one of six congressional villages created in the State of New York by an 1890 act of Congress. Land within this village is held in trust for the Senecas but is subject to 99-year leases, many of them going back to the last century. These leases all need to be reexamined. Land surveys are required, and modern recording and accounting methods must be introduced and steps be taken to identify cases of unauthorized occupancy and to rectify other flaws operating to the detriment of

the Senecas. The Bureau of Indian Affairs has cooperated with the Seneca Nation in securing the services of a real estate management firm, which has given an estimate of \$194,000 as the cost of a resurvey of village boundaries and necessary title searches. This expenditure will contribute to the general welfare of the Seneca Nation, will clear clouded leaseholds, will make possible the identification of trespassers, will increase tribal revenue, and will provide a better utilization of the land.

Section 5 provides for the relocation of Indian cemeteries and for the creation by the Secretary of the Army of a trust fund for their perpetual care.

Section 6 reserves to the Seneca Nation all mineral rights, subject to reasonable regulations by the Secretary of the Army regarding their exploration and development.

Section 7 allows the Indians to remain on their land after January 1, 1965, only if the Secretary of the Army consents.

Section 8 authorizes the tribe, as well as the individual Indians, up to 60 days before the vacation date to harvest crops, remove timber, mine and remove sand and gravel, and to salvage improvements.

Section 9 reserves to the Seneca Nation the right to use and occupy the taking area for all purposes not inconsistent with the easement and rights-of-way granted the United States, including the right to lease lands for farming and grazing, to dispose of minerals reserved, to hunt and fish, and to license others so to do, and to regulate access to the reservoir shoreline if there is provision for free public access thereto pursuant to regulations prescribed by the Secretary of the Army.

Section 10 reimburses the Seneca Nation for the cost of engineering and appraising services not to exceed \$250,000, and provides that attorney fees shall be paid under the terms of the contract approved by the Secretary of the Interior.

Sections 11 and 12 describe what actions an individual Indian who rejects the moneys tendered him for his property must take, and outlines the procedure for litigating the issue.

We interpret the provisions of section 11(c) to mean that the Secretary of the Interior may represent an Indian minor or one under legal disability or who cannot be located solely for the purpose of receiving payment on his behalf.

Section 13 authorizes the Secretary of the Interior, with funds provided under section 4(f), to purchase or condemn lands for the relocation of houses and community facilities or for recreational, commercial, or industrial development or, contiguous to the Allegheny Reservation, for recreational or commercial development.

Section 14 provides for a map delineating the easement and rights-of-way taken by the United States by condemnation.

Section 15 provides that, when the Secretary of the Army determines that all or any part of the easement and rights-of-way granted are no longer needed, title to such lands shall thereupon vest in the Seneca Nation.

Section 16 provides that no moneys paid by the United States to the Senecas by virtue of this act shall be considered as an offset or counterclaim against any other claims of the Senecas against the United States.

Section 17 provides for the exemption from State and Federal taxation of all moneys paid under this act.

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

Sincerely yours,

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

A BILL To authorize the acquisition of and the payment for certain interests in land within the Allegheny Indian Reservation in New York, required by the United States for the Allegheny Reservoir (Kinzua Dam) project, to provide for the relocation, rehabilitation, social and economic development of the members of the Seneca Nation, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in furtherance of the Allegheny Reservoir project authorized by the Flood Control Acts of June 28, 1938 (52 Stat. 1215), August 18, 1941 (55 Stat. 638), and December 22, 1944 (58 Stat. 889), payment shall be made as hereinafter set forth in this Act to the Seneca Nation and to the individual Seneca Indians for such easements, interests in land and other property within the Allegheny Indian Reservation, more particularly described in section 14 of this Act, as have been taken for the construction, operation, and maintenance of said project.

SEC. 2. In consideration for the interests in land acquired as set forth in section 1 of this Act, the United States will pay, out of funds available for the Allegheny Reservoir project, and in accordance with the provisions of section 3 hereof—

(a) to the Seneca Nation, the amount of \$666,285 in full compensation for the direct damages (including severance damages), but excluding damages caused by the increased difficulty or impossibility of developing or otherwise exploiting the subsurface resources retained by the Seneca Nation under section 6 to lands within the Allegheny Indian Reservation caused by the acquisition of interests therein by the United States;

(b) to the Seneca Nation, the sum of \$100,000 as full compensation for the damages caused by the increased difficulty or impossibility of developing or otherwise exploiting the subsurface oil and gas resources retained by the Seneca Nation under section 6 of this Act: *Provided*, That the Seneca Nation shall have the right in the condemnation proceedings instituted by the United States in the United States District Court for the Western District of New York to seek an additional sum as just compensation due the Seneca Nation for damages to the sand and gravel resources within the Allegheny Indian Reservation caused by the acquisition of interests in land therein by the United States: *Providing further*, That in the event the Seneca Nation seeks such additional compensation, the district court under section 1358, title 28, United States Code, shall have jurisdiction to determine the just compensation due to the Seneca Nation for said damages;

(c) to individual Seneca Indians, a sum aggregating \$522,775, to be disbursed in accordance with the provisions of a schedule prepared pursuant to section 3(c) of this Act, as full compensation for the taking of houses, barns, fences, wells, and other structures and improvements on lands within the Allegheny Indian Reservation; and

(d) to the Seneca Nation, the amount of \$1,033,275, in full settlement of all other claims, rights, and demands of the Seneca Nation and its members, including indirect damages and loss of access to the bed of the Allegheny River, arising out of the taking of property under this Act, exclusive of the interest, if any, of the Seneca Nation in houses, structures, or other improvements within the Allegheny Indian Reservation claimed by nonmembers of the Seneca Nation.

(e) in making payments under this section the United States shall be entitled to a credit for all funds heretofore deposited in condemnation proceedings before the United States District Court for the Western District of New York as the estimated just compensation for the acquisition of interests in lands and other property belonging to the Seneca Nation or individual Seneca Indians in connection with the Allegheny Reservoir project.

SEC. 3. (a) The payment authorized by section 2(a) of this Act shall be made directly to the Seneca Nation: *Provided*, That out of the funds so distributed to the Seneca Nation a sum not exceeding \$611,675 shall be paid to individual Seneca Indians in accordance with a schedule prepared by the Secretary of the Army, after certification by the Seneca Nation. Said schedule shall reflect the amount agreed upon by the Secretary of the Army and the Seneca Nation, with the approval of the Secretary of the Interior, as compensation for the interests in lands within the taking area of said individual Seneca Indians.

(b) The payment authorized by section 2(b) of this Act shall be made directly to the Seneca Nation: *Provided*, That if the Seneca Nation through litigation recovers additional compensation for damages to its sand and gravel resources, the United States shall be entitled to a credit against that supplemental award in the amount paid to the Seneca Nation under section 2(a) for damages to the surface of the lands on which such sand and gravel are located,

(c) The payments authorized by section 2(c) of this Act shall be made directly to individual Seneca Indians in accordance with a schedule of property owners within the taking area prepared by the Secretary of the Army, after certification by the Seneca Nation. Said schedule shall reflect the amount agreed upon by the Secretary of the Army and the Seneca Nation, with the approval of the Secretary of the Interior, as compensation for the homes, barns, fences, wells, and other structures and improvements within the taking area of said individual Seneca Indians.

(d) The payment authorized by section 2(d) of this Act shall be made directly to the Seneca Nation: *Provided*, That the Seneca Nation, with the

approval of the Secretary of the Interior, shall make available from the funds so distributed not to exceed \$127,050 to pay the expenses, costs, losses, and damages incurred by individual Seneca Indians as a result of moving themselves and their possessions, including dwellings and other buildings owned by them, on account of the acquisition by the United States of interests in land within the Allegany Reservation as set forth in section 1 of this Act.

(e) No part of the compensation provided for in section 2 of this Act shall be subject to any prior lien, debt, or claim of any nature whatsoever against the Seneca Nation or the individual Seneca Indians entitled to such compensation, except for the repayment of housing or resettlement loans made to individual Seneca Indians by a bank or other recognized lending institution, and also except for delinquent debts owed to the United States by the Seneca Nation or delinquent debts owed to the United States or the Seneca Nation by the individual Seneca Indian entitled to the compensation: *Provided*, That such compensation shall not be applied to the payment of individual delinquent debts to the United States unless the Secretary of the Interior first determines and certifies that no hardship will result from the payment of such delinquent debts.

Sec. 4. There is authorized to be appropriated the additional sum of \$16,931,000, which shall be deposited in the Treasury of the United States to the credit of the Seneca Nation and which shall draw interest on the principal at the rate of 4 per centum per annum until expended, for assistance designed to improve the economic, social, and educational conditions of enrolled members of the Seneca Nation, including, but not limited to, the following purposes:

- (a) agricultural, commercial, and recreational development on the Allegany, Cattaraugus, and Oil Springs Reservations;
- (b) industrial development on the Seneca reservations or within fifty miles of any exterior boundary of said reservations;
- (c) relocation and resettlement, including the construction of roads, utilities, sanitation facilities, houses, and related structures;
- (d) the construction and maintenance of community buildings and other community facilities;
- (e) an educational fund for scholarship loans and grants, vocational training, and counseling services;
- (f) the acquisition of lands either within or contiguous to the Allegany Reservation, as authorized under section 13 of this Act; and
- (g) a resurvey of the boundaries of the villages established pursuant to the Act of February 19, 1875 (18 Stat. 330), together with a title search to determine the current status and extent of all leases issued by the Seneca Nation therein.

The funds authorized by this section shall be expended in accordance with plans and programs approved by the Seneca Nation and the Secretary of the Interior: *Provided*, That no part of such funds shall be used for per capita payments.

Sec. 5. The Secretary of the Army, out of funds appropriated for the Allegheny Reservoir project other than funds provided by this Act, is authorized and directed to relocate and reestablish within the Allegany Reservation such Indian cemeteries, tribal monuments, graves, and shrines inside the taking area as the Seneca Nation or the next of kin shall select and designate: *Provided*, That reinterment of individual remains, though not entire cemeteries, outside the boundaries of the Allegany Reservation also is authorized if so desired by the next of kin, but in such event reinterment to a site which exceeds the equivalent distance from the disinterment site to the farthest point at which reinterment could be made within the reservation boundaries will be made only if the next of kin agrees to pay the added cost: *Provided further*, That the Secretary of the Army is authorized and directed to provide a trust fund in an amount computed on the basis of \$14.40 for each reinterment for the perpetual care and maintenance of the graves for the reinterments at the two cemetery relocation sites selected by the Seneca Nation.

Sec. 6. All minerals of any kind whatsoever, including oil and gas and sand and gravel, within the areas subjected to the interests in land acquired by the United States as set forth in section 1 of this Act are hereby reserved to the Seneca Nation: *Provided*, That the exploration and development of such minerals, including oil and gas and sand and gravel, within the taking area shall be consistent with said interests in land and subject to all reasonable regulations of the Secretary of the Army necessary for the protection of the Allegheny Reservoir project.

SEC. 7. Members of the Seneca Nation shall have the right without charge to remain on and use the lands subject to the interests in land acquired by the United States as set forth in section 1 of this Act until required to vacate at such times as may be fixed by the Secretary of the Army, with the approval of the Secretary of the Interior and after consultation with the Seneca Nation: *Provided*, That the time for vacating in any event will not extend beyond January 1, 1965, unless the Secretary of the Army otherwise permits.

SEC. 8. Up to sixty days before the date for vacating in accordance with section 7, the Seneca Nation on its common lands within the taking area for the Allegheny Reservoir project, and individual Seneca Indians on lands in which they have an interest as shown on the schedules described in section 3 (a) and (c) of this Act, shall have the right, without charge, to harvest crops, to cut and remove all timber, to mine and remove sand and gravel, and to salvage improvements: *Provided*, That if such rights are not exercised or are waived by said individual Seneca Indians within the time prescribed, the nation shall have an additional thirty days within which to exercise their rights on its own behalf: *And provided further*, That the crops harvested, the timber cut, the sand and gravel removed, and the salvage permitted by this section shall not be construed to be compensation.

SEC. 9. The Seneca Nation shall have the right to use and occupy the taking area of the Allegheny Reservoir project within the Allegany Reservation for all purposes not inconsistent with the interests in land acquired by the United States under this Act, including, but not limited to, the right to lease such lands for farming and grazing purposes to members or nonmembers of the Seneca Nation, the power to dispose of all minerals reserved under section 6 of this Act, the right to hunt and fish on such lands, and to license hunting and fishing by nonmembers of the Seneca Nation, and the right to regulate access to the shoreline of the reservoir: *Provided*, That public access to the shoreline shall be provided and no charge shall be made to the public therefor: *Provided further*, That the use by the public of the water areas of the Allegheny Reservoir project shall be pursuant to such rules and regulations as the Secretary of the Army may prescribe.

SEC. 10. The Secretary of the Treasury, upon certification by the Secretary of the Interior, shall reimburse the Seneca Nation for all fees and expenses incurred in relation to the Allegheny Reservoir project, including the cost of engineering and appraising services: *Provided*, That not more than \$250,000 is authorized to be appropriated for such reimbursable fees and expenses: *Provided further*, That attorney fees shall be paid under the terms of the contract approved by the Secretary of the Interior.

SEC. 11. (a) Any individual Seneca Indian who accepts the payment tendered to him pursuant to section 3(a) shall be deemed to waive and release any further claims, rights, or demands in his own name arising out of the taking of interests in land under this Act. Any individual Seneca Indian who accepts the payment tendered to him pursuant to section 3(c) shall be deemed to waive and release any further claims, rights, or demands in his own name arising out of the taking of houses, barns, fences, wells, and other structures and improvements under this Act.

(b) Any individual Seneca Indian who has been duly tendered payment in accordance with the schedules prepared pursuant to section 3 (a) and (c) of this Act shall have the right to reject either or both of the sums so tendered by filing a notice of rejection with the Seneca Nation, Salamanca, New York, the district engineer, United States Army Engineer District, Pittsburgh, Pennsylvania, and the United States attorney for the Western District of New York, Buffalo, New York, within ninety days after the tender is made.

(c) For the purposes of this section, the Secretary of the Interior is authorized to represent any individual Seneca Indian entitled to payment who is a minor, or under any other legal disability, or who cannot be located after a reasonable and diligent search.

SEC. 12. (a) Any individual Seneca Indian who, pursuant to section 11(b) of this Act, rejects a sum tendered in payment under section 3 (a) or (c), or both, shall have the right to litigate the issue of just compensation in the United States District Court for the Western District of New York. The court shall, except as otherwise expressly provided herein, determine just compensation in accordance with the laws and procedures applicable to the determination of just compensation in condemnation proceedings in the Federal courts. No court or

statutory costs, but all other costs and expenses, including attorney's fees, shall be at the contesting individual's expense.

(b) Where the sum rejected by an individual Seneca Indian has been tendered under section 3(a) of this Act, and the United States has instituted condemnation proceedings, the Seneca Nation within sixty days shall deposit in court the total amount paid to it pursuant to section 2(a), less any credit given the United States under section 2(e), for the interests in land acquired by the United States which are the subject of the contesting individual's claims. Any excess of the sum so deposited over the amount finally determined as just compensation for the interests in land, if any, of the contesting individual shall be paid back to the Seneca Nation. If the amount finally determined as just compensation for all interests in land acquired by the United States which are the subject of the contesting individual's claim exceeds the sum deposited by the Seneca Nation, the difference shall be paid into court by the United States, and the total amount so paid and deposited shall be distributed as directed by the court.

(c) Where the sum rejected by an individual Seneca Indian has been tendered under section 3(c) of this Act, and the issue of just compensation is litigated, the United States shall not assert as a defense that any interest in the property is owned by the Seneca Nation.

(d) For the purposes of this section, any individual Seneca Indian eligible to file suit, who is a minor or under any other legal disability, shall be represented by his legal guardian or, if no guardian has been appointed, by an attorney appointed by the court.

SEC. 13. The Secretary of the Interior is hereby authorized, with the funds provided under section 4(f) of this Act, to purchase or to acquire through condemnation proceedings lands, and interests in lands, within the Allegheny Reservation, for the relocation of houses and community facilities, or for recreational, commercial, or industrial development, or contiguous to the Allegheny Reservation, for recreational, or commercial development. Any lands so acquired outside the existing reservation shall become a part of the reservation and have the same legal status as lands within the reservation.

SEC. 14. The interests in land required for the Allegheny Reservoir project within the Allegheny Indian Reservation are generally identified and delineated on a map entitled "Allegheny River Basin, Allegheny Reservoir, New York, General Map." Detailed legal descriptions of the lands shown thereon, together with tract maps, are or shall be filed in condemnation proceedings which heretofore have been or hereafter shall be instituted by the United States in the United States District Court for the Western District of New York for the acquisition of easements, interest in land, and other property within the Allegheny Indian Reservation. The estates taken shall be as specifically set forth in the complaints filed in said proceedings, except insofar as the court may determine that the condemnation by the United States of any easement, interest in land, or other property identified therein for the construction of a limited access highway to be made a part of the New York State Southern Tier Expressway has not been authorized, in which event said estate shall not be taken. Copies of the final decree and other appropriate papers in said condemnation proceedings setting forth legal descriptions of the lands and the estates taken, together with identifying tract maps, shall be filed among the land records of the Bureau of Indian Affairs in Washington, District of Columbia, and recorded in the office of the county clerk of Cattaraugus County, New York. A true and correct copy of said papers shall be furnished by the Secretary of the Army without cost to the Seneca Nation.

SEC. 15. Upon a determination by the Secretary of the Army that all or part of the interests in land acquired under section 1 of this Act no longer are necessary for purposes of the Allegheny Reservoir project, all right, title, and interests in such lands shall thereupon vest in the Seneca Nation.

SEC. 16. No part of any expenditures made by the United States under any of the provisions of this Act shall be charged by the United States as an offset or counterclaim against any claim, if any, of the Seneca Nation against the United States other than claims arising out of the acquisition of interests in lands for the Allegheny Reservoir project.

SEC. 17. All funds authorized by this Act paid to the Seneca Nation and individual Seneca Indians shall be exempt from all forms of State and Federal taxation.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., February 28, 1964.

HON. HENRY M. JACKSON,
Chairman, Senate Committee on Interior and Insular Affairs,
New Senate Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Bureau of the Budget on S. 1836, a bill to authorize the acquisition of and the payment for a flowage and clearing easement and rights-of-way over lands within the Allegheny Indian Reservation in New York, required by the United States for the Allegheny River (Kinzua Dam) project, to provide for the relocation, rehabilitation, social and economic development of the members of the Seneca Nation, and for other purposes.

The general purpose of the bill is stated in its title. The Departments of the Army and Interior have provided a detailed explanation of the provision of the bill in the reports which they have submitted to the committee. The total cost of S. 1836 cannot be computed because in some sections the dollar amounts have been left blank. However, the total cost of H.R. 1794 as passed the House is \$20,150,000. It is estimated that if the land and structures covered by this bill were acquired under the normal procedure of paying the owners just compensation (fair market value) for their property, the acquisition cost would be \$1,611,325.

Legislative proposals to compensate the Seneca Nation for the portion of its land needed for the Allegheny River project have been the subject of extensive negotiations. The results of negotiations up to the present time are reflected in H.R. 1794 which is now before the Senate. The Bureau of the Budget would have no objection to the enactment of S. 1836 if amended to conform with H.R. 1794, subject to your consideration of the following comments.

Section 17, which is identical in S. 1836 and H.R. 1794, would exempt all funds paid under the act to the Seneca Nation and to individual Seneca Indians from all forms of State and Federal taxation. As presently drafted this section might create complicated administrative problems for State and Federal tax officials. Two examples of the problems that might be encountered are claims by individuals for exemptions from Federal excise and State sales taxes on articles purchased with funds received under the act, and claims by heirs (even successive generations of heirs) for exemption from inheritance taxes on that part of an estate derived from payments made under the act. The major importance of this provision is exemption from income taxes. Accordingly, it is recommended that section 17 be amended to provide an exemption only from Federal and State income taxes.

Section 4 of S. 1836 does not specify an amount for assistance designed to improve the economic, social, and educational conditions of enrolled members of the Seneca Nation. Section 4 of H.R. 1794 provides the sum of \$16,931,000. We believe several facts relating to the economic impact of the Allegheny River Dam and Reservoir project on the Seneca Nation are relevant to the amount to be included in section 4.

There are 482 Seneca Indians (130 households) living within the reservoir area that will need to relocate. They represent 16 percent of the 2,976 enrolled members of the Seneca Nation living on the reservations or 12 percent of the 4,132 total enrolled membership.

Of the individuals living within the project area, 145 were classified by a June 1962 survey as fully employable adults (housewives and mothers of small children not seeking work were excluded)—107 of these were males and 38 were females. Eighty males and thirty females were employed at the time of the survey. Only 8 males and no females were employed in occupations that would be affected by the use of Seneca land for the Allegheny project. Three of these were farmers and five were self-employed, utilizing native products. Since about 50 percent of the reservation area needed for the project will be flooded only once in 5 years, farming will probably continue on that portion of the land that is arable.

This loss of employment opportunity can be contrasted with the jobs that would be created by the development of an industrial park with the portion of the rehabilitation funds (\$4,438,000) in H.R. 1794, identified for this purpose. The operation and maintenance services alone for such an industrial park would provide employment for 60 persons on a full-time basis. When fully developed, it is estimated that the industrial plants locating there will provide 3,300 jobs.

Senecas residing within the project taking area had an average income of \$3,894 per household during 1961. Per capita income was \$1,002. This compares with average per capita income of \$260 and \$319 respectively for the Crow Creek and Lower Brule Sioux Indians, the most recent tribes to receive a legislative settlement for lands taken for a flood control project in the Missouri River Basin.

In the legislative settlement for the taking of the lands of the Crow Creek and Lower Brule Sioux Indians, the Congress used a per capita amount of \$2,250 for the enrolled members of the tribe to arrive at the amount of the rehabilitation payment. Since the Senecas live on two physically separate reservations—the Allegany and the Cattaraugus—a comparable rehabilitation payment could not be computed by applying an identical per capita amount to the enrolled membership of the Seneca Nation. There are 4,132 enrolled members of the Seneca Nation, counting those that live on and off the reservations. Of these 1,103 live on the Allegany Reservation which is affected by the Allegheny River flood control project and 1,873 live on the Cattaraugus Reservation which is not affected. If the \$2,250 per capita amount is applied to the enrolled members on the Allegany Reservation, the result is \$2,481,750. If applied to the total enrolled members of the Seneca Nation, the amount would be \$9,297,000.

In conclusion, we would urge the committee in arriving at a legislative settlement for the taking of the Seneca lands to consider the limited economic effect of the project on the Senecas and the relationship of this settlement to previous ones.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

[H.R. 1794, 88th Cong., 2d sess.]

AN ACT To authorize the acquisition of and the payment for a flowage easement and rights-of-way over lands within the Allegany Indian Reservation in New York, required by the United States for the Allegheny River (Kinzoa Dam) project, to provide for the relocation, rehabilitation, social and economic development of the members of the Seneca Nation, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in furtherance of the Allegheny Reservoir project authorized by the Flood Control Acts of June 28, 1938 (52 Stat. 1215), August 18, 1941 (55 Stat. 638), and December 22, 1944 (58 Stat. 889), payment shall be made as hereinafter set forth in this Act to the Seneca Nation and to the individual Seneca Indians for such easements, interests in land and other property within the Allegany Indian Reservation, more particularly described in section 14 of this Act, as have been taken for the construction, operation, and maintenance of said project.

SEC. 2. In consideration for the interests in land acquired as set forth in section 1 of this Act, the United States will pay, out of funds available for the Allegheny Reservoir project, and in accordance with the provisions of section 3 hereof—

(a) to the Seneca Nation, the amount of \$666,285, as full compensation for the direct damages (including severance damages, but excluding damages caused by the increased difficulty or impossibility of developing or otherwise exploiting the subsurface resources retained by the nation under section 6) to lands within the Allegany Indian Reservation caused by the acquisition of interests therein by the United States;

(b) to the Seneca Nation, the sum of \$100,000, as minimum compensation for the damages to the nation caused by the increased difficulty or impossibility of developing or otherwise exploiting the oil and gas subsurface resources retained by the nation under section 6 of this Act: *Provided, however,* That the Seneca Nation shall have the right, in the condemnation proceedings instituted by the United States in the United States District Court for the Western District of New York, to seek an additional sum as just compensation due the nation for said damages and for damages to the sand and gravel resources within the Allegany Indian Reservation caused by the acquisition of interests in land therein by the United States: *Provided further,* That in the event the Seneca Nation seeks such additional compensation, the district court under section 1358, title 28, United States Code,

shall have jurisdiction to determine the just compensation due to the nation for said damages.

(c) to individual Seneca Indians, a sum aggregating \$522,775, to be disbursed in accordance with the provisions of a schedule prepared pursuant to section 3(c) of this Act, as full compensation for the taking of houses, barns, fences, wells, and other structures and improvements on lands within the Allegany Indian Reservation; and

(d) to the Seneca Nation, the amount of \$1,033,275, in full settlement of all other claims, rights, and demands of the nation and its members, including indirect damages and loss of access to the bed of the Allegheny River, arising out of the taking of property as set forth in section 1 of this Act, exclusive of the interest, if any, of the Seneca Nation in houses, structures, or other improvements within the Allegany Indian Reservation claimed by nonmembers of the nation.

(e) In making payments under this section, the United States shall be entitled to a credit for all funds heretofore deposited in condemnation proceedings before the United States District Court for the Western District of New York as the estimated just compensation for the acquisition of interests in lands and other property belonging to the Seneca Nation or individual Seneca Indians in connection with the Allegheny Reservoir project.

SEC. 3. (a) The payment authorized by section 2(a) of this Act shall be made directly to the Seneca Nation: *Provided*, That out of the funds so distributed to the nation a sum not exceeding \$611,675 shall be paid to individual Seneca Indians in accordance with a schedule prepared by the Secretary of the Army, after certification by the nation. Said schedule shall reflect the amount agreed upon by the Secretary of the Army and the Seneca Nation, with the approval of the Secretary of the Interior, as compensation for the interest in lands within the taking area of said individual Seneca Indians.

(b) The payment authorized by section 2(b) of this Act shall be made directly to the Seneca Nation: *Provided*, That if the nation through litigation recovers additional compensation for damages to its sand and gravel resources, the United States shall be entitled to a credit against that supplemental award in the amount paid to the nation under section 2(a) for damages to the surface of the lands on which such sand and gravel are located.

(c) The payments authorized by section 2(c) of this Act shall be made directly to individual Seneca Indians in accordance with a schedule of property owners within the taking area prepared by the Secretary of the Army, after certification by the Seneca Nation. Said schedule shall reflect the amount agreed upon by the Secretary of the Army and the nation, with the approval of the Secretary of the Interior, as compensation for the homes, barns, fences, wells, and other structures and improvements within the taking area of said individual Seneca Indians.

(d) The payment authorized by section 2(d) of this Act shall be made directly to the Seneca Nation: *Provided*, That the nation, with the approval of the Secretary of the Interior, shall make available from the funds so distributed not to exceed \$127,050, to pay the expenses, costs, losses, and damages incurred by individual Seneca Indians as a result of moving themselves and their possessions, including dwellings and other buildings owned by the members of the nation, on account of the acquisition by the United States of interests in land within the Allegany Reservation as set forth in section 1 of this Act.

(e) No part of the compensation provided for in section 2 of this Act shall be subject to any prior lien, debt, or claim of any nature whatsoever against the Seneca Nation or the individual Seneca Indians entitled to such compensation, except for the repayment of development loans made to the Seneca Nation, or of housing or resettlement loans made to individual Seneca Indians, by a bank or other recognized lending institution, and also except for delinquent debts owed to the United States by the nation or delinquent debts owed to the United States or the Seneca Nation by the individual Seneca Indian entitled to the compensation: *Provided*, That such compensation shall not be applied to the payment of individual delinquent debts to the United States unless the Secretary of the Interior first determines and certifies that no hardship will result from the payment of such delinquent debts.

SEC. 4. There is authorized to be appropriated the additional sum of \$16,931,000, which shall be deposited in the Treasury of the United States to the credit of the Seneca Nation and which shall draw interest on the principal at the rate of 4 per centum per annum until expended, for assistance designed to improve the economic, social, and educational conditions of enrolled members of the Seneca Nation, including, but not limited to, the following purposes:

(a) agricultural, commercial, and recreational development on the Allegheny, Cattaraugus, and Oil Springs Reservations;

(b) industrial development on the Seneca reservations or within fifty miles of any exterior boundary of said reservations;

(c) relocation and resettlement, including the construction of roads, utilities, sanitation facilities, houses, and related structures;

(d) the construction and maintenance of community buildings and other community facilities;

(e) an educational fund for scholarship loans and grants, vocational training, and counseling services;

(f) the acquisition of lands either within or contiguous to the Allegheny Reservation, as authorized under section 13 of this Act; and

(g) a resurvey of the boundaries of the villages established pursuant to the Act of February 19, 1875 (18 Stat. 330), together with a title search to determine the current status and extent of all leases issued by the Seneca Nation therein.

The funds authorized by this section shall be expended in accordance with plans and programs approved by the Seneca Nation and the Secretary of the Interior: *Provided*, That no part of such funds shall be used for per capita payments.

SEC. 5. The Secretary of the Army, out of funds appropriated for the Allegheny Reservoir project other than funds provided by this Act, is authorized and directed to relocate and reestablish within the Allegheny Reservation such Indian cemeteries, tribal monuments, graves, and shrines inside the taking area as the Seneca Nation or the next of kin shall select and designate: *Provided*, That reinterment of individual remains, though not entire cemeteries, outside the boundaries of the Allegheny Reservation also is authorized if so desired by the next of kin, but in such event reinterment to a site which exceeds the equivalent distance from the disinterment site to the farthest point at which reinterment could be made within the reservation boundaries will be made only if the next of kin agrees to pay the added cost: *And provided further*, That the Secretary of the Army is authorized and directed to provide a trust fund in an amount computed on the basis of \$14.40 for each reinterment for the perpetual care and maintenance of the graves for the reinterments at the two cemetery relocation sites selected by the Seneca Nation.

SEC. 6. All minerals of any kind whatsoever, including oil and gas and sand and gravel, within the areas subjected to the interests in land acquired by the United States as set forth in section 1 of this Act, are hereby reserved to the Seneca Nation: *Provided*, That the exploration and development of such minerals, including oil and gas and sand and gravel, within the taking areas shall be consistent with said interests in land and subject to all reasonable regulations of the Secretary of the Army necessary for the protection of the Allegheny Reservoir project.

SEC. 7. Members of the Seneca Nation shall have the right without charge to remain on and use the lands subject to the interests in land acquired by the United States as set forth in section 1 of this Act until required to vacate at such times as may be fixed by the Secretary of the Army with the approval of the Secretary of the Interior and after consultation with the Seneca Nation: *Provided*, That the time for vacating in any event will not extend beyond January 1, 1965, unless the Secretary of the Army otherwise permits.

SEC. 8. Up to sixty days before the date for vacating in accordance with section 7, the Seneca Nation on its common lands within the taking area for the Allegheny Reservoir project, and individual Seneca Indians on lands in which they have an interest as shown on the schedules described in section 3 (a) and (c) of this Act, shall have the right, without charge, to harvest crops, to cut and remove all timber, to mine and remove sand and gravel, and to salvage improve-

ments: *Provided*, That if such rights are not exercised or are waived by said individual Seneca Indians within the time prescribed, the nation shall have an additional thirty days within which to exercise their rights on its own behalf: *Provided further*, That the crops harvested, the timber cut, the sand and gravel removed, and the salvage permitted by this section shall not be construed to be compensation.

SEC. 9. The Seneca Nation shall have the right to use and occupy the taking area of the Allegheny Reservoir project within the Allegheny Reservation for all purposes not inconsistent with the interests in land acquired by the United States as set forth in section 1 of this Act, including, but not limited to, the right to lease such lands for farming, and grazing purposes to members or nonmembers of the nation, the power to dispose of all minerals reserved under section 6 of this Act, the right to hunt and fish on such lands, and to license hunting and fishing by nonmembers of the nation and the right to regulate access to the shoreline of the reservoir: *Provided*, That public access to the shoreline shall be provided and no charge shall be made to the public therefor: *And provided further*, That the use by the public of the water areas of the Allegheny Reservoir project shall be pursuant to such rules and regulations as the Secretary of the Army may prescribe.

SEC. 10. The Secretary of the Treasury, upon certification by the Secretary of the Interior, shall reimburse the Seneca Nation for all fees and expenses incurred in relation to the Allegheny Reservoir project, including the cost of engineering and appraising services: *Provided*, That not more than \$250,000 is authorized to be appropriated for such reimbursable fees and expenses: *And provided further*, That attorney fees shall be paid under the terms of a contract approved by the Secretary of the Interior.

SEC. 11. (a) Any individual Seneca Indian who accepts the payment tendered to him pursuant to section 3(a) shall be deemed to waive and release any further claims, rights, or demands in his own name arising out of the taking of interests in land as set forth in section 1 of this Act. Any individual Seneca Indian who accepts the payment tendered to him pursuant to section 3(c) shall be deemed to waive and release any further claims, rights, or demands in his own name arising out of the taking of houses, barns, fences, wells, and other structures and improvements under this Act.

(b) Any individual Seneca Indian who has been duly tendered payment in accordance with the schedules prepared pursuant to section 3 (a) and (c) of this Act shall have the right to reject either or both of the sums so tendered by filing a notice of rejection with the Seneca Nation, Salamanca, New York, the district engineer, United States Army Engineer District, Pittsburgh, Pennsylvania, and the United States attorney for the western district of New York, Buffalo, New York, within ninety days after the tender is made.

(c) For the purposes of this section, the Secretary of the Interior is authorized to represent any individual Seneca Indian entitled to payment who is a minor, or under any other legal disability, or who cannot be located after a reasonable and diligent search.

SEC. 12. (a) Any individual Seneca Indian who, pursuant to section 11(b) of this Act, rejects a sum tendered in payment under section 3 (a) or (c), or both, shall have the right to litigate the issue of just compensation in the United States District Court for the Western District of New York. The court shall, except as otherwise expressly provided herein, determine just compensation in accordance with the laws and procedures applicable to the determination of just compensation in condemnation proceedings in the Federal courts. No court or statutory costs, but all other costs and expenses, including attorney's fees, shall be at the contesting individual's expense.

(b) Where the sum rejected by an individual Seneca Indian has been tendered under section 3(a) of this Act, and the United States has instituted condemnation proceedings, the Seneca Nation within sixty days shall deposit in court the total amount paid to it pursuant to section 2(a), less any credit given the United States under section 2(e), for the interests in land acquired by the United States

which are the subject of the contesting individual's claims. Any excess of the sum so deposited over the amount finally determined as just compensation for the interests in land, if any, of the contesting individual shall be paid back to the Seneca Nation. If the amount finally determined as just compensation for all interests in land acquired by the United States which are the subject of the contesting individual's claim exceeds the sum deposited by the Seneca Nation, the difference shall be paid into court by the United States, and the total amount so paid and deposited shall be distributed as directed by the court.

(c) Where the sum rejected by an individual Seneca Indian has been tendered under section 3(c) of this Act, and the issue of just compensation is litigated, the United States shall not assert as a defense that any interest in the property is owned by the Seneca Nation.

(d) For the purposes of this section, any individual Seneca Indian eligible to file suit, who is a minor or under any other legal disability, shall be represented by his legal guardian or, if no guardian has been appointed, by an attorney appointed by the Court.

Sec. 13. The Secretary of the Interior is hereby authorized, with the funds provided under section 4(f) of this Act, to purchase or to acquire through condemnation proceedings lands, and interests in lands, within the Allegheny Reservation, for the relocation of houses and community facilities or for recreational, commercial, or industrial development, or contiguous to the Allegheny Reservation for recreational or commercial development. Any lands so acquired outside the existing reservation shall become a part of the reservation and have the same legal status as lands within the reservation.

Sec. 14. The interests in land required for the Allegheny Reservoir project within the Allegheny Indian Reservation are generally identified and delineated on a map entitled "Allegheny River Basin, Allegheny Reservoir, New York, General Map". Detailed legal descriptions of the lands shown thereon, together with tract maps, are or shall be filed in condemnation proceedings which have been instituted by the United States in the United States District Court for the Western District of New York for the acquisition of easements, interests in land, and other property within the Allegheny Indian Reservation. The estates taken shall be as specifically set forth in the complaints filed in said proceedings, except insofar as the court may determine that the condemnation by the United States of any easement, interest in land, or other property identified therein for the construction of a limited access highway to be made a part of the New York State Southern Tier Expressway has not been authorized, in which event said estate shall not be taken. Copies of the final decree and other appropriate papers in said condemnation proceedings setting forth legal descriptions of the lands and the estates taken, together with identifying tract maps, shall be filed among the land records of the Bureau of Indian Affairs in Washington, District of Columbia, and recorded in the office of the county clerk of Cattaraugus County, New York. A true and correct copy of said papers shall be furnished by the Secretary of the Army without cost to the Seneca Nation.

Sec. 15. Upon a determination by the Secretary of the Army that all or part of the interests in land acquired as set forth in section 1 of this Act no longer are necessary for purposes of the Allegheny Reservoir project, all right, title, and interests in such lands shall thereupon vest in the Seneca Nation.

Sec. 16. No part of any expenditures made by the United States under any of the provisions of this Act shall be charged by the United States as an offset or counterclaim against any claim of the Seneca Nation or of any claimant claiming under or in place of said Seneca Nation by virtue of a valid, existing contract or agreement against the United States other than claims arising out of the acquisition of interests in land for the Allegheny Reservoir project.

Sec. 17. All funds authorized by this Act paid to the Seneca Nation and individual Seneca Indians shall be exempt from all forms of State and Federal taxation.

Passed the House of Representatives February 7, 1964.

Attest:

RALPH R. ROBERTS, *Clerk.*

88TH CONGRESS } HOUSE OF REPRESENTATIVES } REPORT
 2d Session } } No. 1128

AUTHORIZING THE ACQUISITION OF AND THE PAYMENT FOR A FLOWAGE EASEMENT AND RIGHTS-OF-WAY OVER LANDS WITHIN THE ALLEGANY INDIAN RESERVATION IN NEW YORK, REQUIRED BY THE UNITED STATES FOR THE ALLEGHENY RIVER (KINZUA DAM) PROJECT, PROVIDING FOR THE RELOCATION, REHABILITATION, SOCIAL AND ECONOMIC DEVELOPMENT OF THE MEMBERS OF THE SENECA NATION, AND FOR OTHER PURPOSES

FEBRUARY 5, 1964.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

REPORT

[To accompany H.R. 1794]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 1794) to authorize the acquisition of and the payment for a flowage easement and rights-of-way over lands within the Allegany Indian Reservation in New York, required by the United States for the Allegheny River (Kinzuu Dam) project, to provide for the relocation, rehabilitation, social and economic development of the members of the Seneca Nation, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

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

That in furtherance of the Allegheny Reservoir project authorized by the Flood Control Acts of June 28, 1938 (52 Stat. 1215), August 18, 1941 (55 Stat. 638), and December 22, 1944 (58 Stat. 889), payment shall be made as hereinafter set forth in this Act to the Seneca Nation and to the individual Seneca Indians for such easements, interests in land and other property within the Allegany Indian Reservation, more particularly described in section 14 of this Act, as have been taken for the construction, operation, and maintenance of said project.

SEC. 2. In consideration for the interests in land acquired as set forth in section 1 of this Act, the United States will pay, out of funds available for the Allegheny Reservoir project, and in accordance with the provisions of section 3 hereof—

(a) to the Seneca Nation, the amount of \$666,285, as full compensation for the direct damages (including severance damages, but excluding damages caused by the increased difficulty or impossibility of developing or otherwise

exploiting the subsurface resources retained by the nation under section 6) to lands within the Allegheny Indian Reservation caused by the acquisition of interests therein by the United States;

(b) to the Seneca Nation, the sum of \$100,000, as full compensation for the damages caused by the increased difficulty or impossibility of developing or otherwise exploiting the oil and gas subsurface resources retained by the nation under section 6 of this Act: *Provided, however,* That the Seneca Nation shall have the right, in the condemnation proceedings instituted by the United States in the United States District Court for the Western District of New York, to seek an additional sum as just compensation due the nation for damages to the sand and gravel resources within the Allegheny Indian Reservation caused by the acquisition of interests in land therein by the United States: *Provided further,* That in the event the Seneca Nation seeks such additional compensation, the district court under section 1358, title 28, United States Code, shall have jurisdiction to determine the just compensation due to the nation for said damages.

(c) to individual Seneca Indians, a sum aggregating \$522,775, to be disbursed in accordance with the provisions of a schedule prepared pursuant to section 3(c) of this Act, as full compensation for the taking of houses, barns, fences, wells, and other structures and improvements on lands within the Allegheny Indian Reservation; and

(d) to the Seneca Nation, the amount of \$1,033,275, in full settlement of all other claims, rights, and demands of the nation and its members, including indirect damages and loss of access to the bed of the Allegheny River, arising out of the taking of property as set forth in section 1 of this Act, exclusive of the interest, if any, of the Seneca Nation in houses, structures, or other improvements within the Allegheny Indian Reservation claimed by nonmembers of the nation.

(e) In making payments under this section, the United States shall be entitled to a credit for all funds heretofore deposited in condemnation proceedings before the United States District Court for the Western District of New York as the estimated just compensation for the acquisition of interests in lands and other property belonging to the Seneca Nation or individual Seneca Indians in connection with the Allegheny Reservoir project.

SEC. 3. (a) The payment authorized by section 2(a) of this Act shall be made directly to the Seneca Nation: *Provided,* That out of the funds so distributed to the nation a sum not exceeding \$611,675 shall be paid to individual Seneca Indians in accordance with a schedule prepared by the Secretary of the Army, after certification by the nation. Said schedule shall reflect the amount agreed upon by the Secretary of the Army and the Seneca Nation, with the approval of the Secretary of the Interior, as compensation for the interests in lands within the taking area of said individual Seneca Indians.

(b) The payment authorized by section 2(b) of this Act shall be made directly to the Seneca Nation: *Provided,* That if the nation through litigation recovers additional compensation for damages to its sand and gravel resources, the United States shall be entitled to a credit against that supplemental award in the amount paid to the nation under section 2(a) for damages to the surface of the lands on which such sand and gravel are located.

(c) The payments authorized by section 2(c) of this Act shall be made directly to individual Seneca Indians in accordance with a schedule of property owners within the taking area prepared by the Secretary of the Army, after certification by the Seneca Nation. Said schedule shall reflect the amount agreed upon by the Secretary of the Army and the nation, with the approval of the Secretary of the Interior, as compensation for the homes, barns, fences, wells, and other structures and improvements within the taking area of said individual Seneca Indians.

(d) The payment authorized by section 2(d) of this Act shall be made directly to the Seneca Nation: *Provided,* That the Nation, with the approval of the Secretary of the Interior, shall make available from the funds so distributed not to exceed \$127,050, to pay the expenses, costs, losses, and damages incurred by individual Seneca Indians as a result of moving themselves and their possessions, including dwellings and other buildings owned by the members of the Nation, on account of the acquisition by the United States of interests in land within the Allegheny Reservation as set forth in section 1 of this Act.

(e) No part of the compensation provided for in section 2 of this Act shall be subject to any prior lien, debt, or claim of any nature whatsoever against the Seneca Nation or the individual Seneca Indians entitled to such compensation, except for the repayment of development loans made to the Seneca Nation, or of housing or resettlement loans made to individual Seneca Indians, by a bank or

other recognized lending institution, and also except for delinquent debts owed to the United States by the nation or delinquent debts owed to the United States or the Seneca Nation by the individual Seneca Indian entitled to the compensation: *Provided*, That such compensation shall not be applied to the payment of individual delinquent debts to the United States unless the Secretary of the Interior first determines and certifies that no hardship will result from the payment of such delinquent debts.

SEC. 4. There is authorized to be appropriated the additional sum of \$16,931,000, which shall be deposited in the Treasury of the United States to the credit of the Seneca Nation and which shall draw interest on the principal at the rate of 4 per centum per annum until expended, for assistance designed to improve the economic, social, and educational conditions of enrolled members of the Seneca Nation, including, but not limited to, the following purposes:

(a) agricultural, commercial, and recreational development on the Allegheny, Cattaraugus, and Oil Springs Reservations;

(b) industrial development on the Seneca reservations or within fifty miles of any exterior boundary of said reservations;

(c) relocation and resettlement, including the construction of roads, utilities, sanitation facilities, houses, and related structures;

(d) the construction and maintenance of community buildings and other community facilities;

(e) an educational fund for scholarship loans and grants, vocational training, and counseling services;

(f) the acquisition of lands either within or contiguous to the Allegheny Reservation, as authorized under section 13 of this Act; and

(g) a resurvey of the boundaries of the villages established pursuant to the Act of February 19, 1875 (18 Stat. 330), together with a title search to determine the current status and extent of all leases issued by the Seneca Nation therein.

The funds authorized by this section shall be expended in accordance with plans and programs approved by the Seneca Nation and the Secretary of the Interior: *Provided*, That no part of such funds shall be used for per capita payments.

SEC. 5. The Secretary of the Army, out of funds appropriated for the Allegheny Reservoir project other than funds provided by this Act, is authorized and directed to relocate and reestablish within the Allegheny Reservation such Indian cemeteries, tribal monuments, graves, and shrines inside the taking area as the Seneca Nation or the next of kin shall select and designate: *Provided*, That reinterment of individual remains, though not entire cemeteries, outside the boundaries of the Allegheny Reservation also is authorized if so desired by the next of kin, but, in such event reinterment to a site which exceeds the equivalent distance from the disinterment site to the farthest point at which reinterment could be made within the reservation boundaries will be made only if the next of kin agrees to pay the added cost: *And provided further*, That the Secretary of the Army is authorized and directed to provide a trust fund in an amount computed on the basis of \$14.40 for each reinterment for the perpetual care and maintenance of the graves for the reinterments at the two cemetery relocation sites selected by the Seneca Nation.

SEC. 6. All minerals of any kind whatsoever, including oil and gas and sand and gravel, within the areas subjected to the interests in land acquired by the United States as set forth in section 1 of this Act, are hereby reserved to the Seneca Nation: *Provided*, That the exploration and development of such minerals, including oil and gas and sand and gravel, within the taking area shall be consistent with said interests in land and subject to all reasonable regulations of the Secretary of the Army necessary for the protection of the Allegheny Reservoir project.

SEC. 7. Members of the Seneca Nation shall have the right without charge to remain on and use the lands subject to the interests in land acquired by the United States as set forth in section 1 of this Act until required to vacate at such times as may be fixed by the Secretary of the Army with the approval of the Secretary of the Interior and after consultation with the Seneca Nation: *Provided*, That the time for vacating in any event will not extend beyond January 1, 1965, unless the Secretary of the Army otherwise permits.

SEC. 8. Up to sixty days before the date for vacating in accordance with section 7, the Seneca Nation on its common lands within the taking area for the Allegheny Reservoir project, and individual Seneca Indians on lands in which they have an interest as shown on the schedules described in section 3 (a) and (c) of this Act, shall have the right, without charge, to harvest crops, to cut and remove all timber, to mine and remove sand and gravel, and to salvage improvements: *Provided*, That if such rights are not exercised or are waived by said individual

Seneca Indians within the time prescribed, the nation shall have an additional thirty days within which to exercise their rights on its own behalf: *Provided further*, That the crops harvested, the timber cut, the sand and gravel removed, and the salvage permitted by this section shall not be construed to be compensation.

SEC. 9. The Seneca Nation shall have the right to use and occupy the taking area of the Allegheny Reservoir project within the Allegany Reservation for all purposes not inconsistent with the interests in land acquired by the United States as set forth in section 1 of this Act, including, but not limited to, the right to lease such lands for farming and grazing purposes to members or nonmembers of the nation, the power to dispose of all minerals reserved under section 6 of this Act, the right to hunt and fish on such lands, and to license hunting and fishing by nonmembers of the nation and the right to regulate access to the shoreline of the reservoir: *Provided*, That public access to the shoreline shall be provided and no charge shall be made to the public therefor: *And provided further*, That the use by the public of the water areas of the Allegheny Reservoir project shall be pursuant to such rules and regulations as the Secretary of the Army may prescribe.

SEC. 10. The Secretary of the Treasury, upon certification by the Secretary of the Interior, shall reimburse the Seneca Nation for all fees and expenses incurred in relation to the Allegheny Reservoir project, including the cost of engineering and appraising services: *Provided*, That not more than \$250,000 is authorized to be appropriated for such reimbursable fees and expenses: *And provided further*, That attorney fees shall be paid under the terms of a contract approved by the Secretary of the Interior.

SEC. 11. (a) Any individual Seneca Indian who accepts the payment tendered to him pursuant to section 3(a) shall be deemed to waive and release any further claims, rights, or demands in his own name arising out of the taking of interests in land as set forth in section 1 of this Act. Any individual Seneca Indian who accepts the payment tendered to him pursuant to section 3(c) shall be deemed to waive and release any further claims, rights, or demands in his own name arising out of the taking of houses, barns, fences, wells, and other structures and improvements under this Act.

(b) Any individual Seneca Indian who has been duly tendered payment in accordance with the schedules prepared pursuant to section 3 (a) and (c) of this Act shall have the right to reject either or both of the sums so tendered by filing a notice of rejection with the Seneca Nation, Salamanca, New York, the district engineer, United States Army Engineer District, Pittsburgh, Pennsylvania, and the United States Attorney for the Western District of New York, Buffalo, New York, within ninety days after the tender is made.

(c) For the purposes of this section, the Secretary of the Interior is authorized to represent any individual Seneca Indian entitled to payment who is a minor, or under any other legal disability, or who cannot be located after a reasonable and diligent search.

SEC. 12. (a) Any individual Seneca Indian who, pursuant to section 11(b) of this Act, rejects a sum tendered in payment under section 3(a) or (c), or both, shall have the right to litigate the issue of just compensation in the United States District Court for the Western District of New York. The court shall, except as otherwise expressly provided herein, determine just compensation in accordance with the laws and procedures applicable to the determination of just compensation in condemnation proceedings in the Federal courts. No court or statutory costs, but all other costs and expenses, including attorney's fees, shall be at the contesting individual's expense.

(b) Where the sum rejected by an individual Seneca Indian has been tendered under section 3(a) of this Act, and the United States has instituted condemnation proceedings, the Seneca Nation within sixty days shall deposit in court the total amount paid to it pursuant to section 2(a), less any credit given the United States under section 2(e), for the interests in land acquired by the United States which are the subject of the contesting individual's claims. Any excess of the sum so deposited over the amount finally determined as just compensation for the interests in land, if any, of the contesting individual shall be paid back to the Seneca Nation. If the amount finally determined as just compensation for all interests in land acquired by the United States which are the subject of the contesting individual's claim exceeds the sum deposited by the Seneca Nation, the difference shall be paid into court by the United States, and the total amount so paid and deposited shall be distributed as directed by the court.

(c) Where the sum rejected by an individual Seneca Indian has been tendered under section 3(c) of this Act, and the issue of just compensation is litigated, the United States shall not assert as a defense that any interest in the property is owned by the Seneca Nation.

(d) For the purposes of this section, any individual Seneca Indian eligible to file suit, who is a minor or under any other legal disability, shall be represented by his legal guardian or, if no guardian has been appointed, by an attorney appointed by the Court.

SEC. 13. The Secretary of the Interior is hereby authorized, with the funds provided under section 4(f) of this Act, to purchase or to acquire through condemnation proceedings lands, and interests in lands, within the Allegheny Reservation, for the relocation of houses and community facilities or for recreational, commercial, or industrial development, or contiguous to the Allegheny Reservation for recreational or commercial development. Any lands so acquired outside the existing reservation shall become a part of the reservation and have the same legal status as lands within the reservation.

SEC. 14. The interests in land required for the Allegheny Reservoir project within the Allegheny Indian Reservation are generally identified and delineated on a map entitled "Allegheny River Basin, Allegheny Reservoir, New York General Map". Detailed legal descriptions of the lands shown thereon, together with tract maps, are or shall be filed in condemnation proceedings which have been instituted by the United States in the United States District Court for the Western District of New York for the acquisition of easements, interests in land, and other property within the Allegheny Indian Reservation. The estates taken shall be as specifically set forth in the complaints filed in said proceedings, except insofar as the court may determine that the condemnation by the United States of any easement, interest in land, or other property identified therein for the construction of a limited access highway to be made a part of the New York State Southern Tier Expressway has not been authorized, in which event said estate shall not be taken. Copies of the final decree and other appropriate papers in said condemnation proceedings setting forth legal descriptions of the lands and the estates taken, together with identifying tract maps, shall be filed among the land records of the Bureau of Indian Affairs in Washington, District of Columbia, and recorded in the office of the county clerk of Cattaraugus County, New York. A true and correct copy of said papers shall be furnished by the Secretary of the Army without cost to the Seneca Nation.

SEC. 15. Upon a determination by the Secretary of the Army that all or part of the interests in land acquired as set forth in section 1 of this Act no longer are necessary for purposes of the Allegheny Reservoir project, all right, title, and interests in such lands shall thereupon vest in the Seneca Nation.

SEC. 16. No part of any expenditures made by the United States under any of the provisions of this Act shall be charged by the United States as an offset or counterclaim against any claim of the Seneca Nation against the United States other than claims arising out of the acquisition of interests in land for the Allegheny Reservoir project.

SEC. 17. All funds authorized by this Act paid to the Seneca Nation and individual Seneca Indians shall be exempt from all forms of State and Federal taxation.

H.R. 1794

H.R. 1794 was introduced by Congressman Haley. Similar bills were introduced by Congressman Saylor (H.R. 3343) and Congressman Goodell (H.R. 7354). Hearings were held at Salamanca, N.Y., and Washington, D.C., on May 18, July 15, and 16, and August 8, 9, 12, 19, and 20, 1963, and the bills were further considered in subcommittee on October 31, November 1, and December 9, 10, and 13, 1963, and in full committee on January 22, 1964.

BACKGROUND

Kinzua Dam is under construction by the Corps of Engineers, U.S. Army, on the Allegheny River. Authorization for its construction as one feature of the Ohio River Basin project is contained in the act of June 28, 1938 (52 Stat. 1215, 1217), as amended by the acts of August 18, 1941 (55 Stat. 638), and December 22, 1944 (58 Stat. 889), and first funds for its construction were made available in the Public Works Appropriation Act, 1958. Present schedules call for partial closure of the dam in June of this year, for total closure in October

of this year, and for completion of the entire structure early next year. The estimated cost of the project, exclusive of certain items in the present bill, is \$107 million. Its benefit-cost ratio computed on the basis of current costs (but absent items in the bill not normally considered by the Corps of Engineers in connection with projects of this sort) is 2.1 to 1.0. Treating all items covered by the bill as though they were project costs, this ratio becomes 1.8 to 1.0.

The damsite is in Warren County, Pa. The lands which will be flooded, permanently or intermittently, total about 21,175 acres. They are in Warren and McKean Counties, Pa., and Cattaraugus County, N.Y. Among the lands in the last-named county which will be affected are approximately 10,200 acres within the Allegany Indian Reservation, 9,100 of which are now dry land and 1,100 of which are within the present river channel. These 10,200 acres are about one-third of the entire acreage within the Allegany Reservation. The remainder of the reservation land includes about 10,000 acres within the so-called congressional villages and 2,000 acres in rights-of-way for highways and the like. There will thus be left about 8,500 acres of dry land for permanent and unrestricted use by members of the Seneca Tribe residing on this reservation. Much of this, however, will either be so isolated by the reservoir or so hilly that it will be of little use to the inhabitants.

The Seneca Nation has 4,200 enrolled members, of whom about 1,100 reside on the Allegany Reservation, 1,900 on the Cattaraugus Reservation, and the remainder elsewhere. Of the 1,100 on the Allegany Reservation, 482 (making up 127 families) are within the reservoir area. Nearly all of these families will be relocated at two places within the reservation—the Jimersontown site (300 acres) and the Steamburg site (350 acres).

Article III of the treaty of November 11, 1794 (7 Stat. 44), commonly referred to as the Pickering Treaty, after describing "the land of the Seneca nation," went on as follows:

Now, the United States acknowledge all the land within the aforementioned boundaries, to be the property of the Seneca nation; and the United States will never claim the same, nor disturb the Seneca nation, nor any of the Six Nations, or of their Indian friends residing thereon and united with them, in the free use and enjoyment thereof; but it shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase.

Relying in part on this engagement, the Seneca Nation contested in the courts the authority of the Corps of Engineers to condemn land for and to construct the project. It lost its suits (*United States v. 21,250 acres of land*, 161 F. Supp. 376 (D.C.W.D.N.Y. 1957); *Seneca Nation v. Brucker*, 262 F. 2d 27 (C.A.D.C. Cir. 1958), cert. den. 360 U.S. 909 (1959)). A copy of the opinion of the court of appeals in the second of these cases is appended to this report. (See appendix.)

Were the lands within the Allegany Reservation which are required for the Kinzua project other than Indian land, there would be no occasion for intervention by the Congress. Acquisition thereof could proceed through the normal processes of negotiated purchase and sale or, if necessary, condemnation. In view, however, of the treaty provision just quoted, the special duties which the United States owes to its Indian wards, and the precedents which have been established in

such instances as those of the Lower Brule and Crow Creek Sioux Reservations during the 87th Congress, the committee believes that something more than usual is called for in this case. The bill therefore provides for the payment of three classes of money to the Senecas: (1) that which would be required in any event for the acquisition of interests in land within the Allegany Reservation; (2) that which is necessary to compensate the Senecas for certain indirect damages which, in an ordinary condemnation action, are not compensable; and (3) that which is necessary to rehabilitate and reestablish on a firm footing the Senecas' economy and to cover certain other expenses.

DIRECT DAMAGES

The first of these three items is covered in section 2, subsections (a), (b), and (c), of the bill, as reported. It amounts in all, to \$1,289,060, plus such additional sum, if any, as the Seneca Nation may recover in court for damages to its sand and gravel resources. This amount is broken into \$666,285 for interests in land being acquired by the United States, \$522,775 for the taking of permanent improvements on lands within the reservation, and \$100,000 for "damages caused by the increased difficulty of developing or otherwise exploiting the oil and gas subsurface resources retained by the nation."

Contrary to its usual practice, the Corps of Engineers, at the request of the Seneca Nation, is acquiring only flowage easements rather than fee title to lands within the reservoir area. Some of these easements have already been acquired by declaration of taking filed in the U.S. District Court for the Western District of New York. The remainder will be so acquired before the present bill becomes law. Those below elevation 1,292 mean sea level are within the maximum winter flow regulation pool of the reservoir, those below elevation 1,328 are within the maximum summer flow regulation pool, and those between this elevation and elevation 1,365 will, it is estimated, be subject to flooding at frequencies varying from once a year to once every 100 years, depending on their location. Other lands are required for the relocation of rights-of-way which now cross the reservation.

Both the amount of \$666,285 which is fixed in the bill for the acquisition of the easements and the amount of \$522,775 which is fixed for the permanent improvements were arrived at by negotiation between spokesmen for the Seneca Nation and the Corps of Engineers. The negotiations were conducted after each of the parties had had independent tract-by-tract appraisals made by qualified appraisers. Although these figures represent compromises, they are acceptable both to the corps and to the nation.

The \$100,000 for such increased difficulty as may occur in developing the oil and gas resources of the nation is likewise a mutually acceptable compromise figure. The existence of such resources was admitted by both parties, but there was disagreement as to their extent and commercial value. The committee regrets that it was impossible to develop a similar figure for the sand and gravel resources, but the corps and Senecas' estimates of the amount involved were so far apart that the committee had no choice but to leave this item for judicial decision if the Senecas desire to pursue the matter further.

The committee points out, however, that in the event the nation does pursue the matter successfully in the case of any of the tracts alleged to have significant sand and gravel resources, the Government will be entitled to an offset to the extent that it has already paid for other interests in the surface of the same land. This is provided for in section 3(b) of the bill.

The committee also notes that the reason for separating the amount to be paid for the easements from that to be paid for the improvements is that the latter belong to individual members of the nation who, on the other hand, have only a use right in the land itself.

INDIRECT DAMAGES

Section 2, subsection (d), of the amended bill provides for the payment of \$1,033,275 for various indirect damages. The nation claimed \$1,242,250 for these items, the corps admitted to \$824,273, and the committee split the difference. The parties were agreed on the dollar amounts for two of the items within this category—\$691,625 for the loss of timber, wildlife products, and the like, and \$127,050 for certain relocation costs—which make up nearly 80 percent of the total allowed by the committee. The values of these two items were estimated by staff members of the Bureau of Indian Affairs who participated in the calculation of similar charges involved in prior legislative settlements in other instances. They were in serious disagreement as to the amount to be allowed for loss of ready access to the river bottom, the corps valuing this at \$6 per acre (the amount allowed in earlier legislative settlements similar to the present one) and the nation at \$100 per acre. They were in total disagreement as to the propriety of including any of the other items claimed by the nation, such as \$50,000 for 400 acres of replacement land, \$100,000 for the nation's share of the cost of furnishing water to the relocation sites, and \$155,500 for improving these sites.

The corps, the committee also notes for the sake of the record, also disagreed strongly (as it had in earlier cases) with the propriety of charging these indirect costs to the project rather than elsewhere. It is the committee's views that these items, even though they might not under other circumstances be recoverable, are clearly the result of building the project and should be charged accordingly. These costs, moreover, are similar to those which have been allowed by the Congress in earlier cases such as those cited above.

REHABILITATION FUNDS

The largest of the items in H.R. 1794 is that for which provision is made in section 4—\$16,931,000. This is to become available, after appropriation, for "assistance designed to improve the economic, social, and educational conditions of the Seneca Nation." Although the bill does not specify dollar amounts for each of the subitems set out in section 4 of the bill and it is not the intent of the committee to earmark particular amounts for particular purposes, it arrived at the total thus—

\$8,000,000 for agricultural, commercial, and recreational development;

\$4,438,000 for industrial development;

\$1,029,000 for relocation and resettlement;

\$970,000 for community buildings and facilities;
\$2,300,000 for an educational fund; and
\$194,000 for a resurvey of the congressional villages on the reservation.

The first of these items represents a very considerable reduction from the amount of \$29 million suggested by the Brill Engineering Corp. which, under a contract with the Bureau of Indian Affairs and with funds supplied by the Corps of Engineers, studied the recreation potential of the area and recommended quite a large-scale development—a kind of Indian Williamsburg—to attract tourists to the Seneca country and thus to improve the earning capacity of its inhabitants. The committee believes that the more modest investment provided in the bill, based on a plan projected by the Seneca Nation itself, will serve this purpose without unduly burdening the Treasury.

The second item is based on a plan, also developed by the Brill Engineering Corp., for development of an industrial park in the vicinity of the reservation which will not only provide badly needed employment opportunities in the area but will, it is hoped, give the nation a reasonably steady source of income.

The relocation and resettlement item will cover certain costs involved in making the Jimersontown and Steamburg areas habitable. Specifically, it will supplement the moneys paid to individual Senecas for their improvements on the land which is being acquired by the Government. The amounts being paid, since they are based on depreciated values, will not be enough to finance suitable replacement dwellings, let alone to upgrade the community's living standards. This money will also be available for such related items as sanitary facilities and the like. The amount of \$1,025,000 has been approved by the Seneca Housing Committee, the Kinzua Planning Committee and the Office of Indian Affairs. Assurances have been worked out that individuals who avail themselves of the assistance which this sum will provide will be bona fide permanent residents of the reservation and the houses to be constructed will be geared to the sizes of the families involved.

The \$970,000 for community buildings and facilities contemplates the construction of two buildings, one on the Cattaraugus Reservation and the other on the Allegany Reservation, which will provide courtrooms, office space for tribal officials, meeting places for the tribal membership, and athletic facilities for the young people. It is noted, in this connection, that the courthouse on the Cattaraugus Reservation burned down 2 years ago and that the courthouse on the Allegany Reservation is on the very edge of the reservoir taking area and that its basement is below elevation 1365.

The recommendation that \$2,300,000 be made available for education is based on estimates of needs made by the Seneca Nation with advice and assistance from the Bureau of Indian Affairs. It is intended to finance a 20-year program of higher education and vocational training for a generation of Seneca children. The plans call for scholarship assistance to 55 youngsters the first year the plan is in operation with gradual increases to 115 20 years later.

The final item is \$194,000 for a resurvey of the congressional villages. Though they are within the reservation, the lands in these towns are subject to 99-year leases entered into pursuant to acts of

Congress. The leases yield hardly more than a pittance in revenues to the nation. In addition, the land title records were left in deplorable condition when the local Indian office was closed some years ago. It is, in the committee's judgment, essential that the land records be brought into creditable condition as soon as possible for the protection of the nation, particularly since the time for renegotiation of the leases is not far off.

MISCELLANEOUS PROVISIONS

In addition to the major matters in the bill which have already been discussed, H.R. 1794 covers a number of other subjects.

Section 3, subsections (a), (c), and (d), deal with the distribution of moneys received by the nation among individual members who had use rights in the land within the reservoir area, who have improvements on such land, and who have to move to another location. (The sums mentioned in this section are not additional to the sums for which provision is made in section 2 but are part of the latter.) If any individual member is dissatisfied with the amount tendered him for his use rights or improvements, opportunity is provided in sections 11 and 12 for him to refuse the tender and to litigate the issue. Appropriate adjustments will then be made in the amount paid the nation under section 2.

Section 5 provides for the relocation of graves within the taking area. This is a normal expense of constructing any public project where a cemetery has to be moved. This section also provides that the Secretary of the Army will set up a trust fund amounting to \$14.40 for each grave for perpetual care. It is estimated that the cost which will be incurred pursuant to this section will amount to about \$643,240.

Section 10 authorizes the appropriation of not more than \$250,000 to reimburse the Seneca Nation for expenses which it has incurred in connection with the Allegheny Reservoir project. Attorney fees will be paid under a contract approved by the Secretary of the Interior.

Since the United States is acquiring only easements in the land within the reservoir area the Senecas will, of course, retain all rights not acquired by the Government. This is spelled out in sections 6 and 9 of the bill. Section 9, however, also requires that the nation provide free public access to the shoreline of the reservoir and provides that any use by the public of its water area shall be subject to regulations prescribed by the Secretary of the Army. Section 6, which deals with minerals, requires that any exploration for or development of minerals within the taking area shall be consistent with the protection and operation of the project and with the interests in land which the United States acquires for project purposes. The Senecas' interest in the lands within the reservoir area is further emphasized by the reverter provisions of section 15.

The Senecas will, under section 7, be permitted to occupy the land being acquired by the Government until January 1, 1965, or such earlier date as reservoir requirements necessitate. During this period they may, under section 8, continue to harvest their crops, remove timber, mine sand and gravel, and salvage improvements. The value of these items will not be deducted from the compensation paid them.

Section 13 deals with the acquisition of lands by the Secretary of the Interior for various tribal purposes and for the incorporation of such lands in the Allegany Reservation. If this authority is exercised, the cost of the acquisition will be chargeable to funds provided under section 4 described above. It will be noted in this connection, however, that the sum authorized for appropriation in section 4 was arrived at without taking this specific purpose into account. Hence, if funds are used for this purpose there will be a commensurate reduction in the amount available for other purposes.

The \$16,931,000 allowed in section 4 will not be paid over directly to the Seneca Nation immediately upon appropriation. It will, rather, remain in the Treasury to the credit of the nation until expended for purposes approved by the Secretary of the Interior and will, while in the Treasury, draw interest at the rate of 4 percent per annum. None of the funds will be available for per capita payments.

Provision is made that none of the moneys paid to the nation or to individual members of the nation shall be taxable (sec. 17); that they shall not, with certain exceptions, be subject to prior debts, liens, or claims (sec. 3(d)); and that none of the expenditures of the United States under the act shall be considered by way of offset or counterclaim in any claim of the Senecas against the Government except claims arising out of the taking of interests in land for the Kinzua project (sec. 16).

TOTAL COST

It is estimated that the total amount which is involved in H.R. 1794 is about \$20,150,000. A portion of this amount—particularly that for direct damages as described above—is already available from appropriations made to the Corps of Engineers for construction of the Allegheny Reservoir project. The costs of administering that portion of the bill which concerns the Bureau of Indian Affairs will be borne by appropriations regularly made to that agency. The committee expects these costs to be held to a minimum. It sees no need for the Bureau to set up more than a skeleton and temporary office to take care of fieldwork in connection with its part in carrying out the terms of H.R. 1794.

DEPARTMENTAL REPORTS

The reports of the Department of the Interior and the Department of Defense are set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 12, 1963.

Hon. WAYNE N. ASPINALL,
*Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D.C.*

DEAR MR. ASPINALL: This responds to your request for a report on H.R. 1794 and H.R. 3343, identical bills, and H.R. 7354, a similar bill, to authorize the acquisition of and the payment for a flowage easement and rights-of-way over lands within the Allegany Indian Reservation in New York, required by the United States for the Allegheny River (Kinzua Dam) project, to provide for the relocation, rehabilitation, social and economic development of the members of the Seneca Nation, and for other purposes.

We endorse the purpose of these bills and urge their early consideration, so that congressional policy toward the Senecas may be determined, particularly with respect to compensation for special damages. The purpose of financial assistnces specified in section 4 of the bills have our full endorsement. They are well designed to promote the community well-being and prosperity of the Seneca Indians. Because important dollar figures are still incomplete, however, we are unable at this time to go beyond a general endorsement. When all dollar amounts have been supplied and the documentation underlying such amounts has been made available to us for examination, we shall be glad to prepare further recommendations. At the present time we are in position to recommend several perfecting amendments. The page and line references are to H.R. 1794, and some of the amendments are already contained in H.R. 7354.

The bills result from the construction by the Corps of Engineers of the Allegheny River Dam and Reservoir project, which will require the acquisition by the Government of a substantial portion of the lands of the Seneca Indian Reservation. The bills are patterned along the lines of similar legislation enacted for several Indian tribes in the Missouri River Basin when their lands were acquired for water development projects (Standing Rock, Cheyenne River, Crow Creek, Lower Brule, Yankton, and Fort Berthold). There are, however, differences.

The principal provisions of H.R. 1794 and H.R. 3343 are:

1. The bill is a legislative taking of a flowage easement on approximately 10,000 acres of reservation land, and of a right-of-way on additional land for the relocation of roads and utilities.

2. The compensation to be paid for the legislative taking is left blank in the bill and the figures need to be inserted. The compensation consists of three parts:

(a) The fair market value of the interests in land acquired by the Government (i.e., the flowage easement and right-of-way).

(b) The fair market value of the improvements on the land taken.

(c) The so-called indirect damages.

The first two of these sums are under negotiation between the Seneca Nation and the Corps of Engineers. The third sum is still under consideration by the Indians and by this Department. We have estimates for various items aggregating \$1,442,350. The figure includes such items as the moving of farm buildings, farm machinery, household equipment and furniture, families and personal property, loss of wages, and the extra cost of acquiring from Indian assignees their surface rights to areas where the displaced Indians will be relocated. It also includes certain development costs in the relocation area. These costs, however, will be reduced if grant funds are received under the accelerated public works program for which the Seneca Nation has applied to the Community Facilities Administration. The figure also includes reimbursement for loss of food, medicinal herbs, and craft material in the "taking" area, which loss has been capitalized at 4 percent.

The division between the Seneca Nation and its individual members of the amount paid for the flowage easement will depend upon the total amount of the negotiated price.

The portion of the indirect damages set aside for moving costs incurred by individual Senecas (subsec. 3(c)) is estimated at \$127,050.

These costs include the moving of farm buildings and machinery, household equipment and furniture, families and personal property, and the loss of wages, and are based upon the March 1963 draft report entitled "Seneca Indians Who Will Be Affected by the Kinzua Dam Reservoir," prepared by the Director of the Missouri River Basin Investigations Staff, Bureau of Indian Affairs.

3. In addition to the foregoing compensation provisions, the bill provides an additional sum, the amount of which is blank, for rehabilitation, or, in the language of the bill, "for assistance designed to improve the economic, social, and educational conditions of enrolled members of the Seneca Nation." We have a partial list of items which aggregate \$4,493,000. It covers the general subjects of relocation and resettlement costs (including the construction of roads, sanitation facilities, houses and related structures), the construction of community buildings and facilities, and an educational fund for scholarship loans and grants, vocational training, and counseling services. That figure does not include estimates for agricultural, commercial, and recreational development on the reservations, for industrial development, or for the acquisition of lieu lands. A feasibility and development study regarding commerce, recreation, and industry on or near the Seneca Reservation is being made by an engineering firm with funds provided jointly by the Corps of Engineers and by the Bureau of Indian Affairs. It is nearing completion and the final report will be presented to the Seneca Nation for consideration, and the proposals of the Indians will be made directly to the Congress. This report is expected to indicate the necessity for a very substantial sum for the development proposed. The tribal council of the Seneca Nation is still considering the lieu lands it wants, and its determination will be based upon the report of the engineering firm. There is no method of determining the land value until after the council's decision is reached on the amount of lands required.

4. The Seneca Nation retains the right to use and control the "taking" area for all purposes not inconsistent with the flowage easement and right-of-way acquired by the Corps of Engineers, including the right to regulate access to the shoreline of the reservoir.

5. The Secretary is authorized to acquire for the Seneca Nation, by condemnation if necessary, lieu lands not in excess of a blank number of acres.

6. Miscellaneous provisions relate to the relocation of cemeteries, limitations on the exercise by the Seneca Nation of its reserved mineral rights, rights of occupancy until the land is needed by the Corps of Engineers, the right to salvage timber and improvements, reimbursement for expenses incurred by the Seneca Nation (which we estimate at \$250,000), and the procedure for adjudicating the compensation payable to the individual Senecas who reject the negotiated amounts. Provision is also made for the preparation of necessary maps and legal descriptions, authorization for reconveyances of interests in lands not needed for the project, and the usual tax exemption.

We recommend the following perfecting amendments:

1. After the word "flowage" wherever it appears, insert "and clearing". The word appears in the title of the bill, and on page 2, line 16; page 3, line 2; page 4, line 22; page 7, line 20; page 8, lines 9 and 17; page 9, line 7; page 12, line 22.

2. On page 2, line 2, after "flood" insert ", clear".

3. On page 3, line 19, change "allottees" to "assignees".

4. On page 5, line 3, after "except" insert "for the repayment of housing or resettlement loans made to individual Seneca Indians by a bank or other recognized lending institution, and also except". This will permit the assignment of money anticipated under the bill as security for bona fide housing and resettlement loans.

5. On page 6, lines 1 and 2, delete "if a preferential right of employment is granted members of the Nation". The preference right of employment might be detrimental rather than helpful in some kinds of industrial development.

6. On page 6, line 20, delete ", after consultation with" and insert in lieu thereof "and".

7. On page 8, line 21, change "allottees" to "assignees".

8. On page 8, line 22, after "charge" insert "to harvest crops, to mine and remove sand and gravel,".

9. On page 9, line 2, after "That" insert "the crops harvested, the sand and gravel removed,".

10. On page 9, line 18, after "Nation" insert "out of funds in the Treasury not otherwise appropriated".

11. On page 12, line 17, change "adjacent" to "contiguous".

12. On page 12, line 19, after "recreational" insert ", commercial".

13. On page 12, line 20, after "the" insert "existing".

14. On page 12, line 20, after "shall" insert "become a part of the reservation and".

15. On page 13, revise section 15 to read as follows:

"SEC. 15. Upon a determination by the Secretary of the Army that all or part of the flowage and clearing easement and rights-of-way acquired under section 1 of this Act no longer are necessary for the purposes of the Allegheny River project, all right, title, and interests in such lands shall thereupon vest in the Seneca Nation."

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.

DEPARTMENT OF THE ARMY,
Washington, D.C., July 12, 1963.

HON. WAYNE N. ASPINALL,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to H.R. 1794 and H.R. 3343, 88th Congress, identical bills To authorize the acquisition of and the payment for a flowage easement and rights-of-way over lands within the Allegheny Indian Reservation in New York, required by the United States for the Allegheny River (Kinzua Dam) project, to provide for the relocation, rehabilitation, social and economic development of the members of the Seneca Nation, and for other purposes.

The Department of the Army has considered these bills, the purpose of which is generally as stated in the titles. Since both bills are identical, for the convenience of discussion, reference is hereinafter

made to the major provisions of H.R. 1794. More specifically, this bill authorizes the taking by the United States of flowage and rights-of-way easements over portions of the lands within the Allegany Indian Reservation as required for the Allegheny River Dam and Reservoir project; approximately 10,010 acres for flowage easements and an unspecified acreage for other easements. In consideration for this taking, the bill provides for payment out of project funds for, (1) an unspecified amount for direct damages to the Seneca Nation for the taking of surface and subsurface interest in land; (2) an unspecified amount to individual Seneca Indians for the taking of improvements; (3) an unspecified amount for indirect damages including moving costs and settlement of all claims; and (4) the relocation of Indian cemeteries, tribal monuments, and shrines, together with funds for perpetual maintenance of two cemetery sites. Provision is also made to authorize appropriation of an unspecified amount to be expended by the Seneca Nation, after consultation with the Secretary of the Interior, for the purpose of rehabilitation of the Seneca Nation and Indians including (1) recreational, agricultural, and commercial development on the reservation lands; (2) industrial developments on the reservation or within 50 miles thereof; (3) community relocation and resettlement including roads, houses, and related facilities; (4) construction of community buildings and facilities; (5) an educational fund; (6) acquisition of lieu lands; and (7) a title search and boundary survey of the villages. Funds are also authorized for payment of administrative and legal fees. In addition, it is also provided that (1) Indians and/or nation may, without charge, cut and remove all timber and salvage all improvements on lands being acquired; (2) all minerals including gas, oil, sand, and gravel are reserved; (3) the Seneca Nation shall have the right to use, occupy, and control the taking area for all purposes not inconsistent with project purposes including the right to lease such lands, to issue hunting and fishing licenses, and control access to the shoreline; (4) the Secretary of the Interior is authorized to purchase lieu lands out of funds provided for rehabilitation; (5) the boundaries, descriptions, and estates taken are to be delineated on maps by the Secretary of the Army and filed with the Bureau of Indian Affairs and the county clerk of Cattaraugus County; and (6) any lands subsequently not required for the project shall be reverted, without charge, in the Seneca Nation.

The Allegheny Reservoir project was authorized as part of the comprehensive plan for flood control and other purposes in the Ohio River Basin by the act of June 28, 1938, as amended (52 Stat. 1215, 1217; 55 Stat. 646), and the Flood Control Acts of August 18, 1941 (55 Stat. 638) and December 22, 1944 (58 Stat. 889). The damsite is on the Allegheny River in the vicinity of Kinzua, Warren County, Pa., with the reservoir in Warren and McKean Counties, Pa., and Cattaraugus County, N.Y. Construction of this project, which is now underway, by the Chief of Engineers is estimated to be completed in 1965. In this connection, the Corps of Engineers is in the process of acquiring fee and easement rights in approximately 26,000 acres of land in Pennsylvania and New York States. Included within the project are approximately 10,000 acres of land in the Allegany Indian Reservation over which various easement rights will be required.

The matter of the adjustment of the Seneca Nation and its members to the situation caused by the Allegheny Reservoir project has had

the attention of the President. Reference in this respect is made to the President's letter of August 9, 1961, to the president of the Seneca Nation. Pertinent excerpts of the President's letter are set forth on pages 22 and 23 of Senate Report 1097, 87th Congress, 1st session, public works appropriation bill, 1962.

Essentially the President directed the departments and agencies of the Federal Government to take every action within their authority to assist the Seneca Nation and its members who must be relocated in adjusting to the new situation and to prepare recommendations if legislation were required to achieve his objectives.

In implementation of the President's directive, the Corps of Engineers, the Bureau of Indian Affairs, and the Seneca Nation of Indians, at a meeting on October 13, 1961, agreed upon procedural actions to be taken by the parties. Following respective actions to be taken by the parties, the Department of the Army through the Corps of Engineers, was to draft proposed legislation on matters within the scope of the President's directive and beyond existing authorities. The drafting of legislation by the corps has not been accomplished because the Seneca Nation elected not to follow the agreed procedure and decided to bring directly to Congress the legislation desired by it.

We mention the matter of the Presidential directive because we think its basic feature should be adhered to; that is, that matters which can be done under existing authorities should be done under those authorities and that special legislation should be confined to matters beyond existing authorities but deemed reasonable and justifiable.

Based on information currently available, comments on the major provisions of the bill are hereinafter set forth.

Section 1 provides for a legislative taking of an easement merely to flood subject lands to elevation 1365 (mean sea level) and in general rights-of-way easements for highways, railroads, and other utilities. An easement estate is a limited right to use lands or property only for those purposes specified; all other rights are retained by the fee owner. The proposed estates are indefinite and do not provide adequately for the property rights or interests essential for the operation of this project. While this Department in this instance is amenable to departure from the normal policy of fee taking insofar as reservation lands are concerned, the easement estates must be sufficiently comprehensive so as not to restrict the proper operation of this project for the purposes authorized. This contemplates, among other uses, the right of the public to the use and enjoyment of the water areas of the reservoir pursuant to the Flood Control Act of 1944 and amendatory laws. Accordingly, it is recommended that subsections (a) and (b) of section 1 be amended to more specifically define the easement estates required including the right of public use; a suggested amendment for this purpose is attached.

Section 2 (a) and (b) provide for payment of unspecified amounts of money as compensation for direct damages to (a) the surface and subsurface rights in lands, and (b) houses, structures, and other improvements on the lands. These amounts have as yet not been determined. It has been the purpose of the Corps of Engineers and the Seneca Nation to agree to the amount of direct damages by negotiations on an individual tract basis. To this end the corps has completed appraisals on 280 of the estimated 450 tracts of land involved and obtained an estimate as to value of gas and oil interests.

Two formal negotiation conferences were held in March and May 1963 between the parties. Agreements, exclusive of oil and gas value, were reached on 20 tracts, as well as on a number of collateral items. It is apparent from these discussions that there is considerable variance as to the basic appraisal approaches of easement estates, land classification, building depreciation, etc., and that major differences of opinion now exist as to the value of the oil and gas interests; also, it is expected that major differences of opinion will exist as to the value of sand and gravel deposits. However, both parties have agreed to review the areas in dispute and to continue negotiations.

Collateral to this problem, however, the Department of Justice has advised this Department that the title of the Seneca Nation and the interests of the individual allottees are uncertain and are subject to various outstanding claims; that the Seneca Nation lacks the statutory authority to convey the required perpetual easements; and that the United States should acquire these interests by condemnation. The Department of Justice has further advised that a legislative taking does not assure valid title. As a result and in view of the uncertainty of the outcome of negotiations, consideration is being given to the immediate initiation of condemnation proceedings in the Federal district court, with the filing of declarations of taking for the acquisition of the necessary easements and the deposit in court of funds in the amount of the Government's estimates of value. This procedure has the advantage of making funds readily available to the nation and its members; it does not preclude the continuation of negotiations for settlement on an individual tract basis; and will serve to dispose of the title questions. The Seneca Nation has concurred in this procedure. Moreover, as to those tracts not settled by negotiation, the Department of the Army believes that the traditional procedure of allowing the Federal courts to determine just compensation is sound, and that Congress should not be called upon to establish disputed values by legislative act. In the event this procedure is adopted, it would appear appropriate to amend this bill by deleting the "taking aspects" from section 1 and subsections (a) and (b) of section 2 relating to direct damages.

Section 2(c) provides for payment of an unspecified amount of money out of project funds in settlement of all other claims of the Nation and its members, including indirect damages arising out of the taking of this property. These are special damages, the nature of which involve benefits in addition to payments normally allowed by the courts in accordance with a conventional determination of just compensation. The Department of the Army is aware that the impact of acquisition of lands on Indians may be greater in some instances than those of others from whom property is taken for water resource projects, and that Congress has in the past enacted legislation providing such additional payments. However, this Department believes that items of this nature should not be chargeable to project funds; further, that should this committee favorably consider payment of this item, it is submitted that such would more appropriately be included in the provisions of section 4 herein relating to rehabilitation.

With respect to the amount of money for these indirect damages, the Department of the Army has not as yet received a valid or authoritative report as to the extent, nature, and basis of these damages.

Under the mutually established procedure for implementing the President's directive, it was agreed that the Seneca Nation was to advise the U.S. Army district engineer at Pittsburgh, Pa., as to the special damages due to the taking; thereafter the Bureau of Indian Affairs was to evaluate the reasonableness of the claim and inform the Corps of Engineers of its recommendations. This Department has become aware by attendance of corps representatives at council meetings of the Seneca Nation, through press releases, and Seneca news publications, that various items are proposed for inclusion under indirect damages which would exceed \$1,442,350. The Bureau of Indian Affairs has recently furnished the Corps of Engineers a tabulation setting forth amounts for claims of indirect damages and rehabilitation, without an analysis of or recommendation concerning these items. However, it is believed that some of the items and costs classified as indirect damages should more properly be classified as rehabilitation. In order to evaluate these items of indirect damages, additional substantiating data should be provided. However, since this item is being proposed as a project cost, the Department of the Army strongly urges that the committee defer any action on subsection (c) of section 2 until this Department is afforded an opportunity to review the items and substantiating data and furnish the committee its views thereon.

Section 3 provides for the apportionment and distribution of payments for direct and indirect damages in accordance with schedules prepared by the Secretary of the Army by agreement with the Seneca Nation and upon approval of the Secretary of the Interior. This Department has no objection to this provision, it being the primary concern of the nation and the individual Indians.

Section 4 provides for a fund designed to improve the economic, social, and educational conditions of the members of the Seneca Nation. These special privileges or rights that would be granted by this bill to the Indians relate to matters pertinent to the relationship between the United States and the Indians within the purview of the Bureau of Indian Affairs of the Department of the Interior. While this section does not provide that the funds will be a charge against the project, it is felt advisable to point out several of the benefits in this regard have already been obtained or are in the process of obtainment by the Seneca Nation from the Corps of Engineers and other Federal agencies and utility companies.

Section 4(a): It is recognized in the President's letter to the president of the Seneca Nation that consideration would be given to a careful review of the recreational potential resulting from construction of the reservoir, the manner in which the Seneca Nation could share in the benefits from developing this potential, and that special attention and assistance would be given those members of the Seneca Nation required to move from their present homes, by way of counseling, guidance, and other related means. In order that these elements could be considered it was agreed with representatives at the joint meeting mentioned above that the Corps of Engineers would request the National Park Service of the Department of the Interior to make a study of the recreational potential of the reservoir project; and would then request the Bureau of Indian Affairs to determine how the Seneca Nation might share in the recreational potential. With respect to the element of special assistance, it was agreed that the

Corps of Engineers would request the Bureau of Indian Affairs to report as to what they proposed to do.

At the request of the Corps of Engineers the National Park Service prepared a report which proposed an extensive national type development estimated to cost approximately \$20 million and requiring the acquisition of extensive reservation lands not otherwise included within the reservoir taking line. A preliminary recreational study was prepared by the U.S. Army district engineer to show how the nation could commercialize the type of development normally provided at Corps of Engineers reservoir projects. Both of these reports have been referred to the Bureau of Indian Affairs for consideration. The Corps of Engineers has not been furnished comments on either of the reports prepared by the National Park Service or of the Corps of Engineers. However, the corps has authorized the Bureau of Indian Affairs to contract on a reimbursable basis up to \$50,000, with a firm of their choice, to develop a more detailed plan which would develop the recreational potential of the Allegany Indian Reservation and define the costs and economic advantage to the nation. This report or study is now being undertaken by the Brill Engineering Co.

While the corps has not been informed of the results of the study, it is significant that an article in the Salamanca, N.Y., newspaper of June 14, 1963, indicates that the report includes a Williamsburg historical type development costing about \$29 million. There would be, among many things, a reception and information center, an auditorium, a library, a greenhouse, the Long House Motor Lodge with lounges, swimming pools, Indian sauna, cafeteria, shops, special recreation rooms, 50 tent cabins, shopping center, Seneca Indian village, living nature museum, 12 buildings having an early 19th century architectural style showing the Indian influence in America, and additional buildings to be developed as a result of research conducted during the early years of the project's operation, buildings and plantings in French architectural tradition, buildings and planting to provide a British atmosphere, and a London puppet theater similar to the one visited by the Iroquois chiefs in 1710. An appraisal of this concept of development from the viewpoint of national significance and economic or financial feasibility is not within the province of the Department of the Army. However, should this type of development be approved by the Congress, it should be considered as an investment not attributable or chargeable to the Allegheny Reservoir project.

The above concept of development has no direct relationship to the normal concept of outdoor recreational opportunities associated with water oriented activities. The adjoining Allegheny State Park has been in the process of development since 1928 and provides a wide range of outdoor activity on its 65,000 acres. Similar opportunities exist in the adjoining 1 million acres of national forest land, and the deficiency of water recreation will be largely met in the downstream water areas of the Pennsylvania portion of the Allegheny Reservoir. Were the corps to provide for the water related facilities in the New York portion of the reservoir, they would consist of boat-launching ramps, parking areas, and picnic areas augmenting the above-stated recreational facilities and opportunities in the other lands; the cost of such development would probably not exceed \$200,000.

Section 4 (c) and (d): With regard to the relocation and resettlement, the Corps of Engineers has agreed with the Seneca Nation to design and construct with project funds approximately 5.5 miles of

access roads upon assurance that the State of New York will agree to maintain these roads to serve the two resettlement areas.

It is understood that (1) the nation has made application to the Community Facilities Administration for a fund of approximately \$393,400 to construct a common water system in the resettlement areas and the nation would be obligated to repay only 25 percent of this amount; (2) the nation expects that the power and telephone companies will install their facilities in the resettlement areas without connection charges; (3) the Public Housing Authority has authorized the construction of 60 dwellings on the Cattaraugus and Allegany Indian Reservations of which 25 dwellings will be constructed on the Allegany Reservation; and (4) the Seneca Nation has made application to the Community Facilities Administration for \$940,000 to construct 2 community buildings, 1 on each of the 2 reservations, with the nation being obliged to repay 25 percent of this amount. A review of the tabulation received from the Bureau of Indian Affairs mentioned above, in comparing some of the items in section 4, shows that some of the indirect damages provided in section 2(c) should be more appropriately charged under section 4.

Section 4(f): It is recognized that the President's letter to the president of the Seneca Nation provided for giving consideration to the possibility of the Federal Government securing a tract of land suitable for tribal purposes and uses contiguous to the remaining Seneca lands in exchange for the area to be flooded. Under the mutually established procedure for implementing the President's directive, it was agreed that the Seneca Council would inform the U.S. Army district engineer as to the extent and exact location of lieu lands desired by the nation. The Corps of Engineers would then ask the Bureau of Indian Affairs whether those lands are "suitable for tribal purposes and uses contiguous to the remaining lands." The Seneca Council has not at this time informed the district engineer that they desire "in lieu" lands. It is the view of the Department of the Army that, if funds are provided for the acquisition of "in lieu" lands, the amount of funds so provided should be deducted from payments made under section 2(a) of the bill.

Section 5, providing that the Secretary of the Army shall relocate cemeteries, graves, tribal monuments, and shrines, is not objectionable to this Department. Agreement has been tentatively reached with the Seneca Nation for the Corps of Engineers to relocate approximately 3,000 graves to 2 selected sites; the nation is to form a cemetery corporation; and the Secretary of the Army is to provide a fund in the amount of \$43,200 to this corporation for perpetual care and maintenance of those reinterred. An appropriate amendment to reflect this procedure is attached.

Section 6, providing for the reservation of minerals, oil, gas, sand, and gravel, is considered objectionable as the Government is acquiring only easement interests in the reservation land above and below elevation 1340. Accordingly, there is attached a suggested amendment to reflect this fact.

Section 7 affords the members of the Seneca Nation the right to remain on and use, without charge, the lands within the taking area, until required to vacate by the Secretary of the Army with approval of the Secretary of the Interior. This section in general is not objectionable to this Department. However, it should be recognized that the dates for vacating various areas must be in conformance with the

construction requirements and not one overall date of vacation. Reservoir clearings, construction of roads, railroads, utilities are proceeding pursuant to an established construction schedule which includes specified times for each feature. The current project schedule indicates that a partial closure of the dam will be effected in June 1964 with final closure of the dam beginning in October 1964. Accordingly, it is recommended that "October 1, 1964" be inserted in this section as being the maximum extent of occupancy.

Section 8 provides a right for the Seneca Nation and the individual Indians, without charge, to cut and remove all timber and salvage improvements from their respective lands up to 60 days before the date for vacating the taking area in accordance with the provisions of section 7. This Department considers these rights to be a duplication in part to the payments provided in subsections 2 (a) and (b) and therefore objectionable. Additionally, the above comments as to section 7 are equally applicable here as to dates of removal. It should be clearly understood that these rights are subordinate to the construction requirements.

Section 9 would provide that the Seneca Nation shall have the right to use, occupy, and control the taking area of the Allegheny River project, not inconsistent with the interests acquired by the United States, including the right to regulate access to the shoreline of the reservoir. This provision is susceptible to various interpretations which could result in confusion, interference, or restriction in the proper operation by the Corps of Engineers of this project for its authorized purposes. This section is unnecessary if the primary purpose is merely to provide for use of the land areas. Since the United States is here acquiring only easements, all other rights not inconsistent therewith remain with the owners as a matter of law. If the purpose is to effect uniform control in the Seneca Nation as a matter of management by elimination of any rights of the individual allottee, such would be of no concern to this Department.

The "taking area" of this project within the Allegany Reservation will encompass both the water areas of the reservoir and the intermittent flooded land areas. To permit the nation to exercise any control over the waters of this reservoir would be (1) in direct conflict with existing statutes relating to navigation and water resource projects; (2) an undue restriction on the proper operation of this project by the Corps of Engineers as required by law; and (3) it would lead to conflicts and confusion of the public in its use of these waters.

The provision affording the Seneca Nation the right to regulate access to the shoreline of the reservoir should be deleted for the same reasons as stated above. The acquisition of only easements over reservation lands precludes the Government from providing any public access areas to the reservoir; control of these lands remain therefore with the owners as a matter of law. However, it is desired to point out that under section 4 of the Flood Control Act approved December 22, 1944, and amendatory acts, Congress has expressed the intent that "The water areas of all such projects shall be open to public use generally, without charge, for boating, swimming, bathing, fishing, and other recreational purposes." For these reasons, the Department of the Army recommends that section 9 be deleted in its entirety. However, if it is desired to retain this section, then it is recommended that it be amended to clearly confine the exercise of control by the Seneca

Nation to the land areas. An appropriate amendment for this purpose is attached.

Sections 11 and 12 provide procedures for a determination of the respective rights of the Seneca Nation and the individual Indians as to those instances wherein the individual Indian rejects the tender of payment under subsections 2 (a) and (b) (direct damages) by referral of the matter to the Federal district court. In this connection, as mentioned above, the Department of the Army proposes to acquire the real property interests for this project of all parties in the Allegany Indian Reservation by institution of condemnation proceedings in the U.S. District Court for the Western District of New York. All parties will therefore be afforded an opportunity to present evidence as to value, their entitlement to compensation, and obtain an adjudication thereon. Since the provisions of these sections may in some respects differ from established judicial procedures, it is recommended that the committee obtain the views of the Department of Justice which has the primary responsibility for conducting the Government's condemnation proceedings.

In view of the foregoing, it is the recommendation of the Department of the Army that the committee defer final action on these bills, H.R. 1794 and H.R. 3343, for such time as will permit (1) the completion, review, and analysis of the various reports in support of those items in the bills containing unspecified amounts, and (2) the ascertainment of the direct damages or a method to provide for the same. However, should the committee nonetheless desire to presently consider these bills, then it is the recommendation that the bills be modified in accordance with the proposed amendments as attached hereto.

The full fiscal effect of these measures, if enacted, is not presently ascertainable in view of the incompleteness of the various studies relating to cost items.

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

Sincerely yours,

CYRUS R. VANCE,
Secretary of the Army.

DEPARTMENT OF THE ARMY PROPOSED AMENDMENTS TO H.R. 1794 AND
H.R. 3343

Title of the bill: The title of the bill should be revised by deleting the words "flowage easements and rights of way over" and by substituting therefore the words "certain interests in".

Enacting clause: The enacting clause should be amended by inserting between the word "of" and the word "August" on page 1, lines 4 and 5, the following: "June 28, 1938 (52 Stat. 1215)".

Section 1: Section 1 should be amended by deleting section 1 (a) and (b) commencing on page 2, line 1, and the following be substituted therefor:

"(a) The perpetual right, power, privilege and easement in, upon, over, and across all those tracts on the Allegany Indian Reservation, containing — acres, more or less, as identified and delineated on the maps referred to in section 14 hereof for the purposes set forth below, together with all right, title, and interest in and to the structures and

improvements now situate on the land and all right, title, and interest in and to the timber situate below elevation 1,333 feet, mean sea level, and the right to clear and remove only dead or fallen trees, logs, slash, fences, and other floatable material from the land lying above elevation 1,333 feet, mean sea level:

"(1) Permanently to overflow, flood, and submerge the land lying below elevation 1,328 feet, mean sea level, in connection with the operation and maintenance of the Allegheny Reservoir project as authorized by the Acts of Congress approved June 28, 1938, and August 18, 1941, together with the continuing right to clear and remove any brush, debris, and natural obstructions which, in the opinion of the representative of the United States in charge, may be detrimental to the operation of the project.

"(2) Occasionally to overflow, flood, and submerge the land lying above elevation 1,328 feet, mean sea level, to 1,365 feet, mean sea level, in connection with the operation and maintenance of said project.

"(3) *Provided*, That no structure for human habitation shall be constructed or maintained on said land: *And provided further*, That no other structures shall be constructed or maintained on said land except as may be approved in writing by said representative of the United States in charge of the project: *Provided further*, That any exploration or exploitation of oil, gas, and minerals shall be subject to Federal and State laws with respect to pollution and shall not create floatable debris.

"(4) Unrestricted use by the public, pursuant to such regulations as may be issued by the Secretary of the Army or his designee, of the water areas of the reservoir and of the lands adjacent thereto lying below elevation 1,340 feet, mean sea level.

"(5) As to the described land in which easements are taken, all rights and privileges which may be used and enjoyed without interfering with or abridging the rights and easements hereby taken are specifically reserved to the respective owners, their heirs and assigns; the above estate is taken subject to existing easements for public roads and highways, public utilities, railroads, and pipelines.

"(b) The permanent and assignable easement on all those tracts on the Allegheny Indian Reservation, containing — acres, more or less, as identified and delineated on the maps referred to in section 14 hereof, for the purpose of constructing, reconstructing, and maintaining thereon a highway and appurtenances, together with the right to control access on such highway to and from which the owners or occupants of abutting property or any other persons shall have no right of access either as pedestrians, as operators of vehicles or in any other capacity, except at junctions of such highway with other public highways.

"(c) The permanent and assignable easement on all those tracts on the Allegheny Indian Reservation, containing — acres, more or less, as identified and delineated on the maps referred to in section 14 hereof, for the purpose of constructing, reconstructing, and maintaining thereon a highway and appurtenances.

"(d) The permanent and assignable easement on all those tracts on the Allegheny Indian Reservation, containing — acres, more or less, as identified and delineated on the maps referred to in section 14, hereof, for the purpose of constructing, reconstructing, and maintaining thereon a stream channel and appurtenances.

“(e) The permanent and assignable easement on all those tracts on the Allegany Indian Reservation, containing — acres, more or less, as identified and delineated on the maps referred to in section 14 hereof, for the purpose of constructing, reconstructing, and maintaining thereon a drainage ditch and drainage structures together with appurtenances.

“(f) The perpetual and assignable easement and right-of-way to locate, construct, operate, maintain, repair, patrol, and remove utilities in, upon, over, and across all those tracts in the Allegany Indian Reservation, containing — acres, more or less, as identified and delineated on the maps referred to in section 14, hereof; together with the right to trim, cut, fell, and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right-of-way; subject, however, to existing easements for public roads and highways, public utilities, railroads, and pipelines; reserving, however, to the landowners, their heirs, executors, administrators, successors, and assigns all right, title, interest, and privileges as may be exercised and enjoyed without interference with or abridgment of the easements and rights hereby taken for said public uses.

“(g) The perpetual and assignable easement and rights-of-way in, on, over and across all those tracts on the Allegany Indian Reservation, containing — acres, more or less, as identified and delineated on the maps referred to in section 14 hereof, for the location, construction, operation, maintenance, replacement, and/or removal of a railroad and all appurtenances related directly or indirectly to the business of transportation.”

Section 2: Section 2 should be amended by deleting on page 2, lines 16 and 17, the words “flowage easement and rights-of-way” and by substituting therefor the word “interests”.

Section 2(a): Section 2(a) at lines 22, 23, and 24 on page 2 should be amended by deleting the parenthetical phrase “(including severance damages and the taking of subsurface rights as hereinafter provided in sec. 6)” and by substituting the following therefor: “(including damages on account of severance and interference with subsurface rights)”; and at line 2 on page 3 the words “flowage easements and rights-of-way” should be deleted and the words “interests in lands” substituted therefor.

Section 3(c): Section 3(c) at line 22 should be amended by deleting the words “a flowage easement and rights-of-way” and by substituting the following therefor: “interests in land”.

Section 5: Section 5 at line 12 on page 7 should be amended by deleting: “That the Secretary of the Army is authorized and directed to provide for perpetual care and maintenance at not more than two cemetery relocation sites designated by the Seneca Nation if 50 per centum or more of the graves within the Allegany Reservation subject to disinterment by virtue of the Allegheny River projects are reinterred in such sites.” and by substituting the following therefor: “That the Secretary of the Army is authorized and directed to provide a trust fund in the amount of \$43,200 for the perpetual care and maintenance of the graves for the reinterments at the two cemetery sites selected by the Seneca Nation.”

Section 6: The provisions of section 6 should be deleted in entirety and amended to read: "All minerals of any kind whatsoever, including gas and oil and sand and gravel, within the areas subjected to the interests in land acquired by the United States under section 1 of this Act, are hereby reserved to the Seneca Nation: *Provided*, That the use and enjoyment of minerals shall not interfere with or abridge said interests in land: *And provided further*, That the exploration and development of such minerals, including oil and gas and sand and gravel, within the taking area shall be subject to all reasonable regulations of the Secretary of the Army necessary for the protection of the Allegheny River Reservoir project."

Section 7: Section 7 on page 8, line 9, should be amended by deleting the words "flowage easements and rights-of-way" and by substituting the word "interests"; the date for insertion in lines 14 and 15 is _____, 1964.

Section 8: Section 8 at line 17, should be amended by deleting the words "vacating the flowage easement and rights-of-way" and by substituting the following therefor: "vacation".

Section 9: Section 9 should be amended: On page 9 at line 7 by deleting the words "flowage easement and rights-of-way" and by substituting the word "interests"; and at lines 14 and 15 by deleting the words "and the right to regulate access to the shoreline of the reservoir"; and by placing a colon after the word "Nation" and add the following: "*Provided*, That the exercise of such rights shall be subject to the following conditions:

"(a) The use by the public of the water areas of the Allegheny Reservoir project shall be pursuant to such rules and regulations as prescribed by the Secretary of the Army; and such rights of the Seneca Nation as herein above mentioned shall be limited exclusively to the land areas of the project within the Allegany Indian Reservation.

"(b) Nothing contained in this section of this Act shall be construed to diminish the provision in section 4 of the Flood Control Act of 1944, approved December 22, 1944 (58 Stat. 887), and amendatory laws, to wit: 'The water areas of all such projects shall be open to public use generally, without charge, for boating, swimming, bathing, fishing, and other recreational purposes.' "

Section 12(c): Section 12(c) at line 6 should be amended by deleting the word "property" and by substituting therefor the words "structures and improvements".

Section 15: Section 15 at lines 15 and 16 should be amended by deleting the words "flowage easement and rights-of-way" and by substituting therefor the words "interests in lands".

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs recommends that H.R. 1794 as amended be enacted.

INDIVIDUAL VIEWS

We wish to recognize the patience and understanding shown by Representative James A. Haley, chairman, Subcommittee on Indian Affairs, in pursuing the cause of justice for the Seneca Indians in their negotiations with the Federal Government.

We commend him for his undeviating perseverance in achieving a fair settlement for the Seneca Nation in accordance with our American ideals.

WAYNE N. ASPINALL.
WALTER S. BARING.
RALPH J. RIVERS.
LEO W. O'BRIEN.
ROY A. TAYLOR.
LAURENCE J. BURTON.
CHARLOTTE T. REID.
JOHN P. SAYLOR.
JOHN KYL.
THOMAS G. MORRIS.
TOM GILL.
HUGH L. CAREY.
ROBERT B. DUNCAN.
PAT MARTIN.
JOE SKUBITZ.
CRAIG HOSMER.
E. Y. BERRY.
MORRIS K. UDALL.
HOMER E. ABELE.
JOHN O. MARSH, Jr.
ROGERS C. B. MORTON.
JACK WESTLAND.
EDWARD R. ROYBAL.
ELIZABETH KEE.
J. ERNEST WHARTON.
MARK ANDREWS.
J. EDGAR CHENOWETH.
WALTER ROGERS.
HAROLD T. JOHNSON.
ED EDMONDSON.
RAY ROBERTS.
COMPTON I. WHITE, Jr.

APPENDIX

SENECA NATION OF INDIANS v. BRUCKER

THE SENECA NATION OF INDIANS, APPELLANT

v.

WILBER M. BRUCKER, SECRETARY OF THE ARMY, AND EMERSON C. ITSCHNER, MAJOR GENERAL, UNITED STATES ARMY CORPS OF ENGINEERS, APPELLEES

United States Court of Appeals, District of Columbia Circuit, 262 F. 2d 27 (1958)

PER CURIAM.

The appellant Seneca Nation of Indians seeks an injunction to restrain the appellees from constructing an Allegheny Reservoir project so as to flood a substantial amount of appellant's lands. The district court dismissed the complaint.

It is undisputed (1) that the proposed flooding will infringe Indian rights acquired by treaty in 1794 (7 Stat. 44), and (2) that Congress can authorize a taking by eminent domain despite the treaty *Cherokee Nation v. Southern Kansas Railway Company* (1890, 135 U.S. 641, 654-657, 10 S. Ct. 965, 34 L. Ed. 295). The question here is whether Congress has, in a sufficiently clear and specific way, shown an intention to do so.

An act of Congress of August 18, 1941 appropriated \$45 million "for the prosecution of the comprehensive plan approved in the Act of June 28, 1938, for the Ohio River Basin, modified to include the Allegheny Reservoir project in accordance with the recommendation of the Chief of Engineers in House Document Numbered 300, Seventy-sixth Congress, first session," (55 Stat. 638, 646). In that document the Chief of Engineers plainly showed that the project he recommended would flood the lands in suit in violation of the treaty of 1794. In January 1957 the U.S. District Court for the Western District of New York in condemnation proceedings authorized a survey of the lands in question, "based upon the verified assertion of the Secretary of War that a survey of such lands and others would be necessary for the construction of the Kinzua dam" (*United States v. 21,250 Acres of Land*, D.C., 161 F. Supp. 376, 377).

In August 1957 Congress appropriated funds "For the prosecution of river and harbor, flood control, shore protection, and related projects authorized by law * * *" (71 Stat. 416, 417). The hearings, congressional debate and Senate report on this appropriations bill show that the Allegheny River Reservoir was one of the projects covered. They also show Congress knew (1) that the Seneca lands would be flooded, (2) that the Seneca Nation was unwilling to relinquish any of its rights in the lands, and (3) that the lands could be taken by eminent domain (hearings, House Subcommittee on Appropriations, 85th Cong., 1st sess., on "Public Works Appropriations for

1958, Government Justification, Pt. 2," pp. 111-128; hearings, House Subcommittee on Appropriations, 85th Cong., 1st sess., on "Public Works Appropriations for 1958, Private Testimony, Pt. 1," pp. 451-479, 497-498, 1030-1033, 1050-1052; hearings, Senate Subcommittee on Appropriations on H.R. 8090, "Civil Functions, Department of the Army," pp. 785-791, 1290-1293, 1379-1388, 2285-2291, 2457-2462; 103 Congressional Record, 85th Cong., 1st sess., Pt. 7, pp. 9674-9675, 9683-9684, 9702-9709; 103 Congressional Record, 85th Cong., 1st sess., Pt. 10, pp. 13977-13981; S.Rept. 609, 85th Cong., 1st sess., p. 26). Both of the Senators from New York, Senator Ives and Senator Javits, after expressing concern over the taking of Indian lands, voted for the bill. Senator Ives said:

"What has disturbed me, as my friend from Louisiana and some other members of the Committee on Appropriations know, is that by this action we will be virtually wiping out the Allegany Reservation of the Seneca Nation of the Iroquois Confederacy in New York State. * * * I realize that under the procedure followed by the Government of the United States over the years in the handling of matters concerning Indian reservations, the Government has the legal right to do what is proposed. But what distresses me is the moral responsibility we have" (103 Congressional Record, 85th Cong., 1st sess., Pt. 10, p. 13977).

We think Congress has authorized the taking of these lands.

Affirmed.

Senator CHURCH. We have with us today the senior Senator from New York, Senator Javits, who is the chief sponsor of S. 1836, and we have a rather lengthy witness list of others who wish to testify on these bills, including people from out of the city as well as departmental witnesses from Washington. We hope to move ahead with the Seneca legislation as rapidly as we can and I do not wish to take a great deal of time alluding to the details of the project or the details of the bills under consideration in order that we can give maximum time to the witnesses who have come here to testify today.

There are a number of expert witnesses here who can give us this information in detail, so I will ask, first of all, that Senator Javits present his testimony as the sponsor of the bill. Then I understand that Senator Keating plans to testify, and Senator Ervin, and Ralph Widner, legislative assistant to Senator Joe Clark of Pennsylvania. We will hear from these witnesses first and then we will proceed to the witness list that is before us this morning.

It is a pleasure to welcome you, Senator Javits, and why don't you proceed as you would like.

STATEMENT OF HON. JACOB K. JAVITS, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator JAVITS. Mr. Chairman, first I thank the Chair for having this subcommittee meet as promptly as it did and I express gratitude to my colleagues, Senator Gruening, Senator Walters, and Senator Mechem, for their presence this morning, which helps tremendously when members hear the testimony. I would not attempt, Mr. Chairman, to be the expert that George Heron, the president of the Seneca Nation, will be, or that the departmental witnesses will be, but I do wish to leave three very important points with the committee from where I sit.

One, this represents to my deceased and beloved colleague, Senator Ives, and myself a very strong moral obligation. It is interesting that Senators should have assumed one, but we did. When the Kinzua Dam project was before us, the Allegheny Reservoir project, as it is technically called, Senator Ives and I pledged our sacred honor that the problems of the Indians who are concerned would have our utmost solicitude and care, and it was inconceivable that they should be frustrated in getting not only compensation, which I think is but a small part of what we are engaged in here, but justice, so that they could rehabilitate their lives in a new place, as it were, and we counted the strong feeling of the Senecas that this dam project should be opposed on the highly moral ground that they had an irrevocable commitment, in so many words, saying that their lands would never be taken, going back to the days of George Washington.

Now, we know and the courts have said, and they understand, that this cannot stand as a matter of public policy in the face of the Federal Government's right of eminent domain, but, nonetheless, as human beings and men of morality, it is a fact that they did have this commitment; hence the reason that Senator Ives and I took the strong position we did. On the whole we felt that the debates will show, and I am sure the committee will find that in the Senate, reassurance to us by the sponsors of the Allegheny Reservoir bills on the appropria-

tion discussions, and in every debate there was this deep feeling that the Senecas had a right to entertain, that the whole Senate shared with us, Senator Ives and myself, this moral responsibility. Senator Ives is no longer here. I am the sole survivor of the two, unhappily, and so I speak for both of us, I know. I know what he would want me to do, and really that is the kind of unique, first and foremost point from us, in that we do feel very deeply committed personally and with every good reason.

The second point is that the House of Representatives under Jim Haley has done a very fine job in their bill and, though I like our bill and I have a number of cosponsors, including some members of this committee, on S. 1836, I would say for my myself, Mr. Chairman, that H.R. 1794, having been so thoroughly digested and having been the product of so much arduous work with the Corps of Engineers, the Department of the Interior, the representatives of the Seneca Nation, and of Representative Haley himself and his associates on the committee, we will gladly accept that as the solution and let it replace S. 1836. There is no competition between the bills.

H.R. 1794 is acceptable to me and, I am sure, to my cosponsors.

The third point. The chairman of this committee has most admirably and most cooperatively scheduled a very early hearing on this bill and for a very important reason. Time is creeping up on us very sharply. The Indian families who must actually move from the site must move before the early fall—by September 30. We are heading into a situation in the Senate which will tie us up for time, estimated variously at 6 to 8 weeks. It could be more. And there is just the chance that this committee could conceivably act very promptly. I must say, gentlemen, and I am a very experienced lawyer, the worst thing in the world you can ever do is to ask a court to hurry, and I never do it. It is a very bad practice. But one must, nonetheless, lay before a body of men who must come to a decision the reasons for a time element in the picture and then they must judge for themselves whether they will be swayed by it or not. I do not ask the committee to pressure itself to a decision nor do I pressure the committee myself, which I think would be very improper. I only lay before you these factual elements, the situation in the Senate, the situation of the Indians who are affected, and under those circumstances leave it to your conscience and judgment as to what can be done in order to bring about a result which should be attained.

Finally, it is a fact that the U.S. Government has not been giving any compensation in this situation as it does in so many other situations. I understand there is an average cost of about \$800 a year per Indian where there is maintenance by the U.S. Government. That has not been the case here, so that, though the amount which is involved in the House bill is a larger amount than in many other takings comparatively, based upon the number of Indians who are involved, you have, first, the fact that there has been no maintenance record in the past since 1949.

Second, it is New York. After all, it is very expensive land, very expensive relocation, a very expensive place to live compared to the less occupied part of our Nation, and the fact that these Indians are there is just one of the facts of our history. They had valuable land

and the task to be carried through with the money which is provided is based upon a very intelligent survey by the Brill Engineering Co., so that it is by no means just an amount of money picked out of the air. It has a very solid structural basis of detailed analysis as to what is required and what ought to be done. It is a matter of elementary justice for these people who, through no fault of their own, notwithstanding a solemn covenant solemnly arrived at with the Father of Our Country, must be moved from their land. They must be. We understand that and it is one of the facts of the development of our Nation, but I think we can afford under those circumstances to really provide what needs to be provided in order to do what needs to be done for the necessary resettlement and rehabilitation, education, and development of these, our truly first citizens.

So, Mr. Chairman, I have digested my testimony rather than take the time of the committee to read it and I would like to read in conclusion the words of our beloved and unhappily deceased President who said in respect to this matter in August of 1961 the following:

I fully appreciate—
said President Kennedy—

the reasons underlying the opposition of the Seneca Nation of Indians to the construction of the Kinzua Dam on the Allegheny River. Involved are very deep sentiments over the loss of a portion of the lands which have been owned by the Seneca Nation for centuries.

Even though construction of Kinzua must proceed, I have directed the departments and agencies of the Federal Government to take every action within their authority to assist the Seneca Nation and its members who must be relocated in adjusting to the new situation.

* * * I hope you will convey to the members of the Seneca Nation the desire of the Federal Government to assist them in every proper way to make the adjustments as fair and orderly as possible. I pledge you our cooperation.

Mr. Chairman, I close with those words.

"I pledge you our cooperation," a solemn commitment of the United States which I hope very much this committee will, as expeditiously as it feels justice requires, make it.

Thank you.

Senator CHURCH. Thank you very much, Senator Javits. Would you care to have your prepared statement included in the record at this point?

Senator JAVITS. I would appreciate it very much.

Senator CHURCH. Very well. Without objection that will be included in the record.

(The statement referred to follows:)

STATEMENT OF HON. JACOB K. JAVITS, A U.S. SENATOR FROM THE STATE OF
NEW YORK

The present story of the Kinzua Dam project, beginning with the infringement of Seneca rights under the treaty of November 11, 1794, and ending with the present anticipated displacement of members of the Seneca Nation of Indians from their homes in New York is a deeply tragic one. It deserves the most serious and urgent attention of this subcommittee. This moving story concerns the moral responsibility which the Congress assumed when the United States entered into the Pickering Treaty with the Seneca Nation, which assured the Senecas of the free use and enjoyment of their land. One hundred and seventy-one years after this treaty was entered into, the Kinzua Dam project, constructed by the U.S. Army Corps of Engineers and authorized as one feature of the Ohio River Basin project, will be ready for completion.

As a result of this Federal construction, members of the Seneca Nation will be compelled to move from their historic homelands. When the U.S. court of appeals considered the effect of the construction of the Kinzua Dam on the rights of the Seneca Nation and its members (262 F. 2d 27 (1958) cert. den. 360 U.S. 909 (1959)), it concluded that although the proposed flooding of the dam would infringe on rights acquired by the 1794 treaty, the taking was legally justified. The court took note of the views expressed in the Congress by my former colleague, Senator Ives, as to the moral responsibility of the Congress to the Seneca Indians.

The Corps of Engineers' newly constructed damsite is located in Warren County, Pa., and its water will flood 21,175 acres located in Warren and McKean Counties, Pa., and Cattaraugus County, N.Y. The result of the Federal taking of easement rights over 10,200 acres within the Allegany Indian Reservation in New York will be that 127 Seneca families will be required to move from their homes and reestablish their community at two places within the Allegany Reservation—at Jimersontown and Steamburg sites.

President John F. Kennedy clearly understood the plight of the Senecas and dedicated himself and the U.S. Government to their assistance when he stated in a letter to the Seneca Nation in August 1961:

"I fully appreciate the reasons underlying the opposition of the Seneca Nation of Indians to the construction of the Kinzua Dam on the Allegheny River. Involved are very deep sentiments over the loss of a portion of the lands which have been owned by the Seneca Nation for centuries * * * I hope you will convey to the members of the Seneca Nation the desire of the Federal Government to assist them in every proper way to make the adjustment as fair and orderly as possible. I pledge you our cooperation."

Your subcommittee is today considering S. 1836, a bill which I introduced, together with Senators Keating, Scott, Clark, McGovern, Case, and Ervin, to provide much needed financial compensation for the relocation, rehabilitation, social and economic development of the Seneca Nation of Indians. Also under consideration by the subcommittee is a similar bill, H.R. 1794, which was reported unanimously by the House Interior Committee on February 5, 1964, and was passed by voice vote in the House of Representatives on February 10. H.R. 1794 is the product of many months of arduous detailed discussion between the Corps of Army Engineers, the Department of the Interior, and representatives of the Seneca Nation and was worked out under the leadership of the House Interior Committee. While I do believe that my own bill, S. 1836, is a sound bill, I am convinced that the main purpose of my bill would be most effectively and expeditiously realized in the enactment of H.R. 1794, a measure that has already been carefully considered. I, therefore, wholeheartedly support H.R. 1794, and deeply hope that this subcommittee will act favorably on it.

There is a strong precedent for the provisions of H.R. 1794 in legislation enacted in the 87th Congress for compensation to the Lower Brule and Crow-Creek Sioux Indians for the taking of their property for the construction of the Federal project Fort Randall Dam and Reservoir. H.R. 1794 provides for compensation to the Seneca Nation and its members in the amount of \$20,150,000, consisting of three classes of funds: (1) that which would be required for the acquisition of interests in land within the Allegany Reservation, in effect, the fair market value of the interests in land acquired by the Government and improvements on that land; (2) that which is necessary to compensate the Senecas for certain indirect damages; and (3) that which is necessary to rehabilitate and redevelop the Senecas' economy and to cover certain other expenses.

As to direct damages, H.R. 1794 provides for compensation in the amount of \$1,289,060 plus such additional sums, if any, as the Seneca Nation may recover in court for damages to its sand and gravel resources. This direct damage fund includes money for (1) interests in land being acquired by the United States, (2) the taking of permanent improvements on lands within the reservation, and (3) damages caused by the increased difficulty of developing or otherwise exploiting the oil and gas subsurface resources retained by the Seneca Nation. Costs covered by the first and the second categories were arrived at on the basis of independent tract-by-tract professional appraisals and were fixed after negotiation between the Corps of Engineers and representatives of the Seneca Nation. Figures on the last category, covering increased difficulty in developing oil and gas resources, were acceptable to both the Corps of Engineers and the Seneca Nation. Due to the difficulty in arriving at a sound valuation for sand and gravel resources, the House Interior Committee decided to leave this item for

judicial decision if the Senecas desire to pursue this matter further. I am advised this solution is agreeable both to the Corps, and the Seneca Nation.

As to indirect damages, section 2 of H.R. 1795 provides for \$1,033,275 to cover the loss of timber, wildlife products and the like as well as certain relocation costs. Also included is a small amount for loss of access to the Allegheny River bed.

The largest item in this bill is contained in section 4 and includes \$16,931,000 for financial assistance to improve the economic, social, and educational conditions of the Seneca Nation. Because of the significance of this item, I purposely omitted this amount in the bill I introduced in the Senate in the hope that the committee after detailed consideration would arrive at an appropriate figure. The House of Representatives has now done so. The item for rehabilitation funds includes:

- \$8 million for agricultural, commercial, and recreational development;
- \$4,438,000 for industrial development;
- \$1,029,000 for relocation and resettlement;
- \$970,000 for community buildings and facilities;
- \$2,300,000 for an educational fund; and
- \$194,000 for a resurvey of the congressional villages on the reservation.

The \$16.9 million figure represents a considerable reduction from the amount of \$29 million which was estimated by the Brill Engineering Co., a concern retained by the Bureau of Indian Affairs to study the recreational potential of the area. The House Interior Committee decided against the proposed creation of an Indian "Williamsburg" to attract tourists to Seneca land to improve the economic capacity of its Nation. However, economic development of the reservation is vitally necessary and the longstanding need for more and better job opportunities for the Senecas will be accentuated when families move into a new community. In 1961, the average income for the Seneca households living in the area affected was \$3,894, which is \$2,000 lower than the median income for all families in Cattaraugus County. The expenditure of industrial development funds is based upon plans set forth by the Brill Engineering Co. for development of an industrial park in the vicinity of the Allegany Reservation. Resettlement costs will cover certain expenditures involved in making the Jimersontown and Steamburg areas habitable. Funds for the community buildings and facilities are planned for use in construction of two buildings, one on the Cattaraugus Reservation and the other on the Allegany Reservation, to provide courtrooms, office space for tribal officials, and youth athletic facilities.

The educational funds would be used to finance a 20-year program of higher education and vocational training for Seneca children. Scholarship assistance to 55 youngsters could be provided the first year with gradual annual increases in scholarship availability. The funds for resurvey would be used to bring outdated land title records into a useful state. In addition, it must be remembered that none of the rehabilitation funds in section 4 will be paid directly to the Seneca Nation immediately upon appropriation. Instead, the funds will remain in the Treasury to the credit of the Nation until expended for purposes approved by the Secretary of the Interior.

Assistance for the soon-to-be-displaced Seneca Nation is urgently needed in view of the Corps of Engineers' present schedule for partial closure of the dam in June of this year and for total closure in October. The corps has recommended that October 1, 1964, be the final date of occupancy. Completion of the dam is planned for early next year. Clearly, time is of the essence. Members of the Seneca Nation are unable to complete their plans for the required move from their homes because of the lack of funds and resulting inability to finance in new housing.

I hope that this subcommittee will make a special effort to act promptly on H.R. 1794, which is similar in purpose and in form to S. 1836, and will live up to the pledge of our late President to fulfill honorably the obligation which the United States owes to the Seneca Nation of Indians.

Senator JAVITS. May we also include a very interesting analysis of the situation of the Seneca Nation from the New York Times of yesterday?

Senator CHURCH. Without objection that also will be included in the record.

(The statement referred to follows:)

[From the New York Times, Mar. 1, 1964]

SENECAS, LAND TO BE FLOODED, PEER INTO THEIR FUTURE DARKLY—700 INDIANS, TO BE RELOCATED BECAUSE OF KINZUA DAM, MUST LEAVE UNSPOILED WOODLAND DOMAIN IN FEW MONTHS

(By Robert Trumbull)

SALAMANCA, N.Y., February 26.—With straightforward Indian logic, an 86-year-old Seneca woman voiced today the bitterness of her tribe against the U.S. Government.

"Since I was a girl," said Mrs. Lena Snow, "I have been told that the Senecas would have their land as long as the sun shines and the river flows. Well, I haven't seen them stop."

The sun was shining, sure enough, on the simple frame house where Mrs. Snow has lived for 60 years. Nearby, ice tinkled in the currents of the Allegheny River.

But as surely as the sun shines and the river flows, Mrs. Snow and hundreds of other Senecas will be dispossessed of their ancestral land in a few months as water backed up by a Federal dam covers their homes.

The \$107 million dam, at Kinzers, Pa., will inundate Seneca homes in violation of a treaty signed by the Seneca Nation and the United States in 1794, guaranteeing the integrity of the Indian land forever. This is said to be the oldest treaty in the U.S. Archives.

The only litigation involving the dam was brought by the Indians in 1958. They asked the courts to rule on whether Congress intended to break the Government's treaty with the Senecas to build the dam. The U.S. court of appeals ruled that Congress did intend to break the treaty.

The U.S. Supreme Court has ruled more than once that the Federal Government has the right to break treaties, so this right was never questioned in the courts by the Senecas.

A committee of the Senate will begin hearings Monday on a \$16,931,000 bill, already passed by the House, to relocate the Senecas and compensate the tribe in other ways for Washington's repudiation of the 170-year-old treaty.

ONE HUNDRED FAMILIES INVOLVED

It is vital to more than 100 Indian families, consisting of nearly 700 individuals, that the Senate act at once on the bill, George Heron, president of the Seneca Nation, said. Until the measure passes and the funds are appropriated, he declared, the displaced Senecas cannot begin building the homes to which they must move before water covers the area next September.

Mr. Heron, a lithe and handsome man, formerly commuted 150 miles a day to Buffalo and back as a steelworker. Senecas and some other Indians of the Iroquois Confederacy have been in demand for such jobs because of their apparent immunity to acrophobia, or fear of heights. (Although Mr. Heron is at home on top of a spidery tower he hates to fly in an airplane.)

Today the former steelworker is the elected head of a nation within a nation. The Senecas, like other Indian tribes, run their own affairs on the reservation through elected officials. At the same time, they are subject to Federal and State laws and taxes.

The Allegany Reservation is only a mile or so wide, but it runs for 44 miles along a slow bend in the Allegheny River (the Senecas give the name their own spelling). It includes the pleasant city of Salamanca, built by white men on land leased from the Indians.

SENECAS PREFER WOODS

Few Senecas have much to do with the town on their land, beyond working in white men's factories making furniture and casting bricks.

They prefer to live near the woods filled with wild game—including pheasants, deer, and bears—woods that will soon be underwater because, the Senecas say wryly, it is needed "to flush white men's toilets in Pittsburgh."

Even if everything works out as the Federal Government has promised, the displaced Senecas are going to be constricted into a semiurban way of life that has been completely foreign to their history.

About 10,000 acres that the Indians now roam at will, in the way of their ancestors, will be flooded by the dam. In place of this unspoiled domain, the Senecas have been cut back to a 500-acre site for two new towns where they will live somewhat like suburbanites on adjacent plots of 1 to 3 acres.

"They say we did nothing with the land anyway, except rattle around on it," Mr. Heron said. "But we rattle around, and that's something, isn't it?"

Senecas live today on family acreage granted by the tribal authorities. These grants are not extraordinarily large, for few Indians want to engage in farming. Instead, they take whatever jobs are available for cash wages. The average family income is \$3,000 a year, and unemployment runs at 35 percent.

So the Seneca is often poor, and lives in a house that may be little better than a shack and without plumbing. But he is happy, according to the tribal elders.

"Give me a shanty where I can live as I please," Mrs. Snow says. However, her own simple frame house is hardly a "shanty." Inside there is wall-to-wall carpeting and a big television set. Many other Senecas are similarly comfortable in homes that look ramshackle outside.

Across his own unfenced grant, the Seneca gazes upon serene forest and river shore where his sons can learn the woodcraft of their ancestors as they may be inclined. The coming spring will be the last for this free way of life on the Allegany Reservation.

"The Indians are going to have to adjust to a new way of life now," Mr. Heron said. "He will have better house, but without the forest. And his neighbors will be different. Also, living in the new homes is going to cost him more."

For generations, Mr. Heron explained, the Senecas have been accustomed to cutting their firewood free, as needed, on the forested hillsides. Each family had its own well, producing clear, sweet water.

Now the Seneca households will have to pay for their fuel and drink water tasting of chlorine from community mains, which the Indian, accustomed to wells and springs, dislikes.

Many Seneca customs will change, or will be observed in strange settings. For example, about 40 cemetery sites will be relocated. The Long House, where the Indians dance to the beat of the water drum and the turtle-shell rattle, and practice the gentle religion founded by an 18th-century tribal prophet named Handsome Lake, will also be moved.

And next winter there will have to be new runs for the snow snake. The snow snake is a slender hickory pole 7 feet long, which the Indians hurl like a javelin into a trough in the snow, to see who can make it go farthest—an ancient competition involving incantations and secret "medicines" rubbed into the wood.

These crises, all subordinate to the immediate housing problem facing the Seneca Nation, are discussed by the Indians in their own language at councils in the long house.

NEW SETTLEMENTS PLANNED

The \$16,931,000 relocation and rehabilitation program now before the Senate has been written to provide for the "social and economic development" of the Seneca Nation on its reduced reservation. The two new settlements, called Jimersontown and Steamburg-Quaker Bridge, are being planned as model communities in school facilities, recreational areas and so on.

Friends of the Senecas, like Representative James A. Haley, Democrat of Florida, chairman of the House Subcommittee on Indian Affairs, hope that a new four-lane highway included in the Kinzua Dam project will bring a heavy tourist traffic through the Allegany Reservation. This would provide a lucrative market for the cornhusk masks and dolls, beadwork, and other Seneca handicrafts.

But the Senecas have learned to count on what they see, not what is promised. The history of their relations with the white man has not been encouraging.

The distribution this week of the annual allotment of "treaty cloth" provided a vivid example of time's erosion on the Government's commitments to the Senecas.

Under the treaty of 1794, Washington sends the tribe a yearly payment in cloth in partial return for Indian concessions. The Federal expenditure is about \$2,700, Mr. Heron said.

"We used to get 10 yards each of colorfully designed percale, calico, and gingham," he recalled. "Now we are lucky to get 3 yards of unbleached muslin."

The muslin is used for pillowcases, doll clothes, and other purposes of little significance in the Seneca economy. Nevertheless, "the Indians feel that as long as they are getting the cloth, the treaty will continue to be honored," Mr. Heron said.

To the realistic Senecas, the fact that the treaty had already been violated by the condemnation of land for the Kinzua Dam backwater is less important now than the need for congressional funds to assure the new housing before their homes are flooded.

"Our housing program is ready, but we can't move on it without funds," Mr. Heron said. "If we don't have our new homes before the deadline for moving, I will have to advise the people to remain where they are.

"You might say," he remarked, "that we are thinking about getting angry over all this."

Senator CHURCH. I want to thank you for your testimony. I think in all likelihood the committee will want to question other witnesses who will appear later with respect to the detail of the bill, as to the figures, but if there are any questions of Senator Javits we can entertain them now.

Senator GRUENING. Senator Javits, as the sponsor of this legislation on the Senate side I wonder whether you would say for the record what was the justification for the violation of this treaty? A treaty is a pretty solemn obligation and it gives us pause when we find our country is in definite violation of a treaty.

How would that be justified for purposes of history?

Senator JAVITS. The best words really are the words of the circuit court of appeals and I prefer to quote those because I am deeply troubled, Senator Gruening, by this situation. There was a solemn promise to the Seneca Nation about this area and here, on the other hand, was the most urgent problem of an important and populous part of our country which had serious flood problems, actual flood problems in being.

Now, there were alternate plans for the location of this reservoir. The Seneca Indians themselves came forward with plans. So did Senator Keating and I, and Irving Ives and I before that. The fact is that the Corps of Engineers decided that these were impractical, that they wouldn't do the job, that they wouldn't do it within a reasonable compass, that this was the only route that would do the job, and it is a fact now embedded in our law that these treaties, even those of, in their words, "irrevocable character," must nonetheless yield on grounds of public policy which rises above their words to the demands of the country. We have something like that, for example, in the outlawing by the Supreme Court of so-called covenants of racial restriction where again the words say that Negroes shall not buy land in a certain area.

Nonetheless, those have been declared invalid by the court as being against public policy. It is hornbook law that a covenant to utilize a piece of property for an immoral purpose or an illegal purpose, as, for example, an illegal still to produce whisky, will not withstand assault in the courts, notwithstanding its words.

The racial covenants at the time they were entered into were possibly lawful under the doctrine of the separate-but-equal doctrine which obtained until finally the Supreme Court knocked it down in 1954.

These other things were more palpably unlawful, like the utilization of land for an illegal still to distill alcohol, but, nonetheless, this

is now very definitely embedded in our law and so, regrettable as it is, much as it tears at the national conscience that these promises are not being kept, though most solemnly given, the courts have settled for us the fact that they are contrary to public policy in the sense that they cannot be permitted forever to immobilize the community in its efforts at self-preservation, and in a sense, regrettable as it is, this is an effort at self-preservation for an important and populous part of our Nation, especially of northern Pennsylvania, for which these Indians are suffering through no fault whatever of theirs and notwithstanding the solemnity of a covenant.

That, Senator, is the best explanation I can give as in a sense a devil's advocate. I cannot endeavor to justify it on moral grounds. I can only say this is the explanation of the courts on the most pragmatic of all grounds.

Senator GRUENING. I would like to ask this further question. Given all these facts does the Seneca Nation nevertheless oppose this legislation?

Senator JAVITS. It did. It felt very bitterly about it because it was able to offer, as the president, Mr. Heron, who is here, will tell you, alternative plans which it felt would do the job just as well.

And again I say, there I must be ruled and our Nation must be ruled by those authorities where we have vested the judgment, and they concluded, the Corps of Engineers, which will probably testify before you today, that this was the route and that there was nothing else to be done about it, and so Senator Ives and I, after manfully trying in every way to fight for some alternative which would have preserved this treaty inviolate, just had no other recourse but, as I say, to pledge our sacred honor that we would fight tooth and nail for the only other alternative, which is in the bill before you.

Senator GRUENING. One more question. What would have been the dire consequences if the treaty had been adhered to and this project had not been sought?

Senator JAVITS. It would have meant continual flooding of an important industrial area of northern Pennsylvania from which it had suffered for years and which this is designed to remedy, and this is again taking the two alternatives.

The courts have said that the alternative of obeying the treaty, notwithstanding the public interest and the prevention of floods, is inconsistent with public policy.

Senator GRUENING. Would the flooding have caused any loss of life?

Senator JAVITS. Probably not, but it would have caused material loss of property, as it had over the years, and backwardness in terms of development of an important area of one of our important States.

Senator GRUENING. Then the issue in effect was a matter of property damage versus human rights, wasn't it?

Senator JAVITS. Well, in a sense, yes; but I think, Senator Gruening, that is putting it harshly. It deserves to be put harshly, but, nonetheless, I think there is extenuation. One could make a case for the fact that there are cases where you just have to find some balance between the pragmatic need of the country to move on and the solemn covenant which at the time it was undertaken no one visualized would need to be invalidated. Who knew that this area in Pennsylvania

would become an important area requiring this kind of treatment? Certainly George Washington didn't.

Senator GRUENING. In other words, you would say that the advances of science, and the growth of population, and other factors that could not have been foreseen a hundred years ago necessarily justified some solution of this kind?

Senator JAVITS. And that we are making the best rough balance with the facts of life that we can in allowing for the rehabilitation and giving a new chance to the Senecas.

Senator GRUENING. Do you consider that the sums provided in this bill, which total \$2,322,335, with a further chance to appeal to the courts, are adequate?

Senator JAVITS. That is the compensatory amount, Senator. There are some \$17 million provided for the rehabilitation of the Seneca Nation. That is a very substantial sum of maney, more than has been allowed in any other case, justified by a really scientific finding as to what is needed to do the job, and considering the unique moral obligation here, I really feel in all conscience we should not do less than what it takes to do the job.

Senator GRUENING. What is the total number of individuals affected?

Senator JAVITS. The total number of individuals is some 4,132 and the number of families which will actually be moved very promptly and currently—

Senator GRUENING. How many will be moved?

Senator JAVITS. About 128 families with something in the area of 700 Indians will actually be moved from the site.

Senator GRUENING. And the total amount, counting the rehabilitation of these 700, will be something less than \$20 million.

Senator JAVITS. That is correct—around \$20 million.

Senator GRUENING. Around \$20 million.

Senator JAVITS. That includes compensation plus rehabilitation.

Senator GRUENING. And in fact that includes everything that can humanly be done for them?

Senator JAVITS. That is correct.

Senator GRUENING. To compensate them for their removal.

Senator JAVITS. Well, President Heron will speak for the Seneca Nation, but I really believe that, everything considered, they still feel, you know, the covenant should have been honored, but other than that a real effort has been made to be fair to them.

Senator GRUENING. I thank you very much, Senator.

Senator JAVITS. Thank you, Senator Gruening; very helpful questioning I must say. I appreciate it.

Senator CHURCH. I think in view of the legal and the constitutional questions that have been raised by this exchange it might be well to include in the record that portion of the House report which appears on page 6.

Senator JAVITS. All right, Mr. Chairman, I ask unanimous consent, if I may, that that be done.

Senator CHURCH. Yes. This includes the provision of the treaty in question. I might read it into the record here.

Article III of the treaty of November 11, 1794 (7 Stat. 44), commonly referred to as the Pickering Treaty, after describing "the land of the Seneka nation", went on as follows:

Now, the United States acknowledge all the land within the aforementioned boundaries, to be the property of the Seneka nation; and the United States will never claim the same, nor disturb the Seneka nation, nor any of the Six Nations, or of their Indian friends residing thereon and united with them, in the free use and enjoyment thereof; but it shall remain theirs until they choose to sell the same to the people of the United States, who have the right to purchase.

The following paragraph which refers to the testing and interpretation of this provision in the courts, and the citation of the courts, and the copy of the opinion of the court that finally determined that question appear in House Report 1128, which has been incorporated in this record.

Senator JAVITS. Mr. Chairman, may the record show also that certiorari was denied by the U.S. Supreme Court in 1959, the citation being 360 U.S. 909.

Senator CHURCH. Yes. I think all the citations set forth here appear in our record.

Senator JAVITS. Thank you very much.

Senator CHURCH. Thank you, Senator Javits.

Senator JAVITS. Thank you.

Senator CHURCH. Senator Keating is present this morning and would also like to testify on behalf of the bill. We are pleased to welcome you to the committee this morning, Senator Keating.

STATEMENT OF HON. KENNETH B. KEATING, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator KEATING. Thank you, Mr. Chairman, and I shall be very brief. Senator Javits has very well covered the important points, I think. This is a familiar controversy to us and, as he said, others can give you in more detail the story of the Pickering Treaty and the abrogation of that treaty by the United States.

I want to say, Senator Gruening, that I simply cannot, in any way, justify our country going back on its treaty and I think any possible steps should have been taken among these alternative plans rather than to have had this happen.

I think it is a blot on our history. I opposed the building of the dam when I was then in the House, and later in the Senate, and Senator Javits and I introduced our bill, S. 1836, omitting dollar figures because the costs were not clear.

A similar bill was introduced in the House. They had 8 days of public hearings, 6 days of committee consideration, and in my judgment they passed a fine bill, the very best that can be done under the circumstances to compensate the Senecas for the loss of their land and to make just reparation for the breaking of the treaty.

There is just this short word in closing to be added, Mr. Chairman. On October 1 of this year, 7 short months from now, the lands on which these Senecas make their home will be flooded. My figures indicate 482, but perhaps that figure is not correct. For 6 years the Government has been assuring the Senecas that they will be compensated and resettled by that time, and now only months remain. Not only have they not received the money needed to make the move;

they can't even obtain loans with the proposed compensation as collateral.

Two entirely new settlements must be constructed in one building zone. Roads must be laid out and utilities provided. Homes and public buildings must be erected, and time is very short and I therefore ask the committee to bear in mind the really emergency nature of this legislation.

There are some details in which our bill differs, but the practical way to handle it now is to report out H.R. 1794, which I sincerely hope can be done at an early date. As I understand it, Senator Javits placed in the record this New York Times story. I believe I heard him say that.

Senator CHURCH. Yes.

Senator KEATING. That is a very interesting article that appeared, I think, on Sunday. Thank you, Mr. Chairman.

Senator CHURCH. Thank you very much, Senator Keating. Any questions? Senator Simpson?

Senator SIMPSON. Senator Keating, will the partial closure which is scheduled for June have any effect upon the Seneca Nation?

Senator KEATING. I think you had better address that question to President Heron, the president of the nation. He will testify here.

Senator SIMPSON. If it does it would even further the argument for—

Senator KEATING. It accentuates the need for quick action.

Senator SIMPSON. Thank you very much.

Senator CHURCH. Senator Gruening.

Senator GRUENING. Senator Keating, for the purpose of the record I wonder whether you could give us a summary of the legislative history. What I have in mind is this: Here is a violation of a treaty; when this bill was first introduced wasn't there considerable protest on the part of those in the Congress who think that it is important for us to maintain our treaty obligations?

Senator KEATING. Yes, sir.

Senator GRUENING. How did this get started?

Senator KEATING. Well, it got started largely through the offices of the late Representative Gavin, of Pennsylvania, who represented the district where this flooding would take place in Pennsylvania. He was a very strong advocate for the point of view which he held and he was vigorous and a very fine Representative, and he went through the usual channels to get this project underway with the Corps of Engineers. It doesn't help much in the State of New York, anyway, as far as the flooding is concerned. There isn't a big problem there, certainly not enough problem to call for the abrogation of a treaty.

We who opposed it used that argument in opposition to this project. I was in the House then and I know that was an argument strongly advanced by, well, Representative Reed, who represented that district at that time, and others of us who did not like the moral implications of abrogating a treaty, but the Corps of Engineers reached the conclusion that this was the only feasible way to do the job.

Other alternatives were offered which they said wouldn't work. Finally the matter went to court and the court held on balance that the project should not be interfered with. Then the only recourse was to try to compensate these injured people as best we could.

Senator GRUENING. What was the date on which the final decision was made that the dam would be built? It has been pointed out there has been a great delay. Here these houses are going to be flooded out in a few months and nothing has been done, and I am curious to know why there was so much delay.

Senator KEATING. We had our bill put in in July last year. I believe we had a similar bill in the previous session. Isn't that right? In 1959 was the court decision and we were still after that opposing the appropriation for the project, but it actually wasn't authorized until 1960.

Senator CHURCH. I think for the record it should be clear that we have not in this committee had any bills pending on his matter.

Senator KEATING. No.

Senator CHURCH. Until now.

Senator GRUENING. That is correct. This is a new subject for this committee.

Senator CHURCH. Yes; the project itself, I take it, was authorized through the Public Works Committees.

Senator KEATING. That is right.

Senator CHURCH. So we have tried to expedite this legislation and to move it along as quickly as possible. It seemed like the best way to proceed was to allow the House to act, and the House has just acted and passed the bill to us, and, of course, we are going to try our best to expedite it here, but I just wanted it clear that insofar as this committee is concerned there certainly has been no procrastination or delay, and I think that it is a cause of wonderment that 6 years should pass before this matter finally comes to a head in the Congress.

Senator KEATING. It was in the court quite a while and the Seneca Nation and others of us were hopeful that they would succeed in blocking it in the courts, but that didn't happen so they have forged ahead with it.

Senator GRUENING. Senator Keating, there has been some mention of promises made to the Indians for compensatory action. Who made those promises? I am not quarreling with the promises that have been made, but I am trying to find out why there was so much delay, whether it wouldn't have been possible for some agency, executive or otherwise, to have moved with a little more speed. It seems a little unconscionable that here on the very eve of their flooding we have to, in great haste rehouse, rehabilitate, and relocate these Indians.

Senator KEATING. They have been working on figures for quite a time. It is quite a project to determine the amount of damages. The Bureau of Indian Affairs, I am told, has had people up there for 3 years. To expressly answer your question, I remember very well a strong statement made by President Kennedy that they would be compensated. I think he saw the justice of this cause and I presume faster action could have been taken, but, after all, that is now water over the dam, if you will, unfortunately.

Senator GRUENING. I agree with you they should be compensated. I was just curious to know why, with this thing imminent and hanging over them for several years, it hasn't been possible to do some of this planning.

I realize there are probably financial problems, a question of appropriations and so forth, but if we have similar situations elsewhere

I would like to obviate such unfortunate delay. There should be advance planning and provisions made at the time.

Senator KEATING. That is right.

Senator GRUENING. I have no further questions. Thank you.

Senator CHURCH. Any other questions? If not, Senator Keating, we are pleased to have you come this morning and to hear your testimony.

Senator KEATING. Thank you very much, Mr. Chairman.

Senator CHURCH. I notice that Congressman Haley, who has shepherded this legislation through the House, is here and I want to acknowledge his presence and let him know that he is most welcome.

Mr. HALEY. Thank you, Mr. Chairman.

Senator KEATING. I want to express my gratitude to Congressman Haley for the great help that he has been in this case and to the entire House committee. Congressman Haley has taken the laboring oar in bringing this bill to this point and we are all very grateful to him.

Senator CHURCH. Thank you very much, Senator Keating.

Senator KEATING. Thank you.

FURTHER STATEMENT OF HON. JACOB K. JAVITS, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator JAVITS. Mr. Chairman, before we are dismissed, if Senator Keating will bear with me a minute, may we have leave to add to the record a joint letter answering Senator Gruening's question. There are very good reasons why we didn't put the bill in until 1963 and I think as long as the question has been raised we will jointly present it to the committee.

Senator CHURCH. Very well. The record will be held open for that purpose.

Senator JAVITS. We will get that in today, Mr. Chairman, so you won't have to hold it open.

(The statement referred to is printed as an appendix to the hearing record.)

Senator CHURCH. Without objection, at this point in the record I will insert a statement by Senator Case, of New Jersey, with reference to this legislation.

(The statement referred to follows:)

STATEMENT OF HON. CLIFFORD P. CASE, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Mr. Chairman, for years I opposed the construction of the Kinzua Dam and the violation it involves of our oldest continuing treaty, the Pickering Treaty of 1794 with the Seneca Nation. It has never been comprehensible to me that our country undertook this project without a thorough and impartial exploration of the alternative ways of accomplishing the same flood control and water storage objective.

When the administration made clear it was determined to go ahead with this project, further opposition became futile. I was, however, proud to join Senator Javits and other colleagues in sponsoring S. 1836, to provide compensation and assistance to the Senecas.

Last August, I wrote to you to urge that your subcommittee hold hearings on this legislation as a matter of urgency, to permit the affected Seneca families a reasonable opportunity to build their new homes before they are forced to move by the rising waters of the Allegheny River. There was then well over

a year before the moving deadline of September 30, 1964, set by the Corps of Engineers. Now there are less than 7 months.

Witnesses—representing the Senecas—are testifying today on the added difficulties which further delay by the Federal Government would pose to the Seneca families involved. Fortunately, we do have an extensive report on H.R. 1794, the House version of this legislation. The time is already late, and it is more important than ever that your subcommittee make possible completion of congressional action in the near future.

It is my belief that the American sense of justice dictates also that we help the Senecas plan for the changes in their way of life which the inundation of much of their homelands will make necessary.

H.R. 1794 embodies the principal provisions of S. 1836. Since H.R. 1794 has already been passed by the House of Representatives, I am glad to join Senator Javits, the principal sponsor of S. 1836, in urging that the subcommittee report favorably the House-passed bill.

Senator CHURCH. Senator Ervin was scheduled to testify but he is unable to appear this morning and has submitted the following statement:

STATEMENT OF HON. SAM J. ERVIN, JR., A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Mr. Chairman, it is a privilege for me to appear before this subcommittee in support of the bills, S. 1836 and H.R. 1794, to provide reparation to the Seneca Nation of Indians for the taking of lands required by the United States for the Allegheny River-Kinzua Dam project.

I have followed the developments of the Kinzua project with careful interest, since it first came to my attention in 1961. The Senecas and their friends have availed themselves of legal processes available to cause the United States to rescind the construction of Kinzua Dam, and to honor fully its obligations under the Pickering Treaty of 1794. However, failing this, the Seneca tribal council has realistically worked to prepare their people for the changes which the Kinzua Dam will bring. The Senecas have been meeting this disruptive challenge by conscientiously planning for their future.

Obviously, such planning requires a considerable outlay of funds and equally obviously the Senecas are entitled to compensation for the taking of their lands. Apart from any legal position which the Senecas may enjoy concerning compensation for the taking of their property, the equitable nature of their case requires its immediate consideration. As a first step in this direction, it is imperative that the legislation before this subcommittee be enacted in order that the Committee on Appropriation can make, as soon as possible, the actual appropriations for the Senecas' compensation, relocation, and rehabilitation.

The House committee which considered this legislation held exhaustive hearings on the Seneca Reservation in New York and here in Washington, D.C. We are fortunate to have the benefit of their careful consideration. It is my understanding that the language of the amended House bill, H.R. 1794, represents the consensus of the Seneca Nation, the Corps of Engineers, and the Bureau of Indian Affairs. In view of this agreement and the need for early action on this matter, I urge the Subcommittee on Indian Affairs to report favorably to the Senate S. 1836 with the same authorization and language that appears in H.R. 1794.

Mr. Chairman, the need for this legislation is clear and undisputed. The need for immediate action is equally apparent. I hope that your subcommittee will precipitate the early consideration of these measures.

Mr. Chairman, in yesterday's issue of the New York Times there appeared an article by Robert Trumbull concerning the situation of the Senecas. In this article, Mr. Trumbull reviews the background as well as the present situation and the Senecas plans for the future. I feel this is a timely article and accordingly, I ask that it be made a part of the record of this hearing.

Thank you, Mr. Chairman.

(The article referred to is printed on p. 63.)

Senator CHURCH. We will now hear from Mr. Ralph Widner, who is the legislative assistant to Senator Joseph S. Clark, of Pennsylvania.

**STATEMENT OF RALPH WIDNER, LEGISLATIVE ASSISTANT, ON
BEHALF OF SENATOR JOSEPH S. CLARK, OF PENNSYLVANIA**

Mr. WIDNER. Thank you. Mr. Chairman and members of the subcommittee, my deep apologies for Senator Clark not being here this morning. He feels extremely deeply about this bill, but this has been a very rough weekend for him. He just gave his daughter away in marriage and on top of that he has a number of other things which have held him in Philadelphia until later this morning.

There is no point in my reading his statement in the record and I will just ask for permission to have it inserted at this point.

Senator CHURCH. Without objection it will be inserted at this point in the record.

(The statement referred to follows:)

**STATEMENT OF HON. JOSEPH S. CLARK, A U.S. SENATOR FROM THE STATE OF
PENNSYLVANIA**

I want to express my very great appreciation to the chairman of this subcommittee, Senator Church, for his sympathetic consideration of every request I have made to him, on behalf of the sponsors of S. 1836, concerning these hearings and the welfare of the Seneca Nation. Those of us who represent the people of New York and Pennsylvania owe him a debt of gratitude and feel we have in him a firm ally in resolving the very difficult moral questions embodied in this bill.

When all is said and done, it is, after all, a moral question which you are being asked to consider today. With the matter of civil rights very much on our minds I might say that this bill is a civil rights bill. This subcommittee must determine whether the people of the United States will honor its special obligations toward the Seneca Nation or whether the Senecas will continue to live as victims, instead of participants in the progress of American society. In his letter to the Seneca Nation in 1794, President George Washington said:

"Hear well, and let it be heard by every person in your Nation, that the President of the United States declares that the government considers itself bound to protect you and all the lands secured you by the Treaty of Fort Stanwix * * *." And it is significant that the President added:

"The United States will be happy to afford to you every assistance in the * * * business which will add to your numbers and happiness."

This bill carries out that commitment of our first President.

Mr. Chairman, I have been one of the leading advocates on behalf of the Allegheny River Reservoir.

This reservoir, in northwestern Pennsylvania and southwestern New York, will be the keystone impoundment in the river basin development program for the Allegheny River and the upper Ohio.

It will provide flood control for the several million Pennsylvanians who live downstream.

It will store spring floods for release in the dry months of autumn in order to keep the levels of the Allegheny River high throughout the year, thus maintaining industrial, commercial, and municipal water supplies without jeopardy from drought.

It will help, through dilution, to curtail the concentrations of acid mine drainage in the Allegheny River.

It may provide a new source of hydroelectric power in a severely distressed region.

And perhaps, just as significantly, it will become the nucleus for a new national recreation area serving the Pittsburgh-Buffalo-Cleveland complex, thus creating several thousand new jobs in the area and opportunities for new business investment.

In essence then, I have espoused the construction of this reservoir in order to improve the economic fortunes of northwestern Pennsylvania and southwestern New York.

Today I support S. 1836 for the same reason.

For it is an unfortunate fact that in attempting to improve the economic outlook for several million Pennsylvanians and New Yorkers we have done grave damage to the economic fortunes of the Seneca Nation.

In my judgment there was no alternative to this difficult course, but I have maintained consistently that the economic future of the Senecas must also be improved by this project or it can only be considered a partial success. The bill before you today makes it possible for the Senecas, as well as their neighbors, to reap the economic returns the Allegheny Reservoir can yield.

The courts of the United States have ruled that the Government, acting on behalf of millions of citizens, was entitled to take Seneca lands for the Allegheny Reservoir. But, though the legal questions can be resolved by the courts, there are moral questions which cannot.

I thoroughly agree with what Senator Irving Ives, of New York, said back in the 85th Congress when the Allegheny Reservoir was before the Senate for appropriations:

"What has disturbed me * * * is that by this action we will be virtually wiping out the Allegany Reservation of the Seneca Nation of the Iroquois Conference in New York State * * *. I realize that under the procedures followed by the Government of the United States over the years in the handling of matters concerning Indian reservations, the Government has the legal right to do what is proposed. But what distresses me is the *moral responsibility*." [Emphasis supplied.]

We have a moral responsibility to make good on George Washington's commitment to the Senecas. We are being asked to honor their civil rights.

There is a special urgency in your deliberations on this bill. Present plans call for partial completion of the dam this year. There is a deadline before which the Senecas must vacate their homes. The Seneca must move by October, before the waters of the new lake flood out their age-old settlements. New houses, new sewer lines, and new public facilities must be made ready to receive them in the fall. There is not a moment to lose.

It is because of this special emergency that I take the liberty of suggesting that this committee would be doing a great service to the good name and honor of our country by reporting this bill as quickly as possible to the floor of the Senate for action so that it will not be stalled by the filibuster. Once the filibuster is underway it will be difficult if not impossible to act on the legislation in time to provide the Senecas with new homes and communities.

It is true the provisions of this bill go considerably beyond the normal commitments of the Government in helping those affected by the construction of a public project, but this is no usual case.

In my judgment, every section of this bill is essential if we are to do the Senecas justice. In particular, the section which would help them develop commercial, resort, and industrial facilities on their land is vital if they are to reap any of the economic benefits of the reservoir. It is unfortunate, but the Seneca Reservation is so far upstream on the reservoir that the Senecas will not gain the maximum benefits of the water-based recreational development which will occur further downriver in Pennsylvania.

Mr. Chairman, the reservoir area adjoins the Allegheny National Forest and the Allegany State Park. Highway plans will soon place it in the recreational backyard of millions of Americans. The reservoir will enormously enhance the potential for development of a thriving vacation industry in the area. For this reason, the plans to develop a resort complex on Seneca lands with assistance provided under this bill are economically sound and will make an invaluable contribution to the recreational development of the whole area.

I have noted the comments of the executive agencies on this bill. It seems quite clear that if S. 1836 is amended by the committee so that it is in accord with H.R. 1794, already passed by the House, the administration and a majority of Senators will support it.

The House has held lengthy hearings on H.R. 1794 and passed it unanimously. I would hope that the chairman, if the schedule and workload of the committee permits could see his way to report a bill before the filibuster begins—a bill which the Senate, too, can pass unanimously.

Such an action would help repair the damage which has been done to the good word of our country.

In closing, Mr. Chairman, I ask your permission to include in the hearing record an editorial from the Washington Post of February 24, 1964.

[From the Washington Post, Feb. 24, 1964]

INJURY UPON INJUSTICE

A probability of adding serious injury to injustice arises from the delay in passing H.R. 1794 to finance the relocation and rehabilitation of the Seneca Indians who will be deprived of their homes by the Kinzua Dam. Construction of the dam near the Pennsylvania-New York border was begun in disregard of a 1794 treaty guaranteeing to the Seneca Nation "free use and enjoyment" of the area forever. President Kennedy concluded in 1961 that it was not possible to halt the Kinzua project, but he pledged to the anguished Indians full cooperation of the Federal Government to help them "make the adjustment as fair and orderly as possible." Now, however, flooding of the Seneca lands is said to be less than 8 months away and funds have not been provided to build new homes, churches, schools, and roads on the remaining land.

The House unanimously passed H.R. 1794 2 weeks ago, and Senate hearings are scheduled for March 2. No opposition to the bill has arisen, but it is feared that it will be caught in the Senate filibuster over civil rights and indefinitely delayed. If that should happen, flooding from the dam may drive the Indians out of their homes before it is possible to carry out an orderly relocation.

If it is impossible to speed up the Senate hearings, Chairman Frank Church of the Subcommittee on Indian Affairs should make certain that it is held on March 2, in spite of any filibuster, and that the bill is promptly reported to the Senate. The importance of the bill would then justify special efforts to have it pass the Senate by unanimous consent. To leave this harassed minority without relief as manmade floodwaters encroach upon it would be a reproach to the whole country.

STATEMENT OF RALPH WIDNER—Resumed

Mr. WIDNER. There perhaps are a few points that I might reinforce that have already been made this morning, particularly as to why this project was built in the first place. That map shows you really one of the major sources of the Mississippi River. This project was built not just for the flood control of northern Pennsylvania, but the drainage covers most of the Ohio drainage area, which, as you know, enters the Mississippi farther down.

The city of Pittsburgh is well south of this reservoir site. The area south of that reservoir suffers the highest per capita damage in flooding per year of any region in the United States because of its dense population, but it also has a number of other serious problems. The high fluctuation in the river affects the big industrial complex down river very substantially, so that reservoir will be used for low-flow augmentation, storing the spring floods for release during the fall of the year.

Because of the great mining activities that go on south of there it will also help ameliorate a very serious resource problem in the area—acid mine drainage—and a number of other pollution difficulties. There may be some hydroelectric potential developed in the reservoir, but one of the reasons that Senator Clark advocated the construction of this reservoir was its impact on the immediate area.

As you notice, the green area there shows the Allegheny National Forest and just north of there in New York State is the Allegany State Park. This whole region is classified as "economically distressed" with a very high rate of unemployment, and in our economic redevelopment program in Pennsylvania it became quite clear that one of the major development potentials in this region was in the field of recreation and vacation development. So for this additional reason the reservoir was supported by my Senator, but, while the Indian problem is a familiar one to most of the members of this subcommittee, it is a

new one to most of us in the eastern United States. We can't build a significant public works project without displacing a great number of people wherever the project happens to be located in our part of the country and to have the problem compounded by the very serious moral questions posed by the Seneca Reservation just made the problem that much more difficult.

Senator Clark, therefore, when he supported this reservoir, said that we simply had to discharge our moral obligations to the Senecas by enabling them insofar as possible to capitalize on whatever economic opportunities we were generating by the project in the area and for that reason he is an ardent supporter of the bill that is now before this subcommittee.

The two Senators have already alluded to the severe urgency of acting soon. Senator Clark shares Senator Javits' conviction that if it is at all possible for this subcommittee to see its way clear to act on this bill in the reasonably near future so that we don't get it caught up in the problems on the floor of the Senate that are ahead it would be extremely helpful.

There have been a number of attempts made outside the purview of this bill to help the Senecas get relocated. They have received a small grant from the accelerated public works program to begin to build some water and sewer lines in the new resettlement areas, but they can't really build these areas until they get the assistance under this bill.

The assistance we would give under this legislation, it is true, is far in excess of anything that we have ever provided before. However, we think it is justified for the reasons that Senator Javits enumerated, and also because we are practically destroying this reservation. We are cutting the heart out of it. All we are leaving is the most undesirable land, the slope land, the land above the floor level, but the rich bottom lands, the heavily settled areas, are being flooded out.

For this reason we think the size of some of the sections in the bill, and particularly the one on economic development, are warranted.

I think it might be well, Mr. Chairman, to take from the hearings record of the House, in addition to the other materials you have inserted in the record, a letter which President George Washington wrote to the Seneca Nation in 1790. I would like to read one paragraph from that letter.

He said to the Senecas :

Hear well, and let it be heard by every person in your nation, that the President of the United States declares that the Government considers itself bound to protect you and all the lands secured by the Treaty of Fort Stanwix * * *

And he added :

The United States will be happy to afford to you every assistance in the * * * business which will add to your numbers and happiness.

We view this bill as a way of carrying out that commitment to the Senecas made almost 200 years ago. It is unfortunate that President Washington could not visualize the economic growth and development of that region in the intervening 180 years, but this does not remove from us the moral obligation of carrying out, insofar as possible, the commitments which he made to the Senecas back in 1790.

Senator CHURCH. Without objection if you have the full text of the letter it will be inserted at this point in the record.

Mr. WIDNER. Yes.

KINZUA DAM

(The letter referred to follows:)

TO THE CORNPLANTER, HALF TOWN, AND GREAT TREE, CHIEFS AND COUNSELORS OF
THE SENEKA NATION OF INDIANS

Philadelphia, December 20, 1790.¹

I the President of the United States, by my own mouth, and by a written Speech signed with my own hand [and sealed with the Seal of the US] Speak to the Seneca Nation, and desire their attention, and that they would keep this Speech in remembrance of the friendship of the United States.

I have received your Speech with satisfaction, as a proof of your confidence in the justice of the United States, and I have attentively examined the several objects which you have laid before me, whether delivered by your Chiefs at Tioga point in the last month to Colonel Pickering, or laid before me in the present month by the Cornplanter and the other Seneca Chiefs now in Philadelphia.

In the first place I observe to you, and I request it may sink deep in your minds, that it is my desire, and the desire of the United States that all the miseries of the late war should be forgotten and buried forever. That in future the United States and the six Nations should be truly brothers, promoting each other's prosperity by acts of mutual friendship and justice.

I am not uninformed that the six Nations have been led into some difficulties with respect to the sale of their lands since the peace. But I must inform you that these evils arose before the present government of the United States was established, when the separate States and individuals under their authority, undertook to treat with the Indian tribes respecting the sale of their lands.

But the case is now entirely altered. The general Government only has the power, to treat with the Indian Nations, and any treaty formed and held without its authority will not be binding.

Here then is the security for the remainder of your lands. No State nor person can purchase your lands, unless at some public treaty held under the authority of the United States. The general government will never consent to your being defrauded. But it will protect you in all your just rights.

Hear well, and let it be heard by every person in your Nation. That the President of the United States declares, that the general government considers itself bound to protect you in all the lands secured you by the Treaty of Fort Stanwix, the 22d of October 1784, excepting such parts as you may since had fairly sold to persons properly authorized to purchase of you.

You complain that John Livingston and Oliver Phelps have obtained your lands, assisted by Mr. Street of Niagara, and they have not complied with their agreement.

It appears upon enquiry of the Governor of New York, that John Livingston was not legally authorized to treat with you, and that every thing he did with you has been declared null and void, so that you may rest easy on that account.

But it does not appear from any proofs yet in the possession of government, that Oliver Phelps has defrauded you.

If however you should have any just cause of complaint against him, and can make satisfactory proof thereof, the federal Courts will be open to you for redress, as to all other persons.

But your great object seems to be the security of your remaining lands, and I have therefore upon this point, meant to be sufficiently strong and clear.

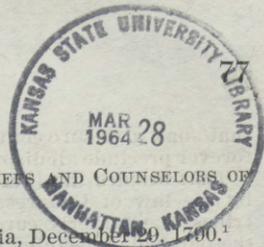
That in future you cannot be defrauded of your lands. That you possess the right to sell, and the right of refusing to sell your lands.

That therefore the sale of your lands in the future, will depend entirely upon yourselves.

But that when you may find it for your interest to sell any parts of your lands, the United States must be present by their Agent, and will be your security that you shall not be defrauded in the bargain you may make.

[It will however be important, that before you make any further sales of your land that you should determine among yourselves, who are the persons among you

¹ Source: The Writings of George Washington from the original manuscript sources, 1745-1799, prepared under the direction of the United States George Washington Bicentennial Commission and published by authority of Congress. John C. Fitzpatrick, editor. Vol. 31, Jan. 22, 1790—Mar. 9, 1792. U.S. Government Printing Office, Washington; 1939, pp. 179-184.



that shall give sure conveyances thereof as shall be binding upon your Nation and forever preclude all disputes related to the validity of the sale.]

That besides the [before mentioned] security for your land, you will perceive by the law of Congress, for regulating trade and intercourse with the Indian tribes, the fatherly care the United States intend to take of the Indians. For the particular meaning of this law, I refer you to the explanations given thereof by Colonel Pickering at Tioga, which with the law, are herewith delivered to you.

You have said in your Speech "That the game is going away from among you, and that you thought it the design of the great Spirit, that you should till the ground, but before you speak upon this subject, you want to know whether the United States meant to leave you any land to till?"

You now know that all the lands secured to you by the Treaty of Fort Stanwix, excepting such parts as you may since have fairly sold are yours, and that only your own acts can convey them away; speak therefore your wishes on the subject of tilling the ground. The United States will be happy to afford you every assistance in the only business which will add to your numbers and happiness.

The murders that have been committed upon some of your people, by the bad white men I sincerely lament and reprobate, and I earnestly hope that the real murders will be secured, and punished as they deserve. This business has been sufficiently explained to you here, by the Governor of Pennsylvania, and by Colonel Pickering on behalf of the United States, at Tioga.

The Senekas may be assured, that the rewards offered for apprehending the murderers, will be continued until they are secured for trial, and that when they shall be apprehended, that they will be tried and punished as if they had killed white men.

Having answered the most material parts of your Speech, I shall inform you, that some bad Indians, and the outcast of several tribes who reside at the Miamcee Village, have long continued their murders and depredations upon the frontiers, lying along the Ohio. That they have not only refused to listen to my voice inviting them to peace, but that upon receiving it, they renewed their incursions and murders with greater violence than ever. I have therefore been obliged to strike those bad people, in order to make them sensible of their madness. I sincerely hope they will hearken to reason, and not require to be further chastised. The United States desire to be the friends of the Indians, upon terms of justice and humanity. But they will not suffer the depredations of the bad Indians to go unpunished.

My desire is that you would caution all the Senekas and six Nations, to prevent their rash young men from joining the Miamcee Indians. For the United States cannot distinguish the tribes to which bad Indians belong, and every tribe must take care of their own people.

The merits of the Cornplanter, and his friendship for the United States are well known to me, and shall not be forgotten. And as a mark of the esteem of the United States, I have directed the Secretary of war to make him a present of Two hundred and Fifty Dollars, either in money or goods, as the Cornplanter shall like best. And he may depend upon the future care and kindness of the United States. And I have also directed the Secretary of War to make suitable presents to the other Chiefs present in Philadelphia. And also that some further tokens of friendship to be forwarded to the other Chiefs, now in their Nation.

Remember my words Senekas, continue to be strong in your friendship for the United States, as the only rational ground of your future happiness, and you may rely upon their kindness and protection.

An Agent shall soon be appointed to reside in some places convenient to the Senekas and six Nations. He will represent the United States. Apply to him on all occasions.

If any man brings you evil reports of the intentions of the United States, mark that man as your enemy, for he will mean to deceive you and lead you into trouble. The United States will be true and faithful to their engagements.

/s/ GEO. WASHINGTON.

Senator CHURCH. Are there any questions for Mr. Widner?

Senator SIMPSON. Mr. Chairman.

Senator CHURCH. Senator Simpson.

Senator SIMPSON. This just occurred to me. Are there any values accruing to the Seneca Nation by virtue of the recreation areas?

Mr. WIDNER. A small amount, Senator, but not really sufficient. As you can see, the lower end of the reservoir is far down into Pennsylvania and so most of the water-based recreational benefits are in the lower end of the reservoir in Pennsylvania and just a small amount in New York. By the time you get up to the Seneca Reservation the fluctuation in the reservoir, the shallowness of the reservoir, is such that they will not get a significant amount of benefit.

There are three or four access areas which will be within their region. This is why I think that we have to seriously regard the study made by the Brill Co. of a kind of Indian Williamsburg. This region, Senator, is just south of Buffalo. It is just due east of Cleveland and almost due north of Pittsburgh. There are several major interstate highways being built north and south of the region. The area will suddenly be extremely accessible to this huge metropolitan complex and will be the prime recreational area outside of Lake Erie for these cities.

In fact, there is a plan to attempt to establish some form of a national recreational area on part of that reservoir. The Williamsburg concept has enormous potential. We feel that people are going to travel a substantial distance in the Eastern United States to visit an area which reconstructs the life which once existed in this region and we have conferred with the U.S. Travel Service and they tell us a good many Europeans who are coming over to the United States are not interested in seeing our cities, or Fifth Avenue, or the things they can find in London or Dresden, or wherever they happen to live, but they are interested in seeing an honest reconstruction of Indian life. This would be one of the closest such areas to the seaboard, one of the first areas they would contact as they came into the interior of our country.

We think it is economically sound and is a feasible proposal. It would tie in very well with the broad economic development program we have outlined for this whole region and therefore we ardently support it.

Senator CHURCH. Any further questions?

Senator GRUENING. As in Williamsburg, where the people dress in the costumes of 200 years ago, are the Indians likewise going to be clad as they were or were not?

Mr. WIDNER. This is up to Mr. Heron to answer. I would hate to think so in a cheap sort of way. We are thinking here of a genuine historical restoration without any of the tinhorn promotion atmosphere about it. We would bring in the best historians we could find. I would hope to make this a very genuine attempt just as Williamsburg was. As for the dress, I would hate to think of us being served in brechcloth but I am sure that Chief Heron can explain to us just what they have in mind.

Senator GRUENING. Thank you.

Senator DOMINICK. Mr. Chairman.

Senator CHURCH. Yes, Senator Dominick?

Senator DOMINICK. I wonder if I could just try and get some facts straight in my mind. It is my understanding that the reservation area is the pink area. Is this correct?

Mr. WIDNER. Yes, sir; that is right.

Senator DOMINICK. So that the recreation area which is proposed near the damsite has nothing to do with the Indian reservation. Is that correct?

Mr. WIDNER. Very little, sir.

Senator DOMINICK. It is also my understanding, if I read this bill correctly, that the direct damages in terms of property and compensation are being taken care of in terms of the first three sections of the bill. Is that right?

Mr. WIDNER. Yes.

Senator DOMINICK. And section 4, which is the major portion of the payment that we are taking care of, is in fact a payment to ease our moral pangs. Is that correct?

Mr. WIDNER. Only partially, Senator. I think we can go beyond that. Maybe I could put it this way—

Senator DOMINICK. Well, it is in fact a program for rehabilitation of the area, is it not?

Mr. WIDNER. Right.

Senator DOMINICK. And it is being kind of dragooned into this bill by the process of being a type of moral escape for our wrong in building the dam to begin with and violating the Seneca's rights.

Mr. WIDNER. I would say, Senator, that even if this reservoir were never constructed and we were seriously attempting to rehabilitate the economy of this region, which is very severely depressed, someday in the future we would have come down to a proposal which would have helped the economy, not only of the region, but of the Senecas as well. I think that this is a natural complement to the reservoir which is, after all, part of a rehabilitation program for the regional economy.

One of its primary purposes is to attract fairly large volumes of traffic into this region which up until now has been bypassed in terms of its recreational potential, and once that traffic comes in the Williamsburg idea can succeed.

Senator DOMINICK. If I may say so, Mr. Chairman, this is exactly the point I was trying to make. It seems to me that we are using this particular type of section in order to provide a general recreation area which has really very little to do with the Senecas other than that this would give some kind of handle upon which to float that type of issue. I am not sure that I have anything against it at all and I certainly don't have anything against the Senecas, but it does seem to me that maybe we are confusing two wholly different types of procedures in the one bill.

Senator CHURCH. If I may interject at this point, I would just like to say for purposes of clarification the Williamsburg concept that you have referred to is not contained in any of the allowances provided in the House-passed bill.

Is that not correct? To what extent does the House-passed bill undertake to effectuate this Williamsburg concept that you mentioned? Would you care to detail that?

Mr. WIDNER. I would like to refer to the Department of Interior report which gives such an analysis.

Senator CHURCH. How it relates to this particular concept, as apart from general economic and recreational development.

Mr. WIDNER. Right.

Senator CHURCH. I think we should have a clear idea of exactly how it is proposed that this money is to be used.

Mr. WIDNER. Right. I think, Senator, it is worth saying here that we are eliminating the bottom lands and the former sources of economic livelihood which the Senecas had and we are trying to find a substitute. Certainly there is a moral element here, but it is also a very real economic dimension.

Senator CHURCH. Of course Williamsburg, as you know, was not financed by public money.

Mr. WIDNER. Yes, sir. Perhaps the term is unfortunate.

Senator CHURCH. Has any undertaking been made to interest the Rockefellers in this kind of historic reconstruction?

Mr. WIDNER. I will have to ask Senator Javits.

Senator CHURCH. I didn't mean to interrupt your questioning, Senator Dominick, but I do think we should make sure that the record contains this material.

Mr. WIDNER. I will get that statement.

Senator CHURCH. I suspect that other witnesses will present it during the course of the hearings.

Senator DOMINICK. Mr. Chairman, if I may, on that point, section 4 outlines specifically what the money, \$16,931,000, really almost \$17 million, is to be used for, and it obviously seems to me to be a program of rehabilitation of this entire area.

I have nothing against a program of rehabilitation of this area if this is one of the primary things that we need to do in a depleted treasury State, but I do have some question as to whether we ought to put it in using the Seneca Nation as an excuse.

This seems to me to be the primary question. Maybe we should, but I haven't heard anybody address himself to that particular issue yet.

Senator CHURCH. Any further questions, Senator?

Senator GRUENING. In connection with your statement that the dam was destroying some of the economic supports of the Nation, would you outline what they are?

Mr. WIDNER. Yes, sir; farming on some of the land that will be flooded. They have also had free access to the timber growing in the area for fuel, sale, or whatever use they see fit to make of it. That is gone. The bill does reserve some rights to them in terms of the resources that exist in the area, such as oil and gas, sand and gravel.

This is the sort of thing that they have been doing in this region. A lot of them of necessity have had to supplement their incomes from work elsewhere. It is not a problem that is uncommon to rural America, as you know. It is difficult to make a living on the small farms we have in the eastern United States nowadays, but this is the kind of thing that would happen.

Senator GRUENING. As you understand it, there will be a program of substitution of other means of livelihood for those that they have lost.

Mr. WIDNER. Yes, sir. The whole function of this region economically has shifted drastically in the past 25 years, Senator. It used to be a resource-based economy, primarily oil, gas, coal, and this sort of thing to the south, but nowadays these are increasingly less viable.

The new potential in this region is in the field of recreational resource development.

Senator GRUENING. As you understand it, the livelihood has already shifted among the Seneca Nation before this dam has become a fact.

Mr. WIDNER. Not so much the Senecas as the people around them.

Senator GRUENING. What about the Senecas?

Mr. WIDNER. I think this bill really is a way of getting the Senecas to share in the new economic function of this region. They have still been subsisting to a very large extent on agriculture, timber raising, and this sort of thing which is realizing lower and lower employment and income return, as you know.

Senator GRUENING. Is it conceivable that as a result of this program, if it is well carried out, they may actually be better off economically than they have been?

Mr. WIDNER. I would hope so. They have suffered at our hands harshly and perhaps there is a moral question involved here that colors our judgment, but it seems to me that when you build a public project of this nature, if it doesn't improve things then it is not much of a project.

It is sort of to improve their conditions. If it doesn't, then it was badly designed and badly executed.

Senator GRUENING. Thank you.

Senator CHURCH. Just to clarify the exchange that we had a moment ago, the report of the Department of the Interior on page 5 makes reference to the Brill report and its proposal for a Williamsburg-type development program on the reservation on the Hotchkiss Plateau and the amount estimated in that report for such a project was about \$30 million.

Senator DOMINICK. What is the date of that report, Mr. Chairman?

Senator CHURCH. That report is dated February 24, 1964. I believe you have a copy of it, Senator. You are talking about the Brill report, or the Department's report?

Senator DOMINICK. What you were just talking about.

Senator CHURCH. Yes; it was to this proposal that I had reference.

Now, the House bill contains a scaled down program which would come to \$7,971,075, which represents the extent to which the House has approved a project of this character, but it is a considerably lower figure and, I take it, less extensive development than the so-called Williamsburg type of development originally contemplated in the Brill report. Is that correct?

Mr. WIDNER. Yes; and I would hope we can get additional assistance from other sources to carry the project even further. I might say, with respect to the two Department reports that you have and H.R. 1794, in Senator Clark's view both of the administration reports and H.R. 1794 are very useful guides to any work that might be done by this subcommittee. He concurs in many of the recommendations.

Senator CHURCH. Isn't it possible that money from private sources might be secured and possibly——

Mr. WIDNER. Or even State.

Senator CHURCH (continuing). Might be secured for the full implementation of the kind of Williamsburg concept that the Brill report originally contained.

Mr. WIDNER. Yes, sir.

Senator CHURCH. Any further questions? If not, thank you very much.

Senator McGOVERN. Mr. Chairman, I wonder if I may ask unanimous consent that a statement that I prepared in support of the legislation be filed at this point in the record.

Senator CHURCH. Without objection that will be done.
(The statement referred to follows:)

STATEMENT OF HON. GEORGE S. McGOVERN, A U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Mr. Chairman, the Kinzua Dam is a long way from the State of South Dakota. The crisis for the Seneca Nation caused by its construction in my opinion is not. The condemnation of lands within the Allegany Indian Reservation by the Federal Government, notwithstanding the treaty of November 11, 1794, and the shattering impact of that taking upon the structure of Seneca society, give rise to national and not just local concern.

I have joined with my colleagues from New York and Pennsylvania in sponsoring S. 1836 because I believe, as a matter of principle, that the United States has a special responsibility to aid the Indian people displaced and to rebuild the Indian community destroyed where tribal or allotted lands are acquired for a public work. This committee has recognized that principle, and in South Dakota alone has approved substantial resettlement and rehabilitation funds on the Standing Rock Sioux Reservation in connection with Oahe Dam and on the Crow Creek and Lower Brule Sioux Reservations in connection with the Big Bend Dam. I think we can and should do no less for the Seneca Indians in New York.

According to my understanding, H.R. 1794, which is comparable in purpose to S. 1836 and which also is before this committee for consideration, was the subject of 12 days of hearings before the House Subcommittee on Indian Affairs. The measure was rewritten in committee to reflect compromises in language among the interested parties, and the dollar figures involved were adjusted downward to cover only those amounts which testimony showed clearly to be justified. The bill then was reported unanimously by the subcommittee and its parent, the Committee on Interior and Insular Affairs, and thereafter was passed unanimously by the House of Representatives. I am advised that the House bill, as so revised and adopted, is endorsed by the executive departments concerned, and is wholeheartedly supported by the Seneca Nation. In view of these circumstances, and for the sake of speed and simplicity in acting upon the legislation, I would like to suggest that S. 1836 be tabled and that this committee approve H.R. 1794 in its present form.

According to my further understanding, the 127 Seneca families who must relocate because of the Kinzua Dam actually may be forced to vacate their homes on October 1, 1964, if the current Corps of Engineers construction schedule is met. As yet, not a single new house is being built to receive these displaced people, and construction apparently cannot start until the funds provided under the pending bills are made available. In order to avoid unnecessary, but threatened human hardship later in the year, and particularly in view of the developing parliamentary situation on the floor of the Senate, I earnestly urge that this committee report H.R. 1794 promptly and favorably.

Senator CHURCH. Thank you, Mr. Widner, for your testimony this morning.

Mr. WIDNER. Thank you.

Senator CHURCH. I have a statement here from Senator Hugh Scott, of Pennsylvania, which we will include in the record at this point.

(The statement is as follows:)

STATEMENT OF HUGH SCOTT, A U.S. SENATOR FROM PENNSYLVANIA

Mr. Chairman, we are hearing a great deal about treaties these days. Concern is expressed over whether the Soviets might violate the nuclear test ban treaty, or the Panamanians the canal treaty, or the Cubans our Guantanamo Base treaty. But small attention has been paid the fact that one of our very oldest treaties, a treaty with the Seneca Indians which embodies a personal promise of George Washington, they assert has been violated, and they charge that we have failed to meet our obligation to these first Americans.

They were promised use of land which is now to be flooded due to construction of the Allegheny River Dam at Kinzua, Pa. Though this dam will be of benefit to a vast area, and I supported it, our obligation to the Seneca Indians remains very real, and we have not honored it.

These people have not been compensated for the loss of their homes and lands. They are growing desperate, and angry, and they have every right to be so. For this reason I am a cosponsor of S. 1836 which would provide compensation for the Senecas, and I urge prompt consideration and action.

At a time when the Senate is about to take up historic civil rights legislation, it would be a sad paradox indeed if we did not meet this urgent obligation to the Seneca Indians.

Senator CHURCH. Our next witness will be Mr. George D. Heron, the president and chief administrator of the Seneca Nation of Indians. Would you care to have your legal counsel, Arthur Lazarus appear with you?

STATEMENTS OF GEORGE D. HERON, PRESIDENT AND CHIEF ADMINISTRATOR OF THE SENECA NATION OF INDIANS; AND ARTHUR LAZARUS, JR., LEGAL COUNSEL

Mr. HERON. I believe so, yes.

Senator CHURCH. All right. Fine. We will be very pleased to hear from you.

Mr. HERON. Mr. Chairman and members of the committee, I have a rather brief statement. I presume I will have a few questions to answer. It seems as though the gentleman who preceded me to the stand informed this committee that I would answer certain questions.

I am George D. Heron, president and chief administrator of the Seneca Nation of Indians. Along with me in this room are other Seneca officials and members of the tribal council. We are thankful for the opportunity accorded us to appear here at this time and present our statements.

This is not our first visit to the Nation's Capital. Our first experience with congressional committees occurred in 1957 when we appeared before the House Appropriations Committee in opposition to the construction of the Kinzua Dam. Since that time we have attended many other hearings and conferences and have observed the procedures of the Federal courts.

During this period there has been a complete disruption in a way of life which we Senecas had so long enjoyed. The Treaty of Canandaigua guaranteed that we would never be disturbed. I am here to tell the members of this committee that a severe mental disturbance has existed on the Allegany Reservation for the past 7 years.

I regret to say that there is bitterness against the U.S. Government among the Seneca people. When I tucked my Navy discharge into my pocket in October of 1945, I was happy and joyous to be returning to

the land which other Senecas and I had fought to protect. Little did I realize that 12 years later we would be engaged in a legal battle to preserve our lands against that same Government we had so proudly served. Little did I dream that 19 years later I would be sitting here before this committee imploring speedy action on legislation that would enable we Senecas to maintain our pride and dignity.

The story of the Kinzua Dam would make an interesting book. Reading through the pages, you would find sorrow, pathos, and fear—all of the ingredients that go into the making of a good book. This book can still have a happy ending but it is up to you gentlemen to write that final happy chapter.

During the course of the past 6 months we have had the pleasure of working closely with your colleagues in the House Indian Affairs Subcommittee. They have done much to drive away some of the bitterness of which I spoke and have restored the confidence of the people in democratic processes.

Mr. Chairman, I trust that you and other distinguished members of this committee will do nothing to shake that confidence. On behalf of myself and the Seneca Nation of Indians, I urge speedy and favorable action on H.R. 1794.

SENATOR CHURCH. Mr. Lazarus, do you have any statement to make?

MR. LAZARUS. Yes, Mr. Chairman. I have a detailed statement here which not only includes narrative material, but includes also a section-by-section analysis of the bills under consideration.

My name is Arthur Lazarus, Jr. I am a member of Strasser, Spiegelberg, Fried, Frank & Kampelman, a New York and Washington law firm which serves as general counsel to the Seneca Nation of Indians. I appear before this subcommittee on behalf of the Seneca Nation to support S. 1836 and H.R. 1794, comparable bills to authorize the acquisition of and the payment for certain interests in land within the Allegheny Indian Reservation, required by the United States for the Allegheny River (Kinzua Dam) project, and to provide for the relocation, social, and economic development of the members of the Seneca Nation.

The story of the Allegheny River (Kinzua Dam) project begins for the Seneca Indians with a unilateral violation by the United States of the treaty of November 11, 1794 (7 Stat. 44). Specifically, article III of the 1794 treaty provides in part:

* * * Now, the United States acknowledge all the land within the aforementioned boundaries, to be the property of the Seneca nation; and the United States will never claim the same, nor disturb the Seneca nation, nor any of the Six Nations, or of their Indian friends residing thereon and united with them, in the free use and enjoyment thereof: but it shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase.

The Seneca Nation did not choose to sell the choicest portions of its Allegheny Reservation to the people of the United States, but notwithstanding the language of the treaty, the Federal Government is taking that property.

The devastating impact of the Kinzua Reservoir upon the Seneca way of life already is a matter of public record. Suffice it to say that easements for the project will occupy over 10,500 acres in the lowland heart of the Allegheny Reservation, leaving to the Indians little more than scattered, uninhabitable and frequently inaccessible mountain-

sides. For a people as passionately devoted to the soil as the Senecas, and as faithful on their part to the letter and spirit of the 1794 treaty, the Federal Government's invasion of their homeland has proved a shattering experience.

The need for legislation to provide for the resettlement and rehabilitation of members of the Seneca Nation is clear and undisputed. Indeed, in a letter to Basil Williams, then president of the Seneca Nation, dated August 9, 1961, our late President John F. Kennedy declared:

Even though construction of Kinzua must proceed, I have directed the departments and agencies of the Federal Government to take every action within their authority to assist the Seneca Nation and its members who must be relocated in adjusting to the new situation. In the event legislation is required to achieve these objectives, I have asked that recommendations be prepared.

President Kennedy's directive in the Seneca case, of course, follows the precedent previously established by Congress in authorizing relocation and rehabilitation programs whenever a significant area of Indian tribal or allotted lands has been condemned by the United States for a public work.

The unanimous vote of the House of Representatives in favor of H.R. 1794 and the sponsorship of S. 1836 by a distinguished group of seven Senators amply demonstrate the noncontroversial and non-partisan character of the proposed legislation. In view of the widespread publicity given the Senecas' plight, the testimony being submitted by other witnesses, and the familiarity of this committee with the general problems to which the bills here under consideration are directed, I shall not attempt in this statement to furnish voluminous background information or to describe in detail why special assistance to the Seneca Nation now is necessary and appropriate.

Instead, I shall attempt in these remarks only to explain the purpose of the proposed legislation and why particular provisions are justified.

In this regard, I wish to point out that S. 1836 is virtually identical to H.R. 1794, as originally introduced in the House of Representatives. Unlike the Senate bill here under consideration, however, H.R. 1794 has been revised to reflect, in addition to desirable technical changes, a number of substantive agreements between the Corps of Engineers and the Seneca Nation as well as other amendments based upon the record of the 1963 hearings.

The Seneca Nation wholeheartedly endorses the House-passed version of this legislation and, in order not to reopen debate on questions which already have been answered, the following discussion will be keyed to the text of H.R. 1794.

Section 1: The Corps of Engineers, apparently at the insistence of the Department of Justice, has requested that the acquisition of easements, interest in land, and other property within the Allegany Indian Reservation be effected through a condemnation court and not by a legislative taking.

Section 1 of H.R. 1794, read in conjunction with section 14, would accomplish this objective. The Seneca Nation has no objection to the legal procedures favored by the corps, and affirmatively prefers that the United States acquire easements over, rather than fee title to, Seneca lands.

Section 2(a) : This section provides that the United States shall pay the Seneca Nation \$666,285 as full compensation for direct damages to the surface of lands within the reservation. The figure so specified represents the total amount agreed upon by the nation and the corps, after lengthy settlement negotiations, as the fair market value of the interests being condemned in 437 separate tracts. A lesser consideration is being paid for easements than would be the case if the Federal Government were taking fee title, and of course, the Seneca Nation under the Constitution is entitled to just compensation for its property whether or not the pending legislation is approved.

Section 2(b) : This section provides that the United States shall pay the Seneca Nation \$100,000 as full compensation for direct damages to its subsurface oil and gas resources. Although the nation retains ownership of such resources under section 6 of H.R. 1794, the Kinzua reservoir in fact will render development of oil and gas on the reservation physically difficult and financially unfeasible under current methods of exploitation. The sum specified represents an amount agreed upon by the Seneca Nation and the Corps of Engineers as a proper payment for this loss.

Because of widely divergent appraisals, the nation and the corps have been unable to agree on the amount due the Senecas for the taking of sand and gravel resources within the Allegany Reservation.

Section 2(b) further provides, therefore, that the issue of just compensation with respect to such damages may be litigated in the condemnation court. In effect, this proposed statutory language merely preserves a right which the Seneca Nation possesses under existing law.

Section 2(c) : This section provides that the United States shall pay individual Seneca Indians \$522,775 as full compensation for direct damages to improvements on the Allegany Reservation.

The figure so specified represents the total amount agreed upon by the nation and the corps, after lengthy settlement negotiations, as to the fair market value of such improvements on 142 separate tracts. Again the Senecas would be entitled to just compensation for this property whether or not the pending legislation is approved.

Section 2(d) : This section provides that the United States shall pay the Seneca Nation \$1,033,275 in full settlement of all its other claims arising out of the Kinzua Dam taking, including indirect damages and loss of access to the bed of the Allegheny River, except its interest in certain improvements claimed by non-Senecas. The figure so specified represents a compromise worked out by the House subcommittee between the sum of \$1,242,250 requested by the Seneca Nation and the sum of \$824,273, which the corps conceded should be paid.

If such a position will speed consideration and approval of H.R. 1794 in its present form, the Seneca Nation is prepared to recede from its initial request and not ask this committee for an upward adjustment of the House-approved amount of compensation for indirect damages.

The report of the Department of the Army on S. 1836, however, seeks to have this figure of \$1,033,275 further reduced to \$824,273. In response to this plea, the nation respectfully submits that \$1,242,-

250 is the correct amount and, if the sum now provided in section 2(d) for indirect damages is to be changed at all, the higher figure should be the one substituted.

The respective estimates of the Seneca Nation and the Corps of Engineers for the items covered under section 2(d) are set forth in detail in the report of the Department of the Interior on S. 1836, and need not be repeated herein.

Briefly stated, the nation and the corps completely agree on two elements of indirect damages—\$691,625 for the loss of natural resources and \$127,050 for removal expenses—which total \$818,675. The nation and the corps disagree, on the other hand, over the value to be assigned 933 acres of river bottom sand and gravel (\$93,300 as against \$5,598) and over whether the costs of preparing the two Seneca resettlement areas for the construction of relocation housing (\$330,275) should be charged to the project as indirect damages.

As is demonstrated in a separate memorandum of law submitted in conjunction with this statement, the Seneca Nation owns the bed of the Allegheny River within the exterior boundaries of the Allegany Reservation and may claim damages for loss of access to this land.

Nonetheless, a substantial question does arise over whether the United States must pay the nation, as a matter of constitutional right, for taking such property in connection with a flood control project. *Lewis Bluepoint Oyster Cultivation Co. v. Briggs*, 229 U.S. 82 (1913), affirming 198 N.Y. 287 (1910). In order to avoid needless debate over the subject, the nation suggested and the House committee agreed that the taking of the riverbed be treated as an item of indirect rather than direct damages.

The stand of just compensation, though, should be the same regardless of the label employed, and in this case Empire Appraisal Associates, the nation's appraisal firm, has valued the riverbed for sand and gravel uses. Under these circumstances fair compensation for the damages caused by loss of access to the riverbed would be \$100 per acre, or a total of \$93,300, rather than the nominal figure of \$6 per acre proposed by the corps.

The resettlement costs claimed by the Seneca Nation as indirect damages consist of actual expenses incurred (or to be incurred) to provide its members with facilities comparable to what they now possess and would retain were it not for the Kinzua Dam taking, to wit: cleared homesites along residential roads on which adequate water is available.

The nation submits that such added expenses for the replacement of existing assets at modern prices, as contrasted with the creation of new assets, constitute indirect damages and are not a part of rehabilitation.

With respect to the question of whether to charge these items as a cost of the Allegheny Reservoir project, the nation subscribes to the views of the House Committee on Interior and Insular Affairs as follows (report, p. 8):

The corps, the committee also notes for the sake of the record, also disagreed strongly (as it had in earlier cases) with the propriety of charging these indirect costs to the project rather than elsewhere. It is the committee's views that these items, even though they might not under other circumstances be recoverable, are clearly the result of building the project and should be

charged accordingly. These costs, moreover, are similar to those which have been allowed by the Congress in earlier cases such as those cited above.

Section 2(e): This section provides that the United States shall receive a credit in making the above-described payments for all funds deposited in the condemnation court as estimated just compensation.

Section 3: This section provides for the distribution of the compensation specified in section 2 of H.R. 1794, and does not call for any additional appropriations. Subsections 3(a) and 3(c) require that certain funds be allocated in accordance with schedules prepared by the Secretary of the Army, after certification by the Seneca Nation and approval by the Secretary of the Interior.

Subsection 3(b) grants a credit to the United States for the amount paid as surface damages in the event the nation recovers a supplemental award for the taking of its sand and gravel resources. Subsection 3(d) limits the amount the Seneca Nation may turn over to its members for reimbursement of relocation expenses. And subsection 3(e), as in the case of similar legislation in the past, declares that the compensation paid under section 2, with stated exceptions, shall not be subject to any prior debt, lien, or claim.

Section 4: This section authorizes the appropriation of \$16,931,000 "for assistance designed to improve the economic, social, and educational conditions of enrolled members of the Seneca Nation."

As pointed out by the House committee (report, p. 8) the bill does not specify dollar amounts for each subsection and, although estimates of the cost for each program were utilized in arriving at the total figure, there was no intent to earmark particular sums for particular purposes. In this way, a degree of necessary flexibility is preserved should one type of activity prove especially desirable, yet somewhat more expensive than anticipated. Rehabilitation funds authorized under section 4 of H.R. 1794 may be spent only in accordance with plans and programs approved by the Seneca Nation and the Secretary of the Interior, and may not be used for per capita payments.

Section 4(a): This section authorizes the expenditure of funds for agricultural, commercial, and recreational development on the three Seneca reservations. In furtherance of this objective, the Bureau of Indian Affairs and the Corps of Engineers employed the Brill Engineering Corp., in association with the firm of Child & Waters, to evaluate the recreation potential of that portion of the Kinzua Reservoir which will lie within the Allegany Reservation.

The Brill report proposed a Williamsburg-type educational and historical exhibit, showing accurately and with dignity the contribution of Iroquois culture to American and European institutions, at an estimated expense of \$29 million. The Seneca Nation has endorsed the Brill recreation development report, and seeks in the first instance a Federal appropriation to cover the entire cost of this project.

The nation recognizes, however, that \$29 million is a substantial sum for this single purpose and suggested, therefore, as a second alternative, that \$8 million in Federal funds be appropriated for recreational development. The House committee approved this lesser figure. The nation intends to use the funds so authorized as a first step in carrying out the Brill recommendations, with the balance of the money to be secured from other sources. Another possibility would be for

the nation to engage in a scaled-down recreation-development program which, according to a table of estimates worked out with Bureau of Indian Affairs officials and reproduced in the Interior Department report on S. 1836, would cost \$7,971,875.

Section 4(b): In a separate report, the Brill Engineering Corp. recommended the expenditure of \$4,438,000 for industrial development on the Seneca reservations in order to furnish income to the nation and employment to its members. The Seneca Nation has endorsed this proposal which, if carried to fruition, would alleviate depressed economic conditions and reduce the extraordinarily high unemployment rate on the reservations. The Brill study is summarized in the report of the Department of the Interior on S. 1836 and that analysis need not be restated herein.

Section 4(c): Everyone familiar with the Allegany Reservation and with construction costs in western New York knows that the \$522,775 which the Corps of Engineers has agreed to pay as just compensation for improvements in the Kinzua Dam take area (see sec. 2(c) of H.R. 1794) will be grossly inadequate to provide the more than 130 Seneca families forced to relocate with adequate replacement housing.

Indeed, of the 138 dwellings being condemned, a total of 76 or about 55 percent have an agreed fair-market value of less than \$3,000 each. Such a sum will not even begin to cover the cost of a new house, particularly since the Seneca owners of these modest buildings undoubtedly would not be considered good credit risks and eligible for mortgage loans, even if such financing were generally available on the Allegany Reservation.

Section 4(c) of H.R. 1794 is designed to enable all Seneca families driven from their homes by the Kinzua Reservoir to acquire decent, minimum-standard houses to replace the ones the Federal Government is taking. The Seneca Council has approved a detailed program for distributing this housing assistance, an outline of which was made part of the record of the hearings before the House subcommittee (pp. 64-67, 382-384), to insure that every family will be treated fairly and to prevent windfall benefits. The most recent statistics available, incidentally, indicate that the \$1,029,000, estimated as the total cost of this program may be slightly too low.

Section 4(d): The sum of \$970,000 for "the construction and maintenance of community buildings and other community facilities," as authorized by this section, was suggested by the Nation's independent architect-engineer, the firm of Sargent, Webster, Crenshaw & Folley in Syracuse, N.Y. The funds requested are necessary to build structures on both the Cattaraugus and Allegany Reservations, including tribal offices, courtrooms, et cetera, as well as desirable sports and social facilities, in accordance with preliminary plans already drawn, plus the required furnishing and equipment. Two separate buildings are essential because of the distance and difficulty of commuting between the two reservations.

Section 4(e): The Seneca Nation studied the educational needs of its members in depth prior to recommending a program "for scholarship loans and grants, educational training, and counseling services," and the \$2.3 million fund sought is based upon conservative estimates worked out with Bureau of Indian Affairs officials. (For details, see

House hearings, pp. 71-75.) The program is structured to be self-liquidating in 20 years on the theory that adequate assistance to one generation will make the next self-sustaining.

Section 4(f): This section authorizes the expenditure of funds for "the acquisition of lands either within or contiguous to the Allegany Reservation." As noted in the Interior Department report on S. 1836:

No amount has been estimated for this purpose as there is no concrete proposal for such lands at the present time, and it is assumed that sufficient moneys will be available, if and when needed, for this purpose.

Section 4(g): The boundary resurvey and title search in the so-called congressional villages authorized under this section were estimated to cost \$194,000 by one of the two principals in the appraisal firm hired by the nation, in the light of my instructions to come in with a rockbottom figure. In his estimate, the nation's appraiser suggested that the expenditure of an additional \$83,000 would be desirable in order to do the entire job properly.

Fortunately, section 4 of H.R. 1794 is completely flexible so that funds may be shifted to an item which has been underestimated in cost from an item, if any, which may have been overestimated.

Section 5: The Secretary of the Army under existing law is required to remove cemeteries from lands acquired by the United States for a public work. Section 5 of H.R. 1794 gives effect to an agreement between the Seneca Nation and the Corps of Engineers covering the relocation and reestablishment of Indian cemeteries within the Allegany Reservation.

Section 6: Since the United States is acquiring easements, and not fee title, within the Allegany Reservation, the Seneca Nation will retain all subsurface resources as a matter of general law. Section 6 declares that the mineral rights so reserved by the Nation are subject to reasonable regulation by the Secretary of the Army regarding exploration and development. This committee has approved similar legislation in the past reserving tribal mineral rights, even where the United States was taking fee title to the Indians' property.

Section 7: This section allows members of the Seneca Nation to remain in the Kinzua Dam take area until required to vacate, but not later than January 1, 1965, unless the Secretary of the Army otherwise permits. The purpose of this language is to prevent families from being forced to move before construction of the project makes such action essential.

Section 8: This section authorizes the Seneca Nation and its members, without charge, to harvest crops, cut timber, remove sand and gravel, and salvage improvements up to 60 days before the date for vacating the Kinzua Dam take area. Similar provisions permitting such action and declaring that the exercise of the rights so granted shall not constitute compensation are found in earlier bills approved by this committee.

Section 9: Under existing law, the Seneca Nation would have the right to use and occupy the Kinzua Dam taking area for all purposes not inconsistent with the easements and rights-of-way acquired by the United States. This section spells out and thus clarifies the nation's reserved rights. Section 9, however, further limits the nation's interest by requiring that public access to the reservoir be provided and

that public use of the water areas be pursuant to rules and regulations of the Secretary of the Army.

Section 10: This section authorizes the Secretary of the Treasury, upon certification by the Secretary of the Interior, to reimburse the Seneca Nation in an amount up to \$250,000 for fees and expenses incurred in relation to the Allegheny Reservoir project. Through 1963, the nation has paid out approximately \$125,000 in engineering, appraisal, and administrative expenses (see House hearings, pp. 53-59), and I estimate that at least another \$25,000 will be spent for such purposes before the end of 1964.

As of this date, the amount of legal fees the nation will be required to pay is uncertain, but such attorney fees will be fixed under the terms of a contract approved by the Secretary of the Interior. Section 10 of H.R. 1794, of course, is comparable to provisions in similar legislation previously approved by this committee.

Sections 11 and 12: These sections preserve the option of individual Seneca Indians to accept or reject the direct damage settlements negotiated by the nation and the Corps of Engineers. In the event a settlement is rejected, the objecting individual shall have the right to litigate the issue of just compensation in the condemnation court. Provision is made for adequate notice, for an appropriate deposit and distribution of funds, and for the representation of minors or persons under legal disability.

Section 13: This section authorizes the Secretary of the Interior to purchase or to condemn lands for the relocation of houses and community facilities, and for recreational, commercial, or industrial development. The purpose of this language, in line with President Kennedy's directive of August 9, 1961, is clearly to vest in the Secretary the power to acquire property necessary for the Seneca rehabilitation programs.

Section 14: This section, among other technical matters, specifies how the easements, interest in land, and other property acquired by the United States within the Allegany Reservation are to be identified, and preserves the right of the Seneca Nation to contest the condemnation by the Federal Government of a four-lane, limited-access high easement through the reservation for use by the State of New York.

Sections 15, 16, and 17: Section 15 provides that, when the Secretary of the Army determines that all or any part of the interests in land acquired by the United States no longer are needed for project purposes, title to such lands thereupon shall vest in the Seneca Nation. Section 16 provides that no moneys paid by the United States to the Senecas under the legislation shall be deemed an offset or counterclaim against any other claims of the Senecas against the Federal Government. Section 17 provides that all money paid to the Seneca Nation and individual Seneca Indians under the legislation shall be exempt from all forms of State and Federal taxation. Similar provisions are found in comparable legislation approved by this committee for other Indian tribes.

As the foregoing discussion shows, the Seneca Nation wholeheartedly supports H.R. 1794 as passed by the House of Representatives. The nation respectfully requests that this committee report the bill quickly and favorably so that the job of adjusting to the Kinzua crisis may move forward.

We have read into the record already a quotation from the letter of our late President, John Kennedy, to Basil Williams, then president of the Seneca Nation, in which President Kennedy declared that he would recommend legislation to assist the Seneca Nation in adjusting to the Kinzua Dam crisis.

For the record, Mr. Chairman, I have with me a copy of President Kennedy's entire letter and I would appreciate the opportunity to have this letter included in the record of the hearings.

Senator CHURCH. Without objection it will be included at this point. (The letter referred to follows:)

THE WHITE HOUSE,
Washington, August 9, 1961.

MR. BASIL WILLIAMS,
President, Seneca Nation of Indians,
Salamanca, N.Y.

DEAR MR. WILLIAMS: I fully appreciate the reasons underlying the opposition of the Seneca Nation of Indians to the construction of Kinzua Dam on the Allegheny River. Involved are very deep sentiments over the loss of a portion of the lands which have been owned by the Seneca Nation for centuries. I therefore directed that this matter be looked into carefully and that a report be submitted to me on the basic issues involved.

I have now had an opportunity to review the subject and have concluded that it is not possible to halt the construction of Kinzua Dam currently underway. Impounding of the funds appropriated by the Congress after long and exhaustive congressional review, and after resolution by our judicial process of the legal right of the Federal Government to acquire the property necessary to the construction of the reservoir, would not be proper. Moreover, I have been assured by the Corps of Engineers that all of the alternative proposals that have been suggested, including the so-called "Morgan Plan No. 6," have been thoroughly and fairly examined and are clearly inferior to the Kinzua project from the viewpoint of cost, amount of land to be flooded, and number of people who would be dislocated. In addition, the need for flood protection downstream is real and immediate—the cessation of construction would, of course, delay the providing of essential protection.

Even though construction of Kinzua must proceed, I have directed the departments and agencies of the Federal Government to take every action within their authority to assist the Seneca Nation and its members who must be relocated in adjusting to the new situation. Included in the items I have directed the executive departments and agencies to consider are (1) the possibility of the Federal Government securing a tract of land suitable for tribal purposes and uses contiguous to the remaining Seneca lands in exchange for the area to be flooded; (2) a careful review of the recreation potential resulting from construction of the reservoir, and the manner in which the Seneca Nation could share in the benefits from developing this potential; (3) a determination of whether any special damages will be sustained because of the substantial proportion of the total Seneca lands to be taken; and (4) special attention and assistance to be given those members of the Seneca Nation required to move from their present homes, by way of counseling, guidance, and other related means. In the event legislation is required to achieve these objectives, I have asked that recommendations be prepared.

I hope you will convey to the members of the Seneca Nation the desire of the Federal Government to assist them in every proper way to make the adjustment as fair and orderly as possible. I pledge you our cooperation.

Sincerely,

JOHN F. KENNEDY.

MR. LAZARUS. The unanimous vote of the House of Representatives in favor of H.R. 1794, and the sponsorship of S. 1836 by a distinguished group of seven Senators amply demonstrate the noncontroversial and nonpartisan character of the proposed legislation. Rather than take up the time of the committee with detailed background information, therefore, I shall address the remainder of my remarks to the parti-

cular language of the bills before the subcommittee and shall attempt to show why particular provisions are justified.

In this regard for the sake of convenience I shall deal with the sections of H.R. 1794, the House-passed bill, which is, as the other witnesses indicated, a later and more refined version of S. 1836, which was introduced in the Senate.

Section 1 of H.R. 1794 merely provides for the acquisition of interests in land within the Allegany Reservation through the condemnation court rather than as a legislative taking. This is a feature of the bill which the Corps of Engineers recommended, apparently at the insistence of the Department of Justice, and the Seneca Nation has no objection to the legal procedures favored by the corps.

The nation prefers, as the bill provides, that the United States acquire easements over, rather than fee title to, Seneca lands.

Section 2 deals in the first three sections with direct damages. These are damages which the United States would be required to pay under the fifth amendment to the Constitution even in the absence of this legislation. The figures inserted in the House bill are figures agreed to by the Seneca Nation and the Corps of Engineers after rather lengthy settlement negotiations, so there is no dispute over the figure in section 2(a) of \$666,285, over the figure in section 2(b) of \$100,000, and over the figure in section 2(c) of \$522,775. The Nation and the corps were unable to agree as the value of the sand and gravel resources within the reservation so section 2(b), began with the agreement of the corps and the nation, provides that just compensation for the taking of sand and gravel shall be determined in the condemnation court.

Section 2(d) provides that the United States shall pay the Seneca Nation \$1,033,275 in full settlement of all its other claims arising out of the Kinzua Dam taking, including direct damages and loss of access to the bed of the Allegheny River, except its interest in certain improvements claimed by non-Senecas. The figure so specified represents a compromise worked out by the House subcommittee between the sum of \$1,242,250 requested by the Seneca Nation and the sum of \$824,273, which the corps conceded should be paid.

The nation, for the purpose of getting H.R. 1794 quickly approved by this committee, will receive from its original request, and is content with the House-passed figure, \$1,033,275. I note, however, that the Department of the Army in its report requests that this figure be reduced to \$824,273. If this subcommittee is to reconsider and change the figure in section 2(d) the nation submits, for the reasons given in detail in my prepared statement, that the proper figure to insert is \$1,242,250.

In other words, the indirect damage that the nation suffered is the larger figure which we are claiming and not the smaller figure about which the corps specifies. I might point out for the record that indirect damages of this nature have been allowed in all previous legislation of this character which this committee in earlier years has considered and approved. There is nothing new in the allowance of indirect damages for Indian tribes in the cause of taking of tribal lands for public works.

Most of the figures are agreed upon and are based upon the same formulas that were employed in other cases where this committee has set precedent. One of the issues in dispute is over ownership of

the bed of the Allegheny River. For the convenience of this committee I would like to submit for the record a memorandum which I have prepared, a separate memorandum, on the subject of ownership of the bed of the Allegheny River within the reservation.

The law is clear and the Corps of Engineers witnesses will concede that the Seneca Nation as a matter of law owns the bed of the Allegheny River within its reservation.

Senator GRUENING (presiding). Without objection, it will be included in the record at this point.

(The memorandum referred to follows:)

MEMORANDUM

By: Arthur Lazarus, Jr.

For: Senate Subcommittee on Indian Affairs.

Subject: Ownership of the bed of the Allegheny River within the Allegany Reservation by the Seneca Nation of Indians.

Question: Does the Seneca Nation of Indians own the bed of the Allegheny River inside the exterior boundaries of the Allegany Reservation.

Conclusion: Yes; subject to the dominant servitude of the United States for navigation purposes.

Discussion: When European settlers first came to the New World, they found the Seneca Nation of Indians in complete and undisputed possession of a large territory in what is now Canada, New York, and Pennsylvania. By a series of treaties and agreements, the settlers whittled down the Seneca country until today only the Allegany, Cattaraugus, and Oil Springs Reservations remain. The Senecas hold these reservations pursuant to the treaty of November 11, 1794 (7 Stat. 44), under which the United States promised never to "disturb the Seneca Nation * * * in the free use and enjoyment thereof * * * until they choose to sell * * *."

The aboriginal use and occupancy of the Seneca Nation constituted a title "as sacred as the fee simple of the whites." *Mitchel v. United States* (9 Pet. U.S. 711, 746 (1835)). The 1794 Treaty of Canandaigua raised this aboriginal right of occupancy to the status of a right under solemn contract with the Federal Government to which the entire faith of the United States is pledged. In interpreting a treaty similar to the treaty of November 11, 1794, the Supreme Court flatly ruled that "the right of perpetual and exclusive occupancy of the land is not less valuable than full title in fee." *United States v. Shoshone Tribe* (304 U.S. 111, 116 (1938)). Where there is a reservation of aboriginal lands and rights in lands, the Indian "holds, strictly speaking, not under the treaty of cession, but under his original title, confirmed by the Government in the act of agreeing to the reservation." *Gaines v. Nicholson* (9 How. U.S. 356, 375 (1850)). As was said in *United States v. Winans* (198 U.S. 371 (1905), at page 381, "the treaty was not a grant of rights to the Indians, but a grant of rights from them—the reservation of those not granted." As a consequence, since the Seneca Nation initially held all rights of ownership in its aboriginal lands, including all sovereign rights, the Senecas reserved such rights of ownership and the United States confirmed them in the treaty of November 11, 1794.

Even apart from the treaty involved, the Seneca Nation under State law clearly is the owner of the bed of the river, and one of the witnesses for the Corps of Engineers so indicated during his testimony before the House subcommittee (hearings, p. 199). Contrary to the rule in most American jurisdictions, the State of New York does not own the bed of streams navigable in fact, and the owner of property abutting the river, whether navigable in fact or not, is treated as owning the bed of that stream to the middle. *People v. System Properties* (2 N.Y. 2d 330, 141 N.E. 2d 429 (1957)); see *Fulton Light Heat & Power Co. v. State* (200 N.Y. 400, 94 N.E. 199 (1911)).

In view of the foregoing principles, the Seneca Nation may claim damages for the taking of lands under the Allegheny River within the Allegany Reservation.

Mr. LAZARUS. Section 3 of the bill provides for the distribution of funds allowed under section 2. Section 3 does not call for any additional appropriations, but is really a distribution section. I think the

language has all been agreed upon and we can pass quickly over that section.

Section 4, and I will devote the remainder of my statement to section 4, authorizes the appropriation of \$16,931,000 "for assistance designed to improve the economic, social, and educational conditions of enrolled members of the Seneca Nation."

If I may interject a remark here in response to Senator Dominick's question, this is a bill for the relief, relocation, and rehabilitation of the Seneca Indians. It necessarily will have benefits in the entire area because the Seneca reservation is the most depressed part of a depressed area.

Raising the standard of living for the Senecas will raise the economic conditions in the whole area. But this is not a bill designed to improve an area and tie it on to the Senecas. This is a bill for the Senecas and each one of the items set forth in section 4 is necessary for the relocation and rehabilitation of Senecas. It has secondary benefits for the entire area, but the purport and intent of the bill is to help Senecas.

As pointed out by the House committee in its report at page 8, the bill does not specify dollar amounts for each subsection and, although estimates of the cost for each program were utilized in arriving at the total figure, there was no intent to earmark particular sums for particular purposes. In this way, a degree of necessary flexibility is preserved should one type of activity prove especially desirable, yet somewhat more expensive than anticipated. Rehabilitation funds authorized under section 4 of H.R. 1794 may be spent only in accordance with plans and programs approved by the Seneca Nation and the Secretary of the Interior, and may not be used for per capita payments.

Section 4(e): This section authorized the expenditure of funds for agricultural, commercial, and recreational development on the three Seneca reservations. The particular project that we have come up with after doing an intensive feasibility study is that proposed by the Brill Engineering Corp. in association with the firm of Child & Waters.

This report recommends an educational and historical exhibit showing accurately, and, Senator Gruening, with dignity, the contribution of Iroquois culture to American and European institutions. The estimated cost is \$29 million. The Seneca Nation has endorsed this report and would like a Federal appropriation to cover the entire project.

We realize though that \$29 million is a substantial sum for this single purpose and therefore the nation itself suggested as a second alternative that \$8 million in Federal funds be appropriated for recreational development. This is the figure approved by the House of Representatives.

Senator CHURCH. May I interrupt to ask, "Will all of this be grant money as provided by the House bill?"

Mr. LAZARUS. The \$8 million would be Federal grant money. What the Seneca Nation intends to do is start with that grant and then go to other courses, two already mentioned here today, the State of New York and the Rockefeller Foundation or other foundations to obtain the rest of the money necessary to complete the type project described in the Brill Engineering report.

Senator CHURCH. If I may, the money will be used for the purposes set out in the Department's report beginning on page 5 and running through page 7. Is that correct?

Mr. LAZARUS. That is correct. What we have done is, the Nation in conjunction with the Bureau of Indian Affairs, we have worked out a scaled down program which costs \$7,971,875. This is a complete program unto itself. If we get no additional funds, that is what we will spend the money for. If we get additional funds we will go into the more ambitious program.

Senator CHURCH. In going over the proposed development plan I notice that we begin with an Indian village and stockade for \$300,000, an American Indian heritage, which includes an Indian place name exhibit, Indian influence on the great events in American history, Indian influence on American food, Indian art and literature, Indian trading post and country store, the construction of which would be \$1,100,000 and the contents for which the Government is also to provide \$1,500,000.

Mr. LAZARUS. That is correct. These are all authentic and original.

Senator CHURCH. An information center, a reception and administrative office building, \$500,000; an amphitheater containing 1,000 seats, \$135,000; a motel and pool of 75 units, \$600,000; a cafeteria with 150-seat capacity for \$200,000; a snack bar for \$12,000; a retail shop, arts and crafts for \$100,000; an automobile service station for \$40,000, bringing the subtotal to \$4,487,000.

Then service facilities: Roads, exhibit area, \$100,000; water treatment, storage, and distribution, \$100,000; sewage collection and treatment, \$106,000; a dam, including pump works, culverts, and gutters, for \$65,000; electric distribution, \$85,000; parking for 2,000 cars, \$170,000; landscaping paths, gardens, et cetera, \$200,000; fire-house and truck, \$75,000; maintenance garage and equipment, \$150,000; bring a subtotal of \$1,201,000, which, added to the previously mentioned cost of exhibit facilities, comes to a total of \$5,688,000.

Then there are architects' and engineers' fees of \$568,800 and contingencies of \$853,200, coming to a grand total of \$7,110,000.

Then, in addition to that, there is to be a State line run park, a marina, including permanent docks, 100 floating Fiberglas berths, gasoline service facilities, for \$222,000; boat-launching facilities for \$13,500; a motel and pool—this I take it is an additional motel and pool to the one that I previously mentioned—\$210,000; a restaurant, \$36,000; another automobile service station for \$25,000; additional parking for 400 cars, \$53,000; landscaping, \$50,000; sewage disposal plant, \$40,000, and a water treatment plant \$40,000.

That is a subtotal of \$689,500, plus architectural and engineering fees of \$68,950, and contingencies of 15 percent for \$103,425. That is a subtotal of \$861,875.

When you add all this together it comes to \$7,971,875. Wouldn't you say that represents a pretty good start?

Mr. LAZARUS. Yes; it does.

Senator CHURCH. Will all these facilities be turned over to and be owned by the tribe? Federal money will construct them all. Then what happens to their maintenance and operation afterward?

Mr. LAZARUS. I can only give some of my own personal feelings about this, Senator, because all of the programs must be in accordance with plans approved by the Secretary of the Interior. I visualize this as having separate corporations, having the nation charter separate corporations, and perhaps two, one for the exhibits and one for the profitmaking enterprises, to operate the recreation development program, and I see it as a progressive thing with the members of the nation always being prime movers in the corporations and gradually taking them over completely.

I do not anticipate that the Seneca Nation will be able to throw up out of its own membership immediately persons who will have all of the necessary experience and skills to run a program of this type.

Senator CHURCH. What I am concerned with is this; and I hope that some of the Department witnesses can spell this out more clearly. Here a very elaborate and expensive development undertaking is contemplated at Federal expense. I want to be certain that once this is done we are not then involved in a continuing governmental operation and responsible for the future conduct of this facility.

I think we have to be clear on this so we know where we are going from here.

Mr. LAZARUS. If I were to lay down two principals on this it would be, one, that the Government money will be wisely spent, so that there will not be waste in this operation and so that the investment will not be lost, and the second principal would be that the faster the Government can get out of management in this enterprise, the better off we all will be, and the House committee report points exactly in that direction.

I can't put my finger right on it, but there is a statement in the House committee report that these programs are not intended to establish an ongoing, permanent Federal bureaucracy on the Allegany Indian Reservation.

Senator CHURCH. We often start that way, but we don't end up that way, and this has been so often the history of the Department in these matters that if we take a somewhat skeptical view it is because it has been demonstrated again and again that this is the experience.

Mr. LAZARUS. I think George Heron can speak better than I to the wishes of the Seneca Nation in that, but I think he will echo much of what I have said.

Senator CHURCH. Would you care to speak to this point?

Mr. HERON. I think Mr. Lazarus covered it pretty well. We would establish separate legal entities who would govern this development. It may not be made up entirely of Senecas. We may ask people interested in recreational development and conservation to serve on these commissions or whatever they will be.

There may be one from the Department of the Interior and perhaps Laurance Rockefeller, with his wealth of experience, may be asked to serve on one of these commissions.

It wouldn't necessarily be made up entirely of Senecas. I would prefer that half of the membership be Senecas. However, there would be, aside from our own political structures, future councils who don't get their fingers in it.

Senator CHURCH. Senator Dominick?

Senator DOMINICK. Mr. Chairman, I just wanted to bring up one point here that confuses me. It seems apparent to me from the list of items that the chairman just read it is going to take some time to construct these things if the Senate should pass this bill.

Is there any particular reason why we should authorize the immediate appropriation of this amount of money and put it in interest for the benefit of the Seneca Nation rather than appropriating money as construction goes on from time to time?

Mr. LAZARUS. Senator, I believe there is built into these figures the allowance for the fact that the money will be earning interest. In other words, some of the research and development cost that will be necessary are not in those construction figures. I am talking now about historically, sir, but which will be paid out of the interest which is being earned.

I understand that that is one aspect of what you are talking about. I do wish to agree with you that the construction of this particular aspect of the Seneca rehabilitation program is not what makes the emergency and the need to pass the legislation. The emergency is because people live in that area shown in blue on the map as under water. They have to get out and it has been the pattern all along that everything is wrapped up in one package when rehabilitation legislation comes before the Congress.

The time of the membership has so many demands upon it that it is desirable from everybody's point of view that it all go through at one time, but I will agree with you that construction on the recreation facility will not start in June, though we do need the houses then.

I would like to make one other point for the record because, as the chairman read the figures, it was quite obvious that this is not the world's most modest recreation development program and there is a positive reason for that.

The Seneca Reservation is competing with other areas for the recreation dollar. You see on the map over there Allegany State Park. Other witnesses have testified that the best water areas are in the State of Pennsylvania and that the Senecas are left with mud-flats and a very highly fluctuating level of water which starts being drawn down in some of the best summer months.

In order for recreation development to work for the Senecas it has to be a high-quality type of operation. Otherwise you will not get the people.

Senator DOMINICK. Mr. Chairman, I don't mean to interrupt the witness, and this is real interesting information, but it isn't on the point that I was trying to make.

My point is that the Treasury of the United States is bankrupt. The Senecas are in trouble. The rest of the taxpayers are in trouble, too, and the necessity for appropriating \$16 million right now I can't see in this bill. It is my understanding that the need for the urgency of getting money in the hands of the Senecas is to be able to relocate them and pay them for the damage the dam is going to do, but the first three sections of the bill would do that, as I understand it, and it is also my understanding that the Corps of Engineers has already deposited some money in the court in order to take care of the direct property damage.

Is this not true?

Mr. LAZARUS. I understand that the last of the cases was filed last week. I think there were some 15 or so cases filed just last week and that is the last of the takings, so that all of the estimated just compensation of the corps, which is less than the dollars in the bill, is now on deposit in court.

It is not readily available to be taken out, but it is on deposit in court.

Turning to the rest, your question of appropriations, as I understand it this is an authorization bill and the authorization is necessary as one package. Otherwise you can't get your programs going. The appropriations will come separately from the Appropriations Committee and it may be then that the appropriations for this project can go over a period of 1, 2, or 3 or more years as construction goes forward.

The authorization in this bill is necessary at once.

Senator CHURCH. I think we should be clear on the manner of accrual of interest. It normally is not the case that once a bill authorizing a given project and authorizing the appropriations of a stipulated sum is enacted that interest accrues from that point forward on the principal amount authorized. Frequently the amounts of the appropriations may be extended over a period of years and it may in fact develop that the actual amount spent is different from the amount authorized.

Mr. LAZARUS. That is correct, Mr. Chairman. This bill, unfortunately, doesn't get us a dollar that we don't already have. It merely is the authorization for the Appropriation Committees to approve the expenditure of funds and there is no interest until the appropriation is made, and, if I recall, the language of this bill is identical in that area to the language of all the previous bills passed by the committee.

Senator DOMINICK. Mr. Chairman.

Senator CHURCH. Yes; I think we ought to clarify this point.

Senator DOMINICK. This may be a reasonable interpretation, but it isn't the way I read the bill. It looks to me right now as though the Senecas would have a credit of 4 percent on this total amount applied each year regardless of whether this money was appropriated, so it seems to me that if we are going to have this as part of our problem or part of the program that will be enacted we ought to take some steps to clear that point up.

Senator CHURCH. Would you cite that provision?

Senator DOMINICK. It is section 4 of the bill.

Senator CHURCH. H.R. 1794?

Senator DOMINICK. Section 4 of H.R. 1794, and it reads:

There is authorized to be appropriated the additional sum of \$16,931,000, which shall be deposited in the Treasury of the United States to the credit of the Seneca Nation and which shall draw interest on the principal at the rate of four per centum per annum until expended * * *

Then it goes on beyond that.

Senator CHURCH. I hope, Mr. Commissioner, that your legal representatives here can clarify this because I wouldn't think that the authorization results in a deposit.

Senator DOMINICK. I don't want it to, anyhow.

Senator CHURCH. No; I would think that a deposit could occur only after the authorization has been implemented by specific appropriations.

Mr. LAZARUS. I think that is correct.

Senator CHURCH. But I think the record should be clear on this point because Senator Dominick has raised an important question and we have to be certain that we are not establishing a precedent here that would engulf us from here on out in many other cases.

Mr. LAZARUS. I think this language calls for the interest to run only from the appropriation, not from the authorization.

Senator CHURCH. Very well. We will have further questioning of the departmental witnesses on that point.

Mr. LAZARUS. I was just concluding my remarks with respect to recreational development, which, to emphasize, in order to work on, given the area the Senecas are in, it must be a high quality recreation development program and you will note in the figures that the chairman read that there are some aspects of the program which are not moneymakers and therefore it is necessary in order to make this economically feasible that there will be included also some facilities which will make money.

Just as in Williamsburg, it is the motels and the restaurants which pay for the restoration.

Senator DOMINICK. Mr. Chairman.

Senator CHURCH. Senator Dominick.

Senator DOMINICK. I wonder if I could just try and pinpoint one more fact here. The witnesses, and the letters which I have received, keep on referring to the fact that there is an urgent necessity for passing this bill. The lands are going to be flooded and the Indians will be displaced. At least 472 of them out of 1,100 on the reservation will be displaced. The urgent necessity, therefore, as I understand it, applies only to relocating these families which will be so displaced and to paying them for the direct damage created by the appropriation of their property by flood water. That portion of it is in fact already provided for, is it not, by money on file in the court suits?

Mr. LAZARUS. No, Senator, that is not correct.

Senator DOMINICK. In what way is it not correct?

Mr. LAZARUS. In terms of having enough money to move Senecas forced to relocate from the homes they now occupy to new homes we need the money provided under section 4(c) of this bill.

Senator DOMINICK. How much is that?

Mr. LAZARUS. It was estimated to be \$1,029,000. That figure, more recent statistics show us, will be slightly low, but it is necessary for the reasons stated in my written statement to have our housing assistance program also authorized and the funds appropriated in order to get houses for the 130 Seneca families forced to relocate to move to, because if you look at the figure, in section 2(c) it is \$522,757 which includes not only homes, but also the barns and some agricultural facilities.

I just checked yesterday the sums that we have agreed on with the Corps of Engineers as just compensation for houses and of the 138 dwellings being condemned, 76 or 55 percent, have a fair market value of less than \$3,000. Fifteen of them have a fair market value of less than \$1,000. We cannot get houses for these people unless the com-

pensation they receive for their old house is in some way supplemented, and that has to come through the rehabilitation money.

That is why we need this bill and we need the appropriations under it to move our people. That is the need for speed. We have less than one construction season left to get resettlement areas constructed, and they don't even have the roads in them yet, to get the waterlines in, and we are just starting on that, and we need money out of this bill to supplement that, and then we have to get the houses built, and we cannot do it with the money that the corps has made available.

We have to have money out of this legislation.

Senator DOMINICK. How much has the corps made available?

Mr. LAZARUS. I don't have the figures for the last 15 suits that were filed. I think up until last week the total on deposit in court had gotten up over \$700,000, but unfortunately that \$700,000 doesn't all belong to the people who have to move. We can't take Peter's money to pay Paul.

Senator DOMINICK. Let me ask you one more question then.

This is helpful and I appreciate it. If the provisions of the bill through subsection 2, which would include subsection (d), referring to indirect damages, were passed at this time would this take care of any urgent need that you have?

Mr. LAZARUS. Without breaking down the figures I can't give you an exact answer to that, but I still think we would fall short. That there is still not enough money in all of section 2 to take care of the necessary expenditures to get people relocated and resettled.

Senator DOMINICK. Thank you.

Senator BURDICK. Mr. Chairman, I have been at another committee. May I ask a question?

Senator CHURCH. Yes, certainly.

Senator BURDICK. How many Indian families are involved in the relocation?

Mr. LAZARUS. In the relocation itself 127 families.

Senator BURDICK. Are any other Indian families involved in any other way?

Mr. HERON. The 127, Senator, are the actual homeowners. We have other families who reside on the reservation who rent homes from other Senecas and the total figure there would be 140 families.

Senator BURDICK. Out of 127 families, how many does that amount to in number of people?

Mr. HERON. The figure here is 472, but we estimate the figure is closer to 650. They didn't take into account the people who rent homes on the reservation.

Senator BURDICK. Who gave the figure of 472?

Mr. HERON. I think that was established by a survey made by the MRBI about 2 years ago.

Senator GRUENING. Would you yield at this point?

Mr. HERON. I wouldn't swear to that figure.

Senator GRUENING. Haven't more children been born in the 2 years?

Mr. HERON. Definitely. Our tribal enrollment increases considerably every year. We now number 4,300, while 20 years ago we numbered 3,400.

Senator BURDICK. That is all.

Senator CHURCH. I was just going to suggest that you continue in your testimony.

Mr. LAZARUS. Section 4(b) is a provision for industrial development of the Seneca Reservation. This also is a figure arrived at through a study by the Brill Engineering Co. and that report is summarized in the Interior Department bill.

The Interior Department I believe has its experts here and I think they are in a better position than either Mr. Heron or I to testify on the details of the industrial development figure.

Section 4(c) we have already discussed.

Senator CHURCH. Let me ask in this connection if an industrial park is to be created based upon a sound plan which looks to the leasing of this park, I take it by private companies—

Mr. LAZARUS. That is correct.

Senator CHURCH (continuing). This obviously would be an investment in the nature of a profitmaking venture for the tribe and which I think would be a fine thing if it is feasible for the tribe, but why shouldn't Federal money extended for the purpose of enabling the tribe to undertake a profitmaking venture be loan money which could then be repaid as it is in every other case where profitmaking ventures are concerned, both for Indians and for other citizens.

Mr. LAZARUS. Without going into the detailed economic feasibility on which, as I say, the Bureau experts would be more competent than I, I believe the primary emphasis of the industrial park is much less the income that the nation would realize from the venture because low rent is one of the things that attracts the industry.

The purpose of it is to provide employment for members of the Seneca Nation where we have, as on most Indian reservations, this tremendously high unemployment rate.

Senator CHURCH. We are talking about what? One hundred and twenty-seven families here?

Mr. LAZARUS. No; we are talking in terms of industrial development—

Senator CHURCH. We are talking in terms of 4,132.

Mr. LAZARUS. That is right.

Senator CHURCH. What is the present unemployment rate among these people?

Mr. LAZARUS. I think it is about 25 percent, isn't it?

Senator CHURCH. How many employables are there to start with?

Mr. HERON. I can't give you that figure right off. It fluctuates. In summertime many of them do seasonal construction work. It might last for only 2 or 3 months.

Senator CHURCH. Even if we were to assume that half, which would be a very high percentage, are employable, and of some 2,000 and some 25 percent of those, which would be around 500, would represent the level of unemployment, it seems to me that the figures here for industrial development don't reasonably correlate with what you say is the basic purpose.

Mr. HERON. Senator Church, we have some 1,000 Senecas that don't reside on any reservation. For some reasons of unemployment they have moved to larger cities—Chicago, Buffalo, New York—to seek employment, and in 75 percent of the cases they don't make out, but remain there and they become a charge to the local welfare de-

partment, whether it be the State or the Government, and this would be designed to bring these people back to the reservations where there is something for them.

Senator CHURCH. The figures I have here, and I would like to put them in the record if they are accurate, and so I would like to check them with you, is that the total enrollment of the tribe is 4,132.

Mr. HERON. I would like to correct that now. As of now it is 4,300. I don't know when the 41 came in.

Senator CHURCH. I think this is the figure that the Bureau has supplied us, 4,132, and your figure is slightly higher, about 4,300?

Mr. HERON. Yes.

Senator CHURCH. The other Bureau figures are that these people are residing in two separate regions, one, the Cattaraugus region, which is not really even involved in what we have been discussing here so far as the dam project is concerned. Isn't that correct?

The LAZARUS. That is correct.

Senator CHURCH. And that 1,873 live in that region, which is separated entirely from the area affected by the dam, that 1,103 live in the Allegany region, which is the area affected by the dam that appears on that map, and that some 1,156 are living off the reservation entirely. Making allowances for the little difference that may exist between the total figure you have suggested of 4,300 and the Bureau's figure of 4,132, that roughly represents the division of the people on the two sections of the reservation and off the reservation. Is that correct?

Mr. HERON. That figure is correct, yes.

Senator DOMINICK. Mr. Chairman, I would like to add to that figure one other which the Bureau of the Budget gives in its report and that is, that there are only eight males employed in occupations that would be affected by the use of Seneca land for this project. That is on page 2 of the report of the Bureau of the Budget.

Senator SIMPSON. That is the report of February 28, 1964?

Senator DOMINICK. Right.

Mr. HERON. I take exception to that report. Many of the Seneca males on the reservation now actually cut what is known as pulpwood or paper wood, and I dare say there are far more than eight engaged in this sort of activity right now. It is their only means of living. If they are talking about farmers it is a different thing. Then I will have to admit there are possibly only eight farmers that farm on a commercial basis.

Senator DOMINICK. Are they going to be cutting from portions of the reservation which will be flooded, Mr. Heron?

Mr. HERON. It is my understanding the Corps of Engineers will clear to the 1,333 level. I am not positive of that, but it seems as though that is what I have been told and this involves clearing all of the bottom land of course and most of the mountain sides will be inaccessible or severed because of the four-lane expressway that is contemplated.

Senator CHURCH. I think inasmuch as Senator Dominick has referred to this paragraph we ought to include the full paragraph in the record.

It reads:

Of the individuals living within the project area, 145 were classified by a June 1962 survey as fully employable adults * * * 107 of these were males and 38 were females. Eighty males and thirty females were employed at the time of the survey. Only eight males and no females were employed in occupations that would be affected by the use of Seneca land for the Allegheny project. Three of these were farmers and five were self-employed, utilizing native products. Since about 50 percent of the reservation area needed for the project will be flooded only once in 5 years, farming will probably continue on that portion of the land that is arable.

That is the whole paragraph based upon the June 1962 survey of the Indian Bureau.

Mr. LAZARUS. I believe many of those statistics and substantial other information in the reports of the Interior Department and in the planning of the Seneca Nation are taken from the MRBI report on the Seneca Reservation. This is rather voluminous to go in the hearing record, but if it is not in the files of the committee it might be desirable to have one available.

Senator CHURCH. We do have one. Thank you, Mr. Lazarus. We will see to it that it is included in the file of the committee with other papers relating to this matter.

Mr. LAZARUS. In response to Senator Dominick's questions I have commented upon section 4(c), which is the program for housing assistance. I have also material in my written statement on section 4(c). I think if I may make one other comparison, it is that in the absence of housing assistance many of the displaced members of the Seneca Nation will be forced to rely upon public housing and I am advised that the per unit cost for public housing, which is a direct Federal grant, is far in excess of the necessary housing assistance that we provide under section 4(c) so that is the type of program which very well could end up in a net savings to the Government.

Section 4(d) covers the construction and maintenance of community buildings and other community facilities. The estimate of \$970,000 was prepared by an independent firm of architects and engineers in Syracuse, N.Y. There are two buildings involved, and this is necessary because of commuting problems between the two Seneca reservations. They are approximately 40 miles apart, but that is too long a haul where you are engaging in youth activities. It is necessary to have the facility on both reservations.

The Seneca tribal courthouse on the Allegheny Reservation will not be taken by the project, but will be rendered virtually useless. I believe the basement of the courthouse is below the flow level, but the building itself is above the maximum flowage easement.

On the Cattaraugus Reservation, unfortunately, the Senecas courthouse burned down 3 years ago.

Senator CHURCH. This amount in section 4(d) would cover the construction of two new buildings including the one that burned down 3 years ago?

Mr. LAZARUS. That is right. One on the Cattaraugus Reservation and one on the Allegheny Reservation.

Section 4(e) covers a program for scholarship loans and grants, educational training, and counseling services. This is a carefully thought out, phased out program which we expect to be self-liquidating at the end of 20 years. This is the type of program which is usually

not necessary for other tribes who come before your committee because the Bureau of Indian Affairs already furnishes them with educational assistance, but the Federal Government is making no contribution to education in the State of New York.

Senator CHURCH. What about the Indian vocational educational program that we have extended and enlarged? Are these Indians unqualified to participate in that program? We have to consider, in the interest of equal treatment of Indians everywhere in the country, the programs that we establish on a somewhat uniform basis for this.

Education, after all, is not related directly to the project under consideration or its impact upon these people. It is a fine thing and we have a vocational educational program set up to give uniform treatment to Indians generally. Don't the Senecas qualify for that program?

Mr. LAZARUS. Subject to correction by Bureau of Indian Affairs officials, I think that, as an administrative matter, there are no Bureau of Indian Affairs educational programs in operation in the State of New York. This is true also for the Public Health Service. There are no Indian health programs of the Federal Government in operation in the State of New York.

Senator CHURCH. The health responsibilities have been largely assumed, as you may know, by the Department of Health, Education, and Welfare. My question was, "Don't the Seneca Indians qualify for the general program?" Maybe you don't know the answer to that question and we will need to put it to the Indian Bureau people, but since we do have a program of general application I think we will need to know.

Mr. Commissioner, you are here. Can you give me the answer to that?

STATEMENT OF PHILLEO NASH, COMMISSIONER OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY GRAHAM E. HOLMES, ASSISTANT COMMISSIONER FOR LEGISLATION

Mr. NASH. I would be glad to testify to that now or at the appropriate time.

Senator CHURCH. You might just answer the question now and if you want to extend your remarks later when you testify feel free to do so.

Mr. NASH. The answer, Mr. Chairman, is that the Senecas are as eligible as anybody else, but the Bureau, having withdrawn from the Allegany Reservation in 1948, has not been providing any of the services to Indians of this area or any other in New York State that it provides elsewhere.

Consequently, there are no Seneca Indians who are taking advantage of, or who have been offered, the vocational training services, or the higher education grants, or the public health services of the two Departments.

Senator CHURCH. In the matter of education, wouldn't it be a great deal simpler to make the general law and grants and educational assistance that we furnish available to these people than to establish

a separate program, the estimated cost of which is to be \$2,300,000 and to extend over a 20-year period? On what basis are we then going to justify this treatment when many other Indian tribes will then come to you and you will then come to us and say, "In view of this separate educational program for the Senecas we feel that our case is equally justifiable or more so, and, therefore, we want comparable treatment."

Mr. NASH. There are two answers to that, Mr. Chairman. One is that the level of higher education grants is considerably lower than what is contemplated in the education aid program for the Senecas under this bill. We average about \$800 for the higher education grants, whereas this would be a 100-percent expense consideration.

Senator CHURCH. What is the justification for discriminating against Indians generally on a lower level and justifying this at a higher level?

Mr. LAZARUS. Because of the exceptional injury which is being done here and the disruption of the community life.

Senator CHURCH. How do educational opportunities for the future relate to injury? There has been a lot of injury to Indians. You can make a case that the whole continent has been taken from the Indian people.

Mr. NASH. Yes, sir.

Senator CHURCH. And in various ways we have been attempting to settle Indian claims through the Indian Claims Commission and through congressional appropriations for many, many years, but what I am interested in here is how we justify to other Indian peoples a specialized educational program that is not related to the actual injuries sustained by the project we have before us?

Mr. NASH. Mr. Chairman, where there have been takings of lands, as, for example, in the Missouri Basin, or where there have been successful claims prosecuted against the United States for injuries done in the past, it is quite customary for the tribes to set aside a portion of the proceeds as an educational fund of their own.

Senator CHURCH. That isn't quite comparable to this, is it, Mr. Commissioner?

Mr. NASH. I think it is, sir.

Senator CHURCH. We have set out here the funds that are allocated to the various injuries sustained and if the Senecas were desirous of setting aside a portion of those funds for educational purposes I think that would be comparable, but if my logic is not wrong, it is not quite comparable to this situation where we make full compensation for the injuries and then provide an additional amount for an educational program that gives a benefit over and beyond the benefit that we make generally available to other Indian people.

I just don't see any fault in this appraisal. If there is a fault in it tell me about it.

Mr. NASH. I will attempt to do so. The direction of the President was to develop legislation programs, by whatever means might be necessary, to lead to the social and economic development and rehabilitation of the Seneca Nation as extraordinary compensation for the violation of this treaty and the taking of these lands. Senecas themselves have developed this program and one of the first things that they asked for was an extensive educational program, a comprehensive

one that would be over and above what is provided in the way of education by the State of New York or by tax funds.

Senator CHURCH. Or by the Indian Bureau for other Indians.

Mr. NASH. Or by the Indian Bureau for other people.

Senator CHURCH. That is what I was trying to get at in the first place. It is then in fact special treatment not only with regard to matters that pertain to the injury, but with regard to other matters as well, and the justification for it in your view and in the view of the Department is because the taking here involved a special treaty commitment.

Mr. NASH. Yes, sir.

Senator CHURCH. The courts have passed on the legality of the taking and the meaning of that commitment, have they not?

Mr. NASH. Yes, sir.

Senator CHURCH. So what you are basing this on is a special feeling of extra responsibility by virtue of the commitment which you do not feel with reference to other Indian tribes.

Mr. NASH. That is correct, sir, or at least I do not feel it with respect to other Indian tribes that are not similarly situated. There are many tribes that have had this experience and they place great value in education and quite commonly ask for and set aside these sums for specialized educational purposes.

Senator GRUENING. I would like to ask the Commissioner a question. You would sum up the situation by saying that this special provision is due to the unique situation that there has been a treaty violation and that under those circumstances the United States should be more generous in satisfying the aspirations of the Seneca Indians than they would in any other case where there has been no treaty violation?

Mr. NASH. Yes, sir; although there have been other examples of treaty violation.

Senator CHURCH. I was going to say this is not unique.

Mr. NASH. This is, unfortunately, not unique. It is, however, extraordinary in the degree of public interest that is involved and more commitment, as the Senators know.

Senator CHURCH. Yes, I think that is so.

STATEMENTS OF GEORGE HERON AND ARTHUR LAZARUS—Resumed

Mr. LAZARUS. Mr. Chairman, I wonder if I may comment for a minute on what the courts held because I think the discussion this morning by public interest being a decision of the courts was not an accurate reflection of what the court held and I think the decision which is in the record will show this.

The courts have held very simply this: The United States may break a treaty, period. It may break a treaty with an Indian tribe. It may break a treaty with a foreign government. It has done so in both cases and the courts have held that the sovereign can do this. The sovereign has the power to break the treaty. In the Seneca case the only issue before the court was whether the sovereign exercised that power.

Did Congress break the treaty? And the court said yes. That is all that was before the court.

Senator CHURCH. I think that is important to clarify because it is true that the Government can break a contract, but when this happens there are certain consequences.

Mr. LAZARUS. And that is why we are here.

Senator CHURCH. And the consequences for breaking a contract are the damages that flow from the breach. It is the same as if you and I were involved in a contract and you were to break it. Then the court would determine how and to what extent I had been damaged. Is that not correct?

Mr. LAZARUS. Yes, but—

Senator CHURCH. In this particular case we are attempting to legislate the remedy by virtue of the special obligation that was originally assumed in this treaty and because of our interest in the welfare of Indian peoples.

Mr. LAZARUS. Mr. Chairman, I wonder if it would be appropriate at this point in the record for me to call your attention to a memorandum which was prepared for the Senecas by three anthropologists? None of these people are in the employ of the Seneca Nation, but they are three anthropologists who are vitally interested in the problems of the Seneca Nation, and particularly the impact of Kinzua Dam upon the Seneca society. The three anthropologists prepared a memorandum showing that the taking of the Senecas reservation homeland has a greater impact upon the Seneca people than would be the case if my house were taken or your house were taken. The reservation means more to the Senecas than land can possibly mean to someone not raised in that culture.

Senator CHURCH. I am sure that is so, if I may interject, and I think that is the reason we are here to consider this bill. I would be very happy to include this in the record.

Mr. LAZARUS. I think this memorandum shows from the scientists point of view just what some of the responsibilities of the United States might be in this case.

Senator CHURCH. Without objection the memorandum will be included in the record.

(The memorandum referred to follows:)

MEMORANDUM

As anthropologists with special knowledge of and experience among the Allegany Seneca, we wish to make the following points relevant to the displacement of reservation Indians by Government owned, operated, or subsidized hydroelectric or industrial projects. Our intention is to help clarify the cultural component in the question of Indian rights, and suggest a basis for just compensation in the event of the whole or partial abrogation of these rights.

1. The general historical claim of Indians to the reservation lands on which they now reside, hardly needs to be spelled out here, since it has been acknowledged in case after case and has, indeed, become the basic assumption from which all negotiations flow.

2. The question at issue in the Seneca-Kinzua case does not, then, merely involve the general historical right in perpetuity (Treaty of Canandaigua, 1794) of the Seneca to the reservation lands in New York State, but more specifically, the philosophy which should guide the appropriate agencies of the Federal Government in seeking to arrive at a just settlement, for infringement of that generally acknowledged right.

3. We believe that the fundamental criterion should be cultural. That is, a peculiar continuity of values exist among reservation Indians which cannot be translated directly or simply into the prevailing usages of the larger society or, indeed, be measured by the standards ordinarily employed in contemporary American civilization.

4. To the Indian, the land of the reservation is a material segment of an ancient tradition, and the basis and focus for his identity as an Indian. A cooperative network exists among reservation Indians, composed of economic, social, and ritual links. These cooperative forms, although they have changed over the years, echo the past and are expressed concretely in the syncretic religions, such as the Iroquois Handsome Lake faith and also the local Christian sects, and in a great variety of informal mutual aid mechanisms. No matter how crude living and other facilities may be in fact, the reservation itself is a home and a shelter, and the most tangible symbol of Indianess, both for those now living there and for many tribe members temporarily living elsewhere. In this, Indians differ from other citizens, including other minority groups, for whom the specific land they occupy is of far less cultural and psychological significance.

5. The reservation is, however, not merely a repository of a dwindling heritage. It is, also, a society in which new possibilities of Indian cultural expression struggle to establish themselves.

6. The ethnic identity of the American Indian is by no means exhausted—and if it is to develop further, it can only do so on the basis of the cultural possibilities that exist on the reservation today. As Americans, not only as the first Americans, Indians have the unwritten right that all minority groups, in our minority country, possess; that is, to develop in their own distinctive way, consonant with the broader claims of citizenship.

7. Therefore, the conflict of rights which develops when the Government finds it necessary to displace Indians from reservation lands because of the needs of reclamation projects, dams, and related installations, can only be resolved by attempting to compensate the displaced groups not merely in terms of market assessments, whether tangible or intangible, but culturally; that is, by providing the Indian with an environment in which his cultural distinctiveness and cohesion may be given an adequate opportunity to evolve further.

8. The proximity of reservations to waterways, along with their remote rural locations, is leading to Indian displacement with increasing frequency at a time when hydroelectric and reclamation projects are essential to the national interest. But unlike the situation with other citizens, when Indians are displaced their cases are tried collectively, congruent with their traditions. This saves the Government a great deal of litigation, extra expense, and effort. But it does not necessarily result in an adequate collective compensation for the shattered cultural unit involved—rather, the collective nature of the settlement is confined to a lump-sum payment which is usually rapidly broken down into individual payments, or otherwise inadequately distributed. This, of course, is not necessarily the responsibility of the Government, since Indians themselves, and their representatives, tend to argue the cases in terms of the customary procedures of the larger society.

9. However, we suggest that in order to maintain the possibility of cultural continuity and growth, and in order to minimize the possibility of dissipating resources because of decisions reached and accepted in the usual ways, the Allegany Seneca be granted, without encumbrance, the resources to construct what is, in effect, a new reservation. In this particular case, we do not necessarily mean the allocation of a new tract of land. Rather, we refer to community facilities, new housing, and sufficient national resources to make the reservation an attractive substitute for the flooded lands.

10. We are arguing, in short, for a fair cultural exchange. It does not appear to us seemly for the Government to provide just enough resources to give the Indian a chance for survival on what amounts to the lower rungs of the socio-economic ladder in the larger society, once the reservation has been substantially reduced or eliminated. Special provisions are required to assist the community in preserving and developing its unique identity. Fair cultural exchange means that the values which the Indian has been realizing on the reservation be translated into a modern equivalent.

11. It is hardly necessary for us to point out, further, that our experience on the Allegany Reservation in recent years has convinced us that the psychological and social hardship which the Indians are suffering as a result of anticipated displacement, apart from all cultural and economic considerations, is an intangible damage which deserves the deepest human and practical consideration in reckoning compensation.

12. As anthropologists, we also wish to call respectfully to the attention of Congress that no Indian in recent years has volunteered to sell his reserva-

tion, either as an individual or as a member of a community. That, in itself, helps illuminate a critical distinction in values between Indians and other citizens, culturally inherited Indian values which are a proud part of our American heritage, and for which we plead equitable compensation.

STANLEY DIAMOND,
*Special Consultant, National Institute of Mental Health*¹; *Professor of Anthropology, Maxwell Graduate School of Citizenship and Public Affairs, Syracuse University.*

WILLIAM C. STURTEVANT,
*Ethnologist, Bureau of American Ethnology, Smithsonian Institution.*¹

WILLIAM N. FENTON,
*Assistant Commissioner, New York State Museum and Science Service.*¹

MR. LAZARUS. Section 4(f) of the bill does not have any particular dollar figure assigned to it. It is for the acquisition of additional land outside the reservation.

SENATOR CHURCH. Excuse me just a second. We are trying to figure out what we can do this afternoon.

MR. LAZARUS. If we can possibly conclude these hearings today that would be fine.

SENATOR CHURCH. We are going to make every effort to do so. We have received permission to sit so we will continue through the balance of the day. We are going to have to take out some time for lunch. I am wondering now will it be possible for you, Mr. Lazarus, to complete your testimony between now and 12:30 and then we could take time for lunch and come back, say at 2 o'clock.

Do you think you can do it?

MR. LAZARUS. Yes; I could finish easily by 12:30.

SENATOR CHURCH. If other members of the committee will arrange to come back this afternoon we will make every effort to get on and complete the hearing as soon as we can.

Very well, Mr. Lazarus. Will you continue, please?

MR. LAZARUS. I was stating that section 4(f) talks about the acquisition of land outside the reservation. At the present time there are no plans to acquire such land and there is, therefore, no dollar amount attributed to this subsection. It may be in the recreation development program that it is desirable to acquire a little land outside the reservation, in which event we think there would be such money under the appropriation already for recreation development to take care of it.

SENATOR DOMINICK. Mr. Chairman.

SENATOR CHURCH. Yes.

SENATOR DOMINICK. On that point, does the bill give power of condemnation for this purpose of acquiring lands?

MR. LAZARUS. Yes; it does, Senator, in section 13.

SENATOR DOMINICK. So then what we would be doing is authorizing still another agency to acquire still more land and go through the same thing all over again?

MR. LAZARUS. It is not anticipated that we will have to go through the same thing all over again because this is just a small area that would be adjacent to the reservation, if it were desirable, and only in order to make sure that roads leading to the recreation development area are under the control of either the Seneca Nation or whatever corporate entity is running the recreation development program.

¹ Affiliations listed for purposes of identification only.

It makes no sense either for the investment of the United States or the operation of a recreation development program if your access road is to run maybe for only 500 feet outside the reservation and a person can set up a use inconsistent with what you are attempting to do on the reservation.

Senator SIMPSON. May I interrupt?

Senator DOMINICK. May I make one point while we are on it and then I will be glad to yield.

The provision 4(f) is very general, limited only by the amount of money that is authorized. Section 13 specifically provides that lands can be acquired contiguous to the reservation for recreational or commercial development without incorporating it in any way with the usages that are provided in the other programs, so it would seem to me that we are going far beyond in terms of authority—whether it will be exercised or not is a different thing—anything that is needed to do now for the purpose of remedying the wrong that has been done to the Senecas.

Mr. LAZARUS. The reference in section 13 is with funds provided under section 4(f). The funds provided under section 4(f) can only be spent for specific purposes. Therefore, you could not go, under section 13, beyond the purposes specified in section 4(f).

Senator DOMINICK. Mr. Chairman, just to read it in, section 4(f) reads:

The acquisition of lands either within or contiguous to the Allegany Reservation as authorized under section 13 of this Act.

It doesn't say anything about what it is being acquired for, and then in section 13 it does say recreational or commercial development.

Senator CHURCH. I think it also should be asked, as the bill is now drafted, whether this land acquired outside the boundaries of the present reservation, which could be forcibly acquired through the power of condemnation, would then be tax free.

Mr. LAZARUS. The provisions in section 13 is that it would become part of the reservation.

Senator CHURCH. And the answer, then, to my question would be the land would be taken from the tax rolls.

Mr. LAZARUS. Yes, sir. At this point I hesitate to clutter up the record of the committee, but a question was raised on the House side about the constitutionality of authority in section 13 to condemn land for a recreational purpose. It is done all the time, Senator, and I have a memorandum of law, a copy of one I submitted to the House subcommittee, which indicates the legal authority which says that a condemnation for this purpose is then entirely constitutional.

Senator SIMPSON. Mr. Chairman, just a thought there. There has been some difference in thinking on that phase, too, but I am sorry this matter has come to us so late. There are so many questions involved. Frankly, I have some considerable misgiving about some of the points that have been raised here today, two or three by yourself, Mr. Chairman, others by other Senators on the committee, both as to condemnation and as to educational features, and as to termination of the Government role in this project. I don't see any hopes of that for the foreseeable future. As I say, I have considerable misgiving but there seems to be an urgency to have it taken care of before the civil

rights bill comes up because we anticipate a filibuster and all that, and I just don't feel adequate to pass on it in the light of some of the things that have been raised at our hearing here.

Senator CHURCH. I would say, Senator, that I think many of these points will be further testified to in the course of our hearing. We want to make as thorough a hearing as we can within the time available and then I think we must undertake in executive session to thrash the matter out and do the best we can.

It is true that it has come to us very late and now we are asked to act on it very rapidly. That always makes for not only awkwardness, but hasty judgment and often can make for bad legislation.

However, as to the memorandum that you suggest, I have no objection to including that in the record. I think that it is not a particular problem so far as this committee is concerned, but without objection, the memorandum will be included in the record at this point.

(The memorandum referred to follows:)

MEMORANDUM

By: Arthur Lazarus, Jr.

For: House Subcommittee on Indian Affairs

Subject: Condemnation of private lands outside Allegany Indian Reservation in furtherance of proposed Seneca Historical and recreational center.

Question. Whether constitutional limitations upon exercise of the right of eminent domain prohibit the condemnation of private lands outside the Allegany Indian Reservation in furtherance of a Seneca historical and recreational Center as proposed by the Brill Engineering Corp.

Conclusion. No. When the condemnation is authorized by statute (as provided in sec. 13 of H.R. 1794) and just compensation is to be paid, the Constitution requires only that the property be taken for a public use. Amendment V. The creation of a park, the preservation and development of historic sites and improvement of the lives of American Indians are public uses of land justifying exercise of the power of eminent domain. The purposes for which "lieu lands" are to be acquired, as enumerated in the Brill report, make it clear beyond doubt that there is no constitutional or other legal impediment to the taking of any property which in the judgment of Congress may be necessary to success of the proposed historical and recreational center.

Discussion:

A. STANDARD OF REVIEW

The U.S. Supreme Court, speaking through Mr. Justice Holmes, has held that a declaration of public need by Congress is "entitled to deference until it is shown to involve an impossibility." *Old Dominion Land Co. v. United States* (269 U.S. 55 (1925)). Some subsequent decisions have flirted with limiting even further, if not altogether eliminating, judicial review of legislative determinations to condemn property: See *United States ex rel T.V.A. v. Welch* (327 U.S. 546 (1946)—opinion of Reid, J. concurring; but see opinion of Frankfurter, J. concurring); *United States v. Carmack* (329 U.S. 230 (1946)—capricious and arbitrary standard); *Maiatico v. United States* (302 F. 2d 880 (D.C. circuit., 1962)—courts do not determine or review a legislative determination of public need); *Barnidge v. United States* (101 F. 2d 295 (eighth circuit, 1939)—if Federal Government has constitutional power to embark upon the project for which land is taken, the use is a public one); *United States v. Certain Parcels of Land* (102 Fed. Supp. 691, 696 (W.D. Pa. 1952)—standard applied was whether or not Congress had constitutional authority to accomplish the project).

Perhaps the clearest and most revealing judicial statement of the constitutional requirements in eminent domain cases appears in *Government of Virgin Islands v. 50.05 Acres of Land* (185 Fed. Supp. 495 (D. Virgin Islands, 1960)). Judge Hastie, speaking for the court, held:

"* * * the law of this jurisdiction that the determination of what and how much property is needed for a stated public use is primarily a matter of legislative discretion whether that discretion is exercised through an administrative agency as in that case, or directly by the legislature, as here. Only if it appears

affirmatively that such a legislative determination has been made arbitrarily, without attendant circumstances which might persuade reasonable men so to act, can judicial interdiction be justified."

B. RELEVANT USES FOR WHICH TAKINGS HAVE BEEN UPHELD

(1) *Public parks*.—"The power to acquire by eminent domain property to be devoted to streets * * * recreation centers, parks * * * and other 'public uses' is established beyond question. *Schneider v. District of Columbia* (117 Fed. Supp. 705 (D.D.C., 1953), Prettyman, J.). The appropriation of land for the purpose of creating a park was also upheld with no difficulty in *United States v. Kennedy* (278 F. 2d 121 ninth circuit, 1960); *United States v. Dieckmann*, 101 F. 2d 421 (Seventh Circuit, 1939); and *United States v. Southerly Portion of Bodie Island, N.C.*, 114 Fed. Supp. 427 (E.D.N.C., 1953)).

(2) *Use as an historical or cultural site*.—Sixteen United States Code Annotated, section 461 et seq., grants the Secretary of the Interior the power to acquire lands for the purpose of preserving "for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States. The Secretary's power to condemn lands under this statute for the purpose above described has been sustained, and the courts will not review the Secretary's determination that the land in question has historical value. *Barnidge v. United States*, *supra*; *United States v. Certain Parcels of Land* (99 Fed. Supp. 714 (ed., Pa., 1951); see *Government of Virgin Islands v. 50.05 Acres of Land*, *supra* (where the land was taken by the Island to be developed and maintained as an historic and recreational area, though not under the act cited above)).

(3) *Use for the development and protection of Indians*.—The courts have held, on at least one occasion, that the Federal relationship to Indians is an interest of sufficient magnitude to warrant a taking of property, even where a State held title to the land and itself had devoted the premises to public use. Specifically, the court held in *State of Minnesota v. United States* (125 F. 2d 636 (Eighth Circuit, 1942)):

"It is our conclusion that the guardianship which the United States is required to exercise over the Indians makes the use of lands acquired by it for the purpose of affording them food, occupation, and a place to live, a public use. The problem of providing for the care, protection and welfare of these dependent tribes is a public problem and one which is necessarily national in its scope and character." (640-641.)

C. EXTENT OF THE TAKING

Once it has been judicially determined that the taking was for a public use and that it was authorized by the Congress, the courts will not inquire into the extent, quantity, manner or timing of the appropriation. *United States v. Kansas City, Kans.* (159 F. 2d 125 (Tenth Circuit, 1946); *Simmonds v. United States*, 199 F. 2d 305 (Ninth Circuit, 1952)).

Thus, Congress has the power to take lands outlying the entrance of the proposed park if, in its judgment, the exploitation of such property by the present owners would jeopardize the investment of the United States in the project. See *United States v. Certain Parcels of Land* (149 Fed. Supp. 696 (ND, Ohio, 1957) (holding that the Government can condemn the fee underlying its lease in order to protect its investment in the lease); *United States v. Willis*, 211 F. 2d 1 (Eighth Circuit, 1954) (Corps of Engineers could take a strip of land not flooded by its dam upon its determination that the property was necessary properly to run the project); *Arp v. United States* (244 F. 2d 571 (Tenth Circuit, 1957) (United States is free to adopt the method it chooses to protect its investment)). The Supreme Court has held, when it appeared that a section of road near a TVA project which had been isolated by the dam could be "used to frustrate some of the objectives of TVA legislation" (549), that "the Government is not barred from making a commonsense adjustment" (555), and can take the land in order to protect itself. *United States ex rel. T.V.A. v. Welch* (327 U.S. 545 (1946)).

There is, therefore, no constitutional or other legal barrier to the taking of lieu lands outside the Allegany Indian Reservation in furtherance of the project proposed by the Brill Engineering Co.

Senator CHURCH. Could we try to meet this 12:30 deadline?

Mr. LAZARUS. Yes, sir. If I may make just one more point on the condemnation, there are at present no plans to acquire land outside of the reservation.

Senator CHURCH. Why then should there be this authority?

Mr. LAZARUS. The language is because the experience down at Williamsburg was that when they did not cover in their access to the restoration area they got inconsistent uses. They got honky-tonks which took away from the quality of the recreation area.

Senator CHURCH. Then why shouldn't this authority be limited to acquisitions relating to access for the protection of development within the reservation?

Mr. LAZARUS. That would be fine. That would be fine.

Senator CHURCH. This language, as you see, is very general and could actually lead to substantial acquisitions beyond the reservation.

Mr. LAZARUS. It was not intended as such.

Senator CHURCH. If it is not the intention, we think that perhaps the law ought to reflect the intention and not open the floodgates here.

Mr. LAZARUS. In the President's letter there was some indication of even replacing acre for acre that which was being taken but that has long since been abandoned.

Section 4(g) is a boundary resurvey and title search in the so-called congressional villages. To save the committee's time I would like to submit for the record a copy of a letter which I wrote to Dr. Taylor of the House committee which explains leasing on the Seneca reservations and why this boundary resurvey and title search is necessary.

I also have a copy of a letter from one of the Nation's appraisers which explains the cost item attributed to this subsection.

(The letter referred to follows:)

APRIL 18, 1963.

Re Seneca Nation of Indians.

Dr. J. L. TAYLOR,
*Consultant on Indian Affairs,
Committee on Interior and Insular Affairs,
House of Representatives, Washington, D.C.*

DEAR DR. TAYLOR: I am writing in reply to your letter of March 7, 1963, requesting a status report on long-term leasing within the Seneca reservations, with particular emphasis upon leases within the city of Salamanca.

The early background of the Salamanca leases is summarized in Federal Indian Law (G.P.O., 1958), at pages 977-1978, as follows:

"Prior to 1875, the village of Salamanca on the Allegany Reservation grew up through numerous alleged leases of Indian lands, ostensibly under State laws and authority, but contrary to Federal laws. A careful consideration of the validity of these leases under State authority led State courts to the conclusion that such leases were void as being in violation of Federal restrictions on Indian lands against leasing or alienation."

In order to protect non-Indians found by the courts to be illegally resident within the Seneca reservations, Congress, at the request of the New York Legislature, then passed the act of February 19, 1875, 18 Stat. 330.

The 1875 act governing Seneca leasing provided in material part as follows:

- (1) That all leases of land within the Seneca Reservations to railroad companies were ratified and confirmed (sec. 1);
- (2) That boundaries for the villages of Salamanca, West Salamanca, Vandelia, Carrolton, Great Valley and Red House within the Allegany Reservation were to be surveyed and established (sec. 2);
- (3) That the municipal laws of the State of New York were to be extended over these villages (sec. 8); and

(4) That all leases within the aforementioned six villages were to be valid and binding for a period of five years, with a right in the non-Indian lessees to renew the leases for another twelve years (sec. 3). Two years before the Seneca leases were scheduled to expire, Congress approved the act of September 30, 1890, 26 Stat. 558, authorizing their renewal for another 99 years.

Although the Salamanca leases called for annual rentals of only \$1 to \$5, even for choice city lots, a substantial number of lessees failed to make their payments. In 1940, the United States successfully brought suit to cancel approximately 40 percent of the leases for default in the payment of rent. *United States v. Forness*, 125 F. 2d 928 (C.A. 2, 1942). Thereafter, however, the Government supervised the issuance to the same parties of new leases which provided for no more than a token increase in the rentals. Except as noted below, these leases and all other leases under the 1875 act, as amended, expire on February 19, 1991.

Under the 1875 act (sec. 6), rentals under the Salamanca leases were paid by the individual lessees to the Seneca Nation. By the act of August 14, 1950, 64 Stat. 442, however, Congress authorized the city of Salamanca to pay to the nation the total annual rental under all such long-term leases. The city, in turn, would collect the individual rent payments from the lessees and, in the event of default, the city would foreclose on the leasehold. The purpose of the 1950 act thus was to prevent the Seneca Nation, in the event of default by the individual lessee, from recapturing lands within Salamanca for its own benefit.

Until 1949, the Bureau of Indian Affairs maintained an agent in Salamanca, and the Federal Government controlled the execution and management of the Salamanca long-term leases. By administrative order in 1949, the Bureau summarily closed its office in New York. The bulk of the records pertaining to leases on the Seneca reservations were removed to Washington, and those few papers relating to Salamanca leases turned over to the nation were in chaotic condition. The nation, therefore, has wholly inadequate data for determining what lands within the so-called congressional villages are under lease and what the proper rent should be. Indeed, at least once a year the Seneca Council receives a petition for a new lease from a non-Indian in Salamanca who, as a result of a title search, finds that he is living on property for which he has no present valid lease. The nation has reason to believe that there are many other tracts in Salamanca, both vacant and occupied, which are not covered by a long-term lease, but from which, because of lack of information, it derives neither use or revenue.

By virtue of the Bureau of Indian Affairs form for Salamanca leases, as permitted (but not required) under section 3 of the 1875 act, as amended, such leases apparently are subject to renewal in 1991 for another term of 99 years, with the rental open first to negotiation and then, if no settlement is reached, to binding arbitration. In this regard, section 4(g) of H.R. 1794 provides for the appropriation of Federal funds to conduct a "resurvey of the boundaries of the villages established pursuant to the act of February 19, 1875 (18 Stat. 330), together with a title search to determine the current status and extent of all leases issued by the Seneca Nation therein." This job is essential if the nation is to realize the maximum benefit from its lands in Salamanca and the other congressional villages, and in order for the nation to be prepared for negotiations on the renewal of the 99-year leases, which negotiations, of course, will have to start long before 1991. The nation feels—quite reasonably, I believe, in the light of the foregoing historical background—that the obviously inadequate level of its income from Salamanca leases and the equally inadequate state of its records in relation thereto, are directly due to acts and omissions on the part of the United States, and, accordingly, that the cost of the necessary resurvey and title search should be borne by the Government.

Before concluding, I should point out that the act of August 14, 1950, authorized the Seneca Council to issue leases outside the congressional villages "for such purposes and such periods as may be permitted by the laws of the State of New York" (sec. 5). At the time, New York State prohibited the alienation of Indian lands except with the consent of the legislature. New York Constitution, Article I, Section 13, now title 25, New York Indian law, sec. 7-a. Because of its unhappy experience with long-term leases, the Seneca Nation requested and the New York Legislature in 1961 approved authority to lease outside the congressional villages for a maximum period of only 10 years. Title 25, New York Indian law, section 78.

In addition, the Seneca Nation has the right to execute leases for 25 years, with an option to renew for an additional 25 years, subject to approval of the Secretary of the Interior, under the Federal Indian Long-Term Leasing Act of August 9, 1955, 69 Stat. 539, 25 U.S.C. 415. (A copy of the Bureau of Indian Affairs memorandum to such effect, dated March 14, 1963, is attached hereto.) The Seneca Nation never has used this authority, but may do so in connection with the forthcoming programs for public housing and recreational or industrial development.

Should you have any further questions about leasing within the Seneca reservations, or the plans of the Seneca Nation to meet the crisis caused by construction of the Kinzua Dam, please do not hesitate to call upon me again.

With kind regards,
Sincerely yours,

ARTHUR LAZARUS, Jr.

NYPENN REALTY CORP.,
Jamestown, N.Y., June 7, 1963.

Re your letter of January 10, 1963.

Mr. ARTHUR LAZARUS, Jr.,
Seneca Nation Office,
Salamanca, N.Y.

DEAR MR. LAZARUS: A comprehensive study of the Seneca resurvey problem has been made by the undersigned. Having conferred with you, Seneca Nation officials, surveyors, abstract company officials, tax officials, it would appear our basic problems are:

(1) To establish the validity of existing leases, wherein the Seneca Nation is, in each case, the lessor. Validity in this case being determined upon—

(a) the occupied or leased properties conforming with the boundaries of the lease description;

(b) land rentals being current, paid either by the lessee or the city of Salamanca.

(2) An adequate system of tax billing, receipts, and record controls.

To accomplish part 1 the minimum work necessary would encompass:

(a) abstracting of each lease.

(b) Survey and map of each leased parcel.

(c) A rental search.

(d) Collation of all reports.

To accomplish point 2 we propose an IBM card system consisting of—

(1) A master file.

(2) Two cross-reference files.

(3) Tax bills.

(4) Tax receipts.

(5) Master lists (printed).

(6) Periodic lists (printed) for paid and unpaid accounts.

The machine process would incorporate controls.

Based upon the 3,344 parcels as set out in Mr. Deforest Billy's letter of March 15, 1963, a copy of which is attached; we estimate this work can be accomplished through Nypenn Realty Corp. for an amount not to exceed \$194,000. Please note, location and quantities in each location are of essence. If complete abstracts, including all setouts, encumbrances are required, the cost would increase by \$25 per parcel, or \$83,325.00.

Very truly yours,

SAMUEL F. VALONE.

Senator SIMPSON. Mr. Chairman, I don't want to delay, but I point out that with all the insertions of these things in the record, how are we going to have an opportunity to determine this in the executive session without the record before us. There are so many things that have flooded in upon us here that it poses a pretty difficult thing for me.

Senator CHURCH. I will make every effort to get the record printed and made available to members of the subcommittee as quickly as this can be done. I want to ask one question about this resurvey of boundaries.

This has nothing to do with the project or the taking or the injury resulting therefrom, does it?

Mr. LAZARUS. This is an ancient injury that needs to be remedied.

Senator CHURCH. But it has nothing to do with this particular project.

Mr. LAZARUS. It has nothing to do with the Kinzua taking. This was a statute that was passed in 1875 in which Congress ratified certain illegal leases within the Senecas reservation. That statute was amended in 1890 to run these leases for 99 years, and one of the early difficulties on the Allegany Reservation that most of the usable land within the reservation that isn't being taken for Kinzua is already taken up with these congressional villages, and for the reasons stated in my letter it is necessary to have boundary resurvey and title search done.

The remaining sections of H.R. 1794 pretty well cover items which are ordinarily in legislation of this character and are technical or legal in nature. For example, section 5 ratifies an agreement between the corps and the Nation on the relocation of Indian cemeteries. Section 6 confirms the fact, as would occur under existing law, that the Seneca Nation retains subsurface resources. That is the natural result of giving an easement.

Senator CHURCH. I don't quite understand. If we only are acquiring an easement, an easement doesn't relate to even the title of the surface. It relates to a use, in this case the right to flood. Why, then, is it necessary as a matter of good legal principle to include a special provision reserving mineral rights? No rights have been transferred here except a right of easement to the Government to flood the surface of the area.

Mr. LAZARUS. This is to make sure that the law will be clear.

Senator CHURCH. Aren't you, as a lawyer, sure that the Government just gives an easement? It requires no more than an easement.

Mr. LAZARUS. If I have a statute that declares it to be so I feel much more sure, and I believe the corps is interested in this so that the provision in section 6 will be included, that our development of the subsurface resources is subject to regulations by the Secretary of the Army.

Senator CHURCH. That provision might very well be. I raise a question as a fellow lawyer on the desirability of spelling out in a statute certain reservations with respect to mineral rights and this kind of thing where you may end up 10 years from now finding that you have created an ambiguity relating to what the property rights of the Indians involved are that would not have been created if the matter had been left silent.

All the Government is acquiring here is an easement.

Mr. LAZARUS. One of the reasons that we have this little deviation, Senator, is that in section 2(b) the United States is paying \$100,000 for damages to oil and gas and the Seneca Nation is authorized to sue for damage to sand and gravel. The reason for this is that the nature of the easement the United States is taking is such that it is the equivalent of a fee taking in depriving us of the use of the resource.

Senator CHURCH. I think you are talking in circles around this thing. All that the Government is getting here is an easement. The nature of that easement is such that a special allowance is being made to compensate for whatever added difficulty the reservoir may cause in securing oil if there is oil, and then you have a special provision in the bill which reserves the mineral rights to the Indian tribe. I think you may be creating difficulties here for them that are not justified as a matter of good legal principle. That is the only question I raise. I don't think you are answering it.

Mr. LAZARUS. I don't think I am creating a problem. It certainly was not intended to create a problem.

Senator CHURCH. Is there any survey to indicate that there may be oil under their area?

Mr. LAZARUS. There is a gas well down now.

Senator CHURCH. Is it producing?

Mr. LAZARUS. It is, according to my understanding, capable of producing, but they do not yet have a pipeline to it.

Senator CHURCH. The Corps of Engineers has made a survey and thinks there is a possibility that oil may be beneath this land?

Mr. LAZARUS. The Corps of Engineers has agreed with the nation to pay \$100,000 for damage to the oil and gas resources.

Senator SIMPSON. They must have made a survey, then.

Mr. LAZARUS. Yes.

Senator CHURCH. We will question them.

Mr. LAZARUS. What we have not agreed on was the damage to sand and gravel resources which also will be under water and there is a provision in the bill for litigating that. With this provision for compensation relating to subsurface resources we thought it desirable that the bill include the fact that we are reserving the right to exploit them. I might add that this is true in all of the previous bills approved by this committee where the United States took fee title.

Senator CHURCH. I don't want to get into an argument here. I have no objection to the reservation. I just thought it might create a problem for the Indians rather than help. All we are getting here is an easement. Everybody understands what an easement is.

Mr. LAZARUS. Sections 7, 8, and 9 are relatively self-explanatory and are comparable to provisions that have been in bills previously approved by the committee. Section 10 relates to legal appraisal and engineering expenses. The form of the section is comparable to bills previously approved by the committee. The amount is somewhat larger because the Seneca Nation has incurred greater expenses. Those expenses are set out in the House hearings at pages 53 to 59, and I have the 1963 expenses for the Seneca Nation. I also have for the record of the committee a copy of my attorney contract, since there is reference in section 10 to the attorney contract, and I would be happy to submit these items for the record.

Senator CHURCH. Very well, without objection they will be included in the record at this point.

(The statement referred follows:)

Seneca Nation of Indians expenditures for Kinzua Dam matters—Total amount for the calendar year 1963

| | |
|---|------------|
| Administrative and clerical (salaries): | |
| George D. Heron..... | \$6,217.84 |
| DeForrest Billy..... | 1,900.00 |
| Shirley Crowe..... | 2,926.62 |
| Nora Crouse..... | 608.62 |
| Subtotal..... | 11,653.08 |
| Traveling expenses re Kinzua matters (including room and board): | |
| George D. Heron..... | 1,561.61 |
| DeForrest Billy..... | 417.00 |
| Basil G. Williams..... | 185.00 |
| Maxwell Thompson..... | 85.00 |
| Wayne Printup..... | 232.07 |
| Subtotal..... | 2,480.68 |
| Conferences Corps of Engineers (Seneca Nation Negotiating Committee): | |
| DeForrest Billy..... | 595.00 |
| Basil G. Williams..... | 270.00 |
| Maxwell Thompson..... | 688.44 |
| Delbert Crowe..... | 200.00 |
| Quentin Biscup..... | 75.00 |
| Theodore Stafford..... | 280.00 |
| Russell King..... | 163.00 |
| Wayne Printcup..... | 90.00 |
| Miscellaneous..... | 32.00 |
| Subtotal..... | 2,393.44 |
| Kinzua Planning Newsletter..... | 1,793.76 |
| Special services (mailings, etc.)..... | 198.40 |
| Kinzua Planning Committee conferences..... | 1,451.00 |
| Seneca Nation Council special sessions..... | 2,580.00 |
| Facilities (utilities)..... | 500.00 |
| Total..... | 23,050.36 |

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., December 20, 1960.

STRASSER, SPIEGELBERG, FRIED, FRANK & KAMPELMAN,
Attorneys at Law,
Washington, D.C.

GENTLEMEN: Your letter of December 13 addressed to the Secretary transmitted a copy of a resolution adopted by the Council of the Seneca Nation of Indians on December 10 accepting the conditional approval of December 5 of the attorney contract between your law firm and the Seneca Nation and accepted the conditional approval on behalf of your firm. By messenger on December 14 you delivered to this office a certified copy of the resolution.

One copy of the conditionally approved contract is enclosed for your records. One copy is also enclosed for the records of the Seneca Nation.

Sincerely yours,

EDMUND T. FRITZ, *Acting Solicitor.*

[Enclosure 1]

ATTORNEYS' CONTRACT

(Symbol 14-20-0650—Contract No. 809)

This Agreement, made and entered into the 17th day of October 1959, by and between the Seneca Nation of Indians, hereinafter referred to as the Nation, represented by George D. Heron, President, and Strasser, Spiegelberg, Fried & Frank, hereinafter referred to as the Attorneys.

Witnesseth:

1. The Nation, by and through its President, under authority vested in him by resolution of the governing Council of the Seneca Nation, a copy of which is attached to and made a part of this Agreement, hereby contracts with, retains and employs the Attorneys in the matters hereinafter mentioned, pursuant to the provisions of Section 2103 of the Revised Statutes (Section 81, Title 25, United States Code), as amended.

2. It shall be the duty of the Attorneys to advise, assist and represent the Nation as its general counsel in all legal matters, including, but not limited to, legal advice on Federal and State laws affecting Indians and any proposed changes therein, appropriate activities to preserve the rights and jurisdiction of the Nation, assistance in the leasing and development of property belonging to the Nation, recovery of sums due to the Nation, and other legal matters of interest to the Nation, but not including claims against the United States or the State of New York. In performing these services and the further services provided under Paragraph 4 of this Agreement, the Attorneys shall advise the Nation and represent it before all courts, departments, tribunals, agencies, committees of Congress, and the New York Legislature, and other officers, Federal or State, having any duty to perform in connection with the matters so described.

3. As consideration for the services rendered pursuant to Paragraph 2 of this Agreement, the Attorneys shall receive annually the sum of Five Thousand (\$5,000.00) Dollars, payable in equal quarter-annual installments: *Provided*, however, that the payment of compensation shall be made only upon the submission of proper vouchers approved by the Commissioner of Indian Affairs, or his duly authorized representative; and *Provided* further that such payments shall be subject to the availability of funds in the local treasury of the Nation or held by the United States for the use and benefit of the Nation; and *Provided* finally that the fee herein stipulated shall be subject to renegotiation, with the approval of the Commissioner of Indian Affairs, as of each anniversary date of the contract, if either party has served notice not less than fifteen (15) days prior to such anniversary date of a desire to renegotiate.

4. It shall be the further duty of the Attorneys to advise, assist, and represent the Nation on all legal matters relating to its efforts to prevent the taking of Seneca lands in connection with the proposed Allegheny River (Kinzua Dam) Project, including, but not limited to, the advocacy of alternative flood control plans and, if so directed by the Nation, the exhaustion of remaining legislative, administrative, and judicial remedies and appeals. In the event the Nation's efforts to preserve its lands are not successful, the Attorneys shall advise, assist, and represent the Nation on all legal matters arising out of or relating to the taking or other use of Seneca lands for said Project, including, but not limited to, assistance in the negotiation, preparation, and execution of any settlement agreement, prosecution of any claim for the loss of said lands, and representation before appropriate agencies, tribunals, and legislative bodies with regard to the size and distribution of any award, judgment, or settlement fund; *Provided*, however, that nothing in this Agreement shall be construed as authorizing the Attorneys to enter into any settlement without the consent of the Nation. In view of the provisions of Paragraph 5 relating to compensation, the Attorneys also agree without additional charge to represent individual members of the Nation, if these individuals so request, on all legal matters arising out of the taking or other use of their interests, if any, in Seneca lands to the extent such individual interests are not in conflict with the interests of the Nation.

5. As consideration for the services rendered pursuant to Paragraph 4 of this Agreement, the Attorneys shall be entitled to a fee of Ten Thousand (\$10,000) Dollars if construction of the presently proposed Allegheny River (Kinzua Dam) Project is blocked or if alternative flood control plans are adopted which will exclude a substantial portion of the Seneca land now covered by the Project. In the event the Nation's efforts to prevent the taking of Seneca lands in connection with the proposed Allegheny River Project are not successful, in whole or in

part, the Attorneys also shall be entitled: (a) in the event of a satisfactory settlement without litigation, to a fee of not less than two and one-half percent (2½%) nor more than five percent (5%) of all money and other property paid or delivered for any lands or interests in lands taken or used in connection with the Allegheny River Project (including the value of individually owned interests therein, but not the value of individually owned improvement thereon), said fee to be fixed by the Commissioner of Indian Affairs; or (b) in the event judicial proceedings prove necessary or desirable, to a fee of not less than five percent (5%) nor more than ten percent (10%) of the total recovery for any lands or interests in lands taken in connection with the Allegheny River Project (including the value of individually owned interests therein, but not the value of individually owned improvements thereon), said fee to be fixed by the court, or if the court fails or refuses to act, by the Commissioner of Indian Affairs.

6. The Attorneys shall be reimbursed for all necessary and proper expenses incurred in connection with the performance of their duties hereunder after the effective date of this Agreement, including, but not limited to, traveling expenses (including mileage at ten cents (\$.10) per mile when privately owned automobile is used), long-distance telephone, telegrams, taxi fares, notary fees, costs of printing or reproducing documents, overtime stenographic services and stenographic services not performed in the office of the Attorneys, and the compensation, expenses and other costs of employing appraisers and other technical, professional (nonlegal) and expert assistance: *Provided*, however, that all such expenditures shall be itemized and verified by the Attorneys incurring the same, and shall be accompanied by proper vouchers, and shall be paid only on the approval of the Commissioner of Indian Affairs; and *Provided* further that such expenditures shall not exceed in the aggregate Two Thousand, Five Hundred (\$2,500.00) Dollars in any one year, unless the excess expenditure is authorized by the Nation and the Commissioner of Indian Affairs.

7. No assignment of the obligations of this Agreement in whole or in part, and no assignment or encumbrance of any interest in the compensation agreed to be paid under this Agreement shall be made without the consent of the Nation and the Secretary of the Interior, or his representative. Any assignment of the obligations of this Agreement and/or any assignment or encumbrance of any interest in the compensation agreed to be paid in violation of the provisions of this Paragraph shall operate to terminate the Agreement, and in such event no attorney having any interest in the Agreement or in the fee provided hereunder shall be entitled to any compensation for any services rendered to the date of the termination of the Agreement.

8. The death, withdrawal, or addition of any partner or associate in the firm of Strasser, Spiegelberg, Fried & Frank shall not operate to terminate or otherwise modify this Agreement. In addition, it is agreed that services rendered on behalf of the Nation by any partner or associate of the firm of Strasser, Spiegelberg, Fried & Frank shall constitute services performed by the Attorneys in accordance with this Agreement.

9. This Agreement shall be effective as of October 15, 1959, and shall remain in effect for three (3) years with respect to the Attorneys' services as general counsel to the Nation as provided in Paragraph 2, and for ten (10) years with respect to the Attorneys' services in safeguarding the Nation's rights and property under the Allegheny River (Kinzua Dam) Project, as provided in Paragraph 4. This Agreement may be terminated for cause by joint action of the Nation and the Commissioner of Indian Affairs, or upon sixty (60) day's notice by either party. If the Agreement is so terminated, in whole or in part, the Attorneys shall be entitled to compensation up to the date of termination in accordance with this Agreement at the rate specified in Paragraph 3 for general counsel services and on a *quantum meruit* basis for services performed under Paragraph 4.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the dates and at the places set forth opposite their names.

SENECA NATION OF INDIANS,
By GEORGE D. HERON, *President*.

Date: October 24, 1959.
Place: Red House, N.Y.
Attest:
Date: October 24, 1959.
Place: Killbuck, N.Y.

LEO C. COOPER, *Clerk*.

STRASSER, SPIEGELBERG, FRIED & FRANK,
By ARTHUR LAZARUS, *Jr.*

Date: October 19, 1959.
Place: Washington, D.C.

[Enclosure 2]

AFTERNOON SESSION

Special Session of Council. The Seneca Nation of Indians, Saturday, October 17th, 1959. In the Allegany Reservation Courthouse at Jimersontown, N.Y.

Theodore Gordon moved, seconded by DeForrest Billy, That we retain Arthur K. Lazarus Jr., as our General Counsel and our Attorney for the Kinzua Dam litigation, negotiations, or settlements. Motion carried.

I certify that this is a true copy of the resolution as it appears in the minutes of the Council Session.

CORDELIA J. ABRAMS,
Deputy Clerk, Seneca Nation of Indians.

[Enclosure 3]

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C.

The foregoing contract between the Seneca Nation and the law firm of Strasser, Spiegelberg, Fried, Frank & Kampelman is hereby approved pursuant to Revised Statutes section 2103 (1875), 25 U.S.C. section 81, subject to the conditions that—

1. The reference to "overtime stenographic services and stenographic services not performed in the office of the attorneys," shall be deleted;

2. Any additional funds for expenses above those provided for in the contract shall be authorized by the Seneca Nation and approved by the Secretary of the Interior or his authorized representative in advance of their incurrence by the attorneys; and

3. References to the Commissioner of Indian Affairs shall mean the Secretary of the Interior or his authorized representative.

This approval is given on the express understanding that the payment of compensation and reimbursement of expenses are subject to the availability of funds which are not required under the act of August 14, 1950 (64 Stat. 442), to be paid pro rata to the members of the Seneca Nation.

FRED A. SEATON,
Secretary of the Interior.

DECEMBER 5, 1960.

Mr. LAZARUS. Sections 11 and 12 preserve the right of individual Seneca Indians to accept or reject the settlement figure arrived at by the corps and the nation. If the individual rejects that figure he has the right to litigate the issue of just compensation in the condemnation court.

Section 13 we have discussed. Section 14 merely deals with the identification of the rights being acquired by the United States. Sections 15, 16, and 17 are standard in all legislation of this kind.

I thank you very much, Mr. Chairman, for hearing me at such length. I would be happy to answer any further questions either in writing or at the table and on behalf of the nation. Again, may I urge that the committee give favorable and, we hope, speedy consideration to the bill.

Senator CHURCH. Are there any further questions of Mr. Lazarus at this time?

Senator GRUENING. I would like to ask Mr. Heron one question.

Senator CHURCH. Senator Gruening.

Senator GRUENING. Mr. Heron, you said if this bill passed we would have a happy ending to your long trial of the Seneca Nation. Is that correct? Would you affirm that?

Mr. HERON. I guess I was referring to a book that could be written and could do a story, and as it stands now we are in the process of writing the last chapter and whether or not the Senecas end up with

a place to move into here and a few additional benefits depends on the actions of this committee.

Senator GRUENING. But if the committee should pass the House bill, H.R. 1794, would that be the happy ending that you visualize or spoke to?

Mr. HERON. I guess I would have to say yes to that, although we have known a lot of unhappiness over the past 7 years. We would trade this bill for our homeland now. We would still take our homeland and you can take the bill.

Senator GRUENING. Thank you.

Senator CHURCH. Thank you very much. The hearing will resume at 2 o'clock.

Mr. LAZARUS. Thank you.

(Whereupon, at 12:35 p.m., the hearing recessed to reconvene at 2 p.m., the same day.)

AFTERNOON SESSION

(The subcommittee reconvened at 2:05 p.m., Senator Frank Church, chairman of the subcommittee, presiding.)

Senator CHURCH. Are Mr. Hurley and Mr. Elfvin here?

(No response.)

VOICE. They were here this morning, sir.

Senator CHURCH. That is what I understood.

What about Mr. Walter G. Taylor on behalf of the Indian Committee of the Philadelphia Yearly Meeting of Friends and the Friends Committee on National Legislation? Mr. Taylor.

Mr. TAYLOR. Right here.

Senator CHURCH. Would you like to come forward and testify at this time?

I might say that I will make an effort this afternoon, first of all, to reach those out-of-town witnesses who have come in especially for this hearing in the hope that we can get to them and not require them to stay over for another day.

Mr. Taylor.

STATEMENT OF WALTER G. TAYLOR, ON BEHALF OF THE INDIAN COMMITTEE OF THE PHILADELPHIA YEARLY MEETING OF FRIENDS AND THE FRIENDS COMMITTEE ON NATIONAL LEGISLATION

Mr. TAYLOR. Chairman Church and members of the Senate Subcommittee on Indian Affairs.

My name is Walter Taylor and my home is in Salamanca, N.Y., just outside the Allegany Reservation. For 3 years I have served as representative to the Seneca Nation of Indians from the Indian Committee of the Philadelphia Yearly Meeting of Friends (also known as Quakers).

The Friends Committee on National Legislation, the New York Yearly Meeting Committee on Indian Affairs and the American Friends Service Committee join the Indian committee in this testimony and we submit additional statements in writing rather than verbally in order to conserve the time of this hearing.

Senator CHURCH. Very well.

Mr. TAYLOR. Mr. Chairman, I have the statements here. There is some supplemental material with two statements. I intended one for delivery which was to be shorter, but I will abbreviate it even more now, if I may.

Senator CHURCH. Yes; we would appreciate that.

Mr. TAYLOR. The other statement is a supplement to it.

Senator CHURCH. The supplemental statement will appear in full in the record and your abbreviated testimony, of course, will appear. Would you also like to have the full statement in the record?

Mr. TAYLOR. I will cover much of it. Mr. Chairman.

Senator CHURCH. Then let the ruling be that without objection the supplemental statement will appear in full in the record and you will abbreviate the other statement. The other materials that you have supplied here, including the Kinzua letter, dated December 4, 1963, another item entitled, "Lake of Perfidy" and a pamphlet entitled, "Kinzua Dam Controversy" will all be filed with other papers relating to this case.

Mr. TAYLOR. Fine, thank you.

(The statement referred to is as follows; the letter and other material are in the files of the committee.)

EXPANDED STATEMENT OF WALTER TAYLOR, INDIAN COMMITTEE REPRESENTATIVE
OF THE PHILADELPHIA YEARLY MEETING OF FRIENDS (QUAKERS)

OLD HISTORY

Chairman Church and members of the Senate Subcommittee on Indian Affairs, the Indian Committee of Philadelphia Friends (or Quakers) developed a mutually trusting relationship with the Seneca Nation of Indians in the 18th century and established that long ago in the Seneca homeland what Congress might now call a Peace Corps.

The spirit in which Friends have wanted to approach any other people is one of mutual understanding and respect. Quaker intentions, not always achieved because of human weaknesses, were well expressed by John Woolman who wrote in his journal in 1763:

"A concern arose to spend some time with the Indians, that I might feel and understand their life and the spirit they live in, if haply I might receive some instruction from them, or they might in any degree be helped forward by my following the leading of truth among them."¹

One hundred and seventy years ago, in the year 1794, just 5 years after George Washington was elected the first President of the United States, four Quakers traveled 8 days from Philadelphia on horseback to Canandaigua, N.Y., to attend the negotiation of a treaty with the Six Nations of Indians. Two of them kept journals. William Savery made the following entry in his journal on October 21, 1794:

"* * * Colonel Pickering introduced himself as sole commissioner on the part of the United States, whom the Six Nations had requested might be appointed on the present occasion; gave them assurances of his desire to promote the happiness and peace of their nations, and told them that they might depend upon one thing at least, which was, that he never would deceive them. He also introduced us, their old friends the Quakers, as having come forward at their [the Indians'] request, and with the approbation of the President. * * *"²

October 23:

"* * * Captain John, an Indian chief, visited us, and had much to say about the many deceptions which had been practiced upon them by the white people; observing, that however good and honest white men might be in other matters, they were all deceivers when they wanted to buy Indian lands; and that the

¹ Woolman's Journal was originally published in 1774. It was edited and reissued by John Greenleaf Whittier in 1871.

² "The Friends' Library," vol. I, printed by Joseph Rakestraw, Philadelphia: 1837, p. 355.

advantages of learning which they possessed, made them capable of doing much good and much evil. * * *"³

November 1, 10 days before the signing of the treaty :

"* * * After dinner, John Parish and myself rode to view the Farmer's Brother's encampment, which contained about 500 Indians. They are located by the side of a brook, in the woods; having built about 70 or 80 huts, by far the most commodious and ingeniously made of any that I have seen; the principal materials are bark and boughs of trees, so nicely put together as to keep the family dry and warm. The women as well as the men appeared to be mostly employed. In this camp, there are a large number of pretty children, who, in all the activity and bouyancy of health, were diverting themselves according to their fancy. The vast number of deer they have killed since coming here, which they cut up and hand around their huts inside and out, to dry, together with the rations of beef which they draw daily, give the appearance of plenty to supply the few wants to which they are subjected.. The ease and cheerfulness of every countance, and the delightfulness of the afternoon, which these inhabitants of the woods seemed to enjoy with a relish far superior to those who are pent up in crowded and populous cities, all combined to make this the most pleasant visit I have paid to Indians; and induced me to believe, that before they became acquainted with white people and were infected with their vices, they must have been as happy a people as any in the world. * * *"⁴

On November 11, 1794, after the treaty was signed by over 50 of the most eminent chiefs and warriors of each nation, Farmer's Brother addressed the Quakers in part as follows :

"Brothers, you have attended this treaty a long time; the articles which we have now signed, we hope you fully understand. Now, as we have shown them to you, we would wish to know your opinion whether we have made a good peace or not; as we cannot read, we are liable to be deceived; you have no doubt considered them; we want to know your minds whether there is any flaw or catch in them, which may hereafter occasion uneasiness.

"Brothers, if you think that peace is now established on a good foundation, we wish you would come forward and sign the articles; as you are a people who are desirous of promoting peace, and these writings are for that purpose, we hope you will have no objection, but all come forward and put your names to them, and this would be a great satisfaction to us."⁵

In closing their report of 7 weeks with the Indians, the Quakers noted :

"That the engagement was one involving trials of a peculiar and painful nature, yet they had reason to hope, that the objects they had in view were in good degree answered, and that they were thankful in being permitted to return with the reward of peace.

"As the articles of the treaty confirmed the right of the United States to large tracts of land which had been obtained by conquest, without making the Indians what Friends deemed an adequate and just compensation for it, they could not consent to the requests so frequently made to sign the treaty."⁶

RECENT HISTORY

During the past quarter of a century there has been much controversy over the Kinzua Dam, but certain facts should be recorded here as indisputable: First, the wording of the treaty is clear and unequivocal and simply means in respect to certain lands described exactly what it says: "the United States will never claim the same, nor disturb the Seneka nation, nor any of the Six Nations, or of their Indian friends residing thereon and united with them, in the free use and enjoyment thereof; but it shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase."

Second, the taking of 10,000 of the best acres on the Allegany Reservation for the Kinzua Dam severely violates the terms of the Pickering Treaty of 1794.

Third, the treaty violation is unilateral, since no treaty changes were ever negotiated and no consent has even been given. Even to this day, the Indian people in the condemned valley would greatly prefer to retain their land and homes in accordance with the Pickering Treaty.

³ Ibid., p. 355.

⁴ Ibid., p. 361.

⁵ Ibid., p. 367.

⁶ Ibid., p. 368.

Fourth, the Seneca Nation committed itself to a most generous position when it declared: "The Seneca Nation has always taken the position that we will abandon our opposition to the Kinzua Dam if and when it is shown by competent, objective evidence that a feasible alternative does not exist."

Fifth, the treaty violation is unnecessary, since an admittedly feasible alternative does exist, discovered at the expense of the Seneca Nation. Substantial engineering claims that the best alternative would actually be superior in the public interest to the Kinzua Dam were never investigated by any impartial agency outside the Corps of Engineers.

Sixth, the 1961 White House inquiry into the Kinzua Dam controversy included thorough consultation with the Corps of Engineers, but no consultation at all with Dr. Arthur E. Morgan, renowned engineer, first Chairman of the TVA, former president of Antioch College, and the primary advocate of an alternative to the Kinzua Dam which he still considers superior even aside from the important advantage of honoring a solemn treaty. In August 1961 I was invited by a White House staff member to meet with several representatives of the Corps of Engineers in Washington. They insisted that there was no justification for any impartial review of the controversy between the Corps of Engineers and Arthur E. Morgan, since the Corps of Engineers was clearly right and Dr. Morgan wrong.

That is now history, but let the facts remain unclouded since they may help the Congress in the future to insist that necessity be proven objectively before any more Indian land is threatened, and that necessary treaty changes be negotiated openly and freely before, not after the Congress authorizes any engineering project. In the future adequate time and appropriate staff for the resolution of human problems should be allowed before engineering deadlines are established.

THE PRESENT CRISIS

Seneca families now living in the Kinzua Dam "take" area have to move within less than 7 months from the date of this hearing. They have not yet received payment for their present homes and they must wait for congressional legislation in order to have assurance of sufficient funds to replace these homes. Even if the bill could be signed today by President Johnson, it would be very late. If it should be delayed for even a few weeks, it will be too late for Seneca families to have even one full building season to establish two entirely new communities before Columbus Day of this year.

THE FUTURE OF SENECA INDIANS AND OTHER AMERICANS

Only a minority of Seneca Indians maintain their faith in the religion of Handsome Lake, the Seneca prophet who received the Gaiwio, the Good Message, from four messengers in a dream in 1799. Most Seneca Indians, however, acknowledge that the Handsome Lake religion of the Longhouse is a fundamental part of their heritage from ancient times and of their identity today—together with their Seneca language and their "treaty-protected" land.

Dr. Wallace Chafe noted the deep meaning of Longhouse ceremonies in his "*Seneca Thanksgiving Rituals*":

"The printed page can only suggest the beauty of these rituals in actual performance, and can convey little of the satisfaction and security found in them by those who have grown up with them as part of the annual round. They are emotional experiences as deeply felt and devoutly regarded as the religious expressions of any people. They should be approached with the reverence and respect that is always due traditions by which men are profoundly moved."⁷

About a month ago the annual New Year's ceremonies or midwinter festival took place in the Cold Spring Longhouse on the Allegany Reservation for the last time before the taking of the Longhouse for the Kinzua Dam. The Cold Spring Longhouse is less than 250 miles from this Senate hearing room geographically, but those ceremonies and the life and spirit of the followers of Handsome Lake are as far away culturally from Washington as the most distant star.

What is left in Seneca Indian life that is different and good and still survives after all these years of exposure to a dominant society?

⁷"Seneca Thanksgiving Rituals," by Wallace L. Chafe, Smithsonian Institute, Bureau of American Ethnology, Bull. 183, U.S. Government Printing Office, Washington: 1961, p. 14.

The quality of production is still noteworthy in Seneca craftwork—almost two centuries after William Savery observed it in the temporary shelters set up by Farmer's Brother during the treaty negotiations.

Religion is a personal matter, but there is something very moving in a religion which stresses above everything else the giving of thanks for the many natural blessings bestowed on many by his Creator—without making continual demands or prayer for future benefits. There is something quite appealing, even for one who does not understand Seneca language, to observe several mornings of religious ceremonies which include very comfortably both sexes and all ages. The code of Handsome Lake is a very high ethical statement which requires about 4 mornings to recite. The ceremonies combine in a wonderfully relaxed, but dignified manner long statements of thanksgiving (all in Seneca language); joyous, enthusiastic but respectful dancing and singing to the rhythm of turtle rattles, horn rattles, gourd rattles, water drum or stick; ceremonial burning of tobacco and sharing of food. There is no proselytizing, but only an effort to fulfill one's own religious responsibilities. In recent years sincere non-Indians have been permitted to observe many of the Longhouse ceremonies, but they would never be performed for tourists, nor is anyone allowed to take pictures of any ceremonies. The Handsome Lake religion seems to form an integral part of the daily life of its followers.

The Seneca language is hard for many English-speaking persons to learn and one can only imagine that the other way around was not easy either. A few Seneca people on the Allegany Reservation speak no English. Quite a few who do speak English well still prefer Seneca for any statements of serious beliefs or opinions. Fewer children now are learning Seneca at home. Some of them, however, express a desire to learn it even in later years when it becomes harder. There are no swear words in Seneca language.

Even aside from their religious activities, the music, dancing, and craftwork of Seneca Indians deserves notice. I suspect that research might demonstrate among Seneca Indians a most unusual frequency of genuine artistic talent. Could it be that such talent flourishes more freely among Seneca Indians because of the manner in which they are warmed and loved and accepted in their earliest years?

Many Seneca Indians are more reserved than most Americans. They feel no need to fill every silence between two people with words. Statements are usually concise and clear and often eloquent. Some of the closest neighbors of the Seneca Indians, even those who live in Salamanca, a non-Indian squatter city located right on the reservation, do not know Indian people at all well. Many, perhaps even most of the lifelong residents of Salamanca, have seldom if ever heard anyone speak the Seneca language, although it is very frequently used.

It is quite possible for a non-Indian neighbor or visitor on the reservation to miss the extraordinary warmth, good humor, dignity, and humble pride of many Seneca Indians. To appreciate or even observe these qualities may require sincere interest, patience, sensitivity, and an open heart. Some visitors wear cultural blinders which permit them to see only through their own frames of reference.

William Savery caught the spirit of it in 1794. He spoke of "the ease and cheerfulness of every countenance" and he felt that "these inhabitants of the woods" seemed to enjoy the delightfulness of the afternoon "with a relish far superior to those who are pent up in crowded and populous cities."

Seneca Indian life has certainly changed in recent centuries and will change further in the decades ahead. At the Chicago conference in 1961, American Indians from every corner of the United States resolved to "advance with dignity" but in doing so to preserve and even strengthen the sound fundamental qualities of their identity, their integrity, and their heritage.

This subcommittee has a challenging opportunity today to restore some measure of Seneca faith in the Federal Government. Other citizens likewise are looking to this Senate for immediate constructive action to keep faith with President Kennedy's promise of Federal cooperation with Seneca Indians to achieve a "fair and orderly" adjustment and with President Johnson's recent promise to place American Indians in the forefront of the war on poverty.

Even more challenging, however, is the opportunity afforded in H.R. 1794 and S. 1836 to go beyond the mere payment for a wrong and actually do something right, something constructive, something imaginative, something to benefit our entire society.

In H.R. 1794 we find an opportunity for the Seneca Nation to demonstrate how poverty may be overcome and pride and dignity restored to a rural Indian reservation community through an imaginative program of education, community development, and new employment opportunities using the richest resources left in the area—the Seneca Indians themselves with their fascinating history, their continuing unique contribution to American society, and their enduring double identity—both as loyal Americans and as indestructible Seneca Indians.

Hard-working Seneca committees and subcommittees have participated actively in planning for a creative future in spite of Kinzua Dam. Friends and Federal and State agencies have shared in these earnest efforts during the past 3 years. Much has been accomplished within a very limited time for such long-range and drastic planning. The purpose to which the Seneca Nation has dedicated its efforts is constructive. It is described in the attached "In Memoriam for John F. Kennedy" which appeared on the cover of the Kinzua Planning Newsletter of the Seneca Nation of Indians, December 4, 1963.

Quakers can no more endorse H.R. 1794 as a completely fair and equitable settlement for damages to the Seneca Nation than their predecessors could sign the treaty of 1794.

H.R. 1794 does nothing to assure Seneca Indians of any adequate solution for the severance of their reservation by a new four-lane, limited-access expressway; for the loss of about 40 miles of residential roadway to be replaced by about 6; for the loss of access between the only two residential areas left except by way of the anticipated expressway; for the confusion and anxiety now rampant on the Allegany Reservation because of unconscionable delay in receiving any funds or assurance of adequate funds with which to move properly. In some places, H.R. 1794 has been cut quite arbitrarily in spite of evidence to support the original figures. In another place some \$21 million was cut from the \$29 million figure considered essential by the experts employed to recommend a feasible economic enterprise. This cut was made with the consent of the Seneca Nation, however, which has concluded that any additional funds needed beyond \$8 million will have to be obtained from other interested sources.

The total figure in H.R. 1794 for direct and indirect damages and for constructive rehabilitation programs is no more than the Pennsylvania Railroad actually received 3 years ago for a 28-mile right-of-way through the Seneca Indians' Allegany Reservation—a failing line at that which will soon be discontinued, not replaced.

The House of Representatives has studied H.R. 1794 exhaustively and passed in under a unanimous-consent voice vote. We feel that it deserves prompt approval by this Committee with an effective plan to move it quickly to the Senate floor.

Even though the hour is late and Seneca Indians have already suffered great disturbance and extreme anxiety, the opportunity still remains for the U.S. Senate to keep the commitment made by President Kennedy to the president of the Seneca Nation on August 9, 1961:

"I hope you will convey to the members of the Seneca Nation the desire of the Federal Government to assist them in every proper way to make the adjustment as fair and orderly as possible. I pledge you our cooperation."

"Indians," said the late President in his 1960 campaign, "have heard fine words and promises long enough. They are right in asking for deeds. * * *"

The responsibility rests clearly upon the Senate. The time for deeds is now, before another presidential pledge to Seneca Indians fades into an empty memory.

Mr. TAYLOR. Today, I have the privilege and responsibility to represent the intense concern not only of Quakers, but of countless other conscientious citizens throughout the United States. They have been shocked to learn that their Government has become unalterably committed to the unilateral, unnegotiated, and unnecessary violation of its oldest active treaty, as unequivocal and binding an agreement as any in our history.

May I insert here, Mr. Chairman, the commentary of the unnecessary nature of this discussion because of the discussion this morning. The best of the alternatives was presented by Dr. Arthur E. Allen, formerly of the Valley Authority. It was never reviewed impartially

outside of the U.S. Corps of Army Engineers for dispute over certain aspects of it, but its feasibility was acknowledged.

Therefore, I would submit that the violation of this treaty is in that sense unnecessary. They now find it inconceivable that the Seneca Indian families who face eviction from their homes by the Kinzua Dam only half a year from now should still be waiting for legislative assurance of sufficient funds with which to move in a dignified and constructive manner.

I want to express appreciation to Senator Javits, and may I also submit in behalf of a member of the Seneca Nation who is present, but asked me to state a one-sentence comment he would like to submit for the record.

The gentleman is Harry Watt, Seneca Indian. He is chief of the Bird Clans in the longhouse and he says to the members of this committee, and I quote:

To you, each individual Senator, do unto others like you would have them do unto you. And that will be all.

The Indian committee and other Friends organizations joining in this testimony submit to you the following earnest appeal:

We urge the Subcommittee on Indian Affairs to take extraordinary action today on legislation to provide reparation, relocation, and rehabilitation for the Seneca Nation of Indians. We ask the subcommittee to complete today its approval of H.R. 1794 as passed by the House of Representatives with unanimous consent on February 7, 1964.

We ask that the subcommittee devise today a legislative procedure for H.R. 1794 that will immediately gain its approval by the full Committee on Interior and Insular Affairs and that will inspire the full Senate to pass it within 2 days, by March 4, 1964.

We ask the subcommittee for two reasons to make no changes in H.R. 1794 which would delay final enactment. First, the bill has been so thoroughly studied and revised that it has earned approval in its present form by all appropriate Federal agencies, by unanimous committees of the House of Representatives and by a conciliatory and reasonable Seneca Nation of Indians.

Second, Seneca Indians have no time left to wait. The eviction deadline of October 1, this year, was fixed by Army Engineers. Seneca families in the take area will have no assurance of sufficient funds with which to move constructively until legislation is passed.

For 3 years I have shared in planning meetings of the Seneca Nation Council and of several planning committees studying the complex human problems resulting from Kinzua Dam. The effort has sometimes been frustrating, but we have made progress, which is represented in H.R. 1794, toward a constructive and creative future for Seneca Indians whose present way of life, I am sorry to say, is being further destroyed over what has happened in the past 2 or 3 years.

I might say that from our point of view, the damage being done to the Seneca Nation of Indians and also to the reputation of the United States for good faith, are in a great sense incomparable. It is not only the solemn promises of Presidents Washington, Jefferson, and our late President Kennedy that are involved here, but also the severe damage to a way of life.

Now, 300 or 400 years ago these Indians lived in a manner which was independent, which was an asset from our American point of view. At that time they were fully employed. They were blessed with a fine religious sense of unity with nature. There was quality and integrity in their production, in the craft work, and may I say that Indians made contributions to this Government on the basis of which in part our Constitution was constructed and our Federation of United States was developed, and in addition, many other contributions which have headed our dominant society's way of life.

In considering the damages that are being done the question arose and seems unanswerable. Attempting to put it into dollar figures, where do you put the decimal point? I believe that the Kinzua Dam will be a monument no matter what, and it can be a monument to good faith or it can be a monument to bad faith.

If the effort to compensate for what is really incalculable is delayed seriously, we would become involved in undue considerations of dollar amounts, when it has been so thoroughly studied I believe the monument will be one to bad faith.

On the other hands, the Kinzua Dam can become a monument to good faith. If, at this point—granted that this committee is placed under pressure which we all regret—provisions can be made whereby the Seneca Nation can take its years of effort to devise a healthy, constructive, creative, new way of life, one that will do them and the United States proud, one that will overcome problems which have beset the Senecas, which did not bother them in the early days before the white man came, an approach that will permit them to achieve full employment, to achieve independence, to make the full contribution that they are so uniquely capable of making to our country and to protect the Seneca Nation against the further taking of land for a four-lane, limited-access expressway which will further divide the remaining land and will offer the only route by which one may drive from one relocation area to the other.

Three bridges are being replaced by only one, that for the expressway. Forty miles of residential road along which Seneca families now live are being replaced by only about 6 miles in the relocation areas. The amount recommended originally for the outstanding tourist program has been reduced by 72 percent. Other amounts have been reduced to achieve the approval of Federal agencies and Members of Congress.

Following the signing of the Pickering Treaty in the year 1794, Farmer's Brother, a spokesman for the Seneca Nation, asked the Quakers who attended the negotiations, to sign the treaty if they felt it was a good peace without any "flaw or catch" in it. As he put it, he said, "as we cannot read, we are liable to be deceived." The Quaker report in answer stated as follows:

As the articles of the treaty confirmed the right of the United States to large tracts of land which had been obtained by conquest, without making the Indians what Friends deemed an adequate and just compensation for it, they could not consent to the requests so frequently made to sign the treaty.

Now, like the treaty of 1794, H.R. 1794 does not seem entirely adequate to the Indian committee.

However, its immediate enactment into law could avoid further damage to the Seneca Nation and could help to restore some confidence

of Indians and other Americans in the good faith of their Government.

In a sense this subcommittee sits now in judgment on the future of the Seneca Nation of Indians. An old Indian proverb advises, "Before judging a man, walk 3 moons in his moccasins."

I should like for 2 or 3 minutes to speak more personally from the experiences I have shared among Seneca Indians, because I feel it is difficult for members of the Senate sitting in Washington only 250 miles away from the Allegany Reservation, to visualize, to feel in their hearts, the way of life which exists there and which has already suffered and yet which has great opportunities for the future.

I have brought some visual aids, if I may be permitted to use them for just a few minutes, because I see no way to use only words to convey to this committee something of the spirit of life which exists on this reservation.

The 250 miles geographically are much longer culturally and it is as difficult sometimes for Seneca Indians that far away to understand what happens here in Washington.

I will depart from the prepared statement here and simply try to be as brief as I can to illustrate something that you may otherwise be very unfamiliar with.

I don't know if you ever heard of snow-snakes before, and maybe it seems insignificant, but this picture of a snow-snake game was taken about 3 weeks ago on the Allegany Reservation, and just briefly, the game is one in which several teams participate. A snow-snake is a long, finely carved and polished pole. It takes about 2 years of very high-quality work to produce. The thrower has his own skill and the medicine man puts the right kind of wax for the snow on it, and the stick is hurled down the trough and the object is to see how far it will go. Sometimes these sticks, so well carved, will travel as much as a mile along a flat area.

I brought one or two of the homes to show you, homes in which people are having to live and for which they will not have the means to replace until some action is taken. The way in which you look at a home depends a good deal upon the understanding.

I wish I could convey to you what goes on inside these homes and in the hearts of the people who live in them, but it is very difficult to do briefly.

This is a picture of the longhouse, and I can hardly convey to you the depth of spirit and the meaning of the religious ceremonies which take place in that building. It is unimpressive, perhaps, from the point of view of modern church architecture, but I wish only inadequately as I can to convey to you something of the spirit of life which takes place, and it took place; the New Year's ceremonies were only a few weeks ago.

The primary aspect of the religion in the longhouse, the Handsome Lake religion, is one of thanksgiving. Ceremonials, dancing, singing, and joyful activities are carried on to give thanks for the many blessings which these people feel they enjoy, and very little, if anything, is done in the way of prayer for further blessing.

Here is one of the three bridges which will be taken, and no longer can the river be crossed at that point.

This was taken only 2 or 3 weeks ago and shows the bare beginnings of the road along which the Seneca Indians will have to build their new homes.

This is the state of affairs right now in one of the relocation areas and in the other one, roads are not even begun. This you can see rough cutting of timber and clearing of the roadway for the places where people have to be moved in by the first of October.

Here is the seat of the Government of the Seneca Nation of Indians in the courthouse where the council members sit and carry on the nation's government.

Here is a picture of the Allegany Indian School. I believe it is the last Indian school in the State of New York. It will be taken, and unfortunately it will not be possible to have a new school built by the time the children need it. We hope some provisions can be made to permit them to use this school for 1 more year so the children will not have to add to their inconvenience of moving and adjusting to further adjustment for some temporary period.

Here is one of the finer homes in the reservation that will be taken, and if you could consider this closely you would realize that really almost for any American there is no compensation for a loss of such an area.

Here is a second bridge that will be taken. There will be no crossing of the river at that point.

Here is another home which will be taken, and you get a little bit of the flavor of the lovely countryside which is there now and which we fear is not being improved by the rising and falling of waters.

This is another home, one of the leaders in the longhouse, and here is the last bridge that is being taken.

Here is a picture of the manner in which the hillsides are being scraped in order to permit the relocation of one of the railroads to a higher point on the hillside.

I take 1 or 2 more minutes at the risk of delay, and I bring these, gentlemen, not as trinkets, not as tourist exhibits, but because I wish to convey to you something of the deep respect which those of us who have sat in the longhouse, those of us who have visited in the homes of Seneca Indians, feel for a way of life that is being equally troubled.

This, Mr. Chairman, is a turtle rattle. It is made of a snapping turtle. The handle is wrapped with bark, and I submit it for just an illustration of the quality and the integrity of production and the ingenuity of production which has been a part of the Seneca Nation of Indians for many years. This is a different kind of rattle made of elm bark.

These are used and were used only a few weeks ago in the mid-winter ceremonies in the longhouse, the thanksgiving ceremonies.

This is a water drum; it has no water in it at the moment. When it is wet it produces a very resounding bit of music that is used in the singing part of the religion. This is a religion of a minority of the Senecas, but it is a religion in which all Senecas have feelings and respect.

Here is another rattle, and a couple more rattles here. I will not take time.

One sometimes feels that most Americans understand only in respect to Indians that there were wars, there was killing, and there were feathers and so on. I have only these few minutes to try to convey to you in a most inadequate way something of the spirit.

This, by the way, is more typical of the type of bonnet-type of head-dress which belongs to the Iroquois. Sometimes they now wear the western bonnets for decorative purposes, but this o-steh-weh is the more typical.

I am not an anthropologist and I have no interest in people learning about anthropology, but I do have personal experience of several years acquaintance, and several years of enrichment of my life and I know of others, by just being acquainted, as deeply as one can, if one's heart and mind is open, to a people whose ways are different, who are not given to the graspingness which sometimes besets our society, and people who I believe have a very great contribution to make to our way of life, if we can consider it in terms of interaction rather than in terms of one way of life dominating and obliterating another, which has sometimes been the hope of some people.

I have with me other things I will not even attempt to show you.

I have some dolls; these are dolls made by Dorothy Jimerson. They are made out of corn husks. Perhaps I can briefly show you what they are. They have one interesting feature which I believe only Dorothy Jimerson particularly practices. The underwear on these dolls is made out of treaty cloth. It is made of the cloth which the United States Government every year sends to the Seneca Nation as part of its treaty obligation. These are made entirely of corn husks. Some of the others have corn husk bodies and then they are dressed.

Now, I have taken more than the time I wish to allot myself for this. Let me simply make a final statement.

In my association of the past several years with the American Indians I have come to understand that their great future lies not in the termination of their reservations nor in their homogenization by their neighbors. Their future and that of other Americans will be enriched instead by a respectful and appreciative interaction among all ways of life, each open to the other's contributions, but none forced to give up its identity nor to conform unwillingly.

Some of my neighbors who have lived all their lives in Salamanca on the Allegany Reservation have never heard a word of the Seneca language spoken. That is a measure of the quiet reserve of most Seneca Indians, for the Seneca language is very often used. Although I do not speak or understand Seneca myself, let me attempt to summarize with one phrase I have tried to learn from Handsome Lake's "Good Message."

Handsome Lake, if I failed to mention to you, is the prophet of the longhouse religion and a very interesting and worthwhile religion. His message includes this:

En-gai-wii-yoagh des-wa-da-ja-da-geh-hah des-wah-yeh-nonh—
"While we are working together and helping each other, let there be good will among us."

Thank you.

Senator CHURCH. Thank you, very much, Mr. Taylor, for your testimony and also for your exhibits brought with you today.

Any questions, gentlemen?

Senator DOMINICK. Yes.

Senator CHURCH. Senator Dominick.

Senator DOMINICK. I just want to find out something. Your principal objection, Mr. Taylor, as I understand it, is to the taking of the

Seneca land by virtue of the construction of the dam, is this not correct? An invasion of their treaty rights, in other words?

Mr. TAYLOR. That is the basis of our concern about this, yes, sir.

Senator DOMINICK. Let me say I completely subscribe to that, because I understand this was done back in 1944 when the original Ohio flood control project was authorized, way back some 20 years ago. The problem is that although I share your objection on this, this has been proved to be legally correct under our law in suits before the Supreme Court.

So we are faced now not with the question of whether we should or should not take this property, but the fact that it is going to be taken and what is proper compensation for it. So we are talking in wholly different terms than I think your statement was addressed to, although I recognize the great value that the Seneca traditions and culture have.

It seems to me that in this thing all we are faced with here is the question of what compensation is to be given to the Senecas for the action which was taken some 20 years ago.

Mr. TAYLOR. May I answer Senator Dominick's question?

Senator CHURCH. Surely.

Mr. TAYLOR. In reply, my understanding of the Supreme Court's action was not as is sometimes suggested, that the Supreme Court ruled that it was proper to do this, only that the Supreme Court ruled that they would not hear a case—I am not a lawyer so I cannot speak to this—which expressed doubt that the U.S. Congress had known it was violating a treaty when it authorized the project. So I think there is nothing in the Supreme Court ruling which says it is proper to do what has been done.

In the second instance, I am not sure I follow exactly your question. In considering compensation, that is the term you used, we do consider, as has always been done in such instances, we do consider also the very grave intangible damages which are being done in addition to the mere real estate values which are actually figured by white man's terms, not in any sense according to the ways in which Indians have always valued lands.

Senator DOMINICK. What I was saying is that you do not re-create Seneca culture by putting an industrial park in the center of their reservation.

Mr. TAYLOR. I did not make myself clear in my effort to be brief. We are not interested and I don't believe the Seneca are interested in re-creating the culture. What I think we have all worked hard to find a way to do is to create a good future culture. It is bound to be changed. It is bound to be more expensive than the ways that they have lived recently. But our interest is in creating a good culture, not in attempting—we cannot restore the Seneca Indians as they were in the 17th century, and may I say, in that respect, that after the dam is built and the area is subjected to flooding, about the only asset that will be left to be exploited on the reservation is not the new water area for recreation, but the Seneca Indians themselves.

They have the greatest asset within themselves if they wish to permit it to be exploited, and they will have to make a very serious contribution of the very little useful land that is left to them in order to do so.

I meant to include along with the map that you have in your folder, I have only one copy of this, it was a map made by a volunteer to bring out more firmly the very small amount of useful land that is left after this taking, between mountains and the villages that are occupied mostly by non-Indians. There is very little useful land left, and with the water rising and falling there is serious question about how effectively the mudflats can be used.

The one important asset that this area will have left after the taking is the Indians themselves, whatever they can contribute of themselves to an outstanding presentation of history, culture, and their ways to others.

Senator CHURCH. You wish to offer this map for the record, or do you wish to retain it?

Mr. TAYLOR. There is one in your folder; this one has the same thing only it just points out more sharply the areas that are left in usable form.

Senator CHURCH. Can you testify personally to the accuracy of this, from your personal knowledge of the reservation?

Mr. TAYLOR. Yes, I can.

Senator CHURCH. It is not indicated on it where it was done or who did it.

Mr. TAYLOR. I will take responsibility for part of the production of it.

Senator CHURCH. Is there objection to the inclusion of this map in the record?

Senator MECHEM. Is there arable land?

Mr. TAYLOR. Most of the arable land is being taken, what is left here—

Senator MECHEM. How many acres?

Mr. TAYLOR. Is left?

Senator MECHEM. Yes, sir.

Mr. TAYLOR. I would believe roughly a thousand acres. If I were to lean over backwards, I would say no more than 2,000 which the reservation occupies.

Senator CHURCH. Now, just for purposes of keeping our thinking straight, there is no taking here except for the easement involved, is that not right? The easement to overflow?

Mr. TAYLOR. Right.

Senator CHURCH. Is it not true that portions of the land over which this easement will extend will not be regularly flooded and may be available for farm use?

Mr. TAYLOR. No, sir; I do not believe there is land enough left for farm use.

Senator CHURCH. Well, we want to get the Corps of Engineers expert testimony on this, but I just wanted to put the question to you to find out what information you could give us on it.

Mr. TAYLOR. We hope there will be some use made of the area that is seldom flooded. However, the road pattern, the new expressway coming through and the accessibility are going to be problems which I am not expert on, but I believe there is going to be a serious loss.

I want to use this map just to illustrate. These are two relocation areas, and here is the proposed expressway running through, and as it now stands, the only way by which people will get between these two

areas is along this expressway, not a very suitable way of unifying a community which is divided in that way.

Of course, most of the areas along the edge is mountainous, and I think the expressway itself will be another dividing factor.

Senator DOMINICK. How would you get access if you did not have the expressway?

Mr. TAYLOR. Well, there would be a road that is not an expressway. It would be a regular two-lane road, as there is now. This is an improvement, so-called, which the State of New York and the Corps of Engineers have agreed to work out. We hope, really, that some way can be found to provide a service road to connect those two areas.

There are other easements. I would ask that someone more expert testify. There are railroads and highways coming through. The railroad on the north side of the river has got to be moved. That will take land for that. Land will be required for this expressway and for certain other roads.

I believe this map—if 1 or 2 acres were challenged by an engineer, which I am not, that is well and good. But the sense of this is correct and this represents a reduction in this land promised forever, over a great many years.

On the far side, which we are not talking about too much, a problem remains in using any of this area here because the expressway undoubtedly will go through there also, and nobody can tell you yet where it will go. Those little spots are useless because no one will know where the road will be. It is likely to come in the next decade or so. Much of that land is wet or mountainous.

Senator CHURCH. Any further questions?

Senator MECHEM. No, thank you.

Senator CHURCH. Thank you, very much, Mr. Taylor.

Mr. TAYLOR. Thank you.

Senator CHURCH. Are Mr. J. B. Hurley and Mr. John T. Elfvin here now?

Mr. ELFVIN. Yes; we are here now.

Senator CHURCH. Would you gentlemen come forward together, please?

Mr. ELFVIN. Our apologies for not being here at the start of the afternoon session.

Senator CHURCH. Won't you both be seated?

Are you planning to make separate statements, or are you going to submit one statement and then respond to questions?

Mr. ELFVIN. Our plan would be this, if it is the pleasure of the subcommittee: I have a statement that I have prepared which has been filed and which I will read. Mr. Hurley is here to answer any questions that the subcommittee members have.

Senator CHURCH. What about the addendum that you have?

Mr. ELFVIN. That is attached to the statement, actually. The last three pages of what you have in your hand.

Senator CHURCH. Do you propose to read that, too, or do you want that included in the record?

Mr. ELFVIN. I can read that very quickly and I want to hand to the committee, in connection with that, copies of H.R. 1794 which I have taken the liberty of marking to show the particular changes that we are espousing.

Senator CHURCH. All right.

STATEMENT OF JOHN T. ELFVIN, ATTORNEY FOR DEVONIAN GAS & OIL CO., PITTSBURGH, PA.

Mr. ELFVIN. I am John Elfvin, this is Mr. Hurley on my right.

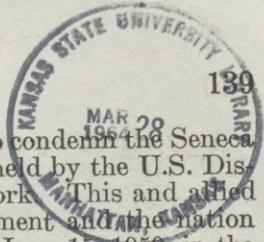
The Devonian Gas & Oil Co. appreciates this opportunity to put before you its interests in the subject matter of the legislation which you are considering—namely, S. 1836 and H.R. 1794—and to suggest certain aspects of apparent conflict between the present provisions of those bills and the rights of Devonian and other nonmember holders of lease interests under the Seneca Nation of Indians of the State of New York.

I am John T. Elfvin, an attorney licensed to practice law in the State of New York and the District of Columbia. I am a member of the law firm of Lansdowne, Horning & Elfvin, whose offices are in Buffalo, N.Y. This law firm has recently been retained by Devonian Gas & Oil Co. to represent and protect the company's interests and rights in certain condemnation actions and proceedings which have been, and are being, filed and instituted by the United States of America in the U.S. District Court for the Western District of New York.

With me are Mr. Jarvis B. Hurley, president of Devonian Gas & Oil Co., and C. Walter Harris, Esq., an attorney at law having his offices in the Colorado Building here in the District of Columbia and who is also an officer and a director of Devonian Gas & Oil Co. Mr. Hurley will gladly answer any questions which any of this subcommittee's members may have and will supply any further information which the subcommittee deems helpful.

Devonian is a corporation organized and existing under the laws of the State of Delaware and having its principal office and place of business in Pittsburgh, Pa. The business of Devonian is primarily that of a producer of oil and natural gas. Its operations reach into several States with particular emphasis on Pennsylvania, West Virginia, and Ohio. In early 1956, Devonian became the assignee of five oil and gas leases given and granted by the Seneca Nation of Indians of the State of New York to Mr. Harris and another. Such leases, as assigned, grant to Devonian the exclusive rights of drilling for and producing oil and gas throughout approximately 18,000 acres of the nation's Allegheny Reservation and the right to store natural gas underground throughout the area. The leases went into effect December 1, 1955, and run for a term of 10 years "and as long thereafter as oil or gas is produced in paying quantities." Generally, the nation is paid certain rentals and a royalty of one-eighth of the receipts from all sales of gas and oil.

Devonian proceeded to exercise its rights under the leases and has drilled three wells which are capped at the present time because the threat of the Kinzua taking has made it economically impracticable to build the transmission line needed for marketing of the substantial gas reserves which have been shown to be present. More than \$120,000 has been invested by this leaseholder to date for equipment, drilling expenses, rental payments, legal fees and the like. The investment of additional drillings and for marketing facilities was deemed not justified by Devonian in view of the imminency of the U.S. Corps of Engineers taking of all or part of the acreage for its Allegheny Reservoir project.



On January 11, 1957, the Government's right to condemn the Seneca Nation's land for the project's purposes was upheld by the U.S. District Court for the Western District of New York. This and allied litigation was carried out between the Government and the nation during 1957, 1958, and 1959, and culminated on June 15, 1959, in the decision of the U.S. Supreme Court denying the nation's motion for a writ of certiorari in an injunction suit brought by the nation. It was decided, for all purposes, that the United States had the right to take the nation's land or interests and rights therein.

What is to be taken, for purposes of our statement, are all lands up to the topographical level of 1,365 feet above sea level. Within this "taking area" lie some 10,000 acres of land covered by Devonian's leases. This area also encompasses one of the three capped gas wells which has definitely proven that natural gas in commercial quantities lies beneath the leased lands. The taking will mainly be of flowage rights, but it is assumed by all interested persons and admitted by the Corps of Engineers that the effect will, for all operative or utilization purposes, be the same as if the taking were in fee. The area will be submerged to varying but substantial depths and the general plans for use of the general area, after taking, call for development of recreational facilities and attractions which are wholly incompatible with any further development and production of oil and/or gas.

The proved reserves of gas within the said 10,000 acres are substantial and have been appraised at about \$1,500,000—actually, \$1,476,270. The nation's interest in this property is about one-eighth and Devonian's approximates seven-eighths. What amount is to be paid by the United States for this taking will be determined in and by the condemnation proceedings in the U.S. District Court for the Western District of New York. Devonian's concern and its reason for having sought this audience today are that it strongly feels that nothing in any law or laws giving general or special relief to the Seneca Nation and its members should militate against Devonian and other nonmember leaseholders or adversely affect their property rights, including the right to be justly compensated for the taking of the same by this Federal project. We submit that certain of the provisions of S. 1836 and of H.R. 1794 lend themselves to such misuse by those who will oppose nonmember leaseholders in the Federal Court. We believe that this subcommittee and this Congress and the U.S. Government will agree that this proposed legislation ought not to have any such adverse effect upon nonmember leaseholders' rights and ought to so state clearly and unequivocally.

Devonian is heartily in accord with the avowed purpose of this legislation. It believes that the Seneca Nation of Indians of the State of New York is being and will be prejudiced by the Kinzua Dam project far beyond what is the usual experience in condemnation cases. Devonian espouses the cause of leaning far in the direction of granting these people extraordinary relief and is willing to pay its share of the cost of the same, along with other taxpayers in this country. Nonmember leaseholders have the right, however, not to be called upon to contribute specially or in any extraordinary fashion to such cause, however worthy. Laws helping these Indians must not negate or diminish or otherwise derogate from such leaseholders' property rights and their right to just compensation.

It is for this purpose that particular amendments to S. 1836 and H.R. 1794 are proposed as set forth in the addendum hereto. The most significant of these is a provision that would be added to such bills—as section 19 in S. 1836 and as section 18 in H.R. 1794—as follows:

Nothing in this Act shall be deemed or constructed as compensation to any person or persons other than the Seneca Nation of Indians and individual Seneca Indians and nothing herein shall be constructed or used or cited in any legal proceeding by any person as any negation, taking away, limiting or other derogation of all or any part of the valid, existing rights of any other person, including the right of any such other person to just compensation for any and all taking of any of said rights by or in connection with the Allegheny Reservoir project.

Such a declaration is needed, it is urged, to circumvent and prevent any misuse of this legislation.

In the addendum, to summarize, I started out by indicating, of course, that we have had a disparity between the times when these two bills were filed—one came in January of 1963 in the House, and the Senate bill was filed, I believe in July. There was about a half year lapse, and in that time the Senate bill picked up two or three of the amendments that were in course and we find that some of the Senate bill already accords with amendments that have been put into the House bill.

Most of the attention here today has been directed to H.R. 1794. Now, I will go into what we put in the addendum on S. 1836 but because we did not know what would be the consideration of the subcommittee today, whether you were going into consideration of S. 1836 itself—

Senator CHURCH. You know now we will proceed on H.R. 1794 in the interest of saving what time we can.

(The partial addendum to the statement of John T. Elfvin follows:)

ADDENDUM TO STATEMENT OF JOHN T. ELFVIN, ATTORNEY FOR DEVONIAN GAS & OIL Co.

In proposing the following amendments, it has been noted that S. 1836 is fairly comparable to H.R. 1794 as the latter was introduced in the House of Representatives January 14, 1963. H.R. 1794 underwent substantial amendatory change in its course through the House of Representatives and some of such amendments are reflected in S. 1836 (probably due to its not having been introduced in the Senate until July 9, 1963, approximately one-half after the filing of H.R. 1794). Thus, section 3(d) of S. 1836 parallels the amended section 3(e) of H.R. 1794 and both sections 4(b) accord, as do sections 4(c). The Corps of Engineers, the Bureau of Indian Affairs and the Seneca Nation of Indians will probably be interested in every such change; Devonian hereinafter only sets forth and concerns itself with those sections in each bill in which some change or amendment is sought.

S. 1836

Sections 1, 2, and 3 now reflect a legislative taking of the flowage and other easements which taking will also take away nonmember leaseholders' property rights. Despite this severe effect upon Devonian and others, only the Seneca Nation and individual Seneca Indians are to be compensated for such taking and section 3(d) clearly bans any and all claims upon or against the nation or individual Indians for any part of the consideration which they are to receive from the Government. If legislative taking is to be pursued, the bill ought to be amended to show clearly either a taking only of the nation's and/or individual Indians' interests of that persons other than the nation and the individual Indians shall have the right to have the value of their interests determined judicially and to be paid such value. Sections 6 and 9 respectively

reserve oil and gas and other minerals for the Seneca Nation and empower it to dispose of the same. Admittedly, section 6 does not give these valuable assets to the nation—in which event the prima facie construction might well be that these assets had been taken from the nation, individual Indians and non-member leaseholders and then granted back or over to the nation—but the words “are hereby reserved” do not clearly negate such an inference. If it is intended that the rights in and to the oil and gas and other minerals are to remain as they were prior to the taking, the bill should so state. Section 9, also, ought to specify that the nation does not, by the legislation, gain any new power or greater authority than it had before the taking to dispose of the reserved minerals.

Also, even though such clarifying amendments be made to sections 6 and 9, section 2(a) must show that the sum is paid to the nation for, among other things, the “damages to the nation involved in the increased difficulty or impossibility in exploiting subsurface rights.” Such damages to others—e.g., non-member leaseholders—should be recognized and specific provision made for their just compensation.

Mr. ELFVIN. If there is a consideration of S. 1836 we have certain objections or suggestions, amendments to it. It plainly concerns the legislative taking and compensation.

Particularly in H.R. 1794 there are two areas that concern us, and as I say, I have taken the liberty of marking copies of H.R. 1794, and particularly section 2(b) if you will read my addendum on that.

Section 2(b) should be amended by substituting “minimum” for “full” in the 2d line thereof, by inserting “to the nation” after the word “damages” in said 2d line and by inserting “said damages and for” before the word “damages” in the 10th line thereof. The nation has a one-eighth interest in Devonian’s oil and gas leases, for example, and the \$100,000 specified as its full compensation is grossly inadequate. Of course, to interject, our interest there is not to have our seven-eighths interest indirectly evaluated by some evaluation that is put to their one-eighth. Such sum ought to be minimal or a “floor” price with the right given, by the third of the suggested amendments, to seek the balance of its just compensation in court. The second of the amendments would clearly indicate to all that the sum set forth in the first line of section 2(b) is only for damages to the nation, thus leaving Devonian and others to have their damages evaluated and compensated for. We refer then back to the early part of the addendum relative to sections 6 and 9. Briefly what is concerned there, and I marked the bill. We are concerned in section 6 about the express reservation through the nation of these oil and gas reserves. As I have mentioned in the addendum, this is somewhat different, perhaps, from any phraseology which would be that these reserves are given to the nation, but, on the other hand, there is some connotation of that in the language of reserving it to them, and if it would be felt that there was taking away, as there is effectually, in the condemnation proceedings in Buffalo, then we would have maybe some question which we think ought not to be in this law, we would have some question whether this reserve to the nation operated to somehow reinvest them with rights for the oil and gas reserves, and if there was such a reinvesting, they, of course, could argue that this was outside of and separate from our lease rights.

Senator CHURCH. This, of course, is the very kind of consideration I had in mind in the latter part of the hearing this morning, the unforeseeable difficulties that can arise when an effort is made to reserve rights if, in fact, the estate that the Government takes does not affect those rights. When you start spelling out rights in a statute you always invite mischief.

Mr. ELFIN. We are content to leave things where they are, and not have this legislation creep into our condemnation action as being one of the things we have to resolve there, and I am just speaking attorney to attorney when I am saying that, because there are going to be enough things to fight about there without worrying about (1), the constitutionality of the statute, the construction of the statute and what the legal effect of the statute is.

Senator CHURCH. On the other hand, I do not see why you should be concerned about the present language of section b. Certainly, whatever rights your client has under the lease or the leases are rights that will be ascertained by the court, and your company is protected fully by the fifth constitutional amendment that guarantees against taking of property rights without adequate compensation.

Mr. ELFIN. That again gets into arguments of unconstitutionality and section 1 of the act, while we are getting away from—the legislative taking—now refers to taking by the condemnation proceedings, and, of course, what will be taken there, even though it is a flow of easements going to effectually take away all of the rights in the oil and gas reserves; the economic feasibility is just going to be out of the picture from this point on; and now we come to 2(b) where, as consideration for that taking they are going to pay \$100,000 as full compensation for the damage caused and so forth. Now, if we could only insert, “to the Nation,” then there is no question but what is being paid goes for the Nation’s interest. Ours would be outside of that.

Senator CHURCH. Are you reading section 2(b)? It says Seneca Nation. That’s the very first four words.

Mr. ELFIN. That is right.

Senator CHURCH. They relate this to the Seneca Nation.

Mr. ELFIN. Of course, in court I would argue exactly your position, that this did not oust us at all, but on the other hand, the contention is available.

Senator CHURCH. Your client is not part of the Seneca Nation.

Mr. ELFIN. We might be left in making the claim against the Seneca Nation for part of the moneys they received for the full compensation for the oil and gas reserve. The thing is there in theory and I think it can be ironed out by putting in the language which clarifies it. Now, I appreciate the subcommittee’s time schedule and I appreciate also that if we are going to make any amendment it interferes with that severely; but, on the other hand, we are here to protect our rights or to put before the committee what our rights are and hope the committee would afford us some relief in the legislation so we do not have the effect in court, even though as I agree with you in the balance of things, you are perfectly right and we ought to be able to persuade the court that we are not affected by it, but why have a question? I was going to section 9 which is the only further thing that ties in with the reservation of the oil and gas reserves in section 6.

Section 9 then goes on and gives to the Seneca Nation—“The Seneca Nation shall have the right,” among other things, “the power to dispose of all mineral reserves under section 6 * * *” of course, our position must be that they have already disposed of those to the extent that they are under our leases; we did not want any question

raised that this is some new power in them to dispose of it and they could thumb their noses.

That concludes my presentation, and Mr. Hurley is here to answer any questions that committee members may have.

Senator CHURCH. Any questions?

Senator MECHEM. Yes.

Mr. Elfvin, you construe that this language of the reservation is a grant, is this your contention?

Mr. ELFVIN. Senator Mechem, my position is this; I do not say that that is the construction. In court, if this were the language of the bill I would argue most strenuously and I would hope successfully that that construction is not the proper one for this language. I only say here that this can be made clear at this point by the Congress and we will not have that question come up.

Senator MECHEM. Actually, the reservation can cover only those things that they now have and it cannot give them anything new under this type of legislation, as I see it.

Mr. ELFVIN. Well, as I said, Senator.

Senator MECHEM. Reservation is certainly a word that is better from our point of view than gift, but it has a little bit of that in it.

It is common in this business, and it looks to me like it more than adequately describes the situation that exists there at the present time.

Mr. ELFVIN. As I say, this would be my contention if this were the language that came through out of Congress.

Senator MECHEM. Maybe we can make the intent clear.

Mr. ELFVIN. Yes.

Senator MECHEM. Do you have production there of your complete well that you have capped?

Mr. ELFVIN. Mr. Hurley might answer that.

Mr. HURLEY. We have two wells that are completed and capped and shut in and awaiting the installation of a transmission line.

Senator MECHEM. Have you tested them yet?

Mr. HURLEY. Yes, we have tested both wells, and the corps has tested them and the Seneca has tested them.

Senator MECHEM. Is there gas there in commercial quantities?

Mr. HURLEY. Yes, in both wells. One well at the northern part of the reservation is approximately the 2,000-foot level, the well at the southern end near the Pennsylvania and New York line is at 4,600, approximately.

Senator MECHEM. Is there any petroleum in either one of them?

Mr. HURLEY. If there is it has not shown up yet. We think they are both gas wells.

Senator MECHEM. How many more wells did you plan to drill in this area?

Mr. HURLEY. Well, our preliminary study of this matter, insofar as it concerns the taking area, revealed that in order to adequately test the entire area we would have to drill on 160-acre spacing which would entail approximately 60 wells, and these wells have been—the first well cost us approximately \$60,000 to drill and for the equipment. However, we equipped that well. We thought we might later go and test the lower zone, which, while not in the immediate area but in the area of northwest Pennsylvania and further north in New York, that proved productive in the lower formations.

Senator MECHEM. What is the closest production to you now?

Mr. HURLEY. The closest gas production and oil, too, is in the Alleghany Park, approximately 18 miles distant. I am guessing on that distance, but that is fairly close.

Senator MECHEM. Have you explored the entire reservation or only that part that you have drilled?

Mr. HURLEY. We have only drilled these three wells and have held up on our exploration program because of this continuing threat to our situation. We did not know whether the Seneca were going to be able to sustain their position of not having to give up their reservation, until quite recently, and now we are faced with condemnation proceedings, so we do not plan and have not planned to go into an extensive drilling program because of the completely speculative nature of what our position would be after having spent all this money.

Senator MECHEM. Will the existence of this flood plain here or this body of water interfere with your drilling program?

Mr. HURLEY. Yes, it would, because it would force us—if we were permitted to do it—to go into deep water drilling, depending on the depth, or slant drilling, which would be economically unfeasible because some engineers estimate this reserve at about 3 million feet of gas per acre at this particular level of 4,600 feet, and it is within limits. To enlarge on my earlier statement about the number of wells, we figured that drilling 60 wells would cost approximately \$3 million, and it would cost another million dollars to put in adequate transmission facilities, and that, based on the estimates of a possible 2 to 3 million cubic feet per acre, there was a possible return of \$9 million, anywhere between \$6 and \$9 million, so that we were faced with spending \$4 million to get between \$6 and \$9 million.

Senator MECHEM. How many wells did you anticipate you might drill in this area that is either to be flooded or used for reservoir purposes?

Mr. HURLEY. Approximately 60, or 160-acre spacing.

Senator MECHEM. Within that specific area or within the reservation?

Mr. HURLEY. Well, within the taking area. The entire 18,000 acres would take more wells. But that is at the 4,600-foot level on this 160-acre spacing.

Now, if we drill deeper it would depend on the reservoir conditions as to whether it should be 160 or 320 as it is in New Mexico. Our well spacing out there is 320 acres.

Senator MECHEM. Are you subject to State regulating authority?

Mr. HURLEY. We are as of 1963, but not as to spacing.

Senator MECHEM. You can establish your own spacing?

Mr. HURLEY. I have not read the law since we have not been drilling currently this year in New York, so I really do not know whether there is a spacing law or not. I believe there are some features in the law that require you to stay so far off the property line, but this is the first year it has been in effect.

Senator MECHEM. Have you drilled enough wells out there to tell whether you have good communication between the wells or not?

Mr. HURLEY. No; we have not.

Senator MECHEM. This will have to be tested?

Mr. HURLEY. We would have to drill many wells to prove the point of communication, if, indeed, there was.

The Bonita formation is the one I am addressing my remarks to which is at the 4,600 level, is lenticular in nature, is not a solid reser-

voir, and there is a great chance of getting dry holes as well as production; it is purely speculative.

Senator MECHEM. But you are still waiting to prove this particular field.

Mr. ELFVIN. This, of course, would be one of the issues in court in the condemnation proceeding. We would have to have the various experts come in and give their opinions and this, that, and the other thing, and let the chips fall where they fall.

Senator CHURCH. I am glad the court will have to determine this question and not this committee.

Mr. HURLEY. Our great concern was perhaps this \$100,000 which we have absolutely no quarrel with at all, and want no part of it. We were fearful that there was an agreement between the correspondents and the Seneca to discharge this entire claim for gas and oil rights underlying the taking area which would operate to our detriment in the condemnation proceeding. That is unless we had clarification in the bill.

Senator DOMINICK. Mr. Chairman.

Senator CHURCH. Yes, Senator Dominick.

Senator DOMINICK. On that specific point, if we just put in the words "to the nation" in line 19 on page 2, it seems to me that would take care of that point, without using the word "minimum" or the other suggestion you have.

Mr. ELFVIN. That is right, and the only other further connection with that, and I think we can take care of that in court, the \$100,000 might be cited as evaluation of the one-eighth which ties our hands to a certain extent on the valuation of the seven-eighths, but I think we can get around that. Obviously, there is an agreement by the corps, between the corps and the Seneca Nation and as far as the Seneca Nation is concerned I think it is obvious to all that they are not truly concerned whether they are getting their money under 2(b) or whether they are getting it under some other provision of the act. What they want is the money and as far as the corps is concerned, if they can get the moneys allotted outside of the district award basis it is not charged to their project and they are probably very delighted.

Senator DOMINICK. Mr. Elfvin, let me just expand on this a little more. You have not yet established in court, have you, that there has been a taking by the Government of your rights here?

Mr. ELFVIN. We have been cited, served rather, in a certain number of the 29 condemnation proceedings, the exact number I have to admit I do not know, but I would say 50 percent of them—

Mr. HURLEY. In the taking area?

Mr. ELFVIN. How many have we been served with?

Mr. HURLEY. Approximately eight.

Mr. ELFVIN. Eight thus far, and this does not include the balance they served the other day. February 28 they filed more.

Senator DOMINICK. But there has been no agreement between you and the corps, nor has there been any establishment yet in court, that your rights here have been violated by the taking of the Government sufficient to pay you compensation?

Mr. ELFVIN. That's right, and, of course, we would have to come in and show, I say in my statement this is sort of admitted at this point, but in court we will have to show that this is the real effect of this

taking in full acknowledgment, that in effect it takes just as though they were taking in fee as far as knocking us out of the box.

Senator DOMINICK. The point I was trying to make here was to make sure of this position. I am sure the committee does not want to put any language in here which would have any effect on the court decision as to its reliability.

Mr. ELFVIN. That is what we would hope for.

Senator CHURCH. Any further questions?

Thank you very much, gentlemen.

Mr. ELFVIN. Thank you.

Senator CHURCH. Now, Mrs. Edwin D. Solenberger is here from Upper Darby, Pa., but she tells me that in the interest of saving the committee time and knowing the problem we face in completing our hearing, that she will not ask to testify, but I wanted to call attention to the fact that she has come and has had a great interest in this matter as well as in Indian matters generally, and we are very happy that she is here and that she is cooperating with the committee in this way.

Mrs. SOLENBERGER. May I submit a statement as I did for the House hearings for the Women's International League?

Senator CHURCH. You certainly may.

Mrs. SOLENBERGER. I would like to submit a statement for this nationwide women's organization.

Senator CHURCH. Very well, without objection, that statement will be received and included in the record.

(The statement referred to follows:)

STATEMENT OF MRS. EDWIN D. SOLENBERGER

On behalf of the Women's International League for Peace and Freedom, U.S. section, for which I have for some years been referent on American Indian problems, I wish to support H.R. 1794 as passed by the House of Representatives.

We strongly supported H.R. 1794 in the House. We hope that the Senate's committees, then the Senate, will adopt H.R. 1794 speedily in order that work on new homes, community buildings, scholarships, and other needs of Senecas facing results of the Kinzua Dam may be started as soon as possible.

I am also a member of the Indian Committee of Philadelphia Friends Yearly Meeting and of the Indian Rights Association, but wish to emphasize at this time the support of 10,000 women in a nationwide organization to whom I have presented reports on Kinzua Dam prospects and expected results for the past 7 years, always with unanimous approval from members in many States.

Senator CHURCH. Is Mrs. Reva Barse here?

Mrs. BARSE. Right here.

Senator CHURCH. Would you like to testify at this point?

Mrs. BARSE. Yes.

Senator CHURCH. You are representing the Women of the Seneca Nation?

Mrs. BARSE. That is right.

Senator CHURCH. Mrs. Barse.

STATEMENT OF MRS. REVA BARSE, REPRESENTING THE WOMEN OF THE SENECA NATION; ACCOMPANIED BY MRS. HATTIE HALFTOWN

Mrs. BARSE. Mr. Chairman, members of this committee, ladies and gentlemen. It is due to unequal and unjust circumstances that Hattie Halftown and I are here today before this subcommittee, an institution of justice and fair play, the Senate of the United States of

America. We profoundly appreciate this privilege and opportunity to present before this esteemed committee the objectives and desires of the mothers of the Seneca Nation of Indians and its disenfranchised women. We are entirely without counsel so perhaps you will have to bear with us.

In a public council meeting of the Seneca Nation held February 1, 1964, in the reservation courthouse, Red House, N. Y., during the course of what became a heated discussion between George Heron and me, Mr. Heron stated: "The women of the Seneca Nation did not vote me or this council into office. You have no voice in the affairs of the Seneca Nation. You are not represented by me or this council. As far as I am concerned you are a second class citizen of the Seneca Nation."

When I challenged his right and that of the council to have dared to negotiate and litigate to the extent that they have on the project without representation of the women, Mr. Heron repeated his stigmatizing remark.

In that Mr. Heron and his council have disregarded section 5 and section 13 of their tribal constitution by denying the mothers of the nation and the disenfranchised women, voices in the affairs of the nation, Hattie Halftown and I have been delegated by Seneca mothers and disenfranchised women to present our objection to H.R. 1794 and our desires to have H.R. 1794 amended in the hope of having this renowned institution of justice and fair play to minority groups will have to relieve us from this oppression. Read sections 5 and 13. Note: Establishes the fact that our grandmothers voted in the affairs of our nation.

It is requested that the voice of the women has been denied in these modern times.

We have been instructed to demand for the disenfranchised women and mothers of the Seneca Nation a per capita payment, instead of all those fantastic expenditures, unnecessary and foreign to our people.

We demand an investigation into the extensive irregularities in administration of tribal affairs which have been emphasized through the proposed Kinzua Reservoir project.

I bring this out because I have been named as the sponsor of a petition to rectify the very fact that our Indian women are not represented by this council or by President Heron or their attorney, so I will have to submit a petition asking our male members, who are the legal voters, to hold a referendum that we, too, may have voices in the affairs of our nation.

I have learned from Seneca women who give serious consideration to our Indian problems that the majority of those who have contacted me by mail or discussed the problems personally the uppermost thought is "We demand a per capita payment or no reservoir."

The members of the Seneca Nation of Indians still own their reservation lands in common. They were exempt from the provisions of the Allotment Act, Daws Act of February 8, 1887. Our properties have never been allotted in severality. No one holds a clear deed to his property. There can be no lease or rental of lands for any reason, or sale of natural resources to the Federal Government, the State of New York or any other local government, business enterprise, or non-Seneca individual, without a per capita payment to enrolled Senecas. Such tribal income or funds is not the personal property of the elected officials to do with as their irresponsible impulsiveness dictates.

The women, and an increasing number of men, are desirous of having a full accounting of tribal funds, a proper bookkeeping method set up for the Indians, and periodic auditing of the nation's finances. No more of this two sets of books: one for public examination, and another for the administration's own security; no more free hunting and fishing licenses or special favors of any type to friends of the tribal officials at the expense of loss of revenue to the enrolled members.

Congressional reenactment of the Ryan Act, 1902, has been suggested as a possible means of protecting tribal funds, with punishment to tribal officials for misappropriation of funds, concealment or destruction of records, failure to operate on a budget and establish a bona fide system of accounting, and arrange for a quarterly examination of books.

Regarding mother heritage, some of the Indians are in favor of enrollment of children of both white and Indian mothers with equal treaty and tribal rights, and Mr. Heron has suggested that, in order to do this, in order to vote, that we have to forfeit our mother heritage, and the women do not believe in that.

However, the Indian men who have entered into mixed or intertribal marriages did so with full knowledge of loss of Seneca Indian rights to their children. Granting Seneca rights to children of intertribal marriages would not work out, as the non-Seneca mother's tribe is just as anxious to preserve its own tribal identity, lands, and culture as we. Many of the white mothers do not want their children on the reservation Indian roll. Generally, they do not want their children resident upon the reservation for any great length of time. These white mothers ask nothing of the Seneca Nation. If they need assistance they know their children are Indians of the State of New York, where nationals and race are determined by the father's race and nationality and are therefore entitled to any aid available to Indians of the State of New York without discrimination of race, color, creed, or nationality.

Mother heritage is dual in purpose and highly regarded as well as functional in both the religion and government of the tribes of the Iroquois Confederacy, of which the Seneca Nation is a member. Mother heritage of the confederacy cannot be extinguished or extended by an ultimatum from an elected form of tribal government. This dominant factor of Indian life is accepted or rejected upon the prerogative of the individual; the door to the reservation is always open. It is not for George Heron to dictate who is to be an enrolled Seneca. He is grossly overconfident and overstepping his bounds when he attempts to dictate to white mothers, as he has the disenfranchised Seneca women, who have at long last openly rebelled at the dictatorial and unjust measures exercised over them by all-male administrations.

The Seneca women ask by what authority the Bureau of Indian Affairs feels after 14 years of disclaiming any responsibility toward the Seneca Nation of Indians, it along with the incompetent tribal officials; the Quakers, and the Corps of Engineers assumes the right to negotiate and OK arrangements for all the fantastic programs as provided under H.R. 1794 or to dictate how much is to be paid, when and how the money is to be spent. Did this triumvirate dictate what the white people affected by the Kinzua Dam and proposed reservoir will do with their money? If so, by what right? Was the Pennsyl-

vania Railroad Co. told how it was to spend the \$30 million property and rights-of-way?

Many Senecas feel that using funds for educational and community recreational programs deny many of the older people the full benefit of the money. For instance, all our Indian youths are not ambitious enough or sincerely interested in college educations for \$3 million to be earmarked for education when less than 20 Senecas attain college entrance qualification per year, and less than half of the college students remain long enough to receive their degree.

Many of our Indians are just not college material. Furthermore, formal education is strictly the individual's personal problem or that of his immediate family, and in our circumstances should not be extended as a tribal responsibility. The United States and the State of New York extend welcome and helping hands to all others, even non-citizens across the seas. Why discriminate against the Senecas? If a youth really desires to improve himself, he will make it with a little hard work and a few sacrifices. The Seneca men and women who have achieved their aims most appreciate their higher education because they have had to work for it. It can be truthfully said that "they earned their degree." In the same line of thought the proposed recreational facilities are objectionable to the majority in that not too many would actually benefit through participation.

There is objection to the proposed \$29 million Williamsburg development and I quote:

Under this proposal there would be among other things a reception and information center, an auditorium, a library, a greenhouse, the Longhouse Motor Lodge with lounges, swimming pools, Indian sauna, cafeteria, shops, special recreation rooms, 50 tent cabins, shopping center, Seneca Indian village, living natural museum, 12 buildings having an early 19th century architectural style showing the Indian's influence in America, and additional buildings to be developed as a result of research conducted during the early years of the project's operation, buildings and plantings in French architectural tradition, buildings and plantings to provide a British atmosphere, and London puppet theater similar to the one visited by the Iroquois chiefs in 1710.

Could any program be more ridiculous? The Indians feel that they are in need of more useful things. They fear that the summers would be a typical Coney Island or carnival, with a perpetual Olympiad in operation every month of the year. The U.S. Government wildlife and conservation program though more in keeping with true Indian atmosphere would require the taking of more lands over what is required for the reservoir.

Federal housing in the reservation is not without criticism. The purchasing or renting of new homes either from the Federal Housing Authority or the Seneca Nation is objected to. The homes should be outright gifts with no strings attached. Those who now have homes of relatively little value and are of limited means would have to rent. They do not desire to be placed in a position of servitude in order to live in one of the Federal- or nation-owned projects as has been outlined. After all, the Senecas did not request this reservoir.

Many of these families to be relocated from the "take area" have never rented, many are retired from working as section hands on the railroads, or farming their own lands. They have never paid rent, they cannot imagine the responsibility. They ask, "What is to happen to us? Where are we to go when we are evicted for nonpayment of rent? Will Warren, Pa., Pittsburgh, Jamestown, Randolph, Brad-

ford, and Buffalo welcome them to their slums and charity institutions?"

In view of the fact that the Seneca women and many men have had no voice in affairs of their nation, it is my personal recommendation that a thorough Senate investigation be undertaken as soon as possible, into the irregularities of administration of tribal affairs, and conflict in interests of the tribal officials and their attorney.

Others who have promoted and endorsed these fantastic programs for the Seneca Nation of Indians without further responsibility for their future cannot be absolved from their part in this most unjust, un-American, and undemocratic program to be attempted upon a minority within the boundaries of these United States of America in modern times. The Indian Bureau has been aware that the women have been without representation in tribal affairs. Mr. Carney, BIA representative, moved in for the kill as soon as the Heron administration set the stage. I informed Colonel De Melker, of the Corps of Engineers, of the problem in 1962-63. In Washington, D.C., March 19, 1963, I testified before the House Subcommittee on Interior and Insular Affairs (Indian Subcommittee) and informed that committee of some of the irregularities in administration of Seneca Nation affairs. I was advised at that time to undertake the necessary reforms, but such an undertaking was more than my daughter could afford to finance.

Reforms should be instituted as soon as possible. A tribal election is due to be held in November of this year. Men who normally would be interested in holding office are reluctant to even express desires for candidacy to succeed these corrupt officials, as they want no part of the situation as it is, lest they, too, will be charged with the same irregularities in administration of our affairs, as left by former administration. They wish to enter office with a clean slate.

There is also the suggestion that tribal officials holding office during the past 8 years and the Senecas who volunteer to serve on various Kinzua project committees be barred from ever holding tribal office or actively engaging in affairs of the Seneca Nation, the right to vote in the tribal elections would not be denied.

We want no part of these funds held in trust by the Bureau of Indian Affairs for the Kinzua project, as it is no safer there than it would be in the hands of our corrupt tribal officials. This we have learned through past experience, and I believe that that will conclude what I have to offer.

Senator CHURCH. Thank you, Mrs. Barse.

Any questions? Senator Dominick?

Senator DOMINICK. Mrs. Barse, did you make a statement before the House committee?

Mrs. BARSE. Yes; I did.

Senator DOMINICK. Do you live on the reservation?

Mrs. BARSE. No; I live in Buffalo. I am an enrolled member of the Seneca Nation.

Senator DOMINICK. Do you have property which will be taken over when this property becomes flooded?

Mrs. BARSE. Yes; I do.

Senator DOMINICK. Could you tell the committee how much of the tribal income is now distributed on a per capita basis?

Mrs. BARSE. Well, from the U.S. Government we get \$2.40, and then the money from the nation fluctuates. This last time I think we got about \$6 from tribal revenues.

Senator DOMINICK. Let me ask you this: Is there a distribution on a per capita basis each year?

Mrs. BARSE. Yes; there is.

Senator DOMINICK. Your request here is that instead of creating a trust fund for the nation as a whole, whatever payment that is made should be distributed on a per capita basis?

Mrs. BARSE. Yes; we feel that inasmuch as other people have the right to use their money, the white people and other persons of this country, the Indian people should be able to do the same.

Senator DOMINICK. You are a Seneca?

Mrs. BARSE. Yes; I am.

Senator DOMINICK. Am I correct in understanding that the Senecas do not have women suffrage?

Mrs. BARSE. That is right. I was invited before the intercommunity club of the women's organizations in Buffalo on Susan B. Anthony Day where they gave annual awards and I was honored for undertaking this work to try and have the women of the Seneca Nation have a voice in their government. They thought it was proper that I should.

Senator DOMINICK. Now, is it your position, as far as this House bill is concerned, that section 4 is unnecessary?

Mrs. BARSE. I do not have that. Would you please give me an idea of what it is?

Senator DOMINICK. Section 4 is the \$17 million for education, for industrial development, for community buildings, community facilities.

Mrs. BARSE. That is right. I do not think that we need the industrial park for one thing, because we are in such a place, the most modern and most advanced scientific laboratories and things like that in Buffalo and surrounding cities, that as far as employment is concerned and everything else, it is just a matter of getting in your car and driving to the places and you can either be employed, work, or seek any information you want from these industrial facilities that are part of the general community, and we are not barred from that. The white people up our way are very kind to us in this respect.

Senator DOMINICK. The members who live on the reservation are entitled to go to the public schools; are they not?

Mrs. BARSE. Oh, yes.

Senator DOMINICK. So there is no segregation problem?

Mrs. BARSE. Definitely not of any kind.

Senator DOMINICK. Thank you.

Senator CHURCH. Of all of the Seneca Indians, approximately one-fourth live off of the reservation?

Mrs. BARSE. They say about that; yes. There are very few of them that are living down in the State area, actually. Some of us go back for the summer or a few months, over the weekend or for vacation.

Senator CHURCH. Do the women of the reservation have no vote, even those who live on the reservation?

Mrs. BARSE. That is right, no one has a vote. We have never voted since 1848 when our tribal government—the chief form of govern-

ment was replaced by the elected form of government. Since then, even though the white women got their vote in 1924, the Seneca Nation never did extend that privilege to us.

Senator CHURCH. Now, you are referring, of course, to voting for members of the tribal council?

Mrs. BARSE. Yes. But if a person wants to exercise their right to vote in the general election of the white people, you can.

Senator CHURCH. In other words, you can vote in, as you put it, the white people's election, but you cannot vote for members of the council of your own tribe?

Mrs. BARSE. That is right.

Senator CHURCH. This is not a matter that this committee can resolve insofar as this bill is concerned, but I would be interested in knowing whether you have taken this up with the Indian Bureau in view of the fact that tribal constitutions under the laws are supposed to be not inconsistent with the governing constitution of the State and Nation.

Mrs. BARSE. I have spoken to the House and repeatedly letters have gone into both the Department of the Interior and the House of Representatives complaining about these things, and they have disregarded them up to now.

Senator CHURCH. Mr. Commissioner, are you aware of this situation? What has the Bureau done in the past about it?

Mr. NASH. Yes, sir. The Bureau has not heard from Mrs. Barse on this subject. I have had discussions with Mr. Heron, the president of the Seneca Nation, who is of the opinion that the tribe bylaws ought to be revised so as to provide for woman suffrage. At the time the present tribal government was organized, the laws of the States and of the United States, also, did not provide for woman suffrage.

Senator CHURCH. What is the opinion of the Bureau on this matter?

Mr. NASH. The opinion of the Bureau is that the bylaws ought to be changed, not taking part in this activity as a part of the general Bureau withdrawal from Seneca affairs which took place in 1948, and our coming back into it has been only occasioned by the present crisis over the Kinzua taking.

Senator CHURCH. If there are no further questions, thank you very much.

Senator DOMINICK. I would like to ask one question just to tie down a point.

Do I understand that you had a meeting of the women of the Seneca tribe and they appointed you as their spokesman?

Mrs. BARSE. Yes; I have letters that I will leave.

Senator DOMINICK. Thank you, Mrs. Barse.

Senator CHURCH. Very well. Thank you very much, Mrs. Barse. (The letters referred to are in the files of the committee.)

Senator CHURCH. Mrs. Halftown, thank you for coming.

Mr. LAZARUS. Mr. Chairman, we have a good number of women from the Seneca Tribe who will not consider this lady their spokesman.

Senator CHURCH. We are not really going to undertake to pass judgment upon such questions as who represents who. What we really want to do is get whatever testimony witnesses desire to offer that bears upon the bill.

We understand your position on this and we appreciate your coming and testifying today.

Mrs. BARSE. Thank you.

Senator CHURCH. Thank you very much, ladies.

Now, Mr. Commissioner, you have been here for a better part of the whole day and we have not heard from you yet except to call you on the carpet two or three times. Would you not like to come up now and present your testimony? You have Mr. Holmes with you, do you not, the Assistant Commissioner?

Mr. NASH. I would like him to accompany me, and I also have Mr. Carney with me.

STATEMENT OF PHILLEO NASH, U.S. COMMISSIONER OF INDIAN AFFAIRS; ACCOMPANIED BY GRAHAM HOLMES, ASSISTANT COMMISSIONER FOR LEGISLATION, AND SIDNEY CARNEY, SPECIAL REPRESENTATIVE OF THE BUREAU AT SALAMANCA—Resumed

Mr. NASH. Mr. Chairman, for the record, my name is Philleo Nash. I am the U.S. Commissioner of Indian Affairs and I have with me this afternoon Mr. Graham Holmes, Assistant Commissioner for Legislation, and Mr. Sidney Carney, special representative of the Bureau at Salamanca, and our liaison with the Seneca Nation since the development of this matter.

I have submitted previously, Mr. Chairman, a very brief statement to supplement the departmental report on the bill. Because there is a shortage of time and the Department's views are well known, with your permission, I will not read it or even speak from it, but merely reaffirm the departmental support of this legislation; concur with the statements that have been made this morning as to the importance of proceeding expeditiously; to say that the late hour at which this legislation comes before this committee is more a reflection of the complexity of the problem than of the failure either of the Indians or of the Government to come to grips with the problem; and then to submit myself for such questioning as the committee may have, unless the Chair would prefer I proceed with some statements on various portions of the bill.

Senator CHURCH. I think this is saving as far as time goes, Commissioner.

Do either of your associates have any prepared statements to make?

Mr. NASH. No, sir; they came here to support me with facts or information that I may not have.

Senator CHURCH. Let me first turn to other members of the committee and ask if they have questions to put to these representatives of the Bureau?

Senator MECHEM. I wanted to inquire what the basic difference was between this treaty and the treaties that exist with the other Indian tribes?

Mr. NASH. Very little difference, Senator.

Senator MECHEM. This is one of the very earliest treaties in which the United States entered. The language is perhaps a little more sweeping and more exact than some of the others, but in principle there is no difference between this treaty, merely a difference in history and antiquity in this particular case.

Have there been any interpretations of the treaty by courts similar to some of the other treaties that have been reviewed?

Mr. NASH. Senator Mechem, the Senecas, through their attorneys, contested the taking of the land for this purpose in the courts and carried it all the way to the Supreme Court of the United States which refused certiorari in 1959. The plan itself, as the Senator perhaps knows, is an old one. It was first proposed in 1928 and has been a matter of controversy over a very long period of time.

Senator MECHEM. But this is the only time that this particular treaty has been handled in the courts?

Mr. NASH. This is all I know.

Senator MECHEM. Do you have any information at this time as to the number of children on the reservation of school age and of college age that are taking advantage of the existing educational facilities?

Mr. NASH. The information as to population and education is fully set forth in the Brill report, of which the committee has copies. Mr. Carney perhaps could provide the exact figures more easily than I could.

With reference to lower school education, the State of New York has been providing these services along with all other community services for many years.

As I indicated earlier this morning, our representative at Salamanca was withdrawn in 1948, so that all those Federal services to which the Senecas might be entitled but where there is a matter of application or a matter of their being informed about it have not been systematically brought to their attention over the past period of years unless the State of New York should happen to do it. The New York State services to the Senecas are very comprehensive. We have no Senecas on adult education or training. We have no Senecas taking advantage of the grants to higher education. As I said this morning, they are entitled, and the fact that they do not, merely reflects the fact that we walked away and left them in 1948.

Senator MECHEM. The only grants that you are paying at the present time are treaty grants?

Mr. NASH. Yes, sir. And these are symbolic and ceremonial. There is an actual payment of cloth in kind that is provided for in the treaty which antedates the 1794 treaty.

Senator MECHEM. If this legislation is approved, will the Bureau have any part in the management of any of the facilities or any advisory position or anything of that characteristic?

Mr. NASH. Our present policy is to provide technical assistance to the Indian tribes and to try to keep the heavy hand of communism out.

If such a large sum of money should be provided to the Senecas, the legislation provides for the plan to be agreed upon between the Seneca tribal government and the Secretary of the Interior. We would exercise such supervision over that plan as the Congress might direct us to. If we have no direction other than what is provided in this present legislature, we would want to see the plan through leaving Mr. Carney there long enough to set up a corporation under New York State law as provided for and recommended in the bill and see the project well launched. I have the impression that the Senecas have come to rely upon Mr. Carney's friendly counsel and advice to a very

considerable degree. I would not like to see any more of that going back after criminal jurisdiction has been transferred to the State of New York as it was many years ago, and after the land records situation is cleared up in my judgment we have quite a mess as far as the land records are concerned at Salamanca when our agent was withdrawn in 1948, and one of the secondary purposes of this legislation is to correct that.

Senator MECHEM. Are you at the present time operating any programs to attempt to obtain employment for any of the Senecas off reservations?

Mr. NASH. No, sir. The only services that we are providing the Senecas at the present time are those which Mr. Carney is providing and those services are all in connection with the pending legislation, economic development programs. Under that we have had many contacts and conferences with their President and counsel members of the Seneca Nation here in Washington but we have all been mainly preoccupied with the problems arising out of the legislation.

Senator MECHEM. Let me ask Mr. Holmes a question on section 6 of H.R. 1794.

The use of the word "reservation." I would like to get this opinion for the record if I could, and ask him what is constituted within the phrase "reserved as far as the oil and gas business is concerned" as far as the ownership goes?

Mr. HOLMES. Well, I think that section 6 is purely clarifying. It reserves nothing that they do not already have, actually. In other words, this is a taking by an easement, flowage easement; the very nature of that type of taking leaves to the tribe everything that is not taken, so the tribe owns the minerals, but they understand it better when it is spelled out in language like this and when it is explained to the tribe it is easier to explain to them where there is a specific reservation stated in the act itself. We do not interpret section 6 to give the tribe anything they do not retain by the nature of the taking itself, so that is our interpretation. It will not serve to give them any additional estate that they do not already own.

Senator MECHEM. Thank you, that is all.

Senator CHURCH. Senator Dominick?

Senator DOMINICK. Mr. Chairman. Mr. Nash, you said the Bureau of Indians Affairs removed itself from Seneca affairs in 1948; is that right?

Mr. NASH. Yes, sir.

Senator DOMINICK. At whose request did you come back in and when was it?

Mr. NASH. We came back in in the sense of having a personal representative at Salamanca by agreement between the Senecas and the Corps of Engineers and ourselves. Mr. Carney was—

Senator DOMINICK. When was this?

Mr. NASH. March of 1962. I might say that all these arrangements were made pursuant to a directive of President Kennedy who reviewed the whole Seneca matter after he took office and wrote the then president of the Seneca Nation, Basil Williams, that he was directing the departments of the Government to lend every assistance needed and named four particular areas, and it was pursuant to that directive that we got back into Seneca affairs and we have taken several

steps; the only one that involved personnel representation was assigning Mr. Carney there.

Senator DOMINICK. Did that report—of course, I have not seen that—call for the creation of industrial parks.

Mr. NASH. Yes, sir.

Senator DOMINICK. Specifically?

Mr. NASH. Yes, sir. The President's letter directed us to do four things: to examine the recreation potential to be created by the waters; to investigate the possibility of new lands contiguous to the reservation that would be required in exchange for the lands to be inundated; directed us to offer guidance counsel to the Indians in the matter of relocation, and to offer rehabilitative services, including a plan for the social and economic development of the reservation area. It is my interpretation of that section that we included the possibility of a municipal park.

Senator DOMINICK. Was it on that basis that you agreed to pay for part of the program?

Mr. NASH. Yes, sir.

Senator DOMINICK. Now, in 1948 you came to the conclusion that the Senecas were emancipated, did you not?

Mr. NASH. I was not associated with the Bureau at that time, Senator.

Senator DOMINICK. This would be the basis for that determination?

Mr. NASH. But the basis of the withdrawal of Bureau representation at Salamanca at that time was that the State of New York had taken on all the important services that were being offered, especially in the community services field and education. The civil and criminal jurisdiction either had been or was about to be extended to the State of New York. There seemed to be very little left for the Bureau to do at Salamanca at that time except the exercise of trusteeship over the tribal lands, which to this date are owned tribally and held in title to the United States with beneficial benefit to the nation.

Senator DOMINICK. Has that changed so far as the tribe is concerned?

Mr. NASH. I am not quite sure I understand your question.

Senator DOMINICK. Are they any less qualified to be emancipated now than they were in 1948?

Mr. NASH. No, sir. They are a very capable, competent, and well-represented group of people.

Senator DOMINICK. That is the general impression I have received: an intelligent, good group of people. But the effect of this, as I understand section 4, is to recreate a tribal situation tending to pull them back in from this emancipated position.

Mr. NASH. I would think not, sir, not intending to be contentious, but the report—we have copies for the committee, if none are in the committee files—very clearly proposes the formation of a corporation under State law with the—

Senator DOMINICK. We are not talking about the Brill report here. I am just talking about the bill that we have in front of us.

This creates a new fund in the Treasury, presumably to be administered by the Interior Department and the Bureau of Indian Affairs over a period of time, 20 years for educational services, all the very things that it seemed to me that we were trying to get away from in 1948.

Mr. NASH. Senator Dominick, these were not services that were being performed by the Bureau to any great extent anywhere in 1948, and not at all on the Allegany Reservation. I see no particular reason to think that the simple administration of the proposed educational trust fund or the affairs of the corporation of which the funding is provided in this bill should require a large Bureau establishment or create interference in the affairs of the Senecas.

Senator DOMINICK. Now, in section 4 at the bottom of pages 7 and 8, it says that the funds authorized by this section shall be expended in accordance with plans and programs approved by the Seneca Nation and the Secretary of the Interior provided that no part of such funds shall be used for per capita payments.

Even though, as I understand it, the nation is emancipated. Does this not bring the Secretary of the Interior right back into the tribal government?

Mr. NASH. It brings the Secretary of the Interior, Senator, into the planning function; I would think that the Congress of the United States would not be too anxious to direct or set up a fund as large as this without providing for some assurance that the execution, that the preparation of the plans and executions are in accordance with the instructions of the Congress.

Senator DOMINICK. Let me say that I am not a bit sure I want to set up a fund this large anyhow. So, that is not what I was getting at.

The point I am making is simply that it seems to me that under section 4 we are dealing with a newer type of thing than we are as far as the damages at Kinzua Dam is concerned. Is it not true that the Area Redevelopment Act, for instance, is available in this area for loans for industrial purposes, tourist purposes, and so on?

Mr. NASH. It is generally available. Mr. Carney, is it specifically applicable to this county?

Mr. CARNEY. We now have a designation of 75-25 percent.

Mr. NASH. Yes; it is.

Senator CHURCH. Yes; it is. Area Redevelopment Act is also for Indian reservations.

Senator DOMINICK. This area also is serviced educationally by the State of New York and the State of Pennsylvania, I believe, for schools?

Mr. NASH. The State of New York; not the State of Pennsylvania.

Senator DOMINICK. Well, the State of New York. The State of Pennsylvania, I presume, has a public school system; those who live in Pennsylvania can get an education there.

Mr. NASH. The reservation is located in New York State.

Senator DOMINICK. But the dam is in Pennsylvania, the recreation area is going to be in Pennsylvania.

Mr. NASH. The recreation area proposed by this bill will all be in New York State, sir. May we produce our map?

Senator DOMINICK. Let me just go on a little bit further.

Mr. NASH. Yes, sir.

Senator DOMINICK. The Senecas, as I understand it, would be eligible for loans under the NDEA, would they not?

Mr. NASH. Yes, sir.

Senator DOMINICK. For higher educational purposes?

Mr. NASH. Yes, sir.

Senator DOMINICK. They would be entitled, in other words, to make use of the broad programs that have been passed by Congress just like anybody else?

Mr. NASH. You are quite correct.

Senator DOMINICK. Well then, what we are doing is to provide over and beyond this a very special set of situations to draw them back in again into a special category; is that correct?

Mr. NASH. Not entirely correct, sir. There is proposed a fund here which is desired by the Nation as part of the special damages which the Bureau was directed to assess by the President of the United States. We worked this out with the Senecas themselves and they themselves feel that as part of the special damages they desire to have this educational trust fund set up over and above what everybody else is receiving.

Senator DOMINICK. Let me say I do not blame them.

Mr. NASH. The only exception I took, sir, was the statement it is intended to bring them back into the fold. That is not their purpose nor ours.

Senator DOMINICK. Well, it has the effect of doing that as I see it at the moment.

Senator CHURCH. May I interject a question at that point, Senator?

You remember last year, Mr. Commissioner, we passed the bill that related to the Lower Brule tribe. There was a taking there as I recall it, of Indian land for reservoir purposes, was there not?

Mr. NASH. Yes.

Senator CHURCH. How do you differentiate this case from the case of the Lower Brules to justify so much more for an extensive, elaborate program for these Indians than you advocated for the Lower Brule tribe?

Mr. NASH. There are several reasons, Mr. Chairman. One reason is that this reservation is being torn apart to a much greater degree than any of the Missouri Basin taking. May I direct your attention to the colored chart there. The New York-Pennsylvania line is over there at the left hand side. When the pool has been filled all that will remain of the reservation lands are the parts which are shown in this colored chart in orange; above the Salamanca, the land is almost unusable for economic or development purposes because of water, marsh, and brush condition.

The two recreation areas which we are proposing modified almost three quarters from the Brill report are the lower left hand side of the reservation, the most extreme left on that chart marked State Line Run Recreation Area. Here we are proposing a water-based recreation area principally because that is a part of the reservation which is the closest to the big impoundment and the place where there will be the least fluctuation of the pool.

Now, at the Hotchkiss Plateau area on the north side of the reservoir the Brill Co. has proposed, and we have accepted only in part, a proposal to generate a non-water-based destination area that will offer something to the tourist not offered by the water-based recreation of the competitive areas.

As the map shows, the impoundment stops just short of the visage of Salamanca. Part of our proposal here for the Senecas is to bring those land records tied up in surveys up to date so that the present injustices in the leases may be corrected.

Now, what does not show here is the proposed industrial park at the Cattaraugus south of Buffalo which the Brill Co. recommends and which is a part of our bill and which will provide jobs and eventually income. What we have tried to do here is to scale the Brill proposals to the definable needs of the Indians and we have applied only two tests. One, is this feasible? Does it actually relate to the Indian people so as to avoid the objections raised by Senator Dominick earlier, and second, is it in line with the directives of the President in his letter to Basil Williams and his memorandums to us?

Senator CHURCH. I did not mean to interrupt your questioning, Senator Dominick. If you want to finish your questioning, please do.

Senator DOMINICK. This will not take very long.

On page 2 of the report you show that the cost of the water facilities for the relocation site, for instance, has already been estimated at \$410,000 by the Community Facilities Administration which has authorized a \$306,000 grant, so it seems apparent that the Community Facilities Administration, under the ARA, has already been used in here; is this correct?

Mr. NASH. That is correct, it was done at our insistence—

Senator DOMINICK. And the Seneca Nation, according to the report from the Department of the Army, has made application to the Community Facilities for \$940,000 for the construction of two community buildings with nation being obliged to repay 25 percent of the amount?

Mr. NASH. Those applications have been rejected by the Community Facilities Administration.

Senator DOMINICK. They have been?

Mr. NASH. Yes, sir.

Senator DOMINICK. Was any reason given?

Mr. NASH. No, sir. They thought that the supplying of funds of the water development was as far as they could go in fairness to other communities in New York State. They accepted the water on an emergency basis and turned down the community buildings. The amounts here is merely enough to take care of the Senecas 25-percent charge under that grant.

Senator DOMINICK. Now, section 2(d) states in its language that it provides for the payment to the nation over a million dollars as indirect damages and a settlement of all other claims that it, the Seneca Nation, may have. I would presume that what we are talking about there is a settlement of all claims outside direct damages which could be attributed to the Kinzua Dam directly; is that correct?

Mr. NASH. Mr. Holmes, do you care to comment on this question?

Mr. HOLMES. Yes, sir. And to add further, this is the style and the format of the other takings for the construction of dams along the Missouri River. This falls into the same pattern. There is a sum of money for the actual value of the land, the appraised value of the land. There is a sum of money which is granted to Indian tribes as indirect damage for loss of their use of their area, that is for the wood and the wildlife and such things as that. That is the indirect damages. This figure here, that makes up this figure.

Senator DOMINICK. Now, can either Mr. Nash or Mr. Holmes, and I think this is my last question, Mr. Chairman, tell me of any other cases specifically, and if so, how many, where a provision similar to section 4 has been inserted?

Mr. NASH. Yes, sir. This was done in five takings of land for river basin development purposes in North and South Dakota. Specifically at Fort Berthold, Cheyenne River, Standing Rock, Crow Creek, and Lower Brule. And there may be others, but these are the most similar.

Senator DOMINICK. Now, as far as the last two are concerned, the report of the Bureau of the Budget, I believe it was, differed with you on that. I do not seem to have it. In the settlement for the Crow Creek and Lower Brule, we used a per capita settlement provision?

Mr. NASH. No, sir.

Senator DOMINICK. We used the per capita amount to arrive at the amount of the rehabilitation payment?

Mr. NASH. Yes, sir.

Senator CHURCH. And how did that amount compare to the amount in this bill, if I may ask?

Mr. NASH. It was substantially lower than this, Mr. Chairman.

Senator CHURCH. Can you give me the figures?

Mr. NASH. Yes, sir; at Fort Berthold, the rehabilitation funds per member were \$1,679; for Cheyenne River, \$1,200; for Standing Rock, \$1,610; at Crow Creek and Lower Brule, \$2,250; the sum we are proposing for the Seneca amounts to \$4,030. And it was with respect to this that I was attempting to address myself when I began to explain the nature of the project, the difference between this taking and the Dakota takings in the much greater destructiveness to the reservation, to community life, as compared with what was left in the Dakotas. The Dakotas destruction was very great.

Senator DOMINICK. This was what I was trying to bring out. It is my understanding that there are very few of the Senecas unemployed?

Mr. NASH. The labor force, according to our latest information, of the Senecas is 800, with a 35-percent unemployment rate.

Senator DOMINICK. Are they on the reservation?

Mr. NASH. On both reservations; yes, sir.

Senator DOMINICK. But not on the reservation that is affected by the Kinzua?

Mr. NASH. This one, the reservation affected by Kinzua is Allegany. Our figures are based on Allegany and Cattaraugus. The park, if it is approved by the Congress, will go in at the Cattaraugus Reservation.

Senator CHURCH. There are 127 families involved here?

Mr. NASH. That refers only to those who are physically residing in the taking area.

Senator CHURCH. And how many are residing in the whole Allegany portion of the reservation?

Mr. NASH. Eleven hundred, Mr. Chairman.

Senator CHURCH. I just like to get the figures.

Senator DOMINICK. People, not families.

Senator CHURCH. I like to get the figures as straight as we can so we know what we are dealing with.

Mr. NASH. I attempted to sort out some of the figures as the testimony went along this morning. The best figures that I can give you come out of this research report from the Bureau of Indian Affairs brought up to date.

In the taking area we identified 124 households but there were 6 households or families that were absent at the time the research report

was made, so the number of families directly involved in the taking is 130.

We reckoned 482 individuals in those households. Now, that is in the blue area on our picture chart. And we are using the figure of 4,200 for the three reservations combined. There are actually three Seneca reservations, but in one of them there are no inhabitants.

Senator CHURCH. And in the other two sections there is no taking? The taking is all confined to this one section?

Mr. NASH. The taking of all is limited to this area.

Senator DOMINICK. In your reference to the 800 people who are employed—

Mr. NASH. In the labor force.

Senator DOMINICK. In the labor force.

Mr. NASH. Of which 35 percent are unemployed.

Senator DOMINICK. Covers all three sections, the entire reservation, in other words?

Mr. NASH. Yes.

Senator DOMINICK. The 35 percent equals 280 people.

Mr. NASH. Yes.

Senator DOMINICK. About.

And it is your feeling, I gather, that the existing facilities we have are inadequate to take care of the problems created by this?

Mr. NASH. Yes, sir; and in attempting to scale the real proposal to the bona fide needs of the reservation people we have taken account of the fact that the industrial park is described by the Brill Corp. as offering in complete form 60 jobs in connection with the maintenance and operation of the park itself, which, of course, is independent of the manufacturing employment that would be incidental to the location of plants there, and that the two recreation projects which are outlined on the map here, State Line Run and Hotchkiss Plateau, would provide up to 150 to 200 jobs themselves.

Senator DOMINICK. But not necessarily for the Senecas?

Mr. NASH. We would hope to the fullest extent possible for the Senecas.

Senator DOMINICK. That is all, Mr. Chairman.

Senator CHURCH. Mr. Commissioner, are these projects you have located on the map in the orange area all to be built with Federal money which will be granted or given to the Senecas under this bill?

Mr. NASH. Yes.

Senator CHURCH. After these very extensive improvements are constructed underlying title to the improved land will remain in trust status?

Mr. NASH. Yes, sir.

Senator CHURCH. So that the United States then has continuing responsibilities as trustee for the improved property; is that right?

Mr. NASH. Yes, sir.

Senator CHURCH. This bill may not reflect the full amount of the continuing costs involved for the Federal Government. Certainly there will be continuing administrative costs with respect to the land itself and the improved property since the Government continues to act as trustee for the Senecas and land—and continues responsible for the administration of the land, title, and so on?

Mr. NASH. Mr. Chairman, that would be true even though this bill should not be enacted into law.

Senator CHURCH. I know that. That is not my question. We are now talking about improved properties of great value. What happens if one of these ventures proves unsuccessful and is allowed to fall into a state of serious disrepair. If the Government is responsible for the condition of the property and is negligent in performing its duties as trustee, then could new claims be raised against the United States?

Mr. NASH. Yes, sir, that has happened before.

Senator CHURCH. That has happened before, has it not?

Mr. NASH. Yes.

Senator CHURCH. And here is a classic foundation for a new series of cases of that sort in the future.

With respect to the industrial park, when this land is leased it is going to be leased for profit-taking purposes by the tribe; is it not?

Mr. NASH. Yes, sir.

Senator CHURCH. And if this is a feasible park which warrants the expenditure of this money, then I take it it has been based upon a reliable survey which indicates that business can come in and profitable leases can be entered into. We will then ask why is this money not extended on a loan basis so that it can pay for itself and in due course the Treasury's investment can be retired and the Indian tribe can continue to then benefit on the leases that are made? Why must it be a grant in a matter that is so clearly business in character and profit taking in its objective?

Mr. NASH. I think, Mr. Chairman, the honest answer to that is the same one I made with respect to the question about education this morning. The whole of section 4 is intended to recover as well as may be the good name and honor of the United States with respect to the Senecas, and therefore—

Senator CHURCH. Now let me ask you on that particular basis: What about the Brules? Was there not in that case and in the case of these other Indian tribes—Crow Creek and others that we have treated within the past—also an obligation on the part of the United States setting over to these Indians certain reservations and was there not a taking, and was that taking not for dam purposes just as it is in this case?

Mr. NASH. Yes, sir.

Senator CHURCH. What makes this case so special as to be differentiated from the treatment that we have given, honorably, to Indians elsewhere?

Mr. NASH. Primarily the much greater damage and destruction—

Senator CHURCH. You cannot say on one hand that there is this very special moral obligation aside and apart from the injury here for which other provisions of this bill attempt to adequately compensate, and then turn around and say that the special consideration being given this bill is based upon a peculiar moral obligation that did not exist in the other cases.

Mr. NASH. It was not my intention to say that, Mr. Chairman.

Senator CHURCH. That seems to be the purport of the testimony until now. We keep going in circles on this thing.

Mr. NASH. In that case I have been misunderstanding the chairman.

I do not distinguish between moral obligation. This treaty is the same as other treaties. This tribe is the same as other tribes, this reservation is the same as other reservations. Dollar value of what is to be paid into the rehabilitation fund to accomplish the purposes to which the President of the United States directed us have a dollar value based on what is needed to accomplish the purpose. In the case of the other reservations, as a practical matter, there was more left to do with. Here there is less to do with. In the case of the Crow Creek and Lower Brules, you have an ongoing Bureau apparatus in the public service operation which has not been at Salamanca since 1948 and which we are not proposing to reestablish.

Senator CHURCH. I heard those other cases. I heard testimony that we were taking the same bottom land, the Indians were being forced to the hillsides, the same kind of testimony we are hearing in this. It seems to me that whether you judge this on the basis of a per capita allotment or whether you judge it on the new and extended programs that are involved in this bill which have not been involved in previous bills, no matter how you judge it, you come out with preferential treatment and you may not, Mr. Commissioner, have to live with this, but this committee, apart from its separate members and the life of this committee, is going to have to live with it in the future and other Indian tribes may very well point to this as a special precedent for extended and preferential treatment for themselves. Unless we have a very strong case to make, that preferential treatment was here warranted and is not warranted elsewhere, their argument will be very difficult to contend with.

Mr. NASH. May I say, Mr. Chairman, that when we supported the Crow people and the Lower Brule, although it worked out to \$2,250 per capita, that was not the basis of our programing of funds, and we have not attempted to set a per capita standard here. I have made the calculation because I knew the committee would be concerned about it. We have subjected ourselves only to one standard: Will the program offered here developed by the tribe, supported by the Bureau of Indian Affairs, and largely concurred in by the Corps of Engineers, actually result in the consequences desired by the President in his letter to Basil Williams? To do less than that would not be to honor the directive in the President's letter. If the committee disagrees with us as to the—

Senator CHURCH. I suppose our responsibility here is to try and uphold the public interest as we best see it?

Mr. NASH. Yes, sir.

Senator CHURCH. And to try and relate this matter to Indian policy generally, as we will hereafter have to deal with it.

It seems to me that very serious questions are raised here that cannot be easily minimized.

I have a report of the Bureau of Indian Affairs which causes me to wonder about the underlying title to the lands involved here. This report is dated January 4, 1954. It comes from the Bureau itself, and it says with respect to this particular land in the Allegany Reservation and the Cattaraugus Reservation the following:

The litigation dealing with the locus of the title in these two reservations, title has been variously described. For instance, the first litigation seemed to indicate that the title was in the Indians with Ogden Land Co. and its predecessors having only a "preemptive right" or the right to purchase if the Indians choose

to sell. However, the weight of authority is that the ultimate fee title to the reservation land is in the Ogden Land Co., the Indians having an indefeasible right of occupancy and possession. This also applies to the 1,920 acres of the Tuscarora Reservation mentioned above.

Can you tell me what that means?

Mr. NASH. I think I would like to have Mr. Holmes comment on that in detail. The history of the Seneca lands goes back quite a long time before 1794, and the treaty of 1794 was intended to rescue the Senecas from the consequences of land speculators. One of the reasons why the procedural condemnation is being used to acquire these lands is so there will not be a question of title claims of the kind that you are bringing forth now, as to the project itself.

Senator CHURCH. Do you know the answer to what this means?

Mr. HOLMES. No; I do not.

Senator CHURCH. It seems to raise a question as to whether the land belongs to the Indians at all, which I do not understand, but maybe the Corps of Engineers would have some answer to that.

You have been in the condemnation proceedings here, have you not?

Mr. LAYTON. I was involved in the original part of this matter.

Senator CHURCH. Would you identify yourself?

Mr. LAYTON. My name is L. A. Layton, district counsel for the Corps of Engineers, Pittsburgh. It was that the Seneca Nation had a right of possession which was recognized by a treaty and under court decisions this gave them a right to compensation if the land were taken. The history goes something like this:

That the State of New York entered into Hartford treaty with the State of Massachusetts, and under that treaty the right of preemption to this said Indian land went to the State of Massachusetts, the jurisdiction, political jurisdiction, was in the State of New York.

In other words, jurisdiction over these lands was vested by this treaty in the State of New York; the right to preempt these lands went to the State of Massachusetts.

They sold the right of preemption to Robert Morris and by variances title came into the Ogden Land Co., and a good part of the rest of New York was purchased under that right of preemption.

These lands, the Alleghany Reservation and the Cattaraugus Reservation and the Oil Springs Reservation were always excepted from these advances.

Of course, there is another involvement about another treaty that was upset, but it comes back to the fact that these Indians have an aboriginal right of occupancy which has been recognized by treaty and the right of preemption is outstanding in the Ogden Land Grant.

Senator CHURCH. What exactly do you mean by preemption?

Mr. LAYTON. The right of first purchase.

Senator CHURCH. Is it because of this peculiar history that the Corps of Engineers in this particular case is choosing to secure an easement rather than to secure title to the reservoir?

Mr. LAYTON. No; that has nothing to do with the decision as to what they take.

Senator CHURCH. In every other case I know anything about we have always taken fee title to the reservoir area. That has been the corps' consistent policy over the years; why is it not the case in this bill?

Mr. LAYTON. From this aspect: That to the extent we could we wanted to leave the enjoyment of the lands with the Seneca Nation in view of the very special early treaty and long arguments, so it was our concept that the best way that the reservoir and the reservation could live together to the extent possible was by an easement taking instead of a fee.

Senator CHURCH. Now, in the case of the Lower Brules and in the case of the Dakota and Wyoming and Montana Indians, where the taking has occurred it has all been in fee, has it not?

Mr. LAYTON. I understand it has been. I understand also that there were certain reservations by which you may come to the equivalent of an easement. Certain uses of land were reserved, but I am speaking now, you are out West and I am not familiar with that.

Mr. HOLMES. Mr. Chairman, it was taken in fee, but Congress turned right around and passed an act which gave back to the Indians so much of the right that it now amounts to an easement. There we had two bills; here, of course, we wrap it all up in one.

Senator CHURCH. You say the practical effect is the same?

Mr. HOLMES. Yes, sir. There it took two bills. Here we do it all in one.

Mr. LAYTON. May I direct myself to your previous question as to why we elected easement?

Senator CHURCH. Yes.

Mr. LAYTON. In your Senate Report No. 609, this is the 85th Congress, 1st session, public works appropriation bill, 1958, the committee there states:

The Corps of Engineers has indicated a willingness to accept flowage easements over land owned by the Seneca Indians in order that the reservation may be kept intact. The committee desires the Corps of Engineers cooperate to the maximum extent practicable with the Seneca Indians in order to minimize the effect of the Allegheny River Reservoir on the Indian lands. It is recognized that if the Seneca Indian Nation elects to grant easements for this purpose, they will control the reservoir area within the boundaries of the reservation and that recreational benefits will inure to the Seneca Nation as a result of the development of this project. The committee recognizes that this procedure may not be entirely satisfactory to all the Seneca Indians but also realize that they have rights in courts if they insist on determining the issues involved in this matter.

I would add to my further remarks, you stated they may not own the lands, but so far as the courts are concerned, the compensation, they have the equivalent of absolute ownership so far as making compensation goes.

Senator CHURCH. Does the Ogden Land Co. still exist?

Mr. LAYTON. The trustees are unknown.

Mr. HOLMES. I think the answer to this, Mr. Chairman, in this statement is made under the circumstances that existed at that time and the opinions at that time. It is now our opinion that the Seneca Nation has sufficient title to convey the interest or to at least collect for the use right that the Government now wants.

Now, it is hard for me to answer the question in the light of just this one thing that is circled in here because it absolutely is not compatible with that. I think our opinion now is that although it may be stated a little differently here, that the Indian Nation does own sufficient title to participate on the basis that is set out in this bill and we think in the condemnation suits that are pending in the Federal court in New York.

Mr. LAYTON. We do not take any exception with that.

Senator CHURCH. All right, fine.

Mr. NASH. Mr. Chairman, could I return to the question of whether the Senecas are receiving preferential treatment here?

Senator CHURCH. Yes; certainly.

Mr. NASH. I do not want to let the record stand that unless it was clear that the only difference between what we are doing here and what has been done in five Dakota takings is in the dollar value per enrolled member or dollar value per resident member, of the rehabilitation fund itself, what is embraced here in section 4 of the bill.

Senator CHURCH. But you will agree from your experience, Mr. Commisisoner, that is the way the matter will be measured by all other Indian people. That is the first criteria that will be looked to in comparing this with other treatments.

Mr. NASH. The cost of these takings has been going up, and I am free to say that from the standpoint of the Bureau and the Department of the Interior that we think when the cost-benefit ratio of these projects is calculated that the price of taking Indian lands ought to enter into the calculations. Because our friends in the Corps of Engineers, and we have worked very cooperatively here with the corps, but the corps for its reasons had a different reason than the Indian affairs department, maintains that the indirect damages and the rehabilitation funds are not to be charged to the project, and are not to go into the cost benefit ratio. Consequently, we find ourselves time after time after time coming into this committee to justify the rehabilitation funds for projects that were heard in another committee. And on the other side, Chairman Haley exhorted me in very definite and commanding terms to be careful to ask to be heard and to insist on the Indian right in future matters of this kind.

Senator CHURCH. There is a very marked differential between what is paid for a taking of land owned, let us say, by a non-Indian and what is being paid for that land when owned by an Indian, is there not?

Mr. NASH. Yes, sir; broken promises come high.

Senator CHURCH. Yes. Are there any takings here in this project of non-Indian land?

Mr. NASH. Within the reservation area, no, sir.

Senator CHURCH. I mean insofar as the project itself is concerned? Non-Indian land being condemned and taken for this project?

Mr. NASH. Yes, sir; in Pennsylvania, outside the reservation area, there are takings and then the railroad, the Pennsylvania Railroad goes through the reservation and they have a right for which they have been paid, they have been paid at a very high price, and it caused considerable bitterness among the Indians that they were paid, where the nation was not receiving anything, not even enough to make their plans.

Senator CHURCH. Is there any non-Indian land in the area that is shown on the map?

Mr. NASH. Nothing other than some railroad easements and some power land and other use rights. The title to the entire reservation area is in the tribe and even the individuals have only customary use rights which are recognized in the peacemaking courts of the Nation

and are recognized by New York State law as being inheritable, devisable, and all that.

Senator CHURCH. I think this problem is one that has to be taken into account procedurally here in the Congress, because we get one cost-benefit ratio and it is based exclusively upon what a non-Indian gets and that is strictly limited to the market value of the land that is taken, and the benefits that go to the Indian-held land which are, as this bill well demonstrates, very much larger. And if we are going to get an accurate notion of what these projects are going to cost and what the true cost-benefit ratio is, then you have to bring these costs into consideration at the time that the projects are authorized.

Mr. NASH. We will not dispute that in any way.

Mr. HOLMES. Mr. Chairman, for the benefit of the committee, I believe the House report here shows that the cost-benefit ratio is still good even if this bill passes.

Senator CHURCH. As I remember it was 2.1 to 1 under the original bill; it would be reduced to 1.8 to 1 with the passage of this legislation.

Mr. NASH. That is correct. It is on page 6 of the House report.

Senator CHURCH. Are there any further questions?

Senator DOMINICK. Two questions.

Senator CHURCH. Senator Dominick.

Senator DOMINICK. One is not really a question. It is a further statement on the budget report. Again on the question of whether there is special treatment under the bill.

At page 2, the budget report says that the Senecas residing within the project taking area had an average income of \$3,894 per household during 1961. Per capita income was \$1,002. This compares with average per capita income of \$260 and \$319 respectively for the Crow Creek and Lower Brule Sioux Indians, the most recent tribes to receive a legislation settlement for lands taken for a flood control project in the Missouri River Basin.

In other words, the per capita income of the Senecas who will be affected by this within the project taking area was about five times what it was in the others, and yet they are going to get about a little over twice as much per capita taking basis.

Mr. NASH. Yes, sir; this raises a good question as to whether the rehabilitation fund that was provided in the Dakota takings will, in fact, serve to advance those people as far as they ought to be authorized economic civil sufficiency.

Senator DOMINICK. That is exactly the point we were bringing up, Mr. Nash.

One more point.

Can you give me as an estimate from the Bureau of Indian Affairs what the estimated length of time would be under subsections a to g of section 4 for completion of the programs set out therein?

We need this, it seems to me, in order to be able to figure out how much interest on this rehabilitation money we are also supposed to be computing within the overall cost.

Mr. NASH. Let me be sure I understand the question, Senator. Are you asking how long it would be before each phase of the project was initiated and the construction money should be available or are you asking for a total?

Senator DOMINICK. I am looking for a closeout date because until all the money is expended, it draws interest.

Mr. NASH. I would take as the closeout date the end of the 20 years provided in the education trust fund.

Senator DOMINICK. You think it would be closed out in 20 years?

Mr. NASH. We set it up actuarially to be supplied on this basis; yes, sir.

Senator DOMINICK. Thank you.

Senator CHURCH. Is it your understanding from the language of the bill, Mr. Commissioner, that the interest begins to accrue when the money becomes available; that is, after the Congress has appropriated it and the President has signed the appropriation bill? Would that be the beginning date for interest accruals?

Mr. NASH. Yes, sir; it is consistent with law and precedent for Indian tribal funds on deposit in the U.S. Treasury to begin to draw 4 percent interest from the time the appropriation act is signed. And the authorization would not in and of itself begin that interest.

Senator DOMINICK. Would you be asking for the total authorization, then, in the first appropriation bill?

Mr. NASH. In the current budget of the President, there is under total contingency title enough there to include whatever the Congress in its wisdom sees fit to authorize after considering these bills.

Senator CHURCH. In other words, the answer is "Yes."

Mr. NASH. The answer is "Yes." We would come in with a supplemental for such amounts as the Congress authorizes.

Mr. MECHEM. I would like to ask a question.

Do the Senecas have any claims pending before the Indian Claims Commission now?

Mr. NASH. I don't know. Mr. Carney does not, Mr. Holmes does not, and the Senecas' attorney does not. Our role in connection with Indian claims is quite limited.

Mr. LAZARUS. If I may interrupt, I do not happen to handle the Seneca claims, but my understanding is they have all been lost before the Indian Claims Commission. I do not know whether there are appeals being prosecuted.

Mr. NASH. Mr. Chairman, we will get the answer to that if you wish.

Mr. MECHEM. My question was, Are there any claims now pending before the Indian Claims Commission by the Seneca Tribe?

Mr. NASH. My answer was, We do not know of any, but we will find out.

Senator CHURCH. Does this bill contain the ordinary set off provisions we have included in similar bills? The set off provision has been just in the lands bills.

Mr. NASH. This bill provides that sums appropriated here will not be regarded as that.

Senator CHURCH. Yes.

How does this bill compare to previous bills, Mr. Commissioner, in connection with the treatment of interest?

Mr. NASH. This is standard——

Senator CHURCH. I mean, for instance, the Brule matter. Did that contain a similar provision with respect to interest?

Mr. NASH. Yes, sir. This is standard language.

Senator CHURCH. Now, that interest is computed on the basis of a delinquent balance; is that right?

Mr. NASH. That is right.

Senator CHURCH. The interest is computed on what is left?

Mr. NASH. The sums are allocated from the Treasury balance to the tribe for disbursement pursuant to law and the interest is calculated on the remaining balance.

Senator CHURCH. Any further question, gentlemen, of the Commissioner?

Mr. NASH. The question was raised this morning as to the urgency and the emergency features of this fund. May I say that so far as the movement of people is concerned, the provision of housing for them, the cost of moving and so on, the absolutely essential items are 1, 2, and 4(c). It is not true that sections 1 and 2 would provide for this adequately; without 4(c) we will be in very bad shape.

Senator DOMINICK. That brings up something else, Mr. Chairman.

Senator CHURCH. Yes; I just want to ask one other question.

What about the advisability of using money in the revolving credit fund to help out this situation?

Mr. NASH. The revolving credit fund is fully committed. Nevertheless, we have overcommitted it several times, subject to the availability of funds. Nevertheless, we have drawn against this fund in order to make certain things available to the Senecas which they absolutely had to have. For instance, we loaned them the money to hire an appraiser, the Corps of Engineers is paying for Mr. Carney's expense. We loaned them other moneys; \$120,000, so that they could take advantage of the community facilities of the administration's 75 percent.

Senator CHURCH. Will these loans be repaid out of the money in this bill?

Mr. NASH. Yes.

Senator CHURCH. To the fund?

Mr. NASH. To the fund; yes.

Senator CHURCH. Senator Dominick, did you have a further question?

Senator DOMINICK. Yes. You referred to the necessity of passing sections 1 and 2 and section 4(c).

What position did the Bureau of Indian Affairs take of the request of the Senecas to include under sections 2(d) most of the items which are included under 4(b)?

Mr. NASH. In my report section 2(d) only relates to the Senecas interest in a few minor claims.

Senator DOMINICK. Under section 2(d) the original estimate on page 2-D of your report indicates that the Senecas included a request for a long cookhouse, 450 acres of replacement land, cost of domestic water, rough site planning, site planning, staking 1-acre lots, topographical survey, all of which were not included in there and which I presume were included in 4(c).

Mr. NASH. I have a different number in front of me, sir.

Our position on section 2(d) is that the indirect damages are the consequences of the taking and are closely related to the purposes of legislation authorizing construction of the dam as the construction of the dam itself or the taking of the land and improvements on them. We are aware of the fact that the corps does not agree and the concern is that the essential needs of the Indians be taken care of.

Senator DOMINICK. The point I am trying to make is, Do you back the Senecas to get the passage of section 2(d), or should it be put over in the 4(c) category?

Mr. NASH. No; we supported the Senecas in putting it in 2(d) and supported their original estimates.

Senator CHURCH. Any further questions?

Mr. MECHEM. I would like to get back to this difference in treaties for just a minute.

We recently approved construction of the Knowles Dam that was part of the Missouri River Basin project. Is there any difference between that particular case where there was a very violent protest on the part of the Flathead Tribe for construction of this type?

Mr. NASH. There was no difference in substance, the language of the treaty of 1794 happens to be more sweeping and very specific. Then there is a vast amount of material in the form of correspondence that perhaps gives a special cogency to the Seneca claim, but it was nevertheless true that the Flathead Indians have occupied that land and occupied their reservation pursuant to the treaty of 1835, I believe it is, and that in both law and precedent there is, and they have an indispensable interest in it. The position of the Interior Department with respect to the dam has been that the same thing as here, that there is no claim superior to that of the United States and if in the judgment of Congress, if any lands are needed for a public purpose then everyone must bow to the will of the United States. But that the Indian people are entitled to extraordinary compensation because they have been made these promises and there are special attributes that go with Indian land that is not in other land, and in the specific case of the Knowles Dam where there were two different power sites we urged that the full power value of these two dams be included in the cost-benefit ratio, not just a value of lands, whether this should be compensated and paid to the Indians in the form of dollars or a block of power is a matter to be arranged, but as far as the value and compensation, we urged the same thing we urged here.

Senator MECHEM. Do you recall what portion of the structure was attributable to flood control and what portion was attributable to the power project?

Mr. NASH. No; that is a Bureau of Reclamation job and I do not know that. I would be glad to obtain it if you wish for the record, sir.

Senator MECHEM. If you would, please.

Mr. NASH. Yes, sir.

Senator CHURCH. Would you not think, Mr. Commissioner, that if, as you say, these various developments, the main exhibit area, the marina, and other developments that you hope to bring into this area and run as businesses are to be turned over to corporations and presumably are going to be operated for a profit, that there ought to be in those arrangements turning over the management of these developed and improved properties such corporate entities provisions that will hold the Government free from further claim for liability in the event that the entity does not manage the scheme the way the Indian people or some of them may later think it ought to have been managed? The Government has no way to protect itself in a case of this kind. We do this for the benefit of the Indian people. We set it up in accordance

with a corporate scheme of things and then if we do not provide for a release from further liability, we end up paying for some mismanagement over which we can exercise no control.

Mr. NASH. Yes, sir; short of—

Senator CHURCH. Unless we are going to continue to manage and assume the responsibility for the management of these entities, it seems to me positively mandatory in the public interest, the general and the larger interest of the United States, that such provisions be included.

Mr. NASH. Yes, sir. I will agree with the chairman's statement.

Senator CHURCH. Well, I hope that you will undertake to see that that is done when these proposals are made and the Secretary is called upon to approve them.

Mr. NASH. Yes, sir.

Senator CHURCH. All right. Thank you, Mr. Nash.

Now, we have come to that point in the witness list where we are going to call upon the Corps of Engineers witnesses who are here. I think that will be the concluding group of witnesses insofar as my list indicates. If there are others that are not listed and want to testify from out of town, we will try and accommodate them. If not, we will then proceed with the Corps of Engineers witnesses, please.

Mr. TAYLOR. Excuse me just a moment.

Acting as the spokesman for the Friends Council, Dr. Paschal Sherman has asked that a brief written statement be submitted for the record. Is it possible for me to submit that?

Senator CHURCH. Yes, I know Dr. Sherman.

That will be submitted at this point in the record.

(The statement is as follows:)

STATEMENT OF DR. PASCHAL SHERMAN, CHAIRMAN OF TRUSTEES, AMERICAN INDIAN
CIVIL LIBERTIES TRUST

My name is Dr. Paschal Sherman, chairman of trustees of the American Indian Civil Liberties Trust, Washington, D.C. Our trust is set up to make grants of money to promote and protect the interests of Indians in their civil liberties and rights. This includes the preservation of rights under Indian treaties and agreements.

We shall not go at length into the merits of H.R. 1794 as passed by the House of Representatives. Suffice it to say that the testimony given at the extensive hearings on the bill, as reported, and the testimony now being given before this committee are eloquent in conviction as to the propriety of the appropriation authorized to compensate the Senecas and as to the urgency for your immediate action. We are hoping and all friends of the Senecas are hoping that you will accept the House version of the proposed legislation without change.

The plight of the Senecas has appealed to Indians throughout the country as no other Indian cause has in recent years. On November 1, 1957, the National Congress of American Indians adopted a resolution at its Claremore convention to protest the violation of the Seneca Treaty of 1794. As the oldest live treaty of the United States, the Seneca Treaty had come to be regarded as the symbol of this Nation's honorable dealings with the Indians.

The plight of the Senecas has touched the hearts of people in all walks of life everywhere. Testimony has brought out that President Washington and President Jefferson assured and reassured the Senecas that the terms of the treaty would not be abrogated without their consent. On June 8, 1961, in the Philadelphia Daily News a former First Lady of the land, Mrs. Eleanor Roosevelt, reviewed the situation of the Senecas and movingly asked the President to give their representative a hearing. Two months later President Kennedy, in a letter to the Senecas, proposed a form of compensation with a

relocation and rehabilitation program, as just and fitting under the circumstances, which is embodied in the House bill before you.

On January 28, 1960, there was a striking editorial in the Washington Post for a "Second Look at Kinzua." In the February 24, 1964, issue of the Washington Evening Star we find a column for a last look at the "Worries about the Senecas," of which we are offering a clipping for your consideration. We ask, we pray, that you resolve those worries to the universal approbation of America.

[From the Washington Evening Star, Feb. 24, 1964]

THE RAMBLER WORRIES ABOUT THE SENECAS

(By John McKelway)

In 1794 one Timothy Pickering, representing the United States, signed a treaty with the Seneca Nation of Indians.

Some 60 Indian chiefs joined in the negotiations, among them Handsome Lake, Tossongaulolus, Fish Carrier, Stinking Fish, Heap of Dogs, and Woods on Fire. They lived along the Allegheny River in western New York State, just above the Pennsylvania line.

The treaty, ratified by the Senate, reads in one section:

"Now, the United States acknowledge all the land within the aforementioned boundaries, to be the property of the Seneca Nation; and the United States will never claim the same, nor disturb the Seneca Nation, nor any of the Six Nations, or of their Indian friends residing thereon and united with them, in the free use and enjoyment thereof; but it shall remain theirs, until they choose to sell the same to the people of the United States."

The Indians never did "choose to sell the same" and remained on the reservation. And the United States continued to honor the terms of the treaty.

But today the Senecas are having some anxious moments.

A few years back, Army engineers started construction of a dam at Kinzua, Pa., about 198 miles north of Pittsburgh on the Allegheny River. Completion of the dam will create a narrow reservoir some 35 miles in length—all the way to Salamanca, N.Y.

A partial closure of the dam is scheduled for June and total closure will come in October.

The trouble is that the reservoir will flood about one-third of the 30,000 acres held by the Senecas.

As Representative Aspinall, Democrat, of Colorado, recently summed it up:

"I shall not dwell on the manner in which this project was handled except to say that the Indians were caught in a bind. Unfortunately, the Indians were not reimbursed for their losses before the dam and reservoir construction commenced. In fact, they have not received a dime to date."

In short, time is running out for the Senecas.

Through the efforts of Representative Haley, Democrat, of Florida, and Mr. Aspinall, a bill providing some relief for the Indians was passed unanimously by the House on February 7—in the midst of the debate on civil rights.

Nearly 140 Seneca Indian families face removal from their homes. They will be relocated on land still within the reservation. The bill provides for the "relocation, rehabilitation, social, and economic development of the members of the Seneca Nation." It would authorize a \$20 million appropriation.

But what worries backers of the bill is that the Senate will become involved in a lengthy filibuster over civil rights and never get the chance to square it with the Senecas before it is too late. The reservoir will start filling up, maybe.

The Indians, meanwhile, have virtually no idea what they will receive for their land and what sort of homes they will be able to relocate in.

The late President Kennedy was interested in the plight of the Senecas and pledged his cooperation in securing assistance. He also said: "Indians have heard fine words and promises long enough. They are right in asking for deeds."

Mr. Haley recently said: "To me the treaty means what it states. To the Corps of Engineers apparently the treaty means something else. The United States has a special and peculiar responsibility to its Indian wards, particularly when they are covered by treaty provisions. This is not the first time—nor will it be the last time, I fear—that Indians have seen their land taken in a ruthless manner. * * *

It may be of some interest to note that the first Congress said: "The utmost good faith shall always be observed toward the Indians; their land, and property shall never be taken from them without their consent."

Supreme Court Justice Black once commented in an opinion: "Great nations, like great men, should keep their word."

Senator CHURCH. We will take a recess of about 2½ minutes while the members of the corps assemble here to give their testimony.

(A short recess was taken.)

Senator CHURCH. Back on the record.

Let us proceed, gentlemen.

First of all, will you identify yourselves for the record?

STATEMENT OF LONEY W. HART, CHIEF, LEGISLATIVE SERVICES (REAL ESTATE) OFFICE, CHIEF OF ENGINEERS; ACCOMPANIED BY COL. BERT DE MELKER, DISTRICT ENGINEER, U.S. ARMY, ENGINEER DISTRICT, PITTSBURGH, PA., AND C. C. CASEY, CHIEF, PLANNING AND PURCHASE (REAL ESTATE) OFFICE, CHIEF OF ENGINEERS

Mr. HART. Mr. Chairman, members of the committee, I am Loney W. Hart, Chief of the Real Estate Legislative Services Office, Office of the Chief of Engineers, Department of the Army. I have been designated to present the views of the Department of the Army in this matter. I am accompanied by Col. Bert de Melker, who is on my right, district engineer, U.S. Army Engineer district, Pittsburgh, Pa., and Mr. C. C. Casey, who is on my left, Chief, Planning and Purchase Branch, Office, Chief of Engineers.

In addition, there are present, members of Colonel de Melker's staff and representatives of the Chief of Engineers who are available to furnish detailed information in their respective fields of activity.

I have a prepared statement which I would like to present to the committee.

Senator CHURCH. How long is that prepared statement?

Mr. HART. It is about nine pages, sir, and if you wish, if you care to spread it on the record, I will be glad to summarize.

Senator CHURCH. Why do you not do that in the interest of time, because we are now, by virtue of the earlier testimony, generally familiar with much of the detail that I am sure that statement will reiterate.

(The statement referred to is as follows:)

STATEMENT OF LONEY W. HART, OFFICE, CHIEF OF ENGINEERS, DEPARTMENT OF THE ARMY

Mr. Chairman and members of the committee, I am Loney W. Hart, chief of the Real Estate Legislative Services Office, Office of the Chief of Engineers, Department of the Army. I have been designated to present the views of the Department of the Army in this matter. I am accompanied by Col. Bert de Melker, district engineer, U.S. Army Engineer District, Pittsburgh, Pa., and Mr. C. C. Casey, chief, Planning and Purchase Branch, Office, Chief of Engineers. In addition, there are present, members of Colonel de Melker's staff and representatives of the Chief of Engineers who are available to furnish detailed information in their respective fields of activity.

I have a prepared statement which I would like to present to the committee.

H.R. 1794 and S. 1836 are similar bills, the purpose of which is generally as stated in the titles. The views of the Department of the Army on S. 1836 were

furnished to the chairman of this committee by letter dated February 24, 1964. This letter, likewise, in substance reflects the views of this Department on H.R. 1794, an act passed by the House of Representatives on February 10, 1964.

As you are aware, the proposed acquisition of a part of the real estate holdings of the Seneca Nation of Indians for the Allegheny Reservoir project has been under discussion for a number of years; the subject has received wide publicity through the media of the press, radio, and television. The Department of the Army is cognizant of the fact that there is involved in this matter deep sentiments over the loss of a portion of the lands which have been owned by the Seneca Nation for many years.

However, before commenting on the specific provisions of this bill, it may be helpful to the committee to briefly review, in general, some of the background, characteristics, and requirements of this project. You will observe to the side several large map exhibits depicting various project features. For the personal convenience of the members of this committee, we have also furnished small scale reproductions of these key exhibits. With your permission, Mr. Chairman, I would ask Colonel de Melker to briefly explain these features, after which I will proceed to discuss in detail the provisions of this legislation.

(Statement by Colonel de Melker.)

Mr. Chairman, speaking now to the objectives of these bills, such follow the pattern of legislation enacted for the several Indian tribes in the Missouri River Basin when their lands were acquired for similar reservoir projects. There are, however, certain differences which will hereinafter be discussed.

As stated by Colonel de Melker, the Corps of Engineers is acquiring for this project various easement rights over approximately 10,500 acres of land within the Allegany Indian Reservation.

The matter of the adjustment of the Seneca Nation and its members to the situation caused by the Allegheny Reservoir project has had the attention of the President of the United States. As a result, President Kennedy wrote to the president of the Seneca Nation on August 9, 1961, stating that the project must proceed, but that he had directed the departments and agencies of the Federal Government to take every action within their authority to assist the Seneca Nation and its members who must be relocated in adjusting to the new situation. Included for consideration were: (1) the possible acquisition of "lieu lands" in exchange for lands flooded; (2) a review of the recreation potential and how the Seneca Nation could share in the benefits; (3) a determination of any special damages sustained by the taking; and (4) special assistance to members of the Seneca Nation required to move, by way of counseling, guidance, and other related matters.

In implementation of the President's directive, the Corps of Engineers, the Bureau of Indian Affairs, and the Seneca Nation, at a meeting on October 13, 1961, agreed upon procedural actions to be taken by the parties for the development of special studies on each of the four major features. While various studies were undertaken by all parties, such had not been completed at the time of the introduction of subject legislation. Consequently many of the major proposals were developed concurrently with the numerous hearings held by the House Subcommittee on Indian Affairs on H.R. 1794.

As a result, however, the Department of the Army, the Department of the Interior, and the Seneca Nation have resolved most of their differences, and have agreed upon recommended language revisions to all provisions in these bills. These agreements are incorporated in the act, H.R. 1794, now under consideration. As indicated in the House Report No. 1128, the Department of the Army interposes no objection to the provisions of this act except as to subsection 2(d) relating to payment of indirect damages.

More specifically, I would now like to briefly comment on those sections of the act, H.R. 1794, of direct concern to this Department.

Section 1 directs that payments be made as provided herein to the Seneca Nation and the individual Indians for taking of interests in their lands by the United States by certain condemnation proceedings.

It may be noted that this is not a "legislative taking act." By reason that the title of the Seneca Nation to these lands is uncertain, the Department of Justice has advised that the United States should acquire these interests in land through the court.

Accordingly, the Department of the Army, with the concurrence of the Seneca Nation, has been periodically acquiring the necessary interests in land by the filing of condemnation proceedings in the U.S. District Court for the Western

District of New York. To date 29 condemnation assemblies together with funds for deposit approximating \$1,293,779 covering all tracts have been submitted to the U.S. attorney. All have been filed except for the cemetery case which will be accomplished within the next 2 weeks.

Section 2 (a), (b), and (c) provides for the payment by the United States out of project funds for direct damages. Subsection (a) to the Seneca Nation \$666,285 for damages to surface land; (b) to the Seneca Nation \$100,000 for damages to oil and gas reserves, with a proviso that damages to sand and gravel deposits to be determined by the U.S. district court; (c) to the individual Indians \$522,775 for taking their improvements on land.

These payments are not objectionable to this Department. The amounts have been mutually agreed to by the parties based upon 8 months of negotiations on a tract-by-tract basis. Funds covering payments have been or will be deposited in the Federal court and procedures have already been established for the withdrawal of the same. No settlement was reached as to sand and gravel deposits and the parties mutually agreed to have this value determined by the court.

Section 2(d) directs the United States, out of project funds, to pay the Seneca Nation \$1,033,275 for various indirect damages including loss of access to the river bed.

This provision is objectionable. The Department of the Army, as a matter of general principal, has consistently opposed the charge to project funds of indirect damages. This involves special benefits over and above payments normally allowed by the courts in the determination of just compensation; as such it is considered more appropriate to place it under the rehabilitation provisions. Further, as to payment for loss of access to the river bed, such is particularly objectionable by reason that (1) the Allegheny River being a navigable stream, the underlying lands have always been subject by law to the Government's paramount navigational servitude; (2) the Government is not here acquiring, nor does it need to acquire, any rights in the bed of the river; and (3) the amount of \$100 per acre for 933 acres is excessive compared to previous acts wherein the maximum allowed was \$6 per acre.

However, this Department is aware that Congress has in prior Indian legislation provided for such payments. Thus, should this committee favorably consider this item, it is submitted, that following legislative precedent, such payment should not exceed \$824,273; this is made up of \$127,050 for moving costs, \$691,625 for loss of wildlife products, and loss of river bed (at \$6 per acre) of \$5,598.

Section 3 concerns the method of distribution of payments under section 2. This is of primary concern to the Department of the Interior and the Seneca Indians. It is not objectionable to this Department.

Section 4 authorizes the appropriation of \$16,931,000 to be expended under plans approved by the Secretary of the Interior to improve the economic, social, and educational conditions of the enrolled members of the Seneca Nation. Such funds are not to be a charge against the project and relate to matters primarily within the purview of the Bureau of Indian Affairs, Department of the Interior. Accordingly, to the extent that no developments are contemplated which will adversely affect the operation of this project, the Department of the Army interposes no objection to this section.

Section 5 providing that the Secretary of the Army shall relocate cemeteries, graves, tribal monuments, and shrines is not objectionable to this Department. Agreement has been reached with the Seneca Nation for the Corps of Engineers to relocate approximately 3,000 graves to 2 selected sites at an estimated cost of \$600,000; the nation is to form a cemetery corporation; and the Secretary of the Army is additionally to provide a fund to this corporation for perpetual care and maintenance of those reinterred; this is to be a lump-sum payment computed on the basis of \$14.40 for each reinterment and will approximate \$43,200.

Section 6 purports to reserve to the Seneca Nation all minerals, oil and gas, and sand and gravel resources within the taking area, with the proviso that any exploration and development will be subject to regulations of the Secretary of the Army for protection of the Allegheny Reservoir project. This section is not objectionable to this Department.

Section 7 affords the members of the Seneca Nation the right to remain on and use, without charge, the lands within the taking area, until required to vacate by the Secretary of the Army with approval of the Secretary of the Interior. The time will not extend beyond January 1, 1965, unless otherwise permitted by the Secretary of the Army. The parties have mutually agreed to this cutoff date and this section is not objectionable.

Section 8 provides a right for the Seneca Nation and the individual Indians, without charge, to cut and remove all timber and salvage improvements from their respective lands up to 60 days before the date for vacating the taking area in accordance with the provisions of section 7.

This Department considers these rights to be a duplication in part to the payments provided in subsections 2 (a) and (c). However, in view of the legislative precedent in similar acts, this Department does not object to this section.

Section 9 provides that the Seneca Nation shall have the right to use and occupy the taking area of the Allegheny Reservoir project for all purposes not inconsistent with the interests acquired by the United States, including the right to regulate access to the shoreline of the reservoir, with provisos that public access shall be provided without charge, and that the use by the public of the water areas shall be pursuant to rules and regulations of the Secretary of the Army. In general, this section is not objectionable to this Department.

Section 10 provides for payment to the Seneca Nation for administrative costs not to exceed \$250,000. This is of no direct concern to the Department of the Army.

Sections 11 and 12 provide procedures for a determination of the respective rights of the Seneca Nation and the individual Indians as to those instances wherein the individual Indian rejects the tender of payment under subsections 2(a) and (c) (direct damages), by referral of the matter to the Federal district court. In this connection, as previously mentioned, the Department of the Army is acquiring the real property interests for this project of all parties in the Allegany Indian Reservation by institution of condemnation proceedings in the U.S. District Court for the Western District of New York. All parties will therefore be afforded an opportunity to present evidence as to value, their entitlement to compensation, and obtain and adjudication thereon. These provisions have been mutually agreed to by the parties and are not objectionable to this Department.

Section 13 authorizes the Secretary of the Interior to acquire certain lands for the Seneca Nation in connection with the rehabilitation programs, and is of no direct concern to this Department.

Sections 14 to 17 are general provisions primarily of an administrative nature and are not objectionable to this Department.

In summation, the Department of the Army, with the exception of subsection 2(d), indirect damages, interposes no objections to the provisions of the House act, H.R. 1794.

This concludes my statement Mr. Chairman, and we shall be happy to answer any questions you may have in this matter.

Mr. HART. I will just summarize.

Senator CHURCH. If you will, please. The full text has been inserted in the record.

Mr. HART. Just before starting, Mr. Chairman, we had planned it might be helpful to the committee to have Colonel de Melker explain some of the physical characteristics of the project with our maps. We have furnished the committee just in the last few days envelopes which contain a number of small maps which are duplicates of the large exhibits we have here, and I think the committee members, by making reference to those, may find some help.

Senator CHURCH. Fine.

Mr. HART. There have been several maps that we have noticed that were introduced here today that do not seem to be exactly in accord with our engineering studies and, perhaps, Colonel de Melker can just go right ahead.

He also has a prepared statement which, with your permission could be spread on the record.

Senator CHURCH. Without objection, Colonel, your full statement will be spread on the record at this point, and we would like to hear from you.

(The statement referred to is as follows:)

PREPARED STATEMENT OF COL. B. DE MELKER, DISTRICT ENGINEER, U.S. ARMY
ENGINEER DISTRICT, PITTSBURGH

Mr. Chairman and members of the committee, I am Col. B. de Melker, district engineer, U.S. Army Engineer District, Pittsburgh. I have prepared a brief statement which I would like to present to the committee.

The Allegheny Reservoir project is being prosecuted by the Corps of Engineers, U.S. Army. The administration of construction and the acquisition of real estate for the project come under the U.S. Army Engineer District, Pittsburgh.

Authorization for its construction as one feature of the Ohio River Basin flood protection is contained in the Flood Control Act of June 28, 1938, as amended by the Flood Control Act of August 18, 1941, and December 22, 1944.

First funds for construction were made available in the Public Works Appropriation Act for 1958.

The estimated cost of the project, exclusive of certain items in the pending bill, is \$107 million.

Its benefit-cost ratio computed on current costs (not including items in the bill not normally considered by the corps in connection with flood control projects) is 2.1 to 1.

Present schedules call for partial closure of the dam in June of this year, for total closure in October of this year, and for completion of the entire dam structure early next year.

The dam is located across the Allegheny River about 8 miles above Warren, Pa., and about 198 miles above its mouth at Pittsburgh. The dam is a combination concrete and earth embankment type with a length of 1,897 feet and a height of 179 feet above streambed.

The drainage area above the dam is 2,180 square miles.

The maximum flow of record at the damsite was 60,500 cubic feet per second and occurred on March 8, 1956.

The minimum pool is at elevation 1,240 with capacity of 24,000 acre-feet which covers an area of 1,900 acres and extends upstream 7 miles.

The low flow regulation pool, also called the summer pool, is at elevation 1,328, for a total net capacity of 549,000 acre-feet, covering an area of 12,050 acres, and extending upstream 27 miles.

The minimum winter flood control capacity is 940,000 acre-feet (between elevations 1,292 and 1,365) or 8.09 inches of runoff. The minimum summer flood control capacity is 607,000 acre-feet (between elevations 1,328 and 1,365) or 5.22 inches of runoff. The total storage at maximum reservoir elevation 1,365 is 1,180,000 acre-feet or 10.15 inches of runoff covering an area of 21,175 acres, extending 35 miles upstream.

Relocations include, in approximate numbers, 37 miles of railroad, 83 miles of highway, 66 miles of communication lines, 34 miles of pipelines, and 65 miles of powerlines. There is also required the relocation of 51 cemeteries, containing approximately 5,750 graves. Of the 51 cemeteries, 44 are Indian.

I would like to explain the operation of the reservoir.

There are four reservoir elevations that are pertinent to an understanding of how it operates.

The first is elevation 1,365, which is termed the reservoir full elevation.

The second elevation that is pertinent is termed the maximum summer flow regulation pool which is at elevation 1,328.

The third pertinent reservoir elevation is termed the maximum winter flow regulation pool which is at elevation 1,292.

The fourth pertinent elevation is termed the minimum pool or permanent pool which is at 1,240 and which extends just a few miles above the dam and does not enter New York State or the Allegheny Indian Reservation at all.

The operation of the reservoir is associated with these elevations as follows: The reservoir is evacuated down to or below elevation 1,292 by not later than November 15 of each year, and may be evacuated down to the 1,240 minimum pool; it is maintained in that condition, except for temporary flood impoundments, until the spring months when storage is made to bring it up to the maximum summer flow regulation pool at 1,328 by May 1 of each year; thereafter that pool is drawn on as required to maintain certain streamflow conditions or volumes downstream, which results in its reduction to the 1,292 contour by not later than November 15

of each year. In the average year gradual drawdown of the summer pool would commence about the last week in July.

It must of course be recognized that impoundment and discharge vary as required by conditions.

The total reservoir area is about 22,000 acres of which about 10,000 acres are in Pennsylvania and about 12,000 acres in New York. Of the acreage in New York, 9,077 acres are on the Allegheny Indian Reservation and the remaining 2,923 acres are in non-Indian ownership.

There are about 900 tracts in Pennsylvania and about 600 tracts in New York. Of the tracts in New York 436 parent tracts are on the Indian reservation and the remainder of 164 tracts are outside the reservation. These figures are, of course, subject to adjustment because of outsales and information disclosed by title examinations.

The corps has an agreement with New York State whereby the State is acquiring on a reimbursable basis the lands off the Indian reservation. This type of agreement is authorized by the 1938 Flood Control Act and has been the usual procedure for flood control projects in New York State.

In Pennsylvania the corps has acquired 800 tracts, and is in process of acquiring the remainder.

The Allegheny Indian Reservation may be generally described as a strip of land about 1.6 miles in width, bordering on each side of the Allegheny River, upstream from the New York-Pennsylvania State line for a distance of about 29 miles and containing 30,189 acres.

The area below reservoir full elevation 1,365 is 9,077 acres.

The area below maximum summer pool elevation 1,328 is 3,520 acres.

The area between elevations 1,365 and 1,328 is 5,557 acres. The residual area is 21,112 acres.

Twenty percent of the area between elevations 1,365 and 1,328 would be flooded once in 5 years, and the remaining 80 percent would be flooded less frequently. All of this area of 5,557 acres would be suitable for crops, grazing, timber production, hunting, trapping, and recreational access to water areas. Of course, no habitations or floatable structures would be permitted.

The taking of easements for the relocation of highways, railroads, and utilities will comprise about 500 acres, which, when added to the 9,077 acres, results in a total taking area of 9,577 acres. If the river bed of 933 acres is included, the total taking for easements is 10,510 acres.

The Corps under the current acquisition policy being applied to the Allegheny Reservoir project would have acquired the affected area of the Allegheny Indian Reservation in fee. Under the special circumstances applicable to these Indian tribal lands, decision was made to acquire easements only so that the Seneca Nation and its members could retain title and enjoyment of the reservation to the extent compatible with the project. This means that the nation and its members can utilize a substantial portion of the easement area for crops, grazing, timber production, hunting, trapping, and recreational access to water areas. Of course, no habitations or floatable structures could be permitted.

The corps awarded last year a contract for the construction of roads to serve the resettlement areas at Jimersontown and Steamburg. This work will be completed during the coming working season. At the same time, the Seneca Nation, through various types of assistance by other agencies, will be providing water and power and constructing new homes.

The House Committee on Interior and Insular Affairs, in its report on the bill, provides certain information on Seneca population and occupancy with which the corps is in agreement, and which may be of interest to this committee. I quote from the report:

"The Seneca Nation has 4,200 enrolled members, of whom 1,100 reside on the Allegheny Reservation, 1,900 on the Cattaraugus Reservation, and the remainder elsewhere. Of the 1,100 on the Allegheny Reservation, 482 (making up 127 families) are within the reservoir area. Nearly all of these families will be relocated at two places within the reservation—the Jimersontown site (300 acres) and the Steamburg site (350 acres)."

This concludes my statement, Mr. Chairman. I shall be happy to answer any questions you may have on the project, after which Mr. Hart will continue his presentation on the specific provisions of this act.

STATEMENT OF COL. BERT DE MELKER, DISTRICT ENGINEER, U.S.
ARMY ENGINEER DISTRICT, PITTSBURGH, PA.

Colonel DE MELKER. Mr. Chairman and members of the committee, I am Col. B. de Melker, district engineer, U.S. Army engineer district, Pittsburgh. I have prepared a brief statement which I would like to present to you.

We had in mind we probably would be first, but since this has already been covered, I will not comment on it at this time.

Senator CHURCH. Very well.

Colonel DE MELKER. The Allegheny Reservoir project is being prosecuted by my office.

Authorization for its construction as one feature of the Ohio River Basin flood protection is contained in the Flood Control Act of June 28, 1938, as amended by the Flood Control Acts of August 18, 1941, and December 22, 1944.

First funds for construction were made available in the Public Works Appropriation Act for 1958. The current estimated cost of the project is \$107 million.

Present schedules call for partial closure of the dam in June of this year, with initiation in October of this year. The completion of the entire structure is scheduled for next year.

The dam, as you probably know, is located across the Allegheny River about 8 miles above Warren, Pa., and about 198 miles above its mouth at Pittsburgh. The dam is a combination concrete-and-earth embankment type with a length of approximately 1,900 feet and a height of approximately 180 feet above streambed.

The drainage area above the dam is 2,180 square miles. The maximum flow of record at the damsite was 60,500 cubic feet per second and is at elevation 1,328. The minimum pool is at elevation 1,240 with capacity of 24,000 acre-feet, which covers an area of 1,900 acres and extends upstream 7 miles.

The low-flow regulation pool, also called the summer pool, is at elevation 1328, for a total net capacity of 549,000 acre-feet, covering an area of 12,050 acres, and extending upstream 27 miles.

Senator CHURCH. The minimum pool there, will it extend upstream from the dam 7 miles?

Colonel DE MELKER. That is correct.

Senator CHURCH. The maximum pool will extend upstream from the dam 27 miles?

Colonel DE MELKER. The maximum low flow—I will explain the operation later on. I just want to get these areas in their proper perspective.

Senator CHURCH. All right.

Colonel DE MELKER. The minimum winter flood control capacity is 940,000 acre-feet and this lies between elevations 1,292 and 1,365. The minimum flood control capacity is 607,000 acre-feet. The total storage at maximum reservoir flow is 1,200,000. This corresponds to 10.1 inches of runoff, and at that elevation will cover approximately 21,000 acres.

The construction of the reservoir locations include, in approximate numbers, 37 miles of railroad, 83 miles of highway, 65 miles of powerlines, and 51 cemeteries, for a total of approximately 5,750 graves. Of the 51 cemeteries, approximately 44 are Indian.

There are really four reservoir elevations that are pertinent to an understanding of the project. The first is 1,365, what we call the reservoir pool, and this corresponds to the storage mentioned.

The second elevation that is pertinent is the elevation we referred to as the summer pool elevation of 1,328.

The third pertinent reservoir elevation is the winter pool at regulation pool elevation which is 1,292.

The fourth pertinent elevation is termed the minimum pool or permanent pool which is at 1,240 and which extends just a few miles above the dam. This is an elevation below which we would never draw the reservoir.

When we evacuate the pool down to elevation 1,290 on the 15th of November every year we do not go below 1,240. In other words, the water between 1,240 and 1,292 is the water we have on hand to provide low-flow regulation downstream during the winter months.

During the spring months we then bring the pool up to elevation 1,328 by the first of May. This, then, is our elevation we call our summer regulation pool which provides the water or low-flow regulation during the summer.

We reach this elevation, as I say, by the first of March, and then again at the end of July we start drawing down from 1,328 down to the 1,292, and the cycle is repeated the following year. Of course, you must realize that the impoundments will vary in elevation depending upon the requirements for water downstream.

The total reservoir area is approximately 22,000 acres of which 10,000 acres are in Pennsylvania, 12,000 in New York. Of the acreage in New York, 9,077 acres are on the Allegany Indian Reservation, and the remaining 2,923 are in New York State in non-Indian ownership.

There are approximately 900 tracts in Pennsylvania and approximately 600 tracts in New York. Of the tracts in New York, 436 parent tracts are on the Indian reservation and the remainder of 164 tracts are outside the reservation. These figures, of course, may vary before we get through with the project because of outsales and other information, splits of property.

The corps has an agreement with New York State whereby the State acquires, on a reimbursable basis, the land that we need outside of the Indian reservation. This type of agreement was authorized by the 1938 Flood Control Act and has been our usual procedure in all work in New York to acquire the necessary interest.

In Pennsylvania, the corps has acquired 800 tracts and is in the process of acquiring the remainder. The Allegany Indian Reservation may be generally described as a strip of land approximately 1.6 miles in width, bordering on each side of the Allegheny River upstream from the New York State-Pennsylvania State line for a distance of approximately 29 miles, and containing 30,189 acres.

That is the area that you see in color on the print. The area below the reservoir full pool elevation is 9,077 acres. The area below maximum summer pool, that is our high pool at 1,328, is 3,520 acres. The

area between elevation 1,365 and 1,328 is 5,557 acres. The residual area is 21,112.

Senator CHURCH. Well, can you tell me, Colonel, what use can be made of this land when it is not overflowed?

Colonel DE MELKER. Yes; 20 percent of the area between elevation 1,365 and 1,328 will be flooded once in 5 years and the remaining 80 percent will be flooded less frequently. All of this area, this 5,557 acres, will be suitable for crops, grazing, timber production, hunting, trapping, and recreational access to the area.

Of course, we would not permit any habitation or floating structures in this area, because of possible damage.

The taking of easements—incidentally, I might say that this chart on my right also shows the frequency of flooding in each elevation. I just used the 20 percent there at elevation 1,340 which is flooded once every 5 years, frequently to 1,344 once in 10 years, elevation 1,350, once in 25 years, and above 1,365 we would—the records show we have not reached that, although it is possible.

Senator CHURCH. You just do not think you are going to have to use the spillway on this dam?

Colonel DE MELKER. I hope not, sir. I think our greatest flood of record was 60,500 acre-feet per second. It would take it up at 1,356, so you see it is not normal, although it is possible to have it.

The relocation of highways, railroads, and utilities will compromise approximately 500 acres, which, when this is added to the 9,077 acres, result in a total taking of 9,577 acres. If the riverbed of 933 acres is included, the total taking for easements is 10,510 acres.

The corps under the current acquisition policy being applied to the Allegheny Reservoir project would have acquired the affected area of the Allegheny Indian Reservation in fee. Under the special circumstances applicable to these Indian tribal lands, decision was made to acquire easements only so that the Seneca Nation and its members could retain title and enjoyment of the reservation to the extent compatible with the project. This means that the nation and its members can utilize a substantial portion of the easement area for crops, grazing, timber production, hunting, trapping, and recreational use. Of course, no habitation is permitted.

The corps awarded last year a contract for the construction of roads to serve the resettlement areas at Jimersontown and Steamburg. This work will be completed during the coming working season. At the same time, the Seneca Nation through various types of assistance by other agencies will be providing water and power, and constructing new homes.

The House Committee on Interior and Insular Affairs, in its report on the bill, provides certain information on Seneca population and occupancy with which the corps is in agreement, and which may be of interest to this committee. I quote from the report:

The Seneca Nation has 4,200 enrolled members, of whom 1,100 reside on the Allegheny Reservation, 1,900 on the Cattaraugus Reservation, and the remainder elsewhere. Of the 1,100 on the Allegheny Reservation, 482 (making up 127 families) are within the reservoir area. Nearly all of these families will be relocated at two places within the reservation—the Jimersontown site, 300 acres, and the Steamburg site, 350 acres.

This concludes my statement, Mr. Chairman. If there are any questions?

Senator CHURCH. Questions, Senator?

Senator MECHEM. What is the average length of time that you anticipate you will maintain water between 1,328 and 1,350? Will it be released within a week, 2 weeks, or what?

Colonel DE MELKER. I would like to answer your question this way, sir: That in our operation we, of course, would like to determine to elevation 1,328 as soon as possible to give us the extra storage during the summer. During the winter months we will, of course, attempt to return to 1,292 as soon as possible, so that we have the flood control storage available in case of storms.

Now, it is difficult to answer your question because we have an entire system of reservoirs on the Allegheny and Ohio. In the first place, our releases are limited by the capacity of the channel immediately downstream. In other words, we can not exceed the bankable capacity or we would be creating artificial floods.

We must also correlate our discharges with other reservoirs and other runoff that may be occurring in the system at the same time. I think you can see that you are faced with the problem of how much water are you over the 1,328 or the 1,292. What has happened downstream? How general is the storm?

I think that I can only say that we would reduce the reservoir down to summer pool or winter pool depending on the time of the year that we are talking about in a minimum length of time. We do not want to get caught with our reservoirs.

Senator CHURCH. Will power be generated at this dam?

Colonel DE MELKER. We had studied the power in the Allegheny Reservoir and find it economically not feasible. It is feasible, however, depending upon the system that ties into the produced pump power. Now, pump power is not a production power, it is merely a strong battery type of thing. You take water from the reservoir, pump it up on the canal, during peak hours bring it back down. We are making provisions in the construction of the dam to put in turnstiles.

Senator CHURCH. But no turbines are anticipated at this time?

Colonel DE MELKER. We find that there is a small amount of power that could be produced by making the regular releases that we need to make of downstream water and our water supply regulation of that stream, so if you are going to run it out anyway, you could produce a small amount of power.

Senator CHURCH. Is that planned in this \$107 million project?

Colonel DE MELKER. No, sir; it would not be feasible unless you had a pump power project tied with it. You could take advantage of it that way.

Senator CHURCH. The \$107 million—this is a corps project, it did not come through our committee in the first place, so I am not familiar with the details concerning the project. This \$107 million is all Federal money?

Colonel DE MELKER. Yes.

Senator CHURCH. And it would be all nonreimbursable?

Colonel DE MELKER. That is correct.

Senator CHURCH. And the cost-benefit ratio is based entirely upon the flood control benefits?

Colonel DE MELKER. No, sir.

Senator CHURCH. What is that?

Colonel DE MELKER. Just based on flood control and flow regulation.

Senator CHURCH. Flood control and low flow regulation?

Colonel DE MELKER. That is right.

Senator CHURCH. Which is a health antipollution benefit?

Colonel DE MELKER. Yes, sir. It provides benefits to the downstream population insofar as they do not have to keep their water, their domestic water, to the same extent they would without the dilution. It also helps them in the treatment of their sewage and there are benefits to fish and wildlife.

No; it is not only flood control, it is low flow, and flood control, and flow regulation.

Senator MECHEM. Do you charge anything on the waterways?

Colonel DE MELKER. Navigation?

Senator CHURCH. Yes.

Colonel DE MELKER. There might be a small amount since there is navigation on the Allegheny.

Senator CHURCH. Any other questions, gentleman?

Senator MECHEM. Are you going to clear this part of your flood plan between 1328 and 1365?

Colonel DE MELKER. Our clearing line is 1333. That is about 5 feet above summer pool.

Senator MECHEM. That is all.

Senator DOMINICK. Mr. Chairman.

Senator CHURCH. Yes, Senator Dominick.

Senator DOMINICK. In this \$107 million project, do you have recreation areas provided?

Colonel DE MELKER. We are providing for public use and recreation in the area. I do not know whether that map shows the recreation areas or not. I believe it does. These are all water-related types of recreation.

Senator DOMINICK. That is part of the \$107 million being appropriated for this project?

Colonel DE MELKER. Yes, sir.

Senator DOMINICK. Are you planning any recreational areas within the Indian reservation area?

Colonel DE MELKER. We are not, sir.

Senator DOMINICK. Why is that?

Colonel DE MELKER. Do you want to take that?

Mr. HART. I could answer it just as the chairman has brought out earlier, that in this particular case the Government is acquiring merely an easement which is a comprehensive easement or right to overflow, to restrict structures, and the like, so that actually we have no right to take any action on the Indian lands other than these specific easement rights.

Now, under that we would not have a right to develop any public use areas whatsoever, and this is one of the reasons or underlying reasons, perhaps, that easements were taken and with the understanding that the Senecas would have the opportunity to develop the recreational potential that might exist up there in the New York area.

Senator CHURCH. In other words, you are taking easement rights where the Indian lands are concerned, but you are taking fee rights where the non-Indian lands are concerned, is that correct?

Mr. HART. This is correct.

Senator DOMINICK. May I ask one more question on that?

Senator CHURCH. Yes.

Senator DOMINICK. If the Senecas should give you permission, would you be in a position to say whether or not the area as proposed for recreation under the Brill plan would be as good or better than the ones now being put into operation in your fee land?

Colonel DE MELKER. In the first place, I must say that I am not qualified in the recreational development except as it relates to water-related projects. I think I might say that the type of recreation facility recommended by the Brill report is not a water-related facility but a functional type of thing to the area.

Senator DOMINICK. I think you can see the point I am making. How much money are you planning to spend on your fee land areas, water-related recreation areas?

Colonel DE MELKER. Of course, this is a continuing type of thing. We do not construct all the facilities that are initially required; we only construct the facilities that are required to meet the recreation loads of the day.

Our initial expenditure for recreation will be, ultimately I think \$2.8 million.

Senator DOMINICK. Your winter pool, in fact, barely reaches the reservation, does it not? Just the beginning of the reservation area, is that correct?

Colonel DE MELKER. That is correct, sir. I think this map here may be a little bit more accurate. This is the head of the maximum winter pool, but you see it is practically like streambed here.

Senator DOMINICK. This so-called water-related recreation area would have to refer to the summertime anyhow, would it not?

Colonel DE MELKER. That is correct, sir. I think I could say this as to water-related activities. Such things as water launching ramps, duck hunters, and all would extend into the winter period.

Senator DOMINICK. You are preparing to have those in the area on the fee land in Pennsylvania?

Colonel DE MELKER. Yes, sir.

Senator DOMINICK. Have you had any negotiations with the Indians in determining whether or not they might give you rights to put this type of area within their own reservation?

Colonel DE MELKER. The history of our negotiation talks with the Indians on recreation is quite lengthy. As a result of the President's letter we determined how the Indians could participate in the recreation. We asked the National Park Service to make a study to determine what could be done on the reservation. They were not very enthusiastic because of the fluctuation of the reservoir insofar as water-related facilities are concerned.

They did, however, recommend acquiring additional Indian land and making it a national recreation area. Since this was out of the question at that time, and it still is the policy to minimize the taking of the Indian land, we prepared a report showing what could be done on the reservation, which we turned over to the Indians and to the BIA for their use for further study.

Our study did not purport to explore the economic feasibility of such recreation area. Consequently, we agreed with BIA and Fuhri-

man, a commercial report, to determine the economic feasibility of developing recreation facilities, and their answer is the Brill report which states \$30 million for development of a recreational facility which is economically feasible.

Senator DOMINICK. Thank you.

Senator CHURCH. Mr. Hart, do you have further testimony now?

Mr. HART. Yes, Mr. Chairman. With your permission, I will go right ahead speaking toward the objectives of the bill. I might say that the views of the Department of the Army were furnished this committee on February 24, 1964, with respect to S. 1836. That report also reflects the Department of the Army's views in respect to H.R. 1794 and I will not go into that in too much detail, and if I may, I will go right into the sectional analysis of H.R. 1794.

I might say that H.R. 1794, just by way of introduction, as you know, had a great deal different approach and was similar in structure to 1836. However, after numerous hearings in the House subcommittee, why, a number of the differences were resolved by the parties and another reason by which we ended up with a number of changes was that at the time of the introduction of legislation and the initiation of hearings, neither the Department of the Interior, the Department of the Army, nor the Indians for that matter, had completed many of these special studies which were generated as a result of the President's directive.

Just as an advance statement, the Department of the Army now, as a general position, has no objection to the provisions of H.R. 1794, with the exception of those relating to the indirect damage which we still like to talk to.

First, section 1, is merely a recital of the direction of payment and I point out that this particular act is not a legislative taking act. There is some reference to it before and with some surprise, I might point out this is not different. You have had the same situation on two other Indian reservations in your prior acts and if you desire I can give you the citations, where you start out with a legislative taking, condemnations were initiated in the meantime before the act was enacted, and as a consequence, the sections were taken so that it was changed from a legislative taking to merely a bill for payment, and this follows somewhat the same thing.

Also you have heard stated that the title to the Indian lands has some cloud on it. The recommendation of the Department of Justice and with the concurrence of the Bureau of Indian Affairs and the Seneca Nation, the Army has studied condemnation proceedings to acquire these interests. To date we have filed, as of the end of February, and it was very close, 29 separate declaration takings.

We have deposited in court \$1,293,779, and this completes all of the proceedings necessary except the procedural one relating to the relocation of the cemeteries. This is not interfering or holding up anything and we will have that completed within the next several weeks.

I might say that the amount of money that we have deposited in court includes funds for non-Indian as well as the Indians, that is the ownership of improvements by non-Indians on the Indian lands and that the settlements that we have arrived at and have spoken of here, we will be making a deficiency judgment, deposits just as fast as we can arrive at stipulations through the mechanical processes of having

stipulations entered, and providing payments to the Seneca Nation and the individual landowners.

Senator DOMINICK. Mr. Chairman, excuse me just a minute. I have a report from the Department of the Army in front of me which has a stamp date of February 24, 1964. Is this the report that we are supposed to say is up to date or is this one that was prepared as you said some time ago?

Mr. HART. Well, this particular report was actually prepared last November, or at the end of October, submitted to the Bureau of the Budget and it remained there until the 21st of February, and about 6 o'clock that night, before the holidays, we were directed to get it out, it was cleared, and to update it insofar as the negotiations were concerned.

We did it over the weekend and we tried to update it to the fullest extent practicable and with the exception, perhaps, of section 4, I would say that the report properly reflects the statement of facts. Even on section 4, aside from our references and details there, I understand from testimony today that some of these proposals that the Senecas had had for additional funds have been turned down. Of course, I was unable to ascertain on short notice.

This report is based only on S. 1836 and is not directed to H.R. 1794. Well, the report is not directed to H.R. 1794 because we were directed to report to your committee on S. 1836. However, the sum and substance of our position on S. 1836 would reflect our thinking on H.R. 1794 and our amendments, if followed, I believe you will find will pretty much result in your present bill, H.R. 1794.

In other words, it was our intent to have our amendments to the Senate bill coincide with the bill passed by the House, with the exception of section 2(d) relating to indirect damages and there, as has been stated before, the Department of the Army still makes an objection to that particular payment.

Senator CHURCH. I wonder if we could get to that. I do not think it is necessary to go through sections 2 (a), (b), and (c). The sums have been agreed upon, and the Department approves them, but to get into section 2(d), and here you do raise objection to the indirect damage.

Would you care to testify on that?

Mr. HART. Yes, Mr. Chairman. This is actually the only objection we have as it is presently drafted and first, we have a general objection which we have voiced here on similar bills, and still do, that the charge to the project of costs of indirect damages is inappropriate. We feel that this should be charged elsewhere and not a direct charge to the project.

So that other than the one amount, which may be enumerated, which is the amount of \$127,050, which represents the cost of moving the personal property of the various families that are going to relocate, this, we feel, is the proper charge to the project, and we would normally be authorized to pay it under our statutes of resettlement.

The other items, why, we generally feel do not. On the other hand, the Department of the Army does recognize that as legislative precedent that the Congress has made similar provisions in previous bills and that in line with those provisions they have allowed damage to loss of herbs and woods and national wildlife and the like, and following that, we have taken the BTA report where they have listed

a number of items, and perhaps to save time you have read them before in the report, and we have stated in substance that if you intend to actually put in a similar item, then the committee should follow the past precedent and charge only that similar type of item.

That is where in the previous report it has come out that the maximum recommendation would be the sum of \$824,437.

Senator CHURCH. That is \$824,000 what?

Mr. HART. \$273.

Senator CHURCH. \$824,273 would be your recommendation for indirect damage based upon previous precedent?

Mr. HART. Yes, based on previous precedent. Those are made up of three items: the moving costs, \$127,050; the reimbursement for loss of timber, wildlife, fish, and berries, and the like, \$691,625; and the loss of access to the bed of the Allegheny River of 933 acres at \$6 per acre, or \$5,598.

Now, I might say as to this loss of access to the riverbed, we would like to restate our position that we feel that this payment is inappropriate. The Federal Government has a paramount right of navigational servitude over the rivers. We are not taking any interest in the riverbed here, and we feel we should not have to pay for it. Now, whether we do recognize in the previous bills the Congress also allowed it—

Senator CHURCH. What was added here, Mr. Hart, over and above what we have allowed in previous bills?

Mr. HART. Well, I am turning now to the original question of the Seneca Nation which has been supported by the Bureau of Indian Affairs. They have added \$8,000 for reestablishing and moving a longhouse. We feel we have paid for that once and we do not feel this is a proper indirect damage, it has been paid direct damage.

For acquiring 40 acres of replacement land, they have \$50,000. This is land which is on their reservation and which is necessary to purchase the outstanding occupancy rights of the house. We do not think this is an indirect damage as such. We think it relates to the resettlement areas authorized to develop under section 4(c).

Likewise the domestic water, two relocation sites, \$100,000. Then they have the development of that resettlement area, rough sites leveling, \$155,500, site planning, \$2,000, staking 1-acre lots, \$7,775, topographical boundary surveys, \$7,000. Those are the ones, and they add up to \$330,275.

Senator CHURCH. Are you making here, Mr. Hart, just a bookkeeping objection? Are you objecting to these additional items as unnecessary, or simply to the fact that they are being charged against the project rather than some other provision of the bill?

Mr. HART. Basically, it is the charge against the project.

Senator CHURCH. That you are objecting to?

Mr. HART. Yes, sir; we are not taking issue as to whether or not this is necessary. I am sure it is necessary, all of these items are necessary. They appear reasonable. We have not gone into the reasonableness of the cost. However, our main objection is simply that they should not be charged to the project.

There is another place in the bill for these extra items and if we are going to follow legislative precedent, then we think legislative precedents stop up there at our \$824,000. Now, this was the position—

Senator CHURCH. This just comes down to an argument over whether the budget of the Corps of Engineers should be charged with this extra money or the budget of the Bureau of Indian Affairs?

Mr. HART. This is basically true.

Senator CHURCH. But it is completely true, is it not?

Mr. HART. Yes, sir; it depends on the relationship, if any, to a charge against the project. It is a small amount, of course, it has no real effect on the benefit-cost ratio here.

Senator CHURCH. What about the item here on page 6 of your testimony, Mr. Hart, where you say the amount of \$100 per acre for 933 acres is excessive compared to previous acts wherein the maximum allowed was \$6 per acre.

Mr. HART. Yes, sir; that relates to the item that the Senecas have made their request for based on loss of access to the riverbed of 933 acres and they had based it on \$100 per acre. Our position in this respect is again based on legislative precedent, if you will. In our Indian bills legislation on the Missouri River you paid the tribes \$6 an acre for loss of riverbed. I might say over our same objection—

Senator CHURCH. Well, is there any difference here in connection with the nature or characteristics of the riverbed to justify so great a differential as that between \$6 an acre and \$100 an acre?

Mr. HART. We can see no difference whatsoever.

Senator CHURCH. You do not see any difference at all?

Mr. HART. No, sir; and in connection of whether the title of the riverbed is in the Senecas, we agree that it would be, but that has nothing to do with the particular loss of access.

Senator CHURCH. But your \$824,000 figure includes this particular item, does it not, valued at \$100 an acre?

Mr. HART. No, sir, it includes the value at \$6, that is where we get the difference of \$5,500 as against the \$93,000 that they would have.

Senator CHURCH. I understand.

All right, Mr. Hart, do you want to go ahead then with the rest of your testimony?

Mr. HART. Well, yes, if you would like following section 2, section 3 is mere distribution with which the Department of the Army has no concern.

Section 4 we have no particular—

Senator CHURCH. That is a Bureau of Indian Affairs.

Mr. HART. I might say this, unless some particular development would come up which would affect the direct operation of our reservoir we might have some objection, otherwise, no.

Section 5 as to the cemetery relocation, we are in full agreement. We could do this by law anyway. We would do it, and we are doing the same thing in Pennsylvania, so this is perfectly all right.

Section 6 is the reservation to the—and it purports to reserve the minerals, and I do not wish to go into that particularly at the moment, but we have no objection to the section, although we do not believe it is particularly necessary. We do not feel it does us any particular harm.

Section 7 is the time for vacation. I might say that is January 1, 1965, which was arrived at by a series of discussions as between the two dates of the Army's original date of October 1964 and the request

of June 1965. We took a good look at our construction schedules; Colonel de Melker feels January 1 would be a safe date.

Section 8 is again a right that is similar to previous bills, a right for them to salvage, without compensation, improvements and timber. We make note that that is again an additional benefit but it is similar to previous legislation, and we are not objecting to it.

Section 9, which sets out that the Indians will have the use of this land. Again, we do not believe this particular section is necessary; however, it merely states rights which they already have. In other words, in view of the fact that the Department of the Army is taking merely an easement, all the rights provided in there, they certainly have the same ones anyway so long as it does not interfere with our easement.

Section 10, of course, is the payment to the nation for administrative costs. This is a matter for the Department of the Interior.

Sections 11 and 12 are merely procedural in connection with the handling of condemnation cases where individual Indians do not care to accept the award.

Section 13 is the matter of the Secretary of the Interior authorizing him to acquire the land.

Sections 14 to 17 are general provisions.

Again, I say in summation, sir, the Department of the Army has no objections except to 2(d) and just concluding my statement I would merely like to say this: That, with reference to the proposals of the Devonian Oil Co., I have not seen those proposals. It was new. I did not know about it, and if the committee gives any consideration to those, I would appreciate if we might have an opportunity to look at them and comment on them, and if you desire our comments, we will furnish them. On the face of it we do not see that such amendments are necessary, but maybe we will have to take a look at that.

Senator CHURCH. If you could get your comments in right away. We have a time problem, as you know.

Mr. HART. Yes.

Senator CHURCH. Several others have asked an opportunity to submit statements and I have indicated that the record will be held open. I must make it plain now that the record cannot be held open for more than a day or two at the most.

I think Mr. Gamble will undertake to get the transcript of the hearing today available, we hope sometime tomorrow, then we are going to proceed to executive session as soon as we have the necessary materials from this hearing gathered together in usable form.

So, be mindful of that in connection with concluding your remarks on this proposal.

Mr. HART. I might say if there is anything we can do, if you need any additional statements or any of the exhibits, we would be more than glad to get them right up to you.

Senator CHURCH. Thank you very much. Any questions, Senator?

Mr. MECHEM. No, thank you.

Senator CHURCH. Any further witnesses to be heard?

Very well. This will conclude the hearing, then. And we have had a long, full day and I want to thank you all for your patience and for your helpful testimony.

(Whereupon, at 5:53 p.m., the committee adjourned.)

(Under authority previously granted the following statements and letters are included in the hearing record.)

STATEMENT BY ROGER C. ERNST, ACTING PRESIDENT, ASSOCIATION ON AMERICAN INDIAN AFFAIRS

The Association on American Indian Affairs shares with the Seneca Nation and the House of Representatives a sense of great urgency regarding passage of legislation providing assistance in the relocation and rehabilitation of the Seneca Nation and its members.

Today, brevity serves the Seneca people best.

We join with them in support of S. 1836 and H.R. 1794.

Because of the emergency created by the imminent closing of Kinzua Dam, we hope that this legislation can be reported today to the Committee on Interior and Insular Affairs, and that the full Committee will, in turn, report the legislation to the Senate in advance of the debate on the civil rights bill.

Swift action will redeem the Nation's honor and President Kennedy's pledge for a fair and orderly adjustment for the Seneca community.

IRVING, N.Y., February 12, 1964.

To the Senate Interior Subcommittee on Indian Affairs, Washington, D.C.:

I am writing in regard to H.R. 1794, the bill which is going to come in front of you, for passage of reimbursement to the Seneca Indians.

Enclosed please find a Kinzua Newsletter which I received, and clippings from the Buffalo Evening News.

I am very much against this bill being paid to the Seneca Nation as there is no one in office capable of holding this money or can be bonded enough for handling of this money. There is never an accurate account of the nation's expenditures.

There are too many destitute Indians on the reservation for money to be spent for recreation, courthouses which we have which have not been kept up. Our churches have been kept up by the members of the church.

On page 6 of the newsletter you will note what the nation proposes the money to be used for. There is only one farmer left on this reservation and she is non-Seneca. In this day and age you must have knowledge of agriculture or it would be a complete flop. The small farmer is out of business to farm it.

On page 3 I underlined George Heron's statement of the aging grandmother residing in Red House. I should like to inform you of a 90-year-old Red House resident, that is being deprived of her houses. One she built herself, the other her mother built which she has possession of, which the nation is taking the money. She has a nice home, running water, etc. At the age of 90 she is one of only three or four that do Indian craftwork. This woman stays up to 1 p.m., to be self-supporting. Her name is Sarah Pierce. Her father a Seneca, her mother non-Seneca.

So when they plan this recreation area who is going to provide these stands with Indian crafts?

There are many homes without walls under the houses or water—even electricity. Many of these people are on welfare, who could use this money and come off the welfare rolls.

I am enrolled Seneca Indian and taxpayer. I am also a voter in Collins, N.Y. I would rather see the Government keep the money, as the average Indian will realize nothing of this money. There would be only a few get rich and make jobs for themselves.

The people that have to move and landowners in the nation are withholding 10 percent of their money. If we are to be paid for losing our tax-free land, then each individual should receive the money direct from the U.S. Treasury. The same as when the Kansas money was passed out in about 1905.

Also, I have underlined less than one-quarter-blood be removed from the rolls. I have built a nice new home on the reservation and I certainly expect my children to have it. When I built I knew that my children would be able to have it. Now the nation would like to change that. What difference is this than losing the land for the dam? At least the Engineers are paying them for their property.

When the New York State Thruway went through the money was divided between the members, I think it was about \$24; this recreation in Allegheny cannot possibly help anyone.

Yours truly,

Mrs. ROSEMARY PREISCHEL.
Mrs. BETTY PARRY.
Mrs. SADIE KENNEDY.

HEADQUARTERS, DEPARTMENT OF THE ARMY,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D.C., March 5, 1964.

HON. FRANK CHURCH,
Chairman, Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs, U.S. Senate.

DEAR MR. CHAIRMAN: Reference is made to hearings held by your subcommittee on March 2, 1964, with respect to H.R. 1794, an act to authorize the acquisition of and the payment for a flowage easement and rights-of-way over lands within the Allegany Indian Reservation in New York, required by the United States for the Allegheny River (Kinzua Dam) project, to provide for the relocation, rehabilitation, social and economic development of the members of the Seneca Nation, and for other purposes.

As brought out at the hearings, the United States has acquired the real property interests involved herein by filing condemnation proceedings in the Federal district court. Appropriate funds have been or will be deposited in court and payments required by subsections 2 (a), (b) and (c) will be accomplished by stipulations filed in said proceedings. In this connection, the parties have recently found several sets of improvements, originally negotiated as being Indian owned, which are actually owned by non-Indians. The sum of money in subsection 2(c) should therefore be reduced to this extent. As a consequence, to provide for such unforeseen situations, and avoid ambiguities between legislative and judicial payments, the Seneca Nation and the Department of the Army have mutually formulated an additional provision to H.R. 1794 as follows:

On page 4, after line 11 insert an additional subsection "(f)" to section 2:

"(f) The sums payable under (a) and (c) of this section shall be subject to deduction in accordance with stipulations entered into, or to be entered into, between the United States, the Seneca Nation and individual Seneca Indians if it is judicially determined that title to any lands or improvements to which such compensation relates is not vested, in whole or in part, in the Seneca Nation or individual Seneca Indians."

Accordingly, as a matter of further clarification, it is respectfully requested that section 2 of subject bill, H.R. 1794 be amended as above set forth.

Sincerely yours,

LONEY W. HART,
Chief, Legislative Services Office, Real Estate.

HEADQUARTERS, DEPARTMENT OF THE ARMY,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D.C., March 6, 1964.

HON. FRANK CHURCH,
*Chairman, Subcommittee on Indian Affairs,
Committee on Interior and Insular Affairs,
U.S. Senate.*

DEAR MR. CHAIRMAN: Reference is made to hearings held by your subcommittee on March 2, 1964, with respect to H.R. 1794, an act to authorize the acquisition of and the payment for a flowage easement and rights-of-way over lands within the Allegany Indian Reservation in New York, required by the United States for the Allegheny River (Kinzua Dam) project, to provide for the relocation, rehabilitation, social and economic development of the members of the Seneca Nation, and for other purposes.

During the course of these hearings, representatives of the Devonian Gas & Oil Co., in their testimony, recommended a number of amendments to subject bill. In view of the time element, the witnesses for the Army were unable to complete their comments on these amendments and it was proposed to furnish the same for the record. The substance of these comments would have been as follows.

A review has been made of the formal statement with proposed amendments of John T. Elfvin as submitted to the committee. The Department of the Army is strongly opposed to the inclusion of these amendments as being unnecessary, inappropriate, and improper for the reasons hereinafter set forth.

Mr. Elfvin's statement recites the interest of Devonian Oil & Gas Co. as being the holder of certain oil and gas leases from the Seneca Nation; alleges certain damages resultant from the Allegheny project; reviews subject bill and asserts that provisions therein may jeopardize its right to just compensation; and proposes a number of amendments to the bill.

As to the statement and testimony thereon, this Department recognizes the Devonian Oil & Gas Co. as being the record holder of five oil and gas leases granted by the Seneca Nation. This Department takes issue with many of the statements made, particularly those concerning the validity and value of the leases, affect of project requirements, and amount of damages sustained. However, these are all factors to be presented during the litigation in the pending condemnation proceedings, and are not considered appropriate to be injected in hearings on subject bill.

The ostensible purpose of these amendments is to assure that no provisions of subject bill would adversely affect the rights of the Devonian Oil & Gas Co. and/or preclude it from asserting its claim for just compensation in the condemnation proceedings now pending in the U.S. district court. To this end an additional section 18 to H.R. 1794 was proposed. The Department of the Army opposes this amendment for the following reasons:

(a) This bill is not a legislative taking; the real property interests involved have been acquired by condemnation proceedings filed in the U.S. district court in Buffalo, N.Y. All parties having any possible interest in these lands have been made defendants to the suits, including the Devonian Oil & Gas Co. Thus the interests of all parties are fully protected.

(b) The text of H.R. 1794 read in full, or by specific sections, indicates clearly that such legislation relates solely to the interests of the Seneca Indians. Moreover, the legislative history, consisting of the printed hearings and committee reports, makes such clearly evident.

(c) All discussions, negotiations, and settlements by the parties have been predicated on settlement of only the interests of the Senecas; any and all non-Indian interests have been and will be dealt with separately by this Department. This is one of the major factors requiring condemnation proceedings.

(d) Irrespective of any other argument, it is axiomatic, that under the fifth amendment of the U.S. Constitution, private property may not be taken for public use except by due process of law and the payment of just compensation.

(e) By reason of the obviousness of the above legal principles, the insertion of the proposed amendment would tend to create uncertainty as to its exact purpose, rather than clarification of the bill.

With respect to the amendment to subsection 2(b) proposing to change the payment of \$100,000 from "full payment" to "minimum payment," such would nullify and invalidate the settlement agreement between this Department and the Seneca Nation. The Department of the Army strongly opposes this gratuitous proposal by a third party to formulate any new settlement herein. This settlement was predicated on, and the bill clearly indicates, payment of \$100,000 in full compensation for the damages sustained by the Seneca Nation, whatever such may be; it in no respect relates to nor lessens the rights of the mineral lessees to obtain just compensation in the Federal district court. While this oil company is entitled to its opinion of values, it is considered extremely inappropriate and unwarranted for this company to inject itself in this agreement and this bill under the guise of a third-party beneficiary.

Accordingly, it is respectfully submitted that the interests of these lessees are fully protected as stated above, and that H.R. 1794 should not be distorted by the inclusion of the aforesaid amendments.

Sincerely,

LONEY W. HART,
Chief, Legislative Services Office, Real Estate.

KINZUA PROJECT OF THE INDIAN COMMITTEE,
Upper Darby, Pa., February 20, 1964.

Senator FRANK CHURCH,
Senate Office Building, Washington, D.C.

DEAR SENATOR CHURCH: May I express the hope that the Senate Subcommittee on Indian Affairs will accept House recommendations for appropriations in behalf of Senecas without reductions? In fact, I greatly wish that amounts for secondary roads in at least one area above that to be flooded by the Kinzua Dam could be increased. I am well acquainted with several families prominent among the Senecas, who must move and who have an intense desire to go to a familiar place right up the hill from the present longtime homes. The land there is available but there is no road to it. I could give you details about this. These Senecas have a longing to live where the outlook would be toward a familiar outline of trees and mountaintops instead of a strange setting. Will you consider that? The Corps of Engineers is willing to plan for houses in two areas.

I first visited all Iroquois reservations in 1942 with a son, then a graduate student of anthropology, later the U.S. anthropologist, under the Department of the Interior, for the Marianas Islands. During the past 2½ years I have visited the Seneca reservations near the Kinzua Dam six times. I think that I must have seen all or nearly all of the Senecas who must move. Everyone with whom I have spoken has expressed deep distress over the Kinzua Dam, though with a dignity and restraint of wording which it might be hard to match among white people.

I have been for years a member of the Indian Committee of Philadelphia Yearly Meeting of Friends, of the Indian Rights Association, and of a nationwide women's organization which I serve as referent on problems of American Indians. Because most of the Friends who have spent time among the Senecas in recent years have been men, I have been especially glad to come to know well many women Senecas, including a number of the "clan mothers." It seems to me that their suffering at heart is greatest. Some of the oldest, who are devoted members of the old "Handsome Lake" religion, can't quite believe that the disaster will really come. One said, "I think the Lord will intervene at the last minute and stop it." Another said, "I am very old. I think I shall die before the water reaches my old home." Another suggested, "Maybe one of those bombs will come and we won't have to think about it."

The dam will be finished; the old homes and Longhouse where I have attended so many ceremonies will vanish. But are not such suffering people entitled, in memory of the broken treaty, to good new homes and enough small roads for some choice of homesites on the reservation?

Sincerely yours,

EDITH REEVES SOLENBERGER.
Mrs. Edwin D. Solenberger.

HYATTSVILLE, MD., March 3, 1964.

Hon. FRANK CHURCH,
Chairman, Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR CHURCH: As one who has long maintained a home in the Allegheny River Valley, in Tionesta, Pa., considering it home in a peculiar sense—and as one with a special interest in Indians and (as you know) in our natural resources I should like to—

(1) Contribute this letter to the record of the hearings on measures to recompense the Seneca Indians with regard to damage from the Kinzua Dam; and

(2) Support the House-passed act, H.R. 1794.

I appreciate your promptness in holding the hearings and the way in which you are expediting the legislation.

I can well appreciate the frustration you may feel in having urgencies make difficult the lengthier considerations that are carried on more confidently and more conveniently but are time consuming.

These urgencies, as I understand the situation, are not of the Indians' creation but like so many other aspects of the Kinzua Dam situation are troubles brought to the Indians by those constructing and supporting the dam.

The urgencies are the result, as I understand them, of the scheduled closings of the dam—a matter in the control of the Corps of Engineers immediately and ultimately the Government of the United States.

With some such provision as a requirement that the closing of the dam be scheduled for not sooner than a year after the enactment of legislation for resettlement and compensation of the Senecas, there could have been plenty of time and a freedom from the current urgencies.

So I trust that the urgencies of the situation will not be allowed to result in further detriment to the Indians.

We owe these Indians every possible compensatory consideration and should be eager to concur in any settlement that meets with their concurrence, the damage having been (1) unnecessary and in realization of our own preference and convenience, (2) irreparable in many ways from the Indians' point of view, and (3) a calculated gain for us at their expense, despite the obligations of a treaty. (We are forcing them to accept a certain and constant flooding of their land in order to avoid an occasional and seasonal flooding of some of our own land.)

If the Corps of Engineers insists on closing the dam within 3 months and there is in existence a settlement that has been concurred in by representatives of all points of view, we should not do anything for our own advantage to jeopardize the Indians further.

The Corps of Engineers does insist on the closing, H.R. 1794 does constitute a settlement concurred in by representatives of all points of view, and accordingly it seems to me that the Senate, while meeting its responsibilities, should be especially eager to favor the interest of the Indians.

I listened attentively to the entire hearings yesterday. While hearing the colloquy on the treaty breaking, as Senators Javits and Keating responded to Senator Gruening's questions, I felt anew a deep shame as a citizen of the United States. The thought even occurred to me that it would be well even now to abandon this project, construct the alternative that would respect our treaty obligations, and perpetuate the Kinzua Dam itself with a suitable massive inscription as a monument to our national redemption and persistent determination to live again in the honor that was once violated. When later in the day it seemed apparent that the proposals in H.R. 1794 would provide for what the President of the Senecas anticipated as a last-chapter happy ending and what seemed to me like a promised forgiveness, it seemed like an offer of relief and that we should hasten to act for this prospect.

May I emphasize that I write this letter as a citizen of the United States of America, for myself and not as a spokesman for any organization or group. Though I know there are many who share my convictions, this expression is without the specific endorsement of anyone else and must depend on its own communications for the consideration that I trust it will receive.

With personal regards and reiterations of my appreciation of the services you are giving as chairman of the subcommittee, I am,

Sincerely yours,

HOWARD ZAHNISER.

BUFFALO, N.Y., March 9, 1964.

HON. E. L. MECHEM,
U.S. Senate,
Washington, D.C.:

May I reiterate the position of Devonian Gas & Oil Co. concerning H.R. 1794. Devonian is a party defendant in 29 condemnation actions brought by United States in western district of New York to take flowage easement over different tracks of Allegany Reservation of Seneca Nation. Devonian owns oil and gas production rights and gas storage rights under leases with nation. Easement admittedly completely destroys value of such rights. Devonian's just compensation to be determined in court. Total value of rights at least \$1,500,000. Nation has eighth interest. Amendments needed to protect Devonian in court from Army deal with nation re oil and gas. Changes requested in sections 2(b), 6, 9, and 16 plus new section 18. Army wants minimum sum charged to project cost. Nation wants maximum sum in interest-bearing fund. Both have acted to harm Devonian. Please refer to Devonian statement and addendum in subcommittee hearing.

JOHN T. ELEVIN, Attorney.

APPENDIX

SALAMANCA, N.Y., *March 5, 1964.*

Re H.R. 1794.

HON. FRANK CHURCH,
*Senate Office Building,
Washington, D.C.*

DEAR SENATOR CHURCH: May I first thank you and your Subcommittee on Indian Affairs for patience and determination in the long day of hearings on H.R. 1794. I understand it is most extraordinary to continue a hearing so long and to complete it in 1 day.

We have recently heard a disturbing report, however, that the subcommittee might deal with the unique Seneca plight routinely—by formula, multiplying \$2,250 by a certain number of Indians. This matter could have been handled by some such formula months ago, but the Federal Government, under the explicit directives of President Kennedy, spent thousands of dollars and much agency time over the past 3 years assisting the Seneca Nation in planning a sound rehabilitation plan for a constructive future. The House has now approved that plan. The total amount in the bill, \$20,150,000, can be compared with the \$20 million which the Pennsylvania Railroad received 3 years ago for its failing, 28-mile right-of-way taken for Kinzua Dam construction.

If the Senate subcommittee should now make deep cuts in the House-passed bill which has been approved by all appropriate agencies and by the Seneca Nation of Indians, there will be another dark chapter written in the book of relations between the white men and the Indians. Such action by the Senate subcommittee would seem entirely out of harmony with the spirit and intent of President Kennedy's letter to the Seneca Nation of August 9, 1961, and with the report of the Senate Appropriations Committee of September 20, 1961, which indicate that this unique matter should receive special consideration and not be treated with a routine formula. (Excerpts from these documents are enclosed.)

This is not a routine case. There need be no fear of setting any new precedent, since the circumstances facing the Seneca Nation should never again occur. I presume the U.S. Congress will never again violate unilaterally, without prior negotiation, over the explicit objections of the tribe, our country's oldest and most firmly worded and reaffirmed treaty promises. Never again will the Congress face this particular situation, in which the tribe offered to give up its opposition to a treaty-violating Federal project if it could be shown by impartial evidence that no feasible alternative existed. That never was shown, because the best alternative developed by Dr. Arthur Morgan, at the expense of the Seneca Nation, was admittedly feasible and was never reviewed by any engineering firm outside the Corps of Engineers. The corps insisted that its judgment should not be questioned. This treaty violation was not only unilateral, but also unnecessary, since a possible alternative was admittedly available.

Other tribes all over the United States have offered resolutions and letters in support of H.R. 1794. They will consider severe reductions in H.R. 1794 as another affront to all American Indians.

The rehabilitation fund in H.R. 1794 was developed by careful study of what would be required to achieve a constructive new way of life in place of the present Seneca way of life which will be severely disturbed if not destroyed by the Kinzua Dam. The Seneca planning committees recognized congressional dissatisfaction with mere distribution of cash payments to individual Indians and proposed instead a new economy which would not only provide employment for the community, but would add a significant historical and cultural asset for the benefit of all our citizens, supplementing the benefits of our various national parks, shrines, and monuments. Such an educational service for tourists could contribute greatly to constructive understanding and interaction between Indians and other American citizens.

The people of the United States have been shocked by the breach of faith represented in the Kinzua Dam treaty violation. It will be hard for many of us to retain any confidence at all in the good faith of our own Government if now your Subcommittee on Indian Affairs adds to that broken treaty a further breach of the most earnest promises of President Kennedy and of the Senate Appropriations Committee.

It seems inconceivable that the subcommittee could ignore not only these substantial promises, but also the earnest concerns of the sponsors of S. 1836 and of thousands of conscientious citizens who have expressed deep concern personally and in newspaper articles, editorials, and television presentations over several years.

I hope the subcommittee will examine President Kennedy's letter to the Seneca Nation of August 9, 1961, side by side with the letter of February 28, 1964, to Senator Jackson from the Bureau of the Budget, reporting on H.R. 1794. These letters, both issued from the same Executive Office of the President of the United States, seem to go in exactly opposite directions. Their philosophy and intent are so contradictory that side by side they resemble the "white man's forked tongue" which has plagued American Indians throughout our national history.

In accordance with the President's directives, H.R. 1794 was prepared to provide for the "relocation, rehabilitation, and social and economic development of the members of the Seneca Nation." It would at the same time create an institution of Indian culture and history of benefit to all Americans.

The Senate Subcommittee on Indian Affairs has an opportunity to assist the Seneca Nation to recover from bitter disappointment and to create a new life in which all American Indians and all Americans can share and take pride. We appeal to you on the strength of both practical and moral considerations for approval of H.R. 1794 as passed by the House of Representatives.

Sincerely yours,

WALTER TAYLOR,

Representative to the Seneca Nation of Indians from the Indian Committee, Philadelphia Yearly Meeting of Friends.

[Enclosure]

U.S. COMMITMENTS TO THE SENECA NATION OF INDIANS AS EXPRESSED BY PRESIDENT JOHN F. KENNEDY AND BY THE SENATE COMMITTEE ON APPROPRIATIONS

Excerpt from President John F. Kennedy's letter of August 9, 1961, to Mr. Basil G. Williams, then president of the Seneca Nation of Indians:

"* * * Even though construction of Kinzua must proceed, I have directed the departments and agencies of the Federal Government to take every action within their authority to assist the Seneca Nation and its members who must be relocated in adjusting to the new situation. Included in the items I have directed the executive departments and agencies to consider are (1) the possibility of the Federal Government securing a tract of land suitable for tribal purposes and uses contiguous to the remaining Seneca lands in exchange for the area to be flooded; (2) a careful review of the recreation potential resulting from construction of the reservoir, and the manner in which the Seneca Nation could share in the benefits from developing this potential; (3) a determination of whether any special damages will be sustained because of the substantial proportion of the total Seneca lands to be taken; and (4) special attention and assistance to be given those members of the Seneca Nation required to move from their present homes, by way of counseling, guidance, and other related means. In the event legislation is required to achieve these objectives, I have asked that recommendations be prepared.

"I hope you will convey to the members of the Seneca Nation the desire of the Federal Government to assist them in every proper way to make the adjustment as fair and orderly as possible. I pledge you our cooperation.

"Sincerely,

"JOHN F. KENNEDY."

(The full text appears on p. 145 of the hearings on H.R. 1794 before the House of Representatives Subcommittee on Indian Affairs, 1964.)

Excerpt from Report No. 1097, public works appropriations bill, 1962 (p. 22), dated September 20, 1961, the Honorable Allen J. Ellender, chairman, Senate Committee on Appropriations:

"* * * The committee is deeply concerned that the Seneca Nation be given the utmost consideration and that all possibilities be explored for the ameliora-

tion of the difficulties and hardships which the construction of the reservoir will impose upon its members.

"The President has recently written the Seneca Nation, informing them that he had directed the departments and agencies of the Federal Government to take every action within their authority to assist the Seneca Nation and its members who must be relocated in adjusting to the new situation * * *."

U.S. SENATE,
Washington, D.C., March 12, 1964.

HON. FRANK CHURCH,
Chairman, Indian Affairs Subcommittee,
Interior and Insular Affairs Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR CHURCH: As you permitted, we are writing to supplement the record of hearings conducted by your subcommittee on S. 1836 and H.R. 1794 for the purpose of providing information on the background of this legislation and how the status of the authorized project is related to consideration of legislation for the relief and rehabilitation of the Seneca Nation of Indians. The following information is hereby submitted:

(1) The Kinzua Reservoir project, as part of the plan for flood control in the Ohio River Basin, was authorized for construction by the U.S. Army Corps of Engineers by the Flood Control Act of June 28, 1938 (52 Stat. 1215), as amended by the act of August 18, 1941 (55 Stat. 638). Appropriations were made in fiscal years 1959 and 1960 for the initiation of construction.

(2) On January 11, 1957, the U.S. District Court for the Western District of New York upheld the Government's right to condemn a survey easement for project purposes on lands of the Seneca Nation of Indians. *United States v. 21,250 Acres of Land, etc.*, 161 F. Supp. 376 (D.W.D. N.Y. 1957). The U.S. Court of Appeals for the Second Circuit denied a petition of the Seneca Nation for a stay of the order of possession granted to the Government, and the lower court decision never was appealed.

(3) During the hearings on public works appropriations for fiscal year 1958, the committees heard testimony by Dr. Arthur E. Morgan and Mr. Barton Jones, representing the Seneca Indians, in support of a plan for diversion of floodflows from the Allegheny River into Lake Erie as an alternative to the Kinzua Dam. After consideration of their testimony, as well as the testimony of the Corps of Engineers, the committees included \$1 million in the bill for completion of planning and initiation of construction of the Allegheny Reservoir as previously authorized.

(4) Because of the intense interest shown in alternate plans by various groups and individuals sympathetic to the Indian cause, the Corps of Engineers hired the firm of Tippetts-Abbett-McCarthy-Stratton to make an independent engineering study of alternative plans including the proposal of Dr. Morgan. The firm made this engineering study and a review of the authorized project and five alternate plans which covered the principal possibilities for storage in the Conewango Valley and for diversion into Lake Erie. The engineering firm found the alternate plans to be feasible, but that they would cost from 25 to 38 percent more than the authorized project, would require 51 to 108 percent more land, and would dislocate 150 to 180 percent more people. Accordingly, the Corps of Engineers concluded that construction of the authorized project should proceed.

(5) During the hearings on public works appropriations for fiscal year 1959, the committees included an additional \$1 million in the bill for the Kinzua Dam. The committee reports, however, provided that none of the funds available for this project be expended pending determination by the courts of the legal issues involved in connection with the proposed use of land of the Seneca Indians.

(6) On April 14, 1958, the U.S. District Court for the District of Columbia denied the Seneca Nation's request for an injunction against the Secretary of the Army to prevent construction of the Allegheny Reservoir project. *Seneca Nation v. Brucker*, 162 F. Supp. 580 (D.D.C. 1958). The Court of Appeals for the District of Columbia Circuit affirmed that decision on November 25, 1958 (*Seneca Nation v. Brucker*, 262 F. 2d 27 (C.A.D.C. 1958)), and the U.S. Supreme Court denied certiorari on June 15, 1959 (360 U.S. 909).

(7) Following its hearings on public works appropriations for fiscal year 1960, the House committee reported:

"The committee has ordered an independent investigation of the merits of the alternative proposals advocated by the Corps of Engineers and the engineering consultants for the Seneca Indians for development of flood control storage in the upper Allegheny River area. In view of this fact and the further fact that litigation on the matter of the Kinzua Dam is still pending in the Supreme Court, the committee directs that the \$1,400,000 balance of previously appropriated funds available for the project be reprogrammed to other projects."

The Supreme Court denied certiorari in the Senecas' case after the House committee had acted, and the Senate committee refused to hold up the expenditure of funds for the Kinzua Dam. The latter view prevailed in conference and, as passed by Congress, the bill included an additional \$1,365,000 for construction of the Allegheny Reservoir.

(8) During consideration of public works appropriations for fiscal year 1961, the House committee again heard extensive testimony from both proponents and opponents of the Kinzua Dam. A motion on the floor by Congressman Charles Goodell on May 25, 1960, to return the appropriations bill to committee with instructions to delete the funds contained therein for the continuation of construction of the project was defeated 110-294. We both registered our steadfast opposition to the Allegheny Reservoir in statements on August 10, 1960, when the public works appropriations bill was before the Senate.

(9) On February 22, 1961, and again on May 23, 1961, President Basil Williams, of the Seneca Nation, wrote President John F. Kennedy asking that he suspend construction of the Kinzua Dam and order an independent investigation into the merits and comparative costs of the Allegheny Reservoir project and the Conewango-Cattaraugus substitute flood control plan devised by Dr. Morgan. On August 9, 1961, President Kennedy replied:

"Even though construction of Kinzua must proceed, I have directed the departments and agencies of the Federal Government to take every action within their authority to assist the Seneca Nation and its members who must be relocated in adjusting to the new situation. * * * In the event legislation is required to achieve these objectives, I have asked that recommendations be prepared."

In its report on the public works appropriations bill for fiscal year 1962, the Senate committee, after approving additional funds for the Kinzua Dam, reiterated:

"The committee is deeply concerned that the Seneca Nation be given the utmost consideration and that all possibilities be explored for the amelioration of the difficulties and hardships which the construction of the reservoir will impose upon its members."

(10) We have been advised that it was only after President Kennedy's letter of August 9, 1961, that the Senecas finally concluded that their opposition to Kinzua Dam would not prevail and thus turned to thoughts of compensation and rehabilitation to repair the terrible damage which would result on the Allegheny Reservation from the construction of the authorized project. The next question considered by the nation was whether the Senecas should come to Congress immediately requesting legislation for their relief, or should withhold asking for remedial legislation until such time as the Seneca Nation, with the assistance of the executive departments, had worked out in detail, feasible rehabilitation programs that would justify commensurate appropriations. The Senecas chose the second course.

(11) The development of detailed rehabilitation programs was commenced in August of 1961 and was worked on until the beginning of 1963. On January 14, 1963, Congressman Haley, of Florida, introduced H.R. 1794, a bill to provide compensation for the dislocation of the Seneca Nation. Similar bills were introduced by Congressman Saylor, of Pennsylvania (H.R. 3343), and Congressman Goodell, of New York (H.R. 7354). Hearings were held at Salamanca, N.Y., and Washington, D.C., in May, July, and August and the bills were further considered in the subcommittee on October 31, November 1, and December 9, 10, and 13, 1963, and in the full committee on January 22, 1964. The House Interior Committee reported H.R. 1794 on February 5, 1964, and the House passed the bill by voice vote on February 7, 1964.

We introduced, along with Senators Scott, Clark, McGovern, Case, and Ervin, a similar bill, S. 1836, on July 9, 1963, which was considered in hearings by the Indian Affairs Subcommittee on March 2, 1964.

We are hopeful that this background information surrounding the pending legislation will be of assistance to you.

With best wishes,

Sincerely,

JACOB K. JAVITS,
U.S. Senator.
KENNETH B. KEATING,
U.S. Senator.



