

INDIAN HEIRSHIP LAND PROBLEM

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON INDIAN AFFAIRS

OF THE

COMMITTEE ON

INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

EIGHTY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 1049

A BILL RELATING TO THE INDIAN HEIRSHIP LAND PROBLEM

APRIL 29 AND 30, 1963

PART 3

(Part 1 comprised hearings held on August 9 and 10, 1961, on which dates testimony was heard on S. 1392. Part 2 comprised hearings held on April 2 and 3, 1962, on which dates testimony was heard on S. 2899)

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INDIAN HEIRSHIP LAND PROBLEM

MONDAY, APRIL 29, 1963

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

The subcommittee met, pursuant to call, at 10:20 a.m., in room 3110, New Senate Office Building, Senator Frank Church presiding.

Present: Senators George McGovern, of South Dakota, and E. L. Mechem, of New Mexico.

Also present: James H. Gamble, professional staff member.

Senator CHURCH. Today we are beginning the third phase of our hearings on legislation to resolve the Indian heirship land problem. The bill under consideration this morning and upon which testimony will be taken is S. 1049.

This measure was introduced on March 8 and on March 19 several hundred copies of the bill were mailed to all of those receiving material on this subject during the past 3 years.

We have several new members of the Indian Affairs Subcommittee who have not participated in our consideration of the heirship problem in the past, and for their benefit, as well as others who will be reading this record, I should like to outline what the subcommittee has already done by way of examining the heirship land problem.

In an effort to learn all the facts relating to the multiple ownership of Indian land, the staffs of the Senate and House Committees on Interior and Insular Affairs, in conjunction with the specialists of the Library of Congress, made extensive studies of the problem, beginning in 1959.

In 1960 two heirship land survey reports were published by the House and Senate. These documents contain the most complete and up-to-date information on what the heirship problems are and where the problems exist. The reports also reflect suggested solutions by Indian owners of these lands, as well as those responsible for administering them.

Briefly stated, the heirship problems arise from the fact that the United States holds in trust for Indians about 41,000 tracts of allotted land—approximately 6 million acres—that are in fractionated ownership.

Multiple ownership arose when, upon the death of the original allottee, his or her estate was probated and the heirs were given undivided interests in the tract. Through the years successive probates have taken place affecting the same tract until at the present time there may be more than 200 heirs holding fractional interests in a single piece of trust land. Understandably, this fractionation of owner-

ship has created serious problems for the heirs themselves and the tribes, as well as those charged with administering trust land. And the problem is growing rapidly.

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

In 1962 I introduced another bill, S. 2899, and that legislation was the subject of hearings on April 2 and 3, 1962.

The bill before us now embodies the recommendations and suggestions made over the past 2 years by governmental agencies, Indian tribes and their attorneys. A great deal of time has been spent by committee staff drafting this proposal, and we believe if it is enacted a major step will have been taken toward the solution of one of the most complex administrative problems in the field of Indian affairs.

It is my hope that we will receive additional comments today that will result in a further strengthening of the bill.

We have received reports on S. 1049 from the Department of the Interior, the Department of Justice, the General Accounting Office, and the Bureau of the Budget. Without objection we will insert in the record at this point the text of S. 1049, the letter I sent to the tribes notifying them of these hearings, an excerpt from the Congressional Record containing my remarks and a section-by-section analysis of the bill. Following those exhibits the reports of the various departments will appear.

(The exhibits are as follows:)

[S. 1049, 88th Cong., 1st sess.]

A BILL Relating to the Indian heirship land problem

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the owners of not less than a 50 per centum interest in any land, where ten or fewer persons own undivided interests, or the owners of not less than a 25 per centum interest in any land where eleven or more persons own undivided interests, where all of the undivided interests are in a trust or restricted status, may request the Secretary of the Interior (hereinafter referred to as the "Secretary"), and the Secretary is hereby authorized to partition the land in kind, or to partition part of the land in kind and sell the remainder, or to sell the land if partition is not practicable and a sale would be in the best interests of the Indian owners.

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

SEC. 2. Whenever the Secretary, after receiving a request to partition or sell any tract of land under subsection (b) of section 1 of this Act, is unable after due effort to obtain the approval of an unrestricted interest in such tract, he shall, upon application of the persons making the foregoing request, consent to judicial partition or sale of such tract if in his judgment such action is in the best interests of the Indian owners. Where such consent is granted, jurisdiction

over the land is hereby conferred on any State court of competent jurisdiction to hear and determine the partition or sale proceedings and to render judgment for partition in kind or judicial sale in accordance with the law of the State wherein the lands are situated. The United States shall be an indispensable party to any such proceeding with the right of removal of the cause to the United States district court for the district in which the land is located, following the procedure in title 28, United States Code, section 1446. The proceeds of sale of the trust or restricted interests shall be paid to the Secretary for distribution unless he waives this requirement as to any of the owners thereof. If the land so partitioned or sold is acquired by an individual Indian or an Indian tribe, title thereto shall be taken in the manner prescribed in subsection 5(d) of this Act.

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

(b) Any trust interest in oil, gas, or other minerals that is reserved to an Indian owner in any sale of land made pursuant to this Act shall be reserved in a trust status. No sale made under this Act shall include any mineral estate that has been reserved to any Indian tribe by any provision of law.

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

SEC. 5. The Secretary shall give actual notice or notice by publication and provide an opportunity for a hearing before partitioning in kind or selling land pursuant to this Act. All sales of lands made by the Secretary pursuant to this Act shall be in accordance with the following procedure:

(a) Upon receipt of requests from the required ownership interests, the Secretary shall notify the tribe and each owner of an undivided Indian interest in the land by a letter directed to his last known address that each such owner and the tribe has a right to purchase the land for its appraised value, unless one of the owners or his authorized representative objects within the time fixed by the Secretary, or for a lower price if all of the owners agree, and that if more than one owner or if one owner and the tribe wants to purchase the land it will be sold on the basis of sealed competitive bids restricted to the owners of undivided interests in the land and the tribe unless one of the owners or his authorized representative objects within the time fixed by the Secretary.

(b) If any Indian owner or his authorized representative objects to a competitive sale restricted to the owners of undivided interests and the tribe, the Secretary shall offer the land for sale by sealed competitive bid with a preferential right in the tribe or any Indian owner to meet the high bid, unless one of the Indian owners or his authorized representative objects within the time fixed by the Secretary. All bids shall be rejected if no bid substantially equal to the appraised value is received.

(c) If any Indian owner or his authorized representative objects to a sale by sealed competitive bid with a preferential right to meet the high bid, the Secretary shall offer the land for sale by sealed bids: *Provided*, That, after notice to all interested parties including the tribe, the land shall be sold at auction immediately after the opening of the sealed bids, and auction bidding shall be limited to the Indian owners, the tribe, and persons who submitted sealed bids in amounts not less than 75 per centum of the appraised value of the land. The highest sealed bid shall be considered the opening auction bid. No sale shall be made unless the price is equal to the highest sealed bid and substantially equal to the appraised value: *And provided further*, That the term "appraised value" as used in this section shall mean the current appraised value of the land, said appraisal to be not more than one year old.

(d) Title to any land acquired by a tribe or an individual Indian pursuant to this Act shall be taken in trust unless the land is located outside the boundaries of the reservation or approved tribal consolidation area. Title to any land acquired by a tribe or an individual Indian that is outside the boundaries of the reservation and approved consolidation area shall be taken in the name of the purchaser without any restriction on alienation, control, or use.

SEC. 6. (a) In order to assist tribes that wish to purchase land offered for sale under the provisions of this Act, the Secretary is authorized to make a loan

to any tribe under the conditions stated below, provided the tribe does not have funds available in an amount that is adequate to make the purchase and is unable to obtain a loan from any other source. Such loans shall be made from the revolving funds referred to in section 10 of this Act.

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

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

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

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

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

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

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

SEC. 10. (a) All funds that are now or hereafter a part of the revolving fund authorized by the Act of June 18, 1934 (48 Stat. 986), the Act of June 26, 1936 (49 Stat. 1968), and the Act of April 19, 1950 (64 Stat. 44), as amended and supplemented, including sums received in settlement of debts of livestock pursuant to the Act of May 24, 1950 (64 Stat. 190), sums collected in repayment of loans heretofore or hereafter made, shall hereafter be available for loans to organizations of Indians, Eskimos, and Aleuts (hereinafter referred to as Indians), having a form of organization that is satisfactory to the Secretary, and to individual Indians of one-quarter degree or more of Indian blood who are not members of or eligible for membership in an organization that is making loans to its members, for any purpose that will promote the economic development of such organizations and their members, or the individual Indian borrowers.

(b) The appropriation authorization in section 10 of the Act of June 18, 1934 (48 Stat. 986), as amended by the Act of September 15, 1961 (75 Stat. 520), is hereby amended by increasing it from \$20,000,000 to \$55,000,000.

SEC. 11. The Secretary is authorized to execute such patents, deeds, orders, or other instruments as may be necessary or appropriate to carry out the provisions of this Act.

SEC. 12. The terms "owner" and "owners" as used herein include, wherever applicable, any tribe, band, group community, or pueblo of Indians, Eskimos, or Aleuts, and also include any federally chartered organizations of Indians, Eskimos, or Aleuts.

SEC. 13. (a) Sections 1 through 9 of this Act shall become effective one year after the date of its enactment.

(b) The Secretary shall, prior to the effective date of sections 1 through 9 of this Act, notify by publication Indian tribes and owners of undivided interests in Indian trust or restricted land, of the rights of such tribe or owners under this Act.

SEC. 14. (a) The Secretary shall, prior to the conclusion of any probate proceeding conducted on or after the effective date of sections 1 through 9 of this Act, notify each heir or devisee having an interest in such proceedings of his rights under this Act.

(b) Beginning one year after the effective date of sections 1 through 9 of this Act, the Secretary shall submit an annual report to Congress setting forth the progress made in the preceding year in carrying out the purposes of this Act.

[From the Congressional Record, Mar. 8, 1963]

INDIAN HEIRSHIP LAND PROBLEM

MR. CHURCH. Mr. President, I send to the desk a bill relating to the Indian heirship land problem, and I ask that it be appropriately referred.

Mr. President, the Subcommittee on Indian Affairs, of which I am chairman, has been engaged for several years in an effort to resolve one of the most complex problems in the field of Indian affairs—the multiple ownership of Indian allotments. The Indian heirship land problem arises from the fact that the United States holds in trust for Indians about 41,000 tracts of allotted land—approximately 6 million acres—that are in fractionated ownership. This situation arose when, upon the death of the original allottee, his or her estate was probated and the heirs were given undivided interests in the tract.

Through the years, successive probates have taken place affecting the same tract until at the present time there may be anywhere from 2 to 200 heirs holding fractional interests in the same piece of trust land. This fractionation of ownership has created serious problems for the heirs themselves, the tribes, and the Bureau of Indian Affairs, which has responsibility for managing trust land.

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

Based on the committee studies, I introduced S. 1392 on March 21, 1961, and that bill was used as a vehicle for exploring further the viewpoints and wishes of the people most affected by this problem. Hearings were conducted in August 1961, and valuable testimony was received from Members of the Senate and House, the Interior Department, the Justice Department, the General Accounting Office, Indian organizations, and Indian tribes.

At the completion of the hearings there was a mass of materials, suggestions, and recommendations. I instructed the staff to study the hearings thoroughly and redraft the bill or amendments thereto based on the excellent material then available. Unfortunately, due to the excessive congressional workload, there was no opportunity for further hearings on proposed amendments.

In February 1962, I introduced a second bill, S. 2899, relating to the Indian heirship land problem. The provisions of S. 2899 included many of the recommendations that had been made to the committee during the hearing in the preceding year on S. 1392. Again extensive hearings were held and published and widely distributed to Indian tribes and others concerned with the problem. Since the close of hearings on S. 2899 the staff has been busy consulting with the various Indian organizations, tribal representatives, and Federal agencies over changes that would make the bill more effective and acceptable.

The recommendations and suggestions made during and after the hearings have been sifted and analyzed at great length, and the bill that I am sponsoring today is the product of many months and years of investigation into the extent of heirship and the solutions needed to resolve this most difficult problem in

the administration of Indian affairs. Every effort has been made in drafting the bill to authorize and implement an effective program to alleviate the heirship problem. Particular attention has been given in designing a bill to maximize the opportunity to return multiple-owned land to individual Indian ownership or to tribal ownership and to preserve its trust status.

The language of this new measure gives the Secretary of the Interior sufficient latitude to solve the problem but allows him enough discretion to protect the best interests of the Indian owners. The most controversial sections of the earlier bills have been modified or eliminated completely, but the Secretary is still provided the necessary tools to relieve what has been a worsening problem, one that has adversely affected many Indian owners of allotted lands.

Mr. President, our committee has had two complete hearings on two separate bills, and they have been so productive I want to have additional comment and suggestions, not only from the executive departments but from representatives of Indian tribal organizations and the tribes themselves. It is my intention to schedule hearings at an early date, and I feel certain that, with the cooperation of all of those who have a vital interest in this matter, we will be able to report corrective legislation to the Senate early in this session.

Mr. President, I ask unanimous consent that the text of the bill I am introducing today may be printed in full following these brief remarks and that a section-by-section analysis of the bill, as prepared by the staff of the Committee on Interior and Insular Affairs, may also be included in the Record.

The VICE PRESIDENT. The bill will be received and appropriately referred; and, without objection, the bill and section-by-section analysis will be printed in the Record.

The bill (S. 1049) relating to the Indian heirship land problem, introduced by Mr. Church, was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

The section-by-section analysis presented by Mr. CHURCH is as follows:

"ANALYSIS OF S. 1049 SECTION BY SECTION

"Section 1(a). This section applies only to that heirship land where all the undivided interests are in trust status, and subdivides that land into two categories. The first category would be tracts owned by up to 10 heirs and the second, tracts owned by 11 or more. Where there are up to 10 owners any 1 or more owning a 50 percent or larger interest may request the Secretary of the Interior to sell or partition the land. In those tracts where there are 11 or more owners the requirement is reduced to 1 or more owning at least 25 percent of the land. The Secretary is authorized to partition the entire tract, partition part of the land and sell the remainder, or if this is not practicable he may sell the entire tract if the sale would be in the best interests of the Indian owners.

"Section 1(b). This subsection applies to those tracts of land where there are interests in nontrust status. Generally this means that a non-Indian has inherited a share in the estate. The same categories are present as in (a) with a 50-percent minimum ownership required for authority to request partition or sale in tracts with up to 10 owners and a minimum of 25 percent in tracts with 11 or more owners. The Secretary may sell the trust or restricted interests and may, with the approval of nontrust owners, partition all of the land, partition part of the land and sell the remainder, or sell the entire tract.

"Section 2. If the Secretary is unable to obtain the approval of owners with unrestricted interests to sell or partition the land he may, upon request, transfer jurisdiction to State courts for judgment to partition in kind or judicial sale in accordance with State law. The United States reserves the right of removal to the U.S. district court. Title to any land partitioned or sold that is acquired by an Indian or tribe shall be taken in trust under certain conditions (see 5(d)).

"Section 3(a). Some questions in the past have been raised concerning whether tax exemption of Indian properties is a vested property right. This section is designed to protect such rights, if they exist.

"Section 3(b). Provides that any trust interest in oil, gas, or other minerals that are reserved shall be held in trust, and tribal mineral interests will not be affected under this act.

"Section 4. The Secretary is authorized to act for Indian owners who cannot act for themselves.

"Section 5. Provides that notice by publication must be made and the interested parties provided a hearing before action is taken under this act. Proce-

dures to carry out sale or partition are stated as follows: (a) When a request to sell or partition has been received each owner and the tribe is notified. Each is allowed to purchase the land at appraised or lower value unless one owner objects. If more than one is interested there will be sealed bids among them. (b) If action in (a) is objected to there shall be sealed competitive bids with right of tribe or owner to meet the high bid, unless there is objection. All bids will be rejected if no bid is substantially equal to the appraised value. (c) If there is objection to (b) the land shall be offered for sale by sealed competitive bids, and after notice to all parties, including the tribe, it will be sold at auction. Auction is limited to owners, tribe, and those bidding more than 75 percent of appraised value. Highest sealed bid is the opening auction bid. Sale price must be substantially equal to current appraised value. (d) Land acquired by Indians or tribes under these procedures will be taken in trust if within the reservation and tribal consolidation areas.

"Section 6(a). If a tribe does not have money to purchase such lands they can borrow it from the Government under certain conditions. The Government shall be given security, hold a mortgage on the land and other property. Maximum loan for 30 years with interest set by Secretary. If the tribe receives a judgment any payments in default shall be collected therefrom. A master plan for land consolidation shall be drafted by the tribe and approved by the adult membership before presentation to the Secretary. The Secretary shall render technical assistance in preparing a plan if requested.

"Section 7. Any consolidation plan involving a Federal loan or not will carry with it approval to sell or encumber any tribal land or other property to carry out the purposes of the plan.

"Section 8. In an effort to avoid any programs that might tend to confuse any termination activities, no plan can be approved that will prevent or delay such actions.

"Section 9. The purpose of this act is to add to the Secretary's powers and shall not repeal any present authority.

"Section 10. All funds presently authorized for loans to Indians would be consolidated into one revolving fund. This is in keeping with a recommendation of the Senate Appropriations Committee. An additional \$35 million is authorized for loans, making a total of more than \$55 million in authorizations for this purpose and other requirements.

"Section 11. Provides general authority for the Secretary to execute all necessary documents to carry out the purposes of this act.

"Section 12. Definition of the terms "owner" and "owners" as used in the bill.

"Section 13(a). A delay of 1 year is provided during which time the Secretary can notify the tribes and they can plan their programs. This period can also be utilized by the Department to formulate necessary regulations, etc., to implement the program.

"Section 13(b). The Secretary is to notify by publication heirship land owners and the tribes of their rights under this act.

"Section 14(a). At all probate hearings after 1 year the Secretary shall notify each interested party of their rights.

"Section 14(b). Provide that the Secretary shall submit an annual report to Congress on the workings of this act."

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
March 19, 1963.

DEAR SIR: Knowing of your interest in the subject, I am taking this opportunity to call to your attention a new bill I have introduced relating to the Indian heirship land problem. As you know, the Indian Affairs Subcommittee has been diligently engaged in research on this problem, and I have previously introduced two bills (S. 1392 and S. 2899) during the 87th Congress on the subject. The second bill (S. 2899) was a refinement brought about through a series of hearings on the earlier measure. Hearings on S. 2899 brought me to the conclusion that while we were approaching a lasting and workable solution, we would have to make additional changes.

Based on our extensive studies, conferences, and the statements by interested parties, both at the hearings and by mail, I have caused to be drafted S. 1049. Enclosed are copies of this new bill and the discussion from the Congressional Record at the time of introduction.

The Indian Affairs Subcommittee has scheduled hearings on S. 1049 for Monday and Tuesday, April 29 and 30, beginning at 10 a.m., in room 3110, New Senate Office Building. Should you care to submit a written statement or send a representative to testify, please contact Mr. James H. Gamble of the committee staff, so that an appropriate witness list may be prepared.

Sincerely yours,

FRANK CHURCH, *U.S. Senator.*

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., April 26, 1963.

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. 1049, a bill relating to the Indian heirship land problem.

We recommend that the bill be enacted with the amendment suggested below.

The bill represents the results of long and careful consideration of the Indian heirship problem by both the legislative branch and the executive branch, and although the bill does not purport to resolve the problem completely it should make a major contribution.

Section 1(a) provides for an administrative partition or sale of land when all undivided interests are in a trust or restricted status. The proceeding may be initiated by the owners of a 50-percent interest in the land if there are 10 or fewer owners, or by the owners of a 25-percent interest if there are more than 10 owners. The Secretary has discretionary authority to make the partition or sale, or to refuse, depending upon his judgment regarding the best interests of the Indians, under section 4, the Secretary can represent for the purposes of these percentage figures any Indian who is a minor, noncompos mentis, cannot be found, or has an undetermined interest in a decedent's estate.

Section 1(b) provides for an administrative partition or sale of land when some of the undivided interests are in an unrestricted status. In such cases he can only sell all of the trust or restricted interests, unless the owners of the unrestricted interests authorize him to partition or sell the full ownership interest in the land.

Section 2 provides for a judicial partition or sale, on request of the owners of a 50-percent or a 25-percent interest, as the case may be, if the owners of unrestricted interests in the land fail to join in an administrative partition or sale.

Section 3 preserves any tax-exempt status that amounts to a vested property right, and provides that any minerals reserved by the Indians when a tract of heirship land is sold may be reserved in a trust status. Neither of these provisions is necessary, because they both are merely declaratory of existing law. Their inclusion, however, is unobjectionable.

Section 5 spells out in detail the procedure to be followed when offering land for sale, and provides preferential rights for any of the coowners or the tribe to purchase the land. We would have preferred a statutory procedure that is less detailed and that provides more flexibility, but we do not object to the section as written if it represents the considered judgment of the committee.

If, on the other hand, the committee wishes to adopt a less rigid approach, subsections 5 (a), (b), and (c) could be combined into the following single subsection 5(a):

"SEC. 5. (a) The Secretary shall give actual notice or notice by publication and provide an opportunity for a hearing before partitioning in kind or selling land pursuant to this Act. All sales of lands made by the Secretary pursuant to this Act shall be by competitive bid, except that a sale may be made to one of the owners of an interest in the land, or to the tribe within whose reservation or approved consolidation area the land is located, at not less than the appraised value of the land if none of the owners after reasonable notice objects. If a timely objection is made, the sale shall be by sealed competitive bid: *Provided*, That if the high bid is not made by one of the Indian owners of an undivided interest, or by the tribe on whose reservation the land is located, any of the Indian owners or the tribe shall have the right to meet the high bid. If the tribe and one or more of the owners, or more than one of the owners but not the tribe, elect to meet the high bid, the Secretary shall solicit new bids limited to the parties exercising the election. Subsequent sale shall be for not less than

the amount of the previous high bid. No competitive sale shall be made at a price less than the appraised value of the land, unless the Secretary determines that such price is not inconsistent therewith and in his judgment is the highest price that may be obtained under the circumstances."

Section 10 consolidates the three parts of the Indian revolving loan fund, and increases the appropriation authorization by an additional \$35 million. An increase in the size of the fund is essential if the loan provisions of the bill are to be effective.

Section 13 defers the effective date of the partition and sale provisions of the act for 1 year after the bill is enacted and requires the Secretary to notify the Indians of their rights. The delay will also prevent the initiation of sale procedures until Congress has had an opportunity to appropriate the additional money needed for the revolving loan fund to help finance tribal purchases.

The bill is limited to the sale or partition of heirship land, and provides none of the management tools which the Department needs for managing the lands that will remain in a trust status. It is unrealistic to expect the entire heirship problem to be solved by sale or partition. Moreover, in some cases the lands are quite valuable, and although they are in an heirship status they represent the only asset the Indians have. It might be contrary to their best interests to sell. Consequently, without management provisions the bill should be regarded as a first step, and a desirable step, but not as a solution to the entire heirship problem.

The amendments recommended by the Department are:

1. Revise section 5, if the committee is favorably disposed, as suggested earlier in this report.

2. Amend section 6(e), page 7, lines 20-25, by deleting "No plan shall be considered by the Secretary unless it has been first considered at a general meeting of tribal members called for that purpose, upon due notice to all adult members of the tribe, and approved by a majority of the adult members present and voting at that meeting."

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.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., May 1, 1963.

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

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on the bill (S. 1049) "Relating to the Indian heirship land problem."

The bill, except section 10, authorizes the Secretary of the Interior, upon the request of a specific number of heirs, to partition or sell restricted Indian lands. The Secretary of the Interior also is authorized by section 4 to represent minors, persons non compos mentis, estates where the heirs have not been determined, and heirs who cannot be located. Previously, it was necessary to obtain the appointment of guardians ad litem for minors and persons non compos mentis and there was no authority for anyone to represent heirs who could not be located.

Section 10 of the bill authorizes loans to Indian tribes or groups or to individual Indians to be used in the purchase of heirship lands.

The subject of this legislation is not a matter for which the Department of Justice has primary responsibility, and accordingly we make no recommendation as to its enactment. However, the bill does contain an objectionable feature to which attention is invited.

The only portion of the bill which has a bearing on the activities of this Department is section 2, which authorizes partition in State courts under State law of tracts containing unrestricted interests where the Secretary is unable to obtain the approval of the unrestricted interests to a sale or partition by him under section 1. The United States is made an indispensable party to these pro-

ceedings and is given a right of removal to a Federal court. It is assumed that in most of these cases, except possibly only those where the interests are too small to justify such action, the Department of Justice will be called upon to protect the rights of the heirs owning restricted interests. This undoubtedly will mean removal of such cases and it would be preferable that they be instituted in the Federal court in the first instance. We recommend that the bill be amended to confer jurisdiction upon the Federal courts rather than the State courts.

If the provision conferring partition jurisdiction upon State courts remains in the bill, then the bill should be amended to require service upon the United States in the manner prescribed by rule 4 of the Federal Rules of Civil Procedure. Furthermore, the time for removal should be extended beyond the period of 20 days provided by 28 U.S.C. 1446. That time is wholly inadequate for investigation of the facts by the Department of the Interior and the processing of a request for action by the Department of Justice. We suggest a 60-day time period should be provided.

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

Sincerely yours,

NICHOLAS DEB. KATZENBACH,
Deputy Attorney General.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, April 11, 1963.

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

DEAR MR. CHAIRMAN: By letter dated March 11, 1963, acknowledged March 13 you requested our comments on S. 1049, a bill relating to the Indian heirship land problem.

Our Office has consistently emphasized the need for legislation to resolve this problem. In our report to the Congress, B-114868, March 2, 1961, on the review of certain aspects of the program for the termination of Federal supervision over Indian affairs, we pointed out that the need for attacking this problem continues to exist and recommended that the Congress enact appropriate legislation. We are of the opinion that S. 1049 will alleviate the Indian heirship land problem and for that reason support its enactment.

Our comments with respect to specific sections of S. 1049 follow:

Subsection 5(d) of the bill would provide that title to any land acquired by a tribe or an individual Indian pursuant to this act shall be taken in trust unless the land is located outside of the reservation boundaries or approved tribal consolidation area. We believe that this language should be permissive instead of mandatory. Under this provision an Indian could not acquire fee title to land now in a trust status. Consequently, this land will probably go into or stay in multiple ownership and the Indian heirship land problem will continue.

Subsection 6(e) of the bill would provide that before a loan is made under the act the tribe shall submit for the approval of the Secretary of the Interior a master plan for the use of all lands to be purchased. We believe that in order for a master land use plan to be feasible and effective it should cover not only the lands to be purchased but also the lands presently owned by the tribes. We believe also that the inclusion in this master plan of a provision for consolidation of tribal holdings is not of itself an adequate justification for tribal acquisition of land. In our opinion the committee report on S. 1049 should provide policy guidance and criteria for what constitutes an approvable tribal land use plan.

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

This bill is the last of three measures dealing with this problem that have been introduced in the 87th and 88th Congresses. The two previous bills, S. 1392 and S. 2899, 87th Congress, were the subject of our reports to your committee, B-145427, April 27, 1961, and B-145427, March 30, 1962, respectively. Additionally, in our report, B-145427, August 8, 1961, we submitted supplementary comments on S. 1392 and on August 9, 1961, we testified at hearings held by the Senate Subcommittee on Indian Affairs on S. 1392. While we have limited our comments in this report to the present bill, S. 1049, our views expressed in previous reports on this problem have not changed.

The following citations are offered for your ready reference to previous expressions by our Office on the Indian heirship land problem. Our testimony on S. 1392 appears on pages 79-84 of part I of the hearings entitled "Indian Heirship Land Problem" which were held on August 9 and 10, 1961, before the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, U.S. Senate, 87th Congress on S. 1392. Our reports of April 27, 1961, and August 8, 1961, on S. 1392 appear on pages 15-19 of these hearings and our report of March 30, 1962, on S. 2899 appears on pages 205-206 of part II of the hearings held before the same subcommittee on April 2 and 3, 1962.

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., May 6, 1963.

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

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Bureau of the Budget on S. 1049, a bill relating to the Indian heirship land problem.

Sections 1 and 2 of the bill respectively provide for the administrative and judicial partition or sale of undivided interests in trust or restricted land. Proceedings for partition may be initiated by the owners of a 50-percent interest in the land if there are 10 or fewer owners, or by the owners of a 25-percent interest if there are 11 or more owners. The remaining sections of the bill specify conditions for the implementation of sections 1 and 2. In addition, section 10 provides for the consolidation of all funds that are now or hereafter part of the Indian revolving loan fund and increases the appropriation authorization from \$20 to \$50 million.

The Interior and Justice Departments, in reports that are being submitted to your committee, recommend several amendments to the bill. We note an apparent technical flaw in the bill. The phrase "any owner of" should be inserted after the word "of" in line 21, page 2.

Subject to the committee's consideration of the amendments recommended by the Departments of Interior and Justice, the Bureau of the Budget would not object to the enactment of S. 1049.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

Senator Church. The first witness will be the Honorable Philleo Nash, Commissioner of Indian Affairs. He is accompanied by members of his staff. We are happy to welcome you, Mr. Nash. Please come forward and bring such members of your staff as you would care to have seated with you.

We are very pleased to have your testimony.

STATEMENT OF HON. PHILLEO NASH, COMMISSIONER OF INDIAN AFFAIRS; ACCOMPANIED BY JOHN O. CROW, DEPUTY COMMISSIONER; JAMES E. OFFICER, ASSOCIATE COMMISSIONER; GRAHAM E. HOLMES, ASSISTANT COMMISSIONER FOR LEGISLATION; AND LEWIS A. SIGLER, ASSISTANT LEGISLATIVE COUNSEL, DEPARTMENT OF THE INTERIOR

Mr. NASH. Mr. Chairman, Senator McGovern, Senator Mechem. For the record, I am Philleo Nash, Commissioner of Indian Affairs. I have with me this morning, Mr. James E. Officer, the Associate Commissioner, Mr. Graham E. Holmes, the Assistant Commissioner for Legislation, and Mr. Lewis Sigler of the legislative staff of the Department.

May I point out with your permission, sir, that this is Mr. Holmes' first appearance before this committee in his new capacity as Assistant Commissioner for Legislation.

We will not make a lengthy appearance this morning unless it is the committee's desire to question us. The departmental report has been submitted, and as the chairman indicated, we testified at some length at the earlier hearing in the last session.

We are supporting this legislation and recommend that the bill be enacted with the addition of an amendment which is referred to in the report.

The first section of the bill provides for administrative partition or sale of land when all undivided interests are in the trust or restricted status.

The proceeding may be initiated by the owners of the 50-percent interest in the land if there are 10 or fewer owners, or by the owners of a 25-percent interest if there are more than 10 owners.

This provision replaces an item to which we objected in the previous version of the bill and after careful study in the Bureau we are satisfied that this provides adequate protection and that the dangers which we feared and which the tribal witnesses feared and expressed a fear last time have been removed.

These fears are groundless. Under the present bill the Secretary has discretionary authority to make the partition or sale, to refuse, depending upon his judgment regarding the business interests of the Indians so that here again there is administrative protection by the discretion vested in the Secretary.

Under various subsections of the bill the Secretary can represent for the purposes of these percentage figures any Indian who is a minor, non compos mentis, who cannot be found or who has an undetermined interest in a decedent's estate, so again we think the responsibility is adequately protected by this part of the bill.

Section 1(b) of the bill provides for an administrative partition or sale of land when some of the individual interests are in an unrestricted status.

Here again this is an administrative tool which is necessary for the effective management of the Indian land base and we again think that this provides adequate protection in view of the section's trust responsibility.

Section 2 will provide for judicial partition or sale on request of the owners of 50- or 25-percent interest as the case may be, so that again the same protection is provided as is provided in the case of administrative partition and here again our objections to the earlier version of the bill have been met.

Section 3 of the present bill preserves any tax-exempt status that amounts to a vested property right and provides that any minerals reserved by the Indians when a tract of heirship land is sold may be reserved in a trust status.

Now, these are mainly declaratory of existing law but we have no objection to their inclusion and the repetition in this bill will again reaffirm an Indian interest and right.

Section 3 spells out in detail the procedure to be followed when offering land for sale. It provides preferential rights for any of the coowners or the tribe to purchase the land. This was one of the most controversial elements of the earlier versions of the bill and much discussion was held at the two previous hearings as to whether the rights of the individual landowners were properly protected at the same time that the tribe was given preferential position.

We think that this is a reasonable compromise of the interests and will assure the constitutional right of the individual owner to be protected at the same time providing for the interest of the community in having consolidated tracts.

Now, with respect to the procedure, we would have preferred that the law be less detailed and would provide more flexibility. We are not objecting to the section as written, but we are offering an amendment for the committee's consideration which is included in the report and simply consolidates subsection 5 (a), (b), and (c), combines them into a single subsection 5(a) which we think offers a more flexible administrative procedure than the present version of the bill.

I am not going to discuss those in detail unless the committee desires to question us on it.

Section 10 of the bill consolidates the three parts of the Indian revolving loan fund and increases the appropriation authorization by an additional \$35 million. An increase in the size of this fund is essential if the provisions of the bill are to be effective.

Here, Mr. Chairman, I wish to emphasize the extreme importance to our operations of this portion of the bill. We do not think that the bill, as it stands, would solve the entire heirship problem. There are management tools that are needed which are not included in this bill but in the discussions that I have had with the chairman of the subcommittee we have been promised an opportunity to present our needs with respect to management of Indian trust property for alternate consideration.

The bill is important to us because at the present time we have millions of dollars worth of applications for land loans from tribes that wish to purchase land to consolidate their tracts and we cannot process them because we do not have that much money in the revolving loan fund; \$35 million would not, in itself, solve the heirship problem but it would enable us at least to deal with the applications that are pending.

No doubt if this money were to be appropriated we would receive many more applications, but it is our feeling that money is needed

for this purpose, that the applications for the tribes for land purchases are legitimate and reasonable applications and we would like to make those loans if we could, but in the present condition of the revolving loan fund we cannot do so without jeopardizing the loans that we are making for tribal enterprise and other economic development purposes but where the loan term is of shorter duration. Not only the authorization but the appropriation of this money is essential to the accomplishment of the purposes of this bill and it is our opinion that the negative features of some of the previous legislation have been eliminated, that the safeguards are adequate, that the contribution to better land management would be made by this bill and that the \$35 million of authorization is such a valuable addition that in our opinion this bill should be supported by all.

I want to refer to the amendments that we are asking for. If the committee is favorably disposed, we recommend the revision of section 5 as I mentioned earlier in this report; we also recommend an amendment of section 6(e) on page 7, simply deleting the phrase—

No plan shall be considered by the section unless it has been first considered at a general meeting of tribal members called for the purpose upon due notice to all adult members of the tribe and approved by a majority of the members voting at that meeting.

Mr. Chairman, we have been endeavoring in the time that I have been Commissioner to strengthen the tribal governments by dealing with them as a duly authorized, elected representative of their tribes, fully charged with the responsibility and the authority necessary to make basic economic and political decisions for the tribe. We feel that this provision which requires that the tribal government in effect be bypassed in favor of a general council meeting will have the tendency, at least, to weaken the efforts that we are making to strengthen representative government in the tribes and therefore, we are not making a great point of it, we desire to call the committee's attention to the fact that this may not be consistent with some other purposes of the Congress and the Executive with respect to Indian tribal governments.

Mr. Chairman, the last time I testified I called attention to our pilot program at Pine Ridge, where we are endeavoring to see whether a land consolidation program can be helpful in meeting the heirship problem.

I have a report as of April 20 on the status of this program. Without going into great detail I can say that we are making progress, we are hopeful. It is apparent that there will be considerably more time involved in effecting a consolidation of all the tracts than we had thought but it is definitely working.

Whether it will be a complete answer by itself will require more time but by way of progress I can report that we have made a good start and that we are satisfied that the consolidation program at Pine Ridge is an effective means of meeting the heirship problem.

Senator CHURCH. I am very happy to hear that, Mr. Commissioner.

We are pleased to have your testimony. I note that it is one of endorsement and support of this legislation. We have come a long way since our first hearing on this bill. The testimony of the Department, of the Justice Department, of the many Indian tribal leaders and attorneys through the past 3 years has helped us to draft

legislation that we feel will be a good step forward toward coming to grips with this worsening heirship problem and I want to express my appreciation to you and to other members of the Indian Bureau for the cooperation that you have given us in trying to work out a satisfactory solution to this problem and to give us the necessary additional legislation which we must have if we are going to alleviate the problem.

You have been most cooperative and the committee appreciates it.

Mr. NASH. Thank you, sir.

Senator CHURCH. Senator Mechem, have you some questions?

Senator MECHEM. Yes. Governor, have you had any expression from the Navajo on this legislation at this time?

Mr. NASH. Not that I know of.

Senator MECHEM. So the contentions that Mr. Jones made last year are still the tribe's position, as far as you know?

Mr. NASH. As far as I know there has been no change in its position.

Senator MECHEM. So as far as the loan provisions of the legislation are concerned they have not been changed?

Mr. NASH. The loan provision in the present bill is for \$35 million; there is no change.

Senator MECHEM. But it does not apply to the Navajo tribe, actually? They would not be eligible?

Mr. NASH. There is no restriction as to the Navajo tribe and this bill would have the effect of consolidating all of the separate loan funds in one fund which would make it much more flexible from our standpoint.

It would not exclude the Navajo.

Senator MECHEM. They might be eligible?

Mr. NASH. They would be eligible.

Senator MECHEM. How many additional employees do you anticipate will be required to execute this program?

Mr. NASH. I have with me Mr. Huber, the Chief of our Branch of Credit, who can answer that question better than I; I would think not very many. Mr. Huber?

Mr. HUBER. I do not think any.

Senator MECHEM. You can do it with what you have now. Let me direct some questions to Mr. Holmes. Under this legislation would it be possible to sell the reservation?

Mr. HOLMES. Actually it is designed to affect allotments, it does not primarily affect the tribal land at all. It would not be necessary to sell all of the allotments that are in heirship status.

Senator MECHEM. This provides in here for land held under allotment or by trust, undivided interests?

Mr. NASH. I do not think the intent here is to sell a tract of land wholly owned by the tribe but rather the intent of the legislation appears to be to allow or authorize the Secretary to sell lands that are in heirship status even though the tribe may have an undivided interest in it, but certainly no one has contemplated that it would give the Secretary authority to sell the whole reservation.

Senator MECHEM. Could this be spelled out so that one item was clear?

Mr. NASH. Yes; I think you could—I am certain that you could write——

Senator CHURCH. I should think that the intent of the committee could be made perfectly clear in the report, Senator, so that there would be no confusion on that point.

Senator MECHEM. The reason that I present this question is that there is some valuable land in the Rio Grande Valley that might be sold even though it is not held in allotted status but it is held in a trust status. I know that the Pueblos are not directly involved, it is good land and it could be sold. It might put them in a position where they had nothing to fall back on whatever. I would like to see this one item spelled out if it could be.

Mr. NASH. Senator, as I read this legislation and reflect on the language as well as the intent, I really do not see how this could be interpreted to apply to tribal trust land. I believe it is intended and does in fact refer to individual allotted trust land where one or more of the interests are undivided and, of course, particularly those where the ownership interests are multiple.

Senator MECHEM. If we had a definition of how the reservation is held actually there is an undivided interest of a number of Indian people as I understand it, it is held in common. This is undivided interest and the legislation reads if it is held in trust status or as an allotment it is subject to sale.

Under the language, falling within the general definition as they are known, it certainly, as I see it, could apply to a reservation if there was a strained construction put on the act.

This is what I want to clear up.

Mr. NASH. I wonder if we could ask the Legislative Counsel to remark on that.

Mr. SIGLER. It has been the opinion of the Department and the courts that the individual members of the tribe do not own individual interest in the property, the title to the tribal property is in the tribe itself and not in the members of the tribe, so that this bill would not apply to tribal property on the premise that you are stating. There is a possibility, I find, in looking at the language that if the tribe owns all of the interest in a piece of land, that is itself tribal land and that would be only one owner, the tribe is the one owner.

If the tribe asked for a sale under this bill it is conceivable that the bill would apply. This is the first time that the point has come up. I had not thought of it before, but excluding that possibility I can answer dogmatically that this bill does not permit a sale of tribal land on the application of, let us say, half of the tribe or 25 percent of the tribe, it has no application unless the owner of the land itself applies or some percentage of the owners, and in the case of tribal land the only owner is the tribe itself.

Senator CHURCH. Under the circumstances could that one item be spelled out which would either definitely permit the tribe to sell allotted lands or not to sell?

Mr. SIGLER. No, not sell allotted land. I am speaking of tribal lands. This bill could conveyably authorize the sale of tribal lands. I do not think it does.

Senator CHURCH. I think that could be made perfectly clear in the report of the bill. I also call attention to the fact that the first state-

ment before the actual text of the bill begins, "A bill relating to the Indian heirship land problem," which almost by definition confines it to the allotted lands that are held by multiple owners and fractionated interests, so I think that this, plus a clear statement in the report would take care of the problem that the Senator has brought up and I see no reason why that cannot be done.

Senator MECHEM. Once a system is established, though, this is my concern, once a system is established it could be extended to tribal lands. This is your next step. By a simple change in the legislation it could be extended to reservation land and I think would be a problem for us.

Mr. NASH. Senator, the Congress, can, of course, authorize the sale of tribal lands either by special or by general legislation. In some of the land consolidation programs there is good reason to believe that the tribes need authority to make certain sales in order that they can make purchases and consolidate their holdings, but that is part of the tribal land management program generally, and is not a step that we would take except by tribal expression either a request, an application, or with their consent.

Senator CHURCH. Any further questions, Senator?

Senator MECHEM. No, sir.

Senator CHURCH. Thank you very much, Mr. Nash.

Our next witness is Mr. Robert Burnette, the executive director of the National Congress of American Indians.

Is Mr. Burnette here?

(There was no response.)

Senator CHURCH. I understand that the chairman of the Yakima Tribal Council and his associates wish to testify tomorrow; is that correct?

Mr. SALUSKIN. Yes.

Senator CHURCH. All right, then our next witness is Mr. Marvin Sonosky, attorney, representing several Indian tribes.

STATEMENT OF MARVIN SONOSKY, ATTORNEY, WASHINGTON, D.C., REPRESENTING SEVERAL INDIAN TRIBES

Mr. SONOSKY. Mr. Chairman, my name is Marvin J. Sonosky. I am an attorney in Washington, D.C., and I am here today on behalf of Indian tribes I represent.

With the committee's permission I should like to introduce some of the delegates who are here from the Standing Rock Tribe in North Dakota: Mr. Dan Howard and Mr. Isaac Hawk, who are members of the tribal council, and from the Lower Brule Sioux Tribe of South Dakota, Mr. Rush, chairman of the tribal council; and from the Crow Creek Sioux Tribe, Mr. Solomon St. John is here. There are some others coming and I think they were planning on being heard tomorrow if this is satisfactory to the committee.

Senator CHURCH. Very well, Mr. Sonosky.

Mr. SONOSKY. I should like just for one moment to direct myself to the particular question posed by Senator Mechem.

I think if you will look at the question concerning the possibility of sale of tribal land, and this is one of the things that concerned us—section 6(c) of this bill provides that in the event of a loan the tribe

shall give the United States in mortgage on the land purchased by the tribe with the loan and on any other tribal property which the Secretary deems necessary to adequately secure the loan. I think that that poses the possibility that tribal land could be lost by foreclosure under the mortgage.

Also in section 7—section 7 provides that under the plan which may be approved the tribe with the approval of the Secretary, notwithstanding any other provision of law, is authorized to sell or encumber any tribal land or other property in furtherance of such sale.

So, those two provisions should be kept in mind if we are concerned with the possibility of tribes losing their land.

The thing about legislation of this nature is that it is not made for now, it is made for always. It is not made for an administration such as we currently have with a sympathetic Commissioner of Indian Affairs and a Secretary who, I am sure, would administer this law. This bill, if it becomes law, would protect tribal property, but past history in Indian affairs has indicated that the future too, may bring us administrations less favorable and who may use legislation intended to protect the tribe as a means of removing land from tribal ownership.

Mr. Chairman, I am not going to read my statement but I should like to highlight some of the points that I have made in it.

The first point concerns the availability of funds to purchase the land. S. 1049 would become law a year after its enactment, it would become effective. But the loan provisions may or may not be effective in the sense that money will be available. If money is not available to the tribes, and S. 1049 becomes law, this land can be moved out of trust ownership without an opportunity to many of the tribes to purchase the land and this is a real concern to the tribes and we have suggested an amendment which would tie the effective date of the law to the availability of funds to the tribe; in other words, unless there is a plan approved and unless funds are available to the tribe land may not be sold.

Of course, if the tribe advises the Secretary that it has no interest in the land there would be no objection.

The second point concerns the protection against debts. This was the same point I raised at the hearings in the last Congress. We think that this trust land should be protected from all liens or encumbrances the way it is now protected under existing law, and our concern is that it should be written into the statute so that the proceeds from the sale of this land will be protected.

After all, under the terms of the bill, Indians are being asked to sell their land or their land is being involuntarily sold for them, and the money should stand in lieu of the land and should be subject to the same protections which other trust moneys are subject to.

For that reason we have suggested a new section which would give the protection to the proceeds from the sale of the land that now attaches to the land itself.

The third point concerns mineral rights. The bill provides that if mineral rights are reserved they shall continue in trust. But we have had experience with sales of trust land over the last 10 years and up until the last few years Indians, in fact, were encouraged to sell their mineral rights when they came in to ask that their trust land be sold.

An Indian would apply for leave to sell his trust land. To many Indians, when they say "sell land" they do not mean minerals, it just means land. To them, in order to sell minerals you would have to say "I want to sell my minerals." They were not given advice that they should reserve their minerals and there are many places in the county today, and particularly in Fort Peck, where highly valuable mineral land in oil and gas areas which were then under development and lease were sold at supervised sale by the Bureau of Indian Affairs and the minerals went with the land. The minerals were never appraised, just the surface, and the Indian was not advised that he should reserve his minerals.

We think that this calls for special protection in view of our past experience and the least that can be done is to put into the law what the Bureau now has adopted as an administrative policy, and that is that in any area where the U.S. Geological Survey designates the area as prospectively valuable for oil or gas or other minerals, automatically, as a matter of protection to the Indian, minerals should be reserved.

My fourth point concerns the representation of minors and others. Now, this is a new power given to the Secretary, he is here permitted to represent all minors. In talking to the people I represent they point out that as Indian fathers and mothers they think they ought to have something to say about whether the interest of their minor children should be sold. They resent very much, and I am sure any member of the committee can see how this could be, that an outsider will make the decision as to whether or not any interest in land held by minor children should be sold. I now bring to the attention of the committee, and I feel that there is a great deal of validity to it, that the bill be amended so that the authority of the Secretary be limited to minor orphans or a situation where neither parent can be located.

The fifth point relates to the concern that nothing is said in the bill about the best interests of the tribe or the community where the land is located. The authority of the Secretary to sell or partition is exercised by one criteria, whether it is in the best interests of the individual Indian.

Now, conceivably an individual Indian can own an allotment on which there is water and grazing country and he might be able to get a very fine price for that land and it would be in his best interests to sell the land, but if it is sold it might destroy thousands of acres of tribal grazing land which cannot be used without the water supply.

In other words, I am talking about key tracts. There is also the situation where there may be Indians living on another Indian's land, regular communities have been established sometimes in this situation.

Now, they really are squatters but would it be in the best interests of a community to sell a piece of land of that nature, and the possibility that it can go to an outsider?

We ask only that these criteria be spelled out in the statute so that before the Secretary exercises his power he must look to see whether this sale would be not only in the best interests of the Indian owner but also in the best interests of the tribe, and at least not detrimental to the community where the land is located.

My next point relates to the Secretary's power to sell trust land but not fee interests.

As I read section 1(b) of the bill where there are both trust interests and fee interests in the same land the Secretary has the power to sell the trust interests. Of course, he has no power to sell the fee interests because he has no jurisdiction.

As I visualize the operation of this bill the fee owner of a small interest in a piece of land could just sit tight and refuse to sell. The Secretary does have the power to sell the trust interests. Nobody is going to buy fractional trust interests, leaving outstanding a fractional fee interest. The only interested buyer in most cases is going to be the owner of the fractional fee interest.

If the Secretary undertook to sell the trust interests separate from the fractional fee interests he could not get as good a price as he could if you are offering the whole. It is fundamental that the market is limited for people who want to buy fractional trust interests in land. It is also fundamental that you get less for a fractional interest in land than you would if you sold the whole; that is an undivided one-fourth interest in land will not bring the equivalent of one-fourth the full market value of the land.

We think, also, that this raises the danger that it would encourage the Secretary to throw this land into the State courts for partition and we think it should be the other way, that the law should provide motivation or some compulsion on the Secretary and on the fee owner to get that land into voluntary sale.

Now, we think that this could be done by encouraging the Secretary to get powers of attorney and he would get powers of attorney if he did not have the power to sell trust interests where there were fee interests.

He goes to the owner of the fee interest and he says:

I can sell this piece of land in which you own an undivided one-sixteenth interest, all the trust interests will give me the necessary power, if you will give it to me I can do it, but if you won't give it to me I cannot sell it.

I think some compulsion would be put on the fee owner to give him the power of attorney to sell. Now, under this bill the Secretary has the power where there are trust and fee interests to throw it into judicial partition proceedings in the State court.

Now, where the Secretary exercises his own power of sale administratively to sell and partition, we have all this long row of protective rights for the tribe. They have every opportunity to come in and buy that land, every preferential right. That is the section 5 that the Commissioner was referring to.

But where it goes over into judicial partition there are no such provisions. We do not know why a distinction should be made if there is reason to protect trust interests in land administratively the same reasons should extend to judicial partition and Congress in the past has enacted legislation which put Indian land into the State courts for partition and in that legislation has provided for preferential rights.

So we do have a precedent and we think that this section should be amended to provide that in judicial partition the tribe should have a preferential right to purchase either at the appraised price under judicial proceedings as they have in some States or to meet the high bid at the sale which is usually the proceeding in nearly all States.

On the master land-use plan, the Commissioner has covered that and the tribes agree with his view that a general meeting of the tribe should not be required, that the governing body of the tribe deals with matters which are at least of equal concern and equal importance and they—and the power vested in them should not be diminished by the statute.

We suggest in the statement on page 5 a number of additions which might be spelled out in the bill to be included in the master land-use plan.

We do not think that it was intended that there be any limitation on the plan but since some things are mentioned in the statute we thought that perhaps other things ought to be.

In that plan there should be the possibility of the tribe buying land on deferred payment plan or buying land through the use of tribal certificates, provision should be made along the same lines as testified in the last Congress, that the tribe should be able to buy less than the full interest in the land, perhaps buy subject to a life estate so that people would not have to leave their land and at the end of the life estate the full title would then pass to the tribe; arrangements might be made for purchases where a homestead interest could be left in an Indian family, where they have a large tract but their home is on it, they may want to sell 140 acres, they may have 160 acres and want to sell the entire 160 and reserve to themselves the right to maintain their home on a 5-acre part of it for a specified period of time.

All these things are practical cures, it seems to me, to various problems which come up on a day-by-day basis.

No. 9 in my statement relates to trust land outside the reservation, or consolidation area. We think that if there is now a piece of trust land outside the reservation or consolidation area owned by several Indian heirs and one of those Indian heirs buys the interest of the other that the trust ought to continue; the bill ought not become a means of removing the trust. It should not change a status quo.

There are some problems which the committee has considered and I know that the Bureau of Indian Affairs has been disturbed by them regularly which relate to what we call economic considerations.

I hear constant complaint on the reservation by owners of land, and this is one of the reasons that motivates this legislation—the fact that Indian owners do not get much out of their land. They do not get much out of it sometimes because their interests are so small or because there are so many heirs that the Bureau of Indian Affairs cannot manage the land, there are just too many people to deal with.

I know that the Bureau is vitally interested in increasing the income from this land. I am satisfied that if the income could be increased to where this land brought in at least the equivalent of comparable land owned on the outside of the reservation many of these Indians would have more interest in keeping their land and using it than they now have.

I do not know that there is anything that can be written into this bill which will accomplish this, but if something could be put in the legislative history to recognize the problem, and I think it probably will be in there because it is one of the causes for people wanting to rid themselves of fractional interests, this would be helpful.

On the Wind River Reservation, in which particularly, and perhaps on other reservations, the problem is not a great one in the sense that there is not a large amount of fractionated land, and those tribes have money and are in the position to develop their own program in order to buy the land, and clean up that fractionated heirship matter.

They have tried in two prior Congresses to get special legislation and the problem with them is that this general legislation may or may not, we cannot be sure yet, work out a solution for them.

They could use something much simpler and get their job done. If this legislation, enacted satisfactorily to all the people, would become law I think probably their problem can be worked out, but if not there is a feeling on some reservations that a special investigation of the facts relating to the particular local situation might require provisions different from those which are contained in S. 1049.

There is one other item which is not covered in my statement but which just recently has given me concern and that arises under section 6 of the bill.

Section 6 states that before a loan can be obtained the tribe must establish that it is unable to obtain a loan from any other source.

Now, this suggests that the tribes can go to regular commercial sources and obtain loans and some tribes can do that. Now, if they go to a commercial source and obtain a loan, from a bank, a question arises as to whether that money, if used to purchase land, will permit the land to remain in trust. There is some indication in the manner in which the purchase of trust land is now being administered that if an Indian takes his trust money and buys trust land, the land can be taken in trust, but if an Indian borrows money from a bank to buy trust land the land cannot be taken in trust.

The same thing is true of a tribe. And we now have that precise question under consideration before the Bureau so that if purchases are to be made out of funds other than those borrowed from the Bureau of Indian Affairs it may be well that the bill specifically provide that the source of the money shall not affect the right to take the land in trust.

Mr. Chairman, I appreciate this opportunity to appear before you and I think we have come a long way since we first started working on this bill and we are hopeful that good legislation will develop from it.

Senator CHURCH. Thank you, Mr. Sonosky.

Senator MECHEM, some questions?

Senator MECHEM. Yes. Mr. Sonosky, have you had an opportunity to review the Bureau's recommendation for the change of section 5?

Mr. SONOSKY. I received it; I read it this morning, Senator, very quickly.

Senator MECHEM. Do you have a curbstone opinion on that amendment? The thing that I am trying to get at is, Do you think it would have a tendency to eliminate some of the pressure that might be applied for sale to a non-Indian?

Mr. SONOSKY. Well, I think that the chief advantage of the revised section 5, as it appears in the Department's report, is that it simply simplifies and makes easier to follow the rights of the tribes as they are now set out in the bill; that is, the rights to participate in the sale.

I do not believe that they were intended to make any substantive changes. You will notice that the Bureau does not object to the provision as now written in the bill, it simply is suggesting this section 5 as a simpler and easier-to-follow statement of the procedure involved when a tribe is to exercise its rights to purchase land at sale.

Senator MECHEM. As to section 6(a), let us take for example, a tribe that probably had somewhere in the neighborhood of \$100,000 free and clear that they could use for the purchase of land. The land was appraised at, oh, around \$75,000 or \$80,000 and submitted to bid and the purchase price was somewhere in the neighborhood of \$90,000.

Would the tribe then, under section 6(a), be eligible to obtain a loan from the Bureau of Indian Affairs?

Mr. SONOSKY. If I understand your question correctly, the tribe has \$100,000?

Senator MECHEM. That is right. That is all they have.

Mr. SONOSKY. This becomes a question of administrative approach. I would say that under the present administration of Indian affairs that they would say that a tribe that only had \$100,000 certainly would be eligible for a loan from the revolving fund.

I would add, though, that there could be a situation, because we have experienced it, where they would say to the tribe, "No, you have got \$100,000; use it."

Senator MECHEM. They would not have to say that they were eligible for it?

Mr. SONOSKY. No; they would not. It becomes a matter of administrative interpretation. They could say, "You want to buy the land, use your last \$100,000." I know that this Commissioner would not do that because his basic interest, as he testified this morning was, I think he made the exception for the situation where they want to develop the economic potential of the reservation in terms of developing industry and jobs for people, which he regards as primary.

So, if a tribe had its money allocated and available for that purpose he would not touch it and would say that they were eligible for loan from the fund.

I hope I am stating—this is my feeling, he is here so he can speak for himself.

Senator MECHEM. As you say, this legislation will run for many long years, if enacted.

Mr. SONOSKY. Yes, it will run for a long time, past all of us, I am afraid.

Senator MECHEM. And he might not be around.

That is all, thank you.

Senator CHURCH. Mr. Sonosky, I want to say to you that over the past 3 years you have been very helpful in pointing up to the committee areas for revision and changes in the original bills and we appreciate your cooperation and your contribution. We will give careful consideration to your testimony this morning.

Mr. SONOSKY. Thank you, sir.

(The prepared statement follows:)

STATEMENT OF MARVIN J. SONOSKY

I make this appearance on behalf of the tribes I represent, including the Standing Rock Sioux Tribe of North Dakota and South Dakota, the Rosebud Sioux Tribe, the Crow Creek Sioux Tribe, and the Lower Brule Sioux Tribe of South Dakota, the Sioux and Assiniboin Tribes of the Fort Peck Reservation, and the Shoshone Tribe of Wyoming.

These tribes are concerned that the bill, as drafted, may result in the movement of trust land into fee status. If the bill is amended to embrace additional safeguards, these concerns may in large measure be overcome. I list these items for the consideration of the committee.

1. *Availability of funds to purchase land.*—Under the bill, land can be sold or partitioned within a year after the bill becomes law, but the money for loan to tribes so that they can buy the land depends (1) on approval of a master land use plan, (2) on Congress appropriating land money, and (3) on the Secretary granting a loan.

If the tribes have no funds to buy land or if approval of a master land use plan is not forthcoming, the fractionated trust land would be sold, largely in fee status without any opportunity for the tribes to buy. The proposed law then would become a means of moving land out of trust ownership. That is not its purpose. Accordingly, I recommend that the bill be amended by striking the proviso in section 6(a) and substituting:

"*Provided*, That no land within the reservation, or approved consolidation area, shall be sold under this Act unless the tribe has funds available for the acquisition of such land, or advises the Secretary in writing that it does not desire to acquire the land.

2. *Protection against debts.*—Trust land is protected from all liens or encumbrances and from the charges of any debts whatsoever incurred by Indian owners while the land is in trust status. Proceeds from the sale of trust land should stand in the same position as the trust land itself and should be protected in the same way. The bill contains no such specific protection. Accordingly, I would recommend that the bill be amended to include a new section reading as follows:

"Section —. The proceeds of the sale of trust or restricted interests under sections 1 and 2 of this Act shall be paid to the Secretary for use or distribution in accordance with law: *Provided*, That no part of the proceeds from the sale of any trust or restricted land under this Act, shall be subject to any lien, debt, or claim of any nature whatsoever against the individual Indian landowners or their Indian predecessors in title, except where the land is security for the payment under an instrument duly approved by the Secretary, and except for delinquent debts owed to the United States or to the tribe by individual Indians, and the Secretary of the Interior determines and certifies that no hardship will result from the payment of such delinquent debts."

3. *Mineral rights.*—Under the bill, if mineral rights are in a trust status and the Indian owner reserves them, they remain in trust status. However, we have learned from experience that Indians frequently do not request that their minerals be reserved. They believe they are selling their land, not their minerals, and do not realize minerals must be expressly reserved. They have not always been correctly advised.

We have also learned from experience that buyers sometimes pretend to be interested in the surface when in fact their interest is in the minerals. Since only the surface is appraised, such buyers obtain both surface and minerals for the appraised value of the surface only. Frequently the appraised value of the surface is less than the value of the minerals.

To protect the interests of Indian owners, I believe that minerals should be reserved if they have or may have value. To accomplish this, I recommend that the bill be amended by striking the first sentence of section 3(b) and substituting the following:

"(b) No trust or restricted interest in oil, gas, or other minerals in areas designated by the United States Geological Survey as prospectively valuable for oil, gas, or other minerals shall be included in any sale of land made pursuant to this Act."

4. *Representation of minors and others.*—One of the new powers given to the Secretary of the Interior is the right to represent any Indian owner who is a minor. This means that the Secretary can vote the interests of the children in deciding whether trust land should be sold. This is highly objectionable to Indian parents. If their children under age have an interest in trust land, the parents, not the Secretary, should make the decision to sell or not to sell.

To accomplish this, I would recommend that section 4 of the bill be amended to strike the phrase "(1) who is a minor," and to substitute the following:

"(1) who is a minor orphan, or neither of whose natural parents or guardians can be located by the Secretary after reasonable and diligent search and the giving of notice by publication."

5. *Best interests of the tribe and the community.*—As written, the trust land may be sold where the Secretary believes it "would be in the best interests of the Indian owners." The quoted phrase is so placed that doubt is raised as to whether the "best interests" test is applicable if partition or partial partition takes place. More important, the phrase should be expanded to include the best interests of the tribe and also the sale ought not be detrimental to the Indian community. The sale of key tracts, controlling water or access, may destroy the usefulness of thousands of acres of grazing land owned by the tribe or other members of the community. (See secs. 1(a), 1(b), and 2.)

To provide this safeguard and avoid the ambiguity noted above, we recommend the following:

Amend section 1(a), page 2, lines 1 and 2. Place a colon after "practicable" (line 1); strike line 2 and add the following:

"*Provided*, That no partition or sale shall be authorized unless in the best interests of the Indian owners and the tribe and would not be detrimental to the local Indian community."

Amend section 1(b), page 2, line 12, and section 2, page 3, line 1. Strike the period after "owners" and add: "and the tribe and is not detrimental to the local Indian community."

NOTE.—This amendment for section 1(b) is not required if the amendment proposed in connection with item 6, page 4, is adopted.

Section 5 of the bill provides for notice and hearing before the Secretary sells or partitions, but no such provision is made before he consents to judicial partition. One is as important as the other. Also, section 5, line 1, calls for "actual" notice. This is ambiguous. We recommend that section 5 be amended by striking the first sentence of section 5 and substituting the following:

"Sec. 5. The Secretary shall give notice in person or by publication and provide an opportunity for a hearing before partitioning in kind or selling land, or before consenting to judicial partition or sale pursuant to this Act."

6. *Secretary's power to sell trust but not fee interests.*—Under section 1(b) of the bill, where both trust and fee interests are in the same land, the Secretary has the power to sell the trust interests only. The Secretary has no authority to sell the interests of the fee owners. In operation, this could mean that trust interests would be sold to the owners of the fee interests in practically every case. The fee owners would be the only ones interested in buying the fractionated trust interests in the same land.

The bill should include provision to encourage the Secretary to obtain powers of attorney to sell the unrestricted interests. This can be accomplished by denying the Secretary the power to sell the trust interests unless he also has power of attorney to sell the fee interests. The following amendment is suggested:

Amend section 1(b), page 2, by striking lines 11-17 and substituting the following:

"hereby authorized, where he is empowered by power of attorney to partition or sell all unrestricted interests, to partition the land in kind, partition part of the land in kind and sell the remainder, or to sell the land if partition is not practicable and a sale would be in the best interests of the Indian owners and the tribe and would not be detrimental to the Indian community."

7. *Protection of tribal rights in judicial partition proceedings.*—The various special rights which are given to the tribe to buy trust land where the Secretary sells, are denied to the tribe if the sale goes to State court for judicial proceedings. Section 2 of the bill dealing with judicial sale or partition should confer on the tribe a preferential right to purchase the land at the judicial sale at the appraised value approved by the court, or if it is offered at judicial sale, the preferential right to meet the high bid. This is consistent with the objective of affording the tribe an opportunity to hold trust land in trust status. Also, it would make less attractive the possibility of placing a small interest in fee status so as to make the land eligible for judicial partition.

To accomplish this, we recommend that section 2 be amended to include the following sentence before the beginning of line 11:

"The tribe on whose reservation the land is located or adjoins shall have a preferential right to purchase the land at partition sale at a fair valuation fixed by appraisement in the proceedings, or if offered for sale by competitive bid or auction, to meet the highest bid."

8. *The master land use plan.*—The bill requires that the master land use plan be approved by a general meeting of the tribe. The governing body of the

tribe should make this decision just as it makes many more important decisions. Also, since the bill lists some of the items to be included in a master land use plan, it ought to include others which would permit the tribes to buy on the deferred payment plan and by use of certificates of indebtedness, to purchase subject to life estates, and so forth.

I recommend that section 6(e), pages 7-8, be amended to read as follows:

"(e) Before a loan is made under this Act a tribe shall submit for the approval of the Secretary a master plan for the use of all lands to be purchased. Such a plan may be revised from time to time by the tribe with the approval of the Secretary and upon request of any tribe preparing or revising a plan, the Secretary shall render such technical assistance as may be necessary."

"Any plan approved by the Secretary and a tribe shall include, without intending any limitation hereby, the following: (1) Provision for consolidation of holdings in conjunction with those held to permit reasonable economic utilization of the land and repayment of the loan. Such plan may be revised from time to time with the approval of the Secretary; (2) provision for payment of the consideration for the land in cash, on a deferred payment plan or by unsecured tribal certificates of indebtedness bearing interest on the principal sum at not to exceed 4 per centum per annum, or any combination thereof; (3) provision for the purchase of land subject to a right of homestead for a term of years of subject to an estate for life of all or a portion of the acquired land, where in the judgment of the Secretary such action is appropriate to provide a home for the Indian owner or owners; (4) provision requiring that the land be leased or used in tribal enterprises and that the full fair market rental value of the land be paid by the lessee or the tribe into a reserve fund for the redemption of tribal certificates of indebtedness; (5) provision making tribal certificates of indebtedness alienable among members of the tribe with the approval of the Secretary and permitting such certificates to be used by members of the tribe, where practicable, in lieu of cash to pay rentals or other debts owing to the tribe or for the purchase of the right to use and occupy tribal lands by a member of the tribe for a specified term of years or for life; (6) provision to encourage members of the tribe to devise trust land or restricted property by wills approved by the Secretary."

9. *Trust land outside the reservation.*—Under the bill, section 5(d), if trust land outside the reservation or the approved consolidation area is bought by an Indian owner, it must be taken in fee. It seems to us that, regardless of the location of trust land, if the other trust interests are purchased by one of the Indian owners, the land should continue in trust.

To accomplish this result, amend section 5(d), page 6, line 12, by inserting the following after the word "area": "shall be taken in trust if the purchaser was the owner of trust or restricted interests in the land before the purchase or partition, otherwise".

10. *Economic considerations.*—If this bill becomes law, the market will be soon flooded with Indian land. This will depress the value of land in the area. It seems unfair to individual Indians to adopt a plan for sale, which in itself would be the cause of lowering the possible sales price. Language cautioning the Secretary to avoid this result might well be put in the bill.

There are many Indian people who would be interested in retaining their lands if the land brought in a fair income, at least as much as it would if a non-Indian owned the lands. This is particularly true of grazing land. Under the current procedures for managing trust property, grazing lands owned by individual Indians are included in range units. The minimum rental fixed by the BIA is substantially less than the rental paid for contiguous or nearby fee land of the same carrying capacity.

One of the prime reasons individual Indians are anxious to sell their land is because they get so little out of their land. If land income were brought closer to its market rental value, they might not sell. It does not seem right to manage trust lands so that individual Indians get far less than rental value and then adopt legislation under which Indians would seek to sell because their land produces so little income.

I do not know that anything can be written into this bill to accomplish this objective. I think it should be in the legislative history to show that Congress was aware of the problem and did not intend this legislation to be used as a substitute for good land management under which land would bring in something near what it was worth.

11. *General legislation versus special legislation.*—We all know that size and conditions vary from one reservation to the next. The fractionated land

problem has more serious consequences on some reservations than others. Some tribes have money with which to buy land and some do not. Some tribes have strong governing bodies and some have no governing body except for rare general councils.

There is real danger in a general law applicable to all reservations regardless of size and local conditions. The problem is one which requires a reservation-by-reservation study, with appropriate legislation designed to fit each particular reservation.

Senator CHURCH. Is Mr. John B. Cummins here and ready to testify? Mr. Cummins is the chairman of the Crow Tribe in Montana.

Mr. CUMMINS. Mr. Chairman, I have with me the other delegates.

Senator CHURCH. Very well, why don't you bring them up?

Mr. CUMMINS. Arles Whitman, Frank Takes Gun, Oliver Hugs; the fifth man is not here yet.

Senator CHURCH. Do you have a prepared statement?

Mr. CUMMINS. Yes, I have, sir.

Senator CHURCH. You may proceed Mr. Cummins.

STATEMENT OF JOHN B. CUMMINS, CHAIRMAN, CROW TRIBE IN MONTANA

Mr. CUMMINS. This is a brief statement, Mr. Chairman, gentlemen of the committee.

On behalf of the Crow Tribe of Indians of Montana, I first want to express our appreciation to the committee for the opportunity to appear here today and voice the opinion of the Crow Tribe upon the proposed legislation now before the committee.

Over a period of many years, the Crow Tribe has wrestled with the problem of fractionated heirship lands on the reservation. In fact, as recently as the year 1960, the Crow Tribe caused S. 3321 of the 86th Congress, 2d session, to be introduced into the Senate by the late Honorable James E. Murray.

The proposed bill gave the Indians on the Crow Reservation the sole right to purchase the fractionated heirship lands and therefore, the Indians, under the provisions of the bill, would be able to maintain their land base within the boundaries of the reservation.

We have always contended, and we shall firmly assert that a general bill pretending to cover the complicated problem on all Indian Reservations is not, and can never be the solution. Each individual tribe has its own individual land base problems. The factors existing by one tribe upon its particular reservation, compared with the problems existing by another tribe upon its particular reservation are wholly different.

For a simple example let me refer to just one particular condition on the Crow Indian Reservation. We have a specific law which was enacted in 1920, which is commonly known as the Crow Allotment Act. This act specifically provides that certain Crow Indians may lease their allotted lands for lease terms up to 10 years. Many of these 10-year leases are now in full force and effect. Assuming that the bill now before you, namely S. 1049, were enacted and the provisions of the bill become effective upon application of the 50-percent ownership or the 25-percent ownership. As a result, the Secretary of Interior could, without question, force a sale of the lands by the partition provisions of the bill. With a 10-year lease in effect upon the such lands,

it is fully apparent that the market value of the lands would be deteriorated and a public auction defeated.

Obviously, S. 1049 is not the solution to the fractionated heirship problem on the Crow Indian Reservation. The Crow Tribe has, after a study of the proposed legislation, received—resolved to and does oppose S. 1049.

Moreover, aside from what I have already said, the bill has numerous other objectionable features. First and very seriously, we assert that we are against the bill, since the provisions of the bill does not fully protect the Indian land base problem.

After providing for competitive sales as between the Indian owners of the lands to be partitioned and sold, it does not provide for a competitive sale to the other members of the tribe. If we are to retain our land base, then every reasonable opportunity must be given to the non-owning tribal members to permit the acquiring ownership to the fractionated heirship lands. No such guarantee is contained in the bill.

Secondly, the bill spells out in no uncertain words, that the Secretary shall approve no plan pursuant to the act that contains any provision that will prohibit or delay a termination of Federal trust responsibilities with respect to the land during the term of the plan.

This, we assert, is a radically unfair approach to the Indian termination program proposed by those individuals who do not in fact know the Indian problem.

It is our sincere opinion that under existing conditions and under existing Indian self-help programs, termination provisions in any legislation should be limited to those tribes and those tribes only who request termination.

Next, we oppose the bill because it places in the administrative branch of the Government a most powerful instrument, specifically the authority in the Secretary of the Interior, to arbitrarily force land sales of restricted Indian lands. Some officials may and would use this powerful instrument of law in a discretionary manner. On the other hand, what would a tyrant do under the law?

Lastly, we propose that unfair legislation is more evil than no legislation at all. Consequently, to assist in solving the fractionated heirship problem, we have now established under existing law a feasible land purchase program. Under the program the Crow Tribe with its own funds, is purchasing restricted Indian lands under competitive land sales. The program has become effective. It is working both to the benefit of the tribe, the Indian landowner and the nonland owner Indian. We have approached the problem in a careful and prudent manner. Therefore, unless we can have specific legislation which will be satisfactory and operative to the members of our tribe, we must resist and oppose legislation which on its face is unfair and unjust.

In conclusion, on behalf of the Crow Tribe and by its unanimous action, I request the committee to investigate further into the matter before passing a bill which in itself is not workable on many Indian reservations and particularly is unworkable on the Crow Indian Reservation.

Again, gentlemen of the committee, I thank you for the time here granted to me in order that our views could be presented.

Senator CHURCH. Senator Mechem, do you have any questions?

Senator MECHEM. I would just like to ask one question.

Mr. Cummins, do you have any probate court in your tribal government?

Mr. CUMMINS. What is that?

Senator MECHEM. A probate court, a court to determine heirship to land.

Mr. CUMMINS. No; we do not.

Senator MECHEM. None existing at the present time?

Mr. CUMMINS. No.

Senator MECHEM. That is the only question.

Senator CHURCH. Thank you very much, Mr. Cummins, we appreciate your testimony.

Mr. CUMMINS. Thank you, sir.

Senator CHURCH. Mr. John W. Cragun, attorney, representing the Arapahoes.

We are glad to have you again, Mr. Cragun.

STATEMENT OF HON. PHILLEO NASH—Resumed

Mr. NASH. Mr. Chairman, before Mr. Cragun proceeds, in view of the rather generous comments made by Mr. Sonosky about my attitude about the funds, I want to be sure that the record is clear with respect to Senator Mechem's question.

At the present time tribes which have as much money in the treasury or are budgeting annual appropriations the size of the Navajos are as a matter of policy required to buy land out of their funds rather than to do it through an approved loan from the revolving fund in view of the fact that our fund is available to tribes with the smaller amount of money and the tribes with the largest amounts of money ought to draw on their own first.

On looking at the bill again I realize that the language of the section which requires as a matter of law that the tribe have available funds and use them or go to private lenders before coming to the revolving fund would probably—as a matter of law rather than policy—would probably exclude the Navajos from this program as long as this situation is what it is now.

I did not want to let the record stand. I had said this would put the Navajos on the same footing as everybody else. Well it does, as a matter of law, but as a matter of physical management it would not.

Senator MECHEM. Thank you, sir.

Senator CHURCH. Thank you, Mr. Nash.

Mr. Cragun.

**STATEMENT OF JOHN W. CRAGUN, COUNSEL FOR THE NORTHERN
ARAPAHOE TRIBE OF THE WIND RIVER RESERVATION, WYO.;
CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLAT-
HEAD RESERVATION, MONT.; QUINAIELT TRIBE OF THE
QUINAIELT RESERVATION, WASH.; AND THE SPOKANE TRIBE
OF THE SPOKANE RESERVATION, WASH.**

Mr. CRAGUN. Mr. Chairman. My name is John W. Cragun. I have furnished a statement to the committee which I shall not read. It goes into this bill in small draftsmanship matters which I do not think I should take the committee's time up with generally.

I want to, in general, join with the Commissioner of Indian Affairs in saying we think this is a great improvement as a bill. We do hope that legislation results. We do see that there are ways of strengthening and improving the bill.

Let me just refer to a few of them.

In the first place, section 6(d) says that the maximum term for a loan to the tribe to buy land is 30 years.

Now, we have instances, the Quinaielt Tribe is an example where the economic cycle of cutting time runs over a period longer than 30 years. We feel that the term of the loan ought to extend, at least in the Secretary's discretion, up to 40 or 50 years, so as to match the cutting cycle of lands.

There is a provision that if a tribe recovers on any claims against the United States then automatically its loan becomes due. Now, that means that the tribe who has already recovered on a claim against the United States, where it makes a loan, does not have its funds arising from its claims pounced on by the Government because they are behind it, but that others do.

It is a discrimination against the tribes who usually for no reason for which they can be charged, have been unable to get their claims through as yet.

Senator CHURCH. Mr. Cragun, I think that the provision in the bill reads a little differently than you have stated it.

Section 6(d) reads:

In the event of a default in the repayment of the loan the Secretary of the Interior shall take such action as he deems necessary to protect the interest of the United States, if during the period of repayment the tribe is awarded a money judgment against the United States and if the payment of any installment on the loan is at fault, the installment or installments in default shall be collected from the appropriation to satisfy the judgment so far as the amount of appropriation will cover the same.

As I understood you to say it, the balance due on the loan would then be deducted from the amount of the judgment whereas I think the language provides only the amount of an existing default owing the Government would be taken.

Mr. CRAGUN. Thank you, Mr. Chairman, I am glad to have that made clear.

Section 6(e) of the bill says that if the tribe wants a loan then the tribe has to approve a plan by a meeting of the tribal membership which has been commented on by the Commissioner and we join in his view.

There is no reason to bypass the established tribal government and a meeting in some circumstances with a large tribe would be a complete mechanical impossibility.

Section 8 providing that no plan shall contain any provision which would prohibit or delay termination is offensive, I believe, to all tribes. You just heard the Crows on that subject and it is unnecessary to offend them with a provision of that kind because there is nothing in the world that a tribe could do, in its plan or the Secretary in approving it, which could prohibit Congress making any disposition of tribal affairs which Congress felt was called for. I recommend that that offensive language be stricken from the bill.

Finally, the last item I wanted to mention was the matter of consolidation of tribal land ownership and consolidation not only for the tribe but for individuals.

We feel there ought to be provision in here for the tribe to purchase land on behalf of its individual members and under an arrangement with them to get the property into their hands. There appears to be an adequate but not plainly stated provision in the bill which looks to that but we think that could be dressed up in language and made to apply very specifically.

Thank you, Mr. Chairman.

Senator CHURCH. Thank you very much, Mr. Cragun. I want to assure you that your testimony will be carefully studied by the committee and your recommendations taken into consideration as to possible revisions of the bill.

I am pleased that you generally support the legislation and the objective we seek to reach.

Thank you.

Senator Mechem, do you have any question?

Senator MECHEM. No, thank you, Mr. Chairman.
(The statement referred to follows:)

STATEMENT OF JOHN W. CRAGUN OF WILKINSON, CRAGUN & BARKER, WASHINGTON, D.C., COUNSEL FOR THE NORTHERN ARAPAHOE TRIBE OF THE WIND RIVER RESERVATION, WYO.; CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, MONT.; QUINAIELT TRIBE OF THE QUINAIELT RESERVATION, WASH.; AND THE SPOKANE TRIBE OF THE SPOKANE RESERVATION, WASH.

My name is John W. Cragun. I am a lawyer of Washington, D.C., and a member of the firm of Wilkinson, Cragun & Barker which is tribal attorney for the Northern Arapahoe Tribe of the Wind River Reservation, Wyo., the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Mont., the Quinaielt Tribe of Indians of the Quinaielt Reservation, Wash., and the Spokane Tribe of the Spokane Reservation, Wash. We have been asked by our clients to appear on their behalf in connection with the Indian heirship lands bill, S. 1049, introduced by Senator Church last month.

Our clients regard the bill as a great improvement over the previous draft of bill, S. 2899 of the 87th Congress, just as it in its turn was some improvement over S. 1392 of the 87th Congress. All the bills seek to overcome the economic stagnation which results from Indian trust lands being held by many heirs of the original allottee, sometimes with a ridiculously small interest on the part of particular heirs, as a result of which no disposition of the lands could be made by the tribe nor could any individual owner effectively take title so as to place the land back into production and improve the situation of the particular tribe or Indians concerned.

At the same time, our clients see some minimum improvements to be made in the bill:

1. Section 4 authorizes the Secretary to represent minors, lunatics, interests being probated and persons who cannot be found. But much time and admin-

istrative effort can be lost locating and getting consent of persons who own very small interests; and we suggest that the Secretary be authorized also to represent, without the need for getting in touch with, those who own minuscule interests in the land—say, a one-sixteenth, or a one thirty-second part, or less.

2. Section 6(d) says that the maximum term for a loan to the tribe to buy land is 30 years. But there are cases, involving timber and cutover timberlands, where the land is valuable only for timber and where a 40- or 50-year period would be required until harvest; and a period of 40 or 50 years for the loan, to be paid at maturity or upon the cutting of the timber on the allotment, should be allowed on such lands instead of a fixed 30-year limit. We would leave the term of the loan to the discretion of the Secretary. As an alternative, the Secretary might be authorized to extend the term where adequate justification is present.

3. Section 6(d) says that if the tribe has borrowed money from the United States and if it recovers a judgment against the United States, the judgment must be used to pay off the debt. We believe the Secretary should have discretion whether to use the judgment to pay off tribal debts before they are due. Small judgments may reasonably be needed for more pressing programs; and the discrimination against tribes who have not yet recovered, as contrasted with tribal borrowers whose claims are already closed up (only the former of whom would have their judgments invaded to pay a debt not yet due) is obvious and unfair. The Spokane Tribe believes this provision of the bill would not affect the tribe to any extent and hence does not recommend this change.

4. Section 6(e) of the bill says that if the tribe wants a loan, then the tribe has to approve a tribal plan for the use of the lands purchased and that the plan has to be approved at a general meeting of tribal members by a majority of those present and voting. But with many of the tribes, the tribal government is a representative government and tribal action is taken by an executive committee, business council or tribal council, which gives competent, representative government and whose action alone should determine the matter without the cumbersome (and in case of a very large tribe, a mechanically impossible) general meeting of the tribal members themselves. In such circumstances the bill could be analogized to a situation where the United States offers a Federal program to a State if it accepts, but provides that the State acceptance shall be not by the legislature but by a majority vote of the citizens present and voting at a general meeting of the citizens of the State. The bill should merely require approval of the tribe, and leave it to the Secretary to determine whether tribal action can be taken by a business council, executive committee or tribal council, or only by the general council of the tribe.

5. Section 8 provides that the Secretary shall approve no plan which contains any provision that will prohibit or delay a termination of Federal trust responsibilities with respect to the land. This language, apparently meant to reserve the right to "terminate" tribes is offensive to most Indian tribes in its reference to "termination." "Termination" is a word of uncertain meaning which perhaps relates to any of several concepts—liquidation of tribal assets, refusal of special Federal services, transfer of jurisdiction to the States, deprivation of tax exemption, detribalization through abolition of tribal government and reservation existence, or (perhaps as in this case) mere renunciation of Federal trusteeship of lands and other property of the tribes and its members. Whatever the sense, Indians regard "termination" as a threat to their continued existence as Indians and their right to exist as a minority group in this country. We urge that the paragraph be deleted. In any event, it is an unnecessary affront to the tribes as it is meaningless; for no matter what the plan provided, Congress could always, as a matter of plain Federal power, override it and provide for "termination" (in any sense).

6. Finally, there should be a permissive provision to authorize a tribe to participate in aiding its members to establish economic units of land, even though the tribe otherwise, for strictly tribal-program purposes, has no particular interest in the particular land involved. The bill should give permission to the tribe to purchase heirship lands which it may resell to a member or exchange for a member's land without the land going out of trust, in cases where the member reasonably needs additional land to have an economic unit and the tribe is willing that such a sale or exchange be authorized. The Yakimas already have that authority, act of July 28, 1955, 69 Stat. 392, 25 U.S.C. § 608. Such authority should be general. One of our clients, the Northern Arapahoe Tribe, would like legislative approval of a provision whereby it could sell or exchange tribal land to its mem-

bers so that the members may build homes on tracts then owned in trust by the members. It has plans under way for a community development plan based on long-term leases. It thinks that its members would prefer to own the lots (in trust) and that such ownership would contribute substantially to individual and community betterment. On behalf of the Northern Arapahoe Tribe, we ask that the committee consider a provision which would authorize such sales and exchanges.

ADDITIONAL VIEWS OF THE SPOKANE TRIBE

Section 1 of the bill authorizes sale of the land "if a sale would be in the best interests of the Indian owners." The Spokane Tribe would like the interest of the tribe also made a criterion—that is, let the bill authorize sale of the land if it is in the best interest of the Indian owners and of the tribe.

Section 3(b) adds a clause saying that any trust interest in minerals which is reserved to an Indian owner in a sale under the act shall be reserved in trust status. The Spokane Tribe fears that reserved mineral interests may become more complex than the land problem itself has become, and recommends that the mineral rights be included with the land when it is purchased and that these rights remain in trust status if purchased by another Indian or the tribe.

Section 5(a) refers to a situation that "if more than one owner or if one owner and the tribe wants to purchase * * *," which perhaps is defective draftsmanship. The Spokane Tribe believes that what is probably meant is that "if more than one owner or if one or more owners and the tribe want to purchase * * *."

Section 5(b) and section 5(c) say that bids or prices must be "substantially equal to the appraised value." What is probably meant is that bids or prices may not be substantially lower than the appraised value, for if higher obviously the appraised value is not the fair market value to which the owners are entitled.

Section 5(b) gives the tribe and the owners a right to meet the high bid; but if both want to meet it there is no express provision for what is to happen, though perhaps it would fall into section 5(c). The Spokane Tribe strongly believes that the preference should be given a coowner to enable him to get enough land to have an economic unit.

Senator CHURCH. Mr. Richard Schifter, attorney for several Indian tribes, is our next witness. Mr. Schifter is very well known to this committee.

You may proceed, sir.

STATEMENT OF RICHARD SCHIFTER, ATTORNEY, WASHINGTON, D.C.

Mr. SCHIFTER. Mr. Chairman, my name is Richard Schifter. I am an attorney with offices in Washington, D.C., and am here to testify on behalf of the Nez Perce Tribe of Idaho, the Oglala Sioux Tribe of South Dakota, and the Association on American Indian Affairs.

The manner in which the bill is now before you has evolved over the years—can serve indeed as a fine example of the democratic process at work. The two predecessor proposals in the 87th Congress did, as the committee knows, raise serious questions in the minds of Indian tribal representatives.

These questions were expressed in the committee hearings. It is evident now that the committee and its chairman did not enter the earlier hearings with closed minds, but considered the testimony with care and responded to it by modifying the bill.

In the form in which it is now before you, S. 1049 is a good bill, which, together with other tools available to the Bureau of Indian Affairs, could help simplify the complex heirship patterns which can be found on the allotted Indian reservations throughout the country.

It is particularly gratifying to Indians and their friends to note the statement by Senator Church at the time of the introduction of

S. 1049 that "particular attention has been given in designing a bill to maximize the opportunity to return multiple-owned land to individual Indian ownership or to tribal ownership and to preserve its trust status."

This underlying legislative purpose must, of necessity, control future administrative determinations under this bill. It is this difference between S. 1049 and its predecessors which has caused Indians to shift their attitude on the heirship proposals from opposition to support.

I shall explain briefly what I have in mind. Fractionated heirship problems have bedeviled Indian administration for many years. There is no doubt that as time goes on, the problems increase unless something is done about them. Something must be done about them to end the absurdity of requiring administrators to engage in complex mathematical computations in dividing relatively small amounts of money. The Pine Ridge heirship consolidation plan, sponsored by the Oglala Sioux Tribe and approved by the Bureau of Indian Affairs, on which the committee heard testimony last year, too, is one approach to the problem. S. 1049 is another. As a matter of fact, the procedures which S. 1049 would make available could easily help speed the consolidation plan along.

But in trying to solve administrative and clerical problems, we must not lose sight of the underlying goal of governmental policy: that of raising Indian communities to a level of economic and social well-being comparable to that of our general society, and in that process, to make them self-supporting and self-sustaining.

The experience of the past decade shows that our problems are not solved if a Sioux Indian sells a piece of reservation land and moves into a hut in the shanty town on the outskirts of Rapid City, S. Dak. He may no longer be a problem to the Branch of Realty of the Bureau of Indian Affairs, but the health, welfare, and law and order problem "gained" by the authorities of Pennington County, S. Dak., far overshadows the problem "loss" of the Branch of Realty.

When I testified before you a year ago, I suggested six basic assumptions in the light of which heirship policy should be formulated. They are:

1. The experience of the last 12 years demonstrates that the economic and social ills of Indian reservation areas do not disappear if nothing is done about them.

2. Out-migration alone won't solve the problem. In a free society there will always be people who cling to the familiar home environment, have children and thus perpetuate the community. During the decade of persistent efforts at relocation of Indians and deliberate abstention from any plans of reservation development and, as a matter of fact, discouragement of reservation development, the reservation population did not decline.

3. The problems of Indian reservation areas are in many ways similar to those of depressed coal mine areas in West Virginia, Pennsylvania, and Illinois, depressed textile areas in New England, or for that matter, underdeveloped and depressed areas in northeast Brazil, Iran, or Tunisia.

4. The Indian Bureau's failure to concern itself with reservation development during the past decade resulted in serious hardship for

the Indians of these reservations. The Bureau's policy has also been a serious detriment to our Western States, as the depressed economic and social conditions on the reservations have added to the problems of the affected State and local governments.

5. The solution to the problems of economic and social disorganization on Indian reservations is to afford these reservations opportunities of economic development similar to those enjoyed by the more fortunate sections of our country. This proposed solution is similar to that offered by the Area Redevelopment Act, or, for that matter, by our foreign assistance program.

6. On some Indian reservations, land does not play a significant role in the future growth of the local economy. On others it is one of the foundation stones on which a healthier economy can be built. The development of a good land-use pattern and the employment of local residents in the utilization of the land can in many areas be an important element in strengthening the local economy.

The conclusion which I derived from these premises when I testified before was: Where land can make a substantial contribution to the improvement of a reservation economy, every effort should be made to hold it in an ownership status which will make its effective utilization in the interest of reservation development possible. This means, in its essence, that the land should be held in Indian ownership.

The one problem which S. 1049 presents in this context is the inevitable delay between an authorization and the actual appropriation. Where a land consolidation plan is developed and approved, will there be money to carry it out? If the money has not been appropriated, will the land be sold off anyway?

We understand the answer to be "no" and hope that the committee will make it clear that the administrative tools made available by S. 1049 are to be used so as to harmonize with tribal economic development programs.

Now, Mr. Chairman, in addition to my prepared statement, I would like to make a few comments on the matters which have been discussed before.

I, too, share the views of the Commissioner with regard to the provision that tribal memberships by popular meeting be required to approve consolidation or heirship consolidation plans.

The Pine Ridge was a complicated matter to work out the program, it was complicated enough, I think, to analyze and discuss it with 28 councilmen interested in the matter and perhaps more better equipped to understand the intricate details than it would be if the matter were presented to the general public.

You, yourself, as example of representative government, I am sure, are aware that at a certain point you have to make your conclusion and act on your feelings of your own responsibility toward your constituents in casting a particular vote.

Another point I would like to make is that I think it was the intent of the chairman in drafting section 6A that the provision which reads that a tribe, in order to be eligible, for a loan from the loan fund, must demonstrate that it is unable to obtain a loan from any other source, and what I am sure is meant is a loan on certain terms as offered by the Government and perhaps this language ought to be made clear. It is the kind of language that appears in other Federal legislation.

In other words, you can always obtain a loan, it is a question of what the terms are.

I also want to say that I agree with the statement made by Mr. Sonosky with reference to section 4 and the authority of the Secretary of the Interior concerning tracts or interests owned by minors.

It would seem the Secretary will, at any rate, have an opportunity to pass on an application and it might be appropriate to say that in case of a minor who has parents, the parents would make this application; in the case of a minor who might be an orphan the designated guardian would be doing it.

Finally, I agree with Mr. Cragun in suggesting with regard to the 30-year limitation on loans. Other land loans made and authorized by the Federal Government frequently permit at least 40 years for repayment.

That is all I have to say. Thank you very much.

Senator CHURCH. Mr. Schifter, I want to express to you my appreciation for the guidance and advice you have given the committee in the past 3 years in our efforts to fashion this legislation. You have always done this with the interests of your clients uppermost in mind, but also with a general understanding of the problem that faces the Indian people.

I concur with your judgment that economic development is the most important single contribution we can make toward the solution of the Indian problem.

The heirship legislation will be helpful if it tends to put the land back to more profitable and productive use because that, in itself, is one of the basic resources that the Indians have to rely upon for improved economic conditions. That is the reason we have tried so hard to find a solution to this worsening problem, and you and the other Indian attorneys here who have testified this morning have been most helpful to us in that effort.

Mr. SCHIFTER. Mr. Chairman, I am very grateful for your statement. I want to say, I am sure as you are aware undoubtedly, the administrative discretion will have to be granted here; I hope that the record which can be made in terms of legislative history will make it wholly clear that these administrative determinations by whomever they might be made, will be made in the interest of economic development and not running counter to that purpose.

Senator CHURCH. Senator Mechem, do you have any questions?

Senator MECHEM. No questions.

Senator CHURCH. Thank you very much, Mr. Schifter.

Our next witness is Mr. Carl Whitman, chairman, Three Affiliated Tribes, in North Dakota.

Mr. Whitman.

STATEMENT OF CARL WHITMAN, JR., CHAIRMAN, THREE AFFILIATED TRIBES, NORTH DAKOTA

Mr. WHITMAN. Not too long ago, the Three Affiliated Tribes made a mass movement from the Missouri River bottom lands to the residual lands of the reservation which meant a complete population shift and shuffle. Everyone now has new neighbors. The community organizations as they existed in the bottom lands have been disrupted. Even

the three different tribes that had their own districts before the inundation are now mixed, because where they reestablished was determined by their allotted lands. At the time the allotments were made, tribal affiliations were ignored. It was made in an alphabetical order. This gives you the background of our reservation.

The Three Affiliated Tribes has continuously been concerned about the land problem. A land program was submitted to the Department of the Interior at the time of the settlement of the Garrison Dam project land taking. This program was not approved nor was it disapproved. Subsequently, the tribal business council managed to get and use small portions of its settlement money for the land program. However, such small amounts could not possibly solve this big land problem, but it eased the situation somewhat.

In contemplation of the land problem, we realize that not all of our families are interested in agriculture, some desire only a home-site with a garden plot and some pasturage. Others want to sell and leave the reservation, and a lot of them have already left. Still others will be content to lease their lands and work for wages or live from other sources of income. The difficult problem is how to help those who want to use the lands to further their agricultural enterprises and those who have been born after the allotment of lands. They are now in a productive age.

In a recent report by a superintendent to the area director, it was stated there were 3,405 allotments made. There are 876 allotments in heirship status. The ownership of other lands is now centered in the older members who are beyond the productive age. Much of our lands are owned by nonenrolled Indians from other reservations. There are some 49,000 acres of alienated lands in our reservation. This indicates an absolute necessity for enacting this legislation with the authorization of the \$55 million.

The Three Affiliated Tribes employed the Doanes Agricultural Service of St. Louis, Mo., to conduct a study and to make recommendations on the type of program that will fit our needs. In their report, they pointed out three major problems to solve in the agricultural field before economical units for the Indians can be established:

- (1) Scattered landholdings.
- (2) Lack of intermediate and long-term credit.
- (3) Operations of small uneconomical units.

The Three Affiliated Tribes, living in a farm and livestock country, realize that if they are to become self-reliant in agriculture, it is imperative that they commence a land program immediately in order to overcome the serious handicaps attending the present landownership situation.

This complex landholding problem that developed is a result of the Federal Government trying to solve the Indian problem. Since the situation is, in effect, created by the Government it should be under some moral obligation, or at the very least, help to straighten out the mess that we Indians are in while there is still a chance. We cannot agree with the Bureau's attempt to solve the problem by the easy and ill-conceived plan of supervised land sales and issuance of fee patents as this has harmed and impoverished the Indian. We believe this ultimate underlying consequence has never been squarely faced.

Unfortunately the specter of death will continue to take its toll

every year which means that our land ownership will worsen as time goes on and the cost of operation and management to the Bureau of Indian Affairs will increase in volume each year. Unless this mess is resolved, we are afraid that in the very near future, our lands will be beyond management and the Bureau will throw up their hands in resignation and abandon the hopeless situation. It is absolutely necessary that some sort of a legislation be enacted as soon as possible as this will make our task easier.

In 1946, the Missouri Basin investigation unit conducted a survey on this reservation and a social and economic report was prepared as a result. This report recommended the purchase of one-third of the residual land base and use of it as a large revolving pool for consolidation purposes. The tribe would have had no trouble in these transactions particularly from the older people. Page 60 of this report estimated that one-fourth of the residual land base would cost \$999,665. The land prices have gone up in the last several years which is one of the reasons why something should be done soon. Although the above figure appears high, it is given to show that S. 1049 should have a higher figure. But the figure of \$55 million can be administered in a way to get the maximum benefit. Income can be generated in a way that it will make possible for the seller to use the some money received from the land sale to buy other lands for consolidation purposes.

The Indians want to keep their lands which is indicated by the lack of requests for fee patents or clear titles although they are in dire need. This is also significant when you consider the fact that these people are living in a false economy created by the large payment received for their lands lost to the Garrison Dam. However, some patent-in-fees have been issued to nonenrolled and nonresident Indians. We must again state that should any appreciable amount of land go into fee patent status, the margin for Indian use would drop below the needs of the Indians.

The Doane's report revealed that we have a number of other opportunities now that the water of the Garrison is backing up. At the present time, the tribal council is doing a lot of tourist promotion. As yet we do not have any impressive number of the tourist traffic, but annual increases indicate that it will be larger each year. Last year's traffic placed a burden on tourist facilities and if there are no expansions made, then the tourist trade can be expected to taper off. Whether these expansions are made or not will depend on whether this legislation is enacted or not. Many of our Indians who are not interested in the farming and ranching line want to, and can, go into the tourist business. However, they can not enter this new business until they can sell their land and use the proceeds for this purpose.

This legislation will benefit 1,564 members of the Three Affiliated Tribes who are now in distant cities. In many cases, inquiries have come in, relative to the possibilities of selling their land to the tribe so they can use the money to purchase a home. Some of them have already bought homes and are now making monthly payments. In these cases, they would like to use the money to pay for the home in full, and for a very good reason. In these unpredictable times, a house paid for in full will give them a sense of security and also with

the predicted increase in real estate values this will prove to be a sound investment. Otherwise, through reduction in employment, they could lose their homes which has happened to some already. Sale of their lands will psychologically sever their ties with the reservation which, of course, will help the Bureau's relocation program. Because we have had no programs, a few of these relocatees had to sell their lands to non-Indians, which, of course, does not help the Indian's economic situation.

We might have had been in a better shape to take care of this problem had the Bureau been aware of a disturbing economic behavior. It has anciently been recognized that at times of high income when employment and business is generally sanguine, outlook is encouraging to both borrowers and lenders. The spending that results from these transactions adds to the general total of the purchasing power when, in effect, it is least needed. Under less favorable circumstances, loans are advanced more cautiously and this, conversely as in prosperity, occurs at the least propitious times.

In the last several years, the Government has been on the receiving end of a lot of unfavorable publicity as a result of the alienation of Indian lands. An impressive land program such as this legislation can create can go a long way toward showing these critics that the Government sincerely wants to help the Indians.

We realize that other reservations have similar problems and we also realize that to spread the Bureau's meager resources is not going to do any reservation any good. There is need for a legislation such as S. 1049.

Our aim, of course, is complete utilization of our land resources by the Indians themselves. We believe that once we have accomplished this, much of the Indian problem will dissolve. All historical information indicates that the people of Fort Berthold are primarily agriculturalists. This sort of legislation is awaited by our people.

The Bureau of Indian Affairs credit program is, presently, working under a policy that the "Indians get their credit from the same source as those used by other people, wherever possible." In practice, it is no good. It is ridiculous to approach this outside credit source and tell him "I have 200 acres here, 40 acres across the lake; 20 acres 30 miles from here, and another 10 acres somewhere else," and expect him to loan you money. This situation proves the need to solve the heirship problem first. It appears that the well-worn phrase "putting the cart before the horse" must be repeated. The present policy, mentioned above, to induce the Indian to utilize "outside" credit sources is definitely premature.

There is absolutely no question that land is good investment. History reveals that advancing wealth and productivity will bring more people, but they will not bring more land from which to feed these people. As a result, those who own lands will be able to command an ever greater return, given its quality, for what will become an increasingly scarce resource. A consistent rising of land prices in the United States is indicative of the history repeating itself. I believe it is a moral obligation of the Government to create a situation which will keep the lands in Indian ownership.

In view of all this, I believe the practical approach would be to stop all land sales which reduces Indian landownership until all that is authorized under S. 1049 is appropriated and put to use.

In the meantime, the Bureau of Indian Affairs should be urged to develop the resources of the reservation—land and people.

The present Bureau policy of insisting that Indians use outside credit has impoverished the Indian. Over half of our reservation is now being used by non-Indians.

None of this statement should be construed to mean we want termination.

Senator CHURCH. Thank you, Mr. Whitman, for your testimony. Any questions?

Senator MECHEM. No questions.

Senator CHURCH. We appreciate your coming very much.

Mr. Ray Simpson, attorney for the Agua Caliente Band.

Mr. SIMPSON. Mr. Chairman, we prefer to defer until tomorrow and permit the tribal chairman, Mrs. Miguel, to testify prior to my testimony, if it please the committee.

Senator CHURCH. All right, we will hear from Mr. Robert Burnette, executive director, National Congress of American Indians.

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

Mr. BURNETTE. Mr. Chairman and members of the committee, my name is Robert Burnette, and I represent the Indian tribes of this Nation. Our organization is the only national all-Indian organization in this country that voices the opinions of the Indian tribes and their membership.

We thank you for this opportunity to appear before this distinguished body of men who hold the fate of our Indian people in their hands.

We wish to express the true sentiment of our people who have a very dear spot in their hearts for the subject before you here today, land.

It can be truly said that we Indians have never really placed a monetary value on land or held land as something to desire more of as a means of increasing one's wealth, for to us land was sacred and it is something to protect in its natural state for future generations.

Society as a whole has forced us to look upon lands in a different light in recent years as the pressures mounted to rid us Indian people of our last land holdings. We treasure our lands and desire to retain all the land possible in Indian ownership for many good reasons.

We respectfully request that this bill be put aside and not enacted for the following reasons:

This bill and its provisions are completely impracticable for the Secretary of the Interior already has authority to carry out the needed land programs for Indian tribes.

We make this statement because we are fully aware of all the complications involved in the vast difference between the needs of each individual tribe.

Each tribe has its different problems that must be specifically dealt with on a basis of the consent of the individuals involved. We believe that sections 1 and 2 of this bill violate the constitutional rights of individual landowners, for it would allow their land to be sold without their consent.

The tribes should be allowed to work out their own land programs and also work out a land use program to meet their special needs. We fear many of the provisions of this bill because we elected tribal leaders who work each day with these land problems realize the great mistakes the Congress has made in the past with legislation that was passed for the benefit of the Indian people, but later proved unworkable.

We call your attention to the Allotment Acts of 1887 and 1889 that were the beginning of this problem we are dealing with today. The General Allotment Act created all these problems and is considered by all Indian experts as the worst legislation ever passed dealing with our Indian lands. This allotment act never applied to the majority of the southwest tribes, so you have no problem there because all lands are tribal. We hasten to point out that the southwest tribes are forging ahead in the economic fields while the allotted tribes are staggering from all the legal complications created by the General Allotment Act.

We also emphasize that this bill will have the same reverse effect as Public Law 83-280 has had on the overall Indian population, yet section 2 seeks to place certain lands in the hands of the State courts. We are opposed to this section because of the ill-treatment that Indians are receiving in certain States.

The mounting evidence of the denial of the basic constitutional rights of our Indian people in State courts in South Dakota, the brutal treatment given to Indian men in county and city jails, cause all Indians to rebel at the words of "State courts." The assaults on several Indian women in jail by police officers of the county and city government creates fear in all the hearts of Indian people. The complete lack of law and order on Nebraska reservations points out the real feelings in certain areas against Indian people, and we would not like to see our people thrown to the mercy of men whose sole desire is to mistreat Indian people and relieve Indians of their lands.

We say this of section 8 of this bill because if Congress so desires it can terminate all of the tribes at any time and our only choice would be to enter the courts of our land as a last ditch stand.

We cannot help but point out that the individual Indian who desires to take any step whatsoever to better himself is not included in any manner in this bill. In fact the individual has been completely ignored in this bill, as are his rights as a property owner.

We beg you to allow each tribe to formulate their own programs to meet the needs of their Indian people, and we sincerely urge that you give every consideration to the voice of the American Indian leaders because in the end we are going to find that only the Indian people themselves will be able to truly solve the problems they face, for we know and live this life each day solely for the benefit of the people we represent.

At this point I would like to submit something in the record. A question has arisen in our minds and is bothering many of the tribes. A question arises that some of the tribes have special legislation that affects their lands and their tribes individually. We are wondering whether or not this bill will supersede those acts and if this bill will supersede these tribes certainly will be placed in jeopardy since they

are so used to their own legislation and carrying out their own programs.

It is a question for the committee itself.

We urge that this bill not be enacted for the good of all people involved and we urge that Congress recognize the right of the individual along with the tribes' rights. We make this appeal to you because we believe in the true democratic principle of consent of the governed, and we believe that Congress should allow us Indians the right to control our own destiny and truly enjoy the right to walk through life in dignity before the eyes of all men.

We emphasize the fact that when you allow Indian people to be separated from their lands, in many cases these lands represent the only income the Indian people have. When they sell their last assets they will become a full burden upon the Federal, State, and county governments.

We point this out because the Indian people will not react to some of the provisions contained in this bill. We know that they will not react to the due notice clause that is proposed in the bill because a majority of them will not understand the implications involved in such a notice.

We point out that all the individual Indians will not be protected in several instances under the provisions of this bill and we urge that you fully protect their rights in all instances under any circumstances.

We call your attention to the fact that the provision for the adoption of a land program under the provisions of this bill completely ignores the fact that most tribes have duly elected tribal council members, who represent the Indian people the same as each of you represents your constituents. You should not choose to ignore these tribal governing bodies that were duly constituted under the IRA Act of 1934.

We are completely opposed to any provision that seeks to "terminate" Indian people or serves as a reminder to Congress that someone wishes to keep the spark of "termination" alive in Congress. The platforms of both parties stated that no termination would be forced upon the tribes. We shall resist all efforts toward termination unless a tribe chooses to terminate at its own will.

In closing, we wish to place before you our real problem, that of having a free choice of what we are to be, as citizens.

We truly believe that the consistent movement to change Indians into something they are not should be stopped immediately and we should have the full right to retain our cultural traditions without being harassed.

In other words, the United States of America is a country of freedom and we Indians want the choice of how we can best serve the cause of freedom and yet be able to be as Indians, as we may wish.

Thank you for your kind attention and for this opportunity to express our opinion before this great congressional body.

Senator CHURCH. Senator Mechem? Any questions?

Senator MECHEM. No questions.

Senator CHURCH. We will continue these hearings tomorrow morning at 10 o'clock. The other witnesses who have asked to be heard have indicated a preference to be heard tomorrow. We will hear them at that time.

If there is anyone here who cannot be present tomorrow and who wants to testify and has come to testify we will be glad to hear that person now before closing the hearing for today.

Is there anyone in that category?

(There was no response.)

Senator CHURCH. Very well, we will recess the hearings now until 10 o'clock tomorrow morning when the balance of the witnesses will be heard.

(Whereupon, at 12:10 p.m. the hearings were recessed until April 30, 1963, at 10 a.m.)

There is a strong hope of securing the present testimony and will be able to testify to the fact that we will be able to hear that the testimony is in that category.

(There is no response.)

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INDIAN HEIRSHIP LAND PROBLEM

TUESDAY, APRIL 30, 1963

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

The subcommittee met, pursuant to recess, at 10:05 a.m., in room 3110, New Senate Office Building, Senator Frank Church presiding.

Present: Senators Church (presiding), Mechem, Simpson, McGovern, and Burdick.

Also present: James H. Gamble, professional staff member.

Senator Church. The subcommittee will be in order.

Is Mr. Alex Saluskin present? Mr. Saluskin is chairman of the Yakima Tribal Council and is accompanied by Watson Totus, Robert B. Jim, Eagle Seelatsee, and James B. Hovis, tribal attorney.

Will you please come forward and be seated, gentlemen?

The committee will be glad to hear you.

STATEMENT OF ALEX SALUSKIN, CHAIRMAN, YAKIMA TRIBAL COUNCIL; ACCOMPANIED BY WATSON TOTUS, ROBERT B. JIM, EAGLE SEELATSEE, AND JAMES B. HOVIS, TRIBAL ATTORNEY

Mr. SALUSKIN. My name is Alex Saluskin. I am chairman of the Yakima Tribal Council, a member of the Yakima tribal delegation. We are here today to testify on this bill as authorized by Resolution T. 77-63, passed by our tribal council.

I would like to thank you for allowing us to testify today. We have, as authorized by our resolution, considered yesterday's testimony. We have, by unanimous vote, approved all but point 4 of Mr. Sonosky's written statement. We also have unanimously approved points 2, 4, 5, and 6 of Mr. Cragun's written statement. We also unanimously approved the general tenor of Mr. Schifter's statement.

In order to save time I believe we will at this time ask our chairman of the land committee from the tribal council, Mr. Watson Totus, to proceed with the presentation of this oral statement.

STATEMENT OF WATSON TOTUS, VICE CHAIRMAN, YAKIMA TRIBAL COUNCIL

Mr. TOTUS. Thank you. My name is Watson Totus. I am a member of the Yakima delegation, vice chairman of the Yakima Tribal Council. I serve as chairman of the tribal council land committee. Since I have served in this capacity during most of the effective time of our Land Purchase Act perhaps I can be of benefit

to the committee in the experience that we have had. Unanimous approval, we have found that to require 100 percent of the owners to sign has handicapped an effectiveness of our Land Purchase Act and consolidation of our heirship interests. This requirement also handicaps timber sales, acquisitions of company tracts for proper land and timber management.

We are trying to do a job on our reservation since the effective date of our act less than 8 years. We have spent over \$3 million to acquire and consolidate heirship lands. We have acquired 232 tracts or an average of 80 acres per tract. This has been at the cost of \$13,554 per tract, an average of \$166 per acre. All in all we have added 18,541 acres to our land base in good effort in consolidation and land management.

However, our funds would not meet the needs even with the present restrictive consent requirement. We have applications in the amount of 181 tracts pending. This covers approximately 15,000 acres. It is estimated that even with that restrictive consent requirement of 100 percent that we have an immediate need for \$3 million to meet this demand. Since our tribal income, even if we discount all the worthwhile programs and the system, cannot meet this need, we must have loan funds immediately available to us. The revolving loan has not and cannot in the present condition meet this need.

This is the greatest need, more money on a loan for the purchase of this land.

Thank you.

Senator CHURCH. Thank you very much, Mr. Totus.

Mr. SALUSKIN. Our next witness will be Mr. Eagle Seelatsee, chairman of the credit loan committee of the tribal council and a member of the delegation for the Yakima Tribe.

STATEMENT OF EAGLE SEELATSEE

Mr. SEELATSEE. Mr. Chairman and members of the committee, my name is Eagle Seelatsee, delegate from the Yakima Reservation to attend this hearing. At home I serve as the chairman of the credit loan, extension, education and forest depression committee of the tribal council.

This is one of our greatest concerns among our people on the Yakima Indian Reservation in regard to congested, complicated land problems.

It has been my experience that where we have members who are landed that seem to make the best economic and social adjustment we are encouraging our people to retain their lands, we are encouraging our people to work in individual participation and consolidation under existing authority. We are also encouraging our people to make wills to provide for the distribution of their lands to reduce the heirship problem to the minimum. Where it is necessary, either through desire or need that our people sell their lands, we are trying to acquire same.

Mr. Chairman and members of the committee, you see we have authority under our Land Purchase Act to resell these lands to members. We have set up our own credit enterprise with our own funds. When we have our people trained through our scholarship program and other programs we would like to be in a position to sell them

lands. We wish to have first-class lands and adequate site units for them to purchase as they become trained to compete in aggressive agricultural industry.

Anything this committee can do toward promoting this end will be appreciated by me and my people.

I thank you.

Senator CHURCH. Thank you, Mr. Seelatsee.

Mr. SALUSKIN. We have our last speaker of this delegation and after this presentation by Robert B. Jim, secretary of the tribal council, our tribal attorney, James B. Hovis, will read a statement and also cover some of the points that probably we have considered during the hearing yesterday. We feel these will be pertinent in our presentation.

Senator CHURCH. Fine.

STATEMENT OF ROBERT B. JIM, SECRETARY, YAKIMA TRIBAL COUNCIL

Mr. JIM. Senator Church, gentlemen of the committee, and other fellow delegates representing the different nations here today. My name is Robert Jim, secretary of the Yakima tribal council. We have testified here last year on what they call S. 2899. Now, I think that first of all there is a definite improvement regarding the objections of the Indians on the whole that have been rewritten along with a system and along with a feeling of the subcommittee that is considering this today along the lines that in your statement, Mr. Church, when you reiterated time and time again that it was your interest to retain the Indian lands in trust status.

Now, I think that alone in my thinking is one of the most important factors that we have here. We feel that from our standpoint this is something that we do not come here entirely objecting to the bill, only to those provisions that we feel would tend to alienate these lands to the best of our ability. And also we bring along the recommendations that are written, we bring along our land committee chairman and others who have studied and feel that due to the economic situation of the Indians, and especially in our area at this time, we have a problem that is blown up, so to speak, because of the lack of money, and I think that because in our reservation we are declared a depressed area Mr. Chairman, I cannot recommend all of the passages that I have heard yesterday. There were some very distinguished speakers that have the Indian interests at heart and the recommendations they have made.

Mr. Saluskin has said we will go along because we feel there is a definite problem. But to start with, one of the things that does come to my mind is that there is a problem and we think that in a way there is a problem, in a way there is another as some tribes have expressed that rather than encourage legislation, no legislation is better than none. So this is the case that we are trying to object to, the section that would hurt us.

When they had a hearing last year it was reiterated again and again that with the present authorities that the Bureau of Indian Affairs has there was actually no problem as far as management of the lands and the disposition with the present authorities the Bureau has today. Now, that is one.

Section 1(b), I think that this is one of the points that has been objected to most of all. In that section there is unrestricted ownership in some of these lands, that are protected by what you say they must by due process of law, but on the other hand, the Indian is not protected by due process; even though he is a citizen of the United States and protected by the Constitution there is not a definite restriction in this bill to protect that one owner shall, as we recommend that 25 percent at least shall be the objective part to stop the sale of any lands.

Now, this, of course, could be gone a little further on different legal aspects of it, but I think that when we go to the unrestricted status there are many things that can be brought up. Each situation on each reservation, it seems to me, is a little different. In our area we have the consideration in our land-buying program that our Indians are not up to par, so to speak, in the educational field of the rest of the area.

They are not up to par in their health facilities on the Indian reservations yet. These are some of our long-range programs and also it has been promised to us by our treaty.

Also, I think that one of the points that should be brought out some place along here is that even though you consider the Indian heirship problem, when he owns a small heirship interest that we should consider what it will be worth in the future. Looking over some of the claims that we have settled, we have been getting something like 50 cents an acre for land that is now worth maybe \$500 or more an acre.

This should be taken into consideration when you talk about this heirship problem. This should be taken in the future when there will be, as they said, in 1970, a double population, and the year 2000 doubled again, what will land be worth then?

Would this bill force the Indians to sell now at a lower price when it will be worth a thousand times more in the future?

Now, one of the facts we have and that must be considered on our reservation in talking to the land committee, we have very few original heirs that are living alone on their allotments. I think there is a figure of something like 80 or 90 percent of the families living today are living on undivided heirship lands. So when you consider giving the power to partition or to sell or to divide I think this is one thing that must be taken into consideration because of the very few living heirs that we have today.

On section 2(b) one of the facts that I can't find in the bill is that it gives a coowner belonging to the tribe the preferential right to buy in certain situations.

But it does not yet spell out any place where the Indian coowner can qualify for the money if he has the other land to mortgage in this regard. In section 5, I think I spoke on that regarding the request of the restrictions regarding the Indian owners and the preferential right to buy, but I thought in my thinking that when this section could be rewritten a little to give the tribe the preferential right to buy because originally, as in our reservation, this is treaty land which must or should revert back to the tribe because it has been alienated by the 1887 Allotment Act and the distributing heirs have caused the problem, especially in the unrestricted area of the inheritance.

Also section 6, we feel that the conditions that the tribes must look to other sources. First, I think we can only reiterate the question that can be buy trust lands with moneys that are not in trust? I think this is one of the various questions.

Also, we would object again to the section where it requires us to come before the general council or the majority of the tribe which I feel, in my thinking, would create more problems because it will encourage those areas that are on relocation or on employment, or out for others to make the livelihood, encourage those to come back and work toward getting on a priority for selling and encourage your own Federal programs in this regard.

We of the Yakima Nation, I think, it has been spoken already, that we have a plan already in progress which we hope will not be jeopardized by this bill and could be excepted from it. We feel that this in many instances, many tribes should not be covered by a general law. We feel ourselves is a problem that we can solve best and we feel that in our area that loaned money to use is one of the things that is the most important factor here and we have proven this by putting over \$3 million into a land purchase program and in trying to solve the heirship in that way.

Also from the section 6(c), the mortgage of the lands in regard to Public Law 450, I think this is something that should be considered.

Mostly in regard to the section 8 where I think at one time or another that it has been said that the Congress can terminate the tribes whenever it so feels. In this regard I do not believe that such a treaty as ours which is ratified by the Senate and signed by the President, I believe it is a two-sided deal and in regards to termination, I think this section should be struck because I do not believe we can be terminated and I think that we would put up quite a fight in this regard and it should be eliminated.

Section 10, I think, will be reiterated in our statement by our attorney that we have the program and to allow us less money than is required would be, so to speak, that would be taking a switch to kill a bear.

I think, Mr. Chairman, that that concludes my statement, but we have problems facing us in regards to this termination when we have 447 tracts in our area that heirs have interest in. This could hurt us in this regard and I think that we of the Yakima Tribe are very much concerned and hope that you take into view our considerations in regard to rewording some of the sections of this bill and we believe that we are very much interested and thank you very much for your consideration.

Senator CHURCH. Thank you very much, Mr. Jim, and you may be assured that these hearings, as the hearings last year, as the hearings the year before, on this problem will be utilized by the committee to make further changes in the legislation.

We are seeking to effect it in the best possible way.

Now, Mr. Hovis.

STATEMENT OF JAMES B. HOVIS, YAKIMA TRIBAL ATTORNEY

Mr. Hovis. Senator Church, members of the committee. In the effort to conserve your time I would like at this time to request that the written statement of the Yakima Tribe be inserted in the record and perhaps I can summarize it somewhat.

Senator CHURCH. Without objection that will be done.
(The statement referred to follows:)

STATEMENT OF YAKIMA TRIBE

The confederated tribes and bands of the Yakima Indian Nation does submit the following statement in regard to S. 1049.

GENERAL STATEMENT

The Yakima Tribe of Indians of the State of Washington is very interested in the maintenance of its Indian land base. It is concerned in that regard that the Indian people retain for themselves the lands which will give them a basis for pride and for economic betterment. It is in this general tenor that they make the specific objections and recommendations on S. 1049. The Yakima Tribe is interested in the economic betterment of its non-Indian neighbors as well, and, therefore, is interested in the productive use of the lands now retained by the Yakima Tribe and individual Indians. The economic conditions of agriculture require at the present time that farms be adequately financed, adequately equipped, and that the farm unit itself be large enough for economic production. It is a well known fact that in the United States of America that the capital investment per employee in agriculture and on the farms is from two to three times as large as in retail or industrial pursuits. Capital, both for operation and improvement is agriculture's No. 1 concern. This is a concern that is shared by both agriculture and the Congress of the United States. More and more the average farmer is desiring either to rent lands or to obtain same on long-term purchase plans. Because of the tremendous amounts of money needed for equipment, seed, fertilizer and animals, it is impossible for the average farmer to have large amounts of money tied up in capital improvements relating to real estate. For example, in the State of Washington the average value of the farm within the State is \$44,075, at a per acre cost of \$148.74. The average size of the farm in the State of Washington is 362.9 acres. In Yakima County, where the bulk of the agricultural lands of the Yakima Tribe are located, the average farm investment in land is \$40,620, at a per acre cost of \$312.94. The average size of the farm in Yakima County is 167.2 acres. The cost of equipment, seed and fertilizer to operate these farms would exceed these amounts. From the foregoing facts it is believed that your committee and Congress can see that providing lands for rental by the average farmer is in the public interest for, otherwise, how can the average farmer have such an immense capital investment in lands and still be able to provide capital for equipment and operation on the acreage that would make his unit economically feasible. This is also a concern of the Yakima Tribe, where other than Indians are farming their units. It is believed by this delegation that the interests of the Indians and of the people at large is served by maintaining adequate units for rent by those who wish to become or who are engaged in agricultural pursuits. Toward this end, and for sometime, the Yakima Tribe has been purchasing lands which have been for sale by members of the tribe—forming these tracts into larger farm units for operation by Indians and others. The Yakima Tribe has in the course of the last 5 years spent approximately \$3 million toward this end. This is a program that we wish to continue and a program that we feel serves the members of the Yakima Tribe and the neighboring public.

MORATORIUM

We certainly would agree with a proposition that gives owners and the tribe preferential right to purchase. However, to have a right to purchase something without having funds available is not a right at all. While we note that the present intention is to increase the revolving loan fund from \$20 million to \$55 million we feel that the reports of this committee would indicate most clearly that this amount of money will not meet the present need of those wishing to sell all or a portion of their lands. We would, therefore, suggest that an additional section be added which would provide that where a tribe wishes to purchase the lands and has made application for a loan, and where there are not funds available in the loan fund, there be no sales within that reservation until such time as there are funds available. We feel that, conservatively, to take care of the need, that the loan fund should be at least \$200 million. We know

the problem that Congress will have appropriating such funds and, therefore, would suggest that this moratorium provision be inserted so that lands will not pass from the Indian land base or become unavailable for the average farmer because funds are not available.

SPECIFIC REFERENCE TO SECTIONS OF THE BILL

Section 1: While we understand the need to clear up the heirship problem, we would suggest that section 1(a) be amended to provide that if 25 percent of the owners by value object to the sale of the lands, in writing, that the lands not be sold. We realize that this is allowing a minority to control sale and partition, but we believe that this would correct the Bill and keep demand more in line with the facilities of the tribes and the Federal Government to provide funds for the purchase of such lands by the Indian owners and the tribes involved. Partition does not settle the question. While partition will make sure that there are fewer interests in each allotment, it will replace the multiple heirship problem with the problem of many small allotments which cannot be dealt with as a group or economically farmed. Today farmers find even an 80-acre allotment too small. Farm units must continue to be larger, not smaller, and any legislation which causes us to deal with smaller units and individual ownership as contrasted with tenants in common will increase the administration problem, not decrease the existing problem.

Section 2: We would agree with the provision that would provide that restricted interests when sold to an Indian or tribe remains in trust status. This is a provision that will more adequately allow these lands, their rental and ownership to be adequately managed. Trying to deal with lands in different status has proven to be unworkable.

Section 3: We would agree that this bill should not remove any exemption from taxation or interfere with the reservation of any mineral rights that now exist. To do so would be an interference with a contract right.

Section 4: We would agree that to allow the Secretary or his representative to represent the interests set forth therein is a more expeditious manner with which to handle this matter. It would not be necessary to set up a guardianship to pursue any partition or sale. This would represent an economic savings to those involved.

Section 5: We would agree that the change requiring actual notice by letter, rather than by publication, is a good change. We generally agree as to the priority of any owner or the tribe to purchase the land, but would like to point out that this right is not a right at all unless adequate funds are provided so that said owner or tribe is able to exercise this preference. We believe that the provision providing for title to be taken in trust or restricted status when such purchases are made is a good one, as it allows the lands to be adequately managed. We further call your attention to our previous request for a moratorium if funds are not available.

Section 6: We would agree with the general provision which would provide for loans to be made to owners or the tribe so as to enable them to exercise their preference. We do object to the portion of the bill which would make the tribe look to other sources first, because authority for them so to do is not now available. We would object also to the portion of the section that says that the loan will not be made if there are other moneys available. To so provide would require that the tribe would not have funds available for other programs and enable the Government to control all other programs on every reservation where the tribe has a wish to acquire land. We believe that loans should not be so restricted. Further, since the Yakima Tribe has an existing approved land purchase program, we would request that an exception be made so that where there are existing approved land purchase programs, they need not be submitted for approval to the general council or the Secretary of the Interior. This will improve the administration of the program without the necessity of repetitious tribal and governmental action. The term of the loan should be increased to 40 or 50 years, particularly in the case of timberland purchases.

Section 7: We believe that the tribe should have authority to dispose of tribal lands pursuant to a tribal land program. This authority to dispose of lands should fit into a tribal purpose. We would suggest that the section be changed to require the sale to be in the best interests of both the owners and the tribe.

Section 8: We believe that the Secretary should not be so restricted so that he could not approve a plan that would interfere with termination of Federal

responsibility. In many circumstances it might well be that a long-term plan would be to the best interest of the Indians involved and of the people at large. The Yakima Tribe continues its objection to termination of Federal supervision until such time as the human resources are so developed that such termination can take place without economic and human waste.

Section 9: We would request that our Land Purchase Act (69 Stat. 392; 25 U.S.C. 608) be expressly excluded from the provisions of this act so that there will not be a question of it being impliedly repealed. The Yakima Land Purchase Act has proven to be workable and worthwhile by the test of performance.

Section 10: We approve the setting up of funds for the purchase of these lands, but would request that the loan fund should be increased to a much larger figure, it being our considered judgment that to take care of the need of a loan fund in the neighborhood of \$200 million should be available. Since your reports and investigation indicate that from 25 percent to 40 percent of the Indian people either through desire or through necessity wish to sell all or a portion of their lands, such a low figure in the increase of the revolving loan fund is unrealistic. We would, from these figures, estimate the need of land purchase funds, on the Yakima Reservation alone, to be in the neighborhood of \$30 million. Our income, even with the discontinuation of all other necessary functions and programs, can not meet this demand.

Section 11: We have no present objection to this provision as written.

Section 12: We have no present objection to this provision as written.

Section 13: While we have no present objection to this provision as written, we feel it will increase demand for sale far beyond the facilities available to satisfy this demand.

Section 14: While we have no present objection to this provision as written, we feel it will increase demand for sale beyond the facilities available to satisfy this demand.

TRIBAL ACTION

The Yakima Tribal Council has unanimously taken the following action on this bill. By resolution they have instructed this delegation to do as follows: "To present testimony on S. 1049, a bill introduced by Senator Church and relating to the Indian heirship land problem on April 29 and 30, 1963, at the New Senate Office Building and request a moratorium amendment and percentage amendment thereto."

Mr. SALUSKIN. Gentlemen, I think this committee's work in this regard has been a fine thing and I also have noticed throughout the hearings yesterday a cooperation from the Indian people as well, and I think with the tremendous problem that this heirship problem is I think we will have to work together and I know the Indian folks have tremendous fear in regard to any land sale bill and I am pleased to see that their cooperation is as good as it is and they are trying their very best to try to reach some understanding in regard to this matter.

Senator CHURCH. I think that is certainly true of the Yakimas you represent this morning and it is true of the several Indian spokesmen and the Indian lawyers yesterday. We are all striving to come up with a constructive bill that would help to solve the problem which, without this effort, continues to get worse each year. We appreciate the attitude that has been shown by many of the witnesses who have appeared before us, very much, and that includes the Yakimas, I might say.

Mr. Hovis. Thank you very much.

As brought out by the statements of other delegates, the Yakimas have a big interest in wanting to retain their Indian land base, as I think most Indian tribes do, but we think of this matter not only for the Indians themselves but also for the Indian and non-Indian farmers who rent lands from Indians.

I think it is a pretty well known fact that in the United States of America the capital investment in agricultural industry runs from two to three times what it runs in other industry and retail trade for an employee. Agriculture is using a tremendous amount of capital and we feel that this is agriculture's No. 1 need and, secondly, agricultural's No. 1 need to exist in the existing economy is to have bigger tracts of land.

Therefore, we feel that we serve our area very much with our consolidation program of putting together larger tracts of land which are available for rent because if Mr. Average Farmer is to go about and to put his capital investment into land he does not have enough money to buy the animals, the feed, and the fertilizer and the seed and the vast machinery expenditure that it takes to make a farm an economic unit.

For example, in one of our bordering counties, not within our reservation, the average size of the farm, and this is dry dirt farming, the average size of the farm is 2,000 acres and it takes you about 3,000 or 3,500 acres of land before you get away from being a marginal producer. Now, if you have a lot of money tied up in capital in these farms and if you don't have land for rent it makes it pretty tough for Mr. Average Farmer.

Now, those of you who are from the West, this has always been, we have always been public land areas and I think the part of this bill where you are trying to see that these lands get consolidated into bigger tracts and into the hands of tribes for rental purposes and perhaps for sale later to the Indian people is a very good thing toward the economy of the agricultural region.

As pointed out, in the course of the last 5 years—8 years—we have spent approximately \$3 million acquiring and consolidating lands.

Right now we have a backlog and would take an immediate need of another \$3 million to take care of just what we have on hand, people wishing to sell right now, wishing to sell to the tribe.

Now, this is where a hundred percent of the people are agreeing to sell. You can see the tremendous amounts of money that this land program is going to take, the tremendous amounts of money. I think your reports, the return on your investigation pointed out there was between 20 and 40 percent of the people, Indian people wanted to sell all or a portion of their land.

We just do not think that the \$55 million figure is anywhere realistic. It is only an additional \$35 million. We do not think this is realistic according to what your demand is going to be. I think last time when we were talking to the Bureau they estimated \$200 million to probably generally take care of the program within the next decade and we were of the opinion it would probably take closer to \$300 million.

This is the thing that gives us the biggest concern—if I have a right to buy the first Rolls Royce off the line or the first Boeing 707 off the line that comes out this year, that preferential right doesn't do me any good if I don't have the money, and we are tremendously concerned that these lands will pass from consolidation and from the Indian land base because of the unavailability of funds to purchase them.

It is happening now and we would request, therefore, that in the tribal interest and for the betterment of the Indian people and for also retaining these lands as I say for rent in larger units, for the agricul-

tural community, that there be a moratorium section in this bill that would provide a moratorium against land sales if there were not funds in the revolving loan fund for a loan. In other words, if the tribe was making an effort to borrow money to purchase these lands and it was economically feasible that if there was not enough money in there, appropriation was not there, that there be a moratorium against the sale until such funds were available.

Now, Mr. Sonosky yesterday in his point No. 1, the amendment he produces in his written statement under item No. 1, would accomplish this and we are all in favor of it.

The second problem that we have is that we think that perhaps not, but with the notice provisions and everything else we think that Interior will have a tremendous load placed on it and we think that the U.S. Government will have a financial load placed on them. Of course, it will be reimbursed for the money it puts out for the lands, but right now it will be an immediate appropriation, and we do not think that Interior with its present staff—and we would suggest it be increased—Interior with its present staff, or Congress with its present problems as far as expenditure is concerned, is in a position to take care of everyone all at once. We would therefore suggest as a matter of priority, that a provision be inserted into the act that where, even where you have 50 percent of the people who have signed up to sell that if 25 percent of the people object in writing to the sale that that sale be deferred until such time as the sales where there are no objections are taken care of.

We realize that this is allowing the minority interests to more or less control in a particular point of view but you are going to have to have some kind of priority in this matter anyway because of administration problems and also fund problems.

We do not think that partition, speaking about partition, settles the question whatsoever. Now, people cannot get along with 80 acres, a farmer who tries to farm 80 acres and irrigating ground is just taking the slow way to bankruptcy, and unless he has an outside job where he can support his farm, at least in our area.

Now, if we divide this up into 20-, 40-, 60-acre units, I do not anticipate that you are going to be getting economic production from these lands that it takes to make an economic farm or it takes to make the production in your area, and we feel that partition, dividing these things up into smaller units is creating more problems because you have more interests to deal with and it is even worse than the tenant in common situation.

Senator CHURCH. I think we take care of that, Mr. Hovis, by stipulating that there will be a discretionary review of proposed sales by the Secretary and that he keep the interests of the owners and the Indian community in mind. If that would entail reducing the slices to 10 or 15 acres, he would recognize it would not be in the interests of either the owners or the Indian community and would therefore select a different alternative. That is why we have tried to provide this element of discretion to take care of this very problem.

Mr. HOVIS. Thank you, Mr. Chairman, because I do think that this—we are just pointing out some of the things that we generally see in our area as to what is the best productive use of the land, how does it help the people? I am not being specifically critical of portions of the bill.

In addition to our written statement in regard to section 3 we, of course, agree that any existing exemption from taxation should remain. However, we would suggest the striking of the word "vested" so that it would avoid any misunderstanding in regard thereto.

Senator SIMPSON. Is that on line 19?

Mr. HOVIS. Yes.

In regard to section 4, we believe that allowing the superintendent to deal with minors interest is a good thing because it cuts out the guardianships and particularly when you are dealing with a small minority interest it is not very economic to have to have people go out and obtain a guardian to take care of a small interest in these tribes where this minor is.

Mr. Sonosky said something about parents having the right yesterday. I would suggest that perhaps we could correct that by adding the provision in there that the superintendent should be instructed to consult with and obtain the parent's consent or at least to consult with them in that regard to remove his objection in that way.

We are particularly, Mr. Chairman and members of the committee, wholeheartedly in accord with the statements made yesterday by the other people testifying that we would like to tie tribal interests into this matter because to allow key tracts to pass from tribal ownership is not in the best interests of the tribes and it is most detrimental to any successful management of either the lands, timbers or grazing units and we think this is a very important provision of the bill and I think one that the committee will wish to give quite a bit of consideration to.

Yesterday the question was brought up by one of the members of the committee as to whether this act would include the right of the tribe to, by a 50-percent vote, to sell out all of the tribal interests, the tribal land. I know it is not the intention of the committee, I think the question is a good one and I think it is something you should have your counsel look at very thoroughly because under section 7 it gives the tribe the right to encumber or sell any land and also if you will notice in section 12 of the act it defines owner and owners to include the tribe, band, or group. So, while I think the intent of Congress and intent of this committee certainly is that it does not cover the situation. The courts will rule where there is plain meaning that they will not be looking to the history of the act and there might be a problem that the court would misconstrue the intention of this committee and hold that it would refer to the situation that was discussed yesterday and I think it should be given some consideration.

Also, one other additional thing. One other thing I think should be considered very carefully by counsel for the committee, under section 2 you attempt to confer jurisdiction on State courts. I call to your attention that in the State of Washington, under article 26 of our State constitution, it is expressly in there that the Federal Government shall have exclusive jurisdiction over Indian lands and this is in our State constitution and since we came into the Union under the same enabling act as Montana and South and North Dakota, I believe that there are similar provisions in their State constitutions as well, so that it might not be possible, you see, even if Congress wished to so do, as a legal matter, to transfer jurisdiction to the State courts by this act, and it is something that should be given a very careful look.

I do not think it is possible myself, but something that your counsel for your committee should be looking at very closely.

This concludes my statement, Mr. Chairman. Thank you very much.

Senator CHURCH. Thank you, Mr. Hovis.

Are there any questions, Senator Burdick?

Senator BURDICK. No.

Senator CHURCH. Senator Simpson?

Senator SIMPSON. Mr. Saluskin being chairman of this group, I just wanted to call your attention to your general statement.

On page 4 at the top under section 9 you refer to your land purchase act, statutory enactment, which you say has proven to be workable and worthwhile. Then on page 3 you say:

We believe that the tribe should have authority to dispose of tribal lands pursuant to a tribal program.

Do you have reference to that statutory program or to another? I don't know who is going to answer that. Perhaps Mr. Hovis?

Mr. HOVIS. Yes, Senator Simpson.

We have a land purchase act, and the citation is here. Of course, since it has proved to be very workable—we need some amendments to it—but in the main I believe it allows us to sell, retain, and then resell to our individual members, and we would like to retain the effectiveness of this act and we would like to express it in your act that it is not overruled.

Senator SIMPSON. Do you have any misgiving about that? I doubt that this act would even by implication repeal the Yakima Tribal Land Act. Are you not in accord with that?

Mr. HOVIS. No, I am not in accord with that. It is dealing with a general subject and the Yakima Act is with a specific subject. This is true, but since this act is more all encompassing I think there would be a question and I am particularly interested, Senator, in the fact that no matter what the courts do about it, I am particularly interested that there be no question in the mind of the Interior.

Senator SIMPSON. How would you affect that, by specific inclusion?

Mr. HOVIS. Yes.

Senator CHURCH. Since there are a number of tribes that have special legislation and a great many that have none, I think that we could clarify the point.

Mr. HOVIS. Either in the report—

Senator CHURCH. By a general reference of some kind we could clarify the point. I should think there would be no difficulty because I do not believe there is going to be any conflict between this and special laws. In a case of conflict there might be. I do not anticipate we will have this problem. In any case we can direct some attention to it.

Mr. HOVIS. Thank you. We are more worried that Interior may feel like it is excluded and the courts might.

In answer to your question, Senator, in furtherance to your question we do have under this act an established land-purchase program with priorities for purchase if it has been approved by the Secretary of the Interior.

Senator CHURCH. We tried to deal with this in section 9 which appears on page 8 of the bill, which reads:

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

We are attempting to deal with this problem. Now, whether we can improve on this language is another question, but this is what is now included in the bill and its purpose is to avoid these conflicts with special legislation.

Mr. SALUSKIN. Mr. Senator, I would like to place on the record the number of the Yakima Act, approved July 28, 1955, 69 Stat. 393.

Senator SIMPSON. 392, is it not?

Mr. SALUSKIN. 393. This act was originally recommended by the general counsel of our Yakima Tribe and then in 1953, January the 4th I believe, general counsel passed a resolution that some attempt or some program should be initiated by the tribe to try to stop the alienation of their trust lands and try to save and build back the land base for the Yakima Nation for the future needs of our people as it has been set up by the treaty of 1855.

The tribe felt that unless some efforts were made to acquire these heirship lands then the land base, under the present irrigation system that we have there, under this irrigation system the approximate acreage is about 130,000 of irrigable lands. Now, by watching the alienation program of these trust lands it becomes a checkerboard area and we believe that we have quite a pressure coming in either to the Secretary's office or to Congress, to activate this program of alienating the lands because of the population impact, common to the Northwest and the Yakima Valley.

It is probably one of the best agricultural areas in the State of Washington irrigable land and we believe that unless we have some safeguards set up by Congress to further our protection in regard to much legislation that has been passed and also the policies that have been changed during different administrations, so, therefore, it makes us quite concerned to realize that maybe one administration will just come right out with a policy that would open up the doors and say, well, you shall follow this policy and you shall start to sell land.

This would destroy any program we have. For this reason we as a tribe and the delegates would like to ask Congress rather than to have a policy of philosophy of each administration and then the change of this program, it keeps the tribes sort of shook up all the time.

The Congress should have its policy that it would guarantee to these tribes that are going to use their moneys and borrow tribal moneys, that there should be protection to develop their resources with. That is all we would like to point out. Of course, when we start to invest over \$3 million now, they are asking we should invest another \$3 million, we will therefore have \$6 million more or less invested into land base.

Then we will be faced with a termination and that is the thing that starts to worry us now more than anything else, so whether or not the other tribes are going to look favorable to asking Congress for these loans or have them use their windfall moneys under recovery from the Claims Commission, these are the problems that I believe each tribe in the entire United States is worried about.

Senator CHURCH. As you know, the bill that we are now dealing with has nothing at all to do with the termination matter. There is a reference that I think can be stricken entirely from the bill because the subject matter of the bill is wholly apart from the question of termination and I think the suggestion that you have made and others have made that this simply be stricken from the bill is a very good suggestion and the committee should take this into serious account.

Are there other questions?

(No response.)

Senator CHURCH. Thank you very much, gentlemen, for your testimony this morning, we certainly do appreciate it.

Mr. HOVIS. Thank you, sir.

Senator CHURCH. I would like to call Mrs. Eileen Miguel, who is chairman of the Agua Caliente Band in California.

**STATEMENT OF MRS. EILEEN MIGUEL, CHAIRMAN, AGUA CALIENTE
BAND OF MISSION INDIANS**

Mrs. MIGUEL. Mr. Chairman and members of the committee, my name is Mrs. Eileen Miguel and I am chairman of the Agua Caliente Tribal Council at Palm Springs, Calif.

Last year when we were here to testify on this heirship bill, this year our testimony is practically the same position as we had last year because we do not have—well, the heirship bill really is not too important to our particular tribe because we do not have an heirship problem on our reservation, but we are interested because we know that it is very important to the other Indians in the country and, of course, important to me as a woman, since current studies show that women of the country control most of the Nation's wealth, that they stand a chance to inherit the balance I am very much interested.

I would like to compliment you, Senator Church, for your efforts to straighten out, to try to straighten out this inheritance problem and want to also thank you for adopting some of the suggestions that were made by us last year. Our tribe favors the passage of the bill but would suggest two things that I can think of, and that is a definite uniformity of standards for the inheritance examiners because in our particular tribe we are always, of course, having somebody down our neck because of the value of our properties and I think that we can have an inheritance problem if the inheritance examiners are not qualified to do this, and I know this to be true, because we have had instances that I testified on last year that have happened on our reservation because of this.

Secondly, I would think that if this bill goes through that maybe progress reports could be made from the Bureau of Indian Affairs to this committee, maybe annually. We do it for our tribe, so it doesn't just become law and end there.

Senator CHURCH. I think that is an excellent suggestion. I do not know of any way we can test the effectiveness of the law without some progress reports because, as you say, it sometimes happens that we pass a law that goes on to the statute books and is then forgotten and never employed by the people who were charged with administering the program.

Mrs. MIGUEL. I definitely think this should be done and I would like to thank you again for what you are trying to do.

Now Mr. Simpson will talk on more technical points.

Mr. Simpson.

Senator CHURCH. Thank you very much, Mrs. Miguel. We will be happy to hear from you, Mr. Simpson.

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

Mr. SIMPSON. Mr. Chairman and members of the committee, at the outset I have been requested to make something clear for the record.

Yesterday you will recall that testimony was given by a gentleman for whom I have considerable respect, Mr. Bob Burnette, the secretary, executive secretary of the National Congress of American Indians, and Mr. Burnette at that time declared that he represented the Indian tribes of this Nation.

Now both his organization and Mr. Burnette have done some very fine things and I do not mean to make any disparaging or derogatory comment, but I would at this time, since we do have some new members on this committee, as opposed to members who were here at the last hearing, point out that the organization does not represent the Agua Caliente Band of Mission Indians, nor do they represent the 51 other bands of Mission Indians I represent in southern California, nor do they represent the Zuni Indians of New Mexico that I represent on speaking on this question, nor the Fort Mojave in California, Arizona, and Nevada.

I think the record should make this clear so that the statements made would not be construed as an absolute voice of the American Indian.

Senator CHURCH. I appreciate that, too, for another reason, inasmuch as we have specific tribal endorsements of this legislation from tribes that do form a part of the National Congress of American Indians. They have separately taken a very different view than their executive secretary took yesterday.

Mr. SIMPSON. Mr. Chairman, I would also add a couple of other points that I think are significant. In the testimony yesterday it was strongly emphasized that this particular legislation, if carried out, would only be an embellishment of the General Allotment Act of 1887, which, after all, was the birth of the problem we now face.

I would suggest this is not really the case. Actually, if you consider the statement that was made yesterday you will recall that part of it was to the effect that the General Allotment Act had not been applicable to the Southwest tribes and consequently that you had them coming along pretty well.

Well, of course, the Mission Indian Act pertaining to so many in the Southwest is an amplification of the General Allotment Act and for this reason must be viewed as one that has application and I would suggest using the Agua Caliente as an illustration that we have done exceptionally well, and I feel that really this is a type of red herring that has nothing to do with the legislation before this committee.

I would also go along with what others have proposed with respect to section 8 when it was stated that this is a declaration of termination. I feel the deletion of this particular paragraph would avoid considerable embarrassment for this committee and others interested.

Now directing to my attention briefly to a few suggestions I would make to the committee, however. One is a repetition of one that we made last year. There are provisions in paragraphs 4, 5, 13, and 14 of the bill advocating that notification be given to the Indians or to the persons involved with an heirship problem.

I would simply suggest a tightening up or stronger definition of the type of notification. The bill specifies that it can be actual notice or by publication. What I have in mind is this, that even this hearing, as well as other hearings, and I know that Mr. Gamble, on behalf of this committee, has sought diligently to give notice, but the members of the Mission Indians did not receive notice with the exception of those who testified here.

I feel that this is an area where it might be improved if the bill specified that notice shall be given by certificated or registered mail delivered to addressee only, with a registered return receipt requested, thereby providing evidence of the fact that people have received notice, the designated or authorized people.

Senator SIMPSON. May I stop you right there? What would you do in the case he did not receive it, go on with the publication?

Mr. SIMPSON. Go on with the publication; yes, Senator Simpson.

Then turning your attention to section 5 on page 6 at line 12, there is a reference in this sentence, "All bids shall be rejected if no bid substantially equal to the appraised value is received."

I would suggest the deletion of the word "substantially" in order to avoid a problem. The word "substantially" is undefined. It is left somewhat uncertain for this reason, and I will explain what I mean.

If we look at line 22, speaking of the sales, where we more or less establish a floor and say that if it is not up to 75 percent of the appraised value the bid will not even be considered. It would seem to me that we would do better at line 12 to carry out the same idea that bids that are less than 75 percent of this, or 80, or whatever percentage you would want, but having suggested 75, I would add that adding the same suggestion at the top of page 6 where the word "substantially" is used at line 1, I also would suggest in connection with this point one other thing: In probate practice, at least in California, the appraised value in an estate is a matter of public knowledge. This is done because when you have a sale of property it is believed that people know, under the probate code there you may not sell the property for less than 90 percent of the appraised value, but if they know that the court will not be bothered by receipt of bids, that have absolutely no validity or no acceptability as far as their character.

With the Bureau of Indian Affairs in the Palms Springs area, we have had many supervised sales where a tremendous amount of work went into it, where time was required for publication of notices, all the information went out to interested or prospective purchasers, but the practical matter was that in some instances as high as 80 percent of the bids received, since the appraisals are considered to be highly classified material and nobody is to know this but the Bureau, since that information has been kept highly secret, nearly 80 percent in cer-

tain supervised sales have been thrown aside because the people had no idea.

Now, the important thing is that I have tried to interrogate some people respecting this, and they have informed me, and I trusted in good faith, that had they known the appraised value they would have been glad to go higher than they did.

They thought they were bidding a fair price, in some instances it was 75, so I would suggest that if it can be conveniently lodged in the bill that it should.

During our last hearing, Senator Church, you had requested, when I mentioned the word "appraisal" it should have the word "current" before it, that I put something in the language; with the permission of this committee I would like to try some language and send it to you respecting this point.

Senator CHURCH. We are going to hold the hearing record open for 10 days. If you can get it to us within that period it will be included in the record and we will have a good close look at it.

Mr. SIMPSON. I will do my very best.

Senator CHURCH. Fine.

(Subsequently the following communication was received:)

SIMPSON & DALEY,
Long Beach, Calif., May 3, 1963.

Re S. 1049.

HON. FRANK CHURCH,
U.S. Senator,
Senate Office Building, Washington, D.C.

DEAR SENATOR CHURCH: In accordance with the representation made by you at the recent hearings in Washington on S. 1049, that the record would be kept open for a period of 10 days for receipt of additional materials, I am now suggesting the following:

1. You will recall that it was my suggestion that bids for the purchase of property would be facilitated if the appraised value thereof were made public prior to receipt of the "sealed competitive bids." It is therefore my suggestion that on page 6 of S. 1049 on line 5 thereof, you strike the period following the word "old" and in lieu thereof, have a comma with the following language being added: " * * and the value of the land as determine by said appraisal shall be made public prior to the time of the request for sealed competitive bids."

2. The word "substantially" which appears on line 12 of page 5 of said bill should be deleted inasmuch as it is uncertain and vague, to make this consistent with the language set forth on line 22 of page 5, which refers to "not less than 75 per centum." I would suggest that the word "substantially" and the language following it on line 11 through line 13 be deleted so that the entire sentence would thereafter read: "All bids shall be rejected if the amount thereof is less than 75 per centum of the appraised value of the land." For the purpose of being completely consistent, I would also suggest that the phrase commencing on line 1 at the top of page 6, employing the words "substantially equal to the appraised value" be deleted and in lieu thereof have it read " * * must not be less than 75 per centum of the appraised value:."

3. In subparagraph (d) commencing on page 6 at line 6, I would suggest placing a period following the word "trust" at the end of line 7 and deleting the balance of the subparagraph through line 13 thereof. In this way you make the intent of the legislation clear without inviting litigation born from the confusion in the lack of definition which may be ascribed to the phrase "approved consolidation area." This is particularly true when speaking of reservations established with checkerboard sections.

4. It is my suggestion that the language "no plan shall be considered by the Secretary unless it has been first considered at a general meeting of tribal members called for that purpose," appearing on page 7 and commencing at line 20 thereof, should be rewritten to expand the consideration so that it would say " * * unless it has been first considered and acted upon favorably by a majority

vote of the duly authorized governing body of the tribe or in the absence of such a governing body, at a general meeting of tribal members called for that purpose."

Again on behalf of Mrs. Eileen Miguel, the tribal chairman for the Agua Caliente Band of Mission Indians, and myself, let us say thank you for the fairness and consideration you have extended at the hearings and in all other dealings with your office.

Respectfully submitted.

RAYMOND C. SIMPSON,

Tribal Attorney, Agua Caliente Band of Mission Indians.

Mr. SIMPSON. The next point I would like to suggest in terms of draftmanship is on page 6 of the bill, commencing at line 9.

I would suggest that all of the language through line 9, 9 through 13, be deleted and I will explain why.

Senator SIMPSON. All of it?

Mr. SIMPSON. All of it.

Senator SIMPSON. You mean starting with "reservation" or starting with "Title"?

Mr. SIMPSON. In fact, I rephrased my statement to say I would start with line 8, putting a period behind the word "trust" at line 7.

Senator CHURCH. What page is this?

Mr. SIMPSON. This is page 6, subparagraph (d), commencing at line 6, so that the entire paragraph would be one short sentence which would say:

Title to any land acquired by a tribe or an individual Indian pursuant to this Act, shall be taken in trust.

The balance of it goes on to explain unless the land is located outside the boundaries of a reservation or approved tribal consolidation area.

I understand the intention here, the problem I foresee is with what we describe as checkerboard reservations. For example, if you define "consolidated" to include a complete area beyond checkerboard this is one thing, but the Agua Caliente, for example, will have 1 square mile that will be tribal, next to it is a square mile that is non-Indian, then Indian, and so on, so that you look at 62,000 acres of land, you see 32,000 of it as tribal land, but square miles checkerboarded throughout.

The Fort Mojave have the same type of things. Other tribes I represent have the same thing. If you speak of this then you would have a very basic question, is this the consolidated area? Is the consolidated area the land that is actually contiguous, or if you have a piece over here and a piece over here 3 miles further separated by a couple of sections of non-Indian land, is this included?

I feel since the intent of this section, I believe, is to maintain the benefit to the Indian of the trust advantages, taxwise and otherwise, that by putting the period behind the word "trust" at line 7 and deleting the balance of the paragraph through line 13, the purpose of this committee would be accomplished.

I would suggest next that we concur with the reference made yesterday by Mr. Sonosky regarding the extension of the term of loans.

On page 7 at line 4 it speaks of a term not to exceed 30 years. As a practical matter, if you find that the loan involved is inconsistent, such as he used the reference of the time better and where you have given a license that goes beyond a period for development and it would be for, let us say, 35 years or 40 as it is in certain instances, in

this particular instance that the loan be consistent. It does not have to be 35 or 40 years, but the Secretary be authorized to actually approve a loan up to a period consistent with other programs carried on in the reservation.

I would suggest next on the same page, page 7 at line 20, that there may be some wisdom in deleting the word "master" as it appears before the word "plan."

Here the tribe is required to submit for approval to the Secretary of the Interior a master plan if he is to take advantage of this.

It is my suggestion that if you say "master plan" without defining it you are inviting trouble.

For example, in Palm Springs the Agua Caliente Indians had one section of valuable land called section 14. They determined they wanted to master plan it so they contacted Victor Gruen and Associates, a nationally recognized outfit who proceeded immediately to do this for \$15,000.

I don't believe you want that detailed a plan or you would preclude tribes without funds from taking advantage of this bill, therefore I would say a plan and that makes it vaguer but the vagueness has an advantage in that if it does seem justifiable for the economic development of the tribe then the Secretary is in a position to assist. I would suggest one other thing that has been mentioned here this morning which appears on line 22 where it states that no plan shall be considered by the Secretary unless it has first been considered at a general meeting of tribal members called for that purpose.

This, I feel, is quite inconsistent with the whole concept of representative government.

I feel that this can be retained but again the language could be modified where you have a business committee or tribal council handling the business, because some tribes that I represent, I know when they have a general council meeting of the entire tribe it becomes a momentous thing.

One tribe I represent has taken nearly 7 years just to get its constitution and bylaws approved and hasn't quite succeeded, although the Secretary of the Interior did approve them 7 years ago subject to the very thing you are asking take place here.

I would suggest just as you gentlemen represent your constituents that this could be done as an alternative. I do not think it should be stricken from this, in other words, it would be submitted but it must first be approved by the authorized governing body of the tribe, or in the absence of such a body, by a general meeting of tribal members.

This is, I feel, a way of causing this to be handled more expeditiously. These are the primary suggestions, Senator Church, that we would offer. We would underscore one thing: That we do feel that this bill, while not a panacea, is an excellent step in meeting a problem which is a challenge to the Indian people.

We would want to go on record for this reason as favoring its passage and what we have offered is simply in the form of amendment to try to assist in reaching the perfection we strive to obtain but so frequently fall short of.

Senator CHURCH. Thank you very much, Mr. Simpson.

Any questions? Senator Simpson?

Senator SIMPSON. As one lawyer to another and one Simpson to another, will you comment as to Mr. Hovis' remarks on section 2 at the top of page 3 regarding the State courts?

Mr. SIMPSON. I, of course, am not familiar with the things he referred to in the State of Washington. It would seem to me in addressing myself to it, however, that this is somewhat akin to Public Law 280 where you have a jurisdictional problem.

As I read 1049 it was my impression that if this were a problem that the bill itself takes care of it by providing for the handling of the same matter by the Federal courts so I would not consider it an impediment to the bill.

Senator SIMPSON. Thank you very much.

Senator CHURCH. Thank you very much, Mr. Simpson. Are there any other questions, Senator Burdick?

Senator BURDICK. No questions.

Senator CHURCH. We appreciate your testimony and are happy to have your general support and your recommendations will be given very serious consideration.

Mr. SIMPSON. Thank you, Senator Church.

Senator CHURCH. I think at this time it might be well for the record to show that the committee has received communications endorsing S. 1049 either in its present form or with some suggested changes from the Nez Percé Tribe and the Colville Tribe.

In addition, we have received testimony also indicating endorsement with suggested changes from attorneys representing the following tribes: The Oglala Sioux, Fort Belknap, Isleta, Laguna, the San Ildefonso, the Santa Clara, and the Ute Mountain Ute, from the Standing Rock, Rosebud, Lower Brule, Shoshone, and Fort Peck.

We have a general endorsement with Mr. Sonosky's proposed amendments which he testified to yesterday. We also have endorsements from the Indian Rights Association, and the American Association of Indian Affairs.

We have in addition received communications in opposition from the Kiowa, Comanche, Apache of Oklahoma, and the Shoshone Bannock, and from the Umatilla Tribe.

I also have a letter from Mr. W. F. Semple, writing in behalf of the Five Civilized Tribes of Oklahoma in which he points up certain particular problems that relate to legislation that heretofore has been passed governing these tribes. I should like to pass this letter on to the Bureau.

Mr. Sigler, would you take this letter and review it and advise the committee with respect to it? If certain language needs to be added to this bill or certain changes made in this bill in view of the problem that is posed by this letter, then this committee wants to know about that and wants your recommendations.

Mr. SIGLER. We will be very glad to, Senator.

Senator CHURCH. Thank you very much.

(The letter from Mr. Semple and the Department's response thereto are as follows:)

TULSA, OKLA., April 26, 1963.

Senator FRANK CHURCH,
Senate Office Building, Washington, D.C.

DEAR SENATOR: I thank you for your letter of April 9.

Confirming what I have heretofore said, I am absolutely certain that if the bill as presently drafted is enacted into law, it will seriously complicate legal problems in the Five Civilized Tribes and the Osage Tribe. It certainly could apply to Indians under the General Allotment Act, but not to the Five Civilized Tribes or the Osage Tribe. There are three distinct sets of laws, acts of Congress, and decisions that relate to Indians in Oklahoma, namely:

- (1) Laws and decisions relating exclusively to the Five Civilized Tribes;
- (2) Laws and decisions relating to the Osage Tribe; and
- (3) Those laws that apply generally to Indians under the General Allotment Act.

Title problems have been settled and will be settled on the basis of existing laws insofar as the Five Civilized Tribes and the Osage Tribe are concerned; but unless this bill excludes those tribes, judges and lawyers will be unable to determine what laws actually apply to the Indians of Oklahoma.

I find it impossible to be present at the meeting on the 29th and I would suggest that a general hearing on this bill be deferred to some future date, in order that the interested parties might be heard.

Yours very truly,

W. F. SEMPLE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 21, 1963.

HON. FRANK CHURCH,
U.S. Senate, Washington, D.C.

DEAR SENATOR CHURCH: In accordance with your request to Mr. Sigler during the recent hearing on the Indian heirship bill, S. 1049, we have considered Mr. Semple's letter dated April 26, 1963, to you and believe that the problem he poses warrants an amendment to the bill.

The problem is this: The act of August 4, 1947 (61 Stat. 731), provides that all restrictions on lands in Oklahoma belonging to members of the Five Civilized Tribes are removed at the death of the owner, except that no interest in land acquired by an Indian heir or devisee of one-half or more Indian blood may be conveyed without the approval of the county court, and sales of interests belonging to minors or incompetents must be made in accordance with the laws of the State.

Although the act says that all restrictions are removed at death, the act in fact imposes a restriction on conveyances without the approval of the county court. The question is whether this restriction makes the interest in the land a restricted interest within the meaning of the heirship bill. A second question is whether the authority of the county court to approve sales of such interests is inconsistent with the authority of the Secretary under the heirship bill, and therefore is superseded according to the language of section 9. Likewise, in the absence of an amendment, it is uncertain whether section 2 of the act of June 14, 1918 (40 Stat. 606), which provides for the partition in State courts of lands belonging to members of the Five Civilized Tribes, is continued in effect.

Similar questions arise as a result of the special procedures applicable to the Osages.

We believe that the answers to these questions should not be left in doubt, and that the following sentence should be added to section 9 of the heirship bill in order to make the situation clear: "This Act shall not repeal the laws heretofore enacted with respect to the procedure for disposing of or partitioning lands belonging to members of the Five Civilized Tribes of Oklahoma and the Osage Tribe, but this Act shall provide a supplemental and alternative authority and procedure for such disposition."

We believe that the general procedures provided by the heirship bill should be available for use in the case of the Five Civilized Tribes and the Osage Tribe, but that the general procedures should be an alternative to the special procedures and should not repeal the latter. This is the effect of the foregoing amendment. By making the general procedures applicable it will be possible for the Secretary of the Interior to provide a free service to the members of these tribes, through an administrative partition or sale, instead of requiring them to go through the local courts. The latter alternative, however, will still remain available to those who wish to use it.

If the Congress should prefer to make the existing special procedures the exclusive ones, that result can be accomplished by changing the second clause in the foregoing amendatory language, beginning with "but," to read "and this Act shall not apply to any interest in land which is subject to a restriction imposed by such laws."

Mr. Semple's letter to you is enclosed.

Sincerely yours,

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

Senator CHURCH. Now, our next witness, listed here, is Mr. Owen Panner, who is attorney for the Confederated Tribes of the Warm Springs Reservation of Oregon.

Mr. Panner.

Mr. PANNER. I would like to ask my delegation to join me at the table, if I might, Senator.

Senator CHURCH. Surely.

Mr. PANNER. I will introduce, first, the chairman of our tribal council, Mr. Ed Scott, who will introduce the other members and make the opening statement.

STATEMENT OF EDWIN SCOTT, CHAIRMAN, TRIBAL COUNCIL OF THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVA- TION OF OREGON

Mr. SCOTT. I have two other members; first I think, Mr. Owen Panner, the attorney, has already been introduced, on my left I have Vern Jackson, my secretary-treasurer; on my right we have Delbert Frank, a member of the council. My name is Edwin Scott. I am chairman of the tribal council of the Confederated Tribes of Oregon.

I would like to thank the committee for the opportunity to be able to present our views on this bill 1049.

I would also like to ask permission to file our statement for the record, sir.

Senator CHURCH. That will be done, Mr. Scott.

Without objection the statement is made a part of the record.

(The statement referred to follows:)

STATEMENT OF THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

INTRODUCTION

The Confederated Tribes of the Warm Springs Reservation of Oregon is a Federal corporation chartered under the Wheeler-Howard Act, and has an enrollment of approximately 1,635 members.

The governing body is the tribal council, which is composed of 11 members. Eight are elected every 3 years and three are the recognized chiefs in their district and are elected for life.

The Warm Springs Tribe has made a real effort to properly manage the tribal affairs and the tribal assets. Needless to say, the road is rough, but progress is being made.

HEIRSHIP SUBJECT GENERALLY

No doubt other subcommittees have in the past, at some time or another, worked longer on particular problems than this committee has on the Indian heirship study, but I'm sure none have worked any harder. Our tribal leaders have read with interest the detailed and comprehensive analysis of Indian opinions which this committee published in 1960. The hearings on the two previous bills were well attended by both witnesses and members of the subcommittee. The changes that have been made each time a new bill has been introduced indicate a sincere attempt to fairly reconcile the interests of the tribes and the individuals involved.

It isn't easy to find a solution which will help to alleviate the situation of those owning fractionated interests and at the same time will permit the tribes to retain their reservations intact. We trust that your patience will continue and that you understand our fear of new procedures which may result in the further erosion of Indian lands. The chance that more lands may be lost to Indian control causes high blood pressure, nausea, and dizziness.

The Warm Springs Tribe, like most, will find it difficult to enter into an extensive land purchasing program, both from the standpoint of the personnel required and from the standpoint of the money involved. At the time of the Klamath termination we had the opportunity to find out what problems are involved in the mass acquisition of undivided interests. Under the Klamath Termination Act all lands owned by members of the Klamath Tribe passed into fee patent status in August of 1958. Because of the numerous holdings of the Klamaths on the Warm Springs Reservation, the tribe spent almost \$80,000 in payments to the Klamaths for their undivided interests. In addition, many thousands of dollars were expended in having these interests appraised and in contracting and negotiating with the Klamaths. The tribe voted to spend this money, but it is not difficult to understand a certain reluctance on the part of the members in having to spend tribal funds to prevent the reservation from being checkerboarded. The peoples' willingness to do so indicates an intense desire to retain their reservation intact.

The Warm Springs people are willing to make further sacrifices to acquire the lands of people who want to sell, and all that they ask is the reasonable opportunity to do so. Using this premise as a starting point, let's take a look at some of the sections of S. 1049 which most concern us.

SUBSECTION 3 (a)

We are uncertain of the meaning of this particular subsection. Whether an exemption from taxation on lands constitutes a vested property right may be difficult to ascertain. Lands acquired by an individual Indian or an Indian tribe in trust should continue to hold the same status insofar as taxation is concerned as it held prior to the sale.

SECTION 5

The provision for notice and hearing contained in this section seems satisfactory. With respect to subsections (a), (b), and (c), we earnestly request modification so as to give the tribe the unqualified right to purchase the land for the appraised value if it desires. In the event the tribe does not wish to purchase at the appraised value, then the other owners who have undivided interests should have the right to purchase at the appraised value. If more than one such owner desires to purchase the land, then they should have the exclusive right to bid upon the land, with the sale being made to the highest bidder so long as the bid is above the appraised price. If neither the tribe nor any individual owner wishes to buy at the appraised value, then the land could be sold to the highest bidder who is a tribal member.

As had been pointed out each time consideration is given to the heirship problem, there are two factors to consider—one is the right of the individual to acquire a fair price for his lands, and the other is the right of the tribe to maintain the lands intact which were set aside by the treaties. The theory we have proposed which gives the tribe the first right to buy at the appraised value is not unique. Where public interest is involved, governmental entities and even private corporations are given the right to acquire lands from an individual for the fair market value through eminent domain procedures. The procedure we propose would permit the individual to obtain a fair price for his lands and would adequately protect the tribe.

Without such protection, the tribe, in many instances, will find it impossible to acquire the funds for such purchases. Section 6(b) restricts loans to the appraised value of the land plus the value of any other property the tribe may mortgage or pledge as security for the loan. This restriction is required to adequately secure the United States and assumes that the tribe will be able to utilize the land so as to obtain a reasonable return in order to repay the loan.

Throughout the United States, more and more, we are seeing sales of land where the purchase price bears no reasonable relationship to the income that may be expected from the property. Non-Indians are beginning to attach a romance value to real property just as the Indians have always done. Particularly with reference to recreational property, non-Indians are willing to pay a price which completely ignores the productive capacity of the land. While this situation would not occur on every piece of land sold, it would undoubtedly occur with enough frequency to cause the Tribe to lose key properties that are necessary in any intelligent tribal development program.

SUBSECTION 6 (a)

By restricting the loans to tribes who do not have funds available, the result will be to compel the tribe to utilize all of its assets for land purchases, thereby seriously detracting from other tribal programs and from the ability of the tribe to properly develop the lands so as to be able to repay the loan. So long as the loan does not exceed the appraised value of the land, it would seem reasonable to permit such loan irrespective of the availability of any other tribal funds. This would permit the continued programing of such other funds for necessary tribal ventures.

SUBSECTION 6 (c), (d), AND (e)

These subsections seem reasonable. However, in order to prevent the sale of lands before the tribes have available funds with which to purchase the land, the effective date of sections 1 to 9 should be 2 years after the appropriation is made in order to give the tribes adequate opportunity to draft and obtain approval of a master plan as provided in subsection 6(e).

SUBSECTION 13 (a)

As previously mentioned, this subsection should provide for an effective date 2 years after the loan appropriation has been made.

SUBSECTIONS 13 (b) AND 14 (a)

To permit a reasonable program of land sales and to prevent complete confusion, the Secretary should be given discretion as to the time of notification. The passage of the act will require substantial innovations in tribal planning and procedures and it seems apparent that great numbers of sales at the outset would make it impossible for the Indian owners and the tribes to protect themselves.

CONCLUSION

We thank the subcommittee for the opportunity to make this presentation, and we are most grateful for your studious efforts to take the fractions and make them into wholes. We have attempted to be constructive in our suggestions. We are convinced that the tribes must have the first opportunity to acquire the lands at fair market value. The tide of events over which the Indian people have had little control, seems to have made it inevitable that they must buy back the very lands set aside for them by treaty. Permitting these lands to go on the auction block and requiring the tribes to compete in unlimited bidding which funds which are limited by the appraised value of the lands would make it impossible to maintain the reservation land base.

Mr. SCOTT. Going along further, I note you people are awfully busy people and I think to save time I think I would like to ask our attorney to comment on the certain points of the bill.

Senator CHURCH. Fine.

STATEMENT OF OWEN PANNER, ATTORNEY, CONFEDERATED
TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

Mr. PANNER. On behalf of the tribal council at Warm Springs I want to say we never ceased to be amazed out there and to be appreciative of the fact that we do have an opportunity to appear before a committee such as this and express our views.

I know that many of the members of our tribe have commented that it is amazing to them that you gentlemen will take the time to actually listen to us present our views on this problem.

This particular subject with which we are dealing here today has been one that has concerned all of us for many years, gentlemen. We, at Warm Springs had a terrific problem when the Klamath Tribe was terminated. We discovered very shortly before the actual termination date that the interests that the Klamaths held in undivided lands on Warm Springs Reservation would become fee patent, so we embarked on a crash program to purchase these interests before the deadline and this experience gave us a little indication of what is involved with mass purchase of undivided interests. We were basically very successful, I might add, and I think that given the type of cooperation that we were given then by the Bureau, and with the incentives that we had then, we succeeded and could succeed again, so we are hopeful that this type of bill will be most successful for all the tribes because recognizing, as the other delegates here have, that the land base is necessary to any sort of an intelligent tribal program we realize that something must be done and we are most appreciative of the efforts of the committee and Mr. Gamble, and the patience that you have shown to get at this thing.

Like everyone else, I think we are hoping that maybe the third time around will be the charm.

With that opening, I would like to make just a very few comments on the substance of this bill.

I hope that these comments do not fall in what I would consider an insignificant category. We think they are basic. No. 1, we would certainly agree that in the determination as to whether this land is to be sold or not as provided in section 1, that the tribal interests be considered and I assume that is a simple oversight that can be corrected readily.

Section 3 concerns me a little because I am not sure what property has a vested property right in an exemption from taxation. I am not sure of that language. It may be that it has been used consistently, but I am concerned that there could be considerable argument by the Bureau of Internal Revenue over whether or not this particular land that is involved in any one transaction here was subject to an exemption from taxation which constitutes a vested property right. These taxation privileges that the Indians enjoy are mixed personal and property rights and I would much prefer specific language which said, for example, that the lands acquired by an individual Indian or an Indian tribe in trust should continue to hold the same status insofar as taxation is concerned as it held prior to the sale.

Senator CHURCH. Suppose that section 3(a) were simply revised to read, "If, with respect to any land transfer, pursuant to this Act, there is in existence an exemption from taxation," striking "which consti-

tutes a vested property right . . ." "such an exemption shall remain in force and effect until it terminates by virtue of its own limitations."

Mr. PANNER. The concern I have, we lawyers get concerned—

Senator CHURCH. I think the fewer words we throw in the better off we are.

Mr. PANNER. I would agree with that language.

Next, with respect to section No. 5, we believe, certainly, that the individuals who have an interest in these undivided lands have some rights and they have the right to sell it if they want to, and this is the basic thing that is involved here, but counterbalancing that right are the equal rights of the tribes and we would suggest that when any land, when notice has been given or with the question has been made as provided in subsections 5(a) that the tribe be given the absolute first right to purchase this land at the appraised value, or at fair market value, those two terms should be identical.

The reason for that is this. We are like the rest of the areas in the West undergoing quite a change in land speculations tied up with the sale of small tracts of land.

We have some beautiful sites on our Indian reservations, some sites where most of us would pay exorbitant prices for 5-, 10-, even 40-acre tracts without regard to what return that land might give to us.

I would say, conservatively, that a 40-acre tract on a beautiful spot on one of our rivers might very well sell for a price of \$2,000 or \$3,000 an acre which bears no relationship to the return that that land will give. By the same token in section 6 of the act, we have provided that the only basis for the tribe to borrow money with which to buy these lands is on the basis of appraised value.

In other words, we have a method of borrowing which is confined to appraised value and yet we are apt to be bidding on the open market on small tracts of land without any limitation of value.

Now, the argument here, of course, is that if you do this this takes away some of the rights of the individual to get the most possible price for their land.

Again, I think we have to balance these rights and it is not a new procedure to provide that a governmental entity may have the right to acquire at fair market value, and we certainly do not want any different situation than that.

We think that the individuals are entitled to fair market value.

Senator CHURCH. I want to say, if I may interrupt at this point, that last year we had difficulty with the provisions of the former bill where a forced sale is involved. The Justice Department made it clear that you cannot deprive an owner of an opportunity to get the best possible value the free market will bring without impairing basic constitutional rights, so we have tried to strike here a balance that is consistent with the constitutional rights of the owners and yet gives first preference to the other Indian owners or the Indian tribe, as the case might be, but we have to formulate the legislation in a way that conforms to the constitutional rights of the owners and this is what we have been striving to do in working out this third version of the bill.

Mr. PANNER. I appreciate the problem, Senator, and I would suggest that whoever made that comment in the Justice Department had not really studied the situation because I am convinced that on these fractionated interests in allotted lands, which is what we are dealing

with here, that any provision which would give the owners fair market value would be absolutely proper and appraised value should be consistent with fair market value.

This is what we attempt to do. I think, also, a very simple procedure could be provided for, an appeal to the Secretary if there was a question about the appraiser's figure, and I think this could be given.

The advantage is simply this, that this would make it possible for the tribes, within the framework that you have set up here, to buy these lands and to get a fair market value for the people and still not run the risk of losing key tracts in the reservation.

We are finding that on Warm Springs Reservation our whole economy may be tied up with recreation, we may have something in future years that will be based primarily on a recreational aspect and it will bring the greatest yield to the tribe on this basis.

If the key portions are cut out here by people who have substantial amounts of money and who are in a basis to bid that we are not, we are going to have difficulty, and this is real concern.

We are in effect here permitting any one person to say: "I don't want the tribe to have a preference." This seems to be a little bit harsh. I do not know whether anything can be worked out but we would appreciate it.

It is apparent we are not going to have the money to bid if we— if our borrowing power is confined to appraised value and the ceiling price is not.

Next, as to the availability of funds to tribes who have funds of their own.

I was a little concerned about this and I felt the same as the Commissioner did when I heard him say yesterday that I don't think under this statute, this particular statute, that the Commissioner would have, or the Secretary would have any authority to go ahead and make this loan if the tribe had funds.

I think we could be in a serious snarl up here and I think it does not make sense anyway. Let us assume that a tribe has managed its assets reasonably well and that critical programs are immediately underway which need these very funds that we have budgeted for this purpose, and so forth.

Are we going to say that those programs have to be discontinued in order to buy back these lands which are coming under the gun? It does not make sense to us. In fact, if we are to repay the Government the loans, the money which we are borrowing to buy these lands, it is apparent to all of you gentlemen that we are going to have to develop these lands, they are raw now in most cases and we are going to have to go in with tribal programs, tribal range programs, and so forth.

We have at Warm Springs just completed a substantial Oregon State survey, which has included a number of directions, all of which are going to cost us money. We are in the process now of trying to figure out where to go.

We would hate to see all of the money go to buy lands and nothing left to develop them. We would respectfully submit that if the Government is getting security in the form of appraised value equal to the loan that there should be no limitation on the borrowing by virtue of the other funds available.

Senator CHURCH. We will have another look at this point. It is my understanding that the provisions of the bill merely reserve the status quo insofar as the use of the revolving credit fund is concerned but I am not certain of that.

Mr. Sigler, could you enlighten us on that score?

Mr. SIGLER. Mr. Chairman, it is my opinion that the language of the bill which speaks in terms of a tribe that has funds available would not preclude a loan to a tribe who has budgeted all of its available assets for other purposes.

Senator CHURCH. I see.

Mr. SIGLER. If its tribal budget has come in and been approved by the department or by the Bureau, that tribal budget contemplates the use of all available funds of the tribe, then I think that this language would permit a loan.

There is also the additional factor which I think is implied in the bill, although it is not explicit, and that is, the tribe must be able to get funds, if it does not have its own available funds, it must be unable to borrow them on equally advantageous terms from a commercial source.

Senator CHURCH. Yes.

Mr. PANNER. I would agree with Mr. Sigler, but keep in mind that we budget on a year-to-year basis, in other words, our budget is for 1 year and that is the budget that is approved by the Bureau, there may be tentative budgets for up to 5 years, for example, for money we know will have to go into continued programs.

This is, perhaps, what the Commissioner was talking about when he said he did not think we could get the money if we had any other funds.

Perhaps to accomplish the purpose, some simple statement might be made that the Secretary may consider other funds in determining whether a loan should be made and I think this would make sense.

We would also go further that the general meeting should be eliminated and the governing body of the tribal council as provided in section 6(e) should have authority to approve a plan. I am not too concerned about whether it is a plan or a master plan, but I think that certainly the tribal council or the governing body should have the authority to make that determination.

I would suggest, also, in accordance with Mr. Hovis' suggestion that some general statement be made in the bill to protect against the elimination of the Yakima Purchasing Act.

I was looking at section 9 and I think it probably comes reasonably close to it and it may be the place to elaborate a little bit.

Section 9 provides that the act does not repeal the authority of the Secretary under any other law but expands on it, of course, and it may be that some general language which would protect the rights of the tribes under other legislation could be included.

We have one also which permits us to buy lands within the reservation and return it to trust and we have found it most helpful and useful.

I want to say that whatever the committee does on this bill we at Warm Springs feel that by aggressive tribal action and by the good cooperation we have had from the Bureau that we will continue to buy lands and restore them to tribal ownership and our comments here are concerned primarily with the unique situation of lands which have

high recreational value that may bring tremendous prices that we cannot compete with from a return basis.

We appreciate the opportunity to be here. Thank you.

Senator CHURCH. Thank you. Are there any questions?

(No response.)

Senator CHURCH. If not, we appreciate your testimony very much, and I will next call Mr. Joseph R. Garry, who is the chairman of the Coeur d'Alene Tribal Council. He is not here but Mr. Oswald George is.

Mr. George is from my State of Idaho and I am pleased to welcome him here today.

STATEMENT OF OSWALD GEORGE, VICE CHAIRMAN, COEUR D'ALENE TRIBAL COUNCIL

Mr. GEORGE. First of all, I would like to mention that my colleague, Mr. Joseph R. Garry, the chairman of the Coeur d'Alene Tribal Council, due to pressing tribal business was not able to come and he sends his regrets to the committee.

However, Mr. Garry will, within the 10-day allotted time, send in a written statement with regard to the bill.

Senator CHURCH. That will be fine, we will see that it is included in the record.

(As of May 20, no statement was submitted.)

Mr. GEORGE. My name is Oswald C. George. I am vice chairman of the Coeur d'Alene Tribal Council, of the Coeur d'Alene Tribe in northern Idaho.

I represent a small reservation. To give you an idea, the leases from the rentals on our reservation amount to about \$405,000 a year. This is agricultural land, mostly, with small tracts of timber.

At the present time we are, shall we say, involving ourselves in a land buying program that would involve not only land acquisitions but land development and land consolidation.

This bill would hurt our tribe in that it would stymie our efforts to buy lands at normal appraised values. I believe this was brought up several times by others that came forward and appeared before this committee.

The competition that would be offered by rich cattlemen and ranchers would be terrific and if we have to compete against them it would not be at the appraised value but much higher.

At this time I will also bring up the uses of the judgment fund that the Coeur d'Alene Tribe was fortunate to get. At the present time we are working with the community, that is not only the Indians but our white neighbors. We have already deposited money in the amount of \$27,000 with a planer mill in Plummer, Idaho.

This is one of the towns located within the reservation, and it is a planer mill, that is, it is going to be run by a bunch of smaller sawmills, and our idea in investing in this is that we have been—the Indians are going to be involved in working at these mills.

My reason for mentioning industrial development within our community, is to show that all finances cannot be devoted fully to land acquisition, that there are other factors involved.

This investment is small now compared to what we have plans for in the future. This is a plywood mill that is going to be in St. Mary's, and it runs in quite a figure, it is going to be a \$2 million plant.

The tribe is not going to pay for all of it but for a fraction of the price. It is more on a community deal, we are getting together with the community and putting a portion of the amount that is requested by the ARA.

Senator CHURCH. Yes, you have some Small Business Administration money involved and it is part of the area redevelopment program.

Mr. GEORGE. That is right.

Senator CHURCH. I am very pleased that the tribe is participating in that because I think it has real promise. If it works out as we all hope it will.

Mr. GEORGE. We hope it will. We are investing, I believe, around a hundred thousand dollars in this venture, and there will be at least 40 of our members that possibly might be employed in the mill. It is a year-round job and we are doing this in a spirit of community interest.

I do believe I have mentioned before in a talk we made, we had a meeting there not too long before I came, with the community. It involved the Department of the Interior, it involved most of the county and our own tribe, and we got together and spoke on all these developments and the things that the tribe and the community could get together on and I do believe it was successful.

Everybody praised the whole thing.

One of the wordings of the bill always has struck me as odd and that is always in every wording of a bill involving the Indian it has in there "to the best interests of the independent owners or the individual."

Now, I cannot help but think that that word is a farce, not meaning that you have put it in there to be so, but another administration can come over and use that wording to its own advantage.

For instance, back home we have in the past had experience that cannot pay—that persons who cannot pay for themselves too well and the Government has come in and sold their land and left them now as destitute and now that was considered by the Government as to his best interests, and it just don't make sense.

I mentioned earlier the competition offered by the farmers and cattlemen, and along the same line I would very much like to have inserted a consent clause in this bill especially for those tribes that already are initiating a land buying program.

As is remembered from the past, the consent clause, if it had been added to the Public Law 280, it would have really made a difference and I do believe that a consent clause in any bill is really to the advantage of those concerned.

Also, it was mentioned on the decisions, as far as land acquisition, consolidation, and so on be left to a general meeting, to decisions of a general meeting, we do not agree with this, we do believe that this judgment should be left up to the governing tribes.

Last, to complete my statement, I would say that there should be a moratorium in that interval where the tribe does not have the funds to purchase the lands concerned.

Mr. Chairman, I thank you for this opportunity.

Senator CHURCH. Thank you very much, Mr. George.

Are there any questions?

Senator SIMPSON. Yes, Mr. George. I am inclined to agree with you on your observation that the words "best interest" cover up a multitude of abuses. Would a change in that—would you subscribe to a change that the best interests be determined both by the tribal council and the Secretary, jointly?

Mr. GEORGE. Mr. Simpson, I do believe that the best interests of the individual as well as the tribe.

Senator SIMPSON. Yes, you object to just one person determining what is the best interests, in other words?

Mr. GEORGE. I do.

Senator SIMPSON. I agree with you.

Senator CHURCH. Thank you, Mr. George. Are there any further questions?

(There was no response.)

Senator CHURCH. Thank you very much.

Our next witness is Mr. Walter Wetzel, who is the president of the NCAI, chairman of the Blackfeet Tribe of Montana, and Earl Old Person, member, Blackfeet Tribe Tribal Council, Blackfeet Tribe, Montana.

**STATEMENT OF WALTER WETZEL, CHAIRMAN, BLACKFEET TRIBE
OF MONTANA, AND EARL OLD PERSON, MEMBER, BLACKFEET
TRIBAL COUNCIL**

Mr. WETZEL. My name is Walter Wetzel. Thank you very much, Mr. Chairman, it is indeed a pleasure to be here this morning and I am honored to be in the presence of some of the Senators that I have met in the past and I know are very sympathetic with the Indian problems.

I am chairman of the Blackfeet Tribe of Montana and also president of the National Congress of American Indians, this is Mr. Earl Old Person, a member of the Blackfeet Tribe and a member of the tribal council.

We are indeed happy to have the privilege to appear here today at your hearings on S. 1049. We fully realize the complications arising because of the heirship land situation on our reservation. We appreciate the committee's interest recognizing this important complex problem.

The Blackfeet Tribe is very interested in maintenance and retention of its land base. The tribe on numerous occasions made known its position on the importance of the Indians keeping their land in Indian ownership.

We feel that the land owned by the Indians is their greatest asset in this ever-expanding population growth of our country.

The Indians want to retain and utilize our lands, develop our resources to improve our economic position, this being of great concern to the Indian people and the Federal Government today.

We oppose any legislation that would open the way for Indian lands to become sold on open market and taken forever out of Indian ownership. As the situation now stands, the tribe and individual Indians have a very limited amount of funds to purchase lands from

Indians who want to sell their lands. We feel that the Indian owners of heirship land should give their consent before any of this land is sold.

Past experiences have been noted on the Blackfeet Reservation where oil and gas and mineral rights were not retained by the owner of trust lands who have sold land, thus the Indian losing valuable resources. This safeguard is now the policy on Indian land sales.

However, we feel that the bill should so stipulate that the oil, gas, and mineral rights in areas designated by the U.S. Geological Survey shall not be included in any sale of land made pursuant to this act.

As written, the trust land may be sold where the Secretary believes it "would be in the best interest of the Indian owners."

The phrase is so placed that doubt is raised as to whether the best interests test is applicable if partition or partial partition takes place. More important, the phrase should be expanded to include the best interests of the tribe and also the sale ought not to be detrimental to the Indian community.

The sale of key tracts controlling water or access may destroy the usefulness of thousands of acres of grazing land owned by the tribe or other members of the community.

We think that the master plan as referred to in S. 1049 subsection 6(e) could be approved by the governing body of the tribe and submitted to the Secretary of the Interior for consideration. This is another responsibility that the tribal governing body could assume.

We feel that the money authorization is a step in the right direction. However, the amount should be fourfold. Also, an appropriation should be in the bill. This is of vital concern for we know that hundreds of Indians would sell their land immediately to the tribe if funds were now available.

The applications for sale are mounting daily in the tribal office and agency realty offices. We would recommend that each tribe have their own specific land program to deal with their problem. We would recommend a reservation study be made by the Secretary of Interior, thus bringing about a program that would keep Indian land in Indian ownership through adequate purchasing program with financial assistance being given by the Federal Government through availability of loans; work out the administration problems dealing with heirship lands.

Our recommendation is that strong emphasis be given to hold the land for future Indian generations, not to destroy the reservation or land base holding of the Indians.

We are only asking that the Indians be given adequate credit, guidance, assistance in preserving their land. Surely every American in our country treasures his land. We do so likewise. We are ever conscious of these things because history will reveal, and it's an actual reality that the Indian landholdings have dwindled to a small estate compared to what we originally owned.

For the committee's information, the Blackfeet Tribe has spent several months planning and preparing a land acquisition and use program. Also, the tribe is taking steps now to allow the tribal council or governing body to buy certain lands on the Blackfeet Indian Reservation.

We wholeheartedly endorse a Federal program making available adequate funds to meet the Indian's needs to purchase land offered for sale by members of the tribe.

We respectfully submit this statement for the record showing our opposition to S. 1049, as outlined herein.

We thank you for giving us this opportunity to appear here today.

Senator CHURCH. Thank you, Mr. Wetzel.

Our next witness is Mr. Edison Real Bird, vice chairman of the Crow Tribe. We had Mr. John B. Cummins of the Crow Tribe, a delegate, representing that tribe yesterday.

Mr. Real Bird.

STATEMENT OF EDISON REAL BIRD, VICE CHAIRMAN OF THE CROW TRIBE

Mr. REAL BIRD. Thank you, Mr. Chairman and members of the committee.

I am very grateful to the committee, particularly the chairman, for the opportunity to appear before the committee to state the wishes of the Crow Tribe.

Yesterday morning the Crow—my colleagues, members of the Crow delegation—were here to testify but they concur with my statements that I have prepared for this subcommittee.

My name is Edison Real Bird. I am the vice chairman of the Crow Tribe and one of the official delegation of the Crow Tribal Council, the governing body of the Crow Tribe of Indians in Montana.

This is a statement prepared by the official delegation. Therefore, we are appearing in our official capacity for and on behalf of our people. We are here to express the wishes, hopes, sentiments of the Crow Tribe. Our people have studied S. 1049 and by a resolution, passed and adopted by the Crow Tribal Council, April 23, 1963, authorizing and directing me and the delegation to appear in opposition to the bill. The April 23, council, was called to make a definite stand on this particular bill.

The resolution and minutes of this council of April 23 have not been completed yet but they are coming in through the mail so I would like to submit that later with my testimony.

The taxi driver is bringing it over.

Senator CHURCH. Very well.

Mr. REAL BIRD. The tribe opposes S. 1049. We believe that the bill is vastly more far reaching than appears on the surface. The bill is merely intended to resolve administrative problems of undivided Indian heirship lands. But its practical effect will be a constant loss of lands within the reservation which will pass from Indian to non-Indian ownership.

As an officer of the Crow Tribe, it is my responsibility and the duty of other leaders to look at this bill in two ways, one is the non-Indian and the Indian way, and being a member of the Crow Tribe.

I want to look after my people and take the latter view and under this view it is not feasible for us, although some features may look favorable on the surface; it is detrimental in the long run.

We believe each Indian tribe and its leaders should inaugurate its own programs to attend to its heirship lands, then the Congress can help by enacting legislation dealing with each tribe separately.

To fit the needs of various tribes, by this I mean that one can be adopted to fit the need of the Crow Tribe and not jeopardize other Indian tribes because our land problems all differ from one another. In majority of cases, the tribes throughout the country already have such authority as the Crow Tribe has. Many tribes already have established land acquisition programs and are purchasing complicated heirship lands, and reselling them to individual members, along the same lines proposed in S. 1049.

The bill must be appraised in the light of the heritage and experience of the Crow Tribe. Our tribe is among those fortunate tribes of Indians living on their reservations. Our tribe is not rich and our reservation is neither extensive nor capable of producing great wealth. But it is our land and so long as we retain our present land base, we can maintain our tradition, our heritage, and survival.

Bitter things have caused us to be on guard to preserve our lands. Our most important responsibility is to preserve our home for ourselves and our children. We must resist any further encroachment upon our land. We are instructed to oppose this legislation whose practical effect will be the rapid displacement of Crow Indian families from the existing Crow Reservation and the substitution of non-Indian ownership for our lands.

This honorable committee may be aware of portions of our Crow history. Our first treaty, in August 4, 1825, was initial recognition and pledge of friendship between the Crow Indian Tribe and the U.S. Government.

The second treaty of September 17, 1851, at Fort Laramie, setting aside an area of 38½ million acres to the Crow Tribe. Over 100 years have passed and it has diminished. The treaty recognized our ownership of extensive areas in Montana and Wyoming, but today this 38½ million acres is diminished to 1½ million acres.

With the population growth and increase of the Crow people and our land base gradually diminishing, it is not good economics when the supply and demand do not correspond closely. So this bill would only lead to hardship for my people.

Will legislation help us to preserve our reservation in Indian ownership? Or will it make it easier for non-Indians to acquire our lands?

This is the standard to apply. We want to hang on to our own. That is why we are instructed to oppose this bill. It will not help us keep our land base for ourselves and next generation of the Crow tribal members.

The bill purports merely to solve problems arising when land is left to more than one heir and at least one of the heirs desires the partition of the devised land. This bill would then permit the Secretary to dispose of the land in order to meet the wishes of the heir or heirs who want to reduce inheritance to immediate cash.

Some of the heirs will desire cash and this will lead into sale of majority of the land out of Indian ownership. As this process proceeds, we will lose our reservation and land base which we believe is vitally important. We are aware of certain safeguards under which the heirs, or the tribe itself, are in a position to retain the lands in ownership. This will not be available. Indians seldom have ready cash to buy out their interest nor have enough collateral. Over a period of years, we would not be able to constantly buy out heirship interest as tribal and individual.

As I mentioned, the Crow Tribe has a land purchase and resale program in operation. The Crow Tribe is now operating under legislation which is satisfactory and which meets our desires and our situation. I refer to the acts of June 8, 1940 (54 Stat. 252), and July 1, 1948 (62 Stat. 1215), which gives us the authority to buy heirship lands and also heirs can buy out the interest of other heirs. Those are the two acts we are now operating under.

We feel the situation on our reservation to be now satisfactory. We see no reason for altering it by this new legislation. We are particularly opposed to alter this situation in the light of our fears about S. 1049. We believe it would be a betrayal of our children to accept legislation whose clear effect would be to strip away land from Indian ownership.

S. 1049 should not have compulsory general application. What is good for some Indian tribes, given their circumstances, might be very injurious to others. If there are tribes which desire legislation of this type, it should be readily possible to limit the application of the bill to those tribes who desire it. The Crows, as I have said, are opposed to the heirship bill. We should not be required to accept what we believe is not good for our people.

That concludes my written statement and, in conclusion, I would like to thank the committee for the opportunity to speak for and on behalf of the Crow Tribe of Indians but I would like to include in the statement some of the important items I overlooked as I was preparing that statement.

We appreciate the committee for the consideration of providing the tribes to purchase heirship land. One remedial recommendation we would like to make is to set up funds and let the Indian tribes work out feasible plans on the heirship land programs.

In this way greater objectives and wishes can be accomplished by this method and would be satisfactory to all people concerned, even if it takes a hundred bills to be introduced. It is the responsibility of the present day leaders to take into consideration making things possible and easier for the next generation. Our ancestors made it possible that we can enjoy and utilize our present Indian land and reservations today, we must look after and make it easier for the next generation of Crow people as well as other American Indians.

If this bill passes and is enacted it would be detrimental to the next generation of Indian children, the minority group here in America.

The heirs of allotments are generally related to one another. The reason we have these heirship problems is because they are related. Their relationships are brothers, sisters aunts, uncles, and cousins.

It is not a good practice to make it possible to have these groups of relatives bidding against one another and this would lead into family squabbles and it is not a good relationship or anything to create that nature cause of the Indians, the minority group, are closely related and a much better relationship exists in a non-Indian society. You must take that into consideration. You must realize that the culturization made by the Indian people today, it is still necessary that the land base must remain intact for the future Indian children.

The great Creator has made it possible that these Indian reservations were set aside for the benefit of the Indian people. One area

of the Crow Reservation, particularly the Big Horn District, is in the deceased allotment or estate and are now used by the children or grandchildren of deceased allotments and is in over 50 percent of these cases it is one of the first original allotments in the Crow Reservation and would lead to hardship for my people.

Other tribal members are not given the opportunity in this bill either to purchase these heirship tracts. If you want to pity any group you must pity the Crow Indian people as well as the other American Indians. You have to take the theory that you are responsible to look after the least fortunate group of people.

I want to call attention of the committee that the Indian heirship problem is not homogeneous. All Indian tribes have different land problems in terms of population, finances, land base, goals, and objectives of these Indian tribal leaders and even a blanket legislation of this nature is sometimes injurious to one tribe.

Maybe it is good for some people in Idaho but it may be bad for my people in the Crow Reservation. These things must be taken into consideration every time a blanket bill of this nature is introduced affecting all the Indian tribes in the United States.

Before I conclude my statement I would like to tell a story that was told by my granduncle when I was little. It was the time the treaties were made in the 19th century in the area of Fort Laramie, Wyo.

When all the tribes were called together at Fort Laramie, there is an Indian term for it, the gentleman in charge of the meeting would get up and talk to these other tribes assembled at Fort Laramie, I am going to do this for you, I am going to give this to you Indian people. They were accepting right down the line, except for my forefathers. They stand there and said, "Tonight we will call a council fire and will decide what is good for us."

So that night at the teepee they met and the chief presiding told the others along with them, representing my people, they said as they were talking, "We must be cautious, we must be able to forecast what it will do in our future generation, we must look at what they have proposed today in the long run whether it will be good for our people or not."

There was a young man in that group, most of them were adult chiefs and a young man, the chief was explaining that the wolves, as he was explaining this treaty, he said, "The wolves are eying your lands."

As he was explaining, emphasizing the "wolves are eying your land," this younger lad finally stopped his uncle and said, "What do you mean, the wolves?"

He said, "Those are the white people, they are eying your land."

So we must take a view of that nature today, we must know—I did not mean to say that but that's just a story, and that's the way the story goes, and I want to conclude my statement with that little story that I was told back when I was young.

I would like to also thank the committee for the opportunity to appear in behalf of my people and I will submit my statement and as soon as the taxi driver arrives with the resolution passed and adopted by the Crow Tribal Council on April 23, of 1963, I will submit it to the committee.

Would it be necessary for the committee to include these acts that I mentioned of 1940 and 1948 that we are now operating in our land purchase program, or will the statement do?

Senator CHURCH. Well, those acts do appear in your statement, they are part of the text of the laws. So just the statement and the resolution is all that is necessary.

(The exhibits referred to were not received by the committee.)

Senator CHURCH. Are there questions?

Senator BURDICK. Yes, well, I would like to ask a question. Were you at the hearing yesterday?

Mr. REAL BIRD. Yes, I was here yesterday.

Senator BURDICK. You have heard various witnesses testify that they would approve this legislation if certain amendments were adopted?

Mr. REAL BIRD. They did improve it compared to 1961 and 1962.

Senator BURDICK. Did you hear the testimony of Mr. Sonosky?

Mr. REAL BIRD. No.

Senator BURDICK. My point is that if the objections you had were taken care of by amendment would you still be against the legislation?

Mr. REAL BIRD. I feel that the tribes, all tribes are, like I mentioned in my statement, our problems are not alike, they are not homogeneous, therefore, I feel every Indian tribe needs to be dealt with directly one by one down the line.

Like I said, our problems on heirship are not homogeneous, what I mean by that is financially, populationwise, our land base and in some areas it is community owned and whereas in some reservations there are allotments, and our treaties are all not alike, so I feel that it is like the Crow reservation, we feel that we are in a good position to operate with our present acts of 1940 and 1948.

I feel it is the responsibility of these tribal leaders to look into this matter and come up with some programs—like I mentioned here as I was speaking, that as I started I recommended that funds be set aside and the tribes work out their own heirship land problems, even if it takes a hundred bills to be introduced to accomplish this objective.

Senator BURDICK. Do I understand your testimony that in no event would you want legislation along these lines?

Mr. REAL BIRD. What is that again?

Senator BURDICK. I said, in no event would you want any legislation in this field?

Mr. REAL BIRD. I said the legislation pertaining to one tribe and the next tribe, the next tribe, down the line. Not a blanket legislation. I myself, and my people, are in opposition to this blanket type of legislation because like I mentioned, it might be good for some reservations in Idaho, it might be detrimental to some of the Indian reservations in the State of Montana or Arizona. I feel that legislation in the future introduced be directly affected to these particular Indian tribes and establish an authority whereby consent basis can be made possible before an Indian tribe accepts this general blanket legislation.

Senator BURDICK. You want the U.S. Congress to deal with each tribe separately, with a separate piece of legislation?

Senator CHURCH. You realize that would be a problem?

Mr. REAL BIRD. I realize that, it would be more satisfactory for the objectives and the goals of the Senate and the Indian tribes will be more—

Senator CHURCH. You realize we have been proceeding on exactly that basis for 50 years and at the end of that time the problem is worsening, 6 million acres of land are in heirship status, much of it is unproductive. I should think that long experience would indicate that it is not a very successful way of dealing with the problem and improving conditions for Indian people, generally.

Mr. REAL BIRD. The Bureau of Indian Affairs are the ones who have been doing that the last 50 years. I realize that it did not accomplish the objectives and goals due to the responsibility of new administration changed the type of goals which they set.

I feel like one of the statements made yesterday, I did not hear it, but it was talked about yesterday, the Bureau of Indian Affairs set a policy and after operation of so long, here comes a new one, the old one is obsolete and they go on with the new one and this is why the heirship land problem has never been really worked on by the tribes themselves.

Senator CHURCH. Any further questions?

(There was no response.)

Senator CHURCH. Thank you, Mr. Real Bird, for your testimony.

Mr. REAL BIRD. I thank the committee.

Senator CHURCH. The next witness is Mr. Philemon Berry.

Mr. Berry is from the Kiowa, Comanche, and Apache Tribes of Oklahoma.

STATEMENT OF PHILEMON BERRY ON BEHALF OF THE KIOWA, APACHE, AND COMANCHE TRIBES

Mr. BERRY. Thank you, Mr. Church. Members of the committee.

This is our first opportunity to express our views in connection with the proposed legislation at hand.

I have a resolution which was passed by the Kiowa, Apache, and Comanche Tribes at a meeting held April 27, 1963, at Anadarko, Okla. I want to submit this resolution for the record.

I would like to elaborate somewhat in regards to this resolution passed by the tribe. While we oppose this legislation in its present form we are mindful of the fact that the three tribes have a tremendous heirship problem. We do not have a reservation system, all of our lands have been allotted in 1900 and as a result from time to time, through deaths, our land has become quite a problem insofar as heirship is concerned. We realize that from the efforts of our Senators and Congressmen, an effort that they put forth to try to eliminate the heirship problem, we still feel that the tribes, themselves, should have a voice in the legislation that they are going to be affected by.

For the record, I would like to make this known to the committee. I understand that 10-day period will be observed to submit additional information.

Senator CHURCH. Yes.

Mr. BERRY. Our committee has taken this Senate bill S. 1049 under further study and we will make some additional recommendations to fit our needs in Oklahoma.

We are mindful of this under the present wording of the bill. We are somewhat afraid of two things and when the words are mentioned

among our people they become quite alarmed, and that's "termination," and "fee patent."

Now, we feel that according to the present wording of the bill it gives somewhat a minority interest to control the partition or eventual sale of certain tracts.

It is quite conceivable that maybe one or two people could own a 50-percent interest or a 25-percent interest in a tract of land and could request the Secretary to partition or partition part and sell the remainder or sell the rest of it.

We feel that our land base is very important to us. If this was to become a law much of our land will become out of Indian ownership as it already has occurred.

Many acres of our lands have already been sold and it is getting to the point where we treasure what little we do have.

We have not too much tribal land but most of it is under allotment. We feel we ought to continue to hold on to our land for this reason.

In our State our Indian children attend public schools on the whole. We are more or less assimilated in white districts and our children attend public schools and the school districts receive quite a number of dollars and cents from the Government to operate in lieu of taxes exempt lands which our Indians now own.

We are fearful that if this land based should dwindle down to become nothing then what will the Government do to support our school districts where our Indian children now attend?

I want to elaborate a little bit on one provision of the bill in which it says that the Secretary could issue a fee patent in order to carry out any provisions of this act. The words "fee patent" has a great meaning among the Kiowa, Comanche, and Apache Indians.

We were allotted in 1901, and under the trust patent that was issued we were supposed to be protected for 25 years.

Lo and behold what happens? Around 1919 there were some 200 fee patents issued forcibly upon the Indians without their request.

At that time our Indian people were not in a position to effectively handle their own affairs and therefore much of these lands are not owned by those people that were issued these fee patents.

When that was done our Indian people were quite alarmed and they objected to the issuance of these fee patents; nevertheless, the Government did it anyhow.

So, we feel that legislation that applies to us should be worded in such a way that we will hold on to what little we have now.

I would like to see legislation passed that would enable us, perhaps, to put us in the position to buy up what little allotment lands that we do have left.

We have some tribal funds in the Treasury of the United States but we do not feel that is adequate. We will need additional funds to carry out a program of that kind.

Then, another thing that comes to our mind, is that too much of this land, according to the present provisions of the bill would eventually go out of Indian ownership, as it has been proven in the past.

On previous land sales held in our State—they are held twice a year—in the spring and in the fall—upon application by the individuals. What has happened is that white owners have purchased practically all of this land which was formerly in Indian ownership

and we feel that the same thing is liable to happen if this bill should pass and we are hopeful that the recommendations as to amendments to this bill would be considered seriously by the committee when the Kiowa, Comanche, and Apache Tribes have had this 10-day opportunity to submit same.

(No further communication was received by May 20.)

Senator CHURCH. Thank you very much. Any questions?

(No response.)

(The resolution presented for the record is as follows:)

RESOLUTION

Whereas the Kiowa, Comanche, and Apache Tribes meeting at the Riverside Indian School, Anadarko, Okla., April 27, 1963; and

Whereas there was presented S. 1049, the heirship land bill, introduced by Senator Frank Church of Idaho, for discussion; and

Whereas the following questions relating to this bill were raised:

(1) What does the Indian stand to gain by this bill?

(2) This could be a further step toward termination.

(3) This bill will bring many problems to the Indians.

(4) The white man stands to gain by this bill.

(5) Removal of restrictions an eventuality.

(6) Indian lands will be unalienated too easy.

(7) This bill will eliminate the present Government aid to schools now benefiting from nontaxable lands in their respective districts.

(8) Will do away with the Federal trust responsibilities on Indian lands.

Whereas the tribes after due study and consideration on this bill, it is the sentiment of the Indians that this bill is not in their best interest; and, now, Therefore be it

Resolved That the Kiowa, Comanche, and Apache Indian Tribes do hereby go on record as opposing S. 1049 for the above reasons and does hereby further to instruct the Senate Committee on Interior and Insular Affairs not to recommend its passage to become a law.

CERTIFICATION

STATE OF OKLAHOMA,
County of Caddo, ss:

We the undersigned chairman and secretary of the Kiowa, Comanche, and Apache tribal meeting do hereby certify that the foregoing resolution was presented and discussed and put to a vote and the results were 109 for and none against said resolution.

In witness whereof we have hereunto set our hands and seals this 27th day of April 1963 in the city of Anadarko, county of Caddo and State of Oklahoma.

PARKER MCKENZIE, *Secretary.*
ADOLPHUS GOOMER, *Chairman.*

Senator CHURCH. Our next witness is Mr. Pascal Sherman, a Colville Indian of Washington, who is speaking for himself.

I think we have had some communication from the tribe on this matter.

Mr. Sherman.

STATEMENT OF PASCAL SHERMAN, MEMBER, COLVILLE CONFEDERATED TRIBES, WASHINGTON

Mr. SHERMAN. My name is Pascal Sherman, member of the Confederated Tribes and I am heir to lands on the Yakima Reservation as well as the Colville Reservation. I do not speak for the tribes, but I have asked your indulgence for this appearance because my heirship problem is representative of one of the most hopeless ones reported in part No. 1 of the Indian heirship land survey of the 86th Congress mentioned yesterday.

I think I do speak for most of the heirs concerned in this particular property. Our greatest difficulty was that three of the heirs are Canadian. On motion of them the Government would disclaim any jurisdiction over their property rights and action taken toward the disposition of the land would be forestalled.

Of course, this bill, if enacted, into law, would cure that situation, but let us bear this in mind, an Indian is an heir, not only to 1 tract of land, but he is an heir perhaps to as many as 20 other tracts of land. I myself am heir to several tracts of land on the Yakima Reservation; I was heir to about 8 tracts of land, but there I succeeded in having my shares in these several tracts of land partitioned and consolidated into 40 acres of land. So there is no problem there.

We do have an interest in the general provisions of this law because, for example, there is a provision here that land disposed of outside the tribal consolidation area or outside of the reservation, would be taken in fee patent. I do not think it is good procedure to have a situation in which an Indian would have land in one place under trust and land nearby in fee patent.

I have comments only on two sections of the bill.

In section 5(c) there is a provision that the current appraised value of the land shall mean appraisal not more than 1 year old.

By reason of the delays which will follow the loan procedure here provided in many cases the appraisals will be more than 1 year old so that the action taken to reappraise the land will delay matters considerably.

It is the practice of the field service of the Indian Bureau to list lands for appraisal in order that sometimes we might be 8 months behind in the appraisal procedure, so any land in this might be subject to those delays. We would suggest that the clause, "appraisal not to be more than 1 year old," be stricken, we think the phrase "current appraised value of the land" would be sufficient and interpreted properly by local officials.

Now, we come to section 5(d) in which there is a provision as to an approved tribal consolidation area. There is no provision here that the consolidation area would be an area in which the tribe had something to say. This ought to read "tribal consolidation area as agreed upon between the Secretary and the tribe concerned."

Now we know that the executive departments and the Congress are subject to influences brought to bear by pressure groups, sometimes in a given reservation pressure may be brought to bear to demarcate certain areas as tribal consolidation area which will exclude very valuable property.

On the Yakima Reservation in which I have land, the checkerboard area constitutes the best land from the standpoint of productivity and value in agricultural operations.

Senator SIMPSON. Mr. Sherman, did you hear Mr. Simpson's idea with respect to 5(d) that he put a period at the end of the second line and strike the rest of it? Would that satisfy your objection?

Mr. SHERMAN. Yes, that would be very satisfactory and I think that, too, would eliminate the provision that land taken outside of the reservation or not within the consolidation area would be taken in fee patent.

The loan provision here is very cumbersome. If the loan provision here applies only to tribes and not to individuals who can borrow money from the revolving fund we believe that section 6(b) should be amended to eliminate the words "the appraised value of the land plus"—it would be sufficient to say "The amount of the loan shall not exceed the value of any other property mortgaged by the tribe."

This appraised value will again be subject to this 1-year provision and other provisions relating to approval of the master plan and would cause considerable delays.

We have no objection to the provision to partition of lands.

Some question has been raised here as to the constitutionality of this act in that respect when applied in the State of Washington.

By Federal legislation Indian land was thrown into a State court in Washington for disposition because of the involved heirship status.

No question was raised then as to the constitutionality of that law. However, in this case, the State court would be an instrumentality of the Federal Government. After its determination it would turn over the money and the land to the Federal Government to dispose of in its trust status.

Now, there may be a question there as to whether constitutional questions will arise. I am an attorney myself but I can see no constitutional questions involved here.

The partition provision we think is very good from this standpoint.

Much has been made at these hearings upon the value of a partitioned portion from an economic unit standpoint, but sometimes a particular Indian might want his share partitioned so he could use it as a homesite.

Then, again, the partitioned share might have a definite economic value when used in connection with other property nearby.

Now, this property reported in the land survey here is very small, the State of Washington wants to buy it to use for recreation purposes—well, they want to use it, for example, as parking area for tourists coming to Lake Chelan.

I would like to have a portion of that land myself as a homesite. My cousins would want a partitioned share because their share amounts to about 22 acres, and they could use that land very well in connection with properties they are developing now in fine commercial orchard.

We could put the 22 acres into an apple orchard and they could very well use it profitably in connection with their other property, so that the idea the partitioned shares should be determined on the basis of its economic value alone, I don't think should control in this situation.

Senator CHURCH. Well, I think the bill is written to provide sufficient latitude so that discretion can be used depending upon each situation, each particular case. I think you make a very good point, Mr. Sherman.

Mr. SHERMAN. Thank you, Mr. Chairman, that concludes my statement.

Senator CHURCH. Thank you very much for your testimony.

Any questions? If not, we will now hear from Mr. William Howard Payne.

**STATEMENT OF WILLIAM HOWARD PAYNE, GENERAL COUNSEL
FOR THE CHEYENNE-ARAPAHO TRIBES OF OKLAHOMA, AND FOR
THE CHEYENNE RIVER SIOUX TRIBES OF SOUTH DAKOTA**

Mr. PAYNE. Mr. Chairman and members of the Senate committee, my name is William Howard Payne. I appear here as general counsel for the Cheyenne-Arapaho Tribes of Oklahoma and for the Cheyenne River Sioux Tribes of South Dakota.

When we were here about a year ago this month we gave testimony for the most part with regard to the land problems of the Cheyenne-Arapaho Tribes of Oklahoma. Today we wish to present and talk with you very briefly the land involvements of the Cheyenne River Sioux Tribe of South Dakota. With respect to the pending legislation before you, it's of Senate 1049, I speak.

In connection with the Cheyenne River Sioux land involvements I might say briefly that there is in tribal ownership approximately 892,000 acres of land. In allotted individual ownership approximately 576,000 acres. The total Cheyenne River Sioux restricted landownership is approximately 1,468,000 acres. Within the exterior boundaries of the Cheyenne River Sioux Reservation in South Dakota the Government owns approximately 4,500 acres and there is in fee ownership approximately 1,332,500 acres. The total acreage within the exterior boundaries of the Cheyenne River Sioux Reservation in South Dakota is approximately 2.9 million acres. In heirship status, there are 657 tracts totaling approximately 113,000 acres, 30 of these tracts have 11 or more heirs; 627 of the tracts have 10 heirs or less. The average value of the lands per acre is about \$15 and the Cheyenne River Sioux Tribe would need approximately \$1,694,000 to acquire these fractionated heirship lands of approximately 113,000 acres.

In that connection, Mr. Chairman, we would like to present for the record being made here today and yesterday a map which has been prepared under the auspices of the Subcommittee of the Tribal Council of the Legislation and Claims Committee and the Bureau of Indian Affairs Branch of Realty at the Cheyenne River Sioux agency at Eagle Butte, S. Dak.

This map shows that approximately 89 percent of the tribally owned and the individually owned lands on the Cheyenne River Sioux Reservation are used by Indians of this tribe.

We have another map we would like to present for the consideration of the committee in connection with these hearings, the map that has been prepared under the same auspices showing effort of the Cheyenne River Sioux Tribe to consolidate their land area within the exterior bounds of the old reservation.

In that connection, as of about a year ago, this tribe had applications proposing to sell to the tribe land, I believe, 318 applications proposing to sell to the tribe individual allotments totaling some 58,000 acres.

Up to about a year ago the tribe had exchanged with nonmembers or exchanged with members of the tribe approximately 16,000 acres. That's up to about a year ago.

From 1956 to March of 1962, the tribal purchases amounted to approximately 161,600 acres of land for which the tribe paid approxi-

mately \$1.9 million. The purchases from individual Indians totaled 23,000 acres, total amount of about \$327,000.

We would like to submit those maps, Mr. Chairman, if it please the committee, for the record here.

Senator CHURCH. Yes; it may not be possible for us to publish the maps in the public hearings but they will be included in the files and with the associated materials that have been submitted.

Mr. PAYNE. Very well, thank you, Mr. Chairman.

Present before the subcommittee here today are Alex Chasing Hawk, who is vice chairman of the Legislation and Claims Committee of the Cheyenne River Sioux Tribal Council and also Mr. Ernest Duchenaux, who is a member of the tribal council and also a member of the legislation and claims committee.

Mr. Duchenaux will not be talking with the committee here, today, but Mr. Alex Chasing Hawk, who is vice chairman of the legislation and claims committee will be able to tell you that that committee has given very intent study to S. 1049, his committee has made certain recommendations and those recommendations have had full and free discussion before the full tribal council.

Mr. Chasing Hawk will talk with you now, if it please the committee, very briefly about those recommendations.

Senator CHURCH. Mr. Chasing Hawk.

STATEMENT OF ALEX CHASING HAWK, VICE CHAIRMAN, LEGISLATION AND CLAIMS COMMITTEE, CHEYENNE RIVER SIOUX TRIBAL COUNCIL

Mr. CHASING HAWK. Mr. Chairman and the members of the committee, first I want to tell you I have been in these hearings for many, many times. I served on the tribal council for 25 years and this is my 58th trip to Washington, D.C.

Probably some hearings I attended in joint committee and especially working with them and I appreciate seeing you folks and I think this is the only time that I believe they have given the tribe a chance to testify before the committee.

We studied the Senate bill, S. 1049 and, of course, I myself am the chairman of the land apportionment committee of the tribal council and deal with the claims and legislative committee where we handle all the legislative matters.

Now, of course, we are not professional people and we have to depend on technical assistance from the Bureau of Indian Affairs. So, what we can gather here is that we get help from agency departments, and I appreciate their help because otherwise we will be in a dark place.

I don't understand all the legal language provided in the law. We recognize the committee here is making an attempt to solve the heirship problem.

Now, before I go on with this recommendation we have, we are not here to condemn the bill but we are here to give our expressions which will help the committee to improve such problems, so with that, under the bill here, 1049, we will leave this record with the committee. It has a reference to section 4 which has a reference to a minor, who is an orphan minor, that is line 4, who cannot be located by the Secre-

tary after a reasonable and diligent search and the giving of notice by publication.

We recommend the giving of notice by publication for not less than 30 days. That is our recommendation.

Under section 6, the tribe shall give to the United States a mortgage on the land purchased by the tribe with a loan and on any other tribal property which the Secretary deems necessary to adequately secure the loan. We recommend eliminating "and on any other tribal property which the Secretary deems necessary to adequately secure the loan," which this means that we have over close to a million acres of tribal lands and we are attempting to acquire a loan from the U.S. Government in the amount of \$250,000 and I think we worked on that for 2 years and unable to acquire the loan and what the Government wants is they want us to offer our close to a million acres as security for this \$250,000 loan, and we argued that we should offer enough land to get this loan.

Now, we fought this loan for over 2 years now, and so with that we would say that if we acquired a loan and purchase land which could, in turn, be offered as security to guarantee the loan or probably adequate funds that we could offer as security, not the whole entire assets of the tribe. We are opposed to that.

Then, this section, that is under section 8, the Secretary shall approve no plan pursuant to this act that contains any provision that would prohibit or delay the termination of Federal responsibility with respect to the land during the term of the plan.

We recommend striking out from the bill in its entirety because of the fact that we were governed under the Indian Reorganization Act and under the law we have an approved constitution and bylaws to govern ourselves and under the term of our laws I think this should be stricken out for the benefit of the Cheyenne River Sioux Tribe as well as the others.

We recommend to this committee: Section 9—

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

We recommend—

It shall apply only if exercised in line with recommendations.

Then, section 13—

section 1 thru 9 of this Act shall become effective one year after the date of its enactment.

We recommend—

this Act shall become effective upon a tribe only after the tribe has adopted a master plan and has been approved for a loan in accordance with section 6 of this Act.

What do we mean by that? If this law takes effect 1 year after its enactment, suppose the Cheyenne River Sioux Tribe are unable to acquire a loan, then it will hinder our land program on the reservation because we will not have the money to buy all the heirship land.

We recommend that.

Section 14, subsection B, beginning—

one year after the effective date of Section 1 thru 9 of this Act the Secretary shall submit an annual report to Congress setting forth the progress made in the preceding year in carrying out the purpose of this Act.

We would recommend to add—

In the event the tribe feels that the intent of this act is not being fulfilled and is not to their benefit such tribe may, by majority of the people, petition the Secretary to be excluded from the provisions of this act.

At the end we hope the committee will take this into consideration. We recommend that moratorium of sale affecting trust lands to where they will be eliminated until funds are made available to the Cheyenne-Sioux Tribe.

That's the thing, Mr. Chairman. I appreciate your hearing us. I know, like a preacher, holding a service with all the congregation gone, the same thing happened here, I think all the committee is gone, there is no use for me to talk.

Senator CHURCH. Everything you said will be put in the record and will appear in print in published hearings, and it will be available to all members.

We appreciate your coming very much.

Mr. PAYNE. Thank you, Mr. Chairman, that concludes our statement.

Senator CHURCH. Fine, Mr. Payne.

Now that concludes the list of witnesses today. Is there anyone else who wants to be heard before we close the hearing?

Mr. Howard?

Mr. SONOSKY. Mr. Chairman, yesterday, you recall, these witnesses were called and asked to be deferred until today.

We have prepared statements by Mr. J. Dan Howard and Mr. Isaac Hawk who have a joint statement, Mr. Solomon St. John of the Crow Creek, Mr. St. John has a little difficulty with his voice and he would ask permission to submit his statement for the record.

Senator CHURCH. Very well, we will accept his statement for the record, when it is submitted. We appreciate his appearing in Washington.

STATEMENT OF J. DAN HOWARD AND ISAAC HAWK ON BEHALF OF THE STANDING ROCK SIOUX TRIBE OF NORTH DAKOTA AND SOUTH DAKOTA

Mr. HOWARD. Mr. Chairman, I was hopeful we could have been heard when our two Senators, Mr. McGovern and Mr. Burdick were present. We have a situation of being in two States so we feel that we will be well represented.

My name is J. Dan Howard of Morristown, S. Dak. and I am treasurer of the Standing Rock Sioux Tribe. With me is Isaac Hawk, a member of the tribal council from the Wakpale district of the reservation.

We appreciate this opportunity to testify. Our tribal council has followed the fractionated heirship legislation more closely than any other bill before Congress. We wish to thank the committee and its staff for keeping us informed on the heirship bills and the hearings, both in this Congress and the last Congress.

Our tribe realizes the problem we have where there are many owners in the same tract of trust land. We would like to see the problem solved. At the same time, we want it done in a way which will not mean loss of our trust land base. The tribe has some funds for land

purchase, but nowhere near what we would need if this bill became law. We want to be sure that Congress does not make a law which will allow trust land to be sold where the tribe does not have funds.

For that reason, we feel S. 1049 should be amended to make sure that there would be no sale of trust land unless the tribe had money or told the Secretary it did not wish to buy the land.

There are other items which disturb the council.

We do not want the Secretary to be able to sell trust interests where he cannot sell fee interests in the same land.

We do not want the Secretary to vote the interests of minor children unless they are orphans.

We do not want a general tribal meeting to decide on a master land use plan. This is the work of the representative elected by the people. That is what the tribal council is for.

We do not want partition or sale in the State courts unless Congress writes provisions in the bill to give the preferential rights to buy at court sale.

We urge that the greatest care be used to put clear limits on the discretion given to the Secretary of the Interior so that the powers given under this bill would not be used to defeat its purpose of giving the tribe a full and fair opportunity to buy trust land offered for sale. We worry about this because, while the bill talks about the Secretary of the Interior, by the time he gets through delegating his powers, the decisions are made at the lowest clerical level in the agency.

At that level the Secretary's discretion needs to have the controls spelled out. Another reason for us to be in Washington, we have plans, we made quite extensive plans to consolidate our holdings and we also are awaiting approval on part of our land program now to make use of what funds we do have available, and we like other people, would need additional moneys to try to take care of our heirship problems. I thank you.

Senator CHURCH. I wish you much success. I appreciate your coming gentlemen.

Mr. St. John, we appreciate your coming. Your statement will appear at this point in the record.

STATEMENT OF SOLOMON ST. JOHN, MEMBER, CROW CREEK SIOUX TRIBAL COUNCIL
OF SOUTH DAKOTA

My name is Solomon St. John. I am a member of the Crow Creek Sioux Tribal Council. I wish to thank the committee for this opportunity to testify.

My tribal council has asked me to remind this committee that twice the United States has taken our lands for dams in the Missouri River, for Fort Randall Dam and for Big Bend Dam. Our land base has been pretty well broken up. Congress has given us a settlement for the takings. Part of this money will be used to buy land. But there will not be enough money. Much trust land on the reservation is up for sale, partly because people have been forced to move twice. The tribe wants the chance to buy that land. Under S. 1049, we are afraid trust land will be sold when the tribe has no money. We ask that S. 1049 be amended so that no trust land the tribe wishes to buy will be sold when the tribe has no funds.

On the loan matter, section 6(a) of the bill says a tribe cannot get a loan from the Bureau unless it shows it is unable to get a loan from any other source. I heard one of the lawyer witnesses say we do not have to worry about this because it means we only have to show we cannot get a loan from other sources on the same terms as the Bureau gives. I am glad to hear this. If it is true, the language in the bill is not needed because no source outside the Bureau gives 30- or 40-year loans at 2 percent interest. Up to now, the Bureau has always told us that such language means that no Bureau loan will be granted if a bank or FHA or a similar lending institution will make a loan. I hope the committee makes sure about this.

There are other features of the bill my tribe objects to. These were covered in the statement of our attorney, Mr. Marvin J. Sonosky.

Senator CHURCH. That concludes the hearing. The record will remain open for 10 days for the submission of supplementary written statements by all interested parties.

(Whereupon, at 12:55 p.m., the hearing was closed.)

APPENDIX

THE NAVAJO TRIBE,
Window Rock, Ariz., May 9, 1963.

HON. FRANK CHURCH,
U.S. Senate, Washington, D.C.

DEAR SENATOR CHURCH: This replies to your March 19, 1963, letter requesting comments on S. 1049, a bill relating to the Indian heirship problem. It is a matter of great regret that I was unable to be present for the hearings held April 29 and 30 on the proposal, due to a Navajo Tribal Council meeting and to my recently becoming chairman on April 13.

The Navajo Tribe recognizes the difficult and complex problems which you, the subcommittee, and the staff have faced in seeking acceptable legislation to help resolve their heirship situation. While we believe some of the difficulties which surround the Indian heirship problem might best be solved by approaching the problems from the point of view of each reservation, we do not oppose the principle of general legislation designed to attack the overall problem. However, it may be necessary to seek special relief where particular or peculiar problems are found in the administration of the legislation.

There are over 4,000 Navajo allotments, most of them east of our reservation in New Mexico, and almost all of which lie outside of the Navajo Reservation. On about 3,000 of these the original allottee has died, with resulting heirship problems. It is important to note that most of these allotments are intensively used for grazing purposes by families of the original allottees. Thus, the land use situation is quite different from other Indian allotment areas, where, I have been told, land often lies unused when the heirship problem has become acute.

While the land may be in use, the problems of administration are nevertheless acute, particularly where minerals are concerned.

Many Navajo allotments are potentially valuable for mineral development. Administrative problems will remain even if the surface is sold under the provisions of the act and the minerals are reserved to the allottee in trust. Fractionation of interest frequently causes the Bureau of Indian Affairs to issue checks for each allottee having an interest, the face amount of which is less than the cost of processing the check. This situation can only get worse. And yet it appears unfair to the allottee to force sale of his mineral interest due to the uncertainty of value.

It is for this reason that I suggest to the subcommittee the possibility of providing for separate sale of the surface and the minerals, the minerals to be sold only at auction with a right to meet the high bid, reserved to any of the Indian owners first, and then to the tribe, provided the owners consent to such a sale.

Our comments relating to specific sections are listed for consideration of the committee:

1. *The land use plan*—Section 6(e) requires adoption of a master plan for use of lands to be purchased as a prerequisite to the making of a loan by the Secretary for land purchase. Section 7 provides that a tribe adopting a plan not involving a loan may sell or encumber tribal property in furtherance of such plan. Section 5(d) provides that title may be taken in trust by a tribe or individual Indian purchasing land unless it is outside a reservation or an approved tribal consolidation area. The combination of these sections would seem to foreclose the Navajo Tribe from acquiring title in trust to any allotments it might purchase outside the Navajo Reservation, because under section 6(a), as now written, the Navajo Tribe would not be eligible for a loan and section 7 does not provide for adoption of a plan containing an "approved tribal consolidation area." To remedy this combination of difficulties so that it is clear that tribes not receiving loans could take title in trust outside their reservations, but

within an "approved consolidation area," we recommend that section 6 be rewritten as follows, to add a new subsection:

"SEC. 7. (a) Any tribe not eligible for a loan pursuant to section 6 of this Act may submit for the approval of the Secretary of the Interior a master plan for the use of all lands to be purchased. Such plan shall be formulated by the governing body of the tribe which may call upon the Secretary for technical assistance, and the Secretary shall render such assistance as may be necessary. The plan shall include provisions called for by subsection 6(e) of this Act and may be revised from time to time with the approval of the Secretary.

"(b) Any tribe that adopts, with the approval of the Secretary, a plan, pursuant to subsection (a) of this section or pursuant to subsection 6(e) of this Act, is hereby authorized with the approval of the Secretary, notwithstanding any other provision of law, to sell or encumber any tribal land or other property in furtherance of such plan."

2. *General meeting of tribe.*—It is a practical impossibility for the Navajo Tribe to hold a general meeting to consider a land use plan. The overwhelming majority of our people are living on tribal lands and are not sufficiently familiar or concerned with the allotment problem to make such a meeting fruitful, although those living on or around allotted lands outside of the reservation would be much concerned. Formulation and submission of such a plan for consideration of the Secretary should be accomplished by the recognized governing body of the tribe. Since even a referendum among the Navajo people would be prohibitive in cost, we strongly urge deletion of the second sentence of subsection 6(e) at lines 20-25 on page 7 of the bill. The first sentence could be revised to read as follows:

"(e) Before a loan is made under this Act the tribe, through its governing body, shall submit for the approval of the Secretary of the Interior a master plan for the use of all lands to be purchased."

3. *Eligibility for loans.*—As the bill is drafted it is likely that the Navajo Tribe would not be eligible for a loan pursuant to section 6 of the draft. This is unfair to the Navajo Tribe, who, because of its size, actually has very little resources on a per capita basis. In fairness to all we believe that we should be eligible for a loan and that the Secretary should decide on the basis of all facts whether or not a loan should be made to the Navajos. Further, discriminatory legislation, such as this section would create, might have constitutional difficulties if it came before the courts. Subsection 6(a) could be revised to allow loans by the Secretary upon such nondiscriminatory regulations as he may issue.

4. *Representation.*—We believe that insofar as possible the Secretary should not become involved in family decisions concerning trust or restricted lands, and for this reason we recommend that lines 5-6, page 4, of the bill, be amended as follows: "(1) who is a minor without parents by law or tribal custom who can be found upon reasonable search by the Secretary."

5. *The "best interests" test.*—It seems to us that the present wording of section 1 of the bill could be improved to make clear that the "best interests" of the owners should be considered before any partition of the land is accomplished. To accomplish this we suggest striking line 2, page 2, and substituting the following: "Provided, That no such partition or sale shall be authorized unless it would be in the best interests of the Indian owners."

This bill represents a great step forward in dealing with fractionated heirship interests in trust or restricted lands. While general legislation often does not solve individual reservation problems completely, we would not oppose the proposed solution contained in S. 1049, if amended to provide protection for Navajo interests as outlined above.

Thank you for the opportunity to comment on this bill.

Very truly yours,

NELSON DAMON,
Acting Chairman, Navajo Tribal Council.

STATE OF CALIFORNIA,
DEPARTMENT OF SOCIAL WELFARE,
Sacramento, April 11, 1963.

HON. FRANK CHURCH,
U.S. Senator,
Washington, D.C.

DEAR SENATOR CHURCH: Thank you so much for calling our attention to your new bill on the Indian heirship land problem.

In California we have been interested for many years in all efforts to secure for our Indian population the full rights and privileges of all citizens. We know that with their property in such a fashion it has been difficult to handle it to their advantage because of the complexities brought about by the specialized forms of ownership. Therefore, we would very much like to see the kind of simplification to which your bill goes and would hope that it would receive favorable attention.

Very truly yours,

J. M. WEDEMAYER, *Director.*

NEZ PERCÉ TRIBAL EXECUTIVE COMMITTEE,
Lapwai, Idaho, April 24, 1963.

HON. FRANK S. CHURCH,
U.S. Senator, Committee on Interior and Insular Affairs,
Senate Office Building, Washington, D.C.

DEAR SENATOR: The Nez Percé Tribal Executive Committee, at its last meeting, was apprised of the special hearings to be conducted by the Subcommittee on Indian Affairs, which you so ably chair, on April 29 and 30.

The Nez Percé Tribe of Idaho feels that this legislation is long overdue to enable both Indian tribes and individual members owning fractionated individual interests in lands to manage the lands under modern conditions to achieve their full utilization and returns.

Please register the Nez Percé Tribe of Idaho as favoring S. 1049, and we are authorizing our tribal attorneys in Washington—Strasser, Spiegelberg, Fried, Frank & Kampelman—by and through Richard Schifter & Associates, to attend the hearings as our official representatives to testify or present documentary evidence in support of the bill.

Sincerely,

ANGUS A. WILSON, *Chairman.*

STATEMENT OF HARVEY MOSES, CHAIRMAN OF THE BUSINESS COUNCIL, COLVILLE
CONFEDERATED TRIBES

The following statement represents not only my views but more importantly the views of the Business Council of the Colville Confederated Tribes in the State of Washington. The views herein expressed were expressly approved at the regular meeting of the business council held at Nespelem, Wash., on Thursday, April 11, 1963.

The Colville Confederated Tribes are in agreement that S. 1049 is the best bill which has been presented to attempt to solve the Indian heirship land problem. We do, however, have a few suggestions for amendments which we think would make the bill even more desirable.

Section 1: We suggest that section 1 be amended to provide that the 50-percent interest in land requirement be applicable regardless of the number of persons who own undivided interest. We also suggest that line 2 in section 1(a) be amended by adding at the end thereof the words "and the tribe." We also suggest that consideration be given to the amendment of section 5(d). Many of the allotments made to the members of the Colville Confederated Tribes are outside the boundaries of the reservation. If title to those lands must be taken in the name of the purchaser without any restriction there will be very

little incentive to the owners of undivided interest to invoke the procedures provided for in section 2 of the bill. It is our view that the title to any land acquired by a tribe or an individual Indian under the bill should be taken in trust even though it be located outside the boundaries of the reservation or approved consolidation area.

Cox & Cox,
Attorneys at Law
Phoenix, Ariz., March 26, 1963.

HON. FRANK CHURCH,
U.S. Senator,
Washington, D.C.

DEAR SIR: Section 6(e) page 7, line 22 of the printed bill as introduced calls for "a general meeting of tribal members." It is suggested that some tribes may be of sufficient size to make it impractical, if not impossible, to hold a general meeting. It might be advisable to allow an election to be held under the direction of the Secretary of the Interior in such an event.

I was very pleased with my first reading of this bill.

Sincerely yours,

Z. SIMPSON COX.

ALBUQUERQUE, N. MEX., April 4, 1963.

HON. FRANK CHURCH,
U.S. Senator,
Senate Office Building, Washington, D.C.

DEAR SENATOR CHURCH: Thanks for your consideration in sending us a copy of your proposed new bill regarding Indian heirship land problems.

This office represents the following Indian tribes: Acoma, Isleta, Laguna, San Ildefonso, Santa Clara, Ute Mountain Utes, and we are particularly interested in this heirship land problem because over the period of many, many years, the allotted land question has become nothing but a headache to us, and we heartily approve of your bill.

However, there are some points we would like you to consider. We believe section 7 could be eliminated because it would tend to do this—which we believe to be harmful not only to the Indians, but to the United States as such. This portion of the bill would indicate that the aim of this bill is to get at the Indian lands and open them to landgrabbing speculators. The allotment inheritance has substantially proved this is exactly what happens where these large Indian families have eventually sold off, or married off, until the land is in the hands of the white man who uses it for speculations.

It is our opinion that where the allotted land is within the Indian reservation, and there are a number of such allotments, the sale of this property should be reserved to the Indians or to the Indian tribe, and they alone have the sole right to buy such land and that no white man be permitted in such instance to buy the land. Your provision on loan not to exceed 30 years would certainly indicate that this can be done.

Some question arises concerning section 2 of your bill consenting to the State or local court to hear these matters. We are sure that your study discloses the prejudice in the courts to the Indians, and also to the enormous political strain put on the court by the white man who wants the lands, and particularly the more valuable lands. Such would not, in our opinion, give full justice and right to the Indian in the suits. Surely the U.S. courts, since the U.S. Government is an indispensable party, would administer to the trust relationship of the U.S. Government and to the Indian with full justice, and accord them each the relief that your bill intends to give.

We have fought Indian cession where the purpose was for the white man to take the Indian land which through some political maneuver became surplus and where obviously the action was not for the benefit of the U.S. Government or the Indian. Your bill does what we want and that is protect heirship tracts since they are potentially one of the most important of the Indian resources today when you consider how many young Indians have no lands.

Section 5 of your bill provides for notice. We would like to suggest that the notice be specific. By that we mean it should go not only to the allottees, but to the Indian tribe itself, so that the tribe may act through its governor or

chairman to protect the Indian tribe's interest in the land or right to purchase. Such notices to protect the allottee and the Indian tribe must conform to the rules of civil procedure of the U.S. courts.

Very truly yours,

SAM DAZZO

(For Dazzo, Dazzo & Brophy, Attorneys at Law).

STATE OF NEBRASKA,
DEPARTMENT OF PUBLIC WELFARE,
Lincoln, March 27, 1963.

HON. FRANK CHURCH,
*U.S. Senate,
Washington, D.C.*

DEAR SENATOR CHURCH: Heirship land held in trust on behalf of Indians has been the source of considerable controversy and difficulty in the State of Nebraska. Controversy arises when these Indian owners apply for public assistance.

Nebraska officials are perfectly willing to treat Indians in the same manner as any other race. There is, however, a real reluctance to make public assistance payments to Indians who are the actual owners of thousands of dollars worth of farmland. We have instances where an Indian owns fractional interests in as many as two to five different tracts. The Indian himself does not farm or ranch this land, nor can it be expected that he will ever do so. The small net rentals are of little real value to the Indian.

The Nebraska Department of Public Welfare has, in contacts with the Indian agency and the Nebraska congressional delegation, urged liquidation of all Indian heirship lands in those cases where the Indian is not in a position to himself farm or ranch the property. A sale will place these lands on the tax rolls and remove the continuing objection to making public assistance payments.

Sincerely yours,

E. D. WARNSHOLTZ, *Legal Consultant.*

POCATELLO, IDAHO, *April 5, 1963.*

HON. FRANK CHURCH,
*U.S. Senator, Senate Chambers,
Washington, D.C.*

DEAR SENATOR: I have your letter of March 19, together with copy of the Senate bill.

Your attention is again called to the inescapable fact that any settlement of the allotment problem on the Fort Hall Reservation can only be accomplished in one of three ways.

First, the tribe buy the lands from the allottees.

Second, the Government buy the land from the allottees for the benefit of the tribes.

And, third, Congress provide that when a certain number of persons with an undivided interest in a restricted tract due to the death of the original allottees and their survivors, that the title vest in the tribe as a whole, or in the Government for the benefit of the tribe with either the superintendent or the tribe authorized to give preferences to heirs by way of assignment if any appeared qualified to operate the property.

Certainly, No. 1 is not feasible here. This tribe simply does not have the money to purchase the lands and it should not be required to purchase these lands because the Indians have never understood that the Government was making it possible to take the land out of Indian ownership by the allotment procedure.

As to No. 2, the Government could, of course, purchase the interest in heirship, but it is questionable whether or not the money would be of any benefit to the number of people involved. When there are so many undivided interests that it becomes cumbersome and unwieldy to have the Government purchase it, it would be one of the fair ways to handle the matter. However, I assume that Congress would be opposed to that.

And No. 3, to provide for the right of the land to tribe ownership is much more reasonable and fair to the Indians as a whole than to provide for the fractional sale of interests where it is provided in every instance that the lands may pass into the hands of non-Indians, generally referred to as "whites."

The record of sales of Indian lands to non-Indians, or to the tribe on the Fort Hall Reservation, shows absolutely and conclusively that the money received from such sales by the individual Indian has been lost and wasted. Why this statement is denied, or ignored, I have no idea, but it is absolutely true. These people are not yet able to invest, save, or take care of the money received from the sale of a piece of real estate.

I constantly hear the statement and complaint that to handle the matter on this basis invades the constitutional right of the individual Indian. This would have some force if it were not for the fact that Congress has repeatedly invaded the constitutional rights of the Indian people and the provisions of their treaties. Also, it is repeatedly held that Congress can enact any legislation it sees fit with reference to the constitutional rights of the Indians, or with reference to changes in their treaties.

For Congress to adopt Public Law 280 and at the same time say they cannot solve the heirship problem is simply "straining at a gnat."

The heirship bill is fine in theory but it still leaves the matter wide open for a timeless procedure and arguments about loans, etc. The local tribe could not in 100 years repay a loan in a sufficient amount to purchase the lands affected by an undivided interest.

Instead of loaning the money, the Government would be better off to purchase the lands outright and save all the administrative costs of the Bureau that will build up over the period of years it will take to administer the new law. The proposed law may be feasible with reference to some reservations, but certainly not this one, and Congress has the power to deal with reservations separately and individually rather than as a whole.

At the present time we have so much administrative Indian law and regulations that it is almost impossible for an individual to accomplish, or master it. The amount of money the Government would save over a period of years by doing away with the bookkeeping involved with the complicated allotment system and with the undivided interest in heirship lands would simply be tremendous. I have an idea that from a strict financial standpoint the Government would save considerable money over a period of even 25 years to purchase the lands involved on the Fort Hall Reservation and do away with all of the bureaucratic procedure in maintaining a great staff to take care of the handling and management of the funds, etc. in connection with the administration of allotments.

I notice in section 8 of the bill that Congress evidently still has in mind a termination of trust responsibilities and if that is one of the objectives, why should the tribes be saddled with all the extra duty of purchasing heirship lands and why should the Government not use every effort to get the title of all the lands within a reservation into the tribe as a whole.

Respectfully yours,

B. W. DAVIS, *Attorney at Law.*

HAVRE, MONT., April 24, 1963.

SUBCOMMITTEE ON INDIAN AFFAIRS,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
U. S. Senate, Washington, D.C.

GENTLEMEN: The writer is attorney for the Fort Belknap Community Council, Consolidated Assiniboine-Gros Ventre Indians, Fort Belknap, Mont.

The subcommittee is to be congratulated for the work it has done since the hearings on S. 2899.

Comparison of S. 1049 to S. 2899 makes it clear that the subcommittee has answered practically all Indian objections to the previous bill.

I have but a few comments to make on S. 1049.

SECTION 2

This section is still objectionable, as was section 2, S. 2899, from the standpoint of costs and expenses in judicial partition sale.

A typical 320-acre allotment on Fort Belknap would bring, by liberal estimate, \$5,000.

In Montana, judicial partition requires a trustee and appraisers. The trustee has an attorney. Each individual owner is entitled to an attorney to represent his interest. The court can appoint an attorney for unknown or unlocatable owners. All attorneys' fees are set by the court, and payable from sale proceeds.

As an attorney, I am not adverse to the potential of additional legal business. However, costs, fees, and expenses in a judicial partition can easily take up to 30 percent of the sale proceeds.

It is recommended that the Secretary be given authority for an administrative partition or sale. Administrative partition or sale would be cheaper and give the owners a greater share of the proceeds.

SECTION 6

Section 6(e) requires an approval vote by general meeting of tribal members. This provision should also authorize councils of organized tribes to offer master plans.

Further, it should authorize provision of existing land enterprise programs to include the master plan provided by 6(e).

The constitution and bylaws of organized tribes have procedures for forcing referendums on council actions. Expressly giving tribal councils the planning power can, in most cases, avoid expenses of general tribal referendums.

SECTION 14

It is not clear in section 14(a) that notice can be given by publication as well as actual.

If a court should require actual notice under 14(a), it would often be impossible to satisfy.

By inserting after the comma following the word "Act," line 13, page 10 of the bill, the words: "by actual notice or notice by publication" this question can be laid at rest.

There is no question but that practically everyone concerned with the problem of legislation for fractionated heirships desires that the land remain in Indian ownership, individual or tribal.

The only way that this can be achieved is for Congress to provide financing where a person or tribe is unable to do so. If Congress does not, these lands will pass to non-Indian ownership.

Respectfully submitted.

J. CHAN ETTIEN,

Attorney for Fort Belknap Community Council.

COLORADO RIVER INDIAN TRIBES,

Parker, Ariz., April 25, 1963.

Mr. ROBERT BURNETTE,
*Executive Director, National Congress of American Indians,
Washington, D.C.*

DEAR SIR: This is in reference to S. 1049, a bill relating to the Indian heirship land problem and the three points raised by N.C.A.I.

1. The Colorado River Indian Tribes do not have any objections to the stated percentages of heirs who may cause the sale of a tract of land. The 50 percent or more provision seems practical. So, too, does the 25 percent or more provision where there are 11 or more owners. The larger the number of owners the more there are whom you can't find or who just won't act one way or the other. If too large a percentage is required, desirable action may be needlessly prevented.

2. We see no objection to bringing the State courts into it (sec. 2), particularly when the case is subject to removal to Federal court. Partition or sale, by any court proceeding, is a relatively routine thing, but, the bill (sec. 2) should be amended to make the Indian preference to purchase provisions of section 5 also applicable to sales by the court.

3. After considerable discussion and thinking on section 8, the Colorado River Tribes feel that the "termination" clause be omitted entirely from the bill.

Following further review and advice by the Colorado River tribal attorney, the Colorado River Tribes do not have any other recommendations or omissions on the other contents of the bill.

Very truly yours,

PETE HOMER, Sr., *Chairman.*

INDIAN RIGHTS ASSOCIATION,
Philadelphia, Pa., April 26, 1963.

HON. FRANK CHURCH,
Chairman, Subcommittee on Indian Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR CHURCH: Thank you for your invitation of March 19, 1963, to the Indian Rights Association, to submit a written statement or to testify regarding the Indian heirship land problem. This letter is in response to that invitation. I have testified previously before your committee on the heirship land problem (August 10, 1961; April 3, 1962).

The bill, S. 1049, relating to the Indian heirship land problem, is far superior to any that has been introduced previously. We approve it in general and in most of its details.

The Indian heirship land situation is widely recognized as one of the difficult problems facing Indians and administrators having to do with Indian affairs. In the consideration of Indian trust and restricted lands, the policy should be to use the lands productively for the support and advancement of the Indian people and to find a solution to the heirship land problem that will allow the land to be used by the Indian people to the maximum extent feasible. The provisions of S. 1049 seem generally in line with this policy.

Reference follows to a few specific provisions of the bill:

Section 8: Although attorneys advise that this section has very little force and effect, the mere appearance of the word "termination" in the bill will tend to create opposition. I recommend omission of the section.

Section 10(b): The authorization for a substantial increase in the Indian revolving loan fund is an extremely important provision of the bill. The lack of loan funds for tribes to enable them to purchase heirship lands put up for sale could result in the loss to tribes and individual Indians of areas of land vital to land-use programs. The increase in the loan authorization should surely be retained in the bill.

Section 13(a): This provision to make the act effective 1 year after its enactment will help to assure time for the appropriation of additional loan funds and also give tribes a margin of time in which to prepare land-use plans.

Very sincerely yours,

LAWRENCE E. LINDLEY,
General Secretary.

STATEMENT OF THE BLACKFEET INDIAN TRIBE

HON. FRANK CHURCH,
U.S. Senator.

We, the undersigned members of the Blackfeet Indian Tribe, wish to express opposition to S. 1049, Indian heirship bill, authored by the Honorable Frank Church, Senator from the State of Idaho, for the following reasons:

1. This bill promotes the termination policy of preceding administrations. A policy that has been verbally renounced by spokesmen of the present administration. A policy that many Indians are opposed to.

2. This bill permits the land, acknowledged as part of the heritage and birthright of this hemisphere's first inhabitants, to be taken from them without due process of law.

3. This bill abrogates and nullifies certain tribal constitutional provisions. This nullification instituted in complete disregard of the wishes or feelings of the first Americans. This abrogation instituted without allowing these first Americans to decide whether they wish such constitutional provisions to be eliminated.

4. This bill puts in the hands of one man the power of deciding the future of many individuals. This future holds in prospect the probability of complete loss of identity of their culture, a culture that is interwoven in the skein and fabric of the history of this land; the native habitat of the Indian.

5. This bill will remove from consideration the inherent right of the individual to self-determination. This act permits self-interest to force its will on the minority and the majority without benefit of appeal.

6. This bill is vague in certain of its provisions. This vagueness will permit a wide latitude of interpretation. Such interpretation could work to the detriment of a whole race of people.

7. This bill holds no guarantees of protection for the unenlightened or unknowing.

8. This bill allows for a sixth policy regarding the Indian American: In addition to the former policies of extermination, transmigration, isolation, paternalism, and termination can now be added the policy of encroachment.

It is not fair to criticize and not justify such criticism. Making positive recommendations is one method of justifying criticism. Therefore, we wish to convey this through to you, Senator Church. A bill for solving the heirship of Indian trust property or disposition of such should be promulgated with specific provision(s) for such property remaining in the possession of an Indian or the Indian tribe as a whole. Make provision(s) for acquisition of property by the individual Indian or the Indian tribe. We do not want our land to pass out of "Indian country" existence as it is one of the few assets remaining to us.

Respectfully submitted.

Richard Little Dog, Chairman; William Running Crane, Vice Chairman; Henry Morning Gun, Secretary; Louis Reeves, Dan Bull Plume, Fish Wolf Robe, Louis Plenty Treaty Bear Child, Maggie Manny Hides, Charles Horn, Maude Lahr.

STATEMENT ON BEHALF OF THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION, PENDLETON, OREG.

On behalf of our client, the Confederated Tribes of the Umatilla Indian Reservation, we submitted a statement regarding the Indian heirship land problem and S. 2899, then pending before the Indian Affairs Subcommittee of the 87th Congress, 2d session (see pp. 351-352, pt. 2, hearings on S. 2899 (1962)). S. 1049 is less objectionable than was S. 2899 because S. 1049 contains no provisions of the nature of those in section 11 of S. 2899, requires a request for partition or sale to come from the owners of substantial interests in the land in question and makes a few technical refinements. However, the Umatillas consider that S. 1049 is otherwise subject to the same objections we previously urged.

This statement will deal primarily with what the Umatillas believe is the most fundamental objection; namely, the failure to provide a practicable means of financing the purchase rights purportedly given by the bill to the tribe and individual owners. For our criticisms on other features—the failure to provide for exchanges between owners and the ambiguous nature of section 8—we refer the subcommittee to our statement filed regarding S. 2899 (see above).

FINANCING

The provisions in the bill for loans and the section-by-section analysis of the bill by Senator Church tacitly admit that the preferential bidding rights given to tribes and individuals under section 5 of the bill are meaningless and illusory unless there is financial assistance in the form of mortgage loans by the Government to tribes and individuals.

In our 1962 statement regarding S. 2899, we requested liberalization of the loan provisions and stated that the Umatillas—

"* * * are opposed to any program or measure for the acceleration of sales of heirship interests until a practicable means is devised whereby individual tribal members may acquire such interests."

We regret that S. 1049 indicates that no progress has been made in devising practicable financial assistance. Rather than being satisfied with the above general statement, we offer the following constructive criticism and statement of facts regarding the Umatillas, with the thought that thereby the actual effect of this bill may be more clearly seen.

Factual background.—The Umatillas have special reasons for requesting realistic financial provisions. We believe, however, that such special reasons are shared by many tribes. These reasons arise out of the following facts:

1. The membership of the Confederated Tribes of the Umatilla Indian Reservation exceeds 1,200, including children. More than half of the members live outside the reservation. Many of those living outside the reservation (a) are more self-sufficient economically, (b) are of a lesser degree of Indian blood, or (c) are less interested in the tribal organization and in preserving trust status of allotted lands than are those living on or near the reservation.

It is, therefore, quite possible that a tribal consolidation program under section 6(e) of the bill would not be approved at a general meeting of tribal members. Also, for the reasons stated below, it would be hard to say whether the tribe has adequate funds "available" so that it would not be entitled to a loan under section 6(a) of the bill.

2. Very few of the members living on the reservation are able to borrow money from lending institutions. One reason is that they do not have sufficient security to offer a prospective lender.

3. The tribe presently operates at a small annual deficit. For several years it has had a small-scale credit program under which loans have been made to members by the tribe. Because the tribe does not wish to endanger its comparatively modest capital, the entire fund from which loans are made is only \$30,000. All the fund is presently on loan. Because many of the loans are secured by mortgages on homes and because the borrowers have no other source of financing, it is probable that the greater part of this fund will not be repaid for several years.

4. Whether the tribe has "adequate" funds with which to finance a tribal land consolidation program depends on one's point of view. It has funds equal to the probable investment in a small program, but if it uses such funds it will have to operate with substantially greater deficits, and may have to forgo such programs as the sanitation facilities program offered by the Public Health Service.

Probable effect of present bill.—With the foregoing facts in mind, the Umatillas Board of Trustees see grave risk that, should the present bill go into effect, its net effect would be to eliminate most of the Indian ownership of land on the reservation.

Suppose, for instance, that (for one reason or another) the tribe does not have an approved consolidation plan or is otherwise unable to bid at a sale conducted under the bill. This would leave the individual as the only one able to preserve or protect what may be his only interest in land. If the individual applies for a loan under section 10(a) of the bill, he may well be met with one of or all the following from the Bureau of Indian Affairs:

(a) That the tribe "is making loans to its members" within the meaning of section 10(a) so that, even though the tribe cannot make a loan to him, he is not eligible for a loan under the bill.

(b) That any loan under the bill must be supported by adequate security—say, 80 percent or 90 percent of the "appraised value" of the land to be sold.

(c) That because current funds are not available, or for various other reasons, the loan cannot be made by the time the land is put up for sale.

With this the individual Indian is expected to engage in the bidding procedure of section 5 of the bill under which he quite possibly will have to compete in an open bid against wealthy local farmers, ranchers, and timber companies in which the sale price is not limited to the "appraised value."

We strongly urge the subcommittee to recognize that the individual cannot effectively compete under these circumstances.

Even if a loan commitment were obtained, it almost certainly would be in terms of the "appraised value." Yet the bidding itself may prove that this "appraised value" is too low. It seems to the Umatillas that either the maximum price should be the "appraised value" or loans should be in terms of the sale price. We have little hope that the latter would be allowed under the present bill. This is indicated by section 6(b) of the bill, which provides that even a loan to a tribe is limited to "appraised value" plus the value of any other security.

RECOMMENDATIONS ON FINANCING

On the basis of the foregoing and long experience which indicates the absolute necessity of making Indians' rights crystal clear if they are to be fairly and consistently recognized by every administrative regime which may control the Bureau of Indian Affairs from time to time, we recommend the following changes in the financial provisions of S. 1049:

1. No sale should be allowed under sections 1 or 2 unless the Secretary of the Interior finds that the interested individual owners (and the tribe, if it has an approved plan) are actually eligible for a loan available to them in an amount that will enable them to bid as high as the sale price.

2. If the foregoing recommendation is not followed, then at least no sale should be allowed under sections 1 or 2 unless and until Congress has actually appropriated the increase in the revolving loan fund authorized in section 10(b) and at the time pertinent to the sale there are available funds with which to make the loan.

3. That part of subsection (b) of section 5 authorizing objection to the right of other owners and the tribe to meet the high bid and all subsection (c) of section 5 should be eliminated. Further, if recommendation 1, above, is not adopted, the sale price should be limited to the "appraised value," and the sale

should be canceled if the owner or owners of a substantial interest in the land object to the sufficiency of the "appraised value."

4. As stated in 1962 in our statement concerning S. 2899, section 6(a) should be modified to make tribes eligible for loans under the bill, even though they may theoretically have adequate funds "available." It should be specified that funds are not "available" if the tribe believes it necessary to retain them for other programs or for general tribal operations.

5. Section 10(a) should be modified to provide that individual members are eligible for loans under the bill unless an adequate loan from the tribe is actually available to them.

OTHER RECOMMENDATIONS

The following additional improvements should be made:

1. Section 1 should set forth the standard applicable to the judgment which the Secretary is required to exercise in determining (a) to partition or (b) to partition part and sell part. The absence of a present provision establishing such standard apparently results from oversight. Thus, as to a sale of all the land under section 1 and a consent to judicial partition, partial partition and partial sale and sale of all under section 2, the Secretary is required to find that such is "in the best interests of the Indian owners." Yet, no finding is expressly required for partition or partition of part and sale of part under section 1. Without a congressionally established rule for decision, the hearing guaranteed by section 5 would be meaningless.

2. If the present provisions of section 6(e) regarding the approval of the tribal consolidation program at a general meeting of tribal members called for such purpose are retained, the notice requirements should be liberalized so that the tribe may give such notice by mail to the adult members of the tribe at their last-known addresses. Section 4 of the bill recognizes that there will be interested owners who, "after a reasonable and diligent search," cannot be located, and section 5(a) provides that notice of sale by the Secretary may be directed to the owner's "last-known address." If the Secretary is entitled to use such means of notification, the tribe should be entitled to do so when calling the required general meeting. The present provision for "due notice" is not sufficiently definite to assure the tribe that such means are sufficient.

Respectfully submitted,

KING, MILLER, ANDERSON, NASH & YERKE,
MARK C. McCLANAHAN,

*Legal Counsel for the Confederated Tribes of the Umatilla Indian
Reservation.*

ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC.,

Santa Fe, N. Mex., April 26, 1963.

HON. FRANK CHURCH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CHURCH: Various factors have delayed me until now in acknowledging your courteous letter of March 19 and copy of your new version of an Indian heirship land bill, S. 1049, that you so kindly sent me. I have studied the bill with care and consulted about it with my colleagues in the association, and it is a pleasure to express to you our appreciation of the thought and the concern for the best interests of our Indians that you have shown in writing this bill.

This is statesmanlike legislation that does not sweep the grievous problem of Indian heirship land under the rug, but insures that wherever Indians afflicted by that problem show a desire to help themselves, they will have an opportunity to do so. We understand it to be your intent that this bill, when enacted into law, will be administered in such a way as not to endanger Indian landholdings in any area in which they can be the basis of significant help to the economic development of the Indian community. In this, we are most heartily with you.

Your willingness to bring in three successive versions of bills on this subject, each in succession more closely fitted to the expressed desires and needs of the Indians as they were brought to light, is most unusual. We hope that out of your thoughtful good will there will come an act that will be a historic landmark in solving a problem that has been bypassed by administration after administration and Congress after Congress for many years.

Yours sincerely,

OLIVER LA FARGE, *President.*

POPLAR, MONT., April 30, 1963.

Senator FRANK CHURCH,
Chairman Subcommittee of Indian Affairs,
Washington, D.C.:

The Fort Peck tribal executive board supports tribal Attorney Marvin J. Sonosky's position and testimony on the heirship bill which is S. 1049.

WM. YOUPEE, *Chairman.*

THE SHOSHONE-BANNOCK TRIBE,
Fort Hall, Idaho, April 24, 1963.

HON. FRANK CHURCH,
Senator from the State of Idaho,
Senate Building, Washington, D.C.

DEAR SENATOR CHURCH: I have had the opportunity to discuss the Indian heirship bill with members of the tribal council and a number of tribal members and there seems to be considerable room for abuse in said bill in depriving the Indians of recognized rights under the constitution, charter, and bylaws. Our constitution sets up a program whereby the same things which are sought to be accomplished under the heirship bill could be accomplished, but it appears that all of such acts are under the supervision and subject to the approval of the Bureau of Indian Affairs and the Secretary of the Interior. The stalemate that has taken place appears to have been occasioned by the failure of the tribe, the Bureau, and the Secretary to work for a common goal. In other words, redtape has created a situation of stalemate and hopelessness.

Your bill does not make any distinction between the organized tribes and the unorganized tribes. It is the feeling of the members of this tribe that I have discussed the matter with that some recognition should be given to the organized tribes' constitutions, laws, and regulations insofar as heirship matters are concerned. To pass the bill in the form as it is now printed would be to do away with the self-government provisions of the organized tribes under the reorganization act. We feel that there should be some recognition of the rights of self-government as established by the aforementioned act and that the same goals could be accomplished by permitting the tribes to exercise a little freedom in self-government as could be accomplished by every step and function being performed by the Federal Government.

There are some provisions of the bill that we do feel to be desirable and that is a provision to permit free exchange and sale of property between tribal members and between the tribe and tribal members.

There is one great improvement we believe could be accomplished by giving control of these heirship matters to the superintendent of the respective reservations rather than by putting the control in the area office. It appears that the big delays in decisions and actions occur in the area office and if the control was localized more efficiency would result.

I wish you would give these comments your consideration and advise what your thoughts are.

Very truly yours,

EDWARD BOYER, *Chairman.*

SMITH & SMITH,
Wapato, Wash., May 6, 1963.

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
U.S. Senate, Washington, D.C.

GENTLEMEN: I have been reading about your committee's recent hearings on a bill relating to the sale of Indian allotments which are in fractionalized ownership. I noted with interest the proposal for amendments advanced by representatives of the Yakima Indian Tribal Council, specifically, asking that no sales be authorized unless and until the Yakima Tribe secures a \$3 million Federal loan to buy up the land themselves. As a lifelong resident of this reservation and one who has represented many individual Indians in dealing with these problems, I felt compelled to express my views on the matter.

The tribal council appears to be trying to reverse 100 years of history and wreck the system of allotted Indian land. They already own thousands of acres of tribal land of an estimated value of three or four hundred million dollars. Allotments were authorized years ago to give individual Indians something for themselves.

The tribal council has already succeeded in passing an enrollment act limiting inheritance of allotted lands to those having one-fourth or greater Yakima Indian blood. They have also succeeded in having an unlawful moratorium on land sales placed in effect by the Bureau of Indian Affairs for the past several years, so that they have been the only ones allowed to buy these lands. Many perfectly competent Indians feel compelled to sell their allotments to avoid disinheriting their own families, but are forced to deal with the council on its own terms, very often at great financial loss.

For some years the council has been using what is left of their large income after paying the exorbitant cost of administering their reservation, to purchase these lands. They've gone so far that they couldn't even pay their members a per capita payment this year; that is, the stockholders have gotten nothing on their huge investment. Now they want to prevent their own members from selling their own land unless Congress will loan them \$3 million of our tax money to buy the land on a noncompetitive basis.

Passage of these proposed amendments will hurt many Indian people and lower the economy of this reservation. Those competent Indians who cannot pass their land on to their children because they don't have sufficient quantity of Yakima blood, those whose allotment interests are in such small proportions as to render them practically worthless, and those who are just plain tired of being treated as second-class citizens and want to sell their land and get out should have the right to sell to the highest bidder on a competitive basis. There would appear to be no reason for the tribal council to buy any of this land, let alone for them to have the exclusive right of purchase. I feel the only obligation our Government owes is to individual Indians and not to a tribal council as a political entity.

Very truly yours,

SMITH & SMITH,
DEAN C. SMITH.

BERT W. KRONMILLER,
Hardin, Mont., May 10, 1963.

HON. FRANK CHURCH,
*Senate Office Building,
Washington, D.C.*

DEAR SENATOR CHURCH: Mr. John B. Cummins, chairman of the Crow Tribal Council, has asked me to write this letter for him. He requests that further action upon the Indian heirship bill be deferred until the Indian tribes can prepare bills which they deem suitable to their particular Indian reservations.

I am conveying Mr. Cummins' request to you.

Very truly yours,

BERT W. KRONMILLER, *Tribal Attorney.*

SEATTLE, WASH., *April 24, 1963.*

Senator HENRY M. JACKSON,
*Chairman, Senate Interior and Insular Affairs Committee,
Senate Office Building, Washington, D.C.*

DEAR SIR: I read recently in the March 8 Congressional Record the text of Senator Church's latest bill, S. 1049, which offers solutions for the nagging Indian heirship land problem. This is Senator Church's third effort in this direction and he certainly deserves credit for his interest in the Indians and their problems.

Be that as it may, I must go on record as opposing the passage of S. 1049. If the bill is passed it would be the greatest device since the Bureau supervised land sale programs for reopening the sale in virtually wholesale lots of much needed Indian land. In this respect it would accomplish a purpose directly opposed to the stand of present Indian leadership, as I read it in their statements, which is to keep Indian land in Indian ownership. In a sense it would also negate the efforts of the late Senator James Murray who checked Indian land losses by getting the Bureau to set a moratorium on land sales under the supervised land sale program.

The proposed bill would encourage hard-pressed Indian heirs to sell their land for much needed cash. It would also facilitate these sales at the local level by allowing the Secretary of the Interior to turn over cases for probate in State courts. The bill would be the signal for Indians living in poverty and distress to line up at the agency realty office and exchange land for a living of sorts.

The Indian tribes that want to buy the heirship lands for tribal projects, on the other hand, are roped in by the proposed bill with a mass of redtape like a

calf at a rodeo contest. The provisions allowing them to borrow money under the bill to buy up the heirships are cumbersome and time consuming. In a public auction, some of the tribes will tell you, the price does not go to the encumbered or slow moving. Even the \$50 million made available for tribal use to buy the heirship land is only a token nod in the direction of giving the tribes first choice on the land. They could buy very little of the 6 million acres with this amount of money.

I would appreciate a copy of the bill for further study and comment.

Respectfully yours,

MAX GUBATAYAO.

NATIONAL INDIAN YOUTH COUNCIL,
Gallup, N. Mex., April 29, 1963.

Senator FRANK CHURCH,
Chairman, Senate Interior and Insular Affairs Subcommittee,
Washington, D.C.

THE HONORABLE SENATOR CHURCH: Because Senate bill 1049 about Indian heirship is contrary to constitutional due process, trust administration under the Property Law Act of 1925, and amendment V of the U.S. Constitution; and because S. 1049 seeks unjust advantage of economic servitude by the sale of private property by a public servant without just compensation to the Indian value of property; therefore, the passing of this bill into law would give cause to serve to qualify tort claims against the United States, extend legislative abuse of deciding an issue not instigated or formulated by Indian owners of private property, create disturbance to the domestic welfare of all citizens, bring unnecessary dissension to governmental trustees, qualify Indian apathy toward cooperation with Government programs, increase unmitigated debts to Indians without recourse to remedy, and generally add fuel to foreign criticism of the United States for the mishandling of American Indian relations.

For these and numerous other reasons we have little choice but to look in complete disfavor upon S. 1049 and do most respectfully request that it not be reported to the floor of the U.S. 88th Congress.

THE NATIONAL INDIAN YOUTH COUNCIL,
HERBERT BLATCHFORD, Executive Director.

—
SIOUX CITY, IOWA, May 13, 1963.

Re S. 1049, heirship land bill.
Senator FRANK CHURCH,
Senate Subcommittee on Indian Affairs,
Washington, D.C.

HONORABLE SIR: Omaha tribal council representing Omaha tribe of Nebraska oppose bill. Request each tribe given opportunity present own land program.
Very sincerely,

WILSON WOLF,
Secretary, Macy, Nebr.

—
KANSAS-OKLAHOMA DIVISION,
MID-CONTINENT OIL & GAS ASSOCIATION,
Tulsa, Okla., May 15, 1963.

HON. FRANK CHURCH,
Chairman, Subcommittee on Indian Affairs, Interior and Insular Affairs Committee, Washington, D.C.

DEAR SENATOR CHURCH: The following comments concerning S. 1049 are respectfully submitted by the subcommittee on Indian lease matters of the legal committee, Kansas-Oklahoma Division, Mid-Continent Oil & Gas Association, for consideration by the Committee on Interior and Insular Affairs of the U.S. Senate.

Because of extensive investments by members of this association in oil and gas mining leases on restricted Indian land, the association shares with Indian owners a concern in any proposed legislation affecting the stability of record title to restricted Indian land.

While it is understood that the main purpose of S. 1049 is to provide an alternative means by which trust or restricted interests in land may be partitioned administratively by the Secretary of the Interior, it is felt that the bill should be amended by specifically excluding land of the members of the Five

Civilized Tribes of Indians in the State of Oklahoma from the application of the act for these following reasons:

(a) The main purpose of S. 1049 has been accomplished by existing acts of Congress and the judicial construction placed upon these acts over a long period of time which have resolved all questions pertaining to partition, probate and administration of estates, determination of heirship, and related matters applicable to the members of the Five Civilized Tribes.

Act of June 14, 1918 (40 Stat. 606; 25 U.S.C.A. 355-375, inclusive), provides (1) for the determination of heirs of deceased members of the Five Civilized Tribes and (2) confers jurisdiction upon courts of the State of Oklahoma to partition lands of restricted Indians including minors.

Act of April 12, 1926 (44 Stat. 239), requires that the United States be made a party to a partition action by service of notice thereof on the superintendent of the Five Civilized Tribes and further permits the removal by the United States of such an action to the Federal court.

Exemption from taxation constituting a vested property right continues in effect under existing law (act of Aug. 11, 1955, 69 Stat. 666).

Act of June 26, 1936 (49 Stat. 1967; U.S.C.A. 501), known as the Oklahoma Welfare Act, grants to the Secretary of the Interior a preferential right, in his discretion, to purchase restricted Indian land sold at a partition sale for or in behalf of a tribe, band, or individual Indian and hold the same in trust.

The provisions of S. 1049 relating to tribal reservations are not applicable to any of the Five Civilized Tribes to any substantial degree under the purposes of the bill.

(b) S. 1049 authorizes the Secretary of the Interior to partition in kind or sell all interests in trust or restricted Indian land upon request made in accordance with the act. The Secretary is authorized to represent any Indian owner who is a minor, who is non compos mentis, whose ownership in a decedent's estate has not been determined, or who cannot be located. Such representation appears to be without the necessity for consent of such Indians or their guardians except as to those who have requested partition under the bill. The Secretary is also authorized to execute appropriate patents and deeds to carry out the provisions of the proposed act, presumably conveying interests for and in behalf of all Indian parties involved, including those from whom no consent may have been obtained.

Lands allotted to members of the Five Civilized Tribes were patented by the tribe to the allottees in fee, subject only to restrictions on alienation imposed upon allottees of certain specified quantum of Indian blood by various acts of Congress. Act of August 4, 1947 (61 Stat. 732), removed all restrictions upon the death of an allottee, except that conveyances of interests in land inherited by Indian heirs of one-half or more Indian blood, if such interest had been restricted in the hands of the ancestor, require the approval of the proper county court. The 1947 act also vests the State courts of Oklahoma with exclusive jurisdiction of all guardianship matters affecting Indians of the Five Civilized Tribes.

Serious constitutional questions involving due process are therefore raised by the proposed power of the Secretary to convey a vested interest of an Indian of the Five Civilized Tribes in land that is restricted only in that alienation of the land by the Indian requires proper approval. The certainty of title to such lands so partitioned would remain in doubt until the act has been construed by the courts.

Thus it is submitted that, although S. 1049 may be intended as an alternate means by which to effect the partition of Indian land, as far as the Five Civilized Tribes are concerned, the alternative proposed by S. 1049 can be expected to create uncertainties which can and should be avoided by excluding the Five Civilized Tribes from the application of the act.

Respectfully submitted.

VARLEY H. TAYLOR,
Chairman, Subcommittee on Indian Lease Matters.

FORT TOTTEN, N. DAK., May 10, 1963.

Senator FRANK CHURCH,
Senate Office Building, Washington, D.C.

DEAR MR. CHURCH: Please be advised that the Devils Lake Sioux Tribe is opposed to Senate bill S. 1049, Indian heirship lands bill, as proposed. This bill does not protect the rights of the individual Indian landowners and if the bill

is enacted could cause wholesale loss of vitally needed lands out of Indian ownership.

Sincerely,

LEWIS GOODHOUSE,
Chairman, Devils Lake Sioux Tribe.

Senator FRANK CHURCH,
Washington, D.C.:

LANSING, MICH., May 9, 1963.

The Keweenaw Bay Indian Council Community Council opposes bill S. 1049.

SAM SPRUCE, *President.*

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
May 21, 1963.

HON. FRANK CHURCH,
Chairman, Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed for your information and consideration is a petition I received from constituents in support of S. 1049, presently pending in your committee.

With warm regards, I am,
Sincerely,

QUENTIN N. BURDICK.

FORT YATES, N. DAK.,
May 15, 1963.

HON. QUENTIN N. BURDICK,
U.S. Senate, Washington, D.C.

DEAR SENATOR BURDICK: This has reference to S. 1049, a bill relating to the Indian heirship land problem. The delegation from the Standing Rock Reservation who went to Washington to testify on this bill do not represent us. None of the Indian landowners on the reservation were consulted and we request that you and the committee disregard their testimony, particularly their testimony on section 6(e) of the bill. This refers to the plan which should be voted on by all members of the tribe. Please do all in your power to see that this section remains in the bill. All people should have a voice in their government, particularly in our case, where it pertains to the assets of our tribe.

We do not want the tribal council mortgaging our tribal land without our consent. May we hear from you on this matter.

With best regards.

Sincerely yours,

Louise Alkin, Harry Fasthorse, Katie Standing Crow, William Goodiron, Margaret Sleep, Marlene Twinn, Mrs. Alice Vaulters, Bede White, Samuel Goodiron, Josephine Kelly, Margaret Defender.

P.S.—If more people knew what was going on, we can assure that you would receive a lot of mail on this.

PRAIRIE BAND POTAWATOMI TRIBE OF INDIANS OF KANSAS,
BUSINESS COMMITTEE,
Wichita, Kans., May 16, 1963.

Senator FRANK CHURCH,
*Senate Committee on Interior and Insular Affairs,
New Senate Office Building,
Washington, D.C.*
(Attention of Mr. James Gamble).

DEAR SENATOR CHURCH: I have reviewed S. 1049 and I have discussed the bill with various members of the tribe. I want to go on record favoring the bill as written.

I consider the options in the bill are a considerable step forward from the present heirship position.

Respectfully yours,

PHILIP D. BURNS, *Chairman.*