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Black Lung Benefits Act of 1972

Statement by the President Upon Signing the Bill Into Law. May 20, 1972.

Today I have signed H.R. 9212, the Black Lung Benefits Act of 1972.

This legislation extends for 18 months the Federal responsibility for operating a transitional program enacted in 1969 to provide cash benefits for coal miners disabled by black lung disease.

Under the original law, lifetime monthly benefits have been awarded to more than 260,000 miners, widows, and dependents at a Federal cost of more than \$600 million.

The Black Lung Benefits Act of 1972 will mean that tens of thousands of additional miners and their dependents will be eligible for lifetime benefits from the Federal Government, because of its extension of filing time and because it provides for generous liberalization of eligibility requirements.

I am heartened that this legislation provides benefits for orphans of black lung victims, who are excluded in the present law through legislative oversight. Other dependents are covered but not orphans. Under the new law, some 2,000 orphans of black lung victims—and all such orphans in the future—will receive the benefits to which they should be fully entitled.

Nevertheless, I sign this legislation with mixed emotions, not over whether miners, widows, and their dependents need this assistance—they do—but because of the precedent it tends to establish.

This legislation departs from the U.S. tradition that compensation for work-related accidents and diseases should be provided by State workmen's compensation laws, financed by the owners of the industries containing the hazards. Responsibility for black lung compensation clearly should lie with the owners and operators of the mines.

In this case, however, the States have not yet improved their owner-financed laws to meet the challenge posed by black lung—and there are too many victims of this dread disease for me not to have acted.

Therefore, I have moved to pick up the responsibility that others have neglected—so that disabled miners and their families will not be deserted by our society in their hour of critical and justified personal need.

The health and safety of coal miners has been a primary concern of this Administration. One of my earliest legislative recommendations was for more effective Federal laws in the area of coal mine health and safety, culminating in the enactment of the Federal Coal Mine Health and Safety Act of 1969. Since that law was enacted, major progress has been made in improving working conditions in our Nation's coal mines and in the protection offered to those who work in them.

The 1969 act established the temporary black lung benefits program. The legislation I have signed today will extend Federal responsibility for this program from Janu-

ary 1, 1972, to June 30, 1973. In the latter half of 1973, the Federal Government will continue to accept applications for black lung benefits but beneficiaries enrolled during this period will be transferred to the State programs on January 1, 1974.

I urge that all mining States review their workmen's compensation programs to make certain that adequate laws exist for the black lung disease by that time.

Yakima Indian Reservation

Statement by the President Upon Signing Executive Order. May 20, 1972

It is with particular pleasure that I sign this Executive order which places 21,000 acres of land in the State of Washington under the trust jurisdiction of the Secretary of the Interior for the Yakima Indian Tribe.

This action rights a wrong going back 65 years.

The United States Government lost the treaty map in its own files and by the time it was found actions had been taken which had mistakenly displaced the Indians from this land.

The Indian Claims Commission has ruled that the Yakima Tribe has a rightful claim, but rather than accept cash compensation, the Tribe with the permission of the Commission, sought to have the land itself restored.

In a comprehensive opinion, Attorney General Mitchell reviewed the unintentional but mistaken actions of 1907 and ruled that the Executive order of that time did not constitute a "taking" of the land by the Government in the legal sense and that it can be restored by Executive action now.

Ordinarily, of course, Indian land claims are being, and should be, settled by cash award, but this case has exceptional circumstances which the Attorney General has described.

I am equally pleased to note that the Yakima Tribe itself has pledged by tribal resolution to "maintain existing recreation facilities for public use" and to "recognize the dedication of that portion included in the Mt. Adams wilderness use."

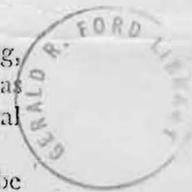
NOTE: For the text of the Executive order, see the following item.

Yakima Indian Reservation

Executive Order 11670. May 20, 1972

PROVIDING FOR THE RETURN OF CERTAIN LANDS TO THE YAKIMA INDIAN RESERVATION

In 1855, the United States entered into a treaty with the Yakima Tribe of Indians. The treaty created a reservation, generally described by natural landmarks, for



the exclusive use and benefit of the Tribe. Over the years, there have been continuing disputes regarding the true location of the reservation boundary.

In 1897, President Cleveland created by proclamation the Mount Rainier Forest Reserve in an area near the western boundary of the Yakima Reservation. In 1908, President Theodore Roosevelt extended the boundary of that Forest to include a tract of some 21,000 acres, then mistakenly thought to be public land. The tract is included within a larger area now called the Gifford Pinchot National Forest. In 1942, a portion of the tract was designated the Mount Adams Wild Area, and this portion has been administered since 1964 for the public benefit under the Wilderness Act.

In 1966, the Indian Claims Commission found that this tract had originally been intended for inclusion in the Yakima Reservation. However, the Commission does not have authority to return specific property to a claimant; it may only grant money damages. Accordingly, the Tribe sought Executive action for return of its land.

The Attorney General has at my request reviewed the specific history and background of this particular case, including the principles which govern the taking of land by the United States and the question of whether this particular land was so taken. In a recent opinion, the Attorney General has advised me that, in these exceptional and unique circumstances, the land was not taken by the United States within the meaning of the Fifth Amendment and that possession of this particular tract can be restored to the Tribe by Executive action.

Now, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, particularly 16 U.S.C. 473, it is ordered as follows:

SECTION 1. A portion of the eastern boundary of the Gifford Pinchot National Forest is modified as follows:

Beginning at the point on the main ridge of the Cascade Mountains, where the Yakima Indian Reservation boundary as located by the 1926 Pecore survey from Goat Butte intersects said main ridge; thence southwesterly along the main ridge of the Cascade Mountains to the summit or the pinnacle of Mount Adams, as shown on the diagram of the Rainier National Forest attached to the Presidential proclamation of October 23, 1911, 37 Stat. 1718; thence southerly along a divide between the watersheds of the Klickitat and White Salmon Rivers as shown on the 1932 Calvin Reconnaissance Survey Map (Petitioner's Exhibit No. 4, Docket No. 47, Indian Claims Commission) to its intersection with the north line of Section 34, Township 7 North, Range 11 East, Willamette Meridian.

SEC. 2. The Secretary of the Interior is directed to assume jurisdiction over the tract of land heretofore administered as a portion of the Gifford Pinchot National Forest and excluded from the Forest by Section 1 of this order, and to administer it for the use and benefit of the Yakima Tribe of Indians as a portion of the reservation created by the Treaty of 1855, 12 Stat. 951.

SEC. 3. Any prior order or proclamation relating to the tract of land affected by this order, to the extent inconsistent with this order, is hereby superseded.

RICHARD NIXON

The White House

May 20, 1972

[Filed with the Office of the Federal Register, 11:10 a.m., May 22, 1972]

THE PRESIDENT'S TRIP TO AUSTRIA, THE SOVIET UNION, IRAN, AND POLAND

The President's Remarks at the Departure Ceremony at Andrews Air Force Base. May 20, 1972

Mr. Vice President, Members of the Cabinet, Members of the Congress, and ladies and gentlemen:

We really do appreciate your coming to the airport today on this rainy day to wish us Godspeed on this trip. In just a few minutes we will be boarding the plane, the "Spirit of '76" on a trip that will take us first to Austria, then to the Soviet Union, then to Iran, and finally to Poland before returning here on the first of June.

I know as we visit these four countries that I can say to the people of all of these countries that I bring with me the best wishes, the friendship of all of the people of the United States to the people of these

EXECUTIVE ORDER 11670

Providing for the Return of Certain Lands to the Yakima Indian Reservation

In 1855, the United States entered into a treaty with the Yakima Tribe of Indians. The treaty created a reservation, generally described by natural landmarks, for the exclusive use and benefit of the Tribe. Over the years, there have been continuing disputes regarding the true location of the reservation boundary.

In 1897, President Cleveland created by proclamation the Mount Rainier Forest Reserve in an area near the western boundary of the Yakima Reservation. In 1903, President Theodore Roosevelt extended the boundary of that Forest to include a tract of some 21,000 acres, then mistakenly thought to be public land. The tract is included within a larger area now called the Gifford Pinchot National Forest. In 1942, a portion of the tract was designated the Mount Adams Wild Area, and this portion has been administered since 1964 for the public benefit under the Wilderness Act.

In 1966, the Indian Claims Commission found that this tract had originally been intended for inclusion in the Yakima Reservation. However, the Commission does not have authority to return specific property to a claimant; it may only grant money damages. Accordingly, the Tribe sought Executive action for return of its land.

The Attorney General has at my request reviewed the specific history and background of this particular case, including the principles which govern the taking of land by the United States and the question of whether this particular land was so taken. In a recent opinion, the Attorney General has advised me that, in these exceptional and unique circumstances, the land was not taken by the United States within the meaning of the Fifth Amendment and that possession of this particular tract can be restored to the Tribe by Executive action.



NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, particularly 16 U.S.C. 473, it is ordered as follows:

SECTION 1. A portion of the eastern boundary of the Gifford Pinchot National Forest is modified as follows:

Beginning at the point on the main ridge of the Cascade Mountains, where the Yakima Indian Reservation boundary as located by the 1926 Pecore survey from Goat Butte intersects said main ridge; thence southwesterly along the main ridge of the Cascade Mountains to the summit or the pinnacle of Mount Adams, as shown on the diagram of the Rainier National Forest attached to the Presidential proclamation of October 23, 1911, 37 Stat. 1718; thence southerly along a divide between the watersheds of the Klickitat and White Salmon Rivers as shown on the 1932 Calvin Reconnaissance Survey Map (Petitioner's Exhibit No. 4, Docket No. 47, Indian Claims Commission) to its intersection with the north line of Section 34, Township 7 North, Range 11 East, Willamette Meridian.

FEDERAL REGISTER, VOL. 37, NO. 100—TUESDAY, MAY 23, 1972



THE PRESIDENT

SEC. 2. The Secretary of the Interior is directed to assume jurisdiction over the tract of land heretofore administered as a portion of the Gifford Pinchot National Forest and excluded from the Forest by Section 1 of this order, and to administer it for the use and benefit of the Yakima Tribe of Indians as a portion of the reservation created by the Treaty of 1855, 12 Stat. 951.

SEC. 3. Any prior order or proclamation relating to the tract of land affected by this order, to the extent inconsistent with this order, is hereby superseded.



THE WHITE HOUSE,
May 20, 1972.

[FR Doc.72-7915 Filed 5-22-72; 11:10 am]

NOTE: For the text of a Presidential statement dated May 20, 1972, and issued in connection with E.O. 11670, above, see Weekly Comp. of Pres. Docs., Vol. 8, No. 21, issue of May 22, 1972.

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SATURDAY, NOVEMBER 22, 1975

MR. MEREDITH: Ladies and gentlemen, my name is Edward Meredith. I am with the Field Solicitor's Office, Interior Department, Billings, Montana. In accordance with the provisions of P.L. 93-134, known as the Use or Distribution of Indian Judgment Funds Act of 1973, and implementing regulations, it is my responsibility to conduct this hearing. Most of you undoubtedly filled out an attendance card as you entered the room or as it was handed to you. If you have not done so, I now ask that you complete one.

The information of these cards will be of assistance to me in conducting this hearing. If those of you who have not filled out cards will please raise your hand, we will distribute them to you.

Is there anyone else who has not received a form to fill out?

At this time I would like to thank the members of the Confederated Salish and Kootenai Tribes and the Tribal Officials and the people responsible for making this hall available to us today to hold this hearing. It is a beautiful hall and amply suited for the purposes of this hearing.

A notice has been posted at various places on the

1 Reservation on October 28, 1975, and published in the
2 Polson-Ronan Advertiser of Wednesday, October 29, 1975;
3 Flathead Courier on October 30, 1975; the Ronan Pioneer
4 on October 30, 1975; and the Char-Koosta Newspaper of
5 the Salish, Pend 'd Orielles and Kootenai Tribes of the
6 Flathead Reservation, Vol. 5, No. 12, dated November 1,
7 1975, advising the public of the hearing to be held on
8 Saturday, November 22, 1975, at 7:00 P.M., at the Tribal
9 Community Center, St. Ignatius, Montana.

0 The purpose of the hearing is to record the views
1 of every person affected by the proposed planning of the
2 Confederated Salish and Kootenai Tribes for the use of
3 judgment funds awarded under Document No. 50233,
4 Paragraphs No. 8 and 9, totaling approximately
5 \$550,000.00.

6 The notices advised that oral and written comments
7 would be received at this public hearing and that a copy
8 of the transcript of the public hearing and the program
9 proposal would be submitted to Congress for final
0 approval.

1 Replies which have been received as a result of the
2 foregoing notices will become part of the transcript of
3 this hearing.

4 When you entered the room or after you arrived, you
5 were provided with a copy of the proposed plan for use

1 or distribution of the monies here in question. If you
2 don't have a copy of that proposed plan, one is available
3 on the front table.

4 It is suggested that you read this statement as
5 soon as possible. It should answer most of your questions.

6 When you are called upon for your statement, please
7 come forward to the microphone, state your name, and if
8 you are speaking on behalf of someone else, please so
9 state.

10 All written statements will become a part of the
11 official record whether they are filed with the hearing
12 officer, read at this hearing or orally summarized.

13 In the interest of conserving time, you are
14 requested to file lengthy statements for the record and
15 summarize them orally at this hearing. Please keep in
16 mind that it is the official transcript containing all
17 written statements, as well as oral presentations, that
18 will be used for review by the Secretary of the Interior
19 and later by Congressional Committees in their
20 consideration of this use or distribution plan.

21 Statements will not be made under oath, and since
22 this is not an adversary proceeding, there will be no
23 cross examination.

24 This hearing will be conducted strictly for the
25 purpose of recording your position or views on the

1 proposed plan. Debates between individuals and officials
2 of the Government or between other individuals will be
3 ruled out of order. Please direct any inquiries to me
4 and I will rule as to whether the question is pertinent
5 to the plan for which this hearing has been called,
6 keeping in mind that the purpose of this hearing is to
7 compile an official record of public opinion with respect
8 to the merits of this plan for the use or distribution
9 of monies awarded to the Confederated Salish and Kootenai
0 Tribes by Indian Claims Commission Docket No. 50233 as
1 called for by the Use or Distribution of Indian Judgment
2 Funds Act of 1973, Public Law 93-134.

3 It is not the duty of the hearing officer to reach
4 any conclusions or make any decision regarding this
5 proposed plan.

6 After this public hearing, a thorough review will
7 be made of the proposed plan, the record of this public
8 hearing and all other information on the plan by the
9 Secretary of the Interior. He will transmit his
0 recommendations regarding the plan to the Congressional
1 Committees. If the Congressional Committees do not
2 reject the plan within 60 days from the date they receive
3 it, it becomes effective.

4 Now I ask Fred Houle, Secretary of the Confederated
5 Salish and Kootenai Tribes, to explain the use or

1 distribution plan to you.

2 MR. HOULE: As Mr. Meredith has stated, the
3 purpose of this hearing is to record the views of each
4 person affected by the proposed planning of the
5 Confederated Salish and Kootenai Tribes for the use of
6 judgment funds awarded under Docket 50233, Paragraphs
7 8 and 9, U. S. Court of Claims, totaling approximately
8 \$550,000.00.

9 For the benefit of this hearing, I would like to
10 set forth a brief history of the judgment award and say
11 a few words in support of the position of the Tribal
12 Council.

13 Pursuant to the Treaty of Hell Gate, the Confederated
14 Salish and Kootenai Tribes ceded their vast aboriginal
15 homeland to the United States but retained from the
16 cession a portion of their lands to be their future home-
17 land. Article 2 of the Treaty described the boundaries
18 of the reserved lands and provided:

19 "All which tract shall be set apart and,
20 so far as necessary, surveyed and marked
21 out for the exclusive use and benefit of
22 said Confederated Tribes as an Indian
23 Reservation. Nor shall any white man,
24 excepting those in the employment of the
25 Indian Department, be permitted to reside

1 upon the said reservation without
2 permission of the Confederated Tribes,
3 and the Superintendent ..."

4 In determining the boundaries, officials of the
5 Federal Government in 1887 surveyed what was purported
6 to be the north boundary of the Reservation and in 1893
7 what was purported to be the Southwest boundary.

8 The Tribes have contended ever since the running
9 of the surveys that certain lands reserved by them in
10 their treaty were situated outside the boundaries by
11 virtue of erroneous surveys conducted by agents of the
12 United States. The United States consistently refused
13 to recognize the contention of the Tribes that the
14 surveys were in error and consistently claimed that the
15 accuracy of those surveys was one to be determined by
16 a court.

17 This was good thinking on the part of the government
18 because we had no authority to sue the United States
19 until a special jurisdictional act was passed on July 30,
20 1946, which accorded us an opportunity to prove the
21 inaccuracy of the surveys.

22 On November 12, 1965, the United States Court of
23 Claims agreed with the Tribes and held that portions of
24 the out-boundaries of the Reservation had been erroneously
25 surveyed and lands reserved by the Tribes by the Treaty



1 of Hell Gate were outside of the surveyed boundaries.

2 A study of the status of the lands excluded
3 revealed that of the approximately 15,000 acres of land
4 excluded by the erroneous surveys, 10,585.86 acres are
5 presently in various national forests and were placed
6 there at no cost to the United States.

7 We tried to have the United States Court of Claims
8 declare that the lands were still Tribal property but
9 the court determined that the excluded lands were in fact
10 taken by the United States and that we were limited to
11 seeking only monetary compensation.

12 We tried in the Supreme Court to get that decision
13 reversed but the Supreme Court denied our petition for
14 review.

15 We attempted also to have legislation introduced.
16 ~~In effect, we were suing and in fact~~ Congressman Olson
17 introduced a bill to have the lands restored to the
18 Tribe but it never got anyplace in Congress because the
19 Department of Justice, the Department of Interior and
20 the Department of Agriculture all opposed the restoration
21 of the land. We were finally forced in 1972, to accept
22 monetary compensation for the lands.

23 At that time, when the money was appropriated, the
24 Tribal Council passed a resolution stipulating that the
25 money would be held in escrow and we would continue to

1 seek restoration of the land to the Reservation.

2 The present ownership of the excluded lands is more
3 valuable to the Tribes than the compensation they received
4 based on 19th Century prices.

5 We hired a Forestry Consultant in 1970, and he
6 estimated that there was 15,678,900 board feet of timber
7 on the excluded lands. At a very conservative estimate
8 of \$40.00 per thousand, the timber alone would be worth
9 over \$6,000,000.00 and we would still have the land.

10 Now this doesn't mean we could go out and cut
11 \$6,000,000.00 of timber off of this land today. It means
12 that over the years 15 million board feet of timber
13 could be added to our timber management program and over
14 the years we could benefit by an increased annual yield.

15 The Tribal Council wants these lands restored to
16 the Reservation. They will seek to do it by Executive
17 Legislature or Administrative means. They are precedents
18 for this action. Congress restored Blue Lake to the
19 Taos Pueblos. But President Nixon, by Executive Order
20 11670, restored 21,000 acres of the Mount Rainier Forest
21 Reserve to the Yakimas under almost identical circumstances.

22 This Tribe was forced to take a cash settlement
23 based on 19th Century values for the land, \$550,000.00.
24 Now this would amount to a mere \$94.00 per Tribal Member
25 if it were given out in a per capita payment.

1 As stated above, there is more than \$6,000,000.00
2 worth of timber on the land. No one knows what, if any,
3 minerals exist in the area.

4 The Tribal Council believes that it would be far
5 more beneficial to the Tribes in land use, forestry and
6 possible mineral assets to have the land restored than
7 to accept the \$550,000.00 and make a \$94.00 per capita
8 payment.

9 This land was omitted from the Reservation by an
0 error made by the United States Government. The United
1 States has been enjoying beneficial use of the land for
2 over 80 years at the expense of the Tribes. It would
3 cost the United States nothing to return the land to
4 the Tribes.

5 MR. MEREDITH: After hearing Mr. Houle's
6 explanation of the proposed plan, we will now begin the
7 public discussion.

8 I ask that all pertinent information be presented
9 as completely as possible. As I indicated to you earlier,
0 if anyone wishes to summarize their statements for the
1 record, you may do so.

2 In the event that time becomes a factor, I may
3 request that you limit your oral remarks. Anyone present
4 who desires to make a statement may do so. I wish to
5 remind you again that statements will not be made under

1 oath and since this is not an adversary proceedings,
2 there will be no cross examination. Anyone desiring to
3 question a person making a statement for clarification
4 purposes only will direct their questions to me. If I
5 deem them pertinent, I will request the person making the
6 statement to answer the question.

7 In order to permit the conduct of the meeting and
8 oral comments to become a matter of record, I ask that
9 all speakers come to the microphone and make their
0 statements. This has several advantages but principally
1 allows everyone in the room to hear and also the recording
2 secretary to take down what you have to say. I ask that
3 you give your name and address and the interest which
4 you represent. I ask that you speak slowly and distinctly.
5 If you have a written statement, please hand it to me as
6 you come to the front. At that time you may elect to
7 read it for the record or leave it for the record. It
8 has equal effect either way so far as the record is
9 concerned.

The forms that you have filled out indicate whether
you plan to make an oral statement, hand in a statement
or make no statement.

If there are any of you who filled out these forms
that have come in after the meeting started that wish to
make an oral statement, I would appreciate your turning



in your forms to me since I will call the speakers from the forms, those that indicated that they wanted to make statements have so indicated on this form.

First, I would like to call Mr. Bill Morigeau.

MR. MORIGEAU: I hope that the hearing doesn't turn into a conflict because I think the information that will be brought out to you on behalf of the Tribe in support of the Tribal Council is quite pertinent. I have been working on the land work for at least the last three Council Terms and we appropriate budgets from \$250,000.00 to \$500,000.00 a year for land purchase and I believe this land is worth anywhere, low grade land, anywhere from \$150.00 an acre right on up to \$1,000.00, \$2,000.00 an acre. And if we were to take this offer of \$550,000.00 for approximately 10,000 acres that is left in the southwest boundary, that would be a mere \$55.00 an acre and we couldn't do that.

I can't hardly recommend that we do that. And like Mr. Houle said, the timber itself has a value of at least \$6,000,000.00. So the way that I figured and the way that I priced the land by itself, the land is worth at least \$2,000,000.00. So there is in round figures, to me there is about \$8,000,000.00 worth of land and resources.

1 The appraisal on the timber was made back about
2 9 or 10 years ago and, of course, it was the value of
3 the timber then but as it is cut, it also grows so the
4 potential for the timberland is always there and the land
5 is worth and the timber is worth much more than I have
6 stated.

7 I just want to say that this is a land based Tribe.
8 I represent this Tribe on the National Congress of
9 American Indians and it is the land based Tribes that
0 keep the Tribes in the United States together.

1 They generally serve, furnish the vital information
2 to the National Congress of American Indians and I can't
3 hardly recommend to you people to accept \$55.00 an acre
4 for that land. Thank you.

5 MR. MEREDITH: (Applause)

6
7 MR. MEREDITH: The next speaker will be
8 Victor Stinger.

9
0 MR. STINGER: I don't have too much to add
1 because I agree with everything that has been said by
2 Fred Houle and Bill Morigeau. But the one thing that
3 I want to mention is the land we are talking about is
4 part of the original land that we reserved for ourselves
5 in the Treaty and so by law it isn't for sale. We are

1 not allowed to sell land, only stuff that we bought since
2 1968. And so in my opinion, we are not allowed to accept
3 money for this land because it is part of the original
4 Reserve we have reserved for ourselves. Thank you.

5 (Applause)

6
7 MR. MEREDITH: The next speaker is
8 Joe Cullooyah.

9
0 MR. CULLOYAH: Well, I don't have too much to
1 say. Bill Morigeau and Vic Stinger covered it pretty
2 good. That is all.

3 (Applause)

4
5 MR. MEREDITH: Okay, our next speaker will be
6 Octave Adam Finley.

7
8 MR. FINLEY: I am Octave Adam Finley and on
9 these here funds, that is appropriated, I was wondering
0 if there is any way that this Tribe could purchase some
1 kind of a commissary for the Indians because it gets
2 pretty expensive for most of us to run into Missoula or
3 Kalispell, to buy your groceries. By the time that you
4 get there, you might as well go to one of these stores
5 here to buy them. That's why I thought that I'd kind of

1 bring that up.

2 If we had our own store, I think that it would be
3 a lot cheaper on a lot of us here. Say have a store
4 centrally located. I think that it would work. I think
5 that is enough to put into a store of some kind where
6 you can buy your groceries. I know a lot of you have to
7 spend quite a bit by the time, like I say, by the time
8 you run into Missoula, that is \$10.00, \$15.00 worth of
9 gas to go to Missoula and back, especially to people with
10 big cars. That is all, thank you.

11 (Applause)

12
13
14 MR. MEREDITH: Our next speaker will be
15 Mr. Britton V. Salois.

16
17 MR. SALOIS: I am speaking on behalf of myself
18 as a member of the Confederated Salish and Kootenai
19 Tribes. We are looking at \$150,000.00 (sic) versus
20 15,000 acres of land.

21 How much do you think a white man would charge you
22 for that land?

23 I think it has been the main consensus so far of the
24 speakers that they would rather have the land than the
25 money. We are being ripped off and I personally hope that

1 this doesn't go through.

2 Would you let your parents go, your mother go for
3 \$35.00 an acre? Think about it. Thank you.

4 (Applause)

5
6
7 MR. MEREDITH: The next speaker will be
8 Mrs. Juanita Rose Bailey.

9 MRS. BAILEY: My name is Juanita Rose Bailey,
10 a member of the Confederated Salish and Kootenai Tribes
11 and I feel that most members of the Tribe have come to
12 realize that their land is becoming more and more
13 important to them. They should. The dollar isn't worth
14 that much to us right now because with the land and a
15 lot of hard work you can make your own dollar. Thank you.

16 (Applause)

17
18 MR. MEREDITH: I will call next Mr. Raymond
19 Clifford Elmo.

20
21 MR. ELMO: I am Clifford Elmo Raymond. I do
22 say my middle name because I have a cousin that's got
23 the same name.

24 I am in favor of going with the Tribal Council on
25 trying to get the omitted land back into the Reservation.

1 Back when I was in high school in the late '40's,
2 a piece of land, an allotment was sold and at that time
3 the man that bought it immediately within a month sold
4 the timber off of it, half of it and paid for the land
5 and still had money in his pocket plus the land and half
6 of the timber.

7 Octave has suggested putting up a building to house
8 a store and \$550,000.00 probably would barely build the
9 building to put it in, let alone stock it and is there a
0 Tribal member that knows the finances and the planning
1 that goes into running a store? I know I couldn't do it.

2 When we give up our land, we have given up everything.
3 Why do people from Europe come here, land, free land;
4 they steal it from us.

5 Look at Brigham Young when he stole the Salt Lake
6 Valley and no more man can back this down. They said that
7 we had to have someplace but according to the Bible,
8 thou shalt not steal. It does not give an end to the
9 means and the land is ours. I say keep it. We want it,
0 not a mere pittance that won't feed us for a month.

1 That is all I have to say.

2 (Applause)

3
4 MR. MEREDITH: I call now Mr. R. Louis Dupuis.
5

1 MR. DUPUIS: My name is R. Louis Dupuis. I
2 am from Polson, and I am a member of the Tribe.

3 On November 12, I had a letter that appeared in
4 the Missoulian and that's what I want to repeat here.

5 I feel that I've got something that must be said
6 concerning the meeting that is being called by the
7 B.I.A., on the date of November 22nd, 1975, at 7:00
8 o'clock P.M., at the St. Ignatius Community Center. It
9 seems to me that the U. S. Government and the officials
0 are laboring under a serious misapprehension. They have
1 drawn the foregone conclusion that the Flathead Indians
2 are going to accept or have already accepted the pile
3 of money they have placed in plain sight to further tempt
4 us in exchange for several thousand acres of land in the
5 Southwest corner of our Reservation.

6 They've put a different slant on it other than what
7 is the true picture. Apparently they have decided to take
8 that land and give the Indians the money that they are
9 tempting us with. The U. S. Government and the U. S.
0 Courts are telling us that we lost the right to owner-
1 ship of the land simply because there was a mistake made
2 when the Reservation Boundary Survey was made. It does
3 not sound reasonable or of justice. In fact, it is ridic-
4 ulous that the loss of land could result because of an
5 error in the boundary survey and that this same error could

1 nullify some of the terms of the 1855 Treaty. That
2 Treaty says that the South boundary commences at the
3 headwaters of the Jocko and follows the ridges that
4 divide the drainages of the Jocko on the North and the
5 Bitterroot on the South, westward to a point on the
6 Clark Fork River.

7 Then the West boundary begins further downstream
8 near the same point and thence follows northerly on
9 ridges that divide the drainages eastward to the Flathead
10 River and westward to the Clark Fork River.

11 The Treaty does not say it in these exact words
12 but that is the meaning carried in the Treaty.

13 The facts are plain to see that these lands are a
14 part of our original Treaty Reservation. The error was
15 brought to light, I believe, by one of our Tribal
16 attorneys, George M. Tunison, whom the Tribe hired in
17 the early 1940's. He worked on Tribal cases until his
18 death in the early 1950's. He was associated with the
19 same law firm that we have today.

20 But the point that I wish to make is that the
21 U. S. Government violated its responsibility in not
22 honoring the Treaty and was negligent in not protecting
23 the Indian Reservation from invasion.

24 Even after the error was brought to light, the
25 U. S. Government forced the Tribe to take this matter to



1 the courts in seeking a restoration of these lands to
2 the Reservation. But the court decided that it would
3 be easier to give the Indians the money and take the land.

4 Several years ago, our Tribal Council rejected this
5 offer of money from the government and wanted the land
6 to be kept as a part of the Reservation instead. Now
7 it appears that the government does not accept the word
8 of the Tribal Council and chooses to bring the matter up
9 again, only this time it is going to the people, which
0 move will probably bring about dissatisfaction, dissension,
1 hard feelings and may even cause a split in Tribal unity.

2 I must say one thing more about the Reservation
3 Boundary Survey. There are several places where the
4 surveyors took shortcuts from one high point to another
5 and in doing so, lopped off several acres of land that
6 are in fact justly Reservation lands but supposedly lost
7 because of the erroneous survey.

8 I have got another paragraph on this but it is not
9 pertaining to this particular thing.

0 I will leave it with the master of ceremonies here.

1 (Applause)

2
3 MR. MEREDITH: The next speaker will be
4 Mr. Thurman Trosper.
5

1 MR. TROSPER: My name is Thurman Trospen. I
2 am a member of the Tribe. I have been gone for many
3 years and I have now returned.

4 I live up at Ronan, and the thing that bothers me
5 probably more than anything else about this particular
6 case is that the wishes of the Tribal Council have not
7 been adhered to.

8 This is a case that has been going on for a long,
9 long time and the Tribe has said repeatedly, the Council
10 has said repeatedly that they want the land back and not
11 the money, particularly not the money at 1910 prices,
12 \$50.00 an acre or some such figure.

13 My background is in Forestry and I can tell you
14 that the figures that have been quoted here tonight as
15 to the forest values are very conservative. The true
16 value of the timber is much higher than that and that
17 isn't the important thing. I think the important thing
18 is that we need to have a land base to sustain the Tribes.
19 The thing that bothers me about what is going on here
20 tonight is that it looks like the bureaucrats have
21 decided what is good for the Tribe. They have already
22 made that decision.

23 Now they come before us with an offer not of
24 concerning the basic question of whether or not we should
25 accept the money or not, but what should we do with the

1 money after we accept it. How will it be paid out which
2 to me is a ridiculous question because the first question
3 has to be answered first and that question is, do we
4 accept the money or do we accept the land.

5 Now my position is very firm on this point. We
6 need to do everything we can to regain control of the
7 10,000 acres in question but this isn't the only area
8 in question. There are lands on the Northern part of
9 the Reservation up near Yellow Bay that are in the same
0 category.

1 Now I will go one step further; it isn't just the
2 lands that are still in the National Forest ownership
3 but it is all of the land, the lands that have been
4 alienated. I think the Federal Government should buy
5 these lands back and return them to the Tribe and I would
6 propose that we act in unison and that we attempt to
7 resolve this particular question through the legislative
8 process.

9 I think we have run the gamut through the judicial
0 process and I have no hope that this kind of question
1 will be settled administratively looking at the track
2 record of the B.I.A. So the only hope that we have got
3 is to go back to Congress as we have done, as has been
4 done with Blue Lake, Taos, the more recently, the small
5 band of Indians there near Grand Canyon National Park

and, of course, the more recent case with the Yakimas.

I think this is completely feasible. It will take a little time but I think this is the course of action that I would recommend the Tribal Council and Tribes pursue.

Thank you.

(Applause)

choice of MR. MEREDITH: The next person will be Mr. Norbert Dupuis.

MR. DUPUIS: My name is Norbert Dupuis, a Salish member. I am a member of the American Indian Movement.

These white people, they come in here to our land just like rats. They come here to devour our country and take everything we have got and it makes me mad and I'm going to say this land is going to be occupied, this thing as soon as we can.

I am going to fight for my mother and I will die, too.

(Applause)

MR. MEREDITH: The next speaker will be Mr. Joseph McDonald.

1 MR. JOSEPH McDONALD: My name is Joe McDonald.
2 I am a resident of Ronan and I am a Tribal Councilman.

3 I have some different people that couldn't be here
4 tonight that asked me to submit these. In looking through
5 them, they are on both sides.

6 I, being a Tribal Councilman, I thought that at the
7 meeting we were going to discuss whether or not we had a
8 choice of taking a payment for the disputed land or
9 whether we had a choice of taking the land. It was
0 certainly a surprise and shock to me to come in here
1 tonight and get this supposed plan where we determine
2 how we are going to spend the money.

3 I certainly, to me, and to many of us, land is very
4 valuable and certainly the land, I haven't been up there;
5 I have been on certain parts of that area but I know,
6 you know, have flown over it. I know what much of it is
7 like and to many of us, that kind of land is, you know,
8 out on a lonely mountain ridge and that country is full
9 of rock slides I guess and maybe in some areas a few
0 rattlesnakes but to me, that kind of country is really
1 valuable and much more valuable than real rich, fertile
2 farmland as far as I am concerned.

3 So I do hope that the Tribe will support the Council
4 and the Council would be very adamant in their approach
5 of getting the land back. Thank you.

(Applause)

1 MR. MEREDITH: The next speaker is Virginia
2 Brazill.

3
4 MRS. BRAZILL: Every time I get up to speak
5 they put this thing way up there and I could never reach
6 it. Usually they don't even give it to me.
7 My name is Virginia Brazill. I am from Arlee. I
8 am also running for Tribal Council. Our Tribal Council
9 Our Tribal Council in 1972, made a right decision.
0 They didn't give us the money to spend. They held it in
1 escrow until now.
2 Three years later, we find out that we have half
3 a million dollars that we could have spent or maybe we
4 should keep the land. I feel that we should keep the
5 land.

6 I think that we should keep the land for future
7 generations. Where are our children going to be one
8 generation from now, 30 years from now, 50 years from now
9 if we just sell our land.

0 When determination was an issue, many, many young
1 people spoke and said we must keep our Reservation in-
2 tact because we have children and grandchildren coming
3 and we want something for them.

4 I feel, as an individual Indian person that we
5 really must keep our Reservation intact if we want a

fruitful future for our children and our children's children. Thank you.

(Applause)

MR. MEREDITH: Some of you came in after the program started and were given forms to fill out by my great helper here in the front row. I would appreciate it now if you would let me know if there are any others that would like to make a statement that might not have turned in your forms.

Would you please raise your hands and we can collect the forms.

While some of the people are still filling out their forms though that arrived late, we do have some people that have indicated they wanted to make a statement. I'd like now to call Tom McDonald.

MR. McDONALD: My name is Tom McDonald and I am a candidate for the Tribal Council from Arlee and I will make a brief statement and it is reiterating what has already been said by Norbert Dupuis and Joe McDonald and everyone that has spoken so far this evening. They are all saying that we want the land and that I think it is an insult to offer us, you know, the money that has been offered us, you know, for the land..

1 From my understanding of the amount of land and the
2 amount of money involved, that we would be -- we'd be
3 fools to accept the money and I don't think that any of
4 us are fools and I think that we are all, you know, going
5 to fight for the land.

6 I think that in the end we will get the land back.
7 Thank you.

8 (Applause)

9 MR. MEREDITH: I will call now Douglas Allard.

10 MR. ALLARD: My name is Douglas Allard. I am
11 a Tribal member from St. Ignatius.

12 Actually I came up here to talk for Pete Woodcock
13 but what he told me to say, he told me in Indian and I
14 don't understand that and I have to talk for myself
15 instead.

16 Actually what he said, he said he came here because
17 he heard it was going to be round two of some kind of a
18 fight that's been going on here tonight. I don't know
19 what he was talking about. Somebody has been fighting
20 I guess and he came to see round number two. That's what
21 he told me.

22 My ideas are very similar, for a change, to the
23 members, as that of the members of the Tribal Council.

1 The price that's offered for the land is, of course,
2 absolutely ridiculous. The hearing, however, according
3 to the little blurb that was handed to us is not on whether
4 or not we want the land or the money but what we are
5 going to do with the money and I think that we are kind
6 of contributing a little bit to the delinquency of the
7 Tribe by attending the hearing that is not designed to do
8 what we want to do. ~~that probably have believed that they~~

9 I think the best thing we could have done with this
0 hearing is probably send the government people -- my
1 apologies to you personally. You don't look like a real
2 bad guy but I don't like government guys too good. I
3 have a lot of reasons for that -- the best thing we could
4 have done is to not attend the hearing I believe and tell
5 them to take the hearing and their little minutes and
6 thunk, just like that with them.

7 The idea of sitting around discussing something that
8 makes absolutely no difference to them is a little bit
9 ridiculous. They are here conducting a hearing on what
0 we are supposed to do with the money and we have already
1 decided that we don't want the money but we want the land.

2 All we are doing is putting down a bunch of stuff
3 on paper. They are not going to pay attention to it.

4 I don't know what your job is, I'm sorry. Maybe
5 you just -- maybe you work for us, I don't know. At any

1 rate, I have to look at somebody when I say nasty things
2 instead of Bill Morigeau or some of these other guys.
3 I did that to him enough already.

4 At any rate, I believe that what they are putting
5 down on paper here will probably ultimately have absolutely
6 have nothing to do with any decisions ever made on anything
7 to do with this Tribe and I think that it should go in
8 the record that at least somebody here believes that they
9 are here paying lip service only to our needs and our
10 demands and they probably will never even act on all of
11 the things that are said here tonight because all the
12 things that are said here have nothing to do with the
13 statements here about how we are going to spend our money
14 and I would like to have it go on the record that I think
15 that it's a little ridiculous of us to sit here and
16 listen to each other saying what we all know we want to
17 do. We don't want the money. We want the land.

18 If you want to sell it for \$550,000.00, I know
19 somebody that will buy it for \$600,000.00.

20 We don't want that. Nobody wants the money. Every-
21 body wants the land yet we sit here and pay service to
22 their hearing about what we are going to do with the
23 money and they will go back and read the record and say
24 look at all of those dumb guys out there. We had a
25 hearing about what they were going to do with the money

1 and they didn't know what it was about. They stood up
2 and they said they wanted the land.

3 I just want them to make damned good and sure that
4 they know we want the land and that somebody should pay
5 attention to what this says when it goes back there and
6 maybe the next time they have a hearing we ought to make
7 sure everything is about what we want it to be about and
8 not what they want it to be about. Thank you.

9 (Applause)

10 MR. MEREDITH: Patrick Pierre.

11 MR. MEREDITH: Patrick Pierre.

12
13 MR. PIERRE: I guess I'm the last one here.
14 The indication was that I wanted to talk last because I
15 wanted to kind of summarize what everybody is talking
16 about and bring it out back to the Indians, not to the
17 Tribal members but to the members --

18
19 MR. MEREDITH: I didn't notice your statement.
20 There are a few others that might like to make a statement.

21
22 MR. PIERRE: Good, I'd like to wait.

23
24 MR. MEREDITH: I'm sorry, I didn't notice that.
25 I have one letter and there are some others that are

1 filled out.

2 Is there anyone that wants to speak that came in
3 late and has a form that they have just filled out?

4 Would anyone else who wishes to speak please raise their
5 hands. Do you have a form to fill out? Have you filled
6 out one of these?

7
8 MR. ALVIN SLOAN: No, I haven't but can we
9 ask a question?

0 MR. MEREDITH: You can ask a question for
1 purposes of clarification. Would you state your question?

2
3 MR. ALVIN SLOAN: Well, so far, and I got in
4 a little late, but I checked this out on the front table
5 there and it seems that there might be some people here,
6 at least the question that was asked me seems to be
7 verified by my further questioning. That is we are
8 talking about the land involved and I'm not sure that
9 everybody here understands what the land involved is
0 and in the answer you gave, I'd like to have them state
1 not just the miles involved or from this point to that
2 involved but to tell the people here as you drive
3 through it and you see it from different areas and the
4 highways for example, etc., that you can see it from,
5 what are we talking about?

1 I understand that probably as well as a lot of the
2 people here do but I think we all ought to understand
3 it better in as far as the selection of how we feel
4 about whether or not we should retain it.
5

6 MR. MEREDITH: What was your name, sir?

7 MR. SLOAN: Alvin Sloan.

8 MR. MEREDITH: Mr. Sloan, if you are aware of
9 the area, would you want to explain it to the people in
0 a statement to where it is or would you rather ask
1 someone else to do that?

2 MR. SLOAN: I would -- I think -- I asked this
3 question to Fred Houle and I think he can explain it
4 quite well.

5 MR. MEREDITH: Okay, Mr. Houle?
6

7 MR. HOULE: The land area that we are trying to
8 get back is that area on the Southwest boundary of the
9 Reservation. If anybody knows where Mrs. Bertha Gingery,
0 McGinnis Creek, Southwest as you travel out of Perma,
1 past Sepay Creek, you come to Knowles Creek. From the
2 area between Mrs. Gingery's house and Knowles Creek there
3 is an arrowhead-shaped piece of land. Most of it is
4 South of the river. There is some North of the river but
5 there are 10,000 acres -- 10,500 acres in the National

1 Forest on both sides of the river from about Knowles
2 Creek down to the junction of where the Clark Fork River
3 runs into the Flathead River. That is the land area we
4 are trying to get back.

5
6 MR. SLOAN: Go on further, Mr. Houle. Could
7 you tell us basically what the use of that land is that
8 isn't in the National Forest? I mean of the White and
9 first of all, I am in trouble. I thought we were here at
10 this meet. MR. HOULE: Well, that land that is not in the
1 National Forest has been patented to third parties like
2 the majority of the Reservation here has. It was home-
3 staded and is now owned by farmers along the river.

4 The area that is in the National Forest is the
5 timberlands. I think they are doing a good job of
6 taking care of the timber. They are doing
7 MR. SLOAN: And how close to the confluence of
8 the river before you get into Paradise, would the marker
9 or whatever to show the Reservation Boundary is?

10
1 MR. HOULE: The far Southwest extent of the
2 Reservation is the confluence of the Flathead and the
3 Clark Fork River.

4
5 MR. SLOAN: Which is roughly where?

1 MR. HOULE: Just before you get into Paradise,
2 as you cross the bridge.

3
4 MR. MEREDITH: Joann Kuntz is next.

5
6 MRS. KUNTZ: First of all, I'd like to thank
7 you for pronouncing my name right.

8 I am Joann Kuntz and I'm a member of the Tribe and
9 first of all, I am in shock. I thought we were here at
0 this meeting to talk about if we wanted to keep the land
1 or if we were going to sell it. I walk in and I get a
2 proposal and this is typical of the B.I.A. They give us
3 the proposal and expect us to rubber-stamp it.

4 The initials to me, B.I.A., you know, often bossing
5 Indians around like they always do, bossing the Indians
6 and they never give us what we want. They just tell us.
7 Thank you.

8 (Applause)

9
0 MR. MEREDITH: Is there anyone else here that
1 would like to make an oral statement?

2 Would you please come forward and fill out one of
3 these forms so we can get your name?

4
5 MR. LINDY McCLURE: My name is Lindy McClure



1 and I'm from St. Ignatius and I'm a member of the Tribe.

2 I want to know why Mr. Houle didn't state to the
3 people that that land down there that we want back is
4 also the Knowles dam site which if we got that land back,
5 that dam site would be ours and which would mean a pretty
6 penny to the Tribe.

7 I would like to know why Mr. Houle didn't state that
8 to the people so that the people would know that?

9 (Applause)

10
11 MR. HOULE: I want to apologize for not
12 mentioning that, Lindy. The Tribal Council defeated the
13 construction of Knowles Dam in the early 1950's and to
14 the best of my knowledge, Knowles Dam will never be built
15 but it is a thought. It is a very valuable dam site but
16 I believe the matter is dead now, that they won't build
17 Knowles Dam.

18 (Applause)

19
20 MR. MEREDITH: Is there anyone else who wishes
21 to make a statement?

22
23 MRS. LUCILLE TROSPER OTTER: My name is Lucille
24 Otter and I'm a resident of Ronan, Flathead Allottee
25 No. 3313.

I have a statement. Should I read it? But I wanted to ask Mr. Houle a clarification of the Northeast Boundary of the Reservation and why the Council is not asking for that land back as well as the Southwest end of the Reservation?

MR. HOULE: I am not aware of any land in the Northwest or Northeast corner I believe you said. I am not aware of any land up there that is in the National Forest. It is all Burlington Northern land up in that area or ACM land.

MRS. OTTER: As long as I am up here, I may as well read my statement.

An error in survey, hardly likely. It appears to be another instance of short changing the Indian of his lands.

The amount awarded by the Court of Claims in payment of approximately 15,000 acres of land is not just compensation to the Indians considering the time elapsed since these surveys were made. Therefore, I suggest that all lands be returned to the Tribe, especially that area in the Northwest end of the Reservation.

Restoring this area, as well as the Southwest area, to the Tribal Ownership will involve a long legal battle but on the other hand will bring to the attention of the

1 people of this nation in this bicentennial year that
2 another rip off of Indian resources was made.

3 Ownership of the lands in question would benefit
4 the Tribe much more than the cash award made by the
5 Court of Claims.

6 (Applause)

7
8 MR. MEREDITH: I notice a few other people
9 have come in in the last few minutes. Is there anyone
0 else that would like to make an oral statement here,
1 any of you people who came in a few minutes ago, do you
2 have anything -- do you want to make a statement?

3

4 MR. BILL MORIGEAU: Bill Morigeau again. Lindy
5 McClure asked about the ownership of the Knowles Dam.
6 The lower lands that went into the third party ownership,
7 the lands that we understand we can't get back; Knowles
8 Dam site was down in that area and I understood from
9 Mansfield and Metcalf that the Knowles Dam site just
0 reverted, the Knowles Dam site area reverted back to the
1 Tribe so there is really no question there. It belongs
2 to the Tribe right now but what Mr. Houle said about it
3 is correct. Thank you.

4 (Applause)

5 MR. MEREDITH: Is there anyone else who wishes

1 to make an oral statement? Mr. Pierre would like to
2 speak last so he can explain this and summarize it and
3 if there are no further statements from anyone else, I
4 will ask him to come forward now. All right, Mr. Dupuis.

5
6 MR. LOUIS DUPUIS: I want emphasis in my mind
7 and to the people here that this land that we are talking
8 about belongs to the Tribe. We have ownership of it
9 by the defines of the Boundary so why can't we make the
0 government prove that we don't own it? That is all.

1 (Applause)

2
3 MR. MEREDITH: Does anyone else have an oral
4 statement to make?

5
6 MR. VICTOR STINGER: I want to add a little
7 something to this, just in case this record of this
8 hearing goes someplace that means something.

9 I have been the Chairman for the Land Committee
0 for the last couple of years on the Council and I think
1 if National Forest Land is selling for \$55.00 an acre,
2 we'd be willing to buy any number of acres.

3 (Applause)

4
5 MR. MEREDITH: I will ask again if there is

1 anyone else that has an oral statement to make? Then
2 I will ask Mr. Pierre to come up and summarize if you will.

3
4 MR. PATRICK PIERRE: Thank you. First of all,
5 my name is Patrick Pierre, Polson, Montana. I am a
6 member of the Tribe. I'd like to add that I'm a full-
7 blooded member.

8 I have been listening. I missed part of the first
9 part of this meeting. I didn't know what kind of money
0 they were talking about in dollars and cents, what kind
1 of per capita they were talking about but that is
2 immaterial, I mean how much the money is, the land is
3 worth shouldn't even be talked about. Everybody wants
4 the land and that is all there is to it.

5 Now this, as a part of what I got to say tonight,
6 I believe somebody here mentioned before that we have
7 lost a lot of land. The Reservation is hardly a
8 Reservation. I have been to Reservations where there is
9 no Homestead Act and it is a Reservation, all Indians.
0 It is Indian land and it is defined as such and the
1 people there make the decisions of what is going to take
2 place. They don't have the B.I.A., come in. They don't
3 have the people from the outside come in to tell them how
4 to run the Reservation or how to conduct themselves.
5 They run the Reservation and the Reservation thrives.

Why? Because the sole interest is to keep the land, to keep the Reservation above reproach where the people from the outside are not going to come in and begin to say, well, how come you don't belong to the county? How come the county is taking care of you and how come the county is taking care of you? Why isn't the Tribe doing it?

I believe we have got too much of that on this Reservation. Although we have to live this way because that is the way that it is put out.

Nevertheless, it still remains the Reservation and if we let go of that portion of the Reservation which to my understanding -- maybe I'm wrong -- somebody said 10,000 acres. I believe it's more than that. But I believe that if we were to let that portion go, that corner, what is to stop anybody from coming in and taking off another chunk? What is to stop them from coming and taking the Reservation boundary and moving it in a little bit more, a squeeze?

We are already in a bind now. We have all kinds of organizations right in the middle of our Reservation. What can we do about it? We have got Mod, Free and what have you and none of these organizations has said anything that hey! Skip, you can come and belong to my Reservation. You can come and belong to my organization rather. They don't come and tell you, hey, you can come and belong to

1 our organization. It doesn't matter if you are an Indian.
2 No sir, you have got to be some kind of an Indian to get
3 into some of these organizations.

4 Why? Because it don't belong to the Indians. It
5 is a white man's organization.

6 All right, you blew part of that land. What do you
7 get? You get a few measly dollars. You are rich today
8 and tomorrow you are broke. You ain't got no land. You
9 sold that portion of the land or Reservation. Sure,
10 it's good to have money but it's also good to have these
11 kids belong to a land that belongs to them and their
12 kids and so on down the line.

13 I personally don't believe that any money in regard
14 to this portion of the Reservation that we are talking
15 about should even be talked about. It should be an open
16 and shut case, we take the land back and that is all.

17 I mean there shouldn't be nothing up to hey, this
18 piece of paper don't say nothing about whether we got
19 a choice of this land or the money. It says the money.
20 What are you going to do with the money? Are you going
21 to spend it on a Cadillac or are you going to forget
22 about the land and just let it go? No, if this is going
23 to go anywhere, let it go to the right place.

24 I don't know how many times this group of people
25 has been heard anywhere besides right here on the

Reservation.

I have got a man back there that don't understand much of what I'm saying and he is going to have a chance to talk and he is going to have a chance to talk through me because I am going to interpret for him.

How many of us can interpret one for another here? I still see the true value of -- I have been a Tribal member and an Indian, first an Indian. That's how I stand.

I don't believe that there should be any question about how much money we are going to accept for that land over there. This land belongs to the Reservation and it is not for sale.

Just real quickly, how many believe that this land should not be for sale, just raise your hands.

About 65%. What are the rest of you going to do, sell? Aren't you proud of your Reservation? Don't you want to keep this land intact? Do you want to give it up just a portion at a time? Is that right? You are not going to be here all your life, the rest of your days.

Now you are not going to live to be 1,000 years old but these children are and they are going to need land. They are going to need a place to put their homes and be free.

This is for the Tribal members and as a Tribal



1 member, I'm going to speak to some of these people that
2 didn't understand.

3 (Mr. Pierre spoke at length in
4 Indian language.)

5 Pete, he comes over here to listen in most of the
6 time and that is what happens. People come over to
7 listen in and what do they hear, they hear a bunch of
8 mumbo jumbo and then they go home and say I don't know
9 what I done, I went over there and nobody comes and told
10 me what was going on.

11 After awhile, they come over there with a piece of
12 paper and they say well, Pete, you was at the meeting,
13 here, sign this.

14 He might be signing away his Reservation.

15 (Mr. Pierre speaks Indian language
16 again.)

17 The opinion of one full-blooded Tribal member. He
18 says that the land is more valuable than money. He says
19 that the land belongs to the Reservation and, therefore,
20 we want the land back.

21 This is just the opinion of one Tribal member who
22 should by all means be heard at everyone of these meetings
23 and if it's in my power, I will be here at these meetings
24 so I can interpret for these people like Pete. That is
25 Pete Woodcock, one of the oldest Tribal members of this

1 Reservation.

2 I believe as a matter of fact I would like to stress
3 to everyone of you that knows somebody or can bring
4 somebody of the older Tribal members, the full-blood
5 Tribal members on this Reservation, to bring them and I
6 will personally interpret for them so that they can have
7 a voice in this and any matters that is of any importance,
8 I would like to have them here and I believe we have a
9 lot of C.H.R.'s around here. They should be hauling
0 these people to these meetings. Isn't that right?
1 Wouldn't you say that?

2 How many C.H.R.'s do we have here? How many people
3 did you haul here to this meeting tonight? How many did
4 you haul here, nobody? All right.

5 I believe that this should be -- a meeting of this
6 type should be first and foremost in these old people's
7 lives so that they can understand what is going on. I
8 don't know either one of you guys so if I don't call you
9 by name, don't be offended. But I think personally that
0 we should, whenever we have a meeting of this type, bring
1 these old people so that they can be heard. They are the
2 people that this Reservation at one time belonged to,
3 people like Pete Woodcock, John, Mose, my aunt Christine.

4 I don't have too much more to say except that I
5 believe I didn't catch the figures but I'm sure I don't

1 think that \$94.00 is something to trade for thousands
2 of acres of land. I believe the land is more valuable.
3 The reason that I say this is that I'm a sawmill man and
4 wood products are very important to me. I worked the
5 sawmill all my life and I started when I was 17 and I
6 am now 46 years old.

7 Right now we are getting pinched off. Pack River
8 Lumber Company, Dupuis Lumber, there is no more timber
9 yet we have timber standing all around us but we can't
0 get it to the mill so the mill is shutting down.

1 There are very few of us here that realize how much
2 it hurts to be pushed out of a job. Who is doing it?
3 We don't know. I mean we know but we are not going to
4 broadcast it.

5 I believe that that timber is a very good thing to
6 have on this Reservation but by all means if we get the
7 timber out, keep the B.I.A. - Forestry out of it.

8 (Applause)

9 Right now, that is about all I have. I thank each
0 and everyone of you for taking the time to listen.

1 (Applause)

2
3 MR. MEREDITH: Is there anyone else who desires
4 to make a statement or present any evidence germane to
5 this hearing? There being none, it becomes my duty to

1 close the hearing.
2

3 VOICE FROM THE AUDIENCE: Before you close
4 the hearing, I'm curious. You heard all of our statements.
5 What are you going to do with this once more?
6

7 MR. MEREDITH: As I stated at the first part
8 of this hearing, it is not up to me to make any decision.
9 This is evidence that will be submitted to the Secretary
0 and then to the Congressional Committees and any state-
1 ment that you make here will be in the record that goes
2 forward.
3

4 MR. BRITTON V. SALOIS: I believe that we are
5 being taken. There seems to be a lack of communication
6 on what this money is all about. They are getting it
7 through to the people that we have the money and how do
8 you want to spend it without asking us or giving us
9 alternatives or anything like that. They are taking us
0 for granted. We are being insulted and can you really
1 call this hearing fair? I think that we ought to
2 disregard this hearing.
3

4 (Applause)
5

MR. RAYMOND CLIFFORD ELMO: This hearing has been called a slap in the face to our Tribal Council. I am very much pleased with the fact that everybody is supporting our Tribal Council here and no one has spoken against the decision that they have tried to do on this matter. That is all.

That I am duly authorized. (Applause)
The testimony and evidence in the above entitled public hearing. MR. MEREDITH: Does anyone else have a statement? If not, I will now close the hearing. There being no further statements, a copy of this transcript will be furnished to the Tribe. Anyone else wishing a copy of the transcript of this hearing should make personal arrangements with the Reporter who is taking the statements at this hearing.

I wish to thank everyone for your cooperation given during this hearing. Since there is nothing further in connection with this hearing and no more testimony or evidence to be offered, the hearing stands adjourned.

(End of proceedings.)

C E R T I F I C A T E

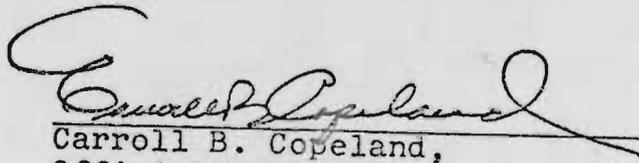
STATE OF MONTANA)
 : ss.
County of Missoula)

I, Carroll B. Copeland, Official Court Reporter, State of Montana, residing in Missoula, Montana, do hereby certify:

That I was duly authorized to and did report the testimony and evidence in the above entitled public hearing.

I further certify that the foregoing pages of this transcript represents a true and accurate transcription of my stenographic notes.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of December, 1975.


Carroll B. Copeland,
Official Court Reporter.

Nevertheless, I sign this legislation with mixed emotions, not over whether miners, widows, and their dependents need this assistance—they do—but because of the precedent it tends to establish.

This legislation departs from the U.S. tradition that compensation for work-related accidents and diseases should be provided by State workmen's compensation laws, financed by the owners of the industries containing the hazards. Responsibility for black lung compensation clearly should lie with the owners and operators of the mines.

In this case, however, the States have not yet improved their owner-financed laws to meet the challenge posed by black lung—and there are too many victims of this dread disease for me not to have acted.

Therefore, I have moved to pick up the responsibility that others have neglected—so that disabled miners and their families will not be deserted by our society in their hour of critical and justified personal need.

The health and safety of coal miners has been a primary concern of this Administration. One of my earliest legislative recommendations was for more effective Federal laws in the area of coal mine health and safety, culminating in the enactment of the Federal Coal Mine Health and Safety Act of 1969. Since that law was enacted, major progress has been made in improving working conditions in our Nation's coal mines and in the protection offered to those who work in them.

The 1969 act established the temporary black lung benefits program. The legislation I have signed today will extend Federal responsibility for this program from Janu-

cash compensation, the Tribe with the permission of the Commission, sought to have the land itself restored.

In a comprehensive opinion, Attorney General Mitchell reviewed the unintentional but mistaken actions of 1907 and ruled that the Executive order of that time did not constitute a "taking" of the land by the Government in the legal sense and that it can be restored by Executive action now.

Ordinarily, of course, Indian land claims are being, and should be, settled by cash award, but this case has exceptional circumstances which the Attorney General has described.

I am equally pleased to note that the Yakima Tribe itself has pledged by tribal resolution to "maintain existing recreation facilities for public use" and to "recognize the dedication of that portion included in the Mt. Adams wilderness use."

NOTE: For the text of the Executive order, see the following item.

Yakima Indian Reservation

Executive Order 11670. May 20, 1972

PROVIDING FOR THE RETURN OF CERTAIN LANDS TO THE
YAKIMA INDIAN RESERVATION

In 1855, the United States entered into a treaty with the Yakima Tribe of Indians. The treaty created a reservation, generally described by natural landmarks, for

the exclusive use and benefit of the Tribe. Over the years, there have been continuing disputes regarding the true location of the reservation boundary.

In 1897, President Cleveland created by proclamation the Mount Rainier Forest Reserve in an area near the western boundary of the Yakima Reservation. In 1908, President Theodore Roosevelt extended the boundary of that Forest to include a tract of some 21,000 acres, then mistakenly thought to be public land. The tract is included within a larger area now called the Gifford Pinchot National Forest. In 1942, a portion of the tract was designated the Mount Adams Wild Area, and this portion has been administered since 1964 for the public benefit under the Wilderness Act.

In 1966, the Indian Claims Commission found that this tract had originally been intended for inclusion in the Yakima Reservation. However, the Commission does not have authority to return specific property to a claimant; it may only grant money damages. Accordingly, the Tribe sought Executive action for return of its land.

The Attorney General has at my request reviewed the specific history and background of this particular case, including the principles which govern the taking of land by the United States and the question of whether this particular land was so taken. In a recent opinion, the Attorney General has advised me that, in these exceptional and unique circumstances, the land was not taken by the United States within the meaning of the Fifth Amendment and that possession of this particular tract can be restored to the Tribe by Executive action.

Now, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, particularly 16 U.S.C. 473, it is ordered as follows:

SECTION 1. A portion of the eastern boundary of the Gifford Pinchot National Forest is modified as follows:

Beginning at the point on the main ridge of the Cascade Mountains, where the Yakima Indian Reservation boundary as located by the 1926 Peccore survey from Goat Butte intersects said main ridge; thence southwesterly along the main ridge of the Cascade Mountains to the summit or the pinnacle of Mount Adams, as shown on the diagram of the Rainier National Forest attached to the Presidential proclamation of October 23, 1911, 37 Stat. 1718; thence southerly along a divide between the watersheds of the Klickitat and White Salmon Rivers as shown on the 1932 Calvin Reconnaissance Survey Map (Petitioner's Exhibit No. 4, Docket No. 47, Indian Claims Commission) to its intersection with the north line of Section 34, Township 7 North, Range 11 East, Willamette Meridian.

SEC. 2. The Secretary of the Interior is directed to assume jurisdiction over the tract of land heretofore administered as a portion of the Gifford Pinchot National Forest and excluded from the Forest by Section 1 of this order, and to administer it for the use and benefit of the Yakima Tribe of Indians as a portion of the reservation created by the Treaty of 1855, 12 Stat. 951.

SEC. 3. Any prior order or proclamation relating to the tract of land affected by this order, to the extent inconsistent with this order, is hereby superseded.

RICHARD NIXON

The White House

May 20, 1972

[Filed with the Office of the Federal Register, 11:10 a.m., May 22, 1972]

Black Lung Benefits Act of 1972

Statement by the President Upon Signing the Act into Law. May 20, 1972.

Today I have signed H.R. 9212, the Black Lung Benefits Act of 1972.

This legislation extends for 18 months the Federal re-eligibility for operating a transitional program enacted in 1969 to provide cash benefits for coal miners disabled by black lung disease.

Under the original law, lifetime monthly benefits have been awarded to more than 260,000 miners, widows, and orphans at a Federal cost of more than \$600 million.

The Black Lung Benefits Act of 1972 will mean that tens of thousands of additional miners and their dependents will be eligible for lifetime benefits from the Federal Government, because of its extension of filing time and because it provides for generous liberalization of eligibility requirements.

I am heartened that this legislation provides benefits for thousands of black lung victims, who are excluded in present law through legislative oversight. Other dependents are covered but not orphans. Under the new law, 2,000 orphans of black lung victims—and all orphans in the future—will receive the benefits to which they should be fully entitled.

Nevertheless, I sign this legislation with mixed emotions over whether miners, widows, and their dependents need this assistance—they do—but because of precedent it tends to establish.

This legislation departs from the U.S. tradition that compensation for work-related accidents and diseases should be provided by State workmen's compensation programs financed by the owners of the industries containing the hazards. Responsibility for black lung compensation should lie with the owners and operators of the

In this case, however, the States have not yet improved their worker-financed laws to meet the challenge posed by black lung—and there are too many victims of this dread disease for me not to have acted.

Therefore, I have moved to pick up the responsibility which others have neglected—so that disabled miners and their families will not be deserted by our society in their most critical and justified personal need.

July 1, 1972, to June 30, 1973. In the latter half of 1973, the Federal Government will continue to accept applications for black lung benefits but beneficiaries enrolled during this period will be transferred to the State programs on January 1, 1974.

I urge that all mining States review their workmen's compensation programs to make certain that adequate laws exist for the black lung disease by that time.

Yakima Indian Reservation

Statement by the President Upon Signing Executive Order. May 20, 1972

It is with particular pleasure that I sign this Executive order which places 21,000 acres of land in the State of Washington under the trust jurisdiction of the Secretary of the Interior for the Yakima Indian Tribe.

This action rights a wrong going back 65 years.

The United States Government lost the treaty map in its own files and by the time it was found actions had been taken which had mistakenly displaced the Indians from this land.

The Indian Claims Commission has ruled that the Yakima Tribe has a rightful claim, but rather than accept cash compensation, the Tribe with the permission of the Commission, sought to have the land itself restored.

In a comprehensive opinion, Attorney General Mitchell reviewed the unintentional but mistaken actions of 1907 and ruled that the Executive order of that time did not constitute a "taking" of the land by the Government in the legal sense and that it can be restored by Executive action now.

Ordinarily, of course, Indian land claims are being, and should be, settled by cash award, but this case has exceptional circumstances which the Attorney General has described.

I am equally pleased to note that the Yakima Tribe itself has pledged by tribal resolution to "maintain existing recreation facilities for public use" and to "recognize the dedication of that portion included in the Mt. Adams wilderness use."

NOTE: For the text of the Executive order, see the following item.



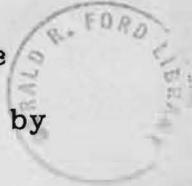
STATEMENT OF MR. E. W. MORIGEAU,
MEMBER OF THE TRIBAL COUNCIL
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION, MONTANA,

BEFORE THE SENATE SUBCOMMITTEE ON INDIAN AFFAIRS,
IN HEARING ON
S. 1517, NINETY-FIRST CONGRESS, SECOND SESSION

April 24, 1970

4591

Mr. Chairman, members of the Committee, my name is E. W. Morigeau; I am a member of the Tribal Council of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana. I have been a member of the Tribal Council for 20 years. I am accompanied today by Mr. Floyd Nicolai, who also is a member of the Tribal Council, and by Mr. Richard A. Baenen, a member of the law firm of Wilkinson, Cragun & Barker, general counsel to the Confederated Tribes. We appear here in support of S. 1517, introduced by Senators Mansfield and Metcalf, a bill to set aside certain lands in Montana for the benefit of the Confederated Salish and Kootenai Tribes of the Flathead Reservation. The lands involved, 10,585.86 acres, more or less, are the residue of Reservation lands which were erroneously excluded from the Flathead Reservation by faulty boundary surveys performed by the United States in the 1880's and which have not been patented to innocent third parties but which are held today by the United States and administered by the National Forest Service. This bill recognizes that the error was on the part of the United States in surveying the lands; it also recognizes that the Tribes have been the innocent victims of the



mistake of the trustee and that the Tribes have an equitable right to the beneficial ownership of the lands; the bill provides recognition of these facts and that the lands shall be so held by the United States for the Tribes.

On behalf of the Tribes we request favorable consideration of S. 1517. We urge the Committee to recommend that it be enacted by the Senate. The lands are mainly forest lands and will be used by us in our sustained yield forest program, a program that returns money to the Tribes and is a source of employment to tribal members. My introductory remarks are supported by the record, which I will summarize now for the Committee. These remarks are part of a prepared statement which at this time I request the Chairman to accept as part of and incorporate into the record.

By the Treaty of Hell Gate, July 16, 1855 (12 Stat. 975), ratified April 18, 1859, we ceded to the United States all of our theretofore aboriginally-owned lands, and by Article II of that Treaty we reserved from the cession and the United States confirmed in us beneficial ownership in a tract of land to be held for our exclusive home. Article II of the Treaty described the out-boundaries of our reserved lands and provided:

"All which tract shall be set apart, and, so far as necessary, surveyed and marked out for the exclusive use and benefit of said confederated tribes as an Indian reservation. Nor shall any white

man, excepting those in the employment of the Indian department, be permitted to reside upon the said reservation without permission of the confederated tribes, and the superintendent and agent. . . ."

In setting the out-boundaries of our reservation, agents of the United States surveyed in 1887 what purported to be the north boundary and in 1893 what purported to be the southwest boundary. We long claimed that the surveys had placed aboriginally-owned lands reserved by the Treaty outside the survey lines delineating the reserved area and sought for many years a resolution of this dispute. Finally, we were reduced to seeking a special jurisdictional act in order to have a forum within which to resolve this and other disputes with the United States. In 1946, Congress enacted H.R. 2678 (79th Cong., 2nd Sess.), but President Truman vetoed the enactment. The provisions of H.R. 2678 are pertinent to the inquiry here. Section 1 provided that jurisdiction was conferred on the Court of Claims "to hear, examine, adjudicate, and render judgment in any and all legal and equitable claims" which we might have arising out of any treaties, agreements, Acts of Congress or Executive Orders or:

". . . by reason of any lands taken from said Indians by Acts of Congress or otherwise, including lands lost to them by erroneous surveys, or lands opened to settlement, or used for dam, power, and reservoir sites and irrigation projects, or loss of lands by submergence by erection of reservoirs without

compensation and without their consent given in the usual manner, or for the failure or refusal of the United States to protect the interests of any of said Indians in lands as to which they had or claimed possessory right of use and occupancy, or because of any mismanagement or wrongful handling of any of the funds, lands, properties, or business enterprises belonging to or held in trust for said Indians."

Section 7 provided:

"That if the court shall find that any lands formerly belonging to or possessed by said Indians have been appropriated by the United States, or set apart and reserved as national reservations, dam, power, and reservoir sites, and irrigation projects, or that loss of lands has been occasioned by submergence by the erection of reservoirs, or that lands have been taken for other public uses or otherwise reserved or disposed of in any manner whereby the said Indians have been deprived of the use or benefits of such lands and the natural resources thereof, without compensation therefor and without their consent it is hereby declared that such action shall be sufficient grounds for equitable relief, and the court shall render judgment in favor of said Indians, and shall award to them, as for a taking under the power of eminent domain, just compensation for all such lands, sites, projects, and natural resources." (Sen. Rept. 1714, 79th Cong., 2d Sess., p. 4).

In transmitting his veto of the bill, President Truman stated:

". . . The jurisdiction thus to be conferred, it is provided, would extend to claims arising by reason of any lands taken from these Indians, including lands lost by erroneous surveys, or lands opened to settlement, lands used for dam, power, and reservoir sites or irrigation projects, or lands lost by submergence, resulting from the erection of reservoirs, without compensation and without the consent of the Indians given in the usual manner. . . .

"In addition to other objectionable features of the bill, an attempt is made in its provisions to define the 'grounds for equitable relief' and the basis upon which the court shall render judgment in favor of the Indians and award to them just compensation 'as for a taking under the power of eminent domain.' It is possible that under the provisions of the bill the use by the United States of any lands 'formerly*** possessed' by the Indians, even though the Indians were without any recognized title, would constitute a sufficient basis 'for equitable relief' and 'for a taking under the power of eminent domain.' Thus the bill does not merely waive the statute of limitations and laches and provide a forum for the adjudication of any preexisting claims which the Indians may have against the United States, but it seeks to create liability against the Government which would not otherwise exist. Moreover, by providing for the payment of just compensation, the bill would probably require the Government to pay interest, for a period of more than 30 years, on a claim that did not even exist prior to its passage. . . ." (Ibid., p. 2.)

Congress removed what the President considered to be objectionable provisions, and as finally enacted, the jurisdictional act conferred on this Court jurisdiction "to hear,

examine, adjudicate, and render judgment in any and all legal and equitable claims of whatsoever nature. . . ." (60 Stat. 715). Gone were provisions constituting mere setting apart as a "national reservation" (national forest) a taking under the power of eminent domain.

Pursuant to this Act we filed a complaint which contained several causes of action. Included therein were claims that the surveys of the north (Para. 8) and southwest (Para. 9) boundaries of the Reservation were erroneously run, thereby establishing the boundaries of the Reservation so as to exclude lands aboriginally held by us and confirmed in us by our treaty.

A hearing was held and evidence taken on whether or not the boundaries of the Reservation were established as called for by the Treaty. The Court of Claims held in Confederated Salish and Kootenai Tribes v. United States, 173 Ct. Cls. 398 (1965), that the defendant's surveys were erroneous and that reserved treaty lands were outside the surveyed out-boundaries.

Portions of the reserved lands affected by the erroneous survey were patented to third parties or granted to railroads. However, 10,585.86 acres of land were placed in various national forests and have remained there. The legal description of those lands is set out in the proposed Bill. The sequence of events affecting these lands is as follows:

On March 3, 1891, Congress passed "An Act to repeal timber-culture laws, and for other purposes." (Fifty-First Congress, Sess. II, c. 561, 26 Stat. 1095.) In pertinent part that Act provided:

"SEC. 10. That nothing in this act shall change, repeal, or modify any agreements or treaties made with any Indian tribes for the disposal of their lands, or of land ceded to the United States to be disposed of for the benefit of such tribes, and the proceeds thereof to be placed in the Treasury of the United States; and the disposition of such lands shall continue in accordance with the provisions of such treaties or agreements, except as provided in section 5 of this act."^{1/} (At 1099; emphasis added.)

"SEC. 24. That the President of the United States may, from time to time, set apart and reserve, in any State or Territory having public land bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations, and the President shall, by public proclamation, declare the establishment of such reservations and the limits thereof." (At 1103; emphasis added.)

President Cleveland issued on February 22, 1897, a Proclamation under the authority of Section 24 which purported to affect land erroneously excluded by the faulty survey on

^{1/} Section 5 amended Sections 2289 and 2290 of Chapter 5, Revised Statutes, relating to homestead entries.

the north end of the Reservation. (Proclamation No. 29, February 22, 1897, 29 Stat. 907.)

The Proclamation recites Section 24 of the Act of March 3, 1891, and after stating that "whereas, the public lands in the State of Montana, within the limits hereinafter described, are in part covered with timber, and it appears that the public good would be promoted by setting apart and reserving such lands as a public reservation," proceeds to describe, inter alia, portions of the excluded lands.

The Proclamation continues, after describing the lands:

"Excepting from the force and effect of this proclamation all lands which may have been, prior to the date hereof, embraced in any legal entry or covered by any lawful filing duly of record in the proper United States Land Office, or upon which any valid settlement has been made pursuant to law, and the statutory period within which to make entry or filing of record has not expired; and all mining claims duly located and held according to the laws of the United States and rules and regulations not in conflict therewith;" (At 908; emphasis added.)

On June 4, 1897, Congress provided in a general appropriations act:

"The President is hereby authorized at any time to modify any Executive Order that has been or may hereafter be made establishing any forest reserve, and by such modification may reduce the area or

change the boundary lines of such reserve, or may vacate altogether any order creating such reserve." (Fifty-Fifth Congress, Sess. I, Act of June 4, 1897, c. 2, 30 Stat. 11, 36.)

President Theodore Roosevelt issued on November 6, 1906, a Proclamation purportedly affecting lands situated outside of the exterior boundaries of our Reservation because of the erroneous survey of the southwest boundary. By the Proclamation, these lands were considered part of the Lolo National Forest. Cited as authority for the Proclamation was the Act of June 4, 1897, and by the Proclamation the Lolo Forest Reserve was "enlarged to include the said additional lands, and that the boundaries of the reserve are now as shown on the diagram forming a part hereof." (34 Stat. 3261.)

The Proclamation was not to "take effect upon any lands withdrawn or reserved, at this date, from settlement, entry, or other appropriation, for any purpose other than forest uses, or which may be covered by any prior valid claim, so long as the withdrawal, reservation, or claim exists." (At 3261; emphasis added.)

In addition, Public Land Orders have been issued affecting some of the land involved. These orders are of relatively recent dates and appear to be in the main administrative actions by the Secretary of the Interior transferring lands from one national forest to another.

After the Court's determination and the conclusion of the study that showed the 10,585.86 acres were held by the United States, our attorneys filed on our behalf a motion in the Court of Claims seeking a determination that the lands had not been taken by the United States by virtue of the erroneous survey. This course of action was taken because the Bureau of Indian Affairs refused to recognize or seek a confirmation of title in the Tribes to these lands. The United States through the Justice Department objected, and contended that the lands had been taken by the United States. Of course, the value of the lands to the Tribes today is far in excess of any value they can recover in the Court of Claims, a value to be determined as of the date of taking, which in most instances will be set before the turn of the century.

The Court of Claims on July 3, 1968, held that the lands erroneously excluded from the exterior boundary of the Reservation by reason of the faulty surveys in which lands are now a national forest have not remained the property of plaintiffs and therefore are properly subject to a claim of taking by the United States and should be treated as such. A Petition for Writ of Certiorari was filed in the Supreme Court seeking a review and reversal of the Court's opinion, but the Petition was denied on January 20, 1969 (with the Chief Justice, Mr. Justice Douglas and Mr. Justice Brennan dissenting to the denial).

The Tribes in fairness and equity should have these lands restored to them and the proposed bill contains a provision by which we would not benefit from any court action if the lands are restored. Hearings in the Court of Claims have been suspended on request of our attorneys pending consideration of this bill. There has been no money judgment. We have recovered a nominal sum for some of the lands on the north, about \$.50 an acre for about one thousand acres. Under the bill we will repay that amount to the United States. This recovery came in our aboriginal title claim in the Indian Claims Commission, Docket No. 61. It came because we were not certain, without benefit of a full trial, of the extent of loss on the north. There has been no recovery for lands on the southwest, for we excluded those lands from the aboriginal title claim. We knew those lands were ours and we wanted them back. It is for this reason that legislation is sought on behalf of the Tribes.

We do not, as we prepare this statement, know the position of the Department of Agriculture. We understand that it recommends that the Court of Claims determination not be reversed, and that the lands involved in S. 1517 be retained in the National Forest of which they are a part.

We are not asking that the Court of Claims' decision "be reversed". We assert that as a matter of equity and moral obligation we are entitled to have these lands held in trust

for us. The lands were lost through an error by the United States Government, the trustee of the Tribes. The Tribes were in no way at fault. No innocent third party has intervened, for as to the lands patented to third parties, we are not seeking any restoration and we will accept a money judgment which will be based on a valuation date before the turn of the century. We would rather have the land, but we recognize the position of innocent third parties. The United States, however, is not innocent; it committed the error and it should not be allowed to benefit from that error at the expense of its ward.

We also understand the Department of Agriculture contends that these lands are valuable public lands which have been managed, protected, and improved at public expense for over 60 years and that much of their current value is due to their treatment as National Forest lands during this period.

The fact that the United States has expended money based on its own error is irrelevant. The United States also has expended money for tribal forest lands and it cannot be said that because it has spent money to take care of the forest lands of the Tribes, that the Tribes are not entitled to keep those lands and they should be placed in the National Forest system. In addition, the 60-year period was caused solely by the trustee's total failure and insensitivity to the claim of the Indians. We long claimed that the trustee had erroneously surveyed the Reservation. When the trustee was

notified of the erroneous survey, it failed to fulfill its trustee obligation and conduct a resurvey to determine the correctness of its prior survey. Had it done this many years ago when it was brought to its attention, the United States would not have administered the lands for the 60 years. Therefore, the argument based on length of time is of no moment.

The lands involved are not in an area used very much for public purposes, and the fact that 10,000 acres may now be eliminated from public use certainly is not detrimental to the public and is not an argument to support denying us our equitable right. There are hundreds of thousands of acres of National Forest land in the area of Montana wherein these lands lie which are available to the general public. Finally, the general public is as a general rule allowed to utilize tribal land on the Flathead Reservation by virtue of Tribal Council action and most likely the public use will continue as at present if beneficial interest to the lands is restored to the Tribes.

We understand Agriculture alleges that enactment of S. 1517 would be a questionable departure from the traditional and well-accepted manner of treating Indian land claims.

That is not true. Each case must be determined on its own facts. This is a relatively small acreage, is adjacent to the present Reservation, was confirmed as part of the Reservation by the United States by solemn treaty, and is

outside our Reservation only because of the error of the United States, acting under the treaty and as trustee, an error which to date it refuses to correct. The Administration has been morally insensitive. We know that Congress will not be so.

Finally, the Department of Agriculture reportedly asserts that it believes we will receive adequate compensation for the 10,585.86 acres involved in S. 1517 through the pending Court of Claims determination and that the Court proceeding will be equitable to the Indians and to the general public who use and benefit from the National Forest system.

This is blatantly false. We will receive a value based upon Victorian prices (19th Century). We will have to take this value because of the error of our trustee. The general public will not be affected, and, assuming it was, the equities are on our side.

We understand also that the Justice Department opposes this bill on a stated principle that we, having sought and obtained relief in the courts, apparently are dissatisfied with the results and now seek to circumvent the Court's action to secure the return of the land because it promises to be of greater financial benefit.

The Department of Justice misstates the issue and reaches a conclusion which is based on an erroneous fact.

While we originally sought judicial relief, it was only because that was the only way we could get a determination

made of the correctness of the boundary claim. We have alleged for many years that the boundaries should be resurveyed, but our request was denied, and instead of the trustee exercising its trust duty to determine if the boundaries were properly surveyed in the first instance, it forced us to go to a court and that is why there was a judicial determination. Thus, we had to incur the expense and delay of litigation to prove a fact which the defendant conceded at trial, that the southwest boundary had been erroneously surveyed.

"This boundary [southwest] was surveyed in 1893 by Deputy Surveyor George Scheetz. Defendant concedes that the instructions which Scheetz had received from the Surveyor General of the United States were erroneous and that, as a result, approximately 11,900 acres of land and water were omitted from the Reservation. . . ." (173 Ct. Cl. 398, 403 (1965))

Of the approximately 10,585.86 acres involved, 9,014.51 lie in the southwest, the area admitted by defendant to have been erroneously excluded. Had the United States, as trustee, taken the time it took as the Tribes' adversary in the Court of Claims litigation to investigate the allegation of erroneous survey when first raised, it would have been able to correct the error many years ago.

The Justice Department also asserts, so we understand, that after the Court of Claims determined that the lands were erroneously excluded from the Reservation and that we were entitled to recover, we abruptly changed our position.

That is an error. We did not abruptly change our position. We only showed in the first proceeding that the lands had been erroneously excluded.

" . . . The primary issue in this action is whether certain of the reservation boundaries, as surveyed by the United States, are in accord with the requirements of the Treaty. Specifically, we must consider plaintiff's assertion that the existing boundaries on the north and on the southwest of the reservation are incorrect." (173 Ct. Cl. 398, 399.)

The United States refused to administratively determine whether the boundaries had been properly surveyed. A special jurisdictional act was the only method available to us to get that determination. Upon securing a judicial determination that the lands had been excluded, the next act was to seek a determination that we had not lost beneficial ownership to any of the lands which had not been patented to third parties. Our position has been consistent throughout the litigation.

In our initial pleading before the Court of Claims on whether the surveys were correct, we stated in conclusion:

"Further proceedings should be ordered [after a determination of the correct location of the boundaries] in which it may be determined when and what of the excluded lands were taken from plaintiff."
(See p. 19 of Tribes' Brief in Support of Exceptions filed December 7, 1964, to Report of Commissioner filed September 24, 1964, in United States Court of Claims, Docket No. 50233-19-Erroneous Survey, Southwest Boundary. For the same language for lands on the north, see p. 20 of the Tribes' Brief in Support of Exceptions, filed October 23,

1964, in Docket No. 50233-J8-Erroneous Survey of North Boundary.)

The Justice Department is in error.

We are not seeking to accomplish by legislation what we failed to accomplish by litigation. What we do seek is an equitable right to lands. The trustee has consistently failed to offer administrative relief and has forced us into court, and the court has said that we must now take money when in equity we are entitled to the land. What we are seeking is action by the trustee in recognition of a judicial determination that the trustee made an error some 60 years ago, that no third parties have been injured, and that we are entitled to have confirmed in us beneficial ownership of the lands involved.

We did not seek and have not received compensation for the lands erroneously excluded on the southwest in any forum, either the Court of Claims or the Indian Claims Commission, and the Department of Justice entered a stipulation to that effect. In the case before the Indian Claims Commission, Confederated Salish and Kootenai Tribes v. United States, Docket No. 61, Additional Findings of Fact and Valuation, Findings entered September 29, 1965, 16 Ind. Cl. Comm. 1, Finding 23 reads:

"Petitioners and defendant stipulated at the hearing that the total area to be valued, excluding the present Flathead Indian Reservation, is 12,500,000 acres. This figure includes the area of Flathead Lake outside the Flathead Reservation, which is 55,000 acres.



"The total acreage to be valued does not include a tract of 12,292 acres of land outlined in red on Joint Exhibit 1 which is the subject of a claim of an erroneous boundary survey in another case pending before the Commission." (At page 2; emphasis added.)

That acreage, which was excluded by the stipulation, encompasses 9,014.51 acres of the acreage involved in the proposed legislation. Therefore, we (1) have not been compensated for that land, (2) expressly excluded it from the aboriginal title claim, and (3) this exclusion shows a consistent position on our part that we were not after compensation but that we wanted and were entitled to the land.

As for the 1,571.35 acres on the north, under the terms of the S. 1517 bill the Tribes will have to return what money they received.

We did seek a determination that the lands were erroneously excluded (173 Ct. Cl. 398 (1965)), but only because that was the only way the trustee would permit us to show that the trustee had erroneously excluded land. If we had not sought that determination in the Court of Claims, we would have been out in the cold.

We are seeking legislation to correct the trustee's error.

I will conclude by noting that we have not recovered a single penny for the lands involved in the southwest and have recovered no more than nominal value for the acreage on the

north, which we must return under Section 2 of S. 1517. (In the valuation phase of the case at the Indian Claims Commission, cited supra, the Commission gave no value to timber, which is what is involved here [see 16 Ind. Cl. Comm. at 73].) We specifically excluded recovery in the Indian Claims Commission in Docket No. 61; we have not recovered anything in the Court of Claims in terms of financial reward; and we have expressly sought a ruling that we should not recover money but the land. The only determination in the Court of Claims is one that the lands were erroneously excluded and taken. There has not even been a valuation trial.

With this background we submit that the proposed bill is one which is in the interest of the Tribes and the United States. It is a bill which recognizes the obligation of the United States as trustee to the Indians and which recognizes that the United States has committed an error which it is willing to rectify at this date, the error now having been brought to its attention by a decision of the Court of Claims.

We urge that the Committee report favorably on the bill.

Respectfully submitted,

E. W. Morigeau

Floyd Nicolai

Members, Tribal Council,
Confederated Salish and Kootenai
Tribes of the Flathead Reservation,
Montana



THE WHITE HOUSE

WASHINGTON

May 17, 1976

4591

MEMORANDUM FOR: SECRETARY OF THE INTERIOR
FROM: TED MARRS *JM*
SUBJECT: SALISH AND KOOTENAI LAND CLAIM

It will be appreciated if a response with rationale is provided.

This, if it should and can be accomplished would be good to announce in a White House briefing.

Enclosures

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THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION

(406) 246-350

DIXON, MONTANA 59831

April 27 1976

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Victor L. Stinger, Vice Chairman
E. Eugene Johnson, Secretary
Linda Lee Busch, Treasurer
Former County Jail Sergeant at Arms

TRIBAL COUNCIL MEMBERS

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Harold W. Mitchell, Jr.
E.W. Morigeau
Sonny Mongean
Thomas E. Pablo
Noel Pichette
Victor L. Stinger
Fred Whitworth

Dr. Theodore Marrs
Special Assistant to the President
White House
1600 Pennsylvania Avenue
Washington D. C. 20000

Dear Dr. Marrs:

Last month a delegation from the Flathead Reservation, Montana, met with you in Washington, D. C. to discuss primarily education matters. During the course of the meeting other matters were discussed including one of our aboriginal claims cases wherein the United States erroneously excluded several thousand acres of land from our reservation when the reservation was surveyed in the late 1800's. At that time you expressed interest in reviewing the situation and see if something could be done to restore the land to the Tribes. You suggested to the delegation that the information be sent to you for consideration and possible assistance.

The Confederated Salish and Kootenai Tribes, by the Treaty of HellGate, ceded their vast aboriginal homeland to the United States but they retained from the cession a portion of their lands to be their future homeland. Article 2 of the Treaty described the boundaries of the reserved land. In determining the boundaries of the reservation, agents of the Federal Government in 1887 surveyed what was purported to be the north boundary, and in 1893 what was purported to be the southwest boundary.

In 1965 the U. S. Court of Claims agreed with us and held that portions of the outboundaries had been erroneously surveyed and lands reserved by the Tribes by the Treaty were outside the surveyed boundaries. We have tried in the Court of Claims to have the lands declared tribal property but we were only able to obtain a monetary settlement based on 19th century land values. The money has been placed in an escrow account while we attempt to have the land restored by Executive, Congressional or administrative means, each of which methods has precedent. So far we have not been successful. Therefore, this appeal to you.

4591



THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION

DIXON, MONTANA 59831

Mr. Theodore Marrs
Special Assistant to the President

4591

April 27 1976
Page Two

I am enclosing a statement that some members of our Council made to Congress in 1970 which gives a good description of the problem and legal facts of the situation. Also, enclosed is the transcript of a public hearing that was held here on the reservation where the people expressed their desire to have the land restored to them.

I'm sure you are aware that Congress restored the Blue Lake area to the Taos Pueblos and by Executive Order 11670 dated May 20, 1972, President Nixon restored some 21,000 acres of the Gifford Pinchot National Forest to the Yakimas under almost identical circumstances as ours. Since this is our bicentennial election year it would be most appropriate if you and President Ford could review this matter and restore this 10,585.86 acres to the Flathead Reservation. It would cost the United States nothing and we could give back that portion of the meager cash settlement attributable to those lands restored.

Your review of this matter would be appreciated by all the members of our Tribe. If you have any questions please call.

Sincerely yours,

Confederated Salish & Kootenai Tribes


Harold W. Mitchell, Jr.
Chairman, Tribal Council

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enclosures (3)

STATEMENT OF MR. E. W. MORIGEAU,
MEMBER OF THE TRIBAL COUNCIL
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION, MONTANA,

BEFORE THE SENATE SUBCOMMITTEE ON INDIAN AFFAIRS,
IN HEARING ON
S. 1517, NINETY-FIRST CONGRESS, SECOND SESSION

April 24, 1970 ✓

4591

Mr. Chairman, members of the Committee, my name is E. W. Morigeau; I am a member of the Tribal Council of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana. I have been a member of the Tribal Council for 20 years. I am accompanied today by Mr. Floyd Nicolai, who also is a member of the Tribal Council, and by Mr. Richard A. Baenen, a member of the law firm of Wilkinson, Cragun & Barker, general counsel to the Confederated Tribes. We appear here in support of S. 1517, introduced by Senators Mansfield and Metcalf, a bill to set aside certain lands in Montana for the benefit of the Confederated Salish and Kootenai Tribes of the Flathead Reservation. The lands involved, 10,585.86 acres, more or less, are the residue of Reservation lands which were erroneously excluded from the Flathead Reservation by faulty boundary surveys performed by the United States in the 1880's and which have not been patented to innocent third parties but which are held today by the United States and administered by the National Forest Service. This bill recognizes that the error was on the part of the United States in surveying the lands; it also recognizes that the Tribes have been the innocent victims of the

mistake of the trustee and that the Tribes have an equitable right to the beneficial ownership of the lands; the bill provides recognition of these facts and that the lands shall be so held by the United States for the Tribes.

On behalf of the Tribes we request favorable consideration of S. 1517. We urge the Committee to recommend that it be enacted by the Senate. The lands are mainly forest lands and will be used by us in our sustained yield forest program, a program that returns money to the Tribes and is a source of employment to tribal members. My introductory remarks are supported by the record, which I will summarize now for the Committee. These remarks are part of a prepared statement which at this time I request the Chairman to accept as part of and incorporate into the record.

By the Treaty of Hell Gate, July 16, 1855 (12 Stat. 975), ratified April 18, 1859, we ceded to the United States all of our theretofore aboriginally-owned lands, and by Article II of that Treaty we reserved from the cession and the United States confirmed in us beneficial ownership in a tract of land to be held for our exclusive home. Article II of the Treaty described the out-boundaries of our reserved lands and provided:

"All which tract shall be set apart, and, so far as necessary, surveyed and marked out for the exclusive use and benefit of said confederated tribes as an Indian reservation. Nor shall any white

man, excepting those in the employment of the Indian department, be permitted to reside upon the said reservation without permission of the confederated tribes, and the superintendent and agent. . . ."

In setting the out-boundaries of our reservation, agents of the United States surveyed in 1887 what purported to be the north boundary and in 1893 what purported to be the southwest boundary. We long claimed that the surveys had placed aboriginally-owned lands reserved by the Treaty outside the survey lines delineating the reserved area and sought for many years a resolution of this dispute. Finally, we were reduced to seeking a special jurisdictional act in order to have a forum within which to resolve this and other disputes with the United States. In 1946, Congress enacted H.R. 2678 (79th Cong., 2nd Sess.), but President Truman vetoed the enactment. The provisions of H.R. 2678 are pertinent to the inquiry here. Section 1 provided that jurisdiction was conferred on the Court of Claims "to hear, examine, adjudicate, and render judgment in any and all legal and equitable claims" which we might have arising out of any treaties, agreements, Acts of Congress or Executive Orders or:

". . . by reason of any lands taken from said Indians by Acts of Congress or otherwise, including lands lost to them by erroneous surveys, or lands opened to settlement, or used for dam, power, and reservoir sites and irrigation projects, or loss of lands by submergence by erection of reservoirs without

compensation and without their consent given in the usual manner, or for the failure or refusal of the United States to protect the interests of any of said Indians in lands as to which they had or claimed possessory right of use and occupancy, or because of any mismanagement or wrongful handling of any of the funds, lands, properties, or business enterprises belonging to or held in trust for said Indians."

Section 7 provided:

"That if the court shall find that any lands formerly belonging to or possessed by said Indians have been appropriated by the United States, or set apart and reserved as national reservations, dam, power, and reservoir sites, and irrigation projects, or that loss of lands has been occasioned by submergence by the erection of reservoirs, or that lands have been taken for other public uses or otherwise reserved or disposed of in any manner whereby the said Indians have been deprived of the use or benefits of such lands and the natural resources thereof, without compensation therefor and without their consent it is hereby declared that such action shall be sufficient grounds for equitable relief, and the court shall render judgment in favor of said Indians, and shall award to them, as for a taking under the power of eminent domain, just compensation for all such lands, sites, projects, and natural resources." (Sen. Rept. 1714, 79th Cong., 2d Sess., p. 4).

In transmitting his veto of the bill, President

Truman stated:

". . . The jurisdiction thus to be conferred, it is provided, would extend to claims arising by reason of any lands taken from these Indians, including lands lost by erroneous surveys, or lands opened to settlement, lands used for dam, power, and reservoir sites or irrigation projects, or lands lost by submergence, resulting from the erection of reservoirs, without compensation and without the consent of the Indians given in the usual manner. . . .

"In addition to other objectionable features of the bill, an attempt is made in its provisions to define the 'grounds for equitable relief' and the basis upon which the court shall render judgment in favor of the Indians and award to them just compensation 'as for a taking under the power of eminent domain.' It is possible that under the provisions of the bill the use by the United States of any lands 'formerly*** possessed' by the Indians, even though the Indians were without any recognized title, would constitute a sufficient basis 'for equitable relief' and 'for a taking under the power of eminent domain.' Thus the bill does not merely waive the statute of limitations and laches and provide a forum for the adjudication of any preexisting claims which the Indians may have against the United States, but it seeks to create liability against the Government which would not otherwise exist. Moreover, by providing for the payment of just compensation, the bill would probably require the Government to pay interest, for a period of more than 30 years, on a claim that did not even exist prior to its passage. . . ." (Ibid., p. 2.)

Congress removed what the President considered to be objectionable provisions, and as finally enacted, the jurisdictional act conferred on this Court jurisdiction "to hear,

examine, adjudicate, and render judgment in any and all legal and equitable claims of whatsoever nature. . . ." (60 Stat. 715). Gone were provisions constituting mere setting apart as a "national reservation" (national forest) a taking under the power of eminent domain.

Pursuant to this Act we filed a complaint which contained several causes of action. Included therein were claims that the surveys of the north (Para. 8) and southwest (Para. 9) boundaries of the Reservation were erroneously run, thereby establishing the boundaries of the Reservation so as to exclude lands aboriginally held by us and confirmed in us by our treaty.

A hearing was held and evidence taken on whether or not the boundaries of the Reservation were established as called for by the Treaty. The Court of Claims held in Confederated Salish and Kootenai Tribes v. United States, 173 Ct. Cls. 398 (1965), that the defendant's surveys were erroneous and that reserved treaty lands were outside the surveyed out-boundaries.

Portions of the reserved lands affected by the erroneous survey were patented to third parties or granted to railroads. However, 10,585.86 acres of land were placed in various national forests and have remained there. The legal description of those lands is set out in the proposed Bill. The sequence of events affecting these lands is as follows:

On March 3, 1891, Congress passed "An Act to repeal timber-culture laws, and for other purposes." (Fifty-First Congress, Sess. II, c. 561, 26 Stat. 1095.) In pertinent part that Act provided:

"SEC. 10. That nothing in this act shall change, repeal, or modify any agreements or treaties made with any Indian tribes for the disposal of their lands, or of land ceded to the United States to be disposed of for the benefit of such tribes, and the proceeds thereof to be placed in the Treasury of the United States; and the disposition of such lands shall continue in accordance with the provisions of such treaties or agreements, except as provided in section 5 of this act."^{1/} (At 1099; emphasis added.)

"SEC. 24. That the President of the United States may, from time to time, set apart and reserve, in any State or Territory having public land bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations, and the President shall, by public proclamation, declare the establishment of such reservations and the limits thereof." (At 1103; emphasis added.)

President Cleveland issued on February 22, 1897, a Proclamation under the authority of Section 24 which purported to affect land erroneously excluded by the faulty survey on

^{1/} Section 5 amended Sections 2289 and 2290 of Chapter 5, Revised Statutes, relating to homestead entries.

the north end of the Reservation. (Proclamation No. 29, February 22, 1897, 29 Stat. 907.)

The Proclamation recites Section 24 of the Act of March 3, 1891, and after stating that "whereas, the public lands in the State of Montana, within the limits hereinafter described, are in part covered with timber, and it appears that the public good would be promoted by setting apart and reserving such lands as a public reservation," proceeds to describe, inter alia, portions of the excluded lands.

The Proclamation continues, after describing the lands:

"Excepting from the force and effect of this proclamation all lands which may have been, prior to the date hereof, embraced in any legal entry or covered by any lawful filing duly of record in the proper United States Land Office, or upon which any valid settlement has been made pursuant to law, and the statutory period within which to make entry or filing of record has not expired; and all mining claims duly located and held according to the laws of the United States and rules and regulations not in conflict therewith;" (At 908; emphasis added.)

On June 4, 1897, Congress provided in a general appropriations act:

"The President is hereby authorized at any time to modify any Executive Order that has been or may hereafter be made establishing any forest reserve, and by such modification may reduce the area or

change the boundary lines of such reserve, or may vacate altogether any order creating such reserve." (Fifty-Fifth Congress, Sess. I, Act of June 4, 1897, c. 2, 30 Stat. 11, 36.)

President Theodore Roosevelt issued on November 6, 1906, a Proclamation purportedly affecting lands situated outside of the exterior boundaries of our Reservation because of the erroneous survey of the southwest boundary. By the Proclamation, these lands were considered part of the Lolo National Forest. Cited as authority for the Proclamation was the Act of June 4, 1897, and by the Proclamation the Lolo Forest Reserve was "enlarged to include the said additional lands, and that the boundaries of the reserve are now as shown on the diagram forming a part hereof." (34 Stat. 3261.)

The Proclamation was not to "take effect upon any lands withdrawn or reserved, at this date, from settlement, entry, or other appropriation, for any purpose other than forest uses, or which may be covered by any prior valid claim, so long as the withdrawal, reservation, or claim exists." (At 3261; emphasis added.)

In addition, Public Land Orders have been issued affecting some of the land involved. These orders are of relatively recent dates and appear to be in the main administrative actions by the Secretary of the Interior transferring lands from one national forest to another.

After the Court's determination and the conclusion of the study that showed the 10,585.86 acres were held by the United States, our attorneys filed on our behalf a motion in the Court of Claims seeking a determination that the lands had not been taken by the United States by virtue of the erroneous survey. This course of action was taken because the Bureau of Indian Affairs refused to recognize or seek a confirmation of title in the Tribes to these lands. The United States through the Justice Department objected, and contended that the lands had been taken by the United States. Of course, the value of the lands to the Tribes today is far in excess of any value they can recover in the Court of Claims, a value to be determined as of the date of taking, which in most instances will be set before the turn of the century.

The Court of Claims on July 3, 1968, held that the lands erroneously excluded from the exterior boundary of the Reservation by reason of the faulty surveys in which lands are now a national forest have not remained the property of plaintiffs and therefore are properly subject to a claim of taking by the United States and should be treated as such. A Petition for Writ of Certiorari was filed in the Supreme Court seeking a review and reversal of the Court's opinion, but the Petition was denied on January 20, 1969 (with the Chief Justice, Mr. Justice Douglas and Mr. Justice Brennan dissenting to the denial).



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We do not, as we prepare this statement, know the position of the Department of Agriculture. We understand that it recommends that the Court of Claims determination not be reversed, and that the lands involved in S. 1517 be retained in the National Forest of which they are a part.

We are not asking that the Court of Claims' decision "be reversed". We assert that as a matter of equity and moral obligation we are entitled to have these lands held in trust

for us. The lands were lost through an error by the United States Government, the trustee of the Tribes. The Tribes were in no way at fault. No innocent third party has intervened, for as to the lands patented to third parties, we are not seeking any restoration and we will accept a money judgment which will be based on a valuation date before the turn of the century. We would rather have the land, but we recognize the position of innocent third parties. The United States, however, is not innocent; it committed the error and it should not be allowed to benefit from that error at the expense of its ward.

We also understand the Department of Agriculture contends that these lands are valuable public lands which have been managed, protected, and improved at public expense for over 60 years and that much of their current value is due to their treatment as National Forest lands during this period.

The fact that the United States has expended money based on its own error is irrelevant. The United States also has expended money for tribal forest lands and it cannot be said that because it has spent money to take care of the forest lands of the Tribes, that the Tribes are not entitled to keep those lands and they should be placed in the National Forest system. In addition, the 60-year period was caused solely by the trustee's total failure and insensitivity to the claim of the Indians. We long claimed that the trustee had erroneously surveyed the Reservation. When the trustee was



notified of the erroneous survey, it failed to fulfill its trustee obligation and conduct a resurvey to determine the correctness of its prior survey. Had it done this many years ago when it was brought to its attention, the United States would not have administered the lands for the 60 years. Therefore, the argument based on length of time is of no moment.

The lands involved are not in an area used very much for public purposes, and the fact that 10,000 acres may now be eliminated from public use certainly is not detrimental to the public and is not an argument to support denying us our equitable right. There are hundreds of thousands of acres of National Forest land in the area of Montana wherein these lands lie which are available to the general public. Finally, the general public is as a general rule allowed to utilize tribal land on the Flathead Reservation by virtue of Tribal Council action and most likely the public use will continue as at present if beneficial interest to the lands is restored to the Tribes.

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That is not true. Each case must be determined on its own facts. This is a relatively small acreage, is adjacent to the present Reservation, was confirmed as part of the Reservation by the United States by solemn treaty, and is

outside our Reservation only because of the error of the United States, acting under the treaty and as trustee, an error which to date it refuses to correct. The Administration has been morally insensitive. We know that Congress will not be so.

Finally, the Department of Agriculture reportedly asserts that it believes we will receive adequate compensation for the 10,585.86 acres involved in S. 1517 through the pending Court of Claims determination and that the Court proceeding will be equitable to the Indians and to the general public who use and benefit from the National Forest system.

This is blatantly false. We will receive a value based upon Victorian prices (19th Century). We will have to take this value because of the error of our trustee. The general public will not be affected, and, assuming it was, the equities are on our side.

We understand also that the Justice Department opposes this bill on a stated principle that we, having sought and obtained relief in the courts, apparently are dissatisfied with the results and now seek to circumvent the Court's action to secure the return of the land because it promises to be of greater financial benefit.

The Department of Justice misstates the issue and reaches a conclusion which is based on an erroneous fact.

While we originally sought judicial relief, it was only because that was the only way we could get a determination

made of the correctness of the boundary claim. We have alleged for many years that the boundaries should be resurveyed, but our request was denied, and instead of the trustee exercising its trust duty to determine if the boundaries were properly surveyed in the first instance, it forced us to go to a court and that is why there was a judicial determination. Thus, we had to incur the expense and delay of litigation to prove a fact which the defendant conceded at trial, that the southwest boundary had been erroneously surveyed.

"This boundary [southwest] was surveyed in 1893 by Deputy Surveyor George Scheetz. Defendant concedes that the instructions which Scheetz had received from the Surveyor General of the United States were erroneous and that, as a result, approximately 11,900 acres of land and water were omitted from the Reservation. . . ." (173 Ct. Cl. 398, 403 (1965))

Of the approximately 10,585.86 acres involved, 9,014.51 lie in the southwest, the area admitted by defendant to have been erroneously excluded. Had the United States, as trustee, taken the time it took as the Tribes' adversary in the Court of Claims litigation to investigate the allegation of erroneous survey when first raised, it would have been able to correct the error many years ago.

The Justice Department also asserts, so we understand, that after the Court of Claims determined that the lands were erroneously excluded from the Reservation and that we were entitled to recover, we abruptly changed our position.

That is an error. We did not abruptly change our position. We only showed in the first proceeding that the lands had been erroneously excluded.

" . . . The primary issue in this action is whether certain of the reservation boundaries, as surveyed by the United States, are in accord with the requirements of the Treaty. Specifically, we must consider plaintiff's assertion that the existing boundaries on the north and on the southwest of the reservation are incorrect." (173 Ct. Cl. 398, 399.)

The United States refused to administratively determine whether the boundaries had been properly surveyed. A special jurisdictional act was the only method available to us to get that determination. Upon securing a judicial determination that the lands had been excluded, the next act was to seek a determination that we had not lost beneficial ownership to any of the lands which had not been patented to third parties. Our position has been consistent throughout the litigation.

In our initial pleading before the Court of Claims on whether the surveys were correct, we stated in conclusion:

"Further proceedings should be ordered [after a determination of the correct location of the boundaries] in which it may be determined when and what of the excluded lands were taken from plaintiff."
 (See p. 19 of Tribes' Brief in Support of Exceptions filed December 7, 1964, to Report of Commissioner filed September 24, 1964, in United States Court of Claims, Docket No. 50233-59-Erroneous Survey, Southwest Boundary. For the same language for lands on the north, see p. 20 of the Tribes' Brief in Support of Exceptions, filed October 23,



1964, in Docket No. 50233-J8-Erroneous Survey of North Boundary.)

The Justice Department is in error.

We are not seeking to accomplish by legislation what we failed to accomplish by litigation. What we do seek is an equitable right to lands. The trustee has consistently failed to offer administrative relief and has forced us into court, and the court has said that we must now take money when in equity we are entitled to the land. What we are seeking is action by the trustee in recognition of a judicial determination that the trustee made an error some 60 years ago, that no third parties have been injured, and that we are entitled to have confirmed in us beneficial ownership of the lands involved.

We did not seek and have not received compensation for the lands erroneously excluded on the southwest in any forum, either the Court of Claims or the Indian Claims Commission, and the Department of Justice entered a stipulation to that effect. In the case before the Indian Claims Commission, Confederated Salish and Kootenai Tribes v. United States, Docket No. 61, Additional Findings of Fact and Valuation, Findings entered September 29, 1965, 16 Ind. Cl. Comm. 1, Finding 23 reads:

"Petitioners and defendant stipulated at the hearing that the total area to be valued, excluding the present Flathead Indian Reservation, is 12,500,000 acres. This figure includes the area of Flathead Lake outside the Flathead Reservation, which is 55,000 acres.

"The total acreage to be valued does not include a tract of 12,292 acres of land outlined in red on Joint Exhibit 1 which is the subject of a claim of an erroneous boundary survey in another case pending before the Commission." (At page 2; emphasis added.)

That acreage, which was excluded by the stipulation, encompasses 9,014.51 acres of the acreage involved in the proposed legislation. Therefore, we (1) have not been compensated for that land, (2) expressly excluded it from the aboriginal title claim, and (3) this exclusion shows a consistent position on our part that we were not after compensation but that we wanted and were entitled to the land.

As for the 1,571.35 acres on the north, under the terms of the S. 1517 bill the Tribes will have to return what money they received.

We did seek a determination that the lands were erroneously excluded (173 Ct. Cl. 398 (1965)), but only because that was the only way the trustee would permit us to show that the trustee had erroneously excluded land. If we had not sought that determination in the Court of Claims, we would have been out in the cold.

We are seeking legislation to correct the trustee's error.

I will conclude by noting that we have not recovered a single penny for the lands involved in the southwest and have recovered no more than nominal value for the acreage on the

north, which we must return under Section 2 of S. 1517. (In the valuation phase of the case at the Indian Claims Commission, cited supra, the Commission gave no value to timber, which is what is involved here [see 16 Ind. Cl. Comm. at 73].) We specifically excluded recovery in the Indian Claims Commission in Docket No. 61; we have not recovered anything in the Court of Claims in terms of financial reward; and we have expressly sought a ruling that we should not recover money but the land. The only determination in the Court of Claims is one that the lands were erroneously excluded and taken. There has not even been a valuation trial.

With this background we submit that the proposed bill is one which is in the interest of the Tribes and the United States. It is a bill which recognizes the obligation of the United States as trustee to the Indians and which recognizes that the United States has committed an error which it is willing to rectify at this date, the error now having been brought to its attention by a decision of the Court of Claims.

We urge that the Committee report favorably on the bill.

Respectfully submitted,

E. W. Morigeau

Floyd Nicolai

Members, Tribal Council,
Confederated Salish and Kootenai
Tribes of the Flathead Reservation,
Montana



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 17 1976

Memorandum

To: Mr. Brad Patterson
The White House

Subject: Salish and Kootenai Land Claim

Attached in accordance with Dr. Theodore Marrs' request of May 17 is the draft of a proposed response to Mr. Harold W. Mitchell, Jr., Chairman of the Tribal Council, Confederated Salish and Kootenai Tribes, on their land claim. My apologies are extended for the delay in this transmittal which was occasioned by the need for research to explore alternative methods, other than legislation, to accommodate the tribes.


Secretary of the Interior

Attachments





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DRAFT

Dear Mr. Mitchell:

As you are aware, S. 1517, which was introduced in the 91st Congress on March 12, 1969, and its companion bill, H.R. 9138, failed of enactment because of the basic policy that Indian claims to land should be satisfied by money payments rather than by restoration of the land.

At the time S. 1517 was introduced the outstanding similar, yet somewhat different, legislation pending was the proposed Blue Lake restoration to the Taos Pueblos. In hearings on the Blue Lake restoration, the concern was expressed that a precedent would be set and that Indian tribes would want land rather than money from the Indian Claims Commission and the courts. An exception was ascertained in the Blue Lake case on the basis that the land had great religious significance and the Taos Indians had occupied and used the land since the 12th century.

Perhaps a more closely related example to the Confederated Salish and Kootenai request is the recently enacted Public Law 93-620. Section 10 of the act provided that 185,000 acres of land be added to the Havasupai Reservation. It further provides and requires that the Secretary of the Interior, in consultation with the Havasupai Tribal Council, develop a land use plan for the 185,000 acres before the law can be implemented.

According to a Department of Agriculture review, 73 cases involving National Forest System lands were being adjudicated by the Indian Claims Commission. They estimated that these cases included approximately 40 million acres of National Forest land. It is obvious that certain criteria must be established when Congress considers requests by tribes for restoration of land in lieu of money.

A thorough examination has been made of various statutes and authorities to determine whether or not the subject lands can be restored administratively. The conclusion has been reached that the legislative route is the only method that can be considered.

The Department of the Interior is presently working on a position paper which would recommend to the Office of Management and Budget, an Indian land acquisition policy to govern future acquisitions of land in trust for Indian tribes. This paper proposes that prime consideration be given to lands "unintentionally alienated" from Indians in the past due to erroneous surveys, legislative error, improper surveys and so forth. Proximity of the land to a reservation would be one of the prime factors to be considered in this category.

It is hardly necessary to comment on the question of the Government's equitable and moral responsibility owed to the Confederated Salish and Kootenai Tribes. I am optimistic that if the subject position paper referred to is accepted in its present form, any future request of the tribe for transfer of the lands which were the subject of S. 1517 could be given prime consideration.

Sincerely,

Mr. Harold W. Mitchell, Jr.
Chairman, Confederated Salish &
Kootenai Tribes Tribal Council
Dixon, Montana 59831

