

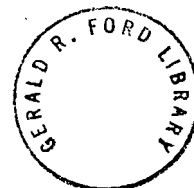
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94TH CONGRESS
2^D SESSION

H. R. 14417



IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 1976

Mr. MEEDS (for himself, Mr. LUJAN, Mr. DON H. CLAUSEN, and Mr. SYMMS)
introduced the following bill; which was referred to the Committee on
Interior and Insular Affairs

A BILL

To authorize Indian tribes to consolidate their land holdings, to
provide for inventories of Indian trust resources, and for
other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Indian Land Consolida-
4 tion and Resources Inventory Act".

5 SEC. 2. For the purposes of this Act—

6 (a) "Secretary" means the Secretary of the In-
7 terior;

8 (b) "tribe" means any Indian tribe, band, group,
9 pueblo, or community for which or for the member
10 of which, the United States holds lands in trust;

1 (c) "tribal member" means any citizen of the
2 United States who is an enrolled or otherwise recog-
3 nized member of the tribe involved;

4 (d) "tribal governing documents" includes, but
5 is not limited to, constitutions, articles of associa-
6 tion, and those ordinances and resolutions properly
7 adopted by the general council of the members of the
8 tribe or other properly recognized general governing
9 body composed of the tribal membership; and

10 (e) "trust lands" means lands title to which is held
11 by the United States in trust for an Indian or Indian
12 tribe and lands title to which is held by an Indian tribe
13 subject to a restriction by the United States against
14 alienation.

15 TITLE I—TRIBAL LAND CONSOLIDATION

16 SEC. 101. (a) Except to the extent provided in section
17 103 (b) of this title, the provisions of this title shall be appli-
18 cable to any tribe which adopts a land consolidation plan
19 and submits such plan to the Secretary, which plan shall
20 become effective upon its approval by the Secretary.

21 (b) Nothing in this title shall be construed as super-
22 seding or overriding any provision of any tribal governing
23 document, except in the case of a referendum election car-
24 ried out in accordance with section 103 (b) of this title.
25 Except in the case of any such referendum election, no

1 action shall be taken under this title which the Secretary
2 determines is either prohibited by, or inconsistent with, the
3 provisions of the tribal governing documents of the tribe
4 involved.

5 (c) The authority conferred by this title shall be in
6 addition and supplemental to any other authority granted to
7 the Secretary and the tribes with respect to which a land
8 consolidation plan has been approved in accordance with
9 subsection (a) of this section.

10 SEC. 102. The Secretary shall, pursuant to the provi-
11 sions of this title and upon the request of the governing
12 body of an Indian tribe, or its designated agent, acquire,
13 through purchase, donation, exchange, or assignment, any
14 land or interest in land within the boundaries of the request-
15 ing tribe's reservation for the purpose of consolidating tribal
16 land holdings; eliminating fractional heirship interests in
17 Indian trust land; providing land for any tribal program for
18 the improvement of the economy of the tribe and its mem-
19 bers through the development of industry, recreational facil-
20 ities, and housing projects; and the general rehabilitation
21 and enhancement of the total resource potential of the reser-
22 vation. For the purchase of such lands or interests in lands,
23 the use of any funds available to and identified by the tribe
24 from any source is hereby authorized, and title to any land

1 acquired under the authority of this section shall be taken in
2 the name of the United States in trust for the tribe.

3 SEC. 103. (a) Notwithstanding any other provision of
4 law, any tribe, acting through its governing body or through
5 its designated agent, is authorized pursuant to the provisions
6 of this title and a land consolidation plan approved by the
7 Secretary, to exchange or sell any tribal land or interests
8 in land not needed or suitable for use by the tribe or so
9 situated and located that it would be to the economic or social
10 advantage of the tribe to sell or exchange the property:
11 *Provided*, That (1) any such sale shall be by competitive
12 sealed bidding, except that tribal members shall have the
13 option to purchase by matching the high bid; (2) the sales
14 price or exchange value received by the tribe for land or
15 interests in land covered by this section shall not be less than
16 the fair market value thereof as determined by the Secretary;
17 (3) if the tribal land involved in an exchange is of greater
18 value than the land for which it is being exchanged, the
19 tribe may accept cash from the grantor in such exchange in
20 order to equalize the values of the properties exchanged; (4)
21 any proceeds from the sale of land or interests in land or
22 money received by the tribe to equalize an exchange made
23 pursuant to this section shall be used exclusively for the
24 purchase of other land or interests in land pursuant to a land
25 consolidation plan of such tribe approved by the Secretary;

1 (5) title to any land acquired for a tribe pursuant to this
2 section shall be taken in the name of the United States in
3 trust for the tribe; and (6) if a tribal member acquires land
4 from such tribe pursuant to this section, title shall be taken
5 in the name of the United States in trust for such member.

6 (b) The provisions of this section shall not be applicable
7 to any tribe unless a majority of the total adult membership
8 of that tribe has first voted, in a referendum election re-
9 quested by the governing body of the tribe and called by the
10 Secretary, to come within the purview of such provisions.

11 SEC. 104. (a) Any Indian tribe may, by appropriate
12 action of its governing body, provide that no undivided frac-
13 tional interest in trust lands within its reservation, whether
14 held in fee or in trust, of an appraised value of \$100 or less
15 shall thereafter descend by intestacy, but shall escheat to
16 such tribe and title to such escheated interest shall be taken
17 in the name of the United States in trust for such tribe. The
18 Secretary, in carrying out his responsibility to regulate the
19 descent and distribution of trust lands under section 1 of the
20 Act of June 25, 1910 (36 Stat. 855; 25 U.S.C. 372), as
21 amended, and other laws, shall give full force and effect to
22 any tribal action under this subsection.

23 (b) Any Indian tribe may purchase, at fair market
24 value, the undivided fractional interest or interests of any
25 tribal member in trust lands within its reservation notwith-

1 standing the absence of consent of other owners of undivided
 2 interests in such lands. Such purchase shall be subject to the
 3 approval of the Secretary, who shall determine fair market
 4 value, and title to such interest shall be taken in the name of
 5 the United States in trust for the Indian tribe.

6 (c) Any tribal member, owning undivided fractional
 7 interests in two or more tracts of trust land, may, with the
 8 approval of the Secretary and the consent of the Indian tribe
 9 in whose reservation such tracts are located, exchange such
 10 interests for the assignment of a life estate in a tract of tribal
 11 land of equal value: *Provided*, That the value of the assigned
 12 lands may be of a value less than the interests exchanged
 13 upon a specific finding by the Secretary that such exchange
 14 is in the best interest of the tribal member. The grant of an
 15 exchange assignment of tribal lands shall have the same
 16 force and effect, and shall confer the same rights, including
 17 all timber, minerals, and water rights vested in or held by
 18 the tribe, upon the holder thereof, that are conveyed by a
 19 trust patent issued pursuant to section 25 of the Act of
 20 February 8, 1887 (24 Stat. 389), as amended and sup-
 21 plemented, except that the period of trust and tax exemp-
 22 tion shall continue until otherwise directed by Congress.
 23 The undivided interests exchanged to the tribe shall be taken
 24 in the name of the United States in trust for such tribe.

1 SEC. 105. All land or interests in land acquired by the
 2 United States in trust for tribes or tribal members under
 3 authority of this title shall be exempt from Federal, State, and
 4 local taxation.

5 SEC. 106. No provision of or any action taken pursuant
 6 to this title shall affect criminal or civil jurisdiction within
 7 any Indian reservation or the definition of "Indian country"
 8 as that term is defined in section 1151, title 18, United
 9 States Code: *Provided*, That the acquisition of lands by the
 10 United States in trust for an Indian tribe pursuant to this
 11 title shall not confer any hunting or fishing rights upon such
 12 tribe which were not vested in such tribe prior to the acqui-
 13 sition of such lands.

14 TITLE II—TRIBAL RESOURCE INVENTORY

15 SEC. 201. The Congress finds and declares that the
 16 United States has charged itself with a trust responsibility
 17 for the lands and other natural resources of Indian tribes
 18 and that, in implementing that responsibility, it should as-
 19 sure the protection, preservation, and orderly development
 20 of such resources for the economic and social benefit of the
 21 tribe and its members. The Congress further finds and de-
 22 clares that, in order for the United States and its agents to
 23 adequately carry out such trust responsibility, it is a pre-
 24 requisite that the United States cause resource inventories

1 to be made of each Indian tribe's land and other natural
2 resources.

3 SEC. 202. (a) Within one hundred and eighty days
4 after the date of enactment of this Act, the Secretary shall
5 submit to the Congress and each Indian tribe a plan for the
6 conduct of resource inventories of land and other natural
7 resources of Indian tribes, and a timetable for carrying out
8 such plan. The plan shall include, among other things, fac-
9 tors and considerations involved in such inventories; the list
10 of Indian tribes, in order of priority, for whom such in-
11 ventories will be conducted; and an estimate of the total
12 funds required for such inventories.

13 (b) Sixty days prior to the end of the fiscal year suc-
14 ceeding the fiscal year in which this Act is enacted and sixty
15 days prior to the end of each fiscal year thereafter, the Sec-
16 retary shall submit to the Congress a list of Indian tribes
17 for whom resource inventories will be initiated in the suc-
18 ceeding fiscal year and an estimate of the amount of funds
19 necessary for such inventories.

20 (c) Notwithstanding the foregoing provisions of this
21 section, the Secretary shall not conduct any such inventory
22 with respect to any tribe, if the governing body of that tribe
23 has notified the Secretary, in writing, that it does not wish
24 to have such inventory carried out with respect to its lands
25 and resources.

1 (d) In carrying out inventories pursuant to this section,
2 the Secretary shall, from time to time, consult with such
3 tribe with respect thereto.

4 SEC. 203. All data, reports, communications, or any
5 other material developed by the Secretary in carrying out
6 his trust responsibility pursuant to this title or other provi-
7 sion of law and any communication between the Secretary
8 or his delegate and any Indian tribe or member thereof or
9 their agents with respect to the trust resources of such tribe
10 or member shall not, without the consent of such tribe or
11 member, be subject to the provisions of the Act of Septem-
12 ber 6, 1966 (80 Stat. 383).

13 SEC. 204. In carrying out his trust responsibility under
14 this title, the Secretary is authorized to enter into inter-
15 agency agreements with any other department, agency, or
16 instrumentality of the United States for the use of their
17 resources and capabilities on a reimbursable or nonreim-
18 bursable basis. To the extent of such agreement, the depart-
19 ment, agency, or instrumentality shall be deemed to repre-
20 sent the United States as a trustee and shall be subject to
21 the provisions of section 203 of this Act.

94TH CONGRESS
2^D SESSION

H. R. 14417

A BILL

To authorize Indian tribes to consolidate their land holdings, to provide for inventories of Indian trust resources, and for other purposes.

By Mr. MEEDS, Mr. LUTJAN, Mr. DON H.
CLAUSEN, and Mr. SYMONS

JUNE 16, 1976

Referred to the Committee on Interior and Insular
Affairs

INT: 6221-76

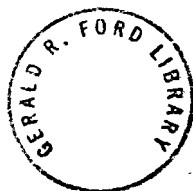
THE WHITE HOUSE
WASHINGTON

Ralph Keen

OTR - BIA

343-7513

14417



THE WHITE HOUSE
WASHINGTON

OT Rep

74

+ Albuquerque
(funds)

+ rights protection
staffs on Area Offices

Area v Cal

"practically irrigable
areas"

Definition of this please -
BIA v B Rec.



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

August 26, 1976

Memorandum

To: Brad Patterson

From: Acting Director, Office of Trust Responsibilities *Ralph F. Keen*

Subject: Your Request for Information on Applicability of
HR 14417 to School Land Problems

As you requested, I checked with Mr. Ralph Reeser of our Congressional and Legislative Affairs Staff concerning the above question.

He informs me that, as currently written, the Bill would allow tribes to purchase lands from the state. Also, that there may be a possibility of a reversionary clause that may be available, depending upon the manner in which the state took title. I will check further on this before our meeting on August 30, 1976.



Enclosure



Save Energy and You Serve America!

AUG 24 1976

Memorandum

To: Legislative Counsel

Through: Commissioner of Indian Affairs

From: Director, Congressional and Legislative Affairs Staff, BIA

Subject: H.R. 14417, a bill to authorize Indian tribes to consolidate their land holdings, to provide for inventories of Indian trust resources, and for other purposes.

We recommend that H.R. 14417 be enacted with the amendments suggested below.

OVERVIEW AND DISCUSSION

Land consolidation and natural resource inventories are two of the most widespread needs of Indian tribes. The absence of effective programs to meet these needs has been a serious impediment to Indian economic development and self-sufficiency. This bill will greatly facilitate Indian land consolidation programs and will mandate the preparation of trust resource inventories.

Title I of the bill is concerned with "Tribal Land Consolidation", that is, the acquisition by tribes of contiguous economic size units of land. The need for land consolidation programs for most tribes has arisen from tribal lands being ceded to or taken by the United States and, much more significantly, by various allotment acts, especially the General Allotment Act of 1887 (24 Stat. 388; 25 USC 331 et. seq.).

The allotment acts provided that individual Indians would be allotted portions of their tribal lands and that surplus tribal lands would be sold to homesteaders or others. This has resulted in a "checkerboarding" of the reservations, that is a kind of land ownership patchwork of tribal land, allotted land, and non-Indian land within the reservations. This has caused jurisdictional disputes between Indians and non-Indians and a pattern of land ownership in economically unfeasible units of land.

Another very serious problem arising from the allotment program is usually termed "fractionated heirship", which means that the heirs or devisees of allotment owners receive an undivided interest in the allotment. Ownership has become so fractionated that there are often scores and even hundreds of owners of an allotment which may have been too small to be an economic unit in the first place. In such cases, it becomes very difficult to utilize the land to the economic benefit of any of the owners. Further, because of the numerous and complex fractionated land ownership cases, the Bureau of Indian Affairs is burdened with increasingly complex land management operations including the distribution of the income received from the use of such land among the numerous owners.

Enclosed for your further information is a historical summary of the origin and growth of the allotment-fractionated heirship problem which was prepared in 1959 in response to a congressional request.

We believe that there is a need for legislation, such as title I of H.R. 14417, to provide comprehensive land consolidation authority for those tribes who have a need for land consolidation. The statutory authority used most often in connection with tribal land consolidation programs is sections 4 and 5 of the Indian Reorganization Act (48 Stat. 984; 25 U.S.C. 464 and 465), and section 1 of the Oklahoma Indian Welfare Act (49 Stat. 1967; 25 U.S.C. 501). These Acts do not cover all of the tribes recognized by the Secretary of the Interior. With respect to the tribes to which they do apply, these two Acts give the Secretary authority to accept gifts of land for tribes and allow exchanges of land, but do not provide authority for the sale of tribal lands held in trust by the United States.

In recent years, a number of tribes have requested and received special legislative authority to carry out land consolidation programs. Enclosed is a listing of tribes with such special legislative authority. As the list shows, more and more tribes have been seeking this authority in recent years. Enactment of general authorities as proposed in H.R. 14417 will eliminate the need for legislative action on an individual tribe by tribe basis.

Title II of the bill provides for inventories of the lands and natural resources of Indian tribes held in trust by the United States. These inventories would relate mainly to the quantities and values of: minerals, including coal, gas, oil, and water; timber; and land, including rangeland for grazing, and arable land for agriculture.

We believe that the development of such inventories would be of great assistance in the exercise of the Secretary's trust responsibilities as well as providing a necessary tool for tribal planning of land use and resource development.

ANALYSIS OF H.R. 14417

Sec. 1. Provides the short title: "Indian Land Consolidation and Resources Inventory Act."

Sec. 2. Defines various terms used in the bill.

TITLE I-TRIBAL LAND CONSOLIDATION

Sec. 101(a). Makes the title applicable (except to the extent provided in section 103(b)) to a tribe that adopts and submits to the Secretary for approval a land consolidation plan which becomes effective upon his approval.

Sec. 101(b). Provides that except in the case of a referendum under section 103(b), the provisions of the title do not override any tribal governing documents, and no action may be taken under the title which is inconsistent with such documents.

Sec. 101(c). Provides that the authority conferred by this title shall be in addition and supplemental to any other authority granted the Secretary and the tribes with approved land consolidation plans.

Sec. 102. Authorizes the Secretary, upon the request of a tribe and pursuant to this title, to acquire land or interests in land for a tribe within its reservation boundaries for land consolidation and certain other purposes. It also provides that such funds as are available and identified by the tribe may be used for purchases, and that title to lands so acquired are to be taken in the name of the United States in trust for the tribe.

Sec. 103(a). Authorizes a tribe to sell or exchange tribal lands pursuant to an approved land consolidation plan under the following limitations:

- (1) Sales must be by sealed bid, with tribal members having the right to purchase by meeting the high bid.
- (2) Sales price or exchange value received by a tribe must be not less than the fair market value.
- (3) Where tribal land is to be exchanged for lands of less value, tribe may accept cash to equalize the exchange.
- (4) Proceeds from sales or exchanges must be used exclusively for the purchase of other lands for the tribe.
- (5) Title to lands acquired for the tribe are to be taken in the name of the United States in trust for the tribe.
- (6) Title to lands acquired by an individual Indian from a tribe will be taken in trust by the United States.



Sec. 103(b). Provides that the section shall not be applicable to any tribe unless a majority of the adult members have voted for its application in a referendum election requested by the tribal governing body and called by the Secretary.

Sec. 104(a). Provides that a tribal governing body may act to provide that no fractional interest in trust lands within its reservation (whether held in trust or fee) of an appraised value of \$100 or less shall thereafter descend by intestate succession, shall escheat, in trust to the tribe. The Secretary carrying out his statutory responsibility to probate Indian trust estates would be required to give effect to a tribe's action under this subsection.

Sec. 104(b). Permits a tribe to purchase, at fair market value, any tribal member's fractional interests in trust lands within its reservation without the consent of the other owners of undivided interests. The Secretary would determine fair market value and would take the fractional interest in the land in trust for the tribe.

Sec. 104(c). Permits a tribal member, owning fractional interests in two or more tracts of trust land, to agree with the tribe to exchange such interests to the tribe in return for an assignment of a life estate in a tract of tribal lands. The value of such assigned tribal land must have a value not less than that of the exchanged interests unless the Secretary determines that the exchange is in the best interest of the member. While the exchange assignment would be in the nature of a life estate the subsection would confer upon it all the attributes of a trust allotment under the General Allotment Act of 1887 (25 U.S.C. 331 et seq.) including timber, minerals, and water rights, but the period of trust and tax exemption would continue until otherwise directed by the Congress. The undivided interests exchanged to the tribe would be taken in the name of the United States in trust for the tribe.



Sec. 105. Provides that all lands or interests therein acquired in trust by the United States for tribes or tribal members under this title shall be exempt from Federal, State, and local taxation.

Sec. 106. Provides that no provision of or action pursuant to this title shall affect the civil or criminal jurisdiction on any Indian reservation or the definition of Indian country in 18 U.S.C. 1151. It further provides that the acquisition of land for an Indian tribe hereunder shall not confer any additional hunting or fishing rights which were not vested in the tribe prior to such acquisition.

TITLE II -- TRIBAL RESOURCE INVENTORY

Sec. 201. Declares and finds that (1) the United States has charged itself with a trust responsibility for the lands and natural resources of

Indian tribes and it should assure the protection, preservation, and orderly development of such resources for the economic and social benefit of the tribe and its members, and (2) in order to carry out this responsibility, it is necessary that inventories be made of such lands and resources.

Sec. 202(a). Requires the Secretary to submit within 180 days of enactment a plan and timetable for the conduct of inventories of Indian lands and natural resources and sets out some of the elements to be included in such plan.

Sec. 202(b). Requires the Secretary, to annually submit to the Congress a list of the tribes for whom inventories will be initiated the following year and the amount of funds needed for each fiscal year.

Sec. 202(c). Gives any tribe the power to veto the conduct of any inventories with respect to its lands and resources.

Sec. 202(d). Requires consultation with tribes on a periodic basis while conducting such inventories.

Sec. 203. Prohibits disclosure under the Freedom of Information Act (5 U.S.C. 522) of information, data, etc., developed by the Secretary in carrying out his trust responsibility and relating to the private trust assets and resources of any Indian tribe or member, unless consented to by the tribe or member involved.

Sec. 204. Authorizes the Secretary to enter into agreements with other Federal entities in carrying out his trust responsibility under this title and provides that, to that extent, such entities shall be deemed agents of the trust and subject to section 203.

AMENDMENTS TO H.R. 14417

We suggest the following revision of the section 2(e) definition of "trust lands" to include interests in lands and lands held by individual Indians subject to a restriction against alienation imposed by the United States:

"(c) 'trust lands' means lands (including any interests therein) title to which is held (1) by the United States in trust for an Indian or Indian tribe, or (2) by an Indian or Indian tribe subject to a restriction by the United States against alienation;".

The bill as drafted would not provide land consolidation authorities for tribes located in Oklahoma. To provide for those tribes, we recommend the addition of the following new section 2(f) definition of the term "reservation" as used in the bill:



"(f) 'reservation' means those lands within or adjacent to the boundaries (as determined or recognized by the Secretary) of a tribe's reservation, or those lands in Oklahoma (1) within the boundaries (as determined or recognized by the Secretary) of former reservations or (2) contiguous to land held in trust for an Oklahoma Indian tribe."

We have a number of suggested amendments to Title I and we have incorporated them into the attached proposed substitute for that title.

Section 101(a) in the substitute would be revised to provide for the title to become applicable to a tribe "upon approval by the Secretary" of a land consolidation plan adopted by the tribe. In addition, we have added a provision that the title would cease being applicable to any such tribe should it rescind its plan and so notify the Secretary.

Section 101(b) of the substitute would preclude actions under title I which are determined by the tribe to be prohibited by, or inconsistent with the tribal governing document (rather than the Secretary being the only one authorized to make such determinations).

Section 101(c) of the substitute would shorten the provision without changing its meaning.

Section 102 of the substitute would make clear that all types of acquisitions are included to provide the tribes with the maximum amount of flexibility. We have also added a proviso to make clear that the authority in the second sentence (beginning on page 3 line 22) does not include the acquisition of lands with funds which were appropriated or contracted for other purposes. Other changes in the section are merely technical or editorial in nature.

Section 103(a) of the substitute would make clear that in addition to the tribes, the Secretary, in accordance with a tribal request, is also authorized to exchange, sell, or otherwise convey tribal trust lands or interests therein. In most cases, the title to tribal "trust lands" is in the United States in trust for the tribe.

The revised section 103 would require the "value of the consideration received" by a tribe for lands or interests therein to not be less than the fair market value thereof. The revision eliminates the need for a special provision dealing with equalizing values in exchanges of lands of unequal value and does not restrict the type of approvable consideration to cash and land. Other changes in the section are of a technical or editorial nature.

Section 103(b) of the substitute would provide that the referendum election in which a tribe votes on the application of section 103 to their tribe would also include voting on amendments to their tribal governing documents to eliminate any provisions which would prohibit or be inconsistent with any actions authorized by section 103. We believe that amendment of the tribal governing documents is preferable to having the authority in H.R. 14417 overriding such documents for an indefinite period. However, the substitute does provide that such amendments would be effective if approved by at least two-thirds of those voting, or by such lesser number as may be required for such amendments under terms of the tribal governing documents. The latter provision would permit amendments where the tribal governing documents include a requirement for approval of amendments by a percentage based on tribal membership which may be difficult to achieve in some cases because of a large number of members living off reservation.

Section 104(a) would be redesignated as section 104 in our substitute because it deals with escheat of certain undivided interests in trust lands whereas the other subsections provide authority for purchase and exchange of such interests. A number of clarifying and editorial changes are included in the substitute.

Section 104(b) [section 105 in the substitute] would be amended to make clear that a tribe may purchase any undivided interest in trust lands including those owned by non-Indians.

Section 104(c) [section 106 in the substitute] would be amended to make clear that non-Indians as well as tribal members owning undivided interests in trust lands may participate in the authorized exchanges with the tribes. We have also omitted the listing of property rights which were conveyed under the General Allotment Act because there is some disagreement in that regard which may have to be settled by litigation. In addition, the substitute would permit voluntary exchanges of individually owned land for assignments of life estates in tribal lands.

The text of the last two sections of Title I are unchanged in the substitute. Section 201 should be amended by deleting "preservation" on line 19, page 7 and substituting therefore "conservation". The term "conservation" is more frequently used in connection with natural resources and it has the connotation of wise use and nurture whereas "preservation" connotes keeping "as is" without improvement.

We recommend that either section 202(a) be amended to delete on page 8, line 10 the phrase "in order of priority" or that some standards be provided by which priorities among tribes are to be established.

Although it does not expressly so state, we assume that the intent of section 202(b) is that the information specified be submitted not later than sixty days prior to the fiscal year ends involved and not that such

information is only to be submitted on the sixtieth day preceding such year ends. However, we suggest that the information would be more appropriately included in our budget justifications to the Congress and we therefore recommend that the subsection be deleted.

We also recommend that section 202(c) be deleted. In his capacity as trustee, the Secretary should not be precluded from undertaking activities such as those involved in conducting an inventory of the lands and resources held in trust for the tribe.

We recommend that section 203 be amended by deleting "All" on page 9, line 4 and inserting "No"; by deleting "any" on line 7 and inserting "no"; and by deleting all of lines 10, 11, and 12 and inserting "or member shall be disclosed (other than to appropriate agents and employees of the Secretary) without the consent of such tribe or member." We believe that such a prohibition is more appropriate and would provide the intended Freedom of Information Act exemption under the provision of that Act codified in 5 U.S.C. 552(b) (3).

(Sgd) Ralph Reeser

Ralph R. Reeser



Enclosures

cc: 200/202-Gordon
220

TITLE I - TRIBAL LAND CONSOLIDATION

SEC. 101. (a) Except to the extent provided in section 103(b) of this title, the provisions of this title shall be applicable to any tribe upon approval by the Secretary of a land consolidation plan adopted by the tribe. The provisions of this title shall cease being applicable to such a tribe when it rescinds or repeals its plan and so notifies the Secretary.

(b) Except in the case of a referendum election carried out in accordance with section 103(b) of this title, nothing in this title shall be construed as superseding or overriding any provision of any tribal governing document and no action shall be taken under this title which the Secretary or the tribe involved determines is either prohibited by, or inconsistent with, the provisions of the tribal governing documents of such tribe.

(c) The authority conferred by this title shall be in addition and supplemental to any other authority granted to the Secretary and each tribe to which it applies.

SEC. 102. Pursuant to the provisions of this title and upon the request of an Indian tribe, or its designated agent, the Secretary is authorized to acquire (through purchase, donation, exchange, assignment, or otherwise) any land or interest in land within the boundaries of the requesting tribe's reservation for the purpose of consolidating tribal land holdings; eliminating fractional heirship interests in Indian trust land; providing land for any tribal program for the improvement of the economy of the tribe and its members including, but not limited to the development of industry, recreational facilities, and housing projects; or the

general rehabilitation and enhancement of the total resource potential of the reservation. For the acquisition of such lands or interests in lands, the use of any funds available to and identified by the tribe from any source is hereby authorized: Provided, that such authorization does not extend to funds made available to the tribe for other purposes pursuant to law, contract, or agreement. The title to any lands or interests in lands acquired under the authority of this section shall be taken in the name of the United States in trust for the tribe.

SEC. 103. (a) Notwithstanding any other provision of law, and pursuant to the provisions of this title and a land consolidation plan approved by the Secretary, any tribe, or its designated agent, (or the Secretary in accordance with a request of such tribe or agent) is authorized to exchange, sell, or otherwise convey any tribal trust lands or interests in trust lands not needed or suitable for use by the tribe or so situated and located that it would be to the economic or social advantage of the tribe to dispose of such lands or interests: Provided, That -

- (1) any such sale shall be by competitive sealed bidding, except that tribal members shall have the option to purchase by matching the highest bid;
- (2) the value of the consideration received by the tribe for such lands or interests shall not be less than the fair market value thereof as determined by the Secretary;



(3) any proceeds from the disposal of trust lands or interests in trust lands shall be used exclusively for the acquisition of other land or interests in land pursuant to a land consolidation plan of such tribe approved by the Secretary;

(4) title to any land acquired for a tribe pursuant to this section shall be taken in the name of the United States in trust for the tribe; and

(5) if a tribal member acquires land from such tribe pursuant to this section, title shall be taken in the name of the United States in trust for such member.

(b) The provisions of this section shall not be applicable to any tribe unless in a referendum election, requested by the governing body of the tribe and called by the Secretary, (1) a majority of the total adult membership of that tribe has voted to come within the purview of such provisions and (2) if necessary, the tribal governing documents are amended so that actions under this section would not be prohibited by or inconsistent with the provisions of such documents: Provided, That such amendments shall be effective if approved by at least two-thirds of those voting in such election, or by such lesser number as may be required for such amendments under the terms of the tribal governing documents.

SEC. 104. Any Indian tribe may, by appropriate legislative action of its governing body, provide that no undivided fractional interest (whether held in fee, in trust, or subject to a restriction against alienation) of an appraised value of \$100 or less shall thereafter descend to any heir by intestate succession, but title to such interest shall escheat to the United States in trust for such tribe. The Secretary, in carrying out his responsibility to regulate the descent and distribution of trust lands under section 1 of the Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372) and other laws, shall give full force and effect to tribal actions under this subsection.

SEC. 105. Any Indian tribe may purchase, at fair market value, the undivided fractional interest or interests (whether held in fee, in trust, or subject to a restriction against alienation) of any person in trust lands within its reservation notwithstanding the absence of consent of other owners of undivided interests in such lands. Such purchase shall be subject to the approval of the Secretary, who shall determine fair market value, and title to such interest shall be taken in the name of the United States in trust for the Indian tribe.

SEC. 106(a) Any person owning trust or other lands, or owning undivided fractional interests (whether held in fee, in trust, or subject to a restriction against alienation) in one or more tracts of trust land, may, with the approval of the Secretary and the consent of the Indian tribe in whose reservation such land or tracts are located, exchange such land or interests for the assignment of a life estate in a tract of tribal land.



(b) The value of land assigned to a tribal member, pursuant to the authority provided in this section, may not be less than the value of the interests exchanged by such member except upon a specific written finding by the Secretary that such exchange is in the best interest of such member.

(c) The grant of an exchange assignment of tribal lands pursuant to this section shall have the same force and effect, and shall confer upon the holder thereof the same rights and interests that are conveyed by a trust patent issued pursuant to section 5 of the Act of February 8, 1887 (24 Stat. 389), as amended and supplemented (25 U.S.C. 348) except that the period of trust and tax exemption shall continue until otherwise directed by Congress.

(d) The undivided interests exchanged to the tribe pursuant to this section shall be taken in the name of the United States in trust for such tribe. The life estate interest received by a tribal member shall be taken in the name of the United States in trust for such member.

SEC. 107. All land or interests in land acquired by the United States in trust for tribes or tribal members under authority of this title shall be exempt from Federal, State, and local taxation.

SEC. 108. No provision of or any action taken pursuant to this title shall affect criminal or civil jurisdiction within any Indian reservation or the definition of "Indian country" as that term is defined in section 1151, title 18, United States Code: Provided, That the acquisition of lands by the United States in trust for an Indian tribe pursuant to this title shall not confer any hunting or fishing rights upon such tribe which were not vested in such tribe prior to the acquisition of such lands.

Special Tribal Land Sale, Exchange or Acquisition Statutes

<u>Tribe/Reservation</u>	<u>Act of</u>
Cheyenne River	7/14/54; 68 Stat. 467; 25 U.S.C. 484 9/3/54; 68 Stat. 1191 8/11/64; 78 Stat. 389
Coeur d'Alene	5/19/58; 72 Stat. 121; 25 U.S.C. 463 note 10/9/72; 86 Stat. 788
Colville	7/1/48; 70 Stat. 626
Crow	6/8/40; 54 Stat. 252 7/1/48; 62 Stat. 1214 5/19/58; 72 Stat. 121; 25 U.S.C. 463 note
Crow Creek	9/2/58; 72 Stat. 1766
Eastern Cherokee	6/28/38; 52 Stat. 1212
Flathead	7/18/68; 82 Stat. 356
Ft. Peck	5/19/58; 72 Stat. 121; 25 U.S.C. 463 note
Hopi	5/22/70; 84 Stat. 260; 25 U.S.C. 641 et.seq.
Kalispel	12/15/71; 85 Stat. 625
Klamath	5/19/58; 72 Stat. 121; 25 U.S.C. 463 note
Lower Brule	9/2/58; 72 Stat. 1773
Minnesota Chippewa	6/8/40; 54 Stat. 255; 25 U.S.C. 593
Navajo	7/10/40; 54 Stat. 746 8/9/55; 69 Stat. 555 4/19/50; 64 Stat. 46 as added by 6/11/60; 74 Stat. 199; 25 U.S.C. 635
Navajo, Canoncito	8/13/49; 63 Stat. 605, 25 U.S.C. 622
Pueblos	9/14/61; 75 Stat. 505; 25 U.S.C. 624 8/13/49; 63 Stat. 605; 25 U.S.C. 622
Rosebud	12/11/63; 77 Stat. 349 as amended by 11/10/69; 83 Stat. 190
Shoshone-Arapaho (Wind River)	7/27/39; 53 Stat. 1129; 25 U.S.C. 574
Southern Ute	6/14/72; 86 Stat. 216

Spokane	5/19/58; 72 Stat. 121; 25 U.S.C. 463 note 6/10/68; 82 Stat. 174; 25 U.S.C. 487
Standing Rock	7/14/54; 58 Stat. 467; 25 U.S.C. 484 9/2/58; 72 Stat. 1762
Swinomish	9/28/68; 82 Stat. 884; 25 U.S.C. 610
Tulalip (Swinomish)	12/23/44; 58 Stat. 917 6/18/56; 70 Stat. 290; 25 U.S.C. 403a-1&2
Umatilla	8/10/39; 53 Stat. 1351; 25 U.S.C. 463e
Warm Springs	9/6/61; 75 Stat. 470
Yakima	7/28/53; 69 Stat. 392, as amended by 8/13/64; 78 Stat. 747; 25 U.S.C. 608

reserving for individuals certain tracts of land for which patents were, in many cases, later issued. And, in an act providing for the distribution of the Brotherton Indians' lands (5 Stat. 349), Congress in 1839 expressly used the term "allotment". By 1885 the Government had, under various laws and treaties, issued over 11,000 patents to individual Indians and more than 1,200 certificates of allotment. By 1900, nearly five and a half million acres of land had been allotted in severalty. The allotment program reached its peak during the first decade of the 20th century and rapidly decreased in the 1920's. When, for all practical purposes, the allotment process ceased in 1934, a total of 246,569 allotments, comprising 40,848,172 acres, had been approved.

The allotments made under the special treaties and acts, prior to the General Allotment Act, vested in the Indians restricted and, in some cases, unrestricted titles. By 1887, it was clearly evident that a restrictive period of from 2 to 5 years was not adequate to protect the Indians in their ownership of their allotments. The 1887 act provided that the allotments issued pursuant thereto should be covered by trust patents which would retain the land in a period of trust for 25 years. It was thought that by retaining the title in trust, the Indian would be protected against his own incompetency and improvidence and also against the avarice of the many non-Indians who were desirous of obtaining additional Indian lands.

The Act of June 21, 1906 (34 Stat. 325), authorized the President in his discretion to extend the periods of trust on individually owned trust or restricted lands and tribal lands. It was apparent that many of the Indians who had received allotments were, because of age, physical disability, or otherwise, unable to operate or utilize their own allotments or to manage or dispose of the same without assistance. It was also readily apparent that many of the allottees or their Indian heirs or devisees were not competent to manage their own affairs, especially their real property. In order to save the land for such individuals, it was essential that the periods of trust be extended. As a result of the 1906 act, numerous executive orders were issued to extend the periods of trust. In some cases these extensions covered all allotments still held in trust as of the effective date of the orders relating to specific reservations. In others, especially during the period from 1917 to 1921, the orders extended all periods of trust, except those owned by individual Indians deemed by the Superintendent or a competency commission to be competent to handle their own affairs.



In 1932, the administration called a halt to further disposition of Indian-owned land because of the serious economic situation existing at that time. As a result of considerable investigation and study of the over-all Indian problem, the Congress by the Act of June 18, 1934 (48 Stat, 984), prohibited further allotments on reservations to which the act became applicable, and provided that the periods of trust or restrictions on Indian-owned land should be continued until otherwise provided by Congress.

As several tribes voted against the application of the provisions of the 1934 act to their reservations, it was necessary for the Department to recommend and obtain executive orders extending the periods of trust on the allotments on such reservations and on allotments on the public domain to which the 1934 act did not apply. These extensions were made for a period of 25 years and applied to any and all allotments not under the Indian Reorganization Act of 1934. In 1950, the Department adopted a policy of issuing an annual order which extended all trust or restrictions expiring during the following calendar year for a period of one year only. Study was given to adoption of policy and procedures by which allotments owned by Indians deemed to be competent to manage their own affairs would be omitted from future trust extension orders. As these trust periods were designed to protect incompetent Indians in the ownership of their lands, it was considered that competent Indians should take unrestricted title to their lands. Thus, the competent Indians would be required to accept the responsibilities and obligations of unrestricted ownership, commensurate with their ability, and permit the Federal Government to utilize the limited funds and personnel available to the Bureau of Indian Affairs in the protection and assistance of those individuals who genuinely need such services. This proposal was not, however, adopted. On January 7, 1959, the Secretary of the Interior issued an order extending trust restrictions for an additional five years on all Indian lands on which the trust restrictions were to expire in calendar year 1959.

Practically all of the allotments were made over 30 years ago. The passage of time, coupled with the age of some of the allottees at the time of making of the allotments, has resulted in a majority of the allotments being in heirship status. There are several factors which have contributed to the creation and continuance of the heirship problem as it exists at this time. Perhaps the most important is that in most cases it was not feasible to partition the land in kind. Generally, the only property of any appreciable value which an allottee owned at his death was his allotment. As most of the allotments were of not more than 160

acres of dry farming or grazing lands, and in even smaller acreages where the lands were irrigable, it will readily be seen that it was generally not feasible to partition the land in kind. Another factor in the creation of the heirship problem is the limited statutory authority for partitions in kind. The first act of general applicability which authorized the sale of trust or restricted allotted lands was the Act of May 27, 1902 (32 Stat. 275; 25 U.S.C. 379). This act authorized the sale of allotted trust or restricted land by the adult heirs of the allottee, and in the case of minors by a guardian appointed by a proper court, subject to the approval of the Secretary of the Interior. Where a partition was feasible, if it was to be accomplished under this act, the heirs would have to be in agreement. The Act of June 25, 1910 (36 Stat. 855; 25 U.S.C. 372), is the first specific statutory authority of general applicability for the partition of heirship lands in kind by the Secretary. This authority, however, is limited since the Secretary may only cause the shares of the competent heirs, upon their application, to be set aside and patents in fee issued therefor. Also this authority is limited to trust allotted heirship lands.

The 1910 act also contained provision for the sale of trust allotted heirship lands by the Secretary if he found one or more of the heirs incompetent, and for the distribution of the proceeds to the heirs in accordance with their shares.

The Act of May 18, 1916 (39 Stat. 127; 25 U.S.C. 378), provides broader authority for the partition of heirship lands in kind. By this act the Secretary was authorized to partition lands where such could be done to the advantage of the heirs, regardless of their competency, patents in fee to be issued to competent heirs and trust patents to the incompetent heirs. This authority, however, is also limited to trust allotted heirship lands.



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

Rights Protection 202

SEP 15 1976

Mr. Bradley H. Patterson
The White House
Washington, D.C.

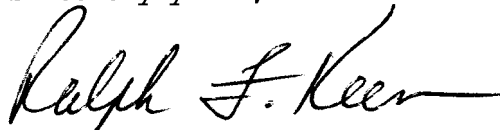
Dear Mr. Patterson:

In reference to our discussions of August 30 concerning Sections 16 and 36 granted to the State of Montana for common school purposes within the Crow Reservation, our research indicates that the Crow Tribe was compensated for the loss of such lands. The attached copy of a letter dated August 20, 1924, from the Assistant Secretary of the Interior to the General Accounting Office outlines the authority and accountability for the payment.

We appreciate the opportunity to have met with you and to explain the functions of our Office of Trust Responsibilities. Should you have further questions or if we can be of assistance in any way, please call upon us.

Sincerely yours,

Acting



Director, Office of
Trust Responsibilities



Attachment



Save Energy and You Serve America!

Finance
FC
27224-24
61380-24

AUG 20 1924

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J
CH

General Accounting Office,
Civil Division.

FILED BY CLERK

FOR FILE

Gentlemen:

Section 16 of the Act approved June 4, 1920

(41 Stat. L. 751-756) reads as follows:

That there is hereby granted to the State of Montana for common-school purposes sections sixteen and thirty-six, within the territory described herein, or such parts of said sections as may be non-mineral or nontimbered, and for which the said State has not heretofore received indemnity lands under existing laws; and in case either of said sections or parts thereof is lost to the State by reason of allotment or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized to select other unoccupied, unreserved, nonmineral, nontimbered lands within said reservation, not exceeding two sections in any one township. The United States shall pay the Indians for the lands so granted \$5 per acre, and sufficient money is hereby appropriated out of the Treasury of the United States not otherwise appropriated to pay for said school lands granted to the said State: Provided, That the mineral rights in said school lands are hereby reserved for the benefit of the Crow Tribe of Indians as herein authorized; Provided further, That the Crow Indian children shall be permitted to attend the public schools of said State on the same condition as the children of white citizens of said State.



For Signature
AUG 20 1924
No Secretary

The area of lands embraced in sections 16 and 36 within the Crow Reservation shown by report of

INITIALING COPY FOR FILE

10372
24-Crow
3983

the General Land Office dated February 7, 1924, copy herewith, which have not been allotted to Indians or used as bases in support of indemnity selections made by the State of Montana for school purposes, and for which title is vested in the State, aggregates 18,102.41 acres, which, at \$5 per acre as above provided, amounts to \$90,512.05.

The area of indemnity school land selections shown by report of the General Land Office of August 11, 1924, copy herewith, made by the State of Montana within the Crow Indian reservation, in the Billings land district, under Acts of February 22, 1889 (25 Stat. 676) and June 4, 1920 (41 Stat. 751) and which was approved by the Department July 22, 1924, aggregates 25,978.53 acres, which, at \$5 per acre, amounts to \$129,891.65, or a total of \$220,403.70 for the lands in question. It is therefore requested that an account be stated in your office and a warrant issued by the Treasury Department crediting this amount to the Crow Indians under the title "Payment to Crow Indians for lands - Act June 4, 1920".

Respectfully,

(Sigs.) F. M. GOODWIN,
Assistant Secretary.

OK
Wed Nov 25
Called Nov 24/24
220,403.70
5-20-24
Incl. 9312



WOK



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20242

IN REPLY REFER TO:

**Program Development
and Implementation
BCCD 5377**

SEP 15 1976

**Mr. Edward Driving Hawk
President
Rosebud Sioux Tribal Council
Rosebud, South Dakota 57570**

Dear President Driving Hawk:

Your letter of July 14, 1976 to President Ford has been referred to me so that we could address your concerns about Indian land going out of trust status.

I do share your concern on this matter. As I understand the Indian Reorganization Act, there is presently legislative authority to meet our common concern. Our major problem is the availability of funding resources.

The Bureau of Indian Affairs budget for FY 1977 does not include funds for this purpose. I believe it would be necessary for these funds to be specifically identified before we would have authority to make expenditures for land acquisition. In order to have future budget requests contain money for land acquisition purposes, it would probably be necessary to do this at the expense of our present programs.

I am sympathetic to your concern and I will give it very serious consideration as I make future budget recommendations.

Sincerely yours,

(SGD) Morris Thompson

Commissioner of Indian Affairs



Copy for Mr. Bradley Patterson, Jr.
White House