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UMATILLA INDIAN RESERVATION LAND CONSOLIDATION, DEVELOPMENT, AND INHERITANCE OF TRUST

GOVERNMENT

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HEARING

BEFORE THE

UNITED STATES SENATE

SELECT COMMITTEE ON INDIAN AFFAIRS

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

S. 470

PERTAINING TO LAND CONSOLIDATION AND DEVELOPMENT  
ON THE UMATILLA INDIAN RESERVATION

S. 471

PERTAINING TO THE INHERITANCE OF TRUST OR RESTRICTED  
LANDS ON THE UMATILLA INDIAN RESERVATION

JULY 5, 1977

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WASHINGTON : 1977

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(II)

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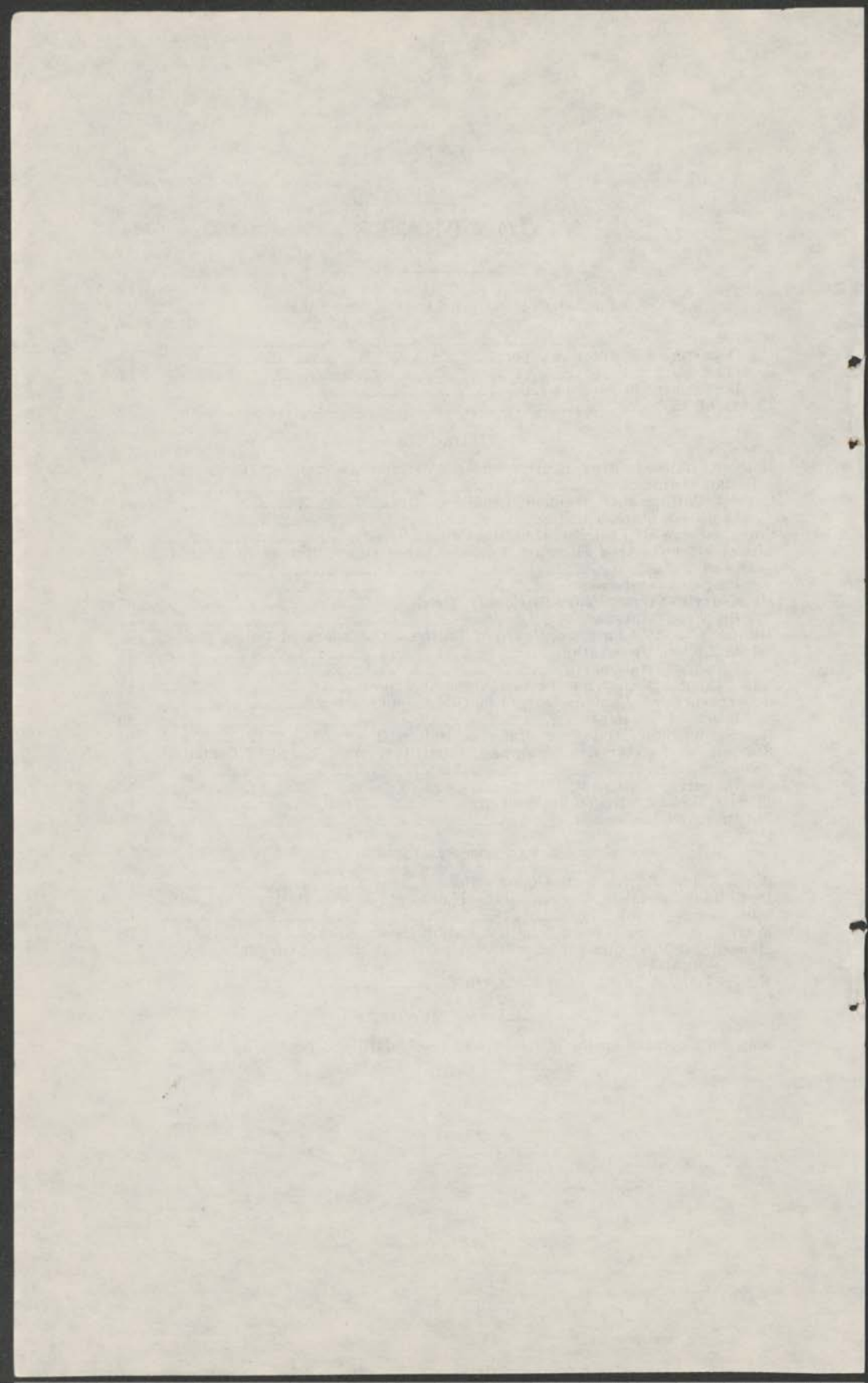
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## UMATILLA INDIAN RESERVATION LAND CONSOLIDATION, DEVELOPMENT, AND TRUST INHERITANCE

TUESDAY, JULY 5, 1977

U.S. SENATE,  
SELECT COMMITTEE ON INDIAN AFFAIRS,  
*Pendleton, Oreg.*

The committee met, pursuant to notice, at 3 p.m., in the Vert Theater, SW. Dorion Avenue, Hon. Mark O. Hatfield, U.S. Senator from Oregon, presiding.

Present: Senator Hatfield.

Staff present: Keith Kennedy, professional staff member.

Senator HATFIELD. Ladies and gentlemen, I am sorry for the delay. I sometimes wonder how we ever got to the Moon. I have a particular jinx, I guess, on anything mechanical—particularly public address systems.

We are going to try to begin the hearing with this sort of arrangement and if you cannot hear at any time the people who are testifying, please let that be known and perhaps we can move more down toward the front in order to make everyone heard.

These hearings of the Senate Select Committee on Indian Affairs have been called to receive testimony on Senate bill 470, a bill pertaining to land consolidation and development on the Umatilla Indian Reservation, and Senate bill 471, pertaining to the inheritance of trust allotments of the reservation. These bills were introduced with the cosponsorship of Senator Bob Packwood on January 26 of this year. Identical legislation was sponsored by Representative Al Ullman and was the subject of hearings before the House Interior Subcommittee on Indian Affairs on June 6.

A brief history of the reservation's development, I believe, is helpful in understanding why this legislation is needed. A reservation of 245,000 acres was created by the treaty of June 9, 1855. By that treaty, the Indians agreed to cede vast tracts of lands to the whites and move to the area designated as their reservation, provided, among other things, that they were to be protected from white encroachment onto their reservation and provided that all their hunting and fishing rights would be preserved.

Thirty years later, by the act of March 3, 1885, Congress provided for the allotment of the reservation.

All heads of households were allotted 160 acres; each single person over the age of 18, 80 acres; each orphan child under 18, 80 acres; and to each child under 18 not otherwise provided for, 40 acres. Additional land was set aside for tribal purposes and for a school. The remainder, despite the treaty language forbidding encroachment by whites, was

opened for sale and settlement by non-Indians. Some 74,000 acres were sold in this manner. When the allotment policy was applied nationwide by the Dawes Act of 1887, the detrimental effect on Indian landholdings was even more severe; by 1933, in the Nation at large, 91 million acres or two-thirds of the Indian land base had been lost.

Today, Umatilla Indian holdings consist of 68,434 acres of trust allotments held by individuals, 16,168 acres of tribal trust land, 830 acres owned by individuals in fee simple, and 22 acres owned by the tribe fee simple. A total of 86,688 acres on the reservation are owned by non-Indians.

These figures reveal that the majority of Indian holdings are in trust allotments that were originally made by the 1885 act. Over the years, as these lands have passed from generation to generation, ownership has become fractionated amongst several heirs. This multiple ownership frustrates economic development. For example, as many of you know, the consent of all shareholders in an allotment is required for the leasing of that land to a non-Indian, and all share in the rent paid according to that lease. Some of these rent shares are ridiculously small, but each requires a separate payment.

Therefore, the purpose of Senate bill 470 and Senate bill 471 is to respond to this situation by providing the Confederated Tribes of the Umatilla Indian Reservation with a means of creating a stable economic base and eliminating the fractionalized ownership on tribal lands.

Senate bill 471 is straightforward and, I believe, noncontroversial. It deals strictly with the inheritance of individual trust allotments when the owner dies without a valid will. It would return the inheritance of trust allotments to the method prescribed under Oregon law until it was changed in 1969. The bill was designed to prevent the fractionalization of ownership that has occurred over the years. Individual shares of an allotment are as small as  $3/3888$ , an equivalent of six-hundredths of an acre. Senate bill 471 will help reverse this trend, and I hope it will be expeditiously approved.

Senate bill 470 authorizes the Secretary of the Interior, in accordance with a land consolidation and development plan drafted by the tribes and approved by the Secretary, to acquire additional trust lands for the Umatilla Indians through purchase, relinquishment, or exchange. These lands may be acquired both inside and outside the reservation boundaries. However, no lands may be acquired for individuals outside the boundaries and lands acquired outside the boundaries for the tribe cannot be exempted from taxation.

The bill also provides for the sale of tribal trust lands and allotments. Proceeds from these sales will be used for the purchase of other lands or for other purposes in keeping with the consolidation plan approved by the Secretary.

Section 8 of Senate bill 470 authorizes the Confederated Tribes, with the approval of the Secretary, to execute a mortgage on trust land. This would give the tribes a valuable financial management tool which they do not now enjoy. Similar mortgage authority exists for other tribes, so this is no precedent.



Now, the Secretary may use tribal trust funds and whatever additional funds are made available by the tribes for the purposes of acquiring land. I am advised by the tribe that no funds are now available for these purposes. The Secretary may also use whatever Federal funds are appropriated under the authority of section 5 of the Indian Reorganization Act of 1934—25 U.S.C. 465. It should be pointed out, however, that no funds have been appropriated for more than 20 years, and there is little likelihood that funding will be renewed under this act.

Any and all land acquisition and sales authorized by this bill would be completely and only voluntary, between a willing buyer and a willing seller. No condemnation authority is given in this bill.

Many interested citizens have voiced concerns about the kind of consolidation and development contemplated by the tribe in anticipation of the bill's passage—the status of water rights, and the potential impact upon the tax revenues of Umatilla County. It is my hope that testimony received here today from tribal representatives, Federal, State and local officials, and interested citizens will serve to allay these concerns and fears.

In closing, I want to make clear that the subject of these hearings today is Senate bill 470 and Senate bill 471, only. The draft jurisdiction proposal that was the subject of considerable debate earlier this year has been dropped, and since it is unrelated to the two bills at hand, it will not be a matter of discussion here today. The Chair reserves the right to rule out of order testimony or comment on extraneous issues.

I now place in the record copies of the bills under consideration today, S. 470 and S. 471, reports from the Department of the Interior on these two bills, and the treaty of 1855.

[The bills, departmental reports, and treaty referred to follow:]

95TH CONGRESS  
1ST SESSION

# S. 470

---

## IN THE SENATE OF THE UNITED STATES

JANUARY 26 (legislative day, JANUARY 19), 1977

Mr. HATFIELD (for himself and Mr. PACKWOOD) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

FEBRUARY 11 (legislative day, FEBRUARY 1), 1977

Rereferred, pursuant to S. Res. 4, to the Select Committee on Indian Affairs

---

## A BILL

Pertaining to land consolidation and development on the Umatilla Indian Reservation.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That sections 2, 3, and 4 of the Act entitled "An Act author-  
4       izing the restoration of tribal ownership of certain lands  
5       upon the Umatilla Indian Reservation, Oregon, and for other  
6       purposes", approved August 10, 1939 (53 Stat. 1351; 25  
7       U.S.C. 463 e, f, g), are amended to read as follows:

8       "SEC. 2. For the purpose of effecting consolidations of  
9       land within the Umatilla Indian Reservation, in the State of  
10      Oregon, into the ownership of the Confederated Tribes of the  
11      Umatilla Reservation and the individual members thereof,

II—O



1 and for the purpose of attaining and preserving an economic  
2 land base for Indian use, alleviating problems of Indian heir-  
3 ship and assisting in the acquisition, disposition, and other  
4 uses of tribal and individually allotted lands of the Umatilla  
5 Reservation, the Secretary of the Interior is authorized, in  
6 his discretion, under such rules and regulations as he may  
7 prescribe, to:

8       “(a) Acquire for the Confederated Tribes of the Uma-  
9 tilla Reservation and individual Indians with any funds  
10 through purchase, exchange, or relinquishment, any lands,  
11 interests in lands, improvements thereon, water rights, or  
12 surface rights to lands within, adjacent to, or in close prox-  
13 imity to the boundaries of the Umatilla Indian Reservation,  
14 except that such lands or interests acquired for individual  
15 Indians shall be within the boundaries of said reservation.

16       “(b) Sell or approve sales of any tribal trust lands, any  
17 interests therein, or any improvements thereon.

18       “(c) Exchange any tribally owned lands, tribal trust  
19 lands, interest in lands, or improvements thereon, for any  
20 other lands or interests in lands situated within, adjacent to,  
21 or in close proximity to the boundaries of such reservation.  
22 The lands or interests in lands exchanged must be equal in  
23 value or be equalized by the payment of money.

24       “(d) Accept any transfer of title from the Confederated  
25 Tribes of the Umatilla Reservation for any lands or interests

1 in lands within the boundaries of the Umatilla Reservation,  
2 and take title to such lands or interests in lands in the name  
3 of the United States in trust for the Confederated Tribes of  
4 the Umatilla Reservation.

5 "SEC. 3. Title to any lands or interests in lands acquired  
6 pursuant to this Act for Indian use, shall be taken in the  
7 name of the United States of America in trust for the Con-  
8 federated Tribes of the Umatilla Reservation or the individual  
9 Indian for whom the lands or interests in lands were ac-  
10 quired, and the lands or interests in lands so acquired shall  
11 be nontaxable and shall be subject to the same laws as re-  
12 lated to other Indian trust lands on the Umatilla Reserva-  
13 tion if the lands are within the boundaries of the Umatilla  
14 Reservation, and the title shall be taken in the name of the  
15 tribes, subject to no restriction on alienation, taxation, or  
16 management if the lands are outside such boundaries.

17 "SEC. 4. That, notwithstanding any general statutory  
18 prohibition against use of tribal funds to acquire land in Ore-  
19 gon if the acquisition would exempt the land from local tax-  
20 ation, the Secretary of the Interior is authorized to purchase  
21 lands or interests in lands for the Confederated Tribes of the  
22 Umatilla Reservation within the boundaries of the Umatilla  
23 Reservation with any funds made available by the tribes,  
24 or as may be hereafter appropriated pursuant to section 5  
25 of the Act of June 18, 1934 (48 Stat. 984).

1       "SEC. 5. The acquisition, sale, or exchange of lands  
2 for the Confederated Tribes of the Umatilla Reservation,  
3 pursuant to this Act, shall be upon the request of the Board  
4 of Trustees of the Confederated Tribes of the Umatilla Res-  
5 ervation, evidenced by a resolution adopted in accordance  
6 with the constitution and bylaws of the tribes, and shall  
7 be in accordance with a land consolidation and development  
8 plan approved by the Secretary of the Interior.

9       "SEC. 6. Any moneys or credits received by the Con-  
10 federated Tribes of the Umatilla Reservation from the sale  
11 or exchange of lands or interests in lands shall be used by  
12 the tribes for the purchase of other lands or interests in lands  
13 or for such other purpose as may be consistent with the land  
14 consolidation and development program approved by the  
15 Secretary of the Interior.

16       "SEC. 7. The Secretary of the Interior is authorized  
17 to sell or exchange individual Indian trust lands or trust  
18 interests in lands held in multiple ownership on the Umatilla  
19 Reservation to the Confederated Tribes of the Umatilla  
20 Reservation, or to any enrolled Indian member of the  
21 Confederated Tribes of the Umatilla Reservation having an  
22 interest in the land involved, providing that the sale or  
23 exchange has been authorized in writing by the owners of  
24 at least a majority of the trust interests in such lands; except  
25 that no greater percentage of approval of such trust interests



1 shall be required under this Act than in any other statute of  
2 general application approved by Congress.

3 "SEC. 8. The Board of Trustees of the Confederated  
4 Tribes of the Umatilla Reservation, with the approval of  
5 the Secretary of the Interior, may execute a mortgage or  
6 deed of trust on land being purchased by the tribes with  
7 title thereto to be taken either in the name of the tribes  
8 or the United States in trust for the tribes where such  
9 mortgage or deed of trust is given to secure the balance  
10 of the purchase price of such land. Such land shall be sub-  
11 ject to foreclosure and sale pursuant to the terms of such  
12 mortgage or deed of trust and in accordance with the laws  
13 of the State of Oregon. The United States shall be an in-  
14 dispensable party to any such proceedings involving tribal  
15 trust lands within the reservation with the right of removal  
16 of the cause to the United States district court for the district  
17 in which the land is located, following the procedure in  
18 section 1446 of title 28, United States Code, and the United  
19 States shall have the right to appeal from any order of  
20 remand entered in such action. Title to any land within the  
21 reservation redeemed or acquired by the Confederated Tribes  
22 of the Umatilla Reservation at such foreclosure or sale pro-  
23 ceeding shall be taken in the name of the United States in  
24 trust for the Confederated Tribes of the Umatilla Reserva-  
25 tion as provided in section 3. Title to any land within the



1 reservation purchased by an individual Indian member of  
2 the Confederated Tribes of the Umatilla Reservation at such  
3 foreclosure sale or proceeding may, with the consent of the  
4 Secretary of the Interior, be taken in the name of the United  
5 States in trust for the individual Indian purchaser as pro-  
6 vided in section 3."



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

JUN 30 1977

Honorable James Abourezk  
Chairman, Select Committee  
on Indian Affairs  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for our views on S. 470, "Pertaining to land consolidation and development on the Umatilla Indian Reservation."

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

The Act of August 10, 1939 (c. 662, §§2, 3, and 4, 53 Stat. 1351; 25 U.S.C. 463e, f, and g), authorized the Secretary of the Interior to restore the undisposed of surplus lands of the Umatilla Indian Reservation, Oregon, to the ownership of the Confederated Tribes of the Umatilla Indian Reservation. Until then, such lands had been open to entry or other forms of disposal under the public-land laws.

To effect land consolidations within the Reservation, the Secretary was authorized to acquire any interest in lands, water rights, or surface rights to lands within the Reservation by purchase, exchange or relinquishment. The 1939 Act also provided that title to the acquired lands would be taken in trust for the benefit of the Tribes or any individual member, and that any funds appropriated pursuant to section 5 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), may be used to effect the land provisions of that Act. However, the land consolidation authorities contained in the IRA are not applicable to the Confederated Tribes because the members of the Tribes voted against its application.

S. 470 would amend sections 2, 3, and 4 of the 1939 Act, and would provide the Umatilla Indians an opportunity to re-establish a viable land base through land consolidation and purchase of lands presently owned by non-members of the Confederated Tribes. As of 1975, approximately 55% of the land in the current Umatilla Indian Reservation was owned by non-Indians.

Under S. 470, the Secretary's authority is expanded to enable him to acquire lands not only within the exterior boundaries of the reservation, but, also, those that are adjacent to or in close proximity to the boundaries of the Umatilla Indian Reservation--without taking those lands outside the reservation off the county tax rolls. The Secretary is further authorized to approve the sale of tribal lands that are unproductive or which cannot be properly utilized because of location or other reasons. Those lands within the reservation that are acquired under the provisions of the bill will be taken into trust for the benefit of the tribe or the individual tribal member.

Further, S. 470 would authorize the Secretary to acquire lands or interests in lands for the Umatilla Tribe with funds made available by the tribe or pursuant to appropriations made under section 5 of the Indian Reorganization Act. Section 5 of the IRA, which is the same as section 4 of the 1939 Act pertaining to the Umatillas, authorizes the Secretary to acquire lands for Indians whether within or without existing reservation boundaries through purchase, exchange, relinquishment, gift, or assignment, and also authorizes the appropriation of \$2 million annually for such land acquisitions. However, no funds have been appropriated pursuant to section 5 since 1953. Recent appropriations for the Bureau of Indian Affairs have prohibited the use of tribal funds in certain States, including Oregon, for acquisition of tribal lands. Although this prohibition is no longer contained in current appropriations, S. 470 would render such a prohibition non-applicable to the Umatilla Indians.

The bill would require that any land consolidation thereunder must be pursuant to resolutions duly adopted by the Board of Trustees of the Confederated Tribes, and only in accordance with a land consolidation and development plan approved by the Secretary. Any moneys received by the Umatilla Indians from the sale or exchange of lands shall be used consistently with the plan.

The Secretary may sell or exchange individual Indian trust lands or trust interests in lands held in multiple ownership on the reservation to the tribe or to an enrolled tribal member having an interest in the land involved, providing that the sale or exchange has the written authorization of at least a majority of the owners of the trust interests in the lands. This consolidation of fractionated interests will facilitate the tribe's land consolidation and development program.

The tribe may, with the approval of the Secretary, execute a mortgage or deed of trust on such lands as are being acquired under this legislation. The Act of March 29, 1956 (70 Stat. 62, 25 U.S.C. 483a) only provides this authority for individual trust or restricted lands.



The 1956 Act was designed to encourage individual Indian landholders to utilize commercial credit to the maximum extent possible, subject to proper supervision, enabling Indian trust or restricted lands to be pledged as security for loans so that valid mortgages could be issued thereon. Prior to that, title insurance companies in some States had expressed doubts as to the authority of the Secretary under then existing laws to consent to the encumbrance of Indian trust land and related property interests with forecloseable first mortgages. Many potential vendors of lands were unwilling to accept large cash payments from a tribe, preferring instead, a mortgage arrangement of several years duration in order to avoid a large tax liability.

S. 470 provides that such lands as are acquired would be subject to foreclosure and sale pursuant to the terms of such mortgage or deed of trust and in accordance with the laws of the State of Oregon. Title to any land within the reservation redeemed or acquired by the tribe at such foreclosure or sale proceeding shall be taken by the United States in trust for the benefit of the tribe or the individual Indian. At any redemption or foreclosure proceeding, the United States is an indispensable party, insuring that proper care will be exercised in approving mortgages and deeds of trust to prevent improvident loans which could result in the alienation of Indian lands.

S. 470 would permit the tribe or individual members to use their real estate resources for obtaining capital, consolidating their interests, and enhancing the acquisition, consolidation, and development program on the reservation. The Umatilla Indians have requested this legislation to enable them to carry out their land consolidation program, and reduce fractionated interests.

We recommend that the following language be added to the last sentence of section 5 (line 8, page 4) ", after publication in the Federal Register and opportunity for public comment in accordance with section 553 of title 5 of the United States Code."

This amendment would enable the Secretary to take into consideration the views of interested members of the public in the land consolidation plan.

We would point out that the purpose of this bill should be to authorize the exchange, disposal and acquisition of Indian trust lands and interests therein, but not confer any authorities with regard to other lands or interests therein under the jurisdiction of the Secretary. Such authorization should depend upon the willingness of all parties concerned and should not be mandatory. Further, the language in the bill should not supersede the requirements of the Federal Land Policy and Management Act of 1976 with respect to public lands or interests therein.

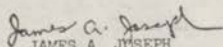


Accordingly, we recommend that a new section 9 be added to the 1939 Act under S. 470:

"Sec. 9. Nothing in this Act shall confer any authority or impose any requirement on the Secretary to exchange, dispose of or otherwise utilize other lands or interests therein under his administration in connection with any exchange, disposal or acquisition of Indian trust land or interests therein authorized by this Act. Nothing in this Act shall supersede or repeal by implication the requirements of the Act of October 21, 1976 (90 Stat. 2743). Any acquisition or exchange pursuant to this Act which involves public lands as defined in the Act of October 21, 1976, shall also meet the requirements of said 1976 Act."

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

  
JAMES A. JOSEPH  
UNDER SECRETARY

95TH CONGRESS  
1ST SESSION

# S. 471

---

## IN THE SENATE OF THE UNITED STATES

JANUARY 26 (legislative day, JANUARY 19), 1977

Mr. HATFIELD (for himself and Mr. PACKWOOD) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

FEBRUARY 11 (legislative day, FEBRUARY 1), 1977

Rereferred, pursuant to S. Res. 4, to the Select Committee on Indian Affairs

---

## A BILL

Pertaining to the inheritance of trust or restricted lands on the  
Umatilla Indian Reservation.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That the right to inherit trust or restricted lands on the  
4       Umatilla Indian Reservation, to the extent that the laws of  
5       descent of the State of Oregon are inconsistent herewith,  
6       shall be as follows:

7       SECTION 1. When any Indian dies leaving any interest  
8       in trust or restricted land within the Umatilla Reservation  
9       and not having lawfully devised the same, such interest shall  
10      descend in equal shares to his or her children, and to the  
11      issue of any deceased child by right of representation; and

1 if there is no child of the decedent living at the time of his or  
2 her death, such interest shall descend to all his or her other  
3 lineal descendants; and if all such descendants are in the  
4 same degree of kindred to the intestate, they shall take such  
5 real property equally, or otherwise they shall take according  
6 to the right of representation. Any interest taken hereunder  
7 shall be subject to the right of a surviving spouse as  
8 provided in section 2.

9       SEC. 2. The surviving spouse of any Indian who dies  
10 leaving any interest in trust or restricted land within the  
11 Umatilla Reservation shall be entitled to the use during his  
12 or her life of one-half part of all such trust or restricted inter-  
13 ests in land.

14       SEC. 3. If any Indian who leaves any interest in trust or  
15 restricted land within the Umatilla Reservation, makes pro-  
16 visions for his or her surviving spouse by an approved will,  
17 such surviving spouse shall have an election whether to take  
18 the provisions as made in such will or to take the interest as  
19 set forth in section 2 of the Act, but such surviving spouse  
20 shall not be entitled to both unless it plainly appears by the  
21 will to have been so intended by the testator. When any sur-  
22 viving spouse is entitled to an election under this section, he  
23 or she shall be deemed to have elected to take the provisions  
24 as made in such will unless at or prior to the first hearing to  
25 probate the will that he or she has elected to take under  
26 section 2 of this Act and not under the will.





# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

JUN 30 1977

Honorable James Abourezk  
Chairman, Select Committee  
on Indian Affairs  
United States Senate  
Washington, D. C. 20510

Dear Mr. Chairman:

This responds to your request for our views on S. 471, a bill  
"Pertaining to the inheritance of trust or restricted lands on  
the Umatilla Indian Reservation."

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

S. 471 provides that the right to inherit trust or restricted lands  
on the Umatilla Indian Reservation, to the extent that the laws of  
descent of the State of Oregon are inconsistent with the bill's  
provisions, shall be governed by the following three sections:

Section 1 declares that when any Indian dies intestate leaving any  
interest in trust or restricted land within the Umatilla reservation,  
such interest will descend in equal shares to his/her children and to  
the issue of any deceased child by right of representation. If there  
is no living child of the decedent at the time of his/her death, such  
interest would descend to all his/her other lineal descendants. If  
all such descendants are in the same degree of kindred to the intestate  
they would take such real property equally, or otherwise they shall  
take according to the right of representation.

Section 2 provides for the rights of the surviving spouse. The surviving  
spouse of any Indian who dies leaving an interest in trust or restricted  
lands within the Umatilla Reservation would be entitled to the use  
during his/her life of one-half of all such or restricted interests in  
land.

Section 3 provides that if any Indian who leaves any interest in trust  
or restricted land within the Umatilla Reservation, makes provisions  
for his/her surviving spouse by an approved will, such surviving spouse  
would have an election whether to take under the will or to take the  
interest as set forth in Section 2. The surviving spouse would not



be entitled to both unless it plainly appears by the will to have been so intended by the testator. Section 3 further provides that when any surviving spouse is entitled to election under this section, he or she would be deemed to have elected to take under the will unless at or prior to the first hearing to probate the will, he/she has elected to take under Section 2 and not under the will.

In 1969, Oregon State Law was amended (O.R.S. 112.025) to provide that a surviving spouse would receive one-half of the net estate, including real property, of a person dying intestate. State law is applied to the descent and distribution of Indian trust lands unless (or to the extent) otherwise provided by Federal law and regulations (see 25 U.S.C. 348, 371-373, 607 and 43 CFR 4.200-4.297, 4.300-4.369). The 1969 Oregon amendment has led to Umatilla Indian trust land passing out of trust status in those cases where the decedent left a non-Indian or non-tribal member surviving spouse who takes in fee the decedent's interest in trust land. The Umatilla Indians are also concerned that this change in State law could also lead to checkerboard land ownership and fractionated heirships.

Prior to 1969, the law of descent and distribution in Oregon provided that real property within the State would descend in equal shares to the children of the deceased, subject only to the right of dower in a surviving spouse, and consisting of only a life time interest in one-half of all land the deceased owned at death. Thus, until 1969, the Department in accord with Oregon law awarded dower rights to widows, and estates by courtesy to widowers, of Indian spouses who died possessed of trust or restricted lands in Oregon. This practice is still recognized in the States of Michigan, Montana, and Wisconsin.

Several tribes have been successful in obtaining Federal legislation to govern descent of trust or restricted lands to non-Indians or non-tribal members when State descent and distribution law has had the affect of passing Indian land out of trust or restricted status. For example, certain non-Indian surviving spouses of deceased Osage Indians may not take by inheritance trust or restricted property, but may take by devise. The Act of December 3, 1970 (84 Stat. 1874) provides for limitations on inheritance of trust or restricted real property by individuals other than members of the Yakima Tribes of Washington. The Confederated Tribes of the Warm Springs Reservation, Oregon (86 Stat. 530) and the Nez Perce Tribe of Idaho (86 Stat. 744) have also obtained statutes governing descent of trust or restricted lands similar to that of the Yakima Tribes. The Umatilla Indians have passed a resolution requesting legislation along the lines of S. 471.

To the extent any interest in trust or restricted land within the Reservation is not lawfully devised by the decedent Indian, section 1 provides for its succession to the decedent's lineal descendants. In our judgment, deletion of the word "all" in lines 2 and 3, page 2, would clarify that those descendants in more remote degrees of kindred take only when their "root" is deceased.

The wording in section 2 creates an ambiguity as to whether the surviving spouse obtains one-half interest in the undivided whole for life, or obtains a life estate in a divisible one-half part.

We recommend that this section be clarified in the following manner. If the first alternative is the intended interpretation, we suggest that section 2 be revised as follows:

"Sec 2. The surviving spouse of any Indian who dies leaving any interest in trust or restricted land within the Umatilla Reservation shall be entitled to obtain a one-half interest in all such trust or restricted interests in land during his or her lifetime."

If the latter alternative is intended, we recommend that the following language be inserted between the words "of" and "one-half" on line 12, page 2: "a divisible".

We recommend deletion of the word "that" in line 25, page 2, because the word is confusing. This deletion would clarify the language of section 3 without changing the section's intended meaning.

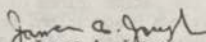
We recommend that a new section 4 be added to S. 471:

"Sec. 4. The provisions of this Act shall apply to all estates of decedents who die on or after the date of enactment of this Act."

In our judgment, this provision will eliminate the possibility of future litigation resulting from retroactive application of this bill to estates pending before the Examiner of Inheritance at the time of enactment.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

  
James A. Joseph  
UNDER SECRETARY



## TREATY WITH THE WALLA WALLAS, CAYUSES, AND OTHERS, 1855

Articles of agreement and convention made and concluded at the treaty-ground, Camp Stevens, in the Walla-Walla Valley, this ninth day of June, in the year one thousand eight hundred and fifty-five, by and between Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, and Joel Palmer, superintendent of Indian affairs for Oregon Territory, on the part of the United States, and the undersigned chiefs, head-men, and delegates of the Walla-Wallas, Cayuses, and Umatilla tribes, and bands of Indians, occupying lands partly in Washington and partly in Oregon Territories, and who, for the purposes of this treaty, are to be regarded as one nation acting for and in behalf of the respective bands and tribes, they being duly authorized thereto; it being understood that Superintendent I. I. Stevens assumes to treat with that portion of the above-named bands and tribes residing within the Territory of Washington, and Superintendent Palmer with those residing within Oregon.

Article 1. The above-named confederated bands of Indians cede to the United States all their right, title, and claim to all and every part of the country claimed by them included in the following boundaries, to wit: Commencing at the mouth of the Tocannon River, in Washington Territory, running thence up said river to its source; thence easterly along the summit of the Blue Mountains, and on the southern boundaries of the purchase made of the Nez Percés Indians, and easterly along that boundary to the western limits of the country claimed by the Shoshonees or Snake Indians; thence southerly along that boundary (being the waters of Powder River) to the source of Powder River, thence to the headwaters of Willow Creek, thence down Willow Creek to the Columbia River, thence up the channel of the Columbia River to the lower end of a large island below the mouth of Umatilla River, thence northerly to a point on the Yakama River, called Tomah-luke, thence to Le Lac, thence to the White Banks on the Columbia below Priest's Rapids, thence down the Columbia River to the junction of the Columbia and Snake Rivers, thence up the Snake River to the place of beginning: *Provided, however,* That so much of the country described above as is contained in the following boundaries shall be set apart as a residence for said Indians, which tract for the purposes contemplated shall be held and regarded as an Indian reservation; to wit: Commencing in the middle of the channel of Umatilla River opposite the mouth of Wild Horse Creek, thence up the middle of the channel of said creek to its source, thence southerly to a point in the Blue Mountains, known as Lee's Encampment, thence in a line to the headwaters of Howtome Creek, thence west to the divide between Howtome and Birch Creek, thence northerly along said divide to a point due west of the southwest corner of William C. McKay's land-claim, thence east along his line to his southeast corner, thence in a line to the place of beginning; all of which tract shall be set apart and, so far as necessary, surveyed and marked out for their exclusive use; nor shall any white person be permitted to reside upon the same without permission of the agent and superintendent. The said tribes and bands agree to remove to and settle upon the same within one year after the ratification of this treaty, without any additional expense to the Government other than is provided by this treaty and until the expiration of the time specified, the said bands shall be permitted to occupy and reside upon the tracts now possessed by them, guaranteeing to all citizen[s] of the United States, the right to enter upon and occupy as settlers any lands not actually enclosed by said Indians: *Provided, also,* That the exclusive right of taking fish in the streams running through and bordering said reservation is hereby secured to said Indians, and at all other usual and accustomed stations in common with citizens of the United States, and of erecting suitable buildings for curing the same; the privilege of hunting, gathering roots and berries and pasturing their stock on unclaimed lands in common with citizens, is also secured to them. *And provided, also,* That if any band or bands of Indians, residing in and claiming any portion or portions of the country described in this article, shall not accede to the terms of this treaty, then the bands becoming parties hereunto agree to reserve such part of the several and other payments herein named, as a consideration for the entire country described as aforesaid, as shall be in the proportion that their aggregate number may have to the whole number of Indians residing in and claiming the entire country aforesaid, as consideration and payment in full for the tracts in said country claimed by them. *And provided, also,* That when substantial improvements have been made by any member of the bands being parties to this treaty, who are compelled to abandon them in consequence of said treaty, [they] shall be valued under the direction of the President of the United States, and payment made therefor.



Article 2. In consideration of and payment for the country hereby ceded, the United States agree to pay the bands and tribes of Indians claiming territory and residing in said country, and who remove to and reside upon said reservation, the several sums of money following, to wit: eight thousand dollars per annum for the term of five years, commencing on the first day of September, 1856; six thousand dollars per annum for the term of five years next succeeding the first five; four thousand dollars per annum for the term of five years next succeeding the second five, and two thousand dollars per annum for the term of five years next succeeding the third five; all of which several sums of money shall be expended for the use and benefit of the confederated bands herein named, under the direction of the President of the United States, who may from time to time at his discretion, determine what proportion thereof shall be expended for such objects as in his judgment will promote their well-being, and advance them in civilization, for their moral improvement and education, for buildings, opening and fencing farms, breaking land, purchasing teams, wagons, agricultural implements and seeds, for clothing, provision and tools, for medical purposes, providing mechanics and farmers, and for arms and ammunition.

Article 3. In addition to the articles advanced the Indians at the time of signing this treaty, the United States agree to expend the sum of fifty thousand dollars during the first and second years after its ratification, for the erection of buildings on the reservation, fencing and opening farms, for the purchase of teams, farming implements, clothing, and provisions, for medicines and tools, for the payment of employees, and for subsisting the Indians the first year after their removal.

Article 4. In addition to the consideration above specified, the United States agree to erect, at suitable points on the reservation, one saw-mill, and one flouring-mill, a building suitable for a hospital, two school-houses, one blacksmith shop, one building for wagon and plough maker and one carpenter and joiner shop, one dwelling for each, two millers, one farmer, one superintendent of farming operations, two school-teachers, one blacksmith, one wagon and plough maker, one carpenter and joiner, to each of which the necessary out-buildings. To purchase and keep in repair for the term of twenty years all necessary mill fixtures and mechanical tools, medicines and hospital stores, books and stationery for schools, and furniture for employees.

The United States further engage to secure and pay for the services and subsistence, for the term of twenty years, [of] one superintendent of farming operations, one farmer, one blacksmith, one wagon and plough maker, one carpenter and joiner, one physician, and two school teachers.

Article 5. The United States further engage to build for the head chiefs of the Walla-Walla, Cayuse, and Umatilla bands each one dwelling-house, and to plough and fence ten acres of land for each, and to pay to each five hundred dollars per annum in cash for the term of twenty years. The first payment to the Walla-Walla chief to commence upon the signing of this treaty. To give to the Walla-Walla chief three yoke of oxen, three yokes and four chains, one wagon, two ploughs, twelve hoes, twelve axes, two shovels, and one saddle and bridle, one set of wagon-harness, and one set of plough-harness, within three months after the signing of this treaty.

To build for the son of Pio-Pio-mox-mox one dwelling-house, and plough and fence five acres of land, and to give him a salary for twenty years, one hundred dollars in cash per annum, commencing September first, eighteen hundred and fifty-six.

The improvement named in this section to be completed as soon after the ratification of this treaty as possible.

It is further stipulated that Pio-Pio-mox-mox is secured for the term of five years, the right to build and occupy a house at or near the mouth of the Yakama River, to be used as a trading-post in the sale of his bands of wild cattle ranging in that district: *And provided, also*, That in consequence of the immigrant wagon-road from Grand Round to Umatilla, passing through the reservation herein specified, thus leading to turmoils and disputes between Indians and immigrants, and as it is known that a more desirable and practicable route may be had to the south of the present road, that a sum not exceeding ten thousand dollars shall be expended in locating and opening a wagon-road from Powder River or Grand Round, so as to reach the plain at the western base of the Blue Mountain, south of the southern limits of said reservation.

Article 6. The President may, from time to time at his discretion cause the whole or such portions as he may think proper, of the tract that may now or hereafter be set apart as a permanent home for those Indians, to be surveyed into lots and assigned to such Indians of the confederated bands as may wish to enjoy the privilege, and locate thereon permanently, to a single person over twenty-one years of age, forty acres, to a family of two persons, sixty acres, to a family of three and not exceeding five, eighty acres; to a family of six persons and not exceeding ten, one hundred and twenty acres; and to each family over ten in number, twenty acres to each additional three members; and the President may provide for such rules and regulations as will secure to the family in case of the death of the head thereof, the possession and enjoyment of such permanent home and improvement thereon; and he may at any time, at his discretion, after such person or family has made location on the land assigned as a permanent home, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased for a longer term than two years, and shall be exempt from levy, sale, or forfeiture, which condition shall continue in force until a State constitution, embracing such land within its limits, shall have been formed and the legislature of the State shall remove the restriction: *Provided, however*, That no State legislature shall remove the restriction herein provided for without the consent of Congress: *And provided, also*, That if any person or family, shall at any time, neglect or refuse to occupy or till a portion of the land assigned and on which they have located, or shall roam from place to place, indicating a desire to abandon his home, the President may if the patent shall have been issued, cancel the assignment, and may also withhold from such person or family their portion of the annuities of other money due them, until they shall have returned to such permanent home, and resume the pursuits of industry, and in default of their return the tract may be declared abandoned, and thereafter assigned to some other person or family of Indians residing on said reservation: *And provided, also*, That the head chiefs of the three principal bands, to wit, Pio-Pio-mox-mox, Weyatenatemany, and Wenap-snoot, shall be secured in a tract of at least one hundred and sixty acres of land.

Article 7. The annuities of the Indians shall not be taken to pay the debts of individuals.

Article 8. The confederated bands acknowledge their dependence on the Government of the United States and promise to be friendly with all the citizens thereof, and pledge themselves to commit no depredation on the property of such citizens, and should any one or more of the Indians violate this pledge, and the fact be satisfactorily proven before the agent, the property taken shall be returned, or in default thereof, or if injured or destroyed, compensation may be made by the Government out of their annuities; nor will they make war on any other tribe of Indians except in self-defense, but submit all matter of difference between them and other Indians, to the Government of the United States or its agents for decision, and abide thereby; and if any of the said Indians commit any depredations on other Indians, the same rule shall prevail as that prescribed in the article in case of depredations against citizens. Said Indians further engage to submit to and observe all laws, rules, and regulations which may be prescribed by the United States for the government of said Indians.

Article 9. In order to prevent the evils of intemperance among said Indians, it is hereby provided that if any one of them shall drink liquor, or procure it for others to drink [such one] may have his or her proportion of the annuities withheld from him or her for such time as the President may determine.

Article 10. The said confederated bands agree that, whenever in the opinion of the President of the United States the public interest may require it, that all roads, highways and railroads shall have the right of way through the reservation herein designated or which may at any time hereafter be set apart as a reservation for said Indians.

Article 11. This treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and Senate of the United States....<sup>1</sup>

Senator HATFIELD. I would ask that when witnesses are called to testify that they summarize their written statement so that we will

<sup>1</sup> C. J. Kappler (comp.), *Indian Affairs. Laws and Treaties. U.S. Doc. No. 319, 58 Cong., 2d sess., II, 694-97.*



have time for questions and can accommodate all those who wish to testify in the limited time we have. Of course, the full prepared statement will be incorporated into the record.

Our first witness this afternoon will be Mr. Vincent Little for the Portland regional office of the Bureau of Indian Affairs, and any that wish to accompany him from that office.

Gentlemen, I assume that the speaker should use the podium here, the others may use the seats here, until it is the individual's turn to speak.

**STATEMENT OF VINCENT LITTLE, AREA DIRECTOR, PORTLAND  
AREA OFFICE, BUREAU OF INDIAN AFFAIRS**

Mr. LITTLE. Thank you, Mr. Chairman.

I am pleased to testify in favor of the enactment of Senate bill 470 and Senate bill 471, with some minor amendments as suggested in our prepared statement which was previously handed to you.

Senator HATFIELD. Your prepared statement will be made a part of the record.

Mr. LITTLE. Thank you.

[The prepared statement of Vincent Little follows:]



STATEMENT OF MR. VINCENT LITTLE, AREA DIRECTOR, PORTLAND AREA OFFICE, BUREAU OF INDIAN AFFAIRS, BEFORE THE HONORABLE MARK O. HATFIELD; MEMBER OF THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON S. 470, A BILL PERTAINING TO LAND CONSOLIDATION AND DEVELOPMENT OF THE UMATILLA INDIAN RESERVATION, AND S. 471, A BILL PERTAINING TO THE INHERITANCE OF TRUST OR RESTRICTED LANDS ON THE UMATILLA INDIAN RESERVATION.

Mr. Chairman and Members of the Committee:

I am pleased to testify in favor of the enactment of S. 470 and S. 471, with some minor amendments.

The Act of August 10, 1939 (c. 662, SS2,3, and 4, 53 Stat. 1351; 25 U.S.C. 463e, f, and g), authorized the Secretary of the Interior to restore the undisposed of surplus lands of the Umatilla Indian Reservation, Oregon, to the ownership of the Confederated Tribes of the Umatilla Indian Reservation. Until then, such lands had been open to entry or other forms of disposal under the public-land laws.

To effect land consolidations within the Reservation, the Secretary was authorized to acquire any interest in lands, water rights, or surface rights to lands within the Reservation by purchase, exchange or relinquishment. The 1939 Act also provided that title to the acquired lands would be taken in trust for the benefit of the Tribes or any individual member, and that any funds appropriated pursuant to section 5 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), may be used to effect the land provisions of that Act. However, the land consolidation authorities contained in the IRA are not applicable to the Confederated Tribes because the members of the Tribes voted against its application.

S. 470 would amend the 1939 Act, and would provide the Umatilla Indians

an opportunity to re-establish a viable land base through land consolidation and purchase of lands presently owned by non-members of the Confederated Tribes. As of the present approximately 55% of the land in the current Umatilla Indian Reservation are owned by non-Indians.

Under S. 470 the Secretary's authority is expanded to enable him to acquire lands not only within the exterior boundaries of the reservation, but, also, those that are adjacent to or in close proximity to the boundaries of the Umatilla Indian Reservation--without taking those lands outside the reservation off the county tax rolls. The Secretary is further authorized to approve the sale of tribal lands that are unproductive or which cannot be properly utilized because of location or other reasons. Those lands within the reservation that are acquired under the provisions of the bill will be taken into trust for the benefit of the tribe or the individual tribal member.

Further, S. 470 would authorize the Secretary to acquire lands or interests in lands for the Umatilla Tribe with funds made available by the tribe or pursuant to appropriations made under section 5 of the Indian Reorganization Act. Section 5 of the IRA, which is the same as section 4 of the 1939 Act pertaining to the Umatillas, authorizes the Secretary to acquire lands for Indians whether within or without existing reservation boundaries through purchase, exchange, relinquishment, gift, or assignment, and also authorizes the appropriation of \$2 million annually for such land acquisitions. However, no funds have been appropriated pursuant to section 5 since 1953. Recent

appropriations for the Bureau of Indian Affairs have prohibited the use of tribal funds in certain States, including Oregon, for acquisition of tribal lands. Although this prohibition is no longer contained in current appropriations, S. 470 would render such a prohibition non-applicable to the Umatilla Indians.

The bill would require that any land consolidation thereunder must be pursuant to resolutions duly adopted by the Board of Trustees of the Confederated Tribes, and only in accordance with a land consolidation and development plan approved by the Secretary. Any moneys received by the Umatilla Indians from the sale or exchange of lands shall be used consistently with the plan.

The Secretary may sell or exchange individual Indian trust lands or trust interests in lands held in multiple ownership on the reservation to the tribe or to an enrolled tribal member having an interest in the land involved, providing that the sale or exchange has the written authorization of at least a majority of the owners of the trust interest in the lands. This consolidation of fractionated interests will facilitate the tribe's land consolidation and development program.

The tribe may, with the approval of the Secretary, execute a mortgage or deed of trust on such lands as are being acquired under this legislation. The Act of March 29, 1956 (70 Stat. 62, 25 U.S.C. 483a) only provides this authority for individual trust or restricted lands.



The 1956 Act was designed to encourage individual Indian landholders to utilize commercial credit to the maximum extent possible, subject to proper supervision, enabling Indian trust or restricted lands to be pledged as security for loans so that valid mortgages could be issued thereon. Prior to that, title insurance companies in some States had expressed doubts as to the authority of the Secretary under then existing laws to consent to the encumbrance of Indian trust land and related property interests with foreclosable first mortgages. Many potential vendors of lands were unwilling to accept large cash payments from a tribe, preferring instead, a mortgage arrangement of several years duration in order to avoid a large tax liability.

S. 470 provides that such lands as are acquired would be subject to foreclosure and sale pursuant to the terms of such mortgage or deed of trust and in accordance with the laws of the State of Oregon. Title to any land within the reservation redeemed or acquired by the tribe at such foreclosure or sale proceeding shall be taken by the United States in trust for the benefit of the tribe or the individual Indian. At any redemption or foreclosure proceeding, the United States is an indispensable party, insuring that proper care will be exercised in approving mortgages and deeds of trust to prevent improvident loans which could result in the alienation of Indian lands.

S. 470 would permit the tribe or individual members to use their real estate resources for obtaining capital, consolidating their

interests, and enhancing the acquisition, consolidation, and development program on the reservation. The Umatilla Indians have requested this legislation to enable them to carry out their land consolidation program, and reduce fractionated interests.

We recommend that the following language be added to the bill: ", after publication in the Federal Register and opportunity for public comment in accordance with section 553 of title 5 of the United States Code."

This amendment would enable the Secretary to take into consideration the views of interested members of the public in the land consolidation plan.

S. 471 - REGARDING THE RIGHT TO INHERIT  
TRUST OR RESTRICTED LANDS.

S. 471 provides that the right to inherit trust or restricted lands on the Umatilla Indian Reservation, to the extent that the laws of descent of the State of Oregon are inconsistent with the bill's provisions, shall be governed as follows:

One section declares that when any Indian dies intestate leaving any interest in trust or restricted land within the Umatilla Reservation, such interest will descend in equal shares to his/her children and to the issue of any deceased child by right of representation. If there is no living child of the decedent at the time of his/her death, such interest would descent to all his/her other lineal descendants. If all such descendants are in the same degree of kindred to the intestate they would take such real property equally, or other wise they shall

take according to the right of representation.

The next section provides for the rights of the surviving spouse. The surviving spouse of any Indian who dies leaving an interest in trust or restricted lands within the Umatilla Reservation would be entitled to the use during his/her life of one-half of all such restricted interests in land.

The next section provides that if any Indian who leaves any interest in trust or restricted land within the Umatilla Reservation, makes provisions for his/her surviving spouse by an approved will, such surviving spouse would have an election whether to take under the will or to take the interest as set forth by this bill. The surviving spouse would not be entitled to both unless it plainly appears by the will to have been so intended by the testator. It further provides that when any surviving spouse is entitled to election under this section, he or she would be deemed to have elected to take under the will unless at or prior to the first hearing to probate the will, he/she has elected to take under Section 2 and not under the will.

In 1969, Oregon State Law was amended (O.R.S. 112.025) to provide that a surviving spouse would receive one-half of the net estate, including real property, of a person dying intestate. State law is applied to the descent and distribution of Indian trust lands unless (or to the extent) otherwise provided by Federal law and regulations (see 25 U.S.C. 348, 371-373, 607 and 43 CFR 4.200-4.297, 4.300-4.369). The 1969 Oregon amendment has led to Umatilla Indian trust land passing out of trust status in those cases where the decedent left a non-Indian



or non-tribal member surviving spouse who takes in fee the decedent's interest in trust land. The Umatilla Indians are also concerned that this change in State law could also lead to checkerboard land ownership and fractionated heirships.

Prior to 1969, the law of descent and distribution in Oregon provided that real property within the State would descend in equal shares to the children of the deceased, subject only to the right of dower in a surviving spouse, and consisting of only a life time interest in one-half of all land the deceased owned at death. Thus, until 1969, the Department in accord with Oregon law awarded dower rights to widows, and estates by courtesy to widowers, of Indian spouses who died possessed of trust or restricted lands in Oregon. This practice is still recognized in the States of Michigan, Montana, and Wisconsin.

Several tribes have been successful in obtaining Federal legislation to govern descent of trust or restricted lands to non-Indians or non-tribal members when State descent and distribution law has had the effect of passing Indian land out of trust or restricted status. For example, certain non-Indian surviving spouses of deceased Osage Indians may not take by inheritance trust or restricted property, but may take by devise. The Act of December 3, 1970 (84 Stat. 1874) provided for limitations on inheritance of trust or restricted real property by individuals other than members of the Yakima Tribes of Washington. The Confederated Tribes of the Warm Springs Reservation, Oregon (86 Stat. 530) and the Nez Perce Tribe of Idaho (86 Stat. 744) have also obtained

statutes governing descent of trust or restricted lands similar to that of the Yakima Tribes. The Umatilla Indians have passed a resolution requesting legislation along the lines of S. 471.

To the extent any interest in trust or restricted land within the Reservation is not lawfully devised by the decedent Indian, the bill provides for its succession to the decedent's lineal descendants. In our judgement, deletion of the word "all" would clarify that those descendants in more remote degrees of kindred take only when their "root" is deceased.

The wording in the bill creates an ambiguity as to whether the surviving spouse obtains one-half interest in the undivided whole for life, or obtains a life estate in a divisible one-half part.

We recommend that this section be clarified in the following manner. If the first alternative is the intended interpretation, we suggest that the bill be revised as follows:

"The surviving spouse of any Indian who dies leaving any interest in trust or restricted land within the Umatilla Reservation shall be entitled to obtain a one-half interest in all such trust or restricted interests in land during his or her lifetime."

If the latter alternative is intended, we recommend that the following language be inserted between the words "of" and "one-half": "a divisible".

We recommend that a new section be added to S. 471:

"The provisions of this Act shall apply to all estates of decedents who die on or after the date of enactment of this Act."

In our judgment, this provision will eliminate the possibility of future litigation resulting from retroactive application of this bill to estates pending before the Examiner of Inheritance at the time of enactment.



Mr. LITTLE. The act of August 10, 1939, provided for the restoration of certain lands to the Confederated Tribes of the Umatilla Reservation. And the act also provided authority for the acquisition through purchase, exchange or relinquishment of any interest in lands within the reservation for the purpose of effecting land consolidation between the Indians and non-Indians.

S. 470 would revise the land consolidation provisions of the 1939 act and as so revised, the act would provide that any acquisitions, sale or exchange of lands by the Secretary of the Interior for the Confederated Tribes shall be in accordance with a land consolidation and development plan approved by the Secretary. The Secretary would be authorized to acquire lands for the tribes and for individual Indians with any funds, including funds furnished by them or by congressional appropriation.

Under S. 470, land acquired for individuals would have to be within the reservation. While land acquired for the tribes would have to be within, adjacent to, or in close proximity to the boundaries of the reservation.

All land acquired within the reservation would be taken in trust by the Secretary for the tribes for the individual involved, while land acquired outside of the reservation would be in the name of the tribe and would not be tax exempt or subject to any restriction by the United States on alienation or management, such as under the Non-intercourse Act.

This proposed bill is actually more restrictive than the Wheeler-Howard Act of 1934, which allows those tribes which adopted it to acquire lands in trust within or without reservation boundaries. Any funds or credits received by the tribes for the sale or exchange of lands are to be used for the purchase of other lands in accordance with their land consolidation and development plan.

Any transactions between non-Indian land owners and prospective Indian purchasers will be on a willing-seller, willing-buyer basis.

Section 7 of the 1939 act, as revised by S. 470, is aimed at alleviating the problems associated with fractionated heirships or multiple ownership of individual tracts of land within the reservation.

The Secretary would be authorized to sell or exchange individual Indian trust lands or trust interest in lands held in multiple ownership. Such sales or exchanges could be made to the tribes or to any enrolled Indian member of the tribes having an interest in the land involved. Any such land or exchange must be authorized in writing by the owners of at least a majority of the trust interest in such lands, unless the Congress enacts general legislation requiring a lesser percentage.

Section 8 of the revised 1939 act would authorize the tribes to mortgage land being acquired where necessary to secure the balance of the purchase price. Foreclosure and sale would be possible pursuant to Oregon State law, with the United States being an indispensable party to any such proceedings involving trust lands within the reservation.

We believe the enactment of S. 470 will aid the tribes in the more effective use and development of their lands and will aid in reducing the problems associated with the use of lands which have a number of owners of fractional interest.

Senate bill 471 would provide Federal statutory authority for the inheritance of trust or restricted lands on the Umatilla Indian Reser-

vation. It is intended to supersede Oregon State law which, since a 1969 amendment, has resulted in the reservation lands passing out of Indian ownership.

Prior to 1969, the law of descent and distribution in Oregon provided that real property would descend in equal shares to the children of the deceased, subject only to the surviving spouse's right to a life-time interest in one-half of all real property owned by the deceased when he or she died.

In 1969, the Oregon law was amended to provide that a surviving spouse is to receive one-half of the net estate, including real property of a person dying without a will. Therefore, since 1969, any non-Indian spouse of a deceased member of the Umatilla Tribe is entitled to one-half interest in trust lands of the deceased.

S. 471 would essentially return to the pre-1969 situation insofar as trust or restricted land is concerned. Current Oregon law would apply to all other portions of the estates of deceased members of the tribes.

This concludes my formal statement.

Mr. Chairman, I have with me from my staff, Mr. Doyce L. Waldrup, Assistant Area Director for Economic Development, Mr. Richard Balsiger, Assistant Area Director for Community Services, and Mr. Wilford Bowker, Area Realty Officer, and we will be pleased to respond to any questions.

Senator HATFIELD. All right. Mr. Little, do any of the other gentlemen accompanying you wish to make a statement?

Mr. LITTLE. No, sir. This is our summary.

Senator HATFIELD. What is the present procedure for the acquisition, sale, and exchange of tribal trust lands?

Mr. LITTLE. Mr. Bowker, would you care to answer that one there in detail? That is your field.

#### **STATEMENT OF WILFORD BOWKER, AREA REALTY OFFICER, PORTLAND AREA OFFICE, BUREAU OF INDIAN AFFAIRS**

Mr. BOWKER. Mr. Chairman, my name is Wilford Bowker. I am the Area Realty Officer. I would like to ask for one clarification.

What is meant by procedure, now?

Senator HATFIELD. What I am trying to get at is what system you follow now in the acquisition of such land and the followup question is going to be: How would Senate bill 470 in any way impact a change—affect that decision?

Mr. BOWKER. We have a procedure which has many steps to follow in sale or acquisition of land for Indians. As far as the Umatilla Tribe is concerned, their only authority to acquire land is the 1939 act, and the act itself is for purchase, exchange, or relinquishment, and that is all.

Senator HATFIELD. Is there any impact that you see that would change that traditional procedure by Senate bill 470?

Mr. BOWKER. Senate bill 470 would authorize the sale of tribal lands, to enhance them, to consolidate an area that would be a more economic unit for them to work with.

Senator HATFIELD. In any land consolidation plan, it would have to be approved by the Secretary?

Mr. BOWKER. Yes, sir.

Senator HATFIELD. Senate bill 470?



Mr. BOWKER. Yes, sir.

Senator HATFIELD. Which is not now the case?

Mr. BOWKER. No.

Senator HATFIELD. And, further, Senate bill 470 does make very clear that any land purchased outside the boundaries would be subject to taxation.

Mr. BOWKER. That is correct.

Senator HATFIELD. By the authorities of Umatilla County, or of the State, or whatever districts may be empowered to impose such a tax.

Mr. BOWKER. That is right.

Senator HATFIELD. In other words, if anything, Senate bill 470 puts more definitive parameters on the whole matter of land consolidation as it exists today under the present statute. Would you agree with that observation?

Mr. BOWKER. Yes; I do.

Senator HATFIELD. Are there any authorities today that provide the tribe with the ability to impose a mortgage on their lands?

Mr. BOWKER. The Umatilla Tribe?

Senator HATFIELD. Yes. Umatilla.

Mr. BOWKER. No; there isn't.

Senator HATFIELD. So this bill would further be different in that situation. Now, are there other tribes that you are aware of that have been granted this authority to put a mortgage on trust lands?

Mr. BOWKER. Yes; in the Portland area we have three other tribes that have special legislation that enabled them to do the very thing that this proposed legislation would enable the tribe to accomplish.

And those three tribes are the Swinomish Tribe, Spokane Tribe, and the Tulalip Tribe; which are all in the State of Washington.

Senator HATFIELD. Could you make any observation or analysis on the consolidation land program, similar to the one proposed in 470, such as, perhaps, the Warm Springs?

Mr. BOWKER. The Warm Springs has the land consolidation program. However, they do fall under the Wheeler-Howard Act of 1934. But they did have limitations on expending tribal funds by the Appropriations Act; until that was removed very recently. So they went to Congress and had an act passed in the mid-sixties, that authorized them to expend tribal funds even though this appropriation limitation was there. The appropriations limitation kept the Umatilla Tribes from exercising whatever authority they had in the 1939 act, as far as purchasing land.

Senator HATFIELD. All right. Thank you very much. Mr. Little, I appreciate your presence here today. I hope you will be able to stand by in case other questions arise. These will be referred to you later. I would like now to invite the County Commissioners from Umatilla County to come forward. Commissioners Ford Robertson and Woody Starrett.

#### STATEMENT OF F. K. (WOODY) STARRETT, CHAIRMAN, UMATILLA COUNTY BOARD OF COMMISSIONERS

Mr. STARRETT. Senator Hatfield, it is a pleasure to be here. I am addressing only Senate bill 470.

Senator HATFIELD. All right.



MR. STARRETT. I am F. K. Starrett, Chairman of the Umatilla County Board of Commissioners. It is my pleasure to testify before you as concerns the lands on the Umatilla Indian Reservation. My testimony will, in the main part, address the tax lands on the reservation and the division of the different taxing districts.

The maps that I have here denote the lands that are assessable and those that are tribal lands and not assessable. Those colored yellow are the lands on the reservation on which there are no taxes. I will show you those \* \* \* and the assessor will have my hide if I don't get those back to him but I will get you some copies if you need them.

The other lists I have, which are these tax lists I believe you have, were prepared by the tax assessor and reflect the various dollar amounts of the various districts. As an example, school district 16R gets nearly \$300,000 of tax revenues from land valued at \$21 million.

This checkerboard of taxable lands, you might have noticed the map, the yellow being nontaxable, totals \$29 million in appraised values. County, city, and other tax districts depend on property tax to provide the bulk of their expenditures for mandated services. Oregon does not have a sales tax or other taxes to provide for port, college, cemetery, fire, or other districts. Property tax is vital to providing money for local governments and services.

The quality of life in Umatilla County is a concern of the governing bodies. We would opt that taxes be applied equally and the benefits returned fairly to every citizen. As we consider the possibility of less and less area being taxed without reducing the needs on the outside, or an outside replacement of the tax dollars, we can expect the lands outside the reservation would carry higher and higher taxes and lower economic return.

This shadow of this shifting land, tax load, uprooting third and fourth generation family farms, and other social economic trending has provoked alarm. All those living on reservation lands have a heritage, no matter what their nationality and are looking to the Government for fair and equitable treatment. In short, I am suggesting there is a delicate balance in social as well as economic values on reservation lands. These lands are in the heart of Umatilla County and what affects them affects all the county.

In summary, these exhibits are rough figures of the tax load that presently exists and the maps reflect the entanglement of the districts and the ownership. I hope that I have made the point, that decisions inside the tribal boundaries can have profound effects, inside and out, and affect the entire county. The final point was that economics and the social well-being of Umatilla County residents are as interwoven emotionally as are the lands physically attached. It would take a very delicate surgery to complete such an operation.

I appreciate your time. If you have questions, I will try to respond.

Senator HATFIELD. Thank you.

Your prepared statement will be entered in the record.

MR. STARRETT. Thank you.

[The prepared statement of Mr. Starrett follows.]

I AM F. K. STARRETT, CHAIRMAN OF THE UMATILLA COUNTY BOARD OF COMMISSIONERS. IT IS MY PLEASURE TO TESTIFY BEFORE YOU AS CONCERNS THE LANDS ON THE INDIAN RESERVATION. MY TESTIMONY WILL, IN THE MAIN PART, ADDRESS THE TAX LANDS ON THE RESERVATION AND THE DIVISION OF THE DIFFERENT TAXING DISTRICTS.

THE MAPS HERE DENOTE THE LANDS THAT ARE ASSESSABLE AND THOSE THAT ARE TRIBAL LANDS AND NOT ASSESSABLE. THOSE COLORED YELLOW ARE THE LANDS ON THE RESERVATION ON WHICH THERE ARE NO TAXES.

THE OTHER LISTS I HAVE WERE PREPARED BY THE TAX ASSESSOR AND REFLECT THE VARIOUS DOLLAR AMOUNTS AND THE VARIOUS DISTRICTS. AS AN EXAMPLE, SCHOOL DISTRICT 16R GETS NEARLY 3 HUNDRED THOUSAND DOLLARS OF TAX REVENUES FROM LAND VALUED AT 21.6 MILLION DOLLARS.

THIS CHECKERBOARD OF TAXABLE LANDS TOTALS \$29,226,510 IN APPRAISED VALUES. COUNTY-CITY AND OTHER TAX DISTRICTS DEPEND ON PROPERTY TAX TO PROVIDE THE BULK OF THEIR EXPENDITURES FOR MANDATED SERVICES. OREGON DOES NOT HAVE A SALES TAX OR OTHER TAXES TO PROVIDE FOR PORT, COLLEGE, CEMETERY, FIRE OR OTHER DISTRICTS. PROPERTY TAX IS VITAL TO PROVIDING MONEY FOR LOCAL GOVERNMENT AND SERVICES.

THE QUALITY OF LIFE IN UMATILLA COUNTY IS A CONCERN OF THE GOVERNING BODIES. WE WOULD OPT THAT TAXES BE APPLIED EQUALLY AND THE BENEFITS BE RETURNED FAIRLY TO EVERY CITIZEN. AS WE CONSIDER THE POSSIBILITY OF LESS AND LESS AREA BEING TAXED WITHOUT REDUCING THE "NEEDS" OR AN OUTSIDE REPLACEMENT OF THE TAX DOLLARS, WE CAN PROJECT THAT LANDS OUTSIDE THE RESERVATION WOULD CARRY HIGHER AND HIGHER TAXES AND LOWER ECONOMIC RETURN.

THE SHADOW OF THIS SHIFTING TAX LOAD, UPROOTING THIRD AND FOURTH GENERATION FAMILY FARMS, AND OTHER SOCIAL ECONOMIC TRENDING HAS PROVOKED ALARM. ALL THOSE LIVING ON RESERVATION LANDS HAVE A HERITAGE NO MATTER WHAT THEIR NATIONALITY AND ARE LOOKING TO THE GOVERNMENT FOR FAIR AND EQUITABLE TREATMENT. IN SHORT, I AM SUGGESTING THERE IS A DELICATE BALANCE IN SOCIAL AS WELL AS ECONOMIC VALUES ON RESERVATION LANDS. THESE LANDS ARE IN THE HEART OF UMATILLA COUNTY AND WHAT AFFECTS THEM AFFECTS ALL THE COUNTY.

IN SUMMARY, THESE EXHIBITS ARE ROUGH FIGURES OF THE TAX LOAD THAT PRESENTLY EXISTS AND THE MAPS REFLECT THE ENTANGLEMENT OF THE DISTRICTS AND THE OWNERSHIP. I HOPE I HAVE MADE THE POINT, THAT DECISIONS INSIDE THE TRIBAL BOUNDARIES CAN HAVE PROFOUND EFFECTS "INSIDE AND OUT" AND AFFECT THE ENTIRE COUNTY. THE FINAL POINT WAS THAT ECONOMICS AND THE SOCIAL WELL BEING OF UMATILLA COUNTY RESIDENTS ARE AS INTERWOVEN EMOTIONALLY AS THE LANDS ARE PHYSICALLY ATTACHED. IT WOULD TAKE VERY DELICATE SURGERY TO COMPLETE SUCH AN OPERATION.

I APPRECIATE THE TIME YOU HAVE ALLOWED FOR THESE REMARKS.



Senator HATFIELD. Commissioner Robertson, would you like to take the stand. We will have both of you make your statements first, then we will have questions.

**STATEMENT OF FORD ROBERTSON, COMMISSIONER, UMATILLA COUNTY, OREG.**

Mr. ROBERTSON. Senator Hatfield, I am Ford Robertson, commissioner of Umatilla County, Oreg., which includes the reservation of the Confederated Tribes of the Umatilla Indians. I am interested in any matter that has to do with the welfare of any of the citizens of the county. My testimony will be in the form of posing two questions about Senate bill 470 and the possible results, mainly from section 6 of the bill.

Money or credits received by the Confederated Tribes of the Umatilla Reservation from the sale or exchange of land or interest in lands shall be used by the tribes for the purchase of other lands or interest in lands or for such other purpose as may be consistent with the land consolidation and development program approved by the Secretary of Interior.

My concern is with this section, "and development program approved by Secretary of Interior."

Could this allow the Confederated Tribes to regulate the use of the waters of the Umatilla River and McKay Creek, such as damming up the streams and using the water for irrigation or recreation on the Indian lands? At the present time, the Umatilla River is the source of supply for the major part of the city of Pendleton's water system. The waters of both the Umatilla and McKay Creek supply the irrigation water for 66,390 acres in the Pendleton, Echo, Stanfield area.

Will these water rights be retained or will they be lost? This would have a very terrific impact on the county from a tax standpoint and would ruin a lot of people, if the water rights were taken away from them. Retention of present water rights should be spelled out in the bill.

Second, would the word "development" allow the Confederated Tribes to erect, operate, and maintain an industrial complex that might not be compatible to the overall welfare and well-being of the citizens of Umatilla County or for that matter, of the State of Oregon? Would such a complex come under the health and safety standards of the State of Oregon and DEQ, or would they come under such standards as might be set by Confederated Tribes?

The above questions might be a supposition on what might happen if they developed. But I think they are of enough importance that the limits or guidelines of development should be spelled out before the bill is passed and not after the problem arises.

In conclusion, as a county commissioner, I wish to thank this committee for holding this hearing on Senate bills 470 and 471 in Pendleton where the people who are concerned about the bills, both pro and con, could have input which could influence your decision or clarify the bill. Thank you.

Senator HATFIELD. Thank you, Commissioner.

I now place your prepared statement in the record.

[The prepared statement of Mr. Robertson follows:]

## SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

VERT AUDITORIUM, JULY 5, 1977

HEARING ON SB 470-471

I am Ford Robertson, Commissioner of Umatilla County, Oregon, which includes the Reservation of the Confederated Tribes of Umatilla Indians. I am interested in any matter that has to do with the welfare of any of the citizens of Umatilla County. My testimony will be in the form of posing two questions about SB 470 and the possible results, mainly from Section 6 of the Bill.

## SENATE SELECT COMMITTEE ON INDIAN AFFAIRS, S.B 470

Section 6

Money or credits received by the Confederated Tribes of the Umatilla Reservation from the sale or exchange of lands or interest in lands shall be used by the Tribes for the purchase of other lands or interest in lands or for such other purpose as may be consistent with the land consolidation and development program approved by the Secretary of Interior.

My concern is with Section 6 "and development program approved by Secretary of Interior."

1. Could this allow the Confederated Tribes to regulate the use of the waters of the Umatilla River and McKay Creek, such as damming up the streams and using the water for irrigation or recreation on the Indian Lands?

At the present time, the Umatilla River is the source of supply for the major part of the City of Pendleton's water system.

The waters of both the Umatilla and McKay Creek supply the irrigation water for 66,390 acres in the Pendleton, Echo, Stanfield area.

Will these water rights be retained or will they be lost? This would have a terrific impact on the County from a tax standpoint and would ruin a lot of people if the water rights were taken away from them. The retention of present water rights should be spelled out in the Bill.

2. Would the word "development" allow the Confederated Tribes to erect, operate and maintain an industrial complex that might not be compatible to the overall welfare and well being of the citizens of Umatilla County or for that matter, of the State of Oregon? Would such a complex come under the health and safety standards of the State of Oregon and DEQ or would they come under such standards as might be set by Confederated Tribes?

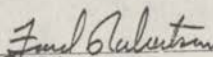


## SENATE SELECT COMMITTEE ON INDIAN AFFAIRS, S.B. 470

The above questions might be a supposition on what might happen if they developed. But, I think they are of enough importance that the limits or guidelines of development should be spelled out before the Bill is passed and not after the problem arises.

In conclusion, as a County Commissioner, I wish to thank this Committee for holding this hearing on S.B 470 and 471 in Pendleton where the people who are concerned about the Bills, both pro and con, could have input which could influence your decision or clarify the Bill.

Thank you.

  
\_\_\_\_\_  
Ford Robertson  
County Commissioner

Senator HATFIELD. First, I would like to address a response to Commissioner Starrett, as he has asked for interpretation or a definition, and then I will address my response to Commissioner Robertson.

On page 2, Commissioner Starrett, of your prepared testimony, you indicate that the shadow of this shifting taxload uprooting third and fourth generation family farms and other social economic trending, has provoked alarm. I would like to try to underscore with every conceivable power I have, the wording of the bill and the intent of the bill is to create this relationship purely on a land exchange or land sale, purely on a voluntary basis.

As I indicated in my opening statement, it has to be a willing buyer and a willing seller. And so the fear of uprooting somehow that something is happening beyond the control of the existing parties, is just not in the bill, nor is it contemplated, nor is it intended or in any way implied. I would like to just try to allay that particular fear that you have represented here today, that you have reflected from your constituents.

And if there is any way in which you feel the bill could be better worded than the present language to convey that intent, I am certainly very open to suggested change of wording. It was thought when this bill was drafted that this wording did that very thing. But if you have some better wording, I certainly would welcome it.

And I would also like to ask about the matter of taxes and the impact of land consolidation on taxes. Since the tribe today has no trust funds and no other funds available for the purpose of land acquisition, it becomes very apparent that the tribe would have to sell trust lands in order to raise the funds necessary for other purchases, because Senate bill 470 authorizes that kind of sale.

Now, don't you feel or wouldn't you expect that the sale of existing trust lands, which would take them out of the trust and thereby put them back on the tax rolls of Umatilla County, would tend to mitigate against tax impact on the trust land acquisition? In other words, wouldn't there be some mitigation or offset here of lands coming on the tax rolls, somewhere relating to those lands that would be taken off the tax rolls? Would you agree that there would be some mitigating factor there?

Mr. STARRETT. Some, yes.

Senator HATFIELD. Also, I would like to ask you, Commissioner, about the present services that you or the country renders to the tribe on the reservation. Do you have an estimate of dollars, or any other way, in which you would express what kind and the amount of services you presently render to the tribes?

Mr. STARRETT. I think I could.

Senator HATFIELD. Could you get that for the record?

Mr. STARRETT. Fine. Whatever you want. Let's see if I can remember. I think first off I would have to say it is easier to be a critic, which is my position here, and I sympathize with those who try to write a bill that has that which we want in it.

Somewhere along the line, we talked about the taxes that were generated as related to services. There are \$628,000 of tax dollars coming out of there. They provide funding for the college. Some of the Indian people go to the college. They provide cemetery districts. They provide our sheriff and search and rescue, and they provide a lot of other funding.

Hopefully that whole \$628,000 is going into some services that provided back to that taxing district. So that is a concern.

The other thing you mentioned about this exchange. I think there is one word in there that they can mortgage that, so if they had, for instance, a \$100,000 piece of property, which was completely owned, and they found the right sort of a person who would say, OK, you can mortgage that for \$80,000. They could, in fact, buy \$80,000 of other land, which might then in turn be mortgaged, which then might be in turn mortgaged, which could erode that tax base rather badly.

So that is a little of the concern that I have in that area.

It isn't exactly like Jesus feeding the loaves of bread and all that to the multitudes, but it could get where you have maybe the entire reservation today under certain mortgaging things, could go back under the tribal ownership. And in that case, the entire \$628,000 of taxable money would not be available, which would be shifted to the outer areas and that is my concern.

Did I touch most bases?

Senator HATFIELD. Yes, yes; you did.

Now, with the prospective land consolidation, which is to develop a more sound economic base: Would you not anticipate that there could possibly be a reduction of some welfare and social services now provided, as the economic base became stronger and developed?

Mr. STARRETT. I think that is a good thought and that is a very good point. We would like that.

Certainly, we want no second-class citizens. We want everybody to have equal opportunities and improve themselves.

Senator HATFIELD. I thank you very much, Commissioner.

Commissioner Robertson, you raise two very legitimate questions that I appreciate very much your bringing into the open, and again I can only respond by referring back to both the wording and the intent of the bill to your first question.

Senate bill 470 would authorize acquisition of water rights on the same basis as land. And that is strictly on a voluntary basis. Senior water rights that might exist would, of course, have to be respected because in no way does this bill attempt to change the priority of water rights, either on trust lands or lands that would be acquired.

As you know, there is a long history of water rights as it relates to Indian lands and others. You are familiar, of course, with the *Winters* doctrine which tends to be the governing authority and which was promulgated by the Ninth Circuit Court, I believe, back in 1908, or so. And in that the court was very clear in its enunciation of what rights the Indians had or did not have. And in one part of that decision, they indicated very clearly that the Indians' title to land includes title to the water on that land, unless it was specifically excluded or especially diminished or denied to them.

Another factor in that decision by the court was in the treaties, the Indians were granting certain things to the United States, not vice versa. In those treaties, it was the Indians granting to the United States, not the United States granting to the Indians.

So given this doctrine as the governing body of law, the application here to the Umatillas right to water in the Umatilla River and other streams on the reservation, would, therefore, date back to the date of creation of the reservation in 1855 and, thus, those rights would be



senior to any water rights held by non-Indian users living on the deeded land within the reservation, since those rights could only have been acquired after the Allotment Act of 1885.

Now, I am no expert in water rights as such, but, again based upon the intent of the bill—and again I reiterate we welcome clarifying language or better wording, in order to convey and to lock in our intent—is that all of this exchange would be purely on a voluntary basis with that water on the same basis as the land acquisition.

You raise a second question relating to the matter of what would be the laws applied or rules applied in this word “development.” How would such a complex come in under the health and safety standards in the State of Oregon DEQ or would they come under such standards as might be set by the Confederated Tribes.

There is no authority to act in violation of State laws or regulations conveyed in this bill. They would be required to comply with those existing State laws as any other person. So we are not granting them any exempt status. We are not conveying or investing them with any special status in relation to those existing laws, which you ask under your second question.

And again, I can assure you that drafting legislation, as the Commissioner said, is a difficult task and if you have some suggestions or others in the audience have some suggestions to better clarify any of these points that I have indicated was the intent in the legislation, that we would welcome it. I am very grateful to you.

Now, I would like to invite Mr. Leslie Minthorn, who is chairman of the board of trustees of the Confederated Tribes of the Umatilla Indian Reservation, and Mr. Doug Nash, who is the attorney for the Confederated Tribes of the Umatilla Indian Reservation.

**STATEMENT OF LESLIE MINTHORN, CHAIRMAN, BOARD OF TRUSTEES, CONFEDERATED TRIBES, UMATILLA INDIAN RESERVATION; ACCOMPANIED BY DOUG NASH, ATTORNEY FOR THE CONFEDERATED TRIBES**

Mr. MINTHORN. Thank you, Senator Hatfield.

My name is Leslie Minthorn and I represent the Confederated Tribes, Umatilla Indian Reservation.

The statement that we have prepared we would like to have introduced as part of the record and we also have some maps that visualize and explain pretty much what we are looking for as far as this legislation process is involved in land consolidation and the inheritance measure.

The people of our reservation, I think, are a pretty significant part of this community. They are entitled to a strong capable government to protect their interests and to develop programs that are beneficial to their people. It is through this tribal government that we have found some of these problems in working with various programs that the land consolidation measure and the inheritance measure would help alleviate, if these two bills were enacted.

Through the years of working with the tribal government in developing programs that relate to housing, education, health, planning, zoning, we have seen the patterns that cause these problems, the frac-

tionized ownership of lands, the scattered parcels of lands that the tribe owns that are scattered throughout the reservation.

Through these two pieces of legislation, we are asking the congressional delegation to help alleviate some of these problems relating to the inheritance of trust allotments and the land consolidation of those lands.

The inheritance bill, S. 471, in very simple terms to us that live on the reservation that experience these things, the concept of the bill represents our efforts to have trust allotments that are not subject to the provisions of a valid will passed by intestate succession in a manner acceptable to the tribe.

And by that the tribe has said that this bill provides that trust or restricted allotments for lands that are not subject to a valid will, shall descend to the lineal descendants of the Indian decedents. So that the land passes down to those persons who are entitled to hold land in trust status for the tribe and their people.

Prior to 1969, this, in fact, was acceptable to the tribe. The law of descent and distribution of the property would descend in equal shares to the children of the deceased. Property would descend only to the right of dower in a surviving spouse and consisting only of a lifetime interest in one-half of all the land that the deceased owned at the time of death.

The amendment of the 1969 law had, in effect, allowed trust allotments to go out of trust where an Indian or a non-Indian spouse, a non-tribal member, inherited that property, they took that property in fee, thereby losing trust interest on the reservation lands.

The present law as it applies to the Umatilla Indian Reservation and the members of the tribe compounds the already fractionalized ownership of lands. It has already been mentioned—the fractionalized ownership pattern on the reservation—and we deal with fractions. I think on page 7 of our prepared statement, those figures speak for themselves, as far as fractionalized interests. And these are today's figures for many generations that have already passed. We don't know what these figures will be in the future but those figures need to be corrected. By having trust allotments descend only to lineal descendants, the property will pass to persons of Indian blood, maintaining the trust status and will minimize the fractionalized ownership of land and maintain the base of land in trust and restricted status on the reservation.

The land is the only thing, the water, the timber, that these people live by. The land base is very critical to their survival for future generations. And it is by the enactment of this bill, if this bill is passed, that some of the fractionalized ownership patterns on the reservation will be minimized for those generations who are yet to come, who have now today nothing more than handfuls of dirt as their share of that piece of ground.

In regards to the S. 470 bill—the land consolidation bill—I think it goes without saying that a key role is the administration in the operation and maintenance of a tribal government. It is very critical. You need to have a good strong sound administrative body to manage those resources.



What we have left today on the reservation is the remains of the Allotment Act and the settlement process. What is left is very critical to the future growth and development of our reservation.

Our tribal needs are expanding for housing, farming, timber, business, commercial and other tribal projects. The tribe needs to produce more tribal income and we need a means to provide that income.

The land consolidation bill, which has been introduced as S. 470, is a method by which we can make the most of what we have left. The tribe owns many parcels of land, scattered throughout the reservation. This bill would provide a method by which the tribe can consolidate existing lands owned by the tribe into large usable tracts.

Also, to reacquire lands offered for sale by willing sellers, trading land by willing traders, or to use the mortgage or deeded trust as security when purchasing lands. The use of a mortgage has never been available to the tribe before. This bill would allow that most commonly used device in your everyday lives if you are non-Indian, as a security. We have never had the opportunity to use that device. This bill would authorize that.

Probably the only other area that I think I should stress in some of the concerns, is that all of the transactions involving the Confederate Tribes in any nonmembers, is that all of the transactions are voluntary. There is no condemnation. Everything is on a voluntary basis.

The land consolidation plan and the inheritance measure are two specific bills that we are asking the Congress to pass to allow future development. Tax bases have been mentioned. We pay taxes. Property tax, no. We pay all of the other tribal tax that some of you people pay.

Last year on our tribal organization, there was a total payroll of roughly a half million dollars—\$473,991. Through the first quarter of this year, our gross payroll for January through March, just in a 3-month period, was \$178,984. Additional taxes would be minimized at the very beginning because we do not have a fund set aside to purchase these lands through this land consolidation bill.

It will take time to develop a plan, and it will take time for the Secretary to approve that plan. So the tax base that Mr. Starrett and the county commissioners are talking about is nonexistent, as in the very beginning, none of these lands were taxable in the first place.

I think with that, Senator Hatfield, that concludes just a summary of some of the things that I would like to point out at this time. Mr. Nash and myself will be glad to answer any questions that you have pertaining to the two bills.

Senator HATFIELD. Does Mr. Nash have anything to say?

Mr. MINTHORN. No, sir.

Senator HATFIELD. Could I ask a number of questions to underscore points that have been raised?

Does the tribe today have a land consolidation development plan as described in Senate bill 470?

Mr. MINTHORN. No; we do not.

The consolidation plan upon approval or enactment of this legislation in part would develop that plan. There is none now.

Senator HATFIELD. Is there any plan in process that you could give us a time frame as to when one might be developed?



Mr. MINTHORN. We have several plans that are already developed. The overall economic development plan that has been in existence for 2 or 3 years we have in a technical assistance report that was developed in 1969. We have a comprehensive plan. We have the tools available to develop this plan that will be approved by the Secretary. A lot of the preliminary work has already been done in these two different documents.

Senator HATFIELD. What about a land consolidation plan? Is there any preliminary work going on in that direction?

Mr. MINTHORN. Not at this time. Not until the enactment of this legislation.

Senator HATFIELD. Are tribal planning sessions open to the public?

Mr. MINTHORN. All of our meetings are open to the public. The board of trustees and the general council meetings, they are all open and they are all publicized.

Senator HATFIELD. Would the tribe then conceive of the possibility of having a land consolidation plan, before submitting to the Secretary, be subject to a public hearing on which others might be able to testify and participate?

Mr. MINTHORN. The public hearing on the land consolidation bill—at times we have found that public hearings don't get the job done, but we would have no objection to having the land consolidation plan placed in the Federal Register and comments offered on that basis.

Mr. HATFIELD. But you would not at this time, as I understand your statement, be agreeable to having that planned consolidation development plan subject to a public hearing before the Secretary receives a copy?

Mr. MINTHORN. I don't believe there would be any reason for objection, other than the fact that it would be a burdensome process prior to reaching the Secretary for enactment.

Senator HATFIELD. On the other hand, it might avoid a lot of problems or difficulties arising by people who had felt that they would have liked to have had their views or their voice heard during the process and I would urge the tribe to consider that possibility if this bill passes, just in a practical way to try to avoid later difficulties or delays with problems.

I think that public hearings may be burdensome at times but, on the other hand, they can be a good method by which people can get clarification of intent, express viewpoints, get it out of their system, and contribute in a sense as well to refining and developing a better plan.

This very process we are going through today, hopefully, will even develop a better bill than what we came to Pendleton with. But I am only making that as a suggestion for your consideration. We have not any language in the bill that would require it.

Does the tribe now have zoning authority over lands within the reservation boundaries?

Mr. MINTHORN. Yes; we have had an interim zoning ordinance since 1973 with the county, which is a joint interim zoning ordinance, that controls zoning of the various categories on the reservation. Yes, we do have.

Senator HATFIELD. It is not exclusive but concurrent with the county? Is that right?

Mr. MINTHORN. Both parties must agree to any requests.

Senator HATFIELD. In other words, you just cannot unilaterally zone.

Mr. MINTHORN. No; we cannot.

Senator HATFIELD. Does the tribe have any plans, preliminary or otherwise, for the development of an irrigation project on the Umatilla River?

Mr. MINTHORN. No; we do not.

Senator HATFIELD. Does the tribe anticipate or have you thought about the possibilities of developing such a project?

Mr. MINTHORN. No; we haven't.

Senator HATFIELD. Does the tribe contemplate an exercise of the right of eminent domain in effecting the land consolidation proposal in Senate bill 470?

Mr. MINTHORN. No. We explained that, I think, I don't know how many times; Mr. Nash has explained it. No.

Senator HATFIELD. Then, of course, as I indicated earlier, we grant no condemnation power within the bill either. It has been said, Mr. Minthorn, by some that they have a fear that possibly the tribe might use the consolidation plan as proposed in Senate bill 470, through harassment or otherwise, to drive non-Indian landowners off the reservation. How do you respond to that concern?

Mr. MINTHORN. We have heard that concern throughout the process and there is no truth to it and I think those are pretty damaging statements as far as the relationship between the people that live on the reservation and the Indian people.

There never has been any discussion concerning driving people from the reservation, there is no authority in the bill. There never has been. It never has been discussed, as far as I am concerned, the board of trustees of the governing body.

The people that are making these comments, I think, are making very damaging statements that are affecting the relationship between those people who live on the reservation and our neighbors, and there is no truth to it, whatsoever.

Senator HATFIELD. What kind of authority would you have under that type of plan, if that plan existed? I see nothing in the bill that would grant you authority——

Mr. MINTHORN. There is no authority.

Senator HATFIELD. What other power would you have to exercise, if this were the situation? Do you have other powers, under other laws or treaties, that would give you this ability?

Mr. MINTHORN. To remove people from the reservation?

Senator HATFIELD. Other than on a voluntary basis.

Mr. MINTHORN. No. Again; no.

Senator HATFIELD. All right I would like to thank you very much, Mr. Minthorn.

Mr. Nash, do you have anything further to say?

Mr. NASH. No, sir, we don't.

Senator HATFIELD. Thank you very much. Mr. Minthorn, your prepared statement will be placed in the record at this point.

Mr. NASH. Thank you, sir.

[The prepared statement of Mr. Minthorn follows:]



STATEMENT OF  
MR. LESLIE MINTHORN, CHAIRMAN  
BOARD OF TRUSTEES  
CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION  
BEFORE THE  
INDIAN AFFAIRS SUBCOMMITTEE  
UNITED STATES HOUSE OF REPRESENTATIVES

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MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM LESLIE MINTHORN, CHAIRMAN OF THE BOARD OF TRUSTEES OF THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION. THE BILLS THAT WE ARE HERE TO DISCUSS TODAY AND INDEED, THIS HEARING, ARE MILESTONES IN THE HISTORY AND DEVELOPMENT OF OUR TRIBE.

WE HAVE WORKED HARD IN RECENT YEARS TO DEVELOP PROGRAMS THAT ARE BENEFICIAL TO OUR TRIBE AND TO BUILD A STRONG AND CAPABLE TRIBAL GOVERNMENT. WE FEEL THAT OUR MEMBERSHIP IS ENTITLED TO A TRIBAL GOVERNMENT THAT CAN SERVE AND PROTECT THEIR INTERESTS. WE ARE PROUD OF WHAT WE HAVE ACCOMPLISHED ON OUR RESERVATION. HOWEVER, AS IN ALL MAJOR ENDEAVORS, PROGRESS CAN ONLY BE MADE TO A CERTAIN POINT BEFORE OBSTACLES ARE ENCOUNTERED THAT WOULD BE INSURMOUNTABLE WITHOUT ADDITIONAL ASSISTANCE.

WE HAVE FOUND OURSELVES AT THAT POINT RECENTLY. WE HAVE ENCOUNTERED TWO DISTINCT PROBLEMS THAT IMPEDE OUR FURTHER DEVELOPMENT AND IT IS WITHIN THE POWER AND AUTHORITY OF CONGRESS TO REMEDY THESE PROBLEMS. THUS, THROUGH THESE TWO PIECES OF LEGISLATION, WE ARE ASKING YOUR ASSISTANCE IN RESOLVING MATTERS RELATING



TO THE INHERITANCE OF TRUST ALLOTMENTS AND LAND CONSOLIDATION ON THE UMATILLA INDIAN RESERVATION. I WOULD LIKE TO DISCUSS EACH OF THE TWO MATTERS SEPARATELY.

HOWEVER, BEFORE DEALING WITH THE SPECIFIC BILLS, I WOULD LIKE TO PROVIDE YOU WITH SOME BACKGROUND ON BOTH OUR RESERVATION AND TRIBAL GOVERNMENT SINCE BOTH WILL BE AFFECTED BY THE PASSAGE OF THESE MEASURES.

THE UMATILLA INDIAN RESERVATION IS SITUATED IN NORTHEASTERN OREGON AND IS PRIMARILY WITHIN UMATILLA COUNTY, THERE BEING APPROXIMATELY 1000 ACRES SITUATED IN UNION COUNTY. THE RESERVATION WAS CREATED BY THE TREATY OF JUNE 9, 1855, 12 STAT. 941. AS CREATED, IT ENCOMPASSED APPROXIMATELY 245,799 ACRES, ALL OF IT HELD PURSUANT TO THE TRIBE'S ABORIGINAL TITLE.

THE RESERVATION CONTAINS A GREAT DIVERSITY OF CLIMATES AND LAND. THE NORTHERN PORTION IS CHARACTERIZED BY FLAT, FERTILE SOILS THAT ARE VALUABLE FOR DRY LAND FARMING. THE UMATILLA RIVER BISECTS THE RESERVATION FROM EAST TO WEST AND CONNECTS WITH SEVERAL TRIBUTARIES WITHIN THE BOUNDARIES. TO THE SOUTH, ONE ENCOUNTERS HILLSIDES SUITABLE FOR GRAZING PURPOSES, AND ULTIMATELY, IN THE BLUE MOUNTAINS, TIMBERED COUNTRY.

BY THE ACT OF MARCH 3, 1885, 23 STAT. 340, CONGRESS PROVIDED FOR THE ALLOTMENT OF THE RESERVATION. UNDER THIS ACT, ALL TRIBAL MEMBERS ALIVE AT THAT TIME WERE GIVEN A PARCEL OF LAND TO FURTHER THE GOVERNMENT'S GOAL OF "CIVILIZATION" BY ENCOURAGING FARMING AS AN OCCUPATION. OF COURSE, MANY INDIANS AT THAT TIME WERE NOT

DISPOSED TO BE FARMERS AND SOME OF THE ALLOTMENTS WERE SOLD. ONE TRACT OF LAND WAS SET ASIDE AS A FARM SCHOOL. SOME WAS RESERVED FOR THE TRIBE AND THE REMAINDER WAS TO BE SOLD TO NON-INDIANS. THE ALLOTMENT PROCESS AND SUBSEQUENT OPENING OF THE RESERVATION TO NON-INDIAN SETTLEMENT WAS BROUGHT ABOUT BY PRESSURE FROM NON-INDIANS IN THE AREA WHO COMPLAINED THAT RESERVATION LAND WAS "LYING WASTE" AND THAT IT WOULD SUPPORT SOME 1500 FARMING FAMILIES. McNAB, A CENTURY OF NEWS AND PEOPLE IN THE EAST OREGONIAN, PP. 77-80 (1975). APPROXIMATELY 74,000 ACRES WERE THUS SOLD. THE ACT OF AUGUST 10, 1939, 53 STAT. 1351 RESTORED "TO TRIBAL OWNERSHIP THE UNDISPOSED OF SURPLUS LANDS OF THE UMATILLA INDIAN RESERVATION, OREGON, HERETOFORE OPENED TO ENTRY OR OTHER FORM OF DISPOSAL UNDER THE PUBLIC LAND LAWS...".

AS MENTIONED EARLIER, THE RESERVATION ENCOMPASSED 245,799 ACRES WHEN CREATED. OF THAT TOTAL TODAY, 16,168 ACRES ARE TRIBAL TRUST LAND AND THE TRIBE OWNS 22 ACRES IN FEE SIMPLE. TRUST ALLOTMENTS TOTAL 68,434 ACRES AND 830 ACRES ARE OWNED BY TRIBAL MEMBERS IN FEE SIMPLE. THE REMAINDER IS DEEDED LAND OWNED BY OTHER THAN INDIVIDUAL INDIANS OR THE TRIBE.

FROM 1855 TO THE PRESENT WE HAVE SUFFERED SIGNIFICANT LOSSES OF OUR LAND BASE. FROM THE RESERVATION THAT WAS SET ASIDE FOR THE TRIBE AND TRIBAL PURPOSES IN 1855, THAT SAME TRIBE IS LEFT TODAY WITH THE "REMAINS" OF THE ALLOTMENT AND SETTLEMENT PROCESS. ONE OF THE BILLS TO BE DISCUSSED TODAY PROVIDES A METHOD BY WHICH WE COULD REACQUIRE SOME OF THE LANDS THAT HAVE BEEN LOST

AND BETTER MANAGE THAT WHICH WE HAVE.

A TRIBAL GOVERNMENT PLAYS A KEY ROLE IN THE ADMINISTRATION AND DEVELOPMENT OF LAND RESOURCES ON ANY RESERVATION. I AM PROUD TO SAY THAT OURS IS A VERY ACTIVE AND PROGRESSIVE TRIBAL GOVERNMENT THAT HAS DEVELOPED RAPIDLY IN THE PAST FEW YEARS. I WOULD LIKE TO REVIEW FOR YOU THE STRUCTURE AND SCOPE OF OUR TRIBAL GOVERNMENT.

WE HAVE A GOVERNING BODY WHICH CONSISTS OF NINE MEMBERS, KNOWN AS THE BOARD OF TRUSTEES WHICH IS ELECTED BY THE GENERAL COUNCIL WHICH CONSISTS OF ALL TRIBAL MEMBERS OF LEGAL VOTING AGE. OUR CONSTITUTION AND BY-LAWS WERE ADOPTED IN 1949. ONE AMENDMENT TO THE CONSTITUTION WAS APPROVED IN NOVEMBER OF 1976.

AT THE PRESENT TIME, WE HAVE SOME 24 COMMITTEES, TRIBAL DEPARTMENTS AND ENTERPRISES. AMONG THESE ARE COMMITTEES THAT ARE RESPONSIBLE FOR A SPECIFIC SUBJECT AND REPORT TO THE BOARD OF TRUSTEES ON RELEVANT MATTERS. THEY INCLUDE ENROLLMENT, BUILDING, PLANNING, JOHNSON O'MALLEY, CHILD CARE, FISH, CREDIT, SENIOR CITIZENS, CELEBRATION, LAW AND ORDER, HEALTH, EDUCATION AND HOUSING COMMITTEES. THERE ARE ENTERPRISES WHOSE FUNCTION IS TO ENGAGE IN PROFIT MAKING ACTIVITIES FOR THE TRIBE. THEY INCLUDE FARM, FOREST AND RANGE, CONSTRUCTION AND COMMERCIAL ENTERPRISES.

A SOURCE OF PARTICULAR PRIDE IS THE MISSION MARKET, A GROCERY STORE WITH AN ARTS AND CRAFTS SHOP, GAS SALES AND A LAUNDROMAT THAT WAS RECENTLY OPENED ON THE RESERVATION AND IS OPERATED BY THE COMMERCIAL ENTERPRISE COMMITTEE.



OUR HOUSING AUTHORITY HAS CONSTRUCTED AND NOW MANAGES 84 HOUSING UNITS. FIFTY MORE ARE TO BE CONSTRUCTED IN THE NEAR FUTURE.

COMMUNITY HEALTH PROGRAMS INCLUDE COMMUNITY HEALTH REPRESENTATIVES, ALCOHOL AND DRUG PROGRAM, ZONING OFFICE, ADULT BASIC EDUCATION PROGRAM AND NEEDS ASSESSMENT. THESE PROGRAMS HAVE BEEN DEVELOPED TO MEET THE NEEDS OF OUR PEOPLE OR TO PROVIDE WISE MANAGEMENT AND PROTECTION OF OUR TRIBAL INTERESTS.

IT IS THROUGH THE OPERATION OF THIS TRIBAL GOVERNMENT STRUCTURE THAT WE HAVE FOUND THE PROBLEMS THESE BILLS ARE DESIGNED TO CORRECT.

### UMATILLA INHERITANCE BILL

THE BILL THAT HAS BEEN INTRODUCED AS S. 471 IN THE SENATE AND H.R. 2540 IN THIS HOUSE OF REPRESENTATIVES IS THE UMATILLA INHERITANCE BILL. THIS BILL REPRESENTS OUR EFFORT TO HAVE TRUST ALLOTMENTS THAT ARE NOT SUBJECT TO THE PROVISIONS OF A VALID WILL PASS BY INTESTATE SUCCESSION IN A MANNER ACCEPTABLE TO THE TRIBE.

AS YOU ARE AWARE, THE DESCENT AND DISTRIBUTION OF INDIAN TRUST ALLOTMENTS IS SUBJECT TO FEDERAL LAW. THAT LAW PROVIDES THAT THE DESCENT AND DISTRIBUTION OF SUCH PROPERTY SHALL BE IN ACCORDANCE WITH THE LAWS OF THE STATE WHEREIN IT IS LOCATED. IN 25 USC 348, IT IS PROVIDED IN PART, "...THAT THE LAW OF DESCENT AND PARTITION IN FORCE IN THE STATE OR TERRITORY WHERE SUCH LANDS ARE SITUATE SHALL APPLY THERETO AFTER PATENTS THEREFORE HAVE BEEN

EXECUTED AND DELIVERED...". SIMILARLY, IN 25 USC 373, WHICH IS DERIVED FROM THE ACT OF JUNE 25, 1910, 36 STAT. 856, PROVISION IS MADE FOR THE APPROVAL OF WILLS INVOLVING TRUST ALLOTMENTS BY THE SECRETARY OF THE INTERIOR. WHERE SUCH A WILL IS DECLARED INVALID, THE STATUTE PROVIDES THAT "...THE PROPERTY OF THE TESTATOR SHALL THEREUPON DESCEND OR BE DISTRIBUTED IN ACCORDANCE WITH THE LAWS OF THE STATE WHEREIN THE PROPERTY IS LOCATED". IN ACCORDANCE WITH THESE PROVISIONS, THE INTESTATE PASSING OF TRUST ALLOTMENTS ON THE UMATILLA RESERVATION HAS BEEN SUBJECT TO THE LAWS OF THE STATE OF OREGON WHICH ARE FOUND IN OREGON REVISED STATUTES, CHAPTER 112, §112.015 - 112.115.

FOR MANY YEARS THIS WAS SATISFACTORY TO US. HOWEVER, IN 1969, THE STATE OF OREGON REVISED IT'S LAWS ON INTESTATE SUCCESSION. A SUMMARY DESCRIPTION OF THE EVOLUTION OF OREGON'S INTESTATE SUCCESSION LAWS IS ATTACHED TO THIS STATEMENT FOR YOUR REFERENCE. AFTER SEVERAL YEARS EXPERIENCE UNDER THE NEW LAWS, THE MEMBERS OF OUR TRIBE EXPRESSED DISSATISFACTION WITH THE RESULTING DISTRIBUTION OF PROPERTY. OTHER PROBLEMS WITH THE NEW LAWS ALSO BECAME EVIDENT IN THAT THE DISTRIBUTION REQUIRED, COMPOUNDED THE ALREADY DIFFICULT PROBLEM OF FRACTIONATED OWNERSHIP AND LANDS BEGAN TO GO OUT OF TRUST.

FRACTIONATION OF LAND OWNERSHIP IS A PERPLEXING PROBLEM THAT PLAGUES MANY PARCELS OF LAND ON OUR RESERVATION. BOTH THE INHERITANCE AND LAND CONSOLIDATION BILLS ADDRESS THIS PROBLEM. I WOULD LIKE TO GRAPHICALLY DISPLAY THIS PROBLEM TO YOU. IT BEGINS,

AS YOU KNOW, WHEN THE OWNER OF AN ALLOTMENT DIES AND EACH OF HIS HEIRS ACQUIRES AN UNDIVIDED INTEREST IN THE ALLOTMENT, WHEN THEY DIE, THEIR HEIRS EACH OBTAIN AN UNDIVIDED INTEREST AND THE PROCESS CONTINUES IN A PYRAMIDAL FASHION. AFTER MANY GENERATIONS, THE FOLLOWING SITUATIONS, WHICH REPRESENT ACTUAL EXAMPLES OF ALLOTMENTS ON THE UMATILLA INDIAN RESERVATION, RESULT,

<u>ALLOTMENT No.</u>	<u>SHARE</u>	<u>ACREAGE EQUIVALENT</u>	<u>RENTAL RECEIVED</u>	
			<u>OCTOBER</u>	<u>APRIL</u>
A	132/9600	1.09	\$1.09	\$ .00
B	300/604800	.0647	.36	.36
C	30/38880	.0617	.28	.28
D	32/73444	.0348	.13	.13
E	48/24480	.1568	2.36	.00
F	9702/13608000	.0533	.36	.00
G	18/40320	.0357	.00	.02
H	1/70	.5714	.00	.08
I	1/30	2.6	.00	1.48
J	10/2160	.3703	.00	.30
K	15/8640	.0814	.21	.21



I BELIEVE THESE FIGURES SPEAK FOR THEMSELVES. THIS IS ONE OF THE PROBLEMS THAT THIS LEGISLATION WOULD HELP US OVERCOME.

THE INHERITANCE BILL PROVIDES THAT TRUST OR RESTRICTED LAND THAT IS NOT THE SUBJECT OF A VALID WILL SHALL DESCEND TO THE LINEAL DESCENDENTS OF THE INDIAN DECEDENT.

THIS VARIES FROM THE INTESTATE SUCCESSION LAWS OF THE STATE OF OREGON THAT PROVIDE THE FOLLOWING LINE OF SUCCESSION. IF A DECEDENT LEAVES A SPOUSE AND ISSUE, THE NET ESTATE IS TAKEN ONE-HALF BY EACH. IF THERE IS A SPOUSE AND NO ISSUE, THE SPOUSE TAKES THE ENTIRE ESTATE. THAT PORTION OF THE ESTATE THAT DOES NOT GO TO THE SPOUSE SHALL PASS TO THE ISSUE OF THE DECEDENT. IF THERE IS NO ISSUE, THEN TO SURVIVING PARENTS. IF THERE ARE NO SURVIVING PARENTS, THEN TO BROTHERS AND SISTERS. IF THERE ARE NO BROTHERS OR SISTERS, THEN GRANDPARENTS. OF COURSE IF THERE ARE NO HEIRS AT ALL, A PERSON'S NET ESTATE WOULD ESCHEAT TO THE STATE UNDER STATE LAW.

FEDERAL LAWS OF DESCENT AND DISTRIBUTION PRESENTLY PROVIDE THAT WHERE NO HEIRS EXIST, THE DECEDENT'S TRUST PROPERTY WILL ESCHEAT TO THE TRIBE THAT OWNED THE PROPERTY AT THE TIME THE ALLOTMENT WAS MADE. 25 USC §373(A), ACT OF NOVEMBER 14, 1942, 56 STAT. 1021. THIS SUPERCEDES STATE LAW UNDER WHICH AN ESTATE FOR WHICH THERE WERE NO HEIRS WOULD ESCHEAT TO THE STATE.

UNDER THE SYSTEM PRESCRIBED BY STATE LAW, IT IS READILY SEEN HOW TRUST ALLOTMENTS WOULD GO OUT OF TRUST BY GOING TO A

NON-INDIAN SPOUSE OR OTHER RELATIVE WHO WAS NOT ELIGIBLE TO HAVE PROPERTY HELD IN TRUST FOR THEM.

By HAVING TRUST ALLOTMENTS DESCEND ONLY TO LINEAL DESCENDENTS, THE PROPERTY WILL PASS TO PERSONS OF INDIAN BLOOD AND THE TRUST STATUS CAN MORE REGULARLY BE MAINTAINED.

THE SPOUSE OF THE DECEDENT IS NOT IGNORED UNDER OUR BILL. SECTION 2 PROVIDES FOR A LIFE ESTATE FOR A SURVIVING SPOUSE IN ONE-HALF OF THE TRUST OR RESTRICTED PROPERTY. THUS, A SPOUSE, WHETHER INDIAN OR NON-INDIAN, WILL HAVE AN INTEREST IN THE PROPERTY AND A MEANS OF SUPPORT DURING THEIR LIFE WHILE THE TITLE TO THE REMAINDER OF THE LIFE ESTATE AND THE OTHER ONE-HALF OF THE PROPERTY LIES WITH THE LINEAL DESCENDENTS OF THE DECEDENT. THE INTEREST THUS CREATED IN THE SPOUSE IS AKIN TO THE COMMON LAW CURTSEY AND DOWER ESTATES THAT WERE PROVIDED UNDER OREGON STATUTES PRIOR TO 1969. LIKEWISE, THE EMPHASIS ON LINEAL DESCENDENCY PROVIDED UNDER THIS BILL IS SIMILAR TO THE OLDER STATE SCHEME OF DISTRIBUTION.

SECTION 3 OF THE BILL PROVIDES THAT A SPOUSE WHO HAS RECEIVED AN INTEREST IN A TRUST OR RESTRICTED ALLOTMENT BY THE WILL OF THE DECEDENT HAS AN ELECTION AS TO WHETHER TO TAKE THE PROPERTY PURSUANT TO THE WILL OR THE PROVISIONS OF THIS BILL.

THIS BILL, IF ENACTED, WOULD SUPERCEDE STATE LAW AND ALLOW AFFECTED LANDS ON THE RESERVATION TO PASS IN ACCORDANCE WITH ITS TERMS. IT WILL ALLOW THE INTESTATE SUCCESSION OF TRUST OR RESTRICTED PROPERTY IN A MANNER CONSISTENT WITH THE WISHES OF THE

TRIBAL MEMBERS AND WILL GO FAR TO MINIMIZE THE FRACTIONALIZED OWNERSHIP OF LAND AND TO MAINTAIN A BASE OF LAND IN TRUST AND RESTRICTED STATUS ON THE UMATILLA INDIAN RESERVATION.

### LAND CONSOLIDATION BILL

IT HAS BEEN SAID MANY TIMES BEFORE THAT ONE OF THE MOST IMPORTANT THINGS TO THE INTEGRITY AND ECONOMY OF A TRIBAL GOVERNMENT IS A SIZEABLE AND STABLE LAND BASE. I WOULD LIKE TO REAFFIRM THAT PREMISE HERE AND EMPHASIZE THAT THIS IS ESPECIALLY TRUE WHERE, AS IN NORTHEASTERN OREGON, THE ECONOMY OF THE WHOLE AREA IS BASED UPON AGRICULTURE. AS I RELATED EARLIER, VAST AMOUNTS OF TRIBAL LAND ON OUR RESERVATION WERE LOST DUE TO THE ALLOTMENT PROCESS, AND THE OPENING OF THE RESERVATION TO SETTLEMENT BY NON-INDIANS. THAT WHICH REMAINS IN TRIBAL HANDS REPRESENTS A MAJOR FACTOR IN TERMS OF TRIBAL INCOME AND DEVELOPMENT. FARM LANDS ARE CUSTOM FARMED AND PRODUCE TRIBAL INCOME. GRAZING LANDS ARE LEASED AND TIMBERED LAND IS UTILIZED THROUGH TIMBER SALES AND RECREATION. TRIBAL LAND IS ALSO USED FOR HOUSING PROJECTS AND FOR BUILDINGS HOUSING TRIBAL OFFICES AND INDIAN HEALTH SERVICE FACILITIES. THESE NEEDS ARE EXPANDING. THE ACQUISITION OF LAND MEANS ROOM FOR EXPANSION AND INCREASED TRIBAL INCOME WHICH COULD REDUCE THE CURRENT TRIBAL RELIANCE ON FEDERAL GRANTS AND CONTRACTS. THE CONSOLIDATION AND ACQUISITION OF LANDS UNDER TRIBAL OPERATION COULD IMPORTANTLY MEAN MORE JOBS AND A STIMULATED RESERVATION ECONOMY. WE WOULD LIKE TO BE ABLE TO SUPPORT MORE



OF OUR OWN PROGRAMS, BUT WE NEED THE MEANS TO PRODUCE OUR OWN INCOME.

UNFORTUNATELY, WE CANNOT REVERSE HISTORY. WE CANNOT NOW URGE CONGRESS NOT TO PASS THE ALLOTMENT ACT AND POINT OUT THE ADVERSE EFFECT THIS ACT WOULD HAVE ON OUR TRIBE. WE CANNOT NOW URGE THAT THE OPENING OF OUR RESERVATION IS INCONSISTENT WITH THE OBLIGATION OF THE FEDERAL GOVERNMENT TO PROTECT OUR INTERESTS. WE CANNOT NOW REFUTE THE URGINGS OF THE NON-INDIAN COMMUNITY THAT THE LAND ON OUR RESERVATION WAS "LYING WASTE" WHEN, IN FACT, IT WAS BEING "UTILIZED" TO THE HIGHEST DEGREE BY OUR ANCESTORS AS THEY HAD "UTILIZED" THAT LAND AND MORE, FOR CENTURIES BEFORE. WE CAN DEMONSTRATE FOR YOU THAT THE PROPOSED LAND CONSOLIDATION BILL WHICH HAS BEEN INTRODUCED AS S. 470 IN THE SENATE AND H.R. 2539 IN THIS HOUSE OF REPRESENTATIVES IS A METHOD BY WHICH WE CAN MAKE THE MOST OF WHAT WE HAVE TODAY.

OF THE LAND THAT IS PRESENTLY HELD BY THE TRIBE, MUCH IS IN THE FORM OF SMALL PARCELS SCATTERED THROUGHOUT THE RESERVATION. SUCH A SITUATION IS UNDESIRABLE FROM BOTH A MANAGERIAL AND ECONOMIC POINT OF VIEW. WE HAVE A FARMING ENTERPRISE THAT MANAGES OUR FARM LAND AND A FOREST/RANGE ENTERPRISE THAT MANAGES TIMBERED AND GRAZING LANDS. HOWEVER, WITH THE SMALL SCATTERED PARCELS, THE ONLY VIABLE METHOD OF UTILIZATION IS TO LEASE THEM TO OTHER AGRICULTURAL INTERESTS.

WE FACE A DESPERATE NEED TO CONSOLIDATE THESE PROPERTIES

INTO LARGE, USEABLE TRACTS AND TO REACQUIRE SOME OF THE GOOD AGRICULTURAL LAND THAT HAS BEEN LOST TO TRIBAL OWNERSHIP. THE PROPOSED LAND CONSOLIDATION BILL IS THE VEHICLE BY WHICH THIS CAN BE ACCOMPLISHED.

THE CONCEPT OF THE UNITED STATES HOLDING PROPERTY IN TRUST FOR A TRIBE OR INDIVIDUAL IS A GOOD AND NECESSARY ONE. PROBLEMS ARE ENCOUNTERED, HOWEVER, WHEN ONE CONSIDERS THE SALE OR EXCHANGES OF SUCH PROPERTIES OR THE ACQUISITION OF DEEDED LANDS TO BE RETURNED TO TRUST STATUS. THE MOST OBVIOUS EXAMPLE IS WHERE THE TRIBE WISHES TO SELL A PIECE OF LAND THAT IS OF RELATIVELY LITTLE VALUE TO THE TRIBE DUE TO IT'S SMALL SIZE, REMOTE LOCATION OR TYPE OF LAND. PERMISSION MUST BE OBTAINED FROM THE LEGAL OWNER, THE UNITED STATES, AND THIS CAN BE A BURDENSOME PROCESS.

MORE COMMONLY, A NON-INDIAN OWNER OF LAND ON THE RESERVATION WISHES TO SELL HIS PROPERTY AND OFFERS IT FIRST TO THE TRIBE. BECAUSE THE UNITED STATES CAN ONLY TAKE LAND INTO TRUST THAT HAS A CLEAR TITLE, IT IS IMPOSSIBLE TO PURCHASE THAT LAND UNDER A NORMAL LAND SALE CONTRACT AND MORTGAGE AND HAVE IT IMMEDIATELY TAKEN INTO TRUST. WE ARE ALSO PRECLUDED FROM PLEDGING ANY OTHER TRIBAL TRUST LAND AS SECURITY FOR ANY LAND PURCHASE BECAUSE SUCH A PLEDGE WOULD BE AN ENCUMBRANCE UPON TRUST PROPERTY. EVEN IF THE TRIBE HAD THE FUNDS ON HAND TO PAY CASH FOR THE PROPERTY THAT BECOMES AVAILABLE, SUCH PAYMENT IS NOT ACCEPTABLE TO THE SELLER BECAUSE OF THE RESULTANT HIGH INCOME TAXES. IN MOST CASES, CASH PAYMENT IN FULL IS AN IMPOSSIBILITY SINCE THE TRACTS OFFERED

FOR SALE ARE LARGE AND COST PER ACRE IS HIGH.

A RECENT STUDY CONDUCTED BY OUR TRIBAL DEVELOPMENT OFFICE REFLECTS THAT FROM 1973 TO THE PRESENT, LANDS TOTALING 4,911 ACRES WERE OFFERED TO US. ALTHOUGH PRICES PER ACRE VARIED, THE TOTAL COST OF THESE LANDS WAS \$2,013,680.00. FOR THE REASONS JUST STATED, WE WERE UNABLE TO PURCHASE THESE LANDS.

WHEN LAND IS PURCHASED BY THE TRIBE, WE HAVE FOUND MANY TIMES THAT THE ABILITY TO HAVE THE LAND HELD IN TRUST MAKES THE DIFFERENCE BETWEEN ECONOMIC FEASIBILITY AND IMPOSSIBILITY. THIS IS ESPECIALLY TRUE OF GRAZING AND TIMBERED TRACTS WHERE THE POSSIBLE ANNUAL RETURNS WOULD BE LESS THAN ANNUAL PAYMENTS. THE INCLUSION OF THE PROPERTY TAX FACTOR MAY REDUCE ANTICIPATED INCOME TO A POINT FAR BELOW ANTICIPATED EXPENDITURES FOR THAT PARCEL.

THE LAND CONSOLIDATION BILL ADDRESSES THESE PROBLEMS IN VERY STRAIGHT-FORWARD TERMS.

THE BILL BEGINS BY STATING THAT ITS PROVISIONS ARE AMENDMENTS TO THE ACT WHICH RESTORED THE LANDS NOT PURCHASED BY NON-INDIAN SETTLERS TO THE TRIBE AND RESERVATION. ACT OF AUGUST 10, 1939, 53 STAT. 1351, 25 USC §463 E, F AND G.

THIS ACT IS COINED, IN PART, IN TERMS OF LAND CONSOLIDATION. HOWEVER, IT SIMPLY AUTHORIZED THE SECRETARY, UNDER SUCH RULES AND REGULATIONS AS HE MIGHT PRESCRIBE, TO ACQUIRE LANDS WITHIN THE RESERVATION. THE ACT FURTHER AUTHORIZED HIM TO TAKE TITLE TO SUCH LANDS IN TRUST AND TO UTILIZE SUCH FUNDS AS WERE



APPROPRIATED PURSUANT TO 25 USC §465.

THIS ACT DID NOT PROVIDE THE PROCEDURAL FORMAT IN WHICH EXCHANGES, SALES AND PURCHASES COULD TAKE PLACE AND IMPORTANTLY, DID NOT AUTHORIZE THE TAKING OF TITLE IN TRUST WHERE PROPERTY HAD BEEN MORTGAGED. FURTHER, INsofar AS I AM AWARE, NO RULES OR REGULATIONS WERE EVER DEVELOPED AND NO FUNDS WERE APPROPRIATED. THE ACT OF 1939 FALLS FAR SHORT OF OUR NEEDS IN TERMS OF LAND CONSOLIDATION TODAY.

SECTION 2 OF THE BILL STATES THAT FOR THE PURPOSES OF EFFECTING LAND CONSOLIDATIONS OF LAND ON THE RESERVATION INTO TRIBAL AND INDIVIDUAL OWNERSHIP; ATTAINING AND PRESERVING AN ECONOMIC LAND BASE; ALLEVIATING INDIAN HEIRSHIP PROBLEMS AND ASSISTING IN THE ACQUISITION, DISPOSITION AND "OTHER USE OF TRIBAL LANDS, THE SECRETARY IS AUTHORIZED, UNDER SUCH REGULATIONS AS HE MAY DEVELOP, TO TAKE THE FOLLOWING ACTIONS:

- A. ACQUIRE FOR THE TRIBE OR INDIVIDUAL MEMBERS, LANDS, *why?* INTERESTS IN LANDS, IMPROVEMENTS, WATER RIGHTS OR SURFACE RIGHTS TO LANDS WITHIN, ADJACENT TO OR IN CLOSE PROXIMITY TO THE RESERVATION BOUNDARIES THROUGH PURCHASE, EXCHANGE OR RELINQUISHMENT. ANY PROPERTIES ACQUIRED FOR INDIVIDUALS MUST BE WITHIN THE RESERVATION BOUNDARIES.
- B. SELL OR APPROVE SALES OF TRUST LANDS, INTERESTS THEREIN OR IMPROVEMENTS THEREON.
- C. EXCHANGE TRIBAL LANDS, INTERESTS OR IMPROVEMENTS

FOR LIKE ITEMS PROVIDED THAT THE EXCHANGES ARE FOR EQUAL VALUE OR ARE EQUALIZED BY MONEY.

- D. ACCEPT TITLE TO ANY LANDS OR INTERESTS IN LAND IN TRUST FOR THE TRIBE.

SECTION 3 PROVIDES THAT LANDS OR INTERESTS IN LANDS ACQUIRED UNDER THIS ACT SHALL BE TAKEN IN TRUST AND SHALL HAVE THE SAME STATUS AS OTHER TRUST LANDS ON THE RESERVATION. HOWEVER, LANDS ACQUIRED BEYOND THE RESERVATION SHALL BE SUBJECT TO NONE OF THE TRUST PROTECTIONS.

SECTION 4 AUTHORIZES THE USE OF ANY FUNDS AVAILABLE OR THAT MAY HEREAFTER BE APPROPRIATED FOR THE PURPOSE OF THIS ACT.

SECTION 5 PROVIDES THE SAFEGUARD OF ALLOWING ACTION UNDER THIS BILL ONLY WHEN REQUESTED BY THE BOARD OF TRUSTEES AND WHEN CONSISTENT WITH A LAND CONSOLIDATION AND DEVELOPMENT PLAN APPROVED BY THE SECRETARY. PLANNING IN REGARD TO LAND PURCHASES AND CONSOLIDATION HAS BEEN A LONG TERM MATTER FOR US. AT THE PRESENT TIME WE HAVE PLANS APPROVED THAT WERE DEVELOPED BY THE FARM COMMITTEE FOR FARM LANDS AND THE FOREST/RANGE COMMITTEE FOR GRAZING AND TIMBERED LANDS. WE WOULD EXPECT THAT OUR OVERALL ECONOMIC DEVELOPMENT PLAN AND OUR COMPREHENSIVE PLAN MIGHT SERVE AS A GENERAL LAND CONSOLIDATION AND DEVELOPMENT PLAN. IN ADDITION, OUR COMMERCIAL ENTERPRISE IS IN THE PROCESS OF DEVELOPING SUCH A PLAN AS IT SPECIFICALLY RELATES TO OUR COMMERCIAL OPERATIONS.

SECTION 6 PROVIDES ANOTHER SAFEGUARD IN THAT IT PROVIDES THAT MONIES OR CREDITS RECEIVED THROUGH SALES OR EXCHANGES UNDER

THIS BILL CAN ONLY BE USED FOR THE ACQUISITION OF OTHER LANDS OR INTERESTS OR OTHER PURPOSES CONSISTENT WITH THE APPROVED LAND CONSOLIDATION AND DEVELOPMENT PLAN.

A MAJOR PROVISION IS FOUND IN SECTION 7 WHEREIN THE SALE, TO EITHER THE TRIBE OR INDIVIDUAL PURCHASERS, OF LANDS HELD IN MULTIPLE OWNERSHIP IS AUTHORIZED WHEN THE OWNERS OF A MAJORITY OF TRUST INTERESTS IN SUCH A PARCEL AUTHORIZE THE SALE IN WRITING. THIS PROVISION WILL BE A MAJOR STEP TOWARD REMEDYING THE COMPLEX FRACTIONALIZED OWNERSHIP OF LANDS WITHIN THE RESERVATION.

SECTION 8 AUTHORIZES THE USE OF A MORTGAGE OR DEED OF TRUST AS SECURITY WHEN PURCHASING LAND AND THE TAKING OF TITLE IN TRUST IN THAT SITUATION. THE SECTION ALSO DEFINES HOW FORECLOSURES WILL PROCEED AND THE ROLE OF THE UNITED STATES IN SUCH PROCEEDINGS. THIS ONE STEP WILL OPEN A BASIC DOOR AND MAKE AVAILABLE TO THE TRIBE THE MOST COMMONLY USED SECURITY DEVICE IN LAND PURCHASES THAT HAS NEVER HERETOFORE BEEN AVAILABLE TO US.

THIS BILL, IN SHORT, FILLS THOSE PRECISE NEEDS THAT WE HAVE IDENTIFIED OVER YEARS OF MANAGING LANDS WITHIN OUR RESERVATION.

THE PROBLEMS ENCOUNTERED HAVE MADE THAT MANAGEMENT VERY FRUSTRATING. THE PASSAGE OF THIS BILL WOULD PROVIDE US WITH AN OPERATING BASIS AND MECHANISM THAT WOULD ALLOW US TO DEVELOP AN ECONOMICALLY AND ADMINISTRATIVELY SOUND LAND BASE.

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, THAT CONCLUDES MY PREPARED STATEMENT. WE WOULD BE HAPPY TO ANSWER ANY QUESTIONS THAT YOU MIGHT HAVE FOR US.



PREF-1969 OREGON INTESTATE SUCCESSION LAWS

THE STATE LAWS OF OREGON REGARDING INTESTATE SUCCESSION DEVELOPED IN THE FOLLOWING MANNER,

STATE STATUTES WERE CONTAINED IN A SET OF BOOKS CALLED "OREGON COMPILED LAWS ANNOTATED" (OCLA) PRIOR TO THE ADVENT OF THE PRESENT "OREGON REVISED STATUTES" (ORS).

IN THE OCLA, TITLE 16 DEALT WITH DESCENT AND DISTRIBUTION. SECTION 16-101 PROVIDED FOR THE INTESTATE SUCCESSION OF PROPERTY TO THE DECEDENT'S LINEAL DESCENDENTS, IF NONE THEN TO THE SPOUSE, IF NONE THEN TO FATHER AND MOTHER, IF NONE THEN TO BROTHERS AND SISTERS AND THEN ISSUE AND IF NONE OF THESE SURVIVED THE DECEDENT, THEN TO THE NEXT OF KIN.

IN ADDITION, THE COMMON LAW ESTATES OF DOWER AND CURTSEY WERE PROVIDED FOR IN TITLE 17 OF THE OCLA. SECTION 17-101 PROVIDED FOR THE WIDOWS DOWER WHICH WAS ONE-HALF INTEREST IN THE DECEDENT'S ESTATE FOR HER LIFE. SIMILARLY, THE WIDOWER'S CURTSEY WAS PROVIDED FOR IN SECTION 17-401 WHICH ENTITLED HIM TO ONE-HALF INTEREST IN HIS WIFE'S ESTATE FOR HIS LIFE TIME.

AS CAN BE SEEN, THE COMBINATION OF THE INTESTATE SUCCESSION LAWS AND THE CURTSEY AND DOWER ESTATES DESCRIBED ABOVE ARE QUITE SIMILAR TO THE CONTENTS OF THE UMATILLA INHERITANCE BILL.

WHEN THE LAWS WERE RECODIFIED AND THE ORS WAS ESTABLISHED, THESE LAWS WENT INTO THE ORS AS WRITTEN, THE ONLY CHANGE BEING A DIFFERENT SET OF BOOKS WITH A DIFFERENT NUMBERING SYSTEM. CHAPTER 591 OF THE 1969 SESSION LAWS EFFECTED A MAJOR REVISION

IN THESE LAWS. THE OLD INTESTATE SUCCESSION LAWS AND THOSE SECTIONS DEALING WITH CURTSEY AND DOWER ESTATES WERE REPEALED AND REPLACED WITH THE PRESENT LAWS CONTAINED IN CHAPTER 112 OF THE ORS.

ORIGINALLY:

OCLA §16-101 - DESCENT OF REAL PROPERTY (INTESTATE SUCCESSION)

OCLA §17-101 - ESTATES IN DOWER

OCLA §17-401 - ESTATES BY CURTSEY

WHEN RECODIFIED:

OCLA §16-101 BECAME ORS 111.020

OCLA §17-101 BECAME ORS 113.010

OCLA §17-401 BECAME ORS 113.020

ORS 111.020, 113.010 AND 113.020 REPEALED BY 1969 OREGON SESSION LAWS, CHAPTER 591, REPLACED BY ORS 112.015 COVERING INTESTATE SUCCESSION.

Senator HATFIELD. I would like to invite Mr. Irvin Mann at this time to come forward.

**STATEMENT OF IRVIN MANN, FARMER, YAMHILL COUNTY, OREG.**

Mr. Mann, your full prepared statement will be placed in the record and you may summarize it or you may handle it in any way you wish.

Mr. MANN. Thank you, Mr. Chairman.

I really appreciate and I know that other people appreciate your appearing here. I am really gratified by the way the meeting has developed and I know it is going to be most beneficial for all of us.

I am Irvin Mann, presently farm at Carlton, Yamhill County. I spent all my early life on a ranch near Adams on the Umatilla Indian Reservation and have interests in land on the reservation and on that land. There is now coming to maturity the fourth generation of my family that has been on that land. I also have farmed in western Umatilla County and have land there with water rights that date back in the Umatilla River to 1898.

I support the purposes of Senate bill 470 and its companion bill, the inheritance bill, as essential elements in bringing some kind of sensible economic order for the Indians of the Umatilla Indian Reservation out of a situation that has resulted over the years of short-sighted but probably well-meaning efforts on the part of the Congress and the BIA.

To make the success of these bills possible, Mr. Chairman, particularly that of Senate bill 470, I do indeed have some quite concrete suggestions to make as to additions to them. It has become clear that you are aware that there are fears that have to be allayed about the prospective purposes and intent of this bill. I assure you that I am sure that some of those fears have been allayed.

I think the fears stem from three major factors: (1) There was an unfortunate news story about the bill which you dropped, which is not the point here, but which caused a great deal of consternation in the community. There is a general fear of the encroachment of the Federal Government on any local community and that is, I am sure, part of it. I am sure it is just a general fear of the unknown in this bill. For that reason I have some suggestions that would enable you to draft it in the manner that would allay many of these fears and erase many of the unknowns. I think the acceptance of the bill would come much quicker with the simple implementation, would be much more palatable and more profitable for all concerned, if it were written to insure two things. I am sure you made it clear that you recognize these two things. One of them is, of course, that throughout the implementation of the bill to recognize the laws of the State of Oregon—as they functioned in the past and as they function in the future.

The acquisition or sale or exchange or consolidation must be accomplished with good faith and free will and you have shown a sensitivity to that necessity.

Every safeguard, every concrete assurance that that will be the case, should be written into the bill. The application of both bills must insure that all Indian reservation landowners—minority and



majority minority interest holders in Indian land, as well as non-Indian owners—have their legitimate right to protection.

To speak to these two points for just a moment, it would be counter-productive if all attempted implementation of the bills should result in a constitutional confrontation between treaty rights of Indians and legitimate property rights of non-Indians.

I speak to four particular areas:

1. The land consolidation and development plan should be provided with some statutory guidelines. This is not all of them but, it is some that should be provided. The goals we have planned and you have indicated that you recognize this, should provide that the plan conform with existing goals and requirements of Oregon's LCDC, the DEQ, County Planning Commission and recognize the existence, also, of property rights acquired in Umatilla County under the valid laws of the State of Oregon.

I recognize that you say that the bill does not preempt the laws of the State of Oregon but I would certainly suggest that that be written in concrete terms that the bill does recognize the property rights garnered under the laws of the State of Oregon and other pertinent laws that may come into conflict with any kind of independent activities on the reservation and under the land consolidation plan.

In the matter of protecting existing water rights, you gave a very able projection of what the situation is and it is quite true and there is no flaw in it. However, if the land consolidation plan contains plans for irrigation, then there is going to be a fundamental confrontation unless and until the waters of the Umatilla River are augmented because you have the ancient water rights in western Umatilla County, which are a long ways from the reservation, which mean a great deal to the economic well-being of this county and you have an even more ancient right that you referred to—the treaty of 1855.

Now that all sounds like we are getting along fine, except that if the water dries up at the top of the stream, something is going to suffer. One of two things is going to happen and that is that either there is going to be a great economic loss unless the streamflow is augmented through a Federal program, which makes an awful lot of economic sense anyway, which I described in my testimony. Without the augmentation, one of two things will happen. That is, that there will be a great economic loss to the county in the west end of the county or, if that loss doesn't occur, there will be a lot of empty hopes on the part of the reservation people for irrigation, because the two things are not going to coincide. I think that the bill should speak to that and to talk in terms of the comprehensive plan when it talks of irrigation, talk also in terms of augmentation of the flow of the Umatilla River, either by upstream impoundments or from the Columbia River or for both. And also talk in terms of making that flow accommodate the return of the coho salmon in the upper reaches of the Umatilla River, as a part of the plan.

The non-Indian reservation landowners have expressed some concern about landlocking under the land consolidation bill. I don't personally read any such intent in the bill but the bill could positively eschew any such intent by recognizing and calling for the application

of Oregon's perfectly good and equitable easement by necessity statute in such cases, if they arise (ORS 376.105 et seq.), wherein the county court is empowered to grant easements to the landlocked landowner and the public in such cases. The bill could specifically refer to that.

The bill makes clear that Indian property acquired thereunder would not be subject to Oregon property taxes. And this is a principle that we are not able to quarrel with, however, it is entirely possible for the bill to provide for Federal payments to local governments in lieu of taxes to prevent any severe damage to the local property tax base. It is a practice that is well established by long precedent on Bureau of Land Management lands and forest lands. This would protect our local schools, road financing structure, and would be in keeping with the well-established precedent which is most important to a State where more than half of the land is already owned by the Federal Government and not subject to property taxes.

And so, in essence, Mr. Chairman, I say to you there is no need for confrontation, there is a need for dialog and analysis, deliberation, and good will. This meeting, I am sure, has lent a lot to that end.

Senator HATFIELD. You have made a very excellent contribution, Mr. Mann, and I appreciate it.

This easement of necessity, I think, is a very valid suggestion. We didn't consider that point because we notice here on the map there is already landlocked holdings that exist today. I suppose, because of that, we didn't particularly focus on that. As you can see by the maps here there is much landlocked ownership on the reservation but I do think the judgment is a valid one, not only to apply in the future but perhaps to those today, that have landlocked situations.

How do they handle that?

Mr. MANN. You will note that in this county, on each section, there is a public road and so all of the landlocked areas that appear to be landlocked on that map, are not landlocked.

Senator HATFIELD. I have a map here that shows the county roads but I see some white spots here that aren't quite up to those county roads. Well, be that as it may, I think that the suggestion is a very good suggestion.

In your point 4, you suggest Federal payments in lieu of taxes to mitigate potential impact on the tax base. I think you would be interested to know that Senator Abourezk of our Indian Affairs Committee has submitted legislation to accomplish that. So that, again, is a very excellent point that you made.

Now, your point No. 1, about being affirmative rather than just leaving it as not granting an exemption, but rather affirmatively stating that they are subject in their land consolidation program to the existing laws and so forth—again, I think this is a valid suggestion.

We are seeking, of course, to protect all these existing rights of people and we are not attempting in any way to diminish or divest people of those rights. The question is to this land. This Federal land—basically federally considered trust land—I would see no problem at all in writing that in the law. Writing into the bill language that would require observance of State laws. But when the counties are a creature of the State, I am not sure that we have such precedent—we



can research this out—of the Federal Government subjugating its position to a county or local government. Position, such as you indicate here, by listing the county planning commission.

Mr. MANN. Yes; I was interested to note that the Indians are co-operating with the county planning commission. I think that is excellent.

Senator HATFIELD. They are doing that now, but not by statute.

Mr. MANN. The county planning commission, as I am sure you are aware, has certain responsibilities which are delegated by the State.

Senator HATFIELD. Yes; but in working with State laws I think the Federal Government would consider then they are, in effect, letting the State implement that, working in relationship to the other echelons in government but not necessarily to specify the Federal subjugation to the county. I am not a lawyer, so I would have to have that checked out.

But I want to thank you very much for your fine suggestions.

Mr. MANN. I would like to say, sir, that I fully agree with the points that you made to the county commissioner that the elevation of the economic lot of the Indian would be of great value to this county, as great a value as it would be to the Indian people themselves.

Senator HATFIELD. Thank you very much.

[The prepared statement of Mr. Mann follows:]



STATEMENT OF IRVIN MANN  
CONCERNING S.470 and S.471  
BEFORE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS  
AT PENDLETON, OREGON  
JULY 5, 1977

I am Irvin Mann, presently farming near Carlton in Yamhill County. I spent all my early life on a ranch near Adams on the Umatilla Indian Reservation and have interests in land on the Reservation that was once Indian owned and on which the fourth generation of a part of my family is coming to maturity. I also have farmed in Western Umatilla County and have land there with water rights in the Umatilla River dating back to 1898.

I have also been a Port Commissioner and a legislator from Umatilla County. As a legislator, I led the successful resistance in 1967, of the then Oregon Game Commission's determined effort to repeal the Oregon statute that proclaimed Oregon's recognition of Indian Treaty rights to Columbia River fishing.

It should go without challenge by the State of Oregon or other local governments and citizens that the hunting and fishing treaty rights of Indians are inviolate and not subject to any qualification except by Indian agreement.

I support the purposes of S. 470 and its companion inheritance bill as essential elements in bringing some kind of sensible economic order for the Indians of the Umatilla Reservation out of a situation that has resulted over the years, from short-sighted but probably well-meaning management of Indian affairs by the BIA and the Congress.

To make the success of the bills possible and particularly that of S. 470, it must be recognized that there is a great deal of apprehension which must be dealt with and allayed among non-Indian Reservation residents about the prospective purpose and operation of S. 470.

Generally, that apprehension stems from three factors, none of which is indicative of any desire to stymie Indian economic development:

1. Unfortunate political and social implications in an earlier news story about the so-called "Jurisdiction" bill with which the hearing is not concerned.

2. General fear and disaster for and revolt against an overpowering federal presence in the community with its all too-often total lack of concern with local customs, aspirations and problems.

3. And just general fear of the unknown things left unspoken to in the bill.

It is this last point to which I would address my counsel. It would appear that acceptance of the bill would be considerably quicker to come and its implementation would be more palatable and more profitable for all concerned, if it were written to insure two things to the Reservation people involved:

1. That its implementation avoid conflict with state laws and property rights constitutionally acquired over generations, both legally and in the best good faith. It is to be remembered that the land now farmed by a fourth generation was acquired in complete good faith under the stern aegis of the federal government and that the Indian grantor acted of his own free will at the time. The acquisition, sale or exchange and consolidation of land under this bill must be accomplished through the same good faith and free will. It is to be remembered that

down-river irrigators acquired their rights to waters of the Umatilla River in good faith under the water laws of Oregon which are among the most enlightened in the Nation.

2. The application of both bills must insure that all Indian Reservation landowners' (majority and minority interest owners as well as non-Indian Owners) legitimate rights are protected.

To speak to these two points for just a moment, it would be counter-productive for all concerned if the attempted implementation of the bills should result in a constitutional confrontation between treaty rights of Indians and legitimate property rights of non-Indians.

Goodwill and mature consideration by all hands and by the Congress can avoid this and it must be avoided because the winner of such a confrontation would have a pyrrhic victory in the purest sense of that term.

I present changes in four areas that it would appear, in applying these principles, would aid in feasibility and acceptance of the bill:

1. The "Land Consolidation and Development Plan" referred to in Sections five and six should be provided with some statutory guidelines. Such guidelines must provide, among other things, that the plan conform with existing goals and requirements of Oregon's LCDC, DEQ and the County Planning Commission and recognize the existence of property rights acquired in Umatilla County under the valid laws of the State of Oregon. Such requirements would do much to allay the "fear of the unknown" that now plagues the bill. If such guidelines are not provided, perhaps these fears are justified.

2. In the matter of protecting existing valid water rights,



(which is one of the property rights referred to above), the established need of the Indian to have sufficient stream-flow to bring Coho salmon to spawning grounds high up the Umatilla, and the real aspiration of both Indian and non-Indian reservation land owners to have expanded reservation irrigation, could be accomplished to the great satisfaction of all, by the federal government financing a comprehensive water plan to enhance the flow of the Umatilla River, either by transfer of Columbia River water into the Umatilla or development of upstream impoundments, or both. We are talking about some of the most naturally productive land in the Pacific Northwest and the feasibility of such procedure is patent.

If Reservation irrigation were to be done at the expense of established water rights west of Pendleton, the economic damage to the county would be devastating. The statutory guidelines for the land consolidation and development plan must require that if irrigation is included, it be based on the premise that the Umatilla River flow will be enhanced to prevent such an occurrence.

To do less would result in either a threat of such economic loss or raising empty hopes for Reservation irrigation and surely would contribute to unnecessary confusion and misunderstanding.

3. Non-Indian Reservation land owners have expressed concern about being landlocked if land consolidation goes forward. This threat could plague Indian as well as non-Indian landowners. I do not read such intent into the bill, but the bill could positively eschew such intent by recognizing and calling for the application of Oregon's perfectly good and equitable "Easement by Necessity" statute in such cases, if they arise, (ORS 376.105 et seq) wherein the county court

is empowered to grant easements to the landlocked landowner and the public in such cases.

4. The bill makes clear that Indian property acquired thereunder would not be subject to Oregon property taxes. Without violating that principle, it could call for federal payments to the local governments in lieu of taxes, which is a practice that is well established by long precedent for BLM and forest lands. This would protect the local school and road financing structure and would be in keeping with well established precedent which is most important to a state, more than half of which is already owned by the Federal Government and not subject to property taxes.

There is no need for confrontation. There is need for dialogue, analysis, deliberation and goodwill.

STATEMENT OF STAFFORD HANSELL, DIRECTOR, EXECUTIVE  
DEPARTMENT, STATE OF OREGON, AS READ BY GEORGE COREY

Senator HATFIELD. Mr. George Corey?

Mr. COREY. Senator Hatfield, with your prior permission and at the request of Stafford Hansell and Representative Duff, I would like to read their brief prepared statements into the record, rather than merely filing them here with you, if I might.

Senator HATFIELD. Surely.

Mr. COREY. I will hand copies to you.

This is the statement of Stafford Hansell.

My name is Stafford Hansell. I am a farmer by profession but currently serve as Director of the Executive Department of the State of Oregon.

I have a number of hats to wear on the issues involved in S. 470 and S. 471. I grew up adjacent to the Umatilla Indian Reservation in the town of Athena. I was educated in an integrated school where about 10 percent of the students were from the reservation. I played basketball and baseball and bowled both with and against teams from the reservation. I have made many long and lasting friendships with the members of the Umatilla Tribe.

In addition, my father, the late M. W. Hansell, leased and bought lands on the reservation in accordance with the existing laws—land that incidentally is still farmed by our family. However, as a taxpayer in Umatilla County, I am concerned that removal of taxable property from the tax rolls of Umatilla County will have a negative effect on other properties in the county and will provide a shifting of the tax burden.

As Director of the Executive Department, I am concerned about the ability of the tribes to pick and choose among the functions they would perform while leaving the more expensive functions to the State.

As a landowner within the tribal boundaries, I am concerned about the impact of not knowing if the lands would be included in those to be purchased by the tribes. This would seriously impact the value of the land and the ability to borrow against it.

As a student of history and a collector of early American artifacts, I am knowledgeable and sympathetic of the callous treatment of the native Americans and interested and supportive in the betterment of their plight.

I would like to suggest these steps:

First: A clear identification of the boundaries of the reservation.

Second: A clear statement and understanding of the goals and objectives of the Umatilla Indian Tribe. If the goal is ownership of the entire acreage, then this should be so stated.

Third: A clear understanding of the relationship with the city of Pendleton, Umatilla County, and the State of Oregon, and those functions to be taken over by the tribe clearly enunciated.

Fourth: An appropriation by Congress of enough money to complete these plans under a reasonable timetable. They should be published with public hearings throughout the affected area and the necessary national and State legislation prepared.



It seems inevitable to me that substantial changes must be made in relationship to current practices, but the method envisioned in S. 470 and S. 471 can only create a deep distrust and ill feeling that I am afraid will last for years. Let's get on with the job and let's understand clearly what the goals and objectives are.

Senator HATFIELD. Mr. Corey, may I interrupt to make a response to Senator Hansell first, before you proceed with Representative Duff.

I asked the Solicitor of the Department of the Interior to give a legal statement on the question that Senator Hansell raises in his first point on the question of boundaries. I shall introduce it in the record at this point. It is a multipaged opinion by the Solicitor. The last paragraph says: "Therefore, the boundaries of the Umatilla Reservation are not only those boundaries described in the Secretary's Order of 1888," which is the diminished border of 1885, "but also include those surplus lands which the Secretary returned to tribal trust status pursuant to the 1939 Act." So I think that Senator Hansell's suggestion here—which I might also say was urged by the Attorney General of the State of Oregon, Mr. Redden—has at least taken this step to get a clear definition by the highest legal authority we have in the Department of the Interior. We will make that available for the record and I would be very happy to make available a copy for you.

[Solicitor's opinion follows:]



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SOLICITOR  
WASHINGTON, D. C. 20340

JUN 29 1977

Memorandum

To: Acting Deputy Commissioner  
Bureau of Indian Affairs

From: Acting Associate Solicitor  
Division of Indian Affairs

Subject: Boundaries of the Umatilla Reservation

*See page 6*

You have asked for our opinion as to the existing exterior boundaries of the Umatilla Reservation. After having completed a preliminary review of the 1855 Treaty in conjunction with the subsequent acts of Congress, all with an eye towards determining the intent of Congress in defining the boundaries of the reservation, it is our view that the original 1855 reservation has been diminished. Briefly, this conclusion is based on the following analysis.

The 1855 Treaty (12 Stat. 945) established the boundaries of the Umatilla Reservation. In 1882 (22 Stat. 297), the Secretary was authorized, with the consent of the Indians, to survey and lay out in lots and blocks so much of the Reservation in the vicinity of the City of Pendleton as was necessary and proper for the extension and growth of the City, not to exceed 640 acres. The Secretary was authorized to appraise and sell lots to non-Indians. The proceeds from the sale were to be placed in the Treasury to the credit of the Indians. Section 7 provided

"[t]hat the interior lines of the land by this act authorized to be laid out in town lots and separating the same from the lands of said reservation shall from the date of said survey by the Secretary of the Interior, be and constitute the line of said reservation between the same and the town of Pendleton." *Emphasis added.*

By the Act of March 3, 1885 (23 Stat. 340), Congress provided for the allotment of the Reservation. This was to be accomplished by the appointment of a Presidential Commission

to determine the number of Indians entitled to allotments, etc. The total acreage for all purposes was not to exceed 12,000 acres. Section 1 provided that

"the said tract [120,000 acres of allotted lands] shall thereafter constitute the reservation for said Indians, and within which the allotments herein provided for shall be made." Emphasis added.

Section 2 went on to provide

"[t]hat as soon as the report of said Commission in respect to the new boundaries of said reservation shall be approved, the reservation of said reservation lands not included in the said new lines shall be surveyed . . . [and sold to settlers]." Emphasis added.

The 1885 Act was amended by the Act of October 17, 1888 (25 Stat. 558), which removed the 120,000 acre limitation contained in the 1885 Act, and permitted the Secretary to

"set apart such further quantity of land of the existing Umatilla Reservation, in addition to [120,000 acres] . . . as shall enable him to fix, define, and establish the lines and bounds of said reserved tract in a satisfactory manner, and to include therein such portions as he may deem advisable of certain lands in the eastern part of the reservation . . ."

The Act provided, further that the ". . . Secretary is authorized by order to establish such diminished reservation accordingly, . . ."



Pursuant to the Act of 1885 and 1888, the Secretary entered an order entitled "Order of Secretary of the Interior, December 4, 1888, Defining Boundaries of Umatilla Reservation, Oregon." 1 Kappler 891. This order recited that pursuant to the Act of March 3, 1885, a tract was to be set aside for the Indians that "shall thereafter constitute the reservation for said Indians." This order recited that the Commission appointed pursuant to the Act had "selected a tract for a diminished reservation containing in the aggregate 119,364 acres," which was about 10,000 less than was necessary to make allotments to the Indians, making it necessary to appoint a second commission "to re-adjust the boundaries of the diminished reservation."

The second commission, appointed on December 22, 1887, made its report describing the selected land by metes and bounds; but it "was found to be a tract of land so irregular in its shape and outline, as it would make it difficult for the Indians living upon it and the white settlers occupying lands adjoining it on the outside to know certainly and exactly the location of the boundaries of the diminished reservation." Although the Indians were more satisfied with the report of the second commission than that of the first, they remained dissatisfied because certain mountain and timberlands in the eastern part of the existing reservation were not included because of the acreage limitation. Therefore, the matter was submitted to Congress, which, by the 1888 amendment, permitted these additional lands to be included in the diminished reservation. In pertinent part, the Secretary's 1888 order provides:

"Now, therefore, it is hereby ordered, that so much of the existing Umatilla Indian Reservation in the State of Oregon, as lies within the following-described metes and bounds, is hereby declared to be, and is, established as the diminished reservation by the Act of March 3, 1885, as amended by the Act of October 17, 1888, to be selected and set apart to constitute the reservation for the confederated bands of Cayuse, Walla Walla, and Umatilla Indians for the purposes specified in the said Act of March 3, 1885." At p. 893. (Emphasis added).

The order then described the land included in the "diminished reservation."

The Act of July 1, 1902, 32 Stat. 730, provided "that all the lands of the Umatilla Indian Reservation not included within the new boundaries of the reservation and not allotted or required for allotment to the Indians" and not already sold at a public sale should be sold at a private sale at not less than the appraised value.

The Acts of March 3, 1905, 33 Stat. 1073; June 29, 1906, 34 Stat. 611; February 11, 1913, 37 Stat. 665; and February 17, 1917, 39 Stat. 923, provided that all those who purchased lands and had paid for them in full pursuant to the 1885 and 1902 acts were entitled to patents upon giving satisfactory proof to the Secretary of the Interior that the untimbered lands so purchased were not susceptible to cultivation or residence and were exclusively grazing lands, incapable of any profitable use other than for grazing purposes. These acts, which are discussed in 38 L.D. 38, have no bearing upon the matter before us.

It is our view, that after considering the language contained in the Acts of 1882 and 1885, along with the 1888 amendment and the Secretarial order, that the 1855 boundaries of the reservation have been diminished. The intent of Congress, as specifically stated in the above statutes was to alter the 1855 boundaries; an intent which was embodied in the Secretary's order of 1888. Given the well-established rule that, when determining Congressional intent, you look to the language of the Act, the surrounding circumstances and legislative history; this conclusion must follow. *Rosebud Sioux Tribe v. Kneip*, \_\_\_ U.S. \_\_\_, No. 75-562 (1977). Although doubtful expressions are to be resolved in favor of the Indians, this rule "does not command a determination that reservation status survives in the face of congressional manifested intent to the contrary." *Rosebud*, *supra*; *DeCoteau v. District Court*, 420 U.S. 425 (1975).

Subsequent to the above congressional enactments, Congress enacted three additional acts affecting the boundaries of the Reservation.

The Act of July 1, 1912, 37 Stat. 186, authorized the sale to the City of Pendleton of a tract not to exceed 200 acres of unallotted land within the Umatilla Indian Reservation for a municipal waterworks. This tract was within the diminished reservation as described in the 1888 Secretarial Order and did not alter the boundaries of the diminished reservation.

The Act of May 29, 1928, 45 Stat. 1008, amended the Act of March 3, 1888, by authorizing the Secretary "to withhold from sale or disposition, for use as tribal grazing grounds, all unentered and undisposed of lands in township 2 south, ranges 34 and 35 east of the Willamette Meridian, Oregon, formerly a part of the Umatilla Reservation." These lands were restored to tribal trust status pursuant to the 1939 Act and 1940 Secretarial Order as described below.

The other act is the Act of August 10, 1939, 53 Stat. 1351. Section 1 provides:

"That the Secretary of the Interior be, and he is hereby, authorized in his discretion to restore to tribal ownership the undisposed of surplus lands of the Umatilla Indian Reservation, Oregon, heretofore opened to entry or other form of disposal under the public-land laws: Provided, That restoration shall be subject to any existing valid rights." (Emphasis added).

Section 2 authorizes the Secretary, in his discretion, to acquire through purchase, exchange or relinquishment any interest in lands, water rights or surface rights to lands within the reservation for the purpose of effecting land consolidation between Indians and non-Indians within the Reservation.

Pursuant to the 1939 Act, the Secretary of the Interior entered an "Order of Restoration" dated March 20, 1940. This order recites that the Indians of the Umatilla Reservation "ceded" to the United States certain lands of the Umatilla Reservation by the Act of March 3, 1885,



and that there were remaining undisposed of lands in T 1 N, R 34 and 35 E; T 2 N, R 32 E; T 1 S, R 34 and 35 E, and T 2 S, R 33 E, W.M. To restore these undisposed of lands "within the ceded portion of their Reservation" the Secretary ordered:

"Now, Therefore, by virtue of the authority vested in the Secretary of the Interior by the Act of August 10, 1939, (Public No. 375-76 the Congress), all lands which are now, or may hereafter be classified as undisposed of surplus opened or ceded lands of the Umatilla Indian Reservation, Oregon, are hereby restored to tribal ownership for the use and benefit of the Indians of the Umatilla Reservation, and are added to and made a part of the Umatilla Indian Reservation, subject to any existing valid rights." (Emphasis added).

It is our understanding that pursuant to the 1939 Act and Secretarial Order, that approximately 14,129 acres of surplus land was returned to tribal trust status. These trust lands are administered by the tribe and the Bureau as part of the reservation, within the jurisdiction of the tribe and the federal government.

Therefore, the boundaries of the Umatilla Reservation are not only those boundaries described in the Secretary's Order of 1888, but also include those surplus lands which the Secretary returned to tribal trust status pursuant to the 1939 Act.

Senator HATFIELD. Now as to the other question raised by Senator Hansell—point 3—about a clear understanding of the relationship with the city of Pendleton, Umatilla County and the State of Oregon, and those functions to be taken over by the tribe clearly enunciated, let me say: There are no functions contemplated being taken over by the tribe, unless surrendered or given to the tribe on the initiative of such political bodies. There are no functions contemplated that are now performed by the city, county, or State to be taken over by the tribe.

I think his fourth point about public hearings is an excellent one, too. I would certainly subscribe to that. I don't think we can get an appropriation of the Congress until such plans are developed and we know what we are talking about in terms of money and so forth, but I can assure you that I will urge that appropriation authority to be fully exercised once that has moved that far along. As a member of the Appropriations Committee, I have great faith that I can acquire those funds to carry out his suggestion.

I think it is an excellent statement and I want to thank you for reading it for Senator Hansell.

**STATEMENT OF JACK DUFF, MEMBER, OREGON STATE HOUSE OF REPRESENTATIVES, AS READ BY GEORGE COREY**

Mr. COREY. I will proceed, Senator, with the statement of Representative Jack Duff, Umatilla County representative, district 57.

First, I raise no objection to S. 471. This measure pertains to the inheritance of trust or tribal lands and is a tribal matter.

Second, in the matter of S. 470 I do question the need or wisdom of this bill. On page 4, lines 13, 14, and 15, it speaks to a land consolidation and development plan approved by the Secretary of the Interior. To my knowledge no such plan has been approved by the Secretary and if it has been, it has not been generally circulated to persons who will be affected by it. In the absence of such knowledge, it is impossible to see how any intelligent decision can be made on the following questions:

One: What are the boundaries of the reservation? The present ones or the original 1855 boundaries.

Two: The threat of condemnation is a very real one.

Three: As land is acquired and taken off the tax base, what is going to be the impact on the county tax picture.

Four: Is the acquisition of land contiguous to the reservation going to result in an expansion of boundaries.

Five: In section 8 "the powers to mortgage" in the purchase of land. I understand that the tribe has purchased land on a long-term contract and evidently does not need this section.

Six: Acquisition could result in landlocking non-Indian ground and forcing sale or exchange by refusing access to affected land.

Seven: The county has built and maintained roads on the reservation for many years. Would it be reimbursed for its efforts?

Eight: Many of the farms that will be affected by this proposal have been in these families for three generations or more. Land has been bought and sold in good faith for many years and already this proposed bill has created a declining interest in owning land on the Umatilla Reservation.



In closing, let me say that any such proposal should have a long and careful scrutiny by everyone affected. Many of us have lived in Umatilla County all our lives and our relations with the Indians have been very good. Congress should refrain from consideration of the bill until a reservation plan is adopted and the affected parties have time to review the implications of the plan. After the plan is adopted, we can then comment on the bill with more understanding of its intent. The residents of Umatilla County will be able to offer constructive criticism and discuss the impact of this bill upon our community.

Thank you for the opportunity to share with you my reservations in regard to the bill before you.

Senator HATFIELD. Again, Mr. Corey, I would like to keep the sequence for the record.

His first point—about the boundaries—I think we have clarified here today the ruling of the Solicitor.

I have to respectfully disagree with the Representative that the threat of condemnation is a very real one. The only way to condemn is to have power to condemn and there is no granting of such power in this bill, nor is there intent to grant such power. So there is no threat at all of condemnation.

He asks about the impact on the county tax picture as land is acquired and taken off the tax base. It is very difficult to project what that impact will be. Perhaps payment in lieu of tax might be one way to further moderate any kind of impact. I can say that as the father of the payment in lieu of tax bill in the Senate, at least as the shepherd of that bill. In the closing hours of the last Congress when we got it passed about 2:30 in the morning, I had to reverse my age-old view that anything that passed after midnight in a legislative body is not good legislation because I think this is a good legislation in this particular case. And I know the difficulty we had in getting it passed. I am not sure that I could promise great hope in getting a payment in lieu of tax applied and expanded to cover these lands. But that certainly would be worth our effort.

On his fourth point, that the acquisition of land contiguous to the reservation is going to result in the expansion of boundaries, let me say that only the Congress can change the boundaries, only the Congress can make that determination, and this bill has no impact or effect on the legal boundaries of the reservation. The Solicitor has said what that tribe boundary is in his legal opinion.

He asks in point five, about section 8, the power to mortgage in the purchase of the land. Title does not pass to the Indian tribe. Title will not pass until full payment has been made on the lands being acquired. So I think that should allay that fear.

We talked about the landlocking system before when Mr. Mann made a suggestion which I think is very good.

He mentions that the county has built and maintained roads. Well, that is a question of jurisdiction which this bill does not affect and it is a matter that will have to be worked out between the reservation and the county. We do not foresee in this bill involving ourselves with that kind of jurisdiction.

And then he says there has been a general declining interest in owning land on the Umatilla Reservation since this proposed bill. I might say this bill has been in the Congress now for three sessions. That goes



back 6 or 7 years. And if there has been that declining interest. I can only say that is the result of the relationship between the Indians and the non-Indians here. I don't see where the bill has any role to play in that at all. If anything, our bill hopes to try to create a better definition of those relationships and strengthen the base of the Indian Reservation to make it a more active and equal participant in the society of Umatilla County and the State. So I again think that the Representative has provided us with a very excellent statement and I appreciate very much your willingness to read it and make it part of the record. I am anxious to work with Representative Duff and your local officials and State officials as well in resolving the concerns that you have and I appreciate the frankness with which they are raised.

Now, Mr. Corey, you will be speaking for yourself.

### STATEMENT OF GEORGE H. COREY, ATTORNEY, UMATILLA COUNTY, OREG.

Mr. COREY. Yes.

I am George Corey, a Pendleton lawyer here representing various landowners and other interested Umatilla County persons living and farming both on and off the Umatilla Reservation.

As I said when I appeared before the House committee last month regarding this legislation, my comments in behalf of the people I represent are intended to be constructive and not obstructive. There has been a good relationship between Indian and non-Indian in our community for generations and we wish to maintain this relationship. Most of us have worked with our Indian neighbors and participated together in Pendleton Round-Up activities, and have established valued friendships with them. If we have differences of opinion, we would much prefer to first work them out here locally and then propose Federal legislation, if necessary.

The fact that the land consolidation and development bill or similar legislation has been before Congress in other years, all without notice or comment from residents of this area, does not indicate agreement with this bill. By now it is apparent that it was the proposed Umatilla Reservation jurisdiction bill and reservation boundary uncertainties that brought this bill to the attention of the local people. With this in mind, our comments regarding S. 470 are:

1. This measure in its present form appears to be piecemeal legislation. Its declared intent is to consolidate land for Indians by purchase and sales on and off the reservation in accordance with a tribal plan to be approved by the Secretary of the Interior. There is no indication in the bill that State, county or local government authorities or affected landowners will be consulted or given an opportunity to provide input into the tribal plan. As of now, the nature of the plan has not been announced. We suggest that there be coordination of the Indian development plan and Federal legislation through planning, hearings and public discussion before a land consolidation bill is enacted by Congress. In this matter the rights and interests of non-Indians on the reservation and others will be considered and protected. Oregon has pioneered procedures for land use planning and practices with some success. One of the reasons for this success is its citizen involvement in the decisionmaking process at the planning stage.

2. The proposed bill provides for purchase, sale and exchange of land both on and off the reservation. The bill does not describe or locate the reservation boundary and we are advised that tribal spokesmen contend that the 1855 treaty boundaries are still in effect. The attorney general of Oregon has recommended that in view of this uncertainty regarding reservation boundaries, that any legislation dealing with land consolidation should carefully and clearly delineate the boundaries. The proposed bill does not do so and we so recommend.

3. Section 3 of the bill provides that the land acquired for trust purposes either in trust for the tribe or for individuals shall be non-taxable. According to the recently published U.S. Geological Survey report on water resources of the reservation, 55 percent of the land within the reservation is owned by non-Indians. If this land or any substantial portion of it, which is now taxed, is to go off the Umatilla County tax rolls some provision should be made for adjusting this loss to the county and to its taxpayers.

4. The purchase of land within and without the reservation boundaries may very well result in surrounding non-Indian land and placing it in a landlocked or semi-landlocked position. While we hope that this result will not occur, we point out that presently it is difficult to get easement across Indian land. We suggest that this committee give consideration to including in this bill a statutory method to protect non-Indian landowners from landlocking and to prevent the taking of their rights of access.

5. Even now, land values of non-Indian land on the reservation, as well as land within the 1855 treaty boundaries, have been affected by this proposed legislation. Prospective buyers can be told that the Government, as trustee of Indian land, has no power of condemnation, however, the belief persists that the Government as trustee has not relinquished its power of eminent domain. A definite statement in the bill that there is no power of condemnation would allay these fears.

6. Under existing law the Secretary of the Interior is authorized to acquire through purchase, exchange or relinquishment land within the reservation to effect land consolidations. The need for this proposed bill is not entirely apparent, unless it is intended as a vehicle for the substantial or wholesale takeover of non-Indian land. Granted that it does attempt to clear up some problems of fractional ownership of restricted Indian land and to give the tribe power to execute purchase money mortgages, nevertheless there seems to be no question that the intention of the bill is to shift ownership of land on the reservation from non-Indian ownership. One of the cosponsors of this bill, Senator Packwood, in a recent letter to a constituent, stated that there would be no pressure to sell but he added that the bill would establish a mediator in the Interior Department to negotiate sales between present landowners and the Umatilla Tribe and to help determine reasonable and fair market value of such land. Nowhere in the bill do we find that a Government mediator is going to be established to determine fair market value of land belonging to non-Indians and to negotiate sales. If a Federal agent or agency is going to mediate and negotiate non-Indian land transactions, we suggest that this be stated in the bill and that the public be made aware of the powers and duties of the Federal mediator and the procedures he will follow.



In conclusion, we suggest that before the legislative process proceeds further than the development plan of the tribe as it affects non-Indian interests be the subject of planning, study, and hearings with Indians and non-Indians both participating. In this manner legislation of this type may clearly state the objectives and goals of the bill and have the support of local citizens.

Senator HATFIELD. Thank you very much, Mr. Corey.

I will not repeat my comments on those points which we have previously commented upon and that you have incorporated in your statement. I would just say to you I wholeheartedly agree that before final passage of this bill that we ought to have a fairly drawn map of exactly what the boundaries are. I think when the Solicitor has indicated that the lands are inclusive of these tribal lands in the southern part are detached from the main area of the reservation, then it raises the question of how do you incorporate that particular detached area into the reservation. I agree with you more that those boundaries should be clearly defined. I think the language of the Solicitor is clear but now let's see that language transposed on a map and I think that you raise a valid point.

You suggest that there be an affirmative statement in the bill that no condemnation power is herein granted. And because there is no intent to grant condemnation power, either by omission of language or by the inclusion of language, we certainly can handle that matter, I think, either in the wording of the bill or in the committee report.

As you know, the committee report can include many details of intent without trying to put it into the bill and have the same weight of knowing exactly what the intent of the bill was.

Sometimes we weigh bills down with so much detail that the bill becomes vulnerable to attack on legal technical grounds that create great frustrations, delays, and miscarriage of justice.

So what we try to do at times is spell out the detail in the language of the committee report, which always accompanies the bill and gives the bill then that legislative history upon which legal arguments can be made, if points of question arise at a later time. But, again, I want to express my appreciation to you on your appearance here today, and your very fine statement. You raise questions that are naturally concerned questions and we have a responsibility to try to answer them and allay those fears that you have expressed, in order to get to the very heart of the bill.

I would certainly support the idea of a public hearing so the people are fully aware of what the comprehensive plan is, and Mr. Minthorn has indicated he would see no objection to that. He has also indicated that he would see no objection to having the plan printed in the Federal Register so it would get wide circulation.

So I think it shows intent on both the author of the bill and those who are affected as far as in the tribes. I am very hopeful that everyone can participate and know what exactly is being proposed, so that no one feels that they are left out, who have a real interest in this.

So I welcome any legal language that you are so capable of drafting; and if you would like to submit to us some of the specific language amendments, we would welcome that.



Mr. COREY. Thank you, Senator, for putting some of your statements and opinions in the record because I am sure that is very helpful in getting the intent of the legislation.

I have one other statement that I will hand to Mr. Kennedy after the hearing, from Naegle Forrest, who is a landowner on the reservation.

Senator HATFIELD. Fine.

Mr. COREY. You already have it?

Senator HATFIELD. Let me say, Mr. Corey, at this point, if there are other statements that people wish to make a part of the record and you are not prepared to do so today, we will keep the record open for 2 weeks, and we welcome and would receive these statements or testimony that you would like to submit to my office as part of this official record.

[The prepared statement of Mr. Forrest follows:]

July 2, 1977

To the Select Committee on Indian Affairs:

My name is R. N. Forrest. I have an interest in property on the Umatilla Indian Reservation affected by the Act which Senate Bill 470 would amend, and I respectfully suggest that Senate Bill 470 be modified so that its enactment would result in the following:

1. That land acquired under the Act by or for the Confederated Tribes or by or for an individual adult citizen defined as an Indian under the Act be acquired in the name of the Confederated Tribes or in the name of the individual Indian and that thereafter such land be subject to taxation under the laws of the State of Oregon.

2. That, except where funds for acquisition, sale or exchange are provided by the United States, the Confederated Tribes or an individual adult Indian would not be required to obtain approval of the Secretary of the Interior to proceed under the Act.

3. That there be a trust fund established and funded by the United States to provide the Confederated Tribes monies to pay all taxes to which the land acquired by the Confederated Tribes under the Act would be subject or would become subject under laws of the State of Oregon.

These suggestions are made, in part, for the following reasons:

1. The adult citizens defined as Indians under the Act are competent individuals and the Confederated Tribes is a competent body. There is adequate evidence to indicate that the adult citizens defined as Indians under the Act are as capable as any other adult citizens in making reasonable economic decisions.

2. Land acquired by the Confederated Tribes under the Act would likely be exempt from taxation under current Oregon law wherever it were located within the State of Oregon. However, if for no other reason than that benefits are derived by all of the citizens of the United States from the continued existence of tribal culture, if tribal land were subject to taxation by the State of Oregon, the trust fund should be established to assure that such taxation would not in any way diminish the economic base maintaining the existence of tribal culture.

Thank you for permitting me to submit this statement.



R. N. Forrest

Senator HATFIELD. Mr. William Roesch.

### STATEMENT OF WILLIAM ROESCH

Mr. ROESCH. I didn't know I had to have copies for this, and I just printed them up.

Senator Hatfield, Mr. Kennedy, and the audience, most of the questions that I had in mind have been talked over.

One question, though, that I didn't see come up was on Senate bill 470, on page 2, about the Secretary being able to purchase with "any funds." These funds should be specified as to tribal funds or such, is the way I feel. I mean, "any funds," that means any funds out of the Treasury or where they are.

Senator HATFIELD. Yes. That is not at all the intent. We can certainly clarify that in the language of the report, Mr. Roesch, that only the tribal funds could be used.

Mr. ROESCH. It isn't in the bill is why I suggested that it be brought up. It just says "any funds."

Then the boundaries have been pretty well explained and whether they are old or new and Senator Hatfield brought up something about the treaty, I have read the treaty over and over and over, and the very first paragraph in it says something about ceding all their rights, title, and interest for other lands and others where in the treaty, it says, such shall be in common with U.S. citizens, such as grazing rights and hunting rights, and such as this.

Being a landowner, I am especially interested in egress and ingress. That could be a pretty important thing, I believe, because of the fact of violence created throughout the reservation of the whole map says, and that is about all I have to say.

I think S. 471 is probably a good bill and should be passed. S. 470, I think, needs some scrutiny.

Senator HATFIELD. All right. I appreciate your statement, and you have, of course, raised questions that obviously have been discussed and expressed by others here. So you are representing more than just your own personal interest in this, and I so understand. I appreciate very much your taking the time to be here.

Mr. ROESCH. All right. Thanks again.

Senator HATFIELD. Dr. Phillip Corbett?

### STATEMENT OF PHILLIP CORBETT, M.D., RESIDENT OF PENDLETON, OREG.

Dr. CORBETT. Senator, my name is Phil Corbett. I am an orthopedic surgeon here in Pendleton. I won't bore you with repeating my prepared statement. The answers to many of the questions in there have already been made here in prior testimony.

Senator HATFIELD. We will put the full prepared statement in the record.

Dr. CORBETT. Thank you.

[The prepared statement of Dr. Phillip Corbett follows:]



## STATEMENT OF PHILIP CORBETT

July 6, 1977

I am Philip Corbett, and I am a medical doctor engaged in the practice of orthopedic surgery in Pendleton.

I was born, raised and educated in up-state New York and moved to eastern Oregon in 1974. Two years ago my wife and I purchased a small acreage on the Umatilla Indian Reservation from another non-Indian. It has given the greatest joy to me and my family and represents the fulfillment of many lifelong dreams.

At the time of our purchase there was no discussion and indeed very little, if any, public knowledge of this current proposed legislation, S.B. 470 & 471. In the last six months, however, a great deal of public discussion has created unrest, discomfort, and doubt in the future of our modest American dream.

I do not represent a group nor have I the authority to speak for others. However, many of the smaller land and homeowners on the reservation are concerned, and my wish is to express these concerns of the so called "little people." S.B. 470 in particular is a source of great concern. While the Bill very succinctly states its laudable and worthy purpose of allowing the Confederated Tribes to consolidate and accumulate lands previously sold, it does not go into detail as to the means for such accumulation. More to the point, it does not rule out the possibility of such practices as land condemnation, unrepresented taxation, and harassment.

At a recent meeting of the Rotary Club in this City, Doug Nash was asked the Tribe's position on such matters and his response was that they had not been considered. The problem is that they should be discussed and not be allowed.

I am in great sympathy with the Tribe's position and feel that they should be allowed the privileges as well as the responsibilities of any individual or corporate body under the law of the land. Ordinarily these sentiments would hardly warrant expression. It seems, however, that at present the federal government is uncertain as to whether it is dealing with a geographic subdivision of its own domain or a separate dominion. There are very few precedents by which to judge future actions, and those poorly understood.

I would summarize the lack of understanding in the non-Indian community by asking a few questions. Hopefully consideration of their answers will lead to better community relations and enhance the unity of the populace.

Under the proposed legislation:

1. Are tax dollars to be used to repurchase land which has already been sold? **NO**

2. Are the Tribes empowered to levy taxes on non-Indian homeowners on the Reservation? **NO**

If not, how are the Tribes going to generate the funds necessary to pay off the mortgages? **SALE & RLOW DEV.**

If so, is it to be taxation without representation, at least as far as the non-Indian owners are concerned?

3. Whose land is going to be purchased, and what happens if

*Want to*  
they don't sell?

4. Would it be reasonable to have the Tribal planning commission be a part of the County planning commission?

5. Would it be even more reasonable for the Tribe to be represented in the East Central Oregon Association of Counties?

6. Do the Tribes have the power of condemnation?

7. What procedures will be used to ascertain fair market values on lands to be consolidated, and protect the values of nearby residences?

It seems to me that these questions ought not to be left unaddressed, but rather should be fully considered and the answers promulgated prior to the passage of S.B. 470 or similar legislation.

Thank you.



Dr. CORBETT. I would like to remark that I practice orthopedic surgery here with both white and nonwhite, Indian and non-Indian patients, with what, I think, is equal success. I am a latecomer to the area of northeastern Oregon, having lived on the reservation for 2 years. I am a small landowner and homeowner. I do not represent any group, nor am I authorized to speak for anyone else.

Many of the concerns which prompted my submitting a statement were generated by public media, private conversations, and attempting to gain a better understanding of my Indian neighbors. In particular, the areas of condemnation have already been greatly covered in detail. But an area that has not been covered, that was touched on earlier, is taxation.

The reason for bringing up the questions of taxation and condemnation, by the way, is that it is uncertain, in this area at least, in discussion with lawyers and even the legal counsel for the Confederated Tribes, as to what position the reservation is in. Is it a separate domain, which is being treated with the Federal Government, or is it a dominion of the Federal Government? What is its relationship to the State and county?

I would, therefore, like to summarize those points that I made in my prepared statement by asking first of all: Are tax dollars to be used to repurchase land which has already been sold?

Senator HATFIELD. No.

Dr. CORBETT. Are the tribes empowered to levy taxes on non-Indian homeowners or landowners on the reservation?

Senator HATFIELD. No.

Dr. CORBETT. If not; how are the tribes going to generate the funds necessary to pay off the mortgages?

Senator HATFIELD. From the sale of trust lands and also from economic development.

Dr. CORBETT. The question of whose land is going to be purchased and what happens if they don't want to sell has already been covered quite adequately.

But would it be reasonable to have the tribal planning commission be a part of the county planning commission?

Senator HATFIELD. That is certainly a concept worthy of consideration, but I think that would have to be mutually agreed to.

Dr. CORBETT. I recognize that.

Senator HATFIELD. I think they now have concurrent zoning and have exercised that evidently successfully. Perhaps it could conceivably be worked out on the planning.

Dr. CORBETT. Thank you.

Would it be even more reasonable for the tribe to be represented in the East Central Oregon Association of Counties? I recognize that both of these two questions, before you answer, are suggestions which are aimed at opening up better lines of communication between two areas of the population, which have very scant lines at the present time.

Senator HATFIELD. I can't speak for the tribes. I would think that they would probably like very much to get that broader involvement in participation and representation. Again, that would be one of those

matters which, I think would have to be worked out on the basis of mutual agreement. I think it is a very interesting suggestion you make or at least a very interesting point you raise. I don't think we could impose that through the legislation. That would be a local matter that would be determined here by the parties involved.

Dr. CORBETT. At least they would be empowered to do so if they so wished?

Senator HATFIELD. I would think so; yes.

Dr. CORBETT. My final question is: What procedures will be used to ascertain fair market value on lands to be consolidated and protect the value of nearby residences?

Senator HATFIELD. That would be a procedure set by the Secretary of the Interior. But again, whatever procedures are set would still require mutual and voluntary agreements. That if a party is not interested in a sale, once those procedures have been embarked upon or once it has been concluded, it is no sale, because a willing buyer still has to be tied in with a willing seller.

Dr. CORBETT. All right.

Senator HATFIELD. To answer the question, procedures are to be set by the Secretary of the Interior.

Dr. CORBETT. I realize that these seem to be circuitous questions. They are not intended to be.

Senator HATFIELD. No; no.

Dr. CORBETT. In a recent address to the Rotary Club in this city, Mr. Nash was asked the question about condemnation and taxation. His answer was only that the tribes had not considered these avenues. Although he may not have intended anything by that remark, it leaves one feeling that perhaps that stone just hadn't been turned over. I wanted to have it on the record as to exactly what is in the bill.

My suggestion for the bill—you asked earlier for suggestions—is to put in the specific privileges or rights or powers which are delegated to the tribes and also put in—

Senator HATFIELD. There is no condemnation.

Dr. CORBETT. Correct, I recognize the difficulty with doing that as well, therefore, perhaps leaving future powers unaddressed. The reason that these have been repeated time and time again by the various people on the podium is the very serious concern.

Senator HATFIELD. I sense that and I appreciate that concern. Let me assure you this: I don't think there is a question and the question has been raised that we cannot establish very clear legislative records, or legislative history either through the report of the committee or in the record of this testimony today or by reordering or rewording the bill to meet those objections or those questions that have been raised. That is the purpose of the hearing, of course, not to come out with a locked-in position from Washington to say this is it and you all have to agree to it. I would rather that we come out to hold hearings, in order to get the public input so that the bill then is clearly doing what it is intended to do and is fully recognizing the impact of that bill.

At luncheon at Kiwanis this noon, I used the example of OSHA, which most people know about. It looked good on paper but in the implementation, it became another story. So that is why I want to make



sure that everyone who has questions like you have raised here today have an answer. If we don't have an answer clearly stated in the bill, in the wording, then we want to clarify that wording. If it is something that doesn't more appropriately belong in the bill, we can certainly put it in as part of the record and part of the history of the bill.

Dr. CORBETT. I thank you very much, Senator, for allowing me to exercise my rights. It is a privilege to see the governmental process operating so well.

I would like to say that I think that the espoused goals, as stated in the opening statement of the bill, are worthy and laudable. I would hope that the intent that you have described here can be implemented.

Thank you, sir.

Senator HATFIELD. Thank you, Doctor.

Has Senator Mike Thorne arrived?

Here is a man who is trying to close the legislative session down and at the same time be here in two places at one time. I think it is a very great compliment to the Senator's interest for him to be up all night and drive here to Pendleton today. I really appreciate it, Senator.

#### STATEMENT OF HON. MICHAEL THORNE, OREGON STATE SENATOR

State Senator THORNE. How are you? Good to see you.

For the record, I am Mike Thorne, Oregon State senator, representing District 29, which includes Umatilla County. I have presented to you, Senator Hatfield, a prepared statement which covers the fact that I was born and raised in this area. I am involved in a farming operation with my family, north of Pendleton, and also I am a real estate broker, dealing primarily with farm and ranch property.

Senator HATFIELD. Your prepared statement will be made a part of the record.

State Senator THORNE. Thank you.

[The prepared statement of State Senator Thorne follows:]



JULY 5, 1977

TESTIMONY  
OF  
MIKE THORNE

I AM MICHAEL THORNE, OREGON STATE SENATOR, DISTRICT 29. I WAS BORN AND RAISED IN UMATILLA COUNTY AND FARM HERE WITH MY FAMILY NORTH OF PENDLETON. I AM A REAL ESTATE BROKER AND IN THAT PROFESSION AM PRIMARILY INVOLVED IN TRANSACTIONS INVOLVING FARMS AND RANCHES.

MY TESTIMONY IS DIRECTED TO SENATE BILL 470. I AM CONCERNED WITH PARTS OF THIS LEGISLATION. MUCH OF THIS PROPOSAL IS VAGUE AND THE SPECIFIC INTENT IS NOT SPELLED OUT. FOR EXAMPLE, CURRENT LAW PROVIDES THAT THE SECRETARY MAY ACQUIRE LANDS WITHIN, ADJACENT TO, OR IN CLOSE PROXIMITY TO THE BOUNDARIES OF THE RESERVATION.<sup>1</sup> HEREIN LIES THE WHOLE PROBLEM. THERE IS A DISPUTE AS TO THE BOUNDARIES OF THE RESERVATION. INDIAN ADVOCATES CONTEND THE 1855 TREATY BOUNDARIES ARE THE LEGAL BOUNDARIES. OTHERS CONTEND THE ACT OF OCTOBER 17, 1888, WHICH APPEARS TO REDUCE THE LAND MASS BY SOME 100,000 ACRES TO BE THE LEGAL BOUNDARIES. THE BOUNDARY ISSUE MUST BE ASCERTAINED AND DESCRIBED IN ANY BILL THAT DEALS WITH BOUNDARY DESIGNATIONS AND JURISDICTIONAL PROCEDURE.

SECONDLY, THE POSSIBILITY OF THE SECRETARY ACQUIRING LAND NOT WITHIN THE RESERVATION BECOMES VERY REAL BY THIS LEGISLATION. THE BILL CLEARLY ALLOWS ACQUISITION OF REAL PROPERTY OUTSIDE THE EXISTING BOUNDARIES OF THE RESERVATION.<sup>2</sup>

BUT WOULD THIS PROPERTY ACQUIRED OUTSIDE THE RESERVATION BOUNDARIES THEN BECOME PART OF THE RESERVATION? I SAY THIS FACETIOUSLY, BUT BY THIS ACT IT APPEARS THAT THE GROWTH OF THE RESERVATION COULD BE ENDLESS, SHOULD PROPERTY OUTSIDE THE BOUNDARIES, WHATEVER THEY MAY BE, CONTINUE TO BE TAKEN IN. ALSO, RESERVATION LAND WOULD BE REMOVED FROM THE TAX ROLLS. THE FACT THAT THIS LEGISLATION IS NOW BEING WIDELY PUBLISHED AND COULD INCLUDE THE 1855 BOUNDARIES OR BEYOND COULD AFFECT THE MARKET VALUE OF MUCH OF THE LAND IN UMATILLA COUNTY.

THERE ARE AREAS OF THE BILL THAT I HAVEN'T TOUCHED ON, THE REASON BEING THE UNANSWERED QUESTION OF BOUNDARIES OF THE RESERVATION. I DON'T FEEL THAT THIS QUESTION SHOULD BE CONSIDERED UNTIL THE BOUNDARY DISPUTE IS SETTLED.

MY SUGGESTION IS THIS: THIS LEGISLATION IS TRYING TO SOLVE PROBLEMS WITHIN THE UMATILLA RESERVATION. I THINK IT WOULD BE IN ORDER TO ESTABLISH A JOINT COMMITTEE OF INDIANS AND NON-INDIANS TO STUDY THE UNIQUE PROBLEMS OF THE UMATILLA INDIAN RESERVATION, TAKING INTO CONSIDERATION THE "CHECKERBOARD" PATTERN OF OWNERSHIP. THIS COMMITTEE COULD PROPOSE MUTUALLY AGREEABLE SOLUTIONS, UNDERSTANDING THE UNEMPLOYMENT PROBLEMS AND THE LAND RIGHTS OF THE INDIANS AND ALSO UNDERSTANDING THE LAND AND WATER RIGHTS OF THE NON-INDIANS. WITH A THOROUGH STUDY, LEGISLATION MIGHT THEN BE NECESSARY TO IMPLEMENT SOLUTIONS.

1. S.470, PAGE 2, SECTION (A), LINES 8 THRU 14.
2. S.470, PAGE 2, SECTION (A), LINES 12 AND 13

State Senator THORNE. I would like to circumvent the prepared text and call your attention to the essence of the points I want to raise and in making those points, I feel that, as I am sure that you can appreciate, those of us that serve in the legislative process that are not attorneys, have to rely upon those that are, sometimes, to give us some direction.

My comments relate to, and in my prepared statement, in the first paragraph, I point to the fact that the current law provides that the Secretary may acquire lands within, adjacent to, or in close proximity to the boundaries of the reservation.

I have, and I will leave it with you, if you have not had a chance to see a letter that was addressed to Representative Jack Duff, as a result of a meeting that Representative Duff, and others, including myself, had in Salem early in the spring, in April, to discuss the proposed bill.

My question is with the potential, even though as you have indicated, the Solicitor has indicated that the boundary is fixed, as a result of his opinion. I have here not an opinion of the Attorney General, but a letter at least, in which he is advising us and I want to call your attention to, and I, again, will leave this letter with you, if you don't have it.

He points out that the current law provides that the Secretary may acquire, as I read it, lands within, adjacent to, or outside of the boundary.

Going on, then, he alludes to the fact that, in brief: The Secretary is given greater flexibility as trustee and purchasers are allowed the use of notes and mortgages. This is a significant departure, or the significant departure seems to be the possibility of acquiring land *not*, and he underlined the not, within the reservation. It specifically allows acquisition of property adjacent to or in close proximity to the boundaries of the reservation.

The bill would clearly allow acquisition of real property outside of the existing boundaries of the reservation. His question would appear to be: Would such acquisition automatically render such property an integral part of the reservation?

I am going to leave this letter with you, if you have not had a chance to see it.

Senator HATFIELD. I have the letter.

State Senator THORNE. If you have it, then I refer your attention to it.

Senator HATFIELD. The Attorney General has sent a letter, Senator, to us, on that and the answer to the question he raises is, "No".

Senator THORNE. My suggestion would be, Senator, having worked with the process of dealing with Attorney General's opinions and I can only speak for my experience in Oregon, I call your attention to the fact that they are opinions and their final test, of course, would be subject to review in the courts. I am not recommending that that is what would happen here but I am only saying, as I have had experience before, that that is the ultimate conclusion. I am saying in the interest of making the intent clear, it may very well be that we ought to provide a clear congressional intent as to what the boundaries will be, including the fact that the Solicitor has pointed out to you the fact that he believes the boundaries are clearly defined. I think it might be



in the interests of both sides involved, that we make that distinction clear in whatever proposed legislation develops.

That is the essence of what I was going to say. I will not read further. I would be happy to respond to any questions.

Senator HATFIELD. The question, Senator, that you raise, we have had raised by previous witnesses. I have indicated, and I would reiterate now, that on the map with which you are familiar, these lands to the south of the main reservation area, are, in the solicitor's opinion, included in the reservation.

And so, as I indicated earlier, what we want to do now is to have that legal language of the Solicitor superimposed here on a map to show us exactly how it is going to be actually drafted to conform to his legal statement. We can assure you that we will see that that is done before this bill passes so the people will know exactly where that boundary line follows.

I think that is a legitimate request. It is certainly not an unreasonable one in any sense of the word.

I appreciate again your traveling this distance to participate in our hearing today with all the pressure on you to close the session in Salem. I have had some experience in that in the past and I can appreciate that both as a member of the legislature and later as Governor. I remember my barber gave me a bit of wisdom one time. He said that every 2 years, 90 people come down to Salem to argue, debate, discuss, and legislate. He said: "I wonder if the State might be better off if every 90 years, 2 people would come to Salem to do the same."

State Senator THORNE. I am sure you are right.

Senator HATFIELD. You have heard that yourself before but now, as a member of the legislative branch, I know that the executive branch just waits until the legislature comes to get things squared away, and get the State on its track again. So I want to congratulate you.

State Senator THORNE. Thank you. I can report that we finished this morning about 4 o'clock and the State is now set for 2 years.

Senator HATFIELD. We have concluded our formal list of those who had made known to us of their desire to testify. I am wondering if there is anyone who wished to be heard. Are there any questions that someone would like to raise that has not been raised?

I would reiterate that we welcome your testimony or your statements and they can be placed in the record for the next 2-week period.

So just drop them in the mail and hopefully the mail will get to Washington within 2 weeks, if you wish to submit them.

If there is no further witness to be heard, the hearing is adjourned.  
[Whereupon, at 5:28 p.m., the hearing was adjourned.]

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[The following prepared statements were submitted for the record:]

ADAMS, OREG., May 9, 1977.

Re: Confederated Tribes jurisdiction, Umatilla Indian Reservation.

HON. MARK HATFIELD,  
Washington, D.C.

DEAR SENATOR HATFIELD: This third letter to our Congressmen is prompted by my increasing concern for the economic future of Non-Indian landowners who

reside within the boundaries of the original Umatilla Indian Reservation. I am sure that a member of your staff will be able to supply the information I desire, without taking your valuable time to dictate an answer to this letter.

My request is for a statement of the philosophy, rationale and justification for the effort to allow the Confederated Tribes to levy any form of taxation on the Non-Indian landowners without their participation in the decisions. Such a procedure seems to me to be contrary to one of the most basic tenets of our nation's Constitution and Bill of Rights, as well as simple justice. Perhaps it would clear my thinking if you would share yours with me on this subject.

If the Tribes are desirous of increasing their landholdings, it would seem that they could go the same route as non-Indians—that is, by borrowing money against the land they already own and using that to purchase land on the open market. In more than fifty years of dealing with the Indians of this Reservation, as a tenant, I have never known of one who was interested in farming for a livelihood; but all are very anxious to receive the rewards of the landlord, which do not entail any particular efforts or risk on their part.

It is my studied opinion that increased monetary income without effort is not in the best interests of the Indian, as shown by many examples in the past. It appears that the Indians wish to enjoy the best features of trusteeship, together with absolute sovereignty and the material blessings of state and county government. I do not see how such a mix can be even considered, let alone justified by level-headed and responsible Congressmen.

The possibility that such taxing powers may be granted the Confederated Tribes has already had serious effects on the marketability of deeded land on the Reservation. Certainly I would be most hesitant to consider purchase of any land that was thus threatened; and should I try to sell the land we now own, I am sure that it would not find a ready buyer, so a great sacrifice would be entailed should we try to "get out" before the legislation becomes law.

If the Confederated Tribes reap the bonanza of this type of legislation I am sure that all the other Indians of the country will demand the same treatment—and after that, why not the negroes, the Poles, the Chinese, etc. etc.?

Thanks for your consideration of my request.

Respectfully yours,

KOHLER G. BETTS.

P.S.—I favor bills such as the one introduced by Representative Ullman to allow the Secretary of Interior to buy and sell lands with willing parties, in order that Indian lands may be consolidated, and favor any efforts to correct the increasing fragmentation of lands passed on by inheritance. We have farmed one 80 acre tract that at last count numbered over 60 different shareholders, each to receive two annual guarantee payments plus a third payment if the crop share exceeds the guarantee. Many of the payments are less than one dollar.

K.G.B.

PILOT ROCK, OREGON.

DEAR SENATOR MARK HATFIELD: I would like for the following statements to be entered as testimony on the Bill, S. 470.

1. The Secretary of the Interior should not purchase any land outside of the present Reservation boundary for the Confederated Tribes, only within the Reservation—because where does it end?
2. The present Reservation boundary lines should be described clearly in this bill, with a legal description.
3. Federal funds should not be used to purchase any land for the Confederated Tribes, only tribal funds should be used, because the land was willingly sold on the Reservation in the first place.
4. A government loan, with a low rate of interest may be needed to help them consolidate the present Reservation.
5. All County, State, and Federal laws, and LCDC comprehensive plans need to be adhered to by all citizens and all races of people. This include zonings and water use priorities. All present water rights need to be preserved and protected, or it could spell economic disaster in the heart of a great food producing area. This should be stated clearly on the bill.



6. Reservation consolidation should not occur suddenly, but slowly through the years, to allow the local tax load to adjust slowly.

7. So long as any white landowner remains on the Reservation, they deserve to have their constitutional rights and property rights preserved and upheld by the U.S. Government—to the extent that they must be allowed the right to vote on any tribal decisions affecting their land and constitutional rights.

8. Rivers and streams must not be restricted from their normal flow on the Reservation by dams.

9. The Tribes' comprehensive consolidation plan must be discussed at open public hearings, so that all landowners, local people, County and State officials can participate in the planning, then submit the plan to the Secretary for approval, and before any bill such as S. 470 be considered. It is unfortunate that none of the people who would be effected by this land consolidation was notified in advance, that this plan was being considered.

10. An "Easement of Necessity" must be automatically included in the bill, to protect people who may become landlocked.

11. The Tribe cannot condemn land for any reason to force a sale.

12. Sales between willing buyers and sellers do not require a mediator in Washington to set the price. Sales of land should reflect similar prices of sales in the area BEFORE this issue become known, because land sales and values have plummeted on the land in question. Land values were rising steadily before this issue came to light.

13. The Confederated Tribes cannot levy taxes of any kind on the white landowners on the Reservation, as this will surely jeopardize those small farmers continued existence, just as the Indians do not pay any taxes.

14. The Confederated Tribes should have representation in the Association of Counties in Oregon.

15. All rights and powers of the Tribe must be clearly stated on the bill.

16. There should be no more government handouts to one race of people, they have been draining more from the economy than they contribute.

17. All of the above concerns should be so stated on S. 470 before the bill is considered, and the people in this area should be given the chance to know what is contained in the bill, before it is considered.

Thank you and most sincerely,

JUNE MILLER.

P.S. Yes, the Confederated Tribes do have the power to quell any harassment on the Reservation, as Indian police cruise the area, and they have the same policing power over their members that our police have over us.



