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FEDERALLY OWNED LAND IN NEVADA HELD IN TRUST
FOR THE PAIUTE AND SHOSHONE TRIBES OF THE
FALLON INDIAN RESERVATION

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HEARING
BEFORE THE
U.S. SENATE
SELECT COMMITTEE ON
INDIAN AFFAIRS

ON

S. 785

TO DECLARE CERTAIN FEDERALLY OWNED LAND IN
NEVADA HELD IN TRUST FOR THE PAIUTE AND
SHOSHONE TRIBES OF THE FALLON INDIAN
RESERVATION

JULY 19, 1977

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(II)

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FEDERALLY OWNED LAND IN NEVADA HELD IN TRUST FOR THE PAIUTE AND SHOSHONE TRIBES OF THE FALLON INDIAN RESERVATION

TUESDAY, JULY 19, 1977

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 6202, Dirksen Senate Office Building, Senator James Abourezk (chairman of the committee) presiding.

Present: Senators Abourezk and Hatfield.

Staff present: Alan Parker, chief counsel, and Barbara Berger, staff attorney.

Chairman ABOUREZK. The committee will come to order.

This is a hearing on S. 785: A bill to declare certain federally owned land in Nevada held in trust for the Paiute and Shoshone Tribes of the Fallon Indian Reservation.

The purpose of this hearing this morning is to take testimony on that bill which would declare that 2,640 acres of land presently owned by the United States be held in trust for the Paiute and Shoshone Tribes of the Fallon Indian Reservation in Fallon, Nev.

The present reservation occupies 5,480 acres, including 2,600 acres that are not irrigable. The additional acreage encompassed in this bill would provide sufficient irrigable land to enable the tribes to make full use of their water right acreage of 4,780 acres. Most of the tribal members earn their livelihood from agriculture, and the acquisition of this land would raise their economic status and establish a higher degree of development for social improvement.

This bill was introduced by Senators Cannon and Laxalt and has the support of the State of Nevada.

Without objection, I shall order the departmental report and bill inserted in the record at this point.

[The bill and departmental report follows:]

95TH CONGRESS
1ST SESSION

S. 785

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24 (legislative day, FEBRUARY 21), 1977

Mr. CANNON (for himself and Mr. LAXALT) introduced the following bill;
which was read twice and referred to the Select Committee on Indian
Affairs

A BILL

To declare that all right, title, and interest of the United States in two thousand six hundred and forty acres, more or less, are hereby held by the United States in trust for the Paiute and Shoshone Tribes of the Fallon Indian Reservation, Nevada, to promote the economic self-sufficiency of the Paiute and Shoshone Tribes, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That, subject to valid existing rights, all right, title, and
- 4 interest of the United States in two thousand six hundred
- 5 and forty acres, more or less, described below are hereby
- 6 declared to be held by the United States in trust for the
- 7 Paiute and Shoshone Tribes of the Fallon Indian Reserva-
- 8 tion, Nevada:

MOUNT DIABLO MERIDIAN

Township 19 north, range 30 east, section 2, northwest quarter; section 3, north half and southwest quarter; section 4, all; section 8, north half and southwest quarter;

Township 20 north, range 30 east; section 33, south half; section 34, south half; section 35, west half southeast quarter and southwest quarter.

SEC. 2. The lands held in trust pursuant to this Act shall be included in and deemed a part of the Fallon Indian Reservation, Nevada.

SEC. 3. The Paiute and Shoshone Tribes of the Fallon Indian Reservation, Nevada, shall be entitled to the revenues reserved by the United States under any lease, contract, permit, right-of-way, or easement issued prior to this Act covering lands declared to be held in trust by this Act. In the event that such trust lands do not cover all of the land embraced within any such lease, contract, permit, right-of-way, or easement, the Paiute and Shoshone Tribes shall be entitled only to the proportionate amount of the revenues reserved by the United States under such lease, contract, permit, right-of-way, or easement which results from multiplying the total of such revenues by a fraction in which the numerator is the acreage of such lease, contract, permit, right-of-way, or easement which is included in the land declared to be held in trust pursuant to this Act and the

1 denominator is the total acreage contained in such lease,
2 contract, permit, right-of-way, or easement.

3 SEC. 4. (a) Upon the request of Indian allottees, their
4 heirs, or successors, and with the consent of the Fallon
5 Paiute and Shoshone Tribes Business Council, the Secretary
6 of the Interior is hereby authorized and directed, under
7 such rules and regulations as he may prescribe after con-
8 sultation with the Paiute and Shoshone Tribes Business
9 Council, to transfer the right, or any part thereof, to the
10 use of water appurtenant to other lands within the Fallon
11 Indian Reservation, to the lands, or any part thereof, de-
12 clared to be held in trust by this Act: *Provided, That the*
13 *Secretary of the Interior may act for any minor without*
14 *natural parent or guardian, adjudicated incompetent, or un-*
15 *known heir in effecting any such transfer.*

16 (b) The Fallon Paiute and Shoshone Tribes Business
17 Council or the Secretary of the Interior, acting at the request
18 of the tribes, is authorized to acquire through purchase, gift,
19 or exchange the water rights appurtenant to any allotted
20 lands within the boundaries of the Fallon Indian Reserva-
21 tion. The tribes are hereby authorized to transfer such ac-
22 quired water right, or any part thereof, to the lands, or any
23 part thereof, declared to be held in trust by this Act. The use
24 of any tribal judgment or trust fund or grants to the tribes
25 earmarked for such purpose is hereby authorized for the

1 acquisition of such water right and the title to all water
2 rights acquired, transferred, or developed under the authority
3 of this Act shall be held in trust by the United States for the
4 benefit of the Paiute and Shoshone Tribes of the Fallon
5 Indian Reservation in Nevada.

6 SEC. 5. The Fallon Paiute and Shoshone Tribes Business
7 Council or the Secretary of the Interior, acting at the request
8 of the tribes, is authorized to acquire through purchase, gift,
9 or exchange any lands or interest in lands within the bound-
10 aries of the Fallon Indian Reservation in Nevada for the
11 purpose of consolidating landholdings, eliminating factionated
12 heirship interests in Indian trust lands, providing land for
13 any tribal program for the improvement of the economy of
14 the tribe and its members through the development of indus-
15 try, recreational facilities, housing projects, and the general
16 rehabilitation and enhancement of the total resource potential
17 of the reservation. The use of any tribal judgment of trust
18 fund or grants to the tribes earmarked for such purpose is
19 hereby authorized for the acquisition of such lands or interest
20 in lands and title to any land acquired under the authority
21 of this Act shall be taken in the name of the United States
22 in trust for the Paiute and Shoshone Tribes of the Fallon
23 Indian Reservation in Nevada.

24 SEC. 6. Nothing in this Act shall affect rights subject to
25 adjudication in United States against Alpine Land and

1 Reservoir Company, et al., Equity No. D-183, U.S. Dist.
2 Ct., Nevada, and United States against Truckee-Carson
3 Irrigation District, et al., Civ. No. R-2987, U.S. Dist. Ct.,
4 Nevada.

5 SEC. 7. (a) The Secretary of the Interior is authorized
6 and directed to improve and extend the existing system for
7 the delivery and distribution of irrigation water within the
8 Fallon Indian Reservation and to construct such additional
9 canals, laterals, and irrigation works as are necessary to
10 deliver sufficient water to irrigate the practicably arable acres
11 included in the Fallon Indian Reservation pursuant to this
12 Act.

13 (b) The Secretary of the Interior is authorized and di-
14 rected, if requested by the Paiute and Shoshone Tribes
15 Business Council, to make loans to the tribes for subjugation
16 purposes, out of funds appropriated pursuant to this Act, in
17 amounts of money equal to the full cost of subjugating up to
18 one thousand eight hundred acres.

19 (c) Out of funds appropriated pursuant to this Act, the
20 Secretary of the Interior is authorized to make grants to the
21 Fallon Paiute and Shoshone Tribes to develop and imple-
22 ment plans for using newly irrigated reservation lands in
23 an orderly, efficient, and profitable manner and to establish
24 and carry out training programs for Indian farmers, includ-
25 ing courses in marketing and agricultural economics.

1 SEC. 8. (a) There are hereby authorized to be appropri-
2 ated for the construction of water resource project facilities
3 and improvement and extension of existing irrigation delivery
4 and distribution systems under section 7 (a) of this Act the
5 sum of \$1,250,000 during fiscal year 1978, and such sums
6 as may be necessary during each subsequent fiscal year for
7 construction purposes under this Act.

8 (b) There are authorized to be appropriated for grants
9 to the Paiute and Shoshone Tribes to implement sections
10 7(b) and 7(c) of this Act, the sum of \$900,000 during
11 fiscal year 1978, and such sums as may be necessary during
12 each subsequent fiscal year.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 10 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. 785, a bill "To declare that all right, title, and interest of the United States in two thousand six hundred and forty acres, more or less, are hereby held by the United States in trust for the Paiute and Shoshone Tribes of the Fallon Indian Reservation, Nevada, to promote the economic self-sufficiency of the Paiute and Shoshone Tribes, and for other purposes."

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

S. 785 would declare that subject to valid existing rights, all right, title, and interest of the United States in 2,640 acres be held in trust by the United States for the Paiute-Shoshone Tribe of the Fallon Reservation, Nevada, and would make such lands part of the Reservation.

Upon request of Indian allottees, and with the consent of the Fallon Paiute and Shoshone Business Council, the Secretary of the Interior is directed to transfer certain existing water rights to other lands within the Reservation to the 2,640 acres transferred by S. 785.

Background

The history of the present-day Paiute Shoshone Tribe stems from allotments made from the public domain to certain Paiute and Shoshone Indians pursuant to the General Allotment Act of February 8, 1887 (25 Stat. 388), as amended. In 1890, fifty allotments of 160 acres each were made, and in 1893-94, 146 more allotments of the same acreage were made. These allotments totaled about 31,000 acres and were, for the most part, located within what later became the Truckee-Carson Irrigation District, a part of the Newlands Project, authorized by the 1902 Act.



On August 5, 1906, an agreement was made whereby the Indians would release their original 160-acre allotments of non-irrigable land and receive therefor ten-acre allotments of irrigable land with paid-up water rights. Of the 196 original allottees on the public domain, 189 allottees consented to have their 160-acre allotments cancelled and exchanged for ten acres of irrigable land. An order of the Department of the Interior, dated April 20, 1907, reserved an area of 4,640 acres (the original Fallon Reservation) on behalf of Indians who had relinquished their original allotments and such other Indians as might, on investigation, be found entitled to allotments thereon.

These acres were allotted to qualifying Indians pursuant to the Act of April 30, 1908 (35 Stat. 85). An additional 840 acres adjoining the north boundary of the original reservation were set aside by Departmental Order of November 21, 1917. Under date of November 11, 1908, a water right certificate, No. 01196, was issued for the 4,640 acres comprising the original reservation. Water rights were adjusted to 4,077.0 acres on January 19, 1914. By application of July 1, 1926, a water right of 800.3 acres was acquired for the 840 acres added to the reservation on January 14, 1910. As of June 30, 1973, there were 840 acres of tribal trust land and 4,640 acres of allotted trust land within the reservation boundary, all within the Carson Division of the Newlands Project.

Many of the owners of the original allotments did not receive full compensation for relinquishing them. The tribe, in good faith, exchanged with the United States its 31,000 acre reservation for the smaller area on the promise that this smaller area would have fully paid-up water rights. Although, at the time of the exchange these 4,640 acres were thought to be irrigable, after the transfer the tribe found that for reasons of soil or topography, about 2,600 acres were not irrigable. Thus, the exchange program was never fully consummated according to the agreement. Nevertheless, the United States has paid for and continues to pay for a water right for the other approximately 2,600 acres that the tribe has never been able to irrigate.

Preliminary surveys indicate that some 1,800 acres of irrigable lands as established by the Bureau of Reclamation are within the 2,640 acres of public domain presently under withdrawal by that bureau and the U.S. Fish and Wildlife Service. The lands under the bill are contiguous to the north boundary of the reservation. It is almost impossible to separate the 1,800 irrigable acres from the 800 non-irrigable acres in the tract as these lands are all checkerboarded.

The Tribal Council has adopted resolutions requesting legislation to add the land in question to the reservation. Section 4(a) would transfer the water rights the tribe now has to non-irrigable acres within the reservation to irrigable acres within the new land.

The amount of water available to irrigate the 1,800 acres is determined by court decrees. A duty of water of 3.065 acre feet per acre at the farm headgate was set for irrigation of lands in the North and South Carson Divisions of the Newlands Project. Thus, the irrigable acres to be added to the reservation by S. 785 would require approximately 5,400 acre feet of water at the farm headgate during the course of a year. The tribe believes that this additional acre feet can be provided without any additional diversions of Truckee River water either now or in the future.

Under present diversions for the reclamation project, 195,000 acre feet of project water will be delivered to the farm headgates of Carson Division lands. The additional 5,400 acre feet needed by the tribe at the farm headgate are 2.8% of the 195,000 acre feet available. Even under projected operating criteria for the reclamation project for the immediate future and the ultimate future, the tribe's needs would only be respectively about 3.7% and 3.4% of the total acre feet to be delivered to the farm headgate. Thus, the impact of this additional amount on the reclamation project is negligible.

Recommendations

Because there is not enough arable land on the reservation to fulfill the Indians' water rights, and suitable land is available adjacent to the reservation, we support enactment of S. 785 if amended as suggested herein.

While we support enactment of section 1 of S. 785, we would point out that the Federal Land Policy and Management Act of 1976 (90 Stat. 2757) provides criteria and guidelines for the conveyance of public lands. Further, section 209 of the Act provides that federally owned minerals shall be reserved to the United States, unless certain criteria are met. If these criteria are satisfied, then conveyance of the mineral estate shall be made upon payment of administrative costs and the fair market value of the interests being conveyed. This Department will be developing a policy concerning these criteria and guidelines and conveyance of land such as those in this bill.

Under section 3, the Tribe would be entitled to any revenues reserved by the United States under any lease, contract, permit, right-of-way, or easement, issued prior to enactment of S. 785, covering the lands transferred by the bill. The language of section 3 is ambiguous as it could be interpreted as retroactively entitling the Tribe to these revenues, a result we cannot support. Further, we do not know the meaning of the term "reserved" in this context, and suggest that "received" may have been intended. Accordingly, we recommend that lines 11-20, page 2, be deleted, and the following substitute in lieu thereof:

"Sec. 3. The Paiute and Shoshone Tribes of the Fallon Indian Reservation and Colony shall hereafter be entitled, from the date of enactment of this Act, to the revenues to be received by the United States under any existing lease, contract, permit, right-of-way or easement covering lands declared to be held in trust by this Act. In the event that such trust lands do not cover all of the land embraced within any such lease, contract, permit, right-of-way, or easement, said Tribes shall hereafter be entitled, from the date of enactment of this Act, to the proportionate amount of the revenues to be received by the United States under any existing lease, contract"

Sections 4(b) and 5 authorize either the tribe or the Secretary of the Interior to acquire, lands or interests therein within the reservation in order to consolidate land holdings, eliminate fractionated heirships, and improve the tribe's economy.

Sections 4(b) and 5 are ambiguous as to the source of funds for the acquisition of lands and interests therein by the Tribe or Secretary. It would appear that the use of tribal funds is contemplated for this purpose, a result which we support. In order to clarify this ambiguity, we recommend that the words ", with funds provided by the Fallon Paiute and Shoshone Tribes," be inserted between the words "acquire" and "through" on line 18, page 3, and on line 8, page 4. Further, since the third sentence in section 4(b) and the second sentence in section 5 are responsible for the ambiguity as to the source of funds for acquisition, we recommend that both sentences be deleted through the word "and" (line 1, page 4 for section 4(b); line 20, page 4 for section 5) and the remaining language be made a new sentence.

We would further point out that the purpose of these sections should 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 sections 4(b) and 5 concerning exchange should not supersede the requirements of the Federal Land Policy and Management Act of 1976 with respect public lands or interests therein.

Accordingly, we recommend that section 5 become subsection 5(a) and the following subsection 5(b) be added:

"Sec. 5(b). Nothing in this section or subsection 4(b) of 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 section and subsection 4(b) of this Act. Nothing in this section or in subsection 4(b) of 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 section or subsection 4(b) of this Act which involves public lands or interests therein as defined in the Act of October 21, 1976, shall also meet the requirements of said 1976 Act."

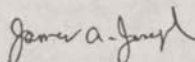
Section 6 is a savings clause which would insure that the bill will not affect, restrict or supersede any adjudications concerning water rights in certain suits currently pending in the U.S. District Court for the District of Nevada.

Section 7 of S. 785 directs the Secretary to develop irrigation facilities for the lands to be held in trust under the bill; section 8 authorizes \$1.25 million for that purpose. Section 7 also directs the Secretary to make loans to the Tribe for the subjugation of up to 1,800 acres and to make grants for irrigation and agricultural training and planning. Section 8 authorizes \$900,000 for such purpose.

We are against enactment of sections 7 and 8. These activities are authorized under present law (25 U.S.C. 13). These activities should be considered along with the needs of all the other tribes in the BIA budget process. Thus, we recommend that these two sections be deleted.

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,



Acting SECRETARY

Chairman ABOUREZK. I would like to introduce our first witness, our colleague, Senator Cannon of Nevada who is one of the principal sponsors of this legislation.

I would like to welcome you, Senator, to the committee. In fact, you created this committee earlier this year.

If you are ready to testify, we are ready to hear from you.

**STATEMENT OF HON. HOWARD W. CANNON, A U.S. SENATOR
FROM NEVADA**

Senator CANNON. Mr. Chairman, I wish to thank and compliment you and the members of your committee for your thoughtfulness in holding an early hearing on S. 785.

I am making this statement on behalf of myself and Senator Laxalt. He could not be here this morning.

I introduced, with Senator Laxalt, the legislation you are considering today, in order to correct a serious injustice inflicted on the Fallon Paiute and Shoshone Tribes of Nevada more than 70 years ago. In 1906, tribal members held more than 31,000 acres in 160-acre allotments located in what today is the heart of the Carson Division of the Newlands reclamation project.

In order to guarantee the success of the Newlands project, the U.S. requested that Indians relinquish their allotments and retain a smaller part of the original allotment area. The members of the Fallon Paiute and Shoshone Tribes agreed on condition that all of the smaller land base contain irrigable acres and that the U.S. guarantee a free water right for the lands. The U.S. accepted the conditions of the Indians.

The tribes relinquished approximately 26,000 acres of land and retained a 4,640-acre area which was ultimately reallocated in 10-acre allotments.

In 1917, an 840-acre parcel was added to the Fallon Indian Reservation. The United States has purchased water rights to cover 4,877.3 acres of the 5,480-acre reservation. The tribes, however, have never been able to farm substantial portions of their lands because of water-logging and the alkaline condition of the soil. Today, due to soil and topographical conditions, 1,597 acres of Indian land with paid-up water rights on the Fallon Indian Reservation cannot be farmed.

The purpose of S. 785 is to provide the Fallon Paiute and Shoshone Tribes lands that can be farmed and an opportunity to exercise their existing water rights on these lands. The 2,640-acre tract included in this legislation contains approximately 1,600 irrigable acres. Thus, S. 785, if enacted, will enable the tribes to exercise their water rights to the full extent for the first time since 1906.

I want to particularly emphasize the importance of sections 7 and 8 of this legislation. Section 7 authorizes and directs the Secretary of the Interior to improve and extend the existing water delivery system on the Fallon Indian Reservation and to make grants to the tribes for subjugation. Section 8 authorizes \$1.25 million to be appropriated for the construction of water resource project facilities and the improvement and extension of the existing reservation water delivery system, and authorizes appropriations not to exceed \$900,000 for grants for subjugation.

If we are, in fact, to correct the injustice done to the tribes, it is essential that the tribes have a delivery system in place and funding for subjugation so that they can actually put their water right to beneficial use without further delay. The tribes have already waited long enough. The trust responsibility of the United States can only be fulfilled when the lands included in this legislation can be cultivated.

Finally, I want to comment on my proposed amendment to S. 785 which I sent to you, Mr. Chairman, on June 10, 1977. The amendment would transfer in trust to the Fallon Paiute and Shoshone Tribes 60 acres of land known as the Fallon colony. This off-reservation colony was established of necessity about 70 years ago when a number of tribal members who had received 10-acre allotments in the reduced reservation discovered that the land they had been allotted could not be farmed.

Of the 60 acres 40 were "reserved for Indian purposes" in 1917 and 20 additional acres were withdrawn in 1958 in aid of legislation. The 60 acres are occupied exclusively by tribal members; however, the tribes do not have title to this land.

They wish to make improvements on these lands and cannot meet eligibility requirements for various Federal community development programs unless the lands are held in trust. Legislation to place these 60 acres in trust passed the Senate in 1971, but no action was taken in the House. I hope the committee will act favorably on this amendment.

Mr. Chairman, once again I want to thank you and your committee for the excellent treatment accorded the Indian communities of Nevada and urge the committee to act favorably on S. 785, with my proposed amendment.

Chairman ABOUREZK. Thank you very much, Senator Cannon. We appreciate your appearance here today and your support of this legislation. I know the tribes are very much interested. I am sure they are grateful for your sponsorship in pushing the bill as you have.

Chairman ABOUREZK. Our next witness is Raymond Butler, Acting Deputy Commissioner, Bureau of Indian Affairs.

Mr. Butler, we welcome you. We will follow the usual procedure on testimony. I think that it has worked very well for both of us in times past.

STATEMENT OF RAYMOND V. BUTLER, ACTING DEPUTY COMMISSIONER OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY RALPH REESER, DIRECTOR, CONGRESSIONAL AND LEGISLATIVE AFFAIRS, BUREAU OF INDIAN AFFAIRS; AND PHILLIP CORKE, DIVISION OF TRUST RESPONSIBILITIES, BUREAU OF INDIAN AFFAIRS

Mr. BUTLER. Thank you, Mr. Chairman.

I would like to introduce the members of the staff who are with me this morning: Mr. Ralph Reeser from our Legislative Office and Mr. Phil Corke from our Trust Responsibility Office.

Mr. Chairman, it is my pleasure to appear before you this morning to testify in favor of S. 785: A bill to provide land and certain authorities for the Paiute and Shoshone Tribe of the Fallon Reservation and colony in Nevada.

Mr. Chairman, I will submit my prepared statement for the record.

Chairman ABOUREZK. Without objection, it is so ordered.

[The prepared statement of Raymond V. Butler follows:]

STATEMENT OF RAYMOND V. BUTLER, ACTING DEPUTY COMMISSIONER OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ON S. 785, BEFORE THE JULY 19, 1977 HEARING OF THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON A BILL "TO DECLARE THAT ALL RIGHT, TITLE, AND INTEREST OF THE UNITED STATES IN TWO THOUSAND SIX HUNDRED AND FORTY ACRES, MORE OR LESS, ARE HEREBY HELD BY THE UNITED STATES IN TRUST FOR THE PAIUTE AND SHOSHONE TRIBE OF THE FALLON INDIAN RESERVATION, NEVADA, TO PROMOTE THE ECONOMIC SELF-SUFFICIENCY OF THE PAIUTE AND SHOSHONE TRIBES, AND FOR OTHER PURPOSES."

Mr. Chairman and members of the Committee, I am pleased to testify in favor of enactment of S. 785, a bill to provide land and certain authorities for the Paiute and Shoshone Tribe of the Fallon Reservation and Colony in Nevada.

S. 785 would declare that a certain 2,640 acres of public domain land is held in trust for the Fallon Tribe. The land adjoins the north boundary of the Fallon Reservation and has been under withdrawals by the Bureau of Reclamation and the U.S. Fish and Wildlife Service who have no objection to the transfer.

The transfer of the 2,640 acres is necessary because the Federal Government has not fulfilled a 1906 agreement whereby 189 allottees exchanged their 160-acre allotments for 10-acre allotments of what was to be irrigable land with fully paid-up water rights. Therefore, some 30,240 acres of land was exchanged for 1,890 acres. With other additions, the Fallon Reservation now includes 840 acres of tribal trust land and 4,640 acres of allotted trust land.

The need for the additional 2,640 acres to be transferred by S. 785 results from the fact that only about 2,000 of the 4,640 acres are irrigable leaving 2,600 acres not irrigable. The 2,640 acres to be transferred by S. 785 includes some 1,800 irrigable acres.

The Fallon Tribe has a membership estimated at 1200 of which some 224 live on the Fallon Reservation or the nearby Fallon Colony. Indians are farming 81% of the reservation land, 17% is idle or unsuited for farming, and 2% is leased to non-Indians for farming.

Because the Indians of the Fallon Reservation and Colony rejected application to them of the Indian Reorganization Act, the land consolidation provisions of that Act are not applicable to them. S. 785 would also provide needed land consolidation authorities for the Fallon Reservation.

The Interior Department's report on S. 785 includes some recommended amendments which I shall not take time to repeat in this statement.

This concludes my prepared statement and I shall be pleased to respond to any questions the Committee may have.

Mr. BUTLER. There are two basic points which I would like to share with the committee this morning. They relate, Mr. Chairman, to the authorizations in sections 7 and 8 of the bill.

Chairman ABOUREZK. That would be on pages 5 and 6?

Mr. BUTLER. Yes.

In our report we have raised some questions about the enactment of sections 7 and 8. It is our view that such authority is provided under our general "Snyder Act" authorization in 25 U.S.C. 13. However, Mr. Chairman, I wish to point out to the committee an inconsistency which I think would be unfair to these people, particularly with regard to section 7(b) where we would be authorized to "make loans to the tribes for subjugation purposes, out of funds appropriated pursuant to this Act." Mr. Chairman, under our general program, subjugation costs would be part of the project development costs. I think it would be totally unfair if I did not share with the committee my judgment that it would be inequitable to ask these people to apply for and repay a loan for this purpose, whereas other tribes are not required to do so.

Chairman ABOUREZK. So, your recommendation is to amend that to read "grants" instead of "loans"?

Mr. BUTLER. In essence, we would suggest putting section 7(a) and 7(b) together into one and make them all part of the project cost.

Second, Mr. Chairman, in section 8 certain specific amounts are authorized. It would be my judgment, that the amount be left open ended as is the case under our authority in 25 U.S.C. 13. Rather, for example, in section 7 the Congress could authorize and direct the Secretary to place, as a top priority, funding and development of the irrigation delivery and distribution system.

Chairman ABOUREZK. You are suggesting under section 8 that there be a direction?

Mr. BUTLER. Yes.

Chairman ABOUREZK. On what line would that be?

Mr. BUTLER. In lieu of section 8, Mr. Chairman, we would include the direction as a part of section 7(a). This is on page 5: "The Secretary of the Interior is authorized and directed to place as a top priority"——

Chairman ABOUREZK. You would move section 8 back into section 7. I guess it could be done either way. I think your intent is clear. I think you make a good point.

I will direct the staff to prepare that language.

Mr. BUTLER. Mr. Chairman, in followup to Senator Cannon's comment about the Fallon colony, I would like to say that it is my judgment that, in my brief experience as the acting head of the BIA, the Bureau of Land Management within the Department of the Interior would be delighted to get lands such as these straightened out where they have certain responsibilities for lands that Indian people have been occupying. I would suggest that the good Senator's amendment, which has been submitted to the chairman, be given serious consideration.

Chairman ABOUREZK. What was the amendment recommended by Senator Cannon?

Mr. BUTLER. It is relative to the 60-acre Fallon colony which they now occupy and which is not held in trust for them by the Bureau of Indian Affairs.

Chairman ABOUREZK. He recommends that it be held in trust?

Mr. BUTLER. Yes.

Chairman ABOUREZK. Who owns it now?

Mr. BUTLER. It is under the administration of the Bureau of Land Management.

Chairman ABOUREZK. You want that included as an amendment?

Mr. BUTLER. Yes. I recommend that the committee give very serious consideration to that.

Chairman ABOUREZK. I will direct the staff to include that as an amendment as well.

Mr. BUTLER. With that, Mr. Chairman, I will conclude my testimony. I will be pleased to respond to any questions.

Chairman ABOUREZK. Are you satisfied that the land transfer provided for in this bill will enable the tribes to make full use of their water rights?

Mr. BUTLER. Provided that we get the direction to provide them with the resources to deliver the water for this land.

Chairman ABOUREZK. Do you believe that sections 7 and 8, as amended, concerning the construction of irrigation facilities, would circumvent the normal planning and budget process of the Bureau of Indian Affairs.

Mr. BUTLER. It would direct us to consider it as a top priority.

Chairman ABOUREZK. But it will not circumvent the normal process?

Mr. BUTLER. My counsel advises me that, in effect, it may circumvent it because it would put them on top. [Laughter.]

Chairman ABOUREZK. You don't have any argument with that, do you?

Mr. BUTLER. No.

Chairman ABOUREZK. Do you support conveyance of the subsurface interests in this land?

Mr. BUTLER. That is one; Mr. Chairman, that I think we would need to defer to the committee's judgment because of the recently passed Bureau of Land Management Organic Act.

Chairman ABOUREZK. What do you mean by that?

Mr. BUTLER. Basically, Mr. Chairman, it is relative to the new Federal Land Policy Management Act of 1976, which provides certain criteria which are to be satisfied before conveyance of the mineral estate in public domain lands may be made by the Secretary. We are not opposing it, Mr. Chairman.

Chairman ABOUREZK. You are not opposed to it?

Mr. BUTLER. No.

Chairman ABOUREZK. I will ask the staff to prepare language relative to that transfer.

Senator Hatfield?

Senator HATFIELD. Mr. Butler, about 6 years ago I introduced, along with Congressman Al Ullman of Oregon, a bill for land consolidation. We held a hearing in Oregon a week ago on this bill which is now Senate bill 470. It is a land consolidation proposal.

In that we don't have any authorization for projects on that reservation, once it is consolidated.

I would like to get your response to something that troubles me about this bill. We are going to be faced with a number of consolidation acts. It seems to me that we ought to get some sort of criteria on what this committee is going to recommend and what the agency is going to recommend vis-a-vis the consolidation acts where they stand on their own merits.

The question comes to my mind as to whether or not we should mix an act of consolidation, giving authority to consolidate, along with the projects that will ultimately have to be appropriated. In this case it is \$1,250,000 for an irrigation project and \$900,000 for agriculture development. Those two proposals, if this bill passes in its present form, could come back around to me on the Subcommittee on Public Works and the Appropriations Committee. I am going to be faced with them saying: "Why didn't you get authorization for our projects, once consolidation takes place?" I am talking about the Umatillas.

My first reaction is that we ought to handle land consolidation authority as a basic, generic act to be applied to all tribes and let each develop their own plan for development of those lands. They could come back in another year in another process and stand in line, or whatever criteria this committee may set up for approving projects. That is an off-the-top-of-the-head reaction that I have. I am concerned about consolidation and the wise use of the lands once they are consolidated. It seems like we are mixing up too many things at one time in one bill.

Do you have any comments?

Mr. BUTLER. Senator Hatfield, I do; yes, I think in many instances you are quite right—the consolidation is the primary objection to begin with. However, I think there are, perhaps, certain instances—and I use this particular bill as an example—where the two do go hand in hand in terms of developing the land that is to be consolidated. The administration and the Congress may be confronted with a limited number of those types of situations where they would go hand in hand.

In general, Senator, I would concur with you that the first priority, of course, is the land consolidation effort. The development then follows.

Mr. Reeser, do you have further comment?

Mr. REESER. Senator, we too think that it would be the best case to have a general bill that would not require us to come to Congress for each tribe. Many tribes have individual legislation, and many tribes are subject to the authorization within the Indian Reorganization Act for land consolidation.

Several months ago, we sent to the National Tribal Chairmen's Association and the National Congress of American Indians a draft land consolidation bill for comment. We have been receiving comments over the last several months on that bill. So far there has been no objection raised.

Previous attempts to come up with a general bill have sometimes raised objections from those tribes who did not want to have specific authorities provided. We have come up with a draft which authorizes the tribes to trigger the act's application to them. It is, hopefully, an answer to such objections.

Senator HATFIELD. Would the consolidation occur in this instance with tribal funds? How would the consolidation be funded?

Mr. BUTLER. In this bill?

Senator HATFIELD. Yes.

Mr. BUTLER. It could be; yes.

Mr. REESER. Our report indicates that we assume that was what was intended. There is an authorization in the Indian Reorganization Act for \$2 million a year for Federal funds for land consolidation efforts. However, that has not been funded for about a quarter of a century.

Senator HATFIELD. In S. 470, we have what we call a "clean" bill. We say that consolidation shall occur out of tribal funds or out of funds provided by the tribe. They can encumber the land in order to meet certain financial requirements and so forth. We give them that authority.

Then we say to them that, working with the Secretary of the Interior, they have to come up with a plan for the development of that land. It has to be a comprehensive plan.

It seems to me sort of an orderly process. When we do this on an ad hoc basis, I think we raise—not intentionally—problems. For example, in the jurisdictional problem we tried to go ad hoc. The Umatillas would get certain jurisdiction. We made a rough draft about reconstituting the old things, and it was absolutely unbelievable the amount of bias and emotion which surfaced. We have had generations of peaceful coexistence there amongst the Indians.

I have a very uneasy feeling about moving without some basic criteria, at least a minimum. Then if there are exceptional cases, as you say, that is fine.

I think the American Indian Policy Review Commission made this recommendation. We could get a basic, generic land consolidation act. Then we could make the modifications as the cases may require.

Would that be your recommendation?

Mr. BUTLER. Yes; Senator Hatfield.

Under the authority of our general authorization, if the tribes were to move into these developmental processes, we would then be in a position to assist them with both technical assistance as well as the resources to accomplish their plan.

Senator HATFIELD. Thank you.

Chairman ABOUREZK. Mr. Butler, if you had general authorization similar to the way that we began handling the native claims 3 or 4 years ago where the process would start with authorization under the Bureau of Indian Affairs, then with extraordinary circumstances they could come to Congress. That has worked well in the claim situation, I think.

Mr. BUTLER. Yes; it has.

Chairman ABOUREZK. We might end up with something like that. I have no more questions. I want to thank you very much for your testimony.

Mr. BUTLER. Thank you.

Chairman ABOUREZK. Our next witness is Mr. Chris Hicks, tribal chairman of the Paiute and Shoshone Tribes. He is accompanied by Mr. Bertram Hirsch, attorney.

**STATEMENT OF CHRIS HICKS, TRIBAL CHAIRMAN, FALLON PAIUTE
AND SHOSHONE TRIBES BUSINESS COUNCIL, ACCOMPANIED BY
BERTRAM HIRSCH, ATTORNEY, AND DELL STEVE, COUNCILMAN**

Mr. HICKS. I would like to introduce to you, Mr. Chairman, Dell Steve, a member of our council.

Chairman ABOUREZK. I would like to welcome you.

Mr. HICKS. I have a prepared statement to submit for the record. I will briefly summarize that statement.

Chairman ABOUREZK. Your written statement will be accepted into the record at this point.

[The prepared statement of Chris Hicks follows:]

STATEMENT OF CHRIS HICKS, CHAIRMAN,
FALLON PAIUTE AND SHOSHONE TRIBES BUSINESS COUNCIL REGARDING S. 785

Mr. Chairman, I wish to express to you and the members of the Select Committee on Indian Affairs the appreciation of the Fallon Paiute and Shoshone Tribes for this opportunity to testify in support of S. 785. For 70 years we have been appealing to the United States for an equitable settlement of our land and water rights. We have never given up hope and this hearing confirms our belief that justice will one day be done.

PURPOSES

The purposes of S. 785 are:

- 1) To honor the federal government's trust obligations to the Fallon Paiute and Shoshone Tribes;
- 2) To alleviate poverty among tribal members and dependency on the federal government that result from the past failure of the United States to protect the land base of the Tribes;
- 3) To enable the Tribes to put their water rights to beneficial use; and
- 4) To promote sound economic growth and efficient land-use and water-resources management.

SUMMARY OF MAJOR PROVISIONS

To accomplish these purposes, S. 785 proposes that the United States:

- 1) Convey to the Fallon Paiute and Shoshone Tribes approximately 2,640 acres of federal land contiguous to the north boundary of the Fallon Indian Reservation to be held in trust by the United States;

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- 2) Authorize the Tribes to acquire water rights appurtenant to any allotted Indian lands within the reservation;
- 3) Transfer water rights now appurtenant to Indian lands within the Fallon Indian Reservation that cannot be farmed to the lands to be conveyed to the Tribes under the proposed legislation;
- 4) Authorize the Tribes to consolidate landholdings and eliminate fractionated heirship interests in Indian trust lands¹; and
- 5) Improve and extend the existing system for the delivery and distribution of irrigation water to lands within the reservation and lands to be added to the reservation under the proposed legislation.

BACKGROUND AND NEED

The enrollment of the Fallon Paiute and Shoshone Tribes is 631, with 410 members (76 families) living on the Fallon Indian Reservation and in the Fallon Colony. The reservation is located 12 miles east of the city

¹ The land consolidation authority is necessary because the Fallon Paiute and Shoshone Tribes are not organized under the Indian Reorganization Act of June 18, 1934 (48 Stat. 984, 988; 25 U.S.C. 464 and 465) and the land consolidation provisions of that Act are not applicable to them or their lands.

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of Fallon, Nevada, and consists of 5,480 acres of land. The Colony is located on federal land on the outskirts of the city.

The Tribes have paid-up water rights to irrigate 4,877 acres of their reservation under the terms of an agreement entered into between the Tribes and the United States; but, owing to the mismanagement of the Tribes' land by the Federal Government, the Tribes have only 3,277 acres of arable and practicably irrigable land. As a result, the Tribes suffer needless economic and social hardships, and the United States incurs substantial annual expenses for the relief of these conditions--conditions that the Tribes feel they can correct through their own efforts under the terms of S. 785. The proposed bill would transfer sufficient land to the Tribes to irrigate an additional 1,600 acres; representing a 50 per cent increase in the amount of land the Tribes could farm.

At one time the Fallon Indian Reservation comprised 31,360 acres of land. It consisted of 196 allotments of 160 acres each, allotted between 1890-1894 under the General Allotment Act of 1887 (24 Stat. 338). The allotments were made to encourage tribal members to become self-sufficient through farming. The land was arid and the Indians living on it, although industrious, were in extreme poverty and thus could not afford the great expense of purchasing equipment with which to work the land or to construct irrigation ditches that would carry water to the land. Consequently, much of the land was not under cultivation.

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Following enactment of the Reclamation Act of 1902 (32 Stat. 338), the United States Reclamation Service began efforts to acquire most of the Indian lands for the proposed Carson Division of the Newlands Project in order to guarantee the success of the Project. The United States requested that the Indians relinquish their allotments and retain only a small part of the original reservation. The members of the Fallon Paiute and Shoshone Tribes agreed on condition that all of the smaller land base contain arable and practicably irrigable acres and that the United States guarantee water rights for the lands and construct and operate and maintain a water delivery system to serve the lands. The United States accepted these conditions. In 1907 the Tribes relinquished nearly 26,000 acres of land and retained a 4,640-acre area, of which 4,010 was allotted in 10-acre allotments. The land the Tribes gave up was promptly settled by homesteaders attracted by the opportunities that the Newlands Project would afford.

On November 11, 1908, the Reclamation Service issued water rights certificates covering the 4,640 acres under the Act of April 30, 1908 (35 Stat. 85). This certificate obligated the United States to pay irrigation construction and operation and maintenance costs.

Soon after the Newlands Project began operations, almost the entire Project became waterlogged and alkalied. The Paiute and Shoshone lands, which are in the lowest part of the Lahontan Valley, were the worst affected. Furthermore, the Reclamation Service failed to construct a

delivery system adequate to irrigate all of the new 10-acre allotments and allowed the irrigation ditches that it did construct to deteriorate.

Some of the tribal members, when they discovered the lands they had been allotted could not be farmed, moved off the reservation and established the Fallon Colony. In 1917, the Federal Government reserved 40 acres of land for the Colony and added 20 acres in 1958.

On February 5, 1914, the Federal Government removed 563 acres of the reservation from the coverage of the 1908 water rights certificate, since these lands, even under the most favorable conditions, could not be farmed; and the certificate was adjusted to provide water rights for the remaining 4,077 acres. On November 21, 1917, the Department of the Interior added an 840-acre tract free of seepage to the Fallon Indian Reservation to increase the irrigable acreage. Water rights were acquired for 800.3 acres of this new tract on July 1, 1926, under the Act of May 10, 1926 (44 Stat. 466). This brought the total acreage covered by water rights to its present level of 4,877.3 acres.

The problems of the Tribes were compounded when, in 1926, the United States transferred management of the Newlands Project to the Truckee-Carson Irrigation District. There followed continuing controversies between the Irrigation District and the Federal Government over operation and maintenance costs regarding delivery of water to the Fallon Indian Reservation and, during this time, the District either

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failed to maintain the drainage ditches properly or refused to provide water service at all. Additionally, seepage from project canals caused further damage to lands in the northern portion of the reservation.

For the first 15 years of the project, 1909-1924, the average acreage in cultivation was 1,200-1,500 acres. Between 1915-1929, members of the Tribes suffered approximately 10 crop failures because of the failure to deliver water and the inadequate maintenance of drains. Conditions worsened between 1924 and 1929. By 1929 the cultivated area of the Fallon Indian Reservation had shrunk to a mere 800 acres.

In 1932, the Senate Committee on Indian Affairs investigated conditions on the Fallon Indian Reservation. The condition of the land was so bad that one government witness testified, "I would not turn a wild burro on it, let alone a civilized human being."

Since that time, over the past 45 years, farming operations have gradually improved on the reservation and the Tribes have been able to irrigate increasing amounts of land.

However, today heirship problems make it difficult to farm a substantial portion of the land presently in the Tribes' ownership. Of the 4,650 allotted acres on the reservation, 910 acres have two to five owners and 1,360 acres have six or more owners. Unless the heirship provisions of the proposed legislation are enacted, the problem can only get worse.

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The United States has invested \$145,858 to purchase water certificates for the Fallon Paiute and Shoshone Tribes. The Tribes ask that the full amount of this investment be put to work and S. 785 provides the means to do this. It will provide the lands and funds needed to put these water rights to beneficial use and it will enable the Tribes to solve the perplexing heirship problem in order to make more effective use of the Tribes' land and water resources.

IMPACT ON EXISTING RIGHTS

Leases

Section 1 of S. 785 declares that the 2,640 acres of federal land to be transferred in trust to the Fallon Paiute and Shoshone Tribes shall be "subject to valid existing rights."

Existing rights include a geothermal lease and four oil and gas leases:

Geothermal lease No. 1173 was granted to the Union Oil Company of California for a primary lease term of ten years. The effective date is October 1, 1975. The annual lease rental is \$2.00 per acre. The lease covers 843 acres and includes 320 acres of the 2,640 acres affected by the bill.

Oil and Gas lease Nos. 6275, 6276 and 6845 were granted to the Standard Oil Company of California for a ten-year lease term. The effective date of Lease Nos. 6275 and 6845 is January 1, 1974 and the

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effective date of Lease No. 6276 is February 1, 1974. The annual lease rental is \$0.50 per acre. The leases cover 3,900 acres and include approximately 1,680 acres of the 2,640 acres affected by the subject bill.

Oil and Gas Lease No. 6385 was granted to the Mountain State Fuel Supply Company of Salt Lake City, Utah for a ten-year lease term. The effective date of the lease is April 11, 1974. The annual rental is \$0.50 per acre. The lease covers 2,400 acres and includes 400 acres of the 2,640 acres affected by the subject bill.

The oil and gas leases are in an area 100 miles distant from ~~the~~ Nevada's only producing oil field. The United States Geological Survey advises that prospects for oil discovery are remote.

All of these leases contain provisions that permit extension of the lease term.

In the past, annual grazing permits have been issued covering part of the 2,640 acres.

S. 785 will have no impact on these leases.

Water Rights Litigation

There is presently pending before the United States District Court for Nevada United States v. Alpine Land and Reservoir Company, et al., Equity No. D-183 BRT (D. Nev.) and United States v. Truckee-Carson Irrigation District, et al., Civ. No. R-2987 BRT (D. Nev.)

Section 6 of S. 785 provides that the subject bill will not affect any rights subject to adjudication in Alpine and Truckee-Carson Irrigation District.

In Alpine, filed on May 11, 1925, the United States seeks to quiet title to its and all other persons' rights to the use of the waters of the Carson River and its tributaries in the states of California and Nevada. In Truckee Carson Irrigation District, filed in December, 1973 against all water users on the Truckee River in the state of Nevada, the United States seeks to quiet its title, held in trust for the use and benefit of the Pyramid Lake Tribe of Paiute Indians, to sufficient water in the Truckee River to maintain the long-term level of Pyramid Lake and to permit the establishment of a fishery in Pyramid Lake and in the Truckee River.

All of the water rights of the Fallon Paiute and Shoshone Tribes and its members are rights to waters of the Carson River. Presently, the waters of the Carson River and part of the waters of the Truckee River are commingled in the Lahonton Reservoir of the Newlands Project. Truckee River water in the Lahonton Reservoir is diverted through the Truckee Canal to irrigate farm lands of the Fallon Paiute and Shoshone Tribes and others in the Carson Division of the Newlands Project.

Section 6 protects the right of the United States to continue unimpeded its efforts to litigate the Truckee River water rights of the Pyramid Lake Tribe of Paiute Indians. These rights once adjudicated

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may adversely affect the use of Truckee River water by Carson Division water users. The section also protects the rights of Carson River water users to litigate rights to Carson River water without prior Congressional limitation on those rights for the benefit of the Fallon Paiute and Shoshone Tribes.

Section 6 assures that the Fallon Paiute and Shoshone Tribes will not obtain through S. 785 water rights they do not now possess and assures that no Truckee River or Carson River water users will lose through this legislation water rights currently possessed or claimed by them.

LEGISLATIVE HISTORY

Proposals to increase the size of the Fallon Indian Reservation to enable the Tribes to put their water rights to beneficial use are at least half a century old, and the current effort was begun more than a decade ago. In September 1966 the Superintendent of the Western Nevada Agency wrote to the Phoenix Area Office recommending an addition of 2,640 acres to the reservation, and in December of that year the Tribes passed a resolution formally requesting this addition.

In order to facilitate the legislative process, the Department of the Interior then began to resolve jurisdictional issues relating to the management of the 2,640-acre tract to be conveyed to the Tribes under S. 785. In 1966, this tract was part of the Newlands Reclamation

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Project and the Stillwater Wildlife Management Area. All matters concerning lands within the Stillwater Wildlife Management Area are governed by a November 26, 1948 agreement between the Truckee-Carson Irrigation District, the Nevada State Board of Fish and Game Commissioners, and the United States Fish and Wildlife Service. In 1970, the parties to the 1948 agreement consented to release that part of the 2,640 acres--1,760 acres--contained in the Wildlife Management Area, and the Bureau of Reclamation agreed to relinquish the reclamation withdrawals on the 2,640-acre tract. The Bureau of Reclamation at that time informed the Bureau of Indian Affairs that, should the tract be added to the reservation, it would support transfer of water rights by the members of the Tribes to the 2,640-acre addition.

In the Ninety-Third Congress a measure similar to S. 785 was introduced by Senator Alan Bible and Senator Howard Cannon. The measure was referred to the Committee on Interior and Insular Affairs. A hearing was held before the Subcommittee on Indian Affairs on January 25, 1974. No action was taken.

In the Ninety-Fourth Congress, a similar measure was introduced by Senator Cannon and Senator Paul Laxalt. The measure was referred to the Committee on Interior and Insular Affairs. A companion bill was introduced by U.S. Representative Santini and referred to the Committee on Interior and Insular Affairs. No action was taken during the Ninety-Fourth Congress

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BENEFITS

If enacted, S. 785 would enable the Tribes to farm at least 1,800 acres of additional land, with a resulting increase in gross crop value of at least \$360,000 per year. This in turn will yield to the Tribes at least \$126,000 per year in profits and wages from farm employment.

To the extent to which S. 785 increases the Tribes' income, it should have the corresponding effect of decreasing dependency on the Federal Government.

Finally, S. 785 will enable the Tribes to make better economic use of their existing land base by enabling them to solve their heirship problem.

PROPOSED AMENDMENTS REGARDING THE FALLON COLONY

The Fallon Paiute and Shoshone Tribes request that S. 785 be amended to transfer to the Tribes in trust two contiguous tracts of federal land reserved for Indian purposes in 1917 and 1958. The tracts are described as the southwest quarter northwest quarter (40 acres) and the south half northwest quarter northwest quarter (20 acres) of Section 29, township 19 north, range 29 east, Mt. Diablo meridian, Nevada.

Approximately four acres in the proposed conveyance are needed for the Truckee-Carson Irrigation District's canal that bisects the 40-acre tract. The transfer would be made subject to the right of the United States to use this land without compensation to the Tribes for so long as the Secretary of the Interior determines it would be necessary for irrigation canal purposes.

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Background and Need

Shortly after the reduction of the original Fallon Indian Reservation to 10-acre allotments it became apparent that many of these allotments could not be farmed, and many families moved off the reservation and into shacks or camped on a 40-acre tract of desert land located just outside the city of Fallon. The families found employment in and around the city. In 1917 the 40-acre tract was eliminated from a reclamation withdrawal and reserved for Indian purposes.

In constructing their houses, some of the families located them by mistake outside the northern boundary of the 40-acre tract. By the early 1950's ten houses and a small church were located on a 20-acre tract on federal land contiguous to the north boundary of the 40-acre tract. The 20-acre tract was withdrawn from further entry on March 14, 1958, in aid of legislation. It was contemplated then that this land would be added to the Fallon Indian Reservation. At this date, neither tract is a part of the reservation.

There are now 16 houses located on approximately 25 acres of the 40-acre tract. Eleven acres are under irrigation with water deliveries from the Newlands Reclamation Project. This parcel is under lease to a tribal member. Approximately four acres are used for the TCID irrigation canal. There are now 11 homes on the 20-acre parcel. Most of the 28 buildings on the two tracts have been constructed and maintained by the Indians at their own expense.

In order for the Paiute and Shoshone families of the Fallon Colony to take advantage of federal community development programs, including housing and sanitation programs, they must have a vested property right in the land. Transferring the land in trust to the Tribes will accomplish this.

Legislative History

In 1967, the Tribes passed a resolution requesting that the U.S. transfer the Fallon Colony to them.

Legislation was introduced in the Ninety-First Congress by Senator Alan Bible to transfer the land in trust and to make it a part of the Fallon Indian Reservation. The bill was referred to the Committee on Interior and Insular Affairs, but no action was taken.

An identical bill was introduced in the Ninety-Second Congress by Senator Bible. Following hearings, the Committee on Interior and Insular Affairs reported the bill on December 2, 1971 (S. Rep. 92-541). The bill passed the Senate on December 6, 1971. No action was taken in the House.

Proposed Amendments

The Fallon Paiute and Shoshone Tribes respectfully request that S. 785 be amended as follows:

Strike out all after the enacting clause and insert
in lieu thereof the following:

"That (a) subject to valid existing rights, all
right, title, and interest of the United States

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in two thousand seven hundred acres, more or less, described below are hereby declared to be held in trust for the Paiute and Shoshone Tribes of the Fallon Indian Reservation and Colony, Nevada:

MOUNT DIABLO MERIDIAN

Township 19 north, range 29 east, Section 29, south half, northwest quarter northwest quarter and the southwest quarter northwest quarter."

This amendment adds the 60-acre Fallon Colony to the scope of the subject bill and directs the United States to hold the Fallon Colony in trust for the Paiute and Shoshone Tribes.

All other land descriptions contained in Section 1 of S. 785 should remain unaltered as part of Section 1.

It further recommends that a subsection (b) be added to Section 1 as follows:

"(b) Notwithstanding any other provision of this Act, the United States shall be entitled to use, without compensation, for so long as necessary, as determined by the Secretary of the Interior, four acres, more or less, of such lands referred to in subsection (a) for irrigation canal purposes."

This amendment protects the right of the United States to continue

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to use the irrigation canal that bisects the 40-acre tract in the Fallon Colony.

CONCLUSION

Enactment of S. 785 will enable the United States to honor its agreement with the Fallon Paiute and Shoshone Tribes, made 70 years ago. In so doing, it will make it possible for the Tribes to achieve economic independence and to contribute more fully to the economy of the state of Nevada and the Nation. On behalf of the Tribes, I respectfully urge that the Committee act favorably on S. 785, together with the proposed amendments.

Chairman ABOUREZK. What we generally do in the committee, since it has been organized this year, is to ask the witnesses just to say in their own words what they want to state about the legislation and the issues. It leaves more time for questions. If you don't read your statement, then the committee doesn't go to sleep. We find that we get more legislation passed that way. [Laughter.]

Mr. HICKS. I will try to make it as brief as I can.

Mr. Chairman, I wish to express to you and the members of the Select Committee on Indian Affairs the appreciation of the Fallon Paiute and Shoshone Tribes for this opportunity to testify in support of S. 785.

For 70 years we have been appealing to the United States for an equitable settlement of our land and water rights. We have not given up hope, and this hearing confirms our belief that justice to correct this situation will be done.

I also want to express our appreciation to Senators Cannon and Laxalt for their efforts on our behalf.

S. 785 proposes that the United States do the following:

First. Convey to the Fallon Paiute and Shoshone Tribes approximately 2,640 acres of Federal land contiguous to the north boundary of the Fallon Indian Reservation to be held in trust by the United States;

Second. Authorize the tribes to acquire water rights appurtenant to any allotted Indian lands within the reservation;

Third. Transfer water rights now appurtenant to Indian lands within the Fallon Indian Reservation that cannot be farmed to lands to be conveyed to the tribes under the proposed legislation;

Fourth. Authorize the tribes to consolidate landholdings and eliminate fractionated heirship interests in Indian trust lands; and

Fifth. Improve and extend the existing system for the delivery and distribution of irrigation water to lands within the reservation and lands to be added to the reservation under the proposed legislation.

Our reservation was once more than 31,000 acres of land. At the request of the United States, the tribes agreed to reduce the size of the reservation to 4,640 acres of arable and practically irrigable land on condition that the United States furnish it with a paid-up water right and with an irrigation delivery system to serve 4,640 acres. Congress later increased this entitlement to 4,877 acres and a delivery system for that amount of land.

Unfortunately the United States failed in its obligation to the tribes. As a result, today we have only 3,277 acres of arable and practically irrigable land, and our delivery system does not even serve all of this land. We have 1,600 acres of land that is considered "beyond reclamation."

S. 785 would convey a 2,640-acre tract containing approximately 1,600 acres of arable and practically irrigable land. It would also authorize appropriations for the construction of a delivery system and grants for subjugation so that we may utilize our water rights and put the land to beneficial use.

The legislation will not affect any existing rights in the tract of land to be added to the reservation, including any geothermal leases,

oil and gas leases, or grazing permits. Furthermore, nothing in S. 785 will affect any pending water rights litigation adjudicating rights in the waters of the Truckee and Carson Rivers.

We would like to suggest that the bill be amended to convey in trust to the tribes two tracts of land comprising the Fallon Colony. These tracts total 60 acres and are presently reserved for the benefit of the Fallon Paiute and Shoshone Tribes. This will enable the tribes to become eligible for various Federal community development programs that they are not now eligible for because the tribes do not have a vested property right in the land.

In closing, I want to stress the importance of maintaining provisions in the bill that would provide the funds to enable us to implement S. 785. It is my understanding that the current backlog for the construction and rehabilitation of presently authorized Indian irrigation projects totals \$500 million. At the present rate of appropriation we believe it will take 50 to 100 years to eliminate this backlog. We believe we have waited long enough.

We are pleased by the support of the Bureau of Indian Affairs to direct the Secretary to assign top priority for funding of the delivery system for the costs of subjugation. We feel that this money must be made available to us as soon as possible, and we feel that we can accept the Bureau's position only if we do receive that top priority.

When the tribes entered into their agreement with the United States, the agreement included provisions for the construction of delivery systems. This element of the agreement was the only reason the tribes agreed to relinquish 26,000 acres of land. We know of no other situation in which an Indian land cession was based on a commitment by the United States to construct an irrigation delivery system.

Mr. Chairman, we are not asking for a gratuity. We are asking the United States to honor its agreement.

Thank you, Mr. Chairman, for hearing our appeal for justice.

At this time I would like to introduce our attorney, Bert Hirsch, to submit further comments for the record.

Mr. HIRSCH. Thank you.

I have a very brief comment on costs. Section 7(a) authorizes and directs the Secretary to improve and extend the existing water delivery system to serve a total of 1,800 acres, including the lands to be conveyed to the tribes under S. 785, as well as certain other lands on the existing reservation not now served.

Section 7(b) grants to the tribes funds for the subjugation of up to 1,800 acres.

Section 7(c) makes planning and training grants to the tribes.

In preparing the legislation, it was contemplated that the cost to implement sections 7(a) and 7(c) would total \$1.25 million. Accordingly we recommend that section 8 be amended as follows:

There are hereby authorized to be appropriated to implement sections 7(a), 7(b), and 7(c) of this act the sum of \$2,150,000 during fiscal year 1978 and such sums as may be necessary during each subsequent fiscal year.

Furthermore, section 7(b), as drafted, would provide loans, rather than grants, for subjugation. We recommend that that be amended accordingly, as Mr. Butler has testified.

With respect to section 8, we have heard Mr. Butler's testimony and his recommendations. Either the option that I have just presented

to the committee or Mr. Butler's option would be perfectly agreeable to us.

Chairman ABOUREZK. You are satisfied with either one?

Mr. HIRSCH. Yes.

Chairman ABOUREZK. It is better to have a specific figure in there. I wonder if Senator Hatfield might have a comment on that. I am talking about not having an open-ended authorization. I think we have to have a figure.

Senator HATFIELD. Yes.

Chairman ABOUREZK. So, we probably ought to put in \$2.5 million?

Mr. HIRSCH. \$2,150,000.

Chairman ABOUREZK. I will instruct the staff to prepare that language as an amendment for the markup.

You are satisfied with the other amendments which the administration has recommended?

Mr. HIRSCH. Unfortunately, we have not seen them. I understand that there are two of them. One is on the Federal Land Policy Management Act. I am familiar with that. I don't think we have any problems with that at all.

Chairman ABOUREZK. He asks that they be authorized and directed under section 8(a), which I think you agree with; don't you?

Mr. HIRSCH. Yes.

Chairman ABOUREZK. Do you have any other problems with this legislation?

Mr. HIRSCH. I do not think so. Was there another amendment?

Chairman ABOUREZK. That was all, except changing "loans" to "grants."

Mr. HIRSCH. I would just point out to the committee that there is a phrase that says "factionated heirship" instead of "fractionated." That ought to be corrected.

Chairman ABOUREZK. What page is that on?

Well, we will have that changed. That is a typographical error.

I have no other questions.

Senator Hatfield?

Senator HATFIELD. Could you describe a little bit the character of the land, that is, the land which was nonarable and that which would be consolidated and would be irrigable land?

Mr. HICKS. You mean the physical characteristics?

Senator HATFIELD. Yes.

Mr. HICKS. Are you talking about all of the land in heirship and that which is in single ownership? I am not sure exactly what you are referring to.

Senator HATFIELD. As I understand the history of your tribes, from the original allotment of 31,000 acres you were reduced back to about 4,600 acres. You thought at that time that all of the land could be irrigated. Then, you found that about 2,600 acres was not irrigable land.

Is that correct?

Mr. HICKS. Yes.

Mr. STEVE. I can answer that, I think.

We are basing it on half the reservation of the original water right which is nonirrigable. The agreement, to begin with, is irrigable land with full water rights. Fifty percent of the reservation is alkali, and you cannot farm it.

Yet, it has a water right. There is no way you can farm it.

Senator HATFIELD. Is it clay or sand?

Mr. STEVE. Alkali.

You can farm it for 10 to 20 years, and you can't get the alkali content out. Really, the water right is useless.

In 1965 the Soil Conservation Service did a soil test on the land north of the reservation. At that time, they claimed that it was one of the better soils in the valley. It is adjacent.

Senator HATFIELD. What do they raise?

Mr. STEVE. Alfalfa.

The market is in California.

Senator HATFIELD. I see.

Mr. STEVE. It is very important, in our mind, that justice be done, or whatever you want to call it. But we do have water rights, and it is not being used. Therefore, the good land north of the reservation, we want to put to good use. We are not asking for additional water rights. We want full use of the water rights we have.

Senator HATFIELD. What would be the total acreage if this bill passes? I am talking about the reservation acreage.

Mr. HIRSCH. It is 5,480 acres right now. This would add 2,640 acres. If the amendment is accepted with respect to the Fallon Colony, then that is another 60 acres.

Senator HATFIELD. So, it would be about 8,000 acres altogether under the new reservation boundaries?

Mr. HIRSCH. Approximately, yes.

Senator HATFIELD. You still have the same alkali part of the reservation which will not produce; don't you?

Mr. STEVE. Yes.

Senator HATFIELD. What is the source of the water that you would be using for your irrigation?

Mr. STEVE. What source?

Senator HATFIELD. Is it well water?

Mr. STEVE. It comes off the Sierra Nevadas. We have the Great Basin.

Senator HATFIELD. Your claim is on what you can take from the river?

Mr. STEVE. Yes. We do have sufficient water coming down from the Sierra Nevadas, but in the last 2 years it has been dry. So, we have been cut 50 percent on the water use. But, still, this is very unusual. In a normal year we have sufficient water.

Senator HATFIELD. The free flow of the river or impoundments?

Mr. HICKS. The water right we have is through the irrigation project, the Newlands irrigation project when they made the transfer. That is when our water right was granted to the reservation, that is, when the tribe relinquished the 31,000 acres for the 10-acre allotments. That is when the water right was given to us through the Newlands irrigation project. We received our water from that. Our water right is dated from then.

Mr. HIRSCH. The Newlands reclamation project stores the waters of the Truckee and Carson Rivers in the Mohatten Reservoir. The water that the Fallon Paiute and Shoshone Tribes receive comes from that.

Senator HATFIELD. Do these rivers flow through the reservation or alongside the reservation?

Mr. HIRSCH. The Carson River, which is the source of the water right for the Fallon Paiute and Shoshone Tribes—only the Carson River—used to flow down two sides of the reservation. It is no longer a flowing river. All of the water from that river is stored in the Mohatten Reservoir. It does flow farther north, but by the time it reaches their reservation it flows into the Mohatten Reservoir and there is no longer a river flowing down both sides of the reservation.

Senator HATFIELD. So, your rights would then be fulfilled through both impoundment and through stream flow?

Mr. HIRSCH. Yes.

Senator HATFIELD. Do you have any problems there with adjoining water users?

Mr. HIRSCH. None whatsoever. These rights are guaranteed. All the adjoining water users have recognized them and have never questioned them for years.

Senator HATFIELD. Thank you, Mr. Chairman.

Chairman ABOUREZK. We have no more questions, so I want to thank you for your appearance and for your contribution to the legislative history of this bill.

The hearing is now adjourned.

[Whereupon, at 10:40 a.m., the committee adjourned.]



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