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SENATE

{ REPORT
No. 490

PROVIDING FOR THE TERMINATION OF FEDERAL SUPERVISION
OVER THE PROPERTY OF THE CONFEDERATED TRIBES OF
COLVILLE INDIANS LOCATED IN THE STATE OF WASHINGTON
AND THE INDIVIDUAL MEMBERS THEREOF, AND FOR OTHER
PURPOSES

JULY 20, 1965.—Ordered to be printed

Mr. JACKSON, from the Committee on Interior and Insular Affairs,
submitted the following

REPORT

[To accompany S. 1413]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 1413) to provide for the termination of Federal supervision over the property of the Confederated Tribes of Colville Indians located in the State of Washington and the individual members thereof, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

On page 4, line 13, strike the words "land and".

On page 4, line 14, before the word "lands" insert the words "trust or restricted".

On page 5, line 8, before the word "value" insert the words "fair market".

On page 5, line 9, strike the words "in each unit;" and add "but the determination necessarily need not conform to the geographical boundaries of the surface units;".

On page 5, line 15, strike the word "reports" and insert the words "a summary".

On page 5, lines 15 and 16, strike the words "and determinations of values".

On page 6, lines 23 and 24, strike the words "at not less than the appraised value determined by section 6 of this Act,".

On page 7, line 1, before the words "any tribal forest lands" insert the words "title to".

On page 7, line 2, strike the words "are offered for sale" and insert the words "need to be sold".

On page 7, line 2, strike the word "purchased" and insert the word "taken".

On page 7, line 3, strike the word "with" and insert "by publication of a notice in the Federal Register; and".

On page 7, line 4, strike the word "that" and insert "for that purpose".

On page 7, line 9, add the following proviso:

Provided further, That if the tribes are not willing to accept the appraised value of such tribal forest lands, as determined under section 6(b) of this Act, the tribes may commence an action in the appropriate Federal court for a judicial determination of just compensation and such determination shall be made without regard to the appraised standard contained in section 6(b):

On page 7, line 17, after the word "guardian" insert the words "or any person designated by the Secretary".

On page 8, line 20, strike the number "15" and insert the number "14".

On page 8, line 20, following the word "Act" change the period to a colon and insert the following:

Provided, That property which is held by the United States for the benefit of the tribes shall continue to have the status of tribal property until title is conveyed or transferred pursuant to section 6(f) or 7(a) of this Act and the net proceeds are actually distributed to the individual members.

On page 9, line 14, add the following new sentence: "Any tribal forest lands sold under this authority shall be purchased by the Secretary of Agriculture in accordance with the provisions of subsection 6(f)."

On page 9, line 23, after the words "Members of the tribes who" insert "elect to withdraw from the tribes and".

On page 10, line 1, after the word "shall" insert ", upon the publication of the proclamation authorized by section 17(a)."

On page 10, line 2, strike the word "thereupon".

On page 11, line 18, after the word "sold" strike "at not less than the appraised value thereof".

On page 11, line 22, after the word "land" strike "at not less than the appraised value thereof".

On page 12, line 13, strike all of section 10 and renumber the following sections.

On page 13, line 23, after the word "districts," insert "and section 1 of the Act of July 29, 1954 (68 Stat. 580; 43 U.S.C., 499a), which relates to the transfer of movable property to irrigation districts or water users associations."

On page 14, line 6, strike the number "18" and insert "17".

On page 14, line 17, after "lands" insert "and non-Indian-owned lands".

On page 14, line 22, strike the word "Indian".

On page 15, line 3, add a new subsection "e" as follows:

(e) There is hereby authorized to be appropriated, out of any funds in the United States Treasury not otherwise

appropriated, the sum of \$11,596.25 for payment to the Colville Tribes with interest at 4 per centum annually as reimbursement for tribal funds used for irrigation construction and operation and maintenance benefiting nontribal lands on the Colville Indian Reservation, such interest being computed from the dates of the disbursement of such tribal funds from the United States Treasury to the end of the fiscal year in which the appropriation is made.

On page 15, line 18, strike the number "18" and insert "17".

On page 16, line 14, add the following proviso:

Provided further, That every trust created for any minor member of the tribe under this section shall contain a provision requiring the trustee to continue the trust after the minor reaches the age of majority under the laws of the State of his residence until the trustee can make a finding in accordance with the terms of the trust with respect to the need of such person for assistance in conducting his affairs:

On page 16, line 22, strike the word "further" and insert "however,".

On page 16, line 23, after "Secretary" insert "or the trustee".

On page 16, line 25, strike the word "secretarial".

On page 17, line 1, strike the word "secretarial".

On page 17, line 4, after "Secretary" insert "or the trustee".

On page 18, line 10, strike the word "jurisdiction." and add the following:

jurisdiction: Provided, That the Secretary is authorized to continue beyond the date of said proclamation to exercise functions and authorities essential to the completion of the termination of Federal responsibilities under this Act, including but not limited to the probate of trust or restricted estates of deceased Indians, and the administration to their completion of contracts for the education program authorized by section 26 hereof, it being the intent of this proviso to authorize the Secretary to complete as speedily as possible all of the actions required under existing law and under the provisions of this statute in order to complete the Federal obligations authorized to be accomplished by this Act.

On page 19, line 1, strike the number "18" and insert "17".

On page 20, line 4, add the following new sentence:

The governing body of the tribes as recognized by the Secretary is authorized to reserve from distribution, with the approval of the Secretary, adequate tribal funds to defray the cost of prosecuting tribal claims against the United States and the Secretary is authorized to continue supervision of such funds. Any balance remaining after such litigation has been concluded shall be distributed among all members whose names appear on the final roll, or their successors in interest.

On page 21, line 11, strike the number "18" and insert "17".

On page 22, line 6, add the following new section:

SEC. 27. Effective on the date a majority of the number of the adult members of the tribes voting in a referendum

approve a termination of Federal supervision, the Surgeon General of the Public Health Service is authorized and directed (a) to conduct such studies as are necessary to determine present and anticipated health needs of members of the tribes and the resources that are available to meet them; (b) to work with appropriate State and local agencies and with the tribes for the purpose of arranging for participation by the tribes and their members in comprehensive health care programs, including, but not limited to, private voluntary health benefits plans, group insurance policies or contracts, or similar group arrangements provided by carriers; (c) to develop plans and make arrangements for the orderly assumption of financial responsibility by the tribes and their members, the State and the localities involved, in accordance with their respective abilities, with respect to environmental and preventive health services now authorized under the Act of August 5, 1954 (68 Stat. 674); and (d) to assure to the extent practicable, that adequate sanitation facilities (as described in section 7 of such Act) are provided on the reservation prior to the date on which a proclamation in accordance with the provisions of section 17 of this Act is issued.

PURPOSE

The purpose of S. 1413, as amended, is to provide for the termination of Federal supervision over the property of the Confederated Tribes of Colville Indians located in the State of Washington and the individual members thereof.

NEED

Section 5 of Public Law 772, 84th Congress (70 Stat. 626), provided that:

The Business Council of the Confederated Tribes of the Colville Reservation shall, in accordance with Resolution Numbered 1955-33, dated April 8, 1955, of the Colville Business Council, submit to the Secretary of the Interior within five years from the date of enactment of this Act proposed legislation providing for the termination of Federal supervision over the property and affairs of the Confederated Tribes and their members within a reasonable time after the submission of such proposed legislation.

In compliance with the 1956 act, the tribal business council submitted proposed legislation providing for a two-stage termination program. That proposal was introduced in the 88th Congress as S. 1442.

In late October 1963, the then chairman of the Subcommittee on Indian Affairs, Senator Church, of Idaho, held hearings on S. 1442 at Spokane, Nespelem, and Seattle, Wash. Officials representing the tribal business council, and various organizations of Colville Indians, as well as individual Indians, and county and State officials gave testimony on and suggested amendments to S. 1442. The vast majority of those appearing to testify did not support S. 1442, but recommended a one-step termination process that would result in ending trusteeship at the earliest possible date.

Subsequently, S. 1442 was amended to provide for a referendum on the question of termination and would, if approved by a majority of the Indians, set into motion a terminal program patterned after the act of August 13, 1954, as amended, affecting the Klamath Tribe of Oregon. S. 1442 passed the Senate on August 18, 1964. However, due to the lateness of the session, it was not possible for the bill to be acted on by the House.

On January 12, 1965, the Colville tribal business council, by Resolution 1965-1, requested the reintroduction of S. 1442 with certain proposed amendments. The resolution follows:

RESOLUTION 1965-1

Whereas, in compliance with section 5 of Public Law 772, of the 84th Congress, the Colville Business Council submitted to the Secretary of the Interior a plan for termination of Federal supervision over the property and affairs of the Colville Confederated Tribes which would have required two separate congressional acts; and

Whereas, consequently, proposed legislation was introduced in the U.S. House of Representatives (H.R. 8469) and similar legislation was introduced in the U.S. Senate (S. 1442), which embodied the proposal of the business council; and

Whereas, subsequently, the U.S. Senate approved S. 1442 in an amended form requiring one congressional act to accomplish the purposes of termination of Federal supervision; and

Whereas the enactment of a law containing the provisions of S. 1442, in the amended form, is dependent on the re-introduction of the proposed legislation in Congress; and

Whereas the joint legislative committee of the business council has carefully reviewed S. 1442, in the amended form, and recommends approval of the text with the inclusion of the following suggested revisions:

SECTION 1

1. On page 6, line 18, after the word "majority" and before the word "of" insert the wording "of the number".

2. On page 6, line 18, after the word "the" and before the word "members" insert the word "adult".

3. On page 6, line 18, after the word "tribes" and before word "approve" insert the wording "voting in a referendum".

4. On page 6, line 21, after the word "the" and before the word "members" insert the words "enrolled adult".

Section 1 revised (revision italicized) would read as follows:

SEC. 1. That the following sections of this Act shall become effective on the date a majority of *the number of the adult members of the tribes voting in a referendum* approve a termination of federal supervision in accordance with those sections. The Secretary of the Interior shall conduct a referendum to ascertain the wishes of the *enrolled adult* members within ninety days after the enactment of this Act

in accordance with such rules and regulations as he may prescribe."

SECTION 6, SUBSECTION F

1. On page 11, line 17, delete the comma following the word "selected". After the word "selected" and before the word "and" insert the wording "at not less than the appraised value determined by section 6 of this Act".

2. On page 12, line 11, change the semicolon following the word "property" to a colon. After the colon and before the word "and" insert the wording: "*Provided, That title to lands purchased by using individual interest as collateral shall be withheld by the Secretary until distribution of the proceeds of the tribal estate as provided in this section;*"

Section 6, subsection f, revised (revisions italicized), would read as follows:

"SEC. 6. (f) select the portion of the tribal property which if sold at the appraised value would provide sufficient funds to pay the members who elect to withdraw from the tribes for their beneficial interest in the total tribal property, sell the property so selected *at not less than the appraised value determined by section 6 of this Act* and pay the proceeds of the sale to the withdrawing members: *Provided, That any tribal forest lands that are offered for sale shall be purchased by the Secretary of Agriculture with funds that are hereby authorized to be appropriated, and such lands shall become national forest lands subject to the laws that are applicable to lands acquired pursuant to the Act of March 1, 1911 (36 Stat. 961), as amended: Provided further, That any person whose name appears on the final roll of the tribes, or a guardian on behalf of any such person who is a minor or an incompetent, shall have the right to purchase, for his or its own account but not as an agent for others, any other property in lots as offered for sale for not less than the highest offer received by competitive bid; any individual Indian purchaser who has elected to withdraw from the tribes may apply toward the purchase price up to 100 per centum of the amount estimated by the Secretary to be due him from the sale of his interest in tribal property: Provided, that title to lands purchased by using individual interest as collateral shall be withheld by the Secretary until distribution of the proceeds of the tribal estate as provided in this section:* and if more than one right is exercised to purchase the same property pursuant to this proviso the property shall be sold to one of such persons on the basis of competitive bids:"; and

Whereas the joint legislative committee recommends that the business council submit a request to Senator Henry M. Jackson to introduce a bill in the U.S. Senate containing the same text as S. 1442, in the amended form, except that it shall be redrafted to the extent necessary to include the above listed revisions and that the same request be submitted to Representative Tom Foley for introduction of the proposed legislation in the U.S. House of Representatives; and

Whereas the joint legislative committee recommends that, following the introduction of proposed legislation in both houses of Congress, the respective Subcommittees on Indian Affairs be encouraged and urged to early consider and act on the proposed legislation: Therefore be it hereby

Resolved, That we, the Colville Business Council, meeting in special session at the Colville Indian Subagency, Nespelem, Wash., acting for and on behalf of the Colville Indians this 12th day of January 1965, do hereby approve the recommendations of the joint legislative committee and authorize said committee to compose and send the above-mentioned letters of request (to include necessary explanatory material) and to take action necessary to promote early congressional action on the proposed legislation.

The foregoing was duly enacted by the Colville Business Council by a vote of 7 for; 6 against, under authority contained in article V, section 1(a) of the Constitution of the Confederated Tribes of the Colville Reservation, ratified by the Colville Indians on February 26, 1938, and approved by the Commissioner of Indian Affairs on April 19, 1938.

Senator Jackson introduced S. 1413, as requested by the tribal governing body, on March 8, 1965.

On April 5 and 6, 1965, following receipt of executive department reports on S. 1413, the Subcommittee on Indian Affairs conducted hearings on the bill. Spokesmen for the tribal business council, representing the majority who support termination legislation, and minority members who oppose the bill, as well as representatives of the Colville Indian Association, the Petitioners Party, and individual tribal members, gave their testimony. Officials from the Department of the Interior were also heard. The printed hearings were distributed to members of the tribe.

The committee believes that a majority of Colville Indians want to dissolve the tribal entity and dispose of their assets. In recent tribal elections, candidates running on the termination issue have been elected, increasing the total number of councilmen supporting this course, further evidencing the desire of most members for termination. It is believed that these Indians should have the opportunity to express themselves on the question of termination, and S. 1413, as reported, would assure this opportunity by providing for a referendum, at which a majority of the adult members voting would determine if Federal supervision and control of these tribes would be brought to an end.

S. 1413 has been amended by incorporating several proposed clarifying and perfecting changes suggested by the executive agencies. It is believed that these amendments strengthen the legislation and will aid in avoiding the problems encountered in earlier termination acts.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill provides that the termination provisions shall become effective only if a majority of the number of the adult members of the tribes approve in a referendum called for that purpose by the Secretary of the Interior.

Section 2 states that the purpose of the act is to provide for the termination of Federal supervision over the trust and restricted property of the Colville Tribes and the individual members.

Section 3 defines the terms used in the act.

Section 4 provides for the preparation and publication in the Federal Register of a membership roll for the tribes, which will be final for the purposes of the act. Primary responsibility for preparation of the roll is placed on the tribes. Corrections to the roll will be handled entirely by the appeal process. Any aggrieved person may appeal to the Secretary. After the Secretary has decided all appeals, he will republish the roll and it will be final for the purposes of the act. As the Secretary does not review the roll except to the extent necessary to decide appeals, a local representative of the Secretary is given the right to appeal on behalf of any Indian in order that he may protect the rights of persons who should but who fail to appeal, to the extent he knows about them.

Section 5 declares that the right of each enrolled member of the tribes to share in the use or disposition of tribal property is a personal property right which may be bequeathed or inherited but which may not otherwise be alienated before the Federal trusteeship over the property is terminated.

Section 6 as amended directs the Secretary of the Interior, within 60 days after the section becomes effective, to initiate a program to update all ownership records pertaining to trust or restricted land on the reservation. The program is to be completed within 1 year. Thereafter, the Secretaries of Interior and Agriculture jointly shall determine what portions of the tribal lands are valuable chiefly for timber, grazing, farming, or other purposes, and divide the lands into appropriate units for sale or management. Appraisals will be made of these units by three qualified independent appraisers to ascertain the fair market value of the assets. Fair market value of the timber assets are defined to be the market price that would be realized if the sale of the timber were made over a period of 10 years. The Secretary determines fair market value by averaging the three appraisals.

The Secretary will also determine the fair market value of tribal mineral rights, and the value of hunting and fishing rights, and submit summaries of all appraisals to the adult tribal members within 60 days after completion. Thereafter he will provide an opportunity for the enrolled members to elect to withdraw from the tribe and have their assets converted into money and paid to them, or to remain in the tribes and participate in a tribal management plan.

The Secretary will select the portion of the tribal property that would, if sold at its appraised value, provide sufficient funds to pay withdrawing members. Any tribal forest lands required to be sold are to be taken by the Secretary of Agriculture with funds authorized by the bill, and such lands shall become national forest lands. If the tribes are not willing to accept the appraised value of such tribal forest lands, the tribes may commence an action in the appropriate Federal court for a judicial determination of just compensation, and this determination will be made without regard to the appraisal standard contained in section 6(b). Tribal members or designees shall have a right to purchase any other property at not less than the highest offer received by competitive bid and withdrawing members may pledge up to 100 percent of the amount estimated to be due them for this purpose.

The Secretary will cause a plan to be prepared for the management of property retained by members electing not to withdraw. The plan may provide for transferring such property to a trustee, corporation, or other legal entity. The property which is held by the United States for the benefit of the tribes will continue to have the status of tribal property until title is conveyed or transferred pursuant to sections 6(f) or 7(a) and the net proceeds are actually distributed to the individual members.

Section 7 as amended authorizes the Secretary of the Interior to execute conveyancing instruments necessary to convey title to tribal property to be sold or transferred. If a majority of the members who remain in the tribe request a sale of their property before it is transferred to another trustee, corporation, or other legal entity, the Secretary may sell it and distribute the proceeds if he determines it is feasible and practical to do so. If the Secretary takes this course of action, any tribal forest lands sold will be purchased by the Secretary of Agriculture in accordance with the provisions of subsection 6(f).

All actions required by sections 6 and 7 are to be completed at the earliest time, but in no event later than 4 years after the sections become effective. Members who elect to withdraw from the tribes and receive the money value of their interest in tribal property shall, upon publication of the proclamation authorized by section 17(a), cease to be members of the tribes, but they will share in the proceeds of any tribal claims against the United States.

Section 8 provides that no funds distributed pursuant to section 6 to withdrawing members shall be paid to any person as compensation for services pertaining to the enactment of the bill or any amendments. Certain penalties are provided if this section is violated.

Section 9 as amended authorizes the Secretary to transfer unrestricted control of funds and personal property to individual members of the tribe within 4 years after the section becomes effective. Restrictions on the allotted lands are also removed and provision is made for resolving the heirship land problem through partitionment, sales, and exchanges.

Section 10 of the bill as introduced made State law rather than Federal law applicable to the probate of trust or restricted property of Indians who die 6 months or more after the date the section becomes effective. The Bureau of Indian Affairs recommended, on the basis of past experience with termination acts, that this provision be deleted from the bill. The committee accepted this suggestion, which has the effect of continuing Bureau responsibility for the probate of estates of deceased members of the tribes until the termination process is completed.

Section 10 of the bill as reported provides for the disposition of federally owned property, as distinguished from Indian property, that is now used for the administration of tribal affairs. Such property may be given to the Indians or to public or nonprofit agencies if the Indians will derive a benefit therefrom, or may be retained in Federal ownership at the discretion of the Secretary of the Interior.

Section 11 makes the distribution of trust property under the act not subject to Federal or State income tax, but after the distribution is made the property and income therefrom will be subject to the same Federal and State taxes as in the case of non-Indians.

Section 12 as amended authorizes the Secretary of the Interior to transfer the care, operation, and maintenance of reservation reclamation works and movable property to water users' associations or irrigation districts which may be established for that purpose. Provision is made for the assessment and collection of construction costs and charges on any project lands and for recordation in the appropriate county office of the first lien against project lands in favor of the Federal Government which secures the repayment of Federal funds advanced in connection with project works. Section 12 as amended also authorizes secretarial cancellation of reimbursable irrigation operation and maintenance costs and construction costs, against Indian-owned and non-Indian lands subject to the provisions of the bill. The sum of \$11,596.25 is authorized to be appropriated with interest as reimbursement for tribal funds used for irrigation construction and operation and maintenance benefiting nontribal lands on the reservation.

Section 13 of the bill protects existing water rights.

Section 14 directs the Secretary of the Interior to protect the rights of Indians who are minors, non compos mentis, or unable to handle their property without assistance by causing the appointment of guardians or by such other means as he deems adequate. The committee adopted an amendment to provide that every trust created for a minor shall contain a provision requiring the trustee to continue the trust after the minor reaches the age of majority until the trustee makes a finding with respect to the need of such person for assistance in conducting his affairs. Any member who is determined by the Secretary of the Interior or the trustee to be in need of assistance may, within 120 days after notice, contest the determination in any naturalization court. The court's decision is final.

Section 15 provides for the use of tribal funds in the Treasury of the United States for any purpose approved by the tribe and the Secretary.

Section 16 authorizes the Secretary of the Interior to execute such patents, deeds, or other documents as are necessary to carry out the provisions of the act or establish a marketable and recordable title to any property disposed of pursuant to the act.

Section 17 provides that when Federal restrictions are removed from the property of the tribes and their members a proclamation will be published in the Federal Register, and thereafter such Indians will have the same status under State and Federal law as any other person or citizen. As amended, this section authorizes the Secretary to continue beyond the proclamation date certain functions and responsibilities such as probating of estates and administration of education contracts. However, these programs are to be completed as expeditiously as possible.

Section 18 terminates the power of the Secretary or other Federal officer to take, review, or approve any action under the tribal constitution and any constitutional power of the tribes which is inconsistent with provisions of the bill.

Section 19 authorizes the Secretary to transfer title to cemeteries within the reservation to any organization authorized by the tribes, or for the Secretary to take such action on his own initiative if the tribes fail to do so.

Section 20 authorizes funds payable under the act to an individual Indian to be set off against any debts owed by the individual to the tribe or to the United States.

Section 21 as amended protects claims heretofore filed with the Indian Claims Commission. The tribal governing body as recognized by the Secretary is authorized to reserve from distribution adequate funds to defray the cost of prosecuting tribal claims.

Section 22 reaffirms the validity of any lease, permit, license, right-of-way, lien, or other contract approved prior to enactment of this act. Also, it authorizes the Secretary to transfer to another Federal agency, or to the State if all parties consent, any powers, duties, or other functions of a continuing nature he may have with respect to Indian trust property.

Section 23 gives the Secretary of the Interior authority to issue rules and regulations necessary to carry out the purposes of the act.

Section 24 repeals all inconsistent provisions in other acts.

Section 25 contains a separability provision.

Section 26 provides that the Secretary of the Interior may, prior to the issuance of the proclamation provided for in section 17, undertake a special training and educational program to help tribal members earn a livelihood, conduct their own affairs, and assume their responsibilities as citizens without special services from the Bureau of Indian Affairs.

Section 27 authorizes and directs the Surgeon General of the Public Health Service (1) to conduct study of present and anticipated health needs of the tribes; (2) to work with the State and local agencies and the tribes for the purpose of arranging participation of the members in health benefit plans, group insurance policies, or similar group arrangement; (3) to develop plans for the assumption of financial responsibility with respect to environmental and preventive health services; and (4) to assure to the extent practicable that adequate sanitation facilities are provided on the reservation prior to termination.

Section 28 provides that nothing in the act shall affect the authority to make timber sales otherwise authorized by law prior to the termination of Federal control over such timber. Any timber contracts involving forest lands purchased by the United States shall be administered by the Secretary of Agriculture.

Section 29 provides that all sales of tribal lands pursuant to the act on which roads are located shall be subject to the right of the United States and its assigns to maintain and use such roads.

Section 30 provides that any enrolled person who has continuously resided since July 24, 1961, on any forest lands purchased by the United States shall be entitled to occupy and use a reasonable acreage of such lands as a homesite for his lifetime, subject to regulations by the Secretary of Agriculture.

Section 31 provides that the costs required by this act may be paid from tribal funds which are authorized for that purpose, subject to full reimbursement by the United States.

COST

The cost to the Federal Government of acquiring tribal timberland authorized to be purchased by this act cannot be estimated at this time. The number of tribal members electing to withdraw and have their shares of property paid to them will determine how much of the tribes' assets will have to be sold.

FACT SHEET

A fact sheet relating to the Colville Reservation, prepared by the Bureau of Indian Affairs, is set forth below:

COLVILLE RESERVATION

Population

On the Colville Reservation there are 11 different bands of Indians. Of the 4,600 Indians whose names appear on the membership roll, 75 percent live off the reservation. Actually, 1,608 Indians reside on the reservation and 1,174 nearby. Between 100 to 200 Indians reside in each of the 3 small villages of Nespelem, East Omak, and Inchelium and between 20 to 30 in each of the crossroads sites of Keller, Disatel, and West Fork. Sixty-six percent of the reservation Indians have over 50 percent Indian blood and 25 percent of them are fullbloods. Eighty percent of the Indians read and write English.

Labor force

The reservation labor force numbers 655, of which 52 percent or 339 are currently unemployed. Nevertheless, the average annual family income, derived mostly from logging operations but also from farming or Government work, is between \$2,500 and \$3,100.

The land

The Colville Reservation consists mostly of high rolling plateaus, but there are also steep hills and mountains and a large portion of the land is heavily timbered. Of the reservation's 1,062,601.17 acres of land, 925,660.56 acres are tribal lands, 136,932.13 are controlled by individuals, and only 8.48 acres are Government owned. These lands have neither been surveyed nor appraised and an accurate appraisal would take from 6 to 8 weeks at least and be very costly.

Forest lands

The forest lands are the economic backbone of the operations of the Colville bands. There are 825,666 acres of commercial timber resources, of which 755,314 acres are in tribal land and 70,352 acres in allotted land. It is estimated that on the tribal land there is a total of 5,077,335 MBM, of which 2,284,800 MBM or 45 percent is in ponderosa pine and 2,792,535 MBM or 55 percent is in other species. The allotted lands contain 403,446 MBM, of which 70 percent or 282,412 MBM are in ponderosa pine and 30 percent or 121,034 in other species.

There are 10,200 acres of noncommercial timber resources, of which 9,912 acres are in tribal land and 288 in allotted lands. There is no data on the volume of this noncommercial timber, but it is relatively small.

There is no tribal mill for the milling of the lumber. The annual cut is advertised for sale and sold by contract to loggers, who bid for the timber that may be cut each year on the sustained yield timber management plan. The current

cut is about 95 to 100 million board feet per year, but under sustained yield management, an annual harvest of 120 million board feet of sawtimber could be maintained on the tribal and allotted lands.

Timber income

The Stanford Research Institute has estimated the annual income from both tribal and allotted lands at \$2,400,000, of which the tribal share would be \$2,160,000 before taxes if the management, after termination, were conducted along present lines. However, since business income and property taxes on tribal lands alone (if no tax relief were forthcoming) would approximate \$630,000, the net would be \$1,530,000. The average gross annual timber income from both tribal and allotted lands for the past 10 years has been \$1,499,665, or a net of \$1,349,700. Since the sales of timber from allotted lands have approximated 20 percent of the total, the average tribal net income has been \$1,079,760 for that period. Per enrolled Indian this would amount to about \$235, but the per capita payments have only averaged \$150 annually, the balance presumably having been used for tribal expenses.

Forest liquidation value

If all of the timber, leaving no reserve stand, could be cut and sold today or this year, without upsetting the lumber market, under the usual timber sale terms, the estimated value is \$80,500,000. This is based on an arbitrary stumpage rate of \$20 per thousand board feet for ponderosa pine and \$10 per thousand board feet for all other species. These rates are reasonable approximations of stumpage rates presently in effect. These values are predicated upon no disturbance in the lumber market by continuing to sell only the sustained-yield capacity. To liquidate all of this timber in a few years could do nothing but upset the market and drive prices down.

An investor in the timberlands who would continue to manage it and place it on the market in reasonable amounts probably could not afford to pay more than approximately one-half of the estimated value. A quick liquidation (cutting) probably would result in similar circumstances.

Mineral lands

Mineral deposits are known to exist on the reservation. Their value, however, is unknown, and questioned by some. Mineral bearing structures may be limited because formations containing them are reported to be discontinuous and broken. Nevertheless, 11,066 mining claims had been filed by June 1961, and of these 10,920 have been disposed of. A recent study of sodium sulfate deposits found that, at current market prices for sodium sulfate and at current production costs, the extraction of the mineral would be unprofitable at this time. This same study reported on the occurrence of sodium carbonate (soda ash), and a California chemical firm has indicated interest in undertaking production.

A minerals survey of the reservation has not been made. Such an investigation would cost from \$60,000 to \$175,000 if

drilling is involved; and the cost of such an overall mineral survey, plus an appraisal of all reservation land values, would be somewhere between \$200,000 and \$475,000. The appraisal alone would take a very minimum of 6 to 8 weeks.

Irrigated lands

The Colville Indian irrigation project, consisting of the Monse, Nespelem, and Hall Creek-Twin Lakes units irrigates 4,154 acres of land, all controlled by individuals except 344 acres of tribal lands. The construction costs for the irrigation works total \$450,596. There has been no water delivered to lands on the Hall Creek-Twin Lakes unit since 1954. There is little or no interest in irrigation farming under the Nespelem unit, and it is anticipated that the Monse unit will be acquired by the Douglas County Public Utility District in connection with the construction of the proposed Wells hydroelectric project. There are no further plans for construction work on this project.

Dry farmlands

There are 22,688 acres of dry farmland, of which the tribe controls only 567 acres and individuals 22,121. The total annual income therefrom approximates \$212,713.

Grazing lands

There are about 170,994 acres of open grazing land of which 132,783 acres are tribally controlled and 38,211 acres individually controlled. There are about 13,665 individually owned cow units grazing thereon, but only 7,194 of these are Indian owned. This grazing land appears to be overstocked, but there has yet been no serious erosion. In 1963 the cash income from permits totaled \$51,401, of which non-Indians paid \$39,088 and Indians \$12,313. Of this total, \$31,729 were paid to the tribe and \$19,672 to Indian individuals.

Wild lands

There are also 13,659 acres of wild lands, all tribally owned except 221 acres controlled by individuals.

Other lands

There are also 14,983.48 acres of land under nonagricultural use, of which 14,500 are tribally controlled, 475 individually controlled, and 8.48 acres owned by the Government.

Tribal production

In 1962 Indian production from all reservation lands, including timber land, was valued at approximately \$4,530,305. Non-Indian production thereon amounted to \$628,847, but of this \$48,500 was paid to the Indians as rentals.

Tribal moneys

As of December 31, 1963, as indicated in the annexed tables, the tribe had net assets of cash or accounts receivable amounting to \$854,815.08; and on May 20, 1964, tribal funds in the U.S. Treasury amounted to \$2,296,389.84. The tribe may also have some funds deposited locally, about

which we have no present information, but these are probably insignificant.

Roads

For the construction of roads, the Bureau programed \$438,000 for fiscal 1964 and \$532,000 for fiscal 1965. During fiscal 1964, \$66,266 was spent on the maintenance of 495 miles of roads, and the figure for fiscal 1965 is estimated at \$81,000. It is believed that it will be necessary to spend between \$1,500,000 and \$2 million to bring the roads up to standards under which the counties concerned will accept responsibility for the whole system.

DEPARTMENTAL REPORTS

The reports of the executive agencies relating to S. 1413 are as follows:

DEPARTMENT OF THE INTERIOR,
Washington, D.C., April 2, 1965.

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

DEAR SENATOR JACKSON: This responds to your request for a report on S. 1413, a bill to provide for the termination of Federal supervision over the property of the Confederated Tribes of Colville Indians located in the State of Washington and the individual members thereof, and for other purposes.

The Department has no objection to the enactment of the bill if it is amended to require a favorable vote of a majority of the adult members of the tribe, rather than a majority of those voting, and if it is further amended as indicated in the enclosed appendix.

The position of the Department of the Interior is that severance of the Federal trusteeship is not objectionable if it is done by mutual consent. S. 1413 provides for a referendum and is therefore consistent with this policy of the Department.

Experience with previous terminations, however, leads us to recommend a number of perfecting amendments, which are contained in the attached appendix. Two of them are of sufficient importance to warrant special mention.

The bill as drafted does not specify the size of the electorate which is to determine the future of the Colville Tribes and their valuable estate. In a matter of this importance, it seems to us that a substantial number of the tribal members ought to express their views and that the legislation should specify the necessary number. We recommend that a majority of the adult enrolled members ought to vote affirmatively for liquidation before the decision is made so to do.

Furthermore, the method of evaluating so large a forest ought to be specified in the legislation. We interpret the language referring to "an appraisal of the fair market value" to mean the cash value of a clear cut, spread over 10 years, undiscounted, and have so stated in a proposed amendment.

Although we accede to the desire of the Congress to refer the future of the reservation to the Colville members, we think it is important that the members know of the existence of an alternative to liquidation.

We have for some time been developing a proposal to develop a forest products enterprise at Colville that will satisfy the legitimate desire of the tribal members both on and off the reservation for income; keep the forest intact and operated on sound conservation principles; vest the interests of each tribal member so that his share of the tribal estate may be devised or bequeathed; provide maximum employment for those members of the tribes who prefer rural to urban living; and provide revenues for the cost of local government. This proposed plan is summarized here, and a more complete description will be provided at the hearing on the bill.

In broad outline, the plan is as follows:

An investment by a Federal loan of \$12 million for plant construction, and \$1,850,000 for working capital.

At a cutting rate of 120 million board feet per year, gross revenues of \$17,784,000 would result from sales of logs, lumber, plywood, and chips.

With estimated costs of \$15,742,000 and assuming present tax advantages accorded conventional tribal enterprises, net profit would be \$2,042,000.

Added to this profit would be \$1,912,000 from sale of stumpage, making a total of \$3,934,000. A reserve for debt repayment of \$480,000 would leave \$3,454,000 for per capita payments of about \$700.

In addition, an estimated 600 jobs would be available in the forests and the mill complex.

For such an enterprise to succeed, it would be necessary in our opinion for the Federal trust to remain and for the enterprise to be free of Federal taxation.

The objection of the proponents of liquidation to the present situation are based primarily, we believe, on the following considerations:

1. The low yield of dividend income from the present forest operations. Standing timber is being sold for about \$2 million. Only \$718,000 are being distributed per capita as dividend income. Based on rough estimates of \$100 million as the value of the Colville forest, this is a yield of less than 1 percent. By an integrated forest products system and future stumpage sales, we believe this could be raised to 3.5 percent without liquidating tribal holdings as this bill contemplates.

2. Many Colville individuals fear that their children will in time lose their membership in the tribe and, understandably, prefer to receive their share of the tribal estate in cash now. Closing the rolls would have the effect of vesting the tribal property rights as individual rights and thus the operation of the forest products enterprise could provide both of these desirable goals. Legislation to close the rolls would, of course, be necessary.

3. Continued supervision of tribal affairs by the Bureau of Indian Affairs is objectionable to many Colville tribal members, as well as to Members of Congress. Continuation of this supervision is not essential to the development of the forest enterprise. Private management by contract is entirely feasible, we believe, and our plan provides for a 15-percent cost allowance for this purpose.

4. Continued functioning of the tribal government in apparent competition with the governments of Okanogan and Ferry Counties is objectionable to many people. The counties' 25-percent share of stumpage from a national forest would amount to about \$500,000.

5. Of major concern to the Department and the Congress will be the future well-being of the 2,900 members of the Colville Tribes

who are also local residents of the reservation and therefore of Okanogan and Ferry Counties. If the bill is enacted and the referendum results in liquidation, they will receive substantial sums of cash.

As a group of human beings, what are their characteristics? What are their problems? Will cash relieve them? If not, what is their future?

Conditions of life among the reservation residents are well known. They were well described in a Stanford Research Institute study of 1960, and have been brought up to date by the Division of Indian Health; by employment studies of committees of the Congress; and by data made necessary for the administration of the Area Redevelopment Act.

In summary, this is a group which has many of the characteristics associated with poverty. The reservation labor force numbers approximately 650, of which about 50 percent are regularly unemployed. The average family income in 1963 was \$2,800. Included in this sum is an average \$1,290 from per capita payments and land leases. Two-thirds of those on or adjacent to the reservation are one-half or more Indian blood quantum.

An average of 20 percent of the 2,900 residents have graduated from high school.

Since 1935, the public schools have provided for the educational needs of Colville Reservation children under Johnson-O'Malley contracts. Nevertheless, 56 Colville children were attending Bureau of Indian Affairs schools in the academic year 1963-64. Under Bureau criteria, this indicates a poor home environment, for were it not so the children would be going to public school.

The last complete housing survey of the Colville Reservation was made in 1958 by the Division of Indian Health of the Public Health Service. Only 82 of a total of 625 houses met standards set by the Division's sanitary engineers. One hundred and twenty-two are unfit for human habilitation. One hundred and sixty-one houses required major repairs; 260 needed minor repairs. Under authority of the Indian Sanitation Act, the Division of Indian Health has since done much to improve sanitation, and individual Indians have added extra rooms and bathrooms, but most of the housing on Colville Reservation must still be described as seriously substandard with respect to congestion, construction, sanitation, and heat. The programs of the Public Housing Administration for low-rent public housing and mutual-aid construction have been discussed with the Colville tribal government but they have not formed the necessary tribal housing authority; we believe because they anticipate termination.

The health status of the Colville Indians will be the subject of a separate report by the Division of Indian Health. We are, however, generally aware of the poor health of this population and feel that it should be taken into account in planning for the future.

We point to the unemployment, the lack of education, and poor housing, the low income, and the lack of sophistication of the 2,900 reservation residents because we feel that we have an obligation to alert this committee to a likely repetition of the Menominee experience. Although the Menominee tribal enterprise has been successful, the social needs of the Menominee population generally—similar in their characteristics to the Colville population—are so great that the

county has been forced to turn to the State for additional assistance in the years since termination.

It is our belief that liquidation and the distribution of cash will not in themselves solve the problems of poverty at Colville. Neither will the development of a forest enterprise in and of itself. The roots of poverty go deeper than the absence of economic development or the perennial cash shortage of poor people everywhere.

If this bill is enacted into law and the referendum is affirmative, the annual income will be replaced by the distribution of a substantial sum in cash. The cash hunger of poor people is great, and the cash for many of them will not last long. At that point the welfare costs to Okanogan and Ferry Counties will bring to mount, just as they have for Menominee County, and there will be a demand for State and Federal welfare aids.

If the referendum should fail, we hope the Congress and the tribes would jointly agree to a program of integrated forest products development. The start of such a program has been too long delayed and has already contributed to the dissatisfaction with the present situation, which is shared by all who participate in it.

It would be unrealistic to suggest that such development would by itself relieve the conditions of poverty which characterize this and many other rural situations. This Department anticipates a demand for State and Federal aid for the relief of poverty for many years to come in the Colville Reservation and adjacent areas. If the outcome of this legislation should be a continuation of the Federal trust, it becomes this Department's responsibility, in association with other Government agencies, such as the Office of Economic Opportunity, to devise antipoverty programs. If the trust should be dissolved, it is our recommendation that any new Federal aid program be made the responsibility of other Government agencies.

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

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

I. PERFECTING AMENDMENTS

1. On page 1, lines 4 and 5, delete "number of adult members of the tribes voting in a referendum" and substitute "enrolled adult members of the tribes".

This change requires a majority vote of all enrolled adults rather than a majority of those voting.

2. On page 4, in line 13, delete "land and"; and on line 14 after "to" insert "trust or restricted Indian".

This change restricts the requirement with respect to land records to Indian lands.

3. On page 4, lines 23 and 24, delete "by three qualified independent appraisers"; and on page 5, lines 4 to 6, delete "The Secretary shall determine fair market value by averaging the three appraisals".

This change deletes the requirement that the determination of fair market value be made by averaging the appraisals of three independent appraisers. This procedure cannot be expected to achieve a result

which would represent the judgment of any one of the experts in the field of evaluation. The tribes might well allege that the acceptance of any value less than the highest figure would be prima facie evidence of payment of less than fair market value. Furthermore, with a property as extensive and as varied in its value aspects as the tribal estate at Colville, it is unrealistic to anticipate the employment of any single appraiser qualified to prepare appraisals of all of the various parts of the total estate. There are forests, range lands, dry farmlands, irrigated agricultural lands, unexplored mineral resources, recreational potential, industrial and townsite potential.

The Secretary of the Interior should be given broad authority to appraise the units designated under the previous subsection. This would enable the employment of experts, as needed, qualified in the evaluation of diverse land types, and the employment of coordinative appraisal expertness to arrive at a single, document, estimate of fair market value for the tribal estate, by units.

For the purpose of evaluating the timber assets of the reservation, the bill defines fair market value to be the market price that would be realized if the sale of the timber assets were made over a period of 10 years. This definition is a departure from the normally recognized definition of "fair market value." We do not object. In fact we believe it is a step in the direction of assuring to the Colville Indians a realization of the values which they impart to their tribal holdings over and above those normally associated with this terminology in the world of commerce. If the bill is enacted, we will interpret the language to mean that the value of timber would be the total of the prices that would be realized if the sales were made on the open market, over a 10-year period of time with no restrictions, either implied or otherwise, on cutting. This would not include the discounting of future returns to their values at the date of the appraisal. It is assumed, too, that the property would be tax free during the 10-year period and that it would be divided into marketable units that would bring maximum returns. The value would also include the value of forest growth that is estimated would occur during the theoretical 10-year period in which the sales were being made.

4. On page 5, line 9, amend subsection (c) to read: "(c) determine the value of tribal mineral rights (including oil and gas), but the determination necessarily need not conform to the geographical boundaries of the surface units".

Subsection (c) provides for a determination of the value of tribal mineral rights in each unit. The mineral resources of the Colville Reservation have not been explored in depth. There is currently well-defined interest in the exploration for and development of such minerals. Substantial mining interests are presently active in this field. It is recommended that the appraisals of minerals not be, of necessity, identified with or tied geographically to the boundaries of surface units. As a very practical matter there may be no real correlation. It would be within the discretion of the appraisers and the Secretary to outline practical salable units of mineral rights independently of such surface units.

5. On page 5, lines 12 and 13, change the beginning words to read: "(e) cause a summary of said appraisal to be delivered to all adult enrolled members * * *".

The present language directs that copies of the appraisal reports be delivered to all adult enrolled members of the tribe. This would

entail the duplication of thousands of copies of voluminous detailed technical reports at great expense. This requirement should be amended to provide for notification to the membership of the total estimates of the value of the tribal estate. This information should serve, adequately, the purpose intended. Furthermore, it would be against the best interests of the Indian people to distribute publicly these estimates of value together with their detailed documentation. Much of the information contained in the details of an appraisal report are and should be maintained as confidential data.

6. On page 7, line 6, after "guardian" insert "or any person designated by the Secretary".

This change will permit, for example, the designation of an administrator to act on behalf of heirs.

7. On page 9, line 1, change "four" to "seven".

Our experience shows that four is too short a time to complete the acts required by the act.

8. On page 8, line 22, add the following sentence: "Any tribal forest lands sold under this authority shall be purchased by the Secretary of Agriculture in accordance with the provisions of subsection 6(f)."

We believe that any sale of tribal forest lands that is made under section 7 should be made to the Secretary of Agriculture.

9. On page 10, line 21, and again on line 25, delete "at not less than the appraised value thereof".

The requirement that the Secretary sell individual lands "at not less than the appraised value thereof" is an unduly restrictive limitation. The Secretary should have latitude to sell if an offer closely approximates or is not inconsistent with the appraised value.

10. On page 11, line 16, delete all of section 10, and renumber all succeeding sections.

Section 10 makes State law rather than Federal law applicable to the probate of trust or restricted property of Indians who die 6 months or more after the date the section becomes effective. The Bureau of Indian Affairs would complete the probate of estates pending at that time, but would not be responsible for the probate of any new estates. This section should be deleted. Experience with earlier termination acts containing this provision disclosed that it created unnecessary confusion and difficulty in closing the estates of deceased Indians.

11. On page 12, line 17, change the colon to a comma and add "except that property transferred to a trustee, corporation, or other legal entity for the benefit of the members who elect to remain in the tribe, and the income from such property, shall not be subject to Federal or State taxation for a period of 15 years after such transfer."

This change will provide a transition period during which the tribal corporation will have an opportunity to establish a sound business venture.

12. On page 12, line 25, after "districts" put a comma and add "and section 1 of the Act of July 29, 1954 (68 Stat. 580; 43 U.S.C. 499a), which relates to the transfer of title of movable property to irrigation districts or water users associations."

Subsection (a) provides for the transfer of the care, operation, and maintenance of reclamation works to water users associations or irrigation districts. It does not provide for the transfer of title of movable property.

13. On page 13, line 16, after "lands" insert "and non-Indian owned lands". On line 20 delete "Indian".

Subsection (c) provides for the adjustment, elimination, or cancellation of all or any part of the reimbursable operation and maintenance costs and reimbursable irrigation construction costs chargeable against Indian-owned lands. This would require that any adjustments on non-Indian owned lands be made by separate legislation under the act of June 22, 1936 (49 Stat. 1803). This would result in considerable delay in transferring the irrigation projects to the water users.

14. On page 14, after line 2, insert the following new subsection (e):
"(e) There is hereby authorized to be appropriated, out of any funds in the United States Treasury not otherwise appropriated, the sum of \$11,596.25 for payment to the Colville Tribes with interest at 4 per centum annually as reimbursement for tribal funds used for irrigation construction and operation and maintenance benefiting non-tribal lands on the Colville Indian Reservation, such interest being computed from the dates of the disbursement of such tribal funds from the United States Treasury to the end of the fiscal year in which the appropriation is made."

Tribal funds were spent for irrigation construction and for payment of operation and maintenance assessments on nontribal lands on the Colville Reservation. The new subsection (e) is the same as a comparable provision in the Klamath Act.

15. On page 15, line 4, after the colon insert: "*Provided*, That every trust created for any minor member of the tribe under this section shall contain a provision requiring the trustee to continue the trust after the minor reaches the age of majority under the laws of the State of his residence until the trustee can make a finding in accordance with the terms of the trust with respect to the need of such person for assistance in conducting his affairs."

On page 15, line 6, after "Secretary" insert "or the trustee".

On page 15, line 8, delete "secretarial" in the two places it occurs.

On page 15, line 12, after "Secretary" insert "or the trustee".

Section 15 provides authority like that vested in the Secretary of the Interior in a number of previous termination acts to protect the interests of minors, persons non compos mentis, or others who in the Secretary's opinion are in need of assistance in conducting their affairs. In the Klamath termination situation trusts were created for some minors solely because of their minority. Upon their reaching their majority the trust funds were released although the individuals were mentally incompetent. Some provision should be made for determining an individual's competency where a trust has been created for him as a minor.

16. On page 16, line 17, change the period to a colon and add: "*Provided*, That the Secretary of the Interior is authorized to continue beyond the date of said proclamation to exercise functions and authorities essential to the completion of the termination of Federal responsibilities under this Act, including but not limited to the probate of trust or restricted estates of deceased Indians, and the administration to their completion of contracts for the education program authorized by section 2(b) hereof, it being the intent of this proviso to authorize the Secretary to complete as speedily as possible all of the actions required under existing law and under the provisions of this statute

in order to complete the Federal obligations authorized to be accomplished by this Act."

This change clarifies the Secretary's authority to clean up tag ends of work after the termination of trusteeship and the issuance of the proclamation. This could include probating the estate of an Indian with trust property dying shortly before the date of the proclamation. It also clarifies the Secretary's authority to complete the administration of vocational training programs, including final payments.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., April 3, 1965.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate,
3106 New Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Bureau of the Budget on S. 1413, a bill to provide for the termination of Federal supervision over the property of the Confederated Tribes of Colville Indians, located in the State of Washington and the individual members thereof, and for other purposes.

The general purpose of the bill is adequately described in its title. We are not able at this time to comment on the detailed provisions of the bill, but we do wish to express to the committee our concern with respect to its broad objectives.

First of all, we have no clear evidence that termination of Federal supervision as proposed by the bill is either necessary or desirable at the present time. So far as we know, the views of tribal members on this question have not been formally sought, although we understand a significant number of the enrolled members do favor termination. In these circumstances the committee may wish to assure that the referendum required by section 1 will in fact represent a decision by the majority of the adult members of the tribe rather than a majority of those voting in the referendum.

Second, subsection 6(f) requires the Secretary of Agriculture to purchase for national forest lands any tribal lands offered for sale. This provision raises a number of questions:

(a) Are additional national forest lands in this section of the Nation desirable? The Federal Government already has over 6 million acres of commercial forest in Washington and 15 million acres in Oregon; the State of Washington owns 2 million acres of commercial forests. Suitable arrangements can be made for recreation, soil stabilization, and careful land management whether the land is in Indian, Federal, or private ownership.

(b) Does the Federal Government have an obligation arising from its trust responsibilities to assure a market for these lands? We do not believe the Federal Government has this responsibility and recommend continued trust arrangements if private sale is not a feasible or desirable alternative. In any event, sale arrangements should permit disposal over a period of years to minimize adverse effects on the market for timberlands.

(c) Are the Federal expenditures required for purchase of the lands the wisest use of Federal funds in all the circumstances? We

note that the Stanford Research Institute some years ago estimated the value of the lands at amounts ranging from \$38 to \$100 million based on various assumptions. The appraisal provisions in subsection 6 (b) through (d) may well result in an appraisal which succeeds the fair market value of the property. Even if, as is recommended, the provision for Federal purchase of the land is deleted and the appraisal is used simply to establish an estimated value of the tribal property and to assist in the sale of the lands, we would recommend the deletion of subsection 6 (b) through (d) and the substitution of language authorizing the Secretary to cause separate appraisals to be made of the units designated under subsection 6(a) for the purpose of ascertaining the fair market value of each such unit.

In summary, we urge most careful consideration of the merit of termination, both from the Federal Government standpoint and from that of the tribe. Further, in the absence of any convincing evidence of the need for Federal purchase, and in recognition of the substantial expenditures required for this purpose, we recommend deletion of these provisions from the bill in favor of either continued trusteeship arrangements, private sale, or a combination of these.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., April 5, 1965.

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

DEAR MR. CHAIRMAN: This letter is in response to your request of March 12, 1965, for a report on S. 1413, a bill to provide for the termination of Federal supervision over the property of the Confederated Tribes of Colville Indians located in the State of Washington and the individual members thereof, and for other purposes.

S. 1413 authorizes the Secretary of the Interior to conduct a referendum to ascertain the wishes of the Colville Indians regarding the termination of Federal supervision over their property and affairs. The bill also authorizes the Secretary of the Interior to bring up to date all land and ownership records of the lands of the Colville Indian Reservation; to cause appraisals to be made to determine the fair market value of the lands including the value of tribal mineral rights and hunting and fishing rights; to select portions of the tribal property to be sold to provide members withdrawing from the tribe their beneficial interest in the total tribal property; to sell such property; to cause a plan to be prepared for a tribal corporation to manage the tribal property for those who elect to remain in the tribe; and to take other steps as appropriate to remove Federal restrictions on the property of the tribes and individual members. The bill also provides that upon the removal of said Federal restrictions, the individual members of the tribes shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians.

Of particular interest to this Department is the fact that the bill does not make any reference to the health and sanitation services

provided the Colville Indians by the Division of Indian Health, Public Health Service, but would terminate such services. It should be noted that the health status of the Colville Indians is far below that experienced by the general population of Washington State. Mortality rates from tuberculosis are 1.5 times greater than the general population; influenza and pneumonia claim 3 times the relative number of lives, and diseases of early infancy account for a mortality rate 5 times as great as that experienced by the general population of the State of Washington. Also, in 1955, 70 out of 1,000 live births among the Colville Indians resulted in infant deaths. By 1962 this number had been reduced to 65. But this is still almost 3 times as large as the infant death rate for Washington as a whole.

Since 1955, when the Division of Indian Health, U.S. Public Health Service, assumed the responsibility for providing health services to the Indians, there has been a gradual improvement in the mortality experienced by the Indians of the Colville Reservation. In 1955 the death rate from all causes was 1,369. In 1962 the total mortality rate had dropped to 1,226. This change is further reflected in the fact that, compared to Washington State, the ratio of the Colville death rate has dropped from 1.5:1 to 1.3:1. This change is primarily due to the reduction of infectious and communicable disease deaths. For example, mortality rates for infectious and parasitic diseases dropped from 39.7 per 100,000 in 1955 to 8.5 in 1962; gastritis death rates were reduced from 29.8 to 17.0. In spite of these improvements, the health status of the Indians does not compare favorably with the rest of the residents of the State of Washington. Your attention is invited to the attached mortality table.

The Division of Indian Health, U.S. Public Health Service, provides a comprehensive health program including curative, preventive, and sanitation services to Indians on the Colville Reservation through direct and contract services. Outpatient medical and dental care is available at the health center located near Nespelem on the Colville Agency grounds. For those medical services that cannot be provided by the health center staff and for Indian beneficiaries living too far from the health center, needed care is provided through contract doctors, hospitals, and pharmacies. Contract dental care for Indian children is provided in a similar manner. During fiscal year 1964 there were 5,771 medical and 1,591 dental outpatient visits at the health center. In addition, 2,051 days of hospital care and more than 400 outpatient medical visits were provided by contract hospitals and doctors. To reinforce the medical care, preventive health services are provided by a public health nurse, a sanitarian aid, and a social worker on the health center staff. In the eastern part of the reservation, additional public health nursing services are furnished through contract by the Ferry County Health Department. Under the provisions of Public Law 86-121 cooperative PHS-tribal projects have been undertaken on the Colville Reservation for the construction of water and sewerage facilities for Indian homes. Upon completion of authorized projects, approximately 75 percent of the Colville Indians living on the reservation or on nearby tax-free Indian lands will be served by these facilities. Additional projects are needed to serve Indian families in the Nespelem-Grand Coulee area of the reservation and four areas adjacent to the reservation.

The cost of the health services provided by the Division of Indian Health to the Colville Indians during the past fiscal year were as follows:

Fiscal year 1964 actual obligations for Colville

Subactivity	Position	Cost
Sanitation.....	2	\$13,600
Dental.....	2	14,900
Public health nurse.....	2	14,900
Field medical service.....	8	91,300
Subtotal.....	14	134,700
Contract patient care.....		19,300
Total, fiscal year 1964.....		154,000

NOTE.—Construction cost for Public Law 86-121 projects not included.

The termination of Federal health services will obviously have a severe impact upon State and local health services as well as upon the health status of the Indians. It is estimated that only about one-half of the Colville Indians have sufficient appreciation and understanding of modern health practices to seek early medical attention and to manipulate living habits and environmental factors successfully in the achievement of satisfactory levels of health. The rest need much more health education and constructive noncritical support during this period of cultural transition. Careful planning, therefore, based upon the health and sanitation needs must be conducted with the State and local health services to assure that these services will be provided with due regard to the general acculturation of the Indians to the customs and practices of the non-Indian population of the State. The impact of these requirements upon the resources of the State and local health agencies will probably be such as to require a period of phasing out before the State and local health services are able to meet the health and sanitation needs of the Colville Indians.

Since the bill is devoted to matters of direct concern to the Department of the Interior, we defer to their views on such matters. We would recommend, however, that the bill be amended to give specific recognition to the health responsibilities of this Department under the transfer statute of August 5, 1954 (68 Stat. 674), as amended, and provide for studies of health needs and resources of the Colville Indians and for the planning and establishment of transitional programs.

Time has not permitted us to secure advice from the Bureau of the Budget as to the relationship of the bill to the program of the President.

Sincerely,

WILBUR J. COHEN,
Assistant Secretary.

MORTALITY TABLE.—*Death rates from selected causes of death among Indians in the Colville service unit for the two 3-year periods, 1954-56 and 1961-63, compared with the rates for all races in the State of Washington, 1955 and 1962*

[Rates per 100,000 estimated population]

	Colville	Washington State	Ratio
All causes:			
1955	1,369.0	940.4	1.5:1
1962	1,225.5	910.9	1.3:1
Ratio	.90	.97	.87
Infectious and parasitic diseases:			
1955	39.7	6.2	6.4:1
1962	8.5	3.9	2.2:1
Ratio	.21	.63	.34
Tuberculosis:			
1955	39.7	6.2	6.4:1
1962	42.6	2.9	14.7:1
Ratio	1.07	.47	2.30
Influenza and pneumonia:			
1955	79.4	28.8	2.8:1
1962	85.1	32.6	2.6:1
Ratio	1.07	1.13	.93
Gastritis:			
1955	29.8	4.7	6.3:1
1962	17.0	3.9	4.4:1
Ratio	.57	.83	.70
Diseases of early infancy:			
1955	158.7	35.4	4.5:1
1962	136.2	28.7	4.7:1
Ratio	.86	.81	1.04
Infant deaths per 1,000 live births:			
1955	70.4	24.5	2.9:1
1962	65.2	22.8	2.9:1
Ratio	.93	.93	1.00

Source: Indian: Data for the Colville service unit are taken from the Portland area office annual health statistics reports, 1954-56 and 1961-63. Washington State, all races: "Vital Statistics of the U.S., 1955," vol. I, table BR, 1962; vol. II, mortality, pt. A, tables 1-13, pp. 1-22.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., April 9, 1965.

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

DEAR MR. CHAIRMAN: This is in response to your request of March 12, 1965, for a report on S. 1413, a bill to provide for the termination of Federal supervision over the property of the Confederate Tribes of Colville Indians located in the State of Washington and the individual members thereof, and for other purposes.

The Department of the Interior has primary responsibility for the management and disposition of Indian tribal assets and for Federal services furnished the members of the Confederate Tribes of the Colville Indian Reservation. The Department of Agriculture, therefore, makes no recommendation as to whether termination of Federal supervision of the trust and restricted property and of Federal services to the members of the Confederate Tribes of Colville Indians is now timely or desirable. If enactment of legislation for this purpose which would involve sale of tribal forest lands is determined to be desirable, we believe that provisions of the bill for incorporating the forest and related lands to be disposed of into the national forest system would be desirable.

S. 1413 would become effective only upon approval of its provisions by a majority of the members of the tribes affected. It would provide the authorities and procedures whereby members of the tribes would elect to either withdraw from the tribes and have their beneficial

interest in tribal property converted into money and paid to them, or the members could elect to remain in the tribes and participate in benefits of management for that portion of the tribal property retained for that purpose. The Secretary of the Interior would jointly with the Secretary of Agriculture classify the tribal lands as chiefly valuable for timber, farming, grazing, or other purposes, and would divide the parts into units suitable for disposal or management. The Secretary of the Interior would cause appraisals to be made to determine the fair market value of each of these units and would determine the value of mineral rights and tribal hunting and fishing rights. That part of the property required to pay withdrawing members their proportionate share of tribal assets would be sold for that purpose.

Subsections 6 (a) and (f) and sections 28, 29, and 30 are of direct interest to the Department of Agriculture.

Under subsection 6(a), the Secretary of Agriculture would join with the Secretary of the Interior in classifying the tribal lands for division into units appropriate for sale or management. Under subsection 6(f), the Secretary of Agriculture would purchase the tribal forest lands offered for sale to meet the requirements of the withdrawing Indians. Lands so purchased by the Secretary of Agriculture would become national forest lands subject to laws applicable to lands acquired by the United States pursuant to the act of March 1, 1911 (36 Stat. 961), as amended.

Section 28 provides that outstanding timber sales contracts affecting all lands purchased by the Secretary of Agriculture would then be administered by this Department. Section 29 would require that all sales of the tribal lands be subject to the right of the United States and its assigns to use and maintain any roads located on such lands. Section 30 would provide that any member of the tribe who has continuously resided since July 24, 1961, on forest lands purchased by the United States under the act shall be entitled to occupy and use as a homesite for his lifetime a reasonable acreage of such lands as determined by the Secretary of Agriculture and subject to such regulations as the Secretary may issue to safeguard the administration of the national forest.

The many other provisions that prescribe the detailed methods to carry out the purposes of the bill are not of direct concern to this Department.

The Colville Indian Reservation in Washington adjoins the southern boundaries of the Colville and Okanogan National Forests. It is predominantly a timbered area and the timberlands are quite similar to those in the national forests except that, generally speaking, the timberlands of the reservation lie at a lower elevation. A recent fact sheet prepared by the Bureau of Indian Affairs indicates that the Colville Indian Reservation includes about 929,000 acres of tribal lands of which some 755,000 acres are commercial forest lands. The reservation also includes some 70,000 acres of commercial forests land in individual allotments. The remaining tribal and allotted lands are comprised of grassland, farmland, barren areas, noncommercial timber types, and other wildlands. Major forest types are ponderosa pine and Douglas-fir. Western larch and lodgepole pine also occupy appreciable areas. The tribal forested lands are predominantly stocked with sawtimber-size trees containing some 5 billion board feet of commercial sawtimber. Currently, over 100 million board feet

are sold each year under supervision of the Bureau of Indian Affairs for manufacture by local mills.

Much of the soil within the reservation is of glacial origin and hence is highly erodible. The reservation lands drain into the impoundment created by Grand Coulee Dam, the Okanogan River, or other Columbia River storage pools. It is important that the forest and range lands of the reservation be adequately managed to prevent undue soil disturbance and to minimize soil erosion and that soil stability be maintained during timber harvest operations.

The forested portions of the Colville Indian Reservation are well suited to multiple use and sustained-yield forest management. While site quality is not high, the lands have, according to the Bureau of Indian Affairs, a capacity in the aggregate for producing up to 120 million board feet of merchantable timber annually for use by local industries. The forest lands require constant and permanent forest management under sound technical practices to perpetuate this valuable economic resource and to fully utilize the other resources inherent in them, such as recreation, wildlife, and watershed functions. Continuation of sustained-yield management and orderly utilization of the timber on the tribal lands is important to assure a stable and reliable supply of timber to dependent wood-using industries. Forced or untimely or indiscriminate liquidation, or marketing in ways that would encourage installation of excess mill capacity on a temporary basis, would be detrimental to the long-term economic stability of the wood-using industries in the area.

The forest lands now are managed by the Bureau of Indian Affairs under sustained-yield forestry practices which include an active program of timber sales. Continuation of such management will provide for forest and soil conservation needs and for orderly sustained harvest of timber crops. Therefore, from this standpoint, no change is needed in the present arrangements for the management of the forest lands in the reservation. However, if conversion of forest land tribal assets to money should be decided upon, incorporation of such lands into the national forest system, with equitable compensation to the Indian owners, would assure permanent multiple-use sustained-yield management of the timber resource and continued availability of it, under public sale procedures, to sawmills and other wood-using plants in the area. National forest management also would provide public access to and use of the wildlife, range, and recreational resources and conservation of the soil and watersheds.

Predominantly forested areas of the Colville Indian Reservation very likely will contain areas of grass, brush, noncommercial timber, or barren lands intermingled with the timber types. There may also be instances where areas of nonforest types will constitute fringes around predominantly timbered units. These generally are integral parts of the larger land management units. Inclusion of such non-timbered types within the units found chiefly timbered in character would be logical, and we would interpret the provisions of the bill as permitting such action.

The Bureau of the Budget advises that, while there is no objection to the presentation of this report to the committee, the Bureau, in its report on S. 1413, states that, in the absence of any convincing evidence of the need for Federal purchase of tribal lands of the Colville Indians, and in recognition of the substantial expenditures required for this purpose, deletion of these provisions from the bill is

recommended in favor of either continued trusteeship arrangements, private sale, or a combination of these.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

DEPARTMENT OF JUSTICE,
Washington, D.C., April 15, 1965.

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

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 1413, a bill to provide for the termination of Federal supervision over the property of the Confederated Tribes of Colville Indians located in the State of Washington and the individual members thereof, and for other purposes.

The subject of this bill is not a matter for which the Department of Justice has primary responsibility and accordingly we make no recommendation as to its enactment. There are, however, certain features of the bill to which attention is invited.

The bill is similar in many respects to the Klamath Termination Act of August 13, 1954, 68 Stat. 718, as amended 25 U.S.C. 564, et seq. That act has resulted in what has proven to be lengthy and costly litigation. We refer principally to the actions entitled *Klamath and Modoc Tribes, etc. v. United States*, No. 125-61 and *Anderson, et al. v. United States*, No. 87-62, in the U.S. Court of Claims. We offer the following suggestions in the hope that, insofar as practical, similar litigation may be avoided at Colville.

In section 5 it is provided that "the beneficial interest in tribal property of each person whose name appears on the roll shall constitute personal property which may be inherited or bequeathed." Similar language was included in section 4 of the Klamath Termination Act and it has been urged by the plaintiffs in the *Anderson* case that this language indicates an intent on the part of Congress that upon publication of the final roll, the property in which the tribe held the beneficial interest then ceased to be tribal property and vested in the individual members as tenants in common. A like contention is made as to members who elected to withdraw from the tribe, based upon the language of section 5(a)(3) of the Klamath Termination Act. Similar language is found in section 6(f) of S. 1413. This Department considers the language of the Klamath Termination Act to show a definite intention on the part of Congress that such property remain tribal until (1) it is conveyed to a trustee, corporation, or other legal entity for the benefit of the members who elect to remain with the tribe, or (2) it is disposed of in the manner prescribed and the net proceeds are actually distributed among those members who elect to withdraw from the tribe. The court has not ruled on the question. In the absence of such a ruling, it would seem that to avoid the possibility of similar litigation at Colville, appropriate language should be inserted in the bill expressly stating the intention of Congress. This Department recommends that the following be added to section 6(g): "*Provided, That property which is held by the United States for the benefit of the tribe shall continue to have the status of tribal property until title is conveyed or transferred pursuant to section 6(f) or 7(a) of this Act*

and the net proceeds are actually distributed to the individual members."

Subsections (b), (c), and (d) of section 6 provide for appraisals of the tribal assets. Section 6(b) refers to "fair market value" with the additional provision that "fair market value of the timber assets shall be defined to be the market price that would be realized if the sale of the timber assets were made over a period of ten years." Section 6(c) refers to "value" of tribal mineral rights and section 6(d) refers to "value to the tribes" of hunting and fishing rights. It is extremely doubtful that these varying definitions would meet the requirements of just compensation. It would seem preferable that in each instance the term "fair market value" be used without any qualifications or limitations. Also it is not clear what disposition, if any, is to be made of such hunting and fishing rights, if any, as the tribes may possess. The definitions might be adequate if the property were later to be sold in a manner reasonably contemplated to obtain a fair return to the Indians since there would then be no taking under the fifth amendment.

Section 6(f) provides that the Secretary of Agriculture shall "purchase" any tribal forest lands that are offered for sale. If this means that the Secretary of Agriculture shall enter the bidding for forest lands in competition with other prospective purchasers and would purchase only such lands as he believes advisable because of price or other considerations, the provision would not seem objectionable from a constitutional standpoint. On the other hand, if this is considered a taking under the power of eminent domain, the Secretary of Agriculture to pay the appraised value, then the fifth amendment to the Constitution requires the payment of just compensation. The rule is that the determination of just compensation is a judicial matter. *Monongahela Navigation Company v. United States*, 148 U.S. 312 (1893). In order to avoid the constitutional question it would seem necessary to provide a judicial determination of just compensation or approval by the Colville Tribes of the taking and of the values determined in accordance with section 6 (b), (c), and (d). We strongly recommend that if there is to be such a judicial determination, it should be made at the time of the transfer of the property to the national forest system. In this connection, we also recommend that if a taking of the forest lands under the power of eminent domain is contemplated, the bill authorize the issuance or publication of an order or proclamation by the Secretary of the Interior transferring the beneficial interest in the forest lands from the tribes to the United States and definitely fixing the date on which the interest of the tribes is extinguished. This would definitely fix the date on which just compensation would be determined, a question concerning which considerable controversy has arisen at Klamath.

Section 1 of the bill provides for a referendum by the Indians before the act becomes effective. It is not believed this referendum would constitute an approval by the Indians of the value which might be determined pursuant to section 6 (b), (c), and (d) since the Indians at the time of the referendum would not and could not be advised of the amount of the appraisals. If it is intended that, by the referendum authorized in section 1, the Indians are surrendering their right to a judicial determination of just compensation, this should be made very clear to them at the time of the referendum.

Section 6(f) authorizes the Secretary of Agriculture to purchase forest lands which may be offered for sale under that section. Section 7(a) does not contain a similar authority for forest lands offered for sale thereunder. We are unable to determine whether this omission is deliberate or whether the omission of this authority in section 7 is an oversight.

Section 6(f) authorizes the Secretary of the Interior to select certain property for sale and to sell the property at not less than the appraised value. No provision is made for the contingency that no purchaser may be found who will purchase the property or parts thereof, at or above the appraised value. Some provision for disposition of property for which a purchaser cannot be found who is willing to pay the appraised value would appear to be an essential part of any termination program.

Section 7(b) requires that all action pursuant to sections 6 and 7 be taken within 4 years from the date when section 7 becomes effective. We think the experience at Klamath has demonstrated that 4 years is much too short a time to carry out such an extensive program as termination of supervision of a reservation of this size and complexity. Inadequate time to obtain appraisals and to carry out other programs can and probably will give rise to serious difficulties.

Section 7(c) provides that members of the tribes will cease to be members upon the receipt of the money value of their interest in tribal property. This is a very indefinite term since there probably would be a number of payments to its members. For instance, at Klamath moneys are still accruing for the benefit of the withdrawing members which will be distributed at some time in the future. It is believed that it would be preferable to provide that membership ceases upon the publication of the proclamation authorized by section 18(a).

Also it is not clear whether under section 7(c) members who elect to remain with the tribe, but who may receive the money value of their shares in the tribal property under section 7(a), shall cease to be members of the tribe. We assume it is not so intended, but the intent should be made clear.

Section 22 reserves to the tribe the benefits of the Indian Claims Commission Act of August 13, 1946, 60 Stat. 1049, 25 U.S.C. 70, et seq. Litigation is pending entitled *Wade Crawford, et al. v. Udall, et al.*, Civil No. 1401-64 in the U.S. District Court for the District of Columbia, in which it is questioned whether the Klamath Tribe and the Secretary of the Interior had authority to reserve tribal funds for the purpose of prosecuting claims against the United States after the issuance of the proclamation of the Secretary of the Interior declaring that the Federal trust relationship to the affairs of the tribe had terminated pursuant to section 18(a) of the Klamath Termination Act. While this Department believes it implicit in the Klamath Termination Act that such authority does continue to exist, in order to avoid litigation at Colville similar to the *Crawford* case it is recommended that such authority be expressly included in S. 1413. This could be accomplished by adding to section 22, the following:

"The governing body of the tribes as recognized by the Secretary of the Interior is authorized to reserve from distribution, with the approval of the Secretary, adequate tribal funds to defray the cost of prosecuting tribal claims against the United States and the Sec-

retary of the Interior is authorized to continue supervision of such funds. Any balance remaining after such litigation has been concluded shall be distributed among all members whose names appear on the final roll, or their successors in interest."

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

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

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