

STATEMENT OF RONALD ESQUERRA, DEPUTY TO THE ASSISTANT SECRETARY - INDIAN AFFAIRS (OPERATIONS) BEFORE THE HEARING OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, HOUSE OF REPRESENTATIVES ON H.R. 3534, A BILL "TO PROVIDE FOR THE DISPOSITION OF FUNDS APPROPRIATED (SIC) TO PAY A JUDGMENT IN FAVOR OF THE COWLITZ TRIBE OF INDIANS IN INDIAN CLAIMS COMMISSION DOCKET NUMBERED 218 AND FOR OTHER PURPOSES."

June 24, 1986

Mr. Chairman and members of the Committee, I am pleased to present the views of the Department of the Interior on H.R. 3534, a bill providing for disposition of funds appropriated to pay a judgment in favor of the Cowlitz Tribe.

We oppose enactment of H.R. 3534, as introduced.

H.R. 3534 provides for the disposition of funds awarded by the Indian Claims Commission and appropriated in 1973 for the taking by the United States in 1863 of lands of the Cowlitz Tribe. After payment of attorney fees and litigation expenses and with investment income earned, the \$1,550,000 award has grown to about \$4,302,056 as of April 30, 1986.

Section 2 of the bill would have the Secretary of the Interior "set aside 100 per centum of the judgment award and interest accrued thereon, for lawful purposes authorized by the Cowlitz Tribal Council and the purchase of land for the Cowlitz Tribe." It goes on to provide that land may be purchased "in fee patent until such time as the tribe becomes federally recognized or acknowledged, at which time the land becomes the Cowlitz Reservation to be taken in trust for the tribe by the Department of the Interior."

Section 3 confirms the intent that the funds are to be held in trust after enactment and provides for tax and other exemptions similar to but more liberal than those now provided in section 7 of the so-called Indian Judgment Funds Act of October 19, 1973, as amended (25 U.S.C. 1407).

A key fact is that there is no federally acknowledged successor tribe to the Cowlitz Tribe whose land was taken in 1863 and for whom the award was made. The descendants of that tribe can be described as consisting of three groups of individuals.

One group of the descendants identifies themselves as the Tribe of Cowlitz Indians of the State of Washington. This group has not been acknowledged by the Federal Government as an Indian tribe and its "Council" is not a governing body with which the Federal Government would deal under the government-to-government relationship between tribes and the Federal Government. This group is seeking acknowledgment as a tribe under 25 CFR Part 83.

Although this first group was recognized for the purpose of prosecuting the 1863 Cowlitz claim against the United States, it should be noted that the benefits of claims awarded for the taking of tribal land are normally provided to the aggrieved tribe if it continues to exist, or its successor tribe(s), or to the descendants of its members.

A second group are descendants of Cowlitz Indians who moved to the Yakima Reservation early in this century and a majority of these individuals are members of the Yakima Tribe.

The third group is the undetermined number of Cowlitz descendants who are not included in the other two groups.

We undertook the first effort to provide for the disposition of the Docket 218 award funds under the Indian Judgment Funds Act. A hearing of record was held on June 1, 1974, at Cowlitz Prairie, Washington. About half of the 168 individuals present favored a proposal of the unrecognized Tribe of Cowlitz

Indians for use of the funds by them. That plan was opposed by those Cowlitz affiliated with the Yakima Tribe who subsequently submitted a petition with 194 signatures calling for a full per capita distribution of the funds as did 116 letters we received. We understand that this disagreement among the descendants continues.

On November 4, 1974, we submitted to the 93rd Congress a plan for the full per capita distribution of the funds to the lineal descendants of the Cowlitz Tribe as it existed in 1863. The considerable controversy among the descendants resulted in the Chairmen of the appropriate House and Senate Committees requesting that our plan be withdrawn and we withdrew it.

Congressional proposals for the disposition of the funds include H.R. 5090 in the 94th Congress, H.R. 5523 in the 95th Congress, and H.R. 3612 and S. 2931 in the 97th Congress.

We oppose H.R. 3534, as introduced, because:

- (1) it treats an unacknowledged group as if it were a federally recognized Indian tribe;
- (2) it treats that group as if it were either the aggrieved tribe for which the award was made, or the successor to that tribe;
- (3) it imposes a trust responsibility on the Secretary of the Interior for the funds the bill would grant to that group; and
- (4) it precludes any benefit to the other descendants who should benefit in the absence of the aggrieved tribe or a successor tribe to it.

It should also be noted that it is our view that compensation paid to a tribe as the result of an award for the taking of tribal land should be used as a tribal asset for tribal purposes and as a general rule should not be distributed per capita.

We would support the bill if it were amended to provide:

(1) for the funds to be continued to be held in trust and invested until a final determination is made under 25 CFR Part 83 as to whether the "Tribe of Cowlitz Indians of the State of Washington" is a successor tribe to the Cowlitz Tribe as it was constituted in 1863;

(2) for the development of a roll of descendants of the Cowlitz Tribe as it was constituted in 1863 and a division of the funds among the three groups; or

(3) for a full per capita distribution to the descendants of the Cowlitz Tribe as it was constituted in 1863.

Under our first alternative the bill should provide that if the Secretary determines that the group is a successor tribe, the funds should be programmed for tribal purposes approved by the Secretary and that per capita payments of the funds are barred. As I noted, we believe that awards paid to tribes should be used for tribal purposes and not paid per capita to individuals. Moreover, in this case a per capita payment to only the individuals in the group which identifies themselves as the Tribe of Cowlitz Indians of the State of Washington would not be equitable.

Also under our first alternative, the bill should provide that if the Secretary determines that the group is not actively fulfilling its

responsibilities under the 25 CFR Part 83 process, or if the Secretary determines that they are not a successor tribe to the Cowlitz Tribe of 1863, then the funds are to be paid per capita to the descendants of the Cowlitz Tribe as it was constituted in 1863.

Under our second alternative the bill should provide that the share of the first group is to continue to be held in trust until a determination is made under 25 CFR Part 83. If the determination is to acknowledge that the group is a tribe, then the bill should provide for programming of the funds for tribal purposes approved by the Secretary. If the determination is not to acknowledge that the group exists as a tribe, then the bill should provide for a per capita distribution to the individuals in the group.

Also under our second alternative the bill should provide that the shares of the second and third groups are to be paid per capita to the individuals in those groups.

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