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Report Concerning Tribal Delegation to Washington, December 16-22 from James E. Curry to Representative Burdick, December 23, 1951

James E. Curry

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JAMES E. CURRY

File

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December 24, 1951

Memorandum from James E. Curry, Tribal Attorney, Three Affiliated Tribes
of the Fort Berthold Reservation.

I am sending you herewith a copy of my notes on the various conferences
and other activities of the recent delegation of the Three Affiliated
Tribes.

If it appears to you any of the statements included in this report is
inaccurate or misleading, I would appreciate your advising me.

James E. Curry

Mr. Burdick ✓

LAW OFFICE
JAMES E. CURRY
519 East Capitol St., Washington 3, D.C.

December 23, 1951

To: The Tribal Business Council of the Three Affiliated Tribes of Fort Berthold Reservation.

From: James E. Curry, Tribal Attorney.

Report Concerning Tribal Delegation to Washington, December 16-22, 1951

GENERAL

The delegation arrived in Washington by air late in the evening of December 16. It consisted of Martin Cross, Ben Youngbird, George Gillette, Sam Matthews and Carl Whitman Jr. Graham Holmes, Area Attorney, also arrived in Washington at about the same time, having been sent by Area Director John Cooper. Mr. Holmes accompanied the delegation in most of its negotiations on the 17th, 18th and 19th. He left for Aberdeen early on the 20th. Tribal Attorney James E. Curry also accompanied the delegation in most of its activities.

The delegation met with Miss Erma Hicks on December 17 to review its agenda and to arrange for meetings with Indian Bureau officials. On Dec. 18, a meeting was held with staff members of the Bureau, attended by Warren Spaulding, Harry Critchfield, Erma Hicks, John Provinse, Jeff Ward, James Curry, Attorney Hopkins, Graham Holmes, and the members of the delegation. The purpose of this meeting was to discuss the question of voluntary withdrawals. On Dec. 19, a meeting was held at the Department for the principal purpose of discussing the question of oil revenue rights. It was attended by Messrs. Spaulding, Larkin, Utz, Kammerer, Holmes, Cramer, Critchfield, Curry and members of the delegation.

On the afternoon of the same day, a meeting was held in Indian Commissioner Dillon Myer's office, attended by Commissioner Myer, Mr. Spaulding, Mr. Curry, Mr. Holmes and members of the delegation.

Separate conferences were also held with Tribal Claims Attorneys Ernest Wilkinson, Glen Wilkinson and John Cragun; with Congressman Usher L. Burdick; with Senator Langer's staff; Senator Young's staff; with A. A. Grorud; with Miles Kennedy, National Director of the American Legion; with Amanda Finley, in charge of the office of the National Congress of American Indians; with Mrs. Ruth M. Bronson, Executive Director of the National Congress of American Indians; and with Mr. Elmore McKee, of the Ford Foundation.

Also present in Washington on Dec. 17, 18 and 19 were an unauthorized delegation from the Reservation consisting of Percy Rush, Oscar Burr and Rufus Stevenson. Chairman Martin Cross invited these men to attend the conferences at the Indian Bureau, but they refused to do so.

OIL REVENUE RIGHTS - GENERAL

The principal item on the agenda of the delegation was the following:

"Stanolind Gas Company of Tulsa, Oklahoma, have now under lease 17,290.86 acres of Indian land on the Fort Berthold Indian Reservation for the

purpose of prospecting for oil and gas, under the lease contract the said company will drill and sink a 12,000-foot well within a year's time and because of the above situation, the Land Committee of the Tribal Business Council deems it imperative and their duty to consult with their Tribal Attorney and with the Secretary of the Interior to ascertain the meaning of stipulations inserted in trust patents issued to individuals under various allotment Acts. Tribal Land Committee feels very much concerned regarding stipulations under the Act of February 14, 1920 (41 Stat. 408) and further, to consult with the Secretary of the Interior, concerning the ownership upon oil and mineral rights on school lands in Sections 1 and 36 of each township on the Fort Berthold Reservation that the Indians ceded to the State of North Dakota.

And also further consult with Secretary of the Interior and make it known to him that Fort Berthold Indians did not waive their oil and mineral rights in connection with the selling of so-called 14 townships ceded to the U. S. Government under Hanna Act of 1912."

OIL RIGHTS IN THE ALLOTMENTS MADE UNDER THE ACT OF 1920

Many of the tracts of land on which the oil leases were recently issued and on which the landowners collected a total premium of a half-million dollars consisted of properties covered by the Act of Feb. 14, 1920. When the invitations for bids were issued recently, the question arose whether the oil royalties should go to the Tribe or to the allottees. The allotments were made under the Act of Feb. 14, 1920 (41 Stat. 408-24) which provides:

"That where selections are made on land reported to contain coal or other mineral, such selections shall be approved and the allottee shall receive a patent therefor, under the aforesaid Act, with a reservation, however, of the coal or other mineral for the benefit of the tribe."

On December 6, 1951, the Superintendent reported to the Chairman, quoting the Commissioner of Indian Affairs, as follows:

"The report of the Geological Survey at the time the allotments were approved, as is evidenced by the record presented to the Secretary of the Interior, shows that no minerals other than coal were found in the reservation. Accordingly, patents were issued pursuant to the 1920 Act without reservation to the tribe of any of the oil and gas that may underlie the land."

The Commissioner's decision on this question affects not only the question whether the Tribe shall get the oil revenues from land now in individual Indian ownership. If the Commissioner is right, then the Tribe also loses the oil revenues from many allotments which have passed into white ownership. This problem was discussed at length with representatives of the Indian Bureau on Dec. 18. Tribal Attorney Curry had not yet been able to make a full study of the problem because up to that time he had not been able to get certain papers from Bureau officials.

The general opinion of the Indian Bureau officials was in agreement with that of Commissioner Myer above quoted. The Delegation felt that such large amounts of money are involved that the legal question should be explored thoroughly. It

was agreed that Curry would make a full study of the subject and report back. It was further understood that the Indian Bureau people would give him full cooperation, not only in digging out the facts (such as the surveys made by the Geological Survey at the time, the proceedings for allotment of the land, etc.) but in any other possible way.

It cannot be stated with any certainty that the Commissioner is wrong in the ruling he has made. However, there is some doubt about the matter. After the meetings were over, this doubt was expressed in a letter from the Delegation to the Commissioner, reading in part as follows:

"The statute does not provide for a reservation of coal rights only. Neither does it limit the minerals to be reserved to those actually reported to exist. Is it not true that where coal was reported on the land, then the allotments should have complied strictly with the terms of the Act and contained a 'reservation . . . of the coal or other mineral'? Was not the allotment of minerals other than coal unauthorized by law and therefore null and void? If your answer is, yes, then is not the Tribe entitled to the oil revenues from this land? We would appreciate your official legal opinion on these questions, including legal points and authorities in support thereof."

When a reply is received from the Commissioner, the legal study of these questions will be carried forward.

OIL REVENUES FROM SCHOOL LANDS

Another issue raised at our conferences with Bureau officials and lawyers refers to land granted to the State of North Dakota under Sec. 8 of the Act of June 1, 1910. This Act provides that Sections 16 and 36 of each township "are hereby granted to the State of North Dakota for school purposes." Mr. Youngbird pointed out that "school purposes" do not include the exploitation of the land for minerals. He said that this is strictly a commercial purpose. He raised the question whether it was not the intention of Congress to reserve mineral rights to the Tribe.

The Indian Bureau lawyers pointed out that this language has been used in dozens of statutes granting public lands of the United States. They said it has always been interpreted as authorizing the States to sell the land, to use it for any purpose, or to make any other disposition of it that they please. This question was also referred to the Tribal Attorney for further study in cooperation with the Indian Bureau.

OIL REVENUES FROM LANDS
RESERVED FOR AGENCY, SCHOOL AND RELIGIOUS PURPOSES

Mr. Ben Youngbird also raised the question who should have the oil revenues from lands reserved for agency, school and religious purposes under Sec. 3 of the Act of June 1, 1910. We were advised that, in 1912, a law was adopted authorizing patents to the churches for lands held by them under this clause. However, nobody knew whether or not such patents had actually been granted. Incidentally, the question was also raised whether the compensation for lands of this character located in the taking area ought to go to the religious organizations or to the Tribe. These matters are booked for additional legal study.

OIL REVENUES FROM "FOURTEEN TOWNSHIPS"

The Delegation also inquired who ought to get the oil revenues from the lands conveyed to the State during the time of Governor Hanna. This property is usually described as the "14 townships." Mr. Sam Matthews stated to the conference that Governor L. B. Hanna told the Indians at the time of the transaction that the minerals would be reserved for them. The Indian Bureau was not able to locate the law authorizing this transaction or any of the details. Therefore, no final answer could be given to our inquiries. However, the Tribal Attorney and the Indian Bureau will work together in getting the necessary information. Mr. Youngbird told the Tribal Attorney that further information on this question could be obtained from Mr. Byron H. Wilde at Emmet, North Dakota.

POSSIBLE ADDITIONAL OIL LEASES

The delegates asked about the possibility of blocking out more land for oil and gas leases. Mr. Larkin said it was usually desirable to have the companies come in and ask for leases before invitations for bids are issued. However, there is nothing to prevent the Tribe from taking the initiative and advertising the lands itself. It was also suggested that representatives of the Tribe may want to approach some private companies and try to interest them in requests for leases before any invitations are actually issued.

PERSONNEL MATTERS

(a) During the conference of December 19 with the staff, Mr. Whitman requested that the Delegation be given an interview with the Commissioner of Indian Affairs for the purpose of urging an increase in salary for the Superintendent. This conference was arranged for the same afternoon. Mr. Whitman stated to the Commissioner that such an increase should be given because the Superintendent has been working extremely long hours, sometimes 24 hours a day. The Commissioner indicated that it would be very difficult, if not impossible, for Mr. Quinn to have an increase in pay unless he were transferred away from Fort Berthold Reservation to a bigger job.

Mr. Whitman said that Mr. Cross might disagree with him on this, and Mr. Myer asked the Chairman for his opinion. The Chairman said that if Mr. Quinn was transferred he hoped that his successor would be the present Chief Clerk Mr. Frank J. Gordon.

(b) At the staff conference of December 19, and also in our conference with Commissioner Myer, the Delegation suggested replacing the Agency Realty Officer Mr. McSpadden. They unanimously recommended that he be replaced by Mr. Ernest Salee who is now temporarily performing his duties. It appears that Mr. McSpadden will not be able to return to work. However, it is impossible to appoint Mr. Salee to the job until Mr. McSpadden is retired for disability, either voluntarily or involuntarily.

CLAIMS

Several conferences were held with representatives of the firm of Wilkinson, Boyden and Cragun. The Claims Committee is submitting a separate report on the progress of the case.

- (a) Mr. Matthews and the Tribal Attorney discussed with Mr. Cragun a possible claim for the negligence of the Government in failing to retain the mineral rights on allotted lands, school lands, etc. Mr. Curry stated that he would make a thorough investigation on this subject hoping that he might file a lawsuit to establish that the Tribes should get the oil revenues. If that is not possible, he will turn over to Mr. Cragun the results of his investigation. Mr. Cragun can use this information in prosecuting a claim against the Government for failure to retain said oil rights for the Tribe.
- (b) Mr. Matthews also inquired about the claim of the Turtle Mountain Chippewas which covers a part of the area that is also claimed by the Three Affiliated Tribes. Mr. Cragun said that this conflict had been called to his attention by another member of his firm. He hoped some agreement could be worked out between the two tribes.
- (c) Mr. Matthews also inquired about a possible claim for the "six-mile strip." Mr. Cragun said that he had been unable to get any information about this matter. He asked that further information be supplied to him.
- (d) Mr. Matthews and Mr. Cragun talked also about correction of the boundary line on the south side. The question is whether this boundary is based on the Heart River or the Cannonball River. This question will be studied further.
- (e) Mr. Matthews also asked Mr. Cragun about the present prospects of the claim as judged by the Tribal Claims Attorneys. Mr. Cragun said that they were not in a position now to estimate the chances of success. They are waiting for answers to be filed by the Government.
- (f) Mr. Matthews asked Mr. Cragun about the possibility of additional claims being filed. Mr. Cragun said that Congress might pass a law extending the time for filing claims for one or two years.

TECHNICAL AMENDMENT TO THE TRIBAL CONSTITUTION

At the staff conference of December 19, it became known that the Tribes can not carry on their land-acquisition program because of the provision in the tribal constitution which forbids the purchase of Indian-owned land that is not in heirship status. Several possible methods were suggested for getting around this constitutional provision. However, these were all abandoned, and it was finally decided that the constitution ought to be amended. The action taken by the delegation is shown in a letter of December 20 to Commissioner Myer which reads as follows:

"You are well acquainted with the problems of our tribes that arise from the taking of our lands for Garrison Reservoir. Your office has been very helpful in our program of land acquisition for the purpose of providing new homes for displaced Indians.

We now find our efforts along this line thwarted by a technical legal provision in our constitution. The provision to which we refer is Section 12 of Article IX which provides:

'Sec. 12. Tribal funds in the United States Treasury may be used, with the consent of the Secretary of the Interior, to acquire land, under the following conditions:

(a) Land within the Fort Berthold Reservation or adjacent to the boundaries thereof, excepting allotments not in heirship status, may be purchased by or for the Three Affiliated Tribes.

(b) Land owned by any member of the tribe who desires to leave the reservation permanently may be purchased by the tribe under such terms as may be agreed upon.'

If we comply fully with this provision, we cannot carry on our land acquisition program. Much of the land that we want to acquire is 'not in heirship status' and therefore, under this section, we cannot use treasury funds to acquire it. We want to amend this clause to read as follows:

'Tribal funds in the United States Treasury may be used, with the consent of the Secretary of the Interior, to acquire land, by or for the Three Affiliated Tribes within the Fort Berthold Reservation or adjacent to the boundaries thereof.'

This matter was discussed with your representatives and personally with you today. It was agreed that we should submit our proposed amendment to you. We hope that you will give us your views thereon, stating that you have no objection to the adoption of such an amendment. If you can give us such a ruling before we leave for home, we will submit the proposed amendment formally as soon as we return.

We would also like to have this amendment submitted in such a manner as to facilitate getting out the required 30% of the vote. We hope that the balloting will not be limited to a single day but that the election will be held over a more extended period so that we will surely be able to get the necessary number of voters."

DELEGATION OF POWER TO ACQUIRE LAND

At our conference of December 19, we learned that a Land Committee was established and that, on December 5, it was to handle the buying of land for the relocation program. Area Attorney Graham Holmes stated his opinion that the Tribal Business Council cannot delegate this power to a committee.

Tribal Attorney Curry stated that in his opinion it could be done under the constitution of the Tribe if the Council adopted a proper resolution setting out the standards to guide the Committee in purchasing lands. Since it is very difficult to get a quorum of the Council to handle these land transactions, it is very important for the Council to be able to delegate this power. It was agreed by all that Mr. Curry should submit a legal opinion to the Council on the matter. If he finds that the delegation of power is authorized, it is anticipated that the Indian Bureau will raise no objection to the Council's action.

GENERAL CONSTITUTIONAL AMENDMENTS

We also discussed the possibility of other changes in the constitution, particularly with respect to the land provisions. However, it was decided to postpone any action on such amendments until after we have adopted and obtained approval of the technical amendment necessary to carry out the land-acquisition program.

ENROLLMENT

At our conferences with the Bureau staff and at our conference with the Commissioner, there was considerable discussion as to whether or not the Tribe should enroll children of members who were born off the Reservation, so that they may share in the per capita payments and other benefits. The Bureau officials agreed that the Council is not required to enroll such people.

A question was also raised as to whether persons who are now on the rolls but who have long ago left the Reservation can be removed from the rolls. It was agreed by all that this is not possible under the present constitution. There was some disagreement about whether the constitution could be amended to permit the disenrollment of such people. Mr. Holmes and the Indian Bureau officials were of the tentative opinion that it could not be done. Mr. Curry was of the tentative opinion that it could be done. There was no final decision on this matter and will not be unless the Council decides that certain classes of members should be "disenrolled."

LAND ACQUISITION

The Delegates also talked with Bureau officials about 200 land transactions that have been returned to the Tribal Business Council in order to give an opportunity for renegotiation with respect to oil rights. We urged that these transactions be carried through as rapidly as possible.

RELOCATION

On December 21, the Chairman telephoned the Area Office about the long delay in approving the agreements which provide for relocation of Indians now in the taking area. This had previously been discussed with the Area Office on November 8 by Messrs. Cross and Matthews. At that time, Mr. Cooper promised that a new man, Mr. Smith, would be put on the job.

When the Chairman called Mr. Cooper on December 21, Mr. Cooper said that, on or about November 8, all of these contracts had been returned to the Agency office for further information and had not yet been returned to the Area Office. He said that Mr. Smith had discussed the matter with Mr. Quinn and that the papers were expected back at the Area Office almost immediately, whereupon they would be promptly cleared.

NATIONAL CONGRESS OF AMERICAN INDIANS

The Delegates had extended discussions with Miss Amanda Finley of the office staff of the National Congress of American Indians and with Mrs. Ruth Bronson, Executive Director of the of the organization. Pictures were taken for publication in the Bulletin of the NCAI. They also visited the grave of Sgt. Rice at Arlington and placed a wreath on it.

FORD FOUNDATION

Delegate Carl Whitman conferred with a representative of the Ford Foundation about a possible radio program dramatizing the community work of the Fort Berthold Indians.

PER CAPITA PAYMENTS

The main purpose of the unauthorized delegation was to obtain another per capita payment. For this purpose, they are sponsoring legislation similar to H.R. 8411 of the last Congress. The Chairman discussed this matter with Congressman Burdick. It was decided, under the law as it now exists, that the Secretary of Interior has full authority to make such a per capita payment. Therefore, legislation is not necessary for that purpose.

VOLUNTARY WITHDRAWAL

The agenda as originally submitted by us did not include any discussion of the question of voluntary withdrawal. However, at the meeting of December 14, Councilman Ralph Wells requested that the Delegation discuss this matter. Also, on December 10, Area Director John Cooper wrote a letter to the Commissioner that the Delegation wanted to discuss the question on their trip to Washington. Therefore, Miss Hicks took the initiative and arranged a meeting for the purpose of discussing this matter. This meeting was held on December 18. The delegation decided not to press for any final answers at the present time. However, we did talk about the "criteria" that need to be fixed before the withdrawal program is carried out.

Some of the points raised by Mr. Critchfield were:

- (1) Whether the person who voluntarily withdraws from the Tribe should be permitted to keep trust land on the reservation.
- (2) Whether a person who withdraws from the Tribe should be permitted to retain land on the reservation in fee simple, taxable, status.
- (3) Whether the person withdrawing should receive his full per capita share of the value of the Tribe's assets or whether he should get a percentage of that value.
- (4) Whether persons who reside on the reservation should be permitted to withdraw at all.
- (5) Whether persons who withdraw from the Tribe should be permitted to continue receiving the benefits of services of the Indian Bureau and other special governmental services to Indians.

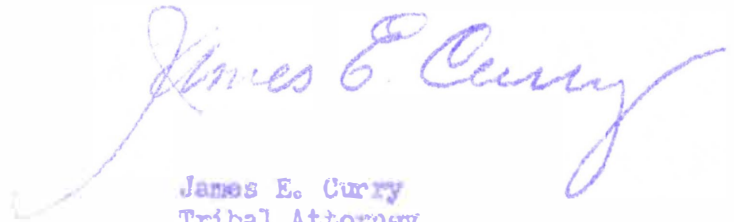
It was fairly generally agreed that the voluntary withdrawal program could not be carried forward until after the payments are made under Act. No. 437 to owners of land. Therefore, no further action was taken on this matter.

TIMBER

There was some discussion during the staff conference as to continuation of the cutting of timber in the taking area. The Tribal Attorney suggested the possibility of getting outside private operators to come in and purchase the Tribe's right to salvage this timber. The Delegates stated, however, that Mr. Stolson is planning to go ahead and execute a contract recently prepared by the Tribal Attorney and that they will rely upon him to carry forward this part of the tribal program.

FUNDS

On December 21, conferences were held with Bureau officials about speeding up transfer of funds to the Tribal Council account as requested by the Council last October. Miss Hicks informed the Chairman that the request has been referred back to the Area Office for further information, that they expect it to be returned to the Indian Office in a week or so and that, if the transfer had not been accomplished by that time, the Tribal Attorney can get in touch with Mr. Jeff Ward in the Fiscal Division.

A handwritten signature in blue ink that reads "James E. Curry". The signature is written in a cursive style with a long, sweeping underline that extends to the left.

James E. Curry
Tribal Attorney