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Letter from Felix Cohen to Joseph O'Mahoney Regarding Chief of Army Engineers Statement on Inundation of Fort Berthold Lands, December 14, 1945

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UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON 25, D. C.

December 14, 1945.

Hon. Joseph C. O'Mahoney,
United States Senate.

My dear Senator O'Mahoney:

With reference to your telephonic inquiry concerning the meaning and effect of the comments made in paragraph 12 of the letter of the Chief of Engineers, United States Army, dated December 31, 1943 (House Document No. 475, 78th Cong., 2d sess., p. 4), concerning arrangements to be made where Indian lands are inundated by proposed reservoirs, there are two observations that I should like to submit:

1. As a legal matter I should think it very doubtful whether a statement by the Chief of Engineers of the United States Army in a letter to the Chairman of the House Committee on Flood Control would be considered a limitation upon any powers of condemnation which may be vested in the War Department by prior legislation, such as the act of March 3, 1901 (31 Stat. 1058, 1084; 25 U. S. C. sec. 357) authorizing the condemnation of Indian allotments with cash payment of damages.

2. Even if the statement in question should be construed as having the force of law, it purports in terms not to limit any legal authority heretofore vested in Federal agencies to carry out condemnation, but rather to spell out authority to handle land transactions with Indians on a basis of agreement and subject to the approval of the Secretary of the Interior. I do not doubt that such a method of procedure is highly desirable. Unfortunately, the language of the statement in question, while purporting to authorize future action on such a basis, does not in terms limit action to any such basis. It thus fails to accord to the Indians any assurance that they will be consulted with regard to the disposition of their lands.

I trust that the foregoing observations appropriately answer your inquiry. Because of the pressure of time these observations have not been submitted to the scrutiny of the Interior Department and they are therefore to be considered merely as the expressions of my own opinion.

Sincerely yours,



Felix S. Cohen,
Acting Solicitor.

FSC:mjt