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Letter from Felix Cohen to Joseph O'Mahoney Regarding Possible Impacts of House Amendments to US House Resolution 5400, March 4, 1946

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

March 4, 1946.

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

My dear Senator O'Mahoney:

At the conference with the representatives and attorney of the Three Affiliated Tribes of the Fort Berthold Reservation which you were good enough to arrange this morning, I was able to explore the probable impact upon these Indians of the House amendment to the pending War Department's Civil Appropriation Bill (H. R. 5400) affecting the Garrison Dam. In accordance with our conversation this morning, I am submitting the following observations on the probable effects of the House amendment:

1. The First Deficiency Appropriation Act for 1946 (Public Law 269, 79th Cong.) contained the following proviso, which has been commonly referred to as the O'Mahoney amendment:

"... Provided further, That no part of the appropriation for the Garrison Reservoir herein contained may be expended for actual construction of the dam itself until suitable land found by the Secretary of the Interior to be equal in quality and sufficient in area to compensate the Three Affiliated Tribes shall be offered to the said tribes in exchange for the land on the Fort Berthold Reservation which shall be inundated by the construction of the Garrison Dam."

Under the foregoing language the War Department was required to arrange for making satisfactory substitute lands available to these Indians before commencing construction of the proposed Garrison Dam. I am advised that the War Department has not met with either the Indians or the Interior Department for this purpose since the enactment of the legislation in question.

2. Section 6 of H. R. 5400, as presently drafted, would supersede the so-called O'Mahoney amendment and would make it unnecessary for the War Department to enter upon negotiations for making substitute lands available to displaced Indians until after the completion of the dam. This would place the Indians in a most difficult position. Their opportunity to secure modifications of construction plans so as to minimize damage to their own lands would be gone. There would be little or no opportunity to secure Congressional reconsideration of such construction plans. Neither the Indians nor the Interior Department could expect to stop or even postpone the use of the dam, once it was constructed, if such stoppage or postponement could be construed as threatening lives and property down stream. For these reasons the Fort Berthold delegates will object to the

proposed repeal of the O'Mahoney amendment. In my judgment their position is sound and reasonable.

3. If the objection of the Fort Berthold delegates is sustained, the language of section 6 might well be amended by striking out the first paragraph of the section; striking the words "Garrison Reservoir Dam (North Dakota) and" at lines 12 and 13; striking the words "the Indians of the Three Tribes in North Dakota and" at lines 17 and 18; and striking the words "Fort Berthold" in line 22. This would leave untouched the proposed language in so far as it affects the Oahe Reservoir Dam (South Dakota), to which I understand that the two Indian tribes concerned raise no objection.

4. The chief concern of the Fort Berthold Indians is to see that negotiations for substitute lands should precede construction operations. If the Committee considering the question should reject that position, I understand that the Indians will urge that the language of the House amendment should in any event be modified so as to give the Indians themselves a final voice in the acceptance or rejection of substitute lands offered. The following amendment of section 6 would accomplish this result: Substitute for the words, "comparable in quality and sufficient in area to," in line 16 on page 20, the words: "acceptable to the Tribes concerned and of such quality and area as will fairly."

It seems to me that such an amendment would be highly desirable and would be in accord with the pledges and promises of the Federal Government noted in the memorandum which I submitted on October 17, 1945, for the consideration of the Senate Committee on Indian Affairs.

While the foregoing observations have been informally discussed with the Indians concerned, with their counsel, and with the Office of Indian Affairs and the Reclamation Bureau in this Department, time has not sufficed to permit full and formal departmental consideration of the problems involved, and I must, therefore, ask you to regard the foregoing as merely the expression of my own opinion.

Sincerely yours,



Felix S. Cohen,
Acting Solicitor.

FSC:mjt

Copy to Senator Langer ✓
" " Commissioner Brophy
" " Ralph Case, Esq.