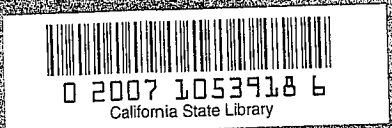


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PROGRESS REPORT TO THE LEGISLATURE

by the

SENATE INTERIM COMMITTEE ON CALIFORNIA INDIAN AFFAIRS

(Senate Resolution No. 171)

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GENERAL EXPLANATION

By John A. Bohn, Counsel and Executive Secretary, California Interim Committee on California Indian Affairs. (For Department of the Interior comment see letter of March 6, 1959 from Roger Ernst, Assistant Secretary, reprinted elsewhere in this report.)

H.R. 9512

GENERAL EXPLANATION

(Respecting Termination of Federal Supervision Over California Indians)

The following explanation of the general intent and effect of H.R. 9512 is presented for the purpose of outlining in nontechnical language the provisions of the bill and results to be anticipated from its passage.

The bill does not terminate federal supervision over California Indians now or at any fixed time in the future. Rather it provides the mechanics by which the Bureau of Indian Affairs in consultation with the Indians involved can develop over the years a program of termination as to each of the reservations or rancherias in California. It is expected that a different plan will have to be provided for each of the properties since their problems differ, but general procedures are outlined setting the pattern within which individual termination programs can be accomplished as the needs of each of the properties require. It is the intent of the bill also that the affected Indians vote upon any plan presented for an individual rancheria or reservation and such plan becomes effective upon a majority approval of the Indians voting. However, if the plan is not approved by a majority of the such Indians, the fact of such nonagreement is reported to Congress and the plan will be carried out unless it is disapproved by Congress by concurrent resolution adopted within one calendar year after submission.

The following is a brief discussion of each section of the bill and the results it is intended to accomplish.

SECTION 1

This section deals with the so-called "tribal" membership "roll". Under federal theory, as each child is born it becomes a member of the tribe, band or group involved and is as equally entitled to share in the property rights of such tribe, band or group as all other members. Death of a member automatically forfeits his rights to tribal property which are normally not inheritable. The fact that one family may have seven or eight children and another family have none makes no difference, and this whole concept has added immeasurably to the confusion regarding Indian property rights in this State. It, therefore, appears clear that in any termination program the "roll" has to be closed which would mean that persons born after a given date would no longer be considered "members" for purposes of determining property rights. This section "closes" the roll and also re-

quires that a membership roll be prepared which would in effect constitute a list of persons to be considered in the distribution of the particular property in which the group had an interest. The bill does not set forth the details as to how eligibility for this roll is to be determined, leaving this for later adoption in the form of rules and regulations to be issued by the Secretary of the Interior. Considerable thought was given in an attempt to spell out eligibility requirements in the bill, but it appeared that different tests might have to be used in the various reservations because of the diversity of problems throughout the State.

Any Indian who is not included in the final roll of members adopted by the Secretary of Interior, or who otherwise feels he has been unfairly treated, has the right to appeal to a special board called the California Indian Appeals Board, which is given the authority to review and consider all appeals on this subject for two purposes: (1) If the appeal raises the question that an individual Indian was entitled to inclusion in the final roll under the regulations of the secretary but was not so included, the appeals board has the right of making a final decision to include or exclude this Indian from the roll. (2) If the appeal is on the grounds that the eligibility requirements adopted by the secretary are themselves discriminatory and should be revised so that the appealing Indian and others falling within the same class would be included, the board is given the power to make a recommendation to the secretary that the eligibility requirements be modified to cover the situation. The secretary is not required to follow the recommendations of the board changing the eligibility requirements, but it is expected that in the normal instance he would do so.

It should be noted that this section of the bill is only applicable to reservations which are held by the United States for the benefit of a designated tribe, band or group of Indians. It is thus distinguishable from the other class of reservations where the land was acquired for the benefit of "landless Indians" which is separately treated elsewhere in the bill. The provisions of this section likewise do not apply to land which has been allotted to an Indian or Indians, and the subject of allotted land is separately treated in Section 15 of the bill.

SECTION 2

This section provides for the creation of the California Indian Appeals Board briefly referred to in the explanation to Section 1. This board is to be appointed by the Secretary of Interior and shall be composed of three employees within the department who are not in the Bureau of Indian Affairs. The bill does not so specify, but it is expected that the membership of this appeals board will primarily be composed of attorneys in the solicitor's office who are not attached to or work for the Bureau of Indian Affairs.

SECTION 3

Section 3 is intended to require the Department of the Interior to complete the construction and improvement of roads within or giving access to Indian reservations in accordance with county standards of road construction. Thereafter, the bill contemplates that these roads

be transferred to and accepted for maintenance by the county and become part of the county road system.

The Department of the Interior has already undertaken such a program, but this section is designed to accelerate it by specifically authorizing contracts with state and county agencies for construction as a substitute for the somewhat cumbersome procedures now in use.

This section also makes provision for the transfer of rights of way to the counties or State, as required, depending upon the nature of the roadways and provides for compensation under some circumstances to Indian owners for lands taken for right-of-way purposes.

SECTION 4

This section is intended to require the Department of the Interior to provide exterior and interior surveys and boundaries of Indian reservations or rancherias where accurate surveys do not now exist or where for any other reason new surveys are necessary to clearly establish the boundaries of the lands to be considered. It is intended that the direction given to the secretary by this section also includes the responsibility of providing surveys of individual plots or parcels which may be transferred to individual Indian owners as a result of the acceptance of a plan to distribute tribal properties or to transfer fee title in existing allotted or assigned properties.

SECTION 5

This section provides for the creation of a special commission to be known as the California Indian Water Rights Commission. It will consist of two members appointed by the Secretary of Interior, two members appointed by the Governor of California and a fifth to be selected by unanimous vote of the other four. In addition, a representative to be chosen by the tribe, band or group of Indians involved shall sit as a member of the commission while the claims of such group or its members are being considered.

The purpose of the creation of this commission is to provide technical help in establishing permanent water rights applicable to Indian lands in California. At the present time where the United States claims a paramount water right, it is not clear as to what portion of said water right it is claiming for the benefit of affected Indians and what portion, if any, it is claiming under its sovereign powers. Further, it does not appear that there is any federal machinery for the segregation of such water rights and granting them or portions of them to affected Indians.

The problem becomes even more complicated when it is considered that as part of the termination process, the Indians in particular reservations or rancherias may choose to distribute tribal properties not all of which would be located in equal proportions along the bank of a stream, yet if distribution of the lands is to be handled in a fair manner, there will also be required an assignment of water rights not only to the entire land involved but to the holders of individual parcels after distribution takes place.

The purpose of the commission, therefore, is to examine the water problem with regard to each piece of trust property in California and to make recommendations for an equitable use and distribution of the

water to the Indians. It is further contemplated that to make such rights permanent, special state legislation will be necessary to cover the situation in view of the fact that the problems presented by these Indian lands are unique and do not readily fit into existing state patterns governing water use and distribution.

The bill provides that the findings of the commission, which must be completed within five years of the effective date of the act shall be prima facie evidence of the existence of such right but shall not be regarded as an adjudication.

SECTION 6

The purpose of Section 6 is to provide that as to Indians dying after the effective date of the act, their interests in property held for them in trust by the United States Government shall be determined and distributed in accordance with the laws of the State of California. Under present practice, the Bureau of Indian Affairs maintains a probate procedure of its own for the inheritance and distribution of lands held in trust by the United States Government for the benefit of the decedent. Thus, where an Indian dies having an interest in trust property and also owning nontrust property, such as a bank account, automobile, etc., that portion of his property not subject to federal supervision is distributed in accordance with the laws of the State of California and the trust property is distributed under the rules of the Bureau of Indian Affairs. Although it appears that the rules of the Bureau of Indian Affairs parallel the state statutes in most respects, the entire procedure is cumbersome and unsatisfactory.

SECTION 7

Section 7 is designed to authorize a partition action involving trust properties. It is primarily designed to cover a situation where a given parcel of land is partially held in trust by the United States Government and is partially in private ownership. This section would authorize an action in partition by the private owners and upon the entry of the judgment for partition or sale, the federal trust would terminate on the portion now subject to the trust and the matter would be handled as in the case of any other partition under existing state law.

SECTION 8

This section is designed to authorize the federal government to give federally-owned property to tribes, bands or groups of Indians or individuals without consideration. It is deemed necessary to permit transfers of federally-owned buildings, water systems, etc., on reservations which would no longer be needed for federal purposes when the bill becomes effective.

SECTION 9

This is the general section providing for the mechanics of property distribution. In reviewing the various subsections it is again necessary to distinguish between the two basic types of trust properties within the State. In the case of some reservations the land is held by the United States in trust for a named tribe, band or group of Indians, whereas in the case of other reservations or rancherias the property

was specifically acquired by the United States for the use of "landless Indians." In the case of the former, some recognition perforce must be given to tribal membership, whereas in the case of the latter, occupancy and usage seems to present the basic pattern for distribution. It should further be noted, however, when dealing with reservations falling into the "landless Indian" category, in some instances "tribal" councils or groups have been organized which have some influence upon the Indian affairs conducted upon this land and the problem becomes further complicated when it is recognized that the Bureau of Indian Affairs and others have dealt with this type of "tribal" council in a manner similar to tribal councils governing land acquired for a particular tribe, without regard to the specialized status of this particular land.

Subsection (a) places the responsibility on the tribe or on the Secretary of the Interior to prepare a plan for distributing property in those reservations held by the United States Government for the benefit of the particular tribe.

Subsection (b) places the responsibility on the Secretary to prepare a plan similar to that referred to in subsection (a) for the distribution of land held by the United States for the benefit of "landless Indians," as distinguished from the type of land referred to in subsection (a).

Subsection (c) simply provides that property held by the United States Government for "landless Indians" which has not been occupied must be sold and the proceeds deposited in the Treasury for the account of the "Indians of California." It is not intended that this section require the sale of unused land which is part of a tract now occupied or used by Indians. Rather, it is the intent of this section to require the sale of several tracts of land which are wholly unoccupied and wholly unused by Indians even though held by the federal government in trust for the "landless Indians" of California. The primary purpose for requiring the sale of this property is that no other alternative seems practical. Consideration was given to whether these several parcels should not now be made available for use of "landless Indians" but the tentative conclusion was reached that no fair way appeared to distinguish which of the many "landless Indians" of California should be permitted to occupy the same and accordingly a sale was determined as the fairest conclusion.

Subsection (d) specifies the various matters which must be included in any plan prepared either by the Indians or by the Department of Interior for the distribution of Indian lands. It is intended to require by statute the accomplishment of certain objectives before any such plan can become effective. For example: (1) The section provides that all liens now existing against Indian lands must be cancelled. (2) Roads, water facilities, etc., must be completed before distribution of the land. (3) All restrictions on the ownership or control of land held by individual members of the Indian group involved shall be removed. (4) The value of existing and prior allotments to individual members of the Indian group may be deducted from the shares of the allottee at the time of distribution of other assets of the tribe or group.

Subsection (e) provides for notice of the proposed distribution plan and opportunity to object thereto. It also provides for submission of

the plan to the affected Indians and upon their approval its being carried out. Provision is made for any person affected who feels that he has been unfairly treated in the proposed distribution of property to present his views and claims before the California Indian Appeals Board and after consideration of such arguments the board may either approve the plan as submitted or recommend that the Secretary modify the same.

Subsection (f) provides that where the Indians do not approve a particular plan, it is submitted to the United States Congress and becomes effective within one year unless changed by Congress.

Subsection (g) merely provides for an unrestricted title being granted to the Indians in carrying out the details of any approved plan of distribution.

Subsection (h) provides that the Secretary is authorized to apply in courts of competent jurisdiction in California for guardianship proceedings to protect the rights of minors and incompetents. In this section of the bill, it is provided that the test of competency shall be the same test as that applicable to all citizens of California. This principle differs from that now currently in use by the Bureau of Indian Affairs in that the present test of competency seems to involve a determination by the Department of Interior as to whether an Indian is "competent" in the sense that he possesses sufficient education and training to effectively handle his affairs without guidance from the Government of the United States. This latter concept was purposely discarded in the preparation of this section for the reason that it was believed impossible either by statute or administrative decision to determine whether any person possesses that degree of judgment and skill necessary to protect his own property rights. In reaching this conclusion, the committee noted that at least four-fifths of all the Indians in California have been assuming this responsibility for generations and further found no reason why the remaining one-fifth would not also be sufficiently capable of doing so.

Subsections (i), (j), (k), and (l) of Section 9 of the bill do not seem to require special explanation with the exception of subsection (j) and (l).

Subsection (j) provides that the laws of California as to loss of water rights by nonuse will not apply until five years after the distribution of the land and water right to the Indian. This was placed in the bill to give the Indian a reasonable time to develop his property and the use of water thereon after it was distributed to him. This section would also have to be supplemented by special State legislation and possibly revised either by the extension of the time or otherwise, depending upon the findings and recommendations of the California Indian Water Affairs Commission.

Subsection (l) is worthy of special note, which provides in substance that the distribution of this property to the Indians shall not subject the Indian to any Federal or State income, estate or inheritance tax.

SECTION 10

Section 10 is intended to provide a comprehensive, special educational program designed to help the members of tribes, bands or groups of Indians in California to conduct their own affairs, earn a

livelihood and assume their full responsibility as citizens without special consideration because of their status as Indians. At the present time, of course, under California law, all Indians in California, regardless of whether they have any connection with Federal trust properties, have the same legal rights and responsibilities as any other citizen of California. However, the contention has been made that Indians living on reservations or rancherias, having received special protection from the Federal Government as to their land ownership, are not yet ready to assume the responsibility of handling property to be distributed to them under any termination plan. Whether or not this contention is correct, the purpose of this section of the bill is to give to the Department of Education of the State of California the responsibility of conducting a state-wide special program to remove any doubt on the subject. The State Department of Education was chosen as the agency to perform this service for the reason that it was felt that the State Department of Education is in the best position to integrate this program with local school districts and to generally correlate the activities of all of the school districts toward a common goal. It has been suggested that this special educational program should be supplemented by a state directed program providing for the orientation of Indians living on reservations and rancherias with the local non-Indian community life. Such a program is not provided by this bill but may be later considered by the State Government.

SECTIONS 11, 12 AND 13

These three sections are generally intended to provide correlation between the agencies of the State of California and those of the Federal Government during the transition period preceding eventual termination and distribution of Indian properties. Special appropriations are made to reimburse the State of California for extra costs during this period.

SECTION 14

Section 14 is intended to revoke charters given to various Indian tribes in connection with the so-called Indian Reorganization Act. These charters sought to authorize constitutions, by-laws, etc., for Indian tribes desiring to be self-governing, and several of the tribes elected to come under the provisions of the Act. Of course, if Federal trusteeship is terminated, it would appear that such charters would have no place in the California law.

SECTION 15

Section 15 is intended to convert all present or future allotments into fee patents, thereby in effect providing an unrestricted title to the Indian of property now held in allotment status. Allotted property now is inheritable but the Indian "owner" cannot dispose of the same without special permission of the Secretary of Interior. This section of the bill would remove that restriction on his "ownership".

SECTION 16

Section 16 authorizes the necessary appropriation over the years to accomplish the results intended by the bill.

SECTION 17

This section is intended to make certain that the termination and distribution program provided by this bill would be carried out without any setoff arising from Indian claims litigation. Some time ago Congress granted authority for claims to be processed on behalf of the "Indians of California" for various grievances and from the judgment thus obtained there was deducted a sum of money for services rendered by the United States Government to the Indians for facilities provided for them. The value of the lands now constituting the reservations and rancherias in California was deducted from this judgment fund and so the claim has been made that these lands, having been paid for by all of the Indians of California, belong to all of the Indians of California, rather than to particular tribes, bands, groups or occupants. However, regardless of the merits of this contention, complete chaos would undoubtedly result if the individual occupants or tribes utilizing these special reservations or rancherias were dispossessed, and special provision therefore must be made in federal legislation to either negate the contention above expressed or provide additional funds to all of the Indians of California to compensate them for the value of these specific properties. It is believed that the former course is the most desirable and the bill so provides.

CONCLUSION

H.R. 9512 is intended to provide the maximum protection and safeguards to the Indians of California who have an interest in trust lands. As indicated in the introduction, the bill does not provide for immediate termination of federal supervision over these lands, but rather the mechanics for a gradual termination as fair and equitable plans can be developed to meet the needs of each of the individual rancherias and reservations.