final and complete interpretations, meaning and status of treaties made and AFFILIATED TRIBES OF NORTHWEST INDIANS NEWSLETTER DECEMBER 29, 1954

Our January Bulletin should be in your hands in a few days. Since it has been several months between issues we'll endeavor to recapitulate the news in the bulletin giving coverage on the Eith Congress, the adverse ruling in Federal District Court on the Julia Nicodemus case, and other items deemed by us to be of reader interest. The tax case decision was a serious blow on the Indians. Judge D. Worth Clark held that the income of Julia Nicodemus from trustheld property was subject to Federal income taxation. It is quite apparent that the decision was bound or patterned by the Circuit Court Decision on the Taunah v. Jones case. Attorney Robert Dellwo is going to appeal the Nicodemus case to the Circuit Court of Appeals at San Francisco. It is urged that tribes that can give financial assistance to the Coeur d'Alene Tribe do so as early as possible because the financial burden in this particular litigation is heavy. finacial burden in this particular litigation is heavy.

Thus, by this declaration, the Constitution gives us the final word, the

We note that considerable activity is being generated throughout the Indian Logiculty. In this issue we are going to cite an article by Robert Yellowtail of Crow Agency, Montana and some other material that we've picked up on the Moccasin Telegraph. ens eastmoone bas revoo States, and the language us

#### THE PROVINCE OF GOVERNMENT IN INDIAN AFFAIRS

#### besides By Robert Yellowtail besides son ens ensibni"

The province of Government is to serve, protect and conserve the rights, property and persons of the people.

Here in America, after much bitter experiences arising during the Colonial period with England and the other European governments, the Colonies, after much bitter debate and wrangling among themselves and their leaders, finally declared themselves free from any and all Governments of Europe, and by and through the Declaration of Independence, and the Revolution, established their complete independence. They also adopted a Constitution and wrote into it, every safeguard and protection of human rights, that they had suffered at the hands of foreign tyrants and despots and to make sure that there would be no repetition of tyranny and despotism in the United States, they wrote the Bill of Rights.

As a result of Government under this Consitution, the United States of America, has grown great and prospered beyond all dreams and to a degree unequaled and unparalleled in the history of the world.

This constitution was the combined brainwork of all of the leading scholars of the colonies. It contains ten amendments known as the Bill of Rights. These amendments apparently were never thought of when the original draft was written and adopted. They specifically spell out and provide for the safeguarding of our basic human rights.

The Preamble to this Constitution stresses six purposes, they are: 1, to form a more perfect Union; 2, establish justice; 3, to insure domestic tranquility; 4, provide for the common defense; 5, promote the general welfare and secure the blessings of liberty to ourselves and our posterity.

These, then, were, and still are, the purposes enumerated in the Constitution, for the protection of the rights of the people.

# The Bill of Rights provides by: bes enabled and has decreased and

Amendment 1. Freedom of religion, speech, the press and assembly.

Amendment 4. Regulation of right of search and seizure.

Amendment 5. Protection for persons and their property.

Amendment 14. Equal rights for all citizens regardless of race or color.

These, then, are the specific spelling out and enumeration of our basic human rights. (119 U. S. 127) Sup. Ct. L. Ed. 306.

### TREATIES, THE SUPREME LAW OF THE LAND

The Constitution, by Article 6, declares:

"All treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land."

Thus, by this declaration, the Constitution gives us the final word, the final and complete interpretations, meaning and status of treaties made and authorized by the United States. We thus, now, have a better understanding of the legality of Indian treaties and their position in the law.

Amendment 14 declares: a ni abned ruov ni ed bluoda nijellug viennat ruo

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." protection of the laws."

The argument we make here is: The Indians also, are "persons" and were born in the United States, and are subject to its jurisdiction and therefor, must come within the purview and meaning of the American Constitution. "All persons" means everyone under the American Flag, subject to the jurisdiction of the United States, and the language use, clearly intends to cover and encompass the Indians, who too are "persons" within the plain intent of the language used.

"Indians are not excepted from the protection guaranteed by the Federal Constitution; but their rights are secured and enforced to the same extent as those of other residents or citizens of the United States." (Syllabus 10) Choate v. Trapp, 224 U. S. 665. geometreoxe reddid noum redda actiona ni erell

period with England and the other European governments, the Colonies, bitter debate and wrengling among themselves and their leaders, final

Also:

"An Indian's right of private property is not subject to impairment by legislative action, even while he is, as a member of a tribe, subject to the guardianship of the United States as to his political and personal status."

Choate v. Trapp, 224 U. S. 665, 56 L. Ed. 941. of tyranny and despotism

Once these rights have been conferred upon the Indians, neither the Secretary of the Interior, the Commissioner of Indian Affairs, nor Congress can abrogate or take them away.

"It is conceded that no right which was actually conferred on the Indians can be arbitrarily abrogated by statute."

Choate v. Trapp, 224 U. S. 665, 674.

and adopted. They specifically spell out and provide for the safeguardining our basic human rights.

"There is no question that the Government may, in its dealings with the Indians, create property rights, which once vested even it cannot alter. Williams v. Johnson, 239 U. S. 414, 420, 60 L. Ed. 358; Sizemore v. Brady, 941; English v. Richardson, 224 U. S. 680, 56 L. Ed. 948; Jones v. Meehan, 175 U. S. 1, 44 L. Ed; Chase v. U. S., 224 Fed. 593, 596. Such property rights may result from agreements between the Government and the Indian. Whether "There is no question that the Government may, in its the transaction takes the form of a treaty or of a statute is immaterial; the important considerations are that there should be the essentials of a binding agreement between the Government and the Indians and the resultant vested property rights in the Indian."

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Also:

"The Supreme Court consistently has held that treaties must be construed liberally, and if there is ambiguity,
the language used in the treaty should not be construed
to the prejudice of the Indians." Choctaw Nation v. U. S.
(119 U. S. 127) Sup. Ct. L. Ed. 306.

Thus, with these decisions before us, from the Courts and the Constitution, it is much easier for us now to perceive and understand our rights under the law and to better understand when they are being violated, or denied us. Also, we can now better understand that the Government also is bound by law, which imposes upon it, constitutional limitations that it too, cannot exceed nor violate, without being hailed into its own courts and made to redress the wrongs inflicted. This is what we mean when we refer to our Constitutional rights

and point an accusing finger at the officers of the Government for violating them. Thus: "Congressional power over the Indians is subject to Constitutional limitations and does not enable the Government to give the lands of one tribe or band to another, or to deal with them as its own." Chippewa Indians v. U. S. 301 U. S. 358. THE ORME LEWIS INDIAN POLICY MAN VASATI way of life. Each administration has its own Indian policy. This administration's Indian policy was announced by Orme Lewis, Assistant Interior Secretary, in a letter to Senator Watkins, on March 13, 1953. Then on various dates beginning from March 9, 1953 to July 22, 1953, six letters passed back and forth between the Orme Lewis office in Washington, the Indian Commissioner's office and the Billings Area office in which this policy was discussed and implemented and amended from the field by Mr. Fickinger, Area Director, and whose suggestions were accepted and made a part of the human reliable to the burner of th and made a part of the bureau-wide policy now in force as an Orme Lewis made law, and controlling on every Indian Reservation in the land. This is one way Indian Policy is made. It requires no approving action by the elected representatives of the people in the Congress, nor of the President. All it requires is the personal approval of Orme Lewis. I wish to respectfully submit that this is not Government of, by, or for the people, but instead, Government by the decree of one man. Also, that this is exactly the kind of rule the Colonies rebelled against, and which resulted in the adoption of the Declaration of Independence, the Revolutionary War and the Constitution. I further respectfully submit that this policy is in plain violation of the letter, the spirit and the intent of the Constitution of the United States, and the Bill of Rights. Also of Article 6, which declares that treaties are "the supreme law of the land." It should, therefore, and forthwith, be rescinded, repudiated, scuttled and abolished, in the interests of common justice to a people who have been most loyal to this nation in its hours of peril, and, who in addition, have treaties with the United States, solemnly entered into, and which, under Article 6 of the Constitution, brands the actions contemplated in the Orme Lewis Indian Policy as un-American, unlawful, against the public policy of this country as heretofore known, and as originally declared by President Washington in his Northwest Ordinance of July 13, 1787, which declared: "Article 3. The utmost good faith shall always be observed towards the Indians; their lands and their property shall never be taken from them without their consent; and in their property, right and liberty, they never shall be invaded, or disturbed unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs done to them, and for preserving peace and friendship with them." with them." proves that the Constitution on Indian reservations, s This is the best Indian policy ever conceded to the Indians in the history of this Nation. It is the Golden Rule policy. "Do unto others as you have them do unto you." It is the Christian spirit and the William Penn approach that complies with this Nation's treaty commitments and obligations assumed by the United States to the Indians when it offered to them treaties unilaterally made and concluded with them and certainly this is a most solemn promise and commitment made upon the honor and integrity of the United States and is as binding today as when made, and should not, for matters of expediency, be treated lightly. The honor of the United States has been given and the world looks to it to discharge honorably. Interior; he is the man who runs t was mad nature of the levis is doing now and with no thought whatsoever that the indians too have rights aidn to those The Indian Bureau was created in 1834 with several thoughts in mind, They 1. To contain the Indians on reservatic s so the conquests of their lands might go on unimpeded. The military, after many years of conquest, was unable to crush them as was hoped. Also, an expanding nation begged Washington to contain them on reservations so the crippling conflicts with them on the frontiers might cease. 2. The gold rush to California and the Black Hills made it necessary to build a long chain of forts through the Indian country for the protection of the goldrush pilgrims while their invasions of the Indian country could go on unmolested. The Custer campaign and debacle was a direct result of this military policy of annihilation. 3

anterpos na Jniog bns 3. The policy changes. Economic rehabilitation steps in, annihilation steps out. 4. Conservation and protection of their treaty land holdings in treaty reserved areas. 5. Treaty agreements to assist in their general education. 6. Treaty agreements to assist them in learning the whiteman's way of life. These then were the thoughts and ideas underlying the creation of the Bureau of Indian Affairs back in 1834. In short, it was an unintended move to extend to them the benefits and guarantees of the protections enumerated in the Bill of Rights. Those basic human rights guaranteed to 'every person' under the American Flag. Let us now see how well this trust has been observed. First, let me again remind you, that the duty and province of Government is to serve, protect and conserve the rights, property and persons of the people. The question here is: Have the officers of the Interior and Bureau of Indian Affairs done this? The answer is: No! the Gongress, nor personal approval of Orme Lewis. I wash to respectfully submit than The proof: Government of by, or for the people, but instead, Governme

The Indian Bureau, since its foundation, has been a closed corporation. It has never operated with the Constitution set before it as its guide in the management and control of Indian Affairs. Its head officers have always been political appointees and the office of Commissioner always political patronage. I am thinking of all of the Indian Commissioners beginning with Francis E. Leupp, serving under President Theodore Roosevelt, and who was appointed not because he was by training and association with Indians fitted to discharge the important duties of the office, and also the more important treaty obligations of the Government to the Indians. His appointment was made solely on the basis of personal friendship. He was a classmate of T. R. at Harvard University. In other cases, the Commissionership has gone to political party stalwarts who did something to help win the election as in the case of Cato Sells who swung the Texas delegation to Woodrow Wilson and which put him over. The office of Commissioner of Indian Affairs has always been a political plum given to party deservees as a reward for good work in political campaigns and elections. Hence, this Bureau has always been conducted along lines of political expediency rather than along lines of strict compliance with the Constitution or the Bill of Rights. It operates under rules and regulation promulgated jointly by the Secretary, the Commissioner and the key field officials which have the force and effect of law and are controlling on the Indians. Thus, it can be stated without any fear of successful contradiction that the Indian Bureau has always operated on the whims and decisions based on expediency of one man; the Secretary of the Interior. The current Indian Policy announced by Orme Lewis which contemplates scuttling and repudiation of the ob ligation of the United States, in Indian treaties, proves that the Constitution on Indian reservations, still is a dead letter.

# A BRIEF REVIEW OF AMENDEENTS - 1, 4, 5 and 14

I have lived every day of my life of over half a century under the control and domination of the Eureau of Indian Affairs. I have, since the administration of Grover Cleveland, watched this Eureau operate. I have watched all of its Interior Secretaries and its many Indian Commissioners come and go. I have watched all of the many different administrations set up their respective Indian policies. I have yet to see one administration which has set up an Indian policy in harmony and in tune with the Constitution or the Bill of Rights. This Eureau has always operated under the whims of one man, the Secretary of the Interior; he is the man who runs the show just as Mr. Orme Lewis is doing now, and with no thought whatsoever that the Indians too have rights akin to those of other people under the American Flag. That they too come within the protection of the Constitution. Thus:

"Indians are not excepted from the protection guaranteed by the Federal Constitution; but their rights are secured and enforced to the same extent as those of residents of citizens of the United States. (Syllabus 10) Choate v.

Trapp, 224 U. S. 665. This is the law; but it has meant nothing to the Indian Bureau and its chiefs in the administration of Indian Affairs. The province of Government herein recited, also has meant nothing to the Interior Secretary."

of the Indian country could so on unablested. The Custer compaten and debasis was a direct result of time salitary policy of

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This Bureau has been well supplied with money from the Federal treasury to carry on its work. It has received well over \$1,000,000,000 since the Theodore Roosevelt administration. The bulk of this money has gone to pay a horde of Federal employees who, in turn, have produced nothing for the Indians. The Indians, many of them, and especially so in the great American desert area, are today living in total squalor and great economic distress. Charity, generosity and philanthropy should begin at home before we go across the seas to play Santa Claus to the destitute of other lands. The United States has been playing Santa Claus to all of the Nations of the earth. Let us take care of our own people first, then if we have a lot of money left, dole it out across the seas. Thus, the burden of argument here is: The Indian B ureau has never operated their business in harmony with, nor in compliance with the Constitution or the Bill of Rights. This is the charge after 60 years of observation. Let any one who thinks differently begin trying to prover otherwise. Let me repeat: The Constitution and the Bill of Rights have been kicked to the winds in the administration of Indian Affairs since the founding of the Indian Bureau. There are no exceptions. Some have gone closer to the Bill of Rights than others; but all have fallen short. The Indians thus have a case before the judgment bar of the Nations, but, instead, we will appeal to the American people to correct these conditions. We know the right approach will do the job. end ofth belief even mane THE 5th AMENDMENT and sew it dark went Jacob

"NO PERSON SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HISELF, NOR BE DEPRIVED OF LIFE, LIBERTY
OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR SHALL PRIVATE
PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION."

Well! Let us see how this command has worked out on the Crow Reservation. Wm. Shane, a Crow Indian, has just filed a petition for a new trial. In his petition, he charges that he was manhandled, beaten, and threatened by the arresting officer, and under threat, forced to confess to a crime, and then his testimony, made under such circumstances, used to convict and send him to jail for life. No argument is needed to establish that this was in violation of the 5th Amendment.

Under our American system of jurisprudence, any one charged with a crime is presumed innocent until proven guilty by his accusers and the burden of proof is upon them.

I happen to know something about this case as I was the Government's Superintendent of the Crow Indian Reservation at the time. Upon being advised as to the manner of the handling of the defendant, I took the complaint up before the Court when they were being tried. As a Government witness, I took vigorous exceptions to the manner of handling and extracting confessions from the defendant boys, and also pointed out to the Court that the 5th amendment was violated by the F. B. I. in their actions, but was not sustained by the Court. In fact, I was nearly cited for contempt of Court. This statement is a matter of record in the Federal Court of Montana, and is repeated here only to show how the 5th amendment works among the Indians.

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Amendment 5 also commands:

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"That private property shall not be taken for public use, without just compensation."

Let us see how this law has worked here on the Crow Reservation. The Crow Tribe has, since 1911, been defending itself against the Government, its Bureau of Reclamation, the State of Montana, its officers and its delegation in the Congress, from the taking of its tribal treaty lands without adequate nor just compensation. Every form of deception and trickery has been employed by the officers of the Government and its fellow travelers, to dispossess the Crow Tribe of its lands for the proposed Yellowtail Dam. These well-laid plans, if Tribe of its lands for the proposed Yellowtail Dam. These well-laid plans, if successful, will be the most rank violation of the 5th amendment. The proponents promise an all-out attempt in the 84th Congress. This gives an example of how the inhibitions for the Bill of Rights works on the Indians when they have valuable natural resources that the Government or the people of the States want.

## AMENDMENT 14 to wants told told avor

The 14th Amendment commands that: "No person shall be denied the Equal Protection of the Law." webser galdered need and erlatta

On account of race, social and other forms of discriminations, the Indians have never received the equal protection of the law. Jim Crow discriminations

exist on and around every Indian reservation in the country. Here in Montana, Hardin, Great Falls and Havre are conspicuous. Rossevelt administration. The bull

The theory of American law governing Indian Affairs has always been that the Government owes the Indians a duty of protection in his relations with non-Indians. Thus, in the case of <u>United States v. Kagama</u>, 118 U. S. 375, 384 (1886), the Court said: claus to the destitute of other lands.

"Because of the local ill feeling, the people of the states where they (the Indian tribes) are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them, and the treaties in which it has been marriand them. the treaties in which it has been promised, there arises the duty of protection, and with it the power.

This has always been recognized by the Executive and the Congress, and by the Executive and the Congress, and by this Court, whenever the question has arisen." of the Mations, but, instead, we will appeal to the America

We, then, have not only our own statement, but the declaration of the Supreme Court, in this controversial subject. Let me cite a case in point to prove that the Court knew what it was talking about. Three whitemen were hailed into the State Court at Hardin, Montana, for killing a beef which belonged to a Crow Indian. I was the prosecution's star witness as I apprehended the thieves, caught them in the act. We had an air tight case against them. The crime was committed on the Crow Indian Reservation and was thus a Federal Case triable in the Federal Courts. Superintendent Asbury refused to have anything to do with the Federal Courts. Superintendent Asbury refused to have anything to do with the case nor call the Federal Court authorities, so the case was tried in the State Court in H ardin, Montana. The attorneys for the Defendant whitemen argued that the defendants were drunk, did not know what they were doing, and in a similar case in California, it was held that stealing from an Indian was not a crime. The Judge turned them loose. The argument here is: This farce trial was a denial of the equal protection of the law, and a violation of the 14th amendment, and a denial of due process. Indians go into a whiteman's Court with two strikes against them usually if the defendants are white. This is the two strikes against them usually, if the defendants are white. This is the usual rule. The exceptions are very rare. nder our American system of jus

In 1903, two Crow Indians were caught with meat they could not account for. They were hustled to the Deer Lodge prison and served several years. About the same time, two white men, Garvin and Lee stole one thousand head of cattle from the Crows; they served a few months and were paroled and employed by a man who was a former agent of the Crow Indian Reservation. This is not protection as is commanded in the 14th amendment. It also is not the equal protection of the law. It is rule by deception.

In 1918, the Crow Tribe owned a tribal herd of 18,500 head of cattle valued at one million dollars. We had a dry summer and a hard winter threatened. We begged Superintendent Asbury to ship the herd to Texas for the winter as other stockmen were doing. He replied that he was running the show, and refused to do anything about saving our herd entrusted to his care without bond. A hard winter set in, and we lost nearly the entire herd. When we attempted to sue the Government for this bullheaded refusal to protect and conserve our property that the Government was controlling and managing through its Superintendent, the attorneys of the Justice Department argued that the Superintendent was not responsible. That the loss was an Act of God. This in spite of the fact that we proved that the Superintendent, from mere negligence had permitted the entire herd to be decimated as is herein related. The loss was the result of negligence of the Government, and the Indians have no recourse in the Courts of the Government, In the Courts, the Government officials and attorneys gang up on the Indians and if the Indians won, it usually was because the Government dared not take may other action as it would be too brazenly wrong. For the Indians to win, is usually the big exception! Tribe of its lands for the proposed Yellowtail

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promise an all-out attempt in the 84th Again, the province of Government is to serve, conserve and protect the rights, property and persons of the people. Measured by these standards, the Government and its Interior Department and its Indian Bureau, have, as the records prove, fallen far short of discharging its duty and the obligations of the Nation to the Indians, which have been intrusted to it by law.

This gives an example of how

The Bureau of Indian Affairs has been operating under rules and regulations it created itself, and which are not in harmony with the spirit or the intent of the Constitution or the Bill of Rights. These rules and regulations are not law and should not be permitted to displace the Constitution or the Bill of Rights.

The Orme Lewis Indian policy of scuttle, tax and repudiation, is in violation of (1) the public policy, (2) the promises in the treaties, and (3) the spirit and intent of the Constitution and should be forthwith abolished.

The sanctity of Indian treaties as is declared in the Constitution, must be obeyed henceforth by Indian Bureau officials and any others concerned. They are declared the supreme law of the land and should be kept so.

Constitutional and representative government decrees that the governed shall have a voice in the selection and election and appointment of those who are set up to rule. This basic right has consistently been denied the Indians when they attempted to help name the Indian Commissioner. This is a denial of Constitutional guarantees.

The foregoing has been the record in Indian Affairs administration by the Indian Bureau for this Nation, and in view of such it is respectfully submitted to the President, that he take a hand in this matter to the extent that he order a change which will meet the demands of the Indians as they have made them in the past. Rule in compliance with the Constitution, the Bill of Rights, the promises contained in the treaties and the declarations contained in President Washington's Northwest Ordinance. Thus, for all of the foregoing reasons, the Indians of the United States respectfull submit this, their petition, to the President and to the Congress.

(In another paper, Mr. Yellowtail states as follows:)

Today, we are faced with an entirely different Indian Policy, which is exactly the reverse of Washington's policy which promised the Indians security in their lands and liberties. It is the Orme Lewis Indian Policy declared by himself for the Eisenhower administration. This policy contemplates the following:

- 1. The liquidating of the Indian Bureau, regardless of the wishes of the Indians.
- 2. The cutting loose of Tribes from Government protection. Their treaty commitments to the contrary notwithstanding.

3. The turning loose of all State law to control on Indian Reservations.
4. The taxation of all trust lands, treaty held or otherwise.
5. The denial of further transfer between Indians on reservations, of their lands in a trust status; must accept such lands under fee simple patents.

6. The further denial of requests of Indians, restricted or not, for fee patents to a portion of their lands. The Orme Lewis order is: "Take it for all or none." This is a denial of the right of self-determination and "due process"

under the Constitution.

7. The move to tax all of the trust lands of the Indians. Such a move was begun in Bert and Peawifeah Tunaugh (or Taunah) v. H. C. Jones, Collector of Internal Revenue in the U. S. District Court for Western Oklahoma. Also, in the many letters upon this question between the Orme Lewis office, that of the Indian Commissioner and the Billings area office, since this administration took over, and including the last two years of the Truman administration. We have copies of all of these letters and they indicate a determination to liquidate the Indian Bureau, the Indians and repudiate treaty commitments flowing to the Indians from their treaties, entered into with the United States.

8. The transfer of State law to Indians on Reservations.

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NOTE: Your comments on the foregoing will be welcomed. We have some more material on hand and will be forthcoming. Watch for: "AUTOCRACY, DESPOTISM, ABSOLUTISM AND TYRANNY IN THE ADMINISTRATION OF INDIAN AFFAIRS", "INDIAN VESTED RIGHTS", and others being gathered for us by the MOCCASIN TELEGRAPH NEWS AGENCY.

In behalf of our officers of the AFFILIATED TRIBES OF NORTHWEST INDIANS:

Joseph R. Garry, President Alex Saluskin, Vice President Frank George, Secretary-Treasurer and Executive Council Members: William A. Wall Alex Sherwood Robert LaFromboise Eagle Seelatsee and Sam Scott

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Frank George, Secretary-Treasurer, Affiliated Tribes of Northwest Indians, Nespelem, Washington.

Joseph R. Carry, President Alex Salvation, Vice President Frank George, Secretary-Trossurer and Executive Council Members:

. Mr. Click Relander, Route 3, Box 146, Yakima, Washington has sentale

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