TERMINATING FEDERAL SUPERVISION OVER INDIAN FORESTS

By Kenneth B. Pomeroy

The American Forestry Association

Termination of federal supervision over Indians has been labeled a "sociological problem" of little concern to foresters. Foresters, however, are land managers as well as practitioners of silviculture. Consequently they should have some understanding of Indian problems because Indian reservations still contain more than 50 million acres of forest and range land. Furthermore, the centuries-old struggle for land has been a major facet of Indian and non-Indian relationships. In fact, as pointed out by Simpson and Yinger, 1/ "there is scarcely a major issue of policy in the United States that has not been involved. Questions of land use and conservation; of universal citizenship and franchise; of the 'melting pot' versus segregation; of colonialism; of the separation of church and state; of private property and communal property; and of the extent and nature of government responsibility for education all have involved policy questions concerning Indians."

In pre-Colonial days the Indians attached little significance to land as such. Ownership of land, on the other hand, was important to the early settlers. At first each colony dealt directly with local tribes. The General Court of Massachusetts declared in 1633 that any Indians, who should come to the English plantations and live civilly and orderly, should have allotments according to the custom of the settlers. This did not work out satisfactorily. In 1660 the Virginia Assembly recognized that settlers were encroaching upon lands of the Accomack Indians and directed that a tract be set aside for their maintenance. But development of a coordinated Indian policy did not materialize for another century.

In 1763 the King of England issued a Royal Proclamation declaring that the Indians had a right to be protected in the peaceful possession of their lands. This policy later was incorporated into the basic law of the United States Government. 2/

Under the Royal Proclamation agreement was reached by some 25 to 30 tribes and the colonies regarding a boundary line between Indian and Colonial holdings. This paper barrier to westward settlement extended from the east end of Lake Ontario to western Florida. The Proclamation also ordered that people illegally settled upon Indian lands should be removed. The British, however, lacked means of enforcing the agreements and within a decade some 60,000 people had settled in the Ohio Valley.

Conflicts between the Indians and the settlers multiplied rapidly as the expanding population of the new republic pushed westward. By 1825 the situation was so acute that President Monroe told Congress experience had clearly demonstrated the impossibility of Indians remaining in the present states. Five years later the Non-Intercourse Act provided for exchange of lands and removal of the Indians to lands west of the Mississippi River.

1/ Simpson, George E. and J. Milton Yinger. Foreword. The Annals of the American Academy of Political and Social Science. Vol. 311. May, 1957.

2/ The Northwest Ordinance of 1787 (1 Stat. 50).

NOTE: This address was delivered before the members of the Society of American Foresters in Annual Meeting at Syracuse, New York, November 12, 1957.

Some tribes were moved. But isolation attempts failed when national confidence in such a policy was shaken by the tragic experiences of the Cherokee Nation. One-quarter of the tribe perished during the 800-mile enforced march from the Smoky Mountains to Oklahoma.

For a time efforts were made to completely segregate the Indians in reservations. During this era many people began to feel that the aboriginal way of life could not be maintained indefinitely even in isolated reservations. T. Hartley Crawford, Commissioner of Indian Affairs said: "Common property and civilization cannot co-exist." Agitation followed for separate allotments of land within each reservation to individual Indians.

The new concept eventually received Congressional sanction in the General Allotment Act of 1887. The Act provided for 160-acre allotments to each Indian family of land suitable for agriculture. Unfortunately many Indians had little knowledge of or interest in farming. Consequently many of the allotted tracts, as well as excess reservation land, eventually passed into non-Indian ownership.

By the 1920's it was clear that the General Allotment Act had been a mistake. Many Indians were destitute. Their land holdings had decreased from the 138 million acres available in 1887 to 47 million acres. Federal policies then were reversed under the Indian Reorganization Act of 1934. This Act gave the reservation system new life. It forbade further allotments of land; prevented future alienation of restricted tribal lands; restored to tribal ownership the remaining surplus lands of any reservation previously opened; authorized the acquisition of lands and water rights; made mandatory the practice of forest and range management; and granted tribal councils greater authority. Acquisition, which continued through 1948 aggregated 1.7 million acres. Restored surplus lands made up most of the balance and the total increased from 47 million to 56 million acres before the tide turned.

All tribes did not accept the Indian Reorganization Act. Some felt it to be a step backwards and others have stated since that it prevented Indian progress for 20 years. On the other hand, many Indians loudly acclaimed the Indian Reorganization Act.

The restoration period or "golden era" as some refer to it, ended in 1952 when the Bureau of Indian Affairs was instructed to terminate federal supervision over Indians as rapidly as possible. Since then the issuance of patents in fee and sales of allotted lands have alienated an average of 400,000 acres annually. These actions have been taken at the request of the individuals concerned and have been stimulated greatly by post-World War II increases in land values.

The new policy was formalized in House Concurrent Resolution 108, 83rd Congress, 1st Session (August 1, 1953) which stated in part:

"Whereas it is the policy of Congress, as rapidly as possible to make Indians ....subject to the same laws and entitled to the same privileges....as other citizens....to end their status as wards....and to grant them all the rights and prerogatives pertaining to American citizenship....be it resolved that....all the Indian tribes....of California, Florida, New York and Texas....should be freed from federal supervision and control...." The Flathead, Klamath, Menominee, Potowotomee and Chippewa tribes also were named in this resolution.

House Concurrent Resolution 108 triggered termination laws for nine tribes. Several of these termination Acts have been completed successfully. Only Menominee and Klamath, significantly the two containing a valuable resource, have run into trouble. Let us examine them briefly:

The Menominee Indians comprise one of the few Eastern tribes to retain any substantial portion of their ancestral estate. In the early 1800's, when other Eastern tribes were being moved west of the Mississippi River, the Menominees passively resisted all government attempts to relocate them. Finally in 1854 they were granted a permanent home on the present reservation in Northern Wisconsin. Later, when many other tribes accepted the General Allotment Act, the Menominees stoutly voiced their determination to keep the reservation intact in tribal ownership. Today the Menominee Indians recognize that their future as a tribe is dependent upon continued operation of their principal asset - the forest. This is a key point.

The Menominee reservation contains 234,000 acres, of which 222,000 acres are forested. Logging began in 1872 with a river drive of 12 million board feet of white pine. For a time thereafter, a group known as the "Pine Ring" tried to gain control of the forests. During this period the Indians were only permitted to log dead and down timber. Logging of green timber was resumed in 1890 with the cut limited to 20 million board feet annually. In 1908 Senator Robert M. LaFollette sponsored legislation to place the reservation forests under a sustained-yield program. 3/ The Act directed the Secretary of the Interior to prescribe rules and regulations for the cutting of timber and to provide for the construction of a sawmill. This mill is still operating and recent surveys indicate that gross annual growth has increased to 36 million board feet. Many of the tribes 3,270 members work in the woods or in the sawmill and all share in the earnings of tribal enterprises.

In 1950 the Menominee Indian Tribe secured an $8,500,000 judgment against the Federal Government as damages for earlier mismanagement of the timber resource. This decision was only one of the many which define the legal and moral obligations of the Federal Government as a trustee of Indian property. The courts have ruled that a guardian may not permit any action detrimental to the interests of its wards even though the wards desire such action. This is another important point to keep in mind while considering various termination proposals.

Successful damage suits by the Menominee Indians, plus income from their timber operations built up deposits exceeding $10 million in the United States Treasury. So in 1952 the Tribal Advisory Council recommended per capita payments of $1500, totaling about $4,750,000; allotment of $3,140,000 for tribally sponsored projects, and $3,000,000 for operating capital of the Menominee Indian Mills. This request, plus a growing sentiment in Congress for termination of federal supervision over Indians, resulted in enactment on June 17, 1954 of Public Law 399 (68 Stat. 250). This Act authorizes transfer to the tribe by December 31, 1958 of all property held in trust, and terminates federal supervision over the Menominee Indians.

Such a change raises many questions. Consequently, the Tribal Advisory Council and the State of Wisconsin have undertaken several surveys and exploratory studies in their search for ways to implement Public Law 399. Several significant adjustments already have been made. The tribe has taken over budgetary responsibility

---

3/ Act of March 28, 1908 (35 Stat. 51).

for the administrative program. The Tribal Role has been closed. The tribe has accepted responsibility for law and order and has established a police force. Special action by the State Legislature has enabled the tribe to reestablish its credit and loan program under the laws of the State of Wisconsin. Additional activities including hospitalization, education, welfare and extension services have been covered by working relationships with state and local agencies.

There remains the key economic question - how to perpetuate a sustained harvest of forest products. The solution may depend upon the pattern of local government adopted. This decision, however, may be influenced by the type of land disposition most favored by the tribe. Obviously the two problems are inter-related and must be solved together. Some of the possibilities are:

1. Ownership by individual Indians following a division of tribal lands.

2. Ownership by one or more companies after sale by the tribe.

3. Ownership by the Indians as a cooperative or private corporation.

4. Public ownership as a community, county, state or federal forest.

5. Operation as a trust under state or private guidance.

These alternatives have been reduced by coordinated tribal and state study to (a) operation of the forest and mill by tribal members alone, or (b) by a cooperative undertaking involving outside capital. The task now is to help individual Indians understand all potentialities so that tribal members can reach a sound decision regarding their own future.

Decisions of such magnitude come slowly, especially when the persons involved have not enjoyed that privilege for more than a century. This has been the price of wardship.

Time is needed - time to search out the pitfalls; time to educate a people; time to arrange a new way of life. The tribal council has requested a 2-year extension of the Termination Act. This request has been endorsed earnestly by Governor Thomson of Wisconsin. The State Legislative Committee, which Governor Thomson previously served as chairman, is preparing recommendations for amendment of the Wisconsin Forest Crop Law. This amendment is needed to adjust the Federal Crop Law to the requirements of a mature operating forest. The Act originally was designed for cut-over lands. The necessary amendment cannot be made until the State Legislature re-convenes in 1959.

Congress, on the other hand, has been reluctant to grant an extension to termination procedures fearing that such efforts may drag on interminably with attendant costs to all concerned. A 2-year grace period, however, is cheap indeed when weighed against the economic security of 3000 Indians and their non-Indian friends and neighbors.

Now, let us turn to the Klamath Indians of Oregon. At one time the Klamath Reservation contained 1,107,847 acres. But years ago about one-fifth of the land was assigned to individual Indians under the General Allotment Act of 1887. Many of these allotments have passed out of Indian ownership and the rest are being disposed of rapidly. This indicates the probable trend if the 863,159 acres

remaining in tribal ownership should be divided among the members. The present tribal assets include some 4.5 billion board feet of timber on 745,280 acres of forest land, 1090 acres of improved farm land, and 116,789 acres of open range and marsh.

Several decades of agitation for greater freedom in the management of tribal affairs reached a climax in 1954 with enactment of Public Law 587 (68 Stat. 718). This Act differs basically from the Menominee Termination Law in that it permits individual Indians to request their share of tribal assets in cash.

When the Klamath bill was proposed three years ago, only a few of the Indians voiced a desire to withdraw from the tribe. At that time it seemed like a good idea to let them go. However, the number desiring to withdraw increased sharply after rumors placed the value of individual shares at $50,000 each. Now more than 70 percent of the tribe want cash payment. This poses some contradictory considerations in disposal of the forest, the tribe's major asset.

Ponderosa pine, with a rotation age of 140 years, does not lend itself to sustained-yield management in small tracts. Yet sale in large blocks for long-term investment may not bring as much as sale in small parcels. Still the Federal Government, in its role as guardian, must seek the maximum return for its wards or be legally liable for mismanagement.

Efforts to find a solution other than immediate liquidation have resulted in several proposals:

1. A 10 to 15 year extension of the remaining 2½ year termination period. This would permit an orderly disposal of the timber instead of the "fire sale" now envisioned. Many people feel that such a course would merely prolong liquidation of the forest and would not result in the practice of sustained yield.

2. Public acquisition at appraised current retail stumpage prices. Although this proposal has considerable public support, the prospects are dim for federal appropriation of some $113 million for this program.

3. Private acquisition for sustained yield management at a price consistent with long-term investment. Such a course would mean less money for the Indians. So the difference between this wholesale price and the appraised retail value might be considered as an indemnity to be paid by the Federal Government.

To the above possibilities another alternative might be added. That is repeal of the portion of Public Law 587 which permits quick liquidation of the timber. In this event the Forestry Branch of the Bureau of Indian Affairs might continue to manage the forest under the present arrangement, whereby the Klamath Indians pay for actual costs of administration.

The various proposals for disposal of Klamath assets raise a question for discussion by the Division of Private Forestry, Society of American Foresters.

If sustained yield is really in the public interest and all professional foresters insist that it is, what price are we willing to pay to ensure its accomplishment? On Indian forests the price might be outright public purchase. Or, as mentioned above, it might be payment of the difference betwen the sustained yield and liquidation values. If so, then tax concessions elsewhere in the form of forest crop laws may be in order.