

p. 4 The Responsibility which the United States has for its Indian ~~population~~ citizens is of the same general nature as that which the nation has for all its citizens. But, in the case of the Indians, there is a special public responsibility, also, which arises from the fact that in the beginning they had to adapt themselves to value systems and economic pursuits not of their devising.

.... The first governor of Virginia colony proclaimed that colonization was "not to supplant and root them out..."

...and in 1650 Harvard College was chartered for "education of ye English and Indian youth of this country in knowledge and Godlyness."

As Benjamin Franklin reported to provincial representatives p. 5 at the Albany Congress in 1754; "Many quarrels and wars have arisen between the colonies and the Indian nations through the bad conduct of traders who ~~through~~ cheat the Indians after making them drunk, to the great expense of the colonies both in blood and treasure."

Public Law 176, 83rd Congress, Chapter 1260 2d Session HR 2233

An Act

To provide for the acquisition of lands by the United States
required for the reservoir created for construction of Oahe Dam on the
Missouri River and for rehabilitation of the Indians of the
Cheyenne River Sioux Reservation South Dakota and for other purposes.
All 68 Stat 1191.

83d Congress 1st sess. H.R. 4898

In the House of Representatives

April 28, 1953

Mr. Holmes introduced the following bill; which was referred to the Committee on Public Works.

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A Bill

To provide for the development of Priest Rapids site on the Columbia River, Washington, under a license issued pursuant to the Federal Power Act.

1-Be it enacted by the Senate and house of Representatives of the United States of America in Congress assembled, That the Flood control Act of 1950 (64 Stat. 170, 179) insofar as it adopted and authorized to be prosecuted the Priest Rapids Dam on the Columbia River, Washington substantially in accordance with the plans recommended in the report of the Chief of Engineers dated June 28, 1949, contained in House Document Numbered 531, Eighty-first Congress, second session, is hereby modified to permit the development of the Priest Rapids site by Public Utility District Number Two, of Grant County, Washington, or such district or its successor in combination with such other utilities as it may legally affiliate with, under and in accordance with the terms and conditions of a license duly issued pursuant to the Federal Power Act. Such license shall authorize the development of such site in such a manner as to provide substantially the same benefits with respect to hydroelectric power as would be provided in the plans recommended by the Chief of Engineers in such report, and to permit further construction with respect to flood control and navigation as authorized in section 2 of this Act.

Sec. 2-The authorization in such Act is further modified to authorize the Department of the Army to add such flood control features as are recommended in such report to any dam constructed at the Priest Rapids site pursuant to the provisions of this Act.

Sec.3-The Department of the Army shall review any plans submitted to the Federal Power Commission for the purpose of acquiring a license to develop the Priest Rapids site or any other site in connection therewith, and may submit recommendations with respect to such plans to the Commission.

Sec.4-If an application for a license under the Federal Power Act to authorize the development of the Priest Rapids site is not filed with the Federal Power Commission prior to the date which is two years after the date of the enactment of this Act, the provisions of this act shall not be effective after such date and the authorization for the development of the Priest Rapids site contained in the Flood Control Act of 1950 shall have the same status it would have had if this Act had not been enacted. Notwithstanding any other provision of law, the Federal Power Commission shall act, on any such application filed with it prior to such date, within one year after the date on which such application is so filed.

H.R. 4898 A bill to provide for the development of the Priest Rapids site on the Columbia River, ~~Wash~~ Washington, under a license issued pursuant to the Federal Power act.

By Mr. Holmes. April 28, 1953. Referred to the Committee on Public Works.

Excerpts from Public Law No. 437--Fort Berthold Indian Reservation N.D.

...Conference Report (H Rept. No. 1458)

"...Sec 2-The fund of \$5,105,625 appropriated by the War Department Civil Appropriation Act, 1948 (Public Law 296) Eightieth Congress) shall not lapse into the Treasury as provided therein, but shall be available for disbursement under the direction of the Commissioner of Indian Affairs, Bureau of the Interior (hereinafter called the "Commissioner" for the following purposes:

"(a) Payment for tribal and allotted Indian lands and improvements including heirship interests, and values above and below the surface, within the Taking Area:

"b) Costs of relocating and reestablishing the members of the tribes who reside within the Taking area: and

"(c) Costs of relocating and reestablishing Indian cemeteries, tribal monuments, and shrines within the Taking Area.

Any unexpended balance remaining from the said fund....shall remain in the Treasury to the credit of the Tribes.

(960 members)

Appendix G

....Their attitude has been improved also by Congressional recognition in the enactment of Public Law 437, 81st Congress, of the principle of payment of damages for intangible losses suffered by the Indian people and by recognition, in the enactment of Public Law 870, 81st Congress, of the right of Tribes to negotiate with the Government for damages covering both their tangible and intangible losses...

Provision includes 4 per cent interest for any sum set aside.

...On the Fort Berthold...individual Indians received from \$500 to \$30,000 for loss of personally owned land and the tribe received \$7,500,000 as compensation. The individuals developed their individual

plans for the use of this money which is being handled by the Indians themselves, free from restraint on the part of the government.

M. 34326.

Indian Rights in Columbia River Reservoir

Memorandum opinion, December 29, 1945.

Statutory Construction--Second paragraph of Section 1 of Act of June 29, 1940 (54 Stat. 703) Indian Rights of Hunting, Fishing and Boating in Columbia River Reservoir--Administration of Columbia River Reservoir Area--Constitutionality of Regulatory Provision of the Act.

The second paragraph of Section 1 of the act of June 29, 1940, provides:

"The Secretary of the Interior, in lieu of reserving rights of hunting, fishing and boating to the Indians in the areas granted under the act, shall set aside approximately one-quarter of the entire reservoir area for the paramount use of the Indians of the Spokane and Colville Reservations for hunting, fishing and boating purposes, which rights shall be subject only to such reasonable regulations as the Secretary may prescribe for the protection and conservation of fish and wildlife; Provided, that the exercise of the Indians rights shall not interfere with project operations. The Secretary shall also, where necessary, grant to the Indians reasonable rights of access to such area or areas across any project lands."

The act imposes a mandatory duty upon the Secretary to set aside approximately one-quarter of the entire reservoir area for the paramount use of the Indians of the Spokane and Colville Reservations.

...The constitutionality of the act is supported by the property interests of the United States in the reservoir area; the power of Congress to control the navigable waters of the United States; and the powers of Congress over Indians and Indian affairs.

(Gardner, Solicitor:..

Seufert Bros. Co v United States, 249 U.S. 194-197.

...Section 1 of the act of June 29, 1940 authorizes

acquisition of Indian tribal and allotted lands up to a maximum elevation of 1,310 feet above sea level. The maximum water elevation of the reservoir is 1,290 feet, thus leaving a freeboard margin of 20 feet.,

...paragraph 2 of the latter memorandum of understanding provided: "Nothing in this agreement shall affect existing hunting and fishing rights of the Indians in the Columbia River Reservoir area intended to be satisfied by the enactment into law of the provisions of the second paragraph of Section 1 of S. 3766 and HR 9445 (76th Cong. 3d sess.). "most of the lands along the river acquired for the reservoir were allotted rather than tribal lands, and among the latter were also some ceded. (See memorandum from the Assistant Commissioner of Indian Affairs to Commissioner of Reclamation dated April 15, 1941.)

..."In Consideration of the rights they now enjoy within the Spokane and Colville Reservations, provisions are contained in the bill concerning the hunting, fishing and boating rights of the Indians. In substance, such provisions would require the Secretary of the Interior to set aside an area of approximately one-quarter of the entire reservoir area for the use of the Spokane and Colville Reservation Indians for hunting, fishing and boating purposes, subject to such reasonable regulations as the Secretary would prescribe and provided that the exercise of such hunting, fishing and boating rights would not interfere with project operations.

...Tulee v Washington 315 U.S. 681, with respect to the treaty rights of the Yakima Indians to fish at their "usual and accustomed places" on ceded lands without paying license fees to the State of Washington. The court held that the State could not burden the treaty right by imposing license fees. It is true that this ruling is not precisely in point here. No treaty right is involved, and the question

presented is one of Federal rather than State regulation. Nevertheless the liberal approach of the Supreme Court to the problem is not without significance here. Furthermore, the Court expressly pointed out that "the imposition of license fee is not indispensable to the effectiveness of a state conservation program. The same would seem to be true of a Federal conservation program."

...Finally there is the plenary power of Congress over Indians and Indian affairs, which has been recognized by a long line of decisions since *United States v Kagama*, 118 U.S. 375. Indeed in *United States v McGowan* 302 U.S. 535 the Supreme Court declared: "Congress alone has the right to determine the manner in which this country's guardianship over the Indians shall be carried out."

While the Federal regulation of Indian and hunting and fishing in the reservoir may extend to areas as to which the Indian title has been extinguished, the plenary power of Congress over Indians does not necessarily depend upon title. *United States v Thomas* 151 U.S. 577. The power of congress to regular the liquor traffic with Indians on lands ceded by them has been uniformly upheld, despite the fact that the Indian title has been extinguished...

Lone Wolf v Hitchcock 187 U.S. 553, 565 : "Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the government."

...In *United States v Ramsey* 271, U.S. 467, the Court declared in general terms that "Congress possessed the broad power of legislating for the protection of the Indians wherever they may be within the territory of the United States."...Warner W. Gardner, solicitor.

...Purchase of their holdings and property, some personal property and moving themselves and their belongings. It may require special legislation to give them consideration for religious etc. values, also for moral considerations such as taking away their hunting and fishing grounds and their source of livelihood, must be covered by covered by special law.

This law could take any one of three courses.

1-Special mention in the enabling act authorizing the dam. It is also sometimes accomplished by including in the act words to the effect that dam is to be built in accordance with plans and reports of chief of Engineers. The report then must be specific on the proposal for the Indians and spell out the payments and reasons.

2-A special law to cover the problem. This requires special hearings by committee of Insular Affairs and if passed must also be covered by a second law appropriating the money. It must also I think be supported in hearings before the appropriations committee. This is the surest way but you can see it takes time and might not pass at the session of Congress.

3-The third way is by a rider to the appropriation bill setting up construction funds. This is the method used in the Dalles Dam ~~and~~ case both in the payment for fishing rights and the resettlement of the displaced permanent homes at Celilo. It stands the chance of being thrown out of a bill by the simple objection of one Congressman since it is against the Congressional rules (although it's done quite often) to cover new legislative matters in an appropriation bill.

I am sending you a few ~~mk~~ files...

Petition to the U.S. Government

To all persons concerned: President Dwight D. Eisenhower, Senators, Congressmen, Committees and Individuals.

We the undersigned and attached signers, ask in all fairness and sincerity that Construction at The Dalles, Oregon be stopped and no other work be done on the dam, known as The Dalles Dam, that will, if finished, destroy Celilo Falls and a Treaty given the Indian People in good faith.

Stop this construction and restore the treaty made them in 1855, and enact at once proper legislation that will protect this treaty, so never again can man hope to destroy Celilo Falls and the Treaty given in 1855 under the seal of the United States of America. We ask the National Honor of our country be kept as it should be;

Name

Address

Date

Geo. Roger Chubb

R-1, Outlook, Wash.

24 April 1953

68.86
3.93

72.79
25

47.70