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WHAT IS THE STATUS OF FOLLOW-UP ACTIONS AT WOUNDED KNEE?

Substantial losses were suffered by Indian residents of Wounded Knee during the 71-day occupation of the village.

Restoration efforts by the Bureau of Indian Affairs include:

1. Emergency housing for 20 Indian families and financing assistance for 56 Indian families.
2. Repair of 17 Indian homes.
3. Replacement of seven houses and six mobile homes.
4. Replacement of substantial quantities of home furnishings, utensils, and appliances.
5. Replacement of one bridge and repair of four miles of highway.

The cost of direct restoration work by BIA totals \$375,000 exclusive of law enforcement and other Federal costs.

In addition, the Oglala Sioux housing authority with emergency funds from HUD, is repairing damages to 12 public housing units in the village. Legislation has been introduced to compensate non-Indian residents and ranchers for loss of crops, cattle, and personal possessions. Senators McGovern, ~~Aborez~~<sup>Aborez</sup>, and Curtis have introduced an amendment to a Small Business Act (S.1846) which would make restitution.

SINCE WOUNDED KNEE WHAT HAS BEEN DONE ABOUT LAW ENFORCEMENT TRAINING FOR INDIANS?

A total evaluation of the Bureau of Indian Affairs law enforcement program is now underway, on a priority basis.

The Bureau of Indian Affairs is now preparing a request for an amendment to the 1974 budget that will ask for more money for law enforcement efforts. If this amendment is passed, it will give the Bureau \$9,827,000 more money to work with in the area of judicial prevention and law enforcement than it had in 1973 (fiscal year).

Additional money for this same work will be requested for fiscal year 1975 and 1976. [REDACTED]

The Bureau of Indian Affairs is now developing a nationwide crowd control unit of 50 Indians. These are a highly select group trained by the Department of Justice to handle emergency situations. They are highly selected, all Indians, and are taken from various BIA police units on various reservations. They will be on call much as are the Indian firefighting units.

Police training has been made mandatory for all Federal officers on Indian reservations. In addition, police training is available for all police who are employed by Indian tribes on a priority basis, through the BIA Police Academy, Brigham City, Utah.

STATUS OF PROSECUTIONS AT WOUNDED KNEE?

The Department of Justice has 91 indictments covering 117 defendants and the FBI is still investigating.

No firm trial dates have been arrived at by the U.S. District Court for the District of South Dakota, headquarters at Sioux Falls, South Dakota, the court which has jurisdiction. The lawyers for those indicted have presented a motion for a change of venue (a change as to where the trial will be held) because of pretrial publicity. [REDACTED]

[REDACTED] to Pine Ridge Agency in the capacity of superintendent says that

in his opinion a change of venue does have merit. Justice says the lawyers for the defendants contend they cannot get a fair trial in North, South Dakota, or Nebraska and would like the trial moved to, say, New York City. A change of venue generally means merely a change to an adjoining district but the longest distance in Justice records has been from Boston to San Francisco. AIM leaders Banks, Means, Bellecourt, Camp, Bissonette, and others have been indicted for burglary, larceny, impeding Federal officers during a civil disorder, conspiracy, assaulting a Federal officer, and possession of unregistered firearms. Penalties for each go up to five years.

Two hundred and eighty-seven persons were arrested in connection with the occupation of Wounded Knee, and most were charged with interfering with law enforcement officers in the performance of their duty because of a civil disorder. This has to do with interstate commerce and is according to U.S. Code 18, Sec. 231. Fifty-two charges were dropped even before the people were brought before a magistrate. Two hundred thirty-five people have appeared before the Federal magistrate

WHAT IS THE STATUS OF PYRAMID LAKE SITUATION?

On September 22, 1972, the Solicitor General filed an original complaint in the Supreme Court on behalf of the United States against the states of Nevada and California. In its complaint the U.S. Government asked that a: "decree be entered declaring the right of the United States for the benefit of the Pyramid Lake Paiute Tribe of Indians to the use of sufficient waters of the Truckee River to fulfill the purposes for which the Pyramid Lake Reservation was created, including the maintenance and preservation of Pyramid Lake and the maintenance of the lower reaches of the Truckee River as a natural spawning ground for fish and other purposes beneficial to and satisfying such use to be with a priority of November 29, 1859."

On June 11, 1973, the Supreme Court declined to hear United States of America v. States of Nevada and California. The Supreme Court suggested that a suit be filed in a local district court in Nevada. On June 20, 1973, the Interior Department requested the Justice Department to file a suit in the Nevada district court and, if necessary, also in the California district court to assert the same rights as presented to the Supreme Court.

The Justice Department has indicated that the suit will be filed within 60 days (by August 20th).



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

## FACT SHEET

Date: April 5, 1973

Reference: 18/d/OS

(REVISED)

Subject:

INDIAN WATER RIGHTS

Indian rights to the use of water -- claimed and exercised -- are predicated upon the principles first enunciated by the Supreme Court in a 1908 Case (*Winters vs. United States*) which arose on the Fort Belknap Indian Reservation in Montana along the Milk River, a tributary of the Missouri River. Those principles as applied and amplified by subsequent decisions are the basis for the proposition that there is an implied reservation of rights to the use of water by and for the Indians in the springs, streams, lakes or other sources of water which arise upon, border, or traverse their lands. Water was reserved from use and appropriation by others as of the date of the creation of the Reservation whether created by Treaty, Executive Order or Statute. These Winters Doctrine Rights to the use of water may be used to satisfy the future as well as the present needs of Indian reservations.

In the past the quantity of water reserved under the Winters Doctrine has been measured in terms of agricultural and domestic needs. However, the United States has recently filed a series of cases to determine if, in fulfillment of the purposes of the Federal sovereign, the Doctrine includes other uses such as the maintenance of a lake for recreational purposes; minimum stream flows to preserve fisheries and satisfy other ecological needs; and water necessary for the production of minerals on reservation lands.

Indian rights to the use of water are private, not public in character; therefore, they cannot be administered as are rights to the use of water owned by the Nation and exercised for the benefit of the public as a whole. Today in many locations Indians and non-Indians are in acute competition for a water supply inadequate to meet all demands. The extent of Indian water rights, is, however, largely undetermined.

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Rights to the use of water are part and parcel of the land itself. The right to use is what is owned by the Indians or anyone else who has title to the right to take water. Being interests in real property, Winters Doctrine Rights to the use of water pass to non-Indians when the lands to which they are part and parcel are transferred. Lessees of Indian lands may exercise the water rights appurtenant to the leased lands.

On October 4, 1971, the Secretary of the Interior announced the establishment of an Indian Water Rights Office. It directs all aspects of the Department effort to assert and protect the water rights of American Indians for whom the United States is trustee. In order to better perform the obligations of the trustee, the head of the Indian Water Rights Office reports directly to the Assistant to the Secretary for Indian Affairs. It has in the past year, in the performance of its function, undertaken 15 major cases in the United States Supreme Court, in Federal District Courts, and before the Federal Power Commission.

An imperative first step in the protection of the Indian property was considered to be an inventory of the potential land and water uses on Indian reservations. The Indian Water Rights Office has established and is now in the process of implementing a plan for the inventory of such land water uses for both present and future Indian water needs for all purposes. Along with the inventories, confirmation of the rights will be accomplished by administrative action or by court adjudication.

Indians want an accelerated water resource development program paralleling the program to quantify water supply and requirements so that Indians can utilize that invaluable natural resource in making their reservations viable economic communities.

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THERE HAVE BEEN TWO RECENT COURT DECISIONS ON THE QUESTION OF INDIAN PREFERENCE, ONE IN NEW MEXICO AND ONE IN THE DISTRICT, WHAT IS THE DEPARTMENT DOING ABOUT THE CASES?

### INDIAN PREFERENCE LITIGATION

On December 21, 1972, the District Court for the District of Columbia in the case entitled Freeman v. Morton, a class action on behalf of all Indian employees of the Bureau of Indian Affairs qualified for Indian preference, held ". . . that all initial hirings, promotions, lateral transfers, and reassignments in the Bureau of Indian Affairs as well as any other personnel movement therein created to fill vacancies in that agency, however created, be declared governed by 25 U.S.C. § 472 which requires that preference be afforded qualified Indian candidates; . . ."

Because the decision went further in application of preference than had been announced by the Secretary's expanded policy, an appeal of the decision was sought on the basis that it created an unworkable personnel situation and froze the Bureau of Indian Affairs in its present organizational structure by requiring that preference be afforded even in making reassignments of employees within the Bureau.

The District Court denied a petition for stay of its decision pending appeal and the Court of Appeals for the District of Columbia also, on June 1, 1973, denied a petition for stay. On May 30, 1973, the Government's brief in support of its appeal was filed with the Appellate Court.

On June 1, 1973, a three-judge panel in Albuquerque, New Mexico, in a case brought by non-Indian employees of the Bureau challenging the preference acts as violative of the Equal Employment Act of 1972 and void under the Constitution, entitled Mancari v. Morton, held that ". . . defendants are hereby permanently enjoined from implementing any policy in the Bureau of Indian Affairs which would hire, promote, or reassign any person in preference to another solely for reason that such person is an Indian, since 25 U.S.C. §§ 44, 46, and 472 are contrary to the Civil Rights Act, and are inoperative."

The result is that under the order issued by the United States District Court for the District of Columbia the Secretary cannot take personnel action in the Bureau of Indian Affairs without affording Indian preference and under the



injunction issued by the United States District Court for the District of New Mexico he cannot use Indian preference in taking such personnel actions. The problem is, therefore, how to resolve the impasse pending decisions on the appeal which has been filed and the review of the New Mexico decision which may be sought.

All personnel actions in the Bureau of Indian Affairs are affected. The Interior Department seeks a stay in the Mancari case to prevent the injunction against Indian preference. The Interior plans to appeal the Freeman decision on the basis that the decision is too pervasive in making it mandatory to select Indians. The Department seeks a more discretionary policy which would allow the selection of non-Indians when necessary.



WHAT ARE THE ISSUES OF CONFLICT WITHIN THE DEPARTMENT REGARDING THE PROPOSED REORGANIZATION OF THE BIA? WHAT IS THE EFFECT OF THE CONFUSION ON ONGOING INDIAN PROGRAMS?

Secretary Morton has assigned to Mr. Marvin Franklin, the Assistant to the Secretary for Indian Affairs, the responsibility for developing the most effective organizational delivery system for services and assistance to Indians in Indian areas. To assist him we have established a steering committee with Mr. Franklin as chairman and including as members the Assistant Secretaries who have the responsibility and expertise for the organization and management of the Department and for the budget and long range policy development activities of the Department. The Solicitor is also on the committee to assure that the organization adequately provides for the discharge of the Secretary's trust responsibilities to Indians. The committee is thoroughly reviewing the proposed realignment of the BIA's central office and is preparing for a review of the BIA's field delivery system. This thorough review by the Committee should not be characterized as a conflict when it is actually a review by the committee members to assure Mr. Franklin and Secretary Morton that we will achieve the best possible delivery system.

There has been no disruption or interference in the delivery of services or assistance to Indians due to the planning for the organizational realignment or changes. Some minor problems have resulted from our restricted ability to take personnel actions due to the Freeman and Mancari court decisions discussed in a previous answer. These could become serious if some relief from these court orders is not forthcoming shortly. In addition, there was a disruption in services (operation of schools, etc.) on the Pine Ridge Reservation due to the recent occupation of Wounded Knee.