Indian Affairs - Office of Public Affairs

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For Immediate Release: January 8, 1959
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Grave moral issues would be raised by last-minute attempts now to disturb Navajo Indian title to small "islands" of former public lands in Utah within the tribal reservation boundaries, the Department of the Interior warned today.

Assistant Secretary of the Interior Roger Ernst presented the Department's views in letters to Senator Frank E. Moss, and Representative David S. King, both of Utah.

In the closing days of the last Congress, legislation was enacted making the tracts part of the reservation. In November, primarily on the basis of this new law, the Department rejected numerous offers for oil and gas leases on these isolated tracts.

The disputed lands are in San Juan County, Utah. They are near the McCracken Mesa Area which will be added to the reservation in exchange for lands the tribe is surrendering to permit construction of Glen Canyon Dam, key feature of the billion dollar Upper Colorado River Storage Project.

In December, then Senator-elect Moss and Congressman-elect King had complained that removal of the lands from public status was unfair to certain oil and gas lease applicants.

Assistant Secretary Ernst wrote them today that the reasons for excluding the islands from the reservation back in 1884, 1905, and 1933 "have long since lost all validity."

It was the existence of those old land claims, now dead, that prevented the public lands from being included in the reservation decades ago, he emphasized.

For many years the tribe has had free and unrestricted use of the surface of the technically public lands, which are not set apart from the reservation lands that surround them.

Assistant Secretary Ernst wrote that only friction and animosity could result from suddenly treating them now as public lands, using only the barest technicality as an excuse. The Department's stand is that it is only right and fair that the Indians' rights should be fully protected.

The Department understands the legislation as enacted included a package agreement between the tribe and State of Utah, Assistant Secretary Ernst wrote. This agreement added the public lands to the reservation as well as giving Utah special lieu selection rights for State school lands--not usually granted to other States. The Department regards the Tribal-State agreement as equitable, and therefore did not object to its enactment by the Congress, Mr. Ernst said.

Clear title is now vested in the tribe. Since Congress has so decided, wrote Assistant Secretary Ernst, "any further legislation modifying the present status of the lands would be a taking of property from the tribe for which compensation would be required."

The legislation cleared the way for construction of the Glen Canyon Dam, he stressed. He contrasted this quickly settled acquisition of Indian lands with the long-drawn-out proceedings in obtaining Crow

Indian tribal lands in Montana for the Yellowtail Project. For 14 years, dispute over payments for Crow land delayed that program.

The Department said the applicants whose oil and gas offers were rejected at no time had any guarantee the lands would be open to leasing. Since the tracts had public land status purely because of questionable technicalities, it is extremely doubtful leases would have been granted by the Department even if Congress had not added the lands to the reservation. A copy of the letter is attached.

UNITED STATES DEPARTMENT OF THE INTERIOR
Office of the Secretary
Washington 25, D. C.
January 8, 1959

Dear Mr. King:

I am glad to respond to your letter of December 9 relative to the provisions of Section 1(d) of Public Law 85-868 (the so-called Navajo Exchange Act) having to do with confirmation, subject to valid existing rights, of the Tribal title to all public lands within the boundaries of the Navajo Reservation.

As your letter notes, the effect of this provision is to preclude further consideration of the oil and gas lease applications which were dealt with in the decision of the Director of the Bureau of Land Management dated November 7, approved November 17, in Superior Oil Co. et al., Utah 016385. This was the holding in that decision.

It should be emphasized that while P. L. 85-868 is commonly referred to as the Navajo Exchange Act, the legislation is not limited to a simple exchange of 53,000 acres of public lands, exclusive of minerals, for 53,000 acres of Indian land exclusive of minerals. The legislation represents a package arrangement touching upon many originally diverse views and interests to meet a unique problem. The legislation is designed to lessen the friction between the Indians and the non-Indians in the area, to acquire for the Federal Government the lands that are needed for the Glen Canyon project without a large expenditure of Federal funds for their purchase, to avoid what in the case of other Federal reservoir projects have been years of delay occasioned by the effect of such projects upon Indian lands, and to deal fairly with the Indians, with the State, and with the local citizens of the area. A legislative undertaking of this sort necessarily presents a delicate matter requiring the balancing and adjusting of numerous interests and equities.

Turning specifically to the provisions of Section 1(d) confirming Tribal title to public lands within the boundaries of the reservation, this provision was one of two involving the State of Utah as well as the Navajo Tribe that were recommended by the Senate Committee on Interior and Insular Affairs when it reported the bill.

The other amendment in that category comprises Section 3 of the legislation as enacted. Section 3 authorizes the State of Utah to exchange State-owned school sections located within the area to be transferred to the Navajo Tribe for lands located outside that area. Neither provision was included in the draft legislation as originally prepared in and proposed by this Department. The state of Utah sought the provisions of Section 3. To this provision the Tribe was at first opposed and negotiations then ensued between the state and the Tribe. In these negotiations, we understand, the Tribe proposed what is now that part of Section 1(d) with which your letter deals. It is our further understanding that both of these provisions were then agreed to between representatives of the State and of the Tribe as a

package compromise of the issues in disagreement between them and that neither party would have agreed to the amendment desired by the other without inclusion of both amendments.

While this Department did not participate in the discussions between the State and the Tribe, we concurred in the amendments that were made to the bill; we so advised both the Senate and the House Committees; and, all things considered we regard the package arrangement as fair and equitable. The provision with respect to the lands within the reservation was a~ above indicated a part of the compromise which we understood the State representatives and the Tribe agreed to when working out the solution to the school land problem raised by the State, and it was intended to resolve an ambiguous situation with respect to lands within the Indian Reservation.

While it may well be that absent the provisions of Section 1(d) concerning which you write, the State of Utah, under the Mineral Leasing Act, would receive returns in the form of a 37 1/2 percent share of any oil and gas lease revenues accruing, it is equally true that the asserted claims were the subject of vigorous contest and it is by no means clear that such claims would, in the final analysis, have been sustained.

Moreover, the elimination of obstacles potentially standing in the way of early construction of Glen Canyon Darn, the key to the development of the Colorado River Storage Project with all of the potential that such development means to the State of Utah and to the other States of the Upper Colorado River Basin, is a not inconsiderable factor to be taken into account when appraising the total effects of Public Law 85-868. In this connection, one has only to consider the fate that befell the Yellowtail project in the State of Montana to appreciate what Public Law 85-868 has meant in the terms of giving a green light to continued construction of the Glen Canyon Unit. Yellowtail was authorized by the Congress in 1944. The damsite and a third of the reservoir are located on the Crow Indian Reservation. Only in the last session of Congress was the 14-year delay occasioned by a dispute over the compensation payable to the Crow Indians for the Tribal lands involved resolved to the point where that issue no longer is a bar to initiation of construction.

Finally, any proposal now to disturb the status of the lands within the exterior boundaries of the reservation as confirmed by Section l(d) raises what in our view are serious moral issues. The reasons for the exclusion of the acreages involved at the time of the Executive Orders of 1884 and 1905 and of the enactment of the Act of March 1, 1933, have long since lost all validity. This is recognized by the language included in Section 1(d) which refers to those rights as having been "since relinquished, extinguished, or otherwise terminated." Moreover, the Tribe has for many years had the actual utilization of the surface of these lands undistinguishable from lands within the exterior boundaries of the reservation which were without question Tribal lands. In these circumstances, to retain these lands, upon the barest of technicalities, as continuing enclaves of public lands within the reservation, when they would not have been excluded from the reservation in the first place except for the existence of claims long since sterile, could serve no purpose other than to act as a continuing source of friction and animosity between Indian and non-Indian. These considerations are entirely aside from the fact that Section 1(d) in any event now having vested clear title in the Tribe, any further legislative action modifying the present status of the lands would be a taking of property from the Tribe for which compensation would be required.

Sincerely yours,

(Sgd) Roger Ernst

Assistant Secretary of the Interior
Hon. David S. King
House of Representatives Washington 25, D. C.