

STATEMENT OF GEORGE M. TUNISON, TRIBAL ATTORNEY OF THE  
CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLAT-  
HEAD RESERVATION, MONT.

Mr. TUNISON. With your kind permission, I would like to move that map over here near this spot that it will be readily available.

My name is George M. Tunison, attorney at law, of Omaha, Nebr. For many years, I have been attorney under contract with the Federated Tribes of the Flathead Reservation in Montana. I may add that I have also during those years been attorney for the Shoshone Tribe of Indians of the Wind River Reservation in Wyoming. Those are the only two tribes, or individual Indians, whom I represent.

Representative BERRY. I wonder if it would not be better if you would sit down there so that you can talk into that microphone. I wonder if the people in the room can hear the witness. This room is pretty large, Mr. Tunison, and we want everyone to hear.

Mr. TUNISON. Very well, Mr. Chairman. I will add that I have prepared a nine-page typewritten memorandum which I will hand to the reporter at the close of my address, and which I would appreciate having placed in the record at that time.

Now, I would like to state to the committee that this map which is an official Interior Department map from the office of the clerk of the committee shows the various land accessions of the United States, and the green area in the upper left-hand corner is labeled on that map, "Oregon Territory, American title established in 1846."

Now, you will observe from that map that it begins at what is now the lower line of Oregon, and the southern line of Idaho, and extends into what is now a part of Wyoming. From thence, it goes along the Continental Divide up to the Canadian line, where the Continental Divide comes out into Canada and then along the 49th parallel to the Pacific Ocean. Then it goes south to the place of beginning. That was the 1846 accession of that territory to the Dominion of the United States. That territory had prior thereto been a debatable ground as to whether Great Britain owned it or whether America owned it, and certain claims of France and even of Russia were involved therein. But that was all settled by this treaty of 1846.

Now I mention that point for this reason, that the Indians residing in that territory of which the Federated Salish and Kootenai Tribes that I represent were the original owners of that territory. They were there before there was any Declaration of Independence and they were there before there was any Constitution of the United States, and they actually owned and occupied that land. The land owned by the Salish people, the Federated Salish and Kootenai Tribes, is what is known as western Montana, which appears on this map beginning at the Canadian line, at the Continental Divide, and coming right down along that Continental Divide line to a point immediately southeast of Butte, and Anaconda, and then going west along the Continental Divide to the Bitter Roots. Then it goes back up along the Bitter Roots and the Purcell Mountains to the Canadian line.

That territory included 16 million acres of land, and in that present territory there is located this present Flathead Reservation of one million and a half acres of land.

The reason it is called a reservation, gentlemen, is that the Flatheads own that land. That was their country from time immemorial and no one has ever disputed that, and they granted that land to the United States. The United States did not set aside this reservation for those people. They granted the 16 million acres to the United States. That point has recently been decided by the Supreme Court of Montana in the case of the *State of Montana ex re Irvine v. District Court, Fourth Judicial District*, December 20, 1951. It is cited in 239, Pacific, Second, and volume 6 of the Montana State Reporter, at page 163, in which the court said and it will be interesting to you gentlemen to know that the court that wrote this opinion, or the judge who wrote this opinion for the Montana Supreme Court, is now a Member of Congress from the Second Montana District, Congressman Metcalf, and here is the language used in 1951:

It should be noted that the Flathead Indian Reservation was created by the Hell Gate Treaty of 1855—

Representative BERRY. I do not think that these folks can hear, and I think that you will have to speak into the microphone.

Mr. TUNISON. All right, Mr. Chairman. It was created by the treaty of 1855—

between the Indian tribes called the Flathead Nations and the Federal Government—

and this is the significant language, your honors

the treaty with the Indians was not a grant of rights to the Indians but it was a grant of rights from the Indians with a reservation remaining to them.

In other words, the point emphasized in that decision is that, when the Flatheads ceded this 16 million acres of land to the United States for general public purposes, they did the ceding and they did the reserving, and this present reservation which is now before your committee for consideration was reserved. Nobody gave it to them. So the court continued:

Consideration has been given to the State's argument in regard to our enabling act and the provisions thereof. The answer to that argument is that the admission of the State into the Union even without any express reservation by Congress of governmental jurisdiction over the public lands within its borders does not qualify the former Federal jurisdiction over tribal Indians. Whatever rights a State acquires by its enabling act are subordinate to the Indians' prior right of occupancy.

Then he cited *United States v. Thomas* and another case.

That is the latest decision of the supreme court of the State in which these lands are located.

Now, going back to our story, gentlemen, after this Oregon cession of 1846, next came the act separating the north half of that country from Oregon and from what is now Idaho and creating the State of Oregon. Next came the election of Franklin Pierce in 1853, I think it was, and President Pierce appointed an Army major named Major Stevens to make a survey of the country from St. Paul and Minneapolis to the Pacific coast. It was with a view of lining up a railroad—and I will say that is presently the line of the Northern Pacific Railway—and of establishing friendly relations with the Indians along the route of that railroad. He appointed him the first Territorial Governor of the State of Washington.

He went out there in 1853 and started from St. Paul and Minneapolis. He met different tribes along the road, and he met with the Flatheads in the Flathead Valley. He went on out to Olympia and established the Territorial government of the State of Washington, which at that time extended from the Pacific Ocean to the Rocky Mountains, and the territory at that time on the east side of the Rocky Mountains was a part of the territory of the great and sovereign State of Nebraska.

Governor Cummings, of Nebraska, came up the river at the time of this treaty and met Governor Stevens over on the Judith River and made the first common hunting ground treaty with the Blackfeet.

So these people who came into that country following Lewis and Clark in 1804 and 1805 were fur traders. They were the Hudson Bay Co. The first Hudson's Bay Co. post established in that country was on this present Flathead Reservation, known as Fort Connah, and it was established by the grandfather of Walter McDonald who sits here, the present chairman of the tribal council, and who has lived there since his birth, and the McDonald family have lived there all of these years.

The Hudson's Bay factor married a Flathead Indian woman, raised a large family, and the descendants of that family are presently on that reservation and active in tribal affairs.

After these first early trappers came in, Father DeSmet came up the Missouri River from St. Louis in 1840, and in 1841 he established on the Flathead Reservation the old St. Mary's Mission down there on the Bitter Root. That church has been active in the affairs of this tribe from that time to the present, and I see represented here by Father Birn, the local parish priest from the St. Ignatius territory, who will tell you his story when the time comes.

These three tribes, following that first trip of Major Stevens across there, were united largely, I will admit, by Governor Stevens' negotiations into one tribe, known as the Confederated Salish and Kootenai Tribes. That included the Flatheads, in the southern part of that 16 million acres and the Pend d'Oreilles in the middle part and the Kootenais in the northern part. But they were united into the Confederated Salish and Kootenai Tribes, and they signed this treaty.

Now, following that first visit, Governor Stevens returned to Washington and told his story to Jefferson Davis and to the President, the then Secretary of the Interior, and he was commissioned to go out and make a treaty with these three tribes whereby they would cede this 16 million acres of land to the United States and agree to go on a reservation.

In that treaty there was no mealy-mouthed words about when it should last or how long it should last. It said, "This is to be a reservation for your tribe." It did not say it was to be for 10 years or for 100 years or 50 years or another period. "It is for your absolute and undisturbed use and occupation, as an Indian reservation."

I wish to say to this committee on behalf of this tribe, and the unanimous resolutions of its business council that is the position of this tribe today, that they are entitled to keep that territory which belonged to them long before there was a United States, and which they ceded with a reservation of this particular Indian reservation to themselves, and

they are entitled to keep that as an Indian reservation as long as they want to keep it as an Indian reservation.

The argument I have heard here advanced—and I say this part argumentatively—that the United States has the right to terminate this treaty with those Indians without consultation with them, without offering them any compensation for the loss of hunting and fishing rights which are guaranteed to them in that treaty, for the loss of their other incidental rights involved in that treaty, because simply you have the power and simply because this committee and this Congress has the power to do that—that, to my mind, is a whole new concept of the dealings of the United States with either a sovereign nation or an Indian tribe.

What this tribe wants is the right to have their right to own and occupy that reservation in perpetuity. Now, I will grant that if this Congress or any other nation wishes to abrogate and violate a treaty it has the perfect right to do that. But common fair dealing requires that when you do that you at least call in the other party and say, "We as a Government have decided that it would be better for you and better for us to terminate this treaty and we want to terminate the treaty with you gentlemen."

That has not been the approach of this Congress or these present bills to this problem. Now, on the vital question of taxation, which is what this bill means and which the committee has very frankly stated at these hearings, it is the intention of these bills to put all of this property on the tax rolls.

Now, there has been talk here about \$70 million, and I ask the committee, Where is any \$70 million? Who is talking about \$70 million? What products are they talking about?

The statement was made here that Kerr Dam is worth \$30 million. Well, the Kerr Dam brings in to these Indians \$200,000 a year. That is the contract price, and that covers a long period of years yet to come. Now, what is something worth which produces \$200,000 a year? Do any of you gentlemen know how to figure that at 4 percent? You can figure what the value of it is. To talk about that being worth \$30 million is the height of absurdity.

Now, the same statement is made about our tribal lands being worth \$40 million. Now, the evidence that you have here is that the most they have ever brought in per year is \$600,000, and that figure is arrived at at a term of high lumber prices and under the sustained-yield program outlined by the Bureau of Forestry, and that yield in normal times will swing to at least a third, around \$200,000. Now, again, what are forest lands which produce \$200,000 per year worth? Are they worth \$40 million, which figure has been indicated here? I say that as a matter of commonsense anybody knows they are worth about what they will earn at 4 percent.

Now, when you put those lands again under taxation, which this bill clearly contemplates, how much will be left no one knows. It seems to me the fundamental thing is, have these people got rights in land which they own before any of us here were present, ages before that, which they reserved to themselves. Have you a right to say now at the end of 100 years, "Gentlemen, you fellows have been pretty good Indians, and we are going to cut you loose and make you the same as any other American citizen"?

The question was raised this morning about the common immigrant. I say the common immigrant brought nothing to this country except in the case of most of them a determination to work and a willingness to work, but these people whose affairs are now before you gentlemen were here and they were the owners of this country. When they ceded it to the United States, they reserved this reservation. It is my humble opinion, as one who has been for a good many years interested in Indian affairs, that is not fair and just treatment to these Indians.

I might say, in conclusion, that it was our Shoshone case in the Supreme Court of the United States some 15 years ago which established the doctrine that Indians on a treaty reservation own everything on that reservation, the coal and the oil and the minerals and all of their resources. Prior to that time, that had been a kind of debatable question. Many people in the Interior Department and in the Department of Justice took the position that all the Indian had was a right to occupancy, and that he could cut a little timber for his domestic purposes, and his fencing, but that the latent hidden resources were retained by the United States.

Well, that Shoshone case settled that rule, and since that day there has been no question but what the Indians on a tribal reservation under a treaty own everything that was there. So that these Indians own everything that is on their reservation, and they are entitled to have it and maintain it without this kind of legislation which will subject it to taxes and which, in my judgment, based on many years of what I believe to be considered sound experience with Indian matters, will result in the loss of that property. They do not want that.

Now, Mr. Chairman, I thank you for your consideration, and I think that I have given you the picture.

Representative BERRY. Well, Mr. Tunison, I just have a question or two. How would you suggest that the people ever get their rights to the property?

Mr. TUNISON. The people, Your Honor, have all of the rights to the property they need now, the ones that own property there, like these men who are going to appear before you. They occupy the land and they farm it, but they do not pay taxes on it.

Representative BERRY. Would you think that if a majority of the Indians favored this legislation or similar legislation, whatever they wanted, that should terminate this treaty that you are talking about?

Mr. TUNISON. I think if a majority of those Indians living on that reservation and using that reservation want to terminate this treaty, they have a right to do it; yes.

Representative BERRY. You think it should be limited to those who live on the reservation?

Mr. TUNISON. That is right.

Representative BERRY. Do you think that those who have left the reservation do have property rights in that property?

Mr. TUNISON. Yes, sir; and I agree that in the event of a dissolution or termination of that reservation, they should receive their proportionate share.

Representative BERRY. But they should not have anything to say about what should be done with it?

Mr. TUNISON. No, sir; for the reason that the Wheeler-Howard Act under which that tribe is organized, and to which it has faithfully

adhered, provides that only Indians living on the reservation, the charter of incorporation issued under that act, provides that only the Indians living on the reservation shall have a right to vote on the disposition of tribal property. Those who have seen fit to stay there, Your Honor, and make that their home, are the people who are interested in the heritage received from their Great Chief Victor, whose son, incidentally, sits here in this room, and will testify later. That has been their home and it is the home of their ancestors, and the home where their ancestors are buried, and those that want to stay there and live there, some 2,000 of them, are the people who should decide what should be done with it.

Representative BERRY. How long do you think it should be before they should be given an opportunity to have their property?

Mr. TUNISON. Well, I do not agree, or I cannot grasp the concept of Your Honor's question, "agree to have their property." They already have their property.

Representative BERRY. Subject to the supervision of the Federal Government, is that right?

Mr. TUNISON. That is right.

Representative BERRY. What does the treaty say, Mr. Tunison, with regard to this? Is there anything in the treaty?

Mr. TUNISON. Very well, sir, I will be glad to read you the exact words of it. The treaty states, in article 1—

Representative BERRY. Is that the 1855 treaty?

Mr. TUNISON. Yes, and that is the only treaty this tribe has ever had with the Government. Article 1 said that—

the Confederated Tribes of Indians hereby cede, relinquish, and convey to the United States all of their rights, title, and interest, in and to the country occupied or claimed by them and bounded and described as follows.

Then, there is the description which is shown on the map I have already indicated to you, starting with Canada and coming down the Continental Divide and then over to the Bitter Roots and then north along the Bitter Roots and the Purcell Mountains to Canada again, and back to the place of beginning.

That is the description. Article 2 is:

There is, however, reserved from the lands above ceded—

and this is the language that I think you want—

for the use and occupation of the said Confederated Tribes.

It says for the use and occupation of the said Confederated Tribes, and as a general Indian reservation on which may be placed other friendly tribes from the Territory of Washington under the common designation of the Flathead Nation, head chief of the Flathead Tribe, as the head chief, that tract of land included within the following boundaries, and then they set out the boundaries of the reservation which you gentlemen are dealing with, and which is presently occupied by the tribe.

Then, the treaty goes on in the next paragraph:

All of which tract shall be set apart and so far as necessary surveyed and marked out for the exclusive use and benefit of said Confederated Tribes as an Indian reservation.

Then, it goes on—

Nor shall any white man except those employed by the Government—  
and so on.

Those are the vital words of that treaty. It says:

There is reserved for the use and occupation of said tribes all of which tracts shall be set apart, surveyed, and marked out for the exclusive use and benefit of said Confederated Tribes as an Indian reservation.

I submit on that point—

Representative BERRY. It does not say under the jurisdiction of the Federal Government or anything like that, though, does it?

If they should form an association or a corporation to handle their own affairs, would it not be covered by this treaty, and it is for their own exclusive use and benefit?

Mr. TUNISON. The tribes themselves, you mean?

If the tribes are willing to give up that exclusive use and benefit provision, you mean?

Representative BERRY. But this does not take the exclusive use and benefit from the tribal property; does it? By that I mean this bill.

Mr. TUNISON. No, it provides for a patent in fee to this tribe and then they are in the same position as your chairman has indicated repeatedly in this hearing, as any other citizen of the United States. Now, the position of this tribe is that they are in a better position and they had something which the United States wanted, and they ceded that to the United States for a valuable consideration, and they are entitled to the benefit of that bargain. That is the position of this tribe.

Representative BERRY. In other words, if the property were not taxable, would that withdraw your objection?

Mr. TUNISON. Yes, sir, and I think that this tribe would be happy to take their reservation and run it themselves and the Government could leave them alone if they wanted to but do not put us on the tax roll.

Representative BERRY. There is just one more thing that I would like to ask you and that is this: You say that under the Wheeler-Howard Act, the nonreservation Indians have no right in the operation of that reservation?

Mr. TUNISON. That is right. For your honor's information, I will be glad to read that to you.

Representative BERRY. I will take your word for it. Do you not think that all Indians under this treaty and their children and grandchildren of all of the Indians covered in this treaty have a vested right in that reservation, in the property of that reservation, the assets of that reservation?

Mr. TUNISON. Yes, sir.

Representative BERRY. Then, when the Wheeler-Howard Act took their rights away from them, is that not taking from them a constitutional right?

Mr. TUNISON. No. Any Indian who is an enrolled member of this tribe that wants to live on that reservation has a perfect right to go there and live on it.

Representative BERRY. There are about 4,000 Indians; are there not?

Mr. TUNISON. Yes.

Representative BERRY. They are the enrolled Indians?

Mr. TUNISON. Yes, sir.

Representative BERRY. How many of them live on the reservation?

Mr. TUNISON. About half of them.

Representative BERRY. And they are getting along fairly well with 2,000. That is probably about all that the area will carry; is it not?

Mr. TUNISON. I would say so; yes.

Representative BERRY. And by this, you are trying to force the other 2,000 to come back and all 4,000 live on the reservation so that none of them can make a living; is that right?

Mr. TUNISON. Not at all, sir, and I decline to have those words put in my mouth and we are not trying to force anybody to do anything. But, I am saying to you that the descendants of the people who made this treaty have a right to stay there and use that reservation, and if anybody wants to get up and go to Seattle, or Washington, they have a perfect right to do so.

But the people who live there and use and occupy that reservation and produce its products with their own hands are the ones who ought to have the management of it.

Representative BERRY. But you are taking property away from individuals without any compensation, and not just compensation, but any compensation; are you not?

Mr. TUNISON. No; we simply formed this corporation under the Wheeler-Howard Act, and we are adhering strictly to it. Now, if you want to repeal it—

Representative BERRY. It may not be constitutional though; may it?

Mr. TUNISON. No one has seen fit to attack it as yet.

Representative HARRISON. Does the Wheeler-Howard Act provide that only those residents who live on the reservation may vote on the disposition and use of the tribal property? Is that in the Flathead constitution?

Mr. TUNISON. Yes. Let me read what it says. I will be glad to do that.

Representative HARRISON. That is under the Wheeler-Howard Act?

Mr. TUNISON. Yes, sir.

Representative HARRISON. Now, are the rights of the enrolled members vested property rights?

Mr. TUNISON. That is a pretty broad statement, but will you elaborate a little on what you mean by vested property rights?

Representative HARRISON. You know what I mean, Mr. Tunison, as an attorney, are the tribal rights of all enrolled members vested property rights. Do the property rights vest in the individuals? And, are they rights of which you cannot divest them?

Mr. TUNISON. Yes. I would say that is a general question and I would answer that, yes.

Representative HARRISON. Then are they such rights of property as are protected by the due process clause to the fifth amendment of the Constitution?

Mr. TUNISON. I will grant that they are.

Representative HARRISON. What becomes of constitutionality of the Wheeler-Howard Act, then?

Mr. TUNISON. Now, listen, your honor, if you want to debate the constitutionality of that act—



Representative HARRISON. I am asking a question and the witness can say he does not or does want to answer it, but I am not going to get into an argument with him. I am asking a question and I am entitled to an answer.

Senator WATKINS. Can you answer it, Mr. Tunison?

Mr. TUNISON. I do not presume to pass in a judicial capacity on the constitutionality of an act of this Congress. You know as much about it as I do.

Representative HARRISON. Your position is that you just prefer not to answer that question; is that right?

Mr. TUNISON. I prefer not to pass on the constitutionality of it.

Representative HARRISON. I am not asking you on that. I merely asked you a question of what, in your opinion, becomes of the constitutionality of the Wheeler-Howard Act.

Mr. TUNISON. In my opinion, then, I will say that the Flatheads had a perfect right to adopt this charter, which was submitted to the Secretary of the Interior, and was approved by him.

Representative HARRISON. Nobody has questioned that, Mr. Tunison, and I am merely saying if these are vested property rights and come under the fifth amendment would the Wheeler-Howard Act then, in your opinion, be constitutional if it deprives those who lived off the reservation and owning vested rights from a vote on the use and disposition of their property.

Mr. TUNISON. There are two "ifs" in there, and I prefer to go back to the fundamental doctrine that the tribe has the right to develop its own membership and this tribe could, if it saw fit, revise its rolls, and say only those living on this reservation are entitled to be enrolled here.

Now, the tribe has not done that, and it has continued to carry these people, although they reside in various cities, on its rolls. But, it is entirely within the management and purview of these Indians to restrict the management of that reservation to those who prefer to stay there and live.

Representative HARRISON. Such action on the part of any council or any of those on the reservation voting would certainly violate our due process laws, would they not, of the fifth amendment?

Mr. TUNISON. No, sir; it would not.

Representative HARRISON. Your position is that they can vote to take away and divest these people who reside off the reservation and divest themselves of their property rights and their interests in tribal assets.

Mr. TUNISON. I do not think that question is involved, but I will say this, that this treaty set aside this reservation as a home for these people belonging to this tribe. Now, if one of them sees fit to be in Seattle or to go to Washington, there is a grave question there whether he still retains that right or not. But the tribe has never raised that question. The tribe has continued to carry them on the rolls. That is a moot question there.

Representative HARRISON. It might be a moot question, Mr. Tunison, to some individuals, but I would say it would be far from a moot question to the individuals concerned with it.

Mr. TUNISON. Nobody has raised it on them. It is a moot question until someone raises it.

Representative HARRISON. I am raising a question as a matter of information at the present time.

Representative D'EWART. The question has been raised many times before our committee and only recently in this session in the case of the Fort Peck Reservation. The House committee very clearly determined that we did not have the right to divest any tribal member of his right in the tribal estate.

Mr. TUNISON. That is right. Nobody is trying to divest any tribal member here.

Representative D'EWART. Then, I do not understand what you are trying to do if you say that those who leave the reservation, who are on the tribal rolls, still lose their right to the tribal assets.

Mr. TUNISON. I do not say that.

Representative D'EWART. That is what I inferred from your remarks.

Mr. TUNISON. If you interpret any of my remarks that way, I would like you to have the reporter tell me where I said that, and I did not say that.

Representative D'EWART. Did you not try to convince this committee that if an Indian left the Flathead Reservation, he thereby lost some right in this tribal estate?

Mr. TUNISON. I did not, and I said he is carried on the rolls and he gets his full share of anything that they receive. The tribal officers pay out in per capita payments whenever they get a few hundred dollars ahead. They pay it out to everybody on the rolls.

Representative D'EWART. That is right, but you did, if my memory is right, say they were divested of their right in the management of that estate.

Mr. TUNISON. What I said, and I will repeat it, is that the tribal constitution issued to this tribe by this Government contains a provision that only those who have resided on the reservation for a period of 1 year have the right to vote on the management of the reservation. Now, to my mind, that is a clear proposition, and that is the position of the tribe.

Representative D'EWART. And you argue that it does not in any way divest a Flathead Indian of any rights whatsoever when he leaves the reservation?

Mr. TUNISON. No. I do not agree about it at all. I say that that tribal Indian who has left the reservation gets his share of any income that reservation has.

Senator WATKINS. May I ask this: Is the right to participate in the management worth anything?

Mr. TUNISON. To the Indian; very much.

Senator WATKINS. And to the Indians who have left the reservation, is it worth anything?

Mr. TUNISON. Apparently not; they have gone off and left it.

Senator WATKINS. Well, now, just as a matter of policy, Mr. Tunison, is it not the likely effect of such a proposal that if it were meant that they could not have any voice in anything would it not be that it would be tantamount to saying to these Indians the only way you can realize fully all of your rights is to come back to the reservation and stay there?

Mr. TUNISON. No; it would not at all.

Senator WATKINS. If you go away, you say, you do not have any vote on what disposition may be made of that property. That is what you are proposing, and you are saying only the Indians who live on the reservation have the right to determine the future policy with respect to the management of this reservation.

Mr. TUNISON. No; what I am saying—

Senator WATKINS. That is all that is involved here and we are not trying to take away the property.

Mr. TUNISON. Yes; you are when you put it on the tax rolls. I differ with you on that. I am telling you as one with as many years of experience in Indian affairs as any man in this room that that is what you are doing to these people when you put their property on the tax rolls.

Senator WATKINS. We are only doing this: We are saying to you Indians, "You want the advantages of American citizenship and you want to enjoy what the rest of the taxpayers are paying, and you want to sit in the legislatures and you want to sit on county commissions and fix the tax rates for everyone else, and you want all of those privileges, and you do not want to submit any of your property to help carry the burden of the things that you enjoy along with the rest of American citizens," over and above anything guaranteed to them in the treaty.

Mr. TUNISON. All right. You are entirely disregarding the consideration which these three tribes furnished in exchange for that exemption. You paid no attention to the language of that treaty.

Senator WATKINS. There was nothing said in that, as I remember, about taxes; is there?

Mr. TUNISON. What is it?

Senator WATKINS. Is there anything in the treaty itself directed to the question of taxes?

Mr. TUNISON. Why, the treaty says it is for their absolute and undisturbed use and occupation as an Indian reservation.

Senator WATKINS. I think my deed to my home says the same thing but I pay taxes on it just the same.

Mr. TUNISON. I do not know what the deed to your home says.

Senator WATKINS. It is in all deeds. It conveys a fee title and there is nothing in there that says it is going to be exempt from taxes, and I do not see anything in there that says if you are going to get benefits from society you should not have to pay something for those benefits.

Mr. TUNISON. I will read you what Governor Stevens said on July 19, 1855:

On another point, I wish to speak plainly—

Senator WATKINS. Who is this?

Mr. TUNISON. Governor Stevens, the man who made this treaty, and these are the official minutes.

Senator WATKINS. Read from the treaty and let us have what is in the treaty. We are talking about the treaty itself.

Mr. TUNISON. I will read what he said:

On another point, I wish to speak plainly. Within yourselves you will be governed by your own laws. The act will see that you are not interfered with but will support the authority of the chiefs. You will respect the laws which govern the white man, and the white man will respect your laws. We look

with favor on the missionaries who come among the Indians for they desire them and I think their coming may do good. The priest will be your friend but he will have no control over your affairs. The priest will advise you in your spiritual affairs, which relates to God, but he will have no control over your temporal affairs. Your own laws you will manage yourselves.

That is the verbatim transcript.

Senator WATKINS. They have come a long ways since the day when there were no other benefits out there except what they had on the reservation. I am pointing out to you the modern conditions under which they are living. They are getting many benefits along with the other people, and in addition to that now they have been given the opportunity of citizenship. They have embraced it and they go to the elections and they elect the county commissioners and they elect members of the legislature. They elect Congressmen and those Congressmen pass laws which require the payment of taxes.

They have participated to that extent and they use the highways provided by the people of the United States and they go to the various sections of the country and the cities and towns and they have opportunities for labor to improve the conditions. Over 600 of them have actually taken advantage of that. They get all of these other benefits and, at the same time, under your theory, they are not supposed to make any contribution to that. They still have their property and the conveyance of property ordinarily does not say whether it is going to be taxed or will not be taxed. That is one of the powers of the State; police power or whatever power you call it.

That is to require of the members of society and of the American citizen certain contributions to help maintain the things that they are going to enjoy and get benefits from.

I am trying to point out to you the overall benefits, and the overall situation which they have embraced of their own will. No one compelled them to vote, and there is not any compulsory vote on that.

I cannot see why a group that gets the benefits of society and all of these things should resist making their own contribution to it. If you say the property is not worth much, very well, they will not pay very much. Many of them, of course, are paying income taxes, and they are paying personal property taxes, and where they have gone into cities and towns where they bought property in their own names, independent of the Federal wardship, or guardianship, they pay taxes on that. So, to that extent, they have done that.

Now, we have a rather extensive reservation here. It is made up largely of forest lands and grazing lands. We are talking now about saying to the Indians who are away, if you are going to get the right to say anything about the management, you have to come back. Suppose they did all come back. Would they have equal rights to living quarters and farming land and to grazing land on that reservation with the others? They have an equal ownership; could they have it?

Mr. TUNISON. Sure; they would.

Senator WATKINS. There is plenty of land and plenty of room?

Mr. TUNISON. Well, there are over 500,000 acres.

Senator WATKINS. But what about farming land; could they get an equal farm with anyone else who lived there?

Mr. TUNISON. Well, now, you are setting up first an entirely improbable situation.

Senator WATKINS. You mean if they come back?

Mr. TUNISON. Yes, sir.

Senator WATKINS. There would be a big inducement if they can have anything to say about the management of this and they have to come back in order to have a voice in it and they might decide to go back. Suppose they did.

Mr. TUNISON. There is plenty of room.

Senator WATKINS. I am testing your theory. That is what I am doing to see how it works.

Mr. TUNISON. There is plenty of room for all of them there.

Senator WATKINS. That is physically, but with opportunities, I take it for granted it is like all reservations that the best lands and the best setups have already gone to Indians who are now there.

Mr. TUNISON. And who sold them; all but 15. Subsequent testimony will show you here that there are 15 original allotments still in the hands of the Indians.

Senator WATKINS. But at any rate, these people you say still have a right to the tribal lands, and I am talking about the tribal lands and not those that are in individual allotments.

Mr. TUNISON. Well, the fundamental difference of approach between the counsel for this tribe and the chairman of the committee, I think you have stated very fairly, Mr. Chairman. You have recited all of these advantages; and now I have recited to you the simple facts of a simple contract made 100 years ago with a group of unlettered Indians who did understand what the treaty said and what Governor Stevens told them.

Now, if in your opinion it is the just and right thing for the United States to say to those people, "We are through with Government supervision of this, we are going to give you a patent to it; God bless you, do the best you can with it," they do not want you to do that and I do not want any doubt to be in the mind of this committee about their position.

Now, I will grant you, you have the power to kick them out and turn them loose if you see fit to do it.

Senator WATKINS. You would insist that this constitution, by these Indians who lived on the reservation, should be governing as to all of the Indians whether they are there or not?

Mr. TUNISON. The management; yes.

Senator WATKINS. You do concede, if Congress thinks that that is an unfair advantage taken of Indians who do not live there, that it could be repealed by the Congress?

Mr. TUNISON. The Congress enacted the Wheeler-Howard Act, and you certainly have the power to repeal it.

Senator WATKINS. That is precisely what we are trying to do in this bill. It is to repeal that, too; and it would go out with the rest of it. They would have to start over again if they wanted to do that.

It has not worked very well in many places we know. My own personal judgment is, if it permits them to setup such a constitution as you told us about, that it probably takes away, without just compensation, one of the rights of an Indian who wanted to go somewhere else.

Now, if the objective is to have these Indians integrated with the people of this country, to make them regular citizens with the rest

of the people, the constitution you are talking about has the contrary effect. It has the effect of trying to segregate the Indians and to put them on this reservation to keep them there. It is the type of philosophy with respect to these Indians that would want them actually to stay pretty much as they were away back in the tribal days when they went into this treaty with the United States.

I do not think that the majority of the Indians, on or off the reservation, want anything of that kind. It is my candid opinion that, if they would submit that to an honest vote of the Indians after the whole matter were explained and if those Indians were intelligent enough to see that it is to their interests, the interests of the Nation, and the interests of society in general, that they become an integrated part of this country, they would vote for some kind of proposal that would give them full and complete rights as American citizens to control their own property.

And that is all we are trying to do. They would also vote as American citizens, and they would say, "Gentlemen, we are invited to share this civilization with you. Although times have changed and events have transpired, we are going to recognize those changes. We want to do our humble part, if it is a humble part, in carrying on that Government. And we want to pay our part for whatever is necessary to keep it going."

It seems to me that you folks are the ones who want to go back to the days of the treaty, segregate the Indians, and keep them there. Everything we have done, in an educational way and all of these helps that we have given them, has had for its objective the training of them so that they could be integrated.

Now, if the tribe of Indians can keep their property from being taxed, those who live on their reservation, why is it not logical that all of the Indians who live off the reservation should likewise have their property not taxed?

Mr. TUNISON. Listen, at a meeting 4 years ago, I asked the board of equalization of the State of Montana who were good hardheaded ranchers and country fellows, sitting around a table like this: "I want you fellow to say what you would do if we Montana Indians become a part of the Union. Your ancestors had a township of good grazing land and in order to get them to come into the Union, Congress passed an act or a treaty that he could come in and hold that land forever exempt from taxes."

"No," I said, "would any one of you men sitting around this table voluntarily step up and say, 'I want to be a patriotic citizen and I want to pay taxes the same as anybody else?'" I did not get a single assent vote.

Senator WATKINS. Did you present the other point of view, that is, of what their duty would be as citizens?

Mr. TUNISON. I did not make as long a speech as you did, Your Honor.

Senator WATKINS. I realize that you did not. And they probably took advantage of the fellows and appealed only to their personal side and not to their patriotic side?

Mr. TUNISON. They were a pretty hardheaded crowd.

Senator WATKINS. I will admit that to be so. Any citizen, of course, and I will say nearly any human being, does not like to carry any

more burdens than he has to carry. But there ought to be a concept developed in this country that it is not only the right but also it is a privilege to pay taxes to help maintain our country, to maintain its institutions, and to make for progress.

The Indians have taken advantage of the highways, the modern inventions; and they do not want to live any more as their ancestors did when the treaty was made. Practically all of them are taking advantage of everything around them, that is, schools, health institutions, churches that are built according to our civilized standards, and all of those things.

I am trying to bring out the general overall policy and basic philosophy in back of this bill. And we say to them, "Here is your property, full-fledged American citizens. You have accepted the offer of citizenship, and you have come in now. Take a few of the obligations and go along, but manage your own property. Take this God-given right that no man ought to take away from you, to manage your own affairs without a guardian sitting over you to tell you whether you may come to Washington, spend a few dollars, or whether you may do this, that, or the other."

That is what we are trying to do for them. And it is the first time in my life that I have ever seen any American actually resist being given more liberty.

Mr. TUNISON. Well, Your Honor, I realize that there is such a debate.

Senator WATKINS. Will you tell me where Americans have resisted? I notice that some of you Indians say that Americans do resist having liberties given to them. They fought for it everywhere. They are fighting for it now, and billions of dollars are being appropriated not only to keep themselves free, but also to keep other nations free.

Will you please tell me. Is there any one here who has any idea that we are trying to take away liberties or that we are fighting against having liberties? I would like to know, if there is such an idea, what it is.

Mr. TUNISON. You are not trying to take away liberties; you are are trying to take away contractual rights. We might as well have that issue right out plain on the table.

Senator WATKINS. I have just one further thing; and then I will be through.

What about this land that you said came in, and you used that illustration, "coming into the Union?"

Incidentally, somebody else claimed some right to that; and we obtained that property by a claim of some kind or other, independent of the Indians, to start with. The treaty came in years after we took over the property.

Mr. TUNISON. You took over the property and entered into a contract with Great Britain in 1846. The State of Oregon was organized 2 years later, in 1848, and then the northern part was split off.

Now, as to who owned that territory prior to 1846 was a widely disputed question.

Senator WATKINS. We took it by reason of discovery and as a result of what our English ancestors and others had done. If our right to any of it is good, probably our right to that area is just as good as our right to the rest.

Some would say that we do not have any right to any of it, but I have not found anybody feeling that way who is willing to step up and give a deed back to the Indians for that part.

Mr. TUNISON. As to who governed that country in 1846 and in 1855, probably Walter McDonald, the chairman of the tribal council, who is here, can tell you. His grandfather was the Hudson Bay factor out there.

Now he was about as much law as anybody knew about in that country that was under the domain of Great Britain. That was all settled by this treaty of 1846 which did not disturb the Indians' right to the real ownership.

Senator WATKINS. Of course, we assumed that we received some ownership by reason of discovery or settlement. We never did admit that the Indians had the right to own all of it.

Mr. TUNISON. I do not know. The Supreme Court of the United States has spoken very strongly on the point of the validity of an original Indian ownership, and if they did not own it, who did own it?

Certainly, this little band of colonists that landed on the coast of New England did not get it by landing on that coast.

Senator WATKINS. They got whatever right anybody got by reason of coming here. Who were ahead of the Indians?

Mr. TUNISON. I do not know.

Senator WATKINS. Who did they take it from?

Mr. TUNISON. They were here from time immemorial.

Senator WATKINS. And we have been here for a long time. They did not have a right to control this whole part of the earth where 8 million of them lived where the territory would support over 200 million.

Mr. TUNISON. When this treaty was made for that 16 million acres of land, he was in a suppliant position as compared with the Indians. He was going into a new raw, remote country and he wanted the right of white people to come into that territory and explore it, settle it, and get the Indians to live on a reservation.

He was asking something from the Indians. He was asking them to surrender this 16 million acres, which they had owned from time immemorial. And he wrote that treaty and put that provision in it. Then Congress ratified it and the President proclaimed it.

Senator WATKINS. I think that you have my view and I have yours.

However, I have 1 or 2 questions on some of the practical things and then I will be ready to yield to my colleagues.

At the present time, the United States is paying for the education of the Indian children from the Flathead Reservation in the State schools of Montana. Do you think the United States ought to go on doing that?

Mr. TUNISON. That is purely a matter of discretion with the United States.

Senator WATKINS. Well, you would not object if we say that we are not going to do it any further in view of the fact that Indians are amply able to take care of that themselves?

Mr. TUNISON. That is a matter for your committee and the Congress to decide how far they want to go.



Senator WATKINS. Do you think we ought to go on contributing to these Indians out of the Public Treasury, that is, what we call gratuity money to maintain health services?

Mr. TUNISON. Well, on the question, Your Honor, of actual Indian administration out there and on these various funds, I have no question on the figures submitted by the Bureau of Indian Affairs and by Superintendent Stone. I will ask the tribal delegates who are here to answer your question about whether that ought to be continued.

Senator WATKINS. But that would not be your thoughts. I said, "Do you think we ought to?" I am trying to get your point of view; that is, not necessarily the Indians, although I think you reflect what they think.

Mr. TUNISON. Well, I would say that it is rather common in this great Government of ours for the Government of the United States to encourage the education of various classes of young people. I see no reason why the Indians should be excepted from such a program.

Senator WATKINS. I will agree with you. But do you think they ought to have it without a contribution? Is there any reason why they should not make a contribution to the maintaining of the schools?

Mr. TUNISON. No.

Senator WATKINS. Then you do not object to that. Of course, this bill would make it so that they would have to contribute.

Now, the next one is with respect to the highways that they use. Do you think that they ought to make a contribution to the maintenance of the highways on the reservation and off the reservation?

Mr. TUNISON. Well, I think that that would go with some other problems; if the Indians were approached on whether they would be willing to surrender their treaty rights and make some contributions to these various State funds, that would be a different approach.

Senator WATKINS. You would not want the county commissioners and the other people to say in the school district, "We are not going to let you go to school any more; we are not going to take a contract; we will not let you travel on our roads off the reservation; and we will not let you do a lot of these things that you are now permitted to do because you take the position that you have certain exclusive contractual rights and you are insisting on the contract?"

What would be the situation? Do you think under those circumstances, if they are going to use those facilities, they ought to make a contribution?

Mr. TUNISON. The State of Montana is not raising that question.

Senator WATKINS. I did not ask you that. I ask you, do you think that they ought to? You are dodging the question.

Mr. TUNISON. Well, I certainly do not intend to dodge any question you ask me.

Senator WATKINS. What do you think?

Mr. TUNISON. They do pay in the form of licenses.

Senator WATKINS. I did not ask you whether they paid. I ask you, do you think that they ought to pay?

Mr. TUNISON. Yes, sir.

Senator WATKINS. That is the answer. I have no further questions.

I have one further question that has been suggested to me. This is about your position "that this bill would not be so bad and it would

probably be all right if Congress did not put the property on the tax rolls."

Mr. TUNISON. That is the fundamental objection to it, yes, sir.

Senator WATKINS. That is what I understood.

My colleagues may now go ahead.

Representative D'EWART. I would like to return to your interpretation of the Wheeler-Howard Act because it is different from anything that has been presented to our committee before.

I have a copy of the act before us, and I will quote some of it. Then we will explore your interpretation of it.

Title to any lands or rights acquired pursuant to this act shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

Now that means all of the tribe, does it not? Or does it mean a part of the tribe?

Mr. TUNISON. I think that means the whole tribe.

Representative D'EWART. I think so, too.

Then we go over a little further in the act and it says:

\* \* \* to prevent the sale, disposition, lease or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe, \* \* \*

Now again, that means all of the tribe, does it not?

Mr. TUNISON. Except to this extent: That each tribe has the right to decide its own membership. I have seen instances, repeatedly, in the Shoshone case where they were fortunate enough to get some oil a few years ago, of people applying for enrollment with various degrees of blood.

The whole matter solemnly was submitted to the tribal council, the general council, and the vote was unanimously "No". We have the authority to decide the membership of this tribe. And I see no inconsistency in the action of the Flathead tribe in saying that the people who live on the reservation have the right to vote on tribal matters.

Representative D'EWART. Let us pursue this a little further. You say that the tribe shall be governed by a majority vote of those who live on the reservation, is that a correct statement of your position?

Mr. TUNISON. Congressman D'Ewart, with the highest regard for you, let me get the official statement on that. I want to get the charter issued to this tribe.

Representative D'Ewart. We will get to the charter after a while. I am trying to talk about the Wheeler-Howard Act and not the charter. I am trying to find out an interpretation of this Wheeler-Howard Act. Under that act it says:

*Provided*, That such charter shall not become operative until ratified at a special election by a majority vote of the adult Indians living on the reservation.

Now it does not say that that majority of the Indians living on the reservation shall govern forever, but it simply says that the charter shall be adopted by a majority of the Indians living on the reservation. I quoted you the law just as it reads. I think that is important.

Now, if the tribe itself in its charter wants to deprive some of its members of some of its property rights, that is another matter; but it is not the Wheeler-Howard Act that takes those rights away from some of those members. I want to make that clear.

The charter may do it, and I do not know whether it does or not: but the Wheeler-Howard Act does not deprive any member of a tribe of his rights as a member of that tribe.

Mr. TUNISON. Then may I inquire, Mr. Congressman, if it is your position that Harold L. Ickes, Secretary of the Interior, who issued this constitution and bylaws, which was approved by the tribal council out there, and the charter issued—that that was an illegal act?

Representative D'EWART. I think Mr Ickes interpreted this act way beyond any interpretation intended by Mr. Wheeler. I think the testimony and other statements following enactment of this law by Mr. Wheeler bear forth that statement.

Mr. TUNISON. My only answer to that would be that this tribe was one of the first tribes to approve of a corporate charter and a constitution and bylaws back in 1935.

Representative D'EWART. I am not arguing about the charter, but I am saying that the Wheeler-Howard Act did not deprive members of the tribe of any rights. That is the only point I am trying to make.

Now if the Indians did it in their charter, that may be, and I do not know; but the Wheeler-Howard Act did not do that.

Mr. TUNISON. Well, on that point, Your Honor, the charter says, and I will just read it to you briefly. I will read from article 4, section 5:

Any member of the confederated tribes of the Flathead Reservation who is 21 years of age or over and who has maintained a legal residence for at least one year on the Flathead Reservation shall be entitled to vote.

Now, you have raised a new issue here, on me, and I have never gone back to the Wheeler-Howard Act to try to ascertain whether that was a legal provision; but I can only say it has been in effect for over 20 years, and this is the first time that I have heard it raised that that was an illegal provision.

Representative D'EWART. Again I would like to read this provision, "such charter shall not become operative until ratified at a special election by a majority vote of the adult Indians living on the reservation," and that only refers to ratification of the charter.

Mr. TUNISON. Well, that charter bears this certificate:

"Pursuant to section 17 of the Act of June 18, 1934, this charter, issued by the Secretary of the Interior to the confederated Salish and Kootenai Tribes, was duly submitted for ratification to the adult Indians living on the reservation and was on April 25, 1936, duly ratified by a vote of 425 for and 129 against in an election in which over 30 percent of those entitled to vote cast their ballots. Edwin Duprey, chairman of the tribal council.

Representative D'EWART. I apologize for taking so much time, but it seems to me that this is important to the tribe and also to the Congress because we deal with this matter continually.

Up here, according to the subject I read a little bit earlier, it is the tribe that votes on the disposition of property under the Wheeler-Howard Act. They must consent, employ legal counsel, fix the fees, and so forth; and prevent the sale and disposition, lease or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe. And you just said a few minutes ago that the tribe was all of the members.

Mr. TUNISON. Yes, but I say, also, that the tribe has the right to limit the right to vote to those who live on that reservation just the same as they have the right to limit the roll.

Representative D'EWART. I will agree, they have a right to vote; but they cannot under the Wheeler-Howard Act dispose of property without the tribe giving its consent. And the tribe, as you say, is all of the members. That is what I am trying to say.

Mr. TUNISON. The tribe has the right to limit the vote to those who live on the reservation.

Representative D'EWART. That is right.

But not for the disposition of property because that right is denied in the Wheeler-Howard Act. And all of the tribe and all of its members must vote on the disposition of property, as I read out of the act, and as you, yourself, said a few minutes ago.

Mr. TUNISON. If you want to take that position, I cannot help it. It is your construction of the act. The construction has been for 20 years that the people living out there had the right to vote. If you want to change the law, or enforce an edict that everybody has to vote on everything, I will grant you may say that.

Representative D'EWART. I would like to know if this tribe has disposed of any property under your advice?

Mr. TUNISON. No, sir. It would be against my advice if they did. My advice is to keep what they have as long as they can.

Representative D'EWART. I think you are on safe ground if you advise them not to without a vote of every member of the tribe.

Senator WATKINS. There are many other things connected with the government of the tribe which they could vote on because it governs largely the people who are on the reservation.

Mr. TUNISON. That is right.

Senator WATKINS. The matter of property sale, conveyance, or anything of that sort, would never come up under the ordinary circumstances?

Mr. TUNISON. That is right.

Senator WATKINS. Of course, you know ordinarily a man has to sign the deed before he can be divested of his property by conveyance of any kind?

Mr. TUNISON. That is right.

Senator WATKINS. Now, as I understand it, Mr. Tunison, you are here today as the attorney for this tribe of Indians?

Mr. TUNISON. Yes, sir.

Senator WATKINS. And you speak for them and the arguments you have presented here today are the arguments of this tribe?

Mr. TUNISON. Well, I would not want to assume that what I have said were all of the arguments of this tribe.

Senator WATKINS. But the principal arguments?

Mr. TUNISON. Well, I would not even go that far, but I will say they are in behalf of the tribe, yes, sir.

Senator WATKINS. I would assume that this tribe in hiring an attorney would have him present the principal arguments. I think you have said that the principal argument against this bill is the fact that if it goes through the Indians will have to pay taxes on this property when it comes into their possession and when they have fully unrestricted possession and control?

Mr. TUNISON. That is my opinion.

Now there are Indians sitting here who value the hunting rights which they have exclusively on this reservation and who value the

fishing rights which they have exclusively on this reservation as being of large value to them. I know they are.

There are men, who I see sitting here, who go out and get an elk or deer and bring it home. It is part of their winter's meat.

Now, if this becomes law, they cannot do that, and they come under the State law. So those are things and there are other things in addition to this one thing of taxes that I have mentioned.

Senator WATKINS. They want to take everything they can get from the State and other people and, at the same time, give up nothing.

Mr. TUNISON. Why should they not; it is their land, and they contracted for it.

Senator WATKINS. I want to make sure that that is the position.

Mr. TUNISON. That is right.

Senator WATKINS. I think that that is all that I have to ask you.

Mr. TUNISON. Thank you, Mr. Chairman and members of the committee.

Senator WATKINS. We will argue with you a great deal and we will argue with lawyers more; but everybody here today apparently wants to be a lawyer.

Mr. TUNISON. I thank you for your consideration, gentlemen.

Senator WATKINS. We will call Mr. Walter McDonald.

Before some of the members of the committee leave, we will say that we will continue this hearing at the conclusion of this session this afternoon until tomorrow morning at 10 o'clock. It will be in this very room. And we will probably run until 1 o'clock tomorrow afternoon. We are trying to finish the hearing on this bill tomorrow.

**STATEMENTS OF WALTER McDONALD, CHAIRMAN OF THE TRIBAL COUNCIL; WALTER MORIGEAU, VICE CHAIRMAN OF THE TRIBAL COUNCIL; RUSSELL GARDIPE, TRIBAL LAND CLERK; AND STEVE DeMERE, TRIBAL MEMBER OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION**

Mr. McDONALD. Mr. Chairman and members of this committee, my name is Walter McDonald, chairman of the Tribal Council.

Now, yesterday, I saw where the Department of the Interior had four of their men up who testified; and our position here today is that we would like to give the full information on timber, power sites, land, and irrigation.

I wonder if it would be permissible for me to have my boys up here with me today, like it was yesterday.

Senator WATKINS. Do you want some people up with you?

Mr. McDONALD. Yes.

Senator WATKINS. You may surround yourself with the whole tribe if you want to. We will not object, whether they are on the reservation or off.

Mr. McDONALD. Thank you, sir.

Senator WATKINS. State your name, your address, and what official position, if any, you occupy with the tribe of Indians known as the Flatheads; also state the names of your colleagues who are sitting at the table with you.