

**TRIBAL LAND CONSOLIDATION AND
RESOURCE INVENTORY**

HEARINGS
BEFORE THE
SUBCOMMITTEE ON INDIAN AFFAIRS
OF THE
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
HOUSE OF REPRESENTATIVES
NINETY-FOURTH CONGRESS

SECOND SESSION

ON

H.R. 14417

TO AUTHORIZE INDIAN TRIBES TO CONSOLIDATE THEIR
LAND HOLDINGS, TO PROVIDE FOR INVENTORIES OF
INDIAN TRUST RESOURCES, AND FOR OTHER PURPOSES

HEARINGS HELD IN RAPID CITY, S. DAK., JULY 14, 1976
AND
WASHINGTON, D.C., AUGUST 27, 1976

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NOTE.—The first listed minority member is counterpart to the subcommittee chairman.

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(III)

There is no requirement for vote in that instance, but there are some provisions for consolidation of heirships which are solely by the permission of the owners of those fractionated interests?

Mr. DRIVING HAWK. Right.

OK, then the point of acquiring, the tribe being able to acquire some of these fractionated interests, there is no funding mechanism or appropriation built into this bill, you know, which would make funds available for the tribe either through loan grants or whatever to accomplish this purpose.

I think currently most of the tribes are relying on loans through the FHA sources and through that way to attempt to do this now. But with the limited funds available, of course, that restricts this quite extensively.

I think the—there also needs to be clarification as to what type, specifically what request by the council or agent, I think, is the wording in the bill, to acquire lands? Would it require resolution from the tribal council or would it require executive board action or land consolidation board to act on this? I think this should be further clarified.

I think one of the major things which I did touch on, and probably one of the most important things, is the lack of funding attached to the bill. I think it would be a superficial effort for the bill such as this to be passed without adequate funding being attached to it. I think on the Rosebud we can roughly say because of fractionated interests and other problems that we have \$26 million worth of land offered for sale at this time which we are unable as a tribe to purchase.

What basically this would mean is that our reservation would be diminished due to the land going out of trust.

Mr. MEEDS. I am sorry, I don't understand that.

Mr. DRIVING HAWK. Well, due to the fractionated interest a person would own, say, a few acres in a quarter section of land, and he would not have any traditional ties to that land, not at this generation level; the interest in it would not be great enough for him to be concerned over the maintaining of that land because there would be no use to him, so he offers it for sale.

Mr. MEEDS. This bill doesn't change that process.

Mr. DRIVING HAWK. I know that, but—

Mr. MEEDS. Unless he wants to offer it for sale to the tribe itself.

Mr. DRIVING HAWK. This is what I am saying, that there are no funds available to change; you know we say we want to consolidate the area. We want to pick up the heirship lands. This bill would not alter this in any way.

Mr. MEEDS. If you are saying it doesn't authorize the appropriation of funds from the Federal Government to do that, you are correct.

Mr. DRIVING HAWK. Right.

Mr. MEEDS. If you are saying that in any way, at least to my reading of it, makes it easier for the lands to go out of tribal or individual ownership and trust status, then that is incorrect?

Mr. DRIVING HAWK. No—

Mr. MEEDS. In fact, it makes it easier for it to go into trust.

Mr. DRIVING HAWK. What I am saying is that due to the lack of funds being attached to this, this does not eliminate the situation that exists today.

Mr. MEEDS. Would you gentlemen sit forward so we don't have to speak so loud.

VOICE. No; that is all right. We are just observers.

Mr. MEEDS. You don't want to hear?

VOICE. Oh, we can hear.

Mr. DRIVING HAWK. It doesn't provide the mechanism for the tribe to purchase these and naturally then they have to go to the non-Indian buyer.

Mr. MEEDS. Well, I am afraid you have a misunderstanding of the intent of the bill.

First of all, the bill does not in any way change how fractionated interests of heirship land could go to buyers presently, except to make it easier to give the tribes authority to get those fractionated interests more easily than they can today. It doesn't make it easier for anybody else.

Mr. DRIVING HAWK. No, no, no. Maybe I am not making myself clear.

I am in agreement with what you have said. However, in making it easier for the tribe to obtain these lands is just a hollow statement because, you know, of the lack of funding mechanisms to obtain those lands.

Mr. MEEDS. Are you telling me you don't want the bill unless it authorizes money?

Mr. DRIVING HAWK. Right. There should be some funds attached to the bill, you know, accomplish what the bill, as I read what the intent of the bill is, to accomplish the intent because without the dollars and cents we are in the same particular situation that we are now.

Mr. MEEDS. Well, I have to disagree with you about that, sir—reluctantly, I would add. If the bill were passed, you would have a lot more authority and a lot more flexibility in consolidating lands on reservations. It would not give you additional funds with which to do that, that is true, but it would allow you to use your own funds, or funds from other sources that you can obtain, with much more flexibility than you presently can.

Mr. DRIVING HAWK. Well, I don't believe we are restricted at the present time from obtaining those lands. You know it might be time consuming to do it. The main reason that those lands are not obtained is due to the financial mechanism. It is not because of the bureaucratic system or the delays. I guess we have learned to live with those, but the primary reason is that, you know, due to the lack of funds. If we were to forcefully or without consent of the landowners just to pull those fractionated interests back into the tribe without some just compensation. I think we would be violating our individual trust responsibilities.

Mr. MEEDS. Well, let me pose a hypothetical for you then. Do you have a copy of the bill before you?

Mr. DRIVING HAWK. Yes; I do now.

Mr. MEEDS. Will you turn to page 5, bottom of the page, line 23 and thereafter.

Would you tell me now how you would buy the fractionated interest of any holder of all the parts of that total interest without the consent of all of the owners today?

Mr. DRIVING HAWK. What you are saying is that, how would we go about purchasing a total—say a quarter-section of land, and getting—

Mr. MEEDS. Well, let's say the total interest is 100 acres, and there are 100 owners each owning 1 acre.

Now, will you tell me how under present law without getting the consent of all 100 of those you could get the fractionated interest of one even if he wanted to sell that to you?

Mr. DRIVING HAWK. Well, we have a mechanism on the Rosebud which originated back in 1941, which is the tribal land data price, which allows these individuals to turn their interests in to the Tribal Land Enterprise for return of certificates.

Mr. MEEDS. Right.

Mr. DRIVING HAWK. And which at this time, when funds are available, we purchase those certificates back for cash value. In this way the tribe is obtaining ownership of some of these fractionated interests.

Mr. MEEDS. Now ownership, is it, sir? It is a lease?

Mr. DRIVING HAWK. No; the title is returned to the tribe. The titles are held in the name of the tribe.

Mr. MEEDS. If some of the other fractionated interest owners do not consent?

Mr. DRIVING HAWK. Right, we buy individual interests.

Mr. MEEDS. How can they do that?

Mr. DRIVING HAWK. Through this mechanism.

Mr. MEEDS. I think that is quite unique.

Mr. DRIVING HAWK. Right, it is unique to the Rosebud.

Mr. MEEDS. Because I know of no provision under law under which you can do that.

Mr. DRIVING HAWK. This was established in 19— to the Bureau of Indian Affairs. I believe it was in 1942 or 1947, which allowed for this mechanism to accomplish just what I have said.

Mr. MEEDS. I would be interested in your submitting to us and for the record the authority under which you are proceeding with that kind of acquisition.

Mr. DRIVING HAWK. I don't have the constitution with me, but I think it was derived through the Reorganization Act—

Mr. MEEDS. You don't have to do it now, but would you submit that?

Mr. DRIVING HAWK. I will introduce it to you. This is a copy of the bylaws of our Tribal Land Enterprise.

Mr. MEEDS. Fine, without objection it will be made a part of the record at this point.

[The bylaws referred to follow:]

BY-LAWS
TRIBAL LAND ENTERPRISE
ROSEBUD INDIAN RESERVATION



Adopted by the Rosebud
Sioux Tribal Council
April 6, 1943

Revised October 6, 1943
Approved by the Office of the
Secretary of the Interior
December 15, 1943

Revised February 19, 1954
Approved by the Office of the
Commissioner of Indian Affairs
July 8, 1955

Revised January 25, 1962
Approved by the Office of the
Commissioner of Indian Affairs
November 29, 1962

BY-LAWS
TRIBAL LAND ENTERPRISE

ORGANIZATION:

(1) The Rosebud Sioux Tribe having been incorporated hereby authorizes a subordinate organization under the Tribal Council to be known as the Tribal Land Enterprise, henceforth known in these By-laws and official documents pertaining to the Tribal lands as TLE, through which this plan will function.

AUTHORITY:

(2) Sections 4, 16, 17 of the Act of June 18, 1934 (48 Stat. 984) as well as the Rosebud Constitution and Charter provide authority for the establishment of this subsidiary organization.

Article IV, Section 1 (n) of the Rosebud Constitution provides that the Tribal Council has the authority "To charter subordinate organizations for economic purposes and to regulate the activities of all cooperatives associations of members of the Tribe". Section 5 (b) of the Rosebud Charter provides that subject to certain limitations, the Tribe has the following corporate powers: "To purchase, take by gift, bequest or otherwise, own, hold, manage, operate, and dispose of property of every description" Section 5 (c) provides that the Tribe may " . . . issue interest in corporate property in exchange for restricted Indian land, the forms of such interest to be approved by the Commissioner of Indian Affairs or his duly authorized representative (Appd. 1/28/47).

PURPOSE AND OBJECTIVES:

(3) To effect a plan to remedy the situation of increasing infractionation of ownership interests in allotted lands resulting from probate procedure.

(4) To provide a plan to consolidate individual ownership interests in restricted land in furtherance of economic enterprises.

(5) To develop a land management plan for the economic interests of members of the Rosebud Sioux Tribe who participate in this plan.

(6) To provide for the preservation and safeguarding of the values in individual ownership equities in land.

(7) To provide a simplified process by which an individual may exchange his land holdings for areas adapted to his ambitions for economic enterprise through the flexible use of certificates of interest in the Tribal Land Enterprise

(8) To utilize lands under the control of the Tribe for the development of economic enterprises within the various communities of Indians on the reservation.

(9) To provide for an adequate system of keeping records and of accounting in connection with the operation and management of this plan.

(10) To provide a long term land buying program which would benefit members of the Tribe.

MEMBERSHIP:

(11) TLE shall be operated by the Rosebud Sioux Tribe as a subordinate Tribal Enterprise; provided that only members of the Rosebud Sioux Tribe shall be considered a member by virtue of the Tribal lands placed under the operation and management of the enterprise; and provided further that individual members of the Rosebud Sioux Tribe shall be members of the TLE by virtue of having conveyed land or interests in land to the United States in trust for the Rosebud Sioux Tribe, and having received in exchange certificates of interest in TLE, or come into ownership of such certificates as provided in Sections 27 and 30 thereof.

BOARD OF DIRECTORS:

(12) There shall be a Board of Directors composed of seven members of the Rosebud Sioux Tribe, as follows: The President of the Tribal Council, the Treasurer of the Tribal Council, the Secretary of the Tribal Council and four members of the Tribe who shall be bonded for \$1,500 each for their term of office. (Amendment approved July 18, 1962, effective November 29, 1962) The Tribal Land Enterprise shall pay for the bonds of members of the Board of Directors. (Amendment approved August 14, 1961). A vacancy in the post of any one of these four last mentioned members of the Board of Directors shall be filled by election by holders of certificates of interest in TLE at regular or special meetings of holders of certificates of interest to serve a term of three years or until his successor shall have been elected. Provided, however, that such vacancy may be filled by temporary appointment by the Board of Directors and such temporary appointee shall be a member of the tribe and shall serve until a regular or special meeting of the holders of certificates of interest in the Tribal Land Enterprise. (A-

amendment approved by Sec 1, Pt 34) The Superintendent shall be an advisory member of the Board of Directors without the right to vote

Officers of Board of Directors.

(13) The holders of certificates of interest in TLE at a regular or special meeting of holders of certificates of interest shall elect from the membership of the Board of Directors the Chairman of the Board. The Board of Directors, from its own membership, shall elect a Vice-Chairman and a Secretary. The Chairman, Vice-Chairman and Secretary shall be members of the Rosebud Sioux Tribe and shall serve until their term on the Board expires unless otherwise removed from office for due cause. (Amendment approved July 18, 1962, effective November 29, 1962).

Meetings.

(14) The Board of Directors shall meet regularly once each month at the Rosebud Indian Agency at a time agreed upon by the Board of Directors and shall be subject to calls for special meetings by the Chairman or the Superintendent on three days' notice. The Chairman shall preside at meetings of the Board of Directors, or, in his absence, the Vice-Chairman shall preside. The Secretary shall keep a record of proceedings of the Board of Directors and through such records keep the Tribal Council informed of the Board's proceedings.

Voting.

(15) All members of the Board of Directors enumerated shall have equal voice in matters coming before them for decision. Five members present at any meeting of the Board of Directors shall constitute a quorum to do business. A majority vote of those present shall rule on all questions.

Compensation of the Board of Directors.

(16) The Board of Directors is hereby empowered to pay to the Tribe a sum not to exceed 25% of the amount of salaries paid by the Tribe to the President, the Treasurer and the Secretary, respectively, of the Tribal Council. Members of the Board of Directors who are not otherwise receiving a salary from the United States or the Tribe may be paid a salary by the TLE at a rate per day as fixed by the holders of certificates of interest at their annual meeting for each day devoted to TLE matters. All members of the Board of Directors shall be paid by TLE per diem in lieu of subsistence

and mileage when on TLE business off the reservation (Amendment approved July 18, 1962 effective November 29, 1962)

Powers of the Board of Directors

(17) The Board of Directors is hereby empowered to act, subject to the approval of the Superintendent for TLE in behalf of the Tribe and holders of certificates of interest in TLE on all policies, stipulations and land transactions as enumerated in these By-laws or as may hereafter be authorized in accordance with Section 45 hereof. Any action not approved by the Superintendent may be submitted by the Board of Directors to the Commissioner of Indian Affairs or his duly authorized representative, for review and decision. The Board of Directors shall establish in written form criteria, which will be used as a guide in securing information to determine eligibility and priority for assignment of TLE lands. Information so gathered shall be made in writing and shall be treated as confidential and shall be made a part of the permanent record of the case.

CERTIFICATION OF DOCUMENTS

(18) The Chairman of The Board of Directors is hereby designated as the certifying officer to sign all official documents of TLE. In case the Chairman is unable for any reason, the Vice-Chairman is authorized to act in his stead.

LANDS

Management of Tribal Lands

(19) TLE is authorized to enter into an agreement or agreements with the Rosebud Tribal Council to manage such Tribal lands as the Tribal administrative reserve, and such other tracts of land as are, on the date of approval of these By-laws, being used for community purposes or projects shall not be included in this plan, and provided further that in the approval of these By-laws the Tribe authorizes an agreement with TLE to manage and operate, subject to the approval of the Commissioner of Indian Affairs or his duly authorized representative (Approved by Sec'y 1/28/47), all lands now in Tribal ownership, or which may come into Tribal ownership from any source, exclusive of Tribal timber reserve, administrative reserve, tracts of land being used for community projects, community parks, community buildings, Indian dance halls, churches, cemeteries, such agreements or agreement shall be revokable by the Tribal Council upon approval of the Commissioner of Indian Affairs or his duly

authorized representative (Approved by Sec'y 1/28), upon six months notice to TLE of intention of such revocation. Revocation of such agreements shall be subject to any existing assignments, lease, or permit on the land involved. When such revocation becomes effective, the certificates of interest of the Tribe in TLE shall be reduced in the amount of interests representing the land involved.

Home Assignments

(20) Any agreement for management of Tribal lands shall not abrogate the provisions of Sections (5) and (6) of Article 8 of the Rosebud Constitution and By-laws pertaining to home assignments, and when TLE may be affected by withdrawals of land for home assignments, proper adjustment of its records and accounts shall be made to provide for same.

Conveyances of Restricted Land and Interests in Restricted Land

(21) Any owner of restricted land or interests in restricted land on the Rosebud Sioux Reservation may convey, in the presence of two witnesses of his choice, with the consent of the Commissioner of Indian Affairs, or his duly authorized representative (Approved 1/28/47), such land or interest in land to the United States of America in trust for the Rosebud Sioux Tribe; said conveyance being conditional upon the issuance of certificates of interest in TLE, based upon the current market value of such land or interest in land; provided that nothing in this section or in these By-laws shall be construed to affect or change the ownership status of lands of persons in the armed forces without their full consent.

Conveyances of Unrestricted Land.

(22) Any member of the Rosebud Sioux Tribe, who owns unrestricted land may convey such land, with the consent and approval of the Commissioner of Indian Affairs, or his duly authorized representative (Approved 1/28/47) to the United States of America in trust for the Rosebud Sioux Tribe; provided such conveyance is cleared of all encumbrances thereon by the payment thereof, TLE is authorized to liquidate such encumbrances and to issue to the conveyor certificates of such interests as shall represent the difference between the appraised value of the lands so conveyed and the amount of encumbrances liquidated by TLE.

Assignment of Land for Community Use.

(23) TLE is authorized to set aside areas of land under

its control and make assignments of such areas to recognized communities for the specific use of such communities in the development of economic enterprises or other community use. However, such assignments must be compensated for by the deposit of certificates of interest in TLE or by outright rental, or a combination of both.

Use of Surplus Lands

(24) Lands not otherwise assigned or leased for use to members of the Tribe either as associations or individual members, may be leased to non-Indians, for terms not to exceed five years, provided such leases are made subject to cancellation at the end of any lease year should such land be assigned. The same regulations which govern the leasing of other trust lands shall be applicable to these lands.

Appraisals

(25) Lands to be accepted by TLE shall be appraised and certificates of interest in TLE shall be issued to the respective owners thereof, on a current market basis. The Board of Directors of TLE and the Commissioner of Indian Affairs, or his duly authorized representative shall each designate an appraiser to determine the value of each tract, or allotment, or land contemplated for acceptance under this plan. The appraiser designated by TLE is to protect the interest of the Rosebud Sioux Tribe, and the appraiser designated by the Commissioner of Indian Affairs or his duly authorized representative, is to protect the interests of the individual Indians who may transfer their lands in exchange for certificates of interest or assignments. Land capabilities along with the other factors shall be the basis of making appraisals.

Assignment of Land

(26) TLE may assign land under its control to members of the Tribe. An individual or cooperative association receiving such assignments of Tribal land will be required to surrender to the Tribe certificates of interest in TLE equal to the current market value of such lands assigned. Such cancelled certificates shall remain on deposit with TLE during the period such lands remain in the possession of such individual or cooperative association. Certificates of interest so surrendered for assignments shall not be eligible to share in any net earnings, nor shall such surrendered certificates of interest be voted in the conduct of the business of TLE. Any improvements placed upon such land under assignment by the assignee shall remain the property of the assignee.

Likewise, any improvements belonging to the land assigned shall be inventoried to the assignee, but such improvements shall remain a part of the land (Amendment approved by Sec'y of Int 1 28 47. (Land-Ten & Acq. 17937-42-310, Sec 1, Part 34). Certificates so surrendered shall be cancelled. New lieu certificates will be issued in the event assignment is forfeited or relinquishd back to the Tribe

CERTIFICATES OF INTEREST:

Issuance of Certificates of Interest

(27) TLE is authorized to issue certificates of interest in the Tribal Land Enterprise, Class "A" and Class "B" in accordance with the following provisions:

(a) There shall be issued to the Rosebud Sioux Tribe, Class "A" certificates of interest in TLE for the appraised value of land, the management and operation of which is assigned by the Tribe to TLE

(b) For lands or interests in land conveyed by individual members of the Tribe to the United States of America in trust for the Rosebud Sioux Tribe, there shall be issued Class "A" certificates of interest in TLE to said individual for the appraised value of such land or interest in land

(c) In the conveyance of land under the provisions of these By-laws, TLE may accept interests in land of Indian non-members of the Rosebud Sioux Tribe for which Class "B" certificates of interest in TLE may be issued for the appraised valuation thereof.

(d) In the transfer of Class "A" certificates of interest to non-members of the Rosebud Sioux Tribe through probate, such certificates shall be converted to Class "B" certificates of interest.

(e) In the transfer of Class "B" certificates of interest to members of the Rosebud Sioux Tribe through probate, or purchase, such interests shall be converted to Class "A" certificates of interest.

(f) Class "B" certificates of interest shall be entitled to participate in net earnings on the same basis as Class "A" certificates of interest, but shall not entitle the holder thereof to membership in TLE nor the right to vote such interests.

(g) Class "B" certificates of interest shall be subject to liquidation or redemption through purchase by TLE

at the discretion or upon demand of the Board of Directors of the TLE

Value of Interests

(28) Certificates of Interest in TLE are to be issued in units, whose unit value will be determined by the current Bureau of Agriculture Economic Real Estate Market price for South Dakota, such index to be determined at or as near as possible to January 1 of each year. The certificate of interest value, as a result of the determination of such an index, thus placed on certificates of interest will remain without change until the following year when a new index will be determined. The base value (1943 period) per certificate of interest will be \$1 00 per interest

(29) The Tribal Land Enterprise is authorized to purchase land from any available funds to its credit and that title to lands thus purchased shall be taken in the name of the United States of America in trust for the Rosebud Sioux Tribe. Certificates of Interest will not be issued to the Tribe when purchases are made from TLE earnings

Probate of Interests.

(30) If in probate, interests in TLE are fractionated the Rosebud Sioux Tribe is authorized to purchase such interests. TLE is authorized to act for the Tribe in such transactions

Transferability of Certificates

(31) Except as provided in Sections 27 and 30 hereof, certificates of interest in the Tribal Land Enterprise shall be transferable only to the Tribe or its members, subject to approval of the Commissioner of Indian Affairs or his duly authorized representative. (Approved by Sec'y. 1/28/47). Any and all such transfers of certificates of interest must be accomplished in the TLE office. Also, unless certificates of interest are on file in the TLE office they will not be eligible to be voted or to receive dividend payments whenever such payments are made to holders of certificates.

Distribution of Net Earnings

(32) Distribution of net earnings shall be made semi-annually as of April 1st and October 1st of each year from net earnings of TLE for the year ending October 1st to holders of certificates of interest in TLE as of record and eligibility on April 1st or October 1st of that year. The distribution of net earnings as of April 1st shall not exceed 2% of certificates of interest value and the distribution of net

earnings as of October 1st, shall be the balance from net earnings from TLE for the year ending October 1st, remaining after adequate reserves have been established by the Board of Directors for (a) Depreciation, (b) Reserve for contingencies, (c) Normal Cash Operating reserves, (d) Purchase of lands during the ensuing twelve months. (e) Purchase of TLE certificates during the ensuing twelve months. (f) Payment of indebtedness. No earnings will be paid on certificates which are not on deposit for record and safekeeping in the TLE Office.

During the first ten years of operation of TLE, distribution of net earnings to be made on interests owned by the Tribe shall be credited to the account of TLE and shall be subject to the order of the Board of Directors for use in the purchase of fractional equities in land, purchase of lands and miscellaneous expenditures in connection with conducting the business of TLE, and during this ten-year period such net earnings be subject to liquidating the Tribal land from the United States. At any time from the date these By-laws are approved by the Commissioner of Indian Affairs or his duly authorized representative (Approved 1/28/47), the Tribal Council is authorized to initiate amendments to these By-laws making provisions for future equities of the Tribe in lands herein authorized for assignment to TLE for management and operation.

Purchase of Interests.

(33) The Rosebud Sioux Tribe is authorized to purchase certificates of interest in TLE, (upon the approval of the Commissioner of Indian Affairs or his duly authorized representative (Approved by Sec'y. 1/28/47). TLE is authorized to act for the Tribe in such transactions. Also, certificates of interest may be purchased with TLE funds. However, all purchases of certificates of interest for the Tribe or TLE must be made on the basis of current market value as indicated in Section 28 of these By-Laws. Certificates of interest purchased with TLE funds, must be offered for resale at current market value, to any eligible member of the Tribe who desires to secure certificates for application on assignment of TLE land.

USE OF CERTIFICATES AS COLLATERAL AND SECURITY:

Rental Tribal Lands.

(34) TLE may accept assignment of anticipated distribution of net earnings of certificates of interest in TLE as security for rental of land within its control, or TLE may accept certificates of interest in TLE in payment of such rental.

Rental Other Lands

(35) Members of the Tribe who rent land owned by other members of the Tribe may assign anticipated net earnings on certificates of interest in TLE as security for such rentals, and by this process meet the requirements for bond.

Security on Loans

(36) Members of the Tribe who hold loans from the Tribal Credit Revolving Fund may assign anticipated net earnings on certificates of interest in TLE which may be accepted either as partial or total security on such loans at the discretion of the Tribal Corporation Credit Committee.

Grazing Fees

(37) Where grazing permits are granted to members of the Tribe on lands controlled by TLE, certificates of interest in TLE may be accepted in payment of grazing fees.

Accounting.

(38) Funds collected for TLE shall be deposited in an individual Indian Money account at the Rosebud Indian Agency or such other depository acceptable to the Commissioner of Indian Affairs and the Tribal Council. TLE shall keep an appropriate record of all land transactions even though this may duplicate any record thereof maintained by the Department of the Interior.

Forms.

(39) The Board of Directors shall cause appropriate forms to be prepared for use in the execution of the various transactions involved in the operation of TLE.

AUDIT:

(40) The Tribal Council shall cause an annual audit to be made on the accounts and records of TLE. Such audit shall be made previous to the annual meeting of the holders of Class "A" certificates of interest in the Tribal Land Enterprise. A report of such audit shall be made and filed at such meeting.

Liquidation.

(41) In the event it becomes necessary to abandon and to liquidate TLE, holders of Class "A" certificates of interest in TLE shall be entitled to an assignment from lands held by the United States of America in trust for the Rosebud

Sioux Tribe equal to the certificates based upon the appraised valuation of said land at the time the same was assigned to TLE for management and operation in such proportion as may be determined by the holders of certificates of interest at a meeting called for that purpose; such proportionate determinations to be subject to approval of the Tribal Council and of the Commissioner of Indian Affairs or his duly authorized representatives, (Approved by Sec'y. 1/28/47). Class "B" certificates of interest shall be entitled to liquidation through leasehold agreements on Tribal lands or on a cash basis from funds to the credit of TLE and or from rental returns from Tribal land, subject to the same proportions as determined for Class "A" certificates.

Annual Meeting.

(42) A meeting of the holders of certificates of interest in TLE shall be convened annually on a date set by TLE and notices of said annual meeting shall be mailed to all holders of certificates of interest in TLE on record 10 days prior to said annual meeting. (Amendment approved August 14, 1961).

Notices of said meeting shall be posted at the Rosebud Indian Agency and at all Community centers 10 days prior to said meeting. At said annual meeting TLE shall render a detailed report of the status of Tribal Land Enterprise and of business transacted during last fiscal year ended, including a financial statement for TLE. Special meetings of holders of certificates of interest in TLE may be called by TLE, and upon a petition signed by holders of certificates of interest in TLE representing 25% of outstanding certificates of interest of record, TLE shall be required to call a special meeting of holders of certificates of interest. Ten day's notice of special meeting shall state specifically the business to be considered. Any changes in policy or management of land and amendments to By-Laws are eligible for consideration at the annual meeting, and at special meeting if specified in notice for special meetings. Proposed amendments to By-Laws will be submitted to the Tribal Council for action and approval of the Commissioner of Indian Affairs or his duly authorized representative (Approved by Sec'y. 1/28/47). Voting at all meetings of holders of certificates of interest in TLE shall be on a basis of certificates of interest represented and such interests voted must be voted in person by the owners of said interests as of records; provided further that guardians may vote the interests of minors or mentally incompetent whose interests they represent. Voting of tribal certificates of interest will be on a basis of pro-rating, for voting purposes, among members of the Tribal Council

present at the meeting Pro-rating of such votes will be done on an equal basis to each Councilman present. Each Councilman shall vote his pro-rated number as individually desired. Voting of interests by proxy shall not be permitted. A majority vote of the certificates of interest voted on any question shall rule. The Chairman of the Board of Directors shall preside at meetings of holders of certificates of interest, or in case the Chairman is absent, the Vice-Chairman.

Maximum Limitations.

(43) To assure that the greatest possible number of Rosebud Sioux Tribal members can take advantage of the TLE program and to limit assignment of lands to those who are primarily interested in acquiring economic units of their own, assignments will be made only to individuals who have less than three sections (1920 acres) of grazing land, or three quarter sections (480 acres) of farm lands, or a combination thereof. Calculation of acreages considered shall include allotments; inherited acreages, Executive assignments; TLE assignments; revocable assignments and any and all other trust land held on the Rosebud Reservation. This clause shall not prohibit exchanges of land for the purposes of consolidation or more suitable location.

Land Use Stipulation.

(44) Because of potential obligations the Tribe has with regard to taking back assignments at same value for which said assignments were originally issued, the following "Land Use" clause shall be made a part of all future assignment contracts, except in those cases where assignments are in exchange for trust allotments.

"The assignee agrees to use this land in accord with established Tribal and Federal land use regulations which are applicable to range and farm lands on the Rosebud Sioux Reservation. Failure on the part of the assignee to follow such approved land use practices on this assignment will constitute a violation of this assignment contract and shall render such assignment subject to cancellation by the Rosebud Sioux Tribal Council. Cancellation shall require final approval of the Secretary of the Interior or his duly authorized representative."

Should such assignments be cancelled, the assignee would be issued certificates equal, in number, to certificates of interest which were surrendered by him at the time the assignment was originally made.

Amendments to these By-Laws

(45) Except as provided in Section 32 hereof, amendments to these By-laws shall originate in meetings of the holders of certificates of interest in the Tribal Land Enterprise or the Tribal Council. Proposed amendments made by holders of certificates of interest are to be submitted to the Tribal Council for action, and if adopted by the Tribal Council, submitted to the Commissioner of Indian Affairs or his duly authorized representative (Approved by Sec'y 1/28/47) for his approval or disapproval. Amendments to these By-laws shall not become effective until approved by the Commissioner of Indian Affairs or his duly authorized representative, (Approved by Sec'y 1/28/47). In case the Tribal Council fails to endorse amendments thus proposed, the holders of interests may submit such amendments directly to the Commissioner of Indian Affairs or his duly authorized representative (Approved by Sec'y 1/28/47), for his approval or disapproval upon a two-third vote of the interests present and voting on said question. Amendments thus adopted and approved shall be in full force and effect

CERTIFICATION:

We hereby certify the foregoing By-laws for the Tribal Land Enterprise was adopted by the Rosebud Sioux Tribal Council at its regular session April 5-7, 1943, by a vote of thirteen for and eight against; amended at its regular session October 4-6, 1943, by Resolution No 682, adopted as of that date; pursuant to authority vested in the Tribal Council by Article IV Section 1 (n) of the Constitution and By-laws of the Rosebud Sioux Tribe and Section 5 (b) and 5 (c) of the Charter for the Rosebud Sioux Tribe; and corrected by Resolution No. 696 adopted by the Tribal Council at regular session January 19-21, 1944, in accordance with recommendations contained in letter of approval from the Secretary of the Interior dated December 14, 1943. Further revisions, included herein, adopted by the Rosebud Sioux Tribal Council, at a special session, February 19, 1954, and approved by the Office of the Commissioner of Indian Affairs, July 8, 1955. At its regular session convened November 18, 1960, the Tribe adopted Resolution No. 6053, and received approval by the Office of the Commissioner of Indian Affairs on August 14, 1961.

Revisions adopted and incorporated under Resolution No 6202, by the Rosebud Sioux Tribal Council in their regular session, January 25, 1962, are in accordance with conditions of approval from the Office of the Commissioner of Indian Affairs, July 18, 1962, effective November 29, 1962,

The presented amendments and revisions are the current and effective By-laws of the Tribal Land Enterprise of the Rosebud Sioux Tribe

(s) CATO W VALANDRA
Cato W Valandra, President
Rosebud Sioux Tribal Council

(SEAL)

ATTEST.

(s) ANTOINE ROUBIDEAUX
Antoine Roubideaux, Secretary
Rosebud Sioux Tribal Council

APPROVED:

(s) HAROLD W. SCHUNK
Harold W. Schunk, Superintendent
Rosebud Indian Agency

(s) LESLIE M. KELLY
Leslie M. Kelly, Acting Area Director
Aberdeen Area Office
Bureau of Indian Affairs

Date: November 29, 1962

Mr. DRIVING HAWK. However, that doesn't really, you know, this mechanism that we do have does not relieve the problem of the fractionated interests in its entirety because there, once again, we are relying on the lease income from these acquired lands to purchase additional certificates and redeem other certificates.

I think the one thing that is greatly needed, which this bill would probably accomplish, would be for the—well, not the consolidation, the designation of a consolidation area, but maybe the designation of an area of concentration where the tribes could look down the road in a few years and say, "If this could be accomplished, we would have this amount of the reservation intact."

I think this is one point you know that this particular bill would accomplish, but there again, going back to what I originally said, if the intent for the consolidation plan to restrict the reservation, then it might be a twofold thing. The danger of it can be interpreted as such.

I believe the gathering of an inventory of all the tribal assets has been a long time in coming. At some point along the line we have to stop and draw the line, that this is where trust responsibility of the Federal Government starts and at this point this is what the tribes have and 5 years from now we can look and see how much the tribes have lost of their inventory.

I think this would be one good point that this bill would accomplish. We can go back to the original reservation assignment. We can go back to the surplus land acts and take an inventory based on the land base at that time and we can compare the two, and we can see exactly where the reservation status as far as land is at today.

Now, there are numerous reasons why our land has gone out of trust. The fractionated interest is one, one of many. The reservations have been in an economic or financial struggle for the last years. There are a lot of social and economic reasons why the allottees had offered their land for sale on the open market. Primarily it is because there is no other finances available to them. The cost of inflation has overshadowed—or the increased inflation has overshadowed the incomes from the land that they can derive even when they own a total allotment, say, of 160 acres.

The income they derive of that is small compared to the increase in the cost of living. So these are multiple reasons why, you know, our land is deteriorating. I don't know what impact this bill would have as far as looking at the overall picture. I am sure it would have some impact as far as the fractionated interest area is concerned.

Mr. MEEDS. Is there much sale of fractionated interests in your area, on your reservation, through any other than the method you described earlier, to non-Indians, for instance?

Mr. DRIVING HAWK. Yes: there has been. We have come into the generation now of the fractionated interest being in the multiples of 10 rather than 2 or 3 into a given quarter. We are down to the point now where the second generation is dying and the third generation is—some of those are dying and it is being spread thinner.

Mr. MEEDS. Right.

Mr. DRIVING HAWK. So speaking of up to now, yes, there has been. The fractionated interests have been less, but from now on hopefully the tribe can obtain through our other mechanisms—at least obtain a portion of a given original allotment.

Mr. MEEDS. How about sale of fractionated interests to non-Indians? Is that a very common thing on your reservation?

Mr. DRIVING HAWK. No, no, I can't recall of any instance of that.

Mr. MEEDS. Can non-Indians use the same process that you described and take certificates and redeem them for fractionated interests?

Mr. DRIVING HAWK. No; the original intent of the TLE was designed for the fractionated interests where you would have a quarter-section of land of multiple heirs and they could turn this land in to TLE and the intent was that when they obtained enough certificates, then they could receive what they called a TLE assignment on a total tract of land. Or if one had a multiple group of fractionated interests throughout the reservation, they could turn all of those in to TLE and obtain a 160-acre tract or whatever the equivalent value would be.

So through that mechanism, you know, we have been able to hold onto a lot of this fractionated interest land that would normally have gone up for sale.

Mr. MEEDS. So you would say that there is very little, if any, tribally held or individually held trust land going out of Indian ownership to non-Indian ownership?

Mr. DRIVING HAWK. No; you have your larger tracts—when I referred to fractionated interests I would mean like a quarter-section of land and one individual selling his particular interest to a non-Indian. This doesn't occur.

What does occur is the total owners of that quarter-section of land, you know, they would sell the whole block to the non-Indian.

Mr. MEEDS. They all get together and agree?

Mr. DRIVING HAWK. Right.

Mr. MEEDS. In which instance they could do that.

Mr. DRIVING HAWK. And normally what they do is they exhaust the tribal remedies through TLE and through our FHA land purchase program if the funds are available and we can go ahead in that way. But once they have exhausted that, then they turn to the advertised sale.

Mr. MEEDS. Do you have further comments to make?

Mr. DRIVING HAWK. No; that would be all. Thank you, and I think with the document that we will be submitting to you and our remarks today, it should clarify some of the areas that are concerns to us. Thank you very much.

Mr. MEEDS. I would like to ask a couple questions.

First, what do you consider the Rosebud Reservation?

Mr. DRIVING HAWK. The original boundaries—and I am sure Mr. Tobin would have some objections to that—but they would consist of the four-county area and part of a fifth.

Mr. MEEDS. Could you describe that for me just generally?

Mr. DRIVING HAWK. Todd, Mellette, Tripp, and Gregory, and part of Lyman County.

Mr. MEEDS. Part of Lyman?

Mr. DRIVING HAWK. Lyman, yes.

Mr. MEEDS. Now, under what document was that established?

Mr. DRIVING HAWK. That was established under the 1889 treaty, I believe.

Mr. MEEDS. And is this the area over which you are now asserting tribal jurisdiction?

Mr. DRIVING HAWK. This is the area that is in—that will be heard by the Supreme Court on the jurisdictional question. We in the tribe content that the original boundaries still stand and we do exercise jurisdiction in those areas.

Mr. MEEDS. Where is that located from where we are today?

Mr. DRIVING HAWK. It is roughly 100 miles southeast of here.

Mr. MEEDS. Are there any major non-Indian settlements, cities, towns within that area?

Mr. DRIVING HAWK. Well, the population is small throughout the whole area. It is a rural area, and I think the largest settlement, it would be only one per county, one in Tripp, a Rosebud in Todd, White River in Mellette, and so on.

Mr. MEEDS. You are contending that you have jurisdiction over that, therefore someone else must be contending that you don't?

Mr. DRIVING HAWK. Yes; the State of South Dakota—

Mr. MEEDS. OK, what does the State of South Dakota contend?

Mr. DRIVING HAWK. Well, that the boundaries of the reservation were diminished under the Surplus Land Act.

Mr. MEEDS. What generally are they? What areas do they contend are not within your jurisdiction in these areas?

Mr. DRIVING HAWK. They contend that the reservation was diminished to the boundaries of Todd County.

Mr. MEEDS. And what, in fact, have you been asserting jurisdiction over in recent years? Just Todd County or all four counties and part of the fifth?

Mr. DRIVING HAWK. Well, we have been exerting jurisdiction over all tribal members within the original boundaries. I don't think it was a question of tribal jurisdiction over tribal members. I believe it was a question of State jurisdiction over tribal members in a county outside of Todd County.

Mr. MEEDS. Now, it would be your interpretation of this act that it would apply to the original boundaries?

Mr. DRIVING HAWK. Yes; it would have to. We still have trust land in those other counties.

Mr. MEEDS. You do have other lands?

Mr. DRIVING HAWK. Oh, yes, and we do have fractionated interests in those other counties.

Mr. MEEDS. How much of your land, on a percentage basis, are we talking about?

Mr. DRIVING HAWK. I don't have those figures with me at this time.

Mr. MEEDS. Does anyone know that?

Mr. TOBIN. Yes.

Mr. DRIVING HAWK. Mr. Tobin knows.

Mr. TOBIN. In the four-county—

Mr. MEEDS. Would you identify yourself?

Mr. TOBIN [continuing]. Tom Tobin, Winner, S. Dak.

In the four-county area the tribe holds in trust approximately 10 percent of the entire acreage. That is in issue in the lawsuit.

Mr. MEEDS. Is most of it in Todd County?

Mr. TOBIN. That county is not in issue in the lawsuit.

Mr. DRIVING HAWK. The two counties that the tribe has a large interest in are Mellette and Todd Counties.

Mr. MEEDS. Fine. Thank you very much, Ed, for your testimony.

Mr. DRIVING HAWK. Thank you.

Mr. MEEDS. Our next witness is Urban Bear Don't Walk of the Montana Intertribal Policy Board.

Please come up here where we can all hear you.

STATEMENT OF URBAN BEAR DON'T WALK, OF THE MONTANA INTERTRIBAL POLICY BOARD

Mr. BEAR DON'T WALK. Is it all right if I remain seated?

Mr. MEEDS. Please do, sir.

Mr. BEAR DON'T WALK. OK. First of all, may it please the committee, I am Urban Bear Don't Walk; I am a Crow Indian; I am an attorney; and I was sent down here by the Montana Intertribal Policy Board to offer testimony in regard to H.R. 14417.

First, I would like to express gratitude on behalf of the Montana Intertribal Policy Board for being invited to participate.

At this time, the Montana Intertribal Policy Board is unable to support H.R. 14417 for the reasons as follows:

One. The proposed legislation does not state clearly or perhaps there does not exist a demonstrated need for such legislation.

Two. The chartered landless of Montana are excluded from the purview of this proposed legislation.

Three. The proposed legislation offers a vague definition of a tribal member.

Four. The proposed legislation specificity regarding the land consolidation plan.

Five. The proposed legislation seems to infringe on tribal sovereignty.

Six. Tribal consolidation efforts are limited to within the reservation boundaries.

Seven. The proposed legislation fails to provide for purchase of tribal lands by individual Indians on an installment basis.

Eight. The escheat provisions apply to Indian lands exclusively.

Nine. Indians who own land as tenants-in-common are not given preference over the tribe to purchase interests of other tenants-in-common who want to sell their interest.

Ten. The proposed legislation seems to place the Secretary of the Interior in an untenable position between individual landowners and the tribe.

Eleven. This is the last point. The proposed legislation purports to withhold the sovereignty in regards to hunting and fishing.

If you would like, I would be in a position to elaborate on those statements. Those were major headings.

Mr. MEEDS. Are you sure those are all the reasons that you have for opposing this legislation?

[Laughter.]

Mr. BEAR DON'T WALK. Right, at this time.

Mr. MEEDS. Let's take a little time to develop those then.

Your first point that it doesn't state clearly the purpose or you say maybe there is no need for this legislation.

Do you want to kind of enlarge on that for us a little?

Mr. BEAR DON'T WALK. OK.

Mr. MEEDS. Are you a member of the Crow Tribe?

Mr. BEAR DON'T WALK. Yes, I am.

Mr. MEEDS. Do you live on the reservation?

Mr. BEAR DON'T WALK. I do not live at this time. I have lived there for—

Mr. MEEDS. Are you in the tribal government?

Mr. BEAR DON'T WALK [continuing]. I do, yes.

Mr. MEEDS. Is the Crow Tribe totally satisfied with their authority for land consolidation?

Mr. BEAR DON'T WALK. I do not know that. The tribe has not really spoken to that issue per se.

Mr. MEEDS. Well, are other tribes satisfied with their authority in land consolidation?

Mr. BEAR DON'T WALK. If I could, I would like to state my reasons and then perhaps we could go from there.

Mr. MEEDS. OK.

Mr. BEAR DON'T WALK. First of all, it was not my understanding that tribes could not presently purchase land within the boundaries of an Indian reservation.

Mr. MEEDS. They can under certain circumstances.

Mr. BEAR DON'T WALK. And also, to put that land purchased back into trust or return it to trust status.

Mr. MEEDS. They can under certain circumstances.

Mr. BEAR DON'T WALK. OK. Then I do not understand or the Montana Intertribal Policy Board does not understand how this legislation is going to extend their ability to consolidate lands. We need that clarified. We are not alleging that all legislation is there to provide the ability or capability for tribes to buy lands. It was probably perhaps not that thoroughly researched.

It does speak to the heirship problem which, as we all know, is a great problem. I suppose in the future the thing will solve itself when heirship interests get so small and so minute that something just has to be done.

Mr. MEEDS. Can you get much more than one-quadrillionth?

Mr. BEAR DON'T WALK. One-quadrillionth?

No, that is pretty small.

Mr. MEEDS. At least for 320 acres, that is pretty small, isn't it?

Mr. BEAR DON'T WALK. Right.

Mr. MEEDS. The revenue from that, even if it were in a lease which accumulated a lot of money, might be somewhat near the area of 7 cents a year. When you stop to think it costs somewhere in the area of \$7 to prepare and transmit a check for that amount of money, wouldn't you think it is being somewhat unbearable when it reaches that stage?

Mr. BEAR DON'T WALK. Well, I think that is one factor. In other words, it does create jobs for people in regards to supposedly administering the lands.

Mr. MEEDS. Bureaucratic paper shufflers?

Mr. BEAR DON'T WALK. That is correct. And, of course, we need to create jobs, I believe, in this country for Indian people, and all people.

Speaking to the heirship problem, I think that problem needs to be addressed. The legislation does attempt to address that problem. The plan in regard to an inventory, I understand there are inventories being made, perhaps not at the speed that Indian people would like them to be. There was talk to an inventory of water. As to how

that has progressed, I don't know. But these seem to be worthwhile efforts.

Mr. MEEDS. Heirship and inventory?

Mr. BEAR DON'T WALK. Yes.

In regard to the tribe's capabilities to buy land, it seems one of the major impediments is simply the lack of funds. This proposed legislation in regards to consolidation—

Mr. MEEDS. Surprisingly, that is the same impediment that I have.

Mr. BEAR DON'T WALK [continuing]. Yes.

[Laughter.]

Mr. BEAR DON'T WALK. I did not read any provisions being made for funds being available to tribes so they can carry out their land consolidation plans which may look tremendous on paper but, in reality, if they have no funds, they are not viable programs.

Mr. MEEDS. So, what you are saying is that "Give us some money and we will take care of that problem under present law."

Mr. BEAR DON'T WALK. I don't know if I would like the word "give." Provide the sources through pressure on the Farmers Home Administration so they don't talk a beautiful program, but when it comes out my way, it seems limited, the money appropriated seems limited. There must be a way so FHA will put pressure there on the financing sources which need to be involved in regards to the Indian land problem. I think funds are crucial in this program.

Mr. MEEDS. Do you see any need for the tribes to be able to sell tribal lands in an effort to purchase other lands?

Mr. BEAR DON'T WALK. I think you have to look at lands in regards to their key value to Indian tribes.

For example, the Crow Tribe has a land consolidation program, so to speak, a land purchase program.

They utilize the shotgun approach so, therefore, the land that they purchase is scattered. It is not placed into a block or a tract of land.

Mr. MEEDS. Do you think that that would be better, to kind of concentrate it?

Mr. BEAR DON'T WALK. I think you should concentrate. I think it is just common knowledge that you get the waterholes and other strategic areas of land.

Mr. MEEDS. Let's assume—

Mr. BEAR DON'T WALK. In trying to control the reservation, that would be the—

Mr. MEEDS [continuing]. Let's suppose the Crow did use the shotgun approach which you describe; how do they now sell some of the pellets of that shotgun blast in order to collectively place them into a more rifle-shot purchase?

Mr. BEAR DON'T WALK. If they need to sell some of those lands, that seems somewhat contradictory because, on the one hand, you are talking about consolidating land, and on the other hand, you are talking about selling tribally owned land. I suppose now it would take, again being somewhat unfamiliar, an act of Congress to sell a portion of your reservation that is owned by the tribe.

I am not so sure—

Mr. MEEDS. It would.

Mr. BEAR DON'T WALK [continuing]. I am not sure this is a simple question to Indian tribes in regards to sale of tribal land. If you are