



1-12-1954

Report by Cragun to the Three Affiliated Tribes Regarding the Fort Berthold Claims, January 12, 1954

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Recommended Citation

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REPORT TO THE THREE AFFILIATED TRIBES
OF THE FORT BERTHOLD RESERVATION
ON THE STATUS OF THE FORT BERTHOLD CLAIMS
BEFORE THE INDIAN CLAIMS COMMISSION

Pursuant to the requirements of paragraph 8 of the contract of employment between the Three Affiliated Tribes of the Fort Berthold Reservation and this firm, this report is submitted with respect to the current status of the claims of the Three Affiliated Tribes now pending before the Indian Claims Commission. By means of previous reports (the last one dated June 22, 1953), we have communicated to the Fort Berthold Indians the developments and progress in the claims, particularly action with respect to the motion for summary judgment filed by the government alleging that one of the claims is barred by reason of the previous Fort Berthold decision in the Court of Claims.

At the time our last report was submitted, the briefs on the part of the Indians and the government had been filed for approximately three months, but no action had been taken on the motion by the Indian Claims Commission. As reported at that time, we have been under the impression that the Commission would decide the Fort Berthold motion on the strength and authority of its decision on a similar motion in the Blackfeet case, which it handed down December 17, 1952, and which was in favor of the government. However, immediately after the Commission's decision in the Blackfeet case, we filed a notice of appeal on behalf of the Blackfeet and Gros Ventre Indians, to the Court of Claims, and

the Indian Claims Commission is no doubt awaiting the outcome of that appeal before rendering a decision on the Fort Berthold motion.

We reviewed, in detail, in our last semi-annual report, the circumstances and questions for decision involved in both the Blackfeet and Fort Berthold motions.

Suffice it to say, the question involved is whether the Fort Berthold Indians have the right, under the Indian Claims Commission Act, to sue the United States for the damages sustained by them as a result of the long delay between the time their Fort Laramie Treaty lands were taken from them and the time the Court of Claims awarded them a judgment in payment for the lands back in 1930. The government contends that the special jurisdictional Act under which the earlier suit was brought gave the right to sue for such damages, and that even though no claim was made for them the claim is now barred by reason of the rule of law known as res judicata (which means "thing adjudicated" -- that is, that you have already had decision of the matter by the court).

We have taken the position on behalf of the Three Affiliated Tribes that (1) under the earlier jurisdictional Act the Court of Claims did not have jurisdiction to award such damages, and (2) regardless of an earlier grant of jurisdiction, the legislative history of the Indian Claims Commission Act shows that even though a tribe may have sued in the Court of Claims before as to some claims, where it might have submitted another claim but did not, so that such claim was not adjudicated on its merits, they are not barred from asserting it now in the Indian Claims Commission. As you can see, the issues involved are not complicated,

even though they are legal and technical. And the question does not involve, in a strict sense, the moral or equitable right of the Indians to receive such damages, but merely the right to sue for them in the Indian Claims Commission.

Since we submitted our last semi-annual report, there have been certain developments in the Blackfeet appeal of interest to the Fort Berthold people. That appeal has moved along in the Court of Claims in good fashion, with the briefs filed in early Summer of last year, and legal argument before the Court November 6, 1953. Mr. John W. Cragun, a partner in this firm, argued the case on behalf of the Blackfeet and Gros Ventre Indians, and an attorney from the Department of Justice argued the case on behalf of the government. During the course of the argument it became apparent that the four judges sitting (normally the Court of Claims has five judges, but Judge Howell resigned from the Court a short time before the Blackfeet case was argued) were very interested in the case and its effect on possible other suits in the Indian Claims Commission and within the field of Indian-claims law generally. In our briefs submitted to the Court, and in oral argument, we endeavored to present fully the reasoning and basis of both the alternative arguments for the right of the Indians to bring the claim in dispute, that is, a lack of jurisdiction granted in the earlier special jurisdictional Act, and the broad and remedial nature of the Indian Claims Commission Act, but the Court indicated that it would like to have supplemental memoranda filed by both the Indians and the government outlining in detail the legislative history of the Indian Claims Commission Act, where pertinent.

Such a memorandum was prepared by us shortly after the argument and filed with the Court. Some weeks later (December 29) the government filed its supplemental memorandum. We filed on Friday, January 8, 1954, a brief reply memorandum answering that of the government, and now that it is filed, the appeal is finally submitted to the Court for its decision.

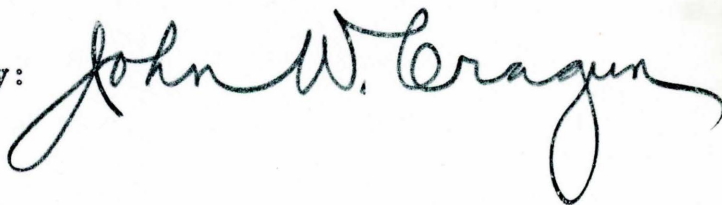
We have every expectation that the decision from the Court of Claims will be forthcoming on this appeal fairly early this Spring. We do not, of course, have any basis upon which to guess what the decision of the Court will be, but as we have repeatedly stated to both the Blackfeet and Gros Ventre Tribes, and the Three Affiliated Tribes, we believe the questions involved are very close legally, and the decision could go against the Indians just as easily as it could go for them.

We shall continue to keep the Three Affiliated Tribes informed on developments in either the Fort Berthold, or the similar Blackfeet, litigation, and shall be happy to answer inquiries from any of the tribal members respecting the litigation.

Respectfully submitted,

WILKINSON, BOYDEN, CRAGUN & BARKER

By:

A handwritten signature in cursive script, reading "John W. Cragun". The signature is written in dark ink and is positioned to the right of the word "By:".

January 12, 1954