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LaDonna Harris

Americans for Indian Opportunity (AIO)

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TESTIMONY BEFORE THE COMMITTEE
ON
ENERGY AND NATURAL RESOURCES OF THE
UNITED STATES SENATE

Statement of
LADONNA HARRIS
PRESIDENT
AMERICANS FOR INDIAN OPPORTUNITY
600 Second Street, Northwest
Suite 808
Albuquerque, New Mexico

January 8, 1981

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Statement of
LADONNA HARRIS
President
Americans for Indian Opportunity
Before the Committee
on Energy and Natural Resources
of the United States Senate
Thursday, January 8, 1981

Mr. Chairman and Members of the Committee:

A good many American Indians were disturbed to learn that President-Elect Ronald Reagan was considering sending to the United States Senate the name of James G. Watt to be U.S. Secretary of the Interior. Many Indian leaders, tribes, and organizations expressed their disapproval of this prospective nomination. Nevertheless, Mr. Watt was nominated. I believe this nomination unwise. I think the confirmation of this appointment by the U.S. Senate would be unwise.

I and others have been dismayed by Mr. Watt's record in connection with the Mountain States Legal Foundation, an organization supported by major energy companies and industrial concerns, a record which indicates his opposition to the Equal Rights Amendment (ERA), his lack of adequate concern for our environment, and his inclination toward alienation of America's heritage of public lands.

But, my appearance here today focuses upon my principal concern as a member of the Commanche Indian tribe, and as President of Americans for Indian Opportunity, about Mr. Watt's lack of support for the rights and powers of Indian tribes as units of government and his opposition to the efforts of Indian tribes to become more viable economically and politically. In this respect, the record of Mr. Watt appears to be contrary to specific statements which President-Elect Ronald Reagan made about Indian self-determination and economic self-sufficiency, when he was a candidate for President of the United States.

I make this statement, now, not because I believe that the confirmation of Mr. Watt can be blocked; that does not appear likely. I make this statement for two reasons: First, because I hope that the Committee will ask Mr.

Watt statements of President-Elect Reagan in regard to Indian affairs; and second, for the educative "Hickel Effect" these hearings may have on Mr. Watt. (I call it the "Hickel Effect" because the record of his later actions plainly show that Walter Hickel, appointed by President Nixon to be Secretary of the Interior, changed some of his attitudes, became a broader, more understanding Secretary of the Interior because of close questioning of him at his confirmation hearings.)

WHAT IS THE LAW IN REGARD TO AMERICAN INDIANS AND INDIAN TRIBES?

U.S. law in regard to American Indians and Indian tribes, as members of this Committee well know, is based, first, upon treaties entered into with Indian tribes; second, on specific mention of Indian tribes in the Commerce Clause of the U.S. Constitution; third, on laws passed by Congress; fourth, on decisions by the federal courts and the U.S. Supreme Court. More than 300 treaties were entered into with Indian tribes in America - many prior to the adoption of the U.S. Constitution. These treaties, especially after the U.S. Constitution went into effect, were entered into with all of the solemnity of every other treaty between the U.S. Government and a foreign nation.

The Commerce Clause of the U.S. Constitution gives Congress, not the states, the power to regulate commerce with the Indian tribes (as well, of course, as commerce with foreign nations and commerce among the states). This provision has been interpreted by the courts as giving the federal government exclusive power (unless it delegates power to the states, which it has rarely done) to deal with all aspects of Indian and Indian tribal matters.

In very early opinions, in Cherokee Nation v. Georgia (1831) and Worcester v. Georgia (1832), the U.S. Supreme Court declared that American Indians have a "unique relationship" with the federal government, and that tribal governments are "domestic dependent nations," or special, internal units of government in our system. This is still the basic law, today. In the 1978 case of Wheeler v. United States, for example, the U.S. Supreme Court once again declared that tribes are units of government and that they retain all the inherent powers of sovereigns that they have not given up or specifically had taken away from them.

This basic law in regard to American Indians and Indian tribes means that the "federal system" of shared sovereignty is not just composed of federal and state (and local) governments. It is made up of federal, state, (and local), and tribal governments. It also means that American Indians have "dual citizenship" and "dual entitlement."

Under the concept of "dual citizenship," members of American Indian tribes, like all American citizens (although this was not spelled out clearly until a 1924 Act of Congress), are, first, citizens of the United States (as a result of which, by operation of the 14th amendment to the U.S. Constitution, they have state citizenship, too), and, second, they are also citizens of the Indian tribes of which they are members. Because of treaties, constitutional provisions, acts of Congress, and decisions of the federal courts and the U.S. Supreme Court, the tribal governments of American Indians - unlike private organizations of other ethnic groups, such as the League of United Latin American Citizens or the National Association for the Advancement of Colored People - are units of government.

Under the concept of "dual entitlement" - again, because of treaties, constitutional, provisions, acts of Congress, and decisions of the federal courts and the U.S. Supreme Court - American Indians are entitled to special or "compensatory" attention to their needs - that is, they are not only entitled to all of the services of the federal government that all other citizens are entitled to, but they are also entitled to additional services just because they are American Indians. Today, as Committee members know, and contrary to what some people believe, American Indians do not receive individual payments from the federal government. But, since for so long they were left out of a lot of health, education, housing, and other governmental programs, "dual entitlement" is a means of allowing American Indian individuals to "catch up" with the social, economic, and health advances which have been made by other Americans.

PRESIDENT-ELECT REAGAN'S VIEWS

President-Elect Reagan has expressed strong support for the basic concepts embodied in the law in regard to American Indians and American Indian tribes.

As a candidate, he made the following statements in regard to these matters (and many were made in response to specific questions asked him by Indian leaders, tribes, and organizations):

I support tribal sovereignty and self-determination for Federally-recognized American Indian tribal governments.

The traditional relationship between the United States and Indian governments is a "government to government relationship."

History tells us that the only effective way for Indian reservations and Indian communities to develop is with local Indian leadership.

Tribal governments must play the primary role in Indian affairs.

State and non-Indian local governments can at best play only a secondary role.

I can assure the Indian Tribes that their leadership will have strong advocacy and an open channel of communication in the White House.

The failure or refusal of the various agencies to cooperate with each other and to coordinate their efforts on behalf of Indian tribes...will not be tolerated in the Reagan White House.

I fully respect the unique trust relationship between the United States government and Federally-recognized tribes.

I am aware of the unique nature of (the Urban Indian Communities) and of the fact that their problems have been largely ignored in the past.

Since tribal governments have the same responsibilities to tribal members that state and local governments have to their citizens my philosophical view is that (the) Federal bureaucrats should not interfere with Indian government policy development.

My administration would be opposed to the abrogation of Indian treaties and the termination of the unique relationship between the Federal government and the Indian tribes.

Economic self-sufficiency will be a goal of my Administration, both in Indian affairs and in the nation at large. It would work to make available financial, technological, and management assistance which will enable tribal enterprises to develop their own self-sufficiency.

Although the systematic development of tribal enterprise is extremely important, the development of individual or small business enterprise is crucial to sound economic development on the reservation....Many Indian businesses fail for lack of adequate management and financing capital availability...My Administration will work to assist all small businesses in obtaining

capital managerial assistance, government procurement contracts, and export opportunities.

The policy of "termination" has been greatly discredited as morally and legally unacceptable and, in practical social and economic terms, devastating; My administration would not recommend that termination be revitalized or resurrected.

Tribal governments should have the right to determine the extent and the methods of developing the tribe's natural resources.

I believe in the rule of law, I support respect for and adherence to existing Indian treaties....The support and fulfillment of Indian treaties is bound up with the honor and integrity of the United States. The United States should keep its pledged word to any nation, great or small.

As a result of these strong and specific statements by President-Elect Reagan in support of political self-determination and economic self-sufficiency for American Indian individuals and tribes, Mr. Reagan received considerable Indian support. In my own state of New Mexico, for example a presidential candidacy of Mr. Reagan.

THE RECORD OF MR. WATT

Despite the strong statement of President-Elect Ronald Reagan in favor of economic self-sufficiency and political self-government for Indian tribes, he has nominated a man whose record on important questions involved in these concepts has been decidedly in opposition to the best interests of Indians and Indian tribes. For example, under the longstanding Winters' Doctrine, it is the law that American Indians have preference rights to water use, past and future - enough to make their lands or reservations "habitable". This is an extremely important economic resource of American Indians and tribes and is essential to their becoming more economically self-sufficient. Yet, Mr. Watt filed a motion and brief on behalf of Mountain States Legal Foundation to become Amicus Curiae in the United States District Court of Nevada against the Pyramid Lake Paiute Tribe of Indians in a very important water rights case. He asserted in that brief that "the Government should not carry this preference treatment to an absurd extreme that is, to the point of twisting the

jurisprudential systems to the sole benefit of the Indian or to the point of "creating favorable rules." The tribe involved rightly felt that it was asking, not for an absurdity, but for a simple affirmation of its clear legal rights under the Winters' Doctrine.

Another example of Mr. Watt's opposition to efforts on the part of Indian tribes to attain political self-government and economic self-sufficiency was the brief that he filed in the U.S. Supreme Court on behalf of Mountain States Legal Foundation, as Amicus Curiae, in the case of Merrion v. Jicarilla Apache Tribe (1980). In that case, the question was whether the tribe could tax oil companies doing business on the reservation (exploiting the energy resources of the tribe in a manner very profitable to the company). In that brief, Mr. Watt appeared to launch an assault on the very nature of tribal sovereignty and the authority of tribal government, themselves, to take steps to help put themselves on the road to economic self-determination. He attacked the power of tribes to enact taxation ordinances as being in opposition to a comprehensive national energy policy.

CONCLUSION

The relationship between the federal government, on the one hand, and Indian tribes and individuals, on the other, is a relationship of "trust," similar, as stated in early cases, to the relationship of guardian and ward. Initially, it was thought that the trust responsibility of the federal government to Indians and Indian tribes was to be exercised solely by the U.S. Department of the Interior and its Bureau of Indian Affairs. But time has changed that. President Lyndon Johnson's "War on Poverty" helped to educate government officials and agencies to the fact, and law, that the trust responsibility of the federal government to American Indians and Indian tribes is "government-wide." Then, in a special message on Indian affairs, President Richard Nixon also gave his stamp of government approval to that concept, and to the concept of "self-determination" - meaning that Indians and Indian tribes are here to stay and that the government ought to work with Indian tribes as units of government, to strengthen them and help them serve their members better.

Still, however, the U.S. Department of the Interior is the principal federal agency which deals with Indians and Indian tribes - particularly in regard to land, resources, and education. That is why so many American Indians are very concerned about the nomination of Mr. Watt.

We have been making progress. We think that the conservative philosophy of President-Elect Reagan fits well with our own desire to strengthen our tribal governments, politically and economically, to govern ourselves close to home in our own units of government, to use our economic resources wisely and in ways which are economically, environmentally, and culturally sound for us. President-Elect Reagan has agreed with this in his earlier statements. And we think it is important that Mr. Watt also express his specific agreement with these goals, explaining or differentiating his earlier "legal" positions on important tribal water and taxation issues.

Some Indian individuals and tribes have more natural resources and assets than do others, of course. Some tribal governments are stronger and more developed than others. What is clear is that tribal governments are permanent and important governmental units within the federal system - and American Indian tribes have been making important advances in political self-government and economic self-sufficiency, under both Democratic and Republican administrations. What is clear, also, is that American Indians, wherever they live - on-reservation or off-reservation - have gained enormous personal strength from increased pride in Indianness. They have reached out to each other - across tribal lines, cultures, and languages - to find a renewed strength and a sense of community in each other. They are helping to show Americans that the right to be different is a fundamental right in this country - and a good one for the country and for the people involved. They are helping to show, also - out of their traditional respect for the earth and living things - that all life is interdependent and that humans must assume greater responsibility for the protection of their environment. Indian tribes, too, are making important strides toward greater, "close to the people," grassroots self-government and more self-reliant, economic self-sufficiency. These are important contributions which can have growing significance in America - if the government will continue to support these goals, as endorsed strongly by President-Elect Reagan.

Thus, we hope that this Committee will take pains to see that Mr. Watt endorses - in specific - the goals of Indian self-government and economic self-sufficiency.

These matters are especially important to the Indian community, now, in these economic hard times, because, as the father of the study of American Indian law, Felix Cohen, wrote:

(T)he Indian plays much the same role in our American Society that the Jews played in Germany. Like the miner's canary, the Indian marks the shifts from fresh air to poison gas in our political atmosphere; and our treatment of Indians, even more than our treatment of other minorities, reflects the rise and fall in our democratic faith....