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BY CONGRESSMAN LES AuCOIN

Since legislation to restore tribal status to the Siletz Indians in Oregon was first introduced in June, 1974, by former Congressman Wendell Wyatt, this subject has undergone careful, if not agonizing, scrutiny.

This is as it should be -- not only because of what the bill does, but because of what some fear it would do.

What the bill does is to make the beleaguered Siletz Indians eligible for humanitarian aid -- for education, vocational, social and health services benefits that are available under federal law only to members of federally recognized tribes.

It is the historic misfortune of the Siletz people to have been, first, caught up in the ill-conceived national policy of termination of official tribal status in the 1950's and, second, to be engulfed by the entirely separate controversy of Indian hunting and fishing rights in the Pacific Northwest in the 1970's.

Now the Siletz tribal restoration bill has been re-introduced -- as in the last session of Congress -- by Senator Mark Hatfield, R-Ore., and me. Once again, misguided objections are being raised against the bill. They were unfortunately perpetuated by a May 22 editorial in The Oregonian.

It's time to separate the issues involved and evaluate them individually. In doing this, the modest requests made by the Siletz seem far less threatening and, instead, quite compelling.

The fundamental point is this: the Siletz bill does not grant special rights of any kind to the Siletz -- be they hunting, fishing, trapping or any other rights.

Secondly, unlike many other tribes, the Siletz have never had a ratified treaty which, as in the case of the Columbia River tribes, is the basis of the court decisions granting Indian hunters and fishermen special rights over non-Indian hunters and fishermen.

The plain fact is, the Siletz have never had a ratified treaty of any kind.

Thirdly, opponents of the Siletz bill are misleading the public when they say this legislation will somehow enhance or accelerate Siletz claims for fishing or hunting rights.

If an individual Siletz citizen wanted to press such a claim right now, there is nothing to stop him from exercising the same right of any citizen to go to court. Thus, to suggest -- as some have -- that this bill is all that stands in the way of pressing a court claim is simply false.

What the issue comes down to is this: Does this bill -- or does it not -- help a party who might want to press a court case in seeking hunting and fishing rights?

The answer is: It does not. Not in any way.

Section 3(c) of House Resolution 7259 says:

"This Act shall not grant or restore any hunting, fishing or trapping rights of any nature, including any indirect or procedural right or advantage, to the Tribe or any member of the Tribe."

It's difficult to imagine language that could be more clear or comprehensive in its meaning.

But to respond to another argument levied against the bill in the last Congress, and to make its neutrality even more self-evident,

this year's bill removes provisions for a reservation. The reason for this is to avoid creating a land base which some fear could be expanded to incorporate rivers and streams.

However, the most vocal opponents of this legislation, the Oregon Fish and Wildlife Commission, are not concerned so much by the fact that the bill is neutral on the issue of hunting, fishing and trapping rights.

Their concern is that the bill is neutral.

The commission and its supporters insisted on an amendment last year, and apparently will again this year, which would terminate any fishing rights the Siletz might have before any court finding that they do, indeed, have any rights and, if so, how extensive they are. And they would do so without any provision for compensation, a clear violation of the constitutional guarantees which protect every citizen against the taking of property rights without compensation.

Some argue that this point can be overcome simply by writing a compensation formula into the bill. The trouble is that Congress, which is just beginning to face the national issue of Indian claims, is not going to set an early precedent on a narrow, remote little bill that only provides tribal identity and education, social and health benefits to some needy people in Oregon. The national issue must be addressed thoroughly and comprehensively, a task that will take some time.

In the meantime, the Siletz, who are an unusual case, should not have to wait for benefits they desperately need now.

It is important to understand that the rights of Indian tribes are not universally similar.

The Boldt and Belloni decisions do not automatically pertain to the Siletz or any other tribe. Everything depends on the nature and existence of treaties and agreements entered into between the Indian peoples and the U.S. government years ago.

On this point, a leading Indian expert for the federal government, Reid Peyton Chambers, the Associate Solicitor for Indian Affairs for the U.S. Department of Interior, testified before the Senate Interior Committee:

"The Belloni/Boldt decisions in Washington and Oregon have no effect whatsoever on hunting and fishing rights the Siletz tribal members may have...

"The Boldt and Belloni decisions both interpret treaties which reserve specifically in the treaties certain rights to fish at all usual and accustomed places off the Indian reservations. These were specifically reserved off-reservation hunting and fishing rights.

"The pertinent Executive orders and statutes...establishing the original Siletz reservation and later affecting its size have no provisions in them comparable to the treaty language that was interpreted by Judge Boldt or Judge Belloni."

In followup questioning, Chambers was asked by Senator Hatfield, "Is it not correct that the unratified Siletz treaty contained no fishing and hunting rights?" He answered: "Yes, I have studied that (unratified) treaty in anticipation of this testimony and there was no provision for fishing or hunting rights similar to the provisions in the treaties with the Warm Springs and Umatilla

Tribes...There was no such provision for off-reservation fishing and hunting rights in the Siletz Treaty."

Finally, Chambers was asked for his interpretation of the language in the Siletz Bill which states that the legislation conveys no special hunting, fishing or trapping rights.

He answered: "...The plain language of the section says it shall not confer any such rights and if there was any conceivable doubt about that in deciding that kind of question, the courts would refer to this kind of legislative history by the sponsor of the bill in committee hearings and would conclude -- it means clearly a court would conclude that the Act does not confer any special hunting or fishing rights."

These viewpoints have been substantiated by David M. Ackerman, legislative attorney for the American Law Division of the Library of Congress, and by Forrest J. Gerard, professional staff member for the Senate Interior and Insular Affairs Committee.

A key point made by Ackerman was that case law reveals Indian hunting and fishing rights are not directly linked to tribal status or the existence of a reservation; rather, they are linked to language in treaties. He points to the Klamath Indians who successfully sued for hunting and fishing rights -- even though their tribe was no longer federally recognized -- because of such treaty language. No similar treaty language exists for the Siletz.

Gerard, in a memorandum to Senator Henry Jackson, D-Wash., and the other members of the Senate Interior Committee, noted the Siletz are at the legal disadvantage of not having a ratified treaty, which may irreparably harm any chance of pressing a claim for hunting or fishing rights.

Then he added: "None of the unratified treaties, executive orders or statutes which created, then diminished, the Siletz or Coast Reservation contain any mention of fishing rights. The 'usual and accustomed places' language of the Boldt and Belloni decision on treaties does not appear in any of the executive orders or statutes pertaining to the original Siletz reservation, nor does any language appear which could be construed as granting off-reservation hunting and fishing rights."

Despite this preponderance of legal opinion, it is unfortunate that doubts and fears persist -- doubts and fears persisting not because of what the bill does, but because of what opponents wish it would do.

As a lobbyist for a sports fishing organization privately told one of my aides:

"We don't object to the Siletz bill itself. It's just a vehicle to use in bringing pressure on the big issue of Indian hunting and fishing rights and the Boldt and Belloni decisions."

Readers will have to ask their own conscience how fair that position is.

I completely sympathize with the need to answer the questions raised by the Boldt and Belloni decisions. I am joining other congressmen in working for solutions. But let me be as emphatic as possible:

Federal recognition as a tribe will mean more doors for needed self-help benefits will be opened.

But most of all, federal recognition will restore the Siletz tribe to its rightful status among other Indian tribes.

Some may see this as "separatist" and wrong. But they would be failing to understand that before one can "belong" he must first know and understand himself. That's what tribal identity, apart from the various benefits, will achieve.

Pauline Bell Ricks, a Siletz Tribal Council member testifying before the Senate last year, made the point best when she said:

"...It will take a long time to heal the wounds and mend the rifts that have sapped the strength of our people. If restoration would come to us, we would once again be known as Indian people.

"Our children, born after termination, would have an identity, a tribe to identify with. I cannot think of a more beautiful thing than to see our people walking tall and proud again."

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I think the position stated above not only lacks compassion, but it also is just not in keeping with my responsibilities.

Termination of the Siletz as a federally recognized tribe in the 1950's did not improve the Indian/non-Indian fishing controversy of today. Restoration of this tribe will not worsen it, particularly because of the tribe's unique history.

So I do not think that the Siletz should be made pawns in a political struggle that does not directly involve them.

Let's get down to the simple truth. The truth is that once their tribal status was taken away, the Siletz and other tribes were left to sink or to assimilate into society at a time when most officials should have known they would sink.

A miracle did not happen and many Siletz did sink -- into alcoholism, broken homes, poor health, malnutrition, under-education, unemployment, social disorientation.

The unemployment rate among the Siletz has reached as high as 44 per cent. The school dropout rate is about 40 per cent, and nutritional, health and dental problems among the Siletz are far in excess of the ratio these problems are found among the non-Indian population.

Through the diligence of people such as former Siletz tribal Chairman Joe Lane and current Chairman Art Bensell, the tribe has begun to pull itself back together. Now it is asking for restored recognition from the federal government, which has a historic trust relationship with all Indians, including the Siletz.