

D. FEDERAL ESTABLISHMENT OF A CATAWBA RESERVATION  
IN 1943

Efforts to have the United States resolve the Catawba Indians' land problems were not limited to requests for litigation assistance. Indeed, throughout the 1930's the Catawba Indians with the help of the State of South Carolina sought federal help in "rehabilitating" the Catawba Indians, but their efforts to secure federal assistance were unsuccessful because the Department of the Interior denied that any guardian-ward relationship existed between the federal government and the Catawba Indians. This situation gave rise to efforts in the late '30's to establish a formal guardian-ward relationship through legislation and thus open the way for federal assistance to the Catawba Indians. See generally, File No. 12492-1930-011, pts. 1 and 2; Central Files, 1907-1939, Bureau of Indian Affairs in National Archives Record Group No. 75.

Two bills were introduced which would have granted federal recognition and the assumption of federal jurisdiction over the Catawba Indians. They were introduced in 1937 and 1939. See Research Materials G-22, G-33 by Representative James Richards of South Carolina but were never reported out of Committee, apparently because of opposition within the Office of Indian Affairs. See Statement of Mr. Richards, Research Materials H-1; see also BIA files, supra at pts. 1 and 2.

Unsuccessful in their attempts to secure congressional recognition, supporters of federal assistance for the Catawbas took a different approach. The State of South Carolina and the BIA entered into a lengthy negotiation process which culminated in the Memorandum of Understanding of December 14, 1943, BIA File No. 34790-1943-360, pt. 1-C; Research Materials G-75.

The Office of Indian Affairs, conscious of the congressional reluctance to establish a guardian-ward relationship, utilized the Memorandum of Understanding to establish a very unconventional federal-Indian relationship with the Catawbas. See August 28, 1941, letter from Assistant Commissioner to South Carolina State Auditor, BIA File No. 12492-1930-011, supra at pt. 3; Research Materials G-63. The thrust of the negotiations were toward finding a way to secure federal assistance without establishing a formal guardian-ward relationship. See minutes of conference between Commissioner of Indian Affairs, Congressman Richards, and Representatives of the Senate, March 17, 1941; Research Materials G-59. Negotiations first centered around federal assistance through the Farm Security Administration, whose involvement would not have been



sought had a traditional trust relationship existed, as services to "Federal" Indians were the exclusive domain of the BIA. The arrangement for an agricultural rehabilitation program undertaken through the Farm Security Administration (FSA) was never carried into effect, apparently because FSA funds were severely cut back because of World War II. See letter of August 28, 1941, to South Carolina Auditor from Commissioner of Indian Affairs BIA File No. 12492, supra at pt. 3; Research Materials G-63.

A report of the Secretary of the Interior, dated August 27, 1959, noted that:

Efforts were made to bring the Catawba Indians under Federal jurisdiction during the 1930's when their plight was especially aggravated by the general depression. These efforts culminated in a memorandum of understanding approved on December 14, 1943, in which the Indians, the State, and the Bureau of Indian Affairs each agreed to take certain actions to alleviate the Catawbas' depressed economic condition. The agreement did not specify that the federal government was assuming guardianship of these Indians and neither the Indians nor the State ever claimed that the Catawbas were wards of the federal government. Research Materials I-2, I-3.

On October 31, 1940, a memorandum from the Commissioner of Indian Affairs to the Secretary of the Interior, regarding the Catawba Indians closed as follows:

We should also offer limited advisory help in order to improve the standard of State care of these Indians. There is no question of assuming Federal guardianship jurisdiction but merely of carrying out the apparent desire of Congress to give a small degree of aid to the State, coupled with expert advice. BIA File No. 12492, supra at pt. 2.

During the period of negotiations with the State which led to the Memorandum of Understanding, the Bureau of Indian Affairs was aware of the existence of the Catawba Tribe's unresolved reservation claims against the State. See BIA File No. 12492, supra at pt. 3. In an undated memorandum to the Commissioner of Indian Affairs, presumably in 1937, the



Commissioner's Administrative Assistant, D'Arcy McNickle, detailed the nature of Catawba claims against the State, suggested that the matter was still unsettled, and further hinted that State desires to secure a "final settlement" were a factor in the State's efforts to secure federal assistance for the Catawbas. Research Materials G-11.

The minutes of the conference between the Commissioner, United States Representative Richards, and representatives of South Carolina on March 17, 1941, indicate the State's position at that time was that if the State furnished land for the Indians, the Catawba Indians would relinquish any claims they had against the State. An August 14, 1941 letter from the State Auditor of South Carolina reiterates that position. BIA File No. 12492, supra at pt. 3; Research Materials G-62.

The Bureau rejected the State's position on this subject and in an August 28, 1941 letter, the Assistant Commissioner advised the State Auditor that "in the absence of court determination we are in no position to pass on the justice of these claims, and I think we could not become a party to any action seeking to quiet these claims." BIA File No. 12492, supra at pt. 3; Research Materials G-63. A 1941 draft of the Memorandum of Understanding contained a clause whereby the Catawba Indians would "execute, in favor of . . . South Carolina, a release and quitclaim of all claims and actions . . . against the State . . ." Research Materials G-76. This provision was not included in the 1943 Memorandum of Understanding which was finally executed by the Parties. Research Materials G-75.

The omission of this proposed extinguishment is confirmed in a January 1942 memorandum to the Commissioner of Indian Affairs, from the Solicitor of the Department of the Interior, stating:

It is further noted that the requirement included in the original draft [of the memorandum of understanding] submitted on October 9 to the effect that the Catawba Indians promised 'to execute, in favor of the State of South Carolina, a release and quitclaim of all claims . . . against the State . . . ' has been eliminated from the present draft. This elimination is most desirable in that it avoids a procedure of doubtful legality which would have consisted in using a contract under the Johnson-O'Malley Act in order to deprive the Indian tribe of claims which it might be able to enforce in the courts. (Emphasis supplied) BIA File No. 12492, supra at pt. 3. Attachment TT.

As the result of the Memorandum of Understanding, a small 3,434-acre reservation was acquired by the State of South Carolina and transferred to the United States to be held in trust. Federal supervision was extended to the Tribe, on a limited basis, through the Indian agency in Cherokee, North Carolina.



E. THE CATAWBA TRIBE'S RESERVATION CLAIMS AND THE DIVISION OF ASSETS ACT

1. An Explanation of the Division of Assets Act

On January 3, 1959, the Catawba General Council enacted a resolution requesting their Congressman, Congressman Hemphill, to introduce and secure passage of a bill removing federal restrictions on their 3,383.8 acre reservation and distributing the land among the tribal members:

Now therefore, BE IT RESOLVED that, in view of the benefits that will accrue to all of the members of the tribe by the equitable distribution of the tribal assets, its General Council assembled in regular meeting hereby formally request the Honorable Robert W. Hemphill, our Congressman from the Fifth District, to introduce and secure passage of appropriate legislation to accomplish the removal of Federal restrictions against the alienation of Catawba land, in York County, South Carolina, so that it can be patented, and to provide for an equitable distribution of all the tribal assets amongst the members of the Catawba Tribe, and to provide for the protection of minors and incompetents, and do all those things necessary to accomplish the purposes of this legislation at no cost to the Catawba Indians or claim against their assets, and that nothing in this legislation shall affect the status of any claim against the State of South Carolina by the Catawba Tribe. (emphasis supplied)

See Attachment HH for the complete Resolution.

On January 26, 1959, the Commissioner of Indian Affairs was advised of the Catawba Tribal Council Action. See Attachment WW. On January 27, 1959, Congressman Hemphill submitted a copy of the Tribal Council Resolution to the Legislative Associate Commission and requested the Bureau of Indian Affairs to draft legislation "to accomplish the desires set forth in the Resolution." Attachment VV.

Six months later the Senate and House Interior Committees had prepared an act to distribute the tribal assets of the Catawba Tribe. The House Report and Senate Report are virtually identical. [S.No. 863; September 1, 1959;

H.R.No. 910; August 17, 1959.] They both indicate that the purpose of the legislation was to:

. . . [P]rovide for the division of the assets of the Catawba Indian Tribe of South Carolina among its enrolled members in approximately equal shares.

Both reports further state:

Since 1943 the State, the Bureau of Indian Affairs, and the tribe have been working together to improve the economic conditions of the members. In 1945 the State bought 3,434 acres of land for the tribe and turned it over to the United States to be held in trust for them.

The Catawbas have advanced economically during the past 14 years and have reached a position that is comparable to their non-Indian neighbors. Many of them are employed in nearby communities. There are 162 Catawba families with 614 individual members. Eighty-three of these families live on restricted or reservation land. A nearly equal number live in Rock Hill.

The tribal assets are valued at about \$254,000, or \$1,500 per family. The assets consist principally of the tribal land which comprises nearly 4,000 acres, including 630 held in trust by the State of South Carolina.

The State appointed a five-man legislative committee on December 16, 1958, to assist in negotiating with the Catawbas to remove the Federal restrictions from their lands.

The Catawba General Council at a regular meeting on January 3, 1959, asked that Federal restrictions be removed from their lands and that deeds thereto be issued. On March 28, 1959, the general council met in special session and endorsed the terms of this bill, as introduced, by a vote of 40 to 17. A second opportunity will be offered for members to accept or reject the legislation by the plebiscite amendment proposed by the committee. Research Materials I-2, I-3.



Both the House and Senate Reports relied almost exclusively on identical letters sent August 27, 1959, to the committees by the Assistant Secretary of the Interior, Roger Ernst. The pertinent part of these letters provides:

The Catawba Indians have requested this legislation; they have endorsed the provisions of the bill; and we believe that they are ready for this action.

The bill provides for closing the membership roll, and for distributing all tribal property among the members in approximately equal shares. Members who have assignments of land from the tribe, or members of their families, are given the right to select the assignments as parts of their distributive shares. The remainder of the tribal property will be sold and the proceeds of the sale will be distributed. Any property that is not sold within 2 years will be conveyed to a trustee for liquidation and distribution. When the program is completed, the Catawba Indians will cease to be subject to the Federal Indian laws, but their status and rights under South Carolina law will not be affected.

The Catawba Indians in South Carolina have only a relatively short history of relationships with the Federal Government. They made a treaty with South Carolina November 10, 1763, by which their original reservation was set aside for them. In 1840 they agreed with the State to a cession of this reservation with the exception of a single square mile of land, which is still held in trust for them by the State. In return for the Catawba land, the State provided services to them. The United States never made a treaty with these Indians. They have no claims filed with the Indian Claims Commission.

Efforts were made to bring the Catawba Indians under Federal jurisdiction during the 1930's when their plight was especially aggravated by the general depression. These efforts culminated in a memorandum of understanding approved on December 14, 1943, in which the Indians, the State, and the Bureau



of Indian Affairs each agreed to take certain actions to alleviate the Catawbas' depressed economic condition. The agreement did not specify that the Federal Government was assuming guardianship of these Indians, and neither the Indians nor the State ever claimed that the Catawbas were wards of the Federal Government.

In accordance with the memorandum of understanding, the State bought 3,434.3 acres of land for the Catawbas and by warranty deed dated October 5, 1945, the State conveyed the land to the United States in trust for the tribe. It is this land and the accumulated assets from operating it that would be conveyed under the provisions of the bill. Research Materials I-5, I-6.

On September 29, 1959, Congress enacted an act entitled, "Catawba Tribe of South Carolina: Division of Assets", 25 U.S.C. §§ 931 et seq. Section 931 provides that a final roll of the Tribe shall be established. Section 932 provides that members of the final roll shall be eligible to receive a share of the Tribe's assets. Section 933 provides a vehicle whereby the Secretary of the Interior shall appraise the Tribe's assets, allow members to select a share of the assets, and shall sell those assets not selected and distribute the money received. Section 934 authorizes the Secretary of the Interior to execute conveyancing instruments necessary to convey marketable title to those reservation lands held in trust which are selected so that each grantee would receive unrestricted title. Section 935 revokes the federal tribal constitution, terminates federal services and makes the Tribe and its members subject to state laws. Section 936 preserves the rights of the Tribe and its members under the laws of South Carolina. Section 937 provides tax exemptions of the distribution of tribal property, and finally § 938 provides that the Secretary of the Interior shall establish education and training programs for the Catawba Indians.

The sparse legislative history of the Act and as well as its language reveals that Congress honored the wishes of the Catawba Tribal Council, by removing the federal restrictions on the 3,383 acre federal reservation and distributing the Tribe's assets among the Tribe's members. The letters from Assistant Secretary of the Interior Ernst confirm that the distribution was intended to affect only those lands transferred to the United States under the 1943 Memorandum of Understanding. Furthermore, the Assistant Secretary's letters



show that Congress never contemplated that the distribution act would affect either Catawba aboriginal land claims or Catawba title land claims originating in the 1763 treaty. Indeed, the Assistant Secretary's letters left the Congress with the impression that there were no other assets held in trust by the United States, aside from the 3,434 acres, which required distribution under the Act. Because Congress was led to believe that the only tribal assets which existed and hence would be distributed were the lands acquired during the limited period of federal assistance, Congress never contemplated, much less intended the distribution act to extinguish Indian land claims which had never been brought to its attention.

2. The Division of Trust Assets Act did not Affect the Catawba Tribe's Reservation Claims

In Section 5 of the Catawba Division of Assets Act of 1959, Congress included the following language:

Thereafter, the Tribe and its members shall not be entitled to any of the special services performed by the United States for Indians because of their status as Indians, all statutes of the United States that affect Indians because of their status as Indians shall be inapplicable to them, and the laws of the several States shall apply to them in the same manner they apply to other persons or citizens within their jurisdiction.  
25 U.S.C. § 935.

It could be argued that in Section 5 of the Act, Congress effectively extinguished the Catawba's reservation claims by making inapplicable to the Catawba Tribe federal statutes, particularly the Nonintercourse Act, which were enacted to protect Indian occupancy such as the Catawbas enjoyed under the Treaty of Augusta of 1763. There are several reasons why this construction of the scope and effect of the language included in Section 5 is improper.

The title to Congress' Act of September 21, 1959, is CATAWBA TRIBE OF SOUTH CAROLINA: DIVISION OF ASSETS. As we have shown in the Act, Congress directed the Secretary of the Interior to determine the assets of the Tribe that were held in federal trust, to determine the membership of the Tribe and to carry out the distribution of the Tribal assets equitably among the members of the Tribe.

The distribution was to effectively extinguish the federal reservation created in 1943, but would not affect