



## INTERIOR BOARD OF INDIAN APPEALS

Estate of Peter Alvin Ward

19 IBIA 196 (02/05/1991)

Also published at 98 Interior Decisions 14

Judicial review of this case:

Dismissed, *Quileute Indian Tribe v. Lujan*, No. CV-91-558-JCC, 1992 WL 605423

(W.D. Wash. Aug. 28, 1992)

Dismissal Affirmed, 18 F.3d 1456 (9th Cir. 1994)

Related Board case:

17 IBIA 95



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

## ESTATE OF PETER ALVIN WARD

IBIA 90-60

Decided February 5, 1991

Appeal from an order denying petition for rehearing issued by Administrative Law Judge William E. Hammett in Indian Probate IP PO 46L 87-56.

Reversed.

1. Indian Probate: Indian Land Consolidation Act: Escheat--Statutory Construction: Indians--Statutory Construction: Legislative History

Where Congress, in amending an existing statutory provision, indicates an intent to clarify that provision, the amendment and its legislative history may be used in construing the original enactment.

2. Indian Probate: Indian Land Consolidation Act: Escheat

Interests subject to the escheat provision in 25 U.S.C. § 2206(a) (1988) escheat only to the tribe with governmental jurisdiction over the reservation or off-reservation area in which the interests are located.

APPEARANCES: Richard Reich, Esq., and Amy L. Crewdson, Esq., Taholah, Washington, for the Quinault Indian Nation; Kerry E. Radcliffe, Esq., and William C. Lewis, Esq., Seattle, Washington, for the Quileute Indian Tribe; Vernon Peterson, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Portland, Oregon, for the Bureau of Indian Affairs.

## OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Quinault Indian Nation seeks review of a January 26, 1990, order denying rehearing issued by Administrative Law Judge William E. Hammett in the estate of Peter Alvin Ward (decedent). For the reasons discussed below, the Board reverses that order.

Procedural Background

Decedent, unallotted Makah 130-7498, died intestate on August 20, 1986, owning interests in trust allotments on the Quinault, Quileute, and Makah Reservations. On September 15, 1988, Judge Hammett issued an order in the estate, in which he determined that decedent's heirs were his widow and his daughter. 1/ Noting that certain of decedent's interests were subject to escheat under section 207 of the Indian Land Consolidation Act (ILCA), 25 U.S.C. § 2206 (1988), 2/ the Judge retained jurisdiction "to issue a supplemental order to determine the tribal entity in which escheat shall be affirmed."

On February 7, 1989, Judge Hammett issued a "Supplemental Order Affirming Escheat," in which he determined, inter alia, that certain of decedent's interests in land within the Quinault Reservation escheated to the Quileute Tribe. Appellant attempted to appeal this order to the Board, but the Board dismissed the appeal as premature, holding that appellant was

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1/ This determination is now final for the Department of the Interior.

2/ All further references to the United States Code are to the 1988 edition.

required to first seek rehearing from Judge Hammett. Estate of Peter Alvin Ward, 17 IBIA 95 (1989). Appellant filed a petition for rehearing, which was denied on January 26, 1990. This appeal followed.

Briefs were filed by the Quinault Indian Nation, the Quileute Indian Tribe, and the Bureau of Indian Affairs (BIA).

### Historical Background

By Articles 1 and 2 of the Treaty of Olympia, July 1, 1855, and January 25, 1856, 12 Stat. 971, the Quinault and Quileute Tribes relinquished their claims to almost all of their territory, reserving for their use and occupation “a tract or tracts of land sufficient for their wants within the Territory of Washington, to be selected by the President of the United States.” Article 6 of the treaty authorized the President to remove the tribes from “said reservation or reservations to such other suitable place or places within said Territory as he may deem fit” to “consolidate them with other friendly tribes or bands,” and to assign reservation lands to individuals and families willing to locate on the lands as a permanent home. By Executive order of November 4, 1873, I C. Kappler, Indian Affairs: Laws and Treaties (Kappler) 923 (1904), a 200,000 acre reservation was established “[i]n accordance with the [Treaty of Olympia] and to provide for other Indians in that locality, \* \* \* for the use of the Quinaielt, Quillehute, Hoh, Quit and other tribes of fish-eating Indians on the Pacific coast.” The Quileutes refused to accept this as a reservation, stating that “their interpretation of the treaty was that they were to be given a reservation where they had always lived at the mouth of the Quillehute River.”

United States v. Moore, 62 F. Supp. 660, 668 (W.D. Wash. 1945), aff'd, 157 F.2d 760, cert. denied, 330 U.S. 827 (1946). By Executive order of February 19, 1889, 1 Kappler 923, the Quileute Tribe was granted a reservation of its own near La Push, Washington.

Around the turn of the century, allotment of the Quinault Reservation was initiated under the provisions of the General Allotment Act of 1887, 24 Stat. 388. By the Act of March 4, 1911, 36 Stat. 1345, Congress authorized and directed the Secretary of the Interior

to make allotments on the Quinault Reservation, Washington, under the provisions of the allotment laws of the United States, to all members of the Hoh, Quileute, Ozette, or other tribes of Indians in Washington who are affiliated with the Quinault and Quileute tribes in the [Treaty of Olympia], and who may elect to take allotments on the Quinault Reservation rather than on the reservations set aside for these tribes: Provided, That the allotments authorized herein shall be made from the surplus lands on the Quinault Reservation after the allotments to the Indians thereon have been completed.

Issues concerning allotment of the Quinault Reservation reached the Supreme Court. In United States v. Payne, 264 U.S. 446 (1924), the Court held that forested land capable of being cleared for agricultural use was subject to allotment. In Halbert v. United States, 283 U.S. 753 (1931), it held that individuals of Chehalis, Chinook, and Cowlitz ancestry were entitled to allotments on the reservation and that reservation residence was not a prerequisite to allotment.

Allotment of the reservation continued through the early 1930's. In 1935, the Indians of the Quinault Reservation voted to accept the provisions

of the Indian Reorganization Act of 1934 (IRA), 25 U.S.C. §§ 461-479, under which further allotment of Indian reservations was prohibited.

Although the Quinault Reservation Indians voted to accept the IRA, they did not adopt a constitution under that Act but, instead, continued to operate under bylaws they had adopted in 1922. In 1965, they adopted revised bylaws; in 1975, they adopted a constitution. <sup>3/</sup> The 1965 bylaws and the 1975 constitution were formally recognized by the Associate Commissioner and the Commissioner of Indian Affairs, respectively, as the governing documents of the Quinault Indian Nation.

The Indians of the Quileute Reservation also voted to accept the IRA. The Quileute Tribe adopted a constitution under the Act; that constitution was approved by the Secretary of the Interior on November 11, 1936, under authority of 25 U.S.C. § 476.

### Discussion and Conclusions

At all times relevant to this appeal, section 207(a) of ILCA, 25 U.S.C. § 2206(a), provided:

No undivided interest in any tract of trust or restricted land within a tribe's reservation or otherwise subject to a tribe's jurisdiction shall descend by intestacy or devise but shall escheat to that tribe if such interest represents 2 per

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<sup>3/</sup> Article II, section I, of the 1975 constitution defines "member" as "(a) Any person of 1/4 Quinault, Queets, Quileute, Hoh, Chinook, Chehalis, or Cowlitz blood of one of the named tribes or combined, not a member of any other federally recognized Indian tribe, (b) any person adopted into the Nation by a majority vote of the General Council."

centum or less of the total acreage in such tract and is incapable of earning \$100 in any one of the five years from the date of decedent's death.

The issue in this appeal is whether land originally allotted to Quileute Indians within the Quinault Reservation is "within the [Quileute Tribe's] reservation or otherwise subject to [its] jurisdiction" for purposes of this provision. <sup>4/</sup> The Board is aware that related issues concerning the rights of other tribes and/or individuals in the Quinault Reservation have been, and continue to be, litigated. See, e.g., Confederated Tribes of the Chehalis Reservation v. Lujan, 129 F.R.D. 171, 17 Indian L. Rep. 3025 (W.D. Wash. 1990), appeal pending, No. 90-35192 (9th Cir.), in which four tribes and nine individuals challenge the Secretary of the Interior's recognition of the Quinault Indian Nation as the sole governing authority for the reservation. <sup>5/</sup> It is apparent that there are unresolved issues concerning rights in this reservation; most of these issues must be decided in other forums. In this appeal, it is the Board's narrow task to determine whether Congress intended in 25 U.S.C. § 2206(a) to permit the escheat of interests in land on the Quinault Reservation to a tribe other than the Quinault Indian Nation.

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<sup>4/</sup> For purposes of this appeal, the Board assumes that the allotments at issue were in fact made to Quileute Indians. The record in this case is sketchy at best with respect to the tribal affiliations of the original allottees. Were the Board to conclude that interests on the Quinault Reservation could escheat to the Quileute Tribe, this case would have to be remanded to the Administrative Law Judge for further documentation concerning the allottees.

<sup>5/</sup> Plaintiffs are the Federally recognized Chehalis and Shoalwater Bay tribes; the non-Federally recognized Chinook and Cowlitz tribes; and nine individuals, who are members of the Quileute, Makah, Hoh and Quinault tribes. The district court dismissed the case for failure to name an indispensable party, the Quinault Indian Nation.

Judge Hammett did not explain his rationale for holding that the interests at issue here escheat to the Quileute Tribe. For purposes of this decision, the Board assumes that his reasons were the same or similar to the arguments put forth by the Quileute Tribe in this appeal.

The Quileute Tribe contends that it has rights in the Quinault Reservation under the Treaty of Olympia, the 1873 Executive order, and the 1911 statute, and that these rights were not affected by the creation of the Quileute Reservation at La Push or the fact that the Quinault Indian Nation is a "consolidated" tribe consisting of members of various tribal ancestry. The Tribe further contends that its rights in the Quinault Reservation were judicially confirmed in Williams v. Clark, 742 F.2d 549 (9th Cir. 1984), cert. denied, 471 U.S. 1015 (1985). <sup>6/</sup> With respect to section 2206(a), the Tribe argues that Congress intended small fractional interests to escheat to the tribe of the original allottee. Finally, the Tribe argues that an escheat of interests in Quileute allotments to the Quinault Nation would abrogate the Quileute Tribe's treaty and Fifth Amendment rights.

The Quinault Indian Nation and BIA argue that Judge Hammett's decision should be reversed. They contend, inter alia, that the United States has long recognized the Quinault Indian Nation as the tribe with exclusive authority to govern the Quinault Reservation and that Congress intended in

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<sup>6/</sup> This decision reversed a decision of the United States District Court for the Western District of Washington, Williams v. Watt, No. C81-700R (Oct. 17, 1983), which had affirmed the Board's decision in Estate of Joseph Willessi, 8 IBIA 295, 88 I.D. 561 (1981).

section 2206(a) that small fractional interests would escheat to the governing tribe of a reservation regardless of the tribal affiliation of the original owners of the interests.

The decision of the United States Court of Appeals for the Ninth Circuit in Williams v. Clark appears, at first glance, to be strongly supportive of the Quileute Tribe's position here. That decision concerned the right of an individual Quileute Indian to devise an allotment on the Quinault Reservation to another Quileute Indian who was not his heir. Under 25 U.S.C. § 464, as originally enacted and as applicable to the case, such devises could be made only to "the Indian tribe in which the lands \* \* \* are located [or] to any member of such tribe \* \* \* or any heirs of such member." The court of appeals held that a member of the Quileute Tribe was a permissible devisee under former section 464, stating that the Quileute Tribe had unextinguished property rights in the Quinault Reservation and exercised jurisdiction over the reservation.

The Quileute Tribe argues that the Board is bound by the decision in Williams and must follow the precedent set therein. The Board agrees that it is bound by the holding in Williams. However, that holding pertained to former 25 U.S.C. § 464, not 25 U.S.C. § 2206(a). The court's language concerning jurisdiction was clearly dicta, and the court specifically declined to expand its statement concerning jurisdiction beyond the specific facts of the case before it. Z/ It is clear that the court of appeals did not rule

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Z/ With respect to jurisdiction, the court stated: "We therefore hold that both the Quileute Tribe and the Quinault Tribe exercise jurisdiction

explicitly in Williams that the Quileute Tribe has jurisdiction over the Quinault Reservation for purposes of 25 U.S.C. § 2206(a).

Further, the two sections are not so analogous that the court's holding concerning former section 464 is necessarily applicable as well to section 2206(a). Rather, the implications of the court's analysis for the two sections are quite different. The aspect of section 464 at issue in Williams was the right of individual Indians to devise property to other individual Indians; despite the court's broad language concerning tribal treaty rights and jurisdiction, the result of its holding was simply to expand the rights

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fn. 7 (continued)

over the Quinault Reservation and either may be considered the tribe in which the lands are located for purposes of IRA § 4 [25 U.S.C. § 464],” 742 F.2d at 555, and “[w]e do not consider here whether tribes other than the Quinault and Quileute also have jurisdiction over the Quinault Reservation for IRA § 4 purposes under the Executive Order of November 4, 1873. Further, we do not consider the extent of the Quileute Tribe's jurisdiction over the Quinault Reservation.” Id. at note 8.

The Solicitor General of the United States, on behalf of the Secretary of the Interior, opposed the petition for certiorari filed in Williams, because of the narrow reach of the decision. In his brief before the Supreme Court, the Solicitor General stated:

“While the judgment of the court of appeals is inconsistent with the result we urged below, we see no warrant for further review in this Court. The court of appeals’ decision is exceedingly narrow; it merely holds that, for the purposes of a superseded version of Section 4 of the IRA, the Quileute Tribe has a sufficient property interest in the Quinault Reservation to allow its members to devise their trust allotments to one another. Although the panel’s opinion does contain unnecessary and ambiguous dicta concerning shared Quileute jurisdiction over the Quinault Reservation, the panel was generally careful to limit its holding to the question of devisability of Quileute property interests under the former language of Section 4 of the IRA \* \* \* The court of appeals’ decision does not disturb the federal government’s longstanding recognition of the Quinault Nation’s exclusive political jurisdiction over the Quinault Reservation.”

(Emphasis in original). Brief for the Secretary of the Interior in Opposition to Petition for Certiorari, Elvrum v. Williams, United States Supreme Court, No. 84-943, at 5-6.

of individual Indians over their own property. <sup>8/</sup> By contrast, a conclusion that a tribe has jurisdiction for purposes of section 2206(a) would unequivocally recognize that tribe as possessing governmental authority over the land in question. This is so because of Congress' clear intent that the term "jurisdiction" as relevant to ILCA was to mean "governmental authority." See H.R. Rep. No. 908, 97th Cong., 2nd Sess. 8 (1982): "For the purposes of this Act, tribal jurisdiction means that the tribe exercises civil governmental powers over the lands involved or that the Secretary of the Interior recognizes that the tribe has the authority to exercise civil governmental powers over such lands."

Because application of the court's analysis in Williams would produce a significantly different result in this case than it did in Williams and because the court specifically disclaimed an intent to expand its ruling beyond the case before it, the Board concludes that Williams is not controlling here and, therefore, does not compel a conclusion that the Quileute Tribe has jurisdiction over the Quinault Reservation for purposes of 25 U.S.C. § 2206(a).

The Department of the Interior has long recognized the Quinault Indian Nation as the governmental authority for the Quinault Reservation. Although the 1975 constitution has not been approved by the Secretary, it has been

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<sup>8/</sup> Under the present version of section 464, these rights are expanded further. In 1980, the section was amended to permit devises to heirs, lineal descendants, and "any other Indian person for whom the Secretary of the Interior determines that the United States may hold in trust [sic]." Act of Sept. 26, 1980, P.L. 96-363, § 1, 94 Stat. 1207.

formally recognized by the Commissioner of Indian Affairs as the Nation's governing document. In that document, the Quinault Nation asserts "jurisdiction and governmental power" over the Quinault Reservation. See also, e.g., with respect to the history of the Department's recognition of the Quinault Indian Nation, Memorandum of the Acting Associate Solicitor, Division of Indian Affairs, to Commissioner of Indian Affairs, March 18, 1980, reprinted in Return Land to the Quinault Indian Nation: Hearings before the Senate Select Comm. on Indian Affairs, 100th Cong., 2d Sess. 94 (1988).

By the same token, the Department has long recognized the authority of the Quileute Tribe as limited to the Quileute Reservation. The Quileute constitution as approved by the Secretary in 1936, provides at Article I: "The jurisdiction of the Quileute Tribe shall include all the territory within the original confines of the Quileute Reservation as set forth by Executive order of February 19, 1889, and shall extend to such other lands as have been or may hereafter be added thereto under any law of the United States, except as otherwise provided by law." Article VIII, section 1, concerning allotted lands and the Tribe's power over them, is also limited to lands within the Quileute Reservation.

In Edwards, McCoy & Kennedy v. Acting Phoenix Area Director, 18 IBIA 454 (1990), the Board held that all Department of the Interior officials, including the Board, are bound by the Secretary's approval of a tribal constitution. In this case, no reason appears why the Secretary's and

Commissioner's approval and recognition, respectively, of the two tribes' governing documents should not also be considered binding. <sup>9/</sup>

It is not necessary to rely solely on these documents, however, or on the precedent of the Department's historical dealings with these two tribes. Congress has also clearly indicated that it recognizes the Quinault Indian Nation as the sole tribal governmental authority for the Quinault Reservation. Recently, the Senate report accompanying the National Indian Forest Resources Management Act, Title III of the Act of November 28, 1990, P.L. 101-630, 104 Stat. 4531, expressed this recognition:

The phrase "reservation's recognized tribal government" is deliberately utilized throughout S. 1289 and this report. The phrase is necessary to avoid confusion since several distinct tribes or descendants of tribes may reside on a single reservation. For example, the Congress has consistently recognized the Quinault Indian Nation as the governing body of the Quinault Indian Reservation which includes residents of the Chinook, Cowlitz, Chehalis, Quileute, Hoh, Queets and Quinault tribal groups. [<sup>10/</sup>]

S. Rep. No. 402, 101st Cong., 2nd Sess. 9 (1990). Congress' recognition of the Quinault Indian Nation as the governing body of the reservation is also

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<sup>9/</sup> While the court of appeals stated in Williams that the jurisdictional language in the Quileute constitution did not extinguish the tribe's property rights in the Quinault Reservation, 742 F.2d at 554, its statement did not address the governmental power of the tribe.

<sup>10/</sup> Section 304(11) of the National Indian Forest Resources Management Act defines "Indian tribe" or "tribe" as "any Indian tribe, band, nation, Pueblo or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and shall mean, where appropriate, the recognized tribal government of such tribe's reservation."

Concerning this definition, H.R. Rep. No. 835, 101st Cong., 2nd Sess., (1990), states at page 17:

"The definition of 'Indian tribe' and 'tribe' is amended in the substitute to make clear that, where the terms are used in the legislation, in contextual circumstances indicating that some decisional action or

evidenced by, e.g., statutes transferring lands to the Quinault Tribe or Quinault Indian Nation. Act of August 26, 1959, 73 Stat. 427; Act of October 15, 1962, 76 Stat. 913; Act of November 8, 1988, 102 Stat. 3327.

The Federal courts have also recognized the governmental authority of the Quinault Indian Nation over the Quinault Reservation. E.g., United States v. Washington, 384 F. Supp. 312, 374 (W.D. Wash. 1974), aff'd, 520 F.2d 676 (9th Cir. 1975), cert. denied, 423 U.S. 1086 (1976); Cardin v. DeLaCruz, 671 F.2d 363 (9th Cir.), cert. denied, 459 U.S. 967 (1982); Snow v. Quinault Indian Nation, 709 F.2d 1319 (9th Cir. 1983), cert. denied, 467 U.S. 1214 (1984).

In view of this consistent history, the Board concludes that, for the purposes of 25 U.S.C. § 2206(a), the Quinault Indian Nation is the only tribe with governmental authority over the Quinault Reservation.

The Quileute Tribe's arguments, however, appear to be premised, not upon a claim of governmental authority over the Quinault Reservation, but upon a claim of property rights in the reservation. 11/ Therefore, the

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fn. 10 (continued)

authority is implied, the terms mean the recognized tribal government of such tribe's reservation. The amendment is to avoid confusion and litigation where two or more historical tribes or descendants of such tribes are located or reside upon the same reservation. Under those circumstances, it is intended that the governing body recognized by the Secretary shall be included in the definition. Because of the amendment of this definition, the phrase 'reservation's recognized tribal government' was deleted throughout the bill. However, no substantive change is intended."

11/ It is not clear from the Quileute Tribe's brief whether or not it is claiming to possess governmental authority over the Quinault Reservation. It speaks only of "property rights" and "treaty rights," with little indication of what it considers to be encompassed in the term "treaty rights." The Board notes that the Quileute Tribe is not among the plaintiffs in Confederated Tribes of the Chehalis Reservation, supra.

Board must consider whether Congress intended in 25 U.S.C. § 2206(a) to permit escheats to tribes which lack governmental authority over the land in question but which may have property rights in the land.

The Quileute Tribe argues that Congress intended for small interests to escheat to the tribe of the original allottee, quoting in support a statement on page 11 of H.R. Rep. No. 908, supra, which indicates that the escheat provision of ILCA was intended to consolidate small fractional “interests in the tribes once [sic] owned these lands before they were allotted.” 12/

The Quinault Nation and BIA argue that Congress intended in ILCA that small fractional interests would escheat to the governing tribe of the reservation on which the land was located. The order on appeal here, they argue, is contrary to the intent of ILCA because it does not serve the purpose of consolidation and because it weakens, rather than strengthens, the authority of a governing tribe over its reservation.

While the statute and its legislative history are not absolutely clear on the precise point at issue here, both the statutory language and the report language concerning tribal exercise of "civil governmental powers," quoted above, tend to indicate an intent to restrict escheats to

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12/ A necessary assumption of this argument is, of course, that the land in question was owned by the Quileute Tribe prior to allotment. Because of its disposition in this matter, the Board is not required to reach any conclusion concerning property rights of the Quileute Tribe in the Quinault Reservation. See also note 4, supra.

the tribe with governmental authority over the land concerned. The report language relied upon by the Quileute Tribe to oppose this interpretation is ambiguous at best.

When viewed in the context of the general purpose of ILCA, the intended meaning of section 2206(a) appears more certain. The goal of ILCA was to "allow Indian tribes: (1) to consolidate their tribal landholdings; (2) to eliminate certain undivided fractionated interests in Indian trust or restricted lands; and (3) to keep trust or restricted lands in Indian ownership by allowing tribes to adopt certain laws restricting inheritance of Indian lands to Indians." H.R. Rep. No. 908, supra at 9. It is also apparent that Congress intended to vest tribes with additional authority over lands within their reservations. See, e.g., 25 U.S.C. § 2205; H.R. Rep. No. 908; S. Rep. No. 632, 98th Cong., 2nd Sess. (1984). Neither this purpose nor the land consolidation purpose of ILCA would be served by escheating small fractional interests to tribes other than the governing tribe of the reservation on which the interests are located.

[1] In a recent amendment to 25 U.S.C. § 2206(a), Congress has clarified its intent in the original version of that section. Section 301 of the Act of November 29, 1990, P.L. 101-644, 104 Stat. 4662, amends the first sentence of section 2206(a) to read:

No undivided interest held by a member or nonmember Indian in any tract of trust land or restricted land within a tribe's reservation or outside of a reservation and subject to such tribe's jurisdiction shall descend by intestacy or devise but shall escheat to the reservation's recognized tribal government, or if outside of a reservation, to the recognized tribal government possessing jurisdiction over the land.

Senate Report No. 483, 101st Cong., 2nd Sess. 6 (1990), explains that this provision

amends the Indian Land Consolidation Act to make clear that lands within a reservation or other trust lands outside of reservations subject to the escheat provision, escheat to the recognized tribal government of the particular reservation, or to the tribal government that has jurisdiction over the off-reservation lands, and not to a different tribal government. For example, if a member of the Quinault Indian Nation who owns land within the Lummi Indian Reservation that is subject to the escheat provision of the Indian Land Consolidation Act, dies intestate, his land would escheat to the Lummi Indian Tribe, and not the Quinault Indian Nation.

The same report states at page 3 that two committee amendments to the amendment as originally drafted "provide further clarification that lands which escheat to a tribe should only include those lands that are within the jurisdiction of such tribe, whether on or off the reservation." It is apparent from the report language that Congress was aware of the problem that had arisen concerning the proper interpretation of section 2206(a) and that it intended the new language to clarify rather than alter the substance of the original version of this section. Accordingly, it is appropriate to consider the amendment and its legislative history in construing Congressional intent in the original version. See, e.g., Glidden Co. v. Zdanok, 370 U.S. 530, 541-543 (1962); May Department Stores v. Smith, 572 F.2d 1275, 1277-78 (8th Cir.), cert. denied, 439 U.S. 837 (1978); Johnson v. Heckler, 607 F. Supp. 875, 881 (N.D. Ill. 1984), aff'd, 769 F.2d 1202 (7th Cir. 1985); 1A Sands, Sutherland on Statutory Construction §§ 22.30-22.31 (4th ed. 1985).

[2] For the reasons discussed, the Board concludes that Congress intended in the original version of 25 U.S.C. § 2206(a) to restrict escheats of interests in trust or restricted land within an Indian reservation to the governing tribe of that reservation.

The Quileute Tribe's final arguments are that to escheat interests in Quileute allotments to the Quinault Nation would abrogate its treaty rights and constitute an unconstitutional taking of its property. The Board lacks authority to declare an act of Congress unconstitutional or violative of treaty rights. See, e.g., Redleaf v. Muskogee Area Director, 18 IBIA 268 (1990), and cases cited therein. Accordingly, the Board does not consider these arguments.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Hammett's January 26, 1990, order denying rehearing is reversed, and the land interests at issue in this appeal are held to escheat to the Quinault Indian Nation.

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//original signed  
Anita Vogt  
Administrative Judge

I concur:

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge