L. Lindley

CORPS OF ENGINEERS, U. S. ARMY
OFFICE OF THE DISTRICT ENGINEER
PITTSBURGH DISTRICT
925 NEW FEDERAL BUILDING
PITTSBURGH 19, PA.

IN REPLY REFER TO

OVPVG

29 March 1957

Miss Sara N. H. Houghton, Clerk
Media Monthly Meeting of the
Religious Society of Friends
Third Street and North Avenue
Media, Pennsylvania

Dear Miss Houghton:

Allegheny Reservoir,
Pennsylvania and New York

Your letter of 2 February 1957, concerning the above subject and addressed to the President of the United States, was referred to this office for direct reply. The District Engineer has the direction of the Allegheny Reservoir project activities since the Allegheny River is in the Pittsburgh District.

There is inclosed a "Statement on the Relationship between the Allegheny Reservoir Project and the Allegany Indian Reservation", which discusses the relationship in some detail and provides answers to the questions raised in your letter.

I trust that this explanation will serve to dispel any misunderstanding you may have had regarding the matter.

Sincerely yours,

Roy S. Kelley

1 Incl
Statement

ROY S. KELLEY
Colonel, Corps of Engineers
Executive Officer

CORPS OF ENGINEERS, U. S. ARMY
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Statement on the Relationship between the Allegheny Reservoir Project and the Allegany Indian Reservation

The Allegheny Reservoir Project will affect a portion of the Allegany Indian Reservation of the Seneca Nation of Indians. Consideration has been given to the viewpoint of some persons that the Project should not be prosecuted because of the rights of the Seneca Nation under a treaty with the United States (Treaty of 11 November 1794, 7 U. S. Statutes at Large 44).

The Allegheny Reservoir Project was authorized by the Flood Control Acts of 1936, 1938 and 1941. It was authorized after studies were made by the Corps of Engineers and were reviewed by the Board of Engineers for Rivers and Harbors, and after Congress gave due consideration to the matter.

The 1936 Flood Control Act contained a declaration of the policy of Congress that destructive floods causing loss of life and property and obstruction of commerce constitute a menace to national welfare and that improvements of waterways for flood control purposes are in the interest of the general welfare. The Allegheny Reservoir Project is one of such improvements, and has been determined to be economically sound. The location of projects is necessarily based on physical conditions and engineering determinations. Based on many years of exhaustive studies, it has been determined that physical and economic factors make it impracticable to have this project in a location other than that selected. Various alternate plans including a system of small dams and diversion schemes have been investigated and found to be entirely lacking in economic justification and ineffective in accomplishing the flood control and flow regulation purposes for which the Allegheny Reservoir is designed.

When the question of the treaty rights of the Seneca Nation is examined in the light of the Constitution and judicial and legislative precedent, it is evident that the above mentioned national policy can be satisfied consistently with good faith to the Indians. In fact, this has been the case in recent reservoir projects prosecuted in the western part of the country where tribal lands were involved.

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Congress in the exercise of its constitutional powers to regulate commerce has the authority to regulate navigation and to provide flood protection and watershed development. If the United States has determined its need for certain land for a public use that is within its sovereign powers, it must have the right to appropriate that land, for otherwise an owner who refused to sell at all or only at an unreasonable price could subordinate the Constitutional powers of Congress to his own will. Accordingly, the courts have held that lands, whether owned by private parties, states, municipalities, or Indians, can be appropriated by the Federal Government for public use within its delegated powers. In the appropriation of lands the United States is liable under the Fifth Amendment to make just compensation. Since the United States cannot be sued without its consent, the "moral" obligation of Congress is to assure that the courts are open for recovery of just compensation if agreement cannot be reached.

Congress no longer makes treaties with Indians (Act of March 3, 1871). Co-existence of separate sovereignties within the same geographical boundaries is considered basically untenable. Congress has long regulated Indian affairs by exercise of its legislative power. The effect of the 1794 Treaty with the Seneca Nation is the recognition by the United States that the Nation has a vested property right. But this property right, like property rights held by any other party, is, as mentioned above, subject to the inherent right of the Government to appropriate property for public use in the exercise of the powers granted Congress by the Constitution.

The integration of Indians into our civilization has been and is the policy of Congress. The Citizenship Act of 2 June 1924 declared all non-citizen Indians born within the territorial limits of the United States to be citizens. Prior to the act about two-thirds of the Indians of the United States had already acquired citizenship. The Indians of New York are among the most advanced in the country as evidenced by recent legislation and legislative history pertaining thereto. The legislation is Public Law 785, approved 13 September 1950, which conferred jurisdiction on the courts of the State of New York with respect to civil actions between Indians or to which Indians are parties, and Public Law 690, approved 14 August 1950, which authorized the Seneca Nation to lease lands within the Cattaraugus, Allegany and Oil Springs Reservations (outside the limits of certain villages, where the Seneca Nation already had leasing power) and to collect and disburse moneys realized from leases. The Legislative History for Public Law 785 (U. S. Code Congressional Service, 81st Congress, Second Session, 1950, Vol. 2, pages 3731, 3732) states: "The Indians of New York have been classified by the Indian Bureau as among the most advanced in the Nation, and the Bureau has stated that they are in no further need of governmental supervision or control.....The enactment of this legislation into law would certainly be in line with the established policy of the Public Lands Committee in its dealings with the Indians; i. e., this committee is especially interested in passing legislation which will lead to the gradual assimilation of the Indian population into the American way of

life, and the gradual but final complete removal of governmental supervision and control." The Legislative History for Public Law 690 (U. S. Code Congressional Service, 81st Congress, Second Session, 1950, Vol. 2, pages 2978, 2982) states: "It is the judgment of your committee that these Indians (i. e. members of the Seneca Nation) are competent to manage their own affairs and to assume the responsibilities which will be placed upon them by the provisions of this bill, as proposed to be amended. The enactment of this bill will make it possible for the United States to withdraw from certain operations which it is now carrying on in respect to these New York Indians, and will enable the Bureau of Indian Affairs to close its Salamanca Agency."

It should be understood that this Project does not mean the end of the Allegany Indian Reservation. The effect of the Project on the Indian Reservation is indicated in the following table:

ALLEGANY INDIAN RESERVATION
CATTARAUGUS COUNTY
NEW YORK

This reservation may be generally described as a strip of land about 1.6 miles in width, bordering on each side of the Allegheny River, upstream from the N. Y.-Pa. State Line for a distance of about 29 miles and containing 30,469 acres.

	Acres
Total area of reservation	30,469
Area below reservoir-full elevation 1365	9,014
Area below maximum summer pool elevation 1328	3,667
Area between elevations 1365 and 1328	5,347 *
Residual area	21,455

* This area, being subject to intermittent flooding only, would be utilizable for crops, grazing, hunting, trapping and access to water areas. No habitations or floatable structures would be permitted.

The population of the Allegany Indian Reservation in 1950 was 1,131. The number of Seneca Indians in the portion of the Indian Reservation affected by the Project has not yet been determined but is estimated from 250 to 500.

In the prosecution of the Project, highways which service the Indian Reservation will be adjusted to furnish equivalent service, and cemeteries will be relocated in a suitable location in the vicinity not subject to flooding and to which convenient access would be afforded. The views of the Seneca Nation on the relocations of highways and cemeteries would, of course, be solicited, and earnest endeavor would be made to reach a mutually agreeable solution.

This office considers feasible a plan whereby the Government would acquire only easements over the affected portion of the Indian Reservation for flooding and clearing on account of the operation of the Allegheny Reservoir Project. By acquisition of easements only the Reservation would remain intact and in Indian ownership, so that the Nation would have for enjoyment, not only the area of its Reservation not affected by the Project but also the affected area to the extent compatible with the operation of the Project. Further, this Project has a significant recreational potential worthy of consideration by the Seneca Nation.

This office will make every effort to reach an agreement with the Seneca Nation which will provide just compensation for the interests in the portion of the Indian lands required for the Allegheny Reservoir Project. If agreement cannot be reached and acquisition must be by other means, just compensation will in any event be provided.

This office has gone to some detail in this statement in an effort to make clear that the rights of the Seneca Nation have been considered and that good faith will be observed not only in the matter of just compensation but also in that thorough consideration has been and continues to be given to a plan which will, to the extent possible, make the Indian Reservation and the Reservoir Project compatible.

Incoming Correspondence. March–May, 1957. MS The Indian Rights Association, 1882-1986: Series 1, Correspondence, 1864–1989 Box 139, Folder 3. Historical Society of Pennsylvania. Indigenous Peoples of North America, link.gale.com/apps/doc/AECJTD448265322/INDP?u=umuser&sid=bookmark-INDP. Accessed 12 Nov. 2026.