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THE WHITE HOUSE

WASHINGTON

August 22, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS 

SUBJECT:

Enrolled Bill H.R. 4707 - Arizona Wilderness

Richard Darman has asked for comments on the above-referenced enrolled bill by noon, August 27. The bill would designate certain areas of Arizona as wilderness lands or parts of the National Wild and Scenic Rivers System, and release other Federal lands not so designated for multiple use management. The released lands would not be subject for reconsideration as wilderness areas for 10-15 years. The bill, embodying many Administration proposals, passed both Houses by voice vote. Section 101(e) (1) of the bill specifies that the designations of Federal wilderness areas do not pre-empt application of State water law.

OMB, Agriculture, Interior and CEQ recommend approval. I have reviewed the memorandum for the President prepared by OMB Assistant Director for Legislative Reference James M. Frey, and the bill itself, and have no objections.

THE WHITE HOUSE

WASHINGTON

August 22, 1984

MEMORANDUM FOR RICHARD DARMAN  
ASSISTANT TO THE PRESIDENT  
AND DEPUTY TO THE CHIEF OF STAFF

FROM: FRED F. FIELDING Orig. signed by FFF  
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled bill H.R. 4707 - Arizona Wilderness

Counsel's Office has reviewed the above-referenced enrolled bill, and finds no objection to it from a legal perspective.

FFF/JGR/lmp 8/22/84  
cc: FFF/JGR/Chron/Subj

THE WHITE HOUSE

Office of the Press Secretary  
(Dallas, Texas)

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For Immediate Release

August 23, 1984

The President today signed H.R. 4280 which amends the Employee Retirement Income Security Act (ERISA) of 1974 and the Internal Revenue Code to provide greater equity, especially for women, in the provision of retirement income under private sector pension plans.

# # #

THE WHITE HOUSE  
Office of the Press Secretary  
(Dallas, Texas)

For Immediate Release

August 23, 1984

STATEMENT BY THE PRESIDENT

I am pleased to sign into law H.R. 4280, the Retirement Equity Act of 1984. This important legislation is the first private pension bill in our history to recognize explicitly the importance of women both to the American family and to the Nation's labor force. It contains significant measures to enhance women's ability to earn pensions in their own right. It improves and protects the vital role of pensions as retirement income to widows.

An end to inequities in the provision of pension benefits to women has been a top priority of my Administration. In September 1983, I sent to Congress our own pension equity bill. I am pleased that most of that bill has been incorporated into this legislation I have now approved.

Existing pension rules, when originally enacted, did not fully anticipate the dual roles many women have come to play as both members of the paid labor force and as wives and mothers during periods of full-time work in the home. Provisions in many pension plans now operate in ways that fail to recognize paid work performed by women at certain periods in their lives and penalize them for time spent in childrearing. To address this inequity, the Retirement Equity Act lowers the age limits on participation and vesting, permitting more pension credits to be earned during the early working years when women are most likely to be employed. The legislation also eases break-in service rules so that parents who bear children and stay home to care for them in the early years will no longer lose the pension credits they previously earned while working.

The Retirement Equity Act also clarifies that each person in a marriage has a right to benefit from the other's pension. No longer will one member of a married couple be able to sign away survivor benefits for the other. A spouse's written consent now will be required on any decision not to provide survivors' protection. The legislation also helps assure that when a vested employee dies before retirement, the employee's surviving spouse will benefit from the pension credits the employee has earned, and it restricts considerably the latitude now allowed pension plans to impose additional conditions on survivors' benefits. Survivors' benefits will be paid automatically in more instances than now. In addition, the bill makes it clear that State courts can allocated pension rights in divorce cases and other domestic relations settlements.

The enactment of this legislation has been a bipartisan effort, and I wish to thank the many Members of both the House and Senate for their hard work. This law is a most significant addition to our continuing efforts to remove economic discrimination against women in our Nation.

# # #



U.S. Department of Justice

Office of Legal Counsel

Office of the  
Assistant Attorney General

Washington, D.C. 20530

AUG 24 1984

MEMORANDUM FOR FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

Re: Enrolled Bill H.R. 4997, an Act to Authorize  
Appropriations to Carry Out the Marine Mammal  
Protection Act of 1972.

In accordance with our recent exchange concerning the need to ensure that the views of the Department of Justice concerning constitutional issues raised by enrolled bills are presented to the President for his consideration, I want to call your attention to the fact that, for reasons of which I am not aware, a signing statement we had recommended in connection with the above enrolled bill was apparently disregarded.

According to our usual practice, our concerns regarding this enrolled bill were included in an enrolled bill report addressed to David Stockman, Director, Office of Management and Budget (OMB), signed by Assistant Attorney General Robert A. McConnell, and dated July 11, 1984 (copy attached). The letter pointed out that the portion of the bill establishing the National Coastal Resources Research and Development Institute (the "Institute"), raised significant constitutional issues. Specifically, we noted that the Institute, which would be "established" by the Secretary of Commerce, was to be "administered" by a state agency, the Oregon State Marine Science Center. The "policies" of the Institute were to be determined by a six member board of Governors, composed of representatives appointed by the governors of five different states, and its director would be named by the Oregon Board of Higher Education. Because the purposes of the Institute could be read to include certain Executive Branch operational responsibilities, a question was raised whether the appointment of the Institute's Board of Governors was consistent with the Supreme Court's holding in Buckley v. Valeo, 424 U.S. 1 (1976), that persons "exercising significant authority pursuant to the laws of the United States" must be appointed by the President in accordance with the Appointments Clause of the Constitution, Article II, § 2, cl. 2. Id. at 126, 140-41.

Despite these concerns, however, we concluded that the constitutional problems raised by the bill could be avoided by giving the bill a careful construction that was supported by its legislative history, and that would be further supported by an appropriate Presidential signing statement. Our letter attached suggested language for this purpose. Unfortunately, no such signing statement was issued when the President signed the bill.

The problems presented by this bill are not trivial. Furthermore, the Appointments Clause issues raised by it are not atypical. Congress seems to be disregarding the President's authority, responsibility and prerogatives in this and other similar areas with increasing frequency. We are concerned that unless the President consistently notes his recognition of these problems and registers an objection to them, his silence will be taken as acquiescence in such inappropriate legislation.

As we have discussed, we will in the future send you a copy of our enrolled bill report concurrently with the transmission of our views to OMB. I hope this practice will eliminate the problems we have had in the past in communicating our legal advice to the President.

Theodore B. Olson  
Assistant Attorney General  
Office of Legal Counsel

cc: ✓ Richard Hauser  
Deputy Counsel to the President



U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

11 JUL 1984

Honorable David A. Stockman  
Director  
Office of Management and Budget  
Washington, D.C. 20503

Dear Mr. Stockman:

This Department has examined a facsimile of the enrolled bill H.R. 4997, an Act to authorize appropriations to carry out the Marine Mammal Protection Act of 1972, for fiscal years 1985 through 1988, and for other purposes. Because we believe that Title II of the bill, establishing the National Coastal Resources Research and Development Institute (the "Institute"), raises important and fundamental constitutional issues, we recommend that the President include a signing statement with the bill expressing his concern regarding its constitutionality and directing the Secretary of Commerce to implement the Act, after consultation with the Attorney General, consistent with all applicable constitutional requirements.

Title II of the bill states that the Secretary of Commerce "shall provide for the establishment" of the Institute, which is to be "administered" by a state agency, the Oregon State Marine Science Center. In fulfilling its statutory mandate, the Institute would "conduct research and carry out educational and demonstration projects designed to promote the efficient and responsible development of ocean and coastal resources, including arctic resources." The "policies" of the Institute would be determined by a six member Board of Governors, composed of representatives appointed by the Governors of five states -- Alaska, California, Hawaii, Oregon, and Washington. A separate state agency, the Oregon Board of Higher Education, would name the Institute's Director. Although the activities of the Institute would be subject to an "ongoing evaluation" by the Secretary of Commerce "to ensure that funds received by the Institute under this title are used in a manner consistent with [its] provisions," the bill specifies that employees of the Institute are not to be considered employees of the Federal government.



Because the Institute would be established under Federal law, a question can be raised whether the procedures for selecting its Board of Governors and Director satisfy the requirements of the Appointments Clause, Article II, § 2, cl. 2, of the Constitution. This Clause provides that the President shall nominate all "Officers of the United States" whose appointment is not otherwise provided in the Constitution. The Supreme Court has stated that the term "Officers" includes any persons "exercising significant authority pursuant to the laws of the United States." Buckley v. Valeo, 424 U.S. 1, 126, 140-41 (1976). Persons who are not Officers may perform functions that are basically "investigative and informative," which are removed from the administration and enforcement of the public law, such as advisory functions. Id. at 137-139. The Court has explicitly stated, however, that certain functions must be performed by properly appointed Officers of the United States. Id. at 140-141. These include, for example, the power (1) to make "determinations of eligibility for [public] funds," (2) to promulgate rules and regulations, (3) to issue advisory opinions, and (4) to conduct litigation to vindicate public rights. Id.

Unless a careful construction is given to Title II of this bill, the appointment by state officials of the Institute's Board of Directors, who set the "policies" for the Institute, and of its Director, who "administer[s]" the Institute, might be held to be unconstitutional. Under the Act, the Institute is to "conduct research and carry out educational and demonstration projects." Although the Appointments Clause does not preclude "investigative and informative" responsibilities from being undertaken by persons who are not Officers of the United States, the carrying out of "educational and demonstration projects" by the Institute appears to go beyond these functions to include the exercise of "significant authority" within the meaning of Buckley. In addition, the Act could be interpreted to give the Director and the Board of Governors independent authority to make grants and disperse funds for such projects. The right to "determin[e] . . . eligibility for [public] funds" is specifically reserved to Officers of the United States under Buckley. To avoid the constitutional problems occasioned by the appointment of these officials by state authorities, the Department of Justice would have opposed the bill in its present form if it had been asked to comment before its passage.

Despite our concerns, we believe that these constitutional problems can be avoided in this case through a careful construction of the bill -- a construction that would be supported

by an appropriate Presidential signing statement and strict adherence to the fundamental principle that statutes should be construed to avoid constitutional problems. See Ashwander v. TVA, 297 U.S. 288, 346-48 (1936) (Brandeis, J., concurring). For example, the statute probably can be read merely to direct the Secretary of Commerce to "provide for the establishment" of the Institute under the auspices of the respective state governments pursuant state law, rather than as creating a Federal entity. This would make the Institute an instrumentality of state law, instead of Federal law. In addition, the authority of the Secretary of Commerce "to ensure that funds received by the Institute under this title are used in a manner consistent with the provisions of this title" could be read to require that he establish a grant agreement with the Institute and approve all grants of Federal money made by the Institute. Under this interpretation, Institute officials would not be making "determinations of eligibility for [public] funds." Thus, although we would only give a definitive construction to this statute after we have consulted with the Secretary of Commerce, we believe it could be implemented in a constitutional manner.

Because of these constitutional issues, it is important that the President express serious concerns in his signing statement regarding the bill's constitutionality and recognize the need for the bill to be construed carefully to avoid constitutional problems. This statement would also serve to remind Congress of the constitutional difficulties raised in the establishment of entities of this type, and would create a basis for a narrowing construction of the statute by the Executive branch. We have attached suggested language for a signing statement which we believe would accomplish these objectives.

Sincerely,

(Signed) Robert A. McConnell

Robert A. McConnell  
Assistant Attorney General  
Office of Legislative and  
Intergovernmental Affairs

STATEMENT BY THE PRESIDENT

I have today signed H.R. 4997, a bill to authorize appropriations to carry out the Marine Mammal Protection Act of 1972, for fiscal years 1985 through 1988, and for other purposes.

As its title indicates, the bill would authorize appropriations for the Marine Mammal Protection Act of 1972, as well as make several statutory amendments to that Act. The bill also provides for the establishment of a National Coastal Research and Development Institute. This Institute would "conduct research and carry out educational and demonstration projects designed to provide the efficient and responsible development of ocean and coastal resources."

Although I believe the Institute's efforts will make a valuable contribution to our understanding of important environmental issues, I am concerned that the structure Congress has chosen for administering the Institute could raise fundamental constitutional questions. Under the bill, the six member Board of Governors for the Institute, which sets the Institute's policies, would be appointed by Governors of various Western States, rather than by the President. The Director of the Institute would also be appointed by a state agency. The Attorney General has advised me that this vesting of appointment authority outside the Executive branch could constitute a violation of the Appointments Clause, Article II, § 2, cl. 2. The Supreme Court has decided that all "Officers of the United States," in other words, all persons "exercising significant authority pursuant to the laws of the United States," must be appointed by the President. Buckley v. Valeo, 424 U.S. 1, 126 (1976).


I fully support the important environmental goals which the Institute seeks to further. Nevertheless, this valid and worthy objective must be carried out consistent with the Appointments Clause. Accordingly, I have directed the Secretary of Commerce to seek the advice of the Attorney General in implementing this Act to ensure that the Act does not transgress constitutional limitations.

THE WHITE HOUSE

WASHINGTON

August 27, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Enrolled Bill S. 2201 -- Zuni  
Indian Tribe Land Conveyance

Richard Darman has asked for comments on the above-referenced enrolled bill by noon today. This bill would authorize conveyance of some 11,000 acres of Federal, State, and private land in Arizona to be held in trust for the Zuni Indians. The lands are said to be of religious significance; indeed, they contain a site known as Zuni Heaven, to which all Zuni spirits hasten. The bill contains several provisions designed to facilitate transfer of the lands, such as authorization for the Zunis to use certain Court of Claims funds to purchase the private land, and a provision deeming the transfer of private lands to be involuntary conversions for Federal tax purposes. The bill also requires the Secretary of the Interior to sell an amount of Bureau of Land Management land equal to the transferred private land to the local county government. The theory is that this will offset the county's loss of taxable land.

The Administration took no position on this bill, confident that it would not pass. That confidence turns out to have been misplaced, and now the affected agencies grudgingly advise that they have no objection to approval. Justice voiced some concern over whether Congressional action to aid the Zunis in acquiring land for religious purposes -- stated to be the purpose of the bill in the bill itself -- would violate the Establishment Clause. Justice concluded that it would not, and I concur. In light of the unique trust relationship between the Federal Government and the various Indian Tribes, assistance that would be unacceptable if extended to other groups should be considered constitutionally tolerable when extended to Indians.

Attachment

THE WHITE HOUSE

WASHINGTON

August 27, 1984

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING Orig. signed by FFF  
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 2201 -- Zuni  
Indian Tribe Land Conveyance

Counsel's Office has reviewed the above-referenced enrolled bill, and finds no objection to it from a legal perspective.

FFF:JGR:aea 8/27/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

August 27, 1984

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 2201 -- Zuni  
Indian Tribe Land Conveyance

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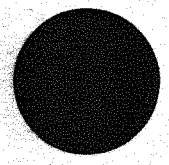
FFF:JGR:aea 8/27/84

cc: FFFielding/JGRoberts/Subj/Chron

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- O - OUTGOING
  - H - INTERNAL
  - I - INCOMING
- Date Correspondence Received (YY/MM/DD) 1/1

JGR



Name of Correspondent: Richard Darman

MI Mail Report      User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Enrolled Bill S. 2201 - Zuni Indian Tribe Land Conveyance

ROUTE TO:	ACTION	Tracking Date	Type of Response	Completion Date
Office/Agency (Staff Name)	Action Code	YY/MM/DD	Code	YY/MM/DD
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**ACTION CODES:**

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  - I - Info Copy Only/No Action Necessary
  - C - Comment/Recommendation
  - R - Direct Reply w/Copy
  - D - Draft Response
  - S - For Signature
  - F - Furnish Fact Sheet
  - X - Interim Reply
- to be used as Enclosure

**DISPOSITION CODES:**

- A - Answered
- C - Completed
- B - Non-Special Referral
- S - Suspended

**FOR OUTGOING CORRESPONDENCE:**

- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: \_\_\_\_\_


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# WHITE HOUSE STAFFING MEMORANDUM

DATE: 8/23/84 ACTION/CONCURRENCE/COMMENT DUE BY: 12:00 Noon MONDAY, 8/27

SUBJECT: ENROLLED BILL S. 2201 - ZUNI INDIAN TRIBE LAND CONVEYANCE

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	OGLESBY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input checked="" type="checkbox"/> P	<input checked="" type="checkbox"/> SS	VERSTANDIG	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FIELDING 	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HERRINGTON	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
McFARLANE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
McMANUS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

May we have your comments on the attached Bill by noon Monday, August 27. Thank you.

RESPONSE:

1984 AUG 23 P11 3: 12

Richard G. Darman  
Assistant to the President  
Ext. 2702





EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

AUG 23 1984

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2201 - Zuni Indian Tribe Land  
Conveyance  
Sponsor - Senator Goldwater (R) Arizona

Last Day for Action

August 29, 1984 - Wednesday

Purpose

Authorizes the conveyance of approximately 11,000 acres in Arizona to be held in trust for the Zuni Tribe for religious purposes.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	No objection
Department of Justice	No objection
Department of the Treasury	No objection (Informally)

Discussion

Background

S. 2201 would add a total of 11,049 acres of public domain, State, and private lands in Arizona to the Zuni Indian Reservation for religious purposes. This land would be held in trust for the benefit of the Zuni Tribe by the Secretary of the Interior.

The lands that S. 2201 would transfer to the Zuni Indians have been of religious significance to the Tribe for many centuries. These lands contain a site known as Zuni Heaven, which is the most sacred location in the Zuni religion because of the Zuni belief that it is the point to which all spirits return. Zuni Indians who practice their traditional religion hold various ceremonies and participate in pilgrimages within the lands which S. 2201 would transfer to the Tribe.

S. 2201 would provide for the acquisition of the 11,049 acres by (1) transferring 3,727 acres of Bureau of Land Management (BLM) land valued at \$56,000 to trust status for the benefit of the Tribe; (2) requiring the Secretary to exchange BLM lands in

Arizona for 1,441 acres of State-owned lands and to transfer such lands without cost to the Tribe; and (3) authorizing either the Secretary or the Tribe to acquire 5,881 acres of private lands and leasehold interests valued at between \$500,000 and \$900,000 by purchase or exchange.

In addition, S. 2201 would: (1) require the Secretary to acquire immediately by voluntary agreement the permanent right of ingress and egress to these lands to enable the Zuni Indians to practice their traditional religious ceremonies and pilgrimages; (2) require the Secretary to sell to Apache County, Arizona, BLM lands that are equal in acreage to the private lands within that county that will be acquired for the Tribe; (3) authorize the Zuni Tribe to use judgment funds in certain Court of Claims dockets, if and when they are awarded, for the purpose of acquiring the 5,881 acres of private lands; (4) prohibit offsets against any judgment fund awards to the Zuni Tribe in certain Court of Claims dockets; (5) deem transfers of private lands and leasehold interests to be involuntary conversions for Federal tax purposes; and (6) require the continuation of any payments-in-lieu of taxes (now about \$3,000 annually) being made to the State of Arizona or local governments on the acreage to be transferred to the Tribe.

#### Administration Position

No formal position was presented to the Congress by the Administration on S. 2201. At hearings on the bill in April 1984 before the Select Committee on Indian Affairs, the Department of the Interior witness mentioned some concerns about S. 2201, but offered no amendments and explicitly took no position on enactment of the bill. The Committee moved immediately after the hearing to report the bill. Because of the Department's belief that the legislation would not move, and its reluctance to express opposition to the bill, no position was subsequently sent to Congress.

The Senate passed S. 2201 by voice vote on July 31, and the House passed the Senate enactment by unanimous consent on August 8, without holding hearings.

As enrolled, S. 2201 has some objectionable features:

- It mandates that the Secretary exchange BLM land for State-owned land, but does not require the Secretary to obtain equal value in the exchange;
- It requires the Secretary to sell BLM lands to Apache County which are equal in acreage to the private lands to be acquired for the Tribe in that County. The sales would be

conducted under special provisions that would result in a price below market value. This is intended to hold Apache County harmless for the conversion of land to nontaxable uses, but will result in a net loss to the Federal Government;

- It requires the continuation of payments-in-lieu of taxes on public lands after these lands are transferred to Indian ownership;
- It could encourage other Indian tribes to seek similar free land acquisitions for religious purposes, as there are many Indian holy sites located off reservations; and
- It potentially increases Zuni claims awards above those that would be applicable under the legal formula used in settling hundreds of past Indian land claims by prohibiting offsets for either land gained by the Zunis under S. 2201 or Federal money and services provided historically to the Tribe.

#### Agency Views

In its enrolled bill letter, the Department of the Interior advises that it has no objection to your approval of S. 2201. Interior states that despite its concerns with the bill, principally the land exchange provisions, the Zuni Tribe's ties to this land are strong enough to justify approval of the legislation. In addition, Interior asserts that it is unaware of any other Indian land claims based on purely religious needs which "... would be impacted by the approval of this enrolled bill."

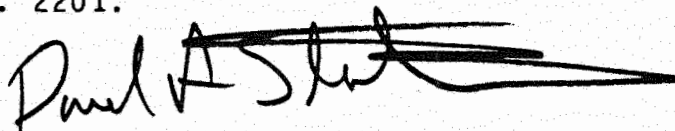
The Department of Justice advises that it has no objection to your signing S. 2201, but notes that the bill raises a novel issue regarding whether Congress' efforts to aid and preserve Indian religions by protecting their sacred sites constitutes an impermissible establishment of religion under the Establishment Clause of the First Amendment to the Constitution. Justice, however, concludes that it does not believe the transfer of land under S. 2201 would violate the Establishment Clause because of the unique relationship between Congress and the Indians. A question remains, however, as to whether it is sound public policy for the Federal Government to promote and protect specific religions. Given the Tribe's historical access to these lands, it is not clear that the Zunis need ownership of them to practice their religion.

### Congressional Views

In arguing the Zuni's case, the report of the Senate Select Committee on Indian Affairs states that "... the Zuni Indian tribe's ties to the lands subject to this bill are strong enough to warrant Congressional action separate and apart from any legal claim of aboriginal ownership..." and that the "... bill treats a unique fact situation involving the Zuni Indian Tribe and is not intended by the Congress to serve as precedence for claims of Indian tribes elsewhere."

### Conclusion

As outlined above, S. 2201 contains a number of undesirable features. However, because of the Administration's failure to present a clear record of opposition to the bill during congressional consideration, the absence of clear constitutional objections, and the relatively small total cost of the bill, I recommend approval of S. 2201.

A handwritten signature in black ink, appearing to read "David A. Stockman", with a long horizontal flourish extending to the right.

David A. Stockman  
Director

# Ninety-eighth Congress of the United States of America

## AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-third day of January,  
one thousand nine hundred and eighty-four*

### An Act

To convey certain lands to the Zuni Indian Tribe for religious purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of securing the following described lands located in the State of Arizona, upon which the Zuni Indians depend and which the Zuni Indians have used since time immemorial for sustenance and the performance of certain religious ceremonies, the following are hereby declared to be part of the Zuni Indian Reservation:*

Beginning at the northeast corner of section 26, township 15 north, range 26 east, Gila and Salt River meridian; thence west to the northwest corner of section 28, township 15 north, range 26 east; thence south to the southwest corner of section 16, township 14 north, range 26 east; thence east to the southeast corner of section 14, township 14 north, range 26 east; thence north to the point of beginning.

Also all of sections 26 and 27, township 14 north, range 26 east, Gila and Salt River meridian.

SEC. 2. All lands described in the first section of this Act which are presently owned by the United States are hereby declared to be held in trust for the Zuni Indian Tribe subject to any existing leasehold interests. The Secretary of the Interior is authorized and directed to acquire through exchange those lands described in such section which are owned by the State of Arizona, and shall exchange lands under the jurisdiction of the Bureau of Land Management within the State of Arizona for said State lands. Such lands will be transferred without cost to the Zuni Indian Tribe and title thereto shall be taken by the United States in trust for the benefit of said tribe.

SEC. 3. The Secretary of the Interior or the Zuni Indian Tribe is authorized to acquire through purchase or exchange the remaining private lands and leasehold interests described within the first section of this Act which are not presently owned by the United States or the State of Arizona, and when acquired, title to such lands shall be held by the United States in trust for the Zuni Indian Tribe.

SEC. 4. The Secretary of the Interior is directed to immediately acquire by voluntary agreement the permanent right of ingress and egress to all lands described in the first section of this Act for the limited purpose of allowing the Zuni Indians to continue to use said lands for traditional religious pilgrimages and ceremonials.

SEC. 5. (a) The Secretary of the Interior shall make available for sale to Apache County, Arizona, land which—

(1) is under the jurisdiction of the Bureau of Land Management on the date of enactment of this Act,

(2) is located within the boundaries of Apache County, Arizona, and

(3) consists of a number of acres equal to the number of acres of land that—

S. 2201—2

(A) are acquired in fee under section 3 by the Secretary of the Interior or the Zuni Indian Tribe, and

(B) are subject to taxation by Apache County, Arizona, on the date of enactment of this Act.

(b)(1) The Secretary of the Interior shall designate the land which is available for sale under subsection (a) by no later than the date which is two years after the date of enactment of this Act. The Secretary of the Interior shall publish in the Federal Register a description of any land so designated.

(2) The designation of land under paragraph (1) shall be subject to any land transfer which is required in order to carry out any relocation pursuant to Public Law 93-531.

(3) Land which is designated by the Secretary of the Interior under paragraph (1) shall be available for sale under subsection (a) during the period which begins on the date which such designation is made and ends on the date which is four years after the date of enactment of this Act.

(c)(1) If Apache County, Arizona, agrees to use any portion of the land purchased under subsection (a) only for public purposes, the price at which such portion of the land shall be sold to Apache County under subsection (a) shall be equal to the lesser of—

(A) the price at which Apache County could acquire such land under the Federal Land Policy Management Act of 1976, or

(B) the price at which Apache County could acquire such land under the Act of June 14, 1926 (44 Stat. 741; chapter 578).

(2) If Apache County, Arizona, does not agree to use a portion of the land purchase by such county under subsection (a) only for public purposes, the price at which such portion of land shall be sold under subsection (a) shall be fair market value of such portion of land determined with regard to the current use of such portion of land on the day preceding the date of such sale.

(d) The provisions of this section shall not delay the transfer of any land under this Act for the benefit of the Zuni Indian Tribe.

SEC. 6. The value of the interest in land conveyed or any funds expended pursuant to this Act or any other sums expended or services rendered gratuitously or otherwise by the United States for the benefit of the Zuni Indian Tribe or its members from 1846 to the present shall not be offset against any award of judgment against the United States which may be rendered in favor of the Zuni Indian Tribe in Docket Numbers 161-79L and 327-81L presently pending before the United States Court of Claims. The Zuni Indian Tribe may encumber its interest in said dockets in order to acquire the lands described in section 3.

SEC. 7. For the purpose of subtitle A of the Internal Revenue Code of 1954, any transfer of private lands or leasehold interests to which section 3 applies shall be deemed to be an involuntary conversion within the meaning of section 1033 of such Code.

SEC. 8. Payment being made to any State or local government pursuant to the provisions of section 1601 of title 31, United States

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Code, on any lands transferred pursuant to section 2 hereof shall continue to be paid as if such transfer had not occurred.

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*

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