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file w/
memo

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

March 20, 1986

STATEMENT BY THE PRESIDENT

I have signed into law H.R. 1614, the Food Security Improvements Act of 1986. This legislation makes changes to several provisions contained in the Food Security Act of 1985, which I approved on December 23, 1985.

In signing the Food Security Act of 1985 into law, I indicated my Administration's strong objections to several features contained in that legislation. One provision was the mandatory three-year payment-in-kind export promotion program that requires the United States to give away \$2 billion worth of commodities to encourage American exports. I stated that, "A program of this size and nature threatens to precipitate an agricultural commodity trade war with our allies. Moreover, it may well be impossible to fulfill the \$2 billion goal over the next three years without subsidizing exports in a manner which will be contrary to the national security interests of the United States." I am pleased to note that H.R. 1614 reduces this program from \$2 billion over the next three years to \$1 billion. This reduction will allow the United States to encourage export promotion without threatening our trade policy or our national security.

I am also pleased to note that the Congress has revised language that had been adopted earlier relating to so-called advance recourse loans to make clear that this program is completely discretionary. The program is ill-advised and unnecessary, and my Administration will not use its discretion to implement it.

Although this legislation does not correct all of the deficiencies contained in the Food Security Act of 1985, it nonetheless represents some improvement and for that reason I have signed it into law.

#

Rm. 106



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

DATE: 3/20

TO: John Roberts

FROM: Roz Rettman

I just received this from Justice.
Has the signing statement already
left the station?

TOO LATE

OMB FORM 38
REV AUG 73

Memorandum



Subject	Date
Food Security Improvements Act of 1986.	MAR 19 1986

To
Roz Rettman
Room 464
Old Executive Office Bldg.
Washington, D.C.

From
Douglas W. Kmiec *DWK*
Deputy Assistant Attorney
General
Office of Legal Counsel

Pursuant to your conversation with Mr. Marcuse of this Office, I am transmitting to you a draft of two paragraphs relating to the President's Special Assistant for Agricultural Trade and Food Assistance, for potential inclusion in the President's statement upon the signing of the Food Security Improvements Act of 1986.

Section 4(b) of the bill provides that the initial appointment to the office of the Special Assistant to the President for Agricultural Trade and Food Assistance, whose office was created by section 1112(a) of the Food Security Act of 1985, shall be made not later than May 1, 1986. In accordance with a well established rule of statutory interpretation, I consider this date to be directory, rather than mandatory. I fully intend to make that appointment expeditiously, but in view of the important responsibilities assigned to my Special Assistant, I shall only do so at an appropriate time after I have screened the suitable candidates available to fill this office.


In further reference to the appointment specified in section 4(b) of the bill, it is appropriate for me to comment on section 1112(b)(9), (d)(1), and (d)(2)(B) of the Food Security Act of 1985 pursuant to which the Special Assistant to the President for Agricultural Trade and Food Assistance is directed to report and make recommendations to the President and Congress. Basic principles of Separation of Powers require that the reports and recommendations of executive officers be made only to the President, and at the President's discretion, released to Congress. This is particularly true with respect to reports and recommendations prepared by a Special Assistant to the President, and I interpret the above statutory requirements as such.

THE WHITE HOUSE

WASHINGTON

March 21, 1986

MEMORANDUM FOR DAVID CHEW
STAFF SECRETARY AND DEPUTY ASSISTANT
TO THE PRESIDENT

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: S. 1396 -- White Earth Reservation Land
Settlement Act

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

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: Dave Chew

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: S. 1396 White Earth Reservation Land Settlement Act

ROUTE TO:	ACTION	DISPOSITION
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD
<u>CUHOLL</u>	ORIGINATOR	<u>86, 03, 20</u>
<u>CUH 19</u>	Referral Note: <u>R</u>	<u>5 86, 03, 20</u>
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- ACTION CODES:**

 - A - Appropriate Action
 - C - Comment/Recommendation
 - D - Draft Response
 - F - Furnish Fact Sheet to be used as Enclosure

DISPOSITION CODES:

 - I - Info Copy Only/No Action Necessary
 - R - Direct Reply w/Copy
 - S - For Signature
 - X - Interim Reply

DISPOSITION CODES:

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

FOR OUTGOING CORRESPONDENCE:
 Type of Response = Initials of Signer
 Code = "A"
 Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
 Send all routing updates to Central Reference (Room 75, OEOB).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 3/19/86 ACTION/CONCURRENCE/COMMENT DUE BY: 3/21/86

SUBJECT: S. 1396 -- WHITE EARTH RESERVATION LAND SETTLEMENT ACT

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	LACY	<input type="checkbox"/>	<input type="checkbox"/>
REGAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	POINDEXTER	<input type="checkbox"/>	<input type="checkbox"/>
MILLER	<input type="checkbox"/>	<input type="checkbox"/>	RYAN	<input type="checkbox"/>	<input type="checkbox"/>
BALL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BUCHANAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SPRINKEL	<input type="checkbox"/>	<input type="checkbox"/>
CHAVEZ	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CHEW	<input type="checkbox"/>	<input checked="" type="checkbox"/>	THOMAS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DANIELS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>
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HENKEL	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HICKS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
KINGON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS: Please provide any comments by Friday, March 21st.

RESPONSE:

MAR 21 1986



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAR 19 1986

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill S. 1396 - White Earth Reservation Land
Settlement Act of 1985
Sponsors - Boschwitz (R) and Durenberger (R) Minnesota

Last Day for Action

March 25, 1986 - Tuesday

Purpose

Settles numerous unresolved claims of individuals relating to certain allotted Indian lands on the White Earth Indian Reservation in Minnesota.

Agency Recommendations

Office of Management and Budget

Approval

Department of the Interior

No objection

Department of Justice

No objection (Informally)

Department of the Treasury

Cites concerns (Informally)

Discussion

Starting in 1902, lands comprising the White Earth Indian Reservation were allotted to individual members of the White Earth Band of Chippewa Indians who were living on the Reservation. This was consistent with national law and policy applicable in the late 1800's and early 1900's. Although initial allotments were held in trust by the Secretary of the Interior, several Acts of Congress enabled these Chippewa Indian allotment holders to obtain outright legal title to their land which removed all restrictions on sale, encumbrance, or taxation. Many of these allotments subsequently were sold to non-Indians or lost in tax forfeiture sales.

Within the last decade both the Minnesota Supreme Court and the Interior Department have concluded that certain categories of White Earth allotments, involving some 100,000 acres, were taken from individual Chippewas unlawfully. The title to these lands is now clouded, and if the problem is not resolved by legislation, the result will be complex and protracted litigation. Both the State of Minnesota and the Federal

Government bear some responsibility for this situation. The attachment to this memorandum more fully describes the background and specific provisions of the enrolled bill.

The Enrolled Bill

S. 1396 would extinguish claims on behalf of Chippewa allottees or heirs by means of the following actions:

1. The Secretary of the Interior would be required to determine which Chippewa allotments fall within the scope of the bill. Allottees or their heirs (some 10,000 individuals) would receive compensation equal to fair market value of the land as of the transaction date, less compensation actually received, plus five percent interest compounded annually. Interior estimated this amount at \$10.4 million in 1984.
2. Allottees or heirs could challenge the constitutional adequacy of the compensation determined by the Secretary if the challenge is filed within 180 days of the compensation determination notice.
3. The extinguishing of claims and clearing of titles would also be conditioned on:
 - (a) transfer of 10,000 acres of land within the boundaries of the White Earth Reservation by the State of Minnesota to the White Earth Band of Chippewas;
 - (b) appropriation of \$500,000 by the State of Minnesota to the United States for computer and technical assistance to facilitate implementing the bill; and
 - (c) a Federal payment of \$6.6 million to a White Earth Economic Development and Tribal Government Fund.

Administration Position

During both committee hearings before the House Interior Committee and Senate Select Indian Affairs Committee and in Statements of Administration Policy, the Administration supported the legislative settlement of claims of individual Chippewa allottees or their heirs but objected to the bill on two grounds:

First, and most important, there is no justification whatsoever for any payment to the White Earth Band as a tribal entity. The requirement to pay the Band \$6.6 million is wholly unwarranted. Even Senator Boschwitz, one of the bill's sponsors, pointed out in his floor colloquy: "If litigated, the White Earth Band as an entity would have no claim."

Second, the bill would impose a complex administrative burden on the Department of the Interior in determining and locating heirs. As an alternative, Interior had proposed making the heirs responsible for coming forward to file claims and imposing a statute of limitations for filing.

In its enrolled bill views letter, however, Interior now expresses no objection to approval of S. 1396. While acknowledging that S. 1396 is not the "optimum solution" to the White Earth land claims problem, Interior believes it is a feasible alternative for resolving this long-standing dispute. If the enrolled bill does not become law, Interior believes there will be continuing (1) litigation, which could prove more costly to the United States over the long-term, (2) questions regarding the titles to over 100,000 acres, and (3) failure to compensate individual Indian allottees or their heirs for a series of land transactions that are questionable at best.

Treasury advises that it does not oppose S. 1396, but wishes to raise two concerns. The first concern is that the settlement formula's five percent interest rate is too generous. We note that five percent interest payment has long been a feature of such Indian land claims and will continue to be the standard interest rate paid. Second, Treasury believes that the investment of settlement monies by the Secretary of the Interior should be in accord with Treasury guidelines. On this point we are urging Treasury to prepare a draft proposal that would establish such guidelines for consideration by this Office and Interior. This issue has come up previously, but Treasury has yet to develop the necessary legislative proposal for Executive branch consideration.

Congressional Views

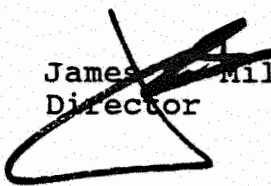
S. 1396 passed the Senate by a vote of 56 to 35 and passed the House by voice vote on the suspension calendar. The bill's proponents -- Senators Durenberger and Boschwitz and Representatives Stangeland, Strang, Udall, and Vento -- emphasized that the bill's legislative solution to an extremely complex problem is the best agreement that could be reached in numerous negotiations held over the last several years with the Band, the State of Minnesota, local governments, and the Administration. These members of Congress characterized the bill as "moderate, fair and balanced . . ." In addition, Representative Stangeland argued that the bill's compensation for the Band was justified because the land loss had created a great deal of unemployment and depression on the White Earth Reservation.

Opponents of the bill when it was considered on the floor -- Senator Melcher and Representatives Dymally and Conyers -- complained that S. 1396 was an unconstitutional taking of property because the Indians would not receive "just compensation." The opponents also argued that the State of

Minnesota, which possesses some 165,000 acres of White Earth Reservation land acquired by tax forfeitures, should make a greater contribution toward this claims settlement. The opponents characterized S. 1396 as a gross injustice and morally wrong and argued that a much larger compensation package or return of the land was due the Indians. The opponents also pointed out that both the White Earth Reservation Tribal Council and the Minnesota Chippewa Tribal Executive Committee oppose the bill because they would like to get the 100,000 acres back in Indian ownership or receive substantially higher compensation.

Conclusion

On balance, I reluctantly recommend approval of S. 1396. I believe that the required payment of \$6.6 million to the tribal government of the White Earth Band is an unwarranted and essentially adverse part of the overall settlement of this claim. However, the alternative of protracted litigation involving the United States might indeed cost us more than the \$6.6 million and still likely result in less than satisfactory results for many of those affected.


James Miller III
Director

Enclosures

Background

By retroactively ratifying land transactions by which individual Indian allottees became divested of ownership of their trust allotments, S. 1396 would clear title to lands now possessed by non-Indians and prevent litigation that might otherwise occur.

The bill proposes to compensate an estimated 10,000 Indian heirs for 100,000 acres located on the White Earth Indian Reservation in Minnesota. Congressional acts in 1887 and 1889 established a national policy of allotting tribal lands among individual members of the tribes occupying a reservation. Subsequent legislation provided that the United States would hold title to the lands in trust for the Indian or his heirs for a period of 25 years. No taxes or assessments could be imposed on any allotment during that period. Any conveyance or encumbrance of the land would not be valid without approval of the Secretary of the Interior. An Executive order signed in 1927 extended the trust periods for an additional ten years. Passage of the Indian Reorganization Act in 1934 indefinitely extended all trust periods in existence at that time.

The initial allotment process was complicated, however, by passage of two pieces of legislation in 1906. The Burke Act allowed the Secretary of the Interior to issue to each Indian a "patent in fee," conferring outright ownership and legal title, provided that the Secretary first determined that the Indian was "competent and capable of managing his or her affairs." All restrictions on sale, encumbrance, or taxation were thereafter removed. The Clapp Amendment, attached to an Indian appropriations bill, summarily removed all restrictions on allotments made to "mixed blood" Indians on the White Earth Reservation. It also authorized the Secretary of the Interior to approve sales by "full blood" Chippewas with their consent. These actions resulted in taxation by the State and counties of White Earth allotments, some of which were lost because of nonpayment of taxes.

The Minnesota Supreme Court, in Minnesota v. Zay Zah (1977), held that transactions under which some members of the White Earth Band of Minnesota Chippewa Indians were allowed to sell or forfeit to taxes inherited individual land allotments were legally void, thus nullifying the Clapp Amendment. The titles of current landowners are therefore clouded. The Solicitor for the Department of the Interior has also ruled that since the Clapp Amendment did not terminate the trust relationship, it is the Department, and not State or local probate courts, which has

jurisdiction and responsibility to determine the heirs of deceased White Earth Chippewas and to distribute their trust estates.

Since many of the parcels of land transferred from Indians to non-Indians changed hands in a manner that violates the provisions of law as described above, the titles to those lands are currently clouded. S. 1396 seeks to resolve these various claims as described below.

The Enrolled Bill

Claims Categories

The bill provides monetary compensation for unlawful transfers involving the following types of Indian trust allotments:

- allotments or interests in allotments which were tax forfeited while the allotments were still held in trust;
- allotments or interests in allotments which were sold by minors while the allotments were still held in trust;
- allotments or interests in allotments which were sold by full blood Chippewa Indians without approval by the Secretary of the Interior while the allotments were still held in trust;
- allotments or interests in allotments which were sold or distributed pursuant to State court probate proceedings while the allotments were still held in trust;
- allotments or interests in allotments which were sold by guardians appointed by State courts on behalf of full or mixed blood Indians; and
- interests in allotments which were sold while the allotments were still held in trust, but which did not have the approval of every Indian who held an interest in a particular allotment.

In addition, the bill enumerates certain types of land transactions on the White Earth Reservation which are to be recognized as valid. These include:

- the sale of allotments or interests in allotments which have been validated by Federal courts;
- the tax forfeiture of allotments or interests in allotments after the expiration of the trust period;
- the sale of allotments or interests in allotments at any time by an adult mixed blood Chippewa; and

- the tax forfeiture of allotments or interests in allotments after the date on which the tax exemption was declared by a Federal court to have expired.

Identification of Land Claims

S. 1396 requires the Secretary of the Interior to determine which White Earth allotments constitute valid claims, as outlined above. Within six months of enactment of the bill, the Secretary must publish his initial determination in the Federal Register and several newspapers in Minnesota, so as to allow the public to identify additional lands which might fall within the disputed categories of land transactions. Any additions must be submitted to the Secretary within one year of publication of the initial list in the Federal Register. Based upon these submissions, the Secretary must publish a second list of allotments.

The Secretary's determination of allotments to be included on either list may be challenged judicially through the Administrative Procedure Act so long as the challenge is filed within 90 days from the date of publication of the first list.

Compensation Formula

Compensation will be given to each heir or allottee identified as having lost an interest in land because of the clearing of titles and extinguishment of claims outlined in the bill. The compensation formula is the fair market value of the land as of the date of the disputed transaction, less compensation actually received, plus interest compounded annually at five percent until the date of enactment of the bill, and at market rates thereafter.

The Secretary of the Interior is to provide written notification of compensation determination and distribution to those heirs or allottees whose addresses can be found by reasonable and diligent efforts. All others are to receive notice through publication in the Federal Register. Judicial review of the Secretary's determination of the appropriate amount of compensation is allowed by the Administrative Procedure Act so long as the review process is initiated within six months of the Secretary's notification to the allottees and heirs.

Implementation Conditions

The claims are not extinguished nor the titles to land cleared until the following criteria are met:

- The transfer of 10,000 acres within the boundaries of the White Earth Reservation from the State of Minnesota to the United States to be held in trust for the White Earth Band; this provision also requires continued public access across the lands transferred;

- An appropriation of \$500,000 from the State to the United States for computer and technical assistance to implement the bill; and
- An appropriation from the United States of \$6.6 million to be used in establishing an Economic Development Fund for the White Earth Band.

In addition to the \$6.6 million appropriation, the Economic Development Fund is to be the depository of any compensation that reverts to the Band because of the inability of the Secretary to locate allottees or heirs entitled to compensation under the bill.

Time Limit

A five year time limit is established for the Secretary to accomplish the requirements and objectives of the bill.

Exemption from Taxation

The monies distributed under the bill are not subject to State or Federal income taxes; nor are they to be considered as income for purposes of determining eligibility for assistance under the Social Security Act or any other federally-assisted program.

Land Exchange

If the White Earth Band and the State or the United States desire a land exchange within the exterior boundaries of the White Earth Reservation, the Secretary of the Interior is authorized to approve the exchange so long as all the affected parties are in agreement.

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

March 24, 1986

The President today signed the following legislation:

H.J. Res. 534 which provides emergency funding of \$5 billion to reimburse the Commodity Credit Corporation (CCC) for net realized losses and directs the Secretary of Agriculture to use the \$1.7 billion of available insured operating loans of the Agricultural Credit Insurance fund; and

S. 1396 which settles numerous unresolved claims of individuals relating to certain allotted Indian lands on the White Earth Indian Reservation in Minnesota.

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THE WHITE HOUSE

WASHINGTON

March 31, 1986

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY AND DEPUTY ASSISTANT
TO THE PRESIDENT

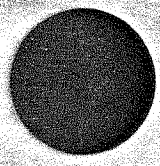
FROM: JOHN G. ROBERTS *JGR*
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: H.J. Res. 573: Making a Repayable
Advance to the Hazardous Substance
Response Trust Fund (Superfund)

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

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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



Name of Correspondent: David Chew

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: H.J. Res. 573 - Making a repayable advance to the Hazardous Substance Response Trust Fund (Superfund)

ROUTE TO:		ACTION	DISPOSITION			
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>WHOLL</u>		ORIGINATOR	<u>86,03,31</u>			<u>1/1</u>
		Referral Note:				
<u>CHAT 18</u>			<u>86,03,31</u>		<u>S</u>	<u>86,03,31</u>
		Referral Note:				<u>3pm</u>
			<u>1/1</u>			<u>1/1</u>
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		Referral Note:				

- ACTION CODES:**
- A - Appropriate Action
 - C - Comment/Recommendation
 - D - Draft Response
 - F - Furnish Fact Sheet to be used as Enclosure

- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

- DISPOSITION CODES:**
- A - Answered
 - B - Non-Special Referral
 - C - Completed
 - S - Suspended

FOR OUTGOING CORRESPONDENCE:
 Type of Response = Initials of Signer
 Code = "A"
 Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
 Send all routing updates to Central Reference (Room 75, OEGB).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 3/31/86 ACTION/CONCURRENCE/COMMENT DUE BY: 3:00 P.M. TODAY

SUBJECT: H.J.RES. 573 - MAKING A REPAYABLE ADVANCE TO THE HAZARDOUS SUBSTANCE RESPONSE TRUST FUND (SUPERFUND)

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	LACY	<input type="checkbox"/>	<input type="checkbox"/>
REGAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	POINDEXTER	<input type="checkbox"/>	<input type="checkbox"/>
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CHEW	<input type="checkbox"/>	<input checked="" type="checkbox"/> P SS	THOMAS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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HICKS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
KINGON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS: Please give your recommendations to my office by 3:00 p.m. today. Thanks.

RESPONSE:

1000 MAR 31 11:42



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAR 31 1986

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.J. Res. 573 -- Making a repayable advance to the Hazardous Substance Response Trust Fund (Superfund)
Sponsor: Rep. Boland (D), Massachusetts

Last Day for Action

April 8, 1986. Signature as soon as possible is recommended.

Purpose

Provide a \$150 million repayable advance from the general fund of the Treasury to the Hazardous Substance Response Trust Fund in order to make funds previously appropriated available for obligation. Such funds must be obligated by May 31, 1986.

Highlights

- o P.L. 99-160, the 1986 HUD/Independent Agencies Appropriation Bill, provides for \$900 million in new budget authority for the Hazardous Substance Response Trust Fund. These funds are not currently available for obligation because the tax financing the program has expired and legislation reauthorizing the tax is currently tied up in Conference committee. This measure would make \$150 million available for obligation immediately by making a repayable advance from Treasury to the Hazardous Substance Response Trust Fund. These funds must be obligated by May 31, 1986. The bill provides no new budget authority or outlays, although it will have a short-term adverse impact on the deficit until the advance is repaid.

Agency Recommendations

Office of Management and Budget

Approval

Environmental Protection Agency

Approval (informally)

Summary of Congressional Action

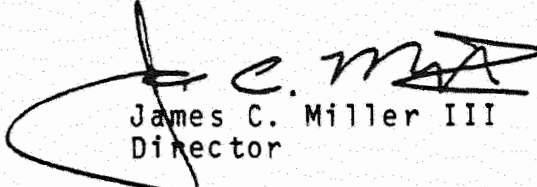
The resolution was passed by voice vote in the House on March 20, 1986. It was passed by voice vote in the Senate on March 21, 1986.

Discussion

The Environmental Protection Agency states that funding is necessary by April 1, 1986, to keep this program operating and to avoid the costly termination of existing contracts. Until now, the Congress has resisted the temporary funding of the Superfund in order to keep pressure on the Conferees to come to an agreement. Recognizing the implicit costs of allowing contracts to expire, Congress has provided the necessary funding in the form of a cash advance with time restrictions on availability.

Recommendation

I recommend that you sign the enrolled bill as soon as possible so that the Hazardous Substance Response Trust Fund can continue operations.



James C. Miller III
Director

Ninety-ninth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday, the twenty-first day of January,
one thousand nine hundred and eighty-six*

Joint Resolution

Making a repayable advance to the Hazardous Substance Response Trust Fund.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled. That language under the heading "Environmental Protection Agency, Hazardous Substance Response Trust Fund" in Public Law 99-160, is amended by deleting "as amended, including sections 111 (c)(3), (c)(5), (c)(6), and (e)(4) (42 U.S.C. 9611), \$900,000,000, to be derived from the Hazardous Substance Response Trust Fund", and inserting in lieu thereof "including sections 111 (c)(3), (c)(5), (c)(6), and (e)(4) (42 U.S.C. 9611), \$900,000,000, of which \$750,000,000 shall be derived from the Hazardous Substance Response Trust Fund and \$150,000,000 shall be derived from an advance from the general fund of the Treasury to the Hazardous Substance Response Trust Fund to be repaid in accordance with section 223(c)(3) of Public Law 96-510 and notwithstanding section 223(c)(2)(D) of Public Law 96-510: *Provided*, That none of the \$150,000,000 shall be available for obligation after May 31, 1986,".

Speaker of the House of Representatives.

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

THE WHITE HOUSE

WASHINGTON

April 2, 1986

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY AND DEPUTY ASSISTANT
TO THE PRESIDENT

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: H.R. 3128: Consolidation Omnibus Budget
Reconciliation Act of 1985

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

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

O - OUTGOING

H - INTERNAL

I - INCOMING

Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Paul Chew

MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: H.R. 3128 - Consolidation Omnibus Budget Reconciliation Act of 1985

ROUTE TO:

ACTION

DISPOSITION

Office/Agency	Staff Name	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CUNHOLL</u>		<u>ORIGINATOR</u>	<u>86.03.31</u>			<u>1 1</u>
		Referral Note:				
<u>CUAT 18</u>		<u>R</u>	<u>86.03.31</u>		<u>S</u>	<u>86.04.01</u>
		Referral Note:				<u>11 AM</u>
			<u>1 1</u>			<u>1 1</u>
		Referral Note:				
			<u>1 1</u>			<u>1 1</u>
		Referral Note:				
			<u>1 1</u>			<u>1 1</u>
		Referral Note:				

ACTION CODES:

- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure

- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

DISPOSITION CODES:

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

FOR OUTGOING CORRESPONDENCE:

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

Comments: _____

Keep this worksheet attached to the original incoming letter.
 Send all routing updates to Central Reference (Room 75, OEOb).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 3/31/86 ACTION/CONCURRENCE/COMMENT DUE BY: 11:00 a.m. 4/1/85

SUBJECT: H.R. 3128 -- CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT
OF 1985

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	LACY	<input type="checkbox"/>	<input type="checkbox"/>
REGAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	POINDEXTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MILLER	<input type="checkbox"/>	<input type="checkbox"/>	RYAN	<input type="checkbox"/>	<input type="checkbox"/>
BALL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BUCHANAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SPRINKEL	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CHAVEZ	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CHEW	<input type="checkbox"/>	<input checked="" type="checkbox"/>	THOMAS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DANIELS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HENKEL	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HICKS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
KINGON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS: Please give your recommendations to my office by tomorrow morning at 11:00 a.m. Thanks.

RESPONSE:

1003 MAR 31 1986 10:40



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

RECEIVED
MAR 31 1986

MAR 31 1986

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R.3128 -- Consolidated Omnibus Budget Reconciliation Act of 1985

Last Day for Action

Signature as soon as possible is recommended since the bill permanently extends the 16¢ tobacco excise tax that expired on March 15, 1986.

Purpose

Changes various spending programs and increases revenues and user fees to reduce the deficit as part of the fiscal year 1986 budget process.

Agency Recommendation

Office of Management and Budget	Approval
Department of Energy	Approval
Environmental Protection Agency	Approval
Department of the Interior	Approval
Department of the Treasury	Approval
Department of Agriculture	No objection
Department of Health and Human Services	No objection
Office of Personnel Management	No objection
Department of Labor	No objection
Department of Commerce	Defers to other agencies
Department of Transportation	Defers to other agencies

Highlights

- o Deficit reduction in the bill totals \$12.9 billion for the three years 1986 through 1988.
- o The bill provides for \$6.0 billion in new revenues over the three-year period including \$4.1 billion from the extension of the 16¢ tobacco excise tax.

- o The bill reduces outlays by \$6.9 billion over the three-year period including \$2.5 billion for Medicare reforms. Settlement of the dispute with the States concerning the distribution of Outer Continental Shelf (OCS) receipts shifts payments to the general fund into 1986 from 1987 and 1988, thus reducing outlays in 1986 and increasing them in the other two years.
- o The bill increases premiums of the Pension Benefit Guaranty Corporation (PBGC) and imposes or increases fees for National Oceanic and Atmospheric Administration maps and charts, pipeline safety programs, and customs processing. These changes are similar to those proposed in the 1987 Budget.
- o Several seriously objectionable provisions -- expansions of Medicare, Medicaid, and Aid to Families with Dependent Children (AFDC), lifting the 75% cap on the Government's share of premiums for the Federal Employee Health Benefits program, the "Buy America" requirements related to the OCS, Superfund taxes, and new import fees to finance the Trade Adjustment Assistance program -- were deleted from the Conference Report before final passage.

Summary of Reconciliation Savings
(in billions of dollars)

	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1986-88</u>
Revenue increases (-)...	-0.8	-2.5	-2.8	-6.0
Outlay decreases:				
OCS receipts.....	-5.0	0.7	4.7	0.4
Other.....	<u>-1.0</u>	<u>-2.2</u>	<u>-4.2</u>	<u>-7.3</u>
Subtotal, outlays...	-6.0	-1.5	0.6	-6.9
Total deficit reduction.	-6.8	-4.0	-2.2	-12.9

Discussion

I. MAJOR OUTLAY PROVISIONS

Medicare.--Makes some reforms in the Medicare program including reducing the indirect teaching adjustment for Medicare reimbursement, extending through 1986 the freeze on Medicare physicians fees for non-Medicare participating physicians --

through April 30, 1986, for Medicare participating physicians. The bill would also require employers of 20 or more people to offer employees over age 69 the same health insurance coverage they offer to younger employees and under the same conditions. Medicare then becomes the second payer for individuals who have an employer plan. In addition, the bill would impose a 1/2% increase from the 1985 level in the prospective payment rate paid to hospitals for discharges occurring on or after May 1, 1986; transition to national rates would be delayed by one year. H.R. 3128 would also provide for additional payment amounts for hospitals serving a disproportionate share of low-income patients, and make permanent temporary hospice benefits.

Medicaid.--Makes several changes in the program, including requiring States to provide more extensive prenatal care services and postpartum coverage.

Customs service.--Imposes customs fees to cover the cost of processing arrivals of passengers and certain commercial vessels into the United States.

Tobacco program.--Lowers tobacco support prices and quotas, gives tobacco purchasers a say in determining future quotas, assumes Federal responsibility for losses on the 1983 burley crop, and subsidizes sales of the current stock of flue cured tobacco.

PBGC insurance premium and reforms.--Increases the PBGC single-employer pension plan premium from \$2.60 to \$8.50 per participant for plan years beginning after December 31, 1986, and makes several reforms to the Single Employer Program to curb "dumping" of pension plan liabilities onto the PBGC.

Small Business Administration (SBA) disaster loans.--Eliminates non-physical and farm-business disaster loans from the SBA disaster loan program.

Veterans Administration (VA) third party liability.--Authorizes the VA to recover from third party health insurers the cost of medical care provided to insured veterans who have no service-connected disabilities. The bill also reforms eligibility criteria for veterans health care in VA facilities.

Federal-aid highways.--Establishes an obligation limitation of \$13.125 billion for Federal-aid highways for fiscal year 1986, \$925 million above the appropriated level. The bill also sets 1987 and 1988 obligation limitations of \$13.525 billion and \$14.100 billion, respectively, which exceed the levels in the 1987 Budget by \$1.1 billion for 1987 and \$1.68 billion for 1988.

Trade adjustment assistance.--Reinstates the expired Trade Adjustment Assistance program until September 30, 1991, providing weekly cash benefits to workers certified as unemployed because of imports retroactively to December 19, 1985, requiring such workers in the future to participate in job search programs in order to receive cash benefits, making the expense of job search program an entitlement, and requiring approval of job training for such workers, subject to the availability of appropriations.

Aid to Families with Dependent Children (AFDC)/Medicaid Quality Control.--Imposes a two-year moratorium on collecting financial liabilities from States with high AFDC error rates and requires new studies of the AFDC and Medicaid quality control process, which determines these liabilities.

Farmers Home Administration (FmHA) Rural Housing.--Alters financing of the rural housing program by requiring all rural housing loans insured or guaranteed by FmHA to be sold to the public instead of to the Federal Financing Bank, and requires FmHA to pay the difference between the interest rate paid by the borrower and the full private market rate.

OCS receipts.--Provides for settlement of a legal dispute between the Federal Government and the States regarding the disposition of certain OCS rents and bonuses. The States will be given 27% of the rents, bonuses, and royalties interest earned currently held in escrow. In addition, future rents, bonuses, and royalties will also be distributed on a 73% federal/27% State basis.

Strategic Petroleum Reserve (SPR) Fill Rate.--Requires SPR to be filled at a rate of 35,000 barrels per day in fiscal years 1986-1988. If the minimum fill rate is not achieved, production at the Elk Hills Naval Petroleum Reserve must stop.

Foster care.--Creates a new program of assistance to State programs to help AFDC foster care children prepare for independent living.

II. MAJOR RECEIPTS PROVISIONS

Tobacco excise tax.--Extends permanently the 16¢ per pack tobacco excise tax, which reverted to 8¢ per pack effective March 15th. New excise taxes of 24¢ per pound and 8¢ per pound are imposed on snuff and chewing tobacco, respectively.

Limitation on income averaging.--Makes ineligible for income averaging for a given year individuals who had been full-time students during any of the prior three years. This will not

apply, however, to a married individual who files a joint return, if 25% or less of the adjusted gross income of the return is attributable to that individual.

Medicare coverage.--Extends mandatory Medicare coverage to newly hired employees of State and local governments.

Taxation of railroad retirement benefits.--Changes the taxation of railroad retirement benefits. Rail industry benefits currently taxed under the more lenient social security equivalent benefit rules will be taxed under the same rules that apply to all other payments received under the industry pension plan. In other words, these benefits will be subject to the Federal income tax to the extent that they exceed previously taxed contributions.

Railroad unemployment insurance tax.--The present law railroad unemployment insurance repayment tax is for repaying loans made to the unemployment insurance account from the railroad retirement account. The tax rate on the first \$7,000 in annual wages paid to a rail employee is increased as follows:

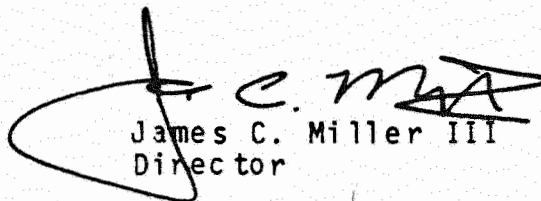
	<u>Current Law Rate</u>	<u>Proposed Rate</u>
1986.....	2.0	4.3
1987.....	2.3	4.7
1988.....	2.6	6.0
1989.....	2.9	2.9
1990.....	3.2	3.2

Coal fee.--Increases the manufacturer's fee on coal, intended to finance benefits paid to disabled coal miners by the Black Lung Disability Trust Fund, to the lesser of \$1.10 per ton for coal from underground mines and 55¢ per ton for coal from surface mines, or 4.4% of the sales price. The bill also imposes a five-year moratorium on accrual of interest payments on the Fund's indebtedness for borrowings from Treasury to meet benefit payments.

Recommendation

The enrolled bill represents the results of months of continual work with Congress and arduous negotiations with the Senate on fiscal year 1986 deficit reduction legislation. By standing firm on the key issues, we were able to get deleted from the Conference Report many highly objectionable features, as outlined

above, which made that Report unacceptable to the Administration. While H.R. 3128 is not ideal, since it still includes some unjustified program expansions, it is a major improvement over the Conference Report. It gains us savings of almost \$13 billion over three years toward deficit reduction, ends a major disagreement with Congress, and enhances our credibility in negotiating critical budgetary matters this year. Accordingly, I recommend that you sign the enrolled bill.



James C. Miller III
Director