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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 17, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill H.R. 6403 - Disposition
of Wyandot Indians Judgment Funds

Richard Darman has requested your comments by close of business today on Enrolled Bill H.R. 6403, which authorizes distribution of funds previously awarded and appropriated to the Wyandot Indians. The Wyandots were awarded \$561,424.21 by the Indian Claims Commission in 1978, and \$2,349,679.60 by the Court of Claims in 1979. Funds have been appropriated to cover these awards, and the instant bill authorizes distribution of the funds among the different groups of Wyandots. This legislation, originally introduced by the Department of Interior, is necessary under the Indian Judgment Funds Act of 1973 because the Secretary of Interior did not submit a plan for distribution within 180 days of the time Congress appropriated the funds. OMB and Interior approve of the bill, the latter indicating that it reflects the desires of the Wyandots. The Department of Justice interposes no objection (informally).

I have reviewed the memorandum to the President from James Frey, Assistant Director of OMB for Legislative Reference, the legislative report, and the bill itself, and have no objections. I recommend that you sign the attached memorandum to Richard Darman.

Attachment

THE WHITE HOUSE

WASHINGTON

December 17, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

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

SUBJECT: Enrolled Bill H.R. 6403 - Disposition
of Wyandot Indians Judgment Funds

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

FFF:JGR:aw 12/17/82

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE
WASHINGTON

December 17, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 6403 - Disposition
of Wyandot Indians Judgment Funds

Counsel's Office finds no objection from a legal perspective
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cc: FFFielding
JGRoberts
Subj.
Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: Richard G. Dorman

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

Subject: Enrolled Bill H.R. 6403 -- Disposition of Wiyandot Indian Judgment Funds

ROUTE TO:	ACTION	DISPOSITION
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD
<u>W Holland</u>	ORIGINATOR	<u>8211216</u>
	Referral Note:	<u>1 1</u>
<u>WAT 18</u>	<u>D</u>	<u>8211216</u>
	Referral Note:	<u>S 8211217</u>
	Referral Note:	<u>1 1</u>
	Referral Note:	<u>1 1</u>
	Referral Note:	<u>1 1</u>

- 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

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

FOR OUTGOING CORRESPONDENCE:
 Type of Response = Initials of Signer
 Code = "A"
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Comments: _____

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WHITE HOUSE STAFFING MEMORANDUM

COB FRIDAY

DATE: Dec. 16, 1982 ACTION/CONCURRENCE/COMMENT DUE BY: December 17, 1982SUBJECT: Enrolled Bill H.R. 6403--Disposition of Wyandot Indians Judgment Fund

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GERGEN	<input type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HARPER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	JENKINS	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
CLARK	<input type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/> P	<input checked="" type="checkbox"/> SS	WILLIAMSON	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DOLE	<input type="checkbox"/>	<input type="checkbox"/>	VON DAMM	<input type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BRADY/SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

Remarks:

Please forward comments on this enrolled bill to my office by close of business Friday.

Thank you.

Richard G. Darman
Assistant to the President
(x2702)

Response:



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

DEC 16 1982

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 6403 - Disposition of Wyandot Indians
Judgment Funds
Sponsor - Rep. Udall (D) Arizona

Last Day for Action

December 24, 1982 - Friday

Purpose

Authorizes the distribution and use of funds already awarded and appropriated to the Wyandot Tribe of Indians.

Agency Recommendations

Office of Management and Budget

Approval

Department of the Interior
Department of Justice

Approval
No objection (Informally)

Discussion

In 1978 and 1979, the Wyandot Tribe of Indians was awarded judgments totaling \$2,911,104 in satisfaction of claims against the United States. H.R. 6403 provides the statutorily required authorization of the distribution and use of these funds by the Wyandot Indians.

H.R. 6403 is virtually identical to a proposal that the Department of the Interior transmitted to Congress this year, and as the Department notes in its enrolled bill views letter, H.R. 6403 reflects the desires of the Wyandot Indians.

H.R. 6403 passed both Houses of the Congress by voice vote.

(Signed) James M. Frey

Assistant Director for
Legislative Reference

Enclosures

Ninety-seventh Congress of the United States of America

AT THE SECOND SESSION

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

An Act

To provide for the use and distribution of funds to the Wyandot Tribe of Indians in docket 139 before the Indian Claims Commission and docket 141 before the United States Court of Claims, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other provision of law, the funds appropriated on October 31, 1978, and March 2, 1979, in accordance with section 1302 of the Supplemental Appropriation Act (31 U.S.C. 724A), in satisfaction of judgments granted to the Wyandot (hereinafter "Wyandotte") Tribe in docket 139 by the Indian Claims Commission and in docket 141 by the United States Court of Claims, less attorney fees and litigation expenses, including all interest and investment income accrued, shall be used and distributed as herein provided.

SEC. 2. The Secretary of the Interior (hereinafter "Secretary") shall divide the funds between the Wyandotte Tribe of Oklahoma and the absentee Wyandotte descendants as follows:

308/510ths to the Wyandotte Tribe of Oklahoma; and
202/510ths to the absentee Wyandotte descendants.

SEC. 3. The Wyandotte Tribe of Oklahoma's share shall be distributed as follows:

(a) A roll shall be prepared, in accordance with the procedures enacted by the tribal government body and approved by the Secretary, of all members of the Wyandotte Tribe of Oklahoma who were born on or prior to and living on the date of this Act. Subsequent to the preparation of this roll, the Secretary shall make a per capita distribution of 80 per centum of the Wyandotte Tribe of Oklahoma's share of the funds, in a sum as equal as possible, to all persons listed on this roll. Any amount remaining after the per capita payment shall be utilized as provided in section 3(b)(2)(iii) of this Act.

(b) The remaining 20 per centum shall be utilized as follows:

(1) A sum of \$100,000 shall be utilized to purchase land for the tribe to be held in trust status by the Secretary.

(2) The balance shall be invested by the Secretary, pursuant to the Act of June 24, 1938 (25 U.S.C. 162a). The interest and investment income accrued shall be immediately available to the Wyandotte Tribe of Oklahoma upon the approval of the Secretary of the tribe's plan of operation and budget as set forth in Wyandotte Tribe of Oklahoma Resolution Numbered 9479, adopted September 4, 1979, as follows:

(i) $33\frac{1}{3}$ per centum shall be utilized toward the upkeep and maintenance of the Wyandotte Cultural Center and other sites as may in the future be developed by the tribe.

(ii) $33\frac{1}{3}$ per centum shall be utilized for the upkeep and maintenance of the Wyandotte Tribal Cemetery at Wyandotte, Oklahoma.

(iii) 33 $\frac{1}{3}$ per centum shall be placed in the custody of the secretary/treasurer of the tribe and, with the approval of the Business Committee of the Wyandotte Tribe of Oklahoma, utilized for the administration of the tribe: *Provided*, That none of these funds be expended for salaries.

SEC. 4. A roll shall be prepared by the Secretary of persons: not members of the Wyandotte Tribe of Oklahoma, on, or lineally descended from persons on, the "Census of Absentee or Citizen Wyandotte Indians" compiled by Joel T. Olive, dated November 18, 1896, as corrected in circular of October 28, 1904, by W. A. Richards, Commissioner of the General Land Office; and born on or prior to and living on the date of this Act. The Secretary's determination concerning eligibility for inclusion on this roll shall be final. Subsequent to the preparation of this roll, the Secretary shall make a per capita distribution, of the absentee Wyandotte's shares, in a sum as equal as possible, to all persons listed on this roll.

SEC. 5. The per capita shares of living competent adults shall be paid directly to them. Per capita shares of deceased individual beneficiaries shall be determined as distributed pursuant to regulations prescribed by the Secretary. Per capita shares of legal incompetents and per capita shares of individuals under age eighteen shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines to be necessary to protect the interests of such individuals.

SEC. 6. None of the funds distributed under this Act shall be subject to Federal or State income taxes or be considered income or resources in determining eligibility for or the amount of assistance under the Social Security Act.

SEC. 7. The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this Act.

Speaker of the House of Representatives.

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

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 21, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill H.R. 2329 - Waiver of Statutes of Limitations for Cherokee, Choctaw, and Chickasaw Nations of Oklahoma

Richard Darman has requested comments by close of business today on Enrolled Bill H.R. 2329, which would waive the statutes of limitations applicable to two claims the Cherokee, Choctaw, and Chickasaw Indians wish to raise against the United States. The first claim involves damage to the Arkansas River riverbed -- owned by the tribes -- caused by the government during construction of the Arkansas River Navigation System. The government clearly took minerals of value from the riverbed, but under the doctrine of navigational servitude is not liable for damages to the owner. See United States v. Rands, 389 U.S. 121, 122-123 (1967); Choctaw Nation v. State of Oklahoma, 397 U.S. 620, 635 (1970). Although there were negotiations on compensation between the tribes and Interior, Interior ultimately decided against compensation, and by that time the statute of limitations on the tribes' "takings claim" had expired.

The second claim is also a takings claim, arising out of a 1906 Act which extinguished an existing reversionary interest of the tribes in abandoned railroad stations. The Secretary of Interior was authorized by the 1906 Act to seek money awards for the tribes, but did not do so. Suit by the tribes on these claims was authorized in separate acts in 1924 and 1946, but the three tribes covered by the present bill did not pursue their claims before expiration of the applicable limitations periods.

The Department of Justice and OMB recommend disapproval of the bill, on the grounds that ad hoc waivers of applicable statutes of limitations undermine the policy of finality underlying such statutes, are discriminatory in favoring selected claimants, and invite other time-barred claimants to seek similar waivers. There is no compelling justification for waiver in these cases: the tribes have not lacked adequate legal counsel and could have had their day in court. Furthermore, with respect to the riverbed claim,

the tribes have no case on the merits, and permitting suit would simply result in a meaningless waste of litigation resources. Interior recommends approval, noting that the government originally erred in contending that the tribes did not own the riverbed, and that the tribes were wrongfully deprived of property in the railroad station cases. Assistant Attorney General Robert McConnell has also written you separately, asking for your support in obtaining disapproval of the bill and enclosing a copy of the Justice Department enrolled bill letter to Stockman and proposed memorandum of disapproval.

I recommend that you concur in the views of Justice and OMB that the President disapprove this bill. There is no legally cognizable claim with respect to the riverbed. While there is a claim with respect to the railroad stations, it is in the nature of statutes of limitations to bar meritorious claims. Permitting exceptions because of the existence of meritorious claims ignores the policy of finality underlying limitations periods. I have attached a proposed memorandum to Darman.

Attachment

THE WHITE HOUSE

WASHINGTON

December 21, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 2329 - Waiver of
Statutes of Limitations for Cherokee,
Choctaw, and Chickasaw Nations of Oklahoma

I have reviewed the above-referenced enrolled bill, which would waive the statutes of limitations with respect to claims by the indicated Indian tribes against the United States.

I agree with the Department of Justice view that this bill would undermine the policy of finality in the applicable statutes of limitations, for no compelling reason, and invite other time-barred claimants to seek similar relief. Furthermore, there is no merit to the underlying claim concerning damage to the Arkansas River riverbed, so the bill would simply authorize wasteful litigation with respect to that claim. As to the other claim, despite special legislation in the past, the claims were not pursued.

Thus, from a legal point of view I would concur in the DOJ/OMB recommendation. However, from a political point the vote would indicate very strong support for this bill. Thus, the views of our legislative people should be sought before recommending a pocket veto.

FFF:dgh 12/21/82

cc: FFFielding
JGRoberts
Subj.
Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: Richard G. Darman

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

Subject: Enrolled Bill H.R. 2329 - Cherokee, Choctaw, and Chickasaw Nations of Oklahoma

ROUTE TO:	ACTION	Tracking Date	Type of Response	Code	Completion Date
Office/Agency (Staff Name)	Action Code	YY/MM/DD			YY/MM/DD
<u>WHolland</u>	ORIGINATOR	<u>82/12/20</u>			<u>1/1</u>
<u>WAT18</u>	Referral Note: <u>D</u>	<u>82/12/20</u>		<u>S</u>	<u>82/12/21</u>
	Referral Note:	<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>

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

Comments: _____

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WHITE HOUSE STAFFING MEMORANDUM

DATE: 12/20/82 ACTION/CONCURRENCE/COMMENT DUE BY: c.o.b. TOMORROW
TUESDAY, 12/21
 SUBJECT: ENROLLED BILL H.R. 2329 - CHEROKEE, CHOCTAW, AND CHICKASAW NATIONS
OF OKLAHOMA

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GERGEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HARPER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	JENKINS	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
CLARK	<input type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/> P	<input checked="" type="checkbox"/> SS	WILLIAMSON	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DOLE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	VON DAMM	<input type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BRADY/SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

Remarks:

May we have your comments no later than Tuesday, 12/21. Thank you.

Richard G. Darman
 Assistant to the President
 (x2702)

Response:



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

DEC 20 1982

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 2329 - Cherokee, Choctaw, and
Chickasaw Nations of Oklahoma
Sponsor - Rep. Synar (D) Oklahoma

Last Day for Action

December 24, 1982 - Friday

Purpose

Waives statutes of limitation and confers jurisdiction on certain courts of the United States to consider specified claims of the Cherokee, Choctaw, and Chickasaw Indian Nations of Oklahoma.

Agency Recommendations

Office of Management and Budget	Disapproval
Department of Justice	Disapproval (Memorandum of Disapproval attached)
Department of the Army	Defers to Justice
Department of the Interior	Approval

Discussion

H.R. 2329 would waive the statutes of limitation applicable to two claims that the Cherokee, Choctaw, and Chickasaw Nations of Oklahoma wish to raise against the United States. The enrolled bill would confer jurisdiction to hear and render judgments regarding these claims upon the U.S. Court of Claims or the U.S. District Court for the Eastern District of Oklahoma.

For reasons set forth below, we concur in Justice's view that such a statutes of limitation waiver is not justified, is fundamentally unfair and discriminatory, and could be viewed as a precedent and thus generate numerous other attempts for relief from statutes of limitation. Accordingly, we join Justice in urging that you disapprove H.R. 2329.

Background

In the early 1800's, the United States granted the Cherokee, Choctaw, and Chickasaw title for lands that are now a part of Oklahoma, including an area through which the Arkansas River flows. These grants were a part of Indian treaties that opened up the southwestern United States to non-Indian settlements. Both of the claims addressed by H.R. 2329 are derived from alleged damages associated with these tribal land grants. However, the tribes cannot pursue their claims because several statutes of limitation bar the filing of such claims.

Arkansas Riverbed Claim

The tribes have consistently asserted title to the Arkansas riverbed that traverses their lands. When construction on the Arkansas River Navigation System (ARNS) commenced in 1946, the Federal Government removed sand, gravel, and other minerals from the riverbed. H.R. 2329 would allow the tribes to seek damages against the United States, including the value of sand, gravel, coal, and other resources taken and the value of damsites and powerheads of dams constructed within the Indians' lands that are a part of ARNS.

The issue of riverbed ownership was settled in 1970, when the United States Supreme Court ruled that the Cherokee, Choctaw, and Chickasaw owned the riverbed. In ruling in favor of Indian riverbed ownership, the Supreme Court did, however, affirm the doctrine of "navigational servitude" regarding the construction of ARNS. In practical terms this meant that even though the Indians owned the riverbed, they were not entitled to damages resulting from this Federal navigation project. Perhaps for that reason the three tribes did not file claims in court, but they tried unsuccessfully for several years to have a bill enacted establishing their right to payment for use of the riverbed.

Eventually, Congress required a 3-year study by the Secretary of the Interior to determine the value of minerals taken from the Indians' portion of the riverbed during the construction of ARNS. This study identified potential values including electric powerhead of up to \$177 million in 1976 dollars. Interior discussed alternative payment arrangements with the tribes between 1976 and 1978. However, the Department ultimately decided not to conclude a payment agreement because under the doctrine of navigational servitude the United States was not constitutionally or legally obligated to pay any compensation to the tribes for use of the riverbed associated with construction of ARNS. By that time, suit by the tribes was barred by the statutes of limitation.

Railroad Station Ground Claims

The tribal land grants of the early 1800's included authorization for future railroad rights-of-way as stipulated by Congress. When such rights-of-way were authorized, the Congress also specified lands outside the rights-of-way to be used by the railroads as station grounds, subject to reversion to the tribes if ever abandoned by the railroads. However, many of these station grounds were never developed, and in a 1906 Act, the Congress provided that title to abandoned station grounds would vest either in the municipality within which the land was located or in the individual who owned the subdivision of which the abandoned tract was a part.

This action effectively extinguished the tribes' reversionary interests in the abandoned station grounds and appears to have created a "legislative taking." Accordingly, the 1906 Act also authorized the Secretary of the Interior to file suit on behalf of five tribes, including the Cherokee, Choctaw, and Chickasaw Nations, to recover money awards or the relevant ground stations. Such suits were never brought by the Secretary for reasons that are not known today.

On two other occasions Congress enacted jurisdictional authority for bringing suit on these station grounds claims. In 1924, the five tribes were authorized to file suits in the U. S. Court of Claims. All of the tribes except the Cherokee Nation pursued their claims, but none was successful. However, under the Indian Claims Commission Act of 1946, the Creek and Seminole Nations managed on appeal to the U.S. Court of Claims to win their claims for station grounds. The Cherokee, Choctaw, and Chickasaw Nations did not file claims under the 1946 Act and thus were barred from such action after 1951. There is no meaningful estimate on the potential value of these claims, for as Interior notes in its enrolled bill letter the "...parcels of land are no longer readily identifiable..." and surveys would be required before any value could be estimated.

Administration Position

The Administration opposed enactment of H.R. 2329 as previous Administrations had opposed related bills throughout the 1970's. The basis for this opposition has been a belief that exceptions to the statutes of limitation should not be made on a piecemeal basis. No exceptional circumstances existed that prevented the Cherokee, Choctaw, and Chickasaw Nations from bringing their claims. The affected Indian tribes have not lacked adequate legal counsel and could have brought their claims within the period allowed.

Furthermore, in the Arkansas riverbed case, the Department of Justice strongly believes that there is no legal basis for compensation by the United States and that litigating a well-settled matter would be a waste of tribal and government resources. In fact, in its 1970 decision awarding ownership of the Arkansas riverbed, the Supreme Court essentially affirmed that the Indians' title was subject to the United States preexisting right to exercise its navigational servitude under the commerce clause of the Constitution. In effect, the courts have ruled that the United States is not obligated to pay damages for the destruction of riverbed property resulting from projects to aid navigation.

Congressional Views

Congressional proponents of this legislation believe it is justified for the following reasons:

- regarding the riverbed claims, (1) the Federal Government gave the appearance of seeking a negotiated settlement until the statutes of limitation barred such claim and then asserted that compensation was not required and (2) the issue of compensation under the doctrine of "navigational servitude" requires further adjudication by the courts;
- regarding the station ground claims, (1) Interior failed to meet its responsibilities as trustee and (2) only after the Creek and Seminole successfully pursued such claims did the other tribes think they could prevail on their claims; and
- regarding both claims, no legal precedents would be created given the unique nature of these cases.

Agency Views

In its enrolled bill letter, Interior acknowledges that the United States is neither constitutionally nor equitably obligated to pay any compensation regarding the riverbed claims, but recommends approval because:

- a final judicial determination of liability would be appropriate in light of the Department's earlier error regarding riverbed ownership at the time of the ARNS authorization;
- in the case of the railroad station ground claims, there is the possibility of "...wrongful deprivation of property..." and, therefore, the tribes should not be denied an opportunity to present their claims; and

- H.R. 2329 would "...simply confer jurisdiction..." without any assurance of awards resulting.

Consistent with the Executive's long-standing opposition to H.R. 2329 and related legislation, Justice recommends that it be disapproved because:

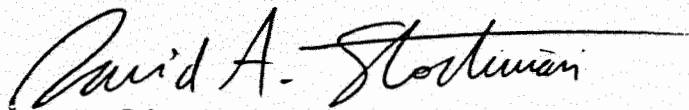
- there are no compelling circumstances that would warrant waiving the statutes of limitation and to do so would unfairly discriminate against those who do not have the benefit of special legislation to pursue their claims;
- the bill would encourage the passage of related waivers;
- litigation on the riverbed claims would serve no purpose given the doctrine of navigational servitude;
- although indeterminate, the ultimate cost of the litigation could be large; and
- the Indians, under other statutes, have had their day in court.

Conclusion

We believe the arguments presented by Justice to be compelling, and accordingly, join that Department in recommending that you not approve H.R. 2329. Unless the enrolled bill is disapproved, we fear that numerous other previously barred claims will surface, and in each case be characterized by their proponents as "unique" and worthy of being included in a growing class of exceptions to the statutes of limitation. The principle underlying the statutes of limitation must not be further eroded.

Justice has prepared, for your consideration, a draft Memorandum of Disapproval with which we concur.

The House initially failed to suspend the rules and pass H.R. 2329 by a vote of 174 to 215. However, the House subsequently passed the bill on a vote of 293-26. The Senate passed H.R. 2329 on a voice vote.


Director

Enclosures

Ninety-seventh Congress of the United States of America

AT THE SECOND SESSION

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

An Act

Conferring jurisdiction on certain courts of the United States to hear and render judgment in connection with certain claims of the Cherokee Nation of Oklahoma.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) notwithstanding sections 2401 and 2501 of title 28, United States Code, and section 12 of the Act of August 13, 1946, as amended (the Indian Claims Commission Act, 60 Stat. 1049, 1052; 25 U.S.C. 70k), jurisdiction is hereby conferred upon the United States Court of Claims, or upon the United States District Court for the Eastern District of Oklahoma, to hear, determine, and render judgment, under the jurisdictional provisions of section 2 of the Indian Claims Commission Act of August 13, 1946, as amended (60 Stat. 1049, 1050; 25 U.S.C. 70a), on any claim which the Cherokee Nation of Oklahoma may have against the United States for any and all damages to Cherokee tribal assets related to and arising from construction of the Arkansas River Navigation System, including, but not limited to, the value of sand, gravel, coal, and other resources taken, the value of damsites and powerheads of dams constructed on that part of the Arkansas riverbed within Cherokee domain in Oklahoma, without the authority or consent of said Cherokee Nation; and also on any claim which the Cherokee Nation of Oklahoma may have against the United States resulting from any action under section 14 of the Act of April 26, 1906 (34 Stat. 137, 142), wherein the United States gave away to third parties lands for what are known as station grounds of railroads, said lands being segregated from Cherokee Nation tribal lands without compensation to said Cherokee Nation of Oklahoma therefor; all of said lands or interests therein being held by said Cherokee Nation by virtue of treaties and by patent issued by the United States granting said lands to said Cherokee Nation in fee simple, or otherwise.

(b) Notwithstanding sections 2401 and 2501 of title 28, United States Code, and section 12 of the Act approved August 13, 1946 (25 U.S.C. 70k), the Court of Claims or the United States District Court for the Eastern District of Oklahoma shall have jurisdiction to the

same extent as under subsection (a) of this Act to hear, determine, and render judgment on any claim of the Choctaw Nation and on any claim of the Chickasaw Nation against the United States for any damages to any tribal assets, lands, or interests of such Nations arising from the actions of the United States described in such subsection.

Speaker of the House of Representatives.

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

Roberts

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
- H - INTERNAL
- I - INCOMING

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

Name of Correspondent: Robert A. McConnell

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

Subject: Enrolled bill H.R. 2329, a bill "conferring jurisdiction on certain courts of the United States to hear and render judgment in connection with certain claims of the Cherokee Nation of Oklahoma"

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>W Holland</u>	<u>ORIGINATOR</u>	<u>82/12/16</u>			<u>1/1</u>
	Referral Note:				
<u>WAT18</u>	<u>A</u>	<u>82/12/17</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:				
		<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: I will forward bill from Staff Secretary's Office when we receive

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.



United States Department of Justice

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

WASHINGTON, D.C. 20530

16 DEC 1982

Honorable Fred F. Fielding
Counsel to the President
The White House
Washington, D.C. 20500

Dear Fred:

Awaiting the President's review is Enrolled bill H.R. 2329, a bill "conferring jurisdiction on certain courts of the United States to hear and render judgment in connection with certain claims of the Cherokee Nation of Oklahoma."

Aside from undermining the policy of the applicable statutes of limitation, this unjustified legislation may have significant budgetary impact. Additionally, because of its discriminatory nature, that is, there are others in similar situations who do not have the benefit of this special legislation and are time-barred from bringing any action, it may lead to similar bills being introduced and passed by the Congress. Throughout Congressional consideration, this Department has been the "lead" and only voice for the Administration. The Administration is clearly on record opposing this bill and similar legislation. Our OMB cleared opposition has been expressed repeatedly.

The Department strongly opposes Executive approval of H.R. 2329. Enclosed is a copy of our enrolled bill report which has been submitted to Director Stockman. We urge your support for appropriate Presidential disapproval of this legislation.

Sincerely,

A handwritten signature in black ink, appearing to be "R. McConnell", written over a horizontal line.

ROBERT A. McCONNELL
Assistant Attorney General

Attachment



United States Department of Justice

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

WASHINGTON, D.C. 20530

DEC 16 1982

December 16, 1982

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

Dear Mr. Stockman:

In compliance with your request, I have examined a facsimile of enrolled bill H.R. 2329, a bill "conferring jurisdiction on certain courts of the United States to hear and render judgment in connection with certain claims of the Cherokee Nation of Oklahoma." The Department of Justice strongly recommends against Executive approval of this legislation.

This legislation would permit the Cherokee Nation of Oklahoma to institute suit in either the United States Court of Claims or the United States District Court for the Eastern District of Oklahoma for claims against the United States: (1) for damages to tribal assets arising out of construction of the Arkansas River Navigational System, and (2) resulting from any action under section 14 of the Act of April 26, 1906 (34 Stat. 142). The legislation also grants jurisdiction to these courts for related claims of the Choctaw Nation and Chickasaw Nation. Jurisdiction is granted to these courts by waiving the relevant statutes of limitations set forth at 25 U.S.C., § 2401 and § 2501, as well as that contained in § 12 of the Indian Claims Commission Act, 25 U.S.C. § 70k.

Throughout congressional consideration of this legislation this Department has been solely responsible for stating the Administration's position. The Department has testified against this legislation (December 9, 1982, before House Judiciary Committee's Subcommittee on Administrative Law and Governmental Relations) and has written to both the House of Representatives (February 1982) and the Senate (November 18, 1982). In each instance, we have stated the clear opposition of the Administration to this legislation. All other Departments either remained silent or deferred to the Department of Justice throughout congressional consideration. The Administration's opposition has been established clearly.

As you are aware, the clear statutory policy embodied in the Indian Claims Commission Act was to put an end to claims that arose prior to August 13, 1946, to establish a firm and clearly identified termination date for such claims. Absent compelling circumstances, the Department of Justice has consistently opposed the waiver of the statute of limitations in these and other matters. Implicit in such statutes is the principle that the opportunity to seek a remedy must terminate at some point since the failure to file suit within the prescribed period of time results not only in unfairness to the opposing party, in this case the government, but also makes rendering of a fair decision difficult, if not impossible. That certain Tribes have overlooked possible claims is not a sound justification for erosion of the statutory policy. Moreover, piecemeal exceptions such as H.R. 2329, are fundamentally unfair to those, who possess a claim barred by the statute of limitations, but do not have the benefit of special legislation to pursue their claims. In this sense, H.R. 2329 is is not only discriminatory but would encourage passage of similar waivers.

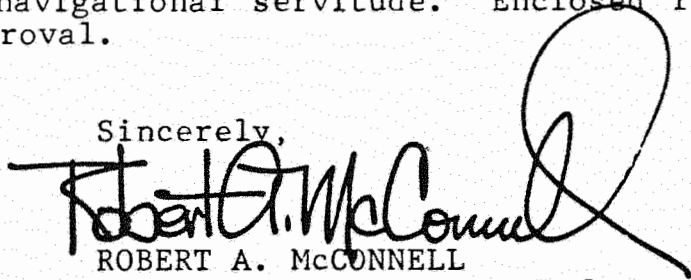
It should be emphasized that permitting litigation over one of the claims of H.R. 2329, that of damages to tribal assets arising out of the construction of the Arkansas River Navigational System, conflicts with the right of the United States to exercise its navigational servitude which is exercised pursuant to the Commerce Clause of the Constitution. As fully set forth in our report to the Committee on the Judiciary, a copy of which is attached, we believe that notwithstanding the ownership rights of the tribe in the bed of the river, the United States is not obligated to compensate for destruction of property resulting from a project in aid of navigation. Enactment of H.R. 2329 would require litigation over a matter for which the law requires no compensation by the United States. Expenditure of resources by the United States to litigate this matter would therefore serve no purpose.

While this legislation makes no direct appropriation of funds, its ultimate cost may be large. Aside from the litigation resources that this Department will be forced to allocate, payment of substantial claims concerning the railroad properties as they relate to actions under section 14 of the Act of April 26, 1906 (34 Stat. 142), is likely. Additionally, while we believe the exercise of the government's navigational servitude in the Arkansas River requires no compensation, it may be possible for a court to construe this legislation as Congress' intention to grant compensation. Under these circumstances, the ultimate liability of the United States may be significant. The Department of the Interior is in a better position to provide an estimate of the federal government's potential liability under this legislation.

The Department of Justice recommends against Executive approval of H.R. 2329. It is undisputed that the parties who would benefit from enactment could have had their day in court. They have not lacked adequate legal counsel and could have brought their claims

within the time allowed. Moreover, enactment would be unfair to those Tribes which possess other claims now barred by the statute of limitations but do not have the benefit of special legislation. Furthermore, enactment of this bill would encourage passage of other bills whose purpose is to waive statutes of limitations, thus promoting additional dangerous and unjustified piecemeal erosion of the sound statutory policy to put an end to these lawsuits. Finally, with respect to the Arkansas River claims, we do not believe there is any legal obligation for compensation arising from the exercise of the United States of its navigational servitude. Enclosed is a suggested Memorandum of Disapproval.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. McConnell". The signature is written in a cursive style with a large, prominent loop at the end.

ROBERT A. McCONNELL
Assistant Attorney General

MEMORANDUM OF DISAPPROVAL

To The House of Representatives

I am withholding my approval of H.R. 2329, a bill "conferring jurisdiction on certain courts of the United States to hear and render judgment in connection with certain claims of the Cherokee Nation of Oklahoma."

H.R. 2329 would waive the statute of limitations found in 25 U.S.C. § 2401 and §2501 as well as that contained in section 12 of the Indian Claims Commission Act, 25 U.S.C. §70k with respect to certain claims of the Cherokee Nation, the Chickasaw Nation and the Choctaw Nation.

The policy embodied in the Indian Claims Commission Act was to provide for finality and certainty with respect to claims that arose prior to August 13, 1946. The applicable statutes of limitations, therefore, should be waived only in compelling circumstances. Implicit in such statutes is the principle that the opportunity to seek a remedy must terminate at some point since the failure to file suit within the prescribed period of time not only subjects the opposing party, in this case the government, to uncertainty and unnecessary litigation, but also makes rendering a fair decision, many years after the fact, difficult, if not impossible. That certain Tribes have overlooked possible claims is not a sound justification for erosion of the statutory policy. Moreover, piecemeal exceptions such as H.R. 2329 are fundamentally unfair to those who possess a claim barred by the statute of limitations, but do not have the benefit of special legislation to pursue their claims. This discriminatory feature of H.R. 2329 will likely lead numerous other groups to seek relief from the clear provisions of statutes of limitations.

By waiving the applicable statute of limitations, H.R. 2329 undermines sound policy of present law. Additionally, it is discriminatory in that it permits litigation of one group's claims which are indistinguishable from those of other similarly situated groups. I cannot support this effort to confer special relief to the detriment of others and the Treasury. Accordingly, I must withhold approval of H.R. 2329.



Office of the Assistant Attorney General

Washington, D.C. 20530

NOV 18 1982

Honorable Strom Thurmond
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on H.R. 2329 and S. 1914, two bills "conferring jurisdiction on certain courts of the United States to hear and render judgment in connection with certain claims of the Cherokee Nation of Oklahoma."

The Department of Justice opposes enactment of this legislation.

H.R. 2329 and S. 1914 would waive the statute of limitations found in 25 U.S.C. §2401 and §2501 as well as that contained in §12 of the Indian Claims Commission Act, 25 U.S.C. §70k, with respect to certain claims of the Cherokee Nation.

With the enactment of the Indian Claims Commission Act of 1946, Congress established an unambiguous statutory policy that all tribal claims which arose prior to August 13, 1946, were to be filed within five years and that no claim not so presented " * * * may thereafter be submitted to any court or administrative agency for consideration, nor will such claim thereafter be entertained by Congress." 25 U.S.C. §70k. It has been the consistent position of this and previous Administrations that exceptions should not be made on a piecemeal basis. It should be emphasized that litigation by Cherokee Indians in the Court of Claims under jurisdictional legislation pertaining specifically to these Cherokee Indians, ^{1/} and the general jurisdiction of the Indian Claims Commission Act, has been conducted in numerous cases for more than 70 years. Both these Acts state clearly that the policy of Congress is to foreclose further litigation of claims which could have been brought within their purview. ^{2/} Moreover, enactment of H.R. 2329 and S. 1914 would require litigation over a matter in which we strongly believe the law requires no compensation by the United States.

1/ Act of April 25, 1932, 47 Stat. 137.

2/ A list of jurisdictional acts and the decisions entered thereunder, relative to the claims of these Cherokee Indians is attached. (See Attachment A). It appears the Cherokee were awarded a total of \$16,152,452.04 in the cases involved.

One of the claims upon which H.R. 2329 is based would waive the statute of limitations with respect to claims for the loss of land to railroads and municipalities during the early 1900s. As stated earlier, we do not believe there is any justification for extending such a special privilege; nothing prevented the tribe from filing claims earlier when they were entitled to do so.

Another claim present in both H.R. 2329 and S. 1914, would waive the statute of limitations relating to the construction of the Arkansas River navigation system. The bed of a navigable river is subject to the authority of the United States to exercise its navigational servitude. Accordingly, it is the Department's position that notwithstanding the ownership rights of the tribe in the bed of the river, the United States is not obligated to compensate for destruction of property resulting from a project in the aid of navigation.

The navigational servitude has been defined in United States v. Rands, 389 U.S. 121 (1967). The Supreme Court's decision in that case makes it clear that the Fifth Amendment does not require the United States to compensate property owners when the servitude is exercised:

The Commerce Clause confers a unique position upon the Government in connection with navigable waters. "The power to regulate commerce comprehends the control for that purpose, and to the extent necessary, of all the navigable waters of the United States. . . . For this purpose they are the public property of the nation, and subject to all the requisite legislation by Congress." Gilman v. Philadelphia, 3 Wall. 713, 724-725 (1866). This power to regulate navigation confers upon the United States a "dominant servitude," FPC v. Niagara Mohawk Power Corp., 347 U.S. 239, 249 (1954), which extends to the entire stream and the stream bed below ordinary highwater mark. The proper exercise of this power is not an invasion of any private property rights in the stream or the lands underlying it, for the damage sustained does not result from taking property from riparian owners within the meaning of the Fifth Amendment but from the lawful exercise of a power to which the interests of riparian owners have always been subject. United States v. Chicago, M., St. P. & P.R. Co., 312 U.S. 592, 596-597 (1941); Gibson v. United States, 166 U.S. 269, 275-276 (1887). Thus, without being constitutionally obligated to pay compensation, the United States may change the course of a navigable stream, South Carolina v. Georgia, 93 U.S. 4 (1876), or otherwise impair or destroy a riparian owner's access to navigable

waters, Gibson v. United States, 166 U.S. 269 (1897); Scranton v. Wheeler, 179 U.S. 141 (1900); United States v. Commodore Park, Inc., 324 U.S. 386 (1945), even though the market value of the riparian owner's land is substantially diminished. 389 U.S. at 122-123 [emphasis supplied].

In United States v. Chandler-Dunbar Co., 229 U.S. 53 (1913), the plaintiff claimed it was entitled to just compensation for the "water power capacity" allegedly taken when the United States constructed dams and dykes to control the current of St. Mary's River in Michigan. In rejecting plaintiff's position that the Fifth Amendment protected its interest in water power capacity, the Court stated:

This title of the owner of fast land upon the shore of a navigable river to the bed of the river, is at best a qualified one. * * * It is subordinate to the public right of navigation, and however helpful in protecting the owner against the acts of third parties, is of no avail against the exercise of the great and absolute power of Congress over the improvement of navigable rivers. That power of use and control comes from the power to regulate commerce between the States and with foreign nations. It includes navigation and subjects every navigable river to the control of Congress. * * * If, in the judgment of Congress, the use of the bottom of the river is proper for the purpose of placing therein structures in aid of navigation, it is not thereby taking private property for a public use, for the owner's title was in its very nature subject to that use in the interest of public navigation. If its judgment be that structures placed in the river and upon such submerged land, are an obstruction or hindrance to the proper use of the river for purposes of navigation, it may require their removal and forbid the use of the bed of the river by the owner in any way which in its judgment is injurious to the dominant right of navigation. 229 U.S. at 62.

In Coastal Petroleum Co. v. United States, 524 F.2d 1206 (Ct. Cl. 1975), a case involving claims analogous to the type that presumably would be asserted by the Cherokee Nation if either H.R. 2329 or S. 1914 is enacted, the Court of Claims held that the effect of the navigational servitude is not reduced by the fact that the government may have received some "commercial benefit" from

the use of the owner's property. In that case, plaintiff claimed compensation for the government's use (as part of a flood control project) of limestone removed from the bottom of a navigable lake. The Court of Claims upheld the government's position that no compensation was required since the limestone was used in connection with the proper exercise of the government's navigational servitude.

A different result obtains, however, where Congress, through legislation, specifically provides for compensation of the owners of "submerged lands in navigable waters." Coastal Petroleum, supra at 1210. Congress has, from time to time, adopted this approach with respect to Indian tribes. For example, in the Act of June 4, 1920, ch. 224, §10, 41 Stat. 751, 754, Congress provided that land on the Crow Indian Reservation in Montana that was valuable for water power development should be reserved from sale and "held for the benefit of the Crow Tribe of Indians." United States v. 5,677.94 Acres of Land, 16 F.Supp. 108, 116 (D. Mont. 1958). Also, the Court of Claims in Confederated Salish and Kootenai Tribes v. United States, 181 Ct. Cl. 739 (1967), found that Congress intended to compensate the Indian Tribes for power values of riparian land when it enacted Section 10(e) of the Federal Water Power Act, ch. 285, 41 Stat. 1063, 1069 (1920), and required payment of a reasonable annual charge for the use of that land. In that case, Congress, with respect to the specific tribes, had enacted legislation requiring rentals for use of their reservation by licensees of the Federal Power Commission. In the absence of legislation, however, we know of no instance where an Indian tribe was treated any differently by the courts with regard to the issue of compensation for riparian rights than other property owners.

This conclusion is fully supported by the Supreme Court's decision in Choctaw Nation v. State of Oklahoma, 397 U.S. 620 (1970), involving a dispute over title to land underlying the navigable portion of parts of the Arkansas River. In that case, which is directly related to the subject matter covered in H.R. 2329 and S. 1914, the Court held that the land belonged to the Choctaw, Chickasaw and Cherokee Nations but indicated that their title was subject to the preexisting right of the United States to exercise its navigational servitude:

Indeed, the United States seems to have had no present interest in retaining title to the river bed at all; it had all it was concerned with in its navigational easement via the constitutional power over commerce. 397 U.S. at 635.

In terms of the Arkansas River bed, there is no legitimate claim against the United States for the exercise of its navigational servitude. H.R. 2329 and S. 1914 would simply permit the tribe to file a lawsuit. It does not waive the right of the United States to exercise its authority under the Commerce Clause of the Consti-

tution, nor does it provide that there should be any compensation paid. It would waste the resources of the tribe and the federal government to litigate a matter that is well settled.

In summary, H.R. 2329 and S. 1914 abrogate a long held policy of the Congress not to waive the statute of limitations. It is a policy which has been subject to few exceptions. The Cherokee Indians could have had their day in court. They have not lacked adequate legal counsel and could have brought their claims within the period allowed. Additionally, litigating the issue of compensation for the government's exercise of its navigational servitude would be a waste of resources. We therefore oppose enactment of H.R. 2329 and S. 1914.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

SIGNED

ROBERT A. McCONNELL
Assistant Attorney General
Office of Legislative Affairs

Claims Against the United States

Brought by Cherokee Indians

Completed Litigation

Act of February 25, 1889, 25 Stat. 694.

Western Cherokee Indians v. United States, 27 Ct. Cl. 1 (1891) aff'd 148 U.S. 427 (1893).

Act of March 19, 1924, 47 Stat. 137, as amended.

Cherokee Nation v. United States, 92 Ct. Cl. 262 (1941).

Act of April 25, 1932, 47 Stat. 137.

Eastern or Emigrant Cherokee v. United States, 82 Ct. Cl. 180 (1935), cert. denied, 299 U.S. 551; Eastern or Emigrant Cherokees and Western Old Settler Cherokee v. United States, 88 Ct. Cl. 452 (1939).

Indians Claims Commission Act, 25 U.S.C. § 70k, et seq.

Western Cherokee Indians v. United States, 1 Ind. Cl. Comm. 1 (1948), rev'd, 114 Ct. Cl. 716 (1949), 2 Ind. Cl. Comm. 7 (1952), aff'd, 124 Ct. Cl. 127 (1953); Western Cherokee Indians v. United States, 1 Ind. Cl. Comm. 20 (1938), aff'd, 116 Ct. Cl. 665 (1950), cert. denied, 340 U.S. 903 (1950); Western Cherokee Indians v. United States, 1 Ind. Cl. Comm. 165 (1949); Cherokee Nation v. United States, 2 Ind. Cl. Comm. 37 (1952); Eastern or Emigrant Cherokee, 1 Ind. Cl. Comm. 408; Cherokee Nation, 9 Ind. Cl. Comm., 435 (1961).

THE WHITE HOUSE
WASHINGTON
December 22, 1982

NOTE FOR JOHN ROBERTS

Sorry for the short notice,
but we need clearance on this
draft veto message by 9:00
a.m. tomorrow morning. Dick
Darman wants the President
to sign it at that time.

If you have any questions,
please call x2702. Thank
you.

Jan McMinn

x2702

MEMORANDUM OF DISAPPROVAL

I am withholding my approval of H.R. 2329, a bill "conferring jurisdiction on certain courts of the United States to hear and render judgment in connection with certain claims of the Cherokee Nation of Oklahoma."

H.R. 2329 would waive the statute of limitations found in 25 U.S.C. §2401 and §2501 as well as that contained in section 12 of the Indian Claims Commission Act, 25 U.S.C. §70k with respect to certain claims of the Cherokee Nation, the Chickasaw Nation and the Choctaw Nation.

The policy embodied in the Indian Claims Commission Act was to provide for finality and certainty with respect to claims that arose prior to August 13, 1946. The applicable statutes of limitations, therefore, should be waived only in compelling circumstances. Implicit in such statutes is the principle that the opportunity to seek a remedy must terminate at some point since the failure to file suit within the prescribed period of time not only subjects the opposing party, in this case the government, to uncertainty and unnecessary litigation, but also makes rendering a fair decision, many years after the fact, difficult, if not impossible. That certain Tribes have overlooked possible claims is not a sound justification for erosion of the statutory policy. Moreover, piecemeal exceptions such as H.R. 2329 are fundamentally unfair to those who possess a claim barred by the statute of limitations, but do not have the benefit of special legislation to pursue their claims. This discriminatory feature of H.R. 2329 will likely lead numerous other groups to seek relief from the clear provisions of statutes of limitations.

By waiving the applicable statute of limitations, H.R. 2329 undermines sound policy of present law. Additionally, it is discriminatory in that it permits litigation of one

group's claims which are indistinguishable from those of other similarly situated groups. I cannot support this effort to confer special relief to the detriment of others and the Treasury. Accordingly, I must withhold approval of H.R. 2329.

THE WHITE HOUSE,

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

December 23, 1982

The President has signed the following legislation:

H.R. 2329 which waives statutes of limitation and confers jurisdiction on certain courts of the United States to consider specified claims of the Cherokee, Choctaw, and Chickasaw Indian Nations of Oklahoma;

H.R. 4364 which transfers 570 acres of land held by the Department of the Interior, Bureau of Land Management, in Pima County, Arizona, to the Pascua Yaqui Tribe.

S. 2611 which authorizes an increase in the readjustment allowance paid to Peace Corps volunteer leaders; and

S. 3073 which authorizes the United States Information Agency (USIA) film "Dumas Malone: A Journey with Mr. Jefferson" to be distributed within the United States.

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