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ALL

DATE INTRODUCED: 02/06/81

H.R.1815

SPONSOR: Lea

REFERRED TO: House Interior and Insular Affairs

LATEST OFFICIAL TITLE:

OFFICIAL TITLE AS INTRODUCED AS OF 02/10/81

A bill to amend the Indian Self-Determination Act to provide that grants under such Acts may not be made to tribal organization for proceedings the tribal organization initiates based on the claim that land was acquired without compliance with the laws of the United States relating to conveyances by any Indian, Indian nation, or tribe of Indians.

LEGISLATIVE ACTIONS:

Feb 6, 81 Referred to House Committee on Interior and Insular Affairs.

ABSTRACT:

Amends the Indian Self-Determination Act to prohibit the Secretary of the Interior from making contracts or grants, under such Act, with or to any tribal organization for proceedings initiated by such organization based on the claim that land was acquired without compliance with U.S. laws relating to conveyances by any Indian, Indian nation, or tribe of Indians.

PAGE 1 OF 2. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

H.R.1815 (L697) continued:

DIGEST:

Amends the Indian Self-Determination Act to prohibit the Secretary of the Interior from making contracts or grants, under such Act, with or to any tribal organization for proceedings initiated by such organization based on the claim that land was acquired without compliance with U.S. laws relating to conveyances by any Indian, Indian nation, or tribe of Indians.

INDEX TERMS:

INDIAN CLAIMS/FEDERAL-INDIAN RELATIONS/INDIAN LANDS/FEDERAL AID TO INDIANS

ALL, PAGE 2 OF 2. READY FOR NEW COMMAND, OPTION OR PG #:

ALL

H.R.2329

DATE INTRODUCED: 03/04/81

SPONSOR: Synar

H.REPT.97-453

REFERRED TO: House Interior and Insular Affairs  
House Judiciary

REPORTED BY: House Judiciary

LATEST OFFICIAL TITLE:

OFFICIAL TITLE AS INTRODUCED AS OF 03/05/81

A bill conferring jurisdiction on certain courts of the United States to hear and render judgement in connection with certain claims of the Cherokee Nation of Oklahoma.

## LEGISLATIVE ACTIONS:

Mar 4, 81 Referred to House Committee on Interior and Insular Affairs.

Nov 3, 81 Executive Comment Requested from Interior, Justice.

Mar 3, 82 Executive Comment Received From Interior.

Mar 4, 81 Referred to House Committee on The Judiciary.

Mar 9, 81 Referred to Subcommittee on Administrative Law and Governmental Relations.

Dec 9, 81 Subcommittee Hearings Held.

PAGE 1 OF 3. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

## H.R.2329 (LG97) continued:

Feb 3, 82 Subcommittee Consideration and Mark-up Session Held.

Feb 3, 82 Forwarded by Subcommittee to Full Committee (Amended).

Mar 10, 81 Executive Comment Requested from Interior, Justice, OMB.

Mar 3, 82 Committee Consideration and Mark-up Session Held.

Mar 3, 82 Ordered to be Reported (Amended).

Mar 3, 82 Reported to House (Amended) by House Committee on The Judiciary. Report No: 97-453 (Part I).

Mar 16, 82 Called up by House Under Suspension of Rules.

Mar 16, 82 Considered by House Unfinished Business Vote Postponed Until March 18, 1982.

Mar 18, 82 Failed to Receive 2/3's Vote to Suspend and Pass by Yea-Nay Vote: 174 - 215 (Record Vote No: 28).

## ABSTRACT:

Confers jurisdiction upon the United States Court of Claims and the United States District Court for the Eastern District of Oklahoma to hear all claims which the Cherokee Nation of Oklahoma may have against the United States with respect to certain lands and assets.

## DIGEST:

Confers jurisdiction upon the United States Court of Claims and the United

ALL, PAGE 2 OF 3. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

## H.R.2329 (LG97) continued:

States District Court for the Eastern District of Oklahoma to hear all claims which the Cherokee Nation of Oklahoma may have against the United States with respect to: (1) damages to tribal assets related to construction of the Arkansas River Navigation System; and (2) lands given to third parties for station grounds of railroads.

## INDEX TERMS:

JURISDICTION/INDIAN CLAIMS/INDIAN LANDS/RIVERS/DISTRICT COURTS--OKLAHOMA/  
RAILROAD LAND GRANTS

ALL, PAGE 3 OF 3. READY FOR NEW COMMAND, OPTION OR PG #:

ALL

DATE INTRODUCED: 05/12/81

H.R. 3553

SPONSOR: White

REFERRED TO: House Interior and Insular Affairs

LATEST OFFICIAL TITLE:

OFFICIAL TITLE AS INTRODUCED AS OF 05/14/81

A bill to permit the Tigua Indian Tribe of Texas to file with the United States Court of Claims any claim of such tribe for compensation for lands allegedly taken from such tribe by the United States without the payment of adequate compensation.

LEGISLATIVE ACTIONS:

May 12, 81 Referred to House Committee on Interior and Insular Affairs.

ABSTRACT:

Grants to the United States Court of Claims jurisdiction to consider any claim filed within one year of the enactment of this Act by the Tigua Indian Tribe of Texas for compensation for any real property acquired from them by the United States without adequate compensation.

DIGEST:

Grants to the United States Court of Claims jurisdiction to consider any claim  
PAGE 1 OF 2. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

H.R. 3553 (LG97) continued:

filed within one year of the enactment of this Act by the Tigua Indian Tribe of Texas for compensation for any real property acquired from them by the United States without adequate compensation.

INDEX TERMS:

INDIAN CLAIMS/INDIAN LANDS/CLAIMS AND GOVERNMENT LIABILITY/TIGUA TRIBE OF TEXAS /COMPENSATION FOR LANDS/COURTS AND CIVIL PROCEDURE/COURT OF CLAIMS/JURISDICTION/ INDIANS AND NATIVE AMERICANS/COMPENSATION FOR LANDS/PUBLIC LANDS AND REAL PROPERTY/TEXAS

ALL, PAGE 2 OF 2. READY FOR NEW COMMAND, OPTION OR PG #:

ALL

H.R.4363

DATE INTRODUCED: 07/31/81

SPONSOR: Udall

REFERRED TO: House Interior and Insular Affairs

LATEST OFFICIAL TITLE:

OFFICIAL TITLE AS INTRODUCED AS OF 08/01/81

A bill to provide water to the Papago Tribe of Arizona and its members, to settle tribal and individual water rights claims in portions of the Papago reservations, and for other purposes.

LEGISLATIVE ACTIONS:

Jul 31, 81 Referred to House Committee on Interior and Insular Affairs.

Aug 11, 81 Referred to Subcommittee on Water and Power Resources.

Aug 27, 81 Field Hearings Held in Tucson, Arizona.

Aug 28, 81 Field Hearings Held in Phoenix, Arizona.

Sep 14, 81 Executive Comment Requested from Interior.

ABSTRACT:

Directs the Secretary of the Interior to deliver water supplies to the Papago Tribe of Arizona and its members, in settlement of tribal and individual water rights claims in portions of the Papago reservations.

PAGE 1 OF 8. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

H.R.4363 (LG97) continued:

DIGEST:

Declares the intent of the United States to reach a reasonable resolution, without costly and lengthy litigation, of Papago Indian claims for water based upon U.S. failure to meet its trust responsibility.

Sets forth findings, purposes, and definitions under this Act.

Title I: Directs the Secretary of the Interior to deliver a firm water supply (an assured annual quantity of water suitable for agricultural use), commencing within ten years of the enactment of this Act, in specified quantities to: (1) the San Xavier Indian Reservation; (2) the Schuk Toak District of the Sells Papago Reservation; and (3) the Sif Oidak District of the Sells Papago Reservation (Chuichu area).

Authorizes the Secretary to enter into contracts or other agreements with the Papago Tribe for: (1) such deliveries; (2) construction, operation, and maintenance of appropriate facilities; and (3) in partial satisfaction of such water supply entitlements, an annual delivery of water in an agreed upon amount from a facility of the Central Arizona Project (with exchanges for ALL, PAGE 2 OF 8. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

H.R.4363 (LG97) continued:

water from other sources permissible).

Authorizes the Secretary to develop cooperatively with the Papago Tribe plans for full use and management of the respective entitlements. Requires that such plans be completed within 18 months and periodically modified thereafter.

Directs the Secretary to carry out appropriate engineering and hydrological studies. Authorizes appropriations to carry out such studies.

Directs the Secretary to acquire and deliver those portions of the respective water supply entitlements which are not provided from the Central Arizona Project entitlement portions.

Directs the Secretary, to the extent consistent with the respective plans, to: (1) improve and extend existing irrigation systems and, on condition that the Tribe or its members subvocate the land, construct additional works; and (2) require the Tribe or its members or a designated entity to assume responsibility for the operation and maintenance of such system.

ALL, PAGE 3 OF 8. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

H.R.4363 (LG97) continued:  
Authorizes the Secretary to make loans to the Tribe for the subvocation of land and delivery of water.

Makes the Secretary's execution of such water supply contracts or arrangements conditional upon execution by the Papaso Tribe of a waiver and release of any and all claims or future claims of water rights or injuries to water rights within specified areas which the Tribe has against the United States, the State of Arizona and its agencies and local governments, or any other person, corporation, or municipal corporation, arising under U.S. or Arizona law. Provides that: (1) no allotted lands within the San Xavier Reservation shall be entitled to such delivery of water unless and until the beneficial owners thereof agree to join in such waiver; (2) agreements to deliver water to the San Xavier Reservation shall not take effect until the Papaso Tribe and allottee class representatives request dismissal of a specified lawsuit.

Directs the Secretary to complete a study within one year to determine which lands within the Gila Bend Reservation have been rendered unsuitable for agriculture because of the operation of the Painted Rock Dam. Authorizes the Secretary to exchange such lands for an equivalent acreage, of like quality

ALL, PAGE 4 OF 8. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

H.R.4363 (LG97) continued:  
but suitable for agriculture, within the Federal public domain. Authorizes appropriations for such purpose.

Title II: Authorizes the Secretary to develop and deliver unappropriated water or ground water (which is appurtenant to public lands and which, to the extent practicable, is not within an active management area) to lands within the San Xavier and Sells Papaso Reservations.

Authorizes the Secretary, in order to supply water to the appropriate Papaso reservations, to acquire, with the consent of the owner: (1) private lands having surface or ground water rights; (2) State water rights; or (3) alternative water supplies. Provides that such water may only be developed and delivered in compliance with specified provisions of the Arizona Ground Water Management Act. Declares that nothing in this title shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group, or community, or any individual Indian allottees. Provides for the management of, and compensation for, lands or interests in lands acquired.

Requires that the contracts entered into under title I of this Act provide ALL, PAGE 5 OF 8. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

H.R.4363 (LG97) continued:  
that the Papaso Tribe or its members: (1) continue to be entitled to pump specified amounts of ground water from certain water basins; and (2) also be entitled to pump other specified amounts of ground water from such basins.

Authorizes the Secretary to provide to the Papaso Tribe, in lieu of the water

to which the Tribe is otherwise entitled under this Act, any Colorado River water which the State of Arizona receives in excess of its authorized amount.

Authorizes the Secretary, to facilitate water delivery under this Act, to: (1) enter into contracts for the exchange of water or for the use of water delivery facilities; and (2) use facilities constructed with Federal funds.

Directs the Secretary, upon the request of the Tribe, to carry out a study to determine water resources within the Sells Papago Reservation but outside specified water basins. Provides that any water developed from such underground sources shall not be credited against the water supply entitlement. Authorizes appropriations to carry out such study.

Sets forth the right of the Papago Tribe to devote the water supplies  
ALL, PAGE 6 OF 8. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

H.R.4363 (LG97) continued:

entitlement to any use. Prohibits the Tribe from permanently alienating any water right in absence of consent by the Secretary. Requires that any profit derived from the disposition of water from such entitlement shall first be used to pay principal and interest on loans made under this Act. Provides that water to which the Papago Tribe is entitled under this Act, with specified exceptions, shall be deemed to have been reserved or appropriated as of the date the reservation to which such water is delivered first was established.

Provides that specified contracts between the Secretary and the Papago Tribe shall be deemed to have been executed in compliance with the Colorado River Basin Project Act and the National Environmental Policy Act of 1969.

Authorizes appropriations to carry out this Act.

INDEX TERMS:

WATER SUPPLY/ARIZONA/INDIAN CLAIMS/PAPAGO TRIBE/WATER RIGHTS/INDIANS AND NATIVE AMERICANS/PAPAGO/WATER AND WATER RESOURCES DEVELOPMENT/ARIZONA PAPAGO TRIBE/INDIAN WATER RIGHTS/INDIAN LANDS--ARIZONA/IRRIGATION/WATER PROJECTS/CLAIMS AND GOVERNMENT LIABILITY/PAPAGO TRIBE OF ARIZONA/WATER RIGHTS SETTLEMENT  
ALL, PAGE 7 OF 8. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

H.R.4363 (LG97) continued:

/INDIAN LANDS/GILA BEND RESERVATION/PAPAGO WATER PROJECTS/LAND TRANSFERS/SAN XAVIER RESERVATION/SELLS PAPAGO RESERVATION/PUBLIC LANDS AND REAL PROPERTY  
ALL, PAGE 8 OF 8. READY FOR NEW COMMAND, OPTION OR PG #:

ALL

DATE INTRODUCED: 12/03/81

H.R.5118

CALENDAR NO: U 256  
535

SPONSOR: Udall

H.REPT.97-422  
S.REPT.97-375

REFERRED TO: House Interior and Insular Affairs  
Senate Select Committee on Indian Affairs  
REPORTED BY: Senate Select Committee on Indian Affairs  
House Interior and Insular Affairs

SHORT TITLE(S):

AS INTRODUCED: AS OF 03/09/82

Southern Arizona Water Rights Settlement Act of 1981

AS AMENDED BY HOUSE: AS OF 03/19/82

Southern Arizona Water Rights Settlement Act of 1981

AS REPORTED IN THE HOUSE:

Southern Arizona Water Rights Settlement Act of 1981

PAGE 1 OF 9. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

H.R.5118 (LG97) continued:

LATEST OFFICIAL TITLE:

OFFICIAL TITLE AS INTRODUCED AS OF 12/04/81

A bill to provide water to the Papago Tribe of Arizona and its members, to settle Papago Indian water rights in portions of the Papago reservations, and for other purposes.

LEGISLATIVE ACTIONS:

Dec 3, 81 Referred to House Committee on Interior and Insular Affairs.  
Dec 3, 81 Executive Comment Requested from Interior.  
Dec 11, 81 Committee Consideration and Mark-up Session Held. (Dec 16, 81).  
Dec 16, 81 Ordered to be Reported (Amended).  
Jan 29, 82 Reported to House (Amended) by House Committee on Interior and Insular Affairs. Report No: 97-422.  
Jan 29, 82 Placed on Union Calendar No: 256.  
Feb 9, 82 Rule Granted Providing an Open Rule with 1 Hour of Debate. Partial Waiver of Points of Order.  
Feb 9, 82 Rules Committee Resolution H.Res.357 Reported to House.  
Mar 3, 82 Rule Passed House.  
Mar 4, 82 Called up by House by Rule.  
ALL, PAGE 2 OF 9. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

H.R.5118 (LG97) continued:

Mar 4, 82 Committee Amendment in the Nature of a Substitute Considered as an Original Bill for the Purpose of Amendment.  
Mar 4, 82 Passed House (Amended) by Yea-Nay Vote: 311 - 50 (Record Vote No: 18).  
Mar 8, 82 Received in the Senate and read twice and referred to the Committee on Indian Affairs.  
Mar 31, 82 Committee on Indian Affairs. Hearings held.  
Apr 29, 82 Committee on Indian Affairs. Reported to Senate by Senator Cohen with an amendment in the nature of a substitute. With written report No. 97-375.  
Apr 29, 82 Placed on Senate Legislative Calendar under Regular Orders. Calendar No. 535.

ABSTRACT:

Directs the Secretary of the Interior to deliver water supplies to the Papago



Tribe of Arizona and its members in settlement of tribal and individual water rights claims in portions of the Papago reservations.

DIGEST:

Southern Arizona Water Rights Settlement Act of 1981 - Directs the Secretary of the Interior to deliver water supplies to the Papago Tribe of Arizona and ALL, PAGE 3 OF 9. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

H.R.5118 (LG97) continued:

its members, in settlement of tribal and individual water rights claims in portions of the Papago reservations.

Directs the Secretary, as soon as possible but not later than ten years after enactment of this Act and if the Tribes has agreed to specified conditions, to: (1) deliver annually specified amounts of water suitable for agricultural use from the main project works of the Central Arizona Project (CAP) to the San Xavier Reservation and to the Schuk Toak District of the Sells Papago Reservation; (2) construct facilities to convey and distribute such water; and (3) establish a water management plan for such areas.

Directs the Secretary, upon request by the Tribe, to study the availability and suitability of water resources within the Sells Papago Reservation but outside the Tucson Active Management Area or the Upper Santa Cruz Basin. Authorizes appropriations to carry out such study.

Declares that the Tribe shall have the right to withdraw ground water from beneath the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation, subject to specified limitations.

ALL, PAGE 4 OF 9. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

H.R.5118 (LG97) continued:

Declares that nothing in this Act shall diminish or abrogate any obligations of the Secretary to the Papago Tribe under the December 12, 1980, CAP water delivery contract.

Requires that the above mentioned deliveries of water under this Act be in such amounts, and according to such terms and conditions as are set forth in the December 12, 1980 agreement, except as otherwise provided in this Act.

Directs the Secretary, whenever unable to deliver such amounts of water from the main project works of the CAP, to: (1) acquire and deliver an equivalent quantity of water from specified alternative supplies and sources; or (2) pay damages at the prevailing CAP rate for such quantities of municipal and industrial water.

Sets forth conditions for acquisitions by the Secretary for purposes of fulfilling such water delivery obligations to the Tribe. Requires the owner's consent to the Secretary's acquisition of land, water rights, contract rights, or reclaimed water. Requires that any private lands acquired have a recent ALL, PAGE 5 OF 9. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

H.R.5118 (LG97) continued:

history of capacity to receive substantially all of the water right use and that preference in acquisition be given to lands upon which water has recently been put to beneficial use. Declares that nothing in this title shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group, or community.

Directs the Secretary, to meet such water delivery obligations, to: (1) design, construct, operate, maintain, and replace appropriate facilities; and (2) deliver the water to suitable boundary points agreed to by the Tribe.

Authorizes the Secretary, to facilitate water delivery under this Act, to: (1) enter into contracts for the exchange of water or for the use of water delivery facilities; and (2) use facilities constructed with Federal funds.

Sets forth similar requirements concerning the purchase and delivery of reclaimed water by the Secretary, in accordance with a specified agreement and in specified amounts, to the San Xavier Reservation and to the Schuk Toak District of the Sells Papago Reservation.

ALL, PAGE 6 OF 9. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

H.R.5118 (LG97) continued:

Requires the Secretary to carry out specified water delivery obligations only if the Tribe agrees to: (1) certain limitations on the pumping of ground water; and (2) compliance with the water management plan. Requires the Secretary to carry out specified distribution systems obligations only if the Tribe agrees to: (1) subjugate the land; and (2) assume responsibility for the systems. Sets forth the rights of the Tribe with respect to the use of water supplies under this Act.

Requires the Secretary to carry out specified water delivery obligations under this Act only if, within a specified period of time: (1) the city of Tucson, the Secretary, and the Tribe agree that the city will make available and the Secretary will purchase a specified quantity of reclaimed water to be delivered annually to the Tribe; (2) the Tribe agrees to file a stipulation for voluntary dismissal with prejudice of a specified district court suit (and the suit is finally dismissed within an unspecified period of time); and (3) the Tribe executes a waiver and release of all of its claims concerning water rights within specified areas against the United States, the State of Arizona and its agencies and local governments, or any other person, corporation or municipal corporation, arising under U.S. or Arizona law.

ALL, PAGE 7 OF 9. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

H.R.5118 (LG97) continued:

Provides that such waiver and release shall not take effect until a trust fund has been established and the full amount authorized to be appropriated to such trust fund under this Act has been appropriated by the Congress.

Directs the Secretary to complete a study within one year to determine which lands within the Gila Bend Reservation have been rendered unsuitable for agriculture because of the operation of the Painted Rock Dam. Authorizes the Secretary to exchange such lands for an equivalent acreage, of like quality but suitable for agriculture. Authorizes appropriations for such purpose.

Authorizes the establishment of a trust fund of \$15,000,000 for the benefit of the Tribe. Directs the Secretary to invest such amount in interest bearing deposits and securities. Provides that the income thus accruing may only be used, pursuant to appropriations legislation, for the subjugation of land, development of water resources, and the construction, operation, maintenance, and replacement of related facilities on the Papago Reservations which are not the obligation of the United States.

ALL, PAGE 8 OF 9. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

H.R.5118 (LG97) continued:

Authorizes appropriations to carry out this Act.

INDEX TERMS:

WATER SUPPLY/SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT AC/INDIAN WATER RIGHTS/  
INDIAN LANDS--ARIZONA/IRRIGATION/INDIAN CLAIMS/GOVERNMENT TRUST FUNDS/ARIZONA/  
INDIAN LANDS/PAPAGO TRIBE/GILA BEND RESERVATION/WATER PROJECTS/CLAIMS AND  
GOVERNMENT LIABILITY/PAPAGO TRIBE OF ARIZONA/WATER RIGHTS SETTLEMENT/  
DEPARTMENT OF THE TREASURY/PAPAGO INDIAN TRIBE/INDIANS AND NATIVE AMERICANS/  
PAPAGO WATER PROJECTS/PAPAGO/LAND TRANSFERS/SAN XAVIER RESERVATION/SELLS  
PAPAGO RESERVATION/PUBLIC LANDS AND REAL PROPERTY/WATER AND WATER RESOURCES  
DEVELOPMENT/ARIZONA PAPAGO TRIBE/WATER RIGHTS/DRY FARMING/AGRICULTURE AND  
RURAL AFFAIRS/FARMS/FARMLANDS/PAPGO INDIANS OF ARIZONA  
ALL, PAGE 9 OF 9. READY FOR NEW COMMAND, OPTION OR PG #:

ALL

DATE INTRODUCED: 01/26/82

H.R. 5358

SPONSOR: Tauzin

REFERRED TO: House Interior and Insular Affairs

COSPONSOR(S): CURRENT (7)

Boggs (A-03/22/82); Breaux (A-03/22/82);

Livingston (A-03/22/82); Long, of LA (A-03/22/82);

Roemer (A-03/22/82); Huckabee (A-03/22/82); Moore (A-03/22/82);

SHORT TITLE(S):

AS INTRODUCED: AS OF 03/11/82

Chitimacha Claims Settlement Act

LATEST OFFICIAL TITLE:

OFFICIAL TITLE AS INTRODUCED AS OF 01/28/82

A bill to provide for the settlement of the land claims of the Chitimacha Tribe of Louisiana, and for other purposes.

LEGISLATIVE ACTIONS:

Jan 26, 82 Referred to House Committee on Interior and Insular Affairs.

ABSTRACT:

PAGE 1 OF 4. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

H.R. 5358 (LG97) continued:

Provides for the settlement of land claims of the Chitimacha Tribe in Louisiana. Establishes the Chitimacha Claims Settlement Fund as compensation to the tribe for extinguishment of claims.

DIGEST:

Chitimacha Claims Settlement Act - Declares constitutional and legal any transfer of land or natural resources in Louisiana by the Chitimacha Tribe before the enactment of this Act. Declares extinguished as of the date of transfer: (1) aboriginal titles held by the tribe to land or natural resources the transfer of which is approved by this Act; and (2) tribal claims for damages or possession against the State, any political subdivision of the State, or any person based on an approved transfer of land or natural resources or an aboriginal title extinguished by this Act.

Sets forth procedures for actions challenging the constitutionality of this Act.

Establishes within the Treasury the Chitimacha Claims Settlement Fund as compensation to the tribe for the extinguishment of any claim under this Act. Requires the Secretary of the Interior to make semiannual payments to the tribe.

ALL, PAGE 2 OF 4. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

H.R. 5358 (LG97) continued:

tribe from income derived from the fund. Frees the use of such payments from regulation by the Secretary. Sets forth requirements for the acquisition of land for the tribe with the fund. Authorizes appropriations to the fund.

Authorizes the tribe to establish a tribal court system and a tribal police force. Gives any tribal court system established under this Act exclusive jurisdiction over certain criminal offenses occurring and civil actions arising on the Chitimacha Reservation.

Permits the tribe to assume exclusive jurisdiction over Indian child custody proceedings in accordance with the Indian Child Welfare Act.

Prohibits the consideration of payments to the tribe under this Act in the

determination of the eligibility of the State, any political subdivision of the State, or the tribe for Federal financial assistance.

INDEX TERMS:

LAND TRANSFERS/CHILDREN AND YOUTH/CUSTODY OF CHILDREN/INDIAN CHILD CUSTODY PROCEEDINGS/CHITIMACHA TRIBE OF LOUISIANA/CLAIMS AND GOVERNMENT LIABILITY/ INDIAN CLAIMS/CHITIMACHA TRIBE/COURTS AND CIVIL PROCEDURE/JURISDICTION/INDIAN ALL, PAGE 3 OF 4. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

H.R.5358 (LG97) continued:

LANDS/DEPARTMENT OF THE TREASURY/GOVERNMENT TRUST FUNDS/CHITIMACHA CLAIMS SETTLEMENT FUND/DOMESTIC RELATIONS AND FAMILIES/INDIANS AND NATIVE AMERICANS/ TRIBAL COURT SYSTEM/INDIAN COURTS/LOUISIANA/PUBLIC LANDS AND REAL PROPERTY/ INDIAN LANDS--LOUISIANA  
ALL, PAGE 4 OF 4. READY FOR NEW COMMAND, OPTION OR PG #:

ALL

DATE INTRODUCED: 12/04/81

S.1914

SPONSOR: Nickles

REFERRED TO: Senate Committee on the Judiciary

COSPONSOR(S): CURRENT (1)

Boren:

LATEST OFFICIAL TITLE:

OFFICIAL TITLE AS INTRODUCED AS OF 12/04/81

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.

LEGISLATIVE ACTIONS:

Dec 4, 81 Read second time and referred to Senate Committee on Judiciary.

Dec 6, 81 Referred to Subcommittee on Agency Administration.

ABSTRACT:

Confers jurisdiction upon the United States Court of Claims and the United States District Court for the Eastern District of Oklahoma to hear all claims which the Cherokee Nation of Oklahoma may have against the United States with respect to certain lands and assets.

PAGE 1 OF 2. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

S.1914 (LG97) continued:

DIGEST:

Confers jurisdiction upon the United States Court of Claims and the United States District Court for the Eastern District of Oklahoma to hear all claims which the Cherokee Nation of Oklahoma may have against the United States with respect to damages to tribal assets related to construction of the Arkansas River Navigation System.

INDEX TERMS:

JURISDICTION/INDIAN CLAIMS/DISTRICT COURTS--OKLAHOMA/INDIAN LANDS/RIVERS/  
CLAIMS AND GOVERNMENT LIABILITY/CHEROKEE NATION/COURTS AND CIVIL PROCEDURE/  
COURT OF CLAIMS/DISTRICT COURTS/INDIANS AND NATIVE AMERICANS/OKLAHOMA/PUBLIC  
LANDS AND REAL PROPERTY/WATER AND WATER RESOURCES DEVELOPMENT/ARKANSAS RIVER  
NAVIGATION SYSTEM/CHEROKEE DAMAGE CLAIMS

ALL, PAGE 2 OF 2. READY FOR NEW COMMAND, OPTION OR PG #:

THE WHITE HOUSE  
WASHINGTON

CABINET AFFAIRS STAFFING MEMORANDUM

044298CA

044318CA

DATE: February 22, 1982

NUMBER: \_\_\_\_\_

DUE BY: Feb. 25

SUBJECT: Ancient Indian Land Claims Settlement Act of 1982

|                     | ACTION                   | FYI                                 |                                   | ACTION                              | FYI                                 |
|---------------------|--------------------------|-------------------------------------|-----------------------------------|-------------------------------------|-------------------------------------|
| ALL CABINET MEMBERS | <input type="checkbox"/> | <input type="checkbox"/>            | Baker                             | <input type="checkbox"/>            | <input type="checkbox"/>            |
| Vice President      | <input type="checkbox"/> | <input type="checkbox"/>            | Deaver                            | <input type="checkbox"/>            | <input type="checkbox"/>            |
| State               | <input type="checkbox"/> | <input type="checkbox"/>            | Allen                             | <input type="checkbox"/>            | <input type="checkbox"/>            |
| Treasury            | <input type="checkbox"/> | <input type="checkbox"/>            | Anderson                          | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Defense             | <input type="checkbox"/> | <input type="checkbox"/>            | Darman ( <i>For WH Staffing</i> ) | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Attorney General    | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Jenkins                           | <input type="checkbox"/>            | <input type="checkbox"/>            |
| Interior            | <input type="checkbox"/> | <input type="checkbox"/>            | Gray                              | <input type="checkbox"/>            | <input type="checkbox"/>            |
| Agriculture         | <input type="checkbox"/> | <input type="checkbox"/>            | Beal                              | <input type="checkbox"/>            | <input type="checkbox"/>            |
| Commerce            | <input type="checkbox"/> | <input type="checkbox"/>            | _____                             | <input type="checkbox"/>            | <input type="checkbox"/>            |
| Labor               | <input type="checkbox"/> | <input type="checkbox"/>            | _____                             | <input type="checkbox"/>            | <input type="checkbox"/>            |
| HHS                 | <input type="checkbox"/> | <input type="checkbox"/>            | _____                             | <input type="checkbox"/>            | <input type="checkbox"/>            |
| HUD                 | <input type="checkbox"/> | <input type="checkbox"/>            | _____                             | <input type="checkbox"/>            | <input type="checkbox"/>            |
| Transportation      | <input type="checkbox"/> | <input type="checkbox"/>            | _____                             | <input type="checkbox"/>            | <input type="checkbox"/>            |
| Energy              | <input type="checkbox"/> | <input type="checkbox"/>            | _____                             | <input type="checkbox"/>            | <input type="checkbox"/>            |
| Education           | <input type="checkbox"/> | <input type="checkbox"/>            | _____                             | <input type="checkbox"/>            | <input type="checkbox"/>            |
| Counsellor          | <input type="checkbox"/> | <input checked="" type="checkbox"/> | _____                             | <input type="checkbox"/>            | <input type="checkbox"/>            |
| OMB                 | <input type="checkbox"/> | <input checked="" type="checkbox"/> | _____                             | <input type="checkbox"/>            | <input type="checkbox"/>            |
| CIA                 | <input type="checkbox"/> | <input type="checkbox"/>            | _____                             | <input type="checkbox"/>            | <input type="checkbox"/>            |
| UN                  | <input type="checkbox"/> | <input type="checkbox"/>            | _____                             | <input type="checkbox"/>            | <input type="checkbox"/>            |
| USTR                | <input type="checkbox"/> | <input type="checkbox"/>            | CCNRE/Boggs                       | <input type="checkbox"/>            | <input type="checkbox"/>            |
| CEA                 | <input type="checkbox"/> | <input type="checkbox"/>            | CCHR/Carleson                     | <input type="checkbox"/>            | <input type="checkbox"/>            |
| CEQ                 | <input type="checkbox"/> | <input type="checkbox"/>            | CCCT/Kass                         | <input type="checkbox"/>            | <input type="checkbox"/>            |
| OSTP                | <input type="checkbox"/> | <input type="checkbox"/>            | CCFA/McClaghry                    | <input type="checkbox"/>            | <input type="checkbox"/>            |
| _____               | <input type="checkbox"/> | <input type="checkbox"/>            | CCEA/Porter                       | <input type="checkbox"/>            | <input type="checkbox"/>            |
| _____               | <input type="checkbox"/> | <input type="checkbox"/>            | CCLP/Uhlmann                      | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |

REMARKS:

Attached are the views received concerning the Ancient Indian Land Claims Settlement Act legislation which is under review. Since the remaining issues appear to be principally legal issues, I suggest that the Cabinet Council on Legal Policy review the comments to discuss any unresolved issues. An additional paper from Justice may serve as the basis for the meeting. To the extent possible, this process should be expedited.

RETURN TO:

Craig L. Fuller  
Assistant to the President  
for Cabinet Affairs  
456-2823



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

FEB 18 1982

MEMORANDUM

TO: Craig L. Fuller

FROM: David A. Stockman *DAS*

RE: Ancient Indian Land Claims Settlement  
Act of 1982

I. Substance of the bill.

The purpose of this bill is to resolve land claims by Indian tribes against certain states, municipalities, and private landowners arising from land transfers made long ago without the Congressional approval required by the Nonintercourse Act of 1790. The affected claims are not against the United States except in the incidental settings where the United States may happen to own land in the affected areas.

The major features of the bill are:

- ° Retroactive validation of transfers of land from Indian tribes to states as of the original transfer dates;
- ° Settlement of monetary claims by the Secretary of the Interior; and
- ° In the absence of settlement, authorization for Indian tribes to sue for compensation in the Court of Claims under a formula established by the statute: the difference between the fair market value at the time of the transfer and all compensation received by the Indians for the transfer, plus modest interest (2% for "aboriginal" title, and 5% for "recognized" title).

In its present form the bill would apply only to claims in New York and South Carolina. It would effectively clear the titles of thousands of innocent landholders, and would free them from the very real prospect of dispossession by the courts. The bill would also be fair to the Indian claimants whose ancestors' transfers of land may have been made for far less than fair market value, by providing compensation to the tribes for any deficiency of consideration for the original transfers. The bill avoids large federal outlays of the sort that accompanied the Carter Administration's Maine settlement (\$81 million, plus 350,000 acres of state-contributed land). Our best estimate of the cost of this bill is \$15-25 million.



## II. Constitutionality.

OMB and Interior attorneys have carefully reviewed the legislation, and believe that it is constitutional. There would be little point in recounting their reasons in this memorandum. In this connection, however, it is worth noting that Attorney General Griffin Bell opined in a letter dated June 30, 1978 that a legislative solution of the sort set forth in the bill would be constitutional. Of course, an ultimate Administration position on the bill must await Justice's opinion on whether it is constitutionally defensible.

## III. Other Issues.

There are some other issues that merit Administration attention:

- ° Should the affected states be required to pay a portion of the compensation? Although I favor such a provision (because the states are principally responsible for having created the present situation, and their citizens will be the principal beneficiaries of its solution), the sponsors are adamantly opposed. I believe that during hearings the Administration should consider supporting an amendment providing for state participation.
  
- ° Should similar treatment be accorded other states affected by Nonintercourse Act claims? Connecticut has requested not be included in the bill, as of now; the other states with current outstanding claims — Massachusetts, Mississippi, and Louisiana — may request to be accorded treatment similar to that of the bill. Assuming that the claims would entail only modest cost, I would support their inclusion.

U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 17, 1982

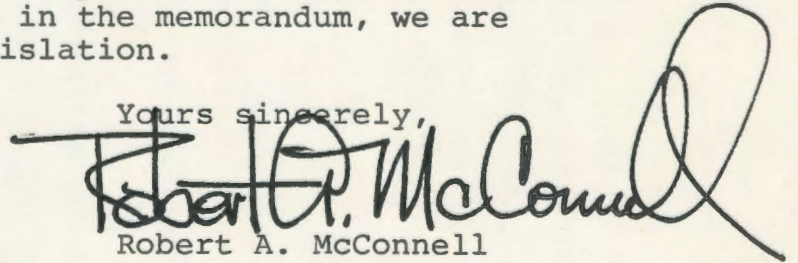
Mr. Craig L. Fuller  
Assistant to the President  
for Cabinet Affairs  
The White House  
Washington, D.C. 20500

Dear Mr. Fuller:

The Department of Justice has completed its preliminary review of H.R. 5494 and S. 2084, identical bills entitled the "Ancient Indian Land Claims Settlement Act of 1982."

Enclosed is a copy of the Department's initial memorandum on this matter. As indicated in the memorandum, we are continuing to review this legislation.

Yours sincerely,



Robert A. McConnell  
Assistant Attorney General

## Discussion Memorandum

### Proposed Legislation: Ancient Indian Land Claims Settlement Act of 1982

This memorandum discusses the proposed "Ancient Indian Land Claims Settlement Act of 1982," a bill introduced on February 8, 1982 by Congressman Lee (H.R. 5494) and Senators Thurmond and D'Amato (S. 2084). 1/ In the very brief time available for review, it has been possible to identify several constitutional and policy issues raised by the bill. These issues are complex and difficult; the conclusions reached herein are necessarily preliminary and tentative.

#### I. The Bill

In recent years, Indian tribes in the eastern United States have brought a number of lawsuits seeking recovery of land as well as trespass damages on the ground that the

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1/ These comments are based on a February 4, 1982 draft of Congressman Lee's bill together with explanations of the bill given by its sponsors and printed in the Congressional Record.

original transfers of the land were invalid under the Indian Non-Intercourse Act, a statute first enacted in 1790 and currently codified at 25 U.S.C. § 177. 2/ The Non-Intercourse Act provides that no transfer of land by an Indian tribe is valid, regardless of the compensation received, unless approved and ratified by the United States. Although the Tribes place principal reliance on the Non-Intercourse Act, they have also asserted claims based on the Constitution and the Articles of Confederation. These suits have clouded title to literally millions of acres of land held primarily by private land-owners who, of course, are innocent of any wrongdoing towards the Indians.

In light of the evident unfairness to the defendants, the burden on private and judicial resources caused by protracted litigation, and the difficulties in negotiating a judicial settlement, it has been thought desirable to resolve

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2/ 25 U.S.C. § 177 provides, in pertinent part:

"No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same shall be made by treaty or convention entered into pursuant to the Constitution."

This provision is taken from an 1834 amendment of the Non-Intercourse Act, 4 Stat. 730.

these disputes through legislation. The Indian claims to a large portion of the State of Maine were, in fact, resolved through legislation drafted in consultation with all the affected parties, including the Indian tribes. 3/ The Maine legislation extinguished Indian title by ratifying the ancient tribal transfers and provided federal compensation for the claims acceptable to the tribes.

The bill now under consideration would settle Indian land claims in New York and North Carolina. 4/ It would retroactively ratify any pre-1912 transfer of land or natural resources by Indian tribes. This ratification would extinguish Indian aboriginal title together with any claim for trespass or other damages based on allegedly invalid transfers of aboriginal or recognized title. 5/ The Secretary of Interior would be authorized to enter settlement agreements with the tribes. The tribes would also be provided with an action

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3/ Maine Indian Claims Settlement Act of 1980, P.L. 96-420, 94 Stat. 785.

4/ Other states may be included in the bill during its consideration by Congress.

5/ "Aboriginal title" is the title to land held by the tribes before the establishment of non-Indian sovereignty. It is commonly distinguished from "recognized title," which is title recognized by the non-Indian sovereign through some action, typically the signing of a treaty.

against the United States in the Court of Claims for the difference between the fair market value of the land or natural resources at the time of the transfer and the compensation actually received. The award would be increased by simple interest, from the date of the original transfer, computed at 2% for aboriginal title and 5% for recognized title.

## II. Constitutional Issues

### A. Extinguishment of Claims under the Non-Intercourse Act

The bill is likely to be sustained against constitutional attack insofar as it extinguishes claims based on the Non-Intercourse Act by retroactively ratifying and approving the original transfers of land by the Indian tribes. The rights guaranteed by that Act are conditioned on the possibility that they will be eliminated through congressional ratification. Although the issue is considerably more in doubt, such congressional action is also probably effective to extinguish claims for trespass or other damages based on alleged wrongful use or occupancy in violation of the Non-Intercourse Act, since such claims are logically dependent on and subordinate to the basic issue of title. Similarly, congressional ratification probably does not amount to a "taking" of Indian property requiring payment of just compensation insofar as it extinguishes claims based on the Non-Intercourse Act, for

the same basic reason that rights under that Act are expressly subject to defeasance through congressional action. The bill's provision of compensation for the loss of claims under the Non-Intercourse Act would, therefore, appear to provide compensation for some of the claims notwithstanding an apparent absence of a constitutional requirement of doing so. It should be noted, however, that the constitutional issues should be studied further before any definitive answers can be given.

B. Extinguishment of Claims based on Legal Theories  
Other than the Non-Intercourse Act

The bill would also ratify transfers which were allegedly made in violation of the Constitution or of federal law other than the Non-Intercourse Act. The precise nature of these claims is unclear. It appears, however, that these claims are not ones that can be extinguished by the simple mechanism of congressional ratification. The power of Congress to extinguish the claims is therefore more problematic.

In the short time available for review, and without fuller information on the factual and legal background of these Indian claims, it is difficult to reach a definite conclusion regarding the constitutionality of the bill as it pertains to claims based on legal theories other than the Non-Intercourse Act. It may well be desirable to restrict the

bill to claims arising under the Non-Intercourse Act, since this is clearly the principal and most substantial basis for the claims 6/ and, at the same time, is the provision under which the power of Congress asserted in this bill is most clearly established. It is quite important, in analyzing this bill, to articulate precisely what types of claims are being extinguished so that the constitutional questions can be fully analyzed. Needless to say, this analysis has not been done yet but must be done prior to any administration approval of the legislation.

C. Limitation on Constitutional Challenges

Section 9(a) of the bill provides that, notwithstanding any other provision of law, "any action to contest the constitutionality or validity of this Act shall be barred unless the action is brought in the federal district court for the district in which the land or natural resources that are the subject of the Indian claim are located within 180 days of the date of enactment of this Act." Objection could be raised to this section on the ground that its limitation on judicial review of constitutional claims violates the Due Process Clause of the Fifth Amendment.

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6/ See generally Symposium on Indian Law: The Eastern Land Claims, 31 U.Md. L. Rev. 1-213 (1979); Note, Indian Land Claims under the Non-Intercourse Act, 44 Albany L. Rev. 110 (1979).



Although time has not permitted a thorough analysis of this question, there is some precedent supporting the view that § 9(a) would be sustained against a due process challenge. The Supreme Court has never questioned that, because of the strong public interest in finality, a reasonable statute of limitations could be imposed even on constitutional claims. Although 180 days is considerably shorter than most limitations periods, it seems a reasonable period in light of the fact that the Indian claimants can be expected to have full notice of the bill's consideration and enactment and need only file a protective claim in the appropriate federal court within the 180 day period.

The provision for bifurcating the litigation, with the constitutional challenge taking place in the federal district court and the compensation suit being brought in the Court of Claims, finds support in Yakus v. United States, 321 U.S. 414 (1944). That case upheld, under the Due Process Clause, provisions of the Emergency Price Control Act of 1942 which required that challenge to certain administrative regulations be brought before the agency with appeal to a special federal court, and which further provided that the regulations could not be attacked by defendants in criminal prosecutions in federal district court. The Court stated:

"[W]e are pointed to no principle of law or provision of the Constitution which precludes Congress from making criminal the violation of an administrative regulation, by one who has failed to avail himself of an adequate separate procedure for the adjudication of its validity, or which precludes the practice, in many ways desirable, of splitting the trial for violations of an administrative regulation by committing the determination of the issue of its validity to the agency which created it, and the issue of violation to a court which is given jurisdiction to punish violations. Such a requirement presents no novel constitutional issue."

Id. at 444.

Although at first blush Yakus would appear to be controlling support for the validity of § 9(a), there has not been time to determine whether there might be significant differences between the statute in Yakus and § 9(a) which would lead to the possibility of a different result in a challenge to the present bill. Further legal analysis of this issue could therefore be useful.

#### D. Trust Responsibility

It is commonly said that the Federal Government owes fiduciary duties to the dependent Indian tribes. The origins of this maxim are found in Chief Justice Marshall's opinion in Cherokee Nation v. Georgia, 30 U.S. (1 Pet.) (1831), in

which the Court held that the Cherokee Nation was not a foreign state for purposes of the Supreme Court's original jurisdiction. Instead, the Chief Justice characterized the Indian tribes as "domestic dependent nations" which "look to our government for protection; rely upon its kindness and its power; and appeal to it for relief for their wants; and address the President as their great father." Id. In his view, this relationship of Indian tribes to the United States "resembles that of a ward to his guardian." Id.

The notion that the Federal Government acts in a sense as trustee for the Indian tribes has become ingrained in the structure of federal Indian law. Early intimations of it are an unstated premise of the Indian Non-Intercourse Act of 1790, the primary subject of this proposed bill. It has been relied on by the Supreme Court in sustaining exercises of congressional power over Indians that probably would have been struck down if exercised with respect to other classes of persons. See Washington v. Yakima Indian Nation, 439 U.S. 463, 501 (1979); Morton v. Mancari, 417 U.S. 535 (1974) (minimal equal protection scrutiny of racial preference for Indians); United States v. Kagama, 118 U.S. 375, 383-84 (1886) (trust responsibility provides independent constitutional authority for federal actions involving Indians). The trust responsibility concept also underlies the various principles of statutory and treaty interpretation that require ambiguous enactments to be read favorably to Indian litigants. See,

e.g., Washington v. Fishing Vessel Association, 443 U.S. 658, 676 (1979); Bryan v. Itasca County, 426 U.S. 373, 392 (1976).

It might well be argued by spokesmen for Indian groups that any proposed legislation which does not deal "fairly and honorably" with the Indian tribes would be unconstitutional because it breached the fiduciary duties owed to Indians by Congress. However, even assuming that it could be established that this bill would not deal "fairly" with the Indians, it probably would not be invalidated as a violation of the trust obligation. It has long been established that Congress has plenary power to constrict or terminate the Nation's guardianship over the Indians. United States v. Nice, 241 U.S. 591, 598 (1916); United States v. Sandoval, 231 U.S. 28, 46 (1913). Thus, the underlying responsibility of the United States Government "is essentially a moral obligation, without justiciable standards for its enforcement." Chambers, Judicial Enforcement of the Federal Trust Responsibility to Indians, 27 Stan. L. Rev. 1213, 1227 (1975). There is, in short, no constitutional provision which establishes the guardian-ward relationship or which creates the trust responsibility. Those relationships are strictly a matter for Congress to create or assume, and the terms, conditions, and expiration of those relationships are matters solely within the jurisdiction of Congress.

Moreover, the trust responsibility does not limit the Administration's ability to support legislation involving Indians which it believes to be in the public interest. As Attorney General Bell stated in 1979 in a letter outlining his views of the trust responsibility:

"the President's duty faithfully to execute existing law does not preclude him from recommending legislative changes [affecting Indians] in fulfillment of his constitutional duty to propose to the Congress measures he believes necessary and expedient. These measures may -- indeed must -- be framed with the interest of the Nation as a whole in mind. In so doing, the President has the constitutional authority to call on [cabinet officials] for [their] views on legislation to change existing law notwithstanding the duty to execute that law as it now stands." 7/

## II. Comments on Specific Sections of the Bill

### A. Congresional Findings and Declarations of Policy

Critics of the bill may well focus their attack on the congressional findings and declarations of policy as evidence that the bill is motivated by antipathy towards Indians. It may be desirable, therefore, to state in somewhat more careful and dispassionate terms the basis and purpose of the bill -- i.e., that the Non-Intercourse Act provided that transfers without congressional approval were invalid; that subsequent approval

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7/ Letter from the Attorney General to the Secretary of Interior, May 31, 1979.

is entirely permissible; that many transfers have taken place without awareness by the buyer that congressional approval was necessary; that transfers may have taken place generations ago in good faith at a price properly negotiated by both buyer and seller; that congressional ratification is necessary to remove a technical cloud on title to the property; that to the extent that full and fair market value was not received at the time, the sellers have long ago died; and that this bill provides a means of recovery of the imbalance, but precludes immense windfalls to descendants of sellers who in many cases received fair and adequate compensation for their lands.

B. Recovery for Aboriginal Title

There is some basis for concern regarding the provision authorizing recovery against the United States for the loss of aboriginal title, with simple interest computed at 2% per annum running from the date of the original transfer. The scope of the United States' potential liability under this provision is uncertain, but is potentially quite large. Theoretically, all the land held by aboriginal title following enactment of the Trade and Intercourse Act could be the subject of litigation. Although the evidentiary problems

associated with proving (or disproving) valid aboriginal title are far more complex than is the case with recognized title, there would still be considerable incentive even at 2% interest to develop expansive claims. The litigation burden and the potential liability on the United States cannot be estimated at this time but the possibility of long-term, complex lawsuits leading to substantial liability cannot be discounted. It should also be emphasized that this bill, if enacted, may become an irresistible legislative precedent since there is little justification for providing a judicial remedy to Indians in two states and denying it to all others.

In addition, a number of unresolved questions may arise if transfers of land, held by aboriginal title, are retroactively validated. Since the thirteen original states have consistently claimed a fee simple title to the land held by aboriginal title, a validation of a purported transfer of such land by an Indian tribe creates the potential for a title dispute between the state (or its successor in interest) and the transferee (or his successor in interest). Such disputes would presumably be contrary to a basic purpose of the bill, namely to terminate the potential for litigation involving clouded titles resulting from alleged violation of the Trade and Intercourse Act.

Another unresolved question concerns the applicability of the bill to land held by aboriginal title and relinquished (voluntarily or otherwise) to white settlers. The definition of "transfer" in § 3(f) includes "any event or events that resulted in a change of possession or control of land or natural resources". However, § 6(d) precludes recovery if the United States can prove that the Trade and Intercourse Act "was not applicable to such transfer . . . ." Since the Trade and Intercourse Act applies only to sales of land, there appears to be an internal contradiction as to the bill's purpose and effect.

C. Authority to Represent Tribal Interest

Another potential problem concerns the authority of the leaders of an Indian tribe or band to negotiate a settlement on behalf of its members. Not all tribes or bands possess a recognized government structure. Even those that do may suffer from severe political or other divisions which prevent any faction from exercising authority on behalf of the tribe as a whole. Consequently, the problem that the Secretary of Interior would face is two-fold: first, do those Indians presenting a claim actually possess authority to negotiate and, second, is the land in question claimed by rival bands within a tribe. While there is no perfect solution to this difficulty, it should be dealt with in a way that minimizes the potential for litigation on these questions. One possible



approach would be to confer on the Secretary plenary authority to determine for the purposes of settlement negotiations which tribal entity was empowered to represent the tribe's interests. Although the Secretary has such authority in other contexts, it may be preferable for this legislation specifically to confer this power in order to avoid any confusion or delay.

It would also appear, given the complexity of the factual questions involved, that the 180 day time limits in which the tribe must submit a claim to the Secretary (§ 5(b)) and in which the Secretary must determine the validity of claim and the amount of the award (§ 5(c)(1)) are too brief.

D. Final Judgments Under Indian Claims Commission Act

In order to avoid any possibility of relitigation of claims that have been previously resolved, it may be desirable to add a clause at the conclusion of § 6(2). Following the word "Act" this new language could read: "or with respect to which a final judgment has been entered pursuant to the Indian Claims Commission Act, 25 U.S.C. 70(2) et seq." Similarly, the Secretary could be precluded from determining monetary compensation involving claims that have been resolved pursuant to that Act.

#### E. Taxes

Under § 5(e) land acquired by tribes in lieu of monetary compensation would be subject to state and local taxes and would not be held in trust for the tribes by the United States. It is worth mentioning that if a tribe had acquired land through litigation or retained ownership, the land would be held in trust and would not be taxable. Tribal ownership of land in fee simple would represent a departure from the traditional policy of preventing any possibility of selling or forfeiting Indian property.

#### F. Definitions

Section 3(2) of the bill incorporates the traditional definition of an Indian tribe. However, it would preclude claims by tribes which no longer inhabit a particular "territory" even though the loss of the land may have resulted from a violation of the Trade and Intercourse Act. This oversight could be corrected by adding the words "at any time" after "inhabiting."

As indicated above, the definition of "transfer" in § 3(f) encompasses more than sales or other conveyances; it includes voluntary and involuntary relinquishment of possession. The scope of the definition is too broad if the cause of action against the United States is predicated on a

violation of the Trade and Intercourse Act. That Act only prohibits sales without the consent of the United States. Consequently, either the definition of transfer should be limited to sales or the cause of action should be expanded. While that choice is essentially a policy judgment, it should be pointed out that the potential liability of the United States is much less if the cause of action is limited to violations of the Trade and Intercourse Act.

### III. General Policy Considerations

#### A. Basic Purposes of the Bill

It seems clear that a legislative settlement of these disputes is preferable to burdensome, protracted, and perhaps ultimately inconclusive litigation. 8/ The magnitude of these claims is evident given the size of the claims, the number of persons owning property in the disputed areas, the nature of the legal issues involved, and the nearly two

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8/ In a 1977 memorandum, the Justice Department described the Maine litigation as "potentially the most complex litigation ever brought in the federal courts with social costs and economic impacts without precedent and incredible litigation costs to all parties." H. Rep. No. 1353, 96th Cong., 2d Sess. 13-14 (1980) (report on Maine legislation).

hundred years that have intervened, in some cases, since the original land transfers. It was estimated that litigation of the Maine case would have taken between 5 and 15 years. 9/ In the meantime, title to land in the entire claim area would be clouded, the sale of municipal bonds would be hampered, and property would be difficult to alienate.

Moreover, there are compelling equities in favor of the private owners of land who have unexpectedly been subjected to these claims. It seems grossly unfair that these owners, who are innocent of any wrongdoing towards the Indians, should be forced to bear the expense of litigation or the loss in property value due to the sudden development of a cloud in their titles. There is, of course, also an equity on behalf of the Indians, who claim they were forced or tricked into alienating their homelands at unconscionably low compensation. The bill seeks to satisfy this equity through the compensation remedy in the Court of Claims. The basic purposes of the bill therefore seem sound.

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9/ Id. at 14.

## B. Need for Further Analysis

However, in light of the comments above, there appears to be a need for additional analysis by the appropriate agencies before unqualified Administration support for the bill is given. As noted above, there are constitutional questions with the bill's provision for extinguishing claims based on legal theories other than the Non-Intercourse Act. Further analysis of the bill's limitation on constitutional challenges seems desirable. It may also be advisable to recommend that the bill be redrafted in accordance with the specific suggestions contained in Part II of this memorandum.

Moreover, it could be useful to conduct further research into the factual issues involved. For example, as noted above, there are serious questions about the scope of the potential United States liability on the aboriginal title claims. In light of current budgetary constraints, it seems desirable not to commit the United States to a financial obligation of uncertain but potentially significant dimension without careful thought and without first achieving the most accurate possible quantification of the potential liability.

Further research may also be useful in assessing the degree of potential litigation burden on the United States.

The litigation issues which the bill requires to be settled in the Court of Claims are staggering in their complexity. As noted above, for example, the issue of aboriginal title alone would require the court to make determinations regarding facts that existed before this Nation was founded. Archeologists, historians, ethnologists and other expert witnesses would be brought forward by parties on both sides of the lawsuit. Moreover, Indian claimants would potentially conflict with one another with respect to the boundaries of their aboriginal title. Proof of facts on the other legal issues would be only slightly less complex. The Court of Claims would be asked to determine: (1) whether the federal government recognized Indian title to specific lands, and, if so, what the boundaries of those lands were; (2) what the fair market value of the property was at the time of its transfer; and (3) what the terms were for the agreement between the Indian tribe and the transferee.

### C. Desirability of Consultations

It would seem prudent to consult with all affected parties, including the States, representatives of the private landowners, and the Indian tribes, before this bill is approved.

The difficulties of proof suggest that it may be desirable, from a budgetary standpoint, to consider whether an agreement could be worked out with the Indian tribes under which they

would be willing to accept a set figure in compensation for their claims rather than pursuing protracted litigation at great expense both to the government and to themselves.

This was the procedure followed in the Maine land legislation. In 1977 President Carter appointed retired Georgia Supreme Court Justice William Gunter to study the case. After substantial study, Gunter recommended that the case be settled. A working group consisting of the Associate Director of the Office of Management and Budget, the Solicitor of the Department of the Interior, and a private attorney was then appointed to develop a settlement plan. This group negotiated with both the Indian tribes and with the State of Maine, finally arriving at a settlement agreement in 1980. The agreement was approved by the tribes, was enacted into legislation by the State of Maine, and was approved by the United States in the Maine Indian Claims Settlement Act of 1980. 10/ A similar process of consultation with all affected parties may well be worthy of at least consideration in the present case.

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10/ See generally H.R. Rep. No. 1353, 96th Cong., 2d Sess. 13 (1980). The cost to the United States of this settlement was \$81.5 million.



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

February 16, 1982

## MEMORANDUM

TO: Craig L. Fuller  
Assistant to the President for Cabinet Affairs

FROM: Emily S. DeRocco  
Assistant to the Secretary of the Interior

SUBJECT: Ancient Indian Land Claims Settlement Act of 1982

The Interior Department fully supports this important effort to resolve Indian claims.

For the past several years, thousands of innocent landholders in several Eastern States have endured clouds on the title of their properties and experienced continual uncertainty as to how and when these claims would be resolved. Tensions in many affected areas have had a negative impact on relations between Indian and non-Indian communities. In some instances, suits have been filed by Indian Tribes that, if won, could dispossess persons who in good faith purchased their land and paid fair market value for it.

We believe that the proposed legislation, if enacted, would provide a means for arriving at an expedient and equitable resolution of this problem. The proposal would allow the Tribes to seek damages either through this Department or in the United States Court of Claims. The Tribes' claims would be extinguished as of the date of enactment of the legislation, thus ending the hardship suffered by the landholders involved.

We understand that the Justice Department is still considering the constitutionality issue raised by the bill and will defer to their views on that issue.

*Emily S. DeRocco*



THE WHITE HOUSE  
WASHINGTON

2-16-82

TO: Richard G. Darman

FROM: EDWIN J. GRAY

FYI

Comment

Re refer to attached  
memos

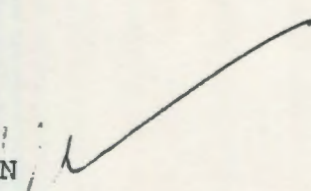
1) Mike Whitman

2) John McCaughey

MEMORANDUM

THE WHITE HOUSE  
WASHINGTON

February 15, 1982

FOR: EDWIN GRAY  
FROM: MICHAEL UHLMANN;   
SUBJECT: Proposed Indian Land Claims Settlement Act

Legislation on this subject is long overdue, but short of turning over the Treasury to the successors-in-interest of the original Tribes, almost nothing we do will be praised by the recipients as fair. Possible objections will focus on two items: (1) the manner of evaluating the land; and (2) the extent of judicial review. On the former point, the bill is prudently parsimonious, and on the latter point, it seeks to settle the issue once and for all by sharply restricting any second-guessing by federal judges. As long as DOJ is satisfied on the constitutional questions, the call is essentially political -- on which point I happily defer to my learned Brother, Chief McClaghry, who eschews fire water and speaks not with a forked tongue.

cc: John McClaghry

MEMORANDUM

OFFICE OF  
POLICY DEVELOPMENT  
1982 FEB 16 P 2:48

THE WHITE HOUSE  
WASHINGTON

February 16, 1982

TO: ED GRAY

FROM: McCLAUGHRY

RE: ANCIENT INDIAN LAND CLAIMS SETTLEMENT ACT 044298CS

This bill is an attempt to solve an essentially intractable problem. Should Indian tribes be paid in money, by the United States, for land illegally taken from them more than a century ago? Or should they have the right to recover the land, much of it now in the hands of innocent due-course holders?

The bill essentially extinguishes all ancient land rights and creates a mechanism for determining money payments. The problems are:

- a) Many of the Indians are philosophically opposed to accepting the white man's money for their Great Spirit's Land.
- b) More practically, the amount of money is to be set by a board consisting of somebody from Justice, plus Stockman, plus Watt. Good luck, claimants.
- c) The bill extinguishes ancient rights of Indians. This fact alone will make for a lot of bad press (see attached.)

In my opinion (see my memo to Jim Murr (OMB) of 1/27, we can force a settlement simply because the Indians don't have the votes in Congress, but I would regard this as somewhat unconscionable. On the other hand, current occupants of the land are hamstrung with uncertain titles.

The only hope so far as I can see is some kind of mediation process, a process introduction of this legislation will make even less likely.

MEMORANDUM

THE WHITE HOUSE  
WASHINGTON

January 27, 1982

TO: JIM MURR OMB  
FROM: JOHN McCLAUGHRY OPD  
RE: ANCIENT INDIAN LAND CLAIMS SETTLEMENT ACT -DRAFT

While I do not feel competent to pass judgment on the legal procedures envisioned in this draft bill, I am reluctant to support Administration support for this bill.

The problem addressed by this bill is very real. What I question is whether there is a legal solution to it, or even a political solution in the customary sense.

Without passing judgment on the merits of any tribe's particular case, I think it can be said without fear of contradiction that the legal rights of Indian tribes to land and resources have not always been honored to the degree which, if practiced against white folks, would keep the perpetrators out of jail. Thus it is highly essential that any legislation such as this be meticulously protective of the due process rights of claimant parties.

I would advise against creating any mechanism such as this bill provides without thorough and sincere discussions with the Indians involved - and not just their lawyers, who have a vested interest in litigation.

The President, during his campaign, promised close consultation with Indians on Indian matters. I am aware that news of this draft bill is causing considerable consternation and resentment in Indian quarters. It seems to me the only honorable way to deal with this is for someone - either the sponsor, or the Administration - to sit down with the parties involved, perhaps with a mediator, and see if a happy solution can be reached. Introduction of this bill will naturally create a tension which may make friendly resolution more difficult.

I would be happy to try to attempt some resolution of the issue of process (not substance) if desired by the sponsor and BIA.

# Indians Face Loss of Land Claims

## Reagan Bill Would Limit Tribes to Money Damages

By Mary Thornton  
Washington Post Staff Writer

The Reagan administration is expected to give its support to legislation, to be introduced Tuesday in the House and Senate, that could virtually wipe out pending land claims by Indian tribes for millions of acres in states along the East Coast.

A draft of the bill, obtained by The Washington Post, provides that the tribes no longer be able to recover any lands taken illegally. Instead, the Indians would be restricted to monetary damages limited to the value of the lands when they were taken, plus a small interest payment.

The legislation would also remove Indian lawsuits from the federal court system and require the tribes to take their cases either to Interior Secretary James H. Watt or to the U.S. Court of Claims, which deals only in claims for monetary damages against the government. Watt's decisions would not be subject to review by any court and Claims Court decisions could be appealed only to the U.S. Supreme Court.

Rep. Gary Lee (R-N.Y.), the author of the legislation, will introduce the bill in the House. Cosponsors in the Senate are Sen. Alfonse D'Amato (R-N.Y.) and Sen. Strom Thurmond (R-S.C.).

"The people who live on this land today should not be the ones penalized for something that did or did not happen in 1795," D'Amato said. "We're looking for a bill that not only will protect those families who have bought homes on this land, but will also define a course of action for those Indians who believe they have a viable claim against the government."

As it is now drafted, the bill would affect Indian lawsuits in New York, South Carolina and Connecticut, but a source involved with the legislation said that other interested states may be added by amendment during the hearing process.

Meanwhile, members of the con-

gressional delegation from Connecticut have complained that they weren't consulted on the bill. Rep. Samuel Gejdenson (D-Conn.) said, "My understanding is that they want to limit judicial remedies. I think that's wrong."

Peter Gillies, deputy attorney general of Connecticut, said he had been called about the bill and was told that it was merely a provision to shift the cost of the claim settlements from the states to the federal government. He said he supported it in concept and requested a copy of the legislation, but he has not received one.

Indian advocacy groups have expressed outrage at the proposal.

"It's one of the most callous power plays we've seen in the area of Indian land claims," said Steven Tullberg of the Indian Law Resource Center. "It's a cross-discriminating bill. It's just racism."

Congressional and administration sources say the legislation has been approved by the Justice Department, by Office of Management and Budget Director David A. Stockman and by Secretary Watt.

At the heart of the issue is the 1790 Nonintercourse Act, which provided that all transactions involving the tribes had to be ratified by Congress. Most of the claims have been made in cases where states or other land purchasers did not obtain the required congressional approval.

In New York, Indian tribes have already sued to recover 324,000 acres and have threatened suit over more than 16 million additional acres.

There are three current cases in Connecticut, involving 2,700 acres under litigation and 2,000 acres that are threatened with litigation. The South Carolina lawsuit by the Catawba Indian tribe is for 144,000 acres in the center of the state.

Arthur Gajarsa, attorney for the Cayuga tribe in New York, said he believes the proposed legislation violates the constitutional guarantees that the federal government may not

seize property without adequate compensation.

His case involves 64,000 acres that was worth about \$280,000 when it was taken by New York State in 1795. The Indians were paid \$7,800 when the land was taken. It was appraised two years ago at more than \$300 million.

The Cayuga tribe reached a settlement with the government in 1980 under which the tribe agreed to take 6,200 acres and an \$8.5 million trust fund to end their claim to the 64,000 acres. But the settlement fell apart after Lee, who first supported it, urged the House to defeat it.

Gajarsa has since filed suit against New York State and 8,000 private property owners to gain possession of the full 64,000 acres of land.

He and other lawyers handling Indian claims say they will challenge the constitutionality of the measure if it does become law, but they warned that in the future Indian tribes may be less willing to negotiate and settle than they have in the past.

"They're adding 10 to 15 years to the litigation process that is now going on," said Suzan Harjo of the Native American Rights Fund. "What I'm fearful of is that tribes that are now negotiating in good faith will back off and refuse to compromise."

The proposed legislation would extinguish all claims to land and natural resources, including minerals, timber, water and hunting and fishing rights. It would also extinguish all Indian trespass claims.

The tribes would be able to seek only monetary damages for the value of the land at the time it was taken, minus any money received by the tribe at the time the land was taken.

Tribes would be eligible for interest since the lands were taken at an annual rate of 5 percent on lands for which they held a recognized title. For "aboriginal title" lands, Indian homelands, the annual interest rate would be just 2 percent.

**WHITE HOUSE STAFFING MEMORANDUM**

DATE: 2/12 ACTION/CONCURRENCE/COMMENT DUE BY: c.o.b. 2/16/82  
Tuesday

SUBJECT: ANCIENT INDIAN LAND CLAIMS SETTLEMENT ACT OF 1982

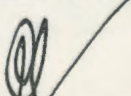
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| VICE PRESIDENT | <input type="checkbox"/>            | <input type="checkbox"/>    | GERGEN        | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| MEESE          | <input type="checkbox"/>            | <input type="checkbox"/>    | HARPER        | <input type="checkbox"/>            | <input type="checkbox"/> |
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| ANDERSON       | <input checked="" type="checkbox"/> | <input type="checkbox"/>    | ROLLINS       | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
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| CLARK          | <input type="checkbox"/>            | <input type="checkbox"/>    | WEIDENBAUM    | <input type="checkbox"/>            | <input type="checkbox"/> |
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Remarks:

Attached is proposed legislation concerning Ancient Indian Land Claims Settlement Act of 1982. Please indicate your views on the proposed legislation. We are anxious to develop an administration position as soon as possible.

Feb. 17, 1982

No objection. It should be noted, however, that this legislation will upset our allies in the Indian community but will not alienate them.

  
 Red Cavaney

Richard G. Darman  
 Assistant to the President  
 and  
 Deputy to the Chief of Staff  
 (x-2702)

MEMORANDUM

THE WHITE HOUSE  
WASHINGTON

February 16, 1982

TO: DICK DARMAN  
FROM: KEN DUBERSTEIN *K.D.*  
SUBJECT: ANCIENT INDIAN LAND CLAIMS SETTLEMENT  
ACT OF 1982

We are informed by the Justice Department that three of its Divisions are still reviewing the legislation, and that it will be early next week before the bill has the thorough analysis it needs.

Senators Thurmond, D'Amato, and Congressman Lee, for obvious reasons, are anxious for quick approval of their bill. But until Justice has signed off, we cannot move forward.

It would be our hope that the normal clearance process will be observed this time around, and in the future.

*Thanks!!*

THE WHITE HOUSE

WASHINGTON

February 16, 1982

FOR: RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT AND  
DEPUTY TO THE CHIEF OF STAFF

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Indian Land Claims Legislation

I have reviewed the proposed legislation on Indian land claims sponsored by Representative Gary Lee and supported by Senators Thurmond and D'Amato, as well as the background materials you attached and a summary prepared by the Justice Department of actions some persons in the Administration have already taken with respect to this legislation. My comments and recommendations are as follows:

Comments

-- On balance, the Indian land claims problem is something that probably should, if possible, be addressed by appropriate legislation.

The various lawsuits being filed by Indian tribes are based primarily on alleged noncompliance with a section of an Act first passed in 1790 and now codified at 25 U.S.C. § 177, which provides that any acquisition of land from Indian tribes be accomplished "by treaty or convention entered into pursuant to the Constitution" -- i.e., approved by the Federal Government. The courts are being asked, under this law, to declare invalid titles to land held by innocent 20th century purchasers, on the basis of alleged title defects created by their 18th or 19th century predecessors-in-interest. The problem is exacerbated by the fact that the courts have been hostile to state-law defenses, such as statutes of limitations or "adverse possession" laws, that normally foreclose challenges to present title on the basis of ancient title irregularities.

The grounds for rejecting such state-law defenses involve the Supremacy Clause of the Constitution (which establishes, in general, that Federal law



prevails over inconsistent state law) and the power given to Congress under Art. I, § 8, cl. 2 "[t]o regulate commerce . . . with the Indian tribes." The latter clause, which was the basis for the 1790 legislation, strongly suggests that Congress has authority to enact legislation now to address and resolve the Indian land claims problem.

- Despite the general authority of Congress to legislate with respect to Indian affairs, legislation of the sort proposed by Lee raises serious Constitutional questions. Specifically, assuming an Indian tribe does have a valid legal claim to contested land, and the claim cannot be defeated by "adverse possession" or other defenses, a bill that requires the tribe to accept compensation based on fair market value in the 18th century could violate the Fifth Amendment's prohibition of taking private property without "just compensation." Valid or not, this challenge is certain to be raised. This is potentially a fairly complicated and arcane legal issue involving a possible conflict between two clauses of the Constitution. A further complicating legal factor involves whether some or all aspects of this problem are covered by the "political questions" doctrine, under which the courts will not second-guess actions on "political" matters where authority is expressly granted by the Constitution to the Executive or Legislative Branch.

All of these are issues that should be thoroughly examined by the Justice Department before the Administration could take an intelligent and defensible position on the Constitutional validity of this proposal.

- There are a number of other legal issues presented by the proposed legislation, some of which have policy overtones and all of which also merit careful study before a particular legislative solution is publicly embraced by the Administration.

For example, the draft legislation covers land in only three states -- Connecticut, New York and South Carolina. As a legal matter (assuming, as is apparently true, that there are potential Indian claims to lands in other states), is it permissible to provide special compensation rules

for some states and not others? As a policy matter, is this something one wants to do even if permissible?

Also, there are a number of suits already filed, as well as some that apparently have already gone to judgment. What legal effect, if any, would or could the legislation have on such pre-existing actions? If those actions are not affected, what are the policy implications of ratifying a windfall of several millions of dollars for tribes who filed lawsuits early while limiting subsequent claimants to 18th century value plus nominal simple interest?

In addition, the particular compensation formulas set forth in the Lee bill, as well as the particular mechanisms that bill provides for the processing of claims, raise a number of policy and political questions -- in an area in which any proposal of the sort offered by Lee is certain to be vehemently attacked by Indian organizations and groups sympathetic to them. Some of these questions may have legal implications as well, to the degree that one formula or another may be more likely to survive a challenge under the "just compensation" clause.

In all these areas, the risks of embracing a particular proposal prior to thorough legal and policy review should be apparent.

### Recommendations

Obviously, our options have been somewhat limited to the extent that actions taken by persons purportedly acting on behalf of the Administration have already publicly committed us in the eyes of the bill's supporters and others. Absent the political pressures created by such actions, this would probably not be the kind of "burning" issue that demands rapid formulation of an official Administration position (if indeed any specific position would have needed to be taken prior to a bill reaching the President's desk). Given that fact and the need for careful review, through normal channels, of the legal and policy issues outlined above, I recommend that we avoid endorsement of any particular proposal to the extent we can do so without seriously offending Representative Lee, Senators Thurmond or D'Amato or others who may think the Administration has already made a commitment to this legislation.

Specifically, if the present political context requires it, we can probably state that we believe this matter is one appropriately addressed by the Congress, rather than being

left to case-by-case disposition by the courts that could create enormous administrative problems and substantial hardship to individual residential and commercial title holders. We can probably state as well that the Lee bill represents a serious effort to come to grips with this problem, one that merits serious study by the Congress and the Administration.


If at all possible, however, we should not become any more publicly wedded than we may already be to particular aspects of the Lee legislation. There are too many legal and policy questions that need careful, disinterested review by Justice and others to risk taking a public position from which we might later have to back away, with attendant embarrassment and other adverse political consequences. Plainly, given the present situation, that review must continue apace. But until it has been completed and both the Cabinet Council on Legal Policy and senior staff have had an opportunity to evaluate the results, we should not rush to get out front on the Lee bill or any other proposal in this area.

cc: Edwin Meese III  
James A. Baker III  
Michael K. Deaver  
Kenneth M. Duberstein

**WHITE HOUSE STAFFING MEMORANDUM**

DATE: 2/12 ACTION/CONCURRENCE/COMMENT DUE BY: c.o.b. 2/16/82  
Tuesday

SUBJECT: ANCIENT INDIAN LAND CLAIMS SETTLEMENT ACT OF 1982

|                | ACTION                              | FYI                      |  | ACTION                              | FYI                      |
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Remarks:

Attached is proposed legislation concerning Ancient Indian Land Claims Settlement Act of 1982. Please indicate your views on the proposed legislation. We are anxious to develop an administration position as soon as possible.

*No additions, deletions.*

*Ed Rollins / mmd  
 Ofc. of Political Affairs*

Richard G. Darman  
 Assistant to the President  
 and  
 Deputy to the Chief of Staff  
 (x-2702)