THE WHITE HOUSE
WASHINGTON

file - Indian Land Claims

TO: Danny J. Boggs
Robert B. Carleson
Wendell W. Gunn
Michael M. Uhlmann

FROM: **ROGER B. PORTER**

- [x] FYI
- [ ] ACTION
- [ ] COMMENT
- [ ] DRAFT RESPONSE

REMARKS:

UNITED STATES GOVERNMENT

NAVAJO & HOPI INDIAN RELOCATION COMMISSION

P. O. BOX KK • FLAGSTAFF, ARIZONA 86002

June 4, 1982

PROGRAM UPDATE AND REPORT

MAY, 1982

LAND EXCHANGE NEGOTIATIONS

In an attempt to reduce the number of families who must relocate, the Commission has presented the Navajo and Hopi Tribes with two proposals to modify the partition of the former Joint Use Area through land exchanges. The proposals were presented to the Tribes at a meeting of their negotiating committees as part of the Commission's on-going efforts to alleviate the problems facing traditional Navajo residents who must relocate.

Under the first proposal, the Tribes would exchange 48,000 acres, with 24,000 acres going to each Tribe. The Hopi Tribe would turn over portions of land in Big Mountain, Pinon, Low Mountain, White Cone, and Teesto. In return, the Hopi Tribe would receive sections of land in Hardrock, Pinon, Low Mountain, White Cone, Tolani Lake, Red Lake, Shonto, and Big Mountain. Under this plan, 96 Navajo familes now facing relocation would remain on their land, and 60 new Navajo families would move - reducing by 36 the number of families who must relocate and resulting in a net savings of almost $3 million in relocation program costs.

Under the second proposal, the Hopi Tribe would transfer 140,000 acres of land in the former Joint Use Area to the Navajo Tribe, and in exchange receive 23,000 acres that had been partitioned to the Navajo Tribe as well as the Navajo Tribe's Bar-N Ranch, located south of Holbrook. The Navajo Tribe would also give up its half share of the royalties from coal operations at Black Mesa for 10 years. At current royalty rates this would amount to from $1.3 million to $1.4 million annually, and these funds could be used to restore sections of the former Joint Use Area retained by the Hopi Tribe. Both Tribes would also agree to settle the 1934 Moencopi land dispute, with the Hopi Tribe receiving a 65,000 acre corridor from the current Hopi Reservation to the Hopi community of Moencopi, located within the Navajo Reservation. Also, the Jeddito-area would no longer be an "island" surrounded by the Hopi Reservation, and would have a corridor to the balance of the Navajo Reservation - which it now lacks. Under this plan, 918 Navajo families now facing relocation would remain on their lands, and 123 Navajo families living in the areas to be turned over to the Hopi Tribe would have to move - reducing by 795 the number of families who must relocate, and resulting in a net savings of almost $60 million in relocation program costs.

Detailed summaries of both proposals may be found as attachments to this report along with statements by Commissioners Sandra Massetto and Roger Lewis.

The goal of the Commission in presenting these proposals is to break the stalemate on land exchange negotiations by presenting concrete proposals for the Tribes' considerations. The Tribes have been asked to respond to the proposals at a June meeting in Albuquerque. The Commission recognizes that the two proposals represent polar opposite approaches to land exchange, and considers them a framework for realistic negotiations. The Commission hopes that the Tribes' consideration of the proposals will stimulate a compromise for a land exchange somewhere between the two extremes.

PARAGON RESOURCES RANCH

At the May Commission meeting, the Commissioners accepted the Navajo Tribe's application to acquire the Paragon Resources Ranch under Public Law 96-305, and unamimously voted to submit the application to the Secretary of the Interior. The Commission recognizes that there will be competing interests involved in making this selection, and urged that the interests of human needs be recognized as more important than the competing needs of energy development.

The Commission has retained the services of Bliss and Kraft, Attorneys at Law, to be a Washington, D.C., representative to assist with the Paragon Resources Ranch selection.

OVERVIEW

Three hundred and eighty-eight (388) families have moved since relocation began, 6 in May and 34 during Fiscal Year 1982. In addition, 66 families are seeking replacement homes and 26 families are in the process of acquiring their replacement homes.

MAY MEETING

Representatives of the Navajo Tribe's Land Dispute Commission and the Hopi Tribe attended the Commission's May meeting, as did representatives of Flagstaff's Native Americans for Community Action and Dineh Cooperatives. Matters considered at the meeting included:

Navajo Tribe: An attorney representing the Navajo Tribe informed the Commission that legal services would be provided to individual Navajos. The Commission asked for a list of attorneys who will work on appeals so that it can be mailed to relocatees, advising them that they have a right to counsel. The Tribal representative also informed the Commission that a member of his staff, an investigator, would provide services to individual Navajos with problems they have. The investigator introduced himself, and made a number of allegations about the Commission's Emergency Management Procedures. The Commission considers the allegations distortions and misinformation. Verbatum statements may be found in the transcript of the meeting.

The Director of the Tribe's Navajo-Hopi Task Force asked to review the plan for utilizing revenues from the Paragon Resources Ranch before it is adopted. He also expressed concern that apparently there are two land selection programs, the Tribe's and the Commission's, and that the Commission's efforts are limiting the process the

Tribe is developing to "look at everything and anything we want to look at." The Commission pointed-out that there is somewhat of a dilemma - the Tribe has the lead in land selection, with the Commission's assistance, until the Summer of 1983, at which time the leadership role passes to the Commission. Because the Act requires voluntary relocation to be completed by the Summer of 1986, the Commission must have information available to support an immediate selection of land in 1983 if this becomes its responsibility.

(At a subsequent meeting, the Director of the Task Force and the Commission's Executive Director discussed steps that might be taken to bring about a joint venture for land selection. Taking into consideration the cost and proposed scope of any proposal, it was suggested that the Tribe review a scope of work for a pilot evaluation contract for a specific site. It was agreed that this proposal would be reviewed by the Tribe's technical staff, and it was suggested that if this approach is rejected the Tribe and Commission should consider a neutral party approach to land selection. The Tribe was also queried for ideas on how problems could be minimized, and mutual efforts could proceed more smoothly.)

The Director of the Task Force asked if the Commission was going to undertake Chapter planning for resettlement communities. The Commission indicated that it wishes to work with the Chapters and that a proposal to the Tribe was being prepared. The Commission also observed that Navajo Tribal staff had indicated that it would likely take longer to prepare a comprehensive Chapter development plan related to relocation than the 14 to 18 months it customarily takes to prepare a Chapter development plan that does not involve relocation, - which could make this approach somewhat impractical. The Director of the Task Force indicated that Chapter planning for relocation would take time, but not the amount of time involved in developing a comprehensive community plan - since the relocation plan calls for filling in necessary amenities, facilities, community and economic development.

The Chairman of the Tribe's Land Dispute Commission asked when the Commissioners were going to meet with the different Chapters who are interested in learning about the relocation plan. He was informed that the Commissioners and Commisson staff would, as in the past, respond to invitations and asked the Chairman to encourage the Chapters to invite Commission personnel to their meetings.

Hopi Tribe: The Director of the Office of Hopi Partitioned Lands expressed concern about the Navajo Tribe's Homesite Lease Policy, the approach the Navajo Tribe is taking to Public Law 93-531, and that the Navajo Tribe should obtain land for relocatees.

Executive Director: By unanimous vote, the Commissioners named Mr. Stephen G. Goodrich the permanent Executive Director of the Commission. Mr. Goodrich had been serving as Acting Executive Director since January 1, 1982.

The Commission expressed concern that the rhetoric heard at the meeting and elsewhere was not contributing to settling the land dispute, and urged both Tribes' negotiating teams to attend the land exchange negotiation meeting the Commission was convening later in May. After the conclusion of the meeting, the Commissioners and staff discussed various aspects of the relocation program with some of the persons who attended the meeting.

COMMISSIONER ROGER K. LEWIS

On May 21, 1982 Commissioner Roger K. Lewis resigned from his position on the Commission. In his letter of resignation, Mr. Lewis indicated that the two proposals for land exchanges would reduce the number of families who have to relocate. With the negotiation process primarily in the hands of the Tribes, he had done what he could to encourage the Tribes to discuss mutually acceptable changes in the relocation program - hence, it is an appropriate time for him to leave the Commission. Mr. Lewis observed that increasingly complex Commission activities have made unexpectedly heavy demands upon his time, and that he wishes to devote himself to writing and other work.

Mr. Lewis will take with him many friendships among Commission personnel and among members and representatives of the Navajo and Hopi Tribes.

STAFF PERFORMANCE AWARDS

The Commission's Sustained Performance Award Program has been implemented. Two staff members received Special Achievement Awards, under the program, because their continued high level of performance significantly surpassed the requirements of their positions.

One staff member, the Commission's Graphic Artist, was cited for the sustained exceptionally high quality of her work, which displays both technical skills and creativity. Her talents have been especially important to the preparation of the Commission's Annual Reports - a major means by which the Commission advises the Congress, relocatees, and general public of its activities.

The other staff member, a Relocation Advisory Services Specialist, was cited for his sincere concern for the Commission's clients and the services they receive. His work is of consistently superior quality, and he explores new ideas for improving the quality of services which all of the Commission's programs provide to the relocatees.

TRIBAL AND AGENCY LIAISON

The Commission has proposed a joint community planning effort to the Navajo Tribe. This will involve the use of Commission resources to fund a model Chapter development planning initiative at a single former Joint Use Area Chapter. The initiative would develop housing, community and economic development planning for land that a Chapter had withdrawn for this purpose.

It was suggested that the Commission and the Navajo Tribe work together to present this idea to a Chapter, and provide technical assistance for land withdrawal. After the land was withdrawn, the Commission would make resources available for the planning effort.

The first step in such a joint effort should be to identify a suitable Chapter. The Commission asked for a staff meeting with Tribal technicians to identify the Chapter and develop a strategy for presenting the idea.

ECONOMIC AND JOB DEVELOPMENT

The Commission is exploring entering into a Cooperative Agreement with the Portable Practical Educational Program. Project PPEP operates a mutual self-help housing program and related human services programs throughout Arizona. Project PPEP's philosophy of self-help and self-employment makes this program especially attractive, and the Cooperative Agreement will ascertain the elements of Project PPEP's programming which are relevant to the relocation program.

In January, 1982 the Commission established a priority project to create a Data Base. The first phase involved administering a survey questionnaire to 180 families awaiting relocation, and has been completed ahead of schedule. The feasibility of a second phase involving interviews with other families awaiting relocation is being examined. The information gained will provide a data base to be used in planning for economic development and the use of the new lands.

CLUSTER HOUSING PILOT PROJECT

Three of the five heads of households participating in the project have signed replacement home acquisition contracts. It is expected that the other contracts will be signed in early June. The Commission has approved a Memorandum of Agreement for the Navajo Engineering Construction Authority to serve as contractor. It is anticipated that NECA will sign the Agreement in early June. Later in June a field trip will be made to the Tonto Apache Reservation to further educate project staff and participants in the self-help housing concept.

DISCRETIONARY FUNDS PROGRAM

The Commissioners reviewed the applications and project proposals requesting assistance from the Discretionary Funds Program. It is anticipated that the proposed projects which most strongly implement the program priorities will be funded in June. This first phase of the Discretionary Funds Program has been helpful to the Commission's overall programming because it has provided very useful information. First, evaluation of the proposals identified opportunities for capacity building efforts to strengthen local organizations, and thus increase their effectiveness in assisting and supporting the relocation program. Second, the expressions of interest from Coal Mine Mesa, White Cone, and Low Mountain have suggested ideas for broader cooperation at the Chapter level to facilitate relocation. Finally, the Commission has been able to identify some very good ideas which could be developed into projects for future funding.

COMMUNITY CONSULTATION

The Navajo Relocation Planning Group met in Winslow. It requested by unanimous resolution that the Navajo Tribe appoint a relocatee to the Land Selection Task Force, and that land be acquired to relieve some of the hardships experienced by persons who are forced to move to urban areas because reservation land is not available for them. The Group also asked Commission staff to look

into possible problems of relocatees selling their homes for less than they are worth. In the future, the Group will hold its monthly meetings at different places in the former Joint Use Area.

The Coconino County Relocation Planning Group did not meet in May. At their May meeting, members of the Flagstaff Relocatee Self-Help Group were registered to vote in Coconino County and received information on voting eligibility in Tribal elections.

The Page Relocatee Group has established an educational program for its members. The Group is also planning the organizational structure of a day care cooperative.

Members of the Navajo County Relocation Planning Committee met and discussed taking a stance on repeal of Public Law 93-531, as amended.

LAND SELECTION

In January, 1982 the Commission created a priority project to catalog information on lands which might be available for acquisition under Public Law 96-305. On June 1st, information on the first block of 100,000 acres of lands so identified will be forwarded to the Navajo Tribe.

The Commission is also developing land use criteria and data that can be employed to identify lands which could be selected under Public Law 96-305.

RELOCATION PROGRAM STATISTICAL SUMMARY

The attached Statistical Program Report details the progress of various aspects of the relocation program. For example 1,425 applications have been certified eligible for benefits, and Relocation Advisory Services has a pre-move caseload of 953 families. In addition, 101 applicants (not all of whom are certified eligible) have homesite leases or land assignments, and 202 applicants have homesite lease or land assignments pending.

Because of the climactic conditions in Northern Arizona, it is typical for more than half of the Commission's replacement home building starts for the year to take place during the warm summer months. This is reflected in the 142 percent increase which has taken place in the Real Estate Services caseload since the end of December. The following sections offer other detailed information on additional aspects of the program.

Replacement Homes

Of the replacement homes acquired during May, 4 were newly constructed on-reservation dwellings and 2 were off-reservation resale dwellings. Of all replacement homes acquired to date, 33 percent have been newly constructed dwellings, 54 percent have been resale dwellings, 10 percent have been mobile homes and 3 percent involved paying-off mortgages on homes occupied by relocatees.

Of the families who moved during May, 4 relocated to an off-reservation homesites and 2 relocated on off-reservation homesites. To date, 27 percent of the families have moved to on-reservation homesites and 73 percent to off-reservation homesites. During Fiscal Year 1982, 50 percent of the families have relocated to on-reservation homesites and 50 percent to off-reservation homesites.

Family Demographics

The average size of the 105 families who have relocated to on-reservation homesites is 4.66 persons. The average size of the 283 families who have relocated to off-reservation homesites is 4.43 persons. The average size of all families who have relocated is 4.49 persons.

A total of 378 Navajo families have relocated (96 on-reservation and 282 off-reservation). The average size of a Navajo relocatee family is 4.50 persons.

A total of 10 Hopi families have relocated (9 on-reservation and 1 off-reservation). The average size of a Hopi relocatee family is 4.10 persons.

Home Acquisitions in Process

Of the 26 families who, at the end of May, are in the process of acquiring replacement homes, 12 families are obtaining newly constructed on-reservation homes, 3 families are obtaining newly constructed off-reservation homes, 9 families are obtaining resale off-reservation homes and the existing mortgages on two relocatee occupied off-reservation replacement homes will be paid-off.

Notes: If you wish additional information or have any questions, please contact David G. Shaw-Serdar at (602) 779-3311, Extension 1591, or FTS 261-1591.

If you wish copies of the Land Exchange Proposals the Commission presented to the Navajo and Hopi Tribes, or the Minutes of the Commission's May, 1982 meeting (including the meeting transcript), please contact Ms. Y-Vette Cave at (602) 779-3311, Extension 1376, or FTS 261-1376.

Attachment: Statistical Program Report

UNITED STATES GOVERNMENT
NAVAJO AND HOPI INDIAN RELOCATION COMMISSION
STATISTICAL PROGRAM REPORT
For the Month of May, 1982

	Month	Fiscal Year	Total
INTAKE			
Nonscheduled Walk-In Interviews	61	368	977
Csse Files			
Inactive Case Files			40
Incomplete Applications			532
Completed Applications	36	243	2,665 *
Total Applications and Case Files			3,237
CERTIFICATION			
Current Caseload	1,177		
Field Investigations	70	385	1,542
Office Conferences	27	440	2,474
Applications for Benefits Denied	0	15	16
Applications for Benefits Certified	31	240	1,425
HOMESITE LEASE ASSISTANCE SERVICES			
Current Caseload	249		
Homesite Feasibility Studies	3	58	416
Lease Applications Pending with BIA or NT	202		
Approved Applications Received	3	60	196
Completed Leases: Vending and Referred to Advisory Services	2	75	193
PRE-MOVE RELOCATION ADVISORY SERVICES			
Current Caseload	953		
Appointments	57	291	1,584
Nonscheduled Walk-Ins	26	291	14,646
Consumer Education Seminar Attendees	57	247	597
TECHNICAL SERVICES			
Current Caseload	79		
Home Construction Plans Received	13	38	104
Pre-Construction Conferences	5	18	58
Total Home Inspections	31	247	1,355
REAL ESTATE SERVICES			
Families Seeking Replacement Homes	66		
Replacement Home Acquisition in Process	26		
Total Current Caseload	92		
Appointments	32	132	1,444
Replacement Homes Acquired - On-Reservation	4	17	105
Replacement Homes Acquired - Off-Reservation	2	17	281
Total Homes Acquired	6	34	386
PROPERTY ACQUISITION AND DISPOSAL			
Preliminary Appraisals	0	9	683
Final Appraisals and Notices of Intent to Purchase	7	29	160
Properties Acquired and Secured	1	20	129
Properties Disposed	3	28	107
POST-MOVE RELOCATION ADVISORY SERVICES			
Current Caseload	354		
Total Families Moved	6	34	388
Post-Move Home Visits Office Interviews and Telephone Contacts	33	424	1,050
Contacts with, and Referrals to, Other Agencies	37	374	1,272

*RECORD AUDIT

UNITED STATES GOVERNMENT

NAVAJO & HOPI INDIAN RELOCATION COMMISSION

P. O. BOX KK • FLAGSTAFF, ARIZONA 86002

STATEMENT OF SANDRA L. MASSETTO

NEGOTIATIONS, MAY 21, 1982

When I first accepted the appointment to this Commission, I expressed my concern over the policy of "relocation". Three years later my apprehensions have been confirmed.

Equally alarming to me, however, is the rhetortic I hear about repeal. Although specifics are never clearly defined when the matter is raised, in my mind it means a return to the status quo before the line was finalized by the Court. The logical step in that process is that condemnation or more appropriately, a taking of Hopi land, must be sought by Congress to accomplish the repeal. The taking of Indian property is as equally reprehensible to me as relocation.

Both "relocation" and "taking" are policies of the extreme. Every effort must be made to avoid the adoption of them. When you encourage either relocation or taking against one another, you are in effect endorsing those policies against other Indian tribes of this nation. When I see the Hopi Tribe promote the relocation of Navajos, I ask myself whether you support the relocation of Fort McDowell Yavapai Apaches. Similarily, I wonder whether the Navajos would endorse a taking of Central Arizona Indians' water rights merely because the non-Indian in Maricopa and Pima Counties greatly out number the Indians.

Frankly, I think you have lost sight of the long term effect of your actions on Indian policy. You need to stop and reflect upon what you are doing. It is essential to strike some accord between "relocation" and "taking".

Two fundamental principles must be accepted before any resolution can seriously be pursued. First, the Hopi Tribe must be assured of an expanded land base. Not one that is based on some speculative land transfer, but rather on land that can immediately come under the jurisdiction and possession of the Hopi Tribe. Secondly, there must be a reduction of the relocation of Navajo families.

To achieve these two goals, both Tribes must accept the harsh reality that there will be relocation of Navajo families and that the Hopis must give up land in the 1882 Reservation.

This program will be re-evaluated. Every program can be improved upon. Members of Congress have began to recognize this need. Senator Goldwater has introduced

legislation. Senator McClure stated in our recent appropriation hearings that "the Congressional program for relocation was an effort on the part of Congress to bring an end to the bickering, and I don't think anybody here thought it was a good solution..." Senator McClure sought suggestions from the Commissioners as to what changes there might be in the program.

The real question in my mind is whether the Hopi Tribe or Navajo Tribe can make the changes or are you once again placing your destiny in the hands of non-Indians. People that have been involved with this issue for more years than I, flatly state that there is no way the two tribes can reach some accommodation. I simply cannot accept that.

The 1980 Amendments provided a vehicle by which the tribes could enter into negotiations. The Commission initiated these meetings in March, 1982. I was disappointed with the results of the negotiations because more time was spent on who was to be in the room than on substance matters.

I have spent the last few months contemplating the role of the Commission in the negotiations. From my vantage point, the role will no longer be passive.

Two proposals will be submitted to you today by the Commission. I want you to know that I favor the more comprehensive proposal. The 1934 litigation must be resolved so that the Commission and Congress can understand what their ultimate responsibilities will be.

The proposals should be carefully reviewed by the tribes. At our next meeting, I expect a detailed response: Not just an acceptance or rejection.

The Commission has a trust responsibility to the relocatees to clearly disclose matters which relate to them. The Commission has been criticized in the past for not communicating fully with them. Consequently, the news blackout will be lifted on the Commission's proposals and our statements.

UNITED STATES GOVERNMENT
NAVAJO & HOPI INDIAN RELOCATION COMMISSION
P. O. BOX KK • FLAGSTAFF, ARIZONA 86002

STATEMENT OF COMMISSIONER ROGER LEWIS TO
NAVAJO AND HOPI NEGOTIATORS MAY 21, 1982, FLAGSTAFF, ARIZONA

Efforts underway for more than a year culminate today with a negotiation structure in place and land exchange proposals, drafted by the Relocation Commission, submitted to representatives of the Navajo and Hopi Tribes.

The Commission's action in submitting suggestions for negotiations is in response to the intent of Congress and to pending legislation. The proposals are aimed at stimulating talks between the two Tribes to see if they have a mutual desire to change the present relocation program. If they do not, then negotiations can be laid aside and the Commission must proceed with relocation as it now exists, knowing that it made a conscientious effort to give the Tribes the opportunity to reshape the program.

Revision of the present program could be accomplished by the Navajo and Hopi Tribes because Congress wisely gave them authority to exchange lands and to undertake other activities upon which they might mutually agree. In the Navajo and Hopi Indian Relocation Amendments Act of 1980, Congress added specific authority for the Relocation Commission to enter into land exchange and lease negotiations with the two Tribes. Congress obviously granted this authority with the expectation that the Commission would promote negotiations to explore such exchanges. These exchanges could result in some families being able to remain where they now reside, a situation which I personally feel is desirable. I have always been an advocate of bending the partition line upon the consent of both Tribes.

This afternoon in Flagstaff, the official negotiating committees of both Tribes are meeting with the Commission and a federal mediator. The negotiating committees will be presented the Commission proposals and will be urged to take these to their respective peoples for study. It is expected that you will return to the negotiating table in June stating what may or may not be fair and worthly of further consideration, and/or to suggest other alternatives. The Commission proposals are submitted as negotiation stimuli, not what precisely ought to be done. If there are to be changes in the relocation program they best come from the initiative and agreement of both Tribes.

I should point out that the present relocation deals only with the former joint use area of the 1882 Reservation. Looming ahead is the possibility of another relocation of Hopis and Navajos stemming from current litigation over the 1934 Executive Order Reservation. One of the Commission proposals introduces that area into the negotiation discussion.

Whether or not, the negotiations will result in the adoption of new alternatives for settling this lengthy dispute is anybody's guess. One could hope that the Tribes might come up with changes to make the Navajo-Hopi settlement as mutually advantageous as possible for both peoples. The general taxpayers have a stake too in seeing that large amounts of public monies are used in a manner deriving maximum benefit. But this land dispute stems in large part from federal government actions or inaction over many years. Therefore, one should not expect to find a settlement which is both honorable and inexpensive.

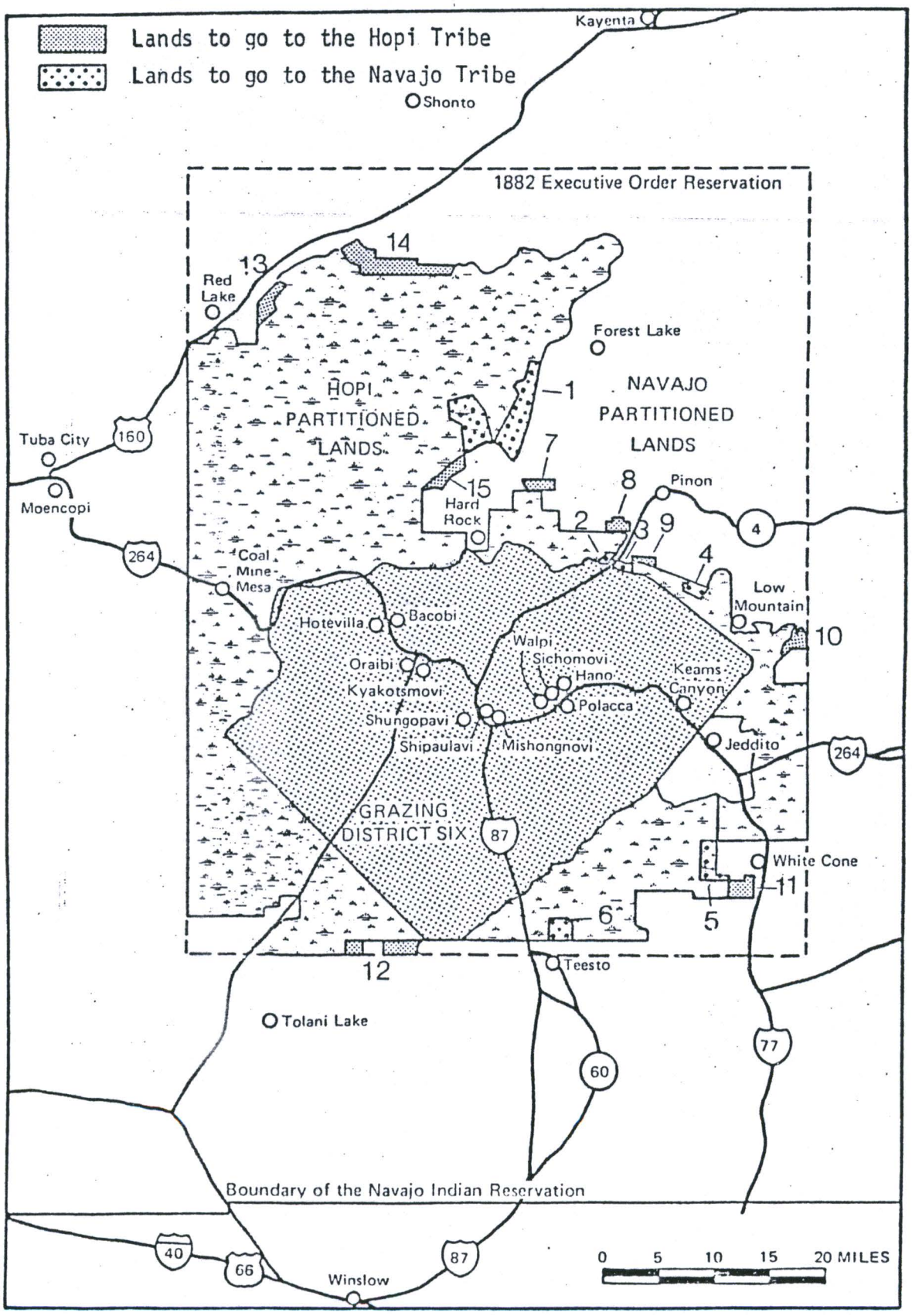
I would like to take this opportunity to again express support for the application filed last week with the Secretary of the Interior by the Navajo Tribe and the Commission for acquisition of 35,000 acres of public domain land within the Paragon Resources Ranch in New Mexico. I will press the Secretary to approve this selection with terms which will make possible the economic potential these coal-rich acres can provide families subject to relocation.

Judging from my experience, the role of a commissioner seems to be one in which negative factors are more abundant than opportunities to carry out positive actions. Congress, no doubt, envisioned commissioners involved in the program part-time as policy makers, not day-to-day operations of an independent federal agency. But the policy determinations are sensitive ones and often without precedent as the Commission struggles to mitigate social and economic hardships for the families. The Commission recognizes too that the elected Tribal governments are forced to deal not only with relocation but with geographic areas in which controversy has prevented the upgrading of services, building of improvements and development of the economy for as long as 25 years.

The emphasis has to be turned from the struggle between the Navajo and Hopi Tribes and turned to the cooperation of the two Tribes in the rehabilitation of the disputed areas.

Thank you.

POTENTIAL LAND EXCHANGE AREAS
PROPOSAL 1



NAVAJO-HOPI INDIAN RELOCATION COMMISSION

Proposal 1

This proposal suggests an exchange in which approximately 24,000 acres from each Tribe would be transferred to the other Tribe.

All 48,000+ acres to be exchanged are located within the 1882 E.O. Area and contiguous to the existing Partition Line.

A net savings of 36 families (estimated) claiming residency in the affected area would be spared relocation under Proposal #1.

The Hopi partitioned areas to be transferred to Navajo jurisdiction:

No.	Area	Acres	Homesites	Families Claiming Residence (Estimated)	Water
1	Big Mountain	19,400	15	45	*, 2o
2	Pinon	600	2	6	o
3	Pinon	120	7	21	None
4	Low Mountain	900	3	9	o
5	White Cone	1,240	2	6	*
6	Teesto	2,500	3	9	None
		24,760	32	96	2*, 4o

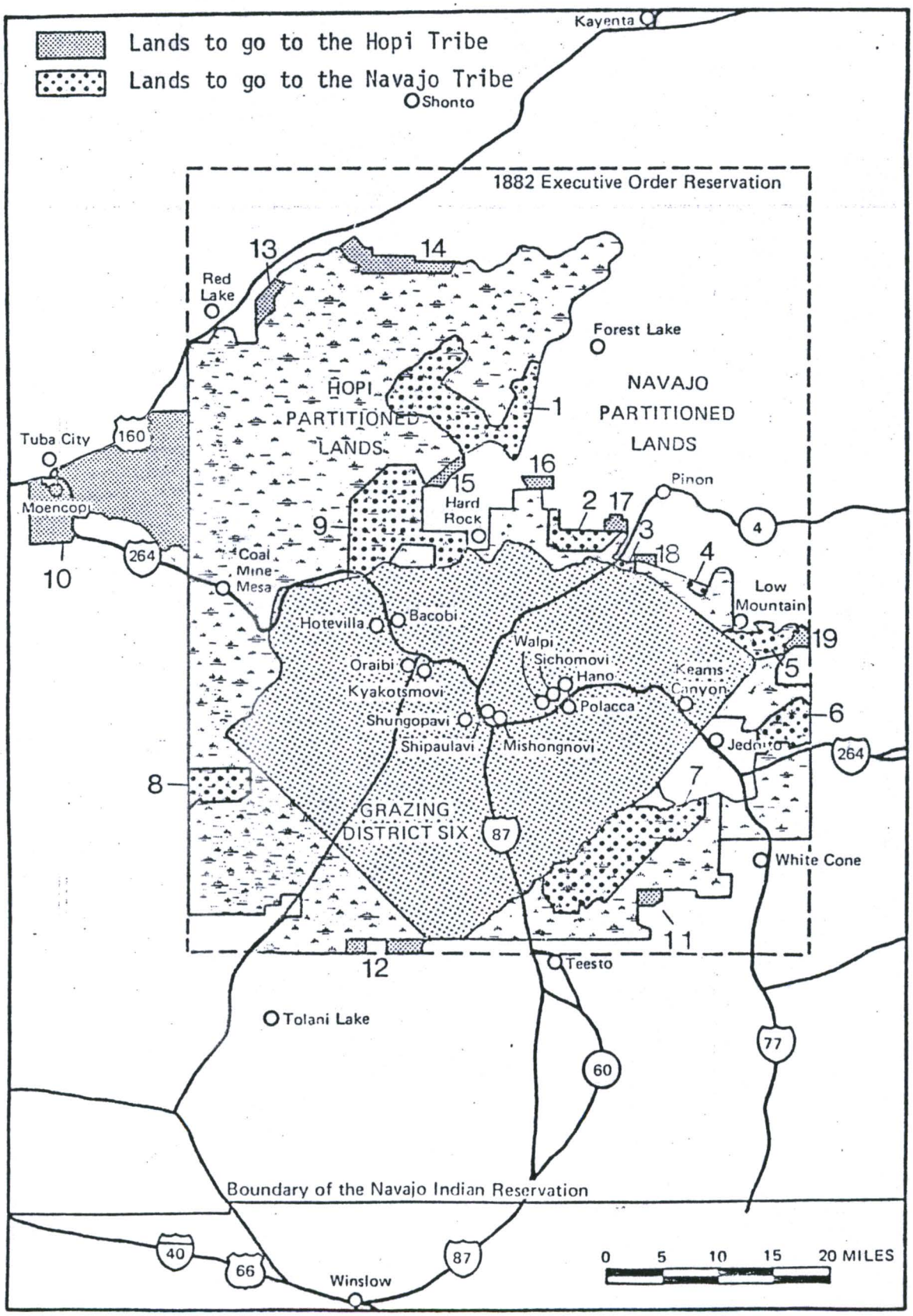
The Navajo partitioned areas to be transferred to Hopi jurisdiction:

7	Hardrock	1,736	0	0	None
8	Pinon	560	0	0	None
9	Pinon	290	0	0	None
10	Low Mountain	2,020	0	0	o
11	White Cone	2,900	0	0	*
12	Tolani Lake	2,880	0	0	*
13	Red Lake	2,080	5	15	o
14	Shonto	8,960	15	45	2o
15	Big Mountain	2,640	0	0	None
		24,066	20	60	1*, 5o
	Net Savings		12	36	

* = Windmill

o = Developed Well

POTENTIAL LAND EXCHANGE AREAS
PROPOSAL 2



NAVAJO-HOPI INDIAN RELOCATION COMMISSION

Proposal 2

This proposal suggests an exchange in which approximately 140,000 acres of Hopi Partitioned Lands would be transferred to the Navajo Tribe, all within the 1882 E.O. area.

Ths Hopi Tribe would receive approximately 23,066 acres from the Navajo Partitioned Area and the 100,000 acre Bar N Ranch currently owned by the Navajo Tribe. The Hopi Tribe would also be given 100% of the royalties from minerals in the 1882 reservation for a period of ten (10) years.

The 1934 litigation would be settled, with 65,000 acres of land in that area going to the Hopi Tribe to link the Monenkopi Village with the Hopi Partition Lands.

A net savings of 795 families (estimated) would be spared relocation under Proposal #2.

The Hopi partitioned areas to be transferred to Navajo jurisdiction:

No.	Area	Estimated Acres	Homesites	Families Claiming Residence (Estimated)	Water
1	Big Mountain	39,700	40	120	2*, 2o
2	Hardrock	7,700	30	90	*
3	Pinon	850	15	45	None
4	Low Mountain	1,125	4	12	o
5	Jeddito/Low Mt.	8,300	20	60	None
6	Jeddito	6,400	7	21	*, o
7	Jeddito/Teesto	37,100	100	300	3*, 3o
8	Sand Springs	2,700	20	60	o
9	Rocky Ridge	35,850	70	210	*
		139,725	306	918	8*, 8o

Navajo partitioned area and 1934 Reservation to be transferred to Hopi jurisdiction:

10	1934 Reservation	65,000	20 1/	60	2/
11	FJUA - Teesto	1,900	1	3	None
12	Tolani Lake	2,800	0	0	o
13	Red Lake	2,080	5	15	o
14	Shonto	8,960	15	45	2o
15	Big Mountain	2,640	0	0	None
16	Hardrock	1,736	0	0	None
17	Pinon	560	0	0	None
18	Pinon	290	0	0	None
19	Low Mountain	2,020	0	0	o
		88,066	41	123	5o
	Net Savings		265	795	

1/ Unenumerated area, uncertain estimate.
2/ Water resources estimate not available.

* = Windmill
o = Developed Well

Barr

Pls. evaluate these two items.

DAKOTA PLAINS LEGAL SERVICES
formerly South Dakota Legal Services

MEMORANDUM

DATE: June 9, 1982

TO:
White House Cabinet Council on Legal Affairs
Washington,
DC.C 20500

FROM:
Donna J. Salhany
Attorney at Law
Box 507
Fort Yates, North Dakota 58538

SUBJECT: INDIAN LAND CLAIMS

I am writing to express concern about the Administration's failure to submit to Congress proposals for resolving certain Indian claims as required by P.L. 96-217, also found in 28 USC§2415. The Administration is well aware that this Statute of Limitations runs in December, 1982. They have established a time line in the past but have failed to honor it. They have analyzed the already documented claims sufficiently to make decisions concerning which claims would be better suited for legislation rather than litigation, but have failed to follow through with proposals for that legislation.

The United States government has a trust responsibility to Native Americans. They are not fulfilling this responsibility in this instance. The Standing Rock Sioux Tribal Chairman wrote to our Congressional delegation concerning this problem earlier this year, so they, too, are cognizant of this situation. As a staff member of an Indian Legal Services program concerned with these Indian claims, I urge you to encourage the Administration to comply with P.L. 96-217. Such compliance at this late date would be difficult so I would further urge you to work to extend the deadline on this Statute of Limitation beyond December 31, 1982. Your work and support is greatly appreciated.

Sincerely,

Donna J. Salhany

Donna J. Salhany
Attorney at Law

DJS:slb

EVERGREEN LEGAL SERVICES
NATIVE AMERICAN PROJECT
520 SMITH TOWER, 506 SECOND AVENUE
SEATTLE, WASHINGTON 98104

(206) 464-5888

GREGORY R. DALLAIRE
DIRECTOR

June 2, 1982

Representative Peter Rodino
Chairman, Judiciary Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Rodino:

As this committee's recent hearings revealed, thousands of Indian citizens may soon be the innocent victims of their U.S. trustee's failure to fulfill its responsibility under 28 U.S.C. §2415. There is ample indication that the Administration cannot file or otherwise resolve by the current December 31, 1982 deadline all pre-1966 damage claims on behalf of Indians. We are writing to urge that this committee take steps which will protect the Indians' rights. Specifically, we hope that the committee will consider legislation which would exempt Indian claims from the application of 2415 or legislation extending the deadline for these claims.

It angers and embarrasses us to be asking Congress once again for an extension of the deadline contained in 28 U.S.C. §2415, particularly when we must do so in the face of the Administration's assurances that they will meet the deadline. We believe that the information contained in this letter and your further investigation will make clear the unreliability of the Administration's representations.

Several lawyers in our program have been advising and assisting Indians who asked the Bureau of Indian Affairs to pursue claims on their behalf. Those lawyers emphatically agree with Senator Cohen's recent characterization of the Administration's approach to its duty under P.L. 97-217. In opening oversight hearings on April 1, 1982, the senator observed, "The lethargic pace at which the United States is considering the [Indian damage] claims and its defiance of congressionally mandated deadlines for performance on the claims is irresponsible."

The Administration has stated that it will be able to process all claims by the December 31 deadline. Our experience leads us to believe otherwise.

1. We represent the Shoalwater Bay Tribe - a tiny, impoverished tribe with a small reservation in Western Washington. A small triangle of land along the reservation's east boundary was reserved to the tribe in 1866 but improperly patented to a non-Indian in 1872. Although BIA records still show the land as reservation, it has been divided into more than sixty lots now occupied by non-Indians' vacation cottages. As early as 1977 the tribe requested U.S. help getting compensation. By December, 1979, the Interior Solicitor had forwarded to Justice a request for litigation in this case. Shortly thereafter, Justice Department attorneys identified this as a claim which would be better resolved by legislation than by litigation. Despite this, neither Justice nor Interior has proposed - or, to our knowledge, drafted - a bill. Neither have the departments given any indication that the U.S. will file a protective suit if legislation is not forthcoming. In our repeated efforts to ascertain the status of the case, we have met sometimes with silence, sometimes with evasive statements, sometimes with promises of action that have never been fulfilled.

2. In 1979 we brought to BIA's attention several unapproved county roads across Nooksack Indian trust land. Within a year the Portland area office had reported the claim to the Solicitor in Washington, D.C. with a recommendation that litigation be filed before the statute of limitations ran. Portland Solicitors had also opened negotiations with the county, claiming more than $100,000 in damages. When we had heard nothing about either a settlement or a lawsuit by the fall of 1981, we began inquiries. The Portland Solicitor referred us to the Solicitor in Washington; the Solicitor in Washington referred us to the Justice Department; the Justice Department referred us back to Portland. In December, 1981 we were told by the Solicitor that the claim had been traced to Justice. But in April this year, the same person reported that he had been tracing the wrong claim, that he can locate no one in Justice who knows about or is reviewing this claim, that the litigation report from Interior to Justice is lost, and that the Portland staff had suspended all efforts long ago in the belief that Justice was handling it. Now we have the added concern that the Administration may arbitrarily designate the rights-of-way as beneficial without notifying us or the claimants we have been assisting.

3. Across two other Nooksack trust allotments there is a railroad track for which a valid right-of-way was never obtained. The trespass has been known to the BIA at least since 1973. By June, 1979 the Portland Area Solicitor asked the local U.S. Attorney to file suit, noting the effect of 28 U.S.C. 2415 on the claim. Despite further urging from the Interior Department, the U.S. Attorney took no action. In October, 1981, we learned that

the case had been referred to Washington D.C. Shortly thereafter, Interior approved a Justice Department complaint and sent the case back to Justice for filing. For the past six months, according to a Justice Department lawyer, the claim has sat on a Deputy Assistant Attorney General's desk. We can get no response to our inquiries in that office.

The Interior and Justice Departments' handling of these and other claims from our area has made us profoundly pessimistic about the chances that meritorious claims will be pursued. As noted, we have seen cases lost in the administrative maze, cases stalled for months on one desk, and cases shuttled back and forth several times between departments. Despite our repeated efforts to get information about the processing of our clients' claims, we have no reliable information about whether and how the claims are progressing through the administration's review process. As far as we can ascertain, none of our clients' cases which are now allegedly under review in Washington, D.C. has moved at all since the first congressional oversight hearings in February.

For these reasons, we were surprised and angered to learn how Administration representatives testified here. They said that the remaining active claims are manageable in number and can be smoothly processed before the deadline. They maintained that no extension of the statute is needed. We submit that the Administration testimony cannot withstand close scrutiny.

The administration is playing a strange numbers game. Interior can now say it has only 1,200 active claims rather than the 17,000 it had just months ago only because it proposes to deal with three major categories of claims other than by filing suit. Unless Indian interests in these claims are to be abandoned altogether, the Administration's recent policy decisions do not relieve it of major responsibilities which must still be carried out in the short time remaining before December 31.

As Interior Department spokesman Roy Sampsel testified, three major types of claims have been removed from the department's statute of limitations program following a policy decision by the acting Secretary on February 11. First, the Secretary decided to seek legislation providing for reimbursement of trust estates whose funds were used to repay Old Age Assistance. BIA Area Directors have been instructed to do nothing more on these claims until Congress acts. In the meantime, Interior has presented Congress with no specific proposals. Interior personnel identified the Old Age assistance claims as candidates for legislative resolution as early as the fall of 1980. Yet the Administration missed the congressionally mandated deadline for submitting such legislation, and now - nearly two years after that deadline - has still to present their proposal. How, in this short congressional year, do they expect the legislators to complete action on a bill to resolve these claims? What if the statute of limitations runs, and Congress does not later adopt legislation

which allows compensation of these clearly deserving claimants?

The acting Secretary's second policy decision was to validate "beneficial" rights-of-way administratively. The solicitor has apparently not yet determined when an illegal right-of-way should be considered beneficial. In the meantime, Interior Department personnel are instructed to presume that all roads and utility lines "directly serving Indian purposes" are beneficial. Even if we assume that the trustee has made a reasonable decision in choosing not to seek damages for trespasses which have probably benefitted Indian land holders, should the trustee not be expected to review the facts of each case to determine whether the trespass fits that description? Will Interior take into account the Indians' views on the desirability of the right-of-way? How can Interior possibly sort out and get ready to file all the cases where harm from the rights-of-way outweighs any benefit to the Indians? Or does Interior plan simply to dismiss all such trespass claims? Our clients have several such claims which BIA lawyers long ago declared meritorious and worth thousands of dollars. The claims have languished in Washington, D.C. for months or years. Are they not moving because Interior now proposes to validate the rights-of-way administratively?

The third Interior policy decision was explained in a March 10 memo from a Deputy Assistant Secretary to BIA Area directors: "White Earth, Forced Fee, and other title claims where title is the most valuable aspect of the claims will be removed from the Statute of Limitations Program and transferred to the regular rights protection program under Unresolved Indian Rights Issues." Again, Interior Department personnel are justified in assuming that they need no longer process claims involving illegal transfer of Indian land to innocent purchasers. Yet, just as with the rights-of-way, cannot the Indians' trustee be expected to review each case to determine whether title is the most valuable aspect of the claim? Does the government propose to forego a claim for damages simply because it also has a basis to quiet title? If not, what is Interior including in this category of claims? There has been no mention, for example, of the hundreds or perhaps thousands of conveyances which Interior made between 1948 and 1958, when it erroneously believed that 25 U.S.C. 483 allowed transfer of inherited interests in land without the heirs' consent. Are these claims affected by the decision regarding so-called forced fees? If not, how will they be handled?

It thus appears to us that nothing has been resolved with respect to the most numerous types of damage claims which will be barred after December 31. There is still a great deal for the Administration to do.

In addition, the Interior Department admits to having 1,200 claims to be reviewed by June 30 -- the deadline by which Justice must get Interior's report if it is to meet the year-end statutory deadline for filing the claims. These claims include a

variety of natural resource damage, water, boundary and trespass claims which Roy Sampsel described as requiring "extensive research."

Although Mr. Sampsel said that the evidentiary studies for most of these claims are nearing completion, he did not explain how few solicitors or other personnel will be available to review the studies and write litigation reports before June 30. His statements also neglected to mention the degree to which BIA and Interior staffs have turned back to the resource-scarce Indian claimants for evidentiary support of the claims. For how many of the 1,200 claims have evidentiary studies not yet been conducted? How many potential claims are not even counted in the 1,200 because they are held up in BIA area offices? How many are not counted because Interior did not have enough funding to conduct evidentiary studies? We know about dozens of claims for damage to fisheries which have never been under active consideration, not because they lack merit but because our area office had funding sufficient to study only a few such cases.

The Interior Department has given itself until June 30 to refer to Justice all cases it wants to see filed. Justice Department representatives state that this will give them sufficient time to act before December 31. We doubt, however, that Justice will have time to do more than file a spate of protective suits. Since many of the claims could probably be negotiated, this run on the courts is at best regrettable. The tight Government schedule also omits time for consultation with affected Indian claimants.

Although we believe that 28 U.S.C. 2415 was not intended to block damage claims by Indians themselves, we have advised our clients that the courts may not agree with this interpretation (unless Congress acts to clarify its intent). For this reason, many of those Indians and tribes with unprocessed claims may be preparing to file their own suits if the U.S. fails to act on their behalf. Unless the Administration sets and meets an early deadline for notifying claimants whether the U.S. will sue, these Indians will be forced into the posssibly unnecessary expense of proceeding on their own. They may crowd the court docket with more protective suits. If they wait until January 1 only to find that the U.S. has not acted on their behalf, they will surely contemplate recourse against their own delinquent trustee.

Whether the Administration's representatives are simply mistaken in their representations to this committee, afraid to admit their failures during the time since P.L. 96-217 extended the statute, or cynically planning to let the claims die, we do not know. We do know, however, that failure to extend or revise the statute will not teach the Administration a lesson for neglecting its duty. It will only hurt thousands of Indians who have had no control over the United States' management or mismanagement of their property. And it could open the U.S. up to massive claims

for breach of the trust duty it voluntarily assumed.

We urge you to do everything in your power to see that justice is done.

Sincerely yours,

Sasha Harmon
Coordinator

Cynthia Davenport
Attorney

SH:CD/BRM

c: Representative Morris Udall
White House Cabinet Council
on Legal Affairs

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

file Indian Land Claims
Mike McConnell, OMB
let me know if you need more Woody Tidwell 6/18/82

JUN 15 1982

MEMORANDUM

To: Deputy Solicitor

Through: Associate Solicitor, Indian Affairs LJJ

From: Assistant Solicitor, Division of Indian Affairs

Subject: Chitimacha Land Claims

This responds to your request, on behalf of OMB, for information on the land claims of the Chitimacha Tribe of Louisiana.

Seven different lawsuits have been filed by the Chitimacha Tribe seeking the return of lands in south central Louisiana. One of these has been voluntarily dismissed without prejudice. A summary of the remaining claims may be found in an October 15, 1980, memorandum from Solicitor Clyde O. Martz to the Assistant Secretary, Indian Affairs, a copy of which is attached. All these suits have been held in abeyance pending attempts to settle them. Even the Harry L. Laws, Inc. case in the 5th Circuit has been held up pending these efforts.

As noted in the Martz memorandum, the only claim which this Department has endorsed is that for 813 acres in the vicinity of Charenton, Louisiana. That acreage, which is immediately adjacent to the Tribe's existing reservation of 250 acres, was appraised in 1980 at $4.5 million.

The Martz memorandum points out that further factual research may indicate that the Tribe's claims for approximately 2000 acres in the Iberville area may show those claims to be credible. He points out that one substantial defense to any Indian claim in those areas would be that the Indians abandoned their occupation of that land prior to non-Indian settlement. Further research, however, indicates that there may be some evidence of Indian occupation of these lands in the 19th century, and the fact that the burden of proof is often on the non-Indian in such circumstances (see 25 U.S.C. § 194) has led us to view these claims as having some merit. As a result, an appraisal was done of the Iberville claim area in early 1981. These parcels were appraised at $3.7 million plus $500,000 for mineral rights.

The Bureau of Indian Affairs service population for the Chitimacha Tribe is 278 (December 1981).

There were no formal negotiations, as such, over the Chitimacha land claims. In May 1980, the Tribe voted to settle all of its claims in the State for $7.5 million. In October 1980, tribal leaders met with Solicitor Martz and Acting Assistant Secretary Thomas Fredericks, who made the commitment to do the appraisals which would lead to some policy decision on support of legislation to effectuate the Tribe's settlement offer. During 1981 the Tribe continued to seek a policy decision on their offer, but when no decision was forthcoming, they sought the support of their Congressional delegation, and legislation was introduced.

Under the terms of the settlement bill the federal government bears the entire cost of the settlement. Governor Treen has indicated some support for legislation along these lines. See the attached September 10, 1980 letter. The State of Louisiana was apparently not a party to any of the transactions in the Charenton and Iberville areas which are now challenged by the Tribe. Nor does the State own any lands in the claim areas, except possibly for state highway rights-of-way. Under the terms of the bill the property owners in the claim areas would not only not have to contribute to the cost of the settlement, but would be able to treat any acquisition of their lands by the Tribe with settlement money as an involuntary conveyance for federal tax purposes.

The federal government did play a role in the Iberville claims in the 19th century by issuing apparently unauthorized patents under the Preemption and Swampland Acts. We can provide you with further information on the merits and background of the Iberville and other claims, if you desire.

Tim Vollmann

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

OCT 15 1980

Memorandum

To: Assistant Secretary, Indian Affairs

From: Solicitor

Subject: Settlement of Chitimacha Land Claims

This memorandum is to brief you on the merits of the Chitimacha land claims in Louisiana. By Tribal Resolution CHI-TC #6-80 dated May 19, 1980, the Chitimacha Tribe of Louisiana offered to settle all its land claims in the State in return for $7,500,000 of federal moneys. This memorandum is designed as a guide for you in developing a counter-offer to the Tribe's offer. Naturally the amount which the federal government is willing to expend in settlement of Indian land claims is closely linked to its perception of the extent of credible tribal claims.

The Chitimachas are a federally recognized tribe with a reservation of approximately 235 acres at Charenton, Louisiana. They have asserted numerous land claims throughout south central Louisiana encompassing all or part of six parishes. The claims may be broken down into four categories:

(1) A claim to the entire aboriginal territory of the Tribe before European contact.

In Chitimacha Tribe of Louisiana v. E. Langdon Laws, Civil Action No. 800637 (W.D.La., April 24, 1980), Civil Action No. 80-1483 (E.D. La., April 24, 1980), Civil Action No. 80-232 (M.D. La., May 12, 1980), the Tribe has asserted title to its entire aboriginal territory before European contact. This is the largest claim, encompassing all or part of Iberia, St. Martin, St. Mary, Iberville, Ascension, and Assumption Parishes. There is no basis for this claim. The great bulk of these lands were lost during the French and Spanish Regimes in Louisiana, and with few exceptions (which give rise to the more specific claims below) there is no indication that the loss violated French, Spanish or American law.

(2) Lands claimed in Chitimacha Tribe of Louisiana v. Harry L. Laws, Inc., Civil Action No. 770772 (W.D. La., July 15, 1977)

Approximately 6000 acres in the vicinity of the Chitimacha Reservation in Charenton were sold by the Chitimachas to non-Indians prior to the Louisiana Purchase. Those sales were not approved by the Governor or Intendant General as required by Spanish Law. However, in 1816, Congress

10/15-1

confirmed the title of the non-Indian purchasers and their successors with full knowledge of the lack of approval by the appropriate Spanish official. Act of April 29, 1816, 3 Stat. 328. This confirmation must be seen as a validation of any of the defects in the sales and as an extinguishment of the Indian title. On April 24, 1980, Judge Davis of the Western District of Louisiana granted summary judgment to the defendants in the Harry L. Laws, Inc. case. That decision has been appealed. Although we disagree with some of the reasoning in Judge Davis' opinion, we believe that the appeal must fail because of the confirmation in the Act of April 16, 1816, supra.

(3) Lands claimed in Chitimacha Tribe of Louisiana v. Gilbert Smith, Civil Action No. 790495 (W.D. La., April 6, 1979)

This claim is for 813 acres which, along with the present reservation, were confirmed to the Chitimachas in 1852, United States v. Chetimacha Indians, 131 U.S. lxx (1852), and patented to them in 1855. The 815 acres were subsequently lost in a number of transactions and state court proceedings. None of these transactions were approved by the United States in accordance with the terms of the Indian Nonintercourse Act, 25 U.S.C. §177. On August 1, 1977, we informed the Department of Justice that the Chitimachas had a credible claim to the 813 acres and requested the institution of a quiet title and trespass action. We subsequently withdrew our litigation request in order to allow the parties to pursue settlement possibilities.

Early settlement initiatives were unsuccessful because the Tribe has expected a settlement based on the total claim asserted while neither the United States nor the defendants have believed that a credible claim exists outside the 813 acres. This spring, however, the attorneys for the Tribe suggested a formula for settlement which would be linked to the value of the 813-acre tract. The BIA appraised the surface estate with improvements at $4,320,000. An outside contractor appraised the subsurface at $160,000.

When the Tribe's settlement offer arrived, it proposed a federal contribution of $3 million in excess of the total value of the 813-acre tract. We are nonetheless forwarding the proposal for your consideration because it was accompanied by documentation of the additional claim discussed below.

(4) Iberville claims

The Iberville claim consists of approximately 2000 acres near Plaquemine, Louisiana. No appraisal of these lands has been done. However, some of the sites are close to oil fields and may be quite valuable for that reason.

Basically the Chitimachas assert that they can document that they had two villages (at Bayou Plaquemine and Bayou Jacob) during the American period in the vicinity of Plaquemine, Louisiana. Although non-Indian claims to the lands under the Louisiana Land Claim Acts were rejected, the lands were treated as public lands and alienated by the United States to non-Indians, including the State of Louisiana, under the Preemption Acts or the Swamp Land Acts.

Three major issues are presented. First, have the Chitimachas adequately shown use and occupancy of the tracts claimed into the American period? Second, is there evidence of abandonment by the Chitimachas before the time the lands were entered by non-Indians? Third, assuming that specific tracts had not been abandoned prior to the non-Indian entries, did alienation by the United States under the Preemption Acts and Swamp Land Acts extinguish Indian title to those tracts. We believe that an adequate showing of Indian ownership into the American period has been made for many, though not all of the parcels claimed. The last report of the Chitimacha village on Bayou Plaquemine occurred in 1819 and the last clear documentation of Indian use of the Bayou Jacob site is in 1807. Most of the lands claimed were entered by non-Indians in the 1830's or later. Thus there is a potentially serious abandonment issue. If the lands were not abandoned we do not believe that their disposal under the Preemption or Swamp Land Acts extinguished Chitimacha title.1/ The details of the merits of the Iberville claim are discussed in the attached memorandum from the Associate Solicitor, Indian Affairs.

The Chitimachas have proposed a settlement of all their claims for $7.5 million. We believe that the Tribe has a credible claim to the 813-acre claim appraised at approximately $4.5 million. Based on the documentation provided by the attorneys for the Tribe, we do not believe that a prima facie case has yet been made for the Iberville claim. However, the difficulty with that claim is factual rather than legal and may be remedied by further research. We therefore recommend that the claim be taken into consideration to some extent in developing a counter offer and in justifying a settlement figure to OMB and Congress. As stated above, the other Chitimacha claims are without merit.

SOLICITOR

1/ A fourth issue is whether the failure of the Chitimachas to assert these claims under the Louisiana Land Claim Acts resulted in an abandonment of Chitimacha rights. The Louisiana Land Claim Acts required holders of incomplete grants to submit their claims for adjudication. Unlike the California Land Claim Act (9 Stat. 631), the Louisiana Acts do not require holders of perfect title to submit claims. Since Indian title is a perfect title, the failure to assert the Chitimacha claims does not result in abandonment or forfeiture. Cf. Barker v. Harvey, 181 U.S. 481 (1901)

DAVID C. TREEN
GOVERNOR

State of Louisiana
EXECUTIVE DEPARTMENT
Baton Rouge

September 10, 1980

Honorable William J. Guste, Jr.
Attorney General
State of Louisiana
7th Floor
2-3-4 Loyola Building
New Orleans, Louisiana 70112

Dear Attorney General Guste:

Thank you for your letter of August 8 concerning the possibility of state participation in a settlement of the land claims of the Chitimacha Tribe. Dennis Daugherty of my staff has discussed this matter with Fred Benton, Jr.

I would hope that any such settlement agreement would resolve all potential Chitimacha land claims, not just the 813 acres claimed in the Gilbert Smith suit. Mr. Benton tells my staff that this would be the case.

I would not want the State to prejudice the rights of any private parties to the Chitimacha suits. Mr. Benton tells my staff that the Tribe supports the proposed settlement and the landowner defendants will not be asked to contribute to the settlement. If that is the case, I see no reason for you not to express an interest in participating in a settlement.

I would appreciate your contacting Superintendent Nix to discuss the type of program to be offered in the settlement. I will, of course, wish to be informed as to the amount of any financial commitments to educational programs you would propose we make. I am not certain what "special hunting and fishing rights" the Solicitor has in mind. I would prefer not to have the State in the position of enforcing different fishing rights for Indians and non-Indians.

I appreciate your bringing the possibility of settling these title claims to my attention.

Very truly yours,

David C. Treen
Governor

DCT/lmf

cc: Honorable Edgar J. Mouton

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240
June 8, 1982

Memorandum

To: AS—IA
BIA
PPA
A/Sol-IA
SOL (Attn: Moody Tidwell)

10 6/9

From: Legislative Counsel

Subject: S. 2294 - a bill "To provide for the settlement of the land claims of the Chitimacha Tribe of Louisiana, and for other purposes."

SPONSOR: Mr. Johnston

The Secretary of the Interior has been requested to submit his recommendations to the (Congress) ~~(Office of Management and Budget)~~ on the attached measure. Please deliver your comments (in duplicate) on the bill or proposal to Room 6244 by the due date noted below.

If your office has no comment, please have the reviewer surname this form and return the form only to Room 6244

DUE DATE: June 22, 1982

ATTORNEY: Jane Lyder (X 34371)

Similar bills previously referred: _____

Other instructions/comments:

Theodore Garrish
Legislative Counsel

cc:

Under Secretary
~~Assistant Secretary, Fish and Wildlife and Parks~~
~~Assistant Secretary, Energy and Minerals~~
~~Assistant Secretary, Land & Water Resources~~
~~Assistant Secretary, Indian Affairs~~
Assistant Secretary, Policy, Budget & Administration
Inspector General
Director, Congressional & Legislative Affairs
Legislative Counsel
~~Assistant Legislative Counsel~~

97TH CONGRESS
2D SESSION

S. 2294

To provide for the settlement of the land claims of the Chitimacha Tribe of Louisiana, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 29 (legislative day, FEBRUARY 22), 1982

Mr. JOHNSTON (for himself and Mr. LONG) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

Indians
Land claims

A BILL

To provide for the settlement of the land claims of the Chitimacha Tribe of Louisiana, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Chitimacha Claims Settlement Act".

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

SEC. 2. The Congress finds and declares that—

(1) the Chitimacha Tribe of Louisiana is asserting claims for damages and for the possession of a large area of land in the State of Louisiana on the ground

that the original transfers of the lands by the tribe to various persons were made in violation of the Trade and Intercourse Act of 1790 (1 Stat. 137) or subsequent versions of that Act;

(2) substantial economic and social hardship to a large number of landowners in the State of Louisiana may result if the tribe's claims are not resolved immediately; and

(3) the Congress shares with the State of Louisiana and the landowners in the area of the claim a desire to remove all clouds on titles resulting from the tribe's claims.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) the term "tribe" means the Chitimacha Tribe of Louisiana, a federally recognized Indian tribe which has adopted a constitution and bylaws pursuant to the Act approved June 18, 1934 (25 U.S.C. 461 et seq.), and any predecessor in interest of such tribe;

(2) the term "Chitimacha Reservation" means the lands of the tribe and all lands which are transferred to or acquired by the Secretary pursuant to the provisions of this Act to be held in trust by the United States for the benefit of the tribe;

(3) the term "Secretary" means the Secretary of the Interior;

(4) the term "State" means the State of Louisiana;

(5) the term "land or natural resources" means any real property or natural resource or any interest in or right to any real property or natural resource, including minerals and mineral rights, timber and timber rights, water and water rights, and hunting and fishing rights; and

(6) the term "transfer" means any transaction involving any change of title to or control of any land or natural resources or any right or interest in any land or natural resources, including any sale, grant, lease, allotment, partition, or conveyance, or any transaction that results in a change or possession of control of land or natural resources.

APPROVAL OF PRIOR TRANSFERS; EXTINGUISHMENT OF INDIAN ABORIGINAL TITLES AND INDIAN CLAIMS

SEC. 4. (a)(1) Any transfer from, by, or on behalf of the tribe or any member of the tribe before the date of enactment of this Act, including a transfer pursuant to any statute or treaty of the State, of any land or natural resources located in the State shall be deemed to have been made in accordance with the Constitution and all laws of the United States

(including the Trade and Intercourse Act of 1790) that are specifically applicable to transfers of land or natural resources from, by, or on behalf of any Indian, Indian nation, or tribe of Indians. Any such transfer shall be deemed to have been made with the consent and approval of the Congress as of the date of such transfer.

(2) Any aboriginal title held by the tribe or any member of the tribe to any land or natural resources the transfer of which was consented to and approved in paragraph (1) shall be considered extinguished as of the date of such transfer.

(b)(1) Any claim for damages or possession of land and natural resources (including claims for damages for trespass and for use and occupancy) by, or on behalf of, the tribe or any member of the tribe against the State, any political subdivision of the State, or any person which is based on—

(A) any transfer of land or natural resources to which subsection (a)(1) of this section applies, or

(B) any aboriginal title to land or natural resources to which subsection (a)(2) of this section applies,

shall be considered extinguished as of the date of any such transfer.

(2) The United States agrees to hold the State, its political subdivisions, and all present or former owners or occupants of such lands harmless for any damages suffered by the

United States due to the compromise of any claim under this section.

(c)(1) Notwithstanding any other provision of law, the constitutionality of this section may not be drawn in question in any action unless such question has been raised in—

(A) a pleading contained in a complaint filed before the end of the one-hundred-and-eighty-day period beginning on the date of enactment of this Act; or

(B) an answer contained in a reply to a complaint filed before the end of such period.

(2) Exclusive original jurisdiction of any action in which the constitutionality of this Act is drawn in question is vested in the United States District Court for the Western District of Louisiana.

(3) Any action to which paragraph (1) applies and which is brought in the court of any State may be removed by the defendant to the United States District Court for the Western District of Louisiana.

(d) This section shall take effect upon the appropriation of $7,500,000 as authorized under section 5(d) of this Act.

ESTABLISHMENT OF CHITIMACHA CLAIMS SETTLEMENT FUND

SEC. 5. (a)(1) As compensation to the tribe for the extinguishment of any claim under section 4, there is established

in the United States Treasury a fund to be known as the Chitimacha Claims Settlement Fund. This fund shall be held in trust by the Secretary for the benefit of the tribe and administered in accordance with this Act and any terms established by the Secretary and agreed to by the tribe. No part of the principal of such fund may be distributed to the individual members of the tribe.

(2) The Secretary shall pay semiannually to the tribe any income derived from the fund. Once such a payment has been received by the tribe, the use of such payment shall be free of regulation by the Secretary and the United States shall have no further trust responsibility to the tribe or its members with respect to such payment, except that lands purchased by the tribe with funds from such payment shall be taken and held in trust by the United States for the benefit of the tribe upon the request of the tribal governing body. Lands so held by the United States shall be part of the Chitimacha Reservation.

(b)(1) The Secretary shall spend a sum not to exceed $4,000,000 of the principal of the fund to acquire land selected by the tribe. Lands acquired pursuant to this subsection shall be held in trust by the United States for the benefit of the tribe and shall be part of the Chitimacha Reservation.

(2) For the purpose of subtitle A of the Internal Revenue Code of 1954, any transfer by private owners of land

purchased by the Secretary with moneys from the fund shall be deemed to be an involuntary conversion within the meaning of section 1033 of the Internal Revenue Code of 1954.

(c)(1) The Secretary is authorized to acquire options to purchase land on behalf of the tribe. The total amount used to acquire such options shall not exceed $200,000.

(2) The sum paid to acquire any such option shall not exceed 5 per centum of the fair market value of the land subject to the option. Each option agreement entered into by the Secretary shall provide that such sum shall be applied to the purchase price of such land, if the purchase is completed in accordance with the terms of the option agreement.

(d) There is authorized to be appropriated $7,500,000 to the fund.

JURISDICTION OVER THE CHITIMACHA RESERVATION

SEC. 6. (a) Subject to such conditions as the Secretary may establish, the tribe, through the tribal governing body, is authorized to establish a tribal court system and a tribal police force. The tribe, through the tribal governing body, may terminate any such court system or police force at any time.

(b) Any Chitimacha tribal court system established under subsection (a) of this section shall have exclusive jurisdiction over the following subjects:

(1) Any criminal offense committed on the Chitimacha Reservation by a member of the tribe against another member of the tribe or the property of the tribe or any such member if the maximum term of imprisonment authorized does not exceed six months and the maximum fine authorized does not exceed $500.

(2) Any criminal offense committed on the Chitimacha Reservation by a juvenile member of the tribe which, if committed by an adult, would be within the exclusive jurisdiction of the Chitimacha Tribe under paragraph (1).

(3) Any civil action between members of the tribe arising on the Chitimacha Reservation which is cognizable as a small claim under the laws of the State.

(4) Any domestic relations matter relating to marriage, divorce, or support between members of the tribe both of whom reside on the Chitimacha Reservation.

(c) All laws of the State relating to criminal and juvenile offenses and all civil laws of the State that are of general application to private persons and private property shall apply within the Chitimacha Reservation and the State shall have exclusive jurisdiction over such offenses and all civil actions arising under such laws, except that if—

(1) the tribe is operating a tribal court system established in accordance with subsection (a) of this section, the State shall not have jurisdiction over any subject described in subsection (b) of this section, or

(2) the tribe has jurisdiction over Indian child custody proceedings in accordance with section 7 of this Act, the State shall not have jurisdiction over such proceedings.

(d) The governing body of Chitimacha Tribe is authorized to enter into agreements with the State or any parish of the State to provide such police training, equipment, and personnel as may be necessary, including the provision of facilities for the incarceration of any person arrested by the tribal police department or subject to a judgment of conviction by the tribal court.

IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT

SEC. 7. (a) The Chitimacha Tribe may assume exclusive jurisdiction over Indian child custody proceedings in accordance with the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.). Before the tribe may assume such jurisdiction over Indian child custody proceedings, the tribe shall present a petition to assume such jurisdiction to the Secretary, and the Secretary shall consider such petition, in the manner prescribed by section 108 of such Act.

(b) Until the Chitimacha Tribe has assumed exclusive jurisdiction over Indian child custody proceedings pursuant to this section, the State shall continue to have exclusive jurisdiction over the Indian child custody proceedings of the tribe. Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court of the State has already assumed jurisdiction.

EFFECT OF PAYMENTS TO THE TRIBE

SEC. 8. (a) No payment for the benefit of the tribe pursuant to this Act may be considered by any agency or department of the United States in determining or computing the eligibility of the State or any political subdivision of the State for participation in any financial aid program of the United States.

(b) The eligibility for or receipt of payments to the tribe or any member of the tribe from the State shall not be considered by any agency or department of the United States in determining or computing the eligibility of the tribe or any member of the tribe for participation in any financial aid program of the United States, except that the actual financial situation of the tribe or a member of the tribe may be considered by such agency or department if such tribe or member is applying for benefits from a financial aid program which requires a showing of need by an applicant.

(c) The availability or distribution of funds pursuant to section 5 of this Act may not be considered as income or resources or otherwise used as the basis for—

(1) denying the household of any member of the tribe or any member of such household participation in any federally assisted housing program;

(2) denying or reducing any Federal financial assistance or Federal benefit to which such household or member would otherwise be entitled; or

(3) denying or reducing any Federal financial assistance or other Federal benefit to which the tribe would otherwise be entitled or for which it would otherwise be eligible.

INSEPARABILITY

SEC. 9. In the event that any provision of section 4 of this Act is held invalid, it is the intent of Congress that the entire Act shall be invalidated.

O