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97TH CONGRESS
2D SESSION

S. 2084

To establish a fair and consistent national policy for the resolution of claims based on a purported lack of congressional approval of ancient Indian land transfers and to clear the titles of lands subject to such claims.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 9 (legislative day, JANUARY 25), 1982

Mr. D'AMATO (for himself and Mr. THURMOND) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

A BILL

To establish a fair and consistent national policy for the resolution of claims based on a purported lack of congressional approval of ancient Indian land transfers and to clear the titles of lands subject to such claims.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Ancient Indian Land
4 Claims Settlement Act of 1982".

5 CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

6 SEC. 2. (a) Congress, after review of various claims that
7 have been asserted by Indian tribes for recovery of lands that
8 were transferred to non-Indians generations ago, purportedly

1 without Federal approval or acquiescence, finds and declares
2 that—

3 (1) there are currently a number of Indian tribes
4 asserting claims against landowners and communities
5 for possession of millions of acres of land in the East-
6 ern United States, and related trespass damages, on
7 the ground that the original transfers of these lands to
8 non-Indians generations ago were made without Feder-
9 al approval and hence were in violation of, inter alia,
10 the Nonintercourse Act provision of the Trade and In-
11 tercourse Act of 1790, other laws of the United States,
12 the United States Constitution, the Articles of Confed-
13 eration, or ancient treaties;

14 (2) for various reasons, including the fact that the
15 States and the legislative and executive branches of
16 the Government of the United States were, with re-
17 spect to certain claimants, unaware that the United
18 States may have had an obligation to approve such
19 transfers and, with respect to other claimants, specifi-
20 cally denied any such obligation, the Federal Govern-
21 ment may have failed to fulfill this alleged obligation;

22 (3) the actions and inactions of the Federal Gov-
23 ernment over the decades and centuries since the origi-
24 nal transfers have resulted in the belief that the Feder-
25 al Government had fulfilled whatever responsibility it

1 may have had to these Indian tribes, and, consequent-
2 ly, in generations of landowners and local and State
3 governments justifiably relying on the validity of the
4 original transfers and the claims of title emanating
5 therefrom, and in the making in good faith of substan-
6 tial investments in and improvements upon these lands;

7 (4) any judicial determination that these ancient
8 transfers were invalid will cause significant economic
9 dislocation and disruption to numerous State and local
10 governments and hundreds of thousands of landowners;

11 (5) Congress agrees with the statements made by
12 several courts and executive branch officials, including
13 past Attorneys General of the United States, who upon
14 examination of the nature and consequences of these
15 claims have expressed the view that these ancient
16 Indian land claims cannot be resolved fairly and equita-
17 bly through litigation against innocent private landown-
18 ers but compel action by Congress;

19 (6) the primary purpose of the Nonintercourse Act
20 provision of the Trade and Intercourse Act of 1790,
21 which was to ensure fairness in the transactions by
22 which Indian tribes conveyed their lands to non-Indi-
23 ans, can be secured by now compensating Indian tribes
24 to the extent that those tribes did not receive fair com-
25 pensation for such conveyances; and

1 (7) to the extent that prior actions by the United
2 States have not constituted whatever Federal approval
3 may have been necessary to validate these ancient land
4 transfers, it is the intent of Congress by means of this
5 Act to provide such approval and validation, and to
6 provide Indian tribes that are affected by such approval
7 and validation with a means of obtaining fair compen-
8 sation, which shall be the exclusive remedy for the sat-
9 isfaction of any claim against the United States, any
10 State or local government, or any other person or
11 entity, that such Indian tribes may otherwise have by
12 virtue of the transfers in question.

13 (b) Therefore, in the exercise of the full constitutional
14 authority of Congress, it is the purpose of this Act—

15 (1) to remove the clouds on the titles to land lo-
16 cated within the States of New York and South Caroli-
17 na resulting from the claims of Indian tribes that trans-
18 fers of such lands prior to January 1, 1912, were in
19 violation of the United States Constitution, the Articles
20 of Confederation, the laws of the United States, includ-
21 ing the Nonintercourse Act provision of the Trade and
22 Intercourse Act of 1790, or any other legal require-
23 ment;

24 (2) to approve, validate, and ratify all such trans-
25 fers effective as of the date of such transfers and with

1 the same effect as if such approval, validation, and
2 ratification had been given at the time of the transfers;
3 and

4 (3) to provide Indian tribes affected by this Act
5 with a means of obtaining fair and equitable compensa-
6 tion for their claims, including a cause of action in the
7 Court of Claims against the United States for mone-
8 tary compensation.

9 DEFINITIONS

10 SEC. 3. For purposes of this Act, the term—

11 (a) "Indian tribe" includes any Indian nation or
12 tribe of Indians, or any other body of Indians of the
13 same or similar race, united in community under one
14 leadership or government, and inhabiting a particular
15 or sometimes ill-defined territory;

16 (b) "land or natural resources" means any real
17 property or natural resources, or any interest in or
18 right involving any real property or natural resources,
19 including without limitation minerals and mineral
20 rights, timber and timber rights, water and water
21 rights, and hunting and fishing rights;

22 (c) "laws of the United States" means the Arti-
23 cles of Confederation, all Federal, State, and Colonial
24 statutes, treaties, proclamations, executive agreements,

1 orders, regulations, and common law principles, and all
2 judicial interpretations thereof;

3 (d) the "Nonintercourse Act provision of the
4 Trade and Intercourse Act of 1790" means section 4
5 of the Trade and Intercourse Act of 1790, Act of July
6 22, 1790, chapter 33, section 4 (1 Stat. 137, 138), and
7 all amendments thereto and all subsequent reenact-
8 ments or versions thereof;

9 (e) the "Secretary" means the Secretary of the
10 Interior or his designate; and

11 (f) "transfer" includes but is not limited to any
12 sale, grant, lease, allotment, partition or conveyance,
13 any transaction the purpose of which was to effect a
14 sale, grant, lease, allotment, partition or conveyance,
15 or any event or events that resulted in a change of
16 possession or control of land or natural resources.

17 **RATIFICATION OF PRIOR TRANSFERS AND**
18 **EXTINGUISHMENT OF RELATED CLAIMS**

19 **SEC. 4. (a)** Any transfer of land or natural resources
20 located within the States of New York and South Carolina
21 from, by, or on behalf of any Indian tribe, including without
22 limitation a transfer pursuant to any statute of or agreement
23 or treaty with any State, made or effected prior to January
24 1, 1912, was and shall be deemed to have been made in
25 accordance with the Constitution and all laws of the United

1 States, including without limitation the Nonintercourse Act
2 provision of the Trade and Intercourse Act of 1790, and
3 Congress does hereby approve, validate, and ratify any such
4 transfer effective as of the date of said transfer.

5 (b) To the extent that any transfer of land or natural
6 resources described in subsection (a) of this section may in-
7 volve land or natural resources to which any Indian tribe had
8 aboriginal title, subsection (a) shall be regarded as an extin-
9 guishment of such aboriginal title as of the date of such
10 transfer.

11 (c) By virtue of the approval, validation, and ratification
12 of a transfer of land or natural resources (whether such land
13 or natural resources were held under aboriginal or recognized
14 title) effected by this section, or the extinguishment of ab-
15 original title effected thereby, no action by the United States,
16 any State or subdivision thereof, or any other person or
17 entity at the time of or subsequent to the transfer and involv-
18 ing the ownership, use or occupancy of such land or natural
19 resources shall be regarded as giving rise to a claim of tres-
20 pass, or for mesne profits or for use and occupancy, in favor
21 of any Indian tribe that may have formerly occupied or held
22 any claim to such land or natural resources, and all actual or
23 theoretical claims against the United States, any State or
24 subdivision thereof, or any other person or entity, by any
25 Indian tribe arising at the time of or subsequent to the trans-

1 fer and based on any interest in or right involving such land
2 or natural resources, including without limitation claims for
3 trespass damages, mesne profits, or claims for use and occu-
4 pancy, shall be deemed extinguished as of the date of such
5 transfer.

6 (d) This section shall not apply to those lands that are
7 located within the Allegany and Cattaraugus Reservations of
8 the Seneca Nation in the State of New York and were leased
9 under authority of the Act of February 19, 1875 (18 Stat.
10 330).

11 NOTIFICATION OF CLAIMS TO THE SECRETARY;

12 SETTLEMENT AGREEMENTS

13 SEC. 5. (a)(1) As soon as practicable after the date of
14 enactment of this Act, the Secretary shall publish in the Fed-
15 eral Register a notice specifying that any Indian tribe whose
16 transfer of land or natural resources has been approved, vali-
17 dated, and ratified by section 4 of this Act may submit to the
18 Secretary such information as the tribe may wish the Secre-
19 tary to consider in making the determinations specified in
20 subsection (c)(1) of this section.

21 (2) To the extent that, with respect to any particular
22 Indian tribe, the Secretary already possesses information
23 needed to make the determinations specified in subsection
24 (c)(1) of this section, the Secretary shall consult with repre-
25 sentatives of said Indian tribe in order to minimize the

1 burden on said Indian tribe in preparing the submission speci-
2 fied in subsection (b) of this section.

3 (b) No later than one hundred and eighty days after the
4 publication by the Secretary in the Federal Register of the
5 notice specified in subsection (a)(1) of this section, any Indian
6 tribe whose transfer of land or natural resources has been
7 approved, validated, and ratified by section 4 of this Act may
8 submit to the Secretary information in response to the
9 Secretary's notice.

10 (c)(1) Within one hundred and eighty days after the date
11 by which submissions must be filed with the Secretary pursu-
12 ant to subsection (b) of this section, the Secretary shall deter-
13 mine, with respect to each Indian tribe that has made a sub-
14 mission pursuant to subsection (b) of this section, whether
15 such Indian tribe had a credible claim, and, if so, the fair and
16 equitable monetary award that he believes should be made by
17 the United States to such Indian tribe. Such determinations
18 shall not be subject to judicial review by any court.

19 (2) In determining what he believes is a fair and equita-
20 ble award that should be made by the United States to any
21 Indian tribe pursuant to paragraph (1) of this subsection, the
22 Secretary may consider: the consideration received for the
23 original transfer of the land or natural resources in relation to
24 the reasonable fair market value of the land or natural re-
25 sources at the time of the original transfer; whether, through

1 Indian Claims Commission judgments or otherwise, the
2 United States has already paid any amounts to such tribes
3 with respect to the transfer of such land or natural resources;
4 whether State governments have already paid any amounts
5 to such tribes with respect to the transfer of such land or
6 natural resources; appropriate adjustments for delay in re-
7 ceipt of fair compensation; the legal strength and validity of
8 the claim; the legal strength and validity of any defenses that
9 would have been raised in opposition to the claim; and such
10 other factors as he may deem appropriate.

11 (d) Any determination by the Secretary under subsection
12 (c) of this section must be accepted or rejected by the Indian
13 tribe in question within sixty days after such determination.
14 Upon acceptance by the Indian tribe, the determination of
15 the Secretary shall become final and binding upon the par-
16 ties.

17 (e) The Secretary is authorized to assist any Indian tribe
18 receiving monetary compensation under this section in using
19 all or a portion of those funds to purchase land or natural
20 resources from any person or governmental entity willing to
21 sell such land or natural resources. If Federal lands or natu-
22 ral resources are otherwise available, the Secretary, after
23 consultation with the appropriate State and local govern-
24 ments, may assist an Indian tribe in acquiring such lands:
25 *Provided*, That the amount of monetary compensation award-

1 ed the tribe shall be reduced by the amount of the fair market
2 value of the land or natural resources so acquired. Any land
3 or natural resources acquired pursuant to this subsection
4 shall for all purposes be subject to the civil and criminal juris-
5 diction of the State, to all laws of the State, and to the civil
6 and criminal jurisdiction of the courts of the State, to the
7 same extent as any other land therein. Such land or natural
8 resources shall be acquired by the tribe in fee simple and not
9 held by the United States in trust for the benefit of the tribe.

10 (f) In performing his responsibilities under this section,
11 the Secretary may adopt such procedures, and utilize such
12 personnel in assisting him in making factual or other determi-
13 nations, as he deems advisable. The Secretary may permit
14 other interested parties, including States, to provide informa-
15 tion relevant to the Secretary's determinations.

16 RECOVERY AGAINST THE UNITED STATES IN THE COURT
17 OF CLAIMS

18 SEC. 6. (a) Any Indian tribe that occupied or possessed
19 land or natural resources within the States of New York or
20 South Carolina and has never obtained a final judgment on a
21 claim filed in the Indian Claims Commission or Court of
22 Claims with respect to the transfer of such land or natural
23 resources, may, within one year of the date of enactment of
24 this Act, or, in the case of an Indian tribe that has made a
25 submission to the Secretary pursuant to section 5(b) of this

1 Act, within the one hundred and eighty day period beginning
2 on the date of the Secretary's determination under section
3 5(c) of this Act, file a claim against the United States in the
4 Court of Claims, which shall be heard, determined, and adju-
5 dicated by the Court of Claims in accordance with the provi-
6 sions of this section. The Court of Claims shall have exclu-
7 sive original jurisdiction over such claim: *Provided, however,*
8 That the Court of Claims shall grant no award with respect
9 to any claim, and shall immediately dismiss on the merits any
10 pending claim, by any Indian tribe relating to land or natural
11 resources with respect to which a settlement agreement has
12 been agreed upon or a determination by the Secretary ac-
13 cepted pursuant to the provisions of section 5(d) of this Act.

14 (b) Any claimant that files a claim in accordance with
15 subsection (a) of this section and proves that—

16 (1) the claimant is an Indian tribe,

17 (2) at the time of the transfer of land or natural
18 resources that is the subject of the claim, the claimant
19 or its predecessor in interest was an Indian tribe,

20 (3) at the time of the transfer of land or natural
21 resources the claimant or its predecessor in interest has
22 aboriginal or recognized title to the land or natural re-
23 sources that is the subject to the claim,

24 (4) if the transfer of land or natural resources took
25 place prior to July 22, 1790, such transfer was invalid

1 unless approved by the United States and that no such
2 approval was obtained, and

3 (5) the claimant or its predecessor in interest did
4 not receive fair consideration for the transfer of the
5 land or natural resources that is the subject of the
6 claim,

7 shall be entitled to a recovery against the United States in
8 accordance with the provisions of subsection (c) of this sec-
9 tion: *Provided, however,* That no recovery shall be awarded
10 with respect to any claim involving a transfer of land or natu-
11 ral resources that took place after July 22, 1790, if the
12 United States establishes that the Nonintercourse Act provi-
13 sion of the Trade and Intercourse Act of 1790 was not appli-
14 cable to such transfer or that, with regard to such transfer,
15 the requirements of the Nonintercourse Act provision of the
16 Trade and Intercourse Act of 1790 had been complied with
17 prior to the enactment of this Act.

18 (c)(1) Any claimant entitled to a recovery against the
19 United States in accordance with the provisions of subsection
20 (b) of this section shall be awarded monetary damages equiv-
21 alent to the difference between the fair market value of the
22 land or natural resources at the time of the transfer and the
23 compensation, if any, actually received by the claimant or its
24 predecessor in interest (whether at the time of transfer or

1 subsequently) for the transfer of such land or natural re-
2 sources.

3 (2) Any amount awarded to a claimant pursuant to sub-
4 section (c)(1) of this section shall—

5 (i) in the case of an award based on a transfer
6 that took place after July 22, 1790, of land or natural
7 resources held under aboriginal title, be increased by
8 simple interest from and after the date of the transfer
9 until the date final judgment is entered in the Court of
10 Claims, with such interest computed at the rate of 2
11 per centum per annum, or

12 (ii) in the case of an award based on a transfer
13 that took place after July 22, 1790, of land or natural
14 resources held under recognized title, be increased by
15 simple interest from and after the date of the transfer
16 until the date final judgment is entered in the Court of
17 Claims, with such interest computed at the rate of 5
18 per centum per annum.

19 (3) Any final award granted by the Court of Claims pur-
20 suant to section 6 shall be paid to the claimant in three equal
21 annual installments.

22 (d)(1) Claims before the Court of Claims brought pursu-
23 ant to this Act shall, to the extent practicable, take prece-
24 dence on the docket over all other cases, and shall be as-

1 signed for hearing, trial, and argument at the earliest practi-
2 cable dates.

3 (2) Review of the judgments of the Court of Claims pur-
4 suant to this section may be sought in the Supreme Court of
5 the United States by petition for writ of certiorari in the same
6 manner as such review may be sought for any other judgment
7 of the Court of Claims.

8 AUTHORIZATION

9 SEC. 7. There are hereby authorized to be appropriated
10 such sums as may be necessary to meet the obligations of the
11 United States as specified in any settlement agreement or
12 determination by the Secretary accepted pursuant to the pro-
13 visions of section 5(d) of this Act or to pay any final judgment
14 rendered pursuant to section 6 of this Act.

15 INSEPARABILITY

16 SEC. 8. In the event that any provision of section 4 or
17 of subsections 6(c) (1) and (2) of this Act is held invalid with
18 respect to a particular Indian tribe, it is the intent of Con-
19 gress that the entire Act be invalidated with respect to such
20 tribe. In the event that any other section or provision of this
21 Act is held invalid, it is the intent of Congress that the re-
22 maining sections or provisions of this Act shall continue in
23 full force and effect.

LIMITATION OF ACTIONS

1

2 SEC. 9. (a) Notwithstanding any other provision of law,
3 any action to contest the constitutionality or validity of this
4 Act shall be barred unless the action is brought in the Feder-
5 al district court for the district in which the land or natural
6 resources that are the subject of the Indian claim are located
7 within one hundred and eighty days of the date of enactment
8 of this Act.

9

 (b) Except as provided in section 6 or in subsection (a)
10 of this section, no court of the United States, including the
11 Court of Claims, and no court of any State, territory, or pos-
12 session of the United States, or of the District of Columbia,
13 shall have jurisdiction of any action or proceeding by or on
14 behalf of an Indian tribe with respect to the invalidity of any
15 transfer of land or natural resources that has been approved,
16 validated, and ratified by section 4 of this Act, or involving
17 any claims, such as claims for trespass damages, mesne prof-
18 its, or claims for use and occupancy, arising from the alleged
19 invalidity of the transfer, or involving any claims against the
20 United States for compensation as a result of this Act.

○

ALL

DATE INTRODUCED: 02/09/82

S.2084

SPONSOR: D'Amato

REFERRED TO: Senate Select Committee on Indian Affairs

COSPONSOR(S): CURRENT (1)

Thurmond:

SHORT TITLE(S):

AS INTRODUCED: AS OF 03/10/82

Ancient Indian Land Claims Settlement Act of 1982

LATEST OFFICIAL TITLE:

OFFICIAL TITLE AS INTRODUCED AS OF 02/11/82

A bill to establish a fair and consistent National Policy for the resolution of claims based on a purported lack of Congressional approval of ancient Indian land transfers and to clear the titles of lands subject to such claims.

LEGISLATIVE ACTIONS:

Feb 9, 82 Read twice and referred to the Committee on Indian Affairs.

ABSTRACT:

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

S.2084 (LG97) continued:

Ratifies the transfer of land made on behalf of Indian tribes before January 1, 1912, within the States of New York and South Carolina. Provides such Indian tribes a means of obtaining fair compensation for their claims to such land. Establishes for such Indian tribes a cause of action in the Court of Claims against the United States to recover such compensation.

DIGEST:

Ancient Indian Land Claims Settlement Act of 1982 - Ratifies the transfer of land or natural resources made on behalf of an Indian Tribe before January 1, 1912, within the States of New York or South Carolina. Extinguishes, by virtue of ratification, related claims against such transfers. Exempts specified land in New York from ratification.

Directs the Secretary of the Interior to publish a notice in the Federal Register soliciting information about outstanding claims from such Indian tribes. Directs the Secretary, within 180 days of such submission, to determine: (1) the credibility of such claims; and (2) the amount of fair compensation due credible claims. Prohibits judicial review of such determination.

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

S.2084 (LG97) continued:

Requires such Indian tribes to accept or reject the Secretary's determination within 60 days. States that such determination shall be binding if it is accepted.

Authorizes the Secretary to assist such Indian tribes receiving compensation to purchase other lands or natural resources.

Authorizes such Indian tribes to file a cause of action in the Court of claims against the United States for compensation arising out of land transfer claims which have not been settled or determined by the Secretary. Gives the Court of Claims exclusive Jurisdiction over such cases.

Sets out: (1) criteria for determining entitlement to a recovery against the United States; and (2) procedures for determining and fixing the amount of

such recovery. Limits recovery due certain claims arising after July 22, 1790.

Assigns docket priority to claims brought under this Act before the Court of Claims.

ALL, PAGE 3 OF 4. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

S.2084 (LG97) continued:
Authorizes appropriations.

Requires any contest of the constitutionality or validity of this Act to be brought in certain Federal district courts within a specified time.

INDEX TERMS:

INDIAN CLAIMS/JURISDICTION/CLAIMS AND GOVERNMENT LIABILITY/NEW YORK/SOUTH CAROLINA/COURTS AND CIVIL PROCEDURE/COURT OF CLAIMS/INDIANS AND NATIVE AMERICANS/INDIAN LANDS/SETTLEMENT/PUBLIC LANDS AND REAL PROPERTY
ALL, PAGE 4 OF 4. READY FOR NEW COMMAND, OPTION OR PG #:

For reasons both ecological and economic, legislation to protect barrier islands should be passed this session.

[From the Quincy (Mass.) Patriot Ledger, May 4, 1981]

PROTECTING THE COAST

Congress should enact legislation forbidding the use of federal aid for development of barrier islands.

Legislation filed last week by Sen. John Chafee, R-R.I., and Rep. Tom Evans, R-Del., would prevent persons seeking to build on undeveloped barrier islands along the Atlantic Coast and Gulf of Mexico from obtaining federal aid. Homes already built on barrier islands could still be covered by federal flood insurance and existing communities still could receive aid. But not new development.

Such a measure is long overdue. About a third of the barrier shoreline from Maine to Texas already is developed, another third is protected, and another third has yet to be developed and should be protected.

Barrier beaches and islands which protect the coastline should be protected from development, no matter how attractive the lure of having beach homes, restaurants, marinas or other development on them, disturbing the fragile environment, lessening protection to coastal areas and prone to destruction from violent Atlantic and Gulf storms.

It makes no sense for the federal government to continue assisting the construction of bridges, roads, seawalls, water systems and structures on these islands and to insure homes. Yet the federal government has spent millions to subsidize such undertakings—an estimated \$500 million alone between 1976 and 1978.

Gov. Edward J. King last year signed a far-sighted executive order to discourage building on Massachusetts' barrier beaches. That order forbids the use of state money and state-administered U.S. grants for construction projects that would encourage development in hazard-prone barrier beaches; allows state antierosion projects only to keep navigation channels open, not to save beach property; says the state will not approve development in flood-prone areas, and will make barrier beaches the state's top priority when buying land for public use.

The federal government should have a similar policy. Not only would it save taxpayers' money, it also would help protect the coastline and could save lives. Time and again, lives are lost and property destroyed on barrier islands during major coastal storms.

The Chafee-Evans legislation would do much to protect barrier islands from development. Its enactment should be part of a change in federal policy.

ANCIENT INDIAN LAND CLAIMS ACT OF 1982

[By request of Mr. BAKER, the following statement was ordered to be printed in the RECORD:]

● Mr. THURMOND. Mr. President, on Tuesday, February 9 of this year, Senator D'Amato and I introduced S. 2084, entitled the "Ancient Indian Land Claims Act of 1982," which was referred to the Select Committee on Indian Affairs.

This bill, we believe, provides a fair and equitable resolution of Indian claims in the States of New York and South Carolina arising out of land transfers alleged to have violated the

provisions of the Trade and Intercourse Act of 1790. These claims have clouded the titles to real property in several Eastern States, and thereby have imposed a substantial obstacle to the normal conduct of commercial transactions.

On February 19, the South Carolina General Assembly adopted a concurrent resolution memorializing Congress to enact S. 2084 and its companion in the House of Representatives, H.R. 5494. I ask that this concurrent resolution be printed in the RECORD.

The concurrent resolution is as follows:

A CONCURRENT RESOLUTION

(To Memorialize Congress To Enact S. 2084 and H.R. 5494 Which Establish the Ancient Indian Land Claims Settlement Act of 1982)

Whereas the members of the General Assembly have learned that companion bills have been introduced in the Congress which establish the "Ancient Indian Land Claims Settlement Act of 1982"; and

Whereas the number of this bill in the Senate is S. 2084 and the number of the bill in the House of Representatives is H.R. 5494; and

Whereas these bills set up a fair and consistent policy with respect to a purported lack of congressional approval of ancient Indian land transfers and further mandate procedures which will clear the title to lands subject to Indian claims in the states of New York and South Carolina; and

Whereas the effects of this bill will consequently be felt in South Carolina where certain types of Indian land claims are presently pending; and

Whereas the members of the South Carolina General Assembly believe that it would be in the best interest of the people of this State, the Indians involved, and the other interested parties to such claims if S. 2084 and H.R. 5494 are enacted into law: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That the members of the South Carolina General Assembly hereby memorialize Congress to enact United States Senate Bill 2084 and United States House of Representatives Bill 5494 which establish the "Ancient Indian Land Claims Settlement Act of 1982"; and be it further

Resolved That copies of this resolution be forwarded to the President of the United States, to each member of the Congressional Delegation from South Carolina, and to the presiding officers of both houses of the United States Congress.

ORDERS AND PROCEDURE FOR WEDNESDAY

Mr. BAKER. Mr. President, there is an order for the Senate to convene at the hour of 10:30 a.m. on tomorrow, is that correct?

The PRESIDING OFFICER. The majority leader is correct.

RECOGNITION OF CERTAIN SENATORS ON TOMORROW

Mr. BAKER. Mr. President, I ask unanimous consent that, after the recognition of the two leaders under the standing order on tomorrow, the following Senators be recognized on special orders not to exceed 15 minutes each: the distinguished Senator from Pennsylvania (Mr. SPECTER); the dis-

tinguished Senator from Vermont (Mr. LEAHY); the distinguished Senator from West Virginia, the minority leader (Mr. ROBERT C. BYRD); and the Senator from Tennessee (Mr. BAKER).

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. Mr. President, is there an order for transaction of routine morning business on tomorrow?

The PRESIDING OFFICER. I will advise the majority leader that no such order has been entered.

Mr. BAKER. I thank the Chair.

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS ON TOMORROW

Mr. BAKER. Mr. President, I ask unanimous consent that, after the expiration of the time allocated to the Senators under the standing order and the special orders just provided for or the yielding back of that time, as the case may be, there be a brief period for the transaction of routine morning business to extend not past the hour of 12 noon in which Senators may speak for not more than 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATOR HARRISON A. WILLIAMS, JR.

Mr. BAKER. Mr. President, may I announce that on tomorrow it is the intention of the leadership to ask the Senate to proceed to the consideration of the so-called Williams resolution at the hour of 1:30 p.m., at which time a quorum call will be requested, which will go live. It is the hope of the leadership that a quorum can be assembled and the Senate can begin debate on the Williams resolution at 2 o'clock. The Senate will continue to debate that resolution until approximately 6 p.m. in the evening. Senators, once again, are urged to remain on the floor during the continuation of that debate.

SENATE JOINT RESOLUTION 142

Prior to that time, Mr. President, either during the period for the transaction of routine morning business or during the time thereafter and before the beginning of the consideration of the Williams resolution, it is the intention of the leadership to ask the Senate to turn to the consideration of Senate Joint Resolution 142, a Senate joint resolution offered by the distinguished Senator from Pennsylvania (Mr. SPECTER) for himself and others. It is anticipated that there will be a rollcall vote on this measure. It is my understanding that this matter has been cleared with the distinguished minority leader and that there is no objection to that procedure on his side.

Mr. President, I will not now repeat the plan of the leadership in respect to the Williams resolution. The outline of that procedure has been spread of record on more than one occasion and has been committed to memorandum form and to letters on both sides

editor of the Oil Daily, DeVan Shumway, describes interest in eliminating irregularities in royalty payments in the following terms. He says:

It would be a shame if the solution to the cheating problem . . . becomes the establishment of another Government bureaucracy. Otherwise, the petroleum industry is slated for more intrusion of Government—right down to the wellhead.

This is not a question of regulation, this is a question of the collection of money owed the public treasury for production done on public lands.

The continued loss of revenues owed the Federal and State Governments cannot continue. At the very least, it fosters fraud and abuse. Administration action to date requires legislation to make its internal actions fully effective. I also believe that administration's legislative proposals will not be stiff enough in the matter of disincentives to abuse of the system. I invite my colleagues to join me in this effort.

I would also like to compliment Senators McClure, Wallop, Melcher, and Cohen for their interest and action in this matter. I look forward to working together with them and the legislative task force now emerging from the Department of the Interior in developing strong answers to this problem. The Senate Energy Committee has been very responsive to the report of the Commission on Fiscal Accountability of our Nation's Energy Resources, and I wish to commend the members of that committee for their work in this matter.

I ask unanimous consent that a statement by Senator Cannon, who is a cosponsor of the bill I am introducing today, be inserted immediately following my remarks, and that after this statement that the text of S. 2083 be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2083

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Royalty Collection Incentive Act of 1982".

Sec. 2. (a) The Congress finds that—

(1) as much as \$650,000,000 in oil and gas royalties go unpaid each year;

(2) royalty payments on oil and gas may amount to \$23,000,000,000 by the end of the decade;

(3) production data used for royalty calculations are also used in calculation of the windfall profits tax;

(4) unpaid royalties can be attributed to producer under reporting, theft, lease mismanagement, and other irregularities which the lessee can prevent; and

(5) the United States Geological Survey does not necessarily have the authority to insure due payment of royalties.

(b) The purpose of this Act is to create a principal lessee for each mineral lease whose responsibility it will be to report production and make royalty payments on such lessees' lease and to provide new penalties for the violation of mineral leasing laws.

Sec. 3. Section 17 of the Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 226) is amended by inserting at the end thereof the following:

"(1) (1) The Secretary of the Interior is authorized to designate a principal lessee (or his designee), with respect to any lease of land containing oil or gas issued under this Act, who shall be responsible to make all royalty and lease payments to the Secretary under such lease.

"(2) Compliance with subsection (1) shall not be a violation of any provision of the Federal antitrust laws."

Sec. 4. Section 17 of the Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 226) is amended by adding at the end thereof the following:

"(m) (1) At the request of the Secretary of the Interior, the Attorney General or a United States attorney shall institute a civil action in the district court of the United States for the district in which the affected operation is located for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of this Act respecting any oil or gas lease, any regulation or order issued under this Act respecting any oil or gas lease, or any term of a lease issued pursuant to this Act respecting oil or gas.

"(2) If any person fails to comply with any provision of this Act respecting any oil or gas lease, or any term of a lease issued pursuant to this Act respecting oil or gas, or any regulation or order issued under this Act respecting any oil or gas lease, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty of not more than \$10,000 for each day of the continuance of such failure. The Secretary may assess, collect, and compromise any such penalty. Any overdue royalty payments due on an oil or gas lease under this paragraph shall be subject to a fine of an additional 5 percent interest payment above the current rate of interest. No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing.

"(3) Any person who knowingly and willfully (A) violates any provision of this Act respecting any oil or gas lease, any term of a lease issued pursuant to this Act respecting oil or gas, or any regulation or order issued under the authority of this Act respecting any oil or gas lease, (B) makes any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under this Act respecting any oil or gas lease, (C) falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under this Act respecting any oil or gas lease, or (D) reveals any data or information required to be kept confidential by this Act respecting any oil or gas lease shall, upon conviction, be punished by a fine of not more than \$100,000, or by imprisonment for not more than ten years, or both. A violation of this paragraph shall automatically result in the forfeiture of any oil or gas lease held by the person convicted. Each day that a violation under clause (A) continues, or each day that any monitoring device or data recorder remains inoperative or inaccurate because of any activity described in clause (C), shall constitute a separate violation.

"(4) Whenever a corporation or other entity is subject to prosecution under paragraph (3), any officer or agent of such corporation or entity who knowingly and willfully authorized, ordered, or carried out the proscribed activity shall be subject to the same fines or imprisonment, or both, as provided for under paragraph (3).

"(5) The remedies and penalties prescribed in this subsection shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the

others. The remedies and penalties prescribed in this subsection shall be in addition to any other remedies and penalties afforded by any other law or regulation."

● **Mr. CANNON.** Mr. President, I am pleased to be a cosponsor of this bill, which is intended to discourage the violation of our mineral leasing laws. This bill is also intended to improve the collection of Government royalties and lease payments received from oil and gas produced on Federal lands.

Various studies and congressional hearings clearly indicate that our Government is shortchanged as much as \$1 for each \$10 owed in royalties. These underpayments, which could amount to as much as \$650 million a year, can be frequently attributed to producer underreporting, fraud, theft, lease mismanagement, error, and other irregularities.

Currently there is no adequate authority to organize the leasing process or to enforce the terms of the leases. Neither is there any adequate sanctions to discourage present irregularities.

This continued loss of revenue cannot continue. Production data used for royalty calculations are also used in calculation of the windfall profits tax, thereby compounding the revenue loss to the Federal Government. Further distressing is the fact that these underpayments and accompanying revenue losses come at a time of large budget deficits and simultaneous tax breaks for the energy industry.

This bill is needed to strengthen the system by which we establish who owes money to the Federal Government. We need to clearly define how much is owed and who is responsible for its payment. This bill is also needed to reduce the existing disincentives for underreporting of production on Federal lands. There is a need for fines, civil penalties, and even lease forfeitures in order to combat lease violations and misuse.

With this bill, the Interior Department would have the authority to designate a principle lessee for each lease and to assure that the lessee's responsibility for reporting and payment of royalties would be clearly defined.

I urge my colleagues to support passage of this important and necessary legislation.

By Mr. D'AMATO (for himself and Mr. THURMOND):

S. 2084. A bill to establish a fair and consistent national policy for the resolution of claims based on a purported lack of congressional approval of ancient Indian land transfers and to clear the titles of lands subject to such claims; to the Select Committee on Indian Affairs.

ANCIENT INDIAN LAND CLAIMS SETTLEMENT

Mr. D'AMATO. Mr. President, today I am introducing, with Senator THURMOND, comprehensive legislation which will resolve the remaining disputed Indian land claims in New York and

South Carolina. The purpose of this act is to remove the clouds on the titles to land owned by homeowners and municipalities, property owners, and shopkeepers. While preserving for present occupants what is theirs, this legislation also provides for those Indians who have alleged or would allege land claims, due process of law and monetary compensation. Surely, after nearly 200 years of dispute, the time has come for Congress to settle the issue of the land claims once and for all.

In New York, two Indian claims which cloud the title to almost 6 million acres of land in the central part of the State, and a third which threatens another 3 million acres, have been filed in the last 4 years. The size of the claims are vast, as great as the size of the States of Rhode Island, Delaware, and Connecticut combined. Should the claimants be restored to the possession of the lands that they claim, there would be enormous disruption to innumerable homes, businesses, municipal facilities, public services, and State and local taxation programs, with adverse consequences that would extend beyond the claims area. The financial consequences would be disastrous for thousands of innocent persons, as security for personal, business, and governmental obligations would be fatally impaired or wiped out.

What was vacant and unimproved lands when owned by the Indians 200 years ago is now enormously valuable property improved by the investments of equity and invaluable work of thousands of individuals, businesses, and governmental units that did not even exist when the wrongs alleged by the Indians were committed.

In addition to claiming millions of acres of land, the Indian tribes in New York and South Carolina are seeking recovery of hundreds of millions of dollars in trespass damages on the ground that the original transfers of the land by Indian tribes in the 18th and 19th centuries were invalid because the Federal Government never explicitly ratified or approved those transfers. While the basic issue raised by the Indian groups is that these land transfers were invalid because the United States failed to approve these transfers in accordance with the Non-Intercourse Act provision of the Indian Trade and Intercourse Act of 1790, the transfers have also been challenged under various other legal theories, including theories involving provisions of the Constitution and the Articles of Confederation.

CAYUGA CLAIM

The most recent suit filed in New York involves the Cayuga Nation. The Cayuga Tribe claims that the treaty it entered into ceding the State of New York 64,000 acres on July 24, 1795, is void because of an alleged failure to comply with the provisions of the Federal Non-Intercourse Act. In their lawsuit, the Cayugas request declaratory relief that they have legal and equita-

ble title and the right of possession on the subject lands; ejectment and repossession of these lands; \$350 million in trespass damages; an escrow fund of local property taxes and proceeds from land sales; an accounting of all mineral and timber removed from the land in question; and plaintiffs' attorneys' fees.

The Cayugas' case is based on an agency theory, claiming that the treaty in question was witnessed by a Federal agent, Israel Chapin, Jr., who lacked the required authority to provide the Federal presence necessary under the Non-Intercourse Act. The Cayugas base their objection on the fact that Chapin received a letter from President Washington's Secretary of War ordering him not to witness such a treaty signing. It is disputed as to whether or not this letter referred to the Cayugas. However, Chapin did not receive the correspondence until after he attended the treaty signing. As a result of this letter, the Cayugas are seeking to wipe out nearly 200 years of the history of the use of this land. It is simply not right or equitable to turn back the clock to 1795 to correct alleged errors and miscommunication at the expense of present title holders by forcing them to vacate the land they own. And so long as the suit is pending, there is a cloud on the titles of current landowners, and it is difficult for the land to be transferred or mortgaged.

RESPONSIBILITY OF THE UNITED STATES

During the past 200 years, the Federal Government has maintained a policy with regard to claimed land which has provided de facto approval of the validity of the land transfers. This course of conduct by the United States has resulted in the justifiable reliance by generations of landowners, and by the affected communities and States, in the integrity of present day land titles, founded on the belief that the United States had fulfilled whatever fiduciary responsibility it may have had to these tribes with regard to their land transfers.

The actions of the Federal Government constitute more than mere acquiescence in the validity of the transfers. Over the years, the United States has acquired land in the claims areas for many Federal purposes, such as the construction of post office, courthouses, and military facilities, and has treated the landowners as the rightful owners of the property. It has granted Federal funds to State and local agencies for various projects that involve the utilization of this land. It has provided millions of dollars in financial assistance, under the auspices of the Department of Housing and Urban Development, the Farmers Home Administration, and the Small Business Administration, to individuals and corporations to use, develop, and improve the lands claimed. Despite the Federal Government's extensive involvement in the land in the claim areas, it has never suggested that the non-Indian

landowners did not have rightful title to the land because of the purported rights of the Indian tribes that are currently laying claim to the land.

SUMMARY OF THE ACT

The purpose of this legislation is to remove the clouds on titles to land located in New York and South Carolina as a result of the claims. In order to do this, the act approves, validates, and ratifies land transfers with the same effect as if such approval, validation, and ratification had been given at the time of the transfers. The act provides Indian tribes whose transfers have been approved by the act with due process with a means of obtaining fair compensation for their claims, including a cause of action for monetary compensation against the United States in the Court of Claims.

There are two processes by which the Indian tribes can have their claims adjudicated. First, as soon as possible after the enactment of the bill into law, the Secretary of the Interior is to publish in the Federal Register a notice of the information that should be supplied by an Indian tribe to allow the Secretary to determine whether in the absence of the act the Indian tribe had a credible claim and to determine a fair monetary award that should be paid by the United States in settlement of the claim. If the Indian tribe agrees to the settlement, there should be a final agreement constituting a permanent settlement. This section of the bill also authorizes the Secretary of the Interior to assist the Indian tribe in purchasing land from willing sellers.

The second process of adjudication provides that the Indian tribe may bring an action in the U.S. Court of Claims against the United States within 3 years of the date of the enactment of the act. The burden of proof is on the Indian tribe to establish that it or its predecessor did not receive fair or conscionable consideration for the land transfer.

Monetary damages awarded by the Court of Claims shall be equivalent to the difference between the fair market value that the claimant should have received for the transfer of its interest in the land and the compensation, if any actually received by the claimant or its predecessor. The amount of the award shall be increased by simple interest from and after the date of the transfer until the date final judgment is entered in the Court of Claims.

This measure provides a fair and equitable solution to the Indian land claims controversy, addressing the serious problems facing present landowners and the claims made by Indian tribes. In a recent New York State Bar Journal article on the New York Indian land claims, Allan Van Gestel succinctly stated the issue before us:

There is a basic inequity in forcing present-day landowners to defend themselves against ancient claims that are in so sense based upon any wrongdoing on their part

while the United States sits on the sidelines or assists in the prosecution. It is time for congress to live up to its representative responsibility and enact legislation which will clear away once and for all the clouds on title by these kinds of Indian land claims."

The time to act is now.

Mr. THURMOND. Mr. President, I wish to express my support for the legislation just introduced by the distinguished Senator and my good friend from New York (Mr. D'AMATO) and I am pleased to be a cosponsor.

This legislation addresses itself to a matter that is long overdue for congressional consideration. The issue of Indian land claims in the eastern and gulf regions of the United States is unquestionably a matter of national interest and concern.

Until recently, Congress believed that this was an issue which had been addressed and settled back in 1946. In that year, Congress enacted the Indian Claims Commission Act. Under that act, a commission was set up to adjudicate all Indian land claims against the United States which were based on allegedly unfair takings and/or inadequate compensation for takings of Indian lands by the U.S. Government. This act provided that all such claims had to be filed by 1951 or they would be forever barred. However, the Congress failed in that act to address the issue of Indian claims arising, not against the United States, but against States, municipalities, and private landowners. This is the type of action which the legislation introduced today is designed to address.

I believe the time has come for the Congress to resolve this issue once and for all. Without congressional action, private landowners who bear no responsibility for the current situation will continue to be forced into court to litigate the question of title to land they purchased in good faith, but which, because of actions taken by Indian tribes and local governments some 200 years ago, has now become the subject of litigation. For the Congress to stand by and allow this deplorable situation to continue would be both unfair and unacceptable.

This legislation would remove all such Indian claims to the U.S. Court of Claims for resolution, and would direct that in those cases deemed meritorious by the court, only a monetary remedy could be awarded. This would eliminate the cloud on title currently hanging over the heads of landowners in the affected States. In addition, a fair compensation formula for this monetary remedy has been included in the text of the bill.

I urge my colleagues to carefully consider the merits of this proposal. I feel that it provides an acceptable vehicle for a final resolution of this issue, one that is fair to all sides and all parties. I would also hope that the Senator from Maine (Mr. COHEN) and the other members of the Indian Af-

fairs Committee will agree to early hearings on this bill.

By Mr. METZENBAUM, (for himself, Mr. MOYNIHAN, Mr. EAGLETON, Mr. INOUE, and Mr. BRADLEY):

S. 2086. A bill to amend title II of the Social Security Act to provide for certain procedures to accompany reviews of continuing eligibility for disability insurance benefits; to the Committee on Finance.

CONTINUING DISABILITY INVESTIGATIONS IMPROVEMENT

● Mr. METZENBAUM. Mr. President, information has come to my attention that the Social Security Administration (SSA) is using seriously flawed procedures in its investigation of the continuing eligibility of current recipients of social security disability benefits. As a result, needed benefits are being denied to many truly disabled persons who have no alternative source of income.

Today, Senators MOYNIHAN, EAGLETON, INOUE, BRADLEY and myself are introducing a bill to correct the procedural inequities that we have found in the present system. While I agree that our social security system can ill afford to carry persons on its rolls who are no longer disabled, we cannot allow our cost-saving initiatives to become so overzealous that we harm those very persons who are most in need of Government assistance and protection.

Starting in March 1981, SSA, at the request of the administration, has engaged in a massive, accelerated review of title II disability recipients. Nationwide, State agencies are receiving over 35,000 cases for review each month and that number is expected to double later this year. The offices are severely understaffed, the backlog of cases is enormous, and there is tremendous pressure to move these cases quickly. SSA has informed the State examiners that they will closely scrutinize cases in which a decision is made to continue benefits, but there is no review of decisions to terminate benefits. As a result of this not too subtle message to decrease the disability rolls, some egregious errors are being made.

Agency personnel have informed my staff that very often the agency does not even request a medical report from the recipient's treating physician, particularly if that person is receiving care in a clinic setting. Even where medical evidence is requested, the agency is allegedly making its decisions to cease benefits prior to waiting a reasonable length of time for receipt of such a report or without reviewing those reports received.

In addition, serious allegations have been made concerning the quality and adequacy of the medical examinations conducted by the independent medical examiners under contract with the State agency. There are too many disturbingly similar stories of hasty 5-minute interviews with indifferent

doctors to believe that these are just isolated incidents. As a result of these ill-advised procedures, the State agency in Ohio is currently ceasing benefits in 47 percent of the cases it reviews while the termination rate nationwide is 45.1 percent. However, in Cleveland, the administrative law judges are reversing at least 50 percent of these initial State agency decisions when the cases finally reach them on appeal. In other States I understand that the error rate is even higher. This incredible reversal rate means that about 25 percent of the disability recipients being removed from the rolls by the State agencies are actually entitled to continued benefits.

The consequences of an erroneous decision by the State agency are severe. Despite a request for a hearing on this initial determination that a person's disability has ceased, benefits are terminated pending the hearing decision. The waiting period for such a decision can be as long as 1 year. When benefits are restored, as they are in at least 50 percent of the cases, it may be too late for those persons with no other sources of income.

My staff have been contacted by desperately ill persons who are being forced to sell their homes and resort to other serious irreversible measures while awaiting this restoration of benefits. Lives are being destroyed, literally, as a result of this process. Several recent suicides and suicide attempts have been attributed to the loss of social security disability benefits.

In one case brought to the attention of my office, Calvin J. Crick, a 55-year-old man who had been on total disability since 1975 when he suffered a massive heart attack, received a notice that his benefits were being terminated because he was no longer disabled. Despite the report of his own physician of 12 years that a series of four heart attacks had left Mr. Crick permanently disabled and unable to resume working and despite previous test results to this effect, the State agency insisted that they would need current laboratory findings. Mr. Crick agreed to undergo a heart catheterization to prove his disability despite the warning of his physician that the operation could be life threatening. Mr. Crick felt he had no choice but to take the risk because he had to support a wife and two children. When one of my staff insisted that a medical consultant at SSA in Baltimore review this case, it was found that Mr. Crick's case file already contained more than sufficient evidence to prove his disability. While Mr. Crick was saved from a life-threatening operation by the last-minute intervention of this office, how many other lives are seriously damaged because no one has intervened on their behalf?

In another Ohio case, a 59-year-old woman had been receiving disability benefits because of a heart condition

97TH CONGRESS
2D SESSION

H. R. 5494

To establish a fair and consistent national policy for the resolution of claims based on a purported lack of congressional approval of ancient Indian land transfers and to clear the titles of lands subject to such claims.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 9, 1982

Mr. LEE (for himself, Mr. HOLLAND, and Mr. WORTLEY) introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

A BILL

To establish a fair and consistent national policy for the resolution of claims based on a purported lack of congressional approval of ancient Indian land transfers and to clear the titles of lands subject to such claims.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Ancient Indian Land
4 Claims Settlement Act of 1982".

5 CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

6 SEC. 2. (a) Congress, after review of various claims that
7 have been asserted by Indian tribes for recovery of lands that
8 were transferred to non-Indians generations ago, purportedly

1 without Federal approval or acquiescence, finds and declares
2 that—

3 (1) there are currently a number of Indian tribes
4 asserting claims against landowners and communities
5 for possession of millions of acres of land in the East-
6 ern United States, and related trespass damages, on
7 the ground that the original transfers of these lands to
8 non-Indians generations ago were made without Feder-
9 al approval and hence were in violation of, inter alia,
10 the Nonintercourse Act provision of the Trade and In-
11 tercourse Act of 1790, other laws of the United States,
12 the United States Constitution, the Articles of Confed-
13 eration, or ancient treaties;

14 (2) for various reasons, including the fact that the
15 States and the legislative and executive branches of
16 the Government of the United States were, with re-
17 spect to certain claimants, unaware that the United
18 States may have had an obligation to approve such
19 transfers and, with respect to other claimants, specifi-
20 cally denied any such obligation, the Federal Govern-
21 ment may have failed to fulfill this alleged obligation;

22 (3) the actions and inactions of the Federal Gov-
23 ernment over the decades and centuries since the origi-
24 nal transfers have resulted in the belief that the Feder-
25 al Government had fulfilled whatever responsibility it

1 may have had to these Indian tribes, and, consequent-
2 ly, in generations of landowners and local and State
3 governments justifiably relying on the validity of the
4 original transfers and the claims of title emanating
5 therefrom, and in the making in good faith of substan-
6 tial investments in and improvements upon these lands;

7 (4) any judicial determination that these ancient
8 transfers were invalid will cause significant economic
9 dislocation and disruption to numerous State and local
10 governments and hundreds of thousands of landowners;

11 (5) Congress agrees with the statements made by
12 several courts and executive branch officials, including
13 past Attorneys General of the United States, who upon
14 examination of the nature and consequences of these
15 claims have expressed the view that these ancient
16 Indian land claims cannot be resolved fairly and equita-
17 bly through litigation against innocent private landown-
18 ers but compel action by Congress;

19 (6) the primary purpose of the Nonintercourse Act
20 provision of the Trade and Intercourse Act of 1790,
21 which was to insure fairness in the transactions by
22 which Indian tribes conveyed their lands to non-Indi-
23 ans, can be secured by now compensating Indian tribes
24 to the extent that those tribes did not receive fair com-
25 pensation for such conveyances; and

1 (7) to the extent that prior actions by the United
2 States have not constituted whatever Federal approval
3 may have been necessary to validate these ancient land
4 transfers, it is the intent of Congress by means of this
5 Act to provide such approval and validation, and to
6 provide Indian tribes that are affected by such approval
7 and validation with a means of obtaining fair compen-
8 sation, which shall be the exclusive remedy for the sat-
9 isfaction of any claim against the United States, any
10 State or local government, or any other person or
11 entity, that such Indian tribes may otherwise have by
12 virtue of the transfers in question.

13 (b) Therefore, in the exercise of the full constitutional
14 authority of Congress, it is the purpose of this Act—

15 (1) to remove the clouds on the titles to land lo-
16 cated within the States of New York and South Caroli-
17 na resulting from the claims of Indian tribes that trans-
18 fers of such lands prior to January 1, 1912, were in
19 violation of the United States Constitution, the Articles
20 of Confederation, the laws of the United States, includ-
21 ing the Nonintercourse Act provision of the Trade and
22 Intercourse Act of 1790, or any other legal require-
23 ment;

24 (2) to approve, validate, and ratify all such trans-
25 fers effective as of the date of such transfers and with

1 the same effect as if such approval, validation, and
2 ratification had been given at the time of the transfers;
3 and

4 (3) to provide Indian tribes affected by this Act
5 with a means of obtaining fair and equitable compensa-
6 tion for their claims, including a cause of action in the
7 Court of Claims against the United States for mone-
8 tary compensation.

9 DEFINITIONS

10 SEC. 3. For purposes of this Act, the term—

11 (a) "Indian tribe" includes any Indian nation or
12 tribe of Indians, or any other body of Indians of the
13 same or similar race, united in community under one
14 leadership or government, and inhabiting a particular
15 or sometimes ill-defined territory;

16 (b) "land or natural resources" means any real
17 property or natural resources, or any interest in or
18 right involving any real property or natural resources,
19 including without limitation minerals and mineral
20 rights, timber and timber rights, water and water
21 rights, and hunting and fishing rights;

22 (c) "laws of the United States" means the Arti-
23 cles of Confederation, all Federal, State, and Colonial
24 statutes, treaties, proclamations, executive agreements,

1 orders, regulations, and common law principles, and all
2 judicial interpretations thereof;

3 (d) the "Nonintercourse Act provision of the
4 Trade and Intercourse Act of 1790" means section 4
5 of the Trade and Intercourse Act of 1790, Act of July
6 22, 1790, chapter 33, section 4 (1 Stat. 137, 138), and
7 all amendments thereto and all subsequent reenact-
8 ments or versions thereof;

9 (e) the "Secretary" means the Secretary of the
10 Interior or his designate; and

11 (f) "transfer" includes but is not limited to any
12 sale, grant, lease, allotment, partition or conveyance,
13 any transaction the purpose of which was to effect a
14 sale, grant, lease, allotment, partition or conveyance,
15 or any event or events that resulted in a change of
16 possession or control of land or natural resources.

17 **RATIFICATION OF PRIOR TRANSFERS AND**

18 **EXTINGUISHMENT OF RELATED CLAIMS**

19 **SEC. 4. (a)** Any transfer of land or natural resources
20 located within the States of New York and South Carolina
21 from, by, or on behalf of any Indian tribe, including without
22 limitation a transfer pursuant to any statute of or agreement
23 or treaty with any State, made or effected prior to January
24 1, 1912, was and shall be deemed to have been made in
25 accordance with the Constitution and all laws of the United

1 States, including without limitation the Nonintercourse Act
2 provision of the Trade and Intercourse Act of 1790, and
3 Congress does hereby approve, validate, and ratify any such
4 transfer effective as of the date of said transfer.

5 (b) To the extent that any transfer of land or natural
6 resources described in subsection (a) of this section may in-
7 volve land or natural resources to which any Indian tribe had
8 aboriginal title, subsection (a) shall be regarded as an extin-
9 guishment of such aboriginal title as of the date of such
10 transfer.

11 (c) By virtue of the approval, validation, and ratification
12 of a transfer of land or natural resources (whether such land
13 or natural resources were held under aboriginal or recognized
14 title) effected by this section, or the extinguishment of ab-
15 original title effected thereby, no action by the United States,
16 any State or subdivision thereof, or any other person or
17 entity at the time of or subsequent to the transfer and involv-
18 ing the ownership, use or occupancy of such land or natural
19 resources shall be regarded as giving rise to a claim of tres-
20 pass, or for mesne profits or for use and occupancy, in favor
21 of any Indian tribe that may have formerly occupied or held
22 any claim to such land or natural resources, and all actual or
23 theoretical claims against the United States, any State or
24 subdivision thereof, or any other person or entity, by any
25 Indian tribe arising at the time of or subsequent to the trans-

1 fer and based on any interest in or right involving such land
2 or natural resources, including without limitation claims for
3 trespass damages, mesne profits, or claims for use and occu-
4 pancy, shall be deemed extinguished as of the date of such
5 transfer.

6 (d) This section shall not apply to those lands that are
7 located within the Allegany and Cattaraugus Reservations of
8 the Seneca Nation in the State of New York and were leased
9 under authority of the Act of February 19, 1875 (18 Stat.
10 330).

11 NOTIFICATION OF CLAIMS TO THE SECRETARY;

12 SETTLEMENT AGREEMENTS

13 SEC. 5. (a)(1) As soon as practicable after the date of
14 enactment of this Act, the Secretary shall publish in the Fed-
15 eral Register a notice specifying that any Indian tribe whose
16 transfer of land or natural resources has been approved, vali-
17 dated, and ratified by section 4 of this Act may submit to the
18 Secretary such information as the tribe may wish the Secre-
19 tary to consider in making the determinations specified in
20 subsection (c)(1) of this section.

21 (2) To the extent that, with respect to any particular
22 Indian tribe, the Secretary already possesses information
23 needed to make the determinations specified in subsection
24 (c)(1) of this section, the Secretary shall consult with repre-
25 sentatives of said Indian tribe in order to minimize the

1 burden on said Indian tribe in preparing the submission speci-
2 fied in subsection (b) of this section.

3 (b) No later than one hundred and eighty days after the
4 publication by the Secretary in the Federal Register of the
5 notice specified in subsection (a)(1) of this section, any Indian
6 tribe whose transfer of land or natural resources has been
7 approved, validated, and ratified by section 4 of this Act may
8 submit to the Secretary information in response to the
9 Secretary's notice.

10 (c)(1) Within one hundred and eighty days after the date
11 by which submissions must be filed with the Secretary pursu-
12 ant to subsection (b) of this section, the Secretary shall deter-
13 mine, with respect to each Indian tribe that has made a sub-
14 mission pursuant to subsection (b) of this section, whether
15 such Indian tribe had a credible claim, and, if so, the fair and
16 equitable monetary award that he believes should be made by
17 the United States to such Indian tribe. Such determinations
18 shall not be subject to judicial review by any court.

19 (2) In determining what he believes is a fair and equita-
20 ble award that should be made by the United States to any
21 Indian tribe pursuant to paragraph (1) of this subsection, the
22 Secretary may consider: the consideration received for the
23 original transfer of the land or natural resources in relation to
24 the reasonable fair market value of the land or natural re-
25 sources at the time of the original transfer; whether, through

1 Indian Claims Commission judgments or otherwise, the
2 United States has already paid any amounts to such tribes
3 with respect to the transfer of such land or natural resources;
4 whether State governments have already paid any amounts
5 to such tribes with respect to the transfer of such land or
6 natural resources; appropriate adjustments for delay in re-
7 ceipt of fair compensation; the legal strength and validity of
8 the claim; the legal strength and validity of any defenses that
9 would have been raised in opposition to the claim; and such
10 other factors as he may deem appropriate.

11 (d) Any determination by the Secretary under subsection
12 (c) of this section must be accepted or rejected by the Indian
13 tribe in question within sixty days after such determination.
14 Upon acceptance by the Indian tribe, the determination of
15 the Secretary shall become final and binding upon the par-
16 ties.

17 (e) The Secretary is authorized to assist any Indian tribe
18 receiving monetary compensation under this section in using
19 all or a portion of those funds to purchase land or natural
20 resources from any person or governmental entity willing to
21 sell such land or natural resources. If Federal lands or natu-
22 ral resources are otherwise available, the Secretary, after
23 consultation with the appropriate State and local govern-
24 ments, may assist an Indian tribe in acquiring such lands,
25 provided that the amount of monetary compensation awarded

1 the tribe shall be reduced by the amount of the fair market
2 value of the land or natural resources so acquired. Any land
3 or natural resources acquired pursuant to this subsection
4 shall for all purposes be subject to the civil and criminal juris-
5 diction of the State, to all laws of the State, and to the civil
6 and criminal jurisdiction of the courts of the State, to the
7 same extent as any other land therein. Such land or natural
8 resources shall be acquired by the tribe in fee simple and not
9 held by the United States in trust for the benefit of the tribe.

10 (f) In performing his responsibilities under this section,
11 the Secretary may adopt such procedures, and utilize such
12 personnel in assisting him in making factual or other determi-
13 nations, as he deems advisable. The Secretary may permit
14 other interested parties, including States, to provide informa-
15 tion relevant to the Secretary's determinations.

16 RECOVERY AGAINST THE UNITED STATES IN THE COURT
17 OF CLAIMS

18 SEC. 6. (a) Any Indian tribe that occupied or possessed
19 land or natural resources within the States of New York or
20 South Carolina and has never obtained a final judgment on a
21 claim filed in the Indian Claims Commission or Court of
22 Claims with respect to the transfer of such land or natural
23 resources, may, within one year of the date of enactment of
24 this Act, or, in the case of an Indian tribe that has made a
25 submission to the Secretary pursuant to section 5(b) of this

1 Act, within the one hundred and eighty day period beginning
2 on the date of the Secretary's determination under section
3 5(c) of this Act, file a claim against the United States in the
4 Court of Claims, which shall be heard, determined, and adju-
5 dicated by the Court of Claims in accordance with the provi-
6 sions of this section. The Court of Claims shall have exclu-
7 sive original jurisdiction over such claim: *Provided, however,*
8 That the Court of Claims shall grant no award with respect
9 to any claim, and shall immediately dismiss on the merits any
10 pending claim, by any Indian tribe relating to land or natural
11 resources with respect to which a settlement agreement has
12 been agreed upon or a determination by the Secretary ac-
13 cepted pursuant to the provisions of section 5(d) of this Act.

14 (b) Any claimant that files a claim in accordance with
15 subsection (a) of this section and proves that—

16 (1) the claimant is an Indian tribe,

17 (2) at the time of the transfer of land or natural
18 resources that is the subject of the claim, the claimant
19 or its predecessor in interest was an Indian tribe,

20 (3) at the time of the transfer of land or natural
21 resources the claimant or its predecessor in interest
22 had aboriginal or recognized title to the land or natural
23 resources that is the subject to the claim,

24 (4) if the transfer of land or natural resources took
25 place prior to July 22, 1790, such transfer was invalid

1 unless approved by the United States and that no such
2 approval was obtained, and

3 (5) the claimant or its predecessor in interest did
4 not receive fair consideration for the transfer of the
5 land or natural resources that is the subject of the
6 claim,

7 shall be entitled to a recovery against the United States in
8 accordance with the provisions of subsection (c) of this sec-
9 tion: *Provided, however,* That no recovery shall be awarded
10 with respect to any claim involving a transfer of land or natu-
11 ral resources that took place after July 22, 1790, if the
12 United States establishes that the Nonintercourse Act provi-
13 sion of the Trade and Intercourse Act of 1790 was not appli-
14 cable to such transfer or that, with regard to such transfer,
15 the requirements of the Nonintercourse Act provision of the
16 Trade and Intercourse Act of 1790 had been complied with
17 prior to the enactment of this Act.

18 (c)(1) Any claimant entitled to a recovery against the
19 United States in accordance with the provisions of subsection
20 (b) of this section shall be awarded monetary damages equiv-
21 alent to the difference between the fair market value of the
22 land or natural resources at the time of the transfer and the
23 compensation, if any, actually received by the claimant or its
24 predecessor in interest (whether at the time of transfer or

1 subsequently) for the transfer of such land or natural re-
2 sources.

3 (2) Any amount awarded to a claimant pursuant to sub-
4 section (c)(1) of this section shall—

5 (i) in the case of an award based on a transfer
6 that took place after July 22, 1790, of land or natural
7 resources held under aboriginal title be increased by
8 simple interest from and after the date of the transfer
9 until the date final judgment is entered in the Court of
10 Claims, with such interest computed at the rate of 2
11 per centum per annum, or

12 (ii) in the case of an award based on a transfer
13 that took place after July 22, 1790, of land or natural
14 resources held under recognized title, be increased by
15 simple interest from and after the date of the transfer
16 until the date final judgment is entered in the Court of
17 Claims, with such interest computed at the rate of 5
18 per centum per annum.

19 (3) Any final award granted by the Court of Claims pur-
20 suant to section 6 shall be paid to the claimant in three equal
21 annual installments.

22 (d)(1) Claims before the Court of Claims brought pursu-
23 ant to this Act shall, to the extent practicable, take prece-
24 dence on the docket over all other cases, and shall be as-

1 signed for hearing, trial, and argument at the earliest practi-
2 cable dates.

3 (2) Review of the judgments of the Court of Claims pur-
4 suant to this section may be sought in the Supreme Court of
5 the United States by petition for writ of certiorari in the same
6 manner as such review may be sought for any other judgment
7 of the Court of Claims.

8 AUTHORIZATION

9 SEC. 7. There are hereby authorized to be appropriated
10 such sums as may be necessary to meet the obligations of the
11 United States as specified in any settlement agreement or
12 determination by the Secretary accepted pursuant to the pro-
13 visions of section 5(d) of this Act or to pay any final judgment
14 rendered pursuant to section 6 of this Act.

15 INSEPARABILITY

16 SEC. 8. In the event that any provision of section 4 or
17 of subsections 6(c) (1) and (2) of this Act is held invalid with
18 respect to a particular Indian tribe, it is the intent of Con-
19 gress that the entire Act be invalidated with respect to such
20 tribe. In the event that any other section or provision of this
21 Act is held invalid, it is the intent of Congress that the re-
22 maining sections or provisions of this Act shall continue in
23 full force and effect.

LIMITATION OF ACTIONS

1
2 SEC. 9. (a) Notwithstanding any other provision of law,
3 any action to contest the constitutionality or validity of this
4 Act shall be barred unless the action is brought in the Feder-
5 al district court for the district in which the land or natural
6 resources that are the subject of the Indian claim are located
7 within one hundred and eighty days of the date of enactment
8 of this Act.

9 (b) Except as provided in section 6 or in subsection (a)
10 of this section, no court of the United States, including the
11 Court of Claims, and no court of any State, territory, or pos-
12 session of the United States, or of the District of Columbia,
13 shall have jurisdiction of any action or proceeding by or on
14 behalf of an Indian tribe with respect to the invalidity of any
15 transfer of land or natural resources that has been approved,
16 validated and ratified by section 4 of this Act, or involving
17 any claims, such as claims for trespass damages, mesne prof-
18 its, or claims for use and occupancy, arising from the alleged
19 invalidity of the transfer, or involving any claims against the
20 United States for compensation as a result of this Act.

○

ALL

H.R.5494

DATE INTRODUCED: 02/09/82

SPONSOR: Lee

REFERRED TO: House Interior and Insular Affairs

COSPONSOR(S): CURRENT (9)

Wortley; Campbell (A-03/10/82); Lent (A-03/10/82);

Napier (A-03/10/82); Solomon (A-03/10/82); Spence (A-03/10/82);

Derrick (A-03/10/82); Hartnett (A-04/26/82);

Molinari (A-04/26/82);

SHORT TITLE(S):

AS INTRODUCED: AS OF 03/17/82

Ancient Indian Land Claims Settlement Act of 1982

LATEST OFFICIAL TITLE:

OFFICIAL TITLE AS INTRODUCED AS OF 02/10/82

A bill to establish a fair and consistent National Policy for the resolution of claims based on a purported lack of Congressional approval of ancient Indian land transfers and to clear the titles of lands subject to such claims.
PAGE 1 OF 4. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

H.R.5494 (LG97) continued:

LEGISLATIVE ACTIONS:

Feb 9, 82 Referred to House Committee on Interior and Insular Affairs.

ABSTRACT:

Ratifies the transfer of land made on behalf of Indian tribes before January 1, 1912, within the States of New York and South Carolina. Provides such Indian tribes a means of obtaining fair compensation for their claims to such land. Establishes for such Indian tribes a cause of action in the Court of Claims against the United States to recover such compensation.

DIGEST:

Ancient Indian Land Claims Settlement Act of 1982 - Ratifies the transfer of land or natural resources made on behalf of an Indian tribe before January 1, 1912, within the States of New York or South Carolina. Extinguishes, by virtue of ratification, related claims against such transfers. Exempts specified land in New York from ratification. Directs the Secretary of the Interior to publish a notice in the Federal Register soliciting information about outstanding claims from such Indian tribes. Directs the Secretary, within 180 days of such submission, to determine: (1) the credibility of such claims; and (2) the amount of fair compensation due credible claims. Prohibits judicial review of such determination.

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

H.R.5494 (LG97) continued:

Requires such Indian tribes to accept or reject the Secretary's determination within 60 days. States that such determination shall be binding if it is accepted.

Authorizes the Secretary to assist such Indian tribes receiving compensation to purchase other lands or natural resources.

Authorizes such Indian tribes to file a cause of action in the Court of claims against the United States for compensation arising out of land transfer claims which have not been settled or determined by the Secretary. Gives the Court of Claims exclusive jurisdiction over such cases.

Sets out: (1) criteria for determining entitlement to a recovery against the

United States; and (2) procedures for determining and paying the amount of such recovery. Limits recovery due certain claims arising after July 22, 1790.

Assigns docket priority to claims brought under this Act before the Court of Claims.

ALL, PAGE 3 OF 4. READY FOR COMMAND, OPTION OR PG #(FOR NXT PG, XMIT):

H.R.5494 (LG97) continued:

Authorizes appropriations.

Requires any contest of the constitutionality or validity of this Act to be brought in certain Federal district courts within a specified time.

INDEX TERMS:

CLAIMS AND GOVERNMENT LIABILITY/INDIAN CLAIMS/NEW YORK/SOUTH CAROLINA/COURTS AND CIVIL PROCEDURE/COURT OF CLAIMS/JURISDICTION/INDIANS AND NATIVE AMERICANS/INDIAN LANDS/SETTLEMENT/PUBLIC LANDS AND REAL PROPERTY/INDIAN LANDS--NEW YORK/INDIAN LANDS--SOUTH CAROLINA/FEDERAL-INDIAN RELATIONS/LAND TRANSFERS
ALL, PAGE 4 OF 4. READY FOR NEW COMMAND, OPTION OR PG #:

on an extremely modest proportion of Federal revenues from the development of Outer Continental Shelf (OCS) oil and gas resources. It will serve the twin purposes of preserving valuable ocean resources funding and providing an incentive for coastal States to cooperate with greater OCS oil and gas development.

H.R. 5543 is similar to, and based on the same premises as, title IV of H.R. 4597, a bill that I introduced on September 25, 1981. Because of a growing consensus that ocean and coastal resource block grants based on a proportion of OCS revenues is an idea that should proceed independently of other OCS-related amendments, we have separated this concept and introduced it as a separate bill, H.R. 5543.

The proposed legislation contains modifications to title IV of the original bill—modifications that have resulted from hearings held by our Subcommittee on Oceanography, chaired by the gentleman from New Hampshire. These modifications were designed with several objectives in mind: To retain the nationally competitive character of the Sea Grant College program; to bring added dimensions of equity and incentives for the disbursement of block grants to the coastal States, and to provide such States with a greater degree of flexibility in the application of the grants.

Proceeds from the fund would be applied to further the purposes of the National Sea Grant College program and to provide block grants to coastal States. These grants would permit continuation and enhancement of State programs for coastal zone management and the coastal energy impact program. Additionally, they would provide States with the opportunity and commitment to accept an increased responsibility for the management of ocean fisheries and living marine resources, necessary to offset a dramatically reduced Federal presence. H.R. 5543 is a clear manifestation of the administration's new federalism and emphasis on block grants.

The benefits of offshore oil and gas development are spread nationally while the impacts are disproportionately felt in the adjacent coastal States and localities. The fund established by our bill would provide coastal States with fiscal resources adequate to prepare for and address the impacts that inevitably accompany mineral extraction activities close to their coastal areas. Currently, this capacity for preparedness is being threatened with extinction as a direct result of the administration's proposed termination of important ocean and coastal management programs. The Nation's policy of accelerating OCS development is one of which I am strongly supportive. However, this policy should not be accompanied by the elimination of programs that foster wise management of our ocean margins. By failing to recognize the Federal-State partnership required for

accelerated OCS development, these inconsistent policies threaten to inhibit the OCS leasing process by promoting conflict and litigation.

It is imperative that our country proceed, in a timely and responsible manner, with the development of OCS resources. This requires a modest investment in the maintenance and improvement of the ocean and coastal management capabilities of affected States. Our legislation would require a very small proportion of funds, based on OCS revenues received by the Federal Government, to be allocated to the States for this maintenance and improvement and to accelerate significantly our offshore program.

The fund would be based on only the increment in Federal OCS revenues that result from the acceleration of our offshore program. Specifically, fiscal year 1982 would be the base year from which only 10 percent of the growth in revenues after that year would form the basis for the fund—but with a ceiling of \$300 million. To put this in a somewhat different perspective, it should be pointed out that the administration has estimated that \$18 billion will be deposited in the Treasury from OCS revenues in fiscal year 1983. The \$300 million established by the fund in our legislation would be the equivalent of 1.67 percent of such revenues—an extraordinarily modest investment for the protection of our State coastal management and fishery programs and for the expansion of our offshore oil and gas program.

We would also ask our colleagues to review the proposal in the context of the question of equity between interior States and coastal States with respect to the sharing of Federal revenues. Under the Mineral Lands Leasing Act of 1920, as amended, 50 percent of the Federal mineral leasing receipts are paid directly to the States within which mining occurs. In many other cases, an additional 40 percent is returned indirectly through a reclamation fund. Equally important, interior States have been granted the authority to place a tax upon the severance of mineral resources from Federal lands. In 1978, Montana collected as much as \$25 million from the severance of coal mined under Federal leases. Other minerals mined under Federal leases are also subject to State severance taxes. Finally, State and local governments also receive compensation for property taxes lost as a result of Federal ownership of lands.

On the other hand, coastal States receive no direct share of OCS revenues and are not authorized to tax or generate revenues from Federal leases on the Outer Continental Shelf. H.R. 5543 would go a long way toward correcting this inequity and would require considerably less, in terms of money and proportion, than that provided under the Mineral Lands Leasing Act.

Our bill provides a timely solution to the problem of maintaining the capabilities of State and local governments to participate in offshore leasing decisions. It will accommodate accelerated development of OCS mineral resources by reducing user conflicts and litigation. Furthermore, by providing funds in block grant form, this bill will substantially reduce the Federal administrative role and increase State decision-making flexibility. The bill is complementary to the policies of the administration and we urge bipartisan support of this critical legislation when it reaches the floor of the House. ●

LOUISVILLE: A GREAT PLACE TO LIVE

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Monday, February 22, 1982

● Mr. MAZZOLI. Mr. Speaker, as the Representative for the Third District of Kentucky which encompasses the city of Louisville, I call your attention to the following statistic which appeared in the Courier Journal on January 29, 1982:

In a national survey recently released, the Louisville community was ranked 19th out of 277 cities listed as the best community in which to live.

As Louisvillians, we are proud of our great city, and are proud that others are finally recognizing what the citizens of Louisville have known all along. ●

SECTION-BY-SECTION ANALYSIS OF H.R. 5494

HON. GARY A. LEE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, February 22, 1982

● Mr. LEE. Mr. Speaker, the following is the conclusion of my section-by-section analysis of H.R. 5494, the proposed Ancient Indian Land Claim Settlement Act of 1982.

SECTION 4. RATIFICATION OF PRIOR TRANSFERS AND EXTINGUISHMENT OF RELATED CLAIMS

Subsection 4(a) provides that all transfers of land or natural resources located in New York and South Carolina made by or on behalf of any Indian tribe prior to January 1, 1912, shall be deemed to have been made in accordance with the Constitution and all laws of the United States, and that such Congressional approval, validation, and ratification shall be effective as of the date of the transfer. By ratifying an ancient Indian land transfer effective as of the date of the transfer, it is the intent of Congress to remove the cloud of Indian claims against all current and former landowners in these three states who may trace their titles back to the transfer being approved. Taken together with subsections 4(b) and 4(c), this subsection is intended to eliminate completely and effectively all Indian tribal land claims and related claims for monetary com-

pensation that may exist as a consequence of the pre-1912 transfers.

The January 1, 1912, cut-off date has been selected because it would embrace all known ancient Nonintercourse Act-type claims against current landowners in these states, while leaving unimpaired any claims regarding land disputes of a comparatively recent origin.

The approach and language in section 4(a) and in the balance of section 4 are essentially identical to the approach and language utilized by Congress in the comparable provisions contained in the Maine Indian Claims Settlement Act of 1980, Pub. L. No. 96-420, 94 Stat. 1785, and in the Rhode Island Indian Claims Settlement Act, Pub. L. No. 95-395, 92 Stat. 813 (1978).

Congressional approval, validation or ratification of earlier transfers of Indian lands has been judicially upheld even when such approval has come many years after the transfers in question. For example, in considering the impact of a statute enacted by Congress in 1927 on the validity of an 1858 acquisition by the State of New York of lands held by the Seneca Nation, the Court of Claims concluded:

"[I]f federal consent was needed under the Trade and Intercourse Act, such approval has been given. All agree that appellant would have no complaint if assent had been given at the time of the appropriations. But approval can also come afterwards, and that is what happened here. In 1927, Congress provided that New York's game and fish laws should thereafter apply to the Senecas' Oil Spring Reservation (among others), except 'that this Act shall be inapplicable to lands formerly in the Oil Spring Reservation and heretofore acquired by the State of New York by condemnation proceedings.' [Citation omitted.] This explicit recognition and implicit ratification of New York's ownership of the tract must be taken as Congress' approval of the original appropriation, as well as of the state's continued claim of right.

(*Seneca Nation of Indians v. United States*, 173 Ct.Cl. 912, 915 (1965) (emphasis added).)"

Subsection 4(b) makes clear that to the extent any transfer approved under subsection 4(a) may involve any aboriginal title held or claimed by an Indian tribe, subsection (a) shall be regarded as a Congressional extinguishment of such aboriginal title as of the date of the transfer. Congress' broad power to extinguish Indian aboriginal title was articulated by Justice Douglas in *United States v. Santa Fe Pac. R.R. Co.*, 314 U.S. 339, 347 (1941):

"The power of Congress in that regard is supreme. The manner, method, and time of such extinguishment raise political not justifiable issues. [Citation omitted.] As stated by Chief Justice Marshall in *Johnson v. M'Intosh*, the exclusive right of the United States to extinguish Indian title has never been doubted. And whether it be done by treaty, by the sword, by purchase, by the exercise of complete dominion adverse to the right of occupancy, or otherwise, its justness is not open to inquiry in the courts."

Subsection 4(c) makes explicit two effects that the provisions of subsections 4(a) and 4(b) are intended to have. The provision is included in the Act in order to avoid any possible ambiguity that otherwise might arise in the absence of such explicit language.

First, subsection 4(c) provides that by virtue of the approval, validation and ratification of Indian land transfers provided by subsection 4(a) and the extinguishment of aboriginal title provided by subsection 4(b), both of which are effective as of the dates

of the original Indian transfers, no action by the United States, any state or subdivision thereof, or any other person or entity after the transfer shall be regarded as giving rise to a claim for trespass damages or any other type of claim for monetary recovery based on the subsequent use or occupancy of the land by non-Indians.

Second, subsection 4(c) makes clear that to the extent any actual or theoretical claims for trespass damages, for mesne profits or for use and occupancy may have arisen subsequent to the transfer, all such claims shall be regarded as extinguished as of the date of the transfer.

Subsection 4(d) is designed to preserve the agreement made by the Seneca Nation and its lessees with respect to certain leases made by the Seneca Nation in the latter part of the nineteenth century pursuant to the Act of February 19, 1875, 18 Stat. 330, as amended. In these leases, the Seneca Nation leased certain of its lands for a period of 99 years, after which possession of the lands is to revert to the Senecas. Absent this subsection, the bill may have the effect of extinguishing the tribe's underlying interest in these lands, thereby making its lessees the owners of the leased lands. Such a result would be contrary to the intentions of the parties when the leases were made. Accordingly, this subsection ensures that the terms of these particular leases will be unaffected by the bill.

SECTION 5. NOTIFICATION OF CLAIMS TO THE SECRETARY; SETTLEMENT AGREEMENTS

Section 5 provides for one of two alternative means by which Indian tribes affected by section 4 of the Act may obtain a monetary award from the United States for the settlement of their claims.

Subsection 5(a)(1) specifies that as soon as practicable after the date of enactment of this Act, the Secretary shall publish in the Federal Register a notice specifying that any Indian tribe whose transfer of land or natural resources has been approved, validated and ratified by section 4 may submit to the Secretary such information as the tribe may wish the Secretary to consider in making the determinations specified in subsection (c)(1).

Subsection 5(a)(2) specifies that to the extent the Secretary already possesses information about a particular Indian tribe needed to make the determinations specified in subsection (c)(1), the Secretary shall consult with representatives of said tribe in order to minimize the burden on the tribe in preparing the submission specified in subsection 5(b).

Subsection 5(b) provides that any Indian tribe affected by section 4 of this Act may, no later than 180 days after the Secretary publishes his notice in the Federal Register, submit to the Secretary information in response to the Secretary's notice.

Subsection 5(c)(1) provides that within 180 days after the date by which submissions are made pursuant to subsection 5(b) (or within approximately one year after publication of the Secretary's Federal Register notice), the Secretary shall determine, with respect to each Indian tribe that has made a submission pursuant to subsection 5(b), whether such Indian tribe had a credible claim, and, if so, the fair and equitable monetary award that the Secretary believes should be paid by the United States to that tribe. The provision makes clear that these determinations are not to be subject to judicial review.

Subsection 5(c)(2) specifies several factors that the Secretary may take into account in determining the fair and equitable monetary award to be made to an Indian tribe.

Subsection 5(d) provides that a tribe has 60 days from the date of the Secretary's de-

termination under section 5(c) within which to accept or reject the Secretary's determination. Upon acceptance by the tribe, the determination of the Secretary shall become final and binding on all parties.

Subsection 5(e) authorizes the Secretary to assist any Indian tribe that will be receiving monetary compensation under section 5 to use all or a portion of such funds to purchase land or natural resources from any person or governmental entity that is willing to sell such land or natural resources. This subsection does not authorize or permit any condemnation of land or natural resources by the Secretary; rather the Secretary is authorized to use his good offices to assist the Indian tribe in negotiating for the acquisition of land from those persons or governmental entities that may be willing to sell land to the tribe. The subsection also provides that the Secretary, after consultation with the appropriate state and local governments, may assist the tribe in acquiring federal lands that otherwise may be available. The amount of any monetary award provided to a tribe under section 5 shall be reduced by the fair market value of any such federal lands acquired by that tribe.

Any land acquired pursuant to subsection 5(e) shall be acquired by the tribe in fee simple title rather than held by the United States in trust for the benefit of the tribe. Also, any land acquired shall be subject for all purposes to the civil and criminal laws and jurisdiction of the state in which the land is located in the same manner and degree as land owned by non-Indians. Consequently, lands acquired by Indian tribes pursuant to this subsection will be subject to state and local real property taxes and assessments and thus will not deprive state and local jurisdictions of their existing tax base.

Subsection 5(f) is intended to provide the Secretary with authority to adopt such procedures or to utilize such other personnel as necessary to assist him in carrying out his functions. In addition, the subsection provides that interested parties, such as the states involved in the claims, may be permitted to present information relevant to the Secretary's determinations.

SECTION 6. RECOVERY AGAINST THE UNITED STATES IN THE COURT OF CLAIMS

Section 6 provides an alternative means whereby Indian tribes whose land transfers are approved, validated and ratified by section 4 of the Act may obtain compensation from the United States. The ability of a tribe to bring an action under section 6 is not dependent on that tribe's having made a submission to the Secretary under section 5, although a tribe cannot obtain a double recovery under the provisions of both section 5 and section 6, and, if a tribe chooses to make a submission to the Secretary under section 5, it may not file or proceed with its action under section 6 until the Secretary has made his determination under section 5(c).

Subsection 6(a) provides that any Indian tribe that occupied or possessed land or natural resources in the States of New York, or South Carolina and that has never obtained a final judgment from the Indian Claims Commission or Court of Claims with respect to the transfer of such land or natural resources may bring an action in the Court of Claims against the United States within one year of the date of the enactment of the Act, or for those tribes that desire to pursue the opportunity for settlement of their claims afforded by section 5, within the 180-day period beginning on the date of the Secretary's determination under section 5(c) of

the Act. Indian tribes, such as those tribes in the State of New York, that previously have obtained final judgments from the Indian Claims Commission or Court of Claims on claims relating to their eighteenth and nineteenth century transfers of land in New York would not be entitled to relitigate those claims under section 6.

On the other hand, several tribes in these three states never pursued a claim against the United States before the Indian Claims Commission and would be entitled to seek recovery from the United States under section 6 even though the time limit for filing claims against the United States under the Indian Claims Commission Act (July 26, 1951) has long since passed. Why certain tribes in these states pursued a recovery against the United States under the Indian Claims Commission Act while others did not is not presently known. The most likely explanation is that until the courts began to address the meaning and scope of the Nonintercourse Act in the last two decades, the tribes that did not bring claims before the Indian Claims Commission did not believe that they had claims under the Nonintercourse Act for which they could obtain compensation from the United States before the Indian Claims Commission.

The proviso to subsection 6(a) makes clear that the Court of Claims shall make no award under section 6 to any Indian tribe regarding any claim with respect to which a settlement agreement has been agreed to pursuant to the provisions of section 5.

Subsection 6(b) sets forth the factual determinations that must be made by the Court of Claims with regard to any filed claim in order to grant the recovery provided by subsection 6(c). With respect to those claims that are predicated upon a transfer of land or natural resources by an Indian tribe that took place after the enactment of the Nonintercourse Act (July 22, 1790), the Indian tribal claimant must establish that (1) it is an Indian tribe (the standards to be utilized by the Court of Claims in making this determination would be those that have been developed by the courts in cases such as *Montoya v. United States*, 180 U.S. 261 (1901)), (2) at the time of the transfer that is the subject of the claim, the claimant or its predecessor in interest was an Indian tribe, (3) at the time of the transfer the claimant had a possessory or ownership interest (i.e., aboriginal or recognized title) in the land or natural resources, and (4) the claimant or its predecessor in interest did not receive fair consideration for the transfer. If the transfer took place prior to the enactment of the Nonintercourse Act (i.e., prior to July 22, 1790) the claimant must, in addition, establish that under applicable law at the time of the transfer (e.g., the Articles of Confederation), the transfer was invalid unless approved or consented to by the United States and that such approval or consent was never obtained.

With regard to transfers that took place after July 22, 1790, the proviso to subsection 6(b) specifies that no recovery shall be awarded if the United States establishes that the Nonintercourse Act provision of the Trade and Intercourse Act of 1790 was not applicable to such transfer or that the requirements of that Act had been complied with prior to the enactment of this Act.

Subsection 6(c)(1) provides that any claimant that is entitled to a recovery against the United States by having established its claim in accordance with the provisions of subsection 6(b) shall be awarded monetary damages equivalent to the difference between the fair market value that the claimant should have received for the transfer of its interest in the land or natural re-

sources and the compensation, if any, actually received by the claimant or its predecessor in interest (whether such compensation was received at the time of the transfer or subsequently). This standard of compensation is essentially identical to that utilized by the Indian Claims Commission in determining awards made to Indian tribes whose land had been transferred to or taken by the United States for less than fair or conscionable consideration or to Indian tribes whose claims were based on transfers to third parties where the United States had a fiduciary duty to present transfers at less than fair or conscionable consideration. By providing this standard of compensation, Congress would be ensuring that, with respect to any Indian land transfer that is approved by the Act, the Indian tribe will have obtained fair consideration.

Subsections 6(c)(2) (i) and (ii) provide that for any award granted by the Court of Claims under section 6 involving a transfer that took place after the enactment of the Nonintercourse Act, the amount of the award shall be increased by simple interest from and after the date of the transfer until the date final judgment is entered in the Court of Claims. Under subsection 6(c)(2)(i), if the transfer involved land held under aboriginal title, the amount of interest shall be two percent per annum; under subsection 6(c)(2)(ii), if the transfer involved recognized title, the amount of interest shall be five percent per annum.

Subsection 6(c)(3) provides that any final award granted by the Court of Claims shall be paid to the Indian tribal claimant in three equal annual installments.

Subsection 6(d)(1) directs the Court of Claims, to the extent practicable, to give precedence on its docket to claims filed under this Act. The purpose of this provision is to ensure that claims under the Act are heard and adjudicated by the Court of Claims as expeditiously as possible.

Subsection 6(d)(2) provides that review of Court of Claims judgments under section 6 of the Act may be obtained by petition for a writ of certiorari in the Supreme Court in the same manner as such review may be sought for other Court of Claims judgments.

SECTION 7. AUTHORIZATION

Section 7 provides the necessary authorization for the appropriation of such sums as may be necessary to meet the obligations of the United States in any settlement agreement agreed upon under section 5 or to pay any final judgment of the Court of Claims under section 6.

SECTION 8. INSEPARABILITY

Section 8 provides that if any provision of section 4 of the Act (the provision validating the ancient Indian transfers of land or natural resources and extinguishing all claims relating to such lands or natural resources) or of subsections 6(c) (1) and (2) of the Act (the provisions specifying the amount of any award that may be granted by the Court of Claims) is held invalid with respect to a particular Indian tribe, it is the intent of Congress that the entire Act be invalidated with respect to that tribe. The purpose of this provision is to ensure that (1) no Indian tribe may obtain recovery from the United States under sections 5 and 6 of the Act with respect to a particular transfer of land unless section 4 is effective in eliminating all possible claims that such tribe may otherwise have for the recovery of such land for related damages, and (2) the liability of the United States to such Indian tribe under section 6 is limited in accordance with the provisions in subsections 6(c) (1) and (2).

The second sentence of section 8 provides that if any other section or provision of the

Act is held invalid, it is the intent of Congress that the remaining sections or provisions of the Act shall remain in full force and effect.

SECTION 9. LIMITATION OF ACTIONS

Subsection 9(a) provides that any action to contest the constitutionality or validity of the Act must be filed within 180 days of the date of enactment. The purpose of this provision is to ensure that, after the expiration of a reasonable period of time, the United States, the states and local governments affected, current landowners and all other persons who have or acquire rights in the lands covered by the legislation can know with certainty and finality that such lands will not be subject to future challenges by Indian tribes. A similar provision was contained in the Rhode Island Indian Claims Settlement Act. In the past, Congress has enacted provisions requiring that challenges to the constitutionality of legislation be instituted within periods as short as sixty days of the date of enactment. See, for example, section 203(d) of the Trans-Alaska Pipeline Authorization Act (Public Law No. 93-153) (43 U.S.C. § 1652(d) (1976)) and the memorandum prepared by the American Law Division of the Library of Congress discussing the constitutionality of such a provision (reprinted at 119 Cong. Rec. 24317 (1973)).

Subsection 9(a) also requires that any action to contest the constitutionality or validity of the Act shall be 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.

Subsection 9(b) provides that except for claims filed with the Court of Claims under section 6 or actions brought under subsection 9(a) to challenge the validity or constitutionality of the Act, no court of the United States, including the Court of Claims, and no court of any state, territory or possession of the United States, or of the District of Columbia shall have jurisdiction over any action or proceeding by or on behalf of an Indian tribe with respect to (1) the invalidity of any transfer of land or natural resources that has been approved, validated and ratified by section 4, (2) any claims, such as claims for trespass damages, mesne profits, or use and occupancy, arising from the alleged invalidity of any such transfer, or (3) any claims against the United States for compensation as a result of the Act. While the provisions of section 4 are intended to prohibit all possible Indian claims relating to the transfers of land or natural resources embraced within that section, the purpose of subsection 9(b) is to make clear that the courts shall not take jurisdiction over any claims based on the alleged invalidity of the transfers covered by section 4 or of any claims for additional compensation from the United States beyond the compensation authorized by section 6. The provision is patterned on the comparable provisions of section 2(d) of the Portal-to-Portal Act of 1947 (29 U.S.C. § 252(d) (1976)).

NATIONAL PARK PROTECTION ACT OF 1982

HON. JOHN F. SEIBERLING

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, January 22, 1982

• Mr. SEIBERLING. Mr. Speaker, the Subcommittee on Public Lands and National Parks recently completed 4

Section 2 amends various sections of the Defense Production Act of 1950, as follows:

Subsection (a) amends the language of the Declaration of Policy to bring the purpose of the Act in keeping with present-day national defense and national security needs. In particular, the amendment calls upon executive agencies and departments to assess continuously the capability of the defense industrial base to satisfy both near-term and increased mobilization production requirements.

Subsection (b) amends the loan guarantee authorizing section of the Defense Production Act (section 301) by increasing the threshold amount beyond which individual loan guarantee amounts must be submitted to Congress from \$38,000,000 to \$50,000,000. The subsection also amends the Congressional review procedure for loan guarantees beyond the threshold amount by shortening the review period from 60 to 30 days of continuous session, and provides for an expedited approval for such loan guarantees through a concurrent resolution of both Houses of Congress.

Subsection (c) amends the direct loan section of the Defense Production Act (section 302) by reducing the Congressional review period for loans over the threshold amount from 60 days to 30 days of continuous session, and provides for an expedited approval for such loans through a concurrent resolution of both Houses of Congress.

Subsection (d) would extend the termination date of the authorities of the Defense Production Act from September 30, 1982, to September 30, 1987.

Subsection (e) would repeal section 720 of the Defense Production Act, the National Commission on Supplies and Shortages, the authority for which was terminated in 1977.

NATIVE AMERICAN INDIAN LAND CLAIMS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. LEE) is recognized for 5 minutes.

● Mr. LEE. Mr. Speaker, I was pleased to join yesterday together with Senators THURMOND and D'AMATO, and Congressmen HOLLAND and WORTLEY in the introduction of H.R. 5494, legislation addressing a problem of overwhelming proportions in our States, and one which shows every promise of spreading to additional areas of our Eastern United States: Native American Indian land claims.

Passage of this bill could lift an enormous burden from the shoulders of property owners in New York and South Carolina, those States first addressed. The following is an analysis of the first three sections of the bill.

SECTION-BY-SECTION EXPLANATION OF H.R. 5494

SECTION 1. SHORT TITLE

This section provides that the Act may be cited as the "Ancient Indian Land Claims Settlement Act of 1982."

SECTION 2. CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

This section sets forth certain findings that describe the background and nature of the claims that have been asserted in several States in the eastern United States challenging the validity of land transfers made generations ago by certain Indian tribes, the immense difficulties involved in attempting

to resolve these claims through litigation against hundreds of thousands of innocent private landowners, and the reasons why such claims must be resolved by federal legislation that would remove any possible question about the validity of these transfers and provide affected Indian tribes with a means of obtaining fair and reasonable compensation from the United States.

Subsection 2(a)(1) describes the nature of the problem addressed by the bill: the existence of claims raised by a number of Indian tribes in the eastern United States (including groups claiming to represent the Oneida, Cayuga, St. Regis Mohawk, and Shinnecock Tribes in New York, the Catawba Tribe in South Carolina) seeking recovery of millions of acres of land and billions of dollars in trespass damages on the ground that the original transfers of the land by Indian tribes in the eighteenth and nineteenth centuries were invalid because the federal government never explicitly ratified or approved those transfers. While the basic claim raised by these Indian groups is that these transfers were invalid because the United States failed to approve these transfers in accordance with the Nonintercourse Act provision of the Indian Trade and Intercourse Act (first enacted in 1790 and now codified at 25 U.S.C. §177), the transfers have also been challenged under various other legal theories, including theories involving provisions of the Constitution and the Articles of Confederation (with regard to transfers that took place after the effective date of the Articles of Confederation but before the adoption of the Constitution and the Indian Trade and Intercourse Act). Regardless of the theory under which the transfers are challenged, the essential element of these claims remains the allegation that the failure of the United States explicitly to approve the transfers renders the transfers invalid.

Several important factors must be taken into account in considering the problems posed by the eastern Indian land claims. First, until the last decade or so, there have been very few court decisions clarifying the scope, meaning, and applicability of the Nonintercourse Act. In decisions such as *Oneida Indian Nation of New York State v. County of Oneida*, 414 U.S. 661 (1974) (in which the Supreme Court indicated that federal consent was required for the extinguishment of Indian title in all states, including the original 13 states) and *Joint Tribal Council of the Passamaquoddy Tribe v. Morton*, 528 F.2d 370 (1st Cir. 1975) (in which the United States Court of Appeals for the First Circuit held that the Nonintercourse Act imposed certain fiduciary duties on the federal government with regard to Indian tribes that had never been federally recognized), the courts have begun to construe the Nonintercourse Act provision of the Indian Trade and Intercourse Act of 1790. While these judicial decisions may provide guidance for future transactions involving Indian lands in the eastern United States, the unfairness of utilizing such decisions to judge the validity of transactions that took place almost two centuries before the decisions were rendered is obvious.

Second, these claims are being raised in lawsuits filed almost two centuries after the transfers in question took place and are being asserted for the recovery of billions of dollars in property and billions of dollars in damage judgments against totally innocent present-day landowners and communities.

Third, the gravamen of these claims does not depend on any alleged unfairness in the compensation received by the Indian tribes at the time of the transfer. Rather, the claims are grounded on the theory that no federal legislation ever specifically ratified

or approved the transfers in question and that in the absence of such federal approval the transfers were invalid. Thus, even if a tribe received full and fair value for its land—of even five times the fair value of the land—under the theories being asserted in these cases the transfers would still be invalid if no specific federal action was taken to approve them.

Subsection 2(a)(2) describes one of the primary reasons why the problems arising from these ancient Indian land transfers have not been resolved in the past. Until quite recently, it has consistently been the view of those federal officials responsible for Indian matters that the United States had no fiduciary responsibilities to those tribes in the eastern United States that had never obtained federal recognition of their tribal status. Responsibility for these tribes had traditionally been left to the states. The views of United States officials in this regard are represented in the following letter (typical of many others) sent by the Bureau of Indian Affairs in response to a request by the Narragansett Tribe for federal assistance:

"The Narragansett Indians are and have been under the jurisdiction of the different states of New England. The Federal Government has never had any jurisdiction over these Indians and Congress has never provided any authority for the various Departments of the Federal Government to exercise the jurisdiction which is necessary to manage their affairs.

"There is, therefore, no possible way in which this office can furnish you with any assistance and all communications in regard to your affairs should be taken up with the proper state officials." (Letter of R. B. Meritt, Assistant Commissioner of the Bureau of Indian Affairs, to John Noka, May 5, 1927, BIA Central Files 1907-1939, Record Group No. 75, National Archives, Washington, D.C.)

Even with regard to those eastern Indian tribes that had received federal recognition and where the United States was aware that such tribes had transferred land to non-Indians in the eighteenth and nineteenth centuries, neither Congress nor, until recently, the Executive Branch took any action that would demonstrate that the United States government believed that the transfers were invalid. Indeed, as discussed below, all of the actions taken by the federal government were consistent with the view that the original transfers by these Indian tribes were valid.

Subsection 2(a)(3) describes how the United States, through its failure to take any action since the original transfers by the Indian tribes (some of which took place almost two centuries ago) that would clarify the rights of these Indian tribes and through its countless actions in dealing with the land during this period as if it were validly owned by the non-Indian landowners, has provided de facto approval of the validity of the transfers. This course of conduct by the United States has resulted in the justifiable reliance by generations of landowners, and by the affected communities and states, in the integrity of present day land titles, founded on the belief that the United States had fulfilled whatever fiduciary responsibility it may have had to these tribes with regard to their land transfers.

The actions of the United States constitute far more than mere passive acquiescence in the validity of the transfers. Over the years the United States has acquired land in the claims areas for a multitude of federal purposes (e.g., post offices, court houses and military facilities) and has treated the non-Indian landowners as the right-

ful owners of the property. It has granted federal funds to state and local agencies for various projects that involve the utilization of this land. It has provided millions of dollars in financial assistance, under the auspices of the Department of Housing and Urban Development, the Farmers Home Administration and the Small Business Administration, to non-Indian individuals and corporations to use, develop and improve the lands claimed. Despite the federal government's extensive involvement in the land in the claims areas, it has never suggested that the non-Indian landowners did not have rightful title to the land because of the purported rights of the Indian tribes that are currently laying claim to the land.

The subsection also emphasizes that generations of landowners, and local and state governments, in justifiable reliance on the validity of the original transfers and the claims of title emanating therefrom, have made billions of dollars in investments in and improvements upon the lands that are now being claimed by Indian tribes. In considering the need for a federal legislative resolution of these claims, it is important to note that challenges to the titles of present landowners based on ancient defects of title could never be maintained if the claimants were non-Indians, since such claims would be cut off by statutes of limitation and doctrines of adverse possession, laches and other legal and equitable principles of repose. With respect to Nonintercourse Act claims, however, the courts have thus far held that such defenses are not available, either on the theory that Indian tribes are entitled to the immunity from such defenses that the United States enjoys with regard to claims involving land owned by the United States or on the theory that defenses based on state law are not available to defeat claims based on federal law. (See, e.g., *Schaghticoke Tribe of Indians v. Kent School Corporation*, 423 F. Supp. 780 (D Conn. 1976)). Thus, current landowners are under a severe handicap in defending against these land claims—a handicap that does not exist in any other type of litigation involving challenges to titles of land. This is one of the many reasons why it is inappropriate and inequitable to attempt to resolve these Indian land claims through lawsuits against current landowners.

Subsection 2(a)(4) makes reference to the catastrophic, economic, social, political and public policy problems that would result from a judicial determination that these ancient Indian land transfers were invalid and that current landowners do not have good title to millions of acres of land in the eastern United States and are liable for trespass damages of astronomic proportions. Restoring the claimants to possession of the lands claimed would have a calamitous effect on thousands of homeowners, businesses and municipal facilities; public services and state and local taxation programs would be cast into disarray, with adverse consequences that would extend far beyond the borders of the states involved. The financial consequences would be disastrous and widespread, and security for personnel, business and governmental obligations would be fatally impaired or destroyed. The practical and political problems inherent in attempting to restore these Indian tribes to possession of the claimed lands would be of an unprecedented dimension, involving judicial supervision of the creation of massive new areas of Indian sovereignty in the eastern states affected.

Subsection 2(a)(5) expresses Congress' agreement with the statements of judges and Executive Branch officials who, after examining the nature and consequences of these claims, have expressed the view that

these ancient claims should be resolved by Congress rather than through litigation against current landowners. The following are typical of the views that have been expressed by various courts and governmental officials on these issues:

"United States District Judge Fort, in discussing the lawsuit filed by the Oneida Indian Nation:

"The greater part of the disruption and individual hardships caused by litigation such as this could be avoided by seeking solutions through other available vehicles. . . . [I]t is within the power of Congress to dispose of the matter under the constitutional delegation of power."

"The aptness of what was recently said by Chief Judge Kaufman is striking. 'As in so many cases in which a political solution is preferable, the parties find themselves in a court of law.'" (*Oneida Indian Nation of New York v. County of Oneida*, 434 F. Supp. 529, 531-32 (N.D.N.Y. 1977).)

"United States District Judge McCurn, in discussing another lawsuit filed by the Oneida Indian Nation:

"There is no question but that these cases present claims which should long ago have been resolved in a legislative forum rather than in a court of law." (*Oneida Indian Nation v. New York*, 520 F. Supp. 1278, 1296 (N.D.N.Y. 1981).)

United States District Judge Theis, in discussing the claims of the heirs of certain Kansas Indians seeking recovery of land transferred in the nineteenth century:

"Nothing in this opinion should be read to indicate that the court is unsympathetic toward the plaintiffs and their position. The Court believes that a great injustice was probably done to some of the Kansas half-breeds in allowing forcible entries and inequitable or fraudulent conveyances to stand, an injustice all too typical of the general treatment of those American nations upon whom the white man chose to impose a conqueror's terms. Justice would not be served, however, by wresting those lands away, more than a century later, from equally innocent landowners. To exact retribution on the current landowners for the sins of their great-grandfathers would merely add to injustice, not right it." (*Dennison v. Topeka Chambers Industrial Development Corporation*, Civil Action No. 79-1668 (D. Kan. November 2, 1981), at 27.)

Retired Georgia Supreme Court Justice William B. Gunter, Special Adviser to President Carter on the Maine Indian claims, in recommending a legislative resolution to the Indian land claims in Maine:

"The pending court actions based on these tribal claims have the unfortunate effect of causing economic stagnation within the claims area. They create a cloud on the validity of real property titles; and the result is a slow-down or cessation of economic activity because property cannot be sold, mortgages cannot be acquired, title insurance becomes unavailable, and bond issues are placed in jeopardy. . . . I have concluded that this problem cannot await judicial determination, and it is proper and necessary for you to recommend some action to the Congress that will eliminate the adverse economic consequences that have developed to date and that will increase with intensity in the near future."

"I have concluded that the Federal Government is primarily responsible for the creation of the problem. Prior to 1975 the Federal Government did not acknowledge any responsibility for these two tribes. Interior and Justice took the position that these two tribes were not entitled to federal recognition but were 'State Indians.' In 1975 two federal court decisions, one at the trial level and another at the appellate level, declared

that the Constitution adopted in 1789 and a Congressional enactment of 1790 created a trust relationship between the Federal Government and these two tribes. . . .

"The problem is complex and does not lend itself to a simple solution because it is old and large. The factual situation giving birth to the problem goes back to colonial times and the early years of our life as a nation under the Constitution. Adding to the complexity is the fact that the problem is social, economic, political and legal."

(Recommendations to President Carter from William B. Gunter re: Passamaquoddy and Penobscot Tribal Claims-Maine, July 15, 1977.)

Attorney General Griffin B. Bell, in explaining to the Secretary of the Interior the reasons why the Department of Justice had decided not to bring Indian land claim suits against landowners in several eastern states:

"After careful thought, I have decided that I will not bring suit against the landowners in the New York, South Carolina, or Louisiana claim areas. I have a number of questions about the legal and factual issues in these suits and question whether they can be won. Furthermore, the fact that the landowners are completely innocent of any wrongdoing weighs heavily against suing them. Finally, the Administration's policy decision to relieve small landowners in Maine from suit through a legislative settlement recommends the same relief to others similarly situated."

"This is not to say that the tribes involved do not have some equitable complaint, using that term in the broadest sense. Other tribes have been compensated over the years for the ancient takings which occurred as a result of the western movement and settlement of the nation. However, it is completely within the power of Congress to remedy the tribal claims by the process of ratifying the ancient tribal agreements with the states. Such ratification could be accompanied by payments to the tribes in appropriate amounts. In the alternative, the tribes could be given a cause of action against the United States in the Court of Claims." (Letter dated June 30, 1978, from Attorney General Griffin B. Bell to Secretary of the Interior Cecil D. Andrus, reprinted at pp. 34-36 of the Hearings on Statute of Limitations Extension before the Senate Select Committee on Indian Affairs, 96th Cong., 1st Sess. (1979).)

In considering the reasons why a fair and equitable solution to these claims cannot be derived through the litigation process, the views expressed by District Judge Urbom is his opinion in the *Consolidated Wounded Knee Cases* (although not a case involving land claims) are strikingly appropriate:

"How much of the sins of our forefathers must we rightly bear? What precisely do we do now? Shall we pretend that history never was? Can we restore the disemboweled or push the waters of the river upstream to where they used to be?"

"Who is to decide? White Americans? The Native Americans? All, together? A federal judge?"

"Who speaks for the Sioux? Those traditional people who testified here? Those Sioux of a different mind who did not testify? The officials elected by the Sioux on the eight reservations?"

"Feeling what was wrong does not describe what is right. Anguish about yesterday does not alone make wise answers for tomorrow. Somehow, all the aching of the soul must coalesce and with the wisdom of the mind develop a single national policy for governmental action."

"I feel no shirking of duty in saying that formulation of such a national policy should

not be made by a federal judge or the hand-ful who may review his decision on appeal." (*United States v. Consolidated Wounded Knee Cases*, 389 F. Supp. 235, 238-239 (D. South Dakota, 1975).)

Subsection 2(a)(6) states that the purpose of the Nonintercourse Act—which was to ensure fairness in the transactions by which Indian lands were transferred—can now be secured by providing monetary compensation to those tribes that may have transferred their lands to non-Indians without federal approval and at less than fair consideration. The purpose of the Nonintercourse Act has been articulated by the Court of Claims in *Seneca Nation of Indians v. United States*, 173 CT.Cl. 917, 925 (1965) as follows:

"In the light of its language, contemporaneous construction, and history, we hold that the Trade and Intercourse Act created a special relationship between the Federal Government and those Indians covered by the legislation, with respect to the disposition of their lands, and that the United States assumed a special responsibility to protect and guard against unfair treatment in such transactions."

Subsection 2(a)(7) states that to the extent the conduct of the United States over the decades and centuries since the original Indian tribal transfers has not constituted whatever federal approval is necessary to validate them, it is the intent of Congress in this Act to settle once and for all whether such approval and validation has been given. The subsection also states that it is the intent of Congress to provide affected Indian tribes with a monetary remedy against the United States, as provided in the Act, which is to be the sole and exclusive remedy for the satisfaction of any claim such a tribe may have against the United States, any state or local government, or any other person or entity by virtue of the transfers in question.

Subsection 2(b) sets forth the three major purposes of the Act and states that in achieving these purposes Congress intends to exercise the full extent of its authority under the Constitution. The major purposes of the Act are:

(1) to remove the clouds on titles in land located in New York and South Carolina as a result of claims by Indian tribes that transfers of such land made prior to January 1, 1912, were in violation of the Constitution, the Articles of Confederation, any law of the United States, including the Nonintercourse Act, or any other legal requirement;

(2) to approve, validate, and ratify such transfers with the same effect as if such approval, validation, and ratification had been given at the time of the transfers; and

(3) to provide Indian tribes whose transfers have been approved by this Act with a means of obtaining fair and equitable compensation for their claims, including a cause of action for monetary compensation against the United States in the Court of Claims.

SECTION 3. DEFINITIONS

Section 3 contains definitions of certain key terms used in the Act.

Subsection 3(a) defines the term "Indian tribe" to include any Indian nation, tribe of Indians, or any other body of Indians of the same or similar race, united in community under one leadership or government, and inhabiting a particular or sometimes ill-defined territory. This definition is intended to embrace all possible Indian entities whose land transfers may have been subject to federal approval under the Nonintercourse Act provision of the Trade and Intercourse Act of 1790, the Constitution, or any other law or treaty of the United States.

Subsection 3(b) defines the term "land or natural resources" to include any real property or natural resources or any interest in real property or natural resources.

Subsection 3(c) defines the term "laws of the United States" in a broad and comprehensive manner to include the Articles of Confederation and all possible federal, state or colonial statutes, treaties, proclamations, executive agreements, orders, regulations and common law principles, and all judicial interpretations thereof. The purpose of this broad definition is to ensure that upon enactment of the Act there remains no legal theory upon which any claims against current landowners could be asserted as a result of the ancient Indian land transfers that are validated by the Act.

Subsection 3(d) defines the term "Nonintercourse Act provision of the Trade and Intercourse Act of 1790."

Subsection 3(e) defines the term "Secretary" to mean the Secretary of the Interior or his designate.

Subsection 3(f) defines the term "transfer." It is intended to have a comprehensive meaning and to cover all conceivable types of transactions and events by which title, possession, dominion or control over land or natural resources may have passed from Indian tribes to non-Indians. ●

INTRODUCTION OF JOINT RESOLUTION URGING A NEGOTIATED SETTLEMENT IN EL SALVADOR

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland (Mr. BARNES) is recognized for 15 minutes.

● Mr. BARNES. Mr. Speaker, on behalf of myself and Mr. SOLARZ, I am today introducing a joint resolution declaring that it is the policy of the U.S. Government to encourage unconditional negotiations for the purpose of achieving a ceasefire and a political settlement to the conflict in El Salvador. An identical resolution is being introduced in the Senate by Senators DODD and TSONGAS.

The administration persists in presenting us with the Hobson's choice between continued escalation of the conflict in El Salvador, and withdrawing and letting the extreme left take over. It is clear to me from the comments I hear my colleagues making that they are not comfortable with that choice. They are seeking another alternative.

Mr. Speaker, there is another alternative, which the administration steadfastly refuses to acknowledge, and that is to work for a political solution to the conflict. Furthermore, this is the only alternative with any hope of producing anything like a centrist government in El Salvador. If we do not pursue that alternative, we will face the prospect of either seeing the defeat of the Salvadoran Government or sending in U.S. troops. I do not think that is a choice any of us want to face.

The Subcommittee on Inter-American Affairs, which I have the honor to chair, will complete its hearings on El Salvador on February 23 and 25. After that, we will take up this and other measures pertaining to the conflict in

El Salvador that have been referred to the subcommittee.

I believe the measure we are introducing today can and will command broad support on both sides of the aisle. It does not confront the President. It does not cut off aid or reduce the President's flexibility. It does offer the alternative the Members are seeking, and it urges the President to adopt that alternative.

Mr. Speaker, we have nothing to lose and everything to gain by talking. I urge all my colleagues to support this resolution as an expression of what Congress thinks should be U.S. policy for ending the war on terms that are favorable to our interests.

I include at this point the text of the resolution, and a joint statement of the sponsors:

H.J. RES. 405

Joint resolution declaring that it should be the policy of the United States Government to encourage unconditional negotiations for the purpose of achieving a ceasefire and a political settlement to the conflict in El Salvador

Whereas the conflict in El Salvador has inflicted on the people of that country a tragic toll in lives and property;

Whereas the conflict appears to be a stalemate with no end in sight;

Whereas the continuation of the conflict will further polarize the political climate in El Salvador and place in jeopardy the peace and security of the Central American region;

Whereas the Government of El Salvador has demonstrated its commitment to the holding of elections;

Whereas the combined political and military leadership of the insurgent opposition has declared its willingness to engage in negotiations without preconditions to end the conflict;

Whereas other groups and nations in Central America and Europe have announced their willingness to facilitate such negotiations; and

Whereas the present opportunity to pursue such negotiations is a unique moment in the history of the conflict and may not be repeated: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That with respect to the conflict in El Salvador, it should be the policy of the United States Government to encourage all parties to the conflict—

(1) to begin unconditional negotiations for the purpose of achieving a cease-fire arrangement under international supervision, and

(2) to pursue these negotiations for the purpose of reaching an overall political settlement to the conflict, one element of which would be open and free elections under international supervision.

STATEMENT BY SENATOR CHRISTOPHER J. DODD, SENATOR PAUL E. TSONGAS, REPRESENTATIVE MICHAEL D. BARNES, AND REPRESENTATIVE STEPHEN J. SOLARZ, FEBRUARY 10, 1982

Today, we will introduce a Joint Resolution calling upon this Administration to pursue a negotiated political solution to the conflict in El Salvador.

The situation in El Salvador continues to go from bad to worse. Despite the substantial escalation of U.S. involvement during the past year, the war is at best at a stale-

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