NOOKSACK INDIAN TRIBE
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to Mike Uhlmann

June 17, 1982

Senator William S. Cohen
Chairman, Senate Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

RE: 28 USC § 2415

Dear Senator Cohen:

The Nooksack Tribe is very concerned about the future of 28 USC § 2415. Many members of the Tribe are heirs of Tribal members who obtained trust allotments under the Act of July 4, 1884, (23 Stat. 96; codified 43 USC § 190). Many of these allotments presently contain illegal trespasses by railroads and county roads. Because the trespasses affect many of our Tribal members, and the promised remedies by the Federal Government under 28 USC § 2415 are quickly disappearing, the Nooksack Tribal Council feels we should speak on behalf of our people.

The Federal Government appears to be breaking its trust responsibilities, and its promises in § 2415, by allowing § 2415 to expire at the end of this year. If that statute is allowed to expire, the promises by the Federal Government to help individual Indians be compensated for long-standing illegal trespass of their lands will remain forever unfulfilled. It is the experience of our people that the Federal Government has deliberately failed to fulfill its trustee obligations concerning the § 2415 claims. I will relate one situation as an example of this failure.

There is one allotment in Whatcom County, Washington known as the Toss Weaxta Nooksack Public Domain Allotment held in trust by the U.S. Government. Across this allotment is an invalid right of way which the Burlington Northern Railway uses in continuing trespass.

On June 29, 1979, the Portland Region Office of the Solicitor for the Department of the Interior sent a letter to the U.S. Attorney in Seattle. The nine (9) page letter requested the U.S. Attorney to initiate litigation on the trespass on the Weaxta allotment. The letter contains a statement of the facts, legal analysis, discuss of possible defenses by Burlington Northern, statement of settlement efforts and recommendations. The Assistant Regional Solicitor was quite sure the right of way used by Burlington Northern was not valid and that the railroad was not on the right of way purchased by Burlington Northern (purchased from a defunct railroad not the Indian owner). He also felt "A negotiated settlement of the damages claim short of litigation appears realistic." He also included 17 exhibits and a draft complaint with the letter.

The allottee heirs heard nothing more. On February 19, 1980, an attorney for Evergreen Legal Services, Native American Project, who was assisting the allottee heirs, wrote a letter to the U.S. Attorney in Seattle. The attorney requested to know the status of the case. It was pointed out to the U.S. Attorney that the U.S. has known about these claims since 1973. The attorney sent another letter February 27, 1980 to the Assistant U.S. Attorney General, Lands and Resources Division, in Washington, D.C. The letter made the same request as the February 19, 1980 letter.

On March 17, 1980, the Portland Region Office of the Solicitor wrote another letter to the U.S. Attorney in Seattle answering three questions the U.S. Attorney had asked. All three questions were without merit if the U.S. Attorney had reviewed the record sent it by the Solicitor. The Solicitor ended his letter by stating:

> "To insure that some attempt is made to file these cases, we will contact the Associate Solicitor, Indian Affairs, and ask him to forward duplicates of our requests for litigation to your Washington Office. Frankly, I have difficulty understanding why, after having these cases for nine months, you wait until March 13, 1980, to raise these questions, a mere seventeen days before the deadline. Although the cases are legally clear and straight-forward, it is doubtful that in the remaining time appropriate authorization can be ushered through the Department of Justice, leaving you sufficient time to file litigation. Unless an extension of 28 USC § 2415 is granted, inaction by the United States will have allowed these otherwise meritorious cases be barred. It is our view that the Federal Trust responsibility requires more, and we seek your assistance in responding to that requirement.

The letter refers to cases because the Burlington Northern invalidly crosses another Nooksack Allotment.

To date, the allottee heirs have heard nothing concerning this case. It has been three years since the Solicitor made the formal request for litigation. It has been over two years since all the questions of the U.S. Attorney have been answered. It has been nine years since these illegal trespasses have been brought to the attention of the U.S. Government. In six months, the U.S. Government will loose its right to bring these meritorious claims. If the claims of illegal trespass across several other Nooksack allotments in Whatcom County are barred by U.S. inaction, it will adversely affect many, many Nooksack Indians. Other cases have the same sad history as the Weaxta allotment.

We as a Tribe, request that 28 USC § 2415 be extended to allow the U.S. Government to fulfill its trust obligations to help Indians redress illegal trespass across their lands. Based on the past history, as illustrated with the Weaxta allotment, the U.S. Government will most probably not be able to file the claims by the end of 1982.

In all fairness, and to assist the Indians redress the illegal trespass of their lands, extend 28 USC § 2415 to allow the U.S. Government to fulfill its trust obligations to us. Even through the Administration states that it does not need more time to bring these actions, our experience demonstrates more time is needed. We will watch the actions of Congress on this matter with great interest.

Very truly yours,

Harry Cooper
Chairman
Nooksack Tribal Council

gcdr

cc: Representative Sam Hall
Representative Peter Rodino
Representative Morris Udall
White House Cabinet Council on Legal Affairs
Sasha Harmon, ELS-NAP

DRAFT

STATEMENT OF

CAROL E. DINKINS

ASSISTANT ATTORNEY GENERAL
LAND AND NATURAL RESOURCES DIVISION

CONCERNING

H.R. 5494

"THE ANCIENT INDIAN LAND CLAIMS
SETTLEMENT ACT OF 1982"

BEFORE

THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

HOUSE OF REPRESENTATIVES

ON

JUNE 22, 1982

Thank you for the opportunity to testify on H.R. 5494, the "Ancient Indian Land Claims Settlement Act of 1982." ~~The~~ This bill ~~Administration supports the basic purpose of the bill -- namely,~~ would ~~to~~ achieve a legislative solution to complex, costly and damaging litigation resulting from the alleged violations of the Trade and Intercourse Act of 1790. ~~This~~ That Act, which is now codified in a slightly revised version at 25 U.S.C. 177, renders ~~null and void~~ ineffective any transfer of interests in land from Indians to non-Indians, regardless of the amount of compensation received, unless Congress has ratified the conveyance.

In essence, H.R. 5494 would achieve a legislative solution to ongoing and potential litigation over the disputed land in New York and South Carolina by providing the Congressional ratification of land ~~extinguishing tribal claims based on both recognized and aboriginal title.~~ transfers called for by the Trade and Intercourse Act, This would be accomplished through ~~retroactive~~ ratification of any pre-1912 transfer of land by Indian tribes as of the date of the transfer and by the extinguishment of any claims for damages from trespass or mesne profits based on those transfers. At the same time, the Secretary of the Interior would be authorized to enter into settlement agreements with the tribes to provide monetary compensation for the loss of the tribes' right to sue the present landowners. Compensation would be based on the difference between the fair market value of the land and natural resources at the time of the transfer and

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the price that the Indians actually received. If the settlement negotiations prove unsuccessful, the tribe would be entitled to sue the United States in the Court of Claims and, if successful, would be compensated on the same formula.

The Administration supports the basic purpose of this Bill, ~~We strongly endorse the concept of a legislative -- namely, to achieve a legislative solution to complex, costly and settlement of disputes involving alleged violations of the Trade and Intercourse Act.~~ damaging litigation. A legislative solution is thus far preferable to burdensome, protracted, and perhaps ultimately inconclusive litigation. The magnitude of these claims is evident given their size, the nature of the legal issues involved, and the nearly two hundred years that have intervened, in some cases, since the original land transfers. It was estimated that litigation of the comparable dispute in the State of Maine ~~which was settled through legislation, enacted in 1980,~~ would have taken between 5 and 15 years. During the litigation, sale of municipal bonds would be hampered, and the affected communities would be severely disrupted.

the land titles of affected landowners would be clouded, their ability to obtain title insurance or to sell their property would be harmed, the

Although the Administration supports the basic concept of H.R. 5494, and regards such a solution as constitutional, we believe that a number of modifications to the bill are necessary in order to obtain a more workable and equitable resolution of these disputes. I will briefly summarize the most significant changes proposed by the Administration.

1. Contribution by States

Under H.R. 5494, the entire ~~bill for~~ cost of ending the litigation against the states and private landowners and compensating the tribes is paid by the Federal Government -- even though the

United States has not in any way been involved in the transactions in question. While the United States is willing to contribute financially to a resolution of these claims, and will bear the litigation burden in the Court of Claims, participation from the affected states must also be part of the solution. We suggest, therefore, that the bill be amended to provide that extinguishment of aboriginal title and ratification of sales of recognized title would be conditioned on the execution of a contract between the Secretary of the Interior and the affected state, providing for the reimbursement of the United States for one half of the liability resulting from claims under the Act.

2. Aboriginal Title

H.R. 5494 creates a cause of action to recover the difference, plus interest, between the fair market value of the land and natural resources at the time of transfer and the price actually received. This formula would apply to land held by aboriginal title as well as recognized title, although the interest on aboriginal title would be two percent and the interest on recognized title would be five percent.

As the Committee is aware, aboriginal title refers to the concept of tribes' right of occupancy of their aboriginal homelands while recognized title refers to lands guaranteed to tribes by treaties, statutes or other action by the sovereign. The Supreme Court has made clear that Congress has plenary authority to extinguish aboriginal title with or without the consent of the tribes.

Moreover, it is well established that the Indian right of occupancy created by aboriginal title is not a vested property right protected by the Fifth Amendment. Tee-Hit-Ton Indians v. United States, 348 U.S. 272 (1955); United States v. Alcea Band of Tillamooks, 341 U.S. 48 (1951). Thus there is no doubt that Congress can constitutionally extinguish any claims based on aboriginal title without the necessity of paying just compensation.

The Administration believes that while there may be a constitutional obligation to compensate for retroactive ratification of transfers of recognized title, there is no such requirement with respect to aboriginal title. Moreover, the complexities of litigation over aboriginal title would place a potential severe burden on the already overextended personnel resources of the Department of the Interior and the Department of Justice. If Congress determines that the land transfers involving aboriginal title should be the subject of federal compensation, we suggest that such compensation be made in a lump sum -- without the requirement of protracted litigation.

3. Negotiations with Federal Government

The provision in H.R. 5494 authorizing separate negotiations with the Secretary of the Interior would be eliminated. Separate negotiations would simply delay the settlement process; they would not serve to preclude filing a lawsuit in the Court of Claims. Once a tribe files suit in the Court of Claims, the litigation can be settled through compromise.

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4. Scope

changed

In our view, the scope of the Act should not be limited to New York and South Carolina: all alleged violations of the Trade and Intercourse Act should be covered. We are aware of similar claims in Connecticut and Louisiana and believe, as a matter of equity, that the tribes and landowners of one state should not be treated differently from those of another state. While it is true that legislation resolving these types of claims has been enacted for tribes in Maine and Rhode Island, the settlements in those states involved lengthy and ultimately successful negotiations involving all parties. Even if such negotiations were attempted here, it is unlikely that the resolution could be achieved quickly or that the results would be substantially uniform.

5. Taxes

Under §5(e) of H.R. 5494, land acquired by tribes in lieu of monetary compensation would be subject to state and local taxes and would not be held in trust for the tribes by the United States. It is worth mentioning that if a tribe had acquired land through litigation or retained ownership, the land would be held in trust and would not be taxable. Furthermore, tribal ownership of land in fee simple would represent a departure from the traditional policy of preventing any possibility of selling or forfeiting Indian property.

Consequently, the Administration recommends that any land acquired in lieu of monetary compensation be held in trust by the United States and therefore not subject to taxation.

In addition to these changes, a number of relatively technical modifications are necessary in order to insure that the process of resolving these claims can be accomplished expeditiously and fairly. The Administration earnestly desires a conclusion to these disputes and believes that, as modified, H.R. 5494, can accomplish this goal. I would like to emphasize that in developing amendments to this bill, the Administration welcomes the opportunity to discuss the changes with the affected states and tribes as well as this Committee and the bill's authors. Working together, I am convinced that a prompt and equitable solution can be achieved.

Thank you.

*633-1442

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I want to emphasize that this bill is an even-handed attempt to provide relief to both sides of an ancient and ~~[illegible]~~ intractable controversy. The lands at issue were transferred by the Indian tribes to the States of New York and South Carolina many years ~~[illegible]~~ ago, and the historical circumstances surrounding the transfers are disputed and clouded by the passage of time. Since that time, thousands of innocent persons have purchased the land in good faith, building homes, businesses and lives in title unawareness of any cloud on their title. On the other side are the descendants of the Indians who originally transferred the land. ~~[illegible]~~ Nothing ~~[illegible]~~

By the Trade and Intercourse Act, Congress undertook to oversee land transfers by the tribes to States and settlers, to ensure the fairness of

the terms. This did not take place, leaving open the real possibility that the tribes were tricked or coerced into unfair transactions. As we survey the situation now, in 1982, we see potential injustice on each side -- innocent landowners on the one, descendants of Indians denied the protection of the law on the other. ~~This bill~~ We believe this bill is a realistic means of resolving this problem -- not perfect justice for all in this imperfect world, but a realistic and ~~worthy~~ evenhanded effort to provide redress to all. In essence, the bill protects the innocent landowners in their enjoyment of the land, while compensating the Indian tribes for the frauds to the ~~to~~ extent the ~~the~~ original terms were unfair. In this way, Congress fulfills its responsibility under

b, H States and settlers with the Indians.

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Ordinarily, we would prefer to see disputes such as this ended through negotiations resulting in fair, reasonable, and affordable settlements. In these cases, however, there has been no progress toward reasonable settlements that the federal government could support. Instead, the parties have proceeded with litigation, and no settlement discussions are now underway.

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Of course, the Administration's support for this Bill does not preclude the parties from working toward ~~a reasonable~~ an equitable and affordable settlement (before enactment of this Bill). If the parties make rapid and real progress toward such a settlement, ~~the Ad~~ we would be whole-heartedly cooperate. However, ~~But the uncertain prospects of such a settlement do not warrant delay of consideration of this Bill.~~ we do not think it would be appropriate to delay a legislative solution to these disputes while awaiting the un-

certain prospects of settlement negotiations.

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STATEMENT OF , DEPARTMENT OF THE INTERIOR, BEFORE THE HEARING OF THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON S. 2294, A BILL "TO PROVIDE FOR THE SETTLEMENT OF THE LAND CLAIMS OF THE CHITIMACHA TRIBE OF LOUISIANA, AND FOR OTHER PURPOSES," JULY 1, 1982.

MR. CHAIRMAN, THANK YOU FOR THE OPPORTUNITY TO PRESENT THE VIEWS OF THE DEPARTMENT OF THE INTERIOR ON S. 2294, THE "CHITIMACHA CLAIMS SETTLEMENT ACT."

WE RECOMMEND AGAINST ENACTMENT OF S. 2294.

S. 2294 WOULD PROVIDE FOR THE SETTLEMENT OF ALL CHITIMACHA LAND CLAIMS IN THE STATE OF LOUISIANA. THE BILL WOULD AUTHORIZE CONGRESSIONAL CONSENT AND APPROVAL OF PRIOR TRANSFERS OF LANDS BY THE CHITIMACHA TRIBE WHICH THE TRIBE ASSERTS WERE MADE IN VIOLATION OF THE INDIAN NON-INTERCOURSE ACT, CODIFIED AT 25 U.S.C. 177. THE BILL WOULD ALSO EXTINGUISH ANY ABORIGINAL TITLE AND ANY TRIBAL CLAIMS FOR DAMAGES OR POSSESSION OF LAND AND NATURAL RESOURCES. A CLAIMS SETTLEMENT FUND IN THE AMOUNT OF $7,500,000 WOULD BE ESTABLISHED TO COMPENSATE THE TRIBE FOR THE EXTINGUISHMENT OF ALL SUCH CLAIMS.

THE PROPOSED LEGISLATION WOULD SETTLE LAND CLAIMS COVERED IN SEVEN SUITS FILED BY THE CHITIMACHA TRIBE. THE PRIMARY CLAIM SEEKS THE RECOVERY OF APPROXIMATELY 813 ACRES, A PART OF AN 1,093-ACRE PARCEL OF LAND LOCATED IN ST. MARY'S PARRISH, LOUISIANA, CONFIRMED TO THE TRIBE BY THE U.S. SUPREME COURT IN 1852. A FEE PATENT WAS ISSUED TO THE "NATION OF CHITIMACHA INDIANS" FOR THE 1,093 ACRES IN 1855. THROUGH A SERIES OF LAND SALES AND LAW SUITS THE TRIBE'S HOLDINGS DWINDLED TO APPROXIMATELY 280 ACRES BY 1919 AT WHICH TIME THE REMAINING LANDS WERE TAKEN IN TRUST FOR THE TRIBE BY THE UNITED STATES. OF THE 813 ACRES ALIENATED OR LOST THROUGH ADVERSE POSSESSION, NONE OF THE TRANSFERS WERE APPROVED BY THE UNITED STATES PURSUANT TO INDIAN NON-INTERCOURSE ACT.

ON AUGUST 1, 1977, BECAUSE OF THE IMMINENT RUNNING OF AN APPLICABLE STATUTE OF LIMITATIONS, THE DEPARTMENT ADVISED THE DEPARTMENT OF JUSTICE THAT THE CHITIMACHAS HAVE A CREDIBLE CLAIM FOR THE RECOVERY OF THE 813 ACRES AND RECOMMENDED THAT SUITS BE FILED BY THE UNITED STATES ON THEIR BEHALF. CONGRESS LATER EXTENDED THE STATUTORY PERIOD, AND BECAUSE OF THE POTENTIAL ECONOMIC DISRUPTION TO THE COMMUNITIES AFFECTED BY THESE CLAIMS THE DEPARTMENT WITHDREW ITS LITIGATION REPORT IN 1978 AND BEGAN TO EXPLORE THE POSSIBILITY OF A LEGISLATIVE SETTLEMENT.

SEVERAL OTHER SUITS FILED BY THE CHITIMACHA TRIBE SEEK THE RECOVERY OF LANDS OUTSIDE THE CONFINES OF THE 1855 PATENT. THE TRIBE HAS DISCOVERED DEEDS AND OTHER DOCUMENTARY EVIDENCE SHOWING THAT THE LANDS INVOLVED WERE PURCHASED OR PATENTED TO VARIOUS NON-INDIANS AND THE STATE OF LOUISIANA AND THAT THE SALES HAVE NEVER BEEN APPROVED BY CONGRESS, OR IN THE CASE OF SALES BEFORE 1804, BY THE APPROPRIATE SPANISH OR FRENCH AUTHORITIES. THE DEPARTMENT HAS NEVER TAKEN A FORMAL POSITION ON THE MERITS OF THESE CLAIMS. ONE SUCH SUIT WAS DISMISSED BY THE U.S. DISTRICT COURT OF LOUISIANA AND THAT DECISION HAS BEEN APPEALED BY THE TRIBE.

IN 1980, AFTER INFORMAL DISCUSSIONS WITH OUR SOLICITOR'S OFFICE, THE TRIBE OFFERED BY TRIBAL RESOLUTION TO SETTLE FOR $7,500,000 AS AN ALTERNATIVE TO FURTHER LITIGATION OF THE CLAIMS. AS A RESULT OF SUBSEQUENT MEETINGS WITH DEPARTMENTAL OFFICIALS AT THAT TIME, THE DEPARTMENT DIRECTED THAT APPRAISALS BE CONDUCTED. THE BUREAU OF INDIAN AFFAIRS THEN CONDUCTED TWO APPRAISALS OF AN 882-ACRE TRACT IN ST. MARY'S PARRISH AND OF TWO PARCELS (1,023.19 ACRES 661

ACRES) IN IBERVILLE PARRISH, LOUISIANA. THE ESTIMATED MARKET VALUE OF THESE LANDS AND PROPERTY AT THE TIME OF THE APPRAISALS, EXCLUDING MINERALS, WAS APPROXIMATELY $8,000,000.

WHILE WE BELIEVE THAT ALL PARTIES CONCERNED WOULD AGREE THAT A NEGOTIATED SETTLEMENT IS PREFERABLE TO LENGTHY LITIGATION, WE DO NOT HAVE SUFFICIENT INFORMATION AT THIS TIME TO DETERMINE WHETHER THE $7.5 MILLION WOULD BE AN APPROPRIATE SETTLEMENT AMOUNT. THE VALUE OF THE ABOVE LAND AND PROPERTY WAS APPRAISED AT THE CURRENT FAIR MARKET VALUE.

IN TESTIMONY BEFORE THIS COMMITTEE ON THE PROPOSED ANCIENT INDIAN LAND CLAIMS SETTLEMENT ACT (S. 2084 AND H.R. 5494) THE ADMINISTRATION HAS RECENTLY SUPPORTED A FORMULA UNDER WHICH A BASIS FOR SUCH SETTLEMENTS CAN BE DETERMINED. COMPENSATION WOULD BE BASED ON THE DIFFERENCE, PLUS INTEREST, BETWEEN THE FAIR MARKET VALUE OF THE LAND AND NATURAL RESOURCES AT THE TIME OF TRANSFER AND THE PRICE THAT THE INDIANS ACTUALLY RECEIVED. IN APPLYING THIS FORMULA, HISTORICAL APPRAISALS OF THE LAND AND THE NATURAL RESOURCES AT THE TIME OF TRANSFER WOULD BE REQUIRED PRIOR TO ANY AGREEMENT BY THE FEDERAL GOVERNMENT IN AN APPROPRIATE SETTLEMENT AMOUNT.

HOWEVER, UNLIKE THE SITUATION INVOLVED IN THE ANCIENT INDIAN LAND CLAIMS SETTLEMENT BILL, WE DO NOT BELIEVE THAT THERE IS A BASIS FOR REQUIRING STATE CONTRIBUTION IN THESE CLAIMS BECAUSE THE STATE HAS NO RESPONSIBILITY FOR THE LAND TRANSACTIONS ALLEGED TO HAVE BEEN IN VIOLATION OF THE INDIAN NON-INTERCOURSE ACT.

BASED ON THE FOREGOING, WE RECOMMEND AGAINST THE ENACTMENT OF S. 2294 AT THIS TIME. MEANWHILE, WE WOULD BE WILLING TO WORK WITH THIS COMMITTEE AND ALL INTERESTED PARTIES ON RESOLVING THESE CLAIMS WITHIN THE PARAMETERS STATED ABOVE.

THIS CONCLUDES MY PREPARED STATEMENT. I WOULD BE PLEASED TO RESPOND TO ANY QUESTIONS THE COMMITTEE MAY HAVE.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

DATE: July 13

TO: Bill Barr

FROM: Mike McConnell

Please review this and if you have any comments, try to get to me by 3:30.

file Indian Land Claims

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REV AUG 73

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DRAFT
NOON, 7/13

STATEMENT OF WILLIAM H. COLDIRON, SOLICITOR, DEPARTMENT OF THE INTERIOR, BEFORE THE HEARING OF THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON S. 2294, A BILL "TO PROVIDE FOR THE SETTLEMENT OF THE LAND CLAIMS OF THE CHITIMACHA TRIBE OF LOUISIANA, AND FOR OTHER PURPOSES," JULY 1, 1982.

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EVEN THROUGH THERE WAS NO FEDERAL INVOLVEMENT IN ANY OF THE TRANSACTIONS, THE FEDERAL GOVERNMENT HAS BEEN WILLING TO EXPLORE POSSIBLE SOLUTIONS TO THE PROBLEM. IN 1980, AFTER INFORMAL DISCUSSIONS WITH OUR SOLICITOR'S OFFICE, THE TRIBE OFFERED BY TRIBAL RESOLUTION TO SETTLE FOR $7,500,000 AS AN ALTERNATIVE TO FURTHER LITIGATION OF THE CLAIMS. AS A RESULT OF SUBSEQUENT MEETING WITH

MEETINGS WITH DEPARTMENTAL OFFICIALS AT THAT TIME, THE DEPARTMENT DIRECTED THAT APPRAISALS BE CONDUCTED. THE BUREAU OF INDIAN AFFAIRS THEN CONDUCTED TWO APPRAISALS OF A TRACT OF APPROXIMATELY .813 ACRES IN ST. MARY'S PARISH AND OF TWO PARCELS (1,023.19 ACRES AND 661 ACRES) IN IBERVILLE PARISH, LOUISIANA. THE ESTIMATED MARKET VALUE OF THESE LANDS AND PROPERTY AT THE TIME OF THE APPRAISALS, EXCLUDING MINERALS, WAS APPROXIMATELY $4.3 MILLION AND $3.7 MILLION, RESPECTIVELY.

WHILE WE BELIEVE THAT ALL PARTIES CONCERNED WOULD AGREE THAT A NEGOTIATED SETTLEMENT IS PREFERABLE TO LENGTHY LITIGATION, WE DO NOT HAVE SUFFICIENT INFORMATION AT THIS TIME TO DETERMINE WHETHER THE $7.5 MILLION WOULD BE AN APPROPRIATE SETTLEMENT AMOUNT. THE VALUE OF THE ABOVE LAND AND PROPERTY WAS APPRAISED AT THE CURRENT FAIR MARKET VALUE.

IN TESTIMONY BEFORE THIS COMMITTEE ON THE PROPOSED ANCIENT INDIAN LAND CLAIMS SETTLEMENT ACT (S. 2084 AND H.R. 5494) THE ADMINISTRATION HAS RECENTLY SUPPORTED A FORMULA UNDER WHICH A BASIS FOR SUCH SETTLEMENTS CAN BE DETERMINED. COMPENSATION WOULD BE BASED ON THE DIFFERENCE, PLUS INTEREST, BETWEEN THE FAIR MARKET VALUE OF THE LAND AND NATURAL RESOURCES AT THE TIME OF TRANSFER AND THE PRICE THAT THE INDIANS ACTUALLY RECEIVED. IN APPLYING THIS FORMULA, HISTORICAL APPRAISALS OF THE LAND AND THE NATURAL RESOURCES AT THE TIME OF TRANSFER WOULD BE REQUIRED PRIOR TO ANY AGREEMENT BY THE FEDERAL GOVERNMENT IN AN APPROPRIATE SETTLEMENT AMOUNT. WE ALSO BELIEVE THE STATE SHOULD BE REQUIRED TO BEAR HALF OF THE LIABILITY RESULTING FROM EXTINGUISHMENT OF THE CLAIMS.

IN ADDITION, WE ARE OPPOSED TO THE DEFERRAL OF CAPITAL GAINS PROVIDED FOR IN SECTION 5. WE BELIEVE THAT SECTION OF THE Internal Revenue CODE SHOULD BE NARROWLY CONSTRUED AND THUS, SHOULD NOT APPLY TO TRANSFERS INVOLVING WILLING BUYERS AND WILLING SELLERS.

ALSO, WE ARE OPPOSED TO THE PLACING IN TRUST OF ANY LANDS ACQUIRED PURSUANT TO THE ACT. WE BELIEVE THAT THE TRIBE IS FULLY CAPABLE OF MANAGING ITS OWN LANDS AND SEE NO NEED FOR ADDITIONAL LANDS TO BE PLACED IN TRUST.

FURTHER, WE BELIEVE THAT IT IS UNFAIR IN THIS TIME OF FISCAL RESTRAINT NOT TO TAKE INTO CONSIDERATION PAYMENTS TO THE TRIBE OR ITS MEMBERS MADE PURSUANT TO THE BILL FOR THE PURPOSE OF PARTICIPATING IN STATE OR FEDERAL FINANCIAL AID PROGRAMS. THEREFORE, WE RECOMMEND THE DELETION OF SECTION 8 OF THE BILL.

BASED ON THE FOREGOING, WE RECOMMEND AGAINST THE ENACTMENT OF S. 2294 AT THIS TIME. MEANWHILE, WE WOULD BE WILLING TO WORK WITH THIS COMMITTEE AND ALL INTERESTED PARTIES ON RESOLVING THESE CLAIMS WITHIN THE PARAMETERS STATED ABOVE.

THIS CONCLUDES MY PREPARED STATEMENT. I WOULD BE PLEASED TO RESPOND TO ANY QUESTIONS THE COMMITTEE MAY HAVE.

STATEMENT OF , DEPARTMENT OF THE INTERIOR, BEFORE THE HEARING OF THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON S. 2719, THE "MASHANTUCKET PEQUOT INDIAN CLAIMS SETTLEMENT ACT," JULY 14, 1982.

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MR. CHAIRMAN, THANK YOU FOR THE OPPORTUNITY TO PRESENT THE VIEWS OF THE DEPARTMENT OF THE INTERIOR ON S. 2719, THE "MASHANTUCKET-PEQUOT INDIAN CLAIMS SETTLEMENT ACT."

WE RECOMMEND AGAINST THE ENACTMENT OF S. 2719.

S. 2719 WOULD PROVIDE FOR THE SETTLEMENT OF LANDS CLAIMS OF THE MASHANTUCKET PEQUOT INDIAN TRIBE OF CONNECTICUT (ALSO KNOWN AS THE WESTERN PEQUOT TRIBE). THE BILL WOULD AUTHORIZE CONGRESSIONAL CONSENT AND APPROVAL OF PRIOR TRANSFERS OF LAND OR NATURAL RESOURCES BY THE PEQUOT TRIBE LOCATED WITHIN THE UNITED STATES AND BY ANY OTHER INDIAN OR TRIBAL ENTITY LOCATED WITHIN THE TOWN OF LEDYARD, CONNECTICUT. THE BILL WOULD ALSO EXTINGUISH ANY ABORIGINAL TITLE AND ANY TRIBAL CLAIMS FOR DAMAGES OR POSSESSION OF LAND AND NATURAL RESOURCES. A CLAIM SETTLEMENT FUND IN THE AMOUNT OF $900,000 WOULD BE ESTABLISHED TO COMPENSATE THE TRIBE FOR THE EXTINGUISHMENT OF SUCH CLAIMS. FINALLY, S. 2294 WOULD EXTEND FEDERAL RECOGNITION TO THE WESTERN PEQUOT TRIBE.

THE CONNECTICUT INDIANS NEVER ENTERED INTO TREATIES WITH THE FEDERAL GOVERNMENT AND THE BUREAU OF INDIAN AFFAIRS HAS NOT PROVIDED SERVICES TO THEM NOR HAS IT EXERCISED ANY JURISDICTION OVER INDIAN LANDS IN CONNECTICUT.

WE UNDERSTAND THAT THE CONNECTICUT WELFARE DEPARTMENT SUPERVISES AND MAINTAINS THE FOUR SMALL STATE RESERVATIONS, INCLUDING WESTERN PEQUOT. THERE ARE APPROXIMATELY 100 MEMBERS OF THE WESTERN PEQUOT TRIBE

WHOSE RESERVATION IS COMPRISED OF 184 ACRES OF LAND. THE RESERVATION IS DESCRIBED AND THE STATE'S POLICY AND PROCEDURES ARE SET FORTH IN CHAPTER 824 OF THE CONNECTICUT GENERAL STATUTES.

WE OPPOSE S. 2719 FOR TWO MAJOR REASONS. FIRST, WE DO NOT HAVE SUFFICIENT INFORMATION AT THIS TIME ON THE PARTICULAR LAND CLAIMS WHICH THIS LEGISLATION SEEKS TO SETTLE. CONSEQUENTLY, WE CAN NEITHER DETERMINE WHETHER SUCH CLAIMS HAVE MERIT NOR WHETHER THE $900,000 IS AN APPROPRIATE SETTLEMENT AMOUNT. FURTHER IN DETERMINING ANY SETTLEMENT AMOUNT, WE WOULD RECOMMEND UTILIZING THE FORMULA FOR COMPENSATION WHICH THE ADMINISTRATION RECENTLY SUPPORTED IN TESTIMONY BEFORE THIS COMMITTEE ON THE PROPOSED ANCIENT INDIAN LAND CLAIMS SETTLEMENT ACT (S. 2084 AND H.R. 5494). THUS, ANY COMPENSATION WOULD BE THE DIFFERENCE, PLUS INTEREST, BETWEEN THE FAIR MARKET VALUE OF THE LAND AND NATURAL RESOURCES AT THE TIME OF TRANSFER AND THE PRICE ACTUALLY RECEIVED. FURTHER, THE STATE SHOULD BE REQUIRED TO BEAR HALF OF THE LIABILITY RESULTING FROM EXTINGUISHMENT OF THE CLAIMS.

SECOND, EXTENDING FEDERAL RECOGNITION TO THE WESTERN PEQUOT TRIBE BY LEGISLATION WOULD BYPASS THE ADMINISTRATIVE PROCESS ESTABLISHED WITH CONGRESSIONAL SUPPORT FOR GROUPS SEEKING FEDERAL ACKNOWLEDGMENT. THIS PROCESS WAS ESTABLISHED TO PROVIDE CONSIDERATION OF PETITIONS UNDER A UNIFORM STANDARD BASED ON A SYSTEMATIC AND DETAILED EXAMINATION OF HISTORICAL EVIDENCE. SUCH A BYPASSING WOULD SET A PRECEDENT WHICH MIGHT ENCOURAGE SIMILAR LEGISLATIVE REQUESTS FROM OTHER UNRECOGNIZED GROUPS WITH PENDING PETITIONS. THERE ARE PRESENTLY 72 SUCH GROUPS WITH PENDING PETITIONS THAT HAVE NOT BEEN PROCESSED.

THE WESTERN PEQUOT GROUP PETITIONED FOR FEDERAL ACKNOWLEDGMENT ON JANUARY 15, 1979, UNDER THE SECRETARY's REGULATIONS AND FINAL SUBMISSION OF FULL DOCUMENTATION IS APPARENTLY IMMINENT. FOR THIS REASON, THERE IS PRESENTLY LITTLE AVAILABLE INFORMATION ON FILE TO INDICATE WHETHER THE GROUP COULD MEET THE REQUIREMENTS FOR FEDERAL ACKNOWLEDGEMENT UNDER THE REGULATIONS. THEREFORE, WE DO NOT HAVE SUFFICIENT INFORMATION ABOUT THE GROUP TO SUPPORT ACKNOWLEDGMENT AT THIS TIME.

ENACTMENT OF S. 2719 WOULD ESTABLISH A GOVERNMENT-TO-GOVERNMENT RELATIONSHIP BETWEEN THE WESTERN PEQUOT AND THE FEDERAL GOVERNMENT AND CREATE A FEDERAL OBLIGATION TO THE GROUP WITHOUT THE SAFEGUARD OF DETAILED KNOWLEDGE WHICH WOULD BE AVAILABLE IF THE GROUP'S PETITION FOR ACKNOWLEDGMENT WERE PROCESSED UNDER THE REGULATIONS. EVEN IF THE WESTERN PEQUOT'S PETITION WERE REJECTED UNDER THE REGULATIONS, THE GROUP WOULD STILL BE ABLE TO APPROACH CONGRESS FOR ACKNOWLEDGMENT THROUGH LEGISLATION. IN SUCH AN EVENT, CONGRESS AT THAT TIME COULD MAKE A DECISION BASED ON FULL AND ACCURATE ANTHROPOLOGICAL, HISTORICAL, AND GENEALOGICAL DATA COLLECTED THROUGH EXTENSIVE RESEARCH.

BASED ON THE FOREGOING, WE RECOMMEND AGAINST THE ENACTMENT OF S. 2719.

THIS CONCLUDES MY PREPARED STATEMENT. I WOULD BE PLEASED TO RESPOND TO ANY QUESTIONS THE COMMITTEE MAY HAVE.

INDIAN LAW RESOURCE CENTER
601 E STREET, SOUTHEAST, WASHINGTON, D.C. 20003 • (202) 547-2800

File
Indian
Land
Claims

July 28, 1982

Mr. William Barr
Office of Policy Development
Old Executive Office Building
The White House
Washington, D.C.

Dear Mr. Barr:

The enclosed transcript of a recent CBS television news broadcast on the Ancient Indian Land Claims Settlement Act includes the following exchange with Congressman Gary Lee of New York:

> JOAN SNYDER: Opponents of Indian land claims often raise the question, is it good for Indians to have reservations?
>
> Republican Congressman Gary Lee of New York.
>
> REPRESENTATIVE GARY LEE (R-NY): I would rather see us pursuing a national policy of assimilation, because we are the melting pot of the world, and I think that's a much better policy for the United States of America, rather than to set up various enclaves for various groups throughout our great country.

The terminationist policy objective of the principal sponsor of this extinguishment bill is directly contrary to the Indian policy announced by the President during his campaign. The Administration's support for Mr. Lee's bill has raised questions about whether the Administration has joined Mr. Lee in his opposition to Indian "enclaves" and in his support of a "policy of assimilation" into "the melting pot."

Sincerely,

Steven M. Tullberg

Enclosure

Rec'd 7/26/82

CBS NEWS

2020 M STREET, N.W., WASHINGTON, D.C. 20036

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Dear Viewer:

In answer to your request, we are pleased to send you the enclosed transcript. This transcript may be used for reference and review purposes only. Should you wish to use any portion on any broadcast, or in any publication, permission must be granted by CBS News Information Services, 530 West 57th Street, New York, New York 10019. Telephone: (212) 975 - 2857.

Frances Foley Stone
Manager of Information Services

CBS EVENING NEWS
with
MORTON DEAN

as broadcast over the
CBS TELEVISION NETWORK

Sunday, July 18, 1982

6:00 - 6:30 PM, EDT
6:30 - 7:00 PM, EDT

PRODUCED BY CBS NEWS

EXECUTIVE PRODUCER: Russ Bensley

DEAN: The nation is involved in some new Indian wars, wars being fought in the courts and Congress. Several tribes, using a 1790 law requiring federal approval of Indian land sales, are bringing suits to regain land they lost. But some congressmen from New York and South Carolina have introduced legislation to block those suits. The legislation would permit litigation by the Indians to be paid for the land, but on the basis of its value at the time the deal was made, as long as 200 hundred years ago. Joan Snyder has more on this story.

(Indian chanting, tom-toms)

JOAN SNYDER: The Iroquois Indians have an ancient saying, "The land is our mother, and we cannot sell our mother." But the Iroquois and other Indian nations lost most of their land after the Revolutionary War in the Eastern states, where the nation began. Now there is renewed conflict over land that Indians want to reclaim, and non-Indians are fighting to keep.

WISNER PAYNE KINNE (Landowner): If a man comes in the night, and puts a knife to your throat, and says, "Give me your wallet," that's not something you negotiate about; you fight him.

CHIEF JOAGGUISHO (Iroquois Confederacy): We're not looking at this as an aggressive action against the American people; we're trying to be fair about this, I think much more fair than— than what happened to us.

SNYDER: Indian leaders gathered at a recent congessional hearing to protest a bill that would wipe out Indian land claims in two states, New York and South Carolina, and perhaps in other Eastern states in the future. The Indians invoked old land treaties they said must still be honored.

CHIEF CORBETT SUNDOWN (Iroquois Confederacy): As long as the wind blows, and long as the grass grow green, and as long the water flows, that's how long that treaty should be enforced.

SENATOR ALFONSE D'AMATO (R-NY): To those who say that the land is sacred to the Indians and should be returned, I say, it is of no less value to those who occupy it today.

SNYDER: D'Amato, a sponsor of the bill, said it would protect hundreds of thousands of innocent property owners from losing their land in areas claimed by Indians.

SNYDER: The bitterest controversy invloves a claim by Cayuga Indians in the Finger Lakes area of central New York State. The Cayugas lost all their 64,000 acres of reservation land in 1807, defrauded, they claim, in violation of federal law, by state officials who paid them $7800. The land is now worth at least $300-million. The Cayugas offered to settle out of court, and reached an agreement with state and federal officials that would have given them federal land and a state park—no home owners to be evicted—and a trust fund to buy more land. But that settlement was rejected by Congress after a New York congressman argued against giving up the state park. The frustrated Cayugas went to court, suing for their old reservation land back, which would mean the eviction of 7,000 property owners. The suit is in court, and some property owners are up in arms.

KINNE: What we're involved in now is giving it back, giving North America back to the Indians.

SNYDER: A meeting of angry Seneca County residents, at an historic farm house owned by their leader, Wisner Payne Kinne. He's the sixth generation of his family to occupy the land since, he says, Captain Elijah Kinne fought Indians who sided with the British during the Revolutionary War. Wisner Kinney says he too is at war.

KINNE: Whatever injustices there were have gone, long since. You cannot turn back the clock. And the people who are now alive would be the ones to suffer, and would they not arm themselves and fight? I would say without any doubt that the possibility of armed conflict over this issue is very great, very serious.

CHIEF FRANK BONAMIE (Cayuga Nation): It is unfortunate that these people are involved, but it— we have no recourse. I mean, this is the only route that we can go to— to protect our rights.

SNYDER: The Cayugas would still like an out of court settlement, like those reached with Indians in other states, where no homeowners have been evicted. But the settlement idea is strongly opposed by some local officials who say that their communities need the economic benefits of the state park, and that the county's tax base would be eroded if Indians took over land and removed it from the tax rolls.

RAYMOND ZAJAC (Senecca County Supervisor): Eventually you would have a very large reservation and certainly the existing tax payers could not afford to continue to support the services needed in the area, and certainly they would have to pack up and leave.

SNYDER: Some property owners who would like to pack up and leave now say they can't because the Indian claims put a cloud over land titles that prevents buying or selling. And if the Indains win in court—

CATHY JENSEN (Homeowner): I bet you'd see a lot of houses burning around here, because a lot of people are infuriated by the whole idea.

SNYDER: Opponents of Indian land claims often raise the question, is it good for Indians to have reservations?

Republican Congressman Gary Lee of New York.

REPRESENTATIVE GARY LEE (R-NY): I would rather see us pursuing a national policy of assimilation, because we are the melting pot of the world, and I think that's a much better policy for the United States of America, rather than to set up various enclaves for various groups throughout our great country.

CHIEF SUNDOWN: I say, here— you don't see no institutions on this reservations. You don't see no jailhouses. Yours is full of them. You can't— you ain't got no place to put 'em anymore. You're asking me to join that kind of society. I think you better join me instead of me joining you.

KINNE: I'm pursuing the nature, the beauty, the blue sky of Seneca County, my home, not theirs. They sold it.

SNYDER: That agrument will be debated in federal court later this month and undoubtably in many places for many months to come.

Joan Snyder, CBS News, Seneca County, New York.