

107TH CONGRESS
1ST SESSION

H. R. 3534

To provide for the settlement of certain land claims of Cherokee, Choctaw,
and Chickasaw Nations to the Arkansas Riverbed in Oklahoma.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 19, 2001

Mr. CARSON of Oklahoma (for himself, Mr. WATKINS of Oklahoma, Mr. KILDEE, and Mr. LARGENT) introduced the following bill; which was referred to the Committee on Resources

A BILL

To provide for the settlement of certain land claims of Cherokee, Choctaw, and Chickasaw Nations to the Arkansas Riverbed in Oklahoma.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Cherokee, Choctaw,
5 and Chickasaw Nations Claims Settlement Act”.

6 **SEC. 2. FINDINGS; PURPOSE; DEFINITIONS.**

7 (a) FINDINGS.—The Congress finds the following:

8 (1) It is the policy of the United States to pro-
9 mote tribal self-determination and economic self-suf-

1 ficiency and to encourage the resolution of disputes
2 over historical claims through mutually agreed-to
3 settlements between Indian Nations and the United
4 States.

5 (2) There are pending before the United States
6 Court of Federal Claims certain lawsuits against the
7 United States brought by the Cherokee, Choctaw,
8 and Chickasaw Nations seeking monetary damages
9 for the alleged use and mismanagement of tribal re-
10 sources along the Arkansas River in eastern Okla-
11 homa.

12 (3) Some of the significant historical facts rel-
13 evant to the claims and controversies between the
14 Cherokee, Choctaw, and Chickasaw Nations and the
15 United States include the following:

16 (A) The Cherokee Nation, a federally rec-
17 ognized Indian tribe with its present tribal
18 headquarters near Tahlequah, Oklahoma, hav-
19 ing adopted its most recent constitution on
20 June 26, 1976, and having entered into various
21 treaties with the United States, including but
22 not limited to the Treaty at Hopewell, executed
23 on November 28, 1785 (7 Stat. 18), and the
24 Treaty at Washington, D.C., executed on July
25 19, 1866 (14 Stat. 799), has maintained a con-

1 tinuous government-to-government relationship
2 with the United States since the earliest years
3 of the Union.

4 (B) The Choctaw Nation, a federally rec-
5 ognized Indian tribe with its present tribal
6 headquarters in Durant, Oklahoma, having
7 adopted its most recent constitution on July 9,
8 1983, and having entered into various treaties
9 with the United States of America, including
10 but not limited to the Treaty at Hopewell, exe-
11 cuted on January 3, 1786 (7 Stat. 21), and the
12 Treaty at Washington, D.C., executed on April
13 28, 1866 (7 Stat. 21), has maintained a contin-
14 uous government-to-government relationship
15 with the United States since the earliest years
16 of the Union.

17 (C) The Chickasaw Nation, a federally rec-
18 ognized Indian tribe with its present tribal
19 headquarters in Ada, Oklahoma, having adopt-
20 ed its most recent constitution on August 27,
21 1983, and having entered into various treaties
22 with the United States of America, including
23 but not limited to the Treaty at Hopewell, exe-
24 cuted on January 10, 1786 (7 Stat. 24), and
25 the Treaty at Washington, D.C., executed on

1 April 28, 1866 (7 Stat. 21), has maintained a
2 continuous government-to-government relation-
3 ship with the United States since the earliest
4 years of the Union.

5 (D) In the first half of the 19th century,
6 the Cherokee, Choctaw, Chickasaw, Creek, and
7 Seminole Nations were forcibly removed from
8 their homelands in the southeastern United
9 States to lands west of the Mississippi in the
10 Indian Territory which were ceded to them by
11 the United States. From the “Three Forks”
12 area near present day Muskogee, Oklahoma,
13 downstream to the point of confluence with the
14 Canadian River, the Arkansas River flowed en-
15 tirely within the territory of the Cherokee Na-
16 tion. From that point of confluence downstream
17 to the Arkansas territorial line, the Arkansas
18 River formed the boundary between the Cher-
19 okee Nation on the left side of the thread of the
20 river and the Choctaw and Chickasaw Nations
21 on the right.

22 (E) Pursuant to the Act of April 30, 1906
23 (34 Stat. 137), title to the bed and banks of the
24 Arkansas River passed to the United States in

1 trust for the respective Indian Nations in ac-
2 cordance with their respective interests therein.

3 (F) For more than 60 years after Okla-
4 homa statehood, the Bureau of Indian Affairs
5 incorrectly assumed that Oklahoma owned the
6 Riverbed from the Arkansas State line to Three
7 Forks, and therefore took no action to protect
8 the Indian Nations' Riverbed resources such as
9 oil and gas production, sand and gravel as well
10 as Drybed Lands suitable for grazing and agri-
11 culture. The United States Government con-
12 structed powerheads and other improvements in
13 the channel of the Arkansas River on tribal
14 lands, using sand and gravel belonging to the
15 three Indian Nations. Due to the Bureau's in-
16 action, individuals with property near the Ar-
17 kansas River began to occupy the three Indian
18 Nations' Drybed Lands—lands that were under
19 water at the time of statehood but that are now
20 dry due to changes in the course of the river.

21 (G) In 1966, the three Indian Nations
22 sued the State of Oklahoma to recover their
23 lands. In 1970, the Supreme Court of the
24 United States decided in the case of Choctaw
25 Nation vs. Oklahoma (396 U.S. 620 (1970)),

1 that the Indian Nations retained title to their
2 respective portions of the Riverbed along the
3 navigable reach of the river.

4 (H) In 1989, the three Indian Nations
5 filed lawsuits against the United States in the
6 United States Court of Federal Claims (Case
7 Nos. 218–89L and 630–89L), seeking damages
8 for the United States use and mismanagement
9 of tribal trust resources along the Arkansas
10 River. Those actions are still pending.

11 (I) In 1997, the United States filed quiet
12 title litigation against individuals occupying
13 some of the Indian Nations’ Drybed Lands.
14 That action, filed in the United States District
15 Court for the Eastern District of Oklahoma,
16 was dismissed without prejudice on technical
17 grounds.

18 (J) From time to time over the years fol-
19 lowing the Indian Nations’ Court of Federal
20 Claims litigation, the Indian Nations, the De-
21 partment of Justice, the Bureau of Indian Af-
22 fairs, and the Indian Nations have engaged in
23 settlement negotiations.

24 (4) Nearly 7,750 acres of the Indian Nations’
25 Drybed Lands have been occupied by a large number

1 of adjacent landowners in Oklahoma. Without Fed-
2 eral legislation, further litigation against thousands
3 of such landowners would be likely and any final res-
4 olution of pending disputes through a process of liti-
5 gation would take many years and entail great ex-
6 pense to the United States, the three Indian Na-
7 tions, and the individuals and entities occupying the
8 Drybed Lands and would seriously impair long-term
9 economic planning and development for all parties.

10 (5) The Councils of the Cherokee, Choctaw, and
11 Chickasaw Nations have each enacted tribal legisla-
12 tion which would, contingent upon the passage of
13 this Act and in exchange for the monies appro-
14 priated hereunder—

15 (A) settle and forever release their respec-
16 tive claims against the United States asserted
17 by them in United States Court of Federal
18 Claims Case Nos. 218–89L and 630–89L; and

19 (B) forever disclaim any and all right,
20 title, and interest in and to the Disclaimed
21 Drybed Lands, as set forth in those enactments
22 of the respective councils of those Nations de-
23 scribed in paragraph (6).

24 (6) The enactments of settlement legislation
25 adopted by the respective Councils of the Cherokee,

1 Choctaw, and Chickasaw Nations each provide that,
2 contingent upon the passage of this Act, the Indian
3 Nation agrees to dismiss, release, and forever dis-
4 charge its claims asserted against the United States
5 in the United States Court of Federal Claims, Case
6 No. 218–89L, and to disclaim any right, title, or in-
7 terest of the Nation in the Disclaimed Drybed
8 Lands, in exchange for the funds appropriated and
9 allocated to the Indian Nation under the provisions
10 of this Act, which funds the Nation agrees to accept
11 in full satisfaction and settlement of all claims
12 against the United States for its use of and damage
13 to the bed of the Arkansas River arising out of the
14 construction of the McClellan-Kerr Navigation Way
15 and for the damages sought in the aforementioned
16 claims asserted in the United States Court of Fed-
17 eral Claims, and as full and fair compensation for
18 disclaiming its right, title, and interest in the Dis-
19 claimed Drybed Lands, payable in the next fiscal
20 year after the date of the enactment of this Act.

21 (7) In those enactments, each Indian Nation
22 expressly reserved all of its beneficial interest and
23 title to all other Riverbed lands, including minerals,
24 as determined by the Supreme Court in Choctaw
25 Nation v. Oklahoma, 397 U.S. 620 (1970), and fur-

1 ther reserved any and all right, title, or interest that
2 each Nation may have in and to the water flowing
3 in said river and its tributaries.

4 (b) PURPOSE.—The purposes of this Act are as fol-
5 lows:

6 (1) To approve, ratify, and confirm an agreed-
7 to resolution of claims brought by the Cherokee,
8 Choctaw, and Chickasaw Nations against the United
9 States, and the agreed-to disclaimers of the three
10 Indian Nations to any right, title, or interest in ap-
11 proximately 7,750 acres of Drybed Lands contiguous
12 to the present channel of the Arkansas River in cer-
13 tain townships in eastern Oklahoma.

14 (2) To reserve the three Indian Nations' bene-
15 ficial interest in the Riverbed except for the Dis-
16 claimed Drybed Lands.

17 (3) To authorize and direct the Secretary to im-
18 plement the terms of such settlement.

19 (4) To authorize the actions and appropriations
20 necessary to implement the provisions of this Act.

21 (5) To maintain the trust relationship between
22 the United States and each of the three Indian Na-
23 tions.

24 (c) DEFINITIONS.—For the purposes of this Act, the
25 following definitions apply:

1 (1) DISCLAIMED DRYBED LANDS.—The term
2 “Disclaimed Drybed Lands” means all Drybed
3 Lands along the Arkansas River that are located in
4 Township 10 North in Range 24 East, Townships 9
5 and 10 North in Range 25 East, Township 10
6 North in Range 26 East, and Townships 10 and 11
7 North in Range 27 east, in the State of Oklahoma.

8 (2) DRYBED LANDS.—The term “Drybed
9 Lands” means those Riverbed lands of the three In-
10 dian Nations which lie above and contiguous to the
11 present high water mark of the Arkansas River in
12 the State of Oklahoma but which have become part
13 of the Riverbed by operation of accretion and avul-
14 sion.

15 (3) INDIAN NATION; INDIAN NATIONS.—The
16 term “Indian Nation” means the Cherokee Nation,
17 Choctaw Nation, or Chickasaw Nation, and the term
18 “Indian Nations” means all three tribes collectively.

19 (4) RIVERBED.—The term “Riverbed” means
20 the Drybed Lands and the Wetbed Lands and in-
21 cludes all minerals therein.

22 (5) SECRETARY.—The term “Secretary” means
23 the Secretary of the Interior.

24 (6) WETBED LANDS.—The term “Wetbed
25 Lands” means those Riverbed lands which lie below

1 the high water mark of the Arkansas River in the
2 State of Oklahoma exclusive of the Drybed Lands.

3 **SEC. 3. SETTLEMENT AND CLAIMS; APPROPRIATIONS; AL-**
4 **LOCATION OF FUNDS.**

5 (a) EXTINGUISHMENT OF CLAIMS.—Upon payment
6 of the funds appropriated under this section, all claims
7 for use of and damage to the Riverbed arising out of the
8 construction and maintenance of the McClellan-Kerr Navi-
9 gation Way and the claims asserted by the Cherokee,
10 Choctaw, and Chickasaw Nations in the United States
11 Court of Federal Claims against the United States shall
12 be deemed extinguished.

13 (b) RELEASE OF TRIBAL CLAIMS TO CERTAIN
14 DRYBED LANDS.—

15 (1) IN GENERAL.—Upon the deposit of all
16 funds authorized for appropriation under subsection
17 (c) for an Indian Nation into the appropriate trust
18 fund account described in section 4, all claims and
19 all right, title, and interest that the Indian Nations
20 may have to the Disclaimed Drybed Lands, shall be
21 deemed extinguished. The Secretary shall execute an
22 appropriate document citing this Act, suitable for fil-
23 ing with the county clerks, or such other county offi-
24 cial as is appropriate, of those counties wherein the

1 foregoing described lands are located, disclaiming
2 tribal interests in such Disclaimed Drybed Lands.

3 (2) EXCEPTION.—Notwithstanding any provi-
4 sion of this Act, the Indian Nations do not relin-
5 quish any right, title, or interest in any lands or
6 minerals to which the United States claims title
7 which are contiguous to the Riverbed, and no provi-
8 sion of this Act shall be construed to extinguish or
9 convey any water rights of the Indian Nations in the
10 Arkansas River or any other stream or the beneficial
11 interests or title of any of the Indian Nations in and
12 to trust lands lying above or below the high water
13 mark of the Arkansas River, except for the Dis-
14 claimed Drybed Lands.

15 (3) LAND TO BE TAKEN INTO TRUST.—To the
16 extent that the United States determines that it is
17 able to effectively maintain the McClellan-Kerr Navi-
18 gation Way without retaining title to lands above the
19 high water mark of the Arkansas River, said lands,
20 after being declared surplus, shall be taken into
21 trust for the Indian Nation within whose boundary
22 the land is located. All Wetbed Lands, including
23 minerals, from the Arkansas State line upstream to
24 the historic point of navigability near the confluence
25 of the Arkansas, Verdigris, and Grand Rivers, and

1 all Drybed Lands located outside the foregoing de-
2 scribed Townships, shall continue to be held by the
3 United States in trust for the beneficiary Indian Na-
4 tion and shall be protected in accordance with appli-
5 cable law governing tribal trust lands.

6 (c) AUTHORIZATION FOR SETTLEMENT APPROPRIA-
7 TIONS.—

8 (1) SETTLEMENT OF CLAIMS.—There is author-
9 ized to be appropriated the aggregate sum of
10 \$41,293,245. After payment pursuant to section 5,
11 the remaining funds appropriated under this sub-
12 section shall be paid and allocated among the three
13 Indian Nations in accordance with subsection (d)
14 and deposited into the trust fund accounts estab-
15 lished pursuant to section 4. Such payment shall be
16 in full satisfaction and settlement of the Indian Na-
17 tions' claims for the use of and damage to the Ar-
18 kansas Riverbed arising out of the construction and
19 maintenance of the McClellan-Kerr Navigation Way
20 and asserted against the United States in the
21 United States Court of Federal Claims, Case Nos.
22 218–89L and 630–89L, and in full satisfaction of,
23 and as compensation for, the three Indian Nations'
24 respective right, title, and interest in and to the Dis-
25 claimed Drybed Lands.

1 (2) RENTALS.—In addition to funds authorized
2 to be appropriated in paragraph (1), there is author-
3 ized for appropriation and allocated in accordance
4 with subsection (d) \$8,000,000, representing the
5 present value of the fair market rentals for the loca-
6 tion and future operation in perpetuity of the two
7 hydropower generation and related facilities at the
8 Webbers Falls Lock and Dam and the Kerr Lock
9 and Dam on the Arkansas River.

10 (d) ALLOCATION AND DEPOSIT OF FUNDS.—After
11 payment pursuant to section 5, the remaining funds au-
12 thorized for appropriation under subsection (c) shall be
13 allocated among the Indian Nations as follows:

14 (1) 50 percent to be deposited into the trust
15 fund account established under section 4 for the
16 Cherokee Nation.

17 (2) 37.5 percent to be deposited into the trust
18 fund account established under section 4 for the
19 Choctaw Nation.

20 (3) 12.5 percent to be deposited into the trust
21 fund account established under section 4 for the
22 Chickasaw Nation.

23 **SEC. 4. TRIBAL TRUST FUNDS.**

24 (a) TRUST FUND ACCOUNTS AND USES OF TRUST
25 FUNDS.—All funds appropriated and paid pursuant to

1 section 3 shall be deposited into three separate tribal trust
2 fund accounts to be established by the Secretary for the
3 benefit of each of the three Indian Nations. All funds de-
4 posited into said accounts, and any income earned there-
5 on, shall be expended only in accordance with the provi-
6 sions of this section. No funds deposited into the trust
7 fund accounts established in section 4 shall be made avail-
8 able to the beneficiary Indian Nation until that Nation
9 files the appropriate stipulation of dismissal with prejudice
10 of all claims asserted in Case Nos. 218–89L or 630–89L,
11 filed in the United States Court of Federal Claims.

12 (b) LAND ACQUISITION.—The funds appropriated
13 and allocated to the Indian Nations pursuant to section
14 3(c) and deposited into trust fund accounts pursuant to
15 section 4(a), together with any interest earned thereon,
16 and allocated pursuant to section 3(d) may be used for
17 the acquisition of land by the three Indian Nations for
18 transfer to the United States in trust for the beneficiary
19 Indian Nation in accordance with the Secretary’s trust
20 land acquisition regulations at part 151 of title 25, Code
21 of Federal Regulations, as in effect on January 1, 2001.
22 Any such trust land acquisitions on behalf of the Cherokee
23 Nation shall be mandatory if the land proposed to be ac-
24 quired is located within Township 12 North, Range 21
25 East, in Sequoyah County, Township 11 North, Range 18

1 East, in McIntosh County, Townships 11 and 12 North,
2 Range 19 East, or Township 12 North, Range 20 East,
3 in Muskogee County, Oklahoma, and not within the limits
4 of any incorporated municipality as of January 1, 2001,
5 except that any such land proposed to be acquired must
6 meet the Department of Interior's minimum environ-
7 mental standards and requirements for real estate acquisi-
8 tions set forth in 602 DM 2.6, as in effect on January
9 1, 2001, and the title to such land must meet applicable
10 Federal title standards as in effect on said date. The In-
11 dian Nations may elect to expend all or a portion of the
12 funds deposited into its trust account for any other pur-
13 poses authorized under subsection (c).

14 (c) INVESTMENT OF TRUST FUNDS; NO PER CAPITA
15 PAYMENT.—

16 (1) NO PER CAPITA PAYMENTS.—No money re-
17 ceived by the Indian Nations hereunder may be used
18 for a general per capita payment.

19 (2) INVESTMENT BY SECRETARY.—Except as
20 provided in this section and section 5, the principal
21 of such funds deposited into the accounts established
22 hereunder and any interest earned thereon shall be
23 invested by the Secretary in accordance with current
24 laws and regulations for the investing of tribal trust
25 funds.

1 (3) USE OF PRINCIPAL FUNDS.—The principal
2 amounts of said funds and any amounts earned
3 thereon shall be made available to the Indian Nation
4 for which the account was established for expendi-
5 ture for purposes which may include construction or
6 repair of health care facilities, law enforcement, cul-
7 tural or other education activities, economic develop-
8 ment, social services, and land acquisition. Land ac-
9 quisition using such funds shall be subject to the
10 provisions of subsections (b) and (d).

11 (d) DISBURSEMENT OF FUNDS.—The Secretary shall
12 disburse the funds from a trust account established under
13 this section pursuant to a budget adopted by the Council
14 of the Indian Nation setting forth the amount and an in-
15 tended use of such funds.

16 **SEC. 5. ATTORNEY FEES.**

17 (a) PAYMENT.—At the time the funds are paid to the
18 Indian Nations, from funds authorized to be appropriated
19 pursuant to section 3(c), the Secretary shall pay to the
20 Indian Nations' attorneys those fees provided for in the
21 individual tribal attorney fee contracts as approved by the
22 respective Indian Nations.

23 (b) LIMITATIONS.—Notwithstanding subsection (a),
24 the total fees payable to attorneys under such contracts
25 with an Indian Nation shall not exceed 10 percent of that

- 1 Indian Nation's allocation of funds appropriated under
- 2 section 3(c).

