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# INDIAN CLAIMS COMMISSION APPROPRIATIONS FOR FISCAL YEAR 1975

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## HEARING

BEFORE THE

### SUBCOMMITTEE ON INDIAN AFFAIRS

OF THE

## COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

### UNITED STATES SENATE

NINETY-THIRD CONGRESS

SECOND SESSION

ON

## S. 3007

A BILL TO AUTHORIZE APPROPRIATIONS FOR THE INDIAN  
CLAIMS COMMISSION FOR FISCAL YEAR 1975

MARCH 26, 1974



Printed for the use of the  
Committee on Interior and Insular Affairs

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FORREST J. GERARD, *Professional Staff Member*

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## INDIAN CLAIMS COMMISSION APPROPRIATIONS FOR FISCAL YEAR

TUESDAY, MARCH 26, 1974

U.S. SENATE,  
SUBCOMMITTEE ON INDIAN AFFAIRS,  
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10 a.m., in room 3110, Dirksen Office Building, Hon. James Abourezk, chairman, presiding.

Present: Senators Abourezk and Bartlett.

Also present: Jerry T. Verkler, staff director; Forrest Gerard, professional staff member; and Ella Mae Horse, staff assistant.

### OPENING STATEMENT OF HON. JAMES ABOUREZK, A U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator ABOUREZK. The Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs is now in session.

This morning we will hear from the Indian Claims Commission on their annual authorization. This is an open public hearing before the Indian Affairs Subcommittee on S. 3007, a bill to authorize appropriations for fiscal year 1975. The purpose of this hearing is to take testimony on this legislation, which was introduced by Senators Jackson and Fannin at the request of the administration.

The act of March 30, 1972, requires an annual authorization for the Indian Claims Commission. In addition, pursuant to that act, the Commission will expire on April 10, 1977, and on that date the remaining cases will be transferred to the U.S. Court of Claims for final adjudication.

The Claims Commission has determined that it has disposed of 413 cases on its docket calendar and has 198 remaining.

At this point I will insert a copy of S. 3007 for the record.

[The text of S. 3007 following:]

93<sup>d</sup> CONGRESS  
2<sup>d</sup> SESSION

# S. 3007

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 18, 1974

Mr. JACKSON (for himself and Mr. FANNIN). (by request) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

---

## A BILL

To authorize appropriations for the Indian Claims Commission for fiscal year 1975.

1        *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That there is authorized to be appropriated to carry out the  
4 provisions of the Indian Claims Commission Act (25 U.S.C.  
5 70), during fiscal year 1975, such sums as may be necessary  
6 to continue the program of the Indian Claims Commission.

Senator ABOUREZK. Now I would like to welcome the members of the Commission and their staff to the subcommittee this morning.

Chairman Kuykendall, I notice you have a statement ready for testimony. We would be pleased to hear from you. I wonder if you might want to introduce the people with you.

STATEMENT OF HON. JEROME K. KUYKENDALL, CHAIRMAN OF THE INDIAN CLAIMS COMMISSION; ACCOMPANIED BY JOHN T. VANCE, COMMISSIONER; RICHARD W. YARBOROUGH, COMMISSIONER; MARGARET H. PIERCE, COMMISSIONER; HARRY E. WEBB, JR., CHIEF COUNSEL; AND DAVID H. BIGELOW, EXECUTIVE DIRECTOR

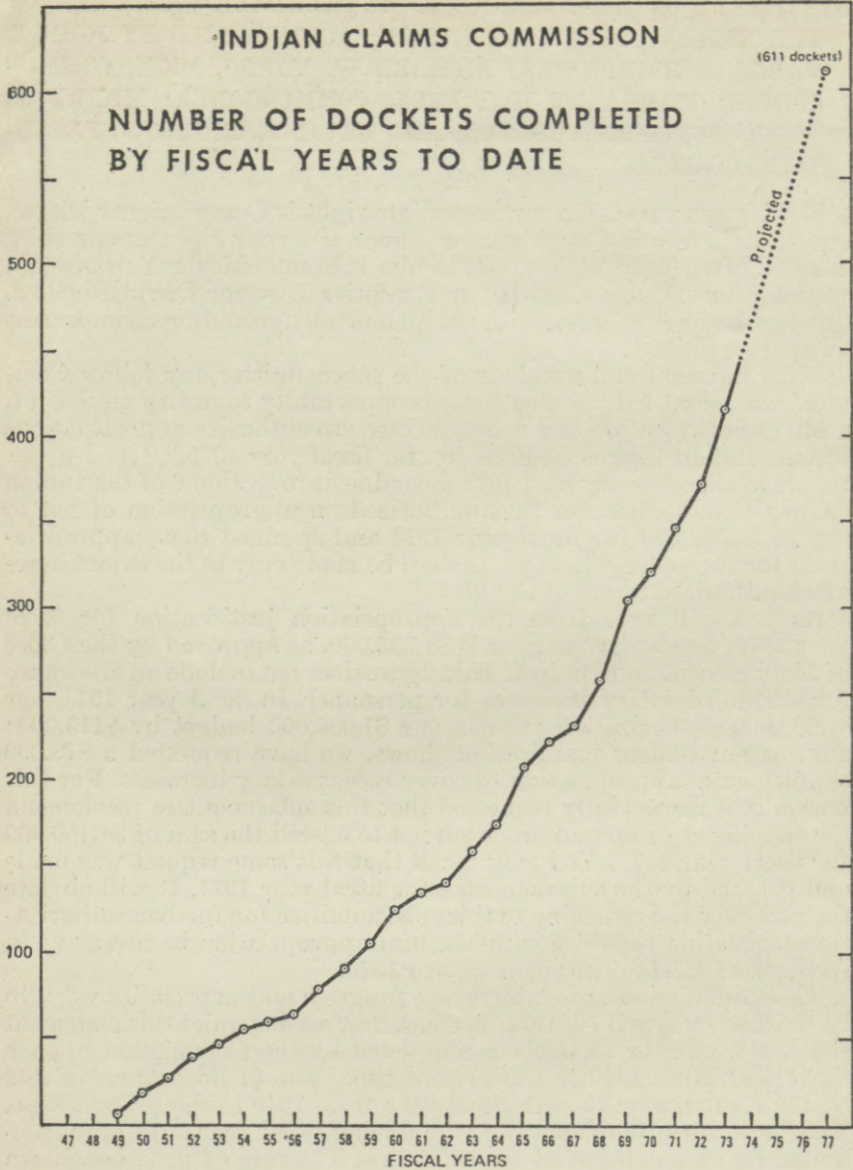
Mr. KUYKENDALL. On my immediate right is Commissioner Pierce, and next to her is Commissioner Vance. To your right is our chief counsel, Mr. Harry Webb; next to him is Commissioner Yarborough, and at your extreme right is our Executive Director David Bigelow. Commissioner Blue is not with us. He had a longstanding commitment away from the city.

Mr. Chairman and members of the subcommittee, my fellow Commissioners and I thank you for this opportunity to testify on S. 3007, a bill pending before this subcommittee "to authorize appropriations for the Indian Claims Commission for fiscal year 1975." This legislation is made necessary by a 1972 amendment to section 6 of the Indian Claims Commission Act that authorized an appropriation of not to exceed \$1,500,000 for fiscal year 1973 and specified that "appropriations for succeeding fiscal years shall be made only to the extent hereafter authorized by act of Congress."

As you will note from the appropriation justification for fiscal year 1975, our budget request is \$1,333,000, as approved by the Office of Management and Budget. This figure does not include an allowance for scheduled salary increases for personnel. In fiscal year 1974, our \$1,200,000 authorization exceeds our \$1,086,000 budget by \$115,000; and, as our budget justification shows, we have requested a \$78,000 supplemental appropriation to cover recent salary increases. For this reason it is respectfully requested that this subcommittee recommend the enactment of an authorization not to exceed the sum of \$1,450,000 for fiscal year 1975. You may recall that this same request was made and granted by the subcommittee for fiscal year 1974. It will obviate the necessity for returning to this subcommittee for further authorization legislation should a supplemental appropriation be necessary in fiscal year 1975, as it was in fiscal year 1974.

The Commission is making good progress and expects its work to be finished by April 10, 1977. A chart that accompanies this statement shows the number of dockets completed by the Commission in each fiscal year from 1949 to the present time. The 31 dockets completed by the Commission in each fiscal year from 1949 to the present time. The 31 dockets completed thus far during fiscal year 1974 are represented by an extension of the solid line. The rate of progress shown by the dotted line indicates that, if we maintain our present pace, our goal of completing all of the cases will be achieved.

[The chart follows:]



To help insure that the remaining cases will move forward to completion as rapidly as possible, the Commission on January 28, 1974, held another calendar conference attended by counsel for the plaintiffs and the defendant. On this occasion the status of each pending matter was again reviewed and, when it was practicable to do, the need for future trials was considered and agreements were reached as to the timing of the trials of various phases of the cases.

Since our last appearance before this subcommittee in February of 1973, we have issued final decisions on claims asserted against the United States in 48 dockets. Final awards were entered in 31 of these cases and orders of dismissal in the other 17. Of these 48 dockets, 21 have been reported to the Congress as finally completed, 15 are involved in appeals before the Court of Claims, and in 12 of them time in which to appeal from the Commission's determinations is now running.

Our total count of pending dockets at this time is 198, or 28 less than the 226 that were pending when we were before the committee in February of 1973. This figure of 198 pending dockets includes all dockets in intermediate stages and also includes all cases on appeal from the Commission's final determinations as well as those in which unwaived rights of appeal from such determinations are outstanding. The number of dockets in the latter two categories at this time is 34. If the Commission were able to report these cases, it would reduce the outstanding dockets to 164.

In addition to the summary of pending claims which I am about to mention, I would like to remind you that additional information on the work of the Commission is available from its annual report for 1973. Copies of this report were sent to each member of this subcommittee and are perhaps before you.

The summary of the pending Indian claims in our report to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives dated December 31, 1973, shows among other things, that 60 of the then pending 203 dockets were before the Court of Claims on appeal or involved in appeals from the Commission's decisions and that one was pending before the Supreme Court on petition for a writ of certiorari. The number of cases involved in appeals to the Court of Claims, which is now running almost 39 percent of the total pending, is a matter of some concern because of the necessity to hold further proceedings in those cases in which the appeal is from an intermediate stage or where the case is remanded for further proceedings.

[Chairman Kuykendall's memorandum with the Summary of Indian Claims Cases on December 31, 1973, follows:]

INDIAN CLAIMS COMMISSION,  
Washington, D.C., January 18, 1974.

*To the Members of the Committees on Interior and Insular Affairs of the Senate and the House of Representatives*

Subject: Indian Claims Commission Report of Progress Made, Work Remaining, Status of Each Case, and Projected Date of Its Completion.

The attached report, required under 25 U.S.C. § 70x, is being furnished for your convenience prior to hearings to be held on the authorization legislation for the Indian Claims Commission.

JEROME K. KUYKENDALL,  
*Chairman.*

*Indian Claims Commission—Summary of Indian claims cases on  
December 31, 1973*

	<i>Number of dockets</i>
Cases filed:	
Received through August 13, 1951-----	370
Causes severed from original claims and redocketed as separate claims -----	241
Total docketed-----	611
Claims disposed of:	
By awards certified to the Treasury Department totaling \$469,325,350.48 -----	231
By orders of dismissal-----	177
Total disposed of-----	408
Claims pending-----	203
Summary of the status of pending Indian claims:	
Pending before the Court of Claims on appeal or involved in appeals from Commission decisions:	
Cases with final awards totaling \$21,071,837.63 (dockets 73 and 151, and 350-F)-----	3
Cases with interlocutory decisions entered (dockets 13-E, 13-F, 15-E, 15-I, 15-P, 22-G, 27, 27-B, 27-E, 29-C, 29-D, 29-E, 29G, 29-N, 59, 64, 64-A, 74, 87-A, 113, 120, 130, 133-A, 133-B, 133-C, 139, 141, 191, 202, 221, 228, 246, 252, 280, 302, 306, 308, 332-C, 335, 338, 350-C, 354, 355 and 356)-----	44
Cases with orders dismissing the plaintiffs' claims (dockets 13-G, 18-J, 18-K, 18-L, 18-M, 40-F, 89, 140, 204, 247, 341-C, 341-D and 350-B)-----	13
Total before the Court of Claims-----	60
Case pending before the Supreme Court on petition for writ of cer- tiorari to the Court of Claims (docket 257)-----	1
Case with dismissal order affirmed by Court of Claims on which time is running for requesting certiorari review (docket 49)-----	1
Cases pending before the Commission:	
Final awards with appeal time running totaling \$15,947,145.41 (dockets 18-C, 18-R, 83, 84 and 300-B, 144, 158, and 231)-----	8
Final award on remand from the Court of Claims in the sum of \$766,936.08 (docket 137)-----	1
Cases with appeal time running on orders dismissing the plain- tiffs' claims (dockets 13-A, 13-K, 18-P, 40-I, and 209)-----	5
Other cases in various stages of litigation-----	127
Total pending under the Commission's jurisdiction-----	141

The seven-judge Court of Claims in October 1973 began to hear appeals from decisions of this Commission in panels of three. There have been three decisions rendered by panels under this new system. In one case the plaintiffs filed a motion on March 12 for rehearing before the full court, and in another both plaintiffs and defendant have had an enlargement of time to March 25 for the purpose of filing a motion for rehearing before the full court. Although experience is limited, we fear that the effect of this three-judge panel procedure may tend to lengthen the amount of time necessary for this Commission to complete its task.

Last year we expressed to you our concern about two matters that vitally affect the Commission's ability to do so.

One of them related to the ability of the Indian Claims Division of the General Services Administration to provide the accounting information needed to complete the litigation of the pending accounting cases. By June 30, 1973, the number of people engaged in this work had increased from a low of 2 in recent months to 75, and the number

of unfilled positions in the division on that date was 60 out of a total of 135 then authorized. We understand that the number of positions originally authorized was 160. Mr. Robert L. Auster, the director of the division, informed us at the calendar conference on January 28 that they had a total of 118 people working on the accounting reports at that date; that they had found it necessary to set priorities for their work and had done so pursuant to guidance from the Department of Justice; and that they sometimes have as many as 15 or 20 people advantageously working on one case with high priority to get it completed in order that the accounting will be ready when needed in connection with proceedings before the Commission.

In October of 1973, the Commission issued two landmark decisions in four accounting cases which include definitive rulings on issues that are also present in most of the accounting claims pending before the Commission. It is expected that the clarifying effect of these decisions will eventually expedite the Commission's disposition of the remaining accounting cases. At this time, however, an appeal by the defendant from one of the decisions is pending before the Court of Claims and the plaintiffs in the second have filed a motion for rehearing. The defendant has given notice of its intention to appeal from the second October decision as soon as the Commission's ruling on the motion to rehear is issued. Assuming that both of the decisions are reviewed by the Court of Claims, it is anticipated, regardless of how the court rules, that a further review by the Supreme Court will be sought.

This review will affect the prosecution and disposition of some 50 of the remaining dockets. The Commission intends, however, to continue with all deliberate speed all possible work on the remaining accounting cases while awaiting the result of these appeals.

The second matter mentioned in our statement last year that is a cause of concern to the Commission is the inadequacy of the Expert Assistance Revolving Fund established by an act of Congress in 1963 (25 U.S.C. 70 N-1 et seq.) to meet the borrowing needs of Indian tribal groups which require funds to finance the employment of expert assistance which is necessary for the preparation and trial of their claims before the Indian Claims Commission. An additional \$900,000 was authorized to be appropriated to this fund by Public Law 93-37, approved May 24, 1973, but this authorized amount has been included in any appropriation act passed since that date. We understand, however, that this sum has been requested by the administration for inclusion in the next supplemental appropriation bill that is normally enacted in the spring of each year.

I call your attention to the attached summary of Indian claims cases as of March 26, 1974. This summary indicates that five cases have been finally disposed of since our report of December 31, 1973.

[The Summary of Indian Claims Cases on March 26, 1974, follows:]

Indian Claims Commission—Summary of Indian claims cases on March 26, 1974

Claims filed:	<i>Number of dockets</i>
Received through August 13, 1951.....	370
Causes severed from original claims and redocketed as separate claims	241
Total docketed.....	611

## Claims disposed of:

By awards certified to the Treasury Department totaling \$486,523,- 555.26 -----	235
By orders of dismissal -----	178
<b>Total disposed of -----</b>	<b>413</b>
Claims pending -----	198
Summary of the status of pending Indian claims:	
Pending before the Court of Claims on appeal or involved in appeals from Commission decisions:	
Cases with final awards totaling \$27,530,800.63 (dockets 18-R, 73 and 151, 83, 158, 231, and 350-F) -----	7
Cases with interlocutory decisions entered (dockets 13-E, 13-F, 15-E, 15-I, 15-N, 15-O, 15-P, 15-Q, 15-R, 22-G, 27, 27-B, 27-E, 29-C, 29-D, 29-E, 29-G, 29-L, 29-M, 29-N, 29-O, 29-P, 59, 64, 64-A, 74, 87-A, 113, 120, 128, 130, 133-A, 133-B, 133-C, 139, 141, 191, 202, 221, 228, 246, 252, 280, 302, 308, 309, 310, 326-J, 332-C, 335, 338, 350-C, 354, 355, and 356) -----	56
Cases with orders dismissing the plaintiffs' claims (dockets 341-C, 341-D, and 350-B) -----	14
<b>Total before the Court of Claims -----</b>	<b>77</b>
Cases pending before the Supreme Court on petitions for writs of certiorari to the Court of Claims (dockets 49 and 257) -----	2
Cases pending before the Commission:	
Final awards with appeal time running totaling \$8,525,291.29 (dockets 84 and 300-B; 342-B, 342-C and 368; 342-F; 342-I; and 363 (in 1 of 4 causes)) -----	8
Cases with appeal time running on orders dismissing the plaintiffs' claims (dockets 13-K, 18-P, 40-I, 73-B, and 124-H) -----	5
Other cases in various stages of litigation -----	106
<b>Total pending under the Commission's jurisdiction -----</b>	<b>119</b>

We favor the enactment of S. 3007 so that our work can proceed during fiscal year 1975. My colleagues on the Commission may wish to add to what I have said, and we are all available to answer questions. We thank you for your interest and for your consideration of this legislation.

Mr. Chairman, if I may, I would ask our chief counsel, Mr. Harry Webb, to provide information pertaining to a recent change in the figures that are shown on schedule A attached to the statement.

Senator ABOUREZK. Surely, Mr. Webb.

Mr. WEBB. Those have already been furnished your staff.

Senator ABOUREZK. Mr. Chairman, the figure of \$1.45 million is the maximum authorization that you will need to carry out your work this year?

Mr. KUYKENDALL. Yes, that is true.

Senator ABOUREZK. And that would take care of any supplemental appropriations so we don't have to ask for new authorizations?

Mr. KUYKENDALL. Yes, and that is exactly the posture of our request.

Senator ABOUREZK. We, for the record, sent a memorandum to every Indian tribe in the country that had a claim pending to ask them if they had any questions to ask of the Commission about the handling of their claim.

[Committee memorandum and replies from tribal leaders follow:]

UNITED STATES SENATE,  
 COMMITTEE ON INTERIOR AND INSULAR AFFAIRS  
 Washington, D.C., March 6, 1974.

## MEMORANDUM

To: All Tribal Leaders.

From: Senator James Abourezk, Chairman, Subcommittee on Indian Affairs  
 Subject: S. 3007, to authorize appropriations for the Indian Claims Commission for fiscal year 1975.

A hearing has been scheduled before the Subcommittee on March 26, 1974, to consider the annual authorization for appropriations for the Indian Claims Commission. The requirement that the Commission appear annually before Congress to secure an authorization for its appropriation was included in the Act of August 3, 1971, P.L. 92-265, from the 92nd Congress which authorized a five-year extension for the life of the Commission. Pursuant to that Act, the Commission will expire on April 10, 1977, and on that date the remaining cases will be transferred to the U.S. Court of Claims for final adjudication.

I would appreciate receiving any questions or comments your tribe may have concerning the operations and procedures of the Commission. Also, I am hopeful that you will feel free to submit a written statement to the Subcommittee on the work of the Commission to date.

Your prompt response to this memorandum will be necessary if I am to have the benefit of your thinking and recommendations.

JAMES ABOUREZK,  
 Chairman.

TRIBAL EXECUTIVE BOARD  
 ASSINIBOINE AND SIOUX TRIBES FORT PECK INDIAN RESERVATION,  
 Poplar, Montana, March 11, 1974.

Senator JAMES ABOUREZK,  
 U.S. Senate, Washington, D.C.

DEAR SENATOR: I have been informed that a hearing is scheduled for March 26, 1974 to consider the annual authorization to appropriate funds for the Indian Claims Commission.

Due to the fact that the Commission has numerous dockets that need to be disposed of, I would appreciate it if your committee will give favorable consideration on request for appropriations.

The Black Hills case has been pending before the Commission for a number of years and it will be most helpful if your committee will call this to their attention.

Thank you for your interest in the affairs of the Indian people.

Sincerely yours,

NORMAN HOLLOW, Tribal Chairman,  
 Fort Peck Tribal Executive Board.

DEVILS LAKE SIOUX ENTERPRISES,  
 Fort Totten, North Dakota, March 18, 1974.

Re S. 3007, to authorize appropriations for the Indian Claims Commission for Fiscal Year 1975.

Senator JAMES ABOUREZK,  
 Chairman, Subcommittee on Indian Affairs, U.S. Senate Committee on Interior and Insular Affairs Washington, D.C.

DEAR SENATOR ABOUREZK: In reply to your memorandum of March 6, 1974, the Devils Lake Sioux Tribe at Fort Totten, North Dakota, urges you to continue the streamlining of the Indian Claims Commission. Your work in this area has been commendable. The new rules and regulations concerning Indian Claims are essential for speedy action. The Tribe is expecting to send representatives for the March 26, 1974, meeting, which will be considering the Annual authorization for appropriation for the Indian Claims Commission.

The main complaint concerning Indian Claims is the extremely slow process of Administrative Award Claims. The deadline of the Claims Commission has been authorized to expire on April 10, 1977, if the procedure is transferred to the U.S. Court of Claims, will any remaining Claims have a chance?

If you would recommend that representatives from the Tribe be present on March 26, 1974, please send details on where they should appear and if you would like to discuss any aspects on the hearings. We have a direct descendant of Chief Sleepy Eye and Chief Grey Thunder, who signed the Treaty of July 3, 1851, who would be available to testify.

Thank you for your time and cooperation.

Sincerely yours,

MRS. EVELYN YOUNG, *Tribal Chairwoman,  
Devils Lake Sioux Tribe.*

cc: Tribal Office

---

CADDO INDIAN TRIBE OF OKLAHOMA,  
*Anadarko, Oklahoma, March 18, 1974.*

Subject: S. 3007, to authorize appropriations for the Indian Claims Commission for fiscal year 1975.

Senator JAMES ABOUREZK,  
*Chairman, Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs, Washington, D.C.*

DEAR SIR: This is to acknowledge receipt of your Memorandum dated March 6, 1974, regarding the subject.

Per your request for questions or comments that our tribe may have concerning the operations and procedures of the Commission, the Caddo Tribe has had a claim pending for years. The claim is the Caddo Tribe et. al. -vs- United States Indian Claims Commission Docket 226. It is felt by the Tribal Members that this claim should be approaching adjudication.

I am sure the Tribe would appreciate your office furnishing them through their Tribal Office the latest status of this pending claim.

Sincerely yours,

HENRY SHEMAMY,  
*Manager, Tribal Business Affairs.*

---

THE NAVAJO NATION,  
*Window Rock, Arizona, March 22, 1974.*

HON. JAMES ABOUREZK,  
*Chairman, Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs, United States Senate, Washington, D.C.*

DEAR SENATOR ABOUREZK: This is in reply to your letter of March 6, 1974 inviting comments from Indian Tribes with respect to the operations of the Indian Claims Commission in connection with consideration by your Subcommittee of S. 3007, which authorizes an appropriation for the Commission for the Fiscal Year ending June 30, 1975.

The Navajo Nation has four claims presently docketed before the Indian Claims Commission. The Commission and its staff have been most helpful in connection with the replacement of our Claims Attorney, and our cases are now moving forward. However, there is no possibility that any of our pending claims can be disposed of during the next fiscal year. It is, therefore, essential to the Navajo Nation that adequate funding for the Indian Claims Commission for the fiscal year ending June 30, 1975 be authorized and appropriated.

The Commission has recently issued decisions favorable to the claims of Indian tribes for violation of fiduciary duties by the federal trustee. We have been impressed with the thoroughness and high degree of legal craftsmanship in the recent opinions of the Commission. The Commission is now making important contributions to the basic body of the federal Indian law, which will have far reaching consequences. To permit completion of its work, we urge your Subcommittee to begin a re-evaluation of the present provision for termination of the Commission in 1977.

Sincerely yours,

PETER MACDONALD,  
*Chairman, Navajo Tribal Council.*

PRINCIPAL CHIEF, CHOCTAW NATION,  
*Durant, Oklahoma, March 24, 1974.*

Senator JAMES ABOUREZK.

*Chairman, Subcommittee on Indian Affairs, Senate Office Building,  
 Washington, D.C.*

DEAR SENATOR ABOUREZK: This will reply to your letter of recent date regarding the annual authorization for appropriations for the Indian Claims Commission.

Without any mental reservations whatsoever, as Principal Chief of the Choctaw Nation, I wish to recommend that the appropriations for the Indian Claims Commission for fiscal year 1975 be authorized by the Subcommittee on Indian Affairs.

The Choctaw Nation has had experience with this Commission, and a few years ago the Choctaws and Chickasaws, who owned some tribal properties jointly, were awarded a sum of approximately \$4,000,000.00 by this Commission regarding a claim that stemmed from a treaty between the Nations and the United States government, in which, as I understand it, the Choctaws and Chickasaws were paid far less than the property involved was worth at the time of this treaty, which was effectuated something more than one hundred years ago. To be specific, the lands involved what was known as the Big Pasture, in Greer County, in western Oklahoma.

Many of the Indian tribes, I understand, still have some very valid claims against the United States government which are still not adjudicated, and I feel that the Indian Claims Commission is proving its worth to the Indian tribes of this country. It has proven very effective in many cases which I am sure you know about, involving many inequities which the Indians have suffered at the hands of the treaty-makers in the past that were able to do whatever they wished to do in dealing with a hapless people who were looking for this same government to protect them in its Indian policy.

I am aware that the government and a majority of you concerned members of the Congress of the United States are doing your best to make amends for many of the old wrongs that were perpetrated and foisted off on the Indian people. For this, I know that many of the Indian people are most appreciative of the efforts of you officials who are watching after our interests.

I appreciate your writing me as you did, and authorize you to use this letter, if you wish, in presenting my statement as pertaining to the need for a continuing appropriation for the Indian Claims Commission until its work is done or the remaining cases transferred to the United States Court of Claims for final adjudication.

Sincerely yours,

HARRY J. W. BELVIN,  
*Principal Chief, Choctaw Nation.*

Senator ABOUREZK. I think you recall last year in the authorization hearings we said we would do that to give Indian people a chance to lay their complaints before us, so we have heard of none. However, I have one of my own, not a complaint necessarily, but a claim I would like to bring up to you. It is the Black Hills claim and it involves my constituency out in South Dakota. I would like to try to establish a record on that, if I might.

I just want to state I understand that finally you have come down with the Commission decision on the value of the land from the Black Hills claim. What have you done on that?

What decisions have been made on the Black Hills claim?

Mr. KUYKENDALL. The Commission has determined the value of the 7.5 million acres of reservation area, plus value of minerals removed prior to the date of taking.

Senator ABOUREZK. Have you determined that that was a wrongful taking by the U.S. Government?

Mr. KUYKENDALL. Yes.

Senator ABOUREZK. And that the Sioux Indians are entitled to compensation for that?

Mr. KUYKENDALL. Correct.

Senator ABOUREZK. What remains then—if you want counsel to respond to these directly, that is fine, too.

Mr. KUYKENDALL. All right, I will call on him if I have any doubt. Before you go any further, I might for the record say that I dissented to a portion of that decision, but nevertheless, there were four voting for what we are telling you about.

Senator ABOUREZK. What remains to be done on the Black Hills claim?

Mr. WEBB. The next step in the Black Hills is to get into the question of the consideration and offsets. There are a couple of items which the Commission was not able to determine in this decision. One, the value of the rights-of-way which were specified under the treaty, and also the value of some 900,000 acres of land which was granted under the treaty, so those items are next in line.

Senator ABOUREZK. The rights-of-way granted by whom to whom?

Mr. WEBB. They were a part of the condition in the 1868 treaty that the Government was to acquire or did acquire certain rights-of-way over the Sioux Reservation.

Senator ABOUREZK. And the deliberation, then, that you are going to undertake is how much the Government will pay the Indians for that right-of-way?

Mr. WEBB. That is correct, sir.

Senator ABOUREZK. What is the 900,000 acres of land that you refer to?

Mr. WEBB. That is land which was granted to the Sioux. As I recall my memory may be faulty on this, that was granted under the 1977 act. It would be a part of the consideration under the treaty. In other words, this would be an amount which the Government would be entitled to assert they should get credit for.

Senator ABOUREZK. As an offset?

Mr. WEBB. Well, it is a question of offset or consideration. I presume it would be consideration in this situation.

Senator ABOUREZK. You mean consideration for the turning over of Black Hills by the Indians to the Government?

Mr. WEBB. Yes, that's right, sir.

Mr. YARBOROUGH. If I might refine that slightly, we held this was not a valid treaty or agreement because the conditions of the 1968 treaty were not complied with. It was a unilateral act by Congress that made these events, so payment made in return are not technically consideration but are payments on the claim, and there is a difference in how they are handled under Indian Claims law according to how that determination is made. So just to keep the record perfectly clear, I would like to make that note.

Senator ABOUREZK. So you have not yet computed the value of that 900,000 acres?

Mr. YARBOROUGH. No, sir.

Senator ABOUREZK. When you do, then you will under your decision subtract that from the total amount the Indians have been awarded?

Mr. YARBOROUGH. That is a possibility. I wouldn't want to get too far into the complexities of it.

Senator ABOUREZK. You will subtract it from the principal or the interest?

Mr. YARBOROUGH. Again, that is another complexity, Senator, that I would prefer not to get too deeply into because it may need some careful thought to determine just how it is done.

[The Interlocutory Order of the Indian Claims Commission of February 15, 1974, follows:]

BEFORE THE INDIAN CLAIMS COMMISSION

DOCKET NO. 74-B

The Sioux Nation of Indians, consisting in part of the Sioux Tribe of the Rosebud Indian Reservation, South Dakota; the Sioux Tribe of the Standing Rock Indian Reservation, North and South Dakota; the Sioux Tribe of the Pine Ridge Indian Reservation, South Dakota; the Sioux Tribe of the Crow Creek Indian Reservation, South Dakota; the Sioux Tribe of the Lower Brule Indian Reservation, South Dakota; the Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Sioux Tribe of the Santee Indian Reservation, Nebraska; and the Sioux Tribe of the Fort Peck Indian Reservation, Montana, Plaintiffs, v. The United States of America, Defendant.

INTERLOCUTORY ORDER

Upon the findings of fact and opinion this day entered herein, which are hereby made a part of this order, the Commission concludes as a matter of law that:

1. The plaintiffs herein are authorized to maintain this suit under the Indian Claims Commission Act, 25 U.S.C. § 70a (1970).

2. The fair market value of the lands acquired by the United States from the Sioux under the Act of February 28, 1877, 19 Stat. 254, was \$17,100,000.

3. The Act of February 28, 1877, *supra*, constituted a Fifth Amendment taking of plaintiffs' property by the defendant. Defendant is liable to plaintiffs only to the extent that plaintiffs have not received just compensation for their property.

4. The gold removed from the Great Sioux Reservation prior to February 28, 1877, was taken by the United States under the Fifth Amendment. Plaintiffs have not received any compensation for the taking. Defendant is liable to plaintiffs in the principal amount of \$450,000, plus 5 percent simple interest on that amount from November 17, 1875, until it is paid.

5. The right to construct three wagon roads through the Sioux reservation, created under Article 2 of the Act of February 28, 1877, *supra*, was a compensable property interest.

6. The defendant did not obtain from plaintiffs, under Article 2 of the Act of February 28, 1877, *supra*, the right to freely navigate the Missouri River.

This case shall proceed to a determination of the amount of compensation received by plaintiffs under the Act of February 28, 1877, *supra* including the value of any property transferred to plaintiffs under the act; and to a determination of the value of the road rights of way acquired by the United States under the act.

Dated at Washington, D.C., this 15th day of February 1974.

JOHN T. VANCE,  
*Commissioner.*  
RICHARD W. YARBOROUGH,  
*Commissioner.*  
MARGARET H. PIERCE,  
*Commissioner.*  
BRANTLEY BLUE,  
*Commissioner.*

Senator ABOUREZK. Under the initial act that authorized the Indian Claims Commission what does the law state with regard to offsets of those kinds and offsets for provisions?

Mr. WEBB. May I read that?

Senator ABOUREZK. Please do.

Mr. WEBB. Section 2 of the Indian Claims Commission Act, 25 U.S.C. 70a. If I may, I will read it all for context.

In determining the quantum of relief the Commission shall make appropriate deductions for all payments made by the United States on the claim, and for all other offsets, counterclaims, and demands that would be allowable in a suit brought in the Court of Claims under section 145 of the Judicial Code (36 Stat. 1136; 28 U.S.C. sec. 250); as amended; the Commission may also inquire into and consider all money or property given to or funds expended gratuitously for the benefit of the claimant if it finds that the nature of the claim and the entire course of dealings and accounts between the United States and the claimant in good conscience warrants such action, may set off all or part of such expenditures against any award made to the claimant except that it is hereby declared to be the policy of Congress that monies spent for the removal of the claimant from one place to another at the request of the United States, or for agency or other administrative, educational, health or highway purposes, or for expenditures made prior to the date of the law, treaty or Executive Order under which the claim arose, or for expenditures made pursuant to the Act of June 18, 1934 (48 Stat. 984) save expenditures made under section 5 of that Act, or for expenditures under any emergency appropriation or allotment made subsequent to March 4, 1933, and generally applicable throughout the United States for relief in stricken agricultural areas, relief from distress caused by unemployment and conditions resulting therefrom, the prosecution of public work and public projects for the relief of unemployment or to increase employment, and for work relief (including the Civil Works Program) shall not be a proper offset against any award.

Senator ABOUREZK. I guess what I am really trying to determine is—and if you know, I would like you to answer this—at the time when the Indians were given rations by the Government back in those days, do you know whether that was considered as part payment of the lands that were taken, or was it for some other purpose, such as keeping the Indians quiet or keeping them so they couldn't resist the western movement of the people of the United States?

Mr. WEBB. The answer to that, Senator, is a little bit difficult. It is controlled to such a large measure by the terms of a particular treaty. Many of the treaties had as a part of their terms the supplying of rations and other considerations. What you say is true in certain cases; I know that they did do this simply as a matter of pacification.

Senator ABOUREZK. In the case of the Sioux, with regard to the Black Hills claim, was that for pacification?

Mr. WEBB. I am not prepared to answer that, Senator. I would be a little bit afraid to answer it because I am not certain of the answer.

Mr. VANCE. May I make a comment?

Senator ABOUREZK. Please do.

Mr. VANCE. The case, the value phase of the case, with the exception of the two matters that were mentioned here, the 900,000 acres which the Government set aside for the tribe, has been decided by the Commission as far as value goes. However, a lot of these matters are still before the Commission for decision and the reason I asked an opportunity to make a comment is that the case is assigned to me for trial and for the conferences which are coming up. In that connection, we are having a meeting tomorrow morning with the lawyers for the tribe and the lawyers who represent the Government to try to determine some of the problems that we still have to consider. The things that we are discussing here now, Mr. Chairman, are matters that the Commission, as the case now stands, must decide. They are not matters that anyone of us as an individual can decide. We have to decide them as a group under the law, sitting en banc, and they have not been placed in the form for decision. In short, what we are discussing here is the decisionmaking of the Indian Claims Commission. Clearly, historically, as we can generalize, I don't think you will get much dis-

agreement that when Indians were fed in certain instances, certainly it was an act of humanity and often with a vital, warlike people as the Sioux were at that time, it may well be that they were fed to keep them quiet and happy. Certainly this was not just a matter of giving provisions. Congress set forth that provisions couldn't be supplied unless the Indians met certain conditions, such as, farm the land, go to school, learn English, and so forth.

Senator ABOUREZK. Were any conditions set in the 1868 treaty under which you are deciding the Black Hills claim?

Mr. VANCE. Well, yes, but the 1877 act of Congress, the Commission has made a finding on that in this case that that act in effect abrogated that treaty.

Senator ABOUREZK. Going back to the treaty itself, though there was no contingency in there that the Indians do anything in return for their rations?

Mr. VANCE. This was the 1877 act.

Senator ABOUREZK. But I mean under the 1868 treaty, before that?

Mr. VANCE. I am not aware of that.

Mr. YARBOROUGH. As I recall, the 1868 treaty provided provisions only for a term of years and I think that term of years had expired by the time of the events of 1877.

Senator ABOUREZK. What did the 1877 act say with regard to that when, as you say, it overruled the treaty?

Mr. VANCE. It set up conditions for provisions, and I really shouldn't be sitting here talking about specifics without the act here before me, but as I recall it, it set up these conditions that in order to get provisions, the Indian children had to go to school and learn English, the Indian children had to go to school and learn English, the Indian males had to farm the land. Provisions that represented the general philosophy of the times, sort of the concept of working on a farm.

Senator ABOUREZK. The act did not say that in order to get provisions you had to give up the Black Hills or part of the Black Hills?

Mr. VANCE. No.

Senator ABOUREZK. I mean we can find that out, of course, by reading the act.

Mr. VANCE. A lot of this can be satisfied. All I want to do is point out that if we seem to be equivocating, we are not. We haven't had an opportunity to sit down and decide that part of it.

Senator ABOUREZK. I understand. How long has the Black Hills claim been in litigation?

Mr. WEBB. Senator, you can safely state that it has been before the Commission since August 13, 1951. As far as litigation itself is concerned, if my memory serves me correctly, there was a decision in 1955 or thereabouts which was a dismissal by the Commission and which was appealed to the Court of Claims and after a hearing there, it was affirmed. However, the Court of Claims for purposes perfectly satisfactory to it, reinstated the case, rescinded its order and the litigation started anew. It was returned to the Commission under the order of the court as they provided that the Commission would reopen if it were necessary to do so based on additional evidence and so on. So it has been back before the Commission since that period of time.

Senator ABOUREZK. How much longer do you expect before an appealable judgment comes down?

Mr. WEBB. I am sorry, sir.

Senator ABOUREZK. How much more time do you anticipate before an appealable judgment is handed down?

Mr. WEBB. Senator, if I may go back, we discussed this question last year, and we gave you an estimate at that time. Concerning the aboriginal title end of it which is presently before the Court of Claims, and that was just argued, if my memory is correct, in January. So it will be some time before that portion comes down.

Senator ABOUREZK. How long?

Mr. WEBB. We would have to give you the 12- to 18-month estimate again, sir. I just don't know. Actually on the argument we should be hearing something relatively soon, but the court hasn't had time to make its deliberations and there is no way to estimate the time of their deliberation process. It is a rather complicated case with a number of parties in it.

With regard to the so-called Black Hills portion of it, you again get into a legal technicality which is a matter of strategy and tactics on the part of the parties. There are two facets to the Black Hills portion. There is the 7.5 million acres of the reservation and then separately there is the minerals removed prior to the rate of taking. That is in effect a final decision from which an appeal presumably would lie. The other portion is questionable, I don't know, I would not offer an opinion.

And a question of extreme importance in this case is one of res judicata stemming from a 1942 decision of the Court of Claims. There was a difference of opinion in the Commission as to whether it was in fact res judicata. This is a further impediment to progress of the case. I would question whether it is appealable at this stage. It is a legal matter and I would say it would be simply a matter of opinion on it.

I would say this, sir, if I may continue for a moment, that the law under which the Court of Claims takes our appeal requires that there be a liability on the part of the defendant. At this state it is questionable whether that liability has been established with regard to the 7.5 million acres because there remain further points to be decided by the Commission. However, the Court of Claims has in the past taken cases in which a technical liability stage has not been reached so I am simply guessing, sir, as to what they might do.

Senator ABOUREZK. Is it proper for Congress to legislate as to whether or not that case is res judicata? In other words, if we legislated in that regard, can we establish that and obviate the argument before the court and the court decision?

Mr. WEBB. Well, sir, I don't think there is any question of the power of Congress to so legislate. They have in the past done similar things and I presume it is possible again.

Senator ABOUREZK. Is it also proper for Congress, in your opinion, to insert a proviso in this authorization bill that we are considering that would provide that no expenditures for food, rations or provisions hereafter, shall be offset against any award as a payment on the claims or as a gratuity?

Mr. WEBB. Again, the answer would be yes, sir. I think the Congress has the power to do that.

Mr. KUYKENDALL. Mr. Chairman, I agree with that. I would suggest that it might be susceptible to a question of whether or not it is germane to the legislation.

Senator ABOUREZK. I don't think there is any question about its germaneness.

I want to ask you another question. Do you have a breakdown of what it would cost to make that provision retroactive? This particular language that I read to you that we are now considering inserting as an amendment to this bill is—

Mr. KUYKENDALL. No, we do not have that, but we could get those figures by searching our records.

Senator ABOUREZK. How long do you think it would be before we would be able to have them?

Mr. KUYKENDALL. I think it would be done before this week is out. No, Mr. Webb thinks that is too soon.

Senator ABOUREZK. If you could do it within what, 10 days?

Mr. WEBB. Senator, may I say that we will do our very best to get it for you within 10 days.

[Letter of Mr. Webb of April 4, 1974, follows:]

INDIAN CLAIMS COMMISSION,  
Washington, D.C., April 4, 1974.

Re Offsets allowed in cases before the Indian Claims Commission for gratuitous expenditures by the United States in behalf of tribal claimants.

Mr. FOREST J. GERARD,

*Professional Staff Member Subcommittee on Indian Affairs of the Senate Committee on Interior and Insular Affairs, New Senate Office Building, Washington, D.C.*

DEAR MR. GERARD: This is in regard to the draft bill "To amend the Indian Claims Commission Act so as to eliminate the use of gratuities as offsets against awards in favor of Indian Tribes" that was delivered to you last week.

During the hearing before the Subcommittee on March 26, 1974, on the Commission's appropriation authorization for fiscal year 1975, Chairman Abourezk asked for a breakdown on the cost of this legislation. You may recall my mentioning to you that we had information on gratuitous offset credits allowed in some of the cases totaling about \$10,000,000.00.

Upon going over the cases in which final awards have been entered to date, we find that the Commission has determined amounts allowable as offsets for gratuitous disbursements in 27 cases involving 37 dockets. Enclosed is a list of these cases by dates of awards showing the docket numbers, names of the claimant tribes, bands or groups, and the offset amounts allowed for gratuities. This list reflects a total of \$2,104,204.94 so allowed.

In most of the cases before the Commission that have been concluded with final awards, the parties have agreed upon compromise settlements of the Government's claims for gratuitous offsets, usually after decisions have been entered on title and valuation issues. In examining the Commission's findings of fact in such cases our staff has found that offset claims in 93 cases involving 149 dockets have been disposed of under compromise settlement agreements, that some amounts of offsets agreed upon totaling \$7,486,699.77 are stipulated in 33 cases involving 37 dockets, and that we have no stipulations as to the amounts of offsets agreed upon in settlements in the other 60 cases involving 112 dockets. In the cases in which the settlement agreements stipulate the amounts of allowed offsets, the language of the agreements is such that we cannot be certain as to what portions of those amounts derive exclusively from gratuitous expenditures. In many of the settlements other remaining issues in addition of offset issues are also disposed of.

In the light of our past experience with compromise settlements of the Government's claims for offsets as set out above, it is impossible for the Commission to provide an accurate figure with regard to the retroactive cost of the proposed amendment.

Sincerely yours,

HARRY E. WEBB, JR.,  
Chief Counsel.

## A BILL

To amend the Indian Claims Commission Act so as to eliminate the use of gratuities as offsets against awards in favor of Indian Tribes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the last paragraph of section 2 of the Act of August 13, 1946, c. 959, 60 Stat. 1050, is hereby amended to read as follows:

"In determining the quantum of relief the Commission shall make appropriate deductions for all payments made by the United States on the claim, and for all other offsets, counterclaims, and demands that would be allowable under Title 28, United States Code, section 1503, in a suit brought in the Court of Claims; but in no event shall any money or property given to or funds expended gratuitously for the benefit of the claimant be set off against any award made to the claimant."

SEC. 2. The Indian Claims Commission, within one year from the effective date of this Act, shall review each claim previously reported to Congress pursuant to section 21 of the Indian Claims Commission Act (25 U.S.C. § 70t), and shall submit a report to Congress listing the amount by which each final award in favor of a claimant was reduced by the offset of gratuities. Such report shall have the effect of increasing the final award previously reported in the amount shown; and there are hereby authorized to be appropriated such sums as may be necessary to pay such increases.

## INDIAN CLAIMS COMMISSION

Docket number	Claimant tribe, band or group	Offsets allowed for gratuities	Date of award
33	Kaw	\$95,468.73	May 15, 1952.
14	Quapaw	59,423.96	May 7, 1954.
9	Osage	75,102.90	Mar. 1, 1955.
15-B	Potawatomi, Prairie	4,146.18	Aug. 8, 1955.
111	Potawatomi, Citizen	865.37	Aug. 8, 1955.
11	Otoe & Missouria	23,024.05	Feb. 17, 1956.
150	Seminole, Oklahoma	160.00	June 4, 1958.
15-J	Potawatomi, Citizen (Potawatomi)		
71-A	Potawatomi, Prairie (Nation 1846)	1,242.10	Feb. 26, 1959.
67, 124	Miami Nation	7,257.33	June 30, 1960.
10	Pawnee	10,000.00	July 6, 1962.
314	Peoria (Wea)	26,294.54	July 29, 1963.
337	Delaware (1818 treaty)	1,341.63	Aug. 5, 1963.
18-A	Chippewa, Red Lake (in 18-A)		
113, 191	Chippewa, Pembina (in 18-A, 113, and 191)	1,699,061.57	Apr. 24, 1964.
75	Emigrant New York Indians	139,351.95	Aug. 11, 1964.
303	Ottawa, Oklahoma	2,028.77	Feb. 11, 1965.
96	Potawatomi, Citizen	130,571.01	Aug. 27, 1968.
65	Peoria	829.14	Nov. 13, 1968.
73	Seminole, Florida		
151	Seminole, Oklahoma	\$84,719.37	Oct. 22, 1970.
288	Washoe	94,000.00	Dec. 2, 1970.
27-A	Delaware	22,106.14	Nov. 24, 1971.
241	Delaware, Absentee		
18-E, 53	Ottawa and Chippewa of Michigan	19,749.68	Mar. 15, 1972.
217	Potawatomi, Citizen Band, et al.		
15-K	Potawatomi, Prairie Band, et al.		
29-J	Potawatomi, Hannahville Indian Community, et al.	10,790.28	Apr. 25, 1973.
173-A	Cherokee Nation and Cherokee Freedmen (Intervenors)	381,031.43	May 30, 1973.
57	Chippewa, Saginaw of Michigan	25,725.00	Aug. 1, 1973.
18-C	Chippewas of Lake Superior and the Mississippi	12,062.32	Nov. 7, 1973.
84	Six Nations, et al.		
300-B	Stockbridge and Munsee	6,788.17	Dec. 28, 1973.
137	Pueblos de Zia, Jeme and Santa Ana	\$171,063.92	Jan. 10, 1974.
Total		2,104,204.94	

<sup>1</sup> Of the amount of \$699,061.57, the sum of \$28,130.45 was chargeable to both bands, the sum of \$664,812.41 was chargeable to the Pembina Band, and the sum of \$6,118.71 was chargeable to the Red Lake Band.

<sup>2</sup> The final award in the Seminole Dockets 73 and 151 has not been reported.

<sup>3</sup> Offsets of \$171,063.92 were determined by the Commission. Additional offset credits of \$17,852.33 were agreed upon by the parties for settlement of offset issues remanded by the Court of Claims.

Mr. YARBOROUGH. Mr. Chairman, may I interrupt for a moment, if I could? This is going way outside my jurisdiction, but making a recommendation on policy, if Congress is contemplating eliminating the

offsets for provisions, there are many other little types of claimed offsets by the Government such as agricultural seed, clothing, farm implements, generally in very small amounts, but requiring enormous amounts of detailed work to determine the possibility of their offset. Provisions generally run a much more substantial sum in any claims of offset by the Government. If you are contemplating wiping out provisions, I would certainly suggest you wipe out all these other little things, too, and leave essentially only land transfers as the offset permissible.

Senator ABOUREZK. That is a good suggestion. I wonder if after the hearings have been completed today, that the staff of the subcommittee might be able to meet with you and just get the language worked out with you on that?

Mr. KUYKENDALL. We would be very happy to give any assistance we can.

Mr. YARBOROUGH. Excuse me, Senator, I know the Office of Management and Budget has not cleared us to make policy statements of this sort this morning, but I did want to put that on the record as to the advisability of going all the way if you are going part of the way.

Senator ABOUREZK. In computing the amount of rations and provisions that were given to the Indians, who does the calculation and how long does that take, specifically on this claim that we are referring to?

Mr. WEBB. Senator Abourezk, it is done through what is known as a GAO report or GSA report, in which the accountants go over and pull out the various vouchers, calculate the total amount of money, and put it under a classification such as provisions. There are a number of classifications, as you would know. That is the process.

Now, the decision then has to be made based upon the information contained in that report as to what is allowable and what is not allowable.

Senator ABOUREZK. And do you know how long it takes to calculate the rations and provisions?

Mr. WEBB. Are you referring to the Sioux case specifically, sir, or generally?

Senator ABOUREZK. To this case, yes.

Mr. WEBB. That is a question, again, that was spoken to by Commissioner Vance, which is a matter which will need a decision before the calculations begin. On that basis, I would respectfully prefer not to try to answer.

Senator ABOUREZK. I wonder if I might be able to pin it down a little better. After the decision has been made, how long would it take to calculate the rations?

Mr. WEBB. Once a decision has been made, it becomes mechanical. Assuming you have an appropriate breakdown, it is a very short time.

Mr. VANCE. If the lawyers will do it the way I want them to do it, Mr. Chairman, I don't know how often that ever occurs, why it wouldn't take more than—certainly not more than 30 days.

Senator ABOUREZK. Once the decision is made.

Mr. VANCE. But this is the hope. I suppose that when anybody goes into some sort of pretrial conference, the ultimate interested party is the public, but the three directly interested parties are the plaintiffs, the defendants and the person who is presiding at the trial, and I don't

know what comes out of that, but that is what we are going to talk about tomorrow morning.

Senator ABOUREZK. You are here asking for the Congress to renew your authorization so you can finish your job. And I wonder if I might just ask you in return if you could put some kind of priority on this Sioux project.

Mr. KUYKENDALL. It is a very old case. It should have prompt attention and it is being processed as fast as possible.

Senator ABOUREZK. Thank you very much.

During hearings on S. 2408 in the 92d Congress you testified that the inadequate number of lawyers in the Indian Claims Section of the Department of Justice might impede the work of the Commission. Can you tell the committee what the staffing situation in this unit is at this time?

Mr. KUYKENDALL. It has been considerably improved. I don't know whether they have enough or not, but they are doing a lot more, producing a lot more work than they were.

Senator ABOUREZK. Is there any way this committee can communicate to Justice the importance of their filling up their staff and making sure the work does go on because it holds up your Commission, it holds up lawyers on the other side?

Mr. KUYKENDALL. Well, I guess any Senator could write to the Department of Justice if he wanted to. What you are saying will be printed and surely it will come to the attention of the Department.

Senator ABOUREZK. I think we will probably write them a letter, as well, to ask them to do so.

Based on your present projections, how many dockets do you realistically estimate may remain for transfer to the Court of Claims for final adjudication?

Mr. KUYKENDALL. If we can succeed in our projection, we will have none left to transfer and that is our goal. But as we have mentioned, there are hazards which may prevent our completing all the cases. These accounting claims are still in their infancy and we don't really know all the complications and problems and time consuming matters that may be involved in those cases. I think that is where the great danger of having some cases left sits.

Senator ABOUREZK. Would it be fair to say that the bulk of the remaining cases would be accounting cases?

Mr. KUYKENDALL. Yes, that would be correct.

Senator ABOUREZK. Senator Bartlett, do you have some questions.

Senator BARTLETT. Chairman Kuykendall, we are very interested in the Black Hills in Oklahoma, but we are a little more familiar with the Washita and the Kiamichi and the Ozarks. Could you give me a couple of sentences in summation of how the Oklahoma claims are proceeding?

Mr. KUYKENDALL. I haven't made a recent analysis by State. Did we give you some such information a year ago?

Senator BARTLETT. I think you did.

Mr. KUYKENDALL. Why don't you permit us to submit something to you in writing?

[Subsequent to the hearing the Indian Claims Commission supplied the following:]

INDIAN CLAIMS COMMISSION,  
Washington, D.C. April 12, 1974.

Re *Claims of the Oklahoma Indian Tribes.*

HON. DEWEY F. BARTLETT,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR BARTLETT: This is in response to your request, made during the hearing before the Subcommittee on Indian Affairs on March 26, 1974, on the Commission's appropriation authorization for fiscal year 1975, for a brief summation of how the Oklahoma claims are proceeding.

At this time there are 55 uncompleted claim dockets of the Oklahoma tribes. All of these cases are being actively litigated. Thirty-one of them are pending before the United States Court of Claims on appeal or involved in appeals from decisions by the Commission, and 2 are pending before the Supreme Court on petitions for certiorari review of decisions by the Court of Claims from determinations by the Commission. The other 22 cases over which the Commission currently has jurisdiction are proceeding on course in line with our projected dates of completion. Although the completion of those that are on appeal may be delayed, we expect that all of the cases will be finished within the remaining lifetime of the Commission.

Since the submission of our detailed report of March 16, 1973, on the Oklahoma claim cases filed with the Commission, final awards in the Oklahoma claim dockets listed below have been certified for inclusion in appropriation requests. Some of the awards are shared by plaintiffs in other consolidated dockets, as indicated in this list.

Docket No.	Plaintiff tribes or groups	Net final award	Date certified
273	Creek Nation	\$400,000.00	Mar. 19, 1973
173-A	Cherokee Nation and Cherokee Freedmen (Intervenors)	3,887,557.57	July 24, 1973
304	Ottawa Tribe of Oklahoma	182,610.00	July 31, 1973
305	do	80,585.76	Do.
217	Citizen Band of Potawatomi Indians of Oklahoma (consolidated with dockets 15-K, Prairie Band of Potawatomi Indians; and docket 29-J, Hannahville Indian Community, and others).	4,104,818.98	Aug. 1, 1973
30	The Fort Sill Apache Tribe of the State of Oklahoma, and others (consolidated with docket 48, The Chiricahua and Warm Springs Tribes of Apache Indians).	521,796.00	Sept. 19, 1973
30-A	The Fort Sill Apache Tribe of the State of Oklahoma, and others (consolidated with docket 48-A, The Chiricahua and Warm Springs Tribes of Apache Indians).	15,967,300.00	Do.
84	The Seneca-Cayuga Tribe of Oklahoma, and others, (including, among others, The 6 nations and the Seneca Nation) (consolidated with docket 300-B, the Stockbridge Muncsee Community, and others).	29,930.25	Mar. 29, 1974
	To the plaintiffs in dockets 84 and 300-5	29,930.25	Mar. 29, 1974
	To the Seneca Nation in docket 84	25,399.50	Do.

I hope this summary will be considered responsive to your request and thank you for allowing us to submit it in writing.

Sincerely,

MARGARET H. PIERCE, *Vice Chairman.*

Senator BARTLETT. That would be fine, Mr. Chairman.

On page 4 you mention the Indian Claims Division of the General Services Administration is charged with the accounting information on the cases, and you pointed out that their numbers have increased from a low of 2 to, in recent months to 75 and they have an authorization, I believe, of 180 or thereabouts.

If that were increased, would that increase the ability of the Commission to finish its job, would it shorten the time?

Mr. KUYKENDALL. Yes, it would. The faster the GSA does its accounting work the sooner the Commission and the attorneys can start working on all the problems.

Senator BARTLETT. Would you recommend that in addition to this

committee contacting Justice that it try to speed up the General Services Administration in its accounting function by contacting them?

Mr. KUYKENDALL. Yes, I would appreciate that very much. I would suggest that it not be intimated that we now say that GSA is not going forward, because it now appears to us that they are. We don't know how fast they are going forward. We certainly appreciate your advice to them that you are interested in their going forward as fast as possible.

Senator BARTLETT. In looking at the curve attached to your statement, it shows an ever-increasing rapidity of processing of cases, which is what I think would be expected. As you project it up to the completion of 611 docketed cases, it would appear that you could complete your work in a year or so in advance of the deadline. Do you think that is possible?

Mr. KUYKENDALL. I really don't, because we have got to wait for these accounting reports and there are many of them yet to come and it will be a year or two before we get the last one. At least 2 years, I would guess.

Senator BARTLETT. Are you saying that the accounting cannot be expedited or you don't anticipate that it will be?

Mr. KUYKENDALL. I think it will be expedited but we are not going to get all the reports from GSA soon. It will probably be at least 2 years before we get the last one, that would be my estimate, even at their accelerated pace.

Senator BARTLETT. Do you have any report from them as to when to anticipate the reports?

Mr. KUYKENDALL. I have not heard any report about when they expect to complete their last case. You might ask that in your letter, if you would.

Senator BARTLETT. I think it would be important we do it. I think from what you are saying it indicates to me the time in which you expect to finish your work depends pretty much entirely on them or at least it is very dependent on them and naturally it depends on you, too, but if they delay you are going to be delayed, if they speed up, you are going to be able to speed up.

Mr. KUYKENDALL. There may come a time when they are putting these reports out so fast we will have a backlog. But in the meantime we can't do anything with those reports until we get them.

Senator BARTLETT. At the present time you are keeping up with them?

Mr. KUYKENDALL. Yes.

Senator BARTLETT. Mr. Chairman, thank you very much.

Senator ABOUREZK. Thank you, Senator Bartlett.

Mr. KUYKENDALL. Senator, could I say something in supplementation of my written statement?

Senator ABOUREZK. Please.

Mr. KUYKENDALL. I made some comment about the procedures the Court of Claims is now following in using three-judge panels. In reading my statement I think what I have said sounds rather critical. This is a new experiment for them. We haven't had very much experience and I don't want to leave the inference that I say this procedure is wrong, because we don't know yet. Offhand it did appear to me that it would probably consume more time overall than not using the

panels, but we have to give the Court of Claims credit for knowing what it is doing. It is a better judge of what would be the best procedure than is anybody else, so maybe when this procedure gets established and the cases flow through it, the court will end up by disposing of them faster than they otherwise would. I hope so.

Senator BARTLETT. Mr. Chairman, would you yield? Would it be the pleasure of the chairman to write such a letter to GSA as I mentioned, and perhaps it might be even helpful to support that with a letter from the chairman of the full committee?

Senator ABOUREZK. Yes, I think what we might do is have a letter for my signature, yours, and Chairman Jackson's as well. I think it is of enough importance that we ought to do that. As I see it, it is costing the taxpayers money by keeping those offices understaffed and dragging the work out.

I would like to announce that there are in the hearing room seven students from Snow Hill High School who are visiting Langley High School in McLean, Va., under the American Field Service program, the short-term exchange program. I wonder if they would stand up and be recognized here?

[Applause.]

Senator ABOUREZK. We have no more questions. The hearing will remain open for 2 weeks for the insertion of additional statements and the information that the Commission will provide. We want to thank the Commission members very much for being as cooperative as they have been. We understand the difficulty of the job that you have undertaken and we would like to compliment you on the way you have handled it.

[Whereupon, at 11 a.m., the hearing was adjourned.]

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The first part of the paper is devoted to a general discussion of the problem. It is shown that the problem is equivalent to the problem of finding a path of minimum length in a certain graph. This is done by constructing a graph whose vertices are the points of the plane and whose edges are the line segments connecting them. The length of the path is then the sum of the lengths of the edges.

In the second part, the problem is solved for the case of a convex polygon. It is shown that the minimum path is a simple polygon whose vertices are a subset of the vertices of the given polygon. This is done by showing that any path can be replaced by a simple polygon of equal or smaller length.

Finally, in the third part, the problem is solved for the case of a general polygon. It is shown that the minimum path is a simple polygon whose vertices are a subset of the vertices of the given polygon. This is done by showing that any path can be replaced by a simple polygon of equal or smaller length.