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HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

OVERSIGHT ON IDENTIFYING AND PROCESSING OF CLAIMS OF
INDIANS AND INDIVIDUALS AND NECESSITY OF EXTENDING
THE STATUTE OF LIMITATIONS

DECEMBER 17, 1979
WASHINGTON, D.C.

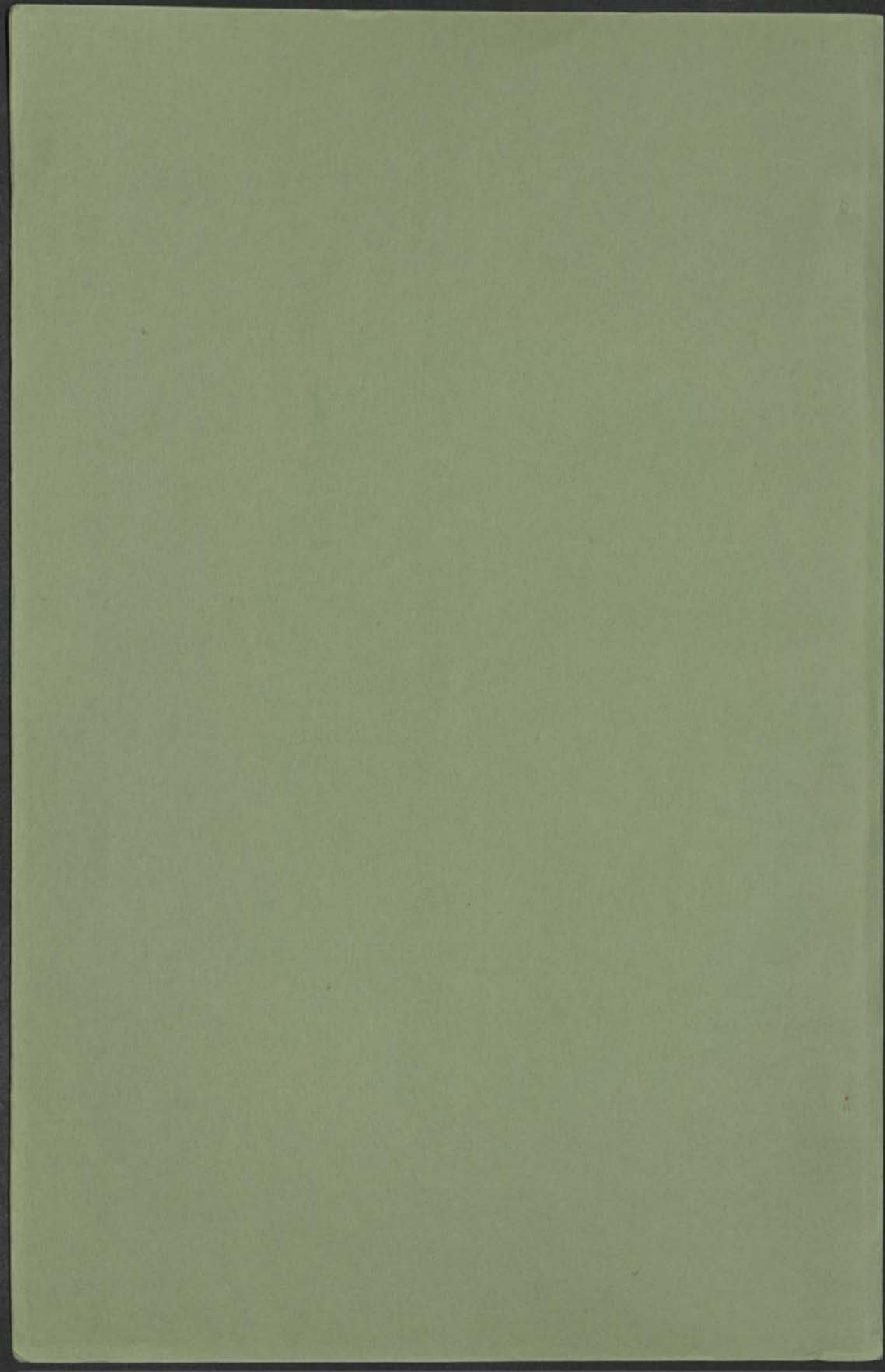
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STATUTE OF LIMITATIONS EXTENSION

MONDAY, DECEMBER 17, 1979

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 10:15 a.m., in room 1202, Dirksen Senate Office Building, Senator John Melcher (chairman of the committee) presiding.

Present: Senators Melcher, Inouye, DeConcini, Hatfield, and Cohen.

Staff present: Max Richtman, staff director; Peter Taylor, special counsel; Virginia Boylan, staff attorney; John Mulkey, professional staff member; and Michael Cox, minority counsel.

Senator HATFIELD [acting chairman]. The hearing will come to order.

The purpose of the hearing this morning is to determine the status of the work of the Department of the Interior and Department of Justice in identifying and processing claims of Indians and individuals that arose before 1966.

Prior to 1966, there was no limitation on the time in which the United States could bring an action for damages either for itself or on behalf of an Indian tribe. In 1966, the Congress enacted 28 U.S.C. 2415 to establish a time limit of 6 years for claims based on contracts and 3 years for damage claims for most torts. Six years was allowed for trespass or conversion damages affecting lands. There is no limit on time for actions to establish title to lands.

In 1972, at the request of the Departments of Interior and Justice, this statute of limitations was amended to extend by 5 years the time in which the United States could bring an action on behalf of an Indian tribe or individual for a claim arising before 1966. In 1977, this statute was again extended by 2½ years to April 1, 1980. The purpose of these extensions was to allow Interior and Justice to identify and process outstanding Indian claims and provide some time for negotiation of settlements outside of court where possible.

We will now invite our first witness today, Forrest Gerard, Assistant Secretary for Indian Affairs, Department of the Interior, to testify.

I am informed, Mr. Gerard, that you would like to have the various field and regional solicitors sit as a separate panel to describe the number of cases before them, the kind of cases, and how long they estimate it will take to process them, and the prospects for achieving negotiated settlements; assuming the statute of limitations is extended. Is that correct?

Mr. GERARD. That is correct.

Senator HATFIELD. And you have others that you wish to accompany you this morning at this time?

Mr. GERARD. That is correct.

Senator HATFIELD. All right.

Would you please have a chair and introduce those who will be accompanying you?

STATEMENT OF FORREST GERARD, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY HANS WALKER, ACTING ASSOCIATE SOLICITOR, DIVISION OF INDIAN AFFAIRS; ULYSSES S. ST. ARNOLD, ACTING RIGHTS PROTECTION OFFICER, OFFICE OF TRUST RESPONSIBILITIES, BUREAU OF INDIAN AFFAIRS; GEORGE A. BOURGEOIS, ATTORNEY, SOLICITOR'S OFFICE

Mr. GERARD. Thank you, Mr. Chairman.

Senator HATFIELD. We have your prepared statement. It will be placed in the record, as you have submitted it. You may read it, summarize it or highlighting it, as you wish.

Mr. GERARD. Mr. Chairman, it would be my preference to summarize the prepared statement.

Senator HATFIELD. That will be fine.

Without objection, your full prepared statement will appear in the record at this point.

[The prepared statement of Mr. Gerard follows:]

STATEMENT OF FORREST GERARD, ASSISTANT SECRETARY FOR INDIAN AFFAIRS,
DEPARTMENT OF THE INTERIOR, BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS
OF THE UNITED STATES SENATE OVERSIGHT HEARING, DECEMBER 17, 1979.

Mr. Chairman and Members of the Committee, it is a pleasure to appear before you to discuss matters relating to the statute of limitations claims program.

I would like, in my testimony today, to describe the scope of the task, our efforts to carry out the task, and some of the problems we have encountered since the extension was granted in 1977.

I will not burden you with a detailed background of the program. That history has been stated in the various reports relating to previous extensions. It will be helpful, however, to mention some points that may place in proper perspective the situation that we face today.

The program began developing after July 18, 1966, the date the statute of limitations first went into effect. The statute limited to six years the time in which the United States, in carrying out its trust responsibility to Indians, could sue third parties for damages to the property of Indians arising out of tort or contract. In 1972 the six-year limitation was extended five more years, or until July 18, 1977, as to claims which accrued before July 18, 1966, the date of the first act.

In 1977, in testimony before this Committee on the then pending extension bill, we stated that we had identified several hundred pre-1966 claims, and that we anticipated well over a thousand nationwide. We were then given a two-year-and-8-month extension, until April 1, 1980.

For fiscal year 1978, we went as far as we could with existing resources. The Department formulated a comprehensive plan of action during FY 1978 and aggressively sought funds to implement such a plan. Immediately after the extension was granted, work began on the formulation of a claims processing plan and on the preparation of a budget request. By February 1978 the plan was initiated with existing resources at the field level with an intensive training phase. The plan included claims processing procedures, time limits, directions on communication channels, recommended forms, suggested publicity, and improved liaison with the Justice Department. Our plan was put into practice during FY 1978, and while we did process some of our backlog it was clear we needed funding if we were to meet the needs of the claims problem.

Specific funding to implement our statute of limitations claims program was first provided for fiscal year 1979. Just as we were launching our program at the beginning of FY 1979, we were slowed for six months by a hiring freeze. When the thaw came in March it left us with about a year to process a then existing inventory of about a thousand claims. In addition our plans called for an all-out search for unidentified claims and the referral of all worthwhile claims to the Department of Justice no later than November 30, 1979. The reason for the November date was that the Department of Justice needed at least 4 months to prepare and file the claims in court.

The all-out search mentioned above was conducted in the summer of 1979. By the end of the summer we had uncovered a large number of potential claims, over 4,500. The potential claims continued to arrive, and by December 1, 1979, our count of identified potential claims reached a grand total of 9,768. We have illustrated this growth on the attached chart. Our search experience also leads us to believe that another 5,000 or more identifiable claims in the field may not yet be inventoried.

The number of these potential claims resulted in an extension of our Justice Department referral date to December 28, 1979, a move which may cause serious inconvenience to the Justice Department.

We managed to resolve over 2700 of the grand total mentioned above either by rejection or by successful resolution of the claim to the benefit of the Indian claimants. To date we have referred about 100 litigation reports to the Department of Justice covering about 2000 claims. Our Solicitor's office currently has about 2700 claims on hand to complete and the BIA about 2200 such claims. A currently undetermined number of worthwhile claims among our backlog of 4900 claims have little chance of making it to court by April 1, 1980. Included in this number are most of the largest and most difficult claims we have, as well as some that may be invalid or of a minor nature.

Our claims program has affected a significant number of our citizens in this country. In many instances hardships may result as a result of our suits. In many of these same instances we are dealing with regaining title to property

under circumstances in which defendants through no fault of their own are holding by void title. The title issues in these claims are not subject to the statute of limitations as are the tort issues.

Many prospective defendants are Indians. Other prospective defendants are immune from suit, such as Indian tribes and the Federal Government. In some instances defendants are corporate entities. In any case, under the time constraints we face, we are unable to give the vulnerable defendants time to work out amicable settlements.

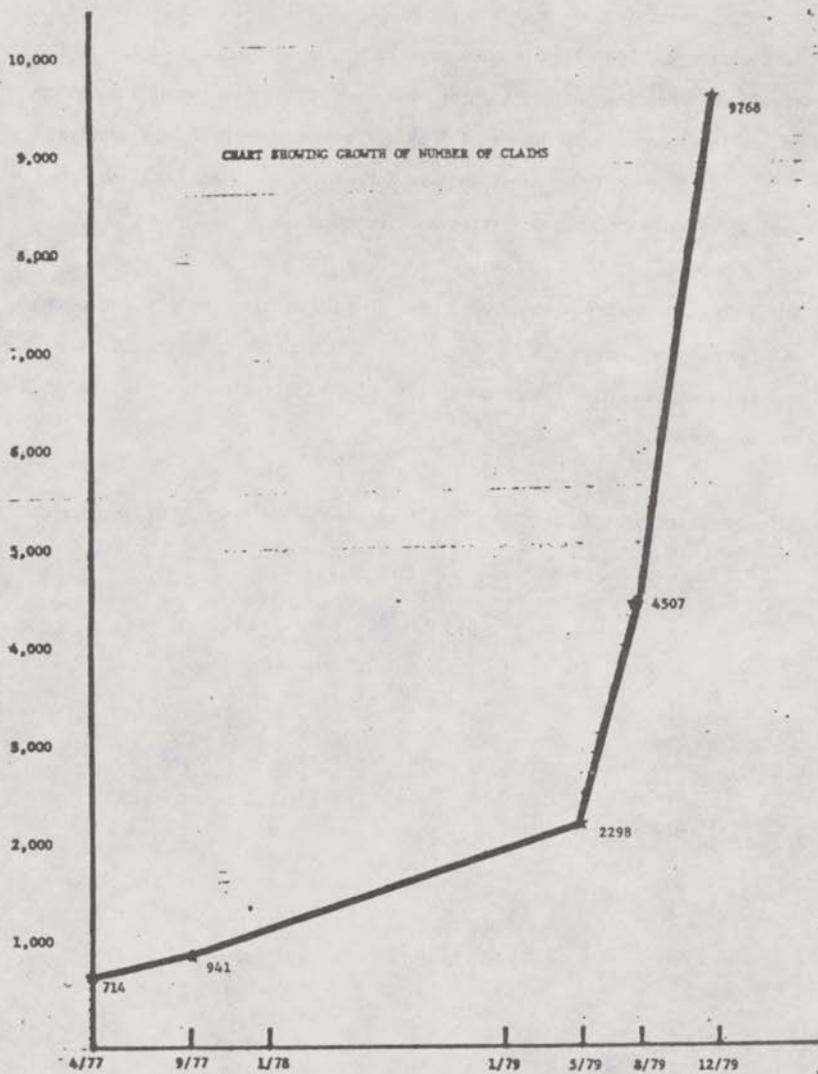
Adding to this is the fractionated heirship problem, the existence of which has greatly hampered the claims program and is in our view one of the principal causes of the tort claims problem. A great majority of the thousands of Indian claimants are heirs of deceased allottees or trust patentees. We are unable to locate many of them. The United States, of course, has a responsibility to them just as it does to recognized tribes, bands, or groups.

The so-called eastern land claims, like many of the smaller land title cases, have tort damage aspects subject to the statute of limitations. These claims are also included in our claims program. This Committee is well aware of the magnitude of the eastern land claims and the effect such claims are having in the jurisdictions where they may be litigated. We have been attempting to achieve negotiated settlements in a number of these claims, but it is likely that we will not make the April 1 deadline on some of them.

Thus, we are confronted with a physical impossibility in completing the tort claims portion of the claims program before April 1, 1980. For this reason we currently believe a short extension of the statute of limitations on tort claims under 28 U.S.C. 2415(b) may be necessary. We have not yet decided on a specific proposal, but we anticipate doing so. We look forward to working with the Committee and its staff.

There is at least one area of good news in this affair. We are convinced that we have processed all or nearly all of the contract damage claims, and for that reason we recommend that the time limitation in 28 U.S.C. 2415(a) not be extended.

This completes my statement and I will be pleased to respond to questions.



Mr. GERARD. Before proceeding, I would like to introduce the others at the table. On my immediate right is Mr. Hans Walker, Acting Associate Solicitor for Indian Affairs. On the far left is Mr. Sam St. Arnold from the Office of Trust Responsibilities in the Bureau of Indian Affairs. On my immediate left is Mr. George Bourgeois who also is with the Office of the Solicitor.

Mr. Chairman, you have already provided background on the statute of limitations and the various extensions. Therefore, I will not cover that, other than to express our pleasure at appearing before the committee today to discuss the statute of limitations claims program.

Today, we will describe the scope of the task, our efforts in fulfilling that task, and some of the problems we have encountered since the last extension was granted in 1977.

Jumping to 1977, Mr. Chairman, at the time this committee considered legislation to authorize another extension, administration witnesses informed the committee that they had identified several hundred pre-1966 claims and that it was their anticipation that well over 1,000 existed nationwide. We have already pointed out that, as a result of congressional action, a 2½-year extension was granted at that time, until April 1, 1980.

I would only say that the net extension to the administration amounted to about 2 years and 4 months since we had to allow Justice 4 months' lag-time to prepare the claims for court once they were referred to them.

Beginning in fiscal year 1977, we went as far as we could to implement the program with existing resources. The Department immediately developed a comprehensive plan, and by February 1978, the plan was initiated. That plan included claims processing procedures, time limits, directions on communications channels, recommended forms, suggested publicity, and improved liaison with the Justice Department. The plan was put into effect at that time, and while we did some processing it was clear that we would need additional funding if the claims program was to move forward.

Specific funding for the statute of limitations claim program was finally provided for fiscal year 1979, but just as we were launching that program a Government-wide employment freeze was handed down, and we lost approximately 6 months before that freeze was lifted. So, when the freeze was lifted, we had approximately 1 year left in which to complete the inventory of the potential claims. An all-out search was then initiated at that time with the understanding that the referral of worthwhile claims would be sent on to the Department of Justice no later than November 30, 1979.

As a result of that all-out search, by the end of last summer we had uncovered over 4,500 potential claims, and as of December 1, 1979, that number had increased to 9,768. As a result of our experience through this intensive search, we believe that there may be another 5,000 or more unidentified claims in the field yet to be inventoried. The number of identified potential claims resulted in an extension of our Justice Department referral date to December 28, 1979, a development that may cause serious inconvenience to the Justice Department, and I am certain they will speak to that point at the time of their testimony.

Looking to the disposition of the various potential claims, we have managed to resolve over 2,700 of the total mentioned above, either by rejection or by a successful resolution of the claim to the benefit of the Indian claimants. To date, we have referred about 100 litigation reports to the Department of Justice covering about 2,000 claims. There are currently 4,900 claims in the system; 2,700 are at the Solicitor's Office level, and about 2,200 are at the Bureau of Indian Affairs level. A currently undetermined number of worthwhile claims among our backlog of the 4,900 claims have little chance of making it to the court by April 1, 1980, and we would point out here that included in this number are most of the largest and most difficult claims before us, including some that may be invalid or of a minor nature.

We appreciate that the claims program has, or will affect a significant number of citizens in this country because, in many cases, we are looking at the prospects of regaining title to property, and many of these individuals—the defendants—through no fault of their own, are holding void titles.

As you pointed out, Mr. Chairman, the title issues in these claims are not subject to the statute of limitations as are the tort issues. Many of the prospective defendants are Indians; others are immune from suit, such as Indian tribes and the Federal Government; and, in many instances, the defendants are corporate entities.

In any event, we feel that, given the time constraints, it is unlikely that we will be able to work with the vulnerable defendants to work out amicable settlements.

Another unique problem should be brought to the committee's attention. This is the heirship problem. As you know, on many of the allotments, if the original allottee has died, the ownership has descended into literally hundreds of individuals. These are potential claimants. We have difficulty locating these individuals, but our responsibility to them is legal and must be met.

Another particular problem that must be addressed is the so-called eastern land claims. Like many of the smaller land claims, these are title cases and have tort damages which are subject to the statute of limitations. The committee is well aware of the magnitude of the eastern land claims and the effect such claims are having in the jurisdictions where they may be litigated. We have been attempting to achieve negotiated settlements in a number of these claims, but it is likely that we will not make the April 1 deadline on some of them.

I think it should be obvious to the committee that we are confronted with the physical impossibility of completing the tort claims portion of the claims program before April 1, 1980. For this reason, we currently believe a short extension of the statute of limitations on tort claims under 28 U.S.C. 2415b may be necessary. We have not yet decided on a specific proposal, but we anticipate doing so. In this connection, we would look forward to working with the committee and the staff.

Mr. Chairman, there is at least one area of good news in this entire affair. We are convinced that we have processed all or nearly all of the contract damage claims, and, for that reason, we recommend that the time limitations in 28 U.S.C. 2415a not be extended.

Mr. Chairman, this completes my statement. The staff and I will be pleased to respond to any questions.

Senator COHEN [acting chairman]. Mr. Gerard, in your judgment, does 28 U.S.C. 2415 apply to suits brought by Indian tribes on their own behalf?

Mr. GERARD. Mr. Chairman, I would like to defer to the Associate Solicitor for Indian Affairs to respond to that, if I may—Mr. Walker.

Mr. WALKER. Mr. Chairman, there is authority for that proposition, but I would not want to say absolutely that that would cut off suits by Indian tribes. I believe there is a good argument that the right of suit by tribes survives the limitation.

Senator COHEN. If the claim by the tribes does not survive the statute of limitations, would there be a suit against the U.S. Government as trustee for failure to carry out a fiduciary obligation, in your judgment?

Mr. WALKER. That is very possible. It would be a breach of the trust obligation to bring an action on their behalf.

Senator COHEN. Let me just say initially that I was in the House of Representatives at the time when this original statute of limitations extension was debated. It was made clear during the course of that debate in the House, and I believe, if you look through the record, you will find a statement by Congressman Udall that the last extension for 2½ years was the final extension—there would be no more. I think there was a rather categorical statement on his behalf that this was the final one.

At that time, as I recall, the information that was given to the House was that there was something in the neighborhood of 1,000 to 1,500 claims left to be processed and those claims would be processed during that 2½-year period. Suddenly, we come toward the end of that period of time, and, according to your testimony, there are some 7,000 cases now that are still being processed or investigated. It seems that the more time that expires the more cases seem to surface.

Mr. GERARD. Mr. Chairman, I believe there are a number of reasons for that. In my view, most of these claims go to history. It appears to be a type of claim that has been either ignored or not dealt with to date.

If I may speak from a personal level, I served on the Senate committee staff back in the seventies and staffed the hearing when the 5-year extension was granted at that time. It seemed to me from the record—and I looked that over again on the weekend—that there was relatively little attention being paid to this type of claim by the administration; there was an acknowledgement that there might be something out there. A panel of witnesses of well-known attorneys representing Indian tribes pointed out that when the original statute was enacted, it was not viewed as an Indian statute, per se; it was a general statute; it went through the Judiciary Committees; it was not exposed to the committees that normally handle Indian affairs.

Also, in that era, I do not believe there was the sharp focus by the public, the Indian community, and, most certainly, the Congress on the whole question of claims. From your own perspective, being from the State of Maine, I know of your interest because of the emergence of the so-called eastern land claims.

It seems also that some of the other Indian legal victories in the area of fishing rights and other Indian rights have brought a renewed focus on the whole question of what are the remaining potential legal claims of Indians throughout the country.

Senator COHEN. If I might interrupt, the renewed focus has served to generate even less tolerance for the statute of limitations. As I recall, Congressman Foley was moving to object to any extension of time. He offered a substitute for Congressman Udall's amendment for a 5-year extension to cut it to 1, as I recall. That is how we happened to end up with the 2½-year extension. The very renewal of focus has served, at least in the House—I cannot speak for the Senate—to cause less enthusiasm for any extensions of time. So, the focus has been there, but the movement for extension has not been.

Let me just go on and ask you a series of questions for the record.

In your letter of November 19, 1979, to this committee, it states that the Department of the Interior had identified 340 pre-1966 cases when the last extension was granted in 1977, and that you had 700 cases in January of this year. Prior to 1979, did the Bureau of Indian Affairs or Interior have any program to specifically identify pre-1966 Indian claims?

Mr. GERARD. Mr. Bourgeois will respond to that.

Mr. BOURGEOIS. As a matter of fact, Senator, there was such a program within existing resources in the Bureau and also in the Solicitor's Office. What was done subsequent to the extension is what is paramount for you to know, I think. That is, a very fine plan was developed based on one that began developing in 1975. The claims process developed in this plan ended up in the BIA manual as 51 BIAM.

The final plan included a calendar plan all the way through April 1, 1980.

The problem came up that the Bureau simply had no way of implementing effectively its plans within existing resources, considering the other duties and programs that the BIA had, but they tried. They disposed of, I think, a couple of hundred cases during that period. They also began running into new cases, and by March 1979, about the time the job freeze was off, we were rather well over that 1,000 cases that the Solicitor anticipated when he testified to before you the last time [1977]. That was in, say, March of this year. By May of this year, when the all-out search started, the thing began to expand.

Senator COHEN. You say you started an all-out search in May 1979?

Mr. BOURGEOIS. I would say that that would be the earliest date we could say we were implemented sufficiently to do it, yes.

Senator COHEN. This was done by an outside contractor?

Mr. BOURGEOIS. In some areas, that is correct—where the trouble spots seemed to be. In other areas, the existing BIA resources were quite adequate. Take Oklahoma, for example.

Senator COHEN. When were these particular contracts let?

Mr. BOURGEOIS. I dare say in May or June—some in May, I think. The Bureau finally got it going in the field around June. Some others were late. In the situation in California especially, the Legal Services Corp. there did not get the contract approved until some time in July, I believe.

Senator COHEN. What was the timeframe in which these contractors are supposed to report?

Mr. BOURGEOIS. Around September. I think some of them varied; the dates and the terms varied; but, roughly, in September. The people in California had an extremely difficult time trying to meet that, but they did produce a work product.

Senator COHEN. They were let in either May or June; the reports came back in September. That raises the question: Why did you wait 2 years, or why did you wait so long before letting the contracts?

Mr. BOURGEOIS. No money.

Senator COHEN. That is the only answer—no money?

Mr. BOURGEOIS. There may be other answers too, Senator. I am not saying that is the only reason. That is probably the primary reason. There are other reasons. For example, it was difficult to assess the extent of the problem. You can hear stories that there are thousands upon thousands of claims out in the misty mountains. On the other hand, we knew of about 1,000, but we also knew there might be more. We did have people who were trying to tell us. We also had problems with BIA records. We had claims that had frankly grown stale, and to dig them up took a lot more effort than if you were trying to find current claims. We have gone to the extent, even, of hiring historians because we have found that their assistance has been instrumental in helping to solve some of these problems. They are experts on the content, condition, and location of Bureau records.

BIA records are stored all over creation. Some of them are not in very usable condition.

Senator COHEN. You knew in 1977 that you had a 2½-year timeframe, and you didn't begin this kind of search until May or June 1977. It seems to me that you could practically predict what the consequences were going to be. If you wait 2 years and you do not have money, it seems to me you have a responsibility to come before the committee and say, "We can't carry out this mandate to finish these claims in 2½ years because we simply don't have the resources."

Mr. GERARD. Senator, if I may add to that point, given the manner in which the Federal budget is put together, in something of an 18-month period of time, there was no way that one could anticipate that the legislation was going to go through.

Also, for the record, we should point out that we did utilize some existing resources in trying to get this program off the ground as quickly as possible. In order to build a budget into the system, it took time and ate up valuable extension time that Congress had authorized.

Senator COHEN. When you use the word, "claims," do you use that as being synonymous with "case"? Are there many claims within one case, or are they separate and distinct?

Mr. WALKER. There is a distinction. One case may involve up to several thousand claims.

Senator COHEN. So, when you say there are 7,000 claims, that you are aware of, still outstanding, that may involve a much smaller number of cases?

Mr. WALKER. That is right.

Senator COHEN. How many cases—if we can use that term—do you think are outstanding now?

Mr. WALKER. It is pretty difficult to say. In those areas where there are similar claims against a single defendant, then we have one case, very likely. I just could not say how many of the 7,000 would fit into that category.

Senator COHEN. You have indicated you have resolved 2,700 of the claims, either by rejection or successful resolution. This seems a rather high figure. What percentage of that number were rejects, and what procedure did you follow in rejecting a claim?

Mr. BOURGEOIS. I would say most of those, sir, are rejections. A number of those were contract-type cases upon which the BIA has had a much better grip than the hard-to-locate or elusive type of tort damage cases. A number of those may have been tort damage cases, too.

In the rejection process, we have included those claims which were collected. We have, I think, perhaps 500 or so claims.

One thing I did want to add to what Mr. Walker said was that we have developed some very good techniques for handling great numbers of claims. For example, he was speaking a minute ago about one case which may include, say, 1,000 claims. If, say, 500 of those are against a single defendant, we'll file only one lawsuit against that defendant and include all 500 claims. We also have categorized cases in situations where we have many defendants but identical legal issues. In such instances we will use one lead type of litigation report. Then, we take, say, several more claims subsequently and associate or identify them with this lead report when referring them to Justice. This saves us an enormous amount of work and has allowed us to have the record you see in our statement.

Senator COHEN. Do you have a breakdown of that in your own records?

Mr. BOURGEOIS. No, sir; I do not. But I can give you some samples. For example, we have one case against a State that has 1,800 claims. We have several other "batch" situations where we have a lead memorandum or lead litigation report. These individually batched claims vary anywhere from three or four to several dozen claims. Each one of those claims, of course, has to be prepared separately because each one may involve title to different land, which means a separate abstract, and may affect different Indian heirs. It means a great research process as well.

Senator COHEN. I think it would be helpful for the committee to see a breakdown of the cases that are pending, cases that are being investigated, and the number of claims within the case for purposes of review.

Mr. BOURGEOIS. Surely. We can furnish this. I am sure we have a grip on it. It is just that I do not have it in my head.

Senator COHEN. I appreciate that. Without objection, it will appear in the record at this point.

[The information follows:]

Of the approximately 2,000 claims referred to Justice so far about 1,800 were claims against only two defendants. Of the 2,140 claims pending at the Solicitor level at this time, it is thought that more than half of them, or about 1,400 claims, will go over to Justice as batched claims against single defendants. We anticipate about 15 to 20 litigation reports in this regard.

Batching claims against several separate defendants in situations where legal issues are identical, or nearly so, but where we can't sue the defendants in the

same suit, we use a lead or primary litigation report as to one defendant, then prepare secondary or related litigation reports on each of the other defendants. We've done this with about 50 or so White Earth claims. We expect to accommodate about another 100 or so claims using this time and labor saving technique. The balance of the claims, about 640 or so, will very probably be referred at the rate of one litigation report per claim, a process that is so burdensome that most of these litigation reports will not reach Justice before December 28, 1979, our administrative deadline. Many of these claims, of course, are awaiting a survey, an abstract of title, or some additional factual information; or perhaps a legal research answer.

In this regard we are also using a prima facie type of submission to Justice. By a prima facie submission is meant the submission of a litigation report to Justice that is complete enough to make a prima facie case in court but which lacks some necessary documentation, such as, for example, an abstract of title, from the submission. The missing documentation is to be supplied to Justice at a later date, or whenever BIA completes its evidentiary search (or the abstract company supplies the abstract, as in our example).

Senator COHEN. I am a little troubled by the distinction you make between tort and contract actions. It seems to me that you are asking for an extension for the tort section only and not for the contract section.

Mr. BOURGEOIS. That is correct, sir.

Senator COHEN. Most of the land claims, on the eastern seaboard at least, involve contract actions. I assume there are many others that are still outstanding that involve contract action. Do you not run a risk with a revision on the part of the claims, saying that they are found in tort? If you have the tort section extended but not the contract section, do you not create some incentive to then amend the complaint to say that there was a tortious taking of the land in trespass as opposed to contract?

Mr. BOURGEOIS. My understanding of the eastern land claims is that these are title cases which have a tort aspect to them. If they are based on contract, I am not aware of that.

Senator COHEN. You think they are based in terms of tort rather than—

Mr. BOURGEOIS. No. I think the damage aspect is based in tort, but those cases are primarily title cases—title to the land which is not even subject to this law.

Senator COHEN. Are you suggesting, then, for all practical purposes, that if we extend the tort section without extending the contract section we, in effect, wind up with the same result that most of these claims will have aspects of tort as well as contract as far as land claims are concerned?

Mr. BOURGEOIS. I have not been convinced that those cases include contract. I would say they include land title issues which are not subject to either 2415(a) or 2415(b), plus tort aspects of damage which is subject to 2415(b). But I do not agree that Eastern land claims include contract issues covered by 2415(a); it may. I may change my mind.

Senator COHEN. It just seems to me we are raising another legal issue. On the one hand you extend the tort section but not the contract section. It seems to me that the attorneys for the tribes are very creative in their legal arguments and would simply amend their complaints to say that, while it was originally founded in a breach of contract and a title claim, the fact that the State of Maine or Massachusetts or any of the other States has been in wrongful possession of those lands for

the past 186 years in a trespass against the tribe's interest, and therefore it lies in tort rather than contract, and therefore it is not precluded by the statute of limitations. That would not take more than a first year law student to argue that.

Mr. BOURGEOIS. That is right; and there are resourceful attorneys around who may well take that line.

Senator COHEN. Did you want to respond?

Mr. WALKER. No. As George says, these claims are title claims, and the tort aspect of the trespass is what we think will survive if part (b) of that statute is extended.

Senator COHEN. When you speak of a short extension, what exactly do you contemplate?

Mr. GERARD. Mr. Chairman, we have not arrived at any firm figure, but it seems to me that at the last extension in 1977 the administration stood on a 4½-year extension. The Congress authorized 2 years and 8 months.

While not speaking fully for the administration, because we have not yet cleared an exact time element, certainly from my standpoint a 2-year extension would seem reasonable given the administration's previous posture.

Senator COHEN. What are the consequences if the statute is not extended, as far as your Department is concerned? What course of action would you recommend?

Mr. GERARD. Mr. Chairman, I am not here to speak to the legal aspects, but from a policy standpoint it would seem to me that there might be countless Indian people and Indian tribes whose potential claims have not yet been given a fair opportunity to be reviewed in terms of their validity. And then there remains the important question of whether or not it would be continuing exposure to the U.S. Government if the statute is allowed to run out on April 1, 1980.

We would do everything within our power to deal with the issue between now and April 1, 1980, but think it is obvious that that time is insufficient.

Senator COHEN. The only difficulty is that you say 2 years will be sufficient; then, 2 years will elapse, and you will come back and say, "Well, we have discovered another 5,000 claims within 10 cases, and we need another 2 years for that." That is why Congressman Udall said, "This is the last extension; no more." That was considered at that time to be written in concrete—that no more extensions would be granted.

Mr. GERARD. If that is Congress judgment, then I think the only remaining question that both Congress and the executive branch must face is whether or not there is continuing exposure to the U.S. Government.

Senator COHEN. I am told that you have representatives present from your field offices. Perhaps they could give us a description of the types of cases that are pending and what they plan to do as far as their resolution is concerned.

Mr. GERARD. I think that would be useful. Also, they could get into some of the complexity and time involved in some of the cases.

We will be available for further questions, if you would like.

Senator COHEN. Thank you very much.

Mr. GERARD. Thank you, sir.

Senator COHEN. Could you state your names for the record so that we will be able to identify all of you?

STATEMENT OF PANEL: JOSEPH F. DePIETRO, STAFF ATTORNEY, REGIONAL SOLICITOR'S OFFICE, SACRAMENTO, CALIF.; ELMER NITZSCHKE, FIELD SOLICITOR, TWIN CITIES, MINN.; JEAN P. LOWMAN, REGIONAL SOLICITOR, PACIFIC NORTHWEST REGION, PORTLAND, OREG.; AND WILLIAM G. LAVELL, FIELD SOLICITOR, PHOENIX, ARIZ.

Mr. DePIETRO. Mr. Chairman, I am Joseph DePietro, staff attorney with the Regional Solicitor's Office in Sacramento.

Mr. LAVELL. I am William Lavell, field solicitor for Phoenix.

Ms. LOWMAN. I am Jean Lowman, regional solicitor for the Pacific Northwest Region in Portland.

Mr. NITZSCHKE. I am Elmer Nitzschke, field solicitor, Twin Cities, Minn.

Senator COHEN. Please proceed in whatever fashion you would like. I think the committee would be interested in hearing the nature of some of the cases you have worked on—the processing, the procedures you have adopted, and what the prospects are for the resolution of those claims. You may proceed in any order you would like.

Ms. LOWMAN. We have two basic groups of cases left in large numbers. We have processed a great many.

Senator COHEN. When you say "cases," again, is it "cases" or "claims"?

Ms. LOWMAN. Claims.

Senator COHEN. And are there many claims within several cases?

Ms. LOWMAN. That happens, yes.

Senator COHEN. Perhaps you could identify those.

Ms. LOWMAN. One type of claim we have is the derogation to the Indian fishery in the Pacific Northwest—the States of Washington, Oregon, and Idaho. The Fish and Wildlife Service, which has a fish and wildlife biologist, has gone out and examined the river systems. They have identified two basic types of cases; we call them the barrier and the nonbarrier cases. The barriers are the dams or logjams—that type of thing. The nonbarrier cases are, for example, the pollution cases.

From the Fish and Wildlife Service, the claims go to the Bureau of Indian Affairs where the information is completed as to prospective defendants and that type of information. Then the claims come to our office.

At this time, I have my entire staff assigned to working on the statute of limitations claims—15 attorneys. We have identified of the fisheries cases an estimated 520; 400 of those are assigned in my office already; this is as of last Friday; 120 were still in the Bureau of Indian Affairs, and certainly there will be more in my office by today; we go and get them daily from the Bureau of Indian Affairs.

Senator COHEN. How long have you had these claims or cases? When did they come into your office? Do you anticipate more coming in?

Ms. LOWMAN. It was only this year when the *United States v. Washington* decision was finalized by the U.S. Supreme Court, and some legal study was done on that. The derogation to the Indian fishery

cases or claims were identified as statute of limitations claims. So, we only started work on those a little earlier this year. Then, at that time, as I said, the Fish and Wildlife Service immediately went to work—their biologists—and identified them. So, they started coming to our office in November of this year.

Senator COHEN. Do you anticipate more coming in?

Ms. LOWMAN. Our information from the Fish and Wildlife Service is that the 520 estimated fishing claims from the information they have is the total number. Some of the tribal people have indicated to members of my staff that they know of others. We do not know what those are at this time.

We have completed litigation reports on 65 of those claims. We have rejected 182, that they are not valid claims. And the remainder of the 400 my staff is working on. We have developed standard formats, and so on, where we just fill in the facts and send them on to the Solicitor's Office in Washington for transmittal to the Justice Department.

Senator COHEN. You just received the claims within the past year—since the Supreme Court decision—and started working on them with intensity and you have already rejected 182?

Ms. LOWMAN. Yes. When you get them, some immediately wash out. So, you would immediately have a number rejected, and then you have tougher ones that do not reject that readily.

Senator COHEN. And are you reviewing the others now?

Ms. LOWMAN. Yes. We have completed litigation reports on 65, and we are reviewing the others now; there are 120 still to come to us from the BIA.

Senator COHEN. What do you anticipate in review of the other 400 cases—in terms of rejection or recommendations for litigation? You have only had a few months to reject the initial 182 cases out of hand. Do the others lend themselves to similar resolution within the next 4 or 5 months?

Ms. LOWMAN. We anticipate that of the 520 estimated claims that we can meet the December 28 deadline on. If there are others we do not know of, I cannot answer as to that.

Senator COHEN. You believe you can meet the December deadline?

Ms. LOWMAN. Yes, on the fishery cases; that is our plan. I would assume that they would probably come out about half-and-half—half would be rejected—just based on statistics only.

Senator COHEN. So, your procedure is to file the others with the Justice Department with a recommendation for litigation?

Ms. LOWMAN. Almost all of them have gone to the Washington office for submission by the Solicitor, under the rules of reference that the Justice Department has—the ones we have submitted so far.

Senator COHEN. But you intend to complete your work by the December deadline?

Ms. LOWMAN. On the fishery cases, yes.

Senator COHEN. What are the other ones?

Ms. LOWMAN. The other group that we have, that we have a problem with, are the so-called "forced fee" cases. Those are the cases where the fee patent was issued to the Indian some time earlier, and the land became subject to taxation and in some instances passed on into other hands. There are some damage claims; for example, the money paid

out in taxes where the individual Indian would not have wished the fee patent to issue, but it did.

Senator COHEN. Are those based on contract or tort?

Ms. LOWMAN. I would say tort.

Senator COHEN. OK.

Ms. LOWMAN. We received 300 of those prior to the December 1 deadline. All of them have been reviewed by my staff. We received 150 after the December 1 deadline. We have a problem in this area because we require a title report in order to know who the defendants are—all the persons who had had title to this land, and there may be many in some instances.

The Bureau of Indian Affairs awarded a contract to individual title companies—private title companies—to furnish these title reports. We have 310 requests for title reports out. The title companies have said that they cannot meet the December 28 deadline; in very few instances can they do so.

So, in many of these forced-fee cases, we cannot, in our office, therefore, meet the December 28 deadline.

Senator COHEN. Who is the tortfeasor in these forced fee cases?

Ms. LOWMAN. There would be a claim, for example, possibly against a county or the State, whoever had collected the taxes, for the taxes that had been paid out.

Senator COHEN. Is there any indication from the title company as to when they will complete their work?

Ms. LOWMAN. Not until after the end of the year. They have been subjected to great pressure by us to do so sooner, but they have declined to do so.

Senator COHEN. Thank you.

Ms. LOWMAN. Thank you.

Mr. NITZSCHKE. Mr. Chairman, as of December 1, 1,225 cases were presented to our office. At the present time, there are 760 of those cases still considered to be active; 76 cases have been forwarded to the Department of Justice, and 58 cases are pending review in the Solicitor's Office. We anticipate being able to forward another 116 cases before December 28. We will then have 442 cases that are still open cases pending in our office, which will need additional materials from the Bureau of Indian Affairs before they can be processed.

It is our judgment that many of these cases will not have sufficient documentation by April 1, 1980, to allow us to evaluate and either reject or forward. The main bulk of the cases pending in our office involves allotments, and there are approximately four types of allotment cases that we are dealing with. The majority of these cases involves lands within the White Earth Reservation which was opened up to allotment and where the position was taken at that time that those lands, once allotted to mixed-bloods, were subject to taxation by the State of Minnesota.

In 1977, the Minnesota Supreme Court concluded to the contrary that, in addition to the ability under the Clapp Act to alienate these lands, it was necessary for some affirmative action to be taken by the allottee before the trust, in effect, was terminated.

Since 1977, a concerted effort has been made to identify all of those, tax-forfeited allotments, particularly those that were easily ascertainable.

Many of the ownerships which were tax-forfeited are still held by the State of Minnesota. Some of these lands are currently held by individuals. With the exception of the cases that involve the State or counties, that have been forwarded, we have made no contact with the landowners; the only notices that have been sent out have been sent out to the units of State government involved. Of course, that is one of the major concerns that I have relating to the timeframe in which we have to operate. Of those cases that have been identified as viable cases, there has been no time in which to conduct settlement negotiations.

In order to meet the April 1 deadline, many more of these cases will have to be filed; and, of course, at that point, a prudent defendant will have to retain legal counsel to represent his interests. This is one of the concerns that is being expressed to us at the field level: that we are forcing people into an expense that might not otherwise be necessary if, in fact, there was time to deal with these issues.

Senator COHEN. In other words, it is your recommendation that if you have not completed the investigation, you would recommend to the Justice Department, or through BIA, that you file the suits on all the claims, even though they might not be valid, in order to protect yourselves under the statute?

Mr. NITZSCHKE. That is correct. And this is basically what was being anticipated back before the last extension was granted in those cases where we had identified a potential claim but had not been able to bring forth all the documentation necessary to present a case that is normally required in order for the Justice Department to give it full consideration.

Senator COHEN. What does the allotment case involve—tort or contract?

Mr. NITZSCHKE. It basically involves two issues: one of title and also the matter of tort, in other words, the unlawful possession and resulting damages since the time that it was unlawfully taken from the Indian allottee.

The other type of cases that we have that involve allotments comes from the States of Michigan and Wisconsin under other treaties. Those, again, are situations—easily identifiable ones—where lands were improperly put on the tax rolls and lost to taxes. The other cases are forced fee cases, as previously testified to by the regional solicitor from Portland. We have a number of those cases. We have not had the opportunity to fully investigate those. At the present time, there is some indication that there may be as many as 600 cases involving forced-fee allotments coming off the Leach Lake Reservation in Minnesota. We have not even gotten close to those yet.

Senator COHEN. What is the timeframe in which these cases have been coming into your office? How old are they? How new are they? What I am concerned about is this: If the statute is extended for, as recommended, 2 years, will we see 5,000 more claims or 7,000 more claims coming in those 2 years, and will you be back saying, "We have done our best; we have 442 cases still open; given the resources we have and the timeframe, we have to have at least 2 more years"? The process goes on and on. I would like to know, from your own experience, when do these cases come in? How long have they been in your

office? Are they recent? Do you expect and anticipate more if the time is extended?

Mr. NITZSCHKE. Answering your last question first: Cases come in on a daily basis. We are still receiving new cases every day, and we anticipate that that will continue as long as the program—or at least until April 1.

In my judgment, a 2-year period would allow us, provided that adequate funding were available to the Bureau of Indian Affairs, to complete the work necessary to perfect these claims. Two years would be a reasonable time, for the reason that the primary research in all claims areas that we are familiar with has been done. Now it is a matter of reviewing the documentation that comes forward to evaluate whether or not a viable claim exists.

Also, I think the file research, which was necessary or the process, has been established and can go forward on an expedited basis as long as it is a priority program. So, I do not see that as a problem.

There are some problems that we have resulting from a lack of field investigation, such as in trespass cases where field work has not been done because of the lack of a current capacity by the Bureau of Indian Affairs.

Senator COHEN. I am suggesting that there is no way you can have a cutoff date. If you extend the statute of limitations, you cannot say, "But this office will accept no more claims as of December 31 or January 1 of 1980; we will not accept any new claims, and we will take the next 2 years to process the 442 that we have." It seems to me, that would immediately invite another lawsuit saying that there has been denial of equal protection, "As long as the statute remains open, we have a right to file our claim as well." It just seems to me that at some point in time you have to say, "This is the final date," whether it is April of this year or whatever the Congress might agree to. It seems to me we are going to have a series of claims continue to be filed, and you will be in the position of having to come back and say, "Senator, we have to have an extension because we have, for the past 2 years, been trying to process the 442 that I told you about back in December of 1979, and now we have these others here, and they are under the 2-year extension, and we need more time for them."

Then, during the next extension, there will be more claims coming in. So, it seems to me that, at some point, we have to say we cannot extend it any more.

Mr. NITZSCHKE. I do not disagree with that, Senator. My only response would be that it seems to me that it was not until this last extension period that a proper program was established to identify and investigate claims. I think that if we can carry through this additional period of time, we will be able to, if sued—and that possibility always exists—have a better record to establish that, as the trustee, we did the reasonable thing and met the test necessary in carrying forth our trust responsibilities.

Senator COHEN. In other words, the fixed deadline set by Congress, in your judgment, served as a positive incentive to focus upon identifying claims which, in the past, have simply been ignored or put off or delayed and deferred, with priority given to others.

Mr. NITZSCHKE. That is exactly true. I think in most offices it has been recognized since that time as a priority program, and in my

office, for the last number of months, that has been almost the total objective of my work force.

I would think that, if it is given the same priority and properly funded for a period of 2 years, we could come as close as possible to meeting our responsibilities.

Senator COHEN. Are you responsible for making budget recommendations for your field office to the BIA, in terms of what you need for resources to complete the proper investigation of the 442 cases you currently have?

Mr. NITZSCHKE. I have control over recommendations as to the operation of my office—that being the Field Solicitor's Office. But, as I indicated to you, at this point in time, in my estimation, the main focus from the budget standpoint has to be the Bureau of Indian Affairs and the funds necessary at the area office level, in my case, to present our office with the necessary material to evaluate. Of course, that is controlled through the Bureau process.

Senator COHEN. Thank you.

Mr. DEPIETRO. Mr. Chairman, at the outset, if I may, I would like to extend the regrets of Mr. Renda, the Sacramento Regional Solicitor. He would have been here today, but he is under doctor's order to forego flying for the foreseeable future due to a recently ruptured eardrum.

Our region, in addition to the Sacramento regional office, has three field offices that are involved in Indian matters, those being the Riverside office, the Window Rock office on the Navajo Reservation, and the Phoenix field office. The figures I will discuss will exclude the Phoenix field office. Mr. Lavell, to my left, will address that office's position.

In the Sacramento region, the Bureau's area office has, to date, identified a total of 971 claims. Again, that includes the field offices, excluding Phoenix.

Within those 971 claims, we had 284 that, for lack of a better term, were generated by the Bureau of Indian Affairs, 687 claims were brought to our attention under contract to an Indian legal services organization within California.

With regard to the confusion we have been hearing about, whether claims are multiple or singular, the 687 figure represents a synthesis by us of a large number of claims submitted individually by the Indian legal services organization, somewhere between 1,600 and 2,000. We determined the actual number of claims to be 687.

To date, we have referred nine claims in litigation format to the Justice Department. We are in the process of finalizing an additional 35 cases for referral. We anticipate that those claims will be referred no later than January. Ten to 12 of those should be completed by the December 28 deadline. Remaining to be reviewed within the Sacramento office are 101 claims.

The breakdown of categories for those claims we have looked at is, by and large, trespass actions such as timber trespass, grazing trespasses, roads and right-of-way problems, and the forced fee situation that we heard described earlier.

The bulk of the remaining claims to be reviewed are the forced fee variety. As I stated, we anticipate the overall wrap-up of our work to be accomplished by the end of January.

Senator COHEN. Let me go through your numbers again. You indicate that you have had 971 claims in total; 284 through the BIA, 687 through contract with an Indian organization in California.

Mr. DEPIETRO. It is the California Indian Legal Services Organization. We entered a contract with them on July 26, and there were very short time constraints placed upon them, but they undertook a fairly massive effort to get the job done. While there were delays in getting the final work product to us, we were able to begin reviewing what they submitted by approximately mid-November.

Senator COHEN. Why was there such a delay—to July of this year—in view of the fact that Congress mandated a rather strict 2-year-8-month extension? Why the delay as regards the focus upon the need to either discover the claims or process them?

Mr. DEPIETRO. As I understand the situation, the Indian legal services approached us during the month of June, and they brought to our attention the fact that similar contract programs were underway in other parts of the country and added if the Bureau's area office in California agree to undertake the type of activity that was ongoing elsewhere.

The Bureau looked at the opportunity, in effect, as an insurance policy because they felt that any viable claims had been properly identified. However, rather than leave any stone unturned they decided to enter into the contract.

So, the late start reflected the date the Bureau was approached by the Indian legal service. We were approached in June and entered the contract in July.

Senator COHEN. You have indicated you have 9 that have gone to the Justice Department and 35 more to go by December, with 101 claims remaining.

What is the discrepancy between the 971 and the 44 that have gone over and the 101 that remain? What happened to all these other cases?

Mr. DEPIETRO. We have found that they are not meritorious, not worthy of going forward on. So, they have been rejected.

Senator COHEN. So, your total then, out of the 971, would be roughly 145 that merit attention, in your judgment: The 9 that have gone, the 35 more that you anticipate will go, and you have 101 left. So, that gives you roughly 145 cases out of the 971 that have been recommended for prosecution?

Mr. DEPIETRO. That is correct.

Senator COHEN. In what timeframe did you decide that the other cases were not worthy of merit?

Mr. DEPIETRO. The 687, as I say, came to us in approximately mid-November, and the bulk of our efforts have been concentrated in that area.

The Window Rock field office had approximately 160 claims of its own that it had been looking at over the past 2 years. It has winnowed those down to, I believe, a remaining 10 or 12.

We had looked at, outside of Window Rock, approximately 121 claims, I imagine, within the Sacramento region over the past few years.

Senator COHEN. Of the 687 that came to you in November—and we are only in December now—in a month's period of time, you have managed to dismiss at least 500 as being without merit?

Mr. DEPIETRO. We have had virtually our entire office directed toward resolving the claims that have been submitted. We have brought in people from all over the country, and, at times, have had as many as six attorneys doing nothing but processing claims.

Senator COHEN. How many attorneys?

Mr. DEPIETRO. A maximum of six, we presently have four in an on-going capacity. So, it has taken the bulk of our time and effort to get to where we are today.

Senator COHEN. In any event, what you have done is dismiss 500 claims in a month's time, and now you are talking about 101 more that you have to give serious review to. Is that correct?

Mr. DEPIETRO. That is correct. But these are not exclusively within Sacramento; we still have some remaining in Window Rock.

Senator COHEN. How many can you examine and make a recommendation on between January and April?

Mr. DEPIETRO. We have no way of knowing what these remaining 101 are going to produce. We are wrapping up and going forward with litigation reports on approximately 45 or so. Depending on what is produced after we look at the 101, we will be in a better position to know just how much additional time we will need.

Senator COHEN. But you will have those litigation reports for the 44 complete as of the end of this month or the beginning of next month?

Mr. DEPIETRO. We anticipate probably by the end of January.

Senator COHEN. Thank you.

Mr. LAVELL. Mr. Chairman, the Phoenix office of the Bureau of Indian Affairs, to give you some idea of the geographic scope, covers all of Utah, Nevada, Arizona, and part of California, alongside the Colorado River. The Salt Lake regional office of the Solicitor handles the work in Utah, and my office the rest of it.

The Phoenix area office very early developed a trust protection unit; they were the first in the Bureau to do this. As a result, we were able, in 1977, to review close to 1,300 different files which were potentially involved in the statute of limitations. Quite a number of them were obviously not. I do not have the numbers here or the types, and the phase of the investigations. But it involves such questions as jurisdictions and things like that.

The 1,300 files, after reviser, were reduced to approximately 68 cases that could involve statute of limitations problems. These 68 cases were broken down further. There are 5 cases under the general category of trust inventory, 47 water rights cases, 1 water inventory, 1 fishing, and 2 sovereignty constitution matters.

These claims were ultimately distilled into 26 viable statute of limitations cases. Since then, 6 cases have been added. All but 10 have been forwarded out of my office, at least as far as the Solicitor's office in Washington. However, of those 10, 6 of the remaining are water rights cases which deal with enormously complicated ground-water pumping matters.

In those kinds of cases many people are involved. To give you some idea of this, the case already in court, involves approximately 1,500 defendants who have not yet been served. In the Upper Safford Valley, we are just about to contract for a study of a number of defendants, approximately 800 to 1,000. The Salt River Reservation

groundwater pumping case will involve approximately 600 to 800 defendants. We are talking about a large number of defendants in these cases.

Senator COHEN. Are these private landowners where water is being diverted to their land?

Mr. LAVELL. They are private landowners. The big users are cities and Salt River project people. For instance, in the city of Tucson case, the big pumpers that are affecting the groundwater table are the city of Tucson and various mining companies and one large corporate farming venture.

So, the number of entities who are seriously affecting the tribe's water table is a half a dozen or so. But the court ordered us to bring in all of the rest of the pumpers in the entire basin. That is how we came up with 1,500. That is the situation we are in now.

We have requested, on all the remaining 10 water cases, and the 4 that are not water cases, but fairly recently referred trespass cases of one kind or another, additional information from the Bureau of Indian Affairs. The additional information is for necessary factual data on which to base these cases. Most of this is being contracted out by BIA.

With everything falling into place just right, we could have all the necessary material to Justice by March 15, at best.

Senator COHEN. You think you could have that to the Justice Department by March 15?

Mr. LAVELL. If everything happens just right.

Senator COHEN. What if the damage section of the statute is not extended? How does that affect your ability to negotiate the water claims?

Mr. LAVELL. In my opinion, it would seriously jeopardize it. Let me use one particular situation as an example. You have to understand, in Arizona now, we have negotiations concerning water rights going on in the Tucson Basin. We have them, recently started by the Governor of Arizona several months ago in the Gila River Basin. We have them started by the Solicitor of the Interior Department in April 1978, in the Salt River and Verde River Basins. The only large basin in the State not being negotiated at the moment is the Little Colorado River.

At the same time, there has been a very serious problem in the State concerning the control of groundwater pumping. Arizona has been overdrafting its groundwater supply for years. The central Arizona project, to some extent, is designed to take care of that problem, or at least to assist in a solution.

The other side of it is going to have to be that the State has to get some effective control of its groundwater pumping independent of any Indian claims. The legislature has been working on this for 2 years. It has been a very hard fight—it is not over yet—basically, between the farming, city and mining industries. In that whole picture, we have these negotiations going.

In the Safford Valley—let me take that as an example—there is the water adjudication decree of 1935. For years, the farmers up there have been pumping water 100 yards or 500 yards away from the stream, saying that that is not stream water but that is groundwater. Under Arizona law, that is all right, or maybe it is all right. The

Indians have protested this for a number of years; it is finally going to be in court. The Justice Department is now processing a procedure [against them] to enjoin them.

If they just face an injunction, this negotiation could go on forever because the worse thing that can happen to them is, some time in the future, a judge is going to either cut back on or cut off their pumping rights. If, in addition, a damage action is brought for what they have done in the past that has interfered with Indian rights, and for every day they continue to do it they face the potential for paying damages, there is a whole different climate for negotiation. You think twice about continuing pumping when you are facing that sort of thing.

Filing suits by April 1, 1980 could seriously jeopardize our negotiations. We have restrained from filing suits, and that is why these things have waited as long as they have—perhaps too long—because of the negotiations. Everyone in the negotiations understands that if the statute runs we have to file suit to protect ourselves and will continue to negotiate. We would hope that we would be able to file the suit and not serve until the last moment.

In that regard, I might suggest that the committee would consider, in addition to an extension of the statute itself, an extension of time in which to serve parties. As I understand it now, under the rules, we have up to a year. That is not a realistic time for completing a complex water negotiation. It would be difficult to say what an extension period would be, but I would certainly say that 3 years would be a minimum.

We will not be able to reach any settlements of these complex water negotiations before April 1; there is no question about that. We feel confident there will be some negotiated agreements down the road somewhere. We have one already—the Ak Chin agreement—which was settled between the farmers in the area and the Ak Chin Tribe. It went to Congress; it was acted upon; and the solution is being implemented. This is the kind of thing we are looking forward to being able to achieve, at least to some extent, in every major watershed.

Senator COHEN. You said you had 13 cases since 1977, or you identified 13 cases?

Mr. LAVELL. No; there were 1,300 files we reviewed in 1977.

Senator COHEN. How many cases have come in since 1977?

Mr. LAVELL. About one-half dozen.

Senator COHEN. Within those cases, are there multiple claims?

Mr. LAVELL. No. Most of these are what I call simple trespass situations.

Senator COHEN. So, out of the 1,300, you have resolved 932 since 1977?

Mr. LAVELL. In 1977 and early 1978, we eliminated all but 26.

Senator COHEN. And you have 68 you have identified that are under the statute of limitations?

Mr. LAVELL. That was a part of the process. So, it boiled down to our actually having 26 out of 68 potential statute cases.

Senator COHEN. So, you had 26 out of a potential 68.

Mr. LAVELL. There is one area remaining to be investigated, that just came through in a memo from the Washington Solicitor's Office. They have asked everywhere to investigate to what extent some State

old-age assistance reimbursement claims may have been wrongfully assessed against Indian trust estates. We have referred this to the Bureau, and that investigation is presently going on. I doubt that it will generate many cases in Arizona because that just has not been a problem there.

Senator COHEN. Thank you very much. Your testimony was very helpful.

The next witness is Myles Flint of the Division of Lands and Natural Resources of the Department of Justice.

Mr. Flint?

STATEMENT OF MYLES FLINT, DIVISION OF LANDS AND NATURAL RESOURCES, DEPARTMENT OF JUSTICE

Mr. FLINT. Good morning, Mr. Chairman.

I would like to thank you for the opportunity to appear before you today. The Department of Justice submitted a written statement this morning setting forth, essentially, the posture of the statute of limitation cases which have currently been referred to us or have been referred to us up to this time by the Department of the Interior.

At the present time, we have approximately 100 case referrals from the Department of the Interior. Some of them have been referred over the past several years. The bulk of them have been referred in the past 3 or 4 months.

We are reviewing these referrals, which have come primarily from offices of the Interior Department located in Minnesota and New Mexico. At the present time, we are acting upon them as quickly as we possibly can. We anticipate, with the referrals that we have at the present time, that we will be able to process them and make a determination as to whether or not litigation should be initiated or whether we believe that litigation would be inappropriate by the time the current April 1 deadline expires.

At the same time, I should comment that we are getting a number of cases each day, and I anticipate that we will continue to get requests for some time.

With a limited staff, I am not sure how we will be able to, or whether we will be able to, process those matters that are referred to us. In part, that depends on the size of the claim, the magnitude of the claim, and the intricacy of the legal problems that are involved. All of those are factors which will affect our review process. Until we receive the requests for litigation, we cannot really make an accurate estimate of the amount of time that will be required.

Senator COHEN. Mr. Flint, without objection, the full prepared statement will be admitted as part of the record at this point.

[The prepared statement and attachments submitted by Mr. Flint follow. Testimony resumes on p. 37.]



Department of Justice

STATEMENT

OF

MYLES E. FLINT
CHIEF, INDIAN RESOURCES SECTION
LAND AND NATURAL RESOURCES DIVISION

BEFORE

THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

CONCERNING

EXTENDING THE STATUTE OF LIMITATIONS IN 28 U.S.C. 2415 AND 2416

ON

DECEMBER 17, 1979

Mr. Chairman and Members of the Subcommittee:

I have been asked to appear this morning to discuss with you the status of processing of statute of limitation matters. On July 18, 1966, Congress enacted a general statute of limitation governing claims by the United States. This statute was codified as 28 U.S.C. 2415 and 2416. Under that statute, Congress specified a number of time limitations on which various causes of action could be initiated by the federal government. The statute, in that portion pertinent to our discussion today, provided that all actions on behalf of Indian tribes, groups or bands, must be commenced within six years of the time the action accrued. Those actions which accrued prior to the passage of the Act were deemed to have accrued on the date the Act was passed -- that is July 18, 1966.

Thereafter the statute with respect to Indian claims has been extended twice. In 1972 Congress extended the statutory period from six to eleven years -- from July 18, 1972 to July 18, 1977. When the limitation period covered by that statute came to an end in July of 1977, Congress again extended the statute. At that time Congress, by Public Law 95-103, extended the limitation for pre-1966 claims until April 1, 1980.

The 1977 legislation was supported by the Administration. At that time the Department of the Interior asserted that a substantial number of valid claims existed which would be barred unless the statute were not extended. It argued that as there had been a sufficient effort to develop these claims, it would be improper for the United States not to extend the statute.

The Department of Justice supported the extension as well. Our primary reason for supporting the legislation was to permit efforts to commence to settle a number of eastern land claims which the Department of the Interior was then considering for referral to the Department of Justice. It was the view of the Department of Justice at that time that these were matters which could best be settled through legislation rather than litigation. That still is our view.

Shortly before the passage of the 1977 extension, the Department of the Interior transmitted a number of requests that the Department of Justice initiate litigation with respect to a number of eastern land claims. It requested that litigation be initiated only in the event the statute of limitation for damage claims were not extended. In addition

Interior requested that no litigation be initiated while negotiations for settlement were being considered or underway. In 1978 Attorney General Bell wrote Secretary Andrus advising that: "After careful thought, I have decided that I will not bring suit against the landowners in the New York, South Carolina, or Louisiana claim areas." Shortly thereafter, at the Attorney General's direction, we apprised the Court in the Maine litigation that he had determined not to sue the landowners in that state. The Attorney General specifically stated he was commenting only with respect to the landowners and that litigation against the State was a different matter. A copy of the Attorney General's letter is attached. We believe that you should be aware of this decision while considering activities with respect to the statute.

Since passage of the last extension in 1977 we have worked continuously to keep apprised of the Department of the Interior's efforts to identify and develop litigation requests for transmittal and also to assist them in its efforts. In February of 1978 the Department of the Interior had a two day

seminar for field personnel from both the BIA and the office of the Solicitor to review Interior procedures to locate and develop information concerning any valid claim which would be affected by the statute. I attended that session to learn of their program and also to advise those officials of the procedures to be followed by the Justice Department with respect to the statute of limitations claims.

Since that time there have been numerous exchanges of correspondence, discussions and meetings between the staffs of the Lands Division and the Office of the Solicitor to review the status of Interior's program. In each instance we have encouraged Interior to refer all matters to Justice as soon as they were properly prepared.

Only a few cases were referred prior to 1979. These cases have been acted on, returned because the reports are inadequate or are being held in abeyance pending Interior obtaining more information. Between January 1 and December 10, 1979, the Interior Department has referred 60 requests for litigation to this Department which it has identified as being affected by the statute of limitations. Of that number 44 have been received in the last three months. We are

reviewing these requests as quickly as possible to determine what actions should be taken on them. In some instances we are declining the requests to initiate litigation because they lack legal merit. In others we will prepare and file complaints in the near future.

At this time the majority of the requests relate to claims in Minnesota and New Mexico. We are advised that other claims are being developed in other states as well.

The Department of Justice defers to the Department of Interior as to whether or not an extension of this statute of limitations is necessary.

Washington, D. C. 20544

June 30, 1978

Honorable Cecil D. Andrus
Secretary of the Interior
Department of the Interior
Washington, D. C. 20240

Re: Ancient Eastern Indian Claims

Dear Mr. Secretary:

From time to time your Solicitor, Mr. Leo Krulitz, has forwarded litigation reports on various ancient Eastern Indian claims to my Assistant Attorney General for Land and Natural Resources, Mr. James Moorman. I refer specifically to three claims in New York (Cayuga, Oneida and St. Regis-Mohawk), one in South Carolina (Catawba), and one in Louisiana (Chittinacha). These reports have not been accompanied by requests to sue immediately, but rather with requests that they be held for later suit pending preliminary settlement negotiations. I believe it is incumbent upon me to inform you of my views on whether suit should ever be filed so that you can better carry out your duties with regard thereto.

At our luncheon meeting on November 29, 1977, you and I generally approved of a settlement approach whereby the Administration would make an omnibus proposal to Congress to settle these claims. My only reservation then and now was that I would not support a settlement bill which forced anyone (other than a state) to give up land.

It appears to me that the settlement process is going slower than we anticipated and that it may not be able to get all the interested parties to agree. At our meeting on November 29th you will recall that Leo Krulitz suggested he would have a bill in April or May of this year. I am under the impression that should settlement discussions fail you may expect that the Department of Justice would actually sue landowners in the claim areas. In addition, the Administration's proposed Maine Claim bill will raise a question in the public's mind as to whether or not we intend to treat the small landowners the same in New York, South Carolina and Louisiana. As you know, the Administration proposes to submit a bill to Congress on the Maine claims which would extinguish Indian title to all land holdings up to 50,000 acres per owner and provide \$25,000,000 in payment to the tribes.

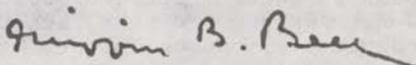
After careful thought, I have decided that I will not bring suit against the landowners in the New York, South Carolina, or Louisiana claim areas. I have a number of questions about the legal and factual issues in these suits and question whether they can be won. Furthermore, the fact that the landowners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

This is not to say that the tribes involved do not have some equitable complaint, using that term in the broadest sense. Other tribes have been compensated over the years for the ancient takings which occurred as a result of the western movement and settlement of the nation. However, it is completely within the power of Congress to remedy the tribal claims by the process of ratifying the ancient tribal agreements with the states. Such ratification could be accompanied by payments to the tribes in appropriate amounts. In the alternative, the tribes could be given a cause of action against the United States in the Court of Claims.

My decision applies only to private landowners. I am undecided as yet with regard to suits against the states of New York, South Carolina or Louisiana. There are several considerations. For example, on the one hand it is true that those states bear some responsibility for the title problems. On the other hand, suits against the states are in effect suits against public lands which involve such things as highways and parks.

As a matter of principle, I believe the landowners should know of my decision not to sue them as soon as possible. The decision could be announced at a time upon which you and I agree. My inclination is to announce it at the same time that the Administration sends up the Maine bill. I would also recommend that the Administration commit to introduce a bill to solve the private landowners' title problems in the claim areas in New York, South Carolina and Louisiana.

- Sincerely yours,



Griffin B. Bell
Attorney General

cc: James Moorman

Senator COHEN. You say you have a limited staff. Exactly how many people in your division are working on these claims?

Mr. FLINT. I am chief of the Indian Resources Section, and within that section lies the responsibility for handling these kinds of claims. At the present time, I have a staff of 12 attorneys, including myself, who are working on these matters. They are not devoting their time exclusively to statute of limitations problems because we have substantial caseloads involving a variety of problems throughout the United States at the present time. However, at this juncture anyway, we are able to meet the requirement.

Senator COHEN. You have indicated you have 100 cases that are currently before you that you could resolve, or at least make a determination as to whether you file suit or reject the recommendations from BIA, I assume, by the April deadline.

Mr. FLINT. Right. I would like to clarify one point. We have had approximately 100 case requests referred to us. In some instances, we have already made a determination and advised Interior that, after review, we would not initiate an action with respect to the claim that was referred to us.

I would have to go back in order to come up with an accurate figure in terms of how many of those are still pending and being reviewed at the present time.

Senator COHEN. Would it not be likely, if, in fact, the statute is not extended, you would expect a veritable floodtide of cases to be referred to the Justice Department with recommendations for prosecution?

Mr. FLINT. That is very possible.

Senator COHEN. In view of Attorney General Bell's decision not to file suit on the eastern seaboard claims, does the Justice Department play a role in helping to negotiate agreements in these eastern cases?

Mr. FLINT. The only one that the Justice Department is currently involved in is the one in your State—the State of Maine—where there is litigation on file before Judge Ginoux. We are involved in that process. We are not involved in any of the other eastern land cases at this time. In part, that is because the Interior Department has withdrawn its request and has been conducting those negotiations itself for some period of time.

Senator COHEN. You would expect that, however the case in Maine is resolved, it would have certain precedential effects for the other claims pending?

Mr. FLINT. I would assume so; yes.

Senator COHEN. How would that, not only impact on eastern claims, but also western claims, in your judgment? Would that have a precedential effect in terms of the cases in the West?

Mr. FLINT. I have, in my own mind, treated them as two kinds of problems—an eastern problem and a western problem. I suppose they could possibly be used as a precedent. But I have not perceived it as being such.

Senator COHEN. Mr. Flint, you have indicated you have 12 attorneys working on less than a full-time basis on the processing of these claims. Do you anticipate making a request for additional personnel in view of the fact that it is likely that you will be confronted with a great many more cases?

Mr. FLINT. I have discussed this with the Assistant Attorney General a number of times. The possibilities of our receiving a number

of requests which are beyond our ability to handle with the current staff are matters that have troubled us for some time.

In view of the small numbers that have been coming to the Department, we were not in a position to make an accurate estimate of how many people we would require to handle the cases that may be referred to us.

We have discussed this with the people from the Department of the Interior from time to time to try to establish estimates of numbers of cases that would be referred and when those cases would be referred. But, because of the very large problem confronting the Department of the Interior, it has been difficult for them even to estimate the number of cases that would be coming to the Department and when they would be coming.

Senator COHEN. In your legal judgment; Does the statute, if it expires, serve to preclude a suit by the tribes as well as by the Federal Government?

Mr. FLINT. There certainly is caselaw, as Mr. Walker suggested earlier, that indicates that. I am not sure that I could give a positive opinion that it would result in the extinguishment of those claims.

Senator COHEN. Could you elaborate on the difference you see, as an attorney, between the tort actions and the contract actions, and in that elaboration, perhaps, discuss any difficulties you might foresee in extending the tort section without extending the contract section?

Mr. FLINT. It is a problem I have not focused on, but at this time the requests I have received from the Department of the Interior have all involved essentially tortious claims or have, at least, been in the form of request that we initiate actions based in trespass—something along that line. It is possible that claims could be alleged in the alternative arising out of the same fact situation, one cause of action being premised in contract and another being premised in tort.

The running of the statute with respect to one claim would not affect the claim with respect to the tort.

Senator COHEN. As a practical matter, then, it is not of significance from a legal point of view as to whether or not the statute is extended for tort but not contracts, and the complaints would, in all likelihood, be amended to argue in the alternative?

Mr. FLINT. I do not know that you can say it would not have some significant effect. Not every case can be framed in both a contractual and tort framework.

Senator COHEN. It can be framed.

Mr. FLINT. You might attempt to frame it that way, but it might not be very persuasive for the court.

As a practical matter, I have not encountered many that would really fit into the contract category in the ones that have been referred to me. So, letting the statute run with respect to contract cases would not affect my caseload at all.

Senator COHEN. You have returned some cases to the Department of the Interior for further information, have you not?

Mr. FLINT. Yes.

Senator COHEN. What is the timeframe involved in the referrals?

Mr. FLINT. That depends on the nature of the information we are requesting.

Senator COHEN. What is the percentage of cases that you refer back to Interior for further information, of the ones you have considered so far?

Mr. FLINT. I really do not have an accurate figure on that. I have many which I have received and which we are in the process of reviewing at the present time where it is possible we may request some additional information, but we have not done so because we are still in the process of reviewing the matter.

I would say that of those that were not received recently, I suspect that in one-half the cases we have had to request some additional information. In some instances, it is information which is easily obtainable. It is more difficult in other instances.

Senator COHEN. How much of an extension are you recommending, in view of the backlog of cases?

Mr. FLINT. The Department of Justice at this time does not have a position with respect to the extension of the statute. We are inclined to defer to the Department of the Interior and the Office of Management and Budget.

Senator COHEN. You appreciate the problem that arises with further extension. You can anticipate that there will almost be a proportional increase in cases that are filed with Interior or being investigated by Interior. In other words, the longer the period of time is extended the more cases will be coming in. That has been the history to date, it seems to me.

Mr. FLINT. It certainly is possible. I do not know just exactly where it would lead to, but it could lead in that direction.

Senator COHEN. As it stands now, you have indicated that you could, in fact, process the 100 cases that you have as of this date by the deadline as established by the statute.

Mr. FLINT. That is correct. But I am receiving cases on a daily basis, and whether I will be able to continue is another question.

Senator COHEN. Thank you very much.

Mr. FLINT. Thank you.

Senator DeCONCINI [acting chairman]. Mr. Delfin Lovato, chairman of the All-Indian Pueblo Council will bring the next panel of witnesses.

Mr. Lovato, would you please introduce the panel as they are seated?

STATEMENT OF DELFIN J. LOVATO, CHAIRMAN, ALL-INDIAN PUEBLO COUNCIL; ACCOMPANIED BY LT. GOV. LAWRENCE SINGER, SANTA CLARA PUEBLO; GOV. ALVINO LUCERO, ISLETA PUEBLO; GOV. HENRY MORA, JEMEZ PUEBLO; GOV. GILBERT PENA, NAMBE PUEBLO; GOV. SAM ARMIJO, SANTA ANA PUEBLO; GOV. RAYMOND CONCHO, ACOMA PUEBLO; PAUL TAFOYA, SANTA CLARA PUEBLO; LAMAR PARRISH, ATTORNEY, ALL-INDIAN PUEBLO COUNCIL; THOMAS LUEBBEN, ATTORNEY, SANTA ANA AND SANTO DOMINGO PUEBLOS; AND GOV. DENNIS MARTINEZ, PUEBLO OF SAN ILDEFONSO

Mr. LOVATO. Thank you, Mr. Chairman.

We have a number of written statements that we would like to introduce for the record, sir.

Senator DECONCINI. We will include in the record at this time, without objection, all of the statements that you submit to us, and they will appear in toto.

[The prepared statements and attachments follow. Testimony resumes on p. 62.]



ALL INDIAN PUEBLO COUNCIL

TESTIMONY OF
DELFIN J. LOVATO, CHAIRMAN
BEFORE THE
SELECT COMMITTEE ON INDIAN AFFAIRS
ON THE
EXTENTION OF THE STATUTE OF LIMITATIONS DEADLINE
DECEMBER 17, 1979 -

Mr. Chairman and members of the Select Committee on Indian Affairs, my name is Delfin J. Lovato, I am Chairman of the All Indian Pueblo Council which represents the Pueblo tribes of New Mexico. I would also like the records to show that I am also representing the views and position of the National Congress of American Indians (NCAI), as their Vice-President.

On behalf of the Pueblo people and members of the National Congress of American Indians, I request and urge this Committee to initiate and support legislation which will provide for a three (3) year extention of the deadline for the Statute of Limitations (28USC 2415) for litigation of third party trespasses on Indian lands. This deadline requires the BIA, the Solicitor General, and U.S. Attorney to pursue claims involving trespasses on Indian lands and to perfect such claims for processing and prosecution before April 1, 1980.

This task will not be completed by the stated deadline. The number of trespasses which have been discovered by BIA surveys within the New Mexico Pueblos have been overwhelming. The trespass cases

on New Mexico Pueblos is complicated by the fact that most of these cases involve private claims which resulted from Spanish and Mexican land grants and the 1924 Pueblo Lands Board which was established by Congress to justify the squatters rights of non-Indians who moved on to Pueblo lands during a time when the Pueblos were not considered Indian and their lands were not given to these individuals are incorrect. There currently exists numerous unidentified claims in the following areas which are vital to the interest of the Pueblo tribes:

1. Spanish or Mexican grants to non-Indians which overlap Pueblo grants.
2. Land purchases by the Pueblo during the 18 and 19th centuries, title to which has not been litigated.
3. Private claim boundaries.
4. Trespass to aboriginal Pueblo lands, title to which has not been extinguished.
5. Lack of rights-of-way across the Pueblo land for access roads to private claims allowed by Pueblo Lands Board.
6. Breached covenants in Pueblo land leases.
7. Water rights.

The Government must finalize all of these trespass claims, plus any others which are discovered, all before April, 1980. Unless the deadline is extended, several results, all undesirable, will likely occur, such as:

1. Many legitimate trespass claims simply will not be processed because of a lack of time, and the Government will have failed in its trust responsibility toward the Pueblos.

2. In its haste to prosecute some of the claims, the Government will file lawsuits against persons which claims may later turn out to be not well-founded. In the mean time, however, these persons will have been forced to retain legal counsel and otherwise undergo the expenses and inconvenience of litigation, which are particularly burdensome when the plaintiff is the United States.

3. The United States will hastily file a suit against trespassers against whom there is a legitimate claim. Some of these claims will be of such a nature that, had more time been available, the claims could have been negotiated out and settled amicably. Again, individuals would be burdened with the expense and inconvenience of litigation which could have been avoided had more time been made available. It prevents compromise and negotiations between the tribe and individual.

4. There are going to be some legitimate, substantial claims, likely brought to the attention of the BIA by the tribes, which will not be prosecuted because of the lack of time. The Pueblos feel keenly the legal responsibilities that go with the trust relationship between the Government and Indian tribes. If legitimate trespass claims are not prosecuted by the Government, one can well imagine that the Government will find itself in the role of a defendant, defending itself against claims for breach of trust responsibility by tribes, rather than fulfilling its proper role of protecting Indian people and their land.

(While the Congress has been very supportive in giving Indian tribes the opportunity to litigate and resolve third party trespasses against them, it has never provided adequate funds to BIA for the necessary

surveys, research, and legislation.)

If this extension is granted, We do not expect another request for an extension to be made in this matter. The BIA is atlast "geared up" and is proceeding to process the various claims. We are confident that the BIA will continue unrelentingly to process all of the existing claims, the backlog is composed overwhelmingly of existing and discovered claims, and the discovery of new ones from this point forward is expected to be few. The personnel will be allowed to continue for an extended time, rather than being abruptly halted in 1980, the claims will be properly disposed of.

Estimated cost to complete the task for the Albuquerque area over a period of one year would be \$2,000,000, however, the various kinds of researchers are not readily available to complete the work in that time and there isn't time to train additional persons. This would be for title searchers, archivists and other document examiners. The estimated cost to complete the task for the Albuquerque area in a period of three (3) years would be \$500,000 per year. The attached data will provide more detailed information on the status of trespass cases in the Albuquerque area.

Private Claims Descriptions Within The Pueblo Lands of
New Mexico

Presented by: Lt. Governor, Lawrence Singer
Santa Clara Pueblo

Pursuit of monetary land claims against trespassers under 28 USC 2415 has identified and highlighted an unusual and difficult situation with respect to the location of private claims within the Indian Pueblos of New Mexico. Resolution of the problem is essential in order to pursue certain trespass cases subject to the statute of limitations in 28 USC 2415. Before the exact nature of the problems is described, it is helpful to briefly review the legal history of the Pueblos.

HISTORY

For many years in New Mexico it was believed that the communal fee lands owned by the Pueblos were not in any way restricted by the terms of the Non-Intercourse Act. See United States v. Joseph, 94 US 64 (1876). Accordingly, many non-Indians obtained title to Pueblo lands by adverse possession or deed. In 1913, the Supreme Court hinted that it would soon reverse its position regarding the alienability of Pueblo lands. United States v. Sandoval, 231 US. 28 (1913). As a result of the Sandoval decision, many non-Indians became fearful that their titles to land within the Pueblos would be invalidated. The Pueblo Lands Act, Act of June 7, 1942 (43 Stat. 636), provided a vehicle for confirmation of non-Indian titles.

The procedures established by the Act were, in theory, quite simple. About ten years earlier, Deputy Surveyor Joy of the General Land Office had surveyed the areas of actual non-Indian occupancy with the Pueblos. In some instances Joy did not survey certain private claims, (hereafter referred to as P.C.'s), were designated by number. The Board held hearings regarding each of these P.C.'s allowing the claimant an opportunity to provide his entitlement under Section Four of the Act. If the claimant prevailed, his P.C. was listed as an exception to the Board's final reports on unextinguished Indian title. The Board described exceptions according to the earlier Joy surveys. On the other hand, if the private claimant failed to prove a valid title, he was named as a defendant in a suit in Federal District Court to quiet title to unextinguished Indian lands. In some cases, the Board's rejection of a private claim was overruled by the Court, and title was quieted in the non-Indian claimant. In all cases to quiet title, the Joy surveys was adopted by the Board were used to describe the P.C.'s involved.

After the matter of title was settled, either by the Board or the Court, of Private Claims the Pueblo Lands Act established further procedures to delineate the areas of non-Indian ownership within the Pueblos. Where non-Indian title has been validated by the Board, Section Thirteen required that:

...the Secretary of the Interior at any time after two years after the filing of said reports of the board shall file field notes and plat for each Pueblo in the office of the surveyor general of New Mexico at Santa Fe, New Mexico, showing the lands to which the Indian title has been extinguished as in said report set out, but excluding therefrom lands claimed by or for the Indians in court proceedings then pending, and copies of said plat and field notes certified by the surveyor general of New Mexico as true and correct copies shall be accepted in any court as competent and conclusive evidence of the extinguishment of all the right, title, and interest of the Indians in and to the lands described in said plat and field notes and of any claim of the United States in or to the same.

Where non-Indian title was validated by the Court, Section Nine required:

That all lands, the title to which is determined in said suit or suits, shall, where necessary, be survey and mapped under the direction of the Secretary of the Interior, at the expense of the United States, but such survey shall be subject to the approval of the judge of the United States District Court for the District of New Mexico, and if approved by said judge shall be filed in said court and become a part of the decree entered in said district court.

United States patents subsequently issued to all successful P.C. claimants made reference to the Pueblo Lands Board description.

This process works well in theory. However, surveys conducted after the Board and Court had finished their work departed in many instances from the Board descriptions. To further confuse matters, some brass caps were placed by the General Land Office surveyors at P.C. corners in altogether different locations from those dictated by either the Board descriptions or the subsequent surveys. The result is that many P.C. boundaries can be retraced in three different locations. If this were not enough, recent attempts to survey the boundaries of private claims have revealed errors in the Pueblo Lands Board descriptions, as well as in the field notes of the subsequent surveys.

In many cases, the difference between the three locations of P.C. boundaries is slight, amounting to only a few inches or feet. In other cases, either the difference is greater or houses straddle one of the three possible lines. Additionally, because P.C.'s are generally located in contiguous blocks, a change in the boundary

line of one P.C. can affect other P.C.'s in a domino-like fashion, resulting in a shift of the boundaries of all contiguous P.C.'s. Needless to say, this situation is intolerable and survey work for statute of limitations claims has been frustrated. Now hopefully, that all problems have been discovered, it is time to make a comprehensive review of the situation.

P.C.'s VALIDATED BY THE BOARD

Descriptions of P.C.'s validated by the Board are set forth in the Board's final reports. Subsequent surveys of these P.C.'s had to be conducted "as in said report set out" pursuant to Section Thirteen. Therefore, variances from Board descriptions were not authorized by the Act and are of no effect. Reference to the Board's descriptions in the patents bolsters this view. However, Section Thirteen elevates conflicting field notes and plats of subsequent surveys to a position of conclusive evidence as to the extent of extinguished Indian title i.e.

1. Francis Joy Field Notes
2. Public Land Survey Field Notes
3. U. S. Government Land Office Filed Notes

P.C.'s VALIDATED BY THE COURT

Descriptions of P.C.'s as validated by the Court were derived from the Joy survey as adopted by the Board. Such descriptions are set forth in the final decrees of the Court and are referenced in the patents later issued to successful claimants. Conflicting post-decree surveys and plats produced by the General Land Officer were merged with the decree pursuant to Section Nine upon approval by the Court.

RESOLUTION

P.C.'s validated by the Board are intermingled with P.C.'s validated by the Court, as well as with unextinguished Indian lands. Therefore, in order to resolve the problem, a consistent approach must be taken. Either the description incorporated in the Board's final report or the description developed by the later General Land Office survey must control all the P.C.'s, whether validated by the Board or the Court. Whichever description is chosen, it will in many instances conflict with brass caps placed in the field by the General Land Office. Additionally, regardless of which description is chosen as controlling, there are bound to be many instances of failures to close and other survey errata.

Arguments in favor of both descriptions can be advanced. Neither can be chosen without direct conflict with the explicit wording of the Pueblo Lands Act. Resort to the general rules of public surveys is to no avail due to the unique nature of the problem.

It appears that the Pueblo Lands Act intended descriptions derived from Joy's surveys and used by the Pueblo Lands Board to control the extent of non-Indian titles within the Pueblos of New Mexico. This conclusion necessitates numerous resurveys by the Cadastral Survey Division of the Bureau of Land Management to bring the official plats and brass caps into line with the descriptions contained in the final reports of the Pueblo Lands Board.

SUMMARY

Taken together, in all the Pueblos, well over 2,500 non-Indian private claims were validated by the Pueblo Lands Board. In many cases, the boundaries of such private claims are difficult to ascertain due to numerous conflicting surveys conducted by the old General Land Office. Until all private claim boundaries can be correctly located, it will be impossible to determine the number and extent of trespasses on Pueblo lands. Presently, an effort is underway to identify all obvious trespasses where fence lines have been extended beyond boundaries most favorable to the private claim owner. These obvious trespasses will be field prior to the April 1, 1980 deadline. Those possible trespasses resulting from Pueblos Lands Board action inconsistencies cannot be identified until the inconsistencies are corrected. Subsequent suits filed in counties of New Mexico to quiet titles by non-Indians claimants who maybe several parties in sucession never made the U.S. Government nor the Pueblos of New Mexico, a party to various suits. Therefore, these cases which were consummated in favor of the non-Indian are invalid and contravenes Section 17 of the Pueblo Lands Board Act.

RECOMMENDATION

To expediate 28 U.S.C. 2415 in our behalf would become a gross failure without the following performances being conducted:

1. Resurvey of all private claims by the U.S. Cadastral Survey Division.
2. Resurvey to ascertain the nature and extent of incursions and identify lands remaining in Indian possession.
3. The Divisions within the U.S. Justice Department and the U.S. Department of the Interior must be in consort with the Pueblo Tribes.
4. To properly consummate the intent of 28 USC 2415, the Pueblos must have an extension of time as delineated in the above items.

December 17, 1979



PUEBLO of ISLETA

Isleta, New Mexico 87022

STATEMENT OF ALVINO LUCERO

My name is Alvino Lucero. I am the Governor of Isleta Pueblo. Isleta is one of the larger Pueblos in the State of New Mexico, consisting of almost a quarter of a million acres, and we have approximately 3,000 Indian people living at Isleta. It is very near to Albuquerque, the major metropolitan area in New Mexico. In spite of the nearness of Albuquerque, the Pueblo has managed to maintain its tradition and language, and we intend to maintain these in the future. Isleta Pueblo strongly supports extension of the time in which to file trespass claims.

Isleta has always had a history of good relations with non-Indian neighbors. In spite of this, or perhaps because of this, we have been plagued with numerous trespasses. Isleta has cooperated to the fullest extent with the Bureau of Indian Affairs and other agencies with respect to identifying trespasses which have occurred over the years. Tribal members have volunteered to assist in this effort and have taken time from their families, jobs, and leisure time to accomplish this. Unless the deadline is extended as is requested in the new legislation, these efforts, as well as those by the BIA, will have been expended by them in vain.

In some instances it is foreseeable that the Government will be forced to file suit prematurely. Isleta provides a good example of this probability. About 70 years ago, the telephone company placed a line from El Paso to Denver. It crossed Isleta lands without troubling the Pueblo or the Government with an easement request. This line, I understand, affected several other Pueblos in the same manner. This trespass is undisputed. The only real question is the amount of money damages. By the time the exact legal description of the land involved is formulated, the acreage determined, appraisals made on our behalf, appraisals made on behalf of the telephone company, and negotiations undertaken with the telephone company, April of 1980 will have long since come and gone. There is no reason to believe that the telephone company would not settle this matter amicably if given the opportunity. Without the extension of the deadline, they will not have an opportunity, and the United States will be forced to file a lawsuit on our behalf. This unnecessary legal exercise would burden the Federal Courts and could easily be avoided, in my opinion, if the deadline were extended as requested.

The Pueblo of Isleta and I, as the Governor of Isleta, urgently request that this extension be given favorable consideration.



Pueblo of Jemez

OFFICE OF THE GOVERNOR
P. O. BOX 78
JEMEZ PUEBLO, NEW MEXICO 87024

STATEMENT OF HENRY MORA

My name is Henry Mora, and I am the Governor of Jemez Pueblo. Jemez is a Pueblo of approximately 2,100 people, located in the Jemez Valley, approximately one hour's drive northwest of Albuquerque, New Mexico's largest city. Jemez Pueblo supports extension of the time for the Bureau of Indian Affairs to file trespass claims.

The Jemez Valley has become very popular with people from Albuquerque as a recreational area. Large geothermal development is also being considered. Land values have risen accordingly, and trespasses that might once have seemed insignificant are now quite important.

Although Jemez has always cooperated with the BIA in attempting to identify trespasses, the Southern Pueblos Agency, which serves Jemez, has not until recently had sufficient personnel and money to investigate and process all of the trespass claims for the various tribes. Now that the BIA appears to have the resources to process these claims, it would be a shame if BIA's efforts on our behalf were halted too soon to accomplish its assigned task.

The statute of limitations, if not extended, will prevent the BIA from investigating, documenting, and filing actions on many suspected trespasses. It will also force the BIA to file suit prematurely on some trespasses without adequate investigation or preparation. Suits will be filed on trespasses which might have been settled, but the present deadline does not permit the luxury of negotiation.

A case in point is a power line of an electrical co-op crossing a portion of the Pueblo. A portion of the line has been in trespass for some time. In order for the Pueblo and the Co-op to negotiate properly, the property involved in the trespass must be surveyed and appraised by both sides. This could take months. Although Jemez and the Co-op have had a good history of cooperation in the past, suit will have to be filed before the deadline in order to protect the Pueblo's rights. The Government and the Co-op will be put to needless expense, and there is no guarantee that justice will be done in the hastily filed lawsuit.

Jemez urges that this panel recommend extension of the statute of limitations for an additional three years.

NAMBE PUEBLO

ROUTE 1, P.O. BOX 117BB * TELEPHONE: 505-455-7692 * SANTA FE, NEW MEXICO 87501

OFFICE OF THE GOVERNOR

STATEMENT OF
GILBERT PENA

I am Gilbert Pena, the Governor of Nambé Pueblo. Nambé is typical of the northern New Mexico Pueblos in size and location, it being approximately 20,000 acres and near much activity by non-Indians. Nambé still carries on its ancient tribal practices; it is a unified community and, I believe, will remain one. Nambé Pueblo believes it is imperative for the extension of time in which to file trespass claims to be granted.

Even though the Federal laws protecting Indian land go back as far as 1790, only last year did the BIA have the money and manpower to undertake the task of identifying trespasses and trespassers to carry out the intent of these old laws. This newly started action has resulted in the discovery of hundreds upon hundreds of claims. The simple fact is, in my opinion, these claims will not be processed in time to meet the April, 1980, deadline. By virtue of another law, which we are not presently challenging, there were many private claims by non-Indians recognized on our land. It must be apparent that the existence of these non-Indians in the heart of our Pueblo lands leads to many trespasses which the BIA can cure, but only if sufficient time is provided to do so.

The legal issues relating to some of the trespasses are difficult. Government lawyers at various levels may well disagree, and while the research, the discussions, and the preparation of legal memoranda are completed, months pass without a decision. This, in effect, shortens the already short deadline. Another facet of this same problem is that in these difficult legal issues, the pressure of time should not be a factor in how the issue is decided. Only the inherent merits of a claim or a class of claims should be considered.

Unless the deadline is extended in this effort, not only will the Pueblos be treated unfairly, but so will a number of non-Indian people. Nambé urges favorable consideration of this request for an extension.

TESTIMONY STATEMENT
BEFORE
THE SENATE SELECT SUBCOMMITTEE
ON INDIAN AFFAIRS
"EXTENDING DEADLINE FOR FILING TRESSPASS CLAIMS"

GOOD MORNING, MY NAME IS RAYMOND CONCHO SR., GOVERNOR OF THE PUEBLO OF ACOMA. I EXTEND TO YOU A GREETING FROM MY TRIBAL COUNCIL AND MY PEOPLE.

THE PUEBLO OF ACOMA WOULD LIKE TO GO ON RECORD TO HAVE THE TIME FRAME FOR SUBMITTING TRESSPASS CLAIMS UNDER THE USC CODE 28 EXTENDING PAST THE APRIL 1, 1980 DEADLINE.

WE HAVE EXPERIENCED THE METHODS OF THE PROCESSES USED WITHIN THE BUREAU OF INDIAN AFFAIRS FOR SUBMITTING AND REVIEWING THE CLAIMS AS A SHORTCOMING TO THE TRIBES. ALTHOUGH THE BUREAU OF INDIAN AFFAIRS HAVE SPENT SOME SIGNIFICANT AMOUNTS OF TIME ON THE RESEARCHING AND SURVEYING ASPECTS NECESSARY TO VALIDATE CLAIMS, ONE OF THE ESSENTIAL THINGS WHICH IS LACKING IN THE PROCESS IS THE INPUT FROM THE TRIBES AND DIRECT CONSULTATION FROM THE TRIBES. MORE SPECIFICALLY, THE TRIBES LACK THE IN-HOUSE CAPABILITY TO UNDERTAKE THE TYPES OF TRESSPASSES WHICH ARE EXISTING AND ARE BEING EXPERIENCED AT THE RESERVATION LOCATIONS. IN THE CASE OF OUR TRIBE, THE ADMINISTRATION STAFF DOES NOT HAVE THE TIME REQUIRED TO CONCENTRATE ON THE COMPILING AND IDENTIFICATION OF THE DIFFERENT TYPES OF CLAIMS THAT NEED TO BE SUBMITTED.

IN VIEW OF ALL THE PROBLEMS WHICH ARE BEING GENERATED BY THE APPROACH TAKEN ON THE METHODS OF CONDUCTING THE RESEARCH AND DOCUMENTATION, THE BUREAU OF INDIAN AFFAIRS NEEDS MORE TIME TO ADDRESS THE MATTER FOR THE TWENTY-TWO DIFFERENT TRIBES IN NEW MEXICO. A NEW PERSPECTIVE NEEDS TO BE TAKEN ON THIS PARTICULAR STATUTE BECAUSE OF THE MANY PENDING CLAIMS WHICH NEED DOCUMENTED RESEARCH IN ORDER FOR THE TRIBES TO BE ADEQUATELY AND JUSTIFIABLY SERVED. AS OF YET, THE ACOMA TRIBE HAS NOT RECEIVED A STATUS REPORT TO DETERMINE WHICH CLAIMS CAN BE PROCESSED FOR THE PUEBLO. WE WOULD APPRECIATE A FAVORABLE CONSIDERATION TO THIS REQUEST.

STATEMENT BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
OVERSIGHT HEARINGS ON 28 U.S.C. §2415 (STATUTE OF LIMITATIONS)

December 17, 1979

My name is Thomas E. Luebben. I am an attorney from Albuquerque, New Mexico. I am the tribal attorney for the Pueblos of Santa Ana and Santo Domingo. The combined populations of these two communities is about 3500. Together, the two Pueblos own or control approximately 140,000 acres of land.

It is with deep concern that we watch the approach of the April 1, 1980 deadline for the United States to file claims for damages for trespasses to Indian lands and water rights. Congress has thrice instructed the Department of the Interior to prepare such claims by passing and twice amending 28 U.S.C. §2415, the statute of limitations on Indian claims. The Department of the Interior has three times failed to perform the task mandated by the Act. The Department of the Interior should have been researching, investigating and preparing these cases since the initial passage of the Act on July 18, 1966. In fact, the Department appears to have done little up until the last year and a half and even now the staff and resources devoted to the effort are woefully inadequate. In partial exoneration of the Department of Interior, however, I think no one really anticipated the magnitude of the trespass problem. For 131 years, ever since the United States acceded to the Southwest under the 1848 Treaty of Guadalupe Hidalgo, these claims have been accumulating. During that 131 years the United States has done little or nothing to fulfill its obligations under that Treaty to protect Indian property. Consequently, every Pueblo faces a staggering backlog of unattended trespass claims and associated land and water

issues. Many of these claims are quite complex, involving many federal statutes passed during a period of more than one hundred thirty years and historical facts which must be gleaned from vast quantities of documentary material.

The first official communication which I have from the Bureau of Indian Affairs concerning the statute of limitations is a letter to the Pueblo Governors dated May 25, 1977. This letter was sent less than two months prior to the statute of limitations deadline as it stood before the most recent amendment to 28 U.S.C. §2415. It states: "If you have any pending claims which may fall within the criteria set forth in the enclosed correspondence, we would appreciate you advising this office as soon as possible." In other words, the entire burden of identifying claims was placed on the tribes themselves. Few tribes had, or have, the necessary resources and expertise to even begin to identify the claims. This is a case of the trustee placing the burden on the beneficiary to do the work of the trustee. Tribal members do not have an intimate knowledge of the history and legal status of the dozens or hundreds of actions which have taken place since 1848 which affect their land titles. For the tribal attorney or consultant, proper identification of the trespass claims requires an intimacy with the Pueblo's land base which can only be developed over a period of years. On-the-ground inspections must be made, and archives must be studied and reviewed. Very often, a particular trespass claim is not evident until an attorney has done considerable background research into the law governing a particular situation. Sometimes this involves the study and interpretation of complex statutes. We are not simply talking about Mrs. Murphy's cow breaking through the fence and eating the chillis on the reservation.

In the case of the pueblos, there is still a great deal of research which needs to be done on the many statutes which have affected pueblo land status, and the legislative history and court interpretations of those statutes. Spanish law must also be researched to determine the status of certain overlapping Spanish land grants. The Spanish Land Grant laws for the New World are only now being translated by a professor of History from the University of Utah. They will not be available in published form for some time. It will be very difficult to resolve some of the land grant issues until this material is available. I do not believe that any of the Pueblo governments responded on their own initiative to the BIA letter of May 25 requesting identification of claims. It has only been with the assistance of active tribal attorneys and consultants that claims for trespass to the Pueblo lands have been identified. A special staff is required at each Pueblo to identify claims. Some Pueblos have identified few, if any, claims, because they have been unaware of the urgency of the situation and exactly how to establish a claims project. A competent effort to identify the claims requires the outlay of substantial funds to establish a project and hire attorneys or land consultants, and many tribes simply do not have the resources. The BIA has thus far provided no funding to any of the tribes to defray the cost of this work. I believe that hundreds of potential claims for the New Mexico Pueblos remain unidentified at this time, just three and one half months before the deadline.

Unfortunately, identifying the claims is only the beginning of the process of getting claims filed before the deadline. Once a tribe has identified its potential claims to the local Indian Agency, the Agency must review its files for all relevant material on the matter, conduct land surveys, and compile whatever additional facts are

needed which may not have been supplied by the Pueblos. Survey plats, documents, and additional facts are then compiled into a report which is sent to the Office of the Field Solicitor for review and preparation of a litigation report. Sometimes more facts are needed, such as the names of all of the defendants in a given matter, and the claim is referred back to the BIA for further fact-gathering. Once the litigation report is finalized, it goes to the Associate Solicitor of Indian Affairs here in Washington for further review. If the Associate Solicitor agrees that the claim is viable, it is referred on to the Justice Department for still another review. If the Justice Department agrees it is a good claim and all the facts are present, it refers the case to the local United States attorney for preparation and filing of a complaint.

Now, in light of that convoluted and time-consuming process, let's look at the status of these claims in the Albuquerque area. Only four or five Pueblos have actually made a concerted effort to identify claims. As a result, over 350 claims were identified. There are probably at least 800 additional claims which have not been identified. Over 100 of the identified claims have been rejected. We believe that at least 40 of those are actually viable claims and that the Solicitor's Office is in error in rejecting them (the Pueblos will probably file independent suits if the United States does not file). About 200 claims are still waiting for completion of fact-finding by either the BIA or the affected Pueblo. Only about 50 claims are covered by completed litigation reports. At least a dozen of the claims involve land grant problems which will require many more months of research before cases can be prepared. It is obvious that of the relative minority of Pueblo claims thus far identified, there is virtually no possibility that even half of them will be completely processed and filed by the deadline.

The consequences of this are that some of the Pueblos will make a desperate and expensive effort to file their claims themselves before the deadline, and that for at least the next six years after the deadline (statute of limitations for claims against the United States), the Pueblos will be filing breach of trust suits against the United States for failing to fulfill its fiduciary duties. The magnitude of this crisis cannot be overstated.

As if the sheer magnitude of the job of identifying and processing the Pueblo claims were not enough, we also face the problem of the rejection by the Solicitor's Office of trespass claims which the tribes and many tribal attorneys believe are good claims. In some instances claims are rejected because they appear to be too complicated or too difficult legally to undertake in view of the volume of work and the shortness of time. In other words, unusual, complex, and difficult claims which are nonetheless worth pursuing are being rejected because they are considered low priority in the present crisis situation. There are also situations where claims are rejected in essence because the Department itself bears some of the blame for the existence of the trespass situation. An example is rights-of-way granted by the Department of the Interior pursuant to Section 17 of the Pueblo Lands Act of 1924, 43 Stat. 636. Section 17 of the Pueblo Lands Act most definitely does not provide authority for the Secretary of the Interior to grant or approve rights-of-way across Pueblo lands. Nonetheless, the Department approved at least 40 such rights-of-way over the years. The Field Solicitor in Albuquerque prepared a litigation report holding that the rights-of-way are not valid and trespass claims should be filed. The Office of the Associate Solicitor in Washington reversed that position and the Pueblos have been instructed that the claims are being rejected.

The Department appears to be taking a political position rather than a legal one by trying to uphold the honor of and defend the record of the Department of Interior simply because the Department violated the statute more than 40 times.

In other instances, the Solicitor has recommended that the United States file claims of far narrower scope than we believe is justified.

As litigation reports are completed by the Solicitor's Office in the next two months, we expect to have additional problems of this nature. The tribes need much more time than presently remains to discuss these claims with the trustee to iron out differences of opinion between the tribes and the Office of the Solicitor and the Justice Department. If time is not allowed to complete this process, it will be necessary for the tribes to file independent trespass claims of their own which will be in conflict with the position of the United States. This is not only unseemly, but it places the United States in a position of conflict of interest. Moreover, the cost to the tribes of this independent litigation will be an enormous burden.

The problems in meeting the April 1, 1980 deadline are especially great for the Pueblos of New Mexico because the problem of determining the superior title in situations of conflicting, or overlapping, Spanish Grants has never yet been faced. In 1854 Congress passed a statute creating the Office of the Surveyor General of New Mexico and creating a mechanism for investigation and confirmation of Spanish and Mexican land grants. 10 Stat. 308. This process determined title only as between the claimants and the federal government, however, and many grants were never reviewed by the Surveyor General. Consequently, Congress created the Court of Private Land Claims in 1891 to consider

further claims based on Spanish and Mexican Grants. Again, the statute authorized adjudication only as between the claimants and the United States, and excluded determination of conflicts as between private parties from the jurisdiction of the Court. Conflicts between Indian and non-Indian grants were also expressly excluded from the Court's jurisdiction. The Pueblo Lands Act of 1924 was intended to resolve title problems as between Indians and non-Indians, but again, determination of conflicts between Indian and non-Indian land grants was expressly excluded from the process. The problem of resolving conflicting Indian and non-Indian land grants has apparently been left for the current generation. Quiet title and trespass damage actions with respect to such lands must be initiated by April 1, 1980 under the mandate of 28 U.S.C. §2415. It is impossible for the Pueblos to meet the deadline, however, because the necessary archival and historical research has not even been started. No funds are available for this work. In the case of the Pueblo of Santo Domingo the true boundaries of the Pueblo lands have never been determined. The entire history of the Santo Domingo Grant must be reconstructed from archives scattered around the United States and as far away as Mexico, Spain and Great Britain. Congress has deliberately avoided the problem of resolving the grant conflicts for 130 years, and has now imposed a deadline which can't be met. The gross unfairness of this situation is obvious.

Another problem of great concern to my clients is the fact they hold unextinguished aboriginal Pueblo land titles to portions of their former aboriginal domain. Claims for money damages arise from trespass to unextinguished aboriginal Indian title, just as with any other land title. United States v. Santa Fe Pacific Railroad Company,

314 U.S. 339 (1942). The United States Justice Department is now litigating just such a case against large oil corporations on behalf of the Alaska natives. The Solicitor's Office has thus far rejected our request to consider claims for damages for trespass to unextinguished aboriginal Indian title. We have not yet had an opportunity to fully discuss this issue with the Solicitor's Office. If the Solicitor's Office does ultimately agree with us that such claims exist, there may be a whole new category of claims which must be processed before the statute of limitations deadline.

We are also very concerned about the adequacy of funding by Congress to carry forward the trespass work. Thus far, funding has been wholly inadequate and the Department of the Interior has in fact not had the resources to do its job. Even if the statute of limitations is not extended, there must be continued funding of the trespass work for at least five years. Where the Pueblos have unresolved land title claims and water rights claims, there are continuing trespasses which must still be addressed under 28 U.S.C. §2415 even after the April 1, 1980 deadline.

We are particularly concerned about trespass to the Pueblos' water rights. Thus far, we have not seen a single litigation report from the Solicitor's Office on any of the various trespass damages claims for trespass to water rights which we have identified. We know that in the Office of the Field Solicitor in Albuquerque there is but one individual working on the water trespass problems. The water claims involve hundreds and possibly thousands of defendants, and could easily lead to full stream adjudications in several instances. We don't see how any of these claims will be filed by April 1, 1980 given the present situation.

There has apparently been a belief among BIA personnel and some tribes that the tribes will still be able to file their own independent trespass damage claims for trespasses prior to July 18, 1966 following April 1, 1980. Unfortunately, this option appears to be foreclosed by the decision of the 9th Circuit Court of Appeals in Capitan Grande Band of Mission Indians v. Helix Irrigation District, 514 F.2d 465 (1975) implying that the statute of limitations applies to independent actions by the tribes as well as to actions on behalf of the tribes by the United States.

The problem of unresolved Indian land titles and claims which has plagued New Mexico since the seventeenth century is a continuing reality. A failure by the Congress to extend the April 1, 1980 deadline to file Indian trespass damage claims will not cause the problem to go away, because the Indian land and water rights continue. Failure to extend the deadline will create a manifest injustice to the Pueblos, however, because they will bear the loss occasioned by 130 years of failure by the trustee to protect their land and water from use and appropriation by others. Failure to extend the deadline will also result in a flood of breach of trust litigation against the United States. On the other hand, an extension of the deadline, for at least five years, accompanied by adequate funding to finish the job, has the potential to finally resolve these long-standing trespass and title problems. For the Pueblos, the real importance of this effort is not so much the money damages which may be recovered, but the fact that it addresses the many land use and title problems which have gone unattended and which have plagued the Pueblos ever since the United States annexed the area. Under an extension, many of these problems can be resolved by negotiation, rather than litigation, with great savings of time and money by all concerned. The Pueblos are facing a real crisis; justice and common sense demand that the deadline be extended.

Mr. LOVATO. I would like, at this time, to introduce the members of our panel. To the far right is Gov. Henry Mora of the Jemez Pueblo; next to him is Governor Pena of the Nambe Pueblo; Governor Lucero of the Isleta Pueblo; Governor Concho of Acoma to my left; Lt. Gov. Lawrence Singer of the Santa Clara Pueblo; Gov. Sam Armijo of the Santa Ana Pueblo; and we have our legal counsel here also, Mr. Lamar Parrish who is sitting behind me, and Mr. Tom Luebben representing two of the pueblos present here today.

Senator DECONCINI. Welcome, gentlemen. We are very pleased to have you here today and look forward to your testimony.

Mr. LOVATO. Mr. Chairman, I would like the record also to show that I am also here as vice president of the National Congress of American Indians.

Mr. Chairman and members of the committee, as has already been pointed out by numerous witnesses before me, the problem of third party trespass cases on Indian lands throughout the United States is of enormous magnitude. I will speak this morning primarily about those cases in the State of New Mexico since those are the ones that I am primarily familiar with.

Needless to say, Mr. Chairman, for the past 10 years, we have been requesting sufficient funding through the Bureau of Indian Affairs to begin looking into the various trespass cases on pueblo reservations. As the record will show, before the various subcommittees on appropriations, our requests have basically fallen on deaf ears.

Be that as it may, at the present time, Mr. Chairman, as of last Friday, we have had in excess of 638 trespass cases identified. Of those 638 cases, fewer than one-half have been properly investigated. Of those that have been properly investigated, fewer than 50 have actually been processed by the Albuquerque Solicitor's office.

It is anticipated, based on record, that there will be an additional 800 unidentified, unprocessed trespass cases which must yet be properly identified.

The problem in New Mexico is compounded by several factors. As you know, the Pueblo Tribes have been under Spanish and Mexican rule prior to coming under the U.S. Government in 1848. We have Spanish land grants and Mexican land grants which overlap Pueblo lands. In addition to those, the Pueblo Tribes have been subjected to two additional pieces of litigation which have subjected us to, I think, an even greater amount of trespass.

One is the 1926 Pueblo Land Condemnation Act, and the other is the Pueblo Lands Board Act which was enacted in the early 1920's to resolve the third party trespass claims which existed as a result of court action in 1876 in the *Joseph* case, which basically opened up the Pueblo Reservations to numerous trespasses by non-Indians for a period of 34 years.

In any event, the situation with regard to the Pueblo Lands Board Act is one whereby individuals were granted easements, or claims on Indian lands were perfected, or they were given deeds. Many of these deeds overlapped Pueblo lands. We have situations where some of these properties do not meet; the reservation boundaries do not come together. We have surveys that were done by Government agencies and private agencies and private individuals which do not agree.

So, we have a mass of confusion in terms of the surveys themselves. The legal descriptions do not match. So, we have a very difficult situation in terms of even determining whether a trespass has actually occurred or not.

In regard to the 1926 act also, we have got surveys that were conducted on behalf of the Pueblo Lands Board which are, in our estimation, erroneous. They conflict with other surveys of Federal agencies which were done later on, in the early 1930's.

In addition to that, Mr. Chairman, we have situations which I think are quite unfortunate. Because of the time limitations, many of these small trespass cases—and by small I mean involving one party trespass situations which cannot be resolved on a compromise basis—are being filed by the various people involved at the Solicitor's office and so forth. We, the tribes, do not have time to sit down with third parties to negotiate, to in any way bring about a more friendly resolving of these cases. Many of these individuals will be forced to obtain legal counsel, I think, at a great expense. We are asking that an extension of 3 years be granted on the statute of limitations.

We have one last situation which I would like to bring to the attention of this committee. I think it is important enough that it warrants some consideration. That is, because of the time limitation, I strongly believe that at least within our area, there is a feeling on the part of the field solicitors to resolve as many of these claims, that are brought to their attention, as possible by means of opinions which they have rendered under section 17 of the Pueblo Lands Board Act.

The tribes feel that we have legitimate claims which came about as a result of section 17 of the 1924 Lands Board Act. Section 17, according to the U.S. Solicitor's Office, gave the Bureau of Indian Affairs authority and power to grant rights-of-way and easements on Indian lands. It is the position of the Pueblo Tribes, at this point, that it did not. We feel we have legitimate claims as a result which the U.S. Solicitor's Office has refused, basically, to acknowledge.

In addition to that, the Pueblo Tribes were successful in repealing a 1926 Pueblo Land Condemnation Act. In addition to that, we got a court ruling which basically states that any easements and rights-of-way which were obtained as a result of that particular legislation were, in fact, null and void. We feel we have legitimate claims under that.

Again, we are still awaiting an opinion from the U.S. Solicitor's Office on that particular point.

All in all, it is our opinion, Mr. Chairman and members of this committee, that there is no way under the Sun that they are going to be able to meet the required work that must be done between now and April 1, considering the magnitude of the problem within our State, considering the various opinions and legal arguments that must be still resolved even within our own solicitor's office.

With that, I would like to conclude my statement, Mr. Chairman, and allow other members of the panel to say a few words and perhaps also give our two attorneys an opportunity to say something.

Mr. LUCERO, the governor of the Isleta Pueblo.

Mr. LUCERO. Mr. Chairman and members of the committee, I do have a prepared statement, but I would just like to summarize it.

The statements that Mr. Lovato has made here are that there are so many claims within our pueblos, and it is a problem as the Bureau does not have time, simply because we have a multiagency. I am talking strictly about the Southern Pueblos Agency. I am the chairman of that committee also. I will let Governor Pena describe the Northern Pueblos. The multiagency, as such, takes care of so many Pueblos; there are so many requests; the Pueblo of Isleta right now has some requests in for surveys to claim the lands that we have.

There are just too many things involved. This is one of the reasons I feel that, even though the deadline, as has been stated here this morning many times, had been known to people, the amount of work it takes to survey the lands, to get into contracts, and the lack of funding have really been detrimental to the type of work we want done. I believe this is one of the reasons that the Indian country, as a whole, has not been able to really get the work done.

My prepared statement has been presented to the committee. I am sure we will get into a little more detail. But we do have trespasses by telephone lines, public services, the Bureau of Reclamation, private claims, and all these sorts of things. This is one of the reasons that we highly recommend that we do get an extension so that justice can be done where it is needed.

Thank you very much.

MR. LOVATO. Governor Pena?

MR. PENA. Mr. Chairman, I have submitted a prepared statement for the record.

I am Gilbert Pena, governor of the Pueblo of Nambe and also the chairman of the Eight Northern Indian Pueblos Council.

What Governor Lucero referred to as the multiagency is true of the Eight Northern Pueblos. There are presently eight pueblos being served by the Northern Pueblos Agency. It is very difficult to meet the survey demands. As a result of the statute of limitations, there have been hundreds of trespass cases identified.

However, it is very difficult to process all these trespass cases because of the legal requirements and the survey requirements.

The Pueblo of Nambe does recommend an extension of the statute of limitations so that justice can be served on behalf of the pueblos.

Thank you, Senator.

MR. LOVATO. Governor Mora?

MR. MORA. Mr. Chairman and members of the committee, my name is Henry Mora. I am the governor of the Jemez Pueblo.

As you know, the Jemez Valley has become very popular with people from Albuquerque as a recreation area. Also, large thermal development has been considered. Land values have risen accordingly, and trespasses which might have once seemed insignificant are now quite important.

Although Jemez has always cooperated with the BIA in attempting to identify trespassers, the Southern Pueblo Agency which serves Jemez has not, until recently, had sufficient personnel and money to investigate and process all these trespass claims from the various tribes, nor does the BIA appear to have the resources to process these claims.

It would be a shame if BIA efforts on our behalf were halted too soon to accomplish the task. The statute of limitations, if not extended,

will prevent the BIA from investigating and documenting and taking action on many suspected trespasses. It will also force the BIA to file suits prematurely on some trespassers without adequate investigation or preparations.

So, we will be filing trespasses which might have been settled. But the present deadline does not permit the luxury of negotiation.

A case in point is the power line of an electrical cooperative crossing a portion of the pueblo. A portion of the line has been in trespass for some time. In order for the pueblo and the cooperative to negotiate properly, the property involved in this trespass must be surveyed and appraised by both sides. This could take months. Although Jemez and the cooperative have a good history of cooperation to protect the Pueblo's right, this will put us through needless expense, and there is no guarantee that justice will be done in a hastily filed lawsuit.

The Jemez urge that this panel's recommended extension of the statute of limitation for an additional 3 years be considered.

Thank you.

Mr. LOVATO. Governor Concho?

Mr. CONCHO. Mr. Chairman and members of the committee, extending the deadline for filing trespass claims is necessary.

My name is Raymond Concho, governor of the Pueblo of Acoma. I extend to you a greeting from my tribal council and my people.

The Pueblo of Acoma would like to go on record to have the time-frame for submitting trespass claims under United States Code section 28 extended past the April 1, 1980 deadline.

Mr. Chairman, the chairman of the 10 southern governors has already expressed some of our needs and some of the problems that we generally run into. The chairman of the eight northern governors has already expressed them also.

I will not go into details as my written statement has been forwarded to your committee. I am sure you will look into our prepared statement.

Your committee is here for a purpose: to look after us, as we do in our home base. I think that is our responsibility in our area, not defeating the purpose, not fighting with one another. If these things had not happened 201 years ago, we would not be fighting about what God has left us here. God left this country; God left this world here for us to protect, to love, and to cherish one another.

This is all I have, Mr. Chairman. Thank you very much for allowing me the time.

Senator DECONCINI. Thank you, Governor.

Mr. LOVATO. Mr. Singer?

Mr. SINGER. Mr. Chairman, I would also like to say that I bring greetings from my people and the council. We have a prepared statement for the record which we would like to introduce.

Also, we have brought three transparencies here, and I would like to yield the rest of my time to Mr. Tafoya for him to illustrate them to you.

Mr. Tafoya, would you please come forward?

Mr. TAFUYA. Mr. Chairman and members of the committee, if you have the time, I can show you an example of what these gentlemen are talking about.

We feel strongly that this is not the fault of the Indian tribes but the fault of the U.S. Government, and what these transparencies will show are three different types of descriptions. These are nonclosures; they identify nonclosures of private claims. In other words, what I am trying to tell you is that we cannot find the reservation boundaries; there is no legal description that would identify them.

So, it is very important at this time that recommendations be made. As far as we are concerned, we are proposing a survey of all the Pueblo lands that we have in the State of New Mexico.

Senator DECONCINI. How long would that survey take, would you think?

Mr. TAFOYA. We estimate it might take a period of 3 years because we are talking about 19 different reservations.

Senator DECONCINI. A 2- or 3-year extension would not be sufficient, then.

Mr. TAFOYA. It could possibly take longer.

Senator DECONCINI. I am more than happy to look at your maps. I am going to have to go vote in about 3 minutes, so if you can do it in that period of time, I will be happy to see them.

Mr. TAFOYA. Would you like me to bring them before you?

Senator DECONCINI. Certainly.

[Senator DeConcini receives the maps from the witness.]

Senator DECONCINI. Thank you very much.

At this time, the committee is going to recess. I have to vote. The committee will recess until 1:30. If you will come back at that time, the balance of your testimony will be taken, and any questions will be given.

[Whereupon, at 12:05 p.m., the hearing was recessed until 1:30 p.m.]

AFTERNOON SESSION

[The hearing resumed at 1:40 p.m.]

Senator INOUE [acting chairman]. May we now resume the hearing? I believe at the time of the recess the All Indian Pueblo Council panel was giving testimony.

Mr. Lovato, you may continue

Mr. LOVATO. Mr. Chairman, we only have a very brief statement remaining on the part of two of the Pueblo reservations, and then the attorneys would like to make one or two comments, and that is all we would have.

Mr. Armijo?

Mr. ARMIJO. My name is Sam Armijo, governor of Santa Ana. I have a prepared statement which I would like to have submitted for the record.

Thank you.

Mr. LOVATO. Mr. Mora?

Mr. MORA. My name is Henry Mora, and I am the governor of the Jemez Pueblo.

We have had some Indian claims on trespasses on Indian lands plus water rights of the Jemez. Some of the water was in a district of conservation. These are the things that have been involved.

I will now present you to my attorney, behind me. He will make a few comments.

Thank you.

Mr. LOVATO. Mr. Luebben will withhold comments until we have finished with our other tribal representatives.

Governor Martinez of San Juan Pueblo?

Mr. MARTINEZ. Mr. Chairman, my name is Dennis Martinez. I am the governor of the Pueblo of San Juan.

I do not have a prepared statement to present at this time. However, I would like to go on record as stating that the Pueblo of San Juan fully and strongly supports the request made by my colleagues today for the extension of the statute of limitations for an additional 3-year-period. I think at this time it is vital that this extension be granted in order for the Bureau of Indian Affairs to carry out their trust responsibilities in the best interests of the Pueblos as well as the other tribes in the Nation.

Thank you.

Mr. LOVATO. Mr. Luebben?

Mr. LUEBBEN. Thank you.

Mr. Chairman, I want to just focus on a couple of very large problems for the Pueblos. I represent two of the Pueblos in New Mexico, the Pueblos of Santa Ana and Santo Domingo. My name is Thomas Luebben.

The solicitor began this effort to fulfill the mandate of the statute by placing the burden for identifying the trespass claims squarely on the Pueblos. Few of the Pueblos have really been able to undertake the in-depth, concentrated kinds of studies which are necessary to identify these trespass claims, and I would say that only four or five of the 19 Pueblos have really been able to make a concerted effort to identify trespass claims.

As a result, it is estimated that upwards of 800 claims remain unidentified at this time. It was doubly difficult for the Pueblos because no resources were made available to them to carry the burden of establishing projects to identify the trespass claims, and the Pueblos that have done so, I believe, have done so entirely on their own.

Identifying the trespass claims requires an intimate knowledge of the Pueblo land base because of the complex overlay of statutes which have affected the Pueblo land status, and each Pueblo pretty much has to have somebody working on the problem for several years in order to develop that intimate knowledge.

One of the large problems we have is that of overlapping Spanish grants. There were no treaties of cession in New Mexico between the Pueblos and the United States. Each Pueblo has a grant from the Crown of Spain, however, as its basic land base. In many instances, however, there were overlapping, non-Indian Spanish grants, and Congress has avoided resolving those overlapping, conflicting titles for the entire period that the United States has had sovereignty over the Southwest.

The United States acceded to the Southwest in 1848 under the Treaty of Guadalupe Hidalgo which carefully protected the Indian property rights. Then, the Surveyor General's Office was set up in 1854 to determine the validity of these various Spanish grants. That legislation and the process which was established did not, however, resolve conflicts as between non-Indian Spanish grants and Indian Spanish grants. The Surveyor General simply reported valid grants

for confirmation by Congress. Confirmation by Congress constituted, in effect, a quitclaim from the United States to the claimant and did not purport in any way to resolve conflicts between private claimants to Spanish grants.

This process was, in essence, repeated with the Court of Private Land Claims established by Congress in 1891, but Congress again carefully avoided establishing a mechanism for adjudicating conflicting Spanish grants in the Court of Private Land Claims. It simply made determinations which constituted quitclaims from the United States to the private claimants.

The issue became important again with the passage of the Pueblo Lands Act of 1924. Again, however, the Pueblo Lands Act contains a provision which leaves it to Congress to determine any titles based on conflicting Spanish grants, and Congress never followed up or acted with respect to any of those conflicting Spanish grants.

There was still another Pueblo Lands Act in 1933 which did not resolve these problems either.

As a result, we are left today with longstanding conflicting titles based on Spanish grants, both Indian and non-Indian grants, and no serious attempt to resolve those conflicts has ever been made.

The statute of limitations forces us to deal with those problems, however, because it establishes the deadline by which we must file these claims.

There are some Pueblos where the boundaries of the Spanish grants have never been adequately determined. One of those Pueblos is Santo Domingo. I do not believe the Federal Government can seriously contend at this point that they really know where the boundaries of Santo Domingo Pueblo are. Resolving that and the host of trespass claims which will go along with that is going to require an in-depth study, which will take a couple of years, of the historical documents supporting the Santo Domingo land base.

There is a wealth of documentation available, but it has never been gathered and analyzed by anyone to determine the true boundaries of the Pueblo.

I, personally, think it is going to take about 5 years to work through these problems. An extension is advisable because there is nothing to be gained, there is no efficiency and no economy to be gained by the Federal Government by not extending the statute. This is because these little problems are going to have to be resolved eventually, in one manner or another, and the only effect of failing to extend the statute will be to deny the Pueblos the opportunity to recover trespass damages in those areas where their titles have not been recognized for some period of time.

It is going to require continued funding, even if the statute is not extended, because quite a bit of funding is going to be necessary to conduct the studies and bring the quiet title actions to settle these conflicting Spanish grants.

Another very large problem—potentially large problem for some of the Pueblos—is the existence of unextinguished aboriginal Indian title. There are certain areas that the Pueblos demonstrably occupied but which are covered by supposed Spanish grants. Many of those grants, however, are not valid and never were valid, and the processes of adjudication, which have gone forward under the statutes I just

mentioned, did no more than quitclaim the United States' interest in those areas to the private claimants, leaving the underlying unextinguished aboriginal Indian titles unexplored, if you will.

We have asked the Solicitor to consider these claims, and he has refused to do so. We need more time to negotiate that process with the Solicitor.

So, I think it is going to take at least 5 years.

Thank you very much.

Mr. LOVATO. Mr. Parrish?

Mr. PARRISH. My name is Lamar Parrish, and I am speaking for the All Indian Pueblo Council, which is composed of the 19 Pueblos in New Mexico.

I would like to briefly respond to some of the things that came up this morning. One thing that was not mentioned is that many of the matters dealt with, particularly given the unique legal history of the New Mexico Pueblos, are difficult legal questions, and each level of government tends to take a separate view and does not always agree, one with the other.

Among other difficulties, this causes a considerable passage of time. One example of this would be the question regarding section 17 of the Pueblo Lands Act which had been, in my view, wrongfully construed for years, which confirmed and gave power to the BIA, Secretary of the Interior, to vest rights-of-way and easements. That is an open question, and to the extent that we can exert effort, will remain so until it is satisfactorily resolved to the satisfaction of the pueblos.

My point is that this sort of difficult question and the communications and the arguments, if you will, take time. This shortens an already short deadline.

To emphasize another thing, the non-Indian community, in my opinion, will suffer if the extension is not granted because there will be hastily filed lawsuits; there will be claims which are truly not legally disputed but only a matter of damages; there will not be sufficient time to negotiate out these, and the non-Indians might well be made defendants in precipitously filed lawsuits so that the BIA, itself, will not be liable for a lawsuit of breach of trust responsibility for the tribe.

A distinction was requested regarding cases versus claims and whether or not those words were used interchangeably, in the testimony this morning.

As far as the pueblos are concerned, a claim is a claim, and it is one claim. For example, the chairman's Pueblo of San Juan, or its eastern boundary, might contain 50 instances of trespasses. Each one of those trespasses is a claim. If suit is ultimately filed on any or all of those, it might well result in one claim. That is to say, the United States versus 20 named defendants. That would probably also reinforce my first point, or my second point, that if more time were allowed to negotiate, these claims would suitably be negotiated out.

With respect to the question of seeking distinctions between remedies in tort and contract, it would be my strong recommendation that no distinction be made, that all elements of the statute of limitations be extended for the period. It is not always easy to make those distinctions. For example, the measure of damages might well be a contract or sound like a contract remedy rather than a tort remedy.

Related to that is another question that has come up, whether or not the pueblos could pursue claims on their own following the expiration of the statute of limitations, assuming that it is not extended. In my opinion, the best way for them to get to court is under the statute customarily used, 25 U.S.C. 1362, which provides access to Federal courts by tribes seeking remedies against third parties on land matters. It is doubtful they could pursue on their own any contract remedy. The statute has been narrowly construed, and it does not appear, in its present state of construction, to provide for contract remedies. So, I think it would be doubly dangerous not to extend all elements of the statute of limitations.

I would like to join with the tribal leaders who have spoken today and ask for favorable consideration of the extension of the statute of limitations.

Mr. LOVATO. That concludes our statement, Mr. Chairman. We would be happy to answer any questions.

Senator INOUE. Chairman Lovato, in your testimony, you have suggested that the statute of limitations be extended for 3 years.

Mr. LOVATO. That is correct.

Senator INOUE. Mr. Luebben suggests 5 years; the Department of the Interior suggests 2 years. I somehow feel that there is a general consensus here that this statute will be extended. The question now comes to the number of years.

Do you have any studies to indicate how long it would take for proper research and searches?

Mr. LOVATO. Mr. Chairman, our position is based on what I consider a practical, reasonable sense based on what work has actually been completed to date, based on what we feel the Congress will look at favorably, and based on what we consider resources would be needed to accomplish the task. Again, I am speaking from the standpoint of the National Congress of American Indians who have taken a position in requesting the 3-year extension. I speak also from the position that the pueblo governments have taken in their position requesting the 3-year extension. Again, it is based primarily on the work that we have accomplished to date. We feel we have identified the vast majority of trespass cases, and we feel we can accomplish what remains to be done in the next 3 years.

Senator INOUE. And you feel confident that in 3 years you would be able to complete your work?

Mr. LOVATO. Based on the judgment of those people who actually do the work in the fields of realty, surveys, et cetera, Mr. Chairman, yes. Of course, we would not mind a 5-year extension either.

Senator INOUE. We would like to accommodate you and avoid all the unnecessary litigation. If 3 years can do it, I think it is in your best interests, instead of dragging it out.

Mr. Luebben, do you agree that 3 years should be enough?

Mr. LUEBBEN. I think it is very difficult to know just exactly how long the process will take because, since you are going into historical documents that are not readily available at the moment, it is difficult to predict just how much of a job is involved.

We, of course, support the All Indian Pueblo Council's position for a 3-year extension. I, frankly, would like to see more time but I think

Chairman Lovato's position is calculated to be a very reasonable position that can get adequate support.

Senator INOUE. Mr. Parrish, would 3 years be enough?

Mr. PARRISH. I suppose none of us is clairvoyant. It is my impression that the Bureau has gotten its teeth into the claims for the first time, frankly, and I think most of them, at one stage or another, have been discovered and are being processed.

I do not expect a considerable number of new ones to be discovered at this point, and I think it is a matter of working through this and giving it proper attention.

I would think that 3 years would be sufficient.

Senator INOUE. Chairman Lovato, Governors, and gentlemen, I thank you, unless you have something else you would like to add?

Mr. LUEBBEN. I did want to add one more thing with respect to that time period. That is, I think, whether it takes 3 years or longer depends to some extent, on the resources that are made available to do the job. If there is adequate funding for the trespass project, it is much more likely that we can finish it in 3 years.

Senator INOUE. I asked for your views on time because as a general rule, the Congress is reluctant to extend statutes of limitations, for obvious reasons. So, we would have to be very careful, and it might make it very difficult in years to come if we find that 3 years is not enough.

So, if you have additional views you would like to submit to the committee, I am sure the chairman will keep the record open so that we can receive such views.

Mr. LOVATO. Thank you, Senator.

Senator INOUE. Thank you very much.

Our next witness is Ms. LaDonna Harris, director of the Americans for Indian Opportunity.

Welcome back to Capitol Hill, LaDonna.

STATEMENT OF LADONNA HARRIS, DIRECTOR, AMERICANS FOR INDIAN OPPORTUNITY

Ms. HARRIS. Thank you, Senator.

From our perspective, the Americans for Indian Opportunity, we would like to add another element to the discussion. This has been well covered by the All Pueblo Council—the conditions, the kinds of claims that are brought about. One of the areas of work that we do as a national organization is to bring about discussion of tribal control of tribal natural resources to develop an economic base.

So, we really rather just backed into the whole statute of limitations problems and the fact that as we were talking to different tribes who had specific kinds of problems such as rights-of-way, we found such things as the following. In the Midwest, we found one case where one tribe has three major power lines crisscrossing their property after they received it back after a 99-year lease. We were trying to help them work out a way of negotiating where those lines would go so they would not cripple their economic development.

Working with the Department of Commerce, we did a paper on the problems of the barriers to economic development. One of the things

is rights-of-way. If you look at the individual histories of the Pueblos and the southwest tribes, for instance, they have 50 rights-of-way that cross their small reservations. If that is your only land base for an economic development approach, then you can imagine what kinds of problems you would have to try to develop something that would come out looking like an economic development project that would be meaningful, that would really be productive.

This is where we came in, coming from that approach more or less. One of the tribes said, "However the claims come down, we would like to have a land use planner, and do you know of anyone who would come and help us? If we had this right-of-way, what would be useful, and what would not? What could we try to negotiate to change the right-of-way alignment so that we could get the best use out of our land?"

That is basically what my written testimony, which I have submitted to the committee, goes into. It goes into much of the history that you have already heard, the history of when the legislation was passed, the lack of activity from the Department of the Interior until 2 years ago, and then, by the time the appropriations were appropriated, by the time they got past that, and by the information for the tribes to get their claims together was available, there was really not an appropriate amount of time.

Senator INOUE. Without objection, your full written statement will appear in the record at this point.

[The prepared statement of Ms. Harris follows:]

PREPARED STATEMENT OF LADONNA HARRIS, PRESIDENT, AMERICANS FOR INDIAN OPPORTUNITY

Over the years, Indian nations have been constantly plagued with trespasses on, damages to, and other violations of their land bases. In 1966, the Congress enacted legislation which was signed into law by President Johnson. The Statute of Limitations was intended to set a time limit on settling claims for money damages for actions which occurred before its enactment. It was fourteen years ago that the Congress expressed its intention; the President agreed and the Bureaucracy, as it is prone to do, failed to respond. It just lay there for a dozen years. No money was requested to carry out the intent of the Congress and the President and none was appropriated. The Indian community called on the Congress to extend the time limits on the original act as it became apparent that the Bureau of Indian Affairs, the Department of Interior and the Justice Department would not be able to get their act together in time to fulfill their responsibility to Indians. To its credit, the present administration joined the Indian community in seeking an extension of time and the Congress responded positively. That was two years ago. The time limit was extended to April 1980—less than four months from now.

During the past two years, money has been requested by this administration to identify claims and prepare cases to be brought on behalf of Indian nations and individuals. The Congress has responded by appropriating funds for this purpose. That's the good news. The bad news is, it was too little too late.

There has been a comparatively commendable effort to identify and file claims on the part of the Bureau of Indian Affairs during the last two years. Over 7,000 potential claims have been discovered. No doubt there are many others. I would like to review for you the procedure that a tribe must go through to gain the attention of the Bureau of Indian Affairs for a particular claim. The first thing a tribe must do is define the issue which would generally fall into these categories:

1. *Unauthorized Use.*—The following types of unauthorized uses, if they took place prior to 1966, may constitute claims:

1. *Placing a structure on the property.*—This includes summer homes, barns, garages, chicken coops, duck blinds, or any other building, and less permanent struc-

tures, too, such as ice houses which may be pulled off a lake onto trust or restricted property when not in use. It also includes non-buildings—fences, drain tiles, etc. The building, fence, etc. need not be entirely on the land—only a few inches is a trespass, if you are sure where the boundary is.

2. *Grazing.*—Cattle are the most common, but sheep, goats, etc. should be watched for. Grazing trespasses are frequently accompanied by other types of trespasses, such as placing of fences, destroying fences already in place, and even raising of forage crops.

3. *Raising crops.*—Using trust or restricted lands for the raising and harvesting of crops of any kind is a trespass. This includes cranberry bogs, rice paddies, Christmas trees, raising forage crops for pasture animals—anything, in addition to the more traditional crops. Again, the entire parcel need not be so utilized. If just a corner is used, it is still a trespass.

4. *Harvesting natural growth.*—This includes harvesting wild rice, wild berries, hay or other wild growth, as well as cutting timber, collecting felled timber or even firewood.

5. *Removal of natural resources.*—Mining, quarrying sand, gravel or stone, etc. would be trespasses. While there may be an instance or two where large operations took place on a tract, it is more likely that these would take the form of spill-overs to trust or restricted properties from adjacent fee tracts.

6. *Rights of way.*—Roads, even though they may have been used for 50 to 100 years, are nevertheless trespassory if easements were never granted. Likewise telephone lines, electrical lines, pipe lines, sewers, etc. In some areas electrical and telephone lines have been placed within valid county or state road rights of way. These may, nevertheless, be in trespass unless a separate easement has been granted to the utility company. On tracts which have been reacquired in trust, there may be valid easements which were acquired during the time when the land was not in trust even though the Bureau records do not reflect them.

7. *Hunting, fishing or trapping.*—In addition to constituting a criminal violation, hunting, fishing or trapping on trust or restricted lands without permission is trespass. They would be very difficult to establish, however, so it is unlikely that any old case of this type will be located.

II. *Damage to Property.*—Damage to real property or personal property which occurred prior to 1966 may be actionable.

1. *Fires.*—Fires, whether set on the property or set elsewhere and allowed to burn onto the property are trespassory if a human agent can be established as the cause. Fires caused by lightning or other "acts of God" are not actionable.

2. *Flooding.*—Flooding, like fires, is actionable if someone caused it—by damming a stream, by draining adjacent land onto trust or restricted lands, by changing the configuration of adjacent land so that water backs up onto trust or restricted lands. It is not actionable unless someone took a specific course of action which resulted in the flooding.

3. *Excavating, dredging or filling.*—This includes depositing fill in marshes, lakes, rivers, etc. or anywhere else on the land, or the deposit of anything—garbage, used cars, refuse of any kind. Excavating areas or dredging soil from marshes, rivers, streams or lakes is actionable, including construction of drainage ditches or canals.

4. *Damage to structures or personal property.*—This includes fires, floods, vandalism, using personal property, such as machinery or equipment, in an improper or unauthorized manner resulting in more rapid depreciation than otherwise would occur.

III. *Debts.*—Money which was due or became owing before 1966 may constitute a claim.

1. *Fees, rentals or payments due on contracts.*—This includes rents not paid for lease of trust or restricted lands, fees for other types of land use, crop share payments, timber fees, mineral royalties—any payments specified in contracts of any kind. It also includes purchase consideration for trust or restricted property sold, if all or part of the purchase price was not received. Amounts paid from the proceeds of sale to third persons in satisfaction of liens, such as Old Age Assistance Liens, when the liens never validly attached to the lands, should be considered. The Departmental position is currently that such amounts are not recoverable, though this is presently being reconsidered.

2. *Contract breach.*—Damages for failure to perform the terms of any lease, contract or agreement, for doing or causing to be done any acts prohibited by a lease, contract or agreement, or misperforming any such obligation should be recovered. The terms of the document itself may spell out the amounts of money

due in the event of breach. If not, the amount will need to be determined by what the actual damage or loss was.

IV. *Holding or Claiming Title Through Improper Acquisition.*—The following methods of acquiring title to trust lands are improper and, in many cases the title to the lands can be recovered. Recovery of such lands will not be barred in 1980, but claims can be made for preventing the rightful owners from occupying the land, and these claims will be barred if not filed prior to 1980.

1. Tax deeds improperly issued while the allotment was still in trust or restricted status following:

(a) *Forced fee patent.*—Where fee patents were issued to allottees or heirs without application and prior to expiration of the trust period, and the lands were then taxed and forfeited. In order to be actionable, the original trust period must extend or have been extended beyond June 18, 1934, and the allottee must never have sold the land. The lands need to be recovered as well as damages. Any of the previously listed types of uses or damages may be involved as well and should be explored. In the event the trust period expired prior to 1934, damages could still be involved for the period of trust.

(b) *Clapp Amendment and determination of mixed blood status.*—This is applicable to the White Earth Reservation only, referring to allotments to mixed blood Chippewas who received trust patents, did not sell their lands, but the lands were nevertheless taxed and forfeited. In order to recover the land as well as damages, the period of trust must have been extended beyond 1934, though trespass damages would be recoverable to the extent of the trust period even if the trust period expired.

(c) *Ineffective certificate of competency.*—Certificates of competency which were not effective did not lift the restrictions on alienation, and the allotments should be treated as though the certificates had never been issued. Again, in order to recover the land, the period of restrictions must extend or have been extended beyond June 18, 1934, and the lands must not have been sold by the allottee or his heirs. The following certificates were ineffective:

(i) *Certificate to a person deceased on the date of issuance.*

(ii) *Certificate issued with a deferred effective date (30 days from issuance or upon recording in the county where the land is located or 30 days after recording) where the person died prior to the effective date.*

(iii) *Certificate for which there was no application.*

(d) *None of the above.*—Where there was no forced fee patent, ineffective certificate of competency or Clapp Amendment application, but the land nevertheless was taxed and forfeited, and the trust or restricted period is still in effect, the land must be recovered in addition to use and damage recovery. Use and damage recovery is still appropriate for the period of trust or restrictions even though it may have expired.

2. *Unapproved deed from the allottee or heirs.*—If a deed was executed by the allottee or heirs during the trust or restricted period without the necessary approval, the land should be recovered unless the trust or restricted period has since expired. In any event, damages should be recovered for use during the trust or restricted period however extensive.

3. *Deed or a state quiet title action based on alleged adverse possession while the land was in trust or restricted status.*—A deed or quiet title action based on adverse possession of an allotment after one of the three ineffective methods of terminating the trust or restrictions—or of allotted or tribal land while the period of trust or restrictions clearly existed—has no more validity than a tax forfeiture, and the discussion of Section IV(i) above applies here equally.

4. *Deed or patent from the United States without consent of all beneficial owners.*—Since 1934, deeds by the United States of allotted lands without full consent of all beneficial owners are not effective on reservations to which the Indian Reorganization Act applies, though it is not clear whether they are ineffective in toto or only as to those undivided interests for which consent was not obtained. In the latter case, title should be recovered of fractional undivided interests, though damages could probably only be recovered for waste or for fractional shares of income, in the event the property produced income. In the former case, full title should be recovered plus use and occupancy damages. The question is currently pending resolution in the Solicitor's Office.

5. *Swamp land or school land selections illegally or erroneously made.*—Title to state selections for school lands and swamp lands has already been litigated on some reservations. On those where it has not, the validity of these selections must be determined, and if invalid, the lands plus damages must be recovered.

Once the nature of the offense has been identified, there are a few little things that must be furnished in order for the claim to be considered for filing. They are as follows:

Factual Data Necessary for Submitting 2415 Claims.

I. For each and every land related claim, including contract breach claims where the contract involved use of land or personal property located on land, the following will be necessary:

1. *Land description.*

2. *Title history from Bureau records, including applicable treaties and any of the following which exist.*—Trust patent, restricted fee patent, certificate of competency, application for fee patent or certificate of competency, deeds, leases, easements. To the extent possible, copies of relevant documents must be provided. At a bare minimum, precise dates, names and concise description of the documents must be provided.

3. *Title history from country records, preferable by means of an abstract, unless the trespass is in the nature of a boundary encroachment, in which case an abstract on the adjacent parcel in the direction of the encroachment should be provided. This need only extend back to the date of the initial trespass.*

4. *Specific date or dates on which trespass took place.*

5. *Names and addresses of all persons thought to be responsible for the trespass.*

6. *Names and addresses of all persons thought to have witnessed all or any portion of the trespass, including the investigator.*

7. *Educated guess as to the fair market value of the portion of land used or occupied for each year of use.* A full appraisal will be needed prior to trial, but is not necessary at the time of filing.

8. *Educated guess as to the cost of restoring the land to its original condition.* A full appraisal will be needed prior to trial, but is not necessary at the time of filing.

9. *Narrative description of the claim.*

II. For each contract claim, the following will be necessary:

1. *Copy of the contract, lease or other agreement.*

2. *Addresses of the person named in the contract and names and addresses of anyone else involved.*

3. *Detail of payment or payments which were received, if any.*

4. *Copies of all correspondence, either from Bureau records or tribal or individual records, relating to the contract and payments made thereunder.*

5. *Description, including names, addresses, dates, places, etc., of any damage resulting from breach of the contract, including an educated guess as to monetary value of the damage.*

Just in case you think we were able to figure all that out ourselves, I would like you to know that this was taken from information prepared by the Department of Interior. It was furnished to the tribes less than a year ago. Last week, it was still being used in workshops for tribal decision-makers just beginning the claims process. It is hard for those of you with staff and the resources of the entire federal government at their fingertips to imagine what this means to a little Indian tribe much less to an individual Indian. Little Indian tribes have very few resources—if they did, they wouldn't be little. Just as a personal note, I can tell you that when Fred left the Senate, we were very forcibly made aware of the value of the kind of staff support that you as members of the Congress take for granted. Ninety-nine percent of the tribes have from little to no staff or monetary support available for the kind of assistance they need to institute their claims, and the primary burden has been placed on the tribes. Even with the special 2415 project, there has been an acute shortage of the trained personnel needed in the Department of the Interior to process claims; nevertheless, over 7,000 potential claims have been discovered. There may be many others. Two years just has not been long enough to identify, let alone settle, these outstanding claims. No one expects that all of these claims will be filed if there is time to properly research them and to negotiate with the non-Indians involved.

One danger that we now face is that due to the short time frame, many cases may be filed in order to get in under the wire which could have been negotiated

out or which may not prove to be of sufficient merit. In that event, those who are filed against will have to incur expense for attorneys which might have been avoided. This is not only undesirable for economic reasons, it is undesirable for emotional reasons. It may well cause ill feeling to be directed toward the Indian community. This country does not need a resurgence of racism, particularly against this continent's first inhabitants.

Another very real danger—and we have reason to believe that it is presently happening—is that in the press to meet the April/Eighty deadline, the Department of Interior or the Department of Justice will simply administratively reject cases on the basis that they have reached the "higher echelons" technically imperfect. That is to say, if any one little bit of information included in that frightening list above is missing, the case is arbitrarily ignored. The size or amount of a claim may seem insignificant to a reviewing official and win it a place in the nearest wastebasket. By the time Indian claimants discover what happened, the sun will have set on our day in court. Also, rushing to process claims, the solicitors fail to keep Indian claimants informed. By the time the claim goes from the area office to the national office and on to the Justice Department, it may bear little resemblance to the initial claim. This, of course, weakens the case.

A related concern is that the legal preparation is done by a person in an agency or area office, forwarded on from level to level for review and eventually goes to a whole different department for actual litigation. This is not conducive to maintaining interest in a case, particularly when your pay check is going to come every two weeks whether you do or you don't.

In reality, the smaller claims begin with a low priority for ever being prepared for filing and never gain in prominence as time passes. What may be crucial to an individual or a tribe with a very small land base may seem very insignificant to an overworked attorney with a hundred other cases to prepare, especially when those cases may be for a tribe whose chairman may be the next Commissioner or Assistant Secretary. There simply must be sufficient time for adequate consideration of all claims. Tribes may be plagued by many small claims and no large ones. If the small ones are considered one at a time and chucked without considering the tribe's problems as a whole, serious miscarriages of justice may result. For instance, if one rancher has one cow or even five cows grazing Indian land a day or two or perhaps a week or two a year, that doesn't seem like much. But if that piece of land can only support one cow an acre and there are 10 or 15 ranchers allowing their cattle to trespass in this fashion, it could be a very serious problem for that tribe. Or, to use another example, one right-of-way on a reservation of a few hundred or a few thousand acres may not cause significant problems for a tribe. Eighty right-of-ways is something else again. We know of at least one tribe which has found itself in this predicament.

One of the major problems facing the Department of Interior and the Department of Justice (besides trying to work with each other) is the varying circumstances that each tribe or each region must deal with. For example; take the Pueblos:

Before the particular situation of the Pueblos, with respect to the statute of limitations (28 U.S.C. s 2415), can be properly understood, a brief review of the legal history of the Pueblos is in order.

All New Mexico Pueblos received land grants from the crown of Spain in the 17th and 18th centuries. These, and other lands purchased by the Pueblos prior to the American period, were held in fee, but the power of alienation was restricted in a manner similar to the Indian non-Intercourse Act. During the Mexican regime (1824-1848), the Plan of Iguala granted equal rights of citizenship to all native peoples, but the status of Indian wardship continued. See generally H. Brayer, "Pueblo Indian Land Grants of the 'Rio Abajo'" (University of New Mexico 1939).

When the United States acceded to sovereignty over the southwest after the Treaty of Guadalupe Hidalgo in 1848 (9 Stat. 922), it treated the various Pueblo groups in the same manner as other Indians. To that end the Indian non-Intercourse Act was extended to the territory of New Mexico, Act of February 27, 1859 (9 Stat. 587), and Indian agents and appropriations for the Pueblos were soon forthcoming. See generally F. Cohen, Handbook of Federal Indian Law 383-400 (1941).

Notwithstanding the clarity of Federal policy toward the Pueblos, the Territorial Court of New Mexico focused on the fact of citizenship under the Mexican regime and concluded that the non-Intercourse Act had no application to the

sedentary Pueblos. *United States v. Lucero*, N.M. 422 (1869). Thus was born the belief that the Pueblos were not restricted in their power to alienate the communal lands held by them in fee. *United States v. Joseph*, 94 U.S. 614 (1876) sustained this view and lent credence to it.

In 1913, however, the Supreme Court held in *United States v. Sandoval*, 231 U.S. 28 (1913) that the prohibition against introducing intoxicating liquors into Indian country included the lands of the Pueblos. The *Joseph* decision was not overruled because *Sandoval* dealt with criminal sanctions, not property rights. Nevertheless, it was clear in *Sandoval* that given the appropriate case, *Joseph* would be overruled.

The SANDOVAL decision created a general insecurity among those non-Indians who traced their land titles to an acquisition from or adverse possession against the Pueblos. Fearing the inevitable overruling of *Joseph*, Congress set out to provide a vehicle for the validation of those non-Indian titles.

In the Pueblo Lands Act, Act of June 7, 1924 (43 Stat. 636), as amended, Act of May 31, 1933 (48 Stat. 111), Congress recognized that many New Mexicans were in possession of Pueblo lands based upon void titles. The Act established the Pueblo Lands Board whose duty was to examine all non-Indian claims to Pueblo lands and confirm those claims satisfying certain requirements. If the claimant had been in possession since 1902 with color of title or since 1889 without color of title, his claim was entitled to confirmation, and Indian title was deemed extinguished. After each Pueblo had been examined, the Board issued a report setting forth the Pueblo lands to which Indian title had not been thus extinguished. These reports formed the basis of quiet title suits filed on behalf of each of the Pueblos in the District Court in Santa Fe, New Mexico.

While many routine trespass cases involving the Pueblos have been processed by the Department of the Interior, other cases arising as a result of the above unique legal history of the Pueblos are not so easily resolved. Following is a listing of eight broad categories of such cases which cannot be filed by the April 1, 1980 deadline set forth in 28 U.S.C. s. 2415.

1. Overlapping land grants

During the Spanish and Mexican regimes in what is now the State of New Mexico, there seems to have been no real control over the institution of land grants. Consequently many of the Pueblos of New Mexico are overlapped by other, non-Indian grants. There has never been a systematic cataloging of the grants and the full extent of the problem is at present unknown. Of the southern group of Pueblos, at least Cochiti, Santo Domingo, San Felipe, Sandia, and Isleta are confronted by overlaps. In the case of Santo Domingo, Indian title was deemed extinguished to the extent of the overlap by the Pueblo Lands Board. This conclusion was reached in the absence of subject matter jurisdiction¹ and without affording the Pueblo with a due process hearing. In light of the Santo Domingo experience, a comprehensive effort should be made to identify all overlapping grants and determine their legal status under Spanish, Mexican and American law.

2. Pueblo purchases

During the Spanish and Mexican regimes, the Pueblos purchased a significant amount of land from non-Indians in the vicinity. Since the Treaty of Guadalupe Hidalgo a number of attempts have been made to identify and confirm the full extent of Pueblo Land ownership. None of these attempts has been wholly successful. Stray deeds to land or grazing rights conveyances to the Pueblos appear from time to time. Actions should be taken now to identify all such deeds, research their validity, and institute quiet title actions. Such an effort would require the services of a full time archivist with interpretation capability. Research of Spanish and Mexican law is also indicated.

3. Aboriginal title

A number of New Mexico Pueblos possess aboriginal lands to which title has not yet been extinguished. Santo Domingo Pueblo currently has an action pending in the Court of Claims to test this thesis. Other Pueblos' aboriginal lands should be identified and researched to determine whether any trespasses have been committed thereon.

¹ The Pueblo Lands Act of June 7, 1924 (43 Stat. 636) as amended by the Act of May 31, 1933 (48 Stat. 107) reserved issues of conflicting Spanish grants for resolution by the Courts—not the Board.

4. Private claim boundaries

The Pueblo of Lands Act, *supra*, was enacted to provide non-Indians with a vehicle to "prove-up" their squatters rights within the Pueblos and obtain thereby a good title to the land. In all the Pueblos, over 2,500 private claims were confirmed. These private claims have been surveyed, described, and platted on at least two occasions. In many cases, these surveys conflict, yielding a number of possible boundaries.

Steps to remedy the situation by the Cadastral Survey Division of the Bureau of Land Management must be taken before most trespasses can be properly identified. This problem most probably cannot be resolved prior to April 1, 1980. Thus, trespass damages will be lost in hundreds of potential cases.

5. Rights-of-way

To date, there has been no effort by the Bureau of Indian Affairs to identify possible rights-of-way irregularities in the northern group of Pueblos. This problem is exacerbated by the fact that the Northern Pueblos surround or are surrounded by metropolitan centers. Accordingly, a fertile area of trespass cases remains unexamined.

6. Rights of access

At present, residents of confirmed private claims maintain ingress and egress to their land by crossing Pueblo land. These occupants undoubtedly have implied easements, but the location and manner of access has never been spelled out. An effort should be made to accurately locate and dedicate all accepted means of access and halt all abuses.

7. Leases

A brief review of miscellaneous leases on the Pueblo of Sandia indicates that many covenants have been breached. A similar review should be undertaken for the other eighteen Pueblos.

8. Water

After a decision has been reached in the *Aamodt* litigation, all Pueblo water rights should be examined and trespass cases filed against those who have appropriated in excess of their share. Such cases need not be postured as adjudication cases.

Preparation of claims cases has served to point up and emphasize a problem that tribal decision-makers have made us at AIO aware of. Bureau of Indian Affairs records of land ownership are so poor that tribes are virtually hamstrung in their efforts to do long-range planning and resource development.

Because of the need to prepare claims, significant (again, not great, but noteworthy) efforts have been made to bring those records up to date, prepare surveys, and inventory natural resources. We fear that if the Statute of Limitations is allowed to run out, there will be no further time or attention devoted to clearing up these problems that prevent tribes from making the best use of their resources. This would be very unfortunate. At the risk of sounding a little too heavy, I would like to point out that failure to clear up land use and land ownership problems could have a serious impact on Indian efforts to contribute to the nation's energy needs. Certainly it will impact on attempts to settle water rights issues. If the present efforts to clear up old claims are not maintained and, hopefully, intensified, how can we hope to address the issues today?

If the April 1, 1980 deadline is not extended, money damages shall be lost. However, the more important aspect of the "2415" project is the identification and resolution of land-use problems affecting the tribes. These problems cannot be solved without continued funding of the magnitude experienced in the "2415" project. Thus, trespass cases are a means to achieve a more important end: That is, to identify all areas of the reservations still subject to overriding control by Indians, solidify those areas as an appropriate subject of future planning, and develop programs for those land areas which will assist the tribes in achieving the long sought after goal of self-sufficiency.

Ms. HARRIS. We testified on behalf of extension of the claims at that time, and we felt, perhaps, that no one knew what it would take. We found out, in interviewing, for instance, from the Albuquerque office the following. The discussion you had with the previous panel was a very important one. The 3-year/5-year difference means what kinds of staff are we talking about?

The area office, thinking they were really doing a good job, allowed one-and-a-half persons in their solicitor's office. They thought that would be sufficient at the time they started. Now they are overwhelmed. If you could talk off the record to them, you would get the information they need: they need a historian; they need an archivist because of the particular history of New Mexico; and you would find the same case in California; I imagine you would find the same particular things in other States or other areas of the country. For their own particular history, they would need this.

My understanding right now is that every surveyor in the State of New Mexico is just trying to accomplish the job that is set out for him to do. So, they are making a real effort to accommodate the claims as they come in, but with this rush and the lack of staff, they are finding it a great hardship.

The other thing we are finding is that the tribes prepare their claims and present them to the Solicitor's Office, depending on which area office you are talking about. In the Solicitor's Office, what they consider legitimate claims are not. Sometimes the smaller claims are just being discounted because of the size of them. Well, if you are a small tribe with a small amount of land, it is more important to you that you get your claims and damages settled than perhaps for a larger tribe.

So, the variations in size are a consideration, I have been told, in some of the investigations we have been doing. Also, we have found that, say, a group of claims were presented together, maybe the legal terminology—not being an attorney, I am not sure of this—is not correct, and so all claims were thrown out.

By the time the tribe gets through the area office, the regional office, and then the national Solicitor's Office, sometimes the advocacy role has changed, and there is no advocacy role left in the claim by the time it gets to the Justice Department, if it even gets that far.

The haste in which some of the claims are being prepared, the lack of appropriate personnel—historians and such—where a lawyer and one clerk are trying to do all this, make it very difficult.

I think those are the points I would like to make, rather than just reiterate what has already been said.

Senator INOUYE. Before proceeding, without objection, all prepared statements submitted by witnesses will be made part of the record, in total, in the appropriate places.

Ms. Harris, you have heard the three different time periods: 2 years, 3 years, and 5 years. What would you suggest?

Ms. HARRIS. I would come down on the 5 years. Being a Comanche, we dealt in horses, so to speak, and I always believe in being a good horse trader. I would really like to say 10, and then we would bargain. I would say 3 if you would give us the right appropriations to give us the kind of staff it would take to expedite these claims. I think 5 is the better number, but I would not like to go against the recommendations of the All Pueblo Council since they are our friends and we work very closely together, or the National Congress recommendation.

I think the consideration of staff and appropriations would make the difference between 5 and 3.

Senator INOUYE. For the fiscal year ending in 1980, Congress has provided \$6 million for this purpose. Do you think that with this type of appropriation 3 years would be enough?

Ms. HARRIS. I think perhaps the lesson that the Department of the Interior and the Bureau of Indian Affairs have learned through this process—and we have all learned, not just criticizing—is that it could be enough, but I think it has to be a broader disciplined group of people in order to achieve these kinds of things.

I think Mr. Luebben made reference to the kind of research that needs to be done just because of the particular histories of each of the tribes and their relationships to the Government. So, I really would not want to be pinned down on the actual dollar amount. I think you would have to take what the Interior Department's records indicate and how that is paid off.

Each area office is a little turfdom of its own, and in some cases it is not communicated. That is why you find the people who are here communicating this problem. The Indian people discovered it, not the Bureau. It was the Indian people who brought it to the attention of the Congress and the Interior Department. They were good enough to come and testify this morning that they, too, agree that there is a problem. So, I do not want to throw rocks at them.

But I think we have learned, and we should learn. One of the attorneys said earlier that there are two reasons. First of all, it is justice for the tribes, in the damages. But the other reason I am more interested in is the viability of their land base and how they are going to survive if we do not build an economic base. The dollars that are being spent on the reservation are just flowing off, and unless we build an economic base the tribes will not survive. That land use planning is going to be more and more important to us in our sense of survival.

Again, it is to the best interests of our non-Indian friends so that we will not have to go into litigation on some of these cases. As we have become more sophisticated in the Indian community, the young Indian lawyers and Indian leadership are becoming more aware of the things that happened to them in the past and how to deal with problems themselves. This has changed, and it is an important change. The sense of tribal control of tribal resources has become a good example of economic and political power that tribes can have when they have an economic base. This is a very important issue that belongs to this argument.

That is what I would like to introduce into this discussion.

Senator INOUE. I thank you very much, Mrs. Harris. We will take your testimony into consideration as we decide upon the number of years.

Ms. HARRIS. Thank you, sir.

Senator INOUE. Maybe the Comanches will win.

Ms. HARRIS. Thank you. Happy holidays.

Senator INOUE. Thank you very much.

Regretfully, I will have to call a short recess. I am due back on the floor, and someone else will be by in a few minutes to continue the hearings.

[Recess taken.]

Senator MELCHER. The committee will come to order.

First of all, I would like to apologize to all of the witnesses for causing this delay. Circumstances are quite often beyond our own personal control. Any individual Senator, depending on what is being considered on the Senate floor, may be required to be present. I was

in that circumstance this morning and so far this afternoon, and I regret that that was the case. Of course, when we schedule the hearings, we hope it will be possible to allot our time just for the hearings and not inconvenience anyone because these hearings are very important. We are on a very important subject today.

However, there was nothing I could do about the flow of consideration on the windfall profits tax bill on the Senate floor, and it fell my lot to have to be present to protect an amendment that I had prepared months ago and introduced on November 5, and it finally came up today. That was the situation I found myself in today, and I am very sorry for the inconvenience that I know has caused many of you to have to wait for your part in the hearing.

I understand that our next witness is Bruce Friedman, director, California Indian Legal Services.

Mr. Friedman, would you introduce those accompanying you?

STATEMENT OF BRUCE FRIEDMAN, DIRECTOR, CALIFORNIA INDIAN LEGAL SERVICES, ON BEHALF OF THE NATIONAL ASSOCIATION OF INDIAN LEGAL SERVICES, ACCOMPANIED BY JOSEPH J. BRECHER, SUBCONTRACTOR, CALIFORNIA INDIAN LEGAL SERVICES 2415 PROJECT; ANITA REMEROWSKI, DIRECTOR, SOUTH DAKOTA LEGAL SERVICES; CYNTHIA DAVENPORT, STAFF ATTORNEY, EVERGREEN LEGAL SERVICES, NATIVE AMERICANS PROJECT; AND PAULINE C. GIRVIN, STAFF ATTORNEY, CALIFORNIA INDIAN LEGAL SERVICES

Mr. FRIEDMAN. Senator, I am the director of California Indian Legal Services, and I am here on behalf of the National Association of Indian Legal Services.

To my far left is Joe Brecher, a private attorney who worked on the California Indian Legal Services 2415 project. To my left is Anita Remerowski, director of South Dakota Legal Services. To my extreme right is Polly Girvin, a staff attorney with California Indian Legal Services and the statewide coordinator for the CILS 2415 project. To my right is Cynthia Davenport, a staff attorney for Evergreen Legal Services Native American Component and their 2415 coordinator.

Each of the persons here has a different perspective on 2415 and is prepared to submit a statement to the committee.

Senator MELCHER. All of the statements that are prepared will be accepted by the committee and will be put in the hearing record, without objection, at this point.

[The prepared statements and attachments follow. Testimony resumes on p. 172.]

1 Statement By

2 National Association of Indian Legal Services

3
4 The National Association of Indian Legal Services speaks
5 on behalf of 19 Indian legal service projects throughout the
6 nation.

7 Each Indian legal service project extends civil legal
8 assistance in respect to the important federal Indian law
9 concerns of numerous tribes and individuals.

10 NAILS supports the timely attempt by the Senate Select
11 Committee on Indian Affairs to illuminate the issue of
12 Administration federal Indian trust responsibility in respect to
13 28 USC Section 2415.

14 While the Administration performance of Indian trust
15 responsibility theoretically ought to be perfect, it at least
16 ought to be thoughtful and comprehensive. But in the instance
17 of 28 USC Section 2415 it was neither. To the contrary, from
18 1972, through the morning of December 16, 1979, Administration
19 policy was in disarray, irrational and selective. To be simple
20 and accurate, the federal attempt to identify, document,
21 investigate and research 28 USC Section 2415 causes of action
22 has failed.

23 Substantial Indian rights shall be either unnecessarily
24 lost or more difficult to secure on April 2, 1980, if the
25 statute is allowed to lapse. To assist the Committee, tribes,
26 individuals and, later, federal judges, the record ought
27 clearly to state the reasons the federal Indian trust responsi-
28 bility was breached in the instance of 28 USC Section 2415.

1 First, a rational, comprehensive policy to comply was not
2 written and communicated. Second, oversight was lacking.
3 Third, few personnel were assigned to complete the task.

4 Finally, importantly, a conflict of interest limited
5 and distorted participation by federal employees. To be specific,
6 it is difficult to separate federal employee impropriety from
7 28 USC Section 2415 liability in two respects. First, federal
8 employees were frequently responsible for the transactions which
9 deprived tribes and individuals of their rights. Second, any
10 28 USC Section 2415 suit filed late in the fall of 1979 may be
11 interpreted to imply a lack of action, information and judgment
12 by federal employees from 1972, through the fall of 1979.

13 Dialogue concerning 28 USC Section 2415 tends to be an
14 essentially misleading inquiry on extending the limitation
15 time. The more critical point must not be missed; 28 USC Section
16 2415 is merely a crystal clear example of a federal Indian
17 right which appears on paper but disappears in reality.

18 The information acquired by NAILS from tribes,
19 individuals and federal employees throughout the nation is
20 fairly consistent. The Administration has had, except in a few
21 instances, neither the intent nor the personnel required to
22 testify accurately to the Committee that it has discharged its
23 federal Indian trust responsibility in a timely, thoughtful
24 and comprehensive manner.

25 Consequently NAILS supports an amendment to 28 USC
26 Section 2415 which extends the limitation time through
27 April 1, 1983, which specifies that personnel independent of
28 Interior and Justice are to complete the task and which specifies

1 continuous reporting and oversight.

2 Dated: December 16, 1979

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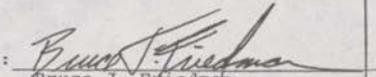
National Association of Indian
Legal Services

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By: 
Bruce J. Friedman

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OAKLAND, CALIFORNIA 94612
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TESTIMONY BEFORE SENATE OVERSIGHT
COMMITTEE CONCERNING 2415 CLAIMS

My name is Joseph J. Brecher. I am an attorney, in private practice in Oakland, California, specializing in natural resource and environmental law. From 1971 through 1974, I was an attorney with the Native American Rights Fund. This past summer and autumn, under a subcontract with California Indian Legal Services, I supervised a team of six researchers in a project to identify and document trespass claims in Southern California, which would be extinguished pursuant to 28 U.S. Code §2415. It was one of the most frustrating experiences in my professional career. The potential scope of the investigation was huge, while the amount of time and resources we were given was totally inadequate to the job at hand. As a result, our investigation and documentation was severely deficient in thoroughness.

There are many categories of possible claims ranging over several areas. Lands that should belong to the tribes have been omitted because of survey errors, or have been conveyed

unlawfully, without proper documentation, or other documentary irregularities, or by purported prescriptive use; unlawful removal of allotted lands from trust; unlawful use of Indian lands for rights of way for roads, power lines, irrigation ditches; pipelines, and other utilities; or unlawful appropriation of Indian natural resources were the major possibilities.

The task we were assigned was to investigate all of these possibilities for each of the 31 reservations in Southern California, comprising hundreds of thousands of acres. The documents concerning these lands on file at the BIA Riverside office comprised tens of thousands of files and millions of documents, some of them going back a century or more. In addition, as we learned to our sorrow, the local BIA documentation had almost none of the original records on land transactions. They were scattered over a half dozen federal repositories in California, Oregon, Washington, D.C., and Maryland. For many types of claims, it was necessary to check three or more of these locations in sequence. Often enough, the administrators of the archives had no idea whether the document was in their custody or where else to look if it was not. Document search and retrieval facilities at many of these archives were inadequate for the number and types of documents we needed to look at.

Thus, we had to rely on a skimming technique. One of the largest potential claims we found was initiated because

one of the researchers happened to glance at a paragraph in a twenty-year old letter, filed in the midst of a stack of correspondence going back to 1901. I am sure that a thorough combing of the files would yield many more claims.

To make the task even more difficult, we were looking for irregularities whose nature could not be predicted at the beginning of our search. We started out with no idea of where to look for possible trespasses. It took a few weeks to gain enough familiarity with the materials even to figure out how to organize the document search effectively. As it turned out, we learned about two excellent potential sources for possible claims only during the last week of our contract, and we never did get to investigate them. [In many cases, of course, the existence of the trespass would not be revealed in the land files, since they consisted of undocumented uses of Indian lands]. Even when the files were relevant, we were usually faced with the extra burden of investigating and proving a negative --that necessary documents did not exist. In many cases, we found the only way to determine whether a claim existed would have been to hire outside experts, such as surveyors, hydrologists, appraisers, and title researchers.

We felt it essential to make an effort to contact the leaders and attorneys of the Southern California Indian bands to explain the nature of our work and to get leads on trespasses. We received and looked into more than 50 suggestions, most of which did not yield proveable claims, but did

consume a great deal of time. It was also necessary to spend a significant amount of time on administrative details; conferences and meeting with government personnel, filling in of forms, personality problems, etc., which all took up more valuable time.

It sounds like a multi-year, million-dollar project, and it is. But by terms of our contract, we had only ^{two} months to do the job for all of Southern California. The result was that we were barely able to skim the surface on potential claims. Everything had to be done in the greatest haste, so our investigation of necessity was extremely superficial and we had to submit incomplete documentation, based only on the most preliminary investigation. I know that in my private practice, I would never dare recommend action to a client on the basis of such superficial work.

Worst of all, the contract did not allow for any follow-up to help the solicitor's office to explain the necessarily incomplete files and to help obtain necessary further documentation. Instead, that office was deluged with a mountain of folders and their attorneys told to work them up for prosecution, cold, within two months, and impossible task. As a result, I am informed that not one of our claims is being recommended for prosecution, even though I am sure that several of them should be prosecuted.

As I noted earlier, we did not learn of several kinds of documents which are fertile claims sources until it was too late

to investigate. They include an appraisal log, which describes numerous appraisals based on trespass complaints stretching back for decades; files on more than 300 terminated rights-of-way, which almost certainly would reveal many trespasses; and leasing records for some very valuable land. I am also convinced that many of the power lines, pipelines, roads and ditches which criss-cross southern California Indian lands do not have valid rights-of-way. They can be checked only by comparing on-the-ground locations with BIA records. My researchers had to terminate their activities still holding a list of 25 excellent leads which should have been followed up.

If 2414 is not extended, I believe millions of dollars in potential claims will be lost in southern California alone. But an extension, without more, would be next to useless. We would merely repeat the previous pattern; no serious effort to develop claims would be made until just before the deadline, when it is too late. There must be a continuous, systematic, properly funded effort to search for claims over at least eighteen months, with at least another year for the Justice Department to develop the potential cases. This effort must be made by independent professionals from outside the government, including attorneys, surveyors, appraisers, title searchers, and other experts. The BIA is in no position to investigate its own stewardship of Indian affairs. The built-in conflict of interest insures that the job would be done with far less than the necessary zeal. Nonetheless, the government's trusteeship responsibility compels a zealous advocacy of the Indians' interests, which means nothing less than

an extension of the statute of limitations, combined with an effective, independent claims investigation effort. Otherwise, the phrase "2415" will be added to the long litany of legal euphemisms which have been used to deprive Indians of their property under the majesty of the law.

TESTIMONY BEFORE THE SENATE SELECT
COMMITTEE ON INDIAN AFFAIRS REGARD-
ING EXTENSION OF 28 U.S.C. §2415
STATUTE OF LIMITATIONS.

Submitted by:

EVERGREEN LEGAL SERVICES
NATIVE AMERICAN PROJECT
Cynthia Davenport
December 17, 1979

Mr. Chairman, members of the Committee, my name is Cynthia Davenport. I am an attorney with Evergreen Legal Services Native American Project in Washington State. We provide services to Indian tribes and individuals throughout the state. We have an Indian Advisory Board to Evergreen Legal Services which this past spring established work on §2415 claims as one of the priorities for the three attorneys in our office.

Our office did not receive funding from the Bureau of Indian Affairs to identify §2415 claims. The ramifications of not having a contract with the Bureau were that we had to divert attorney time from our ongoing work and had to scrape up money from our already tight budget to hire an extra attorney for the summer to work solely on §2415 claims. Additionally, because we did not have a contract with the Bureau and could not thus be considered Bureau employees, we were unable to make a thorough search of all the files to identify potential claims. Our access to the records was limited to specific files in specific cases with the permission of the individual or tribal claimant involved.

In order to gather the claims we went to each reservation or tribal office on request to meet with the tribal councils or groups of elders who felt they had claims. We then tried to document the claims through Bureau, County, State and archival records. An obvious disadvantage to this procedure is that only those wrongs and injustices which the individual Indian person knows about and feels aggrieved about are identified. The hidden wrongs or those the Indian person did not know were wrongs go undetected.

Despite the limitations inherent in the procedure we had to use, we were able to identify a variety of claims

including trespasses of one sort or another, invalid right-of-ways, claims arising from the installation of dams on rivers and streams, and riprapping of streams which caused trust lands to be washed away.

Let me give you a more specific example of the kinds of true injustices to individual Indian people which we have uncovered in the §2415 process, and which this Committee should keep in mind as it considers an extension of the statute. In the northern part of Western Washington there are a number of adjacent public domain trust allotments which are owned by members of a small tribe in the area. A railroad runs across these allotments, cutting many of them in half. The validity of its right-of-way is in question, but more importantly, the railroad for years has effectively prohibited the Indian owners of the allotments from crossing the tracks to get to their land. The railroad has done this by limiting the number of crossings which can be built, and by requiring that the crossing be built to railroad specifications at the Indian landowner's expense--usually several hundred dollars. The landowner is also required to pay for railroad insurance.

In one case the railroad has suggested to the Indian landowner that he share a non-Indian neighbor's crossing which was already built. The neighbor refused, even though the Indian owner offered to pay for half of the cost of the crossing and the insurance. The railroad still refuses to allow the Indian owner to build a crossing, thus preventing him from using his trust land.

Our experience with the §2415 process has been one of constant frustration. After the last extension we had expected the government to develop a rational, systematic approach and do a thorough investigation of its records in

order to identify as many claims as possible. We were told that adequate funding would be made available to the Bureau for this purpose. Unfortunately, in our area none of this happened.

The Bureau was badly understaffed, underfunded, and ill-equipped to adequately address the \$2415 claims process.

Rather than being an advocate for Indian claimants and fully performing its duty as trustee, the Bureau's attitude has been one of "prove it to us." The Bureau has required that the Indian people do the trustee's work for it.

The Bureau sent out obscure notices to the tribes stating that the \$2415 statute of limitations runs out April 1, 1980 and that they and their members should submit their claims to the Bureau. The notice was a one page, uninteresting-looking notice similar to the hundreds of pieces of paper from the Bureau which cross the desks of tribal chairmen daily. The notice meant nothing to a lay person and referred to a statute which a lay person would not understand even if he or she had looked it up. The statute is as uncomprehensible to lawyers as it is to non-lawyers. (In an attempt to fully understand the statute one tribal attorney drafted a two page, single spaced list of questions which the statute raises in his mind.)

Once the Indians were told they had to do the Bureau's work by telling the Bureau what all their claims were, the Bureau then proceeded to set unrealistic deadlines for submitting the claims to the Agency. In April, a notice was sent which referred to May, July and August deadlines. Not only was it confusing, but it was the first notice we had received of any deadlines to be observed other than April 1, 1980.

Once claims were submitted, they were often returned asking for documentation when the documentation necessary would be found only in the Bureau's own records.

When tribes, in an attempt to identify for the Bureau their claims and those of tribal members, approached the Bureau for funding for claims investigation, they were told no such funding was available. The Portland Area Office told one tribe that it would not fund a "fishing expedition."

The frustration we have experienced and the lack of the government's rational approach is aptly illustrated by what I will call the Great Computer Conspiracy. Beginning in the fall of 1978, several tribes in the area tried to obtain from the Portland Area Title Plant a computer print-out of the land status reports for their reservations. These print-outs are helpful in pinpointing questionable transactions regarding trust land and are a good starting point for claims investigations. They had previously been available on request. However, by the fall of 1978, those records were being transferred from the title plant in Portland to a computer in Albuquerque and were unavailable. Once in the Albuquerque computer, the information remained unavailable because there was no print-out paper for the computer. A decision was then made to transfer the information to a computer in Florida. Unfortunately, however, the computer in Albuquerque and the one in Florida did not speak the same language. The information remained unavailable while it was being translated into the Florida language. It was still not available by May of this year. Our frustration over the computer episode was compounded when we learned in July - one month before the August 1 deadline for submitting claims - that the local agency was reorganizing its files, thus making many of the records needed to document the claims inaccessible to us.

These are just two of the many hurdles Indian claimants have had to overcome.

It is not only the Bureau, but also the Solicitor's Office which is giving us cause to wonder just how serious the United States takes its duty as a trustee. Just last week, an attorney in our office who is handling a particular claim for a tribe requested from the Solicitor working on the case the draft litigation report the Solicitor had prepared. Other Solicitors have voluntarily sent us copies of their draft litigation reports on other claims we have submitted, so the request was not unusual. However, it was refused - with no explanation given. The "draft litigation report" soon became an "internal memorandum" which could not be released. Why would the trustee, who is supposedly filing litigation to protect an Indian tribe's rights, not want to release a draft of his proposal for litigation to the tribe's own attorney? The implications of the question are fairly obvious.

Another problem which has arisen and which we all foresaw this summer is that the Solicitor's Office is often waiting until the last possible moment to tell an Indian claimant that a particular claim will not be filed. This means the individual or the tribe has 3 months left in which to find an attorney to file it himself, if he hasn't already been foreclosed by the applicable statute of limitations or if the amount in controversy is not enough to get him into federal court.

Another serious problem which we are facing in our area is a local United States Attorney's Office which, from all indication, is not very interested in §2415 cases. The person in that office responsible for reviewing and evaluating

the claims submitted by the Regional Solicitor's Office stated to me in a recent telephone conversation that "frankly, these cases don't have a hell of a lot of sex appeal." Explain that, if you will, to the Indian person trying to get access to his own land across the railroad tracks!

Because of this expressed attitude and the lack of advocacy for the Indian claimants which it indicates, we urge that any extension of the statute contain provisions for the appointment of a special prosecutor or independent commission to review, file and prosecute the \$2415 claims to insure that they are accepted or rejected on their merits, and that they are zealously pursued once filed. Indeed, even if no extension is granted, we strongly urge that such an arrangement be made possible.

There is also some concern that if an extension is granted, claims which have been submitted previously and which are finally about to be filed will once again be dropped. We urge that some protective arrangement be established to insure that submitted claims continue to be vigorously pursued.

The Committee should be aware that a number of claims involve complex cases in which the parties are seriously negotiating and which are not ripe for litigation. But, because the April 1 statute of limitations raises serious malpractice questions for the attorney involved if a suit is not filed by then, the attorney may have to sue. This will increase the case loads of already overburdened courts. Extending the statute would allow cases which are not really appropriate for litigation to be settled and would reduce the flood of cases which the April deadline will most certainly produce.

As this Committee surely knows, a trustee and its employees are charged with the highest degree of care to insure preservation of trust assets (including damage claims) and are chargeable in an accounting and damage action for any benefits lost. As trustee for the Indians, the United States must meet this standard. By not providing a proper mechanism for identifying the claims the government may very well incur a greater financial liability through a breach of trust responsibility suit than it would if it undertook to properly process these claims.

It is clear to us that a proper job of identifying, documenting and processing §2415 claims can be done if the government uses a rational, systematic approach. We have as examples the superb work done by the Minnesota Solicitor's Office and the work accomplished in a brief few months under the several Legal Services contracts with the Bureau. Because we know a proper job is possible and because it would be a mockery of this country's principles of justice and the United States duty as trustee to let the statute run, leaving the situation as chaotic as it is now, we support an extension of the §2415 statute of limitations and urge that protective provisions be included which address the concerns expressed by all of us here today.

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Statement By
California Indian Legal Services
To
The Senate Select Committee on Indian Affairs

Introductory Proviso

At the outset please note that California Indian Legal Services (hereinafter CILS), was informed at the very last moment of the opportunity to present testimony before this committee. Consequently, the discussion of 2415 concerns herein is merely a general descriptive overview of our concern. Therefore we request that we be allowed to reserve the right to provide the committee with a more detailed supplementation of the matter herein presented.

Background re: Why CILS became involved in assisting the Bureau of Indian Affairs in the investigation of 2415 claims in California.

In late June of 1979 CILS discovered that only ten (10) 2415 claims had been identified by the Sacramento Area Office of the Bureau of Indian Affairs for potential prosecution. (See Exhibit A attached hereto obtained from the Solicitor's Department, Washington D.C. documenting claims identified throughout the state. The notion that only ten claims were identified was incomprehensible to us given the following factors: (1) first hand input of multiple 2415 related concerns obtained from communications with various allottees and tribal representatives; (2) the fact that there are more than 100 Indian tribes in California scattered over a vast amount of land; (3) the nature of the manner in which trust land was acquired in California i.e., by various executive orders in other than a unitary fashion; (4) the lack of coherent administrative jurisdiction by the BIA

over Indian land and in some instances overlapping jurisdiction.

CILS' concern with the small number of claims identified in California was further reenforced upon being informed in mid-June of an August 1, 1979, administratively imposed, cut-off date for the submission of 2415 claims. (See Exhibit B, p.2 attached hereto i.e. memo of February 1, 1979 from the Acting Director of Trust Responsibilities). Since by its term, the statute allows for the filing of claims up and until April 1, 1980, CILS was concerned that many members of the California Indian community, not on notice of the administrative cut-off date, would have their claims go unaddressed.

History of CILS' undertaking to assist the
BIA in 2415 claims identification.

Between July 9, 1979 and July 20, 1979, on its own initiative, undertook to negotiate a contract with the Sacramento Area office of the BIA to assist in the 2415 claims identification process. Although CILS signed off on the contract by July 26, 1979, our involvement in the project was not triggered until after August 6, 1979 the date on which the Bureau of Indian Affairs finally entered its signature to the agreement.

By the term of the contract CILS was allowed beyond the August 1, 1979, administratively imposed cut-off date to identify and submit 2415 claims. During this period CILS researchers were purportedly to be given the same access to Bureau files as BIA employees. Under each understanding, CILS agreed to attempt to

search through the individual allotment files and tribal land files in the state to look for evidence in those files supporting further 2415 claims. Moreover, during its negotiating with the Bureau, CILS was also asked to assess the extent of the forced fee patent problem throughout the state. (Even though, as of the time of the contract, neither the Solicitor's office nor the Justice Department did know how they were going to resolve the prosecution of forced fee claims). Briefly, forced fees are issuance of a fee patent prior to expiration of the trust period without application and valid competency determinations.

As per the terms of the agreement with the BIA, CILS fielded a team of 24 researchers and two attorney coordinators, and designated from our own staff a 2415 coordinator in each of the CILS offices throughout the state. However, since the contract was not fully executed until August 6, 1979 CILS was unable to have our researchers selected, trained and in the field until the latter part of August. Researchers in the northern part of the state were selected and trained by August 20 and 21st. Researchers in the southern part of the state were selected and trained by August 28th. In a month and a half CILS was able to present the Bureau with approximately 700 potential claims. Given the short time of our contract, thorough documentation could not be provided. Problems in supportive documentation did not rest solely upon the lack of time, but also were encountered due to the total lack of any coherent system of file keeping within the Bureau.

At the time of negotiating the contract CILS was informed that a "uniform" and comprehensive file system existed in the state pertaining to Indian land matters. Such a statement was misleading at best. A given allotment file can, and often did, have information in five different states, D.C. and nine different physical plants. Fee patents are kept in Sutland, Maryland. Trust patents are kept in Portland and Oregon. Conveyances made to the Bureau of Reclamation are stored in Denver, Colorado. Individual allotment files are partially stored in D.C. and partially stored in California. The California storage locations include, but are not limited to, San Bruno, Laguna Nigule, Palm Springs, Sacramento and Hoopa. In further regard to the sufficiency of the data contained within the Bureau file in California, note should be taken of certain very alarming statements made by BIA employees to CILS 2415 researchers. Specifically, various of our researchers were informed that five years ago allotment files in California were selectively purged of information. Thus it is hard to tell whether salient data can be obtained from these files without extensive research and investigation in the field among the tribes and allottees concerned. Needless to say, there was no time to attempt this necessary task within the confines of CILS' contract with the BIA.

CILS did seek out potential claims not identified in the BIA file search. By the terms of our agreement with the Bureau we undertook to solicit and generate claims via a multi phased advertising campaign. By the latter part of August CILS

bulk mailed 34,000 newspaper/flyers describing 2415 claims and highlighting the cut off date to all Indian organizations, reservations and rancherias throughout the state. These newspapers contained claim form, inserts to which could be filled out and returned to CILS offices for research and submission to the Bureau. The newspaper mailing was followed by a second mailing in the first week of September of a poster highlighting the 2415 information already conveyed. By September 1, 1979 CILS also distributed a 30 and 60 second public service spot to all 60 TV stations in the state, highlighting the October 1 deadline for 2415 claim submission in California and the availability of CILS offices throughout the state for aiding in claim filing. This is in stark contrast to prior BIA efforts. By September 6, 1979 CILS also issued both a 25 and 30 second public service spot to all radio stations in the state.

Prior advertising of the 2415 claims process in California had been misleading i.e. it led people to believe they had up and until April 1, 1980 to submit claims. But no matter how hard we may have attempted to get the word out concerning the October 1 administratively imposed cut off date, it must be emphasized that, given the brevity of our involvement under the Bureau contract, the Indian community in California was only given a month to digest and respond to the advertisement.

As to be expected with such a short impact period for these media efforts, many claims are still coming into CILS offices throughout the state, and given the administratively imposed cut off date these claims may not be processed as a matter of policy by the Interior, or if not as a matter of policy,

as a matter of reality in light of time constraints and insufficient personnel.

In its short term contract with the Bureau, CILS feels that it only touched the iceberg of potential 2415 claims in California. And in light of the situation, we can't be sure which part we touched. No one from Interior or Justice knows. They can't know. We do at least know that there are many allotment and tribal land files which we never even got to in our research process. Moreover, there is no way that the Bureau had the time to intelligently research and analyze the implications of the claims submitted.

CILS has been informed that of the 700 potential claims it identified, as little as 50 or maybe even 10 may be referred for litigation by Interior to the Justice Department, and fewer still may pass Justice's screen. Based on letters CILS has seen, sent from the Bureau, many of these claims appear to have been dismissed from consideration on grounds that further documentation was necessary. We have also found that this was the plight of several claims identified prior to the 1977 extension. However, if further time could be spent, and resources made available, we believe that many of the claims submitted to the Bureau can be thoroughly documented and proved.

CILS has been given no feedback on the criteria applied by the local Bureau or solicitors' office regarding how they determine to reject or pursue a claim. Given the short time period the Sacramento solicitor's office has had to review and assimilate the claims we presented, we have no assurances that arbitrary and capricious standards of review are not being applied.

To the contrary, we have specific reason to believe, based on our involvement in the contract, that Bureau decision making had to be cursory and non-systematic.

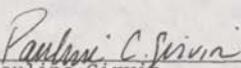
From the inception of its involvement on the 2415 claims project with the Bureau, CILS noted the lack of a coordinated system in the Bureau office concerning the 2415 process. No rational systematic approach seem to have ever been developed by the Bureau or Solicitors office in California. To adequately and rationally address 2415 problems in the State of California, CILS urges the committee extend the statute for a three year period, and that as a part of this extension sufficient resources and personnel be made available to process the claims.

To provide for the active pursuit of 2415 claims we believe that an independent team of special prosecutors should be appointed to address further investigation and prosecution of 2415 claims; particularly, where, as in many cases, the issue of a third party liability also includes the government. (Such as in under-appraisals of timber sales and forced fee patents situations).

During our participation in the 2415 contract we heard direct statements from BIA and Solicitor's office personnel to the effect that claims involving any potential government liability would be rejected.

Dated: December 16, 1979

Respectfully submitted,
CALIFORNIA INDIAN LEGAL SERVICES



-7- Pauline Girvin

EXHIBIT B

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:

FEB 1 1979

HHS
2/13/79

Memorandum

To: Bureau of Indian Affairs, Statute of Limitations Coordinators

From: Acting Director, Office of Trust Responsibilities

Subject: Statute of Limitations Implementation Program

We assume that due to a previous lack of resources the field offices have not completed the claims identification phase which we recommended, in our Joint Directive #1, be completed by December 31, 1978. Rather, in some areas claims identification may only be beginning. This situation can lead to a repetition of the bottleneck which caused us to seek an extension of 28 U.S.C. §2415 in 1977. The Solicitor's Office has discussed this with us, indicating great concern.

In an attempt to forestall such a bottleneck, the Solicitor will direct the Solicitor's Offices Coordinators to refer all valid cases, carried on the January, 1979 claims list, to either Justice or the U.S. Attorneys no later than July 1, 1979. The purpose of that directive is to clear their offices so that they can then process and refer claims, identified by us from this date forward, to Justice or the U.S. Attorneys no later than November 30, 1979. The November deadline will allow a 4 month lagtime for the filing or settling of all claims. This staggered referral procedure has been discussed with Myles Flint of the Justice Department.

Accordingly, I must request that you immediately facilitate the meeting of these deadlines by doing two things:

- 1) Complete the requested factual studies on known claims represented on the January, 1979 claims list, within the next 3 months so that the Solicitors can send these cases to Justice by July 1, 1979.
- 2) Complete the extended claims identification process, by use of file searches, intake forms or whatever other means, by August 1, 1979.



Neither the Solicitor's Office nor the Justice Department can reasonably handle, nor assure the proper legal preparation and filing of claims which the Bureau refers to any Solicitor's Office after August 1, 1979.

Perhaps your offices should issue publicity on the extended claims identification period, making particular note of the August 1, 1979 deadline. As you know the suggested publicity, previously sent to all statute of limitations coordinators, requested that tribes and individuals submit their claims by December 1, 1978.

David C. Hanson

3. ISSUE NUMBER		2. TYPE		3. STATUS		4. SOLUTION METHOD		5. APL		6. COPL	
7. ACRES						8. ACRE FEET					
8. KILOWATT HOURS				10. DOLLARS NEEDED				11. TOTAL DOLLARS TO LAST FY YEAR AMOUNT			
12. DOLLARS CURRENT FY YEAR AMOUNT			13. DOLLARS BUDGET YEAR YEAR AMOUNT			14. DOLLARS PLANNING YEAR YEAR AMOUNT					
15. MAN YEARS FOR SOLUTION						16. TRIBAL GOVERNMENT PRIORITY (1, 2, or 3)					
17. DATE ISSUE FIRST DESCRIBED (Mo.-Yr.)						18. KIND AND DATE THIS ACTION (No. on 5-5101, Month and Year)					
19. FUTURE ACTION (Mo.-Da.-Yr.)		20. PROJECT LEADERS AGPL FSPL		DSPL		JPL		TPL		OTHER	

Release 51-2, 2/15/77



SOUTH DAKOTA LEGAL SERVICES, INC.
BOX 727
MISSION, SOUTH DAKOTA 57555
605-856-4444

December 12, 1979

Hon. John Melcher, Chairman
Senate Select Committee on Indian Affairs
1202 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Melcher:

We would like to submit the enclosed narrative report, correspondence, and Resolution 79-141 of the Rosebud Sioux Tribal Council as written testimony to be incorporated into the record of the hearing to be held by the Oversight Committee on the Statute of Limitations (28 USC 2415) on Monday, December 17, 1979, at 10:00 A.M.

Our program became involved with the claims early this year when I urged the Bureau of Indian Affairs to enter into a contract with us to research and document 2415 claims. We were successful in negotiating a contract for the period March 26 to August 31, 1979, to research and document claims on South Dakota's reservations, including Standing Rock. Prior to our becoming involved, the Bureau had identified only 23 claims since 1977 for the whole Aberdeen Area (North Dakota, South Dakota and Nebraska). During the short period of our contract, our program submitted about 2,600 claims on behalf of South Dakota tribes and tribal members. We have been advised that not one claim has been submitted to the U. S. Attorney for action at this time.

There are nine reservations in South Dakota, and the four largest reservations (Pine Ridge, Rosebud, Cheyenne River and Standing Rock) have approximately 26,000 allotments. Besides the claims identified and researched by us this summer, there are thousands of potential claims currently unidentified. It has been our experience that, although time consuming, the best way to identify claims is by using a systematic method of checking each individual Indian allotment folder in the agency files. It is apparent that in the time remaining, the Bureau of Indian Affairs will not have time to complete documentation of those claims submitted to the Area Office let alone conduct a thorough search of the records in an attempt to identify all potential claims.

Agency personnel of the Bureau of Indian Affairs on South Dakota's reservations have indicated that the claims were not treated as a high priority locally because agency staff could not devote time needed to conduct their day-to-day business to identify claims. Additionally, the agencies needed supplemental funding to hire researchers who could devote full time to the claims. Although monies were made available to agencies in the Aberdeen Area, it came too late for the Bureau to do much except contract with programs such as ours who were able to devote little of our time to this mammoth task.

We consider the Aberdeen Area's failure to treat the claims as a high priority, contrary to directives issued by the Assistant Secretary of Indian Affairs, a serious breach of the trust responsibility the Bureau owes to its beneficiaries.

We urge your Committee to consider the testimony offered and to act favorably upon granting an extension of the statute of limitations in the interest of South Dakota tribes and their individual members.

Sincerely,



Anita M. Remerowski
Director

Enc.

RESOLUTION 79-141

WHEREAS: the Rosebud Sioux Tribe is a federally recognized tribe organized under the Indian Reorganization Act of June 18, 1934, and

WHEREAS: the Rosebud Sioux Tribal Council is the official governing body of the Rosebud Sioux Tribe, and

WHEREAS: the Rosebud Sioux Tribal Council is aware that Congress has set a deadline of April 1, 1980, by which the federal government must file actions in federal court on behalf of Indian landowners and tribes for damages to trust lands, and

WHEREAS: this statute of limitations has been extended once from July 18, 1977 to April 1, 1980, at the request of the Bureau of Indian Affairs so that the Bureau would have additional time to identify and research potential claims, and

WHEREAS: although the claims were designated as a priority by the Assistant Secretary of Indian Affairs in 1977, the claims have not been treated as such by the Bureau of Indian Affairs, Aberdeen Area, partially due to the fact that the Bureau lacked the resources, monies and staff, to conduct an all-out effort to identify potential claims, and

WHEREAS: many claims were identified and documented by South Dakota Legal Services under contract with the Bureau of Indian Affairs, but none of these claims have been referred to the U.S. Attorney for action as yet, and

WHEREAS: unless the statute of limitations is again extended by Congress, thousands of potential claims will not be identified, researched, and documented, and there will not be time to process claims already submitted to the Area Office, and

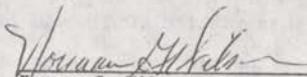
WHEREAS: the Senate Select Committee on Indian Affairs is conducting a hearing on December 17, 1979 to determine whether the statute of limitations should be further extended, and

WHEREAS: At said Committee hearing testimony will be given by tribes the Bureau of Indian Affairs, and others in an effort to have the deadline extended, now

THEREFORE BE IT RESOLVED: that the Rosebud Sioux Tribal Council urgently requests said Committee, in the interest of justice, to further extend the deadline so that all potential claims of tribes and individual Indians may be identified and processed.

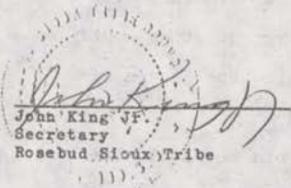
CERTIFICATION

This to certify that the above Resolution 79-141 was duly passed by the Tribal Council in session December 12, 1979, by a vote of thirty-one (31) in favor and none opposed. The said Resolution was adopted pursuant to authority vested in the Council. A quorum was present.



Norman G. Wilson
President
Rosebud Sioux Tribe

ATTEST:



John King Jr.
Secretary
Rosebud Sioux Tribe

NARRATIVE REPORT
2415 Claims

At a meeting of Legal Services Indian program directors held in Denver, Colorado January 17-19, 1979, Mr. Harold Baer, Regional Solicitor's office, Denver, at the request of the Indian program directors, addressed the subject of 28 USC 2415, and the claims falling within this statute of limitations. The Directors were promised material on the claims from Mr. Baer at the Denver meeting. This material, together with a litigation report, was received the week of February 12.

On February 16th the Director wrote to then Area Coordinator Brewer stating SDLS would like to be of assistance and requesting the names of persons assigned to process claims so we could meet with them and get some idea where to start and how much of our program's resources should be marshalled for this effort. She also advised him our March newsletter would be devoted to educating our clients concerning the nature of the 2415 process.

On February 16th, the Director also wrote to Harold Baer, Regional Solicitor's office, advising him the packet of materials had been received and expressing concern with the comparatively small number of claims initiated by the Aberdeen Area. She also informed Mr. Baer that Joe Brewer had indicated that due to a lack of staff his office had not spent much time on the project. Mr. Brewer had also indicated that the use of the Area's share of the 3.25 million appropriation for the claims was under discussion and that a North Dakota firm had been mentioned as a possible contractor.

This letter also expressed our program's wish to be of assistance to individual Indians in the filing of claims. Mr. Baer was advised our March client newsletter would be devoted to the process and that our summer intern project would be marshalled in an organized claim effort. Further, the Director stated she had indicated to him and Mr. Brewer that the Bureau might consider contracting with Indian reservation legal services programs like ours, with access to summer law school students.

The Director also expressed confidence that our clients would waive any potential conflict of interest and advised him there are no LSC regulations prohibiting such a contract.

The Director concluded this letter by expressing hope that a plan of action be developed immediately and that Bureau staff at the local and area levels be mobilized so the Bureau's trust responsibility in this vital area was not abdicated through a contracting process.

A meeting was subsequently arranged with the Aberdeen Area office on February 27, 1979 in Aberdeen at which time the Director outlined for the Area what services our program could provide. At this meeting, Larry Burr, of the Ft. Berthold Agency, who had spearheaded the Minnesota claims effort, explained how the Bureau, Minnesota Agency, had contracted to get their claims filed. According to the Area Office Contract Officer the same type of contract could not be approved in South Dakota. Although the Area was interested in contracting all of the Aberdeen Area, the Director stated that she felt that ethically

our program could only contract for South Dakota reservations where our offices are located. The meeting ended with the Area office requesting that we submit a proposal, and budget, so contract negotiations could be initiated.

Our proposal for research, investigation and documentation of potential claims under 28 USC 2415 was submitted shortly thereafter, and we received SF-18, Request for Quotation on March 10, 1979. Our bid was submitted on March 20, 1979, the contract was signed by the South Dakota Legal Services Director on April 9, 1979, returned to the Area office and signed by the BIA Contracting Officer on April 18, 1979. The contract was for the period March 26, 1979 to August 31, 1979.

The purpose of our contract was "to research, investigate and document claims which fall within 28 USC 2415 in the State of South Dakota and to initiate an advertising campaign designed to inform all potential claimants in the States of North Dakota, South Dakota and Nebraska of procedures to follow, who to contact, and where to file claims under 28 USC 2415" with our program providing all necessary personnel, supplies, materials, equipment and facilities required.

South Dakota Legal Services agreed to research, investigate and document potential claims identified by the Bureau, to conduct an advertising campaign designed to inform all potential claimants under 28 USC 2415 in the States of North Dakota, South Dakota and Nebraska. The contract specified that South Dakota Legal Services would not be required to research and investigate claims identified by the BIA after

July 31, 1979 or claims arising after July of 1966; that we would not research without specific case by case identification claims arising out of trespass, damage to property, contract breach, ineffective certificates of competency, unapproved deed from allottee or heirs, deed or patent from U.S. without consent of all beneficial owners and swamp land selections; that our research and investigation would not include the undertaking of surveys, topography, the ordering of formal appraisals or title abstracts, on site research in out-of-state archives or agencies, or prosecution of claims. The contract further specified that we would be notified of all orientation meetings conducted by the BIA for their staff on the claims process; that we would be notified of and provided with all BIA directives, news releases, and memoranda relevant to the claims; that the Aberdeen Area Office identify the categories of claims other than specific case by case claims to be researched in South Dakota, including Standing Rock, no later than April 30, 1979; that each BIA coordinator would forward, after logging, all claims upon identification and that we would notify the local BIA of claims we received independently; that South Dakota Legal Services would have access to relevant document/records of the BIA; that we would involve areawide and local coordinators to conduct an orientation session for South Dakota Legal Services staff during the 1st week of June, 1979, and that we would during the period of the contract request information possessed by or available to the BIA.

We agreed to provide two full-time staff-persons for planning, advertising, training, scheduling of work assignments, supervision of research, investigation and documentation of claims. In addition one staff member in each of our program's seven offices was assigned to answer inquiries from individuals, communities and tribes during the months of April, May, June and July and to supervise the research of 10 summer law students, program-wide, during June and July. The contract also called for three consultants (professional abstractor, South Dakota expert on water claims, resource person on land/minerals) to be used for a total of seven days over the period of the contract for orientation and advice on research and investigation. Lastly, our program was to provide one full-time researcher for three months.

The final special provision of our contract was that "nothing in this contract shall be construed as an assumption by the contractor of any trust responsibilities owed by the federal government to potential claimants under 28 USC 2415, nor bar the contractor from prosecuting any violations of this trust responsibility on behalf of an eligible client or clients."

During the month of March, we edited and printed 35,000 newsletters. The newsletter contained an explanation of the statute of limitations, outlined types of actionable claims, set out the requirements to document claims, and furnished the names of the agency contact person in the three-state area. Included as an insert to the newsletter was a claim form devised by SDLS for use by potential claimants. We also designed and

printed 1,000 posters.

We obtained the number of boxholders, rural/star route and general delivery patrons by form letter addressed to postmasters in all cities/towns on and near Indian reservations in the three-state area. The newsletter was mailed out the week of April 13th, the same week our director returned our signed contract to the BIA-AAO. In addition to boxholders, our newsletter was mailed to Tribal Chairmen, Superintendents, Agency Coordinators, Area Office, organizations in the three-state area (federal, state, and private) dealing with the Indian populace, colleges/schools, Job Service, IHS hospitals, prisons, legal services programs in the three-state area and programs on reservation such as CAP, CHR, Housing, etc.

The poster was mailed, or taken, to most of the individuals, agencies, organizations, and all Legal Services programs to which our newsletter was sent. In addition, we requested by letter to agencies in the Aberdeen area dated April 30th that we be furnished a list of businesses such as grocery stores, cafes, etc., located on reservations and frequented by Indian people so that we could mail copies of our poster to same. With the exception of one agency, we never received a response to our request.

In addition to the newsletter and poster, we prepared public service announcements to be aired by radio/TV stations during the months of April, May, June and July. The public service announcement was mailed along with a copy of the newsletter to all of the major TV/radio stations, stations on or

near reservations and most of the other stations in the three-state area. Additionally, we also were successful in having Bruce Baird, producer of the Indian Hour program, Vermillion, devote a portion of his program to the claims. This program is aired over WNAX, Yankton, South Dakota; KINI, St. Francis, South Dakota; KUSD, Vermillion, South Dakota; KEYA, Belcourt, North Dakota; KESD, Brookings, South Dakota; and KWLS, Sioux City, Iowa.

The public service announcement was aired throughout the period of the contract. Periodic checks were made to see that the announcement was being aired by either calling or writing randomly selected stations or by contacting staff or other individuals on reservations.

From May 1-4 our two coordinators visited the Bemidji Agency to see how their claims project operated. Their coordinators stressed the importance of the orientation which we were to provide June 4-8 for our staff, summer interns, the legal services programs contracting with the Aberdeen Area Office, and BIA coordinators. Time was spent at the Bemidji Agency learning how to document claims, attending a meeting of their researchers and a representative of the Solicitor's office, and observing a meeting between their coordinators, Superintendent and representatives of the Minnesota tribes. We also learned that Minnesota's effort to have individuals identify claims had been unsuccessful and that the only way claims would be identified was a systematic approach to researching individual allotment folders. Most evident at

that Agency was the outstanding working relationship shared by the contractors, agency and area personnel, and the Solicitor's office.

As our summer interns had all been hired by April 18th, we planned the June orientation session the second week of May and mailed the agenda to speakers on the 25th of May. During this time, we also made numerous calls to the Area Office attempting to schedule a meeting between the BIA and South Dakota Legal Services staff on a proposed plan of action based on what had been observed in Minnesota. On May 9th, when it became obvious that possibly another two weeks would pass before such a meeting could take place, the Director wrote the Area Director about the Bureau's lack of involvement in the claims process and requested that a meeting be held immediately. At this time we also submitted requests for specific information to facilitate research of claims. Mr. Baer was furnished a copy of our letter and was also contacted by telephone.

The meeting was held May 15-16 in Pierre with Agency Superintendents/Coordinators, South Dakota Legal Services, Area Office personnel, Solicitor (Aberdeen Area), and a representative of the Regional Solicitor's office. The purpose of the meeting was to bring about a clear understanding of what the BIA had done and should have been doing on the claims, what South Dakota Legal Services would be doing and when, and to coordinate a joint plan of action. Since all

the Bureau staff were not familiar with the claims, Mr. Baer explained what constituted claims, and our contract was also explained to agency staff. Mr. Baer defined the role of the BIA as trustee and emphasized that agency personnel were responsible for identifying claims, that they must find a way to do it, and that they must document what they had done. In response to our request that specific categories of claims be identified, we were informed that the BIA could not, because of its trust responsibility, identify specific categories of claims to be researched - that ALL claims must be researched. An understanding between the BIA and South Dakota Legal Services was reached with regard to SDLS access to BIA records, space/ clerical assistance being made available at the agencies for our researchers, identification of claims, and the Bureau's and SDLS' roles in the claims process.

Funds to carry out identification of claims were a source of concern to Agency staff, and they were informed money was available for hiring additional employees. They were advised to submit budget requests to the Area Office outlining staff and monies needed.

Mr. Dunker explained what the priority claims were and his deadline for submission of same. (Although we were promised at the meeting these claims would be handcarried to us, we received the claims in the mail on May 24th.)

The second day of the meeting was devoted to meeting individually with agency representatives on what their needs were and to coordinating BIA/SDLS plans of action.

The last week of May was spent finalizing details for the June workshop, familiarizing one summer intern with agency records, etc., and devising methods to document claims. The other nine interns arrived June 1.

The workshop was held June 4-8. Speakers covered such topics as history of the Sioux land base, diminishment of reservations, land descriptions, types of conveyances, definition of claims and documentation required, water rights, and county records/systems. BIA personnel from Rosebud Agency participated in the workshop making presentations on types of conveyances of trust land, the BIA's requirement for obtaining rights-of-way, and Frances Halligan conducted an excellent session covering land descriptions.

Actual documentation of claims began on June 11 and continued until August 3 when the summer interns left. According to Elmer Newcomb of the Area office 2600 claims had been forwarded to the Area at the end of the contract. Some claims which are more complex or require documentation which we have been unable to obtain to date will be forwarded in the near future.

The bulk of the claims were Old Age Assistance (OAA) liens and rights-of-way (roads, powerline, telephone). Other claims submitted included tax forfeitures, tax deeds taken on restricted land, forced fee patents issued to allottees less than 21 years of age, leasing/grazing violations, and unauthorized use of land. Damage estimates were based on the following (see attached):

1) A chart for the affected counties of acreage farm and pasture lands compiled by us from statistics from the South Dakota Crop and Livestock Reporting Service. Rental value was computed at 4% of average land value. This percentage was determined to be an appropriate one by Elmer Newcomb, Area Appraiser, based on a 1964 study of fair rental value for range land on the Cheyenne River Reservation. Simple interest was computed according to percentages supplied us by the South Dakota Banking Association.

2) A reclamation schedule based on conversations with local BIA roads personnel, private contractors engaged in construction projects located in South Dakota and Nebraska and Rural Electrification personnel.

Land use was estimated with available leases on the land or aerial photos. Where the right-of-way went through cropland, rental value and easement purchase price figures were doubled.

With the exception of Cheyenne River who had identified roads having no perfected rights-of-way in 1977, the majority of the rights-of-way claims were identified, researched, and documented by SDLS. We also computed damages for all claims submitted through our office.

Most of the OAA claims were identified by the BIA using a form and system devised by SDLS. The Bureau also assisted in documentation of these claims. Individual claims were for the most part either identified by individual clients or our researchers.

The problems encountered throughout the period of the contract stemmed mostly from the lack of commitment on the part of the Bureau to actively get involved in the 2415 claims process, particularly in the area of identification of claims. With the exception of the Yankton Agency, the Bureau identified very few claims for our researchers. Thus, because we were also identifying claims, our research and documentation efforts were hampered.

Although Area Office staff were pleasant and willing to assist, we experienced some delays in getting information and documents. In addition, monies to hire additional staff at the Agency level weren't expedited as promised at the Pierre meeting. We were never able to establish a good working relationship with Area Office staff, attributable for the most part to the fact that we had to deal with several different coordinators throughout the period of the contract.

The Agency staff, on the whole, didn't treat the claims as the priority Washington had repeatedly emphasized they were to be. There were BIA employees at each Agency who provided valuable assistance, but for the most part it was a "didn't help - didn't hinder" situation. Given the fact that there was so much to do and so little time in which to do it, we could have used every Bureau staff member the Coordinator could have made available and still missed many claims.

We experienced difficulty in documenting claims referred to us as "priority claims" in that the claims were received later than promised, without folders and pleadings and in no

order. Many of the claims had been dismissed, some were post-1966 claims, and one didn't relate to South Dakota. Most of these claims have been sent back to the Area Office. Some require further work.

According to reports of our researchers, the condition of the rights-of-way files at every agency ranged from "absolutely no order" to "chaotic" to "atrocious". The existing rights-of-way files at the agencies were of little or no use to our researchers. The files were found in boxes on top of files in the vaults, in the attic at one agency, in no particular order in file drawers, or missing altogether. This, coupled with the fact that the computer printout on rights-of-way (represented as perfected ROW) was inaccurate, made the task of identifying unperfected rights-of-way burdensome.

Some or all IIM ledger sheets were missing from Wagner, Ft. Thompson, Lower Brule, and Sisseton. This accounted for incomplete documentation of OAA liens at these agencies.

Contents of allotment folders were looseleaf and in no particular order at the agencies. Some were missing - although they probably could have been located elsewhere in the agency. It was noted that these folders are not always returned to the vault or locked in files at the close of each day but are sometimes left on top of desks or file cabinets at some agencies.

Plat books at some agencies are frayed and/or torn, and we would recommend that provision be made to protect these with plastic or some suitable material that can withstand the

constant use.

A and E cards are sometimes incomplete (dates of birth/death/probate), inaccurate (birth dates, etc.; conveyance information), or missing. The importance of recording cannot be stressed enough, and it would be to the benefit of the Bureau if a position was established at each Agency so that one trained person would be responsible for all recording. There is no comparison between the Bureau's records and the records kept by the Counties.

We were never able to obtain copies of the land indexes. When we were informed by the Minnesota Agency that the land index was vital for the documentation of claims, we requested same from the Aberdeen Area. We were informed the indexes would arrive too late to be of any use to us.

Areas Requiring Research:

- A. Railroads - This is a major area that should be checked by the Bureau for possible claims, specifically whether persons were paid for the right-of-way. Railroads are now abandoning track all over the State. Care should be taken to check and see which land should revert back to the Indian owner and that such land is restored. We have learned from the attorney for the S.D. Public Utilities Commission that railroads are presently selling land taken for easements without clear title.

Although we requested copies of easement documents from the Aberdeen Area Office, we were told that particular file contained hundreds of documents making it difficult

to copy. We specifically requested only those documents granting the easement and to date have not received this information.

We were able to ascertain from some A and E cards at Rosebud Agency that allottees would sell outright to the railroad, for example, 15 acres or lots, and the compensation received would be noted. This led us to believe that perhaps rights-of-way granted to railroads didn't convey the land as there were no notations on A and E cards. Furthermore, using the one document sent us on railroads from the Area Office concerning the track running from Winner to Wood, and checking IIM ledger sheets from those allottees having signed consents, we were able to determine that only one heir received compensation.

B. Inherited Indian Land Deeds and Non-Competent Indian Deeds -

An investigation should be made into these types of land transactions. Thousands of acres went out of trust, especially during the period from 1902 to 1910, and was for the most part purchased by a small group of individuals.

We learned at Rosebud that there was a land fraud scheme during this period and that the Agent was subsequently dismissed from the service (in May of 1909) as was the Commissioner of Indian Affairs. We also noted, while reviewing OAA liens from Sisseton that one of the men involved - or a man with an identical name - was later the Superintendent at Ft. Totten Agency in 1946. This

man, after having purchased whole sections of land at one time, opened the Rosebud Real Estate Company in 1915, and, judging from purchases made, probably did a large volume of business.

We observed that there was a notable disparity between the values placed on lands by the Bureau (frequently much lower) and the valuation done by counties for purposes of taxation. Supposedly the Bureau's valuation was more accurate as an appraisal complete with an on-site visit to the land was made while county valuations do not represent the fair market value of the land as no appraisal is made. Their valuation was merely an assessment based on the value of similar land in the county and was strictly for taxation purposes. While the counties were being organized in the first part of the century and may have assessed lands at a higher rate in order to collect more taxes to support their governments, these same lands were sold for as much as thousands more within one-two years after purchase by these same groups of men. Also, given the fact that the counties were opened up to homesteading during this period, and those individuals unsuccessful in getting one were vying for available lands and paying competitive prices, it is conceivable that allottees received less than fair market value for their lands. This seemed to be the prevalent situation on most, and perhaps all, of South Dakota reservations.

Another indication that Indians did not receive fair market value for their lands was that it was common practice to publish the appraised value in the local paper. Allottees often times received as little as \$50 above the appraised value.

Set out below are some of the many irregularities noted in these transactions:

1) Probates weren't done in a uniform manner. There seemed to be two different methods used, i.e. by affidavit and by county court proceedings initiated by non-Indian purchasers. Some files contained "Affidavits as to Lawful Heirs", and one file we saw had copies of the county court proceedings. Secretarial approval was evidently not always given for these findings. In fact, in one case at Wagner, the Secretary disagreed with the county court findings. The land had already been sold, and there was no indication in the file that the Bureau attempted to set aside the deed.

Although we were advised by Mr. Dunker that no probates of Indian estates should have been done in State courts after the June 25, 1910 Act, we noted in Mellette County records that one Abbie Carpenter was petitioning to probate Indian estates in 1911.

2) Land was sold when only one bid was received.

3) There were numerous instances at Rosebud where witnesses would sign trust patent receipts for allottees and then note "his(her) x mark" when the allottee would be a member of the opposite sex. Fee patent receipts were many

times done in the same manner. Using this method, conceivably an individual could have his land disposed of without his knowledge.

4) Many of the original receipts remain in the files at the Agency instead of being forwarded to Washington as required.

5) Some trust patent receipts were signed (Rosebud, and possibly elsewhere as some of these purchasers were on other reservations as well) by non-Indian purchasers and the trust patent receipt would be dated after the deed had been approved. In some cases, the receipt for the deed to the non-Indian purchaser was dated and signed the same day as the receipt for the trust patent.

The deed receipt indicated approval of the deed occurred prior to receipt of the trust patent.

6) Some folders contained two different trust patent receipts - original and copy - for the same tract of land. Both would indicate different dates of issuance of the trust patent and of the date of receipt. Additionally, one receipt would be signed by the purchaser and the other signed by the allottee or for him/her by one of the witnesses.

Files relating to these transactions contained little more than the trust patent receipt, fee patent receipt, and sometimes letters dated, for example, 1917, 1924, or 1932 from someone wanting to lease the land, or to perfect title by getting copies of the determination of the Secretary in the matter of the estate. One file contained a lease drawn up

for the signature of the Superintendent, on behalf of the heirs, to one tract sold before 1910. In the upper left hand corner of the lease form was an I.O. file number and the date "12-29-17", which was one of the dates numerous Rosebud allottees received forced fee patents. However, the lease was not completed.

A and E cards have very sketchy information on these transactions. Many have no dates of birth/death/probate indicated. The notation may simply be "Deeded" and the date.

In more than one instance, the purchaser would sign the trust patent receipt, for example, in February, 1908, and then sign the receipt for the deed in December, 1908, supposedly as successful bidder on the land. The land was allegedly advertised and bids received between those months.

7) Some original trust patents are contained in the files.

8) Non-Indian purchasers were petitioning state court for letters of guardianship to sell minors' land. It was our understanding that the Superintendent was authorized to sign.

9) There were no witnesses to many signatures and in numerous instances, the handwriting in signatures differed on the trust patent receipt, fee patent receipt, and other documents or letters, and the spelling of names varied.

10) Some allottees supposedly conducted their business by using a thumbprint, a mark (x), or their signature, all

within the same period of time.

In some instances, allottees protested they received less than the purchase consideration. It appeared that some of the non-Indian purchasers worked through middlemen, usually mixed blood Indians, and although the money would be deposited in a local bank by the purchaser, it didn't always end up in the hands of the allottee.

11) Mineral rights of allottees/heirs were not protected by the BIA in that none were reserved unto the grantors. Although not much, if any, consideration may have been given to the protection of these rights at that point in time, it would be an important issue now.

Based on the above observations, we requested some of the files on these transactions from Washington. We were promised we'd receive the files before September 30th.

C. Tribal Land Enterprise, Rosebud Sioux Tribe - Mr. Dunker indicated that tribal immunity from suit without consent would make recovery against the tribe and TLE on claims difficult. However, we believe the problems associated with TLE should be thoroughly investigated and we would like a response from the Bureau indicating their position with regard to each of those potential claims so we can advise our clients.

1) Revaluation of TLE certificates. TLE By-laws require that certificates be revalued each year. This was not always done (see attached) and any shareholders who sold certificates during a period of time they hadn't been revalued

may have suffered losses.

2) Dividends - TLE By-laws provide that dividends be paid to shareholders annually. This has not been done, according to the information we have received, since the 1950's.

3) Rights-of-way damages - Although consents of assignees were obtained in numerous instances, they have never shared in the compensation paid for rights-of-way (telephone, powerline, road). It would seem assignees would have claims for one-half of the compensation paid to and received by the Tribe.

4) Assignments made for sub-marginal land which were later cancelled or revoked and for which no certificates were deposited to the credit of assignees or lieu land assigned.

D. Forced Fee Patents - We were never successful in having the Bureau identify forced fee patents for us. We did receive some information on Crow Creek and Lower Brule allotments on July 31 from Washington, followed by copies of some of the information we had requested. However, there remain to be identified at every Agency forced fee patents which may have been forfeited for taxes. When the Declaration of Policy of April 17, 1917 went into effect, the names of allottees, together with their allotment numbers and descriptions of their allotted lands, were sent to the Commissioner. These lists can be used to identify policy patents and are available from Washington. (Washington indicated to us, in response to our request for certain I.O. files, that these were policy patent

files and they were hesitant to copy them.) Considerably more work will be required to identify forced fees issued to heirs. The county records search and computation of damages will need to be done also.

- E. Lands Taken for Taxes While Still in Trust Status - We learned from a private abstractor in Tripp County that she, in the process of completing an abstract, had found an instance where the County had taken trust land for taxes. She stated that during one period (about mid-forties to mid-fifties) the County Auditor had placed on the tax rolls all lands affected by probate, etc. Although the land in the case she referred to was subsequently recovered for the allottee she believes there are many more such cases.
- F. Claims involving water rights, contract breach, removal of natural resources, placing structures on trust property, trespass, unauthorized use of trust property, damage to structures, and any other actions involving title to land remain virtually untouched and remain to be identified by the Bureau.

Recommendations:

Based on our observations during the period of the contract, we recommend the following:

- 1) That the Bureau undertake whatever is required to insure that the claims submitted by our program are processed.
- 2) That the Bureau encourage tribes to seek an extension of the April 1, 1980 deadline for filing claims.

3) That the Bureau inform Congress that they were unsuccessful in this claims effort so an extension may be granted to identify, research and document remaining claims.

4) That the Bureau initiate identification of all unperfected rights-of-way and that action be taken to perfect all rights-of-way. Existing rights-of-way files should be put in order, together with maps and other supporting documents.

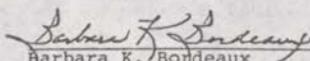
5) That the Bureau improve their methods of recordkeeping to safeguard the interests of their beneficiaries, specifically with regard to A & E cards and allotment folders.

6) That the Bureau investigate the possibility of obtaining additional monies to retrieve and preserve irreplaceable documents.

7) That the Bureau furnish our program with reports on the status of individual claimants so we can advise our clients accordingly.

8) That the Bureau hire a coordinator to complete work on claims submitted by our program and to organize an effort to identify, research and document remaining claims. This person should preferably be someone not currently working for the BIA but familiar with the organization and its functions so full time could be devoted to the claims. At a minimum, this person should possess the following qualifications: 1) knowledge of the trust relationship of the United States and Indian people, 2) working knowledge of trust lands, 3) experience in administration, and 4) writing skills.

Respectfully submitted:


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2415 Claims Coordinator, SDLS

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December 5, 1979

Honorable George McGovern
United States Senate
Washington, D. C. 20510

Dear Senator McGovern:

We would like to respond to some of the statements made by David Harrison in his letter to you of November 9. We are concerned that our congressional delegation will be satisfied that the Bureau of Indian Affairs is doing everything possible to identify, document and process claims based on Mr. Harrison's report, and we don't believe this is the case.

The narrative report we submitted on 2415 claims was intended to document activity on the claims in the Aberdeen Area and to outline what we felt needs to be done if further documentation is to continue. It was not intended as a backstabbing tactic but rather was part of the completion of our contract with the BIA as per its terms.

We take issue with Mr. Harrison's statement that our staff experienced frustration mainly because of their being unfamiliar with the functions of the real property management system. When we conducted an orientation session for our researchers the first week of June, we had staff from the BIA covering the various aspects of real property management. We appreciated their participation in the orientation, and they did a good job. Our staff had no problem understanding the functions of realty -- the problems encountered stemmed mainly from the fact that the Bureau's records were unorganized or missing, and further that we were unable to get information from Aberdeen or Washington that was not available at the agencies.

Mr. Harrison states in his report that additional funding was provided to hire staff, but he fails to mention that this funding was not received at most agencies until about two weeks prior to the August 1 deadline imposed by the Field Solicitor, Aberdeen Area. He further states that the Area Office did change coordinators on different occasions but that this should not have hampered us from carrying out our contract. He does not mention that one coordinator took four weeks of annual leave during the period from the end of May until the first of

August. The fact that we did have to work with a different coordinator on a regular basis did in fact retard our efforts because we were continually told we would have to get certain information from the Area Office. Additionally, information we wanted from Washington had to be requested through the Area. We found it difficult, and many times impossible, to get necessary information because of the lack of coordination on the part of Area personnel.

We were advised on several occasions to come to the Area Office to find the information ourselves. We felt this would be a waste of valuable time and money because our researchers were not familiar with the Title Plant. We believe the Area Office could have provided invaluable assistance in documenting claims -- if the claims had been made a priority.

Our report was intended in part to spur the Bureau to reorganization and preservation of their records on Indian lands and our legislative representatives to request that Congress extend the statute of limitations under 28 USC 2415 once again. We acknowledge that progress, of any type, on the part of the Bureau will be slow given the system they currently have to work with. The importance of recordkeeping cannot be stressed enough. If the Bureau would take the time to organize their records, it would be simple, although time consuming, to identify potential claims. We don't believe the Bureau can do an adequate job in the time remaining with the current system. They are going to have difficulty completing documentation of claims already submitted, without doing any further identification.

As we set out in the report, of critical importance is the condition of the rights-of-way files at all agencies. Until the agencies in the Aberdeen Area organize these files, they will have virtually no way of knowing at the agency level which rights-of-way have not been perfected. In 1977, the Cheyenne River Agency, Eagle Butte, identified many unperfected rights-of-way on that reservation, but nothing further was done until we contracted with the Bureau. This was the only reservation in South Dakota where an effort was made to identify unperfected rights-of-way. During the period of our contract, we were informed by utility companies on the Rosebud Reservation that it is such a hassle to obtain a right-of-way from the Bureau that lines are put in first and then the utility company waits for the Bureau to tell them what is owed. This is contrary to Bureau regulations and not in the interest of landholders.

We stated in our report that only 23 claims had been identified for the whole Aberdeen Area at the time we

contracted with the Bureau in March. About one-third of those claims were South Dakota claims, and of those, several had been dismissed by the U. S. Attorney because our Solicitor failed to provide documentation requested. One concerning railroads was submitted to the U. S. Attorney just prior to the date the statute of limitations was to run in July, 1977, and for which the Solicitor had apparently issued an erroneous memorandum of the law. These claims were referred to us under the provisions of our contract as priority claims and were received in no order, without pleadings, and with no statement as to what was required by the U. S. Attorney to document the cases.

In the seven weeks we had available to research and document claims (our researchers left August 3), we submitted about 2600 claims to the Area Office. We believe this exemplifies what can be done when a commitment is made and is in contrast with action taken by the BIA (see memo from Superintendent, Sisseton Agency, to Area Director in which he states ". . . we have searched the files at this Agency and find no valid outstanding claims or any irregularities for possible claims.")

The Bureau has failed to identify claims that would be relatively simple to document. We learned from researchers in another area that lists of Indians who had received forced fee patents under the Declaration of Policy of April 17, 1917 were available from the Washington office. We found one such list at Rosebud Agency containing the names of 47 allottees. We requested the BIA to identify the names of all allottees on South Dakota's reservations who had received these "policy patents". We did receive a partial listing of Crow Creek and Lower Brule allottees, and we were to receive the lists for Rosebud by September 30. Just two weeks ago, we were told by Rights Protection staff in Washington that we would be furnished a list of 250 Rosebud allottees who received forced fee patents. Our program has offered to research county records on these allotments at no expense to the Bureau. To date, we have heard nothing further from the BIA.

The Bureau has decided to pursue old age assistance claims against states and those claims have been submitted to the Area Office. The BIA has decided not to pursue transfer orders, and heirs affected by this decision have only recently received notification of the Bureau's decision. They have been referred to Legal Services programs in the Aberdeen Area should they wish to pursue these claims on their own. The BIA has done little or nothing on potential claims against railroads, claims involving water rights, or tax forfeitures, among others.

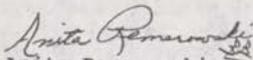
After we had submitted numerous rights-of-way claims to the Area Office, the agencies in the Aberdeen Area began sending out

forms, under instruction from the Area Office, to landholders requesting that they sign a consent stating they wanted a suit brought in their behalf, or in the alternative signing a release that would preclude a suit from being brought. Based on what other Areas are doing and information we received from the Regional Solicitor, we understood that it was not necessary to have the consent of landholders prior to the Bureau initiating action. The Field Solicitor, Minneapolis Area, requested information concerning these forms from the Solicitor, Washington (see enclosed), but we are unaware what response, if any, was received by him.

We are concerned that the Bureau will decide not to, or will not have time to, pursue many claims on behalf of their beneficiaries. As of this date, not one 2415 claim has been referred to the U. S. Attorney for action. It is unclear at this point whether the statute of limitations applies only to the federal government -- or to anyone wishing to bring an action. Legal Services programs do not have the resources available to bring the number of suits possibly to be generated by 2415 claims.

We urge you to consider our report carefully and to speak with the Solicitor's office, the Land Resources Division of the Justice Department, and U. S. Attorneys charged with prosecuting 2415 claims. You will find, I am sure, that little has been done in the past two years to identify and document claims and that any recent, hurried attempts to research claims will not be completed in time for filing let alone thoughtful litigation.

Sincerely,


Anita Remerowski
Director

Enc.



United States Department of the Interior

IN REPLY REFER TO:
RECEIVEDOFFICE OF THE SOLICITOR
Office of the Field Solicitor
686 Federal Building, Fort Snelling
Twin Cities, Minnesota 55111

OCT 5 1979

SDLS/Mission

October 3, 1979

Memorandum

To: Solicitor, Attention: Associate Solicitor, Indian Affairs
Attention: Section 2415 Claims Coordinator

From: Field Solicitor, Twin Cities, Minnesota

Subject: Section 2415 Claims Procedures

The enclosed copies of letters, affidavits and questionnaires have come to our attention recently, as they are apparently being utilized in the section 2415 claims process in other areas. Were they generated in your offices, and are they being suggested for use nationwide? If this procedure is being suggested or required for processing section 2415 claims, we are very concerned that claims submitted from our offices might not be pursued, due to the inability, in most cases, to identify present-day heirs of allottees who are beneficial owners of the lands which are the subject of claims. If we will not be able to pursue claims on behalf of the unknown heirs of an allottee, we may as well cease further investigation and research on all but a very few of our pending claims. On the other hand, if we will be able to pursue claims in such a fashion, the extensive work involved in preparing and mailing out forms such as this seems a waste of the precious few months remaining to us.

The forms, if we are to utilize them to obtain consents to pursue claims, do raise a number of questions. What would the effect be were no response to be received from any beneficial owner of a tract? And what would be the effect of receipt of consents from some of the beneficial owners of a tract and of releases from others? The forms themselves are sufficiently cryptic that they may cause much confusion and misinterpretation among recipients. And there further is no option available to agree to be a plaintiff but decline to testify, for whatever reason.

We would appreciate whatever information you might give us concerning these forms.

Sincerely yours,

*(Sgd) Elmer T. Nitzschke*Elmer T. Nitzschke
Field Solicitor

cc: MAO, BIA w/enclosures

✓ bcc: Anita Remeroski - no enclosure

MRS:vjc



October 2, 1979

Mr. William Benjamin
Acting Area Director
115 4th Ave., S.E.
Aberdeen, South Dakota 57401

Dear Mr. Benjamin:

Enclosed find my response to a client who brought forms, recently sent out by the Bureau to potential "2415" claimants, into our office.

I do not feel that the forms adequately inform the claimants of their options in an action. For example, they seem to indicate that compensation and damages are mutually exclusive and preclude negotiations before trial.

The forms also indicate that the claimant must testify in an action brought on his behalf which I believe in most cases would be unnecessary. The forms are scaring people off.

I would be interested to know if other areas are using such forms. The Minneapolis area office apparently is not.

Sincerely,



Anita Remerowski
Attorney at Law

AR:jv

Enclosure



SOUTH DAKOTA LEGAL SERVICES, INC.
BOX 727
MISSION, SOUTH DAKOTA 57555
605-856-4444

October 2, 1979

Mrs. [REDACTED]
P.O. Box [REDACTED]
Mission, South Dakota

Dear Mrs. Hunger:

I have put (X's) where I think you should sign these forms and filled out the forms for you as you requested, I feel you should be compensated for the right of way taken over your land especially since it is not a feeder line to your residence. You should get damages for the trespass, money for the years of illegal use, as well.

Hopefully, the Bureau can negotiate a settlement for you and other land holders before trial. However, even if this case should go to trial you will probably not have to testify. The Bureau can testify that the line crosses your land and that they do not have your consent on file and that the company's right of way was not Bureau approved as required by federal law.

If you have any other questions regarding these forms please do not hesitate to call.

Sincerely,

Anita Remerowski
Attorney at Law

AR:jv

Enclosure
cc: William Benjamin



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
ROSEBUD AGENCY
ROSEBUD, SOUTH DAKOTA 57570

IN REPLY REFER TO:
Natural Resources
2415 Claims

SEP 24 1979

RS-4843
[REDACTED]

Box [REDACTED]
Mission, South Dakota 57555

Dear [REDACTED]

A lawsuit to be filed, in court on your behalf, by the United States Attorney in a trespass claim for construction of roads and utility lines, requires your attention. This claim will be filed under the authority of 28 U.S.C.A. 2415, Statute of Limitations.

Please review the attached affidavit. We have filled in the consent portion of the affidavit. If you are still willing to have this suit filed, please sign the consent portion of the affidavit. Your signature can be notarized at the Agency Office at no charge.

However if you have no desire in pursuing this matter on having the claim filed, please sign the release portion of the affidavit. The portion states that you do not want the claim filed on your behalf.

Return the signed affidavit (consent or release portions) and the signed and witnessed option form to the Agency Office as soon as possible. We are enclosing a self-addressed envelope for your convenience, this requires no postage.

Sincerely,

James M. Neely
Superintendent
[REDACTED]

Enclosures

1-107-345-391

RS-664

AFFIDAVIT

CONSENT

I, [redacted], being duly sworn, do hereby state that having been informed by the Bureau of Indian Affairs, [redacted] of Rosebud Agency, Rosebud, South Dakota, that I may have a claim for money damages against Cherry-Todd Electric Coop., Inc., (REA) Mission, S.D. because of No Right-Of-Way or compensation paid for distribution line across RS-664, Charles Bordeaux Allotment, described as the lot of Section 26, Twp. 41 North, Rge. 29 West, 6th P.M., Mellette County.

that I am willing to be a plaintiff and testify in this matter if it is necessary to bring suit to recover the money owed us.

(X)

(Signature of Claimant)

ACKNOWLEDGEMENT

STATE _____)
COUNTY OF _____) ss

On this _____ day of _____, in the year _____, before me personally appeared _____ and _____ his wife, known to me to be the persons described in and who executed the foregoing instrument and acknowledged to me that they (he) executed the same as their (his) free act and deed.

(SEAL)

My commission expires _____

RELEASE

I, _____ being duly sworn, do hereby state that the above AFFIDAVIT is true but that I am not willing to be a plaintiff or testify in that matter and do not want to pursue my claim and, therefore, I hereby release the United States from any and all liability for failure to pursue that claim.

X

(Signature of Claimant)

ACKNOWLEDGEMENT

STATE _____)
COUNTY OF _____) ss

On this _____ day of _____, in the year _____, before me personally appeared _____ and _____ his wife, known to me to be the persons described in and who executed the foregoing instrument and acknowledged to me that they (he) executed the same as their (his) free act and deed.

(SEAL)

My commission expires _____

Case No. A-07-345 CLot. No. RS-664

Please check one of the following options:

Box (1) or (2) or (3) or (4)

1. Are you willing to grant a right-of-way retroactively and if so, do you wish to be compensated?
2. Do you want trespass damages with a right-of-way granted at the conclusion of the action.
3. Do you want trespass damages and the (powerline) (road) or whatever removed.
4. Do you prefer other negotiations? If so, please state _____

*Would like to negotiate before trial & sell
the right of way in addition to getting
trespass damage.*

Check your option, sign this sheet - have your signature witnessed by two (2) adults and return, with the completed affidavit, in the enclosed self-addressed envelope.

WITNESSED:

(x)



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

RECEIVED

SEP 21 1979

SOLS/Mission

SEP 13 1979

Ms. Tina Tickasin Vermillion
4729 San Vicente Boulevard, #21
Los Angeles, California 90019

Dear Ms. Vermillion:

This is in response to your letter of August 15, 1979, to me requesting background information explaining correspondence received from the Bureau of Indian Affairs regarding a potential claim by heirs of Mrs. Strike or Large Woman to Standing Rock Allotment No. 3030.

This is to advise you that the BIA, as part of an ongoing trust responsibility claims program, ran across the potential claim mentioned in the BIA correspondence attached to your letter. In sum, the correspondence advises you that such a potential claim exists and that it is up to you to pursue it because this claim will not be prosecuted by the United States on your behalf.

I suggest, therefore, that for additional information you may contact, as the BIA correspondence recommended, South Dakota Legal Services, P.O. Box 727, Mission, South Dakota 57555; or Mr. M.L.D. Wilson, Bureau of Indian Affairs, Standing Rock Agency, Fort Yates, North Dakota 58538. These people are in a position to assist you in the matter.

Sincerely,

Thomas W. Fredericks
Associate Solicitor
Division of Indian Affairs



United States Department of the Interior
OFFICE OF THE SOLICITOR

ROOM 211 - FEDERAL BUILDING
P.O. BOX 549
ABERDEEN, SOUTH DAKOTA 57401

September 5, 1979

RECEIVED

SEP 10 1979

SDAS/numson

Memorandum:

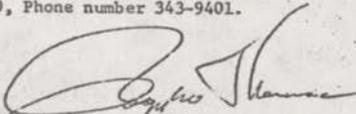
To: Area Director, Bureau of Indian Affairs
From: Field Solicitor
Subject: "2415 Claims" * "Unconsented Transfer."

We have enclosed and are returning to the Bureau of Indian Affairs eight "2415 claims." The Associate Solicitor, Division of Indian Affairs has by memorandum dated August 20, 1979, (copy enclosed) advised that they will not file those claims concerning conveyances of inherited allotments without the consents of all the Indian owners on reservations governed by Indian Tribes organized under The Indian Reorganization Act (IRA). However, please forward a list of all claims of that nature by number, name and amount of damage for each claim.

Please be advised that this office recommends that your Agency give notice to those claimants and heirs involved in the enclosed cases in clear, concise language that:

1. Their "claim" will not be pursued by the Bureau of Indian Affairs in its responsibility as trustee;
2. That your Agency does not feel the "claim" is proper, but that each claimant may seek private counsel, be it from Legal Assistance or otherwise, to pursue his (her) "claim";
3. That if they intend to pursue their "claim", they should properly serve and file the same in the proper Court of Law before April 1, 1980.

We further are advising South Dakota Legal Services, Legal Assistance of North Dakota, Inc., and Inter-Tribal Legal Services of Nebraska of the foregoing; and further that we suggest they contact their clients and properly pursue their claims prior to April 1, 1980. Of course, the legal basis for the Solicitor's Opinion is available from the Division of Indian Affairs, United States Department of the Interior, Office of the Solicitor, Washington, D.C. 20240, Phone number 343-9401.



Roger W. Thomas
For the Field Solicitor

Enclosure

cc: Regional Solicitor
Mr. George Bourgeois
South Dakota Legal Services
Legal Assistance of North Dakota, Inc.
Inter-Tribal Legal Services of Nebraska, Inc.
Mr. Simon Stevens, Area Coordinator

- * Tender offer to Legal Assistance Organizations of eight "2415 Claims" identified as follows:
- | | | |
|--|-----------|-------------|
| 1. Sihazzwin Allotment #301 | Claim No. | A05-303-002 |
| 2. Kenneth Coe King | | A05-303-014 |
| 3. Suna Waamatan; Heirs of Mary
Lohnes Allot. #384 | | |
| 4. Sun Waamatan; Heirs of Mary
Lohnes | | A05-303-017 |
| 5. Benedict Bear (Matowanapeya
Allotment No 664 #85 | | A05-303-080 |
| 6. John Winnipeg, Allotment #1073 | | A05-303-009 |
| 7. Rosalie Dance Eagle | | A05-303-009 |
| 8. John Guy Adams, Emma Woods Adams
Allotment #578 | | A05-303-090 |



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

AUG 20 1979

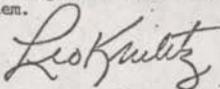
Memorandum

To: All Regional and Field Solicitors
 From: Solicitor
 Subject: 28 U.S.C. §2415 claims: conveyances of inherited allotments pursuant to the Act of May 14, 1948 (25 U.S.C. §483)

In a March 7, 1978, memorandum the Twin Cities Field Solicitor called our attention to a problem arising in the Minneapolis Area of the Bureau of Indian Affairs and perhaps elsewhere. That is the question of what to do about conveyances of inherited allotments made in the 1950's without the consents of all the Indian owners on reservations governed by Indian tribes organized under the Indian Reorganization Act (IRA). The Act of May 14, 1948 (25 U.S.C. §483) would appear to require unanimous consent before all interests in those IRA reservation allotments can be conveyed. By memorandum of February 16, 1979, the Acting Associate Solicitor for Indian Affairs requested all Regional and Field Solicitors to report on the number of conveyances described above which had occurred in their respective areas. We have received a few such reports, but are still in need of full reports from all affected areas in order to comprehend the scope of this problem. (1)

In the meanwhile, I am not going to authorize the transmittal of litigation reports to the Department of Justice for the filing of lawsuits on behalf of those heirs who may not have consented to the conveyances of their interests in such allotments. If there has been any error in the making of such conveyances it has been that of officials of the Bureau of Indian Affairs. The purchasers of these allotments appear to have acquired them in good faith and for fair value. Indeed, we have no reason to believe that the heirs whose interests were so conveyed - with or without their consents - did not receive credit for the appraised value of those interests. Hence, it is my view that any grievances in this regard should be pursued with this Department, rather than against the innocent purchasers, who include among them many individual Indians and Indian tribes.

This problem is but one of many which have arisen as a result of the fractionated heirship problem. Therefore, this Office intends to address this problem, in cooperation with the Assistant Secretary for Indian Affairs, in the context of the general problem of fractionated ownership of inherited allotments. Perhaps some legislative remedy is in order. Again, we must have full reports from each region and area on the number of these allotment conveyances in order for us to understand the full scope of the problem.



Leo M. Krulitz

cc: Assistant Secretary - Indian Affairs



IN REPLY REFER TO:
Natural Resources

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
ABERDEEN AREA OFFICE
115 FOURTH AVENUE S.E.
ABERDEEN, SOUTH DAKOTA 57401

RECEIVED

AUG 15 1979

S. J. Mason

Ms. Anita Remerowski
Director, South Dakota Legal Services, Inc.
P.O. Box 727
Mission, South Dakota 57555

Dear Ms. Remerowski:

In response to your August 13, 1979 letter concerning potential forced fee patents from Standing Rock, Ft. Thompson, and Wagner Agencies.

Due to the short time remaining in your contract I suggest that you visit our Titles and Records Section to review the files that our Central Office has referred you to this office for. Our Chief of the Title Plant will assist you in locating all the necessary files.

If a search of county records is necessary to make the claim complete then the search should be made.

Your contract can be extended to at least until the end of the fiscal year and perhaps beyond if it would be advantageous to you in finalizing claims. Our contracting office informs me that August 20, 1979 will be the final day for modification of all contracts.

If we can be of further assistance please let me know.

Sincerely,

Edmer E. Neucomb
Acting Assistant Area Director
Natural Resources



Save Energy and You Serve America!



SOUTH DAKOTA LEGAL SERVICES, INC.
 BOX 727
 MISSION, SOUTH DAKOTA 57555
 605-856-4444

August 13, 1979

Area Director
 Attn: AAO 2415 Claims Coordinator
 Aberdeen Area Office
 Bureau of Indian Affairs
 115 4th Ave., SE
 Aberdeen, South Dakota 57401

Re: Potential forced fee patent claims from Standing Rock,
 Ft. Thompson, and Wagner Agencies

Dear Sir:

Our program is unable to complete research on potential forced fee patent claims for the above reservations at this point because we are lacking information from the Bureau as to whether applications made by original allottees are on file in the Central Office. Verification of this information is required for 172 files at Wagner, 98 files at Ft. Yates, and 16 files from Ft. Thompson.

Requests for this information have been submitted to Washington from Ft. Thompson using I.O. file numbers as we were instructed to do. On July 31st, the Washington office telephoned our office at Ft. Thompson and was able to furnish information on a number of files requested. We went through the files submitted by our Ft. Thompson office and eliminated all but 16 of those cases. We learned today from Mr. Thompson that Mary Louise Wilson of the Ft. Yates Agency had requested information as to whether applications were on file for a number of cases at Ft. Yates. The 172 cases from Wagner were identified by the Bureau too late to thoroughly research.

We are willing to research county records to determine if any allottees lost their lands to taxes after having received a forced fee patent, aside from our contract with the Bureau, and if the Bureau will immediately identify those cases where no applications exist. We would like a response from you by Friday of this week so we can plan accordingly.

Should the Bureau be interested in pursuing this, we will immediately forward the information required to research these potential claims.

Sincerely,

Anita Remerowski
 Anita Remerowski
 Director

SOUTH DAKOTA LEGAL SERVICES, INC.
BOX 727
MISSION, SOUTH DAKOTA 57555
605-856-4444

August 13, 1979

Mr. Simon Stevens
2415 Coordinator
Aberdeen Area Office
115 Fourth Ave., S.E.
Aberdeen, South Dakota 57401

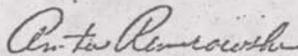
Dear Mr. Stevens:

I am returning the claims the Defenders and the Standing Rock tribe against Percy Tschider.

We were requested to try and pin down the dates of usage by Mr. Tschider. However, our researchers in McLaughlin were never able to track down "Harry Fast Horse" described in the case summary as a witness. It was learned on August 8, 1979 that the man's name is Harry Swift Horse.

I am by copy of this letter requesting our McLaughlin staff to continue their efforts to contact this man and Mr. Tschider.

Sincerely,


Anita Remerowski
Director

AR:jv

Enc.

cc: SDLS McLaughlin, SD
Standing Rock Bureau of Indian Affairs

SOUTH DAKOTA LEGAL SERVICES, INC.
 BOX 727
 MISSION, SOUTH DAKOTA 57555
 605-856-4444

August 10, 1979

Mr. Simon Stevens
 BIA 2415 Claim Coordinator
 Aberdeen Area Office
 115 Fourth Ave., S.E.
 Aberdeen, SD 57401

Dear Mr. Stevens:

The following is our investigation report on a trespass by L. E. Maxon.

I am frankly at a loss as to why we were asked to pursue this since the U.S. Attorney dismissed the action against Mr. Maxon.

We have yet to pin down the period of trespass for this grazing land described as the NW $\frac{1}{4}$ and S $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ and N $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 28 and Timber lots 18, 19, 20, 21, 22, 23, 24 and 25 in Sec. 28, T.20N, R.27E, Black Hills Meridian, Corson County, SD.

Our researcher talked with Mr. Maxon and with Fred Alaisetell of BIA Leasing. According to these gentlemen, Mr. Maxon has attempted to lease the property on numerous occasions and has never heard anything regarding his applications from the Bureau. See also Pat McLaughlin memo of May 29, 1979.

The potential claimants in this action are described in the acting Superintendent's letter of July 12, 1979 and the attached list.

I am by copy of this letter requesting our McLaughlin office to pin down Maxon's period of use. If the period of use is contained in the U.S. Attorney's complaint in this matter, please let me know immediately.

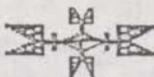
Note that due to the wishes of one of the beneficial owners of the described land a future lease to Mr. Maxon is probably not possible.

Sincerely,

Anita Remerowski
 Anita Remerowski
 Director

AR:lm

Enc.
 cc: SDLS, McLaughlin, SD
 Standing Rock Bureau of Indian Affairs



SOUTH DAKOTA LEGAL SERVICES, INC.
BOX 727
MISSION, SOUTH DAKOTA 57555
605-856-4444

June 13, 1979

Simon Stevens
Aberdeen Area Office
115 4th Ave. SE
Aberdeen, South Dakota 57401

Dear Simon:

I am returning the Standing Rock, Cheyenne River railroad Claim supposedly applicable to most reservation areas in the state. As the attached correspondence indicates the solicitors memo on the law in this area was in error and there is no actionable claim.

Sincerely,

Anita Remerowski
Director

AR/kc
cc: Wally Dunker
Harold Bear
SDLS 2415 Coordinators
Agency 2415 Coordinators



United States Department of Justice

UNITED STATES ATTORNEY
 DISTRICT OF SOUTH DAKOTA
 231 FEDERAL BUILDING & U.S. COURTHOUSE
 400 SOUTH PHILLIPS AVE.
 SIOUX FALLS, SOUTH DAKOTA 57102

BRANCH OFFICE:
 317 FED. BLDG. &
 U.S. COURTHOUSE
 515 9TH ST.
 RAPID CITY, S.D. 57701
 MAILING ADDRESS:
 P.O. BOX 2893

June 7, 1979

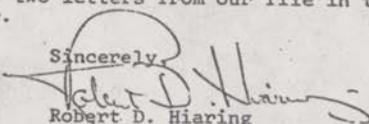
Ms. Anita Remerowski
 Attorney at Law
 P. O. Box 727
 Mission, South Dakota 57555

Re: Request for litigation against
 Chicago, Milwaukee and St. Paul R.R.

Dear Ms. Remerowski:

In accordance with our telephone conversation, I
 am enclosing copies of two letters from our file in the
 above captioned matter.

Sincerely,


 Robert D. Haring
 United States Attorney

RDH:er
 Enclosures

August 5, 1977

John R. Little, Jr. Esq.
Regional Solicitor
Department of the Interior
Post Office Box 25007
Denver Federal Center
Denver, Colorado 80225

Re: Request for litigation against Chicago, Milwaukee
and St. Paul R.R.

Dear Mr. Little:

In accordance with our telephone conversation
with your office on this date, we are returning the files
in connection with the above matter.

Sincerely,

DAVID V. VROOMAN
United States Attorney

lsm
Encl.

July 28, 1977

MEF:JJClear
90-6-1-15

RECEIVED

AUG 2 1977

UNITED STATES ATTORNEY
SIOUX FALLS, S. DAK.John R. Little, Jr., Esquire
Regional Solicitor
Department of the Interior
Post Office Box 25007
Denver Federal Center
Denver, Colorado 80225

Dear Mr. Little:

Re: Request for litigation against
Chicago, Milwaukee and St. Paul RR.

This is in response to your letter of July 12, 1977, requesting that we institute legal action against the Chicago, Milwaukee and St. Paul Railroad for failure to pay a charge of \$15.00 per annum per mile for a railroad right of way running through the Cheyenne River Sioux Reservation in South Dakota and the Standing Rock Sioux Reservation in North and South Dakota.

Your letter states that the \$15.00 per annum per mile charge is imposed by the Act of March 2, 1899, 30 Stat. 990, under which the railroad acquired the right of way. It is our reading of the act, however, that the \$15.00 per annum per mile fee is imposed only on those railroads having rights of way running through the Indian Territory. The Indian Territory is now part of the State of Oklahoma and never included any lands outside the current boundaries of that State.

We therefore believe that the initiation of litigation in this matter is unwarranted.

Sincerely,

James W. Moorman
Acting Assistant Attorney General
Land and Natural Resources Division

By:

Myles E. Flint
Acting Chief, Indian Resources Section

90-6-1-15

cc: United States Attorney
Fargo, North Dakota 58102

✓ United States Attorney
Sioux Falls, South Dakota 57102

Leo M. Krulitz, Esquire
Solicitor
Department of the Interior
Washington, D.C. 20240

Attention: Thomas W. Fredericks, Esquire
Associate Solicitor
Division of Indian Affairs



United States Department of the Interior
OFFICE OF THE SOLICITOR

DENVER REGION
P.O. BOX 25007
DENVER FEDERAL CENTER
DENVER, COLORADO 80225

July 12, 1977



10-18
7-18
10-18

Registered--RRR

Memorandum

To: Myles L. Flint, Esq., Acting Chief, Indian Resources Section, Land's Natural Resources Division, Solicitor's Office, Washington, D.C.

From: Regional Solicitor, Denver

Subject: Litigation Report Regarding 28 USC § 2415, Statute of Limitations, Failure to Pay Annual Rentals to Indian Tribes

1. Factual Background

Pursuant to the terms of the Act of March 2, 1899, 30 Stat. 930, various railroad companies were authorized to gain rights-of-way across Indian Reservations and trust lands. The Act required the railroads pay compensation to the Indians for right-of-way acquisition and that they pay a yearly use fee for each mile of track crossing Indian lands. The Act established a minimum fee of \$15 per mile per year. The Chicago, Milwaukee and St. Paul RR. and the Chicago, Milwaukee and Puget Sound RR. used the provisions of this Act to gain rights-of-way across the Cheyenne River Sioux Reservation in the State of South Dakota and the Standing Rock Sioux Reservation in the States of North and South Dakota.

The railroads acquired the rights-of-way during the years 1909-1910. Road building apparently began immediately upon receipt of the right-of-way grant. Approximately 175 miles of line were laid on the Cheyenne River Reservation and approximately 150 miles of track were laid on the Standing Rock Reservation. The railroads paid the Indian allottees and tribes the assessed value for these acquisitions. However, Bureau of Indian Affairs' records do not show that they have ever paid the yearly fee for each mile of track laid.

Additionally, the Act requires the railroads provide passenger service to, through and within the reservations they cross. While the roads originally did so, they have abandoned such service. We assume that this was done with ICC concurrence. We have not been able to ascertain whether the ICC was advised of the matter before granting permission to abandon passenger service.

The Chicago, Milwaukee and Puget Sound RR. was merged into the Chicago, Milwaukee and St. Paul RR. The company's office is in Chicago, Illinois.

2. Damages.

It is estimated that damages to the two Indian tribes would be a minimum of \$15 per mile of track per year for at least sixty years since approximately 1910 or, for the Cheyenne River Sioux Tribe and its members, \$157,000 plus interest and for the Standing Rock Sioux Tribe and its members \$135,000 plus interest.

In addition, an order should be sought requiring the railroads to restore passenger service to, through and within the reservations for the benefit of the Indians.

3. Witnesses.

(a) Don Perry, Chief, Titles & Records Section, BIA, Aberdeen, E.D. 57491.

(b) Helen Cutler, Realty Officer, Standing Rock Agency, Fort Yates, N.D. 58538.

(c) Richard Dean, Land Operations Officer, Standing Rock Agency, Fort Yates, North Dakota 58538.

4. Applicable Law.

Such Tribal lands were a part of the Standing Rock Indian Reservation or the Cheyenne River Sioux Reservation both established by the Act of March 2, 1689, 25 Stat. 868.

Such allotted land was allotted pursuant to the Act of February 2, 1887, the General Allotment Act, codified at 25 USCA § 331 et seq., particularly § 348.

5. Documents.

There is enclosed the following documents:

(a) Map of Reservation showing the location of rail trackage.

(b) Agency files (3) documenting the granting of the rights-of-way acquired by the railroads.

Handling of this case in this Region has been assigned to Wallace Bunker, Field Solicitor, Aberdeen, S.D. (FIS 782-7254). Please address all future correspondence to him with copies to this office.

45273

John E. Little, Jr.
Regional Solicitor

Enclosures

CC: U.S. Attorney, S.D. (w/enc.)

U.S. Attorney, S.D. (w/enc.)

Field Solicitor, Aberdeen

~~Area Director, BIA, Aberdeen~~

Real Prop. Mgmt.
Claims

June 20, 1977

Memorandum

To: Area Director, Aberdeen Area
From: Superintendent, Sisseton Agency
Subject: Memorandum, No. 25-152

Pursuant to the Area Director's Memorandum, No. 25-152, we have searched the files at this Agency and find no valid outstanding claims or any irregularities for possible claims.

SGD FLOYD THOMPSON
Acting Superintendent

A09:JWVALLIE:sjd 06-20-77
Subject
Chrony

HERMAN E. TALMADGE, GA., CHAIRMAN
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United States Senate

COMMITTEE ON
 AGRICULTURE, NUTRITION, AND FORESTRY
 WASHINGTON, D.C. 20510

RECEIVED

NOV 19 1979

SDLS/Mission

November 14, 1979

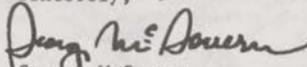
Dear Ms. Remerowski:

Enclosed is a letter I received today from Mr. David Harrison, Acting Director of the Office of Trust Responsibilities.

It appears that your report was not only carefully read, but is being used as the basis for further action by the Area Rights Protection Office and others.

With every good wish, I am

Sincerely,


 George McGovern

Ms. Anita Remerowski
 Director
 South Dakota Legal Services
 Box 727
 Mission, SD 57555

Enclosure



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

Rights Protection 202
BCCO 6170

NOV 9 1979

Honorable George McGovern
United States Senate
Washington, D. C. 20510

Dear Senator McGovern:

This in further reply to your letter of October 5 and our reply of October 16 regarding a report by the South Dakota Legal Services submitted to our Aberdeen Area Office on their work with claims pertaining to 28 U.S.C. 2415.

As indicated in our previous letter, a report on the matter was requested of the Aberdeen Area Office. They report that it was recognized that there would be a need for additional assistance at the agencies to identify and process 28 U.S.C.A. 2415 claims. Therefore, on March 26, 1979, the Aberdeen Area Office entered into a contract with Legal Services to assist in researching, investigating and documenting possible claims. Most agencies were also provided with funding to hire additional staff that would be assigned solely to the researching of 2415 claims. Unfortunately, the Area Office did change Area Coordinators on different occasions but this should not have hampered the contractor from carrying out the provisions of the contract since they were to work directly with the local agency coordinators.

Although the report does criticize the Bureau, it also brings to light those problem areas that need attention. A copy of Ms. Anita Remerowski's report has been provided to the Superintendents of those agencies covered under the contract for information and follow-up. We are informed by the agencies that these problem areas are recognized, and that attempts to remedy the situation are being taken but that progress will most likely be slow because of the demands of the daily workload of Realty staff.

The Area Office was somewhat surprised at the criticism against the Bureau staff for lack of cooperation and participation because the Area Coordinator was in close contact with the contractor and agency coordinators and there appeared to be full involvement in the claims cases by agency staff. Several agencies also provided working space for the contracting personnel to perform their duties.

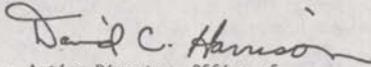
It is understandable that the contractor's staff, which consisted largely of Law students, would experience some frustration mainly because of their

being unfamiliar with the functions of the Real Property management system, and the fact that it was time-consuming when information to complete a case needed to be obtained from the Records Center or other State and Federal agencies. Although the contract period was short, it is felt the program went as well as could be expected and that more time would be needed to fully complete an indepth study of potential claims. Individual interest to file claims was very limited and the majority of the claims submitted were those that the agency staff had identified by researching various records and files locally.

All cases completed by the agency and contractor were forwarded to the Area Rights Protection Office where considerable research of additional documentation was needed to compile proper evidence for court. Agency staff is continuing to be utilized to accomplish this task.

We trust this adequately responds to your inquiry. If we can be of further assistance, please let us know.

Sincerely,



Acting Director, Office of
Trust Responsibilities

DEPARTMENT OF THE INTERIOR
Office of Indian Affairs
Washington

April 17, 1917.

DECLARATION OF POLICY
in the
ADMINISTRATION OF INDIAN AFFAIRS

During the past four years the efforts of the administration of Indian affairs have been largely concentrated on the following fundamental activities - the betterment of health conditions of Indians, the suppression of the liquor traffic among them, the improvement of their industrial conditions, the further development of vocational training in their schools, and the protection of the Indians' property. Rapid progress has been made along all these lines, and the work thus reorganized and revitalized will go on with increased energy. With these activities and accomplishments well under way, we are now ready to take the next step in our administrative program.

The time has come for discontinuing guardianship of all competent Indians and giving even closer attention to the incompetent that they may more speedily achieve competency.

Broadly speaking, a policy of greater liberalism will henceforth prevail in Indian administration to the end that every Indian, as soon as he has been determined to be as competent to transact his own business as the average white man, shall be given full control of his property and have all his lands and moneys turned over to him, after which he will no longer be a ward of the Government.

Pursuant to this policy, the following rules shall be observed:

1. PATENTS IN FEE: To all able-bodied adult Indians of less than one-half Indian blood, there will be given as far as may be under the law full and complete control of all their property. Patents in fee shall be issued to all adult Indians of one-half or more Indian blood who may, after careful investigation, be found competent, provided, that where deemed advisable patents in fee shall be withheld for not to exceed 40 acres as a home.

Indian students, when they are twenty-one years of age, or over, who complete the full course of instruction in the Government schools, receive diplomas and have demonstrated competency will be so declared.

2. SALE OF LANDS: A liberal ruling will be adopted in the matter of passing upon applications for the sale of inherited Indians lands where the applicants retain other lands and the proceeds are to be used to improve the homesteads or for other equally good purposes. A more liberal ruling than has hitherto prevailed will hereafter be followed with regard to the applications of noncompetent Indians for the sale of their lands where they are old and feeble and need the proceeds for their support.

3. CERTIFICATES OF COMPETENCY: The rules which are made to apply in the granting of patents in fee and the sale of lands will be made equally applicable in the matter of issuing certificates of competency.

4. INDIVIDUAL INDIAN MONIES: Indians will be given unrestricted control of all their individual Indian moneys upon issuance of patents in fee or certificates of competency. Strict limitations will not be placed upon the use of the funds of the old, the indigent, and the invalid.

5. PRO RATA SHARES - TRUST FUNDS: As speedily as possible their pro rata shares in tribal trust or other funds shall be paid to all Indians who have been declared competent, unless the legal status of such funds prevents. Where practicable the pro rata shares of incompetent Indians will be withdrawn from the Treasury and placed in banks to their individual credit.

6. ELIMINATION OF INELIGIBLE PUPILS FROM THE GOVERNMENT INDIAN SCHOOLS: In many of our boarding schools Indian children are being educated at Government expense whose parents are amply able to pay for their education and have public schools facilities at or near their homes. Such children shall not hereafter be enrolled in Government Indian schools supported by gratuity appropriations, except on payment of actual per capita cost and transportation.

These rules are hereby made effective, and all Indian Bureau administrative officers at Washington and in the field will be governed accordingly.

This is a new and far reaching declaration of policy. It means the dawn of a new era in Indian administration. It means that the competent Indian will no longer be treated as half ward and half citizen. It means reduced appropriations by the Government and more self-respect and independence for the Indian. It means the ultimate absorption of the Indian race into the body politic of the Nation. It means, in short, the beginning of the end of the Indian problem.

In carrying out this policy, I cherish the hope that all real friends of the Indians race will lend their aid and hearty cooperation.

Cato Sells

Commissioner

Approved

Franklin K. Land

Secretary.

UNITED STATES GOVERNMENT

memorandum

DATE: MAY 11 1979
 REPLY TO: Area Claims Coordinator
 ATTN OF:

SUBJECT: Action: Documentation of Claims - 28 U.S.C.A. 2415

RECEIVED

TO: All Superintendents, Aberdeen Area

MAY 13 1979

FROM: Office of the Area Director

SOLS/Albena

Please review the attached letter from South Dakota Legal Services, Inc. Let this letter serve as a notice to each Superintendent of the importance of and the impending deadline for filing claims under the Statute of Limitations.

Since the Rights Protection Conference which was held in Aberdeen in August 1978, the Agencies and the Area have not given this project a very high priority. It is necessary and vital for the Bureau to give these claims top priority at the Agency level. It has been necessary for the Bureau to contract with Legal Services to assist in the tremendous task of identifying and reviewing and to prepare the claim to meet any legal requirements that are necessary prior to filing the claim.

The Area Office and the Solicitors' offices in Aberdeen and Denver will hold a meeting in Pierre, South Dakota, on May 15 and 16, 1979, at the Holiday Inn beginning at 1:00 P.M. on the 15th and concluding at noon on the 16th. Rates at the Holiday are \$19.00 single and \$27.00 double. Travel may be charged to AOO-01-3400-4130-21N for this trip only. Please furnish this office with copies of all vouchers processed.

We would like each Superintendent in the Aberdeen Area to bring each Agency Coordinator and any other person who will be assisting the Coordinator at the Agency. Also, each Superintendent should contact the Tribe for their input. The Tribe may wish to send a representative.

S. D. Longmire
 Acting Area Director

Attachment



Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

OPTIONAL FORM NO. 10
 (REV. 7-76)
 GSA FPMR (41 CFR) 101-11.6
 5010-112

Senator MELCHER. In addition, I will announce now that the hearing record will remain open through the balance of this month, and anyone who cares to submit written testimony, please feel free to do so. We will receive it gratefully and include it as part of this hearing record.

Please proceed, Mr. Friedman.

Mr. FRIEDMAN. The National Association of Indian Legal Services speaks on behalf of 19 Indian Legal Services projects throughout the Nation, including projects in California, Arizona, New Mexico, Minnesota, Nevada, North Dakota, South Dakota, Wyoming, Alaska, North Carolina, Mississippi, Washington, Idaho, Nebraska, Oregon, Wisconsin, Colorado, and Oklahoma. Each of these Indian Legal Services projects offers civil legal services with respect to important Federal Indian law issues which concern numerous tribes and individuals.

NAILS supports the timely attempt by the Senate select committee to illuminate the issue of Federal Indian trust responsibility in respect to section 2415. While the administration performance of Indian trust responsibility, theoretically, ought to be perfect, it at least ought to be thoughtful and comprehensive.

But in the instance of section 2415, it was neither. To the contrary, from 1972 through at least the morning of December 16, 1979, administration policy was in disarray, was irrational, and was selective. To be quite simple and accurate, the Federal effort to identify, document, investigate, and research 2415 causes of action has failed.

Substantial Indian rights shall be either unnecessarily lost or more difficult to secure on April 2, 1980, if the statute is allowed to elapse. To assist the committee, tribes, and individuals, and, later, perhaps Federal judges, the record ought clearly to state the reasons the Federal Indian trust responsibility was breached in the instance of 2415.

Senator MELCHER. Mr. Friedman, your statement has been made a part of the record. You might just comment on any specific point or emphasis you would like to make, as part of the record.

Mr. FRIEDMAN. To summarize, the issue frequently framed here today is whether or not the statute ought to be extended and, if so, for how long. That misses a critical point. Assuming the statute is extended, if there were not sufficient personnel, and resources directed toward addressing 2415 claims, the extension of time would be a hollow effort. Indian Legal services has a unique perspective, Indian legal services, by reason of working closely with individual Indians, tribes and the BIA has seen the reality of the administrations effort to discharge its trust responsibility. That reality is far more troubling than the administration's testimony here.

Anita Remerowski of South Dakota Legal Services.

Senator MELCHER. All right. Anita?

Ms. REMEROWSKI. Mr. Chairman, my name is Anita Remerowski, and I am director of South Dakota Legal Services. We supply services to Indians and non-Indians in the reservation areas of our State. I am here today to highlight some of the written comments that we submitted late last week outlining our experience this past summer working on a 2415 Indian land claims project in our State.

I want to emphasize that we became aware of the 2415 statute of limitations in January of this year, not through any of our frequent

contacts with Bureau officials in our State but through happenstance, through a meeting of Indian Legal Services directors in January in Denver.

When I investigated the progress of the claims process in our area, the Aberdeen area of the Bureau of Indian Affairs which encompasses North Dakota, South Dakota, and Nebraska, I found that only 23 claims had been submitted to the Justice Department for prosecution. Some of these claims antedated July 1977, and most of these claims were not ready for litigation.

The area office's only real attempt at implementing the Assistant Secretary's directives that this project be given top priority appeared to be only one rights protection conference in August 1978. Local agency personnel that we contacted in the State were not aware of the statute of limitations or the nature of the cases corresponding with the statute of limitations. Nor were they aware of the people in their different agencies who were to coordinate the 2415 projects.

Contrary to what our program felt to be the role of trustee, the local agency people were also waiting for individual Indians and tribes to come into their offices with 2415 claims rather than actively searching their files. This attitude seemed to persist even though the Bureau of Indian Affairs in our area had put out only one press release to the general public on the statute of limitations.

The chaos is easy to understand, given the lack of priority the claims were also receiving in Washington at this time. For 1 month, I called what turned out to be an empty office, the number I had been given for the 2415 coordinator in the Solicitor's office.

In light of this emergency situation, our program suggested that the BIA make use of legal services programs like ours who had access to large numbers of summer interns for research during the summer. We contracted with the Bureau for the months of April, May, June, and July of this past year to research and document claims.

The first few months were spent in advertising, and, in contrast to the Bureau's one press release, our program put out 35,000 newsletters in the entire Aberdeen area for North Dakota, South Dakota, and Nebraska. They are like this, Senator [shows newsletter]. We have given each of the members of the committee a copy.

During the months of June and July, for 7 short weeks, we had access to summer interns. Most of these summer interns were law students, many of them first-year law students with absolutely no background in Indian lands. During that short period of time, they were able to uncover 2,600 claims. Even at that, we felt that we had only scratched the surface as far as potential claims were concerned. This is in sharp contrast to a statement made by a superintendent of one of the agencies in South Dakota in June 1977 to the effect that a thorough search of his records revealed no potential claims.

I want to emphasize also that our program identified, as well as researched, claims. Our contract was only really to assist the Bureau in research, and we did end up identifying many of the claims that we ended up filing and researching. This is because the appropriation for additional staff at local agencies did not filter down to them until the middle of August, 2 weeks before our project ended.

Records, especially rights-of-way files, are in terrible disarray, some of them in complete disorganization. Records of many agency files in

South Dakota we found were missing or were stored in archives in Kansas and Washington, D.C., and were almost impossible to retrieve during the period of our project. Also, records are housed haphazardly in warehouses; sometimes we found them in attics of agency buildings on some of our reservations.

Since submitting claims, clients have come in with consent forms sent to them by the Bureau of Indian Affairs that the Bureau has indicated they must sign before a suit can be brought. It is our concern, based on these persons' questions, that these forms are somewhat misleading and difficult to understand, scaring off potential claimants. Also, in many cases, present claimants cannot be determined. This is especially true in the case of lands concerning deceased claimants.

Furthermore, not one claim at this time has reached the U.S. attorney's office for prosecution, and that is one area I think the committee should clarify. We have heard reports today from the Solicitor's office and the Justice Department. I think the committee should find out exactly what claims are going to be directly referred to the U.S. attorney's office for prosecution because I would think many of these offices might have staffing problems in gearing up to prosecute cases.

There are two areas especially where we saw that further work needs to be done and the surface has not been scratched. That is railroad right-of-way claims in South Dakota where we have evidence that there are rights-of-ways going through reservation areas where one in a long list of allottees has been compensated. Only 2 weeks ago, the BIA in Washington called our office thinking we were still working on this project to tell us that they had just come up with a complete list of forced fee patent allotments for our State.

Another important thing to mention is that we found, in our experience in researching these claims, that the best way of finding claims is a rather painstaking process of searching each individual allotment folder. Over 26,000 allotments were issued on the four major reservations in South Dakota alone.

So, I am here to urge this committee to act favorably as far as an extension to the statute of limitations is concerned, but not to go just that far. I really feel it is important that the committee make provisions so that a similar bottleneck does not occur again in the 2415 process.

The committee might consider perhaps more regular oversight hearings on this process if an extension is granted and insure that the Bureau of Indian Affairs has appropriations to undertake tasks like updating its records and preserving and retrieving irreplaceable documents.

Perhaps the committee should also consider something new to see that the job is done once and for all; perhaps the appointment of a special prosecutor or a special commission to see that these claims are once and for all evaluated, identified, and prosecuted.

Thank you.

Senator MELCHER. We still have quite a few witnesses. We want to allow you to bring up any points that have not been brought up, but we would appreciate it if you would avoid repeating previous points. Just emphasize what you think has not been put on the record and give us your best emphasis on where you think the flaws are.

Mr. FRIEDMAN. Based on their unique, fairly comprehensive and sadly consistent knowledge of the administration's 2415 performance, the primary purpose of Indian loyal services participation in this hearing is to reveal specific instances of the administration's grossly improper 2415 performance, which performance contrasts with the testimony of the administration during this hearing.

With that, our next speaker is Polly Girvin, the coordinator of the CILS 2415 project.

Ms. GIRVIN. I speak to this committee from a sense of great sorrow and contained rage for the manner in which I saw the 2415 process implemented in my State. I have only recently been in Indian law; I have not had exposure to the manner in which trust responsibilities are pursued.

Earlier this morning, we heard from Mr. George Bourgeois, who is the 2415 coordinator from the Solicitor's office, that it was not until at least May of this year that serious efforts were made to gear up and begin looking for 2415 claims subsequent to the 1977 extension.

There have been statements also made that this may, indeed, be due to the fact that sufficient allocations were not put into the budget for the implementation of 2415 nationwide, moreover, that the Department of the Interior itself fell subject to budget and hiring freezes. All the same, this Department is subject to carry out duties from a trust perspective in a fiduciary relationship to the Indian community.

Just highlighting, briefly, points in my presentation, in late June of this year we found, via a computer printout from the Solicitor's office, that possibly as few as 10 claims had been identified for the entire State of California since the 1977 extension effort, coupled with this fact at the same time we learned that the Government was imposing an administrative cut-off date of August 1 for the submission of all claims. We thought a serious emergency situation existed in California.

It was California Indian Legal Services who initiated the contract with the Bureau to assist in trying to search out more claims. This contract was referred to earlier today in testimony as an insurance contract—that the Bureau thought that if CILS stepped in, they could vouchsafe that they had done a thorough job in that State.

I draw your attention to the brevity of our contract, a 1½-month contract in reality, to look through all of the allotment files and tribal files in California. This task was an impossible task, one based on the disorganized filing system for Bureau files. A given allotment file can have information in five different States in nine different physical plants.

We also heard alarming news presented by a Bureau official to various of our 2415 researchers that there had been a purge of allotment files—a selective purge of allotment files in California—5 years ago. So, we have no way of guaranteeing whether, indeed, the documentation we could get through even had enough information to prove out a point.

We will need to conduct, given this fact, I believe, some investigations into the filing system in California, and possibly an extension effort would also have to call for field investigations given our potentially troublesome filing system in California.

Nevertheless, in little over a month and a half, we did identify approximately 700 claims. Some of these claims did contain multiple

claims. However, in the limited time available, and given the spread-out filing system, we could not vouchsafe for the total documentation of all these claims.

I might add that, at the time of negotiating the contract, I specifically asked whether there was a uniform filing system in California. I was told I could go to a local agency office and there would be a similar type of filing system in every office throughout the State. This proved misleading at best.

I would like to highlight that we feel we only touched the tip of the iceberg. There are many allotment files, given their spread-out nature throughout the Nation, that we could not thoroughly get through. However, in northern California, we did find in various allotment series patterns of forced fees.

For your information, a forced fee basically consists of the issuance of a fee patent to an Indian allotment holder prior to the expiration of the initial 24-year trust period without application by the Indian and without a valid competency certificate.

In the Round Valley series, a series of 1,241 allotments, we came up with 167 potential forced fee problems. These were all the files we could get through in Round Valley. We have been informed by the Bureau that they have only reviewed to this date 60 of the 167 forced fee potential situations from this one series and that they have, indeed, found at least 10 tax forfeitures.

There are 1,170 Round Valley files at this point which need research for tax forfeitures. We do believe, at least based on the communications in these files, that there is at least the potential of 150 to 300 additional forced fees in this series. This rests, in part, upon a letter found in the Round Valley series from the Round Valley agent to the Commissioner of Indian Affairs, indicating that he was going to issue fee patents prior to the expiration of the trust period and that he did not want to bring this to the Indians' attention, however, because he feared an uprising.

We also found forced fee patterns in the Susanville, Independence, and Reading series. However, only a very small percentage of these files were actually gleaned through by CILS.

In one of the allotment series, 37 of the files show land sold to third parties prior to the expiration of the trust period with typed-in names of the allottees appearing on the petitions for sale, as opposed to the requisite signature.

We also did not have adequate time to review 36 purchases by the city of Los Angeles prior to the expiration of the trust period in another series where the city was purchasing water right resources; 1,070 allotment files in the Susanville series still need further research.

We cannot believe that between the period of mid-November to the present, which is the period that our local area office has had to review the data we submitted, that they have come up with a thorough search, a thorough ferreting out of these claims. I indicated to you earlier that there are files all over the country for a given allotment. You will see that specifically in my testimony.

We also came across, scattered throughout allotment files, old age assistance liens. This is where a county welfare lien is attached to an Indian probated estate. The debt is taken out of an estate which is sup-

posed to be nonencumberable. We have not been able to adequately pursue this problem in California.

I believe that we need to think in the future of not just an extension but a systematic, organized, investigative process for getting through the allotment files. This will call for, as indicated earlier, various experts that were not available to us in our limited time with the project in California.

For instance, in pursuing the contract, we indicated that, for instance, in researching out some of these claims, for example, a timber trespass or an underappraised timber sale, we would need some expert witnesses there; we would need people who can look at the title history. We also indicated trespasses require surveyors. We did not hire surveyors; we hired legal research clerk people to document and cull through files.

We feel that without the build-in to the system of surveyors, of title abstractors, of the cooperation of various plants throughout the Nation that contain data for individual allottees in California, that a further extension probably would be as meaningless as what happened last time since 1977.

We need to have a coherent scheme, a coherent structure to the Bureau's approach. We do not want to again see a last minute, up against the wall, mad scurry to try to ferret out claims. That requires resources; that requires appropriations.

I have been informed that various of our claims, by the letters people received who were the parties to these claims, have been rejected on the grounds of insufficient documentation. There was no possible way in a month and a half that sufficient documentation could have been developed on all of our claims.

Also, we are very much aware, by correspondence from the 1977 extension period, that many claims then too were rejected for lack of supporting documentation. We believe it is the Bureau's responsibility to review this documentation process. We have pointed them toward patterns, toward potentialities and inferences of illegalities in given series. We have not ferreted them all out. We do hope they will pursue vigorously the leads we have given them. However, we would ask—and I endorse Anita's perspective on this one maybe from a different tack—that a special prosecuting team of some sort be appointed independent of the Department of the Interior to overview the criteria imposed on rejections, to overview and make sure that a systematic, coherent approach is developed in the future if any extension effort is obtained.

This, we feel is certainly important in areas of claims which involve both Government liability and third party liability. There are really very few claims I have been able to come across that do not involve a certain percentage of Government misfeasance. I would say this is true in under-appraisal situations. This would be true even in the forced fee situation.

We were told at the time of negotiating the contract that claims involving any potential Government liability would not be pursued by the Bureau. We believe this has got to be reevaluated. Possibly such criteria could be reevaluated by a special prosecuting team.

I also, in one leaving note, want to indicate problems we had with the due process notice that was made to the Indian community on this

whole project. The statute, by itself, reads that claims can be filed up and until April 1, 1980, at present. But we, by being an Indian Legal Services, became privy to a memo talking of the August 1 cutoff. As far as we know, the Indian community had not been aware of this super-imposed administrative cutoff.

We tried very quickly to make them aware of this in a 1-month process of TV spots, 34,000 bulk mailings to Indian organizations, radio spots, and appearances before various tribal representative bodies. Unfortunately, the Indian community in California, in reality, since we signed off on this contract on August 7 and then basically got our media effort out by September 1, had maybe as little as a month and one-half a month, given the staggered TV showing, to even know that there was a problem in the guarantee of whether their claims would be submitted if they were not in before the administrative cutoff date, not on all fours with the terms of the statute.

We are still receiving incoming complaints and claims forms from the Indian community generated by our advertising campaign, and we have no way of guaranteeing at present whether these will be considered or whether they can even be put into the mill and forwarded on to Justice.

My concerns, if I could just capsule it again, are of a systematic, rational approach being developed for the next go-round, someone that the Bureau maybe has to answer to in guaranteeing that notices get out and guaranteeing that the process is organized and time effective. I think a special prosecuting team independent of the Department of the Interior would serve this purpose.

I come today also with a resolution from the Intertribal Council of California which speaks on behalf of the 120 tribes and organizations throughout California, and I would like to introduce their resolution into the record.

Briefly summarized, it states that they are concerned that individual rights and tribal rights secured by 28-2415 shall be lost if there is not an extension granted. They base this on the fact that they know that the United States has failed to perform its trust responsibility in California.

Senator MELCHER. The resolution will be made a part of the record, without objection, at this point.

[The resolution of the Intertribal Council of California follows:]

INTER-TRIBAL COUNCIL OF CALIFORNIA, INC.

RESOLUTION #24-12-79

1 WHEREAS, the Inter-Tribal Council of California, Inc. speaks on
2 behalf of the interests of 120 Indian tribes and organizations throughout
3 California; AND

4 WHEREAS, the Inter-Tribal Council of California, Inc., is informed
5 that important Indian tribal and individual rights secured by 28 USC Section
6 2415 shall be lost if federal proceedings are not commenced by April 1, 1980;
7 AND

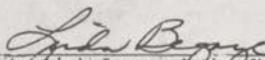
8 WHEREAS, the Inter-Tribal Council of California, Inc., knows that
9 the United States has continued to fail to perform its trust responsibility
10 in California by a timely, properly planned and comprehensive effort to
11 identify, document, investigate, and research 28 USC Section 2415 causes of
12 action; AND

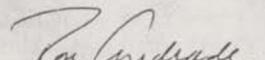
13 WHEREAS, the Inter-Tribal Council of California, Inc., knows of
14 instances in which the federal trust responsibility pertaining to 28 USC
15 Section 2415 has been disregarded; for example, the illicit destruction of
16 federal papers by federal employees, the lack of any comprehensible, access-
17 ible federal filing system, the lack of sufficient federal personnel assign-
18 ments to pay attention to 28 USC Section 2415 causes of action;

19 NOW, THEREFORE BE IT RESOLVED, that the Inter-Tribal Council of
20 California supports the national Indian view that an extension of the April 1,
21 1980 deadline to April 1, 1983, is essential to the proper discharge of the
22 federal trust responsibility for each aspect of 28 USC Section 2415;

23 BE IT FURTHER RESOLVED, that any legislation which extends the
24 April 1, 1980 deadline must contain language which requires special federal
25 employees, independent of Interior and Justice, to attend to 28 USC Section
26 2415 causes of action and which requires continuous reporting and oversight.
27

28 CERTIFICATION: This resolution was adopted at a duly called regular meeting
29 of the Executive Board of Directors this 15th day of December, 1979.

30 
31 /s/ Linda Begaye, Acting Chairman
Executive Board of Directors

32 
/s/ Ron Andrade, Treasurer
Executive Board of Directors



Senator MELCHER. I will have to allot the time now. We have until 4 o'clock to conclude the hearing; that means there are 50 minutes left. I want to check to see whether these witnesses are here.

George Goodwin?

Mr. GOODWIN. I am here, Mr. Chairman.

Senator MELCHER. John Echohawk?

Mr. ECHOHAWK. Here.

Senator MELCHER. Lucy Covington?

Ms. COVINGTON. Here.

Senator MELCHER. Guy Johnson?

Mr. JOHNSON. Here.

Senator MELCHER. William Nisbet?

Mr. NISBET. I am here, Mr. Chairman.

Senator MELCHER. Kirke Kickingbird?

Mr. KICKINGBIRD. Here.

Senator MELCHER. There are six witnesses and two of this panel left; that makes eight. In fairness to everyone—and I do not know if anyone wants to come back on a different day, but I would suspect not—I think we should just divide up the time, 6 minutes or 6½ minutes apiece, because this has to be concluded by 4 o'clock.

I do not want to cut you off, Pauline, but I can state that \$6 million has been appropriated by Congress for this year, for the 2415 project. I do not know if that is enough, but judging from what I have heard, it probably is not enough. But I wanted to let you know that in case you did not know.

Mr. FRIEDMAN. Mr. Brecher, attorney in charge of the southern section of the CILS 2415 project.

Mr. BRECHER. Mr. Chairman, I would like to spend my time with you to give you a few examples of what it is like to actually do this work because I was up to my elbows in it for 2 months in the summer.

I am an attorney in private practice; I do not regularly do Indian law, and I can tell you that this was the most frustrating, demoralizing job I have ever taken on. The number of records that we had to plow through would probably fill all the chairs in all the room behind the stand where you are sitting now. They are in total disarray, disorganized; many of them contain tissue copies of material written in 1898, et cetera, all of which is relevant to the issues we had to look into.

It took us about 3 weeks just to figure out where all the documents were. You have heard that not only are they in California, but they turn out to be in Oregon, Maryland, Washington, and wherever you go, whomever you talk to, they know that they do not have the record you need, and they do not know where it is either. So, just finding out where to locate the appropriate records is a major project.

Then, when you finally get your hands on the record, you find that, inevitably, the particular document you need to show what you want to show is not in that record.

I remember what we were trying to do was prove a negative. We were looking for unlawful actions, which usually means transactions which were not properly documented. It is much more difficult to show that the document is missing than that it exists; that is another basic problem we had.

The pattern of reservations in southern California is particularly complex, based on a series of old secretarial and Presidential orders extending back to the 1890's. Many of those reservations have been surveyed seven or eight times, and the surveys never come out the same.

I remember I went out to one reservation and talked to a tribal elder there who had a collection of maps of the reservation going back maybe 30 or 40 years. He had been there when a number of the surveyors were there. Every time, it sure came out that the Indians lost land or did not get land that they knew was theirs.

I was outraged; I was new to the game; and I said, "We are going to look into this." Then I started seeing that what we would need would be a surveyor, an historian, an archivist, a title searcher, and a whole panoply of experts to look into it. I did not say that to the man right then, but he looked at me with kind of a little smile and a far-away look on his face, and he said, "Nothing will come of this; we have been talking about it for 40 years, and nothing will come of it." And it won't because, as it turns out, we submitted that claim, and we were told by the Solicitor's office that there was insufficient documentation, and so that they do not intend to do anything about it. This is a pattern that we saw repeated over and over again.

I will tell you frankly that it really frosts me that the people who are passing on the claims on whether to go or not go with them are the very same BIA representatives who told us, with straight faces, that there were six claims for the State of California; they had been through all the records; and they had identified all the claims; and as a result, we did not need any extension; we did not need any other funding; and, frankly, they did not need us very much.

My researchers and I were looked at almost consistently as interlopers who were there to uncover a malfeasance that had been done. We received very little cooperation. Formally it was there; there were letters on file saying, "Give them every piece of cooperation," but, in fact, we were subject to petty harassment, inadequate facilities; we only learned of two incredibly useful documents that would have revealed a lot of major claims the last week of our program. When I asked why we were not told about it, we were told, "You didn't ask."

We found out that there is a list of appraisals done by the BIA on each piece of land every time a trespass complaint had come into them for the last 40 years; there is an actual log of those appraisals. We never saw it; we made two efforts to see it. One time a fellow was out to lunch; the other time he said he did not have time for us, and then our project was over.

We also found that there was a list of 300 terminated rights-of-way which we did not locate or did not know about again until the last week. We never had a chance to look at them. I will bet you that at least 10 percent of those rights-of-way were terminated because they were illegal.

We are not talking about nickel-and-dime claims here, I think some of them are in the range of \$500,000 to \$1 million each, and I can tell you, as a private attorney, I could make enough to retire on at 10 percent of the action that could be gotten down there. But the huge investigation costs preliminary to filing claims would discourage almost all private practitioners.

The problem is that there is no incentive for the government to prosecute. The BIA would be making a strong case of malfeasance against itself if it comes up with claims. That is why I am especially interested in making sure that it is an independent agency that does this work, and not in 2 months as we had. You need at least 18 months to 2 years to really get rolling. You have to find the contacts; you have to find the dirt.

We found a BIA employee who had quit and knew about where all the secrets were. We got to that fellow, but by the time we ran everything down, it was time to get our files into the very same agency that had failed to take action in the first place. I think that is a shocking situation, and, frankly, what I heard this morning sounded very much like a whitewash; in other words, "We spent this money; we called in CILS; we did everything we could; and the problem is taken care of." Well, I refuse to be part of a whitewash. The job that I did, I felt, was totally inadequate, ridiculously superficial, and in my private practice I would be ashamed to recommend action to a client on the basis of the kind of investigation that we were forced to do.

If 2415 is not extended and is not extended with adequate funds, it will mean that once again the Indians are made to suffer because of Government incompetence and inertia.

Then the phrase, "2415" will be added to the long litany of legal euphemisms which are used to part the Indians from their land. I think that enough is enough and that this is the committee to put a stop to this sort of thing and make sure the Indians get what is due to them. The land is not theirs any more; the least they are entitled to is the money that is due them.

Thank you for listening.

Senator MELCHER. Very good. Very good. You made excellent points.

Mr. FRIEDMAN. Cynthia Davenport.

Ms. DAVENPORT. I will try to be brief.

My name is Cynthia Davenport, and I am an attorney at Evergreen Legal Services and its native American project in Washington State. We provide services to both Indian tribes and individuals throughout the State.

In early spring of this year the Indian Advisory Board to Evergreen decided that one of the priorities of the three attorneys in our office should be work on 2415 claims. Unlike the other people that have been talking today, we did not have a contract with the Bureau to identify and document claims. The most important ramification of this is that we did not thereby have access to the files of the Bureau to systematically research them for possible claims. We had to rely on the individual tribal members and tribes to tell us what they thought their claims were. We then went to the Bureau and tried to locate the documentation for the claims in their files.

The obvious disadvantage to this procedure is that there are a lot of valid claims which went undiscovered.

Despite the limitations inherent in this type of procedure, we were able to uncover quite a variety of claims, including trespasses of various sorts, invalid rights-of-ways, and rripping of streams which caused trust lands to be washed away.

I think it is important for the committee, as it considers an extension of the statute, to understand the nature and types of claims that we are talking about. As an example, in northwestern Washington there are a number of public domain allotments which are off the reservations. In one particular case, there is a railroad which runs across some of these allotments, cutting them in half. The validity of the railroad's right-of-way is in question, but more importantly to the individual landowners involved, the railroad has been denying them access across the railroad tracks to the other part of their land. The railroad does this by requiring that the crossing be built according to railroad standards, that the Indian landowner himself must pay for these crossings. Often this runs into several hundred dollars, and the individuals obviously do not have the money. The Indian landowners is also required to pay for railroad insurance.

It is this type of claim that we are talking about many times.

The other panelists have expressed their frustration with the 2415 process; our frustration has been equally complete. I would like to illustrate with one particularly frustrating catch-22 type of example. There are computer printouts available, at least in the Portland area office of the BIA, of the title status reports of each parcel of trust land. These are very helpful in beginning research and investigation because they can pinpoint any questionable transaction regarding these trust lands; it gives you a good starting point.

In September or October of 1978, these land statute records from the Portland area office computer were unavailable because they were being transferred to a computer in Albuquerque; for that reason, we do not know, and we never found out. Once the records were put into the computer in Albuquerque, we were still not able to get them because, we were told, there was no computer printout paper available for the computer.

For one reason, also unknown to us, the Bureau then tried to transfer the records to a computer in Florida. Unfortunately, that computer does not speak the same language as the one in Albuquerque, and the rest of the time has been spent trying to translate from one language to the other. By May of this year the records were still not available.

Another very serious problem that we are facing in our area is a local U.S. attorney's office which appears not to be very interested in these types of claims. I had a telephone conversation with the person in that office who will be responsible for reviewing the claims submitted by the Solicitor's office, and he stated to me that, "frankly, these cases do not have a hell of a lot of sex appeal."

Senator MELCHER. Excuse me just a minute, Cynthia. I have been reading ahead of your testimony; and I noted that point before you reached it—about a U.S. attorney not being interested in 2415, and I think that is not peculiar to any area; I think that is the rule. No U.S. attorney is going to be interested in one of these cases unless he is told by the Department of Justice to pay some attention to it.

You can tell me if any of you know when the Justice Department has told a U.S. attorney, where you are practicing, to get busy on a 2415 case. Do you know of any, any of you? They have to be screened, do they not, by Justice, and then maybe the U.S. attorney is brought in.

Ms. DAVENPORT. No, sir. There are some claims which go directly from the Solicitor's office in the area to the local U.S. attorney.

Senator MELCHER. To a U.S. attorney?

Ms. DAVENPORT. Yes, sir.

Senator MELCHER. I mean a U.S. attorney in the district?

Mr. BRECHER. We were told today informally that claims under \$40,000 go directly to the U.S. attorney.

Ms. DAVENPORT. There is a Justice Department manual which specifies that certain cases go directly to the local U.S. attorney.

Senator MELCHER. Yes; but they are not going out and digging them up, are they?

Mr. BRECHER. They are not even prosecuting them when they are handed to them.

Senator MELCHER. I am just getting to the first point. I thought that was your first point, Cynthia. They are not busy looking for them.

Mr. FRIEDMAN. They are not digging them up; they are burying them.

Senator MELCHER. Pardon me?

Mr. FRIEDMAN. They are burying them.

Ms. DAVENPORT. My point is that it is very difficult to get a claim filed. The local U.S. attorneys review the cases which are given to them by the local Solicitor, and if they are not very interested in them, or if there is any difficulty at all with them, they are going to reject them, or not prosecute them vigorously.

Senator MELCHER. There is one other point, and that is that the Solicitor's offices are often waiting until the last moment to tell an Indian claimant that a particular claim will not be filed. It is a very valid point if they wait for the last 90 days or even the last 4 or 5 months of a deadline and it is not going to be filed: What is a claimant supposed to do?

Joe, I do not know how your calendar is, but most practicing attorneys cannot stop whatever they are doing and just pick up and say, "Oh, you only have 90 days or 60 days left; this will take priority over all the rest of my clients." I do not think that happens, does it?

Mr. BRECHER. No, sir.

Senator MELCHER. It cannot happen.

Ms. DAVENPORT. There is also the question of whether they would even be able to get into court.

Senator MELCHER. In that timeframe?

Ms. DAVENPORT. Whether the applicable statute would already have run, or whether they could meet the jurisdictional amount to get into Federal court.

Senator MELCHER. I am going to gavel you. I hope you do not mind. This is very excellent testimony; you have made some very good points.

To be fair to the rest of you, we will get right on to George Goodwin, director of claims, Minnesota Chippewa Tribe.

Thank you all very much.

George.

STATEMENT OF GEORGE GOODWIN, EXECUTIVE DIRECTOR, MINNESOTA CHIPPEWA TRIBE, ACCOMPANIED BY CRAIG COBE, PROJECT DIRECTOR, CLAIMS RESEARCH UNIT

Mr. GOODWIN. My name is George Goodwin. For the record, I am the executive director of the Minnesota Chippewa Tribe.

Senator MELCHER. We have your prepared testimony, George. Without objection, it will be included in the record at this point.

[The prepared statement of Mr. Goodwin follows:]

STATEMENT OF GEORGE GOODWIN, EXECUTIVE DIRECTOR
MINNESOTA CHIPPEWA TRIBE
HEARINGS BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
December 17, 1979

Mr. Chairman, and members of the Committee, my name is George Goodwin, and I am the Executive Director of the Minnesota Chippewa Tribe. I am accompanied by Mr. Craig Cobe, who is the project director of our § 2415-claims investigations. We welcome this opportunity to testify at these oversight hearings on the Statute of Limitations.

The Minnesota Chippewa Tribe has 30,000 members, which makes it one of the Nation's largest tribes. It occupies six reservations: Fond du Lac, Grand Portage, Leech Lake, Mille Lacs, Nett Lake, and White Earth. Most of our land is allotted. Chippewa lands have been improperly acquired through deeds or patents based on tax forfeiture or adverse possession while allotments were still in trust or restricted status. Land has been acquired without the consent of all the beneficial owners or the approval of the Bureau of Indian Affairs. Trespass on Chippewa land has included unauthorized use for grazing; raising crops; cutting timber; harvesting wild rice; hunting and fishing; mining and quarrying; and rights-of-way for roads and utility lines. Most of these abuses took place before 1966.

The Minnesota Chippewa Tribe supports extension of the Statute. April 1, 1980 is the deadline for the United States to file damage actions on behalf of Indian tribes and Indian individuals with allotted trust land for trespass that occurred prior to 1966. Unless the deadline is extended, most of our claims will not be filed and hundreds, if not thousands, of Chippewas will suffer for it. Few can

afford the expenses of litigation on their own behalf to overcome the failures of the United States as trustee.

When the Congress enacted P.L. 95-103 in August 1977, which granted an extension to April 1, 1980, it could not be aware of the number of potential claims that would arise once investigation of the claims was begun in a comprehensive and thorough manner. Most of these were not "new" claims, but old, persistent claims that had never been properly researched by the BIA so that they could be referred to the Solicitor's Office and then to the Department of Justice.

Moreover, with respect to the Minnesota Chippewa Tribe, a 1977 decision of the Minnesota Supreme Court in the Clapp Amendment cases greatly broadened the scope of our claims, the impact of which the Congress could not anticipate. The Clapp Amendment, enacted by Congress in 1906, ^{had been interpreted for many years to} state ^{adult} that trust patents issued to mixed-blood White Earth Chippewas were automatically converted to fee patents and ^{had} subjected the land to taxation. However, in State of Minnesota v. Zay Zah, the Court ruled that the Chippewas had a constitutionally protected right to maintain the trust and nontaxable status of their allotments for the term of years set forth in the trust patents. Allotments with unexpired trust periods were continued in trust status indefinitely by the Indian Reorganization Act of 1934. This decision added greatly to the number of allotments that require investigation.

For the past 20 months the Minnesota Chippewa Tribe has been conducting intensive and comprehensive research into trespass claims. Its research is financed by a contract with the BIA under P.L. 93-638. As a result of our investigations and in the new light of the Zay Zah

decision, we identified more than 8,000 allotments which might be subject to trespass claims. Owing to staffing and time constraints, we have been able to examine closely only 3,000 of these--well under half. In most of these cases *it has been determined that there is no basis for litigation.*

Nevertheless, out of these 3,000 allotments there remain 492 active cases involving 32-40,000 acres of land. The Solicitor's Office has referred 62 of these to the Department of Justice and has the rest under review.

On the basis of our experience, we would project that a thorough examination of the more than 5,000 allotments which we have not yet been able to research carefully would result in an additional 760 active trespass cases, involving several more tens of thousands of acres of land. If the deadline is not extended, most of these claims will not be filed; and, in the rush to meet the deadline, some claims that would not be filed, given adequate research time, will be filed--causing unintentioned hardship to non-Indian landowners who will ultimately prove to have good title. Many of our non-Indian neighbors support us in seeking the extension. We estimate it will take an additional 3-3 1/2 years to complete the work before us. With more funds for staff the time could be shortened.

Mr. Chairman, I have emphasized damage claims for trespass in my testimony. This is because less than 3% of the Chippewa cases that are under consideration for litigation involve breach of contract. We urge that the Statute be extended for breach-of-contract cases as well.

We recognize that this matter has been before the Congress

many times and for a long time. But if the April 1 deadline expires, failure by the United States to file all possible complaints by the deadline would itself constitute a breach of trust. According to the Office of the Field Solicitor, Twin Cities, Minnesota, the recent Court of Claims decision in Mitchell v. United States 591F. 2d 1300 (Ct. Cl. 1979) "provides clear authority for allottees or their heirs to claim damages in the event the Bureau [of Indian Affairs] does not pursue as completely and thoroughly as possible the § 2415 claims investigation procedure and recover all possible damage claims for the benefit of allottees or their heirs." (Letter attached.)

We believe that extending the deadline will shorten the time these claims will trouble the Federal Government, third parties, and the tribes and it will lessen the financial and human costs.

Thank you for this opportunity to testify.

Mr. GOODWIN. With me is Craig Cobe, the project director of our claims research unit with the tribe.

In the interests of brevity, I would like to make a couple of points. One, we dealt with the nuts and bolts of the research at the tribal level through a contract with the Bureau. Craig has been working on this project now for approximately 20 months altogether.

We definitely favor an extension of the statute primarily because of the volume of work that we see is needed to get our work done before it is even submitted to the Solicitor and on to the Justice Department.

We have in our six reservations which comprise the Minnesota Chippewa Tribe some 8,000 allotments. During the course of the research, we have been able to research some 3,000 of those allotments. Craig will give you more details on some of the statistics. But I think what we are finding is that there are many old claims—not new claims. There was some concern that we are digging up new claims by extending the statute. But these are old claims that have been listed on the books for a number of years.

We have had numerous Indian people come to us and say, "That road is built across my grandfather's allotment; he was never compensated for it," and, sure enough, if we check into these records, we find that out.

The other point I would like to make is, through our research, if allowed to be extended, we can clear up any unclouded title issues. We have a great number of clouded title issues within the remaining 5,000 or so allotments people may have title to. We feel that if we are allowed to continue the research, with adequate resources and adequate time extension on the statute, we can clear up these titles, many of which are in non-Indian ownership right now.

Additionally, we have had a case come up in Minnesota called the *State of Minnesota v. Zazaw* which was decided in the State supreme court. This dealt with the taxation of an Indian allotment which further complicated our research and required that we do additional work.

These kinds of things were not projected in our initial undertaking of the research project, and we suspect that those kinds of things will be coming up in the future.

We have discovered old age assistance liens taken on Indian allotments, and some of these are also part of research that we are submitting to the Solicitor.

In the case of brevity, I would like to have Mr. Cobe cite some of the statistical data that we have pulled together and have that also cited for the record.

Senator MELCHER. Mr. Cobe?

Mr. COBE. Mr. Chairman, most of our statistical data you will find in the package that we submitted. These are percentages. Most of what I have prepared is the fact that we have investigated 3,000 allotments.

Senator MELCHER. Have you given us those data?

Mr. COBE. Yes; they have been given to you. It is in the prepared statement.

Senator MELCHER. All right. Please go ahead, Mr. Cobe.

Mr. COBE. There are 8,111 allotments comprised in the Minnesota Chippewa Tribal Reservations. We have covered 3,000 of those allotments in our investigation. The efforts we have made and the research techniques we have developed were developed with a great deal of

assistance from the field solicitor at Fort Snelling and Twin Cities and the Minnesota agency of the Bureau of Indian Affairs. To our knowledge, the intense research born of these efforts is nationally unsurpassed.

Regardless of the fact that research in Minnesota has been great, we have been slowed and hampered in the research effort. We would like to point out that Congress, even though they have extended the statute twice, failed to make sure the Bureau was supplied with adequate funds. It was not until the last month of 1978 that the Minnesota agency received funds specifically for 28 U.S.C. 2415.

In the past year, we have been operating on \$200,000, from which we have employed eight full-time people, and during the summer we have retained as many as 18 to 20 temporary researchers.

To insure the committee that the researchers and my staff do an accurate job, we will be submitting for the record our research plan and the documents we have found that we need to complete a case.

Senator MELCHER. Without objection, they will be included in the record at this point.

[The prepared statement and related material follow. Testimony resumes on p. 220.]

STATEMENT OF CRAIG COBE, 2415 PROJECT DIRECTOR
MINNESOTA CHIPPEWA TRIBE
HEARINGS BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

December 17, 1979

Today we are here to bring to this committees attention, our statistical results which you will find within the enclosures. But, more important, we are here to testify to the considerations that are essential in order to complete the investigation called for by the Statute of Limitations.

The efforts we have made, and research techniques that we have developed, were developed with a great deal of assistance from the Field Solicitor at Fort Snelling in the Twin Cities and the Minnesota Agency of the Bureau of Indian Affairs. To our knowledge, the intense research born of the combined efforts of these agencies is unsurpassed when compared nationally.

Regardless of the fact that the research in Minnesota has been comparatively successful, there are factors which have slowed and hampered research efforts.

We would like to point out that Congress, even though they extended this Statute two times, failed to make sure the Bureau supplied funds for the investigation. It was not until the last month of 1978 that the Minnesota Agency received funds specifically for the 28 U.S.C. §2415 Statute of Limitations investigation.

We have received \$200,000.00 in which we have employed eight (8) full-time staff, and were supplemented by ten (10) temporary researchers during the summer months. To assure the committee that our research is thorough we will be submitting for record, an outline of our research methods. We would also like to point out that our researchers are familiar with the land they are researching and the Indian people they are dealing with. Also, their primary function is to research trust land discrepancies that would apply to the Statute of Limitations.

We would like it to be recognized that the research unit of the Minnesota Chippewa Tribe has researched and identified more cases in less than two years, than did the Bureau in the twelve (12) years prior, in that same geological area.

If our budget request is approved for FY 1980, then we can continue our present research and supply the Field Solicitor with the land surveys needed for present cases.

Based on the time frame that we have worked on in the past year and a half, the Minnesota Chippewa Tribe is requesting that this committee consider a recommendation for an extension of this Statute for at least five (5) years. Three (3) years to do the research and two (2) years to process the findings.

We would like to point out that the investigation itself also has some mutual benefit to Indians, Non-Indians, and businessmen who deal with land and land title problems every day. After investigating the Bureaus' land documents, we have established a means by which questions which presently cloud title on reservations, can be answered and could remove the cloud. This is very beneficial for these reasons.

1. Non-Indians who presently believe they hold good title to lands on the reservation, and indeed do, would be able to clear that title and hold a marketable piece of property.
2. Those Non-Indians who presently believe they hold good title and the investigation shows that title is questionable, can have the questions settled now, as opposed to waiting twenty (20) years after they have improved that land, and running the risk of losing title and their improvements.
3. During the investigation, we believe real estate prices would stabilize and improve as the investigation answered more questionable title.
4. We believe that after the investigation is done, Banks, Loan Companies, Real Estate Agents, and Title Insurance Corporations would be more willing to deal with land within the boundaries of the reservation. Also, they would

have a better understanding of the nature of Indian trust land and the procedures needed to make that land marketable.

We believe that the research techniques that we have developed can be applied nationally. The committee would be able to see results quickly and the end of the investigation would not be imaginary. Every month statistics could be compiled and after six (6) months, these statistics would be reviewed. Using the review we would project. If that projecting were to show that the work could not be done in the amount of time allotted, using those same resources used the first six (6) months, then the resources would have to be beefed up, in order to shorten the time frame.

The testimony you have heard describes the problems, inadequate funding, non-cooperation from all agencies, and lack of personnel. We agree that those are problems, but, we also feel there is a problem in the procedures, there are none. With no authority other than our own, we have contacted the various government agencies in Washington, Aberdeen, Kansas, and Minneapolis, not to forget the Minnesota Agency in Cass Lake. Over the past year and a half, after using these contacts, we have established set procedures to get the research done.

Gentlemen of the Select Committee on Indian Affairs, what we are saying is, that there is an end in sight. There is a process that can be used to clear up this problem. Neither the Bureau nor the government had ever set down a procedure. So, when we started one and a half years ago, we experimented and came up with one. The procedure has had to be refined now and then, but it works.

We feel that after recognizing that a working procedure has been established, that allowing the Statute to run without an extension would be an injustice and unfair to the individual Indian that the Statute was to originally benefit. We would like to continue our research rather than have the Bureau of Indian Affairs make an initial attempt since they have shown a lack of procedure and progress.

This is the reason we would like to have the Statute of Limitations extended, so that we may have an opportunity to bring claims on behalf of our people who have

lost their lands by illegal means, whose lands have been trespassed upon, and whose timber has been cut from their lands, with no more reason than, 'the belief that they are just ignorant Indians who don't know what to do with the land anyway.' This responsibility to research and identify claims on behalf of the individual Indian was not pursued wholeheartedly by the Bureau. Now we, the Indians, the ones that this investigation was supposed to have been done for, ask that we might have the chance to fulfill that responsibility.

DOING CONSENTS TO SALE

- 1) List: Allotment Number
Allottee's Name
Legal description of land involved
County where land is located
Date the allotment approved
Date the Trust Patent issued
Date of Sale
--this information is taken off the A & E cards and the sale cards.
- 2) List the heirs to the tract of land at the time of sale.
--the sales folder contains an Abstract of Probate, which shows the history of people who held interest in the tract. It is the ultimate determination of heirship at the time of sale. However, at times it is incorrect. (Eg. - an heir dies prior to sale, his heirs are probated prior to sale, and the new heirs are not considered in the sale) Therefore, at times it may be necessary to re-check probate determinations to make sure the list of heirs is correct. This can be done by checking the back of the A & E cards or better yet, (but more time consuming), going and checking the probates of the deceased heirs up to time of sale.
Note*** The actual probates are found in the individual files of each Indian. For Indians who were allotted land, go to the Leech Lake or White Earth files. For Indians who were not allotted land, go to the 006 files, or I & H cards.
- 3) Check the birth and death dates of each of the heirs.
--this is important in determining if an heir was actually dead at time of sale, or if he was a minor. The significance of being a minor will be explained later.
--Birth and death dates can be found on A & E card, I & H card, or files.
- 4) Check if "consents to sale of inherited lands" were sent to all heirs.
--there is usually a form letter in the sales folder which begins, "We are enclosing a form, "Consent to sale of Inherited Lands," and is signed by the Superintendent. This is a form sent to the heir with a consent to sale form to determine if the heir is interested in selling his interest in the land. On the form enclosed in the sales folder there is often a list of the heirs to whom consents were mailed.
- 5) Check if any of the heirs made "Application for Fee Patent or for sale of Indian Land."
--this is a request whereby one or more of the heirs makes a request that the agency try to sell the land. It does not operate as a consent, but only allows the agency to contact other heirs, take bids, appraise the land, and make other determinations prior to sale. It does not authorize the agency to actually sell the land.

6) Check if all the heirs consented to the sale.

--All the heirs must have consented to the sale before the sale is sent to the Director for approval, in order that the sale be valid. Very often, the land was sold if there was a majority consent, or even if only one heir consented. This would render the sale defective.

--to check if all the heirs consented, check the consents to sale. These forms are enclosed in the sales folder and are signed by the heir. Usually, only copies of the actual consents are in the sales folder.

Also check Letter of Transmittal. This is a letter from the Superintendent to the Area Office which recommends sale sent to the Area Office. On it is summary of the number of heirs, if all were notified about the sale, the number of heirs that consented, if minors or incompetents were involved, etc.

--There are several issues involved in examining consents to sale.

Some of them are:

- each of consent by all the heirs; phony consents
- consents received after the sale are not valid
- failure to contact heirs that were known or should have been known
- if a minor was involved. A minor in these cases is an heir who was under 21 years of age at time of the consent. A minor could not consent on his own. Only a court appointed guardian could consent for a minor. To be a valid consent by a guardian for a minor, there must be:

*A court order establishing the person as guardian of the minor

*A court order allowing the guardian to sell the land

Note*** Check 006 files for evidence of guardianship. If there is none there, it will have to be checked out at the County Courthouse.

--In the absence of either of these two court orders, the guardians consent is not valid.

- Incompetency. If an heir was found to be incompetent, his consent was not necessary. However, often it seems an heir is declared incompetent for no apparent reason. There is little evidence of incompetency in the files, but note it. Often, an heir is declared incompetent in one sale and not in another.
- Nonresponse does not operate as consent, but lack of objection is not express consent.

7) Check Certificate of Appraisalment

--This is a form in the sales folder appraising the value of the land. Make a comment if it looks suspect (ex. 80 acres of timber land sold for \$200.00, appraised is more by the purchaser). Make a reference to it if it's not in the folder.

8) Check Journal Voucher

--This is a form which lists the heirs and sets out the amount of money paid to each from the proceeds of the sale. The proceeds should go only to the heirs, except that probate fees and sales costs may be taken out of the proceeds. The proceeds should go for

no other purpose than to pay probate fees and the heirs. Proceeds could not be used to satisfy Old Age Assistance liens or any other liens, but often were.

- 9) Check the Conveying Instrument.
 - the kinds of conveying instrument were:
 1. Fee Patent issued to the purchaser. This is okay only if all the heirs consented.
 2. Order Transferring Inherited Interests to the purchaser. This is okay only if all the heirs consented, and was often used when all the consents were not obtained.
 3. Deed to Restricted Indian Land. This is a conveying document from the heir to the purchaser. All of the heirs had to sign a deed in order that it be valid. Also, note that a deed supercedes consent. That is, if an heir signed a deed, it operates consent and therefore it is not necessary that he also sign a consent to sale form.

- 10) Check other documents alluding to sale
 - successful bids by purchaser
 - report on sale
 - any correspondences alluding to the sale, etc.

- 11) Write a narrative explaining your findings and whether you believe the sale to be valid or whether you believe that there is enough wrong with the file to warrant a claim.

- 12) Copies should be made of the following, and if they are missing from the files, make notes of that.
 1. Copy of letter to heirs soliciting their consent, this usually has a list of heirs indicating to whom consents were sent and if consents were sent in.
 2. Letter of Transmittal
 3. Abstract of Probate, Summary of Heirs
 4. Application(s) for Fee Patent or Sale of Indian Lands.
 5. Consents to sale
 6. Certificate of Appraisement
 7. Successful Bids
 8. Report on Sale
 9. Conveying Instruments (Fee Patent or Receipt of Fee Patent, Deeds, Order Transferring Inherited Interests)
 10. Journal Voucher
 11. Any other relevant documents or correspondences.

- 13) Keep a list of incompetents and a list of minors and their purported guardians so that these can be checked out.

- 14) Keep a list of consents. That is, where it seems important to get a copy of the actual consent, keep a list so as to facilitate the making of request for the consent.

15) Send for missing documents.

16) Request copy of Trust Patent if it is not in the folder.

NOTE***If there is any evidence of collusion between the agency and the purchaser, make a note of it in the narrative.

eg. -bids just above the appraised value of the land
-recommendations by the agency that the purchaser adjust his bid
-and almost anything else possibly imaginable.

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§2415 CLAIMS INVESTIGATION

Part A. Issues for Investigation

- I. Unauthorized Use. The following types of unauthorized uses, if they took place prior to 1966, may constitute claims:
1. Placing a structure on the property. This includes summer homes, barns, garages, chicken coops, duck blinds, or any other building, and less permanent structures, too, such as ice houses which may be pulled off a lake onto trust or restricted property when not in use. It also includes non-buildings--fences, drain tiles, etc. The building, fence, etc. need not be entirely on the land--only a few inches is a trespass, if you are sure where the boundary is.
 2. Grazing. Cattle are the most common, but sheep, goats, etc. should be watched for. Grazing trespasses are frequently accompanied by other types of trespasses, such as placing of fences, destroying fences already in place, and even raising of forage crops.
 3. Raising crops. Using trust or restricted lands for the raising and harvesting of crops of any kind is a trespass. This includes cranberry bogs, rice paddies, Christmas trees, raising forage crops for pasture animals--anything, in addition to the more traditional crops. Again, the entire parcel need not be so utilized. If just a corner is used, it is still a trespass.
 4. Harvesting natural growth. This includes harvesting wild rice, wild berries, hay or other wild growth, as well as cutting timber, collecting felled timber or even firewood.
 5. Removal of natural resources. Mining, quarrying sand, gravel or stone, etc. would be trespasses. While there may be an instance or two where large operations took place on a tract, it is more likely that these would take the form of spill-overs to trust or restricted properties from adjacent fee tracts.
 6. Rights of way. Roads, even though they may have been used for 50 or 100 years, are nevertheless trespassory if easements were never granted. Likewise telephone lines, electrical lines, pipelines, sewers, etc. In some areas electrical and telephone lines have been placed within valid county or state road rights of way. These may, nevertheless, be in trespass unless a separate easement has been granted to the utility company. On tracts which have been reacquired in trust, there may be valid easements which were acquired during the time when the land was not in trust even though the Bureau records do not reflect them.
 7. Hunting, fishing or trapping. In addition to constituting a criminal violation, hunting, fishing or trapping on trust or restricted lands without permission is trespass. These would be very difficult to establish, however, so it is unlikely that any old cases of this type will be located.

II: Damage to Property. Damage to real property or personal property which occurred prior to 1966 may be actionable.

1. Fires. Fires, whether set on the property or set elsewhere and allowed to burn onto the property are trespassory if a human agent can be established as the cause. Fires caused by lightning of other "acts of God" are not actionable.
2. Flooding. Flooding, like fires, is actionable if someone caused it--by damming a stream, by draining adjacent land onto trust or restricted lands, by changing the configuration of adjacent land so that water backs up onto trust or restricted lands. It is not actionable unless someone took a specific course of action which resulted in the flooding.
3. Excavating, dredging or filling. This includes depositing fill in marshes, lakes, rivers, etc. or anywhere else on the land, or the deposit of anything--garbage, used cars, refuse of any kind. Excavating areas or dredging soil from marshes, rivers, streams or lakes is actionable, including construction of drainage ditches or canals.
4. Damage to structures or personal property. This includes fires, floods, vandalism, using personal property, such as machinery or equipment, in an improper or unauthorized manner resulting in more rapid depreciation than otherwise would occur.

III. Debts. Money which was due or became owing before 1966 may constitute a claim.

1. Fees, rentals or payments due on contracts. This includes rents not paid for lease of trust or restricted lands, fees for other types of land use, crop share payments, timber fees, mineral royalties--any payments specified in contracts of any kind. It also includes purchase consideration for trust or restricted property sold, if all or part of the purchase price was not received. Amounts paid from the proceeds of sale to third persons in satisfaction of liens, such as Old Age Assistance Liens, when the liens never validly attached to the lands, should be considered. The Departmental position is currently that such amounts are not recoverable, though this is presently being reconsidered.
 2. Contract breach. Damages for failure to perform the terms of any lease, contract or agreement, for doing or causing to be done any acts prohibited by a lease, contract or agreement, or misperforming any such obligation should be recovered. The terms of the document itself may spell out the amounts of money due in the event of breach. If not, the amount will need to be determined by what the actual damage or loss was.
- IV. Holding or Claiming Title Through Improper Acquisitions. The following methods of acquiring title to trust lands are improper and, in many cases the title to the lands can be recovered. Recovery of such lands will not be barred in 1980, but claims can be made for preventing the rightful owners from occupying the land, and these claims will be barred if not filed prior to 1980.

Tax deeds improperly issued while the allotment was still in trust or restricted status following:

- a. Forced fee patent. Where fee patents were issued to allottees or heirs without application and prior to expiration of the trust period, and the lands were then taxed and forfeited. In order to be actionable, the original trust period must extend or have been extended beyond June 18, 1934, and the allottee must never have sold the land. The lands need to be recovered as well as damages. Any of the previously listed types of uses or damages may be involved as well and should be explored. In the event the trust period expired prior to 1934, damages could still be involved for the period of trust.
 - b. Clapp Amendment and determination of mixed blood status. This is applicable to the White Earth Reservation only, referring to allotments to mixed blood Chippewas who received trust patents, did not sell their lands, but the lands were nevertheless taxed and forfeited. In order to recover the land as well as damages, the period of trust must have been extended beyond 1934, though trespass damages would be recoverable to the extent of the trust period even if the trust period expired.
 - c. Ineffective certificate of competency. Certificates of competency which were not effective did not lift the restrictions on alienation, and the allotments should be treated as though the certificates had never been issued. Again, in order to recover the land, the period of restrictions must extend or have been extended beyond June 18, 1934, and the lands must not have been sold by the allottee or his heirs. The following certificates were ineffective:
 - (i) Certificate to a person deceased on the date of issuance.
 - (ii) Certificate issued with a deferred effective date (30 days from issuance or upon recording in the county where the land is located or 30 days after recording) where the person died prior to the effective date.
 - (iii) Certificate for which there was no application.
 - d. None of the above. Where there was no forced fee patent, ineffective certificate of competency or Clapp Amendment application, but the land nevertheless was taxed and forfeited, and the trust or restricted period is still in effect, the land must be recovered in addition to use and damage recovery. Use and damage recovery is still appropriate for the period of trust or restrictions even though it may have expired.
2. Unapproved deed from the allottee or heirs. If a deed was executed by the allottee or heirs during the trust or restricted period without the necessary approval, the land should be recovered unless the trust or restricted period has since expired. In any event, damages should be recovered for use during the trust or restricted period however extensive.

3. Deed or a state quiet title action based on alleged adverse possession while the land was in trust or restricted status. A deed or quiet title action based on adverse possession of an allotment after one of the three ineffective methods of terminating the trust or restrictions--or of allotted or tribal land while the period of trust or restrictions clearly existed--has no more validity than a tax forfeiture, and the discussion of Section IV(1) above applies here equally.
4. Deed or patent from the United States without consent of all beneficial owners. Since 1934, deeds by the United States of allotted lands without full consent of all beneficial owners are not effective on reservations to which the Indian Reorganization Act applies, though it is not clear whether they are ineffective in toto or only as to those undivided interests for which consent was not obtained. In the latter case, title should be recovered of fractional undivided interests, though damages could probably only be recovered for waste or for fractional shares of income, in the event the property produced income. In the former case, full title should be recovered plus use and occupancy damages. The question is currently pending resolution in the Solicitor's Office.
5. Swamp land or school land selections illegally or erroneously made. Title to state selections for school lands and swamp lands has already been litigated on some reservations. On those where it has not, the validity of these selections must be determined, and if invalid, the lands plus damages must be recovered.

Part B. Factual Data Necessary for Submitting § 2415 Claims.

- I. For each and every land related claim, including contract breach claims where the contract involved use of land or personal property located on land, the following will be necessary:
 1. Land description.
 2. Title history from Bureau records, including applicable treaties and any of the following which exist: trust patent, restricted fee patent, fee patent, certificate of competency, application for fee patent or certificate of competency, deeds, leases, easements. To the extent possible, copies of relevant documents must be provided. At a bare minimum, precise dates, names and a concise description of the documents must be provided.
 3. Title history from county records, preferably by means of an abstract, unless the trespass is in the nature of a boundary encroachment, in which case an abstract on the adjacent parcel in the direction of the encroachment should be provided. This need only extend back to the date of the initial trespass.
 4. Specific date or dates on which trespass took place.
 5. Names and addresses of all persons thought to be responsible for the trespass.

6. Names and addresses of all persons thought to have witnessed all or any portion of the trespass, including the investigator.
7. Educated guess as to the fair market value of the portion of land used or occupied for each year of use. A full appraisal will be needed prior to trial, but is not necessary at the time of filing.
8. Educated guess as to the cost of restoring the land to its original condition. A full appraisal will be needed prior to trial, but is not necessary at the time of filing.
9. Narrative description of the claim.

II. For each contract claim, the following will be necessary:

1. Copy of the contract, lease or other agreement.
2. Addresses of the persons named in the contract and names and addresses of anyone else involved.
3. Detail of payment or payments which were received, if any.
4. Copies of all correspondence, either from Bureau records or tribal or individual records, relating to the contract and payments made thereunder.
5. Description, including names, addresses, dates, places, etc., of any damage resulting from breach of the contract, including an educated guess as to monetary value of the damage.
6. Narrative description of the claim.

Part C. Action Plan

I. PHASE I (To be completed by August 15, 1978)

1. Each Agency is to modify the Notice provided by the Washington Office (attached hereto) as appropriate, for example by inserting the appropriate Agency name and address, by deleting instructions not relevant to the Agency and adding necessary additional information, and mail a number of copies of the modified notice to each tribe, band or community for posting in conspicuous places, for inclusion in appropriate newspapers and for announcement at all tribal or other public meetings. The attached intake form should also be modified as appropriate and a large supply provided to each group. The tribes should be requested to maintain a supply of the intake forms in the tribal offices, where appropriate to publish a copy of the form in newspapers, and to distribute them at public meetings. It should be stressed in the cover letter to the tribes that the forms must be received by the Agency no later than December 1, 1978.

2. Agency personnel, using existing Agency data and any additional data readily available from the Title Plant, are to complete a land status map for each reservation (for large or scattered reservations, this may be in several sheets) showing the location of each and every piece of land currently held in trust or restricted status, either for the tribe or for individual Indians. Superimposed on the land status map should be all validly existing rights-of-way for roads, electrical or telephone utility lines, pipelines, or other easements validly acquired or granted.

Contemporaneously with preparation of the land status map, Agency personnel should prepare, for each tract of land which is currently held in trust or restricted status, two forms:

- a. DI-7 or similar form, which is a blank diagram of a section of land. On this form should be drawn a diagram of the tract of land with the validly existing rights-of-way or easements included. The land description should be included on the form, along with an indication of whether the land is in trust status or restricted status, and whether for a tribe or an individual. If it is an allotment, the allottee's name and number should be included. At the bottom of the form provide additional information about the rights-of-way, such as to whom it was issued, what kind it is and when it was granted. Also indicate if it was granted by Act of Congress.
 - b. Physical Investigation Form, which should be completed only to the extent of listing the land description, whether it is held in trust status or restricted status, for whom, and again, if it is an allotment, the name and number of the allottee. The validly existing rights-of-way should be listed on the form, and also the validly existing use rights. This includes any currently outstanding leases or permits, the date of entering into the lease and its expiration date and a brief description of the use which the lease or permit allows. Also should be noted any past leases or valid uses which might still be evidenced on the land. Examples would be current or past leases which authorized clearing, placing structures on the land, construction of roads, driveways, etc.
3. Appropriate Agency personnel should review reservation profiles for reservations and groups within the Agency's jurisdiction and the claims investigation overview contained in the Field Solicitor's letter of September 7, 1977, bearing in mind that the profiles were intended to be a starting point rather than complete and exhaustive. Any major issue area not included should be identified and the Area Project Leader (APL) should be provided with a narrative description along with suggested guidelines for how the issue should be investigated, the time and personnel required, and the dollars necessary to accomplish the investigation.

The issues already identified in the profiles should be reviewed carefully to insure that this action plan will generate the kind of information necessary to resolve the issues. Any proposed changes, additions or deletions to the action plan should be discussed by memo, and if appropriate by telephone with the APL.

4. Agency personnel should begin as soon as possible providing requested information on cases already submitted to the Area Office or Field Solicitor's Office. As soon as any backlog of these requests is eliminated, these requests should be given priority and be handled on an as-received basis. If the data has been requested by the APL, the information should be provided to him. If by the Field Solicitor's Office, it should be provided directly there with a copy to the APL.

II. PHASE II (To be completed by December 1, 1978)

1. The land status maps and the two sheets prepared on each trust or restricted tract should be utilized to begin physical investigation of each tract. Any agency personnel with the capability to locate parcels on the ground should be freed for this purpose. Other possibilities are contracting with the tribes, securing details of appropriate Area Office personnel, securing a survey by the Bureau of Land Management, contracting with county or other local surveyors, and contracting with the forestry or civil engineering departments at local colleges and universities to give practical (but unpaid) experience to forestry and engineering students. As each Physical Investigation Form is completed, it should be returned with the attached diagram to the Agency.

The Agency Project Leader (AGPL) should review the Forms as they are returned, combine the Forms with other forms or files generated through other review processes (discussed below) and route the Form to the appropriate Agency branch for additional information as indicated. For example, if a timber trespass is indicated on the Form, it and whatever additional information is included should be routed to the Forestry Branch for any additional information which the Branch might supply and for investigation if necessary. It is suggested that the AGPL also maintain a card file, preparing a card for the land covered by each form of any kind which he or she receives, categorized by reservation and then by land description, noting on the card which forms have been received relating to that tract, which branch within the Agency has been asked for additional information, and when that additional information is expected to be received. A separate category of cards should be prepared for contract claims unrelated to lands. When the files are ultimately sent to the APL, this also should be indicated on the card.

2. Review of all allotment records, or other land records, forestry records, road records, contracting and property management records, and other appropriate Agency records, should be begun and should be close to complete, utilizing existing Agency personnel and any temporaries or rehired annuitants possible. Files should be read from beginning to end looking for basically three types of documents.
 - a. Documents relating to the title to the land which would show that the land improperly went out of trust or restricted status and should be claimed as still being in such status. For example, documents which would show that an ineffective certificate of competency was issued, that a forced fee patent was issued, that the land was sold without consent of all beneficial owners, etc.

- b. Documents, letters, memos, etc. showing that there has been a physical trespass of some kind in the past.
- c. Documents, letters, memos, leases, contracts, etc. showing that there has been a breach of contract or other agreement or that there is money due and owing a tribe or tribal member by someone other than the United States.

When such documents are found, they should be copied, the copies placed in a separate file, and the Records Review Form for the cover of the file should be completed to the extent possible. The file should be reviewed by the AGPL, the Physical Investigation Form should be placed in the file if it is completed already, and the necessary additional information should be identified. If data outside the Agency is needed, it should be secured at this point, including ordering formal surveys, purchasing abstracts, seeking records from National Archives, etc. The file should then be routed to the appropriate Agency branch, for example Forestry if a timber trespass is indicated, for supplementation. If a card has already been prepared on the parcel of land, the information from the Records Review Form should be added to the card. If not, a card should be prepared as described above. When all appropriate forms are in the file and all necessary information is included, the file should be forwarded to the APL.

- 3. As Intake Forms generated by tribes or individuals are received, the lands involved should be identified and the card file checked to determine whether or not a file already exists on the matter. If so, the Intake Form should be added to the file, noted on the card, and the file should be reviewed to insure that it covers completely the matter described on the Intake Form. If not, further agency record checking is necessary. If there is no card, one should be prepared and a file created to include all Agency documents relating to the matter. As before, when all appropriate forms are in the file and all necessary information is included, the file should be forwarded to the APL.

III. PHASE III (To be completed by February 1, 1979)

- 1. Upon receipt of files from the AGPL, the APL is to review the materials completely, making note of any deficiencies. An Action Plan form is to be completed on the matter at this point. If deficiencies exist, the supplemental material is to be requested from the appropriate office while retaining the file in the Area Office if possible. When the files are complete, they should be forwarded to the Field Solicitor's Office with a request for review and possible litigation.

At a minimum, each submitted file should contain:

- a. Completed Physical Investigation Form, even though it may reflect no physical trespass.
- b. Completed Records Review Form, which should have noted thereon the file contents as well as other requested information. Note particularly that an estimate of money damages must be included.

- c. Copies of all relevant documents showing factual data listed in Part B of this packet.
 - d. Intake Form if one has been received.
2. Necessary surveys not already obtained should be identified at this point, funds secured and the appropriate contracts issued. This may be done either by the APL or the funds and data transferred to the Agency and done by the AGPL.
 3. Lands on which formal appraisals will be necessary should be identified at this time and the appraisals requested of the Area Appraisal Branch by the APL.
 4. Any archive searches, review of documents in Federal Records Centers, historical societies, museums or libraries, General Land Office data searches, or county record searches which must be done by field personnel rather than by simply requesting the appropriate office to provide the data should be initiated during this phase, as the need is identified during Phase II record reviews. These may be done by Agency personnel or by contract with tribes or abstracters or other groups. If done by contract, all documents collected must be provided to the Agency for inclusion in the file.
- IV. PHASE IV (To be completed by July 1, 1979)
1. As files are received by the Field Solicitor's Office, the Field Solicitor Project Leader (FSPL) is to review each and assign the cases for legal review and preparation of litigation reports within the office. For major cases, a case conference should be scheduled as soon as the file has been assigned. The case conference should be attended by, at a minimum, the FSPL, the attorney assigned to the case, the APL and the AGPL. Tribal attorneys should also attend in appropriate cases. For cases of a type of which there are or will be numbers of similar cases, case conferences should be scheduled no less frequently than every two months to review all cases of each type received by the Field Solicitor's Office at that time. These should be similarly attended by the FSPL, attorneys involved, the APL and AGPL and appropriate tribal attorneys. Case conferences should be held for the purpose of reviewing the legal theories on which the particular case or cases rest, the evidentiary material received, for determining any additional materials necessary, and for planning strategy and timing.
 2. Following legal review, case conference and preparation of the litigation report, cases will be submitted to the Office of the Solicitor, Division of Indian Affairs Project Leader (SPL) for further processing and submission to the Department of Justice.
 3. Any archive or record searches initiated during Phase III should be completed, the files processed through the Agency and submitted to the APL. Necessary surveys and appraisals should be identified and requested and the cases reviewed by the APL and submitted to the Field Solicitor's Office for subsequent review, case conferences and preparation of litigation reports as above.

If at any point in the above process it appears that there is additional data necessary from the Title Plant, from a Federal Records Center, from the Washington Office records or from the National Archives, the APL should be notified at once so that the necessary materials can be requested. The request should be as specific as possible. Also, if it becomes apparent that there is a legal issue which requires interpretation prior to pursuing a certain line of investigation, the APL should be asked in writing to request an opinion of the Field Solicitor. If possible, along with the request, all documents on a case which is representative of those in which the issue has arisen should be provided as background materials for the legal review. If legal interpretation is necessary, record searches for cases of that particular type should cease until such time as it is determined that the cases are legally viable and can be pursued by the Department.

Each person involved in this process should be encouraged to raise questions and discuss problem areas with anyone else involved and should feel free to call Area Office or Field Solicitor's Office personnel as the occasion arises. Major issues can be scheduled for discussion at Superintendents' meetings as well as at periodic case conferences.

PHYSICAL INVESTIGATION FORM (\$2415)

Reservation _____
 Land Description _____
 In Trust/Restricted Status for _____

Validly Existing Rights of Way: (Include date, type, to whom granted, and location)

Valid Occupancy or Use Rights: (Include date of lease or permit, date of expiration, type of use granted and to whom)

Nature of Land: (Check more than one if applicable)

<input type="checkbox"/> Timber	<input type="checkbox"/> Pasture	<input type="checkbox"/> Farmstead
<input type="checkbox"/> Cultivated Fields	<input type="checkbox"/> Commercial	<input type="checkbox"/> Lakeshore
<input type="checkbox"/> Marsh or Swamp	<input type="checkbox"/> Residence	<input type="checkbox"/> Park or Recreation
<input type="checkbox"/> Other: _____		

1. Is there a fence on the property? If so, describe the type of fence, the length and approximate location. _____

2. Is there a building on the property? If so, describe the type of building, the size and approximate location. _____

3. Is there a drainage ditch or drain tile on the land? If so, describe the type, length and approximate location. _____

4. Are there animals grazing on the property? If so, identify the type and number and approximate location on which they are grazing. _____

5. Are there cultivated crops being grown on the property? If so, describe the types of crops and the extent and approximate location on which they are being grown. _____

6. Are there roads, pipes or utility lines, other than those listed above, on the property? If so, describe the type, length and approximate location. _____

7. Is there excess dirt, garbage, refuse or other material deposited on the property? If so, describe the type, approximate quantity and approximate location. _____

8. Is there any physical evidence that any of the structures, activities or rights of way listed in the above questions existed on the property at any time in the past? If so, describe as requested above and indicate the estimated time periods when they existed and what the present evidence of them is. _____

9. Is there any evidence that timber, wild rice, other natural growth, sand, gravel, fill, minerals, etc. have ever been removed from the property? _____
 If so, identify the type of materials removed, the approximate quantity, the approximate location from which they have been removed, and the approximate date or dates when such removal took place. _____

10. Is there any physical evidence that the property has ever been burned or flooded? _____ If so, describe the type of damage, the approximate area covered by the damage and the approximate date on which the damage took place. _____

11. Is there any physical evidence that any structure, fence or personal property which is authorized to be on the land has ever been damaged or misused in any way? _____ If so, describe the property involved, the type of damage or misuse, and the approximate date on which the damage took place. _____

12. Is there any other physical evidence of use or occupancy of any kind other than as listed in response to previous questions? _____ If so, describe the type of use or occupancy, the approximate area covered, the damage to the land or structures, if any, and the approximate dates of such use or occupancy. _____

13. For each and every question answered yes, list the person or person, company or agency responsible for the structure, activity, right of way or other damage, including current addresses where possible. _____

14. For each and every question answered yes, list any tribal members, neighbors or other persons who have knowledge of the structure, activity, right of way or other damage, including current addresses where possible. _____

15. Any other information you feel is relevant concerning possible claims involving this property. _____

Name of Person Completing Form: _____

Address: _____

Date Completed: _____

RECORDS REVIEW FORM (\$2415)

Reservation _____

Land Description _____

In Trust/Restricted Status for _____
Allottee _____

Type of Trespass or Claim: (Describe) _____

List Supporting Documents: _____

List Title Documents: _____

Is there an Abstract of County Records Needed? _____

Estimated Fair Market Value
for Each Year of Use: _____

Estimated Physical Damage: (Describe and Give Dollar Amount) _____

Names of Persons Responsible for Trespass: _____

Addresses: _____

Names of Witnesses: _____

Addresses: _____

Person Completing Form: _____

Date of Completion: _____

NOTICE

Time Limit for United States to File Suits to
Recover Money Damages Upon Indian Claims

(28 U.S.C. § 2415)

SCOPE OF CLAIMS BARRED BY STATUTE

Congress has enacted a statute of limitations establishing a time limit after which the United States is forever barred from commencing a lawsuit to recover money damages on behalf of Indian tribes, bands or groups of American Indians or individual Indians whose lands are held in trust or restricted status. Where the acts, transactions or occurrences upon which the claim for money damages is based took place on or before July 18, 1966, the claim will be barred unless the United States files suit prior to April 1, 1980. If the events took place after July 18, 1966, the United States will be barred from commencing such a suit unless the suit is filed six years and ninety days following the time the right to sue first existed.

The statute applies to all cases where the United States has authority to sue to recover money damages on behalf of an Indian tribe or individual Indian by virtue of its trust responsibility to protect Indian property rights. It applies to causes of action arising out of a legally wrongful act or omission or the breach of a contractual obligation. In other words, claims (a) for the unauthorized use of Indian property, (b) for the use, occupation or alienation of Indian property under an agreement which was not finalized in accord with applicable rules and regulations, (c) for the damage to Indian property in the course of using it, (d) for the use of the property in a manner other than what was agreed upon and (3) failure to adhere to the terms of a valid contract. To establish a claim subject

to this statute, it will be necessary to define the specific Indian property rights which have been damaged and decide whether they are protected by federal law.

As trustee for the Indian people, the Department of the Interior wants to locate and process as many pre-1966 claims as possible before the April 1, 1980 deadline. The Department, therefore, urgently requests the assistance of tribal organizations and individual Indians by asking that they examine their own records and report any possible claims to their Bureau of Indian Affairs agency or the area office.

We request that even if you are uncertain as to whether a claim is valid or is subject to the April 1, 1980 statute of limitations, you should still report it to your Bureau of Indian Affairs agency office or area office and they will in turn determine with the advice of the Solicitor's Office whether this is a claim which the United States should file and whether it is one which should be filed by April 1, 1980.

Please submit all claims by December 1, 1978. Early submission of claims will allow the Department enough time to perform the legal analysis, look for all relevant facts and documents and then decide the correct disposition of the claims.

The following discussion may help you better understand the kinds of claims with which we are concerned at this point:

TYPES OF CLAIMS BARRED BY STATUTE

A. Claims for damages due to unauthorized occupancy or incorrect use of tribal or individually held lands or for the use or removal of its Natural Resources (Trespass)

1. Damages resulting from wrongful occupancy or use of tribal or allotted lands. For example, occupancy of Indian lands by a person, building, livestock, fencing, or other improvements without lawful authority. Such cases may arise as a result of boundary disputes, or occupancy and use of such lands by another person who claimed ownership of the Indian land after those lands were illegally taken from the Indians for non-payment of state taxes, or occupancy or use of Indian lands that were sold or leased by the Indian owner, but without the United States' approval of the sale or lease.
2. Damages to tribal or allotted lands or natural resources resulting from fire.
3. Damages resulting from the removal of natural resources from tribal or allotted lands. For example, unauthorized removal of sand, gravel, timber or other minerals.
4. Damages resulting from the wrongful appropriation of or interference with federally protected Indian water rights.

B. Claims for damages due to the wrongful possession or use of tribal or individual personal property if such personal property is protected by federal government. (Conversion)

Damages resulting from wrongfully depriving an Indian owner of the possession or use of personal property which is protected by federal law. For example, the wrongful removal of felled timber (logs) from Indian lands. While

conversion of personal property can fall within the statute, damage to land and natural resources should be the focus of this effort.

- C. Claims for damages due to the non-performance of a contractual obligation relating to federally protected tribal or individual property. (Contract)
1. Damages resulting from breach of a contract, for example, use of Indian property contrary to contract provision, such as surface damage resulting from mining operations, or use of a right-of-way in a manner that has not been agreed to in the contract.
 2. Damages resulting from breach of a lease, for example, non-payment of rent by a tenant or use of the land contrary to lease provision.
 3. Damages resulting from breach of a permit to use federally protected property.

The foregoing categories and types of claims do not indicate all claims that are subject to the statute. We must emphasize that each and every claim will have to be evaluated by the Department on an individual basis to determine if it is a valid claim, if it is a claim that should be brought by the United States and if it is a claim that is subject to the April 1, 1960 deadline. Finally, this statute does not apply to any claim which Indians may have against the United States or an officer thereof.

Again, we wish to emphasize that the Department hopes to fulfill its duty to the Indian people by the processing of all valid claims. Because of the short time period remaining under this statute, the United States Department of the Interior will be better able to fulfill its goal

if tribes give as much assistance as possible by conducting a careful review of records and files within their possession, by maintaining close contact with individual members of tribes, explaining the statute and encouraging individuals to submit their claims at an early date and finally, by working closely with the Bureau of Indian Affairs area and agency offices.

DRAFT INTAKE FORM FOR AGENCY USE

Submit by December 1, 1978

1. Name:
2. Address:
3. Phone:
4. Tribe:
5. Are you an enrolled member?
6. Do you have a complaint against another person or corporation for their using your land, water or other property such as timber, or minerals, without your permission?
7. Has any such person or corporation used the property, with your permission, but in a way that has caused damage to your property?
8. If the answer to number 6 or number 7 is "yes", please describe your complaint:
9. Has any such person or corporation used the property upon the condition that you be paid for that use and then failed to pay you? If so, how much are you owed?
10. Can you give a legal description of your land:
 - a. Is it tribal _____, a trust allotment _____, or privately owned _____?
 - b. What is the allotment number?
 - c. Who was the original allottee? What is your share? Are you the sole owner? If not, who are the other owners?
11. What is the name and address of the person or corporation against whom you have this complaint?

12. During what year or years did these things happen?
13. Have you filed a complaint about this, with the B.I.A., in the past?
14. a. Do you lease your land? _____
b. To whom? _____
c. Has the lessee paid you all amounts of money that are due under the lease agreement? _____
d. If no, how much do they owe you? _____
15. a. Do you pay taxes on your trust allotment? _____
b. Has your trust allotment been taken for nonpayment of taxes? _____
c. If so, when was it taken, by whom and where was the land? _____

Signature of person giving information

Signature of person filing
out form

MR. COBE. We would also point out that the researchers we hire are familiar with the area; they are familiar with the land; they are familiar with the people that they deal with—the Indian people on the reservations—and their primary function is researching each one of these cases.

We would like it to be recognized that in the 1½ years that we have been researching, the Minnesota Chippewa Tribal Research Unit has researched and identified more cases than the Bureau of Indian Affairs has in the 12 years prior to that in the same geological area.

If our budget is approved for fiscal year 1980, we will be able to continue research and will be able to supply the necessary documents and land surveys needed for the present cases.

We would like to point out that the investigation itself also has some mutual benefits to Indians, non-Indians, and businessmen who deal with land and land title problems every day. One, non-Indians who hold land titles today and presently feel that they have good title; and, if our investigations prove that they do, they will be able to clear title and make it a marketable piece of property. Two, those non-Indians who presently hold good title and an investigation shows the title is questionable will be able to settle that now, as opposed to waiting another 20 years after they improve the land and run the risk of losing title and their improvements.

During the investigation, we believe that real estate prices will stabilize and improve as investigation answers more questions on title. We believe that after investigation is done, banks, loan companies, real estate agents, and title insurance corporations will be more willing to deal with land within the boundaries of the reservations.

The reason we would like to have the statute of limitations extended is so that we may have the opportunity to bring claims on behalf of our people who have lost their lands by illegal means, whose lands have been trespassed upon, and whose timber has been cut from their lands with no more reason than the belief that they are just ignorant Indians who do not know what to do with their land anyway.

This responsibility to research and identify claims on behalf of individual Indians was not pursued wholeheartedly by the Bureau. We, the Indians, the ones that this investigation was supposed to have been done for, ask that we might have a chance to fulfill that responsibility.

If there are any questions—and we know you are pressed for time—please ask them.

Senator MELCHER. All right. Thank you both very much, George and Craig, for your testimony.

Mr. GOODWIN. Mr. Chairman, I have just one other point. The question was raised in earlier testimony of how much time we thought was needed. In our prepared testimony, we estimate that our research would take another 3 to 3½ years. Again, that is the time we need to be able to do the research before presenting information to the Solicitor and to Justice. We think a total of 5 years should be the minimum on the statute.

Senator MELCHER. All right. Thank you very much. I think we have had a range of 2 to 5 years recommended by the Justice Department and Interior, and 3 and 5 years by other witnesses. Thank you very much.

John Echohawk and Lucy Covington, we understand you plan to appear together.

John Echohawk, director of the Native American Rights Fund?

STATEMENT OF JOHN ECHOHAWK, DIRECTOR, NATIVE AMERICAN RIGHTS FUND, ACCOMPANIED BY SUZAN SHOWN HARJO, LEGISLATIVE LIAISON, NATIVE AMERICAN RIGHTS FUND

Mr. ECHOHAWK. Thank you, Mr. Chairman. My name is John Echohawk, director of the Native American Rights Fund in Boulder, Colo. With me is Suzan Harjo, legislative liaison with our organization here in our Washington office, and Lucy Covington of the Colville Tribes of Washington State.

As you may know, the Native American Rights Fund is a national Indian legal services organization, and over the years we have represented Indian clients in over 40 States. We agree with the position of the administration spokesmen that the statute of limitations ought to be extended.

When the issue came up in 1977, the administration did ask for 4½ years and received a little over 2½ years. I think it is evident that more time is needed to get the job done.

While we agree that an extension is necessary as the administration spokesman went on record this morning, we do not agree with one aspect of what they said, and I think it is very important. They had recommended that the statute be allowed to run on the suits for damages in contract claims. I submit that that will only invite litigation.

As was discussed several times here today, there is not any kind of uniform agreement on what constitutes a contract claim or what constitutes a tort claim. I submit that that will only lead to litigation if that distinction is made in any extension.

I am here today primarily to talk about what might happen if there is no extension. Our firm represents several tribes here in the East that have large claims for damages and land; the tribes in Maine, the Catawba Tribe in South Carolina, and two bands of the Oneida Nation in New York. In addition to that, we represent the Tunica-Biloxi Tribe in Louisiana.

In some of these cases some litigation has been filed; in others no litigation has been filed. But I submit that it is in the best interests of everyone to get an extension to the statute. Otherwise, litigation will have to be filed or further litigation will have to be pursued. The extension would be in the interests of further negotiations in all of these cases, which I think is in the best interests of the parties.

Some of the cases were close to settlement, others not so close. An extension, I think, would facilitate settlement discussions.

In addition to that, we represent two tribes in Oklahoma—the Pawnee and the Ponca—who have claims pending which apparently will be submitted to the Interior Department very soon. Their claims are to portions of the Arkansas river bed in Oklahoma. I submit, too, that those claims would be well served by an extension, as well as a couple of other cases I will mention briefly: the boundary problems of the Swinomish Tribe in Washington State and the claims of the Shoshone-Bannock at Fort Hall to 38 lots near their reservation. As

was mentioned earlier, the Santa Clara Pueblo has significant problems on their reservation dealing with their boundaries. In addition to that, the Mission Bands of Indians in southern California in the San Luis Rey River Basin have damage claims pending dealing with the pollution of their underground aquifers. In addition to that, I understand the chairman has heard from the Squaxon Island Tribe in Washington State about damages to their fishery which is yet to be investigated.

If there is no extension, I think it is fair to expect the Government, with the cases it has ready, to proceed; those that are not filed by the Government will be filed by the Indian tribes who are not, by the way, bound, in our view, by the statute of limitations because their sovereignty is not derivative from that of the United States.

If, in these cases, the tribes should find that they are barred from asserting damages against the States because of the 11th amendment, I believe that would also afford a breach of trust claim.

I do not think it is a very rosy picture to look at April 1 and figure out what might happen if there is not any extension. I think that is clear that that is a point in time nobody wants to get to, and I would submit that an extension is warranted.

Suzan, do you have anything to add?

Ms. HARJO. My points would be very brief.

We have heard the discussion of time needed for this extension period, from 2 to 5 years. Undoubtedly, the time needed is greater than that. I would like to go back to the point of this statute of limitations; which was to hold the time that the United States had to bring damages against private property holders for land that it only owns, not for Indian land. At the end of the statute of limitations time that was imposed in 1966, the Interior Department and the tribes went to the Congress and said, "This statute may have been inadvertently imposed against Indian tribes and Indian individuals."

That was how the Indian extension was granted for 5 years. By the testimony taken by this committee several years ago, the record was made very clear that the Department of the Interior and the Department of Justice had not fulfilled the task as needed, and it is only during this extension period that we have seen forward movement of any significance. There has been significant forward movement, and we are at a place where we can predict how much time we might need to get the basic identification done.

There is a mechanism in place in the Federal structure, and that is all very hopeful. There is, in the best spirit of self-determination, a contracting procedure with Indian tribes and organizations, as you have heard, in order to get this job done. What has not been spoken to today is the need for additional time for the negotiations to try to keep out of court some of these cases because our whole intent is to resolve them in the fairest and finest way possible. Toward that end, we need much more time for thoughtful, rational, and fair litigation preparation and negotiation preparation.

Narragansett, for example, which is the model settlement for the eastern Indian land claims, has taken 2½ years to resolve.

Senator MELCHER. I am sorry, Suzan. If you have more to add to that, please give it to us in writing, but we are running out of time.

Lucy?

STATEMENT OF LUCY COVINGTON, LEGISLATIVE CHAIRPERSON,
COLVILLE CONFEDERATED TRIBES, STATE OF WASHINGTON

Ms. COVINGTON. Senator Meleher, you are a neighbor of the State of Washington. I represent the Colville Confederated Tribes, and I am the legislative person for the tribes. I do not have a prepared statement; therefore, I will highlight our program and a number of problems concerning their request for extension of 2415.

One year prior to the statute of limitations, April 1, 1980, barring claims from being filed in the claims court under 28 U.S.C. 2415, the Colville Confederated Tribes contracted the claims program from the Bureau of Indian Affairs. We were to research documents and develop possible claims for the tribes and tribal members under joint supervision of the Bureau of Indian Affairs personnel and the tribal council members.

Assistance was requested from all agency officers for any support or personnel needed. An attorney was our director. We had three legal aid assistants and one ex-Department of Social and Health Services employee.

This program started with a 2-week study course on possible claims area—with the assistance of the Minnesota Legal Office and Bureau of Indian Affairs—a news release through the tribal paper and mailouts, stating the tribal membership involvement.

We first were given a July 1, 1979, deadline to file claims with BIA. The July 1, 1979, deadline was extended to August 30 and then to October 1, to the final date of November 30, 1979, as the deadline.

The work force on the program went from 77 to 52 personnel, but even with a large number of personnel, the 2,900 allotment files could not be searched in such a short period of time.

Grading claims from the factsheet, making copies of any important papers, and the search of county records was time-consuming. Pressure for problems to complete the search of county files dropped the current problem claims and walk-in claims investigation. Priority developed a backlog of open files which have not fully been researched by investigators.

Had the tribes not contracted for the 2415 claims program, the tribes would not have seen the impact which could result in correcting many of the ongoing problems with third parties, State, county, and local companies, as well as involving the Bureau of Indian Affairs in more of a direct approach of what responsibilities exist today for protection.

Protection is of paramount importance to the tribe, as can be seen by the attorneys' fees, expert personnel working directly for the tribes, many contracts with the Bureau of Indian Affairs program, and the development of independent programs. This shows the great concern of this tribe for the land and its people and should be equaled by all branches of the Bureau of Indian Affairs or Solicitors in the Department of the Interior.

Should 28 U.S.C. 2415 be allowed to pass with the possible claims that remain unresolved or other areas remaining unexplored, it would be just another injustice on top of all the other injustices this tribe has faced.

We have, on the Moses agreement, 4 claims to file, and there are 40 allotments involved there. For the Colville Reservation, the occupied part, we have one claim for allotment in the allotment files, and we see about 2,400 to 3,000 claims.

The south half, the one we occupy at the present time, has 1,400 allotments. The north half, which had been sold or ceded, has about 500 or more allotments. About one-fifth of the reservation is in non-Indian landownership. We have 296 walk-in claims from tribal members. Forced fee claims, trust property forced into fee status, has 300. Welfare, which is the forced sale of trust land as resources for living expenses in the State of Washington, has 200. To date, we have 796 cases.

We filed and completed 10 cases in the Indian Claims Commission. We have five cases pending. Three cases were transferred to the court of claims. Two cases are filed in the court of claims for mishandling of funds.

With this information, we would like the Select Committee on Indian Affairs to consider 3 to 5 years for extension to process the claims to justify these injustices that have occurred. They are legal; the process would help justify the hurt, the fright, the helplessness of Indians because of the Government system concerning Indians in our country.

I would suggest that Congress consider Indian people's needs and give them priority over other countries' needs. We need expertise to handle these cases; we need more people at the area offices or the superintendents' offices to process these claims. Area offices have told us that they cannot handle all the cases that have been submitted because they do not have the personnel to handle the heavy load.

Thank you for letting me appear. I am trying to hurry to get as much of this statement in as I can. We will send in a prepared statement in the allotted timeframe.

I thank you very much, Senator.

Senator MELCHER. Thank you, Lucy. I suspect we have had plenty of testimony today, and perhaps if we checked each area office I think we would find most of them, and maybe all of them, really do not have the personnel and have not had the personnel to handle this. I realize that there has been precious little progress made on 2415, and we will not be solving the problem with just an extension of time; it is also a question of who is going to do it, whether it is contracted, or all inhouse, or a mix of that. It is certainly going to take a lot more personnel to do it.

I appreciate your testimony. I am sorry we had to cut you off. I hope you will submit any additional material that you would like to. And that applies to you also, John, if you have more to add.

Ms. COVINGTON. Senator?

Senator MELCHER. Yes, Lucy?

Ms. COVINGTON. I just want to say that after hearing Myles Flint this morning on their personnel problems and how long it takes to go through the processes to go to the area office and to the central office, even if they are legitimate claims, they run out of time. I do not think that is fair to Indian people.

Senator MELCHER. No.

All right. Thank you very much.

Guy Johnston, president, Tricounty Landowners Association, Rock Hill, S.C.; and William Nisbet, vice chairman, South Carolina Commission to Study Claims of the Catawba Tribe?

Mr. Nisbet, would you like to appear separately?

Mr. NISBET. I am not going to take very long, Senator.

Senator MELCHER. All right.

Mr. Veeder, you are accompanying Mr. Johnston, is that correct?

Mr. VEEDER. Yes, sir.

Senator MELCHER. We have some testimony here prepared by whom?

STATEMENT OF J. EARL VEEDER II

Mr. VEEDER. Mr. Chairman, I have prepared some separate testimony from these two gentlemen, and I have introduced it for the record.

Senator MELCHER. Without objection, it will be included in the record at this point.

[The prepared statement and related material follow. Testimony resumes on p. 279.]

STATEMENT

TO THE

SENATE INDIAN AFFAIRS COMMITTEE

DECEMBER 17, 1979

BY

J. EARL VEEDER, II

DEFENDENT

SUIT # 770772

CHITIMACHA INDIANS VS.

HARRY L. LAWS ET. AL.

U. S. DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE DIVISION

STATEMENT CONTENTS

- I Introduction
- II Legal Implications
- III Social Implications
- IV Economic Implications
- V Political Implications
- VI Summation

Chairman Melcher, Members of the Senate Indian Affairs Committee, Mr. Taylor:

I

My name is J. Earl Veeder, II and I am a resident of Charenton, Louisiana. I am a defendant in Suit # 770772, Chitimacha Indians vs. Harry L. Laws et. al. I am not here to go into a detailed study of a lawsuit although I will give a brief overview of the lawsuit in order that you might better understand my position in testifying before this Committee. This hearing will have no impact on present litigation pending against myself, my family, and other defendants, however, I feel that my involvement in this litigation allows me to make a valid statement to you and to point out several reasons why the time period for claims and litigation by Indians should be allowed to expire on April 1, 1980.

II

Gentlemen, I am being sued by Indians!! If you will carefully study the attached copies of the suits filed against me, you can easily conclude that the dollar amount involved is somewhere between \$125,000,000.00 and \$750,000,000.00. You may also note the uniqueness and complexity of the suit in the sense that all events in the initial suit took place prior to the Louisiana Purchase. My attorneys inform me that there are certain events in this suit which are not found in any other suit in the Nation. The antiquity of events makes it even more difficult for both plaintiffs and defendants alike because individuals who witnessed the events are no longer alive and many documents pertaining to the events are not readily available. Among those documents that are available, many are in French and Spanish, and expensive, expert translation has been necessary prior to intro-

duction into court records.

Overtures of a settlement have been made by the plaintiffs and the Department of Interior, but I cannot even begin to consider discussion of any type of negotiations or settlement because the plaintiffs are wildly making verbal claims to or for 4 additional parishes (counties), the Bayou Choctaw Salt Dome (which is an integral part of the Department of Energy's Strategic Oil Reserve Program), and the Atchafalaya Basin (which the Department of Interior and Corps of Engineers are presently trying to take from the private landowners therein). If claims are made by the Chitimachas for the Bayou Choctaw Salt Dome and the Atchafalaya Basin, the U. S. Government would then become a defendent party to those suits. Since I can get no guarantee of a termination of claims and litigation, I am in no position to even consider any type of discussions or negotiations with the plaintiffs or the Department of Interior.

III

Since July 15, 1977, when the initial suit was filed, there has been a tremendous negative impact on the small community of Charenton. Old friendships no longer exist between Indian and White. There is discord among some families where intermarriage between Indian and White has occurred and the entire community has been split either for or against one side or the other. There have been several occasions where minor fights have occurred or nearly occurred, along with harrassment of individuals on both sides of the suit. Once Indian and White socialized, played tennis, and participated in other community events together. Now, there tends to be total avoidance socially and otherwise between them. Whites in the community even avoid driving

E

through the small Indian reservation community at any time. Fortunately, the parties to the suit have remained civil to each other and no major violence has occurred.

IV

In this small community of Charenton, there has even been economic problems as a result of the present litigation. The Chitimacha Tribe had a fast food facility on the reservation which was heavily supported by the Whites in the community. Within 60 to 90 days after the initial suit was filed, the facility was closed due to lack of business. The Whites in the community refused to support the facility any longer. Area businessmen who run grocery stores felt the impact of the suit when individuals in the community began to shop elsewhere because one party or the other in the suit might shop at that particular store.

Initial publicity by the plaintiffs and their attorneys indicated that this was not a suit against the "little man" but instead, a suit against "large wealthy landowners". Gentlemen, the majority of land involved in these suits is estate land involving as many as 20 to 50 heirs in any given estate. The majority of these heirs is in one of two classes: Middle-class working people or elderly people who depend on any royalties or crop monies from the land to supplement their Social Security or Retirement income and one well knows that Social Security does not provide enough for even the bare necessities in these times of high prices and overwhelming inflation. As you well know also, attorneys are not inexpensive and the high cost of legal representation has caused an additional financial burden to the defendants, especially those who are elderly and depend on extra income from the lands in litigation. Many individuals have such small royalty or land ownership in the estates that it is questionable whether it is financially

feasible to defend those interests. However, one must defend or default, and fortunately, all have united in a common defense. Additional problems have resulted from a clouded title being placed on the property by the present litigation. It is my opinion that in these times of severe energy shortages, many oil and gas companies are not leasing land or drilling wells in the areas covered by litigation or areas which could potentially come into future litigation. THIS IS A COSTLY PRICE FOR ALL OF AMERICA TO PAY WHEN ONE CONSIDERS THE IMMENSE OIL AND GAS PRODUCTION POTENTIAL IN SOUTH LOUISIANA. Also, attorneys and Savings and Loan Institutions are becoming more and more restrictive in their title work and to a minor extent (at present), Real Estate in the area is beginning to feel the impact of the present litigation.

V

Gentlemen, when an event of such magnitude occurs in a small community, all aspects of life become involved. Our Local, State, and Federal elected officials have come under fire by both sides whether they became involved or not. Both sides feel slighted if no position is taken by an official and one side is slighted and angry if an official even meets with the other side. Our elected officials have found themselves literally "walking on eggshells" and are in a position of being "damned if you do and damned if you don't." It has made it extremely difficult for them to adequately represent their constituents due to the split community and the delicate situation therein.

VI

In summation, I would like to say that this experience has caused unnecessary financial burdens on the defendants, but more importantly,

there has been a severe emotional and physical strain placed on them, especially the elderly, who have no idea whether they will even live to see the outcome of the litigation. Several of the initial defendants are now deceased and I personally fear that a projected length of litigation of 5 to 10 years will see additional defendants dying and never knowing what happened to their lands.

To you and to many others, it is simply a court or legal matter to be resolved but I am faced daily with life in a community which has been torn apart by a "mere legal matter." I must live with the fact that I can no longer have the same feelings about people I have grown up with, that I can no longer socialize with certain people in the community, and must realize that the community I live in will never be the same again. I must daily live with the realization that everything my family has acquired over several generations may be taken from them and must daily see the physical and emotional strain my parents, family and friends live with.

There is no doubt as to my position on an extension of time for filing additional claims and suits. I am in total opposition to any such action! Although it will not directly impact my present legal status, I feel it will only add to a national problem which cannot be solved until the end is in sight!! I have been sued and additional amendments to my suits can be made regardless of a time extension because the Chitimachas do not seem to know if they are through with me or not. But more importantly, settlements cannot be considered or made and a price tag or limit be established on a local or national level until an end is put to all future claims and litigation. With

the "sensationalistic" and "bleeding heart" media coverage of the Maine, Rhode Island, New York, Louisiana, and other suits, I do not feel that anyone in the nation, especially the Indians, is not aware that they have had certain deadlines to meet, in addition to the many years prior to the highly publicized suits mentioned above. The claims deadline must be allowed to expire on April 1, 1980 so that an end to what is a national problem can be reached. And that end cannot be reached until negotiations, settlements, and dollar amounts have been established with the complete knowledge that further such claims will never be forthcoming again.

I would like to express my appreciation at this time to the Committee and to Mr. Taylor, who have allowed me to express my views and I only hope that these views will assist the Committee in reaching a proper and fair decision in this matter.

J. Earl Vecder, II

Defendent
Chitimacha Indians vs.
Harry L. Laws, et. al.

AWARD/CONTRACT				PAGE	OF
				1	XX
1. AGENCY FORM NO. (Where Applicable) (REVISED BY) (REVISED DATE) (GSA GEN. REG. NO. 27)		2. EFFECTIVE DATE		3. REQUISITION/PURCHASE REQUEST/PROJECT NO.	
S50C14200142		3/27/79			
4. ISSUED BY (Name, Title, Location) (CODE)		5. ADMINISTERED BY (If other than block 4)		6. CIL/USED FOR NATIONAL DEFENSE UNDER ROSA REG. 2 AND/OR DMS REG. 1 (BLOCKING)	
Department of the Interior Bureau of Indian Affairs, Eastern Area Office, 1951 Constitution Avenue, N.W. Washington, D. C. 20245				LOT#	
7. CONTRACTOR NAME AND ADDRESS (Street, city, county, State, and ZIP code)		8. FACILITY CODE		9. DISCOUNT FOR PROMPT PAYMENT	
Chitimacha Tribe of Louisiana Tribal Center P. O. Box 661 Charenton, Louisiana 70523				N/A	
10. SHIP TO/MARK FOR (CODE)		11. PAYMENT WILL BE MADE BY (CODE)			
		Bureau of Indian Affairs, Eastern Area Office, Branch of Finance and Accounting - Room 715 1951 Constitution Avenue, N.W. Washington, D.C. 20240			
12. THIS PROCUREMENT WAS <input type="checkbox"/> ADVERTISED, <input checked="" type="checkbox"/> NEGOTIATED, PURSUANT TO:		13. U.S.C. 2304 (OR 1)		Buy Indian Act.	
		<input checked="" type="checkbox"/> 41 U.S.C. 232 (a)(1) & (1);		25 U.S.C. 47	
4. ACCOUNTING AND APPROPRIATION DATA					
S50-01/9/3400/4130		\$55,000.00			
15. ITEM NO.	16. SUPPLIES/SERVICES	17. QUANTITY	18. UNIT	19. UNIT PRICE	20. AMOUNT
	For research and investigation of land claims of the Chitimacha Tribe in Southern Louisiana.				\$55,000.00
	This cost-reimbursable contract consists of this Face Sheet and the following: Part 100-Work Requirements - 4 pages Part 200-Special Conditions - 1 page Part 300-General Provisions - 40 pages Budget - 3 pages				
Estimated		TOTAL AMOUNT OF CONTRACT \$ 55,000.00			
CONTRACTING OFFICER WILL COMPLETE BLOCK 22 OR 26 AS APPLICABLE					
23. CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return original to issuing office.) Contractor agrees to furnish and deliver all items as perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)		24. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) You may use an Solicitation Number including the additions or changes made by you which additions or changes are set forth in full above, it hereby accepted as to the items listed above and on any continuation sheets. This award commences the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. The further contractual document is necessary.			
25. NAME OF CONTRACTOR (Signature of person authorized to sign)		26. UNITED STATES OF AMERICA		BY	
L. M. Burgess, Tribal Chairman		Edward J. Gregory		(Signature of Contracting Officer)	
27. DATE SIGNED		28. NAME OF CONTRACTING OFFICER (Type or print)		29. DATE SIGNED	
7-31-79		Edward J. Gregory, Contracts and Grants Officer, Eastern Area Office		7-31-79	

CHITIMACHA TRIBE OF LOUISIANA
CONTRACT FOR RESEARCH AND INVESTIGATION OF TRIBAL LAND CLAIM
IN LOUISIANA

Part 100 - WORK REQUIREMENTS

- 101 - Statement of Work - The Chitimacha Tribe of Louisiana has located certain documents which suggest the presence of tribal land claims against various third parties. The tribe is presently in litigation to recover some of these lands and is investigating the possibility of further claims. This contract is to provide financing for the research and investigation of these claims. The final product shall be a set of expert reports to be used in litigation or settlement negotiations regarding these claims.
- 102 - Scope of Work - The tribe shall retain experts to do research in the following areas: archival research in various locations including but not limited to the National Archives, Library of Congress, Louisiana Land Office at Baton Rouge, the State Museum Library and Superior Counsel Records of Spanish Louisiana and the notarial documents in the New Orleans civil court; historical research using existing literature records of land title transfers, marriage and geneological records, correspondence among early families and government officials and other sources; complete title abstract of lands within potential claims. The Scope of work is further defined in the following excerpt from the Tribe's proposal.

IN ORDER TO PROVIDE THE LEGAL AND HISTORICAL DATA NECESSARY FOR A SUCCESSFUL LAND CLAIM, THOROUGH INVESTIGATIVE RESEARCH MUST BE CONDUCTED AT SEVERAL LEVELS AND IN SEVERAL AREAS.

ARCHIVAL RESEARCH

A SUBSTANTIAL AMOUNT OF RESEARCH NEEDS TO BE PERFORMED IN VARIOUS ARCHIVAL LOCATIONS INCLUDING BUT NOT LIMITED TO: THE NATIONAL ARCHIVES (BIA CORRESPONDENCE AND GENERAL LAND OFFICE DOCUMENTS), THE LIBRARY OF CONGRESS (CONGRESSIONAL DOCUMENTS AND MANUSCRIPTS FROM FOREIGN ARCHIVES), LOUISIANA LAND OFFICE AT BATON ROUGE (SURVEYOR'S NOTES), THE STATE MUSEUM LIBRARY AND SUPERIOR COUNCIL RECORDS OF SPANISH LOUISIANA (FOR COLONIAL DOCUMENTS), AND THE NOTARIAL DOCUMENTS IN THE NEW ORLEANS CIVIL COURT. THIS RESEARCH WILL BE PERFORMED BY MR. E. C. DOWNS (SEE VITA IN APPENDIX) AND DR. C. O. FRENCH (SEE APPENDIX FOR VITA).

ANTHROPOLOGICAL RESEARCH

THE WORK PURPORTS TO BE ABLE TO IDENTIFY AND FURNISH PRECISE LOCATIONAL DATA ON THE VILLAGES AND THE TERRITORIAL EXTENT OF THE CHITIMACHA INDIANS FROM LATE PREHISTORIC TIMES UNTIL THE PRESENT. IT WILL FURNISH AN IN-DEPTH AND DETAILED TREATMENT OF CHITIMACHAN MATERIAL CULTURE, ENCULTURATIVE PROCESSES (ESSENTIAL TO DETERMINING THE RATE AND NATURE OF LOSS OF PURELY ABORIGINAL MATERIAL CULTURAL ITEMS AND THEIR REPLACEMENT BY OBJECTS OF NONABORIGINAL MANUFACTURE), AND OF THE HISTORICAL LITERATURE AND ARCHIVAL RECORDS PERTINENT TO THE LOCATION OF THEIR VILLAGES, THEIR TERRITORIAL CLAIMS AND/OR RANGE OF TERRITORIAL UTILIZATION. IT WILL PROVIDE A MUCH AMPLIFIED EXPOSITION OF AN EARLIER SUMMARY REPORT ON THE SAME TOPIC (cf. JON L. GIBSON, MARCH 1978. "THE LAND OF THE CHITIMACHA: HISTORICAL AND ARCHAEOLOGICAL DATA RELATIVE TO THE GEOGRAPHIC TERRITORY OCCUPIED AND UTILIZED

BY THE CHITIMACHA INDIANS").

SEVERAL METHODS OF INVESTIGATION WILL BE USED. HISTORICAL RECORDS SEARCH WILL BE THE PRIMARY FOCUS AND WILL BE BASIC TO THE IMPLEMENTATION OF OTHER SUPPLEMENTARY AND CONFIRMATORY PROCEDURES. EXISTENT LITERATURE RECORDS OF LAND TITLE TRANSFERS, MARRIAGE, AND GENEALOGICAL RECORDS, CORRESPONDENCE AMONG THE EARLY FAMILIES, GOVERNMENT OFFICIALS AND OTHER POTENTIAL SOURCES WILL BE ASSESSED AND PERTINENT DATA EXTRACTED. THESE SOURCES WILL BE PART OF THE FINAL REPORT. CONCURRENTLY WITH RECORDS SEARCH, AN EFFORT WILL BE MADE TO ESTABLISH USEFUL MICROTRADITIONAL LINKAGES AMONG HISTORICALLY KNOWN CHITIMACHA ARTIFACTS, e.g., VARIOUS TOOL TYPES AND MANUFACTURING DETAILS AND STYLES, DESIGNS, MOTIFS, MEDIA LIMITATIONS AND OTHER ASPECTS, AND ARCHAEOLOGICALLY RECOVERABLE EXPECTATIONS. THESE WILL BE FRAMED AS A SERIES OF EVALUATORY MODELS. IN ADDITION TO THE MICROTRADITIONAL APPROACH, A GEOGRAPHIC MODELING PROCEDURE WILL BE IMPLEMENTED WHICH INCORPORATES KNOWN GEOGRAPHIC DETAILS (TOPOGRAPHY, DISTANCE FIGURES, AND OTHER POSSIBLY IDENTIFIABLE LANDSCAPE FEATURES) WITH ETHOHISTORICAL DETAILS ABOUT THE KINDS, NUMBERS, AND NATURE OF STRUCTURES PRESENT AT EACH VILLAGE LOCATION, SPACING FACTORS, AND KINDS OF ARTIFACTS PRESENT. THIS APPROACH WILL AGAIN USE THESE DATA TO FRAME A SERIES OF EXPECTATIONS WHICH WILL HAVE TO BE EVALUATED AGAINST ARCHAEOLOGICAL DATA, BOTH IN TERMS OF RECOVERED MATERIAL CULTURE AND CONFIRMED LOCATIONS THEMSELVES. THE FINAL METHODOLOGICAL PROCEDURE WILL BE TO ENGAGE IN LIMITED ARCHAEOLOGICAL SURVEY IN THE PREDICTED LOCATIONS OF VILLAGES. IF SUCH LOCATIONS ARE FOUND, ALL MATERIAL ARTIFACTS WILL BE RETRIEVED, CLEANED, CATALOGUED, INVENTORIED, CLASSIFIED, AND ANALYZED. THE ANALYSES WILL BE DONE TO CONFIRM ASSOCIATED MICROTRADITIONS AND TOOL ASSEMBLAGES. VIA THIS COMBINATION OF METHODS, WE SHOULD BE ABLE TO OFFER

SUBSTANTIAL PROOF OF THE LOCATIONS OF OLD CHITIMACHA VILLAGES AND GIVE SOME VERY BASIC IDEAS ON THE EXTENT OF THEIR OCCUPIED TERRITORY.

LAND CLAIM TITLE ABSTRACT

IN SUPPORT OF A SOUND LAND CLAIM A COMPLETE TITLE ABSTRACT MUST BE PREPARED FROM 1770 TO THE PRESENT. THIS WILL TAKE APPROXIMATELY FIFTEEN WEEKS OF RESEARCH AND TRANSLATION FROM THE ORIGINAL SPANISH AND FRENCH DOCUMENTS. THE FIRM OR TONY, MURPHREY, D'ANTONIO, AND McDUGALL, CHALMETTE, LOUISIANA WILL PERFORM THIS SERVICE.

ALL OF THE ABOVE AREAS IN THE SCOPE OF WORK WILL BEGIN SIMULTANEOUSLY AND CONTINUE OVER A PERIOD OF TIME NOT TO EXCEED TWELVE MONTHS.

- 103 - Reports and Deliverables - The contractor's reports shall be completed and a copy of each delivered to the Contracting officer and to the Office of the Solicitor, Division of Indian Affairs wit' in thirty (30) days following completion of the contract, unless otherwise extended for extenuating circumstances by mutual agreement between the contractor and the contracting officer.

BUDGETCHITIMACHA TRIBAL LAND CLAIM RESEARCHRESEARCH COSTSA. ARCHIVAL RESEARCH

TRAVEL

WASHINGTON TO BATON ROUGE (STATE LAND OFFICE FOR 5 DAYS) APPROXIMATE TOTAL INCL. PER DIEM	1050.00
WASHINGTON TO NEW ORLEANS (TULANE, STATE MUSEUM, CIVIL COURT)	1050.00
WASHINGTON TO NEW ORLEANS CONSULTATION	950.00
WASHINGTON TO CHITIMACHA RESERVATION, INCL. RENTAL CAR	1050.00
20 DAYS FEE, ON TRAVEL	<u>2,000.00</u>
TOTAL TRAVEL	6,100.00

IN WASHINGTON

XEROXING, PHOTOCOPYING	1,000.00
COPHER OR TRANSLATORS	1,000.00
LOCAL TRAVEL, PARKING	50.00
25 CONSULTANT DAYS	<u>2,500.00</u>

LOCAL ARCHIVAL RESEARCH	4,550.00
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20 CONSULTANT DAYS @ 200.00 (INCLUDE EXPENSES)	4,000.00
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B. ANTHROPOLOGICAL RESEARCH

Salaries and Wages

PRINCIPAL INVESTIGATOR	6,000.00
HISTORICAL ASSISTANT	2,250.00
HISTORICAL ASSISTANT	2,250.00
	<u>10,500.00</u>

SUBSISTENCE

19 DAYS @ \$18.00 FOR 3 PEOPLE	1,026.00
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TRAVEL

17,647 MILES @ \$0.17 PER MILE	3,000.00
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CONSULTANTS

ARCHIVIST	2,300.00
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XEROXING, SUPPLIES, AND REPORT PREPARATION	1,200.00
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C. LAND CLAIM TITLE ABSTRACT

FIFTEEN WEEKS RESEARCH TO INCLUDE ALL NECESSARY EXPENSES	<u>7,500.00</u>
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TOTAL RESEARCH COSTS (A+B+C)	40,176.00
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D. Tribal Administrative Costs	2,450.00
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E. OTHER COSTS

REPRODUCTION, MATERIALS, TRAVEL FOR RESEARCH OF COURT RECORDS	5,550.00
TRANSLATION (FRENCH & SPANISH)	1,500.00
SURVEYS	2,424.00
OIL & GAS APPRAISALS	2,300.00
TELEPHONE (LONG DISTANCE)	600.00
TOTAL OTHER COSTS	<u>12,374.00</u>
TOTAL COSTS	55,000.00

Part 200 - SPECIAL PROVISIONS

201 - INDEMNIFICATION - The Contractor shall indemnify and save and keep harmless the Government against any or all loss, cost, damage, claims, expense of liability whatsoever because of accidents or injury to persons or property or others occurring in connection with the operation under this contract.

202 - CONTRACT PERIOD - The period of this contract shall commence on the effective date shown on the face of the contract and all work shall be completed by March 26, 1980.

203 - ACCEPTANCE - Acceptance of all work required by the Contractor under this contract shall be by the Contracting Officer.

204 - MODIFICATION OF CONTRACT - The Contractor and Contracting Officer may mutually agree to modify this contract with respect to matters not covered by the CHANGES CLAUSE in PART 300 - GENERAL PROVISIONS. Such modifications will be accomplished by the use of Standard Form 30, Amendment of Solicitations/Modification of Contract, which shall be signed by both parties.

205 - METHOD OF PAYMENT - The Contractor shall be paid upon the submission of invoices (in quadruplicate) and approved by the Contracting Officer.

206 - TRAVEL RESTRAINTS - All air surface travel under this contract shall be by the most economical means. No payment for air transportation will be by the most economical means. No payment for air transportation will be made for travel in excess of coach fare. Private automobile travel shall be at the rate of Seventeen (17¢) cents per mile. Per diem while in travel status is limited to \$35.00 per day (or otherwise established in Government per diem schedule) or any quarter thereof commencing at 12:01 A.M..

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
NOV 11 1971

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

JUL 15 1971

FILED
W. S. BISHOP, CLERK
(U.S.D.)

CHITIMACHA TRIBE OF LOUISIANA;

CHITIMACHA TRIBAL COUNCIL
(Officially and on behalf of all
members of the Chitimacha Tribe);

L. M. BURGESS, Chairman (Officially
and on behalf of all members of the
Chitimacha Tribe, and Individually)
Chitimacha Tribal Council,

PLAINTIFFS,

vs.

HARRY L. LAWS COMPANY, INC., DOLPH
PARRO TRUST ESTATE, RANDOLPH H.
PARRO, ADOLPH PARRO, IDA M. PARRO
BODIN, ALEXANDER J. PARRO, SR.,
SHELDON J. PARRO, GLORIA MAE PARRO
TURPIN, MRS. WINIFRED V. COCKE,
EDNA L. DELHAYE, PEARL COCKE, BARBARA
V. MCKOIN, CAROL V. WOMMER, HELEN
G. GARRISON, CLARENCE GARDNER, JR.,
MRS. FLORABEL V. CURRY, MRS. ETHEL
V. POPE, MRS. LENA V. SINITERE,
LOUISE VEEDER, GEORGE T. VEEDER,
J. M. MRS. IRENE V. BOUDREAU, MRS.
GERTRUDE V. MEYN, ELIZABETH ANN
VEEDER, HENRY ECUER, E. J. ROBIAHAUX,
MILTON LANDRY, KENNETH S. LANDRY,
MELVIN SIMONEAUX, THERESA B. SIMONEAUX,
DOROTHY A. BOUDREAU, ARNOLD BOUDREAU,
JR., GERANIE A. BOUDREAU, GERTRUDE
A. KERN, ESTER SIMONEAUX KERN, WAYNE
LANGON, WILBERT SIMONEAUX, ALLEN
SIMONEAUX, VIVIAN SIMONEAUX LEBLANC,
IRENE SIMONEAUX PULLEY, VERENA
SIMONEAUX KERN, BRELAND SIMONEAUX,
NATHAN SIMONEAUX, JOYCE SIMONEAUX
NEEKS, GILDA SIMONEAUX BLANCHARD,
NORIS SIMONEAUX, W. RY SIMONEAUX,
MARGANDA SIMONFAUX, TIMOTHY T. ACHEE,
DOME ACHEE, MARGARET AVERILL, JOHN
HERTEL BRICK, BETTY MANION, MICHAEL P.
BURNS, G.E. HERTEL, CHARLES A. HERTEL,
J. M. CAMPBELL, CAROLYN M. LEBLANC,
M. VERLYN CHRISTIE, KEITH E. LEBLANC,
VINCENT J. ST. BLANC, JR., MRS. STEPHANIE
B. DINKINS, H.H. DINKINS, JR., GERTRUDE
O. DINKINS, LADD A. DINKINS, STEPHANIE
DINKINS, RODNEY J. BANTA, ELIZABETH B.
MCGEE LEMAIR, MRS. ETHEL GILES CHANGE,
MRS. BARBARA GILES WEIL, MRS. WILLIE
GILES O'NEILL, ROBERT F. GILES, RAYMOND
A. DUPUY, BEVERLY MARIE DUPUY COMEAUX,
FABIOLA MAE DUPUY PHENIS, ADELINE SUGAR
FACTORY CO., LTD., ROANE LAND CO., INC.,
AMOCO PRODUCTION COMPANY, ATLANTIC
RICHFIELD COMPANY, TENNECO OIL COMPANY,
W.R. BULLEN, V.E. KARNES, AND EDGEWATER
OIL COMPANY,

DEFENDANTS.

* CIVIL ACTION

* NO. 770772

* COMPLAINT

1. This is a civil action to restore the Chitimacha Tribe of Louisiana to possession of certain aboriginal territory and land in St. Mary Parish, Louisiana, which lands are subject to the protection of Acts between the Chitimacha Tribe of Louisiana and the French Crown and the Spanish Crown which were carried forward by the Louisiana Purchase, the protection of Article I, § 8, Article I, § 10 and Article II, § 2 of the United States Constitution, 5 U.S.C. § 701 et seq., and the protection of the Indian Nonintercourse Act, 25 U.S.C. § 177.

2. The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1331, 1337 and 1362. The amount in controversy exceeds \$10,000.00, exclusive of interest and costs, with respect to each defendant.

3. Plaintiff's claim for relief arises under the Acts between the Chitimacha Tribe of Louisiana and the French Crown and the Spanish Crown which were carried forward by the Louisiana Purchase, and Article I § 8, Article I, § 10 and Article II, § 2 of the United States Constitution, 5 U.S.C. § 701 et seq., and the Indian Nonintercourse Act, presently codified at 25 U.S.C. § 177.

4. The Plaintiff, the Chitimacha Tribe of Louisiana, (hereinafter the "Tribe") is an Indian tribe or nation which has resided in the State of Louisiana since time immemorial. The Tribe has adopted a Constitution pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. 476. The business of the Tribe is conducted at the Chitimacha Tribal Center, Post Office Box 661, Charenton, Louisiana, 70523.

The Plaintiff, The Chitimacha Tribal Council is the governing authority for the Chitimacha Tribe of Louisiana. The business of the Council is conducted at the Chitimacha Tribal Center, Post Office Box 661, Charenton, Louisiana, 70523.

The Plaintiff, L. M. Burgess, Chairman (officially and on behalf of all members of the Chitimacha Tribe of Louisiana, and individually) The Chitimacha Tribal Council, Post Office Box 661, Charenton, Louisiana, 70523.

5. The Defendants, and each of them, claim an interest in and title to certain land located in St. Mary Parish, Louisiana, which land is the subject matter of this action, as more fully appears elsewhere in this Complaint.

6. Plaintiff hereby invokes Section 177 of the Federal Law, Title 25, U. S. Code, which reads as follows:

"Section 177. Purchases or Grants to lands from Indians

No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian Nation or tribe of Indians, shall be of any validity in law or equity, unless that same be made by treaty or convention entered into pursuant to the Constitution. Every person who, not being employed under the authority of the United States, attempts to negotiate such treaty or convention, directly or indirectly, or to treat with any such nation or tribe of Indians for the title or purchase of any lands by them held or claimed, is liable to a penalty of \$1,000. The agent of any State who may be present at any treaty held with India: under the authority of the United States, in the presence and with the approbation of the Commissioner of the United States appointed to hold the same, may, however, propose to, and adjust with, the Indians the compensation to be made for their claims to land within such States, which shall be extinguished by treaty. R.S. Section 2116."

7. Plaintiff hereby invokes Section 194 of the Federal Indian Law, Title 25, U. S. Code, which reads as follows:

"Section 194. Trial of right of property; burden of proof

In all trials about the right of property in which an Indian may be a party on one side, and a white person on the other, the burden of proof shall rest upon the white person, whenever the Indian shall make out a presumption of title in himself from the fact of previous possession or ownership. R.S. Section 2126."

8. Since time immemorial, the plaintiff Tribe has exclusively owned, used, and occupied portions of the present Parish of St. Mary, Louisiana, as part of its aboriginal territory.

9. In the year 1767, the French Crown, by an Act of the French Governor of Louisiana recognized the plaintiff Tribe. In the year 1777, the Spanish Crown, by two Acts of the Spanish Governor of Louisiana, recognized the right of the plaintiff Tribe in the lands which they occupied. The said area of land

was within its aboriginal territory in the Parish of St. Mary, Louisiana. The French Crown required the express written approval of the French Governor of Louisiana for any sale of Indian land during the sovereignty of France over what is now the State of Louisiana. The Spanish Crown required the express written approval of the Spanish Governor of Louisiana for any sale of Indian land during the sovereignty of Spain over what is now the State of Louisiana.

10. The Tribe owned and occupied as part of its land and aboriginal territory all of the land which is the subject matter of this action, at the time of the acts complained of herein.

11. The lands which are the subject of this action comprise the center of the ancient Chitamacha Tribal territory, the area around the site of their historic village, and the Tribe and the area of land were recognized by the French Crown and the Spanish Crown.

12. Article I, § 8, Article I, § 10, and Article II, § 2 of the United States Constitution respectively provide, in pertinent part, that "The Congress shall have power (t)o regulate commerce with ...the Indian tribes," that "(n)o state shall enter into any treaty..."; and that "(t)he President...shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur..."

13. In the year 1790, the United States adopted the first Indian Nonintercourse Act, confirming the rights of the Indian tribes to possession of all lands then owned or occupied by them, until alienated with the consent of the Government of the United States, and nullifying any purported conveyances of tribal lands made without such Federal consent. The sovereignty of the United States over what is now the State of Louisiana resulted from the Louisiana Purchase of April 30, 1803, 8 Stat. 200. The Acts between the Tribe and the French Crown and the Spanish Crown which were carried forward by the Louisiana Purchase, and Article I, § 8, Article I, § 10, and Article II, § 2 of the United States Constitution, 5 U.S.C. § 701 et seq., and the Indian Noninter-

course Act, 25 U.S.C. § 177, established and confirmed the Tribe's right of possession to all of the land which is the subject matter of this action.

14. Subsequent to the recognition of the Tribe and their land by the French Crown, the Spanish Crown, and the Louisiana Purchase by the United States, certain persons purported to cause the alienation of all of the aboriginal territory and land of the Tribe by virtue of one or more so-called "deeds". The so-called "deeds" purportedly consisted of one to Philip Verret, two to Hyacinthe Bernard, one to Frederick Pellerin, and one to Baptiste Carmouche and Mary Joseph.

15. On September 10, 1794, a so-called "deed" was entered into indicating that the Indian, representative of plaintiff Tribe, who signed the so-called "deed" signed with an "X" in place of a signature indicating, on information and belief, that the Indian could not read or write.

16. From September 10, 1794 to the early 1800's certain lands purportedly purchased by the said Philip Verret, Hyacinthe Bernard, Frederick Pellerin, and Baptiste Carmouche and Mary Joseph were conveyed among themselves and were conveyed to other parties for a higher consideration than that purportedly paid to the plaintiff Tribe.

17. On information and belief, the said Philip Verret, Hyacinthe Bernard, Frederick Pellerin, and Baptiste Carmouche and Mary Joseph misrepresented to plaintiff Tribe the value of their land and induced them to purportedly sell it for an unconscionable and inadequate price.

18. Acting pursuant to the so-called "deeds", the said Philip Verret, Hyacinthe Bernard, Frederick Pellerin, and Baptiste Carmouche and Mary Joseph undertook to convey or otherwise alienate all of the land of the Tribe to other parties.

19. The defendants, Harry L. Laws Company, Incorporated, Dolph Parro Trust Estate, Randolph H. Parro, Adolph Parro, Ida M. ParroBodin, Alexander J. Parro, Sr., Sheldon J. Parro, Gloria Mae Parro Turpin, Mrs. Winifred Cocke, Barbara V. McKoin,

Edna L. Delhaye, Pearl Cocke, Carol V. Wommer, Helen G. Garrison, Clarence Gardner, Jr., Mrs. Florabel V. Curry, Mrs. Ethel V. Hope, Mrs. Lena V. Sinitere, Louise Veeder, George T. Veeder, Jr., Mrs. Irene V. Boudreaux, Mrs. Gertrude V. Meyn, Elizabeth Ann Veeder, Henry Ecuer, E. J. Robichaux, Hilton Landry, Kenneth S. Landry, Melvin Simoneaux, Theresa B. Simoneaux, Dorothy A. Boudreaux, Arnold Boudreaux, Jr., Euranie A. Boudreaux, Gertrude A. Kern, Ester Simoneaux Kern, Wayne Lancon, Wilbert Simoneaux, Allen Simoneaux, Vivian Simoneaux LeBlanc, Irene Simoneaux Pulley, Verena Simoneaux Kern, Breland Simoneaux, Nathan Simoneaux, Joyce Simoneaux Meeke, Gilda Simoneaux Blanchard, Noris Simoneaux, Wibry Simoneaux, Lucinda Simoneaux, Timothy T. Achee, Emmet Achee, Margaret Averill, John Hertel Frick, Betty Manion, G. T. Hertel, Charles A. Hertel, J.M. Campbell, M. Merlyn Christie, Michael P. Burns, Keith E. LeBlanc, Carolyn M. LeBlanc, Vincent J. St. Blanc, Jr., Mrs. Stephanie B. Dinkins, H. H. Dinkins, Jr., Gertrude O. Dinkins, Ladd A. Dinkins, Stephanie Dinkins, Rodney J. Banta, Elizabeth B. McGee LeMair, Mrs. Ethel Giles Chance, Mrs. Barbara Giles Weil, Mrs. Willie Giles O'Neill, Robert F. Giles, Raymond A. Dupuy, Beverly Marie Dupuy Comeaux, Fabiola Mae Dupuy Phenix, Adeline Sugar Factory Company, Limited, Roane Land Company, Inc., Amoco Production Company, a Delaware Corporation, Atlantic Richfield Company, a Pennsylvania Corporation, Tenneco Oil Company, a Delaware Corporation, W. R. Bullen, V. E. Karnes, and Edgewater Oil Company each claim a title or oil, gas and mineral lease of record to a portion or portions of the said land and aboriginal territory of the Tribe, adversely to plaintiff, and keep plaintiff out of possession of the same.

20. Said defendants, and each of them, assert such claims of title or oil, gas and mineral lease under and pursuant to the so-called "deeds" of said Philip Verret, Hyuncinthe Bernard, Frederick Pellerin, and Baptiste Carmouche and Mary Joseph for the alienation of Tribal land, and the acts of conveyance of the said Philip Verret, Hayancinthe Bernard, Frederick Pellerin, and Baptiste Carmouche and Mary Joseph by which said land was alienated.

21. The French Governor of Louisiana never gave an express written approval of any of the so-called "deeds" during the sovereignty of France over what is now the State of Louisiana. The Spanish Governor of Louisiana never gave an express written approval of any of the so-called "deeds" during the sovereignty of Spain over what is now the State of Louisiana. The sovereignty of the United States over what is now the State of Louisiana, resulted from the Louisiana Purchase and the Government of the United States has never consented to or approved the so-called "deeds", acts of conveyance of the said Philip Verret, Haycinthe Bernard, Frederick Pellerin, and Baptiste Carmouche and Mary Joseph, or any conveyance or alienation pursuant thereto, and the so-called "deeds", acts of conveyance of the said Philip Verret, Hyancinthe Bernard, Frederick Pellerin, and Baptiste Carmouche and Mary Joseph, or any act of conveyance or alienation thereto, are void; nor has the title of the Tribe to said land been otherwise transferred to any defendant or to any other party with the consent or approval of the Government of the United States. The Tribe therefore retains the title and right of possession to the said land.

22. The defendants' claims to the land and aboriginal territory of the Tribe, and each of them, are of no validity in law or equity, and defendants have no right, title, estate, oil, gas and mineral lease, lien or interest in the said land or any part thereof, but defendants' claims constitute a cloud upon plaintiff's title and right to said property.

23. The defendants Dolph Parro Trust Estate, Randolph H. Parro, Adolph Parro, Ida M. Parro Bodin, Alexander J. Parro, Sr., Sheldon Parro, and Gloria Mae Parro Trupin assert a claim of title to a portion of certain Land as alleged in Paragraphs 14 through 22 of the Complaint, described as "Dolph Parro" and further identified as parcel 1 on Exhibit "A" attached to and forming part of this Complaint. Further described as Section 37, T.14 S.-R.9 E., and a portion of Section 2, T.13 S.-R.9 E.

24. The defendant Harry L. Laws Company, Incorporated

asserts a claim of title to a portion of certain land as alleged in Paragraphs 14 through 22 of this Complaint, described as "Laws Realty" and further identified as parcel 2 on Exhibit "A" attached to and forming part of this Complaint. Further described as a portion of Section 2, T.13 S.-R.9 E.

25. The defendants Mrs. Winifred V. Cocke, Edna L. Delhay, Pearl Cocke, Barbara V. McKoin, Carol V. Wommer, Helen G. Garrison, Clarence Gardner, Jr., Mrs. Florabel V. Curry, Mrs. Ethel V. Hope, Mrs. Lena V. Sinitere, Louise Veeder, George T. Veeder, Jr., Mrs. Irene V. Boudreaux, Mrs. Gertrude V. Meyn, and Elizabeth Ann Veeder assert a claim of title to a portion of certain land as alleged in Paragraphs 14 through 22 of this Complaint, described as "Veeder" and further identified as parcels 3 and 6 on Exhibit "A" attached to and forming part of this Complaint. Further described as a portion of Section 2 and a portion of Section 11, T.13 S.-R.9 E.

26. The defendant Henry Ecuer asserts a claim of title to a portion of certain land as alleged in Paragraphs 14 through 22 of this Complaint, described as "H. Ecuer" and further identified as parcels 4 and 7 on Exhibit "A" attached to and forming part of this Complaint. Further described as a portion of Section 11, T.13 S.-R.9 E.

27. The defendant E. J. Robichaux asserts a claim of title to a portion of certain land as alleged in Paragraph 14 through 22 of this Complaint, described as "Robichaux" and further identified as parcels 5 and 8 on Exhibit "A" attached to and forming part of this Complaint. Further described as a portion of Section 11, T.13 S.-R.9 E.

28. The defendants Hilton Landry and Kenneth S. Landry assert a claim of title to a portion of certain land as alleged in Paragraphs 14 through 22 of this Complaint, described as "Mrs. N. Landry" and further identified as parcel 9 on Exhibit "A" attached to and forming part of this Complaint. Further described as a portion of Section 11, T.13 S.-R.9 E.

29. The defendants Melvin Simoneaux and Theresa B.

Simoneaux assert a claim of title to a portion of certain land as alleged in Paragraphs 14 through 22 of this Complaint, described as "Mrs. O. J. Simoneaux" and further identified as parcel 10 on Exhibit "A" attached to and forming part of this Complaint. Further described as a portion of Section 11, T.13 S.-R.9 E.

30. The defendants Mrs. D. Boudreaux, Dorothy A. Boudreaux, and Arnold Boudreaux, Jr. assert a claim of title to a portion of certain land as alleged in Paragraphs 14 through 22 of this Complaint, described as "E. A. Boudreaux" and further identified as parcel 11 on Exhibit "A" attached to and forming part of this Complaint. Further described as a portion of Section 11, T.13 S.-R.9 E.

31. The defendants Euranie A. Boudreaux, Gertrude A. Kern, Ester Simoneaux Kern, Wayne Lancon, Wilbert Simoneaux, Allen Simoneaux, Vivian Simoneaux LeBlanc, Irene Simoneaux Pulley, Verna Simoneaux Kern, Breland Simoneaux, Nathan Simoneaux, Joyce Simoneaux Meeks, Gilda Simoneaux Blanchard, Noris Simoneaux, Wibry Simoneaux, Lucinda Simoneaux, Hilton Landry and Kenneth S. Landry assert a claim of title to a portion of certain land as alleged in Paragraphs 14 through 22 of this Complaint, described as "D. Aleman" and further identified as parcel 12 on Exhibit "A" attached to and forming part of this Complaint. Further described as a portion of Section 21, T.13 S.-R.9 E.

32. The defendant Mrs. Gertrude A. Kern asserts a claim of title to a portion of certain land as alleged in Paragraphs 14 through 22 of this Complaint, described as "Mrs. S. Kern" and further identified as parcel 13 on Exhibit "A" attached to and forming part of this Complaint. Further described as a portion of Section 21, T.13 S.-R.9 E.

33. The defendants Timothy T. Achee and Emmet Achee assert a claim of title to a portion of certain land as alleged in Paragraph 14 through 22 of this Complaint, described as "A. J. Achee" and further identified as parcel 14 on Exhibit "A" attached to and forming part of this Complaint. Further

described as a portion of Section 21, T.13 S.-R.9 E.

34. The defendants Margaret Averill, John Hertel Frick, Betty Manion, G. E. Hertel, Charles A. Hertel, J. M. Campbell, M. Nerlyn Christie and Michael P. Burns assert a claim of title to a portion of certain land as alleged in Paragraphs 14 through 22 of this Complaint, described as "W. C. Hertel" and further identified as parcel 15 on Exhibit "A" attached to and forming part of this Complaint. Further described as a portion of Section 21, T.13 S.-R.9 E.

35. The defendants Keith E. LeBlanc and Carolyn M. LeBlanc assert a claim of title to a portion of certain land as alleged in Paragraphs 14 through 22 of this Complaint, described as "Paul LeBlanc" and further identified as parcel 16 on Exhibit "A" attached to and forming part of this Complaint. Further described as a portion of Section 21, T.13 S.-R.9 E.

36. The defendant Vincent J. St.Blanc, Jr. asserts a claim of title to a portion of certain land as alleged in Paragraphs 14 through 22 of this Complaint, described as "R. Blanchard" and further identified as parcel 17 on Exhibit "A" attached to and forming part of this Complaint. Further described as a portion of Section 21, T.13 S.-R.9 E.

37. The defendants Mrs. Stephanie B. Dinkins, H. H. Dinkins, Jr., Gertrude O. Dinkins, Ladd A. Dinkins and Stephanie Dinkins assert a claim of title to a portion of certain land as alleged in Paragraphs 14 through 22 of this Complaint, described as "H. H. Dinkins" and further identified as parcel 18 on Exhibit "A" attached to and forming part of this Complaint. Further described as a portion of Section 1, a portion of Section 5, and a portion of Section 14, T.13 S.-R.9 E.

38. The defendants Mrs. Ethel Giles Chance, Mrs. Barbara Giles Weil, Mrs Willie Giles O'Neill, Robert F. Giles, Raymond A. Dupuy, Beverly Marie Dupuy Comeaux and Fabiola Mae Dupuy Phenis assert a claim of title to a portion of certain land as alleged in Paragraphs 14 through 22 of this Complaint, described as "W. Giles" and further identified as parcel 19 on Exhibit "A"

and parcel 21 on Exhibit "B" attached to and forming part of this Complaint. Further described as a portion of Section 36, T.14 S.-R.9 E. and a portion of Section 33, T.13 S.-R.9 E.

39. The defendants Rodney J. Banta and Elizabeth B. McGee LeMair assert a claim of title to a portion of certain land as alleged in Paragraphs 14 through 22 of this Complaint, described as "Banta" and further identified as parcel 22 on Exhibit "B" attached to and forming part of this Complaint. Further described as a portion of Section 33, T.13 S.-R.9 E.

40. The defendant Adeline Sugar Factory Company, Limited asserts a claim of title to a portion of certain land as alleged in Paragraphs 14 through 22 of this Complaint, described as "Adeline Sugars" and further identified as parcel 20 on Exhibit "B" attached to and forming part of this Complaint. Further described as a portion of Section 33, T.13 S.-R.9 E.

41. The defendant Roane Land Company, Inc. asserts a claim of title to a portion of certain land as alleged in Paragraphs 14 through 22 of this Complaint, described as "D. C. Roane" and further identified as parcel 23 on Exhibit "B" attached to and forming part of this Complaint. Further described as a portion of Section 55, T.14 S.-R.9 E.

42. The defendant Amoco Production Company asserts a claim of title to an oil, gas and mineral lease, or leases, covering parcels 2 through 11. The said claim is based in whole or in part on a purported oil, gas and mineral lease, or leases, to defendant Amoco Production Company from Dolph Parro (two leases), recorded in Conveyance Book 4Y; from Laws Realty Co., Inc., recorded in Conveyance Book 4Y-24-56871; from A. Veeder Co., Inc., recorded in Conveyance Book 4Y-132-56923; from E. J. Robichaux, recorded in Conveyance Book 4Y-79-56894; from Henry Ecuier, et al, recorded in Conveyance Book 4Y-63-56884; from Henry Ecuier, et al, recorded in Conveyance Book 4Y-111-56912; and certain affidavits, recorded in Conveyance Book 5X-469-66520 to 66538; all of the above Conveyance Books being in the records of St. Mary Parish, Louisiana.

43. The defendant Tenneco Oil Company asserts a claim of title to an oil, gas and mineral lease, or leases, covering parcels 1 through 11. The said claim is based in whole or in part on a purported oil, gas and mineral lease, or leases, to defendant Tenneco Oil Company from May S. Veeder, recorded in the Conveyance Book 7M-650-80559; from Harry L. Laws Company, Inc., recorded in Conveyance Book 5S-627-64850; from Harry L. Laws Company, Inc., recorded in Conveyance Book 16N-503-145603; from Adolph Parro, et al, recorded in Conveyance Book 16X-355-67377; all of the above Conveyance Books being in the records of St. Mary Parish, Louisiana.

44. The defendant Atlantic Richfield Company asserts a claim of title to an oil, gas and mineral lease, or leases, covering parcels 20 through 23. The said claim is based in whole or in part on a purported oil, gas and mineral lease, or leases, to defendant Atlantic Richfield Company from William F. Giles, et al, recorded in Conveyance Book 6W-142-74798; from Rufus C. Banta, recorded in Conveyance Book 6W-367-25017; from Adeline Sugar Factory Company, Limited, recorded in Conveyance Book 7M-784-80623; and from D. C. Roane, recorded in Conveyance Book 8B-801-85263; all of the above Conveyance Books being in St. Mary Parish, Louisiana.

45. The defendant Edgewater Oil Company asserts a claim of title to an oil, gas and mineral lease, or leases, covering parcels 8 through 11. The said claim is based in whole or in part on a purported partial assignment of an oil, gas and mineral lease, or leases, to defendant Edgewater Oil Company from Amoco Production Company.

46. The defendant V. E. Karnes asserts a claim of title to an oil, gas and mineral lease, or leases, covering parcel 6. The said claim is based in whole or in part on a purported partial assignment of an oil, gas and mineral lease, or leases, to defendant V. E. Karnes from Tenneco Oil Company.

47. The defendant W. R. Bullen asserts a claim of title to an oil, gas and mineral lease, or leases, covering parcel 1. The said claim is based in whole or in part on a purported oil, gas

and mineral lease, or leases, to defendant W. R. Bullen from Adolph Parro, et al, recorded in Conveyance Book 20K-252-170313, in the records of St. Mary Parish, Louisiana.

48. All of the lands described in Paragraphs 23 through 47 of this Complaint are in the possession of defendants claiming title to such lands as described herein and if not in their possession are vacant and unoccupied.

49. Defendants keep plaintiff out of possession of the said lands in violation of the Acts between the Tribe and the French Crown and the Spanish Crown which were carried forward by the Louisiana Purchase, and Article I, § 8, Article I, § 10, and Article II, § 2 of the United States Constitution, 5 U.S.C. § 701 et seq. and the Indian Nonintercourse Act, 25 U.S.C. 177. Such violations infringe upon plaintiff's right to title and possession of the said lands as protected by the Acts between the Tribe and the French Crown and the Spanish Crown which were carried forward by the Louisiana Purchase, the protection of Article I, § 2 of the United States Constitution, 5 U.S.C. 701 et seq., and the Indian Nonintercourse Act, 25 U.S.C. § 177. Such violations keep plaintiff out of possession of the said land, and the oil, gas and minerals being removed from the said lands, to plaintiff's great damage.

50. By bringing this action, plaintiff Tribe does not waive or relinquish any right or action in respect of their land and aboriginal territory in the State of Louisiana.

51. It has always been the policy of the Chitimacha Tribe to live in peace and trust and friendship with their neighbors. The plaintiff Tribe brings this action against defendants only because all other avenues of redress have been closed to them.

WHEREFORE, plaintiff prays that this court:

1. Decree, declare and adjudge that plaintiff owns the right and title to all of the land described in Paragraphs 23 through 47 of this Complaint, and is entitled to the quiet and peaceable possession thereof; and that defendants, and each

of them, and all persons claiming under them, have no right, title, estate, oil, gas, and mineral lease, lien or interest in or to the said land or any part thereof.

2. Permanently enjoin defendants, and each of them, and all persons claiming under them, from asserting any adverse claim to plaintiff's title to said property.

3. Declare null and void and cancel of record, with respect to the property which is the subject matter of this action, each of the recorded instruments described herein by which defendants assert their claims to the said land.

4. In the alternative, if this court determines that defendants, or any of them, are in possession of the said land or any part thereof, adjudge that the plaintiff has the right of possession to such land and restore plaintiff to possession, and award plaintiff the rents and profits of said land.

5. For an order requiring defendants to cause an accounting to be made and a money judgment to be paid to plaintiff for all monies received by the defendants and other third parties as a result of the unlawful taking of oil, gas and minerals from the land of plaintiff.

6. For a money judgment compensating plaintiff for damages, in the amount of \$100,000,000.00 for the unlawful occupancy by defendants of the said lands of plaintiff.

7. Award plaintiff the cost of this action.

8. Award such other and further relief as this court deems just.

Dated: New Orleans, Louisiana, this 15th day of July, 1977.

Harry Case Stansbury
HARRY CASE STANSBURY

John C. Rose
JOHN C. ROSE

824 Baronne Street
New Orleans, Louisiana 70113
(504) 522-06

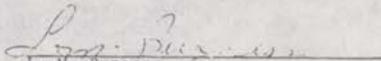
GUY J. D'ANTONIO II
9061 West Judge Perez Drive
Chalmette, Louisiana 70043
(504) 271-0471

ATTORNEYS FOR PLAINTIFFS

STATE OF LOUISIANA
PARISH OF LAFAYETTE

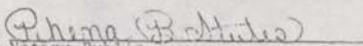
I, L. M. Burges, Chairman, the Chitimacha Tribal Council, the Chitamacha Tribe of Louisiana, the undersigned, after being duly sworn deposes and says: That I the Chairman and duly elected representative of the Chitimacha Tribe of Louisiana at Charenton, Louisiana, and thus, officially on behalf of the Chitimacha Tribal Council and on behalf of the members of the Chitimacha Tribe of Louisiana, and Individually I am a plaintiff in the above matter; that I have read the Complaint in this action and know the contents thereof, that the matters are true as stated therein, to the best of my knowledge.

Dated: Lafayette, Louisiana this 15th day of July, 1977.


L. M. Burgess

Sworn to and subscribed before me this 15th day of

July, 1977.


Notary Public

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED

JUL 15 1977

UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF LOUISIANA

DIVISION
LAFAYETTE DISTRICT

RECEIVED
BY *W. K. Cephus* CLERK
Deputy

CHITIMACA TRIBE OF
LOUISIANA, ET AL.

CIVIL ACTION NO. 770712

versus

DIVISION: LAFAYETTE

HARRY L. LAWS COMPANY, INC.
ET AL

Filed: July 15, 1977 *William P. St. Louis* Dty. Clk.

MOTION TO APPOINT SPECIAL PROCESS SERVER

Now into Court, through undersigned counsel, come complainants in the above numbered and captioned cause, who respectfully request that the Court appoint Roger Rivet to act as the Special Process Server for the service of the above numbered and captioned complaint upon all defendants, pursuant to Rule 4 of the Federal Rules of Civil Procedure.

GUY J. D'ANTONIO, II
9061 W. Judge Perez Drive
Chalmette, Louisiana 70043
271-0471

JOHN C. HOSE
824 Baronne Street
New Orleans, Louisiana 70113
522-0651

HARRY CASE STANSBURY
824 Baronne Street
New Orleans, Louisiana 70113
522-0651

BY: *Harry Case Stansbury*

ROGER RIVET
206 Scott Drive
Slidell, Louisiana

WESTERN DISTRICT OF LOUISIANA

FILED

JUL 15 1977

UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF LOUISIANA

Division
DISTRICTNOTED FOR FILING
BY *W. E. Davis* CLERK
DeputyCHITIMACA TRIBE OF
LOUISIANA, ET AL

CIVIL ACTION NO. 77-0772

versus

DIVISION:

HARRY L. LAWS COMPANY, INC.,
ET ALFiled: July 15, 1977 William C. Sites Dty. Clk.ORDER

Considering the above and foregoing motion to Appoint
Special Process Server:

IT IS ORDERED that Roger Rivet be, and the same is
hereby appointed as Special Process Server for the service of
the above numbered and captioned complaint upon all defendants
pursuant to Rule 4 of the Federal Rules of Civil Procedure.

LAFAYETTE, LOUISIANA THIS 15th DAY OF JULY, 1977.

W. Eugene Davis

JUDGE

CIVIL COVER SHEET

PLAINTIFFS

THE CHITWAHA TRIBE OF LOUISIANA,
ET AL

DEFENDANTS

HARRY L. LEE COMPANY, INC., ET AL

ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NUMBER)
HARRY CASE STANBURY
JOHN C. ROSE
824 Baronne St., New Orleans, La. 70113
522-0351
GUY J. D'ANTONIO II
8061 W. Judge Perez Dr., Chalmette, La.
271-0471

ATTORNEYS (IF KNOWN)

(PLACE AN IN ONE BOX ONLY)

BASIS OF JURISDICTION

1 U.S. PLAINTIFF 2 U.S. DEFENDANT 3 FEDERAL QUESTION (U.S. NOT A PARTY) 4 DIVERSITY

IF DIVERSITY, INDICATE
RESIDENCE BELOW.

CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
Civil Action To Restore plaintiffs to possession of certain lands pursuant to 25 U.S.C. § 177; Article I, § 8, Article I § 10 and Article II § 2 of the United States Constitution, 5 U.S.C. § 70, et al; and Acts of the United States Congress and Spanish Crown which were shadowed through the 19th century by the United States and Spain (and all claims claimed by the United States).

(PLACE AN IN ONE BOX ONLY)

NATURE OF SUIT

(PLACE AN IN ONE BOX ONLY)

CONTRACT	TORTS	ACTIONS UNDER STATUTES			
		CIVIL RIGHTS	FORFEITURE/PENALTY	PROPERTY RIGHTS	
<input type="checkbox"/> 110 INSURANCE	<input type="checkbox"/> 310 AIRPLANE	<input type="checkbox"/> 401 VOTING	<input type="checkbox"/> 610 AGRICULTURE	<input type="checkbox"/> 820 COPYRIGHT	
<input type="checkbox"/> 120 MARINE	<input type="checkbox"/> 315 AIRLINE AND AIRCRAFT LIABILITY	<input type="checkbox"/> 402 JOBS	<input type="checkbox"/> 620 FOOD & DRUG	<input type="checkbox"/> 830 PATENT	
<input type="checkbox"/> 130 MILLER ACT	<input type="checkbox"/> 320 ASSAULT, LIBEL & Slander	<input type="checkbox"/> 403 ACCOMMODATIONS	<input type="checkbox"/> 630 LIQUOR LAWS	<input type="checkbox"/> 840 TRADEMARK	
<input type="checkbox"/> 140 NEGOTIABLE INSTRUMENTS	<input type="checkbox"/> 330 FEDERAL EMPLOYERS' LIABILITY	<input type="checkbox"/> 404 WELFARE	<input type="checkbox"/> 640 R.R. & TRUCK	OTHER STATUTES	
<input type="checkbox"/> 150 RECOVERY OF MONEY BY OR ON BEHALF OF INSURED	<input type="checkbox"/> 340 MARINE LIABILITY	<input type="checkbox"/> 410 OTHER CIVIL RIGHTS	<input type="checkbox"/> 650 AIR LINE REGS.	<input type="checkbox"/> 800 STATE AND APOORNTMENT	<input type="checkbox"/> 801 AGRICULTURAL ACTS
<input type="checkbox"/> 160 OTHER CONTRACT	<input type="checkbox"/> 350 MOTOR VEHICLE	PRISONER PETITIONS		<input type="checkbox"/> 810 ANTI-TRUST	<input type="checkbox"/> 802 ECONOMIC STIMULUS ACTS
<input type="checkbox"/> 195 CONTRACT PRODUCT LIABILITY	<input type="checkbox"/> 355 SYSTEM VEHICLE LIABILITY	<input type="checkbox"/> 510 VACATE SENTENCE (2255)	LABOR		<input type="checkbox"/> 823 FEDERAL PATENT LAWS
	<input type="checkbox"/> 360 FEDERAL EMPLOYERS' LIABILITY	<input type="checkbox"/> 520 PAROLE ORF. REVIEW	<input type="checkbox"/> 710 FAIR LABOR STANDARDS	<input type="checkbox"/> 830 BANKRUPTCY TRUSTS	<input type="checkbox"/> 824 FEDERAL BANKING AND BANKING
	<input type="checkbox"/> 370 FEDERAL EMPLOYERS' LIABILITY	<input type="checkbox"/> 530 HARBOR CONGRESS	<input type="checkbox"/> 720 LABOR/MGMT. RELATIONS	<input type="checkbox"/> 840 COMMERCIAL RATES, ETC.	<input type="checkbox"/> 804 ENERGY ALLOCATION ACT
	<input type="checkbox"/> 380 FEDERAL EMPLOYERS' LIABILITY	<input type="checkbox"/> 540 MANDAMUS & OTHER	<input type="checkbox"/> 730 LABOR/MGMT. HIRING & DISMISSURE ACT	<input type="checkbox"/> 850 DEPORTATION	<input type="checkbox"/> 850 CONSTITUTIONAL STATUTES
	<input type="checkbox"/> 390 FEDERAL EMPLOYERS' LIABILITY	<input type="checkbox"/> 550 CIVIL RIGHTS	<input type="checkbox"/> 740 RAILWAY LABOR ACT	<input type="checkbox"/> 860 SECURITYS COMMERCE & EXCHANGE	<input type="checkbox"/> 870 NARA, TITLE III
	<input type="checkbox"/> 400 FEDERAL EMPLOYERS' LIABILITY		<input type="checkbox"/> 750 OTHER LABOR LITIGATION	<input type="checkbox"/> 870 SOCIAL SECURITY	<input type="checkbox"/> 880 OTHER STATUTORY ACTS
	<input type="checkbox"/> 410 FEDERAL EMPLOYERS' LIABILITY			<input type="checkbox"/> 890 BLACK LUNG	
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	<input type="checkbox"/> 870 FEDERAL EMPLOYERS' LIABILITY				
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	<input type="checkbox"/> 990 FEDERAL EMPLOYERS' LIABILITY				

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ORIGIN

(PLACE AN IN ONE BOX ONLY)

1 ORIGINAL PROSECUTING 2 REMOVED FROM STATE COURT 3 REMANDER FROM 1-4 REINSTATED OR REOPENED 5 TRANSFERRED FROM SPECIFIC DIST. 6 MULTIDISTRICT LITIGATION

RESIDENCE OF PRINCIPAL PARTY(S) (IF DIVERSITY)

RESIDENT OF YOUR STATE PTP DEF 1 1

NON-RESIDENT CORPORATION DOING BUSINESS IN STATE 2 2

NON-RESIDENT CORPORATION NOT DOING BUSINESS IN STATE 3 3

OTHER NON-RESIDENT OF YOUR STATE 4 4

JURY DEMAND: YES NO

RELATED CASE(S) IF ANY

JUDGE _____ DOCKET NUMBER _____

CIVIL CASES ARE DEEMED RELATED IF PENDING CASE INVOLVES:

1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING CASE.

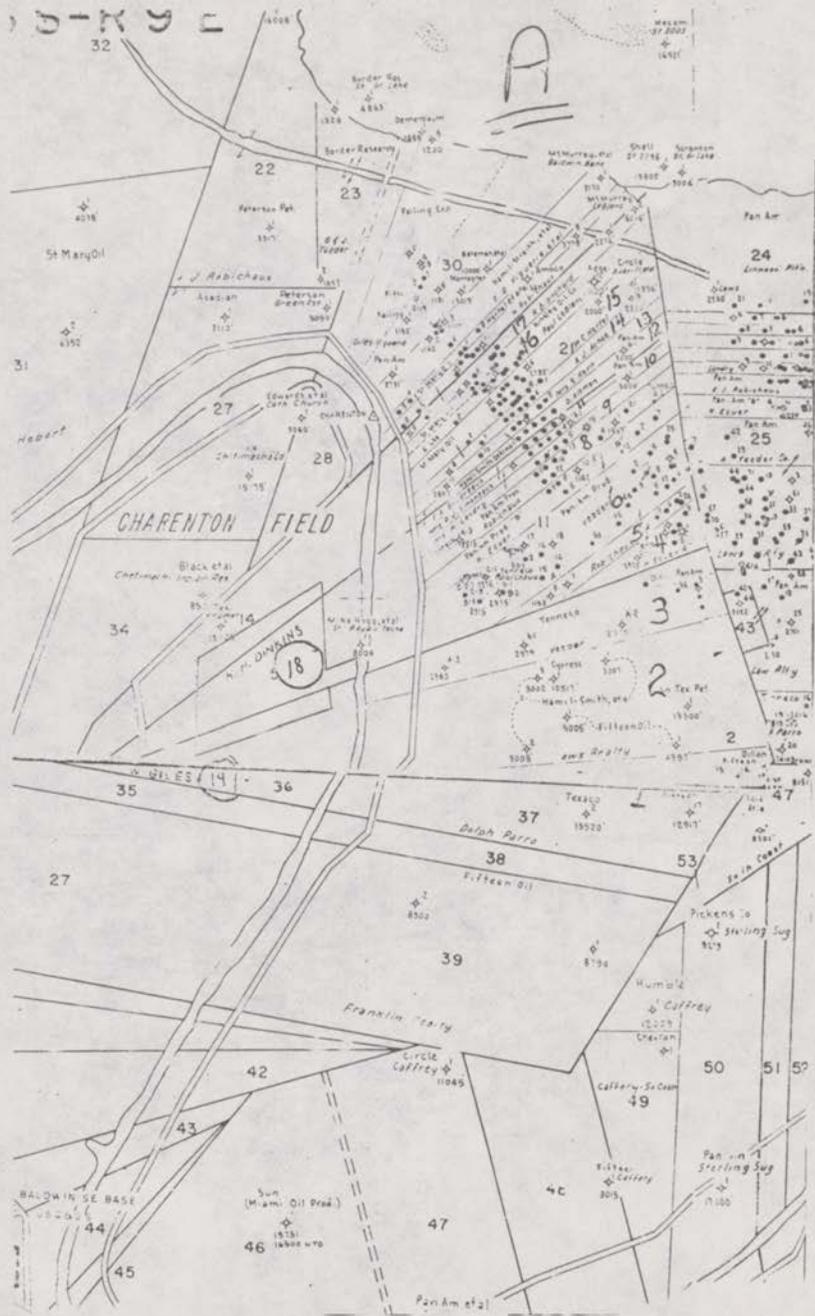
2. SAME ISSUE OF FACT OR GROWS OUT OF THE SAME TRANSACTION.

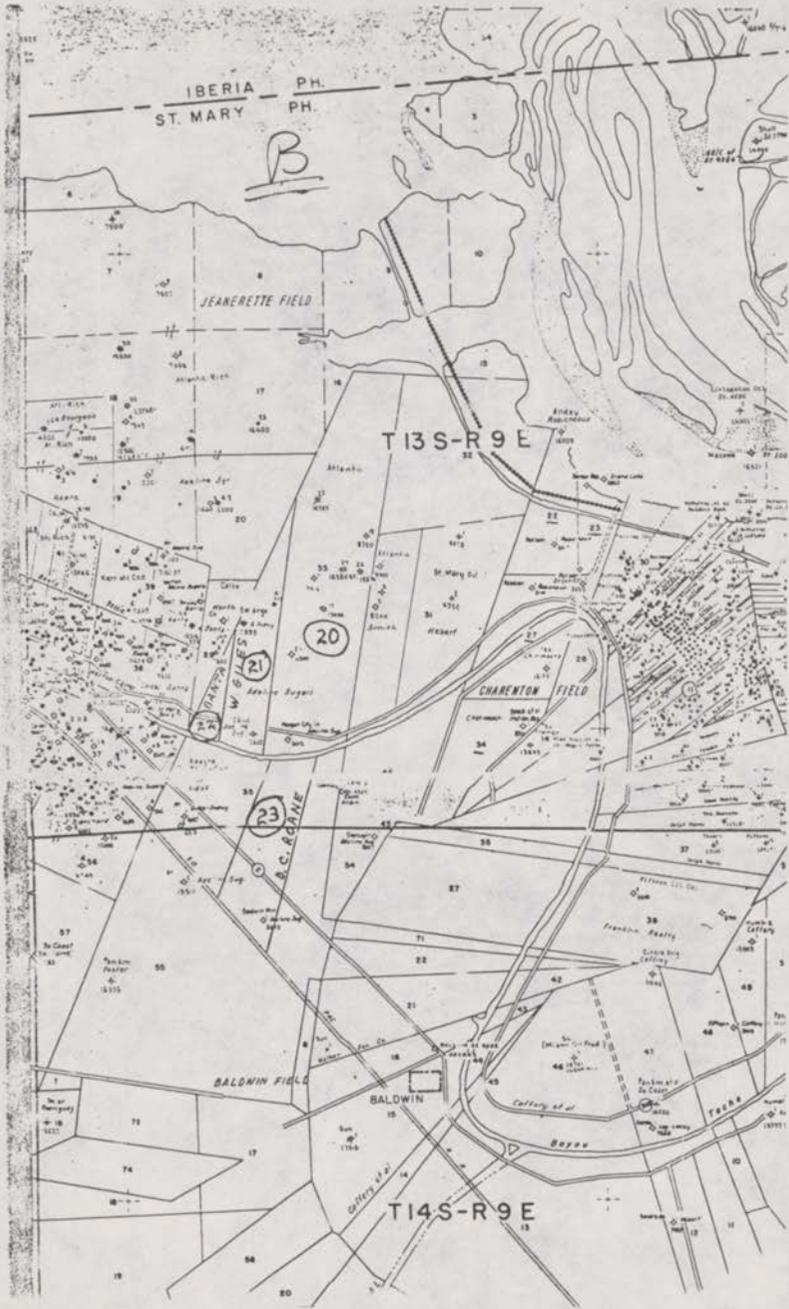
3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK.

SIGNATURE OF ATTORNEY OF RECORD

DATE: July 15, 1977

SIGNATURE OF ATTORNEY OF RECORD: Harry Case Stanbury





UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF LOUISIANA
 LAFAYETTE DIVISION

CHITIMACHA TRIBE OF LOUISIANA, *

PLAINTIFF *

v. *

GILBERT SMITH, WINIFRED V. *
 ERNA L. DELRAY, PEARL COCKE, *
 BARBARA V. MCKOIN, CAROL V. *
 WOMMER, HELEN G. GARRISON, *
 CLARENCE GARDNER, JR., FLORANCE *
 V. CURRY, ETHEL V. HOPE, L. *
 V. SINIERE, LOUISE VEEDER, *
 GEORGE T. VEEDER, JR., IRENE V. *
 BOUDREAUX, GERTRUDE V. MEYN, *
 ELIZABETH ANN VEEDER, D. J. *
 ALLEMAN, SOPHIE E. ROBICHAUX, *
 E. B. SPILLER, STEPHANIE B. *
 DINKINS, H. DINKINS, JR. *
 GERTRUDE O. DINKINS, LADD *
 DINKIND, AND STEPHANIE DINKINS, *

DEFENDANTS. *

CIVIL ACTION

NO. 790493-L

COMPLAINT

The plaintiff Chitimacha Tribe of Louisiana, for its Complaint, alleges upon information and belief that:

1. This is a civil action to restore the Chitimacha Tribe of Louisiana to possession of certain aboriginal territory and land in St. Mary Parish, Louisiana, which lands are subject to the protection of Acts between the Chitimacha Tribe of Louisiana and the French Crown and the Spanish Crown which were carried forward by the Louisiana Purchase, the protection of Article I, § 8, Article I, § 10, Article II, § 2 and Article VI of the United States Constitution, the Fifth Amendment to the United States Constitution, and the protection of the Indian Nonintercourse Act, 25 U.S.C. § 177.

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331, 1337 and 1362. The amount in controversy exceeds \$10,000.00, exclusive of interest and costs, with respect to each defendant.

3. Plaintiff's claim for relief arises under the Acts between the Chitimacha Tribe of Louisiana and the French Crown and the Spanish Crown which were carried forward by the Louisiana Purchase, and Article I, § 8 Article I, § 10, Article II, § 2 and Article VI of the United States Constitution, the Fifth Amendment to the United States Constitution, and the Indian Nonintercourse Act, presently codified at 25 U.S.C. § 177.

4. The Plaintiff, the Chitimacha Tribe of Louisiana, (hereinafter the "Tribe") is an Indian tribe or nation which has resided in the State of Louisiana since time immemorial. The Tribe has adopted a Constitution and By-Laws pursuant to the Indian Reorganization Act, 25 U.S.C. §§ 461-479. The business of the Tribe is conducted at the Chitimacha Tribal Center, P. O. Box 661, Charenton, Louisiana, 70523.

5. The defendants, and each of them, claim an interest in and title to certain land located in St. Mary Parish, Louisiana, which land is the subject matter of this action, as more fully appears elsewhere in this Complaint.

6. Plaintiff hereby invokes Section 177 of the Federal Law, Title 25, U. S. Code, which reads as follows:

"Section 177. Purchases or Grants to Lands
from Indians

No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian Nation or Tribe of Indians, shall be of any validity in law or equity, unless that same be made by treaty or convention entered into pursuant to the Constitution. Every person who, not being employed under the authority of the United States, attempts to negotiate such treaty or convention, directly or indirectly, or to treat with any such nation or tribe of Indians for the title or purchase of any lands by them held or claimed, is liable to a penalty of \$1,000. The agent of any state who may be present at any treaty held with Indians under the authority of the United States, in the presence and with the approbation of the Commissioner of the United States appointed to hold the same, may, however, propose to, and adjust with, the Indians the compensation to be made for their claims to land within such States, which shall be extinguished by treaty. R.S. Section 2116."

The Indian Nonintercourse Act has continuously been in force in substantially the same terms since July 22, 1790, 1 Stat. 137, and Congress re-enacted the Indian Nonintercourse Act in the Act of March 1, 1793, 1 Stat. 329; Act of July 22, 1796, 1 Stat. 489; Act of March 3, 1799, 1 Stat. 743; Act of March 30, 1802, 2 Stat. 139; Act of June 30, 1834, 4 Stat. 729.

7. Plaintiff hereby invokes Section 194 of the Federal Indian Law, Title 25, U.S. Code, which reads as follows:

"Section 194. Trial of right of property;
burden of proof

"The right of title to land shall be in favor of the Indian if an Indian may be a party on one side, and a white person on the other, the burden of proof shall rest upon the white person, whenever the Indian shall make out a presumption of title in himself from the fact of previous possession or ownership. R.S. Section 2126".

8. Since time immemorial, the plaintiff Tribe has exclusively owned, used, and occupied portions of the present State of Louisiana, as part of its aboriginal territory.

9. In the year 1767, the French Crown, by an Act of the French Governor of Louisiana recognized the plaintiff Tribe. In the year 1777, the Spanish Crown, by two Acts of the Spanish Governor of Louisiana, recognized the right of the plaintiff Tribe in the lands which they occupied. The said area of land was within its aboriginal territory in the State of Louisiana. The French Crown required the express written approval of the French Governor of Louisiana for any sale of Indian land during the sovereignty of France over what is now the State of Louisiana. The Spanish Crown required the express written approval of the Spanish Governor of Louisiana for any sale of Indian land during the sovereignty of Spain over what is now the State of Louisiana.

10. The Tribe owned and occupied as part of its land and aboriginal territory all of the land which is the subject matter of this action, at the time of the acts complained of herein.

11. The lands which are the subject of this action comprise the center of the ancient Chitimacha Tribal territory, the site of a historic village, and the Tribe and the area of land were recognized by the French Crown and Spanish Crown.

12. Article I, § 8, Article I, § 10, and Article II, § 2 of the United States Constitution respectively provide, in pertinent part, that "The Congress shall have Power to . . . regulate Commerce with foreign nations, and among the several States, and with the Indian Tribes"; that "(n)o state shall enter into any treaty . . ."; and that "(t)he President . . . shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur . . ."

13. Article VI of the United States Constitution PROVIDES in pertinent part, that "This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the Supreme Law of the Land".

14. The Fifth Amendment to the United States Constitution provides, in pertinent part, that "(N)or shall private property be taken for public use, without just compensation".

15. In the year 1790, the United States adopted the first Indian Nonintercourse Act, confirming the rights of the Indian tribes to possession of all lands then owned or occupied by them, until alienated with the consent of the Government of the United States, and nullifying any purported conveyances of tribal lands made without such Federal consent. The sovereignty of the United States over what is now the State of Louisiana resulted from the Louisiana Purchase of April 30, 1803, 8 Stat. 200. The Acts between the Tribe and the French Crown and the Spanish Crown which were carried forward by the Louisiana Purchase, and Article I, § 8, Article I, § 10, Article II, § 2, and Article VI of the United States Constitution, the Fifth Amendment to the United States Constitution, and the Indian Nonintercourse Act, 25 U.S.C. § 177, established and confirmed the Tribe's right of possession to all of the land which is the subject matter of this action.

16. The Chitimacha Tribe had title to a portion of its aboriginal territory, consisting of land which is the subject matter of this action, recognized in Chetimachas Indians v. United States, No. 62, United States District Court, Louisiana, on June 19, 1848, and in United States v. Chetimachas Indians, 131 U.S. 1xx, on December 15, 1892.

17. The Chitimacha Tribe had title to a portion of its aboriginal territory, consisting of land which is the

subject matter of this action, recognized in letters patent issued by President Franklin Pierce on February 1, 1855, and in a Survey of April 19, 1853 by R. W. Boyd of the Office of the United States Surveyor General.

18. Subsequent to the recognition of the Tribe and their land by the French Crown, the Spanish Crown, and the Louisiana Purchase by the United States, certain persons purported to cause the alienation of all of the aboriginal territory and land of the Tribe by virtue of one or more so-called "deeds". The so-called "deeds" purportedly consisted of one or more to certain persons, including *inter alia* J. B. Maynard, J. A. Frere, Antoinette Pecot Bouille, and F. C. Viguerie.

19. Acting pursuant to the so-called "deeds", the said J. B. Maynard, J. A. Frere, Antoinette Pecot Bouille, and F. C. Viguerie undertook to convey or otherwise alienate all of the land of the Tribe to other parties.

20. The defendants, Gilbert Smith, Winfred V. Cocke, Edna L. Delhay, Pearl Cocke, Barbara V. McKoin, Carol V. Wommer, Helen G. Garrison, Clarence Gardner, Jr., Florabel V. Curry, Ethel V. Hope, Lena V. Sinitere, Louise Veeder, George W. Veeder, Jr., Irene V. Boudreaux, Gertrude V. Meyn, Elizabeth Ann Veeder, D. J. Allaman, Sophie E. Robichaux, E. B. Spiller, Stephanie B. Dinkins, H. E. Dinkins, Jr., Gertrude O. Dinkins, Ladd A. Dinkins, and Stephanie Dinkins each claim a title or oil, gas and minerals of record to a portion or portions of the said land and aboriginal territory of the Tribe, adversely to plaintiff, and keep plaintiff out of possession of the same.

21. Said defendants, and each of them, assert such claims of title or oil, gas and minerals under and pursuant to the so-called "deeds" of said J. B. Maynard, J. A. Frere, Antoinette

Pecot Bouille, and F. C. Viguerie for the alienation of Tribal land, and the acts of conveyance of the said J. B. Maynard, J. A. Frere, Antoinette Pecot Bouille, and F. C. Viguerie by which said land was alienated.

22. The French Governor of Louisiana never gave an express written approval of any so-called "deeds" to any land which is the subject matter of this action during the sovereignty of France over what is now the State of Louisiana. The Spanish Governor of Louisiana never gave an express written approval of any so-called "deeds" to any land which is the subject matter of this action during the sovereignty of Spain over what is now the State of Louisiana. The sovereignty of the United States over what is now the State of Louisiana, resulted from the Louisiana Purchase and the Government of the United States has never consented to or approved the so-called "deeds", acts of conveyance of the said J. B. Maynard, J. A. Frere, Antoinette Pecot Bouille, and F. C. Viguerie, or any conveyance or alienation pursuant thereto, and the so-called "deeds", acts of conveyance of the said J. B. Maynard, J. A. Frere, Antoinette Pecot Bouille, and F. C. Viguerie, or any act of conveyance or alienation thereto, are void; nor has the title to the Tribe to said land been otherwise transferred to any defendant or to any other party with the consent or approval of the Government of the United States. The Tribe therefore retains the title and right of possession to the said land.

23. The defendants' claims to the land and aboriginal territory of the Tribe, and each of them, are of no validity in law or equity, and defendants have no right, title, estate, oil gas and minerals, lien, interest, easement or servitude in the said land or any part thereof, but defendants' claims constitute a cloud upon the plaintiff's title and right to said property.

24. The defendant Gilbert Smith asserts a claim of title to a portion of certain land alleged in Paragraph 16 through

23 of the Complaint, described as "Smith" and further identified as parcel 1 on Exhibit "A" attached to and forming part of this Complaint. Further described as a portion of Section 27, T.13 S.-R.9 E., St. Mary Parish, Louisiana.

25. The defendants Winifred V. Cocke, Edna L. Delhay, Pearl Cocke, Barbara V. McKoin, Carol V. Wommer, Helen F. Garrison, Clarence Gardner, Jr., Florabel V. Curry, Ethel V. Hope, Lena V. Sinitere, Louise Veeder, George T. Veeder, Jr., Irene V. Boudreaux, Gertrude V. Meyn, and Elizabeth Ann Veeder assert a claim of title to a portion of certain land as alleged in Paragraph 16 through 23 of the Complaint, described as "Veeder" and further identified as parcels 2,3 and 4 on Exhibit "A" attached to and forming part of this Complaint. Further described as a portion of Section 22, a portion of Section 23 and a portion of Section 27, T.13 S.- R.9 E., St. Mary Parish, Louisiana.

26. The defendant D. J. Alleman asserts a claim of title to a portion of certain land as alleged in paragraph 16 through 23 of the Complaint, described as "Alleman" and further identified as parcel 5 on Exhibit "A" attached to and forming part of this Complaint. Further described as a portion of Section 22 and a portion of Section 27, T.13 S.-R.9 E., St. Mary Parish, Louisiana.

27. The defendant Sophie E. Robichaux asserts a claim of title to a portion of certain land as alleged in Paragraph 16 through 23 of the Complaint, described as "Robichaux" and further identified as parcel 6 on Exhibit "A" attached to and forming part of this Complaint. Further described as a portion of Section 22 and a portion of Section 27, T.13 S.-R.9 E., St. Mary Parish, Louisiana.

28. The defendant E. B. Spiller asserts a claim of title to a portion of certain land as alleged in Paragraph 16 through

23 of the Complaint, described as "Spiller" and further identified as parcel 7 on Exhibit "A" attached to and forming part of this Complaint. Further described as a portion of Section 22, T.13 S.-R.9 E., St. Mary Parish, Louisiana.

29. The defendants Stephanie B. Dinkins, H. H. Dinkins, Jr., Gertrude O. Dinkins, Ladd A. Dinkins and Stephanie Dinkins assert a claim of title to a portion of certain land as alleged in Paragraph 16 through 23 of the Complaint, described as "H. H. Dinkins" and further identified as parcel 8 on Exhibit "A" attached to and forming part of this Complaint. Further described as a portion of Section 34, T.13 S.-R.9 E., St. Mary Parish, Louisiana.

30. All of the lands described in Paragraph 24 through 29 of this Complaint are in the possession of defendants claiming title to such lands as described herein, and if not in their possession are vacant and unoccupied.

31. Defendants keep plaintiff out of possession of the said lands in violation of the Acts between the Tribe and the French Crown and the Spanish Crown which were carried forward by the Louisiana Purchase and Article I, § 8, Article I, § 10, Article II, § 2 and Article VI of the United States Constitution, the Fifth Amendment to the United States Constitution, and the Indian Nonintercourse Act, 25 U.S.C. § 177. Such violations infringe upon plaintiff's right to title and possession of the said lands as protected by the Acts between the Tribe and the French Crown and the Spanish Crown which were carried forward by the Louisiana Purchase, the protection of Article I, § 8, Article I § 10, Article II, § 2, and Article VI of the United States Constitution, the Fifth Amendment to the United States Constitution, and the Indian Nonintercourse Act, 25 U.S.C. § 177. Such violations keep plaintiff out of possession of the said land, and any oil, gas and minerals being removed from the said lands, to plaintiff's great damage.

32. By bringing this action, plaintiff Tribe does not waive or relinquish any right or action in respect of their land and aboriginal territory in the State of Louisiana.

WHEREFORE, the plaintiff Chitimacha Tribe of Louisiana respectfully requests that this Court:

1. Decree, declare and adjudge that plaintiff owns the right and title to all of the land described in Paragraphs 24 through 29 of this Complaint, and is entitled to the quiet and peaceable possession thereof; and that defendants, and each of them, and all persons claiming under them, have no right, title, estate, oil, gas, and minerals, lien, interest, easement or servitude in or to the said land or any part thereof.

2. Permanently enjoin defendants, and each of them, and all persons claiming under them, from asserting any adverse claim to plaintiff's title to said property.

3. Declare null and void and cancel of record, with respect to the property which is the subject matter of this action, each of the recorded instruments described herein by which defendants assert their claims to the said land.

4. In the alternative, if this Court determines that defendants or any of them, are in possession of the said land or any part thereof, adjudge that the plaintiff has the right of possession to such land and restore plaintiff to possession, and award plaintiff the rents and profits of said land.

5. For an order requiring defendants to cause an accounting to be made and a money judgment to be paid to plaintiff for all monies received by the defendants and other third parties as a result of the unlawful taking of any oil, gas and minerals from the land of plaintiff.

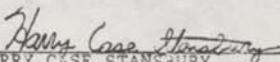
6. For a money judgment compensating plaintiff for damages, in the amount of Twenty-Five Million and NO/100

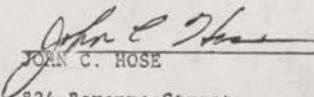
(\$25,000,000.00) Dollars for the unlawful occupancy by the defendants of the said lands of plaintiff.

7. Award plaintiff the cost of this action.
8. Award such other and further relief as this Court may deem just and appropriate.

Respectfully submitted,

Dated: April 6, 1979
New Orleans, LA.


HARRY CASE STANSBURY

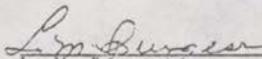

JOHN C. ROSE
824 Baronne Street
New Orleans, Louisiana 70113
(504) 522-0651

GUY J. D'ANTONIO, II
3212 16th Street
Suite 100
Metairie, Louisiana 70001
(504) 486-7231

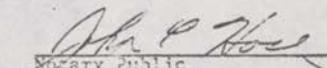
ATTORNEYS FOR PLAINTIFF

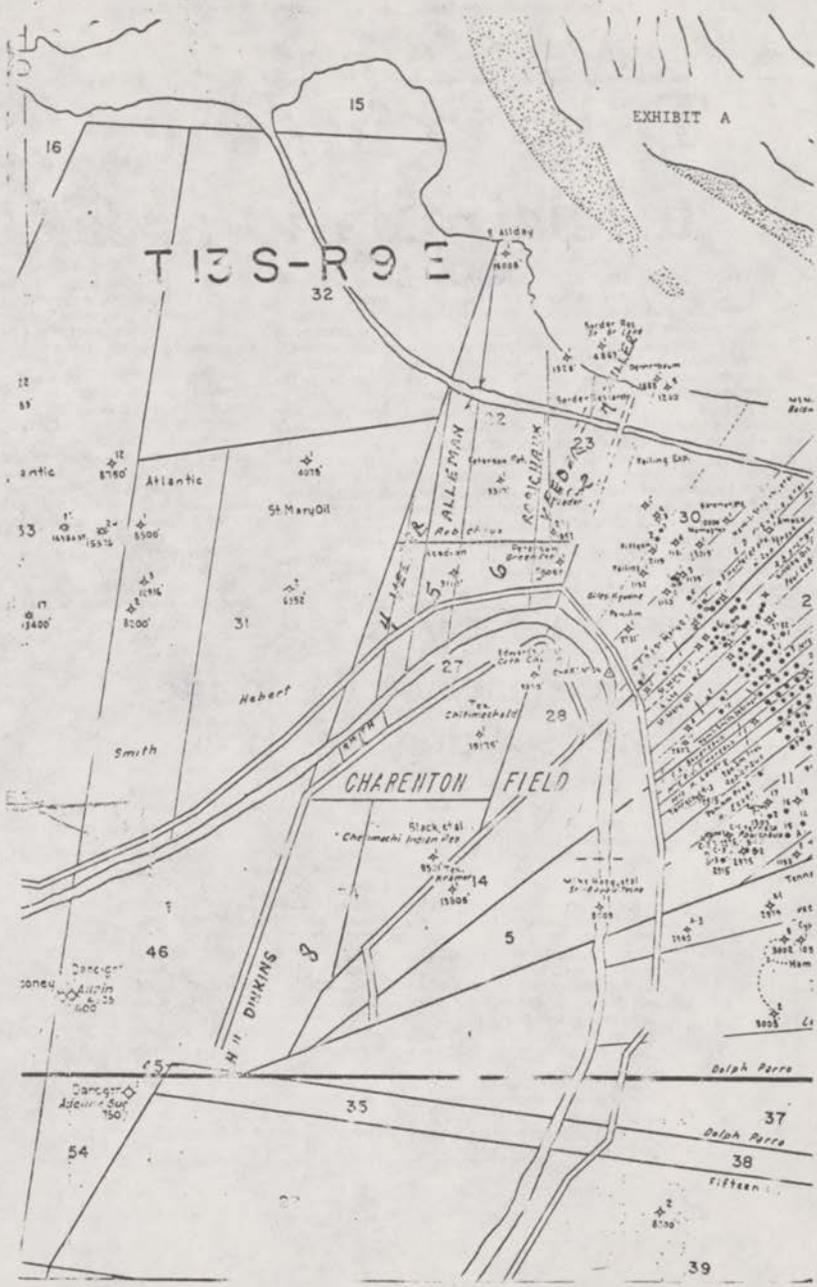
STATE OF LOUISIANA
PARISH OF ORLEANS

I, L. M. Burgess, Chairman, the Chitimacha Tribal Council, the Chitimacha Tribe of Louisiana, the undersigned, after being duly sworn deposes and says: That I am the Chairman of the Chitimacha Tribal Council and duly elected representative of the Chitimacha Tribe of Louisiana at Charenton, Louisiana; that I have read the Complaint in this action and know the contents thereof, that the matters are true as stated therein, to the best of my knowledge.


L. M. Burgess

Sworn to and subscribed before me this 5th day of
April, 1979.


Notary Public



T 13 S - R 9 E

EXHIBIT A

CHARENTON FIELD

DUNKINS

ALLEMAN

Atlantic

St. Mary Oil

Hebert

Smith

Dolph Parra

Dolph Parra

Fifteen

Danciger

Danciger

Adeline

1900

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3,000 square miles

Tribe to file suit to claim land area

By JIM BOURGEOIS

CHARENTON — Attorneys for the Chitimacha Indian tribe will file suit claiming approximately 3,000 square miles of land lying in an area from the Atchafalaya Basin to Louisiana's Gulf Coast.

The claim, which represents approximately 6 per cent of Louisiana's land area, is a part of the Chitimacha aboriginal lands and rightfully theirs, according to attorney John Hose, who is representing the tribe in a suit already filed in Federal District Court, claiming about 5,000 acres of land for the Indians.

No legal action has been taken on the new claim as of yet, Hose said yesterday, while attorneys and clients attempt to reach a decision on what legal route to follow in

their efforts at reclaiming the land for the tribe. A decision will be made on whether the Chitimachas will sue individual landowners in the area of the new claim or sue the federal government in an attempt to force it to sue landowners in the Indians' behalf, he said.

The basis for the new claim was discovered by an anthropology professor retained to research the Indians' lands, Hose said. The researcher found the Chitimacha occupied those lands reaching east and west from an area near Lafayette to Donaldsonville and south to the Gulf, Hose said.

Chitimacha villages dotted the area during the period from 1790 to 1850, he said, and Indians lived, hunted and fished on those lands. The Chitimacha were occupying

the area at the time of the Louisiana Purchase in 1804, Hose said, at which time the tribe fell under the jurisdiction of the Indian Non-Intercourse Act of 1790.

Under the terms of the act, the federal government has the responsibility of holding title to Indian lands in trust for the Indians, Hose said. Therefore, he explained, it was the government's duty to hold title to all Chitimacha lands in the newly researched claim. The lands, he said, belonged to the Indians at the time of the Louisiana Purchase and were lost later to white settlers and the state government.

The Atchafalaya Basin, Louisiana's last wilderness, is part

(Continued on Page 3)

Chitimacha tribe to file suit seeking land area

Continued from Page 1.

of the new claim, he said, and is presently owned by the state of Louisiana. At the time of the Louisiana Purchase, the Basin was a lake in which the Chitimacha fished, Hose said.

A decision on which legal course to take in pursuing the matter will be forthcoming, Hose said, although he sees no need for haste on the part of the tribe. President Carter has signed into law a bill which extends for two years the time in which suits laying claim to Indian lands can be filed, he said, thereby alleviating the need for a quick decision.

The extension has also delayed the filing of another suit claiming approximately 1,000 acres of land for the Chitimacha by the Department of Interior's Bureau of Indian

Affairs (BIA), Hose said. "They can just sit back and wait now," he said.

The tribe's suit filed by the Chitimacha in mid-July asks for a claim of approximately 3,000 acres and near the tribe's reservation in Charenton to Chitimacha ownership. The suit also asks monetary compensation for the oil and gas extracted from those lands since the 1930s.

Chitimacha tribal chief L. M. Burgess told the Daily Iberian the lands were lost through "tax sales and shabby deals. And we didn't even get what a tax sale was," Burgess said.

The Indians' claims are legitimate, Hose said, and he feels the tribe has a good chance of receiving some sort of restitution through a court.

Chitimachas Lay Claim To Atchafalaya Basin

CHARENTON — The Chitimacha Indians of Charenton have long felt they should own a large part of the Atchafalaya Basin, since their ancestors lived there long before Cajuns or any other Europeans sailed its bays or set foot in the swamplands. Now they want it all.

The Indians say they are entitled to approximately 3,000 square miles of land and their attorneys have filed a new claim to supplement one they filed for 5,000 acres of Atchafalaya Basin land in July.

They are claiming the land as the Indian's original home site.

Attorney John [unclear] says the tribe is still trying to decide some of the technical aspect of the new claim, such as whether to sue the government or individual homeowners.

They plan to base their new claim on a report by an anthropology professor who researched the former ownership of Indian land. His report said the Chitimachas once occupied an area

stretching from west of Lafayette to Donaldsonville and south to the Gulf of Mexico.

Today the Chitimacha village at Charenton has shrunk to only a few homes and no longer do members of the tribe earn the bulk of their living by weaving baskets and selling Indian craft products.

Many are employed in the oil fields and at other area industries.

According to historical research the Chitimachas occupied the broad area in the late 1600s, and were still there when the Louisiana Purchase was announced in 1803.

Their attorneys say this placed the tribe under the protection of the Nonintercourse Act of 1790, an act which outlawed individual land dealings with Indians and said the federal government had the responsibility of holding title to Indian lands and keeping the lands in trust for the Indians.

ST. MARY AND FRANKLIN

Banner-Chicago

Vol. 95 No. 294

Franklin, Louisiana

Monday, April 27, 1979

16 pages

10¢ per copy

Claim may include reserve don

Chitimacha tribe extends land claims

The Chitimacha tribe is considering broadening its latest land claim to include the Bayou Choctaw salt dome area, the Atchafalaya in Iberville Parish, said the tribe's attorney, Robert J. Hays, today.

The salt dome has been appropriated by the federal government for use in the Strategic Petroleum Reserve program.

So far, said Hays, the Indians have filed suit on land that covers within one mile of the dome last April and he said he plans on "broadening the claim to include the entire salt dome area."

Hays said the federal government is paying for the exploration "ought to go to the Chitimacha rather than other landowners."

The latest land suit filed in April includes 8,000 acres and \$25 million in damages. The land claimed is in the Atchafalaya parish, across the Atchafalaya Basin from Charenton. This suit was filed in federal court.

The suit was filed in federal court against defendants A. Willbert & Sons Lumber and Shindale Co. and Exxon Co. but Hays said when the suit is broadened to include the dome more companies will be named as defendants most of which will probably be oil and gas companies.

Hays said about 15 big-oil wells cross the land around the dome and he said "about 100" oil wells are on the dome itself.

Hays also said "we're continuing to research the other side of the basin. We're constantly investigating. Hays admitted "I don't think will include the entire area may have a claim suits filed in damages."

in "landowners" filed by the Chitimacha tribe and the state of Louisiana. Hays said "I don't think will include the entire area may have a claim suits filed in damages."

Other suits filed by the Chitimacha tribe and the state of Louisiana. Hays said "I don't think will include the entire area may have a claim suits filed in damages."

Hays said "I don't think will include the entire area may have a claim suits filed in damages."

Mr. VEEDER. I would ask you to pay special attention to a contract there from the Bureau of Indian Affairs to the Chitimacha Tribe of Louisiana in the amount of \$55,000.

I am not going to read my testimony; I will let it stand for the record. I will make a few brief comments.

I am just astounded at what I have seen today. I have seen dozens of people walk in here to talk with this committee. I was informed that we were going to come up here to listen about a 2-year extension, and now I hear about 5 and 10 years; I do not think there is ever going to be any end to this as long as extensions are granted.

If you will read the statement I have submitted, you will see why I am against extending the deadline. I am being sued for \$500 million-plus. I see people up here asking for money, the taxpayers' money, the public's money, for research, documentation, and lawyers' time to file litigation against the very taxpayers who are putting that money up. It is disillusioning to me.

They talk in terms of fairness and justice. What about the defendants in these cases? Under the Nonintercourse Act of 1790, the burden of proof is on the white man. We have been sued for somewhere between \$125 million and \$750 million, and we have to prove that we are innocent; we are guilty until proven innocent.

We feel we have a firm case, a unique case; we feel we have the strongest in the Nation as landowners, but we do not get \$55,000 contracts from the Federal Government to reimburse us for our legal research or our documentation. We feel it is an unfair situation; it is an unfair system where one side in a private lawsuit, individual against individual, receives money from the Federal Government to subsidize their legal research.

I would ask—and I will wind up my testimony at this point in time—this committee, in all fairness, that if you consider legislation for an extension of time, that you also consider one of two additional components in that legislation. That is: (1) make the Interior and Justice Departments liable for defendants' fees on all tribal land suits filed privately or by the Government on behalf of an Indian tribe if the defendants are successful in the court case; and, (2) for every claims research dollar given to the Justice Department, Bureau of Indian Affairs, Interior Department, set aside a like amount, dollar for dollar, to be reimbursed to the defendants in the suits that result from that research.

It is really disillusioning. It is inequitable the way it is set up in the court system, and I feel personally that this would give us some equity in the situation.

I appreciate the time and the opportunity to appear before this committee, Mr. Chairman.

Senator MELCHER. Are you suggesting this only on disputes concerning title to land?

Mr. VEEDER. Yes, sir. This is our problem. We are being sued for land and for damages; 5,800 acres of land, and this extension will have no impact on my lawsuit because they can amend it to include half the State of Louisiana if they wish to do so. So, my time is gone. But there is one additional tribe that is Federally recognized in the State. This would give them additional time. It is my understanding that the plaintiffs' attorneys have already talked to them about filing on their behalf.

We have another tribe that is seeking Federal recognition, and there are two or three others that are attempting to do so also. This will never end unless it is allowed to expire.

Senator MELCHER. Does this involve minerals?

Mr. VEEDER. Yes, sir. The first lawsuit in which I am involved is for 5,000 acres of land which was "illegally taken away from the Indian," \$100 million in damages for unlawful occupancy, and reimbursement of all gas, oil, crops, and I would imagine since this goes back to the 1790's probably slaves and everything else—mules—that was produced on that property; they want to be reimbursed for it.

Senator MELCHER. Who brought the suit?

Mr. VEEDER. The Chitimacha Indian Tribe of Louisiana, and they have since filed a second suit for 800 acres and \$25 million, plus reimbursement, et cetera, et cetera.

Senator MELCHER. Does most of the value involve minerals, or is it the land itself?

Mr. VEEDER. The production in that area has depleted considerably. The field was discovered in the last 1920's and early 1930's, and there is not a great deal of production out there at this point in time. However, if they were to receive reimbursement for everything that had been produced, you are talking about maybe 75 million barrels of oil alone, not counting gas, in a 40-year period.

Senator MELCHER. I see.

Mr. Johnston?

STATEMENT OF GUY JOHNSTON, PRESIDENT, TRICOUNTY LAND-OWNERS ASSOCIATION, ROCK HILL, S.C.

Mr. JOHNSTON. Thank you, Mr. Chairman.

I reside in the area of York County, S.C., which is claimed by the Catawba Indians.

Our citizens have been repeatedly threatened with a land claim lawsuit if we do not resolve the issue with a settlement prior to the expiration of the statute of limitations on April 1. We have suffered economic damage in the area of transfers of titles of over \$50,000; industrial development has virtually halted; commercial development has been slowed; we have had disaster relief funds denied to people who are entitled to them; and HUD has withheld funds from our area because our city government could not show clear title.

Senator MELCHER. What city is that?

Mr. JOHNSTON. Rock Hill, S.C., sir. It is a city of approximately 40,000 people.

Senator MELCHER. Lest I forget it, would you leave a copy of your testimony with us? We do not seem to have one here.

Mr. JOHNSTON. Yes, sir. I turned in copies this morning. They should be there somewhere.

Senator MELCHER. All right. We will find it then. Without objection, it will be included in the record at this point.

[The prepared statement of Mr. Johnston follows:]

TESTIMONY OF:

GUY JOHNSTON, PRESIDENT
TRI-COUNTY LANDOWNERS ASSOCIATION

BEFORE THE:

SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS

DECEMBER 17, 1979

Mr. Chairman, my name is Guy Johnston, I am a resident of York County, South Carolina, and I live in the area claimed by the Catawba Indians. I am appearing here today on behalf of the Tri-County Landowners Association, an association organized for the purpose of "obtaining and communicating information regarding the claim of the Catawba Indians to land in South Carolina.

By way of background, the Catawba Indians claim that a 144,000 acre tract of land was purchased from them illegally by the State of South Carolina in the Treaty of Nations Ford in 1840. It is claimed that this treaty violated the Indian Non-Intercourse Act of 1790. For some time the Catawbas have pursued this claim, and in August of 1977 Mr. Leo Krulitz, Solicitor of the Interior Department issued a litigation request on behalf of the Catawbas, to the Justice Department, recommending an ejection action against the current possessors of the property. Mr. Krulitz later informed our association that Interior had "withdrawn its litigation request" so that negotiations could move forward. To the contrary, in November of this year we learned that in fact U. S. Attorney General Griffin Bell had rejected this litigation request in May of 1978. While we welcomed the news that Mr. Bell had rejected the Interior Department's litigation request, we still have no assurance that interior will not re-request litigation to a new attorney general. Meanwhile, our citizens have been repeatedly threatened with a land claim lawsuit of a settlement is not reached prior to April 1, 1980.

During the two and one-half (2½) years since the litigation request by Mr. Krulitz, our area has suffered severe economic damage because of the mere threat of clouded real estate titles during prolonged litigation. Industrial development in our area has been virtually halted, commercial development has been slowed, transfers of farm and timber-lands have been severely hampered, and even federal disaster relief loans have been difficult to obtain. For nearly a year the U. S. Department of Housing and Urban Development (HUD) withheld from our area nearly \$2 million in funds designated for low income housing. These funds had already been appropriated and approved, and were then held back because of the Catawba Land Claim. Now

that the statute of limitations on federal involvement in this claim nears expiration, some progress can be seen in settlement negotiations. There now appears to be some urgency to get settlement legislation passed prior to April 1, 1980. The Catawba claim is a long way from being settled. Major issues remain unresolved and differences among factions within the Catawbas continue to hamper progress.

We believe that the plight of the current possessors of the property must be carefully considered. We number approximately 40,000 freeholders, and in the words of Mr. Griffin Bell, we are "completely innocent of any wrongdoing". However, if litigation is filed, we will be the ones who suffer.

All the parties to this claim have operated under the assumption that the April 1, 1980 statute of limitations would not be extended. The Tri-County Landowners Association believes that the extension granted three (3) years ago provided ample time to develop a settlement proposal or obtain passage of settlement legislation. As I previously pointed out, our region has already suffered severe economic hardship during this period of time. Another extension of the statute of limitations will only prolong our agony and delay the ultimate resolution of this problem.

Our involvement in this claim has opened the door for us to learn many things about Federal Indian Policy and procedures that are not common knowledge. We find that Indian policy is widely criticized by Indians and non-Indians alike. One of the problems is that Indian policy is inconsistently applied. Many of the claims which have been presented to federal officials have resulted from this lack of consistency. For example: There is no clear federal policy which defines what constitutes an Indian, or an Indian Tribe. Many claims have been filed by obscure groups of citizens claiming to be descendents of various bands of Indians. These claims appear to be spurious, but because of their potentially adverse impact, they require investigation by appropriate federal, state and local officials. This situation should be rectified at the earliest possible date.

Another problem exists in determining the requirements for enrollment in a tribe.

Since over \$2 billion annually is appropriated to fund the many Indian programs of this nation, we believe that federal policy, and not individual groups of Indians, should determine who is entitled to share in the benefits of these funds. Also, a reasonable policy addressing this matter will serve to dramatically reduce the number of claims which must be processed and investigated by affected parties.

My final point is one of equity under the law. Local citizens who find themselves threatened with legal action by the U. S. Justice Department cannot afford the quality of legal representation to adequately defend their position in these cases. Congressman Ron Marlenee of Montana has addressed this issue in H.R. 3929, which has been referred to the House Committee on the Judiciary. H.R. 3929 would amend title 28 U. S. C. to "require that the United States reimburse defendants for the costs incurred in the defense against any civil action filed by the United States on behalf of any Indian or Indian Tribe". I have attached a copy of this bill to my testimony, for the record. The Tri-County Landowners Association opposes any extension of the statute of limitations; however, if an extension is granted, then the provisions of H.R. 3929 should be incorporated into that extension. This is only fair. It would guarantee all citizens, Indian and non-Indian, equality of representation under the law.

In summary, we are opposed to the extension of the statute of limitations on the filing of claims on behalf of Indians or Indian Tribes. The approach of expiration has helped to move settlement negotiations forward. We cannot afford another year or two of the type of damage we have suffered. We deplore lengthy litigation of this claim, but at least we would know that when appeals had run their course, then the case would be over. This is not the case when extension after extension is granted.

Mr. Chairman, on behalf of the Tri-County Landowners Association, I thank you for the opportunity to testify concerning this matter of critical importance to our citizens. I will be happy to answer any questions, or to expand on any part of my testimony.

Mr. Chariman - Thank you.

96TH CONGRESS
1ST SESSION

H. R. 3929

To amend title 28, United States Code, to require that the United States reimburse defendants for the costs incurred in the defense against any civil action filed by the United States on behalf of any Indian or Indian tribe.

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 1979

Mr. MARLENEE introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to require that the United States reimburse defendants for the costs incurred in the defense against any civil action filed by the United States on behalf of any Indian or Indian tribe.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 2412 of title 28, United States Code, is amend-
4 ed—

5 (1) by striking out "Except as otherwise specifi-
6 cally provided by statute," and inserting in lieu thereof
7 the following: "(a) Except as otherwise specifically

1 provided in subsection (b) or in any other provision of
2 law,"; and

3 (2) by adding at the end of such section the fol-
4 lowing new subsection:

5 "(b) Notwithstanding subsection (a), a judgment for
6 costs shall be taxed against the United States under this sub-
7 section in any civil action brought on behalf of any Indian or
8 Indian tribe by the United States or any agency or official of
9 the United States acting in his official capacity as trustee for
10 such Indian or Indian tribe. A judgment for costs under this
11 subsection shall be limited to reimbursing the party against
12 whom such civil action was brought for the amount deter-
13 mined by the court having jurisdiction over such civil action
14 to be equal to the amount of (1) the costs as enumerated in
15 section 1920 of this title, and (2) the reasonable fees and
16 expenses of attorneys incurred by such party in such civil
17 action. Payment of judgment for costs under this subsection
18 shall be as provided in sections 2414 and 2517 of this title
19 for the payment of judgments against the United States."

20 SEC. 2. The amendments made by the first section of
21 this Act shall apply with respect to any civil action filed on
22 or after January 1, 1979, except that no amount represent-
23 ing a judgment for costs payable to any party in any civil
24 action under section 2412(b) of title 28, United States Code,
25 as added by the first section of this Act, shall be paid before
26 October 1, 1979.

Mr. JOHNSTON. All of the parties to our claim have acted under the assumption that the statute of limitations would expire. Since the expiration is approaching, there is some progress toward resolving our claim. It is my feeling and the feeling of our association that if the statute of limitations is extended for any period, then it will only forgo any settlement to our claim. Another extension will just delay our agony and prolong the problem.

Along with Mr. Veeder's testimony, there has been a bill introduced in the House by Congressman Marleene in H.R. 3929 which would reimburse the defendants for legal expenses in any action brought on behalf of Indians by the U.S. Government.

If there is an extension granted, which I do oppose, I would urge you to include the provisions of H.R. 3929 in that extension. Also, if an extension is granted, I would like to ask this committee to please consider exempting all of the Eastern Indian land claims.

We heard testimony this morning from Myles Flint. The only involvement in Eastern Indian land claims at this time is in Maine. We have an opinion from Griffin Bell that he would not sue landowners in South Carolina, Louisiana, or New York. Right now, there seems to be very little involvement in that area, and I would ask you to please put that provision in any extension.

Everything we have heard—requests for extensions, funding, special prosecutors, or whatever—has come from Indian groups and Indian attorneys from the West. I am impressed with the magnitude of the problem in the West, but I do not see it as part of the Eastern problem.

The other thing that could eliminate part of the problem, I think, is some kind of Federal policy clearly delineating what is an Indian and who is entitled to bring suit. In one part of the country, we have groups with one-fourth blood or less not being entitled to be enrolled in tribes, and in the East we have remnants of tribes and people claiming to be descendants of various Indian groups, claiming to be Indian and threatening to bring suits. I think some kind of Federal policy should state what, in fact, is an Indian or an Indian group.

Many of the proposed land claims in the East have come from organizations really having no or very little Indian blood—obscure groups—and these take the time and energy of all the affected parties. I think Federal policy should also address that issue.

Mr. Chairman, I thank you for the time, and I appreciate the opportunity to testify.

Senator MELCHER. Thank you, Mr. Johnson and Mr. Veeder.

I do not know that we have ever passed any legislation that allowed for attorneys' fees for non-Indians when they are being sued by an Indian tribe or being sued by the Justice Department on behalf of a tribe or an individual Indian. But there is some merit to it. I am somewhat sympathetic to it, but I do not know how to limit it so that it does not become a field day for all sorts of suits. I think that if we assure both sides that the costs are going to be paid out of the Treasury, it becomes almost an open invitation to both sides to see whether they can drum up some lawsuits.

That does not go to the equity of it, however. I was involved in something in our own State where the city and the county were being sued in rather extensive litigation. They asked me if we could arrange for some help. I explored it with Justice in that particular suit and got a very cold shoulder from Justice.

I recognize that many of these suits are entered without any reason for knowing that you are going to get into a suit; it might be something that happened 100 years ago, and yet you find yourself in a lawsuit that is going to be very expensive to unravel.

Mr. Veeder, you mentioned the funds just for researching. I recognize that is part of the cost.

Mr. VEEDER. You mentioned a \$6 million appropriation for 2415. I am not familiar with this group, but I assume it is a legal research corporation subsidized by the Government to do research on Indian claims. It is my opinion that if the Justice Department and the Department of the Interior are aware that they may be hit for millions of dollars in defense funds, they will be more cautious in their approach in filing suits. I think the various Indian tribes who file suits privately will be more cautious because they will be under the thumb of the BIA, and the BIA and the Interior Department are not going to want them to file a frivolous suit that will cost them money. I think it will limit the number of suits rather than enhance it.

Senator MELCHER. That might be. Is your proposal here beefed up pretty well to go into that?

Mr. VEEDER. No, sir. On the advice of my attorneys, I took it only from the emotional point of view, just to let this committee and the individuals here know what it is like to be sued for such a large amount, to have to go through the financial, emotional, and physical strain on a day-to-day basis, the implications on the community—how it has been torn apart, split for or against—and the political implications—no matter what a public official does, he is wrong in the eyes of one party or another—et cetera.

I wanted to add these comments because I did not want to go into reading the statement because of time limitations.

Senator MELCHER. Yes. We had attorneys from both sides, 1½ years ago—the tribe in the Massachusetts case, and attorneys representing the titleholders—the title was under a cloud—approach the committee and suggest that we end this squabble with a \$4 million bill, most of which was to be split among the attorneys without anything going to the—well, most of it would go to the expenses of the attorneys without anything going to the claimants, the Indians who were claiming that they owned the land.

There is some equity in it, and I do not know how to handle it. We will review it; I can assure you of that. Where we get, I do not know. It has not been done; it is a new precedent, as I understand it. But I can assure you that we will review it and see if there is some way of working it out so that some recognition could be given to the defendants and their costs when, obviously, they get forced into a position they never dreamt would happen because, for generations perhaps, the title they have held has been held to be viable, honest, and conclusive.

Thank you both very much.

I am sorry to have taken this much time, but these are the witnesses that have a contrary point of view, and I do not want to shortchange them too much.

Mr. Nisbet, you are the vice chairman of the South Carolina Commission To Study Claims of the Catawba Tribe?

STATEMENT OF WILLIAM NISBET, VICE CHAIRMAN, SOUTH CAROLINA COMMISSION TO STUDY CLAIMS OF THE CATAWBA TRIBE

Mr. NISBET. Yes, Mr. Chairman.

The South Carolina commission appointed to study the claims of the Catawba Tribe has diligently studied this claim, along with other claims that potentially may arise. I would like to point out to you, Mr. Chairman, that there were originally 21 tribes, according to the old maps of South Carolina, that occupied South Carolina. Only one tribe, the Catawba Reservation, was designated as a tribe and had a State reservation.

This came about through the initial agreement at Pine Tree in 1759. The agreement at Pine Tree was lost, but then at the Treaty of Augusta in 1763, the Treaty of Pine Tree was inculcated into the agreement with the Catawba Indians. So, really, what you are talking about is a claim that goes back 216 years.

We feel that a claim that goes back 216 years and that has not been resolved to the satisfaction of the people involved certainly should not have additional time to run.

We would also point out to you that the State of South Carolina has been very, very fair, has appropriated money on many occasions to the Catawba Indian Tribe, and has worked more with the Catawba Indian Tribe than any other tribe as a State tribe.

In 1840, the tribe was disbanded, and the land was bought by the State and was deeded to the present owners. This was 139 years ago. An additional 2-year extension appears to us to be rather unreasonable.

In addition to this, since the Federal Government has become involved with Indian claims, several attempts have been made to settle this claim, the last being in 1959 where a bill was passed by the Congress of the United States, ratified by the House and the Senate and signed by the President, disbanding this particular tribe and distributing all of the assets. The Department of Indian Affairs was instructed to close the rolls and to distribute the assets to the Indians. This was supposedly accomplished. If it was not, then the Bureau did not do their job in accomplishing it because they were told to. And now, lately, we are being sued again. We have a threat of a lawsuit right now against the landowners in this area.

The initial threat was a threat of eviction signed by Mr. Krulitz in 1977, and, incidentally, eviction without compensation.

So much for the Catawba Indian Tribe. As I said, there were 21 other tribes who were listed in South Carolina at this time, or in colonial days. We have had three of these tribes now petition for recognition.

So, you are opening up a Pandora's box that we think you ought to look at very carefully before you open up any further.

As far as the study group, of which I am a part, is concerned, we have diligently studied this problem; we have conscientiously met on this problem; and we ask that this committee not consider any extension. I think that, having heard all the testimony that has been presented so far, really, when you analyze the testimony, where they talk about how many more claims are going to come out and how much more money is needed, how many more people are needed, you are

going to find that the \$6 million you are talking about in 1980 is peanuts; it is going to be hundreds and hundreds of millions of dollars.

I would also like to tell you that I paid my own way up here; all the effort I have put out on behalf of protecting the landowners in this particular area of South Carolina, plus my work with the State study commission, has all been on my own time, at my own expense. I do not have legal defense funds supporting me now; I do not have various Government contracts or consulting agreements to help me out. I am doing this alone, with the help of some of the local people in South Carolina.

Speaking for these people in South Carolina and the group I represent, we request that you not consider any extension of this particular statute of limitations.

Thank you very much.

Senator MELCHER. Mr. Nisbet, I think you could help us on a point. A tribe that is not recognized, such as the Catawba, do they have any claims under 2415?

Mr. NISBET. I do not know; I do not have a lawyer with me. We are being sued—I know that—or they say we are being sued.

Senator MELCHER. I do not know, and that is why I ask you. I thought perhaps the commission had researched this and could advise us. We will ask the Justice Department to advise us on that point.

Mr. NISBET. I hope you are right—that we are not being sued and we are not under jeopardy.

Senator MELCHER. I really do not know, and I am just curious.

Mr. NISBET. I am curious, too, because it is not reasonable to be this way. I will have to say that my experience is that some of these claims are not necessarily reasonable.

Senator MELCHER. Thank you very much, Mr. Nisbet.

Mr. NISBET. Thank you, Mr. Chairman.

Senator MELCHER. Our next witness is Kirke Kickingbird, director of the Institute for the Development of Indian Law.

STATEMENT OF KIRKE KICKINGBIRD, DIRECTOR, INSTITUTE FOR THE DEVELOPMENT OF INDIAN LAW, ACCOMPANIED BY ALEX SKIBINE, LEGAL RESEARCH DIRECTOR

Mr. KICKINGBIRD. Good afternoon, Mr. Chairman. I am Kirke Kickingbird, and with me is my legal research director, Alex Skibine.

We have prepared testimony submitted for the record, and I would like to highlight one particular point that I do not think has been touched on.

Senator MELCHER. Without objection, your prepared statement will be included in the record at this point.

[The prepared statement of Mr. Kickingbird follows:]

Good morning, my name is Kirke Kickingbird. I am the executive director of the Institute for the Development of Indian Law.

This testimony is addressed to the issue of whether 28 USC 2415, the statute of limitations allowing the United States to bring some actions on behalf of Indians and Indian Tribes, should be extended past the present deadline of April first 1980.

In September of 1979, the Institute for the Development of Indian Law received a contract from the Department of Agriculture to study Indian Land Claims and their legal and economic impact. The study was mandated by Congress under section 509 (a) of the Housing and Community Development Amendments of 1978. The Act asks the Secretary of Agriculture to study the problems created by remote land claims, including Indian land claims.

Our study is scheduled to be completed by September of 1980. The major objectives of the study are to assess the amount and location of property clouded by these Indian land claims, identify the specific problems caused by these claims, and analyze both present and potential remedies under both federal and state law. Finally, our study will propose remedies which would solve the problems and avoid the negative impacts created by clouded land titles. An analysis of the costs the federal government would incur under each of the proposed remedies will also be included.

For the last 3 months the Institute has been engaged in the initial phase of the study. We have undertaken an in-depth literature search concerning the past and present land claims, what impact the claims have had on local economies, what problems

the claims have created for land owners whose title to lands has been clouded, and how the claims have been or are proposed to be resolved. Our preliminary findings indicate that major Indian land claims can disturb the local economies but that most of the problems can be avoided by careful planning and conscientious negotiations by all the parties involved; primarily the United States government and tribal and state governments.

The existence of a negative impact usually depends on the non-Indian reaction to the news of an Indian land claim. This reaction frequently depends on the psychological climate created by the news media and the various parties negotiating the land claim. A very important factor in determining the impact is the reaction of banks, other lenders of mortgage capital, title insurance companies, and large local businesses.

The ultimate goal in order to avoid a prolonged negative impact, is for all parties to come to a quick settlement of the land claim through negotiations. Sometimes the negotiated settlement will have to be approved by federal, tribal and state legislation. Provided this is accomplished swiftly the impact will be minimal. On the other hand, if the negotiators are procrastinating and the negotiations are continually breaking down, the chances for a negative economic impact of long duration are increased. It is when negotiations are unsuccessful and the parties are forced to litigate that the land titles become clouded and that serious problems occur.

Once the titles are clouded, lending institutions such as banks and mortgage companies stop issuing loans and mortgages. New

businesses cannot open, title insurance firms cannot insure property and real estate cannot be sold. Municipal bond issues cannot be placed on the market or become unsaleable. As a result, the land quickly depreciates in value and this starts a chain reaction which can create a negative economic impact for the whole area covered by the land claim.

Our preliminary research findings also indicate that in almost all cases, the Indian land claims are not frivolous but legally sound and will ultimately have to be addressed and resolved. Our study will recommend remedies that can bring to settlement and resolution Indian land claims without creating any major adverse impact on the local economies of the regions affected. The emphasis will be on fast and effective settlement through negotiations rather than upon costly and time consuming litigation.

Under United States law, the U.S. Government is the trustee for the Indian tribes. Pursuant to this trust relationship, Congress, which is said to be the ultimate trustee for the tribes, enacted 28 USC 2415, allowing the United States to bring action on behalf of the Indians and Indian tribes. Our initial research indicates that there are some 10,000 claims which have been filed with the BIA. Under the trust relationship, the Department of Interior is supposed to determine the validity of these claims and recommend the meritorious ones to the Justice Department for legal action.

Although the statute of limitations only concerns actions brought by the United States for money damages, most land claims involve both a return of land and a cash settlement. Therefore,

these land claims will have to be filed before April 1, 1980. Since our findings indicate that negotiation is preferable to litigation, unless the statute is extended, the U.S. must file thousands of law suits without any attempt at a negotiated settlement. The negative economic impact upon the regions covered by these claims thus cannot be avoided. This will result in severe hardship to all landowners, small or large, whose land titles will be clouded as a result of the litigation. Also, our study, which will not be concluded until September of 1980, will not be available to aid in the resolution of those very cases which were of sufficient concern to the Congress to legislatively mandate the study. Should the United States decide not to proceed with the claims, the Tribal governments will be forced to litigate on their own behalf. By doing so, the United States may expose itself to very costly law suits which the tribes may bring against the BIA for breach of its trust responsibilities. The extent of such federal liabilities is currently in front of the Supreme Court in the case of U.S. v. Mitchell, involving the Quinault Indian Nation.

Our research indicates that the Executive Departments in charge of proceeding with these Indian claims have shown a remarkable casual attitude which is apparently motivated by the belief that if you ignore a problem long enough, it will eventually go away. History has shown us that this is not the case as far as Indian claims are concerned. This lack of concern, all too typical of government bureaucracies, should not be allowed to continue. A simple extension of the statute will solve the immediate problem, but unless the Executive Departments who have responsibility for

this issue are forced to act on these claims in a conscientious manner, the testimony given today will ring true years from now.

It should be remembered that although the Executive Department is supposed to carry out the trust responsibility of the United States towards Indian Tribes, Congress is the ultimate trustee in the relationship. It is therefore the responsibility of Congress to ensure that this trust responsibility is properly carried out.

Mr. KICKINGBIRD. In September 1979, the Institute for the Development of Indian Law, which is a public interest law firm primarily concerned with research into Indian legal issues, received a contract from the Department of Agriculture to study Indian land claims and their legal and economic impact. The study was mandated by Congress under section 509(a) of the Housing and Community Development Act amendments of 1978, and the act asks the Secretary of Agriculture to study the problems created by remote land claims, including Indian land claims.

This also touched on black homesteads in the South and Spanish land grants.

Our study is scheduled to be completed by September of 1980, and the major objectives of the study are to: (1) Assess the amount and location of property clouded by these Indian land claims; (2) identify the specific problems caused by these claims; and (3) analyze both present and potential remedies under both Federal and State law.

Finally, our study will propose remedies which would solve the problems and avoid the negative impacts created by clouded land titles. Our analysis, we hope, will also include costs the Federal Government would incur under each of the proposed remedies which we will propose.

What this indicates, I think, is the broad nature of these kinds of claims. It is not just the land-clouded titles caused by Indian claims that are causing this around the country. It indicates the fact that not Interior but other agencies are concerned about this problem, and I think it indicates the need for the ongoing effort because the bulk of the testimony indicates that the work on these Indian claims could be more thorough and effective.

I certainly urge the Congress, through this committee, to take action to see that the trust responsibility is carried out under the proper allocations of the manpower and money needed to complete this work.

One of the things we sometimes forget is that on July 3, 1776, just before the Declaration of Independence was declared, the Continental Congress was having to deal with Indian land and treaty problems. The same kind of responsibility that was created for the United States under the U.S. Constitution was also allocated in 1778 under the Articles of Confederation.

So, this is a longstanding and ongoing problem, and probably the greatest difficulty is that the U.S. Government, in carrying out its trust responsibility, has never really fully and functionally addressed the problem; it has only been answered in part and piecemeal, and I think that has left us all with the legacy we have today.

Thank you, Mr. Chairman.

Senator MELCHER. Thank you, Kirke.

Does your associate have anything to add?

Mr. SKIBINE. No; thank you, Mr. Chairman.

Senator MELCHER. We do have your testimony. Thank you both very much.

We do have several documents that we will put in the record at this time, without objection.

[The material follows:]

COMMITTEE EXHIBITS

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

PT 100-100000

June 8, 1977

Honorable James Abourezk
United States Senate
Senate Select Committee on
Indian Affairs
Washington, D. C.

Dear Mr. Chairman:

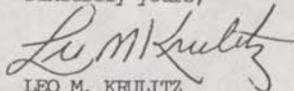
I am enclosing a list of claims which would be barred if the Statute of Limitations is not extended as provided in S. 1377. We have provided estimates of damages where we have them.

In reviewing the list of potential claims, you should understand that

- . Damage estimates are "guesstimates" at best. As claims are developed further, we will be in a better position to estimate the potential exposure.
- . The listing of these claims is not, in effect, a commitment on the part of the Department to bring suit in every instance. Decisions to bring suit will be made only after a careful review of the legal basis of each claim.
- . There may be other potential defendants with regard to these actions which are not known to us at this time.

If we can be of any further assistance please advise.

Sincerely yours,



LEO M. KHULITZ
SOLICITOR

Enclosure

The following is a list of presently identified claims of probable validity which will be affected in whole or in part in the event 28 U.S.C. 2415(b) is not amended. Arranged by geographical area, the list identifies the tribe or individual on whose behalf the claim would be asserted, the probable defendant or defendants, the nature of the claim and an estimate of damages. The list includes more than 340 such claims, with an estimated value of perhaps several hundred million dollars.

Aberdeen:

8 trespass cases on behalf of individuals for fencing and timber trespass on allotted lands.

Billings:

1. On behalf of: Fort Peck Reservation
Claim: Mine tailings leading to pollution of reservation and reservation streams
Defendant: Mining corporation
Damages: \$102,000.00
2. On behalf of: Fort Belknap Reservation
Claim: homesite and agricultural trespass
Defendant: Non-Indian individual
Damages: \$2500.00
3. On behalf of: Fort Belknap Reservation
Claim: Agricultural trespass
Defendant: Non-Indian individual
Damages: \$900.00
4. On behalf of: Fort Peck allottee
Claim: trespass
Defendant: private individual
5. On behalf of: Fort Peck allottee
Claim: trespass
Defendant: private individual
6. On behalf of: Fort Peck allottee
Claim: Trespass
Defendant: private individual
7. On behalf of: allottee
Claim: trespass
Defendant: private individual
8. On behalf of: individual
Claim: trespass and deprivation of use
Defendant: private individual

9. On behalf of: Fort Peck tribes
Claim: Ejectment and trespass damages
Defendant: private individual
10. On behalf of: Fort Peck tribes
Claim: Encroachment from building
construction on lands claimed by tribe

Sacramento:

1. Timber trespass

Riverside:

1. On behalf of: Torres-Martines Band
Claim: innundation of reservation
Defendant: private irrigation districts
Damages: \$1,000,000 (minimal estimate)

Window Rock:

1. On behalf of: Navajo tribe and individuals
Claim: Illegal upstream diversion
Defendants: private irrigation districts,
Arizona cities, Salt River Project.

Albuquerque:

The Area Office has indicated that there are literally hundreds of trespasses of varying types and degrees in derogation of the rights of the eight Northern Pueblos. Identification and development of these claims cannot be undertaken absent massive financial and staff support assistance.

Anadarko:

1. On behalf of: Sac & Fox Tribe
Claim: Surface damage from oil and gas operations
Defendants: private businesses

Pawhuska:

1. On behalf of: Osage Tribe
Claim: water and mineral rights
Defendant: Kansas (?)
2. Indeterminate number of grazing trespasses

Phoenix:

1. On behalf of: Ak Chin Indian Community
Claim: off reservation pumping
Defendant: 300 agricultural users
2. On behalf of: Ak Chin Indian Community
Claim: Railroad trespass
Defendant: Southern Pacific RR
3. On behalf of: Battle Mountain Colony
Claim: Railroad trespass
Defendant: Central Pacific RR
4. On behalf of: Chemehuevi Tribe
Claim: trespass
5. On behalf of: Fallon Tribe
Claim: Water rights adjudication
6. On behalf of: Fort McDowell Apache
Claim: Powerline trespass
Defendants: Salt River Project

7. On behalf of: Fort Mojave Tribe
Claim: 4 separate trespasses
8. On behalf of: Gila River Pima-Maricopa
Indian Community
Claim: Drain trespass
Defendant: Maricopa County
9. On behalf of: Gila River Pima-Maricopa
Indian Community
Claim: Off reservation groundwater pumping
Defendant: San Carlos Irrigation and
Drainage District

Several other identical claims against
individuals engaging in off reservation
groundwater pumping
10. On behalf of: Gila River etc.
Claim: flood damage
11. On behalf of: Kaibab Paiute
Claim: pumping affecting flow of Mocassin Springs
12. On behalf of: Papago Tribe
Claim: Mine tailings pollution
Defendant: private corporation
13. On behalf of: Papago Tribe
Claim: Off reservation pumping
Defendant: Tuscon
14. On behalf of: Papago Tribe
Claim: Off reservation pumping
Defendant: Tuscon (?)
15. On behalf of: Papago Tribe et al.
Claim: Water Rights adjudication
Defendants: thousands unidentified

16. On behalf of: Salt River Tribe
Claim: off reservation pumping
Defendants: Municipal and industrial users
17. On behalf of: San Carlos Apache Tribe
Claim: illegal diversion of underflow of
San Pedro River
Defendant: private corporation
18. On behalf of: San Carlos Apache Tribe
Claim: Water diversion and pumping
19. On behalf of: San Carlos Apache Tribe
Claim: Water diversion
Defendant: private corporation
20. On behalf of: San Carlos Apache Tribe
Claim: Water diversion
Defendant: Private corporation
21. On behalf of: San Carlos Apache Tribe
Claim: accounting and damages for failure
to follow court decree regarding consumptive
water use
Defendant: New Mexico
22. On behalf of: San Carlos Apache Tribe
Claim: Water diversions and pumping
Defendant: private corporation
23. On behalf of: San Carlos Apache
Claim: water rights adjudication concerning
San Pedro River
Defendant: indeterminate number water users
24. On behalf of: Western Shoshone
Claim: Water rights adjudication concerning
Bajoneta Springs
Defendant: State
25. On behalf of: Walker River Tribe
Claim: Upstream diversions

Twin Cities:

108 claims pertaining to individual allotments
 102 tax forfeitures on behalf of individuals
 against state or county
 40 trespass on reservation resulting from
 sand and gravel operations, grazing, fence
 and field encroachment

Defendants in above cases not identified
 Damages not estimated

Alaska:

1. On behalf of: Kenaitze Tribe
 Claim: trespass
 Defendants: several oil companies
2. On behalf of: Chilkat Indian Village
 Claim: Trespasses
 Defendants: Alaska and its lessees and
 permittees
3. On behalf of: Kootznoowoo, Inc.
 Claim: Archaeological excavation and
 destruction or removal of artifacts
4. On behalf of: allottee heir
 Claim: Timber and road trespasses across
 allotments
 Defendant: several oil companies
5. On behalf of: allottee
 Claim: road trespass across allotment
 Defendant: oil company
6. On behalf of: Kootznoowoo, Inc.
 Claim: trespass to lands individually
 held after Tlingit-Haida Settlement Act
7. On behalf of: Sitka Indian Village
 Claim: erroneous survey of Indian held
 lands

8. On behalf of: Sitka Village
Claim: deprivation of use of tidelands
Defendant: Alaska
9. On behalf of: Sitka Indian Village
Claim: damages arising from purported
transfer of school properties in 1950
10. On behalf of: Sitka Indian Village
Claim: Improper transfer of tribal
townsite land into individual ownership
11. On behalf of: Sitka Indian Village -
individual member
Claim: improper transfer of individually
held property to city.
12. On behalf of: Sitka Indian Village -
individual member
Claim: improper transfer of individually
held property to city.

Muskogee:

1. On behalf of: Choctaw Tribe
Claim: recovery of surface and mineral
interests interfered with by railroad
right of way
Defendant: Railroad Company
2. On behalf of: Choctaw Tribe
Claim: Extraction of sand and gravel
from Riverbed
Defendant: Oklahoma and permittees
3. On behalf of: Choctaw Tribe
Claim: illegal sale of tribal coal lands
Defendant: Oklahoma
4. On behalf of: Creek Tribe
Claim: deprivation of use of tribal property

5. On behalf of: Creek Tribe
Claim: destruction of tribal cemeteries
6. On behalf of: Wyandotte Tribe
Claim: Encroachment on Huron Cemetery
Defendants: Kansas, Kansas City, et al.
7. On behalf of: Seneca Cayuga Tribe
Claim: Trespass on tribal lands
Defendants: private individuals

Portland:

1. On behalf of: Umatilla Tribe
Claim: Quiet title to riverbed and damages
for sand and gravel removal from bed of river
within exterior boundaries of Umatilla
Reservation
Defendant: Riparian land owners
Damages: \$100,000.00
2. On behalf of: Umatilla
Claim: Destruction of salmon runs by
diversion of waters from Umatilla River
Defendant: Various irrigation districts
Damages: Estimated \$500,000.
3. On behalf of: Umatilla Tribe
Claim: Trespass to allotted lands. Void
Condemnation
Defendant: Pendleton, Ore.
Damages: \$50,000.00.
4. On behalf of: Swinomish Tribe
Claim: Oil pipeline traversing reservation
w/o benefit of right-of-way
Defendant: Private Natural Gas Co.
Damages: Estimated \$100,000.

5. On behalf of: Swinomish Tribe
Claim: Trespass on tribal tidelands
Defendant: Burlington Northern RR
Damages: Estimated \$600,000.00.
6. On behalf of: Skokomish Tribe
Claim: Ownership and boundary dispute
and claim for unauthorized use of tribal
tidelands
Defendant: State of Washington
7. On behalf of: Skokomish Tribe
Claim: Destruction of fishery by diversion
of water for hydroelectric project on
North Fork River
Defendant: City of Tacoma
8. On behalf of: Skokomish Tribe
Claim: Encroachment upon tribal lands by
construction of school facility within
boundaries of reservation
Defendant: Hood Canal School District
Damages: Estimated \$10,000.00
9. On behalf of: Tulalip Tribe
Claim: Non-Indian trespass on tidelands
secured to tribe
Defendant: A number of private individuals
who have constructed summer homes on
tidelands
Damages: Estimated \$100,000.00.
10. On behalf of: Kalispel Tribe
Claim: Water fluctuation from Box Canyon
Dam eroding easement lines on tribal and
allotted lands causing waters to encroach
upon tribal lands
Defendant: Pend Oreille County Utility
District
Damages: Estimated \$50,000.00.
11. On behalf of: Makah
Claim: Overburdening of access easement
Defendant: logging companies
Damages: Estimated \$150,000.00

12. On behalf of: Shoshone-Bannock
Claim: Unlawful taking & trespass upon
tribal lands by enlargement of reservoir
Defendant: Irrigation districts
Damages: Estimated \$30,000.00.
13. On behalf of: Puyallup Tribe
Claim: Trespass to tribal lands by
interstate freeway
Defendant: State of Washington
Damages: Estimated \$50,000.00.
14. On behalf of: Individual Muckleshoot Owners
Claim: Trespass to allotted lands
Defendants: Tri-County Development Dist.,
City of Auburn, State of Washington and
private corporation

Sacramento: (also, See page 3 infra)

1. On behalf of: Cuyapaibe Band of Mission
Indians
Claim: Fence encroachment and illegal
use of reservation lands
Defendant: Adjacent private land owner
2. On behalf of: Cuyapaibe Band of Mission
Indians
Claim: Continuing cattle trespass
Defendants: Private ranchers
3. On behalf of: Cuyapaibe Band of Mission
Indians
Claim: Trespass on reservation lands by
County through construction of public
road without valid easement
Defendant: County
4. On behalf of: Cuyapaibe Band of Mission
Indians
Claim: Damages for diminishment of
reservation water supply.
Defendants: Individual private water
users and irrigation districts

Cases from different areas being handled by Washington Solicitor's Office:

1. On behalf of: Crow Tribe and individual members
Claim: Violation of Crow Allotment Act
Defendants: Individual landowners
2. On behalf of: Passamaquoddy and Penobscott Tribes
Claim: Non-Intercourse Act claim for recovery of tribal lands
Defendants: Maine and must join individual titleholders
3. On behalf of: St. Regis Mohawk Tribe
Claim: Non-Intercourse Act claim for recovery of tribal lands
Defendants: New York and individual titleholders
4. On behalf of Cayuga Tribe
Claim: Non-Intercourse Act claim for recovery of tribal lands
Defendants: New York
5. On behalf of: Oneida Nation of Indians
Claim: Non-Intercourse Act claim for recovery of tribal lands
Defendants: New York and individual titleholders
6. On behalf of: Oneida Nation of New York
Claim: Non-Intercourse Act claim for recovery of tribal lands
Defendants: 30 individuals
7. On behalf of: Catawba Tribe
Claim: Non-Intercourse Act claims for recovery of tribal lands
Defendants: South Carolina and individual titleholders

8. On behalf of: Wind River Reservation
Claim: Upstream channel diversion
Defendant: 1 Non-Indian landowner
9. On behalf of: Nez Perce Tribe
Claim: Quiet title to riverbed; damages
from sand and gravel removal
Defendants: Idaho and state permittees
Damages: \$100,000.00.



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WASHINGTON, D.C. 20540

November 20, 1979

TO : Honorable Don Young
Attention: Mike Jackson x 59802

FROM : American Law Division

SUBJECT: Effect of Expiration of Statute of Limitations (28 U.S.C. 2415)
on Suits by Indian Tribes and Individual Indians

Enclosed is a discussion of questions raised regarding the impact of the expiration of the limitations period within which damages actions on tort and contract claims must be brought by the United States on suits by Indian tribes and individual Indians. 28 U.S.C. 2415, the object of three previous extensions, is due to expire on April 1, 1980, with the result that suits by the United States on behalf of Indians on claims which accrued prior to 1966 will thereafter be barred. How this will affect suits by individual Indians and tribes and the implications of the running of the statute of limitations with respect to the trust obligations of the United States toward Indians are the subjects of the following questions and discussion.

I.

Will expiration of the statute next April have the effect of precluding tribes from filing suit themselves against States and individuals in tort or contract for monetary damages? If so, why? If not, why not?

28 U.S.C. 2415 provides, inter alia, that suits for money damages brought by the United States on behalf of Indian tribes founded on tort or contract claims which accrued prior to 1966 shall be barred unless brought before April 1, 1980.^{1/} It has been held that this limitations period also applies to suits brought by tribes on their own behalf.^{2/}

The context of that holding, however, was the application of the federal statute of limitations in order to benefit the tribal plaintiffs in the face of defendants' claim that a shorter state limitations period was applicable.^{3/} No court has yet had the opportunity to rule on the question of the applicability of 28 U.S.C. 2415 to bar suit by an Indian tribe.

In cases seeking non-monetary relief, such as actions to recover land, enjoin interference with property, declare property rights, etc.,

^{1/} 28 U.S.C. 2415 (1976), as amended by 91 Stat. 268 (July 11, 1977) and 91 Stat. 842 (August 15, 1977).

^{2/} Capitan Grande Band of Mis. Indians v. Helix Irr. Dist., 514 F.2d 465 (CA 9 1975), cert. denied, 423 U.S. 874 (1975). See also, Oneida Indian Nation of N.Y. v. Cty of Oneida, 434 F. Supp. 527, 544 (N.D.N.Y. 1977)

^{3/} Judge Miller, concurring in the result in Capitan Grande, supra, argued that 28 U.S.C. 2415 was not applicable and that to so hold would hinder Indians in the protection of their property. 514 F.2d at 473. See also, Oneida Indian Nation, supra.

state statutes of limitations are not assertable against the United States. This was also the case for damages actions brought by the United States prior to the 1966 enactment of 28 U.S.C. 2415.^{4/} Indian tribes may assert the sovereign interests when bringing suit themselves and are thus not subject to state statutes of limitations in cases where the United States would not be so subject.^{5/} Indians thus are clothed with the benefits of this doctrine in cases in which the United States itself could have brought suit to vindicate the particular interest involved.

This immunity from state limitations is, therefore, a derivative immunity. Since the United States would not be subject to state limitations periods, the argument goes, Indian tribes with standing to assert the same interests should not be so saddled.^{6/} However, should the United States become subject to a limitations period - in the case of 28 U.S.C. 2415, a federal statute of limitations for damages actions - the parallel argument would subject the tribes to a similar limitation. The tribes' immunity from defenses such as statutes of limitations arises

^{4/} See, Wright, Law of Federal Courts, § 22.

^{5/} See, Narragansett Tribe, Etc. v. So. R.I. Land Level, 418 F. Supp. 798, 805 (D.R.I. 1976); Schaghticoke Tribe of Indians v. Kent School Corp., 423 F. Supp. 780, 785 (D. Conn. 1976); Oneida Indian Nation, supra. See, also, Moe v. Confederated Salish and Kootenai Tribes, 425 U.S. 463 (1976) (bar against injunction of state taxation not applicable to Indian suit since bar would not be applicable to the United States if it had brought suit challenging the tax).

^{6/} Narragansett, supra; Moe, supra at 474.

from the United States' immunity from such defenses. Removal of that immunity from the United States arguably results in a loss of that immunity by the tribes. The Solicitor of the Department of Interior has so advised all field solicitors:^{7/}

The Act [28 U.S.C. 2415] does not cover suits brought by tribes or individuals without the assistance of the United States. Since, however, Indians can no longer rely on the immunity of the United States from statute of limitations defenses, the Act indirectly affects the filing of such actions because they would be subject to those limitations applicable generally, except in cases to quiet title to trust or restricted lands.

The intent behind the 1966 enactment of the statute of limitations for damages actions was to include "actions based on trespass on lands of the United States, including trust or restricted Indian lands."^{8/} Since this form of vindicating federal interests in lands subject to United States protection has been limited with respect to suits brought by the government itself, it would seem that tribes seeking to protect the same interests would be similarly limited. It is the ability to assert the sovereign's interest which clothes Indian tribes with immunity from various defenses.^{9/} The qualification of those interests in the form of a period of limitations within which to file certain actions based thereon would, therefore, seem to be applicable to both the United States and those seeking to assert the interest of the United States, i.e., Indian tribes.

^{7/} 80 I.D. 220 (1973).

^{8/} H. Rept. 1534, 89th Cong., 2d Sess. 3 (1966).

^{9/} See, 80 I.D. at 220, 221.

II.

If the statute expires without credible tribal claims being filed, would the tribes having such claims be legally able to file in the U.S. Court of Claims, without specific authorization from Congress, breach of trust actions against the United States for money damages for failure to file their claims? Please discuss this question in light of the recent decision by the Court of Claims in Mitchell v. United States, 591 F.2d 1300 (1979).

Possible breach of trust claims against the United States by

Indians whose damages actions had not been brought within the time period in 28 U.S.C. 2415 were of concern to federal officials and influenced the extension of the limitations period in 1977.^{10/} However, the precise nature of such suits was not examined in detail at the time. Furthermore, we are not aware of cases in which the United States has been held liable specifically for failing to pursue litigation on behalf of a tribe or where such inaction has been held to be a breach of the trust relationship between the United States and an Indian tribe.^{11/} However, the United States

^{10/} See, Hearings on Statute of Limitations Extension for Indian Claims Before the Senate Select Committee on Indian Affairs, 95th Cong., 1st Sess. 10-11, 60 (1977); 123 Cong. Rec. H. 6825 (July 11, 1977) (daily ed.).

^{11/} Under the Indian Claims Commission Act, Indian tribes could recover from the United States for breach of "fair and honorable dealings" which encompassed "extralegal or moral claims of Indians against the United States." 25 U.S.C. 70a (5) (1976); Otoe and Missouri Tribe of Indians v. United States, 131 F. Supp. 265, 283 (Ct. Cl.), cert. denied, 350 U.S. 848 (1955). Failure to pursue legal remedies on behalf of tribes could be an element of such claims. See, United States v. Oneida Nation of New York, 576 F.2d 870, 879 (Ct. Cl. 1978). However, suits in the Indian Claims Commission must have been brought prior to 1951, 25 U.S.C. 70k (1976), and the commission itself no longer exists. 25 U.S.C. 70v (1976).

has considered litigation a primary, if not essential means of fulfilling its trust obligations under certain circumstances and has sued on behalf of Indians on that basis. Several cases also indicate that the United States may have a duty under certain circumstances to pursue litigation to effectuate its trust responsibilities.

A.

When the United States denied the existence of a trust relationship with the Passamaquoddy Indian Tribe of Maine and therefore refused the tribe's request in 1972 to sue on its behalf for the taking of its land in alleged violation of the Indian Nonintercourse Act, the tribe sought a declaratory judgment that the Nonintercourse Act applied to it and that it established a trust relation between the United States and the tribe. The court held that the Nonintercourse Act (which forbids alienation of Indian land without the consent of the United State) did establish a trust relationship between the United States and the Passamaquoddies (and other Indians to which it applies) and that the United States could not refuse to sue on behalf of the Indians on the sole ground that no trust relationship exists.^{12/} Thereafter, the United States filed suit for recovery of the land and damages, noting that "we have been ordered to acknowledge the existence of a trust relationship between the

^{12/} Joint Tribal Coun. of Passamaquoddy Tribe v. Morton, 388 F. Supp 649 (D. Me.), aff'd, 528 F.2d 370 (CA 1 1975).

United States and the Passamaquoddy Tribe" and, "having done so, we are in no position to view our responsibilities thereunder in a niggardly fashion."^{13/} The Report went on to state the United States' obligation to file suit covering all parts of the claim demonstrated to be legitimate.^{14/}

The United States has also filed suit on behalf of Alaska Natives - a suit which, like Passamaquoddy, was prompted by litigation.^{15/} The district court, in Edwardson v. Morton, had held that the Alaska

^{13/} United States Department of Interior, Litigation Report (Passamaquoddy) (January 10, 1977) at 12.

The Court of Appeals in Joint Tribal Coun. of Passamaquoddy Tribe v. Morton, emphasized that its finding of a trust relationship flowing from the Nonintercourse Act did not mean it was holding that the United States must sue to vindicate that relation:

Whether, even if there is a trust relationship with the Passamaquoddies, the United States has an affirmative duty to sue Maine on the Tribe's behalf is a separate issue that was not raised or decided below and which consequently we do not address. The district court held only that defendants "erred in denying plaintiffs' request for litigation on the sole ground that no trust relationship exists between the United States and the Passamaquoddy Tribe." It was left to the Secretary to translate the finding of a "trust relationship" into concrete duties.

528 F.2d at 375.

^{14/} In this regard, the Report noted the concern expressed by the Ninth Circuit when the United States omitted a prayer for ejectment of a railroad from a right-of-way across Indian lands and instead only sought trespass damages. United States v. Southern Pacific Transp. Co., 543 F.2d 676, 680 n.3 (CA 9 1976).

^{15/} 369 F. Supp. 1359 (D.D.C. 1973).

Native Claims Settlement Act, 43 U.S.C. 1601 et seq., did not extinguish damages actions for pre-Act trespasses on lands occupied by native Alaskans and that the United States had an obligation to protect the natives' use and occupancy of the land against third - party trespasses prior to extinguishment of title. Such accrued causes of action for trespass and breach of fiduciary duty were not, in the court's view, extinguished by the Settlement Act.^{16/}

The court's denial of summary judgment for the United States on the above issues led to the filing of a supplemental complaint by the natives seeking trespass damages, damages resulting from the failure of the United States to protect the natives' possessory interests, and, an order requiring the United States to commence litigation on behalf of the natives to recover trespass damages.^{17/} Thereafter, a stipulation and agreement was entered into whereby the United States agreed to institute litigation to recover damages for trespasses on native lands which occurred prior to the Settlement Act.^{18/}

^{16/} 369 F. Supp. at 1378-9.

^{17/} See, Hearing on Amendments to the Alaska Native Claims Settlement Act (Part 2) Before the Senate Interior and Insular Affairs Comm., 94th Cong., 1st Sess. 187 (1975). See also, Edwardsen v. Morton, 369 F. Supp. at 1381.

^{18/} Hearing at 187-188. The district court ultimately dismissed the case, holding, contrary to the Edwardsen court's view, that the Settlement Act did (and, constitutionally, could) extinguish the trespass claims being pressed by the United States on behalf of the natives. United States v. Atlantic Richfield Co., 435 F. Supp. 1009 (D. Alaska 1977). An appeal is pending in the Ninth Circuit Court of Appeals.

(18/ Continued)

B.

The ability of Indians to sue the United States for damages for breach of trust will be influenced significantly by the Supreme Court's decision in United States v. Mitchell, No. 78-1756. The Court of Claims there held that the United States could be held liable in damages for alleged mismanagement of the Indians' allotted land.^{19/} It ruled that the General Allotment Act, 25 U.S.C. 331 et seq., established a trust relationship between the United States and Indian allottees, a relationship which required the United States to manage and conserve the property for the Indians. Furthermore, the declaration of trust in the General Allotment Act can be interpreted to allow recovery of money damages upon breach of that trust.^{20/} The court went on to hold that 28 U.S.C. 1505 (1976) provided the necessary jurisdiction and consent by the United States to be

(18/ Continued)

After the dismissal in Atlantic Richfield, the Inupiat Community of the Arctic Slope brought suit against the United States in the Court of Claims, alleging, inter alia, that the United States failed to use reasonable skill and care in prosecuting that action. The court recently suspended proceedings in the case. Inupiat Community of the Arctic Slope v. United States, No. 596-77 (Ct. Cl., filed December 16, 1977).

^{19/} Mitchell v. United States, 591 F.2d 1300 (Ct. Cl. 1979), cert. granted 47 USLW 3813 (June 18, 1979).

^{20/} The General Allotment Act does not say expressly that damages are recoverable but such a remedy was deemed a necessary inference from the statute. 591 F.2d at 1302.

sued, since the claim was one "arising under the ... laws ... of the United States," namely, the General Allotment Act.^{21/}

Thus, three questions must be answered before a breach of trust damages action can be sustained. The first is whether there is a statute, treaty, executive order, regulation, or agreement which establishes a trust relationship.^{22/} Second, does the statute, either directly or inferentially, provide for money damages in the case of breach of the statute's obligations? The court in Mitchell found a trust relationship, with damages an implied remedy for breach, flowing from the General Allotment Act. Other statutes governing Indian relations must be judged on the basis of the criteria outlined in Mitchell and possibly to be

21/ 28 U.S.C. 1491, the analogue to 1505 for individual Indian suits provides for jurisdiction of claims against the United States "for liquidated or unliquidated damages in cases not sounding in tort." Section 1505 has been held to also encompass such claims. 591 F.2d at 1302 n.10. The court in Mitchell did not rely on this grant of jurisdiction "because here the Indians do not rest their case on unanchored judge-created principles of fiduciary law but point to and rely upon specific legislation as creating the trust relationship." 591 F.2d at 1302.

22/ The courts have not explicitly enforced a trust obligation flowing elsewhere than from treaty, statutes, regulations, etc. See, White v. Califano, 437 F. Supp. 543, 554 (D.S.D. 1977), aff'd, 581 F.2d 697 (CA 8 1978); Donahue v. Butz, 363 F. Supp. 1316 (N.D. Cal. 1973); Chambers, Judicial Enforcement of the Federal Trust Responsibility to Indians, 27 Stan. L. Rev. 1213 (1975). In other words, "unanchored judge-created principles of fiduciary law" may not be sufficient by themselves to create a judicially enforceable trust obligation breach of which would be answerable in damages. See, 591 F.2d at 1302.

elaborated on by the Supreme Court.^{23/} Thirdly, a basis for jurisdiction must be found. 28 U.S.C. 1491 and 1505 constitute consent by the United States to be answerable in damages in claims arising under statutes of the United States.

The Supreme Court's decision in Mitchell will focus on the question whether the General Allotment Act can be said to provide for monetary relief against the United States for breach of its obligations. The scope of 28 U.S.C. 1491, 1505 will also undoubtedly be discussed. These questions will significantly affect the viability of breach of trust damages claims against the United States for failure to file actions within the allotted time periods in 28 U.S.C. 2415.

For example, while the Nonintercourse Act, 25 U.S.C 177, establishes a trust relationship between the United States and Indians, does the failure to file trespass actions against those allegedly violating the Act constitute a breach of that trust and, if so, is such a breach answerable by the United States in damages? The court in Passamaquoddy declined to spell out the duties which flowed from the Nonintercourse

^{23/} For instance, the court in Whisker v. United States, No. 77-1620 (CA 10, June 14, 1979), 6 ILR E-1, held that the Southern Paiute Judgment Distribution Act, 82 Stat. 1147 (1967), did not create a trust relationship such that the Indians could recover damages for the alleged failure of the United States to attempt to enroll all eligible persons in the distribution scheme.

Act's trust obligations,^{24/} although the Justice Department apparently felt obligated to file comprehensive ejectment and damages actions.

Various statutes, regulations, agreements, etc., other than the Nonintercourse Act, are involved in the numerous potential claims identified by the Department of Interior as being affected by 28 U.S.C. 2415.^{25/} These must be examined to determine in each case whether they establish a trust relationship and whether they can be said to contemplate money damage awards against the United States for their breach. Additionally, the threshold question whether failure to file suit would constitute a breach of whatever obligations may be imposed must be answered.^{26/}

The Court's decision in Mitchell may illuminate these questions and enable more definitive answers with respect to the impact of the running

^{24/} Actions such as ejectment and quiet title are not affected by the limitations on damages actions in 28 U.S.C. 2415. Are such actions a sufficient fulfillment of the trust duties imposed on the United States? If not, is seeking a legislative solution an alternative means of fulfilling the obligations imposed by the Act?

^{25/} See, Hearing, supra note 10 at 12-25.

^{26/} For example, would doubts as to the merits of the claim relieve the United States of the responsibility for filing suit? See, United States v. Mason, 412 U.S. 391 (1973) (upheld reasonable decision by Interior Department not to challenge state taxes on trust property). Would the presence of alternative remedies affect the decision whether failure to file a damages action constitutes a breach of trust? The traditional deference courts accord to prosecutorial discretion may also result in reluctance to impose damages for failure to pursue a particular avenue of litigation. See, Nader v. Saxbe, 497 F.2d 676, 679 (CA DC 1974) and cases cited therein.

of the statute of limitations in 28 U.S.C. 2415. There would seem to be little doubt, however, that suits against the United States would at least be filed if claims are not brought within the limitations period.

III.

Is there any statutory limit on the time in which an Indian tribe or individual may bring a claim against a state or private individual for land, mineral or water rights, or other property?

The limitations period in 28 U.S.C. 2415 only applies to damages actions in tort or contract. Thus, there are no limitations on actions brought by the United States or Indian tribes to, for instance, quiet title to trust lands, seek ejectment of trespassers, enjoin violation of treaty rights, or declare water rights. This proposition is based on the principle that "Indian title is a matter of federal law and can be extinguished only with federal consent..."^{27/} To apply state limitations periods or other defenses to claims for land held in trust or protected by the United States would result in alienation of the lands prohibited by federal law.^{28/} This view is reiterated in the Department of Interior's opinion on the effect of 28 U.S.C. 2415:

If individual Indians or a tribe were to institute litigation, they would be subject to the statute of limitations applicable to the general public except with respect to actions to quiet title to trust or restricted lands (if the statute were permitted to run in such cases it would conflict with federal statutes prohibiting alienation of Indian lands).^{29/}

^{27/} Oneida Nation v. County of Oneida, 414 U.S. 661, 670 (1974).

^{28/} See, Narragansett, supra at 804-6.

^{29/} 80 I.D. 220, 221-2. See note 7, supra. Elsewhere in the opinion, the Associate Solicitor stated:

(^{29/} continued)

Thus, non-damages actions in the nature of quiet title to trust or restricted land or property interests would not appear to be subject to a statute of limitations. Actions involving land which has been patented in fee to an Indian, however, may be subject to state limitations ^{30/} periods.

Richard C. Ehlke
Richard C. Ehlke
Legislative Attorney

(29/ Continued)

The scope of the Act [28 U.S.C. 2415] is limited to actions for damages. It therefore has no effect whatever on actions by the United States seeking to enjoin interference with the violation of Indian treaty rights or other rights granted to Indians by federal statutes. Thus actions to protect Indian hunting and fishing rights or to prevent the imposition of State jurisdiction over "Indian country" are unaffected. Water rights are considered to be real property and therefore, an action to determine the amount of water reserved for a tribe under Winters doctrine is similar to a quiet title proceeding and not subject to the provisions of 28 U.S.C. 2415 and 2416. An action for damages for a taking of Indian water would appear to be subject to the Act but we do not believe that the cause of action would accrue until there is a judicial determination of the amount of water vested in the tribe, particularly in light of 28 U.S.C. 2416(b) excluding from the statute all periods in which facts material to the right of action are not, and reasonably could not be, known to the United States. 80 I.D. at 221.

^{30/} Dillon v. Antler Land Co., 341 F. Supp. 734 (D. Mont. 1972), aff'd, 507 F.2d 940 (CA 9 1974), cert. denied, 421 U.S. 992 (1975).

§ 2414. Payment of judgments and compromise settlements

Payment of final judgments rendered by a district court against the United States shall be made on settlements by the General Accounting Office. Payment of final judgments rendered by a State or foreign court or tribunal against the United States, or against its agencies or officials upon obligations or liabilities of the United States, shall be made on settlements by the General Accounting Office after certification by the Attorney General that it is in the interest of the United States to pay the same.

Whenever the Attorney General determines that no appeal shall be taken from a judgment or that no further review will be sought from a decision affirming the same, he shall so certify and the judgment shall be deemed final.

Except as otherwise provided by law, compromise settlements of claims referred to the Attorney General for defense of imminent litigation or suits against the United States, or against its agencies or officials upon obligations or liabilities of the United States, made by the Attorney General or any person authorized by him, shall be settled and paid in a manner similar to judgments in like causes and appropriations or funds available for the payment of such judgments are hereby made available for the payment of such compromise settlements.

(June 25, 1948, ch. 646, 62 Stat. 974; Aug. 30, 1961, Pub. L. 87-187, § 1, 75 Stat. 415.)

HISTORICAL AND REVISION NOTES

Based on section 228 of title 31, U.S.C., 1940 ed., Money and Finance (Feb. 18, 1904, ch. 160, § 1, 33 Stat. 41; June 10, 1921, ch. 18, § 304, 42 Stat. 241).

Similar provisions of section 228 of title 31, U.S.C., 1940 ed., relating to judgments of the court of claims are incorporated in section 2517 of this title.

The second paragraph was added to make clear that the payment of judgments not appealed may be expedited by certificate to that effect.

Changes were made in phraseology.

AMENDMENTS

1961—Pub. L. 87-187 provided for payment of final judgments rendered by a State or foreign court against the United States, its agencies or officials and compromise settlements and substituted "and compromise settlements" for "against the United States" in the section catchline.

CROSS REFERENCES

Appropriations for payments of judgments against the United States, computation of interest time, see section 724a of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2412 of this title; title 16 sections 79g, 460bb-2; title 31 section 724a; title 42 section 418.

§ 2415. Time for commencing actions brought by the United States

(a) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been ren-

dered in applicable administrative proceedings required by contract or by law, whichever is later: *Provided*, That in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment: *Provided further*, That an action for money damages brought by the United States for or on behalf of a recognized tribe, band or group of American Indians shall not be barred unless the complaint is filed more than six years and ninety days after the right of action accrued: *Provided further*, That an action for money damages which accrued on the date of enactment of this Act in accordance with subsection (g) brought by the United States for or on behalf of a recognized tribe, band, or group of American Indians, or on behalf of an individual Indian whose land is held in trust or restricted status, shall not be barred unless the complaint is filed more than eleven years after the right of action accrued or more than two years after a final decision has been rendered in applicable administrative proceedings required by contract or by law, whichever is later.

(b) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon a tort shall be barred unless the complaint is filed within three years after the right of action first accrues: *Provided*, That an action to recover damages resulting from a trespass on lands of the United States; an action to recover damages resulting from fire to such lands; an action to recover for diversion of money paid under a grant program; and an action for conversion of property of the United States may be brought within six years after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band or group of American Indians, including actions relating to allotted trust or restricted Indian lands, may be brought within six years and ninety days after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band, or group of American Indians, including actions relating to allotted trust or restricted Indian lands, or on behalf of an individual Indian whose land is held in trust or restricted status which accrued on the date of enactment of this Act in accordance with subsection (g) may be brought within eleven years after the right of action accrues.

(c) Nothing herein shall be deemed to limit the time for bringing an action to establish the title to, or right of possession of, real or personal property.

(d) Subject to the provisions of section 2416 of this title and except as otherwise provided by Congress, every action for the recovery of money erroneously paid to or on behalf of any civilian employee of any agency of the United States or to or on behalf of any member or dependent of any member of the uniformed services of the United States, incident to the employment or services of such employee or member, shall be barred unless the complaint is filed within six years after the right of action accrues: *Provided*, That in the event of later

partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment.

(e) In the event that any action to which this section applies is timely brought and is thereafter dismissed without prejudice, the action may be recommenced within one year after such dismissal, regardless of whether the action would otherwise then be barred by this section. In any action so recommenced the defendant shall not be barred from interposing any claim which would not have been barred in the original action.

(f) The provisions of this section shall not prevent the assertion, in an action against the United States or an officer or agency thereof, of any claim of the United States or an officer or agency thereof against an opposing party, a co-party, or a third party that arises out of the transaction or occurrence that is the subject matter of the opposing party's claim. A claim of the United States or an officer or agency thereof that does not arise out of the transaction or occurrence that is the subject matter of the opposing party's claim may, if time-barred, be asserted only by way of offset and may be allowed in an amount not to exceed the amount of the opposing party's recovery.

(g) Any right of action subject to the provisions of this section which accrued prior to the date of enactment of this Act shall, for purposes of this section, be deemed to have accrued on the date of enactment of this Act.

(h) Nothing in this Act shall apply to actions brought under the Internal Revenue Code or denial to the collection of taxes imposed by the United States.

(Added Pub. L. 89-505, § 1, July 18, 1966, 80 Stat. 304, and amended Pub. L. 92-353, July 18, 1972, 86 Stat. 499; Pub. L. 92-485, Oct. 13, 1972, 86 Stat. 803.)

REFERENCES IN TEXT

The date of enactment of this Act, referred to in subssecs. (a), (b), and (g), means the date of enactment of Pub. L. 89-505, which was approved on July 18, 1966.

This Act, referred to in subsec. (h), means Pub. L. 89-505, which enacted this section and section 2416 of this title. For complete classification of this Act to the Code, see Tables volume.

AMENDMENTS

1972—Subsec. (a). Pub. L. 92-485, § 1(a), added further proviso relating to actions for money damages brought by the United States for or on behalf of a recognized tribe, band, or group of American Indians, or on behalf of an individual Indian whose land is held in trust or restricted status.

Pub. L. 92-353, § 1(a), added proviso that an action for money damages brought by the United States on behalf of American Indians shall not be barred unless the complaint is filed more than six years and ninety days after the right of action accrued.

1966—Subsec. (b). Pub. L. 92-485, § 1(b), added exception relating to actions for or on behalf of a recognized tribe, band, or group of American Indians, including actions relating to allotted trust or restricted Indian lands, or on behalf of an individual Indian whose land is held in trust or restricted status.

Pub. L. 92-353, § 1(b), increased the period of limitation to six years and ninety days for actions brought by the United States under the subsection for or on behalf of American Indians.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2416 of this title.

§ 2416. Time for commencing actions brought by the United States—Exclusions

For the purpose of computing the limitations periods established in section 2415, there shall be excluded all periods during which—

(a) the defendant or the res is outside the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico; or

(b) the defendant is exempt from legal process because of infancy, mental incompetence, diplomatic immunity, or for any other reason; or

(c) facts material to the right of action are not known and reasonably could not be known by an official of the United States charged with the responsibility to act in the circumstances; or

(d) the United States is in a state of war declared pursuant to article I, section 8, of the Constitution of the United States.

(Added Pub. L. 89-505, § 1, July 18, 1966, 80 Stat. 305.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2415 of this title.

CHAPTER 163—FINES, PENALTIES AND FORFEITURES

Sec.

2461. Mode of recovery.

2462. Time for commencing proceedings.

2463. Property taken under revenue law not repleviable.

2464. Security; special bond.

2465. Return of property to claimant; certificate of reasonable cause; liability for wrongful seizure.

§ 2461. Mode of recovery

(a) Whenever a civil fine, penalty or precunary forfeiture is prescribed for the violation of an Act of Congress without specifying the mode of recovery or enforcement thereof, it may be recovered in a civil action.

(b) Unless otherwise provided by Act of Congress, whenever a forfeiture of property is prescribed as a penalty for violation of an Act of Congress and the seizure takes place on the high seas or on navigable waters within the admiralty and maritime jurisdiction of the United States, such forfeiture may be enforced by libel in admiralty but in cases of seizures on land the forfeiture may be enforced by a proceeding by libel which shall conform as near as may be to proceedings in admiralty.

(June 25, 1948, ch. 646, 62 Stat. 974.)

HISTORICAL AND REVISION NOTES

Subsection (a) was drafted to clarify a serious ambiguity in existing law and is based upon rulings of the Supreme Court. Numerous sections in the United States Code prescribe civil fines, penalties, and precunary forfeitures for violation of certain sections without specifying the mode of recovery or enforcement thereof. See, for example, section 567 of title 12, U.S.C., 1940 ed., Banks and Banking, section 64 of title 14, U.S.C., 1940 ed., Coast Guard, and section 180 of

Senator MELCHER. The hearing record will remain open through the balance of the month for any further written testimony that people would like to have included in this record.

The committee is adjourned.

[Whereupon, at 4:20 p.m., the hearing was adjourned.]

[The following material was received for inclusion in the record:]

STATEMENT BY W. RICHARD WEST, JR.
ON BEHALF OF THE PUEBLO OF LAGUNA OF NEW MEXICO
BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
DURING OVERSIGHT HEARINGS CONCERNING 28 U.S.C. §2415

Mr. Chairman and members of the Committee, my name is W. Richard West, and I am a member of the firm of Fried, Frank Harris, Shriver and Kampelman, which serves as Washington, D.C. Counsel to the Pueblo of Laguna of New Mexico. I appreciate the opportunity to offer testimony on behalf of the Pueblo of Laguna in support of an extension of the statute of limitations in 28 U.S.C. §§2415 and 2416. My presentation will focus on questions and issues which are of particular concern to the Pueblo.

The Pueblo of Laguna realizes that Congress has been asked to extend the statute of limitations for Indian claims on two previous occasions. It is not without great urgency, therefore, that the Pueblo appeals to you to consider the merits of a further extension.

The Pueblo of Laguna feels that a five-year extension of the current deadline of April 1, 1980 is a reasonable request in light of the nature and number of its claims which are still outstanding. The Bureau of Indian Affairs, the Department of Justice, and the Solicitor General's office only recently have been able to deal adequately with the processing of these claims.

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At this time the various government agencies are working in coordination with the Pueblo. No party, however, expects completion of the task of identifying and filing all valid claims prior to the upcoming deadline. The five-year extension, in our view, is a realistic request in light of the number of personnel currently assigned to the task, the present funding level, and the unique problems in developing the claims of the Pueblo.

The difficulty in meeting the deadline of April 1, 1980 is especially great for the Pueblo of Laguna because the vast majority of its claims derive from boundary disputes. These disputes, in turn, frequently have their roots in Mexican and Spanish law, and will require sophisticated archival research. At this time neither the Pueblo nor the Bureau of Indian Affairs is equipped to handle this research.

The Pueblo has contracted with the Bureau of Indian Affairs to conduct its own initial investigations. The committee established by the Pueblo submitted some 28 claims to the Field Solicitor's office in September, 1979 and since that time the Bureau has taken action on only five of the claims. The delay in this process is, again, due primarily to the fact that the Bureau does not have an expertise in Spanish and Mexican law, nor the personnel trained to do the archival research in order to expedite the process.

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At the present time the Field Solicitor's office for the Albuquerque area believes that as many as 100 unidentified claims may exist which deserve review and without an extension of time, sufficient financial resources, and qualified personnel, this job cannot be done adequately. Thus, the Pueblo cannot emphasize enough the importance of a firm financial commitment to the task of researching these claims. Additional time without the necessary funds to hire qualified researchers and to carry out these very complex investigations will frustrate the purpose of the extension, and for that matter, the purpose of the original statute of limitations placed on Indian claims as established in the 1966 Act.

The Pueblo urges this Committee to solicit testimony from the various federal agencies charged with the responsibility to file these claims in order to ascertain the level of funding that would be required to meet the government's obligation.

We would like to bring a final point to the Committee's attention. The Pueblo of Laguna supports an extension of the statute of limitations for contract claims as well as tort claims. The Pueblo asks that Congress not foreclose the opportunity to find, through these renewed investigations, valid contract claims which have not yet surfaced. Although this Committee has heard testimony to the effect that an extension is not needed for contract claims because they do not exist or are de minimus, the Pueblo feels that valid

Statement by W. Richard West, Jr.
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claims which have not been investigated due to a lack of resources should not be foreclosed prior to the final deadline established by Congress on other claims.

I again would like to thank this Committee for granting me the opportunity to comment on the need for an extension of the statute of limitations in 28 U.S.C. §§2415 and 2416. On behalf of the Pueblo of Laguna, I respectfully urge the Committee to support a five-year extension of the present deadline, and to authorize an appropriation of sufficient funds to realize the goal of filing all meritorious claims.

STATEMENT OF REID PEYTON CHAMBERS
BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
REGARDING EXTENSION OF THE STATUTE OF LIMITATIONS
FOR CLAIMS BROUGHT BY THE UNITED STATES
ON BEHALF OF INDIAN TRIBES

December 17, 1979

My name is Reid Peyton Chambers. I am an attorney in private practice here in Washington. I represent the Standing Rock Sioux Tribe of North and South Dakota, the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation in Montana, the Shoshone Tribe of the Wind River Indian Reservation in Wyoming and the Houlton Band of Maliseet Indians in Maine. These tribes are all seriously impacted by the running of the statute. The Tribes believe that at a minimum, the statute of limitations in 28 U.S.C. 2415 must be extended. More basically, under current circumstances, we submit that the statute of limitations should not be applied at all to bar actions brought by the United States as trustee for the Indians.

The need for congressional action on this problem begins with the Act of July 18, 1966,^{1/} which for the first time established a statute of limitations upon certain actions commenced by the United States seeking money damages against private persons. The most important claims, for our purposes, covered by the statute were actions to recover damages for trespass to lands of the United States and for conversion of property of the United States. The original period of this statute was six years. And while the statute's intent

^{1/} Public Law 89-505, 80 Stat. 304, 28 U.S.C. 2415.

was to subject the United States to a statute of limitations when suing to protect its own property interests, the 1966 Act also pertains to trespass to trust or restricted Indian lands.

This application of the statute to Indian claims went unnoticed by the Interior and Justice Departments and by Indian tribes and their lawyers until the six-year period was nearly up. Then, at the last moment, Indian groups, with Interior Department support, presented the problem to Congress, and Congress extended the statute for five additional years. In 1977, the statute was again extended and, unless further amended will expire on April 1, 1980.

In 1972 and again in 1977, it was hoped that extensions would provide sufficient time to investigate and bring all historic claims for trespass to Indian lands. This hope has gone unfulfilled. While many actions have been filed, many others have not, and there is still a vast number of claims remaining to be investigated, or as yet undiscovered. I served as Associate Solicitor for Indian Affairs at the Interior Department from 1973 to 1976, and I accept the censure due for my part in the failure of the Government to identify and prosecute all these potential claims. The problem, I submit, is not simply insufficient time - it is the extreme lack of resources to service the immense needs, legal and otherwise, of American Indians.

The United States as trustee for the Tribes, has the responsibility for managing, conserving and protecting all trust lands and resources from outside encroachment. But the trustee has clearly not devoted sufficient legal resources

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to fulfill its responsibility. Over the last decades, as Indians looked to the courts to protect their rights, Indian litigation has rightly multiplied. There are six divisions in the Interior Solicitor's office in Washington - the Indian Division is the smallest now, as it was in 1972, although it handles a larger caseload (both quantitatively and surely in terms of the nature of its cases)^{2/} than most other Divisions. The section in the Justice Department responsible for prosecuting these cases has far fewer lawyers than another Justice section charged with defending the United States in the Indian Claims Commission cases against the Indians.

In addition, there is frequent conflict and competition for natural resources within the Interior and Justice Departments between Indians and agencies like the Bureau of Reclamation, Bureau of Land Management, Forest Service, Army Corps of Engineers, and Fish and Wildlife Service. A great deal of lawyers' time is devoted to administrative controversies, and it is often no easy matter for tribes or for their advocates within the Government to get controversial cases filed. Legal manpower in the Solicitor's Office and Justice Department has been insufficient to meet all these needs - both in Washington and in Indian country. The same is true of the Bureau of Indian Affairs. The Tribes fear that these dire shortages of manpower and other resources will continue.

^{2/} Many of its cases, involving as they do the protection of natural resources, entail protracted and highly controversial litigation to adjudicate water rights (as at Pyramid Lake where we sued 14,000 defendants), or hunting and fishing rights (as in the major United States v. Washington case finally resolved last July by the Supreme Court).

While federal resources have been limited, the task required is massive. To assure that all valid claims are brought, reservation lands must be surveyed, tract by tract, to discover unlawful encroachments. Aerial photographs should be compared with section lines and metes and bounds descriptions. In addition, federal agencies have in their possession (generally deep in archival vaults around the country) the papers, records and accounts concerning Indian trust property. These must be searched, and the validity of each existing land use on Indian reservations should be analyzed. On the Standing Rock Reservation, for example, over 3,000 allotments were made after the opening of the reservation. From 1910 to 1921 several hundred allottees were illegally forced to take fee patents without consent. The records of all the Reservation's allotments must now be reviewed to determine where valid trespass claims exist following a forced patent. The task has been rendered all the more difficult because the records are not located at Standing Rock, but have been dispersed to various other BIA offices. It is certain that the searching of records will turn up major, valid claims. Several years ago attorneys for the Native American Rights Fund in researching 19th century documents happened to discover an invalid railroad right-of-way across the Walker River Reservation in Nevada. The United States and the Tribe brought suit against the railway, and with a favorable decision by the court of appeals, the Tribe stands to recover a substantial sum. The title to every right-of-way grant in Indian country should be similarly searched and reported to the tribes and their attorneys before any statute of limitations is imposed.

There are doubtless hundreds of encroachments in Indian country as yet undiscovered. It is the responsibility of the United States to uncover these claims, notify the tribes of their existence, and bring litigation if necessary. Failure to do so before the expiration of a statute of limitations could subject the United States to massive liability for failure to bring valid claims for its Indian beneficiaries. In any event, the Indians should not be penalized and lose their property rights because the trustee did not know what property it manages and what claims it has, or because no action is taken by the trustee to learn and prosecute their rights.

We suggest that a statute of limitations against the United States is eminently reasonable where only the property of the United States is involved, and the United States with all of its resources has slept on its rights. That is not the situation here. The United States is trustee for Indian property rights. The United States manages and administers the property. But the trustee has no inventory of the property it manages, reservation-by-reservation and tract-by-tract, or of the use of this property. It has never reported all possible reasonable claims to its trust beneficiaries. A statute of limitations in these circumstances shifts the loss from private trespassers to the Indians where the Indians have never been fully informed by their trustee. That the trustee has not had sufficient manpower or resources does not diminish the unfairness of making the Indians bear this loss.

To be sure, it is possible that all of the actions necessary to inform Indians of their claims could be taken by the United States during a fixed period of time if the statute were extended to another set deadline. But given the other needs and priorities facing American Indians in the immediate future, the Tribes question the wisdom of having a statute of limitations applied at all to claims regarding Indian trust property and of utilizing the large amount of resources that would be necessary to make a complete parcel-by-parcel inventory of all uses of trust lands on Indian reservations, and report the findings of such an inventory to the tribes and to Congress. For this reason, the Tribes would prefer an amendment holding the statute inapplicable to Indians over another limited extension. It goes without saying, however, that the Tribes would greatly prefer a fixed extension to the running of the statute on April 1, 1980.

An Act to amend 28 U.S.C. § 2415 to provide that the statute of limitations shall not apply to certain actions brought by the United States on behalf of Indians

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2415 of title 28, United States Code, is amended as follows.

§2415. Time for commencing actions brought by the United States.

(a) * * * "Provided further, that nothing in this act shall bar an action for money damages which accrued on or before the date of enactment of this Act in accordance with subsection (g) brought by the United States for or on behalf of a recognized tribe, band or group of American Indians, or on behalf of an individual Indian whose land is in trust or restricted status."

(b) * * * "Provided further, that nothing in this act shall bar an action for money damages which accrued on or before the date of enactment of this Act in accordance with subsection (g) brought by the United States for or on behalf of a recognized tribe, band or group of American Indians, or on behalf of an individual Indian whose land is in trust or restricted status."



NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

Suite 207 1701 Pennsylvania Avenue, N.W. Washington, D.C. 20006
202 - 343-9484

December 17, 1979

REC'D DEC 17 1979

Honorable Senator Melcher
Senate Select Committee on
Indian Affairs
Suite 6313
Dirksen Senate Office Building
Washington, D. C. 20510

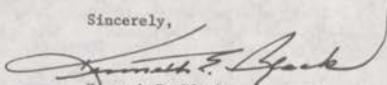
Dear Senator Melcher:

On behalf of the National Tribal Chairmen's Association, we wish to express our concern in regard to the 2415 Statute of Limitations on Indian Claims. Many tribes in our land will find it impossible to identify and develop such claims by April 1, 1980. Indian tribes are being forced to abandon legitimate claims because the Bureau of Indian Affairs does not have the capacity to develop all of the law suits that should receive hearings.

We urge you and your colleagues to repeal 2415 and provide Indian people with continued opportunity to redress by legal action to correct some of the historic wrongs to which they have been subjected.

Your consideration of this matter will be sincerely appreciated.

Sincerely,



Kenneth E. Black
Executive Director

KEB:ss



LUMMI INDIAN BUSINESS COUNCIL
2616 KWINA ROAD, BELLINGHAM, WASHINGTON 98225 206/734-8180

December 11, 1979

REC'D DEC 17 1979

Honorable John Melcher, Chairman
Senate Select Committee on Indian Affairs
Washington, D.C. 20510

Dear Senator Melcher:

It is my understanding that the committee has under consideration the possibility of extension of the statute of limitations on claims for money damages on behalf of tribes or individual Indians. That statute, 28 U.S.C. 2415, currently will result in the barring of historic trespass claims if they are not brought before April 1, 1980.

The Lummi Office of the Reservation Attorney acts as house counsel to the Lummi Indian Tribe in Washington State. We have been involved, to the limits of available time and resources, in the investigation of many claims which may potentially be barred by this statute of limitations. In our opinion, based on the work which we have done for the tribe and its members, that the deadline must be extended for a considerable period of time. This is true for two reasons. First, the Lummi Reservation, like the other reservations in Western Washington, is serviced by a single BIA agency located some 60 miles from the reservation. All of the land records are kept there and the tribe, due to transportation and manpower limitations, has been unable to make full and effective use of the records. In addition, the records themselves are very often incomplete, necessitating trips or correspondence to the Portland Area Office some 300 miles from the reservation.

Second, the Regional Solicitor's Office and the Department of Justice have been literally inundated with numerous claims, each of which must be thoroughly investigated and prepared for filing. Given the volume of the claims and the time pressures involved it is virtually impossible for the Solicitor's Office to do an adequate job of evaluating and preparing the claims. It is inevitable that some valid and meritorious claims will not be filed while other claims which turn out to be invalid will be pursued. Neither situation is beneficial to the tribes or to the present land owners and other potential defendants. For these reasons, the Office of the Reservation Attorney strongly urges an extension in the statute of limitations deadline.

Respectively submitted,

Daniel A. Raas

Daniel A. Raas

Harry L. Johnsen

Harry L. Johnsen
Reservation Attorneys

5 / 10

HLJ/km



STOLUCKQUAMISH
TRUE TO THEIR TRADITIONS AS "CANOE INDIANS"

December 13, 1979

Mr. John Melcher
Chairman, Select Committee
on Indian Affairs
U.S. Senate
Washington, D.C. 20510

Dear Mr. John Melcher,

The Stillaguamish Tribe would appreciate an extension on April 1980 deadline for submitting damage claims to 1966.

The Stillaguamish Tribe has just been recently recognized by Federal Government, in the process of setting up Tribal programs, we have neglected to address this issue, we would appreciate your time and consideration on this matter

yours truly,

Llewellyn Goodridge
Vice-Chairman Llewellyn Goodridge
Stillaguamish Tribe of Indians
23102-107th Ave. N.E.
Arlington, Washington 98223



SQUAXIN ISLAND TRIBE

Route 1, Box 257 Shelton, Washington 98584

Calvin J. Peters - Chairman
 Bryan A. Johnson - Vice Chairman
 Sally Ann Norman - Secretary

Wesley Whitener - Treasurer
 John Kriss - Councilman
 Florence Sigo - Tribal Historian

December 13, 1979

REC'D DEC 13 1979

John Melcher, United States Senator
 Chairman, Select Committee on Indian Affairs
 United States Senate
 Washington, D.C. 20510

Dear Senator Melcher:

As the Chairman of the Squaxin Island Tribal Council, I wish to express my concern about the effect of the #2415 Statute of Limitations on Tribal Claims.

As I understand it, the statute itself is not entirely clear. Although it may stop only actions for money damages brought by the United States on behalf of Indian Tribes, it may also be interpreted to bar all claims brought by Tribes themselves as well, excluding those occurring within the Statute's time limit.

Only recently we learned that the United States Government has consented to help Tribes pursue actions in response to damages to our fisheries. It is impossible for us to identify and develop such claims by April 1, 1980. Indian Tribes are being forced to abandon many claims because the Bureau of Indian Affairs does not have the capacity to develop all of the lawsuits that should get hearings.

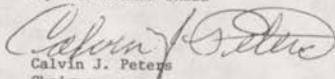
The purpose of any statute of limitation is to foreclose stale claims, where plaintiffs have had an opportunity to pursue legal remedies, but have not done so. Another purpose is to avoid legal action where witnesses and evidence have become, for whatever reason, less reliable over the years. Neither purpose is served by the imposition of this statute. Most Indian Tribes are just beginning to reach a point where they are able to identify and develop these claims adequately; and the problem of witnesses and evidence has not proved to be insurmountable for courts looking at Indian issues in the past. Most, if not all, of these turn directly upon points of law, and only rarely do they hinge on disputed facts.

Page 2
Senator John Melcher

For these reasons, I urge you to repeal #2415 and provide Indians with a continued opportunity to redress by legal action some of the historic wrongs to which they have been subjected.

Very truly yours,

SQUAXIN ISLAND TRIBE


Calvin J. Peters
Chairman

CJP/pl

cc: Craig Cobe, Director
2415 Claims Investigation
Minnesota Chippewa Tribe
P.O. Box 217
Cass Lake, MN 56633

Cynthia Davenport
Evergreen Legal Services
5th Floor, Smith Tower
Seattle, WA

National Congress of American Indians
National Tribal Chairman's Association
Native American Rights Fund
Senator Warren Magnuson
Senator Henry Jackson

ONEIDA INDIAN NATION
NEW YORK

P.O. Box 60
Nedrow, N.Y. 13120

Robert Burr, Jr.
President
Land Claims Representative

(315) 469-6346

RECEIVED JAN 11 1980

260 Reed Ave.
Syracuse, N.Y. 13207

Jacob Thompson
Legal Advisor
Land Claims Representative

(315) 422-6462

January 2, 1980

Senator John Melcher, Chairman
Senate Select Committee on Indian Affairs
6313 Dirksen Senate Office Building
Washington, D.C.

Re: Statute of limitations on Indian
land claims

Dear Senator Melcher,

I am writing with respect to the hearings you conducted on December 17, 1979 with respect to extending the April 1, 1980 statute of limitations on the United States filing land claims lawsuits on behalf of Indian tribes against third parties. The Oneida Indian Nation of New York strongly favors such an extension for itself in particular.

The Nation is currently engaged in several land claims suits in the federal court for the Northern District of New York. These suits include Oneida Indian Nation of New York, et al. v. County of Oneida, et al., Nos. 70-CV-35 and 74-CV-187; Oneida Indian Nation of New York v. Abraham Williams, et al., No. 74-CV-167; and Oneida Indian Nation of New York v. The New York State Thruway Authority, et al., No. 78-CV-104. These suits do not fully cover the claims of the Nation or the defendants who may be liable to the Nation. Unless the statute of limitations is extended, the Nation may be compelled to vastly expand its litigation prior to April 1, 1980.

All of the Nation's land claims are based on alleged unlawful transactions between the State of New York and the Oneida Nation. Through these transactions, the Nation has lost possession of approximately six million acres of land. Nation title to these lands is guaranteed by three treaties with the United States. These are: Treaty of Fort Stanwix of October 22, 1784, 7 Stat. 15; Treaty of Fort Harmar of 1789, 7 Stat. 33; and the Treaty of Canandaigua of November 11, 1794, 7 Stat. 44. Oneida Nation claims are also based on an unpublished 1792 treaty with the United States, the Proclamation of the Continental Congress of September

Senator John Melcher
January 2, 1980
Page two

22, 1783, the Articles of Confederation, the Constitution of the United States and the Trade and Intercourse Acts.

Prior to the first Trade and Intercourse Act, the Oneida Nation lost possession of most of its lands in 1785 and 1788 allegedly unlawful transactions with the State of New York. These transactions are explained in detail in *Oneida Nation of New York, et al. v. United States*, 37 Ind.Cl.Comm. 522 (1976), affirmed, 576 F.2d 870 (Ct.Cl. 1978).

After the first Trade and Intercourse Act, the Oneida Nation lost possession of most of the remainder of its lands, in 26 transactions with the State of New York between 1795 and 1846. None of these transactions conformed to the requirements of the Trade and Intercourse Acts. These transactions are explained in detail in *Oneida Nation of New York, et al. v. United States*, 26 Ind.Cl.Comm. 138 (1971), affirmed in part, remanded in part, 477 F.2d 939, 201 Ct.Cl. 546 (1973), on remand, 43 Ind.Cl.Comm. 373 (1978). The 1795 treaty was at issue in *Oneida Indian Nation of New York, et al. v. County of Oneida, et al.*, 434 F. Supp. 527 (N.D.N.Y. 1977). There the Court held that the transaction violated the Trade and Intercourse Act. The practical effect of the holding is that 24 of the 26 transactions with New York are void (the United States having agreed to two of the transactions) and the Oneidas are the valid titleholders to approximately 250,000 acres of land comprising the counties of Oneida and Madison in the State of New York. This case must still undergo appellate review.

Volumes can be written on the Nation's land claims. Should the Committee have a need for additional information, please let me know and the Nation will try to supply it promptly.

Consistently and continuously from the late 1700s until the present the Nation has complained to the United States about the conduct of New York officials in taking Nation land. The Nation has continuously sought to have the United States take action to restore these lands to the Nation's possession. In 1919, the United States finally acted to void one of the 26 post-1790 transactions as a violation of the Trade and Intercourse Act. Although the transaction involved some 760 acres, the United States sought eviction from approximately 32 acres. The United States succeeded in restoring to Nation possession these 32 acres. The history of this matter can be found in *United States v. Boylan*, 265 F. 165 (2nd Cir. 1920). The aforementioned *Abraham Williams* case seeks restoration of the remaining acres subject to this same illegal transaction.

With the exception of the *Boylan* case, the Nation's pleas for the assistance of the United States went unanswered in terms of any action which might lead to repossession of its lands. Thus, the Nation has been compelled to undertake for itself the expensive and complicated task of protecting its own interests in these land

Senator John Melcher
January 2, 1980
Page three

claims matters. Unfortunately, the Nation is not in a financial position to undertake any additional litigation. To properly protect its claims before the April 1, 1980 statute of limitations, the Nation would probably have to sue tens of thousands of public entities and private individuals, an undertaking most properly within the capacity and responsibilities of the United States - as the Indian Claims Commission and the Court of Claims has held. Also, the primary defendant in any action brought with respect to the Nation's land claims is the State of New York. It is an unsettled question in law whether the Nation acting for itself can surmount a sovereign immunity defense interposed by the State. There is no question that the State of New York would have no such defense if sued by the United States on behalf of the Nation.

During the last three years, representatives of the State of New York, officials of the Department of the Interior, and Congressman James M. Hanley have made various overtures and have attempted to establish a framework for negotiating a settlement of the Nation's land claims. The Nation has and continues to welcome such negotiations. Unfortunately, negotiations have never commenced. The lack of negotiations results in large measure from the fact that in 1975 the United States withdrew recognition of the governing body of the Nation. No governing body has been recognized since. Since the withdrawal, groups and persons from within the Nation and representatives of the Department of the Interior have sought to resolve the recognition issue. The latest effort is contained in a December 12, 1979 letter to me from Assistant Secretary of the Interior for Indian Affairs Forrest J. Gerard. Secretary Gerard committed the Department to recognize the Nation's Executive Committee as its governing body if, by March 11, 1980, the Executive Committee obtains affidavits of support from more than 50 percent of the adult Oneidas whose names appear on a November 21, 1978 list of Oneidas compiled by the Department. The Executive Committee is confident that it will meet this deadline. If it does, recognition should come shortly thereafter.

If the governing body recognition issue is resolved, the Oneida Indian Nation of New York will be able to designate representatives for purposes of land claims settlement negotiations who will be authorized to make commitments on behalf of the Nation. Once such representatives can be appointed, there is every indication that settlement negotiations will begin quickly.

An extension of the April 1, 1980 statute of limitations insofar as the Oneida Nation is concerned will be beneficial to the Nation as well as to all others affected by the Nation's claims. An extension will maintain the legal status quo and relatively tranquil economic, political and social climate that has prevailed in the land claims region. An extension will establish an atmosphere most conducive to successful negotiations by assuring the least pressurized state of affairs for all concerned. Without an extension, it is very possible

Senator John Melcher
January 2, 1980
Page four

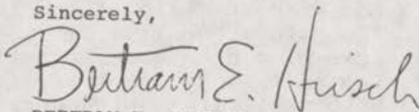
that negotiations will be far more difficult to arrange and far more difficult to successfully conclude. An extension will avoid likely unnecessary inequities to all those affected by the Nation's claims.

On behalf of the Nation, I would like to request that the Committee support legislation that would extend the April 1, 1980 statute of limitations for two additional years. It should be possible for the Nation to settle its land claims by April 1, 1982.

The Nation would like to be advised of the direction that the Committee will take on this matter and would be pleased to work with the Committee and its staff in developing appropriate legislation. Should the Committee desire further elaboration of the Nation's position on the statute of limitations matter or further justification for the Nation's position, please let me know and the Nation will assist the Committee without delay.

Thank you for your consideration of the Nation's views. We wish to request that this communication be made a part of the December 17, 1979 hearing record, and that a copy of the hearing record be made available to the Nation as soon as it is printed.

Sincerely,



BERTRAM E. HIRSCH
Attorney for the Oneida Indian
Nation of New York
76-17 250 Street
Bellerose, New York 11426
Tel: (212) 347-3022

cc: Congressman James M. Hanley
Congressman Donald J. Mitchell
Senator Jacob J. Javits
Senator Daniel Patrick Moynihan
Secretary Cecil D. Andrus
Robert W. Burr, Jr.

REC'D JAN 4 1980

December 26, 1979

Hon. John Melcher
Chairman Senate Select Committee on Indian Affairs
Washington, D.C. 20510

Dear Sir:

I am writing in regards to the 28 USC 2415 Statute of Limitations and my concern of the results in which the claims work is being done as 2415 Claims Coordinator for the Coeur d'Alene Tribe.

And to make myself clear, the claims filing in the beginning of this year was almost completely overlooked at the Northern Idaho Indian Agency, which services three tribes, the Coeur d'Alene, Nez Perce and the Kootenais.

The second month in my term on the Coeur d'Alene Tribal Council I was directed to do what I can on trying to atleast file some claims for the Coeur d'Alenes.

So with the help of the Idaho Legal Aid and Mr. Charles Mathis, Reality Officer, Northern Idaho Agency. We began playing a game of "hit and miss" concerning filing on various types of claims we could dig up from the allotment files which were not complete. This has further hindered the work that is involved in trying to get supportive information on claims.

I question why have a law when no help came from B.I.A. when the law was passed in the beginning. I am not criticizing our local agency. Even though I had some resistance at first, not because the agency did not wish to help but for two main reasons. One was that no money was allocated to hire personnel to work on the 2415 claims. And the second reason because of lack of money that ment the small staff at the Northern Idaho Agency which not only have to do their regular jobs, but, have to try and file on the 28 USC 2415 which lessens the quality of the claims. Which could affect the dicission to accept the claims or not too.

What it comes down too is that hundreds of claims will be over looked and not just the Coeur d'Alenes but every small tribe that can not afford to hire legal re-

searchers who understand the legal jargon needed to figure out if wrongs were done to the tribe or individual landowners.

So my concern is that can the judicial system take on the case loads of claims from the over 200 tribes and do justice to the native people in this country all at one time?

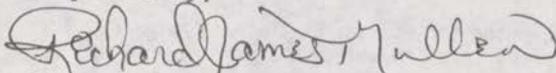
The Coeur d'Alene Tribal Council did not realize the full impact of the 28 USC 2415 Statute of Limitations until last spring when the Idaho Legal Aid gave a presentation on what the 2415 claims law ment.

True the B.I.A. gave notice to the claims but never pushed the issue or gave a full brief on the ramifications if the tribe did not begin a massive and aggressive campaign to get the citizens of the tribe to file claims and any other Indian landowner to do the same.

I do not beleive the purpose of the 28 USC 2415 Statute of Limitations law was created to be remembered as just another cover up law in the long list of laws effecting the Native American Citizens that have gone by in the past.

I just wanted to have my position on record so that no one will say the Coeur d'Alenes did not atleast try to file claims under the present system of "hit and miss!"

Respectfully,



Richard James Mullen, 2415 Claims Coordinator
Coeur d'Alene Tribal Council
Coeur d'Alene Tribal Headquarters
Plummer, Idaho

83851

cc: Chairman, Coeur d'Alene Tribal Council
Idaho Legal Aid, Coeur d'Alene Idaho

Route 10 Box 161 A
Rock Hill, SC 29730
December 21, 1979

REC'D DEC 22 1979

The Honorable John Melchar
Select Committee on Indian Affairs
1123 Dirkson Office Building
Washington, DC 20000

Dear Sir:

I am a property owner in the 144,000 acre area currently being threatened with a law suit by the descendents of the Catawba Indian Tribe of South Carolina. The titles to homes, land, and businesses in this area have been clouded for 2½ years by a constant threat of litigation by these people.

The Native American Rights Fund has done more than ample research into this matter, and the descendents of the Catawba's have been offered \$7,000,000 by the federal government with the possible offer of federal services. Yet, the threat of a law suit still exists.

The 40,000 property owners in this area have been threatened, harassed, and intimidated long enough. No person living in this area has wrongfully taken any land from any person claiming Catawba ancestry. The longer the threat continues, the chance of more economic harm to this area increases.

I am firmly opposed to extending the statute of limitations giving the federal government more time to sue for Indian claims past April 1, 1980.

Please include this letter in the record of testimony at the hearing before the Senate Select Committee on Indian Affairs held on Monday, December 17, 1979.

Yours truly,

Lewis M. Whisonant

Lewis M. Whisonant



INTER-TRIBAL COUNCIL

OF

MICHIGAN, INC.

405 East Easterday Avenue Sault Ste. Marie, Michigan 49783
Phone 906-632-6896

December 13, 1979

REC'D DEC 18 1979

The Honorable John Melcher
Chairman of Select Committee
on Indian Affairs
United States Senate
Washington, D.C. 20510

Sir:

We have been informed that on December 17, 1979, there will be a Conditional Hearing in regards to the Statute of Limitations of U.S.C. 28 Section 2415. Our information indicates that the hearing will center around testimony for extension of that Statute of Limitations beyond the April 1, 1980 deadline.

We, of the Inter-Tribal Council of Michigan, would like to express our deep support for the extension of the deadline for the Statute of Limitations. Pursuant to this, on December 6, 1979, the attached Resolution was adopted by unanimous vote of the Inter-Tribal Council of Michigan.

We would appreciate your support in our endeavors to have this Statute extended to 1985. The claims represented by U.S.C. 28, Section 2415 are a significant factor in Michigan tribal relations. Our position is that any claim made should be investigated to its exhaustive conclusion.

Sincerely,

Frederick Dakota

Frederick Dakota, Chairman
Inter-Tribal Council of Michigan, Inc.

FD/kc

Attachment

Bay Mills Reservation
Brimley, Michigan 49715

Keweenaw Bay Reservation
L'Anse, Michigan 49946

Isabella Reservation
Mt. Pleasant, Michigan 48858

Hannahville Reservation
Wilson, Michigan 49896

5570



INTER-TRIBAL COUNCIL
OF
MICHIGAN, INC.

405 East Easterday Avenue Sault Ste. Marie, Michigan 49783
Phone 906-632-6896

RESOLUTION NO. 79-00033

Ojibwa

- WHEREAS: The Inter-Tribal Council of Michigan, Inc., is a duly organized governing body under State Charter, filed April 16, 1968; and
- WHEREAS: The Inter-Tribal Council of Michigan, Inc., is located at 405 E. Easterday Avenue, Sault Ste. Marie, Michigan 49783; and
- WHEREAS: Article II of the Articles of Incorporation established a joint Tribal organization representing the four (4) reservations in Michigan, these being: Bay Mills Indian Community, Hannahville Indian Community, Keweenaw Bay Indian Community, and the Saginaw Chippewa Indian Tribe; and
- WHEREAS: Inter-Tribal Council of Michigan, Inc., has entered into a contract with the Bureau of Indian Affairs, U.S. Department of Interior, for the purpose of providing continuity in the effort to pursue all possible claims within the purview of 28 U.S.C. Section 2415; and
- WHEREAS: The exhaustion date of the aforementioned Statute of Limitation imposes an extreme hardship on the four (4) member tribes of Inter-Tribal Council of Michigan.
- NOW THEREFORE BE IT RESOLVED: That due to lack of funds, human resources and mere geographical physical impossibility that the tribes of Michigan would be unable to complete all investigations on 2415 claims and comply with the April 1, 1980 Statute of Limitations deadline.
- BE IF FURTHER RESOLVED: That the tribes in Michigan respectfully request that the Statute of Limitations be extended to 1985.

CERTIFICATION

The foregoing resolution was duly adopted by the Board of Directors of Inter-Tribal Council of Michigan, Inc., with a quorum present during (regular, special) session on this 6th day of December 1979, by a vote of 19 for, 0 opposed, and 0 abstaining.

Frederick Dakota
Frederick Dakota, Chairman
Inter-Tribal Council of Michigan, Inc.

Bay Mills Reservation
Brimley, Michigan 49715

Isabelle Reservation
Mt. Pleasant, Michigan 48858

Keweenaw Bay Reservation
L'Anse, Michigan 49948

Hannahville Reservation
Wilson, Michigan 49896

EVERGREEN LEGAL SERVICES
 NATIVE AMERICAN PROJECT
 520 SMITH TOWER, 506 SECOND AVENUE
 SEATTLE, WASHINGTON 98104
 (206) 464-5888

GREGORY R. DALLAIRE
 DIRECTOR

December 26, 1979

REC'D JAN 3 1980

Honorable John Melcher, Chairman
 Senate Select Committee on Indian
 Affairs
 Washington, D.C. 20510

Re: Hearings on 28 United States Code §2415 Scheduled for
 December 17, 1979.

Dear Senator Melcher,

It is my understanding that your committee is conducting a review of the status of Interior and Justice Department processing of Indian Claims subject to the April 1, 1980 statute of limitations. I am an attorney representing several Indian tribes having such claims. The comments I make here are on my own behalf, from my own experience, but may provide the committee with some perspective on how the statute of limitations can operate contrary to federal purposes.

First, the statute limits the amount of time available for informal dispute resolution by requiring attorneys to file lawsuits although negotiations have not ended. In complex cases involving continuing interference with treaty resources (for instance, power dams) some of the actions complained of will have occurred after 1966. But, because of court rules against "piecemeal" litigation, all claims must be made the subject of a single lawsuit. In delicate negotiations, filing a complaint can hardly be treated as a mere formality necessary to toll the statute of limitations.

In less complex cases, where private individuals or households are sued, the trauma associated with the service of the complaint will be irreversible, although it might otherwise have been possible to resolve a claim in a more leisurely and less extreme matter.

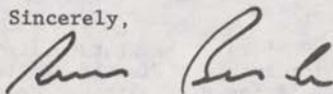
Second, the statute of limitations covers a period of over one hundred years. During that time, a lot of claims have arisen. Because of minimal federal assistance in researching those claims, it will be necessary, in order to

avoid malpractice, to file all colorable claims in order to toll the statute. This sudden flood of accumulated claims threatens to inundate local federal courts at a time when court administrators and the federal bar are already concerned with excessively large court case loads.

Third, since Congress extended the statute to April 1, 1980, there have been a number of instances in which the Department of the Interior and the Department of Justice may have committed actionable negligence. One example is failure to notify tribes and tribal attorneys of deadlines concerning possible claims until those deadlines were almost upon us. Another example is failure to notify tribes that funding was made available by Congress to assist in researching claims so that what funds were made available were either disbursed in a haphazard fashion or absorbed in local BIA offices. By and large, the Bureau of Indian Affairs has simply informed the Indian people that they have a limited amount of time in which to document any possible claims, although the Bureau (not the Indians) is the agency responsible for documentation.

Misfeasance and nonfeasance expose the United States to possible liability for breach of trust duties. One can't help observing that it would be much simpler to establish a breach of the high degree of care imposed upon the trustee and its employees than to reconstruct, from sketchy Bureau records, a case against third parties.

Sincerely,



Russell W. Busch
Attorney at Law

RWB:sh

cc: Craig Cobe, Minnesota Chippawa Tribe

ADMINISTRATIVE OFFICE

P.O. Box 913
Boise, Idaho 83701
(208) 336-8960

AREA OFFICES

Boise, Idaho 83706
104 1/2 So. Capitol Blvd.
P.O. Box 1663
(208) 345-0106

Caldwell, Idaho 83605
109 N. Kimball St.
P.O. Box 1116
(208) 458-1532

Lewiston, Idaho 83501
1336 "F" St.
P.O. Box 973
(208) 743-1556

Idaho Falls, Idaho 83401
P.O. Box 1136
(208) 524-3660

Reply to:

IDAHO LEGAL AID SERVICES, INC.

218 N. 23rd St. - P.O. Box 1439
Coeur d'Alene, Idaho 83814
(208) 667-9559

December 27, 1979

NOV 27 1980

AREA OFFICES

Pocatello, Idaho 83201
1247 Yellowstone Ave.
P.O. Box 2107
(208) 237-6403

Twin Falls, Idaho 83301
P.O. Box 1296
708 Shoshone St. E.
(208) 734-7024

Indian Law Unit
P.O. Box 1663
Boise, Idaho 83706
(208) 345-0106

Migrant Law Unit
P.O. Box 66
Caldwell, Idaho 83605
(208) 454-2591

Honorable John Melchor, Chairman
Senate Select Committee on Indian Affairs
Washington, D.C. 20510

Dear Senator Melchor:

We are writing today in regard to a proposal which is currently being considered by your Committee -- the prospect of extending the April 1, 1980 deadline under 28 U.S.C. § 2415 for claims by the United States in behalf of Native Americans. We respectfully request that the experience of the Indian Law Unit of Idaho Legal Aid Services, Inc. in assisting Native Americans in asserting such claims should be considered by your Committee in reaching any decision regarding the extension of the April 1, 1980 deadline.

Because of our scant resources and staffing, the Indian Law Unit has since early July 1979 undertaken a limited but significant role in the 2415 Claims Program here in Idaho. At that time we notified tribal leaders that we would be available to low-income members of the tribe should they need legal assistance in submitting a claim. While we have received a few requests for assistance from individuals in the southern part of the state, the bulk of our efforts to date have taken place in northern Idaho, in the area serviced by the Bureau of Indian Affairs Northern Idaho Agency at Lapwai. The Lapwai Agency serves the Nez Perce, Coeur d'Alene, and Kootenai Tribes.

As of this date, 46 claims have been submitted with the assistance of the Indian Law Unit to the Bureau of Indian Affairs. Of these, only 6 are the result of individual claimants coming forward with a claim. The other 40 claims are the result of a very limited and incomplete file survey of Coeur d'Alene Allotment files.

It was apparent to the tribal leaders and the Indian Law Unit at the outset that the BIA was attempting to dis-

Honorable John Melchor, Chairman
December 27, 1979
Page Two

charge its obligation under the 2415 Claims Program by relying solely on publicizing the fact of the statute of limitations in the hope that all claims would be brought to the BIA by individual claimants or tribal leaders. Requests for greater assistance from the BIA in the form of a comprehensive survey of allotment, rights-of-way, and lease files were rejected by the BIA. The Indian Law Unit was informed that the Northern Idaho Agency at Lapwai was not budgeted for any funds to gather and investigate claims. We were also informed that the 2415 Claims Program for the entire Northern Idaho Agency consisted of the part-time efforts of the Agency Realty Officer who, because of the pressure of other duties, was unable to do anything more than forward to the Regional Office in Portland claims brought to his attention. As of mid-July 1979, the Northern Idaho Agency had submitted only one claim to the Portland Area Office for further processing.

At the request of the Coeur d'Alene Tribal Council the Indian Law Unit in August and September 1979, conducted a limited survey of Coeur d'Alene allotment files for the purpose of discovering claims involving allotted lands which went out of trust due to the allottee being issued title to the land in fee simple without consenting to this change. As of this date, we have submitted 35 of these "forced fee patent" claims.

Inquiries were made by this office with regard to the Bureau's justification for failing to make a greater commitment to investigate claims in light of the significant results of our own very limited and incomplete file survey. We were aware that in other parts of the country the BIA had actually contracted with independent groups to conduct comprehensive searches for claims which included thorough file surveys. We were informed by the Regional Solicitor that the Bureau had decided against a file survey of the Coeur d'Alene allotment files because a "sampling" for forced fee patent claims conducted at the Colville Reservation in Washington "revealed no appreciable problem." We have attached to this letter copies of our correspondence to the Regional Solicitor's office and their response. Our recent communication with the Claims Coordinator for the Colville Tribe indicates that they have since identified approximately 300 "forced fee patent" claims.

Honorable John Melchor, Chairman
December 27, 1979
Page Three

It is important to recognize that "forced fee patents" are but one category of potential claims to be pursued under the 2415 Claims Program. Not only do we question the validity of a sample which reveals, apparently contrary to fact, no appreciable problem; we seriously challenge the decision to commit such a paucity of resources solely on the basis of one aspect of the 2415 Claims Program. As stated before, the Indian Law Unit, without funding from the Bureau of Indian Affairs, and on a part-time basis, has identified and submitted 46 claims for processing by the Regional Solicitor. We are convinced that a substantial number of undiscovered claims exist in Northern Idaho and we are disturbed by the Bureau's failure to amend its approach accordingly.

With regard to the possibility of again extending the statute of limitations, we have several comments. First, extending the deadline alone will not correct the problem. The Indian Law Unit's primary concern, as briefly discussed above, is the failure of the Bureau of Indian Affairs to demonstrate a genuine commitment to making the 2415 Claims Program a success.

The problem, perhaps, stems from the unwillingness by officials of the BIA to recognize that they or their predecessors have been remiss in their responsibilities as guardians of Native American property held in trust by the United States. Refusal by officials at the Northern Idaho Agency to independently examine allotment folders, or to arrange for the task to be performed on a contract-basis, are manifestations of the Bureau's attitude.

Thus, concurrent with a deadline extension, we propose that independent groups or teams be established to investigate, identify, and process claims on behalf of Native Americans. Adequate measures must also be taken to ensure the autonomy of these groups; they must also be adequately financed. The 2415 Claims Program will never be a success -- gaining the confidence and support of Native Americans -- until such efforts are made.

We realize that this letter only briefly addresses what we believe to be a serious issue. At your invitation, we would be willing to engage in more detailed communication

Honorable John Melchor, Chairman
December 27, 1979
Page Four

with the Senate Select Committee on Indian Affairs, either
by letter or by testimony in Washington, D.C.

Your attention to this matter is greatly appreciated.

Very truly yours,

Man M: [Signature]
for Steven Moore

Steven C. Moore

Frederick F. Belzer

Frederick F. Belzer

For the Indian Law Unit
Idaho Legal Aid Services, Inc.
Dan Edwards, Esq.,
Managing Attorney

SCM/FFB/pds

cc: Senator Frank Church
Senator James McClure
Secretary Cecil Andrus
Forrest J. Gerard

Mahnomen, Minnesota
December 13, 1979

Honorable John Melcher, Chairman
Select Committee on Indian Affairs
United States Senate
1123 Dirksen Building
Washington, D.C. 20510

Dear Senator Melcher;

I very seriously question the desirability of again extending the April 1, 1980 Statue of Limitations deadline for commencing actions on behalf of an Indian tribe, band or group by the Federal Government.

This deadline has been extended at least once in the past that I am aware of. I feel there has been a rash of questionable and false claims of late, especially in this area, which has created a very severe hardship on private citizens who are just unable to cope with the litigation costs in opposition to the resources available to Indians, namely, The U.S. Government.

Very sincerely,

Elmer H. Winter

Elmer H Winter
Mahnomen, MN. 56557

P. O. Box 428
Franklin, La. 70538
January 11, 1980

ANS'D JAN 15 1980

The Honorable John Melcher
Chairman
Senate Select Committee on Indian Affairs
Washington, D. C. 20510

Dear Senator Melcher:

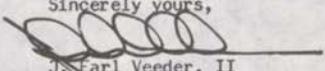
This is to inform you that I have received the transcripts of my December 17, 1979 testimony before your Committee. I do not wish to make any changes in the verbal or written testimony and will notify Mr. Taylor of such with a copy of this letter. I would like to request that either your office or the Committee staff continue to keep me informed on the status of this matter, especially if it appears that there will be forthcoming legislation to extend the Statute of Limitations.

I would like to take this opportunity to thank you and your Committee members for allowing me to attend and testify before the Committee. I am enclosing photocopies of several articles from the New Orleans newspaper concerning several Louisiana Indian Tribes. I would hope these might give you some idea of the potential threat to the people of the State of Louisiana if the Statute of Limitations should be extended. Having been under the physical, emotional, and financial strain of an Indian land claim suit, I only hope that future claims in this State can be stopped and I will do everything humanly possible to keep hundreds or possibly thousands of other Louisiana citizens from having to go through the same experience.

I urge both you and your Committee members to allow expiration of the Statute of Limitations or if an extension is allowed, to please consider some monetary relief for defendants in the suits as discussed in my previous testimony. There must be something done to provide more equity to defendants in these suits. I would be most happy to discuss this matter with you at your convenience if you feel it necessary.

Again, I thank you for your time and consideration and hope that a fair and equitable solution to this national problem will be soon forthcoming.

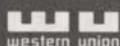
Sincerely yours,



J. Earl Veeder, II
Defendant
Chitimacha Tribe of La.
vs. Harry L. Laws Company,
Inc., et. al.

cc: Peter Taylor
Senator Rullell B. Long
Senator J. Bennett Johnston, Jr.
Rep. David Treen
Rep. Jerry Huckaby

R. GONSER
6015 SOUTH WEST STEVENS
SEATTLE WA 98116

western union

Mailgram



4-0828965348 12/14/79 ICS IPMRNCZ CSP WSHB
2069354866 MGM TORN SEATTLE WA 80 12-14 1049P EST

REC'D DEC 14 1979

▶ HONORABLE JOHN MELCHER, CHAIRMAN SELECT
COMMITTEE ON INDIAN AFFAIRS, PPC
US SENATE
WASHINGTON DC 20510

I BEG YOUR POSTPONEMENT OF THE SCHEDULED DEC 17 DECISION HEARING (TO DETERMINE IF THE APRIL 1 1980 STATUTE OF LIMITATIONS FOR LEGAL ACTION BY THE FEDERAL GOVERNMENT ON BEHALF OF INDIAN ENTITIES) THE TIME SHOULD BE EXTENDED TO ALLOW THOSE AFFECTED BY LOCALE OR PLIGHT TO TESTIFY EITHER BY THEIR PRESENCE OR IN WRITING

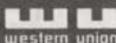
SINCERELY YOURS,

EVA GONSER, VICE PRESIDENT QUINAULT PROPERTY OWNERS ASSOC
206-935-4866

22149 EST

MGMCOMP MGM

MONTANANS OPPOSING DISCRIMINATIO
 BOX 673
 POLSON MT 59660



Mailgram



4-0677458348 12/14/79 ICS IPHMTZZ C8P WSHB
 4068832198 MGM TDMT POLSON MT 113 12-14-0541P EST

REC'D DEC 15 1979

HONORABLE JOHN MELCHER
 US SENATE
 WASHINGTON DC 20510

WE WOULD APPRECIATE YOUR POSTPONEMENT OF THE HEARINGS AT 10AM
 DECEMBER 17 "TO DETERMINE WHETHER THE APRIL 1 1980 STATUTE OF
 LIMITATIONS DEADLINE" SHOULD BE EXTENDED ON BEHALF OF INDIAN TRIBE
 BAND OR GROUP IN THEIR BEHALF BY THE FEDERAL GOVERNMENT, PLEASE
 EXTEND THE TIME FOR WRITTEN COMMENTS OR OPPORTUNITY TO TESTIFY FOR A
 LONG ENOUGH PERIOD FROM THOSE AFFECTED TO BE HEARD, WE STRONGLY
 OBJECT TO ANY FURTHER EXTENSIONS FOR THESE CLAIMS IN ANY EVENT

MONTANANS OPPOSING DISCRIMINATION
 W H MATTHIES E P BURLEW DOCTOR RAY KAISER F W ROCKWELL HARRY
 MILLER JOHN COCHRAN DOCTOR EARL CORIELL ROY LAKE W D MCDANIEL
 JOSEPHINE WHITE

17:41 EST

MGMCOMP MGM

AMERICAN HANDICRAFT V SCHAMEL
109 NORTH MAIN ST
ELMIRA NY 14901



4-0446318348 12/14/79 ICS IPMTZZ CSP WSMB
6077340566 MGM TDMT ELMIRA NY 176 12-14 0252P EST

REC'D DEC 18 1979

HONORABLE JOHN MELCHER CHAIRMAN OF THE SELECT
COMMITTEE INDIAN AFFAIRS
US SENATE 1123 DIRKSON SENATE OFFICE BLDG
WASHINGTON DC 20510

WITH REGARD TO YOUR HEARING SCHEDULED FOR 10:00 AM DECEMBER 17TH TO
DETERMINE WHETHER THE APRIL 18T 1980 STATUTE OF LIMITATIONS DEADLINE
SHOULD BE EXTENDED FOR COMMENCING ACTIONS ON BEHALF OF AN INDIAN
TRIBE BAND OR GROUP BY THE FEDERAL GOVERNMENT, WE FEEL THAT SENATORS,
CONGRESSMAN LEE AND THE BUREAU OF INDIAN AFFAIRS PURPOSELY WITHHELD
INFORMATION FROM US ON THIS HEARING AS WE ARE INVOLVED IN AN INDIAN
LAND CLAIM, WE STRONGLY BELIEVE THAT YOUR COMMITTEE SHOULD HEAR
TESTIMONY FOR THE RECORD WRITTEN STATEMENTS FOR OUR MEMBERS, WE ARE
URGING YOU TO EXTEND MAKING A DECISION FOR A LONG ENOUGH PERIOD OF
TIME TO ALLOW THOSE THAT ARE BEING SUED THREATENED BY A SUIT OR
LIVING IN AN AREA THAT MAY BE UNDER FUTURE LITIGATION AS A RESULT OF
ANY EXTENSION OF THE STATUTE OF LIMITATIONS HAVE AN OPPORTUNITY TO
TESTIFY OR COMMENT
VIVIAN D SCHAMEL CHAIRMAN FINGER LAKES LAND PROTECTION ASSOCIATION
OF NEW YORK INC

14152 EST

MGMCOMP MGM

WISNER T KINNY
KINNY RD
DVID NY 14521

 western union

Mailgram



4-0812358348 12/14/79 ICS IPMTZZ CSP WSHB
6078692864 MGM TDMT DVID NY 135 12-14 0914P EST

REC'D DEC 18 1979

▶ SENATOR JOHN MELCHER, CHAIRMAN SELECT
COMMITTEE ON INDIAN AFFAIRS
SENATE OFFICE BLDG
WASHINGTON DC 20510

PLEASE BE ADVISED THAT THE VARIOUS ADHOC COMMITTEES ON INDIAN AFFAIRS OF THE TOWN GOVERNMENTS OF SENECA COUNTY, STATE OF NEW YORK, KNOWN AS THE SENECA COUNTY LIBERATION ORGANIZATION, STRONGLY OPPOSE ANY EXTENSION BEYOND APRIL 1, 1980, OF THE U.S. STATUTE OF LIMITATIONS PERTAINING TO INDIAN LAND CLAIMS. THEY EXPRESS OPPOSITION BECAUSE THEY BELIEVE ANY SUCH EXTENSION WILL MERELY POSTPONE THE DUE PROCESS ADJUDICATION OF THE CAYUGA LAND CLAIM NOW THREATENING THIS AREA, THEREFORE THE SENECA COUNTY LIBERATION ORGANIZATION RESPECTFULLY REQUESTS THAT ITS OPPOSITION BE ENTERED AS TESTIMONY IN THE RECORD OF THE DECEMBER 17, 1979, HEARING UPON THIS MATTER CONDUCTED BY YOUR COMMITTEE ON INDIAN AFFAIRS, RESPECTFULLY
DR WISNER P KINNY CHAIRMAN SENECA COUNTY LIBERATION ORGANIZATION
DVID NY 14521

21114 EST

MGMCOMP MGM

WISNER T KINNY
KINNY RD
OVID NY 14521

western union

Mailgram



4-081118348 12/14/79 IC8 IPMTZZ CSP W8HB
6078692864 MGM TDMT OVID NY 113 12-14 0909P EST

REC'D DEC 18 1979

▶ SENATOR JOHN MELCHER, CHAIRMAN SELECT
COMMITTEE ON INDIAN AFFAIRS
SENATE OFFICE BLDG
WASHINGTON DC 20510

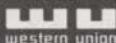
PLEASE BE ADVISED THAT, AS CHAIRMAN OF THE SENECA COUNTY BOARD OF SUPERVISORS, STATE OF NEW YORK, I STRONGLY OPPOSE ANY EXTENSION BEYOND APRIL 1 1980 OF THE U.S. STATUTE OF LIMITATIONS PERTAINING TO INDIAN LAND CLAIMS BECAUSE EXTENSION WILL MERELY POSTPONE THE DUE PROCESS ADJUDICATION OF THE CAYUGA LAND CLAIM NOW THREATENING THIS AREA. THEREFORE, I RESPECTFULLY REQUEST THAT MY OPPOSITION BE ENTERED AS TESTIMONY IN THE RECORD OF THE DECEMBER 17, 1979, HEARING UPON THIS MATTER CONDUCTED BY YOUR COMMITTEE ON INDIAN AFFAIRS.
RESPECTFULLY

DR WILLIAM SCHOENLEBER CHAIRMAN SENECA COUNTY BOARD OF SUPERVISORS
WATERLOO NY 13165

21:10 EST

MGMCOMP MGM

WISNER T KINNY
KINNY RD
OVID NY 14521

western union

Mailgram



4-0814628348 12/14/79 IC8 IPMTZZ C8P WSHB
6078692864 MGM TDMT OVID NY 111 12-14 0922P EST

NYC: DEC 18 1979

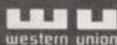
▶ SENATOR JOHN MELCHER, CHAIRMAN, SELECT
COMMITTEE ON INDIAN AFFAIRS
SENATE OFFICE BLDG
WASHINGTON DC 20510

PLEASE BE ADVISED THAT, AS SUPERVISOR OF THE TOWN OF OVID, COUNTY OF
SENECA, STATE OF NEW YORK, I STRONGLY OPPOSE ANY EXTENSION BEYOND
APRIL 1 1980 OF THE U.S. STATUTE OF LIMITATIONS PERTAINING TO INDIAN
LAND CLAIMS BECAUSE EXTENSION WILL MERELY POSTPONE THE DUE PROCESS
ADJUDICATION OF THE CAYUGA LAND CLAIM NOW THREATENING THIS AREA.
THEREFORE, I RESPECTFULLY REQUEST THAT MY OPPOSITION BE ENTERED AS
TESTIMONY IN THE RECORD OF THE DECEMBER 17 1979, HEARING UPON THIS
MATTER CONDUCTED BY YOUR COMMITTEE ON INDIAN AFFAIRS, RESPECTFULLY
LAWRENCE J WILKINS SUPERVISOR TOWN OF OVID OVID NY 14521

21:29 EST

MGMCOMP MGM

WISNER T KINNY
KINNY RD
OVID NY 14521



Mailgram



4-0815098348 12/14/79 ICS IPHMTZZ C8P WSHB
6078692864 MGM TDMT OVID NY 112 12-14 0925P EST

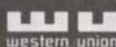
▶ SENATOR JOHN MELCHER, CHAIRMAN, SELECT
COMMITTEE ON INDIAN AFFAIRS
SENATE OFFICE BLDG
WASHINGTON DC 20510

PLEASE BE ADVISED THAT, AS SUPERVISOR OF THE TOWN OF COVERT, COUNTY OF SENECA, STATE OF NEW YORK, I STRONGLY OPPOSE ANY EXTENSION BEYOND APRIL 1 1980 OF THE U.S. STATUTE OF LIMITATIONS PERTAINING TO INDIAN LAND CLAIMS BECAUSE EXTENSION WILL MERELY POSTPONE THE DUE PROCESS ADJUDICATION OF THE CAYUGA LAND CLAIM NOW THREATENING THIS AREA. THEREFORE, I RESPECTFULLY REQUEST THAT MY OPPOSITION BE ENTERED AS TESTIMONY IN THE RECORD OF THE DECEMBER 17 1979, HEARING UPON THIS MATTER CONDUCTED BY YOUR COMMITTEE ON INDIAN AFFAIRS, RESPECTFULLY JOHN SHANSON JR SUPERVISOR TOWN OF COVERT, INTERLAKEN NY 14847

21:30 EST

MGMCOMP MGM

WISNER T KINNY
KINNY RD
OVID NY 14521



Mailgram



4-0814636346 12/14/79 ICB IPMTZZ C6P WSHB
6078692864 MGM TDMT OVID NY 110 12-14 0923P EST

REC'D DEC 15 1979

SENATOR JOHN MELCHER, CHAIRMAN, SELECT
COMMITTEE ON INDIAN AFFAIRS
SENATE OFFICE BLDG
WASHINGTON DC 20510

PLEASE BE ADVISED THAT, AS SUPERVISOR OF THE TOWN OF LODI, COUNTY OF
SENECA, STATE OF NEW YORK, I STRONGLY OPPOSE ANY EXTENSION BEYOND
APRIL 1 1980 OF THE U.S. STATUTE OF LIMITATIONS PERTAINING TO INDIAN
LAND CLAIMS BECAUSE EXTENSION WILL MERELY POSTPONE THE DUE PROCESS
ADJUDICATION OF THE CAYUGA LAND CLAIM NOW THREATENING THIS AREA.
THEREFORE, I RESPECTFULLY REQUEST THAT MY OPPOSITION BE ENTERED AS
TESTIMONY IN THE RECORD OF THE DECEMBER 17 1979, HEARING UPON THIS
MATTER CONDUCTED BY YOUR COMMITTEE ON INDIAN AFFAIRS, RESPECTFULLY
FRANCIS HURD SUPERVISOR TOWN OF LODI LODI NY 14860

21:30 EST

MGMCOMP MGM

December 12, 1979

Honorable John Melcher, Chairman
Select Committee on Indian Affairs
United States Senate
1123 Dirksen Senate Office Building
Washington, D.C. 20510

REC'D DEC 18 1979

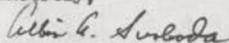
Dear Mr. Melcher:

Many of us in this area would appreciate postponement of the hearing December 17th. "If the deadline should be extended for commencing actions on behalf of an Indian Tribe, band, or group by the Federal Government".

Or, extending the period for written comments for a long enough period of time to allow those that are being sued, threatened by suit, or living in an area that may be under future litigation, as a result of any extension of the statute of limitations, have an opportunity to testify or comment.

Thank you.

Sincerely,



Albin A. Svoboda
Emerson, Nebraska 68733




western union

Telegram

IPMPONT HSA
 4-0224625351 12/17/79
 ICS IPMRNCZ CSP
 8017225001 TDRN ROOSEVELT UT 91 12-17 1200P EST
 PMS MEMBERS OF THE SELECT COMMITTEE ON INDIAN AFFAIRS, HONORABLE JOHN

MELCHER, CHAIRMAN, DLR
 1123 DIRKSEN SENATE OFFICE BLDG
 WASHINGTON DC 20510

DEC 17 1979

REC'D DEC 18 1979

ROOSEVELT CITY COUNCIL URGENTLY REQUEST THAT NO LEGISLATION TO EXTEND THE APRIL 1 1980 STATUTE OF LIMITATIONS ON INDIAN CLAIMS BE CONSIDERED

OVER THE LAST HUNDRED YEARS THERE HAS BEEN AMPLE TIME TO SETTLE ALL CLAIMS FROM THE PAST THERE MUST BE A DEADLINE OR LAWSUITS WILL GO ON FOREVER.

THE COURT COST TO THE AMERICAN TAXPAYER, TO SAY NOTHING OF THE CLAIMS THAT HAVE BEEN PAID OVER AND OVER, ARE STAGGERING THE PEOPLE OF THE UNITED STATES HAVE REACHED A POINT WHERE THEY DEMAND THAT THIS COME TO AN END

W RALPH SHIELDS, MAYOR ROOSEVELT CITY UT

12101 EST

IPMPONT HSA

WISNER T KINNY
KINNY RD
OVID NY 14521



Mailgram



4-0813478348 12/14/79 ICS IPHMTZZ CSP WSHB
6078692864 MGM TDHT OVID NY 136 12-14 0919P EST

REC'D DEC 18 1979

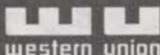
SENATOR JOHN MELCHER, CHAIRMAN, SELECT
COMMITTEE ON INDIAN AFFAIRS
SENATE OFFICE BLDG
WASHINGTON DC 20510

PLEASE BE ADVISED THAT THE TOWN BOARD OF ROMULUS, NEW YORK, COUNTY OF
BENEGA, ON DECEMBER 13, 1979 BY UNANIMOUS VOTE, DID RESOLVE TO
EXPRESS STRONG OPPOSITION TO ANY EXTENSION BEYOND APRIL 1 1980 OF THE
U.S. STATUTE OF LIMITATIONS PERTAINING TO INDIAN LAND CLAIMS BECAUSE
IN THEIR VIEW ANY SUCH EXTENSION WILL MERELY POSTPONE THE DUE PROCESS
ADJUDICATION OF THE CAYUGA LAND CLAIM NOW THREATENING THIS AREA,
THEREFORE, AS SUPERVISOR OF THE TOWN OF ROMULUS AND THE CHAIRMAN OF
THIS TOWN BOARD, I RESPECTFULLY REQUEST THAT OUR OPPOSITION BE
ENTERED AS TESTIMONY IN THE RECORD OF THE DECEMBER 17 1979 HEARING
UPON THIS MATTER CONDUCTED BY YOUR COMMITTEE ON INDIAN AFFAIRS.
RESPECTFULLY

RAY ZAJAC SUPERVISOR TOWN OF ROMULUS WILLARD NY 14588

21:19 EST

MGMCOMP MGM


Telegram

IPMPONT HSA
 4-0628718351 12/17/79
 ICS IPMNT22 CSP
 4060832766 TDMT POLSON MT 56 12-17 0320P MST
 PMS HONORABLE JOHN MELCHER CHAIRMAN SELECT COMMITTEE ON INDIAN

REC'D DEC 17 1979

AFFAIRS
 1123 DIRKSEN SENATE OFFICE BLDG
 WASHINGTON DC 20510

I UNDERSTAND YOUR COMMITTEE IS TODAY CONSIDERING THE STATUTE OF
 LIMITATIONS EXTENSION ON DEADLINE FOR FILING SUITS ON BEHALF OF
 INDIANS.

I SINCERELY URGE REJECTION OF THIS EXTENSION. I BELIEVE FUTURE
 ENCOURAGEMENT OF THE SERIOUS DISRUPTION CAUSED BY THESE ACTIONS
 ACROSS THE COUNTRY IS HARMFUL TO THE NATION AND ACCOMPLISHES NO
 USEFUL PURPOSE. THANK YOU
 EARL D CORRIELL MD

17125 EST

IPMPONT HSA

12/18/79

WALTER MORRIS
PO BOX 555
KINGSTON WA 98346



Mailgram



4-0012588351 12/17/79 ICS IPMBNGZ C8P WSHB
2062972195 MGM TDBN KINGSTON WA 113 12-17 0405A EST

REC'D DEC 18 1979

HONORABLE JOHN MELCHER
SELECT COMMITTEE ON INDIAN AFFAIRS 1123
DIKSEN SENATE OFFICE BLDG
WASHINGTON DC 20510

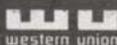
IN THE NAME OF "JUSTICE FOR INDIANS," MANY OF YOUR FELLOW CITIZENS ARE LOSING THEIR HOMES, BUSINESSES AND CITIZENSHIP RIGHTS. WE ARE BEING DESTROYED BY POLICIES AND ACTIONS OF THE FEDERAL GOVERNMENT AND OUR OWN TAX DOLLARS ARE USED AGAINST US. PLEASE ALLOW TIME AND OPPORTUNITY FOR OUR COMMENTS ON THE PROPOSED EXTENSION OF THE STATUTE OF LIMITATIONS DEADLINE, APRIL 1 1980, FOR COMMENCING ACTION BY THE FEDERAL GOVERNMENT ON BEHALF OF ANY INDIAN GROUP OR TRIBE. WE PLEAD FOR YOUR HELP. IT IS ALREADY TOO LAR MANY. THANK YOU.

BETTY MORRIS QUINAULT PROPERTY OWNERS REPRESENTATIVE TO ICERR
PO BOX 555
KINGSTON WA 98346

04105 EST

MGNCOMP MGM

CAL HOLLINGSWORTH
854 HOHEN RD
SEDROWOOLLEY WA 98284



Mailgram



4-0003788351 12/17/79 ICS IPMBNGZ CSP WSHB
2068566835 MGM TOBN SEDROWOOLLEY WA 103 12-17 1239A EST

HONORABLE JOHN MELCHER CHAIRMAN
SELECT COMMITTEE ON INDIAN AFFAIRS
1123 DIRKSEN SENATE OFFICE BLDG
WASHINGTON DC 20510

PLEASE POSTPONE SCHEDULED DECEMBER 17 HEARING TO DETERMINE APRIL 1
1980 DEADLINE FOR STATUTE OF LIMITATIONS FOR LEGAL ACTIONS ON BEHALF
OF INDIAN ENTITIES BY THE FEDERAL GOVERNMENT. WE HAD FOR UNKNOWN
REASON NO LEAD TIME ON YOUR HEARING. TIME SHOULD BE EXTENDED TO ALLOW
THOSE CITIZENS AFFECTED BY LOCALITY OR BY PERSONAL SITUATION TO
TESTIFY IN WRITING OR BY THEIR PRESENCE BEFORE YOUR SELECT COMMITTEE.
SIGNED: CAL HOLLINGSWORTH, PRESIDENT WASHINGTON STATE CHAPTER
INTERSTATE CONGRESS FOR EQUAL RIGHTS AND RESPONSIBILITIES
854 HOHEN RD
SEDROWOOLLEY WA 98284

00139 EST

MGMCOMP MGM

NEAL NELSON - PRESIDENT
 CONCERNED CITIZENS COUNCIL
 WALTHILL NE 68067

western union

Mailgram



1-0488338346 12/12/79 ICS IPMBNGZ CSP WSHC
 4024941626 MGM TDBN SOUTH SIOUX CITY NE 68 12-12 0249P CST

REC'D DEC 17 1979

HONORABLE JOHN MELCHER, CHAIRMAN
 SELECT COMMITTEE ON INDIAN AFFAIRS
 US SENATE
 1123 DIRKSEN SENATE OFFICE BLDG
 WASHINGTON DC 20510

REGARDING DECEMBER 17 10AM HEARING ON EXTENSION OF STATUE OF
 LIMITATIONS DEADLINE WOULD APPRECIATE YOUR GIVING AMPLE TIME FOR
 TESTIMONY AND COMMENTS TO THOSE PARTIES THAT ARE BEING SUED
 THREATENED OF SUIT AND ARE LIVING IN AREAS THAT MAY BE UNDER FUTURE
 LITIGATION AS A RESULT OF ANY EXTENTION OF THE STATUES OF LIMITATION
 THANK YOU FOR YOUR CONSIDERATION
 NEAL NELSON - PRESIDENT
 CONCERNED CITIZENS COUNCIL
 WALTHILL NE 68067

15155 EST

MGMCOMP MGM

THE UINTAH COUNTY CLERK
 COUNTY BLDG
 VERNAL UT 84078

western union

Mailgram



4-0295638351 12/17/79 ICS IPHRNCZ C9P WSHB
 8017891382 MGM TORN VERNAL UT 125 12-17 1055A M8T

REC'D DEC 19 1979

▶ THE MEMBERS OF THE SELECT COMMITTEE ON INDIAN
 AFFAIRS
 CARE HONORABLE JOHN MELCHER CHAIRMAN 1123
 DIRKSEN SENATE OFFICE BLDG
 WASHINGTON DC 20510

WE THE UINTAH COUNTY COMMISSION URGENTLY REQUESTS THAT NO LEGISLATION
 BE CONSIDERED TO EXTEND THE APRIL 1ST 1980 STATUTE OF LIMITATIONS ON
 INDIAN CLAIMS. THE SUITS ALREADY PENDING WILL PROBABLY CONSUME ALL OF
 THE NEXT DECADE AND THIS NIGHTMARE OF UNCERTAINTY AND CAUSE SHOULD BE
 RESOLVED AND BROUGHT TO AN END AS SOON AS POSSIBLE. THIS IS THE
 REASON THE ORIGINAL DEADLINE WAS IMPOSED. NEITHER SIDE HAS GAINED BY
 THE CLAIM. THE SMALL AMOUNT THE INDIANS MAY HAVE ACQUIRED HAS BEEN
 NULLIFIED BY THE ILL-WILL, MISTRUST, AND ANTAGONISMS THAT HAVE
 RESULTED.

THE UINTAH COUNTY COMMISSION MERRILL B. MECHAM, ACTING CHAIRMAN
 NEAL H. DOMGAARD

13:04 EST

MGMCOMP MGM

MONTANANS OPPOSING DISCRIMINATIO
 BOX 673
 POLSON MT 59660



Mailgram



4-0678088348 12/14/79 ICS IPMTZZ CSP WSHB
 4068832198 MGM TDMT POLSON MT 113 12-14 0542P EST

1979 DEC 15 AM 9:30

REC'D DEC 20 1979

HONORABLE DANIEL K INOUYE
 US SENATE
 WASHINGTON DC 20510

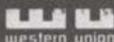
WE WOULD APPRECIATE YOUR POSTPONEMENT OF THE HEARINGS AT 10AM
 DECEMBER 17 "TO DETERMINE WHETHER THE APRIL 1 1980 STATUTE OF
 LIMITATIONS DEADLINE" SHOULD BE EXTENDED ON BEHALF OF INDIAN TRIBE
 BAND OR GROUP IN THEIR BEHALF BY THE FEDERAL GOVERNMENT, PLEASE
 EXTEND THE TIME FOR WRITTEN COMMENTS OR OPPORTUNITY TO TESTIFY FOR A
 LONG ENOUGH PERIOD FROM THOSE AFFECTED TO BE HEARD, WE STRONGLY
 OBJECT TO ANY FURTHER EXTENSIONS FOR THESE CLAIMS IN ANY EVENT

MONTANANS OPPOSING DISCRIMINATION
 W H MATTHIES E P BURLEN DOCTOR RAY KAISER F W ROCKWELL HARRY
 MILLER JOHN COCHRAN DOCTOR EARL CORIELL ROY LAKE W D MCDANIEL
 JOSEPHINE WHITE

17:42 EST

MGMCOMP MGM

• <<NED ANDERSON PRESIDENT INTER-T
124 WEST THOMAS
PHOENIX AZ 85013



Mailgram



4-0800518355 12/21/79 ICS IPHRNCZ CBP W6MB
6022480071 MGM TDRN PHOENIX AZ 148 12-21 0749P EST

REC'D DEC 26 1979

THE HONORABLE JOHN MELCHER
CHAIRMAN SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
WASHINGTON DC 20510

DEAR SENATOR MELCHER

THE INTER-TRIBAL COUNCIL OF ARIZONA, REPRESENTING 18 TRIBES
RESPECTFULLY URGES THAT THE CONGRESS EXTEND THE STATUTES OF
LIMITATIONS ON SECTION 2413 CLAIMS FOR A MINIMUM OF THREE YEARS.
UNLESS AN EXTENSION IS GRANTED, HUNDREDS OF INDIAN CLAIMS IN ARIZONA
WILL NOT BE FILED BY THE APRIL 1, 1980 DEADLINE. THIS WILL NOT BE
OWING TO A FAILURE ON THE PART OF INDIANS FOR THEIR TRIBES. INSTEAD,
LACK OF ADEQUATE BIA STAFF AND FUNDING WILL BE RESPONSIBLE FOR THIS
BREACH OF TRUST BY THE FEDERAL GOVERNMENT. RECENTLY, THERE HAS BEEN
MARKED PROGRESS SCREENING AND CERTIFYING CLAIMS. WITH REASON FUNDING
AND STAFF SUPPORT, WE ARE CONFIDENT THE WORK CAN BE ACCOMPLISHED IN A
THOROUGH, COMPETENT, AND TIMELY MANNER.

NED ANDERSON PRESIDENT INTER-TRIBAL COUNCIL OF ARIZONA
124 WEST THOMAS
PHOENIX AZ 85013

19149 EST

MGMCOMP MGM

W DEAN WILSON
 BOX 383
 FT YATES ND 58538



Mailgram



4-0154188349 12/15/79 ICS IPMTZZ CSP WSHB
 7018547591 MGM TDMT FT YATES ND 120 12-15 1226P EST

REC'D DEC 18 1979

SENATOR JOHN MELCHER, CHAIRMAN SENATOR SELECT
 COMMITTEE ON INDIAN AFFAIRS , OVERSIGHT
 COMMITTEE ON SOL
 US SENATE
 WASHINGTON DC 20510

THE STANDING ROCK RESERVATION LANDOWNERS ASSOCIATION SUPPORTS AN
 INDEFINITE EXTENSION BEYOND APRIL 1, 1980 FOR FILING 2415 CLAIMS.
 FUNDS NEED TO BE APPROPRIATED TO HIRE QUALIFIED PERSONNEL TO HANDLE
 CLAIMS AND FOR PAYMENT OF CONTRACTORS I.E. APPRAISERS ACCOUNTANTS AND
 PROFESSIONALS TO ASSESS RANGE DAMAGES AND MINERAL CLAIMS.

WE URGE THE ISSUANCE OF A CONGRESSIONAL DIRECTIVE TO THE SECRETARY OF
 INTERIOR AND SOLICITORS OFFICE TO SUPPORT THE CLAIMS WORK GIVE LEGAL
 GUIDELINES AND DIRECTION.

INTERIOR DEPARTMENT SHOULD VIEW THE 2415 CLAIMS PROCESS AS AN
 OPPORTUNITY TO GAIN CONFIDENCE OF INDIAN LANDOWNERS.

RESPECTFULLY,
 JOSEPH A WALKER PRESIDENT STANDING ROCK LANDOWNERS ASSN
 BOX 49
 FT YATES ND 58538

12:26 EST

MGMCOMP MGM

SQUAXIN ISLAND TRIBE C J PETERS
RT 1 BOX 257
SHELTON WA 98584

western union

Mailgram



1-0596998347 12/13/79 ICS IPMHTZZ CSP WSHA
2084269781 MGH TDMT SHELTON WA 334 12-13 0529P EST

DEC 17 1979

SENATOR JOHN MELCHER
CHAIRMAN SELECT COMMITTEE INDIAN AFFAIRS
SENATE OFFICE BLDG
WASHINGTON DC 20510

DEAR SENATOR MELCHER:

AS THE CHAIRMAN OF THE SQUAXIN ISLAND TRIBAL COUNCIL, I WISH TO EXPRESS MY CONCERN ABOUT THE EFFECTS OF THE 2415 STATUTE OF LIMITATIONS ON TRIBAL CLAIMS.

AS I UNDERSTAND IT, THE STATUTE ITSELF IS NOT ENTIRELY CLEAR, ALTHOUGH IT MAY STOP ONLY ACTIONS FOR MONEY DAMAGES BROUGHT BY THE UNITED STATES ON BEHALF OF INDIAN TRIBES, IT MAY ALSO BE INTERPRETED TO BAR ALL CLAIMS BROUGHT BY TRIBES THEMSELVES AS WELL, EXCLUDING THOSE OCCURRING WITHING THE STATUTE'S TIME LIMIT.

ONLY RECENTLY WE LEARNED THAT THE UNITED STATES GOVERNMENT HAS CONSENTED TO HELP TRIBES PURSUE ACTION IN RESPONSE TO DAMAGES TO OUR FISHERIES. IT IS IMPOSSIBLE FOR US TO IDENTIFY AND DEVELOP SUCH CLAIMS BY APRIL 1, 1980. INDIAN TRIBES ARE BEING FORCED TO ABANDON MANY CLAIMS BECAUSE THE BUREAU OF INDIAN AFFAIRS DOES NOT HAVE THE CAPACITY TO DEVELOP ALL OF THE LAW SUITS THAT SHOULD GET HEARINGS.

THE PURPOSE OF ANY STATUTE OF LIMITATIONS IS TO FORECLOSE STALE CLAIMS, WHERE PLAINTIFFS HAVE HAD AN OPPORTUNITY TO PURSUE LEGAL REMEDIES BUT HAVE NOT DONE SO. ANOTHER PURPOSE IS TO AVOID LEGAL ACTION WHERE WITNESSES AND EVIDENCE HAVE BECOME, FOR WHATEVER REASON, LESS RELIABLE OVER THE YEARS. NEITHER PURPOSE IS SERVED BY THE IMPOSITION OF THIS STATUTE. MOST INDIAN TRIBES ARE JUST BEGINNING TO REACH A POINT WHERE THEY ARE ABLE TO IDENTIFY AND DEVELOP THESE CLAIMS ADEQUATELY; AND THE PROBLEM OF WITNESSES AND EVIDENCE HAS NOT PROVED TO BE INSURMOUNTABLE FOR COURT'S LOOKING AN INDIAN ISSUES IN THE PAST.

MOST, IF NOT ALL, OF THESE TURN DIRECTLY UPON POINTS OF LAW, AND ONLY RARELY DO THEY HINGE ON DISPUTED FACTS.

FOR THESE REASONS, I URGE YOU TO REPEAL 2415 AND PROVIDE INDIANS WITH A CONTINUED OPPORTUNITY TO REDRESS BY LEGAL ACTION TO RIGHT SOME OF THE HISTORIC WRONGS TO WHICH THEY HAVE BEEN SUBJECTED. VERY TRULY YOURS,

CALVIN J PETERS
CHAIRMAN SQUAXIN ISLAND TRIBE
SHELTON WA

