PROPOSED SETTLEMENT OF MAINE INDIAN LAND CLAIMS

HEARINGS

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

S. 2829

TO PROVIDE FOR THE SETTLEMENT OF THE MAINE INDIAN LAND CLAIMS

JULY 1 AND 2, 1980
WASHINGTON, D.C.

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APPENDIX—VOLUME 2

PROPOSED SETTLEMENT OF MAINE INDIAN LAND CLAIMS

TUESDAY, JULY 1, 1980

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

The committee met, pursuant to notice, at 10:05 a.m., in room 1202, Dirksen Senate Office Building, Senator John Melcher (chairman of the committee) presiding.

Present: Senators Melcher, Inouye, and Cohen.

Also present: Senator Mitchell, a Member of the U.S. Senate from the State of Maine.

Staff present: Max I. Richtman, staff director.

Senator MELCHER. The committee will come to order.

The purpose of the hearing this morning and tomorrow morning before the Select Committee on Indian Affairs is to take testimony on S. 2829, to settle the Indian land claims in the State of Maine. This legislation is intended to resolve a longstanding and extremely complicated land claim made by the Indian tribes in Maine. S. 2829 is the product of the negotiating process between the Penobscot and the Passamaquoddy Tribes and the Houlton Band of Maliseet Indians and the State of Maine.

This negotiating process consists of two bills. One is the Maine Implementing Act, which contains the parties' agreement over questions of jurisdiction. It was passed by the Maine State Legislature and signed into law on April 3, 1980. Its effectiveness is contingent on the enactment of the second piece of legislation, and that is S. 2829, about which this hearing has been called.

The Select Committee on Indian Affairs has a valuable role in the entire settlement process by insuring through extensive research that all parties involved are adequately represented and that the proposed legislation is legally sufficient.

The committee, through the hearing process, will identify and refine a reasoned and principled legislative approach to settlement, taking into account the interest and responsibilities of all parties.

As chairman of this committee, I believe that any legislative solution to this claim, as well as other Indian claims, should be directed toward a workable resolution which is fair and just for all parties involved. For the Congress to attempt anything short of this would be less than responsible.

The test of a good legislative solution is fairness and equity to both Indians who are, in this case, Indian citizens of Maine, and non-Indian citizens of Maine and non-Indian citizens throughout the

United States. That is a test of whether or not this legislation, S. 2892, is good. I have confidence in it, personally. We will establish these facts, we believe, during these 2 days of hearings.

I can tell you, as chairman of this committee, if all goes as I believe it should go, and the facts are established that S. 2829 is fair and equitable, I pledge to you that I will do my utmost to make sure that the Senate approves the bill.

I commend all of you who have participated in this settlement for the dedication and hard work you have shown in an attempt to reach a settlement which is mutually acceptable. I am sure that this hearing will provide an opportunity for all concerned parties to express their views and assist the committee in performance of our duty.

At this point, without objection, I will place a copy of S. 2829 in the hearing record.

[The bill follows. Testimony resumes on p. 26.]

96TH CONGRESS
2D SESSION

S. 2829

To provide for the settlement of land claims of Indians, Indian nations and tribes and bands of Indians in the State of Maine, including the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 13 (legislative day, JUNE 12), 1980

Mr. COHEN (for himself and Mr. MITCHELL) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To provide for the settlement of land claims of Indians, Indian nations and tribes and bands of Indians in the State of Maine, including the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Maine Indian Claims Settlement Act of 1980".

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

SEC. 2. (a) Congress hereby finds and declares that:

(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Maliseet Tribe are asserting claims for possession of lands within the State of Maine and for damages on the grounds that the lands in question were originally transferred in violation of law, including the Trade and Intercourse Act of 1790 (1 Stat. 137), or subsequent reenactments or versions thereof.

(2) The Indians, Indian nations, and tribes and bands of Indians, other than the Passamaquoddy Tribe, the Penobscot Nation, and the Maliseet Tribe, that once may have held aboriginal title to lands within the State of Maine long ago have lost their aboriginal holdings and have ceased to exist.

(3) The Penobscot Nation, as represented as of the time of passage of this Act by the Penobscot Nation's Governor and Council, is the successor in interest to the aboriginal entity generally known as the Penobscot Nation, which years ago claimed aboriginal title to certain lands in the State of Maine.

(4) The Passamaquoddy Tribe, as represented as of the time of passage of this Act by the Joint Tribal Council of the Passamaquoddy Tribe, is the successor in interest to the aboriginal entity generally known as the Passamaquoddy Tribe, which years ago claimed aboriginal title to certain lands in the State of Maine.

(5) The Houlton Band of Maliseet Indians, as represented as of the time of passage of this Act by the Houlton Band Council, is the successor in interest, as to lands within the United States, to the aboriginal entity generally known as the Maliseet Tribe, which years ago claimed aboriginal title to certain lands in the State of Maine.

(6) Substantial economic and social hardship to a large number of landowners, citizens, and communities in the State of Maine, and therefore to the economy of the State of Maine as a whole, will result if the aforementioned claims are not resolved promptly.

(7) This Act represents a good faith effort on the part of Congress to provide the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians with a fair and just settlement of their land claims. In the absence of congressional action, these land claims would be pursued through the courts, a process which in all likelihood would consume many years and thereby promote hostility and uncertainty in the State of Maine to the ultimate detriment of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, their members, and all other citizens of the State of Maine.

(8) The parties to these claims, acting through their duly authorized representatives, whose authority is hereby recognized and acknowledged, have executed a Settlement Agreement dated , 1980, which requires implementing legislation by Congress.

(9) The State of Maine, with the agreement of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, has enacted legislation defining the relationship between the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians and their members, and the State of Maine.

(10) Since 1820, the State of Maine has provided special services to the Indians residing within its borders, including the members of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians. During this same period, the United States provided few special services to the respective tribe, nation, or band, and repeatedly denied that it had jurisdiction over or responsibility for the said tribe, nation, and band. In view of this provision of special services by the State of Maine, requiring substantial expenditures by the State of Maine and made by the State of Maine without being required to do so by Federal law, it is the intent of Congress that the State of

Maine not be required further to contribute directly to this claims settlement.

(b) It is the purpose of this Act—

(1) to remove the cloud on the titles to land in the State of Maine resulting from Indian claims;

(2) to clarify the status of other land and natural resources in the State of Maine;

(3) to ratify the Maine Implementing Act, which defines the relationship between the State of Maine and the Passamaquoddy Tribe and the Penobscot Nation; and

(4) to confirm that all other Indians, Indian nations and tribes and bands of Indians now or hereafter existing or recognized in the State of Maine are and shall be subject to all laws of the State of Maine.

DEFINITIONS

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

(a) "Houlton Band of Maliseet Indians" means the Maliseet Tribe of Indians as constituted on March 4, 1789, and all its predecessors and successors in interest, which, as of the date of passage of this Act, are represented, as to lands within the United States, by the Houlton Band Council of the Houlton Band of Maliseet Indians.

(b) "Land or other natural resources" means any real property or other natural resources, or any interest in or right involving any real property or other natural resources, including but without limitation minerals and mineral rights, timber and timber rights, water and water rights, and hunting and fishing rights.

(c) "Land Acquisition Fund" means the Maine Indian Claims Land Acquisition Fund established under section 5(c) of this Act.

(d) "Laws of the State" means the Constitution, and all statutes, regulations, and common laws of the State of Maine and its political subdivisions, and all subsequent amendments thereto or judicial interpretations thereof.

(e) "Maine Implementing Act" means the "Act to Implement the Maine Indian Claims Settlement" enacted by the State of Maine in chapter of the Private and Special Laws of 1979.

(f) "Passamaquoddy Indian Reservation" means those lands as defined in the Maine Implementing Act.

(g) "Passamaquoddy Territory" means those lands as defined in the Maine Implementing Act.

(h) "Passamaquoddy Tribe" means the Passamaquoddy Indian Tribe, as constituted on March 4, 1789, and all its predecessors and successors in interest,

which as of the date of passage of this Act, are represented by the Joint Tribal Council of the Passamaquoddy Tribe, with separate Councils at the Indian Township and Pleasant Point Reservations.

(i) "Penobscot Indian Reservation" means those lands as defined in the Maine Implementing Act.

(j) "Penobscot Indian Territory" means those lands defined in the Maine Implementing Act.

(k) "Penobscot Nation" means the Penobscot Indian Nation as constituted on March 4, 1789, and all its predecessors and successors in interest, which as of the date of passage of this Act are represented by the Penobscot Nation Governor and Council.

(l) "Secretary" means the Secretary of the Interior.

(m) "Settlement Fund" means the Maine Indian Claims Settlement Fund established under section 5(a) of this Act.

(n) "Transfer" includes but is not limited to any voluntary or involuntary sale, grant, lease, allotment, partition, or other conveyance; any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance; and any act, event, or circumstance that resulted in a change in title to, pos-

session of, dominion over, or control of land or other natural resources.

APPROVAL OF PRIOR TRANSFERS AND EXTINGUISHMENT OF INDIAN TITLE AND CLAIMS OF THE PASSAMAQUODDY TRIBE, THE PENOBSCOT NATION, THE HOULTON BAND OF MALISEET INDIANS, AND ANY OTHER INDIANS, INDIAN NATION, OR TRIBE OR BAND OF INDIANS WITHIN THE STATE OF MAINE

SEC. 4. (a)(1) Any transfer of land or other natural resources located anywhere within the United States from, by, or on behalf of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, or any of their members, and any transfer of land or other natural resources located anywhere within the State of Maine, from, by, or on behalf of any Indian, Indian nation, or tribe or band of Indians, including but without limitation any transfer pursuant to any treaty, compact, or statute of any State, shall be deemed to have been made in accordance with the Constitution and all laws of the United States, including but without limitation the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, sec. 4, 1 Stat. 137, 138), and all amendments thereto and all subsequent reenactments and versions thereof, and Congress hereby does approve and ratify any such transfer effective as of the date of said transfer.

(2) Any transfer of land or other natural resources located anywhere within the State of Maine, from, by, or on behalf of any Indian nation, or tribe or band of Indians including but without limitation any transfer pursuant to any treaty, compact or statute of any State, shall be deemed to have been made in accordance with the laws of the State, and Congress hereby does approve and ratify any such transfer effective as of the date of said transfer.

(3) Any transfer of land or other natural resources located anywhere within the State of Maine, from, by, or on behalf of any individual Indian, which occurred prior to December 1, 1873, including but without limitation any transfer pursuant to any treaty, compact or statute of any State, shall be deemed to have been made in accordance with the laws of the State, and Congress hereby does approve and ratify any such transfer effective as of the date of said transfer.

(b) To the extent that any transfer of land or other natural resources described in section 4(a) may involve land or other natural resources to which the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, or any of their members, or any other Indian, Indian nation, or tribe or band of Indians had aboriginal title, subsection 4(a) shall be regarded as an extinguishment of said aboriginal title as of the date of such transfer.

(c) By virtue of the approval and ratification of a transfer of land or other natural resources effected by this section, or the extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians or any of their members or by any other Indian, Indian nation, tribe or band of Indians, or any predecessors or successors in interest thereof, arising at the time of or subsequent to the transfer and based on any interest in or right involving such land or other natural resources, including but without limitation claims for trespass damages or claims for use and occupancy, shall be deemed extinguished as of the date of the transfer.

ESTABLISHMENT OF FUNDS

SEC. 5. (a) The Secretary of the Treasury shall establish an account in the Treasury of the United States to be known as the Maine Indian Claims Settlement Fund and shall transfer $27,000,000 from the general funds of the Treasury into such account following the appropriation authorized by section 13 of this Act.

(b)(1) One-half of the principal of the Settlement Fund shall be held in trust by the Secretary for the benefit of the Passamaquoddy Tribe, and the other half of the Settlement Fund shall be held in trust for the benefit of the Penobscot

Nation. Each portion of the Settlement Fund shall be invested and administered by the Secretary in accordance with terms established by the Passamaquoddy Tribe or the Penobscot Nation, respectively, and agreed to by the Secretary. The Secretary shall accept reasonable terms for investment and administration proposed by the Passamaquoddy Tribe or the Penobscot Nation within thirty days of the date on which he receives the proposed terms, and, until such terms have been agreed upon, shall fix the terms for the administration of the Settlement Fund. The Passamaquoddy Tribe or the Penobscot Nation may obtain judicial review in the United States District Court for the District of Maine of any refusal by the Secretary to accept reasonable terms put forth by the respective tribe or nation, or of any failure of the Secretary to administer such funds in accordance with such terms.

(2) Under no circumstances shall any part of the principal of the Settlement Fund be distributed to either the Passamaquoddy Tribe or the Penobscot Nation, or to any member of either tribe or nation: *Provided, however,* That nothing herein shall prevent reasonable investment of the principal of said Fund by the Secretary.

(3) The Secretary, on a quarterly basis, shall make available to the Passamaquoddy Tribe and the Penobscot Nation, without liability to or on the part of the United States, and without any deductions, any income derived from

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that portion of the Settlement Fund allocated to the respective tribe or nation, the use of which shall be free from regulation by the Secretary: *Provided, however,* That the Passamaquoddy Tribe and the Penobscot Nation annually shall each expend the income from $1,000,000 of their portion of the Settlement Fund for the benefit of their respective members who are over the age of sixty.

(c) The Secretary of the Treasury shall establish an account in the Treasury of the United States to be known as the Maine Indian Claims Land Acquisition Fund and shall transfer $54,500,000 from the general funds of the Treasury into such account following the appropriation authorized by section 13 of this Act.

(d) The principal of the Land Acquisition Fund shall be held in trust by the Secretary as follows:

(1) $900,000 shall be held for the benefit of the Houlton Band of Maliseet Indians to be used to purchase 5,000 acres of Maine woodland;

(2) one-half of the balance of the principal of the Land Acquisition Fund shall be held by the Secretary for the benefit of the Passamaquoddy Tribe; and

(3) the other half of the balance of the principal of the Land Acquisition Fund shall be held for the benefit of the Penobscot Nation.

The Secretary shall expend, with the consent of the affected tribe, nation, or band, the principal and any income accruing to this Land Acquisition Fund for the purpose of acquiring land for the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians and for no other purpose. If the Houlton Band of Maliseet Indians should cease to exist, any lands acquired for the Maliseet Tribe pursuant to section 5 shall be divided equally and held in trust, one-half for the benefit of the Passamaquoddy Tribe and one-half for the benefit of the Penobscot Nation.

(e)(1) The provisions of section 177 of title 25 of the United States Code shall not be applicable to (i) the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians or any other Indian, Indian nation, or tribe or band of Indians in the State of Maine, and (ii) any land or other natural resources owned by or held in trust for the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians or any other Indian, Indian nation, or tribe or band of Indians in the State of Maine. Except as provided in subsection (e)(2), such land or other natural resources shall not otherwise be subject to any restraint on alienation by virtue of being held in trust by the United States or the Secretary.

(2) Any transfer of land or other natural resources within the Passamaquoddy Indian Territory or the Penobscot

Indian Territory, except takings for public uses consistent with the Maine Implementing Act or the laws of the United States, or transfers of individual Indian assignments from one member of the Passamaquoddy Tribe or Penobscot Nation to another member of the same tribe or nation shall be void ab initio and without any validity in law or equity unless made by or with the consent of the respective tribe or nation and with the approval of the Secretary: *Provided, however,* That the Secretary and the respective tribe or nation shall have authority to approve only transfers of timber and other natural resources; leases of land for a term not to exceed fifty years; exchanges of land; and transfers of land or other natural resources the proceeds of which are reinvested in land within two years of the date of the receipt of such proceeds.

(f) Land acquired and held by the Secretary for the benefit of the Passamaquoddy Tribe and the Penobscot Nation shall be managed and administered in accordance with terms established by the respective tribe or nation and agreed to by the Secretary. The Secretary shall accept reasonable terms for management and administration proposed by the Passamaquoddy Tribe or the Penobscot Nation within thirty days of the date on which he receives the proposed terms, and until such terms have been agreed upon shall fix the terms for management and administration of said lands. The Passmaquoddy Tribe or the Penobscot Nation may

obtain judicial review in the United States District Court for the District of Maine of any refusal of the Secretary to accept reasonable terms put forth by the respective tribe or nation, or of any failure of the Secretary to administer such lands in accordance with such terms.

(g) In the event of a taking of land or any interest in land owned by or held in trust for the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians for public uses pursuant to the laws of the State or the laws of the United States, the Secretary shall reinvest the money received in other lands for the respective tribe, nation or band within two years of the date on which the money is received. Any lands so acquired shall be approved by the affected tribe, nation, or band, and shall be subject to the terms of this Act and the Maine Implementing Act.

APPLICATION OF STATE LAWS

SEC. 6. (a) Except as otherwise provided in subsections (b), (d), and (e) of this section, all Indians, Indian nations, tribes, and bands of Indians in the State of Maine, other than the Passamaquoddy Tribe and the Penobscot Nation and their members, and all lands or other natural resources owned by or held in trust by the United States, or by any other person or entity for any such Indian, Indian nation or tribe, or band of Indians, shall be subject to the civil and criminal jurisdiction of the State, the laws of the State, and

to the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person or land therein.

(b) The Passamaquoddy Tribe, the Penobscot Nation, their members, and the land owned by or held for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, and their members, shall be subject to the jurisdiction of the State of Maine to the extent and in the manner provided in the Maine Implementing Act. The Maine Implementing Act is hereby approved, ratified and confirmed, and the provisions of the Maine Implementing Act which hereafter become effective, including any subsequent amendments pursuant to subsection (d), are incorporated by reference as fully as if set forth herein. The Maine Implementing Act shall not be subject to the provisions of section 1919 of title 25 of the United States Code.

(c) The Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, and all members thereof, and all other Indians, Indian nations, or tribes, or bands of Indians in the State of Maine may sue and be sued in the courts of the State of Maine and the United States to the same extent as any other entity or person residing in the State of Maine may sue and be sued in those courts: *Provided, however*, That the Passamaquoddy Tribe, the Penobscot Nation, and their officers and employees shall be immune from suit to the extent provided in the Maine Imple-

menting Act. In the event that either the Passamaquoddy Tribe or the Penobscot Nation fails to pay any money judgment entered against it within ninety days after entry of final judgment, the Secretary shall pay any such money judgment from that portion of the income of the Settlement Fund held for the respective tribe or nation. Any person asserting a money judgment against either the Passamaquoddy Tribe or the Penobscot Nation may sue the Secretary in the United States District Court for the District of Maine for any such amount due.

(d) Congress hereby consents to any amendment to the Maine Implementing Act with respect to either the Passamaquoddy Tribe or Penobscot Nation provided that such amendment is made with the agreement of such tribe or nation.

(e) The Passamaquoddy Tribe and the Penobscot Nation are hereby authorized to exercise jurisdiction, separate and distinct from the civil and criminal jurisdiction of the State of Maine, to the extent authorized by the Maine Implementing Act, and any subsequent amendments thereto.

(f) The United States, every State, every territory or possession of the United States, and every Indian nation and tribe and band of Indians shall give full faith and credit to the judicial proceedings of the Passamaquoddy Tribe and the Penobscot Nation. The Passamaquoddy Tribe and the Penobscot Nation shall give full faith and credit to the judicial pro-

ceedings of each other and to the judicial proceedings of the United States, every State, every territory or possession of the United States, and every recognized Indian nation and tribe and band of Indians.

(g) Except as provided in this Act, the laws of the United States which relate or accord special status or rights to Indians, Indian nations, tribes, and bands of Indians, Indian lands, Indian reservations, Indian country, Indian territory, or lands held in trust for Indians, shall not apply within the State of Maine: *Provided, however,* That the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be eligible to receive all the financial benefits which the United States provides to Indians, Indian nations and tribes or bands of Indians to the same extent and subject to the same eligibility criteria generally applicable to other Indians, Indian nations, or tribes or bands of Indians and for the purposes of determining eligibility for such financial benefits, the respective tribe, nation, and band shall be deemed to be federally recognized Indian tribes: *And provided further,* That the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be considered federally recognized Indian tribes for the purposes of Federal taxation and any lands owned by or held in trust for the respective tribe, nation, or band shall

be considered Federal Indian reservations for purposes of Federal taxation.

IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT

SEC. 7. (a) The Passamaquoddy Tribe or the Penobscot Nation may assume exclusive jurisdiction over Indian child custody proceedings pursuant to section 1901 of title 25, United States Code. Before the respective tribe or nation may assume such jurisdiction over Indian child custody proceedings, the respective tribe or nation shall present to the Secretary for approval a petition to assume such jurisdiction and the Secretary shall approve that petition in the manner prescribed by section 1918(a)–(c) of title 25, United States Code.

(b) Any petition to assume jurisdiction over Indian child custody proceedings by the Passamaquoddy Tribe or the Penobscot Nation shall be considered and determined by the Secretary in accordance with section 1918 (b) and (c) of title 25, United States Code.

(c) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction.

(d) For the purposes of this section, the Passamaquoddy Indian Reservation and the Penobscot Indian Reservation shall be deemed to be "reservations" within section 1903(10) of title 25, United States Code, and the Passamaquoddy

Tribe and the Penobscot Nation shall be deemed to be "Indian tribes" within section 1903(8) of title 25, United States Code.

(e) Until the Passamaquoddy Tribe or the Penobscot Nation has assumed exclusive jurisdiction over the Indian child custody proceedings pursuant to this section, the State of Maine shall have exclusive jurisdiction over the Indian child custody proceedings of that tribe or nation.

EFFECT OF PAYMENTS TO PASSAMAQUODDY TRIBE, PENOBSCOT NATION, AND HOULTON BAND OF MALISEET INDIANS

SEC. 8. (a) No payments to be made for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians pursuant to the terms of this Act shall be considered by any agency or department of the United States in determining or computing the State of Maine's eligibility for participation in any financial aid program of the United States.

(b) The eligibility for or receipt of payments from the State of Maine by the Passamaquoddy Tribe and the Penobscot Nation or any of their members pursuant to the Maine Implementing Act or any other law of the State of Maine shall not be considered by any department or agency of the United States in determining the eligibility of or computing payments to the Passamaquoddy Tribe or the Penobscot

Nation or any of their members under any financial aid program of the United States.

(c) The availability of funds or distribution of funds pursuant to section 5 of this Act may not be considered as income or resources or otherwise utilized as the basis (1) for denying any Indian household or member thereof participation in any federally assisted housing program, (2) for denying or reducing the Federal financial assistance or other Federal benefits to which such household or member would otherwise be entitled, or (3) for denying or reducing the Federal financial assistance or other Federal benefits to which the Passamaquoddy Tribe or Penobscot Nation would otherwise be entitled.

DEFERRAL OF CAPITAL GAINS

SEC. 9. For the purpose of subtitle A of the Internal Revenue Code of 1954, any transfer by private owners of land purchased by the Secretary with moneys from the Land Acquisition Fund shall be deemed to be an involuntary conversion within the meaning of section 1033 of the Internal Revenue Code of 1954, as amended.

TRANSFER OF TRIBAL TRUST FUNDS HELD BY THE STATE OF MAINE

SEC. 10. All funds of either the Passamaquoddy Tribe or the Penobscot Nation held in trust by the State of Maine as of the effective date of this Act shall be transferred to the

Secretary to be held in trust for the respective tribe or nation and shall be added to the principal of the Settlement Fund allocated to that tribe or nation. The delivery of said State funds to the Secretary shall be accepted in full discharge of any claim of the respective tribe or nation, its predecessors and successors in interest, and its members, against the State of Maine, its officers, employees, agents, and representatives, arising from the administration or management of said State funds. Upon receipt of said State funds, the Secretary, on behalf of the respective tribe and nation, shall execute general releases of all claims against the State of Maine, its officers, employees, agents, and representatives arising from the administration or management of said State funds.

OTHER CLAIMS DISCHARGED BY THIS ACT

SEC. 11. Except as expressly provided herein, this Act shall constitute a general discharge and release of all obligations of the State of Maine and all of its political subdivisions, agencies, departments, and all of the officers or employees thereof arising from any treaty or agreement with, or on behalf of, any Indian, Indian nation, or tribe or band of Indians or the United States as trustee therefor, including those actions presently pending in the United States District Court for the District of Maine captioned United States of America against State of Maine (Civil Action Nos. 1966–ND and 1969–ND).

LIMITATION OF ACTIONS

SEC. 12. Except as provided in this Act, no provision of this Act shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, nor to grant implied consent to any Indian, Indian nation or tribe or band of Indians to sue the United States or any of its officers with respect to the claims extinguished by the operation of this Act.

AUTHORIZATION

SEC. 13. There is hereby authorized to be appropriated $81,500,000 for transfer to the funds established by section 5 of this Act.

INSEPARABILITY

SEC. 14. In the event that any provision of section 4 of this Act is held invalid, it is the intent of Congress that the entire Act be invalidated. In the event that any other section or provision of this Act is held invalid, it is the intent of Congress that the remaining sections of this Act shall continue in full force and effect.

Senator MELCHER. With a great deal of pleasure, I yield to the senior Senator from Maine, Senator Cohen, a distinguished member, not only of the Senate, but a very valuable and distinguished member of this Select Committee on Indian Affairs.

Senator COHEN. Thank you, Mr. Chairman.

As you indicated, the purpose of these hearings that we are holding is to accept testimony on legislation to resolve claims which three Maine Indian tribes—the Penobscot, the Passamaquoddy Tribes, and the Houston Band of Maliseet Indians—have raised against the State of Maine and many of its residents.

Before turning to the subject of these hearings, however, I would like to take a few minutes to speak to the nature of the claim and to the events which have brought us here today.

The origin of these claims lies in the early history of the United States. In its first session the newly formed Congress of the United States enacted a series of statutes known together as the Trade and Intercourse Act which regulated a wide range of activities between the aboriginal inhabitants of America and its non-Indian settlers. Salient among the provisions of the act was the nonintercourse statute which prohibited land transactions, between Indians and States or individual citizens, without the approval of the Federal Government.

Although the Trade and Intercourse Act and the nonintercourse statute were reinacted and amended several times in the succeeding years and the nonintercourse statute became the cornerstone of Federal-Indian policy of the West. It was rarely applied within the boundaries of the Thirteen Original States. On the contrary, these States continued to conduct their relations with the Indians as they had before the act was passed. Consequently, several of the Eastern States made far-reaching treaties with the Indian tribes within their borders involving the relinquishment of the tribes' aboriginal title to large tracts of land.

Massachusetts and its successor in interest, Maine, executed a number of treaties with both the Penobscot and Passamaquoddy Tribes under which the tribes agreed to surrender their possessory interest in up to 12.5 million acres, or more than 60 percent, of the State of Maine. The first of these treaties was effected in 1794, a little more than 1 year after the first reenactment of the Trade and Intercourse Act. The second was made in 1796, the same year in which Congress reenacted the act for the second time. These treaties, then, were made despite continuing congressional attention to the Trade and Intercourse Act. And they were made even though the Eastern States had representatives to the Congress who were presumbably aware of the legislation.

It bears noting that, in making these agreements with the Indian tribes, the agents of Massachusetts and Maine were not acting in defiance of the Federal Government and the Trade and Intercourse Act. Rather, they were proceeding on the assumption that the act did not apply to them. Nor is there any record that the Federal Government objected to these agreements. The parties to the treaties entered into them in good faith and they have been considered valid ever since.

Only recently has the legality of these agreements been questioned. Several years ago, the Maine tribes asserted that, in fact, the nonin-

tercourse statute did apply to the State of Maine. Accordingly, they argued that the treaties between their ancestors and Massachusetts and Maine were invalid for lack of the Federal approval required in the act. The Federal Government rejected the tribes assertion and contested it, through the Justice Department, in Federal District Court. In a landmark decision in 1975, however, the district court held, despite the arguments of the Departments of the Interior and Justice to the contrary, that the nonintercourse statute does apply to the Passamaquoddy Tribe and that that statute imposes the duties of a trustee on the Federal Government in its relations with the tribe. On appeal, the decision was affirmed by the First Circuit Court of Appeals which at the same time noted that it had not determined whether the nonintercourse statute applied to the land transactions embodied in the treaties between the Indian tribes and Maine and Massachusetts. This question remains unresolved to this day.

In reaching its decision, the Maine Federal district court adverted to a facet of the case which continues to loom large in attempts to determine the breadth of the statute: That is the lack of legislative history on the act. The court noted that it was aware of "no legislative history of the Nonintercourse Act which might reveal whether the first Congress had in mind the Passamaquoddies when it enacted the 1970 act." Despite diligent and scholarly research by all parties to this case, the nonintercourse statute remains shrouded in ambiguity.

In light of the court's decision, the Federal Government undertook to press the case of the Maine tribes. As it proceeded to do this, the enormity of the problem became immediately apparent. Nearly 200 years had passed since the first treaty was signed and in the meantime towns were established and developed. The land changed hands on innumerable occasions. Generations of Maine citizens had lived out their lives secure in the belief that the titles of their land were sound. Now more than 350,000 people live on this disputed land.

In deciding how to handle the case, the Federal Government was forced to come to grips with some extremely difficult problems. To begin with, it recognized that unless some form of Federal relief was afforded to the State of Maine, the mere notice of a suit would have a severely adverse impact upon the economy of the State and on the lives of its citizens. Furthermore, the importance of the suit would insure that numerous legal questions would be raised in court which would make certain that a final decision on the merits would not be quickly forthcoming.

The very theory of the operation of the nonintercourse statute engendered some troublesome and perplexing questions about the Federal Government's role as a litigant on the tribes' behalf; for, judicial construction of the nonintercourse statute has held that it creates a trustee-beneficiary relationship between the Federal Government and tribes to which it applies. As the tribes' protector, the Federal Government is bound, under the statute, to prevent them from disposing of their lands improvidently and from being exploited by unscrupulous non-Indians.

In Maine, the Federal Government had not only failed to observe its fiduciary duties; it actively violated them in countless ways. The Federal Government itself, for example, had entered onto lands allegedly subject to the possessory rights of its beneficiaries and, without

obtaining the permission of those beneficiaries, materially altered the land by building military installations, post offices, and other Federal buildings. Furthermore, through Federal agencies and departments such as the Economic Development Administration, the Department of Transportation, the Farmers Home Administration, and so forth, the Federal Government had actively encouraged and even supplied private citizens and the State with the means to develop the same lands it was now asserting belonged to the Indians all along. Finally, it permitted the State of Maine to assume its own trustee responsibilities toward the tribes and to spend literally millions of dollars over the last 130 years for the benefit of the tribes which, under its new view of the statute, Maine was never obligated to pay.

The distastefulness of permitting the Federal Government to sue innocent private parties and the State of Maine and other Eastern States for actions which occurred only because the Federal Government had failed to observe its trustee responsibilities troubled many, including former Attorney General Griffin Bell. On June 30, 1978, Attorney General Bell addressed his concerns to Secretary of the Interior Andrus in a letter in which he explained his decision not to sue private landowners in several of the land claim suits. His decision, he said, was based on his conclusion that the private landowners were "completely innocent of wrongdoing." In the same letter, he rasied the possibility of resolving all the nonintercourse statute claims in comprehensive "omnibus" legislation. In its recent extension of the statute of limitations for suits brought by the United States on behalf of Indian tribes for actions sounding in tort or contract for money damages, the Congress provided that the Secretary of the Interior submit his recommendations for legislative solutions to Indian claims now arising under a wide variety of legal theories. I raise these approaches to the problems posed by the Indian claims only by way of illustrating this point: That Congress has plenary power over this issue and only Congress can resolve it.

Given the enormity of the potential harm a suit in the Maine case would have caused, the administration decided to urge the parties to negotiate their differences and to avoid a confrontation in court during which the private landowners would suffer the greatest harm. President Carter began this process when he personally selected retired Georgia Supreme Court Justice William Gunter to study the Maine claim and to recommend a solution. Judge Gunter's recommendations failed to gain the support of all the parties, however, and they were dropped. All succeeding proposals have met the same fate but the negotiating process has continued.

The legislation, on which we will be accepting testimony today, is the product of that negotiating process. The bill before us is a counterpart to legislation which has already been passed and signed into law in the State of Maine. The effectiveness of each piece of legislation is contingent upon the enactment of the other.

Taken together, the State law, known as the Maine Implementing Act, and the Federal legislation constitute a complex and unique resolution of this most difficult problem. As such, the settlement package has prompted many legitimate questions concerning its elements and the manner in which they were reached. We have asked persons of standing to address those portions ot the legislation which

have rightly caused concern; such as the methods used to evaluate the land, the reasons behind the State of Maine not contributing directly to the settlement, the circumstances under which the landowners will divest themselves of their land and the nature and propriety of the incentives contained in the legislation to have them do so, and how each party perceives his role as defined in the bill.

Given the nature of these questions, we have structured the witness list so as to draw on those persons who can speak authoritatively to the elements of the proposed settlement or the affect on the State and its communities and citizens of a failure to resolve the issue. We look forward to learning of the circumstances under which the agreement was reached and how the parties' differences of substance were resolved.

Mr. Chairman, before calling upon the witnesses to offer their testimony, I would like to yield to my colleague, the junior Senator from Maine, Senator Mitchell.

Senator MITCHELL. Thank you very much, Senator Cohen.

Mr. Chairman, I appreciate very much your invitation to join in the proceedings here today. I have a prepared statement which offers much of the same subject matter covered by Senator Cohen in his remarks, in which I join. In the interest of time, I will not read the statement, but will ask that my statement be inserted into the record of this hearing.

Senator MELCHER. Without objection, it will become part of the record at this point.

[The statement follows:]

STATEMENT OF SEN. GEORGE J. MITCHELL, A SENATOR IN CONGRESS FROM THE STATE OF MAINE

I appreciate the invitation by the Senate Select Committee on Indian Affairs to join in the proceedings here today. The Maine Indian Land Claims case has been of deep concern to the people of Maine for several years. Although attempts at settlement have been made, this is the first major hearing on legislation introduced to deal with this matter.

The legislation before us is the result of extensive review and negotiations by representatives of the State of Maine, the Federal Government, the Maine landowners, the Passamaquoddy and Penobscot Tribes, and the Houlton Band of Maliseet Indians. This Federal legislation is a companion measure to state legislation, known as "An Act to Implement the Maine Indian Claims Settlement."

The State legislation addresses the criminal, civil and tax aspects of the proposed settlement. The bill before us, S. 2829, would extinguish all Indian land claims in Maine, thus removing the cloud on title to two-thirds of the State which has existed since suit was filed. This bill provides a $27 million trust fund as income to the tribes; a $54 million land acquisition fund; federal recognition of the tribes; and ratification of the jurisdictional requirements of the State legislation.

I approach this legislation with a fresh perspective as the new Senator from Maine. I am familiar with the issues involved, however, from my experience as a U.S. Attorney for Maine. In that capacity I served as attorney of record for the Federal Government in this case.

I believe S. 2829 represents a workable solution to the Indian land claims question, not only because of the history of the claims and the State of Maine's historical role regarding the tribes, but also because of the Federal Government's recognition of its responsibility in this matter.

The land claims which this legislation will resolve are based on the Indian Non-Intercourse Act, enacted in the First Congress and rewritten in subsequent Congresses. In essence, the Non-Intercourse Act provides that any land acquisition from an Indian tribe must be ratified by a treaty under the United States Constitution. The Passamaquoddy and Penobscot Indians allege that Massachusetts, which until 1820 included the area which is now the State of Maine, ac-

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quired Indian land through a series of illegal agreements in 1794, 1796 and 1818. The Penobscot Indians also claim that Maine purchased land from them illegally in 1833. The Houlton Band of Maliseet Indians claim generally that their land was taken from them through settlement by non-Indians. It is not certain how much land these claims could involve, though potentially almost two-thirds of the State could be at stake. In addition, the Indians are seeking damages for the use and possession of the lands involved.

Litigation relating to the claims is still in its early stages. The Governor and the Attorney General of Maine believe that the State would win should the case go to court. I understand that they recognize, however, that there is respectable legal authority on the other side of the question.

Obviously, the issues involved will not be easily resolved in court. Pending the outcome of the suit and the inevitable appeals, title to millions of acres of land in Maine will be clouded.

It is clear to me from my experience with this issue as U.S. Attorney, and from concerns expressed by State officials, and individual citizens, that settlement of these claims is in the best interests of Maine and the country. Further litigation would continue economic and social disruptions felt in Maine since the beginning of this suit. For all concerned, it is best to leave this divisiveness behind us and to work together for the good of all Maine citizens.

In that spirit, the legislation before us is a compromise, agreed to after careful consideration by the State, the landowners and the tribes. None of the parties involved obtained everything they sought but all are convinced they have obtained a workable compromise. All parties to the settlement urge enactment of this proposal.

I was not involved in the development of the compromise before us. But I know that all parties were represented ably and vigorously, and I am confident that this proposal represents their best judgment regarding the resolution of this difficult matter. Obviously, all parties involved believed strongly in the positions they advocated. At the same time, it is only because those parties were willing to sacrifice some interest that this compromise proposal is before us today.

This legislation would extinguish all claims to Maine land based on aboriginal title and abolish actions for damages relating to those claims. In exchange, the Federal Government would establish two funds for the benefit of Maine Indians. The first fund, in the amount of $27 million, would provide annual income benefits to the tribes. The second fund, in the amount of $54.5 million, would provide funds to purchase up to 300,000 acres of land for the tribes.

There are some who feel that the tribes will receive too much money under this settlement. There are others who feel that it is not enough. The settlement, however, is a true compromise, under which no party is totally satisfied.

Appearing before us today will be representatives of the parties to the settlement agreement: the Secretary of the Interior, Cecil Andrus; the Governor of Maine, Joseph Brennan, who has worked on this case for over six years, both as Maine's Attorney General and in his present capacity as Governor; the Attorney General of Maine, Richard Cohen, who has been with the Attorney General's office since this case began and who played an active role in negotiating the settlement; Donald Perkins, representing major landowners in Maine; Thomas Tureen, who negotiated this compromise on behalf of the Indian tribes; and four members of the Passamaquoddy and Penobscot Nation.

We will also hear from Pierre Redmond, Chairman of the Committee for an Indian Referendum, and other individuals and groups who are not satisfied with the proposed settlement. Although they do not support this settlement, it is appropriate that the Committee hear all points of view before being asked to make a decision on this matter.

I look forward to the hearings today and tomorrow as a forum to examine whether this settlement proposal is necessary and desirable, for the people of Maine and the United States. With the benefit of the views of the Select Committee on Indian Affairs, there will be reported to the Senate a carefully crafted final bill which the entire Congress can enact with confidence.

I commend all parties involved in the development of this proposal. I especially want to commend my colleage from Maine, Senator Cohen, for the leadership and guidance he has displayed on this matter. I look forward to working with Senator Cohen on this and other matters during the coming weeks.

Senator MITCHELL. I would like to note, in addition, that this hearing is important to the Congress and the people of Maine, and

indeed to the people of this country. It is essential that the proposed legislation be subjected to careful scrutiny and to the test of open public discussion by both proponents and opponents of the legislation. Those who support the legislation must be prepared to testify to that support and to answer satisfactorily the questions raised about it both by those who oppose the legislation and by those who are undecided. Those who oppose the legislation must be prepared to detail and justify that opposition to explain why they think it is not in the best interest of the people of Maine or of the Nation. Out of this confrontation of ideas and issues should emerge, in the classic democratic tradition, a better understanding of the issues and, hopefully, a better bill for the Congress to deal with.

Some of the questions raised about this legislation and this entire settlement process were set forth in an editorial in the Bangor Daily News on March 28, 1980. Mr. Chairman, I ask that the full text of that editorial, which I submit at this time, be included in the record at this point.

Senator MELCHER. Without objection, it is so ordered.

[The article follows:]

[From the Bangor Daily News, Mar. 28, 1980]

THE INDIAN SETTLEMENT

Today in Augusta a special legislative committee will conduct a public hearing on the proposed settlement of the Indian land claims case. After testimony is taken, this special committee will advise the legislature at large to either ratify or disapprove the proposal.

Surely the 13 lawmakers comprising this special committee are keenly aware of the historic significance and solemn nature of the task before them. The proposal, if ratified by the Maine Legislature and enacted by Congress, will grant Maine's three Indian tribes $81.5 million and 300,000 acres of Maine wildlands.

Not since General Preble accepted the surrender overture of Maine's aboriginal people at Ft. Pownal 220 years ago has this state faced an Indian issue of such consequence and magnitude.

The settlement proposal must be subjected to a thorough examination by both the legislative committee and the entire State legislative body. Our lawmakers should not allow themselves to be deluded or intimidated by the arrogance and audacity of the Indians' lawyer, Tom Tureen, who repeatedly points to the supposed sanctity and fragility of this settlement offer, that the state legislature musn't "tinker" with this hallowed document for fear of blowing the ballgame.

Hogwash!

Tureen, and to a lesser extent Maine's state attorney general Richard Cohen, seem to forget that we're talking about $81.5 million of taxpayers' money and serious jurisdictional changes that will have a far-reaching impact upon all Mainers. To place blind faith in the negotiated handiwork of three men, two of whom are out to get all they can from the federal trough, would be the height of naivete and foolhardiness.

The greatest danger is a legislative rush to ratify this proposal without full and fair debate. However tempting the prospect of a federal rescue from the Indian lawsuit may be, there are critical lines of inquiry that the legislature should pursue before taking the historic step signified by ratification.

What are the implications for Maine if the state legislature ratifies the proposal and the U.S. Congress refuses to go along with the revised and extravagant price tag?

Why did the state attorney general agree to let the attorney for the timberland owners and the Indians establish the price tag for the settlement without his participation as spokesman for the state?

If one of the major landsellers, Dead River Co., is prepared to sell much of its timber acreage to the Indians, isn't that highly suggestive of a Government giveaway?

There are reportedly 9,500 Indian cases yet to be resolved by Congress. When the state legislature ratifies this settlement offer, is it unwillingly establishing a precedent for the entire country?

Have all of the intricacies of the jurisdictional language been examined by an expert without a vested interest? Does the jurisdictional language bestow a preferential treatment upon the three tribes which will foster an unrelenting chain of legal disputes in the years ahead?

If the Indians get their money and land in Maine, will the Native American Rights Fund and the other foundations that have bankrolled the Indians in their legal quest dispatch an army of well-financed lawyers to Maine to chase down other historic injustices heaped upon the native Americans by our forefathers?

What about the so-called "Tribal Commission," which constitutes the critical intermediary body in potential jurisdictional disputes between Indians and non-Indians? Is its membership makeup realistic or even workable?

In view of the congressional mood to balance the budget, how can Maine's congressional delegation possibly get behind a settlement proposal whose price tag is two and a half times what was originally agreed to?

Are Maine citizens prepared to submit, to embrace the expedient lifting of the lawsuit cloud and render to history an irrevocable record of a citizenry intimidated by specters and benefit of principle and conviction?

Once our legislature has scrutinized the settlement proposal, there is still the ratification decision to be made. There seems to be an unofficial consensus that the settlement will receive the two-thirds majority vote required to ratify the proposal and send it to the Congress. Perhaps that is as it should be. Perhaps Congress is the proper forum for the ultimate disposal of this question that has plagued Maine for so long.

Only through its own deliberative processes, not the self-serving assurances of those who negotiated the settlement, can Maine lawmakers be confident that ratification is the way to go.

Senator MITCHELL. Several questions were asked in the editorial. Among them were these: If one of the major land sellers, Dead River Co., is prepared to sell much of its timber acreage to the Indians, is that not highly suggestive of a Government giveaway?

Another question was: Have all the intricacies of the jurisdictional language been examined by an expert without a vested interest? Does the jurisdictional language bestow a preferential treatment upon the three tribes which will foster an unrelenting chain of legal disputes in the years ahead? What about the so-called Tribal Commission which constitutes the critical intermediary body in potential jurisdictional disputes between Indians and non-Indians? Is its membership makeup realistic or even workable?

These are but a few of the questions asked, and I hope and expect that the witnesses in the next 2 days will address themselves to these questions.

In addition, on April 1, 1980, former Governor Longley in a detailed statement raised a number of questions similar, though not identical, to those in the editorial to which I have just referred.

I ask, Mr. Chairman, that the text of that statement, including the specific questions raised by the former Governor, be inserted into the record in full at this point.

Senator MELCHER. Without objection, it is so ordered.

[The statement follows:]

STATEMENT BY FORMER GOVERNOR JAMES B. LONGLEY

Over the past few days, I have been asked by representatives of the news media, as well as concerned citizens, what posture, if any, I have taken with respect to the most recent proposal regarding the Indian Land Claims against the innocent citizens of Maine.

Candidly, in fairness to the present Governor and Attorney General, I want to the maximum extent possible to remain neutral on this question; yet, I am deeply concerned. I am concerned most of all for the people of Maine and their Legislators

to the extent I detect pressure being exerted on them to rush this proposed legislation. I feel that the Legislature should strive to avoid pressure to resolve this question in what might well be too short a time. Furthermore, I would hope the Legislature would not simply pass the buck to Maine's Congressional Delegation or the Congress as a whole as it relates to this question.

The Indian Law Suit against the rest of the citizens of Maine was one of the most difficult issues I faced during my time as Governor. I spent countless hours working with the Maine tribes, Attorney General Brennan and other State lawmakers and members of the Maine Congressional Delegation and the White House, in an attempt to resolve this dispute in the fairest and most equitable manner possible for the Indian as well as non-Indian citizens of the State of Maine. The issues have not grown simpler, and Governor Brennan and Attorney General Cohen are to be commended for their continued hard work and dedication toward fairness for all as demonstrated by their efforts since I left office.

Just under two weeks ago, the details of an out-of-court settlement of this dispute were released to the news media. Soon, a Joint Select Committee of the Legislature will conduct a hearing on the proposed settlement, and a vote to enact the proposal may soon follow. We would do well to remember that we are dealing with a dispute which has its legal origins in actions taken over two hundred years ago. I hope that after this extended period, the Legislature will not act hastily to approve that which they may not fully understand. There are a number of issues here that must be carefully weighed to insure that we do not plant seeds today, that in future decades or years, even centuries, will return again to haunt us.

I am not speaking in opposition to the latest agreement. I simply want to urge caution by the Legislature and suggest that they proceed carefully with all the time possible to fully review and understand the proposed settlement. Specifically, they must act with full knowledge and understanding of the course of conduct they are urging on the United States Congress. They should not be rushed. Several questions need to be examined thoroughly, including:

(1) Why would $81 million dollars plus special tax breaks be negotiated by pulp and paper companies and private landowners, with Indian Legal Counsel, without any State involvement?

(2) Why has the price of land been substantially increased from the time I was Governor, when private landowners quoted prices ranging from $100 to $112 per acre, vis-a-vis the present price quoted under this settlement agreement of $181 per acre. This is a difference of over $20 million dollars. Who is to receive this money?

(3) To the extent both Federal and State taxes are involved, why shouldn't citizens and the news media of Maine have an actual list of:

(a) Land to be purchased and where and from whom?

(b) The price to be paid per acre to individual landowners?

I would submit that the Legislature and the news media and the people of Maine should have these answers before the public hearing.

(4) Why wouldn't it be appropriate for the Legislature to ask the Indian Tribes to submit this claim to the United States Court of Claims without any economic sanctions during the trial, if the Indians refuse whatever Congress recommends? During my term as Governor, the citizens of Maine were subjected to tremendous economic pressure and leverage, and I feel it only fair that the Indian Tribes try to avoid this approach in the future, based on the willingness of the legislature to submit any bill to the Congress.

(5) Let us not believe that Maine taxpayers will not have to pay for the $81 million dollars unless they are not paying Federal Taxes. Let us not say there is not going to be additional tax or cost on the taxpayers of Maine. There will be. Therefore, is it fair to say there is not going to be additional tax imposed on the taxpayers of Maine?

(6) I feel that unless each Maine lawmaker thinks $81 million dollars is fair, they should search their conscience as to whether it is fair to pass the buck to the Maine Delegation and the United States Congress.

(7) Should the Federal Government or the Indian Tribes reimburse the State of Maine from any settlement they might receive for the millions of dollars the taxpayers of Maine have paid our Indian citizens due to the fact the Federal Government in the past refused to recognize our Maine Indians as eligible for Federal assistance while still pouring millions of dollars into the western Indian reservations.

Finally, during the time I served as Governor, I was criticized by Indian Legal Counsel for the nation within a nation objective I felt Indian Legal Counsel was seeking. The Indian Legal Counsel consistently criticized my challenge and consistently denied that the nation within a nation concept was one of their

objectives. I am now advised, and my study of the proposed legislation to the Maine Legislature confirms, that there is indeed a nation within a nation concept contained within the proposed bill. However, I have also been further advised that the present bill limits the separate nation status that recent court decisions have rendered. While I disagree with these recent court decisions, I would simply challenge the Legislature to make certain they are not extending separate and preferential laws for Indian Citizens as contrasted with our non-Indian Citizens. If this is so, the State of Maine has indeed rendered favored treatment to one class of citizens, or in effect, endorsed the concept of a second class of citizens vis a vis a first or preferential class of citizens at the expense of the rest of the citizens of Maine.

Once again, I commend the Governor and the Attorney General and I firmly believe each of them is trying to do what is right and fair for all people of Maine. However, I urge each and every legislator to examine this entire proposal very carefully and avoid being pressured or rushed on hasty decisions and matters as important as this for the people of Maine and the entire United States from the standpoint of the precedent that might be set. During the time I was in office, I was advised that there were approximately ninety-five Indian cases pending against the citizens here in the United States. At the time I left office, I was advised that there were 1,500 cases pending against these same citizens of the United States. I am now advised by Senator William Cohen, the Senior Minority Member of the Indian Affairs Committee of the United States Congress, that there are 9,500 cases pending concerning water rights, hunting and fishing rights, land titles, and yes, questions involving nation within a nation, separate rules and laws and ordinances, and I am simply urging the Legislature to weigh not only what is best for Maine but also what our responsibility is to the entire United States from the standpoint of the precedent we might set. Based on my experience with the Maine Legislature, they will try to do what is right for our Indian citizens as well as our non-Indian citizens. I wish them well in this regard.

Senator MITCHELL. It is crucial that the people of Maine, the Members of this Congress, and the people of this country feel and believe that this legislation has been exposed to the most careful searching scrutiny and that what emerges is the product of the best efforts of all concerned, including the membership of this committee.

Before closing, I want to commend all parties involved in the development of this proposal. It is obviously the result of many years of hard work and effort. I especially want to commend my colleague from Maine, Senator Cohen, for the leadership and guidance he has displayed on this matter. I look forward to working with Senator Cohen on this and other matters in the coming months.

Thank you, Mr. Chairman and Senator Cohen.

Senator MELCHER. Thank you, Senator Mitchell.

We are delighted to have your assistance, cooperation, and efforts in this hearing process on the bill.

Senator Inouye, do you have any remarks?

Senator INOUYE. No, Mr. Chairman.

Senator MELCHER. Thank you. Our first witness will be Secretary Andrus. We are delighted to have you here to advise us on the views of the Department and the administration concerning this bill.

STATEMENT OF HON. CECIL D. ANDRUS, SECRETARY, U.S. DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY RALPH REESER, ACTING DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, AND TIM VOLLMANN, ASSISTANT SOLICITOR FOR INDIAN AFFAIRS

Secretary ANDRUS. Thank you very much, Mr. Chairman.

First of all, I would like to introduce the two gentlemen at the witness table with me. On my immediate left is Ralph Reeser who

is the Acting Deputy Assistant Secretary for Indian Affairs of the Department. On my immediate right is Mr. Tim Vollman who is from the Solicitor's Office. Both men have been involved, not only in this legislation that is before you today, but in the negotiations and discussions that have been going on all this time.

Now, Mr. Chairman, I respectfully request that my testimony, as submitted, be put into the record intact. It is quite lengthy, as you have had the opportunity to see, and then I will just summarize before we get to the questions.

Senator MELCHER. Your entire statement will be made a part of the record at the end of your oral testimony.

Secretary ANDRUS. Thank you, Mr. Chairman and members of the committee. As you have stated, I am here today to discuss this administration's views on S. 2829, known as the Maine Indian Claims Settlement Act of 1980.

We fully support the concept of a negotiated settlement as the means for the resolution of the Maine Indian land claims, and we hope that S. 2829 will lead to a final settlement of these claims.

We recognize that a Federal contribution is necessary to achieve a negotiated settlement, and we do not object to the contribution proposed by this bill. The proposed contribution of $81.5 million is substantially higher than the administration has previously supported. However, because years of continued litigation would have a severe impact upon the citizens of Maine—as has been pointed out by both Senators from Maine here this morning—and also because the settlement proposal is based on the agreement of all relevant parties in Maine and should therefore provide a lasting solution to this problem, we do not object to the Congress providing for the Federal contribution contemplated in S. 2829.

It would not be responsible for the administration simply to state its general position on this legislation. For that reason, we have carefully examined all aspects of the proposal in order to insure that the broad interests of the tribes and the United States are well served under it.

Our examination has produced a series of questions concerning details of S. 2829 which we would like to raise to the committee for your consideration as you examine this legislation. I would say at this point, the questions submitted into the record by Senator Mitchell will be responded to by our Department. It may not be possible, Senator, to achieve that in the 2-day hearing period, but the record will be held open, I assume.

Senator COHEN. The record will be held open for 30 days, if necessary. We have planned hearings for today and tomorrow. If additional witnesses are going to be called, we are going to try to work in a third day. So there will be adequate time for you to respond.

Secretary ANDRUS. Thank you. We look forward to working with the Congress to resolve these questions. I think, in fairness to Senator Mitchell and the State of Maine, that we should respond to those questions.

Before we get into the details of S. 2829, let me just quickly summarize, because Senator Cohen summarized it very accurately in his opening remarks, the history of the 8 years.

I will not repeat the record of litigation that the Senator pointed out because it was very accurate. We get into the court decisions and

then we enter into 1977. This administration came into office early in 1977. The President of the United States, President Carter, appointed the former Supreme Court Justice that you referred to, Senator. We worked on it in Interior. I have personally had innumerable meetings, not only with the Indian representatives from the tribes but also with the representatives of the State, representatives of private landowners, and private citizens over this matter.

As has been pointed out, we had many proposed solutions, all of which failed because one or more of the parties would not, or could not, concur.

However, the Department of Interior continued to work to bring about a resolution of this situation. That brings us to today, Mr. Chairman, where I think we are on the threshold of the solution that has been encouraged here by yourself and your colleagues.

We are pleased, and we are encouraged that the tribes and the State have been able to work out the agreement. However, we have a number of questions about the role of the Department of the Interior in connection with that agreed upon relationship and believe that a number of points need revision or perhaps just clarification.

Again, we pledge our willingness to work with the entities involved to bring about a clarification and a resolution of those questions that we have. Those questions are enumerated in the testimony, and I will not go into them except to touch on two major points.

Senator COHEN [acting chairman]. We did not receive a copy of your testimony until just shortly before the meeting. We have not had a chance to look over your full text so that I might familiarize myself with the issues that you have raised. So if you will take a few moments to at least outline those specific questions you do have, it would be helpful.

Secretary ANDRUS. I will do that. I would point out that, while we are pleased that the State, the tribes and the private landowners and hopefully the Congress of the United States and the administration are working toward a solution, we believe that S. 2829 raises two major issues on which further discussion is needed.

First of all, the total level of funding, and, second, the intergovernmental relationship among the tribes, the State, and the Federal Government.

With respect to the Federal funding of the proposed settlement, we support the allocation of $27 million to a trust fund for the tribes. We have supported that position previously in other proposed resolutions. We also do not oppose the allocation of no more than $54.5 million for the land acquisition to purchase the 300,000 acres of average Maine woodlands that have been discussed.

S. 2829 has, in addition, financial implications beyond these outright payments which we believe would be unwarranted. As drafted, section 8(a) of the bill would prevent Federal agencies from considering any payments made for the benefit of the tribes pursuant to the settlement in determining State eligibility for participation in Federal financial aid programs.

Section 8(a) would apparently allow payments by the State agencies to the Indian tribes to be supplanted by Federal payments for the same or similar purposes.

A quick example to what I am referring is this: If the State withdrew all health care funding for its Indian citizens in anticipation of

Indian Health Service aid, the incremental cost to the Indian Health Service is estimated to be about $1 million per year. If this provision were to be established nationwide, it would raise the budget for that purpose by almost $300 million. I am not sure that is what was intended in this legislation, and I am saying that we need clarification in this regard. And there are other questions——

Senator COHEN. There are a number of congressional acts on the books which prohibit or seem to indicate a congressional intent to prohibit or prevent States from allowing Federal funds to supplant State funds. I am thinking specifically of the Johnson-O'Malley Act in which there is the rather clear intent to prevent States from supplanting their own funded Federal dollars. Is that what you are referring to in this?

Secretary ANDRUS. Yes, sir. That is exactly what I am referring to, and there are many pieces of legislation that prohibit the supplanting of Federal for existing State levels of aid. I am just saying to you that if you look closely at section 8(a)—I am not at all sure that that prohibition is there in this regard. We call that to your attention.

The Johnson-O'Malley Act is another, and there are other provisions.

We are concerned with the total Federal financial exposure in this regard. We ask you to look at those and some of the others that we enumerate there.

Our second major question with S. 2829 is with respect to the, let's call it, novel jurisdictional relationships which would be created by the bill and the State Implementing Act. Our foremost concern in this regard is the lack of clarity in defining the role of the Federal Government as trustee to the tribes.

Let me make it clear that we do not regard the State tribal agreement as one calling for termination of these tribes. As we read the State legislation and S. 2829, the tribes' governmental authority over their own members will continue to be recognized. The Passamaquoddy Tribe and the Penobscot Nation will, as we read the legislation, not be entities created and wholly subject to State laws beyond their control, but will continue to be Indian tribal entities subject to the ultimate authority of Congress under the commerce clause of the Constitution of the United States, and subject to certain restrictions on their authority as a result of this jurisdictional compact with the State of Maine.

Our reading of section 6 of S. 2829 and related provisions of the State Implementing Act is that the respective authority of the State and the tribes would not be radically different from the jurisdictional relationship which exists among other States and tribes. However, the relationship in this settlement proposal is not always clear, as you go through the bill. We think a reworking of the relevant language is in order. Furthermore, because the numerous references in S. 2829 to the Maine Implementing Act make an understanding of the jurisdictional relationships difficult, we believe that such relationships should be spelled out in the Federal legislation.

Under the State Implementing Act, the Passamaquoddy Tribe and the Penobscot Nation would largely retain their inherent authority over their own members, but would also be treated as municipalities

under the State law. We have a conceptual problem here, Mr. Chairman, with this model. Maine municipalities derive their powers from their individual charters, but the two tribes have no constitutions or charters, or even a traditional governmental structure. They have long operated under State laws which would be repealed by the Implementing Act. To clarify the jurisdictional relationships and to provide for viable tribal governments in the future, we recommend that S. 2829 be amended to provide for the development of tribal constitutions and charters along the lines provided in the Indian Reorganization Act.

Senator COHEN. Has not the Department of the Interior, or some of its attorneys, been working in conjunction with either counsel for the tribes or in connection with the State in developing this settlement, or have you been totally excluded? Have you had no role of participation so that we come on this first day of hearings saying these issues have not been dealt with, and that there is a problem as far as treating tribes as municipalities, and it is a problem as far as CETA funds or general revenue sharing which has not been contemplated? What has been the role of the Department of the Interior in this particular settlement?

Secretary ANDRUS. The role of the Department of the Interior has been very active all the way through except from about late November 1979 till March 1980. There was kind of a little void in communications there. As a matter of fact, I read about the $81.5 million in the newspaper. I am not saying that members of my staff were not aware, but I have been pretty much involved in this and that prompted a phone call from me to a representative of the tribes.

We get along well, I think. There was a time there when the tribes, the State, and the private landowners seemed to be working without us. I do not object to that, but that probably has caused the drafting of that legislation without our involvement and has probably caused some of these questions to be raised at a later date.

Again, we are not outside looking in. We have open lines of communication now. We have appointments set up for, I believe, this weekend and next week with representatives of the tribes and the State to try and work these out before the Senate comes back on July 21. We will report to you our success or lack of success in working out these details.

In all honesty, I have to say there was that 3-month period of time when our communications were curtailed. I would like to think it was just because it was the holiday season and nobody wanted to bother us.

Senator COHEN. That brief hiatus has resulted in the possibility of a potential of costing the Federal Government $300 million if, in fact, your interpretation is correct on the first count about the total level of Federal funding that might be required, and it has introduced an entirely new relationship between the State and tribes as not recognized in any other State in the country. So, that brief hiatus has precipitated a result which is certainly unique and far reaching as far as potential costs to the Federal Government.

Secretary ANDRUS. In response, let me say I am not finding fault. I do not think these apparent flaws are fatal. I think we should continue to work to a resolution of this problem. I hope that the time between now and when you return from the recess, we will be able to come to you and say that we have worked them out.

On many of the questions that we asked for clarification we find that representatives of the State and the tribes agree with our interpretation. Others, there may be questions on, but given those 3 weeks that we have, Senator, we will put forth every effort to do it.

Senator COHEN. It is my understanding that you had sent land appraisers or evaluators to the State of Maine to make an assessment as to the fair value of the land that has been at least potentially agreed upon. Is that correct?

Secretary ANDUS. Basically, it is correct. We started out in 1977 to value some of this land, which was $112 per acre, give or take, depending on whether it had just been cut or whether it had good second and third growth coverage on it. Now, 3 years have gone by. You have inflation. You have different values of different lands. We believe that the prices are responsible and very close. You might quibble about one 40-acre tract, but I do not think that it is that far off at the current rate of $182.

Senator COHEN. So it is your judgment that the price per acre is within the bounds of reasonableness, and I conclude from your remarks that the 300,000-acre minimum demand of the tribes also is reasonable in your mind?

Secretary ANDRUS. Yes; in the early settlement, Senator, we were asking for other methods of financing the acquisition of 300,000, but we were never in a position of quarreling with the Indian tribes as to the amount of land that was necessary.

Senator COHEN. Do you have more?

Secretary ANDRUS. I have one concluding paragraph.

I would like to say on the record that it is critical that passage on implementation of this legislation put an end to this dispute. For that reason, the provision extinguishing all tribal land claims in Maine must be carefully drafted. We would urge, moreover, that the bill also provide that no Federal money be disbursed under the act—either for the trust fund or for the land acquisition—until the tribes have stipulated to a final judicial dismissal of their claims against these lands. We understand that the tribes have no objection in principle to the inclusion of such a provision, but I do not speak for them here today. Again, as with all other questions I have raised, the administration stands ready to work with all parties to obtain a mutually satisfactory bill. We will report back to you, as I said, on your return on July 21.

Senator COHEN. I have one question, Mr. Secretary, then I am going to yield to my colleague.

Are you not satisfied that section 4 accomplishes that extinguishment of the aboriginal claim? You have raised a question in your final statement that it has to be perfectly clear. I gather, implicitly, that it is not perfectly clear.

Secretary ANDRUS. I would prefer, as we get into the very legal involvement, to have the Solicitor's Office respond to that, in that there is more question than fault there. We just want to make certain that this does, in fact, do what I am confident Congress wants to do, and what we understand all parties would like to do.

Mr. VOLLMANN. We have examined section 4, Senator, and we think the germ of the language that we need to extinguish the land claims is in there, but we see some ambiguities, and I am sure we can work these out in working with the attorneys for the tribes and the State and the committee.

Senator COHEN. Senator Inouye?

Senator INOUYE. When were the lands in question conveyed by the Indian tribes?

Secretary ANDRUS. It was 1794. That was the time that the transaction took place and brought them into violation of the Nonintercourse Act.

Senator INOUYE. Did the State of Massachusetts have jurisdiction at that time?

Secretary ANDRUS. Partially, yes.

Senator INOUYE. The State of Maine was not in existence.

Secretary ANDRUS. No, it was not in existence at that time, but Senator, I am not familiar——

Senator COHEN. Maine became a State in 1820.

Senator INOUYE. According to this measure we have before us, it alleges that the nonintercourse statutes were violated. Who violated the nonintercourse statutes? Was it the State of Massachusetts, the Indian tribes, or the Federal Government?

Secretary ANDRUS. That is a little bit cloudy at this point as to where to place the blame. That is, as to whether it would have been both the Government and the Indians at that time, or whether later governmental entities, by utilizing those lands, and the Federal Government by utilizing some of those lands, were in violation. That is what causes the unique cloudiness of this case. It goes back almost 200 years.

Senator INOUYE. Would you say that the hands of Maine are not all clean?

Secretary ANDRUS. I would have to say that from a layman speaking in a legal sense that their hands are not clean, but I do not think anyone can accuse them of willfully going out to do this with intent to do harm. It was the circumstances of 200 years ago that brought about the unclean hands that you refer to.

Senator INOUYE. Then the truly unclean hands are the Federal hands?

Secretary ANDRUS. I think the Federal hands would have to accept their share of the blame, but I do not recall from memory, Senator, whose responsibility it was to see that those transactions were validated in that day and time. Would it have been the local entities that would have submitted that to the Congress of the United States or would it have been the Congress of the United States responsibility to procure the documents and validate them? I do not know.

Senator INOUYE. I note that the Governor of Maine has insisted that the State of Maine is not guilty of any transgression and, therefore, should not be responsible for any payments. I gather that the payments in this measure will be made by the Federal Government.

What national interest is involved in the passage of this act?

Secretary ANDRUS. No. 1: The Fairness Doctrine—the Indian tribes and nations that have suffered over the years because of this. Also, the trust responsibility that we have by the Constitution and then the statute placing it in that responsibility in the Department of the Interior would be resolved. The citizens of Maine, who sit there in a situation of question over the title of their lands, for actions that they had no part in, should be resolved. The bonding capacity of the areas certainly has a cloud over it. That is why we come before you in

support of a congressional resolution of this problem instead of letting it go on for many, many years additionally into the courts.

Senator. INOUYE. So, it is your contention that the passage of this law will serve the best interests of this country?

Secretary ANDRUS. Yes, sir. It is my view that the congressional resolution would be in the best interests of this country.

Senator INOUYE. Thank you very much.

Senator COHEN. Mr. Secretary, I have several questions I would like to ask you about the role of the Interior Department as a trustee of the Maine Indians' land and the trust fund. To the extent that you cannot answer them this morning, you may supply them for the record before it is closed.

Under section 5(b)(3) of the Federal legislation, the Secretary of the Interior is obliged to disburse income from the principal of the trust fund on a quarterly basis. The use of that income is then expressly freed from regulation by Interior. At the same time, the Federal Government is then forgiven from any liability which might accrue from having made the income available to the tribes. So, I would ask you this. As trustee of the fund, bound by all the duties and obligations which that term implies, do you feel that the provision forgiving the Federal Government from liability adequately protects it?

Secretary ANDRUS. We do not fully understand that provision, Senator. That is one that we have highlighted for clarification.

We would like to discuss it further with the representatives of all involved to see that that is clarified.

Senator COHEN. In a letter to our committee dated June 27, Robert Coulter of the Indian Law Resource Center asserted that, in light of the Supreme Court's decision in *United States* v. *Mitchell*—no reflection upon my colleague—issued on April 15 of this year, the portions of this statute which address the Secretary of the Interior's duties would have to be redrafted. Have you had a chance to look at that particular letter?

Secretary ANDRUS. I did not, personally, but let me defer to Mr. Vollmann.

Mr. VOLLMANN. We have not received that letter, Senator. In the *United States* v. *Mitchell* case, it involved a claim under the General Allotment Act against the United States for claiming that the United States was liable for mismanagement of trust lands. The U.S. Supreme Court held that the United States was not liable for mismanagement of forest lands. I do not see the application to this at all.

Senator COHEN. I will see that you get a copy of the letter, and perhaps you can respond at a later time.

Without objection, the record will remain open at this point for the purpose of inserting this additional information.

[The letters follow:]

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

June 27, 1980

Honorable William S. Cohen
United States Senate
Washington, DC

Dear Senator Cohen:

I am pleased to respond to your request for a summary statement of our position on the proposed settlement of Indian land claims in Maine. A more complete statement will be given at the forthcoming hearings before the Select Committee on Indian Affairs.

We oppose S.2829. We are convinced that it is premature for Congress to consider a comprehensive settlement at this time. Congress should defer all action on this extremely important matter until the Indian peoples involved have had an opportunity to fully consider the issues and until Congress is assured that the Indian peoples have given their agreement to this proposed settlement of their historic claims.

1. There is yet no showing that the Passamaquoddy and Penobscot peoples have in fact agreed to this settlement.

- The bill before Congress is not the same bill which was recently presented to the Passamaquoddy and Penobscot people for their approval or rejection in a referendum. There are a number of substantive changes which the Indian peoples would need to consider and vote upon before Congress could be satisfied that there is in fact agreement on the terms of S.2829.

- There has been no fair or proper referendum whatsoever. On less than one week's notice, the Passamaquoddy and Penobscot people were asked to read, consider and vote upon a highly complex legislative package which included not only

proposed federal legislation but also proposed state legislation of similar length and complexity. This proposed settlement deal has been thrust upon these people in such haste that they have not been able to make an informed, reasoned decision. When a tribal court lawsuit was filed in an effort to delay that rush to referendum, the time problem was dismissed as irrelevant on the ground that the referendum was merely "advisory". This procedural avoidance of the issue should not be sufficient to cloud Congress' legitimate concern that there be a clear manifestation of agreement by the Indian people. Congress should refuse to take any action until it is presented with the results of a fair referendum conducted upon ample notice with fair opportunity to study and debate the issues. These historic Indian claims will not be finally put to rest unless there is a clear record of open and honorable agreement.

2. Recent developments in the law require that the proposed settlement be carefully reconsidered and revised.

- After this bill was drafted and presented to the Passamaquoddy and Penobscot peoples, the United States decided the case of United States v. Mitchell (April 15, 1980), in which the Court ruled that the Secretary of the Interior, as "trustee" over Indian lands, cannot be held liable for mismanagement of that land or for breach of other trust obligations unless those obligations are expressly set forth by act of Congress. Moreover, the Court ruled that a general, unspecified trusteeship "should not be read as authorizing, much less requiring," the Secretary of the Interior to take any protective action with regard to the Indian trust property. Unless this proposed settlement is revised to specify in detail the powers and duties of the Secretary of the Interior as trustee, there will be confusion, unending dispute and uncertain liability. Revision is necessary to protect the rights and interests of all parties to the settlement.

- Other recent Supreme Court decisions, Washington v. Confederated Tribes of the Colville Indian Reservation (June 10, 1980) and White Mountain Apache Tribe v. Bracker (June 27, 1980) also point to the need for revision of the proposed settlement. In these cases the Supreme Court has announced new rules governing the jurisdictional authority of state governments to tax various commercial transactions on Indian lands. There has obviously been no opportunity for the Passamaquoddy and Penobscot peoples and their counsel to prepare and incorporate into the proposed settlement legislation the legal safeguards which might be appropriate in light of these new legal developments.

Our other objections to S.2829 will be presented in more detail in the testimony that we and others have been asked to present on June 2nd.

Many of the Passamaquoddy and Penobscot people are distressed by the terms of the proposed settlement and by the manner and speed with which it is being pushed towards finality. We respectfully ask that you reject all calls for hasty decision-making, and that you insist on more measured consideration of these profoundly important issues which may affect the course of United States-Indian relations for some time to come.

Sincerely,

Robert T. Coulter
Executive Director

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG

Honorable John Melcher
Chairman Select Committee on
Indian Affairs
United States Senate
Washington, D.C 20510

Dear Mr. Chairman:

In the course of the July 1, 1980 hearings on S. 2829, the Maine Indian land claims settlement bill, Senator Cohen asked us to respond to a letter sent to him by Mr. Robert T. Coulter, Executive Director of the Indian Law Resource Center.

In that letter Mr. Coulter proposes that the settlement be carefully reconsidered in light of several recent developments in Indian case law. His letter states that the April 15, 1980, U.S. Supreme Court ruling in United States v. Mitchell requires that the settlement bill be revised "to specify in detail the powers and duties of the Secretary of the Interior as trustee . . . ." We agree that the bill, as introduced, needs further clarification of the duties of the Secretary of the Interior, though it was not the ruling in the Mitchell case which led us to that conclusion. Toward that end, we have submitted to the Committee a proposed amendment by way of a substitute which, we feel, amply clarifies the role of the Secretary as trustee over tribal lands and natural resources.

The ruling in the Mitchell case was that the General Allotment Act of 1887 did not constitute a waiver of sovereign immunity of the United States which would permit an Indian allottee to sue for money damages in the Court of Claims. Mr. Coulter's concern appears to be that the Tribes may not be able to sue the United States for breach of trust for future mismanagement of their land and natural resources. Our proposed amendment to S. 2829 in the nature of a substitute does not directly address that concern. Rather, in Section 5(g) we have provided that such land or natural resources "shall be managed and administered in accordance with terms established by the respective Tribe or Nation and agreed to by the Secretary in accordance with Section 102 of the Indian Self-Determination and Education Assistance Act [25 U.S.C. §450f]." In this way we have provided that land or natural resources of these Tribes may be managed and administered in the same way as any other tribe may provide for the management and administration of its trust resources. If other tribes may sue the United States for mismanagement,

then it is contemplated that the Maine Tribes would have a similar right. We believe the question whether Congress should provide explicitly for waivers of the sovereign immunity of the United States with respect to Indian trust lands and natural resources is an extremely far-reaching policy issue not appropriately addressed in the context of this land claim settlement legislation.

The other recent Supreme Court decisions cited by Mr. Coulter are Washington v. Confederated Tribes of the Colville Indian Reservation and White Mountain Apache Tribe v. Bracker. These cases deal with the authority of the States of Washington and Arizona to tax commercial transactions on Indian lands. It is far from clear whether the rulings in these cases would apply similarly in Maine, in the absence of any Congressional action. In light of the many and varied legal arguments which could be raised regarding the jurisdictional relationship between the State of Maine and the Tribes in Maine, as well as other factors having a bearing on a final settlement of the Tribes' land claims, the Tribes and the State have decided to enter into an agreement which would lay many of these questions to rest. If, as Mr. Coulter seems to recommend, this agreement were to provide that it is to be subject to reexamination every time a court ruled on the jurisdictional relationship between another tribe and another state, then the agreement would have very little worth. Please note also that Section 6(e) of the Administration's proposed amendment in the nature of a substitute would give Congress' consent to future changes in the jurisdictional agreement which may be agreed upon among the Tribes and the State.

If you have any other questions in this regard, please do not hesitate to call upon us.

Sincerely,

Louis D. Rudros

SECRETARY

Senator COHEN. At several points in the Federal legislation, you are bound to accept reasonable suggestions from the Penobscots and Passamaquoddies regarding the investment of the income and the management of land. Do you regard this as a workable standard consistent with your trustee beneficiary relationship?

Secretary ANDRUS. That is another point in the total testimony that we raised as to the definition of "reasonable." Again, we are confident that can be worked out. What we are going to do is tie down each responsibility so that at a later date some future Secretary or some future Congress will not have to go back and redo the whole thing.

Senator COHEN. In section 6(g) of the Federal act, all Federal laws which accord special rights or status to Indians are made inapplicable to the Maine tribes. Do you feel that this act nevertheless provides the tribes with sufficient protection?

Mr. VOLLMANN. We have already discussed section 6(g) with attorneys for the State and the tribes. We are troubled by the language. In our discussions with them, we are satisfied that it accomplishes an important end to which all parties agree, and that is that certain environmental statutes not be applicable; for example, those that would give tribes enforcement authority that would affect non-Indians in Maine. I am sure we can work with the State and the tribes to work out language that would be satisfactorily clear and not give rise to future litigation.

Senator COHEN. Section 177 of 25 United States Code, the present codification of the nonintercourse statute and the basis of the Maine claim is, by the operation of section 5(e)(1), made inapplicable to the Maine tribes. This provision is followed by section 5(e)(2), which provides certain restraints on alienation of Indian land. I have three questions on this pertaining to these two sections.

No. 1: Do you feel that the nonintercourse statute should be made inapplicable to the Maine tribes?

No. 2: Do you believe that the restraint on alienation found in 5(e)(2) of the act will provide the tribal lands with sufficient protection?

No. 3: Is it the opinion of the Department of the Interior that the restraint on alienation embodied in section 5(e)(2) will take on the whole body of case law and regulation which characterizes the nonintercourse statute?

Secretary ANDRUS. Let me defer to the lawyer.

Senator COHEN. If you cannot answer those now, I would be happy to have your answers for the record.

Mr. VOLLMANN. I think we can work out the language of those sections with the State and the tribes. The inapplicability of the Nonintercourse Act is really not important because, on the other hand, section 5(e)(2) imposes restrictions against alienation on the lands in Indian territory, which we understand the parties have agreed to, which would be the same effect as if the Nonintercourse Act were applicable to those lands.

As to the other provisions where the authorization for sale, lease, and encumbrance of that property, I think again we can work out language which will be satisfactory to all.

Senator COHEN. Mr. Secretary, I think you have clarified this question for me in previous remarks.

Some time ago, Donald Perkins, the legal counsel to many of the landowners involved in this settlement, stated that 2 years ago, the administration estimated that the value of the land to be transferred in a proposal aired at that time was $100 to $112 an acre. He states that he believes that that figure had no basis in fact.

I want to ask you how you arrived at that assessment of $100 versus $112.

Secretary ANDRUS. First of all, we have to understand that the price of real estate depends on whether you are buying or selling. There is always a difference, generally, between the two parties. The $112 figure that was referred to in 1977 came to me personally via members ot the Indian tribes and their legal representatives in meetings within my office and discussions with people who were knowledgeable of the transactions in the State at that time.

In all fairness to Mr. Perkins' comments that you refer to, I have to say that it does vary as to whether it is land that has been immediately cut over or land that has a good regrowth on it. So, there is room for an honest difference of opinion, but the main change between 1977 and 1980 is—look at the inflation battle that we are fighting in this country.

Senator COHEN. You are satisfied that the value that they have agreed upon, working out to about $181 per acre, with some few exceptions, is reasonable?

Secretary ANDRUS. I have been advised by our people that have been on some of those lands that that is a reasonable figure across the board.

Senator COHEN. Under section 9 of the Federal legislation, landowners who sell their land to the tribes could treat the sales as section 1033 events under the Internal Revenue Code.

In your Department's judgment, how much in the way of lost revenue would that——

Secretary Andrus. We have been advised by the Treasury and the Office of Management and Budget that this could possibly go as high as $15 million. We have raised questions on that point in the past in the discussions, but I believe that we are in a position to work that out.

Senator COHEN. Do I gather from your statement that OMB has no objection to the provision?

Secretary ANDRUS. When you are dealing with $15 million, I do not think that I can say that OMB would not have any objection, but when we look at that situation and discuss it with the Office of Management and Budget and the Treasury, we have decided we would defer to the wisdom of the Congress in that regard if that is what it requires to make a settlement.

Senator COHEN. I raise that question because of comments you made earlier; namely, that we have to be concerned about the precedential effect that this particular case would have on others. For example, if we treat the tribes as municipalities, if the State is allowed to simply turn the responsibility to the Federal Government, what does that do in terms of the projected costs to the Federal Treasury? You said $300 million.

Well, I suppose we have seven or eight or nine other cases quite similar in factual pattern which, I assume, would be brought to the Congress at some later time for resolution on a settlement basis. If landowners are able to treat these particular settlement proposals as

involuntary conversions or as a condemnation proceeding as such and thereby derive the benefit of the IRS Code, certainly you would want to be concerned about something more than $15 million.

Secretary ANDRUS. Yes, Senator. However, this is probably the only settlement of this size where there is, first of all, that much land involved, and second, where you have to go to the private sector to procure. The other areas where we have made land settlements, for the most part the larger tracts have come from within Federal ownership and/or other public ownership. It does concern us, but, again, you come down to the question of will this, or will it not, tear up the agreements? I think that Congress has to look at that because we have been told that the glue might come apart if that were tampered with. I leave it to your judgment to show you both sides.

Senator COHEN. Under section 6(f) of the Federal act, judgments of the tribal courts in Maine would be accorded full faith and credit by courts of the United States and any U.S. State or territory. How does this provision compare with current law?

Mr. VOLLMANN. Right now there is no statute of the United States that gives tribal court proceedings full faith and credit in State or Federal courts. Some of those courts have honored judgments of tribal courts, nonetheless.

Senator COHEN. Is that on a basis of comity rather than full faith and credit?

Mr. VOLLMANN. Scholars view it as a comity issue, though one court has called it full faith and credit.

Senator COHEN. Senator Inouye raised the question which is going to be raised not only before the Senate but, I assume, before the House, when the bill is presented there. That is the question about the State contribution. I think that he was talking about clean hands versus dirty hands and to what extent the State should contribute.

The State of Maine takes the position that it has, in fact, contributed over the years some $20 to $25 million in assuming a responsibility that clearly did not belong to the State. Is it your judgment or the administration's that the State has, in fact, contributed over the years to the settlement of this particular case and that is the reason why you are endorsing this proposal for full Federal assumption of liability?

Secretary ANDRUS. Not for strictly that reason, Senator. Having been a former governor myself, I can understand why the State would take that position, but I think in all fairness that we have to recognize that there is a question as to the level of participation in the past.

It is true that in a previous proposal for resolution of this dispute, we agreed, the administration, to recognize past contributions as to State as paying their share. Again, attempting to bring it into this dispute, we would still remain in that posture, keeping in mind the question that I raised earlier about supplanting State support with Federal future support. The State of Maine has contributed in the past to her Indian citizens and will in the future in some of these areas.

We, again, support the Federal contribution for a resolution.

Senator COHEN. I would like to come back to section 6(g) of this particular act. It provides in part that, for Federal tax purposes, the

Maine tribes should be treated as federally recognized tribes. It also provides that, for Federal tax purposes, any land owned by the Maine Indians will be considered Federal reservations. This means that although the State of Maine may exact payments in lieu of taxes for the land, the Federal Government cannot. I have several questions for you pertaining to this particular provision.

One: How does this provision affect the income of Maine Indians who are living on the reservation or in Indian territory and who are working on the reservation or in the territory? What is the status of the income tax?

Secretary ANDRUS. They are living on the reservation-type lands and working there also.

Mr. VOLLMANN. My reading of the State Implementing Act is that for the most part all State laws would be applicable and that State income tax would have to be paid. If that is not what was agreed to by the parties, I guess we ought to know that and clarify that.

The Indians living on reservations across the country pay Federal income tax for income earned on reservations. So that issue is not raised here.

Senator COHEN. How does it affect the income of those who are living on either the reservation or in Indian territory but who earn their living elsewhere?

Mr. VOLLMANN. As far as income tax goes, that would not be affected. Now, the property in Indian territory and on the reservation would be subject to restrictions against alienation and would therefore not be subject to State ad valorem taxes. But that would be tribal property. It would not be owned by individuals except according to use and occupancy assignments made under tribal law.

Senator COHEN. How would it affect those Indians who neither live on the reservation nor in the territory but who work there and derive their income from there?

Mr. VOLLMANN. Again, my reading of the State Implementing Act is that they would still have to pay State income tax.

Senator COHEN. Finally, how does it affect the moneys generated by the tribes when acting in a business capacity?

Mr. VOLLMANN. My reading of the State Implementing Act is that the tribe would have to pay, except for ad valorem taxes on the land in Indian territory, all State taxes that would otherwise be applicable to it were it not an Indian tribe.

Senator COHEN. Under section 8(b) of the Federal act, the Federal Government is prohibited from considering funds accruing to the tribes under section 5 of the act—that is the section that establishes the trust fund and the Land Acquisition Fund—in awarding Federal grants and other kinds of aid.

My question is this. How does the Department view this particular provision?

In other words, you cannot take into account any moneys directed to the tribes or that the tribes received under this legislation in awarding any other Federal programs or grants.

Secretary ANDRUS. On pages 8 and 9 of our statement submitted for the record, we covered that. We questioned the same provision that you are questioning.

It could apply to any State payment including, for example, retirement benefits for Indians, State employees—there are many questions raised there.

Senator COHEN. What about revenue sharing?

Secretary ANDRUS. CETA, revenue sharing, any one of those—I think we need some clarification on that. That is what we are asking for.

Senator COHEN. I yield to my colleague, Senator Mitchell.

Senator MITCHELL. Mr. Secretary, thank you for your remarks. I have just a few questions.

First: I understand that you will submit in writing answers to each of the questions raised in the two documents I inserted in the record. That is an editorial in the Bangor News and a statement by the former Governor. Is that correct?

Secretary ANDRUS. That is correct.

Senator COHEN. Without objection, the record will remain open at this point for the purpose of inserting the additional material requested by Senator Mitchell.

[The material follows. Testimony resumes on p. 88.]

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 19 1980

Honorable John Melcher
Chairman, Select Committee on
Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

At the July 1, 1980 hearings before the Committee on S. 2829 Senator Mitchell asked us to respond to certain questions concerning the Indian land claim settlement which were raised in an editorial in the Bangor Daily News and in a March 23, 1980 statement by former Maine Governor James A. Longley. Many of the questions so raised are directed to State officials or are specifically concerned with the roles of State officials in connection with the negotiation of the land claim settlement. We believe these questions would be better answered by such officials. We will endeavor, nevertheless, to answer as many of the questions raised as possible.

One of the questions posed by the editorial asks, "If one of the major landsellers, Dead River Co., is prepared to sell much of its timber acreage to the Indians, isn't that highly suggestive of a government giveaway?" Appraisers and foresters from this Department have reviewed the appraisals done by the James W. Sewall Company of the lands which have been offered for sale by the Dead River Company and other landowners. It was our conclusion that the price being asked by those landowners for the lands offered for sale is a reasonable one.

The next question raised in the editorial asks, "There are reportedly 9,500 Indian cases yet to be resolved by Congress. When the state legislature ratifies this settlement offer, is it unwittingly establishing a precedent for the entire country?" The number used in the editorial refers to a figure used at the December 1979 oversight hearings of the Select Committee on the program to process Indian claims subject to the statute of limitations found at 28 U.S.C. §2415. That figure was never intended to refer to individual lawsuits. It refers only to claim inquiries or possible claims identified by the Bureau of Indian Affairs. Many of those possible claims have nothing to do with land at all, and most involve claims of individual Indians in the West. Indeed, hundreds of those claims have since been rejected by the Department. Only the eastern Indian land claims, of which this Department has identified only seven as credible (including the two in Maine), bear any similarity to the claims in Maine. Since we have viewed the Maine claims as the largest in the country, we do not view this legislative settlement proposal as a broad precedent for the settlement of any other claim.

The editorial next asks whether the jurisdictional arrangement between the State and the Tribes "will foster an unrelenting chain of legal disputes in the years ahead." We have examined the language of the Maine Implementing Act and of S. 2829, and have offered language by way of amendment to the Federal bill to clarify this jurisdictional relationship. Based on the understanding which State and tribal officials now have, we fully expect that this relationship will prove to be a workable one. Furthermore, our proposed amendment to the bill would give Congress' consent to future jurisdictional agreements between the State and the Tribes. Thus, there is flexibility built into this relationship. While we cannot guarantee that there will be no litigation over the meaning of the jurisdictional provisions of the State Act, we can say with certainty that without any agreement there would be a great deal of litigation. Indeed, only last year the State Supreme Court determined that it was the Federal Government, not the State Courts, which had felony jurisdiction over Indian crimes on the State's Indian reservations. The new jurisdictional agreement should go a long way toward insuring that there will be no future doubt regarding law enforcement authority over Indian lands within the State.

The one question raised by former Governor Longley which we believe we should address asks, "Should the Federal government or the Indian Tribes reimburse the State of Maine from any settlement they might receive for the millions of dollars the taxpayers of Maine have paid our Indian citizens due to the fact the Federal government in the past refused to recognize our Maine Indians as eligible for Federal assistance while still pouring millions of dollars into the western Indian reservations[?]" These payments have been taken into account in the settlement proposal now before the Congress. Unlike other eastern Indian land claim settlement proposals, in this one the State is not being asked to contribute any land or money to the settlement, though it is the State and its citizens who are the primary beneficiaries of the settlement. Without the settlement many millions of acres of land in the State will continue to be threatened by the claim, which we believe is a credible one. Yet, Maine is being credited for those past payments, and not being asked to contribute anything more than its cooperation to the settlement of the claims in Maine.

Again, many of the questions raised in the editorial and in former Governor Longley's statement raised issues which State officials, the Tribes, or the landowners who have offered to sell land to the Tribes should be better able to answer. If you, any other members of the Committee, or Senator Mitchell have any other questions, please do not hesitate to address them to us.

Sincerely,

Leslie D. Andrus

SECRETARY

Enclosure

FACT FINDING REPORT
CONCERNING
THE AVERAGE TIMBERLAND VALUE
IN MAINE

Prepared for

the Secretary of the Interior

Attn.: Mr. Tim Vollman

Solicitor's Office

Washington, D.C.

Prepared by

C.T. Eggen
Area Forester (Ret.)
Minneapolis Area Office

Robert A. Benzel
Area Appraiser
Eastern Area Office

Douglas B. Trosper
Appraiser
Billings Area Office

Walter B. Woodcock
Chief Appraiser
Central Office

U.S. DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

OFFICE OF TRUST RESPONSIBILITIES

JUNE, 1980

FACT FINDING REPORT

Concerning forest lands of the State of Maine to assist in the decisions of implementation in the settlement of claims of the Passamaquoddy and Penobscot Indian tribes.

Purpose: The purpose of this report is (1) to estimate the average market value of woodland for the State of Maine; and (2) to review the Sewall Appraisal Report as to reasonableness of value estimate of lands being considered for transfer.

General Data: The State of Maine contains about 20,000,000 acres of which about 17,749,000 acres are forest land. Of this, about 16,900,000 acres are commercial forest. A substantial area of the commercial forest land in the "unorganized" northern portion of the State is held in a unique system of forest land ownership. Some lands are held in "common and undivided interest". Several owners may each own fractional portions of a parcel of land undivided with no boundaries laid out and none of the owners can identify his portion on the ground. Few of these owners have need or desire to identify their portion. As far as is known, this system of land ownership is found nowhere else in the world.

The evolution of this system is an outgrowth of the early history of Maine. Most of what is now the State of Maine was first held by the Massachusetts Bay Company, later by the Province of Massachusetts, and then after the American Revolution by the Commonwealth of Massachusetts. In 1820, Maine, as one-half of the Missouri Compromise, separated from Massachusetts and became the twenty-third State of the Union.

In the early years of statehood, some 8,000,000 acres of unlocated lands were jointly owned by both Massachusetts and the State of Maine. Both states were hard pressed for revenues and sold these lands to investors and speculators. Because the owning of timberlands in such a remote region as northern Maine was considered a risky investment, many of these investors and speculators sought a means of spreading their risk.

To do this, as many as six individuals would purchase an unorganized township and hold it in common ownership and undivided interest. With this form of ownership, no division lines were drawn, and each of the owners held his personal undivided share of the total. Gains and losses from the ownership were also shared according to each owner's interest in the total.

This system has worked exceedingly well, and the cooperation between many diverse owners has generally been excellent. Portions of the land in the unorganized territory are still held in common and undivided ownerships.

A unique system of managing forest land developed as an outgrowth of the system in about 1840. Owners banded together to form united land-management systems. Under this system the manager essentially assumed the owner's role and made decisions regarding time, place, and volume of timber harvest. The proceeds from the sale, less operating costs, were then divided among the owners in accordance with each owner's share.

During the period from about 1850 to 1865 the Penobscot River was lined with saw mills and the area became one of the world's major producers of forest products.

The change in the movement of population began with the discovery of gold in California in 1849 and followed by the westward expansion after the Civil War.

The unique system of ownership and management was responsible to a great degree for the survival of commercial forest operations in the State and is still considered to be a good system.

Today the forest industries own 8,300,000 acres, 49 percent of Maine's commercial forest land. Pulp and paper companies own about 93 percent of this land, lumber companies own about 7 percent, and various other wood-using firms own less than 1 percent.

From 1959 to 1971 the forest industry holdings increased about 27 percent. From 1971 it is believed that the holdings have not changed significantly. According to information provided by the State Forest Service, 380 firms process the harvested timber of the State. Of the total, about 60% is processed by the following ten firms:

Firm	County	Mill Type	Vol./yr.(cords)
1. Diamond Int'l Corp.	Aroostook & Penobscot	chip & paper	120,000 or more
2. Great Northern Paper Company	Aroostook & Penobscot	chip pulp & paper	120,000 or more
3. Pinkham Lumber Co. division of Great Northern	Aroostook	long lumber	120,000 or more

Firm	County	Mill Type	Vol./yr. (cords)
4. International Paper Company	Franklin	pulp & paper	120,000 or more
5. St. Regis Paper Co.	Hancock & Penobscot	pulp & paper	120,000 or more
6. Boise Cascade	Oxford	pulp & paper	120,000 or more
7. Lincoln Pulp & Paper Co.	Penobscot	pulp & paper	120,000 or more
8. Scott Paper	Somerset	pulp & paper	120,000 or more
9. Georgia Pacific	Washington	pulp & paper	120,000 or more
10. Pejepscot division of Hearst Corp.	Sagadahoc	pulp & paper	20-40,000

Waterways were an important factor in the early development of the forest industries of the area. Ponds and lakes, linked by streams and rivers, gave excellent access to good seaports in the estuaries of the major rivers. The Kennebec and Androscoggin Rivers provided access to the southwest portion of the State. The Penobscot River offered access to central and eastern sections and the Allagash and Saint John, flowing north and east, provided access to the mills and seaports of Canada. Waterways were later supplemented with railroads until the rather recent development of roads and motor transport which support the present forest products industries. The southern one-third of the State is well served by a grid of primary and secondary roads. The northern two-thirds of the State is served with a grid of secondary and private roads to serve the area. Trucking costs average about $1.50 per load mile or fifteen cents per cord

mile or more. The cost of transport from the more distant sites of the northwest portion of the State is a critical factor as to the marketability of some forest products. Some persons contacted have indicated that 70 to 80 miles are about the maximum economic distance for trucking with exceptions of some hardwood products which afford a greater haul distance.

Prior to 1967 land use controls were essentially absent within the State. Since then, various laws have been enacted enabling various State agencies to develop regulations to control land use. This has affected the management and transfer of timber land. One often mentioned agency is the Maine Land Use Regulation Commission (LURC) which was organized in October, 1970 to direct land uses within the unorganized township of Maine. In 1971 a statewide subdivision law was enacted which defined a subdivision as a division of three or more lots within any one contiguous ownership over a five-year period. This act was amended in 1975 to restrict the size to lots under 40 acres. Zoning Districts have been established by LURC for all unorganized township. Basic district categories include management, protection and development. The more restrictive regulations are applicable to protection districts. Other statewide environmental laws include the mandatory Shoreland Zoning and Subdivision Control Act of June, 1973 which requires that all bodies of water (rivers, ponds, or saltwater bodies) 10 acres or larger to include a 250 foot shoreland zoning district around the perimeter of the water body. In protective zoning, harvesting of timber and road construction are limited. Under the P-3 Shoreland District, timber

harvesting is limited to 40% over a 10-year period. Other protective districts regulate timber harvest and road construction by permits. Over the years since LURC was enacted by State Law, it has developed a comprehensive land use plan for the unorganized townships published in December, 1975, for the purpose of public review and comment. This has resulted in some modifications of interim zoning policies based on physical, economic and historic factors. One of the more notable effects of the State laws to protect the environment is the abolishment of transportation of logs by flotation on streams or lakes.

The species of trees in Maine are usually quoted on the basis of softwood and hardwood trees. Much of the timber stands are mixed with the higher percentage of softwood being located generally in the south and southwestern areas of the State, and the hardwoods in the central and eastern portions. It is noted that both types can be found throughout the State. The softwoods generally include white pine, red pine, hemlock species, and the hardwoods include maple, white birch, and yellow birch. According to data provided in a 1971 U.S. D.A. publication, nine-tenths of the commercial forest is fully stocked. This includes rough and rotten trees. When the rough and rotten trees are excluded, the stocking rate drops to six-tenths. It is significant to note that the rough and rotten trees are used by the pulpwood industry. An estimated 38 percent (6,143,000 acres) is saw timber, capable of producing an average of 3,800 board feet per acre. Pole timber accounts for 31 percent (5,340,000 acres) capable of providing about 18 cords per acre. The average volume of timber produced on an acre of the State timberland is usually quoted at 16 cords per acre.

This includes all trees 5 inches in diameter DBH or larger. Many areas with below average volumes are of young trees not ready for the market. It is also interesting to note that much of the timberlands were cut over during the last century and the early part of this century and are now being cut over again.

The forest land of the State also is important to the multi-million-dollar tourist industry. Maine woodlands attract recreationists from outside, as well as those native to the State. The State forest, as well as commercial camping sites, are usually filled with the outdoor vacationer. This industry has had an impact on the way the State's timberlands are sold. In recent years, as the per acre sale price has increased, an increment of the value of the land is considered for recreational as well as timber use.

ESTIMATION OF THE AVERAGE MARKET VALUE OF TIMBERLAND

Definition: In this study, average value is defined as the mean value as indicated by total dollars resulting from sales divided by the total acres of timberland sold. The group of sales data used hopefully will, to the degree possible, include all types and volumes of timber, mixed and pure stands of soft and hard woods, large, medium, and small-sized tracts, and parcels having components of value other than timber such as recreation potential.

Methodology: To arrive at an estimate of average timberland value, attempts were made to gather a large group of Maine timberland sales. This effort resulted in 50 sales. Of this number, 24 sales were screened from the total and analyzed for the purpose of this study.

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It was learned during the course of gathering sales that the Division of Taxation for the State has on record all sales which have occurred. An effort to obtain this information was unsuccessful, due to a State law protecting the confidentiality of the information provided by the sellers. The details of the sales data were not provided for this study. However, the Division of Taxation did provide a summary analysis of 427 timberland sales to obtain an average sale price per acre for the State's use in taxation of timberland. Excluded from consideration by the State were all properties with lake frontage. This data was also considered as an indication of average value, even though some consideration for the lake frontage must be made.

To give added support for the data from actual sales and the summary analysis provided by the State, an estimate of value for an average timberland acre was made. This estimate was arrived at by a detailed timber analysis considering average volumes and values of each species and product, based on a U.S. Department of Agriculture publication of statewide forest inventory data.

Comparable Sales Analysis: The screening of sales data gathered results in 24 sales useful for this study. Reference is made to Table 1 on page 11. Factors for adjustments are derived from information gathered during confirmation of the data.

Location: Items considered under this factor relate to distance to markets and roads. These items were often mentioned during confirmation. In this data a

consistent difference due to location could not be identified, suggesting that the mix of the sales was such that this item was offset. Therefore, no adjustment is required for location.

Size: Typically, as size increases the unit value decreases. It was found during the course of gathering this data that the buyer will pay a higher price for larger units which are more manageable. The smaller scattered tracts are typically considered less valuable because of the difficulty of management. In cases where small parcels are contiguous to lands owned by a particular buyer, a higher price is typically paid. This group of sales ranged in size from 200 to 30,000 acres except for one sale which was 400,000 acres. This large sale being a very desirable tract has a great influence on the average price indicated by this study. The good mix of large and small sales in study offsets any adjustment for size.

Time: Prior to the early 1970's, prices for timberland in the State were generally stable and usually low. This can be partially attributed to a discounting method of value timber used by the timber industry. From the early 1970's to the mid-1970's prices showed a rather sharp increase to levels close to what is now being experienced. Essentially, little or no increase is evident from 1978 to the present. An adjustment of 5% per annum was made on all sales prior to 1978 and no adjustment for sales after 1978.

Volume: A variation in the volume from an average quoted in the market at 16 cords per acre is recognized. Some quotes of the average were as low as 14 and others were as high as 18. Local U.S. Forest Service data supports an average of 16 cords per acre. The $10 per cord adjustment was abstracted from the sales data and supported by quotes from market.

The Average Value Per Acre as Indicated by Sales:

a) The weighted average of all sales before adjustment

$$\frac{\text{Total dollars of all sales}}{\text{Total acres of all sales}}: \quad \frac{\$105,190,711}{554,430} = \$190$$

This indication of average value per acre is considered high since the one sale of 400,000 acres represents 75% of the total acreage in the sample. It is a better than average tract in terms of volume, location and good management.

b) The weighted average before adjustment less large sale

$$\frac{\text{Total dollars of these sales}}{\text{Total acres of these sales}}: \quad \frac{\$20,190,711}{154,430} = \$131$$

This group of sales, without adjustment, represents the less desirable timberland from the standpoint of size, timber, volume and management.

c) The weighted average of all sales after adjustment

$$\frac{\text{Total adjusted sale Dollars of all sales}}{\text{Total acres of all sales}}: \quad \frac{\$95,383,169}{554,430} = \$172$$

This indication is the result of adjusting for time and timber, as discussed earlier. The influence of the large sale has been reduced in this case.

TABLE I

COMPARABLE SALES ANALYSIS

Sale	#Acres	Sale Price/Acre	Total Sale Price	Excluding Sale #1	Adjusted for Time	Adjusted for Volume	Adjusted Sale Price	Excluding Sale #1
1	400,000	210	85,000,000 **		210	180	72,000,000	
2	7,936	105	834,000		105	135	1,071,360	
3	611	139	85,000		139	159	97,149	
4	700	205	143,500		205	145	101,500	
5	960	78	74,880		78	118	113,280	
6	2,300	94	216,200		94	124	285,200	
7	230	65	15,000		65	145	33,350	
8	1,300	100	130,000		100	100	130,000	
9	227	143	32,450		143	153	34,731	
10	681	100	68,100		100	170	115,770	
11	215	145	34,000		145	165	35,475	
12	4,118	90	360,000		90	180	741,240	
13	18,000	104	1,877,000		135	145	2,610,000	
14	30,630	156	4,768,845		172	152	4,655,760	
* 17	19,331	140	2,700,000		154	94	1,817,114	
18	5,200	210	1,090,000		221	271	1,409,200	
19	707	124	88,000		130	230	162,610	
20	880	115	101,200		115	120	105,600	
21	27,987	125	3,500,000		131	156	4,365,972	
22	12,000	104	1,250,000		125	200	2,400,000	
23	2,350	128	300,000		141	186	437,100	
24	227	130	29,510		130	110	24,970	
25	17,236	140	2,400,000		147	147	2,533,692	
26	604	154	93,016		169	169	102,096	
	554,430	3,104	105,190,711	20,190,711	3,244	3,754	95,383,169	23,383,169

* Sale 15 excluded due to lack of information.
Sale 16 excluded since it is an offer.

** This sale was not completed at time of confirmation. It is generally known and local appraisers indicated that the details were essentially complete and there was agreement as to final price.

d) The weighted average after adjustment excluding lare sale:

$$\frac{\text{Total adjusted sales dollars}}{\text{Total acres less large sale}}: \quad \frac{\$23,383,169}{154,430} = \$150$$

This indication shows the result of adjusting the smaller sales upward for time and timber volume, without the influence of the largest sale.

3) The simple average of all sales after adjustment:

$$\frac{\text{Total adjusted unit values off all sales}}{\text{Total number of sales}}: \quad \frac{\$3,754}{24} = \$156$$

This indication ignores size and thereby reduces the influence of larger sales.

The range in average value as indicated by the sales data is from $130 to $190 per acre before consideration of adjustment. This range is narrowed to $150 to $172 after adjustment. It is concluded that the central tendency of this data as analyzed is $160 per acre and is an indication of the average timberland value.

Average Sale of Timberland by State Data: The State Tax Division provided the following information from a study made during the period of 6-76 to 6-79. This data is summarized in the following table.

AVERAGE PRICES OF FOREST LAND SALES

County	Number of Sales	Average Price Per Acre
Androscoggin	6	$178
Aroostook	83	100
Cumberland	12	255
Franklin	31	125
Hancock	26	131
Kennebec	11	168
Knox	6	148
Oxford	41	121
Penobscot	50	121
Piscataquis	35	134
Somerset	39	111
Sagadhoc	7	167
Waldo	33	175

Washington	33	89
York	14	143

Total acres: 112,800
Total Amount of Sales: $14,210,055
Average Sale Price Per Acre: $126
Total Number of Parcels: 443
Average Price Per Parcel: $32,077
Average Size Per Parcel: 255 acres

The average price per acre of $126 is considered low primarily due to the fact that all lake frontage sales were excluded from consideration. Had this data been included, it is likely that average value would be somewhat higher.

Average Value of Timberland by Analysis of Timber Data: To arrive at an indication of average value of timberland an analysis of timber data from various State agencies and publications was made. Items considered were stumpage prices for the spring of 1980, volume and species, and types of products manufactured. This data is provided in the addenda of the report in the table headed, "Determination of Average Forestland Acre Timber Volume and Value." A summary of this data is as follows:

Pulpwood:

Upper stems of saw timber trees	1374.2 MM. cu. ft.
Pole timber	12193.8 MM. cu. ft.
Rough trees	1389.6 MM. cu. ft.
Total	14930.6 MM. cu. ft.

14930.6 MM. cu. ft. ÷ 85 cu. ft./cord = 175.65 MM

175.65 MM. cords ÷ 16894.3 M com. timber acres =

10.4 cords per average timber acre.

10.4 cords x $7.61 per cord = $79.16 per acre pulpwood

Saw timber:

Total soft wood	23455.9 MMBF
Total hard wood	11063.8 MMBF
Total volume	34519.7 MMBF

34519.7 MMBF ÷ 16894.3 M acre commercial timber

= 2.043 MBF per acre

2.043 MBF x 48.91/MBF = $99.93 per acre

Estimated value of timber component:

Pulpwood	$ 79.16
Saw Timber	99.93
Total per acre	$179.09

Typically, this estimate of the timber component is discounted at time of purchase since dollars will be returned over a period of years, dictated by volume of annual timber sales. The most quoted discount rate is 35%. This indicates an estimated timber component value, as if purchased now, of

$179 x 65% (100%-35%) = $116.35 called $116 per acre.

The value of bare land must be added to the timber component to reflect the total average price per acre. Three bare land sales acquired during the search for data are included in the sales data provided in the addenda. The range indicated by these sales is $43 to $55 per acre. Most often quoted during the data search was $50 per acre. When $50 per acre is added to the discounted value of timber an indication for the average timber land is $166 per acre.

This indication is supported by the "rule of thumb" used by buyers and sellers, quoted during the search for data:

Average Volume per acre of 16 cords x $11.00 per cord =	$176
Discounted by 35%	- 62
Add bare land value	+ 50
Indicated value per acre	$164

Summary of methods used:

The three methods resulted in the following indication of the average value per acre for Maine timberland:

Actual sales	$160 per acre
State data	126 per acre
Timber analysis	166 per acre

The actual sales data and timber analysis methods are considered reliable. The State data gives added weight to these indications when its additional value for lake frontage or other development potential is added. It is reasoned that in the minds of most buyers (based on the average price per cord and the average volume per acre) $165 per acre is closest to an average value for the State's timberland under present marketing conditions.

REVIEW OF THE SEWALL ESTIMATES OF VALUES FOR PROPERTIES OFFERED

An inspection of the properties, offered by various timber firms for which estimated values were provided by James W. Sewall Company, was made by use of high winged twin-engine Cessna airplane on June 15, 1980. This type of aircraft was used to give optimum viewing potential during flight from the lowest possible safe altitude. By flying, it was possible to see all of the properties which would have been impossible by any other means. The inspection included all members of the task force (Woodcock, Trosper, Eggen, and Benzel). A trip plan was charted on a State road map along with location of offered properties and other known properties which have been sold. This enabled the team to identify to the best possible extent from the air each of the properties inspected. Listed as objectives during flight were readings as to location of property, topographic features, internal and external access, timber types and volumes, and potential for uses other than timber. It was concluded by members of the team that the description of each of the properties in the Sewall report were consistent with what could be seen from the air.

The list of potential sellers acquired from the Deputy Attorney General, John Patterson, is provided on the following page. This list includes the name of each potential seller as the owner, the acreage, the total (gross) price, and the price per acre.

LIST OF LANDS UNDER OPTION IN CONNECTION WITH THE

SETTLEMENT OF THE MAINE INDIAN LAND CLAIMS

OWNER	ACREAGE	GROSS PRICE	PRICE PER ACRE
Dead River Company	129,764	24,400,000	$188.03
Bertrand Tackeff	5,500	1,210,000	220.00
Diamond International	2,408	413,996	171.92
Prentiss & Carlisle	2,885	800,000	277.20
Georgia Pacific	3,834	479,250	125.00
Great Northern Nekoosa	29,010	4,492,150	154.84
Heirs of David Pingree	7,392	1,862,784	252.00
Webber	2,672	355,376	133.00
Scott Paper Company	4,200	900,000	214.28
International Paper Company	7,949	1,457,840	183.39
Cassidy Heirs	38,226	6,199,092	162.16
Unidentified Passamaquoddy/ Penobscot Lands	61,159	11,008,620	180.00
Unidentified Maliseet Lands	5,000	900,000	180.00
TOTAL:	300,000	54,479,180	$181.59

COMMENTS:

Dead River Company:

This property is located in the eastern part of the State near Indian lands in Indian Township. The above list indicates a total acreage of 129764. Mr. Pierce of the James W. Sewall Company indicates in his appraisal that nearly 20,000 (19859) acres are water. It is also noted that about 85000 acres are in a solid block and the remaining approximately 25000 acres are scattered throughout central Maine. The volume of timber for this property is rated by the Sewall report as being above average at 19 cords per acre and valued at $200/ac. This value applies to the 109,095 acres of timber land indicating a total value of $21,981,000 as opposed to the offering price of $24,400,000. This property can be compared with the large 400,000 acre sale property at a volume of 18 to 20 cords/ac. and a sale price of $210/acre.

BERTRAND TACKEFF

This property is located in the eastern part of Maine near the ocean. The total acreage is 5736 acres of which 50% is said to be good blueberry land. This type of land does not fit in the general description of Maine timber land. The offering price is below prices quoted for good blueberry land. It is also noted that local contacts indicate that blueberries require good management, the lack of which results in less desirable or undesirable land. It was also noted that this land is associated with a parcel ready for subdivision development. It is concluded that a price of $220 per acre could be either low or high, depending on its condition, location, and potential.

Diamond International (Lakeview Plantation and Argyle)

There are two tracts in this property. One tract is located within 25 miles of Lincoln where there are mills, and the other tract is located just north of Old Town, close to mills. The timber volume on these tracts are average and above and well located as to roads and mills. There are about 400 acres of lake area. The offering, according to the Sewall report, is based on $180 per acre for 809 acres near Lakeview and $167 for the 1599 acres in the Argyle tract. If the 400 acres of lake area are excluded, the value would be as follows:

809 acres @ $180/acre	= $145620
1199 acres @ $167/acre	= 200233
400 acres lake nil/acre	= -0-
2408 acres @ 143.63/ac.	= $345853

Prentiss and Carlisle (T9SD Donnell Pond)

This property is located about 10 miles east of Ellsworth. This tract is 2866 acres in size. According to Sewall, it has a large percentage of lake area. It has a low rating as to timber volume attributable to a heavy harvest some 15 years ago. Not considered a good buy as timberland.

Georgia Pacific (Indian Township, T1R1 and Perry)

This company is offering 3877 acres comprised of several parcels. Most of the land is located in Indian township close to one of the Indian communities. It is noted that this area was cut some 15 years ago. The timber value is below average with a high percentage of regeneration. It is within 25 miles of a big pulpmill and a sawmill in Woodland. Sewall's estimate was near $165 per acre and

considers the offering price of $125 per acre a steal. It is questionable as to "a steal" considering the low timber volume.

Great Northern Nekoosa (Holeb, Lowelltown and Debsconeag Deadwater)

This 29010 acre property consists of 2813 acre tract near Debsconeag and 26197 acres in the Holeb-Lowelltown tract. This land is located in the western portion of the State in a generally good timber area close to Canadian mills. Our information indicates a below average timber volume, probably due to spotty timber stands. Sewall indicates the offering price $155/acre is a good buy. That offer is below the estimate timber value of $165/acre according to our study.

David Pingree (W 1/2 T6R8 WELS)

This 7392 acre parcel is located more than 50 miles north of Millinocket near the center of the State. It adjoins Baxter State Park on its northeast corner. It has frontage on Grand Lake Matagamon. This is in a good timber area but is somewhat removed from mills. Some value can be attributed to the lake frontage; however, the remote location is likely to have a bearing.

Sewall appraisal indicates 24 cords/acre. Using the local rule of thumb, the following value is indicated:

24 cords @ $11/cord =	$286
Less 35% discount =	100
Indicated value of timber	186
Add bare land @	50
Indicated value	236/acre
Sewall's estimate	$220/acre

Webber Family (Alton)

This 2600 acre tract is located within 10 miles of Old Town, a mill town. The volume is below average. The timber is about 80% softwood. It appears the offering price of $133/acre is reasonable.

Scott Paper Co. (Sugar Island in Moosehead Lake)

This 4200 acre tract is located in the central-western part of the State. This tract has access by boat during the warm season of the year and by ice during the cold season, limiting its accessibility. This island was cut heavily 15 years ago. Since then, State laws restrict transfer of logs through the ice season. The lake shore around the island would be adaptable to recreation development. There is some question as to the feasibility for lake development due to remote location. Sewall's comments that dollars could be better spent elsewhere for forest land are well received.

International Paper Co. (Plantation No. 14 and Argyle)

This offer is for two parcels of land. The Argyle land is located about 10 miles north of Old Town and comprises one or more smaller parcels, totaling 4600 acres. (According to Sewall), these tracts have an estimated timber volume of 13 cords per acre of softwood timber. It was logged 10 years ago, leaving a well-stocked stand of pulpwood. Sewall estimates this land at $150/acre. The other land is located near Dennysville. It is comprised of two parcels totaling 3,300 acres with a timber volume of close to 22 cords per acre. Sewall values this at $160 per acre, which seems low considering the volume, access, and location.

Cassidy Heirs (T39 and T3ND)

This land has not been sufficiently identified for a reading as to location. It is located generally south of Lincoln and north and east of Old Town. No further comment is made on this property due to the uncertainty of what is to be acquired.

The Unidentified Tracts: No comment is offered on these tracts due to a lack of information on the location.

The total asking price for the offered land is $54,500,000 rounded for 300,000 acres. This includes 66159 acres of unidentified land offered at $180 per acre. It also includes an estimated 21400 acres of lake area. Based on Sewall's estimates of dry land acreage and value, plus the unidentified land, the total asking price is $50,770,000. This indicates an average price of $182 per acre for 278600 dry acres.

In discussing the methods used by Leonard Pierce of James W. Sewall Company to develop the evaluations shown for the eleven tracts listed in his letter of April 21, 1980, to Secretary Andrus, Mr. Pierce advised that one tract, number 6, Dead River tree farm, has been cruised with systematic ground sampling procedures. The other tracts were described and evaluated by observation of the aerial photography with some ground visit observations and with Mr. Pierce's extensive background and knowledge of those locations. With the consent of the Dead River Company, Mr. Pierce made available three pages of the cruise report, consisting of the timber value calculation and including the derivation of land values. The cruise was made in 1978 by remeasuring 296 permanent random plots. Acreage of forest

types were from a 1973 inventory of these lands by James W. Sewall Company. The method of developing values for general average purposes and for arriving at total program estimates is reasonable when accomplished by an expert of Mr. Pierce's background, experience and general professional capacity. It is recommended that the actual purchase program requires more specific forest stand and productivity measures, more accurate area measurements, and increased analysis of applicability to Indian management program goals.

CONCLUSIONS:

A) The Average Value Per Acre for Maine Timberland:

The indication of the average value by this study is $165 per acre. This indication is supported by actual sales data, information and data provided by State Tax Division, and by an analysis of timber volume, species and products. The sales data were of a good mix as to size, timber types and timber volume, and considered a good representation of timber sales even though the sample is small.

Generally speaking, the market range is 20%. Seller attitudes range in the upper 10% and buyer attitudes in the lower 10%. This would indicate a negotiating range of $150 to $180 per acre considering an average tract of timber.

B) Reasonableness of the Sewall Appraisal of Offered Lands:

The average value of the parcels offered, based on an analysis by James W. Sewall Company, dated 4/20/80, is $182 excluding the areas in lake and including the unidentified land offered. This average value is only slightly above the average indicated by this study. This can be attributed to overall better than average tracts being offered.

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Signatures:

Prepared by:

June 18, 1980
date

Robert A. Benzel
Robert A. Benzel

June 18, 1980
date

C.T. Eggen
C.T. Eggen

June 18, 1980
date

Douglas B. Trosper
Douglas B. Trosper

Reviewed by:

June 18, 1980
date

Walter B. Woodcock
Walter B. Woodcock

A P P E N D I X

DETERMINATION OF AVERAGE FOREST LAND ACRE TIMBER VOLUME AND VALUE

Sources: "The Timber Resources of Maine," USDA Forest Service Resource Bulletins NE-26, 1972

Bulletins NE-26, 1972

"Stumpage Prices, Spring, 1980, Utilization & Marketing Division, Maine Forest Service."

Total Stand Volume 22,643.0 MM cu.ft. (excludes rotten trees) Table 14.

Sawlog Volume 7712.4 MM cu.ft. (Table 13), 34,519.7 MMBF (Table 15).

Pulpwood Volume 14930.6 MM cu.ft., includes Pole Timber, Rough Trees, and Upper Stems of Saw Timber Trees.

Species distribution for each Size Class from Table 14.

	Sawlogs (1)				Pulpwood (2)			
Species	MMBF	x Rate/MBF Stumpage =	Total Value $M		MM cu.ft.=	MMCords	Stump. Rt/cd.	Tot.Val. $M
White Pine	4,093.1	$64.	261,958.4		630.4	7.42	4.75	35,245.
White Spruce	1,276.0	50.	63,800.0		584.9	6.88	9.25	63,640.
Red Spruce	8,136.8	50.	406,840.0		3,011.8	35.43	9.25	327,728.
Balsam Fir	4,869.4	49.	238,600.6		4,071.3	47.90	9.25	443,075.
Hemlock	2,598.9	31.	80,565.9		692.9	8.15	6.25	50,938.
N. White Cedar	2,242.4	29.	65,029.6		934.0	10.99	2.50	27,475.
Other Soft Woods	239.3	29.	6,939.7		68.4	.80	4.75	3,800.
Total Soft Wood	23,455.9		1,123,734.2		117.57			951,901.
N. Red Oak	661.6	88.	58,220.8		189.2	2.23	6.75	15,053.
Yellow Birch	1,596.5	63.	100,579.5		511.9	6.02	6.75	40,635.
White Birch	671.6	63.	42,310.8		646.7	7.61	6.75	51,444.
Sugar Maple	3,050.3	60.	183,018.0		722.8	8.50	6.75	56,950.
Soft Maples	2,238.2	30.	67,146.0		1,311.7	15.47	6.75	104,220.
Beech	1,022.3	31.	31,691.3		530.7	6.24	6.75	42,182.

Species	MMBF	X Stumpage =	$M	MM cu. ft. =	MM Cords	Stump. Rt/cd.	Total Value $M
Ash	520.0	$83.	43,160.0	203.1	2.39	6.75	16,132.
Aspen	751.2	29.	21,784.8	532.4	6.26	5.75	36,000.
Other Hardwoods	552.1	30.	16,563.0	288.4	3.39	6.75	22.882.
TOTAL HARDWOOD	11,063.8		564,474.2	4,936.9	58.08		385,498.
(3) TOTAL STAND	34,519.7		1,688,208.4	14,930.6	175.65		1,337,399.
PER AVER. ACRE	2,043. B.F.		$99.93		10.40 Cds.		$79.16

Total Value of Timber = 179.09/acre

Foot notes:

(1) Species proportion in Saw timber from Table 14.

(2) Pulpwood components:

Upper Stem of Saw timber Trees = 1,347.2 MM cu. ft.

Pole timber Trees = 12,193.8 MM cu. ft.

Rough Trees = 1,389.6 MM cu. ft.

14,930.6 ÷ 85 = 175.65 MM Cords.

(3) Total Commercial Forest Acreage = 16, 894.3 M

Total Timber Volume ÷ by Total Acreage = 2043 BF and 10.40 Cords Per Acre.

Total Value (BF + Cords) for All Commercial Forest $3,025,607.4 M.

SUMMARY OF SALES DATA

No.	Parties/ Remarks	Date	Amount	Acres	$/acre	Volume Cord/AC	Timber Type	Location from Mill Access	County/ Township
1	Brown to (name withheld) Verified with Sewall Co. Sale not yet closed. Some access problems not a factor.	6/80	$85,000,000	400,000	$210	18-20	35%	50 Average	Franklin/ Oxford Several townships
2	Griscom Heirs to Boise Cascade. Verified with P & C bk. 968/147. 6,630 Acres @ 145/or 1,306 Acres swamp and non-timber.	8/78	834,000	7,936	105	13	Mixed	50 Average	Franklin/ Madrid
3	Cole's Express to Prentiss & Carlisle. No water frontage. Close to P&C operation. Good location & access.	1/78	85,000	611	139	14	40% soft 35% mixed 25% hard	50 Average	Penobscot Enfield twp.
4	Etna Foster to P&C. Verified w/ P&C Considered good buy by P&C. Close to their operation.	5/80	143,500	700	205	26	60% soft 25% mixed 15% hard	25 Average	Penobscot Greenfiel
5	Michaud to Q. Smart No legal access.	78	74,880	960	78	12	65% soft 35% hard	25 Average	Aroostook Madawaska
6	CitiBank of N.Y. to Herb Haynes. Verified by Grantee. Some duress. *Buyer found more than expected. Actual volume close to 18. Frontage on Shin Pond.	1978	216,200	2,300	94	13*	Mixed 50+% hard	25 Average	Aroostook Madawaska

No.	Parties/ Remarks	Date	Amount	Acres	$/acre	Volume Cord/AC	Timber Type	Location from Mill Access	County/ Township
7	Baker to Pierce	78 or 70	$15,000	230	65	8	75% hard	25 Good	Penobscot/ Carmel
8	Thompson to Huber Contiguous to grantor. No legal access. Considered a good bargain.	7/28/78	130,000	1,300	100	16	Mixed 50/50	50 Poor	Hancock/ T7SD
9	Neimi to Herb Haynes. Verified w/ Haynes. Sale contiguous to buyer's land.	78 or 79	32,460	227	143	15	Mixed 50+% hard	25 Aver.	Penobscot/ Lee
10	Smart to Internat'l Paper. Diamond adjoins--would not make offer.	78 or 79	68,100	681	100	9	75% hard	50	Penobscot/ LaGrange
11	Morrison to Davis *Timber cut. Development potential	78 or 79	34,000	215	145	13-14		25 Good	Penobscot/ Clifton
12	J.M. Pierce to Unknown. Verified w/ grantor. *Clear cut 1958. Sewall value $70/ac Timber. $30/ ac lake frontage.	5/80	360,000	4,118	90	7*	Soft	25 Poor	Aroostook/ T16R5
13	Franconia to Wagner. Verified by Al Childs Near Lyme,N.H. Some merchantable timber.	1972	1,877,000	18,000	104	15	Mixed	Aver.	N.H.
14	Allied Chemicals to Huber. w/Mr. Huber by Norman Gosline. Diamond Lbr. Co. Bid 150; contiguous.	3/76	4,768,845	30,630	156	18 Good	Mixed	25 Good	Piscataquis, T5&6R9

No.	Parties/ Remarks	Date	Amount	Acres	$/acre	Volume Cord/AC	Timber Type	Location from Mill Access	County/ Township
15	Percival to Boise Cascade. Recreational potential.	10/78	55,000	331	166		Hard		Oxford/ Andover W. surplus
16	Name withheld, Webb Land Co. (offer) Recreational potential. Young timber growth.	10/78	211,800	1,059	200	10	Hard		Franklin/ Phillips
17	Spaulding to Oxford Paper to (now Boise Cascade). Verified w/ grantee by Norman Gosline. Bk. 503, p. 73. Contiguous.	10/76	2,700,000	19,331	140	24 Good	Mixed 50/50	50 Good	Franklin/ Land twp. T2R3
18	B.C. to Ficovan N.V. Corp. Verified w/ grantor by Norman Gosline. Bk. 1303, p. 501.	3/77	1,090,000	5,200	210	Low immature growth	Mixed	Good	Grafton,NH, Piermont Warren Benton twp:
19	Bolduc to Boise Cascade. Verified w/B.C. by Norman Gosline. Some steep and swampy areas. Close to grantee.	12/77	88,000	707	124	6	Mixed 50/50	25 Good	Oxford/ Rumford
20	Brown to International Paper. Contiguous to I.P. No access.	78-79	101,200	880	115	15-16	Soft	25 Poor	Penobscot/ La Grange
21	Rockwell Internat'l Corp. to Wagner Woodlands Co. Verified w/ Al Childs. Bk. 1325, p. 115. Productive, but cut over in some portions. Scattered parcels.	11/77	$3,500.000	27,987	125	13-14	Hard good	Good	N.H

No.	Parties/ Remarks	Date	Amount	Acres	$/acre	Volume Cord/AC	Timber Type	Location from Mill Access	County/ Township
22	Timberlands, Inc. to Rowe & Pierce Co. Verified w/Al Childs Bk. 843, p. 323. Cut 25 yrs. ago. Wet and marshy. 20% timber rights retained.	7/74	1,250,000	12,000+	104.15	8-9 Low	Mixed	50	Somerset/ W. Forks
23	Frank Winants Estate to Burton Packard. Verified w/Al Childs Bk. 446, p. 451. Recreational potential. *19 cords/acre w/40% of land inoperable.	9/76	300,000	2,350	128	*11-12	27% soft 53% mixed 17% hard	75 Poor	Piscataquis/ Lobster
24	Hardison to Huber. Verified w/Chas. Sleight, Huber Corp. No legal access. 2 tracts.	4/9/79	29,510	227	130	18	Mixed	75 Poor	Aroostook/ Hamlin, Wade
25	Lincoln Associates to J.M. Huber Co. Verified by IRS Glendenning. Bk. 1320/228 and 466/121. Purchased 92.3% of common and undivided 17, 982-746=17,236 acres.	10/77	2,400,000	17,236	140*	16	Soft	Aver.	Aroostook/ T14R16
26	Gerald & Ladd, et al to P&C and McCrills. Verified by IRS Glendenning. Purchased 1/3 of common undivided interest or 604 acres.	12/76	93,016	604	154	16			

No.	Parties/ Remarks	Date	Amount	Acres	$/acre	Volume Cords/AC	Timber Type	Location from Mill Access	County/ Township
27	Chas. Murray to St. Croix (division of G. Pacific). Book 931/275. Verified IRS Glendenning. Purchased as bare land with tree growth potential for planting	6/76		183	55	Bare land			Washington/ Baileyville
28	Ray Higgins to St. Croix. Book 927/ 291. Purchased for replanting. 50 acres in swamp.	6/76		232	43	Bare land			Washington/ T14ED
29	T.S. Bird to St. Croix. Purchased for replanting.	5/76		1,466	45	Bare land			Washington/ Westerly & Northfield

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LIST OF CONTACTS

John Ribe, International Paper

Forest Nelson, Prentiss and Carlisle

Charles Sleight, Huber Corporation

Leonard Pierce, James W. Sewall Company

Ted Tryon, James W. Sewall Company

Walter Glendenning, Internal Revenue Service

Edward von Ohlsen, Internal Revenue Service

James Norris, State Bureau of Taxation, Property Tax Division

John Patterson, Office of the Attorney General

Jeff Pidot, Land Use Regulation Commission

George Bourassa, State Forestry Department

Rod Young, U.S. Forest Service

Burton Blum, Northeast Forest Experiment Station

Joe Barnard, Northeast Forest Experiment Station

Lloyd Ireland, Bureau of Public Land

Thomas Turren, Attorney

John Stowell, Webb Land Company

John Pervear, Fee Appraiser

Norman Gosline, Fee Appraiser

Al Childs, Fee Appraiser

Boise Cascade Corporation

Great Northern Paper Company

St. Regis Paper Company

Georgia-Pacific Corporation

Scott Paper Company

Diamond International Paper Company

Dead River Company

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2. "Stumpage Prices, Spring, 1980," Utilization and Marketing Division, Maine Forest Service, Augusta, Maine.

3. "Maine's Secondary Wood Industry--A Utilization Summary and Directory," Maine Department of Conservation, Augusta, Maine.

4. Maine Primary Forest Products Manufacturer's List, Maine Forest Service.

Senator MITCHELL. Thank you.

Second: You mentioned the question you had regarding the effectiveness of the legislation as now written in extinguishing claims. That is, of course, the very purpose of this settlement—an important part of it.

I believe the way it was left was that your counsel would be working with counsel for the tribes on that. I would like to ask in addition to that, if you would have the Solicitor of Interior, or whatever counsel you designate, submit to the committee and to myself and Senator Cohen a legal opinion confirming that whatever language is ultimately agreed upon does, in fact, extinguish the claims fully and finally so that the Congress can at least be satisfied that the attorney for the Government agency most directly involved is satisfied that the claims are extinguished.

Would you be able to do that?

Secretary ANDRUS. Yes, Senator, we can do that; with the understanding, of course, that the language on the floor or a floor amendment could change that. But as the final one prepared, as we understand it, as of that date, we will supply it.

Senator COHEN. Without objection, the record will remain open for the purpose of inserting this additional material upon receipt.

[The material follows. Testimony resumes on p. 94.]

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

AUG 20 1980
REC'D AUG 20 1980

Honorable John Melcher, Chairman
Select Committee on
Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

During the July 1, 1980, hearings on S. 2829, Senator Mitchell requested of Secretary Andrus a legal opinion from the Solicitor of the Department of the Interior confirming that the language in S. 2829 will in fact extinguish the Maine Indian claims fully and finally. This is in response to that request. It is our opinion that the language in the Administration's proposed amendment to S. 2829 in the nature of a substitute provides a complete settlement and full extinguishment of the Maine Indian claims. The minor differences between the proposed amendment and S. 2829 are discussed at the end of this opinion.

The sections of the proposed amendment relevant to the extinguishment of Indian claims are Sections 4, 5(e), 11, and 12.

Section 4(a)(1) would approve and ratify any transfer of land or natural resources located anywhere within the United States from, by or on behalf of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians or any of their members and any transfer of land or natural resources located within the State of Maine, from, by, or on behalf of any Indian, Indian nation, or tribe or band of Indians. All such transfers shall be deemed to have been made in accordance with the Constitution and all the laws of the United States, including but not limited to the Indian Nonintercourse Act. All such transfers would be ratified and approved effective as of the date of the transfer.

Section 4(b) would provide that to the extent that any transfer described in Section 4(a)(1) may involve aboriginal title, Section 4(a)(1) shall be regarded as an extinguishment of said aboriginal title. The Maine Indian land claims are based on aboriginal title. Aboriginal title is the Indian title to land based upon lengthy and exclusive use and occupancy as opposed to titles arising out of formal action, such as the transfer of a deed or the issuance of a patent. It is a right of exclusive use and occupancy, but it does not include the right to sell the land to whomever one pleases.

Congress has plenary power over Indian lands. Lone Wolf v. Hitchcock, 187 U.S. 553 (1903). The power of Congress to extinguish aboriginal title is supreme and

the manner, method and time of such extinguishment raise political, not justiciable, issues. United States v. Santa Fe Pacific R. Co., 314 U.S. 339, 347 (1941). Moreover, aboriginal title is not a property interest the taking of which requires just compensation under the Fifth Amendment to the United States Constitution. Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 288-289 (1955). Thus, we have no doubt of the authority of Congress to extinguish the aboriginal title of Maine Indians, and thereby to clear land titles throughout the Indian claim areas, without subjecting the United States to Fifth Amendment taking claims.

Even if an argument existed that the Passamaquoddies, Penobscots, or Houlton Band of Maliseet Indians had any claim based on recognized title, i.e., title for which just compensation is owed for an authorized taking, Section 5(e) of the Administration's proposed amendment (to which there is no comparable provision in S. 2829 as introduced), would provide that the Secretary may not expend on behalf of the Tribes any of the payments provided for in the Act unless and until he finds that authorized officials of the respective Tribe, Nation, or Band have executed appropriate documents relinquishing all claims to the extent provided by Sections 4, 11, and 12 of the Act and by Section 6213 of the Maine Implementing Act, including stipulations to the final judicial dismissal of their claims. These waivers will make clear that the Act contemplates a full settlement of all claims against the United States, the State and all third parties and that the Tribes agree to that settlement, thereby precluding any future argument that just compensation was not received.

The waivers and releases would be signed by authorized officials of the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians. These entities are recognized in paragraphs (3), (4) and (5) of Section 2(a) as being the sole successors in interest of the Passamaquoddy, Penobscot and Maliseet Tribes which years ago claimed aboriginal title in the State of Maine. The recognition of a group of Indians as a tribe is a function of the political departments of the Government, and the courts will not go behind a determination of Congress in this regard. United States v. Holliday, 70 U.S. (3 Wall.) 407, 419 (1865). The identity and authority of the officials to execute the appropriate releases and waivers on behalf of the respective Tribe, Nation or Band are likewise political questions which the courts will not reexamine. Fellows v. Blacksmith, 60 U.S. (19 How.) 366, 372 (1856); see also Doe v. Braden, 57 U.S. (16 How.) 635, 657 (1853).

It should be noted that Sections 4(a)(1) and 4(b) would approve the described transfers and extinguishment of the Indian claims of title as of the date of the original transfer out of Indian possession. The reason for this nunc pro

tunc ratification is to eliminate any possibility of trespass or any other types of intervening claims arising at the time of or subsequent to the transfer up until the effective date of the enacted bill. It is clear that Congress has the authority to ratify prior unlawful entries and conveyances by subsequent acts and thereby cut off claims arising before the ratification.

In Shoshone Tribe of Indians v. United States, 299 U.S. 476, 495 (1937), the Supreme Court ruled that by subsequent treaties and Acts of Congress, the United States had ratified the wrongful settlement of the Arapahoes on the Wind River Shoshone Reservation, and the Court held that the date of taking was the date of the original wrongful entry rather than the later ratification. In Seneca Nation of Indians v. United States, 173 Ct.Cl. 912, 915 (1965), the Court of Claims upheld the retroactive ratification by Congress of two state condemnation actions of Seneca lands in New York and found no liability on the part of the United States for state use of the parcels between the condemnation and the ratification by Congress. In United States v. Northern Paiute Nation, 490 F.2d 954, 958 (Ct.Cl. 1974), the Court of Claims ruled that nunc pro tunc ratification precludes a court from viewing pre-ratification non-Indian entry and use as tortious. Most recently, the U.S. Court of Appeals in United States v. Atlantic Richfield Co., 612 F.2d 1132 (9th Cir. 1980), held that Section 4(c) of the Alaska Native Claims Settlement Act, 43 U.S.C. §1601 et seq., extinguished trespass claims for pre-extinguishment use of aboriginal lands in Alaska. Cf., Edwardsen v. Morton, 369 F.Supp. 1359 (D.D.C. 1973).

We are aware that the Supreme Court in Delaware Tribal Business Committee v. Weeks, 430 U.S. 73 (1977), reh. denied 431 U.S. 960 (1977), held that Congress' plenary authority to legislate in Indian matters is subject to the constraints of the Due Process Clause of the Fifth Amendment, and that some tribes have asserted that Congress cannot retroactively ratify a past transaction after the grantor tribe has disavowed it. However, those arguments do not change our analysis regarding retroactive ratification in this case because this settlement is being consummated with the full agreement and consent of the affected Tribes, and their relinquishments and releases pursuant to the proposed Section 5(e) would leave no doubt that all past tribal claims in Maine have been extinguished.

Section 4(c) of S. 2829, and the identical provision in the proposed amendment, would also extinguish:

> ". . . all claims against the United States, any state or subdivision thereof or any other person or entity . . . arising at the time of or subsequent

> to the transfer and based on any interest in or right involving such land or natural resources, including but without limitation claims for trespass damages or claims for use and occupancy . . . ."

A statement to that effect would, of course, also be included in the releases and waivers from the tribes required by proposed Section 5(e). We believe the comprehensive nature of the extinguishment of Indian land claims provided for in Section 4 (which is very similar to the language used in the Rhode Island Indian Claims Settlement Act of 1978, 25 U.S.C. §1705), especially as supplemented by Section 5(e), would completely eliminate the clouds from land titles in Maine caused by the pendency of such Indian claims.

The bill also addresses, and would extinguish, Indian claims other than claims relating to title to lands in the State of Maine. For example, the proposed amendment to S. 2829 would provide in Section 11 for the discharge of all claims by the Passamaquoddy Tribe and the Penobscot Nation against the State of Maine, its officers, employees, agents and representatives, arising from the administration or management of all funds of the Tribe or Nation held in trust by the State of Maine as of the effective date of the Act. The funds would be transferred to the Secretary of the Interior and added to the principal of the Settlement Fund allocated to that Tribe or Nation. The waiver of all such claims by the Tribes would be included in the releases required by Section 5(e).

Finally, Section 12 of the proposed amendment would provide that the Act shall constitute a general discharge and release of all obligations of the State of Maine and all of its political subdivisions, agencies, departments, and all of the officers or employees thereof arising from any treaty or agreement with, or on behalf of any Indian nation or tribe or band of Indians or the United States as trustee therefor, including the action in United States v. Maine. This provision would likewise be incorporated into the releases to be signed by the Tribes.

The extinguishment provisions of the proposed amendment differ from the provisions in S. 2829 as introduced in a few minor respects. First, Section 4(a)(1) contains the following proviso not found in the bill as introduced:

> "Provided, however, That nothing in this section shall be construed to affect or eliminate the claims of any individual Indian (except for any Federal common law fraud claim) which is pursued under any law generally designed to protect non-Indians as well as Indians."

We have added this proviso to make clear that nothing in the section should be construed to extinguish an ordinary land title claim of an individual Indian within the State. Without the proviso the section, read literally, would extinguish the title claim of an Indian homeowner in the State whose claim is based on a Federal law generally designed to protect non-Indians as well as Indians. Certainly it is not, for example, the intention of the bill to deprive an off-reservation Indian of any rights he or any non-Indian may have under the laws governing Federal home loans. The United States could potentially subject itself to liability if it extinguished the claims which are the subject of the proviso. The exception in the proviso relating to Federal common law fraud claims was inserted at the request of the State. The State expressed the fear that Indian Nonintercourse Act (25 U.S.C. §177) type claims could be recast as Federal common law fraud claims (the theory applies both to Indians and non-Indians) and that the State statute of limitations may be held not to apply to the Federal cause of action. We do not believe that there is any basis for these fears, but we have no objection to the inclusion of the language.

Secondly, Section 4(a)(2) and (3) of S. 2829, as introduced, would have Congress deem transfers of Indian land to have been made in accordance with the laws of the State of Maine, and would ratify any such transfer as of the date of the transfer. We believe that it is inappropriate for the Federal government to extinguish state law claims. Those claims should instead be extinguished by the State Legislature and in fact are the subject of Section 6213 of the Maine Implementing Act. Nevertheless, we have agreed, at the request of the State, to insert language in lieu of those two paragraphs which would bar the United States as trustee for the Indians from asserting past land claims arising under state law.

Section 12 of the proposed amendment (Section 11 of S. 2829 as introduced) has been changed to delete the reference to individual "Indians." The provision, as introduced, would by its terms apply to individual personal service contracts with the State, a result intended by none of the parties.

It is therefore our opinion that the proposed amendment to S. 2829 in the nature of a substitute will provide a complete settlement and full extinguishment of the Maine Indian land claims and all tribal claims which may have arisen prior to the date of the enactment of this legislation.

Sincerely,

Clyde O. Martz

SOLICITOR

Senator MITCHELL. I understand the language may be changed. I anticipate that so long as there is any question about that point there will be some valid reservation on the part of some Members of Congress of proceeding, and it seems to me that that being the fundamental purpose of the legislation it is important to nail that down with finality.

Senator Cohen in his questioning referred to section 5(e)(2) dealing with the alienation of lands. I note in reviewing that section that there is a provision against alienation as it affects the lands of the Passamaquoddy Tribe of the Penobscot Nation.

I have received some inquiries from some persons who are concerned about the treatment of the Maliseet Band and specifically, a suggestion has been made that the failure to include the Maliseet Band in this provision against alienation may result in the dispersal of that land.

Have you received the legislation with that question in mind, and are you satisfied that this is an appropriate resolution of that point?

Secretary ANDRUS. No, Senator. We have not resolved that question. I prefer to submit it for the record, if we might, because that is a question that has recently been raised.

Senator COHEN. Without objection, the record will remain open for the purpose of inserting the additional information requested by Senator Mitchell upon receipt.

[The material follows. Testimony resumes on p. 128.]

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 8 1980

Honorable John Melcher
Chairman, Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for our views on S. 2829, a bill "To provide for the settlement of land claims of Indians, Indian nations and tribes and bands of Indians in the State of Maine, including the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and for other purposes."

We view the settlement of the Indian land claims in the State of Maine as one of the most important issues in Indian affairs facing Congress today. After three and one-half years of effort a legislative settlement proposal is before the Congress, one which is supported by the State, the Tribes, and the major landowners in the State, and which has already received the endorsement of the State Legislature. That proposal is predicated upon the authorization of the appropriation by Congress of $81.5 million to carry out its provisions.

At the July 1, 1980 hearing before the Committee on S. 2829, we stated that because years of continued litigation would have a severe impact on the people of Maine — both Indian and non-Indian — we do not object to the Federal contribution contemplated by the bill. However, we also raised a series of questions regarding a number of the provisions of the bill, especially insofar as it provides for the role of the Federal Government as trustee for the Maine Tribes. Since then we have met on several occasions with officials of the State and Tribes, and we fully appreciate the efforts the parties have made to achieve agreement on many of the important provisions of S. 2829. We have worked with those officials to redraft a number of those provisions and have achieved a large measure of agreement on substitute language to clarify the governmental responsibilities and jurisdictional relationships among the parties. It has not been our intent to alter in any way the agreement between the State of Maine and the Passamaquoddy Tribe and Penobscot Nation with respect to their new relationship. We have only sought to assist in making that agreement completely workable.

We have enclosed a proposed amendment to S. 2829 in the nature of a substitute, which we believe would clarify the provisions of the bill while adhering closely to the intent and substance of it. We discuss below the more significant changes which our proposal would make in the language of S. 2829 as introduced. Discussion among the parties has not yet been concluded with respect to one provision of the bill, Section 6(b). We have therefore noted in the proposed amendment that the language of that section is to be supplied. We anticipate concluding the discussion of that provision shortly and will report to the Committee on proposed language for it as soon as possible.

We have provided in Section 3(2) of our proposed amendment for a definition of "Indian territory", primarily to aid in a reading of revised Section 5(d) which has been redrafted to clarify how title to lands acquired pursuant to the terms of the Act shall be held. The definition of "Indian territory" tracks the definitions of "Passamaquoddy Indian Territory" and "Penobscot Indian Territory" contained in the Maine Implementing Act, and is not intended to be inconsistent with the use of those terms. It is important to note that the jurisdictional character of the lands described in Section 3(2)(C) will not be altered unless they are actually acquired by the United States in trust for the Passamaquoddy Tribe or the Penobscot Nation pursuant to Section 5(d). We also note that "Indian territory" has been defined in a manner which permits the parties to vary the boundaries of this area later by mutual agreement.

One important concern arises in connection with these definitions. Lands may only be included within Passamaquoddy or Penobscot Indian Territory under Section 6205 of the Maine Implementing Act if they are acquired by the United States on or before January 1, 1983. Designation of lands as Indian territory is critical because only lands so designated will be held in trust by the United States, subject to Federal restrictions against alienation, and within the limited governmental authority of those Tribes. Lands acquired outside Indian territory, which cannot be so held, are much less likely to provide a lasting land base for the Tribes. The date chosen appears to have been based on the assumption that land acquisition would begin early in 1981, thus giving the Secretary and the Tribes nearly two years within which to acquire lands within Indian territory. It now appears that however quickly S. 2829 is enacted, it may be difficult to acquire the contemplated acreage within the time limit.

Initially, we recommended to State officials that the Maine Implementing Act be amended to address this concern by providing for a more realistic date for cutting off the creation of Indian territory. They responded that such a concern is premature, and that the Legislature would therefore be unwilling to amend the Act at this time. Nevertheless, we have been assured by State Attorney General Richard S. Cohen that if the appropriation of the necessary sums is delayed so that the contemplated land acquisition could not be effected by January 1, 1983, he would personally be willing to recommend to the State Legislature that the Implementing Act be amended to provide for an adequate extension of time. At any rate, we note that Congress has plenary power to remedy this concern if land acquisition is delayed for reasons beyond the control of the Tribes, and the State Legislature does not provide for an extension of the time limit. The Administration will seek an appropriation of $81.5 million in fiscal year 1981, upon enactment of an appropriate settlement.

The most important provision in S. 2829 is clearly Section 4, which provides for the final extinguishment of all Indian land claims in the State of Maine. We have revised Section 4(a)(1) of S. 2829 only to add a proviso which would make it clear that nothing in the section should be construed to affect an ordinary land title claim of an individual Indian within the State. Without the proviso the section, read literally, would extinguish the title claim of an Indian homeowner in the State whose claim is based on a Federal law generally designed to protect non-Indians as well as Indians, such as laws governing Federal home loans.

The effect of this provision of S. 2829 would be that all Indian land claims in Maine arising under Federal law will be extinguished on the date of the enactment of the Act. However, the Tribes have expressed the concern that there is no guarantee that they will receive the consideration authorized in the bill for their agreement to give up their claims. They have therefore advocated that the bill be amended to condition extinguishment of the claims under Section 4 on the appropriation of $81.5 million by Congress. Another Indian land claim settlement bill in this Congress, H.R. 6631 concerning the Cayuga land claim in New York State, was amended by the House Interior and Insular Affairs Committee to provide for such a conditional amendment. The State of Maine, on the other hand, desires immediate extinguishment of the land claims in order to clear titles in the State as soon as possible. State officials note that the aboriginal title claims of Alaska Natives were extinguished on the date of enactment of the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.). We think it is clear that Congress does have plenary power to extinguish claims of aboriginal Indian title. Tee-Hit-Ton Indians v. United States, 348 U.S. 272 (1955). Nevertheless, we appreciate the Tribes' concern, and we would therefore not be opposed to an amendment which would condition extinguishment on the making of the necessary appropriations. We wish to note, however, that under Public Law 96-217 the statute of limitations at 28 U.S.C. § 2415 is now due to run on December 31, 1982. Thus, a delay in appropriations beyond that date may force the Tribes to file protective lawsuits.

Sections 4(a)(2) and (3) of S. 2829 would extinguish claims of Indian title arising under State law. We think this is an inappropriate subject for Federal legislation, and indeed, the identical provisions appear in Section 6213 of the State Implementing Act. Nevertheless, we have agreed to include in our proposed amendment language in lieu of those two paragraphs which would bar the United States from asserting as trustee for the Indians past land claims arising under State law. Because of the importance of the language finally extinguishing Indian land claims within the State, and in response to a specific request made at the July 1 hearing, we will be providing the Committee with an opinion of our Solicitor on the effectiveness of the extinguishment language of Section 4 of our proposed amendment.

Section 5(a) of S. 2829 would establish a $27 million settlement trust fund for the benefit of the Passamaquoddy Tribe and the Penobscot Nation. We have revised Section 5(b) of S. 2829 to clarify the role of the Secretary as the trustee charged with the responsibility of administering this fund. The two Tribes and the Administration agreed in February 1978 that any such trust fund should be administered in accordance with an agreement between the Secretary and each Tribe. The Tribes desire the opportunity for a more liberal investment policy than has historically been authorized for tribal trust funds under the Act of June 24, 1938 (25 U.S.C. § 162a). We respect that desire and are willing to permit future investment of the trust fund to be carried out pursuant to an agreement between the Secretary and each Tribe, but we are concerned that the language of Section 5(b)(1) of S. 2829 does not adequately protect the United States from unwarranted liability. The provision contains the requirement that the Secretary must agree to "reasonable terms" for investment within 30 days of submission of proposed terms by the Tribe. We believe that this is a difficult standard and an unworkable procedure. In our proposed amendment, we adopt an approach suggested in the 1977 Final Report of the American Indian Policy Review Commission. Under that approach trust funds could be utilized by Tribes for potentially more profitable investments, but only after the Tribes specifically release the United States from liability in the event the chosen investment results in a loss.

A proviso in Section 5(b)(3) of S. 2829 would require each Tribe to expend annually the income from $1 million of its portion of the Settlement Fund for the benefit of tribal members over the age of 60. We understand that this was an important factor in discussions of the proposed settlement between the tribal negotiating committees and the memberships of the Tribes, and we applaud their desire to provide special assistance to the Tribes' senior members. However, we questioned whether such a provision should appear in the bill since the Secretary has no responsibility under the bill for any distribution of trust fund income, a point which has been agreed upon among all the parties. Tribal officials have assured us that it is the Tribes alone, not the Secretary, who will be responsible for the expenditure of trust fund income for the benefit of tribal members over 60. In light of that understanding, we do not object to the provision remaining in the bill.

Section 5(c) of S. 2829 would establish a $54.5 million Land Acquisition Fund. The Tribes had insisted upon the acquisition of 300,000 acres of average quality Maine woodland as the integral term of the settlement of their land claims. Our appraisers have determined that $54.5 million is sufficient to acquire such woodland, but we believe the legislation should not be tied to any given acreage figure, since woodland of varying quality may become available in the marketplace at any given time.

Our proposed amendment would reword Section 5(d) to clarify that the title to lands acquired in Indian territory shall be held by the United States in trust for the Passamaquoddy Tribe or Penobscot Nation. Lands acquired for the Tribe or Nation outside Indian territory shall be held in fee simple by the respective Tribe or Nation. Our proposed Section 5(d) also contains an authorization for the Secretary to take lands within Indian territory in trust after they have been independently acquired by the Passamaquoddy Tribe or Penobscot Nation. This is necessary because the Tribes contemplate the acquisition of lands outside Indian territory which would later be used for exchange purposes once additional lands within Indian territory go on sale.

The title to lands acquired for the benefit of the Houlton Band of Maliseet Indians is also addressed by this subsection. The Band desires to acquire lands in eastern Aroostook County which would be held in trust for them by the United States. Officials of the State of Maine, however, initially objected to the acquisition of lands in trust status outside the boundaries of Passamaquoddy Indian Territory or Penobscot Indian Territory. We have sought to accommodate both their concerns by redrafting the subsection to authorize the Secretary to acquire lands in trust for the Houlton Band, but only after obtaining the concurrence of authorized State officials to the acquisition. We have provided further that the Houlton Band would be authorized to enter into contracts with appropriate government agencies for the provision of services, similar to those we recommend below with respect to the Passamaquoddy Tribe and the Penobscot Nation. We expect that State and Band officials will work together in good faith to identify suitable lands for the Houlton Band.

The revised subsection also provides that notwithstanding the provisions of the Act of August 1, 1888, and the Act of February 26, 1931 (40 U.S.C. §§ 257, 258a), the Secretary may acquire land under this section only if the Secretary and the owner of the land have agreed upon the identity of the land to be sold and upon the purchase price and other terms of sale. The cited provisions allow Federal agencies to utilize condemnation procedures and declarations of taking to acquire land for Federal purposes. Our proposed Section 5(d) would not bar the use of such procedures, but would only require the consent of the landowner to the terms of the taking. This limitation was requested by the landowners who intend to sell lands to the Tribes, and we have no objection to it.

Section 5(e) of our proposed amendment is new. At the July 1 hearing we expressed the view that no Federal money should be paid to the Tribes — either for the trust fund or for land acquisition — until they each have stipulated to a final dismissal of their claims. This subsection would condition the Secretary's authority to expend the two trust funds for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians on a finding that authorized officials of each of the Tribes have executed documents relinquishing all their claims and have stipulated to

a final judicial dismissal of their claims. Such relinquishments and dismissals will insure that there can be no future claim against the United States for the extinguishment of the Indian claims effected by this legislative settlement.

Our proposed subsection (f) of Section 5 is a clarification of Section 5(e) of S. 2829. Subsection (f) provides that the Indian Nonintercourse Act (25 U.S.C. § 177) shall not be applicable in Maine, but that lands in Indian territory or held in trust for the Houlton Band of Maliseet Indians shall nevertheless be subject to restrictions against alienation. Paragraph (3) provides specific, though limited, authorizations for the alienation of such trust lands. These are consistent with the terms of the proviso to Section 5(e)(2) of S. 2829, except that a specific authorization for rights-of-way, with the consent of the affected Tribe, Nation, or Band, has been added to provide for rights-of-way without resort to condemnation. The authorization for exchanges in proposed Section 5(f)(3)(E) has been made more flexible by inserting language taken from Section 206(b) of the Federal Land Policy and Management Act (43 U.S.C. § 1716). Without such flexibility such an exchange authority may prove useless because it is often difficult to find exchange lands of precisely equal value. Finally, the authorization in S. 2829 for transfers of land the proceeds of which must be reinvested within two years has been revised in proposed Section 5(f)(3)(F) to reflect the Tribes' intent that sales be authorized only if the Secretary has already made specific arrangements for the acquisition of replacement land.

Section 5(f) of S. 2829 would require the Secretary to agree within 30 days to "reasonable terms" for the management and administration of land held in trust for the Passamaquoddy Tribe and Penobscot Nation. We believe the procedures outlined in this subsection are unwieldy but, more importantly, existing Federal laws and regulations provide adequate authority for the Tribes to manage their own trust lands. We have therefore rewritten the provision, which appears as Section 5(g) of our proposed amendment, to restate existing law which would authorize the Secretary to enter into land management agreements with either Tribe in accordance with Section 102 of the Indian Self-Determination Act (25 U.S.C. § 450f). We note that the contract declination procedures of that Act and existing regulations would be applicable to such agreements.

In our proposed amendment we have added a new subsection (h) to provide for condemnation of Passamaquoddy, Penobscot, and Houlton Band lands in accordance with state law relating to such lands. This subsection is necessary because Indian trust or restricted lands may not be condemned under state law without Congressional authorization. Congressional authorizations have generally required that the condemnation be in Federal court and that the United States be a party. We believe it would be unwise to diverge from this practice. Subsection (h) also specifies the disposition of the compensation received.

The disposition specified differs slightly from Section 5(g) of S. 2829 in that it channels proceeds through the Land Acquisition Fund rather than requiring their reinvestment within two years. Since it is the Tribes who initiate land purchases under the scheme of the bill and since sums in the Land Acquisition Fund may only be used for that purpose, the two year requirement is superfluous and confusing. Subsection (i) provides that the proceeds from the condemnation of trust or restricted Indian lands in Maine pursuant to any law of the United States other than this Act shall likewise be reinvested through the Land Acquisition Fund.

Section 6(a) of S. 2829, and as revised in our proposed amendment, is intended to effectuate the broad assumption of jurisdiction over Indian lands by the State of Maine. As noted above, we will be reporting to the Committee on Section 6(b) as soon as discussion on it is concluded.

Our proposed amendment contains a new Section 6(c) to make absolutely clear the intention of the parties that the Federal government will not have "Indian country" type law enforcement jurisdiction on Indian lands in the State of Maine. See State v. Dana, 404 A.2d 551 (Me. 1979) cert. denied 48 U.S.L.W. 3537 (February 19, 1980). Our proposed Section 6(d) is merely a restatement and clarification of the first sentence and proviso of Section 6(c) of S. 2829. No substantive change is intended, except to clarify that the parties have agreed that the jurisdictional provisions of Section 1362 of Title 28, United States Code, shall apply to the three Tribes, notwithstanding the otherwise broad language of the provision.

At the July 1 hearing we had objected to the second part of Section 6(c) of S. 2829, which would permit suits against the Secretary by judgment creditors of the Passamaquoddy Tribe and Penobscot Nation to force payment of the judgments out of Settlement Fund income. Our concern was that such litigation would be burdensome and unnecessary. Our proposed Section 6(d)(2) would provide instead a procedure for administrative attachment of future trust fund income by judgment creditors of the two Tribes. Under that provision the Secretary would be required to honor valid court orders of money judgments against either Tribe from causes of action accruing after the date of the enactment of the bill, by making an assignment to the judgment creditor of the right to receive future income from the Settlement Fund, notwithstanding the provisions of the Anti-Assignment Act (31 U.S.C. § 203).

Under Section 6(d) of S. 2829 Congress would consent in advance to any amendment of the Maine Implementing Act as long as the Tribes agreed to any such amendment. The breadth of this "consent" gave us cause for concern. We have

therefore included in our proposed Section 6(e)(1), language taken from S. 1181 (96th Cong.) which would authorize future jurisdictional agreements between the State and either the Passamaquoddy Tribe or the Penobscot Nation in the form of amendments to the Implementing Act. State and tribal officials have agreed to this provision. Our proposed Section 6(e)(2) would authorize similar agreements with the Houlton Band of Maliseet Indians.

Section 6(f) of our proposed amendment is identical to Section 6(e) of S. 2829. It authorizes the Passamaquoddy Tribe and Penobscot Nation to exercise jurisdiction, separate and distinct from that of Maine, to the extent authorized by the Maine Implementing Act. That Act in turn leaves the two Tribes with exclusive authority over their own internal tribal affairs, certain misdemeanor jurisdiction over tribal members, small claims jurisdiction, and a significant residuum of regulatory authority over their own lands. The two Tribes will also be treated as municipalities under State law for purposes of jurisdiction over their lands in Indian territory, which means that no other municipality, the main unit of local government in Maine, may exercise any authority over tribal affairs in those areas. Lands and personal property in Indian territory may not be taxed; nor may income from the Settlement Fund. The Tribes and their members shall for the most part be otherwise subject to State taxes.

We note that Section 6208(2) of the Maine Implementing Act would require the Passamaquoddy Tribe and the Penobscot Nation to make payments in lieu of taxes for trust lands within Indian territory. As we pointed out at the July 1 hearing, we prefer that, instead of making in-lieu payments, the Tribes merely negotiate contracts with the counties and other districts for the provision of services. Nevertheless, this is a matter for tribal discretion, and Section 6(e) of our proposed amendment would allow for future jurisdictional agreements to accommodate our preference.

At the July 1 hearing we objected to the full faith and credit provision of Section 6(f) of S. 2829. In lieu of that provision the Tribes and State have offered language which appears in our proposed Section 6(g). It states that the Passamaquoddy Tribe, the Penobscot Nation, and the State of Maine shall give full faith and credit to the judicial proceedings of each other. The parties could agree to this form of comity without the consent of Congress, but we have no objection to its inclusion in the settlement legislation. There is, of course, no reason why the Tribes may not establish similar comity with other jurisdictions.

Section 6(g) of S. 2829 provides that Federal laws of general applicability to Indians, Indian tribes, and Indian lands shall not be applicable in Maine,

except that the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be eligible for all financial benefits for which all other Federally recognized Indian tribes are eligible. We found this provision troublesome and confusing in that Federal financial benefits to Indian tribes would be divorced from general Federal statutes applicable to Indians. This was a subject of some discussion with representatives of the State and Tribes, and agreement was reached on the language of our proposed Section 6(h). In short, this would provide that no Federal law or regulation (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory, or land held in trust for Indians, and also (2) which affects or preempts the civil, criminal, or regulatory jurisdiction or laws of the State of Maine, shall apply within the State. This limitation would include such Federal laws, among others, as the Indian trader statutes (25 U.S.C. §§ 261-264) and the provision of the Clean Air Act Amendments of 1977 which permits Indian tribes to designate air quality standards (42 U.S.C. § 7474).

Section 6(g) of S. 2829 also states that the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians are Federally-recognized Indian tribes and that they shall be eligible for Federal financial programs on the same basis as all other Federally-recognized Tribes. Since the bill contemplates significant acquisition of lands to be held in trust for the Tribes, we read this provision to mean that such trust lands should be treated as Indian reservations for purposes of the provision of Federal Indian services. We do not object to the provision, so interpreted.

We have also included a proviso to this subsection which would limit the membership of the Houlton Band of Maliseet Indians, for purposes of the provision of Federal services or benefits, to persons who are citizens of the United States. This is similar to the limitation in Section 3 of Public Law 95-375 which recognized the Pascua Yaqui Tribe for purposes of the provision of Federal Indian services.

With the agreement of the parties we have included in our proposed amendment a new Section 7, which would clearly permit the Tribes to organize for their common welfare and adopt constitutions or charters. While we have been assured by attorneys for the State of Maine that the Passamaquoddy Tribe and the Penobscot Nation need not adopt charters under State law to avail themselves of the benefits of the status of municipalities of the State, we believe it preferable to make clear that this option continues to exist under Federal law. And, since these Tribes will be administering large land holdings and valuable assets, the adoption of organic governing documents, which would be filed with the Secretary, seems advisable.

Our proposed Section 8(f) would make Section 102 of the Indian Child Welfare Act of 1978 (25 U.S.C. § 1912) applicable to the Houlton Band of Maliseet Indians. Officials of the State of Maine consented to this provision and we have no objection to it.

Section 8(b) of S. 2829 provides that the eligibility for or receipt of payments from the State of Maine by the Passamaquoddy Tribe and the Penobscot Nation pursuant to the Maine Implementing Act shall not be considered by Federal agencies in determining the eligibility of either Tribe for Federal financial aid programs. To clarify this provision, which appears as Section 9(b) of our proposed amendment, we have added a proviso to the effect that Federal agencies shall not be barred by this section from considering the actual financial situation of the Tribe.

Section 8(c) of S. 2829 would prevent Federal agencies from considering the availability or distribution of funds pursuant to Section 5 of the bill for purposes of denying Federal financial assistance to Indian households or to the Passamaquoddy Tribe or Penobscot Nation. We read this provision to refer only to income from the Settlement Fund to be established pursuant to Section 5(a), and expect that the two Tribes will otherwise be treated as any other tribe insofar as their income from other sources are concerned, including income derived from land or natural resources acquired pursuant to the Act. As read, the provision is unobjectionable. It appears as Section 9(c) of our proposed amendment.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Cecil D. Andrus

SECRETARY

Enclosure

Amendment to S. 2829 in the

Nature of a Substitute

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Maine Indian Claims Settlement Act of 1980".

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

Sec. 2. (a) Congress hereby finds and declares that:

(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Maliseet Tribe are asserting claims for possession of lands within the State of Maine and for damages on the grounds that the lands in question were originally transferred in violation of law, including the Trade and Intercourse Act of 1790 (1 Stat. 137), or subsequent reenactments or versions thereof.

(2) The Indians, Indian nations, and tribes and bands of Indians, other than the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians, that once may have held aboriginal title to lands within the State of Maine long ago abandoned their aboriginal holdings.

(3) The Penobscot Nation, as represented as of the time of passasge of this Act by the Penobscot Nation's Governor and Council, is the sole successor in interest to the aboriginal entity generally known as the Penobscot Nation which years ago claimed aboriginal title to certain lands in the State of Maine.

(4) The Passamaquoddy Tribe, as represented as of the time of passage of this Act by the Joint Tribal Council of the Passamaquoddy Tribe, is the sole successor in interest to the aboriginal entity generally known as the Passamaquoddy Tribe which years ago claimed aboriginal title to certain lands in the State of Maine.

(5) The Houlton Band of Maliseet Indians, as represented as of the time of passage of this Act by the Houlton Band Council, is the sole successor in interest, as to lands within the United States, to the aboriginal entity generally known as the Maliseet Tribe which years ago claimed aboriginal title to certain lands in the State of Maine.

(6) Substantial economic and social hardship to a large number of landowners, citizens and communities in the State of Maine, and therefore to the economy of the State of Maine as a whole, will result if the aforementioned claims are not resolved promptly.

(7) This Act represents a good faith effort on the part of Congress to provide the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians with a fair and just settlement of their land claims. In the absence of congressional action, these land claims would be pursued through the courts, a process which in all likelihood would consume many years and thereby promote hostility and uncertainty in the State of Maine to the ultimate detriment of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, their members, and all other citizens of the State of Maine.

(8) The State of Maine, with the agreement of the Passamaquoddy Tribe and the Penobscot Nation, has enacted legislation defining the relationship between the Passamaquoddy Tribe, the Penobscot Nation, and their members, and the State of Maine.

(9) Since 1820, the State of Maine has provided special services to the Indians residing within its borders, including the members of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians. During this same period, the United States provided few special services to the respective Tribe, Nation or Band, and repeatedly denied that it had jurisdiction over or responsibility for the said Tribe, Nation, and Band. In view of this provision of special services by the State of Maine, requiring substantial expenditures by the State of Maine and made by the State of Maine without being required to do so by Federal law, it is the intent of Congress that the State of Maine not be required further to contribute directly to this claims settlement.

(b) It is the purpose of this Act—

(1) to remove the cloud on the titles to land in the State of Maine resulting from Indian claims;

(2) to clarify the status of other land and natural resources in the State of Maine;

(3) to ratify the Maine Implementing Act, which defines the relationship between the State of Maine and the Passamaquoddy Tribe and the Penobscot Nation, except to the extent that it is inconsistent with the provisions of this Act; and

(4) to confirm that all other Indians, Indian nations and tribes and bands of Indians now or hereafter existing or recognized in the State of Maine are and shall be subject to all laws of the State of Maine, as provided herein.

DEFINITIONS

Sec. 3. For purposes of this Act, the term—

(1) "Houlton Band of Maliseet Indians" means the sole successor to the Maliseet Tribe of Indians as constituted in aboriginal times in what is now the State of Maine, and all its predecessors and successors in interest. The Houlton Band of Maliseet Indians is represented, as of the date of the enactment of this Act, as to lands within the United States, by the Houlton Band Council of the Houlton Band of Maliseet Indians;

(2) "Indian territory" means (A) the Passamaquoddy Indian Reservation; (B) the Penobscot Indian Reservation; (C) until January 1, 1983, the lands in the State of Maine of Great Northern Nekoosa Corporation located in T.1, R.8, W.B.K.P. (Lowelltown), T.6, R.1, N.B.K.P. (Holeb), T.2, R.10, W.E.L.S. and T.2, R.9, W.E.L.S.; the land of Raymidga Company located in T.1, R.5, W.B.K.P. (Jim Pond), T.4, R.5, B.K.P.W.K.R. (King and Bartlett), T.5, R.6, B.K.P.W.K.R. and T.3, R.5, B.K.P.W.K.R.; the land of the heirs of David Pingree located in T.6, R.8, W.E.L.S.; any portion of Sugar Island in Moosehead Lake; the lands of Prentiss and Carlisle Company located in T.9, S.D.; any portion of T.24, M.D.B.P.P.; the lands of Bertram C. Tackeff or Northeastern Blueberry Company, Inc. in T.19, M.D.B.P.P.; any portion of T.2, R.8, N.W.P.; any portion of T.2, R.5, W.B.K.P. (Alder

Stream); the lands of Dead River Company in T.3, R.9, N.W.P., T.2, R.9, N.W.P., T.5, R.1, N.B.P.P. and T.5, N.D.B.P.P.; any portion of T.3, R.1, N.B.P.P.; any portion of T.3, N.D.; any portion of T.4, N.D.; any portion of T.39, M.D.; any portion of T.40, M.D.; any portion of T.41, M.D.; any portion of T.42, M.D.B.P.P.; and the lands of Diamond International Corporation, International Paper Company and Lincoln Pulp and Paper Company located in Argyle: Provided, That "Indian territory" within the meaning of this subparagraph may not exceed 300,000 acres of land; and (D) any other lands designated as Passamaquoddy Indian Territory or Penobscot Indian Territory pursuant to the laws of the State;

(3) "land or natural resources" means any real property or natural resources, or any interest in or right involving any real property or natural resources, including but without limitation minerals and mineral rights, timber and timber rights, water and water rights, and hunting and fishing rights;

(4) "Land Acquisition Fund" means the Maine Indian Claims Land Acquisition Fund established under Section 5(c) of this Act;

(5) "laws of the State" means the Constitution, and all statutes, regulations and common laws of the State of Maine and its political subdivisions, and all subsequent amendments thereto or judicial interpretations thereof;

(6) "Maine Implementing Act" means Section 1 and Section 30 of the "Act to Implement the Maine Indian Claims Settlement" enacted by the State of Maine in Chapter 732 of the Public Laws of 1979;

(7) "Passamaquoddy Indian Reservation" means those lands as defined in the Maine Implementing Act;

(8) "Passamaquoddy Indian Territory" means those lands as defined in the Maine Implementing Act;

(9) "Passamaquoddy Tribe" means the Passamaquoddy Indian Tribe, as constituted in aboriginal times and all its predecessors and successors in interest. The Passamaquoddy Tribe is represented, as of the date of the enactment of this Act, by the Joint Tribal Council of the Passamaquoddy Tribe, with separate Councils at the Indian Township and Pleasant Point Reservations;

(10) "Penobscot Indian Reservation" means those lands as defined in the Maine Implementing Act;

(11) "Penobscot Indian Territory" means those lands as defined in the Maine Implementing Act;

(12) "Penobscot Nation" means the Penobscot Indian Nation as constituted in aboriginal times, and all its predecessors and successors in interest. The Penobscot Nation is represented, as of the date of the enactment of this Act, by the Penobscot Nation Governor and Council;

(13) "Secretary" means the Secretary of the Interior;

(14) "Settlement Fund" means the Maine Indian Claims Settlement Fund established under Section 5(a) of this Act; and

(15) "transfer" includes but is not limited to any voluntary or involuntary sale, grant, lease, allotment, partition, or other conveyance; any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance; and any act, event, or circumstance that resulted in a change in title to, possession of, dominion over, or control of land or natural resources.

APPROVAL OF PRIOR TRANSFERS AND EXTINGUISHMENT OF INDIAN TITLE AND CLAIMS OF THE PASSAMAQUODDY TRIBE, THE PENOBSCOT NATION, THE HOULTON BAND OF MALISEET INDIANS, AND ANY OTHER INDIANS, INDIAN NATION, OR TRIBE OR BAND OF INDIANS WITHIN THE STATE OF MAINE

Sec. 4. (a)(1) Any transfer of land or natural resources located anywhere within the United States from, by, or on behalf of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, or any of their members, and any transfer of land or natural resources located anywhere within the State of Maine, from, by, or on behalf of any Indian, Indian nation, or tribe or band of Indians, including but without limitation any transfer pursuant to any treaty, compact or statute of any State, shall be deemed to have been made in accordance with the Constitution and all laws of the United States, including but without limitation the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, § 4, 1 Stat. 137, 138), and all amendments thereto and all subsequent reenactments and versions thereof, and Congress hereby does approve and ratify any such transfer effective as of the date of said transfer: Provided, however, that nothing in this section shall be construed to affect or eliminate the claim of any individual Indian (except for any Federal common law fraud claim) which is pursued under any law generally designed to protect non-Indians as well as Indians.

(2) The United States is barred from asserting on behalf of any Indian, Indian nation or tribe or band of Indians any claim under the laws of the State arising before the date of this Act and arising from any transfer of land or natural resources located anywhere within the State of Maine, including

but without limitation any transfer pursuant to any treaty, compact or statute of any state, on the grounds that such transfer was not made in accordance with the laws of the State.

(b) To the extent that any transfer of land or natural resources described in subsection (a)(1) of this section may involve land or natural resources to which the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, or any of their members, or any other Indian, Indian nation, or tribe or band of Indians had aboriginal title, such subsection (a)(1) shall be regarded as an extinguishment of said aboriginal title as of the date of such transfer.

(c) By virtue of the approval and ratification of a transfer of land or natural resources effected by this section, or the extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians or any of their members or by any other Indian, Indian nation, tribe or band of Indians, or any predecessors or successors in interest thereof, arising at the time of or subsequent to the transfer and based on any interest in or right involving such land or natural resources, including but without limitation claims for trespass damages or claims for use and occupancy, shall be deemed extinguished as of the date of the transfer.

ESTABLISHMENT OF FUNDS

Sec. 5. (a) There is hereby established in the United States Treasury a fund to be known as the Maine Indian Claims Settlement Fund in which $27,000,000 shall be deposited following the appropriation of sums authorized by Section 14 of this Act.

(b)(1) One-half of the principal of the Settlement Fund shall be held in trust by the Secretary for the benefit of the Passamaquoddy Tribe, and the other half of the Settlement Fund shall be held in trust for the benefit of the Penobscot Nation. Each portion of the Settlement Fund shall be administered by the Secretary in accordance with terms established by the Passamaquoddy Tribe or the Penobscot Nation, respectively, and agreed to by the Secretary: Provided, That the Secretary may not agree to terms which provide for investment of the Settlement Fund in a manner not in accordance with Section 1 of the Act of June 24, 1938 (52 Stat. 1037), unless the respective Tribe or Nation first submits a specific waiver of liability on the part of the United States for any loss which may result from such an investment: Provided, further, That until such terms have been agreed upon, the Secretary shall fix the terms for the administration of the portion of the Settlement Fund as to which there is no agreement.

(2) Under no circumstances shall any part of the principal of the Settlement Fund be distributed to either the Passamaquoddy Tribe or the Penobscot Nation, or to any member of either Tribe or Nation: Provided, however, That nothing herein shall prevent the Secretary from investing the principal of said Fund in accordance with paragraph (1) of this subsection.

(3) The Secretary shall make available to the Passamaquoddy Tribe and the Penobscot Nation in quarterly payments, without any deductions except as expressly provided in Section 6(d)(2) and without liability to or on the part of the United States, any income received from the investment of that portion of the Settlement Fund allocated to the respective Tribe or Nation, the use of which shall be free of regulation by the Secretary. The Passamaquoddy Tribe and the Penobscot Nation annually shall each expend the income from $1,000,000 of their portion of the

Settlement Fund for the benefit of their respective members who are over the age of sixty. Once payments under this paragraph have been made to the Tribe or Nation, the United States shall have no further trust responsibility to the Tribe or Nation or their members with respect to the sums paid, any subsequent distribution of these sums, or any property or services purchased therewith.

(c) There is hereby established in the United States Treasury a fund to be known as the Maine Indian Claims Land Acquisition Fund in which $54,500,000 shall be deposited following the appropriation of sums authorized by Section 14 of this Act.

(d) The principal of the Land Acquisition Fund shall be apportioned as follows:

(1) $900,000 to be held in trust for the Houlton Band of Maliseet Indians;

(2) $26,800,000 to be held in trust for the Passamaquoddy Tribe; and

(3) $26,800,000 to be held in trust for the Penobscot Nation.

The Secretary is authorized and directed to expend, at the request of the affected Tribe, Nation or Band, the principal and any income accruing to the respective portions of the Land Acquisition Fund for the purpose of acquiring land or natural resources for the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians and for no other purpose. Land or natural resources acquired within Indian territory for the Passamaquoddy Tribe and the Penobscot Nation shall be held in trust by the United States for the benefit of the respective Tribe or Nation. Land or natural resources acquired outside the boundaries of Indian territory shall be held in fee simple by the respective Tribe or Nation, and the United States shall have no further trust responsibility with respect thereto. The Secretary is also authorized to take

in trust for the Passamaquoddy Tribe or the Penobscot Nation any land or natural resources acquired within Indian territory by purchase, gift, or exchange by such Tribe or Nation. Land or natural resources acquired within the State of Maine for the Houlton Band of Maliseet Indians shall be held in trust by the United States for the benefit of the Band: Provided, That no land or natural resources shall be so acquired without the concurrence of authorized officials of the State of Maine. The Houlton Band of Maliseet Indians is authorized to enter into contracts for payment for the provision of services from the State, county, or municipality exercising jurisdiction over the lands so acquired, annually not to exceed an amount equal to the real property taxes which would have been levied in the given year against the owner of the land or natural resources, were they not owned by the United States. Notwithstanding the provisions of Section 1 of the Act of August 1, 1888 (25 Stat. 357), as amended, and Section 1 of the Act of February 26, 1931 (46 Stat. 1421), the Secretary may acquire land or natural resources under this section from the ostensible owner of the land or natural resources only if the Secretary and the ostensible owner of the land or natural resources have agreed upon the identity of the land or natural resources to be sold and upon the purchase price and other terms of sale. Subject to the agreement required by the preceding sentence, the Secretary may institute condemnation proceedings in order to perfect title satisfactory to the Attorney General in the United States and condemn interests adverse to the ostensible owner. Except for the provisions of this Act, the United States shall have no other authority to acquire lands or natural resources in trust for the benefit of Indians or Indian tribes in the State of Maine.

(e) The Secretary may not expend on behalf of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians any sums deposited in the funds established pursuant to subsections (a) and (c) of this section unless and until he finds that authorized officials of the respective Tribe, Nation, or Band have executed appropriate documents relinquishing all

claims to the extent provided by Sections 4, 11, and 12 of this Act and by Section 6213 of the Maine Implementing Act, including stipulations to the final judicial dismissal of their claims.

(f)(1) The provisions of Section 2116 of the Revised Statutes, shall not be applicable to (A) the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians or any other Indian, Indian nation or tribe or band of Indians in the State of Maine, or (B) any land or natural resources owned by or held in trust for the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians or any other Indian, Indian nation or tribe or band of Indians in the State of Maine. Except as provided in subsection (f)(2), such land or natural resources shall not otherwise be subject to any restraint on alienation by virtue of being held in trust by the United States or the Secretary.

(2) Except as provided in paragraph (3) of this subsection, any transfer of land or natural resources within Passamaquoddy Indian Territory or Penobscot Indian Territory, or transfer of land or natural resources held in trust for the Houlton Band of Maliseet Indians, except (A) takings for public uses consistent with the Maine Implementing Act, (B) takings for public uses pursuant to the laws of the United States, or (C) transfers of individual Indian use assignments from one member of the Passamaquoddy Tribe, Penobscot Nation, or Houlton Band of Maliseet Indians to another member of the same Tribe, Nation, or Band, shall be void ab initio and without any validity in law or equity.

(3) Land or natural resources within the Passamaquoddy Indian Territory or the Penobscot Indian Territory or held in trust for the benefit of

the Houlton Band of Maliseet Indians may, at the request of the respective Tribe, Nation, or Band, be--

(A) leased in accordance with the Act of August 9, 1955 (69 Stat. 539), as amended;

(B) leased in accordance with the Act of May 11, 1938 (52 Stat. 347), as amended;

(C) sold in accordance with Section 7 of the Act of June 25, 1910 (36 Stat. 857), as amended;

(D) subjected to rights-of-way in accordance with the Act of February 5, 1948 (62 Stat. 17);

(E) exchanged for other land or natural resources of equal value, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary for deposit in the Land Acquisition Fund for the benefit of the affected Tribe, Nation, or Band, as the circumstances require, so long as payment does not exceed 25 per centum of the total value of the interests in land to be transferred by the Tribe, Nation, or Band; and

(F) sold, only if at the time of sale the Secretary has entered into an option agreement or contract of sale to purchase other lands of approximate equal value.

(g) Land or natural resources acquired by the Secretary in trust for the Passamaquoddy Tribe and the Penobscot Nation shall be managed and administered in accordance with terms established by the respective Tribe or Nation and agreed to by the Secretary in accordance with Section 102 of the Indian Self-Determination and Education Assistance Act (88 Stat. 2206).

(h)(1) Trust or restricted land or natural resources within the Passamaquoddy or Penobscot Indian Reservations may be condemned for public purposes pursuant to the laws of the State of Maine relating to such lands. In the event that the compensation for the taking is in the form of substitute land to be added to the reservation, such land shall become a part of the reservation in accordance with the laws of the State of Maine and upon notification to the Secretary of the Interior of the location and boundaries of the substitute land. Such substitute land shall have the same trust or restricted status as the land taken. To the extent that the compensation is in the form of monetary proceeds, it shall be deposited and reinvested as provided in paragraph (2) of this subsection.

(2) Trust land of the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians not within the Passamaquoddy or Penobscot Reservations may be condemned for public purposes pursuant to the laws of the State of Maine relating to the condemnation of such land. The proceeds from any such condemnation shall be deposited in the Land Acquisition Fund established by Section 5(c) and shall be reinvested in acreage within unorganized or unincorporated areas of the State of Maine or in Indian territory. When the proceeds are reinvested in land whose acreage does not exceed that of the land taken, the land shall be acquired in trust. When the proceeds are invested in land whose acreage exceeds the acreage of the land taken, the respective Tribe, Nation or Band shall designate, with the approval of the United States, and within 30 days of such reinvestment, that portion of the land acquired by the reinvestment, not to exceed the area

taken, which shall be acquired in trust. The land not acquired in trust shall be held in fee by the respective Tribe, Nation, or Band. The Secretary shall certify, in writing, to the Secretary of State of the State of Maine the location, boundaries and status of the land acquired.

(3) The United States shall be a party to any condemnation action under this subsection and exclusive jurisdiction shall be in the United States District Court for the District of Maine: Provided, That nothing in this section shall affect the jurisdiction of the Maine Superior Court provided for in Section 6205(3)(A) of the Maine Implementing Act to review the finding of the Public Utility Commission or a public entity of the State of Maine.

(i) When trust or restricted land or natural resources of the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians are condemned pursuant to any law of the United States other than this Act, the proceeds paid in compensation for such condemnation shall be deposited and reinvested in accordance with subsection (h)(2) of this section.

APPLICATION OF STATE LAWS

Sec. 6. (a) Except as otherwise provided in subsections (d) and (e) of this section, all Indians, Indian nations, tribes, and bands of Indians in the State of Maine, other than the Passamaquoddy Tribe and the Penobscot Nation and their members, and any lands or natural resources owned by any such Indian, Indian nation, tribe, or band of Indians and any lands or natural resources held in trust by the United States, or by any other person or entity, for any such Indian, Indian nation, tribe, or band of Indians shall be subject to the civil and criminal jurisdiction of the State, the laws

of the State, and to the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person or land therein: Provided, That nothing in this section shall be construed as subjecting land or natural resources held by the United States in trust to taxation, encumbrance, or alienation.

(b) [To be supplied.]

(c) The United States shall not have any criminal jurisdiction in the State of Maine under the Act of June 25, 1948 (62 Stat. 757), as amended, or the Act of July 12, 1960 (74 Stat. 469), as amended.

(d)(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and all members thereof, and all other Indians, Indian nations or tribes or bands of Indians in the State of Maine may sue and be sued in the courts of the State of Maine and the United States to the same extent as any other entity or person residing in the State of Maine may sue and be sued in those courts; and Section 1362 of Title 28, United States Code, shall be applicable to civil actions brought by the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians: Provided, however, That the Passamaquoddy Tribe, the Penobscot Nation and their officers and employees shall be immune from suit when the respective Tribe or Nation is acting in its governmental capacity to the same extent as any municipality or like officers or employees thereof within the State of Maine.

(2) Notwithstanding the provisions of Section 3477 of the Revised Statutes, as amended, the Secretary shall honor valid orders of a Federal, State, or territorial court which enters money judgments for causes of action which arise after the date of the enactment of this Act against either the Passamaquoddy Tribe or the Penobscot Nation by making an assignment to the judgment creditor of the right to receive income out of the next quarterly payment from the Settlement Fund established pursuant to Section 5(a) of this Act and out of

such future quarterly payments as may be necessary until the judgment is satisfied.

(e)(1) The consent of the United States is hereby given to the State of Maine to amend the Maine Implementing Act with respect to either the Passamaquoddy Tribe or the Penobscot Nation: Provided, That such amendment is made with the agreement of the affected Tribe or Nation, and that such amendment relates to (A) the enforcement or application of civil, criminal or regulatory laws of the Passamaquoddy Tribe, the Penobscot Nation and the State within their respective jurisdictions; (B) allocation or determination of governmental responsibility of the State and the Tribe or Nation over specified subject matters or specified geographical areas, or both, including provision for concurrent jurisdiction between the State and the Tribe or Nation; or (C) the allocation of jurisdiction between tribal courts and State courts.

(2) Notwithstanding the provisions of subsection (a) of this section, the State of Maine and the Houlton Band of Maliseet Indians are authorized to execute agreements regarding the jurisdiction of the State of Maine over lands owned by or held in trust for the benefit of the Band or its members.

(f) The Passamaquoddy Tribe and the Penobscot Nation are hereby authorized to exercise jurisdiction, separate and distinct from the civil and criminal jurisdiction of the State of Maine, to the extent authorized by the Maine Implementing Act, and any subsequent amendments thereto.

(g) The Passamaquoddy Tribe, the Penobscot Nation, and the State of Maine shall give full faith and credit to the judicial proceedings of each other.

(h) The laws and regulations of the United States which are generally applicable to Indians, Indian tribes, and Indian lands shall be applicable to Indians, Indian tribes, and Indian lands in the State of Maine, except that no

law or regulation of the United States (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians, and also (2) which affects or preempts the civil, criminal or regulatory jurisdiction of the State of Maine, shall apply within the State: Provided, however, That the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be eligible to receive all of the financial benefits which the United States provides to Indians, Indian nations or tribes or bands of Indians to the same extent and subject to the same eligibility criteria generally applicable to other Indians, Indian nations or tribes or bands of Indians, and for the purposes of determining eligibility for such financial benefits the respective Tribe, Nation, or Band shall be deemed to be Federally recognized Indian tribes: Provided, further, That the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be considered Federally recognized tribes for the purposes of Federal taxation and any lands owned by or held in trust for the respective Tribe, Nation, or Band shall be considered Federal Indian reservations for purposes of Federal taxation: Provided, however, That no person who is not a citizen of the United States may be considered a member of the Houlton Band of Maliseet Indians for purposes of the provision of Federal services or benefits.

TRIBAL ORGANIZATION

Sec. 7. The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians may each organize for their common welfare, and adopt an appropriate instrument in writing to govern the affairs of the Tribe,

Nation, or Band when each is acting in its governmental capacity. Such instrument and any amendments thereto must be consistent with the terms of this Act and the Maine Implementing Act. The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall each file with the Secretary a copy of their organic governing document and any amendments thereto.

IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT

Sec. 8. (a) The Passamaquoddy Tribe or the Penobscot Nation may assume exclusive jurisdiction over Indian child custody proceedings pursuant to the Indian Child Welfare Act of 1978 (92 Stat. 3069). Before the respective Tribe or Nation may assume such jurisdiction over Indian child custody proceedings, the respective Tribe or Nation shall present to the Secretary for approval a petition to assume such jurisdiction and the Secretary shall approve that petition in the manner prescribed by Sections 108(a)-(c) of said Act.

(b) Any petition to assume jurisdiction over Indian child custody proceedings by the Passamaquoddy Tribe or the Penobscot Nation shall be considered and determined by the Secretary in accordance with Sections 108(b) and (c) of the Act.

(c) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction.

(d) For the purposes of this section, the Passamaquoddy Indian Reservation and the Penobscot Indian Reservation shall be deemed to be "reservations" within Section 4(10) of the Act and the Passamaquoddy Tribe and the Penobscot Nation shall be deemed to be "Indian tribes" within Section 4(8) of the Act.

(e) Until the Passamaquoddy Tribe or the Penobscot Nation has assumed exclusive jurisdiction over the Indian child custody proceedings pursuant to this section, the State of Maine shall have exclusive jurisdiction over the Indian child custody proceedings of that Tribe or Nation.

(f) Except as may otherwise be subsequently agreed to by the Houlton Band of Maliseet Indians and the State of Maine pursuant to Section 6(e)(2) of this Act, Section 102 of the Indian Child Welfare Act of 1978 shall apply to the Houlton Band of Maliseet Indians to the same extent that that section applies to Indian tribes as defined in Section 4 of the Act.

EFFECT OF PAYMENTS TO PASSAMAQUODDY TRIBE, PENOBSCOT NATION, AND HOULTON BAND OF MALISEET INDIANS

Sec. 9.(a) No payments to be made for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians pursuant to the terms of this Act shall be considered by any agency or department of the United States in determining or computing the State of Maine's eligibility for participation in any financial aid program of the United States.

(b) The eligibility for or receipt of payments from the State of Maine by the Passamaquoddy Tribe and the Penobscot Nation or any of their members pursuant to the Maine Implementing Act shall not be considered by any department or agency of the United States in determining the eligibility of or computing payments to the Passamaquoddy Tribe or the Penobscot Nation or any of their members under any financial aid program of the United States: Provided, That to the extent that eligibility for the benefits of such a financial aid program is dependent upon a showing of need by the applicant, the administering agency shall not be barred by this section from considering the actual financial situation of the applicant.

(c) The availability of funds or distribution of funds pursuant to Section 5 of this Act may not be considered as income or resources or otherwise utilized as the basis (1) for denying any Indian household or member thereof participation in any Federally assisted housing program, (2) for denying or reducing the Federal financial assistance or other Federal benefits to which such household or member would otherwise be entitled, or (3) for denying or reducing the Federal financial assistance or other Federal benefits to which the Passamaquoddy Tribe or Penobscot Nation would otherwise be entitled.

DEFERRAL OF CAPITAL GAINS

Sec. 10. For the purpose of subtitle A of the Internal Revenue Code of 1954, any transfer by private owners of land purchased by the Secretary with moneys from the Land Acquisition Fund shall be deemed to be an involuntary conversion within the meaning of Section 1033 of the Internal Revenue Code of 1954, as amended.

TRANSFER OF TRIBAL TRUST FUNDS HELD BY THE STATE OF MAINE

Sec. 11. All funds of either the Passamaquoddy Tribe or the Penobscot Nation held in trust by the State of Maine as of the effective date of this Act shall be transferred to the Secretary to be held in trust for the respective Tribe or Nation and shall be added to the principal of the Settlement Fund allocated to that Tribe or Nation. The receipt of said State funds by the

Secretary shall constitute a full discharge of any claim of the respective Tribe or Nation, its predecessors and successors in interest, and its members, may have against the State of Maine, its officers, employees, agents, and representatives, arising from the administration or management of said State funds. Upon receipt of said State funds, the Secretary, on behalf of the respective Tribe and Nation, shall execute general releases of all claims against the State of Maine, its officers, employees, agents, and representatives, arising from the administration or management of said State funds.

OTHER CLAIMS DISCHARGED BY THIS ACT

Sec. 12. Except as expressly provided herein, this Act shall constitute a general discharge and release of all obligations of the State of Maine and all of its political subdivisions, agencies, departments, and all of the officers or employees thereof arising from any treaty or agreement with, or on behalf of any Indian nation or tribe or band of Indians or the United States as trustee therefor, including those actions presently pending in the United States District Court for the District of Maine captioned United States of America v. State of Maine (Civil Action Nos. 1966-ND and 1969-ND).

LIMITATION OF ACTIONS

Sec. 13. Except as provided in this Act, no provision of this Act shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, or to grant implied consent to any Indian, Indian nation or tribe or band of Indians to sue the United States or any of its officers with respect to the claims extinguished by the operation of this Act.

AUTHORIZATION

Sec. 14. There is hereby authorized to be appropriated $81,500,000 for transfer to the Funds established by Section 5 of this Act.

INSEPARABILITY

Sec. 15. In the event that any provision of Section 4 of this Act is held invalid, it is the intent of Congress that the entire Act be invalidated. In the event that any other section or provision of this Act is held invalid, it is the intent of Congress that the remaining sections of this Act shall continue in full force and effect.

Senator COHEN. In your judgment, does the band meet the standard criteria for federally recognized tribes?

Secretary ANDRUS. They have not, as I think the committee is aware, gone through the provisions that we have within the Department to make that determination. We are supporting that provision simply because we think this is a unique and important portion of this, and we are supporting their designation or recognition as a tribe. But we make it quite plain, again, in the testimony that we would hope that this would not become commonplace, that we would go around the regulations that we have to make that determination.

Senator MITCHELL. Mr. Secretary, one question has been repeatedly asked. I would ask your opinion on it, if you have one.

What do you think the effect of this settlement would have upon other suits, either pending or those which possibly could be filed throughout the Nation?

Secretary ANDRUS. I will give you a personal opinion. I think this will do two things.

No. 1: It will show a clear intent by this administration and this Congress to resolve these issues that have been pending these many, many years.

No. 2: It will show the other Indian nations of America that they do not necessarily have to dash to the courthouse. They can sit down and resolve the differences by negotiations instead of litigation.

Senator MITCHELL. Do I then take your remarks to mean that in your judgment the effect it will have will be favorable?

Secretary ANDRUS. Absolutely.

We are starting to keep our word, Senator. We are just 200 years late.

Senator MITCHELL. Better late than never, they say.

Secretary ANDRUS. That is true.

Senator COHEN. I have a couple of more questions.

As a result of the difference in treatment between the Maliseet Band and the other two tribes, is there any doubt on whether the Houlton Band retains civil or criminal jurisdiction over its band? How does that operate?

Secretary ANDRUS. I am advised by counsel that we raise again the lawyerly question of ambiguity. We will again respond to you in writing.

Senator COHEN. I am just not sure exactly what the relationship between that band is going to be—between the Federal Government and the State under this particular agreement for the future in terms of Federal programs or in terms of criminal or civil jurisdiction.

Without objection, the record will be open for response.

[See letter, dated Aug. 8, 1980, from U.S. Department of the Interior, p. 95.]

Senator COHEN. Under section 6(c) this provision would waive sovereign immunity for the Houlton Band and the corresponding waiver for the Passamaquoddy and Penobscot Tribes when they act in a proprietary function. Now, Congress does have the power to waive a tribe's sovereign immunity and it has done so but only occasionally and in a very limited fashion.

Is this a section, in your judgment, which needs some clarification? For example, what types of tribal business can we cover? When can there be a waiver of sovereign immunity?

Secretary ANDRUS. We do feel that it would waive the sovereign immunity of the two tribes provided in the Implementing Act which in turn provides, in section 6206(2), that the tribes and their officers may be sued except to the extent that they are acting in their governmental capacity. This is similar to the waiver of sovereign immunity provided for in the sue and be sued provisions of the charters and of tribal corporations elsewhere in the Nation.

Senator COHEN. Do you think this is consistent with other actions taken by the Congress?

Secretary ANDRUS. Our legal department advises it is consistent.

Mr. VOLLMANN. We see similarities between what tribes have done in the past. A U.S. Court of Appeals recently ruled that the tribes themselves could waive their sovereign immunity. Certainly tribes, when they enter into commercial transactions have to be expected to make limited waivers of their sovereign immunity to be able to get into the commercial world.

Again, we see some ambiguities as to what circumstances one might need a waiver and under what circumstances where sovereign immunity might still be applicable. We would like to clarify this in working with State and tribal attorneys and their clients.

Senator COHEN. Under section 6(c) there also is a provision which allows individuals with unpaid final money judgments against the Passamaquoddy and Penobscot Tribes to obtain payment from the Secretary of the Interior using income from proposed tribal trust funds.

Would you agree that this provision is unique in Federal law?

Secretary ANDRUS. We raised that question, Senator, in the testimony and also in the discussions we have had internally within the Department. There are other provisions that we think could handle this more adequately. The Alaska Native Claims Settlement Act is an area in which this has been discussed. That language would be applicable in this regard. Or language whereby the tribes could enter into an agreement that incomes from this could, in fact, be pledged for security against a loan, as we do in ANCSA, would also suffice. However, we do question the language there.

Senator COHEN. It does impose certain administrative burdens upon the Department to make assessments of these money claims and defend the litigation.

Secretary ANDRUS. Absolutely. That is correct, and it puts the Secretary of the Interior clearly in line for a suit as to questioning whether they did or did not act adequately.

Senator COHEN. Does it not also conflict with another provision that says you cannot deduct any payments? In other words, the ambiguity is created because the Secretary is required by another section to make available these funds without any deductions. How do we reconcile those provisions

Secretary ANDRUS. That is part of the question we raised. Again, the language we refer to is in our text on the bottom of page 12 and on page 13 to where we believe that that language has to be clarified. Again, one way might be to authorize that judgment creditors to attach the income before it is paid to the tribe. The income could be pledged in those situations.

I think it is easily taken care of, but we are not of the belief right now that the language in the bill does that.

Senator COHEN. On section 6(d): This appears to be an attempt to authorize action by the State on changes in the Federal laws, and it assumes congressional adoption of those changes.

No. 1: It seems to me the provision is unique because it allows the Federal act in the U.S. interests, regarding the settlement to be amended by the State. The question is this: Should a Federal act ratify an ambiguous State act in a blanket manner?

Secretary ANDRUS. We object to that language, Senator. In our discussions we have found that the State representatives and the tribal representatives did not believe that that language would give congressional consent to future amendments by the State. So, I think that is one that can easily be worked out. But we object to that language in 6(d) which would give that—we think would give that congressional consent.

Senator MITCHELL. I have one more question. One of the concerns raised about this legislation, both in Maine and here in the Congress, is the difficulty of getting Congress to approve the expenditure of $81 million at a time of tight budgetary restraints. Should that present a problem, I would ask you a question in two parts.

First: What is the possibility of spreading out the payments, particularly with respect to the acquisition of land, over a period of years.

Second: Would that be reconcilable with the extinguishment of the claims, or would that complicate that aspect of the matter?

Secretary ANDRUS. Senator, I think it is possible. Obviously all 300,000 acres of land have not been located with an X on the map, but I cannot speak for the tribes' representatives. I am confident they will be here today and tomorrow to speak for themselves in this regard. It would not cause the Government any problem over that period of time. However, in other legislation—in the Alaska Native Claims Settlement Act it was spread out over a period of years. We do not see a problem with it.

However, I think that question would appropriately be addressed also to the two tribes.

Senator MITCHELL. From the Department's point of view, you think that presents no problem.

Secretary ANDRUS. No, sir.

Senator MITCHELL. If that were an attractive alternative to the Congress, from the Department's point of view, that would not be a difficulty?

Secretary ANDRUS. That would be no problem. As a matter of fact, I would suspect that the administration and Congress would find that an easier way to handle the situation.

Senator COHEN. Mr. Secretary, thank you for your testimony. We look forward to receiving your recommendations to the committee when Congress returns later in July.

[The prepared statement follows. Oral testimony resumes on p. 136.]

PREPARED STATEMENT OF CECIL D. ANDRUS, SECRETARY OF THE INTERIOR

Mr. Chairman, and members of the Committee, I am here to discuss with you today the Administration's views on S. 2829, the Maine Indian Claims Settlement Act of 1980.

We fully support the concept of a negotiated settlement as the means for resolution of the Maine Indian land claims, and we hope that S. 2829 will lead to a final settlement of these claims.

We recognize that a Federal contribution is necessary to achieve a negotiated settlement, and we do not object to the contribution proposed by this bill. The proposed contribution of $81.5 million is substantially higher than the Administration has previously supported. However, because years of continued litigation would have a severe impact on the citizens of Maine—and also because the settlement proposal is based on the agreement of all relevant parties in Maine and should therefore provide a lasting solution to this problem—we do not object to the Congress providing for the Federal contribution contemplated in S. 2829.

It would not be responsible for the Administration simply to state its general position on this legislation. For that reason, we have carefully examined all aspects of the proposal in order to ensure that the broad interests of the tribes and the United States are well served under it.

Our examination has produced a series of questions concerning details of S. 2829 which we would like to raise to the Committee for your consideration as you examine this legislation. We look forward to working with the Congress, the State of Maine, and the tribes to resolve these question in a mutually satisfactory manner.

Before I discuss our questions about S. 2829 in more detail, let me summarize for you the 8-year history of the Department's involvement with the Maine land claims. In 1972, the Passamaquoddy Tribe of Maine petitioned the Department of the Interior for a recommendation that the Department of Justice file suit on the tribe's behalf to remedy a 1794 violation of the Indian Nonintercourse Act of 1790. However, the Department of the Interior took the position that the Nonintercourse Act was not applicable to the Passamaquoddy Tribe because it was not a "recognized tribe," and that the Department therefore did not owe that tribe any trust responsibility. In anticipation of the running of a statute of limitations applicable to monetary trespass claims, the tribe filed suit to seek a declaration that the Nonintercourse Act did apply, and that the Federal Government therefore did have a trust responsibility to the tribe in the assertion of its claims. The statute of limitations was extended by Congress, but the lawsuit continued. In January 1975 the U.S. District Court ruled in the tribe's favor and was upheld by the U.S. Court of Appeals. Neither the United States nor the State, which had intervened in this litigation, appealed to the U.S. Supreme Court, and the court order became final in March 1976. An investigation then began into the merits of the claims of the Passamaquoddy Tribe and the similar claims of the Penobscot Indian Nation.

In late February 1977 the United States reported to the District Court that the tribes had significant claims to five million acres of Maine woodland. However, the Department of Justice also informed the court that it was the position of the Federal Government that such claims are best settled by Congress rather than through years of litigation, and that the President was about to appoint a special representative to work toward this end. In March of that year President Carter appointed Judge William B. Gunter, a retired Justice of the Georgia Supreme Court, to be that representative. In July 1977 Judge Gunter gave the President his recommendation that the claims be settled by providing the tribes with a $25 million trust fund and 100,000 acres of land. Both the tribes and State rejected that recommendation, but it proved to be a point of departure for the negotiations.

In February 1978, a White House Work Group made up of Interior Solicitor Leo Krulitz, OMB Associate Director Eliot R. Cutler, and Mr. A. Stephens Clay, an associate of Judge Gunter, arrived at an agreement with the tribes to provide for a partial settlement of the claim. Under this proposal the tribes would receive a $25 million trust fund and in return would relinquish their claims to any land holdings of 50,000 or fewer acres held by any private landowner in the claims area. The larger landowners and the State were opposed to this partial settlement proposal, and legislation was never introduced to effectuate it. Nevertheless, negotiations did progress. At the same time as the partial settlement proposal was announced the tribes also announced that they would settle the rest of their claims for 300,000 acres of average Maine woodland.

In October 1978 then Senator Hathaway announced a new settlement proposal which the State and the Administration agreed to. It called for a $27 million trust fund plus a $10 million land acquisition fund to enable the tribes to acquire 100,000 acres of woodland. The State contribution to this was set at $5 million, but it was understood that the State would be credited for that amount for the past provision of services to the tribes and their members during those many years when the Federal Government provided no such services. This proposal still did not gain universal acceptance. In March 1979 the tribes voted to settle for no less than

300,000 acres of woodland as previously announced. Negotiations continued, and attempts were made to seek sources of funding to acquire the acreage the tribes deemed necessary. Meanwhile, the tribes and the State tried to achieve an agreement on what jurisdictional relationship would exist among the tribes, State, and the Federal Government over any new acquired lands. These separate negotiations took on added meaning after the Maine Supreme Court ruled in May 1979 that the existing reservations in Maine constituted "Indian country" within the meaning of title 18 of the U.S. Code, and that the Federal Government therefore had jurisdiction over offenses by and against Indians on those reservations.

In November 1979 representatives of the various parties met at the Department of the Interior to discuss what further steps shoud be taken toward a legislative settlement. It was agreed that the attorneys for the tribes, State, and the landowners would review draft legislation prepared in the Department and would return with their alternate drafts in the coming weeks. We saw nothing further until March of this year when it was announced that the parties in Maine had agreed upon an $81.5 million settlement funded by the United States and a jurisdictional agreement on authority over any lands to be acquired with that money. As you know, that settlement proposal took the form of two pieces of legislation, one State and one Federal. The State legislation was enacted and signed into law by Governor Brennan on April 3, 1980, with little opportunity for the Executive branch of the Federal Government to review and comment on it. That legislation could, if ratified by Congress, have a significant effect on the role of this Department as trustee for the Maine tribes.

We are encouraged that the tribes and the State have been able to work out an agreement. However, we have a number of questions about the role of the Department in connection with that agreed-upon relationship and believe that a number of points need revision or clarification. We plan to work with the tribes, the State, and the Congress to make this agreement a clear and acceptable one.

S. 2829 would ratify an Act enacted by the State of Maine to implement a settlement of the Maine Indian land claims—the "Maine Implementing Act." This Act would define respective State and tribal jurisdiction. It would declare that the Houlton Band of Maliseet Indians shall be subject to the laws of the State and that, except as expressly provided, all land owned by Indians, Indian nations, tribes, or bands, or by the United States in trust for them, shall be subject to State law and to both civil and criminal jurisdiction of State courts. Exceptions to such jurisdiction would include internal tribal matters and use of settlement fund income, certain tribal ordinances concerning hunting and fishing, and jurisdiction over minor crimes by Indians, Indian child custody proceedings, and domestic relations matters of tribal members. In addition, the Passamaquoddy Tribe and the Penobscot Nation would gain a status similar to that of municipalities and waive sovereign immunity with respect to actions in any capacity other than a governmental one.

The two tribes would make payments in lieu of taxes on real and personal property and be liable for all other taxes and fees generally applicable in the State. The Act becomes effective only upon enactment of Federal legislation extinguishing the aboriginal land claims and "ratifying and approving this Act without modifications."

In addition to ratifying the State Act, S. 2829 would find that the Houlton Band of Maliseet Indians is the successor in interest to lands within the United States of the aboriginal Maliseet Tribe and would deem the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseets to be Federally recognized Indian tribes eligible to receive financial benefits that the United States provides to Indian tribes. Other laws according special status or rights to Indians or Indian trust lands would not apply within the State of Maine.

The bill would also approve and ratify past transfers of land by these three tribes within Maine and the United States, and extinguish all aboriginal title and any claims arising out of such transfers in Maine. A $27 million settlement trust fund would be established for the Passamaquoddy and Penobscot with the income to be paid to the tribes quarterly and to be free from Federal control. A $54.5 million land acquisition fund would be established, with $900,000 allocated for purchase of 5,000 acres for the Houlton Band and one half of the remainder to each of the other two tribes.

Funds received by the tribes would not be considered for purposes of future Federal payments or grants to either the State or to individual Indians. Funds obtained by the tribes from the State as a municipality would not be considered in determining eligibility of or computing payments to the tribes under Federal

financial aid programs. Transfers of privately owned land to the United States paid for out of the land acquisition fund would be considered to be involuntary conversions for Federal tax purposes, permitting a deferral of capital gains tax.

Again, while we are pleased that the tribes, the State, and the landowners have achieved agreement on many difficult issues, we believe that S. 2829 raises two major issues on which further discussion is needed—(1) the total level of funding, and (2) the intergovernmental relationship among the tribes, the State, and the Federal government.

With respect to the issue of Federal funding of the proposed settlement, we support the allocation of $27 million to a trust fund for the tribes. We also do not oppose the allocation of no more than $54.5 million for a land acquisition fund to purchase 300,000 acres of average Maine woodland. Based upon an assessment recently completed by the Department, this amount of money is sufficient to purchase this acreage.

S. 2829 has, in addition, financial implications beyond these outright payments which we believe would be unwarranted. As drafted, section 8(a) of the bill would prevent Federal agencies from considering any payments made for the benefit of the tribes pursuant to the settlement in determining State eligibility for participation in Federal financial aid programs.

Together with sections 6211(2) and (4) of the State Act, section 8(a) would apparently allow payments by State agencies to Indians to be subplanted by Federal payments for the same or similar purposes. If, for example, the State withdrew all health care funding for its Indian citizens in anticipation of Indian Health Services (IHS) aid, the incremental cost to the IHS is estimated at about $1 million annually. If this provision were to establish a nationwide precedent, the cost would rise to $285 million annually in this single program. Federal funding in Maine could under this reading also supplant State funds in other programs, such as public school assistance under the Johnson-O'Malley Act, which indicates a clear Congressional intent to prevent States from supplanting their funds with Federal dollars.

We recognize that the State has long maintained a relationship with the Passamaquoddy and Penobscot, providing at significant cost educational, comprehensive health, welfare, police, fire, and housing services and, in applying our guidelines calling for State participation in any proposed Indian land claims settlement, we consider the cost of those services to be the equivalent of the land contributed by the State of Rhode Island in the Narragansett settlement and of that to be contributed by New York in the proposed Cayuga settlement. However, the special treatment that the State of Maine would appear to be accorded under section 8 of S. 2829 is totally unjustified.

In effect the provision of governmental services to reservation Indians in Maine would be treated as an almost exclusively Federal responsibility. Every time the Federal Government expended a dollar for services on the reservation, that dollar would supplant a dollar of services provided under State law, services to which all Maine citizens and municipalities would otherwise be entitled. Thus, under this provision many Federal programs to aid the Passamaquoddy and Penobscot would in reality merely allow the State of Maine to withdraw similar programs to those tribes and their members—without Federal agencies being able to reduce their funding for the State government to take into account this new Federal responsibility. We also feel that it is inappropriate to disregard payments (other than those directly under the settlement agreement) in determining tribal or individual Indian eligibility for various forms of Federal assistance. This provision in section 8(b) could apply to any State payment, including, for example, retirement benefits for Indian State employees. We are, therefore, opposed to the present language of section 8 and sections 6211 (2) and (4) of the State Implementing Act, and we will work with tribal representatives and State officials to draft language to eliminate the possibility of funding inequities that may otherwise result under the settlement proposal. We were informed that it was not the intent of the State or the tribe to create this situation and we believe that clarifying language can be worked out.

An additional cost to the United States would result from enactment of section 9 of S. 2829, which would expand Federal tax law to treat the sale of private land to the tribes under the settlement as an involuntary conversion subject to capital gains deferral. The Federal tax loss from this provision is estimated at $15 million. We question the desirability of establishing such a precedent because existing Federal law treats only sales stemming from Federal or State condemnations as

involuntary conversions. Nevertheless, in light of the parties' agreement to this provision, we defer to Congress on the wisdom of adopting it.

Our second major question with S. 2829 is with respect to the novel jurisdictional relationships which would be created by the bill and the State Implementing Act. Our foremost concern in this regard is the lack of clarity in defining the role of the Federal Government as trustee to the tribes.

Let me make it clear that we do not regard the State-tribal agreement as one calling for termination of these tribes. As we read the State legislation and S. 2829, the tribes' governmental authority over their own members will continue to be recognized. The Passamaquoddy Tribe and the Penobscot Nation will, as we read the legislation, not be entities created and wholly subject to State laws beyond their control, but will continue to be Indian tribal entities subject to the ultimate authority of Congress under the Commerce Clause of the Constitution, subject to certain restrictions on their authority as a result of this jurisdictional compact with the State of Maine.

Section 5(d) of S. 2829 authorizes the Secretary to expend the land acquisition fund established under the bill for the purpose of acquiring land for the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band. There is, however, nothing in the bill that states how the land is to be held after purchase, whether in trust by the United States for the benefit of the tribes, by the tribes in fee subject to certain restrictions on alienation, or otherwise. This situation must be clarified, especially with respect to lands that will be subject to real property taxation and tax forfeiture sales.

Section 5(e) of the bill, which deals with restrictions on alienation of trust lands, would differ to some degree from present Federal law. The bill and State Implementing Act distinguish between lands within and without "Indian territory," an area which includes the tribes' current reservations plus up to 300,000 acres of land acquired in certain unorganized townships in rural Maine. This distinction is somewhat similar to that employed on and off Indian reservations in other States. Outside Indian territory no Federal restrictions against alienation would apply. We understand that the intent of this provision is that these lands would be held in fee by the tribes as, for example, off-reservation fee lands of the Navajo Tribe are held. Within Indian territory, tribal trust lands would be restricted, but could be leased, exchanged, or transferred under certain circumstances with the approval of the Secretary. Since existing Federal statutes authorizing the leasing and transfer of tribal lands and natural resources would not be applicable, no standards would be provided for the exercise of the Secretary's approval authority. The application of such existing leasing and transfer authorities—perhaps enumerated in this section—would assure our ability to protect tribal trust lands and clarify the respective roles of tribal and Federal officials. I expect that we should be able to clarify this sufficiently in consultation with State and tribal officials.

Our reading of section 6 of S. 2829 and related provisions of the State Implementing Act is that the respective authority of the State and the tribes would not be radically different from the jurisdictional relationships which exist among other States and tribes. However, the relationship in this settlement proposal is not always clear, and we think a re-working of the relevant language is in order. Furthermore, because the numerous references in S. 2829 to the Maine Implementing Act make an understanding of the jurisdictional relationships difficult, we believe that such relationships should be spelled out in the Federal legislation.

Under the State Implementing Act, the Passamaquoddy Tribe and the Penobscot Nation would largely retain their inherent authority over their own members, but would also be treated as municipalities under State law. We have a conceptual problem with this model. Maine municipalities derive their powers from their individual charters, but the two tribes have no constitutions or charters, or even a traditional governmental structure. They have long operated under State laws which would be repealed by the Implementing Act. To clarify the jurisdictional relationships and to provide for viable tribal governments in the future, we recommend that S. 2829 be amended to provide for the development of tribal constitutions and charters along the lines provided in the Indian Reorganization Act.

Section 6(c) would waive the sovereign immunity of the two tribes as provided in the Implementing Act, which in turn provides in section 6206(2) that the tribes and their officers may be sued except to the extent that they are acting in their governmental capacity. This is similar to the waiver of sovereign immunity provided for in the "sue and be sued" provisions of charters of tribal corporations organized under section 17 of the Indian Reorganization Act. This is sensible

since any governmental entity which seeks to enter into commercial transactions must agree to limited waivers of its sovereign immunity. However, confusion may arise when one attempts to distinguish between actions taken by a tribe in its governmental capacity and those taken in a proprietary capacity. Again, one means of clarifying this distinction would be to authorize each Tribe to adopt a constitution which would govern the activities of tribal government and also a corporate charter which would govern the tribe's business activities. The tribal corporation could then be sued in the courts of the State as provided in the Implementing Act.

Section 6(c) would also allow persons with unpaid final judgments against the tribe to obtain payment from the income of the trust fund established under the bill. We believe this would unnecessarily increase our administrative burden and involve us in unnecessary litigation. One alternative might be to authorize judgment creditors to attach the income before it is paid to the tribes. As now drafted, the provision would be unique in Federal Indian law, as well as inconsistent with section 5(b)(3) of the bill, which provides that income from the fund shall be made available to the tribes "without any deductions."

We strongly object to the language of section 6(d), which would give Congressional consent to future amendments to the Maine Implementing Act. We understand from discussions with tribal and State representatives that this was not the intent of this section. Rather, it was intended to provide the parties with future flexibility in adjusting their jurisdictional relationship under the State Implementing Act. Since that is the case, we recommend that section 6(d) be amended to authorize the making of future jurisdictional compacts between the tribes and State, provided that the roles of Federal officials are not affected thereby.

Under section 6(f), adjudications of the Passamaquoddy Tribe and the Penobscot Nation would be required to be given full faith and credit by the United States, the States, and all other Indian tribes. Although some courts have accorded full faith and credit to tribal judicial proceedings, statutory requirements for such full faith and credit presently exist only with respect to child custody proceedings. In addition, since tribal governmental actions are not reviewable except in habeas corpus proceedings in Federal court, a tribal court adjudication that violates the Indian Bill of Rights might be required to be given full faith and credit. We therefore believe that this provision should be deleted from the bill.

Section 6(g) of S. 2829 would provide that Federal laws specifically applicable to Indians, Indian tribes, Indian lands, and Indian reservations shall not apply in Maine, except that the Passamaquoddy, Penobscot, and the Houlton Band would be eligible to receive all financial benefits the United States provides to Indians. This single provision would make inapplicable every provision of Federal law codified in title 25 of the United States Code and all other Federal Indian laws except certain unspecified provisions respecting "financial benefits." The task of identifying those provisions would be a time-consuming and probably litigious one. We believe that any laws not intended to apply should be specifically enumerated in S. 2829.

Initially, we were concerned that the taxation provisions of section 6208 of the State Implementing Act might result in early depletion of the trust assets provided to the tribes under the settlement. However, we now understand that the tribes do not intend to acquire large acreages outside "Indian territory," where such lands would be subject to real property taxation, except to enable them to exchange such lands for other woodlands within "Indian territory" where they would be immune from such taxation. The in-lieu payments which the tribes would be willing to make for lands within their Indian territories would be very small since the tribes themselves will be the municipalities with the authority to levy the bulk of such taxes. Such in-lieu payments will apparently be made primarily to the counties in return for the provision of services comparable to the value of the in-lieu payments. We prefer instead of fashioning this arrangement in terms of the making of in-lieu payments, that the tribes merely negotiate contracts with the counties for the provision of such services.

Section 4 of S. 2829 raises another question respecting Federal-State relationships. Paragraphs (ii) and (iii) would approve and ratify transfers of land in Maine that were made in violation of State law. This is a wholly novel provision for a Federal statute and may render the United States liable for the State's failure to enforce its laws. The same can be said of section 11 of the bill. We thus object to the inclusion of such provisions. We also note that subsection (a) of section 4 is overboard in that it would ratify land transfers in Maine regardless of any provision of the Constitution and Federal law. This would, of course, include statutes not specifically applicable to Indians, such as antitrust laws, laws respect-

ing national parks and wildlife refuges, and the Fifth Amendment. This could also give rise to unforeseen liability on the part of the United States.

The bill would also recognize the Houlton Band of Maliseet Indians as an Indian tribe, provide for the acquisition of 5,000 acres of land for the band, and extend Federal Indian services to the band. The Houlton Band is an organized group of 350 to 600 individuals located in the Houlton, Maine area. The Houlton Band is not presently a Federally recognized tribe. Various Canadian Maliseet groups have been recognized in that country.

The Houlton Band asserts a Nonintercourse Act claim arising out of aboriginal possession of portions of northern Maine and a 1794 treaty. While the Nonintercourse Act applies to both recognized and nonrecognized tribes, an Indian group must nonetheless establish that it constitutes a tribe in order to establish a claim under that Act. The Department has established the Federal Acknowledgment Project (FAP) to determine which nonrecognized groups constitute tribes. The Houlton Band has not submitted an acknowledgment petition to FAP.

Congress, of course, clearly has the power to recognize an Indian group as a tribe. We recommend that such power be exercised only in exceptional cases, lest too frequent bypasses of the FAP procedure lessen its integrity. We believe that the opportunity to settle all Indian land claims in Maine under the proposed settlement is such an exception. We, therefore, support the recognition of the Houlton Band in S. 2829 as part of this comprehensive settlement.

Finally, we believe it is critical that passage and implementation of this legislation put an end to this dispute. For that reason, the provision extinguishing all tribal land claims in Maine must be carefully drafted. We would urge, moreover, that the bill also provide that no Federal money will be disbursed under the Act—either for the trust fund or for land acquisition—until the tribes have stipulated to a final judicial dismissal of their claims. We understand that the tribes have no objection in principle to the inclusion of such a provision. Again, as with all other questions I have raised, the Administration stands ready to work with all parties to obtain a mutually satisfactory bill. We plan to work with the tribe and the State between now and July 21 to develop amendments to S. 2829 which will address the concerns expressed today, and a number of others. We plan to report formally to the Committee after the July recess on the results of our efforts.

I will be happy to respond to any questions you may have.

Senator COHEN. Our next witness is the Honorable Joseph E. Brennan, Governor of the State of Maine. The Governor has been involved in the land claims case from its beginning, first as Maine's attorney general, and now as Governor. We welcome him and look forward to his comments.

STATEMENT OF HON. JOSEPH E. BRENNAN, GOVERNOR OF THE STATE OF MAINE, ACCOMPANIED BY DAVID FLANAGAN, LEGAL COUNSEL TO THE GOVERNOR'S OFFICE

Governor BRENNAN. Thank you, Mr. Chairman and Senator Mitchell. First I would like to introduce legal counsel to the Governor's office, Dave Flanagan, and I want to thank the committee for inviting us to appear to give our views on this important piece of legislation.

At the outset, I do want to state categorically that the State of Maine has clean hands, and I would suspect that the two U.S. Senators from Maine would share that view.

As has been stated, the claims of these two tribes are enormous, involving over half the land in our State and some $25 billion.

I believe that they are the most extensive and the most complex claims filed by any Eastern tribe. In fact, the Federal official involved in this matter once stated that it was probably the most complex piece of litigation ever to face the Federal courts.

With respect to the interest of the State of Maine, I would like to begin by stating that as attorney general from 1975 to 1978, I was

personally responsible for the defense of the State against these claims. After working extensively with the attorneys, with historians, with anthropologists, and other experts, I reached the conclusion that the State could defend itself and the people of Maine successfully against the legal claims of the tribes. I continue to believe that if we must defend these claims in court, the State would ultimately prevail.

At the same time, I have been involved with this case long enough and deeply enough to recognize that there are responsible, competent legal anaylists who do not share that view, and I have practiced law long enough to realize that any time any claim is litigated, there is a risk of an adverse verdict, however unjust or unfair it may seem to the participants.

So, notwithstanding my deeply held conviction that the State would and should prevail, I acknowledge that this legislation, which will provide for a settlement, is in the best interests of all the parties concerned.

First and foremost: It will with absolute certainty terminate the aboriginal claims once and for all. Second, it will spare the State the tremendous cost of litigation, not only directly on the public treasury, but more importantly, indirectly through interruptions in our access to the finance markets and through creating clouds on titles in over half the State.

In short, litigation may result in economic chaos for the people of our State.

Let me put these considerations into perspective. We could expect the tribes to make a claim in court for more than $25 billion in damages against private landowners and homeowners in the State and for millions of acres of land. During the long and uncertain period of litigation, we could reasonably expect that the ability of the State and private developers to market bonds would be severely jeopardized. Indeed, real estate markets in half of Maine could be frozen as they were a couple of years ago in the town of Mashpee in Massachusetts. The ability to secure financing for private economic development could be paralyzed.

You know that we are making every effort to increase economic development in our State. It is the first priority of our administration. I can think of no single factor which could have a more devastating impact on decisions by business to invest and to expand in our State than the active litigation of these tremendous claims.

Even now, every month that passes with these claims unresolved, there must be, to some effect, a chilling on the prospects of business growth.

With the economic problems facing our Nation and Maine at this time, the resolution of these issues must be of very great concern to responsible leaders of a State which, when the cost of energy is considered, may have the lowest per capita income in any State in this Nation and where good, well-paying jobs are desperately scarce.

So, while I believe the State would prevail in court, I am likewise convinced that a reasonable out-of-court settlement as embodied by this legislation would better promote the interest of the people of Maine than years of bitter litigation with its inevitable adverse economic consequences.

I would like to next address the issue of why the responsibility for any financial contribution for this settlement should rest exclusively with the Federal Government.

Throughout the difficult course of the negotiations with the tribes, I have steadfastly opposed any State contribution, whether with dollars or land, to a settlement. The reason for this is that the people of Maine have done no wrong. Our citizens are absolutely innocent, and the innocent should not be penalized or punished. Yet if the taxpayers of our State—again, one of the poorest States in this Nation in real economic terms—were forced to contribute directly to a settlement, they would be immediately deprived of the goods and services their tax dollars would otherwise provide for them.

It seems to me self-evident that citizens living in Maine today could not be branded guilty for acts that may have been committed two centuries ago. But even if successive generations were somehow to be held accountable for the actions of its forebears, the responsibility for the claims here should still rest directly with the Federal Government.

Both the State of Maine and the Commonwealth of Massachusetts acted in accordance with their own laws in entering into agreements with various groups of Indians for the transfer of lands in the State of Maine. In 1794, the Federal Government was perfectly well aware of these transactions, but far from admonishing the States, the Federal Government disclaimed any responsibility for these Indians whatsoever. Indeed, when Maine was admitted into the Union in 1820, not a word was uttered by the Congress to in any way disavow or to modify the transactions between Maine and Massachusetts and the tribes. On the contrary, the Congress ratified the separation agreement between the two States that contains specific provisions relating to the status of Indian land deeds and treaties.

You well know the fact that it has been only in the last half a dozen years or so that the notion that the Nonintercourse Act might apply to tribal remnants in the original 13 colonies has gained any currency whatsoever. So, after nearly 200 years have passed, the same Federal Government that approved of Maine's management of Indian affairs is now suing, or threatening to sue, the obviously innocent people in my State, people who could not possibly have had anything to do with the alleged wrongs of two centuries ago.

To make matters worse, it was the negligence or the malfeasance or the nonfeasance of the Federal Government itself which spawned this claim as a result of Federal failure to enforce its own law. Indeed, if the Justice Department should be suing anyone, it ought to be suing the Federal Government itself, for the history is clear. If there was any wrongdoing, it was on the part of the Federal Government.

In any event, any suit by the Federal Government against its own obviously innocent citizens would be a gross injustice.

So in my view, the Federal Government should be precluded by even the most rudimentary sense of justice from asserting any claim for contribution from people who are innocent.

I might add, too, as the bill states in section 2, paragraph 10, for two centuries Maine has been responsible for the welfare of the tribes, making voluntary payments entirely without Federal assistance while Maine taxpayers contributed to the National Government and thus to the welfare of the Western tribes, thereby financially getting the worst of both worlds in a financial sense.

In effect, if I may use an analogy, it is as if our family has been taking care of itself for generations, neither asking nor receiving any help from the outside, and our family has during all that time been chipping in to help other families beyond our borders. We have been paying both ways and not receiving. I think the justice of our position is underscored by the fact that after prolonged evaluation, the Carter administration agreed to consider the past voluntary assistance Maine has made to its Indians as a sufficient contribution to its settlement and concluded that Maine should not be asked for additional dollars and land.

The White House working group on this issue in October 1978 committed itself to this fundamental principle as part of the so-called Hathaway proposal. This was endorsed, then, by the Maine congressional delegation and me, in my capacity as attorney general.

Nothing has occurred since October 1978 to provide any basis for the Carter administration, or indeed anyone else, to change the view that Maine's past contribution to its Indians were more than enough.

Before leaving this issue, I would like to stress one final point. To my knowledge, the Maine congressional delegation has not yet achieved a consensus on a dollar figure appropriate for this settlement. I am prepared to endorse any reasonable figure that the delegation collectively arrives at. In the meantime, I do not have any specific recommendations in this aspect of the case.

Finally: Let me turn to just a third issue briefly. As you know, the Carter administration requested that the State, the landowners, and the tribes reach a jurisdictional agreement among themselves before taking any steps toward the ultimate Federal resolution of this claim. We have done so through the Main Implementing Act which was passed by our legislature on April 3, 1980. This legislation deals with various jurisdictional matters and would govern the development of tribal-State relations upon the enactment of the Federal bill.

I believe that this State act, created through months of negotiations between the tribes and the State, represents a positive step in the history of State-Indian relations, not only in Maine, but also nationally, as an alternative to the often unsatisfactory arrangements involving the States, the tribes, and the Federal Government in the West. We could never have a nation within a nation in Maine. Such result would not only be unworkable in a State our size, but it would also promote racial hostility and resentment to the profound detriment of our people. So we have created a new model. By treating the Indian territories as municipalities, this settlement provides that our Indian citizens would be on a substantially equal footing with their fellow citizens in other towns and cities for the first time in our history.

As Maine's attorney general will be able to report in greater detail later, there are technical modifications that will distinguish these municipalities from others relating to eminent domain, local courts for rather minor matters, and local control of certain aspects of hunting and fishing.

Aside from these exceptions, these tribal municipalities will be governed by State law. The Indians would be full-fledged citizens responsible for their own services, taxes, welfare, and destiny just like the people in every other city and town in our State.

I can think of no better way to create in our Indian c mmunities a sense of self-sufficiency and self-respect than through the reform contained in the Maine Implementing Act.

I am truly hopeful that this settlement on these terms will mark the commencement of a new era in which Maine Indians will live and govern themselves with the same success and dignity as other citizens.

Mr. Chairman, I have appeared here as the representative of our State and the people who are citizens of Maine. I am sure that a great number of people in our State have specific objections to specific parts of this bill and to specific portions of the State legislation. I am also sure that a majority recognize that in a compromise, not everyone is totally satisfied.

Finally: Throughout these negotiations, I have advised our attorney general that any settlement would have to be based on three principles.

First: That the State should not contribute any land or money to the settlement because, as the administration has already acknowledged, we have already made a very substantial contribution to the support of our tribes.

Second: That the sovereignty of the State over all its land and people would not generally be compromised.

Third: That the land claims of the tribes, lands and individuals, be unequivocally and finally extinguished.

This settlement, in my judgment, satifies all of those goals, and I believe those are the standards the people of Maine would want applied to test the acceptability of any settlement. In the last analysis, I believe that whatever specific misgivings Maine citizens have, a strong majority of our people join me in believing that a moderate, responsible settlement will ultimately be in the best interests of Maine and indeed this Nation. Such a settlement will best assure the final extinguishment of these claims, protection of the innocent people of Maine from cost of litigation and economic chaos, and the creation of a new form of government solidly within the Maine tradition to encourage self-sufficiency and self-respect and dignity for our Indian citizens.

Thank you.

Senator COHEN. Is it your belief that this proposal that the Congress now has before it is a reasonable settlement?

Governor BRENNAN. Yes, I believe it is a reasonable settlement with one caveat. I am not endorsing the $81 million. I have stated on prior occasions that I would support the collective judgment of the Maine delegation, but I think overall the settlement is in the best interest of the people of our State. The real reason I am concerned with this is how long litigation might take. I just see where the U.S. Supreme Court yesterday decided the *Sioux* case. That case started in 1922. I say the State of Maine cannot afford 6 years of litigation with the clouds that would result, let alone 60 years. Economic development, in my judgment, in a good part of the State would come to a standstill.

So, for many reasons I think it would be in the best interest for this case to be settled on the terms here.

Senator COHEN. In the *Sioux* case, that was a money judgment and not a land claim as such. It was a claim for past due interest on

land that was improperly taken, which is somewhat different from what we have in this situation.

Let me come back to the question of the reasonability of the proposal.

Given your experiences as former attorney general and a former practicing attorney, you have tried many cases, and I assume you have settled many cases, realizing that settlement is ordinarily in the best interest of both parties if it is reasonable.

You have outlined in your views that you believe that this suit would involve some 12.5 million acres of land of Maine—60 percent of the State—and it would cause a cloud over all of that real estate, would impede selling of bonds by local municipalities as well as the State. It would impede the transfer of real estate. People could not buy homes or sell homes. We might see industrial centers delayed or deferred. In your judgment, in view of that as the former attorney general and someone who is skilled in the trial and the settlement of cases, is a 12 million acre claim—is 300,000 acres a reasonable demand on the part of the tribes?

Governor BRENNAN. I think that when you are talking in terms of 12.5 million acres and talking in terms of $25 billion, in the acreage area, 300,000 acres could be very reasonable.

Senator COHEN. And you are familiar with land in the State of Maine? Is $181 per acre a reasonable figure, in your judgment, based upon comparable land values?

Governor BRENNAN. I would have to defer to other experts. My office did not spend any great deal of time trying to assess the values, but certainly in 1980, and where you are talking about acres, somewhere between $100 and $200 apparently are ballpark figures.

Senator COHEN. Then the company that was used to make this assessment—the James W. Sewall Co.—it is used by the State of Maine to make land evaluations rather systematically, is it not?

Governor BRENNAN. I believe that the James W. Sewall Co. enjoys an absolutely excellent reputation, not only in the State of Maine, but in the Northeast and parts of Canada. I am not trying to advertise for them, but——

Senator COHEN. I understand that, but does the State of Maine rely upon the judgment of the land valuations of the Sewall Co. in making determinations for tax purposes, for example?

Governor BRENNAN. The State of Maine has dealt with and used the Sewall Co. extensively over the years.

Senator COHEN. You indicated that you certainly support any decision that the Maine congressional delegation arrives at as being reasonable—both in terms of dollars and acres—and by your testimony this morning, you have indicated that 300,000 acres is reasonable and that the $181 per acre is certainly a reasonable figure.

There was something else mentioned this morning by Secretary Andrus. He said the way in which this particular proposal is drafted could result in an expenditure of as much as $300 million on the part of the Federal Government. In view of the fact that you feel very strongly about the way in which the settlement was achieved as far as retention of civil and criminal jurisdiction by the State and the initiation of a new concept of treating tribes as municipalities—if, in fact, the way in which that settlement has been drafted results in an

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expenditure of $300 million to the Federal Treasury over a period of years, I take it you would consider that to be unreasonable.

Governor BRENNAN. I am not familiar with the details in regard to how that grows into $300 million when you get across the Nation. I would defer judgment on that. I would like to know a little bit more about it.

Senator COHEN. But if, in fact, it did require a Federal expenditure of $300 million, if that is the judgment of the Department of the Interior or OMB, I think you would agree that that would be an unreasonable expenditure in this case. Would you not?

Governor BRENNAN. My concern in this case is that the State of Maine be treated fairly, and I think to treat the State of Maine fairly, the State of Maine should not contribute.

In regard to what the consequences might be in some other State, or what the consequences are for the Federal Government, I think the Senate, the Congress, and the Office of Management and Budget would be in a better position to make a judgment.

Senator COHEN. What I am getting at is this. On the one hand you are asking the Maine congressional delegation to support a reasonable proposal in terms of cost per acre and the number of acres involved. The Secretary of the Interior says they support the $81.5 million as being reasonable in its parameters. The Secretary then went on to say, however, that the way in which this particular settlement has been drafted may expose the Federal Treasury to as much as $300 million over a course of time, involving other States. There it goes beyond the parameters of being reasonable, does it not? That is, as far as this particular settlement is concerned?

Governor BRENNAN. In that area, though, it is my understanding that the Maine attorney general's office and representatives of the tribes plan to meet with the Secretary's office. Obviously, my principal concern is the State of Maine. The ramifications in the other 49 States are something that ought to be addressed here.

Senator COHEN. The other point is about the taxation issue involved. By allowing the companies to treat this as an involuntary conversion, therefore providing for relief if they reinvest the proceeds after the money is paid, it will result in a loss of some $15 million to the Federal Treasury. If, in fact, that is a precedent for other cases, that is another issue that Congress might well raise; that we do not think that provision in your settlement—Senator Cohen or Senator Mitchell, or Congressmen Emery or Snowe—is particularly reasonable to have that loss of revenue to the Federal Treasury.

Now, if Congress were to decide that is not reasonable—the provision that would expose the Federal Treasury to potentially a $300 million loss—and then were to send it back to the State saying it has to be redrafted because Congress will not accept the $300 million liability, would the State of Maine still then work toward a settlement of this case?

Governor BRENNAN. I think the State of Maine would continue to work toward the settlement. I can fully appreciate and respect the right of Congress. In fact, I think it is their responsibility to examine the ramifications of this suit as to how they will affect other States and how they will affect tax situations. I think that responsibility is there. I do not think anyone can boldly assert that this was the perfect

resolution. I think it is a reasonable one, but where there are consequences that may not have been contemplated, I think they have to go back and be resolved.

Senator COHEN. This is not in concrete as such that if the Secretary of the Interior raises questions, if our colleagues raise questions, and we make recommendations to the State in terms of what we feel would be necessary before we could secure the support from the majority of our colleagues in both Houses, the State is certainly open to changes, and I assume the tribes may be open to changes.

Governor BRENNAN. From my standpoint, yes; and I fully respect the right of the Congress and, as I stated, I think it is the responsibility of the Congress to raise questions.

Senator COHEN. Senator Mitchell?

Senator MITCHELL. Senator Cohen has pointed to your vast experience, Governor Brennan, in legal matters and particularly this case. This is a unique case, as you have suggested in your testimony.

I wonder if you could give us your views on what litigation would be like. How long would this take? Do you have any way of estimating that?

Governor BRENNAN. I can only say that this case started a number of years ago. I would point out what was on the front page of the Washington Post today, the *Sioux* case. Action was initially brought to a court about 60 years ago. I feel very strongly that even if it were resolved in 6 or 8 years, if during the course of that 6 or 8 years real estate could not be transferred, economic development could not take place—in effect, something comparable to what took place in Mashpee, a real community that had real problems, just 125 miles from our borders—I would be very concerned with the economic chaos that could result. In human terms, if that means fewer jobs and greater social problems, it means depreciating the quality of life in our State.

Even though I believe, if it went to trial, the State would have the best of it, I think a settlement would be in the best interest of our State. Frankly, I think it would also be in the best interest of our Nation from an equity standpoint. I do not think the Federal Government is responsible if the Federal Government—and that is who would be initiating the suit—brought action against its own innocent citizens. So there are a myriad of reasons why I think a settlement is in the best interest of all parties concerned.

Senator MITCHELL. Following up on that, it has been widely reported in the press that the attorney general of Maine has estimated that the State has a 60-percent chance of winning. Private experienced counsel retained by the State, Mr. St. Clair, stated that he thought that was a fairly accurate estimate. He might even estimate the State's chances a bit higher. Some have raised the question that if you have a 60- or maybe a 65-percent chance of winning a case, why settle it?

Governor BRENNAN. I think the reason is clear that if you have a 60-percent chance of winning, to use Attorney General Cohen's estimate, you have a 40-percent chance of losing. That 40-percent chance of losing has to raise a legitimate concern in the minds of reasonable people. With the magnitude of what is involved here—12 million acres or 60 percent of the State and talk in terms of $25 billion—it is clear that if there were a 10- or 15-percent chance of losing, one ought to work toward a settlement.

There are also some desirable social benefits from a settlement in the sense that I think it might lessen any hostility. I also believe it is so important that we do whatever we can in our State to try to promote economic development. As I stated in my prepared remarks, it has to have some chilling effect for businesses who are considering moving to Maine or expanding in Maine, particularly in the claimed area, when this cloud hovers over the land.

Senator MITCHELL. I placed in the record two documents containing a series of questions regarding the settlement. I wonder if I might ask you and the attorney general if the State would not be willing to prepare written responses to those questions, at least those which are directed toward the State, and supply them to the committee, Senator Cohen, and me. These are questions raised by parties who obviously have, from their standpoint, the interest of the people of Maine at heart, which ought to be addressed.

I wonder if you, in conjunction with the attorney general, could have the State provide responses to those questions where the questions are appropriate for response by the State?

Governor BRENNAN. I can assure you that the State stands ready to provide answers to any questions that would be propounded to the State to assist this committee in its deliberations.

Senator MITCHELL. Then if you would treat those questions as propounded by me, I would appreciate your response.

Thank you very much.

Senator COHEN. Without objection, the record will remain open for the purpose of inserting the responses referred to upon receipt.

[Subsequent to the hearing, the following correspondence was received. Testimony resumes on p. 156.]

RICHARD S. COHEN
ATTORNEY GENERAL

STEPHEN L. DIAMOND
JOHN S. GLEASON
JOHN M. R. PATERSON
ROBERT J. STOLT
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

August 12, 1980

Senator John Melcher
Select Committee on Indian Affairs
U.S. Senate
Washington, D.C.

Re: S. 2829, The Maine Indian Claims Settlement Act

Dear Sir:

During the Committee's hearing on this bill on July 1 and 2, 1980, the Committee requested that Governor Brennan, Senator Collins, Representative Post and me to respond in writing to certain questions posed by the Bangor Daily News and former Governor James B. Longley concerning the bill and the State Implementing legislation. This letter constitutes a joint response to that request.

It is important to note that many of the questions posed by both the Bangor Daily News and former Governor Longley contain inaccurate assumptions about this bill and the State legislation which should be corrected to assure a clear understanding of the issues.

The following are questions from Bangor Daily News editorial of March 28, 1980, with our joint response:

1. "What are the implications for Maine if the State legislature ratifies the proposal and the U.S. Congress refuses to go along with the revised and extravagent price tag?"

This question is premised on the initial assumption that the appropriation provided for in the S. 2829 is excessive. Much of the testimony before the Senate Committee addresses this point and there is no need to repeat those points in this letter.

However, several items are worthy of restatement. As my written testimony noted, the payment to the Maine Tribes under S. 2829 is proportionally less than that provided for in the Rhode Island Settlement enacted by Congress in 1978 and is far less than the total cost of the Alaska Settlement. Moreover, the size of the trust fund and the land base provided in S. 2829 first appeared in settlement proposals made several years ago by the Administration. For all these reasons, I have recommended a settlement at the figures contained in S. 2829. The position of Governor Brennan and the Maine Legislative leadership appears in their testimony in the record. Of course, it is ultimately and appropriately the responsibility of Congress to determine the amount of money that should be spent to extinguish these claims.

The possible implications of Congressional failure to enact S. 2829 were presented in detail by several persons who testified before the Committee. That testimony, which details the likely social and economic hardship if the case went to trial, does not need repetition here. If the settlement failed because of the defeat of S. 2829, the fact that the State has enacted the State Implementing Act would have no effect, either legally or otherwise, on the State's position in possible future litigation. The fact that the State and Indian Tribes had attempted to reach a negotiated settlement could not be used as evidence in any future litigation. If any further litigation results from failure to enact S. 2829, the State would have made no concessions and would not have impaired its litigation position by enacting the State Implementing Act. In addition, if S. 2829 were defeated, the State Implementing Act, by its own terms, would not take effect, and current Maine and federal law would remain in place.

2. "Why did the state attorney general agree to let the attorney for the timberland owners and the Indians establish the price tag for the settlement without his participation as spokesman for the state?"

This issue was discussed in my testimony to the Committee. Briefly restated, it was my view, consistent with earlier statements of former Governor Longley, that any land acquired by the Tribes under any settlement should come from willing sellers at fair market value. Since State participation in those sales negotiations could be perceived as pressuring parties to sell, the State officials responsible for negotiations thought it inappropriate to participate in that aspect of the settlement discussions.

3. "If one of the major landsellers, Dead River Co., is prepared to sell much of its timber acreage to the Indians, isn't that highly suggestive of a government giveaway?"

Apparently the assumption here is that the only reason one seller is willing to sell most of its land is that the price is greater than its worth and cannot be refused. Thus, the questions suggest that at least this seller, and perhaps others, would be unfairly enriched. To state the assumption seems sufficient to refute it. However, the Committee also received testimony that explained why the Dead River Co. had decided to sell off most of its timber acreage. Those reasons do not reflect any suggestion of taking advantage of a "government giveaway."

Perhaps the intent of this question was to raise the issue of land values under the settlement. As the Committee heard, the experts retained by various parties agreed that the prices for the acreage involved were fair and in line with current market values for similar acreage in Maine. The Department of Interior's experts also independently reviewed the acreage and prices and agreed that they reflected fair market value.

4. "There are reportedly 9,500 Indian cases yet to be resolved by Congress. When the state Legislature ratifies this settlement offer, it is unwittingly establishing a precedent for the entire country?"

When the Maine Legislature considered the State Implementing Act, it believed that it was following precedent rather than establishing it, in that it was seeking to resolve the claims by negotiated settlement rather than by litigation. The concept of settlement as a precedent was established by the Rhode Island and Alaskan settlements and has consistently been encouraged by the federal government.

Apart from that consideration, the question assumes that all 9,500 Indian claims are the same and that this settlement would be model applicable to all. In fact this is not so. Only a handful of all claims identified thus far are similar in concept to Maine's and none is so large. Most of the western claims have nothing in common with this case other than the fact that the claimants are Indian. It is a mistake, therefore, to assume that this settlement will be a pattern for resolution of all others.

It is in the nature of negotiated settlements that particular provisions meet the requirements of the interested parties. Each settlement must have unique characteristics that reflect the nature and implications of the underlying claim, the relative risks to the parties, traditions of the area involved and the desires of the parties. In this sense, the settlement provisions in the Maine Act and S. 2829 are not precedents. Every future settlement will have to reflect the unique considerations in each case to meet the parties' requirements.

5. "Have all of the intricacies of the jurisdictional language been examined by an expert without vested interest? Does the jurisdictional language bestow a preferential treatment upon the tribes which will foster an unrelenting chain of legal disputes in the years ahead?"

This question incorrectly assumes that the Governor and Attorney General, and their staffs, in accepting the settlement agreement and the Maine Implementing Act, have not carefully reviewed the jurisdictional language in that Act. The question further suggests that the Governor, Attorney General and members of the Maine Legislature somehow had a "vested interest" or personal stake in the matter and were not acting out of concern for the general welfare of Maine citizens. This suggestion is false.

Not only did we carefully review the language of the bill, we brought in outside counsel to do so as well and have encouraged any other experts to review and make corrective suggestions. At the time of enactment of the Maine Implementing Act the intricacies of the State and Indian jurisdictional relationship had been carefully scrutinized by several independent experts, by the Legislature and by many public speakers. It has been knowledgeably and thoroughly assessed and accepted.

The second part of the question contains the assumption that the Indians receive "preferential" treatment. Under the State Implementing Act, the Penobscot Nation and Passamaquoddy Tribe are given certain rights and authority within the 300,000 acres of "Indian Territory." To the extent that these rights and authority exceed that given any Maine municipality, they do so only to a limited extent and in recognition of traditional Indian activities. (The Houlton Band of Maliseets are not granted this "municipal" status). The most significant aspect of this limited expansion of authority is in the area of hunting and trapping and, to a limited extent, fishing in Indian Territory. Even in this area, the Indian Tribes must treat Indians and non-Indians alike, except for subsistence provisions, and Tribal authority can be overriden by the State if it begins to affect

hunting, trapping or fishing outside the Indian Territory. Generally the Act does not provide Indians with preferential treatment. To the contrary, we believe the Implementing Act establishes a measure of equality between Indian and non-Indian citizens normally not existing in other States. Indeed, the Act recovers back for the State almost all of the jurisdiction over existing reservations that had been lost as a result of recent Court decisions.

Obviously no one can guarantee that there will be no litigation in the future over the meaning of certain provisions in the Maine Implementing Act or S. 2829. However, the provisions of S. 2829 and the Implementing Act have been carefully drafted and reviewed to eliminate insofar as possible any future legal disputes. Particular care was taken to insure that S. 2829 is adequate to finally extinguish the land claims, and as to those provisions we are satisfied that they have been drafted as carefully as possible. Nevertheless, litigation over this and other provisions is always possible and we cannot prevent the filing of future suits. Any contract, agreement or legislation always contains unanticipated ambiguities that sometimes can only be resolved through the courts. In our judgment, however, should questions arise in the future over the legal status of Indians and Indian lands in Maine, those questions can be answered in the context of the Maine Implementing Act and S. 2829 rather than using general principles of Indian law.

6. "If the Indians get their money and land in Maine, will the Native American Rights Fund and other foundations that have bankrolled the Indians in their legal quest dispatch an army of well-financed lawyers to Maine to chase down other historic injustices heaped upon the Native Americans by our forefathers?"

Though we cannot say what the plans of the Native American Rights Fund or similar organizations may be, the Maine Implementing Act and S. 2829 clearly and absolutely extinguish all Indian land claims in Maine. These two Acts will finally and completely settle those issues and remove any legal ground for attempting to resurrect the historical incidents that gave rise to the present claims. As to any other disputes that may arise in the future, we assume the Tribes will use available legal resources and rights just as any other citizen would.

7. "What about the so-called "Tribal Commission," which constitutes the critical intermediary body in potential jurisdictional disputes between Indians and non-Indians? Is itsmembership makeup realistic or evan workable?"

The Tribal Commission's functions are to regulate fishing in Great Ponds and rivers in Indian Territory and to make recommendations on the "social, economic and legal relationship" between the State and tribes. Its balanced composition, with a retired State or Federal Judge as chairman, seems appropriate for its tasks. We believe the composition of the Commission is reasonable and workable and had we not we would not have agreed to its inclusion in the settlement.

8. "In view of the congressional mood to balance the budget, how can Maine's Congressional delegation possibly get behind a settlement proposal whose price tag is two and a half times what was originally agreed to?"

First, the question incorrectly refers to an earlier, less costly settlement as having been "agreed to." While the State did agree in 1978 to a $37 million settlement proposal, the Tribes did not. We know of no settlement proposal that was agreed to by all parties and that involved less money than that called for in S. 2829.

In addition, and as my prepared testimony reflects, the total value to the Tribes of S. 2829 is roughly similar to several earlier settlement proposals sponsored by the Federal government and is less than the value of the proposal of the White House in February, 1978. To the extent that there has been any increase in the estimate of settlement costs, it is largely because of the changing value of land and the fact that land values were understated in earlier proposals. In any event, we would not presume to speak for Maine's Congressional Delegation, the members of the Delegation can adequately respond for themselves. As indicated in our answer to question 1, Congress will have to decide on the appropriateness of the legislation and proposed appropriation, after considering all the factors addressed in testimony given the Committee.

9. "Are Maine citizens prepared to submit, to embrace the expedient lifting of the lawsuit cloud and render to history an irrevocable record of a citizenry intimidated by specters bereft of principle and conviction?"

This is a polemical statement in the form of a question and does nothing to advance reasoned debate of these issues.

The question would have been more fairly phrased if it asked: "Does the Settlement reasonably reflect a fair assessment of risks involved in litigation and is the negotiated jurisdictional arrangement a fairly balanced distribution of governmental authority over tribal lands?" We think that the answer to the question thus phrased is "yes."

The Governor, Attorney General and members of the Joint Select Committee of Maine Legislature have examined the basis for the claim, the risks of litigation and implications of this settlement in detail. All agreed that the settlement now pending was a principled and prudent way to bring this complex legal and social problem to a fair and final conclusion. This is a resolution consistent with our belief that all Maine people ought to be treated equally and fairly and that we should not expose the people of Maine to unnecessary legal and economic risks resulting from a lawsuit if it can be avoided. We believe that the majority of Maine citizens share the view that the settlement represents a reasonable and rational alternative to lengthy, costly and divisive litigation.

The following questions were posed by former Governor Longley in his statement of March 23, 1980.

1. "Why would $81 million dollars plus special tax breaks be negotiated by pulp and paper companies and private landowners, with Indian Legal Counsel, without any state involvement?"

The answer to this question is essentially the same as that in response to Question #2 of the Bangor Daily News. In addition, I would note again that former Governor Longley, when in office, repeatedly stated his belief that the State should not participate in those land negotiations.

2. "Why has the price of land been substantially increased from the time I was Governor, when private landowners quoted prices ranging from $100 to $112 per acre, vis a vis the present price quoted under this settlement agreement of $181 per acre. This is a difference of over $20 million dollars. Who is to receive this money?"

The price of $100-$112 per acre to which Governor Longley refers was a value per acre proposed by the White House in 1978. Inquiries by the State and statements of landowners at the time revealed that figure to be unrealistically low even then. It is therefore inappropriate to use it as the basis for criticizing

the values now proposed. In addition, the price of land, like other things, has risen in the two and one-half years since the value cited by Governor Longley was used by the Administration. Moreover, the value of $181 per acre is an average and includes parcels, some of which are valued at far less and some at more. The identity of the selling, private landowners has already been made public.

3. "To the extent both federal and state taxes are involved, why shouldn't citizens and the news media of Maine have an actual list of:

(a) Land to be purchased and where and from whom?

(b) The price to be paid per acre to individual landowners?"

That information in response to part (a) was presented to the public and the Joint Select Committee of the Maine Legislature at the public hearing on the Maine Implementing Act. It is part of the public record. Values of particular parcels have, we understand, been provided to the Department of Interior in order that it might evaluate the proposed prices. Additional information relative to part (b) has been solicited by this Committee from the landowners involved.

We support full public disclosure of all the details of the transactions between the tribes, the U.S. Department of the Interior and the private landowners as a part of the ongoing public discussion of this issue.

4. "Why wouldn't it be appropriate for the Legislature to ask the Indian Tribes to submit this claim to the United States Court of Claims without any economic sanctions during the trial, if the Indians refuse whatever Congress recommends?"

This proposal is one that was repeatedly suggested by former Governor Longley, but which the Tribe and the Federal government consistently rejected. Asking the Indians to voluntarily abandon their claim to land, as the question suggests, was futile. Continued pursuit of this proposal would have been fruitless.

The basic premise of any settlement is that both parties voluntarily agree to it. The Maine Legislature has no power to erase the Indians' Claims without their consent, and in recent years Congress has indicated that it will not act to resolve Indian claims without Tribal consent. The Indians have continually asserted that they will not settle the claim without some land as well as money. Moreover, in 1976 legislation was introduced in Congress at Governor Longley's request which would have largely accomplished the suggestion contained in this question. The proposal was rejected by Congressional leadership as inconsistent with longstanding Congressional Indian policy.

5. ". . . is it fair to say there is not going to be additional tax imposed on the taxpayers of Maine (as they also pay federal taxes)?"

Presumably the federal appropriation will be paid out of present federal revenues. Thus, it seems fair to say that there will be no additional taxes imposed.

6. "I feel that unless each Maine lawmaker thinks $81 million dollars is fair, they should search their conscience as to whether it is fair to pass the buck to the Maine Delegation and the United States Congress."

The Maine Legislature did not "pass the buck" to anyone. It studied the provisions of the Maine Implementing Act and the proposed federal bill, S. 2829. The Maine Legislature carried out its responsibilities of reviewing and designating the 300,000 acres of Indian Territory and resolving the jurisdictional relationship between the State and the Indian Tribes. The Legislature did not have the responsibility or authority to appropriate the federal money. Thus, it could not make a decision on the appropriateness or fairness of that figure.

7. "Should the federal government or the Indian Tribes reimburse the State of Maine from any settlement they might receive for the millions of dollars the taxpayers of Maine have paid our Indian citizens due to the fact the federal government in the past refused to recognize our Maine Indians as eligible for federal assistance while still pouring millions of dollars into the Western Indian reservations(?)"

This suggestion, like many other options, was in fact considered by the State but rejected by us. In our judgment it would have been futile to ask Congress to reimburse the State

for its past expenditures as well as asking Congress to pay the Tribes for extinguishment of the claim. The State has, however, taken the position that the millions of dollars that it has spent on Maine Indians is its contribution to the settlement agreement. It is for this reason that we expect the Federal Government to meet the expense of purchasing land and creating a trust fund. To ask the Indians or federal government to reimburse the State would only increase the federal cost of the settlement, thus making it more difficult to have the settlement implemented by Congress. Thus, the State has simply proposed that Congress consider the State's past payments as its share of the settlement.

8. "Does the Maine Implementing Act establish 'separate and preferential laws for Indian Citizens,' or has it thus rendered favored treatment to one class of citizen, or in effect, endorsed the concept of a second class of citizen at the expense of the rest of the citizens of Maine?"

The implication in the term "preferential treatment" for Indians has already been discussed in the response to the Bangor Daily News question # 5.

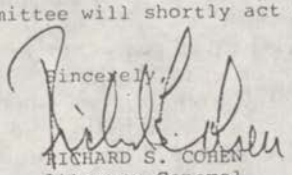
There are certain provisions in the Maine Implementing Act that permit in Indian Territory different laws than apply elsewhere in the State. These provisions embody a recognition of traditional Indian ways. They are minor changes and are far less intrusive on general state jurisdiction than the generally applicable laws that govern federal "Indian Country" generally.

As was stated in testimony, the Maine Tribes now have certain rights on their reservations that other citizens do not. The State is now powerless to change that fact. Should the Tribes be successful in recovering land in a lawsuit they would enjoy these same additional rights on these other lands also. Under current general law, their rights are far more extensive than those accorded under either the Maine Implementing Act or S. 2829. As we stated above, we think the Maine Implementing Act restores equality of treatment of Indians and non-Indians which was lost under recent Court decisions. Rather than creating and continuing "preferential treatment" the Implementing Act and S. 2829 insure equality of treatment. To the extent there are some minor distinctions in the application of State law in Indian Territory and elsewhere in Maine, those differences are in our judgment minor and represent a fair compromise and balancing of Tribal, State and Federal interests.

We wish to thank the State Committee for the opportunity to respond for the record on the series of questions raised by the Bangor Daily News and former Governor Longley. We believe that the record of your hearings on S. 2829 and the Maine Implementing Act clearly show that these questions have been adequately answered.

We hope that the Committee will shortly act favorably on this bill.

Sincerely,



RICHARD S. COHEN
Attorney General

RSC:mfe

cc: Honorable William S. Cohen
Honorable George J. Mitchell

Senator COHEN. I have one final point, Governor. This case presents some unique aspects, both in the terms of the settlement, and also in the creation of the status of tribes being considered as municipalities. If Congress should reject that notion, for whatever reasons advanced by the Secretary of the Interior, the Department of the Interior, or by Members of Congress, and say that this is an assumption of full Federal responsibility in terms of the payment in this case, and we are going to treat the Eastern tribes identically with the tribes in the West and apply Federal laws as they are applied to all tribes and cutting out no exception for Maine, what would be your reaction to that? Would you still propose a settlement of the case?

Governor BRENNAN. I would still urge a settlement as long as it is a settlement that does not unfairly damage innocent people in our State, but if there are substantial variations from what is proposed here, certainly the matter has to go back to the drawing board. After all, it has come this far by consensual agreement by representatives of the private parties, and representatives of the tribes. So, that which cannot pass here for some reason or another, I think, would have to go back for more discussion. I am not urging that at this time, but I am saying I think that is the only reasonable resolution.

Senator COHEN. What we are trying to do is anticipate what might happen, for example, with the competing jurisdictions of other committees. They may say: Wait a minute. Here is the State of Maine coming in. It may alter the CETA program or the revenue-sharing program by terms of the settlement, and we simply will not tolerate that.

If that is the case and they bring it back to us saying, "Gentlemen, we cannot accept it" is it your testimony that the State is willing to continue to negotiate settlement without this unique status if it runs into congressional opposition?

Governor BRENNAN. Yes, that is my testimony, because I think you have important responsibilities to consider the ramifications for other programs.

Senator COHEN. Thank you very much, Governor Brennan.

Senator MITCHELL. Thank you.

Governor BRENNAN. Thank you very much.

Senator Cohen. Our next witness is the Honorable Richard S. Cohen, the attorney general for the State of Maine. Since becoming attorney general, Mr. Cohen has been involved in several facets of the negotiating process and can provide information on several important points.

STATEMENT OF RICHARD S. COHEN, ATTORNEY GENERAL OF THE STATE OF MAINE, ACCOMPANIED BY JOHN PATTERSON, DEPUTY ATTORNEY GENERAL

Mr. COHEN. Thank you, Senator Cohen.

I am pleased to be here today to share with you my views on S. 2829 and to urge your enactment of this bill.

By now I expect you have had an opportunity to familiarize yourselves with the proposed settlement bill and the jurisdictional agreement previously adopted by the Legislature of the State of Maine and the members of the Passamaquoddy Tribe and Penobscot Nation.

While I would be happy to answer any questions about the bill before you or about the jurisdictional agreement between the State and tribes, I think it would be most useful to direct my initial remarks to explaining the history of this dispute, the method by which we negotiated the settlement, and the reasons why I think it is imperative that Congress approve it.

The lawsuit which we are attempting to settle has been characterized by the U.S. Justice Department as "potentially the most complex litigation ever brought in the Federal courts with social and economic impacts without precedent and incredible litigation costs to all parties." The case is based on a claim by the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton band of Maliseet Indians that the land in Maine, originally possessed by them, was taken in violation of the Indian Trade and Intercourse Act. The Trade and Intercourse Act, which was originally enacted in 1790 and which has been a part of Federal law ever since, provides in essence that no one may acquire land from an Indian tribe without express congressional approval or ratification. The Passamaquoddies and Penobscots claim that Massachusetts, of which Maine was a district until 1820, acquired their lands through a series of allegedly illegal agreements in 1794, 1796, and 1818. The Penobscots also claim that Maine illegally purchased some land from them in 1833. Both tribes claim that these transactions were invalid only because they lacked this congressional approval. In no other respect are the transactions alleged to be illegal. The Maliseet Indians do not, so far as we know, look to any particular documents, but claim generally that their lands were taken from them through settlement by non-Indians. The size of the total area in question has never been precisely defined, but could involve most of the eastern half of Maine, including the St. John River Basin, but not including the immediate coastal areas of the State. In total size, the claim could encompass between 5 and 15 million acres or from 25 to 60 percent of the State. In addition, the claim has been estimated to potentially involve trespass damages of up to $25 billion.

Chronologically, the land claims began in 1972 when the Passamaquoddies and Penobscots first requested the U.S. Department of Interior to sue the State of Maine on their behalf for recovery of the disputed lands. The Maliseets did not make a similar request to the Department in 1972, but have only recently raised their claim with the State. In response to the request of the Passamaquoddy Tribe and Penobscot Nation, the Department of Interior refused to bring the suit, arguing, rather, that since the United States had never recognized these Indians as tribes, the Indian Trade and Intercourse Act did not apply to them, and that, therefore, the United States had no trust responsibility with respect to those Indians. Thereafter the Passamaquoddy Tribe sued the Department of Interior in the U.S. district court, seeking a judicial declaration of such trust responsibility. The State of Maine intervened in the suit as a defendant along with the United States. That suit was known as *The Joint Tribal Council of the Passamaquoddy Tribe* v. *Rogers C. B. Morton, et al.*

At the same time that *Passamaquoddy* v. *Morton* was initiated, the tribes obtained a court order compelling the United States to sue Maine in order to toll the then-applicable statute of limitations. The

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United States responded to the court order by suing the State in mid-1972, asking for $300 million in damages, half for the Passamaquoddy Tribe and half for the Penobscot Nation. At that time the suits did not seek recovery of any land, nor did the suits name any individual or corporate defendants. Only the State was sued in 1972. Those cases were ordered held in abeyance pending the outcome of the principal suit by the tribes against the Secretary of Interior.

Passamaquoddy v. *Morton* proceeded to judgment in the district court with that court concluding in early 1975 that the United States did in fact have a trust responsibility to the tribes by virtue of the Trade and Intercourse Act. That decision was affirmed by the circuit court of appeals, which added qualifying language specifically leaving open the question of whether Maine or Massachusetts had in fact ever violated the Trade and Intercourse Act or whether that act even applied to the transactions in question. Because of this important limiting language in the court of appeals' decision, the State of Maine elected not to appeal to the U.S. Supreme Court. For reasons unknown to us, the U.S. Department of Justice did not appeal the decision either.

After the decision of the court of appeals in December 1975, the U.S. Department of Justice and the Department of Interior undertook to evaluate the validity of the land claims. In late 1976, the U.S. Department of Interior announced its intention of recommending to the Justice Department that it pursue the lawsuit against Maine and against all persons occupying land claimed by the Passamaquoddy Tribe or Penobscot Nation. That announcement precipitated the postponement of State and local bond issues, created turmoil in the real estate and title bars, and aroused widespread public concern. I think it is fair to say that in late 1976 and early 1977, the sudden discovery of the land claim created one of the most serious legal, economic, and social crises in the history of the State of Maine. A State bond issue was canceled, title insurance was unavailable, and Federal bank regulatory agencies were questioning the solvency of numerous banks which held mortgages on land in the eastern half of Maine.

Because of the obvious turmoil created by the claim, the U.S. Government initiated a series of efforts to settle the suit. The first such effort involved Judge William Gunter, a retired Georgia State supreme court justice who in March 1977 was appointed by President Carter as his special representative to inquire into the suits and to recommend a resolution to the President. Judge Gunter examined the matter, met with the parties, and in the fall of 1977, proposed a settlement which called for a payment by the United States of $25 million to the two tribes, plus a proposal that the State provide 100,000 acres of public land and ongoing special State services to the tribes. This proposal was rejected by the State and the tribes and did not become a basis for settlement.

In the late fall of 1977, the White House appointed a special work group to reexamine the claim. After extended negotiations with the tribes, the work group came to Maine in February 1978 and publicly reported on a new proposal for settlement. This proposal contemplated a Federal payment of $25 million, a State payment of $25.5 million to be made over 15 years, and 300,000 acres of lands from private parties, for which landowners would be reimbursed $5 per acre by the Federal

Government. The total value of this proposal to the tribes was roughly $90 million. Principally because neither the State nor landowners played any role in negotiation of this second proposal, it was rejected by the State and did not become the basis for settlement.

Finally, in October 1978, the White House announced a third settlement plan through then U.S. Senator William Hathaway and Presidential Counsel Robert Lipshutz. This settlement consisted of a $27 million permanent trust fund, a $10 million land acquisition fund to buy 100,000 acres of land and $25 million in grants and loans, all to be provided by the Federal Government. The total value of this proposal was roughly $62 million. No payment from the State was proposed by the White House. This proposal was agreed to by Governor Longley, Attorney General Brennan, Senator Muskie, Senator Hathaway, Representative Cohen, and Representative Emery. The tribes, however, never accepted the plan and ultimately rejected it on the ground that they had been led to believe they were entitled to more land under the terms of the February 1978 proposal that the tribes had negotiated with the administration.

When I became attorney general in 1979, one of my first tasks was to familiarize myself with the case and to independently evaluate it. To that end I conferred with my own staff, who had been working on the matter, and also engaged James St. Clair, a highly regarded trial attorney with experience in Indian litigation, to review the case and to advise me as to their conclusions.

After hearing the views of Mr. St. Clair and my staff, I concluded that if the matter went to trial there was a reasonable chance that the State would ultimately prevail. Nevertheless, my advisers and I recognized that we were dealing in probabilities and that there was a serious chance that the State and some of its citizens might have some substantial liability.

Many of the defenses of the State, while well grounded in law and history, involved legal issues never definitively ruled upon by the Supreme Court and to that extent the case involved a degree of unpredictability and risk. While I cannot state with precision the degree of risk, given the complexity of the suit and the size of potential liability, I concluded that there was and is a real and serious risk that could not be ignored.

In addition, I concluded that the mere filing of a suit naming individuals and businesses as defendants would probably cause very serious economic and social disruption in Maine. The most immediate effect would be to cast a cloud over land titles, perhaps making property unmarketable and possibly destroying the ability of municipalities to issue bonds.

As you will hear from later witnesses, the possibility that a suit may be filed already prevents the city of Millinocket, Maine from obtaining an adequate opinion from its bond counsel to enable it to sell municipal bonds for capital improvements and annual tax anticipation borrowing. In my opinion, the experience of Millinocket would be repeated in countless communities throughout the eastern half of Maine if the tribes and the U.S. Department of Justice were actually to file a suit naming as defendants all of the businesses and individuals in the claim area.

In case you have any doubts about the potentially catastrophic consequences of litigation should this settlement fail, I think you

need only look to the experience of the town of Mashpee, Mass. I understand that the committee is familiar with that claim from prior hearings. In that town a land claim suit was filed in 1976 by the so-called Mashpee Tribe claiming title to all private property. From the date the suit was filed until very recently, titles and mortgages have been frozen. Title insurance companies would not insure property titles. Municipal bonds could not be sold without a State guarantee. Even though the town eventually won the trial and even though the U.S. Supreme Court refused to consider an appeal by the Indians, some uncertainty about titles persist because of the threat of another suit by the same Indian group.

I was also aware of the fact that a trial on the merits with subsequent appeals could take as long as 5 to 6 years. That is a very conservative figure. That is the figure that was arrived at after consulting with Mr. St. Clair, but it is definitely a very, very conservative time figure as far as a trial on the merits is concerned.

In addition to the enormous litigation costs to the State, it was apparent to me that the interim economic damage to the State during the period of time that it takes to try the case, even if the State were to ultimately prevail on the merits, might make such a success a pyrrhic victory.

With the foregoing in mind, I decided in early 1979 to open discussions with the tribes with the goal of exploring the possibility of working out a mutually agreeable settlement of the case. As those talks progressed, I developed certain fundamental principles that formed the basis of the State's negotiating position.

First: I determined that any agreement with respect to the land claim had to include an agreement with respect to tribal, Federal, and State jurisdiction over currently held or future acquired tribal lands. I felt that it was absolutely essential to avoid in Maine the types of devisive controversy that has so marked tribal/State relations in the Western States and has resulted in so much litigation and ill-will.

Second: I determined that any land to be acquired under the settlement should come only from willing sellers at fair market value. I concluded at the outset that no current landowner, having acquired the land for value and in good faith long after any possible wrong to the tribes, should be forcibly dispossessed of or compelled to accept less than fair value for his land as part of this settlement.

Third: I determined that in fairness to people of the State of Maine, the costs for paying for the settlement should be borne by the Nation as a whole and, that in view of Maine's historical financial assistance to these tribes, no additional payment from Maine would be fair or appropriate. Accordingly, during the negotiations I indicated to the tribes that if we could reach agreement on the first two issues, I would join with them in supporting a request to Congress for a reasonable appropriation to compensate them for relinquishment of their claim. In particular, I agreed that I would support their request for a $27 million trust fund and funds to purchase 300,000 acres of land for a permanent land base.

The settlement proposal you now have before you represents more than 1 year of difficult, hard-fought negotiations. The jurisdictional agreement involves many compromises by both sides. Some of the

Indian people are not happy with it. Some of the non-Indian people are not happy with it. Nevertheless, it has been approved by the tribes and the Maine Legislature.

While it may be an unusual relationship, the most important point is that it is right for Maine. It was vigorously and fairly negotiated by both sides, and it includes compromises and concessions by all parties involved. We do not propose this as a model to be used elsewhere, but we think the manner by which we achieved this negotiated agreement is consistent with the rights of tribes and States to jointly determine their individual working relationship, and we believe it deserves Federal endorsement by this committee and by the Senate and the House.

The bill before you also resulted from the negotiation process I have just described. Apart from the details, the fundamental premise of the bill is that the cost of settling the Maine land claim is a national responsibility and should be funded by the Federal Government. I think that premise is fair in view of the historical circumstances in Maine. Maine is, we believe, unique among States in the extent to which it has assumed, until the last 2 or 3 years, almost total financial responsibility for the welfare of the Maine Indians.

Since the late 18th century the U.S. Government has consistently taken the position that Indians in Maine were the responsibility of the State. Consistent with the abdication of responsibility by the Federal Government, the State of Maine has appropriated moneys for a variety of Indian programs. Since Maine became a State, it has appropriated nearly $20 million for the two principal Indian tribes, $15 million of that amount coming in the last 15 years. These moneys were in addition to other services which Maine's Indian peoples received as a matter of State citizenship.

Research undertaken by my staff and on behalf of earlier Governors and Legislatures of Maine support these figures, and I can provide these in detail to you, if you wish.

During that same period of time the U.S. Government did virtually nothing for the Maine tribes until the Federal courts held in 1975 that the United States had a trust relationship with them. However, since the decision in 1975, the United States has been slow to live up to that responsibility and only this year are certain normal Federal Indian services being provided to the Maine tribes.

Maine taxpayers have contributed their share to the Federal support of tribes elsewhere in the country. Maine taxpayers have contributed their fair share to the Federal support of the tribes and to the payment of the Indian claims in other States. It is now time for the U.S. Government to live up to its responsibility by funding this settlement for the State of Maine.

To the extent that Congress believes as a matter of general principle that States ought to participate in funding settlements, we suggest that in the case of the State of Maine that principle has certainly been satisfied by our historical support of these tribes. I think the administration's settlement proposal of October 1978 demonstrates the administration's agreement with us on this point. As that settlement proposal stated, the administration was willing to consider Maine's past support of Indians as full satisfaction for any obligation on the State's part to participate financially in the settlement.

In addition, however, even after the settlement, the State of Maine will continue to contribute and have some financial obligation

to the tribes. The tribes and their members will be eligible for and entitled to receive the same benefits and programs as other State citizens. In addition, the tribes will, in their new territories, have the same status as municipal governments and will be eligible for the same State subsidies that go to any municipality. The State of Maine is not simply washing its hands of Indians, either legally, financially, or morally.

I think it is also important to understand that this is not a bill designed to bail out the State of Maine from a situation created by the State of Maine. To the contrary, it is a bill designed to cure a problem created by the malfeasance and nonfeasance of the Federal Government. Since at least 1792 the Federal Government has consistently and unalterably taken the position that the Indians in Maine were a State, and not a Federal responsibility. For nearly 200 years the U.S. Government has lead the people of Maine to believe, by its words and deeds, that the State's entire course of dealing with the Maine tribes, including the land transactions now alleged to be illegal, have been entirely appropriate. I have many specific examples outlining these particular points in my remarks. I will not go into them right now, but will skip over them.

With respect to the cost of his settlement, I do not believe it is out of line with other major land claims settled by Congress or other proposals offered by this administration to settle this claim. The administration proposal of February 1978 had a value to the tribes of roughly $90 million. The proposal of October 1978 had a value of about $60 million. Comparing this bill to the recent Rhode Island settlement, the per acre cost is far less. The Rhode Island settlement provided for a Federal payment of about $3.5 million to settle a claim of roughly 3,000 acres, or about $1,160 per acre. In contrast, if we assume the Maine claim to be conservatively encompassing 5 million acres, the settlement in this case would work out to be about $16 per acre. If we assume the Maine claim to be as large as 12.5 million acres the cost per acre is only $7.50

With respect to the size of the trust fund and the proposed acreage, I believe both those figures have been at least tacitly and now, I think this morning, expressly endorsed by the administration. The settlement proposal in February 1978, offered by the White House work group, which included the Solicitor of the Department of the Interior and a representative of the Office of Management and Budget, explicitly endorsed, of course, a trust fund to the tune of, I believe, $27 million. That same report impliedly endorsed a tribal demand for a 300,000-acre land base. The figures in this bill, therefore, were not created out of whole cloth but could be fairly viewed as an expectation of the tribes that was created by the administration.

With respect to the value of the land, which averages $180 per acre, the State did not participate in negotiating that figure. Since we believed that the sale of land should be from willing sellers at fair market value, I did not deem it appropriate for us to participate in those negotiations. I understand, however, that the Department of the Interior has reviewed the appraisals and is of the view that the average price of $180 is a fair price.

Whether or not, of course, Congress thinks that $81.5 million is an appropriate settlement for this claim is for Congress to decide. I

understand there are many competing demands on the budget and that you have an obligation to balance numerous competing interests. However, I have pledged to the tribes that I would support their request for a $27 million trust fund and a 300,000-acre land base; and, consistent with that pledge, I would ask you to give careful consideration to these figures.

Finally, I should offer one final comment about the claim of the so-called Maliseet Band of Indians, since, if they have not already done so, they may request certain amendments to the bill to provide them with an exemption from State taxes, with certain limited sovereign immunity and with restraint on alienation of any land acquired by them. Recently this Indian group has asserted a claim to areas in northern Maine similar to that of the Passamaquoddies and Penobscots. The basis of their claim is, in my judgment, not meritorious. The Maliseets do not now exist as a tribe of Indians, nor have they existed as a tribe for many years. Accordingly, they cannot even meet the threshold test of the Trade and Intercourse Act.

Senator COHEN. Why are they included in this particular proposal?

Mr. COHEN. Out of the moneys that have been decided upon between the Passamaquoddies and the Penobscots, they have entered into an arrangement as to a portion of their moneys. That is something that we were not involved in that we do not object to. They could, I suppose, cause extended controversy in having this matter go on further in arguing over a variety of their claims. But that is why they are included; because of a specific agreement negotiated between the two other tribes and themselves to which the State was not a party.

The vast majority of Maliseets reside not in Maine but in Canada. For that reason the State has been unwilling to make any jurisdictional concessions to the Maliseets. The Interior Department does not even recognize them as a tribe or band, and we would find totally unacceptable any amendments which would grant special status to this group in any respect. While we have indicated to them our willingness to discuss this matter in the future, we do not think it appropriate that Congress grant them special rights and exemptions from State laws without specific State consent.

I have endeavored to set out for you the reasons why I strongly believe this settlement is both necessary and just. Before I conclude, however, I would ask that you consider this problem from another perspective which is neither strictly legal nor economic in nature. That perspective concerns the human relationship between Indians and non-Indians in the State of Maine.

If this case proceeds to litigation, there will be no winners. Even if the State were to successfully defend against the entire claim, a result about which there is reason, certainly, to have some doubts, the litigation alone would have catastrophic consequences. One seemingly inevitable result would be a legacy of bitterness between Indians and non-Indians which might take generations to overcome.

By contrast, the settlement before you is the result of a good-faith effort by both the State and the tribes to effect a reasonable resolution of their differences. I will not pretend that it was 13 months of amicable negotiations. There were indeed times when voices were raised, when threats were made, and when the prevailing mood was certainly

one of frustration. Nevertheless, even during the periods of greatest difficulty, both sides always returned to the table. The wisdom of resolving this matter short of war, albeit one fought in the courtroom, ultimately prevailed.

I cannot promise you that the adoption of this settlement will usher in a period of uninterrupted harmony between Indians and non-Indians in Maine. But I can tell you, however, that because we sat down at a conference table as equals and jointly determined our future relationship, in my view there exists between the State and the tribes a far greater mutual respect and understanding than has ever existed in the past in the State of Maine. I can also tell you that if this matter is litigated over a period of years, the atmosphere in Maine certainly will be quite different.

I cannot put a price tag on human relationships, nor am I suggesting that this factor alone justifies enactment of the legislation before you. I am asking only that you give appropriate consideration to the historical significance not only of the settlement itself, but also of the manner in which it was reached.

Thank you very much, Mr. Chairman.

Senator COHEN. Thank you, Mr. Attorney General. Let me ask you a couple of questions.

What is the level of spending currently in the fiscal 1980 budget for the State of Maine for the tribes?

Mr. COHEN. It is $1.7 million, Senator—there is no budget right now. It would depend, I think, on what happened in Congress and what the level of Federal spending is through Interior as to the current recognition of the tribes.

Senator COHEN. You indicated you contemplated no reduction in the level of services. I was not clear on that point.

Mr. COHEN. No, I did not say there would be no reduction. I said there still would be obligation on the part of the State to provide things such as ADC and a variety of other programs.

Senator COHEN. Mr. Attorney General, let me ask you some questions about the Maine Implementing Act. It creates two kinds of Indian lands: Indian territory and Indian reservations. From my reading of this particular act, I have concluded that this distinction is for the purpose of distinguishing those areas where the tribes may assert criminal jurisdiction for class E crimes—juvenile offenses and so on—from those areas where it cannot. Is that the basis for the distinction?

Mr. COHEN. That is certainly one of the distinctions. The things that you mention, such as criminal jurisdiction, the tribal courts apply on the current reservations as contrasted to the newly acquired lands and how large they might be.

Senator COHEN. The tribes are empowered under the settlement to establish tribal forums where they can try those cases which fall under their jurisdiction. Some people have objected to this particular arrangement as being unworkable in that a decision whether a crime is a class E crime and within the tribes' jurisdiction or a class D crime, which is outside of the tribes' jurisdiction, would rest with the discretion of the prosecutor. Do you see any difficulties in drawing a distinction?

Mr. COHEN. I do not see, Mr. Chairman, any difficulty in that. The fact of the matter is——

Senator COHEN. Let me give you an example. If, for example, the State wants to assert jurisdiction by saying they are going to try this

on a class D basis—if you were to reduce it down to a class E crime, would that then turn the jurisdiction over to the tribe? Would there be some competition between the tribes seeking to assert jurisdiction in that case where you have discretion as to whether you call it class D or class E?

Mr. COHEN. There is a possibility in certain situations, depending on the factual situation of concurrent jurisdiction. In other situations I could see where you might have a jeopardy situation to preclude one jurisdiction from taking action.

We discussed this at great length during the negotiations and consulted prosecutors and what have you. I really do not see a problem as far as competition or anything such as that. I do not see that as a practical problem.

The point I wanted to make, Mr. Chairman—of course currently, today, the State of Maine has no jurisdiction whatsoever to prosecute criminal offenses on any of the currently held Indian lands.

Senator COHEN. Is there any question that a class E crime committed by two Maine Indians on, let's say, Route 1 in the Indian Township—would that fall within the State's jurisdiction or the tribes'?

Mr. COHEN. Yes, Route 1 is entirely within the State's jurisdiction.

Senator COHEN. In section 6208(3) of the Maine Implementing Act it is provided that the Maine tribes, when acting in their "business capacity," will be subject to the laws of the State of Maine governing corporations and also be subject to taxation as such. Do you anticipate any difficulty in distinguishing between when the tribes are actually engaged in a business activity and when they are acting in a tribal capacity?

Mr. COHEN. I do not believe so. The same criteria would be used as when a government entity is working in a proprietary capacity. We discussed utilizing the same criteria.

Senator COHEN. You would use the same criteria that we now use as far as the Government acting in its own proprietary capacity?

Mr. COHEN. That is correct.

Senator COHEN. In the Federal legislation at section 6(d), the Congress gives its consent, in advance, for any amendment to the Maine Implementing Act which is made with the consent of the tribes. What kinds of amendments do you anticipate Congress is giving its consent to?

Mr. COHEN. As far as the Maine Implementing Act is concerned?

Senator COHEN. Yes.

Mr. COHEN. We had nothing specific in mind at this time——

Senator COHEN. Congress is going to want to know what kind of amendment——

Mr. COHEN. We talked about depending on how criminal jurisdiction works out or does not work out, and whether there could be a possible alteration as far as that goes, things of that type. We were just trying to create a mechanism that was workable and that could be effectuated.

Senator COHEN. But you are asking Congress in advance to give consent to amendments that may be offered at some time in the future by the State. I am just trying to find out what kind of amendments you are going to ask Congress for consent on.

Mr. COHEN. It would only be to local relationships that affect the Indians and the State of Maine, specifically. They would not directly affect or have an impact on, certainly, the Federal Government.

Senator COHEN. Perhaps you could spell that out a little more specifically for the record because that question will be raised by many of our colleagues.

Mr. COHEN. I will certainly do that.

Senator COHEN. Thank you. Without objection, the record will remain open for the purpose of inserting this additional information upon receipt.

[See letter dated August 8, 1980, from U.S. Department of the Interior, p. 95.]

Senator COHEN [continuing]. The Federal act, at section 6(b) provides, among other things, that the Maine Implementing Act shall not be subject to 25 U.S.C. 1919. That section of the United States Code permits the States and Indian tribes to enter into agreements regarding the care and custody of Indian children. Am I correct in concluding that you do not feel this provision is necessary because it would have duplicated section 6209(D) of the Maine Implementing Act?

Mr. COHEN. That is correct.

Senator COHEN. Is that the rationale for that?

Mr. COHEN. That is correct.

Senator COHEN. Mr. Cohen, we have received a letter in which it was asserted that the proposed settlement would leave some title problems unresolved because of the continuing controversy in Maine over the public lots. Could you tell us to what degree this controversy affects the land under consideration for transfer to the Maine tribes?

Mr. COHEN. There is a very small portion of acreage of public lots that are involved in any of the lands that are currently under consideration as far as the 300,000 acres are concerned. Wherever they are involved, of course, the grass and timber rights would be transferred. There is a current case pending in the State of Maine as to the ownership of the public lots and depending on how that case is decided would impact as to the public lots involved here.

Senator COHEN. How long do you anticipate the resolution of that particular litigation or controversy is going to last?

Mr. COHEN. It has been orally argued in the Maine Supreme Court and is pending a decision right at the moment.

Senator COHEN. You don't propose going forward until that is resolved, finally?

Mr. COHEN. No; if the State prevails in that particular case, the State would get back the grass and timber rights. If not, they will go on and people can sell them. So it will have no—as far as I see it—direct impact as far as needing any alterations to the settlement is concerned.

Senator COHEN. In their claims against the State of Maine, the tribes have asserted that their aboriginal title to the land was not properly extinguished by Congress. According to the U.S. Supreme Court decision in *Fletcher* v. *Peck*, the Thirteen Original States differ from the Western States in that, aboriginal title notwithstanding, the fee title to the land lies with the State. Do you agree that applies here?

Mr. COHEN. Yes.

Senator COHEN. If you follow that logically, aboriginal title has been described as a possessory interest alone and not an ownership right. It was characterized in a recent law review article as an "encumbrance on those lands in the nature of a life estate for the tribe's use and occupancy."

If the Maine tribes were to win their case in court, is this not the title to which they would succeed?

Mr. COHEN. I have not read that article, but I understand it is in the nature of possessory interest and not fee simple.

Senator COHEN. In other words, the fee simple title would still reside with the State?

Mr. COHEN. Yes; right; but for practical purposes, at least as I look at it, I think it would in effect be fee simple.

Senator COHEN. In other words, it is a possessory life estate that you would say is equivalent, for practical purposes in this case, to a fee title?

Mr. COHEN. As far as affecting current landowners, businesses that are involved, municipalities, yes. That would be my feeling.

Senator COHEN. In section 4(a) (2) and (3) of the Federal legislation, the bill approves and ratifies all transfers of land or other natural resources as of the date they were made. This provision also states that those transfers will be deemed by the Congress to have been made in accordance with Maine State laws. The question I have is this: Why is it important that the Congress express an opinion on transfers that have occurred solely under the color of State law?

Mr. COHEN. I will have Mr. Paterson comment on that.

Mr. PATERSON. We were concerned that despite the fact Congress might extinguish any claim that existed under Federal law, since the U.S. Government would still have a continuing trust relationship with the tribes, they might very well be entitled in the future to bring a claim on their behalf under State—either statutory or common-law theory.

We therefore wanted to make certain that any claim on behalf of these tribes which arose under State law was similarly extinguished.

Senator COHEN. Let me turn now to the Maliseet question. Has the land which would make up that 5,000 acres to be held by the Maliseets been determined as of this time?

Mr. COHEN. Not to my understanding. It is my understanding that they are going to get enough money to purchase the requisite number of acres. I do not know whether or not there has been any agreement arrived at specifically.

Senator COHEN. What is going to be the status of that land? Let's suppose, for example, that there is a nonpayment or default of payment of taxes; what happens? What is the mechanism at that point?

Mr. COHEN. It would be absolutely similar to any other private property in the State of Maine, and it would be subject to foreclosure.

Senator COHEN. And taken by the State?

Mr. COHEN. Yes.

Senator COHEN. Since you are using Federal funds to, in essence, purchase the 5,000 acres, do you think that under those circumstances the default that would then allow the land to revert to or be taken by the State is appropriate?

Mr. COHEN. I think it is appropriate, yes. I do not think there should be any special considerations given here as far as to the United

States, not only in my remarks, but in other documents that were provided to the committee. I think that is the case with the small amount of land that is involved, given the United States creating this whole situation, as far as Maine is concerned, many years ago. I think, under the circumstances of trying to balance the interest, that is the best and most fair at which one could arrive.

Senator COHEN. I take it from your testimony that you do not really think the Maliseets qualify for relief under this particular bill, (1) because they are not a tribe, not a recognized tribe as such as the Passamaquoddies and Penobscots, and (2) because their case is thin or marginal at best. Nonetheless, since the Penobscots and the Passamaquoddies have entered into their separate arrangement with them, as far as you are concerned, you have no objection. Is that the basis for the settlement?

Mr. COHEN. That is correct.

Senator COHEN. If the Federal Government were to include that, since they are using Federal dollars to purchase this land, there should be some nature of a trust relationship with the Maliseets, would that endanger this particular settlement, in your opinion?

Mr. COHEN. I believe that it could seriously jeopardize the entire proposed settlement. It would have to go back, certainly, to the Maine legislators.

Senator COHEN. You mentioned that this settlement is not proposed as a model to be used elsewhere. The fact of the matter is, it will be used as a model elsewhere, where we have other disputed claims that will be coming before the Congress. They will point to the Maine settlement as a precedent saying, "Look what you have achieved here with a full Federal responsibility. We would like the same."

So, it will be pointed to for precedential impact. Second, you obviously intend to have it be used as a precedent because you have a unique situation in which you treat the tribes as municipalities. You want that as a model, do you not?

Mr. COHEN. I do not propose it as a precedent, but I think it could well be used. I agree. I think it is a unique and novel way or relationship, and I think it is something to be looked at by other States and by Congress.

Senator COHEN. But it is so unique that it may cost the Federal Treasury $300 million.

Mr. COHEN. I am not sure that is the case. I see that portion just as Secretary Andrus was talking about; I think that should be analyzed.

Senator COHEN. But, if they come to the conclusion that, because of treating them as municipalities it will deal with tens , if not hundreds of other laws affecting municipalities, from revenue sharing to CETA programs and other types of intergovernmental relationships; if we find that this one situation is an exception, a unique innovation as such, setting a model for the others to follow, which is going to cost the Federal Treasury considerably more than the $81.5 million, and they were to come back and say that they cannot agree with that unique concept, that they are agreeing to full Federal responsibility for these claims to the tune of $81.5 million, but that they were certainly in no position to open up the Federal Treasury to unforeseen or at least reasonably foreseeable contingent requests made upon the Federal Treasury which will cost hundreds of millions of dollars; in that case,

if the Department of the Interior comes to that conclusion and says that they will agree to the settlement figure for the 300,000 acres of land with full Federal responsibility, but not with treating the Maine tribes like any other tribes throughout the country, what would be your position at that time?

Mr. COHEN. You are talking about a hypothetical case here.

Senator COHEN. I am talking about a very realistic possibility.

Mr. COHEN. I do not know if anybody has analyzed that particular $300 million amount——

Senator COHEN. What about our colleagues who sit on this committee or who represent significant populations of Indians in the West who ask why Maine should have a special status for its tribes, and that they should be treated like all Federal tribes, just like they are treated in the West?

Mr. COHEN. As I have indicated here today and further in my remarks in detail, I think the Maine situation is unique. I think the settlement is right for Maine. I think it is fair. I think it is fair as far as the Federal Government is concerned, and I do not think it is going to put a drain or set a precedent that is going to create a huge amount of funding that does not exist now.

Senator COHEN. The Federal Government is now assuming its rightful responsibility. They are Federal tribes. They should have been recognized as such. The Federal Government was wrong. It built on its beneficiaries' property over the years, the post offices, Federal buildings, et cetera. Now we recognize our wrongdoing as such, and we are going to assume full Federal responsibility of the tribes just like we have over every tribe in the country.

Now, at that point they send it back to you. What is going to be your position on that?

Mr. COHEN. Of course, it is not I alone that makes these decisions, and we will have to consult. I have an open mind. I recognize that this is not going to be in any sense rubberstamped. It is going to be scrutinized. I expected this. We expect very hard questions and having to make, very possibly, some very hard decisions.

Senator COHEN. Let me make this clear. I am asking these questions because they are going to be asked by other members of the committee at some later time. Assuming the matter comes out of this committee with a positive recommendation, it will go to the Appropriations Committee. Then they will ask these questions. Then, assuming it were to come out of the Appropriations Committee and go to the full Senate floor, you can be sure there will be debate on the Senate floor on these very issues. As my colleague Senator Mitchell indicated, we want to put this proposal to its full test before the committee to assure everybody that we are answering the questions that have to be analyzed.

Mr. COHEN. I certainly have an open mind as to these particular points and will seriously consider them and discuss them with other governmental leaders in the State.

Senator MITCHELL. Mr. Cohen, following up just briefly on the question of the Maliseets, do I understand your testimony to be that the inclusion of the Maliseet Band did not result in an increase in the total amount of the settlement?

Mr. COHEN. That is correct.

Senator MITCHELL. That is, the total amount was arrived at and then the Passamaquoddy and Penobscot agreed independently to make a portion of that total amount available to the Maliseet Band?

Mr. COHEN. That is correct. The 300,000-acre figure goes back and long before the Maliseets came into the picture and started talking with the Penobscots and the Passamaquoddies, yes.

Senator MITCHELL. I would like to also follow up on another theory that you touched on briefly. That is the area of criminal jurisdiction.

One of the criticisms widely heard in Maine is that the State is somehow giving up something in the area of criminal jurisdiction. As I understand your testimony, in fact, at the present time the State has no jurisdiction over criminal matters on the reservations or the areas in which these two tribes live. Is that correct?

Mr. COHEN. That is totally correct.

Senator MITCHELL. That is as a result of a decision of the Supreme Judicial Court of Maine?

Mr. COHEN. That is correct.

Senator MITCHELL. So, to the extent that the State through this settlement acquires some criminal jurisdiction, in fact, then, the State is gaining something through this settlement in the way of jurisdiction over criminal areas in the affected tribal areas. Is that correct?

Mr. COHEN. That is totally correct, Senator.

Senator MITCHELL. So with respect to jurisdiction over criminal prosecution, it is, in fact, the Federal Government and the tribes who now have exclusive jurisdiction in the area who are making a concession to the State which, as of this moment, has no such jurisdiction. Is that correct?

Mr. COHEN. That is totally correct.

Senator MITCHELL. You heard Secretary Andrus talk about the areas of concern, and his prepared text contains more than he referred to in his oral remarks. I assume that you, representing the State of Maine, are prepared to meet and talk with representatives of the Department of the Interior, as well as representatives of the tribes to work out some of these areas?

Mr. COHEN. Aboslutely.

Senator MITCHELL. As I indicated in my questioning of Secretary Andrus, I am particularly concerned about the language on the extinguishment of the claims; that is, making certain that the very fundamental purpose of this legislation is dealt with in a manner that leaves no room for question as to its effect. Are you prepared to do that?

Mr. COHEN. Absolutely. This is uppermost in our minds, and we went through, I am sure, 40 or 50 drafts on language on just that point. We felt, and do feel, that it is clear now, but we are willing and want to sit down with anybody that has any questions to try to come to an agreement to work out these concerns.

Senator MITCHELL. You also heard me refer earlier to a series of questions raised about this whole negotiating process and the legislation now before us. The Governor has indicated that the State will provide a response. I assume you have seen these questions before, and since one of them—in fact, the very first one—deals directly with

you, although you did touch upon it in your remarks, I wonder if I could ask that question now. I will read the question and see if you can respond to it in a little bit more detail.

Why did the State attorney general agree to let the attorney for the timberland owners and the Indians establish the price tag to the settlement without his participation as spokesman for the State?

Mr. COHEN. Long before I became attorney general and back when Governor Longley was in office, at that time the State felt, and Governor Longley felt, it is my understanding, that since the land in question over a proposed settlement should be negotiated between willing sellers and willing buyers, that the State should not participate at all. The State did not participate going back at that time. And, as we went on through this, that policy continued on.

While we were kept apprised from time to time as to the status of the negotiations, we did not participate. They arrived at the particular price, and then the figures were provided for the Congress.

Senator MITCHELL. Notwithstanding your lack of participation, do you have an opinion as to whether or not the value arrived at is a fair and reasonable one under all the circumstances?

Mr. COHEN. From everything that I have been told by people knowledgeable in the area, the average price that has been arrived at is fair. I have heard nothing else. Again, people have relied here upon the James W. Sewall Co. This is the preeminent company in Maine that makes these determinations. I have heard nothing to the contrary that the prices we are talking about are fair.

There is some land, as you know, that is much less than $180 per acre, and there is some land that is over that. That, of course, depending on which land ultimately comes out of this, could alter the total price.

Senator MITCHELL. By way of establishing the foundation for your view, does the Department of which you are the chief executive, that is, the Department of the Attorney General, engage in matters involving land in Maine, that is, legal matters, public lots, and other disputes involving land?

Mr. COHEN. On a sporadic basis, not on a regular basis. We have no type of expertise within my department to lend any particular light on this. We rely on other State agencies and private companies, where necessary, on specific matters.

Senator MITCHELL. Thank you very much for a very thoughtful prepared statement.

Senator COHEN. Just to clarify for me—you heard the Secretary of the Interior say that the Department was not contacted and was not actively involved in the final stages of the negotiations. Senator Mitchell asked you why the State was not involved as far as the price structure was concerned. But why was not the Department of the Interior involved in negotiating those particular sections that established this unique relationship as a municipality?

Mr. COHEN. Again, when I came into office as attorney general, it was made clear to me from several sources that it was up to the State

and the Department of the Interior, and the administration had indicated that it was up to the State before Congress got involved and before Washington got involved, that is, the State should go back and do their negotiations and work out all the jurisdictional aspects, and then come back.

After I came into office I did meet with Secretary Andrus. We discussed it briefly. The negotiations were going on, and there was never one indication to me that the Interior Department wanted to be involved in it in any respect. They certainly knew the negotiations were going on. They knew who the negotiators were. I never heard anything about Interior wanting to be involved in the development of any particular provisions until this morning.

Senator COHEN. Now we have the relevance of the tax code as far as whether these are involuntary conversions tantamount to a taking by the State or the Federal Government which would qualify them for tax relief. You are talking of a loss of revenue of $15 million in this case. Whether or not this would be acceptable has now to be resolved by the Department of the Interior in conjunction, I assume, with OMB, and whether this is precedential in nature where you have any of these future cases involving involuntary conversions being treated differently for tax purposes. It seems to me it would have been helpful at least to have them at some point in the final stages negotiating these specific provisions which they now have to go back and take to the board and then come back here and work it out.

Mr. COHEN. I absolutely agree. They knew about these provisions, and I do not know why they were not involved.

Senator COHEN. Thank you very much, Mr. Cohen.

Mr. COHEN. Thank you very much.

[The prepared statement follows. Testimony resumes on p. 174.]

STATEMENT OF RICHARD S. COHEN, ATTORNEY GENERAL, STATE OF MAINE

Mr. Chairman and Members of the committee: I am pleased to be here today to share with you my views on S. 2829 and to urge your enactment of this bill.

By now I expect you have had an opportunity to familiarize yourselves with the proposed settlement bill and the jurisdictional agreement previously adopted by the Legislature of the State of Maine and the members of the Passamaquoddy Tribe and Penobscot Nation. While I would be happy to answer any questions about the bill before you or about the jurisdictional agreement between the State and Tribes, I think it would be most useful to direct my initial remarks to explaining the history of this dispute, the method by which we negotiated the settlement and the reasons why I think it is imperative that Congress approve it.

The lawsuit which we are attempting to settle has been characterized by the United States Justice Department as "potentially the most complex litigation ever brought in the federal courts with social and economic impacts without precedent and incredible litigation costs to all parties." The case is based on a claim by the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians that the land in Maine originally possessed by them was taken in violation of the Indian Trade and Intercourse Act. The Trade and Intercourse Act, which was originally enacted in 1790 and which has been a part of federal law ever since, provides in essence that no one may acquire land from an Indian Tribe without express Congressional approval or ratification. The Passamaquoddies and Penobscots claim that Massachusetts, of which Maine was a district until 1820, acquired their lands through a series of allegedly illegal agreements in 1794, 1796, and 1818. The Penobscots also claim that Maine illegally purchased some land from them in 1833. Both Tribes claim that these transactions were invalid only because they lacked this Congressional approval. In no other respect are the transactions alleged to be illegal. The Maliseet Indians do not, so far as we know, look to any particular documents but claim generally that their

lands were taken from them through settlement by non-Indians. The size of the total area in question has never been precisely defined but could involve most of the eastern half of Maine, including the St. John River Basin, but not including the immediate coastal areas of the State. In total size the claim could encompass between 5 and 15 million acres or from 25 percent to 60 percent of the State. In addition the claim has been estimated to potentially involve trespass damages of up to $25 billion.

Chronologically the land claims began in 1972 when the Passamaquoddies and Penobscots first requested the United States Department of Interior to sue the State of Maine on their behalf for recovery of the disputed lands. The Maliseets did not make a similar request to the Department in 1972 but have only recently raised their claim with the State. In response to the request of the Passamaquoddy Tribe and Penobscot Nation, the Department of Interior refused to bring the suit, arguing, rather, that since the United States had never recognized these Indians as "Tribes," the Indian Trade and Intercourse Act did not apply to them and that therefore the United States had no trust responsibility with respect to those Indians. Thereafter the Passamaquoddy Tribe sued the Department of Interior in the United States District Court seeking a judicial declaration of such trust responsibility. The State of Maine intervened in the suit as a defendant along with the United States. That suit was known as *The Joint Tribal Council of the Passamaquoddy Tribe* v. *Rogers C. B. Morton, et al.*

At the same time that *Passamaquoddy* v. *Morton* was initiated, the Tribes obtained a court order compelling the United States to sue Maine in order to toll the then applicable statute of limitations. The United States responded to the Court order by suing the State in mid-1972 asking for $300,000,000 in damages, half for the Passamaquoddy Tribe and half for the Penobscot Nation. At that time the suits did not seek recovery of any land nor did the suits name any individual or corporate defendants. Only the State was sued in 1972. Those cases were ordered held in abeyance pending the outcome of the principal suit by the Tribes against the Secretary of Interior.

Passamaquoddy v. *Morton* proceeded to judgment in the District Court with that Court concluding in early 1975 that the United States did in fact have a trust responsibility to the Tribes by virtue of the Trade and Intercourse Act. That decision was affirmed by the Circuit Court of Appeals which added qualifying language specifically leaving open the question of whether Maine or Massachusetts had in fact ever violated the Trade and Intercourse Act or whether that Act even applied to the transactions in question. Because of this important limiting language in the Court of Appeals' decision, the State of Maine elected not to appeal to the United States Supreme Court. For reasons unknown to us the United States Department of Justice did not appeal the decision either.

After the decision of the Court of Appeals in December 1975, the United States Department of Justice and the Department of Interior undertook to evaluate the validity of the land claims. In late 1976 the United States Department of Interior announced its intention of recommending to the Justice Department that it pursue the lawsuit against Maine and against all persons occupying land claimed by the Passamaquoddy Tribe or Penobscot Nation. That announcement precipitated the postponement of State and local bond issues, created turmoil in the real estate and title bars, and aroused widespread public concern. I think it is fair to say that in late 1976 and early 1977 the sudden discovery of the land claim created one of the most serious legal, economic and social crises in the history of the State of Maine. A State bond issue was cancelled, title insurance was unavailable and federal bank regulatory agencies were questioning the solvency of numerous banks which held mortgages on land in the eastern half of Maine.

Because of the obvious turmoil created by the claim, the United States government initiated a series of efforts to settle the suit. The first such effort involved Judge William Gunter, a retired Georgia State Supreme Court Justice who in March, 1977 was appointed by President Carter as his special representative to inquire into the suits and to recommend a resolution to the President. Judge Gunter examined the matter, met with the parties and in the fall of 1977 proposed a settlement which called for a payment by the United States of $25,000,000 to the two tribes plus a proposal that the State provide 100,000 acres of public land and ongoing special State services to the Tribes. This proposal was rejected by the State and the Tribes and did not become a basis for settlement.

In the late fall of 1977 the White House appointed a special work group to reexamine the claim. After extended negotiations with the Tribes, the work group came to Maine in February, 1978 and publicly reported on a new proposal for

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settlement. This proposal contemplated a federal payment of $25,000,000, a State payment of $25,500,000 to be made over 15 years, and 300,000 acres of lands from private parties, for which landowners would be reimbursed $5.00 per acre by the federal government. The total value of this proposal to the Tribes was roughly $90,000,000. Principally because neither the State nor landowners played any role in negotiation of this second proposal, it was rejected by the State and did not become the basis for settlement.

Finally, in October, 1978, the White House announced a third settlement plan through then United States Senator William Hathaway and Presidential Counsel Robert Lipshutz. This settlement consisted of a $27 million permanent trust fund, a $10 million land acquisition fund to buy 100,000 acres of land and $25 million in grants and loans, all to be provided by the federal government. The total value of this proposal was roughly $62 million. No payment from the State was proposed by the White House. This proposal was agreed to by Governor Longley, Attorney General Brennan, Senator Muskie, Senator Hathaway, Representative Cohen and Representative Emery. The Tribes, however, never accepted the plan and ultimately rejected it on the ground that they had been led to believe they were entitled to more land under the terms of the February, 1978 proposal that the Tribes had negotiated with the Administration.

[The remainder of Attorney General Cohen's prepared statement was read into the record and begins on p. 159.]

Senator COHEN. We have several more witnesses that are scheduled to testify this morning. We have this room until 3 o'clock, so why don't we proceed at least until 1 o'clock or 1:30. Then we will take a half-hour break until 2 o'clock and proceed from 2 to 3 o'clock.

Mr. Tureen, why don' you bring your clients forward.

We are going to hear from representatives from the Passamaquoddy and Penobscot negotiating committee. They will be accompanied by Thomas Tureen, their attorney, who is with the Native American Rights Fund.

We welcome you to the hearings and look forward to any remarks you may care to give on behalf of the tribes.

Again, I would ask, if you could, to summarize your testimony. Your full testimony will be included in the record.

Mr. TUREEN. First we will hear from Mr. Andrew Akins.

Senator COHEN. Mr. Akins, please proceed as you wish.

STATEMENT OF ANDREW AKINS, CHAIRMAN, PASSAMAQUODDY-PENOBSCOT NEGOTIATING COMMITTEE, ACCOMPANIED BY THOMAS TUREEN, NATIVE AMERICAN RIGHTS FUND; PRESENTED BY CLEVE DORR, LIEUTENANT GOVERNOR, PASSAMAQUODDY TRIBE

Mr. AKINS. Thank you, Senator Cohen. I would like to introduce Cleve Dorr who will read my prepared statement.

Senator COHEN. Thank you. That will be fine.

Mr. DORR. My name is Cleve Dorr, Senator Cohen. I am Lieutenant Governor of the Passamaquoddy Tribe at Pleasant Point.

Mr. Chairman, this statement is submitted on behalf of the Penobscot Nation and the Passamaquoddy Tribe in support of S. 2829.

This is an historic moment for our tribes, one for which we have waited a very, very long time. When I speak of a long time, I am not talking about the mere 10 or so years that we have been pursuing our land claims and asserting our jurisdictional rights in this most recent round of court cases. I am talking instead about the 200-plus years

that have passed since General George Washington and Col. John Allan, the superintendent of the Federal Government's Eastern Indian Department, sought and received the support of our tribes in the Revolutionary War in return for a promise that the United States would forever protect our lands. I am talking about the 180 years that have passed since this Congress adopted the first Indian Nonintercourse Act which extended that same land protection to all Indian tribes.

We have been waiting all of these years, because until now the Federal Government has failed to carry out the promises made by George Washington and Colonel Allan or to fulfill the mandate of the Nonintercourse Act. In the absence of Federal protection, Massachusetts and Maine have violated the rights of our tribes in numerous ways.

First and foremost, these two States have taken practically all of our lands. Most of these lands were taken in a series of illegal and grossly unfair treaties during the period 1794–1833. The Passamaquoddies received nothing at all for the lands taken in these treaties, the Penobscots almost nothing. Some of our lands have been taken more recently, as in the case of the 999-year leases that the State of Maine granted about 100 years ago on lands within Indian township, and the land which was carved out of the tiny 100-acre Pleasant Point Reservation during the 1950's.

At the same time, the State of Maine has consistently refused to recognize the sovereign rights of our people. Unlike the United States, which regards Indian tribes as possessing all aspects of sovereignty except those which have explicitly been taken from them, the State of Maine has always taken the position that our tribes have no inherent sovereignty and can exercise only those powers of self-government that Maine gives us. Thus, while the State of Maine has been comparatively more enlightened during the last 15 years, and has passed statutes which recognize in our tribes a greater degree of self-government than was previously the case under State law, Maine has stopped far short of recognizing our legitimate right to manage our own internal affairs. Indeed, before the present negotiations, we had absolutely no assurance that the State would not simply wipe away the few comparatively enlightened statutes that it had passed.

In short, the years of failure on the part of the Federal Government to carry out its moral and legal trust responsibilities toward our tribes left us a nearly landless people whose inherent sovereignty was ignored by the only government which paid any attention to us.

But through all of this we have survived. Perhaps we have survived because we live in a part of Maine which is so isolated, stuck off as it is in the side of Canada, and which is a part of the United States only because of our efforts in the Revolutionary War. Perhaps we survived because of our stubbornness and determination. But for whatever reasons, we have clung to the lands which we still possess, and during the past 10 years, have finally succeeded in bringing our grievances successfully to court.

In a series of decisions too long to detail in this short testimony, the courts of both the United States and the State of Maine have consistently recognized our right to protection under the Nonintercourse Act, the trust responsibility of the United States to act on

our behalf, the existence of our inherent tribal sovereignty, and the "Indian country" status of our lands.

It was this string of decisions which ultimately persuaded the executive branch, under both the Ford and Carter administrations, that the Federal Government must take the lead in bringing about a settlement of our land claims. The negotiations which resulted took 3 years to complete, and have produced the legislation before you today.

The settlement provides sufficient funds to purchase 300,000 acres of average quality Maine woodland for our tribes and to establish two $13.5 million trust funds. The settlement also deals with a variety of jurisdictional issues. For example, under the terms of the legislation the State of Maine relinquishes the power to interfere in our internal affairs which it formerly claimed, and agrees that the jurisdictional terms in the legislation cannot be changed in the future without the consent of the affected tribe. By the same token, under the terms of the settlement we are assured that non-Indians will never be able to assert a constitutional right to a voice in our decisionmaking processes. All of this, of course, is in addition to protections against alienation of our lands, including eminent domain takings, which the settlement legislation includes. The security which this compact provides is of great importance to us.

I would urge your timely attention to this bill. We understand that it requires some technical refinement. For example, because the funds for acquisition of the lands and establishment of the trust funds are not being simultaneously provided, and because the land cannot thus be instantly acquired, we cannot agree to the extinguishment provision as it is presently drafted. We are working already with representatives of the State, the administration, and this committee on appropriate new language. We also see that some clarification may be required to insure that our tribes shall be eligible for the same services as other federally recognized tribes. While we are prepared to work on such technical matters, we would only remind you of the obvious: This bill represents a negotiated settlement of a lawsuit and cannot be altered without the consent of the parties.

Thank you for your time and consideration.

Senator MITCHELL. Is there anyone else who would like to make a statement?

STATEMENT OF CARL NICHOLAS, LIEUTENANT GOVERNOR, INDIAN TOWNSHIP, PASSAMAQUODDY RESERVATION

Mr. NICHOLAS. Senator Mitchell, my name is Carl Nicholas. I am Lieutenant Governor of the Passamaquoddy Tribe of Indian Township.

Due to the sudden illness of our tribal Governor, Harold Looey, who is hospitalized and unable to attend, I am here on behalf of the Passamaquoddy Tribe of Indian Township.

Senator Mitchell, it is also a pleasure to support today S. 2829, the Maine Indian Claims Settlement Act of 1980.

After years of negotiation with the State of Maine, the negotiating committee presented to the tribal members of Indian Township, at its general meeting held in Indian Township, the final package for a

referendum vote for approval of this package. It was passed by an almost unanimous majority of the members present at the meeting.

Again, the Passamaquoddy Tribe of Indian Township supports the settlement package, and the Passamaquoddy Tribe also supports the Houlton Band of Maliseets. I express this support on behalf of my tribe.

Thank you.

Senator MITCHELL. Thank you, Mr. Nicholas.

Mr. TUREEN. Next we have Mr. Pehrson.

STATEMENT OF WILFRED PEHRSON, GOVERNOR OF THE PENOBSCOT NATION

Mr. PEHRSON. Thank you Senator Cohen and Senator Mitchell.

I am down here today on behalf of the Penobscot Nation in support of S. 2829.

My people authorized the negotiating committee and endorsed the result by reservation-wide vote. I lived with the land claims for a long time. I am pleased that it is nearly over so that we can begin to live as we were intended, with a future as well as a past.

Tomorrow you will hear voices of opposition to S. 2829. I have also been elected to represent those of my people who disagree with the conclusion reached by the majority of the tribes. I support their right to present their views to this committee.

You need to hear their concerns, their mistrust, their rage, and all of the feelings which run deep in us because of the way our people have been kicked around for centuries. Hear them, for they are our people and our relatives. They want to get even and carry this to court, whether or not we ever win, but most of out people feel we have won. That is why I am down here today speaking in behalf of the Penobscot Nation in support of S. 2829.

Thank you.

Senator COHEN. Thank you very much, Mr. Pehrson.

Mr. TUREEN. The next witness is Mr. James Sappier.

Senator COHEN. Mr. Sappier, please proceed as you wish.

STATEMENT OF FRANCIS C. SAPPIER, NEGOTIATING COMMITTEE MEMBER, PENOBSCOT NATION TRIBAL COUNCIL

Mr. SAPPIER. Thank you, Mr. Chairman, and Senator Mitchell.

My name is Francis C. Sappier, Penobscot Nation tribal council member.

I am here to give my support for the Maine Indian Land Claim Act of 1980, S. 2829. The history of this settlement will mean a lot to the Penobscot Nation so that we can preserve our Indian culture with a museum and library, our Indian language and traditional rites, Indian lore, and creation of a full nation government and a constitution.

In closing, I support this settlement, S. 2829. It will bring a just conclusion, for all concerned, to the many injustices of the past.

Thank you.

Senator COHEN. Thank you, Mr. Sappier.

Mr. Akins, are there other witnesses?

Mr. AKINS. Yes. We have Mr. Francis.

Senator COHEN. Mr. Francis, you may proceed as you wish.

STATEMENT OF JOSEPH FRANCIS, MEMBER, PENOBSCOT NATION TRIBAL COUNCIL

Mr. FRANCIS. Thank you, Senator Cohen and Senator Mitchell.

My name is Joseph Francis. I am a member of the Penobscot Nation tribal council. I have been chosen as the tribal council spokesperson today, and I am here to support the Maine Indian Land Claim Settlement Act on behalf of the Penobscot tribal council.

I have found many inequities in the act, and generally speaking, it is not so appealing to me or my people. But commonsense outweighs principle, and this act was ratified 2½ to 1 on a referendum ballot, while realizing that all parties have exhausted all of their resources in seeking a just and fair settlement. You will hear others opposing this settlement today, but they do not reflect the opinion of the tribal council, the majority of the tribe, or the people of the State of Maine.

Thank you, sir.

Senator COHEN. Thank you, Mr. Francis.

Mr. AKINS. We are finished and will answer any questions you may have.

Senator COHEN. I have a series of questions, and I will direct them either to you, Mr. Akins, or to your attorney, Tom Tureen.

Just for my own purposes, you have indicated we are going to be hearing testimony tomorrow from opponents of this particular settlement from both within the tribe as well as some expression of opposition from nontribal members.

Could you explain your relationship with those Indians who will be testifying in opposition? Are they members of the Penobscot and Passamaquoddy Tribes?

Mr. AKINS. From what I understand, they are all Penobscots, and they are all our members. We do not have problems with them being here. It is a matter of their right.

Senator COHEN. I want to make it clear for the record, there has been some suggestion that this is not going to be a full and open discussion and debate by all parties concerned. We, Senator Mitchell and I, have tried to make it clear for the record that we are allowing as many parties as we can, within the time constraints that we have, to present their testimony, both in favor and in opposition. So, we look forward tomorrow to hearing those tribal members who will express their opposition and the reasons for that expression of opposition as we do for nontribal members who are also opposed to the settlement itself.

Representatives this morning from the State of Maine have indicated their so-called bottom line in terms of what basic principles are involved for a settlement on this issue. One was the question of no State land or State money. The other was no jurisdiction of other nations and the retention by the State of both civil and criminal jurisdiction over the tribes.

What would be the bottom line in terms of the tribes' acceptance of this settlement? What would be indispensible if Congress were to,

in fact, reject some of the provisions? What are those basic elements from which the tribes would not or could not deviate?

Mr. AKINS. Senator, our bottom line is 300,000 acres of land plus a trust fund of $27 million. That is the bottom line.

Senator COHEN. In other words, if the Congress were to lower the amount in the trust fund, it would be rejected by the tribes. Is that correct?

Mr. AKINS. Yes.

Senator COHEN. What would be the effect if Congress were to reduce the amount of land itself, the 300,000 acres? Would you reject it?

Mr. AKINS. We would really have no option but to reject it.

Senator COHEN. What if Congress were to reduce the amount of money to be appropriated for the total settlement package? In other words, if Congress were to reject the $81.5 million, but nonetheless retain the trust fund of $27 million and the 300,000-acre provision, leaving that intact?

Mr. AKINS. No.

Senator COHEN. That does not affect the tribes as far as the tribe is concerned. The landowners might have some objection, however. Is that correct?

Mr. AKINS. Well, we have made an agreement to purchase the land at a certain rate. If you or anyone else can convince the landowners to sell for less, that is fine with us.

Senator COHEN. That would be fine with the tribe, but I assume the landowners or their attorneys, who will be testifying shortly, would say that is not fine with them, and there goes the basis for the settlement.

There was a report on April 27 of this year which described the manner in which the tribes anticipate the use of this land. There was reference to the purchase of two sawmills owned by the Dead River Co. and that the Dead River would be on, let's say, a management contract for 5 or 10 years. Is that correct?

Mr. AKINS. Five years.

Senator COHEN. What is the state of those negotiations right now? Can you tell us what kind of arrangement has been made? For example, would the company get a percentage of the tribes' net profits? What are the financial arrangements between the tribes under the operation of those two sawmills?

Mr. Tureen?

Mr. TUREEN. Senator Cohen, there is a draft of the proposed contract between the two tribes and the Dead River Co. for management. There are two contracts and frankly I—one runs for 5 years and the other runs for 10. I do not remember which is which. I think the proposed land contract is the longer of the two. It is important to note, though, first of all, that these are proposed contracts. Neither has been agreed to. Second, they both contain a provision for termination on 6-month notice so that if the arrangement does not work out, it can be terminated by either party—either side on 6 month's notice.

The proposed contract does provide for Dead River to be paid a percentage of the net profit. As I say, those contracts have not been finalized, and I don't think it serves a lot of purpose to discuss the details of them since they have not been finally negotiated. They would

also relate to the provision in the legislation which provides for management of the land in accordance with reasonable terms put forth by the tribes.

What we have envisioned in discussing this is that those lands will be managed during the early years, in any event, by the Dead River Co. in close consultation with the tribes pursuant to these contracts, if we are able to reach a satisfactory contract. That would be the way in which the property was handled initially. Most of the land, as you know, would be coming from the Dead River Co. They currently manage the lands. We know they are pretty good land managers, and this would allow for a smooth transition during which time the tribes could expand their own staff of land managers.

Senator COHEN. Is it fair to say that this comes at the request of the tribes rather than the insistence by the Dead River Co.? Some opinion has been raised in various editorials concerning the unique treatment of the land that will be transferred by the Dead River Co., the implication being that they are going to derive a benefit out of the entire transaction. If you couple that suggestion with a management contract in which there is a percentage of the net profits, you start building up at least the impression that this is benefiting the Dead River Co. at the expense of the Federal Treasury or perhaps even the State of Maine.

Am I clear from your statement that this management contract, as such, comes at the request of the tribes and not the company?

Mr. TUREEN. I think it is mutual.

Let me say at the outset that people have the habit of seeing the worst and expecting the worst. We fully welcome any scrutiny of any part of this and, as Secretary Andrus testified earlier, their appraisers have justified the prices that have been negotiated for the lands so far.

The Dead River Co. was interested in that management agreement for a very simple reason. They are prepared to sell practically all of their lands. They have a staff in-house, and it was their feeling they did not want to put those people out of work overnight. They told us that they were reluctant to sell all of those lands if it meant overnight putting their staff out of work.

There is a coincidence of interest there because the tribes for their part are going to need assistance in land management during the early years. So the interest of the Dead River Co. in terms of their own employees and the interest of the tribes in needing management coincided. I think it was very much a mutual matter that we have gone as far as we have in terms of discussing that arrangement. No contract, of course, has been signed yet.

Senator COHEN. That is a 6-month notice of termination?

Mr. TUREEN. That is correct.

That is something that does not get talked about very widely, but it is a very important feature of that agreement.

Senator COHEN. In the testimony before the Joint Select Committee on the Maine Indian Settlement in Augusta, James St. Clair, who is the attorney for the State, or at least a consultant for the State, said that he believed the proposed settlement fairly reflects the potentials for winning and for losing that exists between the State and the tribes.

Mr. Tureen, would you agree with that statement?

Mr. TUREEN. We have avoided stating odds on these cases. Andy Akins stated in those same hearings that he believes the odds were 80–20. I think it is a very difficult and dangerous business to get into.

Senator COHEN. Let me explain why I asked you that question.

You have come under some criticism, I assume, as have some of the tribal council members, that you did not negotiate from full strength and that you could have, in fact, gotten a better deal and that you should have held out for more. I assume that will be the testimony tomorrow.

Is it your considered judgment that you negotiated from equal strength, and this does fairly reflect the potentials for winning and losing under the circumstances?

Mr. TUREEN. I think we certainly negotiated from mutual strength. I would agree with what Dick Cohen said earlier—that the negotiations in this case all around were characterized by a mutual respect and were carried on in a commendable atmosphere. It was not always harmonious, but commendable.

The judgments that go into deciding when to pull the string on a settlement are very difficult and are not easily articulated.

You should understand that Indian tribes are inherently conservative. They are very concerned about their futures. They are very concerned about the long view. All I can say is that my clients made a judgment that this settlement at this point in time is appropriate for them to take. This settlement in hand is worth more than the prospect of litigation. We too, my clients and I, think about the social aspect of the disruption that would go along with litigation. Anyone can criticize a negotiated settlement. By definition you can always get more—one could say that you could have gotten more because the settlement is a compromise. We are not entirely happy with it, but that is what we have reached, and that is what a compromise is.

Senator COHEN. In section 5(d)(1), the amount of money appropriated for the purchase of lands for the Maliseets is $900,000 and is tied to a specific amount of land, namely, 5,000 acres. Why is the money appropriated for the acquisition of lands for the Penobscot and Passamaquoddy Tribes not also tied to a specific number of acres?

Mr. TUREEN. There is not any particular reason. The State legislation, as you know, contemplates acquisition of 300,000 acres. It is the first 300,000 acres that is acquired within the designated area that will receive Indian territory treatment. In fact, the amount of money that is being appropriated from our assessment is sufficient to buy 300,000 acres of average quality land.

Senator COHEN. In section 6(g) and in other sections of the proposed Federal act, many of the Federal Indian laws are made inapplicable to the Maine Indian tribes. I would ask you, Mr. Tureen, in the testimony before the Joint Committee of the Maine Legislature, in Augusta, you said that as the negotiations proceeded, the Maine tribes came to see the general body of Federal Indian law as a source of unnecessary Federal interference in the management of tribal property.

Is this sentiment the reason behind the exclusion of much of the Federal Indian law from the settlement bill?

Mr. TUREEN. Again, there is no simple answer. The general body of Federal Indian law is excluded in part because that was the position that the State held to in the negotiations. It was the State's view that

the destiny of the Maine tribes as much as possible in the future should be worked out between the State and the tribes.

The tribes were concerned about basic fundamental Federal protections which they had not had before the recent round of court cases. So it is also true to say that the tribes are concerned about the problems that existed in the West because of the pervasive interference and involvement of the Federal Government in the internal tribal matters.

Senator COHEN. The reason I raised the question is because tribes in other parts of the country are going to look to this particular section and raise questions as to why they could not enjoy a similar type of freedom from Federal intervention in the control of their lives. That is a question that other members of this committee are going to want to deal with. I am sure it is going to be raised by other Members of the Senate and perhaps the Congress itself.

If I follow this theme a little bit, in section 5(e) the Federal act provides that 25 U.S.C., section 177, the present codification of the Nonintercourse Act, will not be applicable to the Maine tribes. It is replaced by a special restraint on alienation which is found in section 5(e)(2).

Why did you feel this new section on alienation was needed?

Mr. TUREEN. Let me preface that by saying that in terms of what you were saying a moment ago, if there was only one kind of relationship the Indians had to the United States, one might be more concerned about the precedential nature of this settlement. The fact is that there are a myriad of different kinds of relationships that Indian tribes have with the United States.

Senator COHEN. I do not think any of them enjoy the status of the municipality, though.

Mr. TUREEN. They are all different. They range from terminated tribes to the Alaska Natives to the 280 tribes. There are all kinds of different relationships—the Narragansett settlement that was passed in the last Congress.

With all due respect, and I know these questions will be raised, and I would expect them, I do not see why the addition of one more peculiar unique relationship between the United States and a tribe, or two, or three tribes, is going to substantially change the situation that we have today because it is already the nature of Federal Indian law. It is already highly idiosyncratic.

I am sorry. Can you repeat your basic question again?

Senator COHEN. I am wondering why you felt that this special restraint on alienation was needed?

Mr. TUREEN. That was a matter of convenience, and purely that

Senator COHEN. Does the new section carry with it the whole body of law that we now have pertaining to the Nonintercourse Act?

Mr. TUREEN. Yes, without any question. The statutes are the same. There are a couple of minor differences.

In our negotiations we provided our own Nonintercourse Act merely as a matter of convenience because it is only going to apply to particular lands in Maine.

Senator COHEN. In section 8(c) of the Federal act, the Federal Government is prohibited from counting the income realized as a result of the implementation of section 5 which is the "Establishment

of Funds" section of this bill in computing any aid to individual or households, members of those households, or the tribes.

How did this provision come to be included?

Mr. TUREEN. Or to the tribes themselves.

Well, this is not novel. We understand this provision has been included in other Indian statutes. I believe that the particular language here was taken from a Navajo-Hopi settlement. It is fairly obvious that that is essential. For example, the settlement provides for a portion of the trust funds to be set aside for older members of the tribes, for income to be paid to them. Absent this kind of protective language, the money paid to them could simply reduce their social security. The tribes, through their settlement, would be subsidizing the social security fund, which I do not think is the intent of the settlement. It is intended to benefit the Indians, not merely to supplant other Federal spending.

Senator COHEN. This committee has received a letter, which I mentioned earlier today, from Robert Coulter of the Indian Law Resource Center, advising that the Penobscot and Passamaquoddy Tribes should be allowed to reassess the settlement package in light of the United States June 10 decision in *Washington* v. *Confederated Tribes of the Coleville Indian Reservation*, and a decision that came down last Friday, *White Mountain Apache Band* v. *Bracker*.

Do you agree with that suggestion made by Mr. Coulter?

Mr. TUREEN. No. I read both of those opinions, but aside from whatever they say, I do not know how one could enter into negotiations with another party who took the position that every time the Supreme Court handed down another case, the matter should be reopened. That is what a negotiation is. At a particular point in time you reach an agreement, and if you are bargaining in good faith, that is what you do.

Senator COHEN. Then if you have reached your settlement with the State which you feel is fair and reasonable, and even though other cases might be cascading down that would tend to make your case appear to be stronger, you do not feel it would be responsible or appropriate to reconsider it at this point?

Mr. TUREEN. We have negotiated in good faith. We assume the other side has, and it would preclude that kind of behavior.

Senator COHEN. That is all I have for now.

Senator Mitchell?

Senator MITCHELL. Mr. Tureen, what, in your judgment will happen if this legislation is not enacted?

Mr. TUREEN. We will file our suits. The Federal Government, I assume, will proceed with litigation and the tribes will also proceed with litigation. We have established in several cases that tribes can proceed on their own.

Senator MITCHELL. Based upon your experience in this and other cases, what would litigation involve?

Mr. TUREEN. It would involve—there are a variety of ways in which the suit could be brought. I really cannot get into discussing precisely how we would file the action. That is a decision that I would have to make with my clients and with my colleagues. But it would be a suit pressing the claim that we have found the tribes to have and which the Justice Department has found the tribes to have.

Senator MITCHELL. If the matter were litigated all the way, do you have any way of estimating how long it would take?

Mr. TUREEN. The estimates of 6 to 10 years, I think, are conservative. My guess is that it would probably be at least that long, and perhaps twice that long.

Senator MITCHELL. If you get into all-out litigation, would it be your intention to use all legal resources at your command to press the claims in behalf of your clients?

Mr. TUREEN. There is no doubt about that.

Senator MITCHELL. Including those that would have an effect on title to land throughout the affected area?

Mr. TUREEN. The tribes would be seeking full restitution under the law and would be using every legal means available to them to press their claims forcefully and effectively.

I am ethically bound to do that. The tribes are morally bound to do that.

Senator MITCHELL. What effect, in your judgment, would this settlement have upon other suits by tribes throughout the Nation?

Mr. TUREEN. I would think that this would only have a direct effect on the Nonintercourse Act claims, and there are only a handful of them in the East.

I think Secretary Andrus was correct this morning when he said that the most important result of this is to demonstrate that Indian tribes and State governments and the Federal Government can negotiate in good faith and can reach an agreement on their differences which is reasonable and appropriate and fair.

I think that that is the most important thing that this settlement stands for. That is, the proposition that disputes between Indians and others should be either resolved through the courts or through an honorable negotiated process.

Senator MITCHELL. You heard my earlier questions regarding alienation of land and how that position does not apply to the lands to be acquired by the Maliseet Band. Do you have any comment on that—that is, on the suggested criticism that this could result in dispersal of Maliseet land as opposed to the Passamaquoddy and Penobscot land?

Mr. TUREEN. My clients support the Maliseet Band—the Houlton Band of Maliseet Indians. They have, throughout this process. They would very much like to see their lands protected.

As you know, it is the Passamaquoddy and Penobscot Tribes which have agreed, out of the funds set aside for them in the settlement, to provide 5,000 acres for that band. We would hope and urge that the Congress would provide, at least minimally, the same kind of protections for the land as it provided for Indian territory lands of the Passamaquoddies and Penobscots. We would hope that the State of Maine would concur in that one provision.

Senator MITCHELL. There exists a State law which has been enacted and legislation which is now proposed in Congress. Is there anything else which any party anticipates receiving which is not contained in these two documents? That is, are there any ancillary agreements, any side agreements, any other provisions that are not included in the State legislation and this proposed Federal legislation?

Mr. TUREEN. There are things which flow from this but no separate agreements. For example, this legislation provides that the Maine

tribes will now, for the first time in history, begin to receive their full share of Federal Indian programs. As you may know, they have been drastically short changed. During the last few years, those were the only years since 1832 when they received any benefits that were especially set aside for Indians at all.

Obviously, and we have discussed this with representatives of the Carter administration, that question of funding must be addressed. The Maine tribes must have an equitable share of money for which this legislation calls. They must have their fair share of capital improvement funds which have not been provided in the past. All of those are matters which we expect to address through the appropriate channels, the appropriations process—discussions with the administration and such.

Senator MITCHELL. As I understand your answer, then, apart from those matters that are specifically identified in the legislation, or which flow naturally from it, there are no separate matters. That is, the people of the State of Maine and the Nation can be assured that the agreements are self-contained and that whatever benefits ought to be received by either side are spelled out in the agreement. Is that a fair statement to make?

Mr. TUREEN. I think that is fair to say, except for things that would logically flow from those two pieces of legislation.

Senator MITCHELL. You heard Secretary Andrus and Attorney General Cohen both testify regarding some areas that they feel require some more work. Indeed, you yourself—not yourself, but Mr. Sappier, I think—identified such areas. I assume that your clients and yourself are prepared to continue working with the Secretary of the Interior and the State of Maine to resolve those areas, hopefully to meet the objections which have been raised by all sides, and to perfect this bill to eliminate in advance any possible opposition to it. Is that right?

Mr. TUREEN. There is no question about it. We are looking forward to doing that within the next couple of weeks. I would concur with Secretary Andrus and with Attorney General Cohen when they said that they feel we can be back by the time of markup with solutions.

Frankly, I would like to say that I have read Secretary Andrus' testimony in its entirety. I think it is remarkable that at this stage we have as few problems as we do. I do not see anything that he is raising that in my estimation is not soluble. Many of the matters that he has raised have already been discussed between members of the negotiating committee and representatives of the Maine attorney general's office and the administration.

I think for the most part we are dealing with technical refinements, matters of clarification, and no substantive changes.

Senator MITCHELL. In the ordinary land transaction, the buyer negotiates with the seller. It is the buyer who is paying the price. One of the comments made about this process which renders this unusual—I know you have heard this comment because it was made to you in a meeting which I attended by someone else—was that here you, representing the parties who will get the land, negotiated with the parties who were selling the land, but the person who is paying the money for the land was not in the room. This, I think you will concede, is an unusual situation.

What assurance will you give this Congress, the people of Maine, and the people of the Nation, that even though you were lacking the normal incentive that a buyer had, that is, that the money for the land or whatever goods or services were being purchased was coming out of the buyer's pocket, that you have negotiated a fair and a reasonable price for the land in question here?

Mr. TUREEN. Well, Senator, that normal incentive might not have been there but another very real one was. That was that we were going to have to face you today, and that you are going to have to face your colleagues in the Senate, and ultimately you are going to have to face the House of Representatives, and the administration is going to have to pass judgment on this.

We knew from the very beginning that unless what was negotiated was reasonable and fair and within normal commercial limits, it was not going to fly. That is why we—none of us is expert in these matters—hired the most competent consultant that we could find. He will testify tomorrow at the committee's request.

We fully expected from the beginning that all of this would be subject to scrutiny. I am pleased, but not surprised, that the Department of the Interior would send a team of appraisers up to Maine. They have come back and said that that which was done was appropriate and within normal commercial limits.

It is not that difficult, really, to price out Maine woodland. It is not as ethereal as is much real estate appraisal. Basically what you do is count the trees. You count the species. You multiply the number of trees by whatever the price is. You add in something for residual and the quality of the land, and you discount. It is fairly mathematical. I think what Interior found was that we did not deviate from that normal approach.

Senator MITCHELL. So I understand you conclusion to be that you and your clients are satified that the amount being paid for this land is a fair and reasonable one. If you had the money and were paying your own money, this would be a reasonable price from you standpoint.

Mr. TUREEN. I think that is the position of the negotiating committee at this point, and that will be the recommendation to the tribes, yes.

Senator MITCHELL. I have one final question.

You have heard me refer previously to questions raised in two documents which I put in the record, and I know you have seen these before. They may have slipped your mind in the intervening months, but since one of them seems to be directed at you, I wonder if I could ask that question and ask you to comment on it?

Mr. TUREEN. I try my best to forget about documents like that.

Senator MITCHELL. This is a question that appeared in the Bangor Daily News editorial of March 28, 1980. It was among a series of questions, and it says:

> If the Indians get their land and money in Maine, will the Native American Rights Fund and the other foundations that have bankrolled the Indians in their legal quest dispatch an army of well-financed lawyers to Maine, to chase down other historic injustices heaped upon the Native Americans by our forefathers?

Do you have any comment on that question?

Mr. TUREEN. We try to be effective advocates for our clients, and I hope that the Native American Rights Fund will continue to do that.

It should be apparent to the Bangor Daily News and to this committee that the Native American Rights Funds—that neither the Native American Rights Funds nor I, nor Archibald Cox, who is my cocounsel, nor the firm of Hogan and Hartz here in Washington, which has assisted us over the years—none of us has a contingent fee interest in this case or any contractual. The tribe has no contractual obligation to pay any of us anything.

The Bangor Daily News seems to be misinformed on that point. It seems to believe that 10 percent of this, or something, is going to go to the Native American Rights Fund, which is not true. But we try to be responsible advocates, and we try to effectively represent our clients. I hope that we will do that in the future.

Senator MITCHELL. Before you acquire specific parcels of land, I assume it will be your intention to conduct an appropriate search of the title of that land and make certain that the title will be a valid one that you will be receiving?

Mr. TUREEN. Under the scheme laid out, the land will be acquired by the United States. The United States has its own provisions for acquiring land, as I understand it. Generally speaking, it requires a consensual condemnation action, I believe. I am no expert on the Justice Department's procedures here, but it is my understanding that not only do they search the title but they cure any defect that may be there in any event.

Senator MITCHELL. Thank you very much, Mr. Tureen, and all of you gentlemen.

Senator COHEN. There is no financial arrangement between you and the clients you represent?

Mr. TUREEN. None.

Senator COHEN. Thank you, Mr. Tureen, and all of the other gentleman.

We have one final witness this morning. He is counsel for the landowners, Donald Perkins. He is with the law firm of Pierce, Atwood, Scribner, Allen, Smith, and Lancaster of Portland, Maine. He is legal counsel to several of the large landowners of Maine who have agreed to participate in the land transfers that are contemplated in this proposed legislation.

Mr. Perkins, we look forward to hearing your remarks.

If you could summarize your statement, it would be very helpful at this point in time. Your full statement will become a part of the record.

Please proceed, Mr. Perkins.

STATEMENT OF DONALD W. PERKINS, COUNSEL FOR LANDOWNERS IN MAINE, FROM PIERCE, ATWOOD, SCRIBNER, ALLEN, SMITH, AND LANCASTER, PORTLAND, MAINE

Mr. PERKINS. Thank you, Senator Cohen and Senator Mitchell.

My name is Donald W. Perkins. I am counsel for Maine landowners who have indicated willingness to provide options for the sale of forest land at fair market value to facilitate the settlement of the Maine Indian claims.

I understand that the Governor, the Maine attorney general, members of the Maine congressional delegation, and other public represen-

tatives have or will address the public issues involved in this legislation. We support their efforts to resolve this matter by means other than litigation.

In the fall of 1978, the White House proposed the so-called Hathaway plan which made it clear that the administration accepted this matter as a Federal responsibility and accepted the State's support of the Maine tribes over the years as an adequate State contribution.

During the summer of 1978, then Governor, James Longley requested representatives of landowners to meet with him to discuss the availability of land for a settlment. We also met with Senator Muskie and other State and Federal officials.

We were urged to find lands where the owner was willing to sell and to negotiate fair market value options with the tribes. Governor Longley made it clear that owners were not to be forced to sell and that prices were to be negotiated not by the State, but between owners and the tribes.

We searched out land from a variety of sources: Brokers, newspaper advertisements, and land traders. We solicited landowners of all sizes.

The first list of approximately 100,000 acres involved many small parcels as each landowner came up with the land which he could best spare from his operation. As a result, some of these parcels were in remote locations, some were hilly, and some were cut over.

It was my estimate approximately 2 years ago that such land could be pulled together for approximately $150 per acre. Obviously, better land costs more and prices have risen in the intervening 2 years. I do not know where the White House 2 years ago, came up with prices ranging from $100 to $112. It has been indicated to me that this was a negotiating figure without any basis in fact. Both the Maine attorney general's office and I told them they were incorrect.

The tribes persisted in their efforts to obtain lands near their reservations, contiguous so as to facilitate management, and with at least average stocking of timber. As their search continued the tribes found several middlesize owners who were willing to sell large tracts of land in the general area of their reservations. It is not surprising that the fair market value of those lands is higher than the first selection.

I would like to insert at this point a response to two or three questions which have been raised which relate to this negotiation process.

In the first place, the financial dimensions of this settlement are in large measure dictated by the determination, apparently, that there were to be 300,000 acres of average quality forest land in the settlement. Once you make that proposition, then it is a question pretty much for appraisers and experts as to what is average quality and what is fair market value.

Now the question was raised about Dead River. It is my understanding that the principal reason that Dead River decided to put their land on the market was that the inflation of the last year or two had made other investment opportunities more attractive to them than the retention of that forest land.

I would say this to you, however. The proposed Dead River transaction and all of the other option transactions, as far as we are concerned, are fully open to the scrutiny of Congress and the administration. We will cooperate with you in that regard.

The question was asked about were there any other side deals or contracts. The only ones I know of are as follows.

In the case of Dead River, there are drafts, unfinalized agreements for the sale of two sawmills and for management of sawmills, on the one hand, and land on the other. Dead River's option is conditioned upon those contracts ultimately being finalized. The reason for that is that the three aspects of the situation tie together. The land of Dead River has long been selectively managed for sawtimber which, of course, is a very high use of land. Thus, they provide sawtimber for mills. Mills in turn rely upon that sawtimber and Dead River has in place management people experienced relative to both those sawmills and of the land.

So, from Dead River's standpoint, that seemed like sense. And from what Mr. Tureen has conveyed to me, the tribes' analysis does appear to make sense to them. Obviously, what we are talking about here is an option, and we are talking about choices the appropriate public authorities can make.

Third: From the beginning, these options were negotiated on the basis of Internal Revenue Service section 1033 tax treatment; namely, that if the landowner reinvests the proceeds in like property within 3 years, no capital gain will be recognized. Then counsel to the President, Robert Lipshutz, was so advised by my letter of October 26, 1978, copies to Governor Longley, then Attorney General Brennan, members of Maine's congressional delegation and various other interested parties. Solicitor Krulitz of the Interior Department was also so advised. That tax treatment is an essential ingredient of the willingness of individual sellers to sell and of the prices negotiated. It is an express condition stated in the options which we have collected.

Equally important, it is fair treatment. When a private landowner steps forward, at the urgent request of the Governor, to make land available so that there can be a settlement of claims on behalf of Indian tribes, prosecuted by the U.S. Government as trustee for those tribes, to recover possession of two-thirds, or 60 percent, of the State of Maine, exerting not only the compulsion of the possible success of their action, but the great burden of the cost of defense and the financial consequences of land being frozen in the course of litigation for many years, then we have sales for a public purpose and to meet a Federal responsibility.

Sales under those conditions come within the rationale of section 1033 tax treatment, and I have filed with this committee a copy of the memorandum on this subject filed on June 29, 1979, by the law firm of Goodwin, Procter, and Hoar of Boston, Mass., with respect to the proposed amendment to the Rhode Island Indian Claim Settlement Law, Public Law 95–395, which discusses in detail the legal history and context of that proposition.

Senator COHEN. Without objection, the record will remain open for the purpose of inserting this memorandum.

[The material follows. Oral testimony resumes on p. 281.]

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M E M O R A N D U M

June 29, 1979

TO: ASSISTANT SECRETARY OF THE TREASURY FOR TAX POLICY
DONALD C. LUBICK

FROM: DONALD P. QUINN, ESQ., GOODWIN, PROCTER & HOAR, 28 STATE STREET, BOSTON, MASSACHUSETTS, CO-COUNSEL TO THE PRIVATE DEFENDANTS IN THE CASE OF NARRAGANSETT TRIBE OF INDIANS V. SOUTHERN RHODE ISLAND LAND DEVELOPMENT COMPANY, ET AL.

RE: Proposed Amendment to Rhode Island Indian Claims Settlement Act (P.L. 95-395)--S.687; H.2993

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I. INTRODUCTION

On January 8, 1975, the Narragansett Tribe of Indians initiated two lawsuits in the United States District Court for the District of Rhode Island against the State of Rhode Island and thirty-five private defendants. Narragansett Tribe of Indians v. Rhode Island Director of Environmental Management, C.A. No. 75-0005 (D.R.I.) and Narragansett Tribe of Indians v. Southern Rhode Island Land Development Co., et al., C.A. No. 75-0006 (D.R.I.). Approximately one month before these actions were scheduled for trial, the parties to the litigation executed a Joint Memorandum of Understanding Concerning Settlement of the Rhode Island Indian Land Claims ("Agreement"), February 28, 1978, attached hereto as Exhibit A. Under the terms of the Agreement, the State of Rhode Island and certain private landowners were to convey their land to a proposed state-chartered, public corporation ("Narragansett Corporation") controlled by members of the alleged plaintiff tribe.

The Agreement represented the first out-of-court settlement of Indian land claims brought pursuant to the Trade and Intercourse Act of 1790[1] (25 U.S.C. § 177). On October 2, 1978, President Carter signed into law the "Rhode Island Indian Claims Settlement Act" (P.L. 95-395), attached hereto as Exhibit C, as the first step toward implementing the Agreement. Three Million Five Hundred Thousand Dollars was appropriated by the Federal Government to finance the acquisition of the privately held land involved. On May 10, 1979, Governor Garrahy signed the state implementing legislation known as the "Narragansett Indian Land Management Act", attached hereto as Exhibit D.

The Federal and State implementing legislation incorporated most of the terms of the Agreement. However, section 4 of the Agreement which states "[t]he parties to the Lawsuits will support efforts to obtain deferral of both state and federal income taxes resulting from the conveyance of privately held portions of the Settlement Lands" was deleted "in order not to delay enactment of the settlement legislation since inclusion would have involved sequential referral to the Ways and Means Committee." House Report No. 95-1453, "Summary of Major Provisions", § 5 at 11; see also, Senate Report No. 95-972 at 10, attached hereto as Exhibits E and F. Because § 4 of the Agreement

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1 As of this writing, approximately 19 similar claims covering eight states are, or in the near future may, be in litigation. See, letter of Donald P. Quinn to Don L. Ricketts, Joint Committee on Taxation, March 29, 1979, attached hereto as Exhibit B.

was supported by all the parties to the litigation, by the Administration and by those congressional committees having jurisdiction over Indian affairs, it was agreed that legislation implementing this provision of the Agreement would be resubmitted in this session of the Congress. See, S.687 and H.2993, attached hereto as Exhibit G.

The legislation provides for the deferral of recognition of capital gains resulting from the conveyance of the land of the private defendants to the Narragansett Corporation. We are also proposing an amendment to these bills that the time period within which the seller must reinvest begins to run from the effective date of the act.

It is our belief that the Treasury Department should look favorably upon this legislation not only because it was an integral and important part of the Agreement, but because its purpose is wholly consistent with goals and purposes established by I.R.C. § 1033 which permits the deferral of taxes on gains occurring as a result of involuntary conversions. Although a strong case could be made to justify the deferral of recognition of such gains even in the absence of this legislation, we believe that a legislative resolution of this issue is preferable in that it would eliminate uncertainty with respect to the availability of §1033 treatment. To support this position, it is necessary not only to examine the scope and intent of § 1033, but the law governing Indian land claims in general and the facts of the Narragansett case in particular.

II. INDIAN LAND CLAIMS UNDER THE TRADE AND INTERCOURSE ACT

In 1790, Congress enacted the Trade and Intercourse Act (25 U.S.C. § 177) which specifically provided that:

> "No purchase, grant, lease, or other conveyance of land, 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 the same be made by treaty or convention entered into pursuant to the Constitution."

While the entire scope and parameters of this provision have not as yet been subject to full judicial determination, the court in Narragansett Tribe of Indians v. Southern R.I. Land Development Co., 418 F. Supp. 798, 803 (D.R.I., 1976) indicated that to establish a prima facie case under the Trade and Intercourse Act, a plaintiff must show that:

> "1) it is or represents an Indian 'Tribe' within the meaning of the Act;
>
> 2) the parcels of land at issue herein are covered by the Act as tribal land;
>
> 3) the United States has never consented to the alienation of the tribal land;
>
> 4) the trust relationship between the United States and the tribe, which is established by coverage of the Act, has never been terminated or abandoned."

Land transfers found to be in violation of the Trade and Intercourse Act are void. Ewert v. Bluejacket, 259 U.S. 129 (1922). Traditional defenses such as laches, adverse possession, statute of limitations and estoppel by sale appear not to be available to defendants in actions brought by Indian tribes. Narrangansett, supra, at 804-805; Board of Commissioners v. United States, 308 U.S. 343, 350-351 (1939). The Supremacy Clause of the Constitution mandates that the extinguishment of

Indian title is a matter of federal, rather than state, law. United States v. Holliday, 70 U.S. (3 Wall) 407, 419-420 (1865); Oneida Indian Nation v. County of Oneida, 414 U.S. 661, 670 (1974).

Article I, § 8 of the Constitution, which provides that Congress shall have the power "[t]o regulate commerce . . . with the Indian tribes", vests exclusive jurisdiction over Indian affairs with the Federal Government.[2] Oneida Indian Nation v. County of Oneida, supra at 667; Pierce v. United States, 255 U.S. 373, 391-92 (1920); United States v. Sandoval, 107 U.S. 28, 38 (1913); Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 18-19 (1830). The Trade and Intercourse Act which was enacted to implement this exclusive federal jurisdiction over Indian affairs was premised on the notion that Indian tribes or nations were "distinct political communities, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guaranteed by the United States." Worcester v. Georgia, 31 U.S. (6 Pet.) 515,

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2 In United States v. Lariviere, 93 U.S. 846, 847 (1876), the Supreme Court commented on the direct relationship between exclusive federal jurisdiction over Indian tribes and the semi-sovereign status of such tribes when it stated that "[a]s long as the Indians remain a distinct people, with existing tribal organizations, . . . Congress has the power to say with whom, and on what terms they shall deal, . . ."

557 (1832) (emphasis added);[3] United States v. Sante Fe Pacific R.R. Co., 314 U.S. 339, 348 (1941). According to Chief Justice Marshall, the Trade and Intercourse Act "avowedly contemplates the preservation of the Indian nations as an object sought by the United States" and provides that all relations with such tribes shall be within the exclusive province of the United States. Worcester v. Georgia, supra.

The responsibility of the United States toward Indian tribes or nations was more fully discussed in Joint Trib. Coun. of Passamaquoddy Tribe v. Morton, 528 F.2d 370 (1st Cir. 1975). According to the First Circuit, a "trust relationship" similar to that between a guardian and a ward exists between the Federal Government and Indian tribes. 528 F.2d at 375; see also Cherokee Nation v. Georgia, supra. The Trade and Intercourse Act forms the statutory basis of this trust relationship by establishing that "the policy of the United States is to protect Indian title; . . ." 528 F.2d at 376. There is no requirement that a

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3 To constitute a tribe, a certain degree of independent political authority is required. U.S. Dept. of Interior, Federal Indian Law 461 (1958). Indeed, the term "Tribe", as used in the Trade and Intercourse Act, has been defined by the Supreme Court as:

> "a body of Indians of the same or similar race, united in a community under one leadership, and inhabiting a particular though sometimes ill-defined territory." United States v. Candelaria, 271 U.S. 432, 441-442 (1926) (quoting Montoya v. United States, 180 U.S. 261, 266 (1901).

tribe must be specifically recognized by the Federal Government to come within the provisions of the Trade and Intercourse Act. 528 F.2d at 377. As the First Circuit stated in Passamaquoddy, supra at 379

> "That the Nonintercourse Act imposes upon the federal government a fiduciary's role with respect to the protection of the lands of a tribe covered by the Act seems to us beyond question, both from the history, wording and structure of the Act. . . . The purpose of the Act has been held to acknowledge and guarantee the Indian tribes' right of occupancy, United States v. Santa Fe Pacific R.R. Co., 314 U.S. at 348, 62 S. Ct. 248, and clearly there can be no meaningful guarantee without a corresponding duty to investigate and take such action as may be warranted in the circumstances." (emphasis added).4/

This fiduciary relationship requires the Federal Government to take such affirmative steps as may be necessary to fulfill its obligations. 528 F.2d at 379. These obligations cannot be ignored. Rockbridge v. Lincoln, 449 F.2d 567, 573 (9th Cir. 1971). As the Court of Claims stated in Seneca Nation of Indians v. United States, 173 Ct. Cl. 917, 923 (1965):

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4 Pursuant to the First Circuit's decision in Passamaquoddy establishing a trust relationship between the federal government and Indian tribes under the Trade and Intercourse Act, the United States has indicated its intention to seek recovery of approximately 5-6 million acres in Maine on behalf of the Passamaquoddy and Penobscot Tribes unless a settlement is reached. See, Litigation Reports, United States Department of the Interior re: United States v. Maine, Civil No. 1966 N.D. and United States v. Maine, Civil No. 1969 N.D., Jan. 10, 1977, attached hereto as Exhibit H.

> "The requirement has always been for federal consent and participation in any disposition of Indian real property. From the beginning, this legislation has been interpreted as giving the Federal Government a supervisory role over conveyances by Indians to others, . . . This responsibility was not merely to be present at the negotiations or to prevent actual fraud, deception or duress alone; improvidence, unfairness, the receipt of an unconscionable consideration would likewise be of federal concern... The concept is obviously one of full fiduciary responsibility, not solely of traditional marketplace morals. When the Federal Government undertakes an obligation of trust toward an Indian tribe or group, as it has in the Intercourse Act, the obligation is 'of the highest responsibility and trust,' not that of 'a mere contracting party' or better business bureau."

The fiduciary relationship between Indian tribes and the United States obligates the Federal Government to do whatever is necessary to protect Indian land which has been conveyed in violation of the Trade and Intercourse Act. The failure of the United States to protect Indian tribes from violations of the Trade and Intercourse Act constitutes a breach of the fiduciary relationship, United States v. Oneida Nation of New York, 477 F.2d 939, 944 (Ct. Cl 1973), which imposes "a distinctive obligation upon the Government" which should "be judged with most exacting fiduciary standards." Passamaquoddy v. Morton. 388 F. Supp. 662-663 (D. Maine, 1975).

Not only are Indian tribes unique, semi-sovereign entities but they are considered "wards" of the United States on whose

behalf the Federal Government must exercise affirmative responsibilities. For these reasons, Indian land claims are, in essence, public rather than private actions brought pursuant to explicit provisions of federal law and the Constitution. It is in this context that the Narragansett claim must be viewed.

III. STATEMENT OF THE NARRAGANSETTS' CASE

On January 8, 1975, the Narragansett Tribe of Indians brought suit in the federal district court for the district of Rhode Island seeking to recover approximately 3,200 acres of land in Charlestown, Rhode Island. In the First Amended Complaint ("Complaint") filed on June 24, 1975, attached hereto as Exhibit I, the Narragansetts alleged that the Trade and Intercourse Act discussed in Section II herein, "established and confirmed the Tribe's right of possession to all of the land which is the subject matter of this action." (Complaint, ¶ 11). The Narragansetts' right of possession to the subject land ceased in 1880 when the State of Rhode Island adopted "An Act to abolish the tribal authority and tribal relations of the Narragansett Tribe of Indians", attached hereto as Exhibit J. (Chapter 800, Rhode Island Public Laws, 1880).

It was this act of the Rhode Island legislature which the Narragansetts contended unlawfully resulted in the alienation of their tribal lands in 1880 and which formed the basis of their

action in federal court. (Complaint, ¶¶ 12-17). By way of relief, the Narragansetts asked the Court to declare the defendants' possession of the subject land in violation of the Trade and Intercourse Act (25 U.S.C. § 177) and to "[d]ecree, declare and adjudge that the plaintiff has the right of possession to the land. . . ." (Complaint, ¶ 18, Prayer 1).

The propriety of the Rhode Island General Assembly's termination of the Narragansett Tribe in 1880 was the subject of a lengthy opinion rendered by the Rhode Island Supreme Court in 1898. See Opinion of the Justices of the Supreme Court, 20 R.I. 713 (1898). In particular, the Court sought to determine whether Article I, § 8 of the United States Constitution precluded Rhode Island from exercising direct jurisdiction over the Narragansetts. 20 R.I. at 771. The Rhode Island Supreme Court concluded that although Article I, § 8 gives the federal government exclusive power to regulate commerce with Indian tribes, "the political officers of the United States have never, so far as we can ascertain, recognized the existence of such a tribe as the Narragansetts, hence they are not a tribe, commerce with which by that clause Congress in empowered to regulate."[5] 20 R.I. at 780.

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5 This holding by the Rhode Island Supreme Court was perfectly consistent with existing U.S. Supreme Court decisions on the Trade and Intercourse Act at the time. For example, in Justice McLean's concurring opinion in Worcester v. Georgia, supra at 580, he stated that:

Until the 1975 action brought by the Narragansetts in the federal court, the legality of the 1880 action of the Rhode Island General Assembly was never seriously questioned. In 1900, a subcommittee of the Committee on Indian Affairs of the United States Senate held hearings "in relation to Certain Claims of the . . . Narragansett . . . Indians." These hearings were intended "to inquire into the legal and political status of the various tribes or claims of Indians", including the Narragansetts. At this time, the Narragansetts specifically asked the Senate "[t]o test the question whether they as a tribe are entitled to the lands which originally belonged to them."

Although c. 800 of the Acts of 1880 was specifically brought to the attention of members of the subcommittee, the Senate never took any action to redress the alleged grievances of the

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5 [continued]

> "In some of the old states, Massachusetts, Connecticut, Rhode Island, and others, where small remnants of tribes remain, surrounded by white population, and who, by their reduced numbers, had lost the power of self government, the laws of the State have been extended over them, for the protection of their persons and properties." (emphasis added).

Similarly, in the congressional debates over the Indian Removal Policy initiated by President Jackson in 1830, one congressman remarked that ". . . I pass over the laws of . . . Rhode Island . . . in which jurisdiction and sovereignty over the Indians in . . . [its] limits are asserted, as well before the revolution as after it. . ." Abridgement of the Debate of Congress, May 1830.

Narragansetts. Indeed, on April 4, 1901, the Department of the Interior stated that "[t]he affairs of the Narragansetts are not under federal control and this office would have no jurisdiction of any claim they might have against said State." Assistant Commissioner, Office of Indian Affairs to James Arnold, April 4, 1901, attached hereto as Exhibit K.

Over the years, the Federal Government consistently held to its position that the Narragansetts were subject to state, rather than federal, jurisdiction. According to the Department of the Interior:

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

E.B. Meritt, Department of the Interior to Daniel Sekater, June 29, 1927, attached hereto as Exhibit L. See also additional correspondence from the Department of the Interior relative to the Narragansett Indians, attached hereto as Exhibit M.

For almost 100 years, it was assumed that the conveyances authorized by c. 800 of the Acts of 1880 were legal and proper. The defendants in the federal court action brought by the Narragansetts reasonably relied upon earlier determinations by both the State and Federal governments that they had good title to the subject land. It was the defendants' position that had the lawsuits gone to trial, their title to the land would have been upheld. Yet, recent court decisions such as in Passamaquoddy

and Oneida[6] raised the distinct possibility that the United States had failed to fulfill its trust responsibilities toward the Narragansetts in 1880. It was the realization that the defendants risked losing all their land, along with the staggering costs of defending the lawsuits, which ultimately prompted the Settlement Agreement.

IV. THE SETTLEMENT

The Agreement reached among the parties to the Narragansett litigation contained nineteen provisions, all of which were considered "as inseparable, dependent requirements and which are all conditioned upon requisite, favorable and timely action by the appropriate executive and legislative branches of the governments of the State of Rhode Island and the United States of America." Although the United States was not a party to the lawsuits, the Rhode Island congressional delegation and the Administration were kept constantly apprised of the negotiations which led to the settlement. Senate Report, supra at 9.

Under the terms of the Agreement, the Narragansett Corporation was to be created to hold and manage the settlement lands acquired from both the State of Rhode Island and the private

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6 In Oneida, supra at 670, the Supreme Court cast doubt on the widely-held notion that the Trade and Intercourse Act did not apply to states such as Rhode Island by stating that "[t]he rudimentary propositions that Indian title is a matter of federal law and can be extinguished only with federal consent apply in all of the States, including the original 13." See, Worcester v. Georgia, contra at 580.

defendants (Agreement, ¶ 1). Although the settlement lands were to remain subject to the criminal and civil jurisdiction of the State, these lands were to be exempt from local taxation (Agreement, ¶¶ 9, 13). Also, the Narragansett Corporation was to have the right to establish its own regulations concerning hunting and fishing (Agreement, ¶ 11). Development of the settlement lands was to be guided by a land use plan mutually acceptable to the Narragansett Corporation and Charlestown Town Council, with the overwhelming majority of land perpetually committed to conservation purposes (Agreement, ¶¶ 12, 14).

Although the Agreement states that "[n]o private landowner shall be required to convey any land . . . without his or her consent," to the Narragansett Corporation, the signing of the Agreement was contingent upon the prior agreement of certain defendants to convey their land (Agreement, ¶ 3). The acquisition of these private lands was to be financed by a $3.5 million federal appropriation (Agreement, ¶ 5). The State of Rhode Island also contributed land valued at $2.7 million to the Narragansett Corporation (Agreement, ¶ 2; Senate Report, supra at 8).

Because Indian land claims can be extinguished only with the consent of Congress, the parties to the litigation were required to seek implementing federal legislation. The Rhode Island Indian Claims Settlement Act (P.L. 95-395), which implemented portions of the settlement was "predicated, first, upon the finding and conclusion of the Administration that the

Narragansetts have presented a credible claim to the lands involved such that a legislative settlement is justified." Senate Report, supra at 7; letter from Leo Krulitz, Solicitor, Department of the Interior, to Senator James Abourezk, Chairman, Senate Select Committee on Indian Affairs, June 28, 1978, attached hereto as Exhibit N. In addition to the "credibility" of the Narragansetts' claim, the legislation also recognized that "the pendency of these lawsuits has resulted in severe economic hardships for the residents of the Town of Charlestown by clouding the titles to much of the land in the town, including lands not involved in the lawsuits; . . ." (P.L. 95-395, § 2(b)) (emphasis added).

In exchange for Congressional approval of all prior transfers and the extinguishment of all claims of aboriginal title, the Narragansett Corporation received a $3.5 million federal appropriation to purchase lands from the private defendants which would be held in trust for the benefit of the Narrangansett Indians.[7] (P.L. 95-395, §§ 4, 6). Extinguishment of the Narragansett

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7 In Mashpee Tribe v. New Seabury Corp., et al., Civil Action No. 76-3190-S (D. Mass.) the private defendants brought a third party action against the United States alleging that the failure of the United States to fulfill its responsibilities under the Trade and Intercourse Act on behalf of the alleged Mashpee Tribe engendered undue reliance on the part of the private defendants that they had valid title to the subject land. The third-party plaintiffs sought reimbursement from the United States in the event they were deprived of their land as a result of a violation of the Trade and Intercourse Act.

claims was made contingent upon the creation of the Narragansett Corporation "to acquire, perpetually manage, and hold the settlement lands" and the conveyance by the State of Rhode Island of the public settlement lands to the Narragansett Corporation. (P.L. 95-395, § 7). Provision was also made in the Act for the approval of prior transfers and extinguishment of land claims involving other Indian tribes in Rhode Island. (P.L. 95-395, §13). Thus, as a result of the willingness of the State of Rhode Island and the private defendants to convey their land, the entire State of Rhode Island, including the Town of Charlestown, was freed from the threat of economic hardship caused by both actual and potential Indian land claims.

The State of Rhode Island has also enacted settlement legislation known as the "Narragansett Indian Land Management Act." This Act established a "permanent, public corporation of the State . . . to be known as the 'Narragansett Indian Land Management Corporation'" which was authorized to acquire and manage the settlement lands "for the benefit of the descendants

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7 [continued]

Although the third-party complaint in the Mashpee case was dismissed on grounds of sovereign immunity, it is the Narragansett defendants' position that the subsequent voluntary appropriation of $3.5 million to compensate private landowners who agreed to convey their land as part of the Narragansett settlement constitutes an acknowledgement of the United States' moral, if not legal, responsibility for alleged violations of the Trade and Intercourse Act in states such as Rhode Island.

of those individuals of Indian ancestry set forth in the list established purusant to Public Laws 1880, Chapter 800, Section 4." (State Legislation, § 3). The Narragansett Corporation is to be administered by a board of nine directors, five of whom are to be appointed by the Narragansetts. The remaining four directors are to be selected by the Governor, Town Council and Speaker of the House and Majority Leader of the Rhode Island Senate. (State Legislation, § 5). As contemplated in the Settlement Agreement, the Narragansett Corporation is exempt from local taxation and is empowered to establish its own hunting and fishing regulations. (State Legislation, §§ 8, 9).

V. DEFERRAL OF THE RECOGNITION OF GAINS OCCURRING AS A RESULT OF THE CONVEYANCE OF LAND BY THE PRIVATE DEFENDANTS TO THE NARRAGANSETT CORPORATION IS CONSISTENT WITH THEPOLICY ESTABLISHED BY SECTION 1033.

Section 1033 of the Internal Revenue Code provides for the deferral of the recognition of capital gains "[i]f property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted. . . ." Judge Learned Hand has stated that the basic policy established by this section is that "[a]n owner whose property is taken involuntarily, but who has become entitled to compensation, should not be treated as having 'realized' [sic] a taxable 'gain,' provided he at once puts the proceeds to a similar use." Winter Realty & Constr. Co. v. C.I.R., 149 F.2d 567, 569 (2d Cir. 1945). Thus, it is "the forced character of the disposition plus the . . . replacement of involuntarily converted property with like property

[that establishes] the justification for the non-recognition provision." 3 Mertens, Law of Federal Income Taxation, § 20.167 at 776.

Insofar as is relevant, for a conveyance to qualify as an "involuntary conversion" three criteria must be met:

1. The conveyance must result from governmental compulsion.

2. The compulsion must constitute a condemnation, or at least a threat of condemnation.

3. The condemnation must be for a public purpose.

The Internal Revenue Service has defined the term "condemnation" as "the process by which private property is taken for public use without consent of the property owner but upon award and payment of just compensation." Rev. Rul. 57-314, 1957-2, C.B. 523. See also, Behr-Manning Corp. v. United States, 196 F. Supp. 129, 133 (D. Mass. 1961); Dear Publication & Radio, Inc. v. C.I.R., 274 F.2d 656, 660 (3rd Cir. 1960); American Natural Gas Co. v. United States, 279 F.2d 220, 225 (Ct. Cl. 1960). Involuntariness alone is insufficient to permit the application of § 1033.

On the face of the Agreement, it would appear that the private defendants agreed to convey their land voluntarily to the Narragansett Corporation. In general, section 1033 does not apply to sales of property where the owner may choose to keep his property, because in such circumstances the necessary element of compulsion is often lacking. C.G. Willis, Inc. v. Comr., 41 T.C. 468, aff'd per curiam, 342 F.2d 996 (3rd Cir. 1966). However, in S & B Realty Co. v. Comr., 54 T.C. 863, 870-872 (1970), the Tax Court held that a taxpayer who was faced with the threat of

condemnation if he did not expend funds to upgrade his property pursuant to an urban renewal plan could avail himself of the provisions of § 1033 despite the existence of alternatives which would enable him to retain his property. The existence of the option to retain the property by making improvements did not obviate the threat or imminence of condemnation. 54 T.C. at 870. According to the court, § 1033 relief should not be denied in such circumstances because the opportunity to retain the property ". . . neither assuages the compulsion nor contravenes the intent of Congress." Id.

The initiation of the lawsuits put the private defendants on notice that the Narragansetts intended to assert their right to possession of the land as an "Indian tribe or nation" pursuant to the provisions of the Trade and Intercourse Act. Although the private defendants had the option of refusing to sign the Settlement Agreement and litigating the validity of the Narragansetts' claim, the "threat" or possibility that they would lose their land clearly existed. The financial burden of defending the lawsuits dictated the necessity of reaching a settlement. The subsequent determination by the Secretary of the Interior that the Narragansetts had a "credible claim" to the land also raised the possibility that the United States might have joined in the lawsuits, as it intends to do in Maine, if a settlement had not been reached. See, Passamaquoddy, supra. The conveyance of the private defendants' property to the Narragansett Corporation cannot be viewed in isolation apart from the threat

established by the pendency of the lawsuits. As the court stated in S & B Realty, supra at 870, the absolute certainty of governmental action in the absence of a sale is not necessary for a "threat" of condemnation to exist:

> "It is significant that the word 'threat' was used in section 1033. This is indicative of the fact that the statute does not require that the possibility of condemnation be reduced to a certainty. Any reasonable construction of the word must recognize the possibility that the impending, undesirable consequence may never occur. The crucial factor is that the petitioner was compelled by this impending consequence to take evasive action."

The private defendants' sale of their property is not readily distinguishable from the sale of property under the threat of condemnation for which non-recognition treatment was upheld in S & B Realty, supra.

While a threat to the defendants' land clearly existed, the question remains as to whether their disposition of their property to the Narragansett Corporation resulted from a threat of condemnation.[8] As mentioned above, the word "condemnation"

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8 In Richmond Hotels, Inc. v. United States, 75-2 U.S.T.C. (1975), the court set forth three requirements in order for a sale to qualify as being made because of the threat or imminence of condemnation:

1. A reasonable belief by the taxpayer that a threat to condemn was present;
2. Readily obtainable authority to condemn or actual authority to condemn or no reasonable grounds to believe that such authority was not readily obtainable; and
3. A sale made because of the alleged threat or imminence of condemnation.

means "a taking of property by public authority for public use." Behr-Manning Corp., supra at 133. In this regard, the Narragansett land claim shares many of the attributes of a condemnation proceeding.

If the Narragansetts had successfully litigated their claim to the land, title to the defendants' property would have become vested in an "Indian tribe or nation" which, under the laws of the United States, constitutes a semi-sovereign entity. Indeed, had the United States joined in the lawsuits in the exercise of its fiduciary responsibility toward the tribe, the defendants' property might have been conveyed to the Narragansetts as a ward of the United States.[9]

In point of fact, the land in question is to be conveyed to the Narragansett Corporation, a "permanent, public corporation of the State." (State legislation §3). Also, a public purpose was clearly served by the defendants' agreement to sell their land. As part of the settlement, all Indian claims in Rhode Island were eliminated, thereby cutting short the economic hardships caused by the pendency of the lawsuits. While neither the Narragansetts nor any other Indian tribe possess the power of condemnation as literally defined, it is clear that the threat of the taking via the lawsuits emanated from a public

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9 In Heckman v. United States, 224 U.S. 413, 439 (1912), the Court held that "[a] transfer of the [Indian land] is not simply a violation of the proprietary rights of the Indian. It violates the governmental rights of the United States." (emphasis added).

entity. The sale of the land to the Narragansett Corporation provides a direct and tangible benefit to the public as a whole, not just to the individual defendants.

In Narragansett, despite the fact that the private defendants' property was to be conveyed under the threat of forfeiture to a public instrumentality and that such conveyances served a distinct public interest, we recognize that the sellers' right to § 1033 treatment is not clearcut in the absence of the proposed legislation. If the Narragansetts had successfully prosecuted their claim, it would have meant that the defendants did not have a valid possessory interest in the property which was superior to that of the Narragansetts.[10] The absence of a superior possessory interest could negate the concept of "taking" which entitles the defendants to compensation. See, Dorothy C. Thorpe Glass Mfg. Corp. v. C.I.R., 51 T.C. 300, 303-304 (1968).

We believe that the defendants did have a sufficient interest in the land to be entitled to compensation. The question of whether or not there has been a Fifth Amendment "taking" turns on the peculiar circumstances of each case. United States v. Central Eureka Mining Co., 357 U.S. 155, 168 (1958). A "taking" occurs if the acts of the government make it possible for another to

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10 Such a finding would not mean that the defendants had no interest whatsoever in the property. With the exception of the Narragansetts, the defendants interest in the land is superior to that of any other party.

have the benefits of the property. E.g., Eyherabide v. United States, 345 F.2d 565, 570 (Ct. Cl. 1965). It is the loss of property and not the accretion of that property directly to the government that describes a "taking". See, United States v. Causby, 328 U.S. 256, 261 (1946).

If the court decided the Narragansetts had the right to possess the land, the resulting dislocation of the defendants would have been caused by the continuing failure of the federal government to exercise properly its fiduciary responsibilities toward the Narragansetts, thereby engendering undue reliance on the part of the property owners that their title was good. It would be manifestly unjust to simply eject landowners who for almost one hundred years had an apparently valid chain of title to the land as a result of the Federal Government's failure to exercise its fiduciary responsibilities. We believe that the Federal Government acknowledged the inequity of such a scenario when it agreed to appropriate $3.5 million to compensate the defendants for conveying their land to the Narragansett Corporation.

Section 1033 is "a relief measure designed to prevent inequitable incidence of taxation, and therefore to be construed liberally to effectuate its purpose", Creative Solutions, Inc. v. United States, 320 F.2d 809, 811 (5th Cir. 1963). The instant case nonetheless presents a novel situation. No case has yet held that the United States, acting in a fiduciary capacity for the benefit of an Indian tribe, would be condemning property for a public or quasi-public use if it were to prosecute alleged

violations of the Trade and Intercourse Act. Even though the exercise of the power of the United States on the Narragansetts' behalf would appear to be the equivalent to the taking of land for a public purpose and therefore within the scope of § 1033 as a matter of statutory construction, in light of the unique situation created by Indian land claims the defendants' right to § 1033 treatment should be resolved by legislative rather than administrative means.

VI. CONCLUSION

The private defendants have an equitable, and in our view should have a legal, right to § 1033 treatment. Their land was threatened by a semi-sovereign Indian tribe and, potentially the United States of America, in its trustee capacity toward the Narragansetts. The land was conveyed under the threat of complete forfeiture to a public instrumentality, the Narragansett Corporation. The agreement of the private defendants to sell their land served a direct public purpose. The acquisition of the land was financed by the Federal Government, a tacit acknowledgment that the landowners had a right to compensation. We are compelled to believe that had the framers of §1033 ever envisioned that this situation could occur, they would have included loss of land as a result of Indian land claims such as in Narragansett within the scope of that section.

In addition to these factors, it must be remembered that a commitment was made by the Administration during the negotiation of the Agreement to the landowners who participated in the settlement that they would receive § 1033 treatment. This

commitment cannot be broken without discouraging landowners in other Indian land claims suits from participating in future settlement agreements. In light of the clear-cut consistency of the proposed legislation with the goals and purposes of § 1033, we urge the Treasury to endorse the last outstanding element of the Rhode Island Indian land settlement.

EXHIBIT A
JOINT MEMORANDUM OF UNDERSTANDING
CONCERNING SETTLEMENT OF THE
RHODE ISLAND INDIAN LAND CLAIMS

All parties to Narragansett Tribe of Indians v. Southern Rhode Island Land Development Co., et al, C.A. No. 75-0006 (USDC, DRI) and Narragansett Tribe of Indians v. Rhode Island Director of Environmental Management, C.A. No. 75-0005 (USDC, DRI)(together called "the Lawsuits") and the other undersigned persons interested in the settlement of Indian land claims within the State of Rhode Island hereby agree to the following principles and provisions of settlement which are, except for the provisions of Section 18 below, to be considered as inseparable, dependant requirements and which are all conditioned upon requisite, favorable and timely action by the appropriate executive and legislative branches of the governments of the State of Rhode Island and the United States of America:

1. That a state chartered corporation (the "State Corporation") will be created with an irrevocable charter for the purpose of acquiring, managing and permanently holding the lands defined in Sections 2 and 3 below (the "Settlement lands"); the State Corporation will be controlled by a board of directors, the majority whose members will be chosen by a Rhode Island corporation known as "The Narragansett Tribe of Indians" (the "Indian Corporation") or its successor and the remaining members chosen by the State of Rhode Island.

2. That the State of Rhode Island will contribute the Indian Cedar Swamp, the Indian Burial Hill, the land around Deep Pond, and an easement from Kings Factory Road to Watchaug Pond to the State Corporation. These public portions of the Settlement Lands total approximately 900 acres. Contribution of the State land around Deep Pond is subject to the restrictions set forth below in Section 17.

3. That the Settlement Lands will also include approximately 900 acres of land located within the area outlined in red on the map attached hereto marked Exhibit A. The Settlement Lands shall specifically include those lands held by the defendants named in the Lawsuits which are enumerated on the schedule attached hereto as Exhibit B. These privately held portions of the Settlement Lands shall be acquired at fair market value established without regard to the pendency of the Lawsuits. No private landowner shall be required to convey any land hereunder without his or her consent, which shall be deemed to have been given upon

execution of a mutually acceptable option agreement (the "Option"). Any landowner executing an Option shall be paid a nonrefundable option fee by the federal government equal to 5% of the purchase price for a 2-year option. The optionee shall have the right to renew the option for one additional year for a renewal fee paid by the federal government of 2.5% of the purchase price.

4. That the parties to the Lawsuits will support efforts to obtain deferral of both state and federal income taxes resulting from the conveyance of privately held portions of the Settlement Lands.

5. That the federal government will provide the funds, in an amount not in excess of 3.5 million dollars, to acquire the privately held portions of the Settlement Lands.

6. That Federal legislation shall be obtained that eliminates all Indian claims of any kind, whether possessory, monetary or otherwise, involving land in Rhode Island, and effectively clears the titles of landowners in Rhode Island of any such claim. This Federal legislation shall be in form and substance as set forth in the proposed statutory language attached hereto as Exhibit C, unless otherwise agreed by counsel for the private Defendants in the Lawsuit. This legislation shall not purport to affect or eliminate the claim of any individual Indian which is pursued under any law generally applicable to non-Indians as well as Indians in Rhode Island.

7. That the Settlement Lands shall be subject to a special federal restriction against alienation, provided that nothing in the federal restriction or in any other aspect of this memorandum shall affect the ability of the State Corporation to grant or otherwise convey (whether voluntary or involuntary, including any eminent domain or condemnation proceedings) easements for public or private purposes.

8. That the Settlement Lands will be held in trust by the State Corporation for the benefit of the descendants of the 1880 Rhode Island Narragansett Roll.

9. That the Settlement Lands will not be subject to local property taxation.

10. That the federal government will reimburse the private defendants in the lawsuits for costs incurred or paid for legal services and disbursements in connection with the lawsuits with respect to any lands involved in the Lawsuits which are not specified in Exhibit B and for which an Option is not executed.

11. That the State Corporation will have the right (after consultation with appropriate state officials) to establish its own regulations concerning hunting and fishing on the Settlement Lands without being subject to state regulations, but shall impose minimum standards for safety of persons and protection of wildlife and fish stock.

12. All the Settlement Lands contributed by the State will be permanently held for conservation purposes by the State Corporation.

13. That, except as otherwise specified in this Memorandum, all laws of the State of Rhode Island shall be in full force and effect on the Settlement Lands, including but not limited to state and local building, fire and safety codes.

14. That all settlement lands will be subject to a professionally prepared land use plan (the "Land Use Plan") mutually acceptable to the State Corporation and the Town Council. Acceptance of the Land Use Plan shall not be unreasonably withheld by the Town Council. At least seventy-five percent of the Settlement Lands not already committed to conservation purposes by Section 12 above will be permanently subjected to conservation uses by the Land Use Plan. Town Council acceptance of the Land Use Plan shall be a condition precedent to the acquisition of the Settlement Lands by the State Corporation. The Town Council, after its acceptance of the Land Use Plan, shall amend the zoning ordinance of the Town of Charlestown in a manner consistent with the Land Use Plan as it applies to the Settlement Lands. Thereafter, the zoning ordinance, as amended to conform with the Land Use Plan, shall control the use of the Settlement Lands and shall not be further amended in a manner inconsistent with the Land Use Plan without the consent of the State Corporation.

15. That the plaintiff in the Lawsuits will not receive Federal recognition for purposes of eligibility for Department of the Interior services as a result of Congressional implementation of the provisions of this Memorandum, but will have the same right to petition for such recognition and services as other groups.

16. That the Town of Charlestown will be reimbursed for future services provided in connection with the Settlement Lands with funds provided by the Indian corporation.

17. That contribution by the State of the land around Deep Pond is conditioned upon required and appropriate Federal approval of any conveyance of said land in such manner so as not to affect, in any adverse manner, any

benefits received by the State under the Pittman-Robertson Act (16 U.S.C. §669-669i) and the Dingell-Johnson Act (16 U.S.C. §777-777k), and further conditioned upon the retention of permanent State control of and public access to an adequate fishing area within said land.

18. That implementation of all provisions of this Memorandum, except those of Sections 6, 10 and 19, and the payment of the option fees provided for in Section 3 above shall be contingent upon a prompt determination by the Department of the Interior that the Plaintiff in the Lawsuits have a credible claim to the lands involved in the Lawsuits. Plaintiff shall have an opportunity for judicial review of any adverse determination by the Department of the Interior.

19. The Plaintiffs in the Lawsuits agree to cause the Lawsuits to be dismissed with prejudice at the time the portion of the Federal legislation which eliminates title problems pursuant to Section 6 above becomes effective.

WITNESS the execution hereof under seal as of this twenty-eighth day of February, 1978.

HONORABLE J. JOSEPH GARRAHY,
Governor of State of Rhode Island
and Providence Plantations

J. Joseph Garrahy

TOWN OF CHARLESTOWN, RHODE ISLAND
TOWN COUNCIL

By Robert M Lee.

PLAINTIFF: NARRAGANSETT TRIBE OF INDIANS,
By their attorneys,
NATIVE AMERICAN RIGHTS FUND

By _____
Thomas N. Tureen

DEFENDANTS: EDWARD WOOD, RHODE ISLAND DIRECTOR
OF ENVIRONMENTAL MANAGEMENT

By _____
William Granfield Brody,
Assistant Attorney General,
State of Rhode Island

(David F. Giuliano
(Paul E. Bennett
(Alfred Testa

By GOODWIN, PROCTER & HOAR,
their attorneys,

By _____
Donald P. Quinn

(Robert E. Cherry
(Castle Realty Company
(Glenn F. Godden
(Mildred L. Godden
(John S. Johnson
(Alice Johnson
(Ethel W. Duguid
(Providence Boys Club
(Greater Providence Young Mens
(Christian Association
(Sarah J. Browning
(William F. Arnold
(Ruth Arnold
(Thomas L. Arnold
(William Arnold
(Frank W. Arnold
(Thomas L. Arnold, William
(Arnold, Frank W. Arnold
(and the Washington Trust
(Company as trustees for
(the Estate of Frank Arnold
(Thomas L. Arnold, Laurence
(Whittemore and the
(Washington Trust Company
(as trustees for the
(Thomas L. Arnold Trust
(Hope W. Hallock
(Edna May McKenzie
(Lloyd E. Fitzgerald
(Joyce M. Fitzgerald
(Edward A. Whipple
(Pauline Whipple

By TILLINGHAST, COLLINS & GRAHAM,
their attorneys,

By _____

SOUTHERN RHODE ISLAND LAND
DEVELOPMENT CORP.,
By its attorney,

By _____
Archibald B. Kenyon, Jr.

FRANKLIN SHORES, INC.,
by its attorney,

By _____
John P. Toscano, Jr.

EDNA MAE REED, by her attorney,

By _____
Harold B. Soloveitzik

CARL M. RICHARD, by his attorney,

By _____
Francis Castrovillari

OLD STONE BANK, by its attorney,

By _____
Frank Ray

OLD COLONY CO-OPERATIVE BANK,
By its attorney,

BY _____
ARCHIBALD B. KENYON, JR.


MAP of the INDIAN RESERVATION
Charlestown R.I.
Exhibit "A"
Indian Cedar Swamp
44
33
52
53
55

EXHIBIT B

Providence Boys' Club (with the exception of approximately 100 acres of land adjoining Schoolhouse Pond and Lot No. 17)

Greater Providence Young Mens' Christian Association

Hope W. Hallock

Edna May McKenzie

Southern Rhode Island Land Development Corporation

Franklin Shores, Inc.

Edna Mae Reed

Carl M. Richard (including only lots numbered 5, 7, 8 and 9 and provided further that this land shall be held permanently for conservation purposes and neither the State Corporation, Indian Corporation nor any beneficiary thereof shall have standing in any zoning or other administrative or judicial proceeding involving land presently owned by Castle Realty Company)

Approximately 12 acres of land of David F. Giuliano

RHODE ISLAND
INDIAN CLAIMS STATUTE

SEC. 1 (a) Any transfer of lands or waters located within the State of Rhode Island from, by or on behalf of any Indian, Indian nation or tribe of Indians, including but not limited to a transfer pursuant to any statute of the State of Rhode Island, was and shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of lands or waters from, by or on behalf of any Indian, Indian nation or tribe of Indians (including but not limited to the Trade and Intercourse Act of 1790, Ch. 33, §4, 1 Stat. 138, and all amendments thereto and all subsequent versions thereof), and Congress does hereby approve and ratify any such transfer effective as of the date of the said transfer.

(b) To the extent that any transfer of lands or waters described in subsection (a) may involve lands or waters to which any Indian, Indian nation or tribe of Indians had aboriginal title, subsection (a) shall be regarded as an extinguishment of such aboriginal title as of the date of said transfer.

(c) By virtue of the approval and ratification of a transfer of lands or waters effected by subsection (a) or an extinguishment of aboriginal title effected thereby, all claims against the United States, any state or subdivision

thereof, or any other person or entity, by any Indian, Indian nation or tribe of Indians, including but not limited to claims for trespass damages or claims for use and occupancy, arising subsequent to the transfer and that are based upon any interest in or right involving such lands or waters, shall be regarded as extinguished as of the date of the transfer.

(d) As used in this section, the phrase "lands or waters" shall include any interest in or right involving lands or waters, and the term "transfer" shall include but not be limited to any sale, grant, lease, allotment, partition, conveyance, or any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition or conveyance, or any event or events that resulted in a change in possession or control of lands or waters.

EXHIBIT B

GOODWIN, PROCTER & HOAR
COUNSELLORS AT LAW
28 STATE STREET
BOSTON, MASSACHUSETTS 02109
TELEPHONE (617) 523-5700
TELECOPIER (617) 523-1231
TELEX 94-0640
CABLE - GOODPROCT, BOSTON

COUNSEL
RICHARD H. NICHOLS
CARL F. SCHIPPER, JR.
LEONARD WHEELER

March 29, 1979

Mr. Don L. Ricketts
Assistant Chief of Staff
Joint Committee on Taxation
1015 Longworth
House Office Building
Washington, D.C. 20515

Re: Proposed Amendment to the Rhode Island Indian Land Claims Settlement Act--Public Law 95-395

Dear Mr. Ricketts:

We wish to thank you for the courtesy which you and Mr. McConaghy extended us during our meeting on Friday, January 25, 1979, to discuss the proposed legislation granting section 1033 treatment to any gains occurring as a result of the conveyance of privately held lands pursuant to the terms of the Rhode Island Indian Land Claims Settlement Act. We expect that this legislation should be filed by Senators Pell and Chafee and Congressman Beard within the very near future.

During our meeting, you requested that we provide you with additional information regarding similar Indian land claims brought throughout the United States. Although this office is involved in several of these suits, it is by no means involved in all of them. However, we have managed to gather together some information regarding the status of the pending or potential claims in this area. This information is as follows:

CONNECTICUT

1. Schaghticoke Tribe. A group purporting to be the Schaghticoke Tribe has claimed approximately 1,300 acres located in the township of Kent, Connecticut. A lawsuit to recover this land was filed in April of 1975 against eight private defendants and the town of Kent. Schaghticoke Tribe v. Kent School Corp., Inc., Civ. No. 75-125 (D. Conn., filed April 17, 1975). This suit is now in the discovery stage of litigation.

2. Western Pequot Tribe. A group purporting to be the Western Pequot Tribe has claimed approximately 800 acres located near the town of Ledyard, Connecticut. A lawsuit to recover this land was filed in May of 1976 against 26 private defendants and the town of Ledyard. Western Pequot Tribe v. Holdridge Enterprises, Inc., Civ. No. H-76-193 (D. Conn., filed May 6, 1976). This suit is now in the discovery stage of litigation.

3. Mohegan Tribe. A group purporting to be the Mohegan Tribe has claimed approximately 2,550 acres located in the northeast portion of the town of Montville, Connecticut. Two lawsuits to recover portions of this land were filed in August of 1977 against two private defendants and the State of Connecticut. Mohegan Tribe v. Connecticut, Civ. No. H 77-434 (D. Conn., filed August 31, 1977); Mohegan Tribe v. Zaugg, Civ. No. 77-435 (D. Conn., filed August 31, 1977). These suits have been consolidated into one proceeding, and the plaintiffs have announced that they will file additional lawsuits to recover the balance of the claimed land. On November 15, 1978, the State of Connecticut filed a motion to dismiss the suits; that motion is still pending.

FLORIDA

Seminole and Miccosukee Tribes. Groups purporting to be the Seminole and Miccosukee Tribes may claim as much as five million acres in southwest Florida. To date, these groups

have asserted claims only against the State of Florida, but it is possible that claims against private landowners for return of the land itself may also be asserted. The claim against the state is embodied in a lawsuit filed against the State of Florida and its agencies in January of 1979. Miccosukee Tribe v. Florida, Civ. No. 79-253-Civ.-JAG (S.D. Fla., filed January 19, 1979).

LOUISIANA

Chitimacha Tribe. A group purporting to be the Chitimacha Tribe has claimed approximately 7,000 acres in St. Mary Parish, Louisiana. A lawsuit to recover the claimed land was filed in July of 1977 against approximately 84 private defendants. Chitimacha Tribe v. Harry L. Laws Co., Inc., Civ. No. 770772-L (W.D. La., filed July 15, 1977). The defendants filed a motion for summary judgment on February 15, 1979, which has not yet been decided.

MAINE

Passamaquoddy and Penobscot Tribes. Groups purporting to be the Passamaquoddy and Penobscot Tribes have claimed approximately 12 million acres in Maine. Lawsuits embodying these claims were filed in June of 1972. United States v. Maine, Civ. No. 1966-ND, 1969-ND (N.D. Maine, filed June, 1972). In February, 1977, the United States Government, acting on behalf of the two Tribes, indicated its intention to seek recovery of a reduced claim area covering approximately 5-6 million acres. These suits have been stayed pending settlement discussions among the various parties involved. In November, 1978, the Tribes expressed a willingness to settle their claims in return for a $27 million trust fund financed by the Federal Government and 100,000 acres of privately held forest land. The White House has indicated a willingness to support this $27 million trust fund and $10 million to purchase 100,000 acres. The major landowners have indicated a willingness to sell the 100,000 acres of forest land for fair market value. Negotiations are continuing with respect to the identity and price of the land to be sold and on other various issues.

MASSACHUSETTS

1. Mashpee Tribe. A group purporting to be the Mashpee Tribe has claimed 15,000 acres located near the towns of Mashpee

and Sandwich in Massachusetts. A lawsuit to recover the claimed land was filed in August of 1976 against several private defendants and the Town of Mashpee. Mashpee Tribe v. New Seabury Corp., Civ. No. 76-3190-S (D. Mass., filed August 26, 1976). A jury trial on the issue of the plaintiff's status as a tribe resulted in a verdict in favor of the defendants, and the trial court dismissed the suit. The dismissal was affirmed by the United States Court of Appeals for the First Circuit on February 13, 1979. The plaintiffs have until May 14, 1979, to request Supreme Court review of the Court of Appeals' decision.

2. Wampanoag Tribe of Gay Head. A group purporting to be the Wampanoag Tribe of Gay Head has claimed several hundreds of acres of land located in the Town of Gay Head, Massachusetts on the Island of Martha's Vineyard. A lawsuit to recover the claimed land was filed in June, 1975 against the Town of Gay Head. Wampanoag Tribe of Gay Head v. Town of Gay Head, Civ. No. 74-5826-G. The action has been stayed to permit settlement negotiations to proceed between the plaintiffs, the defendants, Harvard Law School Dean Albert Sacks, appointed mediator by the Governor of Massachusetts, counsel for certain private landowners, and representatives of the Gay Head Taxpayers Association. A tentative settlement agreement is seriously under negotiation which would involve the purchase of approximately 175 acres of land at fair market value from present landowners for the benefit of the plaintiff.

3. Descendants of the Chappaquiddick Tribe. Eight individuals purporting to be descendants of one "family" of the Chappaquiddick Tribe have claimed approximately 40 acres of land on Chappaquiddick Island, Martha's Vineyard, Massachusetts. A lawsuit to recover the claimed land was filed on December 5, 1977. Oitzelle Epps, et al. v. Cecil Andrus, et al., Civ. No. 77-3739-S. Sixteen private individuals and various public officials were named as defendants in this action. On December 18, 1978, the court granted defendants' motions to dismiss on the grounds that the Non-Intercourse Act was not applicable to alienation of land by individual Indians. On January 12, 1979, the plaintiffs filed a motion to file an amended complaint and a motion to vacate judgment in this action. In the amended complaint, the plaintiffs claimed to represent the entire class of descendants of the Chappaquiddick Tribe. Hence, the amended complaint expanded the claim area to approximately 700 acres of land on Chappaquiddick. On January 18, 1979, the court denied

both of these motions. A notice of appeal from the judgment of dismissal in this case was filed with the First Circuit Court of Appeals on February 10, 1979. The case is now pending before the First Circuit.

NEVADA

Western Shoshone Group. A group purporting to represent the Western Shoshone Indians may claim approximately 22 million acres in central Nevada. The Western Shoshones now are claiming only that portion of the 22 million acre area that is vacant land owned by the United States, and have announced that they would not claim any land that has been settled, patented, improved, or mined. Nevertheless, the Western Shoshones may decide to alter their position in the future. A lawsuit to test their claim was filed in May of 1974. United States v. Dann, Civ. No. R-74-60-BRT (D. Nev., filed May 6, 1974). A motion for partial summary judgment in this case is scheduled for argument on April 27, 1979.

NEW YORK

1. Oneida Nation. A group purporting to be the Oneida Nation has claimed approximately 6 million acres located in central New York State. Lawsuits to recover the land claimed were filed in 1978, 1974, and 1970. Oneida Indian Nation v. New York Thruway Authority, Civ. No. 78 CV 104 (N.D.N.Y., filed March 6, 1978); Oneida Indian Nation v. County of Oneida, Civ. No. 74 CV 187 (N.D.N.Y., filed May 3, 1974); Oneida Indian Nation v. Williams, Civ. No. 74 CV 167 (N.D.N.Y. 1974); Oneida Indian Nation v. County of Oneida, Civ. No. 70 CV 35 (N.D.N.Y., filed February 5, 1970). In the 1970 suit, involving a portion of the land claimed, the trial court has issued a judgment in favor of the Oneidas on the issue of liability, 434 F. Supp. 527 (N.D.N.Y. 1977). The parties are now preparing for trial on the issue of damages. The other suits have been delayed pending the resolution of the 1970 suit or to encourage settlement discussions. The United States Department of Justice announced on July 1, 1977, that it was prepared to bring suit on behalf of the Oneidas with respect to a portion of their claim (approximately 250,000 acres).

2. Cayuga Tribe. A group purporting to be the Cayuga Tribe has claimed approximately 62,000 acres located in Cayuga

and Seneca counties in central New York. No lawsuit embodying the Cayuga claim has been filed, but the United States Department of Justice announced on July 1, 1977, that it is prepared to bring suit on behalf of the Cayugas to assert their claim. Settlement negotiations are being conducted by representatives of the United States, the State of New York and the Cayugas.

3. St. Regis Mohawk Tribe. A group purporting to be the St. Regis Mohawk Tribe has claimed approximately 10,500 acres located in St. Lawrence and Franklin counties in northern New York. No lawsuit embodying the St. Regis Mohawk claim has been filed, but the United States Department of Justice announced on July 1, 1977, that it is prepared to bring suit on behalf of the St. Regis Mohawks to assert their claim. Settlement negotiations are being conducted by representatives of the United States, the State of New York and the St. Regis Mohawks.

4. Shinnecock Tribe. A group purporting to be the Shinnecock Tribe has claimed approximately 3,200 acres on Long Island, New York. No lawsuit embodying the Shinnecock claim has been filed, but the Shinnecocks have formally requested the United States Department of the Interior to recommend to the United States Department of Justice that the Department of Justice bring suit on behalf of the Shinnecocks. The Department of the Interior has not yet announced its decision on this request.

SOUTH CAROLINA

Catawba Tribe. A group purporting to be the Catawba Tribe has claimed approximately 144,000 acres in York, Lancaster and Chester counties in South Carolina. No lawsuit embodying this claim has been filed, but on August 30, 1977, the United States Department of the Interior recommended that the United States Department of Justice bring suit on behalf of the Catawbas. Settlement negotiations are being conducted by representatives of the United States, the State of South Carolina and the Catawbas.

I hope this information will be helpful to you in understanding the scope of the problem created by these Indian land

claims. However, as we pointed out to you during our meeting, our proposed legislation only affects Rhode Island and is not meant to be an omnibus piece of legislation granting capital gains deferral to landowners involved in all Indian land claims settlements across the country. Despite the potential magnitude of the problem, the tax impact of the Rhode Island legislation is inconsequential.

If you have any questions, please do not hesitate to contact us. Once again, let me express our appreciation for your help and cooperation in this matter.

Very truly yours,

Donald P. Quinn

DPQ:pah

E X H I B I T C

PUBLIC LAW 95-395 "AN ACT TO SETTLE INDIAN CLAIMS WITHIN THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATION AND FOR OTHER PURPOSES" IS RETAINED IN COMMITTEE FILES.

EXHIBIT D

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

May 10, 1979

The Honorable J. Joseph Garrahy
Governor of the State of Rhode Island
State House
Providence, Rhode Island 02903

Dear Joe:

I would like to take this opportunity to recognize you for your personal efforts in resolving the Indian land claim in your State. Through your personal commitment you have accomplished what no other affected Eastern Seaboard state has been able to accomplish, that is, resolve a land claim with an out-of-court settlement. While the circumstances and facts surrounding the Narragansett claim are unique to Rhode Island you have indeed established new ground with your leadership on this issue.

As you sign the State enabling legislation, I would also like to recognize the Narragansett Tribal Council for the patience and perseverance that it showed throughout the settlement negotiations. You have all collectively shown that diligent negotiation and compromise can resolve the most difficult of problems. Additionally, the judiciary and the many other State, local and federal officials who played a part in this process are to be commended for their cooperation and assistance.

The Department of the Interior stands ready to do its part in matching the State land contribution with financial assistance as provided for in the settlement.

Again, my congratulations to you and all of the individuals involved in this effort.

Sincerely,

SECRETARY

AN ACT ESTABLISHING THE NARRAGANSETT INDIAN LAND MANAGEMENT CORPORATION, PASSED BY THE GENERAL ASSEMBLY OF THE STATE OF RHODE ISLAND IS RETAINED IN COMMITTEE FILES.

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E X H I B I T E

HOUSE REPORT NO. 95-1453 TO ACCOMPANY H.R. 12860: THE RHODE ISLAND INDIAN CLAIMS SETTLEMENT ACT IS RETAINED IN COMMITTEE FILES.

+ + + + + +

E X H I B I T F

SENATE REPORT NO. 95-972 TO ACCOMPANY S. 3153: THE RHODE ISLAND INDIAN CLAIMS SETTLEMENT ACT IS RETAINED IN COMMITTEE FILES.

EXHIBIT G

96TH CONGRESS
1ST SESSION

S. 687

To amend the Rhode Island Indian Claims Settlement Act to provide an exemption from taxes with respect to the settlement lands and amounts received by the State Corporation, and to provide a deferral of capital gains with respect to the sale of settlement lands.

IN THE SENATE OF THE UNITED STATES

MARCH 15 (legislative day, FEBRUARY 22), 1979

Mr. CHAFEE (for himself and Mr. PELL) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend the Rhode Island Indian Claims Settlement Act to provide an exemption from taxes with respect to the settlement lands and amounts received by the State Corporation, and to provide a deferral of capital gains with respect to the sale of settlement lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Rhode Island Indian Claims Settlement Act (Public Law 95-395) is amended by adding at the end thereof the following new sections:

"EXEMPTION FROM TAXATION

"SEC. . (a) Except as otherwise provided in subsections (b) and (c), the settlement lands and any moneys received by the State Corporation from the Fund shall not be subject to any form of Federal, State, or local taxation.

"(b) The exemption provided in subsection (a) shall not apply to any income-producing activities occurring on the settlement lands.

"(c) Nothing in this Act shall prevent the imposition of payments in lieu of taxes on the State Corporation for services provided in connection with the settlement lands.

"(d) The exemption provided in subsection (a) as it relates to amounts received by the State Corporation from the Fund shall not apply if any of such amounts are used for, or diverted to, any purpose other than—

"(1) the purposes authorized under this Act; or

"(2) investment (but only to the extent that the invested portion of such amounts is not currently needed for the purposes otherwise authorized by this Act) in—

"(A) public debt securities of the United States,

"(B) obligations of a State or local government which are not in default as to principal or interest, or

"(C) time or demand deposits in a bank (as defined in section 581 of the Internal Revenue Code of 1954) or an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act (12 U.S.C. 1752(6)) located in the United States.

"DEFERRAL OF CAPITAL GAINS

"SEC. . For purposes of subtitle A of the Internal Revenue Code of 1954, any sale or disposition of private settlement lands pursuant to the terms and conditions of the Settlement Agreement shall be treated as an involuntary conversion within the meaning of section 1033 of the Internal Revenue Code of 1954.".

EXHIBIT H

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

JAN 14 1977

Honorable Joseph E. Brennan
Attorney General
State of Maine
Augusta, Maine 04333

Dear Mr. Brennan:

As promised, I am providing you with copies of the final draft litigation reports of the two Indian land claims entitled United States v. Maine. Such copies are also being made available to Mr. Thomas Tureen and Mr. Stuart Ross, counsel for the Passamaquoddy Tribe and the Penobscot Nation.

As explained in my cover letter to the Justice Department, which is also enclosed, these reports do not represent the final decision of the Interior Department in this matter. The reports are being made available to you contrary to our usual practice, primarily because of the extreme importance of the matter to the State of Maine and its non-Indian citizens. As the reports indicate, I have concluded that the Tribes' claims are substantial. Therefore, in the absence of any imminent non-judicial resolution, and in view of the approaching expiration of the statute of limitations period, it should be understood that the Government is regarded as having a legal responsibility to pursue those claims in the courts.

Please note that release of these reports to you and others does not constitute a waiver by the United States or this Department of any privilege of confidentiality to which it may be entitled. Because most of the documents referred to in the reports and incorporated therein by reference are regarded as subject to the work-product doctrine, we have not made them available. But, as my cover letter to the Justice Department indicates, we may make certain materials available to you in the future, if their disclosure is not in violation of our trust responsibilities to the Tribes.

Note further that we reserve the right to alter any opinions or conclusions stated in the two draft reports. Nothing therein should be taken as an admission of the existence or nonexistence of any fact underlying the claims which are or may be the subject of United States v. Maine. This procedure is consistent with the terms of the submission of your legal arguments to us on December 9, 1976. (See Mr. John Paterson's letter of October 21, 1976.)

Let me say that I appreciate the patient cooperation we have received from you in this most difficult matter. I wish to express my sincere hope that this controversy will be resolved as expeditiously as possible with a minimum of suffering for the people of Maine.

Sincerely yours,

H. Gregory Austin

H. Gregory Austin
Solicitor

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

January 10, 1977

The Honorable Peter R. Taft
Assistant Attorney General
Land and Natural Resources Division
Department of Justice
Washington, D. C.

Re: United States v. Maine, Civil No. 1966 N.D., and
United States v. Maine, Civil No. 1969 N.D.,
U.S.D.C., D. Maine.

Dear Mr. Taft:

With this letter we are transmitting to you final drafts of the litigation reports with respect to the two Maine cases concerning the Passamaquoddy and Penobscot Tribes. These drafts represent my final thoughts on this subject.

In preparing these litigation reports my colleagues and I have carefully considered the factual materials and legal arguments presented to us by the State of Maine, and particularly the memorandum addressed to Governor Longley by Attorney General Brennan on December 7, 1976, entitled "Indian Claim Litigation."

Because of the importance of these cases and the fact that my successor will have responsibility, on behalf of the Department of the Interior, for certain policy aspects of the litigation, I have felt it appropriate for my successor to review these litigation reports before they are submitted to the Department of Justice in final form. The attached final drafts should be sufficient to allow you to comply with the order of the District Court requiring you to advise the court on or before January 15, 1977 of the Government's intended course of action with respect to the cases.

As we have discussed, it is my intention to deliver copies of these final draft litigation reports to the Attorney General of Maine and to representatives of the Passamaquoddy and Penobscot Tribes, and to make copies of the drafts available to others who may request them. The litigation reports will be released immediately after you have made your report to the District Court.

Many of the materials contained in the exhibits to the litigation reports are attorneys' work product, and will neither be subject to discovery in the litigation under the Federal Rules of Civil Procedure nor subject to disclosure under the Freedom of Information Act. Because of our trust responsibilities to the Tribes, we intend to review carefully all of the materials contained in the exhibits to determine which, if any, of those materials may be or must be disclosed to other parties to the litigation. The Secretary of the Interior wishes to reciprocate the directness and candor of representatives of the State of Maine in dealing with this Department with respect to the subject matter of these suits. Therefore, he wants to disclose as much information as possible to the State of Maine, to help it assess its position and that of its residents, so long as such disclosure is not in violation of law or in violation of the Secretary's trust responsibilities.

Sincerely,

H. Gregory Austin
Solicitor

Enclosures

Hand-Delivered

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

FINAL DRAFT
(PASSAMAQUODDY) 1/19/77

Honorable Peter R. Taft
Assistant Attorney General
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Attention: Mr. Myles E. Flint
Acting Chief,
Indian Resources Division

Dear Mr. Taft:

This is the litigation report in the case of United States v. Maine, Civil No. 1966 N.D., U.S.D.C., D. Maine, the Indian Nonintercourse Act claim of the Passamaquoddy Tribe. Our report on the similar claim of the Penobscot Nation will soon follow.

In our letter of June 28, 1976 to you in this matter, we indicated that it is now our view that it is settled that the Indian Nonintercourse Act (25 U.S.C. § 177) established a trust relationship between the federal government and the Passamaquoddy Tribe with regard to tribal lands under the coverage of the Act. This position was of course compelled by the decision in Joint Tribal Council of the Passamaquoddy Tribe v. Morton, 528 F.2d 370 (1st. Cir. 1975). We also offered the view that the Tribe can present substantial evidence that a large part of its aboriginal territory was taken in violation of the Nonintercourse Act. Much of that evidence is contained in the enclosed report [Appendix A] prepared by a team of experts who are available to testify in support of the opinions and conclusions stated therein. (Photocopies of the source materials for the report are enclosed as Appendix B.) Other experts in the field have also been retained, and they are conducting further research in preparation for a possible trial in this case.

During the preparation of this litigation report the Attorney General of the State of Maine asked for the opportunity to submit a memorandum offering his view that the claims of both the Passamaquoddy Tribe and the Penobscot Nation are without merit. He also requested from us any materials we might have in support of the Tribe's claims. In November after consulting with you and members of your staff, we agreed to offer the Maine Attorney General summaries of the historical evidence supporting the claims. We have since been provided with memoranda presenting the State's position, and they are enclosed here as Appendix C. It is our view that the State's arguments do not provide us with any basis to regard the Tribes' claims as without merit. Enclosed is a memorandum from the Acting Associate Solicitor for Indian Affairs [Appendix D] reviewing the materials provided by the State.

As you know, copies of this report and the Penobscot report are being made available to the State in the interest of a better understanding of the position of the United States in this controversy. The Maine Attorney General has asked for the opportunity to comment on our reports, and because of the serious consequences to Maine which may result from pursuit of this litigation, we recommend that you provide such an opportunity within the limitations of the court-ordered and statutory deadlines which you face.

ANALYSIS

A. Elements of a Cause of Action for Recovery of Indian Land.

A prima facie case for recovery of Indian land taken in violation of the Nonintercourse Act is established by a showing that:

(1) the claimant is a "tribe of Indians" within the meaning of the Act;

(2) the land claimed is covered by the Act as tribal land;

(3) the United States has never consented to its alienation; and

(4) the trust relationship between the United States and the tribe, which was established by the coverage of the Act, has never been terminated.

Narragansett Tribe of Indians v. Murphy, C.A. No. 750005, U.S.D.C., D.R.I., opinion entered June 23, 1976, at p. 9 (enclosed as Appendix E).

Two of the elements of such a cause of action require little discussion. The fourth listed element presents a settled matter of law with regard to the Passamaquoddy Tribe. The First Circuit Court of Appeals has already determined that Congress has never withdrawn Nonintercourse Act protection. 528 F.2d at 380. And the first element is a simple matter of proof. As mentioned in our June 28 letter, no persuasive evidence can be offered to dispute the fact that the Passamaquoddies constitute an Indian tribe in the racial and cultural sense, and that they are therefore a "tribe" within the meaning of the Act. This issue receives comprehensive treatment in Section II of Appendix A. Thus, our principal inquiries are whether the land claim area is covered by the Act and whether the United States consented to any alienation of these lands. The Court of Appeals specifically declined to rule on these issues. Id. at 376, 380.

B. Passamaquoddy Lands Covered by the Nonintercourse Ac

The policy behind the Nonintercourse Act applies to Indian lands whether or not the Indian title thereto is based upon treaty, statute, or other formal government action. United States as Guardian of the Walapai Tribe v. Santa Fe Pacific R. Co., 314 U.S. 339, 347 (1941), rehearing denied 314 U.S. 716 (1942); Joint Tribal Council of the Passamaquod Tribe v. Morton, 528 F.2d at 377. The Passamaquoddy claim is one based on aboriginal title unrecognized by any formal

action. The legal nature of such title is the subject of numerous Supreme Court opinions, and it is treated in the enclosed memorandum of Tim Vollmann of this office. [Appendix F] It should be noted that the concept of aboriginal title and the principle of its inalienability predate the 1790 enactment of the Nonintercourse Act. Indeed, the Supreme Court decisions of the early nineteenth century rarely cite the Act, but instead recognize aboriginal title as a principle of international law dating back to the European "discovery" of the American continents. For further background we suggest reference to the Vollmann memorandum.

Proof of aboriginal title is established by a showing of actual, exclusive, and continuous use and occupancy of lands for a long period of time. Sac and Fox Tribe v. United States, 315 F.2d 896, 903 (Ct. Cl. 1963), cert. denied 375 U.S. 921 (1963). Use and occupancy is determined by reference to the way of life, habits, customs, and usages of the Indians. Sac and Fox Tribe v. United States, 383 F.2d 991, 998 (Ct. Cl. 1967). And it has been held that "the 'use and occupancy' essential to the recognition of Indian title does not demand actual possession of the land, but may derive through intermittent contacts [citation] which define some general boundaries of the occupied land . . . ." United States v. Seminole Indians, 180 Ct. Cl. 375, 385 (1967) [emphasis in original]. Section III A of Appendix A presents detailed documentary evidence in support of an aboriginal Passamaquoddy claim to five watersheds in eastern Maine, an area of over two million acres. Such historical evidence, including expert testimony, is regularly relied upon in Indian claims cases to establish aboriginal title. See e.g., Snake or Piute Indians v. United States, 112 F. Supp. 543, 552 (Ct. Cl. 1953); Confederated Tribes of the Warm Springs Reservation v. United States, 177 Ct. Cl. 184, 201-02 (1967).

We have experts prepared to testify that the area covered by the St. Croix, Dennys, Machias, Narraguagus, and Union watersheds, and the adjacent coastline and islands, were all part of the exclusive aboriginal territory of the

Passamaquoddy Tribe. However, it has been suggested that Passamaquoddy aboriginal use of the western watersheds was not exclusive, and that the Tribe's aboriginal title therefore cannot be established. This suggestion arises principally from references in the journals of Col. John Allan during the Revolutionary War. Allan refers to the presence of Penobscots and other Indians in this area alongside the Passamaquoddies in their campaign against the British. F. Kidder, Military Operations in Eastern Maine and Nova Scotia during the Revolution (1867) at pp. 305-313. Our experts are of the view that the presence of these other Indians in Passamaquoddy territory is primarily attributable to Allan's efforts to recruit them for the defense of eastern Maine, and that they returned to their own territories after the war. There may also have been some intermarriage between the tribes during the period of the alliance. That would account for some Indians remaining behind and becoming members of the Passamaquoddy Tribe by virtue of marriage or other kinship ties. But this would not defeat the exclusive occupancy of the Tribe. 1/

C. Consent of the United States

The Nonintercourse Act provides that once the tribe "make[s] out a presumption of [Indian] title . . . from the fact

1/ It should be noted that even if it were found that certain portions of this territory were used and occupied jointly by the Passamaquoddies and other Indians, this would not necessarily defeat aboriginal title. The Court of Claims has held on several occasions that two or more closely related Indian groups might inhabit a region in joint and amicable possession and retain joint aboriginal title thereto. See e.g., United States v. Pueblo of San Ildefonso, 513 F.2d 1383, 1394-96 (1975).

of previous possession," the burden is on the non-Indian defendants to show that aboriginal title was extinguished. 25 U.S.C. § 194. And, of course, under the Act the consent of the United States is required to perfect such extinguishment. Section III B of Appendix A documents the history of the Passamaquoddy Tribe's ouster from possession of their aboriginal lands. In short, most of that territory was lost as a result of a 1794 treaty with the Commonwealth of Massachusetts. That treaty did set aside roughly 23,000 acres in parcels as reservations within the Tribe's territory. But 8,100 acres of this land was later conveyed away as well. It appears evident that Congress never consented to the alienation of any Passamaquoddy territory in accordance with the Nonintercourse Act, either by ratifying the 1794 treaty or otherwise.

We are in the process of compiling a file of copies of those deeds, grants, and other conveyance instruments (including the 1794 treaty) which purported to transfer Passamaquoddy territory out of tribal hands, and will forward this file to you when it has been completed. We have already reviewed these documents, and it suffices to say that there is no indication on their face that the federal government participated in any of those transactions.

Nonetheless, the State of Maine will undoubtedly claim that Congressional approval of the 1819 Articles of Separation establishing Maine as a state separate from Massachusetts amounted to federal ratification of all earlier conveyances. 3 Stat. 544 (1820). (See pp. 21-37 of the memorandum to Maine Governor Longley in Appendix C.) A similar contention was made by the State as intervenor during the Tribe's suit against the Department. Reliance was placed on the following provision in the Articles:

> "[Maine] shall . . . assume and perform all the duties and obligations of [Massachusetts] towards the Indians within said District of Maine, whether the same arise from treaties, or otherwise . . . ."

Maine Const., Art. X, sec. 5. Thus, it was argued that Congressional endorsement of the Articles amounted to a termination of all federal responsibilities to the Passamaquoddies. However, the First Circuit rejected this argument, holding Congress' action was no more than approval of Maine's voluntary assumption of certain responsibilities to the Indians. 528 F.2d at 378. An argument that Congress' ratification of the Articles effectively extinguished the Tribe's aboriginal claims is, if anything, substantially weaker than the proposition already put forward. Indian lands are not even mentioned in the Articles. Moreover, the courts have often held that Congressional extinguishment of Indian title "cannot be lightly implied in view of the avowed solicitude of the Federal Government for the welfare of its Indian wards." Walapai Tribe, supra, 314 U.S. at 354. 2/ For further discussion of this and related arguments made by the State, please refer to Appendix D.

D. Defenses

Due to the antiquity of the Tribe's claims, we may anticipate that the defendants will attempt to raise state law defenses such as limitations, laches, and estoppel. The United States is of course immune from such defenses, whether it is suing on behalf of its Indian wards or on its own behalf. United States Immigration and Naturalization Service v. Hibi, 414

2/ Attorneys for the State of Maine have cited Seneca Nation v. United States, 173 Ct. Cl. 912 (1965), as authority for the proposition that Congress can impliedly ratify a conveyance of Indian lands. However, that case involved an act of Congress which specifically referred to the transaction which was claimed to have violated the Nonintercourse Act. Id. at 915. We are aware of no Congressional act which even mentions the Passamaquoddy Tribe by name, much less refers to the conveyance of any Passamaquoddy lands.

U.S. 5, 8 (1973); United States v. Minnesota, 270 U.S. 181, 196 (1926). And a federal district court recently granted a tribe's motion to strike such defenses to its aboriginal land claim even though the United States was not a party to the suit. Narragansett Tribe of Indians v. Murphy, supra. However, a federal statute of limitation with regard to actions to recover damages for trespass on behalf of an Indian tribe is due to run on July 18, 1977. 28 U.S.C. § 2415(b). Thus, it behooves the United States to file any such claims on behalf of the Passamaquoddies before that date. Our recommendation on the relief to be sought in this case is discussed below.

It may also be expected that Maine will contend that Passamaquoddy title was extinguished prior to enactment of the Nonintercourse Act. In support of that contention reliance would be placed on statements made by John Allan in 1792 that the Tribe had given up its land during the War of Revolution. However, as the discussion in Appendix A indicates, those statements are inconsistent with contemporary documentation, including the earlier statements of Allan himself. In addition, the context of these statements was a proposed treaty between the Tribe and the Continental Congress, and there is no evidence that the Congress ever took any action on the proposal.

Because there was some non-Indian settlement in Passamaquoddy territory prior to 1790, it may be argued that the Tribe voluntarily abandoned certain portions of the region and thus relinquished its claims to those portions. This argument might be advanced together with the theory, discussed in the preceding paragraph, that the Tribe gave up all its territory during the War of Revolution. As a factual matter, the areas from which the Passamaquoddies may have departed prior to 1790 are relatively small. Settlement appears to have been limited mainly to coastal outposts. (See Heads of Families-Maine, U.S. Census (1790) at p. 9. The townships with recorded populations may be plotted on a map in J. Sullivan, History of the District of Maine (1795).) Even so, it has been held that white encroachment, by itself, does not effect

an abandonment of Indian title. Turtle Mountain Band of Chippewa Indians v. United States, 490 F.2d 935, 947 (Ct. Cl. 1974). The Indians must have demonstrated a "plain intent" or a "clear intention" to unreservedly give up their lands. Walapai Tribe, supra, 314 U.S. at 354; Healing v. Jones, 210 F. Supp. 125, 184 (D. Ariz. 1962). Neither non-use alone, nor the lapse of time, can extinguish an aboriginal claim. Fort Berthold Indians v. United States, 71 Ct. Cl. 308, 334 (1930); see also Strong v. United States, 518 F. 2d 556, 565 (Ct. Cl. 1975), Healing v. Jones, supra.

In an October 7, 1976 letter to your office Maine Deputy Attorney General John Paterson argued along this same line that the decision in Williams v. City of Chicago, 242 U.S. 434 (1917), is authority for the proposition that the Passamaquoddy Tribe has since abandoned its land claims. That case involved a treaty cession to the United States. The lands ceded were described in the treaty as being bounded by the shores of Lake Michigan. Many years later some of the lakebed was reclaimed and annexed as part of downtown Chicago. This suit was an enterprising attempt by eight Pottawatomie Indians, who then lived in the State of Michigan, to quiet title to the reclaimed area. However, the Supreme Court held that the Pottawatomies had long before voluntarily abandoned their claim to the lakebed. The Passamaquoddy claim differs from Williams in at least one substantial respect: the Passamaquoddies gave up possession of their lands by means of conveyances in violation of the Nonintercourse Act. To hold that such action amounted to an effective abandonment of their lands would render the Act a nullity. Such logic would validate any tribal conveyance made without federal consent.

In defense against the Passamaquoddy claim it may also be expected that certain land grants made prior to enactment of the Nonintercourse Act will be offered as proof of the extinguishment of Passamaquoddy title. Between 1762 and 1776 a number of townships along the southeastern Maine coast were included in grants made by the Massachusetts Bay Colony. However, those grants recited that they would "be void and of none effect, unless the Grantees do obtain

his Majesty's Confirmation of the same in eighteen months from this Time," and they were never perfected by royal confirmation. Indeed, it has been suggested that the inhabitants of the unsanctioned settlements in Passamaquoddy territory joined the patriots' cause during the war for the very reason that royal confirmation had never been forthcoming. Note further that, like the Nonintercourse Act, British colonial law provided that Indian title could not be extinguished without the consent of the sovereign. Mitchel v. United States, 34 U.S. 711 (1835).

After independence, beginning in 1784, the Commonwealth of Massachusetts purported to confirm a few of the unratified grants made during the colonial period, principally in or adjacent to the Union and Narraguagus watersheds. The Commonwealth also granted a dozen more townships along the Atlantic Coast and adjacent to Passamaquoddy Bay. In addition, pursuant to a 1786 Resolve, Massachusetts offered 50 inland townships in Passamaquoddy territory for sale by lottery, an area of approximately 1.1 million acres. However, only a fraction of this area was disposed of prior to 1790. The bulk of the lottery offering was deeded to one William Bingham in 1793. We are in the process of compiling a comprehensive file on these early transactions, and will provide it when it is complete.

It is not completely clear what the intended effect of the 1784-1790 conveyances was. None of the instruments of conveyance mention Indian title or recite, in so many words, that a fee simple absolute title is being conveyed. Indeed, a number of the grants were subject to conditions subsequent regarding diligent settlement. The Passamaquoddy Tribe--or any other Indian or Indian tribe, for that matter--was not a party to any of these conveyances. Thus, they may have been mere conveyances of Massachusetts' preemptive fee title, subject still to the Indians' right of use and occupancy. Or Massachusetts may have intended to extinguish Indian title.

If the latter view is determined to be correct, we are of the opinion that Massachusetts nevertheless had no authority to make grants of Indian lands before 1790 without the

consent of the United States. Persuasive arguments can be made for the proposition that the law regarding extinguishment of aboriginal title was little or no different during the period of the Confederation than it was after the enactment of the Nonintercourse Act. As mentioned supra at page 4, early precedent relies not on the Act but on universally understood principles of aboriginal title. Statutory law during that period was also very similar to the Nonintercourse Act. For further discussion of this subject, please refer to Appendix D. In any event, it should be pointed out that the validity of pre-1790 conveyances is important at this time only for purposes of determining the scope of the Passamaquoddy claim. It is clear that hundreds of thousands of acres remained in Passamaquoddy hands as of the date of enactment of the Nonintercourse Act.

RECOMMENDATION

Enclosed is a proposed amended complaint for discussion purposes. [Appendix G] It is intended to be illustrative only. As we indicated in our June 28 letter, the four-page protective complaint filed over four years ago is obviously insufficient. It does little more than recite the Nonintercourse Act, allege the invalidity of the cession of tribal lands made in the 1794 treaty, and pray for damages of $150 million from the State of Maine. 3/ In addition, it contains superfluous references to voting rights and other matters unrelated to the Passamaquoddy aboriginal claim.

The proposed complaint seeks ejectment of all persons in possession of the Tribe's aboriginal lands as defined by the boundaries of five watersheds in eastern Maine (map

3/ Paragraph 7 of the protective complaint describes the Tribe's aboriginal territory as including all of Washington County and parts of Hancock and Waldo Counties. However, our research reveals no evidence that the Passamaquoddies hold Indian title to any portion of Waldo County.

enclosed as Appendix H). It also prays for mesne profits for the period of the Tribe's dispossession. This relief is framed after that sought by the United States in the Walapai Tribe claim, cited supra. See also United States v. Boylan, 265 F. 165 (2d Cir. 1920).

We are not unmindful of the breadth or the potential impact of this claim on the population of eastern Maine. Several important considerations have led us to seek such comprehensive relief. First, and most importantly, we have been ordered to acknowledge the existence of a trust relationship between the United States and the Passamaquoddy Tribe. And having done so, we are in no position to view our responsibilities thereunder in a niggardly fashion. Seminole Nation v. United States, 316 U.S. 286, 297 (1942); Pyramid Lake Paiute Tribe v. Morton, 354 F. Supp. 252, 256 (D.D.C. 1973). Indeed, for the government to file suit for less than what the Tribe can demonstrate is a legitimate claim could be seen as having the practical effect of extinguishing Indian title. See Lane v. Pueblo of Santa Rosa, 249 U.S. 110, 113 (1919). Only Congress has such power. Turtle Mountain Band v. United States, supra, 490 F.2d at 945; United States v. Portneuf-Marsh Valley Irr. Co., 213 F. 601, 605 (9th Cir. 1914). 4/

In addition, filing suit for the maximum tribal claim has the merit of settling the matter once and for all. If we

4/ In the recent decision in United States v. Southern Pacific Transportation Co., 9th Cir., Nos. 74-3333, 75-1080 (Sept. 10, 1976), the U.S. Court of Appeals noted that the United States had amended its complaint on behalf of the Walker River Paiute Tribe to omit its prayer for ejectment of the railroad from the right-of-way across Indian lands: "This change of position concerns us. We cannot be oblivious to the fact that this railroad services a United States Navy munitions depot. Whether the Justice Department can represent the claims of the Tribe and allottees without a conflict of interest should be examined by the district court on remand." Slip opinion, footnote 3.

were to sue for less, there would be no jurisdictional bar to an ejectment action on the part of the Tribe for the remainder of the claim--perhaps years later. Oneida Indian Nation v. County of Oneida, 414 U.S. 661 (1974). Recent publicity has already thrown all local titles in doubt. Thus, a complaint which omitted a portion of the claim area would leave that portion in a legal limbo long after resolution of the suit.

Another reason for asserting an all-inclusive claim is found in your letter of June 21, 1976 to this office regarding the Nonintercourse Act claim of the St. Regis Mohawks of upstate New York. There you offered the view that where a land claim is alleged, all record titleholders within the claim area should be joined as indispensable parties pursuant to Rule 19, F.R. Civ. P. While we are not necessarily in agreement on this point, your position certainly dictates the filing of a comprehensive claim, apart from the other considerations discussed above.

Of course, assertion of a claim of this size creates a number of logistical problems. We are still in the process of defining the precise geographical boundaries of the Passamaquoddy aboriginal area. And we must identify each record titleholder or non-Indian claimant within the claim area and the real property in the possession of each such individual. This is undoubtedly a task of great proportion, and we assume that it must be completed and every defendant joined by July 18, 1976. Otherwise the Tribe's monetary claims might be barred by the federal statute of limitations. 28 U.S.C. § 2415(b). We have already discussed the defendant class action concept, and understand that you do not believe that it is an appropriate procedure for this case. However, we wish to note the possibly persuasive argument that the filing of a class action tolls the running of the limitation period for each member of the putative class. See American Pipe and Construction Co. v. Utah, 414 U.S. 538 (1974). Thus, if it appears fairly certain that some potential parties may not be identified and joined by July 18, we suggest use of the class action device to buy additional time for joinder.

It should be apparent that further research needs to be done before the Tribe's claim will be ready for trial. Indeed, identification of defendants must be accomplished prior to the filing of a final amended complaint. However, we think there is presently a sufficient basis for determining that the Passamaquoddy Tribe has a substantial claim to hundreds of thousands of acres of land in eastern Maine. Therefore, we recommend that you inform the U.S. District Court on January 15, 1977 that the United States intends to prosecute United States v. Maine, (Civil No. 1966).

For further information or for assistance in the prosecution of this claim, we suggest you contact Lawrence A. Aschenbrenner, Assistant Solicitor for Indian Affairs.

Sincerely yours,

Enclosures

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

FINAL DRAFT
(PENOBSCOT) 1/10/17

Honorable Peter R. Taft
Assistant Attorney General
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Attention: Mr. Myles E. Flint
Acting Chief,
Indian Resources Division

Dear Mr. Taft:

This is our litigation report on the Penobscot Indian Nation land claim, United States v. Maine, Civil No. 1969 N.D., U.S.D.C., D. Maine. We have also sent you our separate report on the very similar claim of the Passamaquoddy Tribe. The legal principles underlying both cases are virtually identical. Therefore, to the extent that this report's discussion of such principles is incomplete, please refer to the Passamaquoddy report.

Unlike the Passamaquoddy situation, the question of the existence of a trust relationship between the United States and the Penobscot Indian Nation has not been adjudicated. Nonetheless, a protective complaint in the instant suit was filed in July, 1972 pursuant to a stipulation entered into between representatives of your Department and the Nation. This was done in apparent acknowledgment of the similarity of the Penobscot claim to that of the Passamaquoddies. By letter of July 6, 1972 this office had indicated that it would have no objection to the filing of such a protective complaint.

We must now determine to what extent the decision in Joint Tribal Council of the Passamaquoddy Tribe v. Morton, 528 F.2d 370 (1st Cir. 1975), requires the United States

to assist the Penobscots in the pursuit of their claims under the Indian Nonintercourse Act (25 U.S.C. § 177). The Court of Appeals held that the Act should be read to include within its coverage Indian tribes other than those which have been specifically recognized by the federal government. In other words, the Act's restriction against the alienation of tribal lands is applicable to Indian tribes identifiable as such by reference to racial and cultural factors rather than to affirmative governmental action. Id. at 377. Accordingly, as an initial matter we must ascertain whether the Penobscot Indian Nation is an Indian tribe in the racial and cultural sense, and thus entitled to the protection of the Nonintercourse Act.

The Court also ruled that the Act establishes a trust relationship between the United States and the tribes protected by its provisions with respect to tribal lands subject thereto. Thus, unless such a trust relationship has ever been terminated, the Tribe's land claims must be examined to determine whether there has been compliance with the Act, and the United States must then take appropriate action in light of its statutory trust responsibilities. In summary, our inquiry preliminary to the making of a recommendation is:

1) whether the Penobscot Indian Nation is an Indian tribe in the racial and cultural sense;

2) whether any trust relationship arising from the Nonintercourse Act has ever been terminated;

3) what Penobscot tribal lands are covered by the Act; and

4) whether the United States has, as required by the Act, ever consented to the alienation of any such lands.

See Narragansett Tribe of Indians v. Murphy, C.A. No. 750005, U.S.D.C., D.R.I., opinion entered June 23, 1976, at p. 9.

ANALYSIS

A. Tribal Existence.

Enclosed you will find a report on the history of the Penobscot Nation as it relates to their land claim. [Appendix AA] This report was prepared by experts available to testify in support of the conclusions stated therein. Also enclosed are copies of the source materials cited in the report. [Appendix BB] Part I of the report provides detailed evidence of continuous Penobscot tribal existence since the seventeenth century. Note that, like the Passamaquoddies, the Penobscots are today recognized as an Indian tribe by the State of Maine. Also enclosed is a copy of an August 6, 1976 memorandum from the Acting Deputy Commissioner of Indian Affairs which offers the Bureau of Indian Affairs' considered opinion that the Penobsc Nation is an Indian tribe in the racial and cultural sense. [Appendix CC]

B. Trust Relationship.

Having found that the Penobscot Nation is an Indian tribe within the meaning of the Nonintercourse Act, we must determine whether the trust relationship created by that Act has ever been terminated. We can find no basis for concluding that such a termination has ever occurred. No federal legislation appears even to mention the Penobscots by name, much less suggest a termination of any trust responsibilities flowing from the Nonintercourse Act. Of course, it was a similar lack of "recognition" which led the Government to deny the existence of any trust relationship with the Passamaquoddy Tribe during the pendency of Passamaquoddy Tribe v. Morton. However, the courts have held that the Nonintercourse Act is a sufficient source of such a relationship. And we can find no affirmative evidence that this has ever been legislatively undone.

The State of Maine may nonetheless contend, as it did before the U.S. Court of Appeals, that the absence of any active relationship between the United States and the Penobscot Nation for over 180 years has served to terminate the Government's trust obligations. But in specific answer to that contention the court held: "[O]nce Congress has established a trust relationship with an Indian tribe, Congress alone has the right to determine when its guardianship shall cease." 528 F.2d at 380.

C. Penobscot Lands Covered by the Nonintercourse Act.

The Penobscot claim is one based on both aboriginal title and title secured by a number of eighteenth century treaties. Section II of the enclosed report indicates that the Penobscots occupied as their aboriginal territory all of the Penobscot River watershed and also a large portion of the St. John River watershed in northern Maine. Since that report was prepared, additional research has been conducted for purposes of determining what portion of the latter watershed was used and occupied by the Penobscot Nation. We will provide the detailed results of that research as soon as it is available. At present, it appears that there is evidence that the Penobscots possessed what is now the northwestern corner of Maine in aboriginal times, but that the Malicetes used and occupied the northeastern corner. Additional research will enable us to draw an accurate boundary between the two aboriginal territories.

Section II of Appendix AA relates a series of complicated and confusing transactions between the Penobscot Nation and British colonial authorities prior to 1775. While those transactions provided recognition for the sovereignty of the Tribe and its aboriginal claims, they also resulted in the cession of some Penobscot territory. The precise extent of those cessions is far from clear, and this is a subject of our continuing research.

Nevertheless, as the report shows, our experts are prepared to testify that at the time of the American Revolution, and until 1796, the Penobscots continued to hold dominion over all of that portion of their aboriginal territory which lay above the head of the tide on the Penobscot River. 1/ This is estimated to be 6 to 8 million acres of land.

D. Consent of the United States.

The Penobscots' loss of the remainder of their territory is also described in detail in Appendix AA. The first major transaction was in 1796 when the Tribe deeded to the Commonwealth of Massachusetts all its "right, Interest, and claim to all the lands on both sides of the River Penobscot, beginning near Col. Jonathan Eddy's dwelling house, at Nickels's rock, so called, and extending up the said River thirty miles on a direct line," excepting Oldtown island and all the islands above it. The dwelling house referred to appears to have been situated near the head of the tide. There is no evidence that the United States was a party to the transaction or that the Congress approved it in accordance with the Nonintercourse Act.

Other lands in the Penobscot watershed were granted to individuals after 1790 without the consent of either the United States or the Penobscot Nation. We are developing a file of the conveyance instruments used in these transactions as evidence of violation of the Nonintercourse

1/ We understand that the head of the tide lay between Oldtown and what is now Bangor during the eighteenth century. However, a modern dam has prevented the tide from reaching beyond Bangor in recent times.

Act. It is interesting to note that, unlike the Passamaquoddy situation, very little non-Indian settlement had taken place in Penobscot territory at the time of the enactment of the Nonintercourse Act. Indeed, the 1790 U.S. Census provides no population figures north of the Eddy township which was apparently near the head of the tide. Heads of Families-Maine, U.S. Census (1790) at p. 9.

Most of the rest of Penobscot territory was lost as a result of the treaty of June 29, 1818 between the Penobscot Nation and Massachusetts. Reserved from an otherwise complete cession of all their lands above the thirty-mile tract lost in the 1796 transaction were four townships now identified as Mattamwamkeag, Woodville, Indian Purchase, and Millinocket. Those townships were purchased by the State of Maine in 1833. None of these transactions appear to have been executed in accordance with the Nonintercourse Act. As a result, the Penobscot Nation today holds only the islands in the Penobscot River between Oldtown and Mattawamkeag.

RECOMMENDATION

We propose that the complaint in the Penobscot Nation claim against the State of Maine be amended to seek ejectment of all persons in possession of Penobscot aboriginal lands north of the head of the tide of the Penobscot River, and also mesne profits for the period of the Nation's dispossession. At the same time we wish to reserve judgment on the Penobscot claim to any lands below the head of the tide until further research has been performed.

E X H I B I T I

NARRAGANSETT TRIBE OF INDIANS v. SOUTHERN RHODE ISLAND DEVELOPMENT CORP., ET AL., C.A. NO. 75-0006, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND IS RETAINED IN COMMITTEE FILES.

EXHIBIT J

Act presented by Select Committee on the Narragansett Tribe of Indians.

State of Rhode Island and Providence Plantations.

JANUARY SESSION, A. D. 1880.

AN ACT to abolish the tribal authority and tribal relations of the Narragansett Tribe of Indians.

It is enacted by the General Assembly as follows:

SECTION 1. A board of three commissioners shall be appointed upon and after the passage of this act, as follows:—one of said commissioners shall be appointed by the Governor; one by the Governor, upon the nomination of the Council of the Narragansett Tribe of Indians; and one by the Speaker of the House of Representatives; and should any vacancy occur in said board, by death, resignation or otherwise, such vacancy shall be filled as soon as may be by appointment in the same manner as the person previously occupying the position so vacated upon said board was originally appointed. All said commissioners shall, before entering upon the performance of their duties under the provisions of this act, be engaged to the faithful discharge of their duties.

SEC. 2. Said commissioners are hereby authorized, empowered and directed, for and in behalf of the State, to negotiate with, and purchase from the Narragansett Tribe of Indians all their common tribal lands, now contained within the Indian Reservation, so called, as bounded A. D. 1709, and all their other tribal rights and claims, of whatsoever name and nature, for a sum not exceeding Five Thousand Dollars; and for and in behalf of the State, to receive from the Council of said tribe a quit-claim deed to the State of all said lands, rights and claims; which deed, executed and delivered by the Council of said tribe, or by a majority of them, to said commissioners, shall vest in the State all the right, title, interest and property of said tribe in and to the premises so quit-claimed as aforesaid; and said deed shall be recorded in the Record of Deeds in the office of the town clerk in the town of Charlestown, and immediately thereafter shall be deposited with the Secretary of State; *provided however*, that the right to use and occupy, for purposes of religious worship, the Indian Meeting House and the lot of land, containing about two acres, upon which the same now stands, together with a suitable right of way, to be laid out, bounded and defined by said commissioners, leading to and from said lot of land and the nearest highway, is hereby granted to the Religious Society now occupying said Meeting House, during such time as they shall use the same for the purposes of religious worship.

SEC. 3. Said commissioners shall have full power and authority to hear and determine all questions which may arise in reference to said lands, rights and claims, quit-claimed to the State as provided in Section 2 of this act, and to all rights, titles, interests and claims, of every kind and nature and on the part of all persons whomsoever, in, to or concerning the same; and shall also have full power and authority to ascertain and determine what persons, members of said Narragansett Tribe of Indians, are entitled to receive portions of said purchase money to be paid by the State, and to equitably apportion said purchase money amongst those so entitled to the same; they first appointing a time and place for hearing all persons interested therein, and giving at least thirty days previous notice of the time and place by them appointed to the council of said tribe, to the town council of the town of Charlestown, and by publishing notice thereof a like time previous thereto in at least two newspapers published in the county of Washington, and two newspapers published in the City of Providence, and one newspaper published in the City of Newport, and by posting notice thereof for a like time previous thereto upon the door or other conspicuous part of the meeting house of said tribe in the town of Charlestown; and at the time and place so appointed and notified by them, said commissioners shall hear all persons interested who shall appear and desire to be heard; and may adjourn said hearing from time to time, and to such place or places as they may deem expedient; and may issue summons to witnesses, and compel witnesses to appear before them and testify; and may severally administer oaths; and shall have full power and authority to do and perform all acts and things requisite for the ample performance of their duties under the provisions of this act.

SEC. 4. Said commissioners, after hearing said parties, shall determine the extent and boundaries of all said lands quit-claimed to the State, as provided in Section 2 of this act, and all questions of right, title, interest and property, of every kind and nature, in, to or concerning the same; and shall cause the same to be surveyed and platted in such manner as to definitely fix the location, extent and boundaries of said lands; and shall make a list of the names of all persons, members of said Narragansett Tribe of Indians, who shall be entitled to receive portions of said purchase money to be paid by the State, together with the amount which they may determine shall be paid to said persons respectively; and shall make report of all said matters and of their said determination, including said list, and file the same, together with said plat, in the office of the clerk of the Supreme Court within and for the county of Washington. The clerk of said Court shall give notice of the filing of said report and plat, in at least two newspapers published in the county of Washington and two newspapers published in the city of Providence and one newspaper published in the city of Newport, to all persons interested therein, to appear at the next term of said court, to be holden within said county next after three weeks from the publication of said notice, and show cause, if any they have, why said court shall not confirm and establish said report.

SEC. 5. The said Supreme Court shall, at the term named in said notice, examine the said report and plat, and shall hear all persons interested therein; and may re-commit the same to said commissioners with such instructions as may be requisite; and may amend the same as law or equity shall require; or may confirm and establish the same; and, in case of such re-commitment by said court, said commissioners shall proceed pursuant to the instructions of said court, and as soon as may be after the completion of their duties thereunder, return said report and plat to said court amended or otherwise pursuant to said instructions; and said court may thereafter, in like manner and with like effect, re-commit and amend, or confirm and establish the same; and may at all times, after the same shall have been first filed in the office of the clerk of said court and until the same shall have been finally confirmed and established, in any county, and either in term time or vacation, pass any order in or concerning the same to carry into effect the purpose and intent of this act; and when said court shall be satisfied that all the foregoing provisions of this act and of law, requisite for the proper carrying out of the provisions hereof, have been complied with, said court shall pass an order confirming and establishing such report and plat by them approved, and ordering the same to be recorded in the office of the town clerk in the town of Charlestown; and thereafterwards said report and plat shall be conclusive evidence of the rights, interest and title of the State, and of the persons named therein, in and to the lands and portions of said purchase money, therein described and assigned to them respectively by said report, at the time said report and plat shall have been confirmed and established by said Supreme Court; and thereupon said commissioners shall draw their orders upon the General Treasurer in favor of said persons, respectively, for the amounts of money to them assigned by said report; and the General Treasurer shall pay the same amounts to said persons respectively, upon presentation to him of such orders.

SEC. 6. As soon as reasonably may be after said report and plat shall have been recorded in the office of the town clerk of the town of Charlestown, pursuant to the order of the Supreme Court, said commissioners shall, after first giving notice of the same and of the time and place thereof, at least thirty days prior to the time thereof, by advertisement in at least two newspapers published in the county of Washington, two newspapers published in the city of Providence, and one newspaper published in the city of Newport, for and in behalf of the State, make sale of all said lands so assigned to the State, as provided in this act, at public auction, to the highest bidder therefor; and for the purpose of such sale may divide said lands into such number of lots or parcels and in such manner as they shall deem likely to facilitate the advantageous sale thereof, and make sale of the same accordingly; and said commissioners may, in their discretion, adjourn said sale from time to time, giving

public verbal notice at the place where such sale had been last previously notified to be had, of the time and place to which the same is adjourned. The purchase money for all such sales shall be received by said commissioners, who shall give their receipt therefor to the purchaser or purchasers, and shall forthwith duly account for the same to the State Auditor and pay over the same to the General Treasurer. Upon and after the receipt of any such purchase money, the General Treasurer for and in behalf of the State, shall execute and deliver to the purchaser an absolute conveyance in fee of the lot or parcels of land by him purchased at said sale—the form of the deed being such as may be approved by the Attorney-General.

SEC. 7. During the execution of the duties imposed upon them under the provisions of this act, said Board of Commissioners shall annually make report of their doings hereunder to the General Assembly, at its January Session; and upon their completion of said duties shall make final report thereof to the General Assembly.

SEC. 8. Immediately upon and after the confirmation and establishment of said report and plat of said commissioners by the Supreme Court, the tribal authority of said Narragansett Indians shall cease; and all persons who may be members of said tribe shall cease to be members thereof, and shall thereupon and thereafter be entitled to all the rights and privileges, and be subject to all the duties and liabilities to which they would have been entitled or subject had they never been members of said tribe; *provided, however*, that all members of said tribe who shall at that time be paupers, and all members of said tribe who shall thereafter, and before gaining settlement in any town, become paupers, shall be held and considered State paupers to all intents and purposes; and *provided also*, that settlement of any member of said tribe in any town, prior to the confirmation and establishment of said report and plat, shall in no event be construed as a part of the time for gaining such settlement in such town.

SEC. 9. No action shall be brought against the said Indian tribe, or any member thereof now resident in the town of Charlestown, for the recovery of any debt contracted or incurred prior to the passage of this act; but the court or justice before whom such action shall be brought, or may be pending, shall, in any stage thereof, dismiss the same with double costs against the plaintiff; and any one of the Narragansett Tribe of Indians committed to jail for debt contracted or incurred prior to the passage of this act, upon mesne process or execution, shall be considered as a poor prisoner, within the true intent and meaning of Chapter 215, of the General Statutes, notwithstanding such prisoner may have estate, real or personal, in common with the said tribe; and shall be entitled to and may receive all the benefits and advantages of said Chapter 215 of the General Statutes.

SEC. 10. Sections 23, 24 and 25 of Chapter 66, Chapters 156, 157, 158 and 159, Section 9 of Chapter 193, and Section 31 of Chapter 215, of the General Statutes, and Chapter 281 of the Public Laws, and all other acts and parts of acts inconsistent herewith, are hereby repealed.

SEC. 11. This act shall take effect immediately upon and after its passage.

EXHIBIT K

Refer in reply to the following:
Land
17080-1901

Department of the Interior
OFFICE OF INDIAN AFFAIRS.
WASHINGTON. April 4, 1901.

James N. Arnold, Esq.,
Box No. 114,
Providence, R. I.

Sir:-

I am in receipt of your letter dated March 30, 1901, wherein you request to be informed if Mr. F. M. Morrison, acting as attorney for the Narragansett "tribe" of Indians, in their claim against the State of Rhode Island, has entered their case in this office and if so, whether it has been disposed of.

In reply you are advised that Mr. Morrison never formally presented such claim to this office. The affairs of the Narragansett Indians are not under federal control and this office would have no jurisdiction of any claim they might have against said State.

Very respectfully,

Assistant Commissioner.

E.B.F.
C

EXHIBIT L

L - C
31295-27
13494-27

Hackley
Eyn

Mr. Daniel Sekater,
196 High Street,
Westerly, Rhode Island.

JUN 29 1927

My dear Mr. Sekater:

Receipt is acknowledged of your letter of June 22, 1927, inwwhich you request information as to what is to be done in regard to the Narragansett Indians.

The Narragansett Indians have never been under the jurisdiction ofthe Federal Government and Congress has never provided any authority for the various departments to exercise the jurisdiction which is necessary to manage their affairs. They are under the jurisdiction of different States of New England.

There is therefore no possible way in which this Office can furnish the Narragansett tribe with any assistance,and all matters in regard to your affairs should be taken up with the proper State officials.

Very truly yours,

(Signed) E.B. Meritt

6-27 jmb

Assistant Commissioner.

FILED JUN 29 1927

JOHN M. O'CONNELL
2d Dist. Rhode Island

Home Address
[redacted]
Wakefield, R.I.

JAMES M. McGARRY
SECRETARY

EXHIBIT M

Congress of the United States
House of Representatives
Washington, D.C.

Bureau of Indian Affairs
Department of the Interior
Washington, D.C.

Gentlemen:

Will you kindly inform me what is being done with respect to the claim of the Narragansett Tribe of Indians, and what has been or is going to be alloted to the Narragansett Tribe out of the funds made available at the last session of Congress.

Sincerely yours,

John M O'Connell

January 9,1935.

L - C
1517-35
GHP

Hon. John L. O'Connell,

JAN 25 1935

House of Representatives.

My dear Mr. O'Connell:

The receipt is acknowledged of your letter of January 9, asking what is being done with respect to the claim of the Narragansett Tribe of Indians, and what has been or is going to be allotted to this tribe out of funds made available at the last session of Congress.

The Narragansett Tribe has had no treaty relations with the United States, and this Office is not aware of any claim pending on behalf of these Indians against the United States. There are no lands or funds held in trust for them by the United States.

With respect to funds made available at the last session of Congress, it is assumed that you have reference to appropriations authorized by the Indian Reorganization Act approved June 18, 1934 (48 Stat. L., 984). This act merely authorized appropriations to be made and thus far no appropriations have been made thereunder; hence, no funds have been allotted to any tribes.

Section 19 defines the terms "Indian" and "Tribe" as used in the act. It is not believed that the Narragansett Indians come under the definition of "Tribe", so in order for them to be entitled to any benefits under the act they must qualify as individuals under the term "Indian". This term is defined as follows:

(a) All persons of Indian descent who are members of a recognized tribe, whether or not residing on an Indian reservation and regardless of the degree of Indian blood.

(b) All persons who are descendants of any such members of recognized Indian tribes and were residing within an Indian reservation on June 1, 1934, regardless of degree of blood.

(c) Persons of one-half or more Indian blood, whether or not affiliated with any recognized tribe, and whether or not they have ever resided on an Indian reservation.

INITIALING COPY-FOR FILE

As the Narragansett Tribe is not a recognized Indian tribe now under Federal jurisdiction, the members do not come within the first or second subdivisions as listed above. Those who are of one-half or more Indian blood, however, come within the third subdivision. It is believed that eventually it will be necessary to prepare a census of these Indians for the purpose of ascertaining the individuals who are of one-half or more Indian blood.

Sincerely yours,

(Signed) John Collier

Commissioner

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Narragansett
Supt

MAY -5 1927

Mr. John Koka,

Shannock, Rhode Island.

Dear Sir:

Receipt is acknowledged of your letter of April 25, 1927, in which you request the Federal Government to take charge of the affairs of the Narragansett Indians.

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

There is, therefore, no possible way in which this Office can furnish you with any assistance, and all communications in regard to your affairs should be taken up with the proper state officials.

Very truly yours,

(Signed) E. B. Merritt

Assistant Commissioner.

5-LL-3

Initialing Copy - For File

-C
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F C T

Mr. Daniel Sekater,
35 Pierce Street,
Westerly, R. I.

JAN 11 1930

Dear Sir:

Receipt is acknowledged of your letter of January 2, 1930, concerning the claim of the Narragansett Tribe of Indians.

Under date of June 29, 1927, you were advised that the Narragansett Indians have never been under the jurisdiction of the Federal Government and Congress has never provided any authority for the various Departments to exercise the jurisdiction which is necessary to manage their affairs. They are under the jurisdiction of the different states of New England.

You were further advised that there is no possible way in which this Office could furnish the Narragansett Tribe with any assistance and that all matters in regard to their affairs should be taken up with the proper state officials.

There has been no change in the situation since the letter was written, and there is nothing this Office can do for the Narragansett Tribe or of any individual member thereof.

Sincerely yours,

C. J. Rhoads

1-MS-8

Commissioner.

FILED BY [illegible]

Initialing Copy-for File 9

L - C
14576-37
F G T

Hackley
Fowler

Hon. John M. O'Connell

House of Representatives

MAR 18 1937

My dear Mr. O'Connell:

Receipt is acknowledged of your letter of March 8, with reference to settlement of the purported claim of the Narragansett Tribe of Indians of Rhode Island.

We have had correspondence directly with Mr. Daniel Sekater relative to this matter. Under date of June 29, 1927, Mr. Sekater was advised that the Narragansett Indians have never been under the jurisdiction of the Federal Government and Congress has never provided any authority for the various Departments of the Government to exercise the jurisdiction which is necessary to manage their affairs. He was further advised that there was no possible way in which this Office could furnish the Narragansett Tribe with any assistance.

The situation has not changed since the above mentioned letter was written.

The Narragansett Indians dealt with the Crown of Great Britain through the Colonial Government and their affairs were practically disposed of at the time of the Revolutionary War and before the organization of the Federal Government under the Constitution of the United States. These Indians could, therefore, have no claim against the Federal Government. If they have a claim for two million dollars it would be against the State of Rhode Island and not the United States of America.

Sincerely yours,

(Signed) William Zimmerman, Jr.

Acting Commissioner

3-11-jmb

MAILING COPY-FOR FILE

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Hazeltine

SEP 23 1930

Mrs. Addie Moynihan,
21 Orchard Street,
Worcester, Massachusetts.

My dear Mrs. Moynihan:

Receipt is acknowledged of your letter of September 10, 1930, requesting information as to whether or not the claims of the Narragansett, Brothertown or Montauks Indians were ever settled by the United States.

We have no knowledge of any claims the Indians referred to have against the United States. The Narragansett and Brothertown Indians are New England Indians, over which the United States have never assumed any control, and we have had but little control over the Montauks. It may be said further that we are not in a position to assert any jurisdiction over the Indians of New England for the reason that they have never entered into treaty relations with the Federal Government.

Sincerely yours,

Commissioner.

9-cd-30

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EXHIBIT N

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

June 28, 1978

The Honorable James Abourezk
Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for our views on S. 3153, a bill "To settle Indian land claims within the State of Rhode Island and Providence Plantations, and for other purposes." While we support most of the aims of that bill, we recommend enactment of the enclosed Administration substitute draft bill in lieu of S. 3153.

S. 3153 is intended to resolve once and for all the claims being asserted by the Narragansett Indians to lands in the Town of Charlestown on the ground that past transfers of those lands may have been made in violation of the Indian Nonintercourse Act. The bills are drawn against the background of an agreement reached among all parties to the Indian claim litigation on February 28, 1978.

S. 3153 would provide for the extinguishment of all land claims of the Narragansett Indians in the State of Rhode Island. In return for their claims, the Narragansetts would receive approximately 1,000 acres of land from the State and 3.5 million dollars from the Federal government with which to purchase an additional 900 acres. These lands would be purchased and administered by a State corporation set up under the laws of Rhode Island and controlled by the Narragansett Indians.

The Administration supports and encourages just and amicable settlements of credible Indian claims and under certain circumstances is willing to make contributions toward such settlements. Although there is no liability on the part of the Federal government involved in cases such as that brought by the Narragansett Indians in Rhode Island, we realize that

the mere pendency of Indian claims has sometimes resulted in economic stagnation in the locales where they are asserted, and we believe that it is proper for the Administration in some instances to aid the States in settling those claims.

We are, however, unwilling to have the Federal government assume the entire burden of resolution of these Indian claims. We have insisted, for example, on State contributions to the settlement of legitimate Nonintercourse Act claims, since we see the State as bearing part of the responsibility for the problems arising from a failure to comply with the Nonintercourse Act. In the case of Rhode Island, we have determined that the State's offer of public land -- land which will comprise over half of the total acreage in the settlement package -- is a valuable and significant contribution to resolution of the dispute caused by the Indian claims. For that reason we support a Federal contribution of 3.5 million dollars to be used in purchasing the balance of the land contemplated by the settlement agreement.

S. 3153, however, presents some concerns which our substitute draft bill attempts to resolve. Many of those are minor technical changes apparent on the face of the draft. The major differences we would like to discuss herein.

It is the intention of the Administration and the parties to effect an approval of the conveyances in question as of the date of transfer, to extinguish Indian titles as of the date of transfer, and to extinguish all trespass, ejectment, or other claims based on Indian title or transfers that may have been subject to the Nonintercourse Act. To clarify this matter, the Administration believes strongly that the language of the bill itself should provide for both extinguishment and ratification as of the time that the original transfers occurred. This is an important point, since with the extinguishment language we need to provide as much assurance as possible to the United States that the bill -- or any future bill modeled on this one -- will not form the basis for a claim of a taking as of the date of enactment. Should there be any basis for such a claim, the potential liability of the United States might be measured by the present fair market value of the claims which have been eliminated -- in this case an amount substantially in excess of the settlement which has been agreed to.

Because the language of S. 3153 is not as clear as it might be on this important point, Section 6 of our substitute draft bill provides for both extinguishment and ratification as of the date of the original transfers. We would like to emphasize that our use of the ratification approach in no way implies any moral judgment about the propriety of the original transfers of Indian lands. We have simply determined, following analysis by attorneys from both the Departments of the Interior and Justice, that the approach we have adopted is one which at once effectively clears all titles and minimizes the danger of exposing the Federal government to additional financial liability. For similar reasons, we have included a new Section 6(c) whose purpose is to eliminate any possible trespass or related claims. While it might ordinarily be assumed that extinguishment and ratification as of the date of the original transfers would necessarily preclude assertion of trespass claims, recent court decisions involving the Alaska Native Claims Settlement Act suggest that it is important for Congress to use the most explicit language possible when it deals with Indian claims.

We have certain other changes to offer. Rather than providing, as in Section 6(a) of S. 3153, that the Federal funds be paid to the Governor of Rhode Island for the purchase of options until the State corporation is created, we have provided in Section 5 of our proposed substitute that the Secretary would assume that responsibility and also the responsibility for acquiring the lands after the State corporation is formed. Acquisition would be made in full consultation with the Governor and the State corporation. Upon completion of the purchases, the excess funds would remain in the United States Treasury and the lands would be transferred to the State corporation. This would avoid the complexities of transferring funds to the State or the corporation.

S. 3153 is also vague with respect to the Secretary's later role. For example, in Section 9 the Secretary is given the responsibility, along with the Governor, of approving later conveyances of State corporation lands, but no standards are provided for that approval authority. Section 7 of our proposed substitute sets forth findings that the Secretary would have to make before the claims of the Narragansetts would be extinguished and the original transfers ratified. Among those are findings that the State of Rhode Island has enacted legislation establishing the State-chartered corporation contemplated by the Act and authorizing the conveyance of the lands which it has agreed to contribute to the settlement.

Once the Secretary has purchased the option agreements, made the above-mentioned findings, published notice of those findings in the Federal Register, and assigned the properties purchased to the State corporation, under Section 8(d) of our draft bill the Secretary would have no further duties or liabilities with respect to the State corporation or the settlement lands. We feel the Secretary should have no further responsibilities in this regard because the State corporation will not be an "Indian tribe" to whom the Secretary will owe any trust responsibility.

We have also deleted the condition provided for in Section 8(c) of S. 3153 that the Secretary must, within sixty days of enactment, determine that the plaintiff in the lawsuits has a credible claim -- and that a Federal contribution toward the settlement will be made contingent upon an affirmative finding by the Secretary. The Administration originally proposed this condition, but we have now had an opportunity to examine the merits of the Narragansett claim, and we have determined that the claim is sufficiently plausible to justify the United States' contribution to settlement. Deletion of the provision for an administrative determination of the credibility of the claim greatly simplifies the legislation, and we expect that no one would be opposed to it.

In addition, deletion of the credible claim determination expedites the settlement process following enactment. After the Rhode Island legislature has provided (1) for the creation of the State corporation authorized to act for the benefit of the Narragansett Indians, and (2) for the State's contribution to the settlement, the purchases of the private settlement lands could proceed.

We have also deleted reference to the condition in Section 8(b) that purchase of the private settlement lands be contingent upon acceptance of a land use plan by the Charlestown Town Council. Reference to the land use plan could create uncertainty, and we believe this is essentially a matter between the Indian and State corporations and the State.

We are unalterably opposed to the authorization of any expenditure for the payment of attorney and consultant fees to the private defendants for the cost of defending the Indian claim lawsuits. Such an expenditure sets a dangerous precedent. We do not want to give anyone the impression that the Federal government is always ready to come to the rescue to pay for the costs of defense of an Indian claim.

Our substitute bill also provides mechanisms for the timely resolution of all Indian claims within the State of Rhode Island which might be asserted by any Indians other than the Narragansetts. First, the bill provides that any such claims within the town of Charlestown will be extinguished simultaneously with the extinguishment of the Narragansetts' claims. In substitution for those claims, we propose a provision similar to that contained in Section 4(d)(2) of S. 3153, whereby such claims could only be asserted against the State corporation or the Indian corporation. The principal change we have made is to limit the remedy to land or damages not in excess of that conferred on the Narragansett Indians by this legislation.

With respect to Indian claims anywhere else within the State of Rhode Island, Section 15 provides that filing must occur within 180 days of the date of enactment. Any claims which have not been filed within that time will then be extinguished in the same manner as the Narragansett claims.

This Administration supports equitable resolution of legitimate Indian claims. Our substitute bill is fair, and it also protects valid interests of the United States. We urge the Committee to adopt our substitute.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

SOLICITOR

Mr. PERKINS. The Maine case is even stronger in this regard, because it is the Federal Government which prosecutes these claims, and which has an action pending in the Federal district court on behalf of each tribe, and which, by the Attorney General of the United States, has indicated its intention to amend those suits to add landowners as defendants if the Congress indicates these suits should go forward.

In addition, we have these landowners coming forward at the urgent request of then Governor Longley to avoid the crisis for the State of Maine, as to finance, the tying up of private and public lands, and avoidance of conflict between Indians and non-Indians, all of which are legitimate government purposes and responsibilities.

When a private landowner agrees to sell under such circumstances, the government which he has aided should not levy a tax upon him, that is, take away 28 cents of every dollar of the sales proceeds and thus reduce his capacity to replace his land. The old tax basis carries forward and if he ultimately sells that forest land, he will pay the tax. On the other hand, if the owner does not reinvest in like property in 3 years, he pays the tax.

There is no revenue loss in this situation, because tax is avoided only if the owner replaces his land. It is fair to assume that an owner who replaces his land would not otherwise have sold. In addition, these sales will only occur if the Congress authorizes them to meet this Federal responsibility.

The tribes contend that their negotiations with the White House work group produced a commitment from this administration that they receive 300,000 acres of average quality Maine forest land. The landowners were not a party to those negotiations. Therefore, we cannot pass any judgment upon them.

However, once it is determined that the tribes are to receive 300,000 acres of average quality Maine forest land, then the implementation is a question for forest land appriasers to determine what is average quality forest land, and what is fair market value.

I am not a forest land appraiser. I have carried prices back and forth between individual landowners and Attorney Tureen. Mr. Tureen has been assisted in his efforts by the James W. Sewall Co., which is generally recognized as one ot the most competent appraisal firms in the State. My perception is that they have negotiated hard and capably.

Options have already been executed on the majority of the acreage, and I have letters indicating the state of progress on the remaining acreage. Most of these options run through June 30, 1981. In three instances, they run through the end ot 1980. Thus, prompt action is necessary it these options are to solve the problem. If advantage is not taken of these options, I would predict that in light of current trends, land prices negotiated in the future would run substantially higher.

At the same time, let me assure you that the landowners will exercise their best efforts to work with you in resolving these problems.

We support the Main delegation and the Congress in its efforts to achieve a proper settlement of these claims instead of years of devisive and burdensome litigation.

I will be happy to respond to your further questions.

Senator COHEN. Mr. Perkins, do you plan on being at the hearing tomorrow?

Mr. PERKINS. Yes, I do, Senator.

Senator COHEN. I have a few questions but I have to defer them. There is business on the floor right now. I have a few questions I would like to address to you. If you are going to be here in the morning, I would start with you.

I would like, in the meantime, for you to submit for the record a map of the State of Maine designating the areas that are now under consideration for sale. It does not have to be here for tommorrow, but it should become a part of the record as far as what areas are being contemplated for sale and what range of parcels are being considered for purchase. It is certainly going to be an area of consideration by our colleagues.

If you could do that prior to the 30-day expiration when the record will be closed, I will appreciate it.

Mr. PERKINS. Yes, I will consult with the attorney general who made such a map for the State legislature's consideration, and with Mr. Tureen, and we will try to give you whatever you want.

Senator COHEN. Without objection, the record will remain open at this point for the purpose of inserting the additional material requested of Mr. Perkins.

[The material follows:]

PIERCE, ATWOOD, SCRIBNER, ALLEN, SMITH & LANCASTER,
Portland, Maine, July 29, 1980.

TIMOTHY WOODCOCK.

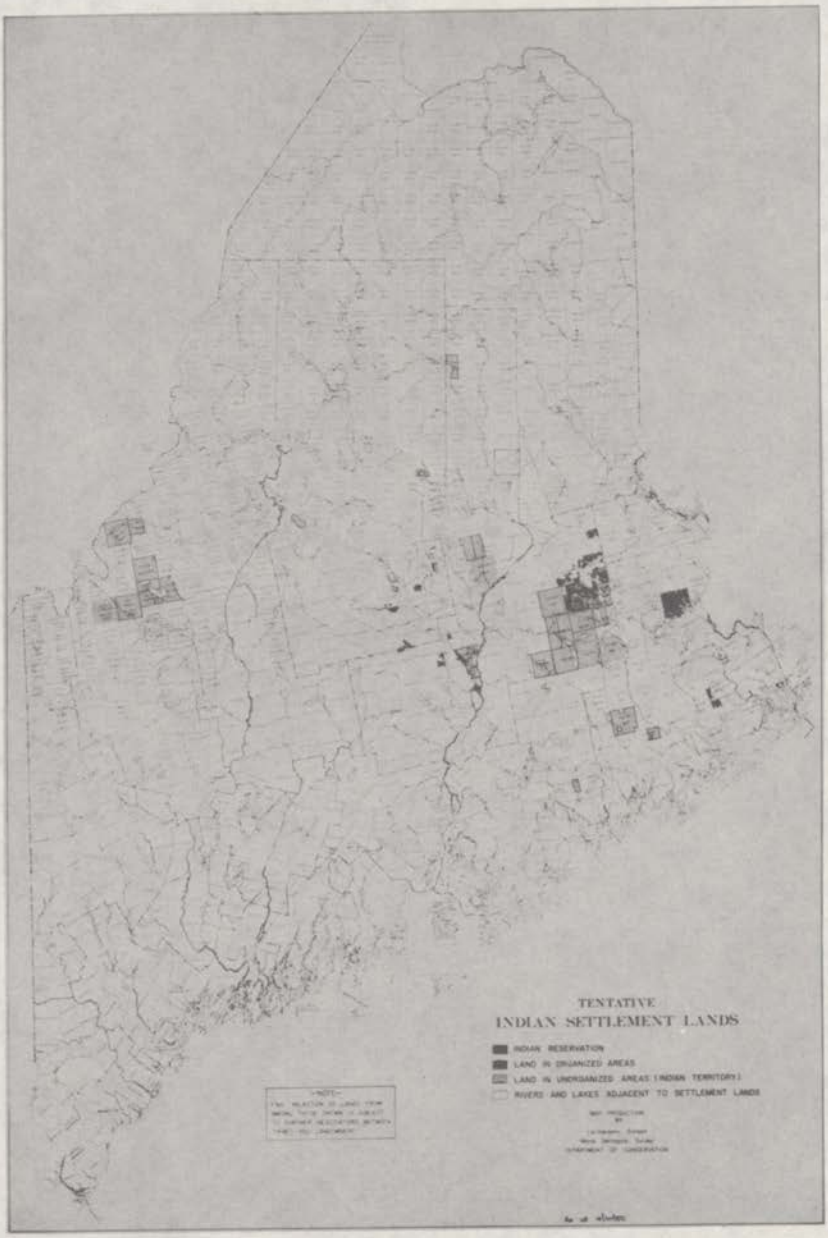
In care of Hon. William S. Cohen,
Dirksen Senate Office Building, Washington, D.C.

DEAR TIM: I enclose for incorportion in the Record of the July 1-2, 1980 public hearing of the Select Senate Committee on Indian Affairs, as requested by Senator Cohen, the map, prepared by the Maine Attorney General's Office for the Maine Legislature, at the time the Maine Indian Claims Legislation was before the Maine Legislature for consideration, reflecting the Tentative Indian Settlement Lands.

I would further report that the four township block in western Maine, consisting of Jim Pond, King and Bartlett, T05 R06 and T03 R05, owned by Raymidga Co., a subsidiary of ITT, have reportedly been sold to another party who substantially outbid the Tribes' offer of $181 per acre. Assuming that information to be correct, those townships will not end up in the Indian Settlement.

Very truly yours,

DONALD W. PERKINS.



Senator COHEN. This hearing will stand in recess until tomorrow at 10 o'clock in room 318 of the Russell Senate Office Building.

[Whereupon, at 1:40 p.m., the hearing was adjourned to reconvene at 10 a.m., Wednesday, July 2, 1980.]

PROPOSED SETTLEMENT OF MAINE INDIAN LAND CLAIMS

TUESDAY, JULY 2, 1980

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

The committee met, pursuant to recess, at 10:20 a.m., in room 318 Russell Senate Office Building, Senator William S. Cohen (acting chairman of the committee) presiding.

Present: Senators Melcher, Cohen, and Mitchell.

Staff present: Max Richtman, staff director; Peter Taylor, special counsel; Virginia Boylan, staff attorney; Tim Woodcock, minority staff attorney; and Jean Streeter, professional staff member.

Senator COHEN. The Select Committee on Indian Affairs will now reconvene its hearing on the claim of the Penobscot and Passamaquoddy Tribes against the State of Maine.

Yesterday afternoon, we concluded the hearing with testimony from Don Perkins. At that time, I requested Mr. Perkins to appear this morning for purposes of asking him questions.

Mr. Perkins, would you kindly reassume the witness table?

I would apologize to those of you who have been waiting so patiently in the audience today. Senator Mitchell and I, and the other Members of the Senate, were in session until 2 o'clock this morning, so it made for a very short evening for us.

Mr. Perkins, yesterday we touched upon the issue of section 1033 tax treatment contained in this particular package. You indicated that it was essential to the Dead River Co.'s participation in this agreement. Would you tell the committee exactly why this is so?

Mr. PERKINS. Yes, Mr. Chairman.

Without the section 1033 treatment, a landowner who sells is left with approximately 72 cents on the dollar to replace his land if that is his wish.

The concept from the beginning here was that land would be sold at fair market value, and the effect of section 1033 tax treatment is simply to defer the capital gains tax of the party who reinvests within 3 years, until the point at which he ultimately gets rid of his land. It is the provision which applies in the case of Government condemnations and threats of condemnation—very similar to this situation.

As I made the point yesterday, I have to take issue with the administration contention that there is a $15 million revenue loss here. That figure is apparently calculated by taking 28 percent of the $54.5 million. I made the point that the only landowner here who gets his tax deferred is the one who reinvests in like property within 3 years. I think it is fair to assume that the landowner who does that would not otherwise have sold. Therefore, I say there is no tax loss.

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I again repeat myself to say that that is an express condition of the options that have been granted. We were convinced from the outset that it was fair treatment. We advised counsel to the President, Robert Lipshultz, to that effect at an early stage in these negotiations. We copied the members of the delegation. We discussed this with then-Solicitor Krulitz of the Interior Department, and no one has objected to that approach.

Senator COHEN. According to reports, the Dead River Co. has no intention of reinvesting the proceeds from this sale into a similar like business. Is that correct?

Mr. PERKINS. I do not know what their reinvestment plan is. I doubt very much that they have one yet in any definitive detail because, of course, no one knows whether this legislation will be enacted or when. I think it is fair to say, however, as my testimony indicated yesterday, that I understand a substantial reason for their sale at this time was the effect of inflation on return from such timber land and competing opportunities. It would not follow from that that they would turn around and put a large portion of those proceeds into like property, at least in name.

Senator COHEN. What is the impact of this particular provision if there is a sale between a willing seller and willing buyer in this case? The proceeds are not taxed under section 1033 for a period of 3 years?

Mr. PERKINS. What happens is that you note on your tax return an election to take that treatment. If you reinvest in like property within the 3 years, there is no tax at this time. Your old basis carries forward. When and if you sell, you pay your tax. That is the situation.

Senator COHEN. In essence, what I am saying is, do you not defer for 3 years the capital gains tax during that 3-year period?

Mr. PERKINS. No; substantially but not technically. If you do not reinvest within the 3 years, you go back and amend your return in year one and pay the tax on that basis.

Senator COHEN. But, in effect, it is deferred for a 3-year period?

Mr. PERKINS. No; I think you have to pay the tax as of year one, but you have the 3 years in which to exercise one option or the other.

Senator COHEN. There has been some question raised about persons who hold leases—that some of the landowners involved have allowed the individuals who currently hold the leases to purchase them. To your knowledge, has that been done in all cases?

Mr. PERKINS. It has not yet been done in all cases because it has not yet been finally resolved what will be the composition of the land package.

As you will recall, the State legislation authorizes some 440,000 acres to be within the Indian jurisdiction, of which, presumaably, 300,000 acres will ultimately be designated.

Great Northern and Dead River have both indicated policies in which they either reserved the leasehold properties out and continued their lessor relationship or offered an alternative of purchase. Other companies have indicated similar programs, though not yet finalized because they do not know whether their land is going to be in yet.

This matter was discussed very thoroughly before the State legislative committee. There was concern about it, and I believe we answered that concern satisfactorily.

Senator COHEN. I assume that out of the total amount of land that the landowners have agreed to make available for the selection of these 300,000 acres that final determination will not be made until such time as Congress approves a specific amount of money. Is that correct?

In other words, you have 400,000-some-odd acres of land which potentially could be used for selection of the 300,000 acres. Is that correct?

Mr. PERKINS. That is correct.

Senator COHEN. Would not the amount of money that Congress will decide to make available be a determining factor in which parcels the tribes ultimately select—depending upon how much money is available? Is that a factor, or not?

Mr. PERKINS. Yes, I guess that is true. That question may best be addressed to Attorney Tureen and the tribal negotiating committee because, obviously, they have some selection amongst these options. On the other hand, all 440,000 acres is not definitely available. They are still negotiating for part of that land.

Senator COHEN. For example, some Members might raise a question as we look over the map of the individual parcels. We might say, for example, that there is an island in the middle of Moose Head Lake, and why was that particular parcel selected either for sale or for purchase by the tribes? What is the relative value of that particular piece of land? Is that something that Members of Congress are going to give their approval to purchase?

There may be questions raised about the selection of the parcels themselves and their comparative value. And if, in fact, Congress should decide not to provide the $81.5 million, or something less, it seems to me that would have an impact on which parcels would be selected.

Mr. PERKINS. That is certainly correct. These lands are offered at fair market value. Whatever the money is, it goes just that far.

Senator COHEN. Mr. Perkins, if the present settlement were to fail and the case were to go to court, and the Federal Government and the tribes were to select out only the large landowners, what would you recommend to your clients?

Mr. PERKINS. I would recommend that we defend the case vigorously.

Senator COHEN. But, in addition to that, would you be cross-claiming other parties into the suit?

Mr. PERKINS. Yes. Of course, that approach was suggested at one point, and we prepared to defend on that basis and did a great deal of investigation of what that involved. The fact is that a substantial portion of the land that the major landowners hold came over on warranty deeds. There would be involvement of the State of Massachusetts; there would be involvement of the State of Maine; there would be issues about the Federal responsibility. It does not work out to be the simple selecting of a few companies, as has at times been suggested.

Senator COHEN. What about the small, individual homeowners? Even though tribes—and I have no way of knowing this—but they might not be interested if this negotiated settlement were to either

be rejected by Congress or modified in such a way that it was not acceptable to all the parties. A suit was filed and, let us assume hypothetically, only filed against some of the large landowners in isolated areas of Maine or the forested parts of Maine, not the settled portions. In that case would you feel compelled to recommend to your clients that they then cross-claim in the hundreds of thousands of acres of privately owned land of small homeowners?

Mr. PERKINS. In the instance of the small homeowner who does not have a relationship to our holdings by warranty deed or otherwise, I do not believe we would be cross-claiming against them. But if somebody has given us a warranty deed or somebody has given a contractual obligation to us as to title, we would have an obligation to stockholders to protect our rights to pull in all the central parties, as in any title dispute.

Senator COHEN. In a letter to the Secretary of the Interior dated April 21, 1980, Mr. Leonard Pierce, who works for the James Sewall Co., said that the land was held in common and undivided in its ownership. In other words, it was held by several different entities in fractions. I think you have alluded to this yourself in your remarks and have somehow indicated that this lessens the value of the land itself because it is held in common and undivided ownership, as opposed to being held by a single entity. Could you explain that?

Mr. PERKINS. Common and undivided ownership is a unique type of land ownership, at least in the exact form that exists in Maine. The history of it is, in large measure, family holdings that have come down through, by inheritance or by will. So you have this common and undivided ownership, which is a lot like a tenancy in common. It is a lot like the situation where five children inherit the family farm and you have this common ownership. As a result, claims against that land affect a lot of people that you would not normally think of who are heirs or beneficiaries of trust. They may spread around the country, but they come from these families.

There are procedures for petitioning off interests in these lands, but they are costly and time consuming. And, of course, while Maine has a history of these common interests being managed in a very effective way, it is obviously a consideration in value and in acquisition because you have some partners when you buy some common and undivided land.

Senator COHEN. Senator Mitchell?

Senator MITCHELL. Thank you, Mr. Chairman.

Mr. Perkins, are there specific options—written options—in existence now?

Mr. PERKINS. Yes, sir; to the extent of about half the proposed sellers or optionors. The others in the instances where tentative agreement has been reached are in the course of preparation. I will give you an example. This is one involving the Webber heirs, which is a family group. It has to be circulated among some 30 or 40 people for signature. That is going around the country now to get signed. Yes, there are some.

Senator MITCHELL. So, there are identifiable parcels of land that are now under option?

Mr. PERKINS. That is correct, but not to the extent of the full 300,000 acres yet.

Senator MITCHELL. If all of the options that are either already in existence or in the process of being executed were executed, would the total then be 300,000 acres of land, or would the options cover more than that?

Mr. PERKINS. It would be approximately 300,000 acres.

Senator MITCHELL. So, in effect, the 300,000 acres to be acquired, if this legislation is enacted, have been identified?

Mr. PERKINS. It has been identified, except that the tribal negotiating committee, understandably, continues its efforts to locate land contiguous to its reservations or near its other holdings, which would be much preferable to them than a parcel of land over in western Maine or farther away.

Senator MITCHELL. I understand that. Obviously, an option does not commit a person who is intended to be the ultimate purchaser to buy the land, and, as the name of the document suggests, it gives him the option to do so. So, am I correct in suggesting that this is a continuous process of negotiation and that you are getting options on some specific pieces of land but negotiations continue and other land may be substituted for some land now under option as the process continues?

Mr. PERKINS. That is correct, Senator.

Senator MITCHELL. Are considerations being paid for these options?

Mr. PERKINS. No, it is not, and I would like to speak to that. In the recent Rhode Island settlement, there was a payment, which I believe came from Federal funds, for the options. To my recollection, it was 5 percent, but I am not positive on that.

It became evident as we moved forward here that if we were to insist upon the same thing in the Maine situation that there would be delay, and I advised the participants not to require that but to help out in their way, and they have all done so.

Senator MITCHELL. For what period of time do the documents give the prospective purchasers the option to purchase the land?

Mr. PERKINS. The majority of them run through the end of June 1981. Three of them run through the end of this year. I spoke to this in my comments yesterday. In a period of inflation and rising stumpage prices, tying land up at a given price for an extended period involves substantial sums of money. In fact, there is at least one instance here of the first price negotiated that is 1½ years old.

The landowners have shown considerable cooperation here and a good faith effort to solve the problem in trying to maintain these options in price. My point yesterday was that it is necessary, though, that Congress and the Government move promptly to take advantage of this.

Senator MITCHELL. Of course, what frequently happens in complex land transactions is that the seller hires a very skillful attorney who, negotiating, builds into the negotiated figure the anticipation of some delay in completing the transaction. Can we assume that you—in behalf of your clients, vigorously representing them, as we all know you skillfully did—took into account that it was not likely that the options would be exercised a few days after they were signed but that, in fact, you knew there was going to be some period of delay?

Mr. PERKINS. First of all, I hope that I have vigorously represented them. Second, the prices have not been escalated in that fashion to my knowledge.

Let me tell you how the prices have been negotiated. The landowner would state what he thought the price should be, and that would be transmitted to Attorney Tureen and considered by him and his appraiser and his negotiating committee. Then there would be a process of negotiation and, typically, consultation between his appraiser and whomever the company had relied upon to see what their differences were as to stocking, values, and whatnot, and, ultimately, a negotiated price.

I am unaware that there was any accepted practice in that negotiation of putting in some kind of writeup.

Senator MITCHELL. You heard me yesterday ask Mr. Tureen the question about the criticism by some people that this was an extraordinary transaction in that the purchaser and the seller of land were negotiating while the person who is paying for the land was not present during the negotiations, which, looked at purely in the abstract, might lead one to conclude that there was no great incentive on the part of the purchaser to bargain very hard, particularly when the person paying the bill is Uncle Sam.

My question to you is: What assurance can you give to the people of Maine; can Senator Cohen and I give to the Members of Congress and to the people of this Nation, that, in fact, these values represent fair and reasonable values and were not inflated because the person paying the bill was not present during the negotiations?

Mr. PERKINS. I heard yesterday Attorney Tureen's answer to your question that they knew full well that these transactions would have full and thorough scrutiny by the Interior Department and by this committee and by the Congress and that he and the tribal negotiating committee and the professional appraiser who was retained to consult with them in that regard had done a thorough job and proceed on that basis.

I can only tell you—being on the other side from the negotiations—that I find that a wholly credible statement.

Senator MITCHELL. So, you are satisfied. Obviously, you are in an unusual position, representing the sellers. But taking that position into account, you are satisfied that the values here are fair and reasonable values and this is not a "giveaway" as has been suggested by by some critics of this proposal?

Mr. PERKINS. I have seen nothing to suggest that. I am not a land appraiser, and I have not tried to appraise this land. I participated in the process of negotiation on behalf of the sellers.

Senator MITCHELL. But you hired appraisers; did you not?

Mr. PERKINS. No; I think you are talking about the Sewall Co. They are hired either by the tribes or the Interior Department; I do not know who is paying the bill.

Senator MITCHELL. Did you not, representing the sellers, have an appraisal made?

Mr. PERKINS. Yes. But in many instances that was in-house. At least in the case of a major landowning company, they are buying and selling land, so they can put a value on in-house. In other instances, sellers would consult with brokers or appraisers.

Senator MITCHELL. Are those appraisals made by the sellers, or either their agents, or persons working for them, or independent appraisers, available?

Mr. PERKINS. I do not know what is available in that regard, Senator, because I have not participated in their price determinations. In other words, in some instances I am sure that woods people, familiar with the market, exercised their own judgment and said, "That land out there is worth $160 an acre."

Senator MITCHELL. Was that not written down somewhere?

Mr. PERKINS. In many instances, no. Most of these proposals would have been made orally from me to Mr. Tureen—back and forth. Once a price was found mutually acceptable, there was a letter confirming that fact.

Senator MITCHELL. But you see, what we have here is the attorney for the buyers who provides us with an appraisal made by the appraiser hired by the buyers. You are the attorney for the sellers. Since the Congress is being asked to enact legislation providing for public funds to pay for this, it seems to me that we ought to be entitled to get the appraisals that were made by the sellers as well. Could you not reconstruct those reappraisals, whether oral or written, and provide them to the committee, to give us some basis for evaluating or for confirming the fair and reasonable value of the land?

Mr. PERKINS. I would be willing to investigate what can be done in that regard, but let me come to grips with your problem, Senator. Your problem, I think, is whether these are reasonable, fair market value prices.

Senator MITCHELL. That is right.

Mr. PERKINS. I understand that professional appraisal people from the Department of the Interior have been up to Maine and reviewed this appraisal process with the Sewall Co., and, as I understood the Secretary's comments yesterday, they were satisfied with what they found.

I think the way to check out these prices—and I encourage this—is a thorough look at them by professional appraisers; a process which I participated in, in my experience as a Maine lawyer, a normal negotiating process. The seller proposes to sell something for a given price; the buyer says it is too high; he consults with his appraiser; offers go back and forth; ultimately, they come to some agreement; that has been the process.

Senator MITCHELL. But in large transactions, Mr. Perkins, both sides have an appraisal made. What we have is the appraisal by one side but not the appraisal by the other. And, as you well know, I am certain, having dealt in many large transactions, appraisal of value of any item, including land in Maine, is a subjective determination. If you took seven qualified appraisers and asked them completely independently to go and appraise a parcel of land up in northern Maine, you might very well get seven different figures.

So it just strikes me that it would be very helpful to us to have the benefit of the appraisals made by the sellers. I fully expect that your appraisals are not going to coincide with the appraisals made by Mr. Pierce on behalf of the buyers, and, in some cases, one of your appraisers might have said this land is worth $120 per acre and you bargained hard and got $140 an acre. There is certainly nothing wrong with that. But it seems to me that it would be very helpful to us in assessing this question to have all relevant appraisals. The appraisals made in behalf of the sellers, by whomever made, are a relevant factor.

Mr. PERKINS. As I have answered, I will investigate the availability of such material. It is my impression, in some instances certainly, that the seller's price came from his informed judgment as a man who trades in land. So there is not an appraisal sitting around such as I would have to get if I had some land and wanted to go about selling it. But I will investigate the availability of what is there.

Senator MITCHELL. You see, this is a matter of semantics. A man who owns land and who is knowledgeable in transacting land, forms an opinion as to the value of that land. That is an appraisal by another name, and that is all I am asking for. I would be astonished if, in every instance, the seller's appraisal happened to be the sale price. That would indicate that we do not have the appraisals.

Mr. PERKINS. You are absolutely correct. Each offering of a price whether done by a man's judgment in some other way, represented an appraisal of what he should get for his land. And you are also right that the substantial difference is between asking prices and negotiated prices.

Senator MITCHELL. That is what a negotiation is all about.

Mr. PERKINS. Yes. That, in particular, would evidence that fact, and I certainly will determine what is available.

Senator COHEN. Without objection, that information will be included in the record at this point.

[In lieu of the appraisals of individual companies requested the following correspondence was received.]

PIERCE, ATWOOD, SCRIBNER, ALLEN, SMITH & LANCASTER

ONE MONUMENT SQUARE

PORTLAND, MAINE 04101

207/773-6411

FRED C. SCRIBNER, JR.
CHARLES W. ALLEN
JOTHAM D. PIERCE
SIDNEY E. TOMPKINS
WILLIAM C. SMITH
RALPH I. LANCASTER, JR.
JEREMIAH D. NEWBURY
DONALD W. PERKINS
GERALD M. AMERO
DONALD A. FOWLER, JR.
BRUCE A. COGGESHALL

S. MASON PRATT, JR.
DANIEL E. BOXER
JOTHAM D. PIERCE, JR.
WARREN E. WINSLOW, JR.
ALBERT G. AYRE
EVERETT P. INGALLS
MALCOLM L. LYONS
JAMES B. DIMPRITCH
ERNEST J. BABCOCK
JAMES G. GOOD
JOHN J. O'LEARY, JR.

JEFFREY N. WHITE
DAVID S. MAKELIN
GEORGE J. MARCUS
RICHARD E. CURRAN, JR.
LOUISE K. THOMAS
JOSEPH M. KOZAR
PHILLIP E. JOHNSON

JOHN W. GULLIVER
JOHN G. DELAHANTY
CHARLES S. EINSIEDLER, JR.
PETER H. JACOBS
DANIEL M. SNOW
JOHN S. UPTON
RICHARD P. HACKETT

LEONARD A. PIERCE
1885-1960

EDWARD W. ATWOOD
1897-1977

AUGUSTA OFFICE
77 WINTHROP STREET
AUGUSTA, MAINE 04330
207/622-6311

July 29, 1980

Timothy Woodcock, Esq.
c/o Hon. William S. Cohen
1251 Dirksen Senate Office Building
Washington, D.C. 20515

Dear Tim:

I enclose the Maine options of Dead River Company, Ebthol Realty Trust, Diamond International, Prentiss and Carlisle, and Scott Paper Company.

I also enclose letters with respect to the options from Georgia Pacific Corporation, the Pingree Heirs, the Webber interests, and the Cassidy interests. I am advised by counsel for the Pingrees and Webbers that their options will be transmitted by letter conditioned upon the Section 1033 treatment. They omitted that provision only because they understood that I was protecting their position in that regard otherwise.

The options from Great Northern Nekoosa Corporation and International Paper Company have been prepared, are awaiting signature, and should be received shortly.

I am in the process of preparing the Tackeff option.

The enclosed options are typical of the remaining options, as far as I know.

I have sent duplicates to Tim Vollman, Esq. of the Interior Department for the confidential use of that Department. This set is transmitted for the confidential use of you and the staff of the Select Senate Committee on Indian Affairs. If Senator Mitchell persists in his request that the material be made a part of the public hearing record, I will gladly comply. However, as I have indicated, I have been concerned

that publication of these prices would motivate landowners with whom Tom Tureen is still negotiating to seek higher prices. That is more a public concern than it is of my clients, but we have been very careful in the course of these negotiations to keep individual offers and negotiations confidential for that reason.

If we can assist in any other way, please advise.

Sincerely,

Donald W. Perkins

DWP:jmt
Enc.

[ENCLOSURES REFERRED TO ARE RETAINED IN COMMITTEE FILES]

Senator MITCHELL. I asked you earlier about options. Are there a large number of documents in existence, or are we talking about a relatively small number of people and therefore few documents?

Mr. PERKINS. You are talking about 11 identified parties at this point, 5 of which are paper companies and 6 of which are other types of animals, ranging from individual sellers to family interests to land-ownership companies, which do not have papermill facilities. So, I am both answering your question and making the point that, while people sometimes think of these sellers as "paper companies," it is a far more diverse group.

Senator MITCHELL. Would there be any difficulty in providing the committee, Senator Cohen, and myself with copies of the options in existence? Are you recording those publicly as you grant them?

Mr. PERKINS. No, sir. In one way or another, I would expect that could be done, but let me explain to you several aspects of that matter. I have taken great care in the course of these negotiations not to disclose, as between one landowner and another, prices of land. I have done that for antitrust considerations, from the consideration of the lawyer's duty to maintain the confidentiality of the individual client's affairs, and the basic problems of fairness in that, if sellers got together in some way, you would not have fair negotiations. I therefore think it would not be productive, even at this point, with negotiations still going on, to render those prices public, but I am prepared to have those documents inspected by some source that does not get us into that problem.

Senator MITCHELL. I think your attitude is commendable, and, but for the fact that public funds are going to be used to pay for this land, I would have no question about it at all. But as this is a time of great difficulty in terms of fiscal restraint in this country and we are going to have to persuade 535 Members of Congress to appropriate a substantial sum of money, it seems to me that we must have in our possession all relevant information. I would ask that those be supplied in whatever form protects the confidentiality that you have alluded to.

Mr. PERKINS. Might I suggest, Senator, that I might confer with your counsel subsequently to determine how that can be done and proceed? I certainly share the purpose of full and open information in a manner appropriate to this committee.

Senator MITCHELL. Everyone is going to find out someday, are they not? When the deeds are executed conveying the land, you have to put a stamp on it, and you have to fill out a document that you file with the registrar of deeds which says what the sale price is, do you not?

Mr. PERKINS. Yes, sir.

Senator MITCHELL. Are you going to go on vacation the day that happens?

Mr. PERKINS. I hope so, but Senator, I think you will agree with me that until the tribal negotiating committee or the Interior Department completes the negotiation of prices aimed at economy in Federal dollars, it is in the interests of the process not to have various potential sellers knowing what the other fellow's price is. That is why I suggest that we address that question—I want to handle this appropriately, but I see that there is a problem there.

Senator MITCHELL. You indicated that the deferral of tax for a period of time permits the seller to exercise his judgment as to whether

he wants to acquire like property. I assume there have been court tests in defining "like property"?

Mr. PERKINS. That is correct, Senator.

Senator MITCHELL. You indicated that the proper procedure is that the seller who does not purchase like property within the period of time allowed by statute then must file an amended return for the first year and pay the tax that was then due. Is that correct?

Mr. PERKINS. That is correct.

Senator MITCHELL. Does he pay that tax plus interest in the intervening time?

Mr. PERKINS. I believe that is correct.

Senator MITCHELL. There was some discussion about current leaseholders, and you indicated that allowances were being made for them by giving them, in some cases, the option to purchase the property; that is, so that that property would not be conveyed to the tribes. Did I understand that correctly?

Mr. PERKINS. That is correct.

Senator MITCHELL. Is there some other manner in which they are being taken care of?

Mr. PERKINS. There are really two approaches, and you can have either or both. One is that you accept the leased property from the conveyance, so that the seller and lessee maintain their existing relationship. The other alternative is that the seller offers the lessee the option to buy, and then his property goes out to him; or perhaps you combine them and give the lessee the choice: You may buy, or, if you don't buy, we will accept, and you can maintain existing relations with us.

Senator MITCHELL. So, each lessee will have an opportunity to be protected in that fashion?

Mr. PERKINS. That is the position that has already been publicly communicated, as I have said, by Great Northern, by Dead River—let me see if I can specify here because there is some difference among companies. I think Great Northern has accepted. I think Dead River has given them the choice. I think Diamond has accepted. I think International Paper has accepted. As I said, this was not finalized, but it was made very clear before the State legislative committee concerned about this. I have heard of no landowner, either among those that have committed to an option or who have been negotiating, but that has accepted that nature of approach.

Senator MITCHELL. I have one final question, Mr. Perkins. Since the options being executed by the sellers expire either at the end of this year—next June—what would be the effect upon these transactions if Congress decided to spread out the payments for the land over a period of years?

Mr. PERKINS. I do not think that would work. You run into the problem of tying up land at a given price over time with the cost of money and prices moving. Let me relate these things together.

What the landowners were asked to do and what they propose to do is sell land at fair market value, and we encourage an open and thorough examination of what is fair market value. But that cannot be eroded—cut into—in either of the two ways that have been suggested by some. One is to take away the section 1033 treatment so that you lose 28 cents out of a dollar in terms of reinvestment, and the other is to tie up land at today's prices and get paid sometime off in the future while prices move, while money is held up, and whatnot.

The Maine landowners have executed several steps here in good faith. They have come forward as the Governor asked. They have decided not to ask for payments for their options, which is typical and which was done in Rhode Island; and they have tied up their land for the period of these options.

Senator MITCHELL. You need the section 1033 treatment because, in many cases, as you already indicated, these lands were acquired many, many years ago for very small amounts in terms of today's prices; is that not true? And the cost implications would be very substantial.

Mr. PERKINS. That is correct.

Senator MITCHELL. You might have purchased some of this land for $1 an acre, or 50 cents an acre, or 10 cents an acre, hundreds of years ago.

Mr. PERKINS. That is correct.

Senator MITCHELL. Thank you, Senator Cohen.

Senator COHEN. I have a couple of final questions.

On the issue of inflation, Secretary Andrus testified; I asked him a question based upon a statement you had made on a public record that his statement that the land value as of 2 years ago was roughly $100 per acre to $112 per acre. You made the public statement that that had no basis in fact. When I asked the Secretary about that yesterday he said, "Well, inflation has changed those figures rather dramatically." In your judgment, has inflation changed the figure from $100 per acre 2 years ago to an average of $181 per acre as of 1980?

Mr. PERKINS. No. It has certainly been a factor, but it would not account for that extent ot change.

Let me tell you my understanding of that sequence of figures. The Secretary also said that they had obtained those figures back at that time via the tribal negotiating people. My understanding was that buyers would be thinking in terms of low prices. When I heard those prices, being on the seller's side, I went back and said: "What are you talking about? You cannot buy average quality forest land for this. You might be able to buy something that was cut over or something where the seller retained the right to cut and then deed it, but if you are talking average quality forest land 2 years ago, you are talking something in the $150 an acre ballpark."

From $150 to $180, you are in the range of inflation, and you are in the range of the question of what the quality of the lands are. The first lands put forward, as I have indicated, were remote; that affects value. They were hilly; that affects value. The extent of stocking affects value. That is the sequence of value figures.

Senator COHEN. You say this is in the range of inflation. Are they also in the range of spruce budworm—any of these lands? That certainly would have an impact on the value of land to the extent that Maine is unable to control the spread of spruce budworm; with the fact that the State has been cutting back on the spraying operations; and the fact that the Federal Government has announced that it does not intend to contribute to that spraying operation to any significant degree. Would that not have a deflationary impact on the value of land?

Mr. PERKINS. It certainly does, and that is in the market determination of values today and for several years.

Senator COHEN. That is one of the factors that appear and others have included?

Mr. PERKINS. Certainly.

In the first list of lands, many of which were remote and up in northwestern Maine where the budworm has hit heavier, it would have had more impact there than down in the central area. For example, the Dead River lands are lands which have exercised the option to be exempt from the spray program, both from the standard of access and other things—they have not felt that they need it. So the Dead River land is an example of land where that negative factor is probably not there to any great extent.

Senator COHEN. Thank you very much, Mr. Perkins.

We hope we can feel free to call upon you in this interim period in the next 30 days to respond to any questions that Senator Mitchell or I or Senator Melcher might direct to you, especially in conjunction with the questions posed by Senator Mitchell pertaining to the seller's appraisal of land.

Mr. PERKINS. You certainly may.

There was one question you asked me yesterday where a part of the answer, I think, got diverted as we turned to other things. You asked the question if there were any other agreements.

In the case of the seller, Bertrand Tackeff, who proposes to option the blueberry farm that is involved, there will be a proposed agreement for certain structures and blueberry operating equipment analogous to agreements relating to the sawmills in the Dead River property. These other operating assets are things that will come from, as I understand it, either the Indians' trust fund, and are therefore not involved in your appropriations, but I wanted to be sure that everything in that regard was disclosed to you.

Senator COHEN. Thank you, Mr. Perkins.

Our next witnesses will be the Honorable Andrew Redmond and his son, Pierre.

Senator Redmond has served on the joint committee of the Maine Legislature which considered this legislation. His son, Pierre, has played a key role in organizing a petition drive to put the Maine Implementing Act to a popular vote.

We welcome them and look forward to their testimony.

Gentlemen, the acoustics in this room are very bad. So, if you could lean forward during the course of your remarks, everyone in the room can hear. That will be very helpful.

Senator Redmond, would you care to lead off?

STATEMENT OF HON. ANDREW REDMOND, STATE SENATOR, MADISON, MAINE

Mr. A. REDMOND. Mr. Chairman and members of the committee, thank you for permitting me to come here and express my thoughts and those of my constituents. I am Andrew Redmond, State senator from Maine, district 17, Franklin, Somerset, and Piscataquis Counties. My home is in Madison, Somerset County.

I am a member of the Joint Select Committee on Indian Land Claims Settlement. I signed the Minority Ought Not to Pass Report. Since age 19, I have lived in the area affected by the Indian Land claims and have become familiar with the feelings of the people in

these areas by working with them as a logger; by ownership and operations of a wood processing plant; by buying logs from loggers, paper companies, and independent operators throughout the entire State, as well as doing clerical and supervisory work.

Living in this area, I belong to various religious, socioeconomic, and fellowship organizations, and being a State senator, I am in constant touch with the people and know their feelings very well. My district is an area of approximately 130 miles long, up to 50 miles wide, with a population of around 30,000 people. About one-half of the 300,000 acres of the land is located in Franklin and Somerset Counties west of the Kennebec River.

The greatest resource that the State of Maine has is its people. Without the people, the forest industry, the businesses, and banks are nothing. I feel that the people of Maine have been overlooked in this transaction.

Since the bill was passed on April 3, 1980, in the Maine Legislature, I have spent all my time listening to the people who surround me, talking with them, regarding this can of worms. The people of Maine want to be heard in settling this issue, as is evident by the results of a statewide survey and petition for a referendum.

In spite of the use of scare tactics by some of our leaders and by some of the large landowners implanted by Indian representatives, the titles of some 12 million acres of land are clouded by the court.

The issue is more important than an amendment to our Constitution, but proposed amendments are not rushed, and then they require the support of two-thirds of both Houses and ratification by the people.

This issue was brought into the Maine Legislature at the 11th hour, with no chance for the people of Maine to be heard.

While I respect the opinion of the agency that made the land appraisal, I wonder if a second opinion with another agency has been made. Knowledgeable people in the area involved disagree with the appraisal being used for these large tracts which include some waste swamps, mountains, and very heavy cutting over recent years. It should be taken into consideration that the spruce budworm is killing much of the softwood.

Moreover, in some of these areas west of the Kennebec River, many of the landowners have requested the legislature to be taken out of the spruce budworm spraying district because some of these areas are not even designed to be sprayed because the cost is too high, because of the mountainous area and the smaller volume of spruce and fir in those areas. Therefore, that should have an effect on some of these areas. Perhaps the spruce and fir will never have a chance to get sprayed; $180 per acre is quite high.

While I am on the subject of the cost of land, I would wish to note that appraisals and investment counseling are two different things, as you all know. Obviously, the paper companies have no choice; it is just good management that dictates to them that they look at least 50 years into the future to assure a constant source of supply for their processing plants; but I know that the Indians cannot afford to own land at these same values because they have completely different conditions.

According to the newspapers and some of the testimony I have heard here, It is my understanding that one of those nonprocessor landowners is selling much of this land, which is probably all the

major part of their large holdings. The only reason they give is that it is hard to make money when you are not a processor.

According to the newspapers, this company will have a contract to manage this land for the Indians. It seems that if they cannot make any money with it, I do not know how they can make much money for the Indians.

If the Indians want to buy land with money given by the Government under the same conditions as everyone else in our State, with a deed, and complying with the same laws as everybody else, we would support this. We have no problems with this, but when we give special privileges to a group of people, we have created for all time a special class of citizen in the State of Maine. We shall have two types of societies, two types of government, and a different set of privileges, and to the extent of one group of citizens having more privileges than another, it naturally follows that another group will have fewer.

Have the people living in the affected areas been contacted to see how they feel and what they think of the consequences of the enactment of this Implementation Act? I, as well as many others, believe that the Implementation Act does not settle the claims forever. On the contrary, there are problems. It is a hodgepodge.

We are creating a divided sovereignty and compounding problems for future generations. Although Indians are good citizens, I visualize the possibility of increased activism in the years ahead which might create more Indian aggression.

If some future Commissioner of Inland Fisheries and Wildlife opposes them in the course of action, they may feel that he is taking something away from them. I see real problems for law enforcement.

As State senator, one of my responsibilities is Chairman of Fisheries and Wildlife. In talking with the people in charge of enforcement and others in that department, I know they are involved in the management of the resources. These individuals believe that it will cause hardships in many ways by having people with different and special privileges.

I would like to mention that Somerset and Franklin Counties are located in western Maine and are not in the same geographic areas as the Indians are now located. In addition, these counties are not even in the geographic area covered by the lawsuit in question. The Indians would have to be relocated from the eastern part of the State over to the western part, west of the Kennebec River, an area they never even cared about. They never existed there.

The Maine Legislature, under the pressure of the proponents and the scare tactics of the negotiating committee, has done everything possible to increase the chance of error. They have rushed a committee hearing, rushed a bill through the legislature, refused to let it go to referendum, reduced the safeguards, and have enacted this bill which, once ratified by Congress, becomes law—that only the Indians can initiate any change.

I am here to plead with you to slow this settlement down and make sure that the people of Maine, the taxpayers, and the people of this Nation be given their constitutional rights in this dispute.

I would like to point out the areas on the map on the easel.

Senator COHEN. Why not move to the easel, but speak as loudly as you can so that everyone can hear you.

Without objection, the map will be included in the record at this point.

[The map follows:]

Mr. A. REDMOND. I just want to point out that this is an ordinary map of Maine. The yellow part is the land under land use regulations—LURC. Predominantly, it is unorganized territory of the State, and all in large blocks.

The people I represent live in this general area, at left, about 130 miles by probably 50 miles at the widest. As it is now, the Penobscots and the Passamaquoddys are over in these areas on the right. I do not think you can see it, but I have marked by a red cross the townships which are all specified in the Marine Implementation Act as lands which are available for purchase by the Indians. There are some in the eastern part, and here are the ones in Somerset and Piscataquis Counties.

It seems that that is quite an area to cross, to bring them over and transplant them. You will notice that there is route 27 here which goes up to Canada, and here there is U.S. 201 which goes to the Quebec Portland Highway.

Here is the Jackman area. I am employed here. My employer is a bank. I am the president of a small bank in Jackman, right near the Canadian border. We are constantly doing business with large paper companies and the people of the area. We all have something in common. We live in harmony.

What I would like to point out is that the residents of this area are people who have chosen to live there, and their income derives from, many of them, working for one of the paper companies, one of the landowners, and then, part time, traditionally they are trappers. They have had trap lines for three of four generations in the family. Some derive probably 10 or 15 percent of their income from trapping. Others are Maine guides. They work strictly on piecework; they are very independent; they are proud people. During hunting season, they lay off the wood cutting and they guide tourists from all over the area. They guide them, and they derive quite an income from that.

We also have some resorts, where they are also guides. The business is very diversified. There is bear hunting; deer hunting, and this year we are going to have some moose hunting in certain areas—an experimental season. I think this is quite a major part. It is one of the parts of everyone's income, including the banks—small and big.

I just wanted to point out that some of these people live right in the middle of those areas that will be involved in this transaction, and none of them has ever been contacted, nor have the municipalities, nor the county government—no one. They are all surprised to see that we have enacted this in the legislature so quickly, without their knowing anything. The information they got was that these areas would be treated like municipalities. They say there is nothing wrong with municipalities "if we are treated like a municipality and there won't be any change in the fish and game laws."

I have been pointing out to them my interpretation of the act. There are, in fact, many changes in the fishing, trapping, and hunting laws in those areas inasmuch as, although fisheries and wildlife operate out of dedicated revenue, the only revenue that comes in is from selling licenses to hunt, trap, and fish. In this, L.D. 2037, those who are going to own these lands have a right to charge for a license for exercising those privileges over and above the State of Maine license. I do not think that is very good.

I do not have anything else to say. I just want to express this to you; I have spent the last 3 months, since we adjourned on April 3, listening to those people. I had to have a couple more telephones installed so that I could keep up with what was going on, and I neglected a lot of my other jobs. So I thought it was worthwhile to come and express my feelings to the members of your committee here.

Thank you.

Senator COHEN. Thank you very much, Senator Redmond. We are pleased to have you here. I think you have done a great service to the people of Maine. The fact of the matter is that you do express the viewpoint of a considerable number of constituents, not only in your district but throughout the State of Maine.

Because we may have votes on the floor coming up shortly, I think we should proceed to your son, Pierre, for his statement, and then ask questions at that point.

Pierre?

STATEMENT OF PIERRE REDMOND, COMMITTEE FOR AN INDIAN REFERENDUM, MADISON, MAINE, ACCOMPANIED BY GENE GILFORD, AUBURN, MAINE

Mr. P. REDMOND. Thank you, Mr. Chairman.

May I request that Mr. Gilford, who has been an associate and assisted me in research on the case, be present at the table?

Senator MITCHELL. Would you state his name again?

Mr. P. REDMOND. Mr. Gene Gilford of Auburn, Maine.

Senator MITCHELL. Thank you.

Mr. P. REDMOND. Senator Cohen and Senator Mitchell, to the extent that my prepared statement overlaps what my father has already stated, I will attempt to amend it and summarize it as much as possible.

I am chairman of the Maine Citizens Committee for an Indian Referendum. The committee was officially registered with the Maine secretary of state on June 6 of this year. Its treasurer is former Maine Senate majority leader Richard Berry. Other prominent members include former Maine attorney general James Erwin, attorney; legislator, and member of the Legislative Committee on the Judiciary, James Silsby; and my father; and also former Ambassador to the United Nations, J. Russell Wiggins of Ellsworth.

I will first briefly outline the position of the committee on the relevant issues involved with this bill and then address each one individually.

It is the position of the members of our committee that the proposal before you is not in the best interests of the State of Maine or her people, and to the extent that it will be held up as a model for dealing with claims in other States, it is not in the national interest.

Second, it is the position of the members of this committee that the very specific legal issue of who holds title to the lands in question and the complex legal and constitutional issues arising out of this question can be adequately addressed and answered only by a court of law.

This specific question of ownership should be divorced from any possible moral questions concerning treatment of Indians in the past,

in general, and this question of title should be answered very clearly and definitively by a court of law.

Furthermore, we believe that our judicial system was not designed so as to make resolution of such important issues impossible or unbearable and that these issues could be resolved expeditiously, and that adequate machinery exists to protect the litigants from undue economic disruption pending resolution of this case.

Third, it is the position of the members of our committee that the alleged tribes' claims—and I would point out that I use the term "alleged," because the question of whether or not the Passamaquoddy and the Penobscot are, in fact, legally constituted tribes and direct lineal descendents of the parties involved in the alleged illegal treaties has never been answered or even addressed—are wholly invalid, without merit, and that they would not withstand any one of a number of legal tests in a court of law.

For these reasons and for others, we oppose both the Maine Implementing Act as passed by the State legislature last April, and we oppose the bill that is before you now.

Our belief that this supposed settlement is not in the best interests of the citizenry is the reason that our committee was formed. We believe that a majority of the people of Maine were not made aware of the terms of the proposal and would not approve of it once they were familiar with it. So, at the outset, our concern was essentially a procedural issue, that an opportunity for citizen input is an essential ingredient to the workability of any settlement and that any settlement passed without this opportunity and without being fully and fairly debated in public would never lead to long-term peaceful coexistence between Indians and non-Indians.

As long as the citizens felt that this was being forced upon them against their will or rammed down our throats, as I have so often heard recently, they would fiercely and even violently resist it, as would their children.

This was our basic concern, and if this proposal continues as it has thus far, I can assure you that before long we will all be calling this anything but a settlement.

Tensions already exist near the existing Indian reservations, as proud Maine people who, for the most part, are not very wealthy, look at the Federal housing and the myriad of State and Federal programs serving these tribes and attempt to fathom the equitability of their different standards of living. This windfall will serve only to exacerbate existing conflicts, create new ones, and continue to widen the already wide chasm that exists between the Indian and non-Indian population.

This alleged settlement was negotiated secretly behind closed doors. To some extent, this is understandable; however, I do find it interesting to note that yesterday Secretary Andrus expressed some dismay at the hiatus of contact with his Department during these negotiations, and that he learned of the terms of the deal by reading it in the newspaper.

After this negotiation phase was completed, the proposal entered what we have termed phase 2—what was supposed to be a very thorough review by the elected representatives of the Maine citizenry before entering this final phase where we are now—consideration by Congress.

However, the bill was presented to the State legislature at the end of their session. It was introduced on the eve of adjournment and then enacted into law the following day, just moments before final adjournment, rather than recessing to allow legislators an opportunity to read and understand the bill, then to go home and listen to what their constituents felt, and come back later in a special session, better educated on the facts of the bill and with a sense of public sentiments, and therefore in a better position to make an intelligent decision on this most important issue to confront the State since its inception.

During the course of the 2-day debate on the bill, the phrase was echoing in the State capitol, "Why should we trouble ourselves with this, since Uncle Sam is footing the bill anyway?" And it was widely believed that Congress would not approve of it solely because of the magnitude of the appropriation involved.

In fact, one prominent senator told me point blank that he considered it a real bargain to have 230 million people pay for the problem facing 1 million people. I do not find this to be sound reasoning upon which this kind of bill should be passed.

That the electorate was not made aware of a term of this deal was in evidence when I addressed the statewide meeting of the Maine Professional Guides Association in Greenville on May 17. My presentation to them was the first they had heard of the jurisdictional arrangement over the proposed Indian territories.

Of particular concern to them was the fact that the territories would be essentially exempt from State regulations governing hunting, fishing, and trapping.

Here is a segment of the population who, to a very large extent, earn their living off the fish and wildlife resource in and near the proposed Indian territories and do so in accordance with State regulations governing this activity, regulations which they have agreed to abide by and which were implemented in order to insure sound management of this valuable resource and whose enforcement and implementation are paid for with license fees and taxes that they pay.

The creation of the territories and subsequent removal from fish and wildlife management could have a substantial adverse impact on their livelihoods, yet they were never consulted or even informed.

Another segment with similar concerns are the people who live and/or camp on lakes which would become surrounded by the newly created Indian territories. The faces and the words of these people at a meeting I addressed in Lincoln, Maine, last month conveyed to me a feeling of disbelief, of betrayal by their own elected leaders, and of frustration that they had no apparent recourse, no chance to try to stop or change or influence what was happening to them.

These and all the other thousands of small- and medium-sized landowners whose property falls under the claim area have had no spokesman. With all due respect to Mr. Perkins, who has been regularly referred to as the representative of the landowners, he represents only a small group of elite, very large landowners and processors, not the majority of smaller owners. These people should have had a spokesman and a say in the course of events.

The point is hopefully becoming clear that those who present this proposal as a settlement with no cost to the State are sorely misdirected and would find serious disagreement from the citizens of

Stratton, Eustis, Kingfield, and Jackman in the western part of the State who have never before had to confront Indians or Indian territories. They see their livelihood and lifestyles being very clearly affected, and they see a very real cost to themselves and to their posterity.

Former Senator and now Secretary of State Muskie, in an address to the Joint Legislature, on February 16, 1978, called for an expression of public sentiment on the issue to direct him on the matter. On June 6 of this year, Congressman Emery, at a meeting of the Penobscot Conservation Club in Brewer, reiterated the question, stating, "We want to know what the people of Maine want, and we want this settled to their satisfaction."

Proponents of this deal have argued that the people of Maine desired it, as they wished to avoid the risk of a courtroom. In the last 2 months, we have argued that this is not clear. In order to resolve that issue, I present three pieces of evidence of public sentiment.

First: I, personally, and circulators of our petition to suspend the Maine Act and call for a referendum vote on the matter at the November general election, have confronted face to face literally thousands of voters in Maine this month soliciting their signatures. In basically a 2-week-long effort from June 13 to the deadline of June 27, we were able to collect approximately 12,000 signatures of voters in Maine. My best estimate of the rejection rate we faced is approximately 2 percent of all those confronted. Although I have no way of quantifying the response of the people, it was overwhelmingly in favor of a referendum and overwhelmingly opposed to this deal.

Second: A viewer response survey by channel 13 of Portland resulted in over a 2-to-1 approval of a referendum on the proposal, with 515 for and 235 against. This is in a viewing area in the southern part of the State, outside of the claim area, where people are supposedly indifferent and apathetic on this issue.

Last and most convincingly: I believe a highly scientifically conducted statewide poll by the Social Science Research Institute of the University of Maine, published in last Saturday's Bangor Daily News, stated that, of those surveyed from a random sample of the entire State, 55.6 percent specifically disagreed with this settlement, while only 44.1 percent agreed.

Quoting the Daily News:

> Even allowing for the plus or minus error factor of 4.5 percent in a survey of this size, the survey results show that nearly three-fourths of the respondents want the claim resolved in some manner other than the one it is following.

The breakdowns of this poll clearly indicate that the good people of this State oppose this alleged settlement and oppose it on very basic grounds; not because of specific complaints, as was alluded to by Governor Brennan yesterday. They oppose the very concept of negotiating to give away anything on the basis of what they have been told repeatedly are invalid claims.

I quote Governor Brennan who, as attorney general, was quoted in the Congressional Record of March 1, 1977. His evaluation of the case:

> We firmly believe that the Indians will not be successful in their claim; we assert that view after careful historical and legal analysis and without equivocation, and there are several reasons for our opinion.

He then goes forth with a very scholarly presentation of the research that was done by him and his staff on the claim.

I do not have to repeat the current attorney general's assessment of the case; it has become almost legendary in its simplicity—60/40, we win. The only outside attorney and expert consulted on the case was James St. Clair who successfully defended a similar nonintercourse claim in Massachusetts. He stated that he felt the chances for Maine were even better than 60/40.

It is not logical or reasonable for this body to pass legislation on behalf of a State and her people against its very wishes. Assuming the electorate of Maine is sane and competent—and no one has yet challenged this—we must respect the wishes of the State and her people.

If this bill is not in the best interests of Maine, then whose interest does it serve? Clearly, it does not serve the taxpayers of the other 49 States who shall derive no benefit from money directed to Maine. It is certainly not Congress, for before this Congress appropriates one dime for this bill, each and every Member must take a look at just what he or she is approving of and the precedent that is being set.

If this kind of money will be thrown at an invalid claim, what do we propose to do with the other 9,500 cases identified by Secretary Andrus, some invalid and some, perhaps, more substantial. Some have been called frivolous, but I would bring to the attention of the people here—for it certainly does not need to be brought to the attention of the citizens of Maine—that, until recently, our case was considered frivolous.

One should also take a look at the manner in which the deal was negotiated. The tribes and the representatives of the large landowners sat down behind closed doors, and the tribes presented their shopping list to the land companies who, in turn, agreed to sell those parcels they desired to, knowing they would be very well compensated. Only after this process was completed were appraisals of the agreed-upon lands made, and only now is Congress being consulted.

So, we have a situation where the negotiations were carried on without a clear budget and without the party who must pay the bill being a part. This flies in the face of every standard of normal business transactions that are conducted every day. In effect, we turned a child loose in a toystore with no price tags and gave him a blank check. How can we rationally approve of this kind of policy on the one hand while continuing to preach fiscal responsibility on the other?

Since I have dwelled on our committee's first contention, I will only briefly review the remaining two.

We believe the case should be settled in court, and we feel it is very clear that the interim economic disruption alluded to by proponents would not be severe. We believe that the so-called Settlement bill and the arguments which underlay the overhasty campaign to convince the legislature that it should enact the bill are based upon a faulty premise.

The Nonintercourse Act of 1790, whatever it may have required, cannot be interpreted or given the effect to overturn the due processes guaranteed by the Federal Constitution. Therefore, even if the Indians were found to have a legally sustainable claim to their land in Maine, due process would require compensation of every owner for every foot of ground under consideration.

Who would compensate the owners of approximately half of Maine for the taking of their property? Who will appraise those homes and farms and businesses and woodlands? Who will pay for the cost of such appraisals in this horror story which the proponents of the settlement and spokesmen are relating? In whose name will an implementation be accomplished as a result of a court order? Will there be an army of United States marshals which will descend upon the homeowners, farmers, and woodsmen of eastern Maine? Will they be armed? Will people be injured and possibly killed if there is resistance to this court order? What machinery presently exists or could conceivably exist in the absence of an explicit act of Congress to create it and pay for it, which says how the titles to the property will be searched, the property valued, the owners evicted and paid?

Does anyone in Maine seriously advance the argument that the courts would do such a thing? Has anyone who has threatened the dire results because of an adverse court opinion on the merits of an Indian claim attempted to explain how such a successful judgment would be implemented?

In short, we do not believe the horror story that is being told. We believe it has been determined by scholars and lawyers that no Indian claims existed in the Province of Maine after the French and Indian War. This would be approximately 1757. That was a formal war between the French and the British in which the colonies, including Massachusetts and the Province of Maine, took part, as well as the various eastern Indian tribes. As every schoolboy knows, the Iroquois alone, because of an indiscretion on the part of Champlaigne, 100 or more years before, sided with the British and the English colonies. All of the other Indian tribes of the so-called Algonquin stock, including the Abanakis, whose claims are here before us, sided with the French.

That war was ended by the formal signing of a treaty in Paris. Land on the North American continent was ceded, and boundaries were redefined as the final French stronghold, with the exception of the area of Louisiana, was reduced and conquered by the English. These lands ceded were not ceded subject to Indian claims. There were no reservations for Indians held out of the final treaty terms; the British claimed sovereignty. What was left of the Maine Indians and the Indians in the Canadian Maritime Provinces was totally surrounded by English and French settlements, running all the way to the borders of the unoccupied Indian territories far to the west.

It seems clear from an historical review that the Nonintercourse Act of 1790 was directed westward and was dealing with westward expansion inasmuch as there was no eastward expansion in the already occupied and controlled land by the British and later by the new American Republic.

Even if, after 1790, a deliberate and coordinated attempt was made and successfully carried out to drive the Indians off their claimed lands, can no conquest ever be consolidated? Are you and I to be punished by contemporary Indians for what our forebears or somebody else's forebears did to theirs?

The U.S. Constitution bars bills of attainder. These were a feudal concept, and they died with the last king who called himself a ruler

by the divine right of God. A bill of attainder is one which punishes a son or a more distant lineal descendent for a father's crimes and forfeits his lands, titles, and income to the sovereign.

No one seems to have addressed the question of whether the U.S. Supreme Court, which shall have the last word in this matter, can presently impose by decree what would amount to an attainder. The idea of an attainder died totally and irrevocably in this Nation with the adoption of the U.S. Constitution and the creation of our present Federal Republic in 1789.

It is our position, then, that the proponents of this horror story concerning what would happen if the Indians were successful in their claim are the most simplistic and naive people in the United States today, or they are something far more dangerous.

We do not believe that land titles and municipal bonds would be endangered by a suit, if brought, because there is court machinery to be utilized to hold the State and land owners harmless pending the outcome of such a suit. It would be the United States of America which brings the suit on behalf of the Indians, not the tribes themselves. The United States of America can, if it wishes, provide whatever security is needed pending judgment.

Such a remedy to protect the defendant is not unheard of in courts of equity in this land, and this suit is so unprecedented, and the potential damages pending the outcome of litigation so great for the present innocent landowners, that such a remedy should not be considered either unreasonable or impossible of attainment.

We do not believe the tribes will win in court. We do not believe that the tribes have been properly consulted and canvassed or that the impetus for and design of this suit comes from the rank and file of Maine's tribal persons themselves.

We do not believe that the U.S. Supreme Court could or would order the movement of a whole population from millions of acres on a claim 191 years old and inactive until only recently.

We do believe that it is passing strange that an agreement that took so long to negotiate was presented to the Maine State Legislature on the basis of take it or leave it, and that it was also very strange that the legislature was told it had to be done immediately, even though they had not had time to read and thorougly digest all the ramifications of the act put before them. We believe the haste was caused by people who appear to have vested interests in promoting the settlement.

We ask if there might not be sweetheart deals among the landowners and a handful of Indians who might benefit as individuals but not as members of the tribe as a whole?

We also believe that it is passing strange that the Governor, who was once attorney general, and the incumbent attorney general, who are both on record as saying that Maine would not lose this lawsuit if it is brought, now say that dire things and great troubles will occur in the State if the suit is brought.

We believe these troubles are scaremongered and specifically designed to create a climate of fear for persons who have not had time to inform themselves about the actual truths, to make it easier to vote for the settlement than against it.

These are some of the arguments; there are more. We believe the people of Maine and this Congress should hear them. If the legislatur was intimidated by the captains of industry and the tribe's lawyer, we were not. Let the people hear the whole story, and let them make the judgment.

I would be pleased to answer any questions you have.

Senator COHEN. Thank you very much, Mr. Redmond, for your very fine and eloquent statement on this particular issue.

A couple of things come to mind quickly, and I would like to address them to you.

On the one hand, you express the view that you think ultimately the State of Maine would prevail. This has been expressed by our former attorney general, now Governor; by the present attorney general; and even by counsel who has been secured, Mr. James St. Clair, that ultimately Maine would prevail. In addition to that, you indicated that even if Maine did not prevail, in your judgment, the court could not enforce such a legal decision, and that it would be hard pressed to do so.

This raises a question in my mind because, on the one hand, as you pointed out, what would the Federal Government do to enforce a judgment if it ruled in favor of the tribes? You suggested that there would be a great conflict and potentially great harm to individual tribe members or to non-Indian members of our society.

In your concluding remarks, you indicated that the United States can provide whatever protection is necessary for the benefit of its citizens.

I do not understand, on the one hand, how the Federal Government cannot provide protection for Indian tribes but can provide protection for non-Indians.

Mr. P. REDMOND. I think what is confusing is that we are looking at two different kinds of harm that are being alluded to. No. 1, the potential economic disruption pending the outcome of court litigation. It is to this that I say the United States, if it were bringing the full resources of the Federal Government, through the Justice Department, to bear and causing these great hardships on the State of Maine; while, on the other hand, another arm of the Federal Government, namely the Congress, has full and plenary power at any time to extinguish these claims, would be able to provide whatever remedy or alleviate the problem.

I think you can see very clearly the political pressure that would be brought to bear.

Senator COHEN. Let me stop you just there for a moment.

On the one hand, you are suggesting that if the Justice Department goes forward, which it has indicated that it will because it has been ordered to do so by the court, unless a settlement can be achieved, they have a trustee obligation to present the case against the State of Maine. So we have the full power of the Federal Government with the Justice Department bringing suit against the State of Maine, and what you are suggesting is that Congress would then intervene and somehow relieve the State.

How would you recommend that it do that? Extinguish the claims?

Mr. P. REDMOND. This is my belief. I feel that for a long time now, ever since the initial *Marshall* decisions in the Cherokee Georgia cases,

where this dependent domestic nation and ward of the nation status was granted to tribes, the courts have had great difficulty in acting consistently and potently in dealing with these cases, mainly because there has been no clear indication of congressional intent on which to base their judgment.

Another reason I did not bring up here that I feel these kind of settlements are bad is that this kind of consistent, clear indication of congressional intent and development of a coherent, consistent Federal Indian policy is sorely needed and has long been sorely needed. To the extent that we continue to settle and quell individual claims in various States at the State level, we are precluding and preempting the development of this sorely needed policy.

In this particular case, I think the record shows what congressional intent was: that in granting Maine statehood, it clearly recognized the existing boundaries of the State, and that it could very clearly articulate congressional intent by the passage of this simple act, as introduced by Senators Muskie and Hathaway and, I believe, subsequently reintroduced by Congressman Emery, that would ratify the existing treaties if, for some reason, they have not been considered already ratified, either implicitly or explicitly, and would, at the same time, not preclude the Indians' option of going to court to seek redress for any potential harms that were done in the past.

I think this is something that Congress should seriously consider.

Senator COHEN. Are you suggesting then that, as an alternative, Congress consider the extinguishment of the land claim itself but allow for the tribes to pursue their legal rights at this point for money damages?

Mr. P. REDMOND. In the court of claims.

Senator COHEN. For money damages?

Mr. P. REDMOND. Yes.

Senator COHEN. You are aware that the Supreme Court just recently ruled, in an 8-to-1 decision, that the Sioux Indians were entitled to interest payments, going back to a rather age-old claim itself. I think the original claim was for $17 million for the wrongful taking by the Federal Government, and they awarded $105 million interest on that particular claim. So, it is not unheard of that the court would, nonetheless, rule or can rule in favor, involving significant amounts of money.

As recently as yesterday or the day before, they have come down in that regard.

But what you are suggesting is not a total extinguishment of a legal right which has not been judged to be frivolous by Judge Gignoux or the U.S. Court of Appeals.

Mr. P. REDMOND. I think it should be made very clear that it is our interpretation that a careful reading of the Coffin Circuit of Appeals affirmation of Gignoux' district court holding very clearly limited the scope and the extent of that decision. He explicitly stated that he was by no means attempting to prejudge the merits of this case and that the States should not be prevented from arguing even to the extent that they would overlap arguments that were already put forth.

It is my interpretation—and I do not have the benefit or the burden of a law degree that the two Senators do, and you may correct me if I am wrong—that all this decision granted was standing to sue.

Senator COHEN. When you use the term "frivolous" that has a certain meaning as far as legal jurisprudence is concerned: That it is totally without any merit and, on a motion by one of the parties, can be dismissed.

I think that what you have said is correct—that the court has not ruled on the merits of this particular claim whatsoever, but simply has established a certain trust relationship between the Federal Government and the Maine tribes. But the implication cannot be drawn from that that the claim is totally frivolous because, if so, I am sure the attorney general for the State of Maine could file a motion to dismiss such a claim if it were filed on that basis.

Mr. P. REDMOND. I actually recommend that that course of action be pursued. This might be the appropriate time to introduce—unless you have something to add?

Senator COHEN. I wanted to follow up just a little bit, Mr. Redmond. You are very knowledgeable in this field, and even though you do not have the burden of a legal education, I think I can see the budding of a legal career on your behalf.

You mentioned James St. Clair as counsel for the State of Maine or at least of counsel for the State of Maine. He did try the case involving the Mashpee Indians, and that was a very small claim involving a small amount of real estate affecting a relatively small number of people.

In addition to what you have quoted him as saying, he said the following about the Mashpee suit. He said: "There was no such thing as a sale of property." "It could not be done." "The banks would not give a mortgage." "The title insurance companies would not insure the title." He went on to say that: "They could not collect all of the taxes;" "People who had the misfortune of becoming old could not sell their property:" "The estates could not be administered;" and, "On and on went the problems."

I think what he has suggested in our particular case—at least I gather from his words that he does feel confident the State of Maine ultimately could prevail if it were allowed to go to trial. What he has raised, as far as the concerns go, assuming no Federal congressional intervention, is that you would have very severe economic dislocations inflicted upon the State of Maine—the clouding of the titles. I believe we are going to have some witnesses coming later this afternoon to talk about the difficulty in issuing bonds and so forth. People might not be able to buy or sell homes. It would retard commercial development. And, as he said, "the problems go on and on."

Do you not think this was a legitimate consideration to be taken into account by the elected officials of the State of Maine—even though you disagree with the rapidity with which they proceeded—that this was one of the factors: In their mind, they did not want to put the State to that kind of a burden?

Mr. P. REDMOND. Absolutely. I feel this is a legitimate concern that should have been considered. It is a great distress that I do not feel this concern was carefully considered and weighed against the court litigation option.

I think Attorney St. Clair, although he is a great authority on Indian law—I believe his testimony should be interpreted and accepted, as any attorney's advice is, and taken into consideration, and

the ultimate decision be left to the client of the attorney. I may use the analogy that, if my attorney told me that I should plead guilty to a rape charge and go to jail for 1 year to avoid the risk of going to jail for 10 or 20 years, even though he knows I am innocent; although he may be right, and that court is tricky business and his fees were really high, and there is always that risk; I would at least want to reserve the option of making that decision myself. That is the extent to which I would consider his judgment.

In the terms of this particular information he has provided us, I feel that he has stated very clearly what his experience was with the town of Mashpee. I do not consider Mr. St. Clair an authority on the economics of northern Maine.

When you look at the town of Mashpee or the town of Millinocket or Medway, you are looking at very small, isolated examples of what people are saying could be blown up into a fullscale economic catastrophe over half the State of Maine.

Although the towns would be hard pressed to convince Congress to take remedial action in these cases, I believe you would probably have to agree that it would behoove Congress to take some sort of remedial action if this sort of disruption started to occur over a large and substantial area of the State.

Senator COHEN. Let me ask you this. Suppose that we agree with you in theory—Senator Mitchell, myself, and Congressman Emery and Congresswoman Snowe—that we are not able to persuade 531 of the Members of Congress that they should intervene, saying: This is, after all, Maine's problem. If the people of Maine are as in e endent as their reputation says, then let the people of Maine with their Yankee hardihood endure this particular suit in the name of principle and try it in the courts. Let it go to court through its full appellate level to the Supreme Court, and we will stand by the judgment; but that is a Maine problem, and let the people of Maine handle it on their own. Why should we intervene?

At that point in time, if that were the case, what would your recommendation be, assuming you could have no Federal intervention, notwithstanding what our view might be?

Mr. P. REDMOND. There was one other point of Federal intervention that I do not think I brought up. In addition to extinguishing the claims, it would be to introduce legislation. It is not unheard of to require plaintiffs in civil suits to post bond to cover any potential damages that would accrue to a defendant as a result of an invalid claim. I feel this would be entirely reasonable and that this could be expected.

If we approach the situation or scenario you have just raised, where we are going into court with guns blazing and suddenly land titles and bonds are locked up and Congress refuses to act, I do not think this is the manner in which it has been presented. If that is the case, I think it should be made very clear that that is the case—that Congress is the one who is causing these hardships and bringing this great grief upon the people of the State of Maine, not the attorney for the Indians or the landowners or the attorney for the State of Maine.

Senator COHEN. Why would it not be open for members of this committee or other States who do not have a similar problem to say

that there is a law on the books—apparently, it appears to have been violated according to the tribes—that is disputed by the people of Maine? What obligation do the other Members have to intervene on behalf of the State of Maine? Why would not those particular members be justified in taking that position?

Mr. P. REDMOND. I have long ago given up attempting to predict or understand the actions of Congressmen from our own State let alone other States. I feel that, in addition to the remedial action by Congress, other courses of action could be taken.

One course of action we are actually considering, as a committee, separately and independently from the Maine Attorney General's Office or the U.S. Justice Department's, we would propose that a class action declaratory judgment complaint on behalf of the affected landowners be filed in Federal district court for the district of Maine under Rule 57 of the Federal Rules of Civil Procedure, and also under title XXVIII of the United States Code, section 2201, which specifically allows this action to go along, as we understand it, even though there is a pending lawsuit on the same subject matter in the courts.

But, more importantly as far as we are concerned, the Federal rule specifically states:

> The procedure for obtaining a declaratory judgment pursuant to title XXVIII, United States Code, section 1101, shall be in accordance with the rules and right to trial by jury, may be demanded under the circumstances and the manner provided in Rule 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. Court may order a speedy hearing for declaratory judgment and may advance it on the calendar.

I think simultaneously, although I have not had the opportunity, nor have counsel for the committee, to thoroughly investigate the options, simultaneously with this complaint, we would file an injunction against the claims pending the outcome of the declaratory judgment. I think this would effectively clear the question of titles and bonds.

If you talk to any real estate broker, or banker, or attorney in the affected areas, we are now living under these so-called clouds over the titles. The economic workings of the marketplace have not been severely disrupted. A simple disclaimer in deeds that specifically exclude Indian title when they make the transfer is all that has been required, and that it is upon the judgment of those parties involved as to whether or not they wish to continue and go forth with the transaction.

Senator COHEN. Let me ask you a question about the issue of the public opinion polls. If a majority of the people in the State of Maine were to oppose this—let us say 51 percent were to approve of the settlement—would you recommend at that point that we go forward in Congress?

Mr. P. REDMOND. If, after a full and thorough debate, thorough examination, and fair discussion of the merits of this proposed settlement, and a careful evaluation of the alternatives in court, the people of the State—the majority of them—approved of this particular settlement or of any particular settlement, I would be hard pressed to campaign against it. I have based our whole campaign on the premise that we are representing the people of the State as individuals and

collectively as the electorate of the State, and at such time I would probably cease, although I would personally maintain my conviction that court action is the proper procedure.

Senator Cohen. But how are we to determine that public opinion?

Mr. P. Redmond. That was my question. Why did they not allow the referendum? Then I think we could all proceed so much more intelligently on this case if we had a clear expression of public opinion.

Senator Cohen. You cited the Bangor Daily News poll. As I recall, less than half of the people—some 45 percent—thought there should be a referendum.

Mr. P. Redmond. I do not have the breakdowns before me, but that was in a question with several choices. That was by far the leading choice. The alternatives were——

Senator Cohen. By Congress; by the court——

Mr. P. Redmond. Yes The question was, "Who do you feel should determine the fate of this"——

Senator Cohen. I think it was less than a majority; I may be wrong. But this is all going to be entered into the record—the poll taken by the Bangor Daily News will become a part of the record. But, as I recall, there was a choice: by referendum, by court, by Congress, and I think less than a majority said by referendum; they thought other options more suitable—either by court or by Congress.

Mr. P. Redmond. The Congress was combined jointly with the Maine Legislative Act. In other words, the current course that it is taking—approval by the State legislature and subsequently by the Congress—was one option. That received, I believe, less than half the approval of the referendum procedure, and it is not uncommon where four or five choices are given that the clearly favored option does not achieve a 51-percent majority.

Senator Cohen. Without objection, the poll will be included in the record at this point.

[The material follows:]

Opinion leans against Indian plan

Majority in survey favor say by the voters

By Dave Cheever
Of the NEWS Staff
c. 1980 Bangor Publishing Co.

A majority of those who have an opinion, on the Indian land-claim settlement proposal disagree with it.

Also, more than half of those responding to a statewide survey would prefer to have Maine voters decide the proposal's fate.

Since the Ides of March, when Penobscot Indians voted to accept the settlement proposal and thus cleared the path for it to proceed through the Maine Legislature and on to the U. S. Congress for perhaps final resolution, there have been many opinions expressed about the terms of the agreement. But most of those opinions have come from persons in positions of corporate or government leadership and most of them have favored the settlement.

In the survey, sponsored by the Bangor Daily News and conducted by the Social Science Research Institute of the University of Maine, the opinions of a random cross-section of the Maine public were gathered.

Of the 500 adults contacted in the omnibus telephone survey, 91 percent expressed opinions about the settlement. A majority, 55.6 percent, disagreed (strongly or somewhat) with the settlement. Only 44.4 percent agreed (again, strongly or somewhat) with the terms accepted by the state and tribes in the 10-year dispute.

Perhaps more ominously, the route the settlement is taking also suffered the disfavor of a majority of respondents.

Having been passed by the Maine Legislature in a special session this spring, the agreement proceeded to Washington to await the whims of Congress on whether to accept the $81.5 million proposal that would allow the tribes to purchase 300,000 acres of Maine land from selected tracts of large landowners in addition to establishing a $27 million trust fund for the Indians.

A bill before Congress is scheduled to go into the public hearing process next week.

Although there is no telling how long the process could take in Washington, and no certainty the proposal will be embraced by a majority in Congress, it apparently matters little to the majority of Maine people who responded to the survey.

Given their choice, 50.7 percent of those who had an opinion on the matter would rather have the fate of the settlement decided in Maine by the voters, even though federal money would be involved to pay for the package.

Less than a quarter of the respondents (23.2 percent) agreed that Congress and the Maine Legislature should decide the settlement.

Another 18 percent, almost one person out of every five, would prefer the courts settle the issue.

Even allowing for the plus-or-minus error factor of 4.5 percent in a survey of this size, the survey results show that nearly three-fourths of the respondents want the claim resolved in some other form than the one it is following.

About the survey

This survey was conducted by the University of Maine's Social Science Research Institute.

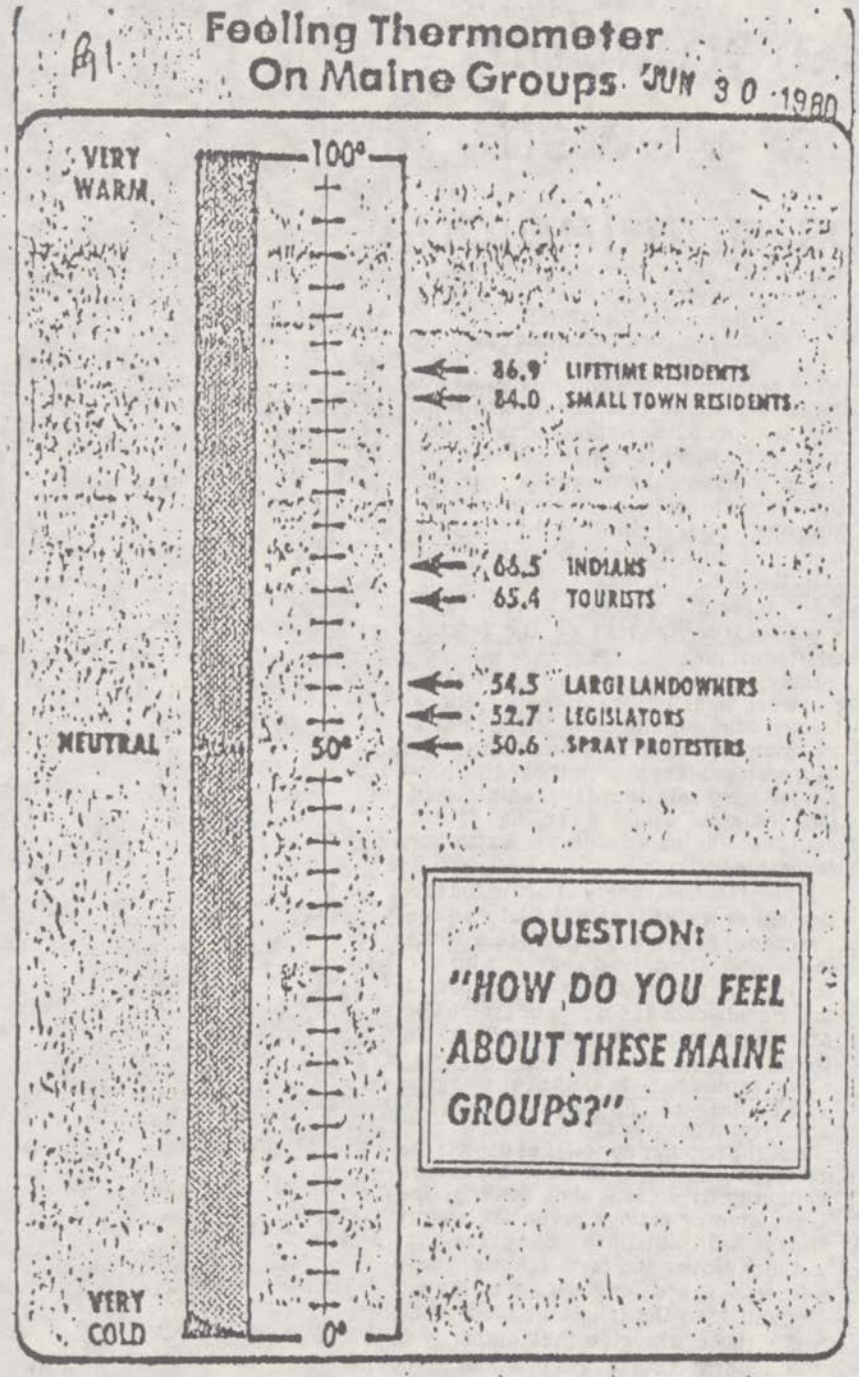
Telephone interviews were carried out with one randomly selected adult resident in each of 500 randomly selected year-round homes with a telephone (whether listed or unlisted).

Experienced, supervised personnel conducted the interviews through the Institute's facility on the Orono campus May 28 through June 25.

As with any sample survey, sampling error—chance variations—can cause the results of this survey to vary from the results that would have been obtained if a census of all Maine adults had been carried out. It is 95 percent certain that for a question based on 500 interviews, the survey result would vary no more than 4.5 percentage points from the figure that would have been obtained if all adults had been contacted.

For analyses based on only some of the interviews—such as those in the regions—the allowance for sampling error should be greater than 4.5 points.

However, the published figures in every case are the best estimates for what the results would have been if all Maine adults had been contacted.



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Referendum not viewed as anti-Indian

JUN 30 1980 By Tony De Paul
Special to the NEWS

Pg 1

The opinion survey commissioned by the NEWS shows that people who support the proposed land-claims settlement feel more sympathetic toward Maine Indians than people who reject the settlement; but surprisingly, Mainers who want to derail the settlement and send it to a referendum vote rate the Indian tribes as high on the "thermometer" graph as those who want to see Congress or the federal courts resolve the issue.

Individual adults in the survey sample were asked to rate their feelings toward Maine Indians by thinking of a thermometer ranging from zero to 100 degrees; a rating of zero meant the person felt very cold or unfavorable toward the Indians, while a rating of 100 degrees indicated very warm or favorable feelings.

Mainers who strongly approve the settlement as it stands rate the tribes at an average of 81 degrees on the scale, while those who strongly disagree with the settlement rate the Passamaquoddies and Penobscots at only 49 degrees. The scale demonstrates an unmistakable trend: agree strongly—81 degrees; agree somewhat—74 degrees; disagree somewhat—67 degrees; disagree strongly—49 degrees.

But the popular notion that depicts the referendum drive as an anti-Indian campaign is clearly shot down by the thermometer ratings given Indians by those who dispute congressional authority over the land claims. Those who want to see Congress act on the settlement rate the tribes at 67 degrees, while those who give that authority to the federal courts gave a 68-degree

See SURVEY on Page 6

Survey shows referendum not an anti-Indian effort

from page 1

ating; the critical point is the 64-degree average given by Mainers who want a chance to vote on the land-claims settlement. That rating is not significantly below the average, indicating that support for a land-claims referendum is not necessarily tied to an anti-Indian bias.

Especially significant in the NEWS survey is the fact that individual feelings for the large landowners are in no way related to opinions on the merits of the settlement. When feelings for the tribes dropped dramatically from 81-19 degrees from those who strongly favor the package to those who strongly disapprove, feelings for the landowners dropped only one degree, 54-53, a statistically insignificant variable.

Feelings for the landowners remained constant, as did feelings for the Indians, among those who want to see the settlement acted on by Congress, the federal courts or the Maine electorate. Mainers who want to see the proposal taken out of congressional hands and put to a popular vote are not reacting against the alleged windfall the settlement might grant to large landowners, most paper companies.

Highlights of the reasons Maine people gave for supporting or condemning the settlement:

FAVORABLE REASONS

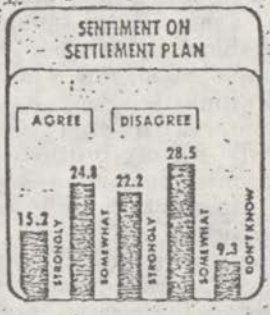
•31 percent said the tribes have a legitimate grievance: They were cheated by white settlers and deserve to be compensated.

•10 percent said giving the Indians money to buy land is better than requiring private landowners to forfeit their property without compensation.

•9 percent said the settlement should be ratified immediately by Congress before the Indians demand more money while the settlement is pending.

•6 percent said the Indians should be given a chance to make a new start in society.

•1 percent said the Indian land-claims case is too risky for the state of Maine to contest in federal court. Evidently, Mainers don't dwell on the warning of the legal community that the Indians have a 40 percent chance of winning a legal battle with the state.



•20 percent gave other reasons.

UNFAVORABLE REASONS

•17 percent said descendants of white settlers should not be liable for wrongs their ancestors allegedly committed.

•15 percent said the claim settlement is too generous with federal money.

•15 percent said the "nation within a nation" concept should be scrapped; the Indians should not be considered a separate entity within American society; they should be treated like other Americans.

•13 percent said the Indians' claim is invalid.

•11 percent said Indians have been supported by society for too long and should not be given any additional benefits.

•6 percent said the proposal is no settlement at all; it leaves future claims by the tribes unresolved.

•6 percent said the Indians want something for nothing.

•4 percent said the settlement does not give enough money to the Indians and does not adequately redress the wrongs they endured in the past.

•One-half of 1 percent said the spoils of war belong to the victor; land taken by conquest becomes the legal property of the conqueror.

•12.5 percent gave other reasons.

Feelings warmest for rural Mainers

The "feeling thermometer" is an opinion measurement technique developed at the Survey Research Center of the University of Michigan. Social scientists have used the thermometer image for the last two decades when interviewing respondents face to face; the Social Science Research Institute at the University of Maine at Orono has adapted the image for use in telephone interviews.

Five hundred randomly selected adults in Maine were asked to rate their feelings for each of seven segments of Maine society: lifetime residents of Maine, persons living in small towns, Indians, out-of-state tourists, large landowners, state legislators, and protesters of the spruce budworm spray program.

Adults in the survey sample were asked to rate their feelings by imagining a thermometer ranging from zero to 100 degrees; a rating of zero meant that the person felt very cold or unfavorable toward a particular group, while a rating of 100 degrees indicated very warm or favorable feelings.

Significant in the results is that no group fell below the neutral 50-degree mark, indicating a more tolerant average attitude than might be readily expected. That lifetime residents of Maine and those who live in small towns are so highly regarded indicates a respect for rural Maine society, held by both long-time residents of the state and relative newcomers.

Since none of the seven groups fell below the neutral mark, it leads data interpreters to conclude that all seven—on balance—escape the negative feelings of the average Maine citizen.

Spray opponents rated the lowest of the seven categories. Indians were rated just above tourists.

Senator COHEN. I would just turn to your father for a moment.

Senator Redmond, you raised the question about a second opinion on the appraisal. I think that was a line of questioning that Senator Mitchell was pursuing this morning.

Who would you recommend, in terms of getting a second opinion as far as the land value in question is concerned?

Mr. A. REDMOND. I would think that if anyone were going to have serious surgery done to him, it is quite well understood that he would want a second opinion. For a second opinion, I would not namely specify anyone. I would think that it would be one that is at least as well qualified as the first opinion, one who specializes in that field. And, on top of that, I think it is very important to mention that investments and evaluations are different.

For instance, I owned with my brother, a few years ago, about 20,000 acres of land. In our opinion, the size of our portfolio and so forth—we felt that we could not afford to own land in the State of Maine. That was our particular case.

Let us pick up one for instance which very often is very popular. Take Scott Paper Co. or the Great Northern Paper Co.—they have to take a different view of these large blocks of land because the management of these paper companies is concerned about a continuous source of supply for their mills where they have tremendous amounts of money invested. They have to think at least 50 years ahead. They do not really want to sell land.

I am sure that if Scott Paper Co. and Great Northern are selling land in this deal, it is not because they really want to sell land; it is just to accommodate this settlement, There is no question in my mind, because they do not want to sell any land; they need it for their mills.

The Dead River Co.—I understood from yesterday's testimony and according to the press—are selling nearly all their lands in this deal. Dead River is not a processor. Dead River manages their own affairs obviously the way they feel is most profitable for Dead River. They chose the course which, in a much smaller way, my brother and I chose some 8 or 10 years ago, and probably they cannot make any money. If you have to hire managers for land, and then you have to hire operators, and then you have to cope with the trials and tribulations of the economic conditions which take place during the course of the operations—the ups and downs of the market, of the paper products, and so forth—it is very, very difficult to make money with land.

If land were given to me and I had no investment, OK. I am sure the Indians, no matter what it costs, will derive something out of it. However, from what I gather, if they had good investment counseling, the investment counsel would probably tell the Indians, "Don't invest in land; you would be better off to invest in minerals or invest in oil or something else."

This is all I can say. I would not want to specify. I have the greatest respect and admiration for the Sewall Agency. As we all know, we are all convinced that they know what they are doing; it is a three- or four-generation business, and I do not question that at all. All I question is perhaps this. Perhaps an investment counsel would have to come into the picture. This is the most important—investment counseling.

Senator COHEN. Ladies and gentlemen, we have a rollcall vote on, so we are going to suspend the hearings for a period of 15 minutes, and then we will reconvene.

[Recess taken.]

Senator COHEN. Ladies and gentlemen, we have another rollcall vote scheduled in about 10 minutes. So, in the interests of all of you, I think, I will now recess this meeting until 1:15 to give everyone a chance to grab a quick lunch. Then we will come back and continue the hearing.

The committee will stand in recess until 1:15.

AFTERNOON SESSION

Senator COHEN. The committee will now come to order.

At this time, I will call upon Senator Mitchell to ask whatever questions he may have of Mr. Redmond or Senator Redmond.

Senator MITCHELL. Thank you, Mr. Chairman.

Good afternoon, Senator Redmond and Mr. Redmond.

I would like to ask Senator Redmond a couple of questions first.

Did I understand correctly that you said you would support this bill if it were simply enabling the tribes to buy land with money purchased by the Government, but that what you object to is the special treatment being given in the areas to be purchased?

Mr. A. REDMOND. You are correct in the way you understood it. We would have no problem with this. We would not even be here; we would trust that Congress and your committee would judge the whole thing according to its merits and do your job; we would not mind that. After all, this is what you are here for.

But I am here for this other part, really; this is what concerns us most.

Senator MITCHELL. That is what I understood. So, you do not object to the concept of a negotiated settlement under which the U.S. Government provides funds to permit the purchase of lands for the benefit of the tribes. In fact, I think the words you used were that you would support that. But from your standpoint, what you object to is the treatment to be accorded those lands that are going to be acquired. Is that correct?

Mr. A. REDMOND. That is exactly correct. I am not speaking as a member of the same committee that I am on with Pierre. I am speaking as Andrew Redmond, State senator, representing the people of this district.

Senator MITCHELL. Fine. I understood that. And on that, I gather that there is some difference perhaps between you and Pierre. But, I just wanted to make certain. I was going to ask him the same question.

Mr. A. REDMOND. I do not support our committee's position—there is no question about it. However, as you know, with the situation I am in, I have to wear a half a dozen hats; I am in banking, and the banks support the settlement; I am in lumbering; I am on this committee as a senator. So, some sort of compromise has to come out in my talks.

I think the leadership has been pushing so hard for this settlement, and my thought, as Andrew Redmond, is to say, "What the heck? Why buck city hall?"

The people who have been in touch with me ever since that enactment—this is what bothers them most; this is it.

Senator MITCHELL. On that score, you referred to the enactment of the Maine Implementing Act by the State legislature, and I think the phrase you used was that "no one knew about it."

Are you satisfied that the procedure being followed here with respect to this bill is satisfactory in terms of public notice and giving an opportunity to be heard?

Mr. A. REDMOND. I think it went fast. I think it follows the pattern of the way it was introduced into the Maine Legislature.

I was reading the Bangor Daily News, and it stated that the final day to request to come and testify here was yesterday and that the meetings were going to be held on a certain date. That was not much advance notice. That part I do not approve of.

Senator COHEN. If the senator would yield: You received notice quite well in advance that we would be holding hearings. It has been publicized for a month. In fact, the Interior Department requested an extension of a week, and that was publicized.

You are not suggesting that you did not have adequate time or notice to know that we were going to have hearings in Washington yesterday and today?

Mr. A. REDMOND. We had adequate time because Pierre was involved so deeply, and I guess Pierre wrote a letter to your office, Senator Cohen.

Senator MITCHELL. In that vein, senator, are there any questions that you feel have not been asked of the proponents of this legislation that you feel should be asked—that you would like to have Senator Cohen or I ask?

Mr. A. REDMOND. I would have to refresh my memory. There are so many implications in this, and I have heard so many complaints about the thing, that it would be irresponsible for me to suddenly pick the one that I would like most to hear—the one I think the public would like to hear mostly—and throw it at you. I do not think it would be responsible.

Senator MITCHELL. I know both Senator Cohen and I feel that every appropriate question that could conceivably be raised about this legislation should be raised, and an opportunity for all points of view to be heard must be made available. That is the purpose of this hearing.

I would ask you if you would submit to me, and to Senator Cohen and the committee—and I ask Pierre Redmond the same thing—at your earliest opportunity, anything you can think of that has not been raised, any part of this subject matter that should be explored that has not been explored. I think there has been substantial criticism by yourself and others about the haste with which this went through the legislature. What I am trying to suggest is that we do not want that feeling to exist.

If there is any question you think should be raised, I would ask you to submit it after you have had time to reflect and think about these hearings and perhaps have a transcript of the hearing to look at, if you would give it to us, we will do our best to see that the question is raised. Would you do that, Senator Redmond, at your convenience? [1]

[1] Material not received at time of printing.

Mr. A. REDMOND. Yes. I appreciate that, Senator Mitchell.

I have other material here I could throw at you; but, as I said, I prefer doing it the other way because I have the feeling that the leadership of the State, and the legislature, and the negotiating committee, have been all along just eating the peanuts and throwing the shells at me. And I could do the same here, but we would just be losing our time.

Senator MITCHELL. Well, we want you to have the peanuts too.

Mr. A. REDMOND. Thank you, Senator.

Senator MITCHELL. I would like to ask you one further question, Senator Redmond.

You referred several times in your testimony to the possible relocation of Indians to the area which you represent, where you indicate that no substantial numbers of Indians had previously resided. Do you have any information to suggest that some substantial relocation by the tribes is intended or anticipated? Or are you just assuming that because they are going to acquire land over there they are going to move over there?

Mr. A. REDMOND. This opinion of mine comes from reading L.D. 2037, the Maine Implementation Act; it is in there. I understand this is what you are going by. There are provisions there, if they want to move there—there are some possibilities.

Senator MITCHELL. Well, there is nothing to prevent Indians from moving to Jackman now, is there? I mean, anyone in this country can move anywhere they want to already, can they not?

Mr. A. REDMOND. Yes, but they do not have the Maine Implementation Act that makes them a special class of citizen, that gives them special rights in fishing, hunting, and so forth. They do not have that.

Senator MITCHELL. So, if I understand what you are suggesting, it is the fact the Maine Implementation Act creates a certain type of treatment for the lands to be acquired, and, second, some of the lands to be acquired are in western Maine. From those two facts, you draw the conclusion that the Indians will move there.

Have you heard from any Indians that they do, in fact, intend to move there?

Mr. A. REDMOND. Senator Mitchell, I am not a lawyer, but I have had quite a bit of experience. I have employed lawyers. As a matter of fact, I sold my business 8½ years ago, and I had some of the most competent lawyers, with all kinds of sheepskins hung on the wall. They said:

> No, Andrew; just so long as you don't compete, you are all right; you can start a little sawmill, or you can start another lumber operation—just so long as you don't compete.

I learned the interpretation of the word "compete," as not only with the product but with the personnel, also with the raw material. In the State of Maine the raw material is wood. What else would you be looking for if you were a guy like me?

What I am saying is this. I do not want to start discussing the interpretation of words. This is what brought me into the legislature and doing this type of work—I could not go back into business. So, interpreting laws and lawyers' language is difficult for me.

Senator MITCHELL. I really do not mean to try to put you in a position of having to interpret that. I was merely trying to find out

what basis there was for your statement which you made, I think, three or four times during your testimony, that Indians would be moving into western Maine, into the area that you represent, an area where they had previously not resided.

Is there anything other than the language of the act to which you have referred that has led you to that conclusion? That is what I am trying to find out.

Mr. A. REDMOND. There are other people who interpret it the way I do. Mr. Tureen did not come and tell me they would move. The attorney general told me they would not move. But I go by the provisions of the act.

Senator MITCHELL. Do you think it would be harmful for the area you represent if some Maine Indians moved there and lived there?

Mr. A. REDMOND. I do not think it would be harmful if they moved there under the Star Spangled Banner, under the laws of Maine and our national laws the way they are now. But if you ratify this document that they brought to you, I think it will be harmful.

Senator MITCHELL. I would like to ask Mr. Pierre Redmond a few questions. Thank you very much, Senator Redmond.

Mr. Redmond, have you been here through the course of the 2 days of hearings?

Mr. A. REDMOND. Yes, I have.

Senator MITCHELL. And were you present when I asked each of the previous witnesses whether there were any separate agreements; anything other than what is contained in these documents before us regarding any of these transactions?

Mr. P. REDMOND. Yes, I was.

Senator MITCHELL. And were you present when all of the witnesses responded that there was, except for Mr. Perkins' making an addition late today on some blueberry property?

Mr. P. REDMOND. That is correct.

Senator MITCHELL. In your prepared remarks, you made a reference to "sweetheart deals" and raised the question about private deals. Do you have any evidence to suggest that the testimony given by the witnesses on that point is false and that there are, in fact, sweetheart deals?

Mr. P. REDMOND. I have none.

Senator MITCHELL. You have none. So you merely raised that as a point of speculation; is that correct?

Mr. P. REDMOND. Just in the same manner that you did, in order that all these questions be raised. If the timing had been different, and I had testified first, I think it would have. If I had not brought it up, then I would have hoped someone else would.

Senator MITCHELL. Are you satisfied on that point? Is there some further line of inquiry you feel that either Senator Cohen or I should pursue in that respect?

Mr. P. REDMOND. I have no evidence or indication of any covert deals that have been made regarding the transfer of lands or subsequent management of them. However, I think that somehow there should be some inquiry made as to the status that will be accorded corporations operating these newly acquired timberlands and sawmills or any other processing plants that go along with it, their tax status, their eligibility for special privileges on the basis of federally

mandated minority set-aside programs, or financing, or contracts that are intended to be as part of an affirmative action plan, and to what extent nonminority managers of these businesses and timberlands, who are associated or in some way or another in partnership with the minority citizens, would stand to benefit from such special status accorded to them. Again, I make no allusion to anything covert. I think this is something that is very above board and should be considered when weighing what benefits will accrue to the landowners who are selling the lands in this transaction, above and beyond the very explicit price that is being paid them for the lands and the tax treatment on the capital gains that have already been addressed.

Senator MITCHELL. I extend to you the same invitation I extended to Senator Redmond, and that is, after the hearings, if there is anything you feel should be asked, that has not been asked, I would appreciate it if you would submit that in writing, and we will undertake to get any question answered.

Mr. P. REDMOND. Thank you.

Senator MITCHELL. You also raised a question about the value of the land; the land being sold. You mentioned that in your testimony. You have heard the questioning by Senator Cohen and myself on that point. Let me ask you this question. Do you have any direct evidence, in the form of appraisals, or other information, to suggest that the values being paid for this land are not fair and reasonable values?

Mr. P. REDMOND. I have no explicit evidence or appraisals by any expert witness or anyone on that matter. I do share some of the concerns that my father, Senator Redmond, has raised, that we are dealing in an area that does not conform to the workings of a classical, purely competitive marketplace, but that we are dealing in a commodity which an economist would say has a perfectly inelastic supply—"they just ain't making any more of it." Because of that, the amount that is transacted from year to year is very low, especially when we are talking about the large, substantial tracts that the paper companies and other large land companies hold.

Because of this traditional economic theory, the microeconomic price theory that is typically applied to arriving at a fair evaluation or market value for this particular commodity—land—is subject to interpretation.

My father pointed out the fact that it is generally accepted among appraisers of timberland that timberland has a higher value to processors than it does to nonprocessors. These things should be considered. Whether, in the absence of this specific act, a transaction would likely occur at those prices is something that should be considered.

Again, I have not prepared anything in this area.

Senator MITCHELL. We have requested that the appraiser for the buyers will appear here, and I understand that he will do so. We have asked for copies of all appraisals made by the sellers. The Interior Department conducted an independent appraisal, about which Secretary Andrus testified yesterday.

Do you have any specific suggestions as to what Senator Cohen and I might do to further establish, one way or the other, whether the values to be paid for the land in question here are, in fact, fair and reasonable values?

Mr. P. REDMOND. I have not prepared for this, but I will take the liberty of going out on a limb here and suggesting that perhaps some alternative methods of evaluation be made outside of that of willing buyer and seller, since, obviously, that is not a situation that often occurs, and it has been indicated that this is not the case here; that they are less than willing sellers; and that they are doing it out of courtesy to the State to resolve the claim.

Senator MITCHELL. Of course, if that were the fact, it would have the tendency to drive up the price, would it not? It would result in an even higher price.

Mr. P. REDMOND. I do not know.

What I was getting to is this. I am not a political science major—I am an economics major—so I have another theory of evaluation that I think might serve as a useful tool in arriving at a fair evaluation. It would be something akin to a discounted cash flow approach or similar to what is used in valuing lands under the Tree Growth Tax Law which is currently used to set values for land in Maine for purposes of property taxation, that the land companies pay. If this sort of approach were used, I think it is very probable that the land values achieved under this system of evaluation—which the land companies agree to now for the purposes of property taxation—might result in a different evaluation than the one presented here.

I would suggest that proper experts be consulted on this matter.

Senator MITCHELL. You stated in your prepared remarks that sometime in May you appeared before a group of leaseholders who expressed to you their frustration and dismay; I think they were two of the words you used; I do not recall the other words; that was after your presentation to them.

At the time you made that presentation, were you aware, and did you convey to them, the assurances that Mr. Perkins has given this morning that all leaseholders would be given the option of either purchasing the property or having their lease continued effective by the persons to be acquiring the land?

Mr. P. REDMOND. Yes. They indicated to me that they had been made very much aware of that provision, but what I would bring out is that, although in theory and in fact they could continue to lease the lands from their new landlords, as they have up until now, in practice and in actuality, many of these people would be very uncomfortable and have indicated that they would be more than uncomfortable to continue to reside in, let us say, a camp on Nicatous Lake in the middle of a 200,000-acre Indian territory, and raise their children there, and have them around.

Senator MITCHELL. You mean they indicated that the fact that the land would be owned by the tribes, as opposed to the paper companies, would make them feel uncomfortable about raising their children in the area?

Mr. P. REDMOND. That hunting and fishing regulations would be different, that there could potentially be active hunting of game on the lands in times of the year they were not used to. As you know, mothers worry for 3 weeks in November every year, and this could possibly be extended. That is basically what they conveyed to me.

Senator MITCHELL. Would there be any change if they bought the property outright?

Mr. P. REDMOND. If the tribes bought the property?

Senator MITCHELL. No; the present leaseholder who has the option of buying the property to be leased outright.

Mr. P. REDMOND. That their camp our house sits on?

Senator MITCHELL. Right.

Mr. P. REDMOND. We did not enter into a discussion of that. I could not pretend to speak for them on that.

Senator COHEN. Would you yield for just one question?

Senator MITCHELL. Yes.

Senator COHEN. Your father suggested that if the tribes simply purchased the land outright with money provided by the Federal Government you would have no objection to that. The question that would be raised, assuming the tribes purchased that land from the companies outright, is this: Would that present any difference in terms of the relationship between the non-Indian citizens and the Indian citizens?

Mr. P. REDMOND. If the newly created Indian territories would be subject to——

Senator COHEN. If the tribes purchased the land outright, if there were no restrictions, they owned the land, I assume that they could exclude anybody they wanted—no trapping, no fishing, no hunting. How would that be different? Your father said that he thought that if the tribes just purchased the land outright and lived by the laws of the United States, he would have no objection. I assume that if they were private landowners they could then exclude non-Indian citizens from that land.

Mr. P. REDMOND. That is correct.

Senator COHEN. I do not understand the difference. In other words, why would there be objection, on the one hand, if they were still subject to Federal tribal regulations, or if they were to own the land outright by purchase?

Mr. P. REDMOND. Although there would not be any difference directly affecting the non-Indians in the area, the basic feeling is one of inequity in this other class of citizens—the Indian population—would have certain rights and privileges that they did not have.

Senator MITCHELL. Is that not true now throughout the country? Do not the laws of this land, as interpreted by the U.S. Supreme Court, require that in many respects Indians be treated in a distinct manner?

Mr. P. REDMOND. Yes, sir.

Senator MITCHELL. Is your difference with this really that fundamental philosophical point; that you do not think any Indians anywhere in the country should be treated differently?

Mr. P. REDMOND. It is true that on existing reservations Indians in federally recognized tribes are afforded certain special status.

Senator MITCHELL. Do you feel that should be discontinued?

Mr. P. REDMOND. I have no feeling on that at this hearing. The point is that, although it has been argued that the new jurisdictional arrangement of this act is actually more beneficial—I would not say beneficial—but bring them more in line with the non-Indian population, and to the extent that this is going to apply to a 30,000-acre parcel above and beyond the existing reservations, then it is still according new and distinct privileges, and these should be weighed.

Whether they are reasonable or unreasonable may not be clear, but they should be considered as such and weighed.

Senator MITCHELL. Is it fair to say, then, that the position you take and that your father has taken is that you do not quarrel with the special status accorded American Indians on the reservations, either in Maine or anywhere else? At least your father does not quarrel with the fact that this settlement contemplates the acquisition of additional land in Maine for the benefit of the tribes. Really, when you get right down to it, your quarrel is with the fact that on the 300,000 acres to be acquired, there is, in some respects, special status accorded to the owners of those lands—the beneficial owners, or the tribes—that is not available to the landowners of other property in Maine. Is that a fair statement to make?

Mr. P. REDMOND. No, that is not quite fair or accurate.

Senator MITCHELL. Let me ask it again. Let us take the first part. Is it correct to say that you have no quarrel with the special status accorded the American Indians on the reservations in Maine or elsewhere throughout the United States?

Mr. P. REDMOND. I do not see this as being a relevant issue to this settlement. That is something I may have personal feelings on, but as far as the terms of this particular settlement are concerned, I have no position on that.

Senator MITCHELL. So that does not bother you?

Mr. P. REDMOND. That is right.

Senator MITCHELL. Second: Do you agree with your father that you would support this legislation if all it provided were that money would be paid to permit the purchase of 300,000 acres for the benefit of the tribes with no other status accorded those lands?

Mr. P. REDMOND. No.

Senator MITCHELL. You disagree with that?

Mr. P. REDMOND. That is correct.

Senator MITCHELL. Third: I assume you disagree with the special status accorded on those lands under this proposed legislation.

Mr. P. REDMOND. That is correct.

Until recently, the committee had taken, as a committee, no position on the merits of this particular settlement or on the merits of court litigation on any type of settlement. Ours was solely a procedural issue in that we wanted to bring this to a vote before the people of Maine. There were many supporters and actual petition circulators who, in fact, felt the settlement was fair and a just resolution of the case, but they felt very strongly that these citizens should be accorded the same privilege that the members of the Indian tribes were.

So, consequently we were working in a delicate area of having support from a broad range of views on this case.

More recently, especially since this hearing was scheduled and it appeared that this particular settlement was continuing along its course, we felt it was no longer a valid stand to take, that we did not oppose this particular issue, and especially when it became apparent that we were not going to be successful in suspending the legislation by petition. It was quite clear that the opinions of the members of the committee were that this claim was invalid and that any negotiated settlement of this claim that would grant them any substantial sum of

money or acreage is not in the best interests of the State, and that we preferred to see these issues, which are separate from any issues or whether we feel there is some deep-seated moral obligation to our native Americans, we wanted to see this very specific issue of who owns the State of Maine resolved. Is it the people who have a farm and have a deed that they got after they had a title search done and believe they had a warranty deed? Do they own it, or does this group—this purported tribe—due to some aboriginal rights that they may have had some time in the past?

This, we feel, is a very difficult issue which should be resolved by a court; a competent court of law.

Senator MITCHELL. That leads me, I think, to what I must say troubles me about your testimony, which I have found generally to be very well thought out and well presented.

On the one hand in your statement, you said, and you have just repeated, that this ought to be decided in a court of law; that it ought not to be the subject of a negotiated settlement. You are saying to the Indian tribes, "You should go to a court of law and get this question resolved." In the very same statement, you said that even if they win, no court could enforce this settlement, and you have directly raised the specter of violence in oposition to a court order.

My question to you is, what does that say to the Indians in Maine, to the people in Maine, all of the people in this country, about the meaning of justice in America? If you say to a group, "You ought to go to court to get your issue resolved, but even if you win, no court is going to be able to enforce your victory, and I tell you now"—and you raise this directly, you use the words, "the specter of violence in opposition to any court order." What does that say to the people of this country about the meaning of justice in America?

Mr. P. REDMOND. I am not saying that they could not get a settlement. I am saying that the state of justice in America is still essentially good. I hold it up as a model to other countries to follow. I do not feel, however, that justice would be served if, contrary to my beliefs and the beliefs of the attorneys I have consulted, if there is merit in the tribes' claim and a court found merit and found that some equitable relief should be given, justice would not be served by creating an even greater injustice to the current residents who live on the claimed lands. Compensation could be made in the form of solely monetary compensation. If that was found—I have not thought through exactly what types of compensation would be awarded.

Senator MITCHELL. What you are saying is, let us let a court decide it as long as the court agrees with you. But if they disagree with you, then it would not be enforced.

Mr. P. REDMOND. That is not true. I am very interested in seeing the Indians being afforded the due process guaranteed by our Constitution in that they should have their claims evaluated. And, if merit is found, then some equitable relief should be given. One that is just to them but, in doing so, does not create an even greater injustice.

Senator MITCHELL. If your views prevailed and this case went to court, and a U.S. district judge said the Indians should receive 12 million acres of Maine land and $25 billion, which they are asking, would you raise your voice in favor of the law and tell the people of

Maine, "You should accept this settlement because a court of law, in a proper proceeding, has said that?"

Would you urge the people whom you now encourage to sign petitions to stand in favor of the rule of law of this country?

Mr. P. REDMOND. Obviously not. If we are involved in court litigation, I will stand with the non-Indian population. We will be confronting the Indians who are seeking damages in this claim. We are obviously on opposite sides of that issue.

Senator MITCHELL. I know, but the purpose of a court hearing is to decide by peaceful means who is right. What you are saying is that you want them to go to court, but if they win, they cannot win anyway—you are not going to have the settlement enforced. Does not that fundamental contradiction bother you?

Mr. P. REDMOND. Either I am not making myself clear or you did not understand what I am attempting to put across. I feel a court of law could consider this very specific issue that is before them, and if, contrary to what I believe, they find merit in the claims, they could award reasonable compensation, that they could award them whatever they felt, as in the Sioux case. There was $106 million out there. They are not raising the specter of violence. They are not attempting to evict people from their homes. However, apparently the Sioux tribes—and I have not followed the case closely——

Senator MITCHELL. But that was not a suit for land; that was a suit for damages, and they got what they wanted. Here they are suing for land. You cannot predict in advance what a court is going to do. I can tell you that from personal experience. Nobody can predict in advance what a court is going to do.

So, what I am suggesting to you is that if this case goes to court, and one party specifically asks for land, the possibility exists that that party might win the land; a 40-percent chance according to attorney general of Maine Richard Cohen; a slightly lesser chance according to James St. Clair. Various lawyers will give you different estimates; nobody knows for sure. My point is that you cannot rule out in advance what the result may be.

I perceive a fundamental contradiction in saying to the Indians, "Go to court; follow the legal processes; but if you win, you are not going to get what you won if a judge says you are entitled to land."

Mr. P. REDMOND. As I stated before, I feel the U.S. Congress should clear up this particular issue by passing the legislation that was proposed by Senators Hathaway and Muskie and Congressman Emery and, I think, Senator Cohen as well. That would resolve this issue. That would still allow them the chance to have the merits of their case heard and just compensation made, and see that justice is done on their behalf, and, at the same time, not create an even greater injustice to those who live in the State of Maine now.

Senator MITCHELL. All right.

I think we have to go vote; we are a little bit late now; we will be back shortly.

Senator COHEN. The hearing will stand in recess for about 10 minutes.

[Recess taken.]

Senator COHEN. The hearing will come to order.

Senator Mitchell is on his way back from the floor, and I will just make a few comments prior to his arrival. I am not sure whether he has any more questions of you, Senator Redmond or Mr. Redmond.

Let me point out a couple of things. First: It has been suggested that this is going to be a rush process. I will take issue that there has been inadequate notice about the date set for these particular hearings. It has been well publicized in the Bangor Daily News, the Portland Press Herald, and on every major station—radio and television—throughout the State of Maine. I have done many interviews myself leading up to this particular set of hearings, in addition to appearing on the follow-up program on channel 5 which has a wide distribution, in addition to going on at least three radio stations last week, again, publicizing these particular hearings. So I think it is clear that we have known for some time we were going to have hearings in Washington, and I wanted to make it very clear that all sides to this particular issue would be heard.

For example, you mentioned members of the committee. I have invited Mr. Libhart to come and testify. He will be submitting a written statement in opposition to the settlement. Mr. Wiggins, whom I know very well, who is well versed in this particular matter, is submitting extensive written testimony. I have asked Attorney Jim Erwin; my office has called to see if he could be here today, but he could not be here.

So, we are taking whatever steps are necessary to make sure that all sides of this particular issue are ventilated.

Now, with reference to its being a rush proceeding, first we have to go through this process. The record will be held open for a period of 30 days following the closing of these hearings for further testimony and written statements. If necessary I will, schedule another day of hearings if it becomes important to do so, to clarify any other questions that should be asked, in addition to the questions Senator Mitchell has invited you to submit to us on areas that you would like us to explore. We have at least a 30-day period on that.

Assuming this committee were to make a recommendation, it would have to go to the Appropriations Committee of the Senate, at which time further hearings would be held before the Senate Appropriations Committee.

Assuming the Senate Appropriations Committee were to make some kind of a recommendation, whether to adopt in whole or in part, or some modification of whatever comes from this committee, I would propose that we, at that point, suspend the process until a similar bill is introduced on the House side.

I want to make it quite clear, I see no point in having the Senate go through this process if, in fact, no action will be taken by the House. I believe the counsel for the tribes would be in agrement with that. They do not want to see us proceed and then have it simply be passed over by the House this year.

So I think we have to be forthcoming with all parties concerned. We are going to proceed as expeditiously as we can, taking into account all of the views, all of the issues; debating them, making suggestions, making modifications if necessary; and then we will find out whether hearings will be set for it. So we can at least try to move along on parallel

tracks because, if not, this would be an exercise in futility for us to hold these hearings and simply have no action taken in the House.

But the point I want to make is that this is not any kind of rush to judgment to anybody. All sides are going to be heard. The matter is going to be fully debated in this committee, in the appropriations committee, presumably on the full Senate floor, and a similar process will take place in the House, before any ultimate judgment can be finalized.

I just wanted to make that clear to you—that we are going to be fair to all parties concerned. This is going to be a well ventilated issue by the time we are through and certainly is not going to be resolved immediately but, rather, in a question of weeks, and perhaps months.

But we are trying to do our job to proceed as responsibly as we can. I think this is very positive, to bring this issue before the full Senate. We are raising issues that legitimately should be debated and are going to be debated.

I think both of your have made a fine presentation this morning. You have raised issues which are on the minds of a lot of people, and properly so, but then it is the responsibility of this particular committee—Senator Mitchell and myself—to proceed with this proposed legislation. But, again, I want to point out that I am only going to propose, as chairman of the delegation, that we proceed to the point where we can at least be assured that the House will undertake a similar consideration. They may come to an entirely different conclusion, but we should have some indication that they are going to proceed with hearings and debate. Otherwise, what we are doing is simply delaying the matter by going through this process, having no action taken by the House, having Congress adjourn on October 3, with no resolution whatsoever, and then throwing it into the next session with a brandnew Congress.

So, there are time pressures placed upon us, certainly, but we are aware of the realities. We want to see this move expeditiously but in a spirit of fairness.

I have raised this to give you time to get back, Senator Mitchell.

I should point out that we have this room only until 5 o'clock this afternoon, so we are going to try to proceed with the balance of the witnesses that we have scheduled and the list is quite extensive.

Mr. P. REDMOND. Senator Cohen, before we proceed, if I have the permission of the committee, I would like to complete answering the line of questions that Senator Mitchell raised just prior to the last recess.

Senator COHEN. Please proceed.

Mr. P. REDMOND. I am very concerned that the line of questions and the exchange between Senator Mitchell and me have left an inaccurate impression on the record. I would like to make it very clear that, in raising this so-called specter of chaos and violence that would occur if an order was attempted to be carried out to evict people from their homes, and so on and so forth; in stating that, I was in no way recommending, encouraging, or condoning this kind of action. I am merely here reporting to you what I, in my travels and contacts with people across the State, have heard from these people. I am stating no opinion of my own as to what sort of action

would be forthcoming. I am just conveying to you what I have heard. I feel that is a very real concern. I think you should be made aware of what is being said up there.

You have said this speaks poorly of the state of our justice system; then so be it.

Senator MITCHELL. I thank you, and I appreciate that.

Let me say that I served as U.S. attorney for Maine for several years, and I served as U.S. district judge. In both cases, I took an oath to uphold and enforce the law as it exists, not as I think it should be. I did not agree with every law that I upheld. In a society of laws, in a Nation of 230 million people it is not possible to have a body of laws with which every person agrees.

But above all else, I believe that if we are to have a truly democratic system of justice under law, each of us must subordinate some aspect of his or her wishes to the common good. And while we ought to be free to vigorously pursue by all appropriate means, in the form of public opinion or in the courts, the positions we stand for, once a law has been established, once a court has spoken in final form, then it is up to us who perceive ourselves to be leaders, who play an active role of leadership in our society, to actively encourage obedience to the law and to discourage acts of violence or other disrespect for the law.

You are as much a leader of Maine as Senator Cohen or I. You have chosen voluntarily, in the best traditions of a democracy, to come forward, to express an important point of view on a matter of overriding interest to the people of Maine, and for that I say to you I have nothing but admiration for you, and I commend you for your willingness to participate.

But, having assumed that role, you also assume an obligation, and that obligation is to lead people in the right direction once the decision has been made.

So, I commend you for your participation; I think you obviously have a great career ahead of you, and I encourage your further public participation because you are obviously a thoughtful, eloquent young man.

But, at the same time, I suggest to you that coming forward, as you have, imposes upon you the same obligation that rests upon Senator Cohen and me, Senator Redmond, and others who participate in leadership roles in a democratic society. And that is to encourage equal justice for all, whether we happen to agree or disagree with the decision, once that decision is finally made. That is the only point I want to make.

Thank you very much.

Mr. P. REDMOND. Thank you.

I would state that I and the members of my committee and counsel for them also agree that it is imperative that we hold the utmost respect for the law and seeing to it that it is obeyed once it has been interpreted.

Senator COHEN. Thank you, Mr. Redmond and Senator Redmond.

We will next hear from the Honorable Samuel Collins, Maine State senator from Rockland, and the Honorable Bonnie Post, Democratic representative to the State legislature from Owls Head.

Senator Collins?

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STATEMENT OF HON. SAMUEL COLLINS, STATE SENATOR, ROCKLAND, MAINE AND HON. BONNIE POST, STATE REPRESENTATIVE, OWLS HEAD, MAINE, ACCOMPANIED BY JONATHAN HULL, COUNSEL TO THE JOINT SELECT COMMITTEE ON INDIAN LAND CLAIMS, MAINE STATE LEGISLATURE

Mr. COLLINS. Thank you, Mr. Chairman.

I am Senator Samuel Collins, and with me is Representative Bonnie Post. We have served as cochairmen of the Joint Select Committee on Indian Land Claims of the Maine Legislature. Our statement is a joint one. I will take the first portion and Mrs. Post the second portion.

For several years the Maine Legislature has been aware of, and involved in, the various attempts to negotiate a settlement of this case. Legislators, including myself, were members of former Governor Longley's advisory panel in 1976. In 1977, Maine legislative leadership set up an informal committee to consider options and advise the attorney general. This committee discussed the case and the ongoing negotiations with the State negotiators and other interested parties.

On several occasions, the legislature was informed of the progress of the claims, including an address to a joint session by former Senator Edmund Muskie in 1978. Thus, the legislature was well informed on the progress and developments of the claims case and the negotiations long before the Maine Act was presented to it.

Early this year our committee considered and favorably reported a bill that carried into Maine law the relevant parts of the negotiated settlement among the Penobscot Nation, Passamaquoddy Tribe, and the Houlton Band of the Maliseet Tribe and the State of Maine. The agreement had been approved by the governing body of each Maine Indian tribe and also by an advisory referendum by the Penobscot Nation prior to its submission to the Maine Committee. The committee and the legislature acted favorably on the bill, and it was signed into law by our Governor on April 3, 1980. It will become effective when this companion Federal bill is enacted.

As you all realize, the final part of that agreement in the form of S. 2829 is now before your committee for its consideration. We strongly urge you to favorably report S. 2829. The bill is vitally important to Maine and to the country as a whole.

As you know, these two acts, the Maine Act and the companion Federal bill pending before this committee form the negotiated resolution of the Maine Indian Land Claims case. That case rests on actions that occurred almost 200 years ago but have had profound consequences in the past few years.

There is no need for us to repeat the details of the legal arguments on both sides of this case, nor the difficulties in developing a negotiated settlement. It is sufficient to note that the process has been long and arduous for all concerned. Both the State and the Indians feel that their legal position is strong but that the consequences of complete court determination of the issues would be too harmful when a reasonable settlement is possible.

The Maine Joint Select Committee considered in detail the legal arguments on both sides of this issue. It considered the provisions of

the Maine and proposed Federal acts. And it considered the results of rejecting the settlement plan. The committee held an extended public hearing on the Maine Act and working sessions involving all parties. It also held a closed session with the Maine attorney general and his advisers to discuss the State's legal position and the consequences of pursuing the lawsuit to its conclusion.

The committee overwhelmingly approved the Maine Act and the terms of the negotiated settlement; 11 members in favor and 2 opposed. The Maine Legislature agreed and enacted the bill, which the Governor then signed. The reasons for Maine's endorsement of the Maine Act are simple: Complete litigation would seriously injure the State and the settlement is an honest and fair compromise by all parties.

Maine has been litigating this issue with the Penobscot Nation and Passamaquoddy Tribe since 1972. During this time the State has spent a great deal of money and has suffered significant disruptions in its legal, social, and financial affairs. Federal expenses have also been substantial since the Justice Department has represented the Indians. However, these costs and disruptions will appear minor compared to those that would occur if the case goes to final litigation.

The Indians have laid claim to approximately 12.5 million acres, almost two-thirds of the State of Maine. This is a greater land area than that of any other New England State. If the settlement is not enacted, land titles in the entire claim area will be clouded. In Mashpee, Mass., a similar claim based on a much weaker case totally disrupted all titles and land transactions in the claim area. These still have not been sorted out, even though the case has been decided.

The *Mashpee* case was finally decided when the U.S. Supreme Court denied certiorari on October 1, 1979, in *Mashpee Tribe* v. *New Seabury Corporation*, 592 F. 2d 575, First Circuit, 1979, certiorari denied, 200 Supreme Court, 138, 1979.

In Maine, the clouded titles would affect 12.5 million acres, including the title of thousands of small landowners and homeowners. This would also affect the bulk of the land that forms the basis of our vitally important forest products industry. Almost one-third of Maine's population lives in the area claimed by the Indians.

Maine's attorney general and the State's counsel on the case, James St. Clair of the Boston firm of Hale and Dorr, estimate that the case could continue for 5 to 10 years. The effect of clouding real estate titles for this long, as the case winds through various courts, would have grave and permanent economic and social consequences for the State.

It would seriously harm State and local governments' ability to raise funds. In 1976, the Boston law firm of Ropes and Gray refused to give a favorable unqualified opinion on the town of Millinocket's $1 million bond issue for sewer construction. Millinocket is located within the claim area. Subsequently, the State delayed and then canceled a $27 million bond issue by the Maine Municipal Bond Bank for the same reason.

It would hamper or stop land transactions in the claim area. Pressing the suit will throw into question every land title in two-thirds of the State of Maine, and title attorneys will be unable to certify clear title to the present owners.

It would jeopardize the stability of present industries and is likely to entirely halt economic development. Real estate sales, with their

accompanying legal, business, and financial activities, would be slowed or halted. Construction and banking would be seriously affected. Businesses would be reluctant to make plans to expand in or move to Maine.

The resulting disruption and uncertainty would not only affect State government, but it would also involve Federal expenditures in those programs intended to meet economic difficulties. Quite probably, welfare and unemployment costs would increase while tax revenues decreased.

In addition to the severe and numerous indirect effects of litigation, the direct expense of litigation will be substantial. Maine's attorney general estimates conservatively that at least $1 million would be needed. This is a significant cost, particularly in these difficult economic times. The Federal Government will also have to bear direct litigation costs, as it has the obligation to litigate the claim in the Indian's behalf.

Aside from the economic effects of litigation, it is important to note the severe social consequences of a long drawn out public battle. Maine citizens, both Indian and non-Indian, have lived together in relative harmony for generations. However, the litigation has begun to foster some disturbing and ugly signs. Tension between Indian and non-Indian citizens is growing. There is little doubt that full litigation over a long period, coupled with its adverse economic consequences and the disruption of titles to land, would lead to increased friction.

It seems doubtful that polarization, with its increased friction and tension could be avoided if this case is relegated to further litigation. Not only would the economic life of the State be seriously hampered, its social fabric could also be severly damaged.

In considering the settlement, the Maine Legislature took account of all these consequences. Although the attorney general and others still feel strongly that the State could win the case, the cost of winning would be too high. The cost of losing is almost unimaginable. That risk is always present in litigation. An out-of-court settlement is an equitable solution, and it requires your support.

We are really asking you to consider a settlement at about one-third of 1 percent of the prospective provable damages.

Senator COHEN. Thank you, Senator Collins.

Mrs. Post?

Mrs. POST. The basic terms of the settlement, as embodied in both the State and Federal bills, turn on three points: A land base for the Indians, a trust fund, and a continuation, in modified form, of the State-Indian relationship.

The Federal bill before you, S. 2829, responds to the first two points by providing a land base of 300,000 acres and a trust fund of $27 million. Although the amounts involved appear to be high, they are very reasonable compared to the costs of litigation or the costs of a court decision in the Indians' favor.

The claims are immense, while the settlement is reasonable. The 300,000 acres represent a small percentage of Maine forest lands and represents only one-fortieth of 1 percent of the land claimed. In addition to the claim for land, the Indian suit asks for $25 billion in back rents and damages. Thus, the trust fund equals only a little bit above one-tenth of 1 percent of the claim amount.

Even more important, the costs of settlement seem reasonable in terms of providing the nation and the tribes with a long-term economic base. The possibility of economic independence for the Indians of Maine is illusory without an economic base. The plans outlined by the Indian representatives during the Maine hearing and committee meetings indicates their concern for self-improvement. The need for this base is self-evident.

As Penobscot Governor Pehrson wrote in his letter to the nation:

> The settlement will allow the nation to work towards becoming economically self-sufficient and, not only will those alive today reap the benefits, but so will our children and theirs, and so on. The Penobscot Nation will not have to look to the future by depending on government contracts and grants. The settlement will allow all of us to determine our own future and the means and methods to reach our goals.

In approving the State act, the legislature is aware of the Federal act and supported the necessary provisions to establish a secure economic base for Maine's Indians.

The Federal bill recognizes the terms of the Maine act and would incorporate those terms into Federal law. It also allows the State and the Maine Indians to further define their relationship as conditions change. The Maine Legislature based its approval of the State bill on the assumption that the companion Federal bill, as it appears in S. 2829, would not be substantially changed. In particular, the Maine Legislature understood that the terms of the relationship between the State and Maine Indians would be ratified and incorporated as they were negotiated and subsequently adopted in Maine.

Although we recognize the authority of Congress, we would strongly oppose any attempt to alter the terms of that negotiated relationship. We would have to even more vigorously oppose any unilateral change by Congress in State law or jurisdiction as embodied in S. 2829 and the Maine Act.

Of course, during its deliberations, the Maine Legislature concentrated primarily on the terms of the State act and the third point of the agreement: The detailed plan for State and Indian interaction. The premise of the Maine Act and its most important principle is that the traditional relationship between the State and the Indians will continue. Although the act, when read with the Federal act, implicitly accepts the concept that the Penobscot Nation and Passamaquoddy Tribe are Federal Indians, it also expressly continues the historical relationship between the State and the Indians.

Unlike the Western Indians, Maine Indians have historically been under the guardianship of the State. Until the filing of suit in 1972, neither the Federal Government nor the Indians had questioned the State's guardianship role. The State took this role seriously and expended millions of dollars in providing services to the Indians. It even established trust funds for the Indians and provided advisory seats in the legislature for their spokesmen. Thus, for almost 200 years Maine Indians have been distinguished from Western Indians in their treatment by the Federal and State Governments.

Now, apparently, the legal concepts have altered. But that does not preclude a continuing close relationship between the Indians and the State. The relationship embodied in the Maine Act and Federal bill is consistent with Federal policy. In fact, this concept of a strong

State role in the context of the Federal trust relationship to Western Indians, with the Indians' agreement, is embodied in the Indian Civil Rights Act, 25 U.S.C. 1301, 1321, and 1322.

The Maine Act seeks to continue the significant role for the State while establishing a sound and undisputed legal basis for that role. Although it is different from the typical treatment of Western Indians, it is a difference that has existed since the nation was founded. It is also a difference that both the State and the Indians have now voluntarily negotiated and agree to continue. Both parties agree that the traditional Western Indian Federal concept should not be applied. This concept, most commonly characterized in political debate in Maine as a "nation within a nation," would be divisive and destructive if applied in Maine. The resulting increased social friction and tension is unnecessary since both the State and the Indians prefer the continuation of the historical relationship.

We do not see this as establishing any basis for a redefinition of Federal policies toward other Indian tribes but rather as a continuation of a long accepted State and Indian relationship in a new legal framework.

The State act embodies the particulars of the continuing relationship. Although in most respects it continues full State jurisdiction over the Indians and their land, it also provides specific exceptions in recognition of traditional Indian practices and the Federal relationship to Indians.

In particular, it recognizes the rights of the nation and the tribe to exclusive control of their "internal tribal matters, including membership in the respective tribe or nation, the right to reside within the respective Indian territories, tribal organization, tribal government, tribal elections, and the use of disposition of settlement fund income."

It grants the nation and the tribe specific authority to regulate hunting and fishing within their territories and creates joint regulatory authority with the State in regulating fishing in great ponds and rivers within the territory. Under the Colonial Ordinances of this State and present statutes, a "great pond" is an inland body of water which in its natural state has a surface area in excess of 10 acres.

It exempts settlement fund income from State taxation although it continues payment in lieu of taxes on land in Indian territory.

It gives the Indians limited jurisdiction over enforcement and adjudication of criminal laws for misdemeanors but continues State jurisdiction over non-Indian and over felonies.

It gives the Indians some control over State eminent domain powers that will prevent the erosion of their territory or reservation areas.

It continues the Indians' eligibility for and receipt of all programs and services that are provided to other Maine citizens. It also makes the tribe and nation eligible for State funds and programs given to all municipalities, including revenue sharing and local road aid.

It gives the Indian territories the status of municipalities within the State; thus under Maine municipal law it authorizes the exercise of taxing, zoning, and other police powers.

I would like to depart from the written statement to elaborate on that particular subject. In Maine, article 8, part 2, sections 1 and 2 of the Maine constitution provide the basis for municipal home rule.

This basic and broad grant of authority to municipalities to undertake all activities that are local and municipal in character that are not expressly prohibited will also apply to the tribe and nation.

This concept of municipal home rule parallels the constitutional relationship between the State and the Federal Government. It is common in New England, where the town is the basic unit of government, but it is not prominent in other parts of the country where county government is primary, at least outside the cities. This concept makes municipal status a very valuable governmental identification.

Senator COHEN. Excuse me for interrupting you, but it may make it very expensive for the Federal Government as well.

Mrs. POST. Why is that?

Senator COHEN. You did hear Secretary Andrus testimony yesterday that if the tribes do, in fact, have a municipality status, this would affect the formulas under which we operate in terms of CETA grants and in terms of those programs such as revenue sharing. It could end up, according to Mr. Andrus, costing the Federal Government, if you apply the same principle to other tribes across the land—he used the figure, $300 million.

Mrs. POST. We are recognizing them as municipalities as far as State law is concerned. I am not sure that that also has to apply as far as Federal law and Federal programs are concerned.

Senator COHEN. I know. But if Mr. Andrus says we cannot accept that initiation of that principle because of the precedent it might set, as far as Federal programs are concerned—I will not interrupt much more of your statement, but the question we will have to ask is this. What if the Members of Congress do not approve of such a new initiation on the part of the State of Maine? Would that alter, in your judgment, the reaction of the State legislature, if it is sent back with a rejection of that new, innovative concept?

Mrs. POST. I think it would. We can get into that.

Even though there are these specific provisions to safeguard the Indians' interests, the Indians generally are treated as are all other citizens of Maine. They are generally subject to the same duties and rights as any Maine citizen.

In approving this negotiated settlement, the committee listened to all sides. We spent many hours reviewing the specific provisions and listening to advocates of diverse views. We heard from Indians who felt that the bill was a "sell-out" as well as the tribal spokesmen who supported it. We listened to non-Indian citizens who believed that it was an unfair infringement of their rights and a granting of special privileges to one group as well as to others who thought it was an unfair restriction of Indians' rights. We heard from those who sought the same rights and authority of Western Indians for Maine's Indians as well as those who argued the bill created a "nation within a nation" that was autonomous of State control. We heard from spokesmen for Indians and non-Indians who wanted the issue to be resolved in the courts. Every interested party had a chance to speak. We are sure that you will hear many of the same arguments during these hearings.

In addition, because this Maine committee was a select committee, it had been chosen to represent many different perspectives. It was composed of prominent members from other joint standing committees

including judiciary, education, fisheries and wildlife, taxation, local and county government, and appropriations. The individual expertise of committee members was applied in detailed explorations with executive branch personnel of particular problems and aspects of the bill.

An example of that might be an issue which has been raised many times during the day, and that is the fish and game law. I think you have been given earlier testimony that representatives of the fish and game department of the State had indicated that because of some of the provisions it would be impossible for Maine, in fact, to be able to enforce the fish and game laws.

We had a representative of fisheries and wildlife on the committee. We had asked him specifically to deal with the Department of Fisheries and Wildlife. He reported back to us, as is present in the legislative record:

> Mr. Speaker, ladies and gentlemen of the house, in reference to the fish and game matters, because I was on the committee, and after I saw the bill, I went down to the department and asked their opinions, asked them to get some questions together. We had two meetings with the attorney general; the questions were answered to their satisfaction. And the Deputy Commissioner of Fisheries and Wildlife, in front of our committee, said that he was satisfied with the bill as it was.

That is an example of the process the Maine Legislature went through in ratifying the Maine act.

During the Maine committee consideration, we requested the parties to consider and negotiate on several issues that were unclear or unsatisfactorily resolved. We submitted numerous questions to the Attorney General and the Indians for further clarification. And finally the committee took the very unusual step of publishing a formal written report that was included in the legislative record. This report contained many of the understandings reached under this process.

As a result of this comprehensive review, the committee made slight changes in the bill which had been agreed to by all parties. But, as a whole, the original bill was accepted and reported favorably out of committee. Then there were several days of floor debate that reviewed the arguments and discussions an all sides. The committee report was finally enacted by a vote of 84 in favor and 47 against in the Maine House of Representatives and 17 in favor and 10 against in the Maine Senate. The Governor signed the bill the same day, April 3, 1980.

We believe that the bill before you today, S. 2829, should be acted on favorably for the same reasons we enacted the Maine act.

The settlement was freely negotiated and agreed to by both the State of Maine and the Maine Indians, and it contains many compromises. The consequences of not passing this bill and of continuing the litigation are unacceptable. And, finally, the settlement provides a sound basis for the relationship among the Maine Indians, the State of Maine, and the Federal Government in the future.

We hope you will agree and act favorably on this bill soon.

Senator COHEN. Thank you very much, Mrs. Post.

It was stated this morning or this afternoon by Mr. Pierre Redmond that the State legislature gave very hasty consideration to this proposal, that he had talked with many State legislators who said:

Why not approve it? After all, it does not require anything from the State of Maine. We have a new status that we have achieved: innovation—as far as tribes are concerned—to create a municipality instead of allowing this to be a normal, Federal trustee relationship with Federal jurisdiction. And, after all, we are not paying the bill.

I would ask you, if the legislature, in your judgment, would have acted as quickly, if it were required to pay, let us say, $1 million toward the settlement? Do you think there would have been more extended debate on the issue?

Mr. COLLINS. Senator Cohen, it is quite possible there would have been more extended debate. I think the result would have been the same.

As I think this committee knows, it is the State of Maine's feeling and historical judgment that we have been contributing rather liberally to the support of our Maine Indians, getting virtually nothing from the Federal Government, which other States and other tribes in the Western part of the country are getting. We rather feel that we are entitled to some respect and consideration for that.

I think that the suggestion that we had a rather cavalier attitude about this is absolutely false. I found people scratching their heads a great deal about the price tag of this bill in Maine and in the legislature. But the alternatives had to be weighed. And when you weigh the alternatives, the ratio that I previously described, you have to think very seriously about this sort of approach.

We recognize that your committee and this Congress have very seriously looked into the proprieties and fairness of the price tag. We know you will. We do not know the ultimate answer to that; that is in your hands. But the important thing is that our legislature recognized that the final responsibility in this matter is in the Congress, not in the Maine legislature. We can only do our very small part, and we want to submit to you our very best judgment and ask you to give it your best judgment.

Senator COHEN. Do you think the Maine Act should be submitted to a popular vote? That is one of the questions raised by opponents of this particular matter—that it has not been put to popular vote; it is not being put to a majority consensus by the people who are affected. I think the suggestion was made this morning that the tribes had an opportunity to vote. Why have not the people had an opportunity to vote in the State of Maine on this? What is your response to that?

Mr. COLLINS. Mr. Chairman, I believe in the Maine system of representative government and the American system of representative government. We have in our constitution, as many States do, a provision that permits the public to take matters like this to public referendum. In the State of Maine, a number of matters have been taken to public referendum where there was a strong feeling about it. In recent years, we have seen the bottle bill and the slot machine bill and the truck weight bill and two or three others that I do not recall immediately. People were very concerned on those issues.

In this particular case, apparently only 12,000 people were concerned, which is less than one-third of the legal requirement. If there were plenty of time to debate this sort of thing for years and years, and there were plenty of time to inform the people, that would be one matter, and I would be happy to have the people vote on it. But the

Department of Justice has said—and it is on record in the Federal court in Portland, Maine—that this is probably the most complicated piece of litigation to ever come into the Federal courts. That is a pretty big statement.

But if it is that complicated, it obviously is going to take a great period of time to properly inform the Maine electorate. And if the Maine electorate is not properly informed, then I do not think that they should be the ones to make the decision.

If you would like to see my own interpretation of this matter, you can read the editorial in today's Bangor Daily News, where I have met head on, the contention of that newspaper, that the matter ought to go to the public referendum.

The public has apparently decided, in its own good judgment, that it does not wish to bring this matter to public referendum, and I am satisfied with that verdict.

Senator COHEN. I have not read your op-ed piece in this Bangor Daily News yet, but is it your position that you are elected to represent your constituents in your senatorial district, as are the other members of the Maine legislature, and that you are held accountable to them for your votes. That you and all the other legislators have to return to your hometowns and your senate districts to explain and justify your vote as to why you approved of this particular proposal, and that is the judgment under which you will have to be considered by your constituents? They are the ones who put you there.

Mr. COLLINS. That is, indeed, a fair statement.

Whatever you may think about public opinion polls, such as the one that has been referred to here today, you must look at the sources of information that the people had when they answered the poll, the nature of the question, and the time frames involved. It is pretty clear, if you analyze that poll, that there were only 18 percent of the people who thought that the court ought to give us the answer.

We know, although the public in Maine in general may not realize, that there are only two places for the answer; one is from the courts, and the other is from the Congress. I think when the people clearly know that, they will support the judgment of their legislators and hopefully of the Congress.

Mrs. POST. I think there was one other factor that influenced the legislature in making a decision on whether or not to send this out to referendum, because the legislature did deal with this issue. That is that we are dealing with a settlement that has been negotiated. The first decision that the committee has to deal with on this issue is whether or not we ought to settle, and once we make that decision, is this a good settlement?

In reaching that first decision on whether or not we ought to settle, we did take the advice of our lawyers, and part of that was done in executive session.

It would not be possible for the legal advice of the State to be given in a referendum process—in a public process—because you are, in fact, telling your opposition what part of your case may be. So that particularly since this was a negotiated settlement, it seems a bit more inappropriate that it go out to State referendum.

Senator COHEN. Senator Mitchell?

Senator MITCHELL. I just have a couple of questions.

Senator Collins mentioned something that has concerned me since I read this poll result in the Bangor Daily News. This poll asks the question, "Who should decide this issue?" And it placed in one category Maine voters; in another category Congress and the Legislature; in a third category the courts; and there has been much discussion about the results of that.

That question contains the assumption that those are three equally alternative methods of disposition in this case and that, somehow, if the voters of Maine say no, the tribes cannot go to the courts.

Do I understand what you are suggesting, Mr. Collins, that that is a completely erroneous assumption and that the voters of Maine simply have no authority to prevent the tribes from going to court, and that the only two true alternatives are, either it is going to be settled through Congress and the legislature, or it is going to court? Is that a correct statement?

Mr. COLLINS. Senator Mitchell, you could not have said it better if you had spent hours and hours writing that question.

The Constitution of the United States places in the Congress the responsibility over the Indian tribes. It is obvious that the voters of Maine do not have that responsibility. So I think the whole basis for that questionnaire was conceived in ignorance, ignorance of the constitution. I am sworn to uphold that constitution, and I am going to keep talking about it.

Senator MITCHELL. If every single citizen in Maine—1 million people—voted that this case ought not to go to court, would that have any legal effect whatsoever?

Mr. COLLINS. Not that I can see.

Senator MITCHELL. While it might be an expression of opinion that all concerned would want to take into account, Senator Collins, as chairman of the Judiciary Committee, when this matter went to court, is it not correct that any Federal judge hearing this case would have to be guided by the requirements of the U.S. Constitution and the laws of this Nation and not by the results of any opinion poll?

Mr. COLLINS. I agree.

Senator MITCHELL. I just want to ask one more question.

On page 10 of your statement, in the second paragraph from the bottom, it says, in talking about the State act:

> It gives the Indians limited jurisdiction over enforcement and adjudication of criminal laws for misdemeanors, but continues State jurisdiction over non-Indians and over felonies.

Although that was an accurate statement as of a few months ago, is it not correct that as of this moment the State of Maine has absolutely no jurisdiction over crimes committed on the Indian reservations?

Mr. COLLINS. That is correct, as I understand the law. I think that when it says "continues," it means before the *State* v. *Dana*. It continues what apparently was the law, what we thought was the law in Maine for 175 years, until the State Supreme Court, relying on various Federal decisions, overruled that position and said, "No, the State has no more jurisdiction."

Senator MITCHELL. So, while there has been considerable discussion here about the tribes' receiving special treatment by virtue of the legislation, it is true, is it not, that insofar as criminal jurisdiction is concerned, the tribes are not now subject to the jurisdiction of

the State of Maine in accordance with the decisions of the Maine Supreme Court, but by this legislation would return that jurisdiction to the State? They would be ceding back to Maine jurisdiction which would place them in a category similar to that of Maine citizens with respect to felonies, a situation which they are not now in. In other words, they would be voluntarily surrendering, through this negotiation process, a special status which they now hold by virtue of law, which they would not otherwise have to give up. Is that not correct?

Mr. COLLINS. This is correct, and I think it is completely within the spirit of Federal policy as expressed in such matters as the Indian Bill of Rights and the Self-Determination laws. They have chosen this deliberately, and I think that is the way it should go.

Senator MITCHELL. So that insofar as receiving special status is concerned, dealing now with the criminal laws on the Indian reservations, by virtue of law unrelated to this lawsuit, the Indians have a special status.

Mr. COLLINS. That is right.

Senator MITCHELL. And they are, through this negotiated procedure, giving up that special status to be accorded the same treatment with respect to certain major crimes as other Maine citizens in the future. Is that correct?

Mr. COLLINS. That is correct.

Senator MITCHELL. I have no further questions.

Thank you, Senator Collins and Representative Post.

Senator COHEN. We thank you for your testimony.

Without objection, we will insert in the record at this point the report of your committee on the Indian land claims.

[The report follows:]

STATE OF MAINE LEGISLATURE, JOINT SELECT COMMITTEE ON THE INDIAN LAND CLAIMS

REPORT OF THE JOINT SELECT COMMITTEE ON INDIAN LAND CLAIMS RELATING TO LD 2037 "AN ACT TO PROVIDE FOR IMPLEMENTATION OF THE SETTLEMENT OF CLAIMS BY INDIANS IN THE STATE OF MAINE AND TO CREATE THE PASSAMAQUODDY INDIAN TERRITORY AND PENOBSCOT INDIAN TERRITORY"

Committee: Sen Samuel W. Collins, Jr., Senate Chairman, Rep. Bonnie Post, House Chairman; Rep. Paul E. Violette, Rep. Michael D. Pearson, Rep. Elizabeth E. Mitchell, Rep. Barry J. Hobbins, Rep. Charles G. Dow, Sen. Gerard P. Conley, Sen. Andrew J. Redmond, Rep. Donald Strout, Rep. Darryl N. Brown, Rep. Robert J. Gillis, Jr., and Rep. Charlotte Zahn Sewall.

The Joint Select Committee on Indian Land Claims would like to present for the record its findings and intentions in voting on L.D. 2037, "AN ACT to Provide For Implementation of the Settlement of Claims by Indians in the State of Maine and to Create the Passamaquoddy Indian Territory and Penobscot Indian Territory." During the course of its deliberation on this bill, the Committee received a great deal of information from the office of the Attorney General and representatives of the Passamaquoddy Tribe and Penobscot Nation, including their counsel. The information and interpretation developed during the committee deliberations are an integral part of the committee's understanding of the bill and were included in the committee's discussion and decision.

It is the understanding of the Committee that L.D. 2037 is a basic document establishing the principles of the relationship between the State and Indians residing in the State. It is more of an organic document than a specific bill, and thus it seeks to establish the broad and basic provisions of this relationship, rather than the intricate details. Because of this nature of the bill, it was not drafted to refer to specific provisions of state law, but to refer to the basic principles of state law

that have remained constant. Thus, it is important that the Committee state that it was considering this bill in the context of present state law, and in some instances, understood that certain specific statutory determinations found elsewhere in State law applied to its intent in the bill. The Committee did not amend the bill to reflect the specific statutory understanding because that would interfere with the bill's purpose of establishing basic principles.

It is the understanding and intent of the Committee that this bill establishes the basic principle of full state jurisdiction over Indian lands within the State, including Indian Territory or Reservations. The bill provides specific exceptions to this principle in recognition of traditional Indian practices and the federal relationship to Indians. The Committee understands that these exceptions are being granted to resolve the long-standing disputes between the State and Indians, and intends that this resolution will provide the basis for harmoniously developing the relationships between Maine's residents. Except for the specific provisions of this bill, Maine's Indians are to be full citizens of the State with all the rights and duties incumbent on that relationship.

It is the understanding and intent of the Committee that the answers to specific questions posed by legislators contained in the memorandum to the Committee from Attorney General Richard S. Cohen, dated April 2, 1980 applies to this bill and accurately interprets its provisions.

It is further the understanding and intent of the Committee that the following specific interpretations apply to the bill:

1. The definitions currently used in Title 12, section 7001 relating to inland fisheries and wildlife apply to the use of those terms in this bill, unless the context clearly indicates otherwise.

2. The authority of the Passamaquoddy Tribe, Penobscot Nation and Tribal-State Commission under this bill are limited to regulating the taking and possession of fish and wildlife. That authority does not include any authority over stocking, propagation and selling or disposition, which remain subject to general state law.

3. The provision on transportation of fish and wildlife permits transportation within the State but outside of Indian Territory if the fish or wildlife was legally taken in Indian Territory. This provision does not exempt that transportation from other legitimate state police power regulation, including requirements relating to public health, sanitation, registration, sale or disposition.

4. The provisions relating to Indian sustenance hunting and fishing apply only to hunting or fishing for personal or family consumption. They do not apply to hunting or fishing to maintain a livelihood or other commercial purpose.

5. The jurisdictional provisions relating to fish and wildlife use the term "sides of a river or stream" which means the mainland shore and not the shoreline of an island.

6. This bill continues without restriction the power of the State to determine the assistance it will offer for roads or highways.

7. The exemption from State taxation for the income from the settlement fund is an exemption from state income taxes.

8. The provision for payment by the Tribe or Nation of a fee in lieu of taxes on real property will apply only to the real property in the Territory that is actually located within the jurisdiction of the taxing authority. Thus, payments to a county in lieu of county taxes would be based on the valuation of the portion of Indian Territory that is within that county's boundaries.

9. The tax exemption granted by this bill to Indian property is not a new exemption under the Maine Constitution, Art. IV, Pt. 3, § 23. Because of the "municipal status" granted to Indian Territory by this bill, the existing exempt status of "government purpose" municipal property applies.

10. The scope of the tax exemption for "governmental purposes" granted to the Indians under this bill is to be governed by the limitations established by the general statutes, rules and case law governing those exemptions in all other municipalities in the State.

11. The definition of "business capacity" under the taxation provision of this bill means that capacity and resulting acts which any resident of this state could take in a private or corporate form without being a governmental agent or agency.

12. The requirement for municipal approval under section 6205, sub-§ 5, before property within the municipality may be added to Indian Territory or Reservation applies to property acquired in any manner, including property received in return for property taken by eminent domain or property purchased with the proceeds of a taking under eminent domain.

13. The selection process and requirements for selecting a tribal school committee are internal tribal matters governed solely by tribal law. The standards for operating the school and school committee, including teacher certification, curriculum, hours, records and other operational requirements are governed by State law.

14. The boundaries of the Reservations are limited to those areas described in the bill, but include any riparian or littoral rights expressly reserved by the original treaties with Massachusetts or by operation of State law. Any lands acquired by purchase or trade may include riparian or littoral rights to the extent they are conveyed by the selling party or included by general principles of law. However, the Common Law of the State, including the Colonial Ordinances, shall apply to this ownership. The jurisdictional rights granted by this bill are coextensive and coterminus with land ownership.

Finally, it is the understanding of the Committee that Congress may provide that certain provisions of this bill may not be amended without the consent of the Indian Tribe, Nation or Band that will be affected by the amendment. However, it is also the understanding and intent of the Committee that the state retains exclusive and unlimited discretion and authority to amend or repeal any statute relating to Indians that is not contained in this bill and to enact, amend or repeal general law even though it may have an effect on the powers or duties of the Tribe, Nation or Band as provided by this bill.

This Committee believes that subject to this interpretation, this bill will provide a firm basis for a strong and sound relationship between Maine's Indians and other citizens. It is a major accomplishment of all parties that this difficult, complex and possible devisive controversy can be resolved in such a reasonable and satisfactory manner.

Senate
SENATOR SAMUEL COLLINS, JR.,
Chairman.

House—
REPRESENTATIVE BONNIE POST,
Chairman.

APPENDIX TO THE COMMITTEE REPORT

STATE OF MAINE,
DEPARTMENT OF THE ATTORNEY GENERAL,
Augusta, Maine, April 2, 1980.

Re Proposed Indian Land Claims Settlement.
To: Joint Select Committee on Indian Land Claims.
From: Richard S. Cohen, Attorney General.

In response to questions posed to me by Senator Collins and Representative Post by their letter of March 26, I am pleased to provide the following responses. This memorandum supersedes my memorandum of March 28, 1980 and provides a more detailed response to several of the questions.

1. What are the major consequences of failing to enact this bill?

As I have said in my earlier statements, failure to enact the Maine Implementing Act could have serious consequences for the State and its citizens. In my opinion, if the matter is not settled, the claim will go to trial. The cost of a trial to the State alone, not including private defendants, would probably exceed $1 million. It would take roughly 5 to 6 years to get a final decision from the United States Supreme Court. During that time titles and mortgages in the claim area would be in turmoil, and municipal bonds would not be marketable. If it goes to trial there is a serious risk of the State and private landowners losing a substantial tract of land and being ordered to pay money damages.

In addition, if the matter goes to trial and if land is awarded to either Indian Tribe, the State will in all probability be unable to enforce any of its laws on those lands.

2. What special provisions exist for Indians attending the University of Maine, such as tuition arrangements, and will they continue after settlement of the claim?

As we understand it, under the current policy of the University of Maine, Indians pay no tuition or fees. This exemption is not required by law, however, and can be continued or terminated at the option of the trustees.

3. What is the status of Indian Territory after settlement, either organized or unorganized, and what are the tax consequences? Will it result in any tax exemptions? What will be the effect on the Forest District, the Spruce Budworm District, and the Tree Growth Tax Law?

The Indian Territories will be unique legal entities. Although they will not be called municipalities they will, with a few exceptions, be the functional equivalents of municipalities. In effect the Territories will be organized areas of the State and will no longer be considered unorganized territory of the State.

The Unorganized Territory Educational and Service Tax, Title 36 M.R.S.A., Sections 1601–1605, will not apply to the Indian Territory. Since the Indian Territories will be functional equivalent of organized areas, these taxes will not apply to the Territory. The purpose of the referenced tax is to provide sufficient monies to the Unorganized Territory Educational and Service Fund. The Fund is annually established by the Legislature at an amount sufficient to pay for the various municipal services provided to the unorganized territory by State agencies or counties. After the Fund level is established the tax is levied on the unorganized territory at a rate sufficient to generate revenues equal to the legislatively established level. Thus the rate of the tax and tax revenues are directly related to services rendered by the State. Since the effect of L.D. 2037 will be to remove certain areas of the State from the unorganized territory it will automatically reduce State costs to the territory. Thus, removal of the Indian Territory from unorganized territory will result in no loss of revenue to the State.

With respect to other taxes, the Tribes will pay all State, county and district taxes of any kind applicable to any municipality. These taxes will be called a fee but paid in the same amount as the usual tax. Income to the Tribes from the Federal Tribal Trust Fund will be exempt from State income taxes. Any land owned by a tribe in a town can be taxed by the town and taken for non-payment of taxes.

Any land acquired by the Tribes in an area currently designated as within the Spruce Budworm District will remain within that District and will pay a fee equal to the tax. With respect to the Maine Forestry District, the Indian Territory will remain within the District. The definition of the District is a geographical description encompassing organized and unorganized areas. In my judgment the incorporation or creation of Indian Territory in an area currently designated as within the Maine Forestry District does not change the boundaries of the District.

Finally, the Tree Growth Tax Law will apply to the Indian Territory. We anticipate that the practical impact of the application of this law to the Indian Territory will be negligible. Current law requires that all forest parcels over 500 acres in size be taxed under Tree Growth rates. Since we anticipate that the lands to be acquired by the Tribes in the Indian Territory are already classified as Tree Growth lands, the tax status of such parcels will not be altered. Thus, the Tribal payments in lieu of taxes will, as a practical matter, be unchanged from the taxes previously levied on these lands. Similarly state funds to be provided to the Tribes will be computed in the same manner as it would to any other municipality in which the bulk of the lands were designated as Tree Growth Tax Lands.

4. How was the price of land to be purchased under the settlement negotiated, and who was involved?

Negotiations were conducted directly between landowners and the Tribes. Since all parties agreed that any purchase of land would be funded by Congress, we did not believe it appropriate to participate in those negotiations. In addition, I believe that former Governor Longley was of the view that the State should not participate in land acquisition negotiations. I agreed with Governor Longley's position and have acted consistent with it. Only Congress has authority to decide how much money should be appropriated for this purpose. I am confident that Congress will carefully scrutinize the requested appropriation.

5. What will the State's obligation for welfare, education, and other services be after the settlement? Will the Federal Government assume any of these obligations?

The Department of Human Services is required to reimburse any municipality 90% of the general assistance costs that exceed .0003 of that municipality's state valuation. This same system will apply to the Tribes in their respective Territories. We believe the current general welfare statutes provide sufficient safeguards to prevent the tribes from abusing that system. If, however, abuses do occur, the Legislature is free to amend the general welfare laws to correct them. In this regard, however, it should be noted that of the budget of the Maine Department of Indian Affairs for F.Y. 1979–80, an estimated $450,000 can be classed as general welfare assistance. It is apparent therefore that the State has traditionally spent substantial sums for these programs on the reservations. Under the Implementing Act these direct appropriations will cease and the Tribes will work within the present system as any other municipality does.

For purposes of determining eligibility for State financial assistance, including for example AFDC, any Trust Fund income distributed to individual members of the Tribes will be treated as ordinary income and computed in determining such eligibility.

The State of Maine currently funds nearly the entire cost of education on the existing Reservations. This cost for fiscal year 79–80 was approximately $770,000. After the settlement, the Federal government will contribute heavily to the cost of education on Penobscot Territory and Passamaquoddy Territory. For fiscal year 80–81 the Federal government is expected to contribute approximately $1,126,000 to the cost of education on the two territories. We anticipate therefore that the State will have little if any financial obligation for education.

Another State expense for municipalities is in the area of road maintenance. Again, however, we expect that under the proposed Implementing Act, the State will realize a net savings. Under present law all roads on the Passamaquoddy and Penobscot Reservations are designated as state highways, no matter how small, and as a result the State pays all costs of maintenance. Under the Implementing Act, this provision will be repealed and the State will have the option of designated state highways and state-aid roads within Indian Territory as it does in any other municipality. While we do not have cost estimates, it seems reasonable to assume that such a scheme will result in a cost savings to the State.

6. Will jurisdiction and ownership of any "Great Ponds" be affected by the settlement?

Ownership of and access to Great Ponds will be completely unaffected. The waters and subsurface lands will remain under State ownership. The general common law right of access to Great Ponds will apply to any of these ponds.

Fishing jurisdiction on Great Ponds, 50% or more which shoreline is within Indian Territory, will be vested in the Tribal-State Commission with authority in the Commission to adopt regulations on season, bag limits, size limits and methods. This regulatory authority is subject to the residual power of the Commissioner of Inland Fisheries and Wildlife to supercede Tribal-State Commission regulations if he determines that the regulations are harming or there is a reasonable likelihood that they will harm fishing stocks in other water.

7. May Congress alter the amount of money in the settlement, and what is the consequence if it is altered? What is the consequences if Congress appropriates no money after the Legislature has enacted the claims bill?

Congress power in Indian law is absolute and as a matter of constitutional power Congress can extinguish the claim on any terms that it wishes. Whether an alteration would affect the chances of enactment of the bill is a matter of political judgment and would depend upon the magnitude of the reduction. I would, however, expect that the Tribes would oppose any bill that appropriates less than that to which they agree. Congress could nevertheless provide less money if it wished to do so, though I would not expect Congress to go so far as to extinguish the claim without any compensation.

With respect to the State bill, although it comtemplates an appropriation by Congress as a precondition to its taking effect, since Congress' power is absolute, Congress could ratify or otherwise implement the Maine Act without regard to that limitation.

8. What will be the effect of the settlement on "camp lots" leased on lands transferred to the Indians? What policies on future leasing have been agreed to?

We do not know the policy of all the landowners but we understand that some have agreed not to sell lands which are leased for camp lots. We also understand that Dead River and Great Northern will give camp owners the opportunity to purchase their lots and thus except those properties from the Indian Territories. To the extent such lands are sold, the Tribal Negotiating Committee has represented to us the Tribes' intention to continue the leasing policies previously employed by the timber companies. This representation is not binding, however, and the Tribes could refuse to renew leases after the termination dates just as any other landowner can.

9. What are the estimated expenses of the Tribal-State Commission and who will pay them?

The Governor has suggested that the Commission's initial expenses not exceed $3,000.00 per year. These costs are proposed to be paid out of the administrative account of the Department of Inland Fisheries and Wildlife. The amount and source of monies can be changed by the Legislature if circumstances require.

10. (A) Will the fish and game provisions of the bill establish two independent licensing authorities in the Territory and Reservation areas?

Yes. The Tribe will have authority to regulate hunting and fishing in small ponds and may require a license. The Tribal-State Commission will have authority in large ponds, rivers and streams and may require a license.

(B) Will Maine residents have to purchase two licenses?

The Tribe and Commission are authorized, but not required, to require licenses on lands or waters under their jurisdiction. These licenses would be separate and distinct from State licenses. However, State licenses are not required to hunt or fish in Indian Territory or waters under Tribal-State Commission control.

(C) Will non-Indians be entirely barred?

Whether non-Indians are barred from the Territory depends on tribal policy. As landowners the Tribes will have the same power to open and close their lands as paper companies do. Since the Tribes may buy land anywhere in the State which will not be included in the Tribal Territory, they will, like any other landowner, be able to use these lands in any legal manner.

(D) How will the licensing and regulatory authority of the Commissioner of Inland Fisheries and Wildlife be affected?

As a general rule, state fish and game laws regarding hunting and fishing will not apply in Indian territory. Taking of game and fish is controlled in the first instance exclusively by the Tribe or Tribal-State Commission. However, the Commissioner can do surveys, can check game registrations and can take remedial steps, including superceding those regulations, if he finds Tribal or Tribal-State Commission regulations to be harming or that there is a reasonable likelihood that they will harm other fish or wildlife resources.

(E) May the Indians close their lands to hunting and fishing?

Yes.

(F) How does this authority compare to that of private landowners?

Like private landowners, the Tribes can close their lands. Unlike private landowners they can adopt separate hunting and fishing regulations as explained above.

(G) Who and how will Indian hunting and fishing regulations be enforced?

Tribal law enforcement officers will be equivalent to municipal police officers and within the Indian Territory the Tribal police can enforce all laws including Tribal ordinances on hunting and fishing and regulations of the Tribal-State Commission. All other state law enforcement officers, including Fish and Game Wardens, can also enforce Tribal-State Commission regulations and other laws of the State.

Indian violators of Tribal fish and game ordinances will go to Tribal Court. Non-Indian violators will go to State Court. All violators, Indian and non-Indian of Tribal-State Commission regulations go to State Court.

Tribal law enforcement officers will also be subject to the mandatory training requirements applicable to other local police officers.

11. How will the Tribal School Committees be selected, what specific powers will they have and who will pay education expenses?

Tribal school committees are currently provided for by special laws. Those laws will be repealed and the Tribes will be authorized to create their own school committees as any other municipality does. They will be subject to general state education laws, but as a transitional measure, and until those new committees are created, the current school committees will continue in operation.

Educational costs will be a shared Tribal-State expense using the same formulas and methods used in any other municipality. Currently all Indian educational costs are borne by the State, with the appropriation for the current fiscal year amounting to $770,000. We have been informed that the U.S. Bureau of Indian Affairs anticipates expending more than $1,100,000 per year on Indian education beginning October 1, 1980. Upon inquiries to the Maine Department of Educational and Cultural Services, we have been advised that this federal payment will more than exceed the anticipated state and local share of education for comparable municipalities.

12. If Indians purchase a business or building with state funds or guarantees and it fails, may the state or other creditor take it to meet the outstanding loans? May lands in the Territories or Reservations be attached by creditors? If not, what remedies are available to enforce payment of debts?

The answer to these questions are not found in the Maine Implementing Act but are contained in the draft of the Federal bill to be proposed to Congress. Lands of the Tribes within the Indian Territories may not be taken or attached to pay

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creditors, regardless of whether the creditor is the State or other person. However' creditors are entitled to be paid out of Tribal Trust Fund income. Thus a creditor can sue the Tribe for a debt. If the Tribe fails to pay the judgment, the creditor can request thae Secretary of Interior to pay the judgment out of the Trust Fund Income. If the Secretary refuses to pay, the creditor can sue the Secretary. We would conservatively estimate the annual Trust Fund income at $1,250,000 for each Tribe which should be ample to pay most debts.

Lands owned by the Tribe outside their Territory are not subject to the same protection and can be foreclosed against, attached or taken for non-payment of taxes or debts. Individual members of the Tribes will not own Tribal land but will occupy parcels assigned to them. Their status is in some respects similar to a person who leases land. The land such individuals occupy cannot be taken or attached by creditors.

13. May Tribal authorities open and close roads through the Territory or Reservation lands, and may they charge for road use?

Private roads owned by the Tribe can be open or closed at will. County or State roads cannot be closed and the Tribe cannot charge fees. County or State roads, whether owned in fee or held under an easement, will not be transferred to the Tribe but will remain under control of the State or County.

14. Are non-Indians residing on Territory or Reservation lands liable for taxes imposed by Tribal authorities? Do they participate in selecting those Tribal authorities or in determining the tax rates?

The real and person property of non-Indians residing on the Territories is subject to taxes imposed by the Tribal Authorities within those territories. Non-Indians residing on the Territories do not have the right to vote in Tribal elections but the Tribes could elect to extend that right to non-members. However, they are entitled to receive any municipal or governmental services provided by the Tribe or Nation or by the State, with minor exceptions, and are entitled to vote in National, State and County elections in the same manner as any tribal member.

15. What is the effect of the settlement on state and Federal authority over coastal or marine waters?

The only coastal land that will be owned by either Tribe is the current Pleasant Point Reservation of the Passamaquoddy Tribe. By virtue of this ownership, the Passamaquoddy Tribe will have authority to enact shellfish conservation ordinances just as other municipalities do in the coastal lands immediately adjacent to Pleasant Point. As in the case of municipalities generally, the enactment of such ordinances will be subject to approval of the Commissioner of Marine Resources. The Tribes will have no other rights in coastal or marine resources other than any other person or entity.

No other coastal lands will be included in the Indian Territory. To the extent the Tribes might buy other coastal land, they have no more rights in the coastal lands or marine resources than any other person.

16. What specific municipal powers and duties are given to the Tribe and Nation under this bill?

The effect of the bill is to make the Indian Territories the functional equivalent of a municipality. The bill confers on the Tribes within their Territories those powers and duties possessed by municipalities under "home rule." Those powers and duties include but are not limited to ordinance powers, taxation powers, home rule powers, the power to sue and be sued and the power to dispense and receive services.

17. What specific "rights incident to ownership of land" in Indian Territory will the Indians gain under this bill?

The quoted provision, which is found in the last sentence of Section 6207(1), means that the Tribes have all the same rights in their property as any other landowner, including the right to prevent hunting, trespassing or snowmobiling, to lease the land, sell stumpage off it, or develop it.

18. What provisions govern the grounds and procedures for civil actions, or custody or domestic relations actions that are within the jurisdiction of the Tribes?

The Tribes are free to establish their own procedures without State regulation but subject to the Federal Indian Civil Rights Act. We assume the Tribes will adopt their own laws regarding minor civil matters and domestic relations as do other Tribes in the country. We understand that the Penobscot Nation now has an operational Tribal Court, employs a lawyer as Tribal judge and that the Court utilizes the Maine Rules of Civil Procedure.

19. What will be the financial obligations of the state after enactment but prior to the effective date of this Act? Will there be an appropriation for transition during fiscal year 1981 or 1982?

The existing State appropriation for Indian programs ends at the end of the current fiscal year. It is unclear whether the State has a legal obligation to fund some or all of the existing Indian programs, until such time as the settlement is implemented and federal funds flow to the Tribes. However, we understand that the Governor is preparing a transitional appropriation for FY 1981 to continue Tribal assistance. Federal funding begins on October 1, 1980, the start of the federal fiscal year.

I hope the answers provided herein are helpful. Please feel free to inquire further of this office.

RICHARD S. COHEN,
Attorney General.

Senator COHEN. Our next witness is Mr. Leonard Pierce, who is employed by the James Sewall Co. of Old Town, which is a well known management firm in Maine. Mr. Pierce is a land appraiser and has conducted estimates on the value of the land in question.

The Maine Indians retained Mr. Pierce to submit estimates of the value of the land which was under consideration for sale to the tribes.

Mr. Pierce, we thank you for coming. We look forward to your testimony.

STATEMENT OF LEONARD PIERCE, LAND APPRAISER, JAMES SEWALL CO., OLD TOWN, MAINE

Mr. PIERCE. Senator Cohen and Senator Mitchell, that is fine. I understand that you have this written document which is about 10 pages, and I gather from what you have just said that you prefer that I do not read it, in the interests of time. That is perfectly all right with me.

I understand that I should set the record straight here. I work for the James W. Sewall Co., and that is the same company that I understand has been alluded to here during the past couple of days as the "Joseph W. Sewall Co.," they are not two companies.

Senator COHEN. Your statement is six pages long only. If you feel more comfortable in reading it, that is acceptable to the committee—whatever you are comfortable with.

Mr. PIERCE. You are the boss down here, sir.

Senator COHEN. Why don't you proceed?

Mr. PIERCE. Mr. Chairman, my name is Leonard Pierce, and I am the vice president for real estate at the James W. Sewall Co. in Old Town, Maine. I appear at the request of the committee to summarize my involvement in the negotiations which led to the proposed settlement of these claims.

About 1 year ago the Penobscot/Passamaquoddy Negotiating Committee employed me to assist in appraising lands offered in connection with the proposed settlement of the Indian land claims. In the course of my employment, I have considered over 500,000 acres of Maine land. The initial offering, which included over 300,000 acres, ran the gamut from virtually worthless swamp to real lush quality spruce land on the shore of the Matagammon Lake. A good deal of it was common and undivided, consisted of a fractional ownership, and, further, a very substantial fraction was encumbered with a right of first refusal on all timber forever.

Considering all the restrictions and encumbrances, as well as the quality of the land itself, including the location, I came up initially with a price of about $100 an acre.

I should parenthetically remark here that, in my judgment, I did not consider that 1033 business. I considered it only on the basis of what I could sell these lands for.

My comments on the various tracts were reported to the respective owners, and it was suggested that they contact me if they wished to discuss the problem further.

As a result of all this, we had a good many logical and businesslike meetings in which we got a good deal resolved. They came armed with data on their lands, which I took into consideration, and I conceded in some cases that my initial number or value was one with which I did not feel entirely comfortable. Not in all cases, to be sure, but in many they gave and I bent.

In each case which was encumbered by the right of first refusal, the owners—Great Northern on 29,100 acres in Holeb and Lowelltown, and International Paper on all their 200,000 acres—backed off completely after they heard how adversely I felt that this restriction affected the value.

After throwing out some of the impossible situations, the most notable of which was a piece of junk which St. Regis put in at $100—I figured it at $30, but they would not budge—and with this dickering behind us, I would say that we were up to about $135 an acre, and we still had a lot of common and undivided land in the package.

Now we must face up to the question: Was this "average Maine timberland?" The answer is no, it was not, and for two reasons.

First: It was not average with regard to the amount of timber per acre. Generally, owners do not put their prime lands on the market; they cut them first.

Second, and far more important: It was not average with regard to situation. Our forefathers used that word 200 or fewer years ago, when discussing the setting off of the public lots: "They should be average with regard to quality and situation."

A brief look at a map would show that these lands were far too far north and far too far west to be average as to situation for the State of Maine. The bulk of the acreage offered was in the northwest quarter of our State where there were no roads, no people, and, most of all, no customers.

Timberland values are, of course, directly related to the value of the stumpage—the price one would pay for standing timber—in a given area. With trucking costs today at least $1.50 per loaded mile or about 15 cents per cord per mile, one can readily calculate that about 50 additional miles reduces the stumpage value by a whopping $7.50 per cord. Actually, it is worse than that because you have to plow your own roads up in that portion of our State, run costly logging camps, and/or pay for traveltime for the crew, or combinations of both.

Without going into a long treatise on logging costs, suffice it to say that hardwood of pulpwood quality is worth $10 per cord in small quantities to the firewood cutter within 10 miles of, say, Bangor, and this same quality tree has a stumpage value of $5 to $6 per cord in substantial quantities to the hardwood pulpwood mill within 50 miles

of his mill. But it is absolutely worthless up in the northwest corner of our State.

What, then, is the value of the average acre of Maine woodland? There is pine timberland in the Bethel/Fryeburg area with 40,000 board feet per acre standing on it. To get this much volume per acre, you must have big trees, and big trees, particularly in white pine, mean quality trees—lots of "clears" worth about $1,000 per 1,000, or, of course, $1 per square foot, one inch thick.

Beyond any shadow of a doubt, it is unusual, but our people have cruised land that had 40,000 feet of pine on it. Recently, good pine like that was worth $200 delivered to a sawmill, and backing this figure back to stumpage, we have at least $130 per 1,000 board feet or a value of standing timber of over $5,000 on a single acre.

As already mentioned, this is the exception; however, there are many acres in that area which will have well over 1,000 dollars' worth of pine on them.

On a slightly different tack, one could focus on the Rumford area where it is absolutely no secret at all that the hierarchy of Boise have concluded that they need more timberland, and they know that they will have to go high to get it and are prepared to do just that. At lunch recently an executive from a nearby and competitive paper company told me of having missed two deals he wanted: One in the $225 per acre range and one at a whopping $350 per acre figure.

Accordingly, if we seek average land in the whole State as the norm, that first batch of land was neither average as to quality nor situation; in fact, it was not even close.

Senator COHEN. Is that the $100 per acre you were talking about—your initial calculation?

Mr. PIERCE. Yes, Senator, that is right.

In my judgment, the average timbered acre in all of Maine will have about 16 cords of all species over 5 inches diameter breast high—D.B.H. If one limits his area to those lands north of Bangor, the average acre is worth $140, and if one considers only timberland south of Bangor, I would say the average acre is worth $230 per acre.

If we then reason that of Maine's 20 million total acres 18 million are timberland and that two-thirds of these timbered acres, or 12 million acres, are north of Bangor, and that one-third are south of Bangor, we have by very simple arithmetic a number of $170 per acre for the value of the average Maine timberland.

I feel reasonably confident that no knowledgeable person would seriously challenge $170 to $180 for the average price of timberland in Maine.

I would further believe that the price of $181.67—the average of the lands under option—is not unreasonable, considering that there is no common and undivided land in the mix and also because a very substantial fraction is located almost ideally between the two tribes with a sawmill on either end of the ownership.

In an appraisal of this magnitude, one must recognize that a big parcel, particularly one in the proper location, could very easily command a premium solely because of its size. If someone had asked me a year ago what 300,000 acres of other than common and undivided pieces, in sufficiently substantial size as to be economically manageable and located in a particular part of the State, would cost, I would have

said that it would be over $200 per acre on the average before he got anywhere near his 300,000 acres.

I hope that this information is useful, and I will be happy to provide any further information you may need.

Senator COHEN. Thank you, Mr. Pierce.

You have been employed by the tribes for little more than a year now, and in April in a letter to Secretary Andrus you said that you had evaluated some 500,000 acres of land. In your judgment, is that an adequate amount of time to have conducted an analysis of that size?

Mr. PIERCE. That is right; overall, I have looked at 500,000 acres for the tribe. Excuse me, I missed the last part.

Senator COHEN. And in your judgment, that 1-year period of time in which you have been secured to appraise the land by the tribes; is that an adequate amount of time to have conducted that evaluation?

Mr. PIERCE. Senator, this is a real toughy. I am comfortable with the numbers I have presented, Senator, and I think they are good, fair, square numbers.

As to how much time it would take to evaluate that much acreage, it would depend on how intense a cruise one wanted on it and what one was going to do with it. That is a tough question to answer.

In my judgment, however, we have good, fair, square numbers out there that are numbers I could sell these lands for to somebody else if the tribes and the taxpayers were not involved in this thing.

We had 1975 photography of the whole State of Maine; and we had it from way up high—18,000 feet. The Sewall Co. did not do it, but somebody else did. We blew it up; 20 chains to the inch was the standard scale that most people appraising timberland use. I had the same type of photography to look at all the lands, which gave me a big help. Above and beyond that, I think I personally saw 80 percent of this land, and I had two good men who looked at some of the others, and I am very comfortable with the numbers that we have set forth.

Senator COHEN. As I understand it, in the evaluation of timberland, the buyer and the seller traditionally come up with evaluations that are roughly within 20 percent of each other. Is that correct?

Mr. PIERCE. That is a good number. I have never heard it before.

Senator COHEN. You have never heard it before?

Mr. PIERCE. It does not sound particularly unreasonable.

Senator COHEN. What has your experience been?

Mr. PIERCE. That a man selling would normally be about 20 percent above the first bid—is that what you are saying?

Senator COHEN. In your experience in dealing with sellers and buyers of timberland in Maine, each one normally comes up with an evaluation in terms of what the buyer wants to get and what the seller wants to pay. How far apart, as a practical matter, are those evaluations between appraisers?

You said you would assume that any qualified appraiser would come out just about where you are on the average value of average land. Now, what happens in a normal, traditional buy and sell operation? How divergent are those evaluations?

Mr. PIERCE. Senator, if you are dealing with two pros, I think your 20 percent would be good. If the Great Northern Paper Co. is selling to I.P., or if I.P. has hired me to sell to somebody else, and I get one of the five or six jobbers, or three or four other than wood-

using people who want land in Maine, it would be within that order of magnitude.

Sometimes you get a wild sale where somebody who was not a professional appraiser put an extremely high price on a piece of land and somebody from out-of-State liked something about it. This happened a few years ago at the peak of the land boom, where that 20 percent would not be adequate. It would be a lot further apart.

Senator COHEN. Is there such a term as a seller's evaluation and a buyer's evaluation?

Mr. PIERCE. Somebody may use it; I do not, Senator.

Senator COHEN. What do you use?

Mr. PIERCE. I use just a dickering number, I guess. I guess I would say 30, if I had to pick a number.

Senator COHEN. There is usually a 30-percent difference?

Mr. PIERCE. Yes.

Senator COHEN. In other words, the seller is looking for 30 percent higher and the buyer is looking for 30 percent lower; is that right?

Mr. PIERCE. Yes.

Senator COHEN. The next question is this. How would you characterize this case? Would it be 30 percent buyer? In other words, you are looking at it in terms of 30 percent less than the seller wants, or is the seller getting 30 percent higher?

Mr. PIERCE. I am on the cozy side. I know who is paying me for sure, Senator. I put numbers in, and I felt that if my people got them at that number they had good buys, yes, sir.

Senator COHEN. I am not sure I understand your answer.

Mr. PIERCE. I am somewhere between zero and 30.

Senator COHEN. Are you at 15? Are you splitting the difference?

Mr. PIERCE. Well, if you are going to grind a number out of me, I am going to say eight.

Senator COHEN. In your letter to Secretary Andrus, the piece of land offered by Prentiss and Carlisle at Donnell Pond was listed as containing some 2,866 acres of land. That included an awful lot of water. Is this true of the other parcels that are now listed as containing a certain amount of acreage?

Mr. PIERCE. There are a couple of bad ones in there, Senator. You have apparently flagged that one. That one had 1,848 acres, and I did not think too much of it, as you may have read. The other one that is of more consequence, is the Dead River one which has 129,764 acres, but 20,000 acres of it is water, and my numbers reflect that aspect.

Senator COHEN. Do you usually pay for acreage under water?

Mr. PIERCE. Senator, there is no easy answer to that question.

Senator COHEN. You have heard about the sale of land in Miami?

Mr. PIERCE. Yes, I have heard of some of those deals.

Senator, quite often whole towns change hands, and if a town has a normal amount of bogs, swamps, and water—say, 5 to 10 percent or less than 10 percent—the whole acreage goes without any embellishment. In this case, however, I felt that 20 percent was way to much to include the water. In other words, the little lakes, the bogs, and so forth go.

For instance, my own family's land here has a township. It has got Square Lake and Cross Lake in it. Instead of 24,000 acres, it would be more like 8,000 or 9,000 acres. At that point, you have to differentiate.

Senator COHEN. Let us go back to the Dead River piece. Of 129,764 acres, how much is water?

Mr. PIERCE. In round figures, 20,000 acres.

Senator COHEN. Did you discount the price on that?

Mr. PIERCE. Yes, I did. In my letter to Secretary Andrus, I point that out.

Senator COHEN. What about spruce budworm? On the lands that you have looked at in terms of evaluation, is the threat or existence of spruce budworm a factor that you considered?

Mr. PIERCE. Anybody talking about Maine lands cannot completely disregard the spruce budworm. This year, I made two big trips for my clients, the Indians; one was a year ago in May and the other this year in May. The spruce budworm, I am pleased to say, was far less bad this time, and the bulk of the concentration is in the far northwestern part of Maine. For instance, the Dead River lands that lie just south of Route Six between Lincoln and Topsfield have very little. In part, that is because Dead River has cut the fir out pretty well. But the other lands down in this area—generally speaking, this batch of Indian lands that I wrote Secretary Andrus about lies south, up there at Mattagammon Lake, are excluded. The rest of them were south of the latitude line about through Howland, sir.

Senator COHEN. I have just one last question.

It was suggested earlier today that perhaps a better method of evaluation would be to take the tax value of the lands in question and use that, as opposed to a fair market value standard. What would your response to that be?

Mr. PIERCE. I do not believe you would find too much difference. Our company does tax evaluations now, as you know, and we are getting up, so I would say we are between 80 and 100 percent of real evaluation on most things. It is not that finite, perhaps, but I do not believe there would be much difference. The unorganized towns would be a little on the low side. But that $16.5 million one I just did, I appraised it for the Indians for $90, and it was my own family's land, and I sold it for $90. I was proud of that one. It might not have worked out that way, but it did, and I happened to do the tax thing on it just 2 or 3 days ago, and it was very close. They had some of it as cottage lots and some of it as timberlands, so there would be a difference there sometimes.

Senator COHEN. Does your company do evaluations for the State of Maine?

Mr. PIERCE. You mean the Augusta level, as opposed to towns?

Senator COHEN. Yes.

Mr. PIERCE. I should know the answer. Let me see; we used to, and then it has changed—we do not do them any more, I think.

Senator COHEN. Do you know which company does? I can find it out for the record—it is not important.

Without objection, it will be included in the record at this point.

[Subsequent to the hearing the following correspondence was received.]

RICHARD S. COHEN
ATTORNEY GENERAL

STEPHEN L. DIAMOND
JOHN S. GLEASON
JOHN M. R. PATERSON
ROBERT J. STOLT
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

July 31, 1980

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

Re: Maine Indian Claims Settlement.

Dear Senator Cohen:

During the recent hearings before your Committee on the Maine Indian claims settlement, the question was asked of the name of the company that had been hired in the past by the State to assess land in the unorganized territory for the State. I have since checked with the office of the Bureau of Taxation of the State of Maine and have been advised that the State itself has done all assessing since 1972. Prior thereto the James Sewall Company of Old Town, Maine, was hired to map, cruise and recommend valuations on lands subject to State property taxation. However, the State has not engaged private companies to perform such work since enactment of the Tree Growth Tax Law in 1972.

I hope this answers your question.

Sincerely,

JOHN M. R. PATERSON
Deputy Attorney General

JMRP/ec

Senator COHEN. Your company used to before?

Mr. PIERCE. Yes, we certainly did.

Since the tree growth tax law, that has changed, Senator, and I am not completely sure whether we do now.

Senator COHEN. Senator Mitchell?

Senator MITCHELL. Mr. Pierce, how long have you been involved personally in appraisal of woodlands in Maine?

Mr. PIERCE. Senator, I am 63 years old, and I started work with the St. Regis Paper Co. just after I got out of college in 1940. So for some 40 years I have been directly or indirectly involved in cutting down trees and figuring values of land in the State of Maine.

Senator MITCHELL. Do you have any way of estimating how many appraisals you have conducted in those 40 years—how many different pieces of land in Maine you have looked at and evaluated over those 40 years?

Mr. PIERCE. No, sir. I have been directly employed by the Sewall Co. for 11 years, so I have been more active in it on a direct basis since that time. I sold 3 million acres of land in 1978 and a little less in 1979. In the last 11 years I have sold between 15 and 20 million dollars worth of land and appraised, above and beyond this Indian thing, several million dollars, Senator.

Senator MITCHELL. Over the past several years?

Mr. PIERCE. Yes, Senator.

Senator MITCHELL. Based upon that experience, are you satisfied that the values contained in these appraisals, which form the basis for the request that Congress appropriate this much money from public funds, are fair and reasonable?

Mr. PIERCE. Yes, sir, beyond any shadow of a doubt.

By the way, back there, I could hear you. I could not hear Senator Cohen. I could hear Senator Redmond but not Mr. Redmond. But I heard you say something to the effect that if it were not that these companies had been kind of coerced in a pleasant way into putting these lands in the pot, this price would be higher. And that is a fact; some of these lands would never have been put on the market. I appraised them for more than the companies put them in at in some cases.

Senator MITCHELL. Are there any parcels that they would not be able to sell on the open market? You made the point that if they were on the open market and were not being forced to sell, the price would be much higher. I assume the converse argument also applies—that there are probably parcels included for which it would be very hard to find a ready, willing, and able buyer to purchase some of those parcels.

Mr. PIERCE. We have thrown those out long ago, Senator. The ones we are going to press with here are all salable; some of them I did not like; I have said so.

Senator COHEN. Some of them are underwater.

Mr. PIERCE. Yes. In the first batch, there were some of highly questionable value. I said so, and my people did not go any further with them.

Senator MITCHELL. The point I was trying to make is, in addition to being an appraiser and having been hired by the tribes, you are a citizen of Maine. You are an American citizen. This is an important public matter that involves expenditures of tax moneys.

Mr. PIERCE. I am a taxpayer too, Senator.

Senator MITCHELL. Exactly.

There are some people who suggest that this is a giveaway, that the price is too high, and that because the negotiations were conducted between a buyer and a seller where the buyer was not paying for it—the person paying being Uncle Sam, who was not represented—the values involved are suspect. That there was not the normal incentive of a buyer, who was paying for it out of his own pocket, to bargain hard. So we confront that here. Senator Cohen and I have to talk to 98 other Senators, and Congressman Emery and Congresswoman Snowe will have to talk to the other Representatives, presumably.

I would like to get your assurance. Can we do that in good faith? Are these fair and reasonable values?

Mr. PIERCE. Yes, Senator. If you had come to me at the time the Indians did and said you wanted 300,000 acres of land, I do not believe I would have had them for you at this price. And, to be more specific, a company did come to me between the time this started and now and wanted 200,000 acres of land. I hate to be naming companies. We are a consulting firm; you can appreciate this. But they are a good, big, reputable company, and they wanted land pretty near to where the Indians here do—a little further west. And if you asked me a couple of questions, you would know about whom I am talking.

I told them at the outset; I said:

> Look, gentlemen, you are looking at $200 per acre, and I will have for you a lot of little pieces, and they are going to be lousy to manage. You just have to recognize that, or you are wasting your money hiring me.

Senator MITCHELL. So, one of the factors here is large, contiguous parcels of land that are advantageous to the buyer?

Mr. PIERCE. That is correct.

It is almost murder for an absentee fellow to look after 100-acre pieces of land, Senator. You send a man out there with a truck; he is gone all day; he comes back, and he has sold three cords of wood; you have lost money; you just cannot do it.

Senator MITCHELL. Based on your experience and what you have done in this case, you are satisfied that this is not a case of a giveaway and that the taxpayers are not being ripped off, and that these are appropriate values for the lands in question?

Mr. PIERCE. That is correct.

Senator MITCHELL. Thank you, Mr. Pierce.

Senator COHEN. Thank you, Mr. Pierce.

Our next witness is Mr. Henry Bouchard, president of the Maine Municipal Bond Bank. He will speak to the problems that he perceives will be raised if the claim goes unresolved.

Prior to your statement, Mr. Bouchard, I would like to express my thanks to the chairman of the Indian Affairs Committee, Chairman Melcher. He has been most cooperative throughout. He has even gone so far as to cancel his own scheduled hearings to accommodate me and Senator Mitchell on this matter.

I also wish to thank Max Richtman, staff director. He has worked miracles in getting us these rooms for the past 2 days. Tim Woodcock, of my own staff; Jean Streeter, and Maureen Walsh have all worked very hard with all the parties to make these hearings possible.

We are going to try to complete this this afternoon. I will continue the hearings, at least until 4 o'clock, and then turn the gavel over to Senator Mitchell to complete the afternoon's hearings.

But again, I would like to remind the people in the audience today, that during the next 2 or 3 weeks, while Congress is in recess, while the Secretary of the Interior and his staff are working with members of the tribes, counsel, and attorney general's office to resolve those issues that were raised yesterday as far as the problems they may have are concerned; and the interpretation of various parts of the language, this committee will stand ready to have another day of hearing if it becomes necessary; to take whatever testimony we need, to clarify any remaining issues of ambiguity.

Mr. Bouchard, perhaps you could summarize your testimony.

STATEMENT OF HENRY G. BOUCHARD, PRESIDENT, MAINE MUNICIPAL BOND BANK, AUGUSTA, MAINE

Mr. BOUCHARD. Thank you, Mr. Chairman.

I think I can summarize my statement in about 5 minutes.

Senator COHEN. Without objection, the full text will be included in the record at the end of your testimony.

Mr. BOUCHARD. My interest in being here, of course, is, I guess, because we were part of the problem when this thing originally started. We were not part of the problem, but we were the ones who brought it forward when the bond issue we tried to sell in 1976 finally met with some major opposition.

We have done several things since then to expedite the solution to the problem because we wanted to continue in the bond market. As you know, we have been able to do that. I feel, personally, that the reason we have been able to do that is that we have had so many people working in the right direction.

At this point in time, if Congress sees fit to turn it over to the courts, I think the forward progress we have made is going to change direction. That is what I am concerned about, and that is where I want to address my few comments.

Senator COHEN. I have noticed your presence here throughout the day. The statement was made that Maine has functioned rather well with this cloud hovering on the horizon for the past 3 or 4 years; that we continue to issue bonds; that no real adversity has been suffered. Perhaps you could address yourself to whether there has, in fact, been adversity, or whether you would anticipate adversity if, in fact, this is not resolved out of court and should go to court. What, in your judgment, would be the results of that?

Mr. BOUCHARD. Let me just give you a few numbers before we do that; that is the point I want to make.

There are about $127 million that municipalities have borrowed, either through the Bond Bank or through other lenders out there. So I am talking about $127 million in the affected area; there is a lot more than that in the State. Of this $127 million, there are a lot of bondholders, and if this thing is not, in fact, resolved, or let us say, if the media makes some comments that this thing will not be resolved shortly, then the investor will become more concerned, particularly with the markets we have had in the last 6 months. They would say,

why buy Maine paper when you can buy other paper? That is what my concern is.

With $127 million out there, if the buyers all of a sudden got nervous because this issue was not being resolved, all this paper which Maine people do not hold but bondholders all over the country, they would have a doubtful situation in trying to remarket those bonds. That $127 million would be affected.

Beyond that, the need out there seems to be about $12 to $15 million a year of additional dollars. We have been lucky; we sold just 1 month ago at very reasonable rates. If we continue with this process, and the delay gets to be more serious, then it would appear to me that every year we delay this would compound the issue and would increase the rate that municipalities would have to pay for their bonds.

If this continues, and the situation appears to be favoring the Indians, whether it is of a major nature or not, some communities will not be able to go to market at all. If that happens, then you can imagine the disruption in those towns. Most Maine towns borrow, not only on a long-term basis, but on a short-term basis. In the area, they borrow something like $35, million annually just for an annual operation base. So if some of those communities—we are going to hear from Millinocket later. Millinocket will talk about their specific problems, and theirs are more real. If the issue continues, that will be a more general feeling in the State of Maine.

Senator COHEN. You are saying, then, because there has been at least a perception that this matter was evolving into a negotiated settlement out of court, there has been no real financial hardship visited upon individual townships at this point. To the extent that that appears to be deteriorating; to the extent it appears more likely that this will not be resolved by Congress, but, rather, by the courts; would that cause a much higher bond rating?

Mr. BOUCHARD. I think it would cause higher interest rates, and if the condition got to be so acute that there were some problems—really, we are talking about the tax base. If we lose the tax base, in effect, we will not have any more security behind those bonds, so the bondholders will not invest in those bonds.

Senator COHEN. What happens if a town cannot sell its bonds because of the doubt that has been cast? What options are available to that particular town? How does it finance its municipal or town operations?

Mr. BOUCHARD. Millinocket will address that specifically. But, my contention would be that if a town cannot borrow on a temporary basis, it will delay the road construction or the fire station construction. If it cannot borrow on an annual basis to pay for the policemen, because, as you know, in Maine, you collect about two-thirds of the year, operating the first two-thirds with borrowed money and collecting thereafter, some of those communities will have to go to the State for some kind of support in the meantime.

Senator COHEN. Senator Mitchell?

Senator MITCHELL. I have no questions of Mr. Bouchard.

Mr. BOUCHARD. I can go on with this, unless you have some more questions.

Senator COHEN. The State of Maine on October 1, 1976, canceled a large sale of municipal bonds for towns that were situated in the claims

area. Can you tell us, for the record, what the circumstances were under which this cancellation occurred?

Mr. BOUCHARD. The Bond Bank was directly involved in that. The Bond Bank issue was the one that was delayed. In 1976, the Indian claim, accented by the Mashpee situation, came more to the front. Several bond attorneys decided to give only qualified opinions. I would relate that to buying a new house and getting a title on it that is not clean. Who is going to invest in that kind of situation? Because several attorneys refused to give us opinions that were clean because of the Indian litigation situation, we stopped the whole issue. Since then, as you know, we have gotten some opinions from our own attorney. We have seen the action of the Governor's office, and we have been able to go back to the marketplace, and the market at this point in time seems to discount the Indian situation.

I think today, if we were marketing, that would be so, except for a couple or three Maine communities. But if we continue to go to the court process, with the media and the courts in favor of the Indians winning the case, then I think our situation is going to be impossible.

Senator COHEN. Forget about the media reports as to who is winning and who is winning during the course of negotiations. What is the impact of filing a suit by the Justice Department against the State of Maine designating a portion of that 12.5 million acres of land? What would the impact, be, in your professional judgment? Would there be an impact?

Mr. BOUCHARD. I think there would be an impact.

Senator COHEN. What kind of an impact?

Mr. BOUCHARD. I think the impact would be in some communities that are more directly affected—Millinocket, Medway, maybe some in the Old Town area. Going to the market would be difficult for them.

Senator COHEN. Would it affect generally the bonds of other parts of Maine? In other words, there is some sentiment in the southern part of the State that this really does not affect them. They are not in part of the claims area, and therefore their bonds are sound. Is there any experience you have had where the marketability of those bonds on a statewide basis would be affected?

Mr. BOUCHARD. My personal comment on that is this. If the magnitude of the claim stays at 12 million, or two-thirds of the State, how much can the rest of the taxpayers absorb? At some point in time, the whole State is going to be affected.

Senator COHEN. What you are saying is that those towns who are having trouble marketing their bonds would have to turn to the State?

Mr. BOUCHARD. The State would have deadwood, and it would be substantial because of the $127 million that is out there, plus their needs. Eventually, I think it could affect the whole State.

Senator COHEN. Thank you very much, Mr. Bouchard.

[The prepared statement follows:]

PREPARED STATEMENT OF HENRY G. BOUCHARD, EXECUTIVE DIRECTOR, MAINE MUNICIPAL BOND BANK

The Maine Municipal Bond Bank was created as an independent state agency in 1972. Since its creation, it has loaned funds to 157 municipalities for capital improvements. The total amount of loans the Bond Bank presently holds amounts to $184,000,000. Of this $184,000,000, $54,000,000 representing 46 units of government has been loaned to towns, cities and special districts in the "so called"

affected Indian area. When the Bond Bank was created in 1972, the purpose was to enable communities to finance their capital projects at the lowest possible interest costs in order to reduce the ultimate taxpayer cost. The Bond Bank has been performing this function for several years. More recently the Bond Bank has worked to improve the financial management of cities and towns through educational programs and on-site assistance. The purpose in improving financial management is to maintain a very high investor confidence in all of the State of Maine and particularly in Maine municipal bonds.

I would like to take a few minutes and explain municipal bonds in general. Municipal bonds usually are sold in two basic forms; A general obligation bond or a revenue bond. General obligation bonds ultimately depend on the taxing power of a municipality on the land and buildings that make up the community. Anything that would change the tax base (taxing power) of those bonds would in fact change the security and subsequently would change what the investor thought was his original investment. On the other hand, revenue bonds depend on a source of revenue similar to a sewer bond or water charge that also could be affected by a land claim because some of the property involved in the claim may change its use and later the income from those properties that would be available to pay the bonds would change.

When a community goes to the Market place, its interest is set on their bonds by a number of factors including the municipality's financial condition, the market's acceptance, the marketing of the bonds, the general state of the economy and, of course, the Bond Counsel's opinion on those bonds. These factors plus the normal process of having the bonds rated by investment houses such as Moody's and Standard & Poor help determine the acceptability of those bonds in the market place. The Maine Bond Bank does an appreciable amount of bonds for small communities in Maine and in the past years has maintained a AA rating, which is very high quality, and consequently passes a substantial amount of savings to the small issuers in the State.

Let's relate the Indian Land Claim in the State of Maine and what the potential effect of delay by Congress to approve the Maine Indian Land Claims settlement would mean. Presently there is an overall total of $127,000,000 outstanding in the claims area by investors that have bought bonds either through the Bond Bank or through commercial and savings banks, and loans made by the Federal government through its several agencies. The outstanding bonds and loans depend on land and building taxes for support. If any of the land were returned to the Indians in the claim area, then the security of the bonds and loans already outstanding, the $127,000,000, would change. Whether the change is material or not would depend on the size of the land settlement, the amount of land, and the location if it has a material effect on the individual community's tax base. If the return of land was substantive, then the investor in Maine bonds, particularly those that are presently outstanding, would certainly be concerned and might at some future point attempt to sell those bonds in the secondary market at a discounted price. On the other hand, if the town that lost some land and was going to try to sell some new bonds may have some difficulty and have to pay an extra dividend to the investor because the security for the bond has been reduced. If the tax base of some towns were substnatially returned to the Indians, the problem of borrowing then becomes impossible.

In 1976, when the Indian Land Claim first affected the Bond Bank, everything in the marketing of bonds in the "so called" Indian Claims area stopped. The Bond Bank together with the Governor's office, the Attorney General's office, and the committee set up to try to resolve the problem decided to hire a law firm to review the claims. The law firm of Hawkins, Delafield & Wood reviewed the Indian Land Claim to see what effect it could potentially have on the future sales of municipal bonds. A copy of their opinion is enclosed in this testimony. There opinion basically states that, in their opinion, no land would be returned to the Indians. The Bond Bank, the State of Maine and other agencies were then able to return to the market place and continue to sell bonds. With the Hawkins' opinion and a continued effort on the part of all concerned to resolve the problem, we have arrived at a settlement that is now pending before you. If this settlement is not approved, the marketing might become more difficult.

Bond investors are very sensitive to any deviation from the normal market procedures and with the present guidelines as to what must be disclosed in the official statement to the bond investor, it has become very important to disclose every single fact about a unit of government. This is the case with the State of Maine and the Bond Bank's disclosure of the Indian Land Claims. You will note in

an enclosed document, an official statement of the Bond Bank discloses in quite a lot of detail the pending Indian Land Claim and its potential effect on the bonds. If Congress does not approve the settlement and litigation proceeds, it is my opinion that because of disclosure requirements and investor sensitivities any delay in the final settlement of this claim would end up costing the State of Maine a substantial amount of dollars. The investor will be unsure of the final results and will require a higher interest rate to invest in Maine bonds in the affected area. The longer the delay, the larger the doubt and the more the investor is going to ask in interest rates to make up for that doubt and insecurity. Let's assume there is a five year delay in the settlement and we assume that a delay would cost an issuer an additional 20 basis points or two tenths of one per cent. This is based on our historical projections of bonds issued and additional needs in the affected area of approximately $12.7 million annually. The cost of just this doubt could be nearly $1 million additional costs to the municipalities in the affected area. If the delay continues and the Indians gain a more favorable position either through the press or through the Courts, this cost would greatly increase. If the Indians position gains solidly in the Courts, then the borrowing by municipalities would probably cease because the investor would become more fearful and the basic investor theory is why buy bonds that have a fear of not being paid out when you can buy other bonds that have a good security. I would ask members of this committee to do some investor inquiries in their own states as to what effect any litigation, whether this litigation or any other, might have on municipal bonds whether it be the bonds they are presently holding and would like to sell on the secondary market on bonds they are contemplating buying. I am sure the answer that most of you will get is there are plenty of bonds available, why invest in questionable quality bonds. Regardless if we talk about the Indian Land Claims in Maine or about Cleveland bonds or New York bonds, I am sure you will find the investors in your own state will give you the very same answer.

I would strongly recommend that this committee give Senate bill 2829 their immediate and favorable support.

Senator COHEN. Our next witnesses will be Mr. William Ayoob, town manager of the town of Millinocket; and Mr. Dean Beaupain, chairman of the Millinocket Town Council.

Both of these gentlemen will describe the difficulties that Millinocket has had as of late because of this particular claim.

We welcome your testimony, gentlemen. The same rule will apply—to the extent that you can summarize, we would appreciate it. But your full statements will be made a part of the record at the end of your testimony.

STATEMENT OF WILLIAM AYOOB, TOWN MANAGER, MILLINOCKET, MAINE, AND DEAN BEAUPAIN, CHAIRMAN, MILLINOCKET TOWN COUNCIL, MILLINOCKET, MAINE

Mr. AYOOB. Senator, I will start off first with just an overview, and Mr. Beaupain will give you the particulars.

I have sent a letter to the committee, and it is very brief for me to summarize. Our community is situated right in the middle of the entire claim land, and we have been very much affected by it. Our ability to borrow money on a year-to-year basis has been seriously questioned. We have had the cooperation of financial institutions of Maine, but it has been a constant battle, and Mr. Beaupain will explain that to you.

At this point, I would just like to address myself to some of the points that were raised this morning. I think it shows very poor taste to talk about violence and that type of thing because, as concerned as I am about the social impacts that we will be facing if this thing is not settled and settled quickly, the people of the State of Maine, generally,

are not violent people, and the Indians in the State of Maine are not violent people. They have a history of being very, very peaceloving and generally get along with their neighbors.

We are asking the Senate and the House—when it gets to the House—to support our request that this claim be settled. It is making our financial lives very uncertain, and, frankly, there are a lot of people who do have homes who are just quietly nursing some suspicions as to what is going to happen to them and their homes.

With that, I would like to turn this section of our presentation over to Mr. Beaupain who is the chairman of the town council.

[The material follows:]

PREPARED STATEMENT OF WILLIAM AYOOB, TOWN MANAGER, MILLINOCKET, MAINE

The Town of Millinocket respectfully requests your support for the Indian Lands Claim settlement.

Our community is situated in the midst of the claim and is very much affected by the turmoil the claim has caused.

Our ability to raise money to operate our town and provide capital improvements is constantly under the pressure of a "cloudy" legal opinion. That "cloud" is the Indian Lands Claim which is written into financial legal opinions and restricts marketability of our securities and affects our ability to get more favorable interest rates.

Court action could go on for years. Costs continue mounting. Litigation fees, interests on money, etc. will cut more and more into the final outcome.

Perhaps even more important than money, is the social and morale factors. People, and their security of mind and body, are at stake on both sides. A tension is present and will ultimately have to be dealt with. A peaceful and honorable settlement is in the best interests of all concerned.

Again, you are requested to support the proposed settlement and encourage the adoption so that both sides can get back to productive living and concentrate more fully on improving the quality of lives of Maine's people, rather than litigating for years to come.

Senator COHEN. Mr. Beaupain?

STATEMENT OF DEAN A. BEAUPAIN, CHAIRMAN, MILLINOCKET TOWN COUNCIL

Mr. BEAUPAIN. Thank you.

Senators, I would like to just summarize the testimony I have submitted.

Senator COHEN. Without objection, the full text will be included in the record at the end of your testimony.

Mr. BEAUPAIN. Starting in 1976, the legal opinions required for the town of Millinocket, the issued tax anticipation notes, have been qualified because of the Indian land claims. The first time we noticed any problem was in 1978. In that year, a Boston bank purchased some of our notes for resale in their market. Eventually, they resold $750,000 of those notes to a Maine bank apparently because there was no market in Boston for them.

In 1979, a different Boston bank purchased some of our notes—$2 million worth—and could not sell them. Eventually, they sold those notes to an affiliate of the bank that bought our entire issue and then sold part to the Boston bank.

In 1980, we received only one bid for our tax anticipation notes, and that was from the same local banks that had received the bids

in the prior 2 years. And that bank was unable to convince either of the two Boston banks to participate. The reason was that each of those two banks had encountered difficulty in the past in selling our notes in the market because of the qualified legal opinion. As a result, we could borrow only $1.5 million rather than $3 million in January of this year.

As a municipality, this posed a problem for us. We had been planning on $3 million to finance our operation through 1980, and we could raise only half of that.

Senator COHEN. What are you doing to compensate? How are you handling that difficulty?

Mr. BEAUPAIN. Well, we crossed our fingers. Our bank said to wait until June and see what we could do at that time. In June, our bank did convince the Boston bank to come in and help us out, and they gave us the additional $1.5 million; so things worked out all right.

However, we paid 7.25-percent interest, as opposed to a 6-percent interest rate for a municipality with Millinocket's rating, without a qualified legal opinion.

Senator COHEN. What does that translate into in terms of dollars and cents?

Mr. BEAUPAIN. That translates into about $7,000 this year. The reason it is $7,000 is that we are only borrowing that money from June until November 4 or 5. Normally, we would repay that money on December 31. So that is another condition they imposed on us; we had to pay that money back earlier.

Senator COHEN. How do you pay the money back?

Mr. BEAUPAIN. Our tax receipts normally start coming in in early October, and by the end of the year we have the majority of it back.

Senator COHEN. In other words, to pick up the $7,000 difference, you are going to have to increase your tax base, are you not?

Mr. BEAUPAIN. Certainly.

Senator COHEN. For the tax rate—the base that currently exists?

Mr. BEAUPAIN. Yes, we will.

Senator COHEN. And if that continues on a sustained basis—let us say this case does go to court, and assuming it lasts for the 6- or 7-year period until it is finally resolved, you would then find yourselves in the position of having to finance both short-term and long-term bonds, to the extent that you could even find any investors for them, by raising your property tax rates in the area.

Mr. BEAUPAIN. The only practical answer for the town of Millinocket is to raise its taxes to the point where it collected enough money to finance its operations during the year until the taxes came in.

Right now, Millinocket, as most towns in Maine, plays a year behind the game. We spend all the money, and then we collect it. And it would be very difficult for a town of our size to raise the taxes for the number of years necessary to get $3 or $4 million cash on hand at the beginning of the year to finance us through the year until our tax collections come in.

But if this case were to go to court and had the effect of drying up the tax anticipation market for us, that would be our only alternative—to raise taxes, to give us enough money to finance our town.

One thing we could do is bring our tax due date forward; some towns do that. We could also, I understand, take steps to have taxes paid four

times a year, or something of that nature. It is just that we do not have very much time to do that, and we do not really have the resources to face all that.

I think Millinocket is very fortunate in that we have a full-time town manager, and when January came and we could not borrow all our money, we had a person who could go to work on this full time and try to straighten it out to the extent possible. Many other towns in the claims area are not that lucky. They are smaller towns, and they do not have those resources.

So we feel that if these claims are not resolved our problems can only increase, and those problems can only spread to other towns in the claims area.

In January of this year, we also tried to raise $1 million in long-term financing. The Maine Municipal Bond Bank approved our application, and our attorney once again qualified his legal opinion, and the attorney for the Maine Municipal Bond Bank, for that reason, rejected the town, and we were not able to participate at that time.

We have a note due with our local bank in the first week of August of this year for $775,000, and, quite truthfully, we do not know how we are going to pay that. If we do nothing between now and the first week in August, our bank will have to make a decision whether to default us or to make some other arrangement. They have told us that they will not default us; they will rewrite the note for at least a year to see if we can come up with some alternative form of financing, but if we do that we compound our local bank's ability to lend us tax anticipation money. There are apparently statutory limits on how much a particular bank can lend to a particular municipality, and the more money we have with them the less tax anticipation money we can get, and it just compounds the prior problem.

Mr. Bouchard told me earlier today that we can forget about participating through the Maine Municipal Bond Bank until this qualified legal opinion is taken care of. In the interim, we have been contacting some other institutions to see if we cannot perhaps have a direct placement of funds. The one company that has responded to us so far tells us that they probably could sell 10-year bonds at 8.25 to 8.5 percent interest, which is almost a 40-percent increase in the interest rate over which the Maine Municipal Bond Bank was able to sell their bonds at earlier in the year.

We are not that happy about that high an interest rate, and we are waiting to hear from other companies to see if there is any alternative. If we cannot come up with an alternative, our local bank will require us to pay back the money we owe them over 5 years at the prevailing rate of interest which, once again, would have to come directly from the taxpayers each year.

So, it has been our experience that the Indian land claims have adversely affected our financial planning. They have thrown everything up in the air; they have definitely affected the cost of borrowing money; and they certainly have the potential to affect the availability of money in the future. For that reason, we would like to see the Congress resolve the situation now.

Senator COHEN. Thank you, Mr. Ayoob and Mr. Beaupain.

Senator Mitchell?

Senator MITCHELL. I have no questions; thank you both gentlemen.

[The prepared statement follows:]

PREPARED STATEMENT OF DEAN A. BEAUPAIN

Mr. Chairman, members of the Committee, My name is Dean Beaupain and I am the Chairman of the Millinocket Town Council.

I appreciate the opportunity to appear before this Committee and describe some of the problems experienced by the people of the Town of Millinocket as a result of the so-called Indian Land Claims in Maine.

Millinocket is a town of approximately 8,000 people, located in north-central Maine. The land comprising Millinocket was originally part of Indian Township No. 3 which was purchased by the State of Maine from the Penobscot Indians in 1833. Attorneys who have studied the Indian land claims tell me that Millinocket, along with several other areas of the State, is in a uniquely precarious position because it was purchased directly from the Indians after Maine became a state.

Our difficulties, because of the Indian land claims, have been in two areas, tax anticipation borrowing, and long term borrowing.

In Millinocket, our budget is on the calendar year. However, property taxes, our principal source of revenue, are traditionally due and paid in early November of each year. Therefore, Millinocket generally borrows a sum of money in January or February of each year in anticipation of its property tax receipts in order to finance its operations during the year. The money is repaid at the end of each year.

Local banks submit bids to the Town for our tax anticipation needs. Correspondent banks from Massachusetts usually participate with the local banks in that the bank awarded our bid sells a portion of the notes to the correspondent bank and the correspondent bank resells the notes in its market. This procedure is followed because our local bank cannot always supply all of our capital needs.

In 1979, the Town wished to borrow $3,000,000 in anticipation of its taxes. The bid was awarded to the Northeast Bank of Millinocket which placed $1,000,000 of our notes within the Northeast Bank Association, and $2,000,000 of our notes were taken by a Boston bank.

The Boston bank was unable to resell the notes in its market because of the Indian land claims and eventually sold the notes to the Northeast Bank of Lewiston, Maine, which is affiliated with the Northeast Bank of Millinocket.

In 1980, the Town once again solicited bids for $3,000,000 in anticipation of our taxes. The Northeast Bank of Millinocket, the only bank to submit a bid, was not able to convince out-of-state banks to participate with them in submitting their bid because of the prior year's experience.

As a result, our local bank could lend us only one-half—$1,500,000—of our required funds through its association.

In June of this year, we again solicited bids for the remaining $1,500,000 of tax anticipation money. A Boston bank did participate with the Northeast Bank of Millinocket in advancing us the money. However, we paid a price. Our interest rate was 7.25 percent as opposed to approximately 6 percent for a community such as Millinocket without the Indian land claims problem.

In addition, we are now in a position where only one bank submits bids for our tax anticipation needs. If that bank is unable to obtain participation of out-of-state banks in submitting bids due to the Indian land claims, our problems in this area will continue.

As I have tried to explain, the people of Millinocket have experienced difficulties in the area of tax anticipation borrowing. We feel that our problems will persist until the Indian land claims are resolved.

Millinocket, during recent years, has constructed a recreation complex and a wastewater treatment plant. Cost overruns, and litigation concerning the two projects, have forced us to borrow $775,000 on a short-term basis. Early in 1980, we decided to raise $1,000,000 in long-term funds to retire the $775,000 note with our local bank and to finish our wastewater treatment plant.

We applied to the Maine Municipal Bond Bank in order to participate in their 1980 Spring issuance of bonds. The Maine Municipal Bond Bank is a state entity created to assist Maine municipalities in issuing and selling long term obligations nationwide.

Our attorney qualified his opinion by disclosing the existence of the Indian land claims, identifying Millinocket as being within the general area of the claims and outlining the possible adverse consequences of the claims upon the Town's ability to repay the bonds through property taxes should the Indian land claims be successfully prosecuted by the Indians.

Unfortunately, counsel for the Bond Bank rejected the qualified opinion of our attorney and we were not allowed to participate in the spring issuance of bonds by the Bond Bank.

Those towns that did participate in the bond sale will pay 6.868 percent interest on their twenty-year bonds. Ten-year bonds were sold at 6.2 percent interest. But for the Indian land claims, we feel we could have participated in the sale and sold twenty-year bonds.

We are now in the process of attempting to raise the money by direct placement of bonds through an investment company in Maine. If successful, we expect that our bonds will be sold entirely within the State of Maine, rather than nationwide through the Bond Bank.

An investment firm, which has expressed an interest in working with us to raise the needed funds, feels it can sell ten-year bonds at 8.25 percent to 8.50 percent interest.

It appears that the people of Millinocket, because of the Indian land claims, will pay a stiff price to place their short-term obligations on a long-term basis. First of all, the repayment period apparently will be ten years rather than twenty which will double the amount of principal to be repaid each year. In addition, we will pay 33 to 37 percent higher interest since the bond Bank's ten-year bonds were sold at 6.2 percent interest rather than 8.25 to 8.5 percent interest.

For example, ten-year bonds, at 6.2 percent interest, would require a first year payment of $162,000. Ten year Bonds, at 8.5 percent interest, would require a first year payment of $185,000. Twenty year bonds, at 6.868 percent interest, would require a first year payment of $118,680. As you can see, if we are successful in marketing our bonds, our people will pay a premium because of the Indian Land Claims.

If we cannot sell bonds, we must repay our local bank $775,000 over five years at the prevailing interest rate. This alternative appears to be the most expensive for the taxpayers of Millinocket.

Millinocket was incorporated in 1901, shortly after it was carved out of the forest when the Great Northern Paper Company mill was built. The basis for the Indian Land claims predates the creation of Millinocket by many years. For this reason, our people do not feel responsible for the Indian land claims. However, our people are paying a price because of the claims. We feel that the people of Millinocket, and the people of Maine, will suffer adverse financial consequences if the Indian Land Claims are litigated no matter what the final result of the case. Therefore, we ask you to end this problem now by approving the legislation submitted to you by our Senators.

Senator COHEN. This committee will stand in recess until 4 o'clock. But before we take this brief recess, the last panel of witnesses that has been scheduled will not be appearing. We have one final panel of seven witnesses, including Mr. Robert Coulter, Mr. Dana Mitchell, Mr. John Sapiel, Mr. Neil Phillips, Ms. Eunice Crowley, and Ms. Renee McDougall.

We will stand in recess until 4 o'clock.

[Recess taken.]

Senator MITCHELL (acting chairman). Senator Cohen had to leave for some pressing Senate business.

Before we proceed to the next group of witnesses, I want to announce that three other scheduled witnesses, Ron Andrade, executive director of the National Congress of American Indians; Kenneth Black, executive director of the National Tribal Chairmen's Association; and Rex Evans,[1] executive director of the United South and Eastern Tribes, who had been scheduled to testify, have elected not to do so, but, rather, will submit material which will be included as part of the record, without objection, at this point.

[The material follows:]

[1] Not received at time of printing.

NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

Suite 207 1701 Pennsylvania Avenue, N.W. Washington, D.C. 20006
202 – 343-9484

The National Tribal Chairmen's Association is composed of the elected federally recognized Tribes of our country. Its membership is composed of Chairmen, Governors, Chiefs and Presidents of the federally recognized tribes.

We appreciate the opportunity to present testimony in support of S. 2829. These people, until they won their case in Court, suffered greatly and gave up much to be a part of our great country.

Restitution at this time is of prime importance for many of our people. Congress can do the state, its citizens and the tribes a great service by the enactment of this legislation.

The National Tribal Chairmen's Association respectfully request that Congress approve S.2829 without undue delay.

Thank you

NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

Suite 207 1701 Pennsylvania Avenue, N.W. Washington, D.C. 20006
202 – 343-9484

RESOLUTION

No. 4/80/3

WHEREAS: The Passamaquoddy Tribe and the Penobscot Nation are seeking a negotiated settlement in resolution of their land claims, and

WHEREAS: the settlement agreement, as proposed, has the endorsement of the general members of the Passamaquoddy Tribe and the Penobscot Nation, and

WHEREAS: the State of Maine has enacted a jurisdictional agreement with the Passamaquoddy Tribe and the Penobscot Nation, and

WHEREAS: such funds will be separately appropriated and will be distinct from any Bureau of Indian Affairs funds appropriated for other or general purposes.

NOW THEREFORE, BE IT RESOLVED, that the National Tribal Chairmen's Association hereby, and without reservation, recommends and urges the Congress of the United States to approve without change the Federal Legislation proposed by the Passamaquoddy Tribe and the Penobscot Nation, and appropriate the reqested funds without delay.

CERTIFICATION

The foregoing resolution was duly adopted by the Board of Directors of the National Tribal Chairmen's Association in a duly constituted meeting on the 16th day of April, 1980, at which time a quorum was present.

PRESIDENT

ATTEST:

SECRETARY

NATIONAL CONGRESS OF AMERICAN INDIANS

202 E STREET, N.E., WASHINGTON, D.C. 20002 (202) 546-1138

RESOLUTION NO. 80 - 98

PASSAMAQUODDY TRIBE AND THE PENOBSCOT TRIBE
- LAND CLAIMS

WHEREAS, the Passamaquoddy Tribe and the Penobscot Tribe are seeking a negotiated settlement in resolution of their land claims; and

WHEREAS, the settlement agreement, as proposed, has the endorsement of the general members of the Passamaquoddy Tribe and Penobscot Nation; and

WHEREAS, the State of Maine has enacted a jurisdictional agreement with the Passamaquoddy Tribe and the Penobscot Nation; and

WHEREAS, such funds will be separately appropriated and will be distinct from any Bureau of Indian Affairs appropriated for other or general purposes.

NOW, THEREFORE, BE IT RESOLVED, that the National Congress of American Indians hereby, and without reservation, recommends and urges the Congress of the United States to approve without change the Federal Legislation proposed by the Passamaquoddy Tribe and the Penobscot Nation, and appropriate the requested funds without delay.

CERTIFICATION

The Executive Committee duly convened at the NCAI Executive Committee meeting in Spokane, Washington on April 17-18, 1980, voted to approve this resolution.

NATIONAL CONGRESS OF AMERICAN INDIANS

Ella Mae Horse
Recording Secretary

Senator MITCHELL. The next and final witnesses are Mr. Robert Coulter of the Indian Law Resource Center and several members of Maine tribes. Those members who are seated at the table with Mr. Coulter are Mr. Dana Mitchell, Mr. John Sapiel, Mr. Neil Phillips, Ms. Eunice Crowley, Ms. Renee McDougall, Ms. Julia Coti, and Ms. Lorraine Nelson. They are here to express their views of the claim and what they believe its impact will be on their tribes.

Mr. Coulter, please proceed.

STATEMENT OF ROBERT COULTER, INDIAN LAW RESOURCE CENTER, WASHINGTON, D.C., ACCOMPANIED BY DANA MITCHELL, JOHN SAPIEL, NEIL PHILLIPS, EUNICE CROWLEY, RENEE McDOUGALL, LORRAINE NELSON, AND JULIA COTI, PENOBSCOT TRIBE

Mr. COULTER. I am the attorney who is attempting to work with these people, and Mr. Mitchell will lead the panel, if that is acceptable.

Senator MITCHELL. Certainly; you may proceed in any form you see fit.

Mr. Mitchell?

Mr. MITCHELL. Mr. Chairman and members of the committee, I would like to thank you at this time for allowing me to speak with you today. Today I come here to speak to you about my concerns about our struggle for our lands and our rights.

Today, I come here to speak in opposition to this Senate bill 2829, to address the reasons I feel should be considered before this bill can proceed, if it does.

I am concerned that my inherent rights and fundamental rights will be given up, as well as my children's and my children's children's. Where are my rights expressed in these bills where I have not accepted them? It does not make any provisions in the bill for people who do not accept it or its conditions. These are our lands and our rights. They cannot be removed without our consent.

The process in which these bills are today, in my opinion, is not legal. I will explain this in the following statement. It is unfortunate that this whole process and the development of this bill has been conducted in secrecy from the Indian people, plus the fact that important information was not made available to them or explained to them.

There has been no impartial interpretation of these bills presented to the Passamaquoddy or Penobscot people. It is the feeling of many of the people that there must be some hidden meanings about the implementation of these bills and the development of them.

It is shown by the record that there has been no clear agreement by the Penobscot or Passamaquoddy or Maliseet peoples in approving these bills.

At this time, it is necessary to make clear to this committee that the lands of the Penobscot Nation are individually owned lands and are deeded lands. This land belongs to those individual people. These people who own the land have not consented to this; they have not all agreed to this. How is it that these lands can be taken by the Federal Government? I think this is an absolute illegality according to the principles by which this Congress operates.

Senator MITCHELL. Excuse me, Mr. Mitchell; I am not sure I understood you. What lands are being taken by the Federal Government?

Mr. MITCHELL. The lands that are individually owned and deeded to individual landowners, because I believe it states in the bill that all present reservation lands will be held in trust by the Federal Government.

Senator MITCHELL. I see. You are talking about the land that is presently on the reservation.

Mr. MITCHELL. The lands that are presently within the lands of the Penobscot Nation.

Senator MITCHELL. Would you, Mr. Mitchell, and any other speakers, identify whether you are with the Penobscot Nation, the Passamaquoddy Tribe, or the Maliseet Band? That would probably be helpful for the record.

Mr. MITCHELL. Myself, I speak as a member of the Penobscot Nation.

Senator MITCHELL. Thank you.

Mr. MITCHELL. I think it is important that the committee understand the principle by which our lands are owned, and they are not within the same conditions as the Passamaquoddy land is held. So the taking of their lands would be illegal, by placing them in trust.

There is a question that I would like to ask of this committee. Where, in all of this process, does it say that the lands of the Penobscot Indian Nation were considered or why they were not considered in the process here? I feel that this is another point of confusion that has been presented to the Indian people. The Penobscot and Passamaquoddy people have not seen this bill as it is presented here. They have not had the opportunity to see this bill. It is totally different from what has been presented to the Indian people. So far, from what we can count, since we have been here and since the bills have been given to the State legislature, there have been approximately 30 changes made.

They have indicated in the voting process that there were technical and minor changes, and they were to be allowed. I would like an interpretation of that. What constitutes technical changes, and what constitutes minor changes? I consider these 30 changes in the bills major changes. The people have been informed that if this happens the whole process of these bills will be considered null and void to the Indian people.

There has been talk of clarifications, as stated in several memos that have come. Clarifications, as I understand it, the consideration of major changes, as indicated by Interior, by Justice, and by other agencies of Congress and the Federal Government. Neither the negotiating team, nor Tom Tureen, nor our tribal governor have ever brought back these clarifications to the people. They have not considered to bring them back to the people. I think this is very unfair; they do not have that authority.

The intent for which these bills are here is with the condition that no changes will be in them—major changes—and these changes so far have indicated major changes in the bills.

It is my understanding that Tom Tureen stated that Congress would recognize the Houlton Band of Maliseets for the purposes of

clarifying and clearing all Indian land claims in Maine. From my understanding, the Houlton Band of Maliseets has no authority from the Maliseet chiefs or counsels to represent the Maliseets in the land claims in the State of Maine.

The lands that are offered for the Maliseets are part of the acreage that was requested for the Penobscot and Passamaquoddy people. The Penobscot and Passamaquoddy people have not given permission for this land transfer, nor have they agreed to the Maliseets being part of the Penobscot and Passamaquoddy land claims.

Senator MITCHELL. Excuse me, Mr. Mitchell. Was there not a vote among the members of the various tribes?

Mr. MITCHELL. No, there was not. The records there indicated this has never been brought to the people.

Senator MITCHELL. There has never been a vote among the Penobscots and Passamaquoddies on this proposed settlement?

Mr. MITCHELL. You are talking about the referendum vote on the bills?

Senator MITCHELL. That is right.

Mr. MITCHELL. Yes.

Senator MITCHELL. Was there a vote by the members of the respective tribes to either support or oppose this proposed settlement and the State Implementing Act?

Mr. MITCHELL. The bills, as they were presented to the people—there was no opportunity for any objections to this or to make any changes in these bills. I understand what you are saying; I am clarifying to the point that, yes, there has been a vote on this, but in my statement which I will make after this, I will try to firm up what you are trying to ask.

Senator MITCHELL. I just wanted to get one point clear—the basis for your opposition. Yesterday, one of the witnesses testified that the vote was about 2½ to 1 in favor, that is, approving the proposed settlement and the State Implementing Act. You have suggested here today that there have been some changes since that time in the legislation—30 changes—and you question whether they are, in fact, technical or major changes.

My question to you is, do you oppose the Maine Implementing Act as originally suggested, or is your opposition based solely upon the fact that there have been some changes in the legislation?

Mr. MITCHELL. I have opposed the issue from the beginning.

Senator MITCHELL. So, the fact that there may have been some changes, which you suggest may be major as opposed to minor, is not the decisive factor in your opposition to this settlement. You were opposed to it at the outset. Is that correct.

Mr. MITCHELL. I have been opposed to this.

Senator MITCHELL. And even if there were no changes, that is, even if there had been not a single comma changed, you would still be opposed. Is that correct?

Mr. MITCHELL. I think that the changes that are made are just continuing on the downslide.

Senator MITCHELL. In other words, they give you more reason to oppose it, but it is not the fact of the changes that causes you to oppose the legislation. Is that correct? I am just trying to get at the basis of your opposition.

Mr. MITCHELL. I think the basis of my opposition is that my rights are at stake here, and I think that is very important to me. I think the proposed bills, as they were first implemented, and any subsequent changes that have materialized since then are still another increasing factor to the deterioration of my rights.

Senator MITCHELL. All right. That is what I wanted to clarify. Please proceed.

Mr. MITCHELL. The Indian people were always informed that the Native American Rights Fund was funded by private grants. The Indian people were never told that NARF was paid by the Federal Government and that 80 percent of Tom Tureen's salary and expenses are paid by the Federal Government.

The lawyer, as I have to view it, hired to protect our lands and rights is being paid by the people who are taking these lands and rights from us. And they may succeed. This, to me, would show who Tom Tureen is actually working for as well as the law firm he represents.

Senator MITCHELL. You feel that because, as you allege, part of Mr. Tureen's salary is paid by the Federal Government, that he has not adequately represented the tribes?

Mr. MITCHELL. Yes, I feel so. That is my opinion and feeling.

I also feel that he should not be working on Indian land claims or dealing with Indian rights, or protecting the rights of individual Indians. It should be told to the Indian world what kind of intent they represent because it is certainly not the intent of the Indian people. I feel this is a direct conflict of interest in principle, as an attorney.

I would also question what tribal governments would support such a law firm as this.

The Federal and State bills that were presented to the Indian people were never approved at a general meeting of the people. The people of the Penobscot Nation petitioned the Governor to bring these bills to a general meeting of the people where we conduct all the proceedings that deal with any material or any legislative material. This was never done.

The Governor, out of a workshop of counsel, had called for a referendum vote. He totally ignored the people's request through this petition to bring this issue to a general meeting.

There was also a petition received from people who are off-reservation, who live and reside outside of the State of Maine. They voted on the issue without full understanding, without any legal or impartial interpretation given to them. They did not have time to consider this; the time element was very short for them.

Most of the people who voted on it voted on it based on the notice that was supplied to them.

The committee that I am a chairperson of, the Penobscot Indian Nation Judicial Advisory Committee, is a committee, a standing committee, to review and evaluate all interim laws and ordinances as well as to recommend to the people any proposed laws or ordinances.

Senator MITCHELL. Could I ask you, Mr. Mitchell, what would you and the other members here like to see happen?

Mr. MITCHELL. I would like to see several things happen. I feel that the most important thing at this time—and I would make this recommendation to this committee—is to hold field hearings on

these proposed bills. We have an excellent facility at home where the committee could have some impartial committee come and evaluate it. The committee could also get impartial evaluations of these bills set up; get this presented to inform the people what these bills imply; what the legal meanings mean to them and to their rights; hold the field hearings.

We have come here at our own expense and on our own time. We have not had the opportunity, as some people here who have come here to support this bill, to be paid by either the State government or the Federal Government or some corporate entity. We have taken our own expense and time to come here because we feel that our rights are being done away with.

Senator MITCHELL. So, you want field hearings. Would you like to see Congress not pass this legislation? Is that what you want done?

Mr. MITCHELL. My feeling on it is, yes, because I feel that my rights are being violated here.

Senator MITCHELL. So, you do not want this legislation enacted?

Mr. MITCHELL. I do not want this legislation enacted.

Senator MITCHELL. Then, what would you like to see happen?

Mr. MITCHELL. Primarily, I would like to see field hearings held. I also think that, in conclusion of that, I would like to see these land claims go to court. I think it is important that they be treated fairly. It is obvious that this whole process has been conducted in secrecy, basically, from the Indian people.

Senator MITCHELL. But this is not a secret proceeding.

Mr. MITCHELL. I understand that, but this is not part of the negotiations.

Senator MITCHELL. No; I understand that.

So, really, what you want— I am trying to get to the crux of your argument—you want this legislation not enacted; you want this case not settled; you want to go to court and have a trial in court?

Mr. MITCHELL. I think it would be fair to the Indian people in all areas if this issue goes to court.

Senator MITCHELL. Would you be prepared to accept the consequences if the court decided that the Indians were entitled to nothing?

Mr. MITCHELL. I think that is premature in conception at this time—to understand that.

Senator MITCHELL. But you understand—just as I said to Mr. Redmond—when you go to court, you do not know what the outcome is going to be.

Mr. MITCHELL. It does not mean that, because I go to court, and I lose, I agree with the court.

Senator MITCHELL. No; I am not asking you to agree with it. I know; I have lost many cases, and I have yet to agree with one I have lost. But I accepted the results.

My question of you is this: Not that you agree with the court, but if you went to court and had a trial, and the court ruled that the Passamaquoddy, the Maliseet, and the Penobscot were entitled to nothing—no lands, no money, their claims were over—would you be prepared to accept that and say, "We had our day in court; that is what we wanted"?

Mr. MITCHELL. At least I would have my day in court.

Senator MITCHELL. And would you be prepared to accept that?

Mr. MITCHELL. I would take it under advisement, certainly.

Senator MITCHELL. You are sounding a lot like Mr. Redmond. You want to go to court, and you would obviously be prepared to accept it if you won, but you seem unprepared to accept a result adverse to you.

I am not asking you to agree with it; I understand that perfectly. But I am saying "accept it."

Mr. MITCHELL. Yes; we would probably accept it. But that does not mean we will agree with it.

Senator MITCHELL. I understand that. On that, Mr. Mitchell, we have no disagreement.

And you understand that that is a real possibility?

Mr. MITCHELL. There is a possibility in anything. We understand that. The committee of which I am chairperson has had no input into these bills.

Senator MITCHELL. Well, you have a chance today.

Mr. MITCHELL. Nor has this committee had the opportunity to seek an impartial legal opinion of these bills. We were allowed to ask any questions on these bills only the day before the people were asked to vote on approval of these. We could not give the people of the Penobscot Nation any evaluation of these bills or make any recommendation to them as to what this might imply to them.

Senator MITCHELL. Mr. Coulter is your attorney? Are you an attorney, Mr. Coulter?

Mr. COULTER. Yes.

Senator MITCHELL. You are representing this group of people?

Mr. COULTER. Yes.

Senator MITCHELL. You have had an opportunity to look at this legislation, have you not?

Mr. COULTER. Yes.

Senator MITCHELL. You have had an opportunity to advise Mr. Mitchell and the other members of the group here what you think the legislation does or does not do, have you not? I just want to get this straight. He just said that he has not had an opportunity to look at this legislation and advise people about it.

My question to you is this: This has been in the works for months; the legislation and the hearings have been published. Have you had an opportunity, Mr. Coulter, to look this legislation over, to talk with your clients, to talk with anybody you wanted to about this legislation?

Mr. COULTER. No.

Senator MITCHELL. What has prevented you from doing that?

Mr. COULTER. It is a new bill; it is not the same bill that was submitted to the referendum. We did discuss the old bill. We had about 5 days to do that.

Senator MITCHELL. This was dated June 13—that is 3 weeks ago. Have you had an opportunity to look at this since then?

Mr. COULTER. Yes, of course. But there has been no referendum; no meeting. I had not met with these people until about 9:30 this morning.

Senator MITCHELL. You understand, Mr. Mitchell and Mr. Coulter, that as Senator Cohen set for the schedule, the hearing record will be open for 30 days; then there must be action by this committee; then it must go to the Appropriations Committee. You now have the opportunity, that has existed for several weeks, to look at this, review

it, make any analysis you want, make any comment you want to this committee or to anyone else you want. You understand that, do you not?

Mr. MITCHELL. Yes; I understand. But I was saying to you that we did not see this bill, and neither had the people seen this bill, until we arrived here. This has never been made available to the people as it is written here. This is a totally different bill than what the people were presented.

Senator MITCHELL. I am not going to argue about that. Whether it is totally different or not is a matter of some interpretation.

In any event, you now have 30 days in which to make any analysis you want and submit any comments you want to this committee and make those views known to anyone you want.

Mr. COULTER. Let me be clear; there is no question about whether or not we can make our views known here; the question is whether the people of the Passamaquoddy Tribe and the Penobscot Nation have ever had a chance to fairly evaluate the legislation and fairly speak their minds about it, to fairly consent to it or reject it. We say we have not had that opportunity, and there is nothing that we can do here; there is nothing that we can submit to you that will change that.

Senator MITCHELL. And there is nothing that I can do about that either, is there?

Mr. COULTER. Yes; you can refuse to pass it or support it until such consent is manifested fairly and openly.

Senator MITCHELL. And if another election were held, and you lost again, would you then support the bill?

Mr. COULTER. We might not support it, but we would not object on the grounds of fairness.

Senator MITCHELL. All right.

Please continue, Mr. Mitchell.

Mr. MITCHELL. I feel that this is a great misrepresentation to the Indian people. The final bills only have to do with our rights. There is no guarantee of lands; there is no guarantee of moneys. We are forced to give up everything that we have always had.

Senator MITCHELL. Wait a minute. You understand this bill to say that you would give up all your lands and rights, and you would get nothing in exchange—you would get no land or money? Is that your understanding of this bill?

Mr. MITCHELL. I am not getting any money; the Federal Government is getting the money.

Senator MITCHELL. A $27 million trust fund.

Mr. MITCHELL. That is going to the Federal Government.

Senator MITCHELL. Right—for whose benefit?

Mr. MITCHELL. That might be for some of the people's benefit, but basically I see it as the Government's benefit.

Senator MITCHELL. You think the creation of a trust fund, as contemplated by this legislature, would be for the benefit of the Government and not for the benefit of the members of the tribes involved?

Mr. MITCHELL. They get to control the land; plus, they get to control and invest the money.

Senator MITCHELL. And for whose benefit will the money be invested?

Mr. MITCHELL. More likely the Secretary of the Interior or whoever they invest it through.

Senator MITCHELL. You think the Secretary of the Interior is going to keep the income from this trust fund?

Mr. MITCHELL. I think he will use the biggest percentage of it.

Senator MITCHELL. For himself?

Mr. MITCHELL. Well, I think for Interior or for whatever purpose the Government might deem necessary.

Senator MITCHELL. And you think it will not be used for the benefit of the tribes—is that what you are saying here today?

Have you advised them in that respect, Mr. Coulter?

Mr. COULTER. Yes; and I agree with him.

Senator MITCHELL. You are an attorney and you are telling me, in your judgment, you have advised these people that the Secretary of the Interior would keep this money for himself?

Mr. COULTER. No; I did not say that. I said there are inadequate controls there. I said the Secretary of the Interior will invest money as he sees fit in the best interests of the United States. There is nothing in the bill that will protect the interests of the Indian people, particularly not in light of the *Mitchell* case.

Mr. MITCHELL. For whose benefit will the money be invested, Mr. Coulter?

Mr. COULTER. We all recognize that the bill is supposedly in the interests of the Passamaquoddy and the Penobscot. What we are saying is that the bill does not achieve that end. We are not quarreling about technical phraseology; we are quarreling about the substantive results. And the view he is expressing, and the view I support, is that the substantive result will not be to the substantial benefit of the Penobscot Nation and the Passamaquoddy Tribe.

Senator MITCHELL. Let me just read you section 5(b)(3) beginning on page 11 of the bill:

> The Secretary, on a quarterly basis, shall make available to the Passamaquoddy Tribe and the Penobscot Nation, without liability to or on the part of the United States and without any deductions, any income derived from that portion of the settlement fund allocated to the respective tribe or nation, the use of which shall be free from regulation by the Secretary.

Mr. COULTER. We understand those words.

Senator MITCHELL. If you understand those words, how is that consistent with what you have just said and what Mr. Mitchell said you advised him?

Mr. COULTER. The question is what is done with the trust fund. The question is: How is it invested? Who invests it? Who controls it? There is no question that there will be some cash flow; there is cash flow now. The cash flow is not the crucial point. We know that there will be some cash flow from the income of the trust to somebody who will govern the Penobscots and Passamaquoddies.

What we are trying to do is get at the underlying problem, and the underlying problem is that the Secretary of the Interior will control the corpus of the trust, not the Indian people. You see, we are trying to get at the substance of it, not at the details.

Senator MITCHELL. I understand what you are saying.

But, Mr. Mitchell, do you understand now—and do the other members of the panel understand—the distinction that is being made here? All of the money that is owned by this trust fund must, by law—by this law—be paid over to the tribes for their use and benefit.

There is no suggestion that the Secretary of the Interior can keep any of this money or use it for other purposes. What Mr. Coulter quarrels with is who controls the investment of the principal that earns the income.

So there can be no misunderstanding, obviously, the proceeds—the income—received is for the benefit of the tribes, not for the benefit of the Secretary of the Interior or anybody else; that should be made clear.

Please proceed with your next point, Mr. Mitchell.

Mr. MITCHELL. I testified at the public hearings in Maine on the Maine Implementing Act. I presented testimony as well as evidence which was excluded from the final report. I would like to ask this committee the reasons why. We felt that the evidence presented was very important for the consideration of that State bill which caused the Federal bill to be where it is today; yet this information was left out of the report. The reason I understand was the cost of reproducing it. Yet, when I wanted a copy of the report, I was told I would have to buy it.

I have a statement from the Penobscot Indian Judiciary Advisory Committee to present here to the Select Committee on Indian Affairs.

The Penobscot Indian Judiciary Advisory Committee is a duly elected body of the Penobscot Indian Nation. It is the official opinion of this committee that Senate bill 2829 should not be here as it is today with the official sanction of the Penobscot Nation.

The PINJAC Committee—the abbreviation for our committee—has determined that the procedure for the referendum vote was not in accordance with established law of the Penobscot Nation. Precedence for the procedure for a referendum has always been established by a mandate at a general meeting of the people.

I will submit this with evidence before the time allowed for closing of this.

Senator MITCHELL. Without objection, it will be included in the record at this point.

[The material follows. Testimony resumes on p. 411.]

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STATEMENT OF THE PENOBSCOT INDIAN JUDICIARY ADVISORY COMMITTEE BEFORE THE HEARING OF THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON S. 2829, THE MAINE INDIAN CLAIMS SETTLEMENT ACT OF 1980

The Penobscot Indian Judiciary Advisory Committee PINJAC is a duly elected body of the Penobscot Indian Nation.

It is the official opinion of this committee that Senate Bill S. 2829 should not be here as it is today with the official sanction of the Penobscot Nation.

The PINJAC has determined that the procedure for the referendum vote was not in accordance with established law of the Penobscot Nation.

Precedence for the procedure for a referendum has always been established by a mandate at a general meeting of the Penobscot Nation. (attached #1) (At the general meeting held on March 17, 1980, on Indian Island, those tribal members attending voted to have the Negotiating Committee recommended settlement package placed on a ballot for a referendum vote). This process was not followed. Wherein the Governor and Council had brought these Bills to a referendum vote, overiding the procedure of a general meeting of the Penobscot Nation. (attached 1A) (A motion was made by Clara Jennings to bring the Land Claims Settlement Package to a referendum vote for tribal members on Saturday, March 15, 1980. Seconded by Francis Sapiel).

Under Title 22S 4793 (State of Maine a Compliation of Laws pertaining to Indians). Par. 5 1st. and 2nd sentences. (The tribal governor shall call a general meeting of the tribe for the purpose of affirming or rejecting legislative proposals prepared by the tribal governor and council for submission to the State Legislature).

A member of the Penobscot Nation attempted to stop this referendum vote in a hearing on our tribal court on March 14, 1980, (Attean vs. Gov. Pehrson & Governing Council. Docket NO. 80-03) At that time the motion was denied on the grounds that this was an Advisory referendum only, and that the negotiating committee was a civic group. However, under the same provision, it states that (pg. 8) (What your telling me is, that the referendum is merely an advisory referendum). In testimony given at this hearing, Mr. Thomas Tureen stated that it was taken to the Tribal Governor and Council the previous night, March 13, 1980. The only meeting on record for March 13, 1980, was a tri-council special meeting of the Penobscot and Passamaquoddy Councils. In this meeting, the only motions made was to support the settlement package and the negotiating committee. At no time, was a motion made to approve the specific Legislative Bills. (attached #4) (Motion made by Joseph Francis to support the settlement packages (state and federal) and give support to the Negotiating Committee and the Tribal Attorney. Seconded by Beth Sockbeson).

The PINJAC also feels that the introduction of L.D. 2037 by Senators Collins and Conley was in violation of Title 22 Sec. 4793 Par. 5, (No private organization, church organization, State department, civil

group or individual shall submit legislation affecting the Penobscot Tribe of Indians to the State Legislature without first bringing it before the Penobscot governor and council for approval.) due to the fact that they did not bring this Bill L.D. 2037 to the Penobscot tribal governor and council for approval.

It is also the opinion of PINJAC that at the very best this referendum was an advisory vote of the Penobscot Nation, not an affirmative vote of the Legislative Bills L.D. 2037 and Senate Bill S. 2829.

Wherein the ballots of that referendum vote (This is a final vote by members of the Penobscot Nation on accepting settlement terms, prescribed in the federal and state agreements). is arbitary and ambiguous. According to testimony given in Attean vs. Governor Wilfred Pehrson and Governing Council, Penobscot Nation. Civil Action Docket No. 80-30 and at the public hearings held in the main auditorium of the Augusta Civic Center, Augusta, Maine on March 28, 1980, on the Maine Indian Land Claims Settlement. On page 177 and 178, Tom Tureen again stated that this was an advisory vote (attached #6) (Mr. Tureen: The answer to the question is that I did state that the vote as a technical matter was an advisory vote).

The PINJAC has also received numerous complaints from mebers of the Penobscot Nation as follows:

A. Did not receive ballot or details of settlement package and Legislative Bills.

B. Did not receive ballots or settlement package in time enough to vote.

C. Did not have sufficient time to evaluate the Legislative Bills.

D. Did not have knowledge of the actual settlement agreement.

E. Did not have an impartial evaluation of the settlement package.

In conclusion, it is the opinion of the PINJAC that the people of the Penobscot Nation have not received due process in consideration of these Legislative Bills.. L.D. 2037 & Senate Bill S. 2829. The PINJAC recommends that this Senate Select Committee should take under advisement the objections of this testimony as presented here today before allowing these Bills to procede any further.

Thank you

T. Dana Mitchell July 2, 1980

The PINJAC Committee Chairperson

#2

STATE OF MAINE

A COMPILATION OF LAWS

PERTAINING

TO

INDIANS

Compiled from:

- the Maine Revised Statutes of 1964, including amendments through 1976
- the Constitution of Maine
- current Resolves and Private & Special Laws

Prepared by the Department of Indian Affairs

Augusta, Maine

Printed

JULY 1976

guishing marks on the ballot or if the ballot is marked in such a way as to make the voter's choice impossible to determine. In no case shall a ballot be disputed solely because of the type of mark used to indicate the voter's choice, and all votes shall be counted where the voter's intention can be clearly seen and no other reason for challenging the ballot but its type of marking exists. If any mistake was made in counting the ballot on the election day, the commissioner shall correct his tabulation. If the corrected tabulation changes the result declared on election day, the commissioner shall declare the winner as determined by the recount. The commissioner shall issue his certificate of election to the winner of a recount, unless within 4 days of the said recount, the loser appeals its result in writing to the Governor, addressed to the Secretary of State. In all cases the determination of the winner by the Governor shall be final.

Sec. 4793. Governor and council

The governor, lieutenant governor and representative at the Legislature of the Penobscot Tribe of Indians shall hold office for 2 years commencing on the first day of October on the even-numbered years beginning October 1, 1968, or until their successors are elected.

The council of the Penobscot Tribe of Indians shall consist of 12 members elected for 4 years, chosen in the following manner: At the election of September 8, 1970, 12 members shall be elected to said tribal council. The 6 members receiving the highest number of votes in the 1970 election shall hold office for 4 years and the remaining 6 members shall hold office for 2 years, commencing on October 1, 1970, unless removed as provided, or resigned. In each subsequent election thereafter, 6 members of said tribe shall be elected to said tribal council and shall hold office for 4 years, commencing on the first day of October in the even-numbered years, or until their successors are elected. Biennially on the first day of October in the even-numbered years, all correspondence, records, files and other materials pertaining to Penobscot tribal government and tribal activities shall be turned over to the newly elected tribal governor by the former tribal officials.

The governor shall preside over all meetings of the council and be a member ex officio. In the absence of the governor, the lieutenant governor shall preside. Seven members of said council shall constitute a quorum thereof for the purpose of conducting the affairs of the tribe and exercising its powers and for all other purposes, notwithstanding the existance of any vacancies. Tribal council members who are not in attendance at 3 successive tribal council meetings, or at 5 tribal council meetings during a 12-month period, shall be removed from said council by the governor, with the advice and consent of the council. Each council member must be given at least 24 hours advance notice of said meeting by the governor. The governor may excuse tribal council members from attendance at tribal council meetings in advance of such meetings for health or other personal reasons. No member of the council shall be liable to answer for anything spoken in debate at any council meeting.

Whenever any vacancy occurs in the office of governor, lieutenant governor, council and representative at the Legislature, there shall be a special election called by the commissioner within 60 days to fill such vacancy. The governor, lieutenant governor, council and repre-

sentative at the Legislature may be removed from office by a petition showing charges and signed by a number of registered voters equal to at least a majority of the number of votes cast for tribal governor at the next preceding tribal election, and the petition is presented in writing to the governor, lieutenant governor, council and representative at the Legislature in a formal hearing called by the commissioner, and thereupon such petition shall be acted upon, provided that a majority of the persons legally registered to vote at the next preceding tribal election are present. Tribal members who have been convicted of a felony shall not be permitted to hold any tribal office, either elective or appointive.

The tribal governor shall call a general meeting of the tribe for the purpose of affirming or rejecting legislative proposals prepared by the tribal governor and council for submission to the State Legislature. Notice of the time and place of the general meeting shall be posted 7 or more days before said meeting day at the office of the tribal governor and one conspicuous place on Old Town Island. Legislative proposals that have received an affirmative vote of a majority of those present and voting at the general meeting of the tribe shall be given to the tribal representative of the State Legislature for submission to the State legislature. No private organization, church organization, State department, civil group or individual shall submit legislation affecting the Penobscot Tribe of Indians to the State Legislature without first bringing it before the Penobscot governor and council for approval.

Chapter 1355

PASSAMAQUODDY TRIBE

Sec.

Sec.

4831. Passamaquoddy tribal elections (Chapter 740 P.L. 1973, as amended by Sec. 3, Chap. 97 of P.L. 1975 and Sec. 230 of Chap. 771 of P.L. 1975)

Biennially on the even-numbered years, on the Tuesday following Labor Day in September, the Passamaquoddy Tribe of Indians shall

#1

Office of the Governor and Council
Wilfred Pehrson,
Governor
Edwin Mitchell,
Lt. Governor
Timothy Love,
Representative

Community Building
Indian Island
Old Town, Maine 04468
(207) 827-7776

March 20, 1979

TO: Penobscot Tribal Members
FROM: Governor Wilfred Pehrson
SUBJECT: Referendum Vote

At the general meeting held of March 17, 1979 on Indian Island, those Tribal Members attending voted to have the Negotiating Committees recommended settlement package placed on a ballot for a referendum vote. Keep in mind, that the enclosed recommended settlement package, labeled Exhibit #1, has been approved by the Governor, Tribal Council and the Passamaquoddy/Penobscot Negotiating Committee.

A series of seminars are to be held, to answer any questions on the proposed package.

These seminars will be held at the Community Building on Indian Island on the following dates:

Wednesday, March 21, 1979 at 7:00 p.m.
Thursday, March 22, 1979 at 7:00 p.m.
Saturday, March 24, 1979 at 1:00 p.m.
Sunday, March 25, 1979 at 11:00 a.m.

Also find enclosed, a ballot, for those not able to come to Indian Island to vote on the package. Check either Yes or No, and these must be returned to the Penobscot Tribal Clerk by March 30, 1979. For those able to come to Indian Island to vote, the polls will be open from 10:00 a.m. to 5:00 p.m. on March 31, 1979 at the Community Building.

1A

Office of the Chief and Council
Indian Island

Community Building
Indian Island
Old Town, Maine 04468

IN COUNCIL/SPECIAL MEETING(EXECUTIVE) 10:20 A.M.
MARCH 9, 1980

PRESENT: Governor Wilfred Pehrson, Lt. Governor Edwin Mitchell, Beth Sockbeson, Clara Jennings, Nick Sapiel, Fred Becker, Joseph Francis, Francis Sapiel, Nicholas Dow, Ernest Goslin, Donald Nelson

ABSENT: Miles Francis, Irving Ranco

Negotiating Committee Members: Tim Love, Reuben Phillips, James Sappier Stanley Neptune (Alternate), Attorney Tom Tureen

Governor Pehrson opened the session at 10:20 a.m.

This session is for council members to ask any questions they might have regarding the Land Claims Settlement Package.

Tom explained that the Federal-Indian status provides protection for 1. land, and 2. internal affairs. Beyond these two other important areas are 1. hunting & fishing, 2. Tribal Courts, 3. Taxation, and 4. regulatory laws.

Tim Love doesn't support package. Feels we haven't gone far enough. We compromised at mercy of the State. We should try to exhaust every avenue. He thought Committee had leverage and should use it. We negotiated our rights away. Settlement is best interest of Tribe but does not agree with jurisdictional section.

The Tribe does have inherent rights but can you get State and Federal Courts to enforce inherent sovereignty?

Separate enforceable sovereignty from inherent sovereignty.

There was much concern over Land Commission - 4 Indian, 4 non-Indian, 1 non-Indian judge. This Cimmission can only recommend to Legislature. Fear of Governor and Council losing authority.

Anything Commission recommends to change settlement has to be consented to by Tribe.

In the past Land Claims was a joke (several attempts), now it's a reality.

1A

IN COUNCIL/SPECIAL MEETING(EXECUTIVE) 10:20 A.M.
MARCH 9, 1980

Council has to set time limit - referendum - when the people will vote on it.

Convened for lunch - 12:00 P.M. - Reconvened 1:00 P.M.

Tom Tureen urged the importance of a decision of the council as to when the Tribe will vote on this settlement package. Congress will not vote on this until the Tribes and State have agreed.

Tribal business exempt as any other Corporation . Privately owned (individual) are not exempt.

Property taxex - fees for services - County, such as plowing, road maintenance, it would be a very small tax in lieu of property tax.

MOTION
Clara Jennings made a motion to bring the Land Claims Settlement Package to a Referendum Vote for tribal members on Saturday, March 15, 1980. Seconded by Francis Sapiel.

VOTE - 8 in favor 2 opposed* Motion Passed
*Fred Becker, Nicholas Dow
Nicholas Dow would like to go on record the reason for his opposition was not giving enough time.

Workshops will be held every night of the upcoming week. It was suggested that Tom and Butch could go to Massachusetts, Connecticut and Portland, Maine for Workshops.

MOTION

Ernest Goslim made a motion that polls be open from 9 a.m. to 8 p.m. Seconded by Francis Sapiel.

VOTE - 8 in favor 2 opposed* Motion Passed
*Fred Becker, Nick Dow

Absentee ballots received Monday, March 17, 1980 will be counted.

Ernest Goslin nominated Deanna LeBretton, Edwina Sapiel, and Martha Loring as Ballot Box Tenders. Seconded by Miles Francis.

VOTE - Unanimous

ADJOURNED: 4:00 p.m.
Blanche Corbett
Tribal Clerk

PENOBSCOT NATION
Civil Action
Docket No. 80-03

TRIBAL COURT

#3

GARY ATTEAN

vs.

GOVERNOR WILFRED PEHRSON and
GOVERNING COUNCIL, PENOBSCOT NATION

BEFORE: Hon. Andrew M. Mead, Judge of the Tribal Court
in Indian Island, Maine on March 14, 1980

APPEARANCES:

Gary Attean, Pro se
Plaintiff

Thomas Tureen, Esq.
Attorney for the Defendant

ment agreement referred to in the proposed bills has not been made public, therefor no informed decision on the proposal can be made. While I may be in sympathy with those points and believe that they may have legitamate grievance, there, it's quite clear that those factors are insufficient to bring the matter before the court. My decision will only be on the narrow, the narrow notice issue. Thats all I'm considering. I do have one question for Mr. Tureen to make sure that were not dealing with a moote point here. If in fact the referendum produces a majority vote, which I assume it will, will that proposal or the subject of the proposal be submitted to the Tribal Representative to submit to the State Legislature?

MR. TUREEN: No your Honor. The purpose of that, of that legislation of the referendum, is to allow the people an opportunity to speak. That will directly, and is a very practical matter, have no effect on what the Maine Legislature does. I think it's a practical matter, and if it's ruled negatively it will not proceed to the Maine Legislature, the Tribal Council may change their mind after that, but, it's a legal matter, as a procedural matter the bill will not then be submitted to the representative, it will simply be introduced as the Governor of the State and Attorney General of the State are now waiting to do.

COURT: I'm wondering if we may be dealing with a moote point here. What your telling me is, that the referendum is merely an [advisory referendum] and has no binding result upon the Council, is that correct?

#45

Office of the Chief and Council
Indian Island

Community Building
Indian Island
Old Town, Maine 04468

IN COUNCIL/TRI-COUNCIL/SPECIAL 5:30 P.M.
MARCH 13, 1980.

Discussion on Robert (Time) Coulter. He's being invited by a dissident group of Penobscots t talk about the federal and state agreements for settlement of the land claims.

MOTION

Motion by Joseph Francis to support the settlement packages (state and federal) and give support to the Negotiating Committee and the Tribal Attorney. Seconded by Beth Sockbeson

VOTE - 9 in favor 1 opposed

MOTION

Joint motion by Clara Jennings to support the settlement package (state and federal) and to give support to the Negotiating Committee and Tribal Attorney. Seconded by Mary Yarmal.

VOTE - 17 in favor 1 opposed

BALLOT
Penobscot Indian Nation #5

The question, is whether to accept the federal and state agreements for settlem of the Passamaquoddy Tribe and Penobscot Nation's land claims, against the State of Maine and large and small landholders within our claim area in Maine.

This is a final vote by members of the Penobscot Nation on accepting settlement terms, prescribed in the federal and state agreements. I acknowledge that final approval of the federal legislation is contingent on ratification by the United States Congress, and that the Maine legislation approval is contingent upon ratification by the Maine Legislature. I further acknowledge that the Negotiating Committee is given approval to make technical and minor changes, and will not change the intent of the legislation. In addition, safeguards will be taken to ensure that the Congress or the Legislature does not change the intent of the agreements.

QUESTION: Do you approve of the recommended federal and state agreements to settle the land claims of the Passamaquoddy Tribe and the Penobscot Nation?

☐ YES ☐ NO

SAMPLE

To be official, and for verification purposes you are required to sign the ballot and to give your date of birth and current address.

SIGNATURE: _____

DATE OF BIRTH: _____

ADDRESS (include Zip code): _____

_____

_____

Ballots must be postmarked no later than midnight, Friday, March 14, 1980.

#6
Front of Pg 177-178

STATE OF MAINE

MAINE LEGISLATURE
Joint Select Committee

MAINE INDIAN CLAIMS SETTLEMENT

Public Hearing Held in the Main Auditorium of the Augusta Civic Center, Augusta, Maine, at 10:00 A.M., on March 28, 1980.

PRESENT

Sen. Samuel W. Collins, Jr.
Senate Chairman
Rep. Bonnie Post
House Chairman

Rep. Paul E. Violette
Rep. Michael D. Pearson
Rep. Elizabeth E. Mitchell
Rep. Barry J. Hobbins
Rep. Charles G. Dow
Sen. Gerard P. Conley
Sen. Redmond
Rep. Donald A. Strout
Rep. Darryl N. Brown
Rep. Robert J. Gillis, Jr.
Rep. Charlotte Zahn Sewall

Joanne M. Peasley
Hearings Reporter
Public Utilities Commission

I will report on it to you just as quickly as I can.

REPRESENTATIVE POST: Thank you.

SENATOR COLLINS: Any other questions for Mr. Pearson--excuse me, Mr. Perkins? The Committee has scheduled a work session for Monday and at that time we will be deliberating on all that we've heard today. The Committee Members are advised that if they have any specific issues on which they would like to meet with Commissioners or other members of the State Government on Monday, they will make it known to David Flanagan of the Governor's Staff. He will try to arrange those matters.

MR. PHILLIPS: Excuse me, Senator.

SENATOR COLLINS: Sir.

MR. PHILLIPS: I submitted two questions to the Board and I would like to have those two questions asked to Mr. Tureen and I'd like to have his answer please. I'd like to have that answer on record. Two questions on a yellow piece of paper, torn in half, from Neil Phillips. It's on a legal sheet of paper, torn in half. Would you allow me to ask him, please, if you can't find them? I submitted them right after lunch.

SENATOR COLLINS: Could you restate the questions to us?

MR. PHILLIPS: Alright, I direct this question to Mr. Tureen. In the lawsuit, Gary Akins vs. the Penobscot Governor and Council, is it not true that you stated that the vote on March 15th would only be an advisory vote?

SENATOR COLLINS: Would you state the other question too, please, and then we'll have him answer both.

MR. PHILLIPS: And the second question is that if this is an advisory vote, will this question be brought back to the people so that

people can either affirm it or throw the thing out?

SENATOR COLLINS: Mr. Tureen.

MR. TUREEN: The answer to the question is that I did state that the vote as a technical matter was an advisory vote. There is no specific procedure layed out in the Penobscot Nation for dealing with this kind of issue. The Tribal Council speaks for the Tribe and it decided that before it would move forward with this Settlement Proposal, that it wanted to allow the people of the Tribe to speak in a referendum, which it did. It was not legally advised to do that. I will say at the last general meeting that was held in the Tribe to consider a settlement question, that was a year ago when the Tribes voted on the amount of land that would be acceptable in the Settlement and the amount of money that would be acceptable. That was--the decision at a general meeting was made to conduct that vote by referendum. It's not for me to answer the second question. That's up to the Governor and Council--to the Penobscot Nation itself.

SENATOR COLLINS: Thank you, Mr. Tureen. I believe this concludes our hearing. I know that our stenographer is about out of material and energy. I thank all of you for coming today, for your patience and your contributions and the Committee will be meeting on Monday to give this matter further work. This hearing is now adjourned!

* *

We the undersigned, respectfully request the Senate Select Committee on Indian Affairs to hold public hearings on the Senate Bill S. 2829, Maine Indian Land Claims. We request that these hearings be held at the Penobscot Indian Nation Community Building, Indian Island, Maine for the express purpose of presenting evidence for and against this negotiated settlement, as presented to Congress, so that we may make an informed decision on all aspects of Senate Bill S. 2829.

Thank you for your consideration in this matter.

Respectfully,

Penobscot Indian Nation Members

1. David A. Daigle
2. Thomas Barrows
3. Gary Neptune
4. [illegible]
5. Daniel Ranco Lane
6. Carl E. Perkins
7. Leslie M. Bonta
8. [illegible]
9. Leona M. Dennis
10. Madeline Shay
11. W. B. Newell
12. Cecilia Cote
13. Francis A. Mitchell
14. Jean Sapiel
15. Eloise Francis
16. Phyllis Nicola
17. Joseph K. Sapiel Jr.
18. Caron Shay Thibeault
19. Vickie Pierres
20. Ann L. Pardello
21. Norma Lagueux
22. James E. Neptune
23. Celina A. Newell
24. Gerard R. Pardello Jr.

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Thank you for your consideration in this matter.

Respectfully,

Penobscot Indian Nation Members

1. John J Loft
2. Elsie Lolar
3. Phyllis M Gross
4. Mabel C Ranco
5. Paul Francis Sr
6. Edna Becker
7. Theresa Mitchell
8. Alberta Francis
9. Alberta Nicola
10. Harry Francis Jr
11. Madeline Francis
12. Kenneth Paul
13. Sidney Francis
14. Ralph Nicola
15. Joseph A Francis
16. Esther Paul
17. Edward J Paul
18. Wayne Pritchard
19. Steven J Paul
20. Vivian Massey
21. Gilbert J Francis
22. _____
23. _____
24. _____

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Respectfully,

Penobscot Indian Nation Members

1. [signature]
2. [signature]
3. [signature]
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Thank you for your consideration in this matter.

Respectfully,

Penobscot Indian Nation Members

1. Lisa Pardilla
2. Marie Woodbury
3. Richard Sapiel
4. Lisa M. Mitchell
5. Barry J. Nelson (Mashpee)
6. [redacted]
7. Edwina Sapiel
8. William McDougall
9. Barbara Francis
10. Mark A. Mitchell
11. Sylvia Spann
12. Leon Sapiel
13. Francis Lewis
14. Adrian Francis
15. Richard Love
16. Mike Murphy
17. Daniel J. Nelson
18. David Almanar
19. Lorna Dana
20. Emma M. Francis
21. Mabelle D. Mitchell
22. Clarence Francis
23. Violet Francis
24. Lawrence St. Onge

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Thank you for your consideration in this matter.

Respectfully,

Penobscot Indian Nation Members

1. Theresa K Secord
2. Laurence A. Secord Jr.
3. Mary T. Secord
4. Theresa Eugenia Thompson
5. Peter Shattuck
6. Daniel P. Sapiel
7. John Dana
8. _____
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Thank you for your consideration in this matter.

Respectfully,

Penobscot Indian Nation Members

1. Eunice Crowley
2. [illegible]
3. Ruth Davis
4. Donald Nicholas
5. Martha A. Neptune
6. Janice Gabbeau
7. Barbara J. Neptune
8. Meana M. Neptune
9. Geoffrey Phillips
10. Michael Sapiel
11. [illegible]
12. Lawrence Nelson
13. Wilder Burns
14. Ralph Sims
15. Michael Francis
16. Martha Lacey
17. Janet Dana
18. Rose Francis
19. Jacqueline M. Jones Sockabasin
20. Dorcas N. Francis
21. Martin Francis
22. Jeannette La Plante
23. Leslie Mitchell
24. Josie Neptune

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Thank you for your consideration in this matter.

Respectfully,

Penobscot Indian Nation Members

1. Neil V Phillips
2. Carol A. Dana
3. Francis Murphy
4. Edwin M. Lapoint
5. Cheryl Phillips Frost
6. Barbara Massey
7. Pam Michaud
8. Yvonne Loring
9. Jean Chavaree
10. Mark Chavaree
11. Lionel Thomas
12. Frank Loring Sr.
13. Eugene Loring Jr.
14. Everett Lapoint
15. Tony Cohen
16. Junior Peters
17. Mike Paul
18. Rubena Nicola
19. Geraldine Francis
20. Mary Byers
21. Carlene Mitchell-Nicola
22. Lynn P. Nicola
23. Eva M. Neal
24. Deborah M. Cleaves

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Thank you for your consideration in this matter.

Respectfully.

Penobscot Indian Nation Members

1. Dorothy McNewell Wood 2. _____

1. _____ 2. Frederick Louis B. Newell

1. Joyce N. Stanford 4. _____

1. Lester V. Bonnell 2. _____

1. Constance Attean Tarzia-Jordan

1. William E. Thomas II 4. _____

1. Edward B. Newell 4. _____

1. Clara Mitchell Thomas 2. _____

1. Barbara Sanders 4. _____

1. David R. Bowden 7-14-84.

1. Cynthia LeMay 4. _____

1. Michelle Moore (Paul) _____

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Thank you for your consideration in this matter.

Respectfully,

Penobscot Indian Nation Members

1. Daniel Mitchell
2. Eunice Baumann
3. John Loring
4. Andrea Mitchell
5. Matthew A. Mitchell Jr.
6. Juanita E. Mitchell
7. Chris Tom
8. Wilbur Altvater
9. _____
10. _____
11. _____
12. _____
13. Frederick B. Nicola, Sr.
14. Harry J. Mitchell
15. _____
16. _____
17. Denise M. Mitchell
18. _____
19. _____
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23. _____
24. _____

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Thank you for your consideration in this matter.

Respectfully,

Penobscot Indian Nation Members

1. Victoria Dow
2. Tim Love
3. Matt Mitchell Jr
4. Gloria J. McManus
5. Roger Rasco
6. Dana Mitchell
7. Stan Neptune
8. [illegible]
9. [illegible]
10. David Paulla
11. Kevin Mitchell
12. Patrick Almeras
13. Sheila Sapiel
14. Raymond J. Giovanelli
15. Marie King
16. Maryellen Mitchell
17. Eugene Lowey
18. St Francis Sr.
19. John Sapiel
20. [illegible]
21. Christine Lacasse
22. Leo Francis
23. Louis Paul
24. Timothy J. Shay

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Thank you for your consideration in this matter.

Respectfully,

Penobscot Indian Nation Members

1. Beatrice Phillips
2. Janice [illegible] Dougall
3. [illegible]
4. [illegible]
5. John Mitchell Jr.
6. [illegible]
7. [illegible]
8. [illegible]
9. Douglas J. Francis
10. Elaine Kenmitts
11. Ina Clavette
12. Diane Newell Wilson
13. [illegible]
14. Laura Loring
15. Regina Spencer
16. Alice Fowler
17. Everett Nicholas
18. [illegible]
19. Dwight Sapiel
20. David Sapiel
21. Elizabeth Tomer
22. [illegible]
23. [illegible]
24. [illegible]

We the undersigned, respectfully request the Senate Select Committee on Indian Affairs to hold public hearings on the Senate Bill S. 2829, Maine Indian Land Claims. We request that these hearings be held at the Penobscot Indian Nation Community Building, Indian Island, Maine for the express purpose of presenting evidence for and against this negotiated settlement, as presented to Congress, so that we may make an informed decision on all aspects of Senate Bill S. 2829.

Thank you for your consideration in this matter.

Respectfully,

Penobscot Indian Nation Members

1. Cindy Okins
2. Timothy Harold
3. Roy Dana Sr.
4. Pat Travis
5. Francis Nicola Sr.
6. Stephen E. Mitchell
7. Joey Loring
8. George M. Mitchell
9. Adam Dennis
10. Carla A. Loring
11. [illegible]
12. M. Mitchell
13. Valerie Mitchell Carter
14. Walter Okins
15. Michael Okin
16. John Love
17. Christine Doucette
18. Laura Mayo
19. Clement R. Neptune
20. Darlene Love
21. Michael J. Neptune
22. [illegible]
23. Peter N. Mitchell
24. Claudia Neptune

We, the undersigned, respectfully request the Senate Select Committee on Indian Affairs to hold public hearings on the Senate Bill S. 2829, Maine Indian Land Claims. We request that these hearings be held at the Penobscot Indian Nation Community Building, Indian Island, Maine for the express purpose of presenting evidence for and against this negotiated settlement, as presented to Congress, so that we may make an informed decision on all aspects of Senate Bill S. 2829.

Thank you for your consideration in this matter.

Respectfully,
Penobscot Indian Nation Members

1. Lena Poolies Acain 4. _____
1. Arthur J. Attean 2. _____
1. Elizabeth W Dyer 2. _____
3. Dorothy Beedy 4. _____
1. Sandra Bouchard 2. Eugene Mitchell
3. Ralph L. Bouchard 4. _____
1. Elizabeth Nicolar Stokes 2. Geraldine Nicolar Connolly
3. Rhonda L. Stokes 4. Michael Connolly
5. Debra E. Stokes 6. Roland Nicolar
Keith Stokes Addison
1. Janet Dana 2. Reynold M. Dana Jr.
3. Edward Caprara 4. _____

Respectfully. Melissa Francis
Penobscot Indian Nation Members
Hyde
1. Lorraine Francis 2. Steven Francis
3. Arnold A Poolies 4. Wesley Francis
5. Scott Francis 6. Peter Mark Francis
Harold Francis

July 7, 1980

Dear Penobscot Nation Member(s)

Can you honestly say the present tribal administration has kept you informed regarding the Maine Indian Land Claims?

Has the administration informed you that on July 1, 2, 1980, you had the opportunity to attend and testify before the Senate Select Committee on Indian Affairs on the Proposed Maine Indian Land Claims?

This hearing generated issues of concerns as follows:

1. Total destruction of Sovereign Rights.
2. Loss of individual land ownership.
3. Taxation of all benefits and lands.
4. Absolute control of all lands and monies by Dept. Of Interior.
5. Eminent Domain Takings under State and Federal laws.
6. Loss of Tribal Jurisdiction.
7. Waiver of Sovereign Immunity.
8. No protection that other federally recognized Indian tribes have.
9. Initiation of municipalities (termination of Penobscot Nation.)
10. Non-Indian majority of Tribal-State Commission (control of hunting, fishing, natural resources and land use.)
11. There is no guarantee of lands or monies.

Members of the Penobscot Indian Nation, we afford you your right to respond in writing to these issues. Not all issues are stated at this time!

Please be advised that we will inform you of the date and time of pending hearing.

Please Note: Respond as soon as possible, as we have obtained 183 signatures. If you know of any Penobscot member who has not received this petition, please photocopy so that they can' respond to this petition. We have less than 30 days to enter these to the record of this hearing.

If there are any further questions, please address these to:

Concerned Citizens Group of The Penobscot Indian Nation
% D. Mitchell
P.O. Box 80
Old Town, Maine 04468

Along with your petition, return address and the present addresses of members of the tribe for our mailing list.

Thank you

Concerned Citizens of the Penobscot Indian Nation

Mr. MITCHELL. Under title XXII, section 4793, State of Maine, a compilation of laws pertaining to Indians, paragraph 5, it indicates——

Senator MITCHELL. Mr. Mitchell, we are going to be able to have this room for only a few more minutes; there is another function that is going to be held. Could I ask you to summarize, and we will print, in its entirety, your statement and see if any of the other gentlemen or ladies want to add anything briefly to what you have said? We are going to have to conclude the hearing very shortly.

Mr. MITCHELL. In conclusion, it is the opinion of this committee that the people of the Penobscot Nation have not received due process, that the approval of this referendum, where it was stated as an advisory referendum, at best, was an advisory and not an affirmative vote of the people.

It is the recommendation of this committee that the Senate Select Committee should take under advisement the objections of this testimony as presented here today before allowing these bills to proceed any further.

Thank you.

Senator MITCHELL. Thank you very much, Mr. Mitchell.

If you will submit the material, we will see that it is printed in its entirety at this point.

PREPARED STATEMENT OF DANA MITCHELL, BEAR CLAN, PENOBSCOT NATION

Today our people are struggling to maintain our lands and our rights. Today I am here in opposition to the Senate Bill S. 2829. To address the reasons I feel that should be considered before this bill can proceed if in fact it does. I am concerned that my inherent rights and fundamental rights will be given up (as well as my children's and their children's). Where are my rights expressed in these bills. Where I have not accepted the conditions as defined. It does not make provision for the people who do not accept these conditions. These are our lands and our rights. It cannot be removed without our consent.

The process where these bills are today is in my opinion not legal—It is unfortunate that this whole process in development of the bills has been conducted in secrecy—plus, important information has not been supplied to the Indian people, or explained to them. There has been no impartial interpretation of these bills presented to the Penobscot or Passamaquoddy people.

It is the feeling of many people that there must be some hidden agenda going on that is surrounding these bills with the government. There has been no clear agreement by the Penobscot and Passamaquoddy or Maliseet peoples in approving these bills.

At this time it is necessary to make clear to this Committee that the lands of the Penobscot Nation are individually owned lands, by deeds. The rights of these individual landowners are being violated by the Federal government, by taking these lands and putting them in trust. Where is it that the Federal government can take these lands without these peoples' permission. These are direct violations of your principles on which you base all rights. You cannot force rights upon these lands unless these people agree. Nowhere in all of this process was it stated that Penobscot lands are owned individually. Why was it not mentioned or considered?

The Penobscot & Passamaquoddy people have not seen this bill as it is written. This Senate bill is not the same in content as was presented to the Indian people. It should also be noted that there have been many changes made in the first writing and there have already been 22 amendments proposed to this bill. The Penobscot people were informed that if any major changes were made to these bills they would be considered null and void. There have been many clarifications made to this bill, which indicate major changes. These have been agreed to by Tom Tureen and the negotiating members only. The people were not informed or asked if they approved. The negotiating teams or Tom Tureen have no authority to make these major changes. As I view these bills, they are being considered illegally—as it was stated to the Indian people.

It is my understanding that Tom Tureen stated that Congress would recognize the Houlton Band of Maliseets for the purpose of clearing all Indian Land claim's to Maine. The Houlton Bands of Maliseets have no authority from the Maliseet chiefs or their councils, to represent the Maliseet land claim. The lands that are offered for the Maliseets are part of the acreage requested by the Penobscot & Passamaquoddy. The Penobscot and Passamaquoddy people have not given permission for this land transfer or agreed to the Maliseet being part of the Penobscot Passamaquoddy land claim. I ask who has given the Penobscot Passamaquoddy Negotiating team and Tom Tureen the authority to negotiate for the Maliseet people.

I have also understood that the Passamaquoddy people who have a very hard time in reading or understanding English but understand things when spoken in their own language, were not given the opportunity to understand all these issues in their own language.

The Indian people were always informed that Native American Rights Fund was funded by private grants. The Indian people were never told that NARF was paid by the Federal government and that 80 percent of Tom Tureen's salary and expenses are paid by the Federal government. The lawyer hired to protect our lands and rights is being paid by the people who are taking these lands and rights from us. This would show who Tom Tureen is actually working for, as well as the law firm he represents. I feel that they should not be working on Indian land claims or protecting Indian rights. It should be told to the Indian world what kind of intent they represent. A direct conflict of interest. I would also question what tribal governments that support this law firm.

The Federal and State bills that were presented to the Indian people of the Penobscot Nation were never approved at a general meeting of the people. The people of the Penobscot Nation petitioned the Governor to bring these bills to a general meeting, before the people had voted at a referendum. He totally ignored the peoples' request. A petition of people who are part of the off-reservation people have also sent me a petition where they have indicated that due to the fact that they did not fully understand these bills they wanted their vote to show they are changing their vote to indicate "No".

The Committee that I am chairperson of, the Penobscot Indian Judiciary Advisory Committee, is a Committee to review and evaluate all interim laws as well as to recommend and propose laws to the people of the Penobscot Indian Nation. This committee has not had any input to these bills. Nor has this Committee had an opportunity to seek an impartial legal opinion of these bills. We were only afforded to ask Tom Tureen questions on these Bill's the day before the people were to vote at a Referendum. We could not give the people of the Penobscot Nation any evaluation of these Bill's as they have empowered this committee to do.

I recommend to this Senate Select Committee that hearings by this committee should be held at the Penobscot Nation as well as the Passamaquoddy tribes. The reason: I feel the Senate Select Committee would be able to hear from other Indian people who are also opposed to this issue who could not afford to be here. Myself as well as other people who are here in opposition to this issue, have had to take time from work, as well as to pay our own expenses to be here today. Our expenses were not paid by the State or Federal Government as those people who have come here to support the Bill.

I feel that this is a great mis-representation to the Indian people. The final Bill's have only to do with our rights. There is no guarantee of lands or proposed amount of money. We are forced to give everything that we have always had. This Bill indicates termination, genocide. The public hearings on the Maine Indian Land claims Bill, in Maine, have not included evidence that was presented in testimony. It shows that bias is being created also by the State to mis-represent the Indian people.

The negotiating teams and Tom Tureen were only given the authority to negotiate a land claim settlement offer, they were never given the authority to give up our rights.

The concerns of the Carter Administration, Justice Dept., Interior as well as other agencies that were presented by Cecil Andrus statement to the hearings of July 1, 1980. The concerns reflect major changes, why hasn't the negotiating teams and Tom Tureen brought these facts to the people where these represent major changes.

Why does the Government and the people who are involved in its process, work with just the people who agree with their views? They are supposed to look at both sides and to hear both sides. Yet when it come to Indian people all they look at is the non-Indian side. We are continually restricted in all our land's or right's.

They say today that we are dependent people. The people who are dependent are the non-Indian people. They are doing everything they can to destroy our remaining cultures and people, everything that we represent. Their greed and corruption to our people and their land's will become answerable to all principles of human rights under International law. The Traditional people of the Indian world know that the Creator will see the wrong that is being done to the Indian people. He will protect our land and the people he had originally entrusted the land to be kept and protected, that is the Indian people.

Senator MITCHELL. Do any of the other gentlemen or ladies wish to add anything briefly?

Ms. Crowley?

Ms. CROWLEY. Mr. Chairman, my name is Eunice Crowley, and I am a member of the Penobscot Indian Nation, and I am a full-blooded American Indian.

Senator Mitchell and members of the committee, as a member of the Penobscot Indian Nation, I hereby state my reasons for opposition to the passing of the bill, S. 2829, Maine Indian land claims.

First and foremost, the way it was presented and rushed through went against my constitutional rights of due process. My rights are being violated. Should S. 2829 be passed, the Indians of Maine are in the position of being first-class wards of the State of Maine and the U.S. Federal Government.

How many of the citizens of the United States of America have money and land held in trust which cannot be used except with the consent of the U.S. Federal Government or the State of Maine?

You speak of self-determination. To me, self-determination is not through the doling out of Federal funds and grants because they are not solving the problems of the indigent of the United States, nor do they help the American Indians to be an exception to the fact.

I feel the Penobscot Indian Nation did not have ample time to analyze the proposed package in the referendum of March 15, 1980, and vote on such an important issue which will not only affect the Maine tribes but also have a disastrous impact on other Indian tribes and nations within the United States of America.

I want to go on record as being against S. 2829 and not being a sellout of my Indian rights and my Indian people for the reasons of expediency and monetary gain this bill will bring if passed.

I did not get the advice of Mr. Tim Coulter nor the advice of Mr. Tom Tureen; these are my own personal feelings about the bill.

Senator MITCHELL. Thank you very much, Ms. Crowley.

Mr. Phillips, do you wish to say something?

Mr. PHILLIPS. Yes. My name is Neil Phillips, and I am a member of the Penobscot Tribe of Indians. I am here opposed to this Senate bill for the following reason.

I believe the Penobscot Nation was not informed nor given the time to fully understand. And I have been with this bill for a long time—since I spoke in Augusta—and I still do not understand all of it.

I am not an educated person. I am an average Indian person. I do not know the ways or the procedures of this; this is a new learning experience for me.

My people are like me; we are not highly educated people; we do have some education now. We are very poor people, and that is what most of the people are. We have not had the opportunity of counsel, supposedly counsel for the Penobscot Nation, to answer our questions. When we had them to ask; they were not answered. We were never given the opportunity to question Mr. Tom Tureen or our leaders about this.

We had one member of the negotiating committee, Mr. Reuben Phillips—my brother—who was duly elected in an election at a general meeting to be the information officer for the off-reservation Indians in February 1978.

The only time that that person went before any off-reservation people was during the 5 days prior to the referendum vote on March 15, 1978.

Senator MITCHELL. Is that the fellow they call "Butch?" Is that your brother?

Mr. PHILLIPS. That is him.

In this meeting I will call him Reuben. When he is home, he is my brother, and he is "Butch."

Senator MITCHELL. I just wanted to make sure. I have met him a couple of times, and everyone called him "Butch." I did not know if it was the same fellow.

Mr. PHILLIPS. Yes, it is.

Senator MITCHELL. That is fine.

Mr. PHILLIPS. Getting back to why I feel this is illegal and why I think this bill should not be passed; our people have not been informed. They were given 5 days in which to read a legislative document. I would like to ask anyone in here, who has, like myself, a ninth grade education, if they can fully understand a legislative document when they have not been given the opportunity to ask a question.

We have asked questions pertaining to these bills from February 1978, and when we started asking questions we became dissidents; we became "troublemakers."

Is the Secretary of the Interior labeled a "dissident" because he is questioned on this bill right here today? No, he is the Secretary of the Interior; he has the right to ask these questions. Do I not have the same rights?

Senator MITCHELL. As far as I am concerned, you certainly do, and that is what we are doing here right now.

Mr. PHILLIPS. I know that, and I am very thankful that I can be here and speak as I do, as a free American.

I was not given that right by my people. We have asked for that right. I have asked for delays on the votes of these bills since 1978. At one time, I asked for 14 days.

They immediately held a general meeting in the following month and reduced it to 5 days. Nowhere in this country can a letter be sent to our people, who are all over this country, working, as good American citizens, and return a ballot that was mailed on Monday morning and be postmarked by Friday of that same week—it is an impossibility with the U.S. Postal Service.

Senator MITCHELL. That is a separate problem Congress faces.

Mr. PHILLIPS. That is right. And I feel that this committee, right here, should go to the Penobscot Nation and explain this bill.

I am not against a negotiated settlement. When we had the vote in March 1978, I said to my brother, "OK; you won; let's join forces." But then it became secret again. When I got word, I was in Albuquerque on the night of this vote. This was the first I had heard that there was a referendum vote; that was on March 15, 1980. I returned home that following week. I never got a ballot; I was told they did not know where I was. The governor of our tribe was signing a check every single week and sending it to the school I was attending. If they did not know where I was to send me a ballot, how did I get my checks every week? Somebody must have known where I was and where the other people were at school. None of our people at school got those ballots. I believe there were a lot of people who did not get those ballots

I did some figuring last night, and I would just like to give you these few figures. The Penobscot Nation, by the census of 1980, has 1,449 people in total. Out of that total population, we have 927 people of voting age as of March 15, 1980. Of that total of 927, only 355 people cast a vote. That is only 26 percent of our total voting population.

I have asked—and have been refused—for the mailing list of the people who were supposedly sent ballots. We do not know how many ballots were printed; we do not know how many ballots were sent out. We have documentation that a lot of the people never received a ballot, who are on the mailing list, nor were they gotten in touch with. In a 5-day notice, it would be impossible anyway.

Senator MITCHELL. Unfortunately, your voting record puts you right in the mainstream of the rest of the country in its record of voting.

Mr. PHILLIPS. That is true, but in the mainstream of this country, when you have a referendum or a general election, it is known for a very long period of time, and you know what the issues are. We have been denied the right to know what the issues are.

Senator MITCHELL. All I meant to say was that the record of the rest of the country in voting on such matters as Presidential elections and other things is, sadly, a low one as well.

Mr. PHILLIPS. That is true.

Senator MITCHELL. I know Ms. McDougall wanted to say something, Mr. Phillips, and also I think Mr. Sapiel wanted to say something. So that everyone gets an opportunity to say something, would you mind if we gave them a chance? We really do have only a few minutes before we have to be out of the room.

Ms. McDougall?

Ms. MCDOUGALL. Mr. Chairman, I am a member of the Penobscot Tribe. I am here today in opposition to the proposed Senate bill 2829.

The enactment of this bill will ratify and approve the Maine Implementing Act, known as LD 2037, of which I have numerous misgivings. I will state a few here.

One is the taxation known as payment in lieu of taxes on the Indian lands. As I understand it, these taxes will come out of the interest money from the trust funds at an assessment rate determined by the State of Maine, but it does not stop there.

As a municipality, we will also be subject to taxes levied by counties on that portion of land that lies within a particular county, of which there will probably be several, due to the distribution of the lands under consideration.

After all this, we still have to consider the taxes on real and personal property. It appears to me that the interest moneys of the trust fund will be for the main purpose of inflating the State's coffers at the expense of the Federal Government and Maine's Indians.

To expand upon this, the State of Maine will no longer bear the burden of Indian education. Conversely, it appears that Indian tax dollars will be supplementing the cost of education for non-Indians.

Another concern I have is this. In reviewing appraisals done by the James W. Sewall Co., on the timberlands under consideration for purchase by the tribes—I believe that was a letter that he read here today—I cannot seem to get above an average figure of $160 to $170 per acre, yet the appraisal of these lands, on the average, is $181.67. Is this a realistic appraisal, as stated, or is it an attempt to inflate the value of the lands for the purpose of a higher tax assessment?

A third area of concern is that which deals with eminent domain in that it does not require a public entity to make a finding of no reasonably feasible alternative. By implication, it only requires the public entity to pay for the land taken in Indian territory. I feel that this is a provision that can be abused without concern for the Indian people and should have more clearly defined restrictions.

Next, another important question is, What and where is the settlement agreement? Ever since March 1980, the Indian people have been told that an agreement has been reached, but nowhere do we see the agreement itself. Why all the secrecy about this settlement agreement?

Last, why all this rush to enact this Senate bill 2829? I do not foresee a great economic decline or financial hardship in the State of Maine by giving the parties concerned, namely, the general members of the Penobscot Nation and Passamaquoddy Tribe more time to consider the consequences of these bills.

I have children and grandchildren presently growing up on Indian Island, and I have instilled in them pride in being a Penobscot Indian. I want to be assured that my great-grandchildren and future generations will take pride in the same cultural heritage that we have nurtured. I am apprehensive that if there would be enactment of S. 2829, the Penobscot people would rapidly become acculturated to the point of nonexistence.

Thank you, Senator Mitchell, for your time.

Senator MITCHELL. Thank you, Ms. McDougall.

Mr. Sapiel?

Mr. SAPIEL. I would like to say that there are a lot of things that are involved in this whole land claim thing, and a lot of the points have not been brought out to the people, such as the trust fund on Mount Kathadin and all the land we are giving up for money.

My people do not understand that the land is sacred to them and is not up for sale. And this is what we are doing today: We are selling this land in order to reap the benefits, acting like white people. To my knowledge and my Indian ways, this is not the way of the Indian people. This is because of the education and the churches that have programed my people to the white man's way and have taken away a lot of things that belonged to the Indian people, such as the language, the culture, the hunting, fishing, ceremonies, religion—all of these things combined.

I feel that if this land claim goes through we will lose Mount Kathadin, one of our most sacred mountains for the Indian people of the Wabanaki Nation. This means a lot to Indian people, not only in Maine but other Indian people across the country.

This is the way the Government has done things—to hurry, and get things done, throwing money to the people, letting them scramble and fight over it, as they do today.

We are getting a lot of money on the reservation, but the people are not benefiting by it, at least not all the people; certain people are doing it.

A lot of the money is for winterizing homes. It helps the old people to fix their homes up, and so on; and this is not being done.

I fought 4 years in the service in the Korean war. I wanted to protect this country. But after I came back from the war and started to understand what things were happening here in the United States, I saw that my people were being pushed around, their lands were being taken away from them, and a lot of other things were happening through the Congress, through the States, and through the U.S. Government. This still continues today; this still continues today because my people do not understand their culture, their heritage. The culture today is money; that is their culture; and the more money they get, the bigger they feel. They rate themselves as white people: first class, second class, third class.

I do not rate people in classes; I rate them as all equal. We should understand one another.

My ancestors left us this land so that we could protect it and live off the land. But all these things have been taken away from us, and today my people are doing the same thing. We could live off the land; we could do a lot of things. We can live by the law of the land; this is our way of living. But the Government does not let us do this because of "progress." This is why the world today is in such a problem.

I can see all of this, and I can understand it, and I know why. I am no educated person. I did not go to school, or I went to school and I would go out the back way because I wanted to be in the woods and understand nature's way so that I could live a decent and respectful life without trying to call my people down or call the white people down.

My people have shared this land with all of the people, not only in Maine but al' across the United States. I cannot see why we have to suffer because of "progress" and things that have to go on and go forward.

I think we should be all equal. There are guys making $300 or $400 a week. When I used to work on the reservation —I cannot even work at the reservation today because they have this thing called "nepotism." When I worked there, I made $77 a week. Then one day they came up and said, "We're going to give you a raise." They gave me a raise—$1. Then I was a recreation director.

With $50, I used to have to pay to get these kids to go different places and try to understand other people's ways of doing things.

I think this has a lot to do with the land claim thing because it is a money thing; there is no land involved. We have to buy back the land if we want.

When I was first introduced to this land claim thing, it was $12.5 million; then it went down to $8 million, then $5 million; and that is the last I heard of the whole thing. I never heard anything else.

Senator MITCHELL. Could you sum up very briefly, Mr. Sapiel? I know that both Ms. Coti and Ms. Nelson want to speak, and we have about 4 more minutes.

Mr. SAPIEL. So, what I would like to say is to have the Congressmen and Senators come to these reservations and see how this money is being spent, and see how the Indian people are being treated. If you do not go along with what they say, you are left out. And this money is supposed to be for all Indian people—all Indian people. They use me as a number; they get money for me, but I do not get a chance to work for it or do anything for it. That is the way it is all across the country. The United States pushes that so that they can have Indian people fighting one another. Then they just come in and say, "We are the guardians," and we have to do what the Governor and council say.

Senator MITCHELL. Yes; but you are not suggesting that the answer to that is not to give the Indians anything here?

Mr. SAPIEL. I cannot understand you.

Senator MITCHELL. You said that one of the problems is that the Government pushes money on the Indians and then tries to control their lives. Would you rather see the Penobscot and the Passamaquoddy get nothing here?

Mr. SAPIEL. I would rather see the Congress, or the Senate, or whoever is in charge of the State of Maine see that this is implemented in the right way and that everybody is getting their fair share.

Senator MITCHELL. Your objection is not that you are getting something; your objection is that you are not getting enough. Is that not true? You think you should get more land?

Mr. SAPIEL. I think we should get more land.

Senator MITCHELL. Thank you very much, Mr. Sapiel.

Ms. Coti and Ms. Nelson, would you each like to say something, briefly?

Ms. Nelson?

Ms. NELSON. Yes; I would. Thank you, Senator Mitchell, for allowing me to speak; I will be very brief.

My name is Lorraine Nelson, and I am a member of the Penobscot Nation. I came here in opposition to the proposed Indian settlement claims.

My concerns are many, as those of these people before you. But I would like to elaborate on my greatest fear that has haunted me ever since I saw the proposed settlement in March 1980. This is, prior to the beginning of the Indian land claims, I brought suit against the Bangor Hydroelectric Co. for illegally trespassing on two of my large islands, on which they erected utility poles to service the town of Chester. This happened about 40 years ago.

No easement was obtained, nor was any permission ratified by the Governor of Indian Affairs. This suit has been held up largely because of the jurisdictional issue concerning Indian lands.

If these bills pass in Congress, our lands will be owned in trust by the Federal Government and will be considered Federal Indian land for purposes of Federal taxation. This will be done without my consent. This is a violation of my rights.

Gentlemen, if this should happen, I will lose my lands either to the Federal Government or to the tribes who are supposed to be representing me. No, gentlemen, these people are not concerned with my rights.

The majority of the Penobscot Indian Council and the negotiating committee does not own a vast amount of land, if any, and therefore cannot feel my concern.

My son hunts and fishes my islands to help provide for our family, and if we are to abide by State laws, as this bill intends us to, my family will endure hardship because of the control of the taking of deer and fish. You know as well as I, inflation has taken its toll, and at the present time I am unemployed and have a family of five to support. Two of these children are going to college. I have brought them up by myself.

If I should lose my lands because of inability to pay taxes, what will I have to offer my children and their children thereafter? It will be history repeating itself—the taking of Indian lands.

Getting back to my pending suit, if this bill should pass, my suit could be extinguished. The bill extinguishes any tribal claim by deeming any transfer as following Federal law. This will ratify any tribal transfer, including taking by the State or any of its agencies. This pertains to the Bangor Hydro, which has to have approval from a State agency, which is the Public Utilities Commission.

This bill could deny my right to recover my land and pursue my claim against the Bangor Hydro. This requires clarification.

In closing, I must express my concern for all Indian people whose individual rights will be extinguished. I fear the taking of my lands under this bill will be a violation of my constitutional and basic inherent rights.

Thank you for your time.

Senator MITCHELL. Thank you, Ms. Nelson.

Ms. Coti, do you wish to say something?

Ms. COTI. My name is Julia Coti. I am a full Penobscot off-reservation Indian residing in Bristol, Conn.

I oppose this bill very much for the mere fact that I do not think all our people were given the legal right to vote. I went to the hearings in March in Augusta, Maine, and I was very much bothered by the way it was presented. I got all the information I could, and when I went back to Bristol, I contacted as many Penobscot people that were residing in Connecticut as I could reach, and I held a meeting at my home.

I contacted, I would estimate, approximately one hundred people who reside, that I know of, in Bristol, Conn. When I had the meeting and also when I spoke to the people on the phone, I informed them of how the bill was presented in Augusta, Maine. I would say the majority of the people I spoke to said they did not even receive a package about what it was all about; they did not even know. They said that had they been informed and informed right, the ones who did vote yes, had they been properly informed, would never have given a yes vote.

I think that if the people had been properly informed, they would not have got what they called the majority of the vote. They certainly did not have the majority of the vote to approve this.

Senator MITCHELL. What do those people want, Ms. Coti? Do they want this case to go to court?

Ms. COTI. I would think so. I cannot speak for them; I can only speak for myself.

Senator MITCHELL. You have reported to us the views of several people. Let me ask you this, from this standpoint. Do you think there should be more money, more land, or both?

Ms. COTI. As far as monetary issues are concerned, they are not my main concern. My main concern is my people's sovereign rights. I do not want to see my people lose their sovereign rights. I do not want to see my people become a municipality. If we become a municipality, we will not even be an Indian nation. I do not want to see this happen to my people.

Senator MITCHELL. Would you prefer to see this resolved with the Penobscot and Passamaquoddy receiving no money and no land but keeping their status the way it is, without becoming municipalities?

Ms. COTI. I am not a judge; I cannot judge and say what will happen.

Senator MITCHELL. No; I know you are not. I am asking what you would like to see. What result would you like to see?

Ms. COTI. I would like to see it be treated more fairly than it has been in the past, and I am not speaking for anyone else; I am speaking for myself as a person.

Senator MITCHELL. All right. Thank you very much.

Thank you all very much.

Mr. MITCHELL. Senator Mitchell, in closing, I would like to make a comment.

Senator MITCHELL. All right.

These Mitchells always have a way of getting in the last word. Whichever one of us finishes, it is going to be a Mitchell who has the last word.

Mr. MITCHELL. It is apparent in this hearing, as it was in Maine, that we, as the people who are opposed to this in principle, are not afforded the time to be heard properly. We are restricted. You have not even had the time to listen to some of our legal counsel here in testimony.

Senator MITCHELL. Just a minute, Mr. Mitchell. You have testified here for over an hour.

Mr. MITCHELL. Yes; there have been seven of us here.

I think there have been individuals who have tied up quite a bit of time.

But, in closing, again, we are restricted in time, and I just wanted that to be indicated.

Senator MITCHELL. Just a minute. I think that is an unfair statement to make. You have had an opportunity to say anything you wanted. I have asked you all this, and you can submit anything you want afterward.

Mr. Coulter, I will ask you this: Is there any point that has not been made that you want to make?

I just do not think it is right for you, Mr. Mitchell, to sit there and say you have not had an opportunity to make your point of view. Seven people have spoken.

I am not asking you to repeat what has been said. Is there a point which is important to you and your clients which has not been made? If so, you go ahead and make it.

Mr. COULTER. Well, there are many more points than I can make under these circumstances. I do not think that is a proper challenge. You have already said that it is time for the hearings to come to a close.

Senator MITCHELL. Also, frankly, Mr. Mitchell, I do not think that is a fair comment—that you have not had an opportunity to be heard. I really do not.

If you have anything you want to say that has not been said, you say it, and you submit a letter, in writing, and I give you my assurance I will read every word of it, and I will ask the other members of the committee to read every word of it.

Mr. COULTER. I think, under the circumstances, that would be the proper thing to do. There are a number of remarks that I would have liked to have made, but I think that if that would be interpreted as taking up the committee's time, I would prefer to defer that and just submit a statement.

Senator MITCHELL. I just do not want the suggestion left that anybody has not had an opportunity to get their point of view across. As far as I am concerned, you have had an opportunity.

Mr. Mitchell, I will say to you, if you have something more you want said, you get it down in writing, get it to me, and I give you my word, I will read every word of it. And I will attempt to get the other members of the committee to read it.

And I will say the same to all of the other people here, if they feel they have not had an opportunity to be heard. There is no intention on anyone's part—I cannot speak for anyone else—to cut off anybody or tell anybody that they do not have an opportunity to be heard.

There are limits. That is, if everyone wanted to take an unlimited amount of time, we would be here forever. But you have had an opportunity, I think, to get your point across—1 hour and 10 minutes, which is, I think, more than many of the other witnesses. I understand there have been seven of you. So I will conclude with that.

Mr. Coulter, I invite you to make, in writing, any comment you want. I give you my assurance I will read it personally, and I am sure Senator Cohen will too because he is every bit as interested in this as I am, if not more so. In fact, he has a much broader background in it than I, as you all know.

Mr. COULTER. Perhaps Senator Cohen's mention of further hearings is a suggestion that we can agree is a good one. At least on my own behalf, I would urge this committee to conduct those hearings so that additional views could be addressed at that time, particularly on any changes.

Senator MITCHELL. You can make that as a suggestion in one of your statements.

Thank you all, very much. That does conclude this aspect of the hearings. Any decision on further hearings will be made by the committee. Senator Melcher is the chairman, and Senator Cohen is the ranking minority member. As you know, I am not a member of that commit-

tee, and so any decisions on hearings will be made by the committee and not by myself.

I thank you, ladies and gentlemen, for your participation, and I thank all of the other persons who had the interest to come here and testify.

The record will remain open for 30 days for the receipt of any additional information that anyone has.

The hearing will now be adjourned.

[Whereupon, at 5:10 p.m., the hearing was adjourned.]

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