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DEPARTMENT OF THE ATTORNEY GENERAL
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April 1, 1980

To: Joint Select Committee on Indian Land Claims
From: Richard S. Cohen, Attorney General
Re: Proposed Land Claims Settlement - L.D. 2037

In response to the Committee's request of Monday, March 31, 1980, I have reviewed John Hull's memorandum to the Committee and have met with Mr. Tureen.

After those discussions we reached the following positions.

Eminent Domain

The issue raised in Mr. Hull's memo questions whether a parcel of land acquired within a municipality in substitution for the exercise of eminent domain within a reservation is automatically included in the reservation without prior municipal approval. After reviewing the language of § 6205 in its entirety this office is of the view that the municipal approval required by the proviso in subsection 5 of section 6205 is applicable to subsection 3. In other words any substitute parcel of land acquired within a municipality to replace a taking of reservation lands does not require legislative approval to become part of the Reservation but does require municipal approval prior to inclusion with the Reservation.

We have discussed this issue with Mr. Tureen and have expressly advised him of our interpretation. Mr. Tureen and the Joint Tribal Negotiating Team disagree with our interpretation. We have explored possible alternate language but have been unable to agree on any mutually satisfactory alternative language. Accordingly, we are not in a position to recommend any joint amendment to the bill. In view of this apparent difference in opinion, I recommend that the Committee report include an express statement of the Committee's interpretation of this issue.

Definitions Regarding Fish and Wildlife

Mr. Hull's memorandum suggests several clarifying definitions to be added to § 6207 of the bill. After discussion with Mr. Tureen and the Tribal Negotiating Committee, we have been able to agree upon the addition of a subsection 9 to read as follows:

9. Definitions. As used in this section the term "fish" means a cold blooded completely aquatic vertebrate animal having permanent fins, gills and an elongated streamlined body usually covered with scales and includes inland fish and anadromous and catadromous fish when in inland water.

With respect to the terms "sides of a river," "sustenance" and "taking" we have been unable to agree upon any modification of the bill. However, as previously expressed by Deputy Attorney General Paterson on March 28 and March 31, we believe those terms have the following meanings:

- (a) "Sides of a river" means the mainland shore of a river or stream and does not include the shoreline of an island.
- (b) "Sustenance" means personal or family consumption and does not include commercial disposition for maintaining a livelihood.
- (c) "Taking" means the attempted or completed act of gaining possession of fish or wildlife by catching, killing, molesting, destroying or shoating and includes pursuit.

The above amendments and understandings are consistent with the oral interpretations provided by Deputy Attorney General John Paterson and are consistent with the Office's view of the bill. With particular regard to the term "taking," the interpretation clarifies that stocking, propagation and selling or disposition of fish or wildlife are not within Tribal jurisdiction but are subject to State law.

With respect to the definition of "wildlife" as proposed by Mr. Hull, the Tribes and I agree that no modification or statement of understanding is necessary.

Taxation

We have discussed Mr. Hull's comments on §6208 and have jointly agreed with the Tribes to propose the following amendment.

Amend § 6208(2) by adding after the word "used" in lines six and thirteen the word "predominantly."

Approval of Prior Transfers

We have discussed Mr. Hull's comments on § 6213 and, although we do not believe any amendment is necessary given the general rules of statutory construction, the Tribes and the State jointly propose the following clarifying amendment.

Amend § 6213(1) by adding in line four after the word "state," the phrase "which transfer occurred prior to the effective date of this Act."

With respect to the remaining comments in Mr. Hull's memorandum, we do not believe any clarifications are necessary or warranted except the addition of "Pleasant Point" to the definition of the Passamaquoddy Reservation and the correction of the "Technical Errors" noted by Mr. Hull.

In addition to the foregoing matters, I wish to confirm for you several matters orally addressed by Mr. Paterson at yesterday's Committee work session.

Boundaries of the Reservation and Territory.

The external boundaries of the Reservations are limited to those areas described in the bill including any riparian or littoral rights expressly reserved by the original treaties with Massachusetts or which are included by operation of law. In particular, the Reservation at Pleasant Point includes the intertidal zone since the deed of conveyance includes lands to low water.

Ownership of any lands acquired by purchase or trade may include riparian or littoral rights to the extent conveyed by the selling party or included by general principles of law. The extent of any riparian or littoral rights would, however, necessitate a case by case examination of the deeds. In any event the Tribes will not own the bed of any Great Pond or any waters of a Great Pond or river or stream, all of which are owned by the State in trust for all citizens. Jurisdiction of

the Tribes (i.e. ordinance powers, law enforcement) will be coextensive and coterminous with land ownership.

Transportation of Fish or Wildlife.

As Deputy Attorney General Paterson stated to the Committee, § 6207(7) permits transportation of fish or wildlife within the State but outside Indian Territory if the fish or wildlife were legally taken in Indian Territory. This provision does not exempt the transportation from other legitimate police power regulation including public health, registration, sale or disposition requirements, but does prevent the State from prohibiting possession or transportation even though such possession would violate state laws on possession limits, seasons, sizes or species.

Maine Forestry District.

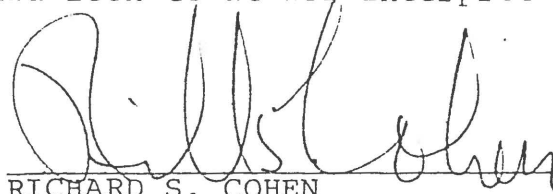
As stated by Deputy Attorney General Paterson, it is our present view that any of the unorganized townships currently in the Maine Forestry District and later acquired in whole or part by either Tribe will remain within the Forestry District. We view the definition of the Forestry District in 12 M.R.S.A. § 1201 as a description of the geographical boundaries of the District and believe it includes the enumerated townships even if subsequently incorporated, unless expressly removed from this District by Legislative act.

Operation of School Committees.

As stated by Deputy Attorney General Paterson, selection of members on Tribal school committees is an "internal Tribal matter" under § 6205(1) and not covered by State education laws. Operation of the committees and schools is, however, subject to State education laws.

With respect to any item in this or my earlier memoranda of March 28 or any issue discussed orally which the Committee believes should be preserved as part of the express history of this bill and for guidance in future interpretation, I suggest that the Committee endeavor to have such matters clearly made a part of the legislative history of the bill. To that end, I suggest that the Committee vote to adopt any interpretative statements, either oral or written, as the understanding of the Committee, that such Committee understandings either be embodied in a separate written report or expressly stated in a

statement of fact in any Committee amendment. To the extent such Committee views are found in this or my earlier memorandum the report could incorporate the memoranda by reference. Finally, I suggest that the respective House and Senate Chairperson make explicit explanatory statements on the floor clearly stating the Committee's understanding on all crucial issues and referring to all documents necessary. All these steps will help in preserving the history of the act in the event a court should look to it for interpretive assistance.

A handwritten signature in dark ink, appearing to read 'Richard S. Cohen', written over a horizontal line.

RICHARD S. COHEN
Attorney General

RSC:mfe