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August 22, 1980

MEMORANDUM

TO: ALL COMMITTEE MEMBERS

FROM: FRANK DUCHENEUX, SPECIAL COUNSEL FOR INDIAN AFFAIRS
 MICHAEL JACKSON, MINORITY CONSULTANT FOR INDIAN AFFAIRS

SUBJECT: AUGUST 25 HEARING - H.R. 7919 MAINE LAND CLAIMS SETTLEMENT

The purpose of H.R. 7919 is to provide a legislative settlement of the land claims of the approximately 3,000 Passamaquoddy, Penobscot and Maliseet Indians of the State of Maine.

The claims involve in excess of 10 million acres of land within the State which were taken by the State of Massachusetts pursuant to treaties dating from 1794. When Maine secured independence in 1820, its articles of separation assumed any obligations that Massachusetts owed to the Indians by treaty or otherwise.

The claims of the tribes are founded on the Indian Trade and Intercourse Act enacted in 1790 and periodically reenacted in later Congresses. These so-called Non-Intercourse Acts provided that no purchase, grant or other conveyance of Indian land should be of any validity unless the transaction be made and executed under the authority of the United States.

The claims are unique in that they are not against the Federal government, but rather against the State and the cities and individuals within the claims area.

Essentially, the legislation provides as follows:

(1) The cloud on land titles in Maine would be removed by the ratification of all prior land transfers between the Indians and the State and by the extinguishment of all claims.

(2) In return, the United States is to deposit \$27 million into a 'Maine Indian Land Claims Settlement Fund' in the U.S. Treasury. These monies would be invested and administered by the Secretary of the Interior for the tribes' benefit, and quarterly interest payments would be made to the tribes for use as they see fit. None of the principal could be disbursed to the tribes. In addition, the United States is to deposit \$54,500,000 in a 'Maine Indian Land Claims Land Acquisition Fund' in the U.S. Treasury. These funds are to be used for the acquisition of approximately 300,000 acres of land for the tribes.

(3) The Act incorporates by reference a 19-page Maine Implementing Act passed by the State Legislature. This Act essentially defines the three-way relationship among the tribes, the State and the Federal government. Under this Act the tribal governments would assume a role similar to that of a Maine municipality. Indian lands would be non-taxable and would be subject to state criminal and civil jurisdiction and state laws, but the tribes would have limited jurisdiction over their own members and a defined "Indian country".

(4) The tribes would be authorized to assume exclusive jurisdiction over Indian child custody proceedings under the terms of the Indian Child Welfare Act of 1978.

AMENDMENT IN THE NATURE OF A SUBSTITUTE

The Administration, while expressing support for "the concept of a negotiated settlement", and "no objection" to the proposed \$81.5 million appropriation, cited several problems with provisions of the bill and with the Maine Implementing Act. Subsequent negotiations with the tribes and the State have produced agreement on most of the Administration's concerns. Those agreements are contained in a proposed amendment in the nature of a substitute sent to the Senate Committee in early August.

Essentially two major problems remain unresolved: one, a lack of agreement as to the exact timing of the extinguishment of the claims. In present form, the claims would be extinguished upon enactment of the legislation; however, the tribes would have no guarantee that the funds authorized would actually be appropriated to fulfill the federal government's part of the bargain.

Secondly, the jurisdictional provisions of the Maine Implementing Act and the bill are still in disagreement.