



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

JUL 31 1979

NOTE

Leo—

Re: Muskie drafting request for Maine Indian legislation

The attached draft is based on the format used for the draft bill we intended to introduce last summer. Note especially the treatment of other tribes (namely the Malecites) in §§2(b)(2), 3(a), 4(a), 4(d)-(e), 5(b)-(c), and especially §6. The "Hathaway proposal" did not address this issue except to state that it was intended to extinguish the claims of "all Indians" in the State of Maine.

One problem area is the application of State law, §10. The Hathaway proposal provides for the applicability of "all state laws" and for taking lands in trust—mutually inconsistent propositions. Tom asked me to go back to the drawing board on this, but the best I have come up with is the current draft. If this were a Departmental proposal rather than a response to a mere drafting request, I would feel more sanguine about fashioning language out of whole cloth.

Note also §2(a)(5), the State's \$5 million credit, and §9(b), the Indian Financing Act authorization.

Tim Vollmann

cc: Legislative Counsel (attn: Jane Lyder)  
Assistant Secretary - Indian Affairs (attn: Suzan Harjo)  
Tom Fredericks

A B I L L

To provide for the settlement of land claims of Indian tribes in the State of Maine, including the Passamaquoddy Tribe and the Penobscot Nation, and for the 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 1979."

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

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

(1) The Passamaquoddy Tribe and the Penobscot Nation are asserting claims for damages and for possession of large areas of land in the State of Maine, on the ground that the original transfers of the lands by the Tribes to the States of Massachusetts and Maine were made in violation of the Trade and Intercourse Act of 1790 (1 Stat. 137), or subsequent versions thereof.

(2) Congress recognizes that substantial economic and social hardship to a large number of landowners and communities in the State of Maine, and therefore to the economy of the State as a whole, will result if the Tribes' claims are not soon resolved or are permitted to be the subject of litigation in the United States District Court.

(3) This Act represents a good faith effort on the part of Congress to provide the Tribes with a fair and just settlement of their ancient land claims which, in the absence of Congressional action, would otherwise have to be pursued through the courts--a process which would in all likelihood consume many years and thereby promote hostility and uncertainty in the State of Maine to the ultimate detriment of the Tribes and their members.

(4) 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 Indians or Indian tribes to sue the United States or any of its officers with respect to the claims extinguished by the operation of this Act.

(5) The State of Maine bears some of the responsibility for the pendency of these Indian land claims, and the Congress would normally expect the State to make a contribution valued at approximately \$5,000,000 toward the settlement of these claims but for the state's annual provision of special services to Indians residing within its borders along with the absence of the provision of any special services by the Federal government; in view of this provision of special services by the State of Maine, which it made without being required to do so by Federal law, it is the intent of Congress that the State not be required to contribute

directly to this claims settlement, but that it instead be credited for the provision of special services to the Indians residing within its borders to the extent of \$5,000,000.

(b) Therefore, it is the purpose of this Act --

(1) to remove the cloud on the titles to millions of acres of land in the State of Maine resulting from the Tribes' claims; and

(2) to provide for a timely resolution of all other similar Indian claims, if any, to land or natural resources in the State of Maine.

#### DEFINITIONS

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

(a) "Claims Area" means:

(1) that portion of the State of Maine which lies within and to the east and north of the Penobscot River watershed, including all of Hancock County, but excluding that part of the St. John River watershed which lies east of a line drawn from the northeast corner of the Town of St. Francis to the northeast corner of Township 2, Range 9, WELS;

(2) all islands in Penobscot Bay; and

(3) that portion of the Kennebec River watershed in the State of Maine east of the eastern shore of Moosehead Lake.

(b) "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 not limited to mineral rights, timber rights, water and water rights, and rights to hunt and fish.

(c) "Passamaquoddy and Penobscot Indian Reservations" means <sup>the</sup> these portions of the Indian Township and Pleasant Point Passamaquoddy Indian Reservations and the Penobscot Indian Reservation in the possession of the Passamaquoddy Tribe or the Penobscot Nation or their members as of February 10, 1978.

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

(e) "Transfer" includes but is not necessarily limited to any sale, grant, lease, allotment, partition, or conveyance, any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance, and any event or events that resulted in a change in possession or control of land or natural resources.

(f) "Tribes" means:

(1) the Passamaquoddy Indian Tribe as constituted on July 22, 1790, and any predecessor or successor in interest, including the governing bodies at both the Indian Township and Pleasant Point Reservations; and

(2) the Penobscot Indian Nation, as constituted on July 22, 1790, and any predecessor or successor in interest.

APPROVAL OF PRIOR TRANSFERS AND EXTINGUISHMENT  
OF INDIAN TITLE AND CLAIMS OF PASSAMAQUODDY  
TRIBE AND PENOBSCOT NATION

Sec. 4. (a) Any transfer of land or natural resources located anywhere within the United States, other than in the Passamaquoddy and Penobscot Indian Reservations, from, by, or on behalf of the Tribes or any member thereof, and any transfer of land or natural resources located anywhere within the Claims Area by, from, or on behalf of any Indian, Indian nation, or tribe of Indians, including but not limited to a transfer pursuant to any statute of any state, 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 land or natural resources 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, Act of July 22, 1790, ch. 33, §4, 1 Stat. 138, and all amendments thereto and all subsequent versions thereof), and Congress does hereby approve 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 which is pursued under any law generally applicable to non-Indians as well as Indians in the State of Maine.

(b) To the extent that any transfer of land or natural resources described in subsection (a) may involve land or natural resources to which the Tribes or any member thereof, or any other 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 of a transfer of land or natural resources effected by this section, 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 the Tribes or any individual member thereof, or any other Indian, Indian nation, or tribe of Indians, 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 not limited to claims for trespass damages or claims for use and occupancy), shall be regarded as extinguished as of the date of the transfer.

(d) Within one hundred eighty (180) days after the date of enactment of this Act, any Indian nation or tribe of Indians (other than the Tribes or the individual members thereof) the governing body of which was situated in the United States as of February 10, 1978, and whose transfers of land or natural resources are approved by this section or whose aboriginal title or claims are extinguished by this section, may bring an action against the Secretary, which action shall be in lieu of an action against any other person or entity against whom a cause of action would have existed in the absence of this section; Provided, however, that in any such action the judgment shall be limited to that portion of the Fund established in section 5(a) which bears the

same ratio to the total Fund as the number of acres in the Claims Area to which the claimant has established a valid claim superior to that of the Tribes bears to the total number of acres within the Claims Area.

(e) The cause of action authorized in subsection (d) shall be the exclusive remedy available to any Indian nation or tribe of Indians whose transfers of land or natural resources are approved by this section or whose aboriginal title or claims are extinguished by this section.

#### 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 9 of this Act.

(b) One half of the principal of the Fund established pursuant to subsection (a) (less one half of any award made in an action brought pursuant to section 4(d) of this Act) shall be held in trust by the Secretary for the benefit of the Passamaquoddy Tribe, and the other half of the Settlement Fund (less one half of any award made in an action brought pursuant to section 4(d)) shall be held in trust for the benefit of the Penobscot Nation. Each portion of the Settlement Fund shall be administered in accordance with terms established by the Secretary and agreed to by the respective Tribe or Nation,



except that no part of the principal of that Fund shall be distributed among the members of either Tribe on a per capita basis. The Secretary shall make available to each Tribe, without liability to or on the part of the United States, any income derived from its allocated portion of the Settlement Fund, the use of which shall be free from regulation by the Secretary.

(c) Any portion of the principal of the Settlement Fund awarded to a claimant in an action brought pursuant to section 4(d) shall be invested in securities of the United States, and the income from such portion paid to such claimant, unless Congress otherwise directs.

(d) 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 \$10,000,000 from the general funds of the Treasury into such account following the appropriation authorized by section 9 of this Act.

(e) One half of the principal of the Fund established pursuant to subsection (d) shall be held in trust by the Secretary for the benefit of the Passamaquoddy Tribe, and the other half of the Land Acquisition Fund shall be held in trust for the benefit of the Penobscot Nation. The Secretary is authorized to expend the principal and any income accruing to this Land Acquisition Fund for the purpose of acquiring land for the respective Tribe or Nation and for no other purpose.

(f) Lands acquired pursuant to subsection (e) shall be held by the Secretary in trust for the respective Tribe or Nation.

APPROVAL OF PRIOR TRANSFERS AND EXTINGUISHMENT  
OF CLAIMS AND INDIAN TITLE TO AREAS IN MAINE  
OUTSIDE THE CLAIMS AREA

Sec. 6. (a) Except as provided in subsection (b) --

(1) 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 of Indians (other than transfers covered by section 4 of this Act), including but not limited to a transfer pursuant to any statute of any state, 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 land or natural resources 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, Act of July 22, 1790, ch. 33, §4, 1 Stat. 138, and all amendments thereto and all subsequent versions thereof), and Congress does hereby approve any such transfer effective as of the date of said transfer.

(2) To the extent that any transfer of land or natural resources described in paragraph (1) may involve land or natural resources to which such Indian, Indian nation, or tribe of Indians had aboriginal title, paragraph (1) shall be regarded as an extinguishment of such aboriginal title as of the date of said transfer.

(3) By virtue of the approval of a transfer of land or natural resources effected by this section 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 such Indian, Indian nation, or tribe of Indians, arising at the time of or subsequent to the transfer and based upon any interest in or right involving such land or natural resources (including but not limited to claims for trespass damages or claims for use and occupancy), shall be regarded as extinguished as of the date of the transfer.

(b) This section shall not apply to any claim, right or title of any Indian nation or tribe of Indians, the governing body of which was situated within the United States as of February 10, 1978, that is asserted in an action commenced in a court of competent jurisdiction within one hundred eighty (180) days of the date of enactment of this Act; Provided, that the plaintiff in any such action shall cause notice of the action to be served upon the Secretary.

#### LIMITATION OF ACTIONS

Sec. 8. Notwithstanding any other provision of law, any action to contest the constitutionality of this Act shall be barred unless the complaint is filed within one hundred eighty (180) days of the date of enactment of this Act. Exclusive jurisdiction over such actions is hereby vested in the United States District Court for the District of Maine.

AUTHORIZATION

Sec. 9. (a) There is hereby authorized to be appropriated \$37,000,000 for transfer to the Funds established by section 5 of this Act.

(b) There is authorized to be appropriated an additional \$15,000,000 to the Secretary (1) to carry out the provisions of sections 217 and 301 of the Indian Financing Act of 1974, Act of April 12, 1974, Public Law 93-262, 88 Stat. 77, such sums to remain available until expended, and (2) for administrative expenses under said Act.

APPLICATION OF STATE LAW

Sec. 10. Notwithstanding any other provision of law, all lands acquired or held in trust for the benefit of the Tribes pursuant to section 5(e) of this Act or with funds appropriated pursuant to section 9(b) of this Act will be subject to all laws of the State of Maine, except to the extent that their trust status exempts them from State laws otherwise applicable.

INSEPARABILITY

Sec. 11. 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.