

DRAFT/SSH/TMWS/12/30/77

M E M O R A N D U M

TO: Elliott Cutler
Leo Krulitz
A. Stephen Clay
White House Task Force on
Indian Claims in Maine

FROM: Passamaquoddy/Penobscot Negotiation Committee

SUBJECT: Settlement Package

DATE: January 2, 1978

This memorandum will set forth those items on which we have agreed as of our meeting last Thursday and our proposals for resolution of those items, which remain unresolved. For convenience, we will use the outline adopted in our November 11, 1977, memorandum.

Numbers 1 and 2. With regard to the land and cash elements of the settlement, it appears that we mutually agreed upon the following:

a. That the federal government will seek an overall settlement for our entire claims, not merely those against private defendants, as initially contemplated.

b. That the Nations will agree in advance to accept one of four possible settlement alternatives:

(1) Settlement of claims against small landowners, litigation for possession and trespass damages against all others;

(2) Settlement of claims against all private landowners, litigation against the State of Maine;

(3) Settlement of claims against small landowners and the State of Maine, litigation against large landowners;

(4) Settlement of all claims.

(c) That the State of Maine and the large landowners will be required to enter into any settlement which involves the relinquishment of claims to their lands, and as in the event an adequate contribution cannot be obtained from either the state or the large landowners, that the Tribes will accept a settlement alternative which does not require contribution from those that refuse to contribute. 1/

(d) That the agreement by the Nations to accept the alternative settlements will expire 90 days after the terms of

1/ Agreement on this item is conditioned on the Tribe having input into determining whether an adequate effort has been made to obtain a contribution from the state or from large landowners.

such alternative settlements are agreed upon by the Nations and the White House Task Force.

(e) That the terms of the alternative settlements will constitute minimums, and that in no event will the Nations be asked to accept less than the amount specified.

(f) That all the lands acquired in settlement shall be held in trust for the benefit of the Nations by the federal government.

(g) That when the Nations and the White House Task Force refer to lands to be acquired for settlement, they are referring to high quality woodlands of the sort which presently has a market value of \$150.00 per acre.

(h) That all funds acquired in settlement shall be held in trust by the Nations on terms agreeable to them and the federal government and that no part of the principal shall be distributed on a per capita basis.

With this agreement, Items 1 and 2 appear to involve only the amounts in question. As we indicated in our meeting, it is our feeling that your proposal falls far short of Judge Gunter's recommendation. That recommendation called for us to

receive \$25,000,000.00, 100,000 acres of land, and "normal" services from the Bureau of Indian Affairs." At the same time, however, the Judge recommended that the Department of the Interior use its best efforts to acquire long-term options for us on an additional 400,000 acres of land. It would have had the State of Maine continue forever to appropriate annual benefits for us at a rate equal to the average of the state's current and last four year's Indian expenditures. These last two items were simultaneously added by Judge Gunter shortly before he presented his report to the President. While it is true that the provision calling for continued state benefits was in a form of a suggestion rather than a demand, and that the option for it to be exercised with "tribal funds", the clear intent was the continued state benefits would yield the tribal funds that would be used for this purpose: either directly through payment in a form of an annuity or indirectly by freeing up funds from the Tribe's federal services budget. In any event, Judge Gunter saw us eventually receiving 500,000 acres, whereas your proposal offers less than half that amount.

In addition to the foregoing, in considering our proposal we would also ask you to remember that in our previous submission you were only asked to set forth terms for settlement of our claims against private defendants, whereas we are now asked to specify an overall settlement. Keeping these facts in

mind, we propose the following:

(a chart - to be left blank now)

Numbers 3 and 4. We are agreed that the final settlement will not specify a specific dollar amount for services, but will carry a pledge that the Nations will be considered fully federally recognized Tribes, will receive federal services on a level comparable to other federally recognized Tribes, and that the eligibility of the Nations for such services shall not be terminated. We are also in agreement that we will hold further talks concerning inclusion in the FY 79 Budget (or an earlier supplemental appropriation) of a special line item for capital improvements acquired by the Nations as a results of 145 years of federal neglect.

Number 5. We are in agreement that the lands acquired pursuant to Sections 1-2 shall be treated for governmental purposes as lands of other federally recognized Tribes are treated, and that we shall hold further talks to determine the appropriate means of accomplishing the Nations' desire (as specified in our memorandum of November 11, 1977) to have the State of Maine exercise civil and criminal jurisdiction during an initial study period.

Number 6. We are agreed that the federal government shall acquire easements for non-commercial hunting, fishing, and trapping for the large private defendants, that such easements shall run with the land, but may include . . . such easements may include an exception prohibiting the right to exercise such rights within a fixed distance of any existing or future dwelling. We have not discussed, and we are in apparent disagreement, over on how much of the lands of these defendants these easements shall apply to. We are in agreement, however, that the settlements shall preserve the full rights of the Nations to hunt, trap, and fish on the lands obtained in the settlement and lands they presently possess, but that their members will be subject to regulation by the State of Maine ^{off-reservation} when they hunt, trap, or fish on/lands of the State of Maine.

Number 7. We are in agreement that the federal government will acquire a needed right to obtain brown and yellow ash from the land of large private defendants in our claim.

Number 8. We are in agreement that we will discuss the problem of flooding by Bangor Heights Electric Company further.

Number 9. We are agreed that in the event an overall settlement is not obtained as specified in Sections 1-2, that the federal government will proceed on behalf of the Nations as

specified in that section, and that in the event we are unable to agree on proposed terms for settlement, that the federal government will proceed to litigate our claims as specified in the Report of the Justice Department to Judge Gunter. The Department of the Interior has agreed that even if we are unable to agree on settlement terms at this juncture, that the Department will oppose any legislation which seeks to extinguish our claim without our consent. [We are agreed that even if we are unable to reach a settlement at this juncture, that the Department of the Interior will oppose any legislation which seeks to extinguish our claims without our consent]. We understand, however, that the President will not unconditionally promise to veto such legislation if we are unable to agree on settlement terms. We have not discussed, but would want a pledge from the President, both in writing and in person, that if we do reach an agreement on settlement terms but the government is unable to secure sufficient contributions from either the large landowners or the State of Maine and is thereby obliged to proceed with litigation, that the President would vigorously oppose and veto any congressional effort to extinguish such remaining claims without our consent.

Number 10. We are agreed that it would be advantageous if the private non-Indian landowners within Indian Township could be convinced to voluntarily sell their claims to land within that Township, and that we will make a good faith effort to obtain

such consent.

Number 11. We are still awaiting information from the Department of the Interior concerning the Marine Mammal Protection Act.

Number 12. We have not reached agreement on the legal forum which an ultimate settlement would take.