



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

SEP 22 1980  
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Honorable John Melcher  
Chairman, Select Committee on  
Indian Affairs  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

This is to provide you with our views on S. 2829 as reported by the Committee, a bill to settle Indian land claims in the State of Maine.

We urge enactment by this Congress of S. 2829 as reported, with the clarifying amendments which we discuss below. We believe the bill represents a reasonable and workable settlement of the Maine Indian land claims.

We believe that several provisions of the bill need minor clarifying amendments. Section 5(e) should be amended so as to read, in part, as follows: "in order to perfect title, satisfactory to the Attorney General, in the United States". In section 6(a), the words "section 5(d)(4) and" should be inserted immediately before "section 8, subsection (e)". In section 6(c), "1162, 1163," should be deleted. In section 12, the word "Indian" should be deleted the first place it appears in the section. We also have no objection to a proposed amendment to section 6(h) which would insert after "civil, criminal, or regulatory jurisdiction of the State of Maine," the following: "including, without limitation, laws of the State relating to land use or environmental matters,".

We note that the Committee's report, in its discussion of section 5 of the bill in the section entitled "Summary of Major Provisions", indicates that the provision of Federal services and benefits to the Passamaquoddy Tribe and Penobscot Nation was a result of a 1978 agreement. At that time, however, the tribes were already eligible for such services and benefits. Thus, these services and benefits are not an element of the Maine Indian land claims settlement itself.

Section 5(b)(3) provides for quarterly payments to the Passamaquoddy Tribe and the Penobscot Nation of "any income received from the investment of the Settlement Fund". The Committee's report states that—

The term "income" as used in Section 5 means the return in money or property derived from the use of the assets in the Settlement Fund, including net appreciation, both realized and unrealized.

We do not interpret the above report language as suggesting that the quarterly payments must include "unrealized" income.

We also note that section 5(i)(3) of the bill provides that the State of Maine shall have initial jurisdiction over condemnation proceedings. The United States is authorized to seek review in Federal courts and is given an absolute right of removal over any such action commenced in the courts of the State. We have agreed to this provision with the understanding that it contemplates that service of process on the United States in any such proceeding is to be pursuant to the Federal Rules of Civil Procedure.

The discussion in the Committee's report respecting the fifth issue in the section entitled "Special Issues" states that certain payments in lieu of taxes to be made by the tribes "will most likely be paid with funds to be provided to the tribes by the federal government." Although such payments may be possible as an incident of contracting or other assistance provided to the tribe by the Federal Government, we believe it is clear, as indicated in the Committee's further discussion of section 6(b)(1) in its report, that the United States has no obligation to make such payments, except as they are authorized by section 6(d)(2) of the bill to be paid out of the Settlement Fund income. The tribes could only use Federal funds for such payments when such use is consistent with the terms under which such funds are provided to the tribe by the Federal agency involved.

It is our understanding that it is not the intent of section 6(b)(1) to allow taxation, encumbrance, or alienation of lands held by the United States in trust. This interpretation is consistent with the language in the Committee's report that the application of Maine law cannot jeopardize or impair the clear title of the United States or obligate the United States, as titleholder, to pay taxes or fees. This subsection parallels existing Federal law in which jurisdiction is granted to States. This is also fully consistent with the tribes' agreement to make payments in lieu of real property taxes and their agreement to pay other taxes and fees as do other persons or entities in the State of Maine. The application of the laws of the State of Maine regulating land use and environmental matters, which the tribes agreed to allow to apply to themselves and which the bill ratifies, is consistent with existing law without obligating the United States or impairing title in the United States.

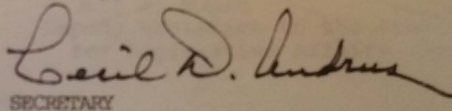
We also wish to reiterate our understanding of section 6(b)(2) of the bill, relating to the use of Federal funds "consistent with the purposes for which they are appropriated" and section 6211(1) of the Maine Implementing Act which provides that "[t]o the extent that any

. . . program requires municipal financial participation as a condition of state funding, the share for either the Passamaquoddy Tribe or the Penobscot Nation may be raised through any source of revenue available" (emphasis added). We believe it is clear from the language of the State Act itself that regardless of whether certain funding sources may be prohibited by Federal law or regulation from supplanting State funds under section 6211(2) or (4) of the Maine Implementing Act, such funds may be used to provide the local share for matching purposes when such use is consistent with the purposes for which such funds are appropriated.

Finally, we note a typographical error in the excerpt from Attorney General Richard Cohen's August 22, 1980 letter, printed at page 42 of the report. In the sentence beginning "It was understood", the words "Federal law" should read "Federal statutes or regulations", as shown in the complete text of the letter beginning on page 49 of the report.

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,

  
SECRETARY

The Honorable William P. Clark  
United States Senate  
Washington, D. C. 20510