

Tom -

Here is a draft of legislation to implement the ~~Malibet~~ Hathaway proposal per the Nuckie drafting request. Please review ASAP & pass on your comments. I am also giving this draft to Susan Hanjo & Jane Jones.

Please take particular note of the fact that the bill affects the Malibets. The Hathaway proposal purported to extinguish the claims of all nations in the State of Maine. Therefore, I utilized the language from our draft bill of last summer. See particularly §§ 2(a)(2), 3(a), 4(a), 4(b)-(c), 5(b)-(c), and 6. In short, if the Malibets have a claim within the 10 million acre "Claims Area", they have to assert it against the Settlement Fund (see § 4(a)) and if their claim is outside the "Claims Area", e.g. in the vicinity of Houlton, they have to file suit within 180 days (see § 6(b)). The Assn. of Ancestral Indians have spoken to Bill Perry of Reid's firm.

Another problem area is application of state law, section 10. I parroted the Hathaway proposal there, but it doesn't make complete sense if the lands are to be taken in trust.

Also, § 2(a)(3) is a reflection of language from Seminole Nation v. U.S. to protect the U.S. in the event the Act is treated as a taking authorization. § 2(a)(4) is taken from ANCSA; § 2(a)(5) is not substantive, but I assumed something ought to be in the Act on the State's credit; § 9(b) is an additional authorization Leo asked me to put in without any authorization for earmarking those § for the Maine Tribes.

Tom

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 this Land Acquisition Fund for the purpose of acquiring land for the respective Tribe or Nation and for no other purpose.

to expend the principal
and any income accruing

(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.

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.