

memorandum

DATE: July 18, 1978

REPLY TO
ATTN OF: *Kay* Kay Oberly
Special Assistant
SUBJECT: Land and Natural Resources Division

Maine Legislation.

TO:

Mr. Eliot Cutler
Mr. Doug Huron
Mr. Ed Kneeder
Mr. Tim Vollmann ✓

Attached is the latest version of the Maine legislation, with alternate formulations for Section 4(e).

Attachment



7/18/78

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 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 1978."

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, or subsequent versions thereof.

(2) Congress recognizes that substantial economic and social hardship to a large number of landowners in the State of Maine, and therefore to the economy of the State as a whole, will result if parts of the tribes' claims are not resolved immediately.

(3) At the same time, it is the desire of Congress to preserve the tribes' claims to at least a portion of the areas to which they assert rights.

(4) The Passamaquoddy Tribe and the Penobscot Nation have entered into a Memorandum of Understanding with representatives of the President wherein the Passamaquoddy Tribe and the Penobscot Nation agree to a partial settlement of their claims.

(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, while at the same time preserving the tribes' opportunity to assert their claims with respect to certain lands held by the State of Maine and tracts held by private landowners in excess of a minimum acreage; and

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

DEFINITIONS

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

(a) "Claims Area" means that portion of the State of Maine which lies east and north of the Penobscot River watershed, including the Penobscot River watershed, but excluding that part of the St. John's River watershed which

lies east of a line from the Northeast corner of the Town of St. Francis to the Northeast corner of Twp. 5, Range 9, WELS.

(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 that portion of the Passamaquoddy Indian Reservation 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) "Residual Claims Area" means those areas of the State of Maine generally defined as:

(1) that portion of the Penobscot River watershed in the State of Maine above Eddington Bend;

(2) that portion of the St. Croix River watershed in the State of Maine above Baring Plantation; and

(3) that portion of the Kennebec River watershed east of the eastern shore of Moosehead Lake;

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

(f) "Titleholder" means the United States or any department, agency or instrumentality thereof; a county

or municipality; or a private individual, corporation, trust partnership, or other entity, not including the State of Maine, that holds an interest in fee simple title to land or water in the State of Maine. A titleholding subsidiary and its titleholding parent, or two or more titleholding subsidiaries of the same parent, or two or more titleholders under substantially common ownership or control shall be regarded as a single titleholder for purposes of this Act. For purposes of section 4(d) of this Act, a tenant in common, joint tenant, or any other person who holds an undivided interest in a tract of real property shall be deemed to be a titleholder to the entire unpartitioned tract; and

(g) "Transfers" 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.

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

Sec. 4(a) Except as provided in subsection (d), 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 Passamaquoddy Tribe or Penobscot Nation, or any other entity presently or at any time in the past known as the Passamaquoddy Tribe or Penobscot Nation, or any predecessor or successor in interest, 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 August 4, 1970, 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.

(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 Passamaquoddy Tribe or Penobscot Nation or any other entity presently or at any time in past known in the Passamaquoddy Tribe or Penobscot Nation, or any predecessor or successor in interest, 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 Passamaquoddy Tribe or Penobscot Nation or any other entity presently or at any time in the past known as the Passamaquoddy Tribe or Penobscot Nation, or any predecessor or successor in interest, or any individual member thereof, or any other Indian nation or tribe of Indians, arising 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 the Residual Claims Area, this section shall not apply to --

(1) parcels or land or water, and all rights and interests incident thereto, held in fee simple title by the State of Maine as of February 10, 1978;

(2) parcels of land or water, and all rights and interests incident thereto,

other than parcels of land or water approved pursuant to section 5 of this Act, held in fee simple as of February 10, 1978, by any titleholder who holds or has an undivided interest in fee simple title to more than 50,000 acres of land or water in the Residual Claims Area; and

(3) any claims for trespass damages, against the State of Maine or against any titleholder who holds or has an undivided interest in fee simple title to more than 50,000 acres of land or water in the Residual Claims Area, relative to the parcels of land or water included in paragraphs (1) and (2) of this subsection.

(e) Within one year after the date of enactment of this Act, any Indian nation or tribe of Indians (other than the Passamaquoddy Tribe or Penobscot Nation, or any other entity presently or at anytime in the past known as the Passamaquoddy Tribe or Penobscot Nation, or any predecessor or successor in interest, or member thereof) [the governing body of which was situated in the United States as of February 10, 1978,] [to whom the United States owed a trust responsibility under the Trade and Intercourse Act of 1790, Act of August 4, 1790, ch. 33, §4, 1 Stat. 138, or subsequent

version thereof, on the date immediately preceding passage of this Act,] 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 in lieu of an action against any other person against whom a cause of action may have existed in the absence of this section; Provided, however, that in any such action the remedy shall be limited to that portion of the Fund established pursuant to section 6 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 claim superior to that of the Passamaquoddy Tribe or Penobscot Nation bears to the total number of acres within the Claims Area, excluding land and water identified in section 4(d).

ADMINISTRATIVE IMPLEMENTATION

Sec. 5(a) Within thirty days after the date of enactment of this Act, the Secretary shall cause to be published in the Federal Register a list of all titleholders who held title to more than 50,000 acres of land in the Residual Claims Area as of February 10, 1978. The Secretary may amend the list to correct errors at any time prior to final approval of designations pursuant to subsection (d).

(b) Any titleholder identified in the original or amended list published by the Secretary pursuant to subsection (a), or any successor in interest thereto, may, within sixty days of publication of the list specified in subsection (a) or any subsequent amendment of the list pertaining to such titleholder, file an application with the Secretary designating up to 50,000 acres of the titleholder's total holdings that the titleholder requests to have covered by Sections 4(a), (b) and (c) of this Act.

(c) When a parcel held in tenancy in common, joint tenancy, tenancy by the entirety, or otherwise in common ownership is designated pursuant to this section a portion of the total acreage of the parcel shall be charged against each titleholder's 50,000 acre exemption in the same proportion as his interest bears to the total of all interests in the fee of the parcel.

(d) After notice and opportunity for hearing, the Secretary shall approve the applications filed under subsection (b) if he finds that they conform to the extent possible with the following general criteria:

(1) tracts should be selected in such a way as to minimize checkerboard patterns of ownership;

(2) the most densely populated areas of a titleholder's total holdings should be included within the 50,000 acre exemption, at least insofar as the titleholder requests such inclusion;

(3) ongoing business operations, including but not limited to millsites, should be included within each 50,000 acre exemption, at least insofar as the titleholder requests such inclusion;

(4) any timber lands included within each 50,000 acre exemption should be representative of the titleholder's overall holdings; and

(5) parcels of land or water held in tenancy in common, joint tenancy, tenancy by the entirety, or otherwise by two or more titleholders should be included in the exemptions, if one or more titleholders of such parcel requests such inclusion.

If the Secretary concludes that any application does not satisfy the foregoing general criteria, he may modify the titleholder's proposed designation to the extent necessary to achieve substantial conformity with those criteria. The Secretary shall then approve the designation as modified.

(e) Any person aggrieved by the Secretary's approvals or modified designations may seek judicial review by filing a petition for review in the United States Court of Appeals for the First Circuit not later than sixty days after publication of the Secretary's approvals or modified designations. The Secretary's determinations shall not be set aside unless they are found to be arbitrary, capricious, or an abuse of discretion.

ESTABLISHMENT OF FUND AND INDEMNIFICATION

Sec. 6(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 \$25,000,000 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(e)) shall be held in trust by the Secretary for the benefit of the Passamaquoddy Tribe, and the other half of the Fund (less one half of any award made in an action brought pursuant to section 4(e)) shall be held in trust for the benefit of the Penobscot Nation. Each half of the 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 the 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 half of the Fund, the use of which shall be free from regulation by the Secretary.

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

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

Sec. 7(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 August 4, 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 subsection (a) may involve land or natural resources to which such 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.

(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 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, Indian nation or tribe of Indians that is asserted in an action commenced in a court of competent jurisdiction within one hundred eighty 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 validity or constitutionality of this Act shall be barred unless the complaint is filed within one hundred eighty 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 There is hereby authorized to be appropriated \$25,000,000 to carry out the purposes of this Act.

INSEPARABILITY

Sec. 10 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.