AFFIDAVIT

STATE OF IDAHO)
) ss.
County of)

COMES NOW the Affiant, DAVE MATHESON, being first duly sworn, upon oath, does depose and say:

1. That I am the Tribal Chairman of the Coeur d'Alene Tribe, whose members reside on a reservation in the State of Idaho.

2. That approximately one-hundred and twenty-five (125) claims have been submitted to the U.S. Department of the Interior pursuant to its 28 U.S.C. § 2415 Statute of Limitations Claims Program, over the past three and one-half years, by and on behalf of members of the Coeur d'Alene Tribe.

3. That a substantial number of these claims are considered to be either forced fee patent or right of way claims.

4. That it has been my experience that the Department of the Interior has never developed or utilized a systematic process for notifying claimants of the status of their claims; i.e. whether they have been dismissed, withdrawn from the program, or recommended for further investigation or litigation.

5. That my Tribe did not learn until recently that approximately one-third of the claims filed from the Coeur d'Alene Reservation were still being considered by the Department; and, in fact, this information was provided by a source not within the Claims Program.

6. That many of the beneficiaries of the claims which have already been rejected have not been notified by the Department of the Interior.

7. That it is my understanding that the Department of the

Interior is in the process of "categorizing" forced fee patent and right of way claims without considering the individual merits of each claim. (See March 10, 1982 Memorandum from John Fritz, attached hereto.)

8. That this categorization is being done without notice to and the advice and consultation of Indian Tribes and individual Indian claimants.

9. That administrative decisions will be made with respect to categories of forced fee patent and right of way claims without notice to and the advice and consultation of Indian tribes and individual Indian claimants.

10. That these decisions will be made in the waning days and weeks before the December 31, 1982 Statute of Limitations deadline.

11. That neither individual claimants nor the Coeur d'Alene Tribe acting in their behalf will have the time or the legal and financial resources to initiate lawsuits - individually or collectively - to pursue these claims before the expiration of the Statute of Limitations.

12. That the activities of the Department of the Interior are in violation of the Federal trust obligation and the Constitutional due process rights of members of the Coeur d'Alene Tribe.

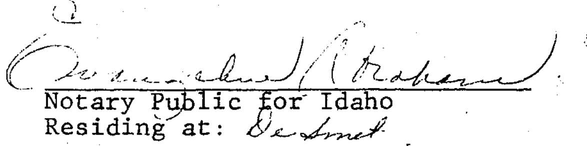
FURTHER your Affiant sayeth not.

DATED this 21 day of September, 1982.

DAVE MATHESON, Affiant

On this 21 day of September, 1982, before me, a Notary Public in and for the State of Idaho, personally appeared DAVE MATHESON, known to me to be the person whose name is subscribed

to the foregoing instrument, and acknowledged to me that he executed the same.



Notary Public for Idaho
Residing at: De Smet

RECEIVED MAY 20 1982

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 16 1982

MAR 10 1982

Memorandum

To: All Area Directors

From: Deputy Assistant Secretary - Indian Affairs (Operations)

Subject: Secretarial Decision Concerning Resolution of Certain Types of Statute of Limitations Claims

On February 11 the Acting Secretary made the following decisions concerning resolution of certain types of Statute of Limitations claims:

1. Legislation will be sought to reimburse those trust estates whose funds were used to repay Old Age Assistance. No further action is required for these claims until a final Congressional decision occurs.

2. Beneficial unapproved rights-of-way will be validated administratively under the regular Bureau procedures enumerated in 25 CFR, subchapter O.

We have requested a definition of a beneficial right-of-way from the Associate Solicitor, Division of Indian Affairs. Until the Associate Solicitor replies, all sectionline and property line roads, and other roads and all utility lines directly serving Indian purposes shall be considered beneficial.

3. White Earth, Forced Fee, and other title claims where title is the most valuable aspect of the claim will be removed from the Statute of Limitations Program and transferred to the regular rights protection program under Unresolved Indian Rights Issues. Formulation of policies is in progress, and we will inform you of our decisions as soon as possible.

Please inform all the tribes in your jurisdiction whose interests are affected by this decision as soon as possible. Attached for your information is a copy of the Decision Sheet listing the above decisions. If you have any further questions, please contact Mr. Ulyses S. St. Arnold at (202) 343-8018.

Attachment

RESOLUTION NO. 82-269

WHEREAS, the Coeur d'Alene Tribe submitted approximately 50 forced fee patent claims to the Bureau of Indian Affairs of the U.S. Department of the Interior, as part of the 28 U.S.C. § 2415 Statute of Limitations Claims Program, on behalf of its members, prior to the previous deadline of the Statute of Limitations on April 1, 1980; and

WHEREAS, the Coeur d'Alene Tribe supported the extension of the Statute of Limitations from April 1, 1980 to December 31, 1982, primarily because the U.S. Department of the Interior had failed to adequately identify and process claims as required by 28 U.S.C. § 2415, thereby facing a violation of the sacred trust obligation of the United States to Indians and Tribes; and

WHEREAS, additional claims - both forced fee patent, right of way, and other miscellaneous claims - have been identified for Coeur d'Alene Indians since April 1, 1980 which would have otherwise not been identified; and

WHEREAS, in the past two years the claims which have been identified on behalf of heirs of Coeur d'Alene allottees have made no progress with the Claims Program of the Department of the Interior; and

WHEREAS, the Department of the Interior has failed to provide the Coeur d'Alene Tribe and individual claimant beneficiaries with periodic notice of the status of their claims; and

WHEREAS, some claimants were never given actual written notice of the dismissal, rejection or removal of their claims from the program; and

WHEREAS, because of the pressure of the rapidly advancing deadline of December 31, 1982, the Coeur d'Alene Tribe believes that the claims filed on behalf of its members, particularly in the right of way and forced fee patent categories, will be removed by the Department of the Interior from the 2415 Claims Program administratively, for economic and political reasons, without fully considering the legal and factual merits of each claim; and

WHEREAS, in many instances the removal of said claims will be to the detriment of claimants and beneficiaries, for the Department of the Interior will be abandoning the damage aspect of these claims, which will be lost as of December 31, 1982; and

WHEREAS, the Coeur d'Alene Tribe and its member claimants have not been notified of the status of their claims and whether they will be removed from the Program, further to the detriment

of said parties; and

WHEREAS, the Coeur d'Alene Tribe believes that the United States, through the Department of the Interior, is once again mismanaging the Claims Program and jeopardizing its sacred trust obligation; and

WHEREAS, even if the Tribe and its member claimants are notified of the status (i.e., rejection or removal from the Program) of the claims before December 31, 1982, we will have neither the time nor the financial and legal resources to initiate actions - either individually or collectively - before the expiration of the Statute of limitations; and

WHEREAS, the Coeur d'Alene Tribe has the authority to initiate this action to protect the interests of itself and its members and to insure the enforcement of the Federal trust obligation.

NOW, THEREFORE, BE IT RESOLVED by the Coeur d'Alene Tribe that it authorizes the initiation of litigation to vindicate the injury to itself and its members by the United States Department of the Interior. More specifically, the injuries which should be recitifed include:

- an arbitrary and capricious categorization of claims, and administrative decisions with respect to these categories of claims, which fail to consider the legal and factual merits of individual claims.

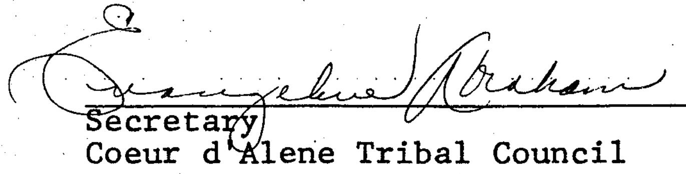
- failure to adequately notify claimants of the status of their claims and whether they have been withdrawn or rejected from the program, in violation of the Constitutional due process rights of claimant Tribes and individuals.

- the failure of the Department of the Interior to recommend, by June 30, 1981, to Congress categories of claims which are inappropriate for litigation and more appropriate for legislative solution, especially in the areas of forced fee patent and right of way claims.

C E R T I F I C A T I O N

The foregoing resolution was adopted at a meeting of the Coeur d'Alene Tribal Council held at the Tribal Headquarters near Plummer, Idaho on September 19, 1982 with a required quorum present by a vote of 5 for and 0 against.

DAVE MATHESON, Chairman
Coeur d'Alene Tribal Council



Secretary
Coeur d'Alene Tribal Council

AFFIDAVIT

State of Montana)
) ss.
County of)

COMES NOW Earl Old Person, being first duly sworn, on oath deposes and says:

1. That he is Chairman of the Blackfeet Tribe of Montana.

2. That to the best of his knowledge individual members of the Blackfeet Tribe are claimants to the following claims identified by the BIA on the Blackfeet Reservation: 257 forced fee patent claims, 57 secretarial transfers without the consent of all heirs and 218 unapproved rights of way easements.

3. That a number of the unapproved rights of way easements are also on tribal land.

4. That the Tribe has not been notified of the status of these claims by the BIA.

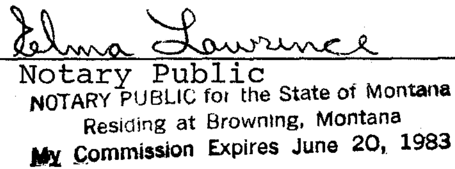
5. That to the best of his knowledge individual Indian claimants have not been identified by the BIA, have not been notified of the status of these claims and are most likely ignorant of the existence of these claims and their interests in these claims.

6. That the Tribe is bound by the Constitution of the Blackfeet Nation to protect the welfare of the individual members of the Blackfeet Tribe and to manage tribal lands.

7. That the Tribe as a whole has an interest in seeing that the federal trust responsibility with regard to Indian lands is consistently enforced.

Earl Old Person

Subscribed and sworn to before me this 21st day of September, 1982.



Notary Public

NOTARY PUBLIC for the State of Montana
Residing at Browning, Montana
My Commission Expires June 20, 1983

My Commission Expires:

June 20, 1983

AFFIDAVIT

STATE OF MICHIGAN)
) ss.
COUNTY OF ISABELLA)

Arnold J. Sowmick being duly sworn deposes and states:

1. That I am the Chairman of the Saginaw Chippewa Indian Tribe of Michigan; and

2. That the Saginaw Chippewa Indian Tribe of the Isabella Indian Reservation in Michigan is a federally recognized Indian Tribe under a constitution and by-laws ratified by the Tribe on March 27, 1937, and approved by the Secretary of Interior on May 6, 1937 pursuant to the appropriate provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended by the Act of June 15, 1935 (49 Stat. 378); and

3. That the Saginaw Indian Tribe is a federal corporation chartered under the Act of June 18, 1934 (48 Stat. 984); and

4. That the Saginaw Chippewa Tribe is remnant of the Saginaw, Swan Creek and Black River Bands of Chippewa, signatories of Treaties of 1855 (11 Stat. 633) and 1864 (14 Stat. 657); and

5. That said Treaties provided for allotments of land; and

6. That some of these allotments being of the not-so-competent variety; and

7. That the Secretary of Interior cancelled 105 fee patents in the years 1872 and 1874; and

8. That after these patents were cancelled approximately 28 patents for forty acre allotments were issued to people of not-so-competent status; and

9. That it was decided in United States v. Naw-cum--o-quay, et al in 1925 that the Secretary of Interior did not have the power to cancel fee patents in 1872 and 1874; and

10. That therefore the second allottees did not have any interest in the land; and

11. That Commissioner John Collier ordered an investigation on May 31, 1933 and nothing was done; and

12. That in 1979 to 1982 in-depth research was conducted on this issue by the Michigan Agency of the Bureau of Indian Affairs under 28 U.S.C. Section 2415; and

13. That a precedent exists for legislative resolution of this issue, see An Act for the Relief of Archie Eggleston, an Indian of the former Isabella Reservation, Michigan; 69th Congress, Session I, Chap. 854, 1926; 70th Congress, Session I, Chap. 137, 1928; and

14. That upon information and belief these claims were forwarded to the Department of Justice for action and returned to the Secretary of Interior by the Department of Justice with the recommendation that these claims should be resolved by legislation rather than litigation; and

15. That the Saginaw Chippewa Indian Tribe has not been officially notified by the Departments of Interior or Justice of the status of these claims, but the Tribe has informally learned that the Department of Interior will not propose any legislation to compensate individual tribal members or the Saginaw Chippewa Indian Tribe for the loss of these property rights; and

16. That individual members of the Saginaw Chippewa Indian

Tribe have claims for damages caused by trespass upon their property by the construction of railroads, roadways and utilities across their property without their consent; and

17. That upon information and belief, the Department of Interior has determined that claims regarding county roads will not be pursued because of an administrative policy decision that has characterized these trespasses as beneficial, without review of the individual circumstances; and

18. That due to the lack of overall action of the Department of Interior and the Department of Justice in enforcement of the provisions of 28 U.S.C. 2415, the Saginaw Indian Tribe has passed Resolution AD-07-82 to pursue legal action to compel compliance with the provisions of 28 U.S.C. 2415.

DATED: 9/20/82

Arnold J. Sowmick, Tribal Chairman

Subscribed and sworn to before me this
20th day of September, 1982
Ruth A. Moses
Notary Public, Isabella County
My Commission Expires: October 27, 1982

RUTH A. MOSES
Notary Public, Isabella County, Mich.
My Commission Expires Oct. 27, 1982

The Saginaw Chippewa Indian Tribe, Inc.

7070 EAST BROADWAY MT. PLEASANT, MICHIGAN 48858 (517) 772 - 5700

RESOLUTION AD-07-82

WHEREAS: The Saginaw Chippewa Indian Tribe of the Isabella Indian Reservation in Michigan is a federally recognized Indian Tribe under a constitution and by-laws ratified by the Tribe on March 27, 1937, and approved by the Secretary of Interior on May 6, 1937 pursuant to the appropriate provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended by the Act of June 15, 1935 (49 Stat. 378) and;

WHEREAS: The Saginaw Indian Tribe is a federal corporation chartered under the Act of June 18, 1934 (48 Stat. 984) and;

WHEREAS: The Saginaw Chippewa Tribe is remnant of the Saginaw, Swan Creek and Black River Bands of Chippewa, signatories of Treaties of 1855 (11 Stat. 633) and 1864 (14 Stat. 657) and;

WHEREAS: Said Treaties provided for allotments of land and;

WHEREAS: Some of these allotments being of the not-so-competent variety and;

WHEREAS: The Secretary of Interior cancelled 105 fee patents in the years 1872 and 1874 and;

WHEREAS: After these patents were cancelled approximately 28 patents for forty acre allotments were issued to people of not-so-competent status and;

WHEREAS: It was decided in United States v. Naw-cum--o-quay, et al in 1925 that the Secretary of Interior did not have the power to cancel fee patents in 1872 and 1874 and;

WHEREAS: Therefore the second allottees did not have any interest in the land and;

WHEREAS: Commissioner John Collier ordered an investigation on May 31, 1933 and nothing was done and;

WHEREAS: In 1979 to 1982 in-depth research was conducted on this issue by the Michigan Agency of the Bureau of Indian Affairs under 28 U.S.C. Section 2415; and

WHEREAS: A precedent exists for legislative resolution of this issue, see An Act for the Relief of Archie Eggleston, an Indian of the former Isabella Reservation, Michigan; 69th Congress, Session I, Chap. 854, 1926; 70th Congress, Session I, Chap. 137, 1928 and;

WHEREAS: Upon information and belief these claims were forwarded to the Department of Justice for action and returned to the Secretary of Interior by the Department of Justice with the recommendation that these claims should be resolved by legislation rather than litigation and;

WHEREAS: The Saginaw Chippewa Indian Tribe has not been officially notified by the Departments of Interior or Justice of the status of these claims, but the Tribe has informally learned that the Department of Interior will not propose any legislation to compensate individual tribal members or the Saginaw Chippewa Indian Tribe for the loss of these property rights and;

WHEREAS: Individual members of the Saginaw Chippewa Indian Tribe have claims for damages caused by trespass upon their property by the construction of railroads, roadways and utilities across their property without their consent and;

WHEREAS: Upon information and belief, the Department of Interior has determined that claims regarding county roads will not be pursued because of an administrative policy decision that has characterized these trespasses as beneficial, without review of the individual circumstances and;

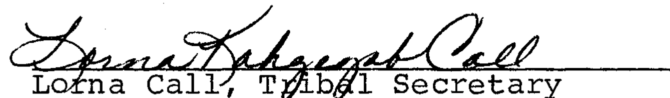
NOW THEREFORE BE IT RESOLVED: That the Saginaw Chippewa Tribe vehemently protests the failure of the Department of Interior to act on this problem that is 110 years old, in which 28 individuals failed to receive their Treaty entitlement.

AND BE IT FURTHER RESOLVED: That the Saginaw Chippewa Tribe hereby authorizes the initiation of legal action to compel those agencies of the United States with responsibility for implementing 28 U.S.C. 2415 to take all actions necessary to implement the provisions of 28 U.S.C. 2415, the Administrative Procedures Act, trust duties owed to the Band and its members, and rights protected under the Fifth Amendment of the United States Constitution.

CERTIFICATION

The foregoing resolution was duly adopted by the Saginaw Chippewa Indian Tribe of the Isabella Reservation with a quorum being present during a (regular, special) meeting on the 20th day of September 1982, by a vote of 7 for 0 against, and 0 abstaining.

Arnold J. Sowmick, Tribal Chairman



Lorna Call, Tribal Secretary

The Grand Traverse Band of Ottawa-Chippewa Indians

Route 1. Box 118
Suttons Bay, Michigan 49682

616-271-3538

RESOLUTION NO. 82-101

WHEREAS, the Grand Traverse Band of Ottawa and Chippewa Indians having become duly recognized by the United States Department of Interior on May 27, 1980, as a present day tribal entity, political successor in interest and party to the Treaty of Washington dated March 28, 1836 (7 Stat. 491), and Treaty of Detroit dated July 31, 1855, (11 Stat. 621); and

WHEREAS, 28 U.S.C. §2415 establishes a statute of limitations for the United States to bring claims against states and private individuals for damage to Indian property rights which occurred before 1966 and such rights include damage to land caused by illegal occupation and destruction of tribal resources; and

WHEREAS, under current legislation the statute of limitations expires on December 31, 1982, after which time the United States would be barred from bringing any claims on behalf of Indian tribes or individuals; and

WHEREAS, the Grand Traverse Band has two major categories of claims that have not been pursued by the Bureau of Indian Affairs. One involves loss of the Band's fishery caused by the State of Michigan's management policies and pollution caused by major corporations and utilities. This claim could result in a substantial amount of damages being awarded to the Band; and

WHEREAS, the second category of claims results from illegal use of at least 10,000 acres of land which were alienated or lost for taxes during a period of time when these lands should have been held in trust or not subject to state taxation; and

WHEREAS, the Bureau of Indian Affairs has not given the Band any information regarding the status of these claims nor allowed the Band an opportunity to comment on the Bureau's positions; and

WHEREAS, if the Bureau of Indian Affairs does not pursue these claims, either through litigation or by proposing legislation, valuable property of the Band would be lost due to the Bureau's negligence; and

(Resolution No. 82- continued)

WHEREAS, with the time of expiration of the statute of limitations quickly approaching, little progress in pursuing claims by the Bureau seems to have occurred; and

WHEREAS, to the Band's knowledge, neither of the Band's major categories of claims, although potentially substantial damage claims, have been forwarded to the Department of Justice for litigation; and

WHEREAS, the Band believes that valuable property rights of the Band and its members will be lost unless legal action is instituted to compel the United States government to comply with the provisions of 28 U.S.C. 2415.

NOW THEREFORE BE IT RESOLVED that the Grand Traverse Band of Ottawa and Chippewa Indians hereby authorize the initiation of legal action to compel those agencies of the United States with responsibility for implementing 28 U.S.C. 2415 to take all actions necessary to implement the provisions of 28 U.S.C. 2415, the Administrative Procedures Act, trust duties owed to the Band and its members, and rights protected under the Fifth Amendment of the United States Constitution.

C E R T I F I C A T I O N

The foregoing resolution was adopted by the Tribal Council on Sept 17, 1982 with quorum present by a vote of 4 FOR, 0 AGAINST and 0 ABSTAINING.

Freda C Schwander — 09-17-82

Ms. Freda Schwander — DATE
Tribal Secretary

INDIANS—TIME FOR COMMENCING ACTIONS

P.L. 92-485, see page 935

House Report (Judiciary Committee) No. 92-1267, July 31, 1972 [To accompany H.R. 13825]

Senate Report (Interior and Insular Affairs Committee) No. 92-1253, Oct. 2, 1972 [To accompany H.R. 13825]

Cong. Record Vol. 118 (1972)

DATES OF CONSIDERATION AND PASSAGE

House August 14, 1972

Senate October 9, 1972

The Senate Report is set out.

SENATE REPORT NO. 92-1253

THE Committee on Interior and Insular Affairs, to which was referred the bill (H.R. 13825) to extend the time for commencing actions on behalf of an Indian tribe, band, or group, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of H.R. 13825 is to amend section 2415 of title 28, United States Code, to provide that actions brought by the United States in behalf of tribes, bands, or groups of American Indians, or individual Indians with land in a trust or restricted status, for money damages which accrued on July 18, 1966 will not be barred until after 11 years from that date or until 2 years from a final administrative decision, whichever, is later. July 18, 1966, was the date of enactment of the law limiting actions by the United States and the date fixed in the law as the date upon which preexisting actions were to be deemed to have accrued.

The House amended H.R. 13825 to add a proviso to subsection (a) of section 2415 providing that an action for money damages which accrued on the date of enactment of the section in 1966 in accordance with subsection (g) of that section, brought by the United States for or on behalf of a recognized tribe, band, or group of American Indians, or on behalf of an individual Indian whose land is held in trust or restricted status, shall not be barred unless the complaint is field more than 11 years after the right of action accrued or more than 2 years after a final decision has been rendered in applicable administrative proceedings required by contract or by law, whichever is later.

The House also amended the bill to provide that section 2415(b) of title 28 be amended by adding the words—

> except that such actions for or on behalf of a recognized tribe, band, or group of American Indians, including actions relating to allotted trust or restricted Indian lands, or on

> behalf of an individual Indian whose land is held in trust or restricted status which accrued on the date of enactment of this Act in accordance with subsection (g) may be brought within eleven years after the right of action accrues.

This language would extend the statute of limitations as to those claims which would have been barred on July 18, 1972. The 11-year period as applied to these claims runs from the time the right of action is deemed to have accrued under subsection (g) of the section. Subsection (g) provides that rights of action which accrued prior to the date of enactment of the act on July 18, 1966, are to be deemed to have accrued on the date of enactment of the act. Thus the 11-year period runs from July 18, 1966.

The Senator Interior Committee concurs in these amendments, which also conform to the amendments recommended by the Interior Department.

NEED

The report of the Department of the Interior noted that section 2415 of title 28 of the United States Code as added to that title by the act of July 18, 1966,

> imposed a statute of limitations on tort or contract suits brought by the United States on its own behalf and in carrying out its trust responsibility to Indians. The statute generally allows six years from the date the action first accrues, with certain exceptions and provisions for tolling the time. Subsection (g) of section 2415 provides that any right of action subject to the provisions of section 2415 which accrued prior to the date of enactment of section 2415 will be deemed to accrue on the date of enactment.

The departmental report stated that all Indian claims subject to section 2415 which accrued prior to the date of its enactment, and these include some very complicated and substantial claims for damages, will therefore be barred from litigation after July 18, 1972, unless the statute is extended by legislation. Clearly immediate action was required in this situation.

In order to provide time to consider this legislation, a 90-day extension of the applicable limitations was enacted by the Congress. On July 18, 1972, the bill, H.R. 15869, was approved as Public Law 92-353. That law amended section 2415 to provide an additional 90 days to the 6-year period fixed in section 2415 for the filing of an action for money damages brought by the United States in behalf of a recognized tribe, band, or group of American Indians. The language added to the section by Public Law 92-353 also provides for such an extension of time for filing actions relating to allotted trust or restricted Indian lands.

The Interior Department in its report on the legislation stated the situation with respect to these actions is such that Indians are concerned that the present statutory limitation might bar them from recovering damages for many wrongs they have suffered. The Department further stated in its report that—

> the Bureau of Indian Affairs and the Solicitor's Office of the Department have not been able to perform the necessary work to identify all of these wrongs and then develop factual information necessary to get litigation filed.

The committee was also advised that—

> even with the help of attorneys employed by the various tribes, there are, no doubt, many causes of action which have not been identified. This inability to prosecute the present claims of Indians will work a hardship on tribes all over the country and may result in a considerable loss to Indians through no fault of their own, losses which Indians can ill afford because of their low position on the economic scale.

The committee feels this situation clearly requires enactment of the extension provided in this bill.

Costs

As has been stated in this report, the potential claims which would be affected by the amendments of this bill are those which have not been identified. Since these are actions which would be filed by the United States in behalf of Indians, it would, of course be necessary for the Government to develop the factual information in connection with each matter before filing the action. While it is not possible to estimate the number of such claims, the Department has advised the committee that the cost to the U.S. Government would be limited to the costs of prosecuting the claims in the courts—any awards made would be at the expense of private tortfeasors and contracting parties. In other words, claims against the United States would not be affected by this legislation.

Committee Recommendation

The Subcommittee on Indian Affairs held an open hearing on S. 3377, the Senate companion measure sponsored by Senators Fannin and Goldwater; and the full Interior and Insular Affairs Committee in executive session on September 28, 1972, unanimously recommended enactment of H.R. 13825, the House-passed bill. Those present at this executive session and voting for the bill were Senators Jackson, Anderson, Bible, Church, Moss, Burdick, Jordan of Idaho, Fannin, Hatfield, and Bellmon.

Departmental Report

The report of the Department of the Interior on S. 3377, the Senate companion measure, is set forth in full as follows:

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., June 26, 1972.

Hon. Henry M. Jackson,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: This is in response to your request for the views of this Department on S. 3377, a bill to extend the time for commencing actions on behalf of an Indian tribe, band, or group.

We recommend enactment of the attached substitute bill in lieu of S. 3377, and we urge your immediate action thereon for the reasons described below.

The act of July 18, 1966, 28 U.S.C. 2415, imposed a statute of limitations on tort or contract suits brought by the United States on its own behalf and in carrying out its trust responsibility to Indians. The statute generally allows 6 years from the date the action first accrues, with certain exceptions and provisions for tolling the time. Subsection g of section 2415 provides that any right of action subject to the provisions of section 2415 which accrued prior to the date of enactment of section 2415 will be deemed to accrue on the date of enactment. All Indian claims subject to section 2415 which accrued prior to the date of its enactment, and these include some very complicated and substantial claims for damages, will therefore be barred from litigation after July 18, 1972, unless the statute is extended by legislation.

S. 3377 would amend 28 U.S.C. 2415 to provide an additional period of time within which action may be instituted by the United States for or on behalf of a recognized tribe, band, or group of Indians for money damages founded upon any contract express or implied in law or fact, and for tort or trespass.

Indians are quite concerned that the present statutory limitation might bar them from recovering damages for many wrongs they have suffered. The Bureau of Indian Affairs and the Solicitor's Office of this Department have not been able to perform the necessary work to identify all of these wrongs and then develop the factual information necessary to get litigation filed. Even wtih the help of attorneys employed by the various tribes, there are, no doubt, many causes of action which have not been identified. This inability to prosecute the present claims of Indians will work a hardship on tribes all over the country and may result in a considerable loss to Indians through no fault of their own, losses which Indians can ill afford because of their low position on the economic scale.

We believe it is particularly important not to let these unidentified claims lapse because we are on the verge of making substantial progress in discharging our trust responsibilities with regard to Indian resources. Recently, the Bureau of Indian Affairs established a new unit, the Indian Water Rights Office, which will have as its principal duties the assertion and protection of water rights of Indians. Efforts have also been made to obtain additional funds and personnel for investigation and determination of boundary conflicts. In addition, the administration has proposed the creation of an independent Trust Counsel Authority to represent the resource rights of Indians free of any governmental conflicts of interest. It would be most unfortunate for many Indian claims to be barred by the statute of limitations at a time when the means for discovering and prosecuting such claims are in the process of being markedly improved.

However, S. 3377, would do more than merely "save" those claims that would be barred on July 18, 1972. It would establish an 11-year statute of limitations for all Indian claims arising under 28 U.S.C. 2415. We do not believe such special treatment of Indians is warranted across the board and would suggest narrowing the effect of the extension of the statute to those claims which would otherwise be barred on July 18, 1972. We submit herewith a substitute draft bill to accomplish this more limited purpose. In addition, we note that the statute which S. 3377 would amend does not differentiate between the claims of Indian tribes or groups and those of individual Indians. Yet both of the amendments contained in S. 3377 would be limited in applica-

bility to "a recognized tribe, band, or group of American Indians." We see no reason not to extend the statute of limitations as well on behalf of individual Indians whose land is held in trust or restricted status. Therefore we have added the phrase "or on behalf of an individual Indian whose land is held in trust or restricted status" to both amending sections of the substitute draft bill.

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 yours,

HARRISON LOESCH,
Assistant Secretary of the Interior.

A BILL To extend the time for commencing actions on behalf of an Indian tribe, band, or group

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 28 of the United States Code, section 2415, is amended as follows:

(a) The period at the end of subsection (a) shall be changed to a colon, and the following provision shall be added thereto: "*Provided further*, That an action for money damages which accrued on the date of enactment of this Act in accordance with subsection g brought by the United States for or on behalf of a recognized tribe, band, or group of American Indians, or on behalf of an individual Indian whose land is held in trust or restricted status, shall not be barred unless the compaint is filed more than 11 years after the right of action accrued or more than 2 years after a final decision has been rendered in applicable administrative proceedings required by contract or by law, whichever is later.".

(b) The words ", including trust or restricted Indian lands" appearing after "lands of the United States" shall be deleted from the proviso in subsection (b), the period at the end of the subsection shall be changed to a comma, and the following words shall be added thereto: "except that such actions for or on behalf of a recognized tribe, band, or group of American Indians, including actions relating to allotted trust or restricted Indian lands, or on behalf of an individual Indian whose land is held in trust or restricted status which accrued on the date of enactment of this Act in accordance with subsection (g) may be brought within eleven years after the right of action accrues.".

Calendar No. 607

96TH CONGRESS 2d Session } SENATE { REPORT No. 96-569

EXTENDING THE TIME FOR COMMENCING ACTIONS ON BEHALF OF AN INDIAN TRIBE, BAND, OR GROUP, OR ON BEHALF OF AN INDIVIDUAL INDIAN WHOSE LAND IS HELD IN TRUST OR RESTRICTED STATUS

FEBRUARY 7 (legislative day, JANUARY 3), 1980.—Ordered to be printed

Mr. MELCHER, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 2222]

The Select Committee on Indian Affairs, to which was referred the bill (S. 2222) to extend the time for commencing actions on behalf of an Indian tribe, band, or group, or on behalf of an individual Indian whose land is held in trust or restricted status, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

1. On page 1, line 5: strike out "30," and insert in lieu thereof "31,".

BACKGROUND AND NEED

I. THE BACKGROUND OF 28 U.S.C. 2415

A. Original act

In 1966 Congress enacted 28 U.S.C. 2415 for the purpose of establishing a statute of limitations for certain contract and tort claims for money damages brought by the United States. The statute imposes a six-year time period in which the government can bring actions based upon contracts with the United States and a three-year limitation for most tort claims filed by the United States. Certain specified tort actions are subject to a six-year limitation.

Before 1966 there was no time limitation imposed on contract or tort claims to be brought by the United States, although there was a time limitation imposed on private individuals. The Act was intended to both remedy this inequity and prevent the presentation of stale claims by the government. It is important to note that the statute only imposes a limitation on claims seeking monetary damages. It does not

bar actions involving titles to land, but any claims for monetary relief arising from these actions must be filed before the deadline.

The statute specifically provided that any claims which arose prior to 1966 were deemed to have accrued on the date of enactment of the Act, i.e., July 18, 1966. The United States thus had a maximum of six years, or until July 18, 1972, in which to bring all of its outstanding claims for damages. The original statute did not specifically cover claims brought by the United States, as trustee, on behalf of the Indians, but as the six-year time limit approached the Interior Department and the Indians became concerned that the statutory limitation might bar them from recovering damages for many wrongs the Indians suffered.

B. Amendment—Five-Year extension to October 13, 1972

In order to provide time to consider a legislative amendment, Congress enacted a ninety-day extension to the July 28, 1972, deadline.

After approving the ninety-day extension, Congress began considering legislation which would allow the United States an additional five years in which to bring claims for money damages on behalf of the Indians. In its report on the bill, which later became Public Law 92-485, the Senate Committee on Interior and Insular Affairs quoted the following from the Interior Department's report:

> The Bureau of Indian Affairs and the Solicitor's Office of the Department have not been able to perform the necessary work to identify all of these wrongs and then develop factual information necessary to get litigation filed. 1972 United States Code Cong. and Adm. News, p. 3593.

An amendment, H.R. 13825, was enacted on October 13, 1972, thereby extending the statute of limitations five more years, to July 18, 1977.

C. Amendment for 2½ year extension—August 15, 1977

On July 11, 1977, President Carter signed House Resolution 539 (Public Law 95-64) extending the statute of limitations an additional month, until August 18, 1977.

After providing the 30-day extension, Congress began considering legislation (S. 1377) which would allow the United States an additional 10 years in which to bring claims for money damages on behalf of the Indians. When the bill, S. 1377, was reported by the Select Committee on Indian Affairs on May 27, 1977, it was amended to reduce the extension to 4½ years. The companion bill in the House (H.R. 5023) was amended on the floor of the House reducing the extension to 2 years. The conferees settled for a 2½-year extension of the statute of limitations, setting the new date at April 1, 1980.

II. FUNDING OF STATUTE OF LIMITATIONS PROJECT (2415 PROJECT)

Immediately following enactment of the 2½ year extension, the Bureau of Indian Affairs attempted to secure a supplemental appropriation of several million dollars to its fiscal year 78 budget to enable it to undertake the necessary research to identify and process outstanding claims. This request for a supplemental appropriation was not passed on to the Congress. Instead, the Bureau was instructed to seek funds for fiscal year 79. BIA reprogramed some monies in order to begin the necessary studies.

The President's budget for fiscal year 79 did not include any funding for the Statute of Limitations Project. Despite the failure of the executive branch to seek funding, the Congress appropriated $4 million for fiscal year 79 for the specific purpose of funding this project. These funds became available in October 1978, just at the time the Executive branch imposed a 6-month hiring freeze on all agencies. BIA sought an exemption for this project but this request was denied. Early in 1979 the BIA began letting contracts to outside agencies to facilitate the necessary studies. Since the 1980 statutory deadline was fast approaching, these contracts necessarily were of short term.

For fiscal year 80 the President's budget included a request for $3.5 million to fund the 2415 project. Congress increased this figure to its present level of $6 million.

III. BUREAU ACTIVITY

In 1977 when the statute of limitations was last extended, the Department of the Interior had before it over 340 pre-1966 claims. They noted that hundreds of pre-1966 claims were still being identified and they estimated that unprocessed cases could well exceed 1,000 nationwide. (See letter of Leo Krulitz to the Committee dated May 2, 1977 and July 15, 1977). A partial list of claims was presented to the Committee by letter of June 8, 1977. These claims range from trespass damages for unlawful rights of way over individual trust allotments, to unlawful extraction of minerals and oil and gas from Indian lands, to improper diversion of water from Indian reservation lands, to claims for substantial areas of land along the eastern seaboard for violations of the 1790 Indian Intercourse Act.

In January of 1979, the Bureau had identified approximately 700 cases. Early in 1979, approximately six months after funds became available, the Bureau contracted with outside agencies such as Legal Services Corporation and the All Indian Pueblo Council to conduct independent research on outstanding claims. This research has led to a quantum leap in the number of cases the Bureau must process. The testimony of Assistant Secretary Forrest Gerard indicates that the Bureau now has in excess of 9,500 claims before it. Mr. Gerard states that the Bureau has been able to process in excess of 2,700 claims either by rejection for lack of merit or by successful resolution of the claim without litigation.

IV. CURRENT STATUS

The number and nature of the potential claims identified in the Committee hearings varies greatly from one area of the country to another.

In the North Central States, California, and, to a lesser extent, the Pacific Northwest, large numbers of "forced fee" cases have been identified. These involve individually owned trust allotments in which the Department of the Interior issued fee patents to the land without the consent or approval of the Indian owner, thus subjecting the property to state and local taxation, exposing the property to debt foreclosures, or freeing it for sale without requirement of Secretarial consent. Many other claims arise from trespass over Indian owned property by utility companies or state or local governments. In Arizona and California there are claims for improper pumping or diversion of water. In many areas of the country there are significant claims

for unlawful extraction of mineral resources. In New Mexico the claims of the Pueblos cannot even be identified until new and extensive surveys are completed.

In some of these areas there has been movement toward negotiated resolution of claims. In other subject areas the recent identification of claims has not allowed adequate opportunity to even formulate concepts for settlement discussions. In Minnesota, a 1977 opinion of the State Supreme Court indicated that individual Indian's may have meritorious claims on large numbers of allotments, title to which may have been unlawfully acquired. A large number of these claims arise on the White Earth Reservation. It appears there are possibilities for negotiated settlement of these claims but there has not been sufficient time to commence settlement discussions.

V. EFFECT OF EXPIRATION OF STATUTE

The statute of limitations does not bar an Indian tribe, band, or group, an individual Indian, or the United States acting on their behalf from bringing a claim for title to lands. It does bar the United States from bringing an action on behalf of an Indian tribe, band, or group, or individual Indian for money damages arising from tort or contract where the cause of action accrued prior to July 18, 1966.

A question has been raised whether the statute would bar an Indian tribe or individual from bringing a pre-1966 damage claim on their own behalf.

Interior Department witnesses testified that the issue was arguable but expressed the view that the statute would probably be held to bar claims of Indians acting in their own behalf. In an opinion issued November 20, 1979 the Library of Congress reached a similar conclusion. This opinion is included as a Committee exhibit in the record of oversight hearings held December 17, 1979.

A question has also been raised regarding the potential liability of the United States to Indian tribes or individuals for failure to actively pursue claims on their behalf. The question springs from the trust relationship which exists between the United States and the Indian tribes. The Library of Congress opinion also addressed this issue and concluded that this issue too, is not free from doubt. There have been some judicial decisions holding the United States liable for mismanagement of trust property. One of these decisions, *Mitchell* v. *United States*, 591 Fed. 1300 (Ct. Cl. 1979), is presently under review by the Supreme Court (47 USLW 3813, cert. granted). The decision in this case will be relevant to the issues addressed here. It will not be dispositive and litigation may be anticipated if the statute of limitations is allowed to expire.

VI. NEED FOR EXTENSION OF STATUTE OF LIMITATIONS

As previously noted, the Department of the Interior presently has before it in excess of 9,500 claims. Witnesses for both the Departments of Interior and Justice stated that they would not be able to complete work on the pre-1966 Indian claims thus far identified within the time allowed by the present statute of limitations. This testimony was supported by many additional witnesses.

The Department of the Interior recommended at the Committee hearing on December 17, 1979, that the limitation on tort claims, (28 U.S.C. 2415(b)) be extended an additional 2 years. They did not seek any extension of limitations for damage claims arising from contracts (28 U.S.C. 2415(a)). The Committee believes that such a distinction would simply inject a spurious legal issue that would unnecessarily cloud further proceedings. For that reason the Committee elected to treat claims arising from contract in the same manner as claims arising from torts.

Failure to extend the time limits now provided will, unnecessarily, bar many meritorious claims of Indian tribes and individuals; it will cause the filing of a multitude of lawsuits which might be rejected if adequate time is allowed for administrative review on the merits; and it will deprive the United States of adequate opportunity to negotiate settlements outside of court. The mass filing of these cases will also cause unnecessary financial burdens on private individuals and local governments which may be named as defendants, and will additionally tax the resources of the Departments of the Interior and Justice, U.S. attorneys' offices, and courts.

In addition to providing additional time for the processing of those claims thus far identified, fairness to the Indian people dictates that additional time be provided for the orderly investigation, identification and processing of remaining claims. Eight years have elapsed since the first extension of time was granted, yet the Department has not allowed sufficient personnel for investigation of these claims. From 1972 to 1977 the record of the Department of the Interior in investigating these claims is spotty at best. Only two offices reported any significant claim identification prior to the 1977 extension: the Field Solicitor's Office in Phoenix, Arizona on water claims in that area and the Regional Solicitor's Office in Twin Cities, Minnesota on land claims within the state. Since 1977, the efforts of the Interior Department are characterized by fits of "stop-start" resulting from delay in appropriations; employment freezes; and then fast closing deadlines.

A time limit on investigation must be drawn, but fundamental fairness dictates that additional time for investigation be allowed. The monies which have been appropriated for fiscal year 1979 and fiscal year 1980 to conduct these studies have provided necessary resources to conduct these studies. Yet the process for fiscal year 1980 has been interrupted by the impending statutory deadline. If the extension to December 31, 1984, is granted, Congress should provide funding for at least fiscal year 1981 to complete the investigative field studies. After fiscal year 1981 additional funding for claim identification should be provided only on a selected "as needed" basis. For example, the claims of the Pueblos of New Mexico cannot be identified until substantial surveys have been conducted. This is a time consuming process which in itself may require separate funding.

The additional time provided by S. 2222 should enable the Departments of Justice and Interior sufficient time to determine those claims which have merit, and initiate settlement negotiations or litigation. It will also provide the Congress an opportunity to consider legislative solutions which are fair and just to all parties concerned.

Legislative History

On December 17, 1979, the Senate Select Committee on Indian Affairs held oversight hearings on the progress of the Department of Interior and the Department of Justice in identifying and processing claims of Indians and Indian tribes which might be affected by the Federal statute of limitations (28 U.S.C. 2415). The testimony received at that hearing demonstrates a strong and immediate need for an amendment of this statute to extend the time limits.

S. 2222 was introduced by Senator Melcher on January 25, 1980, and is cosponsored by Senators Levin, Inouye, McGovern, Cranston and DeConcini. There is no companion measure pending in the House.

Committee Recommendation and Tabulation of Votes

The Select Committee on Indian Affairs, in open business session on February 7, 1980, with a quorum present, recommends by a vote of three in favor and one opposed, that the Senate pass S. 2222 with an amendment.

Yeas	*Nays*
Mr. Melcher	Mr. Cohen*
Mr. Inouye	
Mr. DeConcini	

*By proxy.

Committee Amendments

The Select Committee on Indian Affairs adopted an amendment to change the date of December 30, 1984 as it appears on page 1, lines 5 and 6, to December 31, 1984. The purpose of this amendment is to make the expiration date in section 1(a) of S. 2222 conform to the expiration date in section 1(b).

Section-by-Section Analysis

Section 1(a) will extend to December 31, 1984, the period of time in which the United States may bring an action for damages arising from a contract on behalf of an Indian tribe, band, or group, or on behalf of an individual Indian where the claim accrued prior to July 18, 1966.

Section 1(b) will extend to December 31, 1984, the period of time in which the United States may bring an action for damages arising from a tort on behalf of an Indian tribe, band, or group, or on behalf of an individual Indian where the claim accrued prior to July 18, 1966.

Cost and Budgetary Consideration

The cost estimate for S. 2222 as provided by the Congressional Budget Office is outlined below:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., February 7, 1980.

Hon. John Melcher,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed

S. 2222, a bill to extend the time for commencing actions on behalf of an Indian tribe, band, or group, or on behalf of an individual Indian whose land is held in trust or restricted status, as ordered reported by the Senate Select Committee on Indian Affairs, February 7, 1980.

The bill would extend the deadline for commencing certain legal actions on behalf of Indians from April 1, 1980 to December 31, 1984. Based on this review, it appears that no additional cost to the government would be incurred as a direct result of the enactment of this bill.

Sincerely,

ALICE M. RIVLIN, *Director*.

REGULATORY IMPACT STATEMENT

Paragraph 5(c) of rule XXIX of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that the bill S. 2222 will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The pertinent communications received by the Committee from the Departments of the Interior and Justice setting forth executive agency recommendations relating to S. 2222 are encompassed in the testimony of the Departmental witnesses in the December 17, 1979, oversight hearings. The prepared statements are set forth below:

STATEMENT OF FORREST GERARD, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the committee, it is a pleasure to appear before you to discuss matters relating to the statute of limitations claims program. I would like, in my testimony today, to describe the scope of the task, our efforts to carry out the task, and some of the problems we have encountered since the extension was granted in 1977.

I will not burden you with a detailed background of the program. That history has been stated in the various reports relating to previous extensions. It will be helpful, however, to mention some points that may place in proper perspective the situation that we face today.

The program began developing after July 18, 1966, the date the statute of limitations first went into effect. The statute limited to 6 years the time in which the United States, in carrying out its trust responsibility to Indians, could sue third parties for damages to the property of Indians arising out of tort or contract. In 1972 the 6-year limitation was extended 5 more years, or until July 18, 1977, as to claims which accrued before July 18, 1966, the date of the first act.

In 1977, in testimony before this Committee on the then pending extension bill, we stated that we had identified several hundred pre-1966 claims, and that we anticipated well over a thousand nationwide. We were then given a 2-year-and-8-month extension, until April 1, 1980.

For fiscal year 1978, we went as far as we could with existing resources. The Department formulated a comprehensive plan of action during fiscal year 1978 and aggressively sought funds to implement

such a plan. Immediately after the extension was granted, work began on the formulation of a claims processing plan and on the preparation of a budget request. By February 1978 the plan was initiated with existing resources at the field level with an intensive training phase. The plan included claims processing procedures, time limits, directions on communication channels, recommended forms, suggested publicity, and improved liasion with the Justice Department. Our plan was put into practice during fiscal year 1978, and while we did process some of our backlog it was clear we needed funding if we were to meet the needs of the claims problem.

Specific funding to implement our statute of limitations claims program was first provided for fiscal year 1979. Just as we were launching our program at the beginning of fiscal year 1979, we were slowed for 6 months by a hiring freeze. When the thaw came in March it left us with about a year to process a then existing inventory of about a thousand claims. In addition our plans called for an all-out search for unidentified claims and the referral of all worthwhile claims to the Department of Justice no later than November 30, 1979. The reason for the November date was that the Department of Justice needed at least 4 months to prepare and filed the claims in court.

The all-out search mentioned above was conducted in the summer of 1979. By the end of the summer we had uncovered a large number of potential claims, over 4,500. The potential claims continued to arrive, and by December 1, 1979, our count of identified potential claims reached a grand total of 9,768. We have illustrated this growth on the attached chart. Our search experience also leads us to believe that another 5,000 or more identifiable claims in the field may not yet be inventoried.

The number of these potential claims resulted in an extension of our Justice Department referral date to December 28, 1979, a move which may cause serious inconvenience to the Justice Department.

We managed to resolve over 2,700 of the grand total mentioned above either by rejection or by successful resolution of the claim to the benefit of the Indian claimants. To date we have referred about 100 litigation reports to the Department of Justice covering about 2,000 claims. Our Solicitor's office currently has about 2,700 claims on hand to complete and the BIA about 2,200 such claims. A currently undetermined number of worthwhile claims among our backlog of 4,900 claims have little chance of making it to court by April 1, 1980. Included in this number are most of the largest and most difficult claims we have, as well as some that may be invalid or of a minor nature.

Our claims program has affected a significant number of our citizens in this country. In many instances hardships may result as a result of our suits. In many of these same instances we are dealing with regaining title to property under circumstances in which defendants through no fault of their own are holding by void title. The title issues in these claims are not subject to the statute of limitations as are the tort issues.

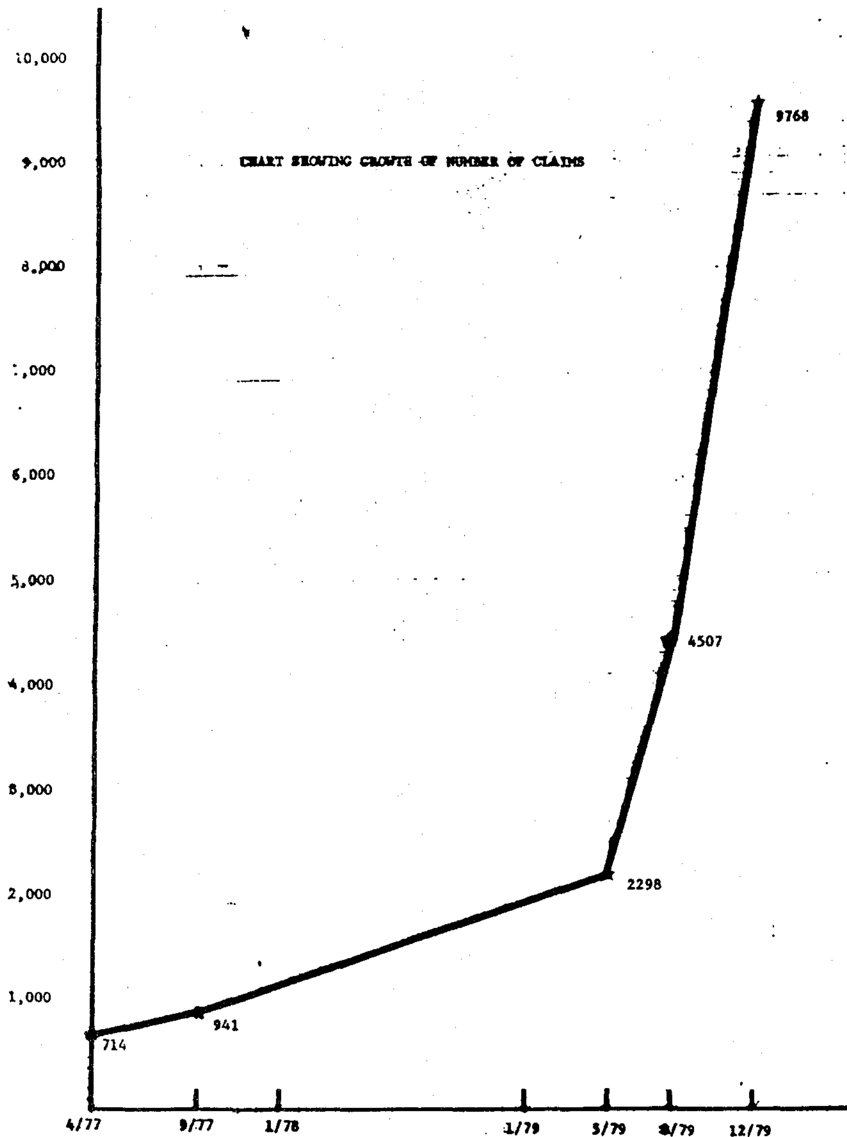
Many prospective defendants are Indians. Other prospective defendants are immune from suit, such as Indian tribes and the Federal Government. In some instances defendants are corporate entities. In any case, under the time constraints we face, we are unable to give the vulnerable defendants time to work out amicable settlements.

Adding to this is the fractionated heirship problem, the existence of which has greatly hampered the claims program and is in our view one of the principal causes of the tort claims problem. A great majority of the thousands of Indian claimants are heirs of deceased allottees or trust patentees. We are unable to locate many of them. The United States, of course, has a responsibility to them just as it does to recognized tribes, bands, or groups.

The so-called eastern land claims, like many of the smaller land title cases, have tort damage aspects subject to the statute of limitations. These claims are also included in our claims program. This committee is well aware of the magnitude of the eastern land claims and the effect such claims are having in the jurisdictions where they may be litigated. We have been attempting to achieve negotiated settlements in a number of these claims, but it is likely that we will not make the April 1 deadline on some of them. Thus, we are confronted with a physical impossibility in completing the tort claims portion of the claims program before April 1, 1980. For this reason we currently believe a short extension of the statute of limitations on tort claims under 25 U.S.C. 2415(b) may be necessary. We have not yet decided on a specific proposal, but we anticipate doing so. We look forward to working with the committee and its staff.

There is at least one area of good news in this affair. We are convinced that we have processed all or nearly all of the contract damage claims, and for that reason we recommend that the time limitation in 28 U.S.C. 2415(a) not be extended.

This completes my statement and I will be pleased to respond to questions.



Statement of Myles E. Flint, Chief, Indian Resources Section, Land and Natural Resources Division

Mr. Chairman and members of the subcommittee, I have been asked to appear this morning to discuss with you the status of processing of statute of limitation matters. On July 18, 1966, Congress enacted a general statute of limitation governing claims by the United States. This statute was codified as 28 U.S.C. 2415 and 2416. Under that statute, Congress specified a number of time limitations on which various causes of action could be initiated by the federal government. The stat-

ute, in that portion pertinent to our discussion today, provided that all actions on behalf of Indian tribes, groups or bands, must be commenced within six years of the time the action accrued. Those actions which accrued prior to the passage of the act were deemed to have accrued on the date the act was passed—that is July 18, 1966.

Thereafter the statute with respect to Indian claims has been extended twice. In 1972 Congress extended the statutory period from six to eleven years—from July 18, 1972 to July 18, 1977. When the limitation period covered by that statute came to an end in July of 1977, Congress again extended the statute. At that time Congress, by Public Law 95–103, extended the limitation for pre-1966 claims until April 1, 1980.

The 1977 legislation was supported by the administration. At that time the Department of the Interior asserted that a substantial number of valid claims existed which would be barred unless the statute were not extended. It argued that as there had been a sufficient effort to develop these claims, it would be improper for the United States not to extend the statute.

The Department of Justice supported the extension as well. Our primary reason for supporting the legislation was to permit efforts to commence to settle a number of eastern land claims which the Department of the Interior was then considering for referral to the Department of Justice. It was the view of the Department of Justice at that time that these were matters which could best be settled through legislation rather than litigation. That still is our view.

Shortly before the passage of the 1977 extension, the Department of the Interior transmitted a number of requests that the Department of Justice initiate litigation with respect to a number of eastern land claims. It requested that litigation be initiated only in the event the statute of limitation for damage claims were not extended. In addition Interior requested that no litigation be initiated while negotiations for settlement were being considered or underway. In 1978 Attorney General Bell wrote Secretary Andrus advising that: "After careful thought, I have decided that I will not bring suit against the landowners in the New York, South Carolina, or Louisiana claim areas." Shortly thereafter, at the Attorney General's direction, we apprised the Court in the Maine litigation that he had determined not to sue the landowners in that state. The Attorney General specifically stated he was commenting only with respect to the landowners and that litigation against the State was a different matter. A copy of the Attorney General's letter is attached. We believe that you should be aware of this decision while considering activities with respect to the statute.

Since passage of the last extension in 1977 we have worked continuously to keep apprised of the Department of the Interior's efforts to identify and develop litigation requests for transmittal and also to assist them in its efforts. In February of 1978 the Department of the Interior had a 2-day seminar for field personnel from both the BIA and the office of the Solicitor to review Interior procedures to locate and develop information concerning any valid claim which would be affected by the statute. I attended that session to learn of their program and also to advise those officials of the procedures to be followed by the Justice Department with respect to the statute of limitations claims.

Since that time there have been numerous exchanges of correspondence, discussions and meetings between the staffs of the Lands Division and the Office of the Solicitor to review the status of Interior's program. In each instance we have encouraged Interior to refer all matters to Justice as soon as they were properly prepared.

Only a few cases were referred prior to 1979. These cases have been acted on, returned because the reports are inadequate or are being held in abeyance pending Interior obtaining more information. Between January 1 and December 10, 1979, the Interior Department has referred 60 requests for litigation to this Department which it has identified as being affected by the statute of limitations. Of that number 44 have been received in the last three months. We are reviewing these requests as quickly as possible to determine what actions should be taken on them. In some instances we are declining the requests to initiate litigation because they lack legal merit. In others we will prepare and file complaints in the near future.

At this time the majority of the requests relate to claims in Minnesota and New Mexico. We are advised that other claims are being developed in other states as well.

The Deparment of Justice defers to the Department of Interior as to whether or not an extension of this statute of limitations is necessary.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., June 30, 1978.

Hon. CECIL D. ANDRUS,
Secretary of the Interior,
Department of the Interior, Washington, D.C.

DEAR MR. SECRETARY: From time to time your Solicitor, Mr. Leo Krulitz, has forwarded litigation reports on various ancient Eastern Indian claims to my Assistant Attorney General for Land and Natural Resources, Mr. James Moorman. I refer specifically to three claims in New York (Cayuga, Oneida and St. Regis-Mohawk), one in South Carolina (Catawba), and one in Louisiana (Chittimacha). These reports have not been accompanied by requests to sue immediately, but rather with requests that they be held for later suit pending preliminary settlement negotiations. I believe it is incumbent upon me to inform you of my views on whether suit should ever be filed so that you can better carry out your duties with regard thereto.

At our luncheon meeting on November 29, 1977, you and I generally approved of a settlement approach whereby the Administration would make an omnibus proposal to Congress to settle these claims. My only reservation then and now was that I would not support a settlement bill which forced anyone (other than a state) to give up land.

It appears to me that the settlement process is going slower than we anticipated and that it may not be able to get all the interested parties to agree. At our meeting on November 29 you will recall that Leo Krulitz suggested he would have a bill in April or May of this year. I am under the impression that should settlement discussions fail you may expect that the Department of Justice would actually sue landowners in the claim areas. In addition, the Administration's proposed Maine Claim bill will raise a question in the public's mind as to whether or not we intend to treat the small landowners the same in New York, South Carolina and Louisiana. As you know, the Admin-

istration proposes to submit a bill to Congress on the Maine claims which would extinguish Indian title to all land holdings up to 50,000 acres per owner and provide $25,000,000 in payment to the tribes.

After careful thought, I have decided that I will not bring suit against the landowners in the New York, South Carolina, or Louisiana claim areas. I have a number of questions about the legal and factual issues in these suits and question whether they can be won. Furthermore, the fact that the landowners are completely innocent of any wrongdoing weighs heavily against suing them. Finally, the Administration's policy decision to relieve small landowners in Maine from suit through a legislative settlement recommends the same relief to others similarly situated.

This is not to say that the tribes involved do not have some equitable complaint, using that term in the broadest sense. Other tribes have been compensated over the years for the ancient takings which occurred as a result of the western movement and settlement of the nation. However, it is completely within the power of Congress to remedy the tribal claims by the process of ratifying the ancient tribal agreements with the states. Such ratification could be accompanied by payments to the tribes in appropriate amounts. In the alternative, the tribes could be given a cause of action against the United States in the Court of Claims.

My decision applies only to private landowners. I am undecided as yet with regard to suits against the states of New York, South Carolina or Louisiana. There are several considerations. For example, on the one hand it is true that those states bear some responsibility for the title problems. On the other hand, suits against the states are in effect suits against public lands which involve such things as highways and parks.

As a matter of principle, I believe the landowners should know of my decision not to sue them as soon as possible. The decision could be announced at a time upon which you and I agree. My inclination is to announce it at the same time that the Administration sends up the Maine bill. I would also recommend that the Administration commit to introduce a bill to solve the private landowners' title problems in the claim areas in New York, South Carolina and Louisiana.

Sincerely yours,

Griffin B. Bell,
Attorney General.

Changes in Existing Law

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill S. 2222, as ordered reported, are shown as follows:

§ 2415. Time for commencing actions brought by the United States

(a) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been

rendered in applicable administrative proceedings required by contract or by law, whichever is later: Provided, That in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment: Provided further, That an action for money damages brought by the United States for or on behalf of a recognized tribe, band, or group of American Indians shall not be barred unless the complaint is filed more than six years and ninety days after the right of action accrued: Provided further, That an action for money damages which accrued on the date of enactment of this Act in accordance with subsection (g) brought by the United States for or on behalf of a recognized tribe, band, or group of American Indians, or on behalf of an individual Indian whose land is held in trust or restricted status, shall not be barred unless the complaint is filed [after April 1, 1980] *after December 31, 1984*, or more than two years after a final decision has been rendered in applicable administrative proceedings required by contract or by law, whichever is later.

(b) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon a tort shall be barred unless the complaint is filed within three years after the right of action first accrues: Provided, That an action to recover damages resulting from a trespass on lands of the United States; an action to recover damages resulting from fire to such lands; an action to recover for diversion of money paid under a grant program; and an action for conversions of property of the United States may be brought within six years after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band, or group of American Indians, including actions relating to allotted trust or restricted Indian lands, may be brought within six years and ninety days after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band, or group of American Indians, including actions relating to allotted trust or restricted Indian lands, or on behalf of an individual Indian whose land is held in trust or restricted status which accrued on the date of enactment of this Act in accordance with subsection (g) may be brought [on or before April 1, 1980.] *on or before December 31, 1984.*

(c) Nothing herein shall be deemed to limit the time for bringing an action to establish the title to, or right of possession of, real or personal property.

*　　*　　*　　*　　*　　*　　*

U.S.C. 415) as amended, to authorize a 99-year lease for the Moses allotment No. 10, Chelan County, Wash., having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The bill S. 1682 would amend the act of August 9, 1955 (25 U.S.C. 415) to authorize a 99-year lease of restricted land, known as Moses allotment No. 10, owned by four Indians in Chelan County, Wash.

* * * * * * * * * *

INDIAN TRIBE—LAND HELD IN TRUST—RESTRICTED STATUS

P.L. 96-217, see page 94 Stat. 126

Senate Report (Indian Affairs Committee) No. 96-569, Feb. 7, 1980 [To accompany S. 2222]

House Report (Judiciary Committee) No. 96-807, Mar. 6, 1980 [To accompany S. 2222]

House Conference Report No. 96-843, Mar. 24, 1980 [To accompany S. 2222]

Cong. Record Vol. 126 (1980)

DATES OF CONSIDERATION AND PASSAGE

Senate February 20, March 24, 1980

House March 18, 24, 1980

The House Report (this page) and the House Conference Report (page 215) are set out.

HOUSE REPORT NO. 96-807

[page 1]

The Committee on the Judiciary, to whom was referred the bill (S. 2222) to extend the time for commencing actions on behalf of an Indian tribe, band, or group, or on behalf of an individual Indian whose land is held in trust or restricted status, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

* * * * * * * * *

Purpose

The purpose of the proposed legislation, as amended, is to amend section 2415 of title 28, United States Code, to extend to April 1, 1982, the time for the United States to file tort or contract actions on behalf of Indians which accrued prior to July 18, 1966.

[page 2]

Background

The claims concerning Indians and Indian tribes which are affected by Section 2415 of Title 28, United States Code, are brought by the United States as a trustee on behalf of the Indians. The Indians themselves do not bring such actions in their own behalf. The policy by which the federal government has become the trustee or guardian for individual Indians and Indian tribes is one that has evolved since the beginning of our Country. This trusteeship has emerged from the early treaties between Indian tribes and the United States; through legislation by the Congress; and through court interpretations.

The true origin of this relationship lies in the course of dealings between the discovering European nations and the Indians who occupied the continent. Throughout the course of history, Indian tribes concluded treaties of alliance or—after military conquest—peace and reconciliation with the United States. In virtually all of these treaties, the United States promised to extend its protection to the tribes. Consequently, the trust responsibility by this government to the Indians has its roots for the most part in these early contracts and agreements with the tribes. The tribes ceded vast acreages of land and concluded conflicts on the basis of the agreement of the United States to protect them from persons who might try to take advantage of their weak position.

From the beginning, the Congress was a full partner in the establishment of the federal trust responsibility to Indians. Article III of the Northwest Ordinance of 1787, which was ratified by the first Congress assembled under the new Constitution in 1789, affirmed this policy. Further, in 1789, Congress enacted the Non-Intercourse Act (now codified as 25 U.S.C. § 177) which itself established a fiduciary obligation on the part of the United States to protect Indian property rights.

The concept of the federal trust responsibility has also evolved judicially. It first appeared in Chief Justice Marshall's decision in *Cherokee Nation* v. *Georgia*, 30 U.S. (5 Pet.) 1 (1831).[1] *Cherokee Nation* was an original action filed by the tribe in the Supreme Court seeking to enjoin enforcement of state laws on lands guaranteed to the tribe treaties. The Court decided that it lacked original jurisdiction because the tribe, though a "distinct political community" and thus a "state," was neither a State of the United States nor a foreign state and was thus not entitled to bring the suit initially in the Court. Chief Justice Marshall concluded that Indian tribes "may, more correctly, perhaps, be denominated domestic dependent nations . . . in a state of pupilage" and that "*their relation to the United States resembles that of a ward to his guardian.*" (Emphasis added.)

Later in the nineteenth century, the Court used the guardianship [illegible] basis for Congressional power, separate and distinct from

the commerce clause. *United States* v. *Kagama*, 118 U.S. 375 (1886)[2], concerned the constitutionality of the Major Crimes Act. Although it concluded that this statute was outside the commerce power, the Court sustained the validity of the act by reference to the Government's fiduciary responsibility. The Court stated that "[t]hese Indian tribes are the wards of the nation. They are communities dependent on the United States . . . From their very weakness and helplessness . . . there arises the duty of protection, and with it the power."

1. 8 L.Ed. 25.
2. 6 S.Ct. 1109, 30 L.Ed. 228.

[page 3]

A number of later cases make express reference to such a power based on the federal guardianship, e.g., *LaMotte* v. *United States*, 254 U.S. 570, 575 (1921)[3] (power of Congress to modify statutory restrictions on Indian land is "an incident of guardianship"); *Cherokee Nation* v. *Hitchcock*, 187 U.S. 294, 308 (1902)[4] ("The power existing in Congress to administer upon and guard the tribal property"), and the Supreme Court has continued to sustain the constitutionality of Indian statutes as derived from an implicit power to implement the "unique obligation" and "special relationship" of the United States with tribal Indians. (See *Morton* v. *Mancari*, 417 U.S. 345, 552, 555 (1974)).[5]

In conclusion, the concept of Federal trust responsibility has evolved from treaties agreed to by the early American settlers and the Indians; through legislative acts by Congress; and through judicial interpretation.

STATEMENT

On July 18, 1966, section 2415 of title 28 was enacted into law and it for the first time imposed a statute of limitations on tort or contract suits by the United States. The statute imposes a six-year time period in which the government can bring actions based upon contracts with the United States and a three-year limitation for most claims filed by the United States. Certain specified tort actions are subject to a six-year limitation.

Before 1966, there were no time limitations imposed on contract or tort claims to be brought by the United States, although there was a time limitation imposed on private individuals. The Act was intended to both remedy this inequity and prevent the presentation of stale claims by the Government. It is important to note that the statute only imposes a limitation on claims seeking monetary damages. It does not bar actions involving titles to land, but any claims for monetary relief arising from these actions must be filed before the deadline.

As the time limit approached (i.e. July 18, 1972), the Department of the Interior and the Indians became concerned that the statutory limitations might bar them from recovering damages. Therefore, in response to this concern, the Congress in 1972 extended the statute of limitations five years to July 18, 1979 for claims brought by the United States on behalf of Indians which accrued prior to July 18, 1966. In 1977, again based on a recommendation of the Department of the Interior, the Congress agreed to an additional extension of this statute of limitations two and one-half years to April 1, 1980 for such claims.

On February 7, 1980, the Senate Select Committee on Indian Affairs reported S. 2222 which would extend this limitation further to

December 31, 1984. On February 20, 1980, this bill was considered by the Senate. At that time, it adopted an amendment to the bill offered by Senator Bellmon which would allow this extension to December 31, 1984 only for those Indian claims which have been identified as such on or before December 31, 1981 by the Secretary of the Interior. Thus, under this approach, the additional three year extension beyond December 31, 1981 would only be for the processing of claims which had already been identified. The Senate then adopted S. 2222, as amended.

On February 27, 1980, the Subcommittee on Administrative Law and Governmental Relations held hearings on S. 2222. At that time,

3. 41 S.Ct. 204, 65 L.Ed. 410.
4. 23 S.Ct. 115, 47 L.Ed. 183.
5. 94 S.Ct. 2474, 41 L.Ed.2d 290.

[page 4]

representatives of the Interior Department testified that the relevant Indian claims still pending could be processed within the next two years and that a four and three-quarter years extension of the statute as proposed in S. 2222 was too long. Therefore, it was recommended by that Department that the statute of limitations be extended two years to April 1, 1982.

The Interior Department further testified that it has processed most of the claims identified thus far, but it will not be able to handle all the claims by April 1, 1980. This Department revealed that it has referred over 3,500 claims, in about 180 litigation reports, to the Department of Justice for suit; rejected over 4,100 claims; resolved 474 claims by collection, compromise, or administrative or court action; and it has done some work on remaining claims (approximately 1,900).

The Interior Department also testified that the amendment offered by Senator Bellmon on the floor of the Senate was unwise as it would create practical problems in the resolution of the disputes, and it would give rise to additional litigation. In a letter appended at the end of this report, the Department of Justice concurred in this analysis, and it also recommended that the so-called "Bellmon amendment" be stricken from the bill.

The Subcommittee on Administrative Law and Governmental Relations also heard testimony from witnesses who are members of various organizations concerned with Indian rights. These included representatives from the Native American Rights Fund, the National Congress of American Indians, and the National Tribal Chairman's Association. These witnesses expressed a concern over how these claims had been handled by the Department of Interior. They felt that Indians and Indian tribes who have legitimate claims will be punished for the inefficiencies of the Department of Interior since these claims are brought by the United States as trustee for the Indians. Thus, they stated their view that it is the fault of the United States that all of the claims have not been processed to date, and not the fault of the Indian tribes. Finally, it was pointed out that if the statute is not extended, those Indians whose claims would be barred by the statute may have a cause of action against the United States for a breach of its fiduciary duty as trustee for the Indians.

The Subcommittee also heard from a representative of a landowners association whose members are currently affected by an Indian

claim. He discussed the problems of landowners who are affected by such claims, including the difficulty in transferring title.

The Committee, after a consideration of the issues raised during the above described hearing, decided to follow the recommendations of the Department of the Interior. The Committee determined that as a matter of equity and in the interest of all concerned, the statute of limitations for these Indian claims should be extended. Thus, it adopted amendments extending the statute of limitations two years to April 1, 1982, and striking the requirements that such claims be identified and published in the Federal Register by December 31, 1981. The Committee determined that the extension of four and three-quarter years as recommended by the Senate was too long and a shorter extension would encourage the Department of the Interior and the Department of Justice to process these claims expeditiously. A longer extension might invite more delay in this process. The Committee also felt that the Sub-

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committee on Administrative Law and Governmental Relations should exercise its oversight responsibilities to insure that all claims are processed by April 1, 1982.

The Committee further adopted an amendment adding a new section 2 to the bill. This amendment requires the Attorney General of the United States, after consultation with the Secretary of the Interior, to submit to the Congress legislative alternatives to resolve those Indian claims subject to the statute of limitations that the Attorney General believes are not appropriate to resolve through litigation. This report is due no later than December 31, 1980 so as to afford Congress sufficient time before the expiration date of section 2415, as amended, to consider these alternatives. Clearly, this report can only contain proposals regarding claims that are known to and evaluated by the Attorney General as of the date of the report.

From the congressional testimony of the witnesses representing the Department of Justice and the Department of the Interior, it appears that some of the Indian claims and potential Indian claims may be ones that are not appropriate to resolve through litigation. The purpose of the Attorney General's report is to identify alernative legislative proposals that Congress may want to consider to resolve these claims in a manner that is fair to all the parties concerned. It is also hoped that such a report will aid the Committee in discharging its oversight responsibility regarding this subject matter.

Conclusion

The Committee finds that an extension of the statute of limitations as contained in Section 2415 of Title 28, United States Code with respect to Indian claims is justified. Further, the Committee feels that a two year extension to April 1, 1982 is an appropriate time period to allow for the processing of all claims in an expeditious and equitable manner.

Committee Vote

(Rule XI, cl. 2(1)(2)(B))

On March 5, 1980, the full Committee on the Judiciary approved the bill S. 2222, as amended, by a voice vote.

COST

(Rule XIII 7(a)(1))

The enactment of this bill will not require any new or additional authorization or appropriation of funds.

OVERSIGHT STATEMENT

(Rule XI 2(1)(3)(A))

The Subcommittee on Administrative Law and Governmental Relations of this Committee exercises the Committee's oversight responsibility with respect to legislation involving claims matters and related administrative and judicial procedures in accordance with Rule VI

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(b) of the Rules of the Committee on the Judiciary. The favorable consideration of this bill was recommended by that Subcommittee and the Committee has determined that legislation should be enacted as set forth in this bill, as amended. Further, the Subcommittee on Administrative Law and Governmental Relations intends to hold oversight hearings regularly throughout the duration of the statutory period to insure that the claims are expeditiously and equitably processed by the relevant government agencies.

BUDGET STATEMENT

(Rule XI, cl. 2(1)(3)(B))

As has been indicated in the Committee statement as to cost made pursuant to Rule XIII 7(a)(1), the bill will not require any new or additional authorization or appropriation of funds. The bill does not involve new budget authority nor does it require new or increased tax expenditures as contemplated by Clause 2(1)(3)(B) of Rule XI.

ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

(Rule XI 2(1)(3)(C))

The estimate received from the Director of the Congressional Budget Office is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., March 6, 1980.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 2222, a bill to extend the time for commencing actions on behalf of an Indian tribe, band, or group, or on behalf of an individual Indian whose land is held in trust or restricted status, as ordered reported by the House Committee on the Judiciary, March 5, 1980.

The bill would extend the deadline for commencing certain legal actions on behalf of Indians from April 1, 1980 to April 1, 1982. Based on this review, it appears that no additional cost to the Government would be incurred as a direct result of the enactment of this bill.

Sincerely,

ALICE M. RIVLIN, *Director.*

OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT OPERATIONS

(Rule XI 2(1)(3)(D))

No findings or recommendations of the Committee on Government Operations were received as referred to in subdivision (D) of clause 2(1)(3) of House Rule XI.

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INFLATIONARY IMPACT

(Rule XI 2(1)(4))

In compliance with clause 2(1)(4) of House Rule XI it is stated that this legislation will have no inflationary impact on prices and costs in the operation of the national economy.

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U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., February 27, 1980.

Hon. GEORGE E. DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 2222 in the House, an act to extend the time for commencing actions on behalf of an Indian tribe, band, or group, or on behalf of an individual Indian whose land is held in trust or restricted status.

We suggest herein an amendment to S. 2222 in the nature of a substitute and recommend that S. 2222 as so amended be enacted.

S. 2222 would amend the statute of limitations provisions in section 2415 of title 28, United States Code, to extend until December 31, 1984, the time within which the United States may bring damage actions on behalf of Indians whose lands are held in trust or restricted status. The extension would apply only with respect to claims identified by the Secretary of the Interior, on or before December 31, 1981, as potential Indian claims and published in the Federal Register.

Under existing law, the United States has until April 1, 1980, to bring damage actions on such claims which arose before July 18, 1966, the date the statute was originally enacted. The April 1980 date was set by Congress in the Act of August 15, 1977 (91 Stat. 842). Although we have made intense efforts to identify and file all such claims by the

April 1980 deadline, unforeseen circumstances have arisen which will prevent us from completing our task by that date.

We experienced an enormous increase in the number of identified potential claims over the last six months of calendar year 1979, from about 1,200 claims in June to about 9,800 by year's end. We also developed information indicating that at least another 5,000 as yet unidentified potential claims still exist.

The Bureau of Indian Affairs (BIA), the primary agency responsible for the claims program, has with the assistance of our Solicitor nevertheless made great progress in disposing of the enormous backlog of identified claims. We had, by December 28, 1979, referred over

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3,500 claims, in about 180 litigation reports, to the Department of Justice for suit; rejected as worthless over 4,100 claims; resolved 575 claims by collection, compromise, or administrative or court action; and advanced the remaining balance of claims, about 1,900, as far in the claims process as our resources could carry them.

Thus, while we recommend that the statute of limitations with respect to these claims be extended, we believe that we can complete our responsibilities within a shorter period than that provided for in S. 2222. We therefore recommend that the statute of limitations be extended for a period of two years, until April 1, 1982.

We believe that we can identify all of the remaining claims involved, which we estimate at approximately 5,000, by April 1, 1981. We would then expect to refer most of these claims to the Department of Justice by mid or late 1981.

We would expect to refer most of the 1,900 claims referred to above to the Department of Justice no later than late spring or early summer of 1981. With respect to a number of claims, we lack only certain particulars without which suit cannot be filed, such as abstracts of title, maps of survey, technical data, or evidentiary studies. We would expect to obtain such particulars by no later than the close of the current year, although studies needed for fishery damage claims in the Northwest and for certain water rights cases in the Southwest may take somewhat longer to complete.

In order to provide the Department of Justice with sufficient time within which it may request and obtain from us additional information necessary to enable them to file suit on claims we refer to that Department for filing, we would expect to complete our work with respect to all claims by September 30, 1981. The final six months before the deadline we recommend would thus be reserved to the Department of Justice to complete the processing and filing of the claims.

We also anticipate intense negotiation with respect to a number of claims, including the eastern land claims. Extension of the April 1, 1980, deadline would prevent the filing of massive lawsuits seeking title to, and possible ejectment of present occupants from, vast areas claimed by the tribes involved, and would avoid our possible liability for breach of our fiduciary reponsibilities to the Indians involved. We believe, in view of the serious nature of this situation, that we must negotiate fair and honorable compromises for presentation to the Congress and that, in the absence of such compromises, we must be prepared to recommend appropriate legislative solutions.

We do not believe that any extension of the statute of limitations should be limited to cases identified by the Secretary and published in the Federal Register, as would be provided by section 2 of S. 2222. As stated above, we believe that we can identify all of the remaining claims within the first year of the extension. However, we believe that any provision requiring the identification and publication of claims would cause practical problems and give rise to additional litigation. For example, the filing of claims which, under a simple extension, could otherwise be filed on April 2 of this year would have to be delayed until they had first been published in the Federal Register. Questions with respect to issues from minor inaccuracies in land descriptions to the propriety of including additional parties in a suit could give rise to substantial additional litigation that would impede the prompt resolution of the claims.

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In view, therefore, of our trust responsibility to the Indians on whose behalf the claims involved may be brought, and the potential liability of the United States if we fail to meet that responsibility, we recommend that the statute of limitations be extended. However, in view of our belief that we can identify and file the claims yet remaining before April 1, 1982, and our belief that a requirement for identification and publication of claims would interfere with the completion of that process, we recommend that S. 2222 be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

> That (a) the third proviso in section 2415(a) of title 28, United States Code, is amended by striking out "after April 1, 1980" and inserting in lieu thereof "after April 1, 1982".
>
> (b) The proviso in section 2415(b) of title 28, United States Code, is amended by striking out "on or before April 1, 1980" and inserting in lieu thereof "on or before April 1, 1982".

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,

RICK C. LAVIS,
Acting Assistant Secretary.

DEPARTMENT OF JUSTICE,
Washington, D.C., February 27, 1980.

Hon. GEORGE DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The purpose of this letter is to express the Department of Justice's concerns abo..t section two of S. 2222, a bill to extend the time for commencing actions on behalf of an Indian tribe, band, or group, or on behalf of an individual Indian whose land is held in trust or restricted status.

As passed by the Senate, section one of the bill would extend the statutory period for filing certain lawsuits on behalf of Indian individuals or tribes to recover monetary damages from April 1, 1980, to December 31, 1984. Section two, however would limit the application of section one to only those claims identified by the Secretary of

the Interior and published in the Federal Register by December 31, 1981.

We believe that the requirement of listing the claims in the Federal Register will lead to unnecessary litigation since the Secretary's decision to list, or not to list, a claim will undoubtedly be challenged in court by the party adversely affected by the decision. That is, if a claim is published in the Federal Register, the non-Indian identified in the claim could sue the Secretary under the Administrative Procedures Act, alleging that the Secretary's decision was arbitrary or capricious or otherwise outside the scope of his authority. If the Secretary decides not to publish a particular claim, the Indian or tribe on whose behalf the claim might have been asserted might also sue the Secretary under the Administrative Procedures Act. We do not think these claims would necessarily succeed, but they would undoubtedly occur, creating confusion and unpredictable impacts on later federal suits on the merits.

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In effect, therefore, section two, if enacted, could double the amount of litigation arising from the statute of limitation claims for, with respect to each claim there could be one suit contesting the Secretary's action and then a second suit on the merits of the claim itself.

We believe that section two would result in a waste of the limited resources of the judiciary and therefore recommend that it be deleted from the bill.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ALAN A. PARKER,
Assistant Attorney General.

HOUSE CONFERENCE REPORT NO. 96-843

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[page 3]

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers of the part of the House and the Senate at the Conference on the disagreeing votes of the two Houses on the amendment of the House to the bill S. 2222, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying Conference Report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment. The House amendment differs from the Senate bill in two ways. First, the House extended the date of the [illegible] applicable to contract and tort actions for money

damages which accrued prior to July 18, 1966 and are asserted by the United States on behalf of Indians (28 U.S.C. 2415) to April 1, 1982. The Senate bill extended the statute until December 31, 1984. The Conference Report fixes the new date for the expiration of that statute of limitations at December 31, 1982. The Conferees agreed on this date as it is one that will fairly allow the relevant government agencies time in which to process the Indian claims, but still protect the rights of Indians and landowners as well who will be effected by this legislation.

The Conferees noted that this statute of limitations (28 U.S.C. 2415) bars the United States from bringing an action on behalf of an Indian tribe, band or group for money damages arising from tort or contract where the cause of action accrued prior to July 18, 1966. The Conferees acknowledged that there is a split of opinion on the question as to whether it will bar an Indian tribe, band or group from bringing such an action on their own behalf.

Among the problems described to both the Senate and House committees are those in which there are conflicting surveys which make it difficult to determine land ownership at this time. The conferees recognized that under existing law, the United States is not barred from bringing an action on behalf of an Indian tribe, band or group when facts material to the right of action are not known and reasonably could not be known by an official of the United States charged with the responsibility to act in those circumstances. Thus, it was noted that the statute of limitations described in section 2415 would be tolled in situations where facts material to the right of action were unknown to the United States and impossible to ascertain.

The second difference between the Senate bill and the House amendment thereto is that section two of the Senate bill was struck and new language was inserted in its place by the House amendment. The Senate language would have required that the Secretary of the Interior

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identify all potential claims and publish them in the Federal Register by December 31, 1981. The language of the House amendment requires a report to be submitted to the Congress by the Secretary of the Interior, after consultation with the Attorney General, by June 30, 1981, which details legislative proposals to resolve those Indian claims that they feel are not appropriate to resolve by litigation. The Conference Report adopts the language of the House amendment. This language was agreed to by the Conferees to ensure that these claims are expeditiously and equitably resolved.

GEORGE DANIELSON,
R. L. MAZZOLI,
WILLIAM J. HUGHES,
HERBERT E. HARRIS II,
MICHAEL D. BARNES,
DAN GLICKMAN,
MIKE SYNAR,
CARLOS J. MOORHEAD,
ROBERT MCCLORY,
THOMAS N. KINDNESS,
Managers on the Part of the House.

STATEMENT OF FORREST GERARD, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS OF THE UNITED STATES SENATE OVERSIGHT HEARING, DECEMBER 17, 1979.

Mr. Chairman and Members of the Committee, it is a pleasure to appear before you to discuss matters relating to the statute of limitations claims program. I would like, in my testimony today, to describe the scope of the task, our efforts to carry out the task, and some of the problems we have encountered since the extension was granted in 1977.

I will not burden you with a detailed background of the program. That history has been stated in the various reports relating to previous extensions. It will be helpful, however, to mention some points that may place in proper perspective the situation that we face today.

The program began developing after July 18, 1966, the date the statute of limitations first went into effect. The statute limited to six years the time in which the United States, in carrying out its trust responsibility to Indians, could sue third parties for damages to the property of Indians arising out of tort or contract. In 1972 the six-year limitation was extended five more years, or until July 18, 1977, as to claims which accrued before July 18, 1966, the date of the first act.

In 1977, in testimony before this Committee on the then pending extension bill, we stated that we had identified several hundred pre-1966 claims, and that we anticipated well over a thousand nationwide. We were then given a two-year-and-8-month extension, until April 1, 1980.

For fiscal year 1978, we went as far as we could with existing resources. The Department formulated a comprehensive plan of action during FY 1978 and aggressively sought funds to implement such a plan. Immediately after the extension was granted, work began on the formulation of a claims processing plan and on the preparation of a budget request. By February 1978 the plan was initiated with existing resources at the field level with an intensive training phase. The plan included claims processing procedures, time limits, directions on communication channels, recommended forms, suggested publicity, and improved liaison with the Justice Department. Our plan was put into practice during FY 1978, and while we did process some of our backlog it was clear we needed funding if we were to meet the needs of the claims problem.

Specific funding to implement our statute of limitations claims program was first provided for fiscal year 1979. Just as we were launching our program at the beginning of FY 1979, we were slowed for six months by a hiring freeze. When the thaw came in March it left us with about a year to process a then existing inventory of about a thousand claims. In addition our plans called for an all-out search for unidentified claims and the referral of all worthwhile claims to the Department of Justice no later than November 30, 1979. The reason for the November date was that the Department of Justice needed at least 4 months to prepare and file the claims in court.

The all-out search mentioned above was conducted in the summer of 1979. By the end of the summer we had uncovered a large number of potential claims, over 4,500. The potential claims continued to arrive, and by December 1, 1979, our count of identified potential claims reached a grand total of 9,768. We have illustrated this growth on the attached chart. Our search experience also leads us to believe that another 5,000 or more identifiable claims in the field may not yet be inventoried.

The number of these potential claims resulted in an extension of our Justice Department referral date to December 28, 1979, a move which may cause serious inconvenience to the Justice Department.

We managed to resolve over 2700 of the grand total mentioned above either by rejection or by successful resolution of the claim to the benefit of the Indian claimants. To date we have referred about 100 litigation reports to the Department of Justice covering about 2000 claims. Our Solicitor's office currently has about 2700 claims on hand to complete and the BIA about 2200 such claims. A currently undetermined number of worthwhile claims among our backlog of 4900 claims have little chance of making it to court by April 1, 1980. Included in this number are most of the largest and most difficult claims we have, as well as some that may be invalid or of a minor nature.

Our claims program has affected a significant number of our citizens in this country. In many instances hardships may result as a result of our suits. In many of these same instances we are dealing with regaining title to property

under circumstances in which defendants through no fault of their own are holding by void title. The title issues in these claims are not subject to the statute of limitations as are the tort issues.

Many prospective defendants are Indians. Other prospective defendants are immune from suit, such as Indian tribes and the Federal Government. In some instances defendants are corporate entities. In any case, under the time constraints we face, we are unable to give the vulnerable defendants time to work out amicable settlements.

Adding to this is the fractionated heirship problem, the existence of which has greatly hampered the claims program and is in our view one of the principal causes of the tort claims problem. A great majority of the thousands of Indian claimants are heirs of deceased allottees or trust patentees. We are unable to locate many of them. The United States, of course, has a responsibility to them just as it does to recognized tribes, bands, or groups.

The so-called eastern land claims, like many of the smaller land title cases, have tort damage aspects subject to the statute of limitations. These claims are also included in our claims program. This Committee is well aware of the magnitude of the eastern land claims and the effect such claims are having in the jurisdictions where they may be litigated. We have been attempting to achieve negotiated settlements in a number of these claims, but it is likely that we will not make the April 1 deadline on some of them.

Thus, we are confronted with a physical impossibility in completing the tort claims portion of the claims program before April 1, 1980. For this reason we currently believe a short extension of the statute of limitations on tort claims under 28 U.S.C. 2415(b) may be necessary. We have not yet decided on a specific proposal, but we anticipate doing so. We look forward to working with the Committee and its staff.

There is at least one area of good news in this affair. We are convinced that we have processed all or nearly all of the contract damage claims, and for that reason we recommend that the time limitation in 28 U.S.C. 2415(a) not be extended.

This completes my statement and I will be pleased to respond to questions.

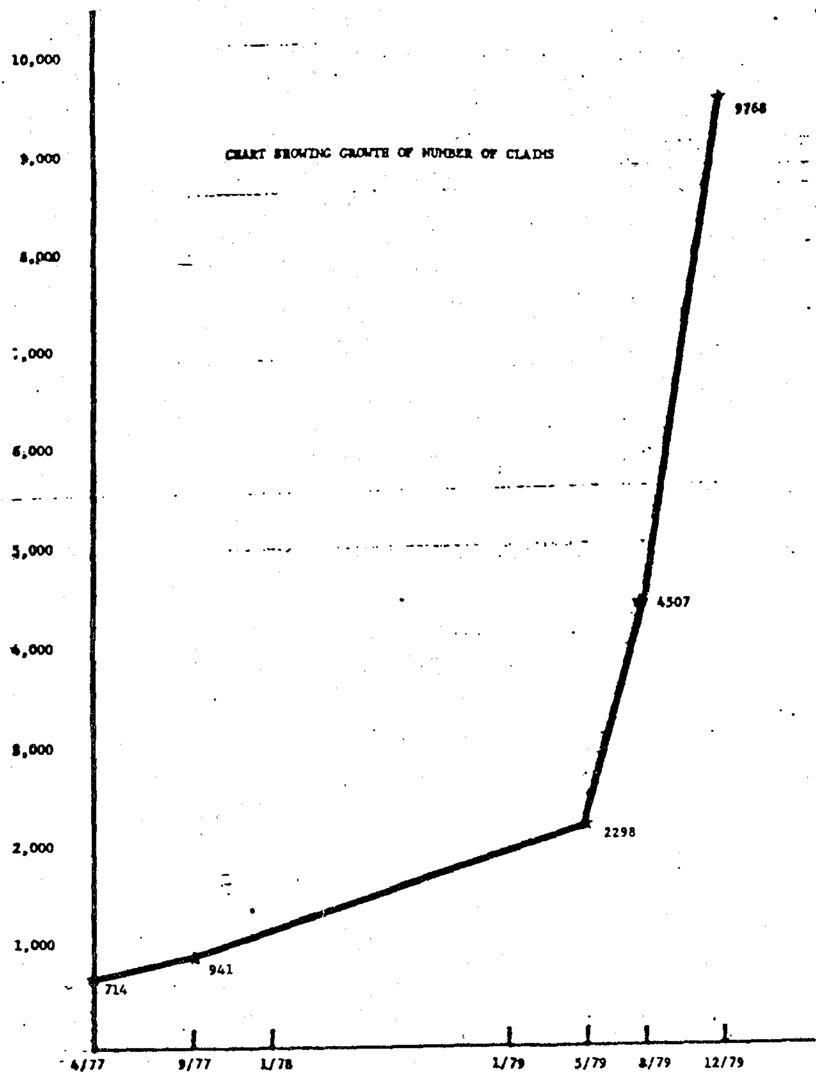
CHART SHOWING GROWTH OF NUMBER OF CLAIMS
10,000
9,000
8,000
7,000
6,000
5,000
4,000
3,000
2,000
1,000
714
941
2298
4507
9768
4/77
9/77
1/78
1/79
5/79
8/79
12/79

Mr. GERARD. Before proceeding, I would like to introduce the others at the table. On my immediate right is Mr. Hans Walker, Acting Associate Solicitor for Indian Affairs. On the far left is Mr. Sam St. Arnold from the Office of Trust Responsibilities in the Bureau of Indian Affairs. On my immediate left is Mr. George Bourgeois who also is with the Office of the Solicitor.

Mr. Chairman, you have already provided background on the statute of limitations and the various extensions. Therefore, I will not cover that, other than to express our pleasure at appearing before the committee today to discuss the statute of limitations claims program.

Today, we will describe the scope of the task, our efforts in fulfilling that task, and some of the problems we have encountered since the last extension was granted in 1977.

Jumping to 1977, Mr. Chairman, at the time this committee considered legislation to authorize another extension, administration witnesses informed the committee that they had identified several hundred pre-1966 claims and that it was their anticipation that well over 1,000 existed nationwide. We have already pointed out that, as a result of congressional action, a 2½-year extension was granted at that time, until April 1, 1980.

I would only say that the net extension to the administration amounted to about 2 years and 4 months since we had to allow Justice 4 months' lag-time to prepare the claims for court once they were referred to them.

Beginning in fiscal year 1977, we went as far as we could to implement the program with existing resources. The Department immediately developed a comprehensive plan, and by February 1978, the plan was initiated. That plan included claims processing procedures, time limits, directions on communications channels, recommended forms, suggested publicity, and improved liaison with the Justice Department. The plan was put into effect at that time, and while we did some processing it was clear that we would need additional funding if the claims program was to move forward.

Specific funding for the statute of limitations claim program was finally provided for fiscal year 1979, but just as we were launching that program a Government-wide employment freeze was handed down, and we lost approximately 6 months before that freeze was lifted. So, when the freeze was lifted, we had approximately 1 year left in which to complete the inventory of the potential claims. An all-out search was then initiated at that time with the understanding that the referral of worthwhile claims would be sent on to the Department of Justice no later than November 30, 1979.

As a result of that all-out search, by the end of last summer we had uncovered over 4,500 potential claims, and as of December 1, 1979, that number had increased to 9,768. As a result of our experience through this intensive search, we believe that there may be another 5,000 or more unidentified claims in the field yet to be inventoried. The number of identified potential claims resulted in an extension of our Justice Department referral date to December 28, 1979, a development that may cause serious inconvenience to the Justice Department, and I am certain they will speak to that point at the time of their testimony.

Looking to the disposition of the various potential claims, we have managed to resolve over 2,700 of the total mentioned above, either by rejection or by a successful resolution of the claim to the benefit of the Indian claimants. To date, we have referred about 100 litigation reports to the Department of Justice covering about 2,000 claims. There are currently 4,900 claims in the system; 2,700 are at the Solicitor's Office level, and about 2,200 are at the Bureau of Indian Affairs level. A currently undetermined number of worthwhile claims among our backlog of the 4,900 claims have little chance of making it to the court by April 1, 1980, and we would point out here that included in this number are most of the largest and most difficult claims before us, including some that may be invalid or of a minor nature.

We appreciate that the claims program has, or will affect a significant number of citizens in this country because, in many cases, we are looking at the prospects of regaining title to property, and many of these individuals—the defendants—through no fault of their own, are holding void titles.

As you pointed out, Mr. Chairman, the title issues in these claims are not subject to the statute of limitations as are the tort issues. Many of the prospective defendants are Indians; others are immune from suit, such as Indian tribes and the Federal Government; and, in many instances, the defendants are corporate entities.

In any event, we feel that, given the time constraints, it is unlikely that we will be able to work with the vulnerable defendants to work out amicable settlements.

Another unique problem should be brought to the committee's attention. This is the heirship problem. As you know, on many of the allotments, if the original allottee has died, the ownership has descended into literally hundreds of individuals. These are potential claimants. We have difficulty locating these individuals, but our responsibility to them is legal and must be met.

Another particular problem that must be addressed is the so-called eastern land claims. Like many of the smaller land claims, these are title cases and have tort damages which are subject to the statute of limitations. The committee is well aware of the magnitude of the eastern land claims and the effect such claims are having in the jurisdictions where they may be litigated. We have been attempting to achieve negotiated settlements in a number of these claims, but it is likely that we will not make the April 1 deadline on some of them.

I think it should be obvious to the committee that we are confronted with the physical impossibility of completing the tort claims portion of the claims program before April 1, 1980. For this reason, we currently believe a short extension of the statute of limitations on tort claims under 28 U.S.C. 2415b may be necessary. We have not yet decided on a specific proposal, but we anticipate doing so. In this connection, we would look forward to working with the committee and the staff.

Mr. Chairman, there is at least one area of good news in this entire affair. We are convinced that we have processed all or nearly all of the contract damage claims, and, for that reason, we recommend that the time limitations in 28 U.S.C. 2415a not be extended.

Mr. Chairman, this completes my statement. The staff and I will be pleased to respond to any questions.

Senator COHEN [acting chairman]. Mr. Gerard, in your judgment, does 28 U.S.C. 2415 apply to suits brought by Indian tribes on their own behalf?

Mr. GERARD. Mr. Chairman, I would like to defer to the Associate Solicitor for Indian Affairs to respond to that, if I may—Mr. Walker.

Mr. WALKER. Mr. Chairman, there is authority for that proposition, but I would not want to say absolutely that that would cut off suits by Indian tribes. I believe there is a good argument that the right of suit by tribes survives the limitation.

Senator COHEN. If the claim by the tribes does not survive the statute of limitations, would there be a suit against the U.S. Government as trustee for failure to carry out a fiduciary obligation, in your judgment?

Mr. WALKER. That is very possible. It would be a breach of the trust obligation to bring an action on their behalf.

Senator COHEN. Let me just say initially that I was in the House of Representatives at the time when this original statute of limitations extension was debated. It was made clear during the course of that debate in the House, and I believe, if you look through the record, you will find a statement by Congressman Udall that the last extension for 2½ years was the final extension—there would be no more. I think there was a rather categorical statement on his behalf that this was the final one.

At that time, as I recall, the information that was given to the House was that there was something in the neighborhood of 1,000 to 1,500 claims left to be processed and those claims would be processed during that 2½-year period. Suddenly, we come toward the end of that period of time, and, according to your testimony, there are some 7,000 cases now that are still being processed or investigated. It seems that the more time that expires the more cases seem to surface.

Mr. GERARD. Mr. Chairman, I believe there are a number of reasons for that. In my view, most of these claims go to history. It appears to be a type of claim that has been either ignored or not dealt with to date.

If I may speak from a personal level, I served on the Senate committee staff back in the seventies and staffed the hearing when the 5-year extension was granted at that time. It seemed to me from the record—and I looked that over again on the weekend—that there was relatively little attention being paid to this type of claim by the administration; there was an acknowledgement that there might be something out there. A panel of witnesses of well-known attorneys representing Indian tribes pointed out that when the original statute was enacted, it was not viewed as an Indian statute, per se; it was a general statute; it went through the Judiciary Committees; it was not exposed to the committees that normally handle Indian affairs.

Also, in that era, I do not believe there was the sharp focus by the public, the Indian community, and, most certainly, the Congress on the whole question of claims. From your own perspective, being from the State of Maine, I know of your interest because of the emergence of the so-called eastern land claims.

It seems also that some of the other Indian legal victories in the area of fishing rights and other Indian rights have brought a renewed focus on the whole question of what are the remaining potential legal claims of Indians throughout the country.

Senator COHEN. If I might interrupt, the renewed focus has served to generate even less tolerance for the statute of limitations. As I recall, Congressman Foley was moving to object to any extension of time. He offered a substitute for Congressman Udall's amendment for a 5-year extension to cut it to 1, as I recall. That is how we happened to end up with the 2½-year extension. The very renewal of focus has served, at least in the House—I cannot speak for the Senate—to cause less enthusiasm for any extensions of time. So, the focus has been there, but the movement for extension has not been.

Let me just go on and ask you a series of questions for the record.

In your letter of November 19, 1979, to this committee, it states that the Department of the Interior had identified 340 pre-1966 cases when the last extension was granted in 1977, and that you had 700 cases in January of this year. Prior to 1979, did the Bureau of Indian Affairs or Interior have any program to specifically identify pre-1966 Indian claims?

Mr. GERARD. Mr. Bourgeois will respond to that.

Mr. BOURGEOIS. As a matter of fact, Senator, there was such a program within existing resources in the Bureau and also in the Solicitor's Office. What was done subsequent to the extension is what is paramount for you to know, I think. That is, a very fine plan was developed based on one that began developing in 1975. The claims process developed in this plan ended up in the BIA manual as 51 BIAM.

The final plan included a calendar plan all the way through April 1, 1980.

The problem came up that the Bureau simply had no way of implementing effectively its plans within existing resources, considering the other duties and programs that the BIA had, but they tried. They disposed of, I think, a couple of hundred cases during that period. They also began running into new cases, and by March 1979, about the time the job freeze was off, we were rather well over that 1,000 cases that the Solicitor anticipated when he testified to before you the last time [1977]. That was in, say, March of this year. By May of this year, when the all-out search started, the thing began to expand.

Senator COHEN. You say you started an all-out search in May 1979?

Mr. BOURGEOIS. I would say that that would be the earliest date we could say we were implemented sufficiently to do it, yes.

Senator COHEN. This was done by an outside contractor?

Mr. BOURGEOIS. In some areas, that is correct—where the trouble spots seemed to be. In other areas, the existing BIA resources were quite adequate. Take Oklahoma, for example.

Senator COHEN. When were these particular contracts let?

Mr. BOURGEOIS. I dare say in May or June—some in May, I think. The Bureau finally got it going in the field around June. Some others were late. In the situation in California especially, the Legal Services Corp. there did not get the contract approved until some time in July, I believe.

Senator COHEN. What was the timeframe in which these contractors are supposed to report?

Mr. BOURGEOIS. Around September. I think some of them varied; the dates and the terms varied; but, roughly, in September. The people in California had an extremely difficult time trying to meet that, but they did produce a work product.

Senator COHEN. They were let in either May or June; the reports came back in September. That raises the question: Why did you wait 2 years, or why did you wait so long before letting the contracts?

Mr. BOURGEOIS. No money.

Senator COHEN. That is the only answer—no money?

Mr. BOURGEOIS. There may be other answers too, Senator. I am not saying that is the only reason. That is probably the primary reason. There are other reasons. For example, it was difficult to assess the extent of the problem. You can hear stories that there are thousands upon thousands of claims out in the misty mountains. On the other hand, we knew of about 1,000, but we also knew there might be more. We did have people who were trying to tell us. We also had problems with BIA records. We had claims that had frankly grown stale, and to dig them up took a lot more effort than if you were trying to find current claims. We have gone to the extent, even, of hiring historians because we have found that their assistance has been instrumental in helping to solve some of these problems. They are experts on the content, condition, and location of Bureau records.

BIA records are stored all over creation. Some of them are not in very usable condition.

Senator COHEN. You knew in 1977 that you had a 2½-year timeframe, and you didn't begin this kind of search until May or June 1977. It seems to me that you could practically predict what the consequences were going to be. If you wait 2 years and you do not have money, it seems to me you have a responsibility to come before the committee and say, "We can't carry out this mandate to finish these claims in 2½ years because we simply don't have the resources."

Mr. GERARD. Senator, If I may add to that point, given the manner in which the Federal budget is put together, in something of an 18-month period of time, there was no way that one could anticipate that the legislation was going to go through.

Also, for the record, we should point out that we did utilize some existing resources in trying to get this program off the ground as quickly as possible. In order to build a budget into the system, it took time and ate up valuable extension time that Congress had authorized.

Senator COHEN. When you use the word, "claims," do you use that as being synonymous with "case"? Are there many claims within one case, or are they separate and distinct?

Mr. WALKER. There is a distinction. One case may involve up to several thousand claims.

Senator COHEN. So, when you say there are 7,000 claims, that you are aware of, still outstanding, that may involve a much smaller number of cases?

Mr. WALKER. That is right.

Senator COHEN. How many cases—if we can use that term—do you think are outstanding now?

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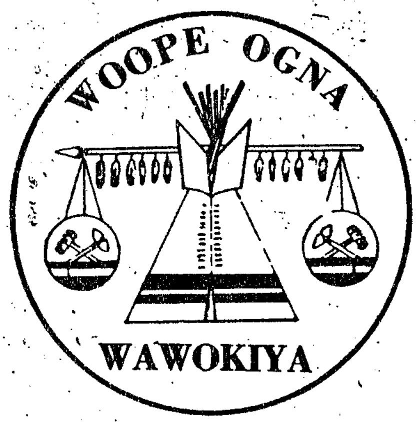
POSTAL PATRON

Nonprofit Organization
U. S. POSTAGE
PAID
Mission, S. Dak.
PERMIT NO. 1



S. D. Legal Services NEWSLETTER

Mission
Box 727
856-4444

Eagle Butte
Box 500
964-2175

Sisseton
Box 250
698-3971

Batesland
Box 564
288-1890

Ft. Thompson
Box 658
245-2341 or 2342

Timber Lake
Box 412
865-3529

McLaughlin
Box G
823-4555

Wagner
Box 388
384-5578

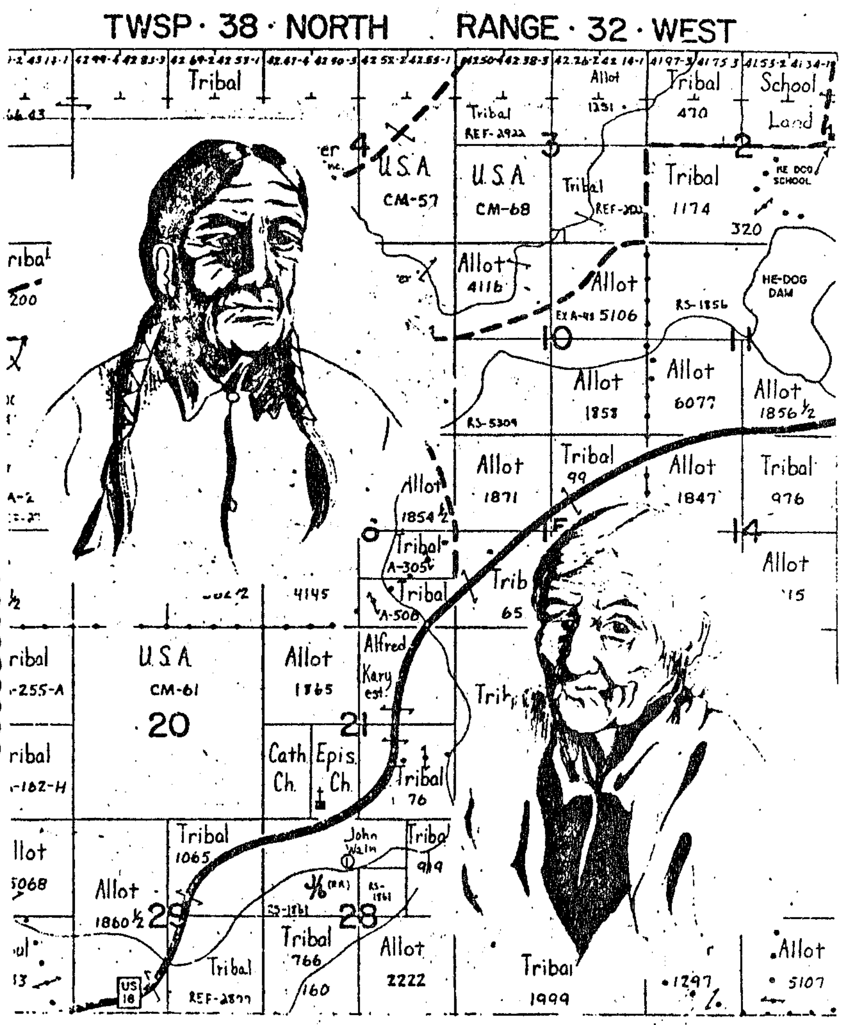
April 1979

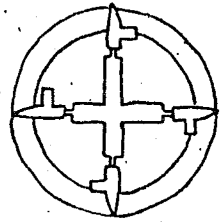
Last chance to file for Indian 2415 claims compensation!!

Urgent request to Indian elders & communities !!!

SOUTH DAKOTA LEGAL SERVICES and the Bureau of Indian Affairs, is making an appeal to reservation people and elders to remember property rights violations which may have been committed against their families, friends or neighbors. SDLS stresses the urgency of the matter as far as time is concerned. Although the statute expires in April 1980, landowners should file claims by August 1, 1979, which is JUST FOUR SHORT MONTHS AWAY!!

IF you or your community wish to learn more about the claims which must be filed before the Statute expires on April 1, 1980, contact your nearest South Dakota Legal Services Branch Office, if you live in South Dakota or your local BIA 2415 claims coordinator if you live in Nebraska or North Dakota. **See Important Information Inside!!**





Claims should be filed by Aug. 1, 1979

"Prepared under contract with the Bureau of Indian Affairs"

APPENDIX 5

Time is running out for Indian landowners & tribes to recover damages upon Indian claims

The United States has authority to sue to recover money damages on behalf of Indian tribes and individual Indians when Indian property rights have been harmed. It has this authority by virtue of its trust responsibility to protect Indian lands, i.e., lands held in trust for tribes or individuals by the U.S. Government.

However, Congress has placed a time limit (Statute of Limitations 28 USC 2415) after which the United States cannot bring lawsuits to recover damages to property that took place on or before July 18, 1966. Such claims will be barred unless the U.S. files suit prior to April 1, 1980. In order to do this, government lawyers must learn about potential claims before August 1, 1979, so that they can properly research the law & facts of each case and decide which claims should be filed in court.

This time limit applies to all claims arising on or before July 18, 1966:

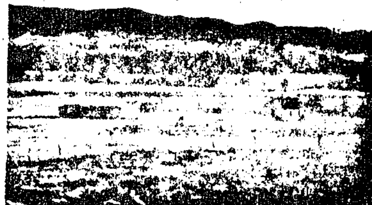
A. FOR THE UNAUTHORIZED USE OF INDIAN PROPERTY:

"A road was put through my land without my permission."

B. FOR THE USE OR SALE OF INDIAN PROPERTY UNDER AN AGREEMENT OR DOCUMENT WHICH WAS NOT ISSUED IN ACCORD WITH EXISTING LAWS AND REGULATIONS:

"The land my brothers and I inherited from my father was sold with their permission but not mine."

"My grandfather never applied for a fee patent, but his land was taken out of trust and later sold for taxes."



C. FOR DAMAGE TO INDIAN PROPERTY IN USING IT:

"Grandmother's land was overgrazed by her renter."

D. FOR THE USE OF PROPERTY IN A MANNER OTHER THAN WHAT WAS AGREED UPON:

"Joe leased his land out for grazing only, and his renter cut his hay and sold it without telling him."

E. FAILURE TO ADHERE TO THE TERMS OF A VALID CONTRACT:

"My renter did not live up to the terms of our lease, but I didn't have money for a lawyer."

For purposes of this time limit, claims cannot be against the U.S. or an officer or agent of the federal government. Claims can be against individuals, private companies, states, counties, cities or tribes.

If you are an Indian landowner or tribal organization and have experienced such violations of your property rights or know of such violations to the Indian lands of others, report it to your BIA agency office or the Aberdeen Area Office using the following claim form. If you live or have land in South Dakota, you can also report claims to your nearest South Dakota Legal Services branch office. Legal Services summer interns will be researching claims for filing.

Search your records and your memories now! At this late date the BIA will not be able to find all potential claims on its own. **All pre-July 18, 1966 claims will be forever barred from litigation after April 1, 1980.**

The claims process

When you report your claim to your local BIA agency office, the Aberdeen Area Office, or South Dakota Legal Services, staff of these agencies will attempt to gather as much material as possible to accompany your claim to the Solicitor's Office.

I. For each and every land related claim, including contract breach claims where the contract involved use of land or personal property located on land, the following will be necessary:

1. Land description.
2. Title history from Bureau records, including applicable treaties and any of the following which exist: trust patent, restricted fee patent, fee patent, certificate of competency, application for fee patent or certificate of competency, deeds, leases, easements. To the extent possible, copies of relevant documents must be provided. At a bare minimum, precise dates, names and a concise description of the documents must be provided.
3. Title history from county records, preferably by means of an abstract, unless the trespass is in the nature of a boundary encroachment, in which case an abstract on the adjacent parcel in the direction of the encroachment should be provided. This need only extend back to the date of the initial trespass.
4. Specific date or dates on which trespass took place.
5. Names and addresses of all persons thought to be responsible for the trespass.
6. Names and addresses of all persons though to have witnessed all or any portion of the trespass, including the investigator.
7. Educated guess as to the fair market value of the portion of land used or occupied for each year of use. A full appraisal will be needed prior to trial, but it is not necessary at the time of filing.
8. Educated guess as to the cost of restoring the land to its original condition. A full appraisal will be needed prior to trial, but it is not necessary at the time of filing.
9. Narrative description of the claim.

II. For each contract claim, the following will be necessary:

1. Copy of the contract, lease or other agreement.
2. Addresses of the persons named in the contract and names and addresses of anyone else involved.
3. Detail of payment or payments which were received, if any.
4. Copies of all correspondence, either from Bureau records or tribal or individual records, relating to the contract and payments made thereunder.
5. Description, including names, addresses, dates, places, etc., of any damage resulting from breach of the contract, including an educated guess as to monetary value of the damage.
6. Narrative description of the claim.

2415 claims investigation: issues for investigation

I. THE FOLLOWING TYPES OF UNAUTHORIZED USES, IF THEY TOOK PLACE PRIOR TO 1966, MAY CONSTITUTE CLAIMS:

1. PLACING A STRUCTURE ON THE PROPERTY. This includes summer homes, barns, garages, chicken coops, duck blinds, or any other building, and less permanent structures, too. It also includes non-buildings -- fences, drain tiles, etc. The building, fence, etc. need not be entirely on the land -- only a few inches is a trespass, if you are sure where the boundary is.

2. GRAZING. Cattle are the most common, but horses, sheep, goats, etc. should be watched for. Grazing trespasses are frequently accompanied by other types of trespasses, such as placing of fences, destroying fences already in place and even raising of forage crops.

3. RAISING CROPS. Using trust or restricted lands for the raising and harvesting of crops of any kind without permission is a trespass. Again, the entire parcel need not be so used. If just a corner is used, it is still a trespass.

4. HARVESTING NATURAL GROWTH. This includes harvesting hay, wild berries, or other wild growth, as well as cutting timber, collecting felled timber or even firewood.

5. REMOVAL OF NATURAL RESOURCES. Mining, quarrying sand, gravel or stone, etc. would be trespasses. While there may be an instance or two where large operations took place on a tract, it is more likely that these would take the form of spill-overs to trust or restricted properties from adjacent fee tracts.

6. RIGHT OF WAY. Roads, even though they may have been used for 50 or 100 years, are nevertheless trespassory if easements were never granted. Likewise telephone lines, electrical lines, pipelines, sewers, etc.

7. HUNTING, FISHING OR TRAPPING. In addition to constituting a criminal violation, hunting, fishing or trapping on trust or restricted lands without permission is trespass. These would be very difficult to establish, however, so it is unlikely that any old cases of this type will be located.

II. DAMAGE TO PROPERTY. DAMAGE TO REAL PROPERTY OR PERSONAL PROPERTY WHICH OCCURRED PRIOR TO 1966 MAY BE VALID CLAIMS.

1. FIRES. Fires, whether set on the property or set elsewhere and allowed to burn onto the property are trespassory if a human agent can be established as the cause. Fires caused by lightning or "acts of God" are not included.

2. FLOODING. Flooding, like fires, can be claimed if someone caused it -- by damming a stream, by draining adjacent land onto trust or restricted lands, by changing the configuration of adjacent land so that water backs up onto trust or restricted lands. Floods caused by natural causes are not included.

3. EXCAVATING, DREDGING OR FILLING. This includes depositing fill in marshes, lakes, rivers, etc. or anywhere else on the land, or the deposit of anything -- garbage, used cars, refuse of any kind. Excavating areas or dredging soil from marshes, rivers, streams or lakes as well as construction of drainage ditches or canals is also included.

4. DAMAGE TO STRUCTURES OR PERSONAL PROPERTY. This includes fires, floods, vandalism, using personal property, such as machinery or equipment, in an improper or unauthorized manner resulting in more rapid depreciation than otherwise would occur.

III. DEBTS. MONEY WHICH WAS DUE OR BECAME OWING BEFORE 1966 MAY CONSTITUTE A CLAIM.

1. FEES, RENTALS OR PAYMENTS DUE ON CONTRACTS. This includes rents not paid for lease of trust or restricted lands, fees for other types of land use, crop share payments, timber fees, mineral royalties -- any payments specified in contracts of any kind. It also includes purchase consideration for trust or restricted property sold, if all or part of the purchase price was not received. Amounts paid from the proceeds of sale to third persons in satisfaction of liens, such as Old Age Assistance (County Poor Relief) Liens, when the liens never validly attached to the lands, should be considered.

2. CONTRACT BREACH. Damages for failure to perform the terms of any lease, contract or agreement, for doing or causing to be done any acts prohibited by a lease, contract or agreement, or misperforming any such obligation should be recovered. The terms of the document itself may spell out the amounts of money due in the event of breach. If not, the amount will need to be determined by what the actual damage or loss was.

IV. HOLDING OR CLAIMING TITLE THROUGH IMPROPER ACQUISITIONS. THE FOLLOWING METHODS OF ACQUIRING TITLE TO TRUST LANDS ARE IMPROPER AND, IN MANY CASES THE TITLE TO THE LANDS CAN BE RECOVERED. RECOVERY OF SUCH LANDS WILL NOT BE BARRED IN 1980, BUT CLAIMS CAN BE MADE FOR PREVENTING THE RIGHTFUL OWNERS FROM OCCUPYING THE LAND, AND THESE CLAIMS WILL BE BARRED IF NOT FILED PRIOR TO 1980.

1. TAX DEEDS IMPROPERLY ISSUED WHILE THE ALLOTMENT WAS STILL IN TRUST OR RESTRICTED STATUS FOLLOWING:

a. FORCED FEE PATENT. Where fee patents were issued to allottees or heirs without application and prior to expiration of the trust period, and the lands were then taxed and forfeited. In order to be actionable, the original trust period must extend or have been extended beyond June 18, 1934, and the allottee must never have sold the land. The lands need to be recovered as well as damages.

b. INEFFECTIVE CERTIFICATE OF COMPETENCY. Certificates of competency which were not effective did not lift the restrictions on alienation, and the allotments should be treated as though the certificates had never been issued. Again, in order to recover the land, the period of restrictions must extend or have been extended beyond June 18, 1934, and the lands must not have been sold by the allottee or his heirs. The following certificates were ineffective:

(1) Certificate to a person deceased on the date of issuance.

(2) Certificate issued with a deferred effective date (30 days from issuance or upon recording in the county where the land is located or 30 days after recording) where the person died prior to the effective date.

(3) Certificate for which there was no application.

c. NONE OF THE ABOVE. Where there was no forced fee patent or ineffective certificate of competency, but the land nevertheless was taxed and forfeited, and the trust or restricted period is still in effect, the land must be recovered in addition to use and damage recovery.

(Cont. on page 4)

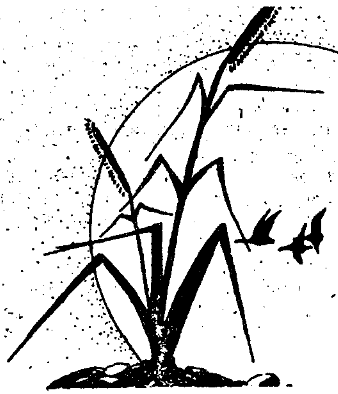
(2415 claims concl.)

2. UNAPPROVED DEED FROM THE ALLOTTEE OR HEIRS. If a deed was executed by the allottee or heirs during the trust or restricted period without the necessary approval, the land should be recovered unless the trust or restricted period has since expired. In any event, damages should be recovered for use during the trust or restricted period however extensive.

3. DEED OR A STATE QUIET TITLE ACTION BASED ON ALLEGED ADVERSE POSSESSION WHILE THE LAND WAS IN TRUST OR RESTRICTED STATUS.

4. DEED OR PATENT FROM THE UNITED STATES WITHOUT CONSENT OF ALL BENEFICIAL OWNERS.

5. SWAMP LAND OR SCHOOL LAND SELECTIONS ILLEGALLY OR ERRONEOUSLY MADE. Title to state selections for schools lands and swamp lands has already been litigated on some reservations. On those where it has not, the validity of these selections must be determined, and if invalid, the lands plus damages must be recovered.



NOTICE TO APPLICANTS FOR STATE TAX REFUND FOR ELDERLY-DISABLED PERSONS

Legal Services has been advised by the State Dept. of Revenue and Taxation that NO CHECKS will be mailed to applicants for the state tax refund for elderly-disabled persons until MAY 1st. It is uncertain at this point whether the Legislature has appropriated enough money to cover the refunds to all eligible applicants, and there is no way of knowing until all applicants have filed by the May 1st deadline. If enough money hasn't been appropriated, it may be necessary to probate available funds.

VEP starts hotline for veterans

The Veterans Education Project has opened a nationwide hotline to help veterans take advantage of a new law which makes it easier to change many less-than-honorable discharges. V.E.P., a non-profit clearinghouse in Washington, D.C., employs its referral list of more than 2,000 counselors and attorneys to help veterans contact someone in their community who can assist in the preparation required to get reconsideration of an unfavorable discharge. V.E.P. provides this free, confidential service to anyone who calls (202) 466-2244, or write to: VETERANS EDUCATION PROJECT, Room 610, 1346 Connecticut Ave., N.W.

"The new law, P.L. 95-126, makes the application process easier for many veterans by suspending the 15-year statute of limitations of the Discharge Review Boards and allowing many former servicemembers to reapply, even though they were turned down on previous applications," said Keith Snyder, V.E.P.'s coordinator. "But these new procedures will end on January 1, 1980, and the government has done very little to publicize them. Our goal is to make veterans aware of their rights to challenge their bad discharges, and of the growing chances of success."

Requests for discharge upgrading have been more successful since early 1977, when a class-action suit forced the Discharge Review Boards to state clearly the reasons for their actions and to make them public. Before that time the boards often would give no explanation, even to the veteran. V.E.P. now keeps track of these decisions so that veterans and their representatives will know which arguments and cases are more likely to win.

V.E.P. also publishes memos to help veterans, counselors and lawyers in applying for an upgraded discharge. One memo details the Army's recent agreement to review any less-than-fully honorable discharge given to a soldier for "personality disorders." More than 47,500 of these stigmatizing discharges were given in the 1968-75 period although frequently the soldier was never diagnosed by a psychiatrist. Another memo tells how to benefit from the services' new policy of giving fully-honorable discharges to homosexuals whose performance of duty is satisfactory.

Veterans who have anything but a fully-honorable discharge often face job discrimination and risk losing veterans' benefits. About three million veterans have these discharges, which are colloquially known as "bad paper."

"This isn't just a problem of the Vietnam vet. About 14 percent of veterans discharged last year were given bad paper," Mr. Snyder explained. "Less-than-honorable discharges can be given for a variety of reasons, from poor attitude to homosexual tendencies. Because these discharges usually are 'administrative' the servicemen has few legal protections.

This new program offers a brief opportunity -- only through 1979 -- for veterans to remedy the unfairness of their discharges."

Contact Barbara K. Bordeaux, Legal Asst., SD Legal Services, Box 727, Mission, SD 57555.

Contact persons for each agency

The following have been designated as the contact person at each agency in this area to coordinate the processing of claims.

Wilford Ashton, Realty Officer, Cheyenne River Agency, Eagle Butte, South Dakota 57625
Phone No. (605) 964-6200

Carol Walking Bull, Realty Specialist, Crow Creek Agency, Fort Thompson, South Dakota 57339
Phone No. (605) 245-2311

Gordon Jones, Field Representative, Flandreau Field Office, Flandreau, South Dakota 57028
Phone No. (605) 997-2451

Ben Kirkaldie, Resource Development Officer, Fort Berthold Agency, New Town, North Dakota 58763
Phone No. (701) 627-4706

Kenneth M. Bajema, Soil Conservationist, Fort Totten Agency, Devils Lake, North Dakota 58335
Phone No. (701) 766-4252

Joyce Estes, Administrative Manager, Lower Brule Agency, Lower Brule, South Dakota 57548
Phone No. (605) 473-5511

Eugene DeCora, Realty Officer, Winnebago Agency, Winnebago, Nebr. 68071
Phone No. (402) 878-2201

Edmund Sand, Economic Development Officer, Rosebud Agency, Rosebud, South Dakota 57570
Phone No. (605) 747-2260 or 747-2224

Marvin Olson, Superintendent, Sisseton Agency, Sisseton, South Dakota 57262
South Dakota 57262
Phone No. (605) 698-7676

Mary Louise Wilson, Land Operations, Standing Rock Agency, Fort Yates, North Dakota 58538
Phone No. (605) 854-3431

Clara Marcellais, Realty Officer, Turtle Mountain Agency, Belcourt, North Dakota 58316
Phone No. (701) 477-3136

Alice Stomley, Realty Officer, Pine Ridge Agency, Pine Ridge, South Dakota 57770
Phone No. (605) 867-5121 Ext. 250

Leo O'Connor, Superintendent, Yankton Agency, Wagner, South Dakota 57380
Phone No. (605) 384-3651

Joe Brewer is the area office coordinator in Aberdeen, S.D.

South Dakota Legal Services Offices are also available for assistance.

NOTICE

Time Limit for United States to File Suits to
Recover Money Damages Upon Indian Claims

(28 U.S.C. § 2415)

SCOPE OF CLAIMS BARRED BY STATUTE

Congress has enacted a statute of limitations establishing a time limit after which the United States is forever barred from commencing a lawsuit to recover money damages on behalf of Indian tribes, bands or groups of American Indians or individual Indians whose lands are held in trust or restricted status. Where the acts, transactions or occurrences upon which the claim for money damages is based took place on or before July 18, 1966, the claim will be barred unless the United States files suit prior to April 1, 1980. If the events took place after July 18, 1966, the United States will be barred from commencing such a suit unless the suit is filed six years and ninety days following the time the right to sue first existed.

The statute applies to all cases where the United States has authority to sue to recover money damages on behalf of an Indian tribe or individual Indian by virtue of its trust responsibility to protect Indian property rights. It applies to causes of action arising out of a legally wrongful act or omission or the breach of a contractual obligation. In other words, claims (a) for the unauthorized use of Indian property, (b) for the use, occupation or alienation of Indian property under an agreement which was not finalized in accord with applicable rules and regulations, (c) for the damage to Indian property in the course of using it, (d) for the use of the property in a manner other than what was agreed upon and (3) failure to adhere to the terms of a valid contract. To establish a claim subject

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to this statute, it will be necessary to define the specific Indian property rights which have been damaged and decide whether they are protected by federal law.

As trustee for the Indian people, the Department of the Interior wants to locate and process as many pre-1966 claims as possible before the April 1, 1980 deadline. The Department, therefore, urgently requests the assistance of tribal organizations and individual Indians by asking that they examine their own records and report any possible claims to their Bureau of Indian Affairs agency or the area office.

We request that even if you are uncertain as to whether a claim is valid or is subject to the April 1, 1980 statute of limitations, you should still report it to your Bureau of Indian Affairs agency office or area office and they will in turn determine with the advice of the Solicitor's Office whether this is a claim which the United States should file and whether it is one which should be filed by April 1, 1980.

Please submit all claims by December 1, 1978. Early submission of claims will allow the Department enough time to perform the legal analysis, look for all relevant facts and documents and then decide the correct disposition of the claims.

The following discussion may help you better understand the kinds of claims with which we are concerned at this point:

TYPES OF CLAIMS BARRED BY STATUTE

A. Claims for damages due to unauthorized occupancy or incorrect use of tribal or individually held lands or for the use or removal of its Natural Resources (Trespass)

1. Damages resulting from wrongful occupancy or use of tribal or allotted lands. For example, occupancy of Indian lands by a person, building, livestock, fencing, or other improvements without lawful authority. Such cases may arise as a result of boundary disputes, or occupancy and use of such lands by another person who claimed ownership of the Indian land after those lands were illegally taken from the Indians for non-payment of state taxes, or occupancy or use of Indian lands that were sold or leased by the Indian owner, but without the United States' approval of the sale or lease.
2. Damages to tribal or allotted lands or natural resources resulting from fire.
3. Damages resulting from the removal of natural resources from tribal or allotted lands. For example, unauthorized removal of sand, gravel, timber or other minerals.
4. Damages resulting from the wrongful appropriation of or interference with federally protected Indian water rights.

B. Claims for damages due to the wrongful possession or use of tribal or individual personal property if such personal property is protected by federal government. (Conversion)

Damages resulting from wrongfully depriving an Indian owner of the possession or use of personal property which is protected by federal law. For example, the wrongful removal of felled timber (logs) from Indian lands. While

conversion of personal property can fall within the statute, damage to land and natural resources should be the focus of this effort.

C. Claims for damages due to the non-performance of a contractual obligation relating to federally protected tribal or individual property. (Contract)

1. Damages resulting from breach of a contract, for example, use of Indian property contrary to contract provision, such as surface damage resulting from mining operations, or use of a right-of-way in a manner that has not been agreed to in the contract.

2. Damages resulting from breach of a lease, for example, non-payment of rent by a tenant or use of the land contrary to lease provision.

3. Damages resulting from breach of a permit to use federally protected property.

The foregoing categories and types of claims do not indicate all claims that are subject to the statute. We must emphasize that each and every claim will have to be evaluated by the Department on an individual basis to determine if it is a valid claim, if it is a claim that should be brought by the United States and if it is a claim that is subject to the April 1, 1980 deadline. Finally, this statute does not apply to any claim which Indians may have against the United States or an officer thereof.

Again, we wish to emphasize that the Department hopes to fulfill its duty to the Indian people by the processing of all valid claims. Because of the short time period remaining under this statute, the United States Department of the Interior will be better able to fulfill its goal

if tribes give as much assistance as possible by conducting a careful review of records and files within their possession, by maintaining close contact with individual members of tribes, explaining the statute and encouraging individuals to submit their claims at an early date and finally, by working closely with the Bureau of Indian Affairs area and agency offices.

DRAFT INTAKE FORM FOR AGENCY USE

Submit by December 1, 1978

1. Name:

2. Address:

3. Phone:

4. Tribe:

5. Are you an enrolled member?

6. Do you have a complaint against another person or corporation for their using your land, water or other property such as timber, or minerals, without your permission?

7. Has any such person or corporation used the property, with your permission, but in a way that has caused damage to your property?

8. If the answer to number 6 or number 7 is "yes", please describe your complaint:

9. Has any such person or corporation used the property upon the condition that you be paid for that use and then failed to pay you? If so, how much are you owed?

10. Can you give a legal description of your land:

    a. Is it tribal ________, a trust allotment ________, or privately owned ________?

    b. What is the allotment number?

    c. Who was the original allottee? What is your share? Are you the sole owner? If not, who are the other owners?

11. What is the name and address of the person or corporation against whom you have this complaint?

12. During what year or years did these things happen?

13. Have you filed a complaint about this, with the B.I.A., in the past?

14. a. Do you lease your land?_______________

    b. To whom?______________________________

    c. Has the lessee paid you all amounts of money that are due under the lease agreement?______________

    d. If no, how much do they owe you?___________

15. a. Do you pay taxes on your trust allotment?_________________

    b. Has your trust allotment been taken for nonpayment of taxes?___________

    c. If so, when was it taken, by whom and where was the land?______________

Signature of person giving information

Signature of person filing out form

(FROM PRESIDENT'S BUDGET PROPOSAL JUSTIFYING APPROPRIATION ESTIMATES FOR FISCAL YEAR 1983, U.S. DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS, SUBMITTED TO APPROPRIATIONS COMMITTEES January-February 1982)

Justification of Program and Performance

Activity: Trust Responsibilities
Subactivity: Indian Rights Protection

(Dollar Amounts in Thousands)

		1982 Appropriation Enacted to Date	FY 1983 Base	FY 1983 Estimate	Inc. (+) or Dec. (-)
A. Environmental Quality	($)	1,189	1,193	1,165	-28
	(FTE-T)	(22)	(22)	(22)	(—)
B. Indian Rights Protection	($)	17,327	17,276	17,083	-193
	(FTE-T)	(86)	(86)	(70)	(-16)
Total Requirements	($)	18,516	18,469	18,248	-221
	(FTE-T)	(108)	(108)	(92)	(-16)
Distribution:					
Tribe/Agency Operations	($)	1,624	1,672	2,032	+360
638 Pay Cost	($)	—	—	17	+17
Area Offices Operations	($)	4,692	4,770	4,172	-598
Central Office Staff Operations	($)	972	799	777	-22
Other Trust Responsibilities Programs:					
Archeological Clearances	($)	278	278	300	+22
Statute of Limitations	($)	3,000	3,000	2,000	-1,000
All Other Rights Protection	($)	4,800	4,800	4,800	—
Alaska Lands Act	($)	2,150	2,150	3,150	+1,000
ANCSA Cemetery/Historical Sites	($)	1,000	1,000	1,000	—

Environmental Quality Services

Authorization: 25 U.S.C. 13 (The Snyder Act of November 2, 1921) is the basic authority under which the Secretary provides services to federally recognized Indians.

42 U.S.C. 4321, et. seq. This is the National Environmental Policy Act (NEPA) which establishes policy and goals for the Federal Government to fulfill "The responsibilities of each generation as trustee of the environment for succeeding generations." In order to achieve this policy, NEPA establishes the procedural requirement that all major federal actions significantly affecting the quality of the human environment be preceded by an environmental impact statement.

16 U.S.C. 470 et. seq. and 16 U.S.C 470aa et. seq. The National Historic Preservation Act and the Archeological Resources Protection Act establish national policy for the management and protection of cultural resources.

Objectives: The objectives of the Environmental Quality program are: (1) to ensure that proposed Bureau actions affecting the environment comply with NEPA and other acts of Congress regarding cultural resources and specific aspects of environmental quality; and (2) to review the proposed actions of other Federal agencies as part of the NEPA process to ensure that potential impacts on Indian lands and people are adequately considered. Other activities which are critical to the environmental function involve air and water pollution abatement, pesticide management, hazardous materials management, cultural and archeological preservation and acid rain investigations.

Base Program: The problems being addressed are basically those which have been recognized by Congress in enacting legislation for environmental protection and cultural resources management.

NEPA and various other acts such as the National Historic and Preservation Act, Fish and Wildlife Coordination Act and the Archeological Resources Protection Act require the examination of proposed actions on Indian lands to determine if they may affect the quality of the human environment or resources which are protected by specific statutes. These activities include; coal mines, oil and gas exploration, uranium mining, timber harvesting, and other surface disturbing activities. When the examination or assessment indicates a significant impact, then an environmental impact statement (EIS) will be prepared to insure that the Indian people and Bureau officials are aware of impacts on the environment, the resources, tribal cultural heritage and social welfare.

The relationship between Environmental Quality and the other programs is that other programs initiate or receive proposals which may affect the environment, and the Environmental Quality program coordinates compliance with NEPA and other environmental laws. The Environmental Quality program also includes the coordination of activities regarding cultural resources, Clean Water Act, Clean Air Act, Endangered Species Act, Toxic Substances Control Act, other laws or regulations concerning the environment, and environmental issues whi may not be addressed by existing law.

In complying with NEPA and other environmental laws, the Environmental Services Staff works quickly to determine which laws apply and the most efficient ways of obtaining compliances. As far as NEPA documents are concerned, action begins as soon as the project is defined. Schedules are set up and maintained to the maximum extent possible. Any problems that arise are quickly and thoroughly investigated and solutions are identified. It is the aim of the Environmental Services Staff to complete the documents as rapidly and accurately as possible in order that the decision maker may have the maximum amount of time and the best information available in order to make an informed decision. This

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philosophy has been working very well as the EIS(s) and EA(s) of the past few years have been completed very close to schedule. This includes large projects such as the Mt. Tolman Mining Project and smaller projects such as oil and gas leases for the Northern Cheyenne.

An important part of the Environmental Quality program is the review, commenting on, and dissemination of environmental impact statements prepared by other agencies to insure that the Indian people are aware of the proposed actions and the impacts that may affect them, and that their concerns are considered.

The Archeological Clearance Program is designed to examine areas on trust or federal lands being considered for construction or modification and to identify significant historic, archeological or scientific features, sites or data that may be present. If any of these features are found, measures are outlined to preserve, maintain or salvage the resources involved. These plans are also made available to the tribes.

Environmental program funds are used for personnel and support services at the Area level and the Central Office. Where staff are not available, we contract with private consulting firms for resource investigations leading to reports, preparation of assessments, and statements necessary to attain the objectives and goals of the program. The funds which are requested for the tribe/agency level are for such contracts, environmental assessments, archeological surveys, and water quality monitoring.

Of the twenty-two FTE for environmental services, 5 are located at the Central Office and 17 at the area offices. Not all environmental work is accomplished by these personnel. Efforts by staff of other programs (minerals, forestry, real estate, etc.) are required in environmental examinations and reviews. Funds for those activities are provided by those programs, In addition, there are major environmental assessments or impact statements which must be contracted for. Funds for those are not included here, because of uncertainty of total fund needs and timing. Funds for those are sought through supplementals, by use of related program funds, or by reprogramming requests.

Workload Data:

	FY 1981	FY 1982	FY 1983
Environmental Examinations	45,500	51,600	52,500
" Assessments	700	700	730
" Impact Statements	6	2	6
" Reviews	420	420	450

Environmental examinations, assessments and reviews are routine in nature. Impact statements, however, are not routine and could be required at any time. They are usually a result of mineral development on reservations and are required before any leases to commence work can be authorized.

The EIS's which are listed above for FY 1982 are projections of what may be required. The projects are the reclamation of the Jackpile Uranium Mines ($175,000) and the Hoopa River fishery controversy ($200,000). The increase in number of EIS's in 1983 is in anticipation of increased oil and gas activity.

Decrease for FY 1983:

(Dollar Amounts in Thousands)

		1983 Base	1983 Estimate	Decrease
Environmental Quality	($) (FTE-T)	1,193 (22)	1,165 (22)	-28 (---)
Distribution:				
Tribe/Agency Operations	($)	28	22	-6
Area Office Operations	($)	674	652	-22
Central Office Staff Operations	($)	213	191	-22
Other Trust Responsibilities Programs:				
Archeological Clearances	($)	278	300	22

The net decrease of $28,000 is the result of adjustments in tribe/agency, area and Central Office priorities. This includes a reduction in personnel services and related operating expenses including travel.

Indian Rights Protection

Authorization: 25 U.S.C. 13 (the Snyder Act of November 2, 1921) is the basic authority under which the Secretary provides services to federally recognized Indians.

28 U.S.C. 2415 (Statute of Limitations) provides that the United States initiate claims for money damages in behalf of a recognized tribe, band or group of American Indians. This section also allows for similar actions for or on behalf of an individual whose land is held in trust or restricted status.

P.L. 96-487 provides for subsistence protection for Alaska Natives, conveyance of title to Alaska Native allotment applicants, and economic development grants to Native groups.

The Alaska Native Claims Settlement Act, P.L. 92-203, provides for the investigation and certification of cemetery sites and historical places and their transfer to Native Regional Corporations.

Objectives: To preserve the resources and protect those rights which the United States guaranteed the various federally recognized Indian tribes through treaty, statute or executive order. In performing its responsibilities, the Bureau of Indian Affairs must meet whatever challenges may occur and initiate action necessary for the protection and continued viability of those rights. To provide for tribes the financial ability to become involved through legal or legislative advocacy; to address all unresolved issues; i.e., water rights, fishing and hunting rights, and to bring potentially contesting parties together on a broad scale to consider Indian rights issues and seek areas of common interests and goals.

Base Program: Indian tribes are vitally interested in preventing the erosion of their rights. In addition to the Bureau of Indian Affairs, the Department of Interior Solicitor, and the Department of Justice both have key roles in rights protection. The Department of Justice usually represents the Indian interest in cases under adjudication. The Interior Solicitor provides legal advice to the Bureau and to tribes concerning rights issues, and prepares litigation reports for consideration by the Department of Justice.

It is the policy of the Department of the Interior to encourage settlements through negotiations rather than protracted litigation, where possible.

Seventy lawsuits related to Indian rights have been filed to date. Six of these will be in the trial or appeal stage during FY 1983, requiring major litigation support efforts; thirty more cases will be active, requiring research and evidence gathering efforts; at least one hundred rights issues will be identified and negotiated, some requiring research and compilation of information. ~~Evidence will also be gathered for Statutes of Limitations active claims, which presently number 11,376.~~

It is incumbent upon the Federal government, by virtue of its responsibility to see to it that Indian rights are not abrogated, lost, or infringed upon. The majority of the tribes are not financially able to undertake the programs necessary to protect their rights and resources. As pressures mount on scarce resources, especially water, program efforts should be available to assure that Indian rights are effectively protected.

Area/Agency Operations ($5,740,000): The rights protection activity provides the Bureau of Indian Affairs with problem-solving staff and technical support services at the reservation or regional level for the protection of the multi-billion dollar estate which the United States administers on behalf of the Nation's Indian tribes. This includes support to meet challenges to tribal rights and interests that are protected by treaty, statute, or Executive Order, as well as the initiation of those actions required of a prudent trustee to clarify the nature of and to ensure the continued viability of those rights.

Where negotiated agreements are not possible, this activity provides the historical, technical, scientific, and other professional expertise necessary for the Government to litigate challenges to Indian rights which the United States has guaranteed through treaty or statute.

The major costs for services required in the protection of Indian rights can not be met within the Tribe/Agency level of funding and has been programmed for several years in the subactivities described below; i.e., litigation support, attorney fees, unresolved Indian rights, hunting and fishing rights. Those subactivities are programmed at the Central Office, based on information provided by the tribes, Agency and Area Offices. The funds are used to support rights protection activities, on a priority basis, based upon the relative importance and urgency of the controversy being negotiated or litigated.

Central Office Staff Operations ($586,000): This element provides the Bureau of Indian Affairs professional, technical and managerial personnel to administer the rights protection program at the national level, to undertake policy initiatives, to initiate and review legislation, to make allocation determinations

for rights protection funds centrally controlled, and to issue and monitor contracts for rights protection research on a multi-regional or national basis. These staff work with all segments of the Bureau in rights issues affecting all Bureau programs.

Other Trust Responsibilities Programs:

Litigation Support ($1,762,000): This activity provides the information and evidence gathering capability required by the United States to successfully defend the Government's position in litigation involving Indian rights issues. In some instances, the United States is suing in actions brought on its own behalf or on behalf of the Indian tribes; in others, is a named defendant in actions brought by third parties; and in others a named defendant in actions brought against the United States by Indian tribes. Litigation support is also provided to the tribe in cases where they are separately represented because other interests of the United States conflict with those of the affected tribe. In such cases, a trust relationship and fiduciary obligation still exists. Much of the activity conducted in support of litigation is actually directed towards negotiated settlement of lawsuits. The great majority of cases requiring litigation support involve the defense of Indian water rights. Others include trespass, title questions such as property line disputes, rights-of-way, allotment claims, mineral entry, pollution issues, activities which have harmed or could harm the health and safety of the reservation population.

Attorneys Fees ($750,000): Decisions of the Comptroller General and the Court of Appeals for the 10th Circuit have ruled that it is appropriate to expend appropriated funds to enable a tribe to retain independent counsel in situations in which the United States cannot represent them as contemplated by 25 U.S.C 175, or where separate representation is required because of inherent conflicts of interest when the United States is representing its own proprietary interests, or because several tribes with conflicting interests are involved in the same case.

Regulations governing the expenditure of appropriated funds for the fees of private attorneys representing tribes in cases being litigated, or where the tribe is initiating litigation, are being promulgated. Following are the existing policy guidelines determining priority classification of eligibility for attorney fee funding:

(a) In the event that a tribe is sued directly and must defend its immunity from suit as well as on the merits and the Attorney General declines to defend the tribe, these facts will constitute the Bureau's first priority funding of a tribe's attorney's fees.

(b) In the event that the United States is sued and a tribe's (or tribes') rights and interests (e.g., *Winters* right) are challenged by the action and, in addition, other identified interests of the United States (BuRec, BLM, etc.), or the rights and interests of another tribe conflict with those of the affected tribe, such facts will constitute the Bureau's second-priority funding of a tribe's (or tribes') attorney fees.

(c) In the event that the actions (or inactions) of another party detrimentally affect the rights and interests of a tribe, and the Attorney General declines to bring suit to enjoin such action, thus forcing the affected tribe to bring suit to protect its rights and interests, such facts will constitute the Bureau's third-priority funding of a tribe's attorney's fees.

Unresolved Indian Rights Issues ($630,000): This activity addresses a broad spectrum of rights issues not under litigation. The emphasis is upon identifying rights issues and obtaining satisfactory resolution at the lowest possible level. This activity was initiated about four years ago with requisite research undertaken to identify unresolved situations requiring action to protect and preserve Indian rights. Information generated by this activity is used primarily to seek and obtain a negotiated settlement; failing this, it can be used to support the initiation of litigation. Some of the issues identified can be resolved administratively or through legislation. The issues addressed include, among others, those involving water rights, mineral entry, trespass, title questions, renewable resources, pollution problems and activities which endanger reservation persons or property. In most cases, negotiated settlements will be obtained at the local Agency/Reservation level.

Hunting and Fishing Rights ($1,658,000): Tribes are going to court to establish their rights not only to hunt and fish but also to assure that sufficient natural resources, i.e., water, forage, etc., are available to make those rights meaningful to prevent the misuse of the resources by persons and agencies; to guarantee that the resources are protected for use by future generations. This activity provides the United States and Indian tribes with the information necessary to determine the extent to which treaty hunting and fishing rights may be asserted without damaging the fish and game resources. This includes biological data collection and analysis to establish herd sizes, stocking rates, harvest quotas, and analysis of environmental development, and other impacts on fish and game resources. The information also provides a basis for self-regulation by tribes, which must be able to demonstrate to the satisfaction of the States and the courts that they have the management and enforcement capacity to regulate their members' exercise of treaty hunting and fishing rights in such a manner as to prevent depredation of the resources.

Statute of Limitations ($3,000,000): To identify, research, prepare, and file all valid claims for money damages against third parties which arose prior to 1966; and to file these claims before December 31, 1982, when the Statute of Limitations expires and to develop legislative remedies for certain types of claims in compliance with P.L. 96-217, Section 2. The program is designed to protect rights, and to avoid hundreds of million of dollars of governmental liability for failure to discharge the fiduciary responsibilities of the United States.

On March 27, 1980, Congress extended the deadline for filing claims under the Statute of Limitations, (28 U.S.C. 2415), from April 1980, to December 31, 1982, in recognition of the large number of discovered claims to be processed and the large number of undiscovered potential claims.

We are presenting the Justice Department with "prima facie" cases. These are essentially protective suits whereby we make sufficient showing justifying a suit, but where additional evidentiary studies are needed to support facts, i.e., identification of heirs, title searches, technical studies, etc.

In order to support "prima facie" cases, programmatic surveys, appraisals, soil and range inventories, evidentiary studies and title research need to be accomplished. Because of the volume of work, a certain percentage of the caseload is contracted out. Most of the work that is contracted is highly technical, such as photogrammetric surveys, biological investigations, and other various types of land appraisals.

ANCSA Site Surveys ($1,000,000): This funding provides field support units for investigation and certification of cemetery sites and historical places authorized by the Alaska Native Claims Settlement Act. Most of the sites are remote and accessible only by helicopter. Travel is an integral part of the ANCSA program, absorbing about 1/3 of annual funding requirements. Field Support units planned for FY-83 are located in Doyon, NANA, Bristol Bay, Calista and Aleut Regions.

With these funds, 160 sites will be located, additional information gathered and verified. The FY 86 target date for completion will not be reached due to increased costs, causing fewer sites to be completed. Two hundred sites per year would need to be accomplished for an FY 86 completion date.

Alaska Lands Act ($2,150,000): As authorized by P.L. 96-487, the Alaska National Interest Lands Conservation Act (ANILCA), this funding provides for effective coordination/consultation with land managing agencies and the State on subsistence preference for Alaska Natives; administration of programs affecting the acquisition of Native allotments, and the administration of grants to each of the Native Group Corporations certified as a Native Group under the Alaska Native Claims Settlement Act. Supplemental funds will be used to establish an automated retrieval system for the allotment records. Inventories of merchantable timber on Native allotments will be accomplished. Trespass, abatement, and fire protection services will be provided for allotments. Of this amount $500,000 will be used for settlement costs of land selections for three Alaska Native Corporations, as required by the Alaska Lands Act. $250,000 of this amount will be used for economic development grants to Native Group Corporations.

Workload Data:

At the present time, approximately 70 lawsuits relating to Indian rights have been filed. Fifty-seven of these cases concern water rights. Of those, three are in the trial stage and twenty-five more may be characterized as active, priority matters. By FY 1983, we anticipate that at least 3 or 4 more water rights adjudications will be filed by the States; that the three currently being tried will still be in the trial stage or under appeal; and that approximately five additional cases in the States of California, Arizona, New Mexico, Washington, and Montana will become active. In addition, each year Indian tribes are involved in over 100 administrative hearings, administrative appeals or third party negotiations involving their property or sovereign rights. Active Statute of Limitations cases presently number 11,376. Of these, 307 have been submitted to the Department of Justice.

Decrease for FY 1983:

(Dollar Amounts in Thousands)

		1983 Base	1983 Estimate	Decrease
B. Indian Rights Protection	($)	17,276	17,083	-193
	(FTE-T)	(86)	(70)	(-16)

Distribution:

Tribe/Agency Operations	($)	1,644	2,010	+366
638 Pay Cost	($)	-0-	17	+17
Area Office Operations	($)	4,096	3,520	-576
Central Office Staff Operations	($)	586	586	—
Other Trust Responsibilities Programs:				
Litigation Support	($)	1,762	1,762	—
Attorneys Fees	($)	750	750	—
Unresolved Indian Rights Issues	($)	630	630	—
Hunting and Fishing Rights	($)	1,658	1,658	—
Statute of Limitations	($)	3,000	2,000	-1,000
ANCSA Site Surveys	($)	1,000	1,000	—
Alaska Lands Act	($)	2,150	3,150	+1,000

Tribe/Agency Operations (+$366,000): This increase represents funding levels established by tribal priorities, in accordance with their concerns for protection and understanding of their rights; and in accordance with Bureau emphasis to place a greater proportion of the Bureau's program efforts at the local agency/tribal level.

The FY 1983 request includes $17,000 to cover additional salary costs calculated at 5% of gross salaries for employees of tribal contractors in order to comply with the requirements of Sec. 106(h) of P.L. 93-638.

Area Office Operations (-$576,000): This reduction resulted from a reduction of 15 FTE at the Area Office level, and from changes in Area Office priorities. In addition, the planned General Overhead Cost Reduction will affect the actual funding for Area Offices.

Alaska Lands Act (+$1,000,000): These are the additional funds required for settlement costs of land selections for the three Alaska Native Corporations, as required by the Alaska National Interest Lands Conservation Act, under Section 506(d) of P.L. 96-487.

Statute of Limitations (-$1,000,000): This reduction is a result of legal determinations reducing the number of cases which will be filed and litigated. A large number of section-line road and utility rights-of-way claims were submitted for litigation. While technical trespasses exist, the claims for damages are without merit because both types of rights-of-way claims confer benefits which completely or substantially offset the trespass damages. It is anticipated that these funds can adequately meet the need to pursue the evidentiary material, additional facts, technical studies, appraisals, etc., required to support the claims filed.

Object Class Distribution

Position Title	Grade	Number	Annual Salary
Paralegal Specialist	12	-2	$-56,490
Water Resources Specialist	12	-1	-28,245
Natural Resources Specialist	11	-1	-23,566
Archeologist	11	-1	-23,566
Realty Specialist	11	-3	-70-698
Rights Protection Specialist	11	-1	-24,352
Rights Protection Clerk	4	-1	-11,490
Clerk Typist	3	-6	-61,410
Total Permanent Positions (FTE)		-16	-299,817
Other Personnel Compensation			-18,000
Total Personnel Compensation (FTE-T)		-16	-317,817
Personnel Benefits			-31,200
Travel and Transportation of Persons			-6,983
Other Services			+141,000
Supplies and Materials			-6,000
Total			$-221,000