

Mr. UDALL. You have raised what I think is the crucial policy question here and I don't want to overstress this business of worry about precedent or not precedent.

My primary concern is justice and I think whether it is just and right under special circumstances involving religious considerations to restore land, this is what is compelling to me and if other Indian groups have a similar case, I am more interested in justice than I am as to whether precedent is or is not set.

I want the record to show I am not saying here to just open the door and give this particular Indian group some land. There may be others having a similar argument and if they can make it and persuade the committees of the Congress, I would like to see them get justice if that is justice in the view of the Congress.

Senator HATFIELD. I could not agree more wholeheartedly, Mr. Secretary. As I indicated prior to my series of questions the thing that raised my concern about your testimony was on page 5 in the terms of what you stated about this not being a precedent.

I think this should be a precedent if we state this case in terms of this bill and other tribes qualify. At the same time we should consider once we set this precedent we are doing more than just returning the lands to Indians in a rather restricted instance or under certain criteria.

We, in effect, are changing the whole policy of the Indian Claims Commission that dealt with money in lieu of land. This was a question confronting the Congress many years ago. It involved Warm Springs in my own State of Oregon. That was a case where they talked of a boundary drafted in 1874 and, if you will recall, many of these earlier Indian boundaries were inaccurate and sloppily handled.

What happened in the Warm Springs case was that there was a piece of Indian land that should have been included in the Warm Springs Reservation, but it was not, and was a piece of the national forest when they were trying to deal with it. Congress recognized this problem by alluding to it in the House Report accompanying the legislation which became the Indian Claims Commission Act.

So this question of land in lieu of money has been before us for some time and we are not only setting a precedent with Indians relating to Indian practices but we must deal with the type of claims that will relate to the future Indian Claims Commission.

Let me remind you the Seminole Indians have a claim in that their aboriginal title has been recognized. What could we do to prevent them coming in and asking for a section of the Everglades National Park in lieu of money?

If you study their history you will find their ancestral lands were sacred to them long before the first Spaniard set foot in St. Augustine.

I believe we can go back and resurrect claims of Indians based on religion that are now part of our national parks, part of our national forests. That is why the Secretary of Agriculture's letter dated September 18 takes great exception to our position and represents a view that this does set a very questionable precedent in history, in his view.

As you know, the Bureau of the Budget has raised a question as to our position on this. I am only trying to bring out some of these points. I don't believe we as a committee can just consider this unrelated and isolated to other groups or for claims or possible claims other tribes may have.