


DEPOSIT
RHODE ISLAND INDIAN CLAIMS SETTLEMENT ACT

78603280

JOINT HEARING
BEFORE THE
UNITED STATES SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS
AND THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
SUBCOMMITTEE ON
INDIAN AFFAIRS AND PUBLIC LANDS
NINETY-FIFTH CONGRESS
SECOND SESSION
ON
S. 3153 and H.R. 12860
TO SETTLE INDIAN LAND CLAIMS WITHIN THE STATE
OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, AND
FOR OTHER PURPOSES

JUNE 20, 1978

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[Created by S. Res. 4, 95th Cong.]

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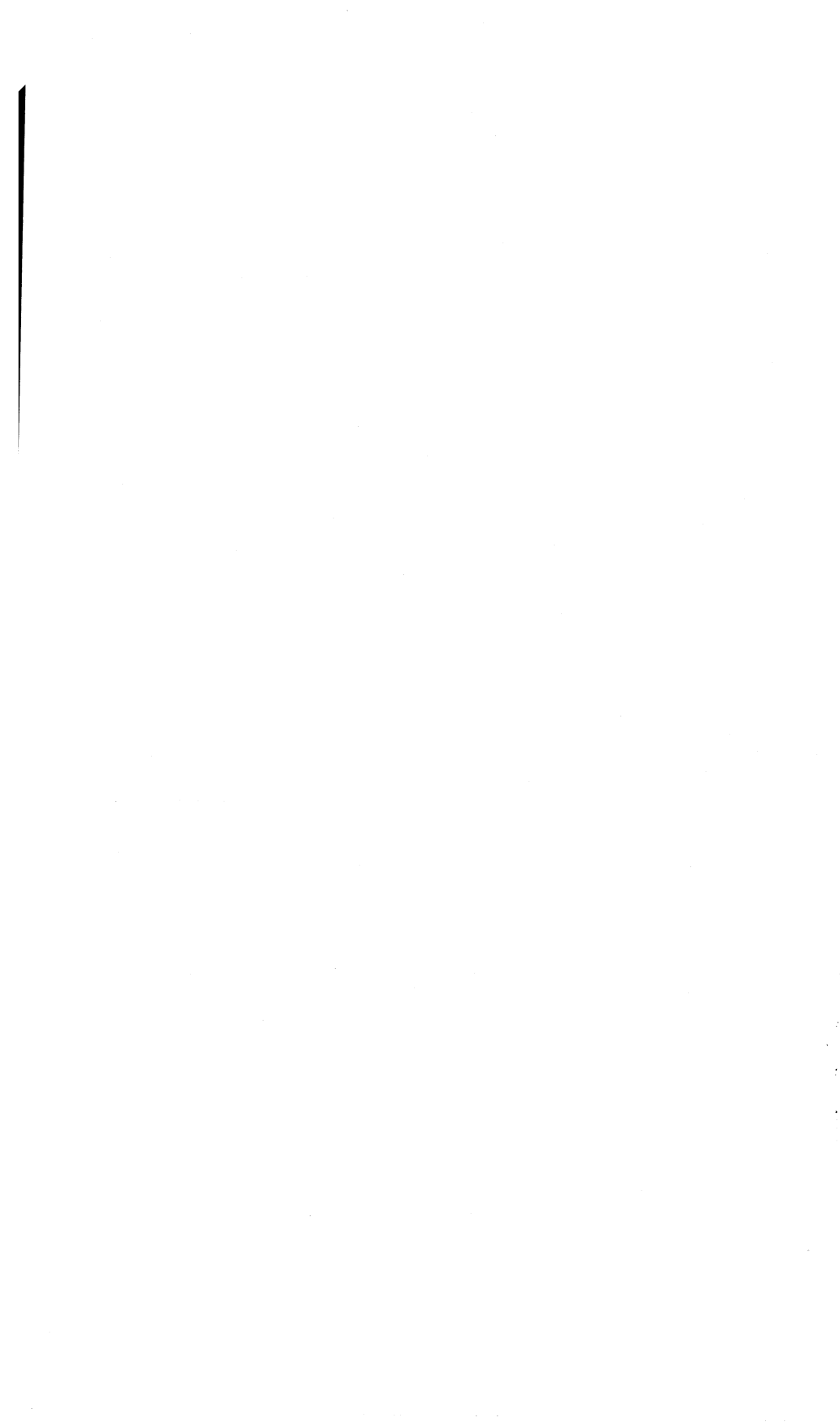
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RHODE ISLAND INDIAN CLAIMS SETTLEMENT ACT

TUESDAY, JUNE 20, 1978

U.S. SENATE, SELECT COMMITTEE ON INDIAN AFFAIRS,
AND U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS, SUBCOMMITTEE ON
INDIAN AFFAIRS AND PUBLIC LANDS,

Washington, D.C.

The committee and subcommittee met, pursuant to notice, at 10:05 a.m., in room 6226, Dirksen Senate Office Building, Hon. James Abourezk (chairman of the Senate Select Committee on Indian Affairs) presiding.

Present: Senator Abourezk and Representative Roncalio.

Staff present: Alan Parker, chief counsel; John Saxon and Barbara Berger, staff attorneys of the Senate Select Committee on Indian Affairs; and Franklin Ducheneaux, special counsel, House Interior Subcommittee on Indian Affairs and Public Lands.

Senator ABOUREZK. The hearing will come to order.

The purpose of the hearing this morning before the Senate Select Committee on Indian Affairs and the House Subcommittee on Indian Affairs and Public Lands is to take testimony on S. 3153 and H.R. 12860, to settle the Indian land claims in Rhode Island. This legislation would implement the negotiated settlement agreement of the Narragansett Indian Tribe's land claim in Rhode Island. Those entering into the settlement agreement include representatives from the State of Rhode Island, the town of Charlestown, and the parties to the lawsuits.

In January of 1975, the Narragansett Indian Tribe filed two lawsuits in the U.S. District Court for the District of Rhode Island seeking possession of approximately 3,200 acres of public and private land in Charlestown, R.I. The plaintiff tribe alleges that it owned and occupied these lands as part of its aboriginal territory and reservation and that subsequent to 1790 these lands were alienated under the auspices of the State of Rhode Island and in violation of the Federal Indian Nonintercourse Act of 1790.

The pendency of these lawsuits—now consolidated into a single action—has resulted in severe economic hardship for the residents of Charlestown by clouding titles to most of the land in the town, including lands not subject to the lawsuit. In recognition of this hardship, the Senate committee and the House subcommittee are conducting this joint hearing so that this matter can proceed as expeditiously as possible.

The significance of this bill and of this hearing is that this is the first opportunity of the Congress to consider legislation which would implement a negotiated settlement of an eastern Indian land claim based on the Federal Indian Nonintercourse Act. As chairman of the Select Committee, I feel quite strongly that any legislative solution to these claims should be directed at a workable resolution which is fair and just for all parties. For the Congress to attempt anything short of this would be less than responsible. I commend all of you who have participated in this settlement for the dedication and hard work you have shown in an attempt to reach a settlement which is mutually acceptable.

This hearing has been set to provide an opportunity for all concerned parties to express their views on these matters and as an aid to this committee and subcommittee in the performance of our task.

First of all, I would like to welcome my colleagues from the Senate, the Honorable Claiborne Pell and the Honorable John Chafee, and Congressman Beard from Rhode Island. Is Congressman Beard here?
[No response.]

Senator ABOUREZK. I wonder if my two colleagues from the Senate would like to come up together to the witness table.

Congressman Roncalio is cochairing the hearings. He will be here late. I now place in the record copies of S. 3153, a committee print on S. 3153, and H.R. 12860.

[The material referred to follows:]

S. 3153

IN THE SENATE OF THE UNITED STATES

MAY 25 (legislative day, MAY 17), 1978

Mr. PELL (for himself and Mr. CHAFEE) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

A BILL

To settle Indian land claims within the State of Rhode Island and Providence Plantations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Rhode Island Indian
4 Claims Settlement Act".

5 CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY:

6 SEC. 2. Congress finds and declares that—

7 (1) there are pending before the United States
8 District Court for the District of Rhode Island two con-
9 solidated actions, entitled "Narragansett Tribe of Indians
10 v. Southern Rhode Island Land Development Co., et al.
11 C.A. No. 75-0006 (D.R.I.) and Narragansett Tribe of

1 Indians v. Rhode Island Director of Environmental Man-
2 agement C.A. No. 75-0005 (D.R.I.") that involve In-
3 dian claims to certain public and private lands within
4 the town of Charlestown, Rhode Island;

5 (2) the pendency of these lawsuits has resulted in
6 severe economic hardships for the residents of the town
7 of Charlestown by clouding the titles to much of the land
8 in the town, including lands not involved in the lawsuits;

9 (3) the Congress shares with the State of Rhode
10 Island and the parties to the lawsuits a desire to remove
11 all clouds on titles resulting from such Indian land claims
12 within the State of Rhode Island; and

13 (4) the parties to the lawsuits and others interested
14 in the settlement of Indian land claims within the State
15 of Rhode Island have executed a Settlement Agreement
16 that requires certain implementing legislation to be en-
17 acted by Congress and the State of Rhode Island as a
18 condition to its effectiveness.

19 **DEFINITIONS**

20 **SEC. 3.** For the purposes of this Act, the term—

21 (a) "Fund" means the Rhode Island Indian Claims
22 Settlement Fund established under section 5 of this
23 Act;

24 (b) "Indian Corporation" means the Rhode Island

1 nonbusiness corporation known as the Narragansett
2 Tribe of Indians;

3 (c) "lawsuits" means the actions entitled "Nar-
4 ragansett Tribe of Indians v. Southern Rhode Island
5 Land Development Co., et al., C.A. No. 75-0006
6 (D.R.I.) and Narragansett Tribe of Indians v. Rhode
7 Island Director of Environmental Management, C.A.
8 No. 75-0005 (D.R.I.)".

9 (d) "Option Agreements" means the agreements
10 entered into or to be entered into pursuant to section 3
11 of the Settlement Agreement between the State Corpo-
12 ration (or in the event the State Corporation has not yet
13 been created, with a designee of the Governor of Rhode
14 Island) and the defendants in the lawsuits under which
15 the State Corporation will have an option to purchase
16 the private settlement lands;

17 (e) "private settlement lands" means those lands
18 that are to be acquired by the State Corporation from
19 the private defendants in the lawsuits pursuant to sec-
20 tion 3 of the Settlement Agreement;

21 (f) "public settlement lands" means those lands that
22 are to be conveyed by the State of Rhode Island to the
23 State Corporation pursuant to section 2 of the Settlement
24 Agreement;

1 (g) "Secretary" means the Secretary of the In-
2 terior or his designee;

3 (h) "Settlement Agreement" means the document
4 entitled "Joint Memorandum of Understanding Con-
5 cerning Settlement of the Rhode Island Indian Land
6 Claims" executed as of February 28, 1978, by represent-
7 atives of the State, of the town of Charlestown, and of
8 parties to the lawsuits;

9 (i) "settlement lands" means those lands defined in
10 subsections (e) and (f) of this section; and

11 (j) "State Corporation" means the corporation
12 created or to be created by legislation enacted by the
13 State of Rhode Island pursuant to section 1 of the Settle-
14 ment Agreement for the purpose of acquiring and hold-
15 ing the settlement lands.

16 RATIFICATION OF PRIOR LAND AND WATER CONVEYANCES

17 AND EXTINGUISHMENT OF ABORIGINAL TITLE

18 SEC. 4. (a) Any transfer of lands or waters located
19 within the United States from, by or on behalf of the Indian
20 Corporation, or any other entity known as or claiming to
21 be the Narragansett Tribe of Indians, or any predecessor in
22 interest, member, or stockholder thereof, including but not
23 limited to a transfer pursuant to any statute of any State,
24 was and shall be deemed to have been made in accordance
25 with the Constitution and all laws of the United States that

1 are specifically applicable to transfers of lands or waters
2 from, by or on behalf of any Indian, Indian nation or tribe
3 of Indians (including but not limited to the Trade and Inter-
4 course Act of 1790 (Ch. 33, Sec. 4, 1 Stat. 138), and
5 all amendments thereto and all subsection versions thereof),
6 and Congress does hereby approve and ratify any such trans-
7 fer effective as of the date of the said transfer.

8 (b) To the extent that any transfer of lands or waters
9 described in subsection (a) may involve lands or waters to
10 which the Indian Corporation, or any other entity known
11 as or claiming to be the Narragansett Tribe of Indians, or any
12 predecessor in interest, member, or stockholder thereof, had
13 aboriginal title, subsection (a) shall be regarded as an ex-
14 tinguishment of such aboriginal title as of the date of said
15 transfer.

16 (c) By virtue of the approval and ratification of a trans-
17 fer of lands or waters effected by subsection (a) or an extin-
18 guishment of aboriginal title effected thereby, all claims
19 against the United States, any State or subdivision thereof,
20 or any other person or entity, by the Indian Corporation, or
21 any other entity known as or claiming to be the Narragan-
22 sett Tribe of Indians, or any predecessor in interest, member
23 or stockholder thereof, including but not limited to claims
24 for trespass damages or claims for use or occupancy, arising
25 subsequent to the transfer and that are based upon any in-

1 terest in or right involving such lands or waters, shall be
2 regarded as extinguished as of the date of the transfer.

3 (d) (1) Any and all other claims involving or in any
4 way relating to lands or waters within the State of Rhode
5 Island of any Indian, Indian nation, or tribe of Indians, aris-
6 ing prior to the date of enactment of this Act under the Con-
7 stitution or laws of the United States that are specifically
8 applicable to transfers of lands or waters from, by or on
9 behalf of any Indian, Indian nation, or tribe of Indians (in-
10 cluding but not limited to the Trade and Intercourse Act of
11 1790 (Ch. 33, Sec. 4, 1 Stat. 138), and all amendments
12 thereto and all subsequent versions thereof), shall be barred
13 unless file in a court of competent jurisdiction within one
14 hundred eighty days of the date of enactment of this Act.

15 (2) Any Indian, Indian nation, or tribe of Indians
16 asserting a claim involving or in any way relating to lands or
17 waters located within the limits of the town of Charlestown,
18 Rhode Island, shall be limited to asserting such claim ex-
19 clusively against the Indian Corporation, and such Indian,
20 Indian nation, or tribe of Indians shall be barred from bring-
21 ing any suit involving such claim against any other person
22 or entity.

23 (e) As used in this section, the phrase "lands or waters"
24 shall include any interest in or right involving lands or wa-
25 ters, and the term "transfer" shall include but not be limited

1 to any sale, grant, lease, allotment, partition, conveyance, or
 2 any transaction the purpose of which was to effect a sale,
 3 grant, lease, allotment, partition or conveyance, or any
 4 event or events that resulted in a change in possession or
 5 control of lands or waters.

6 RHODE ISLAND INDIAN CLAIMS SETTLEMENT FUND

7 SEC. 5. There is hereby established in the United States
 8 Treasury a fund to be known as the Rhode Island Indian
 9 Claims Settlement Fund into which the following moneys
 10 shall be deposited following the appropriation authorized by
 11 section 15 of this Act:

12 (a) \$3,500,000, which shall be distributed to the
 13 State Corporation in accordance with the provisions of
 14 section 7 of this Act;

15 (b) \$262,500, which shall be distributed to cer-
 16 tain private defendants in the lawsuits in accordance
 17 with the provisions of section 6 of this Act; and

18 (c) \$80,077.84, which shall be distributed pursuant
 19 to the provisions of section 13 of this Act.

20 OPTION AGREEMENTS TO PURCHASE PRIVATE SETTLEMENT

21 LAND

22 SEC. 6. (a) Each private defendant in the lawsuits who
 23 has entered or who subsequently enters into a two-year Op-
 24 tion shall, subject to the limitations of subsection (b), be paid
 25 the State Corporation has not yet been created, with a

1 designee of the Governor of Rhode Island) to convey his
2 portion of the private settlement lands to the State Corpora-
3 tion shall, subject to the limitation of subsection (b), be paid
4 an option fee from the Fund equal to 5 per centum of the
5 purchase price agreed upon in each Option Agreement:
6 *Provided, however,* That the total option fees paid to all
7 such defendants shall not exceed \$175,000.

8 (b) The payment of option fees authorized by subsec-
9 tion (a) shall be subject to the following conditions:

10 (i) the option fees shall not be paid from the Fund
11 until immediately prior to the expiration of ninety days
12 from the date of passage of this Act;

13 (ii) the option fee for each Option Agreement shall
14 be applied to the agreed purchase price in each Option
15 Agreement if the land transfer contemplated by each
16 Option Agreement is completed and the full purchase
17 price paid on or before the expiration of two hundred
18 seventy days from the date of each respective Option
19 Agreement;

20 (iii) the option fee for each Option Agreement
21 shall be retained by the party granting the option and
22 not applied to the purchase price if the land transfer con-
23 templated by each Option Agreement is not completed
24 and the full purchase price paid on or before the expira-

1 tion of two hundred seventy days from the date of each
2 respective Option Agreement; and

3 (iv) if, for any reason, the option fee called for by
4 each respective Option Agreement is not paid as set
5 forth in paragraph (i), above, the party granting the
6 Option shall have the right to terminate his obligations
7 under the Option Agreement, and if such right is exer-
8 cised, such Option Agreement shall thereafter be unen-
9 forceable against any party thereto.

10 (c) If the requirements set forth in section 8 of this
11 Act have not been satisfied at the expiration of the term
12 of any Option Agreement, the State Corporation may elect
13 to extend any such Option Agreement then in effect for an
14 additional period of one year. A nonrefundable extension fee
15 equal to $2\frac{1}{2}$ per centum of the agreed upon purchase price
16 shall be paid from the Fund to any defendant whose Option
17 Agreement is extended for such additional period: *Provided,*
18 *however,* That such extension fee shall not be applied toward
19 the purchase price and that the total extension fees paid to
20 all defendants shall not exceed \$87,500.

21 (d) To the extent that any portion of the \$262,500
22 authorized by section 5 (b) of this Act for the payment of
23 option and extension fees is not utilized for the purposes set

1 forth herein, the excess shall be returned to the general
2 Treasury of the United States.

3 SETTLEMENT LANDS

4 SEC. 7. Upon satisfaction of all of the conditions set
5 forth in section 8 of this Act, the sum of \$3,500,000 (minus
6 any option fees paid and credited against the purchase price
7 pursuant to the provisions of sections 6 (b) (ii) and (iii) of
8 the Act) shall be paid to the State Corporation from the
9 Fund for the purchase by the State Corporation of the pri-
10 vate settlement lands and for the reasonable costs of acqui-
11 sition incurred by the State Corporation in connection with
12 the purchase of private settlement lands. If such private
13 settlement lands are acquired for a total amount less than
14 \$3,500,000, the State Corporation shall return any such re-
15 maining monies to the general Treasury of the United States.

16 CONDITIONS PRECEDENT TO THE DISTRIBUTION OF

17 CERTAIN FUNDS

18 SEC. 8. No moneys shall be distributed from the Fund
19 to the State Corporation pursuant to section 7 of this Act
20 until the Secretary has determined—

21 (a) that the State of Rhode Island has enacted
22 legislation in implementation of all of the obligations
23 it has undertaken in the Settlement Agreement;

24 (b) that the council of the town of Charlestown
25 and the State Corporation have accepted the land use

1 plan contemplated by section 14 of the Settlement
2 Agreement; and

3 (c) that within sixty days of the date of enact-
4 ment of this Act, and in accordance with standards es-
5 tablished by the Secretary for this purpose, the plaintiff
6 in the lawsuits has a credible claim to the lands subject
7 to the lawsuits, including a determination that the plain-
8 tiff has a credible claim to status as an "Indian nation
9 or tribe of Indians" within the meaning of the Indian
10 Nonintercourse Act (R.S. 2116) at all relevant periods
11 of time, including the present. In the event that the
12 Secretary determines that the plaintiff in the lawsuits
13 does not have a credible claim to the lands subject to
14 the lawsuits, the determination of the Secretary shall be
15 subject to judicial review in the Federal District Court
16 for the State of Rhode Island or the District of Columbia
17 pursuant to section 702 of title 5, United States Code.
18 The reviewing court shall set aside any such determina-
19 tion only if it is found to be arbitrary, capricious, an
20 abuse of discretion, or otherwise not in accordance with
21 law. If it is ultimately determined in a final, nonappeal-
22 able order of a court of competent jurisdiction that the
23 plaintiff in the lawsuits does have a credible claim to the
24 lands subject to the lawsuits, or if the Secretary shall
25 make such a determination after remand by the review-

1 ing court, such order or determination shall have the
2 same effect as if the Secretary had initially made the de-
3 termination that the plaintiff in the lawsuits has a
4 credible claim to the lands subject to the lawsuits.

5 RESTRICTION ON ALIENATION

6 SEC. 9. No lands acquired by the State Corporation un-
7 der the Settlement Agreement may be sold, granted, leased,
8 or otherwise conveyed, nor shall any such sale, grant, lease
9 or conveyance be of any validity in law or equity, unless the
10 same is approved by the Secretary or his designee and the
11 Governor of the State of Rhode Island: *Provided, however,*
12 That nothing in this Act shall affect or otherwise impair the
13 ability of the State Corporation to grant or otherwise convey
14 (including any involuntary conveyance by means of emi-
15 nent domain or condemnation proceedings) any easement
16 for public or private purposes pursuant to the laws of the
17 State of Rhode Island.

18 EXEMPTION FROM TAXATION

19 SEC. 10. Neither the settlement lands nor any moneys
20 received by the State Corporation from the Fund shall be
21 subject to any form of Federal, State, or local taxation:
22 *Provided, however,* That this exemption shall not apply to
23 any income-producing activities occurring on the settlement
24 lands: *And provided further,* That nothing in this Act shall
25 prevent the imposition of payments in lieu of taxes on the

1 State Corporation for services provided in connection with
2 the settlement lands.

3 DEFERRAL OF CAPITAL GAINS

4 SEC. 11. For purposes of subtitle A of the Internal
5 Revenue Code of 1954, sale or disposition of private settle-
6 ment lands disposed of pursuant to the terms and conditions of
7 the Settlement Agreement shall be treated as an involuntary
8 conversion as a result of condemnation or the threat or im-
9 minence thereof to which Section 1033 of the Internal
10 Revenue Code of 1954 applies.

11 APPLICABILITY OF STATE LAW

12 SEC. 12. Except as otherwise provided in this Act, the
13 settlement lands shall be subject to the complete civil and
14 criminal jurisdiction of the State of Rhode Island.

15 ATTORNEY AND CONSULTANT FEES

16 SEC. 13. A sum not in excess of \$80,077.84 shall be
17 distributed from the Fund to those private defendants in the
18 lawsuits who have not executed Option Agreements with the
19 State Corporation as reimbursement for partial out-of-pocket
20 expenses incurred through April 21, 1978 and partial at-
21 torneys' fees incurred in connection with the lawsuit.

22 FEDERAL BENEFITS PRESERVED

23 SEC. 14. Nothing contained in this Act or any legislation
24 enacted by the State of Rhode Island pursuant to its obli-
25 gations under the Settlement Agreement shall affect or other-

1 wise impair in any adverse manner any benefits received by
2 the State under the Pitman-Robertson Act (16 U.S.C. 669-
3 669 (i)) and the Dingell-Johnson Act (16 U.S.C. 777-777
4 (k)).

5 AUTHORIZATION OF FUNDS

6 SEC. 15. There is hereby authorized to be appropriated
7 such sums as are necessary to carry out the purposes of this
8 Act.

9 SAVINGS CLAUSE

10 SEC. 16. To the extent that there may be any conflict
11 between any provision of this Act and any other applicable
12 Federal law or laws, the provisions of this Act shall govern.

13 STATUTE OF LIMITATIONS

14 SEC. 17. Notwithstanding any other provision of law—

15 (a) any action to contest the authority of the
16 United States to legislate on the subject matter of this
17 Act, or to contest the legality or constitutionality of this
18 Act or any provision thereof, shall be barred unless
19 the complaint is filed within one hundred eighty days of
20 the date of enactment of this Act; and

21 (b) any action over which the Court of Claims has
22 jurisdiction under the provisions of section 1505 of title
23 28, United States Code by any Indian, Indian nation, or
24 tribe of Indians affected by section 4 (d) (1) and (2)
25 of this Act shall be barred unless such action is filed in

1 the Court of Claims within three years of the date of
2 enactment of this Act.

3 SEPARABILITY

4 SEC. 18. If any provision of this Act or the applicability
5 thereof is held invalid, the remaining provisions of this Act
6 shall not be affected thereby.

[COMMITTEE PRINT]

JUNE 16, 1978

[At the direction of the Chairman of the Committee on Indian Affairs, this committee print has been prepared by committee staff for discussion purposes. Linetype indicates recommended deletions from, and italics indicate recommended additions to, the bill, as introduced.]

95TH CONGRESS
2D SESSION

S. 3153**IN THE SENATE OF THE UNITED STATES**

MAY 25 (legislative day, MAY 17), 1978

Mr. PELL (for himself and Mr. CHAFEE) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Rhode Island Indian
4 Claims Settlement Act".

5 CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

6 SEC. 2. Congress finds and declares that—

7 (1) there are pending before the United States

1 District Court for the District of Rhode Island two con-
2 solidated actions, entitled "~~Narragansett Tribe of Indians~~
3 ~~v. Southern Rhode Island Land Development Co., et al.~~
4 ~~C.A. No. 75-0006 (D.R.I.)~~ and ~~Narragansett Tribe of~~
5 ~~Indians v. Rhode Island Director of Environmental Man-~~
6 ~~agement C.A. No. 75-0005 (D.R.I.)"~~ *Narragansett*
7 *Tribe of Indians v. Southern Rhode Island Land*
8 *Development Co., et al., C.A. No. 75-0006 (D.R.I.)*
9 *and Narragansett Tribe of Indians v. Rhode Island*
10 *Director of Environmental Management, C.A. No. 75-*
11 *0005 (D.R.I.)*, that involve Indian claims to certain
12 public and private lands within the town of Charles-
13 town, Rhode Island;

14 (2) the pendency of these lawsuits has resulted in
15 severe economic hardships for the residents of the town
16 of Charlestown by clouding the titles to much of the land
17 in the town, including lands not involved in the lawsuits;

18 (3) the Congress shares with the State of Rhode
19 Island and the parties to the lawsuits a desire to remove
20 all clouds on titles resulting from such Indian land claims
21 within the State of Rhode Island; and

22 (4) the parties to the lawsuits and others interested
23 in the settlement of Indian land claims within the State
24 of Rhode Island have executed a Settlement Agreement
25 that requires certain implementing legislation to be en-

1 acted by Congress and the State of Rhode Island as a
 2 condition to its effectiveness.

3 DEFINITIONS

4 SEC. 3. For the purposes of this Act, the term—

5 (a) "Fund" means the Rhode Island Indian Claims
 6 Settlement Fund established under section 5 of this
 7 Act;

8 (b) "Indian Corporation" means the Rhode Island
 9 nonbusiness corporation known as the ~~Narragansett~~
 10 ~~Tribe of Indians~~; "*Narragansett Tribe of Indians*";

11 (c) "lawsuits" means the actions entitled ~~Nar-~~
 12 ~~ragansett Tribe of Indians v. Southern Rhode Island~~
 13 ~~Land Development Co., et al., C.A. No. 75-006~~
 14 ~~(D.R.I.) and Narragansett Tribe of Indians v. Rhode~~
 15 ~~Island Director of Environmental Management, C.A.~~
 16 ~~No. 75-0005 (D.R.I.); Narragansett Tribe of Indians~~
 17 ~~v. Southern Rhode Island Land Development Co., et al.,~~
 18 ~~C.A. No. 75-0006 (D.R.I.) and Narragansett Tribe~~
 19 ~~of Indians v. Rhode Island Director of Environmental~~
 20 ~~Management, C.A. No. 75-0005 (D.R.I.);~~

21 (d) "Option Agreements" means the agreements
 22 entered into or to be entered into pursuant to section 3
 23 of the Settlement Agreement ~~between~~ *by* the State Cor-
 24 poration (or in the event the State Corporation has not
 25 yet been created, ~~with~~ *by* a designee of the Governor of

1 Rhode Island) and the defendants in the lawsuits under
2 which the State Corporation will have an option to pur-
3 chase the private settlement lands;

4 (e) "private settlement lands" means those lands
5 that are to be acquired by the State Corporation from
6 the private defendants in the lawsuits pursuant to sec-
7 tion 3 of the Settlement Agreement;

8 (f) "public settlement lands" means those lands
9 that are to be conveyed by the State of Rhode Island to
10 the State Corporation pursuant to section 2 of the Set-
11 tlement Agreement;

12 (g) "Secretary" means the Secretary of the In-
13 terior or his designee;

14 (h) "Settlement Agreement" means the document
15 entitled "Joint Memorandum of Understanding Con-
16 cerning Settlement of the Rhode Island Indian Land
17 Claims" executed as of February 28, 1978, by repre-
18 sentatives of the State of *Rhode Island*, of the town of
19 Charlestown, and of *the* parties to the lawsuits, *as filed*
20 *with the Secretary of State of the State of Rhode Island*;

21 (i) "settlement lands" means those lands defined
22 in subsections (e) and (f) of this section; and

23 (j) "State Corporation" means the corporation
24 created or to be created by legislation enacted by the
25 State of Rhode Island pursuant to section 1 of the Settle-

1 ment Agreement for the purpose of acquiring and hold-
2 ing the settlement lands.

3 RATHIFICATION OF PRIOR LAND AND WATER CONVEYANCES
4 AND EXTINGUISHMENT OF ABORIGINAL TITLE

5 SEC. 4. (a) Any transfer of lands or waters located
6 within the United States from, by or on behalf of the Indian
7 Corporation, or any other entity known as or claiming to
8 be the Narragansett Tribe of Indians, or any predecessor in
9 interest, member, or stockholder thereof, including but not
10 limited to a transfer pursuant to any statute of any State,
11 was and shall be deemed to have been made in accordance
12 with the Constitution and all laws of the United States that
13 are specifically applicable to transfers of lands or waters
14 from, by or on behalf of any Indian, Indian nation or tribe
15 of Indians (including but not limited to the Trade and Inter-
16 course Act of 1790 (Ch. 33, SEC. 4, 1 Stat. 138), and
17 all amendments thereto and all subsection versions thereof);
18 and Congress does hereby approve and ratify any such trans-
19 fer effective as of the date of the said transfer.

20 (b) To the extent that any transfer of lands or waters
21 described in subsection (a) may involve lands or waters to
22 which the Indian Corporation, or any other entity known
23 as or claiming to be the Narragansett Tribe of Indians, or any
24 predecessor in interest, member, or stockholder thereof, had
25 aboriginal title, subsection (a) shall be regarded as an ex-

1 tinguishment of such aboriginal title as of the date of said
2 transfer.

3 (c) By virtue of the approval and ratification of a trans-
4 fer of lands or waters effected by subsection (a) or an extin-
5 guishment of aboriginal title effected thereby, all claims
6 against the United States, any State or subdivision thereof,
7 or any other person or entity, by the Indian Corporation, or
8 any other entity known as or claiming to be the Narragan-
9 sett Tribe of Indians, or any predecessor in interest, member
10 or stockholder thereof, including but not limited to claims
11 for trespass damages or claims for use or occupancy, arising
12 subsequent to the transfer and that are based upon any in-
13 terest in or right involving such lands or waters, shall be
14 regarded as extinguished as of the date of the transfer.

15 *EXTINGUISHMENT OF ABORIGINAL TITLE AND APPROVAL*
16 *OF PRIOR LAND AND WATER CONVEYANCES*

17 *SEC. 4. (a) Within ten days of receipt of a certification*
18 *of the Secretary of State of the State of Rhode Island that*
19 *the State of Rhode Island has enacted legislation authorizing*
20 *the creation of the State Corporation with power to estab-*
21 *lish its own hunting and fishing regulations, as provided by*
22 *section 11 of the Settlement Agreement, and authorizing the*
23 *transfer of the public settlement lands to the State Corpora-*
24 *tion, the Secretary shall publish the certification in the Fed-*
25 *eral Register, and upon such publication—*

1 (i) any aboriginal title of, and any claims involv-
2 ing or in any way relating to lands or waters located
3 within the United States (including but not limited to
4 claims for use and occupancy or for trespass damages
5 based upon any interest in or right involving such lands
6 or waters) by, or on behalf of the Indian Corporation
7 or any other entity presently or at any time in the past
8 known as the Narragansett Tribe of Indians, or any
9 predecessor or successor in interest, or any member or
10 stockholder thereof, shall be extinguished;

11 (ii) such extinguishment shall be effective as to any
12 and all such claims against the United States, any State
13 or subdivision thereof, or any other person or entity:
14 Provided, That such extinguishment shall not apply to
15 the claim of any individual Indian under any law gen-
16 erally applicable to non-Indians as well as Indians in
17 the State of Rhode Island or any other State; and

18 (iii) any prior transfer of lands or waters from,
19 by, or on behalf of the Indian Corporation or any other
20 entity presently or at any time in the past known as the
21 Narragansett Tribe of Indians, or any predecessor or
22 successor in interest, or any member or stockholder there-
23 of, including but not limited to any transfer pursuant to
24 any statute of any State, shall be deemed to have been
25 made in accordance with the Constitution and all laws

1 *of the United States that are specifically applicable to*
2 *transfers of lands or waters from, by, or on behalf of*
3 *any Indian, Indian nation, or tribe of Indians (includ-*
4 *ing but not limited to the Trade and Intercourse Act of*
5 *1790, Act of August 4, 1790 (ch. 33, § 4, 1 Stat. 138),*
6 *and all amendments thereto and all subsequent versions*
7 *thereof), and Congress does hereby approve any such*
8 *transfer, which approval shall be deemed to be effective*
9 *as of the date of such transfer.*

10 ~~(d)-(1)~~ Any and all other claims involving or in any
11 way relating to lands or waters within the State of Rhode
12 Island of any Indian, Indian nation, or tribe of Indians, aris-
13 ing prior to the date of enactment of this Act under the Con-
14 stitution or laws of the United States that are specifically
15 applicable to transfers of lands or waters from, by or on
16 behalf of any Indian, Indian nation, or tribe of Indians (in-
17 cluding but not limited to the Trade and Intercourse Act of
18 1790 (Ch. 33, Sec. 4, 1 Stat. 138), and all amendments
19 thereto and all subsequent versions thereof), shall be barred
20 unless file in a court of competent jurisdiction within one
21 hundred eighty days of the date of enactment of this Act.

22 ~~(2)~~ Any Indian, Indian nation, or tribe of Indians
23 asserting a claim involving or in any way relating to lands
24 or waters located within the limits of the town of Charles-
25 town, Rhode Island, shall be limited to asserting such claim

1 exclusively against the Indian Corporation, and such Indian,
2 Indian nation, or tribe of Indians shall be barred from bring-
3 ing any suit involving such claim against any other person
4 or entity.

5 (b) (1) Effective one hundred eighty days after the date
6 of enactment of this Act—

7 (i) any aboriginal title of, and any claims involving
8 or in any way relating to lands or waters located within
9 the State of Rhode Island (including but not limited to
10 claims for use and occupancy or for trespass damages
11 based upon any interest in or right involving such lands
12 or waters) by, or on behalf of any Indian, Indian na-
13 tion, or tribe or Indians (other than the Narragansett
14 Tribe of Indians and members thereof), shall be extin-
15 guished;

16 (ii) such extinguishment shall be effective as to any
17 and all such claims against the United States, any State
18 or subdivision thereof, or any other person or entity:
19 Provided, That such extinguishment shall not apply to
20 the claim of any individual Indian under any law gen-
21 erally applicable to non-Indians as well as Indians in
22 the State of Rhode Island; and

23 (iii) any prior transfer of lands or waters from, by,
24 or on behalf of any such Indian, Indian nation, or tribe
25 of Indians, including but not limited to any transfer pur-

1 *suant to any statute of any State, shall be deemed to have*
 2 *been made in accordance with the Constitution and all*
 3 *laws of the United States that are specifically applicable*
 4 *to transfers of lands or waters from, by, or on behalf of*
 5 *any Indian, Indian nation, or tribe of Indians (includ-*
 6 *ing but not limited to the Trade and Intercourse Act of*
 7 *1790, Act of August 4, 1790 (ch. 33, § 4, 1 Stat. 138),*
 8 *and all amendments thereto and all subsequent versions*
 9 *thereof), and Congress does hereby approve any such*
 10 *transfer, which approval shall be deemed to be effective*
 11 *as of the date of such transfer:*

12 *Provided, however, That this subsection shall not be appli-*
 13 *cable to any claim, right, or title of any Indian, Indian na-*
 14 *tion, or tribe of Indians that is asserted in an action com-*
 15 *menced in a court of competent jurisdiction within such one-*
 16 *hundred-eighty-day period.*

17 (2) *Any Indian, Indian nation, or tribe of Indians*
 18 *asserting title to, or any claim or right within the limitations*
 19 *of section 4(b)(1) involving or in any way relating to lands*
 20 *or waters located within the limits of the town of Charlestown,*
 21 *Rhode Island, shall be limited to asserting such claim ex-*
 22 *clusively against the Indian Corporation.*

23 (e) (c) *As used in this section, the phrase term "lands*
 24 *or waters" shall include includes any interest in or right in-*

1 volving lands or waters, and the term "transfer" shall include
2 ~~but not be~~ *includes but is not* limited to any sale, grant,
3 lease, allotment, partition, conveyance, ~~or~~ any transaction the
4 purpose of which was to effect a sale, grant, lease, allotment,
5 partition or conveyance, ~~or~~ *and* any event or events that
6 resulted in a change in possession or control of lands or
7 waters.

8 RHODE ISLAND INDIAN CLAIMS SETTLEMENT FUND

9 SEC. 5. There is hereby established in the United States
10 Treasury a fund to be known as the Rhode Island Indian
11 Claims Settlement Fund into which the following moneys
12 amounts shall be deposited following the appropriation au-
13 thORIZED by section 15 of this Act:

14 (a) \$262,500, which shall be distributed to certain
15 private defendants in the lawsuits in accordance with the
16 provisions of section 6 of this Act;

17 ~~(a)~~ (b) \$3,500,000, which shall be distributed to
18 the State Corporation in accordance with the provisions
19 of section 7 of this Act; *and*

20 ~~(b)~~ \$262,500, which shall be distributed to certain
21 private defendants in the lawsuits in accordance with
22 the provisions of section 6 of this Act; *and*

23 (c) \$80,077.84, which shall be distributed pursuant
24 to the provisions of section 13 of this Act.

12

1 OPTION AGREEMENTS TO PURCHASE PRIVATE SETTLEMENT

2 LAND

3 SEC. 6. (a) Each private defendant in the lawsuits who
 4 has entered or who subsequently enters into a two-year Op-
 5 tion ~~shall, subject to the limitations of subsection (b), be paid~~
 6 *Agreement with the State Corporation (or in the event*
 7 *the State Corporation has not yet been created, with a*
 8 *designee of the Governor of Rhode Island) to convey his*
 9 *portion of the private settlement lands to the State Corpora-*
 10 *tion shall, subject to the limitation of subsection (b), be paid*
 11 *an option fee from the Fund equal to 5 per centum of the*
 12 *purchase price agreed upon in each Option Agreement:*
 13 *Provided, however, That the total amount of the option fees*
 14 *paid to all such defendants shall not exceed \$175,000.*

15 (b) The payment of option fees authorized by subsec-
 16 tion (a) shall be subject to the following conditions:

17 (i) ~~the~~ *The option fees shall not be paid from the*
 18 *Fund until immediately prior to the expiration of ninety*
 19 *days from the date of passage enactment of this Act; or*
 20 *within twenty days after the appropriation of moneys*
 21 *for the payment of option fees pursuant to section 15(a)*
 22 *of this Act, whichever occurs later;*

23 (ii) ~~the~~ *The option fee for each Option Agreement*
 24 *shall be applied to the agreed purchase price in each the*
 25 *Option Agreement if the land transfer contemplated by*

1 each Option Agreement is completed and the full purchase price is paid ~~on or before the expiration of~~ *within*
2 two hundred seventy days from the date of each ~~respective~~
3 *execution of the Option Agreement;*

4
5 (iii) the option fee for each Option Agreement
6 shall be retained by the party granting the option and
7 *shall not be* applied to the purchase price if the land
8 transfer contemplated by ~~each the~~ Option Agreement is
9 not completed and the full purchase price paid ~~on or~~
10 *before the expiration of within* two hundred seventy
11 days ~~from after~~ the date of each ~~respective~~ *execution of*
12 *the Option Agreement;* and

13 (iv) if, for any reason, the option fee called for by
14 ~~each respective any~~ Option Agreement is not paid as set
15 forth in paragraph (i), ~~above~~, the party granting the
16 ~~Option option~~ shall have the right to terminate his obligations
17 under the Option Agreement, and if such right is
18 exercised, such Option Agreement shall thereafter be un-
19 enforceable against any party thereto.

20 (c) If the requirements set forth in section 8 of this
21 Act have not been satisfied at the expiration of the term
22 of any Option Agreement, the State Corporation may elect
23 to extend any such Option Agreement then in effect for an
24 additional period of one year. A nonrefundable extension fee
25 equal to 2½ per centum of the agreed upon purchase price

14

1 shall be paid from the Fund to any defendant whose Option
 2 Agreement is extended for such additional period: *Provided,*
 3 *however,* That such extension fee shall not be applied toward
 4 the purchase price, and that the total *amount of* extension
 5 fees paid to all defendants shall not exceed \$87,500.

6 (d) To the extent that any portion of the \$262,500
 7 authorized *to be appropriated* by section ~~5(b)~~ 15(a) of this
 8 Act for the payment of option and extension fees is not
 9 utilized for the purposes set forth herein, the excess shall be
 10 returned to the general Treasury of the United States.

11 ~~SETTLEMENT LANDS PURCHASE OF PRIVATE SETTLEMENT~~
 12 ~~LANDS~~

13 SEC. 7. Upon satisfaction of all of the conditions set
 14 forth in section 8 of this Act, the sum of \$3,500,000 (minus
 15 any option fees paid and credited against the purchase price
 16 pursuant to the provisions of sections 6 (b) (ii) ~~and (iii)~~ of
 17 ~~the~~ *this* Act) shall be paid to the State Corporation from the
 18 Fund for the purchase by the State Corporation of the pri-
 19 vate settlement lands and for the reasonable costs of acquisi-
 20 tion incurred by the State Corporation in connection with
 21 the purchase of private settlement lands. If such private
 22 settlement lands are acquired for a total amount less than
 23 \$3,500,000, the State Corporation shall return any ~~such~~ re-
 24 maining ~~monies~~ *moneys* to the general Treasury of the
 25 United States.

1 CONDITIONS PRECEDENT TO THE DISTRIBUTION OF
2 CERTAIN FUNDS SECTION 5(b) MONEYS

3 SEC. 8. No moneys *deposited in the Fund under section*
4 *5(b) of this Act* shall be distributed from the Fund to the
5 State Corporation pursuant to section 7 of this Act until the
6 Secretary has determined—

7 (a) that the State of Rhode Island has enacted
8 legislation ~~in implementation~~ of all of the obligations
9 ~~it has undertaken in~~ *to implement the provisions of the*
10 Settlement Agreement;

11 (b) that the council of the town of Charlestown
12 and the State Corporation have accepted the land use
13 plan contemplated by section 14 of the Settlement
14 Agreement; and

15 (c) ~~that~~ within sixty days of the date of enact-
16 ment of this Act, and in accordance with standards es-
17 tablished by the Secretary for this purpose, *that the*
18 *plaintiff in the lawsuits has a credible claim to the*
19 *lands subject to the lawsuits, including a determination*
20 *that the plaintiff has a credible claim to status as an "In-*
21 *Indian nation or tribe of Indians" within the meaning of*
22 *the Indian Nonintercourse Act (R.S. 2116) Trade*
23 *and Intercourse Act of 1790 (Act of August 4, 1790;*
24 *ch. 33, § 4, 1 Stat. 138), and all amendments thereto*
25 *and subsequent versions thereof, at all relevant periods*

1 of time, including the present. In the event that the
 2 Secretary determines that the plaintiff in the lawsuits
 3 does not have a credible claim to the lands subject to
 4 the lawsuits, the determination of the Secretary shall be
 5 subject to judicial review in the ~~Federal~~ *United States*
 6 District Court for the ~~State~~ *District* of Rhode Island or
 7 the District of Columbia. ~~pursuant to section 702 of~~
 8 ~~title 5, United States Code.~~ The reviewing court shall
 9 set aside any such determination only if it is found to
 10 be arbitrary, capricious, an abuse of discretion, or other-
 11 wise not in accordance with law. If it is ~~ultimately~~
 12 determined in a final, nonappealable order of a court of
 13 competent jurisdiction that the plaintiff in the lawsuits
 14 does have a credible claim to the lands subject to the
 15 lawsuits, or if the Secretary shall make such a de-
 16 termination after remand by the reviewing court, such
 17 order or determination shall have the same effect as if
 18 the Secretary had initially made the determination that
 19 the plaintiff in the lawsuits has a credible claim to the
 20 lands subject to the lawsuits.

21 RESTRICTION ON ALIENATION

22 SEC. 9. ~~No~~ *Settlement* lands acquired by the State Cor-
 23 poration under the Settlement Agreement may *not* be sold,
 24 granted, leased or otherwise conveyed, nor shall any such
 25 sale, grant, lease or conveyance be of any validity in law or

1 equity, unless the same is approved by the Secretary or his
2 designee and the Governor of the State of Rhode Island:
3 *Provided, however,* That nothing in this Act shall affect or
4 otherwise impair the ability of the State Corporation to grant
5 or otherwise convey (including any involuntary conveyance
6 by means of eminent domain or condemnation proceedings)
7 any easement for public or private purposes pursuant to the
8 laws of the State of Rhode Island.

9 EXEMPTION FROM TAXATION

10 ~~SEC. 10. Neither the settlement lands nor any moneys~~
11 ~~received by the State Corporation from the Fund shall be~~
12 ~~subject to any form of Federal, State, or local taxation:~~
13 ~~*Provided, however,* That this exemption shall not apply to~~
14 ~~any income-producing activities occurring on the settlement~~
15 ~~lands: *And provided further,* That nothing in this Act shall~~
16 ~~prevent the imposition of payments in lieu of taxes on the~~
17 ~~State Corporation for services provided in connection with~~
18 ~~the settlement lands.~~

19 *SEC. 10. (a) Except as otherwise provided in subsec-*
20 *tions (b) and (c), the settlement lands and any moneys re-*
21 *ceived by the State Corporation from the Fund shall not be*
22 *subject to any form of Federal, State, or local taxation.*

23 *(b) The exemption provided in subsection (a) shall not*
24 *apply to any income-producing activities occurring on the*
25 *settlement lands.*

1 (c) *Nothing in this Act shall prevent the imposition of*
 2 *payments in lieu of taxes on the State Corporation for ser-*
 3 *vices provided in connection with the settlement lands.*

4 (d) *The exemption provided in subsection (a) as it re-*
 5 *lates to amounts received by the State Corporation from the*
 6 *Fund shall not apply if any of such amounts are used for,*
 7 *or diverted to, any purpose other than—*

8 (1) *the purposes authorized under this Act; or*

9 (2) *investment (but only to the extent that the*
 10 *invested portion of such amounts is not currently needed*
 11 *for the purposes otherwise authorized by this Act) in—*

12 (A) *public debt securities of the United States;*

13 (B) *obligations of a State or local government*
 14 *which are not in default as to principal or interest;*

15 or

16 (C) *time or demand deposits in a bank (as de-*
 17 *finied in section 581 of the Internal Revenue Code*
 18 *of 1954) or an insured credit union (within the*
 19 *meaning of section 101(6) of the Federal Credit*
 20 *Union Act, 12 U.S.C. 1752(6)) located in the*
 21 *United States.*

22 DEFERRAL OF CAPITAL GAINS

23 SEC. 11. For purposes of subtitle A of the Internal
 24 Revenue Code of 1954, any sale or disposition of private
 25 settlement lands ~~disposed of~~ pursuant to the terms and condi-

1 tions of the Settlement Agreement shall be treated as an
 2 involuntary conversion as a result of condemnation or the
 3 threat or imminence thereof to which *within the meaning of*
 4 ~~Section~~ section 1033 of the Internal Revenue Code of 1954.
 5 applies.

6 APPLICABILITY OF STATE LAW

7 SEC. 12. Except as otherwise provided in this Act, the
 8 settlement lands shall be subject to the complete civil and
 9 criminal jurisdiction of the State of Rhode Island.

10 ATTORNEY AND CONSULTANT FEES

11 SEC. 13. ~~A sum not in excess of~~ *An amount not to ex-*
 12 *ceed* \$80,077.84 shall be distributed from the Fund to those
 13 private defendants in the lawsuits who have not executed
 14 Option Agreements with the State Corporation as reim-
 15 bursement for partial out-of-pocket expenses incurred
 16 through April 21, 1978 and partial attorneys' fees incurred
 17 in connection with the lawsuit.

18 FEDERAL BENEFITS PRESERVED

19 SEC. 14. Nothing contained in this Act or any legislation
 20 enacted by the State of Rhode Island pursuant to its obli-
 21 gations under the Settlement Agreement shall affect or other-
 22 wise impair in any adverse manner any benefits received by
 23 the State of *Rhode Island* under the ~~Pitman Robertson Act~~
 24 *Federal Aid in Wildlife Restoration Act of September 2,*
 25 *1937* (16 U.S.C. 669-669 (i)) and the ~~Dingell-Johnson~~

1 ~~Act~~ or the *Federal Aid in Fish Restoration Act of August 9,*
2 *1950* (16 U.S.C. 777-777 (k)).

3 AUTHORIZATION OF FUNDS

4 SEC. 15. There ~~is~~ *are* hereby authorized to be appro-
5 priated: such ~~sums~~ as are necessary to carry out the purposes
6 of this Act.

7 (a) \$262,500 for the payment of option and exten-
8 sion fees as provided for in section 6 of this Act;

9 (b) \$3,500,000 for the purchase of private settle-
10 ment lands as provided for in section 7 of this Act;

11 (c) \$80,077.84 for the payment of attorney and
12 consultant fees as provided for in section 13 of this Act.

13 SAVINGS CLAUSE

14 SEC. 16. To the extent that there may be any conflict
15 between any provision of this Act and any other applicable
16 Federal law or laws, the provisions of this Act shall govern.

17 STATUTE OF LIMITATIONS

18 SEC. 17. Notwithstanding any other provision of law—

19 (a) any action *in any Federal court* to contest the
20 authority of the United States to legislate on the subject
21 matter of this Act, or to contest the legality or constitu-
22 tionality of this Act or any provision thereof, shall be
23 barred unless the complaint is filed within one hundred
24 eighty days ~~of~~ *after* the date of enactment of this Act;
25 and

1 (b) any action over which the Court of Claims has
2 jurisdiction under the provisions of section 1505 of title
3 28, United States Code by any Indian, Indian nation, or
4 tribe of Indians affected by section ~~4(d) (1) and (2)~~
5 ~~4(b)~~ of this Act shall be barred unless such action is
6 filed in the Court of Claims within three years of the
7 date of enactment of this Act.

8 **SEPARABILITY**

9 **SEC. 18.** If any provision of this Act or the applicability
10 thereof is held invalid, the remaining provisions of this Act
11 shall not be affected thereby.

95TH CONGRESS
2D SESSION

H. R. 12860

IN THE HOUSE OF REPRESENTATIVES

MAY 25, 1978

Mr. BEARD of Rhode Island (for himself and Mr. ST GERMAIN) introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

A BILL

To settle Indian land claims within the State of Rhode Island and Providence Plantations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Rhode Island Indian
4 Claims Settlement Act".

5 CONGRESSIONAL FINDINGS AND DECLARATION OF

6 POLICY

7 SEC. 2. Congress finds and declares that—

8 (1) there are pending before the United States
9 District Court for the District of Rhode Island two con-
10 solidated actions, entitled "Narragansett Tribe of Indians
11 v. Southern Rhode Island Land Development Co., et al.

1 C.A. No. 75-0006 (D.R.I.) and Narragansett Tribe of
2 Indians v. Rhode Island Director of Environmental
3 Management C.A. No. 75-0005 (D.R.I.)”, that involve
4 Indian claims to certain public and private lands within
5 the town of Charlestown, Rhode Island;

6 (2) the pendency of these lawsuits has resulted in
7 severe economic hardships for the residents of the town
8 of Charlestown by clouding the titles to much of the land
9 in the town, including lands not involved in the lawsuits;

10 (3) the Congress shares with the State of Rhode
11 Island and the parties to the lawsuits a desire to remove
12 all clouds on titles resulting from such Indian land claims
13 within the State of Rhode Island; and

14 (4) the parties to the lawsuits and others interested
15 in the settlement of Indian land claims within the State
16 of Rhode Island have executed a Settlement Agreement
17 that requires certain implementing legislation to be en-
18 acted by Congress and the State of Rhode Island as a
19 condition to its effectiveness.

20 **DEFINITIONS**

21 **SEC. 3.** For the purposes of this Act, the term—

22 (a) “Fund” means the Rhode Island Indian Claims
23 Settlement Fund established under section 5 of this Act;

24 (b) “Indian Corporation” means the Rhode Island

1 nonbusiness corporation known as the Narragansett Tribe
2 of Indians;

3 (c) "lawsuits" means the actions entitled "Narra-
4 gansett Tribe of Indians v. Southern Rhode Island Land
5 Development Co., et al., C.A. No. 75-0006 (D.R.I.)
6 and Narragansett Tribe of Indians v. Rhode Island
7 Director of Environmental Management, C.A. No. 75-
8 0005 (D.R.I.)";

9 (d) "Option Agreements" means the agreements
10 entered into or to be entered into pursuant to section 3 of
11 the Settlement Agreement between the State Corpora-
12 tion (or in the event the State Corporation has not yet
13 been created, with a designee of the Governor of Rhode
14 Island) and the defendants in the lawsuits under which
15 the State Corporation will have an option to purchase
16 the private settlement lands;

17 (e) "private settlement lands" means those lands
18 that are to be acquired by the State Corporation from
19 the private defendants in the lawsuits pursuant to sec-
20 tion 3 of the Settlement Agreement;

21 (f) "public settlement lands" means those lands
22 that are to be conveyed by the State of Rhode Island
23 to the State corporation pursuant to section 2 of the
24 Settlement Agreement;

1 (g) "Secretary" means the Secretary of the In-
2 terior or his designee;

3 (h) "Settlement Agreement" means the docu-
4 ment entitled "Joint Memorandum of Understanding
5 Concerning Settlement of the Rhode Island Indian
6 Land Claims" executed as of February 28, 1978, by
7 representatives of the State, of the town of Charlestown,
8 and of parties to the lawsuits;

9 (i) "settlement lands" means those lands defined in
10 subsections (e) and (f) of this section; and

11 (j) "State Corporation" means the corporation
12 created or to be created by legislation enacted by the
13 State of Rhode Island pursuant to section 1 of the
14 Settlement Agreement for the purpose of acquiring and
15 holding the settlement lands.

16 RATIFICATION OF PRIOR LAND AND WATER CONVEYANCES
17 AND EXTINGUISHMENT OF ABORIGINAL TITLE

18 SEC. 4. (a) Any transfer of lands or waters located
19 within the United States from, by or on behalf of the Indian
20 Corporation, or any other entity known as or claiming to
21 be the Narragansett Tribe of Indians, or any predecessor in
22 interest, member, or stockholder thereof, including but not
23 limited to a transfer pursuant to any statute of any state, was
24 and shall be deemed to have been made in accordance with the
25 Constitution and all laws of the United States that are spe-

1 cifically applicable to transfers of lands or waters from, by
2 or on behalf of any Indian, Indian nation or tribe of Indians
3 (including but not limited to the Trade and Intercourse Act
4 of 1790 (ch. 33, sec. 4, 1 Stat. 138), and all amendments
5 thereto and all subsequent versions thereof), and Congress
6 does hereby approve and ratify any such transfer effective
7 as of the date of the said transfer.

8 (b) To the extent that any transfer of lands or waters
9 described in subsection (a) may involve lands or waters to
10 which the Indian Corporation, or any other entity known as
11 or claiming to be the Narragansett Tribe of Indians, or any
12 predecessor in interest, member, or stockholder thereof, had
13 aboriginal title, subsection (a) shall be regarded as an extin-
14 guishment of such aboriginal title as of the date of said
15 transfer.

16 (c) By virtue of the approval and ratification of a trans-
17 fer of lands or waters effected by subsection (a) or an extin-
18 guishment of aboriginal title effected thereby, all claims
19 against the United States, any State or subdivision thereof,
20 or any other person or entity, by the Indian Corporation, or
21 any other entity known as or claiming to be the Narragan-
22 sett Tribe of Indians, or any predecessor in interest, member
23 or stockholder thereof, including but not limited to claims for
24 trespass damages or claims for use or occupancy, arising sub-
25 sequent to the transfer and that are based upon any interest

1 in or right involving such lands or waters, shall be regarded
2 as extinguished as of the date of the transfer.

3 (d) (1) Any and all other claims involving or in any
4 way relating to lands or waters within the State of Rhode
5 Island of any Indian, Indian nation, or tribe of Indians,
6 arising prior to the date of enactment of this Act under the
7 Constitution or laws of the United States that are specifically
8 applicable to transfers of lands or waters from, by or on
9 behalf of any Indian, Indian nation or tribe of Indians
10 (including but not limited to the Trade and Intercourse Act
11 of 1790 (ch. 33, sec. 4, 1 Stat. 138), and all amendments
12 thereto and all subsequent versions thereof), shall be barred
13 unless filed in a court of competent jurisdiction within one
14 hundred eighty days of the date of enactment of this Act.

15 (2) Any Indian, Indian nation, or tribe of Indians
16 asserting a claim involving or in any way relating to lands
17 or waters located within the limits of the town of Charles-
18 town, Rhode Island, shall be limited to asserting such claim
19 exclusively against the Indian Corporation, and such Indian,
20 Indian nation, or tribe of Indians shall be barred from bring-
21 ing any suit involving such claim against any other person
22 or entity.

23 (e) As used in this section, the phrase "lands or waters"
24 shall include any interest in or right involving lands or
25 waters, and the term "transfer" shall include but not be

1 limited to any sale, grant, lease, allotment, partition, convey-
 2 ance, or any transaction the purpose of which was to effect
 3 a sale, grant, lease, allotment, partition or conveyance, or any
 4 event or events that resulted in a change in possession or
 5 control of lands or waters.

6 RHODE ISLAND INDIAN CLAIMS SETTLEMENT FUND

7 SEC. 5. There is hereby established in the United States
 8 Treasury a fund to be known as the Rhode Island Indian
 9 Claims Settlement Fund into which the following moneys
 10 shall be deposited following the appropriation authorized by
 11 section 15 of this Act:

12 (a) \$3,500,000, which shall be distributed to the
 13 State Corporation in accordance with the provisions of
 14 section 7 of this Act;

15 (b) \$262,500, which shall be distributed to certain
 16 private defendants in the lawsuits in accordance with the
 17 provisions of section 6 of this Act; and

18 (c) \$80,077.84, which shall be distributed pursuant
 19 to the provisions of section 13 of this Act.

20 OPTION AGREEMENTS TO PURCHASE PRIVATE

21 SETTLEMENT LAND

22 SEC. 6. (a) Each private defendant in the lawsuits who
 23 has entered or who subsequently enters into a two-year
 24 Option Agreement with the State Corporation (or in the
 25 event the State Corporation has not yet been created, with a

1 designee of the Governor of Rhode Island) to convey his
2 portion of the private settlement lands to the State Corpora-
3 tion shall, subject to the limitations of subsection (b), be paid
4 an option fee from the Fund equal to 5 per centum of the
5 purchase price agreed upon in each Option Agreement:
6 *Provided, however,* That the total option fees paid to all such
7 defendants shall not exceed \$175,000.

8 (b) The payment of option fees authorized by subsection
9 (a) shall be subject to the following conditions:

10 (i) the option fees shall not be paid from the Fund
11 until immediately prior to the expiration of ninety days
12 from the date of passage of this Act;

13 (ii) the option fee for each Option Agreement shall
14 be applied to the agreed purchase price in each Option
15 Agreement if the land transfer contemplated by each
16 Option Agreement is completed and the full purchase
17 price paid on or before the expiration of two hundred
18 seventy days from the date of each respective Option
19 Agreement;

20 (iii) the option fee for each Option Agreement shall
21 be retained by the party granting the option and not
22 applied to the purchase price if the land transfer con-
23 templated by each Option Agreement is not completed
24 and the full purchase price paid on or before the expira-

1 tion of two hundred seventy days from the date of each
2 respective Option Agreement; and

3 (iv) if, for any reason, the option fee called for by
4 each respective Option Agreement is not paid as set
5 forth in paragraph (i), above, the party granting the
6 Option shall have the right to terminate his obligations
7 under the Option Agreement, and if such right is exer-
8 cised, such Option Agreement shall thereafter be unen-
9 forceable against any party thereto.

10 (c) If the requirements set forth in section 8 of this Act
11 have not been satisfied at the expiration of the term of any
12 Option Agreement, the State Corporation may elect to ex-
13 tend any such Option Agreement then in effect for an
14 additional period of one year. A nonrefundable extension
15 fee equal to $2\frac{1}{2}$ per centum of the agreed upon purchase price
16 shall be paid from the Fund to any defendant whose Option
17 Agreement is extended for such additional period: *Provided,*
18 *however,* That such extension fee shall not be applied toward
19 the purchase price and that the total extension fees paid to
20 all defendants shall not exceed \$87,500.

21 (d) To the extent that any portion of the \$262,500
22 authorized by section 5 (b) of this Act for the payment of
23 option and extension fees is not utilized for the purposes set

1 forth herein, the excess shall be returned to the general
2 Treasury of the United States.

3 SETTLEMENT LANDS

4 SEC. 7. Upon satisfaction of all of the conditions set forth
5 in section 8 of this Act, the sum of \$3,500,000 (minus any
6 option fees paid and credited against the purchase price pur-
7 suant to the provisions of sections 6 (b) (ii) and (iii) of the
8 Act) shall be paid to the State Corporation from the Fund
9 for the purchase by the State Corporation of the private set-
10 tlement lands and for the reasonable costs of acquisition in-
11 curred by the State Corporation in connection with the pur-
12 chase of private settlement lands. If such private settlement
13 lands are acquired for a total amount less than \$3,500,000,
14 the State Corporation shall return any such remaining
15 moneys to the general Treasury of the United States.

16 CONDITIONS PRECEDENT TO THE DISTRIBUTION OF

17 CERTAIN FUNDS

18 SEC. 8. No moneys shall be distributed from the Fund to
19 the State corporation pursuant to section 7 of this Act until
20 the Secretary has determined:

21 (a) that the State of Rhode Island has enacted
22 legislation in implementation of all of the obligations it
23 has undertaken in the Settlement Agreement;

24 (b) that the council of the town of Charlestown
25 and the State Corporation have accepted the land use

1 plan contemplated by section 14 of the Settlement
2 Agreement; and

3 (c) that within sixty days of the date of enactment of
4 this Act, and in accordance with standards established by
5 the Secretary for this purpose, the plaintiff in the lawsuits
6 has a credible claim to the lands subject to the lawsuits, in-
7 cluding a determination that the plaintiff has a credible claim
8 to status as an "Indian nation or tribe of Indians" within the
9 meaning of the Indian Nonintercourse Act (R.S. 2116) at
10 all relevant periods of time, including the present. In the
11 event that the Secretary determines that the plaintiff in the
12 lawsuits does not have a credible claim to the lands subject
13 to the lawsuits, the determination of the Secretary shall be
14 subject to judicial review in the Federal District Court for
15 the State of Rhode Island or the District of Columbia pur-
16 suant to section 702 of title 5, United States Code. The re-
17 viewing court shall set aside any such determination only
18 if it is found to be arbitrary, capricious, an abuse of discre-
19 tion, or otherwise not in accordance with law. If it is ulti-
20 mately determined in a final, nonappealable order of a court
21 of competent jurisdiction that the plaintiff in the lawsuits
22 does have a credible claim to the lands subject to the law-
23 suits, or if the Secretary shall make such a determination
24 after remand by the reviewing court, such order or deter-
25 mination shall have the same effect as if the Secretary had

1 initially made the determination that the plaintiff in the
2 lawsuits has a credible claim to the lands subject to the
3 lawsuits.

4 RESTRICTION ON ALIENATION

5 SEC. 9. No lands acquired by the State Corporation
6 under the Settlement Agreement may be sold, granted, leased
7 or otherwise conveyed, nor shall any such sale, grant, lease,
8 or conveyance be of any validity in law or equity, unless the
9 same is approved by the Secretary or his designee and the
10 Governor of the State of Rhode Island: *Provided, however,*
11 That nothing in this Act shall affect or otherwise impair the
12 ability of the State Corporation to grant or otherwise convey
13 (including any involuntary conveyance by means of eminent
14 domain or condemnation proceedings) any easement for
15 public or private purposes pursuant to the laws of the State
16 of Rhode Island.

17 EXEMPTION FROM TAXATION

18 SEC. 10. Neither the settlement lands nor any moneys
19 received by the State Corporation from the Fund shall be
20 subject to any form of Federal, State, or local taxation:
21 *Provided, however,* That this exemption shall not apply to
22 any income-producing activities occurring on the settlement
23 lands: *And provided further,* That nothing in this Act shall
24 prevent the imposition of payments in lieu of taxes on the

1 State Corporation for services provided in connection with
2 the settlement lands.

3 DEFERRAL OF CAPITAL GAINS

4 SEC. 11. For purposes of subtitle A of the Internal
5 Revenue Code of 1954, sale or disposition of private settle-
6 ment lands disposed of pursuant to the terms and conditions
7 of the Settlement Agreement shall be treated as an involun-
8 tary conversion as a result of condemnation or the threat or
9 imminence thereof to which section 1033 of the Internal
10 Revenue Code of 1954 applies.

11 APPLICABILITY OF STATE LAW

12 SEC. 12. Except as otherwise provided in this Act, the
13 settlement lands shall be subject to the complete civil and
14 criminal jurisdiction of the State of Rhode Island.

15 ATTORNEY AND CONSULTANT FEES

16 SEC. 13. A sum not in excess of \$80,077.84 shall be
17 distributed from the Fund to those private defendants in the
18 lawsuits who have not executed Option Agreements with
19 the State Corporation as reimbursement for partial out-of-
20 pocket expenses incurred through April 21, 1978 and partial
21 attorneys' fees incurred in connection with the lawsuit.

22 FEDERAL BENEFITS PRESERVED

23 SEC. 14. Nothing contained in this Act or any legisla-
24 tion enacted by the State of Rhode Island pursuant to its
25 obligations under the Settlement Agreement shall affect or

1 otherwise impair in any adverse manner any benefits received
2 by the State under the Pitman-Robertson Act (16 U.S.C.
3 669-669 (i)) and the Dingell-Johnson Act (16 U.S.C.
4 777-777 (k)).

5 AUTHORIZATION OF FUNDS

6 SEC. 15. There is hereby authorized to be appropriated
7 such sums as are necessary to carry out the purposes of this
8 Act.

9 SAVINGS CLAUSE

10 SEC. 16. To the extent that there may be any conflict
11 between any provision of this Act and any other applicable
12 federal law or laws, the provisions of this Act shall govern.

13 STATUTE OF LIMITATIONS

14 SEC. 17. Notwithstanding any other provision of law:

15 (a) any action to contest the authority of the United
16 States to legislate on the subject matter of this Act, or to
17 contest the legality or constitutionality of this Act or any
18 provision thereof, shall be barred unless the complaint is
19 filed within one hundred and eighty days of the date of
20 enactment of this Act; and

21 (b) any action over which the Court of Claims has
22 jurisdiction under the provisions of section 1505 of title
23 28, United States Code, by any Indian, Indian nation,
24 or tribe of Indians affected by section 4 (d) (1) and (2)
25 of this Act shall be barred unless such action is filed in

1 the Court of Claims within three years of the date of
2 enactment of this Act.

3 SEPARABILITY

4 SEC. 18. If any provision of this Act or the applicability
5 thereof is held invalid, the remaining provisions of this Act
6 shall not be affected thereby.

Senator ABOUREZK. We will now hear from Senator Pell.

STATEMENT OF HON. CLAIBORNE PELL, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator PELL. Thank you very much. I thank you, Mr. Chairman and Mr. Roncalio, for arranging for this hearing. I am truly delighted to be here in support of S. 3153.

This bill represents the first consensus resolution of the 14 Indian land claim suits that have been filed in the Eastern States in recent years. This settlement, reached just as a long and costly trial was about to start is the result of months of hard negotiations between lawyers for the Narragansetts, private landowners affected by the suit, and State officials.

This bill, I believe, is a constructive way of resolving the competing interests of all parties involved in the land claim without waiting the 5-7 years before the controversy would be finally resolved by the courts.

I particularly would like to commend Governor Garrahy for his wisdom and leadership in bringing the landowners and the Narragansett Indians together in order to reach the settlement.

I particularly thank, as I said earlier, Senator Abourezk and Congressman Roncalio for scheduling this special joint hearing to consider this legislation. I realize it was difficult. I thank you both for all your cooperation and that of your staffs in working out the details of this bill in the short time since its introduction May 25.

The \$3.5 million authorized under this bill will be paid to a public corporation to be created in our State for the purpose of purchasing approximately 900 acres of privately owned land in Charlestown from landowners who are willing to sell their property at fair market value. The public corporation will hold the property acquired from landowners in trust for the benefit of the Narragansetts.

No funds will actually be paid to the public corporation until the Department of the Interior makes a finding that the Narragansett claim is a credible one and until such time as the State legislature passes appropriate legislation authorizing the conveyance of the State's 900 acre settlement contribution to the newly created corporation.

As part of the settlement agreement embodied in this legislation, all Narragansett Indian land claims are extinguished upon passage of the appropriate State legislation, and all non-Narragansett claims are extinguished 6 months after enactment of this bill that we are discussing today.

I would urge your committee to act on this bill as quickly as possible. The court action created by the Indian land claim virtually immobilized the town of Charlestown, R.I., jeopardizing bond issues for the town, and preventing landowners from selling, mortgaging, or developing their property.

In addition, the private defendants in this lawsuit have borne for over 3 years the financial burden of defending a major lawsuit when none of them have the economic ability to support the expense of litigation. It is time that Congress end the uncertainty created by the land claim, for the landowners and the town, and for the Narragansetts, a great people who are entitled to a congressional resolution of

their historic grievances. I believe that, in reporting favorably on this bill, you will be doing justice to all parties who are fully in support of this measure and anxious that it pass in this session of Congress so that further hardship and uncertainty can be avoided.

By passing this bill, you would also set a precedent for all the other States up and down the seaboard with similar claims. We would hope that this could serve as a beacon light for them.

Senator ABOUREZK. Senator Pell, thank you very much for an excellent statement.

I have to agree with you on that. Instead of the confrontation that we have seen with the Indian tribes, the States, and the people of the States, especially in the Nonintercourse Act claims, if each of them could arrive at a consensus as Rhode Island has—I think it is a shining example for the rest of the country.

All of you are to be congratulated for your participation in it.

Senator PELL. Thank you very much, Mr. Chairman.

Senator ABOUREZK. Senator John Chafee is next.

STATEMENT OF HON. JOHN CHAFEE, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Thank you very much, Mr. Chairman. I would like to thank you and Mr. Roncalio for scheduling this hearing and for taking up this measure.

I support fully everything that Senator Pell said. I would just like to add a couple of comments. First of all, this has created turmoil in the town of Charlestown, as you could well anticipate, upsetting the rights of the landowners there. There is uncertainty that accompanies the indefiniteness of the title and, of course, its effect, in a way, of the economy of the whole State.

Second, I would like to stress that this has been worked out in court, as you mentioned, Mr. Chairman. After arduous negotiations, all parties did reach this agreement, which they are now supporting—each of them.

As Senator Pell mentioned, the Narragansett Indians are a distinguished tribe. We are delighted that this settlement permits them to renew their claims in certain very ancient and historic lands for them.

Third, I would like to make the point that the State of Rhode Island is making a contribution here of some 900 acres. I think that is important when we come here asking for the Federal Government's contribution.

Finally, I would like to stress that we would hope that the committee and the Congress would not feel that all the claims in all the other States have to somehow be settled before we get on with this one. We have, as you mentioned, arrived at a settlement. Although the issues are complex, they have been resolved.

I just hope that we would not wait for a settlement to be arrived at in Maine or New York or wherever it might be before we could step forward and get this one disposed of in accordance with the agreement that the parties worked out.

That is my plea I leave with you, Mr. Chairman and members of the committee.

I believe you are going to hear from Lt. Gov. Thomas Diluglio and Hon. Edward Manning and various representatives of the parties involved. You will find wholehearted support of this agreement.

Thank you very much.

Senator ABOUREZK. Thank you.

I can just say that we will attempt to move this legislation as rapidly as possible. When we get some of the people agreeing on something as controversial as this, it is no use waiting too long because they may change their minds later on.

We have a markup session scheduled in about a week. We intend to move it at that point.

Senator PELL. This is one of the worries that we have; it could unravel unless we do take advantage of the parties agreement. On the other hand, if we do take advantage of the consensus, then it could serve as an example in other parts of the country.

Senator ABOUREZK. I cannot speak for the House side but I know that we will move it very rapidly.

Senator PELL. Thank you.

Senator CHAFEE. Thank you.

Senator ABOUREZK. I would like to thank both of you for your appearance. We appreciate it very much.

Is Congressman Beard here yet?

[No response.]

Senator ABOUREZK. We will hear from the Lieutenant Governor of Rhode Island, Thomas Diluglio, and Eric Jankel, executive assistant to the Governor. Both are from Providence. We welcome you both to the committees' hearing.

The Governor notified us that he was not able to come because of conflict. We wanted to have him here at the hearings. We tried our best to accommodate him. We set the hearings at a different date. I understand how Governors get called away at different times. It is the same with all politicians. Something comes up that requires that they miss scheduled appointments.

We are grateful for the participation in this settlement of the Governor and his office and of you folks here.

**STATEMENT OF THOMAS L. DILUGLIO, LIEUTENANT GOVERNOR,
STATE OF RHODE ISLAND, ACCOMPANIED BY ERIC R. JANKEL,
EXECUTIVE ASSISTANT TO THE GOVERNOR**

Mr. DILUGLIO. Mr. Chairman, my name is Thomas Diluglio I am Lieutenant Governor of Rhode Island; and I come here today on behalf of Gov. J. Joseph Garrahy, who proffers to you his apologies for being unable to testify in person.

I am indeed pleased and privileged to be here today on behalf of Governor Garrahy to speak on the Indian land claim settlement which has been achieved in Rhode Island. With me is Eric R. Jankel, Governor Garrahy's executive assistant for policy.

As all of you know, the Eastern Seaboard States have been attempting to cope with the very difficult problem of Indian land claims for the past 3 or 4 years. These claims have raised very difficult legal, philosophical, and moral questions in each and every State where a claim has been advanced as well as for the Congress of the United States.

Our Founding Fathers have left us with a most difficult type of problem to resolve. To weigh in the context of our contemporary society the subjective considerations of tribal status at several points

in our historical development is a most profound if not impossible assignment.

We, in Rhode Island, have taken a somewhat independent view of our own situation. Mr. Chairman, I would like to give both of the distinguished committees the benefit of our thinking on the approach to this problem.

First, the Rhode Island Indian land claim is small in relative terms. The claim area encompasses some 3,200 acres in the single town of Charlestown. In Mashpee, Mass., the claim is for some 16,000 acres; and in Maine the claim is for over 10 million acres.

About half of the 3,200 acres claimed is State-owned land which, of necessity, made the State government a defendant in this legal action.

Second, the Narragansett Indians have a strong local identity because there has been a consistent presence in the community, and in more recent years Indian organizations have been dedicated to providing social services to, and expanding economic opportunities for, their clientele.

Both of those goals are laudable. It seems clear to us that a land base should be a positive factor, particularly in developing new job opportunities. This is consistent with our State policy.

Third, it appeared to the Governor at the beginning of settlement negotiations that there was a strong will to settle this matter outside of the lengthy and agonizing litigative process which was set in motion by the filing of the claim initially.

I would like to emphasize at this point that the settlement was negotiated by and between the parties in a businesslike and straightforward manner. There was a potential for extreme emotionalism due to frustration and the economic effect which is being felt within the community due to the restrictions of land transaction throughout Charlestown. Yet, the parties were persistent in moving toward their mutual objectives.

Mr. Chairman, all of the counsels to the parties should be complimented for their professionalism and high standards. The individual plaintiffs and defendants must be praised for their patience, endurance, and courage in confronting this action directly.

All of you are familiar with the details of our settlement. It has been iterated to you this morning by Senator Pell.

I would like to thank all of you on behalf of Governor Garrahy for your special attention to this matter.

Before I close, I would like to thank the members of your respective staffs who have worked so diligently with the Rhode Island delegation in shaping the congressional bills necessary to enact the settlement. Both Mr. Parker and Mr. Ducheneaux were very helpful; their assistance is most appreciated.

I know that Speaker Manning is here to comment from the perspective of the Rhode Island Legislature. Mr. Jankel and Mr. Brody, special assistants to the attorney general of Rhode Island, are here to answer any specific or detailed questions that you may have on this matter.

Incidentally, I would like to congratulate the chairman for his statement with respect to the appreciation of the exigency of the matter and his intention to move the matter forward expeditiously.

Thank you very much.

Senator ABOUREZK. Thank you very much.

Do you have a separate statement, Mr. Jankel?

Mr. JANKEL. No, Senator.

Senator ABOUREZK. We have a great many witnesses. We have got to hear them this morning. Otherwise, we would have some questions to ask you.

I just want to express my thanks and ask Congressman Roncalio, chairman of the House Subcommittee on Indian Affairs, if he would like to ask anything or say anything.

Mr. RONCALIO. I have no questions. I thank you for your testimony. Senator ABOUREZK. Thank you very much.

The next witness is Hon. Edward P. Manning, speaker of the Rhode Island General Assembly in Providence, R.I. Speaker Manning has been before this committee at a prior time. He testified on the tribal-State compact bill.

I would like to welcome you once again, Speaker Manning.

STATEMENT OF HON. EDWARD P. MANNING, SPEAKER, RHODE ISLAND GENERAL ASSEMBLY

Mr. MANNING. Thank you, Mr. Chairman and Chairman Roncalio.

I wonder if I may digress from this hearing for a moment and state for the record that those of us who have been involved in Indian affairs with the National Conference of State Legislators and the Council of State Governments wish to wish you well, Senator, in whatever your intentions are in your life. We are sad that you are not going to come back to the Senate. You will be sorely missed by those of us who are involved. We deeply appreciate your involvement in these issues.

Senator ABOUREZK. Thank you very much, speaker.

Mr. MANNING. Senator, you have heard testimony already with respect to how these land cases in Charlestown have adversely affected the economy of the area and the people and their inability to sell their homes. You will hear more of that.

I am here basically to speak about a significant aspect of the settlement proposal. That is the degree of Federal and State cooperation needed to implement the settlement. The settlement proposal which has been agreed upon contemplates the enactment of appropriate legislation by both Congress and the Legislature in the State of Rhode Island.

I think this conceivably could be a historic first. We certainly in Rhode Island stand ready to coordinate and cooperate in every fashion with the Congress in implementing this so-called agreement.

I think that we have already put into the Rhode Island Legislature a draft of the legislation that will be tailored to your own legislation once you pass it. I submit that to you here.

I think Congress has the opportunity to take this first step in achieving the goal of cooperation between the State and Congress with respect to an Eastern Indian land claim. Draft legislation, as I state, is here. I assure you that we will dedicate, and my office will dedicate all its efforts, to making sure that, if Congress does their part, the State of Rhode Island and its legislature will do theirs.

Thank you, Senator.

Senator ABOUREZK. Speaker Manning, thank you very much for an excellent statement. I appreciate it.

I think we can get ours done.

Mr. Roncalio, the witnesses have been saying that, before this thing comes apart, they would like to see it get through both the House and Senate.

We are going to mark it up in about a week's time. You might want to provide an estimate of when you think you can get it marked up.

Mr. RONCALIO. I think we can get it marked up fast enough, but its success on the floor of the House will be a very serious undertaking.

We have a Hawaiian claims bill. We have two Indian claims types of legislation to come before it. We will try to get it marked up.

Mr. MANNING. Thank you, Mr. Chairman.

Senator ABOUREZK. Thank you very much.

The next witness is William Brody, special assistant attorney general.

Mr. BRODY. I would like to welcome you to the committee hearings.

STATEMENT OF WILLIAM G. BRODY, SPECIAL ASSISTANT ATTORNEY GENERAL, STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Mr. BRODY. Thank you, Mr. Chairman and Chairman Roncalio.

Mr. Chairman, I have prepared a statement which I have submitted to the staff already. With your permission, I would submit that for the record.

Senator ABOUREZK. I have encouraged all witnesses to submit their written statements for the record and just ad lib their testimony. It would be appreciated.

Mr. BRODY. Mr. Chairman, my ad lib would be simply to make one point. This particular piece of legislation arises out of a settlement agreement which was entered into by the parties and by the officials of the State of Rhode Island.

I think it is a significant point that it comes from that direction. After a great deal of negotiation, work, and exercise among the parties, we have arrived at that particular point, signed an agreement and then came down to Washington to propose and draft legislation to implement that particular agreement.

Along these lines, as a direct participant in all those negotiations, I would like to take this opportunity to thank my fellow participants for the hard work that they have put into it. I do not think that it can be denied that everybody contributed everything they could. I include in that group the attorneys for the plaintiffs, the private defendants, the officers of the State of Rhode Island, the Governor's office, the Speaker of the House of Representatives of the State of Rhode Island, and the leaders of the General Assembly. Also included, significantly, are the staff of our congressional delegation.

We are all very, very grateful, of course, to the staff of both the House subcommittee and the Senate select committee.

Mr. Chairman, I would like to take this opportunity to submit into evidence, as I indicated in my prepared testimony, a signed duplicate copy of the joint memorandum of understanding concerning settlement of the Rhode Island Indian land claims. In addition to that original signed duplicate, I will submit a certification that an additional signed original copy of that document has been filed with the Secretary of State of the State of Rhode Island for reference.

Senator ABOUREZK. Without objection, that and your prepared statement will be entered into the record.

[The material referred to follows:]

June 20, 1978

JOINT HEARING

UNITED STATES SENATE SELECT COMMITTEE

ON INDIAN AFFAIRS

UNITED STATES HOUSE OF REPRESENTATIVES

SUBCOMITTEE ON INDIAN AFFAIRS AND PUBLIC LANDS

TESTIMONY OF

WILLIAM GRANFIELD BRODY

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Chairman Abourezk; Chairman Roncalio, members of the Committees, first of all, on behalf of Julius C. Michaelson, Attorney General of the State of Rhode Island, I wish to take this opportunity to convey his sincere personal regrets that he could not be here this morning to testify himself. Unfortunately, other pressing matters prevented him from coming to Washington today. He has asked me to express his sincere belief that the Settlement Agreement, which is embodied in the proposed legislation before you, is a fair and equitable solution to the situation now existing in the Town of Charlestown, Rhode Island, and one which does justice not only to the plaintiffs and the defendants in the lawsuits, but also to all of the citizens of Rhode Island, the State and the United States.

The bill before you has been proposed as part of a settlement to two lawsuits that were originally filed in the United States District Court for the District of Rhode Island in January, 1975. Later consolidated by order of the Court, one of the lawsuits affected over 1,600 acres of State-owned land in the Town of Charlestown, Rhode Island. The other involved almost the same amount of privately owned land in that Town. In both actions the Plaintiff Narragansett Tribe of Indians claimed that the land in question had been, at some point prior to 1880, sold or otherwise transferred in violation of the Indian Trade and Intercourse Act of 1790 (currently found, as subsequently amended, at 25 U.S.C. § 177), and each sought immediate return of all the land to the Plaintiff.

I first personally became involved in this matter when

the State's case was assigned to me in January, 1976. From that time I and all of the other legal counsel on both sides became engaged in the enormous task of preparing this case for trial in all of its complex legal and factual aspects. Several legal issues have already been presented to the Court while numerous others remain. At the same time, the task of investigating the factual and historical information involved in a case of this type and magnitude was carried on in its unique and astounding fashion.

During the course of these trial preparations, the lawyers for the parties in the lawsuits began to sound each other out as to, first of all, possible interest in settlement negotiations. These initial soundings did produce results, although, I must say in candor, they did not appear to be all too optimistic. Well over a year ago, however, we began the first of our what later seemed innumerable, and at times interminable, settlement negotiation sessions.

I think that the other participating lawyers will agree with me that the biggest key to the eventual success of our negotiations came from the personal interest, direct involvement and crucial suggestions of Governor J. Joseph Garrahy. With these as a backdrop, the negotiators were able to perceive the actual possibility of settlement and explored these opportunities not only with their clients, but also with necessary "non-parties," such as Speaker Manning and the Rhode Island General Assembly, the Charlestown Town Counsel, our Congressional delegation and the White House.

At the end of this long road we achieved what Attorney General Michaelson has described as a "fair and equitable solution" to the pending lawsuits. The settlement agreement was reduced to writing in a document entitled, "Joint Memorandum of Understanding Concerning Settlement of the Rhode Island Indian Land Claims" and signed by counsel for all parties to the lawsuits as well as Governor Garrahy and, after a unanimous vote, the Charlestown Town Council (by its president, Robert McLean). I am submitting today into the record of this hearing a signed duplicate original of that document. For reference, a signed original of the Joint Memorandum has also been filed with the office of the Secretary of State of the State of Rhode Island. I am also submitting into the record a certification to that effect by the Secretary.

The importance of the Joint Memorandum to the proposed legislation is obvious. If we had not first gone through the long process that led to the signing of the Joint Memorandum, we would not be here before you today. At the same time, if the proposed legislation is not enacted by Congress, that Joint Memorandum becomes a worthless piece of paper. The parties to these lawsuits simply cannot effect a settlement on their own. Because of the very nature of these cases, brought under the Indian Trade and Intercourse Act, and because of the exclusive powers granted to Congress by Article 1, Section 8 of the United States Constitution, appropriate action by Congress is required, if we are ever to see a resolution of the situation now present in Rhode Island.

Please let me advise the Committees that the Joint Memorandum was not hastily drawn, nor was it drafted in any vacuous manner for solely the interests of the parties to the lawsuits. Rather, what the Joint Memorandum as well as the proposed legislation evidence is a serious desire to arrive at a settlement proposal in light of the grand picture, considering the position and best interests of all, both parties and non-parties, whose assistance is needed for its implementation. This studied effort is reflected in the fact that the agreement carries the signature of Governor Garrahy and Charlestown Town Council President McLean, and was achieved only after thorough consultation with Speaker Edward Manning and the leadership of the Rhode Island General Assembly. Prior agreement to the settlement proposal by the Executive and Legislative Branches of the United States, of course, was unfeasible. The concerns of both the lawyers and the Administration, however, were amply presented during our discussions and are, I believe, fully protected in the product thereof.

I cannot say that the proposed settlement agreement or the process by which it was achieved should be a model to be followed by others in this country who face similar situations. That is for others to judge. I can say, however, that the proposed settlement is one of which all of us, plaintiffs, defendants, Rhode Island and the United States, can be proud, not just for its resolution of a legal controversy, but for its treatment of the underlying concerns of both Native Americans and non-Indians alike. For these reasons I respectfully urge passage of the pending legislation.

"Joint Memorandum of Understanding.....
Concerning Settlement of the Rhode
Island Indian Land Claims"

**State of Rhode Island
and Providence Plantations**



**Department of State
Office of the Secretary of State**

Providence

June 19, 1978



STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
DEPARTMENT OF THE ATTORNEY GENERAL
PROVIDENCE COUNTY COURT HOUSE
PROVIDENCE

JULIUS C. MICHAELSON
ATTORNEY GENERAL

June 1, 1978

The Honorable Robert F. Burns
Secretary of State
State House
Providence, RI 02903

Re: Narragansett Indian Land Claim Settlement Agreement

Dear Mr. Secretary:

Enclosed please find an original, executed "Joint Memorandum of Understanding Concerning Settlement of the Rhode Island Indian Land Claims."

I am forwarding this document to you with the request that it be duly filed and recorded in the Office of the Secretary of State.

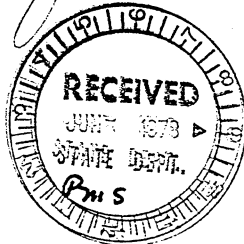
Thank you for your attention to this matter.

Very truly yours,

Julius C. Michaelson
JULIUS C. MICHAELSON
ATTORNEY GENERAL

JCM:JC

Enclosure



EXECUTION COPY 2/28/78

JOINT MEMORANDUM OF UNDERSTANDING
CONCERNING SETTLEMENT OF THE
RHODE ISLAND INDIAN LAND CLAIMS

All parties to Narragansett Tribe of Indians v. Southern Rhode Island Land Development Co., et al, C.A. No. 75-0006 (USDC, DRI) and Narragansett Tribe of Indians v. Rhode Island Director of Environmental Management, C.A. No. 75-0005 (USDC, DRI) (together called "the Lawsuits") and the other undersigned persons interested in the settlement of Indian land claims within the State of Rhode Island hereby agree to the following principles and provisions of settlement which are, except for the provisions of Section 18 below, to be considered as inseparable, dependant requirements and which are all conditioned upon requisite, favorable and timely action by the appropriate executive and legislative branches of the governments of the State of Rhode Island and the United States of America:

1. That a state chartered corporation (the "State Corporation") will be created with an irrevocable charter for the purpose of acquiring, managing and permanently holding the lands defined in Sections 2 and 3 below (the "Settlement lands"); the State Corporation will be controlled by a board of directors, the majority whose members will be chosen by a Rhode Island corporation known as "The Narragansett Tribe of Indians" (the "Indian Corporation") or its successor and the remaining members chosen by the State of Rhode Island.

2. That the State of Rhode Island will contribute the Indian Cedar Swamp, the Indian Burial Hill, the land around Deep Pond, and an easement from Kings Factory Road to Watchaug Pond to the State Corporation. These public portions of the Settlement Lands total approximately 900 acres. Contribution of the State land around Deep Pond is subject to the restrictions set forth below in Section 17.

3. That the Settlement Lands will also include approximately 900 acres of land located within the area outlined in red on the map attached hereto marked Exhibit A. The Settlement Lands shall specifically include those lands held by the defendants named in the Lawsuits which are enumerated on the schedule attached hereto as Exhibit B. These privately held portions of the Settlement Lands shall be acquired at fair market value established without regard to the pendency of the Lawsuits. No private landowner shall be required to convey any land hereunder without his or her consent, which shall be deemed to have been given upon

execution of a mutually acceptable option agreement (the "Option"). Any landowner executing an Option shall be paid a nonrefundable option fee by the federal government equal to 5% of the purchase price for a 2-year option. The optionee shall have the right to renew the option for one additional year for a renewal fee paid by the federal government of 2.5% of the purchase price.

4. That the parties to the Lawsuits will support efforts to obtain deferral of both state and federal income taxes resulting from the conveyance of privately held portions of the Settlement Lands.

5. That the federal government will provide the funds, in an amount not in excess of 3.5 million dollars, to acquire the privately held portions of the Settlement Lands.

6. That Federal legislation shall be obtained that eliminates all Indian claims of any kind, whether possessory, monetary or otherwise, involving land in Rhode Island, and effectively clears the titles of landowners in Rhode Island of any such claim. This Federal legislation shall be in form and substance as set forth in the proposed statutory language attached hereto as Exhibit C, unless otherwise agreed by counsel for the private Defendants in the Lawsuit. This legislation shall not purport to affect or eliminate the claim of any individual Indian which is pursued under any law generally applicable to non-Indians as well as Indians in Rhode Island.

7. That the Settlement Lands shall be subject to a special federal restriction against alienation, provided that nothing in the federal restriction or in any other aspect of this memorandum shall affect the ability of the State Corporation to grant or otherwise convey (whether voluntary or involuntary, including any eminent domain or condemnation proceedings) easements for public or private purposes.

8. That the Settlement Lands will be held in trust by the State Corporation for the benefit of the descendants of the 1880 Rhode Island Narragansett Roll.

9. That the Settlement Lands will not be subject to local property taxation.

10. That the federal government will reimburse the private defendants in the lawsuits for costs incurred or paid for legal services and disbursements in connection with the lawsuits with respect to any lands involved in the Lawsuits which are not specified in Exhibit B and for which an Option is not executed.

11. That the State Corporation will have the right (after consultation with appropriate state officials) to establish its own regulations concerning hunting and fishing on the Settlement Lands without being subject to state regulations, but shall impose minimum standards for safety of persons and protection of wildlife and fish stock.

12. All the Settlement Lands contributed by the State will be permanently held for conservation purposes by the State Corporation.

13. That, except as otherwise specified in this Memorandum, all laws of the State of Rhode Island shall be in full force and effect on the Settlement Lands, including but not limited to state and local building, fire and safety codes.

14. That all settlement lands will be subject to a professionally prepared land use plan (the "Land Use Plan") mutually acceptable to the State Corporation and the Town Council. Acceptance of the Land Use Plan shall not be unreasonably withheld by the Town Council. At least seventy-five percent of the Settlement Lands not already committed to conservation purposes by Section 12 above will be permanently subjected to conservation uses by the Land Use Plan. Town Council acceptance of the Land Use Plan shall be a condition precedent to the acquisition of the Settlement Lands by the State Corporation. The Town Council, after its acceptance of the Land Use Plan, shall amend the zoning ordinance of the Town of Charlestown in a manner consistent with the Land Use Plan as it applies to the Settlement Lands. Thereafter, the zoning ordinance, as amended to conform with the Land Use Plan, shall control the use of the Settlement Lands and shall not be further amended in a manner inconsistent with the Land Use Plan without the consent of the State Corporation.

15. That the plaintiff in the Lawsuits will not receive Federal recognition for purposes of eligibility for Department of the Interior services as a result of Congressional implementation of the provisions of this Memorandum, but will have the same right to petition for such recognition and services as other groups.

16. That the Town of Charlestown will be reimbursed for future services provided in connection with the Settlement Lands with funds provided by the Indian corporation.

17. That contribution by the State of the land around Deep Pond is conditioned upon required and appropriate Federal approval of any conveyance of said land in such manner so as not to affect, in any adverse manner, any

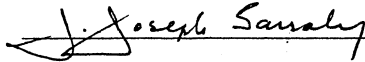
benefits received by the State under the Pittman-Robertson Act (16 U.S.C. §669-669i) and the Dingell-Johnson Act (16 U.S.C. §777-777k), and further conditioned upon the retention of permanent State control of and public access to an adequate fishing area within said land.

18. That implementation of all provisions of this Memorandum, except those of Sections 6, 10 and 19, and the payment of the option fees provided for in Section 3 above shall be contingent upon a prompt determination by the Department of the Interior that the Plaintiff in the Lawsuits have a credible claim to the lands involved in the Lawsuits. Plaintiff shall have an opportunity for judicial review of any adverse determination by the Department of the Interior.

19. The Plaintiffs in the Lawsuits agree to cause the Lawsuits to be dismissed with prejudice at the time the portion of the Federal legislation which eliminates title problems pursuant to Section 6 above becomes effective.

WITNESS the execution hereof under seal as of this twenty-eighth day of February, 1978.

HONORABLE J. JOSEPH GARRAHY,
Governor of State of Rhode Island
and Providence Plantations




TOWN OF CHARLESTOWN, RHODE ISLAND
TOWN COUNCIL

By 

PLAINTIFF: NARRAGANSETT TRIBE OF INDIANS,
By their attorneys,
NATIVE AMERICAN RIGHTS FUND

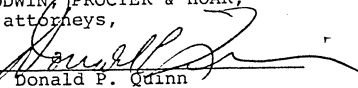
By 
_____ Thomas N. Fureen

DEFENDANTS: EDWARD WOOD, RHODE ISLAND DIRECTOR
OF ENVIRONMENTAL MANAGEMENT

By 
_____ William Granfield Brody,
Assistant Attorney General,
State of Rhode Island

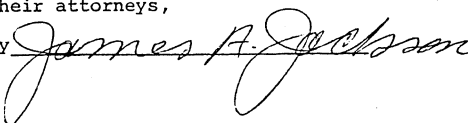
(David F. Giuliano
 (Paul E. Bennett
 (Alfred Testa

By GOODWIN, PROCTER & HOAR,
 their attorneys,

By 
 Donald P. Quinn

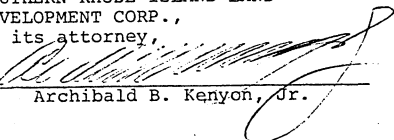
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 (Mildred L. Godden
 (John S. Johnson
 (Alice Johnson
 (Ethel W. Duguid
 (Providence Boys Club
 (Greater Providence Young Mens
 (Christian Association
 (Sarah J. Browning
 (William F. Arnold
 (Ruth Arnold
 (Thomas L. Arnold
 (William Arnold
 (Frank W. Arnold
 (Thomas L. Arnold, William
 (Arnold, Frank W. Arnold
 (and the Washington Trust
 (Company as trustees for
 (the Estate of Frank Arnold
 (Thomas L. Arnold, Laurence
 (Whittemore and the
 (Washington Trust Company
 (as trustees for the
 (Thomas L. Arnold Trust
 (Hope W. Hallock
 (Edna May McKenzie
 (Lloyd E. Fitzgerald
 (Joyce M. Fitzgerald
 (Edward A. Whipple
 (Pauline Whipple

By TILLINGHAST, COLLINS & GRAHAM,
 their attorneys,

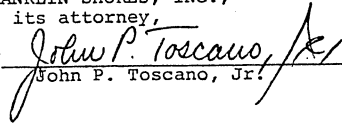
By 

SOUTHERN RHODE ISLAND LAND
DEVELOPMENT CORP.,

By its attorney,

By 
Archibald B. Kenyon, Jr.

FRANKLIN SHORES, INC.,
by its attorney,

By 
John P. Toscano, Jr.

EDNA MAE REED, by her attorney,

By 
Harold B. Soloveitzik

CARL M. RICHARD, by his attorney,

By 
Francis Castrovillari

OLD STONE BANK, by its attorney,

By 
Frank Ray

OLD COLONY CO-OPERATIVE BANK,
by its attorney,

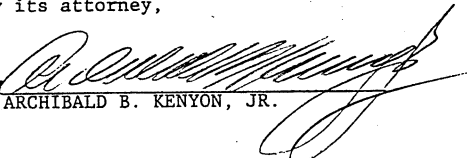
By 
ARCHIBALD B. KENYON, JR.

EXHIBIT A

MAP of the INDIAN RESERVATION

Charlotte R.L.
Map of the Indian Reservation

Exhibit "A"

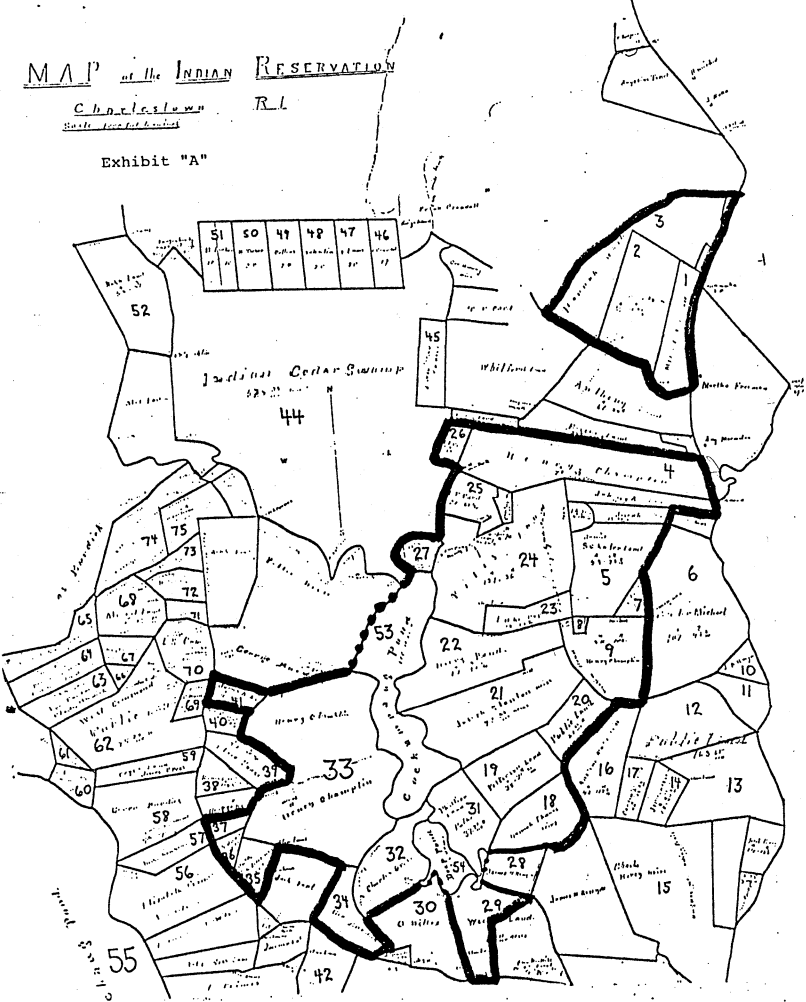


EXHIBIT B

Providence Boys' Club (with the exception of approximately 100 acres of land adjoining Schoolhouse Pond and Lot No. 17)

Greater Providence Young Mens' Christian Association

Hope W. Hallock

Edna May McKenzie

Southern Rhode Island Land Development Corporation

Franklin Shores, Inc.

Edna Mae Reed

Carl M. Richard (including only lots numbered 5, 7, 8 and 9 and provided further that this land shall be held permanently for conservation purposes and neither the State Corporation, Indian Corporation nor any beneficiary thereof shall have standing in any zoning or other administrative or judicial proceeding involving land presently owned by Castle Realty Company)

Approximately 12 acres of land of David F. Giuliano

2/13/78

RHODE ISLAND
INDIAN CLAIMS STATUTE

EXHIBIT C

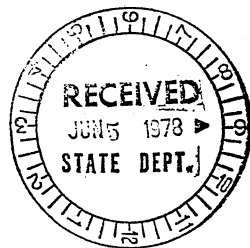
SEC. 1 (a) Any transfer of lands or waters located within the State of Rhode Island from, by or on behalf of any Indian, Indian nation or tribe of Indians, including but not limited to a transfer pursuant to any statute of the State of Rhode Island, was and shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of lands or waters from, by or on behalf of any Indian, Indian nation or tribe of Indians (including but not limited to the Trade and Intercourse Act of 1790, Ch. 33, §4, 1 Stat. 138, and all amendments thereto and all subsequent versions thereof), and Congress does hereby approve and ratify any such transfer effective as of the date of the said transfer.

(b) To the extent that any transfer of lands or waters described in subsection (a) may involve lands or waters to which any Indian, Indian nation or tribe of Indians had aboriginal title, subsection (a) shall be regarded as an extinguishment of such aboriginal title as of the date of said transfer.

(c) By virtue of the approval and ratification of a transfer of lands or waters effected by subsection (a) or an extinguishment of aboriginal title effected thereby, all claims against the United States, any state or subdivision

thereof, or any other person or entity, by any Indian, Indian nation or tribe of Indians, including but not limited to claims for trespass damages or claims for use and occupancy, arising subsequent to the transfer and that are based upon any interest in or right involving such lands or waters, shall be regarded as extinguished as of the date of the transfer.

(d) As used in this section, the phrase "lands or waters" shall include any interest in or right involving lands or waters, and the term "transfer" shall include but not be limited to any sale, grant, lease, allotment, partition, conveyance, or any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition or conveyance, or any event or events that resulted in a change in possession or control of lands or waters.



State of Rhode Island and Providence Plantations



Department of State

Office of the Secretary of State

I, FREDERICK A. MASSARO, First Deputy *Secretary of State*
of the State of Rhode Island and Providence Plantations,
 hereby Certify that the foregoing is a true xerographic
 copy of the original, executed "Joint Memorandum of Understanding Concerning
Settlement of the Rhode Island Indian Land Claims" together with a letter from
the Honorable Julius C. Michaelson, Attorney General of Rhode Island; the same
 being _____

taken from the records in this office and compared with the
original documents aforesaid filed in this office on the fifth day of June,
 A.D. 1978, _____

and now remaining on file and of record in this office.



In Testimony Whereof, I have hereunto
 set my hand and affixed the seal
 of the State of Rhode Island, this

 nineteenth _____ day of
 June, A. D. 1978

Frederick A. Massaro
 First Deputy Secretary of State.

JOINT MEMORANDUM OF UNDERSTANDING
CONCERNING SETTLEMENT OF THE
RHODE ISLAND INDIAN LAND CLAIMS

FROM THE OFFICE OF

GOODWIN, PROCTER & HOAR

ATTORNEYS & COUNSELLORS

28 STATE STREET, BOSTON

JOINT MEMORANDUM OF UNDERSTANDING
CONCERNING SETTLEMENT OF THE
RHODE ISLAND INDIAN LAND CLAIMS

All parties to Narragansett Tribe of Indians v. Southern Rhode Island Land Development Co., et al, C.A. No. 75-0006 (USDC, DRI) and Narragansett Tribe of Indians v. Rhode Island Director of Environmental Management, C.A. No. 75-0005 (USDC, DRI) (together called "the Lawsuits") and the other undersigned persons interested in the settlement of Indian land claims within the State of Rhode Island hereby agree to the following principles and provisions of settlement which are, except for the provisions of Section 18 below, to be considered as inseparable, dependant requirements and which are all conditioned upon requisite, favorable and timely action by the appropriate executive and legislative branches of the governments of the State of Rhode Island and the United States of America:

1. That a state chartered corporation (the "State Corporation") will be created with an irrevocable charter for the purpose of acquiring, managing and permanently holding the lands defined in Sections 2 and 3 below (the "Settlement lands"); the State Corporation will be controlled by a board of directors, the majority whose members will be chosen by a Rhode Island corporation known as "The Narragansett Tribe of Indians" (the "Indian Corporation") or its successor and the remaining members chosen by the State of Rhode Island.

2. That the State of Rhode Island will contribute the Indian Cedar Swamp, the Indian Burial Hill, the land around Deep Pond, and an easement from Kings Factory Road to Watchaug Pond to the State Corporation. These public portions of the Settlement Lands total approximately 900 acres. Contribution of the State land around Deep Pond is subject to the restrictions set forth below in Section 17.

3. That the Settlement Lands will also include approximately 900 acres of land located within the area outlined in red on the map attached hereto marked Exhibit A. The Settlement Lands shall specifically include those lands held by the defendants named in the Lawsuits which are enumerated on the schedule attached hereto as Exhibit B. These privately held portions of the Settlement Lands shall be acquired at fair market value established without regard to the pendency of the Lawsuits. No private landowner shall be required to convey any land hereunder without his or her consent, which shall be deemed to have been given upon

execution of a mutually acceptable option agreement (the "Option"). Any landowner executing an Option shall be paid a nonrefundable option fee by the federal government equal to 5% of the purchase price for a 2-year option. The optionee shall have the right to renew the option for one additional year for a renewal fee paid by the federal government of 2.5% of the purchase price.

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6. That Federal legislation shall be obtained that eliminates all Indian claims of any kind, whether possessory, monetary or otherwise, involving land in Rhode Island, and effectively clears the titles of landowners in Rhode Island of any such claim. This Federal legislation shall be in form and substance as set forth in the proposed statutory language attached hereto as Exhibit C, unless otherwise agreed by counsel for the private Defendants in the Lawsuit. This legislation shall not purport to affect or eliminate the claim of any individual Indian which is pursued under any law generally applicable to non-Indians as well as Indians in Rhode Island.

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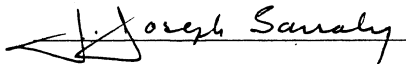
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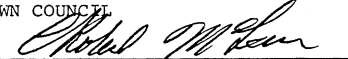
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WITNESS the execution hereof under seal as of this twenty-eighth day of February, 1978.


HONORABLE J. JOSEPH GARRAHY,
Governor of State of Rhode Island
and Providence Plantations




TOWN OF CHARLESTOWN, RHODE ISLAND
TOWN COUNCIL

By 

PLAINTIFF: NARAGANSETT TRIBE OF INDIANS,
By their attorneys,
NATIVE AMERICAN RIGHTS FUND

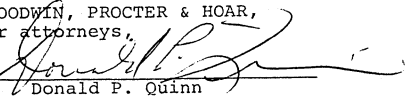
By 
Thomas N. Tureen

DEFENDANTS: EDWARD WOOD, RHODE ISLAND DIRECTOR
OF ENVIRONMENTAL MANAGEMENT

By 
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Assistant Attorney General,
State of Rhode Island

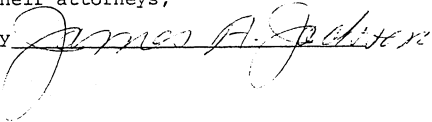
(David F. Giuliano
 (Paul E. Bennett
 (Alfred Testa

By GOODWIN, PROCTER & HOAR,
 their attorneys,

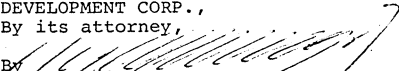
By 
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By TILLINGHAST, COLLINS & GRAHAM,
 their attorneys,

By 
 James A. Johnson

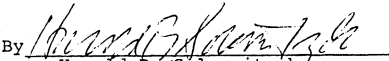
SOUTHERN RHODE ISLAND LAND
DEVELOPMENT CORP.,
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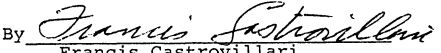
FRANKLIN SHORES, INC.,
by its attorney,

By 
John P. Toscano, Jr.


EDNA MAE REED, by her attorney,

By 
Harold B. Soloveitzik

CARL M. RICHARD, by his attorney,

By 
Francis Castrovillari

OLD STONE BANK, by its attorney,

By 
Frank Ray

OLD COLONY CO-OPERATIVE BANK, by its
attorney,

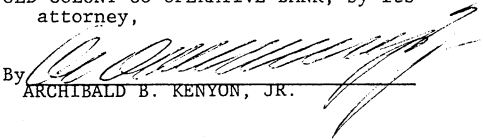
By 
ARCHIBALD B. KENYON, JR.

EXHIBIT A

MAP of the INDIAN RESERVATION

Charles L. ... R.L.
 ...

Exhibit "A"

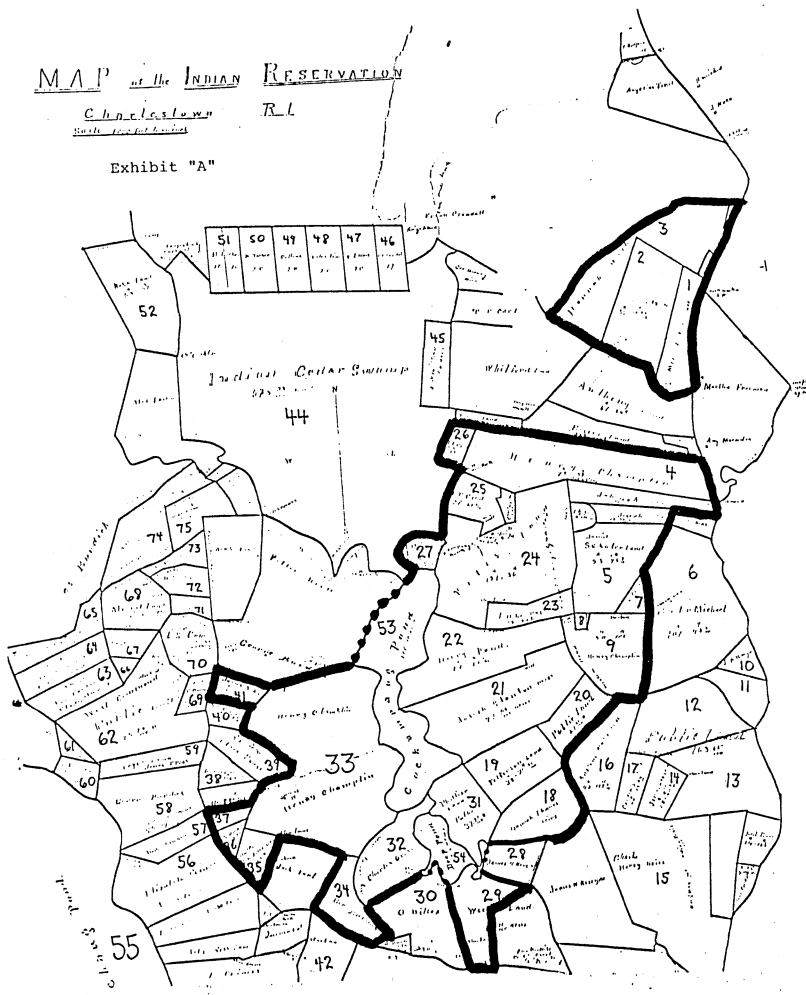


EXHIBIT B

Providence Boys' Club (with the exception of approximately
100 acres of land adjoining Schoolhouse Pond and
Lot No. 17)

Greater Providence Young Mens' Christian Association

Hope W. Hallock

Edna May McKenzie

Southern Rhode Island Land Development Corporation

Franklin Shores, Inc.

Edna Mae Reed

Carl M. Richard (including only lots numbered 5, 7, 8
and 9 and provided further that this land shall be
held permanently for conservation purposes and neither
the State Corporation, Indian Corporation nor any
beneficiary thereof shall have standing in any zoning
or other administrative or judicial proceeding involving
land presently owned by Castle Realty Company)

Approximately 12 acres of land of David F. Giuliano

2/13/78

RHODE ISLAND
INDIAN CLAIMS STATUTE

EXHIBIT C

SEC. 1 (a) Any transfer of lands or waters located within the State of Rhode Island from, by or on behalf of any Indian, Indian nation or tribe of Indians, including but not limited to a transfer pursuant to any statute of the State of Rhode Island, was and shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of lands or waters from, by or on behalf of any Indian, Indian nation or tribe of Indians (including but not limited to the Trade and Intercourse Act of 1790, Ch. 33, §4, 1 Stat. 138, and all amendments thereto and all subsequent versions thereof), and Congress does hereby approve and ratify any such transfer effective as of the date of the said transfer.

(b) To the extent that any transfer of lands or waters described in subsection (a) may involve lands or waters to which any Indian, Indian nation or tribe of Indians had aboriginal title, subsection (a) shall be regarded as an extinguishment of such aboriginal title as of the date of said transfer.

(c) By virtue of the approval and ratification of a transfer of lands or waters effected by subsection (a) or an extinguishment of aboriginal title effected thereby, all claims against the United States, any state or subdivision

thereof, or any other person or entity, by any Indian, Indian nation or tribe of Indians, including but not limited to claims for trespass damages or claims for use and occupancy, arising subsequent to the transfer and that are based upon any interest in or right involving such lands or waters, shall be regarded as extinguished as of the date of the transfer.

(d) As used in this section, the phrase "lands or waters" shall include any interest in or right involving lands or waters, and the term "transfer" shall include but not be limited to any sale, grant, lease, allotment, partition, conveyance, or any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition or conveyance, or any event or events that resulted in a change in possession or control of lands or waters.

Mr. BRODY. If there are any questions, Mr. Chairman, I will be glad to try to answer them.

Senator ABOUREZK. I do not have any questions, Mr. Brody.

Do you have any, Mr. Roncalio?

Mr. RONCALIO. No.

Senator ABOUREZK. We would like to thank you very much for your appearance.

Mr. BRODY. Thank you, Mr. Chairman.

Senator ABOUREZK. Congressman Beard, welcome to the committee hearing. If you are ready to testify, please go ahead.

Mr. BEARD. Thank you very much. I apologize for being late.

**STATEMENT OF HON. EDWARD P. BEARD, A U.S. REPRESENTATIVE
IN CONGRESS FROM THE STATE OF RHODE ISLAND**

Mr. BEARD. Mr. Chairman, I am delighted to have the opportunity to testify on H.R. 12860. I think we are finally arriving at a point where we see some light on a very, very important issue in the southern part of our State.

I think that there is in this legislation fairness for the Indians as well as for the other residents of the Charlestown area and the areas concerned.

I would hope that this legislation that is before this committee would be given full consideration. It certainly has to be resolved on the part of all the parties.

I think the legislation has been drafted so that no one group is going to get short changed. I think that certainly what is owed to the Indians in the State of Rhode Island is long overdue. They have a right to get what belongs to them. On the other hand, the legislation has been tailored to the modern times that we are living in and to the situations at hand in Rhode Island. This has to be resolved in order for the normal business to flow.

I would appreciate this committee giving all aspects, including money and land, full consideration.

Senator ABOUREZK. We did talk about that some. We intend to mark it up. I can give you the exact date of our markup session. It is June 29. We intend to put it on the agenda then and mark it up and send it to the Senate floor. It should not have any real problem on the Senate floor.

The House is a different matter. That is something that you and Mr. Roncalio can handle, I guess.

Mr. BEARD. I will be talking about it, of course, with my colleague. Anything that can be done to expedite this will be a big help.

It is a dilemma in Rhode Island. It has to be resolved. We are a small State; still, we need the help. I appreciate my colleague giving us the chance.

Senator ABOUREZK. I do not think that this will unravel, but you never know.

Thank you very much.

Mr. RONCALIO. We will try to get to it by the 10th or 15th of July. We will try to get it out next month.

Mr. BEARD. Thank you.

Senator ABOUREZK. Without objection, your prepared remarks will be inserted into the record.

EDWARD P. BEARD
2D DISTRICT, RHODE ISLAND

WASHINGTON OFFICE
131 CANNON HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-2735

COMMITTEES:
EDUCATION AND LABOR
VETERANS' AFFAIRS
SELECT COMMITTEE ON AGING

DISTRICT OFFICES
307 POST OFFICE ANNEX
PROVIDENCE, RHODE ISLAND 02903
(401) 528-4861
325 WEST SHORE ROAD
WARWICK, RHODE ISLAND 02889
(401) 528-4871

Congress of the United States
House of Representatives
Washington, D.C. 20515

TO THE CHAIRMEN OF THE JOINT HEARING OF THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS AND THE HOUSE SUBCOMMITTEE ON INDIAN AFFAIRS AND PUBLIC LANDS:

Mr. Chairmen, I want to thank you for the opportunity to come before your Committees to speak on behalf of my bill which will resolve the differences between the State of Rhode Island, the Narragansett Indians and the Southern Rhode Island Land Development Company. Mr. Chairmen, I particularly want to thank you personally for the time and effort you have given to see that this bill was brought up during this session of Congress.

The bill before you, H.R. 12860, the Rhode Island Indian Claims Settlement Act, offers the best solution to the problems brought forth in the two legal actions now pending concerning proper title to various lands and water. This bill will resolve all Indian land claims and it will do so to the satisfaction of all parties. In doing so it will end a three-year old dispute which has caused major disruption to all parties in the two suits as well as the people who live in the disputed areas. I must stress again that this bill will resolve the Indian land claims to the complete satisfaction of all parties.

Beyond settlement of the pending suits, this legislation has a definite urgency based on several facts. First, the bill, while presently supported by all parties, is in fact a compromise. As is always the case in writing compromise legislation, this delicate coalition of differing factions may not be a lasting thing. The longer we delay having this bill approved, the more likely we are to find that one or more of the parties will seek a change in the bill which would gain them an advantage. Such an event would be very unfortunate because this is a fair bill.

In addition to the urgency required to preserve the basic fairness of the bill, I wish to add that the town of Charlestown, Rhode Island finds itself in the middle of this dispute and that the town and its citizens are suffering very real economic hardships because of it. Unless this bill receives the timely

(2)

action it deserves, those citizens will continue to suffer without recourse. Most of those suffering are in no way involved in either of the two suits and yet they stand to lose the most.

As for the town of Charlestown itself, it has reached a point where real estate development is at a virtual stand still. Because of the clouded titles there has been no land sales, an impossible mortgage situation and the town has not been able to present a single bond issue to raise revenues. Again, the urgency of the bill cannot be stressed too much.

The bill provides for the establishment of the Rhode Island Indian Claims Settlement Fund in the U. S. Treasury and authorizes a payment of \$3.5 million to a state chartered corporation comprised of mainly of Narragansett Indians for the purchase of private lands. The corporation will hold the lands in trust for the Narragansett Indians.

If this dispute is not resolve with passage of this bill, it is quite likely that it will remain in the courts for another 5 to 7 years and the economic results will be most severe. It is also likely that the Narragansetts will bring a new suit claiming another 900 acres above the 900 acres they presently claim, thus, bringing about another law suit.

In closing let me state again that the native Americans in this dispute, the Narragansett Indians, and the other parties, the State of Rhode Island and the Southern Rhode Island Land Development Company have come together in support of this legislation. With all involved favoring this legislation there seems to me to be no reason why we should not have this bill reported without delay. The price of this bill is small and the need is very great.

Thank you.

Senator ABOUREZK. Next is the president of the Charlestown Town Council, Mr. Robert McLean. Welcome to the joint committee hearing, Mr. McLean.

**STATEMENT OF ROBERT McLEAN, PRESIDENT, TOWN COUNCIL
OF CHARLESTOWN, R.I.**

Mr. McLEAN. Gentlemen, I want to thank you for inviting me to testify here this morning.

I have submitted a written statement for the sake of saving time. But I do have a few comments I would like to make at this time.

The town of Charlestown, as you know, was not named as a party in the land claim suit. The town council became involved at the request of the residents of the town and at the request of the Tribal Council of the Narragansett Indians. It was felt that the town council might contribute in some way to help resolve this land claim issue.

I would like to say that, from the onset, the meetings with the Narragansett Tribe were honest, open, and completely without any animosity. I think a great deal was accomplished by these meetings. A result was that the town council voted unanimously to have the town of Charlestown become a signatory to the joint proposals of agreement of settlement. It felt that a settlement along these lines would be in the best interests of all parties involved.

We agree with the plan and will actively participate in working out a mutually agreeable land use plan. We feel also that a satisfactory agreement can be reached on the town providing services to the Narragansett Indian Tribe in lieu of taxes.

The land involved in the settlement, more than 50 percent of it, is now tax exempt on the tax rolls of the town of Charlestown. As a matter of fact, the land involved that would come off the tax rolls would represent, at present level, only approximately \$1,600 out of the town coffers.

The principal reason for my appearing here this morning is to make you aware of the fact that, on the basis of the talks of a settlement having reached this plateau of government, the people of Charlestown are optimistic that it will be resolved on an equitable basis. The climate in the town has changed appreciably in the past several months with the optimism of a settlement being imminent. New housing starts are good, with 18 just in the month of May totaling approximately a half million dollars.

More importantly, the town of Charlestown, since 1975, had been unable to sell a bond issue of \$1.1 million, which we had needed for an addition to our elementary school. We had been forced to carry this on short-term notes with interest costing the town approximately \$55,000 a year. For a small community of 3,800 people, it was a sizable amount of money.

As of May 16, this bond issue was sold at a very favorable rate and was fully insurable. In working with the banks and brokers on this bond issue, they expressed the opinion that the prospects of a settlement of the land claims issue was a major factor in the sale of this bond.

In conclusion, the town council of Charlestown feels most strongly that the best interests of the town and its residents will best be served if this issue can be resolved in an equitable manner.

I ask your earnest support in bringing this about at your earliest possible convenience.

Thank you very much.

Senator ABOUREZK. Thank you very much.

Counsel has a question he would like to ask.

Mr. PARKER. Mr. McLean, under section 8 of this bill, which incorporates the settlement agreement, the distribution of the \$3.5 million Federal contribution is conditioned on acceptance of the land use plan by the town council—

Mr. McLEAN. Right.

Mr. PARKER [continuing]. The State corporation's land use plan.

It has been suggested to us that the bill be amended to make the distribution of the purchase funds not conditioned on acceptance of the land use plan but, rather, to make any use of the settlement lands conditioned on acceptance of the land use plan.

The argument was that to hold up distribution of this Federal contribution from the settlement fund until the land use plan has been accepted would raise other problems, whereas the main interest that is being protected is the town council being able to protect its interest with respect to the land use plan.

What would your response be to such a proposal?

Mr. McLEAN. I feel that, in the interests of this being settled more promptly, that would be agreeable because a land use plan would of necessity take a considerable amount of time to put together. I am sure that, if this money was appropriated, we could work along the lines of working into this land use plan at a future date mutually acceptable between the tribe—

Mr. PARKER. One other question: Since the land use plan is a condition in the settlement agreement, is it your understanding that, should there be a failure to reach an agreement between the State corporation and the town council on any aspect of the land use plan, that there would be an opportunity for some sort of judicial review of the town council's decision?

I am projecting, possibly, just a theoretical question whether or not in the future, if there were a failure to reach agreement on some critical aspect of the land use plan, would the issue then go to some sort of judicial review process—a court to decide whether or not either the town council or State corporation was right in its interpretation?

Mr. McLEAN. Well, I would assume—I am not an attorney—the town currently has a zoning code. Decisions made on that, if they are not satisfactory, there is always resort to the court. I assume that this will fall under the same category.

Mr. PARKER. That was your presumption then?

Mr. McLEAN. Yes.

Mr. PARKER. Thank you.

Senator ABOUREZK. Thank you very much, Mr. McLean.

Mr. McLEAN. Thank you, Senator.

Senator ABOUREZK. Without objection, your prepared material will be inserted into the record.

[The prepared material follows:]

ELIZABETH WALL
TOWN CLERK
CLERK OF PROBATE COURT



P. O. BOX 372
CHARLESTOWN
RHODE ISLAND 02813
401/364-7718

TOWN OF CHARLESTOWN

June 15, 1978

The Honorable James Aboureszk, Chairman
Senate Select Committee on Indian Affairs
Dirkson Senate Office Building, Room 5331
Washington, D. C.

Dear Senator Aboureszk:

The Town Government of the Town of Charlestown, Rhode Island, became actively engaged in the land claims of the Narragansett Tribe of Indians in Charlestown, Rhode Island, in May, 1977. As President of the Town Council, I called a special meeting to be held May 16th, 1977. This meeting was called to hear and act upon a petition addressing the Indian land claims. This petition bore the signatures of approximately two thousand taxpayers (our Town's population is approximately 3800). The Town Council unanimously accepted this petition.

As elected officials, the Council is mandated to act in the best interest of the community as a whole. The Council, being fully cognizant of the far reaching ramifications of this issue, feels that in accepting this petition it was indeed acting in the best interests of the Town to use the authority vested in it to help resolve the land claim issue in a just and equitable manner.

Not only are we concerned with the hardships suffered by the residents and taxpayers because of title questions created by these suits, but are vitally concerned with the ability of the Town government to function efficiently within the parameters which might be imposed if the issue is not addressed in an expeditious manner.

Among our concerns in this area are the effects on the Town's financial credit rating in regards to the borrowing of monies or the sale of municipal bonds at a favorable rate. Further, the Town could conceivably suffer by a deterioration of anticipated tax revenues.

As a further result of this meeting, the Town Council passed a resolution "Memorializing Congress to Resolve the Land Claims of the Narragansett Tribe of Indians to Certain Land Claims in Charlestown, Rhode Island", (a copy of which is appended hereto).

I subsequently was invited to take part in meetings with the interested parties, which resulted in a "Joint Memorandum of Understanding Concerning Settlement of the Rhode Island Land Claims", dated February 28th, 1978. Again, upon a unanimous vote of the Charlestown Town Council, I was authorized as President to have the Town become a signatory to this agreement.

The Town Council is of the opinion that a settlement of these land claims as outlined in the joint memorandum is in the best interests of all parties

The Honorable James Aboureszk

Page Two

concerned, and is acceptable from the Town government's point of view.

The lands involved in the settlement are, to a great extent, now tax exempt, and in total will reduce the tax income to the Town by only approximately \$1,600.00. We further concur with the concept of a land use plan mutually acceptable to the State Corporation and the Town Council, Charlestown, R. I.

It is my opinion, arrived at from conversations with many local people, that the majority of the people of the Town of Charlestown feel that the best interests of the Town and all others concerned will be best served by a prompt resolution of this land claim case.

Therefor, at the request of the Charlestown Town Council, I urgently seek your active support in resolving this issue on a federal level. Our concern is not confined solely to our Town, but to all citizens seeking a just, equitable and peaceful solution.

Respectfully,



C. Robert McLean
President
Town Council

CRMCL:s
enc.

RESOLUTION

Memorializing Congress to Resolve the Land Claims of
the Narragansett Tribe of Indians to Certain Land in
Charlestown, Rhode Island

WHEREAS, in January, 1975, two suits for the possession of certain tribal lands in Charlestown, Rhode Island of the Narragansett Tribe of Indians were filed in the United States District Court for the District of Rhode Island by a group stating it was the Narragansett Tribe of Indians and that it was entitled to the protection of 25 U.S.C. #177, the Federal Non-Intercourse Act; and

WHEREAS, These suits have called into question the ownership of land in Charlestown even through possession of much of this land has not been requested in these suits since, if the group is able to prove that it is an Indian tribe within the meaning of 25 U.S.C.#177, any conveyance of any land by the Narragansett Tribe of Indians or its members which occurred after 1790 may be void and of no effect; and

WHEREAS, The residents and taxpayers of Charlestown have suffered and are continuing to suffer widespread hardships because of the title questions created by these suits; and

WHEREAS, The federal government bears the primary responsibility for the peaceful and reasonable resolution of all the land claims of the Narragansett Tribe of Indians in Charlestown, Rhode Island, because the wrongs, if any, of almost two hundred years, are the responsibility of the federal government for its failure to act under the law, now therefor be it

RESOLVED, That the Congress of the United States be and hereby is memorialized to resolve the land claims of the Narragansett Tribe of Indians to certain land in Charlestown, Rhode Island, by enacting remedial legislation which recognizes the rights and obligations of all persons affected by these claims, including, but not limited to, the residents and taxpayers of Charlestown, the private defendants identified in the suits, the State of Rhode Island, the Town of Charlestown, the Narragansett Tribe of Indians and the United States of America; and be it further

RESOLVED, That the Rhode Island delegation in Congress actively support such legislation; and be it further

RESOLVED, That the Town Clerk be authorized and directed to transmit a duly certified copy of this resolution to the Rhode Island delegation in Congress.

VOTED AND PASSED as a Resolution of the Town of Charlestown on May 16, 1977.

C. Robert McLean
President
Town Council

ATTEST:

Elizabeth Wall
Town Clerk

Senator ABOUREZK. Mr. Brody, counsel would like to ask you one or two questions more.

Mr. PARKER. Just to clarify something on the record, Mr. Brody, the legislation as drafted intends to implement the settlement agreement. It provides for an extinguishment of all Indian claims within the boundaries of the State after a 180-day statute of limitations period.

What would be your interpretation of why that provision is in the legislation?

Mr. BRODY. There are two reasons for that particular provision, sir. The first is a practical reason. That is, through all the research conducted by both the plaintiffs and the defendants in these lawsuits, there are no realistic possibilities of any other Indian land claims being filed within the State of Rhode Island. This gives us a realistic situation where we can accomplish for the entire State what we can accomplish by the legislation for the town of Charlestown.

The second reason is that the contribution that is being made of the State land—approximately 1,060 acres—represents a contribution to this settlement by all of the people and all of the citizens of the State of Rhode Island. It is felt that, in return for that contribution, all citizens of the State should be at least given this protection against what may be possibly frivolous claims in the future based upon the historical and realistic evidence that we have presented to us.

Mr. PARKER. Then it is the understanding and presumption of your office that there are no other Indian claims which could be brought in the State of Rhode Island other than by the Narragansett?

Mr. BRODY. That is correct. We would not be in a position to suggest to this committee that it take any arbitrary action if there were any possible claims. The State's position is that, since there are no possible claims, then this action can be taken in this instance.

Mr. PARKER. Finally, as drafted in the committee print, which this committee prepared, the actual extinguishment would not take effect until the State of Rhode Island had enacted legislation as contemplated by the settlement agreement. The extinguishment would then take automatic effect upon certification by the secretary of state of Rhode Island and publication of that certification by the Secretary of the Interior in the Federal Register.

When would you anticipate—perhaps Speaker Manning may want to speak to this—the State of Rhode Island having the opportunity to enact this settlement legislation, thus bringing this settlement to its final conclusion?

Mr. BRODY. I would defer to the speaker on that.

Mr. MANNING. As I stated before, Mr. Parker, the legislation has already been filed. It will be filed again in January, when the session starts. I would anticipate that the legislation would pass within, at the very latest, the first 2 months of the session.

Mr. PARKER. Thank you.

Senator ABOUREZK. Thank you.

Is the administration witness here yet?

[No response.]

Senator ABOUREZK. There will be a panel next: James A. Jackson and Normand Benoit of Tillinghast, Collins & Graham of Providence, R.I.

That is a high-powered law firm.

Mr. JACKSON. Thank you very much. We like to be described as a high-powered law firm.

Senator ABOUREZK. Perhaps you can tell us what your specialty is.

Mr. JACKSON. They have removed the restriction on advertising, so you give me an opening to give a long explanation of our many specialties. But I will defer on that point.

STATEMENT OF JAMES A. JACKSON, ATTORNEY, TILLINGHAST, COLLINS & GRAHAM, PROVIDENCE, R.I., ACCOMPANIED BY NORMAND BENOIT, ATTORNEY

Mr. JACKSON. Chairman Abourezk and Chairman Roncalio, I appreciate the opportunity to appear before the committee today. I will follow the suggestion and encouragement of the chairman and ask the committee to accept the written statement that I submitted yesterday for the record.

Senator ABOUREZK. It will be accepted.

Mr. JACKSON. Thank you, Mr. Chairman.

I will not repeat the points that I made in the written statement. I represent Tillinghast, Collins & Graham. The law firm of which I am a partner represents the majority of the defendants in the litigation that was brought in the U.S. District Court for the District of Rhode Island by the Narragansett Indians. The litigation was brought some 3½ years ago.

The litigation has been very burdensome on the defendants in the case. It has required a tremendous amount of time and effort in a very, very complex litigation.

The litigation presented very many serious political and social problems in the community of Charlestown in a situation where landowners, the defendants in the litigation, were unable to utilize their land. They were unable to sell their land and unable to mortgage their land. Also, people in the town of Charlestown, outside of the immediate area claimed by the Narragansetts, were restricted in the alienation of their land and the mortgaging of their land because of the existence of potential claims in those areas.

However, commencing in approximately March of 1977, intensive negotiations were undertaken by all parties. The negotiations resulted in the settlement which has been submitted and made part of the record dated February 28, 1978. This was the result of very intensive, good faith, sincere negotiations on the part of all parties: The Narragansetts, the private defendants, the community represented by the president of the town council, and through the great assistance of the office of the Governor of the State of Rhode Island.

However, that agreement cannot be implemented without the legislation which is before this joint committee this morning. We ask, and we certainly are encouraged by the remarks the chairman made at the beginning of the meeting, that there be speedy action on the legislation.

As the chairman mentioned, the parties have come to agreement. Now is the time to implement that agreement. I cannot stress that too much this morning.

The tensions in the community have been relieved, as the president of the town council remarked this morning. But the tensions have been relieved in the community only because the community is relying upon the settlement that has been entered into and relying upon the hope that that settlement will be implemented by the legislation that is before the joint committee.

The private defendants support S. 3153 as contained in the committee draft.

There is one point that I would like to emphasize. A very important element in the settlement agreement is contained in paragraph 10 of the settlement agreement. Under paragraph 10, provision is made for reimbursement of the private defendants who are not selling their land to the State corporation for legal expenses incurred in the litigation.

That was an absolute requirement on the part of the private defendants for their entering into the settlement agreement. Some of the private defendants will convey their land to the State corporation under the settlement agreement. While those defendants do not choose to convey their land under these circumstances, or would not choose to convey their land under these circumstances, they are perfectly willing to do so in order to effect the settlement agreement and solve the political and social problems that exist in the community and the judicial problem with which they are faced.

But the other defendants, the defendants who are not selling their land, entered into the agreement on the basis that they would be reimbursed for the legal expenses which they have incurred. Those private defendants are innocent victims here. They have been made to sustain the burden of defending this litigation for a period of over 3½ years.

If there has been a wrong committed in this case, it was not committed by the present generation. It was not committed by these defendants. These private defendants who are not selling their land should be made whole in this situation.

They, of course, have suffered a burden through the last 3½ years on the restriction that has been placed on their land against alienation or mortgaging due to the cloud which has existed on the property resulting from the lawsuit. They do not ask to be compensated for that. They do not insist on compensation for that. But they do ask that they be reimbursed for the legal expenses which they have incurred.

That is a very reasonable request. It was an absolute condition to their entering into the settlement agreement.

I make those remarks to point out the importance of that provision of the agreement and that it was a condition precedent to the execution of the agreement on the part of those private defendants.

I would like to close by thanking the committee for the opportunity to appear before the committee this morning. I particularly want to thank the committee counsels, Alan Parker and Frank Ducheneaux; they have been of just tremendous assistance to us.

I told the private defendants what a reception that we have had in Washington during the meetings that we have come to in Washington to work on this legislation. They have just been tremendously helpful. Barbara Berger has been just tremendously helpful, also, and so has John Saxon recently.

To my left is Normand Benoit. He is an associate in our law firm who has worked on the case and worked on the legislation with me.

I would like to introduce, on my right, Mr. Glen Godden. Mr. Godden is one of the defendants in the case. He is a landowner in the claim area. He is a community leader in the town of Charlestown. He really represented and was the voice of the people in the town of Charlestown. A great deal of the credit for reaching an agreement in this case can be given to Glen Godden. That credit can be given to Glen Godden because he approached the many complex issues with an open mind and a very reasonable and rational approach.

This was a situation where, as I think the chairman pointed out earlier, emotions could have prevailed and there would have been no agreement. But Mr. Godden approached this problem with reason. As a result, we do have an agreement which all parties approached with reason and in good faith.

With the permission of the Chair, I would like to introduce Mr. Glen Godden.

Senator ABOUREZK. Before we hear from Mr. Godden, without objection, your written statement will be inserted in the record.

[The prepared statement follows:]

June 20, 1978

STATEMENT OF JAMES A. JACKSON SUBMITTED TO THE UNITED STATES
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS AND THE INDIAN AFFAIRS
AND PUBLIC LAND SUBCOMMITTEE OF THE UNITED STATES HOUSE OF
REPRESENTATIVES INTERIOR AND INSULAR AFFAIRS COMMITTEE

My name is James A. Jackson and I am a partner in the Providence, Rhode Island, law firm of Tillinghast, Collins & Graham. We represent the majority of the defendants in the case entitled "Narragansett Tribe of Indians vs Southern Rhode Island Land Development Company et al." Civil Action No. 75-0006 which has been consolidated with the case of "Narragansett Tribe of Indians vs Rhode Island Director of Environmental Management" Civil Action No. 75-0005 now pending in the U. S. District Court for the District of Rhode Island. In the consolidated actions, the plaintiff seeks to recover possession of approximately 3,500 acres of land located in the Town of Charlestown, Rhode Island.

Among the defendants whom we have represented in this case is the Providence Boys Clubs which owns approximately 460 acres of land in the claim area on which it operates a summer camp primarily to provide an opportunity for camping experience in a healthy country atmosphere for children from the urban areas in Rhode Island. Another defendant is the Greater Providence Young Mens' Christian Association which also operates a camping facility in the area. Among the other defendants whom we represent are included a widow and others of moderate means.

The litigation which was commenced in January of 1975 has been a very heavy burden for these defendants to bear. The litigation has proceeded through the pre-trial stage including

many complex motions and extensive pre-trial discovery. The case was scheduled for trial on April 4, 1978 before a jury in the U. S. District Court. By the most conservative estimate, this trial would have taken four to five months to conclude. However, in view of the settlement reached by all parties and contained in the "Joint Memorandum of Understanding Concerning Settlement of the Rhode Island Indian Land Claims" executed as of February 28, 1978, the trial has been postponed.

In the early stages of the litigation, it appeared that a negotiated settlement would not be feasible. However, during the period of March 1977 to February 1978, as a result of sincere negotiations on the part of all parties with the great assistance and participation of the Governor of the State of Rhode Island, the settlement was reached. The negotiations were intensive at times, particularly during the final three months prior to the culmination of the agreement. However, without the enactment of S3153, the agreement cannot legally be implemented.

The existence of the litigation raised serious political and social problems in the Town of Charlestown, in addition to creating a severe hardship on the defendants whose land was claimed in the litigation. The social and political problems threatened to intensify but, in view of the settlement negotiations and the ultimate agreement that was reached, the social and political problems have been arrested. However, these problems are under control only because the people of Charlestown hope and believe that Congress will enact the legislation necessary to implement the settlement agreement.

There are other areas in the Town of Charlestown potentially subject to similar claims. People in these areas are unable to sell or mortgage their homes due to the potential claims that exist. The legislation being considered at this hearing will remove those potential claims. The defendants in the law suit have borne a heavy burden during the three year period of this litigation. They have been faced with the burden of expense of defending against the claim. They have been unable to sell or mortgage their lands. The defendants, if the settlement is not implemented, face the further burden of a four or five month trial. Even if the defendants are successful in the trial of the case, they face a further period of uncertainty in which their land will continue to have a cloud thereon during the period of the judicial appeals which would take several years. During this period of judicial appeal, the cloud would also remain upon the titles of others in the Town of Charlestown whose land is potentially subject to similar claims.

The defendants whom we represent feel that the settlement reached is a satisfactory solution to a serious social, political and judicial problem. Some of the defendants will, under the settlement, sell all or a portion of their land. These defendants would not choose to sell their land under these circumstances but they are willing to do so in order to implement the settlement. Other defendants will retain their land free of the cloud on title that has been created by the litigation. The Providence Boys Clubs will retain sufficient

land to continue the operation of its camp. The Young Mens' Christian Association will be able to sell its land in the claim area to the State Corporation and continue to operate its camp on its other adjoining land.

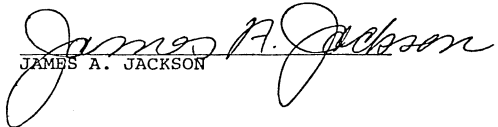
The settlement agreement represents a resolution of many complex problems through many compromises made by all parties in the sincere and intensive negotiations. We now ask that the United States Congress enact the necessary legislation embodied in S3153 so that the settlement may be implemented.

The question of Indian title raised in the litigation is a Federal question. The Federal Government has a responsibility to assist in the resolution of this problem. The private defendants are present day innocent victims of this Federal question and should not be made to sustain any further burden. The State of Rhode Island has assumed in the proposed settlement a great share of the burden in resolving the problem. The Federal Government can carry out its responsibility in resolving this problem by the adoption of S3153.

S3153, in the revised form in which it exists today, is satisfactory. The legislation, in its present form, has been developed with the assistance of Committee counsel. We have appreciated the generous assistance of the extremely competent Committee counsel Alan R. Parker and Frank Ducheneaux, staff attorney Barbara Berger and, more recently, John Saxon.

On behalf of the defendants whom we represent and, on my own behalf, I want to thank you for your consideration of this matter and for the opportunity of appearing before you.

Respectfully submitted,


JAMES A. JACKSON

STATEMENT OF GLEN GODDEN, PRIVATE DEFENDANT

Mr. GODDEN. Chairman Abourezk and Representative Roncalio, I wish to thank you for this opportunity to speak on behalf of the defendants.

I noticed on your agenda here that ourselves and the Indians are at the bottom of your page. We just hope you are not too tired, so please bear with us.

Senator, I have been having a debate about you. And I said, "Well, should I be quiet?" My wife tells me, "Why don't you just be quiet." But I bring you greetings from Mitchell, S. Dak. I was born in Redfield, S. Dak. If you are familiar with the Corn Palace in Mitchell, my father owned the shop across the street from it.

My great-uncle was an Indian agent on the Rosebud Reservation.

Senator ABOUREZK. He was the Indian agent there?

Mr. GODDEN. Yes.

Senator ABOUREZK. That is where I was born, on the Rosebud Reservation. What was his name?

Mr. GODDEN. Caldwell.

Senator ABOUREZK. I have heard the name.

Mr. GODDEN. What I really want to do is bring a word of warning. In all of the legislation that you are going to have and the requests that are going to come from the rest of the country, litigation should be a dirty word.

I thought this day would never come that we would be here before a legislative body, where these questions should be solved between citizens, and citizens of good faith. This particular case is not Indian and non-Indian—not at all. This is a title dispute, a title dispute about whether or not, in 1880, the State of Rhode Island illegally sold the land of the Narragansett Indians, and did the United States of America ignore its stewardship and its fiduciary responsibility of enforcing the 1790 Nonintercourse Act.

In 1880, all of our learned jurists and people of that time certainly were aware that it existed. So, obviously, it was ignored.

It should have been brought out through legislation, through our Senators and Representatives and people of good faith. The people of the town of Charlestown have lived together for a good many years. There are no reasons for ill feelings. But, when you see people who are harmed, their homes are jeopardized, their jobs are lost, then these are matters of record—cold, hard fact.

In my particular case, I have 32 years of my life invested, and every single piece of land I own in Charlestown is involved. I can survive. But there are those who just absolutely cannot. They have had to plead with the banks just to carry their interest. This is through no fault of their own.

You know, the average American citizen is not a great philanthropist. He is hurt; he gets mad, and things are said and done on both sides that should never have been said or done.

If we had approached this thing through the legislative process at the beginning, I am positive it would have been settled on a friendly and a very just basis, which is what we are doing right now.

I sincerely plead with you, do not be sidetracked. Do not let personal interests enter into your deliberations in marking up this bill.

Senator ABOUREZK. What do you mean by personal interests?

Mr. GODDEN. I have no idea what people may want—other people on committees or someone who may walk in and say I would like to do this or do that—I am not saying anything about individuals. I have been in this political game too long to know that someone can open the door at the last minute and throw in his two bits worth.

What I am really saying is, please, hurry, push it. We agree. The tribe is entitled to their lands. We agree. The quicker we get on with it and get this terrible burden off the backs of these people who cannot mortgage their homes and the hundreds of thousands of dollars that are lost that we will never recover—I certainly, at least, want to see our legal fees. But there is no way to measure what we have lost in 3½ years.

The reason we are here, you can realize it would have cost us over \$1 million if this thing had gone to the Supreme Court; and that is a travesty. It has been a very traumatic experience.

I, representing the Charlestown Action Committee, which is composed of 36 of the landowners, the nonnamed defendants, and the rest of us, plead with you to enact this legislation as rapidly as possible.

Thank you so much for listening to me.

Senator ABOUREZK. Thank you very much. We would like to thank all of you for your appearance this morning.

Mr. JACKSON. Thank you very much, Mr. Chairman and Chairman Roncalio.

Senator ABOUREZK. The next witness is Donald Quinn of Goodwin, Procter & Hoar of Boston, Mass. That is another high-powered law firm.

Mr. Quinn, I take it that you must have represented some of the defendants as well?

STATEMENT OF DONALD QUINN, ATTORNEY, GOODWIN, PROCTER & HOAR, BOSTON, MASS.

Mr. QUINN. Thank you very much, Senator, and Congressman Roncalio.

I also represented certain of the private defendants in this case.

I have submitted a written statement. Following your request, I would be delighted to have it accepted.

I do have one technical, noncontroversial change which I would like to suggest. I could either do it now or——

Senator ABOUREZK. Why don't you go ahead now.

Mr. QUINN. With respect to section 4, I think a change would be in order to make it absolutely clear that any claims—this is page 7, line 1. The purpose of this change is to make it absolutely clear that claims that are being eliminated by this section include claims prior to the date of enactment of the act so that there is no problem such as arose under the Alaska Land Settlement Act, Judge Gasch's decision in *Edmundson v. Morton*.

The proposal I would have would be in line 1 to strike "of" and replace it with "to." And then strike the words in lines 1 and 2 "involving or in any way relating to" and replacing that with "arising prior to the date of enactment of this act that involve or in any way relate to."

Senator ABOUREZK. It is consistent with the intent of the legislation, but I read it as already saying that; so it does not really matter to me whether we put it in or not.

Mr. QUINN. Thank you, Mr. Chairman. I felt it would be important to emphasize this, especially in view of the fact that in the Alaskan case there was an issue that did arise out of that language.

Senator ABOUREZK. We do not have any objection to it.

Mr. QUINN. Thank you.

Senator ABOUREZK. And that is the intent of all the parties, I take it.

Mr. QUINN. I endorse the many comments that have been made to date in today's testimony. I point out the absolute need for implementation. The settlement agreement can become unraveled if it is not implemented by both the State and the Federal legislation.

If we have to go back to litigation, it will be very unfortunate, I feel. This is the forum and the place where the decisions regarding the Nonintercourse Act cases should be made, not the courts. I say that from the viewpoint of someone who is involved in several of these Nonintercourse Act cases in the Northeast. They are in litigation. We feel that this is the place to settle it, not in litigation.

Senator ABOUREZK. Thank you very much, Mr. Quinn. We appreciate it.

Mr. QUINN. Thank you.

Senator ABOUREZK. Without objection, your written statement will be inserted.

[The prepared statement follows:]

STATEMENT OF DONALD P. QUINN CONCERNING S. 3153 AND H 12860
SUBMITTED TO THE UNITED STATES SENATE SELECT COMMITTEE ON
INDIAN AFFAIRS AND THE HOUSE SUBCOMMITTEE ON INDIAN AFFAIRS
AND PUBLIC LANDS OF THE UNITED STATES HOUSE OF REPRESENTATIVES
INTERIOR AND INSULAR AFFAIRS COMMITTEE

My name is Donald P. Quinn, a partner in the Boston law firm of Goodwin, Procter & Hoar.

I would like to thank your Committees for the opportunity to present my views on the proposed "Rhode Island Indian Claims Settlement Act" at this Joint hearing. As counsel for certain of the private defendants in the Narragansett Indian cases, I have been deeply involved in the efforts to settle the controversy. The proposed legislation you are considering today goes a long way towards implementing the settlement all the parties reached as an alternative to continuing the three and one-half year old litigation.

If Congress enacts legislation in substantially the form as that before you, and if the State of Rhode Island passes other implementing legislation in a timely manner, the Narragansett Indian Land Claim under the Trade and Intercourse Act of 1790 will become history. If either the State or federal legislation is not enacted, we will have to return to extended and costly litigation, which can only result in further bitterness and disruption of the lives of those affected, no matter what the outcome.

We greatly prefer the passage of the implementing legislation, not only because we recognize the uncertainty

of litigation but also because we truly feel that Federal legislative intervention places responsibility for the Trade and Intercourse Claim cases where it really belongs--in the hands of the Federal Government.

It would be wrong for either the Federal or the State Government to totally disclaim liability for the outcome of Trade and Intercourse cases. The innocent landowner should not be forced to defend his property against claims which have only recently emerged after being hidden in Federal and State archives for almost 200 years.

The proposed legislation creates a framework in which the federal and state governments jointly play a responsible role in disposing of the claim. There are certain basic principles inherent in the proposed legislation which highlight the spirit of fairness and compromise brought to the negotiating table by all of the parties:

1. No private defendant is being deprived of his or her land without consent. However, since many of the defendants would not have chosen to sell their land, even at fair market value, but for the settlement, the legislation gives them tax treatment similar to that which accompanies an involuntary taking.

2. All Narragansett claims are being totally eliminated by the legislation, notwithstanding the outcome of the "credible claim" administrative proceeding anticipated by the bill.

3. All other Indian claims within Rhode Island are being eliminated by the legislation. Congress has recognized the fact that the turmoil, and in some cases, paralysis, which has been created by the mere assertion of a Trade and Intercourse claim, cannot be allowed to continue unchecked.

4. While the legislation provides for substantial amounts of land for the benefit of the claimants, it preserves reasonable state and local controls over both the land and the claimants, thus avoiding many of the legal dilemmas which affect federal reservations.

5. The legislation provides for the adoption of a land use plan to control the long-term usage of the settlement lands in a way compatible to its neighbors, including the restriction of over 85% of the land for conservation purposes.

6. The forum for the determination of the rights of the plaintiff and the corresponding fate of the defendants has been shifted from the "winner take all" atmosphere of the Court to the Department of the Interior. The economic and social disruption which would necessarily follow a final verdict for the plaintiff has been averted. On the other hand, after proving the credibility of this claim, the plaintiffs will be assured of having a land base which they might otherwise have lost in the litigation.

Because the proposed legislation solves so many of the problems which have been created by this unfortunate case, I

urge you to report favorably upon this bill. Since its passage will be precedental for many aspects of other Trade and Intercourse Act claims, I urge your careful consideration of the effect of its passage upon other pending cases.

In closing, I would like to thank those many Congressional staff people who have worked so hard with us to advance this legislation, including Brad Penney and Win Major of Senator Pell's staff, Jamie Pound of Senator Chaffee's staff, Kathy McKenna of Congressman Beard's staff, and especially Alan Parker, Mike Cox, Barbara Berger, and John Saxon from the Select Committee Staff, and Frank Ducheneux from the House Staff. I also wish to thank your Committees for all your help to date and for agreeing to hear this matter so expeditiously. Hopefully, your sense of urgency in this matter will encourage your House and Senate colleagues to pass this legislation without delay. The private defendants who have had the burden of defending against this Claim for over three and one-half years will welcome your action. The private landowners of Rhode Island will applaud the lifting of the cloud of uncertainty which has enveloped their titles since the outset of this claim. Thank you very much.

Mr. QUINN. I also wish to thank the committee members, members of the staff, the Rhode Island delegation, and especially the members of the staff of the Senate select committee and the House subcommittee for their marvelous cooperation in this matter. Thank you.

Senator ABOUREZK. Thank you.

The next panel is Tom Tureen, attorney for the Narragansett Tribe; Ferris Dove, councilman, Narragansett Tribe; Ella Thomas, tribal secretary; and Eric Thomas, tribal secretary.

We welcome you to the committee.

Mr. TUREEN. Eric Thomas has a very brief statement, Mr. Chairman.

STATEMENT OF ERIC THOMAS, TRIBAL SECRETARY, NARRAGANSETT TRIBE; ACCOMPANIED BY FERRIS DOVE, COUNCILMAN; ELLA THOMAS, TRIBAL SECRETARY; AND THOMAS TUREEN, TRIBAL ATTORNEY

Mr. THOMAS. Chairman Abourezk and Chairman Roncalio, ladies and gentlemen, good morning. My name is Eric Thomas. I am tribal coordinator for the Narragansett Tribe of Rhode Island.

With me are Ferris Dove, councilman; tribal secretary, Ella Thomas; and Thomas Tureen, our tribal attorney. Our chief, Sachem George Watson, our tribal medicine man, Lloyd Wilcox, and Lucille Dawson, our tribal historian, asked us to say that they were sorry they could not attend.

We wholly support S. 3153 and H.R. 12860. These bills embody a settlement to which our tribe agreed and, if enacted, will put an end to a 98-year struggle to regain reservation lands torn from us in 1880 when the State of Rhode Island attempted to terminate our tribal existence. Enactment of these bills will help to insure the continued survival of our people and open the door for a new age of mutual understanding and trust between our people and our neighbors.

The lands involved in this settlement include the central residential area of our former reservation and the Indian Cedar Swamp. These lands provided then, as they do today, the cradle for our community. These are the places where we have lived and hunted. The Cedar Swamp is the place where we have gotten our herbs for medicinal purposes and sought refuge during harsh winters and colonial warfare. These lands have been our life source, and returning them now will insure their preservation and our survival.

We are proud of all of the parties who were involved in the effort which led to the introduction of these bills. The bills are the result of a course of fair and honorable dealings between Indians and non-Indians, which is rare in the history of this country. We are most pleased that the legal and moral dispute which underlies these bills could be resolved without undue injustice or hardship on anyone.

Mr. Chairman, we thank you for the help which you and your staff—and we thank the other Senators and Congressmen for the help which they and their staffs—have provided in making these bills possible.

We urge your early favorable action. Thank you. If you have any questions, we will be glad to answer.

Senator ABOUREZK. I do have some questions I would like to ask.

Can you explain why, under the settlement, the claims of tribes other than the Narragansetts are extinguished?

Mr. TUREEN. That was not put in at our request; it was put in without our opposition.

It is our understanding that the State of Rhode Island wanted to have it clear that there would not be Indian claims in the future in Rhode Island. We did not oppose it because it is our opinion that there are no other claims.

Senator ABOUREZK. You do not know of any other tribe which has any kind of a claim, colorable or noncolorable, to land in Rhode Island based on either aboriginal or recognized title?

Mr. TUREEN. Not only am I not aware of such another tribe, I am confident that there is not such other tribe.

Senator ABOUREZK. Is the Narragansett Tribe satisfied that the settlement and extinguishment is equitable?

Mr. DOVE. Yes; we are.

Senator ABOUREZK. Explain to me and to the committee what the parties think is meant by the term "credible claim."

Mr. TUREEN. Certainly it is not an air-tight thing. A credible claim is basically a claim which is not frivolous; one, I suppose, for which a credible argument can be made; a claim which makes sense for which a responsible theory can be laid out.

It is a difficult standard. We fished long and hard for a word to define what that standard should be. It was the solicitor of the Department of the Interior, Leo Krulitz, who came up with the particular term "credible." He probably would be the best one to explain what he means by it.

We understand it to be something short of an absolute certain claim, an air-tight claim, something short of a claim for which no argument can be made in opposition, but a claim which is credible.

I have trouble with the word myself, as you see.

Senator ABOUREZK. Do you think that there might be a conflict of interest arising out of that term with the Secretary being given the right to that determination?

Mr. TUREEN. Well, it is not a perfect world. Sure, there is a conflict there. I would prefer that the decision did not have to be made in that way, but I do not see any other way around it.

Senator ABOUREZK. What standard of judicial review should be employed in the case of an adverse determination?

Mr. TUREEN. We would prefer to see review de novo, the kind of review that one gets when you are appealing from a decision by a magistrate.

Senator ABOUREZK. In the Federal district court?

Mr. TUREEN. In the district court.

We see no reason why that should not happen. Because credible claim is such a very loose standard, we may well wind up in effect under this standard with a review de novo. It may amount to the same thing because the standard for credibility is one which we view and we think the court would view as being very flexible.

Senator ABOUREZK. Is it your understanding that there is a judicial remedy in the event that the town unreasonably withholds consent to the land use plan?

Mr. TUREEN. That provision was written into the agreement specifically to provide the tribe with legal recourse in the event that the town should refuse to adopt the land use plan. There is no similar requirement on the tribe. The tribe can accept or reject the plan.

The town, on the other hand, is prohibited from unreasonably rejecting the plan.

During the negotiations, we specifically inserted that language. It was a compromise. It was a device for giving the tribe a means of judicial review of any decision by the town, any unreasonable decision rejecting the land use plan by the town.

Mr. DOVE. There is also a political aspect to it. We were fortunate to have such a favorable council in office at this time to work with us. It may not be favorable, the next council; so, we have to figure on politics.

Mr. TUREEN. It is our hope that that plan will be put together quickly, that work will begin on it this summer, and that it can be before the town before long.

Senator ABOUREZK. So far as the tribal representatives on the State corporation are concerned: What elements might they think important with respect to the land use plan?

Mr. TUREEN. I do not know that the tribe is in a position to say that yet. We have not begun working on it.

As you know, the agreement provides that 75 percent of the land will be kept in the natural state, which is agreeable to the tribe. That is a condition that they have already consented to.

Mr. RONCALIO. Does that mean open area and no development of any kind and continued agricultural use?

Mr. TUREEN. That is correct.

I do not think it is inconsistent with agricultural use. But it would be open area.

Senator ABOUREZK. Do you feel that under the bill there are adequate assurances that the State and local governments and the private defendants also will live up to their part of the bargain?

Mr. TUREEN. Well, again, it is not a perfect world. The settlement represents compromise. We put in as many assurances as we could get. We feel it is adequate.

Any settlement involves a measure of good faith. You try to make as few things as possible turn on the good faith of the parties, and I think we have come pretty close to that in this agreement.

Senator ABOUREZK. Have you as a tribe already entered into any option agreements with private defendants?

Mr. TUREEN. We have not entered into the option agreements. That is an area that does concern us. It is our view that the private defendants are committed to providing the option agreements by the joint memorandum of understanding. The joint memorandum of understanding specifically names the defendants who are obliged to provide option agreements.

We feel that there is a contractual obligation there at a minimum. We do not yet have those obligations in hand.

Personally, from my dealings with counsel for those parties and given the appraisals that we have in hand already for those lands, I think we should be able to put those option agreements together relatively easy. I do not anticipate a problem there.

Senator ABOUREZK. What is your understanding of what would happen in the event all the option agreements have not been completed by the time the extinguishment is accomplished?

Mr. TUREEN. Well, we have always taken the position that we expected, if not all, substantially all of those option agreements to be

in hand by the time the extinguishment is accomplished. If it is not, as I said before, it is my position that they would have a contractual obligation to go through with those through the joint memorandum of understanding.

Senator ABOUREZK. What if the options expire before the land use plan is accepted?

Mr. TUREEN. There was testimony earlier that it is probably not a good idea to have extinguishment turn on adoption of the land use plan. I think that probably makes sense.

If the option should expire before the land use plan is adopted—well, I suppose we would have a real problem then. It may not make sense to have it turn on that either because the two really are unrelated.

I should say that we anticipate having that land use plan put together this summer. We intend to begin working with the State on that plan this summer. It is our hope that it will be adopted soon.

I do not see room for a great deal of controversy over that since 75 percent of the privately held land will be committed to conservation purposes.

Mr. DOVE. There is one thing that I can say. If it goes through this summer, with the political impact that we have in the State of Rhode Island with our Senator and our Governor and with the town council at present, I am sure everything will be all right.

Mr. TUREEN. And the tribe is also working with the local university and the town council president.

Senator ABOUREZK. I guess those are all the questions we have. We want to express our thanks for your appearance.

We are waiting for the administration witness. While we are waiting for Leo Krulitz to show up, counsel said he would like to ask the private lawyers a couple of questions.

Mr. TUREEN. Mr. Chairman, we do want to echo Mr. Jackson's praise of all the staff people involved. None of this could have been done without the cooperation of everyone. We very much appreciate it.

Mr. DOVE. We hope that this is our last mile because we have gone a long time.

Senator ABOUREZK. Mr. McLean?

Mr. McLEAN. I would like to comment with regard to the political situation and the land use plan.

Senator ABOUREZK. Certainly.

Mr. McLEAN. I do not anticipate being in office as president of the town council indefinitely. However, I do feel it is a small town. I do have the confidence of the majority of the people in the town council. I would be very happy at this time to go on record as saying that I would be willing to devote as much time as necessary to work with all parties concerned on the land use plan.

Senator ABOUREZK. Thank you very much.

Mr. Quinn and Mr. Jackson, counsel would like to direct a couple of questions to you.

Mr. PARKER. For either of you: We have had several negotiating sessions with the administration, I understand that they are not ready as yet to propose this on the record, but there has been some discussion that the administration may be able to, in effect, certify to the committees that in their opinion the claim is credible for purposes

of justifying the settlement legislation. That would have the effect of making the section 8 condition of a credible claim somewhat moot in the legislation.

What would be your response to that, realizing that this is just an ad hoc kind of question. You really have not had much time to prepare an answer to that.

Mr. JACKSON. Of course, this is a new concept that has been presented for the first time at this hearing. I learned that this might be proposed just moments before the hearing commenced this morning.

The procedure set up in the legislation, whereby the determination would be made by the Secretary of the Interior of a credible claim, has been very basic in the settlement agreement and in the negotiations that immediately led up to the settlement agreement and throughout all of the discussions on the legislation. So, it is difficult for me to give a response to that question immediately.

There was some reliance, I would say, on the part of the private defendants that the issue of whether or not a credible claim exists in this case—or call it what you may, a valid claim or credible claim exists—will be determined by the Secretary of the Interior. They were relying on that determination that that issue would be considered by the Secretary of the Interior and a determination made so that they were relying on that fact that there would be a determination.

Now, whether that determination is made at this point in time or a point in time just prior to the enactment of legislation or subsequent thereto, initially I would not see a great problem in that approach. Although I would want to reserve further comment after considering it with more deliberation than I have had an opportunity to consider.

Mr. PARKER. Mr. Quinn?

Mr. QUINN. As Mr. Jackson stated, I also heard of this concept just moments prior to this morning's hearing. I had no real chance to analyze it.

However, we, the defense, did spend an extraordinary amount of time in preparation for litigation. We have analyzed the elements of the strength of the claim of the plaintiffs in this case. We have had extensive historical material prepared going back to precontact history in Rhode Island. We have taken extensive depositions of the current members of the plaintiff group.

We feel that this material should also be considered in the determination. Whether it is made in 60 days or 30 days or presently, it still should be considered so that an accurate and well-informed opinion can be rendered by the Secretary of the Interior.

I think, without having the benefit of the work that we have done, this may not enable the Secretary to make a well-informed decision.

Mr. PARKER. This question refers to that \$3.5 million Federal contribution being contingent upon acceptance of the land use plan. As you probably recall, I asked the State witnesses whether to make a slight alteration in that and make the use of the land, as opposed to deposit of the funds in the settlement fund by the United States, contingent upon acceptance of the land use plan.

Do you have any problems with that kind of an alteration or amendment?

Mr. QUINN. Would you repeat that question please, Mr. Parker?

Mr. PARKER. The bill, as it now reads, makes the distribution of the \$3.5 million Federal contribution contingent upon acceptance of

a land use plan by the town council and the State corporation. My question is this: Could you support amending the bill so that the purchase of the settlement lands was no longer contingent on acceptance of the land use plan but, rather, the use or development of the lands would be dependent on acceptance of the plan?

Mr. QUINN. So long as all claims have been completely and irrevocably eliminated, what happens in that land use plan is of no great concern to my clients. I believe that Mr. Jackson may feel differently about that since some of his clients who are not selling their property are very concerned about the land use plan and about the implementation of it. Possibly the use of the land is what they are concerned about. He may find that acceptable. I would find it acceptable.

Mr. PARKER. Mr. Jackson?

Mr. JACKSON. Under the settlement agreement, the acquisition of the settlement lands is expressly conditioned upon the acceptance of the land use plan. It is a condition precedent to the acquisition of the land. That provision in the settlement agreement was very specifically considered and discussed in the settlement negotiations.

Naturally, there was concern on the part of the private defendants as to what use would be made of the land and how that would affect adjoining land, particularly adjoining land of private defendants that would be retained by the private defendants—the details of the land use plan or the concept of a land use plan being a condition precedent to acquisition of the land satisfied those concerns. So it was important to the private defendants that acceptance of the land use plan be a condition precedent to the acquisition.

Mr. PARKER. The acquisition, as opposed to actual development or use.

The suggestion was offered—this is my understanding—because there were certain related difficulties with making the distribution of the funds and the deposit of the funds in the settlement fund. There were unrelated problems with making that conditioned upon the actual acceptance of the plan, as opposed to making any use of those lands conditioned on acceptance or going forward with any development of the land.

Mr. JACKSON. Could the funds not be deposited, the moneys deposited in the fund but not actually distributed from the fund until such time that the land was going to be acquired?

Mr. PARKER. Yes; that is the point as I read section 8: “no money shall be deposited in the fund,” and then subsection (b), “until town council has accepted the land use plan.”

Mr. JACKSON. Under section 8, it is a prohibition on the distribution from the fund; is it not?

Mr. PARKER. Distribution; right.

Mr. QUINN. Mr. Parker, with respect to your earlier question, it might be advisable to discuss that matter with Mr. Brody. I am talking about the credible claim finding. And also the question of land use plan adoption.

The State would contemplate conveying the public land at the time that the private settlement lands were conveyed to the State corporation. That would be at the time of acquisition. So, I think that the question that you asked with respect to waiving the adoption and just preventing the use impinges upon the timing of the State contribution. I think that that is an important consideration for the State. Possibly Mr. Brody can address that.

Mr. RONCALIO. We will stand in recess for 10 minutes.
[Recess taken.]

Mr. RONCALIO. The subcommittee will come to order.

We are happy to have you here, Mr. Solicitor.

We have heard evidence this morning from Senator Pell, Senator Chaffee, Congressman Beard, and several panels and officials regarding what is the nearest thing in my experience so far to a virtual agreement and settlement. We are hopeful that you can add to this so that we can have a simultaneous markup of this bill in both the House and Senate.

You may proceed.

STATEMENT OF LEO M. KRULITZ, SOLICITOR, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY TIM VOLLMANN, SPECIAL ASSISTANT TO THE SOLICITOR

Mr. KRULITZ. Thank you very much, Mr. Chairman. I do appreciate your accommodating our time schedule.

Mr. Chairman and members of the committees, I appreciate the opportunity to appear before you today to testify on the bills intended to implement a settlement of the Narragansett Indian land claims in the State of Rhode Island.

This legislation is intended to resolve once and for all the claims being asserted by the Narragansett Indians to lands in the town of Charlestown on the ground that the past transfers of those lands may have been in violation of the Indian Nonintercourse Act. The bills are drawn against the background of an agreement reached among all of the parties to the Indian claim litigation on February 28, 1978.

I want to begin by applauding the parties to the litigation—the State of Rhode Island, the Indian plaintiffs, and the non-Indian defendants—and Senator Pell, Senator Chafee, their staffs, and other members of the Rhode Island delegation, for their constructive approach toward resolution of a very difficult problem.

It is reassuring to me to see that attempts to resolve such Indian claims can be made in an atmosphere of cooperation. The parties here have faced each other through 3 years of litigation, but they remain willing and anxious to look toward the future in a renewed spirit of brotherhood. Their agreement is evidence of that spirit.

I feel that I am particularly sensitive to the problems inherent in the modern assertion of Indian claims. In my 15 months as Chief Legal Officer of the Interior Department, I have had to wrestle with extremely difficult problems arising out of Indian claims to natural resources in the West, and also the dozen or so Nonintercourse Act land claims made on the eastern seaboard.

A number of such claims are legitimate, and Secretary Andrus has directed me to insure that Indian people obtain the justice which has so long been denied them. On the other hand, some Indian claims which have come before me do not have substantial merit, and I have refused to condone the expenditure of the taxpayers' money to support them.

Unfortunately, in both circumstances the mere pendency of the Indian claims has sometimes resulted in economic stagnation in the localities where they have been asserted. As Interior Solicitor, I have no more difficult task than to resolve the conflict between the

rights of Indian people to assert valid legal claims and the legitimate concerns of innocent non-Indian purchasers of real property who fear for their homes and their livelihoods.

The administration supports and encourages just and amicable settlements of credible Indian claims, and under certain circumstances we are willing to recommend contributions toward such settlements.

We are, however, unwilling to have the Federal Government assume the entire burden of resolving Indian claims that are not now even being brought against us—that is, the United States. We have insisted, for example, on State contributions to the settlement of legitimate Nonintercourse Act claims since in such cases we see the State as bearing part of the responsibility for the problems arising from a failure to comply with the Nonintercourse Act.

Frivolous Indian claims, brought under the Nonintercourse Act or otherwise, can also have a chilling effect on the economy of an affected community. Nevertheless, the administration is unwilling to recommend contributions to any settlements of frivolous claims. "Paying off" such claimants could only encourage other such frivolous suits and cause problems in other communities. Such claims are best defended; and, indeed, the Interior Department has itself been sued in two Nonintercourse Act claims which we regard as having no merit. Needless to say, the Government is defending itself.

In the case of the Narragansett Indians in Rhode Island, we determined that the claim is sufficiently plausible to warrant the administration's participation in settlement talks among the parties. Representatives of the Executive Office of the President and I have worked closely with the parties in the past few months to assist them in ironing out some of the details of their agreement. Much progress was achieved, but the bills before us were introduced with the understanding that further refinement may be necessary.

The Federal Government was, of course, not a party to the claims litigation; nor was it in danger of any liability arising out of the Narragansett claims. Yet the agreement of the parties and the legislation call for a significant Federal contribution toward resolution of the claims; and Federal officials have been understandably concerned that Federal expenditures be justified, that the interests of the Federal Government are adequately protected, and that the legislation clearly accomplishes the purposes of the settlement agreement.

As I have said, we have insisted on a significant State contribution to the settlement of Nonintercourse Act claims, and the amount of the Federal contribution must be dependent upon the extent of the State's participation. We have not yet finally evaluated the worth of the State of Rhode Island's offer to contribute 900 acres of State public lands to the settlement.

In short, we have a problem with conflicting appraisals of those lands. The State's appraisal came in just last week, and it was only last Friday that the Interior Department appraisers had an opportunity to sit down with the State's appraisers to determine the basis of the discrepancies in their respective appraisals. I expect that this can be worked out very soon, but today I cannot tell you whether the administration is willing to support the size of the Federal contribution specified in the legislation.

Apart from the critical question of the amounts of the Federal contribution and State contribution to the overall settlement, we have objections to some relatively minor provisions of the settlement bill. Several other provisions seem overly cumbersome. Accordingly, early next week we will send to you a report in the form of an alternate bill. I will not now go into great detail on the changes we think need to be made in the settlement legislation. I will, however, point out the most important alterations that we deem necessary.

First, I note that section 4 of the committee print changes the language by which the claims of the Narragansetts are eliminated. It is the intention of the administration and the parties to effect an approval of the conveyances as of the date of transfer, to extinguish Indian titles as of the date of transfer, and to extinguish all trespass, ejection, or other claims based on Indian title or transfers that may have violated the Nonintercourse Act.

To clarify this matter, the administration believes strongly that the language of the bill should provide for both extinguishment and ratification as of the time that the original transfers occurred. This is an important point, since with this language we need to provide as much assurance as possible to the United States that the bill will not form the basis for a claim of a taking as of the date of enactment.

Should there be any basis for such a claim, the potential liability of the United States might be measured by the fair market value of the claims which have been eliminated—an amount substantially in excess of the settlement which has been agreed to. Because the language of the committee print is not as clear as it might be on this critical point, we strongly favor changing that language to provide for both extinguishment and ratification as of the date of the original transfers.

Second, we are seriously considering recommending deletion of the condition provided for in section 8(c) that within 60 days of enactment the Secretary must determine that the plaintiff in the lawsuits has a credible claim and that a Federal contribution toward the settlement will be made contingent upon an affirmative finding by the Secretary.

This was a condition originally proposed by the administration, but we have now had an opportunity to examine the merits of the Narragansett claim; and it appears that we will be able to determine in the near future whether the claim is sufficiently plausible to justify the U.S. contribution to the settlement.

Deletion of the provision for an administrative determination of the credibility of the claims would greatly simplify the legislation, and we expect that no one would be opposed to it.

The change would also expedite the settlement process after enactment. Thus, the need for long-term options to purchase the private settlement lands would be eliminated. After the Rhode Island Legislature had provided: (1) For the creation of the State corporation authorized to act for the benefit of the Narragansett Indians, (2) for the State's contribution to the settlement, the purchases of the private settlement lands could proceed.

Only short-term options would be necessary pending State legislative action early in 1979. As already provided in the bills before us, the fee for these options could then be applied to the total purchase price of the lands.

Third, we are inalterably opposed to the authorization of any expenditure for the payment of attorney and consultant fees to the private defendants for the cost of defending the Indian claim lawsuits. This has been our consistent position in all our conversations with the parties. Such an expenditure sets a dangerous precedent. We do not want to give anyone the impression that the Federal Government is always ready to come to the rescue to pay for the costs of defense of an Indian claim.

We are considering whether some change might not be appropriate in the role of the Secretary in the implementation of the legislation. Rather than providing, as in section 6(a) of the bills, that the Federal funds be paid to the Governor of Rhode Island for the purchase of options until the State corporation is created, it may be possible for the Secretary to assume that responsibility and also the responsibility for acquiring the lands after the State corporation is formed.

Such acquisition would, of course, be done in full consultation with the Governor and the State corporation. Upon completion of the purchases, the excess funds would remain in the U.S. Treasury and the lands would be transferred to the State corporation. This would avoid the complexities of transferring funds to the State or to the corporation.

The current bills are also vague with respect to the Secretary's later role. For example, in section 9, the Secretary is given the responsibility, along with the Governor, of approving later conveyances of State corporation lands. But no standards are provided for that approval authority.

We feel that the relationship of the Secretary to the State corporation has to be clarified before a settlement bill is enacted. That corporation will not be an "Indian tribe" to whom the Secretary owes any trust responsibility. Indeed, the Interior Department has never determined that the plaintiff in the lawsuits, the Narragansett Tribe of Indians, Inc., is entitled to tribal status or the Federal services that flow from that status. This legislation changes nothing in that respect.

The Narragansett Indians—though not the new State-chartered corporation contemplated by this settlement legislation—may still petition the Assistant Secretary for Indian Affairs for a ruling on tribal status. Whether they obtain such a ruling has no bearing on the settlement or on this legislation.

Further refinements in the legislation will appear in our proposed amended bill which, as I have said, will be provided to the committees early next week.

We are then certainly willing to work with the staffs to iron out any details.

That completes my statement, Mr. Chairman. I would be glad to respond to questions.

Mr. RONCALIO. Thank you very much, Mr. Krulitz.

I was about to ask a question this morning as to whether or not there was ever any judicial determination the Narragansetts are a tribe. Has there been such a determination?

Mr. KRULITZ. There has been no determination, Mr. Chairman.

Mr. RONCALIO. You will have a draft within a week?

Mr. KRULITZ. Yes, sir.

Mr. RONCALIO. You will have it within a week.

Mr. KRULITZ. I am assured by all my compatriots that we will.

Mr. RONCALIO. It is so rare where we can find agreement among all parties on an issue like this. I think it is in the best interests of everybody concerned if we move it as fast as we can.

Mr. KRULITZ. We agree.

Mr. RONCALIO. We will refer the bill to the full House Interior Committee with the notice that there will be amendments to be submitted. We look forward to your bill for those amendments.

Mr. KRULITZ. Yes, sir.

Mr. RONCALIO. We hope we will have them.

If we are going to have a hangup on these attorneys' fees, maybe we will not have it. I thought these were attorneys' fees for the counsel to the tribe, but it is not; it is for counsel to the defendants. We may have a problem with that.

I do not know about the deletions of section 8(c). We will defer to the excellent staff members we have. We hope we can work with them on that.

I would like very much to have a general approval of the Department to this legislation. It would help very, very much without necessarily setting a dangerous precedent in that area.

Mr. KRULITZ. I feel fairly confident, Mr. Chairman, that can be achieved.

Mr. RONCALIO. Fine.

I think the contribution of 900 acres of land is a very substantial and real State contribution. I would project that the amount of \$3 million from the Federal Government may have a diminution in value next year of 2, 3, or 4 percent, whereas those 900 acres may have appreciation.

I would not quibble about it; I know it is a very good contribution. I know when we get land in our family, we keep it; but when we get money, we spend it.

We thank you for putting together this statement and helping with the markup.

I believe counsel has a question.

Mr. PARKER. Mr. Krulitz, I have just one question on your suggestion that the section 4 language be amended. Would you have actual proposals to send to us? We would like to see your proposals before your 1 week for a complete administration proposal.

As you know, that language in section 4 has been particularly an issue that everyone wants to look at very closely.

Mr. KRULITZ. Yes, Mr. Parker, I am sure that we can, very early next week, have alternative language for section 4.

Mr. PARKER. As I understand your statement, you feel that if the extinguishment was made effective as of the date of any transfers, that would satisfy your analysis or your feeling that that would be an effective clause then. Is that right?

Mr. KRULITZ. Yes. Mr. Parker, what we are trying to do is eliminate the potential exposure for taking at current values. The theory is that, by ratifying the transfers as of the date of the transfer and in effect a retroactive approval, in essence what we are doing is complying with the Nonintercourse Act, which required Federal approval of the transfers. So, by doing that retroactively, we think that there will be added protection that will be important, not so much in this case but perhaps in others.

Mr. RONCALIO. We thank you very, very much. Give our regards to your wonderful boss.

Mr. KRULITZ. Thank you, Mr. Roncalio.

Mr. RONCALIO. Who wanted to be heard one more time? Mr. Brody, you wanted to say something else?

Mr. BRODY. Thank you, Mr. Chairman. I have just one point with respect to what the Solicitor referred to as a disagreement concerning the appraisals that are submitted. It is a very difficult situation that we are facing in this respect.

What has been asked of the State is to provide a definite monetary valuation upon what has been now counted as over 1,060 acres, which is the State's contribution. It is a difficult task to put a monetary valuation on this particular land, which is now in its natural state. It is a conservation area. It is a wildlife preservation area. And it is the area in its natural state in this particular location, which is of the highest and the greatest value to the tribe in this particular case, not only because of its location but because of its historic value and its present natural state.

I think, first of all, the contribution that the State is making is a significant one. I think that, at times, attempting to put a strict monetary valuation on it, to compare it to what may be other land that is closer to roadside, that may be clearly of a more developable nature for residences, et cetera, is something akin to comparing apples and oranges.

I think, for the sake of clarification, the land does have a significantly high appraisal value as a wildlife preserve area. The estimate from the appraisal is somewhat near \$2.7 million. But, again, the appraiser himself has indicated that that figure is something which may be extremely low in the honest evaluation of the value of this land in its present state. It is something that could not be replaced for hundreds of millions of dollars.

Mr. RONCALIO. We appreciate that. We appreciate the difficulty of appraisal on these types of matter.

Mr. BRODY. Thank you, Mr. Chairman.

Mr. RONCALIO. This joint hearing on this legislation will stand in recess subject to the call of either of the committee chairmen.

[Whereupon, at 11:55 a.m., the committees stood in recess, subject to call of the chair.]

