The original documents are located in Box 12, folder “10/27/74 S3007 Authorizations of Appropriations for the Indian Claims Commission with "Sioux Amendment"” of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

Exact duplicates within this folder were not digitized.

APPROVED
OCT 27 1974

THE WHITE HOUSE

WASHINGTON

OCT 25 1974

Statement issued 10/29

MEMORANDUM FOR THE PRESIDENT

FROM: ROY L. ASH

To Archives 10/29

SUBJECT: Enrolled Bill S. 3007 - Annual authorization of appropriations for the Indian Claims Commission, with "Sioux Amendment"

This memorandum briefly summarizes the attached much more detailed customary enrolled bill memorandum on this bill.

There is no problem with the annual authorization of appropriations for the Indian Claims Commission which the bill provides, but Congress has added a rider to it which Interior is willing to accept but Justice feels calls for a veto.

Although cast in general terms, the rider is designed to assist the Sioux Indians in their claim before the Indian Claims Commission for the asserted illegal taking of the Black Hills area in 1877. The Commission has determined the Sioux are entitled to $17.1 million for the taking, which would be increased by interest to $102 million. The Commission has also determined that the 1946 law under which the claim is being adjudicated requires the value of rations furnished the Sioux by the U.S. should be offset against the claim -- the value would be offset against the principal, and, if Justice estimates of value are proved (a recent estimate was $57 million and continuing to rise), the entire claim would be wiped out.

Indian Claims Commission determinations may be appealed to the Court of Claims by either party, and Justice has already appealed the taking determination.

While a number of arguments for approval of the bill are set out in the attached memorandum, I think, basically, they can be reduced to the following:

- Unquestionably, the Black Hills taking was a classic instance of violation of solemn Federal pledges to the Sioux coupled with harsh repression that resulted in, among other things, Custer's last stand in 1876. It is estimated that, following the taking, $1 to $2 billion in gold was taken from the Black Hills.

- It is particularly difficult to see the Sioux claim wiped out by the value of rations furnished them over the years following their displacement by white settlers, rations which the Sioux argue were necessary to prevent them from starving, at least in the earlier years. While the 1946 Act recognizes many types of offsets, presumably including rations, none of the 455 cases disposed of so far involved any significant offsets for food and only a minimal amount is estimated in the remaining 225 cases.

- Enactment of the bill would expedite settlement of the Sioux claim, which has been litigated for 50 years.

The arguments supporting disapproval can be reduced to the following:

- Many, if not most, of the tribes whose claims have already been disposed of or are pending under the 1946 Act suffered from the same type of double-dealing and repression to which the Sioux were subjected. Therefore, these factors do not provide a basis for singling out the Sioux for special treatment under a law applicable to all other Indians.

- The 1877 law ratifying the taking of the Sioux land provided that rations were to be regarded as payment. Under the 1946 law, the Indian Claims Commission determined that rations were to be treated as an offset against the claim, just as the value of medical and educational assistance were offset against other Indian claims.

- Speeding up the settlement of one claim is scarcely a valid basis for changing a law governing all Indian claims, most of which have been pending as long as the Sioux claim. In any event, an appeal which Justice has already taken on another aspect of this case will require considerable time to resolve.

- Offset provisions of the 1946 Act have never been altered before, and it seems clear that approval of the bill would establish a precedent for further amendment of the offset provisions and the reopening of many of the 455 settled cases.

It should be noted that, as outlined in our longer memorandum, Congressman Abdnor (R - South Dakota) argued at the House hearings that approval of this bill would in effect take away the slogans of the Wounded Knee "rabblerousers."

In their enrolled bill letters, Interior recommends approval and Justice recommends disapproval, each relying essentially on the arguments outlined above that support their positions.

While I find the arguments in favor of approval very appealing, I think the bill should be vetoed nonetheless. As pointed out above, what is appealing here probably applies to many, if not most, Indian claims. All of those claims have been or will be settled under the 1946 Act, and I do not believe we should do anything at this late date to reopen that Act. While the Interior and Justice reports to the House Interior Committee presented arguments for and against the bill, respectively, neither of them explicitly took a position on it, and I see no reason to consider your disapproval of S. 3007 under such circumstances as "an act of bad faith," as Interior, in its enrolled bill letter, contends it would be.

Attached to the other memorandum is a draft veto message we have prepared for your consideration.

Attachments

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 25 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3007 - Annual authorization of appropriations for the Indian Claims Commission, with "Sioux amendment"
Sponsor - Sen. Jackson (D) Washington and Sen. Fannin (R) Arizona

Last Day for Action

October 29, 1974 - Tuesday

Purpose

Authorizes fiscal year 1975 appropriations of $1.45 million for the Indian Claims Commission, and amends that Commission's basic Act in a manner which would affect an upcoming Sioux claims determination worth over $102 million.

Agency Recommendations

Office of Management and Budget	Disapproval (Veto Message Attached)
Indian Claims Commission	Approval
Department of the Interior	Approval
Department of Justice	Disapproval

Discussion

The Indian Claims Commission is an independent, quasi-judicial, five-member agency established in 1946 to settle all claims made by Indian tribes against the United States. The Commission's appropriations are authorized annually and a bill that would have authorized

"such sums as may be necessary" was transmitted to the Congress in March of this year. The Senate Interior Committee amended it to specify $1.45 million -- to which we have no objection -- and added a new section 2 that would insert a provision amending the 1946 Act which established the Commission.

"Sioux Amendment"

The 1946 Act makes clear that in determining the amount to which a tribe is entitled "...the Commission shall make appropriate deductions for all payments made by the United States on the claim..." In the 455 dockets which have been completed to date, the value of provisions, medical assistance, per capita cash payments, tools, outright gifts, and other types of offsets have been deducted from awards. Section 2 of the enrolled bill would add a proviso to the 1946 Act stating that government expenditures for food, rations or provisions would not hereafter be deemed payments on a claim. Although couched in general terms, this amendment is directed at affecting the outcome of a major case now pending before the Commission -- the Sioux claim that the government wrongly took the Black Hills of South Dakota.

Background of the Claim

In February 1974, the Commission ruled that an 1877 Act in which the Black Hills were ceded to the United States constituted a taking of Sioux land in violation of the Fifth Amendment. The events leading up to the 1877 Act can be summarized as follows:

- an 1868 treaty recognized a Sioux reservation consisting of all the present State of South Dakota west of the Missouri River, and also promised that the government would bar non-Indians from the land;

- when in 1875 the existence of gold in the western portion of the reservation was confirmed, a large influx of non-Indian miners followed, and the Army was ordered to stop opposing their entry onto the Sioux lands;

- in the Winter of 1875-76, a commission appointed by President Grant to negotiate for the cession of the area failed; part of the Sioux tribe became increasingly hostile, and the Army began military operations against the Sioux;

- after 1868, many of the Sioux had been supported by government rations that were being given in payment for lands given up under the 1868 treaty. But following Custer's defeat in 1876, Congress attached a rider to an appropriations act stating that the Sioux would receive no further rations until they surrendered the Black Hills to the United States;

- in an 1877 Act, Congress put the Black Hills cession into effect in clear violation of the terms of the 1868 treaty and also stated in that law that food and rations were to be provided to the Sioux "in consideration of the ... cession."

Basic Issue

The issue raised by this case is whether the Sioux claim for the Black Hills taking should be reduced by the value of rations given them after 1877. The Commission has already determined that the value of the land taken was $17.1 million (1877 values), and that the taking of the land was in violation of the Fifth Amendment, thereby obligating the government to pay 5 percent interest on the $17.1 million and bringing the total payment (with no offsets) to $102,262,500. The Justice Department has appealed this determination to the Court of Claims and this appeal is still pending.

At this point the Commission has determined that rations should be considered an offset, but has not determined the value of the rations. In addition to other offsets, Justice has asserted that the United States expended almost $39 million for rations up to 1926, and a recent estimate placed the figure at $57 million; growing at the rate of $750,000 annually. If figures of this magnitude are utlimately substantiated, the $17.1 million claim would be canceled thereby eliminating any award at all, since there would be no principal on which interest could accrue. The Sioux would still have the right to appeal the treatment of rations as an offset, as well as the value given to them.

The Commission has informed the Justice Department that it will carefully scrutinize the government's claimed expenditures, and has demanded a detailed, year-by-year accounting. Such an accounting, which would require that GSA search ancient records, would employ several persons for several years.

Legislative History

The Senate Interior Committee added section 2 while the bill was being marked up, and without holding hearings or otherwise soliciting the views of the Administration. In its report to the Senate, the Committee, claiming that this would correct an inequity, included as its explanation a memorandum prepared by the Sioux Tribe. That memorandum describes the "one basic objective" of section 2 as expediting the settlement of the case by eliminating the necessity for the GSA investigation. The Senate passed S. 3007 by voice vote.

The House passed a companion to the original bill, without section 2, and the two versions were sent to conference. The House conferees refused to accept the Senate version because there had been no hearings in the House, and, by agreement, introduced a separate bill containing the substance of section 2 and scheduled hearings.

OMB cleared reports and testimony from Interior and Justice for presentation before the House Interior Committee. While the cleared Interior testimony did not explicitly recommend enactment, the hearing record shows that the Department's statement was clearly taken as favoring it. Interior argued that:

- the Commission is as much a court of conscience as a court of "black-letter law;"

- the food was given merely to keep the Indians alive;

- rations should not be regarded as payments on a land claim.

Justice, on the other hand, did not explicitly recommend disapproval, but presented the following arguments:

- this would be the first time since 1946 that the ground rules for settling Indian claims have been changed, and three-fourths of the dockets have already been litigated;

- if such a precedent is set, other tribes will seek to extend the precedent to offsets taken in their claims, including offsets for the value of rations -- in many cases, the specific value of some of these would be nearly impossible to determine.

The House Committee voted favorably (31-3) on the legislation, which was then incorporated in S. 3007 without a Committee report or debate in the House. The conference report, which contains little substantive information, was adopted by voice vote in both the Senate and the House, with little discussion preceding either vote.

Arguments for Approval

1. Rations were necessary for survival of the Indians as displaced persons, unable to support themselves by hunting, and it would be unfair to consider them as payments on the claim.

2. Some 7.3 million acres of land was taken wrongfully and at least $1 billion worth of gold has been mined from it; offset provisions of the Act should not serve to deny the Sioux any compensation to which they would otherwise be entitled.

3. In the absence of this legislation, it may take several more years to resolve the Sioux case, which has already been in litigation for 50 years, and determination of the rations deduction could take an additional 3-5 years.

4. OMB clearance of conflicting reports should be regarded as Executive willingness to accept the judgment of Congress after it has considered the arguments on each side.

5. While there are many other small cases in which ration offsets have been or could be deducted, this is the only major case of its type, and thus the nature of the precedent is less important than it may seem -- the Commission states that only an estimated $100,000 is involved in settled cases, and a "minimal" amount in cases not yet settled.

6. In a statement presented in the House subcommittee hearings, Representative Abdnor (R - South Dakota) stated:

> "So great was the wrong, so devastating and far-reaching was the impact of the 1877 Act upon Sioux society that the Black Hills claim literally has become part of the Sioux way of life.... [Settlement of the claim is] the ultimate test of whether the United States in fact has changed its policies towards Indians....[During] last year's disorders at Wounded Knee,...the rabble-rousers who fomented trouble there used as their rallying cry the Government's breach of the 1868 Sioux Treaty and the taking of the Black Hills....I suggest that it makes good public policy as well as good fiscal policy now to take the rabble-rousers' slogans away...."

<u>Arguments for Disapproval</u>

1. As specifically provided in the 1877 Act, the rations were intended as payment, and not just to keep the Indians alive for a few years; the government continued to provide the food for many years.

2. This legislation interferes with, and changes the ground rules in, an established judicial process. The Indian Claims Commission has not yet determined the value of the rations offset, and the Indians still have a right of appeal on the question of whether there should be any such offset at all, and if so, how much.

Moreover, it would represent the first change in the offset provisions of the 1946 Act, under which 455 cases have been finally disposed of.

3. The stated objective of expediting the claim may not be attained even with this amendment if the government and the Indians choose to continue appeals on the case; moreover, other Indian claims have taken comparable periods to settle, and it has not been suggested that preferential legislation be enacted to reduce the time involved in those cases.

4. While it is true that the economic benefits that have been realized from the Black Hills area are much larger in value than the present claim, the established basis for settling Indian land claims is the value of the land at time of taking without consideration for subsequent mineral discoveries, improvements, rises in value, etc.

5. The 1946 Act explicitly states that it is to be the final legislation on this subject and that no exceptions would be considered by the Congress; this language was specifically designed to obviate the steady flow of private Indian bills which had been introduced up until that time -- the present bill would have an effect similar to those that were cut off by the 1946 Act.

6. Even though the value of ration offsets for other tribes may be minimal, the bill, in fact, creates a precedent for reopening the question of offsets in past or future cases, especially where the treatment of the Indians concerned is considered excessively harsh.

7. At the time of clearance, Interior and Justice were advised that their conflicting reports were being cleared to give Congress the benefit of pro and con arguments -- in any event, the President should be free to approve or disapprove a bill on the merits as he sees them.

In its enrolled bill letter, Interior, strongly recommending approval, essentially reiterates arguments it made in its report to Congress, along with other points essentially covered in the pro and con arguments above. However, the following excerpts should be noted:

> "...There is no dispute that the United States violated its own Treaty of 1868, and reduced the Sioux to starvation in the process. The United States should not now be in the position of arguing that the rations it furnished constituted payment for the land which it illegally took.
>
> * * *
>
> "Since the Administration asked Congress to give hearing to all arguments for and against enactment of this bill, and then make a decision on the basis of those arguments, it would be an act of bad faith by the Administration to reject the end result of the course of action that it suggested."

In its enrolled bill letter, Justice characterizes S. 3007 as "highly objectionable," and recommends disapproval, stating in part:

> "It is clearly unreasonable to single out the one class of expenditures for exclusion as offsets, and it is discriminatory to limit an exclusion solely to cases hereafter determined. There is no sensible reason for distinguishing expenditures for food, rations or provisions from expenditures for doctors, farming equipment, education expenses, per capita payments, or the myriad other categories of actual payments 'on the claim' which have been made to various Indian tribes by the United States, and there is even less reason for eliminating from offset any type whatever of payments 'on the claim' while continuing to provide for offset of gratuities from the United States which have no relation to a claim. And it is obviously discriminatory to change a basic rule for compensation to Indian tribes for only the relatively few tribes whose claims still remain to be adjudicated under the Indian Claims Commission Act. If this legislation were to be

> approved, these factors would inevitably lead to further amendments of the Act and to the reopening of most of the Indian tribal claims which have been adjudicated to now final decisions during the past 28 years.
>
> * * *
>
> "...If payments on the claim are eliminated from allowable offsets by the present legislation, not only would financial benefit obviously accrue to the Sioux but it is highly likely that the circumstances of enactment of the amendment to the Indian Claims Commission Act would be construed by them as an endorsement of their entitlement to a sum approximating the $102,712,500 awarded to them in the proceedings presently on appeal, and as a precedent entitling them to further legislative relief if the legal proceedings are substantially unfavorable to them for any reason."

Despite many appealing aspects of the Sioux claim, the OMB joins Justice in recommending disapproval. The treatment to which the Sioux were subjected a century ago was unconscionable and unfair, but it is essentially similar to the treatment received by many, if not most, of the 600 tribes who have had or will have their claims adjudicated under the 1946 Act. While it is true that an offset related to food appears to be significant only in the case of the Sioux, there are, as the excerpt from the Justice letter quoted above points out, many other types of offsets such as services of doctors and per capita payments, that may be equally peculiar to particular tribes.

Basically, however, we object to changing, on behalf of one tribe, the ground rules that have applied for 28 years in more than 450 cases, and, further, doing this before there has been a final adjudication of the claim in question. If this is done, we can see no way of avoiding a serious precedent which could lead many Indian tribes and their alert lawyers to press for (a) other changes regarding proper offsets, (b) reopening of cases previously settled or (c) relaxation of the 1951 statute of limitations to permit new claims to be filed under revised ground rules.

We have prepared the attached veto message for your consideration. Justice suggested that its letter could be the basis for such a message, and we have picked up their salient points in our draft.

Director

Enclosures

A

THE WHITE HOUSE
WASHINGTON

October 26, 1974

Mr. President:

The signing statement in Ken Cole's cover memo is not attached. It will be forwarded for your consideration on Monday. In the meantime I felt it was important that you have the opportunity to consider your decision on this bill.

Don

THE WHITE HOUSE

WASHINGTON

ACTION

Last day - Tuesday, October 29

October 26, 1974

MEMORANDUM FOR THE PRESIDENT

FROM: KEN COLE

SUBJECT: Enrolled Bill: Annual Authorization of Appropriations for the Indian Claims Commission, with "Sioux Amendment", S. 3007

BACKGROUND

The bill authorizes fiscal year 1975 appropriations of $1.45 million for the Indian Claims Commission. There is no opposition to this provision.

The bill also contains the "Sioux Amendment" which is a controversial provision intended to allow the Sioux to recover approximately $103 million from the United States. The Indian Claims Commission has ruled that the United States took the Black Hills land from the Sioux Indians in violation of the Fifth Amendment. The value of these lands and certain gold taken by the U.S. is $17.5 million. The interest on this amount from the date of taking, 1877, brings the total claim to just under $103 million.

Under the Indian Claims Commission Act of 1946, the value of food furnished by the U.S. to the Indians is offset against the principle of the claim. The most recent estimate is that the value of the food in this case is about $57 million which would totally wipe out the $17.5 million of the claim; thus, there would be no interest and, therefore, the Sioux get nothing.

There have been some 600 petitions filed before the Commission and final action has been taken in 455 of these cases to date, amounting to more than one-half billion dollars. In all these decided cases, the total amount of offsetting food payments comes in under $100,000.

During House Committee hearings, the Interior Department testified in favor of the Sioux Amendment and Justice testified against. No one gave an Administration position.

ARGUMENTS FOR SIGNING

It would be fundamentally wrong to wipe out the Sioux Indian claim for land we illegally took on the basis that the food given to them constitutes payment. The fact is, they were starving because we illegally deprived them

of access to their hunting lands. The effect of the Sioux Amendment is to correct a defect in the 1946 Act which is totally consistent with the basic purpose of that Act, i.e., to provide a remedy for Indians who had been morally and legally wronged by the United States.

If the Administration objected to this Amendment as a matter of principle, it should have stated its position during Congressional hearings. A veto is likely to inflame Indian radicals.

Bill Timmons reports that the signing is "absolutely essential" to Representative Jim Abdnor and Senator Milton Young.

Also, Ben Reifel has urged you, by letter through Jack Marsh, to sign this bill. (See Tab A.)

ARGUMENTS FOR VETO

Basically, Justice Department and OMB argue that this will change -- while litigation is in progress and on behalf of just one tribe -- the ground rules that have applied for twenty-eight years in more than 450 cases before the Indian Claims Commission. This will establish a precedent for further amendment of the offset provisions and could lead to the reopening of many of the settled cases. (COMMENT: If the ground rules are wrong, then it is precisely the legislative process (Congress and the President) that should change them.)

Some have pointed out that attorneys for the Indians will get 10% of any recovery. (COMMENT: This should be irrelevant to your decision on the merits of the bill. Furthermore, as Len Garment points out, this is the standard fee and it will be spread over three or four law firms which have worked on the case without payment for over fifty-four years.)

STAFF AND AGENCY POSITIONS

The following recommend signature:

Interior Department
Indian Claims Commission
Ken Cole
Phil Areeda
Bill Timmons

The following recommend veto:

Roy Ash (see attached enrolled bill memo)
Justice Department

DECISION - S. 3007

Sign (Tab B)_____ Veto_____
(sign statement reviewed by
Paul Theis, also at Tab B)

INDIAN CLAIMS COMMISSION
RIDDELL BUILDING, 6TH FLOOR
1730 K STREET NW.
WASHINGTON, D.C. 20006

October 17, 1974

Mr. W. H. Rommel
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Re: Enrolled Bill S. 3007

Dear Mr. Rommel:

This is in reply to your request dated October 17, 1974, regarding enrolled bill S. 3007, an act "To authorize appropriations for the Indian Claims Commission for fiscal year 1975."

The Indian Claims Commission recommends enrolled bill S. 3007 for the President's signature.

Sincerely yours,

Jerome K. Kuykendall
Chairman

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 21 1974

Dear Mr. Ash:

This responds to your request for our views on the enrolled bill S. 3007, "To authorize appropriations for the Indian Claims Commission for fiscal year 1975."

We strongly recommend that the President approve the enrolled bill.

Pursuant to a 1972 amendment to the Indian Claims Commission Act requiring annual enactment of legislation authorizing appropriations for the expenses of the Commission, Section 1 of S. 3007 was enacted. It authorizes $1,450,000 to be appropriated in fiscal year 1975 for the expenses of the Commission.

Section 2 would amend the Act which established the Indian Claims Commission (60 Stat. 1050; 25 U.S.C. 70a) to provide that expenditures for food, rations or provisions shall not be deemed payments on any claim awarded by the Commission. The Act currently requires the Commission to offset such expenditures from awards it makes to Indian tribes if these items were required under the terms of the treaty, statute or Executive Order upon which the claim is based.

Background:

The specific case which prompted the introduction of section 2 of S. 3007 is Sioux Nation v. United States, Indian Claims Commission Docket No. 74-B, the Sioux claim for the taking of the Black Hills area in South Dakota, and for the value of gold extracted from that area.

In 1868 the Sioux entered into a treaty with the United States which, among other provisions, established the Great Sioux Reservation on what is now all the State of South Dakota west of the Missouri River. The Black Hills area lay in the Western part of the Great Sioux Reservation, and was known to be valuable for timber, farming, grazing and minerals, primarily gold. By an Act of February 28, 1877 (19 Stat. 254) Congress effectuated the acquisition by the United States of the Black Hills area.

The Commission has determined that the 1877 Act constituted a taking of Sioux land in violation of the Fifth Amendment of the Constitution. The Commission further found that the value of the land at the time of the taking was $17,100,000 dollars. The United States was also found liable for $450,000 dollars worth of gold that it wrongfully extracted from this area (more than $1 billion dollars in gold has been taken from the area involved in the Sioux Black Hills Claim). Because the 1877 taking violated the Fifth Amendment, the United States is liable for 5% simple interest annually on the $17,550,000 dollar award until the claim is paid. The amount of the damages is now about $103 million dollars.

The United States never paid the Sioux a cash consideration for the Black Hill land and minerals taken under the 1877 Act, but Article 5 of that Act did provide for the Government to furnish the Sioux with beef and other rations until the Sioux could support themselves. In the events leading to the 1877 Act, the United States had deprived the Sioux of hunting rights and Government rations provided by the 1868 treaty, and in 1877 the Sioux were starving.

The Commission's decision also determined that the furnishing of rations to the Sioux constituted a payment on the Black Hills claim and the United States is entitled to attempt to prove (at a future hearing) the expenditures it made under the 1877 Act. The value of such rations will be offset against the value of the land pursuant to section 2 of the Indian Claims Commission Act (25 U.S.C. Section 70a). The Government presently estimates that the United States expended almost $57 million dollars for Sioux provisions up until 1924. If proven, that figure could substantially wipe out any award. This possible result prompted the passage of S. 3007.

The Commission's decision is currently on appeal to the United States Court of Claims by the United States. The issues upon which the appeal is based are: the finding of a Fifth Amendment taking and the finding of liability for the extraction of the gold. If the Court of Claims overturns the Commission's finding on the first issue, the interest would be eliminated and the damages reduced to $17,550,000 dollars. This result could completely nullify the award by the possible offsets. An appeal of the decision by the Court of Claims to the United States Supreme Court is possible by either party. It could be several years before the appellate process for this case is completed.

Finally, the General Services Administration has estimated that it will take 5-15 people working at least 3-5 years to prepare a report on exactly what the Government spent for the rations provided under the 1877 Act. The Commission has determined that the Government must prove that the food shipped went to the proper categories of Indians as set forth in the Act (e.g., the elderly, children). The evidence needed to support the government's assertion is a voucher for every expenditure. In three years the Indian Claims Commission will disband, and the residuum of this issue will go to the Court of Claims.

Our Department and the Department of Justice presented two opposing recommendations on H.R. 16170, an identical bill introduced in the House. This Department believed that from the standpoint of equity there were arguments to be made for enactment of the bill. We set forth those arguments in our report to the House Committee on Interior and Insular Affairs on H.R. 16170, dated August 8, 1974, and in our testimony at the hearings before the House Subcommittee on Indian Affairs on that same date. The Department of Justice recommended against enactment.

Issues:

One impact of section 2 of S. 3007 would be its effect on claims already disposed by the Commission. The Indian Claims Commission, in a report to the House Indian Affairs Subcommittee, dated June 13, 1974, indicated that the amendment would have a "minimal effect" on these claims. Known deductions for food, rations, or provisions have totalled less than $100,000 dollars in the 450 cases (253 dockets) on which final awards (totalling more than $524,800,000) have been entered. It should be pointed out, however, that many cases before the Commission have been settled prior to adjudication, and it is common for the settlement to be made as a lump sum, not broken down into individual items. It would be difficult, if not impossible, to determine what role the required deductions for food, rations or provisions may have played in those settlements.

A second impact would be the effect of section 2 on any claim currently pending before the Commission or an appeal from any final decision of the Commission. In the Commission's June 13, 1974 report, it stated that this effect would also be minimal, except in two cases of the Sioux Nation, the Black Hills claim, and the claim under the Treaty of April 29, 1868 (15 Stat. 635). Since section 2 is prospective, it would have the effect of expediting any other pending claims on this issue.

It has been argued that a private relief bill would serve the same purpose as an amendment to the Indian Claims Commission Act, which has never been amended. However, one main purpose for creating the Indian Claims Commission was to obviate the need for private relief bills. A private relief bill to ameliorate the Black Hills situation would lead to Congress receiving many similar bills for both retroactive and pending claims, thus negating the whole purpose of setting up the Commission in the first place.

The Department's Position:

The Indian Claims Commission was established in order to afford American Indian tribes a special forum in which to press their claims of Federal wrongdoing. Among other claims, the Commission was given jurisdiction to adjudicate "claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity." Thus, it can be argued that the Commission is as much a court of conscience as a court of black-letter law.

Since the establishment of the Commission, required expenditures for food, rations, or provisions have been considered payments on the claim and have been deducted from the relatively few awards in which they have been adduced by the United States. However, we believe that food-related expenditures should not be considered payments to be deducted from the Commission's awards. The provision of food to Indians in many instances was not in the nature of compensation but rather--even when done pursuant to a treaty--a necessary prerequisit for the survival of displaced persons whose livelihood the United States had disrupted. In our view, it is morally wrong for the United States to now "charge" Indians for having given them the food necessary for them to survive this disruption. Moreover, to exact such a charge is not consistent with the role of the Indian Claims Commission as a court of conscience, in which the United States is attempting to make recompense for actions that may not have constituted "fair and honorable dealings."

We believe this interpretation applies squarely to the situation confronting the Sioux in the Black Hills case. The facts are, as the Commission found, that the United States disarmed the Sioux and denied them their traditional hunting areas in an effort to force the sale of the Black Hills. There is no dispute that the United States violated its own Treaty of 1868, and reduced the Sioux to starvation in the process. The United States should not now be in the position of arguing that the rations it furnished constituted payment for the land which it illegally took.

The above views were expressed by this Department in its August 8, 1974 report, along with a recommendation that the opposing view of the Justice Department "be thoroughly considered and debated by the Committee and the Congress." The Administration presented two contrasting views on H.R. 16170 and requested that Congress carefully consider them before taking final action. The record of conduct by the House and Senate indicates that they carried through our request.

Since the Administration asked Congress to give hearing to all arguments for and against enactment of this bill, and then make a decision on the basis of those arguments, it would be an act of bad faith by the Administration to reject the end result of the course of action that it suggested.

Attorneys' Fees:

We are aware that there is some concern with regard to the fact that under the terms of their contract with the Sioux plaintiffs in the Black Hills case, the attorneys are entitled to 10% of the damages awarded. 10% of the increase in the award which could result from approval of S. 3007 would go to the attorneys. This factor is not relevant to the merits of the issue and such concerns would more appropriately have been raised at the time the statutory and administrative criteria for such attorney contracts were established.

Although the attorneys' fees in this particular instance may be extremely large, a veto of S. 3007 for this reason would have the effect of penalizing the Sioux far more severely than it would penalize their attorneys. Under the circumstances surrounding this case, this course of action could well be construed as a loophole for avoiding an award.

Sincerely yours,

Assistant Secretary of the Interior

Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C. 20503

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

OCT 22 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Ash:

In compliance with your request, I have examined a facsimile of the enrolled bill S. 3007, "To authorize appropriations for the Indian Claims Commission for fiscal year 1975."

The enrolled bill is in two sections. The first section authorizes the appropriation of not to exceed $1,450,000 to carry out the provisions of the Indian Claims Commission Act (60 Stat. 1050; 25 U.S.C. 70, et seq.) during fiscal year 1975. Section 2 of the enrolled bill would amend the same Act by providing that "expenditures for food, rations, or provisions shall not be deemed payments on the claim."

The Department of Justice defers to the Indian Claims Commission as to the appropriateness of the first section to enable the Commission to effectively carry out its statutory functions during the pertinent fiscal year. However, the Department finds Section 2 highly objectionable.

The Indian Claims Commission Act was enacted by the Congress in 1946, after many years of study and debate, to enable Indian tribes to litigate once and settle for all time claims arising out of the ancient or newer wrongs which theretofore had been done them or their ancestors. Section 2 of the Act, which Section 2 of the enrolled bill would amend, established the basis on which these claims were to be brought and specified the defenses and offsets which were to be

available to the United States. Decisions by the Commission, and by the Court of Claims on appeal, have developed the meanings and effects of the section.

Over 600 separate original or amended petitions have been filed before the Indian Claims Commission since 1946. Appropriate defenses have been made by the Department of Justice, and final awards or dismissals have been entered by the Commission in 455 dockets, now leaving less than 225 dockets to be disposed of. The Commission has entered final awards of more than one-half billion dollars. At this late point in the determination of such claims, Section 2 of the enrolled bill would amend, for the first time, the basic rules under which claims remaining in litigation are to be determined.

Under the existing law, after the Commission has determined that an Indian tribe is entitled to an award, and the gross amount of such award, two additional determinations are required to be made, for offset purposes: (1) payments made "on the claim" and all other offsets and counterclaims allowable in a suit before the Court of Claims and (2) gratuities as they are allowable for offsets under the Act. Both types of offsets have been made by the Commission since the inception of the Act, based on a great variety of grounds cognizable under Section 2. The enrolled bill would single out, for exclusion as offsets in cases hereafter determined, such payments made "on the claim" as were "expenditures for food, rations, or provisions", leaving all other grounds for offsets intact.

It is clearly unreasonable to single out the one class of expenditures for exclusion as offsets, and it is discriminatory to limit an exclusion solely to cases hereafter determined. There is no sensible reason for distinguishing expenditures for food, rations or provisions from expenditures for doctors, farming equipment, education expenses, per capita payments, or the myriad other categories of actual payments "on the claim" which have been made to various Indian tribes by the United States, and there is

even less reason for eliminating from offset any type whatever of payments "on the claim" while continuing to provide for offset of gratuities from the United States which have no relation to a claim. And it is obviously discriminatory to change a basic rule for compensation to Indian tribes for only the relatively few tribes whose claims still remain to be adjudicated under the Indian Claims Commission Act. If this legislation were to be approved, these factors would inevitably lead to further amendments of the Act and to the reopening of most of the Indian tribal claims which have been adjudicated to now final decisions during the past 28 years.

The Indian Claims Commission Act already provides for the determination of Indian tribal claims based upon "fair and honorable dealings." The first Americans are entitled to no less. And all Americans are entitled to have these claims finally determined without the further delays which could not be avoided with amendments of basic provisions of the Act at this time.

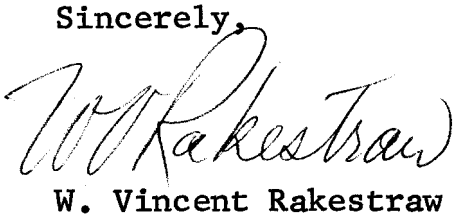
There is a second reason for objection to this bill. While the amendment proposed in Section 2 is couched in general terms, its authors (through their counsel) and principal intended beneficiaries are the Sioux tribes (see Senate Report No. 93-863). In a case, now on appeal to the Court of Claims, which the Indian Claims Commission decided on February 15, 1974, the tribes were awarded $17,550,000 on an alleged Fifth Amendment taking of land and gold, with simple interest at 5% which now would approximate $85,162,500, for a total determined compensation of $102,712,500. Against this award the United States is prepared to assert several defenses, principally (1) that there was not a Fifth Amendment taking and (2) that it is entitled to offsets. The first mentioned defense, if successful, would eliminate interest. As to the second, it may be noted that when the Sioux Nation previously brought this claim, unsuccessfully, under a special jurisdictional act, the Court of Claims

found that the Government had disbursed provisions to the Sioux in the amount of $39,000,000 prior to June 30, 1926, and $43,000,000 by 1942, as payments on the claim (97 Ct. Cl. 613, 662). In a previous appeal of the present case it was estimated that these payments had risen to $57,048,106 and were continuing to rise at an estimated rate of $750,000 annually (146 F.Supp. 229, 234, footnote 2). Accountants are now preparing an updated report on this matter. Since payments on the claim and other allowable offsets would be applied against the $17,550,000 principal, if all such payments asserted by the Government were allowed, the principal involved in the Sioux claim, and consequently the interest, would probably be substantially wiped out even if the Government failed to prevail in its first-mentioned defense. If payments on the claim are eliminated from allowable offsets by the present legislation, not only would financial benefit obviously accrue to the Sioux but it is highly likely that the circumstances of enactment of the amendment to the Indian Claims Commission Act would be construed by them as an endorsement of their entitlement to a sum approximating the $102,712,500 awarded to them in the proceedings presently on appeal, and as a precedent entitling them to further legislative relief if the legal proceedings are substantially unfavorable to them for any reason.

For the stated reasons the Department of Justice recommends against Executive approval of this bill.

It is suggested that the matter contained in the fourth through eighth paragraphs above, would be appropriate for use in a veto message.

Sincerely,



W. Vincent Rakestraw
Assistant Attorney General

THE WHITE HOUSE

WASHINGTON

October 25, 1974

TO THE PRESIDENT

Ben Reifel asked that I bring this to your personal attention.

Jerry

JC Marsh

Attachment

AMERICAN INDIAN NATIONAL BANK
1701 PENNSYLVANIA AVENUE, NORTHWEST
WASHINGTON, D. C. 20006

Oct 18, 1974

Dear Jack:

I got this letter off this afternoon to the President.

Aside from the humanitarian aspects of the legislation, it would certainly be advantageous to Congressman James Abdnor if it could be signed into law before the end of this month.

Would see that the letter is brought to the President's attention.

Thank you Ben Reifel

AMERICAN INDIAN NATIONAL BANK
1701 PENNSYLVANIA AVENUE, NORTHWEST
WASHINGTON, D. C. 20006

October 18, 1974

The Honorable Gerald R. Ford
The White House
Washington, D.C.

Dear Mr. President:

Some 60,000 Sioux Indians, most of whom live in the Congressional District of James Abdnor in South Dakota, are rejoicing over the passage by the Congress this week of S. 3007.

For 51 long, weary years, the Sioux have been looking to the "Great White Father", our government, for settlement of their Black Hills Claim. The bill to bring this case close to a conclusion now awaits only your signature.

I can recall, as a boy on the Rosebud Indian Reservation, the many meetings of tribal members over the Treaty of 1868 and the Black Hills Claim. The latter was first taken up in the U. S. Court of Claims in 1923, but still remains undecided. A.I.M. (American Indian Movement) has used the 1868 Treaty and the Black Hills Claim as its rallying cry at the BIA take-over and again at Wounded Knee, which resulted in bloodshed and a cost of millions of dollars to the American people.

Your approval of S. 3007 will take away the "cause" upon which A.I.M. has focused national attention. It will strengthen the faith of Sioux Indians in particular and all Indians in general in justice and fair treatment within our great country. The factual background of the Black Hills Claim makes clear why the case is so emotionally and economically significant to the Sioux.

In the Treaty of April 29, 1868, the United States solemnly guaranteed to the Sioux Nation a right to the exclusive use and occupancy of a large tract of land in what is now the State of South Dakota.

The 1868 Treaty also authorized members of the Sioux Nation to hunt on certain lands lying outside their exclusive reservation.

The discovery of gold in the Black Hills, which are situated within the boundaries of the Sioux Nation's 1868 reservation, and the resultant flood of non-Indian settlers precipitated by this discovery, was soon to make a shambles of the United States' solemn promises. In 1875 President Grant's administration decided to make no further attempts to resist non-Indian settlement in the Black Hills. The Government decided instead to try to purchase the Black Hills from the Sioux Nation and to extinguish the hunting rights guaranteed by the 1868 Treaty. When the Sioux refused to accede to these demands, President Grant's administration attempted literally to starve them into submission by forcing them out of their normal hunting grounds. Finally, in 1877, after the Battle of Little Big Horn, Congress acted unilaterally -- and in blatant violation of the 1868 Treaty -- by passing legislation which took the Black Hills outright and terminated the Sioux Nation's hunting rights.

The plain facts are that the United States disarmed the Sioux and denied them their traditional hunting areas in an effort to force the sale of the Black Hills. It violated the 1868 Treaty and reduced the Sioux to starvation. Under these circumstances, the United States should not now be in the position of saying that the rations it furnished constituted payment for the land which it took. In short, the Government committed two wrongs: first, it deprived the Sioux of their livelihood; second, it deprived the Sioux of their land. What the United States gave back in food should not be stretched to cover both wrongs.

S. 3007 would amend section 2 of the Indian Claims Commission Act to provide that expenditures by the United States for "food, rations, or provisions" shall no longer be deemed "payments" on a tribal land claim, and thus no longer may be deducted from the compensation otherwise payable to a tribal claimant. Although couched in general language, this proposed change in the law really is directed to a single specific objective -- expediting the Indian Claims Commission's disposition of the Black Hills case. The Indian Claims Commission has filed a memorandum with the House Committee on Interior and Insular Affairs which indicates that no other claim which has been decided by the Commission or which is now pending before the Commission will be affected materially by the amendment embodied in S. 3007. Thus, the only real issue in considering the merits of the bill is whether the United States will take a demonstrably necessary step to ensure that justice will at long last be done for the Missouri Sioux.

It may be that questions will be raised with you as to the procedure that has been followed in bringing this matter to a conclusion. Let me say that it is my judgment, speaking as objectively as I possibly can, that the legislative course which has here been followed was fair and reasonable. The Senate Interior Committee considered the amendment which benefits the Sioux Indians with great care before adopting it unanimously. The House conferees did not merely accept the Senate amendment, but decided to refer the entire issue back for consideration by the full Interior Committee. Separate hearings were held by the Subcommittee on Indian Affairs and these were followed by a vote of the full Committee, which approved the Sioux amendment 31-3. I think the overwhelming vote by which the bill passed both Committees speaks well for the merits of the proposal.

The issue which the Congress has thus resolved through legislation is that there have to be no further hearings on the question of whether food and certain other supplies which were given the Sioux Indians after they were herded onto the reservations should now be deducted from any payment which they are to receive for the land which they were forced to give up. What the Congress has decided is that this issue need not be the subject of prolonged legal battles, but that it should be determined in favor of the Indians, that food delivered to people who have been driven off their land is not appropriate compensation for the loss of their land. I can assure you that this case, involving the Sioux Indians, is quite unique, and that the action of the Congress in this matter would not set a precedent.

Finally, I know you will be informed that the Black Hills Claim may amount to as much as $100 million, and I share your concern over the impact such an expenditure could have on the Federal budget. In this regard, however, I would like to point out that the case will not have any immediate effect on the budget since, even with approval of S. 3007, a final judgment and Congressional appropriation of any award probably will not come for two more years. Secondly, I do not believe that judgments against the United States are part of the regular budget. Finally, and most important, the Sioux occupy the lowest rung of the economic ladder in our country and are the very people at whom your government assistance programs are directed; a substantial judgment in their favor, which on a per capita basis would still be less than many other tribes have received, thus would provide a much needed boost to the South Dakota economy.

As a humanitarian measure and, especially, as a long overdue act of justice, I earnestly request that you sign S. 3007.

Cordially,

Ben Reifel

Ben Reifel

B

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 718

Date: October 25, 1974 Time: 5:30 p.m.

FOR ACTION: Michael Duval
Phil Buchen
Bill Timmons
Paul Theis

cc (for information): Warren Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Saturday, October 26, 1974 Time: 9:00 p.m.

SUBJECT: Enrolled Bill S. 3007 - Annual authorization of appropriations for the Indian Claims Commission, with "Sioux Amendment"

ACTION REQUESTED:

____ For Necessary Action

_xx_ For Your Recommendations

____ Prepare Agenda and Brief

____ Draft Reply

____ For Your Comments

____ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing or call in your recommendation or comments to Warren Hendriks on ext. 6570.

Thank you.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

We assume that the form of this message including the title and the first paragraph, will be revised to conform with the approach taken in the veto message on H.R. 11541--the National Wildlife Refuge System, dated October 22, 1974.

TO THE SENATE

I am today returning without my approval S. 3007, an act to authorize appropriations for the Indian Claims Commission for 1975.

The Indian Claims Commission Act of 1946 was enacted after many years of study and debate to enable Indian tribes to settle once and for all time claims arising out of wrongful actions taken against them and their ancestors. The Act set out the ground rules under which claims are brought, the defenses available to the United States, and the appropriate offsets against established claims. S. 3007 represents the first substantive change in the Act since its enactment 28 years ago.

Although couched in general terms, the change that S. 3007 would make in the law would provide unique relief to the Sioux Indians by barring, as offsets against their claim for the taking of the Black Hills area of South Dakota, food furnished to them by the U.S. over a period of many years.

In regard to this claim, the Indian Claims Commission has already made some determinations and is considering others, including the value of the food offsets which are the subject of S. 3007. Both the tribe and the government have the right to appeal Commission determinations to the Court of Claims, and the Department of Justice has already filed one such appeal.

While recognizing that our treatment of the Sioux and other Indian tribes has had many unhappy chapters in the past, I believe that enactment of S. 3007 is unwarranted, unfair to other Indian claimants, and likely to unravel the basic pattern for settling Indian claims established by Congress in the 1946 Act.

In my judgment, S. 3007 is unwarranted and unfair because it would change the basic ground rules in an ongoing judicial process which has governed the final disposition of the cases of more than 400 Indian groups, many of whose claims involve circumstances no less compelling than those surrounding the Sioux claim.

I am unable to accept the merit of the argument that S. 3007 would expedite settlement of the Sioux claim. Apart from the question of whether this will really happen, given present and potential appeals, other tribes have accepted the time required to obtain judgments through prescribed processes and procedures. Certainly it cannot be fairly argued that elimination of delays in litigation justifies selective substantive changes in the law, benefiting one group.

I believe that the Indian claims settlement program carried out during the past 28 years has produced sound results. To establish a precedent which could lead to a wholesale reopening of that Act as well as to the possible enactment of many other special bills would, in my judgment, be a disservice to both the Indians and the American people generally.

For the foregoing reasons, and in the interest of preserving a program that holds promise for a long-delayed final settlement of the claims of our Indian citizens, I regretfully withhold my approval from S. 3007.

I will, of course, be happy to approve legislation embodying section 1 of S. 3007, to authorize the necessary appropriations to carry on the work of the Indian Claims Commission -- the original and primary purpose of S. 3007.

THE WHITE HOUSE

October , 1974

(M. Duval) PT Signed Paper October 26, 1974

Statement By The P

~~DRAFT SIGNING STATEMENT - S. 3007~~

I have ~~today~~ signed S. 3007, an act to authorize appropriations for the Indian Claims Commission for 1975.

It is a particular pleasure for me to be able to sign this bill because there are not many opportunities in life to take clear and decisive action designed to right a past wrong.

The background is this:

In 1877, the U.S. Government took over lands from the Sioux Indians in the Black Hills of South Dakota. At the same time, to prevent widespread starvation of these Indians deprived of their hunting grounds, the Government supplied them with food and other provisions for a number of years.

Earlier this year, the Indian Claims Commission ruled that the U.S. took the Black Hills lands illegally in violation of the Fifth Amendment. The 1877 value of the ~~confiscated~~ land and gold was estimated at $17.5 million which, together with interest from that point, boosts the value today to nearly $103 million.

However, the Indian Claims Commission Act of 1946 contains a provision requiring that the Government-supplied food and other provisions, valued at approximately $57 million, be used to offset the Indians' claims against the Government. If this offsetting provision stayed in effect, it would totally wipe out the $17.5 million original evaluation and leave the Sioux Indians with nothing.

The basic legal question of whether or not the Sioux have a legitimate claim against the United States over the Black Hills land is still being litigated in the courts. However, in passing this act, Congress has determined -- and I agree -- that if such a claim is held to be valid, it would be unfair and unjust to try to avoid paying it by deducting the cost of previously supplied food and provisions.

Although we cannot undo the injustices from our history, we can insure that the actions we take today are just and fair and designed to heal such wounds from the past.

STATEMENT BY THE PRESIDENT

I have signed S. 3007, an act to authorize appropriations for the Indian Claims Commission for 1975.

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Earlier this year, the Indian Claims Commission ruled that the United States took the Black Hills lands illegally in violation of the Fifth Amendment. The 1877 value of the land and gold was estimated at $17.5 million which, together with interest from that point, boosts the value today to nearly $103 million.

However, the Indian Claims Commission Act of 1946 contains a provision requiring that the Government-supplied food and other provisions, valued at approximately $57

million, be used to offset the Indians' claims against the Government. If this offsetting provision stayed in effect, it would totally wipe out the $17.5 million original evaluation and leave the Sioux Indians with nothing.

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Although we cannot undo the injustices from our history, we can insure that the actions we take today are just and fair and designed to heal such wounds from the past.

Gerald R. Ford

FOR IMMEDIATE RELEASE October 29, 1974

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

I have signed S. 3007, an act to authorize appropriations for the Indian Claims Commission for 1975.

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The background is this:

In 1877, the United States Government took over lands from the Sioux Indians in the Black Hills of South Dakota. At the same time, to prevent widespread starvation of these Indians deprived of their hunting grounds, the Government supplied them with food and other provisions for a number of years.

Earlier this year, the Indian Claims Commission ruled that the United States took the Black Hills lands illegally in violation of the Fifth Amendment. The 1877 value of the land and gold was estimated at $17.5 million which, together with interest from that point, boosts the value today to nearly $103 million.

However, the Indian Claims Commission Act of 1946 contains a provision requiring that the Government-supplied food and other provisions, valued at approximately $57 million, be used to offset the Indians' claims against the Government. If this offsetting provision stayed in effect, it would totally wipe out the $17.5 million original evaluation and leave the Sioux Indians with nothing.

The basic legal question of whether or not the Sioux have a legitimate claim against the United States over the Black Hills land is still being litigated in the courts. However, in passing this act, Congress has determined -- and I agree -- that if such a claim is held to be valid, it would be unfair and unjust to try to avoid paying it by deducting the cost of previously supplied food and provisions.

Although we cannot undo the injustices from our history, we can insure that the actions we take today are just and fair and designed to heal such wounds from the past.

# # # #

Calendar No. 835

93D CONGRESS 2d Session } SENATE { REPORT No. 93-863

AUTHORIZING APPROPRIATIONS FOR THE INDIAN CLAIMS COMMISSION FOR FISCAL YEAR 1975

MAY 21, 1974.—Ordered to be printed

Mr. JACKSON, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany S. 3007]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 3007) to authorize appropriations for the Indian Claims Commission for fiscal year 1975, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

I. PURPOSE OF BILL

The purpose of S. 3007 is to authorize the appropriation of funds to continue the program of the Indian Claims Commission for fiscal year 1975.

II. NEED

This legislation is necessary because of a 1972 amendments to Section 6 of the Indian Claims Commission Act which authorized an appropriation not to exceed $1,500,000 for Fiscal Year 1973 and specified that "* * * appropriations for succeeding fiscal years shall be made only to the extent hereafter authorized by Act of Congress."

As indicated in its appropriation justification for Fiscal Year 1975, the Indian Claims Commission's budget request is $1,333,000 as approved by the Office of Management and Budget. This figure does not include an allowance for scheduled salary increases for personnel. In Fiscal Year 1974 the $1,200,000 authorization exceeds the Commission's $1,086,000 budget by $114,000; and, as the budget justification reveals, the Commission requested a $78,000 supplemental appropriation to cover recent salary increases. For this reason the Committee recommends the enactment of an authorization not to exceed the sum of

$1,450,000 for Fiscal Year 1975. This authorized level of funding will obviate the necessity for the Commission to return to the Interior Committee for further authorization legislation should a supplemental appropriation be necessary in Fiscal Year 1975, as it was in Fiscal Year 1974.

III. Amendments

The Committee amended S. 3007 as follows:

Page 1, line 3, after the word "appropriated" insert the words "not to exceed $1,450,000".

Page 1, line 5, after the figure "1975" strike the comma and the remainder of the sentence and insert a period.

Add a new section 2 as follows:

> Sec. 2. The first sentence of the last paragraph in section 2 of the Act of August 13, 1946 (60 Stat. 1050; 25 U.S.C. 70a) is hereby amended by striking the semicolon and the word "the" after the words "section 250 of Title 28" and inserting in lieu thereof a colon and the following:
>
> "*Provided*, That expenditures for food, rations or provisions shall not be deemed payments on the claim. The".

The latter amendment is designed to correct an inequity in connection with the claim of the Sioux tribes of North and South Dakota. The background and facts concerning this situation are explained in a memorandum prepared and supplied to the Committee by the Sioux Tribes which is set forth in full as follows:

> Although couched in general terms, this amendment is directed to one basic objective—expediting the Indian Claims Commission's disposition of the famous Black Hills case which has been under consideration in the courts without a final decision since 1923. The plaintiffs in the Black Hills case are eight Sioux groups in the States of North and South Dakota, Montana and Nebraska which have, including off-reservation members scattered throughout the county, a combined population of over 60,000.
>
> The background of the Black Hills claim, as described in findings of fact and an opinion issued by the Commission earlier this year (*Sioux Nation* v. *United States*, 33 Ind. Cl. Comm. 151, decided February 15, 1974), makes clear why the case is so emotionally and economically significant to the Sioux. Briefly summarized, in the Treaty of April 29, 1868, 15 Stat. 635, the United States: (1) had confirmed in the Sioux Nation recognized title to a tract of land which consisted mainly of all the present State of South Dakota west of the Missouri River, and which became known as the Great Sioux Reservation (Article II); (2) had promised the Indians that the Federal Government would bar all unauthorized persons (*i.e.*, non-Indian miners, farmers and ranchers) from the Great Sioux Reservation (Article II); and (3) had also granted the Sioux a right to hunt on certain lands outside the Great Sioux Reservation (Articles XI and XVI).

> As early as the 1850's and 1860's, the western portion of the Great Sioux Reservation, characterized as the Black Hills area and comprising some 7,345,157 acres, already was well known as potentially excellent agricultural and grazing land and, more particularly, for reportedly vast gold deposits. In 1874, a military expedition under Lt. Colonel George Custer and, in early 1875, a topographical and geological survey party ordered into the area by President Grant confirmed the existence of a major gold field in the Black Hills.[1] Miners thereafter poured into the Sioux country in violation of the 1868 Treaty. The Government's response, in the words of the Indian Claims Commission, was as follows:
>
> "In June 1875, the Secretary of the Interior, acting under instructions from President Grant, appointed a commission to negotiate with the Sioux for the cession of the Black Hills and for the surrender of certain Sioux hunting rights. The commission, which became known as the Allison Commission, met with the Sioux during September 1875. The government negotiators offered a lower price for the Black Hills than the Sioux were willing to accept, and the negotiations ended in failure.
>
> "After the failure of the Allison Commission to reach agreement with the Sioux, the Grant Administration altered its policy. In November 1875 *the President decided that the United States would no longer fulfill its obligation under Article II of the 1868 Treaty to keep unauthorized persons out of the Great Sioux Reservation.* He ordered that the Army be removed from the Black Hills, and that no further opposition be offered to miners attempting to enter the hills. In addition, President Grant, and members of his administration, began to assert pressure against Congress for unilateral action to acquire the Black Hills.
>
> "*Without waiting for congressional action, the executive branch precipitated the Sioux situation into a crisis.* On December 3, 1875, the Secretary of the Interior instructed the Commissioner of Indian Affairs to direct agents at all agencies in Dakota and at Fort Peck to notify the Sioux in the Yellowstone and Powder River areas in the unceded Indian territory that unless they returned to their reservations by January 31, 1876, they would be declared hostile and would be treated accordingly by the Army. Most of the Sioux who were in the unceded territory during the winter of 1875–76 were hunting with the permission of their agents, as they had a right to do under Article XVI of the 1868 treaty. Furthermore, the severity of the winter made it impossible for them to return to their agencies. Nonetheless, on February 1, 1876, the Secretary of the Interior notified the Secretary of War that his order had not been complied with, and that the Sioux were being turned over to the Army for appropriate military action.

[1] More than $1 billion in gold actually has been taken from the area, principally from the Homestake mine.

"In the spring of 1876 the Army commenced military operations against the Sioux. On June 25, 1876, the Seventh Cavalry, under the command of George A. Custer, was defeated in a battle with the Sioux, in which 259 soldiers, including Custer, were killed. When news of the battle reached Washington, Congress was so incensed that it attached a rider to the appropriation act of August 15, 1876, which provided that the Sioux would receive no further rations until they ceded the Black Hills to the United States. *Because most of the Sioux had been disarmed and were thus unable to hunt, the provision meant that unless the Sioux surrendered the Black Hills they would be allowed to starve.*" (33 Ind. Cl. Comm. 151 at 160–62; emphasis supplied; footnote omitted.)

Article XII of the 1868 Treaty provided that no cession of the Great Sioux Reservation would be valid unless approved by three-fourths of the adult male Sioux. Despite the ultimatum contained in the 1876 appropriations act, the commission which was appointed to negotiate with the Indians was unable to get more than 10% of the adult male Sioux to assent to a cession agreement. Nonetheless, in the Act of February 28, 1877, 19 Stat. 254, Congress effectuated the cession to the Government of the Black Hills and "abrogated" Sioux hunting rights under Articles XI and XVI of the 1868 Treaty outside the remainder of the Great Sioux Reservation. The Commission has determined that the 1877 Act constituted a taking of Sioux land in violation of the Fifth Amendment. (33 Ind. Cl. 151 at 216–18.)

The United States never has paid the Sioux a cash consideration for the Black Hills land and minerals taken under the Act of February 28, 1877. Article 5 of the 1877 Act did provide, however, that the Government would furnish the Sioux "with subsistence consisting of a ration for each individual of a pound and a half of beef (or in lieu thereof, one-half pound of bacon), one-half pound of flour, and one-half pound of corn * * * until the Indians are able to support themselves." The Commission has determined that the furnishing of rations to the Sioux constituted a payment on the Black Hills claim within the meaning of section 2 of the Indian Claims Commission Act, and thus that the value of such rations must be deducted from the value of the land in order to arrive at the amount of just compensation due the Sioux. The Government has asserted that the United States expended almost $25 million for Sioux "provisions" up to 1924, a figure which, if verified,[1] would substantially wipe out the Black Hills claim.

The facts are, as the Commission found, that the United States disarmed the Sioux and denied them their traditional hunting areas in an effort to force the sale of the Black Hills.

[1] GSA has estimated that it will take 5–15 men working at least a year (and probably longer) to prepare a report on what the Government spent for the rations provided under the 1877 Act, and even then the absence of necessary data may prevent the preparation of a complete and fully accurate report.

Having violated the 1868 Treaty and having reduced the Indians to starvation, the United States should not now be in the position of saying that the rations it furnished constituted payment for the land which it took. In short, the Government committed two wrongs: first, it deprived the Sioux of their livelihood; secondly, it deprived the Sioux of their land. What the United States gave back in rations should not be stretched to cover both wrongs.

The amendment to S. 3007 is designed to correct this inequity by amending section 2 of the Indian Claims Commission Act to provide that "food, rations or provisions" shall not be deemed to be payments on a land claim. In the Black Hills case, such a change in the law also would eliminate the necessity for a prolonged and expensive GSA investigation into the amount of rations furnished under the 1877 Act, and thus would move this long-delayed claim a substantial way further towards a final decision. That result is in the interest of both the United States and the Sioux.

IV. Cost

In accordance with Section 252(a) of the Legislative Reorganization Act of 1970 the Committee provides the following estimate of cost:

Enactment of S. 3007 will result in cost to the Federal government of $1,450,000 for Fiscal Year 1975.

V. Committee Recommendation

The Committee on Interior and Insular Affairs in open markup session on May 15, 1974 unanimously ordered S. 3007, as amended, favorably reported to the Senate and recommends its enactment.

VI. Executive Communication

The executive communication from the Chairman of the Indian Claims Commission submitting and recommending this legislation is set forth in full as follows:

Indian Claims Commission,
Washington, D.C., January 18, 1974.

Hon. Gerald R. Ford,
President of the U.S. Senate,
Washington, D.C.

Dear Mr. President: Enclosed is a proposed bill "To authorize appropriations for the Indian Claims Commission for fiscal year 1975." We recommend that the proposed bill be introduced and referred to the appropriate committee for consideration, and we recommend that it be enacted.

Fiscal year 1975 appropriation authorization

The legislation under which the Indian Claims Commission conducts its program, the Indian Claims Commission Act, as amended,

25 U.S.C. § 70e (1972), status "There are authorized to be appropriated for the necessary expenses of the Commission not to exceed $1,500,000 for fiscal year 1973, and appropriations for succeeding fiscal years shall be made only to the extent hereafter authorized by Act of Congress." In order to meet fiscal year 1975 program requirements, we propose that such sums as may be necessary to continue the program of the Indian Claims Commission be authorized. There is need for enactment of this authorization in order for work to proceed during the next fiscal year.

The Office of Management and Budget has advised that this proposed legislation is in accord with the program of the President.

Sincerely yours,

JEROME K. KUYKENDALL, *Chairman.*

A BILL To authorize appropriations for the Indian Claims Commission for fiscal year 1975

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is authorized to be appropriated to carry out the provisions of the Indian Claims Commission Act, 25 U.S.C. § 70, during fiscal year 1975, such sums as may be necessary to continue the program of the Indian Claims Commission.

The appropriations justification prepared by the Indian Claims Commission for fiscal year 1975 is set forth in full as follows:

JUSTIFICATION OF 1975 BUDGET ESTIMATE

Requirements for fiscal year 1975.—The Indian Claims Commission is requesting an appropriation of one million three hundred and thirty three thousand dollars, of which $1,155 thousand is for personnel costs and $178 thousand is for other purposes.

Establishment and Adjudicatory Duties of the Commission.—The Indian Claims Commission is an independent quasi-judicial agency, created by the Indian Claims Commission Act of August 13, 1946, (60 Stat. 1049), codified as Section 70 of Title 25, United States Code. The Commission consists of five members appointed by the President by and with the advice and consent of the Senate. It is responsible for the hearing and adjudication of claims existing up to and including August 13, 1946, as defined under Section 2 of the Act.

Status of Work.—A total of 611 claims of Indian Tribes, bands or other identifiable groups of American Indians have been docketed. On December 31, 1973, 408 dockets had been finally disposed of, and 203 dockets were pending.

OBJECT CLASSIFICATION STATEMENT

11. Personnel Compensation.—It is estimated that $1,065 thousand will be required for personnel compensation. The increase of $65 thousand and over FY 1974 will cover the full-year cost of the October 1973 general salary increase and provide for essential individual increases.

12. Personnel Benefits.—It is estimated that $90 thousand, an increase of $11 thousand, will be required to cover the Government's contribution, in accordance with existing legislation, to employees' group life insurance, group health benefits, retirement, and FICA taxes.

21. Travel and Transportation of Persons.—The Commission may require up to $15 thousand for travel, principally for the conduct of hearings in the field. This amount is unchanged from FY 1974.

23. Rent, Communications, and Utilities.—It is anticipated that $103 thousand, an increase of $88 thousand, will be required for these expenditures. Rent, a new item, will require $83 thousand; and an estimated additional $5 thousand is needed for increased costs of telephone service including FTS, telegraph service and penalty mail.

24. Printing and Reproduction.—It is estimated that $1 thousand will again be required for this object to cover the cost of obtaining stationery and other material printed or bound outside the Commission.

25. Other Services.—It is estimated that $44 thousand, an increase of $2 thousand, will be required for this object to cover such costs as court reporting services; xerox rental; maintenance of office machines; and other administrative services.

26. Supplies and Materials.—It is anticipated that $11 thousand will be required to cover the cost of miscellaneous office supplies. This represents an increase of $1 thousand.

31. Equipment.—It is estimated that $4 thousand will be needed for this purpose. The additional $2 thousand will permit needed replacement of obsolescent office machines.

Salaries and expenses

Appropriation fiscal year 1973	$1,075,000
Appropriation fiscal year 1974 (including proposed $78,000 supplemental)	1,164,000
Budget estimate fiscal year 1975	1,333,000

REQUIREMENTS FOR FISCAL YEAR 1975

The estimate for funds allowed by the Office of Management and Budget to operate the Indian Claims Commission in fiscal year 1975 is $1,333,000.

Summary of increases, 1975 (in thousands of dollars)

Personnel compensation	+65
Personnel benefits	+11
Travel	0
Rent, communications, and utilities	+88
Printing and reproduction	0
Other services	+2
Supplies and materials	+1
Equipment	+2
Total	+169

PERSONNEL COMPENSATION

[Dollar amounts in thousands]

	1973 actual	1974 estimate	1975 estimate	Change in 1975 from 1974
1. Number of permanent positions	42	42	42	0
2. Number of other positions	2	2	2	0
3. Salary cost of permanent positions	$986	$1,059	$1,134	+$75
4. Salary cost of other positions	19	20	21	+1
Total personnel services	1,005	1,079	1,155	+76

PERSONNEL SUMMARY

	1973 actual	1974 estimate	1975 estimate
Total number of permanent positions	42	42	42
Full-time equivalent of other positions	2	2	2
Average paid employment	44	44	44
Average GS-grade	12.2	12.3	12.4
Average GS-salary	$18,355	$22,363	$23,077

OBJECT CLASSIFICATION

[In thousands of dollars]

	1973 actual	1974 estimate	1975 estimate	Change in 1975 from 1974
Personnel compensation	$931	$1,000	$1,065	+$65
Personnel benefits	74	79	90	+11
Travel	6	15	15	0
Rent, comm. and utilities	12	15	103	+88
Printing and reproduction	1	1	1	0
Other services	41	42	44	+2
Supplies	8	10	11	+1
Equipment	2	2	4	+2
Total obligations	1,075	1,164	1,333	+169

ANALYSIS BY ACTIVITIES

[In thousands of dollars]

Activities	Amount available 1973	Amount available 1974	Estimate 1975	Change in 1975 from 1974
Hearing and adjudication of claims	$1,075	[1] $1,164	$1,333	+$169
Total	1,075	1,164	1,333	+169

[1] Including proposed $78 supplemental.

Changes in Existing Law

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, S. 3007, as reported, are shown as follows (existing law proposed to be omitted

is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF AUGUST 16, 1946 (60 Stat. 1050; 25 U.S.C. 70a)

* * * * * * *

Sec. 2. The Commission shall hear and determine the following claims against the United States on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska: (1) claims in law or equity arising under the Constitution, laws, treaties of the United States, and Executive orders of the President; (2) all other claims in law or equity, including those sounding in tort, with respect to which the claimant would have been entitled to sue in a court of the United States if the United States was subject to suit; (3) claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake, whether of law or fact, or any other ground cognizable by a court of equity; (4) claims arising from the taking by the United States, whether as the result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant; and (5) claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity. No claim accruing after August 13, 1946, shall be considered by the Commission.

All claims under this chapter may be heard and determined by the Commission notwithstanding any statute of limitations or laches, but all other defenses shall be available to the United States.

In determining the quantum of relief the Commission shall make appropriate deductions for all payments made by the United States on the claim, and for all other offsets, counterclaims, and demands that would be allowable in a suit brought in the Court of Claims under section 250 of Title 28[; the]*: Provided, That expenditures for food, rations or provisions shall not be deemed payments on the claim. The* Commission may also inquire into and consider all money or property given to or funds expended gratuitously for the benefit of the claimant and if it finds that the nature of the claim and the entire course of dealings and accounts between the United States and the claimant in good conscience warrants such action, may set off all or part of such expenditures against any award made to the claimant, except that it is declared to be the policy of Congress that monies spent for the removal of the claimant from one place to another at the request of the United States, or for agency or other administrative, educational, health or highway purposes, or for expenditures made prior to the date of the law, treaty or Executive Order under which the claim arose, or for expenditures made pursuant to sections 461, 462, 463, 464, 465, 466–470, 471–473, 474, 475, 476–478 and 479 of this title, save expenditures made under section 465 of this title, or for expenditures under any

emergency appropriation or allotment made subsequent to March 4, 1933, and generally applicable throughout the United States for relief in stricken agricultural areas, relief from distress caused by unemployment and conditions resulting therefrom, the prosecution of public work and public projects for the relief of unemployment or to increase employment, and for work relief (including the Civil Works Program) shall not be a proper offset against any award. Aug. 13, 1946, c. 959, § 2, 60 Stat. 1050.

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93D CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 93-1446

AUTHORIZING APPROPRIATIONS FOR THE INDIAN CLAIMS COMMISSION FOR FISCAL YEAR 1975

OCTOBER 8, 1974.—Ordered to be printed

Mr. MEEDS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 3007]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 3007) to authorize appropriations for the Indian Claims Commission for fiscal year 1975, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the bill as passed by the Senate and agree to the same.

And the Senate agree to the same.

LLOYD MEEDS,
ROY A. TAYLOR,
ROBERT G. STEPHENS, JR.,
RALPH REGULA,
Managers on the Part of the House.

HENRY M. JACKSON,
LEE METCALF,
JAMES ABOUREZK,
DEWEY F. BARTLETT,
JAMES A. MCCLURE,
Managers on the Part of the Senate.

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JOINT STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and Senate at the conference on the disagreeing vote of the two Houses on the amendment of the House to the bill (S. 3007) to authorize appropriations for the Indian Claims Commission for fiscal year 1975, submit the following joint statement to the House and Senate in explanation of the action agreed upon by the managers and recommended in the accompanying conference report.

Pursuant to a 1972 amendment of the Indian Claims Commission Act of August 13, 1946, requiring annual enactment of legislation authorizing appropriations for the expenses of the Commission, legislation was introduced as S. 3007 and H.R. 12356.

In passing S. 3007, the Senate added a new section 2 which amended the Indian Claims Commission Act by providing that expenditures by the United States of funds for food, rations, or provisions could not be offset by the United States against any award of the Commission to an Indian tribe or other claimant. While couched in general terms, the amendment would have had or will have only a minimal effect on all claims decided or before the Commission except the claim of the Teton Sioux Nation in Indian Claims Commission Docket No. 74–B.

The House passed S. 3007 with an amendment substituting the language of the House bill, the effect of which was to strike section 2 amending the Indian Claims Commission Act. The Senate disagreed to the House amendment and requested a conference.

The Committee of Conference met on July 25, 1975. The only point in disagreement was the House amendment striking section 2 of the Senate bill.

While the House conferees recognized the possible merit of the proposed Senate modification of the Indian Claims Commission Act, they refused to accept the Senate language on the basis that (1) there had been no hearings or record established in the House on the proposal; (2) the House Committee on Interior and Insular Affairs had not had an opportunity to consider the vote upon such a proposal; and (3) it would be inappropriate for the House conferees to recommend to the House the acceptance of such a proposal without such a record inasmuch as the cost of such an amendment to the Indian Claims Commission Act could approach $100 million.

The Conferees agreed to recess the conference pending introduction of separate House legislation containing the language of section 2 of S. 3007. It was understood that this legislation would be the subject of hearings by the House Subcommittee on Indian Affairs and would then be considered by both the Subcommittee and the Full Committee on Interior and Insular Affairs. It was further understood

that the House conferees on S. 3007 would be guided by the action and vote of the House Committee on Interior and Insular Affairs on the separate House legislation.

Pursuant to such understanding, the proposal was introduced in the House as H.R. 16170. Hearings were held on H.R. 16170 by the Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs at which time both Administration and public testimony was taken. After markup, the bill was reported by the Subcommittee to the Full Committee favorably without amendment.

The Committee on Interior and Insular Affairs, after thorough debate and discussion, on September 25 and October 3, 1974, voted to report the bill favorably without amendment by a roll call vote of 31 ayes and 3 nays. Pursuant to the understanding of the conferees on S. 3007 and by unanimous consent, the Committee agreed to table the bill, H.R. 16170, without further action.

Thereupon, the House conferees returned to the conference with the Senate on October 7, 1974, and moved to recede from their amendment to S. 3007 and concur in the language of the Senate, the result of which is the accompanying report.

LLOYD MEEDS,
ROY A. TAYLOR,
ROBERT G. STEPHENS, Jr.,
RALPH REGULA,
Managers on the Part of the House.

HENRY M. JACKSON,
LEE METCALF,
JAMES ABOUREZK,
DEWEY F. BARTLETT,
JAMES A. MCCLURE,
Managers on the Part of the Senate.

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S. 3007

Ninety-third Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-first day of January, one thousand nine hundred and seventy-four

An Act

To authorize appropriations for the Indian Claims Commission for fiscal year 1975.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is authorized to be appropriated not to exceed $1,450,000 to carry out the provisions of the Indian Claims Commission Act (25 U.S.C. 70), during fiscal year 1975.

SEC. 2. The first sentence of the last paragraph in section 2 of the Act of August 13, 1946 (60 Stat. 1050; 25 U.S.C. 70a) is hereby amended by striking the semicolon and the word "the" after the words "section 250 of title 28" and inserting in lieu thereof a colon and the following: "*Provided*, That expenditures for food, rations, or provisions shall not be deemed payments on the claim. The".

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

October 17, 1974

Dear Mr. Director:

The following bills were received at the White House on October 17th:

S.J. Res. 236	S. 2840	H.R. 7768	H.R. 14225
S.J. Res. 250	S. 3007	H.R. 7780	H.R. 14597
S.J. Res. 251	S. 3234	H.R. 11221	H.R. 15148
S. 355	S. 3473	H.R. 11251	H.R. 15427
S. 605	S. 3698	H.R. 11452	H.R. 15540
S. 628	S. 3792	H.R. 11830	H.R. 15643
S. 1411	S. 3838	H.R. 12035	H.R. 16857
S. 1412	S. 3979	H.R. 12281	H.R. 17027
S. 1769	H.R. 6624	H.R. 13561	
S. 2348	H.R. 6642	H.R. 13631	

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C.