

**The original documents are located in Box 55, folder “9/17/76 S217 Repeal of Certain
Condemnation Authority Concerning Indian Lands” of the White House Records Office:
Legislation Case Files at the Gerald R. Ford Presidential Library.**

Copyright Notice

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Gerald R. Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.

Exact duplicates within this folder were not digitized.

8/17/76

ACTION

APPROVED
SEP 17 1976

THE WHITE HOUSE
WASHINGTON

Last Day: September 20

September 16, 1976

Posted 9/18/76
To ARCHIVES
9/20/76

MEMORANDUM FOR THE PRESIDENT
FROM: JIM CANNON *JDC*
SUBJECT: S. 217 - Repeal of Certain Condemnation Authority Concerning Indian Lands

Attached for your consideration is S. 217, sponsored by Senators Domenici and Montoya.

The enrolled bill repeals an existing 1926 law which tribal lands of the Pueblo Indians of New Mexico are subject to special condemnation actions in rights-of-way cases.

A detailed description of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Kilberg), Brad Patterson and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign S. 217 at Tab B.





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

SEP 14 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 217 - Repeal of certain condemnation authority concerning Indian lands
Sponsors - Sen. Domenici (R) New Mexico and
Sen. Montoya (D) New Mexico

Last Day for Action

September 20, 1976 - Monday

Purpose

Repeals existing law under which tribal lands of the Pueblo Indians of New Mexico are subject to special condemnation actions in rights-of-way cases.

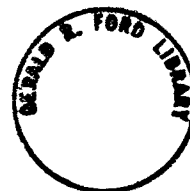
Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Department of Justice	Defers to Interior

Discussion

In 1924, the Secretary of the Interior approved an application of the Santa Fe Northwest Railway Company for a railroad right-of-way through tribal lands of the Zia, Santa Ana, and Jemez Pueblos. However, after completion of the railroad, it was determined that the legal basis for the Secretary's action was not valid. The railroad then attempted to validate the right-of-way by negotiating with the three affected Pueblos, but it could not reach an agreement with the Pueblo of Jemez.

In an attempt to resolve the issue, a bill was signed



into law on May 10, 1926, providing for the condemnation of lands of the Pueblo Indians of New Mexico for any purpose for which other lands of the State may be condemned. However, the 1926 Act placed jurisdiction for such condemnation proceedings in the Federal District Court, and the court found that the 1926 Act contained insufficient authority to decide the case.

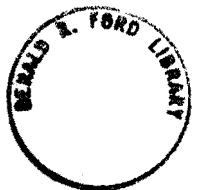
Finally, in 1928, a law was enacted that allowed the Santa Fe Northwest Railway Company to perfect its title to the railroad right-of-way in question. The Act of April 21, 1928, made applicable to the Pueblo Indians of New Mexico and their lands those statutes of the United States governing the acquisition of rights-of-way through Indian lands.

S. 217 would expressly repeal the Act of May 10, 1926, and it would terminate, on the date of enactment, all pending proceedings and actions that were initiated under the 1926 Act. However, any right of appeal from such proceeding or action entered before the date of enactment of S. 217 would be preserved.

Moreover, S. 217 would authorize the Secretary of the Interior to grant one renewal for a period not to exceed ten years of any right-of-way acquired, prior to January 1, 1975, through litigation allowed under the 1926 Act. Such action would be authorized only when the right-of-way holder and the Pueblo tribe cannot reach agreement on renewal, and the Secretary could grant the renewal without the consent of the affected Pueblo tribes. In such cases, the Secretary would require that the Pueblo involved receive fair market value compensation for such renewal.

Finally, the enrolled bill would also amend the Act of April 21, 1928, to make applicable to the Pueblo Indians of New Mexico certain general statutes which provide for rights-of-way across Indian lands.

In its enrolled bill letter, Interior explains the



need for this legislation as follows:

"The 1926 Act should be repealed for a number of reasons. The Pueblos are subject to a type of action from which other tribes in the United States are immune. The Act of 1926 was passed with the intent of solving a unique problem at a precise time. The Act should have been repealed after serving its specific function. Should the need arise for the State to condemn Pueblo lands, it can request such authority from the Congress. The Pueblo Indians feel that use of the Act, however infrequent, imposes an inequitable situation upon them. They have expressed a desire for repeal of the Act in a resolution adopted by the All-Indian Pueblo Council on October 20, 1973.

"With regard to the one-time 10-year renewal provision under S. 217, only two rights-of-way would be involved. Both are for power lines on the Santa Clara Pueblo and expire, respectively, in the years 2011 and 2023. The remaining 10 rights-of-way under the 1926 Act were granted in perpetuity, and would not be affected by S. 217. In all other respects, S. 217 will put the Pueblos on the same basis as other tribes in the United States with regard to the granting, renewal, or widening of rights-of-way through their lands. Accordingly, we recommend that the President approve the enrolled bill."



Acting Assistant Director
for Legislative Reference

Enclosure

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: September 14

Time: 6:15pm

FOR ACTION:

Dick Parsons *no con*
Brad Patterson *on*
Max Friedersdorf *llg*
George Humphreys *adg*
Ken Lazarus

cc (for information):

Jack Marsh
Jim Connor
EE Schmults

FROM THE STAFF SECRETARY

DUE: Date:

September 15

Time:

5:00pm

SUBJECT:

S. 217-Repeal of certain condemnation authority
concerning Indian lands

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

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



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 10 1976

Dear Mr. Lynn:

This responds to your request for the views of this Department on enrolled bill S. 217, "To repeal the Act of May 10, 1926 (44 Stat. 498), relating to the condemnation of certain lands of the Pueblo Indians in the State of New Mexico."

We recommend that the President approve the enrolled bill.

Section 1 of the enrolled bill repeals the Act of May 10, 1926 (44 Stat. 498) which authorized, in Federal district court, the condemnation of Pueblo Indian lands in New Mexico for any public purpose for which lands may be condemned under New Mexico State law.

Section 2 of S. 217 provides that any action pending under the 1926 Act upon enactment of the bill shall be terminated, but the right of timely appeal from a final decree or order in any action under the 1926 Act is preserved.

Section 3 of the enrolled bill amends the Act of April 21, 1928 (45 Stat. 442; 25 U.S.C. 322), which contains certain general statutes relating to the administration of Indian trust lands, by extending the statutes contained therein to the Pueblo Indians and their lands. The result of this amendment would be to place the New Mexico Pueblo Indians in the same position relative to grants of rights-of-way across their lands as other federally-recognized Indian tribes.

S. 217 also adds a new section 2 to the 1928 Act, which provides that the Secretary of the Interior may without the consent of the affected Pueblo Tribe, grant a one-time 10 year renewal of any right-of-way across Pueblo lands acquired either through litigation pursuant to the Act of May 10, 1926, or by compromise and settlement in such litigation prior to January 1, 1975. However, the Secretary may only grant such a renewal if the owner of the right-of-way and the tribe cannot reach agreement within 90 days after such renewal value of the renewal as compensation for the tribe.



The Act of May 10, 1926 (44 Stat. 498), exposes New Mexico Pueblo Indian lands to a wider liability for condemnation than that of other Indian tribes in the United States. It was enacted specifically to resolve the controversy between the Santa Fe Northwestern Railway Company and the Pueblo of Jemez over a right-of-way for railroad purposes through tribal lands of the Zia, Santa Ana, and Jemez Pueblos. The 1926 Act took away the New Mexico Pueblos' right of consent in the consideration of applications for rights-of-way across their land. In contrast, those tribes that organized governments pursuant to the Act of June 18, 1934 (48 Stat. 987), were provided the right of consent in considering such applications, and the balance of federally recognized tribes have been granted such right through regulation (25 C.F.R. 161).

The Act of April 21, 1928 (45 Stat. 442; 25 U.S.C. 322), made applicable to the Pueblo Indians of New Mexico and their lands those statutes of the United States governing acquisition of rights-of-way through Indian lands. In addition, the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328) providing for the granting of rights-of-way through Indian lands specifically included Pueblo lands in its provisions.

It has been argued that either the 1928 Act, or the 1948 Act, repealed the 1926 Act by implication. On this issue the District Court for the District of New Mexico (State of New Mexico v. United States, 148 F. Supp. 508, 1957), has held that the 1926 Act was not repealed because unless a later general statute repeals an earlier special statute expressly or an absolute incompatibility between the two exists, the presumption is that the special statute remains in force as an exception to the general.

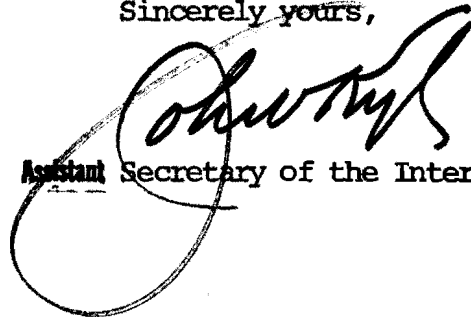
In the nearly 50 years that the 1926 Act has been in effect, it has been used twelve times to obtain rights-of-way on Pueblo lands in the U.S. District Court. The most frequent reason has been that of highway purposes. There is presently pending in the U.S. Circuit Court of Appeals for the 10th Circuit an appeal from a final decision of the U.S. District Court for the District of New Mexico granting a right-of-way for purposes of an electrical transmission system through lands of the Pueblo of Laguna. This suit, Plains Electric Generation and Transmission Cooperative, Inc., v. Pueblo of Laguna, was commenced in the District Court on January 3, 1975. The Pueblos of San Ildefonso and Santa Clara are fearful that similar action will be taken against them in cases involving their lands for other reasons.

The 1926 Act should be repealed for a number of reasons. The Pueblos are subject to a type of action from which other tribes in the United States are immune. The Act of 1926 was passed with

the intent of solving a unique problem at a precise time. The Act should have been repealed after serving its specific function. Should the need arise for the State to condemn Pueblo lands, it can request such authority from the Congress. The Pueblo Indians feel that use of the Act, however infrequent, imposes an inequitable situation upon them. They have expressed a desire for repeal of the Act in a resolution adopted by the All-Indian Pueblo Council on October 20, 1973.

With regard to the one-time 10 year renewal provision under S. 217, only two rights-of-way would be involved. Both are for power lines on the Santa Clara Pueblo and expire, respectively, in the years 2011 and 2023. The remaining 10 rights-of-way under the 1926 Act were granted in perpetuity, and would not be affected by S. 217. In all other respects, S. 217 will put the Pueblos on the same basis as other tribes in the United States with regard to the granting, renewal, or widening of rights-of-way through their lands. Accordingly, we recommend that the President approve the enrolled bill.

Sincerely yours,



Assistant Secretary of the Interior

Honorable James T. Lynn
Director, Office of
Management and Budget
Washington, D.C.

Department of Justice
Washington, D.C. 20530

September 10, 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill S. 217, "To repeal the Act of May 10, 1926 (44 Stat. 498), relating to the condemnation of certain lands of the Pueblo Indians in the State of New Mexico".

S. 217 would repeal the Act of May 10, 1926, 44 Stat. 498, providing for the condemnation of the lands of Pueblo Indians in New Mexico for public purposes and making the laws of the State of New Mexico applicable in such proceedings.

S. 217 would also amend the Act of April 21, 1928, 45 Stat. 442, by striking all after the enacting clause and inserting, in lieu, the following:

"That the provisions of the following statutes:

"Sections 3 and 4 of the Act of
March 3, 1901 (31 Stat. 1083 and 1084);

"The Act of March 2, 1899 (30
Stat. 990), as amended;

"Sections 1 and 2 of the Act of
March 11, 1904 (33 Stat. 65), as amended;
and

"The Act of February 5, 1948 (62
Stat. 17),

are extended over and made applicable to the Pueblo Indians of New Mexico and their lands, whether owned by the Pueblo Indians or held in trust or set aside for use and occupancy by Executive order or otherwise, under such rules, regulations, and conditions as the Secretary of the Interior may prescribe." The essential feature of this portion of S. 217

is to provide for condemnation of the lands of Pueblo Indians in New Mexico as other Indian lands are condemned (see 25 U.S.C. 357), and to authorize the Secretary of the Interior to grant easements for rights-of-way over the lands of Pueblo Indians of New Mexico as he is authorized to grant rights-of-way over other Indian lands (see 25 U.S.C. 319).

S. 217 further authorizes the Secretary of the Interior, notwithstanding the provisions of 44 Stat. 498 and without the consent of the affected Pueblo Tribes, to grant one renewal for a period not to exceed 10 years of any right-of-way acquired through litigation initiated under the Act of May 10, 1926, or by compromise and settlement in such litigation prior to January 1, 1975, provided that he shall require as compensation for the Pueblos involved, the fair market value as determined by him, and provided that such right-of-way renewal be granted only in the event the owner of such existing right-of-way and the Pueblo Tribe involved cannot reach an agreement on renewal within 90 days after such renewal is requested.

The Department of Justice defers to the agencies more directly concerned with the subject matter of the bill as to whether it should receive Executive approval.

Sincerely,

A handwritten signature in cursive script, reading "Michael M. Uhlmann". The signature is written in dark ink and is positioned above the typed name and title.

Michael M. Uhlmann
Assistant Attorney General



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

To: Johnson
9-14-76
6:00 p.m.

SEP 14 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 217 - Repeal of certain condemnation authority concerning Indian lands
Sponsors - Sen. Domenici (R) New Mexico and
Sen. Montoya (D) New Mexico

Last Day for Action

September 20, 1976 - Monday

Purpose

Repeals existing law under which tribal lands of the Pueblo Indians of New Mexico are subject to special condemnation actions in rights-of-way cases.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Department of Justice	Defers to Interior

Discussion

In 1924, the Secretary of the Interior approved an application of the Santa Fe Northwest Railway Company for a railroad right-of-way through tribal lands of the Zia, Santa Ana, and Jemez Pueblos. However, after completion of the railroad, it was determined that the legal basis for the Secretary's action was not valid. The railroad then attempted to validate the right-of-way by negotiating with the three affected Pueblos, but it could not reach an agreement with the Pueblo of Jemez.

In an attempt to resolve the issue, a bill was signed

into law on May 10, 1926, providing for the condemnation of lands of the Pueblo Indians of New Mexico for any purpose for which other lands of the State may be condemned. However, the 1926 Act placed jurisdiction for such condemnation proceedings in the Federal District Court, and the court found that the 1926 Act contained insufficient authority to decide the case.

Finally, in 1928, a law was enacted that allowed the Santa Fe Northwest Railway Company to perfect its title to the railroad right-of-way in question. The Act of April 21, 1928, made applicable to the Pueblo Indians of New Mexico and their lands those statutes of the United States governing the acquisition of rights-of-way through Indian lands.

S. 217 would expressly repeal the Act of May 10, 1926, and it would terminate, on the date of enactment, all pending proceedings and actions that were initiated under the 1926 Act. However, any right of appeal from such proceeding or action entered before the date of enactment of S. 217 would be preserved.

Moreover, S. 217 would authorize the Secretary of the Interior to grant one renewal for a period not to exceed ten years of any right-of-way acquired, prior to January 1, 1975, through litigation allowed under the 1926 Act. Such action would be authorized only when the right-of-way holder and the Pueblo tribe cannot reach agreement on renewal, and the Secretary could grant the renewal without the consent of the affected Pueblo tribes. In such cases, the Secretary would require that the Pueblo involved receive fair market value compensation for such renewal.

Finally, the enrolled bill would also amend the Act of April 21, 1928, to make applicable to the Pueblo Indians of New Mexico certain general statutes which provide for rights-of-way across Indian lands.

In its enrolled bill letter, Interior explains the

need for this legislation as follows:

"The 1926 Act should be repealed for a number of reasons. The Pueblos are subject to a type of action from which other tribes in the United States are immune. The Act of 1926 was passed with the intent of solving a unique problem at a precise time. The Act should have been repealed after serving its specific function. Should the need arise for the State to condemn Pueblo lands, it can request such authority from the Congress. The Pueblo Indians feel that use of the Act, however infrequent, imposes an inequitable situation upon them. They have expressed a desire for repeal of the Act in a resolution adopted by the All-Indian Pueblo Council on October 20, 1973.

"With regard to the one-time 10-year renewal provision under S. 217, only two rights-of-way would be involved. Both are for power lines on the Santa-Clara Pueblo and expire, respectively, in the years 2011 and 2023. The remaining 10 rights-of-way under the 1926 Act were granted in perpetuity, and would not be affected by S. 217. In all other respects, S. 217 will put the Pueblos on the same basis as other tribes in the United States with regard to the granting, renewal, or widening of rights-of-way through their lands. Accordingly, we recommend that the President approve the enrolled bill."

Naomi R. Sweeney

Acting Assistant Director
for Legislative Reference

Enclosure

Date: September 14

Time: 615pm

FOR ACTION: Dick Parsons
 Brad Patterson
 Max Friedersdorf
 George Humphreys
 Ken Lazarus

cc (for information): Jack Marsh
 Jim Connor
 Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: September 15

Time: 500pm

SUBJECT:

S. 217-Repeal of certain condemnation authority
 concerning Indian lands

ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

I recommend approval
Judy

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.

JAMES M. Cannon
 For the President

THE WHITE HOUSE
WASHINGTON

September 15, 1976

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *M.6*
SUBJECT: S.217 - Repeal of certain condemnation authority
concerning Indian lands

The Office of Legislative Affairs concurs with the agencies
that the subject bill be signed.

Attachments

THE WHITE HOUSE
WASHINGTON

9/15

TO: Bill Kendall/~~Charlie Leppert~~

FROM: Jane Greenleaf

Comments Please

*Conference
Report
Passed
Secretly
in voice vote
JSG*

*Passed House
2-2-76 in Suspensive
by voice vote.
Conference Report
Passed House
8-31-76 by a
Vote of 387-0.
Approved. cz.*

Date: September 14

Time: 615pm

ACTION: Dick Parsons
Brad Patterson
Max Friedersdorf
George Humphreys
Ken Lazarus

cc (for information): Jack Marsh
Jim Connor
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: September 15

Time: 500pm

SUBJECT:

S. 217-Repeal of certain condemnation authority concerning Indian lands

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

No comment. RD

please return to judy johnston, ground floor west wing

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.

James M. Cannon
For the President

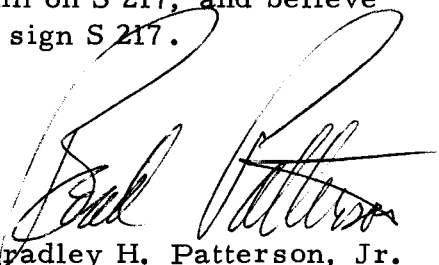
THE WHITE HOUSE

WASHINGTON

September 15, 1976

MEMORANDUM FOR THE STAFF SECRETARY

I concur with the OMB recommendation in the Enrolled Bill Memorandum on S 217, and believe that the President should sign S 217.



Bradley H. Patterson, Jr.

September 14

Time: 615pm

FOR ACTION: Dick Parsons
Brad Patterson
Max Friedersdorf
George Humphreys
Ken Lazarus

cc (for information): Jack Marsh
Jim Connor
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: September 15

Time: 500pm

SUBJECT:

S. 217-Repeal of certain condemnation authority
concerning Indian lands

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

approved

Kelly 9/16/76

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.

James M. Cannon
for the President

REPEALING THE ACT OF MAY 10, 1926 (44 STAT. 498), RELATING TO
THE CONDEMNATION OF CERTAIN LANDS OF THE PUEBLO INDIANS
IN THE STATE OF NEW MEXICO

MAY 20, 1975.—Ordered to be printed

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

REPORT

[To accompany S. 217]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 217), to repeal the Act of May 10, 1926 (44 Stat. 498), relating to the condemnation of certain lands of the Pueblo Indians in the State of New Mexico, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

The purpose of S. 217, as amended by the Committee on Interior and Insular Affairs, is to repeal a 1926 statute which subjects Pueblo tribal lands to condemnation pursuant to state law. Such condemnation authority has been exercised in the past to obtain rights-of-way on Pueblo lands for highway and public utility purposes. Since the 1926 Act contains a proviso that jurisdiction over the condemnation proceedings would be in the Federal District Court, the bill, as amended by the Committee, insures that rights of all parties will be protected in litigation presently pending before the Court.

BACKGROUND

The Act of May 10, 1926, was the culmination of a controversy between the Santa Fe Northwestern Railway Company and the Pueblo of Jemez over a right-of-way for railroad purposes through tribal lands of the Zia, Santa Ana, and Jemez Pueblos.

On July 11, 1924, the Secretary of the Interior, pursuant to the Act of March 2, 1899, approved an application of the Santa Fe Northwestern Railway Company for railroad purposes through lands of the Pueblos of Zia, Santa Ana, and Jemez. After completion of the railroad at Jemez, it was determined by the Pueblo Land Board during its consideration of adverse claims to and within the Pueblo of Jemez that the Indian title to the lands used for a railroad right-of-way was not extinguished and that the Act of March 2, 1889, supra, had no application to the lands in fee simple communal title. The railroad was unsuccessful in securing legal right-of-way access through negotiations with the tribes and turned to Congress to resolve the issue.

A bill was signed into law on May 10, 1926, providing for the condemnation of lands of the Pueblo Indians of New Mexico for any purpose for which other lands of the State may be condemned, with the proviso that jurisdiction over such condemnation proceedings would be in the Federal District Court.

When the Railway Company attempted to finalize its right-of-way across the Pueblo lands under the 1926 Act, the United States District for the District of New Mexico held, in effect, that the Act contained insufficient authority to warrant a decree in favor of the Company as the United States was a necessary party, but had not consented to be sued and therefore the suit could not be maintained.

Legislation was introduced to remedy the defects of the 1926 Act, but it failed of enactment due to the pressure of business at the end of that Congress. It was not until April 21, 1928, that Congress finally passed an Act under which the Railway Company could proceed to perfect its title. The Act of April 21, 1928 (45 Stat. 442), made applicable to the Pueblo Indians of New Mexico and their lands those statutes of the United States governing acquisition of rights of way through Indian lands. In addition, the Act of February 5, 1948 (62 Stat. 17), providing for the granting of rights of way through Indian lands specifically included Pueblo lands in its provisions.

It has been argued that the 1928 Act repeals the 1926 Act by implications. However, on this issue the District Court for the District of New Mexico in the *State of New Mexico v. United States* (148 F. Supp. 508, 1957) held that unless either a later general statute expressly repeals an earlier special statute or an absolute incompatibility between the two exists, the presumption is that the special statute remains in force as an exception to the general statute.

In the nearly 50 years that the 1926 Act has been in effect, it has been used twelve times to obtain rights of way on Pueblo lands in the United States District Court. There is at the present time a condemnation suit pending in the United States District Court of New Mexico against the Pueblo of Laguna for purposes of an electrical transmission system.

NEED

The 1926 Act exposes Pueblo Indian lands to a wider liability for condemnation than that of other Indian tribes in the State and throughout the Nation, and subjects the Pueblos to a type of action

from which the other tribes are immune. In order to restore the Pueblo Indians to a position of equality with the other tribes, the Act of May 10, 1926, should be repealed.

The Pueblo Indians, through a resolution adopted by the All-Indian Pueblo Council on October 24, 1973, expressed a desire for repeal of the Act. Their position is supported by Governor Jerry Apodaca of the State of New Mexico, the National Tribal Chairmen's Association, and the National Congress of American Indians. Finally, the Department of the Interior supports repeal of the Act, if the legislation (S. 217) to accomplish this purpose is amended as recommended in the Department's legislative report on the bill.

COMMITTEE AMENDMENTS

The Committee concurs with the Department of the Interior's position that it can find no legal basis to support the provisions directing retroactive application of the bill to July 15, 1974, contained in sections 1(b) and 2 of the bill. Moreover, the Committee believes that if there is a final disposition of the litigation presently pending before the United States District Court for the District of New Mexico before enactment of S. 217, such enactment may result in a legislative taking of land from the Cooperative involved in the litigation.

The Committee, therefore, agreed with the Department's recommended amendments to section 1 of S. 217, but rejected their proposed substitute language for section 2 of the bill and approved the sponsors' recommended language for that section. It is the Committee's belief that these amendments to the bill will adequately provide for redress of all parties involved in the litigation pending before the U.S. District Court.

The amendments are as follows:

1. On page 1, line 3, delete the letter "(a)".
2. Delete subsection (b) in its entirety.
3. Change section 2, page 2, to read as follows:

SEC. 2. Immediately upon enactment of this Act, all proceedings and actions pursuant to the Act of May 10, 1926 (44 Stat. 498), pending on or commenced on the date of enactment of this Act shall be held and considered to have terminated as of the date of enactment of this Act, and thereafter to be of no force and effect; *Provided, however,* That nothing herein shall be interpreted as terminating or otherwise affecting any right of timely appeal (otherwise available but for the enactment of this Act) from any such proceeding or action in which a final decree or order has been entered before the date of enactment of this Act.

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs in open executive mark-up with a quorum present on May 14, 1975, unanimously ordered S. 217, as amended, favorably reported to the Senate.

COST

Enactment of S. 217 will not result in any additional expenditure of funds by the Federal Government.

DEPARTMENTAL REPORTS

The favorable report of the Department of the Interior on S. 217 is set forth in full as follows:

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, D.C., April 24, 1975.

HON. HENRY M. JACKSON,
*Chairman, Committee on Interior and Insular Affairs, U.S. Senate,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of this Department on S. 217, a bill "To repeal the Act of May 10, 1926 (44 Stat. 498), relating to the condemnation of certain lands of the Pueblo Indians in the State of New Mexico."

We recommend that the bill be enacted if amended as suggested herein.

Section 1 of S. 217 provides for repeal of the Act of May 10, 1926 (44 Stat. 498), a Statute entitled "An Act to provide for the condemnation of the lands of the Pueblo Indians in New Mexico for public purposes, and making the laws of the State of New Mexico applicable in such proceedings." The bill makes such repeal retroactive to July 15, 1974.

Section 2 of the bill provides that all proceedings and actions pursuant to the Act of May 10, 1926, pending on July 15, 1974, or commenced on or after that date but prior to the date of enactment of S. 217, shall be held and considered to have terminated as of July 15, 1974, and thereafter have no force and effect.

The Act of May 10, 1926, was the culmination of a controversy between the Santa Fe Northwestern Railway Company and the Pueblo of Jemez over a right-of-way for railroad purposes through tribal lands of the Zia, Santa Ana, and Jemez pueblos.

On July 11, 1924, the Secretary of the Interior approved an application of the Santa Fe Northwestern Railway Company for a right-of-way for railroad purposes, through tribal lands of the Pueblos of Zia, Santa Ana and Jemez in the State of New Mexico, under provision of the Act of March 2, 1899 (30 Stat. L. 990), as amended. This Act provided for the acquisition of rights-of-way by railroad companies through Indian reservations, Indian lands and Indian allotments. However, the 1889 Act did not apply to those lands allotted in severalty to individual Indians with full power of alienation.

In the Pueblo of Jemez, about 20 acres of cultivated and 25 acres of uncultivated land was taken for railroad purposes, and damages of \$2,946.55 was paid by the company. The railroad company believed that it had secured a complete title for an adequate consideration.

In 1925, when the Pueblo Lands Board functioning under the Act of June 7, 1924, considered the adverse claims to land within the Pueblo of Jemez, it reported that with regard to the claim of the Santa Fe Northwestern Railway Company, the Indian title to the lands used for a railroad right-of-way was not extinguished, and that the Act of March 2, 1899, had no application to the lands of the Pueblo Indians of New Mexico who held their lands in a fee simple communal title.

Thereafter, in accordance with the Pueblo Lands Act of June 7, 1924, a suit was instituted in the United States District Court for the District of New Mexico by George A. H. Fraser, Special Assistant to the Attorney General of the United States, to determine what rights, if any, the Santa Fe Northwestern Railway Company secured in 1924 on the land being used for railroad purposes in the Pueblos of Zia, Santa Ana and Jemez.

While that suit was pending, the Railway Company began refunding operations which involved a bond issue, and attorneys for the bonding house underwriting this issue would not approve the title of Santa Fe Northwestern with the suit pending. It was decided that if the Pueblos would execute a deed for the easement for right-of-way purposes and the transaction was approved by the Secretary of the Interior under the provisions of section 17 of the Pueblo Lands Act the title of Santa Fe Northwestern would be approved for the bond issue.

Negotiations with the three concerned pueblos were held to secure the agreement. The tribal officials objected to this course of action because they felt that the matter should be resolved by the courts. However, the tribal officials of the Pueblos of Zia, and Santa Ana later agreed to sign the deed. The Pueblo of Jemez maintained its position, and refused to sign.

On the basis of the refusal by the Council of Jemez Pueblo to sign any right-of-way agreement, the Attorney General for the State of New Mexico on April 18, 1926, forwarded to Senators Jones and Bratton of New Mexico a proposed bill which provided for the condemnation of lands of the Pueblo Indians of New Mexico for any purpose for which other lands of the State may be condemned, but with the proviso that jurisdiction over such condemnation proceeding should be in the Federal Court. The bill was signed by the President on May 10, 1926.

It was later learned that possible refusal of the Jemez Pueblo Council to sign the agreement was due to the fact that the railroad bordered some of their sacred springs.

The Railway Company attempted to finalize its right-of-way across the Jemez Pueblo under the 1926 Act, by suit in the United States District Court for the District of New Mexico. The Court held, in effect, that the Act contained insufficient authority to warrant a decree in favor of the company as the United States was a necessary party, but had not consented to be sued and therefore the suit could not be maintained.

In an attempt to remedy the defect in the 1926 Act, legislation was introduced but failed to pass the Congress due to the pressure of business at the end of Congress.

On April 21, 1928, Congress finally passed an Act under which the Railway Company could proceed to perfect its title. The Act of April 21, 1928 (45 Stat. 442), made applicable to the Pueblo Indians of New Mexico and their lands those statutes of the United States governing acquisition of rights-of-way through Indian lands. In addition, the Act of February 5, 1948 (62 Stat. 17) providing for the granting of rights-of-way through Indian lands specifically included Pueblo lands in its provisions. It has been argued that the 1928 Act repeals the 1926 Act by implication. On this issue the District Court for the District of New Mexico (*State of New Mexico v. United States*, 148 F. Supp. 508, 1957), has held that unless a later general statute repeals an earlier special statute expressly or an absolute incompatibility between the two exists, the presumption is that the special statute remains in force as an exception to the general.

In the nearly 50 years that the 1926 Act has been in effect, it has been used twelve times to obtain rights-of-way on Pueblo lands in the U.S. District Court. The most frequent reason has been that of highway purposes. There is at the present time a condemnation suit pending in the U.S. District Court for the District of New Mexico against the Pueblo of Laguna for purposes of an electrical transmission system. This suit, *Plains Electric Generation and Transmission Cooperative, Inc. v. Pueblo of Laguna*, was commenced on January 9, 1975. The Pueblos of San Ildefonso and Santa Clara are fearful that similar action will be taken against them in cases involving their lands for other reasons.

The 1926 Act should be repealed for a number of reasons. The most glaring one is the fact that it exposes Pueblo Indian lands to a wider liability for condemnation than that of other Indians in the State. The Pueblos are subject to a type of action from which other tribes in the State are immune. The Act of 1926 was passed with the intent of solving a unique problem at a precise time. The Act should have been repealed after serving its specific function. Should the need arise for the State to condemn Pueblo lands, it can request such authority from the Congress. The Pueblo Indians feel that use of the Act, however infrequent, imposes an inequitable situation upon them. They have expressed a desire for repeal of the Act in a resolution adopted by the All-Indian Pueblo Council on October 20, 1973. The Pueblo Indians have been supported in this request by the National Tribal Chairmen's Association, the National Congress of American Indians, and by Governor Jerry Apodaca of the State of New Mexico.

We can find no legal basis to support the provision directing retroactive application of the bill to July 15, 1974, contained in sections 1(b) and 2 of the bill. Section 2 would cancel all proceedings and actions pursuant to the 1926 Act pending on July 15, 1975, or commenced thereafter, but prior to enactment of this bill. In our judgment, if there is a final disposition of the litigation presently pending before the U.S. District Court for the District of New Mexico before enactment of S. 217, such enactment may result in a legislative taking of land from the Cooperative. In view of this potential result, we recommend the following amendments to the bill:

1. On page 1, line 3, delete the letter "(a)",
2. Delete subsection (b) in its entirety, and

3. Change section 2, page 2, to read as follows:

"SEC. 2. Immediately upon enactment of this Act, all proceedings and actions pursuant to the Act of May 10, 1926 (44 Stat. 498), pending on or commenced on or after the date of enactment of this Act shall be held and considered to have terminated as of the date of enactment of this Act, and thereafter to be of no force and effect; *Provided, however,* That any appeals pursuant to the Act of May 10, 1926 (44 Stat. 498) pending on or commenced on or after the date of enactment of this Act shall remain in effect."

If the Pueblo Indians are to be restored to a position of equality with the other Indian citizens of the State of New Mexico in matters concerning land condemnation, the Act of May 10, 1926, should be repealed. We strongly recommend enactment of S. 217 as amended above.

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

Sincerely yours,

MORRIS THOMPSON,
Commissioner of Indian Affairs.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, D.C., May 13, 1975.

HON. HENRY M. JACKSON,
*Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is to correct a typographical error that appears in our report of April 24, 1975, on S. 217, a bill "To repeal the Act of May 10, 1926 (44 Stat. 498), relating to the condemnation of certain lands of the Pueblo Indians in the State of New Mexico". The error appears in line 4 of the second paragraph on page 4 of the report and reads "July 15, 1975". That date should read "July 15, 1974".

We regret the error and apologize for any inconvenience we may have caused.

Sincerely yours,

MORRIS THOMPSON,
Commissioner of Indian Affairs.

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. 217), 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 MAY 10, 1926 (44 STAT. 498)

[*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That lands of the*

Pueblo Indians of New Mexico, the Indian title to which has not been extinguished, may be condemned for any public purpose and for any purpose for which lands may be condemned under the laws of the State of New Mexico, and the money awarded as damages shall be paid to the superintendent or officer in charge for the benefit of the particular tribe, community, or pueblo holding title to same: *Provided, however,* That the Federal courts of said State of the district within which such lands are located shall have and retain jurisdiction of all proceedings for the condemnation of such lands, and shall conform, as near as may be, to the practice, pleadings, forms, and proceedings existing at the time in like causes in the courts of record of the said State of New Mexico: *Provided also,* That notice of each suit shall at time of filing be served upon the superintendent or other officer in charge of the particular pueblo where the land is situated.]



REPEAL ACT—CONDEMNATION OF CERTAIN LANDS OF
PUEBLO INDIANS, STATE OF NEW MEXICO

AUGUST 26, 1976.—Ordered to be printed

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

CONFERENCE REPORT

[To accompany S. 217]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 217) to repeal the Act of May 10, 1926 (44 Stat. 498), relating to the condemnation of certain lands of the Pueblo Indians in the State of New Mexico, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with the following amendment:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

SEC. 3. The Act of April 21, 1928 (45 Stat. 442), is hereby amended by striking all after the enacting clause and inserting, in lieu, the following:

“That the provisions of the following statutes:

“Sections 3 and 4 of the Act of March 3, 1901 (31 Stat. 1083 and 1084);

“The Act of March 2, 1899 (30 Stat. 990), as amended;

“Sections 1 and 2 of the Act of March 11, 1904 (33 Stat. 65), as amended; and

“The Act of February 5, 1948 (62 Stat. 17), are extended over and made applicable to the Pueblo Indians of New Mexico and their lands, whether owned by the Pueblo Indians or held in trust or set aside for their use and occupancy by Executive order or otherwise, under such rules, regulations, and conditions as the Secretary of the Interior may prescribe.

“SEC. 2. Notwithstanding such provisions, the Secretary of the Interior may, without the consent of the affected Pueblo Tribes, grant one renewal for a period not to exceed 10 years of any right-of-way acquired through litigation initiated under the Act of May 10, 1926

(44 Stat. 498), or by compromise and settlement in such litigation, prior to January 1, 1975. The Secretary shall require, as compensation for the Pueblo involved, the fair market value, as determined by the Secretary, of the grant of such renewal. The Secretary may grant such right-of-way renewal under this section only in the event the owner of such existing right-of-way and the Pueblo Tribe involved cannot reach agreement on renewal within ninety days after such renewal is requested. Nothing in this section shall be deemed to validate or authorize the renewal of a right-of-way which is otherwise invalid by reason of the invalidity of the Act of May 10, 1926, on the date said right-of-way was originally obtained."

And the House agree to the same.

LLOYD MEEDS,
JOHN MELCHER,
ROBERT G. STEPHENS, Jr.,
DON YOUNG,

Managers on the Part of the House.

HENRY M. JACKSON,
LEE METCALF,
JAMES ABOUREZK,
JIM A. McCLURE,
DEWEY F. BARTLETT,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 217) to repeal the Act of May 10, 1926 (44 Stat. 498), relating to the condemnation of certain lands of the Pueblo Indians in the State of New Mexico, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment added a new section 3 at the end of the text of the Senate bill, and the Senate disagreed to the House amendment.

The committee of conference recommends that the Senate recede from its disagreement to the amendment of the House and agree to such amendment with an amendment. The differences between the Senate bill, the House amendment thereto, and the amendment to the House amendment agreed to in conference are noted below except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

S. 217, as passed by the Senate on May 21, 1975, repeals the Act of May 10, 1926, which subjected the lands of the New Mexico Pueblo Indians to condemnation under State law. It provides for the termination of any action or proceeding pending or commencing under such Act upon the enactment of the Senate bill, but preserves any right of appeal from a final decree or order entered before enactment of this legislation.

The 1926 Act exposes Pueblo Indian lands to a wider range of liability for condemnation than that of other Indian tribes in the State and throughout the Nation, and subjects the Pueblos to a type of action from which the other tribes are immune.

As a consequence, the 1926 Act denies the Pueblos the right of consent in considering applications for rights-of-way across their lands for whatever purpose. On the other hand, those tribes that organized constitutional governments pursuant to the Act of June 18, 1934 (48 Stat. 987), clearly, were provided the right of consent in considering rights-of-way applications. Moreover, the balance of federally recognized tribes have been granted the privilege of consent through Secretarial regulations.

It is the purpose of the Senate bill to place the New Mexico Pueblo Indians in the same position relative to grants of rights-of-way across their lands as other federally recognized Indian tribes. The House amendment adds a new section 3 to the Senate bill amending a 1928 statute making certain general statutes providing for rights-of-way across Indian lands applicable to the lands of the Pueblo Indians of New Mexico. One of such general statutes, the Act of February 5, 1948 (67 Stat. 17), permits the Secretary of the Interior to grant rights-of-way for all purposes across Indian lands, but clearly provides that tribes organized pursuant to the Indian Reorganization Act of 1934 and the Oklahoma Welfare Act of 1936 must consent to such grant (five of the nineteen Pueblos organized under the 1934 Act). Moreover, by administrative regulations promulgated under the general statutory authority of the Secretary of the Interior (25 C.F.R. 161.3), the Secretary has extended the consent requirement to rights-of-way to all Indian lands.

In addition to the foregoing provisions contained in the new section 3 as added by the House amendment, the House amendment adds a proviso which provides that if the owner of an existing right-of-way and the Pueblo tribe involved cannot agree to a renewal or widening of a right-of-way or have not entered into a binding arbitration process relative to such renewal or widening within 60 days after a request is made for renewal or widening, the Secretary of the Interior, in his discretion, may grant the right-of-way for appropriate compensation, notwithstanding the absence of Pueblo consent.

This proviso, as contained in the new section 3 added by the House amendment, has the effect of negating the Pueblos' right to exercise the privilege of consent on requests pertaining to widening or renewal of existing rights-of-way (whether granted pursuant to the 1926 Act or voluntarily), notwithstanding their statutory or administrative right to exercise such consent, which would obtain after repeal of the 1926 Act.

It is the foregoing proviso in the new section 3, as added by the House amendment, which is in disagreement.

The conferees agreed to accept the provisions of the House amendment with certain modifications to the proviso of the new section 3, as added by the House amendment, authorizing Secretarial grants of right-of-way renewal across Pueblo lands without Pueblo consent.

The conferees agreed to strike out such proviso and insert, in lieu thereof, a new section 2 to the 1928 Act being amended by such section 3 of the House amendment.

The conference agreement authorizes the Secretary of the Interior to grant a right-of-way renewal across Pueblo lands without Pueblo consent in limited cases. He may grant such renewal only in those cases where the original right-of-way was obtained through litigation initiated under the 1926 Act, or by compromise and settlement in such litigation, prior to January 1, 1975. He is limited to granting only one such renewal for a period not to exceed ten years and only if the Pueblo involved and the owner of the original right-of-way fail to negotiate a renewal within 90 days after the request for renewal by the owner of the right-of-way.

Under the conference agreement, the Secretary must require the payment of fair market value as compensation to the Pueblo for such grant.

Finally, the conference agreement provides that no renewal of a right-of-way under this section may be authorized without the consent of the Pueblo if such right-of-way is declared invalid because of the invalidity of the 1926 Act upon the date of the original acquisition of such right-of-way.

LLOYD MEEDS,
ROBERT G. STEPHENS, Jr.,
JOHN MELCHER,
DON YOUNG,

Managers on the Part of the House.

HENRY M. JACKSON,
LEE METCALF,
JAMES ABOUREZK,
JIM A. McCLURE,
DEWEY F. BARTLETT,

Managers on the Part of the Senate.



Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

To repeal the Act of May 10, 1926 (44 Stat. 498), relating to the condemnation of certain lands of the Pueblo Indians in the State of New Mexico.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to provide for the condemnation of the lands of the Pueblo Indians in New Mexico for public purposes, and making the laws of the State of New Mexico applicable in such proceedings", approved May 10, 1926 (44 Stat. 498), is hereby repealed.

Sec. 2. Immediately upon enactment of this Act, all proceedings and actions pursuant to the Act of May 10, 1926 (44 Stat. 498), pending on or commenced on the date of enactment of this Act shall be held and considered to have terminated as of the date of enactment of this Act, and thereafter to be of no force and effect: *Provided, however,* That nothing herein shall be interpreted as terminating or otherwise affecting any right of timely appeal (otherwise available but for the enactment of this Act) from any such proceeding or action in which a final decree or order has been entered before the date of enactment of this Act.

Sec. 3. The Act of April 21, 1928 (45 Stat. 442), is hereby amended by striking all after the enacting clause and inserting, in lieu, the following:

"That the provisions of the following statutes:

"Sections 3 and 4 of the Act of March 3, 1901 (31 Stat. 1083 and 1084);

"The Act of March 2, 1899 (30 Stat. 990), as amended;

"Sections 1 and 2 of the Act of March 11, 1904 (33 Stat. 65), as amended; and

"The Act of February 5, 1948 (62 Stat. 17),

are extended over and made applicable to the Pueblo Indians of New Mexico and their lands, whether owned by the Pueblo Indians or held in trust or set aside for their use and occupancy by Executive order or otherwise, under such rules, regulations, and conditions as the Secretary of the Interior may prescribe.

"Sec. 2. Notwithstanding such provisions, the Secretary of the Interior may, without the consent of the affected Pueblo Tribes, grant one renewal for a period not to exceed ten years of any right-of-way acquired through litigation initiated under the Act of May 10, 1926 (44 Stat. 498), or by compromise and settlement in such litigation, prior to January 1, 1975. The Secretary shall require, as compensation for the Pueblo involved, the fair market value, as determined by the Secretary, of the grant of such renewal. The Secretary may grant such right-of-way renewal under this section only in the event the owner of such existing right-of-way and the Pueblo Tribe involved cannot

S. 217—2

reach agreement on renewal within ninety days after such renewal is requested. Nothing in this section shall be deemed to validate or authorize the renewal of a right-of-way which is otherwise invalid by reason of the invalidity of the Act of May 10, 1926, on the date said right-of-way was originally obtained.”.

Speaker of the House of Representatives.

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