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DOUGLAS J. LUCKERMAN
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October 25, 2000

Ms. Carol M Browner
1101A
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N W.
Washington, DC 20460

Re: Maine's NPDES Application

Dear Administrator Browner,

In response to an enquiry from the EPA's Office of General Counsel, I put together a packet of documents relating to the negotiations underlying the 1980 Maine Indian Claims Settlement Act, contemporaneous White House and Department of Interior views of the underlying settlement agreement and statements made by Richard Cohen, the Maine Attorney General at the time, interpreting the State's relationship to Settlement Act. I urge you to review this information prior to making a final decision on the NPDES delegation to Maine. These documents highlight the tribal and federal intent to protect the Tribes and the State's long standing recalcitrance to accept the Maine Tribes as unique and endangered cultures. I believe that documents #'s 13 and 14 speak eloquently and tragically to this last point. Thank you for your consideration of these documents.

Sincerely,

Douglas J. Luckerman Esq

Douglas J Luckerman, Esq.
Counsel for
Aroostook Band Of Micmacs
and
Houlton Band of Maliseet Indians

DOUGLAS J. LUCKERMAN
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October 23, 2000

Mr. Jeff Keohane
US EPA, OGC, MC2322A
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: MICSA Documents

Jeff, Sorry about the delay in getting you these documents.

Here is an index of what is attached and why:

1. January 20, 1978. Memo from Robert Lipshurtz to President Carter, regarding a summary of the recent MOU reached between MaineTribes and the White House on the resolution of the Maine Indian land claims.

2. February 6, 1978. Complete version of MOU released to public Page 3, Item 5 of MOU, shows intent of Tribes was not to provide State with unilateral jurisdiction, but only such jurisdiction as was then provided under 25 USC 1321 and 1322. Did not include regulatory jurisdiction.

3. April, 14, 1978. Remarks of Eliot Cutler on White House role in settlement of Maine Indian land claims dispute. Please note at page 5, that even back then the State refused to negotiate with Tribe. Considering State's current stance, what chance do Tribes have to be heard, or for fair treatment on environmental matters in future? The Tribes view this as a critical Trust responsibly issue for EPA.

4. March 27, 1978. Letter to Maine Attorney General Joseph Brennan from Leo Krultitz and Elliot Cutler regarding clarification of MOU. Krulitz and Culter negotiated the MOU with the Tribes. They were clear about the Tribes intent and understanding of the agreement that State jurisdiction was not intended to apply to any regulatory authority. See Page 3 Integrity of State Laws. See also page 7 where Krulitz and Cutler state that land acquired by tribes will become "federal reservation land." Attached to this letter is the original letter from Brennan dated March 2, 1978. Significantly, in his letter to the White House, Brennan's concern over the "Integrity of State Laws" puts the current State situation on its head. Brennan appears to be concerned that Tribal lands would leave fish and wildlife, other Maine citizens and abutters, vulnerable to problems caused by the Tribes such as "stream siltation, air pollution,

clearcutting "noise" and unfair business practices. A bit ironic considering the current plight of the Tribes vis a vis Maine's environmetnal actions since 1980.

5. November, 21, 1978. Letter from Leo M. Krulitz, Dept. Of Interior Solicitor, to Tom Tureen regarding terms for a complete settlement of clams the White House would support. Letter acknowledges that while the State insists that all laws of State apply to trust lands newly acquired by the Tribes, this position is "inconsistent" with the MOU.

6. June 7, 1979, Transmittal letter from Larry Hammond, Deputy Assistant Attorney General, to Douglas Huron Senior Associate White House Counsel, regarding a letter from Attorney General Bell to Cecil Andrus dealing with the federal government's Indian trust responsibility. Bell's letter states that where a statute, treaty, or Executive Order manifests a purpose to benefit all Indians or a tribes, it is the obligation of the responsible Executive Branch officials to give full effect to that purpose. Bell also states DOJ's position that in construing laws dealing with Indians, such laws must be interpreted "in light of the special relationship and special responsibilities of the government towards the Indians" page 4. This supports the Maliseet and Micmac contention that EPA must abide by the promise made by Congress to the Maine Tribes that they will be protected from acculturation. Moreover, the fact that Congress placed land and money in permanent trust for the Tribes, that the Tribes were provided federal recognition of their aboriginal place in the history of this county and that all Maine Tribes, including Maliseet and Micmac, were provided governments to protect the "general welfare" of their people from acculturation, dramatically manifests the intent of Congress to protect and preserve the Tribes cultural identity, even if that means in specific cases, denying the State jurisdiction over Tribal land and waters. EPA cannot both delegate and protect the Tribes in Maine at this time.

7. June 9, 1980. Memo from Doug Huron to Lloyd Cutler, White House Counsel, with an analysis of the State of Maine Indian legislation impact on the Houlton Band of Maliseet Indians. This analysis supports the Maliseet's position that "while the state act does not recognize any power or authority of the Band the Federal act "does not specifically revoke concomitant tribal power." Furthermore the memo confirms the purpose of federal recognition, at that time, was to establish the Maliseet "...entitlement to a government to government relationship with the U.S." While these are not legally binding opinions, it clearly illuminates and supports the Maliseet argument that their inherent sovereignty and jurisdiction was not removed by the 1980 Act. Without question, the White House negotiators had the same understanding of the Maliseet's jurisdiction at the time this memo was written, which was AFTER the passage of the State Implementing Act. Keeping in mind that any ambiguity in the Act should be interpreted to benefit the Tribe, the EPA at a minimum, cannot delegate NPDES authority over Maliseet or Micmac lands without providing these Tribes with a veto over state issued permits, or the ability include such additional criteria that they deem necessary.

8. June 30, 1980. Note from Doug Huron to Lloyd Cutler forwarding Testimony that Cecil Andrus, Secretary of the Interior would be presenting to Congress on the federal Maine Indian Lands Claims Settlement Act. Andrus testified that the federal contribution of 81.5 million dollars is supported by the Carter Administration "because the settlement is based on the

agreement of all relevant parties in Maine and should therefore provide a lasting solution to this problem." This supports the Micmac and Maliseet argument that for EPA to delegate the NPDES program prior to the State and the Tribes entering into an agreement on jurisdiction would violate the basic structure and intent of the agreement the Act is based on

While 1725(a) grants the state some concurrent authority over the Maliseet, it does not provide the State with the unilateral authority to adversely impact the Tribes traditions and culture. All of the Maine Tribes understood the Act to protect their right to survive and prosper into perpetuity. Delegation of NPDES to the State, in light of the State's position that the Tribes no longer exist as Tribes and that it shall only treat tribes as it treats other Maine residents, would be a direct and egregious violation of the intent of the Tribes and the federal government at the time of the signing of the Act.
The same argument can be made for the Micmac. Absent and an agreement on jurisdiction, the State cannot impose its will on the Tribes. That concept would have been unthinkable to either the Carter administration or the Tribes and would never have been agreed to. The unmistakable premise of both the 1980 and 1991 Acts is that an agreement on jurisdiction, previously arrived at, was then accepted by Congress. To interpret the Acts otherwise is to tell the Tribes their cultural survival depends solely on the whim of a State that has no interest in seeing them survive as Tribes.

9. February 6, 1979. Memo to File from Doug Huron regarding a conversation with Tom Tureen. Memo notes that Tom Tureen has not spoken to the former Attorney General, now Governor of Maine Brennan, since November 1978, and that the new Maine Attorney General, Richard Cohen, says he will take the initiative to set up talks to resolve the jurisdiction issues.

10. March 18, 1997. Minutes of a meeting of the Maine Indian Tribal-State Commission. Richard Cohen, Chairman of the Maine Indian Tribal-State Commission (also former State Attorney General who represented Maine in 1980 jurisdiction discussions), in response to recommendations of the 1996 Maine Task force on Tribal-state relations states that the "settlement Act was intended to be a living document". Furthermore, he adds that "there is a segment in state government that says if its not in the settlement it cannot be" and "this is not what was expected" See pages 3 and 6. This supports Maliseet argument that Settlement Act was not supposed to be the end, but the beginning, of negotiations between the State and the Tribe over jurisdiction. However. Once the Act was passed, the State reneged on its commitment to negotiate the jurisdictional contours and reverted to its original position that the Maliseet have no jurisdiction in Maine.

11. June 9, 1997. Letter to Governor Angus King from Richard Cohen, Chairman of the Maine Indian Tribal-State Commission, stating that the Commission has been a failure at resolving tribal state issues because the state has failed to acknowledge the authority of the Commission. Chairman Cohen, requests that the Governor require state agencies to notify the Commission prior to taking any action that will affect tribes, the Governor ultimately refuses to do so.

12. July 1997. In an interview with the Maine publication "Working Waterfront" on the extent of the 1980 Settlement Act, the Maine Indian Tribal-State Chairman Richard Cohen states that "there is a divided opinion within the attorney general office among people who were not involved in those negotiations." "There seems to be a belief that that the Indian Lands Claims Settlement Act was signed and that its carved in stone. There has to be some disabusing of that. There were many issues, including fishing rights, that were subject to discussion and further legislation at that time."

    Here is the man who negotiated the 1980 Settlement Act for the State of Maine and he clearly does not agree with the State's current interpretation of the Act-that all jurisdictional issues were resolved by the Act, end of story. Chairman Cohen's statements significantly bolster the Maliseet argument that the 1980 Settlement Act was not the end, but the beginning of negotiations between the State and the Maliseet regarding jurisdiction. Chairman Cohen passed away in the late 1990's so his position is only available to us through his recorded words.

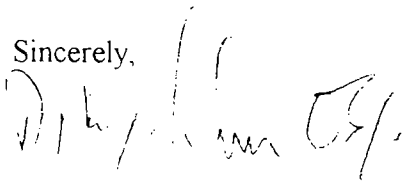
13. **September, 12, 1995 and September 25, 1996. Minutes of the Maine Indian Tribal-State Commission. On these two dates the Commission discussed the conflict of interest of one its its members, Matt Manahan of the law firm Pierce Atwood of Portland, Maine. Mr. Manahan refused to recuse himself on issues that may be precendential and of a benefit to his clients, who are clearly adversarial in interest to the Tribes on many issues. When Mr Manahan refused, he indicated that it was unnecessary as Governor King has not asked him to step down. See pages 3 and 9.**

14. Latest Fish Advisory issued by the State of Maine. Shows the Maliseet's traditional river, the Meduxnekeag, so contaminated that the Tribe is limited **to two fish meals a month**!

15. Bullet Points for our Conference Call with Carol Browner. This will explain the significance of documents 13 and 14.

Please call me with any questions.

Sincerely,



Douglas J Luckerman, Esq.

THE WHITE HOUSE

WASHINGTON

January 20, 1978

MEMORANDUM FOR THE PRESIDENT

FROM: Robert J. Lipshutz RJL

SUBJECT: Maine -- Indian Land Claims

With reference to this matter, you will recall that subsequent to Bill Gunter's recommendation to you I suggested that you withhold making a final determination of your recommendation to the Congress until we could discuss the matter with all of the various interested parties in an attempt to arrive at a consensus which was consistent with Bill Gunter's proposal.

During this period of time I personally have had numerous discussions with members of the Congressional Delegation from Maine, the Governor of Maine, the leaders of both Houses of the State Legislature, representatives of the Indian tribes, and others.

During the past few weeks, a three-person task force has been discussing details of proposals and counter proposals with the Indian tribes and their representatives, in an attempt to reach a consensus which was as close as possible to the Gunter recommendation and also in a form which the Maine political leadership (and particularly the Congressional Delegation) might concur. This three-person task force acting on our behalf consisted of Steve Clay (Bill Gunter's law partner), Leo Krulitz (Legal Counsel for the Department of Interior), and Eliot Cutler (representing OMB).

As a result of these numerous discussions we have arrived at a proposed "joint memorandum of understanding" between the Indian tribes and the Executive Office, which I am attaching, and which I recommend that you approve. I then will attempt to get the approval of the Maine Delegation, through the leadership of Senator Muskie, after which I would propose that we support the necessary legislative effort to implement this agreement.

In the first paragraph of this memorandum you will note the four alternative methods of settling this dispute. In essence,

the Federal government will have the option to consummate the agreement under any one of these four alternatives, the specific alternative to be exercised depending upon the decision of the large private landholders, on the one hand, and the State of Maine, on the other hand.

There are three categories of landholders in Maine: (1) small private landholders, (2) large private landholders (defined as those holding more than 100,000 acres of land), and (3) the State of Maine itself, which holds about 500,000 acres. Under the terms of this proposal, the minimum Federal obligation would be: (1) to extinguish the Indians' claim for up to 100,000 acres held by each landholder, thereby clearing title completely of all the land of the "small property owners" as well as 100,000 acres each of the land of the "large property owners"; (2) to appropriate $25,000,000 to compensate the Indians for extinguishing these claims. It is my understanding that there are approximately seven companies (as well as the State) who own more than 100,000 acres of land each; these are the "large property owners".

The Federal dollar obligation then could increase to a maximum of $30,000,000 if the large private landholders agree to settle. The Federal government would have to be able to acquire this 300,000 acres of land from the "large property owners" at an average price of only $16.66 per acre -- which is considerably less than the current fair market value of such land.

With reference to the State of Maine, which owns approximately 500,000 acres of land to which the title is in question as a result of these claims, the State would have the option either of:

1. Continuing to litigate over this matter, as the State Attorney General and Governor have indicated they would do; or

2. Settling this claim against the land for the sum of $15 million.

With reference to the State of Maine and the Indian tribes, up until this time the State has expended a considerable sum each year for the benefit of the tribes, primarily because the tribes have not heretofore been "formally recognized as tribes" entitled to Federal benefits. That now has been changed, and it is quite likely that the annual expenditure by the State of Maine would be eliminated or substantially reduced. Nevertheless, the State still would find it difficult, both financially and politically, to pay out a sum

as large as $15 million at one time to settle this [illegible]. Therefore, this seems to be the most difficult aspect [illegible] dispute to settle, but we still believe this is the best approach at present. As contrasted with the pandemic of law suits against private landowners, there is little, if any, economic dislocation created by an ongoing law suit involving only the publicly held land of the State of Maine.

Bill Gunter and I both recommend that you approve proceeding in this matter.

_____Approve

_____Disapprove

_____Other

Joint Memorandum of Understanding between:

- Passamaquoddy/Penobscot Negotiation Committee
- Eliot Cutler, Leo Krulitz, Steven Clay--White House Work Group on Indian Claims in Maine

We agree as follows:

Items 1 and 2

The Nations agree to accept any one of the four following settlement alternatives: (1) settlement of claims against small landholders, litigation for possession and trespass damages against all others; (2) settlement of claims against all private landholders, litigation against the State of Maine; (3) settlement of claims against small landholders and the State of Maine, litigation against large landholders; (4) settlement of all claims. Amounts of land and money for the alternatives are as follows:

Alternatives	Land	Money
1	-0-	$25,000,000
2	300,000 acres plus options to purchase 200,000 acres	$28,500,000
3	-0-	$40,000,000
4	300,000 acres plus options to purchase 200,000 acres	$43,500,000

(a) The Federal Government reserves the right to select any of the above alternatives. The Federal Government will consult with the Tribes in advance before final selection of an alternative.

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

(b) The amount of land and money to be obtained under the various alternatives from the various parties shall be determined by the Federal Government. In no event shall the total amounts under each alternative be less than as specified above.

(c) The land selection process will be established with the consent of the Nations and the Federal Government. All lands acquired in a settlement shall be held-in Trust for the benefit of the Nations by the Federal Government.

(d) The funds shall be paid in Trust for the benefit of the Nations on terms agreeable to them and the Federal Government. No part of the capital will be distributed on a per capita basis. The terms of the Trust shall not preclude reasonable investment of the principal nor effect in any way the right of the Nations to dispose of income. The right to dispose of income shall be wholly a matter for tribal discretion.

(e) The 300,000 acres of land to be obtained under alternatives 2 and 4 shall be average quality woodland which has a current market value of about $112.50 per acre.

(f) The options for the purchase of 200,000 acres of land will be exercisable by the Tribes at market value at the time exercised. Tribal funds will be used to exercise the options.

(g) To facilitate acquisition of the land specified in (e), the Federal Government will offer to purchase such 300,000 acres up to a total cost of $5,000,000.

(h) Land and money provided by this settlement shall be divided equally between the two Nations.

Items 3 and 4

The Federal Government pledges that the Nations will be considered fully federally recognized tribes and will receive all federal services, benefits and entitlements on the same basis as other federally recognized tribes. If option 3 or 4 is implemented, the State of Maine will not be expected to provide any special Indian services to the Tribes.

Item 5

If land is acquired pursuant to alternatives 2 and 4, such land and lands currently held by the Tribes shall be treated for governmental purposes as other federally recognized tribal lands are treated. The consent of the United States shall be given for the State of Maine to exercise jurisdiction over criminal offenses and civil causes of action with regard to such lands pursuant to 25 USC 1321, 1322. Provided, however, that the United States shall have the right to effect a retrocession of such criminal and civil jurisdiction upon request of the Tribes within two years.

Items 6 and 7

If either alternative 2 or 4 is implemented, in addition to acquiring the land specified, the Federal Government shall use its best effort to acquire easements for hunting, fishing, trapping, fowling, and gathering for non-commercial purposes and the right to obtain brown and yellow ash from the large landowners within the claim area defined with certainty in the last litigation report on file with Justice from the Department of the Interior which easements shall in no way interfere with the property owners' right to use such lands for any purpose. If such efforts are unsuccessful, the Tribes shall have the right to reject such alternative.

Item 8

We will further discuss the problem of flooding by Bangor Hydro-Electric.

Item 9

The Federal Government will vigorously pursue a final solution on the terms specified in this memorandum of understanding. A letter from the President will be provided promising to vigorously oppose any Congressional effort to extinguish the Tribes claims without Tribal consent on terms other than provided herein.

Item 10

We are agreed that it would be preferable if the private non-Indian landholders within Indian Township could be convinced to voluntarily sell their claims to lands within that township, and that we will make a good faith effort to obtain such consent.

Item 11

The settlement will take a form which will effectuate the terms of this agreement and preclude further litigation as indicated.

Item 12

The Work Group will have 60 days after the initialling of this Memorandum of Understanding in which to reach an agreement in principle with the state of Maine and large land owners.

FOR IMMEDIATE RELEASE FEBRUARY 10, 19[illegible]

Office of the White House Press Secretary

THE WHITE HOUSE

JOINT MEMORANDUM OF UNDERSTANDING

For several months, representatives of the Passamaquoddy and Penobscot Tribes and a White House Work Group comprised of Eliot R. Cutler, Associate Director, Office of Management and Budget; Leo M. Krulitz, Interior Department Solicitor; and A. Stephens Clay, Washington attorney, have been meeting to discuss the tribes' land and damage claims in Maine and the federal services to be extended to the tribes in the future. These discussions have produced agreement with respect to both a partial settlement of the claims and future federal services. The parties hope that the terms and conditions described here also will serve as a vehicle for settlement of all the tribes' claims.

A. The Basic Agreement: A Partial Settlement

The Administration, through the White House Work Group, agrees to submit to the Congress and to seek passage of legislation which would provide the two tribes with the sum of $25 million in exchange for (1) the extinguishment of the tribes' claims to 50,000 acres per titleholder of such land within the 5 million-acre revised claims area (Area I)[1/] to which title is held as of this date by any private individual(s), corporation(s), business(es) or other entity(ies), or by any county or municipality;[2/] and (2) for the extinguishment of all their claims in the

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1/ This acreage description of the revised claims area is based on information taken from maps and not from surveys. The final revised claims area, to be determined by the Department of Justice based on information furnished by the Department of the Interior, may vary from this description by ± 5%.

2/ For purposes of such extinguishment, titleholding, whether direct or indirect, partial or complete, is deemed to include control, or ability to control, through subsidiaries, partnerships, trusts, or other entities.

7.5 million additional acres (Area II) in the claims area as originally defined (Areas I and II). Thus, every landholder within Area I would have his title cleared of all Passamaquoddy and Penobscot land and damage claims up to 50,000 acres,[3/] and all titles in Area II would be totally cleared of such claims.

The tribes will execute a valid release and will dismiss all their claims with respect to Area II and with respect to landholders with 50,000 acres or less in Area I. The legislation will not clear title with respect to any of the holdings of any private individual, corporation, business, or other entity which are in excess of 50,000 acres in Area I, nor to any lands in Area I held by the State of Maine.

By preliminary estimate, the $25 million to be paid by the federal government would clear title to approximately 9.2 million acres within the original 12.5 million-acre claims area. All claims against householders, small businesses, counties and municipalities would be cleared. Approximately 3.3 million acres in Area I out of the original 12.5 million-acre claim would remain in dispute. About 350,000 acres of the disputed land is held by the state; the remaining 3.0 million acres is held by approximately 14 large landholders.

B. Proposed Settlement of the Tribes' Remaining Claims Against the State of Maine and Certain Large Landholders

The tribes and the White House Work Group recognize the desirability of settling the tribes' entire claim, if possible. However, direct discussions between the tribes and the State of Maine or between the tribes and the large landholders either have not occurred or have not been successful.

3/ For any landholder with holdings in excess of 50,000 acres, the 50,000-acre exemption would apply to lands which are representative of the overall holdings of such landholder.

In an effort to promote an overall settlement, the White House Work Group has obtained from the tribes the terms and conditions on which the tribes would be willing to resolve their claims against the State of Maine and against the large landholders whose titles would not fully be cleared by the Basic Agreement. The tribes have authorized the Work Group to communicate these terms and conditions to the appropriate representatives of the State and the affected landholders. In this context, the Work Group serves primarily as an intermediary with limited authority to settle the remaining claims on the terms set forth by the tribes.

1. Claims Against the State of Maine

The tribes have claims against the State of Maine for approximately 350,000 acres of State-held lands in Area I and for trespass damages. Rulings on several of the defenses originally available to Maine already have been made by the courts in the tribes' favor.

The State of Maine currently appropriates approximately $1.7 million annually for services for the Penobscot and Passamaquoddy Tribes. The tribes are willing to dismiss and release all their claims for land and damages against Maine in exchange for an assurance that Maine will continue these appropriations at the current level of $1.7 million annually for the next 15 years. The appropriations would be otherwise unconditional and would be paid to the United States Department of the Interior as trustee for the tribes. Should the State agree to give this assurance, the legislation to be submitted to the Congress by the Administration

would provide for the extinguishment of all tribal claims to the affected State-held lands and all trespass damage claims when the last payment is made.

2. Claims Against Large Private Landholders

In exchange for the dismissal, release and extinguishment of their claims to approximately 3.0 million acres within Area I held by the large landholders as described in the Basic Agreement, and in exchange for a dismissal and release of all trespass claims against said individuals or businesses, the tribes ask that 300,000 acres of average quality (approximately $112.50 per acre) timber land be conveyed to the Department of the Interior as trustee for the tribes, and that they be granted long-term options to purchase an additional 200,000 acres of land at the fair market value prevailing whenever the options are exercised. The tribes also ask for an additional $3.5 million to help finance their exercise of these options.

In recognition of the desirability of achieving an overall settlement, the Administration will recommend to the Congress the payment by the federal government of an additional $3.5 million for the tribes, if the affected private landholders will contribute the 300,000 acres and the options on 200,000 acres as set forth in the tribes' settlement conditions. Additionally, the Administration will recommend the payment of $1.5 million directly to the landholders contributing acreage and options to the settlement package. The $1.5 million would

be divided proportionately according to the contribution made by the respective landholders.

If a settlement of the tribes' claims against the large landholders can be accomplished on the terms specified above, the Work Group has agreed to use its best efforts to acquire easements permitting members of the tribe to hunt, fish, trap and gather for non-commercial purposes and to obtain brown and yellow ash on all property from the large landholders within Area I. The tribes will be subject to applicable laws and regulations in the exercise of these easement rights. Additionally, it is agreed that the exercise of easement rights shall in no way interfere with the landholder's use of his property, either now or in the future. If the Work Group's efforts to acquire these easements are unsuccessful, the tribes have reserved the right to reject a settlement with the large landholders.

C. Other Terms and Conditions

(1) Nothing in this agreement is intended by the parties to be an admission with respect to the value of these claims. If settlement can be accomplished, it will reflect a compromise from every perspective. The tribes regard their claims as worth many times more than any consideration to be received under this agreement. The State of Maine, on the other hand, has taken the position that the tribes' claims are without merit.

The Administration has chosen to evaluate the claims not merely on the basis of their merit and their dollar value, but also in light of

the facts that the claims are complex; they will require many, many years to resolve; and the litigation will be extremely expensive and burdensome to everyone and could, by its mere pendency, have a substantial adverse effect on the economy of the State of Maine and on the marketability of property titles in the State.

With these considerations in mind, any settlement will reflect a shared understanding of the reality created by the litigation, rather than one party's view of the equity of the claims. The claims are unique, and resolution of them on any basis other than litigation similarly must be unique.

(2) If a settlement can be reached with the State of Maine, with the large landholders, or with both on the terms described above, the White House Work Group has the option of implementing a settlement on those terms, rather than on the terms of the Basic Agreement specified in Section A. The Work Group has agreed to consult with the tribes before choosing any of the alternatives provided by this agreement.

(3) The tribes recognize that in no event shall the federal government's cash contribution to any settlement exceed $30 million; the federal government will pay $25 million to achieve the Basic Agreement, and an additional $5 million to facilitate a settlement of all claims against private landholders.

(4) The location of the 300,000 acres must be satisfactory to the tribes. However, it is agreed that the 300,000 acres may be in several tracts, so long as the timber land is of average quality. It is also agreed that land will be selected in such a manner as to not unreasonably interfere with the large landholders' existing operations.

(5) The cash funds to be obtained in the settlement shall be paid in trust for the benefit of the tribes on terms agreeable to them and the federal government. No part of the capital will be distributed on a per capita basis. The terms of the trust shall not preclude reasonable investment of the principal, nor shall they affect in any way the right of the tribes to dispose of income. The right to dispose of income shall be wholly a matter for tribal discretion.

(6) All property and cash obtained pursuant to this settlement shall be divided equally between the two tribes.

(7) The federal government pledges that the tribes will be considered fully federally recognized tribes and will receive all federal services, benefits and entitlements on the same basis as other federally recognized tribes.

(8) All lands acquired by the tribes and land currently held by the tribes shall be treated for governmental purposes as other federally recognized tribal lands are treated. The consent of the United States will be given to the exercise of criminal and civil jurisdiction by the State of Maine pursuant to 25 USC 1321, 1322, provided that the United States may effect a retrocession within two years upon request of the tribes.

(9) If a settlement can be reached with the State of Maine, the White House Work Group will use its best efforts to obtain for the tribes assured access under mutually agreeable regulations to a designated place

in Baxter State Park for religious ceremonial purposes. If the Work Group's efforts to obtain such assured access are unsuccessful, the tribes have reserved the right to reject a settlement with the State of Maine.

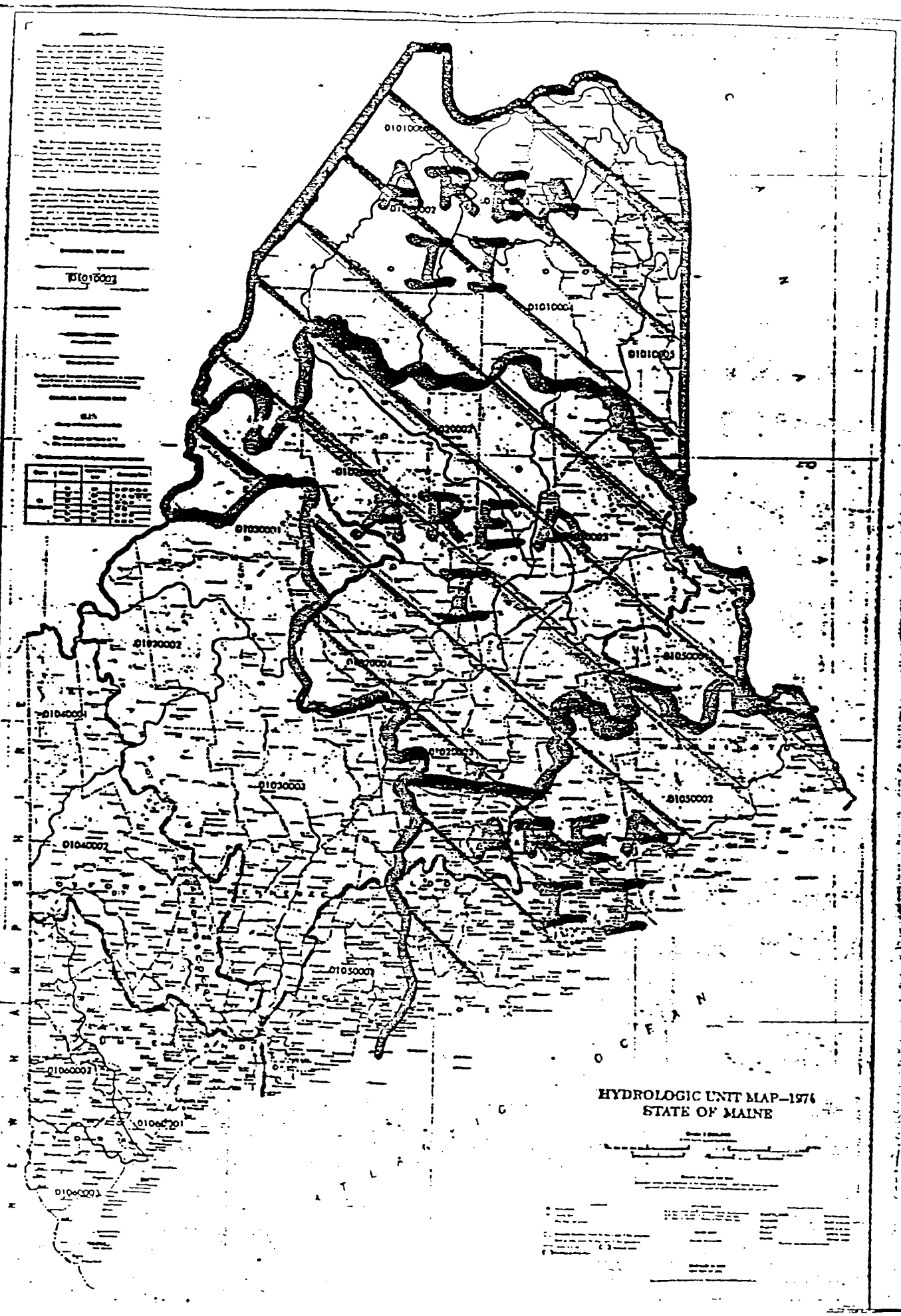
(10) With respect to settlement of the tribes' claims against the State of Maine and large landholders within Area I, the White House Work Group has 60 days to accomplish an agreement. If such a settlement cannot be accomplished within that period, the parties will proceed with the Basic Agreement outlined in Section A, above.

(11) The settlement agreement will be executed in a form appropriate to effectuation of the terms of the agreement and will preclude further litigation with respect to all claims settled. Suitable procedural safeguards will be adopted and implemented by court order in the pending litigation to assure that the parties' intent with respect to this settlement agreement is accomplished.

(12) The White House Work Group and this Administration pledge their vigorous support to settlement on the terms and conditions specified in this memorandum.

(13) This agreement is subject to ratification by the tribes on or by February Ninth, Nineteen Hundred and Seventy Eight.

FOR THE ADMINISTRATION:	FOR THE TRIBES:
Eliot R. Cutler	
Leo M. Krulitz	
A. Stephens Clay	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HYDROLOGIC UNIT MAP—1974
STATE OF MAINE

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

MAR 27 1978

Honorable Joseph E. Brennan
Attorney General
State Capitol Building
Augusta, ME 04333

Dear Mr. Brennan:

We have your letter of March 2. Our responses to the questions which you have raised are as follows:

1. Past State Payments

You have asked whether the White House Work Group, in formulating its recommendations in this matter, has taken into consideration past payments by Maine to the tribes in question. As you have represented to us, those payments total 15 million dollars over the past 15 years. Assuming a combined tribal population of 1,500 over that period, Maine has thus paid out approximately $666.67 per Indian in services, housing and other support annually during that 15-year period.

As far as we can determine, the monies paid out by the State of Maine to these two tribes in the past were largely the result of Maine's voluntary assumption of duties and obligations owed by the Commonwealth of Massachusetts to the tribes. As both the District Court and the First Circuit recognized in the Joint Tribal Council v. Morton litigation, voluntary assistance rendered by a state to an Indian tribe is not determinative of or necessarily related to the definition of federal responsibilities to that same tribe. Accordingly, even if the federal government properly could be found to have had an obligation to these tribes throughout the past 200 years, the existence of that hypothesized obligation would not necessarily negate or condition the obligations to the tribes voluntarily assumed by Maine under the Articles of Separation between Maine and Massachusetts or otherwise.

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

Perhaps you mean to argue that if the transactions wherein the tribes originally lost their land are void, then Maine's obligations to the tribes are not supported by consideration, and that consequently Maine should be "reimbursed" for any payments it has made relying on the assumption that the land transfers were valid. The argument assumes the interdependency of Maine's obligations to the tribes and the validity of the land transfers. The assumption may or may not be valid. Further, because such an argument presupposes a 200-year violation of the Nonintercourse Act, it concedes that the tribes have been wrongly denied possession of their lands during that entire 200-year period. If so, they now appear entitled to damages as well as possession. Those damages would appear likely to exceed the total payments voluntarily made by the state over the past 15 years by a substantial amount.

We know of no authority for your contention that the federal government "has been obligated to provide support services for many years past because of the trust relationship it now asserts to exist". That "trust relationship" exists now because Judge Gignoux and the First Circuit have found it to exist. Both courts have clearly limited the Federal Government's trust responsibilities under the Nonintercourse Act to land transactions "which are or may be covered by the Act". While it is true that the Interior Department subsequently determined independently that the tribes were entitled to federal recognition and therefore to a degree of federal financial support, that decision in no way relieved the State of Maine of any obligation it independently had assumed to the tribes. Moreover, the United States had no obligation to provide any monies to these tribes until the Department of Interior had determined their eligibility for such payments.

Finally, we would reiterate that the terms of settlement have been proposed to the State of Maine <u>by the tribes</u>. In our discussions with the tribal representatives, the Work Group did urge that the tribes take into consideration Maine's past payments to the tribes. It is our understanding that the tribes did give the payments the consideration requested.

2. Integrity of State Laws

We already have advised you that the term 'retrocession' as used in paragraph (8) on page 7 of the Joint Memorandum is a misnomer. Nevertheless, if the State of Maine initially exercises civil and criminal jurisdiction over the acquired Indian lands pursuant to 25 U.S.C. § 1321-22, this will only establish their authority to exercise judicial jurisdiction over that territory. In Bryan v. Itasca County, 426 U.S. 373 (1976), the Supreme Court held that that statute, and its predecessor, P.L. 280, did not give the States any regulatory or taxing authority over Indian reservation lands.

In this instance the Joint Memorandum does not state whether the acquired lands will constitute an Indian reservation. Not all Indian lands do. The Memorandum states only that the acquired lands and current tribal lands "shall be treated for governmental purposes as other federally recognized tribal lands are treated." Off-reservation tribal lands are often treated very differently from reservation tribal lands, depending on the situation. We assume that the Tribes would want all their lands treated as Indian reservations, but we assume that further discussions could be undertaken concerning this question.

Indians on the tribal lands generally would not be subject to state laws; non-Indians may or may not be, depending on the attempted exercise of state authority. For example, non-Indian retail businesses would have to be federally licensed, and the State would exercise no authority over them because of federal preemption. Warren Trading Post v. Arizona Tax Comm'n, 380 U.S. 685 (1965). However, this lack of state authority does not result in a jurisdictional void, or even necessary deference to tribal authority. The federal government would exercise authority over matters of consumer protection (e.g., Indian trader laws, Truth-In-Lending Act, Fair Credit Reporting), environmental protection, minimum wage laws, and fish and game laws. The general rule is that federal laws of general application apply to Indians unless they state otherwise. FPC v. Tuscarora Indian Nation, 362 U.S. 99 (1960).

3. Tax Losses

Because the acquired lands would be held in trust by the Secretary of the Interior for the benefit of the Tribes, the realty would not be subject to state taxation. If the lands are considered an Indian reservation, the personal property of Indians would also be exempt from state taxes. Non-Indians would not be similarly entitled to that exemption. If the lands are in reservation status, the income of Indians who live and work on the reservation would be exempt from state (not federal) tax. McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164 (1973). Non-Indian income would be taxable. The State would not be able to impose sales taxes on Indian purchasers or gross receipts taxes on Indian vendors to collect sales taxes assessed against non-Indian purchasers. Moe v. Confederated Salish & Kootenai Tribes, 425 U.S. 463 (1976)

4. Easement Uses and Fish and Game Laws

We do not know the exact intensity of the contemplated use of the easements requested by the tribes. However, as the Joint Memorandum states at p. 5, "(t)he tribes will be subject to applicable laws and regulations in the exercise of these easement rights." As we explained to you at our February 9 meeting, this sentence refers to state laws and regulations.

5. Other Indians in Maine

Previously it has been reported that the two tribes might assert claims to our 12 million acres. In fact, the tribes claim approximately 10 million acres. With respect to that land, title will be cleared completely. All claims by these two tribes to Maine land will be extinguished.

If any other tribes have claims to any part of the 10 million acres now claimed by the Passamaquoddies and Penobscots, the defense of those claims and the responsibility for any settlement or liability arising from those claims must be assumed by the Passamaquoddys and the Penobscots. The Administration's bill will create a fund out of which all tribal claims to any part of the acres claimed by the tribes and cleared must be satisfied. Based on the information submitted to us to date, the Penobscots and Passamaquoddys are the only tribes entitled to participate

in that fund. No other claims of substance in Maine have been made or brought to our attention.

The settlement proposed with respect to the Maine claims does not have particular precedential value with respect to any other claims. Each case is unique. In most other cases, there will be no need for any involvement by the Administration.

6. Changes from the Gunter Plan

Complex litigation involving many parties and substantial damage claims can be difficult to compromise. With respect to such cases, many different proposals rationally may be characterized as "fair" or "equitable". Judge Gunter's original proposal, which could have cost the State of Maine more than twice as much as the Task Force's recommendations, appeared "fair and equitable"; however, the Administration also consideres the revised terms of the Basic Agreement to be "fair and equitable".

The critical distinguishing aspect of the Task Force's recommendation is that the settlement between the federal government and the tribes described in the "Basic Agreement" has been arrived at by a process of arms-length, good-faith bargaining, rather than by governmental dictate. The plain and simple fact is that any effort to implement a dictated rather than a bargained settlement would be legally challenged by the tribes. As long as that legal challenge were unresolved, homeowners and other small property owners in Maine would suffer adverse economic consequences. The tribes' legal challenges to such a settlement could require many years to resolve. Accordingly, immediate protection and relief for the hundreds of thousands of Maine citizens living in the claims area can be achieved only by arriving at a bargained settlement in advance of litigation.

The tribes would not accept the terms recommended by Judge Gunter. After extensive discussions over the role to be played by the federal government in the resolution of these claims, the Administration concluded that an early, partial settlement on the terms outlined in the Basic Agreement (Part A of the Joint Memorandum) was in the best

interests of the citizens of Maine living in the claims area, of the tribes, and of the federal government. The Basic Agreement does not increase the risk or exposure either of the State of Maine or of the remaining private defendants. Indeed, in some respects, the remaining private defendants are the most substantial beneficiaries of the Basic Agreement, because they will have more acres cleared by the legislation than any other party.

Neither the Task Force nor the Administration assigns relative degrees of guilt to the different defendants. Exposure, of course, varies. The respective defendants' ability to litigate the claims effectively and defend themselves fully also varies. The Administration's overriding concern in attempting to achieve a fair resolution of these claims has been the protection of small property owners. The settlement outlined in the Basic Agreement, if approved by Congress, provides that protection.

7. Land Acquisition Costs

No final settlement has been approved with respect to the Narragansett claims in Rhode Island. Moreover, as pointed out in response to question 5, the Administration considers each claim in each state as unique. The facts of the claims differ. The capacity of the defendants to protect themselves or to survive the adverse economic consequences of the pending claims varies. The tribes' demands and legitimate claims and needs vary. Property values are also different in different communities.

Of course, if the private land owners in Maine agreed to settle with the tribes, they would receive a complete release of all the tribes' claims. The release would include claims to almost 3 million acres of land having a current fair market value in excess of 300 million dollars. In view of the members of the Task Force and of the Administration, that release would have a value substantially greater than the 1.5 million dollar cash payment to be made by the federal government to the private land owners should they participate in such a settlement. Accordingly, a settlement on such terms cannot fairly be characterized as providing the large property owners only $5 per acre.

8. Payments to Interior Department

The Tribes have requested that the Secretary of the Interior be a conduit for the State contribution to be added to the trust fund of the tribes. A preliminary report on the economic consequences of a land claim settlement was recently commissioned by the Tribes, and that report recommends that the bulk of the monetary portion of any settlement be invested in the State of Maine.

9. Baxter Park Easement

With respect to the easement for religious use of certain areas in Baxter State Park, it is our understanding that the tribes merely request formal permission to do something which they can now do with approval of the Baxter State Park Commission or other proper authorities.

10. Responsibility for Services

The provision of State services on Indian reservation lands is for the most part a matter left to the sound discretion of the States. One possible exception is the provision of educational services which the courts have held must be provided to all children within a State on an equal basis. Brown v. Board of Education, 347 U.S. 483 (1954). However, under the Impact Aid program administered by the Office of Education at HEW the Federal government pays local public school districts to make up for the tax exempt status of Indian reservation lands. With respect to highway maintenance and improvement and forest fire protection, the practice has been in the West that the States only maintain those roads on the State highway system, while the Federal and Tribal governments are responsible for all other roads. State forest fire protection has not been extended to forest areas owned by the United States in trust for Indians.

11. Changes in Federal Assistance Patterns

The following information is based upon the assumption that any land, no matter how it is acquired by the tribes, will become federal reservation land.

Parks - Federal funding for the purchase of park and recreation land by state and local governments comes from the Land and Water Conservation Fund (LWCF) which is administered by the Department of the Interior. The distribution of LWCF money is based on a formula contained in the statute which establishes the program. The loss of existing state parklands by Maine or the acquisition of lands now being held privately by the tribes would not increase Maine's LWCF eligibility.

Federal Highway Trust Fund - Creation of a federal reservation in Maine will not increase the amount of money which will be paid to the state under the Federal Highway Trust Fund. However, the reservation land will be considered public land for the purposes of determining the state's required matching share. The amount of money coming to the state will not increase, but the amount of money which the state will have to put up as a match will very likely be reduced.

Other Assistance - The Department of the Interior administers a program of building and repairing reservation roads and bridges. Funds are appropriated to the Department of Transportation, but are administered by Interior. These funds are distributed on a formula basis which takes into account reservation land area, population and existing road mileage. Creation of a reservation would direct some of this money into Maine.

Federal Impact Aid to local school districts, which is administered by the Department of Health, Education and Welfare, could also increase. Impact Aid is based upon a formula which considers the number of children whose parents are living or working on federal land.

It is possible that the funding might increase under the Indian Education Act which is also administered by HEW. Funding under this Act is directed toward specific programs, so it is difficult to determine what the pattern of increase might be.

All of the above is in addition to funding which will come to the tribes through the Bureau of Indian Affairs and the Indian Health Service. It is also anticipated that the Maine tribes will be eligible to participate in other federal programs which have special Indian "set

asides" such as Labor's Comprehensive Employment and Training Act program, the programs of the Economic Development Administration and the Department of Housing and Urban Development's low income housing programs, all of which should have a positive impact on the general state of Maine's economy.

12. Contribution from Massachusetts

The State of Maine and its citizens, corporate and individual, are the current holders of the lands claimed by the tribes in this area. The State and its citizens, of course, are free to assert any claim which they feel would be appropriate against the State of Massachusetts as a prior holder of this land. The value, if any, of such a claim would appear affected by the fact that Maine and its successors in title, have held and used the land in question for approximately 150 years of the 200-year period. Such injury as the tribes have suffered results from the loss of use of the land during that period, and from the loss of possession today. Massachusetts cannot restore possession of the land, and no evidence has been submitted to us by your office demonstrating that Massachusetts has benefitted substantially from the allegedly void transfers. Have you any such evidence?

We are not in a position to determine whether Maine did know, should have known, or would be presumed under the law to have known of the tribe's potential claims at the time Massachusetts transferred its rights (and, presumably, its liabilities) with respect to the land to Maine. What is your assessment of the law and evidence relating to that issue?

Sincerely,

Leo Krulitz

Leo M. Krulitz

Eliot R. Cutler

Eliot R. Cutler

Stephens Clay

A. Stephens Clay

cc: Honorable James B. Longley
Honorable Robert Lipshutz
Honorable Edmund S. Muskie
Honorable William D. Hathaway
Honorable William S. Cohen
Honorable David F. Emery
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DEPARTMENT OF THE ATTORNEY GENERAL
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March 2, 1978

Honorable Leo Krulitz
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Re: United States of America v. The State of Maine.

Gentlemen:

In the course of our review of the Joint Memorandum of Understanding developed by the White House Work Group and representatives of the Penobscot and Passamaquoddy Tribes, a number of questions have been raised. We believe that, prior to development of any final State position on the proposed settlement, answers to these questions are necessary. It is unfortunate that we did not have an opportunity to pose these questions to the Work Group prior to the preparation of the Joint Memorandum.

1. Past State Payments.

In the past 15 years, the Maine taxpayers have contributed approximately $15,000,000 to provide social services, housing and other support to the Indian Tribes. The federal government now recognizes that it is obligated to provide support for the Indian

Tribes and that it has been obligated to provide support services for many years past because of the trust relationship it now asserts to exist. In light of the present federal position regarding its responsibilities for financial support of the Indian Tribes, is the federal government prepared to reimburse the State of Maine for the support provided by the State in lieu of the federal support which should have been available to the Indian Tribes?

Assuming that the federal government is correct in demanding State participation in a settlement as a quid pro quo for federal involvement (a principle with which we take exception), why were Maine's past payments to the Tribes insufficient to satisfy this principle? Has consideration been given to the fact that none of the other states involved in Trade and Intercourse Act claims, Massachusetts, Rhode Island, Connecticut or South Carolina, ever made similar payments to the Tribes located in those states? In view of Maine's extraordinary efforts (approximately $10 - $15 millio in the last 19 years alone), why is more expected by the federal government from Maine citizens and taxpayers? Why is it fair to Maine to expect more of Maine taxpayers who acted in good faith all these years in taking care of what are now asserted to be federal Tri

2. Integrity of State Laws.

The Joint Memorandum indicates that any lands acquired by the Indians be within the State's criminal and civil jurisdiction subject to "retrocession" which would terminate state authority over the lands. The question of the status of enforcement of state laws on acquired Indian lands would appear to require resolution prior to any settlement because of the many implications involved. For example, in developing new businesses, as is proposed with the $25 million federal contribution, would the Tribes take advantage of exemption from state consumer protection, environmental, work place safety or minimum wage laws to compete unfairly with other Maine business who must remain subject to these laws? What protections, if any, will exist for wild animals and fish which live in or cross the acquired Indian lands? What protections will there be for abutting landowners from such problems as stream siltation, air pollution or noise which may result from uncontrolled industrial and commercial activity, such as clearcutting timber, on Indian-acquired land?

3. Tax Losses.

At current rates of taxation ($0.75 - $0.80 per acre) the State will lose at least $400,000 a year in taxes on the 500,000 acres which it is proposed that the Indians would acquire. Assuming an increase in this tax rate over the course of time, this tax loss will surely increase. Will this be the limit of tax losses or will there be other tax losses? For example, will all improvements on

this property be exempt from State taxation? Will business transactions on this property be exempt from State sales and income taxes. Would the exemption from State sales and income taxes be limited to transactions between Indians or would the exemption, if there is to be one, also extend to transactions between Indians and non-Indians? We understand that there is litigation in process in Washington State to determine whether an Indian Tribe can sell tax free cigarettes to non-Indians. The sale of such cigarettes has cost the State of Washington an estimated $8 - 14 million in lost revenues already. Is there likely to be a similar problem in Maine with lost taxes?

4. Easement Uses and Fish and Game Laws.

The proposed settlement requests the Indians be given easements to hunt and fish and collect brown and y e l l o w ash on approximately 3 million acres. How intensive a use is contemplated under these easements? Will the uses under these easements be subject to State criminal laws, fish and game laws, and other necessary State controls designed to prevent abuse of land and resources?

5. Other Indians in Maine.

The Joint Memorandum makes no provision for claims of or federal support for other Indians in Maine, i.e., the Micmac and Maliseet (Malicite). It is entirely possible, however, that either or both of these tribes may assert against the State the same kind of claims asserted by the Penobscot and Passamaquoddy. Indeed, it has curiously been ignored that the 1794 agreement that forms the basis of the Passamaquoddy claim was executed by Massachusetts, not only with the Passamaquoddy, but other eastern tribes, which appears to include the Micmac and Maliseet. What precedential value will the proposals in the Joint Memorandum have on these other latent claims? Is the federal government prepared to extinguish these other claims? Will the federal government take the same posture toward settlement in those cases as it does in this?

6. Changes from the Gunter Plan.

The Joint Memorandum contains an agreement by the White House to extinguish the Tribal claims to 9,200,000 acres in return for a payment of $25,000,000. This is in contrast to Judge Gunter's proposal to extinguish claims to 12,000,000 in return for the same amount of money. Why did the White House decide to still pay $25,000,000 to the Tribes but extinguish a smaller amount of the claim? Since we understand the original proposal of Judge Gunter to have been characterized generally by President Carter as fair and equitable, why did the White House retreat from the position of Judge Gunter that no private landowners be held responsible? Does the White House now take the position that indeed some landowners are, because of the size of their holdings, more guilty than others and less deserving of the protection originally fashioned by Judge Gunter? If so, why?

7. Land Acquisition Costs.

The federal government proposes to assist the Indians in acquiring approximately 300,000 acres of land from private landowners for a payment of approximately $1.5 million, or $5 an acre. At the same time, we understand that a tentative settlement has been reached in a similar suit in Rhode Island, that involves a proposal under which the federal government will acquire land for the Narragansett Tribe at fair market value. Assuming that the federal government agrees to assist in that settlement by acquiring land at fair market value, why should Maine lands purchased to resolve a similar dispute be acquired for far less than fair market value? Is the federal government prepared to reconsider its position and pay prices at or near fair market value for land acquired in Maine?

8. Payments to Interior Department.

The proposed settlement contemplates that any payments by the State to the Indians be paid through the Interior Department. If the settlement is to be between Maine and Maine's Indians, why should the Interior Department play a middleman role in payments? Would it be preferable to keep the money in Maine by making any payments from Maine direct to Maine's Indians without channeling the funds through a Washington bureaucracy which might mandate uses of the funds in a way desired by neither the State nor its Indians?

9. Baxter Park Easement.

The Indians have requested, as part of the settlement, a religious easement in Baxter State Park. Precisely what uses are contemplated under this easement? By this request for an easement, do the Indians seek special privileges not accorded to other citizens, or are they merely requesting permission to do something which they could now do with approval of proper authorities?

10. Responsibility for Services.

It has been suggested that the Indians would undertake a number of economic development projects with funds received as part of the settlement. Such projects will necessarily increase demand for certain services traditionally provided by the State, such as highway maintenance and highway improvement and forest fire protection. Will the State continue to be called upon to supply such services, or will such services all be provided with the $3 to $5 million a year which the federal government contemplates giving to the Indians?

11. Changes in Federal Assistance Patterns.

If the Indians acquire the land they are seeking, will the federal government provide a greater level of assistance to Maine to acquire more park lands for use by all Maine citizens? Similarly, if the Indians acquire the lands they are seeking, will those lands be deemed federal public lands so that the State will receive an increase in the funds the State is paid under the Federal Highway Trust Fund? Are there other areas in which federal aid patterns to the State would change - for better or worse - as a result of the Indian settlement?

12. Contribution from Massachusetts.

The agreements ("treaties") of 1794, 1796 and 1818 which form the bulk of the claim against Maine and its citizens were in fact executed by Massachusetts. Assuming arguendo that these agreements were made in violation of the Trade and Intercourse Act, it must be concluded that the State of Massachusetts perpetrated these "wrongs." Inasmuch as Maine was only assigned the treaties when it became a State, an assignment imposed upon it by Massachusetts as a condition of its statehood, why was no consideration given to, in fairness, demanding a contribution from the State of Massachusetts? Are citizens of present day Maine any more responsible for the events of 200 years ago than the citizens of present day Massachusetts?

I look forward to your answers since they will affect our response to the proposals in the Joint Memorandum.

Sincerely,

Joseph E. Brennan

JOSEPH E. BRENNAN
Attorney General

JEB/ec

cc: Honorable James B. Longley
Honorable Robert Lipshutz
Honorable Edmund S. Muskie
Honorable William D. Hathaway
Honorable William S. Cohen
Honorable David F. Emery
Members of the Maine Legislature

THE WHITE HOUSE
WASHINGTON

212-582 3370 → Elliott

Elliott Cutler

@ Park Lane Hotel
N.Y.

4/17/78

- Went fairly well.
- 2 letters from Governors to Elliott Cutler waiting.
- But a disturbing 2 hours with representatives of big trusts.
- Small press conference after speech.

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

FOR RELEASE ON DELIVERY
Friday, April 14, 1978

REMARKS OF
ELIOT R. CUTLER
ASSOCIATE DIRECTOR FOR NATURAL RESOURCES,
ENERGY AND SCIENCE
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
HUSSON COLLEGE BUSINESS BREAKFAST
BANGOR, MAINE

Last week the White House Work Group announced that the Penobscot and Passamaquoddy Tribes had agreed to extend for one month the time available for the State of Maine and the large landholders to respond to the Tribes' settlement proposals.

On or shortly after May 10, the Administration will file legislation to clear title to 9.2 million acres of land in the 12.5 million-acre claims area in order to provide complete protection for most landholders and homeowners. The legislation would provide for a $25 million federal payment to the tribes. On or about June 15, litigation will commence against any other defendants--such as the State and the large landholders--who have not reached an out-of-court settlement with the Tribes. Should the Congress fail to pass the protective legislation, it eventually would be necessary to also bring an action against hundreds of thousands of Maine citizens to recover land held by them.

I know that I speak for my colleagues on the Work Group, for the President's Counsel, Bob Lipshutz, and for the President himself, when I say that we do not want this case to go to court.

Not because we fear that one side or the other may win.

Not because we think that the many historical and legal issues in the case should not be resolved.

But because we are deeply concerned about the chaos, the hardship and the suffering that many years of litigation would inflict upon all the people of Maine.

In short, we think it is unfair to ask the people of Maine to pay the price of litigation.

The period between now and May 10 is a crucial time for all of us. Each day that passes without progress toward a negotiated settlement brings us closer to a costly confrontation in court. Yet I know that each day also brings more questions, more doubts, and more confusion as to what is the right thing to do.

I would like to take the opportunity this morning to discuss five basic questions about this case that I know trouble many Maine citizens and to address in connection with those questions several misunderstandings about the role the Administration has played in this case and the nature of our proposals.

First, why are the Justice Department and the Interior Department preparing to sue the State of Maine? Why are those two federal agencies taking the tribes' side of this case?

To answer that question, we first must go all the way back to 1971. By that time, the Penobscot and Passamaquoddy Tribes had discovered a copy of the 1793 treaty, had taken it to their lawyers, and had asked the Interior Department to assist them in pursuing the matter further. The tribes claimed that the federal government had an obligation to do that under the terms of the 1790 Non-Intercourse Act.

The government turned down the tribes' request, claiming it had no such duty, and the tribes sued Secretary of the Interior Rogers Morton in Federal Court in Portland in 1972. The State of Maine, recognizing that its interests were very much at stake, asked to intervene and became a second defendant in the case in 1973. In early 1975, Maine's District Judge Gignoux decided that the tribes were right: The tribes, he said, were entitled to the protection of the Non-Intercourse Act, and the federal government was a trustee for the tribes under that Act. The government appealed Judge Gignoux's decision to the U. S. Court of Appeals for the First Circuit and again lost in late 1975. No further appeal was taken, even though the state could have sought to vacate the judgment as late as 1977.

This is a nation which lives under the rule of law, and from that time forward the federal government was bound by Judge Gignoux's decision that it owed to the tribes the duties of a trustee.

On that particular subject, that is as far as Judge Gignoux went. He did not order the federal government to sue the state or anyone else. He said only that the tribes were protected by the Non-Intercourse Act and that the federal government had to act as trustee for the tribes. The federal government had to decide, as trustee, whether it had an obligation to bring the present land claims case to court.

But the government's discretion at this point was limited. It is a fundamental principle of trust law--indeed of our legal system in general--that a trustee's foremost duty is to act in behalf of and to protect the interests of those persons to whom the trust obligation is owed. The lawyers at the Interior Department and the Justice Department examined the legal and historical evidence that had been amassed in the land claims case and decided that ..

the federal government had an obligation to do what any reasonable person would do acting in his or her own best interests--it had to pursue the claim and, if necessary, sue the present landholders on behalf of the tribes. As a lawyer, I cannot imagine that any lawyer or anyone in a position of public responsibility would suggest that the government should have done otherwise.

A second question: We accept that. Though we don't like to be sued by the federal government, we accept the fact that the Justice Department has no choice. But why did the President get involved?

Let me assure you that was not an easy decision for the President to make. Certainly there is no political credit to be gained. The easiest course of action would have been to take the case to court and to let the State of Maine and the large and small landholders fend for themselves. Indeed, the previous Administration was prepared to do just that on January 15, 1977.

However, in 1976 the first indications of the potential upheaval and chaos that would result from litigation began to appear. A number of Maine towns in the claims area were having trouble with bond issues, and there was widespread concern that titles to real estate would be questioned in sales and mortgage transactions. The Governor and the Attorney General asked the Maine Congressional delegation for help, and the delegation turned to President Carter.

In early 1977, the President asked the best lawyer he knew, retired Georgia Supreme Court Justice William Gunter, to be his special representative, to listen to the arguments on both sides of the case, to examine the merits, and to recommend any actions which the federal government and

the parties might take to resolve the dispute. In July, Judge Gunter told the President that the claims were serious and substantial, but his proposed terms were rejected as a basis for settlement by both the tribes and the State of Maine.

In August, the President appointed the White House Work Group, and he asked us to enter into further discussions with the tribes concerning federal-tribal relationships. We did that, and another proposal was made in February--one which was more advantageous to the state.

A third question: Why were the Work Group's discussions held only with the tribes? Was the state shut out of the negotiations?

On at least three separate occasions after Judge Gunter's recommendations to the President were made known to state officials, those officials indicated to us that in their view settlement of the case would be inappropriate and that the state preferred to litigate. The repeated refusals by the responsible state officials to consider any settlement to which the state would make a contribution left us no choice; we could not invite the state to participate in negotiations when the state insisted that it would not settle on any terms.

The tribes, on the other hand, expressed a willingness to enter into further discussions. In light of Judge Gignoux's decision, it was imperative that we begin discussing a number of important questions concerning the relationship between the federal government and the tribes. For example, what was to be the level of future federal services?

It became apparent early in those discussions that the issue of a partial settlement with the tribes would be an unavoidable topic. And given our concern for the hundreds of thousands of Maine homeowners and

businesses facing the threat of litigation, it made sense to us to pursue that topic. It also became clear that we could at least explore the possibility of an overall settlement and obtain from the tribes terms on which at least they would be willing to settle.

Had it not been for those difficult and lengthy negotiating sessions, there would not be on the table at this time any settlement proposals to which even one party had agreed.

A fourth question: Why has the "Great White Father" put the State of Maine "up against the wall?" Why is the Administration trying to force a negotiated settlement?

No one is backed up against a wall. The federal government's efforts over the past year have been strictly voluntary--made at the request of Maine's Congressional delegation. We cannot force a negotiated settlement.

Like Judge Gunter, the Work Group reviewed the tribes claims, the state's defenses, and the pertinent law and historical materials. We reached the same conclusions as Judge Gunter did: The tribes' claims are not frivolous. They are for real. They could be entirely successful in litigation. And the litigation will take many years to resolve, with economic chaos a likely result.

In view of those conclusions, the President authorized us to agree to a partial settlement with the tribes. In exchange for a voluntary payment of $25 million by the federal government, we can clear title and guarantee security for thousands of Maine citizens who own homes and businesses in the claims area, who would suffer the most from litigation,

and who could least afford to risk either the costs of litigation or defeat in court. The Congress must approve this settlement, and anyone who thinks it wise to oppose it can do so. We cannot force its ultimate acceptance by the Congress.

The terms of settlement proposed by the tribes to the state and the large landholders, on the other hand, were set forth without endorsement by the Administration. We neither support those terms nor oppose them. The tribes have made an offer.

As the President said here in Bangor two months ago, "If the Governor of Maine or the fourteen landowners don't want to accept /the offer/, they have three choices. They can either continue to negotiate, they can accept the agreement...and have an end to it, or they can stay in court and litigate. I have no preference about it.... We have not imposed the will of the Executive Branch on the State of Maine at all. The Government of Maine is still completely free to do anything it chooses."

A final question: Isn't is unconstitutional, un-American and unfair to treat large landholders differently from small landholders, homeowners and businessmen?

In responding to this question, I should first point out that it is the opinion of the Justice Department, based on legal precedent, that the proposed 50,000-acre exemption is constitutional. We would not have proposed it if we had not received that assurance.

One of the reasons that it is constitutional is that it is inherently fair. All landholders are treated equally; every person or entity would

Library

have title cleared to 50,000 acres. Indeed, the greatest beneficiaries of this approach--those who would benefit the most from the voluntary $25 million federal contribution--would be those who own the most land.

Second, this proposal is as fair and constitutional as Maine's own growth tax or the federal income tax, where people who own the most timber or have the highest income are taxed at the highest rates.

Finally, this proposal is fair because if the claims are legitimate, those who have benefitted most from any illegal conveyances have the most at stake in this case and can be expected to contribute proportionately more to any resolution of it--in or out of court.

No one is requiring the large landholders to participate in out-of-court settlement. They have the same choices as the state: accept the tribes' offer, negotiate, or litigate. In fact, up until the Administration got involved in this case, there was no settlement offer to which the large landholders could respond.

Small landholders and homeowners do not really have those choices. They generally could not afford to settle on their own; they could not be expected to negotiate individually; and they could not afford the legal expenses or the economic consequences of litigation pending for years and years. And if they lost in court, they could lose their homes and their livelihood. The <u>only</u> fair thing for the federal government to do is to guarantee their security--to protect those who cannot protect themselves.

I know I have taken a good deal of your time this morning, and I appreciate your willingness to listen so patiently. I hope I have clarified some matters, but I am sure you have other questions as well. I will try to answer as many as I can.

Center Library

But before I close, I would like to read for you one passage from the February Joint Memorandum which I think we all ought to keep in mind.

"If settlement can be accomplished, it will reflect a compromise from every perspective. The tribes regard their claims as worth many times more than any consideration to be received under this agreement. The State of Maine, on the other hand, has taken the position that the tribes' claims are without merit...

"With these considerations in mind, any settlement would reflect a shared understanding of the reality created by the litigation, rather than one party's view of the equity of the claims. The claims are unique, and resolution of them on any basis other than litigation similarly must be unique."

Carter Library

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

NOV 21 1978

Thomas N. Tureen, Esq.
Native American Rights Fund
178 Middle Street
Portland, ME 04101

Re: Passamaquoddy and Penobscot
Land Claim Settlement

Dear Tom:

During a recent meeting with the Governors of the two Tribes, members of the Tribes' Negotiating Committee, Assistant Secretary Forrest Gerard and yourself, I was asked to prepare a letter outlining the terms of a complete settlement of the Tribes' claims for land and trespass damages in the State of Maine which the Administration would support before Congress. This letter responds to that request.

The framework of the proposed settlement is described below. Some details remain to be worked out as the legislation is drafted.

In exchange for a complete release of the Tribes' claims, we are prepared to recommend the following to Congress:

1. Payment by the Federal Government of $27 million in trust for the benefit of the two Tribes. Provisions for the trust would be those previously agreed to in paragraph (C)(5) of the Joint Memorandum of Understanding dated February 9, 1978 (MOU).

2. In addition, $10 million will be provided for acquisition of 100,000 acres of timberlands at fair market value, the land to be held in trust for the Tribes. Of this amount, $5 million will be provided by the United States and $5 million will be provided by the State of Maine. The State will be given a credit against their share for past services to the Tribes which past services we understand exceeds the $5 million. As a result, the $10 million will be provided from the Federal Treasury.

3. The land will be acquired through arms length negotiations. The Department of the Interior is prepared to assist the Tribes in these negotiations, if our assistance is requested. Appropriate provisions will need to be included in the legislation for this land acquisition program.

4. The Passamaquoddy and Penobscot Tribes will be federally recognized and entitled to federal services as provided in paragraph (C)(7) of the MOU. The State of Maine will discontinue its services to the Tribes. I assume that individual Indians would be treated like all other citizens of Maine with regard to general state programs.

5. The State of Maine has taken the position that all laws of the State should apply to the newly acquired land. This might be inconsistent to some extent with paragraph 8(C) of the MOU. We have had an initial meeting with State Officials on jurisdictional issues and have agreed to work with the State and the Tribes to try to resolve these issues in a way satisfactory to all concerned.

6. As previously agreed, all property and cash obtained pursuant to this settlement will be divided equally between the two Tribes.

We are willing to work closely with the Tribes and the State to resolve any remaining differences and develope legislation to implement the settlement. We will use the legislation previously drafted as the starting point and revise it to reflect these new agreements. We recognize that this settlement still requires the agreement of the Negotiating Committee, the Tribal memberships and the Congress.

My staff is prepared to work closely with you and the State in the hopes that legislation can be ready for introduction very early in the next session of Congress.

Sincerely,

Leo Krulitz

LEO M. KRULITZ
SOLICITOR

cc: Governor Longley
Attorney General Brennen
Secretary Cecil Andrus
Attorney General Bell
Assistant Secretary Indian Affairs
Mr. Robert Lipshutz
Mr. Eliot Cutler

Deputy Assistant Attorney General
Office of Legal Counsel

Department of Justice
Washington, D.C. 20530

June 7, 1979

Mr. Douglas B. Huron
Senior Associate Counsel
The White House

Dear Doug:

Enclosed for your information is a copy of the final of the letter from the Attorney General to Cecil Andrus dealing with the Indian trust responsibility. There have been no substantial changes from the version you reviewed a couple months ago.

I would appreciate it if you would see that copies are distributed to people there in the White House who may have an interest.

Sincerely,

Larry A. Hammond

Larry A. Hammond
Deputy Assistant Attorney General
Office of Legal Counsel

Enclosure

Office of the Attorney General
Washington, D.C. 20530

May 31, 1979

Honorable Cecil D. Andrus
Secretary of Interior
Washington, D.C.

Dear Mr. Secretary:

As you know, the Department of Justice has long represented the United States in litigation for the purpose of protecting Indian property rights secured by statutes or treaties. This has been and will continue to be an important function of this Department, and I would like to set forth my understanding of the legal principles governing its conduct.

In fulfillment of the special relationship contemplated in the Constitution between the Federal Government and the Indian tribes, the Congress has enacted numerous laws and the Senate has ratified numerous treaties for the benefit and protection of Indian tribes and individuals, their property and their way of life. Where these measures require implementation by the Executive Branch, the administrative responsibility typically resides with the Secretary of the Interior. 43 U.S.C. § 1457 (10). The Attorney General is in turn responsible for the conduct, on behalf of the United States, of litigation arising under these statutes and treaties. This obligation in Indian cases is but one aspect -- albeit an important one -- of the Attorney General's statutory responsibility for the conduct of litigation in which the United States or an agency or officer thereof is a party or is interested. 28 U.S.C. §§ 516, 519.

The Secretary of the Interior and the Attorney General perform their duties here, as in all other areas, under the superintendence of the President. We are the President's agents in fulfilling his constitutional duty to take care

that the laws be faithfully executed. Where a particular statute, treaty, or Executive Order manifests a purpose to benefit all Indians or a tribe or individual Indians or to protect their property, it is the obligation of the responsible Executive Branch officials to give full effect to that purpose. In your role as Secretary of the Interior, you are charged with administering most of the laws and treaties applying to Indians and are often in a policy formulating role with regard thereto. And where litigation is concerned, it is the duty of the Attorney General to ensure that the interest of the United States in accomplishing the congressional or executive purpose is fully presented in court.

The Executive and Judicial Branches have inferred in many laws extending federal protection to Indian property rights the intent that the Executive act as a fiduciary in administering and enforcing these measures. Where applicable law imposes such standards of care, faithful execution of the law of course requires the Executive to adhere to those standards. Thus, it in no way diminishes the central importance of our respective functions to acknowledge that they find their source in specific statutes, treaties, and Executive Orders or to recognize that they are to be performed with the same faithfulness to legislative and executive purpose as are the obligations devolving upon this branch of the federal establishment generally.

A significant portion of the litigation with which we are here concerned relates to property rights reserved to a tribe by treaty or in the creation of a reservation or property which Congress has directed be held in trust, managed, or restricted for the benefit of a tribe or individual Indian. When the Attorney General brings an action on behalf of the United States against private individuals or public bodies to protect these rights from encroachment, he vindicates not only the property interests of the tribe or individual Indian, as they may appear under law to the United States, but also the important governmental interest in ensuring that rights guaranteed to Indians under federal laws and treaties are fully effective.

There is no disabling conflict between the performance of these duties and the obligations of the Federal Government

to all the people of the Nation. The functional thesis upon which our form of government is premised -- the Separation of Powers -- pre-supposes that the people as a whole benefit when the Executive Branch enforces the laws enacted, and protects Indian property rights recognized in treaty commitments ratified, by a coordinate branch. The fact that an identifiable class realizes tangible benefits from litigation brought by the Federal Government does not distinguish Indian cases from many civil rights, labor, and other cases. Just as we go to court to enforce the laws designed to protect minorities from discrimination or disenfranchisement by the majority, we must litigate when necessary to protect rights secured to Indians without reference to whether any present majority of the citizenry would profit from, or otherwise embrace, that action.

It is important to emphasize, however, that the Attorney General is attorney for the United States in these cases, not a particular tribe or individual Indians. Thus, in a case involving property held in trust for a tribe, the Attorney General is attorney for the United States as "trustee," not the "beneficiary." He is not obliged to adopt any position favored by a tribe in a particular case, but must instead make his own independent evaluation of the law and facts in determining whether a proposed claim or defense, or argument in support thereof, is sufficiently meritorious to warrant its presentation. This is the same function the Attorney General performs in all cases involving the United States; it is a function that arises from a duty both to the courts and to all those against whom the Government brings its considerable litigating resources.

The litigating position adopted by the Attorney General on behalf of the United States may affect your administrative and policy-making functions. Accordingly, with respect to all litigation in which the Attorney General represents the United States in protecting Indian property rights secured by statutes or treaties, this Department would expect to receive -- and would most carefully consider -- the advice of your Department, possessing as it does the primary policy responsibility in Indian matters.

Where there are other statutory obligations imposed on the Executive in a particular case aside from those affecting

Indians, faithful execution of the laws require the Attorney General to resolve these competing or overlapping interests to arrive at a single position of the United States. In arriving at a single position, however, we must also take into account the rule of construction now firmly established that Congress' actions toward Indians are to be interpreted in light of the special relationship and special responsibilities of the government toward the Indians.

And, finally, the President's duty faithfully to execute existing law does not preclude him from recommending legislative changes in fulfillment of his constitutional duty to propose to the Congress measures he believes necessary and expedient. These measures may -- indeed must -- be framed with the interest of the Nation as a whole in mind. In so doing, the President has the constitutional authority to call on either of us for our views on legislation to change existing law notwithstanding the duty to execute that law as it now stands.

I look forward to close cooperation between our two Departments in these matters.

Yours sincerely,

Griffin B. Bell

Griffin B. Bell
Attorney General

THE WHITE HOUSE

WASHINGTON

June 9, 1980

MEMORANDUM FOR: LLOYD CUTLER

FROM: DOUG HURON

RE: Status of Maine Indian Legislation

On June 4 I spoke with both Jim Case from Senator Mitchell's staff and Tim Woodcock with Senator Cohen. Both Senators are apparently prepared to introduce the Maine Indian legislation as supported by the parties in Maine. In particular, both appear willing to support the settlement at the proposed $81.5 million figure.

There will be Senate hearings on June 25 and 26, and Secretary Andrus will be asked to testify.

Over a year ago the President authorized spending $37 million in Federal money to resolve this dispute. Arguably, the Administration can be said to have committed $47 million, since Interior agreed in addition to spend $10 million of its own appropriation for land purchases for the tribes. Nevertheless, even $47 million is a good distance from $81.5 million. The question that must be addressed within the Administration is what our position will be when Secretary Andrus testifies.

* * * * *

At my request, in response to an inquiry from Jim Case, OMB has prepared the attached analysis of the Maine legislation. This paper takes no position on the several issues raised but does point out possible trouble spots. Justice, Interior and Treasury also helped prepare the document. We plan to use it in an informal briefing for the Maine Congressional delegation.

Impact of settlement on funding

--The $81.5 million in new budget authority authorized by the settlement far exceeds the $37 million in new Federal funding approved by the Administration for settling Maine land claims.

--Funding difference stems from differing amounts of land contained in the settlement and the average per-acre valuation of the land:

Tribes/State:	300,000 acres x $181.66/acre	$54.5 M
Administration:	100,000 acres x $100/acre	-$10.0 M
		$44.5 M

--Major uncertainty exists concerning effect on Federal programs of the settlement provisions that (1) treat Indian Territory as a municipality under State law -- a unique status found no where else in the United States;1/ (2) require the Federal Government to disregard settlement payments to the tribes, or any State payments to them, when determining individual or tribal eligibility for Federal financial assistance, and (3) provide general tribal and individual eligibility for State financial assistance programs on the same basis as other municipalities and persons, but Federal payments to the tribes or individual Indians for substantially similar purposes shall be deducted from the amount of State funding provided.

. Could the tribes as municipalities receive more Federal funding than would be the case today where they are treated only as tribes?

. If the State could legally withdraw its medicaid funding for its Indian citizens in anticipation of Indian Health Service (IHS) aid, the incremental cost for the IHS is estimated at about $1 million per year in Maine, and $285 million per year if this provision establishes a nationwide precedent.

. Federal funding would supplant State funds in other programs as well, although no estimates of cost are available. The legislative history for some programs like employment and training under CETA or public school assistance under the Johnson - O'Malley Act indicates a clear Congressional intent to prevent States from supplanting their own funds with Federal dollars.

. Effect of the settlement on the separate allocation formula for Indian tribes under the current general revenue sharing act is uncertain, since the settlement would eliminate provisions in existing Federal law that give special status to the Maine tribes.

--The settlement would expand Federal tax law to treat as "involuntary conversions", and therefore subject to capital gains deferral, the sale of private land to the Maine Indians pursuant to the settlement, if the proceeds from the sale are used to buy similar land within two years after the year of sale (3 years for business property). The estimated Federal tax loss would be $15 million. Existing Federal tax law allows involuntary conversions if the sales stem from Federal or State condemnation --not private lawsuits or out-of-court settlements. Enactment of this provision would set a precedent for other Indian claim settlements as well as a general expansion of tax deferrals for real estate.

1/ The settlement defines "Indian Territory" in Maine as the current Passamaquoddy and Penobscot reservations plus the first 300,000 acres of land acquired by the U.S. for the tribes in designated, unincorporated areas of the State.

II. Status of the Houlton Band of Maliseet Indians

Various settlement provisions raise major questions:

--Does the Band meet the standard criteria for a Federally recognized tribe?

--What is the number and location of Band members? (The present estimate is that the Band numbers about 350 persons.)

--Does the Band have a credible land claim pending? (Very little historical or anthropological data is currently available to the Federal Government on this issue.)

--What status for the Band does the settlement envisage? (The State act does not give "municipal" status to the Band nor recognize any power or authority of the Band; however, the proposed Federal act "recognizes" the band, and does not specifically revoke concomitant tribal power.) Further, what is the relationship between the Band and the Federal Government under the settlement? The Band would be eligible for financial benefits to which other tribes may be entitled, but their lands would not be subject to any restrictions on alienation. The nature of the Federal "trust responsibility" over such lands is unclear, since the U.S. would not have any authority with respect to their disposition.

--Although Congress has the authority to recognize the Band as a tribe, it would be contrary to positions taken by the U.S. in Federal court for the Executive Branch to take a position on the Band's status as a tribe without the Band proceeding through the recently initiated Federal Acknowledgement Project administered by Interior. This project was implemented to enable Indian groups to establish their entitlement to a government to government relationship with the U.S.

THE WHITE HOUSE
WASHINGTON

6/30

Lloyd —
This is the new introduction to Sec. Andrus' testimony. The balance outlines technical objections and ~~para~~ follows the earlier draft. I have, however, inserted a paragraph urging that no Federal money be disbursed until the tribes have stipulated to a final dismissal of all claims.

Doug.

ANDRUS TESTIMONY

Mr. Chairman, and members of the Committee, I am pleased to discuss with you today our views on S. 2829, the Maine Indian Claims Settlement Act of 1980.

We fully support the concept of a negotiated settlement as the means for resolution of the Maine Indian land claims, and we hope that S. 2829 will lead to a final settlement of these claims. We recognize that a Federal contribution is necessary to achieve a negotiated settlement, and we do not object to the contribution proposed by this bill. The proposed contribution of $81.5 million is substantially higher than the Administration has previously supported. Because years of continued litigation would have a severe impact on the citizens of Maine, however, and also because the settlement proposal is based on the agreement of all relevant parties in Maine and should therefore provide a lasting solution to this problem, we do not object to the Congress providing for the Federal contribution contemplated in S. 2829.

It would not be responsible for the Administration simply to state its general position on this legislation. For that reason, we have carefully examined all aspects of the proposal in order to ensure that the broad interest of the tribes and the United States are well served under it.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

February 6, 1979

MEMORANDUM FOR THE FILE

FROM: DOUG HURON

RE: Conversation with Tom Tureen

On February 6 I spoke to Tom Tureen concerning the status of the negotiations in Maine. There are two aspects that need to be considered--identification of land and the question of the state's jurisdiction on that land.

1. Land. The large landowners have identified 200,000 acres. Tureen says the cost for some of the land is prohibitive and the location of some is poor, but he says that Perkins is dealing in good faith. At this time, Tureen estimates that the average price being asked is about $150 per acre. He says that International Paper, which has put up 100,000 of the 200,000 acres, is more flexible than the other companies. The tribes are considering a joint venture with I.P. under which the tribes would own a sawmill. I.P. is also looking at the possibility of reducing the price through stumpage arrangements, and consideration is being given to the possibility of borrowing money from Interior to help finance the purchases.

Tureen does not believe that there will be a rapid solution to these issues. I believe that he may be looking for a little more money outright from the Federal government, but I told him that this would not be possible.

2. Jurisdiction. Tureen has not talked to Brennan about this since he became governor. He has talked to Richard Cohen, the new Attorney General, and he believes that Cohen may take a flexible view. He hopes that Kirk Studstrup, rather than David Flanagan, will be acting for Brennan on this issue; he says that Perkins is trying to get Studstrup designated. In the meantime, Attorney General Cohen said that he will take the initiative in setting up a meeting with Tureen to discuss the jurisdictional issue. Tureen believes that the tribes and the state will ultimately be able to resolve this matter.

Tureen mentioned that the Sewell Company should be retained to appraise the land, something which Perkins also mentioned in his letter. Tureen raised the question whether the government will be willing to pay for the appraisal.

I asked Pureen whether it would make sense for us to get together with Perkins and him sometime in the next two weeks to get an update on the status. He said that it would probably make sense, and I think we should try to set up a meeting fairly soon.

Maine Indian Tribal-State Commission
Minutes of March 18, 1997 Meeting

these subsequently were adopted
DCS 10/15/98

MITSC Members Present

John Banks
Anthony "Mike" Best
Paul Bisulca (nonvoting member)
Mark Chavaree
Richard Cohen, MITSC Chair
Clyv Dore
Fred Hurley
Fred Moore (representing [illegible])
Evan Richert

Other Persons Present

Diana Scully, MITSC Executive Director
Maynard Stanley, Passamaquoddy Tribe at Pleasant Point
John Stevens, Governor, Passamaquoddy Tribe at Indian Township
David Westphal, Acadia FilmVideo

Meeting Convened

The March 18, 1997, meeting of the Maine Indian Tribal-State Commission (MITSC), was held in the conference room of the Maine State Planning Office in Augusta. Chair Richard Cohen convened the meeting at approximately 1:00 PM.

MITSC Members

Diana Scully reported that Governor King's Office is working actively on an appointment to MITSC to replace Matt Manahan. The terms of John Banks and Mark Chavaree both expire on May 3, 1997. Fred Hurley's term expires on December 7, 1997.

Funding for Wabanaki Center

Ms. Scully reported that she and Mr. Chavaree met in late January with Ted Mitchell and Gail Sockabasin of the Wabanaki Center at the University of Maine at Orono to explore their interest in receiving $7,500 from the balance in MITSC's contract with the Maine Department of Transportation (MDOT). Mr. Chavaree and Ms. Scully also participated in a March meeting at the Wabanaki Center with Penny Plourde from MDOT. All involved in these discussions felt that a link should be developed between the Center and MDOT and that the $7,500 could be put to effective use by the Center. *It was moved by John Banks, seconded by Mark Chavaree, and agreed unanimously by MITSC members that MITSC should make a payment of $7,500 to the Wabanaki Center, provided that MDOT and the Center are in agreement about the use of these funds.*

New State Hunting Book

Mike Best stated that tribal land is not identified in the new state hunting book. Fred Hurley noted that it is not in the application, but it should be in the hunting laws book. He offered to look into this.

Penobscot Basin Dischargers Council

Penobscot Representative Paul Bisulca said that when the Penobscot Basin Dischargers Council was formed the Penobscot Nation initially was invited to participate. Later they received a letter saying that because Penobscot Nation is fundamentally different than other members and is at odds with other members, it should not be a member. Representative Bisulca wrote and appealed, but the Penobscot Nation still was rejected.

John Banks indicated that he reviewed material from the Council, including minutes from a few of the meetings. He found that incorrect statements were being made about the Nation. He noted that total maximum discharge load (TMDL) standards relate to a river, not to individual dischargers.

Chair Cohen asked how many municipalities are involved. Governor John Stevens commented that there is a growing attitude by the State of Maine to ignore the Tribes because the Tribes are small, and that the State has close contact with companies. He said Georgia Pacific lowers and raises waters and this destroys hunting. He said there is a feeling of resentment on the part of industry toward the Tribes.

Mr. Banks expressed annoyance because the Penobscot Basin Dischargers Council says the Penobscot Nation has a fundamentally different status and last year Governor King said the Penobscot Nation does not have a different status. Chair Cohen stated that he was encouraged by the Governor's appearance at MITSC's December meeting and his expression of wanting to get together with the Tribes.

Evan Richert commented that Governor King probably would be disturbed if a group of governmental entities is freezing out another governmental entity. He said the State does not appear to have oversight over the Council, but it is at least morally, if not legally, wrong to freeze someone out. Mr. Richert suggested that someone should talk with the Maine Department of Environmental Protection (DEP) to see what their relationship is to this effort and that MITSC write a letter to the Council stating that it would be in the best interests of the river and all participants to be inclusive. Representative Bisulca said he would like to see MITSC do this and Mr. Richert agreed to check with DEP.

Evan Richert moved, Clive Dore seconded, and MITSC members unanimously agreed that MITSC should send a letter to the Penobscot Basin Dischargers Council, stating that it would be in the best interests of the river and all participants to be inclusive.

Minutes

Evan Richert moved, John Banks seconded, and MITSC members unanimously agreed to adopt the minutes of MITSC's December 20, 1996 meeting and February 14, 1997 teleconference.

Financial Report

Ms. Scully reported that as of March 15, 1997, MITSC had a balance of $21,509. She indicated that she expected the budget to be tight for the remainder of the year. Chair Cohen asked whether there is any change of getting additional dollars for MITSC? Mr. Richert replied that additional funds were not requested in the budget before the Legislature and that $7,500 in new funding just had been appropriated for the current fiscal year. He noted that the Governor's contingency fund is limited to training in economic development. *John Banks moved, Fred Hurley seconded, and MITSC members unanimously agreed to approve the financial statement for MITSC for the period July 1, 1996 through March 15, 1997.*

Task Force Recommendations

#1 Framework of Tribal-State Relations. Chair Cohen said the Settlement Act was intended to be a living document. Governor Dore commented that Congress changed the document after the Tribes had voted on what they thought was the "final" version. Mr. Richert asked whether the changes were approved by Congress or by the State? Governor Dore replied that the Congress made changes, when they were supposed just to rubber stamp things. Senator William Cohen introduced the provision that subsequent federal laws would not apply to the Tribes in Maine.

Passamaquoddy Representative Moore said there has been a major change in interpretation by the State of the spirit of the Act and the State is not following through on its original intent. He noted that communications among Governors and Chiefs and among other state and tribal leaders have decreased and urged a refocusing on the spirit and intent of the Act. Chair Cohen observed that there is a segment in state government that says if it is not in the Settlement, it cannot be. He added that this is not what was expected. Representative Moore added that the Tribes have been told that they got what they wanted and now they should go away.

Mr. Banks indicated that he has been frustrated as a MITSC member because when MITSC comes up with an interpretation of the Settlement, it is ignored. MITSC spends a lot of money and time spinning wheels. He said the Settlement is not working and another advisory group will not change that.

#2. Annual Assembly of Governors and Chiefs. [No comments.]

#3. Advisory Committee. Expressing concern about creating a competing entity, Chair Cohen said MITSC will appoint the Committee. He said he has been around government too long and has seen things take on a life of their own. He noted that the concept is a good idea, but wondered whether it is necessary to legislate this into existence.

Mr. Richert responded that the purpose of the Advisory Committee is to build a bridge between MITSC and the Legislature and to involve the Micmacs and Maliseets in a more formal way. He commented that if the Legislature is going to take MITSC more seriously, the Advisory Committee must be in legislation. Representative Bisulca said this would begin to replicate what the Department of Indian Affairs used to do. There would be a place for Micmacs and Maliseets and an opportunity to bring in other expertise. He noted that MITSC has not done many of the things that it could have, because of a lack of expertise.

Chair Cohen indicated that since MITSC appoints the members of the Advisory Committee, it also should receive any funding for it and should appoint any personnel to support it. He said that sections 4,5,7, and 9 should be deleted from LD 1269 (the bill to create the Advisory Committee.) Mr. Richert said the Advisory Committee would meet when MITSC meets and would be an outer circle of MITSC. Mr. Banks asked how is this different than what MITSC does now? Chair Cohen stressed that the intent of the Task Force was not to have two separate organizations. Evan agreed that sections 4,5,7, and 9 should be deleted from LD 1269 and said an appropriation also is needed.

Representative Bisulca said the Penobscot Nation will support the legislation. Representative Moore said the Passamaquoddy Tribe probably will not oppose LD 1269, but it will not bring substantial change. Governor Dore said, first, there must be a look at the basic problems of the settlement act and core issues must be addressed.

It was moved by Evan Richert, seconded by Fred Hurley to support LD 1269 with the excising of sections 4, 5, 7, and 9 and, if no funds are appropriated, the excising of section 8. The vote was 5 in favor and 2 opposed.

#4. Supporting and Strengthening the MITSC. Governor Dore asked about the change in MITSC's quorum requirement in LD 1269. He said both Passamaquoddy Governments should be present in order to have a

quorum. Mike Best said he wanted to retract his vote. Governor Dore said alternates to MITSC should be approved.

Chair Cohen asked how MITSC members felt about this. Mr. Richert and Mr. Hurley said there should be no problem if alternates are allowed. There was consensus on this point. *It was moved by Evan Richert to support the deletion of the quorum requirement provision from LD 1269 along with the other changes previously voted on.* (There was a caucus by the Passamaquoddy participants.)

Governor Dore indicated that LD 1269 is not adequate and just adds another layer of bureaucracy. He said the bills submitted to the Legislature by the Passamaquoddy Tribe are the remedy. Chair Cohen responded that LD 1269 will pass one way or another and said he hoped "you can see your way clear to support this." Representative Moore said the Tribe has serious issues with the Task Force and this bill does nothing. Chair Cohen said the purpose of the Advisory Committee is to give MITSC rapport and credibility with the Legislature. Representative Bisulca said the Task Force did not go far enough and to achieve consensus it had to let some things go. Mr. Hurley stated that LD 1269 addresses the lack of connection MITSC has had with the Legislature and Executive over many years. Representative Moore said this is a step forward, but is not enough and is a waste of time. Mr. Banks concurred. Governor Dore expressed concern that MITSC censored what went out to the public.

Evan Richert moved, Fred Hurley seconded, and MITSC members unanimously agreed to support an amended version of LD 1269, deleting sections 1, 4, 5, 7, and 9 and, if no funds are appropriated, deleting of section 8. **Mr. Best requested that Representative Moore's comments be reflected in the minutes.**

MITSC members decided to return later to the discussion of Task Force recommendations.

MITSC Bylaws

Mr. Richert said MITSC needs to revise its bylaws to allow alternates. Mr. Hurley asked whether MITSC should change the public comment provisions in its bylaws relating to placing land in trust? Chair Cohen said MITSC members should get any bylaws changes they would like to see to Ms. Scully.

Passamaquoddy Bills

LD 964 (Placing Land in Trust in Albany Township). Chair Cohen said that MITSC's bylaws indicate that MITSC cannot give a recommendation until it goes through certain procedures to allow for public comment. Governor Dore said 18 acres in Albany Township already are in trust and the Passamaquoddy Tribe wants to add around 50 acres more. *It was agreed that MITSC would follow its bylaws, including placing legal ads to seek public comment.*

Other Bills before Judiciary Committee. Representative Moore said it does not matter to the Passamaquoddy Tribe whether or not MITSC takes a position on its bills. Mr. Banks asked whether the Tribe would like MITSC to take up these bills? Representative Moore replied that sooner or later people will ask for MITSC's opinion.

LD 955 (Changing Place Names). Chair Cohen asked who names things now? Mr. Hurley replied that the U.S. Geological Survey plays a role in this. Representative Moore said an amendment might be offered to LD 955 to go outside Passamaquoddy Territory to change names. *Governor Dore moved, Mike Best seconded, and MITSC members unanimously agreed to support LD 955.*

LD 956 (Repealing 30 MRSA §6204). Mr. Richert said the King Administration is opposed to LD 956. Chair Cohen said §6204 was fundamental at the time of the State going along with the Settlement Act. In effect, repeal of this provision would take away a lot of the Land Claims Act. Representative Moore said that §6204 is used to club the Passamaquoddy Tribe and is used as a tool to diminish cultural integrity. Recognizing that this blanket repeal is a radical change, he said the Tribe would welcome a

transitional period for this change. Chair Cohen said as a practical matter, to rectify any wrongs the Tribe needs to take another approach. Representative Moore said he is trying to prevent an unpleasant situation, and if the Legislature votes this down it shows that there is no choice.

Mr. Banks stated that in environmental land management, this repeal would remove a lot of confusion about laws. There is a body of federal law that applies to other federally recognized tribes. Mr. Banks said the intent of the Settlement Act with respect to natural resources management includes inconsistencies between federal and state laws. He agreed that repeal of §6204 does not stand a good chance of getting through and noted that the Penobscots have been having the same kinds of discussions that the Passamaquoddy Tribe has been having.

Governor Stevens commented that the Passamaquoddy Tribe is standing firm and that there had been a lot of turmoil with a recent law enforcement incident. He said the Tribe had met with Governor King, who said the Tribe should negotiate with the Department of Marine Resources (DMR). The negotiators came up with an agreement, which then was rejected by Governor King. MITSC was not involved.

Mr. Best noted that the State always asks whether it is in the Settlement Act and that the Passamaquoddy Tribe "went the long mile" to accommodate the State. He pointed out that Governor King said a bill should go in and that the Tribe had put the bill in, but then the Governor and DMR opposed it. DMR did not submit legislation.

Representative Moore said the Passamaquoddy Tribe wants dialogue and communication about §6204; they have an obligation and are sworn to do this. He asked who rules on inseparability in the Maine Indian Claims Settlement Act—should this be in the Tribe's forum or the State's forum? Chair Cohen said he is willing to work hard. Mr. Richert commented that the recent round of salt water discussions were never brought before MITSC. He said he would talk with the Governor.

Representative Moore said the Tribe is subjected to double talk. The recent counter proposal by the State is an insult to the Tribe. Mr. Best said when he was involved in negotiations, all present understood what was being said. He said Governor King should be clear with his staff about those negotiations. Representative Moore added that they had felt things were going well with their proposal. Mr. Best said the Passamaquoddy Tribe is not obligated to MITSC and they are tired of getting their legs cut off.

Governor Dore noted that the Tribes are not consulted on laws passed by the State and that their culture and way of life are violated by these laws. He said state laws should get off Passamaquoddy land, especially if they violate Passamaquoddy culture. He added that salt water fishing, housing authorities, and other areas were not part of the Settlement Act. Representative Moore said, on its face, repeal of §6204 is a drastic measure. The Passamaquoddy Tribe would accept an amended version, and they want dialogue.

Representative Bisulca commented that Passamaquoddy experiences are not unique. He said the King Administration has created a wringer, is perceived as arbitrary and heavy-handed, and offers no honest treatment of the issues.

Mr. Richert pointed out that things that have come before MITSC have gotten decent treatment and things that do not come before MITSC can create disaster. He had known that there were discussions going on about alienated lots at Indian Township, but the Administration was ripped for doing nothing. He said the Great Ponds Task Force included a recommendation [to exempt waters in Indian Territory, pending recommendations by MITSC], but the Penobscot Nation rejected this. Mr. Richert observed that MITSC gets involved at the tail end of issues and does not have a chance to do things up front. Chair Cohen urged everyone to get issues before MITSC early and to enlist the support of people like Mr. Richert.

Maynard Stanley indicated that when he grew up, Passamaquoddy Tribal Members did not have wardens to deal with and inherent rights were not legislated. He said no one came and gave the State the right to say that he cannot live his aboriginal rights. Salt water was not part of the pot. He noted

that he has been [illegible] he will not negotiate his rights and [illegible] to maintain a peaceful way of life. Mr. Stanley asked "What is wrong with this?" He said if the State is informed there can be no more [illegible] on this.

Chair Cohen said a lot can be done by coming to MITSC. Representative Bessette said the Kirk Administration does not want MITSC involved in discussions. Representative Moore said, "the camel's back already has been broken. Why and fix it?" Chair Cohen said he is trying to make MITSC more effective for the Tribes and everyone else and he hopes people will give his tenure a chance to settle in. He said he is not going to agree with everything, but the Settlement Act is a living document and that is why MITSC was created. Mr. Best said he likes to give second chances for discussion, but he is on a short fuse.

LD 957 and LD 966 (Tribal Court Bills) Mr. Best said there are no repercussions for non-tribal people and, for tribal people, it is going one way--tribal people must abide by non-tribal laws, but non-tribal members do not have to abide by tribal laws. Chair Cohen asked Ms. Scully to communicate to the Judiciary Committee that MITSC ran out of time to discuss these bills.

Adjournment

The meeting adjourned at approximately 4:00 P.M.

MAINE INDIAN TRIBAL-STATE COMMISSION

June 9, 1997

The Honorable Angus King
Governor of Maine
1 State House Station
Augusta, Maine 04333

Dear Angus:

As you know, I was selected by the Maine Indian Tribal-State Commission (MITSC) as its chair in the latter part of December. Because of a lengthy illness, I have not been able to carry out the agenda I had set for myself to make MITSC a more effective voice in dealing with Indian affairs as contemplated by the 1980 Maine Indian Claims Settlement Act.

It is clear to me now, after looking at the work of MITSC since 1980 and talking to individual members, that MITSC has been a failure in resolving tribal-state issues affecting Maine's people. This conclusion in no way should be interpreted to malign current or former MITSC members or our wonderful Executive Director, Diana Scully.

Meeting minutes over the years reflect the fact that it has been almost always the Tribes who bring issues before MITSC. Rarely has the State done so. The Tribes are asking why they should use MITSC, when the State tends to overlook this forum. They are becoming more impatient about sitting in MITSC meetings, when they see that MITSC is not "in the loop" on the important decisions and actions affecting them.

At our meeting of June 5, I offered a proposal which I believe will make MITSC an effective voice in playing the role contemplated by the Settlement Act. The proposal met with unanimous approval by those members present. Passamaquoddy participants from Indian Township left the meeting before the discussion of the proposal because they needed to respond to urgent telephone calls from their community.

Simply put, the proposal is that before state agencies take any action affecting the Tribes, they should meet with MITSC, review the intended action, and give MITSC the opportunity to discuss the intended action and possibly *suggest* alternative actions. I would hope this could be accomplished by Executive Order. If, of course, a state action requires prior secrecy, this proposal would not apply. I will be making the same proposal to the Tribal Governors and Chiefs as to actions by the Tribes that have a direct impact on state or federal governmental entities.

In no way is this proposal intended to suggest that MITSC would have any veto power over state agencies or the Tribes. However, for the first time, there would be an alternative dispute resolution mechanism—to be used to defuse the very serious attitudes that currently are developing into some very negative confrontational actions.

I had hoped to meet with you personally by now to discuss my perspective of MITSC. However, as you know, I have been in the hospital for four months. I am on my way to Mount Sinai Hospital in New York to finally resolve my current health problems. I want to thank both Mary and you for your kind notes, and I hope to schedule a meeting with you upon my return.

Sincerely,

Richard Cohen
Chairman

cc: Tribal Governors and Chiefs
MITSC Members
John M.R. Paterson

P.O. Box 87 Hallowell Maine 04347 207/622-4815

Dances with litigation

Indian Island (Christopher Ayres photo)

(first of two articles)

By Deborah DuBrule

Posted warnings against eating the fish dot the river banks at Indian Island. Thirty miles downstream from the Lincoln Pulp and Paper mill, the few species that now live or venture into the waters surrounding the Penobscot Nation's reservation contain PCBs and mercury, as well as dioxin, one of the world's most toxic substances.

"We have inland fishing rights," explains the Penobscot Nation's representative to the Maine Legislature, Paul Bisulca. "We just can't enjoy them because the fish are so contaminated that we can't eat them. Our water doesn't meet state water quality standards."

The Nation has called in the federal government, which has responsibility for protecting Native rights and resources.

Downeast, the Passamaquoddy government has virtually posted its Washington County territories against trespass by non-tribal members. Last October, marine wardens seized gear and charged three tribesmen with violating state fishing laws. Gripped in a dispute over state jurisdiction and saltwater fishing rights for more than a year, Passamaquoddy representative Fred Moore warns that if the state continues to "harass" Natives, "it can plan on arresting the entire tribal government because that's who'll be out here fishing."

"Our rights were granted by the creator, not the State of Maine," adds Lt. Governor William Eric Altvater at the Pleasant Point Reservation bordering Passamaquoddy Bay. "We don't need the state's holy water on a piece of paper to do what we've been doing for thousands of years. The Europeans have only been fishing here for the last three or four centuries."

Rather than engaging in ceremonial dances honoring close working ties with the state, both tribes are locked in litigation over conflicts that have emerged since they and the state signed the Indian Land Claims Settlement Act in divided, or more contentious, than over fisheries: The Penobscots have waged the battle inland; the Passamaquoddies are skirmishing along the coast.

Initially hailed as a bridge between governments, the 1980 law has become the bane of tribal sovereignty and aboriginal rights; a carbuncle for state and big business policy makers historically at odds with tribal and environmental interests, and who are unaccustomed to Native involvement in decision making.

A troubled legacy

Prompted by a 1794 treaty discovered in a shoe box at the Indian Township reservation, the settlement act focused on federal compensation for Indian lands that were acquired by Massachusetts and Maine without congressional approval. That land consisted of nearly two-thirds of the State of Maine.

The agreement also established a new legal relationship between the state and the Penobscot Nation and the Passamaquoddy Tribe, the two principal tribal players in negotiations who had won recognition by the federal government just five years earlier.

Until 1975, Maine's Natives were viewed as wards of the state. Unlike many "federal" tribes which enjoy nation-within-a-nation status, Maine tribes have a "unique relationship where state law applies more broadly," according to Assistant Attorney General Thomas Warren. "The law says that, unless it's specified in the settlement act, the tribes are subject to state laws to the same extent as any other persons."

The ancestors of Maine's four surviving tribes have hunted and fished here for more than 11,000 years. In the early 1600s, 32,000 natives lived in what is now Maine and Canada's Maritime Provinces. Ninety percent of that population died between 1616 and 1619 — from disease, war, and forced migrations. Roughly 6,000 souls comprise Maine's Indian population today, including Micmacs and Maliseets who enjoy separate federal agreements.

[illegible] silent on marine fishing. Inland fishing rights, on the other hand, are spelled out intricately, with sections of water allotted to the jurisdiction of the tribes, the state, or the Maine-Indian Tribal State Commission (MITSC), the intergovernmental body created by the settlement to regulate certain waters and to review the effectiveness of the law.

"How can any thinking person look at the inconsistency — all the detail in that section dealing with inland fishing — and believe we would have signed away our saltwater and natural resource rights without a word?" asks Moore.

"Clearly there is a divided opinion with the attorney general's office among people who were not involved in those negotiations," observes MITSC's new chairman, Richard Cohen, former attorney general for the state and the lead negotiator in the settlement. "There seems to be a belief that the Indian Land Claims Settlement Act was signed and that it's carved in stone. There has to be some disabusing of that.

"There were many issues, including fishing rights, that were subject to discussion and further legislation at that time," recalls Cohen. "It's one reason why the Commission was set up. [Marine fishing rights] were not an issue that was foreclosed or precluded by the Maine Implementing Act [a part of the settlement agreement] of 1980."

Nevertheless, Governor Angus King's chief counsel, Elizabeth Butler, said, "The State of Maine has the regulatory authority for protection of stocks and access by all Maine citizens to that stock, whether they're Indian or non-Indian."

Responding to repeated tribal assertions that King had refused to engage in discussion about native fishing rights and management authority, Butler said that the administration had made "every effort to meet with tribes to discuss matters of concern. Trying to explore creative ways to decrease friction between tribes and the state is something we take very seriously. At the same time, we have a duty to faithfully execute the laws of Maine."

A river runs around it

For the last 150 years, the Penobscot Nation has silently watched as dams sprouted around its one-by-three-mile reservation, controlling the movement of both water and fish. Logs from timber harvests clogged the river, later replaced by raw sewage and effluent from tanneries, slaughterhouses, and paper mills that nearly halted the run of anadromous fish.

Silent no longer, the Penobscot Nation has challenged the state and industry over the release of dioxins into the Penobscot River, the re-licensing of dams that have dried up riverbeds, the inadequacy of old fishways that are curtailing Atlantic salmon restoration efforts, and the construction of a new [illegible] Bangor Hydro to trap and truck spawning salmon around the reservation.

The Penobscots have opposed a discharge permit issued to Lincoln Pulp and Paper on grounds that it allows the release of dioxin into the Penobscot River. The chlorine-free paper bleaching process favored by the tribe would release no dioxin. Mill representatives have said that they are significantly cutting back on dioxin discharges and that the chlorine-free alternative is too costly.

The Attorney General's office issued a letter on June 3 to the US Environmental Protection Agency (EPA) that states, "The Nation has no guarantee of...quantity and quality of fish other than that of every other citizen of the State." **The letter also points out that fish were fewer and more contaminated in 1980; guarantees of quality and quantity weren't part of the land claims settlement.**

Maine's Bureau of Health issued various fish consumption advisories on nine bodies of water in March, including the Penobscot, because of mercury, PCBs and dioxins. Deputy Director Philip Haines explained that "only one percent of dioxin comes from paper mills. Most are airborne and are produced by medical waste incinerators burning plastic."

"That's a red herring," charges Bisulca. "That one percent is a national figure. The heaviest concentrations of dioxin occur in the Great Lakes states, the Pacific Northwest, and the state of Maine where the big Kraft mills are located, and this poison bioaccumulates in organisms close to the source. Kansas, for example, has zero dioxin other than that which occurs naturally. There are no Kraft mills in Kansas. Airborne levels are minuscule." Maine has seven Kraft mills.

A measure sponsored by Gov. Angus King and passed by the Legislature addressed lowered levels of dioxin downstream from Kraft mills. "Like lead and asbestos, dioxin production is something [illegible] of the legislature's Natural Res[illegible] Committee. "King's bill doesn't [illegible]

The tribe is awaiting a decision by EPA to hear its appeal.

For almost 10 years, Bangor Hydro's Basin Mills dam project has stood as one of the most contentious battles being waged between the tribe and the state. Of all the Atlantic salmon that return to New England, 70 to 80 percent swim to the Penobscot, the nation's "flagship restoration river," according to the US. Fish and Wildlife Service. Already, fish must navigate past five existing dams, equipped with often-outdated fish passage, to spawn.

The EPA gave the project the worst environmental impact rating it could, yet the state approved it.

"We've told the state that we're not here to impede economic development," explains Bisulca. "We want the state to realize the effect of its actions on the tribe. But the state countered that it could do whatever it wanted — I didn't want to go to the feds, but we weren't getting anywhere with the state," he says, referring to his initiative to successfully involve the US Department of the Interior in the dispute.

"Building a new dam is going to seriously jeopardize our fishing rights and destroy any hope of restoring self-sustaining Atlantic Salmon runs," he added. "It seems to me that enhancing the quality and quantity of fish in the river would serve the tribe and the state. The Penobscot could be a premier fishery, a boon to the state's economy. We have different opinions about our fishing rights. Let's not let that interfere with our studies of the fishery and any joint efforts we can undertake to improve the resource."

Conservation groups and sports fishermen consistently lauded the Penobscots as leaders in helping to restore health to the Penobscot River.

"They've been our very strong allies," said Don Shields, chief spokesperson for the Penobscot River Coalition, which is comprised of national, [illegible] with conservation and sp[illegible] fishing [illegible] "They're in a more [illegible] position than we're in because they have certain treaty and aboriginal rights to the fishery that supersedes ours. And they're backed up by the federal government."

Several years ago, the Penobscot Nation's Department of Natural Resources (DNR) negotiated an agreement with Maine's Department of Environmental Protection to monitor water quality along the river and its tributaries, and with the Department of Inland Fisheries and Wildlife for the management of fish in the river. "We're really just starting to develop programs and getting involved in all the proceedings that affect the river," explains director John Banks, who has headed the DNR, which boasts a staff of 25, for 17 years. **"It gives us a chance to review state fisheries management proposals and consult with the state on those."**

Bisulca said the tribe had developed a good working relationship with Maine's Department of Environmental Protection, as well as an improved association with the Department of Inland Fisheries and Wildlife (IFW).

"I don't think that historically we've brought them into the process as much as we should have," acknowledges IFW Commissioner Bucky Owen. "Over the last 12 months, we've made more of an effort to remedy that."

In addition, Owen sees the tribes as potential allies in the federal arena. "Through the Department of Interior, I think they've got a lot of input," he said. Owen pointed to a potential partnership with Governor King, who wants to close a loophole in the Clean Air Act to reduce Midwestern airborne pollutants that land in Maine.

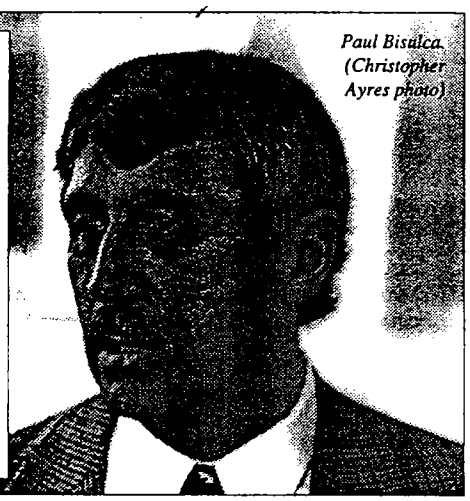
Despite improved relations with a couple of state agencies, Banks observes that tribal-state relations suffer from "a lack of understanding about tribal sovereignty, jurisdiction and federal law."

Enhancing Indian involvement in the fishery, the Legislature added two tribal positions to the board of Maine's Atlantic Salmon Authority last year. Aside from the Authority and the Legislature, (Penobscots and Passamaquoddies have one non-voting member each in the House of Representatives), there are no tribal representatives in the countless state policymaking bodies that oversee fisheries and natural resources.

During a recent fishery conference sponsored by the Maine Indian-Tribal State Commission, Department of Marine Resources (DMR) Commissioner Robin Alden suggested tribal membership on its advisory committees. She also emphasized that DMR needed to ensure that it was consulting tribes, rather than delivering decisions as *fait accompli.* ▼

Next month: Maine's Passamaquoddy tribe and the state jockey over marine fishing rights.

In disputes over fish and rivers, Maine Indians play a growing role



Paul Bisulca. (Christopher Ayres photo)

Maine Indian Tribal-State Commission
Minutes of September 12, 1995

MITSC Members Present

John Banks
Anthony "Mike" Best
Paul Bisulca (nonvoting member)
Cliv Dore
Mark Chavaree
Fred Hurley
Bennett Katz, Chair
Matt Manahan

Other Persons Present

Wes Francis, Central Maine Indian Association
Thomas Harnett, Assistant Attorney General
Diana Scully, MITSC Executive Director
D.V. Shields, Consultant, Ecosystem Protection
David Westphal, Acadia FilmVideo

Meeting Convened

The September 12, 1995, meeting of the Maine Indian Tribal-State Commission, originally scheduled to begin at 11:30 AM, was convened by Chair Bennett Katz at approximately 1:35 PM in room 107 of the State Office Building in Augusta.

Remarks by the Chair

Mr. Katz reported that the Legislature's Judiciary Committee had just held a hearing on the nomination of John Patterson to the Maine Indian Tribal-State Commission and he received just 3 votes. (Earlier, the Committee had supported the nomination of Evan Richert to the Commission.) During the hearing, concerns were expressed that the Commission has done very little reporting about the effectiveness of the Settlement.

Mr. Katz said that he and Tribal Representative Paul Bisulca had approached House Majority Leader Paul Jacques about submitting a bill to address the finances and other needs of the Commission. They discussed expanding the Commission's membership and increasing its funding.

Mr. Katz noted that Governor Cliv Dore had told him that if John Patterson was approved to serve on the Commission, the Passamaquoddy Tribe no longer would be part of the Commission. He stated that if he were Governor King, he would not be feeling too kindly about the outcome of his nomination.

Mr. Katz also expressed concern that the Commission was excluded from a recent meeting involving Governor King's Office, the U.S. Department of Interior, and the Penobscot Indian Nation. He concluded that the Commission has challenges and stated his hope that all parties share a commitment to make it stronger.

John Banks said that he was encouraged by the remarks of the Judiciary Committee, because they saw that the Commission is not taken seriously. The Commission spends a lot of time developing positions and having things go nowhere beyond the Commission. He thought the Judiciary Committee would be willing to listen. Mr. Katz said that he would write a letter to the Judiciary Committee to clarify issues raised.

Minutes; Financial Reports

Mr. Katz reviewed six actions taken during the Commission's meeting of June 16, 1995. He pointed out that these needed to be validated because there had not been a quorum:

- Accepting the minutes from the Commission's meeting of March 16, 1995.
- Accepting the financial report

- [illegible] additional funding for the Wabanaki [illegible] Project [illegible] from the Department of Human Services and the Department of Transportation.

- Authorizing a number of actions regarding the video *Wabanaki: A New Dawn*, including [illegible] from the Commission's [illegible] and packaging.

- Agreeing that Diana Scully, dba Vantage Point, should continue to provide management services to the Commission for the coming year and should provide a work plan for the coming year.

- Approving the Commission's budget for FY 1996.

Matthew Manahan moved, it was seconded and all agreed to accept the minutes from the Commission's meeting of June 16, 1995. [There was not a quorum when this vote was taken.]

Matthew Manahan moved, John Banks seconded, and all agreed to accept the Commission's year-end financial report covering the period of July 1, 1994 through June 30, 1995. [There was not a quorum when this vote was taken.]

Diana Scully reviewed the financial report for the period of July 1 - September 10, 1995. She reported that this summer had been much busier than usual for the Commission and that she was concerned about the rate of expenditure. She said that the Commission had received the State's $15,000 appropriation and had not yet received the Tribal portions of the budget. It was suggested that she send out a second notice to both the Passamaquoddy Tribe and the Penobscot Indian Nation to remind them that their $7,500 payments are due. Ms. Scully noted that the Tribes usually make their payments after the beginning of their fiscal year (October 1). *Fred Hurley moved, Matthew Manahan seconded, and all agreed to accept the financial report for the period July 1 - September 10, 1995.* [There was not a quorum when this vote was taken.]

Mr. Katz said that the Commission should establish an indirect cost rate to apply to future grants it receives. After discussion about a range of rates, *John Banks moved, it was seconded, and all agreed that the Commission's indirect cost rate should be 19%.* [There was not a quorum when this vote was taken.]

Governor and Commission Member Cliv Dore arrived at the meeting and Mr. Katz asked for a motion to validate all actions taken by the Commission during its June 16 meeting. *It was moved by John Banks, seconded by Matt Manahan, and agreed by the Commission to validate all actions taken by the Commission during its meeting of June 16, 1995.* The vote was 6 in favor and one abstention.

It was moved by Matt Manahan, seconded by John Banks, and unanimously agreed: to validate the Commission's actions earlier in the meeting to accept the minutes of the meeting of June 16, 1995, to accept the year-end financial report for the period July 1, 1994 - June 30, 1995; to accept the financial report for the period of July 1-September 10, 1995; and to establish the Commission's indirect cost rate at 19%.

Announcements and Updates

Ms. Scully announced that the Federal Deposit Insurance Corporation was sponsoring a community focus group at the Wabanaki Center at the University of Maine at Orono on Friday, September 2 from 10 AM until 4:00 PM to discuss lending obstacles and opportunities for Maine's American Indian People and Tribes. She distributed information.

Ms. Scully also updated Commission members about the Wabanaki Resources Coordination Project, reporting that a second $20,000 grant from the Maine Department of Human Services is expected and that support by the Maine Department of Transportation is a possibility. She said that Cliff Smith has done a good job identifying a number of resources and that this is long-term, on-going work. She expressed concern that the Commission can offer Cliff only a minimum of support and no office.

Passamaquoddy Ordinance

Mr. Katz asked Governor Dore to tell the Commission about the ordinance passed by the Passamaquoddy [illegible] in which limits access to every [illegible] The Governor replied that this refers to Indian Township. When Mr. Katz asked whether there had been any runaway trespassers, the Governor answered "not yet." Mike Best said that the Tribe has implemented the ordinance.

Penobscot Tribal Representative Bisulca asked whether there were negotiations with the State. Governor Dore replied that Governor King would be visiting Indian Township tomorrow and that this was preliminary to a bigger meeting. Representative Bisulca asked whether the Penobscot Indian Nation might be involved, as well.

Fred Hurley mentioned that this was discussed during the September 6 workshop on fish and wildlife enforcement issues, but that this was not the place to resolve it.

D.V. Shields asked whether the watershed area includes Grand Lake Stream? He wanted to know how the ordinance affects this and whether anglers would need permission from the Tribe to fish there. Fred Hurley said that Grand Lake Stream is not in the reservation.

Ms. Scully expressed concern about possible violence. She pointed to two articles in the September 10, 1995 *Maine Sunday Telegram*: one about the Passamaquoddy Tribe privatizing the use of waterways and the other about Chippewa protests in Canada which resulted in the death of a native protester. She hoped that what happened in Canada would not happen in Maine. Mr. Best said violence could happen, if things can't be worked out.

Conflict of Interest

When Mr. Best stated his concern about a member of the Commission who was involved in a LURC proceeding, Matthew Manahan replied that he represents Georgia Pacific. He said that when he has a paying client, he cannot participate in Commission discussions and votes which affect that client. Governor Dore asked Mr. Manahan how he can participate at all, when everything is intermingled. The Governor said that he cannot feel free to say things at the Commission. Mr. Best reported that the Passamaquoddy Joint Tribal Council was very concerned when they saw Mr. Manahan's signature on the legal document in the LURC proceedings concerning Georgia Pacific.

Representative Bisulca said the legitimacy of the Commission is at question. Even if an individual is capable, if there is a perception that a person is in the enemy camp, then there is a problem. He said that Pierce Atwood (Mr. Manahan's law firm) is fundamentally opposed to the Penobscot Indian Nation. Fishing rights are at the heart of the Nation's dealings with Pierce Atwood.

Mr. Manahan responded that he was disappointed in that position, adding that the Commission is a public body and that things were fully aired during the confirmation process. He said that his firm represents Great Northern and Georgia Pacific.

Mr. Best said the concerns expressed by the Tribes were not a personal attack on Mr. Manahan, but that he had felt comfortable discussing things at the Commission before, but now the Passamaquoddy Governor and Council are telling him to be very careful. Mr. Katz stated that this is a question of personal ethics and that he has personal confidence in Mr. Manahan.

Mr. Banks indicated that after listening to this discussion, he is also concerned. He asked how Mr. Manahan can participate in the Commission's regulation of fishing in a meaningful way, since this automatically involves sustenance fishing. He felt that this puts Mr. Manahan in a direct conflict of interest and asked how he could meaningfully participate in the Commission's work.

Representative Bisulca said that Bangor Hydro contends that the Penobscot Indian Nation has not fishing rights on the Penobscot River and asked how Mr. Manahan can be involved on the Commission. Mr. Manahan replied that when the Commission adopts fishing regulations,

[illegible] this.

Mr. Katz indicated that he had lived with possible conflicts all his life and that the legislature is filled with conflicts. He added that [illegible] conflicts in a broad sense, not in a narrow sense and that this discussion is about conflicts of interest in the broad sense.

Workshop on Enforcement Issues

Mr. Hurley reported that the Commission's September 6 workshop on fish and wildlife issues was good. Participants began to identify issues. The timing of the Passamaquoddy ordinance brought focus to the meeting. Governor John Stevens made a statement which really got to law enforcement people and gave them a good sense of the social and cultural concerns of Tribal Members. It was not the intention of the workshop to resolve higher level policy issues.

Mr. Hurley said that two discussion groups were formed during the afternoon of the workshop, based on geography. Mr. Hurley's group decided that Tribal enforcement people will be invited to division meetings of the Department of Inland Fisheries and Wildlife (DIFW). Mr. Hurley concluded that the workshop set the stage for relationships.

Representative Bisulca said there is an inability to diffuse situations at the local level and that it took a long time to get to local issues. He added that there is not a good batting average in trying to fix things legislatively and asked "How do we arrive at fixes operationally? How do we win at the Legislature?" He said that DIFW had "stuck its neck out" recently on behalf of the Penobscot Indian Nation and that this helped the relationship between DIFW and the Nation.

Mr. Hurley noted that workshop participants had identified relationships on two levels: on the day to day operational level and at the policy level.

Federal Power Act

Representative Bisulca said he would like to see the State, the Tribes, and the Commission stop other people from extreme interpretations of the Settlement. He would like to see the Commission send a letter to the Federal Energy Regulatory Commission (FERC), stating that the Commission does not share the views about the meaning of the Settlement expressed by Great Northern and that the Penobscot Indian Reservation does include waters. (Note: The first draft of these minutes referred to Bangor Hydro instead of Great Northern. That was an error.) Mr. Banks noted that a 1988 letter from then Attorney General Jim Tierney addresses this issue.

Governor Dore moved that the Commission write the letter requested by Representative Bisulca. Mr. Katz asked what assistance the Attorney General could offer on this question. Thomas Harnett stated that if you are on an island and you have a fishing right, then it would seem that you have that right in the water around the island. Mr. Hurley said he felt uncomfortable with this discussion, because it involves a legal issue. He asked, "What is an island?" He said if you own an island, you own land underneath the water.

Mr. Banks reiterated that the Attorney General weighed in on this in 1988, saying that within the sustenance fishing rights of the Penobscot Indian Nation, the Nation may gill net fish from the river. Mr. Shields noted that at that time, the Salmon Federation took a position in support of the Nation. Mr. Hurley pointed out that the same issue affects Indian Township.

Mr. Banks stated that the Penobscot Indian Nation is asking the Commission to make a statement to FERC. Mr. Katz said that he could write a letter over his signature without a vote, after seeing Jim Tierney's letter. Mr. Hurley said he would be comfortable with this if the letter and tone answers the question.

Pamphlet on Fish and Wildlife Provisions

Ms. Scully indicated that she had received few comments on the pamphlet about the fish and wildlife provisions in the Settlement. She indicated that the pamphlet has not listed the

[illegible] ship given the [illegible] adopted by the Passamaquoddy [illegible] that this will see is to be a resolution of the question about whether Mattagamon is one lake or two.

Mr. Hurley noted that from a public perspective, it is one lake but that the Commission can claim anything. He would like to see the Penobscot Indian Nation and DIFW work together on the regulation and enforcement of this water and that this is needed with respect to field operations. He said that if it is the desire of the Commission to have First Lake Mattagamon under its jurisdiction, so be it, provided that the Nation and DIFW work together. Mr. Banks said that he agreed with everything Mr. Hurley said. *There was consensus to amend the pamphlet to include First Lake Mattagamon as one of the Penobscot waters under the Commission's agreement.*

Update on LD 99

Representative Bisulca reported that there had been a meeting involving the Penobscot Indian Nation and the Department of Environmental Protection concerning LD 99 and that he would be meeting again with the Commissioner. He said that in the future he would like to see "thumbs up" on legislation supported by the Commission and that now the Commission doesn't get any respect. He said he sees this idea going forward again.

Trust Land

Mr. Banks and Mr. Bisulca said that the Penobscot Indian Nation has purchased 155 acres of land in unorganized territory (T1 R6 at Salmon Lake) which they will want to place in trust. Ms. Scully said that she would review the Commission's by-laws to determine whether/what public notice will be required before the Commission makes its recommendation on this matter.

Commission's Direction and Work

Ms. Scully distributed a statement with her thoughts about the Commission's overall direction and work. She felt that in the 15 years since the Settlement the collective memory and understanding of its substance and signficance have faded. She also noted that the relationship between the State and the Tribes is an uneasy one and that the uneasiness seems to be growing. She expressed concern that the Commission has never articulated a clear vision of what its role should be, that the Commission's basic operating budget is the same today as it was 8 years ago, and that at a time when people are having greater and greater expectations of the Commission, the budget is feeling tighter and tighter. Among the tasks for the coming year, Ms. Scully suggested focus groups with state and tribal representatives from different areas (e.g., natural resources, law enforcement and judicial, human services, and economic development) to help clarify the Commission's vision, role, and plan for the future. She also suggested the pursuit of additional funding for the both general operating budget and the Wabanaki Resources Coordination Project.

Mr. Katz commented that to the extent the Commission limps along within its existing budget, it will continue to limp along. He asked whether members would be supportive of an amendment to the Commission to increase the membership on the Commission and to provide more funding. Mr. Hurley said that the Commission must have the support of the Tribes to reorganize. Mr. Katz asked whether the Tribal representatives on the Commission could generate support for increased funds, if the Commission agreed that this is an important thing to do. Mr. Best said he would try.

Mr. Katz asked the Commission members to leave it to him and the two Tribal Representatives to try generate support to strengthen the Commission.

Wabanaki Video

Ms. Scully said that Mark Chavaree had negotiated the terms of a distribution agreement with the Native American Public Broadcasting Consortium and she asked for the Commission's approval to proceed on this agreement. Mr. Chavaree said that the main focus now is on getting the video out there. *It was moved, seconded, and agreed that the Commission will enter*

[illegible] satisfactory resolution of details in the agreement.

Reverend Roger Smith said that the Native American Project of the Episcopal Diocese [illegible] like to make another contribution to help with the distribution of the Wabanaki [illegible] schools and/or through the churches.

Meeting Adjourned

The meeting was adjourned at approximately 3:45 PM.

Maine Indian Tribal-State Commission
Minutes of September 25, 1996 Meeting

MITSC Members Present

John Banks
Paul Bisulca [nonvoting member]
Anthony "Mike" Best
Mark Chavaree
Fred Hurley
Governor Cliv Dore
Bennett Katz, Chair
Matt Manahan
Fred Moore [nonvoting member]
Evan Richert
Vendean Vafiades

Other Persons Present

David Attean, Penobscot Indian Nation
Tamis Coffin, Penobscot Department of Natural Resources
Charles Polches, Passamaquoddy Tribe at Indian Township
Diana Scully, MITSC Executive Director
Roger Smith, Chair, Maine Task Force on Tribal-State Relations
David Westphal, Acadia FilmVideo & sister

Meeting Convened

The September 25, 1996, meeting of the Maine Indian Tribal-State Commission, was convened by ChairmanBennett Katz at 11:15 PM at the Penobscot Community Building on Indian Island.

Minutes and Updates

It was moved, seconded and unanimously agreed to accept the minutes from the Commission's meeting of April 18, 1996

Diana Scully reported that *Wabanaki: A New Dawn* was one of four films to receive an award from the American Anthropological Association and that filmmaker David Westphal would travel to San Francisco at his own expense for the November 20 award ceremony. Also present at the ceremony will be one of the video's advisors, anthropologist Prins. There will be a screening of the video in San Francisco on November 22. Chairman Katz offered congratulations on behalf of the MITSC to Mr. Westphal. *It was suggested the Ms. Scully prepare a press release about the award and explore the possibility of distribution through the American Anthropological Association.*

Ms. Scully gave an update on the State's performance based budgeting process and the MITSC's response to it. She reported on her attendance at an August meeting of the Commission on Performance Based Budgeting during which she had an opportunity to provide information about the MITSC and explain why, even though performance based budgeting is a good idea, the State's process does not make sense for the MITSC. She noted that Evan Richert is a member of this Commission and that it seemed as though at least some of its members understood why the MITSC is different than other state agencies. *It was agreed that Ms. Scully should contact the Commission on Performance Based Budgeting, with copies to the*

Bureau of Budget and the Legislature's Office of Fiscal and Program Review to sign on the MITSC's different status as an intergovernmental entity and its inability to meet the State's deadlines for performance based budgeting.

Executive Session and Report

Chairman Katz called for an executive session to discuss the transition to a new Chair and the MITSC's staffing. Upon conclusion of the Executive Session, there was a report on its outcomes.

It was moved by Vendean Vafiades, seconded by John Banks, and unanimously agreed that the MITSC values the contributions of Diana Scully and will continue to retain her as Executive Director over the next year. Chairman Katz reaffirmed his decision to resign as Chair. *He assigned the MITSC members to recommend replacements and to get to Ms. Scully recommended names within 15 days.*

Year-End Financials

Ms. Scully touched upon the highlights of the year-end financial report. *It was moved by Matt Manahan, seconded by Mike Best, and agreed that the year-end financial report for July 1, 1995 through June 30, 1996 be approved.*

--- break for lunch---

Great Ponds Task Force

Mr. Banks said the Fishing Subcommittee wanted to update the MITSC on the work of the Great Ponds Task Force of which Evan Richert is the Chair and Tamis Coffin of the Penobscot Department of Natural Resources is a member. Evan indicated that jet skis are a key issue under consideration and that the Task Force also is considering recommendations to increase the boater registration fee to cover enforcement and protect water quality, to direct funding to lake restoration, and to have a standing Lakes Committee oversee pilot projects. He said the Task Force has received a lot of testimony, would welcome the advice of the MITSC, and notified the Tribes about its work a few months ago.

Mr. Banks asked whether the Task Force is looking at the headway speed law. Evan replied that they have considered this only with respect to personal watercraft and have not made recommendations concerning rivers, because this is a Great Ponds Task Force. Mr. Banks said he is concerned about headways, but not on great ponds. Tamis Coffin said the Penobscots are concerned about access to great ponds on Tribal Trust land. She said there is a public perception that is inaccurate. Mr. Banks suggested that perhaps as areas of concern continue to exist as the report is finalized, then the MITSC could consider taking action.

Fred Hurley said it should be acknowledged that the focus of the Task Force is on the use of great ponds, not access to great ponds. Ms. Coffin noted that it was stated in the Task Force that the waters belong to the State. Cliv Dore commented that this does not apply to waters owned by the Tribes. Governor Dore said he agrees that the Tribes should work with the State on lakes of more than 10 acres on Tribal Trust land, but does not agree that they should work with the State on waters under 10 acres or on rivers and streams. Mr. Banks said the Great Ponds Task Force should identify the waters on the Trust Lands and should hold a different forum so the Tribes can have something to say about surface use. He said, "We're heading for a train wreck with respect to great ponds and we should do something." Chairman Katz asked whether the Subcommittee can continue to work on this and Mr. Banks replied "yes."

Paul Bisulca said the Penobscots should be dealt with in a more tribal-friendly fashion to ensure that Tribal Members are not overwhelmed by non-Tribal participation. Governor Dore commented that the State should come to the Tribes, because many of the waters are within the Tribe's jurisdiction. Noting that this is an example of an issue raising many more complicated issues, Mr. Richert agreed that a separate process might make sense, regardless of jurisdiction. Mr. Banks said that Mattamiscontis Lake is in the middle of Tribal Trust Land.

[illegible] seeking solitude. He indicated that it is important to differentiate lakes on [illegible] order to avoid conflicts.

Governor Dore mentioned that the ruling on the case was when the State did not know through [illegible] the trust status of the reservation. The State still has the deed and has not passed this on to the Federal Government. The deed has not been filed as have all the deeds for all other Trust Lands acquired since the Settlement. Governor Dore said the Tribe [illegible] trust the State. Chairman Katz asked whether there was a vote the MITSC would like to take. Mr. Banks responded that he would like an opportunity to put forward language.

Vendean Vafiades commented that the Tribes are saying that surface use does affect fishing. Governor Dore said anything within the Trust Lands is under the Tribes' jurisdiction. Mike Best added that the State needs to understand that the Passamaquoddy Tribe has its own laws and do not go by State laws. Mr. Hurley said he refers to the Maine Indian Claims Settlement Act and that is why the MITSC is here. Governor Dore replied that the Settlement Act is a fraudulent document.

Mr. Banks asked Mr. Richert whether the Task Force could set aside the great ponds in Trust Territory for now. Mr. Richert responded that he expects that the Tribes will agree with the recommendations the Great Ponds Task Force is coming up with. He said he would propose to the Task Force that it carve something out that would identify that these great ponds are influenced by the MITSC. Governor Dore said there should be only one recommendation: to recognize the sovereignty of the Tribes. "We have our laws and the State has its laws." Mr. Richert commented that it is not that simple to him. Chairman Katz urged everyone to remember that the only reason the MITSC members are sitting around the table is because of the Settlement Act.

Mr. Banks said the Penobscot Indian Nation has ordinances, which often are more stringent than LURC regulations. He said the great ponds on Tribal Trust lands should be pulled out of the Task Force process. Mr. Richert responded that the Task Force must move ahead and that he is willing to recommend that recognition be given to these waters and that there be a forum that gives the Tribes a greater voice. Governor Dore moved to table the discussion indefinitely, indicating that he will not trade away the Tribe's land and water rights. There was no second. *It was moved and seconded and agreed to table the discussion until later in the meeting.*

Round Mountain Pond

Mr. Banks reported that the Fishing Subcommittee was recommending that the MITSC prohibit the use of motors on Round Mountain Pond in Penobscot Territory. *It was moved by Vendean Vafiades and seconded by Fred Hurley to accept the Fishing Subcommittee recommendation for the MITSC to adopt a rule prohibiting the use of motors on Round Mountain Pond in Penobscot Territory.*

Matthew Manahan asked for an explanation of how the Subcommittee came to agree on this. Mr. Hurley replied that when the MITSC promulgated the original rule on Round Mountain Pond, questions were raised about this provision and it was set aside. After the rule was adopted, Department of Inland Fisheries and Wildlife (DIFW) staff discussed this and felt that since this is only a trout pond, it would be appropriate to prohibit the use of motors. Mr. Hurley pointed out that the Settlement Act says that the MITSC needs to consider traditional values.

Mr. Manahan indicated that the Settlement Act says the MITSC has authority to promulgate fishing regulations and expressed concern about regulating something beyond the scope of the Settlement. He asked whether the MITSC has the authority to regulate outboard motors. Representative Bisulca said the reason he had asked for executive sessions to be placed on the agenda for this meeting was to discuss excluding from deliberations the public and MITSC members with conflicts. He said this discussion relates to his concern. Mr. Manahan said if this provision applies to people who are not fishing, MITSC does not have jurisdiction. Mr. Richert added that under State law, DIFW would have jurisdiction. Ms. Vafiades indicated

that she [illegible] the proposal [illegible] and suggested that [illegible] when anything affects the taking of fish, it is under the MITSC's jurisdiction. Mr. Man[illegible] asked whether it would make sense to apply this only to those who are fishing. Mr. Hurley pointed out that the only boats on the lake are fishing and that other property owners have expressed strong support for the prohibition of motors. Mr. Richert noted that motors disturb and affect fisheries.

Mr. Manahan stated that perhaps the MITSC should deal with the perceived conflict. Mr. Richert urged the MITSC to vote on the earlier motion. *The vote on the earlier motion was unanimous with one MITSC member absent.* A brief discussion followed the vote about how to proceed administratively to propose the new rule. Ms. Scully said a hearing is not required. the Settlement Act requires the MITSC to follow the Administrative Procedures Act, and that the language for the rule will be developed.

Conflict of Interest

Chairman Katz told Mr. Manahan that he should recuse himself when there is an actual or a perceived conflict of interest. Mr. Manahan replied that he has recused himself when there has been a conflict, will not participate when there is, and does not believe that he has a conflict in the bigger question of rules by the MITSC.

Governor Dore pointed out that Mr. Manahan would be voting on something that could have precedent down the road and stated that the State appointees to the MITSC should not vote when there is a conflict. Representative Bisulca said that he does not have a problem with the Tribe or State vigorously defending its views, but when the MITSC gets involved in issues regarding the scope of the Settlement Act it is in the companies' interest for the scope to be narrower. Mr. Manahan noted that what others are saying is that he can play no meaningful role in the MITSC. Representative Bisulca said if he had known of the conflict earlier he would have done something.

Mr. Banks stated that Mr. Manahan had agreed to recuse himself from any discussions involving fishing. Mr. Manahan said he referred to fishing that affects his clients. Mr. Banks commented that because Mr. Manahan's clients have taken position on fishing, there is a conflict. Mr. Manahan indicated that Governor King has not asked him to step down. Mr. Best stated that he cannot be open on issues before the MITSC, that Tribal leaders have told him to be quiet, and that this is a problem. Governor Dore mentioned that the Tribe would have opposed Mr. Manahan's nomination, just as they did John Patterson's, if they had known he represents a client with whom the Tribe has very adversarial relations.

Indicating that all members have gone through an appointment process, Mr. Richert said the MITSC does not have the right to kick anyone off its board. He shared his regret that the level of trust is such that any expansion or shrinking raises a conflict. Mr. Richert stated that the MITSC must handle the conflict of interest issues as any group would do: When a member thinks there is a conflict that person raises the conflict and recuses himself.

Electronic Rule

Ms. Scully explained that the Fishing Subcommittee was recommending that the MITSC support the conversion of its existing rule to an electronic data base. No substantive change was made in the MITSC's rule, but a rule-making process was required to convert it to the electronic data base. *It was moved by John Banks, seconded by Fred Hurley, and agreed by the MITSC to approve the conversion of the MITSC's rule to the electronic data base.*

Broad Exercise of Rules

John Banks explained the Fishing Subcommittee's recommendation concerning the proposal for the MITSC to exercise its authority to adopt rules on all waters under its jurisdiction within Penobscot Indian Territory. Mr. Banks said that this would avoid problems of the past (such as Duncan Pond), help further educate people about the MITSC and the waters on Tribal Trust lands, and give the MITSC an opportunity to focus on this important area of responsibility. Mr. Hurley said that this could be a positive step and could fit in with the

[illegible] adopting its rules for next year. Representative Bisulca [illegible] the broad exercise of rules because he felt a more radical approach is needed. Noting that this goes back to the original intent of the Settlement Act, he said the Penobscots can assist in its implementation. He suggested that the MITSC should look at issuing licenses to finance this. The enforcement could be done in conjunction with DIFW and the [illegible] and the MITSC could make this self-funding.

Governor Dore said he had a problem with the MITSC brushing aside issues. He said he brought an issue before the MITSC a year ago involving a state warden on Tribal Land harassing a Tribal Member and nothing has been done. He said he wants money returned and an apology to the Tribal Member. He emphasized that hunting and fishing is the exclusive jurisdiction of the Tribe and questioned why the State is licensing in these areas. When Representative Bisulca asked how this relates to the issue under consideration, the Governor replied that it doesn't.

Mr. Manahan asked whether the broad exercise of authority by the MITSC would be duplicative of DIFW activities. Mr. Hurley replied that there is an effort to publish rules jointly so there is not confusion. People would need only one license.

Paul Bisulca moved that the MITSC adopt rules over bodies of water in Penobscot Territory under the MITSC's jurisdiction, as identified in the MITSC's pamphlet entitled "Fish and Wildlife Provisions under the 1980 Maine Indian Claims Settlement". There was no second.

Chairman Katz asked about a fiscal note. Representative Bisulca replied that DIFW and the Penobscot Department of Natural Resources would help. Chairman Katz asked if there was hesitation about moving forward before having more details. Mr. Banks urged the MITSC to move ahead on rules and deal with licensing and permitting at a future meeting. Mr. Hurley suggested that the Penobscots could go back and develop rules and bring these to the MITSC and then figure out licensing and permitting. Governor Dore said fees and fines involved with the utilization of these waters should go to the Tribes. Chairman Katz asked whether the Tribal Councils should consider this. Representative Bisulca responded affirmatively, but suggested that, first, the Subcommittee should work with the Tribe, DIFW, and Ms. Scully to develop the proposal a little better, including its cost.

It was moved, seconded, and agreed to support the MITSC's exercise of jurisdiction over all waters in Penobscot Territory, as identified in the MITSC's pamphlet entitled "Fish and Wildlife Provisions under the 1980 Maine Indian Claims Settlement" and to have the MITSC's Fishing Subcommittee further develop the details of the proposal. The vote was 7 in favor and 2 abstentions (Mike Best and Governor Dore).

East Branch Penobscot River Stakeholders

Mr. Banks described the proposed management plan for the East Branch Penosbcot River Drainage. At present, Bowater owns 60% of this area and Bangor Hydro owns 40%. Bowater is proposing to take over the Bangor Hydro share and they want to see if there is a water use regime that all stakeholders can accept. At Bowater's invitation, a committee of stakeholders has developed a report, which Bowater is considering. Mr. Banks thought the MITSC should be aware of this, because it has regulatory authority over First Lake Mattagamon. *Mr. Banks asked Ms. Scully to distribute the report to the MITSC members.* Ms. Scully commented that Bowater has been sending information to the MITSC about the stakeholders group and, so considers the MITSC to be a stakeholder.

Atlantic Salmon Task Force

There was discussion about correspondence regarding comments made during a meeting of the Atlantic Salmon Task Force. [Mr. Banks had written about comments by Libby Butler, Chief Counsel to Governor King, that the Atlantic Salmon Authority has sole authority to manage and regulate Atlantic Salmon fishing, including on waters under the MITSC's jurisdiction. Ms. Butler wrote in response that the focus of the Task Force was on developing "a plan to conserve salmon in the seven 'downeast rivers' (the Dennys, East Machias, Machias, Narraguagus, Pleasant, Ducktrap, and Sheepscot)"] Mr. Banks said that during the

Referring to [illegible] Mr. Banks asked what they were talking about and the DIFW commissioner replied that they were talking about the statewide plan. Mr. Banks then said the MITSC should be involved because of the Penobscot and St. Croix Rivers. Governor Dore asked whose jurisdiction is the Rivers, the MITSC's, the Atlantic Salmon Authority's, or the Tribes? Representative Bisulca said he worked hard to get two Indian representatives on the Atlantic Salmon Authority.

FY 1997 Budget

Ms. Scully provided background information about the budget for FY 1997. She reminded MITSC members that the preliminary budget, approved during their April, 18, 1996 meeting, had included a $7,500 balance, since it was not a given that the Tribes would match the $7,500 increase appropriated by the State. She reported that the MITSC had heard from Mr Banks that the Penobscot Indian Nation intended to match the State's increase [by $3,750], but she had not yet received official word from the Passamaquoddy Tribe about their intentions.

Governor Dore said the Passamaquoddy Tribe will not support the additional assessment, but will support the basic assessment. He said the check to the MITSC requires two signatures, including his. Mr. Best said the Passamaquoddy Tribe has a bigger problem with the MITSC than the money. Mr. Hurley said it is too bad this is happening now, especially with the Task Force on Tribal-State Relations which soon will be reporting out its recommendations for the MITSC. Mr. Richert commented that this undermines the one group that might be able to address these things. A year ago a group went to the Legislature to try to shore up the MITSC. Mr. Best responded that the summary of minutes since the Settlement reflects an undermining of the Tribes. He said if the Tribe does not feel it is getting what it is supposed to get, it will not pay. Mr. Bisulca said he brought things up a year ago and hoped that the Penobscot Indian Nation does not renege. Mr. Katz stated, "This is a fascinating exercise in human relations. Am I proud of the MITSC's product after 3 years? No. But we are the best game in town."

Taxation

Mr. Best said during a meeting with Governor King at Indian Township, there was discussion about Passamaquoddy concerns about taxation. Mr. Best indicated that Governor King agreed that this was unfair, but it has been two years since that meeting and nothing has happened. Mr. Best said he has information from the Bureau of Taxation about alienated lands paying taxes to the State. He said there are people living at Indian Township paying property taxes to the State. The Tribe provides them with fire protection; yet these people pay taxes to the State when the State does nothing for them.

Mr. Richert noted that he had discussed this 2 weeks ago with Chuck Hewitt and Elizabeth Butler of Governor King's staff and that Brian Mahaney, the State's Director of Taxation, has been speaking with someone at Indian Township about this. Mr. Banks asked whether this is land within the reservation and asked how this could be happening. Mr. Best replied that the State had given lots to people. *Chairman Katz said if Mr. Best would write a letter with Ms. Scully, he will take it to Governor King.* Governor Dore added that there are alienated islands on the St. Croix and the taking of tribal lands on the reservation....

Other Matters

Mark Chavaree and Matt Manahan agreed to serve on a subcommittee to work with Ms. Scully to devise a plan for using the $7,500 balance of funding from the Maine Department of Transportation....Representative Bisulca had asked for an item to be placed on the agenda about amending the MITSC's bylaws to provided for Executive Sessions. Chairman Katz said he did not think this is necessary....Ms. Scully provided a quick update on the work of the Maine Task Force on Tribal-State Relations.

The meeting adjourned at approximately 2:50 P.M

WARNING ABOUT EATING FRESHWATER FISH

Warning: **Mercury in Maine freshwater fish may harm the babies of pregnant and nursing mothers, and young children.**

SAFE EATING GUIDELINES

- **Pregnant and nursing women, women who may get pregnant, and children under age 8** SHOULD NOT EAT any freshwater fish from Maine's inland waters. Except, for brook trout and landlocked salmon, 1 meal per month is safe.

- **All other adults and children older than 8** CAN EAT 2 freshwater fish meals per month. For brook trout and landlocked salmon, the limit is 1 meal per week.

It's hard to believe that fish that looks, smells, and tastes fine may not be safe to eat. But the truth is that fish in Maine lakes, ponds, and rivers have mercury in them. Other states have this problem too. Mercury in the air settles into the waters. It then builds up in fish. For this reason, older fish have higher levels of mercury than younger fish. Fish (like pickerel and bass) that eat other fish have the highest mercury levels.

Small amounts of mercury can harm a brain starting to form or grow. That is why unborn and nursing babies, and young children are most at risk. Too much mercury can affect behavior and learning. Mercury can harm older children and adults, but it takes larger amounts. It may cause numbness in hands and feet or changes in vision. The Safe Eating Guidelines identify limits to protect everyone.

Warning: **Some Maine waters are polluted, requiring additional limits to eating fish.**

Fish caught in some Maine waters have high levels of PCBs, Dioxins or DDT in them. These chemicals can cause cancer and other health effects. The Bureau of Health recommends additional fish consumption limits on the waters listed below. Remember to check the mercury guidelines. If the water you are fishing is listed below, check the mercury guideline above and follow the most limiting guidelines.

SAFE EATING GUIDELINES

Androscoggin River Gilead to Merrymeeting Bay:---------- **6-12** fish meals a year.
Dennys River Meddybemps Lake to Dead Stream:---------- **1-2** fish meals a month.
Green Pond, Chapman Pit, & Greenlaw Brook
(Limestone):----------**Do not eat any fish from these waters.**
Little Madawaska River & tributaries
(Madwaska Dam to Grimes Mill Road):----------**Do not eat any fish from these waters.**
Kennebec River Augusta to the Chops:----------**Do not eat any fish from these waters.**
Shawmut Dam in Fairfield to Augusta:------ **5** trout meals a year, **1-2** bass meals a month.
Madison to Fairfield: ---------- **1-2** fish meals a month.
Meduxnekeag River: ---------- **2** fish meals a month. * mainstem in c impc
North Branch Presque Isle River---------- **2** fish meals a month.
Penobscot River below Lincoln:---------- **1-2** fish meals a month *
Prestile Stream:---------- **1** fish meal a month.
Red Brook in Scarborough:---------- **6** fish meals a year.
Salmon Falls River below Berwick: ---------- **6-12** fish meals a year.
Sebasticook River (East Branch, West Branch & Main Stem)
(Corinna/Hartland to Winslow):----------**2** fish meals a month.

For more details, including warnings on striped bass, bluefish and lobster tomalley call (207)-287-6455 or visit our web site at janus.state.me.us/dhs/bohetp/index.html

Revised August 29, 2000
Environmental Toxicology Program
Maine Bureau of Health

BULLETS FOR CAROL BROWNER
CALL 10/16/00

The four Maine Tribes ask the EPA to retain federal NPDES jurisdiction on Indian lands and waters in Maine.

We request that EPA uphold it's Federal trust responsibility to Tribes to protect their homelands from environmental degradation and to promote a healthy Tribal culture.

Retention of NPDES permitting authority by EPA would affect less than one-tenth of one percent of the land of State of Maine and would provide a mechanism to protect the Tribe from acculturation.

The Settlement Acts do not give the State the unilateral authority to affect the environment in a manner that will negatively impact our culture and traditions.

EPA has collected Environmental Justice data that shows that because of cultural and sustenance practices, Tribes are disproportionately impacted by environmental contamination.

EPA should not now ignore the direct relationship between Tribal culture, the environment and the health of Tribal members, when making a decision on the State's NPDES application.

× The State of Maine has failed to incorporate Tribal environment or cultural impacts into State decision-making processes.

State of Maine fails to consider Tribal cultural/environmental impacts

The State has failed to take any actions to address the disproportionate environmental and health impacts that state decisions have had on its Tribal citizens.

× The State of Maine has no law, policy or guidance incorporating Tribal concerns into the environmental regulatory process. Neither Maine's Water Quality Standards, nor its Risk Assessment Methodology, address Tribal cultural values or require Tribal concerns be incorporated into the process.

× Maine's Governor, legislature, state agencies and State Attorney General have steadfastly refused to address, or incorporate Tribal environmental or cultural factors into state environmental decision-making.

In 1996, the 117th Maine legislature created "The Task Force on Tribal-State Relations Among its recommendations were the following: 1) The state should create an advisory committee on Tribal-State relations "to provide a forum for discussing any aspect of

Tribal-State relations and concerns". 2) The Governor of Maine should issue an Executive Order requiring Executive Branch agencies to take into account tribal needs and concerns in the development of legislation, rules polices and programs; and 3) The "Micmacs and Maliseet each should have a non-voting representative in the Legislature", on par with the Passamaquoddy and Penobscot. The State has disregarded all three recommendations.

Maine has proposed that State NPDES permits be issued by the DEP and a Board of Environmental Protection (Board). Under Maine law, the Board will have the authority to issue any permit that involves important policy or legal issues or that has generated substantial public interest. (38 M.R.S.A Sec. 341-D(2)) Any party may request the Board assume jurisdiction over a permit application or modification, or the Board may vote to take over the permitting process for a discharger. While the Board is labeled under the law as part of the DEP, its members are appointed by the Governor for four year terms. (38 M.R.S.A Sec. 341-C) No Indian has ever been appointed to the Board.

Based on the State's record, and its position on Tribal issues, there is little chance that a Governor appointed Board will act to protect Tribal interests that are at odds with those of the Governor or the Maine business community. (E.g. Governor King appointed Matthew Manhattan, an attorney with the law firm of Pierce Atwood to sit on the Maine Indian Tribal-State Commission and while on the Commission, Mr. Manahan continued to represent clients whose interests were in direct conflict with those of the Maine Tribes. Although this was of great concern to the other Tribal and non-Tribal members of the Commission, Governor King took no action to address this situation.)(The Task Force also recommended that a conflict of interest policy be created for MISC. This recommendation was also disregarded by the State)

× State does not adequately enforce State and federal environmental laws. The Maine Natural Resources Council, in comments recently submitted to EPA, described a "pattern of inadequate enforcement by [Maine] DEP of state and federal environmental laws." Due to the State's inaction, the rivers and water systems that Maine Tribes rely on for food, ceremonies and medicines are contaminated by PCBs, lead, mercury, dioxin and other toxic chemicals.

× If the EPA delegates the NPDES program to the State, Tribes will lose the protections of the federal laws outside the CWA. (E.g. Endangered Species Act and the Historic Preservation Act..)

× Even the US Fish and Wildlife Service, in its comments to EPA, doubts that once EPA delegates the NPDES program to Maine, it can maintain the same level of protection for salmon, and other Tribal resources, currently available to the Tribes under the Endangered Species Act.

× Attempts by the Tribes to negotiate with the State over the NPDES delegation and other environmental issues have floundered because of the State's intractable position that it has

no reason to negotiate with us on any issue addressed by the Settlement Acts. EPA Region I employed the services of a mediator to bring the State and Tribal parties together to discuss the NPDES delegation issue. The State was the only party who declined to participate.

Tribal cultural survival is reciprocally linked to water quality and ecosystem health

× Native laws and customs assign human beings a spiritual duty to maintain the balance and health of the natural world. Encroachment upon this basic right of recognition of our own spiritual laws and customs, including the right to manage and use our resources, means cultural genocide for Maine Indians.

× Traditional Tribal activities are greatly limited because of pollution.

× Due to the current high levels of contamination, we cannot engage freely in our traditional activities including hunting, fresh and salt-water fishing, gathering and cultivation. Poor water quality (pollution) deprives us of our own traditional means of subsistence, medicines and ceremonial plants.

When contamination makes it impossible to hunt, fish or gather food stuffs and medicine in accordance with our traditions, we cannot pick up and go elsewhere. We must stay on and suffer the consequences. Therefore, when our natural resources are adversely impacted or damaged by influences beyond our control, a vital part of the Tribes cultural link is broken. Accordingly, preservation and protection of natural resources is preservation and protection of Tribal health and culture.

If EPA delegates the NPDES program over our homelands to Maine, we will no longer be guaranteed a role in the environmental decisions that may adversely impact the health, safety and welfare of our people. Without the full range of federal Trust supervision and Tribal opportunity to participate in environmental regulation, the State will be free to continue to degrade our environment and consequently rob us of our Tribal culture and traditions.

The State's support of industry practices and proposals and its exclusion of the Tribes from the State's decision-making process, have already threatened and/or endangered the Tribes environment, their health and their cultural traditions. For example: Without ever consulting the Penobscot Indian Tribe, the State approved a plan that closed the last free flowing section of the Penobscot River between the Penobscot Indian Reservation and the Atlantic ocean that also required the removal of migrating Atlantic salmon from reservation waters. The project was eventually rejected by FERC. EPA gave this project its lowest environmental rating possible.

× Congress promised no acculturation of the Maine Tribes:

> Nothing in the Settlement provides for acculturation, nor is it the intent of Congress to disturb the culture or integrity of the Indian people of Maine. To the contrary, the settlement offers protections against this result being imposed by outside entities by providing for tribal governments which are separate and apart from the towns and cities of the State of Maine and which control all internal matters. (Sen. Melcher, Report to the Senate Select Committee on Indian Affairs, Authorizing Funds for the Settlement of Indian Claims in the State of Maine, S. 2829), Report Number 95, 95th Cong., 2nd Sess. 17, (September 17, 1980).