TESTIMONY

OF

DOUGLAS G. LANKFORD

In Support of S. 2796 (Sen. Markwayne Mullin)

A Bill to Provide for the Equitable Resolution of Certain and Disputes in Illinois and for Other Purposes

Before the Senate Committee on Indian Affairs

Room 628, Dirksen Senate Office Building

Thursday, February 8, 2024, at 10:30 a.m.

Aya akima eecipoonkwia weenswiaani niila myaamia. My name is Chief Douglas Lankford of the Miami Tribe of Oklahoma. I want to thank the Subcommittee for this opportunity to testify in support of S. 2796, a Bill that would permanently resolve the Tribe's treaty-based land claim to the Wabash River Watershed in east-central Illinois and permanently resolve the cloud it creates on title held by landowners in east central Illinois.

The Bill accomplishes this by doing two things:

1) First, it gives the United States Court of Federal Claims (CFC) the authority to decide whether the United States took lands protected by the 1805 Treaty of Grouseland (Reserved Lands) without paying the Tribe; and

2) Second, it extinguishes the Tribe's claim to those lands, which forever eliminates the cloud on title for landowners.

Background

The Miami Tribe of Oklahoma is a federally recognized Indian tribe. Our ancestral homelands are located south of the Great Lakes, in what are now the states of Indiana, Illinois, and Ohio. In 1846, the Tribe was removed from its homelands to what is now the state of Kansas and, in 1867 was again removed from Kansas to the Indian Territory, now the State of Oklahoma. Our seat of government is located in Ottawa County in Northeast Oklahoma.

In 1805, the Miami Tribe and its historical constituents Eel River Band and Wea signed the Treaty of Grouseland with the United States.[1] By Article IV of that Treaty the United States recognized the three Bands as "joint owners of all the country on the Wabash and its waters, above the Vincennes tract, and which has not been ceded to the United States, by this or any former treaty" [2] and further agreed that "they [the United States] do farther engage that they will not purchase any part of the said country without the consent of each of the said Tribes."[3] Thereafter, the United States never negotiated with the Tribe for the cession of the Reserved Land, nor paid the Tribe for that land. Yet, over time, the United States transferred the Reserved Lands to non-Indians.

The Miami Tribe of Oklahoma is the sole contemporary tribal body politic with a treaty title claim under Article IV of the Treaty of Grouseland. As explained below, the Eel River Miami have been a part of the federally recognized Miami Tribe of Oklahoma for over a century. The Wea, now a part of the Peoria Tribe,[4] ceded all their interests in lands in Indiana, Ohio and Illinois, including their 1/3 interest in the Reserved Land, through treaty in 1818.[5]

The Miami Indian confederacy consisted of major group of people located in the Native diaspora that existed just south of the central Great Lakes when the French arrived in the territory in the 1620s. The core bands of the Miami confederacy, that

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[1] Treaty of Grouseland, August 21, 1805, 7 Stat. 91. Appendix 2.
[2] *Id.* at art. IV.
[3] *Id.* at art. IV.
[4] *Peoria Tribe of Indians of Oklahoma v. United States*, Docket 314-D, 22 Ind. Cl. Comm. 469, 478 (1970) (citing *Peoria Tribe of Indians of Okl. v. United States*, 4 Ind. Cl. Comm. 233 (1956), *rev'd on other grounds*, 390 U.S. 468, 88 S. Ct. 1137, 20 L. Ed. 2d 39 (1968)).
[5] Article 1, Treaty with the Wea, 7 October 2, 1818, Stat. 186.

consistently intermarried and forged a clear alliance as a tribe, were the Miami Proper, the Eel River Miami, and the Wea.

Throughout the Eighteenth Century, the Miami Confederacy came into increasing contact with fur traders at trading posts established throughout the region. In 1801, the federal government sent a territorial governor, William Henry Harrison, to administer the region occupied by the Miami Confederacy. The encroachment of non-Indians on Indian lands generated tensions and made clear the need for the United States to negotiate Indian treaties and purchase land. From 1802 to 1804, Harrison negotiated a series of land cession treaties with various tribes,[6] including a series of 1804 treaties that cleared a path for non-Indian occupation along the north bank of the Ohio all the way to the Mississippi River.[7] The Miami disputed many of the agreements, arguing that they had rightful claim to large swaths of the lands ceded by other tribes.

The mess caused by Harrison's approach and the resulting 1802-1804 treaties set the stage for the Treaty of Grouseland. On August 21, 1805, the three Miami bands ceded a small strip of land in present-day southern Indiana. In exchange for this land cession, the Miami demanded and received acknowledgement by the United States of the Tribe's ownership of the vast regions of the Wabash River watershed, including the Reserved Land in present-day Illinois.[8] Because of Harrison's past practice of attempting to negotiate cessions from more "cooperative" tribes regardless of their title to the land evidenced in the 1802-1804 treaties, the Miami, Eel River, and Wea insisted on the recognition of their joint ownership, each with an undivided interest in the whole,[9] such that the United States could "not purchase any part of the said country without the consent of *each* of the said [three] tribes."[10]

Article IV's recognition of lands vested in the Miami, Eel River, and Weas established *treaty* also known as *recognized title* to the lands on the Wabash and its waters above the Vincennes, including the area in Illinois that is the subject of the

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[6] *See* Treaty with the Delawares, Etc., June 7, 1803, 7 Stat. 74; Treaty with the Eel River, Etc, Aug. 7, 1803, 7 Stat. 77.
[7] *See* Treaty with the Delawares, Aug. 18, 1804, 7 Stat. 81; Treaty with the Piankeshaw, Aug. 27, 1804, 7 Stat. 83.
[8] Treaty of Grouseland, Aug. 21, 1805, 7 Stat. 91. Appendix 2.
[9] *Id.* at art. IV.
[10] *Id.* (emphasis added).

Bill.[11] "Treaty" or "Recognized Title" exists where Congress has by treaty or statute conferred or acknowledged a tribal right to permanently occupy and use land. Indians then have a right or title to that land, which has been variously referred to in court decisions as "treaty title," "reservation title," "recognized title," and "acknowledged title."[12] Tribal rights under treaty title, including usufructuary rights, may only be abrogated or limited by clear Congressional expression,[13] and neither title nor use rights may be abrogated or extinguished by implication.[14] Following the Grouselnd Treaty, the United States was thereafter required to secure lands reserved by Article IV by Treaty containing a clear expression, and to provide compensation to the Tribe as required by the Fifth Amendment of the United States Constitution if that title was subsequently taken.[15] The Tribe's treaty recognized title is in contrast to "original Indian title," which is based solely on aboriginal occupancy and use,[16] and which can be taken by the United States without compensation because it—unlike treaty recognized title—does not constitute "property" within the meaning of the Fifth Amendment.[17]

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[11] *United States v. Kickapoo Tribe of Kansas*, 174 Ct. Cl. 550, 554 (Ct. Cl. 1966) (holding that Article IV of the Treaty of Grouseland "plainly recognizes title to and ownership of the designated lands").

[12] *U.S. v. Kiowa, Comanche, and Apache Tribes of Indians*, 479 F.2d 1369, 1374 (Ct. Cl. 1973).

[13] *Minnesota v. Mille Lacs Band of Chippewa*, 526 U.S. 172, 202-203 (1999).

[14] *United States v. Santa Fe Pacific Railroad*, 314 U.S. 339, 358 (1941).

[15] *United States v. Sioux Nation*, 448 U.S. 371, 408 (1980) (explaining that Congressional power over tribal lands "does not extend so far as to enable the Government to give the tribal lands to others, or to appropriate them to its own purposes, without rendering, or assuming an obligation to render, just compensation") (internal quotation marks omitted); *Tee Hit-Ton v. United States*, 348 U.S. 272, 277-78 (1955) (explaining that although Congress has no constitutional obligation to compensate tribes for the taking of land held under original Indian title, "[w]here the Congress by treaty or other agreement has declared that thereafter Indians were to hold the lands permanently, compensation must be paid for subsequent taking").

[16] *Tee Hit-Ton*, 348 U.S. at 279.

[17] *Id.* at 285 (stating that "the taking by the United States of unrecognized Indian title is not compensable under the Fifth Amendment").

Between 1805 and 1840, the Tribe's lands came under ever increasing pressure from white settlers[18] and the federal government, and the Tribe ultimately ceded most of its lands reserved under the Treaty of Grouseland through a series of subsequent treaties. See Figure 1.[19] However, as depicted in Figure 1, the Tribe remained in possession of treaty title to a significant remaining tract of the Article IV. The United States never sought to acquire, and the Tribe never sold the remaining Article IV Reserved Land. Several reasons likely explain this, most notably that, during this period, the remaining lands were wet and not suitable for the farmers who were encouraged to enter and cultivate the land. Ironically, the lack of value attributed to the land by non-Indians was precisely the value of the land to the Tribe, because it was rich with plants, medicine, fish, and fur-bearing animals.

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[18] The transformation in the non-Indian population between 1790 and 1840 in this region was stunning. In 1790 the population of the United States was 3,929,000 and in 1800 it was 5,297,000. The earliest population figures for the Northwest Territory were compiled in 1800, reflecting 45,365 residents of Indiana, 5,641 in Indiana, and no reported population in Illinois, it being considered fully Indian country. *Pottawatomie et al v. United States*, Consolidated Dockets, 43 Ind. Cl. Comm. 687, 724 (1978). By 1840 the numbers were 686,866 in Indiana, 1, 519,467 in Ohio, and 476,183 in Illinois. Returns of the 6th Census, United States Census Bureau (1841).

[19] Treaty of September 30, 1809, 7 Stat. 13; Treaty of September 30, 1809, 7 Stat. 115; Treaty of October 6, 1818, 7 Stat. 189; Treaty of October 23, 1826, 7 Stat. 300; Treaty of February 11, 1828, 7 Stat. 309; October 23, 1834, 7 Stat. 458, 463; Treaty of November 6, 1838, 7 Stat. 569; Treaty of November 28, 1840, 7 Stat. 582. Many of these were signed under coercion, and the last was signed in 1840 shortly before the Tribe was forcibly removed by the United States to Kansas in 1846.

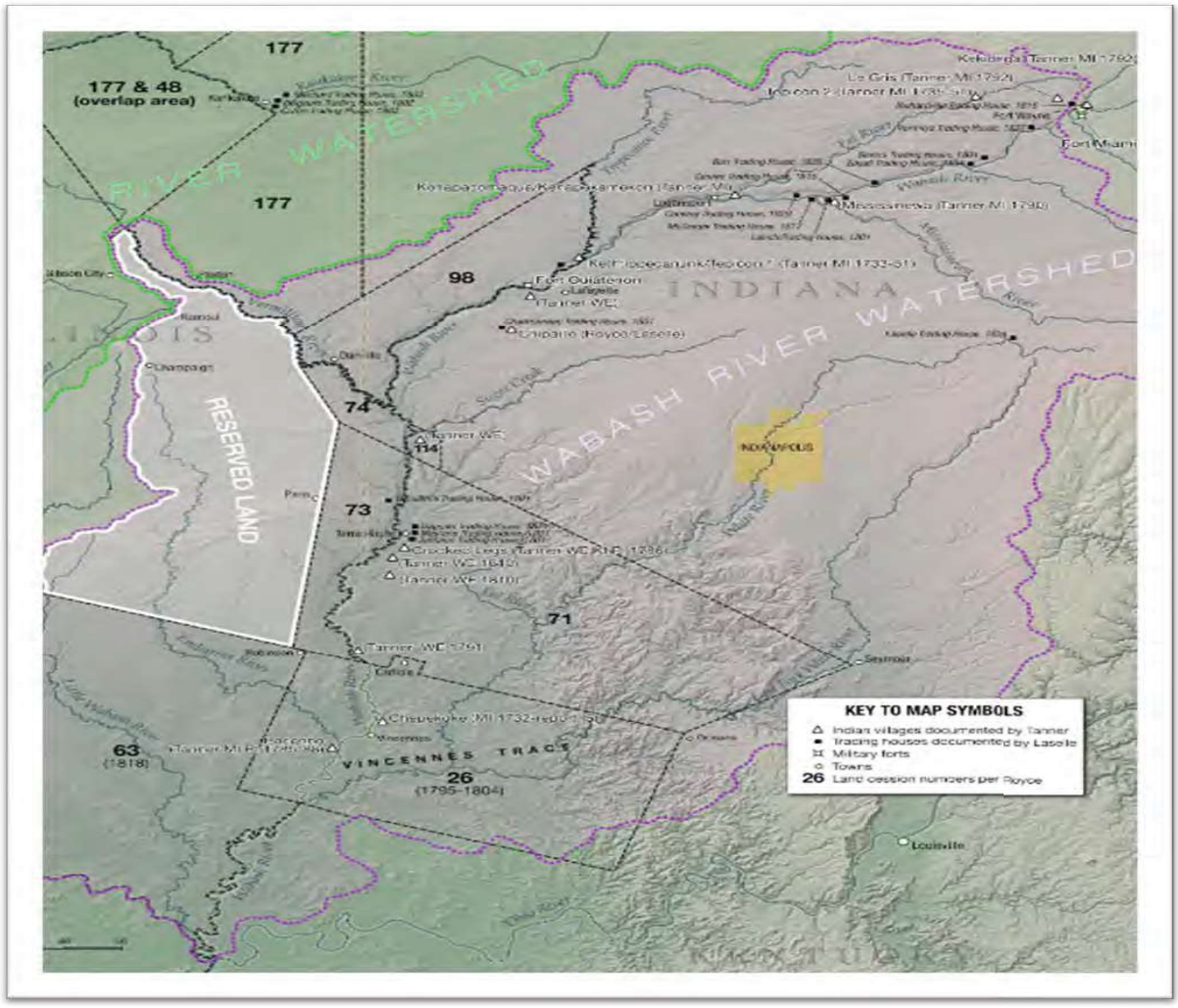


Figure 1[20]

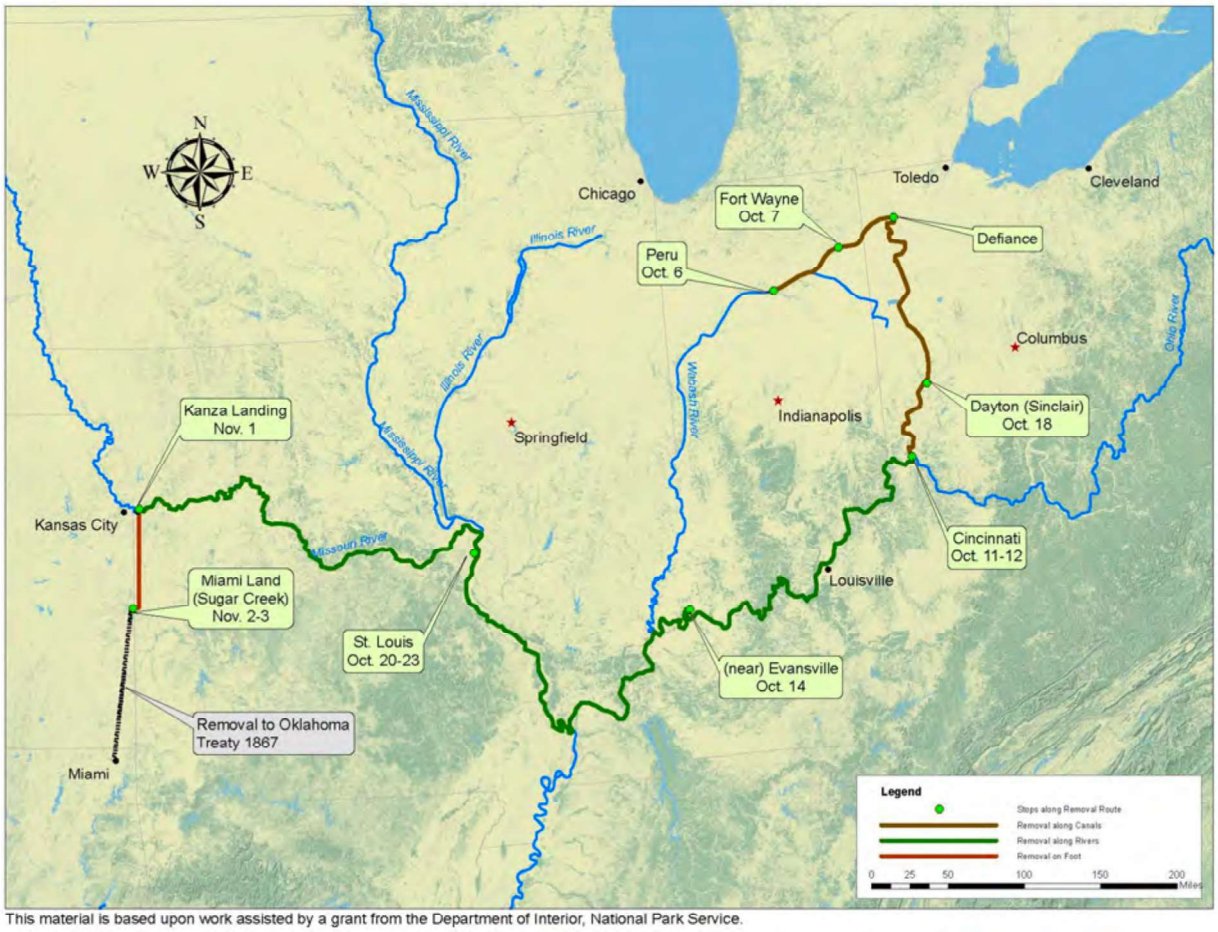
Despite its lack of title, in 1821 the United States, through the Illinois Land Office, began selling parcels of land within the Tribe's unceded territory to white settlers until settlers fully occupied the area with United States land patents in hand. The United States did not seek or obtain consent of the Miami before making these sales in violation of Article IV of the Treaty of Grouseland, and the United States has never compensated the Tribe for the taking.

Because it had not acquired title from the Tribe, the United States did not transfer good title to the land it sold, and its actions give rise for a claim for a treaty taking from the Tribe, which has created a cloud on title to the Reserved Lands, affecting some 2.6 million acres of east central Illinois. Through no fault of their

[20] Additional depictions of the Article IV Reserved Land are found at Appendix 3.

own, and despite having worked the land for generations, the landowners in the Reserved Land have a cloud on their title.

Pressure on the Tribe's people and lands accelerated in the following decades and, following the Treaty of 1840,[21] and after resisting removal for nearly 6 years, the Tribe was forcibly removed from its homeland in 1846 to a reservation in Kansas, by river boat, rail, and by foot. Just 20 years later, the Tribe was again forcibly removed from Kansas to the Indian Territory, following the Treaty of 1867—where it purchased an undivided one-half interest in a reservation set aside for the shared use of the Miami and the Confederated Peoria Tribes. See Figure 2.



This material is based upon work assisted by a grant from the Department of Interior, National Park Service.

Figure 2

[21] Treaty with the Miami, Nov. 28, 1840 (7 Stat. 582).

Against all odds, despite two brutal removals in a 20-year span, and the application of federal laws and policies intended to bring an end to the Tribe, the Miami Tribe has survived and flourished.

The Need for Legislation

In 2000 the Tribe initiated a claim to title,[22] making a matter of public record the cloud that the Treaty itself created on title to the Reserved Land. That litigation remains unresolved. In 2001, the Illinois delegation introduced H.R. 791 (Johnson–IL) (Appendix 4) and S. 533 (Durbin–IL) (Appendix 5) that proposed a different approach. The bills garnered strong bipartisan support from members of the Committee on Resources. Specifically, Congressman Phelps stated:

> I am in support of Congressman Johnson's legislation, H.R. 791, and I commend him for his leadership on this issue, *which will place this issue's accountability where it belongs, with the Federal Government.* This is not a question of who is right and who is wrong, the Miami Tribe or the landowners. This is a question of who is going to take responsibility.[23]

Many others echoed Congressman Phelps' support, acknowledging that the Tribe should be given the opportunity to right serious historic wrongs, the responsibility for which, if proven, would fall on the United States and not the landowners of Illinois. For example, Congressman Timothy Johnson, the sponsor of H.R. 791, clarified that the legislation "enjoyed widespread support" and expressed that, while H.R. 791 *did not* render a judgment on the merits of the Tribe's claim, "there is no question there have certainly been examples throughout history of wrongs committed on Native Americans."[24] Similarly, Speaker Dennis Hastert referred to H.R. 791 as "commonsense legislation" and stressed that judgement on the merits of the Tribe's claim based on the Treaty of Grouseland "can and should

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[22] *Miami Tribe of Oklahoma v. Walden, et al.*, Case No. 4:00-cv-041420-JPG (S.D. Ill.) (filed on June 2, 2000).

[23] *Legislative Hearing on H.R. 521 and H.R. 791 Before the Committee on Resources, U.S. House of Representatives*, 107th Cong. 7 (2002), *available at*: https://www.govinfo.gov/content/pkg/CHRG-107hhrg79494/pdf/CHRG 107hhrg79494.pdf (prepared statement of Congressman David Phelps) (emphasis added).

[24] *Id.* at 3 (testimony of Congressman Timothy V. Johnson).

be made by experts."[25] Likewise, Congressman John Shimkus, whose district later came to include the Reserved Lands, described H.R. 791 as "straightforward and fair to both sides."[26]

While that legislation did not become law, failing because of the sheer breadth of what it proposed, the Tribe found the approach of the legislation to be reasonable and sensible and it began work toward fashioning legislation limited just to Miami's rights that (1) would not repeat the kind of dispossession on the farmers of Illinois that the Tribe endured throughout the 19th Century; and (2) would direct its request for redress to the party responsible for the wrongful conveyance of its Treaty protected land—the United States. Using H.R. 791 and S. 533 as its template, the Tribe introduced H.R. 183, 396 and 6063 in the 115th, 116th, and 117th Congresses, respectively.

The Tribe then spent time in the affected district and in Springfield to discuss the proposal to determine whether those affected by the dispute would support the resolution. And with that support, presented the legislation to the Illinois delegation and it was ultimately introduced by then Congressman Markwayne Mullin as H.R. 183. The Bill ultimately became H.R. 396 (Mullin—OK), and H.R. 6063 (McCollum—MN), each iteration enjoyed broad bipartisan support, and H.R. 396 and H.R. 6063 were heard by the House Indigenous Peoples' Subcommittee but wee not passed because of circumstances beyond the Tribe's control, including a government shutdown, COVID-19 shutdown, and other unprecedented events. It is now time for this broadly supported, common sense Bill to become law.

S. 2796 extinguishes the cloud on title created by the Tribe's land claim in exchange for a one-year window for the Tribe to bring its claim for a treaty taking before the CFC. Extinguishment of the claim and the cloud on title *does not* depend on the Tribe's success in that litigation. The claim is extinguished, and title cleared regardless of the result of CFC litigation.

The Tribe has worked closely and diligently with the Congressional Leadership from Illinois, with local leaders from Illinois, especially those in the affected treaty area, and with the Illinois Farm Bureau[27] to develop a Bill that will resolve, once and for all, this claim and its effect on title.

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[25] *Id.* at 79 (prepared statement of Congressman J. Dennis Hastert, Speaker of the U.S. House of Representatives).
[26] *Id.* at 5 (prepared statement of Congressman John Shimkus).
[27] Appendix 1.

S. 2796 is uncommon Among Jurisdictional Bills Because of its Mutuality

While Congress has passed numerous jurisdictional bills over the prior decades[28] the Bill is unique because of its mutuality, which provides Congressional relief to the current and historic landowners at the same time.

S. 2796 Does not Seek and Appropriation and its CBO Score is "0"

Finally, it is important to note that S. 2796 *is not* a land claim settlement bill, and it *does not* authorize any payment to the Tribe. All it does is allow the Tribe the opportunity to present its case— it gives the Tribe access to its day in court. The claim must be filed exclusively against the United States and only for money damages. The authority of the CFC to award monetary awards granted by the United States Court of Claims exists in 31 U.S.C §1304 (a)(3).

The Tribe is responsible for proving its case. If it fails in this effort, the statutory extinguishment of the cloud on title remains effective. If the Tribe succeeds in its case, and damages are awarded by the Court, liability for the claim is limited to the United States and Federal law provides that a final judgment rendered by the United States Court of Federal Claims against the United States is paid out of "the Judgment Fund."[29] The Judgment Fund is a permanent, unlimited appropriation which is available to pay judicial and administratively ordered monetary awards against the United States.[30] In fact, the Judgment Fund was specifically created by Congress in 1956 to alleviate the need for individual congressional appropriations for each claim against the United States.[31]

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[28] A summary of jurisdictional legislation over the past 50 years is attached at Appendix 6.

[29] 31 U.S.C. §1304(a) provides in relevant part: "Necessary amounts are appropriated to pay final judgments, awards, compromise settlements, and interests and costs specified in the judgment or otherwise authorized by law when (1) payment is not otherwise provided for; (2) payment is certified by the Secretary of the Treasury; and (3) the judgment, award or settlement is payable under section 2414, 2517, 2672, or 2677 of Title 28."

[30] 31 C.F.R Part 256.1. *See also The Judgment Fund: History, Administration and Common Usage,* Congressional Research Service, March 7, 2013, *available at:* https://fas.org/sgp/crs/misc/R42835.pdf

[31] *Id.* at 2.

The Judgment Fund may only be accessed if certain statutory conditions are met.[32] The Treasury Department's Bureau of Fiscal Services certifies payment from the Judgment Fund if the award or settlement is final, it is monetary, the requirements of 31 U.S.C §1304(a)(3) are met, and payment may not be made from another source of funds. The Judgment Fund "requires no further Congressional action and does not expire at the close of any fiscal year."[33] Since 1956, most judgments have been paid from the Judgment Fund.[34]

So, if the Tribe is successful and gets a judgement, Congress does not have to appropriate new money to pay it,[35] and the CBO score for this Bill is therefore "0," and the payment of any award would obviously not be an "earmark."

Conclusion

S. 2796 is simple and fair. It addresses *both* the current and historic landowners' needs. The current landowners' title is cleared, and the people of the Miami Tribe get their day in court.

Mihsi neewe. Thank you, Mr. Chairman, and to the Committee members for their time and the opportunity to testify in support of the Bill and a special thank you to Congressman Mullin for his leadership and assistance on this Bill.

I am happy to answer any questions that the Committee may have.

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[32] 31 C.F.R. 256.1.
[33] *Id.* at 5.
[34] *Principles of General Appropriations Law*, 3d. Edition, Volume II, pp. 14-31.
[35] *Principles of General Appropriations Law*, 3d. Edition, Volume II, pp. 14-29.

Appendix 1

Joint statement of the Miami Tribe of Oklahoma and Illinois Farm Bureau on H.R. 5831 and S. 2796

October 4, 2023

Illinois Farm Bureau members and landowners in eastern Illinois may remember efforts about two decades ago by the Miami Tribe to lay claim to hundreds of thousands of acres of Illinois farmland under the 1805 Treaty of Grouseland. In recent years, the Miami's representatives approached Illinois Farm Bureau to write federal legislation that would resolve the tribe's two century-old claim in a way that forever holds private landowners harmless.

Under H.R. 5831, sponsored by Oklahoma Republican Tom Cole, and S. 2796, sponsored by Oklahoma Republican Markwayne Mullin, Congress would remove any cloud on title resulting from the Miami Tribe of Oklahoma's claim to 2.6 million acres of eastern Illinois farmland. Under the bill's provisions, the Tribe waives all claims to the land under any possible legal theory against Illinois landowners but may argue its claim against the United States before the United States Court of Federal Claims. If the Tribe prevailed in its claim against the federal government, the Court of Claims could provide only monetary damages.

"We are pleased to work with the Miami on this legislation. While IFB takes no position on the Tribe's monetary claims, we support passage of H.R. 5831 and S. 2796," said Illinois Farm Bureau President Richard Guebert, Jr.

"The Tribe is focused on a solution to the Grouseland Treaty claim that is fair to Illinois farmers. The IFB has been exceptional to work with toward this end," said Miami of Oklahoma Chief Doug Lankford.

Richard L. Guebert Jr.
Illinois Farm Bureau
President

Douglas Lankford
Miami Tribe of Oklahoma
Chief

Appendix 2

INDIAN AFFAIRS: LAWS AND TREATIES

Vol. II, Treaties

Compiled and edited by Charles J. Kappler. Washington : Government Printing Office, 1904.

TREATY WITH THE DELAWARES, ETC., 1805.

Aug. 21, 1805. | 7 Stat., 91. | Proclamation, Apr. 24. 1806.

Page Images: 80 | 81 | 82

Margin Notes
Delawares relinquish their claim.
Cession of the Miamies, etc.
An additional permanent annuity to be given to the Miamies, etc.
Miamies, etc., determine not to part with any of their territory without the consent of all parties.
Potawatomies, etc., acknowledge the right of the Delawares to sell, etc.
Annuities, how to be paid.
Treaty, when to take effect.

Page 80

A treaty between the United States of America, and the tribes of Indians called the Delawares, Pottawatimies, Miames, Eel, River, and Weas.

ARTICLES of a treaty made and entered into, at Grouseland, near Vincennes, in the Indiana territory, by and between William Henry Harrison, governor of said territory, superintendent of Indian affairs, and commissioner plenipotentiary of the United States, for treating with the north western tribes of Indians, of the one part, and the tribes of Indians called the Delewares, Putawatimis, Miamis, Eel River, and Weas, jointly and severally by their chiefs and head men, of the other part.

ARTICLE 1.

Whereas, by the fourth article of a treaty made between the United States and the Delaware tribe, on the eighteenth day of August, eighteen hundred and four, the said United States engaged to consider the said Delewares as the proprietors of all that tract of country which is bounded by the White river on the north, the Ohio and Clark's grant on the south, the general boundary line running from the mouth of Kentucky river on the east, and the tract ceded by the treaty of fort Wayne, and the road leading to Clark's grant on the west and south west. And whereas, the Maimi tribes, from whom the Delawares derived their claim, contend that in their cession of said tract to the Delewares, it was never their intention to convey to them the right of the soil, but to suffer them to occupy it as long as they thought proper, the said Delewares have, for the sake of peace and good neighborhood, determined to relinquish their claim to the said tract, and do by these presents release the United States from the guarantee made in the before-mentioned article of the treaty of August, eighteen hundred and four.

ARTICLE 2.

The said Maimi, Eel River, and Wea tribes, cede and relinquish to the United States forever, all that tract of country which lies to the south of a line to be drawn from the north east corner of the tract ceded by the treaty of fort Wayne, so as to strike the general

Page 81

boundary line, running from a point opposite to the mouth of the Kentucky river, to fort Recovery, at the distance of fifty miles from its commencement on the Ohio river.

ARTICLE 3.

In consideration of the cession made in the preceding article, the United States will give an additional permanent annuity to said Miamis, Eel River, and Wea tribes, in the following proportions, viz: to the Miamis, six hundred dollars; to the Eel River tribe, two hundred and fifty dollars; to the Weas, two hundred and fifty dollars; and also to the Putawatemies, an additional annuity of five hundred dollars, for ten years, and no longer; which, together with the sum of four thousand dollars which is now delivered, the receipt whereof they do hereby acknowledge, is to be considered as a full compensation for the land now ceded.

ARTICLE 4.

As the tribes which are now called the Miamis, Eel River, and Weas, were formerly and still consider themselves as one nation, and as they have determined that neither of these tribes shall dispose of any part of the country which they hold in common; in order to quiet their minds on that head, the United States do hereby engage to consider them as joint owners of all the country on the Wabash and its waters, above the Vincennes tract, and which has not been ceded to the United States, by this or any former treaty; and they do farther engage that they will not purchase any part of the said country without the consent of each of the said tribes. *Provided always*, That nothing in this section contained, shall in any manner weaken or destroy any claim

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which the Kickapoos, who are not represented at this treaty, may have to the country they now occupy on the Vermillion river.

ARTICLE 5.

The Putawatimies, Miami, Eel River, and Wea tribes, explicitly acknowledge the right of the Delawares to sell the tract of land conveyed to the United States by the treaty of the eighteenth day of August, eighteen hundred and four, which tract was given by the Piankashaws to the Delawares, about thirty-seven years ago.

ARTICLE 6.

The annuities herein stipulated to be paid by the United States, shall be delivered in the same manner, and under the same conditions as those which the said tribes have heretofore received.

ARTICLE 7.

This treaty shall be in force and obligatory on the contracting parties as soon as the same shall have been ratified by the President, by, and with the advice and consent of the Senate of the United States.

In testimony whereof, the said commissioner plenipotentiary of the United States, and the sachems, chiefs, and head men of the said tribes, have hereunto set their hands and affixed their seals.
Done at Grouseland, near Vincennes, on the twenty-first day of August, in the year eighteen hundred and five, and of the independence of the United States the thirtieth.

William Henry Harrison, [L. S.]

Delawares:

Hocking Pomskan, his x mark, [L. S.]

Kecklawhenund, or William Anderson, his x mark, [L. S.]

Allime, or White Eyes, his x mark, [L. S.]

Tomague, or Beaver, his x mark, [L. S.]

Pattawatimas:

Topanepee, his x mark, [L. S.]

Lishahecon, his x mark, [L. S.]

Wenamech, his x mark, [L. S.]

Miamis:

Kakonweconner, or Long Legs, his x mark, [L. S.]

Missingguimeschan, or Owl, his x mark, [L. S.]

Vigo, colonel of Knox County Militia,

John Conner,

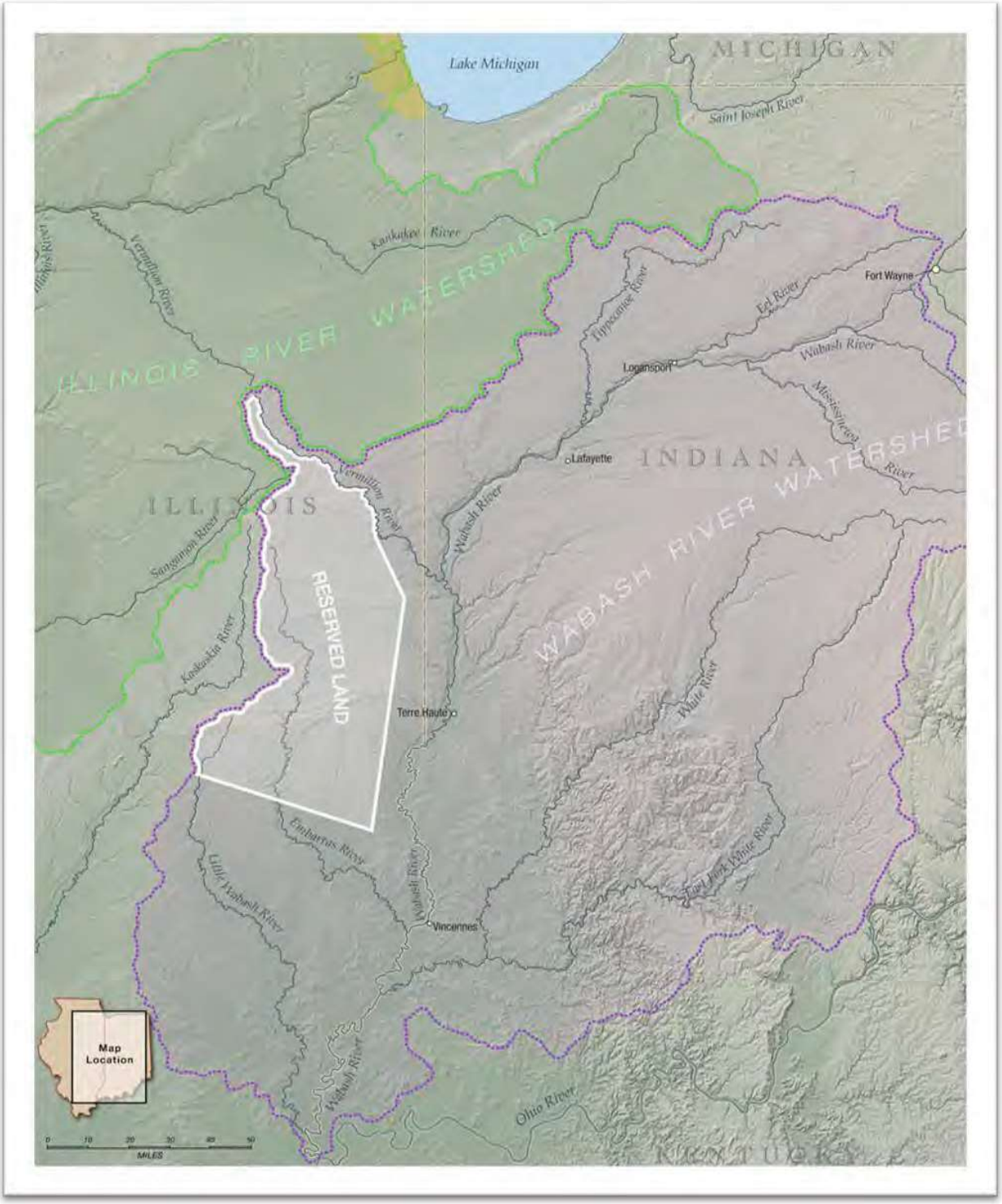
Joseph Barron,

Sworn interpreters.

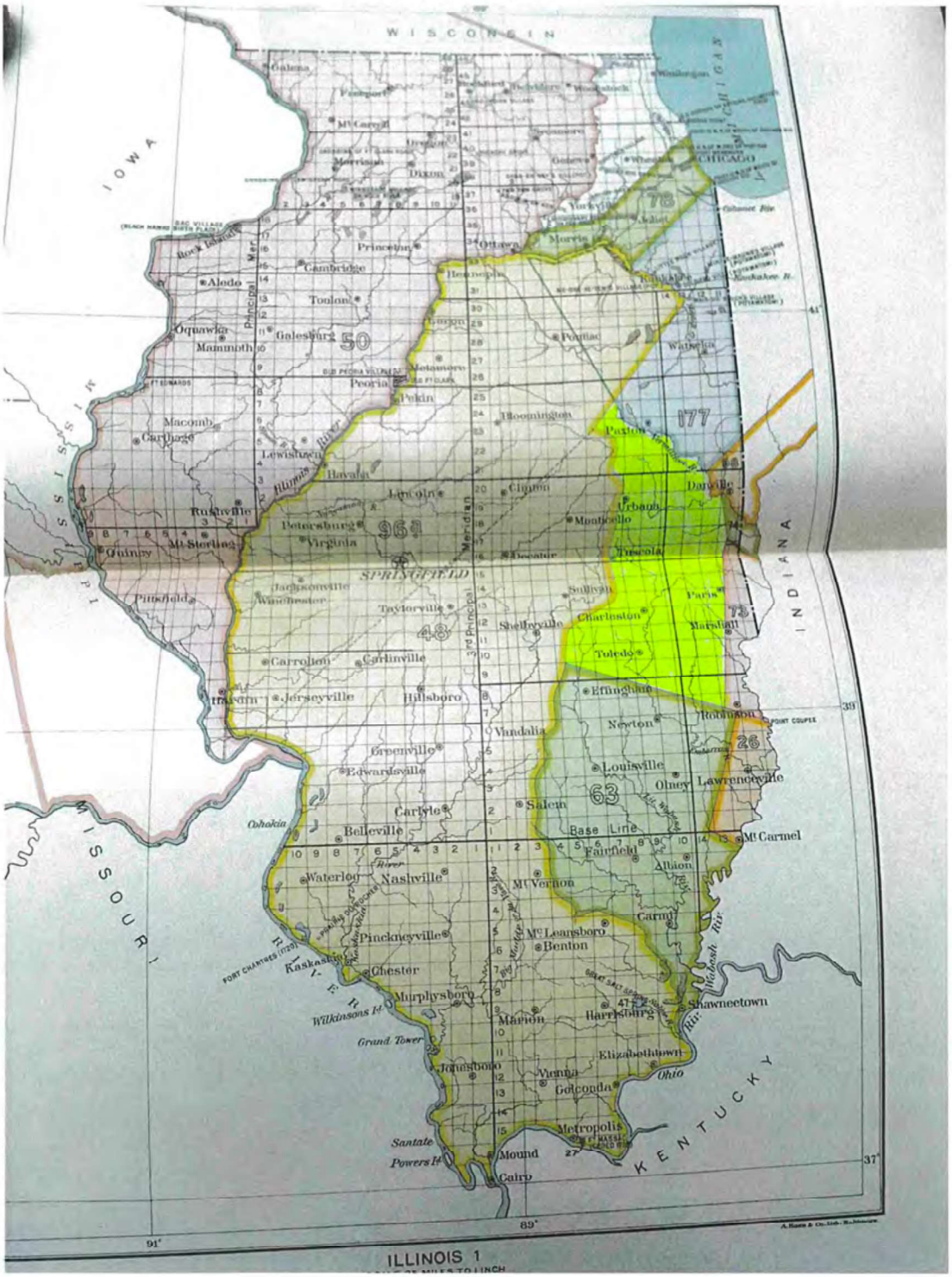
ADDITIONAL ARTICLE.

It is the intention of the contracting parties, that the boundary line herein directed to be run from the north east corner of the Vincennes tract to the boundary line running from the mouth of the Kentucky river, shall not cross the Embarras or Drift Wood fork of White river, but if it should strike the said fork, such an alteration in the direction of the said line is to be made, as will leave the whole of the said fork in the Indian territory.

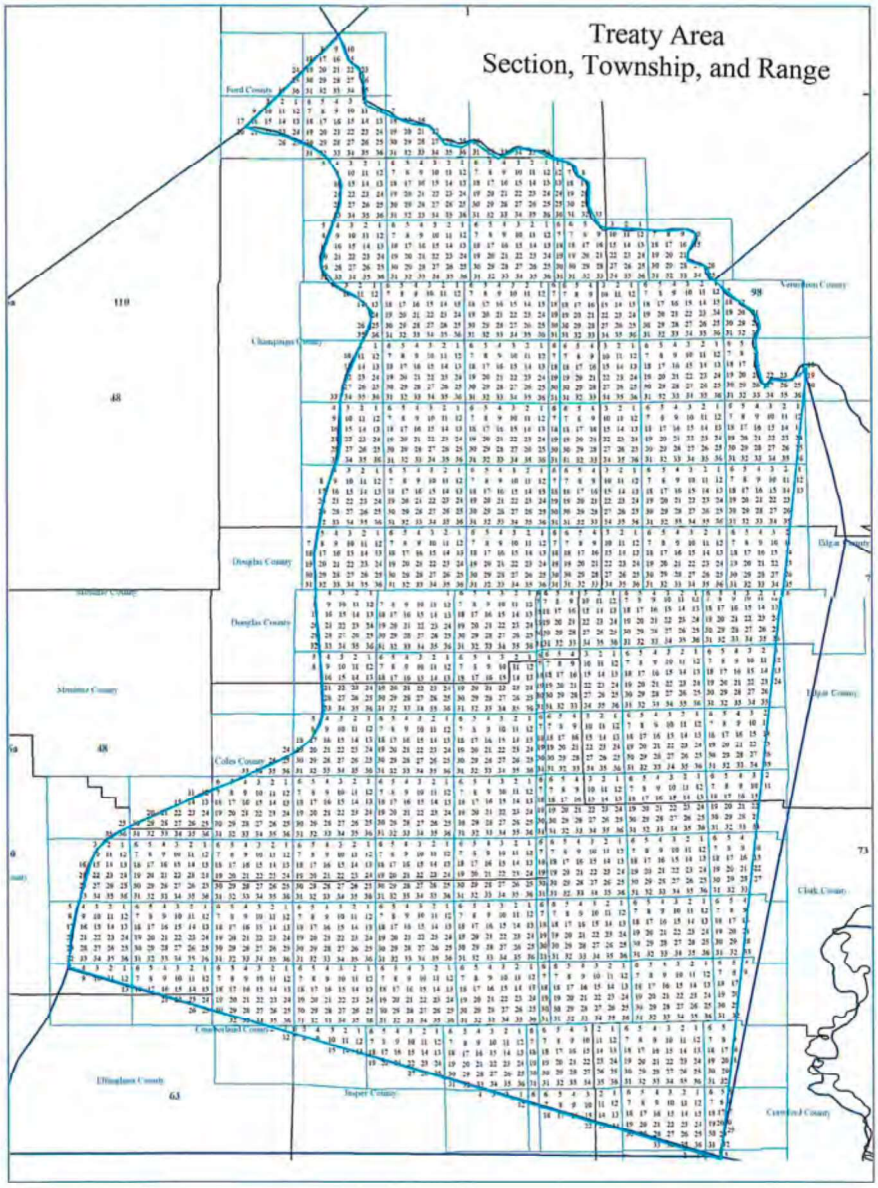
Appendix 3


Lake Michigan
MICHIGAN
Saint Joseph River
Kankakee River
Vermilion River
ILLINOIS RIVER WATERSHED
Tippecanoe River
Eel River
Fort Wayne
Wabash River
Logansport
Mississinewa River
Lafayette
INDIANA
WABASH RIVER WATERSHED
Vermilion River
Wabash River
Sangamon River
RESERVED LAND
Kaskaskia River
Terre Haute
White River
Embarras River
Wabash River
Little Wabash River
East Fork White River
Vincennes
Map Location
Ohio River
0 10 20 30 40 50
MILES

Grouseland Treaty Area



Grouseland Treaty Area



Appendix 4

107TH CONGRESS
1ST SESSION

H. R. 791

To provide for the equitable settlement of certain Indian land disputes regarding land in Illinois.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 2001

Mr. JOHNSON of Illinois introduced the following bill; which was referred to the Committee on Resources

---

A BILL

To provide for the equitable settlement of certain Indian land disputes regarding land in Illinois.

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

SECTION 1. SETTLEMENT OF CLAIMS.

(a) FINDINGS.—The Congress finds the following:

(1) The Miami Tribe of Oklahoma, the Ottawa Tribe of Oklahoma, and the Potawatomi Tribe of Kansas have raised questions with respect to the title of certain lands within the State of Illinois based upon treaties negotiated with the United States.

(2) The Miami Tribe of Oklahoma has filed a lawsuit in the United States District Court for the Southern District of Illinois against private landowners who hold title pursuant to land patents issued by the United States alleging that the Miami are the rightful owners of 2,600,000 acres of land within the State of Illinois.

(3) There are no allegations that the State of Illinois and its citizens have violated the Trade and Intercourse Act of 1790 or any other Federal law against any of the aforementioned tribes, and therefore the sole issue is whether the United States properly acquired title to the lands claimed by the tribes before the issuance of Federal land patents.

(4) None of the aforementioned tribes currently resides or has federally recognized Indian trust land in the State of Illinois, nor does the State of Illinois contain any other federally recognized Indian trust land.

(5) The pendency of the lawsuit and the potential for additional lawsuits may result in severe economic hardships for residents of Illinois who have in good faith relied upon the land patents issued by the United States.

(6) The Congress shares with the State of Illinois and the party defendants to the lawsuits a desire to remove all clouds on titles resulting from such Indian land claims, while allowing the tribes to resolve any outstanding issues with the United States over compensation for the Federal acquisition of the property.

(b) EXTINGUISHMENT OF TITLE AND CLAIMS.—

(1) CLAIMS BASED UPON TREATIES.—Except with regard to the United States as a defendant as provided in subsection (c), any claim by any Indian tribe, any member of any Indian tribe, or any predecessors or successors in interest thereof in or to any land or interest in land in the State of Illinois arising out of Article IV of the Treaty of Grouseland, dated August 21, 1805 (7 Stat. 91); and any claim by any Indian tribe, any member of any Indian tribe, or any predecessors or successors in interest thereof in or to any land or interest in land in land in DeKalb County, Illinois, arising out of Article III of a treaty with the United Nations of Chippewa, Ottawa, and Potawatamie Indians, dated July 29, 1829 (7 Stat. 320) or Article 2 of a treaty with the United Tribes of the Ottawas, Chipawas and

Pottowotomees, dated August 24, 1816 (7 Stat. 146) is hereby extinguished.

(2) ABORIGINAL TITLE AND CLAIMS EXTINGUISHED.—To the extent that any Indian tribe described in paragraph (a) or any member of such tribe, or any predecessors or successors in interest thereof had aboriginal title to any land or interest in land described in paragraph (1), such aboriginal title is hereby extinguished. Except with regard to the United States as a defendant as provided in subsection (c), any claims based upon such aboriginal title to such lands is hereby extinguished.

(c) CLAIMS AGAINST THE UNITED STATES.—Notwithstanding any other provision of law, exclusive jurisdiction is hereby conferred upon the United States Court of Federal Claims to hear, determine, and render judgment with respect to any claim otherwise extinguished by subsection (b). The United States shall be the only person or entity liable regarding such a claim and monetary damages shall be the only available remedy. All such claims against the United States shall be extinguished unless filed not later than 1 year after the date of enactment of this Act.

(d) DEFINITION OF CLAIM.—For the purposes of this Act, the term "claim" includes, but is not limited to, any

claim for trespass damages, use and occupancy, natural resources, and hunting and fishing rights.

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Appendix 5

II

107TH CONGRESS
1ST SESSION

S. 533

To provide for the equitable settlement of certain Indian land disputes regarding land in Illinois.

IN THE SENATE OF THE UNITED STATES

MARCH 14, 2001

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

---

A BILL

To provide for the equitable settlement of certain Indian land disputes regarding land in Illinois.

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

SECTION 1. SETTLEMENT OF CLAIMS.

(a) FINDINGS.—The Congress finds the following:

(1) The Miami Tribe of Oklahoma, the Ottawa Tribe of Oklahoma, and the Potawatomi Tribe of Kansas have raised questions with respect to the title of certain lands within the State of Illinois based upon treaties negotiated with the United States.

(2) The Miami Tribe of Oklahoma has filed a lawsuit in the United States District Court for the Southern District of Illinois against private landowners who hold title pursuant to land patents issued by the United States alleging that the Miami Tribe are the rightful owners of 2,600,000 acres of land within the State of Illinois.

(3) There are no allegations that the State of Illinois and its citizens have violated the Trade and Intercourse Act of 1790 or any other Federal law against any of the aforementioned tribes, and therefore the sole issue is whether the United States properly acquired title to the lands claimed by the tribes before the issuance of Federal land patents.

(4) None of the aforementioned tribes currently resides or has federally recognized Indian trust land in the State of Illinois, nor does the State of Illinois contain any other federally recognized Indian trust land.

(5) The pendency of the lawsuit and the potential for additional lawsuits may result in severe economic hardships for residents of Illinois who have in good faith relied upon the land patents issued by the United States.

(6) The Congress shares with the State of Illinois and the party defendants to the lawsuits a desire to remove all clouds on titles resulting from such Indian land claims, while allowing the tribes to resolve any outstanding issues with the United States over compensation for the Federal acquisition of the property.

(b) EXTINGUISHMENT OF TITLE AND CLAIMS.—

(1) CLAIMS BASED UPON TREATIES.—Except with regard to the United States as a defendant as provided in subsection (c), any claim by any Indian tribe, any member of any Indian tribe, or any predecessors or successors in interest thereof in or to any land or interest in land in the State of Illinois arising out of Article IV of the Treaty of Grouseland, dated August 21, 1805 (7 Stat. 91); and any claim by any Indian tribe, any member of any Indian tribe, or any predecessors or successors in interest thereof in or to any land or interest in land in land in DeKalb County, Illinois, arising out of Article III of a treaty with the United Nations of Chippewa, Ottawa, and Potawatamie Indians, dated July 29, 1829 (7 Stat. 320) or Article 2 of a treaty with the United Tribes of the Ottawas, Chipawas and

Pottowotomees, dated August 24, 1816 (7 Stat. 146) is hereby extinguished.

(2) ABORIGINAL TITLE AND CLAIMS EXTINGUISHED.—To the extent that any Indian tribe described in paragraph (a) or any member of such tribe, or any predecessors or successors in interest thereof had aboriginal title to any land or interest in land described in paragraph (1), such aboriginal title is hereby extinguished. Except with regard to the United States as a defendant as provided in subsection (c), any claims based upon such aboriginal title to such lands is hereby extinguished.

(c) CLAIMS AGAINST THE UNITED STATES.—Notwithstanding any other provision of law, exclusive jurisdiction is hereby conferred upon the United States Court of Federal Claims to hear, determine, and render judgment with respect to any claim otherwise extinguished by subsection (b). The United States shall be the only person or entity liable regarding such a claim and monetary damages shall be the only available remedy. All such claims against the United States shall be extinguished unless filed not later than 1 year after the date of enactment of this Act.

(d) DEFINITION OF CLAIM.—For the purposes of this Act, the term "claim" includes, but is not limited to, any

claim for trespass damages, use and occupancy, natural resources, and hunting and fishing rights.

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Appendix 6

Jurisdictional bills, like S 2796 are a not uncommon way of providing access to the Court of Federal Claims where a limitations period or other time-based barrier might otherwise preclude it. The following provides a summary, in reverse chronological order, of other CFC jurisdictional bills over the last several decades.

H.R. 197, 112th Cong. (2011) (introduced) (non-Indian bill) Confers upon the U.S. Court of Federal Claims jurisdiction to hear, determine, and render final judgment on any legal or equitable claim against the United States to receive just compensation for the taking of certain lands in the state of Missouri by reason of the decision and notice of interim trail use or abandonment authorized by the National Trails System Act and decided by the Interstate Commerce Commission (ICC) on March 25, 1992.
H.R. 3122, 111th Cong. (2009) (introduced) (non-Indian bill) To confer upon the United States Court of Federal Claims jurisdiction to hear, determine, and render final judgment on any legal or equitable claim against the United States to receive just compensation for the taking of certain lands in the State of Missouri, and for other purposes
S. 2711, 107th Cong. (2002) (passed Senate) Native American Omnibus Act of 2002. *See* Zuni Indian Tribe Water Rights Settlement of 2002 § 2108.
H.R. 791, 107th Cong. (2002) (introduced) A bill to provide for the equitable settlement of certain Indian land disputes regarding land in Illinois. Extinguishes title claims of the Miami and Ottawa Tribes of Oklahoma and the Potawatomi Tribe of Kansas with respect to certain lands within Illinois based upon prior treaties with the United States. Extinguishes any aboriginal title within the claims extinguished. Confers exclusive jurisdiction upon the U.S. Court of Federal Claims to hear and determine such claims, requiring the United States to provide the only available remedy in money damages. *Companion bill*: S. 533, 197th Cong. (2002) (introduced)
S. 2723, 100th Cong. (1998) (enacted as Pub. L. 100-580) Hoopa-Yurok Settlement Act. *See* § 14, Limitations of actions; Waiver of claims.

H.R. 2399, 103rd Cong. (1993) (enacted as Pub. L. 103-116)

Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993. Waived immunity of the United States and South Carolina to bring an action in Court of Claims to recover settlement payment if unpaid. *See* § 6(i)-(j).

Companion bill: S. 1156, 103rd Cong. (1993) (passed Senate)

H.R. 3533, 98th Cong. (1983) (introduced)

Confers jurisdiction upon the U.S. Court of Claims to hear and judge specified claims of the Navajo Indian Tribe against the United States. Requires such claims to be filed within six months after enactment of this Act.

Companion bill: S. 1196, 98th Cong. (1983) (passed Senate)

See also H.R. 4445, 97th Cong. (1981) (introduced) (bill to confer jurisdiction on the Court of Claims to hear, determine, and render judgment on specified claims of the Navajo Indian Tribe against the United States.); S. 1613, 97th Cong. (1981) (introduced) (same); S. 2994, 96th Cong. (1980) (introduced) (same)

H.R. 2329, 97th Cong. (1982) (enacted Pub. L. 97-385)

A bill conferring jurisdiction on certain courts of the United States to hear and render judgement in connection with certain claims of the Cherokee Nation of Oklahoma.

Companion bill: S. 1914, 97th Cong. (1981) (introduced)

See also S. 2072, 96th Cong. (1979) (introduced) (A bill conferring jurisdiction on certain courts of the United States to hear and render judgment in connection with certain claims of the Cherokee Nation of Oklahoma.); H.R. 7567, 96th Cong. (1980) (introduced) (same)

S. 1397, 97th Cong. (1981) (introduced)

A bill conferring jurisdiction on the Court of Claims to hear, determine, and render judgment on a claim of the Seminole Nation of Oklahoma.

Companion bill: H.R. 3935, 97th Cong. (1983) (introduced)

See also S. 2778, 96th Cong. (1980) (introduced) (A bill conferring jurisdiction on the Court of Claims to hear, determine, and render judgement on a claim of the Seminole Nation of Oklahoma.); H.R. 7720, 96th Cong. (1980) (introduced) (same)

S. 668, 96th Cong. (1980) (enacted as Pub. L. 96-251)

A bill to permit the Cow Creek Band of the Umpqua Tribe of Indians to file with the United States Court of Claims any claim such band could have filed with the Indian Claims Commission under the Act of August 13, 1946 (60 Stat. 1049).

Companion bill: H.R. 2822, 96th Cong. (1979) (introduced)

S. 1796, 96th Cong. (1980) (enacted Pub. L. 96-434)

A bill to authorize the Assiniboine Tribe and the Blackfeet Tribe to file in the Court of Claims any claims against the United States for damages for delay in payment for lands claimed to be taken in violation of the United States Constitution, and for other purposes.

See also H.R. 7827, 96th Cong. (1980) (introduced) (A bill to authorize the Assiniboine Tribe to file in the Court any claim against the United States for damages for delay in payment for lands claimed to be taken in violation of the United States Constitution, and for other purposes.)

S. 1795, 96th Cong. (1980) (enacted as Pub. L. 96-405)

An act to authorize the Blackfeet and Gros Ventre Tribes to file in the Court of Claims any claims against the United States for damages for delay in payment for lands claimed to be taken in violation of the United States Constitution, and for other purposes.

See also H.R. 7828, 96th Cong. (1980) (introduced) (Confers jurisdiction upon the United States Court of Claims to hear all claims which the Blackfeet and Gros Ventre Tribes may have against the United States with respect to certain lands defined in the Treaty of October 17, 1855. Makes certain stipulations with regard to any award that may be entered in such claim.)

S. 341, 96th Cong. (1980) (enacted as Pub. L 96-404)

A bill to authorize the Three Affiliated Tribes of the Fort Berthold Reservation to file in the Court of Claims any claims against the United States for damages for delay in payment for lands claimed to be taken in violation of the United States Constitution, and for other purposes.

See also H.R. 2101, 96th Cong. (1979) (introduced) (A bill to authorize the Three Affiliated Tribes of the Fort Berthold Reservation to file in the Court of Claims any claims against the United States for damages for delay in payment for lands claimed to be taken in violation of the United States Constitution, and for other purposes.)

H.R. 797, 96th Cong. (1979) (introduced) A bill to permit the Tigua Indian Tribe of Texas to file with the United States Court of Claims any claim of such tribe for compensation for lands allegedly taken from such tribe by the United States without the payment of adequate compensation.
H.R. 6188, 96th Cong. (1979) (introduced) Deems any conveyance of Indian land in Seneca or Cayuga Counties, New York, as extinguishing any aboriginal title to such land, in spite of any other Federal law relating to Indian conveyances. Requires any claim arising out of alleged wrongs involving any aboriginal title to lands in such counties to be asserted directly against the U.S. Government. Limits relief to monetary damages. Gives the U.S. Court of Claims exclusive original jurisdiction over such claims.
Pre-1946: Between 1836 and 1946, tribes had no forum for pursuing claims against the federal government absent congressional action authorizing litigation on behalf of individual tribes. During this period, tribes petitioned Congress to obtain special jurisdictional statutes granting the Court of Claims jurisdiction, waiving sovereign immunity, and often also waiving otherwise applicable statutes of limitation for specific claims. Between 1836 and 1946, Congress enacted 142 such acts.