

THE WHITE HOUSE

WASHINGTON

September 26, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 1735 -- Shoalwater
Bay Indian Tribe Claims Settlement Act

Counsel's Office has reviewed the above-referenced enrolled bill, and finds no objection to it from a legal perspective.

FFF:JGR:aea 9/26/84
cc: FFFielding/JGRoberts/Subj/Chron

REPRODUCED AT THE NATIONAL ARCHIVES

WHITE HOUSE STAFFING MEMORANDUM

DATE: 9/25/84 ACTION/CONCURRENCE/COMMENT DUE BY: 9/26/84

SUBJECT: ENROLLED BILL S. 1735 - SHOALWATER BAY INDIAN TRIBE CLAIMS SETTLEMENT ACT

VICE PRESIDENT	ACTION FYI			ACTION FYI	
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MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	OGLESBY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
DARMAN	<input type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FIELDING →	<input type="checkbox"/> P	<input checked="" type="checkbox"/> SS	VERSTANDIG	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HERRINGTON	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
McFARLANE	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
McMANUS	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

May we have your comments by close of business 9/26. Thank you.

RESPONSE:

1984 SEP 25 PM 3:03

Richard G. Darman
Assistant to the Pres.
Ext. 2702

REPRODUCED AT THE NATIONAL ARCHIVES



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

SEP 25 11 12:55

SEP 25 1984

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 1735 - Shoalwater Bay Indian Tribe
Claim Settlement Act
Sponsor - Senator Gorton (R) Washington

Last Day for Action

October 2, 1984 - Tuesday

Purpose

Provides for the settlement of all claims of the Shoalwater Bay Indian Tribe to eight acres of property in Washington State upon the payment of \$1,115,000 to the Tribe by the Secretary of the Treasury.

Agency Recommendations

Office of Management and Budget

Approval

Department of the Interior
Department of Justice

Approval
Defers to Interior

Discussion

Background

The Shoalwater Bay Reservation was established in 1866 by Executive order. Included in the Reservation by the order were eight acres of land of a particular Government Lot and Section. In 1872, a fee patent was issued to George N. Brown for that Lot. In the patenting of this land, the General Land Office failed to exclude the eight acre portion that was part of the Shoalwater Bay Reservation. Since then, these eight acres have been subject to a dual chain of title. The Bureau of Indian Affairs has considered this land to be within the Reservation and held in trust for the Shoalwater Bay Tribe. At the same time, the successors-in-title to Brown have platted the disputed area as part of a subdivision. The lots are now owned by approximately 62 separate owners and include improvements such as homes and vacation cottages.

The matter was never presented to the Indian Claims Commission which could have heard the claim. Instead, the Tribe filed suit in Federal court in 1983 against the current owners of the tract. Through this lawsuit the Tribe is seeking (1) a declaration from the court that it is the legal owner of the property in question; (2) to eject the current owners; and (3) to obtain monetary damages for wrongful possession, trespass, and wrongful use of the property. In addition, the current landowners filed their own action in the form of a third-party complaint against the United States. Thus, should the Tribe recover from the landowners, they, in turn, would seek compensation from the United States based on the original error. It is unclear, however, whether as a matter of law the United States would be found liable to the present landowners. The United States unsuccessfully sought dismissal of this action which has been stayed pending a legislative or judicial resolution of the matter.

The Enrolled Bill

S. 1735 would require the Secretary of the Treasury to pay the Shoalwater Bay Indian Tribe \$1,115,000 to settle fully any and all claims of the Tribe against third parties or the United States Government related to the fee patent issued to George N. Brown in 1872.

In addition, S. 1735 would: (1) condition payment of the \$1,115,000 upon the Tribe's formal dismissal with prejudice of all pending claims and litigation in the lawsuit--essentially this would forever bar the Tribe from raising these claims again in court; (2) prohibit any of the settlement principal to be used for per capita payments to tribal members; (3) authorize that the settlement funds and any interest thereon be treated as tribal trust funds (e.g., not be subject to any Federal, State or local taxation), except that they shall be retained and managed by the Tribe without supervision by the Secretary of the Interior; and (4) relieve the Secretary of the Interior of any trust responsibility for management of the settlement funds.

Administration Position

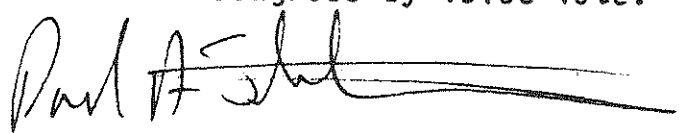
As introduced, S. 1735 was almost identical to proposed legislation transmitted to the Congress by the Department of the Interior in 1982. That version of the bill authorized the Secretary of the Interior to pay the Shoalwater Bay Indian Tribe not more than \$120,000 to settle the claims, an amount based upon the present fair market value of the land in an undeveloped state. As enrolled, however, S. 1735 includes a settlement amount of \$1,115,000, an amount based on a negotiated settlement between the Tribe and the private landowners.

In the September 7, 1984, Statement of Administration Policy and in Interior testimony before the House Interior and Insular Affairs Committee this past August, the Administration objected to the higher settlement amount as excessive and not reflecting a principled valuation. The statement and testimony noted that under the standard land valuation formula used by the Indian Claims Commission in settling the vast majority of Indian claims, the Shoalwater Bay Tribe's claim would be worth only a few hundred dollars.

Conclusion

While the Administration's objections to the settlement amount of \$1,115,000 in S. 1735 are sound, if the pending litigation were eventually to be decided in the Tribe's favor, the potential exposure of the Government from the suit brought by the private landowners for compensation could easily equal or exceed the settlement amount in S. 1735. This contingency, plus recognition of the Government's original error that created the dual title problem, leads me to join Interior in recommending approval of S. 1735.

S. 1735 passed both Houses of the Congress by voice vote.



David A. Stockman
Director

Enclosures

THE WHITE HOUSE

WASHINGTON

September 26, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

Enrolled Bill S. 1735 -- Shoalwater
Bay Indian Tribe Claims Settlement Act

Richard Darman has asked for comments on the above-referenced enrolled bill by close of business today. The bill would provide \$1,115,000 to an Indian tribe to settle the tribe's claims to eight acres of land. The land was included in the tribe's reservation by an 1866 executive order, but an 1872 General Land Office land patent granted the land to another party. Both the tribe and the successors-in-title to the other party now claim the land, and the tribe has filed suit against the other claimants. The other claimants have sued the United States as a third-party defendant.

In 1982 Interior offered \$120,000 to settle the tribe's claims. Under the typical Indian Claims Commission formula, the land would be worth only several hundred dollars. Nonetheless, Interior and OMB recommend approval, arguing that the United States could be exposed to greater liability if the lawsuit goes forward, and noting that the whole problem was caused by the Government in the first place. Justice defers to Interior.

This strikes me as another Indian giveaway, since the amount awarded greatly exceeds any reasonable valuation of the tribe's claim. If Interior, Justice, and OMB approve, however, I do not think we should interpose an objection.

Attachment

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WASHINGTON

September 26, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

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COUNSEL TO THE PRESIDENT

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