

PUEBLO OF ISLETA INDIAN LAND CLAIMS

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JULY 22, 1996.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
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Mr. HYDE, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 740]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 740) to confer jurisdiction on the United States of Court of Federal Claims with respect to land claims of Pueblo of Isleta Indian Tribe, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 740, as reported by the Committee, would permit the Pueblo of Isleta to file a claim in the United States Court of Federal Claims for certain aboriginal lands acquired from the tribe by the United States. The Court's jurisdiction would apply only to claims accruing on or before August 13, 1946, as provided in the Indian Claims Commission Act (ICCA).

BACKGROUND

The Pueblo of Isleta Indian Tribe asserts that a land claim was never filed by the tribe based on aboriginal use and occupancy under the ICCA because it received erroneous advice regarding the types of claims that could be filed. Tribal officials were told by the Bureau of Indian Affairs (BIA) that specific documents must be produced in order to mount a claim, and were not informed that a claim could be based on aboriginal use and occupancy.

As a result, the tribe filed only a limited and unsuccessful claim in 1951 seeking compensation for some 17,000 acres that were covered by specific land grant documents. The tribe states that no claims were filed based on aboriginal use due to the misdirected

advice of the BIA and the tribal officials' lack of familiarity with the provisions of the ICCA.

The Pueblo of Isleta Indian Tribe seeks the opportunity to present the merits of its land claims, which otherwise would be barred as untimely, in the United States Court of Federal Claims. The tribe cites numerous precedents for conferring jurisdiction under similar circumstances, such as with the case of the Zuni Indian Tribe in 1978.

COMMITTEE CONSIDERATION

On May 23, 1996, the Subcommittee on Immigration and Claims met in open session and order reported the bill, H.R. 740, by a voice vote, a quorum being present. On June 11, 1996, the Committee met in open session and order reported favorably the bill H.R. 2937 without amendment by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 740, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 26, 1996.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 740, a bill to confer jurisdiction on the United States Court of Federal Claims with respect to land claims of Pueblo of Isleta Indian Tribe, as ordered reported by the House Committee on the Judiciary on June 11, 1996. Based on an assessment of various possible outcomes, CBO estimates that H.R. 740 could be ex-

pected to result in additional direct spending of between \$2 million and \$3 million no earlier than fiscal year 1998. Because enactment of the bill could affect direct spending, pay-as-you-go procedures would apply.

The bill contains no intergovernmental or private-sector mandates as defined in Public Law 104-4, and would impose no direct costs on state, local, or tribal governments.

H.R. 740 would confer jurisdiction upon the United States Claims Court to render judgment on claims by the Pueblo of Isleta Indian Tribe against the United States for certain Indian lands acquired by the United States without adequate compensation. Current law bars the tribe from presenting its claim because the statute of limitations has expired.

The costs of this bill would depend on a future decision by the Court of Claims. We expect that, if the Pueblo of Isleta Indian Tribe were to pursue its claim successfully, the amount of compensation would be at least \$2 million. This amount represents the approximate value of all of the land in question at the time of the taking, adjusted for interest. Additional monies could be awarded to compensate for possible damages; however, CBO has no basis for predicting the amount of any such additional payment. On the other hand, the court might view the claim as lacking merit and order no compensation. Thus, payments could range from zero to several million dollars. We do not anticipate that any such judgment would be paid prior to fiscal year 1998. Any compensation would be paid out of the Claims, Judgments, and Relief Acts account and would be considered direct spending.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

JUNE E. O'NEILL, *Director*.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 740 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

Section 1. Jurisdiction

Notwithstanding any law which would interpose or support an untimeliness defense, section 1 confers jurisdiction to the U.S. Court of Federal Claims to hear, determine, and render judgment on certain claims of the Pueblo of Isleta Indian Tribe of New Mexico against the United States. Claims within the Court's jurisdiction would pertain to lands or interest therein which the State of New Mexico or any adjoining State held by aboriginal title or otherwise acquired, which the tribe was not adequately compensated for by the United States. The section allows the Court to award interest of 5% per year accruing from the date the land or interest therein were acquired from the tribe by the United States. The section also restricts jurisdiction of the Court to claims accruing on or before August 13, 1946, and limits the time in which to file such

claims to three years after the date of enactment. The jurisdiction of the Court of Federal Claims is conferred notwithstanding any failure by the tribe to exhaust any available administrative remedy.

Section 2. Certain defenses not applicable

This section states that any award made to another Indian tribe under a judgment of the Indian Claims Commission or any other authority with respect to lands which are the subject of a claim submitted by the Pueblo of Isleta Tribe under section 1 shall not be a defense, estoppel, or set-off to that claim. Also, the section states that such awards to another Indian tribe are not to affect the entitlement, or amount of, any relief with respect to the Pueblo of Isleta Indian Tribe claim.

AGENCY VIEWS

The comments of the Department of Justice and the Department of the Interior are as follows:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington DC, January 26, 1996.

Hon. LAMAR SMITH,
Chairman, Subcommittee on Immigration and Claims, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I am writing in response to your inquiry as to the Department of Justice's views on H.R. 740, which would confer jurisdiction on the Court of Federal Claims to hear the land claims of the Pueblo of Isleta. If, as a policy matter, Congress wishes to provide funds to the Pueblo of Isleta for the acquisition of lands, the Department would not object. However, H.R. 740 would waive a statute of limitations to allow the Pueblo of Isleta to litigate a claim that should have been brought before the Indian Claims Commission over 40 year ago in conjunction with other aboriginal title and recognized title claims. The Department opposes such ad hoc waivers of a statute of limitations.

The Department has a particular institutional interest that leads it to oppose legislative exceptions to statutory defenses, including those in H.R. 740. Statutes of limitations play a critical role in our ability, as the attorneys for the Federal government, to fulfill the Department's mission. There must be some definite, limited time period during which the Federal government must be prepared to defend itself.

The Indian Claims Commission Act of 1946, 25 U.S.C. § 70 (ICCA) provides that all tribal claims that arose prior to August 13, 1946, were to be filed within 5 years and that no claim not so presented "may thereafter be submitted to any court or administrative agency for consideration, nor will such claim thereafter be entertained by Congress." 25 U.S.C. 70k (1976). This limitation was central to the purpose of the ICCA, which was to "dispose of Indian claims . . . with finality." *United States v. Dann*, 470 U.S. 39, 45 (1985) (quoting H.R. Rep. No. 1466, 79th Cong., 1st Sess. 10 (1945)). To waive the ICCA statute of limitations, as proposed in H.R. 740, would undermine the finality that the ICCA sought to

achieve. Furthermore, once the Federal government ventures down this road, it will be difficult to devise a principled basis for denying a waiver for other untimely claims.

We recognize that situations will present themselves in which unique circumstances or equities justify special waivers of statutes of limitation. We do not believe, however, that this is such a situation. On August 7, 1951, the Pueblo filed a petition pursuant to the ICCA, which set forth two causes of action for compensation for the loss of tracts of land involved in Spanish land grants. Both causes of action were resolved against the Pueblo on the merits. *Pueblo of Isleta v. United States*, 7 Ind. Cl. Comm. 619 (1959), aff'd, 152 Ct. Cl. 866 (1959), cert. denied, 368 U.S. 822 (1961).

The Pueblo now asserts that it has additional historic claims based on aboriginal use and occupancy that were not brought pursuant to the ICCA. According to the Pueblo, its decision not to bring these claims was based upon erroneous information, provided by a Bureau of Indian Affairs employee, which led them to believe that the ICCA process was not available for all of their claims based on aboriginal use and occupancy. However, the Pueblo was represented before the Claims Commission by two skilled attorneys—Dudley Cornell and M.J. Clayburgh. These same attorneys secured awards based on aboriginal use claims on behalf of the Zia, Jemez, and Santa Ana Pueblos. See *Pueblo de Zia v. United States*, 165 Cl. Ct. 501, 504–06 (1964). Based on this information, it appears that the Pueblo or its attorneys opted not to pursue certain aboriginal use claims in 1951. We do not believe that the Pueblo's desire to reexamine this decision more than 40 years after the ICCA statute of limitations has run constitutes an extraordinary circumstance.

H.R. 740 also departs from prevailing law by authorizing the Court of Federal Claims to award five percent interest on any claims on which the Pueblo prevails. Interest is generally not recoverable on claims against the United States for the extinguishment of aboriginal title. This rule has been adhered to throughout the adjudication of ICCA claims. See *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272, 284–85 (1955); *Osage Nation of Indians v. United States*, 119 Ct. Cl. 592, 671–72, cert. denied, 342 U.S. 896 (1951). To allow the Pueblo to recover interest would be unfair to those tribes that brought timely aboriginal occupancy claims. In addition, a change in the law at this juncture would inevitably provide an incentive for other tribes to request the reopening of their claims. The Department therefore opposes the bill's authorization of interest.

Please call on us if we may be of further assistance with respect to this legislation. The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ANDREW FOIS,
Assistant Attorney General.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, DC, April 30, 1996.

Hon. LAMAR SMITH,
*Chairman, Subcommittee on Immigration and Claims, Committee
on the Judiciary, House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter of January 30, 1996 regarding the Department's position on H.R. 740. Secretary Babbitt has asked me to respond.

The Department of Justice has previously expressed its opposition to this legislation, stating that the legislation as written would result in an ad hoc waiver of a statute of limitations. The Department of the Interior agrees with this assessment.

In your letter to Secretary Babbitt, you state that while the Department of Justice opposes the bill as written, it has dramatically changed its position on this legislation since 1992. Your statement is directed to Justice's present position that as a policy matter, if Congress wishes to provide funds to the Pueblo of Isleta for the acquisition of lands, the Department of Justice would not object. The Department of Justice has assured us that this language in the January 26 letter did not change the longstanding policy of opposing ad hoc legislation waivers of a statute of limitations. Rather, the Justice Department was informing the subcommittee that this policy would not be implicated by the appropriation of funds that were not predicated on historic land claims for which the statute of limitations had run.

We share the Department of Justice's opposition to the reopening of the claims process in the absence of extraordinary circumstances. Allowing interest to be awarded for this specific case would also set an undesirable precedent. We anticipate that with passage of this legislation, many tribes would attempt to reopen land claims foreclosed by the Indian Land Claims Commission Act of 1946.

If the Congress should choose to provide funds to the Pueblo of Isleta for the acquisition of lands for which the Pueblo might otherwise pursue a court claim we, like Justice, would not object, provided that the Congress authorize funding for land acquisition by the Pueblo of Isleta over and above the Bureau of Indian Affairs' FY 1996 and 1997 appropriation requests.

Sincerely,

HILDA A. MANUEL,
Deputy Commissioner of Indian Affairs.

