

Calendar No. **632**

107TH CONGRESS
2^D SESSION

H. R. 3534

IN THE SENATE OF THE UNITED STATES

OCTOBER 2, 2002

Received and read the first time

OCTOBER 3, 2002

Read the second time and placed on the calendar

AN ACT

To provide for the settlement of certain land claims of Cherokee, Choctaw, and Chickasaw Nations to the Arkansas Riverbed in Oklahoma.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Cherokee, Choctaw,
3 and Chickasaw Nations Claims Settlement Act”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds the following:

6 (1) It is the policy of the United States to pro-
7 mote tribal self-determination and economic self-suf-
8 ficiency and to encourage the resolution of disputes
9 over historical claims through mutually agreed-to
10 settlements between Indian Nations and the United
11 States.

12 (2) There are pending before the United States
13 Court of Federal Claims certain lawsuits against the
14 United States brought by the Cherokee, Choctaw,
15 and Chickasaw Nations seeking monetary damages
16 for the alleged use and mismanagement of tribal re-
17 sources along the Arkansas River in eastern Okla-
18 homa.

19 (3) The Cherokee Nation, a federally recognized
20 Indian tribe with its present tribal headquarters
21 south of Tahlequah, Oklahoma, having adopted its
22 most recent constitution on June 26, 1976, and hav-
23 ing entered into various treaties with the United
24 States, including but not limited to the Treaty at
25 Hopewell, executed on November 28, 1785 (7 Stat.
26 18), and the Treaty at Washington, D.C., executed

1 on July 19, 1866 (14 Stat. 799), has maintained a
2 continuous government-to-government relationship
3 with the United States since the earliest years of the
4 Union.

5 (4) The Choctaw Nation, a federally recognized
6 Indian tribe with its present tribal headquarters in
7 Durant, Oklahoma, having adopted its most recent
8 constitution on July 9, 1983, and having entered
9 into various treaties with the United States of Amer-
10 ica, including but not limited to the Treaty at Hope-
11 well, executed on January 3, 1786 (7 Stat. 21), and
12 the Treaty at Washington, D.C., executed on April
13 28, 1866 (7 Stat. 21), has maintained a continuous
14 government-to-government relationship with the
15 United States since the earliest years of the Union.

16 (5) The Chickasaw Nation, a federally recog-
17 nized Indian tribe with its present tribal head-
18 quarters in Ada, Oklahoma, having adopted its most
19 recent constitution on August 27, 1983, and having
20 entered into various treaties with the United States
21 of America, including but not limited to the Treaty
22 at Hopewell, executed on January 10, 1786 (7 Stat.
23 24), and the Treaty at Washington, D.C., executed
24 on April 28, 1866 (7 Stat. 21), has maintained a
25 continuous government-to-government relationship

1 with the United States since the earliest years of the
2 Union.

3 (6) In the first half of the 19th century, the
4 Cherokee, Choctaw, and Chickasaw Nations were
5 forcibly removed from their homelands in the south-
6 eastern United States to lands west of the Mis-
7 sissippi in the Indian Territory that were ceded to
8 them by the United States. From the “Three Forks”
9 area near present day Muskogee, Oklahoma, down-
10 stream to the point of confluence with the Canadian
11 River, the Arkansas River flowed entirely within the
12 territory of the Cherokee Nation. From that point of
13 confluence downstream to the Arkansas territorial
14 line, the Arkansas River formed the boundary be-
15 tween the Cherokee Nation on the left side of the
16 thread of the river and the Choctaw and Chickasaw
17 Nations on the right.

18 (7) Pursuant to the Act of April 30, 1906 (34
19 Stat. 137), tribal property not allotted to individuals
20 or otherwise disposed of, including the bed and
21 banks of the Arkansas River, passed to the United
22 States in trust for the use and benefit of the respec-
23 tive Indian Nations in accordance with their respec-
24 tive interests therein.

1 (8) For more than 60 years after Oklahoma
2 statehood, the Bureau of Indian Affairs believed
3 that Oklahoma owned the Riverbed from the Arkan-
4 sas State line to Three Forks, and therefore took no
5 action to protect the Indian Nations' Riverbed re-
6 sources such as oil, gas, and Drybed Lands suitable
7 for grazing and agriculture.

8 (9) Third parties with property near the Arkan-
9 sas River began to occupy the 3 Indian Nations'
10 Drybed Lands—lands that were under water at the
11 time of statehood but that are now dry due to
12 changes in the course of the river.

13 (10) In 1966, the 3 Indian Nations sued the
14 State of Oklahoma to recover their lands. In 1970,
15 the Supreme Court of the United States decided in
16 the case of Choctaw Nation vs. Oklahoma (396 U.S.
17 620), that the Indian Nations retained title to their
18 respective portions of the Riverbed along the navi-
19 gable reach of the river.

20 (11) In 1987, the Supreme Court of the United
21 States in the case of United States vs. Cherokee Na-
22 tion (480 U.S. 700) decided that the riverbed lands
23 did not gain an exemption from the Federal Govern-
24 ment's navigational servitude and that the Cherokee
25 Nation had no right to compensation for damage to

1 its interest by exercise of the Government's ser-
2 vitude.

3 (12) In 1989, the Indian Nations filed lawsuits
4 against the United States in the United States
5 Court of Federal Claims (Case Nos. 218–89L and
6 630–89L), seeking damages for the United States'
7 use and mismanagement of tribal trust resources
8 along the Arkansas River. Those actions are still
9 pending.

10 (13) In 1997, the United States filed quiet title
11 litigation against individuals occupying some of the
12 Indian Nations' Drybed Lands. That action, filed in
13 the United States District Court for the Eastern
14 District of Oklahoma, was dismissed without preju-
15 dice on technical grounds.

16 (14) Much of the Indian Nations' Drybed
17 Lands have been occupied by a large number of ad-
18 jacent landowners in Oklahoma. Without Federal
19 legislation, further litigation against thousands of
20 such landowners would be likely and any final reso-
21 lution of disputes would take many years and entail
22 great expense to the United States, the Indian Na-
23 tions, and the individuals and entities occupying the
24 Drybed Lands and would seriously impair long-term
25 economic planning and development for all parties.

1 (15) The Councils of the Cherokee and Choctaw
2 Nations and the Legislature of the Chickasaw Na-
3 tion have each enacted tribal resolutions which
4 would, contingent upon the passage of this Act and
5 the satisfaction of its terms and in exchange for the
6 moneys appropriated hereunder—

7 (A) settle and forever release their respec-
8 tive claims against the United States asserted
9 by them in United States Court of Federal
10 Claims Case Nos. 218–89L and 630–89L; and

11 (B) forever disclaim any and all right,
12 title, and interest in and to the Disclaimed
13 Drybed Lands, as set forth in those enactments
14 of the respective councils of the Indian Nations.

15 (16) The resolutions adopted by the respective
16 Councils of the Cherokee, Choctaw, and Chickasaw
17 Nations each provide that, contingent upon the pas-
18 sage of the settlement legislation and satisfaction of
19 its terms, each Indian Nation agrees to dismiss, re-
20 lease, and forever discharge its claims asserted
21 against the United States in the United State Court
22 of Federal Claims, Case Nos. 218–89L and 630–
23 89L, and to forever disclaim any right, title, or in-
24 terest of the Indian Nation in the Disclaimed
25 Drybed Lands, in exchange for the funds appro-

1 priated and allocated to the Indian Nation under the
2 provisions of the settlement legislation, which funds
3 the Indian Nation agrees to accept in full satisfac-
4 tion and settlement of all claims against the United
5 States for the damages sought in the aforementioned
6 claims asserted in the United States Court of Fed-
7 eral Claims, and as full and fair compensation for
8 disclaiming its right, title, and interest in the Dis-
9 claimed Drybed Lands.

10 (17) In those resolutions, each Indian Nation
11 expressly reserved all of its beneficial interest and
12 title to all other Riverbed lands, including minerals,
13 as determined by the Supreme Court in Choctaw
14 Nation v. Oklahoma, 397 U.S. 620 (1970), and fur-
15 ther reserved any and all right, title, or interest that
16 each Nation may have in an to the water flowing in
17 the Arkansas River and its tributaries.

18 **SEC. 3. PURPOSES.**

19 The purposes of this Act are to resolve all claims that
20 have been or could have been brought by the Cherokee,
21 Choctaw, and Chickasaw Nations against the United
22 States, and to confirm that the 3 Indian Nations are for-
23 ever disclaiming any right, title, or interest in the Dis-
24 claimed Drybed Lands, which are contiguous to the chan-

1 nel of the Arkansas River as of the date of the enactment
2 of this Act in certain townships in eastern Oklahoma.

3 **SEC. 4. DEFINITIONS.**

4 For the purposes of this Act, the following definitions
5 apply:

6 (1) **DISCLAIMED DRYBED LANDS.**—The term
7 “Disclaimed Drybed Lands” means all Drybed
8 Lands along the Arkansas River that are located in
9 Township 10 North in Range 24 East, Townships 9
10 and 10 North in Range 25 East, Township 10
11 North in Range 26 East, and Townships 10 and 11
12 North in Range 27 East, in the State Oklahoma.

13 (2) **DRYBED LANDS.**—The term “Drybed
14 Lands” means those lands which, on the date of en-
15 actment of this Act, lie above and contiguous to the
16 mean high water mark of the Arkansas River in the
17 State of Oklahoma. The term “Drybed Lands” is in-
18 tended to have the same meaning as the term “Up-
19 land Claim Area” as used by the Bureau of Land
20 Management Cadastral Survey Geographic Team in
21 its preliminary survey of the Arkansas River. The
22 term “Drybed Lands” includes any lands so identi-
23 fied in the “Holway study.”

24 (3) **INDIAN NATION; INDIAN NATIONS.**—The
25 term “Indian Nation” means the Cherokee Nation,

1 Choctaw Nation, or Chickasaw Nation, and the term
2 “Indian Nations” means all 3 tribes collectively.

3 (4) RIVERBED.—The term “Riverbed” means
4 the Drybed Lands and the Wetbed Lands and in-
5 cludes all minerals therein.

6 (5) SECRETARY.—The term “Secretary” means
7 the Secretary of the Interior.

8 (6) WETBED LANDS.—The term “Wetbed
9 Lands” means those Riverbed lands which lie below
10 the mean high water mark of the Arkansas River in
11 the State of Oklahoma as of the date of the enact-
12 ment of this Act, exclusive of the Drybed Lands.
13 The term Wetbed Land is intended to have the same
14 meaning as the term “Present Channel Claim
15 Areas” as utilized by the Bureau of Land Manage-
16 ment Cadastral Survey Geographic Team in its pre-
17 liminary survey of the Arkansas River.

18 **SEC. 5. SETTLEMENT AND CLAIMS; APPROPRIATIONS; AL-**
19 **LOCATION OF FUNDS.**

20 (a) EXTINGUISHMENT OF CLAIMS.—Pursuant to
21 their respective tribal resolutions, and in exchange for the
22 benefits conferred under this Act, the Indian Nations
23 shall, on the date of enactment of this Act, enter into a
24 consent decree with the United States that waives, re-
25 leases, and dismisses all the claims they have asserted or

1 could have asserted in their cases numbered 218–89L and
2 630–89L pending in the United States Court of Federal
3 Claims against the United States, including but not lim-
4 ited to claims arising out of any and all of the Indian Na-
5 tions’ interests in the Disclaimed Drybed Lands and aris-
6 ing out of construction, maintenance and operation of the
7 McClellan-Kerr Navigation Way. The Indian Nations and
8 the United States shall lodge the consent decree with the
9 Court of Federal Claims within 30 days of the enactment
10 of this Act, and shall move for entry of the consent decree
11 at such time as all appropriations by Congress pursuant
12 to the authority of this Act have been made and deposited
13 into the appropriate tribal trust fund account of the In-
14 dian Nations as described in section 6. Upon entry of the
15 consent decree, all the Indian Nations’ claims and all their
16 past, present, and future right, title, and interest to the
17 Disclaimed Drybed Lands, shall be deemed extinguished.
18 No claims may be asserted in the future against the
19 United States pursuant to sections 1491, 1346(a)(2), or
20 1505 of title 28, United States Code, for actions taken
21 or failed to have been taken by the United States for
22 events occurring prior to the date of the extinguishment
23 of claims with respect to the Riverbed.

24 (b) RELEASE OF TRIBAL CLAIMS TO CERTAIN
25 DRYBED LANDS.—

1 (1) IN GENERAL.—Upon the deposit of all
2 funds authorized for appropriation under subsection
3 (c) for an Indian Nation into the appropriate trust
4 fund account described in section 6—

5 (A) all claims now existing or which may
6 arise in the future with respect to the Dis-
7 claimed Drybed lands and all right, title, and
8 interest that the Indian Nations and the United
9 States as trustee on behalf of the Indian Nation
10 may have to the Disclaimed Drybed Lands,
11 shall be deemed extinguished;

12 (B) any interest of the Indian Nations or
13 the United States as trustee on their behalf in
14 the Disclaimed Drybed Lands shall further be
15 extinguished pursuant to the Trade and Inter-
16 course Act of 1790, Act of July 22, 1790 (ch.
17 33, 1 Stat. 137), and all subsequent amend-
18 ments thereto (as codified at 25 U.S.C. 177);

19 (C) to the extent parties other than the In-
20 dian Nations have transferred interests in the
21 Disclaimed Drybed Lands in violation of the
22 Trade and Intercourse Act, Congress does here-
23 by approve and ratify such transfers of inter-
24 ests in the Disclaimed Drybed Lands to the ex-

1 tent that such transfers otherwise are valid
2 under law; and

3 (D) the Secretary is authorized to execute
4 an appropriate document citing this Act, suit-
5 able for filing with the county clerks, or such
6 other county official as appropriate, of those
7 counties wherein the foregoing described lands
8 are located, disclaiming any tribal or Federal
9 interest on behalf of the Indian Nations in such
10 Disclaimed Drybed Lands. The Secretary is au-
11 thorized to file with the counties a plat or map
12 of the disclaimed lands should the Secretary de-
13 termine that such filing will clarify the extent
14 of lands disclaimed. Such a plat or map may be
15 filed regardless of whether the map or plat has
16 been previously approved for filing, whether or
17 not the map or plat has been filed, and regard-
18 less of whether the map or plat constitutes a
19 final determination by the Secretary of the ex-
20 tent of the Indian Nations' original claim to the
21 Disclaimed Drybed Lands. The disclaimer filed
22 by the United States shall constitute a dis-
23 claimer of the Disclaimed Drybed Lands for
24 purposes of the Trade and Intercourse Act (25
25 U.S.C. 177).

1 (2) SPECIAL PROVISIONS.—Notwithstanding
2 any provision of this Act—

3 (A) the Indian Nations do not relinquish
4 any right, title, or interest in any lands which
5 constitute the Wetbed Lands subject to the
6 navigational servitude exercised by the United
7 States on the Wetbed Lands. By virtue of the
8 exercise of the navigational servitude, the
9 United States shall not be liable to the Indian
10 Nations for any loss they may have related to
11 the minerals in the Wetbed Lands;

12 (B) no provision of this Act shall be con-
13 strued to extinguish or convey any water rights
14 of the Indian Nations in the Arkansas River or
15 any other stream or the beneficial interests or
16 title of any of the Indian Nations in and to
17 lands held in trust by the United States on the
18 date of enactment of this Act which lie above or
19 below the mean high water mark of the Arkan-
20 sas River, except for the Disclaimed Drybed
21 Lands; and

22 (C) the Indian Nations do not relinquish
23 any right, title, or interest in any lands or min-
24 erals of certain unallotted tracts which are iden-
25 tified in the official records of the Eastern

1 Oklahoma Regional Office, Bureau of Indian
2 Affairs. The disclaimer to be filed by the Sec-
3 retary of the Interior under section 5(b)(1) of
4 this Act shall reflect the legal description of the
5 unallotted tracts retained by the Nations.

6 (3) SETOFF.—In the event the Court of Fed-
7 eral Claims does not enter the consent decree as set
8 forth in subsection (a), the United States shall be
9 entitled to setoff against any claims of the Indian
10 Nations as set forth in subsection (a), any funds
11 transferred to the Indian Nations pursuant to sec-
12 tion 6, and any interest accrued thereon up to the
13 date of setoff.

14 (4) QUIET TITLE ACTIONS.—Notwithstanding
15 any other provision of law, neither the United States
16 nor any department of the United States nor the In-
17 dian Nations shall be made parties to any quiet title
18 lawsuit or other lawsuit to determine ownership of
19 or an interest in the Disclaimed Drybed Lands initi-
20 ated by any private person or private entity after
21 execution of the disclaimer set out in section 5(b)(1).
22 The United States will have no obligation to under-
23 take any future quiet title actions or actions for the
24 recovery of lands or funds relating to any Drybed
25 Lands retained by the Indian Nation or Indian Na-

1 tions under this Act, including any lands which are
2 Wetbed Lands on the date of enactment of this Act,
3 but which subsequently lie above the mean high
4 water mark of the Arkansas River and the failure or
5 declination to initiate any quiet title action or to
6 manage any such Drybed Lands shall not constitute
7 a breach of trust by the United States or be com-
8 pensable to the Indian Nation or Indian Nations in
9 any manner.

10 (5) LAND TO BE CONVEYED IN FEE.—To the
11 extent that the United States determines that it is
12 able to effectively maintain the McClellan-Kerr Navi-
13 gation Way without retaining title to lands above the
14 high water mark of the Arkansas River as of the
15 date of enactment of this Act, said lands, after being
16 declared surplus, shall be conveyed in fee to the In-
17 dian Nation within whose boundary the land is lo-
18 cated. The United States shall not be obligated to
19 accept such property in trust.

20 (c) AUTHORIZATION FOR SETTLEMENT APPROPRIA-
21 TIONS.—There is authorized to be appropriated an aggre-
22 gate sum of \$40,000,000 as follows:

- 23 (1) \$10,000,000 for fiscal year 2004.
24 (2) \$10,000,000 for fiscal year 2005.
25 (3) \$10,000,000 for fiscal year 2006.

1 (4) \$10,000,000 for fiscal year 2007.

2 (d) ALLOCATION AND DEPOSIT OF FUNDS.—After
3 payment pursuant to section 7, the remaining funds au-
4 thorized for appropriation under subsection (c) shall be
5 allocated among the Indian Nations as follows:

6 (1) 50 percent to be deposited into the trust
7 fund account established under section 6 for the
8 Cherokee Nation.

9 (2) 37.5 percent to be deposited into the trust
10 fund account established under section 6 for the
11 Choctaw Nation.

12 (3) 12.5 percent to be deposited into the trust
13 fund account established under section 6 for the
14 Chickasaw Nation.

15 **SEC. 6. TRIBAL TRUST FUNDS.**

16 (a) ESTABLISHMENT, PURPOSE, AND MANAGEMENT
17 OF TRUST FUNDS.—

18 (1) ESTABLISHMENT.—There are hereby estab-
19 lished in the United States Treasury 3 separate trib-
20 al trust fund accounts for the benefit of each of the
21 Indian Nations, respectively, for the purpose of re-
22 ceiving all appropriations made pursuant to section
23 5(c), and allocated pursuant to section 5(d).

24 (2) AVAILABILITY OF AMOUNTS IN TRUST FUND
25 ACCOUNTS.—Amounts in the tribal trust fund ac-

1 counts established by this section shall be available
2 to the Secretary for management and investment on
3 behalf of the Indian Nations and distribution to the
4 Indian Nations in accordance with this Act. Funds
5 made available from the tribal trust funds under this
6 section shall be available without fiscal year limita-
7 tion.

8 (b) MANAGEMENT OF FUNDS.—

9 (1) LAND ACQUISITION.—

10 (A) TRUST LAND STATUS PURSUANT TO
11 REGULATIONS.—The funds appropriated and
12 allocated to the Indian Nations pursuant to sec-
13 tions 5(c) and (d), and deposited into trust
14 fund accounts pursuant to section 6(a), to-
15 gether with any interest earned thereon, may be
16 used for the acquisition of land by the 3 Indian
17 Nations. The Secretary may accept such lands
18 into trust for the beneficiary Indian Nation
19 pursuant to the authority provided in section
20 465 of title 25, United States Code, and in ac-
21 cordance with the Secretary's trust land acqui-
22 sition regulations at part 151 of title 25, Code
23 of Federal Regulations, in effect at the time of
24 the acquisition, except for those acquisitions
25 covered by paragraph (1)(B).

1 (B) REQUIRED TRUST LAND STATUS.—

2 Any such trust land acquisitions on behalf of
3 the Cherokee Nation shall be mandatory if the
4 land proposed to be acquired is located within
5 Township 12 North, Range 21 East, in
6 Sequoyah County, Township 11 North, Range
7 18 East, in McIntosh County, Townships 11
8 and 12 North, Range 19 East, or Township 12
9 North, Range 20 East, in Muskogee County,
10 Oklahoma, and not within the limits of any in-
11 corporated municipality as of January 1, 2002,
12 if—

13 (i) the land proposed to be acquired
14 meets the Department of the Interior's
15 minimum environmental standards and re-
16 quirements for real estate acquisitions set
17 forth in 602 DM 2.6, or any similar suc-
18 cessor standards or requirements for real
19 estate acquisitions in effect on the date of
20 acquisition; and

21 (ii) the title to such land meets appli-
22 cable Federal title standards in effect on
23 the date of the acquisition.

24 (C) OTHER EXPENDITURE OF FUNDS.—

25 The Indian Nations may elect to expend all or

1 a portion of the funds deposited into its trust
2 account for any other purposes authorized
3 under paragraph (2).

4 (2) INVESTMENT OF TRUST FUNDS; NO PER
5 CAPITA PAYMENT.—

6 (A) NO PER CAPITA PAYMENTS.—No
7 money received by the Indian Nations here-
8 under may be used for any per capita payment.

9 (B) INVESTMENT BY SECRETARY.—Except
10 as provided in this section and section 7, the
11 principal of such funds deposited into the ac-
12 counts established hereunder and any interest
13 earned thereon shall be invested by the Sec-
14 retary in accordance with current laws and reg-
15 ulations for the investing of tribal trust funds.

16 (C) USE OF PRINCIPAL FUNDS.—The prin-
17 cipal amounts of said funds and any amounts
18 earned thereon shall be made available to the
19 Indian Nation for which the account was estab-
20 lished for expenditure for purposes which may
21 include construction or repair of health care fa-
22 cilities, law enforcement, cultural or other edu-
23 cational activities, economic development, social
24 services, and land acquisition. Land acquisition

1 using such funds shall be subject to the provi-
2 sions of subsections (b) and (d).

3 (3) DISBURSEMENT OF FUNDS.—The Secretary
4 shall disburse the funds from a trust account estab-
5 lished under this section pursuant to a budget
6 adopted by the Council or Legislature of the Indian
7 Nation setting forth the amount and an intended
8 use of such funds.

9 (4) ADDITIONAL RESTRICTION ON USE OF
10 FUNDS.—None of the funds made available under
11 this Act may be allocated or otherwise assigned to
12 authorized purposes of the Arkansas River Multipur-
13 pose Project as authorized by the River and Harbor
14 Act of 1946, as amended by the Flood Control Act
15 of 1948 and the Flood Control Act of 1950.

16 **SEC. 7. ATTORNEY FEES.**

17 (a) PAYMENT.—At the time the funds are paid to the
18 Indian Nations, from funds authorized to be appropriated
19 pursuant to section 5(e), the Secretary shall pay to the
20 Indian Nations' attorneys those fees provided for in the
21 individual tribal attorney fee contracts as approved by the
22 respective Indian Nations.

23 (b) LIMITATIONS.—Notwithstanding subsection (a),
24 the total fees payable to attorneys under such contracts
25 with an Indian Nation shall not exceed 10 percent of that

1 Indian Nation's allocation of funds appropriated under
2 section 5(c).

Passed the House of Representatives October 1,
2002.

Attest:

JEFF TRANDAHL,

Clerk.

Calendar No. 632

107TH CONGRESS
2^D SESSION

H. R. 3534

AN ACT

To provide for the settlement of certain land claims
of Cherokee, Choctaw, and Chickasaw Nations to
the Arkansas Riverbed in Oklahoma.

OCTOBER 3, 2002

Read the second time and placed on the calendar