

# Union Calendar No. 381

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3534

[Report No. 107-632]

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

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 19, 2001

Mr. CARSON of Oklahoma (for himself, Mr. WATKINS of Oklahoma, Mr. KIL-  
DEE, and Mr. LARGENT) introduced the following bill; which was referred  
to the Committee on Resources

SEPTEMBER 4, 2002

Additional sponsors: Mr. FILNER and Mr. SULLIVAN

SEPTEMBER 4, 2002

Reported with an amendment, committed to the Committee of the Whole  
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on December 19, 2001]

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## A BILL

To provide for the settlement of certain land claims of Cher-  
okee, 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, and*  
3 *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-suffi-*  
8 *ciency and to encourage the resolution of disputes*  
9 *over historical claims through mutually agreed-to set-*  
10 *tlements 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, and*  
15 *Chickasaw Nations seeking monetary damages for the*  
16 *alleged use and mismanagement of tribal resources*  
17 *along the Arkansas River in eastern Oklahoma.*

18 *(3) The Cherokee Nation, a federally recognized*  
19 *Indian tribe with its present tribal headquarters near*  
20 *Tahlequah, Oklahoma, having adopted its most recent*  
21 *constitution on June 26, 1976, and having entered*  
22 *into various treaties with the United States, includ-*  
23 *ing but not limited to the Treaty at Hopewell, exe-*  
24 *cuted on November 28, 1785 (7 Stat. 18), and the*  
25 *Treaty at Washington, D.C., executed on July 19,*  
26 *1866 (14 Stat. 799), has maintained a continuous*

1 *government-to-government relationship with the*  
2 *United States since the earliest years of the Union.*

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

14 (5) *The Chickasaw Nation, a federally recognized*  
15 *Indian tribe with its present tribal headquarters in*  
16 *Ada, Oklahoma, having adopted its most recent con-*  
17 *stitution on August 27, 1983, and having entered into*  
18 *various treaties with the United States of America,*  
19 *including but not limited to the Treaty at Hopewell,*  
20 *executed on January 10, 1786 (7 Stat. 24), and the*  
21 *Treaty at Washington, D.C., executed on April 28,*  
22 *1866 (7 Stat. 21), has maintained a continuous gov-*  
23 *ernment-to-government relationship with the United*  
24 *States since the earliest years of the Union.*

1           (6) *In the first half of the 19th century, the Cherokee, Choctaw, and Chickasaw Nations were forcibly removed from their homelands in the southeastern United States to lands west of the Mississippi in the Indian Territory which that were ceded to them by the United States. From the “Three Forks” area near present day Muskogee, Oklahoma, downstream to the point of confluence with the Canadian River, the Arkansas River flowed entirely within the territory of the Cherokee Nation. From that point of confluence downstream to the Arkansas territorial line, the Arkansas River formed the boundary between the Cherokee Nation on the left side of the thread of the river and the Choctaw and Chickasaw Nations on the right.*

15           (7) *Pursuant to the Act of April 30, 1906 (34 Stat. 137), title to the bed and banks of the Arkansas River passed to the United States in trust for the respective Indian Nations in accordance with their respective interests therein.*

20           (8) *For more than 60 years after Oklahoma statehood, the Bureau of Indian Affairs incorrectly assumed that Oklahoma owned the Riverbed from the Arkansas State line to Three Forks, and therefore took no action to protect the Indian Nations’ Riverbed re-*

1        *sources such as oil, gas, sand, and gravel and Drybed*  
2        *Lands suitable for grazing and agriculture.*

3                *(9) The United States Government constructed*  
4        *powerheads and other improvements in the channel of*  
5        *the Arkansas River on tribal lands, using sand and*  
6        *gravel belonging to the three Indian Nations. Due to*  
7        *the Bureau's inaction, individuals with property near*  
8        *the Arkansas River began to occupy the three Indian*  
9        *Nations' Drybed Lands—lands that were under water*  
10       *at the time of statehood but that are now dry due to*  
11       *changes in the course of the river.*

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

19               *(11) In 1989, the Indian Nations filed lawsuits*  
20       *against the United States in the United States Court*  
21       *of Federal Claims (Case Nos. 218–89L and 630–89L),*  
22       *seeking damages for the United States use and mis-*  
23       *management of tribal trust resources along the Arkan-*  
24       *sas River. Those actions are still pending.*

1           (12) *In 1997, the United States filed quiet title*  
2 *litigation against individuals occupying some of the*  
3 *Indian Nations' Drybed Lands. That action, filed in*  
4 *the United States District Court for the Eastern Dis-*  
5 *trict of Oklahoma, was dismissed without prejudice*  
6 *on technical grounds.*

7           (13) *From time to time over the years following*  
8 *the Indian Nations' Court of Federal Claims litiga-*  
9 *tion, the Indian Nations, the Department of Justice,*  
10 *the Bureau of Indian Affairs, and the Indian Nations*  
11 *have engaged in settlement negotiations.*

12           (14) *Nearly 7,750 acres of the Indian Nations'*  
13 *Drybed Lands have been occupied by a large number*  
14 *of adjacent landowners in Oklahoma. Without Federal*  
15 *legislation, further litigation against thousands of*  
16 *such landowners would be likely and any final resolu-*  
17 *tion of pending disputes through a process of litiga-*  
18 *tion would take many years and entail great expense*  
19 *to the United States, the Indian Nations, and the in-*  
20 *dividuals and entities occupying the Drybed Lands*  
21 *and would seriously impair long-term economic plan-*  
22 *ning and development for all parties.*

23           (15) *The Councils of the Cherokee, Choctaw, and*  
24 *Chickasaw Nations have each enacted tribal legisla-*  
25 *tion which would, contingent upon the passage of this*

1 *Act and in exchange for the monies appropriated*  
2 *hereunder—*

3 *(A) settle and forever release their respective*  
4 *claims against the United States asserted by*  
5 *them in United States Court of Federal Claims*  
6 *Case Nos. 218–89L and 630–89L; and*

7 *(B) forever disclaim any and all right, title,*  
8 *and interest in and to the Disclaimed Drybed*  
9 *Lands, as set forth in those enactments of the re-*  
10 *spective councils of the Indian Nations.*

11 *(16) The resolutions adopted by the respective*  
12 *Councils of the Cherokee, Choctaw, and Chickasaw*  
13 *Nations each provide that, contingent upon the pas-*  
14 *sage of the settlement legislation, each Indian Nation*  
15 *agrees to dismiss, release, and forever discharge its*  
16 *claims asserted against the United States in the*  
17 *United States Court of Federal Claims, Case No. 218–*  
18 *89L, and to disclaim any right, title, or interest of*  
19 *the Indian Nation in the Disclaimed Drybed Lands,*  
20 *in exchange for the funds appropriated and allocated*  
21 *to the Indian Nation under the provisions of the set-*  
22 *tlement legislation, which funds the Indian Nation*  
23 *agrees to accept in full satisfaction and settlement of*  
24 *all claims against the United States for its use of and*  
25 *damage to the bed of the Arkansas River arising out*

1       *of the construction of the McClellan-Kerr Navigation*  
2       *Way and for the damages sought in the aforemen-*  
3       *tioned claims asserted in the United States Court of*  
4       *Federal Claims, and as full and fair compensation for*  
5       *disclaiming its right, title, and interest in the Dis-*  
6       *claimed Drybed Lands.*

7               *(17) In those resolutions, each Indian Nation ex-*  
8       *pressly reserved all of its beneficial interest and title*  
9       *to all other Riverbed lands, including minerals, as de-*  
10       *termined by the Supreme Court in Choctaw Nation v.*  
11       *Oklahoma, 397 U.S. 620 (1970), and further reserved*  
12       *any and all right, title, or interest that each Nation*  
13       *may have in and to the water flowing in the Arkan-*  
14       *sas River and its tributaries.*

15       **SEC. 3. PURPOSES.**

16       *The purposes of this Act are as follows:*

17               *(1) To approve, ratify, and confirm an agreed-*  
18       *to resolution of claims brought by the Cherokee, Choc-*  
19       *taw, and Chickasaw Nations against the United*  
20       *States, and the agreed-to disclaimers of the three In-*  
21       *Indian Nations to any right, title, or interest in ap-*  
22       *proximately 7,750 acres of Drybed Lands contiguous*  
23       *to the channel of the Arkansas River as of the date*  
24       *of the enactment of this Act in certain townships in*  
25       *eastern Oklahoma.*



1           (2) *To reserve the three Indian Nations' bene-*  
2 *ficial interest in the Riverbed except for the Dis-*  
3 *claimed Drybed Lands.*

4           (3) *To authorize and direct the Secretary to im-*  
5 *plement the terms of such settlement.*

6           (4) *To authorize the actions and appropriations*  
7 *necessary to implement the provisions of this Act.*

8           (5) *To maintain the trust relationship between*  
9 *the United States and each of the three Indian Na-*  
10 *tions.*

11 **SEC. 4. DEFINITIONS.**

12       *For the purposes of this Act, the following definitions*  
13 *apply:*

14           (1) *DISCLAIMED DRYBED LANDS.*—*The term*  
15 *“Disclaimed Drybed Lands” means all Drybed Lands*  
16 *along the Arkansas River that are located in Town-*  
17 *ship 10 North in Range 24 East, Townships 9 and*  
18 *10 North in Range 25 East, Township 10 North in*  
19 *Range 26 East, and Townships 10 and 11 North in*  
20 *Range 27 east, in the State of Oklahoma.*

21           (2) *DRYBED LANDS.*—*The term “Drybed Lands”*  
22 *means those Riverbed lands of the Indian Nations*  
23 *which lie above and contiguous to the high water*  
24 *mark of the Arkansas River in the State of Oklahoma*  
25 *as of the date of the enactment of this Act but which*



1 *eral Claims against the United States shall be deemed extin-*  
2 *guished.*

3 *(b) RELEASE OF TRIBAL CLAIMS TO CERTAIN DRYBED*  
4 *LANDS.—*

5 *(1) IN GENERAL.—Upon the deposit of all funds*  
6 *authorized for appropriation under subsection (c) for*  
7 *an Indian Nation into the appropriate trust fund ac-*  
8 *count described in section 6, all claims and all right,*  
9 *title, and interest that the Indian Nations may have*  
10 *to the Disclaimed Drybed Lands, shall be deemed ex-*  
11 *tinguished. The Secretary shall execute an appro-*  
12 *priate document citing this Act, suitable for filing*  
13 *with the county clerks, or such other county official*  
14 *as appropriate, of those counties wherein the foregoing*  
15 *described lands are located, disclaiming tribal inter-*  
16 *ests in such Disclaimed Drybed Lands.*

17 *(2) EXCEPTION.—Notwithstanding any provision*  
18 *of this Act, the Indian Nations do not relinquish any*  
19 *right, title, or interest in any lands or minerals to*  
20 *which the United States claims title which are contig-*  
21 *uous to the Riverbed, and no provision of this Act*  
22 *shall be construed to extinguish or convey any water*  
23 *rights of the Indian Nations in the Arkansas River or*  
24 *any other stream or the beneficial interests or title of*  
25 *any of the Indian Nations in and to trust lands lying*

1     *above or below the high water mark of the Arkansas*  
2     *River as of the date of the enactment of this Act, ex-*  
3     *cept for the Disclaimed Drybed Lands.*

4             (3) *LAND TO BE TAKEN INTO TRUST.—To the ex-*  
5     *tent that the United States determines that it is able*  
6     *to effectively maintain the McClellan-Kerr Navigation*  
7     *Way without retaining title to lands above the high*  
8     *water mark of the Arkansas River as of the date of*  
9     *the enactment of this Act, said lands, after being de-*  
10    *clared surplus, shall be taken into trust for the Indian*  
11    *Nation within whose boundary the land is located. All*  
12    *Wetbed Lands, including minerals, from the Arkansas*  
13    *State line upstream to the historic point of naviga-*  
14    *bility near the confluence of the Arkansas, Verdigris,*  
15    *and Grand Rivers, and all Drybed Lands located out-*  
16    *side the foregoing described Townships, shall continue*  
17    *to be held by the United States in trust for the bene-*  
18    *ficiary Indian Nation and shall be protected in ac-*  
19    *cordance with applicable law governing tribal trust*  
20    *lands.*

21             (c) *AUTHORIZATION FOR SETTLEMENT APPROPRIA-*  
22    *TIONS.—*

23             (1) *SETTLEMENT OF CLAIMS.—There is author-*  
24    *ized to be appropriated the aggregate sum of*  
25    *\$41,293,245. After payment pursuant to section 7, the*

1        *remaining funds appropriated under this subsection*  
2        *shall be paid and allocated among the three Indian*  
3        *Nations in accordance with subsection (d) and depos-*  
4        *ited into the trust fund accounts established pursuant*  
5        *to section 6. Such payment shall be in full satisfac-*  
6        *tion and settlement of the Indian Nations' claims for*  
7        *the use of and damage to the Arkansas Riverbed aris-*  
8        *ing out of the construction and maintenance of the*  
9        *McClellan-Kerr Navigation Way and asserted against*  
10       *the United States in the United States Court of Fed-*  
11       *eral Claims, Case Nos. 218-89L and 630-89L, and in*  
12       *full satisfaction of, and as compensation for, the three*  
13       *Indian Nations' respective right, title, and interest in*  
14       *and to the Disclaimed Drybed Lands.*

15                (2) *RENTALS.*—*In addition to funds authorized*  
16        *to be appropriated in paragraph (1), there is author-*  
17        *ized for appropriation and allocated in accordance*  
18        *with subsection (d) \$8,000,000, representing the*  
19        *present value of the fair market rentals for the loca-*  
20        *tion and future operation in perpetuity of the two hy-*  
21        *dropower generation and related facilities at the*  
22        *Webbers Falls Lock and Dam and the Kerr Lock and*  
23        *Dam on the Arkansas River.*

24                (d) *ALLOCATION AND DEPOSIT OF FUNDS.*—*After pay-*  
25        *ment pursuant to section 7, the remaining funds authorized*

1 *for appropriation under subsection (c) shall be allocated*  
2 *among the Indian Nations as follows:*

3           (1) *50 percent to be deposited into the trust fund*  
4           *account established under section 6 for the Cherokee*  
5           *Nation.*

6           (2) *37.5 percent to be deposited into the trust*  
7           *fund account established under section 6 for the Choc-*  
8           *taw Nation.*

9           (3) *12.5 percent to be deposited into the trust*  
10          *fund account established under section 6 for the*  
11          *Chickasaw Nation.*

12 **SEC. 6. TRIBAL TRUST FUNDS.**

13          (a) *TRUST FUND ACCOUNTS AND USES OF TRUST*  
14 *FUNDS.—All funds appropriated and paid pursuant to sec-*  
15 *tion 5 shall be deposited into three separate tribal trust*  
16 *fund accounts to be established by the Secretary for the ben-*  
17 *efit of each of the three Indian Nations. All funds deposited*  
18 *into said accounts, and any income earned thereon, shall*  
19 *be expended only in accordance with the provisions of this*  
20 *section. No funds deposited into the trust fund accounts es-*  
21 *tablished in section 6 shall be made available to the bene-*  
22 *ficiary Indian Nation until that Nation files the appro-*  
23 *priate stipulation of dismissal with prejudice of all claims*  
24 *asserted in Case Nos. 218–89L or 630–89L, filed in the*  
25 *United States Court of Federal Claims.*

1       **(b) LAND ACQUISITION.**—

2               **(1) TRUST LAND STATUS PURSUANT TO REGULA-**  
3       **TIONS.**—*The funds appropriated and allocated to the*  
4       *Indian Nations pursuant to section 5(c) and depos-*  
5       *ited into trust fund accounts pursuant to section 6(a),*  
6       *together with any interest earned thereon, and allo-*  
7       *cated pursuant to section 5(d) may be used for the ac-*  
8       *quisition of land by the three Indian Nations for*  
9       *transfer to the United States in trust for the bene-*  
10       *ficiary Indian Nation in accordance with the Sec-*  
11       *retary's trust land acquisition regulations at part 151*  
12       *of title 25, Code of Federal Regulations, as in effect*  
13       *on January 1, 2001.*

14               **(2) REQUIRED TRUST LAND STATUS.**—*Any such*  
15       *trust land acquisitions on behalf of the Cherokee Na-*  
16       *tion shall be mandatory if the land proposed to be ac-*  
17       *quired is located within Township 12 North, Range*  
18       *21 East, in Sequoyah County, Township 11 North,*  
19       *Range 18 East, in McIntosh County, Townships 11*  
20       *and 12 North, Range 19 East, or Township 12 North,*  
21       *Range 20 East, in Muskogee County, Oklahoma, and*  
22       *not within the limits of any incorporated municipi-*  
23       *pality as of January 1, 2002, if—*

24                       **(A)** *the land proposed to be acquired meets*  
25               *the Department of the Interior's minimum envi-*

1            *ronmental standards and requirements for real*  
2            *estate acquisitions set forth in 602 DM 2.6, as*  
3            *in effect on January 1, 2001; and*

4            *(B) the title to such land must meet appli-*  
5            *cable Federal title standards as in effect on said*  
6            *date.*

7            *(3) OTHER EXPENDITURE OF FUNDS.—The In-*  
8            *dian Nations may elect to expend all or a portion of*  
9            *the funds deposited into its trust account for any*  
10           *other purposes authorized under subsection (c).*

11           *(c) INVESTMENT OF TRUST FUNDS; NO PER CAPITA*  
12           *PAYMENT.—*

13           *(1) NO PER CAPITA PAYMENTS.—No money re-*  
14           *ceived by the Indian Nations hereunder may be used*  
15           *for any per capita payment.*

16           *(2) INVESTMENT BY SECRETARY.—Except as*  
17           *provided in this section and section 7, the principal*  
18           *of such funds deposited into the accounts established*  
19           *hereunder and any interest earned thereon shall be*  
20           *invested by the Secretary in accordance with current*  
21           *laws and regulations for the investing of tribal trust*  
22           *funds.*

23           *(3) USE OF PRINCIPAL FUNDS.—The principal*  
24           *amounts of said funds and any amounts earned there-*  
25           *on shall be made available to the Indian Nation for*



1       *which the account was established for expenditure for*  
2       *purposes which may include construction or repair of*  
3       *health care facilities, law enforcement, cultural or*  
4       *other education activities, economic development, so-*  
5       *cial services, and land acquisition. Land acquisition*  
6       *using such funds shall be subject to the provisions of*  
7       *subsections (b) and (d).*

8       *(d) DISBURSEMENT OF FUNDS.—The Secretary shall*  
9       *disburse the funds from a trust account established under*  
10       *this section pursuant to a budget adopted by the Council*  
11       *of the Indian Nation setting forth the amount and an in-*  
12       *tended use of such funds.*

13       **SEC. 7. ATTORNEY FEES.**

14       *(a) PAYMENT.—At the time the funds are paid to the*  
15       *Indian Nations, from funds authorized to be appropriated*  
16       *pursuant to section 5(c), the Secretary shall pay to the In-*  
17       *dian Nations' attorneys those fees provided for in the indi-*  
18       *vidual tribal attorney fee contracts as approved by the re-*  
19       *spective Indian Nations.*

20       *(b) LIMITATIONS.—Notwithstanding subsection (a),*  
21       *the total fees payable to attorneys under such contracts with*  
22       *an Indian Nation shall not exceed 10 percent of that Indian*  
23       *Nation's allocation of funds appropriated under section*  
24       *5(c).*

**Union Calendar No. 381**

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 3534**

**[Report No. 107-632]**

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**A BILL**

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

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SEPTEMBER 4, 2002

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed