**TESTIMONY OF**
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**U. S. DEPARTMENT OF THE INTERIOR**
**BEFORE THE**
**COMMITTEE ON RESOURCES**
**UNITED STATES HOUSE OF REPRESENTATIVES**
**HEARING ON H. R. 3534**

**APRIL 17, 2002**

Good morning, Mr. Chairman and Members of the Committee. I am pleased to appear before you today concerning the Department's views on H.R. 3534, the "Cherokee, Choctaw, and Chickasaw Nations Claims Settlement Act". Since the subject of this legislation is pending litigation, I can only provide you with a background and status of the issue.

**BACKGROUND**

This case originated in the mid-1960's when the Cherokee, Choctaw and Chickasaw Nations (Nations) filed suit against the State of Oklahoma for a declaratory judgment regarding ownership of the Arkansas Riverbed. The case culminated in a decision by the United States Supreme Court holding that ownership of the Arkansas Riverbed remained in the Nations. *See Choctaw Nation v. Oklahoma*, 397 U.S. 620 (1970). The Supreme Court did not attempt to designate the particular tracts owned by the United States in trust for the Nations.

Thereafter, the United States District Court for the Eastern District of Oklahoma, held that the State of Oklahoma had no further interest in the Arkansas Riverbed. Again, there was no ruling as to the ownership of the particular tracts of land. The Court transferred the ownership of certain oil and gas leases executed by the State of Oklahoma to the Bureau of Indian Affairs (BIA) for the benefit of the Nations. *See Cherokee and Chickasaw v. Oklahoma*, No. 6219-Civil (Judgment filed Jan. 21, 1977) and *The Choctaw and Chickasaw Nations v. the Cherokee Nation*, No. 73-332-Civil (Judgment filed April 15, 1975).

The Nations then sued the United States arguing that the construction of the Kerr-McClelland Navigation System was a taking by the United States of the Tribe's ownership of the riverbed. This case ultimately went to the United States Supreme Court. The Court held that the Nations' interest was subject to the navigation servitude retained by the United States. *See United States v. Cherokee Nation of Oklahoma*, 480 U.S. 700 (1987). The Court stated that the United States has the power to deepen the water or erect structures which it may believe to aid navigation.

What is not directly resolved by the 1987 case is the ownership of specific tracts of dry lands owned by the Nations after avulsive changes in the river's course, as discussed by the Supreme Court in the first decision. After the 1970 decision, the United States obtained a study done by Holway and Associates, a private company located in Oklahoma City, Oklahoma. This study outlined the dry land areas that were considered to be owned by the Nations. As a result of the Holway study, the United States began leasing the minerals located in those areas. The BIA determined that there

might be problems with the Holway study, and a second study was done by the Bureau of Land Management(BLM). This study, like the Holway study, examined the entire length of the riverbed.

In 1989, the Nations filed two lawsuits against the United States in the Court of Federal Claims. *See Cherokee Nation of Oklahoma v. United States*; No. 218-89-L (Ct.Fed.Cl.) and *Choctaw and Chickasaw Nations v. United States*, No. 630-89-L (Ct. Fed. Cl.), seeking damages from the United States for the failure to restore the Nations possession of the tracts claimed. The cases have been pending since that time.

Quiet title lawsuits have been filed regarding certain tracts of land along the Arkansas River. The Cherokee Nation quieted title to one tract of land, in *Cherokee Nation of Oklahoma v. Mathis*, Case No. 87-193-C (E.D. Okla. Judgment filed Nov. 27, 1989). This judgment quiets title in a single tract of land containing 124.942 acres in Section 9, Township 10 North, Range 24 East, of Sequoyah County, Oklahoma.

The United States initiated a quiet title lawsuit covering the claim areas in two sections of the Riverbed. *See United States v. Pates Farms*, et al., Case No. CIV-97-685-B. This lawsuit sought to quiet title to tracts in Sections 31 and 32, Township 11 North, Range 27 East, Sequoyah County, Oklahoma. The case was dismissed by the Court on technical grounds and has not been refiled because of the pending settlement efforts.

**CURRENT STATUS**

The Department has appointed a team to attempt to negotiate a settlement of the Court of Federal Claims cases. The team is composed of representatives of the BIA, the Solicitor's Office and BLM. Representatives of the team have met on numerous occasions with the attorneys for the Cherokee, Choctaw and Chickasaw nations to reach agreement on the support of the Department of the Interior for the bill. Such discussions have centered on the valuation of elements of damages claimed by the Nations. The parties are working towards an agreement as to the amounts that can be recommended to Congress for settlement of the claim. While agreement has not been reached, the parties are making substantial progress on the agreement. At this time, it appears that there exists substantial disagreement as to only one element of damages. That element is the subject of ongoing meetings between the federal negotiation team and the Nation's attorneys.

The Court of Federal Claims is also interested in the settlement of the pending claims and has held a series of status conferences to insure that settlement discussions are proceeding. The next status conference is scheduled for June 19. We believe the Congress should not proceed in ratifying a settlement until the parties have reached agreement on all issues.

**COMMENTS ON H.R. 3534**

We believe that continued discussion by the parties may result in a negotiated settlement between the Department and the Nations. The settlement should achieve two goals: (1) resolve financial elements, and (2) resolve quiet title issues. In addition, the federal negotiation team has discussed

amending certain parts of the bill. The team will be working with the Committee to clarify the description of lands disclaimed, the transfer of real property interests, particularly in areas where the Navigation System was channelized across fee lands acquired by the U.S. Army Corps of Engineers and certain other matters, including an express waiver of certain future claims.

This concludes my prepared statement. I regret that I cannot speak more specifically on the proposed legislation due to the litigation of the matter. We look forward to working with the Committee on the settlement legislation once an agreement has been reached by all parties involved.