Indian Affairs - Office of Public Affairs

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The United States Department of Justice informed a Federal Court February 28 that it intended to follow a modified Interior Department recommendation to pursue Passamaquoddy and Penobscot Indian claims to millions of acres of land in the State of Maine.

Interior's recommendation updates a draft litigation report sent to the Justice Department in January. The February 25 report, signed by Frederick N. Ferguson, Acting Deputy Solicitor for Interior, still asks for the return of land as well as trespass damages. It includes, however, two changes agreed to by the tribes.

The tribes agreed to forbear from asserting their claims to any lands which had already been settled by non-Indians as of 1790. Those lands lie primarily along the Maine coast and are the most populous portions of the claimed area. The report indicates that a legislative solution to the Indian claims on these lands will be sought.

The tribes also agreed to withhold pursuit of any legal remedies against homeowners or small property owners within the claimed area, on the conditions that the tribes would be able to obtain the monetary value of their claims to these lands from “an appropriate sovereign body.”

The Indian claims which the United States will pursue in court thus include five to eight million acres of mostly unpopulated forest land.

The Justice Department’s report notes that President Carter has announced his intention to appoint a special representative to assist the parties to reach an amicable settlement which could be ratified by the United States Congress.

The report states that if an amicable settlement is not reached by June 1, 1977, Justice intends to begin prosecuting the Indian claims. The first action proposed to be taken then by government attorneys would be to join major landholders in the claim area as defendants in the suit. These would be mostly large paper companies. The State of Maine is the only defendant in the suit at this time.

The Indian claims are based on an alleged violation of the Indian Non-Intercourse Act, first enacted in 1790. The Act states that Indian lands may not be conveyed without the consent of the Federal Government. Most of the Passamaquoddy and Penobscot lands were lost in treaties and other transactions with the States of Massachusetts and Maine between 1794 and 1833.

The Departmental decision to prosecute the Indian claims was based on a December, 1975 order of a federal court of appeals which ruled that there exists a "trust relationship" between the United States and the Tribes. It was determined that pursuit of the land claims was the only course consistent with that trust responsibility.