

103^D CONGRESS
2^D SESSION

S. J. RES. 213

To provide for the payment of fair and equitable consideration in satisfaction of the claims of certain Kaw Indians.

IN THE SENATE OF THE UNITED STATES

JULY 22 (legislative day, JULY 20), 1994

Mr. NICKLES (for himself and Mr. BOREN) introduced the following joint resolution; which was read twice and referred to the Committee on Indian Affairs

JOINT RESOLUTION

To provide for the payment of fair and equitable consideration in satisfaction of the claims of certain Kaw Indians.

Whereas, under Article Six of the Treaty of June 3, 1825 (7 Stat. 244, 245), between the United States and the Kanza Nation of Indians, 23 reservations of one square mile each were set aside for the Half-Breed Kaw Indians in what is now the State of Kansas;

Whereas following the beginning of the period of non-Indian settlement in the Territory of Kansas until 1860 the lands set aside and reserved for the Kaw Half-Breed Indians were subjected to settlement by squatters having no claim by right to the lands; that timber and natural resources were taken from the lands without compensation

to the rightful owners; that efforts were made by fraud and deceit and other unlawful means to take title to the lands from the Indian owners thereof; and during this period, despite requests from the Indian Agent in charge, the United States failed to protect the Kaw Half-Breed Indians from the depredations of the non-Indian settlers, including shooting of cattle and burning of houses;

Whereas, by the Act of May 26, 1860 (12 Stat. 21), Congress in substance declared all prior contracts for the purchase of such lands null and void and vested fee title to such lands in the original reservees or their heirs free of any such contracts or other purported encumbrances; directed the Secretary of the Interior to determine such heirs and issue patents for such lands; authorized the Secretary, upon request of such reservees or their heirs, to sell such property; and authorized the Secretary to sell those lands for which there was no surviving reservee or heirs and use the proceeds of such sale or sales equally for the benefit of the living reservees and their heirs, and the heirs of those predeceased reservees;

Whereas, by Act of July 17, 1862, before the Secretary of the Interior could finalize his determination of the heirs of the original reservees and issue patents to them or sell the lands of those original reservees who had died without heirs, Congress repealed those provisions of the Act of May 26, 1860, which vested title in the heirs of the original reservees, and repealed the provisions which authorized the Secretary of the Interior to sell lands of deceased original reservees who had died without heirs and apply the proceeds for the benefit of the surviving original reservees and the heirs of deceased reservees, and re-

pealed that portion of the Act which required sale of the lands through the Secretary of the Interior;

Whereas as a consequence of these Acts of Congress and the failure of the United States to honor its treaty commitments and provide protection and assistance to the Kaw Half-Breed reservees and their heirs, the entirety of the lands set aside for the Kaw Half-Breeds in the State of Kansas were lost, either through denial of titles, fraud and corruption, or through transactions that did not meet the standards of fair and honorable dealing set forth in the Indian Claims Commission Act of 1946;

Whereas, by Act of August 8, 1968 (Private Law 90-318), Congress recognized the responsibility of the United States and provided legislation to compensate the heirs of the Kaw Half-Breed Indians, but such legislation failed to provide for payment of interest on the claims;

Whereas, in the 91st Congress, Senator Sam Irvin introduced legislation to provide for payment of interest on the claim, and by Senate Resolution 162 the matter was referred to the United States Claims Court for a determination of the legal or equitable liability of the United States to the Kaw Half-Breed heirs;

Whereas in argument of this cause the Government acknowledged that the United States guaranteed, by Article 10 of the Treaty of June 3, 1825 (7 Stat. 244), to any Indian a full indemnification for property which might be stolen from them, and that the failure of the United States to protect the Kaw Half-Breed Indians from trespassers may have been a breach of that indemnity clause giving rise to a "moral justification" for the payment of the Kaw Half-Breed claims, but that such breach was only a "breach of contractual rights [and] is not a 'tak-

ing' of property so as to require the payment of interest.”;

Whereas after analyses of the evidence the Claims Court concluded that there was no “constructive taking” by the United States of the lands referred to in the Act of August 8, 1968, and therefore no determination of entitlement to interest was regarded by the court as being required under the resolution;

Whereas the resolution of the Kaw Half-Breed claim should not be determined on the principles of Constitutional fifth amendment takings, but should be resolved on the same principles of “fair and honorable dealings” that were established under the Indian Claims Commission Act of 1946 applied to recognized titles in the tribes;

Whereas it appears that the average value of the 14,720 acres of Kaw Half-Breed lands at the time the Indians were removed from the lands or title to the lands was otherwise lost, title to the lands was estimated by the Indian Agent in charge of said area in 1858 as \$32.50 per acre for a total value of \$478,400 for the entirety of the land, and the value of timber removed from the land by non-Indian squatters prior to the Act of May 26, 1860 (12 Stat. 21) was estimated in the Walsh-Coombs Report filed with the Secretary of the Interior in 1860 to exceed by five times the value of all improvements on such lands, for an estimated total value of \$280,963 for a total estimated loss of land and timber of \$759,363 as of 1855;

Whereas subsequent to the action in the United States Court of Claims, a class action was instituted in the United States District Court for the District of Kansas captioned Dennison, et al. v. Topeka Chambers Industrial Development Corporation, et al. (Civil Action No. 79–

1668) to declare that the heirs of the 23 Kaw Half-Breeds were the owners of “all right, title, and interest in and to the land, which comprises approximately 14,720 acres stretching along the north bank of the Kaw River from North Topeka, Kansas, to east of Perry, Kansas”;

Whereas the Honorable Frank G. Theis, the United States District Court Judge presiding in the above captioned action, concluded that while “a great injustice was probably done to some of the Kansas half-breeds in allowing forcible entries and inequitable or fraudulent conveyances to stand”, nevertheless, the court found two legal bases for barring the claims of the plaintiffs: (1) that the effect of the 1860 and 1862 Acts of Congress effectively removed the requirement for approval of the Secretary of the Interior for any conveyance of lands, and the laws of the State of Kansas regarding adverse possession and statutes of limitation thus barred the claims, and (2) that “the language and the legislative history of Private Law 90–318 (the Act of August 8, 1968) demonstrate that the law was designed to extinguish all claims of the heirs of the 23 individual reserves against anyone arising out of the events related to the 1825 Treaty”;

Whereas on appeal the 10th Circuit Court of Appeals acknowledged that the Kaw Half-Breed reservees and their heirs were entitled to the protection of Article 11 of the Treaty of June 3, 1825 (7 Stat. 244) but sustained the holding of the United States District Court;

Whereas to this day it remains common practice in transactions involving title to lands within the original 23 Kaw Half-Breed reservations in the State of Kansas to institute a quiet title action as a protective measure in any

conveyance or transaction involving such lands to assure that there be no cloud on title to lands; and

Whereas it is the conclusion of Congress that the Kaw Half-Breeds are entitled to compensation for the taking of such lands at the value of such lands as estimated by the Indian agent in 1858, plus the value of timber removed as extrapolated from the Walsh-Coombs Report in 1860, with interest thereon at the rate of 5 percent simple interest from October 1, 1855, and that upon payment of such compensation, less any sums paid under the Act of August 8, 1968 (Private Law 90–318), any claims of the heirs of the Kaw Half-Breed reservees or their heirs or assigns should be extinguished and title to such lands should be quieted in favor of those persons claiming titles or interests in such lands under the laws of the State of Kansas: Now, therefore, be it

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled,*

3 **SECTION 1. PAYMENT.**

4 (a) ACCOUNT.—That the Secretary of the Treasury
5 shall establish a separate interest bearing account in the
6 Department of the Treasury for the payment of claims
7 of the Kaw Half-Breeds and to pay into such account, out
8 of any money in the Treasury not otherwise appropriated,
9 the sum of \$759,363 plus 5 percent simple interest from
10 October 1, 1855, less any sums paid under the Act of Au-
11 gust 8, 1968 (Private Law 90–318). Subject to the restric-
12 tions provided in subsection (e) of this section, the Sec-
13 retary of the Treasury is further authorized and directed

1 to pay out of this account to the persons certified by the
2 Secretary of the Interior as entitled to payment under sec-
3 tion 2 of the Act of August 8, 1968 (Private Law 90-
4 318; 82 Stat. 1420) their proportionate share of the sum
5 deposited in such account as determined by the Secretary
6 of the Interior.

7 (b) HEIRS.—In the case of any such individual who
8 is not living on the date of the approval of this resolution,
9 the Secretary of the Treasury shall pay the proportionate
10 sums to the heirs or assigns of that individual as certified
11 as entitled to payment under section 2 of the Act of Au-
12 gust 8, 1968.

13 (c) MINORS.—In the case of any individual entitled
14 to a payment under section 1 of this resolution who is
15 a minor, the Secretary of the Interior shall hold such indi-
16 vidual's share in trust in an interest bearing account for
17 the use and benefit of such individual, with the remainder
18 of the corpus of the trust, if any, payable to such individ-
19 ual when that individual reaches his or her majority.

20 (d) CLAIMS.—Any claim by an individual asserting
21 a right to share in the distribution of any amount under
22 this section shall be filed with the Secretary of the Interior
23 not later than 180 days after the date the Secretary pro-
24 mulgates regulations establishing the procedure and cri-
25 teria for application for participation in the distribution.

1 (e) LIMITATION.—No payment to any one individual
2 lineal descendant shall exceed 10 percent of the value of
3 any one survey. Any sum in excess of such amount the
4 individual would be entitled to but for this limitation shall
5 be paid into the Trust established in section 2 of this reso-
6 lution.

7 **SEC. 2. TRUST FUND.**

8 (a) The Secretary of the Treasury shall pay, out of
9 any money in the Treasury not otherwise appropriated,
10 interest on amounts owed to Elizabeth Datcherute, Joseph
11 Butler, William Rodgers, and Joseph Cote, to the Sec-
12 retary of the Interior to be held in trust for the use and
13 benefit of the lineal descendants of any individual named
14 in the first section of this resolution as determined by the
15 Secretary of the Interior under subsection (b) of this sec-
16 tion.

17 (b) The Secretary of the Interior shall develop the
18 initial roll of lineal descendants who are eligible for bene-
19 fits under the provisions of this section in accordance with
20 such regulations as the Secretary may prescribe. Any
21 claim by an individual asserting a right to be included on
22 this Secretarial roll must file such claim with the Sec-
23 retary not later than 270 days after promulgation of such
24 regulations. Thereafter, any person asserting a right to
25 benefits under the trust must file his or her application

1 with the board of directors of the charitable trust provided
2 for in subsection (c).

3 (c) The lineal descendants described in subsection (a)
4 of this section are authorized to form a charitable trust
5 under the laws of the State of Oklahoma, which shall be
6 subject to the laws of the State of Oklahoma governing
7 charitable trusts and shall be subject to the jurisdiction
8 of the courts of the State of Oklahoma. The Board of Di-
9 rectors of this charitable trust shall have, at a minimum,
10 one lineal descendant who is an enrolled member of the
11 Kaw Indian Tribe; one lineal descendant who is an en-
12 rolled member of the Osage Tribe; one lineal descendant
13 who is an enrolled member of either the Otoe-Missouri
14 Tribe, the Pottawatomie Tribe, or the Ponca Tribe; one
15 lineal descendant who is not carried on any Indian tribal
16 roll; and one member to be designated by the Secretary
17 of the Interior who is an employee of the Bureau of Indian
18 Affairs or an employee of the Office of the Solicitor, Divi-
19 sion of Indian Affairs. The initial Board of Directors shall
20 be selected and appointed by the Secretary of the Interior
21 from a list of candidates prepared in consultation with
22 representatives of the effected lineal descendant group.
23 Thereafter the members of the board shall be selected and
24 appointed in accordance with the procedure to be estab-

1 lished in the charter of incorporation or bylaws adopted
2 thereunder.

3 (d) Upon completion of the organization of the chari-
4 table trust as provided in subsection (c), the Secretary of
5 the Interior shall pay over to the Trust the entirety of
6 those funds, plus any interest or earnings of such funds,
7 held by the Secretary under the provisions of subsection
8 (a) of this section. Upon payment of these funds to the
9 Trust, the responsibility of the United States in the fur-
10 ther administration of such funds shall be limited to that
11 of any member of a board of directors of a charitable trust
12 as prescribed by the laws of the State of Oklahoma.

13 (e) The charitable trust established under the provi-
14 sions of subsection (c) shall—

15 (1) have the authority to invest the corpus of
16 the trust in any income producing investments au-
17 thorized by the laws of the State of Oklahoma;

18 (2) have the authority to determine through its
19 charter or bylaws the nature of benefits it shall ex-
20 tend to the beneficiaries of the trust and establish
21 the eligibility criteria which will govern the extension
22 of benefits under the trust;

23 (3) only the interest and investment income ac-
24 crued on the principal of the trust shall be available
25 for payment of benefits under this trust; and

1 (4) not less than 10 percent of the income
2 earned by the trust shall be retained by the trust
3 and added to the principal annually.

4 (f) The charitable trust established under the provi-
5 sions of this section shall cause an annual audit to be
6 made to ensure that it is being administered in accordance
7 with the terms of trust and the laws of the State of Okla-
8 homa. The results of such audit shall be available for in-
9 spection by any recognized beneficiary of the trust.

10 **SEC. 3. FUNDS NOT SUBJECT TO TAXES.**

11 None of the funds held in trust by the United States
12 under this resolution or held by the Trust established
13 under section 2 of this resolution (including interest and
14 investment income accrued on such funds while such funds
15 are held in trust by the United States or the Trust), and
16 none of the funds distributed per capita under section 1
17 of this resolution, or made available to individuals under
18 the Trust established by section 2 of this resolution, shall
19 be subject to Federal, State, or local income taxes, nor
20 shall such funds nor their availability be considered as in-
21 come or resources or otherwise utilized as the basis for
22 denying or reducing the financial assistance or other bene-
23 fits to which such household or member would otherwise
24 be entitled under the Social Security Act or, except for

1 per capita payments in excess of \$2,000, any other Fed-
2 eral or federally assisted program.

3 **SEC. 4. FEES AND EXPENSES.**

4 A reasonable fee, plus costs and expenses, as deter-
5 mined by the Secretary of the Interior, for agents or attor-
6 neys on account of services rendered in connection with
7 the payment of funds under section 1 of this resolution
8 may be paid out of the amount provided pursuant to that
9 section.

10 **SEC. 5. EXTINGUISHMENT OF CLAIMS AND CONFIRMATION**
11 **OF TITLE.**

12 Upon establishment of the account and payment of
13 funds by the Secretary of the Treasury into the separate
14 account required to be established under section 1 of this
15 resolution, the Secretary of the Treasury shall publish no-
16 tice in the Federal Register of the establishment of such
17 account and upon such publication of such notice, any and
18 all claims arising from events arising out of Article 6 of
19 the Treaty of June 3, 1825 (7 Stat. 244), shall be extin-
20 guished, and the titles and interests of all persons or enti-
21 ties claiming title or interests in and to lands within the
22 boundaries of the 23 Kaw Half-Breed reserves under the
23 laws of the State of Kansas shall be confirmed.

○