

THE WHITE HOUSE

WASHINGTON

August 27, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 2201 -- Zuni
Indian Tribe Land Conveyance

Counsel's Office has reviewed the above-referenced enrolled bill, and finds no objection to it from a legal perspective.

FFF:JGR:aea 8/27/84

cc: FFFielding/JGRoberts/Subj/Chron

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

O - OUTGOING

H - INTERNAL

I - INCOMING

Date Correspondence

Received (YY/MM/DD) 1/1/79

Name of Correspondent: Richard Darman

☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Enrolled Bill S. 2201 - Zuni Indian
Tribe Land Conveyance

ROUTE TO:

ACTION

DISPOSITION

Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CUHOU</u>		ORIGINATOR	<u>84108123</u>			<u>1 1</u>
<u>CUHAT 18</u>		Referral Note: <u>D</u>	<u>84108123</u>			<u>584108127</u>
		Referral Note:				<u>NOON</u>
			<u>1 1</u>			<u>1 1</u>
		Referral Note:				
			<u>1 1</u>			<u>1 1</u>
		Referral Note:				
			<u>1 1</u>			<u>1 1</u>
		Referral Note:				

ACTION CODES:

A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet
to be used as Enclosure

Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:

A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 8/23/84 ACTION/CONCURRENCE/COMMENT DUE BY: 12:00 Noon MONDAY, 8/27

SUBJECT: ENROLLED BILL S. 2201 - ZUNI INDIAN TRIBE LAND CONVEYANCE

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	OGLESBY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	VERSTANDIG	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
HERRINGTON	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
McFARLANE	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
McMANUS	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

May we have your comments on the attached Bill by noon Monday, August 27.
Thank you.

RESPONSE:

1984 AUG 23 PM 3:12

Richard G. Darman
Assistant to the President
Ext. 2702



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

107-200-30 11 1-19

AUG 23 1984

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2201 - Zuni Indian Tribe Land
Conveyance
Sponsor - Senator Goldwater (R) Arizona

Last Day for Action

August 29, 1984 - Wednesday

Purpose

Authorizes the conveyance of approximately 11,000 acres in Arizona to be held in trust for the Zuni Tribe for religious purposes.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	No objection
Department of Justice	No objection
Department of the Treasury	No objection (Informally)

Discussion

Background

S. 2201 would add a total of 11,049 acres of public domain, State, and private lands in Arizona to the Zuni Indian Reservation for religious purposes. This land would be held in trust for the benefit of the Zuni Tribe by the Secretary of the Interior.

The lands that S. 2201 would transfer to the Zuni Indians have been of religious significance to the Tribe for many centuries. These lands contain a site known as Zuni Heaven, which is the most sacred location in the Zuni religion because of the Zuni belief that it is the point to which all spirits return. Zuni Indians who practice their traditional religion hold various ceremonies and participate in pilgrimages within the lands which S. 2201 would transfer to the Tribe.

S. 2201 would provide for the acquisition of the 11,049 acres by (1) transferring 3,727 acres of Bureau of Land Management (BLM) land valued at \$56,000 to trust status for the benefit of the Tribe; (2) requiring the Secretary to exchange BLM lands in

Arizona for 1,441 acres of State-owned lands and to transfer such lands without cost to the Tribe; and (3) authorizing either the Secretary or the Tribe to acquire 5,881 acres of private lands and leasehold interests valued at between \$500,000 and \$900,000 by purchase or exchange.

In addition, S. 2201 would: (1) require the Secretary to acquire immediately by voluntary agreement the permanent right of ingress and egress to these lands to enable the Zuni Indians to practice their traditional religious ceremonies and pilgrimages; (2) require the Secretary to sell to Apache County, Arizona, BLM lands that are equal in acreage to the private lands within that county that will be acquired for the Tribe; (3) authorize the Zuni Tribe to use judgment funds in certain Court of Claims dockets, if and when they are awarded, for the purpose of acquiring the 5,881 acres of private lands; (4) prohibit offsets against any judgment fund awards to the Zuni Tribe in certain Court of Claims dockets; (5) deem transfers of private lands and leasehold interests to be involuntary conversions for Federal tax purposes; and (6) require the continuation of any payments-in-lieu of taxes (now about \$3,000 annually) being made to the State of Arizona or local governments on the acreage to be transferred to the Tribe.

Administration Position

No formal position was presented to the Congress by the Administration on S. 2201. At hearings on the bill in April 1984 before the Select Committee on Indian Affairs, the Department of the Interior witness mentioned some concerns about S. 2201, but offered no amendments and explicitly took no position on enactment of the bill. The Committee moved immediately after the hearing to report the bill. Because of the Department's belief that the legislation would not move, and its reluctance to express opposition to the bill, no position was subsequently sent to Congress.

The Senate passed S. 2201 by voice vote on July 31, and the House passed the Senate enactment by unanimous consent on August 8, without holding hearings.

As enrolled, S. 2201 has some objectionable features:

- It mandates that the Secretary exchange BLM land for State-owned land, but does not require the Secretary to obtain equal value in the exchange;
- It requires the Secretary to sell BLM lands to Apache County which are equal in acreage to the private lands to be acquired for the Tribe in that County. The sales would be

conducted under special provisions that would result in a price below market value. This is intended to hold Apache County harmless for the conversion of land to nontaxable uses, but will result in a net loss to the Federal Government;

- It requires the continuation of payments-in-lieu of taxes on public lands after these lands are transferred to Indian ownership;
- It could encourage other Indian tribes to seek similar free land acquisitions for religious purposes, as there are many Indian holy sites located off reservations; and
- It potentially increases Zuni claims awards above those that would be applicable under the legal formula used in settling hundreds of past Indian land claims by prohibiting offsets for either land gained by the Zunis under S. 2201 or Federal money and services provided historically to the Tribe.

Agency Views

In its enrolled bill letter, the Department of the Interior advises that it has no objection to your approval of S. 2201. Interior states that despite its concerns with the bill, principally the land exchange provisions, the Zuni Tribe's ties to this land are strong enough to justify approval of the legislation. In addition, Interior asserts that it is unaware of any other Indian land claims based on purely religious needs which "... would be impacted by the approval of this enrolled bill."

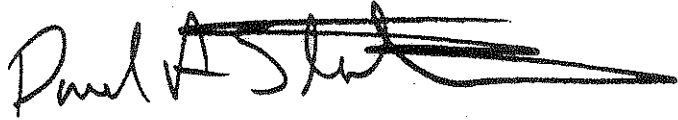
The Department of Justice advises that it has no objection to your signing S. 2201, but notes that the bill raises a novel issue regarding whether Congress' efforts to aid and preserve Indian religions by protecting their sacred sites constitutes an impermissible establishment of religion under the Establishment Clause of the First Amendment to the Constitution. Justice, however, concludes that it does not believe the transfer of land under S. 2201 would violate the Establishment Clause because of the unique relationship between Congress and the Indians. A question remains, however, as to whether it is sound public policy for the Federal Government to promote and protect specific religions. Given the Tribe's historical access to these lands, it is not clear that the Zunis need ownership of them to practice their religion.

Congressional Views

In arguing the Zuni's case, the report of the Senate Select Committee on Indian Affairs states that "... the Zuni Indian tribe's ties to the lands subject to this bill are strong enough to warrant Congressional action separate and apart from any legal claim of aboriginal ownership..." and that the "... bill treats a unique fact situation involving the Zuni Indian Tribe and is not intended by the Congress to serve as precedence for claims of Indian tribes elsewhere."

Conclusion

As outlined above, S. 2201 contains a number of undesirable features. However, because of the Administration's failure to present a clear record of opposition to the bill during congressional consideration, the absence of clear constitutional objections, and the relatively small total cost of the bill, I recommend approval of S. 2201.



David A. Stockman
Director