Answers of Patrick Strauch, Executive Director, Maine Forest Products Council, to Questions Posed by Representative Bruce Westerman Regarding H.R. 6707, Advancing Equality for Wabanaki Nations Act

April 14, 2022

The following are answers provided by Patrick Strauch, Executive Director of the Maine Forest Products Council to questions posed by Representative Bruce Westerman regarding H.R. 6707, "Advancing Equality for Wabanaki Nations Act."

I. Introduction

Patrick Strauch was not involved in the negotiations and drafting that resulted in the enactment of the two pieces of legislation that settled the Maine Indian lands claims—the Maine Implementing Act (30 MRS § 6021, *et seq.*) ("MIA") and the Maine Indian Claims Settlement Act, Public Law, 96-420, §§ 1-16 (25 USC § 1721, *et seq.*) ("MICSA"). This being so, and to be able to fully answer these questions. Therefore, these answers rely on primary sources records which are provided for the Subcommittee's information and assistance.

II. Questions

1. The Maine Indian Claims Settlement Act (MICSA) authorized and approved the settlement of land claims brought by Maine tribes based on conveyances of tribal lands in violation of the Nonintercourse Act (25 USC § 177).

   <u>**Question**</u>: **Did Congress's approval of the settlement terminate the land claims litigation so that no court ever finally ruled one way or the other on the merits of the tribes' claims?**

<u>Answer</u>: Yes, Congress's approval of the settlement resolved the tribes' claims, avoiding lengthy and costly litigation in court. In its "Congressional Findings and Declarations of Policy", MICSA states the settlement of civil suit based on the tribes' Trade and Intercourse Act claims is among MICSA's objectives. Section 1(a)(1); 25 USC § 1721(a)(1). Those Findings also note the need to "resolve[]" the claims "promptly". Section 1(a)(6); 25 USC 1721(a)(6). They also state MICSA's intention to "provide the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians with a fair and just settlement of their lands claims." Section 1(a)(7); 25 USC § 1721(a)(7). MICSA also ratified conveyances of land and natural resources and resolved claims concerning land and natural resources. Section 3(a)-(c) (25 USC § 1723(a)-(c)). As described in his testimony before the Senate Select Committee on Indian Affairs on July 1, 1980, Thomas N. Tureen, Esq., attorney for the Passamaquoddy Tribe and the Penobscot Nation, stated that MICSA and MIA were intended to settle those tribes' Nonintercourse Act claims without needing to resort to adjudication of the merits of those claims. <u>Attachment A</u> (Testimony of Thomas N. Tureen, Esq., before the Senate Select Committee on Indian Affairs, July 1, 1980, at 181, 183); see also, Testimony of Thomas N. Tureen before Joint Select Committee on Maine Indian Claims, Maine Legislature, April, 1980. <u>Attachment B</u>.

2. MICSA ratified and approved state legislation called the Maine Implementing Act (MIA) which set the jurisdictional framework that was to govern relations between the State of Maine and the tribes if the settlement was approved.

Question: Did Congress provide in MICSA any mechanism whereby the State and the tribes could adjust MIA's jurisdictional framework without having to return to Congress for approval?

Answer: Yes. MICSA gave Congress's consent to the State of Maine and the tribes to amend MIA. This consent appears at Section 5(e) (25 U.S.C. § 1725(5)(e)). The Hearing Record of the Senate Select Committee on Indian Affairs suggests that the Interior Department was deeply involved in drafting Section 5(e). Attachment C (Letter from Cecil Andrus, Secretary of the Interior, to Senator John Melcher, August 3, 1980, at p. 102).

Section 5(e) was particularly important because it was understood that, with the $54,500,000 that MICSA was providing for land acquisition and with well more than 300,000 acres of land having been specifically identified by MIA as eligible for inclusion in "Indian Territory" under the MIA, it was understood that the lands that the Passamaquoddy Tribe and the Penobscot Nation were likely to acquire would be scattered all over central and parts of northern Maine. This being so, it was likely that adjustments in MIA would be required because of the anticipated land ownership pattern, as well as for other reasons. In time, these tribes did acquire lands in patchwork fashion over central and parts of northern Maine. A map depicting that pattern of tribal land ownership is attached. Attachment D

The scattered land holdings of the Passamaquoddy Tribe and the Penobscot Nation are located in and around those of private landowners creating a landholding pattern that is very different from tribal land holding patterns anywhere else in the United States, including the land holding patterns of allotted lands. The uniform application of State jurisdiction over these lands was an integral element of MIA and MISCA. See also, answers to Topic 3, question 1 and Topic 4, questions 1 and 2.

Question: In the 41 years since Congress enacted MICSA and ratified MIA, has the Maine Legislature amended MIA with the approval of the tribes?

Yes. The Maine Forest Products Council does not possess detailed information on this question, but believe that the Subcommittee will receive other submissions that will address it.

3. The MICSA is one of several Acts of Congress resolving what are known as the "Eastern Indian land claims." All these statutes approve negotiated settlement of civil claims that required Congressional ratification.

<u>Question</u>: If Congress enacts H.R. 6707 absent the approval of the state of Maine, would this set a precedent for Congress taking the same approach to other, similar settlements?

Yes. While the Maine Forest Products Council is not familiar with other instances in which Congress has approved the settlement of other Eastern Indian Land claims, settlements of civil claims typically require the consent of the parties even where, as here, Congress has the power to unilaterally impose settlement terms. At the same time, the Maine Forest Products Council is not aware of any instance in which, after having approved an Eastern Indian lands claims settlement, Congress has materially changed the terms of the settlement without the consent of all the parties. The Congressional record concerning MICSA, conversely, serves as precedent for amendment of MICSA *only* with the consent of the State and the Tribes

With respect to the settlement of the Maine Indian land claims, the record compiled before the Senate Select Committee on Indian Affairs and the House Interior and Insular Affairs Committee indicates that both the Senate and House sought the approval of all parties to the settlement agreement before approving it. The hearing record before the Senate Indian Affairs Committee shows that the State of Maine, all the tribes, and the United States through Secretary of the Interior Cecil Andrus all supported the bill.

By letter dated August 3, 1980, Secretary Andrus reported to Senator Melcher that, following the July 1-2, 1980 hearing, the Interior Department had worked closely with all the parties to reach agreement on portions of MICSA that required revision. Secretary Andrus wrote: "It has not been our intention to alter in any way the agreement between the State of Maine and the Passamaquoddy Tribe and Penobscot Nation with respect to their new relationship. We have only sought to make it more workable." <u>Attachment C</u> at 95; see also, *e.g.*, <u>Attachment C</u> at 103 (agreement of the parties on revisions to Section 6(h) and Section 7).

The Report of the House Interior and Insular Affairs Committee confirms that the Committee worked with the parties on MISCA so that it would be acceptable to all the parties. "Over a period of three months, officials of the Administration met and negotiated with representatives of the State and of the three tribes, the Senate and House Committee staff attended and participated in these meetings. The amendment in the nature of a substitute is the result of these negotiations and resolves all problems." House Report, 96-1353. <u>Attachment</u> E at 18.

From these Congressional records on MICSA, it is apparent that both the Senate and the House, as well as the Interior Department, worked with all the parties before making any changes to MICSA as introduced. These records provide precedent to the relevant

committees as well as Congress as a whole that MICSA should be amended only with the consent of the State and the Tribes.

It is the Maine Forest Products Council's understanding that neither Governor Janet Mills, Maine's governor, nor the Maine Legislature has consented to the enactment of H.R. 6707. The Maine Forest Products Council is unaware of any instance in which Congress has materially changed the terms of MICSA without the consent or over the objection of the State of Maine or any or all of Maine's Indian tribes. If the State of Maine does not consent to H.R. 6707, therefore, it would set a precedent for Congress's unilateral alteration of MICSA – and other similar settlements in other states – without the consent of all the parties.

Before closing on this point, at present LD. 1626 is pending in the Maine Legislature. If enacted, L.D. 1626 would significantly expand tribal jurisdiction. A second bill, L.D. 585, is also pending in the Maine Legislature. That bill is intended to provide greater State-Tribal cooperation and provide the tribes with greater economic opportunities. Both bills are examples of how the State and the Tribes have attempted to reach agreements on legislation adjusting their relationship, including statutory changes outside of MIA and, pursuant to Section 5(e) of MICSA, to MIA. Congress's unilateral amendment of MICSA could create an incentive for the State and the Tribes to seek Congressional support for objectives which, previously, they have attempted to work out by themselves, as contemplated by MICSA itself. As has been noted at other points in these Answers, the Maine Forest Products Council is particularly concerned about the impact of H.R. 6707 on settled questions of environmental jurisdiction.

Question: If Congress enacts H.R. 6707 absent the approval of the state of Maine, would it set a precedent for Congress enacting legislation materially changing settlement legislation to the disadvantage of the tribe?

Answer: As noted above, the 1980 Congressional record on MICSA shows that the pertinent Committees and Congress as a whole required the consent of the State and the Tribes to any changes in MICSA as introduced. If Congress were to approve H.R. 6707 without the consent of the State of Maine, it would depart from that principle. In that event, it would establish a new precedent—that is, that Congress may make material changes to the MICSA without the consent of the parties to the settlement agreement-the State of Maine and the Tribes. This could create a dynamic in which the State and the Tribes seek Congressional intervention rather than resolving their differences in Maine, as they have done for the last 40 years. Although in this instance the Maine tribes support such intervention, in the future it could as easily be to their disadvantage.

4. There have been some suggestions that tribal negotiators did not understand the implications of the jurisdictional provisions in the MICSA.

Question: When MICSA was presented to Congress for approval and MIA presented to Congress for ratification were the tribes represented by counsel?

Answer: Yes. According the testimony of Thomas Tureen, Esq., before the Senate Select Committee on Indian Affairs, he represented the Passamaquoddy Tribe and the Penobscot Nation as an attorney with the Native American Rights Fund. He was assisted by the Washington, D.C. law firm of Hogan and Hartson (misspelled in hearing record as "Hartz") and by Archibald Cox. (Archibald Cox was at that time an eminent attorney, who had served as Solicitor General of the United States under President John F. Kennedy, and as Special Counsel investigating misconduct by the Committee to Re-Elect the President—President Richard M. Nixon—arising out of the Watergate scandal.) Attorney Tureen further advised that the tribes had no contractual obligation to pay these attorneys anything. Attachment A at 187.

According to the hearing record of the Senate Select Committee on Indian Affairs, the Houlton Band of Maliseet Indians was represented by Reid Peyton Chambers, Esq., of the Washington, D.C. law firm of Sonosky, Chambers & Sachse. Attachment F.

Please note also the references above to the reports of the Senate Select Committee on Indian Affairs and the House Interior and Insular Affairs Committee, as well as the August 3, 1980 letter of the Secretary of the Interior, that they worked closely with the State and the Tribes in revising MICSA. None of those documents suggests that the Tribes were not well and ably represented by counsel, or that they did not fully understand the settlement they agreed to in 1980.

Question: Did any representatives of the tribes inform the Maine Legislature or any committee of Congress that they had concluded that MIA's jurisdictional framework was in the tribes' interest as well as that of the State of Maine?

Answer: Yes. In testimony before the Joint Select Committee of the Maine Legislature on Indian Land Claims, attorney Tureen testified on the jurisdictional framework of MIA as follows:

> Thomas Tureen: "Both sides began to attempt to understand and to the greatest extent possible, accommodate the needs for the other. For the State, this meant, among other things, understanding the Tribes' legitimate interest in managing their internal tribal affairs, in exercising tribal powers in certain areas of particular cultural importance such as hunting and fishing, and securing basic Federal protection against future alienation for the lands to be returned into settlement. For the Indians it meant, among other things, understanding the legitimate interests of the State in having basic laws such as those dealing with the environment apply uniformly throughout Maine. Increasingly, both sides found areas of mutual interest as, for example, in the case of the General body of Federal Indian Regulatory Law which the tribes came to see as a source of uncertainty in future Tribal-State relations. Attachment B at 25.

In testimony before the Senate Select Committee on Indian Affairs, the following exchange occurred between Senator William Cohen of Maine and attorney Tureen:

> Senator Cohen: In section 6(g) [later 6(h) (25 USC § 1725(h))] and other sections of the proposed Federal act, many of the Federal Indian laws are made inapplicable to the Maine tribes. I would ask you, Mr. Tureen, in the testimony before the Joint Committee of the Maine Legislature, in Augusta, you said that as the negotiations proceeded, and the Maine tribes came to see the general body of Federal Indian law as a source of unnecessary Federal interference in the management of tribal property. Is this sentiment the reason behind the exclusion of much of federal Indian law from the settlement bill?
>
> Thomas Tureen: Again, there is no simple answer. The general body of Federal Indian law is excluded in part because that was the positon that the State held to in negotiations. It was the State's view that destiny of the Maine tribes, as much as possible in the future, be worked out between the State and the tribes. The tribes were concerned about basic fundamental Federal protections which they had not had before the recent round of court cases. So it is also true to say that the tribes were concerned about the problems that existed in the West because of the pervasive interference and involvement of the Federal Government in internal tribal matters." Attachment A, 181-182.

In other words, counsel for the tribes informed both the Maine Legislature and Congress that the Tribes had concluded that MIA's jurisdictional framework was in the tribes' interest as well as that of the State of Maine, as part of the comprehensive negotiated settlement.

Question: Did the Senate Select Committee on Indian Affairs Report accompanying the MICSA articulate how Section 6(h) (to be amended by H.R. 6707) would work?

Answer: Yes. The report of the Senate Select Committee on Indian Affairs includes a detailed section-by-section analysis of MISCA as reported from the committee. Senate Report 96-957 (September 17, 1980), Attachment G. The Senate Report discusses Section 6(h) (25 USC § 1725(h)) at pages 30 and 31.

It states that, "...unless otherwise provided in this Act, the general body of Federal Indian law specially applicable to Indians, Indian nations, or tribes and bands of Indians, and Indian trust lands shall be applicable to the Passamaquoddy Tribe, the Penobscot Nation, and, the Houlton Band of Maliseet Indian, their members and their lands and natural resources, and to any other Indians, Indian nations, or tribes and bands of Indians within the State of Maine." Attachment G at 30.

It states further that: "It is also the intent of this subsection, however, to provide that federal law according special status or rights to Indian or Indian Tribes would not apply within Maine if they conflict with the general civil, criminal or regulatory law or

regulations of the State. Thus, for example, although the federal Clean Air Act, 42 U.S.C. § 7474, accords special status to Indian tribes and Indian lands, such rights will not apply in Maine because otherwise they would interfere with State air quality laws which will be applicable to lands held by or for the benefit of the Maine Tribes." Attachment G at 31.

Question: Did the Senate Select Committee on Indian Affairs Report explain that the tribes could not set environmental standards; that only the state of Maine could do that?

Answer: Yes. As noted in response to the previous question, in its section-by-section analysis, the Senate Indian Affairs Committee Report described Section 6(h) (25 USC § 1725(h)) as providing for State jurisdiction over environmental and other regulatory matters.

5. H.R. 6707 would amend Section 6(h) of the MICSA to provide prospectively that "laws and regulations of the United States which are generally applicable to [or enacted for the benefit of] Indians and Indian tribes" would apply in Maine even if they would affect or preempt the State of Maine's jurisdiction.

Question: What limitations would 6(h)—which H.R. 6707 would amend—in its current form place on the eligibility of Maine tribes for federal Indian programs or other benefits and how does Section 16(b)—which H.R. 6707 would repeal—relate to Section 6(h) in its current form?

Answer: Under Section 6(h) (25 USC § 1725(h)), "the laws and regulations of the United States which are generally applicable to Indians, Indian nations, or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations or tribes or bands of Indians shall be applicable in Maine."

Section 6(h) contains a proviso that no federal law or regulation that "(1) accords or relates to a special status or right of or to any Indian, Indian nation, tribe or bands of Indians, Indian lands, Indian reservations, Indian country, Indian territory or and held in trust for Indians and also (2) which affects or preempts the civil, criminal or regulatory jurisdiction of the State of Maine, shall apply within the State."

Section 16(b) (25 USC § 1725(b)), which applies to post-MICSA Congressional enactments, uses a similar formula but requires that the impact of the post-MICSA congressional enactment on the State of Maine s jurisdiction be "material."

Read as a whole, Section 6(h) makes general federal Indian law—including laws "enacted for the benefit of" (see, H.R. 6707, Section 2), generally applicable in Maine.

The sole limitation on the general applicability of these laws is if they would "affect or preempt" the jurisdiction of the State of Maine. (Or, for post-MICSA enactment Congressional enactments, that they would "materially" affect or preempt the jurisdiction of the State of Maine.)

Thus, generally applicable federal Indian laws pertaining to health, education, housing, governmental services, and other areas of community and governmental concern apply in Maine provided that they do not affect or preempt the jurisdiction of the State of Maine.

To place Section 6(h) in greater context, it bears emphasis that Section 6(h) as enacted reversed the language of its predecessor, Section 6(g) of MICSA, as introduced in the House (H.R. 7919) and the Senate (S. 2829). As introduced, H.R. 7919 and S. 2829 set the future jurisdictional relationship between the State and the Tribes at Section 6(g). Section 6(g) generally excluded all federal Indian laws from Maine except those laws that provided "financial benefits" to Indians and Indian Tribes. Attachment H (S. 2829, Maine Indian Claims Settlement Act, as introduced), pp. 18-19 (Section 6(g)).

After the concerns that Secretary Andrus raised about Section 6(g), representatives of the Interior Department, the State, the Tribes, and the House and Senate Committees met to work on this and other drafting problems. As a result of these meetings, the language 6(g), which became 6(h), was reversed to provide that general federal Indian law would apply in Maine, except to the extent it affects or preempts the jurisdiction of the State of Maine. The reversal of Section 6(g)'s general exclusion to Section 6(h)'s general inclusion prompted the addition of Section 16(b) to MICSA. Section 16(b) appears in the Senate Report 96-957 (September 17, 1980) at p. 11 and in the House Report, 96-1353 (September 19, 1980) at p. 11. MISCA was signed into law by President Jimmy Carter on October 10, 1980.

The attached brief filed by Timothy C. Woodcock, Esq., as an amicus in the appeal of *Penobscot Nation v. Frey*, Nos. 2016-1424, 2016-1474, 2016-1482 explains attorney Woodcock's account of the reversal of the wording in Section 6(g) as introduced to the wording of Section 6(h) as enacted and the addition of Section 16(b) to MICSA. Attachment I. Attorney Woodcock's amicus brief notes that at the time the Senate Select Committee on Indian Affairs considered MICSA he was serving as minority staff counsel on the Select Committee.

Question: Would Section 6(h) as amended by H.R. 6707 apply to post-enactment statutory reauthorizations of such federal laws as the Clean Air Act and the Clean Water Act—would such reauthorizations apply in Maine or not?

Answer: It appears that, with H.R. 6707's amendment to Section 6(h) (25 USC § 1725(h)) and its repeal of Section 16(b) (25 USC 1735(b)), a general reauthorization of standing legislation such as the Clean Air Act and the Clean Water Act would make those laws applicable in Maine. But it seems quite likely that, if H.R. 6707 were enacted into law and those or similar environmental laws were reauthorized in whole or in part, it

would result in litigation to determine H.R. 6707's effect on the reauthorization in question.

<u>Question</u>: Would Section 6(h) apply to all court decisions on federal Indian law; would it exclude court decisions issued before H.R. 6707's enactment; would it apply only to court decisions issued after H.R. 6707's enactment; would it apply to such court decisions at all?

<u>Answer</u>: The Maine Forest Products Council is uncertain on the answer to this question. H.R. 6707 clearly applies to statutory laws—both laws in effect on its effective date and those enacted or repealed thereafter. It is not clear whether and to what extent it applies to court decisions on tribal-state jurisdiction. This is problematic because, to a significant extent, federal Indian law is the product of and dependent on court decisions. H.R. 6707 does not refer to this body of decisional law in any explicit way.

It should be noted that the ambiguity of H.R. 6707 on this point contrasts with MICSA's clear definition of the term "Laws of the State" as set forth at Section 2(d) (25 USC § 1722(d)) which reads as follows: "(d) 'laws of the state means the constitution, and all statutes, regulations, and common laws of the State of Maine and its political subdivisions and all subsequent amendments thereto or judicial interpretations thereof."

As lack of clarity in any statute will generate uncertainty and possible litigation. In legislation as far reaching as H.R. 6707, lack of clarity will guarantee litigation. Maine Forest Products Council does not believe that would be in anyone's interest. Therefore, Maine Forest Products Council respectfully asks this Committee to closely examine the question of whether and to what extent H.R. 6707 would apply to court decisions on tribal government and state government jurisdiction. The Committee should also consider whether and to what extent state court decisions on tribal-state jurisdiction would be included. On this point, it bears emphasis that the Senate Report on MICSA cited a state court appellate decision—*Wauneka v. Campbell,* 22 Ariz. App. 287, 526 P.2d 1085 (C.A. 1974)—to describe the tribes' retained, aboriginal jurisdiction under MICSA. In addition, the Maine Supreme Judicial Court issued a significant jurisdictional decision in favor or the tribes in *State v. Dana,* 404 A.2d 551 (Me. 1979). Therefore, the status of state court decisions on State-Tribal jurisdiction under H.R. 6707 should be considered along with federal court decisions.

<u>Question</u>: Would Section 6(h) as amended by H.R. 6707 apply to court decisions made after enactment of H.R. 6707 that may rely on court decisions made prior to enactment of H.R. 6707?

<u>Answer</u>: See response to previous question.

<u>Question</u>: How many state and federal court cases have interpreted the jurisdictional provisions of MICSA and MIA over the past 41 years?

Maine Forest Products Council does not have this information, but understands that it will be provided in other submissions to the Subcommittee.

Question: Would Section 6(h) as amended by H.R. 6707 change any or all of the state or federal court decisions interpreting the jurisdictional framework of MICSA and MIA?

President Carter signed the MICSA into law on October 10, 1980 and, at the same time, the Maine Legislature's conditional approval of MIA became effective. That jurisdictional framework has been in place for more than 40 years. It has been construed by State and Federal Courts.

H.R. 6707 would remove that gradually eliminate that jurisdictional framework. Every new or reauthorized federal law affecting jurisdiction would automatically replace all the case law based on the MIA-MICSA jurisdictional framework. As to any points of jurisdiction under H.R. 6707 that are not clear, the State and the Tribes and possibly private parties, would be forced into court for clarification (or back to Congress).

Question: If the word "laws" in Section 6(h) extends to federal common law, how would this amendment affect the application of future case law?

Answer: See answer to topic, 5, third question regarding impact of H.R. 6707 on pre- and post-enactment court decisions on State-Tribal jurisdiction.

Question: Has any Maine tribe taken the position that its reservation includes any rivers, or branches or tributaries, in Maine, and that the tribes therefore should be able to regulate non-tribal activity on those rivers? For example, to issue fishing licenses to non-tribal members, or to regulate non-tribal wastewater discharge?

Yes, see the discussion in *Penobscot Nation v. Frey*, 3 F.4th 484 (1st Cir. July 8, 2021). The tribe in that case sought to regulate non-tribal uses of the Penobscot River. It has also asserted that its reservation includes the bed and banks of the branches and tributaries of the Penobscot River. For example, on February 22, 2022 the Penobscot Nation a letter with the Federal Energy Regulatory Commission (FERC), stating, in the second paragraph, on page 1 that "It is the Nation's position that the Ripogenus and the Penobscot Mills Projects, located on the West Branch of the Penobscot River, occupy federal lands, the Penobscot Reservation."

Question: Do you know whether any Maine tribe has applied for Treatment as a State status pursuant to the Clean Water Act or any other federal environmental statute making Indian tribes eligible for Treatment as a State status? If so, how many times and how have any issues been resolved to date?

The Passamaquoddy Tribe and the Penobscot Nation have applied several times for treatment as a state ("TAS") under section 518 of the Clean Water Act, 33 U.S.C. § 1377(e). The Environmental Protection Agency ("EPA") has granted TAS to the tribes,

but only for the limited purpose of obtaining federal funds to develop water quality standards. *See, e.g.*, Feb. 28, 2000 letter from Penobscot Indian Nation ("PIN") to EPA (seeking TAS status for purposes of grant funding, and asserting that "the Nation has jurisdiction over the resources affected by the program" and that "the Nation has jurisdiction exclusive of the State of Maine over its internal tribal matters"; "As with all land use matters, new construction is within the exclusive jurisdiction of the Nation as an internal tribal matter"); Sept. 10, 1993 letter from EPA to PIN (offering the clarification sought by the PIN "as to why this approval of TAS status is limited to the water quality CWA § 106 grant purposes and to the water resources over which the Tribe exercises management and protection functions for purposes of the grant activities"). In addition, the Nation received approval of its eligibility application under Clean Air Act § 105, 42 U.S.C. § 7405, for funding assistance and development of an air quality monitoring program by letter dated February 7, 2012.

Notwithstanding that the First Circuit ruled in 2007 that the state, not Maine tribes, regulates water quality under the Settlement Acts, in 2012 and in 2014, the Penobscot Nation applied again for TAS status under the Clean Water Act.

<u>Question</u>: If H.R. 6707 in its current form were enacted into law, would it have an effect on private persons or entities or governmental or quasi-governmental entities? If so, can you describe the probable or possible effects?

<u>Answer</u>: H.R. 6707 could lead to increased costs on businesses and individuals in the forest products industry in two ways: First, if one or all of the tribes attained Treatment as a State status, each tribe would be empowered to issue its own environmental standards and apply them to non-tribal members. Because, as has been noted, the land holdings of the Passamaquoddy and Penobscot Tribes are spread out all over central and parts of northern Maine—in a pattern highly atypical if not unique with respect to tribes in other states—it could create a patchwork of federal jurisdictional enclaves throughout those parts of the state. As many of these tribal land holdings are part of or adjacent to working forests, it could require forest products businesses and employees to comply with two or possibly more sets of environmental standards that might be quite different from one another. Meeting all those standards could add considerable expense to the cost of doing business. It could also create sufficient uncertainty for some businesses in the forest products industry so that they scale back operations or commit their resources elsewhere.

Second, because H.R. 6707 takes effect only prospectively, it will great uncertainty as to when the tribes might become eligible to seek Treatment as a State status. In addition, if they were to attain Treatment as a State status, the tribes might regularly adjust their environmental standards creating further uncertainty and upsetting plans made based on earlier, superseded standards.

Maine Forest Products Council did not have information on the impact of H.R. 6707 on governmental and quasi-governmental entities. Therefore, Patrick Strauch, Executive Director of Maine Forest Products Council, wrote to Richard Bronson, Town Manager of

the Town of Lincoln, Maine, and ask him or his legal representative to respond to these questions. Attachment J. Attorney Matthew Manahan, Esq. responded on behalf of Town Manager Bronson and the other governmental entities and quasi-governmental entities he represents. Attachment K.

Question: Do you believe that enactment of H.R. 6707 could lead to increased costs on businesses, individuals or governmental entities in the state of Maine?

Answer: See answer to topic 5, question 10,

See also Attachment K Letter from Matthew D. Manahan in response to Patrick Strauch inquiry to Richard Bronson, Town Manager, Town of Lincoln, Maine.