

Committee on Natural Resources
Subcommittee for Indigenous Peoples of the United States

Remote Legislative Hearing - Cisco WebEx
March 31, 2022, at 1:00 p.m.ET

Legislative Hearing on H.R.4715, H.R.5715, and H.R.6707

Questions from Rep. Westerman for Patrick Strauch, Executive Director, Maine Forest Products Council.

1. The Maine Indian Claims Settlement Act (MICSA) (25 USC § 1721, *et seq.*) 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).

Question: 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?

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 tribes if the settlement was approved.

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

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

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

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

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 a tribe?

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

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?

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?

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

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 does Section 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?

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?

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

Question: 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?

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

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?

Question: When section 6(h) of the MICSA refers to "laws" of the United States, does that include common law? Doesn't Section 3(d) of MICSA define laws of the State to include common law?

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?

Question: Has any Maine tribe taken the position that its reservation includes any rivers, or branches or tributaries, in Maine, and that the tribe 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 discharges?

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?

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

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