H.R. 5858—MEMORANDUM OF DISAPPROVAL

I am withholding my approval of H.R. 5858, a bill for the relief of three silver dealers who suffered business losses as a result of their short market positions resulting from a decision by the Department of the Treasury to terminate the sale of Government-owned silver on May 18, 1967, without honoring the dealers' telephonic requests made that day to purchase almost seven million ounces of silver.

These claims were the subject of very extensive proceedings before the former United States Court of Claims, which on May 18, 1967, held that no legally binding contracts to purchase the silver had been established by these claimants, because the claimants (1) were clearly on notice that the Treasury's involvement in the silver market was altogether inseparable from monetary policy, (2) had reason to expect that Treasury would abandon the marketplace just as soon as doing so would serve monetary policy, and (3) knew that Government silver sales would end soon in view of the published report that Treasury's supply of silver was being rapidly depleted. (*Primary Metal & Mineral Corp.* v. *United States,* 556 F.2d 507 (Ct.Cl. 1977).)

In parallel proceedings before a trial commissioner of the same court pursuant to a Congressional Reference proceeding under 28 U.S.C. Sections 1494 and 2509 (1970), the trial commissioner had earlier found that the same dealers had valid breach of contract claims, even though he, too, found that they were well aware of the potential for a sudden termination of the sales program. After the court had rejected his analysis, he nevertheless concluded that the claimants had "equitable" claims sufficient to justify private relief legislation merely because (in his opinion) the Court of Claims was wrong in disagreeing with his legal theory. In its report to the Congress, a review panel of three trial commissioners, without explaining its reasoning, stated that it agreed with this unprecedented rationale for the existence of an equitable claim against the Government.

To permit the silver dealers covered by H.R. 5858 to recover over $3.3 million without any findings that they received inequitable treatment from the Government, in the face of the unappealed holding of the Court of Claims that they had no legal claims against the Treasury, would establish an undesirable precedent for payment of a host of claims to claimants who may have encountered hardships due to business decisions made with full awareness of the risks that a change in a Government property disposal program might entail. No doubt many similarly situated individuals have had their expectations frustrated in the past by similar program changes. To single out these three claimants for special relief would be unjust to the others, while payment to all for frustrated expectations would result in an unacceptable interference with the Government's ability to decisively and expeditiously respond to developments affecting vital national policies. For these reasons I find the bill unacceptable.

RONALD REAGAN.

THE WHITE HOUSE, *January 4, 1983.*

S. 2623—MEMORANDUM OF DISAPPROVAL

I am withholding my approval of S. 2623, which would amend the Tribally Controlled Community Colleges Assistance Act of 1978 and extend its authorities through 1987.

I am taking this action with reluctance, because my Administration is deeply committed to providing educational opportunities for American Indians. Education is critical to economic betterment for all elements of our society. It is an equally important aspect of increasing self-determination for American Indians. I support fully the intent of S. 2623 to improve existing Indian community college programs. My Administration is dedicated to furthering this goal. The bill which is before me, however, includes a number of provisions that are unacceptable and that do not contribute to enhancement of Indian education.

Foremost among the unacceptable provisions of this bill is section 2, which would declare the Federal government's support of tribal community colleges to be a part of its trust responsibility toward Indian tribes. College level Indian education has never been characterized in law or treaty as a trust responsibility of the Federal government, and to do so now would potentially create legal obligations and entitlements that are not clearly intended or understood. Such a declaration is wholly unnecessary to the continuation of a successful program of Federal assistance to tribally controlled community colleges.

Although the conference report on S. 2623 suggests that "Federal policy (on Indian education) should be clear and unequivocal", the enrolled bill is highly ambiguous as to the nature and extent of this new policy of trust responsibility. S. 2623 imposes what the conference report itself admits is a "very general" trust responsibility. However, neither the bill nor the report makes any attempt to define the nature or extent of that responsibility, except to suggest—in nonbinding report language—some concepts that are *not* intended. This vague nonstatutory language could be interpreted by the courts in a variety of ways. It could be read as establishing a trust relationship that creates an absolute responsibility to provide assistance to tribal colleges and Indian students regardless of need, and it could establish a highly undesirable precedent for making all Indian social service programs a part of the Federal government's "very general" trust responsibility.

Finally, section 2 would also provide that grants could be used for the improvement and expansion of physical facilities. When the program of assistance to tribally controlled community colleges was originally conceived, the Congress contemplated use of existing community facilities. To begin a major new building program when there are so many other competing tribal needs would be duplicative, unwarranted, and ill-advised under current economic conditions. Funds provided through the Bureau of Indian Affairs for the tribally controlled community colleges assistance program are for program support only, and should remain so.

Another unacceptable provision is in section 14(b) of this bill, which would subject regulations issued by the Secretary of the Interior under the program to an unconstitutional legislative veto device presently found in section 431 of the General Education Provisions Act. The Attorney General has advised me, and I agree, that two Houses of Congress cannot bind the Executive Branch by passing a concurrent resolution that is not presented to me for approval or veto. Such a provision unconstitutionally encroaches on the principle of separation of powers that is at the foundation of our government.

In addition to these strong objections, I also have serious reservations about a number of other provisions of the bill, which could significantly increase Federal expenditures in a time that demands fiscal restraint. Those reservations have been explained in reports and testimony of the Department of the Interior on the bill.

The authorities in the Tribally Controlled Community Colleges Assistance Act are not scheduled to expire until September 30, 1984, under current law. Accordingly, there will be no interruption of our current successful program activities as a result of my disapproval of S. 2623. It is my hope that Congress will reconsider legislation extending the Act early in the next session and enact a bill which both advances the program's objectives and meets the Administration's objections to S. 2623.

RONALD REAGAN.

THE WHITE HOUSE, *January 3, 1983.*

H.R. 7336—MEMORANDUM OF DISAPPROVAL

I am withholding my approval of H.R. 7336, which would make certain amendments intended to improve the implementation of the Education Consolidation and Improvement Act of 1981.

I continue to support the objectives of both Chapter 1 and Chapter 2 of the Education Consolidation and Improvement Act. However, I cannot approve H.R. 7336 because the bill makes

substantive changes to the Education Consolidation and Improvement Act that are unacceptable, as well as amendments to the legislative veto provision of the General Education Provisions Act that I believe to be an unwarranted intrusion on the Executive branch's constitutional authority.

Among the unacceptable provisions is section 17(a)(1), which would declare the Federal government's assistance to disadvantaged Indian students under ECIA Chapter 1 to be a part of its trust responsibility toward Indian tribes. This provision is the same as one included in S. 2623, the Tribally Controlled Community College Assistance Act Amendments, from which I recently withheld my approval. The provision of Federal education assistance to Indian students is not characterized in law or treaty as a trust responsibility, and has not been held by the courts to be so. As I noted in my Memorandum of Disapproval on S. 2623, to declare the provision of education to Indian students a trust responsibility would potentially create legal obligations and entitlements that are not clearly intended or understood. This provision of H.R. 7336 is unnecessary to the administration of the Chapter 1 program.

Also unacceptable is section 16(b) of H.R. 7336, which would make certain amendments to a two-House legislative veto device presently contained in section 431 of the General Education Provisions Act. The Attorney General has advised me, and I agree, that two Houses of Congress cannot bind the Executive branch by passing a concurrent resolution that is not presented to me for approval or veto.

Another objectionable provision of H.R. 7336, section 1, would require continuation under Chapter 1 of the definition of a currently migratory child that was in use under the antecedent Title I program. This requirement would prevent the Administration from focusing the limited resources available for migrant services under Chapter 1 on those children whose education is actually interrupted as a result of their migrant status.

Other amendments in the bill relating to the Education Consolidation and Improvement Act could be construed to reinstate requirements and procedures contrary to the intent of the Act to provide greater authority and flexibility for State and local educational agencies.

My disapproval of H.R. 7336 in no way reflects upon the efforts of the author of this bill, Representative William Goodling, of Pennsylvania. Mr. Goodling worked closely with the Department of Education to clarify specific weaknesses in the Education Consolidation and Improvement Act and to reflect that effort in the House report language. Despite his efforts, there are substantive provisions in H.R. 7336 that do not eliminate the ambiguities in the language of the existing ECIA and seem to restore undesirable complexity to the administration of ECIA programs.

Although the bill would make several desirable changes to the Education Consolidation and Improvement Act, the objectionable provisions far outweigh any of its benefits.

For these reasons, I cannot approve the bill.

RONALD REAGAN.

THE WHITE HOUSE, *January 12, 1983.*

H.R. 9 MEMORANDUM OF DISAPPROVAL

After careful consideration, I have determined, for the reasons stated below, to withhold my approval of H.R. 9. I regret that this action is necessary, because I support the designation of additions to the National Wilderness Preservation System in the State of Florida, as recommended by the Administration and set forth in this bill. My Administration has proposed almost two million acres of land for designation as wilderness and the unique natural habitat designated in H.R. 9 would be particularly valuable additions to the national wilderness system.

Although H.R. 9 is intended to resolve an issue that has been in contention during three prior Administrations, it does so in a way that is unnecessarily costly to the Federal taxpayer. Because of administrative actions taken earlier this week by the Secretary of the Interior, my disapproval of this legislation will not have the effect of permitting phosphate mining to proceed in the Osceola National Forest. I do not object to legislative efforts to preclude phosphate mining in the Osceola National Forest. I do object, however, to the provisions of this bill that would vest previously contingent property rights in certain mining companies. This could require the Federal government to pay those mining companies as much as $200 million for those property rights—rights that, absent this legislation, might not otherwise have existed.

Specifically, this bill attempts to convey to several mining companies the rights to, and value from, 41 preference right lease applications for deposits of phosphates underlying the Osceola National Forest. Under present law, these mining companies are entitled to these mining leases only if the Secretary of the Interior determines that the phosphate deposits underlying this land are valuable deposits. H.R. 9 would establish property rights to the lease in specific companies by requiring the Secretary of the Interior, and ultimately the courts, to judge the lease applications without reference to the cost of compliance with current applicable statutory and regulatory requirements for environmental protection. Such requirements include those established under the National Environmental Policy Act, the Clean Water Act, and the Clean Air Act. Hence, under this legislation, the determination of whether these phosphate deposits are "valuable" would not take into consideration the cost of returning the Osceola National Forest lands to their natural state as required by current law.

This Administration is opposed to a policy of conveying interests in public resources by waiving applicable statutory requirements that are designed to protect the environment.

Moreover, having required the mineral rights to be conveyed to the companies by the Secretary of the Interior, this bill would then prohibit mining on the leases and require the Federal government to purchase the conveyed lease rights back from the companies. Thus, the bill would, in effect, force Federal purchase of rights that under current law would remain in Federal ownership in the first place.

Analyses available to the Department of the Interior indicate that no current technology is capable of returning the mined lands to the reclamation standards required by current Federal laws and regulations. The Department of the Interior is faced with an administrative record regarding restoration that demonstrates that the applicant mining companies cannot meet the valuable deposit test required by current law for lease issuance. Consequently, the Secretary of the Interior has advised me that, based on that administrative record, mining should not now take place in the Osceola National Forest, and that he has rejected the preference right lease applications.

However, because H.R. 9 specifies a less strenuous standard than current law, the lease applicants would most likely be found to have met the valuable deposit test were this measure to become law. The Department of the Interior would then have to determine the fair market value of the interests and extend monetary credits to the lease applicants. Further, though the bill provides that the fair market value is to be determined by taking into account all environmental laws, any Secretarial action valuing these leases in a way adverse to the applicants' expectations would likely result in costly litigation, and the possible recovery in the United States Claims Court of payments to these companies for loss of their "rights" in public resources to which they would not be entitled absent this legislation.

The administrative decision process, necessary under current law to resolve this issue, is being brought to conclusion under my Administration. To the extent that further litigation is entered into on this issue, it should be