

**TESTIMONY
OF
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DIRECTOR OF THE BUREAU OF INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
HOUSE NATURAL RESOURCES
SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS
ON
H.R. 1272, MINNESOTA CHIPPEWA TRIBE JUDGMENT FUND DISTRIBUTION ACT**

MARCH 1, 2012

Good morning, Chairman Young, Ranking Member Boren, and Members of the Subcommittee. My name is Mike Black, and I am the Director of the Bureau of Indian Affairs (BIA). I am pleased to be here today to testify on H.R. 1272, Minnesota Chippewa Tribe Judgment Fund Distribution Act. The bill is intended to provide for the distribution of funds owed to the Minnesota Chippewa Tribe by order of the United States Court of Federal Claims in Docket Nos. 19 and 188. The Department appreciates the effort by the Tribal Executive Committee of the Minnesota Chippewa Tribe to resolve their differences through negotiation and to reach agreement on a distribution plan. However, the Department acknowledges that the distribution formula set forth in H.R. 1272 does not have the unanimous support of the Minnesota Chippewa Tribe six member bands as the Leech Lake Band of Ojibwe (Leech Lake) has expressed its opposition to the distribution plan. The Department supports H.R. 1272 because it respects the decisions of the governing body of the Minnesota Chippewa Tribe.

Background

Congress enacted the Nelson Act, dated January 14, 1889, 25 Stat. 642, (Nelson Act) to establish a process “for the complete cession and relinquishment in writing of all of [the Chippewa Indians in the State of Minnesota’s] title and interest in and to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations. The Nelson Act provided that proceeds from the sale of lands of the Chippewa Indians in Minnesota were to be placed into a fund within the Treasury for a period of 50 years, with annual payments of interest made to individual Chippewa Indians. Section 7 of the Nelson Act provided that, after the expiration of 50 years, “the said permanent fund shall be divided and paid to all of the said Chippewa Indians and their issue then living, in cash, in equal shares[.]” Those funds were to be distributed in equal shares, without regard to which reservation lands they were tied.

Following the 50-year period contemplated by the Nelson Act, there were no remaining funds to distribute in equal shares to the individual Chippewa Indians in Minnesota.

The Minnesota Chippewa Tribe was established in 1934, pursuant to the Indian Reorganization Act. The Secretary approved the Tribe’s constitution in 1936. Under that Constitution, the Minnesota Chippewa Tribe consists of six member bands, on six different reservations: Bois Fort, Fond du Lac, Grand Portage, Leech Lake, Mille Lacs and White Earth. Each Band has two

representatives on the Tribal Executive Committee (TEC), which is the governing body for the entire Minnesota Chippewa Tribe.

On January 22, 1948, the Minnesota Chippewa Tribe, representing all Chippewa bands in Minnesota except the Red Lake Band, filed a claim before the Indian Claims Commission in Docket No. 19 for an accounting of all funds received and expended pursuant to the Nelson Act. On August 2, 1951, the Minnesota Chippewa Tribe, representing all Chippewa Bands in Minnesota except the Red Lake Band, filed a number of claims before the Indian Claims Commission in Docket No. 188 for an accounting of the Government's obligations to each of the member bands of the Tribe under various statutes and treaties that are not covered by the Nelson Act. The Department understands that the expenses for prosecuting the Minnesota Chippewa Tribe's claims in Docket Nos. 19 and 188 were shared equally by the six Bands.

The primary claims asserted by the Minnesota Chippewa Tribe in Docket Nos. 19 and 188 were that the proceeds from the sale of land and timber on the six reservations pursuant under the Nelson Act were misspent, and that the Tribe's land and timber were sold at less than full-value.

On July 1, 1998, the TEC enacted Resolution 01-99, which approved the settlement of the claims for a sum of \$20 million. The vote was 6 in favor of adopting Resolution 01-99 and 3 against. The United States Court of Federal Claims accepted the TEC's decision, and awarded \$20 million to the Minnesota Chippewa Tribe in May 1999, in Docket Nos. 19 and 188. The court specifically stated "[t]he Tribal Executive Committee has the constitutional authority to enter into the proposed settlement on behalf of the Minnesota Chippewa Tribe." The funds were transferred to the Department on June 22, 1999 and have been held in trust since.

The Indian Tribal Judgment Funds Act (Act) of October 19, 1973, 87 Stat. 466, 25 U.S.C. §1401 *et seq.*, as amended, requires the Secretary of the Interior to submit to the Congress a plan for the use or distribution of funds to an Indian tribe. Under subsections 2(c) and (d) of the Act, should the Secretary determine that circumstances do not permit for the preparation and submission of a plan as provided under the Act and the Secretary cannot obtain the consent from the tribal governing body concerning the division of the judgment funds within 180 days after the appropriation of the funds for the award, the Secretary is required to submit to the Congress proposed legislation to authorize use or distribution of such funds.

Pursuant to the Act, the Acting Deputy Commissioner of Indian Affairs issued a Results of Research Report on the Judgment in Favor of the *Minnesota Chippewa Tribe, et al., v. United States, Dockets 19 and 188* (Report) on June 6, 2001. The Report recommended that 35 percent of the funds should be distributed to each of the six Minnesota Chippewa Bands (Bands) in proportion to their losses and 65 percent should be distributed to each of the Bands in proportion to their current tribal enrollment.

Also pursuant to the Act, in April of 2007, the Department submitted a legislative proposal to the Speaker of the House of Representatives and to the President of the Senate. The Minnesota Chippewa Tribe expressed opposition to both the 2001 and the 2007 distribution plans, for varying reasons.

The Department's 2007 proposal was introduced in the 110th Congress by Congressman Collin Peterson on May 14, 2007 as H.R. 2306. H.R. 2306 provided that the fund should be allocated pro rata between the six Minnesota Chippewa Bands based upon the number of tribal members currently enrolled within each of the Bands.¹ The House Natural Resources Committee held a hearing on the bill, but no further action was taken on H.R. 2306.²

On October 1, 2009, the TEC passed Resolution 146-09, by a vote of 10 in favor and 2 against, to distribute the judgment funds. H.R. 1272 incorporates many of the provisions in the Tribal Resolution 146-09.

H.R. 1272

Section 5 sets aside for each Band a portion of available judgment funds equivalent to \$300 for each member enrolled within each Band. After the funds are divided, those funds will be placed in separate accounts. "Per Capita" account for each Band and an "Equal Shares" account for each Band.

After the Secretary of the Interior deposits the available funds into the "Per Capita" accounts and "Equal Shares" accounts, a Band may withdraw all or part of the monies in its account. All funds shall be used for the purposes of distributing one \$300 payment to each enrolled member of the Band.

Each Band may distribute an additional \$300 to the parents or legal guardians for each dependent Band member instead of distributing \$300 payments to the Band members themselves, or deposit into a trust account the \$300 payments of each dependent Band member for the benefit of such dependent Band members to be distributed under the terms of said trust.

Section 5(f) addresses the distribution of unclaimed payments. This section provides that one year after the distribution all unclaimed payments for the Tribe to be returned to the Secretary who shall divide the funds equally among the Bands and deposit the divided shares into "Equal Shares" accounts.

If a Band exercises its right to withdraw monies from its accounts, the Secretary shall not retain liability for the expenditure or investment of the monies after they are withdrawn.

¹ By letter dated May 22, 2008, then-Assistant Secretary of Indian Affairs, Carl Artman, rescinded the June 6, 2001 Results of Research Report which forms the basis for H.R. 2306. By letter dated May 30, 2008, Legislative Counsel for the Department clarified that Mr. Artman's letter "does not reflect the views of the Department of the Interior or the Administration on this issue."

² 25 U.S.C. §1405 states "[t]he plan prepared by the Secretary shall become effective, and he shall take immediate action to implement the plan for the use or distribution of such judgment funds, at the end of the sixty-day period (excluding days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) beginning on the day such plan is submitted to the Congress, unless during such sixty-day period a joint resolution is enacted disapproving such plans." The Department could not find a joint resolution from Congress disapproving the plan.

Department's position on H.R. 1272

H.R. 1272 raises a unique and complex question involving the United States' respect for the sovereignty of tribal governments. The Minnesota Chippewa Tribe is a sovereign government, formed in 1936 under the Indian Reorganization Act, and the TEC is the governing body of the Tribe. The TEC is comprised of twelve members, two from each of the six constituent Bands. Each constituent Band, however, also functions as a distinct sovereign government.

On October 1, 2009, the TEC passed Resolution 146-09, by a vote of 10 in favor and 2 against, to distribute the judgment funds in accordance to the formula set forth in H.R. 1272. The Department understands that disagreements among the Minnesota Chippewa Tribe's constituent bands, and between the Department and the Tribe, have prevented the distribution of the settlement funds for a number of years. The Department also understands that the Leech Lake Band opposes the distribution formula set out in H.R. 1272. Leech Lake has consistently supported the view that the distribution should be based upon total damages suffered by each band. The Department appreciates the concerns of Leech Lake, with whom it has a government-to-government relationship, and would prefer a unanimous agreement among the six bands of the Minnesota Chippewa Tribe regarding the best method to distribute the settlement funds.

Nevertheless, the recognized governing body of the Minnesota Chippewa Tribe has voted 10-2 in favor of the distribution formula set forth in H.R. 1272. Out of respect for the decision of the Minnesota Chippewa Tribe, and in light of the need to distribute the settlement funds in an equitable and expeditious manner, the Department supports H.R. 1272.

The Nelson Act originally contemplated a common-fund for the benefit of individual Chippewa Indians of Minnesota, which would have been distributed to individuals on a per capita basis. H.R. 1272 differs from previous plans to distribute the settlement funds, and reflects the original intent of Congress to distribute the common proceeds to individuals on a per capita basis.

The Minnesota Chippewa Tribe filed Docket Nos. 19 and 188 for the common benefit of all its constituent Bands and members. All six bands equally shared the expense and risk of prosecuting the cases. H.R. 1272 also reflects the equal risk shared by the constituent bands when the Minnesota Chippewa Tribe initiated its claim more than 60 years ago.

The TEC's 1998 vote to settle the cases for \$20 million was not unanimous, as three members voted against the proposed settlement. But for the TEC's vote to settle the case, Dockets Nos. 19 and 188 could still be in litigation. The TEC's settlement vote, however, was respected by all Bands and the federal court, which stated "[t]he Tribal Executive Committee has the constitutional authority to enter into the proposed settlement on behalf of the Minnesota Chippewa Tribe."

Once again, the Department would prefer that any distribution plan have the unanimous support of all of the Minnesota Chippewa Tribe's constituent bands. Should the Subcommittee, and the sponsors of H.R. 1272, wish to consider amendments to the bill in an effort to gain the unanimous support of the Minnesota Chippewa Tribe, the Department is willing to participate in that effort.

Nevertheless, the 1999 settlement itself was not reached with the unanimous consent of the Minnesota Chippewa Tribe's constituent bands, and the Department views H.R. 1272 as the most equitable and expeditious means to distribute the funds agreed upon in that settlement, and to provide a small measure of justice to the citizens of the Minnesota Chippewa Tribe.

In addition, the Department does have two suggested amendments to the bill. The Department suggests amending the language in Section 5 of the bill to clarify that parents or legal guardians of dependents will not receive an additional \$300 for each dependent but rather, that parents or legal guardians of dependents may receive a \$300 payment on *behalf* of their dependent.

Section 5(g) provides that, the Secretary shall not retain liability for the expenditure or investment of the monies after they are withdrawn by the Bands. Pursuant to Section 5(c) and 5(f), a Band may make separate withdrawals: once for per capita distribution, after which remaining funds are returned to the Secretary; and, once again from the "Equal Shares account." The Department recommends amending Section 5(g) to clarify that the Secretary shall not retain liability for the expenditure or investment of the funds after *each* withdrawal.

Mr. Chairman, this concludes my statement and I will be happy to answer any questions the Subcommittee may have.