

**TESTIMONY OF THE PRAIRIE BAND POTAWATOMI NATION
ON H.R. 791 BY GARY MITCHELL, VICE CHAIRMAN,
BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES
MAY 8, 2002**

Good morning, Mr. Chairman and Members of this Committee. My name is Gary Mitchell. I am the Vice Chairman of the Prairie Band of Potawatomi Nation, a federally recognized tribe presently located on our reservation 20 miles north of Topeka and 80 miles northwest of Kansas City. I am also the Tribe's historian. The Tribe maintains a government-to-government relationship with the United States. Thank you for inviting me to testify before you today on H.R. 791, a bill "to provide for the equitable settlement of certain Indian land disputes regarding land in Illinois."

The Prairie Band does not want a dispute with its Illinois neighbors and wishes a truly fair settlement of its land claim in Illinois. The Shab-eh-nay land and Shab-eh-nay himself have been a part of the Tribe's interest, history and culture for more than 150 years and earlier efforts have been made to pursue the Potawatomi Nation's claim. We do not believe that H.R. 791 would provide such a settlement, as I will explain to you.

Perhaps I should say right up front that the Prairie Band's claim is to 1280 acres of land set aside by treaty, that the reservation still exists, that the Prairie Band is the legal successor in interest to the rights under that treaty and that the Nation does not want to displace any land owners from their homes. As an Indian Nation, we know all too well how that feels and its devastating effect.

May I first tell you about the history of the Potawatomi Nation in relation to the treaty and land referred to in H.R. 791. On July 29, 1829, the Treaty of Prairie du Chien between the United States and The United Nations of Chippewa, Ottawa and Potawatomi, reserved two sections of land in Northern Illinois, the future Dekalb County, as a reservation for the Potawatomi Chief Shab-eh-nay and his Band. Although the Illinois-Wisconsin Potawatomi ceded 5 million acres west of the Mississippi in the 1833 Treaty of Chicago and most were removed west, they did not cede the Shab-eh-nay Band's reservation. Nonetheless, in late 1836, the Shab-eh-nay Band was driven from their land and eventually relocated to Council Bluffs, Iowa, where they merged politically and culturally with most of the Illinois-Wisconsin Potawatomi removed west after the 1833 Treaty. This coalition, including the Shab-eh-nay Band proper, relocated to a new reservation in Kansas after the Treaty of 1846, which officially renamed the United Bands the "Potawatomi of the Prairie," already known as the Prairie Band Potawatomi.

Based on falsified deeds submitted by Ansel and Orin Gates, the Gates brothers whose sordid and criminal reputation was well known in Illinois, commonly known as the "Bogus" Gates, part "of the west Paw Paw banditti, linked with horse thieving and counterfeiting," the Commissioner of Indian Affairs determined that Shab-eh-nay's Band had abandoned the Illinois reservation. Then the Commissioner mistakenly concluded that Shab-eh-nay was another Indian, Shobonnier, who died in 1852 and had received his land as an individual grant under the Treaty of 1832.

Based on these misassumptions, on November 5, 1849, the Shab-eh-nay Band's reservation was sold by the United States General Land Office. Shab-eh-nay died in 1859 and the Illinois lands were reserved by the Treaty of 1829 for his band, not for him or his family as individuals. Tribal treaty title is recognized and held in trust by the United States. The lands were not public lands within the General Land Office's jurisdiction. They could neither be abandoned nor sold absent express congressional authorization. The patents issued on the lands in 1850 are void, and the land remains in trust.

When the Shab-eh-nay Band merged with the Prairie Band Potawatomi at Council Bluffs, it conveyed to the Prairie Band any treaty rights the Shab-eh-nay Band held at the time. Thus, the Prairie

Band is the rightful beneficiary of the lands originally reserved for Chief Shab-eh-nay and his Band under the 1829 Treaty of Prairie du Chien.

After the disgraceful theft of the Illinois reservation lands, Shab-eh-nay struggled in vain to regain their possession. The Prairie Band has continued that struggle to this date. The historical record is replete with documentation of this 150-year tragedy. We would be glad to present to you that documentation. The Nation's interest in this land did not arise within the last thirteen years.

The historical record is also replete with evidence of the affection and respect of the non-Indian people in the now Dekalb County area for Shab-eh-nay as a great leader and friend. In that regard, I would like to tell you a few things. By 1857, Shab-eh-nay, disposed of the Band's reservation in northeastern Illinois, moved around the surrounding area continuing to pursue recourse from the federal government. Local settlers in the area of Morris, Illinois (about 20 miles southeast of the reservation) took up a collection to purchase a tract of land for Shab-eh-nay to provide him with a permanent home. Shab-eh-nay selected a 20-acre parcel on a bluff overlooking the Illinois River. This land was set aside for the chief and his heirs forever and removed from the tax rolls. P.A. Armstrong, The Black Hawk War 591-593, Springfield, Illinois (1887)(no publisher listed). The deed granting "20 acres off S.E. T420: 33.6, [from] John Batcheller and Wife," dated June 27, 1857, reads as follows:

"This grant to be held in trust for the use and benefit of Cabaña, Indian Chief of the Pottawattamie tribe, and his heirs forever, the use, rents and profits thereof to be enjoyed by said Shabana and his heirs exclusively."

Recorded 9-23-1857, Book R., Page 215, Grundy County Courthouse, Morris, Illinois. That same year, a group of women in Ottawa, Illinois organized a fund-raiser ball to erect a small cabin on the land. Shab-eh-nay attended the ball. Armstrong 592.

In 1958, local Boy Scout Troop 25, Theodore St. Ev. Lutheran Church, Joliet, Illinois, erected a marker on the site of Shab-eh-nay's cabin with a granite memorial; "On this site Chief Shab-eh-nay occupied a cabin given to him by white friends in 1857, resided here until his death, July 27, 1859." Records of the Shabbona Trail Committee, Troup 25, Boy Scouts of America, 1015 Bury Ave., Joliet, IL 60435.

Shab-eh-nay died on July 17, 1859, from an illness following a hunting excursion. He was buried in Lot 59, Block 7, in the Evergreen Cemetery in Morris, Illinois, about twenty miles south east of Shab-eh-nay's cabin. Sextant's Records, Evergreen Cemetery, Morris, Illinois. Evergreen Cemetery in Morris, Illinois. The exact site is Lot 59, Block 7.

A project was begun in 1861 to raise the funds needed for a monument to Shabbona, but the Civil War left the project incomplete. Letter from Frances Rose Howe to Charles Goold (September 1, 1860), on file with Chicago Historical Society.

On August 19, 1897, the 29th reunion of the Old Settlers of La Salle County discussed placing a monument for Shab-eh-nay. It was unanimously agreed that a committee should be formed to devise ways and means for the erection of a suitable monument. Letter of P.A. Armstrong to Miss McIlvane (17 October 1903), on file with Chicago Historical Society.

The monument decided upon was a large boulder inscribed simply, "Shabbona 1775 – 1859." It was placed on his grave at Evergreen Cemetery in 1903. Letter from P.A. Armstrong to Miss McIlvane (17 October 1903), on file with Chicago Historical Society.

In 1922, construction began on Shabbona Elementary School near Shabbona Grove. The students of the classes of 1922 – 1923 dedicated a handsome monument, containing his sculptured image, to Shab-eh-

nay. www.homestead.com/shabbonaelementary/history

Now, I would like to turn to the legal aspects of the Prairie Band's efforts to obtain conformation of its Shab-eh-nay claim by the Department of the Interior. For two and one-half years, the Potawatomi Tribe submitted extensive supporting materials from esteemed legal and academic professionals to support the Tribe's claim. In July 2000, the Office of the Solicitor, Division of Indian Affairs, issued two internal legal opinions concluding that based on their review of the Potawatomi Tribe's submitted materials, the Tribe has a credible claim that the lands reserved for the Shab-eh-nay Band by the 1829 Treaty of Prairie du Chien constitute a treaty reservation and that the Prairie Band Potawatomi Nation is the sole successor in interest to the rights of the Shab-eh-nay Band under that treaty. Relying on those opinions, the Tribe's research and additional research by the Division of Indian Affairs, on January 18, 2001, the Solicitor, John Leshy, sent a letter opinion to the Illinois governor and the congressional representative in whose district the Shab-eh-nay reservation is located. The Solicitor concluded that the Prairie Band is the lawful successor in interest to Chief Shab-eh-nay and his Band, that the reservation still exists and that the United States owes a trust responsibility to the Prairie Band Potawatomi for these lands. I have the January 18th Solicitor's opinion with me ask that it be made a part of the record of this hearing. I would like to quote just one paragraph from page two of that opinion to you:

Our research has also led us to the conclusion that the Prairie Band is the lawful successor in interest to Chief Shab-eh-nay and his Band. The Prairie Band did bring a claim against the United States under the Indian Claims Commission Act of 1946 and was paid for the loss of certain lands in northern Illinois. However, the reservation of land for Chief Shab-eh-nay and his Band was specifically excluded from the lands for which the Commission awarded payment. 11 Ind. Cl. Comm. 693, 710 (1962). As a result, we believe the U.S. continues to bear a trust responsibility to the Prairie Band for these lands.

The Tribe has arranged to maintain an option on a portion of privately owned property defined as reservation land by the Department of the Interior. The Tribe wants to clear title of the landowners, have first right of refusal to purchase land within the reservation boundaries from willing sellers and reach an agreement with the state and the county regarding ownership, access to and management of the wildlife refuge and park within the reservation boundaries. The Tribe wants to work with the state, the county and individual landowners.

Please note that during the entire time of our preparation of the legal, historical and anthropological elements of the Tribe's claim and also during the entire time of its consideration by the Department of the Interior, and since the issuance of the legal opinions by the Office of the Solicitor, there has been no animosity or legal threat by the Tribe. Neither, we note, has there been any such animosity or legal threat to the Tribe by the state, county or individual landowners.

Land title records show that approximately 52% of the two sections of reservation land is now an Illinois state park, 7% is a Dekalb County Forest Preserve, 10% is a 128 acre farm owned by the Ward family, 5% is owned by the Indian Oaks Country Club, 10% is owned by nine separate landowners and the remaining 2% comprises homes on small tracts owned by 21 separate landowners. It is the Tribe's hope that it can reach an agreement with all parties which can be affirmed by federal legislation. To do so has been the announced policy of the Prairie Band of Potawatomi Nation since 1997. The Nation has advised the Illinois governor's representatives and the Speaker of the House of Representatives in whose district the reservation lands is located of its policy.

H.R. 791 would extinguish the rightful claim of the Prairie Band Potawatomi Nation to its treaty rights under the Treaty of Prairie du Chine. It would rob the Tribe of a significant part of its heritage. I am sure you must ask why money damages are insufficient for the Potawatomi Nation. I ask you simply, "Could money replace your ancestry, your religion, your home?"

We hope that the two opinions, two legal memoranda, from the Division of Indian Affairs of the

Office of the Solicitor have been transmitted by the Department of the Interior to you and that they will be made a part of the record of this hearing. If this has not yet transpired, we request that this Committee obtain those opinions, consider them and make them a part of the record.

Thank you for giving me the opportunity to present the strongly held beliefs and legal position of the Potawatomi Nation to you today. I ask that my written testimony be made a part of the record.

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