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Testimony
Before the Committee on Resources
United States House of Representatives

Hearing on the Status of Settling Recognized Tribes' Land Claims
In the State of New York

July 14, 2005

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Chairman Pombo and members of the Committee on Resources, I am Robert Chicks, President of the Stockbridge-Munsee Band of Mohican Indians. The Stockbridge Tribe is one of several federally-recognized tribes asserting a land claim in New York that has within the last year entered into an Agreement of Settlement and Compromise with Governor Pataki. It is an honor to appear before you and present our views on the current status of ongoing efforts to resolve Indian possessory claims to land in New York State.

I. INTRODUCTION

As a preliminary matter, I would like to address a fundamental question that will need to be considered by Congress when, and if, the New York State Legislature approves one or more of the settlement agreements signed by the Governor and several tribes last winter. That question is this: "How are the New York Indian land claim settlements to be funded if the United States and the State of New York are unable, or unwilling, to contribute financially to those settlements?" The answer to that question, as envisioned by New York's Governor Pataki and officials at the Department of the Interior, and proposed by them to the New York land claim tribes in 2002, was to use the revenues from new casinos in New York's Catskills region to fund the settlements. As a result, the model, or template, for recent settlement agreements in the New York Indian land claims has been fundamentally different from those of past land claim settlements enacted by Congress.

Over the past twenty-five years, most of the Eastern Indian land claims, and a few in other parts of the country, have been resolved by Congressional action. Following several United States Supreme Court decisions in the 1970s and 1980s establishing the viability of Eastern Indian land claims, Congress demonstrated a willingness to legislatively resolve Indian land claims in cases where tribes, states, and the Department of the Interior (DOI) worked out mutually-satisfactory terms and presented them to Congress for implementation. Since 1980, Congress has enacted legislation to resolve Indian land claims in Maine, Connecticut, Rhode Island, Massachusetts, Virginia, South Carolina, Florida, New Mexico, Washington, and California. Most, if not all, of these settlements included a substantial federal monetary contribution.

In 2002, the Bush Administration reviewed its Indian land-claim-settlement policy and determined that federal monetary contributions to such settlements would not be forthcoming, presumably because of budget constraints. Thus the structure of the settlement agreements reached over the course of the past 10 months between Governor Pataki, on behalf of the State of New York, and several Indian tribes is unique. While the agreements differ in their particulars, they share ,with the possible exception of the Mohawk settlement, the common feature of being funded by the tribes themselves, rather than by monetary outlays by the federal and state governments, as was always the case in past land claim settlements. Thus, the settlement agreements provide that in return for the tribe's agreement to consent to a Congressional extinguishment of its right, title and interest to historic treaty reservation lands, the State agrees to provide substantial benefits to the tribes, such as higher education tuition, protection of cultural sites and hunting and fishing licenses and further agrees to the Congressional establishment of small tracts of Indian lands in the Catskills on which the tribes may operate a Class III gaming facility pursuant to a compact between the State and the tribe under the Indian Gaming Regulatory Act (IGRA).

However, as this Committee is keenly aware, this settlement model, which was borne of budgetary necessity and proposed to the tribes by state and federal officials, has generated considerable controversy in recent months and apparently, in the minds of some, has called into question the advisability of the funding mechanism employed by each of the agreements to resolve

the New York land claims. In my Tribe's view, and I believe in the view of the other Tribes which have also pursued a just resolution of their New York land claims for many generations, the fact that we appear to have been caught up in the controversy over so-called "reservation shopping" or "out-of-state tribes" is most unfortunate. It is attributable, in large part, I believe, to a failure to understand that the New York settlement agreements are first and foremost resolutions of long-standing, legitimate land claims, i.e., decades-old litigation that continues to carry the potential for widespread economic and social disruption.

It is of course possible that the New York Legislature will not approve any of the five settlement agreements signed in recent months and Congress will therefore not be faced with the funding-mechanism question posed above. But we believe it more likely that the New York Legislature will, in the near future, approve several of the settlement agreements negotiated by the Governor, with changes that reflect the parties' revised risk assessments in the wake of two recent federal court decisions that somewhat altered the legal landscape of the New York land claims. If we are correct in our assessment and Congress is, in fact, presented with the opportunity to enact one or more of these settlement agreements into law, as we hope it will be, it will be critically important for members of Congress to keep in mind that these are long-sought, exhaustingly-bargained- for resolutions that are strongly supported by the affected local communities. They resolve disputes that are unique in their history and circumstances to the State of New York and, as such, will have little or no precedential applicability to other tribes or areas of the country.

Also, it will be important to keep in mind that if Congress rejects the funding mechanism employed in these land claim settlements, it will be incumbent upon the Administration, Congress and the State of New York to agree on and implement an alternative funding mechanism. This is so for two reasons: first, the interests of fairness and justice demand that Congress finally bring about an honorable resolution to a great historical injustice that it has too long ignored; and second, allowing these lawsuits, together with the uncertainty, expense, and socio-economic disruption that attends them, to drag on for additional decades must not be an option.

II. STATUS OF EFFORTS TO SETTLE THE STOCKBRIDGE LAND CLAIM

A. Overview of the proposed Stockbridge-Munsee land-claim settlement agreement.

During much of 2004, the Tribe, together with representatives of the Department of the Interior, was engaged in land claim negotiations with Governor Pataki's office. On December 7, 2004, the Governor and the Tribe signed an agreement. The agreement is contingent upon the enactment of implementing legislation by the State Legislature and Congress. In the Settlement Agreement, the Tribe agreed to: a) dismiss its land claim with prejudice; b) consent to Congress' extinguishment of its right, title, and interest in the lands and natural resources of the claim area; c) assume the potential liability of the United States to other tribes that might arise from extinguishment of the Stockbridge Land Claim; d) assume a portion of the United States' liability that might arise from extinguishment of the Oneida Land Claim; e) enter into tax and local services agreements; and, f) transfer land it owns in the claim area to the Stockbridge Valley School District.

In return, the State agreed to: a) undertake, together with the Tribe, certain measures to protect and preserve Stockbridge-Munsee historical and cultural resources in the Hudson River Valley; b) provide hunting and fishing rights to tribal members; c) provide free tuition to the State University system to all qualified tribal members; and d) the legislative establishment of Indian lands for the Tribe in Sullivan County, New York on which a Class III gaming facility may be operated by the Tribe pursuant to a compact between the Tribe and the State.

The Stockbridge Settlement Agreement was one of five state-tribal agreements executed in November and December, 2004. Like the other four agreements, it provided that if the State and Federal implementing legislation is not enacted by September 1, 2005, the parties will have no further obligation to one another. In addition, it provided that the parties would seek a stay in the Tribe's land claim litigation in federal district court.

B. The ongoing effort to secure State legislative approval.

In January, 2005, the United States District Court for the Northern District of New York granted the State's and Stockbridge Tribe's request to stay proceedings pending efforts to resolve the case through the enactment of State and Federal legislation that would implement the December 7, 2004 Settlement Agreement between the State and the Tribe. The Court stayed the case until September 1, 2005.

Comprehensive land-claim settlement legislation was later introduced in the New York Senate and Assembly to implement the settlement agreements in the Stockbridge-Munsee, Oneida, Mohawk and Cayuga land claims. In late February, March and April, the Senate and the Assembly each held a series of joint committee hearings on the bills.

On March 29, 2005, the United States Supreme Court issued its decision in City of Sherrill v. Oneida Indian Nation of New York, 1125 S.Ct. 1478, 2005 WL 701058 (2005). As a result of that decision, it became clear that certain provisions of the Oneida and Cayuga settlement agreements would not be supported by the affected local governments or the State Legislature. Thus, on April 15, 2005, Governor Pataki withdrew his proposed settlement legislation (but did not withdraw from the underlying settlement agreements). Noting that Mr. Pataki remained committed to settlement, the Governor's counsel explained that it was necessary for the parties to engage in further discussions regarding the settlement provisions relating to the jurisdictional status of settlement lands and the collection sales, use and excise taxes. See April 15, 2005 letter from Greg Allen to Don Miller. (Exhibit A).

In the period following the Governor's withdrawal of the comprehensive 5-Tribe settlement bill, further discussions aimed at resolving the Oneida and Stockbridge-Munsee land claims were held between the Governor's Office, representatives of Madison and Oneida Counties and the two Tribes. It was decided that the Counties of Madison and Oneida would become signatory parties to the revised settlement agreement. These "supplemental" negotiations resulted in agreement on all issues save one – a disagreement between the State and the Counties of Madison and Oneida regarding the collection and remission of sales taxes by the Oneida Indian Nation of New York. Although negotiations continued through the final days of the State legislative session, which ended on June 24, the State and the Counties were unable to finalize an agreement on this issue before the Legislature adjourned.

The Tribe and the Counties have been led to believe, however, that there exists a strong possibility that the State Legislature will be called back into special session in late July or early August and that settlement of the Oneida and Stockbridge land claims, among others, could be taken up. Since June 24, representatives of Stockbridge and the Wisconsin Oneidas have worked with representatives of Madison and Oneida Counties to arrive at terms which we believe will satisfy the concerns of both the State and the Counties related to the collection and remission of sales taxes by the Oneida Indian Nation of New York. The Stockbridge Tribe has recently approved a revised Settlement Agreement, which has also been approved by the Land Claim Committees of Madison and Oneida Counties. Formal approval by the Counties is expected within the week, and we are confident that the Governor will find its terms acceptable.

III. THE FUNDING MECHANISM USED IN THE PROPOSED STOCKBRIDGE SETTLEMENT DOES NOT SET AN UNWISE PRECEDENT UNDER IGRA: THE STOCKBRIDGE-MUNSEE COMMUNITY IS A NEW YORK TRIBE THAT CURRENTLY POSSESSES UNEXTINGUISHED TREATY-RECOGNIZED TITLE TO 23,000 ACRES IN MADISON AND ONEIDA COUNTIES AND ITS ABORIGINAL TERRITORY IS IN NEW YORK'S HUDSON RIVER VALLEY.

During the past few years, as settlement negotiations intensified, the term "out-of-state tribe" was coined to demean the status of land claims by tribes that were forced out of New York through the State's illegal actions many years ago. But that term has no legal significance and its use merely distracts from the reality that Stockbridge has constitutionally protected property rights to 23,000 acres of reservation land in central New York, a direct result of the Oneidas' solemn bargain in the 1780s and the 1788 Treaty of Fort Schuyler which gave that bargain its legal foundation. Congress, the only body that can do so, has never attempted to extinguish Stockbridge treaty title in New York and the Tribe never waived those rights in any treaty or other agreement with either the State of New York or the federal government.

Although Albany is now recognized as the capital of New York, it was once the location of the capital of the Great Mohican Confederacy that stretched from an area north of Lake Champlain down the Hudson River Valley close to Manhattan itself. Mohicans lived and flourished in the Hudson River Valley for thousands of years prior to the arrival of the Europeans. In fact, just ten miles from Albany is where the Mohicans first met the Dutch Explorer Henry Hudson nearly 400 years ago. All up and down the Hudson River Valley are Mohican place-names, Mohican historical and cultural sites, and numerous Mohican burial sites. In the Bronx, a Mohican burial site has long been commemorated by a stone monument marking the graves of Stockbridge warriors killed in battle with the British as they defended the cause of the colonists during the Revolutionary War.

Sullivan County, the site of the Tribe's proposed gaming facility, is within the aboriginal territory of the Munsee Delaware, one of the great tribes that make up the present-day Stockbridge-Munsee Community of Mohican Indians. The Munsee Delaware had a legendary presence in the famous Minisink Trail area of Upstate New York in towns like Shawanoesberg, which is now Wurtsboro in present-day Sullivan County. It was in this town in the "Mamakating Valley," where the Munsee and the Shawnee gathered for tribal meetings at Council Hill. Additionally, the western boundary of Mohican aboriginal territory abuts the eastern boundary of Munsee Delaware territory, about 40 miles from Sullivan County.

The Tribe's roots in New York are thoroughly documented in numerous respected historical publications. Attached as Exhibit B is a Smithsonian Institution map illustrating the aboriginal areas of the Mohicans and the Munsee Delawares. Our Tribe's presence in the Hudson River Valley predates that of the colonies and, while it has twice been forced to leave its New York homelands, first for a Colonial-era reservation in nearby Western Massachusetts and later for Wisconsin, New York is and will always be its ancestral homeland. By the 1840s, almost all of the Stockbridge Tribe had been forced to migrate

to Wisconsin, but on July 4, 1858, Stockbridge Chief Austin Quinney delivered an Independence Day Address in Reidsville, New York. He said this:

"Let it not surprise you, my friends, when I say, that the spot on which we stand, has never been purchased or rightly obtained; and that by justice, human and divine, it is the property now of the remnant of that great people from who I am descended. They left it in the tortures of starvation, and to improve their miserable existence; but a cession was never made, and their title has never been extinguished.

For myself and for my tribe, I ask for justice – I believe it will sooner or later occur – and may the great and good spirit enable me to die in hope."

Indeed, the Tribe and its members continue to maintain our connections with New York:

• tribal elders, families and youth groups have made pilgrimages and educational visits to New York for many years, and the Tribe often provides buses and pays for such trips;
• the Tribe has participated in reburials of Mohican remains for many years;
• the Tribe was actively involved in attempts to protect the Leeds Flat site, including joining the litigation to stop the development, and meeting with the State and with Wal-Mart to stop the development of that important site.
• the Tribe also purchased property near the site;
• the Tribe continues to develop relationships with museums and libraries in New York and tribal representatives have participated in workshops and seminars in New York on the Mohicans;
• the Tribe has allowed a local college to use its building in Leeds for classes.
• The Tribe's historic preservation office and its legal office have developed a good working relationship with the State's Historic Preservation Office and have participated in consultations on numerous cases under the National Historic Preservation Act requirements.

IV. STOCKBRIDGE-MUNSEE'S LAND CLAIM STANDS ON THE SAME LEGAL AND FACTUAL FOOTING AS THE OTHER NEW YORK LAND CLAIMS.

A. The Department of the Interior has concluded that Stockbridge has a valid land claim and that it is the only proper tribal claimant to the six-mile-square tract at issue in the Stockbridge land claim.

The Stockbridge land claim arises out of a series of State transactions resulting in the sale of New-Stockbridge lands between 1818 and 1847 that were concluded without the presence of an authorized federal agent and which have never been approved by Congress as required by federal law. It is undisputed that the only parties to every one of these transactions were the State and the Stockbridge Tribe. The Tribe initially pursued its claim before the Indian Claims Commission (ICC) in a suit filed in 1951. It filed its litigation request in the pending possessory land claim with the Department of the Interior (DOI) in 1981 and shortly thereafter dismissed its ICC claim for damages against the United States in favor of pursuing its legal claim to possession of its reservation. Stockbridge filed its land claim in Federal District Court in 1986. In 1987, the Oneida Indian Nation of New York (the Nation) intervened as a party defendant, claiming the 23,000 tract, now occupied by approximately 1,400 non-Indian title holders, as its own.

DOI has concluded that Stockbridge has a valid land claim and, in response to the Nation's intervention, that Stockbridge is the only proper tribal claimant to the six-mile-square tract at issue in the Stockbridge land claim. That determination has been conveyed by DOI to the Department of Justice (DOJ) on a number of occasions most recently in a renewed litigation request dated August 12, 2002. (Exhibit C). DOI's Stockbridge litigation request remains under advisement at DOJ.

The August, 2002 litigation request to DOJ was in fact the sequel to an April 2, 2002 letter to DOJ (which itself was the sequel to the first DOI litigation request to DOJ on behalf of Stockbridge in 1997) in which DOI's Associate Solicitor for Indian Affairs informed DOJ that it was still DOI's opinion that Stockbridge had a "meritorious" land claim. The April, 2002 letter urged DOJ to, "in the course of ongoing discussions with the State of New York, encourage the State to commence settlement discussions with the Stockbridge as the State pursues settlement discussions with the various Oneida Tribes." (Exhibit D). However, DOJ was unwilling to assert a claim of Indian title without a clear directive from DOI as to which Tribe, the Oneidas or the Stockbridge, retained Indian title and DOJ asked Interior to make an explicit "cut" as to which Tribe is the proper tribal claimant to the lands of the Stockbridge claim area.

In response to that request, on August, 12, 2002, the Associate Solicitor for Indian Affairs wrote another letter to DOJ. It requested the Department of Justice to intervene in the Stockbridge claim on behalf of only the Stockbridge Tribe, concluding that in the 1788 Treaty of Fort Schuyler, the State of New York lawfully purchased, and thereby extinguished, Oneida aboriginal title to all land in New York State that was not expressly reserved to the Oneida Nation in Article II of

the Treaty. The territory acquired by the State included the Stockbridge tract, and the Treaty's description of the lands reserved to the Oneida expressly excluded the six-mile-square "New Stockbridge" Reservation (the Stockbridge claim area). See 1788 Treaty (Exhibit E) and 1795 map (Exhibit F). Instead, those lands were proclaimed by the 1788 Treaty, at the explicit request of the Oneidas, to be set aside as a permanent Stockbridge Reservation. The Associate Solicitor then found that the State of New York implemented the 1788 Treaty in a 1789 Act of the New York Legislature, formally vesting recognized Indian-title to New Stockbridge in the Mohicans as a permanent Reservation.

The Associate Solicitor's determination in this regard echoes earlier decisions on the same subject by the Indian Claims Commission. In 1978, the Commission found:

On September 22, 1788, the State of New York and the Oneida Nation entered into a treaty at Fort Schuyler. Under that treaty the Oneidas ceded certain of their land to New York and certain other of their lands were reserved for their own use. A tract six miles square and located within the boundaries of the lands so reserved was set aside for the Stockbridges in Madison and Oneida Counties, New York. In 1813, the New York State Legislature enacted a law which officially named the Stockbridges' tract "New Stockbridge," and declared that the tract "be and remain to the said Stockbridge Indians and their posterity forever, but without any power of alienation, or right of leasing or disposing of the same, or any part thereof."

The Stockbridge Munsee Community v. United States, 41 Ind. Cl. Comm. 192, 207 (1978). The above-quoted 1978 finding was supplemental to a 1971 opinion and findings of fact by the Commission. In its 1971 opinion, the Commission held:

In short, the Trade and Intercourse Act applies regardless of the nature or extent of the Indians' title in the land, so long as the tribe has some property interest. . . . Nor does it matter how the tribe may have obtained its interest in the land. . . . The Stockbridges received an interest in New Stockbridge from the State of New York under a treaty entered into September 22, 1788, and under a law of the New York State Assembly enacted April 10, 1813. The interest created was a right to permanent use and occupancy. . . . [I]t is clear that their interest in New Stockbridge was no less compensable that is the interest possessed by a tribe holding land under aboriginal title or by federally recognized title . . . .

The Stockbridge Munsee Community v. United States, 25 Ind. Cl. Comm. 281, 291-92 (1971) (emphasis added) (citations omitted).

B. The 1788 Treaty and Its 1789 Implementing Statute Extinguished Oneida Title to the Six-Mile-Square Tract and Established a Permanent Stockbridge Reservation.

The historical record provides unequivocal support for the determinations of the Associate Solicitor and the Indian Claims Commission. It establishes that in the 1770s and 1780's, a depleted Oneida Nation invited other Indians into their territory to serve as a buffer from increasing encroachment by non-Indian settlers. The Mohicans (who less than a century earlier had been forced from their ancestral Hudson River valley homeland), were enticed to leave their Massachusetts reservation (Stockbridge), which was suffering from even greater white encroachment, by the Oneidas' promise of a permanent reservation in Oneida territory in central New York.

The 1788 Treaty negotiations confirm the intent to permanently establish the Stockbridge Reservation. The minutes of the negotiations show that the Oneidas "insist[ed]" that the Stockbridge "must be established in their Settlements by you," Hough, PROCEEDINGS OF THE COMMISSIONERS OF INDIAN AFFAIRS APPOINTED BY LAW FOR THE EXINGUISHMENT OF INDIAN TITLE IN THE STATE OF NEW YORK, Albany (1861) at 230 (italics added) (Exhibit G). The Oneidas further demanded that the agreement at the Treaty council be reduced to writing so "that it may be established forever, for we mean to settle Matters once (sic) for all." The Oneida desire to settle matters once and for all, and their demand in the negotiations that the State establish the Stockbridge "forever," severely undermines the Oneida Nation of New York's recent revelation regarding the Oneida Nation's true intent in 1788, i.e., to accord the Stockbridge some lesser possessory interest revocable at the whim of the Oneidas. Indeed, the treaty minutes reveal that their intent was exactly the opposite. Understanding that the Oneidas' prior conveyance under tribal law would not secure permanent Stockbridge property rights under state and federal law, the Oneida negotiator, Colonel Louis, strongly expressed the Oneida demand that the State permanently establish the Stockbridge Reservation:

Brother! I must insist upon your considering well the Proposals we shall make, so that we come to a fixed Agreement, and there be no Altercation or further Dispute upon the Subject. There are three Brothers of ours that must be established in their Settlements by you. The Tuscaroras in theirs, and the Stockbridge Indians in theirs. The third Brother, who lives beyond the Stockbridge Indians . . . .

Id. at 230 (italics added).

The first article of the 1788 Treaty of Fort Schuyler provided that the "Oneidas do cede and grant all their lands to the people of the State of New York forever." The Court of Appeals for the Second Circuit has upheld the 1788 Treaty of Fort Schuyler as a valid exercise of the sovereign right to purchase Indian lands and extinguish Indian title. Oneida Indian Nation of New York v. State of New York, 860 F.2d 1145 (2d Cir. 1988), cert. denied 493 U.S. 871 (1989) (Oneida III). In article two, the State of New York reserved to the Oneida Nation a described portion of those lands it had just acquired in article one, but expressly excluded from those lands reserved to the Oneida Nation the six-mile square known as New Stockbridge. In the last clause of article two, the 1788 Treaty provided:

and further notwithstanding any reservations of lands to the Oneidas for their own use, the New England Indians (now settled at Brothertown under the pastoral care of the Rev. Samson Occom) and their posterity forever, and the Stockbridge Indians [sic] and their posterity forever are to enjoy their settlements on the lands heretofore given to them by the Oneidas for that purpose, that is to say, a tract of two miles in breadth and three miles in length for the New England Indians, and a tract of six miles square for the Stockbridge Indians.

(Italics added). This provision made plain that the area reserved by the State for the Oneidas in the first part of article two did not include the Stockbridge lands, which were to be separately and permanently reserved to Stockbridge by the State. The operative language is the phrase "and their posterity forever," which the Treaty used to describe the tenure of both the Oneidas and the Stockbridge: it is the declaration of permanent possessory rights that is determinative of recognized title. Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 277-78 (1955).

In 1789, the State Legislature permanently established the Stockbridge Reservation provided for in the 1788 Treaty, providing “that the tract of land, confirmed by the Oneida Indians to the Stockbridge Indians at the said treaty, shall be and remain to the said Stockbridge Indians and their posterity, under the restrictions and limitations aforesaid.” Those “limitations” were that the tract shall remain for the cultivation, improvement and use of the Stockbridge and their posterity; but without any power of alienation or right of leasing the lands for any longer term than ten years. AN ACT for the sale and disposition of lands, belonging to the people of this State, Laws of the State of New York, Vol. III, Chap. 32, 69-72 (Albany, 1877). When the provisions of the 1788 Treaty and the 1789 Act implementing it are read together, it is apparent that the real property estates of the Oneida and the Stockbridge are virtually identical. Neither Tribe was permitted to alienate its lands, and each Tribe could lease its lands under similar restrictions. The right of permanent occupancy, the hallmark of "recognized title," is expressly secured to both Tribes.

And even after the control over Indian affairs was transferred to the exclusive domain of Congress in the Constitution and the Nonintercourse Act of 1790, the State continued to recognize the Stockbridge Tribe and its reservation. In a 1791–1813 series of statutes, New York State repeatedly reaffirmed exclusive Stockbridge governmental control over, and permanent Stockbridge title to, the six-mile-square. During that period, there were recurring disputes among Oneidas, Stockbridges, and other Indians regarding rights in various tracts that were close to, but outside the boundaries of, both “New Stockbridge” and the Oneida Treaty Reservation. As a result, the New York Legislature was on several occasions called upon to resolve those disputes, and in so doing the Legislature found it useful on three different occasions to make it clear that the lands of “New Stockbridge” were not involved in these disputes or their legislative investigations and resolutions. Thus, acts of the New York Legislature enacted in 1797, 1801 and 1813 decreed that the six-mile-square “confirmed” to the Stockbridge in the 1788 Treaty was to be known as New Stockbridge” and that it “shall be and remain to the said Stockbridge Indians and their posterity forever.”

C. The 1794 Treaty of Canandaigua Recognized and Confirmed Stockbridge Title.

Similarly, after the Constitution was adopted, the federal government quickly recognized the Stockbridge Tribe and its reservation. In the 1794 Treaty of Canandaigua (Exhibit H), the United States promised to never disturb any of the signatory tribes, of which Stockbridge was one, in the “free use and enjoyment” of their Confederal-period reservations, thereby extending federal recognition and protection to the Stockbridge Reservation. The Indian Claims Commission specifically found that article II of the Treaty “related to the lands of the Stockbridges” and that “[a]rticle II pledged the United States never to disturb them in their free use and enjoyment of New Stockbridge.” 25 Ind. Cl. Com. 281, 295. As a signatory to the 1794 Treaty, Stockbridge, like other signatory tribes, received annuities under the Treaty from the United States. See Six Nation, et al. v. United States, 32 Ind. Cl. Comm. 440 (1973) which dealt with claims arising under “an Article dated April 23, 1792" and the “Treaty of November 11, 1794 [Canandaigua].” The Stockbridge-Munsee Tribe shared in the final award based on the United States’ failure to pay the annuities due the tribes under the 1794 Treaty. H.R. Doc. No. 477, 29th Cong., 1st Sess. 29 (1846) describes the annuities paid by the United States to the Stockbridge Tribe as a signatory to the 1794 Treaty of Canandaigua.

V. CONCLUSION

Only Congress can extinguish treaty-recognized Indian title. In earlier, darker periods of our history, Congress sometimes

acted out of sheer political expedience, extinguishing Indian rights and title with little regard for the country's moral or legal obligations to tribal governments. In the modern era, however, Congress has attempted to be more circumspect in the exercise of its so-called plenary powers over Indian resources. In each of the Indian land claim settlement acts enacted by Congress over the past quarter century, two central objectives were promoted and achieved. The first, unchanged from "the bad old days," addressed the needs of non-Indian property owners, governments and economic interests to have clouds on titles and economic activity removed through the extinguishment of Indian property rights. The second objective, and one that has consistently animated Indian legislation only in the modern era, was to honor the United States' moral and legal responsibilities to tribal governments. Through the mechanism of implementing settlement agreements that enjoyed the support of not only state and local governments, but that of tribal governments, Congress was able to address the needs of the non-Indian majority while at the same time successfully fulfilling its moral and legal obligations to Indian tribes.

But Congress has not yet had the opportunity to implement settlement agreements that would resolve the oldest and most contentious land claims in the country. Ironically, the Oneida land claim, the largest of the New York claims, was the first to go before the Supreme Court in 1973, and the federal court decisions that followed in the wake of the first Oneida decision laid the legal groundwork for each of the many Indian land claim settlements enacted by Congress over the past quarter century. However, due in part to the number and complexity of New York Indian land claims, and also due in part to the aggressiveness and recalcitrance of at least one New York tribe and, at various times, several governmental units in the State, settlement agreements in the New York claims have lagged behind those in other eastern states. But we are optimistic that this state of affairs will soon change.

More specifically, we believe it is likely that the remaining issues between the Governor and Madison and Oneida Counties, which seem, to us at least, relatively minor when weighed against the legal, financial and certainty/finality benefits that would accrue to the State and local governments as a result of the proposed agreement, will be resolved shortly. The Stockbridge Tribe has approved a revised settlement agreement and, for the first time since the legal claims were initiated, Madison and Oneida Counties are in support. We anticipate that the New York Legislature will approve our settlement agreement this summer and that federal settlement legislation will be introduced shortly thereafter.

Today, Mr. Chairman, we will ask only one thing of this Committee. If Congress should soon be presented with an opportunity to enact legislation implementing a Stockbridge-Munsee/Oneida land claim settlement agreement, we respectfully urge this Committee to seize that historic opportunity and act quickly and favorably. It is our assessment, given developing trends in federal Indian law (both in Congress and the courts), together with the extraordinary amount of time and effort invested by Governor Pataki, numerous local governments and the Tribes in this settlement process, that such an opportunity will not come around again for a long time. The settlements that you hopefully will be asked to approve in the near future will meet the modern-era objectives of validating non-Indian titles and protecting non-Indian economic interests while fulfilling Congress' legal, moral and trust obligations to the affected tribes. In addition, they will meet the more recently articulated federal objectives of not requiring the appropriation and expenditure of federal dollars and not exposing the United States to post-settlement-act litigation or financial liability. Congressional failure to act to resolve these claims, if presented with the opportunity to do so, would condemn at least another generation of tribal members and their governments, private landowners, businesses and State and local governments to expensive litigation and the economic and social instability that attends uncertainty in land titles and governmental jurisdiction.

Nor does the fact that recent federal court decisions have apparently begun to limit the remedies available to tribes alleviate the need for timely Congressional action. A peek through the historical lens of Indian land claim litigation and legislation over the past century or more would reveal the tenacity with which tribal governments have pursued just resolutions to the illegal deprivation of their ancestral homelands. Indian land claims, and the underlying demands for justice, tend not to dissipate as a result of one or two court decisions. And that will certainly be true of the Stockbridge claim and, I suspect, the Oneida claim. Madison and Oneida Counties have recognized that the value of permanently resolving these long-standing questions of jurisdiction and title through settlement far outweighs the speculative benefits to be derived from another decade or more of litigation and stepped-up federal administrative proceedings.

Finally, in our view, it would be nothing short of a complete moral abdication for Congress to decide to do nothing now. True, in the last few months, the federal courts have begun to limit the legal remedies available to tribes. But those decisions have not in any way called into question the claims' historical/moral foundation or their legal legitimacy, and indeed they have acknowledged the continued existence of Indian land titles and reservation boundaries. Instead, the most they have purported to do, and it is no small matter, is limit or foreclose remedies to admittedly valid claims. Plainly, judicial decisions that recognize the validity of Indian claims but deny any meaningful remedy scream out for Congressional action. If Congress is guided by the polestar of this great country's solemn trust obligations toward Indian Tribes, it will steer a course directly away from inaction and the resultant compounding of the moral, legal, and political lapses that gave rise to the New York Indian land claims in the first instance. It is our hope that you will soon have an opportunity to chart an honorable course toward a constructive and widely-supported resolution of several New York Indian land claims.

I and the Stockbridge-Munsee Tribe thank the Committee for its time and consideration.