



## Leech Lake Band of Ojibwe

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### **ARTHUR LAROSE, CHAIRMAN LEECH LAKE BAND OF OJIBWE**

### **Legislative Hearing to Examine H.R. 1272, the MCT Judgment Fund Distribution Act Before the House Natural Resources Subcommittee on Indian & Alaska Native Affairs**

**March 1, 2012**

#### **INTRODUCTION**

Good afternoon Chairman Young, Ranking Member Boren, and Members of the Subcommittee. I am Archie LaRose, Chairman of the Leech Lake Band of Ojibwe. Thank you for the opportunity to testify on H.R. 1272. This bill would direct the Secretary to distribute funds from a 1999 settlement of a case to resolve claims brought for federal mismanagement of funds and undervaluing of lands and timber sold off under the 1889 Nelson Act according to a prescribed formula advocated by the Minnesota Chippewa Tribe (MCT), which is comprised of the bands of Leech Lake, Bois Forte, Fond du Lac, Grand Portage, Mille Lacs, and White Earth. All six bands are individual federally recognized Indian tribes. Under the formula set forth in H.R. 1272, MCT would be paid attorney fees and other expenses first. The Secretary must then allocate the remaining funds on a per capita and per band basis. Damages inflicted under the Nelson Act to the individual bands, their lands, and their treaties, which was the basis for the settlement amount of \$20 million, is not a consideration in the mandated distribution.

The Nelson Act and the damages that it caused to the treaty-protected reservations in Minnesota represents yet another sad chapter in this Nation's history of dealing with Indian tribes. I agree that time has come to put this issue behind us. However, it must be done in an equitable and just manner. H.R. 1272 would not accomplish this goal. Instead, the bill will compound the injustice that was done to the people of the Leech Lake Band of Ojibwe, our Reservation, and our Treaties and will only result in additional costly and time-consuming litigation.

#### **SUMMARY OF STATEMENT**

H.R. 1272 disregards the sovereignty of the Leech Lake Band of Ojibwe and would result in gross injustice to the Band. Respecting tribal sovereignty means honoring the position of Leech Lake, not sacrificing justice owed it to appease others. H.R. 1272 is based on the improper assumption that the Nelson Act dissolved all the bands' prior interests in land. While the Nelson Act sought to establish a common permanent fund, federal courts have found that the wrongs inflicted under the Nelson Act relate back to the individual treaty-beneficiary bands. Federal courts approved monetary judgments in at least 25 Nelson Act-related claims that were brought by the MCT as the named plaintiff. The awards were then distributed to the individual bands that were the parties to the various treaties that established the reservation lands in the first place. In other words, the United States has *never* abrogated the sovereign rights of the Leech Lake

Band of Ojibwe or transferred its lands or treaty rights at any point to the MCT or anyone else as some have suggested. If that were the case, then Leech Lake looks forward to sharing in the lucrative gaming revenues of the other bands. The MCT has no treaty rights and cannot speak for Leech Lake on matters impacting our treaty-protected Reservation.

Instead of following court precedent of distributing settlement funds to the individual bands, H.R. 1272 ignores *actual* damages suffered by individual federally recognized bands, their individual treaties, and their reservations. The court-approved settlement amount of \$20 million was based upon the damages incurred (land and timber sold improperly or taken and mismanaged) on each reservation under the Nelson Act. The MCT commissioned Wesley Rickard, Inc., as its expert in the case to conduct an appraisal of the lands and timber subject to the claims. The resulting MCT Comparison Report found that the Leech Lake Indian Reservation incurred 68.9% of the damages; Grand Portage 0.9%; Mille Lacs 2.40%; Bois Forte 8.60%; White Earth 9%; and Fond du Lac 10.20%. It would not be fair to allocate the funds based solely upon a per capita and per band basis while ignoring damages incurred by each band given the settlement amount was based upon damages. The parties would not have agreed to the \$20 million settlement amount if it had not been for the 68.9% of damages suffered by Leech Lake.

The Indian Tribal Judgment Funds Use or Distribution Act (Judgment Funds Act), 25 U.S.C. §1401 et seq., was enacted to keep politics out of federal court settlements. The Act sets forth the procedure to handle the distribution of settlements where more than one tribe is involved and where they do not agree on a distribution formula. That Act governs the distribution of this settlement. The Bureau of Indian Affairs (BIA) executed its responsibility under the Judgment Funds Act in 2001 and then again in 2007 by submitting a report and draft legislation to Congress proposing certain distribution allocations to Congress based upon its review of the case, the facts upon which the settlement was based, and the legal equities. The BIA's recommendation to Congress initially supported a distribution based on damages and per capita. The BIA's legal analysis under the Judgment Funds Act found "no compelling reason to support a six way split of the fund that would result in giving the preferential treatment to the membership of the four smaller bands." The controlling voice of MCT (the four smaller bands) has opposed the BIA's recommendation for the past decade. These bands have supported a per band split that would benefit them to a greater degree than other alternatives on the table. H.R. 1272 is their effort to attain the per band split they seek.

Further, H.R. 1272 mandates payments that are beyond the scope of those approved in the Judgment Funds Act. The bill would mandate payment to the MCT for costs and interest incurred resulting from the MCT's work on "the distribution of the judgment funds," which could include lobbying, consulting fees, and other related costs to develop and advocate in favor of H.R. 1272. Such work was done in direct conflict with the interests of the Leech Lake Band of Ojibwe. Such expenditures are not authorized under the Judgment Funds Act.

To resolve this long-standing dispute, the Leech Lake Tribal Council proposed a compromise position that would acknowledge damages along with the views of the other bands. A consensus position is the only way to achieve the goal of putting the settlement funds in the hands of the rightful beneficiaries. We respectfully request that the Congress and the Administration facilitate discussion among the six bands to develop an equitable solution to this problem.

## BACKGROUND / HISTORY

### Treaties with the Leech Lake Band of Ojibwe and other Indians of Minnesota

The United States entered into 43 treaties with the Chippewa Indians between 1785 and 1870. The Leech Lake Indian Reservation was established through a series of treaties with the United States and presidential executive orders. See Treaties of February 22, 1855 (10 Stat. 1165) & March 19, 1867 (Article I, 16 Stat. 719); Executive Orders of October 29, 1873, November 4, 1873, and May 26, 1874. These treaties and executive orders promised to make the reserved lands the “permanent home” for the Leech Lake people.

### Nelson Act of 1889

In the 50th Congress, Minnesota Congressman Knute Nelson sponsored a bill formally titled, “An Act for the relief and civilization of the Chippewa Indians of Minnesota.” Congress passed the bill and President Cleveland signed it on January 14, 1889. 25 Stat. 642 (Jan. 14, 1889). The Act, known as the Nelson Act, is the Minnesota version to the failed Dawes Act (also known as the General Allotment Act). Established during the federal government’s era of Allotment and Assimilation, the United States – through the Nelson Act – sought to destroy the governing structures of the Minnesota bands, parcel out tribal government lands to individual Indians, and open up our reservation timber and lands to settlers and private companies in clear violation of existing treaties. A primary goal of the Nelson Act was to open up the northern white pine forests for lumber companies for logging.

Section 1 of the Nelson Act provides that, “in any case where an allotment in severalty has heretofore been made to any Indian of land upon any of said reservations, he shall not be deprived thereof or disturbed therein...” This provision acknowledges the vested rights of the individual Indians to choose land and remain on their reservations. The remaining residents, the allotted reservation lands, and their tribal governing bodies were not dissolved.

Section 3 of the Act provided for parcels to be allotted to individual Indians. Sections 4 and 5 directed pinelands to be sold at public auction to non-Indians. Section 6 directed agricultural lands to be sold to non-Indian settlers as homesteads.

Section 7 of the Act provides:

“That all money accruing from the disposal of said lands ... shall ... be placed in the Treasury of the United States to the credit of all the *Chippewa Indians in the State of Minnesota* as a permanent fund ... and which interest and permanent fund shall be expended for the benefit of said Indians in manner following: *One-half of said interest shall ... be annually paid in cash in equal shares to the heads of families and guardians of orphan minors* for their use; and *one-fourth of said interest shall, during the same period and with the like exception, be annually paid in cash in equal shares per capita to all other classes of said Indians*; and the *remaining one-fourth of said interest shall, during the said period of fifty years, under the direction of the Secretary of the Interior, be devoted exclusively to the*

*establishment and maintenance of a system of free schools among said Indians, in their midst and for their benefit; and at the expiration of the said fifty years, the said permanent fund shall be divided and paid to all of said Chippewa Indians and their issue then living, in cash, in equal shares.”* (emphasis added.)

### **Amendments to the Nelson Act/Establishment of the Chippewa National Forest**

In 1900 the League of Women Voters petitioned Congress to protect the remaining forestlands surrounding the Leech, Cass, and Winnibigoshish Lakes on the Leech Lake Indian Reservation. The Chippewa National Forest (CNF), originally named the Minnesota Forest Reserve, was established through passage of the Morris Act (June 27, 1902) by taking these lands from the Leech Lake Indian Reservation. Approximately 75% of the CNF lands are within the treaty boundaries of the Leech Lake Indian Reservation.

The Morris Act amended the Nelson Act, opening 25,000 acres of agricultural land to settlement. It also reserved 10 sections and areas of Indian land and allotments from sale or settlement and provided for the sale of 200,000 acres of pine timber with proceeds to be paid “to the benefit of the Indians.”

Section 2 of the Morris Act read:

*“Provided further, That in cutting the timber on two hundred thousand acres of the pine lands, to be selected as soon as practicable by the Forester of the Department of Agriculture, with the approval of the Secretary of the Interior, on the following reservations, to wit, Chippewas of the Mississippi, Leech Lake, Cass Lake, and Winnebigoishish, which said lands so selected shall be known and hereinafter described as ‘forestry lands,’ ...: Provided further, That there shall be reserved from sale or settlement the timber and land on the islands in Cass Lake and in Leech Lake, and not less than one hundred and sixty acres at the extremity of Sugar Point, on Leech Lake ... on which the new Leech Lake Agency is now located, ... and nothing herein contained shall interfere with the allotments to the Indians heretofore and hereafter made. The islands in Cass and Leech lakes and the land reserved at Sugar Point and Pine Point Peninsula shall remain as Indian land under the control of the Department of the Interior.”* (emphasis added.)

I quote the Morris Act for two reasons. First, this quote demonstrates that a majority of Leech Lake’s treaty lands were taken from it to establish the CNF and to sell its timber. Second, this excerpt shows that the U.S. still maintained its government-to-government relationship with the Leech Lake Band on our Reservation even as it was taking our lands in 1902. Today, the Leech Lake Band now holds only approximately 4% of our Reservation lands promised by treaty and executive order. This amounts to approximately 29,000 acres of trust lands, most of which are swamplands that no one wanted to purchase. As a result, much of the trust lands within the Leech Lake Indian Reservation are swamplands and not suitable for housing, infrastructure, or economic development needs. The U.S. Forest Service and the state of Minnesota now hold most of the usable lands within the boundaries of the Leech Lake Indian Reservation.

The CNF today has 115 employees and an annual budget of \$12.5 million. It also makes payments to local counties. Fiscal year 2008 saw \$1.1 million go to the counties. No similar payments are made to the Leech Lake Indian Reservation. The Leech Lake Indian Reservation should have more than a right to comment on the annual forest plans. The Supreme Court has held that the forest and lakes remain our ecosystem and remain subject to our treaty hunting, fishing, and gathering rights. The Leech Lake Indian Reservation should be given an opportunity to engage in self-determination-type contracting with the CNF and have a meaningful say in how environment and natural resources located within our reservation boundaries are used.

After the damage caused by the Nelson Act, the Leech Lake Band continued to govern the remaining tribal and allotted lands of the Leech Lake Indian Reservation. The leaders of the Leech Lake Indian Reservation continued to act on a government-to-government basis with the U.S. to ensure the protection of our treaty rights and to hold the federal government to its trust obligations. Attached to this testimony is a photo taken during the 1920's of delegations from the Leech Lake Band of Ojibwe and the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation during a visit to the White House. In the photograph, the tribal delegations are accompanied by BIA Commissioner Charles Burke.

In 1925, representatives from Leech Lake corresponded with BIA Commissioner Burke urging the U.S. to take action to address the wrongs committed by the Nelson and Morris Acts. This correspondence includes a petition written by Leech Lake tribal leaders to Congress. The petition led to the 1926 legislation that authorized the Nelson Act claims to go forward in federal court. I'm here today, more than a century after our lands were wrongly taken, to ask this Committee to right this wrong – not exacerbate it as would be done under H.R. 1272.

### **Establishment of the Minnesota Chippewa Tribe**

The Secretary of the Interior recognized the MCT on July 24, 1936, pursuant to the authority granted under the Indian Reorganization Act (IRA) long after the 1889 Nelson Act and 1902 Morris Act. Governed by a constitution, the MCT's limited powers are delegated to it from the six bands. In addition to the Leech Lake Band, the other bands include the Bois Forte, Fond du Lac, Grand Portage, Mille Lacs, and White Earth. The initial primary purpose of the MCT was to ease the administrative burden on the six bands, who had little infrastructure and few resources. As will be shown below, the bands entrusted the MCT to bring a series of Nelson Act and similar claims on behalf of the treaty beneficiary tribes. This was again done for ease of administration and so that the bands could hire one attorney as opposed to six. Being jointly represented by one attorney does not mean that we agreed to commingle settlement proceeds as some have suggested.

At no time have any of the bands ceded sovereignty or treaty rights to the MCT. The individual member bands are separate, federally recognized tribal governments. No law or court ruling has taken away the Leech Lake Band's sovereignty or acknowledgement as a federally recognized tribe. Further, the Chippewa Indians of Minnesota and the individual bands are different from the MCT. To say that they are the same is like saying the citizens of the United States and the fifty states are the same as the governmental body of the United States.

## **The Leech Lake Band of Ojibwe Today**

The Leech Lake Band of Ojibwe is a federally recognized Indian tribe with a long history of relations with the United States. The Leech Lake Tribal Council is the governing body of the Leech Lake Band. Our existing Reservation consists of 29,717 acres of trust lands, less than 4% of the total of our initial Reservation.

In the early 1990's, Leech Lake contracted with the BIA to operate programs as one of ten tribes in a second group allowed into a self-governance pilot project. Pursuant to Public Law 83-280, the state of Minnesota has concurrent criminal jurisdiction over crimes occurring on the Reservation. Leech Lake's court system exercises partial criminal and full civil jurisdiction over Indians on our Reservation.

The Leech Lake tribal community consists of approximately 10,000 enrolled members. We have retained a strong and vibrant culture and continue to exercise and protect our treaty rights to hunt, fish, and gather on the lands promised as our permanent homelands.

While our culture and way of life remains strong, our community faces high unemployment, concerns with substance abuse, and challenges in providing adequate health care and education to our people. A glaring gap on our Reservation is the longstanding need to replace the Bug-O-Nay-Ge-Shig High School facility, which is administered by the Bureau of Indian Education, located in Bena, Minnesota.

The current High School facility is a metal-clad pole barn, formerly used as an agricultural building. One-third of the high school facility was destroyed in a gas explosion in 1992. The facility has serious structural and mechanical deficiencies and lacks proper insulation. The facility does not meet safety, fire, and security standards due to the flimsiness of the construction materials, electrical problems, and lack of alarm systems. The building lacks a communication intercom system, telecommunication technology, and safe zones, which puts students, teachers, and staff at great risk in emergency situations. The facility jeopardizes the health of the students and faculty due to poor indoor air quality from mold, fungus, and a faulty HVAC system. The facility also suffers from rodent infestation, roof leaks and sagging roofs, holes in the roofs from ice, uneven floors, poor lighting, sewer problems, lack of handicap access, and lack of classroom and other space. These are just a few of the facility's numerous deficiencies.

One of the primary purposes of the Nelson Act permanent fund was to provide funding for educational institutions for the various bands. We urge the Committee to consider amending H.R. 1272 to address this long-standing unmet need.

## **NELSON ACT LITIGATION AND SETTLEMENT**

As noted above, Congress first acknowledged the wrongs inflicted by the Nelson Act upon the Chippewa Indians of Minnesota in 1926, in part, due to the work of the past leaders of the Leech Lake Band of Ojibwe when Congress first authorized the federal courts to hear claims brought by the various bands for damages incurred under the Nelson Act. *See Act of May 14, 1926.*

Pursuant to this Act of 1926 and its subsequent amendments, the Indian Claims Commission (ICC) and the U.S. Court of Federal Claims, in at least 25 other Nelson Act-related claims, awarded monetary judgments that were distributed to the individual bands based upon damages incurred on their specific treaties/reservations. **While the Chippewa Indians of Minnesota and later the MCT were the named plaintiffs in these cases, the awards were distributed on a per capita basis to the members of the bands whose reservations suffered losses of land and timber.**

The BIA, in its 2001 Results of Research Report (conducted under the Judgment Funds Act) (BIA Report), discussed some of the previous Nelson Act claims brought under the jurisdictional Act of 1926. The BIA Report notes, “in Docket 18, the MCT pursued additional claims in a representative capacity on behalf of the Lake Superior, Mississippi and Pillager Chippewa, before the Indian Claims Commission. It also represented all Chippewa bands in Minnesota ... in Dockets 19 and 188.” The BIA Report then lists previous Nelson Act dockets and the beneficiaries of the earlier awards that were distributed. The chart lists the total money damages awarded in that specific docket along with the percentages allocated to the beneficiary bands. While the MCT was the named plaintiff in each claim, none of these awards went to the MCT.

The settlement that is the subject of H.R. 1272 stems from Dockets 19 and 188. These claims are the remaining unresolved Nelson Act claims for damages incurred by the various six bands that were transferred to the U.S. Court of Federal Claims when the ICC dissolved in 1978. To advance the settlement, the MCT hired Wesley Rickard, Inc., to compile a report, which found that Leech Lake sustained the bulk of the damages under the Nelson Act. The following is a list of the damages appraised by Wesley Rickard, Inc., and put forward by the MCT: Leech Lake incurred 68.9% of the damages; Grand Portage 0.9%; Bois Forte 8.60%; Fond du Lac 10.20%; Mille Lacs 2.40%; and White Earth 9%.

While the MCT heavily relied on the Wesley Rickard Report (Report) in settlement negotiations, it now attempts to discredit the Report. Wesley Rickard, Inc. worked years to locate historical records to document the history and value of the subject property of the claim. They acquired over 300 boxes of research to support their work. The value indications referenced above were derived from market sales of standing timber, market sales of log production costs, and other timely documentation of timber values (valuation dates were from 1879 to 1933). These figures are based upon professional appraisals – market based analyses – not estimates. The Report was prepared for use in court. However, the parties settled shortly after this Report was compiled. The Report assessed the subject property and determined the value of loss to be \$26.3 million -- \$17.4 million of which were losses incurred by Leech Lake. The parties settled for \$20 million, which is within the ballpark of the \$26.3 million valued by MCT’s Report. The MCT spent more than \$1 million on this research. Now it seeks to discredit and sweep this research and its results under the rug. We hope that the Subcommittee sees through this hypocrisy.

On May 21, 1999, the Department of Justice, as part of the litigation, hired its own expert, Morgan Angel & Associates, to prepare a “subject property list” that described the disposition of the lands ceded under the Nelson Act. This list was filed with the Court. The listing clearly shows that the great majority of the lands ceded came from the Leech Lake Indian Reservation to establish the CNF. The listing also acknowledges that the majority of the listed Leech Lake

lands were pine lands, which were far more valuable than the agricultural lands ceded under the Nelson Act and which were more often subject to the fraud that led to these claims. In 1999, the \$20 million settlement agreement incorporated by reference this subject property list.

## **SPECIFIC CONCERNS WITH H.R. 1272**

The Judgment Funds Act governs the distribution of this settlement. 25 U.S.C. § 1401 et seq. Through this Act, Congress sought to keep politics out of federal court settlements. In settlements involving more than one tribe and where tribes disagree on the formula of distribution, the Act requires the BIA to identify the present day beneficiaries of the claim, examine the legal equities of the case, and consider the needs and desires of groups in a minority position. 25 U.S.C. §1402-03. The Act then requires the BIA to submit a report to Congress that includes a plan for distribution of the settlement.

The BIA issued the BIA Report pursuant to the Judgment Funds Act, which acknowledged that the Nelson Act, and its amendments, consistently refers to the “Chippewa Indians of Minnesota,” not the MCT, as the beneficiaries of any distribution of funds. The BIA Report concluded, “We do not find any compelling reasons to support a six-way split of the fund that would result in giving preferential treatment to the membership of four smaller bands at the expense of the membership of the two larger bands.” BIA Report, p. 10.

The BIA Report acknowledges that past claims were distributed to the individual treaty beneficiary bands harmed and that, while the MCT was the named plaintiff, it acts only in a representative capacity on behalf of the treaty beneficiary bands. As noted above, the BIA Report acknowledges that past Nelson Act money damage awards were allocated to the beneficiary bands based upon the percentage of harm incurred. The BIA Report also acknowledges that, “the lands sold [under the Nelson Act] from each of the reservations were originally reserved to the bands under treaty. Under the terms of the Nelson Act, Leech Lake gave up the most land and received the least compensation per acre.”

The BIA Report notes that the BIA first recommended a compromise that would have distributed the funds based on damages (35%) and per capita (65%). The majority of the MCT (the four smaller bands) rejected this compromise proposal. The BIA revised its recommendation and submitted the BIA Report to Congress pursuant to the Judgment Funds Act. Then, in 2007, the BIA sent proposed legislation setting forth a per capita distribution to Congress under the Judgment Funds Act.

Instead of following court precedent or relying upon the BIA’s legal analyses, H.R. 1272 is based on an MCT Resolution that supports the distribution formula set forth in the bill. However, the sovereignty of the MCT flows from its six member bands, not the reverse. The MCT should have no say in the distribution of the Nelson Act settlement funds. The Treaties and Executive Orders between the United States and the Leech Lake Band that established our Reservation took place long before the MCT was established. None of these treaty rights were transferred or delegated to the MCT. Likewise, the 1889 Nelson Act and the damages it caused our Reservation occurred well before the MCT came into existence. Finally, the Act of Congress

that authorized the claim to be brought forward was also enacted prior to the existence of the MCT.

In addition to the BIA, federal courts have also acknowledged that the MCT acts only in a *representative capacity* in these claims. The U.S. Court of Claims, in *MCT v. United States*, overturned an ICC ruling in part by finding that the treaty rights to lands are held by the tribal entity that entered into the treaty, not the individual Indian descendants. The Court stated:

The Commission's order declared that the [MCT] “is entitled to maintain this action in a representative capacity on behalf of all the descendants of the Mississippi bands of Chippewas and the Pillager and Lake Winnibigoshish bands of Chippewas who were parties to the Treaty of February 22, 1855,” regardless of their present-day membership in the Tribe.... At the oral argument the defendant suggested that the Commission's order and findings should be modified to delete the references to "descendants," and to provide instead that the [MCT] is entitled to maintain this action in a representative capacity on behalf of those bands of Chippewas (the Mississippi bands and the Pillager and Lake Winnibigoshish bands) who were parties to the 1855 Treaty. We agree. *Tribal lands are communal property in which the individual members have no separate interest which can pass to their descendants who are no longer members of the group....* At least in such proceedings the [ICC] requires that the awards be made, not to individual descendants of tribal members at the time of the taking, but to the tribal entity or entities today. In this case, the tribal entity is the Minnesota Chippewa Tribe *on behalf of* the Mississippi, Pillager, and Lake Winnibigoshish bands.

*MCT v. U.S.*, 315 F.2d 906 (Ct. Cl. 1963) (interlocutory appeal of ICC No. 18-B decision finding that the Mississippi, Pillager, and Winnibigoshish held recognized title to the 1855 territory) (emphasis added).

We urge the Subcommittee to look to the federal courts' previous treatment of claims for money damages caused by the Nelson Act before finalizing this distribution formula. As stated above, the ICC and U.S. Court of Claims, in at least 25 judgments, acknowledged the damages incurred under the Nelson Act by the specific bands. These awards were distributed to each of the six bands individually based upon the damages inflicted to the respective reservations pursuant to specific treaty or executive order.

### **1854 Treaty Rights and Descendants**

There is also concern that some entities may not be entitled to share in the settlement. The 1854 Treaty rights of the Mississippi are described in Article I as follows:

The Chippewas of the Mississippi hereby assent and agree to the foregoing cession, and consent that the whole amount of the consideration money for the country ceded above, shall be paid to the Chippewas of Lake Superior, *and in consideration thereof the Chippewas of Lake Superior hereby relinquish to the*

*Chippewas of the Mississippi, all their interest in and claim to the lands heretofore owned by them in common, lying west of the above boundry-line.*

This is an expressly reserved, treaty property right with clearly identified valuable consideration, which, under contract and property law, legally precludes any right for recovery for the Chippewas of Lake Superior with regard to compensation for damages for losses of lands and timber in the 1855 ceded territory – the territory directly west of the 1854 boundary line.

The U.S. Supreme Court has repeatedly ruled that Congress may abrogate Indian treaty rights, but it must clearly express its intent to do so. *United States v. Dion*, 476 U.S. 734, 738-40 (1986); *see also Washington v. Washington State Commercial Passenger Fishing Vessel Assn.*, 443 U.S. 658, 690 (1979); *Menominee Tribe v. United States*, 391 U.S. 404, 413 (1968). There must be “clear evidence that Congress actually considered the conflict between its intended action on the one hand and Indian treaty rights on the other, and chose to resolve that conflict by abrogating the treaty.” *United States v. Dion*, *supra*, at 740; *see also Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 203 (1999).

H.R. 1272 contains no such “clear evidence” of congressional intent to abrogate the Chippewas’ 1854 treaty right. In fact this Act is silent on the subject of treaty rights and provides no indication that Congress is considering the 1854 treaty reserved rights of the Chippewas of the Mississippi.

Thus, as the Subcommittee considers H.R. 1272, we urge it to first recognize the past treaties and executive orders that established the various reservations. It is the damage to these reservations upon which the original claims and the resulting settlement are based.

### **Alternative Proposals Presented by the Leech Lake Band of Ojibwe**

For a number of years, the Leech Lake Band held the position that we would only support a distribution formula solely based upon damages. However, in 2011, the Council put forward a compromise to the other five bands. This compromise would acknowledge the significant harm done to our people while incorporating the positions of the other bands. This straightforward compromise would bring closure to this matter. We are also open and interested in working with the Subcommittee, the Administration, and the other bands to find a solution.

### **H.R. 1272 Distribution will not Withstand Judiciary Scrutiny**

I agree with the 2008 testimony of White Earth Chairwoman Erma Vizenor when she stated that the result of a plan to distribute funds on a per band formula “would be to give 75% of the proceeds of the Settlement to 25% of the beneficiaries. We frankly do not believe that such a finding would withstand judicial scrutiny.”

If H.R. 1272 or similar legislation is enacted without provisions addressing Leech Lake’s concerns, we are prepared to file a lawsuit to challenge the inequitable distribution of the settlement funds.

In *Chippewa Indians of Minnesota v. United States*, the U.S. Supreme Court stated:

“Our decisions, while recognizing that the government has power to control and manage the property and affairs of its Indian wards in good faith for their welfare, show that this power is subject to constitutional limitations, and does not enable the government to give the lands of one tribe or band to another, or to deal with them as its own.”

301 U.S. 358, 375-76 (1937). This same rule of law must be applied to the Nelson Act settlement judgment funds that are the subject of H.R. 1272. As a result, H.R. 1272 would amount to an unjust taking in violation of the U.S. Constitution.

The four bands that support the per band split comprise only 27% of the total membership of all Chippewa Indians of Minnesota as that term was used under the Nelson Act. More importantly, these four bands suffered 22% of the total damages. Distributing the settlement funds as proposed in H.R. 1272 effectively gives property of the Leech Lake Band to other bands. Passage of H.R. 1272 will further prolong this debate through time-consuming litigation at the expense of tribal and federal government resources.

## CONCLUSION

Thank you for this opportunity to testify. While we agree that the time has come to get the settlement funds in the hands of the Chippewa Indians of Minnesota, we strongly disagree on the proposed formula for distribution set forth in H.R. 1272. It is undisputed that the great majority of the damages that occurred under the Nelson Act resulted from takings and mismanagement of lands and timber protected by treaty for the benefit of the Leech Lake Band of Ojibwe. Enacting legislation that completely ignores these damages would constitute yet another violation of our treaty rights and only serve to compound the injury done to our community.

I look forward to continuing this dialogue with the other five bands, our Minnesota congressional delegation, the Administration, and this Subcommittee to work together to resolve this matter in a way that is fair.



Above: Delegation of the Leech Lake Band of Ojibwe and the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation with BIA Commissioner Charles Burke during a visit to the White House (estimated date 1920s).