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TESTIMONY BEFORE THE
COMMITTEE ON RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES

OVERSIGHT HEARING ON
STATUS OF SETTLING RECOGNIZED TRIBES' LAND CLAIMS IN THE STATE OF NEW YORK

JULY 14, 2005

Introduction

Good morning, my name is James W. Ransom, Chief with the St. Regis Mohawk Tribe. I bring greetings on behalf of my Tribe and the community of Akwesasne, a recognized Indian reservation that spans the border between the United States and Canada. I extend my appreciation to Chairman Pombo and the Committee for providing me with the opportunity to speak. Today, my remarks will primarily focus on the Akwesasne Mohawk Land Claim settlement with the State of New York and our effort to build an off-reservation casino in the Catskills.

Land Claims

For the past sixteen years, the Akwesasne Mohawks have been negotiating with the State of New York over resolution of land claim court cases that were filed beginning in 1982. The Akwesasne Mohawks are represented in the land claim court cases by the St. Regis Mohawk Tribe, the Mohawk Council of Akwesasne and the Mohawk Nation Council of Chiefs. The Akwesasne Mohawk claims encompass about 15,000 acres in Franklin and St. Lawrence Counties.

Over the past two years, in particular, through the good faith effort on the part of the State of New York, the New York Power Authority, and more recently with the counties of Franklin and St. Lawrence, the Akwesasne Mohawks have achieved a land claim settlement that represents a win-win solution for all of the parties involved. This is only the second Indian land claim to reach a settlement in New York and it marks an historic turning point in Federal-State-Tribal cooperation in solving the problem of ancient land claims.

This morning, I would like to present some of the history of the New York claims and then focus specifically on what the Akwesasne Mohawks have accomplished.

Background

The Mohawks are part of the Haudenosaunee or Iroquois Six Nations Confederacy, one of the most influential Indigenous groups in North America. The Haudenosaunee are amongst the most written about Peoples by anthropologists and historians. The circle of influence for the Haudenosaunee covered much of the northeast part of present day United States, including across most of New York State, parts of Vermont, Pennsylvania and Ohio.

The Haudenosaunee have long believed in the need for laws and have had democratic forms of government that predate the formation of the United States, In fact, in 1987, the United States Congress passed a joint resolution recognizing the contributions of the Haudenosaunee Confederacy to the United States Constitution.

The Haudenosaunee have long understood the importance of treaties and have long relied upon them for establishing its relationship with other sovereignties, including other Tribal Nations and the Europeans when they arrived on North America.

In 1790, the United States Congress recognized the importance of treaties in defining its relationships with Tribes passing the first Indian Trade and Intercourse Act forbidding the transfer of Indian lands to individuals or states except by "treaty under the authority of the United States."

At this time, the State of New York sought to purchase much of the Indian lands within its borders. With a few exceptions,

New York did not obtain approval of these purchases by the United States. These violations of the Trade and Intercourse Act are the basis for the land claims filed by the individual Tribes within New York State.

Akwesasne Mohawk Land Claim

Between 1816 and 1845, several transactions took place in which several thousand acres of lands set aside for the Akwesasne Mohawks were acquired by the State of New York in violation of the Trade and Intercourse Act. In addition, in 1822, after the War of 1812, the United States and Canada took action to establish the border between their two countries. In the process of setting this border, the new border placed a set of Mohawk islands that are also the subject of the claim from Canadian waters to American waters.

The Akwesasne Mohawks have consistently protested the unlawful acquisition of their lands by the State of New York. For many years, the Akwesasne Mohawks and all other Haudenosaunee nations with land claims have faced enormous economic, political, and legal obstacles to resolving their claims. For many years, the courts ruled that they had no jurisdiction over such claims. The option of judicial relief for these wrongs became available only relatively recently. The ability of our Tribes and nations to pursue our claims in federal court was first established in the 1970s and 1980s when the Oneida Nation won two key Supreme Court cases.

Akwesasne Mohawk Land Claim Negotiations

It is important to note that in the Oneidas 1985 Supreme Court decision, both the majority and dissenting opinions suggested that a political solution to the land claim is preferable to a judicial resolution. In fact, the Akwesasne Mohawks filed our land claims only after years of fruitless efforts to reach such a negotiated resolution. After filing of the Akwesasne Mohawk land claims in 1982, 1987, and 1989, renewed efforts to reach a negotiated resolution of the claims intensified. Beginning in 1989, dozens of proposals and counterproposals were exchanged between the State and Akwesasne Mohawks and scores of negotiation sessions were held.

There were a number of factors that worked against a settlement being reached between the parties, however. During this time period, faces kept changing at the negotiation table. There were two State administration changes, three federal administration changes, plus changes within the administration for two of the Akwesasne Mohawk plaintiffs, the St. Regis Mohawk Tribe and the Mohawk Council of Akwesasne. In addition, two leaders of the Mohawk Nation Council of Chiefs passed away. The combination of changing faces and the negotiation style made it extremely difficult to reach a final settlement.

This all changed in the summer of 2003. New Councils were elected for the St. Regis Mohawk Tribe and Mohawk Council of Akwesasne. The three Mohawk plaintiffs reaffirmed their commitment to work together on behalf of the Akwesasne community. A new negotiation strategy, with the agreement of the State of New York, was employed. It represented a switch from positional negotiating to interest based negotiating. And the Akwesasne Mohawk Councils recommitted to involving the Akwesasne community in the land claim process. A comprehensive land claims survey/education process was initiated with 1,775 community residents. The process allowed the Akwesasne community to make comments, provide input and gave the Councils a stronger mandate during their settlement discussions with the State.

Akwesasne Mohawk Land Claim Settlement

Through the efforts of all of the parties involved, an historic Akwesasne Mohawk Land Claim settlement was reached on February 1, 2005 . At that time, Governor George Pataki and New York Power Authority (NYPA) Vice President David Blabey signed the settlement along with all of the representatives of the Akwesasne Mohawks. On March 28, 2005, Franklin County Chairman Earl LaVoie signed the settlement agreement. On April 8, St. Lawrence County Chairman Tom Nichols signed the settlement agreement1.

The Akwesasne Mohawk Land Claim Settlement includes the following major provisions:

- The voluntary return of or right to purchase from willing sellers 13,463 acres of land to the Akwesasne Mohawks.
- The return of two islands to the Akwesasne Mohawks totaling 1,100 acres.
- The transfer of an additional 215-acre parcel to the Akwesasne Mohawks.
- $100 million in compensation to the Akwesasne Mohawks.
- Nine megawatts of low-cost power to the Akwesasne Mohawks.
- Waiver of tuition for Akwesasne Mohawks to attend any State University of New York College and University.

In exchange for this, the settlement will remove uncertainty over land status for residents of Franklin and St. Lawrence

Counties and the Akwesasne Mohawks. It will clear up title issues that have been a source of conflict for all parties for centuries. No non-Indian land owner will lose his or her land as a result of this settlement, unless they decide to sell to the Akwesasne Mohawks on the open real estate market.

The Akwesasne Mohawks agree to release their claim to heavily populated areas that are part of the court case. The State agrees to compensate the two counties for any lost property taxes by establishing a $4 million annual trust fund to be increased by two percent each year. And the State agrees to compensate Franklin County for approximately $2 million in back taxes on lands in the claim area.

The Akwesasne Mohawks land claim settlement is also unique in that it represents a global resolution related to the Federal Energy Regulatory Commission's (FERC's) licensing of the New York Power Authority's St. Lawrence FDR Power Project upstream of Akwesasne. NYPA is a named defendant in the land claim and the Akwesasne Mohawks are interested parties in the effort of NYPA to obtain a new FERC license for their Power Project. The land claim settlement settles the boundaries of the Project and allows NYPA to receive its FERC license unchallenged by the Akwesasne Mohawks.

The Akwesasne Mohawk Land Claim Settlement is in the process of obtaining ratification by the New York State Legislature and United States Congress. On June 21st, the New York State Assembly passed legislation ratifying the settlement. Unfortunately, the New York State Senate failed to do the same before it adjourned on June 24th. The Akwesasne Mohawks remain optimistic that the Senate will return later this summer and pass legislation ratifying the settlement.

Sherrill and Cayuga Court Decisions

On March 29, 2005, the United States Supreme Court overturned the decision of the United Sates Court of Appeals for the Second Circuit in the Sherrill case, a tax case involving the Oneida Indian Nation of New York and the City of Sherrill. The Court held that the passage of time, and development of the land by non-Indians during that time, barred the Nation from asserting its sovereign right to avoid taxation of its lands.

On June 28, 2005, a divided panel of the Second Circuit Court of Appeals, ruled that the Sherrill case should be extended to bar the Cayuga land claim, ruling that the Cayuga Nation and Seneca Cayuga Tribe of Oklahoma waited too long to reclaim their homeland. The court overturned a $247.9 million lower court judgment from 2001 and said the Cayugas have no legal claim to regain title to 64,015 acres of ancestral land along the northern tip of Cayuga Lake in Cayuga and Seneca counties in New York. The two judges in the majority also ruled, in conflict with most other federal appeals courts, that the judicial time-bar known as "laches" could also be applied to the United States. The other judge dissented vigorously from most of the ruling and the Cayugas immediately announced their intent to seek a rehearing of the case.

The Cayuga ruling will now become the subject of further litigation. Because this area of law has not been addressed by many courts, there is unlikely to be clarity in the case until the Supreme Court has spoken. For this reason, the Second Circuit ruling cannot be viewed as the final word on the Cayuga land claim or any other Indian land claim.

Even if the Cayuga ruling were to stand, however, it should not affect the Akwesasne Mohawk Land Claim settlement. Our settlement is a fair and just political resolution to a centuries-old problem and will benefit all parties. The Akwesasne Mohawk Land Claim is also different from the Cayuga and Oneida claims in several critical ways:

• The long-term presence of the Akwesasne Mohawks. The Akwesasne Mohawks have and continue to have a strong presence within their claim area. We have never moved from our ancestral lands. Both the size of the existing reservation at over 14,000 acres and the size of the Tribal membership with over 11,000 Tribal members set it apart from the Cayuga and Oneida claims.
• The distinctly Indian character of the claim area. The Akwesasne Mohawks are an important part of the character of Northern New York State. It has allowed for a generally positive relationship to be built up over the years with neighboring communities and counties. This is in stark contrast to both the Oneida and Cayuga claim areas. Part of the claim area, the Hogansburg Triangle is 97% Indian occupied and is home to many Mohawk businesses. Within the Fort Covington tract, over 30% of the area is Indian occupied.
• Shared jurisdictions. The Akwesasne Mohawks have been exercising jurisdiction within the claim area and has shared jurisdiction in other areas. The St. Regis Mohawk Tribe provides water and sewage sanitation services to the Hogansburg Triangle to both Indian and non-Indian alike. The Akwesasne-Hogansburg Fire Department services the Akwesasne community and is part of the Franklin County Mutual Aid system, providing and receiving assistance to neighboring communities on an as-needed basis. Most recently, the New York State Legislature passed legislation cross-deputizing the St. Regis Mohawk Tribal Police with the New York State Police. The geographical jurisdiction for the Tribal Police Force will include lands returned through the Akwesasne Mohawk Land Claims settlement.

• The NYPA licensing issues with FERC. The Akwesasne Mohawks are settling not only our land claim but the issues in regards to the new license for the St. Lawrence FDR Power Project. Neither the Oneida nor Cayuga claims have this important component to them.
• United States involvement in the FERC Licensing on behalf of the Akwesasne Mohawks. The United States, in the process to issue a new FERC license to NYPA, recognized that the Akwesasne Mohawk land claim process could have implications on NYPA's license. As a result, the Department of the Interior-Bureau of Indian Affairs reserved its section 4(e) and 10 (e) conditioning authority contingent on resolution of the land claim. Neither the Cayuga nor Oneida claims have this component.
• United States position on Islands. The United States took the position that the islands that are the subject of the Akwesasne Mohawk land claim, are within the Department of the Interior jurisdiction within the FERC licensing process for the NYPA Project. This is the only land claim where the United States has taken the position that land claim areas are subject to their active protection and jurisdiction.

The Akwesasne Mohawks do not believe that the Cayuga decision affects our settlement as well, primarily based on the above reasons. To date, all of the signatories to the settlement are still valid. The Akwesasne Mohawks continue to work with local and state governmental representatives to have the Akwesasne Mohawk Land Claim settlement bill introduced into the New York State Senate when it returns.

Support for an Akwesasne Mohawk Land Claim Settlement

There continues to remain support for the Akwesasne Mohawk Land Claim by all of the parties who are signatories to it. The Akwesasne Mohawks do not believe that the Sherrill decision affects our settlement. It should be noted that the decision by St. Lawrence County to approve the settlement came after the Sherrill decision was announced.

On April 15, 2005, Greg Allen, Senior Assistant Counsel to the Governor, sent a letter to the St. Regis Mohawk Tribe stating that "It is clear, however, that the Sherrill decision does not affect the settlement agreement with the Akwesasne Mohawks and the Governor does intend to submit to the Legislature a new bill to implement the terms of the settlement agreement ." And, the New York State Assembly passed the Governor's bill after the Sherrill decision.

What is being overlooked by many is that the Cayuga decision is not final. It is expected that a minimum of one year and probably longer will transpire as this case is appealed to the U.S. Supreme Court. This will leave the parties to the Akwesasne Mohawk Land Claim at risk to further unnecessary litigation at a huge financial cost when a fair settlement has been reached.

Off-Reservation Gaming

In 2001, the New York State Legislature passed legislation authorizing three off-reservation casinos in the Catskills region of the State. New York State Governor George Pataki required that any Tribe proposing a Catskill casino had to resolve its land claims prior to being considered for a Catskill casino.

It is important to note that of all Tribes that sought a resolution of their land claims, only the Akwesasne Mohawks pursued their land claim settlement separate from any gaming interests. This decision was made primarily for three reasons. First, it has always been in the best interest of the Akwesasne Mohawks and State of New York to find a resolution of the land claim. Second, of the three Mohawk plaintiffs, only the St. Regis Mohawk Tribe has gaming interests. The other two Mohawk plaintiffs involved in the land claim settlement negotiations had no gaming interests and thus it was not fair to them to include gaming issues in the discussion. Finally, and equally as important, the Akwesasne community did not want settlement of land claims linked to gaming issues.

As a result of this separation of issues, the Akwesasne Mohawk Land Claim Settlement is the only land claim settlement in the State to not be directly linked to the effort to build off-reservation casinos in the Catskills. This is the only land claim settlement that can make this statement.

Stating this though, the St. Regis Mohawk Tribe, on a separate track, has been diligently working to build an off-reservation casino in the Catskills. By employing an open and transparent process, the Tribe has become the lead Tribe in building an off-reservation casino in the Catskills. The St. Regis Mohawk Tribe has accomplished a number of important milestones in its effort to fully comply with the requirements of the 2001 State Legislation and the Indian Gaming Regulatory Act. They include:

• The first Tribe to undertake a full environmental review for a Catskill Casino, fulfilling the environmental requirements at both the State and Federal level.
• The first Tribe to enter into a local impact and service agreement with the Town of Thompson and the County of Sullivan.

• The first Tribe to complete negotiations with the State on its Tribal-State Gaming Compact.
• The only Tribe to have local site plan approval from the Town of Thompson.

The St. Regis Mohawk Tribe has submitted its land-in-trust application to the Bureau of Indian Affairs for the acquisition of a 66-acre parcel of land for its off-reservation casino site in Catskill. We have expended $20 million in support of its land-in-trust application, consistent with the 2001 New York Legislation and the Two-Part Determination process of the Indian Gaming Regulatory Act. We remain hopeful that this project will be able to move forward, even in the shadow of the many issues that have emerged over off-reservation gaming.

National Debate

Over the past several months, the St. Regis Mohawk Tribe has been participating in the national debate that has been taking place on the subject of off-reservation gaming. Clearly, the outcome of this discussion could affect our ability to build our Catskill Casino. We commend the work of the National Indian Gaming Association and the National Congress of American Indians in organizing forums for Tribal Leaders to engage a candid and thorough discussion on this very challenging issue.

We are concerned that proposed national legislation to address concerns related to off-reservation gaming will be extremely detrimental to our efforts and any Tribe's effort to build a Catskill Casino. We believe the situation in New York is unique and should be considered, specifically, as the discussion of off-reservation gaming continues. We again thank Chairman Pombo and the Committee for holding this hearing on New York specific matters.

Two consistent themes that have emerged during the discussion are that the Indian Gaming Regulatory Act works and that it should not be re-opened. We share this perspective and do not believe that re-opening IGRA is the best solution to off-reservation gaming issues.

In addition, positive actions are being taken to reinforce the Indian Gaming Regulatory Act and its processes. These clarifications, meant to address off-reservation gaming, should be allowed to fully proceed before attempts to rewrite IGRA are considered. In particular, the Bureau of Indian Affairs revised checklist provides clearer guidance for following its rules and regulations under IGRA.

Erosion of Tribal Sovereignty

One of the issues that has emerged is whether off-reservation gaming is an erosion of Tribal sovereignty. We believe that when a Tribe attempts to pursue gaming outside the context of IGRA that this statement is true. A Tribe that attempts to pursue off-reservation gaming without first properly vetting its proposal through the appropriate state and local government channels can erode Tribal sovereignty. When a Tribe fails to complete a thorough environmental review that considers all potential environmental impacts of the proposed project, this can erode Tribal sovereignty.

Likewise, if a Tribe fails to gain local support or adequately address local impacts, this can erode Tribal sovereignty. Finally, if a Tribe tries to encroach on the aboriginal territory of another Tribe(s) without first consulting with the affected Tribe(s), this can erode Tribal sovereignty as well.

On the other hand, a Tribe that acts prudently and responsibly in considering all the impacts and consequences of a proposed casino, engages in meaningful and respectful consultations with the state and affected local communities, agrees to mitigate adverse impacts caused by the proposal, and negotiates agreements that protect and benefit its own interests is clearly exercising its sovereignty in a responsible and protective manner. As specifically discussed below, we have carried out these and other measures to protect and advance our Tribal sovereignty.

Catskill Casinos

We continue to believe that what is happening in New York and our effort to build a Catskill Casino in particular, can serve as a model for the rest of the country for conducting off-reservation gaming. In fact, our effort is being undertaken in an open and transparent manner and fully within the context of IGRA and thus is a positive assertion of Tribal sovereignty.

First, there is affirmative and official State support for our off-reservation casino in the Catskills. This is evidenced by the 2001 State legislation authorizing three off-reservation Indian casinos in the Catskills. In addition, IGRA requires a Two-Part determination by the Secretary of the Interior to acquire in trust lands in the Catskills for our off-reservation casino. And the Governor will have an opportunity to concur in that determination. The land-in-trust application for the Two-Part

determination is a complex and daunting task. We continue to pursue this application as an exercise of our Tribal sovereignty.

Second, we became the first Tribe to undertake a thorough environmental review of its Catskill Casino project. In early 2003, the Department of Justice indicated that they were less likely to defend land-in-trust applications for gaming acquisitions unless they included a full environmental review. We responded and spent several million dollars in completing our Environmental Impact Statement at both the State and Federal level. We view our decision to undertake the full environmental review and subsequent actions as a responsible and prudent exercise of our Tribal sovereignty.

Third, in 2003, we entered into a local service and impact agreement with the Town of Thompson and Sullivan County to address any local impacts from our proposed casino project. In doing so, we became the first Tribe to enter into such an agreement. We did so by exercising our sovereign power to enter into agreements with other governments.

Finally, our location in the Catskills is within our aboriginal territory. Thus, we are not infringing on the aboriginal territory of any other Tribe or Indian Nation. In fact, we have been actively trying to work with other Tribes with ambitions to have a Catskill casino. Again, we believe our actions are consistent with a positive assertion of Tribal sovereignty.

Conclusion

The many positive assertions of Tribal sovereignty we have made in trying to build our Catskill casino represents a cutting edge approach for off-reservation gaming. The Bureau of Indian Affairs is now requiring in its revised checklist many of the steps we have taken in support of our effort to build our casino. In addition, the Governor of New York is now requiring all Tribes interested in the Catskill casinos to follow the path we have followed.

We believe that our actions are completely consistent with IGRA and were envisioned when the IGRA exceptions were drafted. It will not be fair for us to be subject to a new legislative regime for off-reservation gaming when we have been following the rules, regulations and processes outlined within IGRA. We respectfully request that the Committee consider our situation as it continues its deliberations.

I and the members of my Tribe thank the Committee for its time and consideration.