



Leech Lake Band of Ojibwe

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**TESTIMONY OF
GEORGE GOGGLEYE
CHAIRMAN, THE LEECH LAKE BAND OF OJIBWE INDIANS**

BEFORE THE

**U. S. HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES**

CONCERNING

H.R. 2306 (PETERSON); H.R. 3699 (OBERSTAR)

AND

**AN ALTERNATIVE PLAN TO PROVIDE FOR THE USE AND DISTRIBUTION OF
THE FUNDS AWARDED TO THE MINNESOTA CHIPPEWA TRIBE
IN
MINNESOTA CHIPPEWA TRIBE V. UNITED STATES
DOCKET NOS. 19 AND 188
UNITED STATES COURT OF FEDERAL CLAIMS**

June 5, 2008

Chairman Rahall and Members of the Committee on Natural Resources, I am George Goggleye, Chairman of the Leech Lake Band of Ojibwe Indians. On behalf of our Tribe, thank you for convening this important hearing and for inviting me to testify in support of the long awaited distribution of the funds awarded to the Minnesota Chippewa Tribe.

Summary

The U.S. Court of Federal Claims awarded \$20,000,000 in dockets 19 and 188 to the Minnesota Chippewa Tribe for damages suffered under the Nelson Act. These dockets involved claims for compensation for ceded lands and for improper timber valuation.

The Tribal Executive Committee comprised of the six member bands of the Minnesota Chippewa Tribe has proposed apportioning the settlement evenly among its six member Bands. This proposal is embodied in H.R. 3699. Two of the member bands of the Minnesota Chippewa Tribe object to this proposed division. White Earth believes that the fund should be distributed among the six Bands on a per capita basis. This is the apportionment scheme contained in H.R. 2306.

Leech Lake respectfully suggests that neither plan is equitable and proposes that the fund should be distributed based on the amount of damage suffered by each of the six member Bands.

The first Ojibwe settlements were on small islands on Leech Lake. This area in north central Minnesota was the home of the Mississippi and Pillager Ojibwe bands. In 1847, treaties took sections on the southwest corner of their lands with the Mississippi and Pillager bands from the Menominee and Winnebago tribes that were to be moved from Wisconsin. The remaining land was ceded by treaty in 1855 that established the reservation.

The Leech Lake Reservation was set aside under the Treaty of 1855 with the U.S. Government. In 1887, the Dawes Act (General Allotment Act) allotted 80 acres of land to each individual band member. After the allotting was completed, the remaining land was sold to anyone wishing to homestead. In 1889, the Nelson Act opened the northern white pine forests to harvest by private companies. Within a few years, virtually all of the harvestable white pine had been removed. In 1900 the League of Women Voters petitioned to protect the remaining forest by creating the Minnesota Forest, which later became the Chippewa National Forest.

The Leech Lake Tribal Council is the governing body with their offices in Cass Lake and is a member of the Minnesota Chippewa Tribe. In the early 1990's, the Band contracted with the BIA to operate programs under self-governance procedures as one of the second groups of ten tribes allowed into the pilot project. The State is responsible for criminal jurisdiction over Indians on the reservation, while the band has civil jurisdiction over Indians on the reservation. The Leech Lake Tribe issues its own automobile license plates.

The Leech Lake Band is a federally recognized Band with a long history of relations with the United States. For administrative purposes, the Tribe works with five other tribal governments member reservations under the coordination of the Minnesota Chippewa Tribe. The other members include the Bois Forte, Fond du Lac, Grand Portage, Mille Lacs, and White Earth

reservations. The Minnesota Chippewa Tribe and the individual member tribes are federally recognized tribal governments. Established on June 18, 1934, the Minnesota Chippewa Tribe was recognized by the Secretary of the Interior on July 24, 1936, pursuant to the authority granted by the Indian Reorganization Act (48 Stat. 984). Governed by a constitution, the Minnesota Chippewa Tribe's governmental powers are delegated to it by the six Bands.

Background of the Nelson Act

During its relationship with the United States, the Chippewa Indians entered into several treaties concerning its lands and have repeatedly been the subject of federal legislation. The treaties of 1855 (10 Stat.1165), 1863 (12 Stat. 1249) and 1864 (13 Stat.693) ceded hundreds of thousands of acres in return for the creation of reservations. Similarly, in the White Earth Agreements (24 Stat. 29) of 1886 seven Chippewa groups negotiated for cession of reservation in return for allotments. But of all the treaties and legislation that have affected the Chippewa Indians, the Nelson Act (25 Stat. 642) is the most important.

The purpose of the Nelson Act was to promote the removal of substantially all of the Chippewa Indians in Minnesota (except those at Red Lake) to the White Earth Reservation and to open up their former lands to logging and non-Indian settlement. In addition, Indian culture was to be transformed by the elimination of communal property and the substitution of private property ownership through the allotment of land to individuals, first to be held in trust and ultimately to be patented to the allottee in fee.

With the signature of President Benjamin Harrison on March 4, 1890, the Nelson Act ceded to the United States 3,669,200.96 acres of reservation lands held by the Chippewa Indians. More than 2.9 million acres of this land came from the Red Lake Reservation land, and 763,000 acres came from the other reservations. With the exception of the Red Lake Reservation and the White Earth Reservation, the land ceded by the Nelson Act was all the land in the reservation except that which was necessary to make allotments to any Indian that chose not to move to the diminished White Earth Reservation.

The Chippewa lands ceded by the Nelson Act were some of the most valuable timber lands in Minnesota and had long been coveted by lumbermen and land-speculators. Instead of paying the Indians immediately, the United States promised to sell the lands and timber on behalf of the Indians and to deposit the proceeds in a common fund earning 5% interest. Interest from the fund was to be used for educating Chippewa Indians and for making per capita payments to individual Indians. The principal was to be held in intact, except that Congress was allowed to appropriate up to 5% "for the purpose of promoting civilization and self-support among the said Indians." It was assumed that all allotments would be made within 50 years, at which time the fund principal

, which was projected to be very large, was to be divided among all of the Chippewa Indians in Minnesota. (Section 6, 25 Stat. 642).

After the Chippewa Indians ceded their lands under the Nelson Act, the United States held the land, timber and the proceeds from their sale in trust for the Indians. Unfortunately, the government failed to carry out its fiduciary responsibilities. It failed to obtain fair market value for the billions of board feet of valuable white pine, red pine, and other timber sold on the ceded lands. The land itself was sold by the government for the bargain price of \$1.25 per acre, which was the arbitrary price set for homesteads. The government's timber appraisers, either through dishonesty or incompetence, underestimated the volume of timber standing on the ceded lands. Collusion in the bidding process, combined with the sale of live timber through special legislation, led to substantial losses. Timber trespasses were ignored. The government's failures with regard to the ceded lands were compounded by the mishandling of revenues earned, and more than \$24 million earned from the sales of land and timber were exhausted with little or no benefit to the Indians.

Background on the Claims

The Minnesota Chippewa Tribe's land and timber claims were for the difference between the amount paid by the Government for the land and timber and what they were worth at the time they were sold.

As described above, the federal government failed to carry out its fiduciary duty in two critical ways. First, it failed to secure fair market value for lands and timber held in trust for the Chippewa Indians. Second, it failed to spend much of this money for the benefit of the Indians. Each of these failures formed the basis for a series of claims for compensation filed by the Chippewa Indians against the United States in the 1940's and 1950's under the Indian Claims Commission Act (Pub. L. No 79-726, 60 Stat.1049). Over the course of its existence, the Commission heard and resolved hundreds of claims spread out over 600 dockets. When the Commission's term expired in 1978 a few cases, including those of the Minnesota Chippewa Indians, remained unresolved.

The pertinent claims of the Chippewa Indians were contained in dockets 19 and 188. Broadly stated, docket 19 raised accounting claims under the Nelson Act on behalf of the Minnesota Chippewa Tribe. In docket 188, the Minnesota Chippewa Tribe raised non-Nelson Act accounting claims. These dockets were transferred to the United States Court of Federal Claims where they were eventually resolved. Pursuant to a settlement agreement [with the United States], the Court of Federal Claims approved an award of \$20,000,000 to the Minnesota Chippewa Tribe on May 26, 1999.

Draft Report on Fair Market Value of Ceded Timber

During the litigation, the Tribal Executive Committee of the Minnesota Chippewa Tribe retained Wesley Rickard of Wesley Rickard, Inc., a forest management policy and economics consulting firm located in Gig Harbor, Washington. Mr. Rickard provided consulting, analysis and expert witness support with respect to the historic mismanagement and resulting economic damages. His expert witness testimony included the preparation of a report on the fair market value of the timber ceded under the Nelson Act. According to the timber appraisal contained in his draft reports; Mr. Rickard concluded that the total fair market value of the commercial timber ceded by the six Bands and disposed of by the United States was \$26,321,200. But the report also concluded that each Band suffered different losses.

<u>Band</u>	<u>Appraised Timber Value (% of total)</u>
Bois Forte	\$2,393,000 (9.1%)
Fond du Lac	\$2,775,000 (10.5%)
Grand Portage	\$262,000 (1%)
Leech Lake	\$17,592,200 (66.8%)
Mille Lacs	\$935,000 (3.6%)
White Earth	\$2,364,000 (9%)
TOTAL	\$26,321,200

As Mr. Rickard’s analysis demonstrated, Leech Lake Band suffered more than \$17 million in losses, the bulk of the losses related to the ceded timber.

When the losses associated with the appraised lands are included, the value of the damage suffered by Leech Lake rises to approximately \$18 million dollars, or 68.9% of the overall damages. (See attached *Minnesota Chippewa Tribe Comparison Reports*). Mr. Rickard’s report was never finalized due to a decision to discontinue Mr. Rickard’s work by the Tribal Executive Committee. Nevertheless his research was substantial and his findings remain significant.

Results of Research Report

On June 6, 2001 the Acting Deputy Commissioner of Indian Affairs in the Tribal Government Services office of the Department of the Interior issued a report entitled *Results of Research Report on the Judgment in Favor of the Minnesota Chippewa Tribe, et al v. United States, Dockets 19 and 188* (hereafter the “Report”). In it, the Acting Deputy Commissioner offered his opinion as to the disposition of the \$20 million judgment fund. Seeking a compromise, he suggested that 35% of the judgment fund should be distributed to the member bands comprising the Minnesota Chippewa Tribe in proportion to their losses, and that the remaining 65% of the

fund should be distributed *pro rata* amongst the Bands, based upon each Band's the number of currently enrolled tribal members.

Though I disagree with the Acting Deputy Commissioner's recommendation of a 35/65 split distribution of the judgment fund, the recognition of damages is a step in the right direction. I would also point out that his report nevertheless acknowledged that Leech Lake "suffered the greatest loss under the Nelson Act," adding that "Leech Lake gave up the most land and received the least compensation per acre" (Report - Pgs 9, 8). Not only does the Department of Interior's own Report acknowledge the scale of our losses, it offers no rationale or legal support as to why an equitable distribution based solely on losses should not be made.

Pending Legislation

Under 25 U.S.C. 1402, the Secretary of the Interior is required to submit a plan when a judgment fund is to be divided between two or more beneficiary entities. To execute the plan, the Secretary is required to obtain the consent of the tribal governments involved to the proposed division. If the Secretary is unable to obtain the consent of the tribal governments within a specified time, he is required to submit proposed legislation to the Congress to authorize use or distribution of the funds. Accordingly, former Assistant Secretary – Indian Affairs Carl Artman, on April 26, 2007, transmitted draft legislation to apportion the Minnesota Chippewa judgment funds.

H.R. 2306

On May 14, 2007, Representative Collin Peterson introduced H.R. 2306, which would authorize the Secretary of the Interior to divide the judgment fund in proportion to the number of tribal members enrolled in each Band after reimbursing the Bands for certain legal fees and expenses.

Problems with H.R. 2306

In its current form H.R. 2306 favors the White Earth Reservation, whose members represent 53 percent of the total membership in the Minnesota Chippewa Tribe.

The argument in support of this legislation is that under the Nelson Act, if no mismanagement had occurred, the principal from the sales of land and timber would have ultimately been distributed on a per capita basis. What it neglects is that such distribution was intended to be made not to members of Indian tribes, but to Indians who had assimilated into American society.

The Nelson Act grew out of the Allotment and Assimilation Era of Federal Indian policy. During that Era, Congress and the Bureau of Indian Affairs attempted to assimilate Indians into American society by allotting tribal lands to them and turning them into "civilized" farmers.

Although, well intentioned, most scholars consider this policy an overwhelming failure, paternalistic, and benignly racist.

Starting with passage of the Indian Reorganization Act in 1934, Congress has since expressly turned away from the policy of allotment and civilization and instead turned toward expanding a Federal policy of Tribal Self-Determination. Under Self-Determination, Tribes and Tribal governments are provided the necessary tools to realize social and economic self-sufficiency. Arguably, under this policy, Indian tribes are, for the first time since their determination under the U.S. government, realizing true success.

Because it arguably adopts an individual per capita distribution scheme contained in legislation that originally sought to promote the now discredited policies of allotment and assimilation, H.R. 2306 should not, as a matter of policy, be supported. Instead, Congress should craft a Settlement bill that reflects federal Indian policies of the modern era, and that accounts for the losses sustained by each individual Tribe.

H.R.3699

Representative James Oberstar introduced H.R. 3699 on September 27, 2007. This legislation follows a different approach with respect to dividing the Chippewa Indians' judgment fund. H.R. 3699 would direct the Secretary of the Interior to distribute the judgment fund in equal shares among the six Bands comprising the Minnesota Chippewa Tribe.

Problems with H.R. 3699

H.R. 3699 is consistent with the resolution adopted by the Tribal Executive Committee of the Minnesota Chippewa Tribe . But H.R. 3699 would favor four of the bands comprising the Minnesota Chippewa Tribe at the expense of the other two. That is because the four bands that support H.R. 3699 comprise only 27 percent of the total membership of the Tribe. More importantly, these four Bands only suffered 22.10 percent of the total damages.

H.R. 3699 relies in part on the fact that the Tribal Executive Committee of the Minnesota Chippewa Tribe has passed a resolution approving an equal, six-way split of the judgment fund among the Bands. However the sovereignty of the Minnesota Chippewa Tribe flows from its six member bands, and not the reverse. The rationale behind H.R. 3699 therefore disregards the independent tribal sovereignty of each individual Band, two of which have long opposed this apportionment scheme. Thus like H.R. 2306, Representative Oberstar's alternative, while appearing to be a simple solution to a complex matter, would actually undermine the long-standing commitment of Congress to strengthening tribal sovereignty.

Leech Lake Proposal

We thank both Members of Congress for their leadership on and dedication to this issue. However, we respectfully suggest that neither bill will result in an equitable distribution of the judgment fund that adequately reflects the aims of contemporary federal Indian policy.

Under the above proposals, Leech Lake, which lost the most land, would receive the least compensation. As such, we strongly oppose the proposed legislative solutions. The Leech Lake Band, after careful consideration of both legislative proposals, and believing that neither represents an equitable solution to the problem of the distribution of the judgment fund, has submitted this alternate plan to the members of the Minnesota Chippewa Tribe.

Our plan simply and fairly requires the judgment fund to be distributed to the Bands in proportion to the actual damages suffered by each from the disposition of their tribal lands, their interests in lands, and other of their tribal assets.

Benefits of the Leech Lake Proposal

(1) Legislation is not needed

Our proposal offers a solution and can be accomplished without legislation. It is only fair that each member receive a share in proportion to what they lost.

(2) There is No Dispute as to the Apportionment of Damages

The legislation indicates a dispute amongst the Minnesota Chippewa Tribe members in how the fund should be distributed. The Minnesota Chippewa Tribe, however, does not dispute that Leech Lake sustained the bulk of damages. On October 1, 1996, Norman Deschampe, President of the Minnesota Chippewa Tribe wrote each of the six Bands inviting them to a special meeting of the Tribal Executive Committee for the purpose of discussing the claims. Attached to his invitation were "land, timber and population totals on each of the six reservations". He suggested that "these figures should be considered when it is time to discuss a distribution..." The first exhibit in that attachment was titled: "Estimated Reservation Percentages of Appraised Timber and Land Values" (See attached).

Based on the Minnesota Chippewa Tribe's findings as contained in the October 1, 1996 letter, Leech Lake suffered 68.90 percent of the damages. Fond du Lac suffered 10.20 percent. White Earth suffered 9.00 percent; Nett Lake suffered 8.60 percent; Mille Lacs suffered 2.40 percent, and; Grand Portage suffered 0.90 percent.

(3) Respects Tribal Sovereignty

Tribal governmental powers are not delegated powers granted by express acts of Congress, but are inherent powers of sovereignty. Allowing the Bands to determine the apportionment of the judgment fund without legislation continues to enforce the inherent sovereignty of the Tribes.

(4) Continues the Era of Self Determination

As noted above, the Nelson Act was forged in the misdirected and failed policies of Allotment and Assimilation Era. The abuses and misguided policies of this bygone era ultimately led to the reforms brought by Self Determination. Indian governments operating today do so through powers of self-government and at the exclusion of other authorities. Our proposal recognizes the right of the bands to decide the matter without intervention by Congress and the Secretary of the Interior.

Conclusion

As the Committee considers these issues, ask the following two questions:

- (1) Is it fair and equitable that the Tribe who suffered 68.9 % of the damages might receive only 16-20% of the payment for those losses while others could receive more than 16 times the amount of their actual losses?
- (2) If your constituents, suffering the same loss as Leech Lake, were presented with the so-called solutions proposed in these bills, would you think it was fair?

We submit that only through equitable distribution of the fund in accordance with the damages sustained will fairness to the parties be achieved.

I wish to sincerely express my appreciation for the honor and privilege of having been invited to present testimony to Committee today. I am happy to answer any questions you have of me.