

TESTIMONY

of

KEVIN W. LEECY

BEFORE THE

HOUSE COMMITTEE ON NATURAL RESOURCES

Thursday, June 5, 2008, at 10:00am

Room 1324 Longworth House Office Building

Legislative hearing on

H.R. 3699 (Oberstar): 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.

H.R. 2306 (Peterson): Minnesota Chippewa Tribe Judgment Fund Distribution Act of 2007.

CHAIRMAN RAHALL and Members of the Committee:

My name is Kevin Leecy. I am the Chairman of the Bois Forte Band of Chippewa – one of the six Bands that comprise the Minnesota Chippewa Tribe. I am here to testify in support of H.R. 3699, a bill which would divide the funds now held in trust for the Minnesota Chippewa Tribe into six equal shares and distribute those shares to each Band of the Tribe. I support that bill because it is consistent with the law of the Minnesota Chippewa Tribe and I have taken an oath to uphold that law.

For me, the distribution of the funds awarded to the Minnesota Chippewa Tribe must be guided by the Constitution of the Tribe. The claims that led to the award were first brought in the name of the Minnesota Chippewa Tribe under the Constitution approved by the Secretary of the Interior on July 24, 1936. From the time of filing until the claims were settled in 1999, decisions about the filing and prosecution of the claims and, ultimately, settlement of the claims, were decisions made by the Tribal Executive Committee of the Tribe.

Each of the Bands has two representatives on the Tribal Executive Committee and under our Constitution, it is that body which has the power “to apportion all funds within its control.” Although each Band has the power to deal with funds over which that Band has exclusive ownership or control, there is no doubt that the Tribal Executive Committee has the sole power to make decisions about funds owned by the Tribe as a whole. The funds at issue here are just that: owned by the Tribe as a whole.

When the Department of Justice was engaged in settlement discussions with the Tribe’s attorneys in 1998, it wanted to be sure that a settlement with the Tribal Executive Committee would be constitutionally sufficient to bind the Minnesota Chippewa Tribe and its constituent Bands. There was never any doubt on the tribal side, but apparently the Department of Justice wanted reassurance and so it asked the Department of the Interior to address the issue. On January 7, 1999, the Department’s Associate Solicitor for Indian Affairs responded and concluded that “the TEC has the constitutional authority to make a settlement agreement with the United States and to approve the settlement of these claims which relate to the disposition of tribal lands, interests in land or other tribal assets.” If a decision of the TEC was sufficient to settle the claim, its decision on apportionment should also be binding.

Although the Department of the Interior agreed that the Tribal Executive Committee had the authority to settle the claims on behalf of the Minnesota Chippewa Tribe, in 2001 it determined that there was more than one tribal entity eligible to share in the funds. It did so in the context of its flawed “Results of Research” report. I use the term

“flawed” because the regulations governing those reports provide that there should be a proposed formula for allocation of funds *only* if “more than one entity is determined to be eligible to participate in the use or distribution of the funds.” *See* 25 C.F.R. § 87.3 (2007). In this case, it could not be more clear that the only entity eligible to participate in the use or distribution of the funds is the Minnesota Chippewa Tribe. The Tribe was the plaintiff, it prosecuted the claims, it settled the claims, it was awarded the judgment, and it decided how to apportion the award under tribal law.

In conclusion, the apportionment decision was made in 1999 by the Tribal Executive Committee, and I am duty-bound to support that decision. I was not a member of the Tribal Executive Committee when the allocation decision was made but my oath does not permit me to pick and choose which decisions I will support. During my four years on the Tribal Executive Committee, this issue has come before it on several occasions, but the law remains unchanged. Like any legislator, I understand that there are many opinions on different issues and that unanimous decisions are rare. Under our constitution, decisions made by a majority vote are the law. The Minnesota Chippewa Tribe is governed by the rule of law and that is why I support the legislation that gives effect to the Tribe’s law: H.R. 3699.



BOIS FORTE RESERVATION TRIBAL Council

PO Box 16 Nett Lake, MN 55772 218-757-3261-3312

Michael Olsen
Acting Principal Deputy Assistant Secretary-
Indian Affairs
Department of the Interior
18th & C Streets N.W.
Washington, D.C. 20240

Re: Minnesota Chippewa Tribe, et al v. United States
Dockets 19 and 188

Dear Mr. Olsen:

I am writing on behalf of the Bois Forte Band of the Minnesota Chippewa Tribe to comment on the proposed legislation attached to your letter of March 27, 2006. The Bois Forte Band opposes any such legislation for the following reasons.

1. **The proposed legislation is unnecessary.** The regulations implementing the Act of October 19, 1973 (the Use or Distribution of Indian Judgment Funds Act), provide that a proposed formula for allocation of funds is required only "if more than one entity is determined to be eligible to participate in the use or distribution of the funds." 25 CFR §87.3 (2005)

In this case, that only entity eligible to participate is the Minnesota Chippewa Tribe. There are no other entities eligible to participate.

2. **The proposed legislation violates tribal law.** The governing body of the Minnesota Chippewa Tribe (the only entity entitled to use or distribute the funds) decided in September 1999 to allocate the funds equally amongst its six (6) constituent Bands. So far as I am concerned, any attempt to force a distribution that conflicts with TEC Resolution 40-00 is illegal.

3. **The proposed legislation violates the trust responsibility of the United States.**
The claims that led to the award were first brought in the name of the Minnesota Chippewa Tribe
under

the Constitution approved by the Secretary of the Interior on July 24, 1936, and the claims were finally settled by the Tribal Executive Committee under the Revised Constitution approved by the Assistant Secretary on March 3, 1964. Those documents define the relationship between the United States and the Minnesota Chippewa Tribe. TEC Resolution 40-00 is a lawful, binding tribal decision that the United States is not free to ignore. The tribal

governing documents approved by your predecessors authorized the Tribal Executive Committee to bring the suit, settle the suit and decide how the award should be spent. By refusing to honor the TEC decision, you undermine the Constitution of the Minnesota Chippewa Tribe. How do we explain to our constituents that tribal members must obey the rule of law as set out in our Constitution but the BIA is free to ignore it?

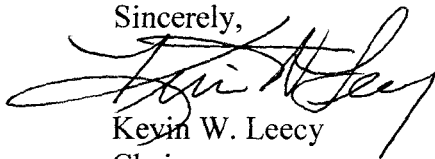
4. **The proposed legislation contains provisions that do not reflect reality.**

Section 4 describes a process for each Band to claim a reimbursement of funds it advanced to the Minnesota Chippewa Tribe to prosecute the claims and makes that reimbursement subject to BIA review and approval. It also prescribes an interest rate. The reality is that each of the Bands contributed an equal amount to the effort. Bois Forte's contribution is memorialized by a note that sets the interest rate. It was anticipated that when the MCT realized an award, it would simply repay the amount due under the note. It makes no sense for the BIA to be involved in that repayment process or for Congress to impose an after-the-fact interest rate.

Section 5 of the proposed legislation inserts the BIA into the process of approving tribal membership rolls and doing so could delay the actual distribution of the money for years. The Tribe's current enrollment data indicates that 6403 members (16% of the entire membership) are "whereabouts unknown." Without addresses, it is not possible to know with certainty who is living and who is dead, so how do we update the rolls? Of the missing, 3,684 are affiliated with White Earth. Your proposal requires a roll update that may be "mission impossible" for White Earth and the result will be that no one would realize the benefit of the award. The BIA tribal government staff should not insert itself into tribal enrollment nor should the BIA propose a plan that will as a practical matter delay distribution of the judgment funds for years.

5. **The proposed legislation will lead to claims against the United States.** Since the adoption of the original Constitution of the Minnesota Chippewa Tribe the BIA has said that the tribal assets (funds, property, and proceeds of property) belonged to the MCT as a whole and not the individual reservations. If the BIA now says that the funds belong to the individual reservations in different proportions, then Bois Forte will demand an accounting from the BIA of all funds derived from our reservation that for seventy years were spent for the common good of the MCT without regard to origin or population.

Sincerely,



Kevin W. Leecy
Chairman



BOIS FORTE

Reservation Tribal Council

Box 16· Nett Lake, MN 55772·218-757-3261 • FAX 218-757-3312

Ms. Daisy West
U.S. Department of the Interior 1849 Street N.W.
Mail Stop 4631
Washington, D.C. 20240

RE: Minnesota Chippewa Tribe Use or Distribution Plan – Dockets 19 and 188.

Dear Ms. West:

The purpose of this letter is to express the Bois Forte Reservation Tribal Council's support of Tribal Executive Committee Resolution No. 40-00, by which the governing body of the Minnesota Chippewa Tribe allocated each member Band an equal share of the net proceeds of the judgment funds from the claims cases referred to above. The allocation of equal shares reflects both the manner in which the Minnesota Chippewa Tribe has owned tribal lands and how the Tribal Executive Committee has historically dealt with the proceeds of tribal lands.

First, it is a historical and legal fact that the lands which were the subject of the claims were owned by the Minnesota Chippewa Tribe. The proceeds from those lands were for the common benefit of the Tribe as a whole. Pursuant to Article V of the Revised Constitution and Bylaws of the Tribe, the Tribal Executive Committee is authorized to administer funds with the control of the Tribe and to deal with tribal lands and assets. From time to time the Tribal Executive Committee has enacted ordinances delegating authority to the constituent Reservations to manage, lease and otherwise deal with tribal lands, but it is clear that the Reservation Business Committee (or Tribal Councils) do so *only* by virtue of such delegation. See Article VI, Section I(c) of the Revised Constitution.

Second, it *is* clear that the claim was originally brought by the Minnesota Chippewa Tribe for the common benefit of all the constituent Bands. The logic is basic. The claims related to lands and timber held in common as a matter of law, so the *only* appropriate claimant was the Minnesota Chippewa Tribe. In fact, the original constitution of the "Minnesota Chippewa Tribe (approved)

Ms. Daisy West

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July 24, 1936 and in effect at the time the claims were first brought) made it clear that the purpose of organization was to benefit all the Minnesota Chippewa except Red Lake. Under that Constitution (a copy of which is attached) it was the Tribal Executive Committee which had the power to employ legal counsel for the advancement and protection of the rights of the Tribe and its members, and to negotiate with other governments in matters affecting the "Minnesota Chippewa Indians." The claims were filed in the name of the Minnesota Chippewa Tribe because it - and no other entity - had the authority to seek redress for claims accruing from community held property.

Third, and finally, the Bois Forte Reservation Tribal Council believes that the Bureau of Indian Affairs should find that one entity - the Minnesota Chippewa Tribe - is the beneficiary of the judgment funds and that the Tribal Executive Committee had the authority to allocate those funds among the constituent Bands. All of the pertinent data - including the historical material, the pleadings, the previous judicial decisions, and the Solicitor's Opinions - lead to a conclusion that Resolution No. 40-00 is dispositive of the matter of allocation.

Because MCT President Defoe provided you with the relevant documents, they are not enclosed. However the Bois Forte Reservation Tribal Council stands ready to answer any of your questions or provide other information you believe might be useful in preparing the Results of Research.

Sincerely yours,

BOIS FORTE RESERVATION TRIBAL COUNCIL

A handwritten signature in cursive script that reads "Doris Isham". The signature is written in black ink on a white background.

Doris Isham

Chairwoman

Enclosure

Cc: Peter Defoe, President
Minnesota Chippewa Tribe