

TESTIMONY OF JEFFREY D. PARKER
Before the
RESOURCES COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES
On
FEBRUARY 6, 2008

TO PROVIDE FOR AND APPROVE THE SETTLEMENT OF CERTAIN LAND
CLAIMS OF THE BAY MILLS INDIAN COMMUNITY
(H.R. 2176)

Mister Chairman, and members of the Committee, I am pleased to be invited to present testimony on behalf of the Bay Mills Indian Community on H.R. 2176. I speak here today in my official capacity as President of the Executive Council, which is the elected government of our Tribe. The legislation before you is extremely important to my people; its importance will be better understood by my description of the history of the Tribe and the origin of this controversy.

The Bay Mills Indian Community is comprised of the bands of Sault Ste. Marie area Chippewa who signed a series of treaties with the United States beginning in 1795. My Tribe's modern-day Reservation is located at the juncture of the St. Mary's River and Lake Superior, in the Iroquois Point area of Michigan's Upper Peninsula, and on Sugar Island, which is just east of Sault Ste. Marie, Michigan, in the St. Mary's River Channel. My Tribe is one of four in Michigan which has maintained continuous government-to-government relations with the United States since treaty times. We adopted a Constitution in 1936 under the Indian Reorganization Act, and codified as our form of government the traditional Chippewa public forum, in which all adult members comprise the General Tribal Council. I represent a direct democracy, which votes every two years to select officers, known as the Executive Council. Our total enrollment is approximately 1,750 members. It is on their behalf that I speak today.

I am very proud to testify in support of this legislation, as it represents the final step in obtaining redress of a great wrong done to our people over 100 years ago, a wrong that has imposed continuing consequences to the present day. The Bay Mills Indian Community is deeply grateful to Congressman Bart Stupak for sponsoring H.R. 2176, and to Congresswoman Candice Miller and Congressman Patrick Kennedy for co-sponsoring it. I also wish to express my thanks to Chairman Rahall and Ranking Member Young for understanding how important this legislation is to my people and for holding this hearing today.

History of Our Land Claim

Dr. Charles Cleland, PhD., a preeminent Great Lakes Indian ethnohistorian, has reviewed the history of the Hay Lake/Charlotte Beach land claim. His report on the claim, directed to the members of the Committee, is attached as Attachment 1. I will attempt to summarize his findings in my testimony.

The Sault Ste. Marie area Chippewa bands, among many other bands throughout the Upper Great Lakes, participated in a series of cession treaty negotiations by which large tracts of land were sold to the federal government. These lands, which later became a large portion of the State of Michigan, were ceded to the United States in 1807, 1819, 1820, and 1836. The terms of the Treaty of 1836 are particularly significant to the story of my people.

The Treaty signed by our ancestors in 1836 promised to set aside certain lands for us in perpetuity. When the 1836 cession Treaty was sent to Congress for ratification, however, the Senate unilaterally inserted a provision which limited protection of the lands reserved under it to a five-year term. As a result, over the course of a relatively short period of time the Chippewa lost hundreds of thousands of acres of land, in direct contravention of the express terms of the Treaty that had been signed by them.

In part to rectify the injustices done by the 1836 Treaty, the United States in 1855 entered into another Treaty with our ancestors by which new lands were to be reserved for our use. Among these lands was property specifically identified by legal description in the 1855 Treaty at Hay Lake (the area in modern times known as Charlotte Beach). My Tribe's ancestors signed the 1855 Treaty with the express understanding that the Hay Lake/Charlotte Beach land would be set aside for our exclusive use, and that it would be protected from alienation and European settler encroachment.

One day after the 1855 Treaty was concluded, however, the United States Land Office allowed that very land at Hay Lake to be sold to non-Indian speculators. Hence, despite the fact that the United States agents induced our ancestors to sign the 1855 Treaty on the understanding that the Hay Lake/Charlotte Beach land would be included within our reserved lands, and despite the fact that the Senate ratified the 1855 Treaty with the legal description of the Hay Lake/Charlotte Beach lands still in place, the Tribe lost that land by virtue of the United States Land Office's actions.

In order to recover the Hay Lake/Charlotte Beach land, which was of central importance to us for historical, food gathering, and cultural reasons, the Bands used their annuity money to buy back what portion of it that they could. Upon advice of the Bureau of Indian Affairs agent at the time, trust title to the Hay Lake/Charlotte Beach land was conveyed from the land speculators to the Governor of the State of Michigan, to protect the land from further alienation and encroachment by the Trade and Intercourse Act's prohibition against the alienation of Indian lands without express Congressional consent.

My ancestors hunted and lived on the Hay Lake/Charlotte Beach property for nearly thirty years undisturbed by the State of Michigan. In the 1880s, however, Chippewa County determined that it would impose taxes on the property. Even though he held trust title, the Governor of the State of Michigan failed to respond to the tax assessment in any manner whatsoever. Despite repeated requests from our people to the Bureau of Indian Affairs for help, the federal government also took no action. Because neither the federal government nor the State of Michigan acted to protect our lands as was required by the Trade and Intercourse Act, the County moved to foreclose on the property and our ancestors were evicted.

I want to make you aware of what the Bureau of Indian Affairs' own agent wrote in 1880 about the impending sale of our Hay Lake/Charlotte Beach lands:

At the ``Sault", the Old Chief Shaw wa no is in very destitute circumstances, and much agonized as his land which amounts to some 300 acres bought by annuity money and deed in trust to the Governor of this State many years ago, has been sold for taxes...*The Old man wished me to do something for him or ask the Government to provide the means to cancel this claim for taxes*, He is Old, sick & Blind; and all his people are very poor, simply sustaining life by fishing, picking berries, or an odd days work which chance may throw in their way...

Emphasis added. G. Lee, Michigan Indian Agent, in a letter to the Commissioner of Indian Affairs dated August 1880.

In 1916, we again petitioned the Bureau of Indian Affairs for help when on behalf of the Community tribal member William Johnson wrote to the Bureau begging for assistance in regaining the Hay Lake lands. The Bureau rebuffed his petition.

In 1925, an attorney, John Shine, wrote again on the Tribe's behalf, begging the Bureau for help in recovering the Hay Lake property. The Bureau again rebuffed the Tribe's petition for help.

In the 1970s, the United States' own expert witness (widely considered to be the preeminent historian of Indians in the Great Lakes area) in the U.S. v. Michigan treaty fishing rights litigation highlighted the existence of the Hay Lake/Charlotte Beach claim in her expert report submitted to the Federal District Court for the Western District of Michigan. See Report of Dr. Helen Tanner, dated April 1974, for the United States in U.S. v. Michigan, Civ. Case No. 2:73 CV 26 (W.D. MI).

In the 1980s, the Bay Mills Indian Community repeatedly petitioned the Department of the Interior to include the Hay Lake/Charlotte Beach claim on its list of protected historical Indian claims pursuant to 28 U.S.C. Sec. 2415. Through a Field Office of the Office of the Solicitor, Interior erroneously denied our Tribe's petition for the simple and only reason that the Hay Lake/Charlotte Beach land was held in trust by the State rather than the federal government. (A copy of that determination letter is attached as Attachment 2.) The Field Solicitor's refusal was not legally supportable. Existing federal court opinions made clear that the Indian Trade and Intercourse Act protects Indian lands held by states, and Congress had specifically directed Interior to protect all historical Indian claims except those that ``had no legal merit whatsoever." (See section 3(a) of Pub. L. 97-394.) Further, the Field Solicitor's refusal was inconsistent with general Interior policy because in fact *Interior had included on the final list of protected historical claims a fair number of state-held lands, including some held for state recognized tribes.*

The Tribe was not the only entity seeking resolution of the Hay Lake/Charlotte Beach claim. Property owners in the area were contacting both the Department of the Interior and the local Congressman, seeking help in their efforts to obtain clean title to their land. An example of that effort is correspondence with then-Congressman Bob Davis, attached as Attachment 3.

In the 1990s, we tried to obtain redress in the courts. Our efforts were unsuccessful. Our federal court case was dismissed on a procedural technicality (the court found that the mere possibility that the Sault Tribe might have a claim to the Hay Lake/Charlotte Beach land prevented the case from going forward). We fared no better in the state courts, which were unable to address our equitable claim for land, and had little understanding of the federal Indian legal issues before them. In both forums, our claim was dismissed on procedural grounds, the merits of the Bay Mills claim to the land unaddressed. Additionally, while these cases were pending, the Tribe was informed by the Department of the Interior that no court decision could unilaterally extinguish its claim to the Hay Lake/Charlotte Beach land. Extinguishment of the Tribe's claim required Congress to act, with or without a court order approving a land claim settlement.

In 2002, we entered into direct settlement negotiations with the Governor of the State of Michigan to resolve the claim. To Governor John Engler's credit, he determined that it would work with our Tribe to address this long-standing grievance. Subsequently, we were able to forge a settlement that addresses the needs and concerns of the Bay Mills Indian Community, of the State of Michigan, of the people living within the Charlotte Beach land claim area, and of the people living in Port Huron. That settlement, executed by the Bay Mills Indian Community and the State in August 2002, and as recently amended by agreement with Governor Jennifer Granholm, is the backbone of the legislation here before you today.

I underscore this history because I want the Congress to understand the long-standing importance that this land has held for my people. I want the Congress to understand that this land claim is not about gaming, not about forum shopping, not about modern-day business deals. This land claim exists because of negligence by Land Office staff, historical inaction by Department of Interior staff, and abandonment of trustee obligations by the Governor. Resolution of this land claim is about finally securing just compensation for the Tribe, finally being able to close this painful chapter of our history, and finally being able to shift our focus to the future. It is about finally achieving justice.

The Settlement

In commencing settlement negotiations with the Governor of Michigan, the Bay Mills Indian Community well understood that no agreement would be possible without compromise. Because achieving closure to this long-standing wrong was very important to our community, we worked hard to reach an accommodation with the Governor by which a resolution to our claim would serve both our goals.

The Tribe's goals were to recover lost lands, and to receive monetary compensation due us for having lost possession of those lands. The Governor's goals were to quiet title to the claim area property without displacement of the people living there, to construct a settlement that

would not have an impact on the State's budget, and to ensure that any replacement lands would be located in a community desirous of our presence there.

The Settlement accomplishes both the Tribe's and the Governor's goals in a fair and equitable manner. Indeed, we would like to think that the spirit of mutual respect and cooperation with which these negotiations took place should serve as a model for how such difficult and emotionally charged issues can be resolved. In addition, I note that the general structure of the Bay Mills settlement is consistent with other land claims settlements already enacted by Congress. (See, for example, the Torres- Martinez Desert Cahuilla Indians Claims Settlement ratified in the 106th Congress and codified at 25 U.S.C. sec. 1778, in which that tribe's claim for trespass damages was resolved with replacement lands and a related gaming opportunity.)

Indian Gaming

We understand that there is a reluctance to allow Indian land claim settlements to be used to as vehicles for the expansion of Indian gaming. We share that concern. We think, however, that the United States owes it our people, particularly given the long and unfortunate history of our dealings with the United States, to take a hard look at the merits of this land claim, and to understand the proposed settlement in the context of our land claim rather than through the filter of modern controversies surrounding Indian gaming.

If we had never been kicked out of our Hay Lake/Charlotte Beach property, if either the United States government or the State of Michigan had honored and enforced the Trade and Intercourse Act when Chippewa County sought to (and achieved) our dispossession through tax foreclosure sales, then everyone, everywhere, would understand the Hay Lake/Charlotte Beach property to be "Indian lands" held by the Tribe prior to the enactment of the Indian Gaming Regulatory Act (IGRA). Had our ancestors never been evicted by county tax assessors, we would continue to live there to this day, and we would be entitled, under IGRA, to operate an Indian gaming facility there.

The Governor made clear that he would not agree to my Tribe's recovery of the Hay Lake/Charlotte Beach land because it could result in the eviction of current landowners in the Hay Lake/Charlotte Beach area. The Governor instead offered his support for the concept of finding new lands to replace the Hay Lake/Charlotte Beach property in return for our agreement that our trust title to the Hay Lake/Charlotte Beach property would be extinguished by Congressional action. By agreeing to provide replacement land to the Tribe, the Governor has alleviated the anxiety of persons currently living in the Hay Lake/Charlotte Beach claim area that they might some day be evicted from their homes. By agreeing that such replacement lands should be eligible for gaming, the Governor has agreed that the replacement land should in fact have the same status as the lands we have agreed to give up--that is, the replacement land should be treated as if it, too, had been held by the tribe since the mid-nineteenth century.

The Governor insisted that we locate replacement lands in a community that was desirous of hosting us. We have done that. As you will hear directly from representatives of Port Huron today, that community affirmatively wishes our Tribe to locate its replacement lands there.

I also wish to underscore that the Governor insisted that he would not approve appropriation of money from the State budget to compensate us for the damage done to us by having lost the use and benefit of these lands for more than a century. We have agreed to that; indeed, have agreed that we will try to achieve full compensation based on the money **we ourselves** make through economic development on the replacement lands. Those funds will generate the income we require in order to provide governmental services and programs to the Tribe's members and their families. Without that income, we would have no choice but to come back both to the State and the Federal Government, and insist that we be compensated for both parties' failure to protect our lands from alienation as required by the Trade and Intercourse Act.

For these reasons, I strongly and respectfully urge you to consider this settlement not through the lens of Indian gaming, but rather in the context of the long and well-documented history of the wrong done to my people, and in the context of the overall wisdom of a settlement crafted to create the greatest good for the most people.

Conclusion

I recognize that there are additional issues which may be of interest or concern to the Committee. I am happy to address any and all issues, and I welcome your questions today. I once again thank you for the opportunity to tell the Bay Mills Indian Community's story, and I respectfully urge you to support the efforts of the Bay Mills Indian Community, the citizens of Charlotte Beach and Port Huron, and the State of Michigan, by providing the necessary Congressional ratification of our settlement without further delay.