Testimony of Aaron Payment

Chairperson of the Sault Ste. Marie Tribe of Chippewa Indians
In Support of H.R. 4115 and H.R. 2176
before the
U.S. House Committee on Resources
February 6, 2008

Mr. Chairman and members of the Committee, my name is Aaron Payment. I speak to you today as the elected Chairperson of the Sault Ste. Marie Tribe of Chippewa Indians, the largest of Michigan's 12 federally recognized Native American tribes. On behalf of our Tribe's 37,000 members who live across Michigan and the world, I would like to thank you and the entire Committee for your consideration of this matter and for giving me the opportunity to be here to testify in support of H.R. 4115 and H.R. 2176.

Before I begin the formal part of my testimony, I want to express the Sault Tribe's deepest gratitude to Michigan Representatives John Dingell, Bart Stupak and Candice Miller. Their leadership has the potential to settle a more than century-old wrong committed against the ancestors of the Sault Tribe and to create more than 2,700 good jobs and hundreds of millions of dollars in new investments in a region of Michigan where the economy is sputtering and desperate for good news. These Representatives care deeply about Michigan's Native people and are working tirelessly to boost our state's economic fortunes. The Sault Tribe is also grateful to Michigan's former Republican Governor, John M. Engler, for his support and for negotiating the 2002 agreement between the State of Michigan and the Sault Ste. Marie Tribe and to our current Democratic Governor, Jennifer Granholm, who has recognized and affirmed the validity of our land claim, negotiated an addendum to the 2002 Engler agreement and has respectfully urged approval of our settlement by the U.S. Congress.

My testimony centers on four main points:

- First, I will focus on the history of Charlotte Beach and the circumstances that gave rise to our land claim. I will show how two Michigan governors have confirmed that the Charlotte Beach lands were wrongly taken from the Sault Tribe's ancestors.
- Second, I will describe the federal court's conclusion that the Sault Tribe has a valid, un-adjudicated claim to the Charlotte Beach lands that were wrongly taken from the Tribe's ancestors.
- Third, I will describe the resolution of the land claim contained in Governor Engler's 2002 Settlement Agreement with the Tribe and Governor Granholm's 2007addendum.
- Fourth, I will demonstrate that the Charlotte Beach settlement falls within the "settlement of land claim" contemplated by the Indian Gaming Regulatory Act and is in no way an expansion of "off-reservation" gaming. Rather, the 2002 settlement creates new trust lands as compensation for lands that were illegally taken from our ancestors.
- Finally, I hope to help you understand how passage of this legislation confirming the 2002 settlement agreement between the State and the Sault Tribe provides just and fair compensation for the wrong done to the ancestral bands of my people more than 100 years ago and how it will add jobs and revenues to Detroit, Wayne County and the State of Michigan
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The history of the Tribe's land claim in Charlotte Beach begins five centuries ago, when Europeans were first setting foot on the lands of what would become the Upper Peninsula of the Great State of Michigan. The Sault Ste. Marie Tribe of Chippewa Indians, together with the Bay Mills Indian Community, is a modern expression of the Anishinabeg who have lived in the Great Lakes since time immemorial. Back in the early 1600s, many of our Anishinabeg ancestors made their homes near the rapids of the St. Mary's River, which they called Powating (Bawating) — the rapids. This area would later become the City of Sault Ste. Marie and Chippewa County, Michigan. In the mid 1600s, our ancestors greeted the French who traveled from Montreal to the Sault to obtain beaver pelts for the fledgling fur trade. When French sovereignty ended a century later in 1763, the English moved into the area and took over what had become a lucrative fur trade. By 1820, the British had been replaced by Americans, and the Anishinabeg ceded 16 square miles of land along the St. Mary's River to the United States to build Fort Brady. We have a long and proud tradition working closely with the Americans to avoid conflict and accommodate settler's needs.

Two important treaties were signed over the next two decades. The Treaty of 1836 — also known as the Treaty of Washington, 7 Stat.491 — was supposed to set aside certain lands for our use in perpetuity. The treaty ceded northern lower Michigan and the eastern portion of the Upper Peninsula to the United States. In return, the Sault Ste. Marie Tribe received cash payments and temporary ownership of about 250,000 acres of land contained in disparate, small reservations located throughout the ceded territory. These reservations were only to last five years, unless extended by the President, which never occurred. Because of the temporary nature of the reservations under the 1836 Treaty, the status of the Ottawa and Chippewa after 1841 was tenuous and uncertain. To address their condition, the United States entered into a second treaty with these same tribes in 1855.

The Treaty of 1855 — also known as the Treaty of Detroit, 11 Stat.621— is central to our land claim. The treaty was agreed to on July 31, 1855 and ratified by the Senate on April 15, 1856. Under the Treaty, the U.S. government agreed to withdraw large parcels of land from the public domain – meaning those lands were no longer available for purchase from the federal government and were to be reserved for the use of our tribe. All of the lands were located within the territory ceded under the Treaty of 1836. The Indians — including our ancestors — were allowed to select land allotments from the withdrawn areas for a 10-year period. After 10 years, all unselected lands were to be restored to the public domain. The area in Chippewa County now known as Charlotte Beach was among the lands specified in the treaty for the use of my ancestors and were for withdrawn from public domain under the Treaty of 1855, 11 Stat.621.

In June of 1856, a non-Indian land speculator named Boziel Paul received a patent from the federal government to lands in Charlotte Beach even though those lands had been designated for withdrawal from the public domain for use by my ancestors under the 1855 treaty. [1]

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[1] United States Patent (June 16, 1856), recorded in Liber 3 of Deeds on page 147 (Oct. 12, 1857), granting Lot 1, Sec. 18, Township 45N, Range 2E; United States Patent (June 16, 1856), recorded in Liber 3 of Deeds on page 150 (Oct. 12, 1857), granting Lot 1, Sec. 7, Township 45N,

After receiving the patent to the Charlotte Beach lands, Paul visited the property and discovered that Indians — including my ancestors — were already living there.

To avoid conflict, on October 12, 1857, Paul conveyed the lands to then Michigan Governor Kingsley S. Bingham in trust for the original bands of the Sault Ste. Marie Indians.[2] The Governor, who may or may not have been aware of the 1857 conveyance, failed to pay property taxes on the Charlotte Beach lands, which were then sold in 1884 and 1885 at a tax sale to third parties, who were non-Indians, even though the land belonged to the Bay Mills and Sault Tribes ancestors, who were then living on the land. [3]

In sum, the wrong committed on the Sault Tribe's ancestors was that lands that had been designated for withdrawal from public domain for the benefit of the tribal members were, in fact, selected by a non-Indian, who received a patent to these lands, in contravention to the 1855 Treaty of Detroit.

Additionally, after that non-Indian subsequently transferred the land to the governor of Michigan in trust for the benefit of our ancestors, the state of Michigan failed to maintain ownership of the lands for the tribe's benefit and, instead, improperly lost the lands for non-payment of taxes.

Make no mistake; **this Land was illegally taken from the Sault Tribe.**

As a result of this illegal land taking from the tribes, not only were the tribes denied rights to their ancestral lands that were designated for their benefit, but the current homeowners face clouded title, since both Bay Mills and the Sault Tribe claim the land as their own, as do the homeowners. These 200 homeowners now face uncertain property rights and diminished property values. As Congressmen John Dingell and Bart Stupak and Congresswoman Candice Miller wrote to you and Ranking Member Young: ".,..we can assure you that for the property owners and taxpayers in Charlotte Beach, this "purported" land claim is all too real. Clouding of private property titles as a result of this unresolved claim has resulted in homeowners finding as much as 90% of their property's assessed value has been lost. In turn, this has led to a depreciation of the real estate tax base of Chippewa County, resulting in lost revenue and reduced government services."

Range 2E; United States Patent (June 16, 1856), recorded in Liber 3 of Deeds on page 149 (Oct. 12, 1857), granting Lot Nos. 2, 3 and 4, Sec. 7, Township 45N, Range 2E

[2] Warranty Deed (Oct. 12, 1857), recorded in Liber 3 of Deeds on page 150, conveying Lot Nos. 1, 2, 3 and 4, Sec. 7, Township 45N, Range 2E to Kingsley S. Bingham for consideration of $375.00; Warranty Deed (Oct. 12, 1857), recorded in Liber 3 of Deeds on page 147, conveying Lot No. 1, Sec. 18, Township 45N, Range 2E, to Kingsley S. Bingham for consideration of $375.00

[3] State Tax Land Deed (Sept. 6, 1884), recorded in Liber 11 of Deeds on page 516, conveying Lot Nos. 1, 2, 3 and 4, Sec. 7, Township 45N, Range 2E, for consideration of $35.00.

It is also important to note that both a federal court and a state court have addressed the land claim. Indeed, the federal court confirmed an important element of the Sault Tribe's claim.

In 1998, the United States District Court for the Western District of Michigan dismissed a quiet title action addressed to the Charlotte Beach claim brought by the Bay Mills Indian Community. The suit was filed against various land owners of the Charlotte Beach tracts and a title company insuring their titles. The District Court ruled that Bay Mills could not prosecute the quiet title action alone because it was not the only tribe that had a claim to the Charlotte Beach properties.

Indeed, the Sault Tribe had the identical claim to the lands. As I noted earlier, both the Bay Mills Indian Community and the Sault Ste. Marie Tribe of Chippewa Indians are modern-day political successors in interest to the Original Bands of Sault Ste. Marie Indians. Thus, the Sault Tribe was held to be an indispensable party to the lawsuit. The court concluded that in the Sault Tribe's absence, the lawsuit could not proceed, and since the Tribe enjoys sovereign immunity, it could not be forced to participate in the litigation without its consent.

The District Court's decision was affirmed by the United States Court of Appeals for the Sixth Circuit in a per curium opinion. *Bay Mills Indian Cmty. v. W. United Life Assurance Co.,* 208 F.3d 212 (6th Cir. 2000).

In a letter of November 14, 2007 to Chairman Rahall and Ranking Member Young, Governor Granholm described the legal situation as follows, "The federal courts have held that both the Bay Mills Tribe and the Sault Tribe trace their ancestry to the two Chippewa bands named in the deed to the disputed Charlotte Beach lands and that both Tribes, accordingly, share in any potential claim based on those lands; both tribes are necessary parties in any effort to conclusively resolve those claims." Governor Granholm concluded that "in order to adequately protect the legal interests of the state and its citizens, it is vital for congress to act to approve both of these amended settlement agreements, allowing these claims to be resolved fully and finally."

At about this same time, Bay Mills initiated a lawsuit against the State of Michigan in its Court of Claims, claiming that it was entitled to money damages against the State because of the Governor's failure to keep the Charlotte Beach lands in trust for its benefit, consistent with the Paul deed in the 1880s. In addition, Bay Mills contended that it was entitled to money damages because of the State's action allowing the lands to be forfeited due to the failure to pay taxes on the property.

Although the Bay Mills' lawsuit against the State of Michigan in state court was rejected, it was not because that court concluded that there was no valid land claim. The Michigan Court of Appeals held that the State was not liable to Bay Mills for money damages primarily because the statute of limitations barred the claim. *Bay Mills Indian Cmty. v. Michigan*, 626 N.W.2d 169, 175-76 (Mich. Ct. App. 2001). To conclude that the State is not liable in money damages to Bay Mills is, of course, far different from concluding that Bay Mills had no valid claim to the Charlotte Beach lands.

This legislation resolves the century old historical land claim by Bay Mills and the Sault Tribe. In 2002, Governor John Engler reached separate land claim settlements with both tribes. Under the settlements, the tribes agreed to relinquish any and all legal and equitable land claims to the Charlotte Beach lands, and, in return, the Governor agreed to select alternative lands in Michigan for the tribes. As the agreement with the Governor reads, "the Governor, as chief executive officer of the State of Michigan…desires to settle the land claim for the benefit of the State of Michigan and, in particular, the Charlotte Beach landowners…"

In 2007, Governor Jennifer Granholm, amended and endorsed the 2002 agreement stating in her November 14 letter to Chairman Rahall and Ranking Member Young, "I strongly encourage you to support H. R. 4115 provided that it includes the Settlement Agreement as modified by the enclosed addendum."

Two other issues regarding this legislation need to be addressed:

First, it is important to understand that land claims are permissible under the Indian Gaming Regulatory Act(IGRA). In fact, IGRA includes a land settlement provision. When IGRA was enacted in 1988 it was contemplated that situations may arise where tribal governments may wish to conduct gaming on lands acquired through land claim settlements, and IGRA specifically allows this to happen. In effect, under this IGRA exception, new trust lands are established — at times long distances from the tribe's original reservation.

Soon after IGRA was enacted, Congress passed the Seneca Nation Settlement Act of 1990, 25 U.S.C. §§ 1774-1774h The United States wanted to make up for the past inequities associated with rental payments to the Seneca Nation Indians, located in western New York, under 99-year leases authorized by Congress in 1875. The leases were substantially under market value. Under the Seneca Nation Settlement Act(SNSA), the Seneca Nation Indians received money from the United States and the State of New York. Those funds could not be obtained by the Seneca Nation Indians until the tribe entered into new leases and released all claims under the old leases. Some of those funds could be used to purchase land for economic development purposes, including gaming. In 2002, the Seneca Nation Indians and the State of New York entered into a tribal-state class III gaming compact under IGRA, which authorized the Seneca to establish three gaming facilities: one on its reservation and one each in the cities of Buffalo and Niagara Falls. The money used for the purchase of gaming sites in these three areas was from the SNSA, the land claims settlement act.

In addition, we are aware of at least three other Indian casinos operating on lands very distant from those tribes' reservations. The Forest County Potawatomi Community of Wisconsin owns and operates a casino in downtown Milwaukee, which is roughly 200 miles south of the Tribe's headquarters and reservation in Crandon. The Kalispell Tribe in Washington State operates a casino in the City of Airway Heights near Spokane, about 75 miles south of its main reservation. The third is the Keweenaw Bay Indian Community in Michigan. This Tribe operates a casino near Marquette, roughly 80 miles west of its reservation.

Although these casinos are operated on lands made eligible for gaming under a different exception to IGRA than the one at issue here, they nonetheless demonstrate that under some circumstances gaming may occur on parcels of land very distant from the reservation of the affected tribe. More importantly, the Department of the Interior has made it quite clear that its difficulty with allowing gaming to occur on parcels far from the affected tribe's reservation is limited to applications for exception to IGRA's prohibition against gaming on off-reservation parcels under the so-called two-part determination exception in IGRA, 25 U.S.C. § 2719(b)(1)(A). Here, the Sault Tribe is not seeking a two-part determination for the new alternative lands. Rather, it seeks to game on the alternative lands agreed to in the 2002 agreement because that land would be taken into trust in settlement of a land claim, a different exception to IGRA's prohibition against gaming on after-acquired lands. See 25 U.S.C. § 2719(b)(1)(B)(i).

Secondly, there is a misconception that this legislation will lead to "off-reservation gaming." **In fact, the IGRA exception embedded in this legislation takes new lands into trust as the remedy for the lands that were unfairly taken from Sault Tribe.** Indeed, the legislation will lead to new trust lands and not "off-reservation gaming."

Additionally, a constitutional amendment approved in 2004 by Michigan voters to limit gaming states that the requirement *"does not apply in Indian tribal gaming."* In fact, the amendment also requires new casinos to win the approval of local voters before they can open. All the localities involved have approved ballot initiatives supporting projects in their communities

Before I conclude, I would be remiss not to emphasize the importance of casino gaming to my Tribe and to the State of Michigan. Before gaming, unemployment among my tribal members exceeded **50 percent**. Today, gaming provides good jobs to thousands of Native Americans and non-Indians across our state.

Since our tribe is so large, we do not have "per capita" payments to our tribal members. All of our revenue goes to services for our 33,000 members. With federal entitlements, we receive just 45 percent of the established need for our members who reside in our Upper Peninsula service area. We pick up the other 55 percent out of gaming revenue. 64 percent of our members reside outside of our service area, including approximately 2000 in the tri-county Detroit area, we do not receive any federal entitlements for these members. Our business ventures provide revenues that have enabled the Sault Tribe to provide health care to our members … to open an award-winning school for tribal children … to provide the services that our tribal elders deserve and long did without … to send tribal members to college … to provide a myriad of human service programs … to pave roads, buy public safety equipment, provide recreational opportunities, and so much more. Because of gaming, thousands of my tribal members have escaped state and federal welfare programs for the hope and opportunities that only gainful, meaningful employment can provide. A new property on the alternative lands that Governor Engler selected, Governor Granholm endorsed and local voters approved would boost benefits and services to our members.

It would also benefit the City of Detroit, where unemployment is in double digits and Wayne County, where unemployment is nearly 9 percent. Detroit currently has three casinos and the Sault Tribe is the majority owner of one of the properties, Greektown Casino. We are currently expanding that property and will do nothing to jeopardize that investment or take away jobs from this casino or Detroit as a whole. Indeed, the Sault Tribe wants the Detroit gaming market and the City of Detroit to succeed and to thrive.

Their will be a net gain of jobs for the region, increased tourism dollars and an increase in revenues to the State of Michigan, Wayne County and the City of Detroit. A new project will bring at least 2700 new jobs to the region. Detroit's gaming market — with more than 4 million people and thousands of visitors daily — can easily support additional properties. In fact, additional properties will help Detroit become even more of a tourism destination. I want to be clear, the Sault Tribe is committed to the City of Detroit.

Finally, I am grateful for the strong support we have received from so many people.

Federal, state and local officials — Democrats and Republicans — support the agreement with Bay Mills and the Sault Tribe as a fair way to address the Charlotte Beach land claim within the confines and spirit of the law. As I have noted, two Michigan governors have negotiated and supported the agreement — John Engler, a Republican and Jennifer Granholm a Democrat. Michigan Congressmen John Dingell and Bart Stupak and Congresswoman Candice Miller have all worked tirelessly for justice for our tribe, to assist the economy of the State of Michigan and help Charlotte Beach homeowners. Local voters in three Michigan communities — Romulus, Port Huron and Flint — have approved ballot referenda in favor of the proposed facilities.

Quite frankly, the loudest arguments against H.R. 4115 and H.R. 2176 come from Las Vegas casino interests and gaming tribes that do not want competition to their own businesses. Our interest is that we are justly compensated for the illegal land taking from our tribe and that the titles are cleared for the many families who today own homes on Charlotte Beach lands.

This land was taken illegally from my ancestors. We have waited for over a century for a resolution. A fair and equitable settlement to our Charlotte Beach land claim is found in this legislation. On behalf of all members of the Sault Tribe, I respectfully urge the Committee and all members of Congress to approve H.R. 4115 and H.R. 2176.

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