

TESTIMONY
OF
NORMAN W. DESCHAMPE

Before the

House Natural Resources Committee

Thursday, June 5, 2008, at 10:00 a.m.

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 Norman Deschampe, I am President of The Minnesota Chippewa Tribe as well as Chairman of the Grand Portage Band of Lake Superior Chippewa Indians. I am here to testify in support of H.R. 3699, a bill that would provide for the use and distribution of the funds awarded to the Minnesota Chippewa Tribe in Minnesota Chippewa Tribe vs. United States, Docket Nos. 19 and 188, United States Court of Federal Claims.

I support H.R. 3699 because it provides for the distribution of funds being held in trust for the Minnesota Chippewa Tribe into six equal shares and distributes those shares to each of the constituent bands of the Minnesota Chippewa Tribe.

Pursuant to the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, the Minnesota Chippewa Tribal Executive Committee is the governing body of the Minnesota Chippewa Tribe. The Minnesota Chippewa Tribe was the plaintiff in the cases referred to as Docket Nos. 19 and 188. The expenses to prosecute the claims were shared equally by the member reservations and the decisions regarding such prosecution were made by the Minnesota Chippewa Tribal Executive Committee. Resolution No. 01-99 was passed at the Tribal Executive Committee level to approve the settlement of the claim and Resolution No. 40-00 was passed by the Tribal Executive Committee to allocate the funds on an equal basis to each of the six member reservations.

Distribution Legislation

The Minnesota Chippewa Tribe's "Nelson Act Claims" were originally filed by the Minnesota Chippewa Tribe in the late 1940's and early 1950's before the Indian Claims Commission ("ICC"). Obviously it took decades of sustained effort to secure this \$20 million settlement in 1999. Soon after these funds were awarded, the Tribal Executive Committee enacted Resolution 40-00. If the Department had simply accepted the Minnesota Chippewa Tribe's distribution plan, these financial resources would have been made available to the respective Bands eight years ago. This could have been accomplished without the need for federal legislation. As a result of the Department's decision to disregard the sovereign authority of the Minnesota Chippewa Tribe, these funds may now only be distributed pursuant to federal legislation.

In light of the necessity for distribution legislation, the Minnesota Chippewa Tribe appreciates Congressman Oberstar's assistance in this matter. He has shown particular interest and regard for the Minnesota Chippewa Tribe's sovereignty. His proposed legislation, H.R. 3699, reflects his recognition that the Tribal Executive Committee is the governing body of the Minnesota Chippewa Tribe. Congressman Peterson's legislation, H.R. 2306, also shows his interest in this matter. Unfortunately, his proposed bill reflects many, if not all, of the flawed assumptions incorporated into the legislative proposal submitted by the Department of Interior ("Department") on April 26, 2007. As the Committee is aware, on May 22, 2008, Assistant Secretary of Interior Carl Artman formally rescinded the Department's previous support for such legislation. A copy of Assistant Secretary's Artman's letter is attached.

The Minnesota Chippewa Tribe is very hopeful that the Assistant Secretary's letter will provide the predicate necessary for this Committee and all Members of Congress to recognize the vital sovereignty principle that essentially compels the enactment of distribution legislation that reflects the position of the Minnesota Chippewa Tribe for an equal division of the judgment funds between all six of the Minnesota Chippewa Tribe Bands.

This testimony will briefly address the flaws in the Department's proposal as well as a discussion of why the equal distribution formula is essential.

Procedural and substantive flaws in the Department's initial proposal

The Department's distribution proposal was based on a fatally flawed June 6, 2001, Results of Research report. The Tribal Executive Committee has objected to that document since it first was drafted. Subsequent to its issuance, the Tribal Executive Committee has met with each of Mr. Artman's predecessors and asked that the document be withdrawn and revised. Following receipt of the November 25, 2005, draft legislation, the Tribal Executive Committee met with the Acting Principal Deputy Assistant Secretary to once again explain its opposition to the distribution plan.

The Secretary's decision to submit a plan was not in accordance with applicable law. A Bureau of Indian Affairs formula for allocation is not necessary because the only entity eligible to participate in the award is the Minnesota Chippewa Tribe. The Minnesota Chippewa Tribe

brought the claims, prosecuted the claims, settled the claims, and was awarded the judgment in the claims. Indeed, before the Court of Federal Claims would approve the settlement in ICC Dockets 19 and 188, the Department of the Interior was required to review the Tribal Executive Committee Resolution approving the settlement to assure the Court that it was the valid, binding governmental act of the plaintiff-The Minnesota Chippewa Tribe. (See attached letter).

Failing to accept the Tribal Executive Committee's proposed distribution is tantamount to disregarding the Minnesota Chippewa Tribe's sovereignty. Each of the Bands has 1/6 of the votes on the Tribal Executive Committee and Resolution 40-00 to allocate 1/6 of the award to each Band was supported by a vote of 10-2. Tribal Executive Committee votes have never been weighted by population. The Bureau of Indian Affairs' previous proposal based on proportional distribution based population was simply inconsistent with the Bureau of Indian Affairs' approval of both the original Constitution of the Tribe or the Revised Constitution of the Minnesota Chippewa Tribe; both gave each Band an equal voice in tribal governance and management of tribal resources. As stated above, the Bureau of Indian Affairs accepted a majority vote of the Tribal Executive Committee to settle the claims. It did not insist that there be an affirmative vote by those Tribal Executive Committee members representing a certain percentage of the population. It necessarily follows that the Bureau of Indian Affairs and Congress defer to the Tribal Executive Committee vote on how the resulting award should be allocated within the Tribe.

We urge the Congress to take action that will fulfill the Federal government's trust obligation to the Minnesota Chippewa Tribe. The Minnesota Chippewa Tribe is pleased that Assistant Secretary Artman has removed the cloud that obscured what is essentially a straightforward question of deferring to tribal sovereignty and the dictates of the Distribution Act. Congress can now proceed to fulfill these obligations and show appropriate regard and respect for the Minnesota Chippewa Tribe's sovereignty by enacting H.R. 3699.

Thank you again for the opportunity to testify on this important matter.

I would be pleased to answer any questions the Committee may have.

THE MINNESOTA CHIPPEWA TRIBE
TRIBAL EXECUTIVE COMMITTEE

RESOLUTION NO. 01-99

Provisional Approval of Proposed Settlement and Stipulation

WHEREAS, The Minnesota Chippewa Tribe is a federally recognized Indian tribe, organized under the Indian Reorganization Act of 1934, and is comprised of six member reservations (Bois Forte, Fond du Lac, Grand Portage, Leech Lake, Mill Lacs, and White Earth); and

WHEREAS, Pursuant to Article II of its Revised Constitution, the Tribe has all powers inherent in a tribal government, including the powers to develop tribal resources, promote the general welfare of tribal members, and maintain justice for its members; and

WHEREAS, Pursuant to Article I of its Revised Constitution, the Tribal Executive Committee has the power to protect and advance the rights of the Tribe, to deal with interests in tribal assets, and to negotiate agreements on behalf of the Tribe with the federal government; and

WHEREAS, The Minnesota Chippewa Tribe is the Plaintiff in two cases currently pending before the United States Court of Federal Claims, entitled Minnesota Chippewa Tribe v. United States, Docket No. 19 and Docket No. 188 (hereafter, "the Cases"), which were filed with the Indian Claims Commission by the Tribe in 1948 and 1951; and

WHEREAS, The Tribal Executive Committee understands that the Complaints in the Cases did not ask for the return of ceded land, that the Indian Claims Commission Act under which the cases were filed did not allow return of ceded land as a remedy, and that the United States Court of Federal Claims Judge currently hearing the Cases has affirmed that he does not have jurisdiction to order the United States to return ceded land to the Tribe; and

WHEREAS, The Tribal Executive Committee understands that a settlement of the monetary claims in the Cases will not legally prevent the Tribe from seeking the return of land or other remedies from Congress; and

WHEREAS, The Tribal Executive Committee on October 27, 1997, authorized a referendum of tribal members on the question of whether to settle the Cases for a proposed twenty million dollar (\$20,000,000) payment from the United States to the Tribe and such referendum resulted in a vote of 4,190 in favor of settlement and 1,224 votes against settlement; and


WHEREAS, The Tribal Executive Committee has reviewed the attached 5/22/98 Draft Joint Motion and Stipulation for Entry of Final Judgment that has been approved by the attorney of records for the United States, and will be recommended for final approval by such attorney of record to the United States Attorney General or other appropriate United States officials; and

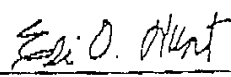
WHEREAS, The Tribal Executive Committee understands that the attached 5/22/98 Draft Joint Motion and Stipulation for Entry of Final Judgment, if changed at all will require additional future approval by the Tribal Executive Committee.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Tribal Executive Committee certifies the following results of the Nelson Act Claims Referendum that was authorized October 27, 1997; 4,190 votes in favor of the proposed settlement; 1,224 votes against the proposed settlement; 13 blank or spoiled ballots.
2. The Tribal Executive Committee provisionally approves the proposed settlement that was endorsed by tribal referendum, and provisionally approves the attached 5/22/98 Draft Joint Motion and Stipulation for Entry of Final Judgment.
3. The provisional approval of paragraph 2 shall become final if the United States agrees formally and finally to the unmodified terms of the attached 5/22/98 Joint Motion and Stipulation for Entry of Final Judgment, and in such case the Tribal Executive Committee hereby authorizes its President and its Attorney of Record to sign such unmodified Joint Motion and Stipulation and any other supporting documents on behalf of the Tribe.
4. If the attached 5/22/98 Draft Joint Motion and Stipulation for Entry of Final Judgment is modified in any way, the authorization of this Resolution is not effective, and the Tribal Executive Committee must re-authorize the Settlement and the final Joint Motion and Stipulation for Entry of Final Judgment before the President and Attorney of Record may sign it.

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a vote of 6 for, 3 Against. Carried. At a Meeting of The Minnesota Chippewa Tribe Executive Committee, a quorum present, held on July 1, 1998, at Vermillion, Minnesota.


Norman W. Deschampe, President
THE MINNESOTA CHIPPEWA TRIBE


Eli O. Hunt, Secretary
THE MINNESOTA CHIPPEWA TRIBE

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RESOLUTION 40-00

- WHEREAS,** The Minnesota Chippewa Tribal Executive Committee is the duly elected governing body of the Minnesota Chippewa Tribe, comprised of the six member reservations (Bois Forte, Fond du Lac, Grand Portage, Leech Lake, Mille Lacs and White Earth), and
- WHEREAS,** The Minnesota Chippewa Tribe is the plaintiff in cases referred to as Docket Nos. 19 and 188 ("the Claims") originally before the Indian Claims Commission and, subsequently, before the United States Court of Federal Claims; and
- WHEREAS,** The Claims have been settled by a judgment in which the plaintiff Minnesota Chippewa Tribe has been paid twenty million dollars, which has been placed in trust for the benefit of the Minnesota Chippewa Tribe, and is currently earning interest for the Tribe; and
- WHEREAS,** The Minnesota Chippewa Tribal Executive Committee is the governing body of the Tribe, and has the inherent sovereign authority to allocate the proceeds of the judgment among its member Bands, acknowledging that the Bands must meet the requirements of the Indian Tribe Judgment Funds Use or Distribution Act (25 U.S.C. §§ 1401-1407) before expending any of the proceeds; and
- WHEREAS,** The Claims have been prosecuted by the Minnesota Chippewa Tribe for the joint benefit of the six member Bands; and
- WHEREAS,** The expenses of the prosecuting the Claims, and the Tribal decisions regarding such prosecution, have been shared equally by the six member Bands; and
- WHEREAS,** Tribal lands (such as those involved in the Claims) have been considered to be owned jointly by the six member Bands.

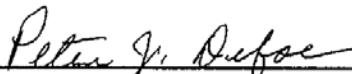
NOW THEREFORE BE IT RESOLVED THAT,

1. The Tribal Executive Committee hereby allocates each member Band an equal share of the net proceeds of the judgment funds from the Claims. The net proceeds shall be considered to be the judgment funds currently held in trust plus interest thereon, minus any funds that may be needed to repay loans from the Department of the Interior for expert witness assistance.


2. The Tribal Executive Committee hereby recommends that the Secretary of the Interior provide separate trust accounts to each member Band for the purpose of holding its share of proceeds until such share is lawfully expended in accordance with the Indian Tribe Judgment Funds Use or Distribution Act (25 U.S.C. §§ 1401-1407).
3. The Tribal Executive Committee hereby determines that the funds allocated by this Resolution shall constitute full repayment by the Tribe of all funds loaned to the Tribe by the member Bands and used by the Tribe for expenses relating to prosecution of the Claims.

BE IT FURTHER RESOLVED THAT, the President of the Tribal Executive Committee is instructed to execute such documents and perform other such tasks as are necessary or desirable to implement this Resolution.

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a roll call vote of 10 For, 2 Against, 0 Silent, with Eli Hunt and Linda Johnston voting against the resolution at a Special Meeting of the Minnesota Chippewa Tribal Executive Committee, a quorum present, held on September 9, 1999 at Onamia, Minnesota.



Peter J. Defoe, President
THE MINNESOTA CHIPPEWA TRIBE



Eli O. Hunt, Secretary
THE MINNESOTA CHIPPEWA TRIBE



United¹ States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

JAN 1999

TELEFAX and REGULAR MAIL

James E. Brookshire
Chief, General Litigation Section
Environment and Natural Resources Division
Department of Justice
P.O. Box 663
Washington, D.C., 20044-0663

Re: Minnesota Chippewa Tribe v. United States, No. 19 and 188, United States Court of
Federal Claims

Dear Mr. Brookshire:

You have asked for our opinion on whether the Minnesota Chippewa Tribe's Tribal Executive Committee Resolution No. 01-99, adopted July 1, 1998, is constitutionally sufficient acceptance of the proposed settlement on behalf of the Minnesota Chippewa Tribe in the above referenced action. Further, you have requested our views on whether the terms of the proposed settlement constitute a fair compromise of the tribe's claims in the subject matter. The proposed settlement would settle claims made by the tribe against the United States for alleged mismanagement in the disposal of certain tribal lands and alleged improper expenditure of tribal trust funds.

There are no specific provisions in the tribal constitution relating to land claims. However, claims based on the wrongful disposition of lands are in the nature of an interest in land and the constitution does make specific provision for the handling of land, interests in land and other tribal assets.

The governing bodies of the Minnesota Chippewa Tribe are the Tribal Executive Committee (TEC) and the Reservation Business Committees (RBC) of the six Minnesota Chippewa reservations. The TEC is composed of the Chairmen and Secretary-Treasurers of each of the six reservations. Article 111, Section 1. The powers of the TEC and the RBC are enumerated in Articles V, Section 1, and Article VI, Section 1, respectively. The TEC has authority to make agreements with the Federal government, Article V, Section 1(e). The TEC has authority, in accordance with Section 16 of the Indian Reorganization Act (IRA)(25 U.S.C. § 476(e)), to prevent any disposition of tribal lands, interests in lands or other assets and to deal with tribal lands, interests in lands and other tribal assets. Article V, Sections 1(b) and 1(f).

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Joint Exhibit 4

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Reserved or excepted from the powers vested by the constitution in the TEC are those powers granted to the RBCs. The constitution implies that the RBCs have authority to deal with their respective reservation lands and assets and, when authorized by the TEC, with tribal lands and assets. However, the constitution does not grant to the RBCs the power to prevent any disposition of tribal lands, interests in lands or other assets similar to that granted to the TEC in Article V, Section I(b).

Thus, I believe that the TEG 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. The only remaining question is whether the resolution was properly adopted.


A quorum of the Committee is seven and the Committee's meetings are governed by Robert's Rules. Bylaws, Article II, Section 5. The President of TEC is elected from within the TEC at the committee's first meeting. Article III, Section 1. The President votes only in the case of a tie. Bylaws, Article I, Section I(g).

It appears from the minutes of the special July 1, 1998, meeting that a quorum was present and that a majority of those present voted in favor of the resolution. The minutes indicate a vote of 6 for and 3 against with 10 members present. The results are consistent with the constitutional restriction that the President can vote only in the case of a tie. Under Robert's Rules, a simple majority vote is sufficient to adopt the resolution approving the proposed settlement. The minutes of the special July 1 meeting were approved on November 2, 1998.

In summary, we believe that Resolution 01-99 is constitutionally sufficient to approve the proposed settlement.

As for your inquiry concerning the fairness of the terms and conditions of the proposed settlement, please be advised that this issue is best addressed by the Assistant Secretary - Indian Affairs. Accordingly, we have referred your request to the Assistant Secretary for response.

If you have any questions or need additional information please feel free to contact me at (202) 208-4591.

Sincerely,

Derril B.
B. Jordan
Associate Solicitor
Division of Indian Affairs

MCT-18



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



MAY 22 2008

The Honorable Nick Rahall
Chairman
House Natural Resources Committee
1324 Longworth Building
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Don Young
Ranking Member
House Natural Resources Committee
1324 Longworth Building
U.S. House of Representatives
Washington, D.C. 20515

Re: The Minnesota Chippewa Tribe Settlement

Dear Chairman Rahall and Ranking Member Young:

On May 26, 1999, the United States and the Minnesota Chippewa Tribe settled claims that had first been brought before the Indian Claims Commission in 1948 and 1951. The Minnesota Chippewa Tribe, through its governing body (the Tribal Executive Committee) had prosecuted the claim and approved the settlement. In September of 1999, the Tribal Executive Committee adopted a resolution allocating each of the Tribe's six constituent Bands an equal share of funds awarded in the settlement.

Pursuant to the Indian Tribal Judgment Funds Act of 1973, 25 U.S.C. §§1401-1408, as amended, the Bureau of Indian Affairs prepared a Results of Research Report and recommended that the funds awarded in the settlement be allocated to each of the Tribe's six constituent Bands based on the number of tribal members currently enrolled with each Band. That June 6, 2001, report has been opposed by the Tribal Executive Committee since it was issued.

On April 26, 2007, the Department sent the House of Representatives and the Senate letters recommending legislation consistent with the 2001 Results of Research Report. Again the Tribal Executive Committee objected and eventually succeeded in obtaining the introduction of legislation (H.R. 3699) that calls for distribution consistent with its 1999 resolution.

It is clear that legislation that is objectionable to the Tribal Executive Committee is not likely to be enacted. Although the 2001 Results of Research Report arrived at one recommendation that we continue to believe was reasonable, that report acknowledged that the distribution formula proposed by the Tribal Executive Committee had merit and was also reasonable. The Department's recommendation to Congress on this issue has been viewed by the Tribal Executive Committee as inimical to tribal sovereignty and self-determination. It is steadfast in its opposition to the Department's proposal. Because the proposed legislation could undermine the Constitution of the Minnesota Chippewa Tribe and be harmful to the Tribe's relationship with the United States, we are rescinding the June 6, 2001, "Results of Research Report in the Judgment on Favor of the *Minnesota Chippewa Tribe, et al. v. United States*, Dockets 19 and 18." We are withdrawing our recommendation of April 26, 2007, that legislation be enacted giving effect to that report.

We hope that the Minnesota Chippewa Tribe can move forward quickly to obtain distribution of the funds in accordance with the processes and law of the Tribe.

Sincerely,



Carl J. Artman
Assistant Secretary - Indian Affairs

cc: U.S. House of Representatives Speaker Nancy Pelosi
U.S. Representative James Oberstar (8th-MN)
President Norm Deschampe, Minnesota Chippewa Tribe