

**TESTIMONY OF AARON PAYMENT
CHAIRPERSON OF THE
SAULT STE. MARIE TRIBE
OF CHIPPEWA INDIANS
BEFORE THE
HOUSE NATURAL RESOURCES COMMITTEE
HEARING ON H.R. 2120, A BILL TO PROCLAIM
SAULT TRIBAL LAND A RESERVATION
JUNE 13, 2007**

My name is Aaron Payment, I am the Chairperson of the Sault Ste. Marie Tribe of Chippewa Indians (Sault Tribe). I would like to thank the Committee for the opportunity to present this testimony on H.R. 2120. I would also like to thank my Congressman, Bart Stupak, for introducing and supporting this legislation and for being a champion not only for the Sault Tribe, but for the many tribes of Michigan. I am also heartened and would like to call your attention to a resolution of support from the Little Traverse Bay Band of Odawa Indians, passed just Sunday night, in support of H.R. 2120.

This bill is important to my Tribe because as I see it, it is simply an effort to correct a failure of the federal government to properly exercise its trust responsibility to my Tribe.

The Sault Tribe reestablished its relationship with the Federal Government in 1972 after twenty long years of seeking federal recognition. The Treaty of March 28, 1836, 7 Stat. 491, with the Chippewa and the Ottawa Bands of Northern Michigan, recognized my Tribe's aboriginal territory. Now, our service area includes Chippewa, Mackinac, Luce, Schoolcraft, Alger, Marquette and Delta Counties. We are a descendancy Tribe with the number of registered members now approaching 33,000. Approximately 12,000 reside in the service area. Since receiving recognition in 1972, my Tribe has engaged in a systematic process to reacquire land in the Upper Peninsula of Michigan within our service area to meet the needs of our members who live in our traditional territory.

The present day trust land of my Tribe is just over a thousand acres located in the City of Sault Ste. Marie and approximately 567 acres located in six separate sites within our treaty territory at Manistique, Wetmore, St. Ignace, Hessel, Marquette and Escanaba, Michigan. All of these lands are held in trust by the

United States for the benefit of my Tribe and are recognized as “Indian Country” subject to tribal and federal jurisdiction pursuant to the 18 U.S.C. §1151.

On these lands, we operate our tribal government and administrative programs, housing programs, health programs, social service programs, law enforcement, and tribal businesses. Of the 1,600 acres held in federal trust, only 124.8 acres have been formally proclaimed as reservation. That is less than 8%. As is the case with many tribes recognized in the last thirty years, we are a land poor tribe when you consider the number of members per acre. Only 500 of our 33,000 members (or about 1.5%) reside on our reservation. Only 4% of those who reside in our service area (500/12,000) are able to reside on the reservation given our limited land base.

H.R. 2120 concerns one piece of land that the Tribe purchased after becoming recognized. In 1983, we requested that the United States take into trust and proclaim this land as a reservation under the Indian Reorganization Act of 1924, 25 U.S.C. §§465, 467. While, the United States took this land into trust in 1983 and that the Tribe requested two times that the it be proclaimed a reservation, the United States failed to proclaim it a reservation (“1983 Parcel”). H.R. 2120 would correct this egregious oversight.

In 1986, my Tribe opened the Kewadin Shores Casino on the 1983 Parcel. Because we did not have a great deal of resources at this time, we elected to open the Kewadin Shores Casino in an existing building. After the enactment of the Indian Gaming Regulatory Act, my Tribe entered into a compact with the State of Michigan in 1993. Over time we added to the existing structure. However, this casino became an unwieldy conglomeration of add-ons. This type of facility composition posed significant health hazards to our 406 employees, because there was poor air circulation and ventilation due to cigarette smoke and concentrated population. There were also serious sewage problems with this facility and its location. Finally, the internal maze like flow within the building was not good for our customers and the outside appearance was equally unappealing.

Given the limitations of this facility, we decided to build a new building. In looking at our land holdings, the Board determined that it was not in the Tribe’s best interest to build on the same spot as the old facility because building the gaming space, lobby and hotel space on the 1983 parcel would mean having to

dislocate several tribal families and other governmental programs from the land. Additionally, building on the same location would mean losing revenue during construction. The casino was instead built on a piece of land immediately adjacent to the old casino, which the Tribe acquired in trust in 2000 (“2000 Parcel”).

As I understand it, the previous Administration believed that the Tribe could do gaming on the 2000 Parcel, because a provision in the Indian Gaming Regulatory Act that states that land taken into trust after October 17, 1988 are eligible for gaming if “such lands are located within or contiguous to the boundaries of the reservation of the Indian Tribe on October 17, 1988.” 25 U.S.C. §2719(a)(1).

I am advised that under the Supreme Court precedent, the 1983 Parcel is a reservation. The Supreme Court has held that “the principal test” for determining whether Indian land constitutes a reservation is “whether the land in question ‘ha[s] been validly set apart for the use of the Indians as such, under the superintendence of the government.’” *United States v. John*, 437 U.S. 634, 648-49 (quoting *United States v. Pelican*, 232 U.S. 442, 449 (1914)). In another case, the Court has said no “precedent of this Court has ever drawn the distinction between tribal trust land and reservations and that the dispositive question was whether the “area has been ‘validly set apart for the use of the Indians as such, under the superintendence of the Government.’” *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 511 (1991) (quoting *John*). The 1983 Parcel is clearly land set aside for the use of Indians and has been under the superintendence and jurisdiction of the United States since 1983.

In 2003 the Tribe asked the Department of the Interior to concur with this view. In February of 2006, we finally received an opinion from the Interior Solicitor’s Office stating that notwithstanding the fact that the 1983 Parcel was set aside for the Tribe and is under the jurisdiction of the United States, because the United States had never proclaimed it a reservation, it did not meet the definition of a reservation under federal law. Accordingly, the Acting Associate Solicitor determined that the 2000 Parcel was not land contiguous to a Reservation under IGRA.

By this time, we were close to finishing our new building, which was to be a new hotel and casino with a state-of-the art air filtration system. We held

numerous meetings with Interior officials to urge them to correct their decision and rectify a problem that was created by the government's own inaction. This was to no avail. The NIGC warned us that if we operated in the new building, they would issue a closure order. We never intended to flout federal law, so we have not opened the casino in the new space. We did open the hotel and the entertainment venue.

However, because the old facility was so unsafe, we elected to invest \$3 million and put the Kewadin Shores Casino in a temporary building (or sprung structure), which is entirely on the 1983 Parcel, but is adjacent to the new casino building on the 2000 Parcel. We have a covered foot path that leads between the two buildings, so that our hotel guests can go to the casino in the temporary building without having to go outside. This sprung structure presents similar air circulation issues as our old building. Moreover, the gaming space in the temporary facility is not optimal as customers are often confused about parking and the distance to walk to the gaming floor.

Our revenue data shows that we are losing money and customers. Since opening the Kewadin Shores Casino in the temporary facility, the Tribe has experienced a loss in revenues. For 2007, year to date, we are 6.5% below last year. In the month of May alone, we are down by 11%. This downturn in revenues is attributed to the temporary structure, which our customers do not like. Many have told us they will not return.

My Tribe spends 97% of our net revenue on membership services to make up for the shortfall of federal funding. If we continue to lose income, we will have to cut membership services. Since becoming Chairperson, I have overseen a reduction in operational costs in the amount of about 5%. Any further cuts will cut deep into services.

Tribal members and non-Indians alike in the local community will likely lose their jobs at the Kewadin Shores Casino because of necessary job cuts. Forty five percent of all our casino employees are non-Tribal. Approximately \$13.5 million of our \$30 million payroll supports jobs for those who are not Tribal members, which underscores that this not simply an Indian problem. Jobs we provide afford great benefits, like retirement and health care. Jobs for which individuals pay taxes and re-circulate excess income in an already stagnating

economy. We currently employ about 20% of the adult workforce of the local city of St. Ignace – a tourism town. Job losses will result in additional burdens on the Tribe’s and State’s social services as those who lose their jobs will turn to Tribal and State support programs.

If casino income from the Kewadin Shores Casino continues to decline, the Tribe will be unable to maintain its current level of 2% net slot revenue payments to local units of government. Those local units of government have come to rely on the Tribe’s contributions. This would come at a time when the State of Michigan is suffering from severe budget deficits, and is having difficulty financing its own governmental operations, and the State would not likely be able to fill in the gap left by reduced or eliminated 2% payments. The reduced and/or eliminated 2% payments would coincide with the increased pressures on local law enforcement, social services, hospitals and health services as a result of increased unemployment resulting from job cuts at the Kewadin Shores Casino.

The inability to use our land as we believe it should be used is entirely the fault of the United States. The Tribe requested two different times (1986 and April, 1988 – both prior to the enactment of IGRA in October 1988) that the United States proclaim the 1983 Parcel a reservation. In 1988, the United States got so far as to inform the local governments that a reservation proclamation was “impending.” As we understand it, only the ministerial act of publishing the notice in the Federal Register, was not done.

In a supportive document from Terry Virden, BIA Regional Director in Minneapolis, the BIA acknowledges that the Tribe complied with all applicable procedures prior to the enactment of IGRA in October of 1988 and that an administration oversight is likely to blame. Why this land was not proclaimed a reservation, we do not know, but we do not believe that the Tribe or the people of the Upper Peninsula should have to pay for this failure.

H.R. 2120 would do what the United States said it was going to do in 1988 and what it should have done in 1983 or even 1986. My Tribe has made a significant investment of \$41 million to build this new casino to provide a safe and healthy place for our 406 employees and customers and to continue to be the economic engine of this area of the State. We did this on land that is held in trust and is contiguous to land that has been in trust since 1983. The new replacement

casino would not increase gaming and would not add to the number of casinos now operating in Michigan. However, according to the Department of the Interior, the only way that the Tribe can operate a casino on this land—without negotiating with the state – is this legislation. We have the support of the city, township and county governments, and the neighboring tribe of just thirty miles – the Little Traverse Bay Band of Odawa Indians - for this legislation. We would urge expedited consideration of this legislation so that we can finally use our building as it was intended.

Again, I would like to thank the Committee for its time and attention to this matter.