

**Statement of Chief Executive
Melanie Benjamin**

**Non-Removable
Mille Lacs Band of Ojibwe
Onamia, Minnesota**

**Before
The United States
House of Representatives
Committee on Natural Resources**

June 5, 2008

Mr. Chairman, Members of the Committee, I am Melanie Benjamin, Chief Executive of the Mille Lacs Band of Ojibwe Indians, located in east central Minnesota. Thank you for inviting me to testify before your Committee.

I am here today on behalf on the Mille Lacs Band of Ojibwe regarding the distribution of a judgment awarded to the Minnesota Chippewa Tribe in Docket Nos. 19 and 188 in the United States Court of Federal Claims. The Tribe has voted to distribute the judgment equally to each of the Tribe's six constituent Bands. I support the Tribe's sovereign authority and property right to determine the distribution of the judgment awarded to the Tribe. The Tribe's determination is reflected in H.R. 3699, a bill sponsored by our Congressman Jim Oberstar.

THE MILLE LACS BAND SUPPORTS H.R. 3699

The Minnesota Chippewa Tribe.

The Mille Lacs Band of Ojibwe is one of the six constituent bands which comprise the Minnesota Chippewa Tribe. Each of the constituent bands is, in its own right, a distinct sovereign government. This fact is reflected in the bands' Self-Governance Compacts with the United States Department of the Interior and the Department of Health and Human Services.

However, the Minnesota Chippewa Tribe is, itself, also a sovereign entity. It was formed in 1936 under the Indian Reorganization Act, and its constitution was approved by the Secretary of the Interior. Under the Tribe's revised constitution, approved by the Secretary in 1964, the governing body of the Tribe is the Tribal Executive Committee (TEC). Each constituent band has equal representation on the TEC, with two seats each. The constitution authorizes the TEC to act by majority vote.

While this structure is unusual in Indian country, it has been in place for more than 70 years. In providing for the distribution of the judgment in Docket Nos. 19 and 188, Congress should respect the sovereignty of the Tribe as well as that of the constituent bands.

The Judgment Fund.

The Minnesota Chippewa Tribe was the plaintiff in Docket Nos. 19 and 188 before the Indian Claims Commission. The Tribe's claims in these dockets arose from the distribution of lands and other tribal assets. After the Indian Claims Commission ceased to exist, the cases were transferred to the United States Court of Federal Claims.

It is important to note that **the expenses of prosecuting the Tribe's claims in these dockets were shared equally by the six Bands.** Decisions regarding the prosecution were made by the TEC.

The Tribe's claims in these dockets were resolved by settlement. On July 1, 1998, the TEC enacted Resolution 01-99, which approved the settlement of the claims. The vote was 6 to 3, with 10 members present.

On May 21, 1999, the Tribe and the United States filed a Joint Motion and Stipulation for Entry of Final Judgment in the Court of Federal Claims. The stipulation called for the Court to enter judgment in the amount of \$20,000,000 "in favor of plaintiff Minnesota Chippewa Tribe."

The TEC resolution reflecting this vote was submitted to the Court in support of the parties' motion. The Court found that "[t]he Tribal Executive Committee has the constitutional authority to enter into the proposed settlement on behalf of the Minnesota Chippewa Tribe," and that the TEC resolution approving the settlement (along with the signature of the Tribe's attorney on the stipulation) was "appropriate and sufficient evidence of acceptance by the Tribe of the settlement."

On May 26, 1999, the Court approved the settlement and directed the Court to enter judgment "pursuant to the [parties'] stipulation." Judgment was entered for "plaintiff," the Minnesota Chippewa Tribe.

In accordance with the Court's judgment, \$20,000,000 was deposited into a trust fund account, creating the judgment fund. Under federal law, the sole beneficiary of the judgment fund is the Minnesota Chippewa Tribe.

Under the Tribe's constitution, the TEC is authorized to make decisions to administer, expend and apportion funds within the control of the Tribe. On September 9, 1999, the TEC enacted Resolution No. 40-00 which allocated to each member reservation an equal share of the judgment in Docket Nos. 19 and 188. The vote was 10 for and 2 against, with all 12 members present.

Need for Legislation.

The Judgment Fund Distribution Act of 1973 requires the Secretary of the Interior to submit a proposed judgment distribution plan to Congress no later than one year after the date that funds are appropriated to satisfy an Indian Claims Commission judgment. The Secretary may obtain an automatic six-month extension to this deadline. If a proposed distribution plan is not submitted within the deadline, the funds may only be distributed through the enactment of legislation.

If the Secretary of the Interior had accepted the September 1999 decision of the Minnesota Chippewa Tribe and submitted a proposed judgment fund distribution plan to Congress by June 2000, the plan would have gone into effect *automatically* at about the same time the 106th Congress adjourned for the August 2000 legislative recess. Because the Secretary failed to do so, Congress must now enact a statute providing for the distribution of the judgment fund.

The Current Position of the Bureau of Indian Affairs.

On April 26, 2007, Assistant Secretary Carl Artman submitted a legislative proposal to Congress that proposed a *pro rata* distribution of the judgment fund between the six bands based on the proportion of membership of each of the respective Bands to the combined overall membership of all six bands.

On May 14, 2007, Congressman Peterson introduced H.R. 2306 which provided for the distribution of Dockets 19 and 188 pursuant to the recommendation of the BIA. On September 27, 2007, Congressman Oberstar introduced H.R. 3699, which provided for the distribution of Dockets 19 and 188 pursuant to the vote of the Minnesota Chippewa Tribe.

On May 22, 2008, Assistant Secretary Artman reversed his position after considering the vote of the Tribal Executive Committee of the Minnesota Chippewa Tribe. He explained:

“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 [on] the Judgment [in] Favor of the *Minnesota Chippewa Tribe, et al. v. United States, Dockets 19 and 188.*” 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.*”

Reasons for Supporting H.R. 3699.

We have three principal reasons for supporting H.R. 3699:

1. Sovereignty and Property Rights. Congressman Oberstar’s bill respects the sovereignty and property rights of the Minnesota Chippewa Tribe.

When the Tribe was considering whether to approve the settlement, some bands voted against it. However, under the constitution of the Minnesota Chippewa Tribe, the Tribal Executive Committee acts by majority vote and the settlement was approved by majority vote of the TEC. Appropriately, the vote was then accepted by the Departments of Justice and the Interior and by the Court of Federal Claims. It is appropriate that Congressman Oberstar’s bill gives the same respect to the Tribe’s decision regarding the distribution of the judgment as the Government and the Court gave to the Tribe’s decision to settle the case.

If the Minnesota Chippewa Tribe is truly a government, its votes cannot be overruled on matters under its jurisdiction, including the distribution of a fund awarded to the Tribe. The defendant in a lawsuit cannot agree to settle a case by paying a sum of money to the plaintiff and then, when the plaintiff determines how the money is to be distributed, disregard that decision and pay the money to someone else. This would be a taking of the judgment awarded to the plaintiff.

The BIA's initial recommendation to disregard the Tribe's decision was inimical to tribal sovereignty and self-determination. The BIA should not second-guess the division of funds on which we voted. If 10 families sued a State for a common injury, agreed to divide the litigation expenses equally among the families, agreed to divide any recovery equally as well, and then recovered \$1,000,000 in their lawsuit, the Governor of the State would not come in and say "in spite of the fact that you agreed to divide this 10 ways and have a legal agreement to do so, I have decided that the families with more members will get more money."

Until the BIA corrected its position last month, this was essentially the position of the Bureau of Indian Affairs. However, the BIA has now withdrawn its former recommendation and supports the Tribe's own determination regarding the distribution of the fund. Assistant Secretary Artman was correct to reverse BIA's prior recommendation. A six-way split is simple, and it's how we voted. Congress should respect our vote.

In short, the Mille Lacs Band is simply requesting that the federal government respect the decision of the Minnesota Chippewa Tribe with respect to the distribution of a judgment awarded to the Tribe. If the BIA and the Congress do not recognize the sovereign authority and property rights of Indian tribes, it is a problem not just for the Minnesota Chippewa Tribe and its six constituent bands, but for all tribes across this country.

2. Committee history. In the early 1980s, the Chief Executive of the Mille Lacs Band, Arthur Gahbow, testified in front of the Interior and Insular Affairs Committee on dividing up another judgment obtained by the Minnesota Chippewa Tribe in an Indian Claims Commission case. He was told by the late Congressman Bruce Vento that he needed to go back to Minnesota, and that the decision was up to the Minnesota Chippewa Tribe.

There are matters we undertake as a Band, such as the Mille Lacs Band Self-Governance Compact with the Department of the Interior, and there are matters we undertake as a Tribe. The claims at issue here were brought by the Tribe and settled by the Tribe, and the judgment was awarded to the Tribe. As Congressman Vento said in the 1980s, the distribution of the award is up to the Tribe.

The late chairman of the Interior and Insular Affairs Committee, Morris Udall, always respected the sovereignty of Indian nations. In 1982, Chairman Udall amended the Judgment Fund Distributions Act to move away from the policy of distributing these settlements in a *pro-rata* fashion to individual members. The Oberstar bill reflects Chairman Udall's respect for the sovereignty of Indian tribes.

3. Resolution. This is a moment in history when we can resolve a longstanding conflict. If we do not do this today, this decision could linger for a generation after us or even longer. That would not be responsible governance. We have the common goal of wanting to do good things on our reservations. Today, we can move forward or we can continue to argue. We can and should resolve this matter now.

We have seen some of these disputes go on for years. Whether in Nevada or South Dakota, there are many tribal claims that may never be resolved. The Dakota will not take money for the Black Hills on principle. The Shoshone will not take money for Nevada on principle.

The six bands of the Minnesota Chippewa Tribe agree unanimously that the judgment fund at issue here should be divided among us and distributed. We do not have unanimous agreement among the bands about *how* it should be divided. However, to resolve our differences, we took a vote under the Tribal Constitution, and that vote should be respected. No other sovereign can change or interpret that vote.

Consequently, the principle we need to rely upon to move forward and resolve this matter is sovereignty. We can and should have a permanent resolution to this matter. The Mille Lacs Band supports a resolution based upon sovereignty. The vote of the Minnesota Chippewa Tribe must be respected. H.R. 3699 respects our vote and should be enacted.

CONCLUSION

While in this specific instance we do not share unanimous views, the bands of the Minnesota Chippewa Tribe do work together on most issues. In the past few years, the Mille Lacs Band has sponsored an economic summit for the Red Lake, White Earth, and Leech Lake bands. Under the Minnesota Tribal Government Foundation, the Mille Lacs Band and two Dakota bands provide economic development grants to the other tribes in Minnesota. We work together on matters of law enforcement, child welfare, economic development, and more.

The bands of the Minnesota Chippewa Tribe have a long, distinguished and unified history together. Ours is a story of survival. But it is also a story of occasional political difference, such as this one.

No one Band controls the Tribe. No federal agency can control the Tribe. The Tribe is a unique self-governing entity. The Tribe has a long-standing Constitution and a history of resolving disputes internally.

In fact, we resolved this dispute. We debated and discussed this matter at length. We put forward proposals. Ultimately, we voted. As in most deliberative bodies, there was disagreement before and after the vote. The vote was not unanimous, but a substantial majority voted for the six-way split.

That vote stands. The Minnesota Chippewa Tribe spoke as a sovereign, self-governing tribal nation. No other government has the right to interfere with that vote.

On behalf of the Mille Lacs Band, we thank Assistant Secretary Artman for respecting tribal sovereignty. We thank Congressman Oberstar for his long-standing respect for the sovereignty of our Band and the Tribe.

Finally, I thank the Committee. I respectfully request that the Committee do the right thing. Chairman Udall recommended that tribal judgment funds generally be administered by the tribes to whom they are awarded and that they not be divided *pro rata* among tribal members. Congressman Vento recommended that judgments in matters litigated by the Minnesota Chippewa Tribe in particular be controlled by the Minnesota Chippewa Tribe. Finally, the BIA spoke on May 28 of this year and recommended that the vote of the Minnesota Chippewa Tribe in this matter be respected.

The right thing to do is to respect the sovereignty of the Tribe and pass H.R. 3699. Mii gwetch.