

TESTIMONY  
OF  
CHAIRWOMAN KAREN R.DIVER  
OF THE  
FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA  
MINNESOTA CHIPPEWA TRIBE  
BEFORE THE  
HOUSE COMMITTEE ON NATURAL RESOURCES

Thursday, June 5, 2008, at 10:00am

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:

I am here to testify in favor of H.R. 3699 and in opposition to H.R. 2306. I therefore join my esteemed colleagues from the Minnesota Chippewa Tribe (MCT) who have testified before me also in favor of H.R. 3699, and wish to state the Fond du Lac Bands' full support of their remarks. I wish to speak to the grave concern that I have relative to the adverse impact of H.R. 2306 which, if adopted, will result in the destabilization of the government of the Minnesota Chippewa Tribe.

As our President has so eloquently informed the Committee, the Minnesota Chippewa Tribe is a federally recognized tribe organized pursuant to the Indian Reorganization Act of 1934. The MCT Constitution was adopted on July 24, 1936, and my predecessors in office from Fond du Lac and the other constituent Bands have been following this Constitution since that time. The Tribal Executive Committee is the governing body of the Tribe, and is comprised of twelve members, two from each of the six constituent Bands. During that 72 year period of time, the MCT has acted as a government adopting resolutions and ordinances governing land use, elections, membership and resolving other legal disputes. The votes on those laws were not always unanimous nor does the Constitution require unanimity. Yet the MCT has governed efficiently and effectively with its majority rule, I would say much like this esteemed body.

Today, however, we find ourselves in a difficult position wherein the question for Congress is whether you are willing to set a precedent that would result in undermining the rule

of law for the Minnesota Chippewa Tribe? The Bureau of Indian Affairs will testify today that they have no qualms in ignoring the law of the Minnesota Chippewa Tribe. They will suggest that the distribution of these funds pursuant to MCT Resolution 40-00 is another configuration, different than the legislation that they present in H.R. 2306 but they will not acknowledge that in presenting this legislation the result will be to ignore tribal law.

What will Congress do when another tribe, made up of 10 constituent Bands, comes before it with a majority decision and minority views? Will this Committee undermine their Constitutional authority to make these decisions or enact its resolutions and ordinances?

The MCT was the named party in the litigation, it was not the individual Bands, the decision to settle the lawsuit was not unanimous yet the Claims Court and the Federal government at the time felt that the resolution by the TEC adopting the settlement was a proper expression of MCT law and binding on all of the Bands. If MCT law was good for settling the lawsuit why is it not good for distributing the proceeds from that lawsuit? The vote on the settlement was 6 in favor 3 against and the vote to distribute the funds by 1/6<sup>th</sup> to each Band was 10 in favor and 2 against. Why should one be binding and not the other? What does that do for the rule of law at the MCT? In my non-lawyerly and humble view it can accomplish one thing and that is undermining the stability of the Minnesota Chippewa Tribe. Will a minority force the tribe to go back and re-evaluate all of its previous decisions? Will that same minority keep the tribe from relying on its future enactments if the vote is not unanimous? The answer again is setting this precedent will result in destabilizing our form of government.

The US Senate is also much like the TEC when it comes to its legislative work. The number of Senators is set without respect to population yet they are not required to adopt legislation unanimously. That seems to be the expectation of the MCT and this is disrespectful and unfair as to us as a sovereign government.

The relationship between the MCT and its constituent Bands is analogous to the federalist system, wherein the federal government delegates certain responsibilities to the states in the same manner as the delegation of authority by the MCT to the constituent Bands. Over the years, the MCT has evolved and delegated more authority to its constituent Bands in furtherance of self-government. The Fond du Lac Band has acknowledged this fact and embraces the MCT move towards greater Band independence in light of our individual history. However, no matter how much independence is accommodated, we are nonetheless bound by our responsibilities' of the majority rule of the TEC. Fond du Lac has not always agreed with the majority and as a result has been in the minority on many occasions. What we expect is the ability to advocate our position among the Bands but we accept the fact that we are bound by our Constitution until the MCT no longer exists. We also understand the political realities that all of my colleagues face with their electorate. These realities can tie the hands of that leadership to a particular position but once the vote is complete we must accept the result as the law of the Tribe. To do otherwise moves us closer to anarchy.

On May 22, 2008 Assistant Secretary of Indian Affairs, Carl Artman, acted to rescind the June 6, 2001 Results of Research Report which forms the basis for H.R. 2306. In doing this he also informed this Committee that the administration is withdrawing its recommendation that

H.R. 2306 be enacted. These are courageous steps toward recognizing and restoring the rule of law for the Minnesota Chippewa Tribe. I ask the Committee to join Assistant Secretary Artman in this effort. On behalf of the Fond du Lac Band I request that the Committee report out H.R. 3699 favorably thereby allowing the Bands access to its badly needed resources. We have been waiting since 1999, almost ten years and that is too long. I thank the Committee for the time you have provided me and will answer any questions that you may have.