

TESTIMONY
OF
NORMAN W. DESCHAMPE

Before the

Senate Indian Affairs Committee

February 2, 2012, at 2:15 p.m.

Room SD-628 Dirksen Senate Building

Legislative hearing on

S. 1739 (Franken): To provide for the use and distribution of Judgment funds awarded to the Minnesota Chippewa Tribe by the United States Court of Federal Claims in Docket numbers 19 and 188.

CHAIRMAN Akaka 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 S.1739, 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 S.1739 because it provides for the distribution of funds being held in trust for the Minnesota Chippewa Tribe in the manner determined by the Tribal Executive Committee of the Tribe. I also support it because it is a just way to allocate the funds.

Pursuant to the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, the governing body of the Tribe is the Tribal Executive Committee. The Minnesota Chippewa Tribe was the plaintiff in the cases known as the Nelson Act Claims. I think it is important for you to know that all of the decisions about the claims were made by the Minnesota Chippewa Tribal Executive Committee. The Tribal Executive Committee decided to bring the claims, it decided the strategy for the claims, and it decided to settle the claims. And when we needed money to pursue the claim, it was the Tribal Executive Committee that borrowed money to make that possible.

In 1999 the Tribal Executive Committee approved the settlement by resolution and again in 1999 the Tribal Executive Committee decided to allocate the funds on an equal basis to each of the six member reservations. We decided on equal shares because each of the Bands had loaned the same amount to the Tribe to support the claims effort.

For years we have not succeeded in getting the funds released. Following a hearing in the House of Representatives in 2008 and an apparent stalemate, the Tribal Executive Committee once again considered different ways to allocate the award, and in October 2009 a resolution approving a new distribution plan was enacted. The distribution plan in that resolution is reflected in S.1739 and it effectively provides more to the Bands with greater populations through the per capita payments to members. I believe that the compromise adopted by the Tribal Executive Committee should become law so that we can finally get the benefit of what was awarded in 1999.

The Minnesota Chippewa Tribe appreciates Senator Franken's assistance in this matter. He understands that the Constitution of the Tribe established a governmental structure that authorizes the Tribal Executive Committee to make decisions that affect the Tribe as a whole. Our constitution specifically gives the Tribal Executive Committee authority to allocate funds belonging to the Tribe. Article V, Section 1(d) of our Constitution provides that the Tribal Executive Committee has the power "to administer any funds within the control of the Tribe and to apportion all funds within its control to the various Reservations." That is what these funds are – Tribal – and they have been Tribal funds since 1999 when they were deposited into a trust account for the Tribe.

Senator Franken's bill also recognizes that the beneficiary of the claims award is the Minnesota Chippewa Tribe. The bill acknowledges what the Tribal Executive Committee knew from the very beginning: that we were going to bring the claim as the Minnesota Chippewa Tribe and that we would decide how to allocate any recovery.

We need these funds released now. It has been too long and our members are constantly asking about the Nelson Act claims. In addition, a small part of the distribution plan in S.1739 is that the Tribal government can be reimbursed the expenses that it has incurred. That is important because the Tribe has carried that amount on its books and the result has been a negative balance in our accounts. Our auditors have made it an issue and we have had to borrow to stay above water. Perhaps the Federal government can do that, but we cannot. Just two weeks ago the tribe was denied a \$25,000.00 grant for a program for elders because of that audit issue. As I said, it is time to get these funds distributed.

Finally, I want you to know that the tribal leadership has carefully considered Leech Lake's argument that it should receive 68.9% of the award because it suffered that amount of the damages. Chairman Goggeye made that argument in his testimony before the House Resources Committee on June 5, 2008, and Chairman LaRose has made the same argument time after time before the Tribal Executive Committee. The problem with the argument is that it is based only on speculation and not on any Court findings. My written testimony explains the problems with Leech Lake's claim in detail, but I want to make it clear that over nearly twenty years the Tribe has considered all arguments about what is fair and the result is the formula in Senator Franken's bill.

To explain, the process leading up to settlement discussions with the government included hiring experts to review the timber and land sales and come up with values. Leech Lake's testimony in the House was that the value of timber sold was about \$26 million and \$18 million of that was at Leech Lake. In 2008, Chairman Goggeye said that "the value of the damage suffered at Leech Lake was approximately \$18 million or 68.9 %."

There are several problems with that argument:

1. Leech Lake did not deduct the amount that the government actually paid the Tribe for timber and land.
2. The appraisals done by the experts were estimates for settlement purposes that were never tested in the Court.
3. The estimates were hotly contested by the United States. In fact, the government's first offer of compensation for land and timber was zero. The government believed that the Tribe got at least what the timber and land were worth - \$14.8 million.
4. There never was a Band-by-Band accounting and the Claims Court ruled decades ago that the government was not obligated to do that kind of accounting.

The reason that this award cannot be split out based on a Band's damages is that Congress – in the Nelson Act and in subsequent legislation authorizing payments from what was collected, has always found that the beneficiary of Nelson Act proceeds is the Tribe as a whole – not each Band for what they suffered or for what they did not receive. That is why the Tribe brought the claim, why the U.S. settled with the Tribe, and why the funds are held for the Tribe.

Leech Lake's argument for a formula based on damages is also flawed because the settlement was based both on a claim for inadequate compensation and on a claim for misspending what was collected by the government. The settlement was \$20 million to settle all claims in these dockets. We did not break out "\$X for timber and land" and "\$Y for misspent proceeds." There was no way to divide it by reference to the various claims and we knew that.

Our Senators understand that this is a Tribal fund that must be allocated in deference to the Tribal government's decision, and I urge you to join them and pass this bill.

ATTACHMENTS TO TESTIMONY
OF
NORMAN W. DESCHAMPE

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1. Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota.
2. Minnesota Chippewa Tribe Resolution 01-99 approving settlement.
3. January 7, 1999 Letter from Solicitor re: Binding vote on settlement.
4. MCT v. United States: ORDER (U.S. Court of Federal Claims) May 17, 1999.
5. MCT v. United States: JOINT MOTION AND STIPULATION FOR ENTRY OF FINAL JUDGMENT (U. S. Court of Federal Claims) May 21, 1999.
6. Resolution 146-09: Approval of allocation of judgment funds by MCT Executive Committee. October 1, 2009.
7. Letter to Hon. Franken from MCT Chairman and Vice President, August 10, 2011, re sponsoring legislation as a companion to H.R. 1272.
- 8.. Memorandum to President, MCT from Mark Anderson re Nelson Act Issue. March 29, 2011.
9. Memorandum to MCT Executive Director from Mark Anderson re Nelson Act Judgment Fund Distribution. October 24, 2011.
10. Nelson Allotment Act of 1889 Distribution Issues.
11. Nelson Act Judgment Distribution.

**REVISED CONSTITUTION AND BYLAWS
OF THE
MINNESOTA CHIPPEWA TRIBE, MINNESOTA**

PREAMBLE

We, the Minnesota Chippewa Tribe, consisting of the Chippewa Indians of the White Earth, Leech Lake, Fond du Lac, Bois Forte (Nett Lake), and Grand Portage Reservations and the Nonremoval Mille Lac Band of Chippewa Indians, in order to form a representative Chippewa tribal organization, maintain and establish justice for our Tribe, and to conserve and develop our tribal resources and common property; to promote the general welfare of ourselves and descendants, do establish and adopt this constitution for the Chippewa Indians of Minnesota in accordance with such privilege granted the Indians by the United States under existing law.

ARTICLE I - ORGANIZATION AND PURPOSE

Section 1. The Minnesota Chippewa Tribe is hereby organized under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended.

Sec. 2. The name of this tribal organization shall be the "Minnesota Chippewa Tribe."

Sec. 3. The purpose and function of this organization shall be to conserve and develop tribal resources and to promote the conservation and development of individual Indian trust property; to promote the general welfare of the members of the Tribe; to preserve and maintain justice for its members and otherwise exercise all powers granted and provided the Indians, and take advantage of the privileges afforded by the Act of June 18, 1934 (48 Stat. 984) and acts amendatory thereof or supplemental thereto, and all the purposes expressed in the preamble hereof.

Sec. 4. The Tribe shall cooperate with the United States in its program of economic and social development of the Tribe or in any matters tending to promote the welfare of the Minnesota Chippewa Tribe of Indians.

ARTICLE II - MEMBERSHIP

Section 1. The membership of the Minnesota Chippewa Tribe shall consist of the following:

- (a) Basic Membership Roll. All persons of Minnesota Chippewa Indian blood whose names appear on the annuity roll of April 14, 1941, prepared pursuant to the Treaty with said Indians as enacted by Congress in the Act of January 14, 1889 (25 Stat. 642) and Acts amendatory thereof, and as corrected by the Tribal Executive Committee and ratified by the Tribal Delegates, which roll shall be known as the basic membership roll of the Tribe.
- (b) All children of Minnesota Chippewa Indian blood born between April 14, 1941, the date of the annuity roll, and July 3, 1961, the date of approval of the membership ordinance by the Area Director, to a parent or parents, either or both of whose names appear on the basic membership roll, provided

an application for enrollment was filed with the Secretary of the Tribal Delegates by July 4, 1962, one year after the date of approval of the ordinance by the Area Director.

- (c) All children of at least one quarter (1/4) degree Minnesota Chippewa Indian blood born after July 3, 1961, to a member, provided that an application for enrollment was or is filed with the Secretary of the Tribal Delegates or the Tribal Executive Committee within one year after the date of birth of such children.

Sec. 2. No person born after July 3, 1961, shall be eligible for enrollment if enrolled as a member of another tribe, or if not an American citizen.

Sec. 3. Any person of Minnesota Chippewa Indian blood who meets the membership requirements of the Tribe, but who because of an error has not been enrolled, may be admitted to membership in the Minnesota Chippewa Tribe by adoption, if such adoption is approved by the Tribal Executive Committee, and shall have full membership privileges from the date the adoption is approved.

Sec. 4. Any person who has been rejected for enrollment as a member of the Minnesota Chippewa Tribe shall have the right of appeal within sixty days from the date of written notice of rejection to the Secretary of the Interior from the decision of the Tribal Executive Committee and the decision of the Secretary of Interior shall be final.

Sec. 5. Nothing contained in this article shall be construed to deprive any descendant of a Minnesota Chippewa Indian of the right to participate in any benefits derived from claims against the U.S. Government when awards are made for and on behalf and for the benefit of descendants of members of said tribe.

ARTICLE III - GOVERNING BODY

The governing bodies of the Minnesota Chippewa Tribe shall be the Tribal Executive Committee and the Reservation Business Committees of the White Earth, Leech Lake, Fond du Lac, Bois Forte (Nett Lake), and Grand Portage Reservations, and the Nonremoval Mille Lac Band of Chippewa Indians, hereinafter referred to as the six (6) Reservations.

Section 1. Tribal Executive Committee. The Tribal Executive Committee shall be composed of the Chairman and Secretary-Treasurer of each of the six (6) Reservation Business Committees elected in accordance with Article IV. The Tribal Executive Committee shall, at its first meeting, select from within the group a President, a Vice-President, a Secretary, and a Treasurer who shall continue in office for the period of two (2) years or until their successors are elected and seated.

Sec. 2. Reservation Business Committee. Each of the six (6) Reservations shall elect a Reservation Business Committee composed of not more than five (5) members nor less than three (3) members. The Reservation Business Committee shall be composed of a Chairman, Secretary-Treasurer, and one (1), two (2), or three (3) Committeemen. The candidates shall file for their respective offices and shall hold their office during the term for which they were elected or until their successors are elected and seated.

ARTICLE IV - TRIBAL ELECTIONS

Section 1. Right to Vote. All elections held on the six (6) Reservations shall be held in accordance with a uniform election ordinance to be adopted by the Tribal Executive Committee which shall provide that:

- (a) All members of the tribe, eighteen (18) years of age or over, shall have the right to vote at all elections held within the reservation of their enrollment.¹
- (b) All elections shall provide for absentee ballots and secret ballot voting.
- (c) Each Reservation Business Committee shall be the sole judge of the qualifications of its voters.
- (d) The precincts, polling places, election boards, time for opening and closing the polls, canvassing the vote and all pertinent details shall be clearly described in the ordinance.

Sec. 2. Candidates. A candidate for Chairman, Secretary-Treasurer and Committeeman must be an enrolled member of the Tribe and reside on the reservation of his or her enrollment for one year before the date of election.² No member of the Tribe shall be eligible to hold office, either as a Committeeman or Officer, until he or she has reached his or her twenty-first (21) birthday on or before the date of election.³

Sec. 3. Term of Office.

- (a) The first election of the Reservation Business Committee for the six (6) Reservations shall be called and held within ninety (90) days after the date on which these amendments became effective in accordance with Section 1, of this Article.
- (b) For the purpose of the first election, the Chairman and one (1) Committeeman shall be elected for a four-year term. The Secretary-Treasurer and any remaining Committeemen shall be elected for a two-year term. Thereafter, the term of office for officers and committeemen shall be four (4) years. For the purpose of the first election, the Committeeman receiving the greatest number of votes shall be elected for a four-year term.

Sec. 4. No member of the Tribe shall be eligible to hold office, either as a Committeeman or Officer, if he or she has ever been convicted of a felony of any kind; or of a lesser crime involving theft, misappropriation, or embezzlement of money, funds, assets, or property of an Indian tribe or a tribal organization.⁴

ARTICLE V - AUTHORITIES OF THE TRIBAL EXECUTIVE COMMITTEE

Section 1. The Tribal Executive Committee shall, in accordance with applicable laws or regulations of the Department of the Interior, have the following powers:

- (a) To employ legal counsel for the protection and advancement of the rights of the Minnesota Chippewa Tribe; the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior, or his authorized representative.

¹ As amended per Amendment I, approved by the Secretary of the Interior on November 6, 1972.

² As amended per Amendment III, approved by the Secretary of the Interior on January 5, 2006.

³ As amended per Amendment II, approved by the Secretary of the Interior on November 6, 1972.

⁴ As amended per Amendment IV, approved by the Secretary of the Interior on January 5, 2006.

- (b) To prevent any sale, disposition, lease or encumbrance of tribal lands, interest in lands, or other assets including minerals, gas and oil.
- (c) To advise with the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Minnesota Chippewa Tribe, except where such appropriation estimates or projects are for the benefit of individual Reservations.
- (d) To administer any funds within the control of the Tribe; to make expenditures from tribal funds for salaries, expenses of tribal officials, employment or other tribal purposes. The Tribal Executive Committee shall apportion all funds within its control to the various Reservations excepting funds necessary to support the authorized costs of the Tribal Executive Committee. All expenditures of tribal funds, under the control of the Tribal Executive Committee, shall be in accordance with a budget, duly approved by resolution in legal session, and the amounts so expended shall be a matter of public record at all reasonable times. The Tribal Executive Committee shall prepare annual budgets, requesting advancements to the control of the Tribe of any money deposited to the credit of the Tribe in the United States Treasury, subject to the approval of the Secretary of the Interior or his authorized representative.
- (e) To consult, negotiate, contract and conclude agreements on behalf of the Minnesota Chippewa Tribe with Federal, State and local governments or private persons or organizations on all matters within the powers of the Tribal Executive Committee, except as provided in the powers of the Reservation Business Committee.
- (f) Except for those powers hereinafter granted to the Reservation Business Committees, the Tribal Executive Committee shall be authorized to manage, lease, permit, or otherwise deal with tribal lands, interests in lands or other tribal assets; to engage in any business that will further the economic well being of members of the Tribe; to borrow money from the Federal Government or other sources and to direct the use of such funds for productive purposes, or to loan the money thus borrowed to Business Committees of the Reservations and to pledge or assign chattel or income, due or to become due, subject only to the approval of the Secretary of the Interior or his authorized representative, when required by Federal law or regulations.
- (g) The Tribal Executive Committee may by ordinance, subject to the review of the Secretary of the Interior, levy licenses or fees on non-members or non-tribal organizations doing business on two or more Reservations.
- (h) To recognize any community organizations, associations or committees open to members of the several Reservations and to approve such organizations, subject to the provision that no such organizations, associations, or committees may assume any authority granted to the Tribal Executive Committee or to the Reservation Business Committees.
- (i) To delegate to committees, officers, employees or cooperative associations any of the foregoing authorities, reserving the right to review any action taken by virtue of such delegated authorities.

ARTICLE VI - AUTHORITIES OF THE RESERVATION BUSINESS COMMITTEES

Section 1. Each of the Reservation Business Committees shall, in accordance with applicable laws or regulations of the Department of the Interior, have the following powers:

- (a) To advise with the Secretary of the Interior with regard to all appropriation estimates on Federal projects for the benefit of its Reservation.
- (b) To administer any funds within the control of the Reservation; to make expenditures from Reservation funds for salaries, expenses of Reservation officials, employment or other Reservation purposes. All expenditures of Reservations funds under the control of the Reservation Business Committees shall be in accordance with a budget, duly approved by resolution in legal session, and the amounts so expended shall be a matter of public record at all reasonable times. The Business Committees shall prepare annual budgets requesting advancements to the control of the Reservation of tribal funds under the control of the Tribal Executive Committee.
- (c) To consult, negotiate and contract and conclude agreements on behalf of its respective Reservation with Federal, State and local governments or private persons or organizations on all matters within the power of the Reservation Business Committee, provided that no such agreements or contracts shall directly affect any other Reservation or the Tribal Executive Committee without their consent. The Business Committees shall be authorized to manage, lease, permit or otherwise deal with tribal lands, interests in lands or other tribal assets, when authorized to do so by the Tribal Executive Committee but no such authorization shall be necessary in the case of lands or assets owned exclusively by the Reservation. To engage in any business that will further the economic well being of members of the Reservation; to borrow money from the Federal Government or other sources and to direct the use of such funds for productive purposes or to loan the money thus borrowed to members of the Reservation and to pledge or assign Reservation chattel or income due or to become due, subject only to the approval of the Secretary of the Interior or his authorized representative when required by Federal law and regulations. The Reservation Business Committee may also, with the consent of the Tribal Executive Committee, pledge or assign tribal chattel or income.
- (d) The Reservation Business Committee may by ordinance, subject to the review of the Secretary of the Interior, levy licenses or fees on non-members or non-tribal organizations doing business solely within their respective Reservations. A Reservation Business Committee may recognize any community organization, association or committee open to members of the Reservation or located within the Reservation and approve such organization, subject to the provision that no such organization, association or committee may assume any authority granted to the Reservation Business Committee or to the Tribal Executive Committee.
- (e) To delegate to committees, officers, employees or cooperative associations any of the foregoing authorities, reserving the right to review any action taken by virtue of such delegated authorities.
- (f) The powers heretofore granted to the bands by the charters issued by the Tribal Executive Committee are hereby superceded by this Article and said charters will no longer be recognized for any purposes.

ARTICLE VII - DURATION OF TRIBAL CONSTITUTION

Section 1. The period of duration of this tribal constitution shall be perpetual or until revoked by lawful means as provided in the Act of June 18, 1934 (48 Stat. 984), as amended.

ARTICLE VIII - MAJORITY VOTE

Section 1. At all elections held under this constitution, the majority of eligible votes cast shall rule, unless otherwise provided by an Act of Congress.

ARTICLE IX - BONDING OF TRIBAL OFFICIALS

Section 1. The Tribal Executive Committee and the Reservation Business Committees, respectively, shall require all persons, charged by the Tribe or Reservation with responsibility for the custody of any of its funds or property, to give bond for the faithful performance of his official duties. Such bond shall be furnished by a responsible bonding company and shall be acceptable to the beneficiary thereof and the Secretary of the Interior or his authorized representative, and the cost thereof shall be paid by the beneficiary.

ARTICLE X - VACANCIES AND REMOVAL

Section 1. Any vacancy in the Tribal Executive Committee shall be filled by the Indians from the Reservation on which the vacancy occurs by election under rules prescribed by the Tribal Executive Committee. During the interim, the Reservation Business Committee shall be empowered to select a temporary Tribal Executive Committee member to represent the Reservation until such time as the election herein provided for has been held and the successful candidate elected and seated.

Sec. 2. The Reservation Business Committee by a two-thirds (2/3) vote of its members shall remove any officer or member of the Committee for the following causes:

- (a) Malfeasance in the handling of tribal affairs.
- (b) Dereliction or neglect of duty.
- (c) Unexcused failure to attend two regular meetings in succession.
- (d) Conviction of a felony in any county, State or Federal court while serving on the Reservation Business Committee.
- (e) Refusal to comply with any provisions of the Constitution and Bylaws of the Tribe.

The removal shall be in accordance with the procedures set forth in Section 3 of this Article.

Sec. 3. Any member of the Reservation from which the Reservation Business Committee member is elected may prefer charges by written notice supported by the signatures of no less than 20 percent of the resident eligible voters of said Reservation, stating any of the causes for removal set forth in Section 2 of this Article, against any member or members of the respective Reservation Business Committee. The notice must be submitted to the Business Committee. The Reservation Business Committee shall consider such notice and take the following action:

- (a) The Reservation Business Committee within fifteen (15) days after receipt of the notice or charges shall in writing notify the accused of the charges brought against him and set a date for a hearing. If the Reservation Business Committee deems the accused has failed to answer charges to its satisfaction or fails to appear at the appointed time, the Reservation Business Committee may remove as provided in Section 2 or it may schedule a recall election which shall be held within thirty (30) days after the date set for the hearing. In either event, the action of the Reservation Business Committee or the outcome of the recall election shall be final.

(b) All such hearings of the Reservation Business Committee shall be held in accordance with the provisions of this Article and shall be open to the members of the Reservation. Notices of such hearings shall be duly posted at least five (5) days prior to the hearing.

(c) The accused shall be given opportunity to call witnesses and present evidence in his behalf.

Sec. 4. When the Tribal Executive Committee finds any of its members guilty of any of the causes for removal from office as listed in Section 2 of this Article, it shall in writing censor the Tribal Executive Committee member. The Tribal Executive Committee shall present its written censure to the Reservation Business Committee from which the Tribal Executive Committee member is elected. The Reservation Business Committee shall thereupon consider such censure in the manner prescribed in Section 3 of this Article.

Sec. 5. In the event the Reservation Business Committee fails to act as provided in Sections 3 and 4 of this Article, the Reservation membership may, by petition supported by the signatures of no less than 20 percent of the eligible resident voters, appeal to the Secretary of the Interior. If the Secretary deems the charges substantial, he shall call an election for the purpose of placing the matter before the Reservation electorate for their final decision.

ARTICLE XI – RATIFICATION

Section 1. This constitution and the bylaws shall not become operative until ratified at a special election by a majority vote of the adult members of the Minnesota Chippewa Tribe, voting at a special election called by the Secretary of the Interior, provided that at least 30 percent of those entitled to vote shall vote, and until it has been approved by the Secretary of the Interior.

ARTICLE XII – AMENDMENT

Section 1. This constitution may be revoked by Act of Congress or amended or revoked by a majority vote of the qualified voters of the Tribe voting at an election called for that purpose by the Secretary of the Interior if at least 30 percent of those entitled to vote shall vote. No amendment shall be effective until approved by the Secretary of the Interior. It shall be the duty of the Secretary to call an election when requested by two-thirds of the Tribal Executive Committee.

ARTICLE XIII - RIGHTS OF MEMBERS

All members of the Minnesota Chippewa Tribe shall be accorded by the governing body equal rights, equal protection, and equal opportunities to participate in the economic resources and activities of the Tribe, and no member shall be denied any of the constitutional rights or guarantees enjoyed by other citizens of the United States, including but not limited to freedom of religion and conscience, freedom of speech, the right to orderly association or assembly, the right to petition for action or the redress of grievances, and due process of law.

ARTICLE XIV – REFERENDUM

Section 1. The Tribal Executive Committee, upon receipt of a petition signed by 20 percent of the resident voters of the Minnesota Chippewa Tribe, or by an affirmative vote of eight (8) members of the

Tribal Executive Committee, shall submit any enacted or proposed resolution or ordinance of the Tribal Executive Committee to a referendum of the eligible voters of the Minnesota Chippewa Tribe. The majority of the votes cast in such referendum shall be conclusive and binding on the Tribal Executive Committee. The Tribal Executive Committee shall call such referendum and prescribe the manner of conducting the vote.

Sec. 2. The Reservation Business Committee, upon receipt of a petition signed by 20 percent of the resident voters of the Reservation, or by an affirmative vote of a majority of the members of the Reservation Business Committee, shall submit any enacted or proposed resolution or ordinance of the Reservation Business Committee to a referendum of the eligible voters of the Reservation. The majority of the votes cast in such referendum shall be conclusive and binding on the Reservation Business Committee. The Reservation Business Committee shall call such referendum and prescribe the manner of conducting the vote.

ARTICLE XV - MANNER OF REVIEW

Section 1. Any resolution or ordinance enacted by the Tribal Executive Committee, which by the terms of this Constitution and Bylaws is subject to review by the Secretary of the Interior, or his authorized representative, shall be presented to the Superintendent or officer in charge of the Reservation who shall within ten (10) days after its receipt by him approve or disapprove the resolution or ordinance.

If the Superintendent or officer in charge shall approve any ordinance or resolution it shall thereupon become effective, but the Superintendent or officer in charge shall transmit a copy of the same, bearing his endorsement, to the Secretary of the Interior, who may within ninety (90) days from the date of approval, rescind the ordinance or resolution for any cause by notifying the Tribal Executive Committee.

If the Superintendent or officer in charge shall refuse to approve any resolution or ordinance subject to review within ten (10) days after its receipt by him he shall advise the Tribal Executive Committee of his reasons therefor in writing. If these reasons are deemed by the Tribal Executive Committee to be insufficient, it may, by a majority vote, refer the ordinance or resolution to the Secretary of the Interior, who may, within ninety (90) days from the date of its referral, approve or reject the same in writing, whereupon the said ordinance or resolution shall be in effect or rejected accordingly.

Sec. 2. Any resolution or ordinance enacted by the Reservation Business Committee, which by the terms of this Constitution and Bylaws is subjected to review by the Secretary of the Interior or his authorized representative, shall be governed by the procedures set forth in Section 1 of this Article.

Sec. 3. Any resolution or ordinance enacted by the Reservation Business Committee, which by the terms of this Constitution and Bylaws is subject to approval by the Tribal Executive Committee, shall within ten (10) days of its enactment be presented to the Tribal Executive Committee. The Tribal Executive Committee shall at its next regular or special meeting, approve or disapprove such resolution or ordinance.

Upon approval or disapproval by the Tribal Executive Committee of any resolution or ordinance submitted by a Reservation Business Committee, it shall advise the Reservation Business Committee within ten (10) days, in writing, of the action taken. In the event of disapproval the Tribal Executive Committee shall advise the Reservation Business Committee, at that time, of its reasons therefore.

BYLAWS

ARTICLE I - DUTIES OF THE OFFICERS OF THE TRIBAL EXECUTIVE COMMITTEE

Section 1. The President of the Tribal Executive Committee shall:

- (a) Preside at all regular and special meetings of the Tribal Executive Committee and at any meeting of the Minnesota Chippewa Tribe in general council.
- (b) Assume responsibility for the implementation of all resolutions and ordinances of the Tribal Executive Committee.
- (c) Sign, with the Secretary of the Tribal Executive Committee, on behalf of the Tribe all official papers when authorized to do so.
- (d) Assume general supervision of all officers, employees and committees of the Tribal Executive Committee and, as delegated, take direct responsibility for the satisfactory performance of such officers, employees and committees.
- (e) Prepare a report of negotiations, important communications and other activities of the Tribal Executive Committee and shall make this report at each regular meeting of the Tribal Executive Committee. He shall include in this report all matters of importance to the Tribe, and in no way shall he act for the Tribe unless specifically authorized to do so.
- (f) Have general management of the business activities of the Tribal Executive Committee. He shall not act on matters binding the Tribe until the Tribal Executive Committee has deliberated and enacted appropriate resolution, or unless written delegation of authority has been granted.
- (g) Not vote in meetings of the Tribal Executive Committee except in the case of a tie.

Sec. 2. In the absence or disability of the President, the Vice-President shall preside. When so presiding, he shall have all rights, privileges and duties as set forth under duties of the President, as well as the responsibility of the President.

Sec. 3. The Secretary of the Tribal Executive Committee shall:

- (a) Keep a complete record of the meetings of the Tribal Executive Committee and shall maintain such records at the headquarters of the Tribe.
- (b) Sign, with the President of the Tribal Executive Committee, all official papers as provided in Section 1 (c) of this Article.
- (c) Be the custodian of all property of the Tribe.
- (d) Keep a complete record of all business of the Tribal Executive Committee. Make and submit a complete and detailed report of the current year's business and shall submit such other reports as shall be required by the Tribal Executive Committee.
- (e) Serve all notices required for meetings and elections.
- (f) Perform such other duties as may be required of him by the Tribal Executive Committee.

Sec. 4. The Treasurer of the Tribal Executive Committee shall:

- (a) Receive all funds of the Tribe entrusted to it, deposit same in a depository selected by the Tribal Executive Committee, and disburse such tribal funds only on vouchers signed by the President and Secretary.
- (b) Keep and maintain, open to inspection by members of the Tribe or representatives of the Secretary of the Interior, at all reasonable times, adequate and correct accounts of the properties and business transactions of the Tribe.
- (c) Make a monthly report and account for all transactions involving the disbursement, collection or obligation of tribal funds. He shall present such financial reports to the Tribal Executive Committee at each of its regular meetings.

Sec. 5. Duties and functions of all appointive committees, officers, and employees of the Tribal Executive Committee shall be clearly defined by resolution of the Tribal Executive Committee.

ARTICLE II - TRIBAL EXECUTIVE COMMITTEE MEETINGS

Section 1. Regular meetings of the Tribal Executive Committee shall be held once in every 3 months beginning on the second Monday in July of each year and on such other days of any month as may be designated for that purpose.

Sec. 2. Notice shall be given by the Secretary of the Tribal Executive Committee of the date and place of all meetings by mailing a notice thereof to the members of the Tribal Executive Committee not less than 15 days preceding the date of the meeting.

Sec. 3. The President shall call a special meeting of the Tribal Executive Committee upon a written request of at least one-third of the Tribal Executive Committee. The President shall also call a special meeting of the Tribal Executive Committee when matters of special importance pertaining to the Tribe arise for which he deems advisable the said Committee should meet.

Sec. 4. In case of special meetings designated for emergency matters pertaining to the Tribe, or those of special importance warranting immediate action of said Tribe, the President of the Tribal Executive Committee may waive the 15-day clause provided in Section 2 of this Article.

Sec. 5. Seven members of the Tribal Executive Committee shall constitute a quorum, and Robert's Rules shall govern its meetings. Except as provided in said Rules, no business shall be transacted unless a quorum is present.

Sec. 6. The order of business at any meeting so far as possible shall be:

- (a) Call to order by the presiding officer.
- (b) Invocation.
- (c) Roll call.
- (d) Reading and disposal of the minutes of the last meeting.

(e) Reports of committees and officers.

(f) Unfinished business.

(g) New business.

(h) Adjournment.

ARTICLE III -- INSTALLATION OF TRIBAL EXECUTIVE COMMITTEE MEMBERS

Section 1. New members of the Tribal Executive Committee who have been duly elected by the respective Reservations shall be installed at the first regular meeting of the Tribal Executive Committee following election of the committee members, upon subscribing to the following oath:

"I, _____, do hereby solemnly swear (or affirm) that I shall preserve, support and protect the Constitution of the United States and the Constitution of the Minnesota Chippewa Tribe, and execute my duties as a member of the Tribal Executive Committee to the best of my ability, so help me God."

ARTICLE IV -- AMENDMENTS

Section 1. These bylaws may be amended in the same manner as the Constitution.

ARTICLE V -- MISCELLANEOUS

Section 1. The fiscal year of the Minnesota Chippewa Tribe shall begin on July 1 of each year.

Section 2. The books and records of the Minnesota Chippewa Tribe shall be audited at least once each year by a competent auditor employed by the Tribal Executive Committee, and at such times as the Tribal Executive Committee or the Secretary of the Interior or his authorized representative may direct. Copies of audit reports shall be furnished the Bureau of Indian Affairs.

ARTICLE VI - RESERVATION BUSINESS COMMITTEE BYLAWS

Section 1. The Reservation Business Committee shall by ordinance adopt bylaws to govern the duties of its officers and Committee members and its meetings.

Section 2. Duties and functions of all appointive committees, officers, and employees of the Reservation Business Committee shall be clearly defined by resolution of the Reservation Business Committee.

CERTIFICATION OF ADOPTION

Pursuant to an order approved September 12, 1963, by the Assistant Secretary of the Interior, the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe was submitted for ratification to the qualified voters of the reservations, and was on November 23, 1963, duly adopted by a vote of 1,761 for and 1,295

against, in an election in which at least 30 percent of those entitled to vote cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

(sgd) Allen Wilson, President
Tribal Executive Committee

(sgd) Peter DuFault, Secretary
Tribal Executive Committee

(sgd) H.P. Mittelholtz, Superintendent
Minnesota Agency

APPROVAL

I, John A. Carver, Jr., Assistant Secretary of the Interior of the United States of America, by virtue of the authority granted me by the Act of June 18, 1934 (48 Stat. 984), as amended, do hereby approved the attached Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota.

John A. Carver, Jr.,
Assistant Secretary of the Interior
Washington, D.C.
(SEAL) Date: March 3, 1964

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, Mille Lacs, and White Earth); and
- WHEREAS,** Pursuant to Article 11 of its Revised Constitution, the Tribe has all power 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 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 vote in favor of the proposed settlement; 1,224 votes against the proposed settlement; (3 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 Vermilion, Minnesota,



Norman W. Deschampe, President
THE MINNESOTA CHIPPEWA TRIBE



Eli O. Hunt, Secretary
THE MINNESOTA CHIPPEWA TRIBE



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

JAN 7 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 (RBCs) of the six Minnesota Chippewa reservations. The TEC is composed of the Chairmen and Secretary-Treasurers of each of the six reservations. Article III, Section 1. The powers of the TEC and the RBCs 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).

MCT - 17

Attachment 3

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 1(b).

Thus, I believe that the TEC 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 1(g).

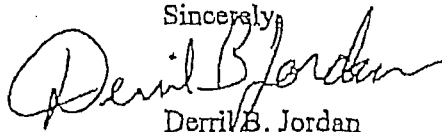
It appears from the minutes of the special July 1, 1998, meeting that a quorum was present and that a majority of those present voted in favor of the resolution. The minutes indicate a vote of 6 for and 3 against with 10 members present. The results are consistent with the constitutional restriction 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. Jordan
Associate Solicitor
Division of Indian Affairs

MCT - 18

In the United States Court of Federal Claims

Nos. 19 & 188
(Filed: May 17, 1999)

THE MINNESOTA CHIPPEWA TRIBE,
et al.,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

ORDER

Pending is the parties' joint motion for findings in aid of settlement. Plaintiff Minnesota Chippewa Tribe and Defendant United States have stipulated and jointly moved the Court to adopt the following findings:


1. Plaintiff Minnesota Chippewa Tribe and Defendant United States anticipate submitting a Joint Motion and Stipulation for Entry of Final Judgment ("Stipulation") to the Court to fully resolve and compromise this dispute. *See* Joint Exhibit 1.
2. Under its Revised Constitution, the Tribe's governing body is the Tribal Executive Committee, which is comprised of the Chairperson and the Secretary-Treasurer of each of the Tribe's six constituent reservations. *See* Joint Exhibit 2.
3. The Tribal Executive Committee has the constitutional authority to enter into the proposed settlement on behalf of the Minnesota Chippewa Tribe.
 - a. On July 1, 1998, the Tribal Executive Committee duly enacted Resolution No. 01-99 which approved the

settlement described in the Stipulation and authorized its President to sign the Stipulation. See Joint Exhibit 3.

- b. The Solicitor's Office of the Department of the Interior has reviewed Tribal Resolution No. 01-99 and the Constitution of the Tribe (which was in Exhibit 4).
 - c. The enactment of Resolution No. 01-99 by the Tribal Executive Committee and the signing of the Stipulation by the Attorney of Record for the Tribe and by the President of the Tribal Executive Committee are appropriate and sufficient evidence of acceptance by the Tribe of the settlement proposed in the Stipulation.
4. The parties propose to attach an Appendix A and an Appendix B to the Stipulation. The parties agree that these appendices represent their best efforts to date to identify certain lands as described therein; and that the parties' sole reason for attaching these appendices is to provide that information, which was developed over the course of the litigation. The parties further agree, and this Court finds that, by attaching these appendices, the parties do not intend to assume or impose any binding obligations on any party with respect to title, status, or ownership of the lands identified therein. The parties further agree, and this Court finds, that these appendices may not be used in any way as evidence of the title, status, or ownership of the lands identified within the appendices.

After reviewing the motion and attachments, and for good cause shown, the court grants the motion. The proposed findings are adopted.

It is so ORDERED.


ERIC G. BRUGGINK
Judge

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

Minnesota Chippewa Tribe,
Plaintiff

v.

Docket Nos. 19 and 188
(Judge Bruggink)

United States of America,
Defendant

JOINT MOTION AND STIPULATION FOR ENTRY OF FINAL JUDGMENT

The Minnesota Chippewa Tribe and the United States of America, parties hereto, hereby stipulate and agree as follows:

1. The parties shall jointly move the Court to enter a final judgment in the amount of twenty million dollars (\$20,000,000) against the United States in favor of plaintiff Minnesota Chippewa Tribe. No appeal from the final judgment shall be taken by either party to any court.

2. Docket Nos. 19 and 188 were filed pursuant to Section 2 of the Indian Claims Commission Act (Pub. L. No. 79-726, Ch. 959, Act of August 13, 1946, 60 Stat. 1049, 1050)(hereafter, "ICCA"). The final judgment entered pursuant to this Stipulation shall finally dispose of all claims, rights, and demands under Section 2 of the ICCA (including all damages on such claims accruing up to the date of the final judgment in Docket Nos. 19 and 188) which plaintiff has asserted or could have asserted in Docket Nos. 19 and 188.

3. The order entering a final judgment shall be by way of compromise and settlement. Nothing in this Stipulation shall be construed as an admission of liability by the United States as to any claim and/or issue.

4. This Stipulation may not be used by either party for the purposes of precedent or argument in any other case or used in any manner whatsoever to the prejudice of either party in any other proceeding; provided that the parties may use this Stipulation to document that Docket Nos. 19 and 188 were finally disposed of pursuant to the terms of this Stipulation.

5. Nothing in this Stipulation or judgment pursuant thereto shall prevent the plaintiff from seeking from Congress any remedy related to the lands ceded and disposed of under the Nelson Act.

6. Appendix A (attached hereto and incorporated into this Stipulation) identifies the legal descriptions and acreages of the lands which were restored to tribal ownership prior to the date of this Stipulation.

7. Appendix B (attached hereto and incorporated into this Stipulation) identifies the legal descriptions and acreages of those ceded lands which were included within the Minnesota National Forest (now the Chippewa National Forest) by operation of the Act of May 23, 1908.

8. All claims, rights, and demands under Section 2 of the ICCA which plaintiff has asserted or could have asserted or could have asserted in Docket Nos. 19 and 188 specifically regarding those lands in the Mille Lacs Reservation that were disposed of by the United States prior to March 4, 1890 (the effective date of the Nelson Act of January 14, 1889) are withdrawn with prejudice. The parties specifically agree that the plaintiff is receiving no compensation for any such claim under the final judgment entered pursuant to this Stipulation, and no such claim is being adjudicated by such judgment.

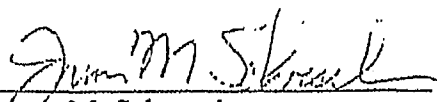
9. Defendant United States waives all claims of offsets in Docket Nos. 19 and 188 which it has asserted, or could have asserted pursuant to Section 2 of the ICCA.

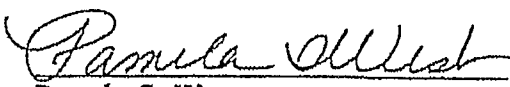
10. Plaintiff Minnesota Chippewa Tribe waives all claims it might have asserted against the United States before the Court of Federal Claims in Docket Nos. 19 and 188 for any additional monies beyond the settlement amount identified in paragraph 1, for attorney fees, expert witness fees, expenses, or costs which plaintiff may have incurred.

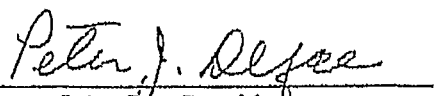
11. Nothing in this Stipulation shall be construed to limit, foreclose, or otherwise adversely affect any tribal right to hunt, fish, and gather, or any tribal treaty right, on any lands or waters within any of the reservations of plaintiff's six constituent bands.

12. The following documents are attached in support of this Stipulation and are incorporated into this Stipulation: 1) a copy of the letter from plaintiff's attorney of record offering to settle all claims in Docket Nos. 19 and 188 for the amount of twenty million dollars (\$20,000,000), subject to approval by the tribal governing body (Appendix C hereto); 2) a copy of the letter from the defendant's attorney of record accepting plaintiff's offer, subject to certain conditions (Appendix D hereto); and 3) a copy of the duly enacted resolution of the Tribal Executive Committee (the tribal governing body) approving the settlement and this joint motion and Stipulation (Appendix E).

Dated: May 21, 1999


James M. Schoessler
Attorney of Record
Plaintiff Minnesota Chippewa Tribe


Pamela S. West
Attorney of Record
Defendant United States of America


Peter J. Defoe, President
Minnesota Chippewa Tribe

RESOLUTION 146-09

- 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 was 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 authority to determine the proper allocation of the proceeds of the judgment award; 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 prosecuting the Claims, and the Tribal decisions regarding such prosecution, have been shared equally by the six member Bands; and
- WHEREAS,** the Tribal Executive Committee has rejected the distribution formula proposed by the Bureau of Indian Affairs because it is in derogation of the principle of self-determination; and

NOW THEREFORE BE IT RESOLVED that the Tribal Executive Committee hereby approves the allocation of the judgment funds now held in trust, together with all interest income, in the following manner:

1. First, an amount to reimburse the Minnesota Chippewa Tribe for its expenses incurred in prosecuting the claim and pursuing its distribution by the United States, including repayment of loans made by each constituent Band to the Minnesota Chippewa Tribe, in accordance with the notes memorializing said loans; and
2. Second, an amount that will enable each constituent Band to make a per capita payment of \$300.00 to each member of the Minnesota Chippewa Tribe enrolled under the Band and living on the date of this Resolution, provided that at the option of each Band's governing body the shares of minors and legal incompetents may either: (1) be disbursed to the parents or legal guardians of such minors or legal incompetents; or (2) be deposited into a trust account (or accounts) for the benefit of such minors or legal incompetents and disbursed under the terms of said trust.


3. Third, one hundred percent (100%) of the funds remaining after the disbursements set forth above shall be distributed in equal shares to each constituent Band; and
4. Fourth, any unclaimed per capita funds shall be administered by the Minnesota Chippewa Tribe in a manner consistent with the provisions of 25 CFR §§ 115.818 to 115.820 (April 1, 2009) and upon restoration to ownership of the Minnesota Chippewa Tribe as provided in 25 U.S.C. §164, shall be distributed to the constituent Bands in equal shares.

BE IT FURTHER RESOLVED that the Tribal Executive Committee hereby requests the United States Congress to enact legislation to effect this distribution of the judgment funds; and

BE IT FURTHER RESOLVED that Resolution 40-00, dated September 20, 1999, and Resolution 144-09, dated July 29, 2009, are hereby rescinded and replaced in their entirety by this Resolution; and

BE IT FURTHER AND FINALLY 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, at a Special Meeting of the Minnesota Chippewa Tribal Executive Committee, a quorum present, held on October 1, 2009 at Prior Lake, Minnesota.


Norman W. Deschampe, President
THE MINNESOTA CHIPPEWA TRIBE


Franklin B. Heisler, Secretary
THE MINNESOTA CHIPPEWA TRIBE



The Minnesota Chippewa Tribe

August 10, 2011

Hon. Al Franken
309 Hart Senate Office Building
Washington, DC 20510

RE: Nelson Act Legislation

Dear Senator Franken:

We are writing to request that you sponsor legislation in the United States Senate as a companion to H.R. 1272, the Minnesota Chippewa Tribe Judgment Fund Distribution Act of 2011. That bill was introduced by Representative Collin Peterson on March 30, 2011, and is co-sponsored by Representatives Chip Cravaack and Erik Paulsen.

The purpose of H.R. 1272 is to authorize the release of funds that were awarded to the Minnesota Chippewa Tribe in a 1999 settlement of claims against the United States. The funds were transferred by the Treasury Department in 1999 to a trust account in the Department of Interior and legislation is required for the Minnesota Chippewa Tribe and its constituent Bands to access the funds awarded by the court.

After a decade of inaction on the Tribe's initial proposal for use and distribution, in 2009 the Tribal Executive Committee modified its distribution formula to reconcile differences in competing bills that had been introduced by Representatives Peterson and Oberstar. Those differences had resulted in a stalemate in the House Committee on Natural Resources in 2008 and a hearing in that Committee made it clear that we needed to restructure the formula. That was done and the new formula is reflected in H.R. 1272.

We urge you to respect our decision by introducing legislation in the Senate as a companion to H.R. 1272. Time is of the essence because we hope that the House will hear that bill in September. Please contact any of the undersigned if you have any questions.

Sincerely,

Norman W. Deschampe
President, Minnesota Chippewa Tribe
Chairman, Grand Portage Band of Chippewa

Karen R. Diver
Vice President, Minnesota Chippewa Tribe
Chairwoman, Fond du Lac Band
of Lake Superior Chippewa

Administration
218-335-8511
Toll Free: 888-112
Fax: 218-335-8491
Home Loan
218-335-8582
Fax: 218-335-6921
Economic Development
218-335-8583
Fax: 218-335-8491
Education
218-335-8584
Fax: 218-335-8024
Human Services
218-335-8585
Fax: 218-335-8081
Water Quality
218-335-6103
Fax: 218-335-8181

Attachment 7

MEMBER RESERVATIONS • BOIS FORTE • FOND DU LAC • GRAND PORTAGE • LEECH LAKE •

NI-MAH-MAH-WI-NO-MIN "We all come together"

Mailing Address: P.O. Box 217, Cass Lake, MN 56633-0217 • Street Address: 15542 State 371 N.W., Cass Lake, MN 56633

MEMORANDUM

TO: Norman Deschampe, President
Minnesota Chippewa Tribe

FROM: Mark A. Anderson



DATE: March 29, 2011

RE: Nelson Act Issue

I understand that a question has come up about the relationship between language in the Treaty of September 30, 1854, and the Nelson Act Claims settlement.

Article 1 of the 1854 Treaty provides that the Chippewas of Lake Superior “relinquish to the Chippewa of the Mississippi, all their interest in and claim to the lands heretofore owned by them in common, lying west of the [cession] line.” Other provisions of the 1854 Treaty established the Grand Portage Reservation, the Fond du Lac Reservation, and set the stage for the selection of the Bois Forte Reservation. (Other Lake Superior Chippewa Reservations were established in Wisconsin and Michigan.)

The relinquishment language in the 1854 Treaty did not, however, mean that Grand Portage, Fond du Lac or Bois Forte would gain nothing from the Nelson Act. The reasons for that are the land cession and sale provisions of the Nelson Act. In them, the Chippewa of Minnesota (excluding Red Lake) ceded their reservations from previous treaties to the United States for a share of the proceeds of the sale of the lands under the scheme of the Nelson Act. Section 7 of the Nelson Act provided that all money accruing from the disposal of the “opened” reservations would be deposited in the Treasury of the United States “to the credit of all the Chippewa Indians in the State of Minnesota.” It made no difference where the reservation was located in Minnesota or for what Band the reservation was created. The statute provided that all would share in the funds. In other words, the reservation lands ceded by each of the Bands were ceded in trust for the common benefit of all, regardless of the amount of reservation land ceded by a particular Band.

The proceeds from the sale of ceded reservation lands would go into the common pool created by the Nelson Act. The Nelson Act structure was upheld in early litigation about who was entitled to payment for the sale of lands on a specific reservation. For example, Mille Lacs sought payment directly to that Band for lands on its reservation, but in 1913 the Supreme Court ruled that the payment would go into the Nelson Act pool for the benefit of all – including Mille Lacs.


Attachment 8

No matter what the “relinquishment” language in the 1854 or other treaties may have provided, the Nelson Act created (with the express consent of a majority of members) a new system – where a Band ceded lands within its Reservation for the benefit of other Bands besides itself.

See Minnesota Chippewa Tribe v. United States, 11 Cl.Ct 221, 224-234 (1986) for a concise discussion of the Nelson Act and litigation under it.

MEMORANDUM

TO: Gary Frazer, Executive Director
Minnesota Chippewa Tribe

FROM: Mark A. Anderson 

DATE: October 24, 2011

RE: Nelson Act Judgment Fund Distribution

I have had an opportunity to review the April 7, 2011, and September 29, 2011, documents prepared by the Leech Lake Tribal Attorney and asserting that there “is an expressly reserved, treaty property right with clearly identified valuable consideration, which under contract and property law, legally precludes any right of recovery for the Chippewas of Lake Superior with regard to compensation for damages for losses of lands and timber in the 1855 ceded territory.” (See page 14 of the September 29, 2011, memorandum.)

As indicated in my memorandum of March 29, 2011, I do not believe that the language in the 1854 Treaty precludes the Grand Portage, Fond du Lac and Bois Forte Bands (each identified by the United States as Lake Superior Chippewa) from sharing in the Nelson Act proceeds or the funds awarded in Dockets 19 and 188. At the bottom line, the settlement dealt with claims arising under the provisions of the Nelson Act and the Nelson Act dealt with the disposition of lands on the reservations created by earlier treaties. And as stated previously, the Nelson Act scheme was to create a common fund no matter which reservation lands were involved.

The Leech Lake memoranda also assert that the pending distribution legislation is flawed because it does not expressly address the treaty right they suggest exists. It is not surprising that the legislation does not address (much less expressly abrogate) a treaty right because the only thing the legislation will do is authorize the Secretary of the Interior to distribute the funds. The authorization to distribute does not affect the terms of the settlement, nor does the distribution alter the terms of the Nelson Act or who had standing to bring the claims. (In fact, the pending legislation is similar to previous legislation authorizing per capita payments from the Nelson Act trust fund to “each of the enrolled Chippewa Indians of Minnesota” without any discussion of historic Band affiliation. See, Act of March 15, 1928, 45 Stat. 314; Act of January 28, 1929, 46 Stat. 54; Act of February 14, 1931, 46 Stat. 1107; Act of February 12, 1932, 47 Stat. 49; Act of January 20, 1933, 47 Stat. 773; and Act of May 7, 1934, 48 Stat. 668.)

Finally, the order and joint stipulation that settled the case dealt with the claims brought in the cases. Neither the MCT nor the U.S. could settle claims not brought. Furthermore, the settlement expressly provided that it did not (as it could not) impact treaty claims or other claims outside the scope of Dockets 19 and 188.

Attachment 9

THE NELSON ACT OF 1889
DISTRIBUTION ISSUES

The recovery in the Minnesota Chippewa Tribe Claims cases relates to improper actions of the United States relating to the implementation of the Nelson Allotment Act of 1889, 25 Stat. 642. The Nelson Act provided for the negotiated cession of lands within all the Chippewa reservations in Minnesota except the Red Lake and White Earth reservations. The statute authorized the surveying of lands in the reservations, and the division of the lands into pinelands and agricultural lands. The pinelands were to be sold at public auction, and the agricultural lands were to be disposed of under the provisions of the homestead law. With regard to the proceeds of the land and timber sales, section 7 of the Nelson Act said in relevant part:

"That all money accruing from the disposal of said lands...shall [after certain deductions] be placed in the Treasury of the United States to the credit of all the Chippewa Indians in the State of Minnesota as a permanent fund...."

The interest on the fund was to be spent on certain annual per capita payments to all Indians and on creating a system of free schools among the Indians. At the end of 50 years the permanent fund was to be divided and paid "to all of said Chippewa Indians and their issue then living, in cash, in equal shares." The fund, however, was exhausted before the end of the 50 year period so there was nothing to distribute.

The Minnesota Chippewa Tribe, as representative of all Minnesota Chippewa Bands except the Red Lake Band, brought a claim before the Indian Claims Commission alleging that the United States undersold Indian lands and timber and improperly spent some of the permanent fund set aside for all Chippewa Indians.

The proceeds of the land and timber sold under the Nelson Act thus went into a common fund for the benefit of all Minnesota Chippewas—proceeds were not put in separate accounts based on which reservation the land and timber came from. Expenditures from the permanent fund were not to be allocated based on which reservation was affected, but were supposed to benefit all Minnesota Chippewas. The Minnesota Chippewa Tribe—the plaintiff in the claims action—currently represents all Minnesota Chippewa Bands other than the Red Lake Band. The Tribe was the plaintiff in the claims litigation. The Tribe funded the claims case and allocated the cost to the individual reservations in six equal shares. The judgment was in favor of the Tribe. The Tribe, by vote of its governing body after a year of discussion, decided how to allocate the funds—allocating each Band a 1/6 share of the proceeds.



THE MINNESOTA CHIPPEWA TRIBE

NELSON ACT JUDGMENT DISTRIBUTION

- In 1948 and 1951 the Minnesota Chippewa Tribe filed complaints in Dockets 19 and 188 before the Indian Claims Commission.
- From the time of filing until the claims were settled in 1999, the Minnesota Chippewa Tribe prosecuted the claims on behalf of the Chippewas of Minnesota (except the Red Lake Nation).
- The claims in the cases were:
 - A. A claim that the proceeds from the sale of land and timber on the 6 Reservations under the Nelson Act were misspent; and
 - B. A claim that the land and timber were sold at less than full value.
- The Minnesota Chippewa Tribe is comprised of six (6) constituent Bands. Under the Tribal constitution, the governing body is the Tribal executive Committee (TEC). Two elected officials from each Band comprise the twelve member TEC.
- The governmental decisions of the TEC are by majority vote. Like the United States Senate, each TEC member's vote has equal weight no matter the population represented.
- The Revised Constitution and Bylaws of the Minnesota Chippewa Tribe empowers the TEC to "apportion all funds within its control to the various Reservations excepting funds necessary to support the authorized costs of the Tribal Executive Committee."
- On May 26, 1999, the claims were settled by a majority of the TEC and judgment was entered. The judgment was simply: "The plaintiff [the Minnesota Chippewa Tribe] shall recover of and from the United States the sum of \$20,000,000.00".
- The settlement did not purport to allocate the award to the two categories of claims presented in the cases. No such allocation has ever been approved.
- On September 9, 1999, the governing body of the Minnesota Chippewa Tribe (the Tribal Executive Committee) enacted Resolution 40-00, allocating each constituent Band an equal share of the net proceeds of the

judgment funds. Only the two Leech Lake representatives on the TEC voted "NO".

- The approved minutes of the September 9, 1999, meeting reflect that the White Earth Tribal Council specifically requested that its position be made a part of the record. That position was that "The White Earth RBC has gone on record recommending an equal one-sixth split for each Band" and was signed by Chairman John Buckanaga and Secretary-Treasurer Erma Vizenor.
- On June 6, 2001, the Bureau of Indian Affairs (BIA) prepared a Results of Research Report recommending that the judgment funds "shall be allocated pro rata between the Bands based on the number of tribal members currently enrolled with each of the Bands."
- Before and after June 6, 2001, the Minnesota Chippewa Tribe objected to the Results of Research as erroneous and inconsistent with tribal law.
- On April 26, 2007, without consulting the Minnesota Chippewa Tribe, the BIA sent to Congress proposed legislation that would give effect to the BIA's proposal and ignore the decision of the Minnesota Chippewa Tribe. The \$20 million award plus \$6 million in accrued interest are proposed by the BIA to be divided amongst the six Bands based on their current population.
- The fundamental flaw in the BIA position is that it insists that there are "two or more beneficiary entities" entitled to the judgment. The position of the Minnesota Chippewa Tribe is that it is the sole beneficiary. Just as the TEC decided to bring the claim, to prosecute the claim and to settle the claim, it has the authority to decide how to divide the claim amongst its constituent Bands.
- The Minnesota Chippewa Tribe's governing body opposes the BIA proposed legislation. It should be returned to the Department and legislation consistent with the TEC Resolution should be enacted. Each Band should receive an equal share.