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REPORT
112–501

# MINNESOTA CHIPPEWA TRIBE JUDGMENT FUND DISTRIBUTION ACT OF 2012

MAY 30, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

## R E P O R T

together with

## ADDITIONAL VIEWS

[To accompany H.R. 1272]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1272) to provide for the use and distribution of the funds awarded to the Minnesota Chippewa Tribe, et al., by the United States Court of Federal Claims in Docket Numbers 19 and 188, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Minnesota Chippewa Tribe Judgment Fund Distribution Act of 2012".

**SEC. 2. FINDINGS.**

Congress finds the following:

(1) On January 22, 1948, the Minnesota Chippewa Tribe, representing all Chippewa bands in Minnesota except the Red Lake Band, filed a claim before the Indian Claims Commission in Docket No. 19 for an accounting of all funds received and expended pursuant to the Act of January 14, 1889, 25 Stat. 642, and amendatory acts (hereinafter referred to as the Nelson Act).

(2) On August 2, 1951, the Minnesota Chippewa Tribe, representing all Chippewa bands in Minnesota except the Red Lake Band, filed a number of claims before the Indian Claims Commission in Docket No. 188 for an accounting of the Government's obligation to each of the member bands of the Minnesota

Chippewa Tribe under various statutes and treaties that are not covered by the Nelson Act of January 14, 1889.

(3) On May 17, 1999, a Joint Motion for Findings in Aid of Settlement of the claims in Docket No. 19 and 188 was filed before the Court.

(4) The terms of the settlement were approved by the Court and the final judgment was entered on May 26, 1999.

(5) On June 22, 1999, $20,000,000 was transferred to the Department of the Interior and deposited into a trust fund account established for the beneficiaries of the funds awarded in Docket No. 19 and 188.

(6) Pursuant to the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.), Congress must act to authorize the use or distribution of the judgment funds.

(7) On October 1, 2009, the Minnesota Chippewa Tribal Executive Committee passed Resolution 146–09, approving a plan to distribute the judgment funds and requesting that the United States Congress act to distribute the judgment funds in the manner described by the plan.

**SEC. 3. DEFINITIONS.**

For the purpose of this Act:

(1) AVAILABLE FUNDS.—The term "available funds" means the funds awarded to the Minnesota Chippewa Tribe and interest earned and received on those funds, less the funds used for payments authorized under section 4.

(2) BANDS.—The term "Bands" means the Bois Forte Band, Fond du Lac Band, Grand Portage Band, Leech Lake Band, Mille Lacs Band, and White Earth Band.

(3) JUDGMENT FUNDS.—The term "judgment funds" means the funds awarded on May 26, 1999, to the Minnesota Chippewa Tribe by the Court of Federal Claims in Docket No. 19 and 188.

(4) MINNESOTA CHIPPEWA TRIBE.—The term "Minnesota Chippewa Tribe" means the Minnesota Chippewa Tribe, Minnesota, composed of the Bois Forte Band, Fond du Lac Band, Grand Portage Band, Leech Lake Band, Mille Lacs Band, and White Earth Band. It does not include Red Lake Band of Chippewa Indians, Minnesota.

(5) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

**SEC. 4. LOAN REIMBURSEMENTS TO MINNESOTA CHIPPEWA TRIBE.**

(a) IN GENERAL.—The Secretary is authorized to reimburse the Minnesota Chippewa Tribe the amount of funds, plus interest earned to the date of reimbursement, that the Minnesota Chippewa Tribe contributed for payment of attorneys' fees and litigation expenses associated with the litigation of Docket No. 19 and 188 before the U.S. Court of Federal Claims and the distribution of judgment funds.

(b) CLAIMS.—The Minnesota Chippewa Tribe's claim for reimbursement of funds expended shall be—

(1) presented to the Secretary not later than 90 days after the date of enactment of this Act;

(2) certified by the Minnesota Chippewa Tribe as being unreimbursed to the Minnesota Chippewa Tribe from other funding sources;

(3) paid with interest calculated at the rate of 6.0 percent per annum, simple interest, from the date the funds were expended to the date the funds are reimbursed to the Minnesota Chippewa Tribe; and

(4) paid from the judgment funds prior to the division of the funds under section 5.

**SEC. 5. DIVISION OF JUDGMENT FUNDS.**

(a) MEMBERSHIP ROLLS.—Not later than 90 days after the date of the enactment of this Act, the Minnesota Chippewa Tribe shall submit to the Secretary updated membership rolls for each Band, which shall include all enrolled members the date of the enactment of this Act.

(b) DIVISIONS.—After all funds have been reimbursed under section 4, and the membership rolls have been updated under subsection (a), the Secretary shall—

(1) set aside for each Band a portion of the available judgment funds equivalent to $300 for each member enrolled within each Band; and

(2) after the funds are set aside in accordance with paragraph (1), divide 100 percent of the remaining funds into equal shares for each Band.

(c) SEPARATE ACCOUNTS.—The Secretary shall—

(1) deposit all funds described in subsection (b)(1) into a "Per Capita" account for each Band; and

(2) deposit all funds described in subsection (b)(2) into an "Equal Shares" account for each Band.

(d) WITHDRAWAL OF FUNDS.—After the Secretary deposits the available funds into the accounts described in subsection (c), a Band may withdraw all or part of the monies in its account.

(e) DISBURSEMENT OF PER CAPITA PAYMENTS.—All funds described in subsection (b)(1) shall be used by each Band only for the purposes of distributing one $300 payment to each individual member of the Band. Each Band may—

(1) distribute the $300 payment to the parents or legal guardians on behalf of each dependent Band member instead of distributing such $300 payment to the dependent Band member; or

(2) deposit into a trust account the $300 payment to each dependent Band member for the benefit of such dependent Band member, to be distributed under the terms of such trust.

(f) DISTRIBUTION OF UNCLAIMED PAYMENTS.—One year after the funds described in subsection (b)(1) are made available to the Bands, all unclaimed payments described in subsection (e) shall be returned to the Secretary, who shall divide these funds into equal shares for each Band, and deposit the divided shares into the accounts described in subsection (c)(2) for the use of each Band.

(g) LIABILITY.—If a Band exercises the right to withdraw monies from its accounts, the Secretary shall not retain liability for the expenditure or investment of the monies after each withdrawal.

**SEC. 6. GENERAL PROVISIONS.**

(a) PREVIOUS OBLIGATIONS.—Funds disbursed under this Act shall not be liable for the payment of previously contracted obligations of any recipient as provided in Public Law 98–64 (25 U.S.C. 117b(a)).

(b) INDIAN JUDGMENT FUNDS DISTRIBUTION ACT.—All funds distributed under this Act are subject to the provisions in the Indian Judgment Funds Distribution Act (25 U.S.C. 1407).

## PURPOSE OF THE BILL

The purpose of H.R. 1272, as ordered reported, is to provide for the use and distribution of the funds awarded to the Minnesota Chippewa Tribe, et al., by the United States Court of Federal Claims in Docket Numbers 19 and 188.

## BACKGROUND AND NEED FOR LEGISLATION

On January 22, 1948, and August 2, 1951, the Minnesota Chippewa Tribe, representing all Chippewa Bands in Minnesota except for the Red Lake Band, filed a number of claims before the Indian Claims Commission. These claims (later referred to as Docket Numbers 19 and 188) are related to various accounting obligations of the federal government pursuant to the Nelson Act and various treaties that are not covered by the Nelson Act. The Minnesota Chippewa Tribe filed these claims against the federal government alleging that the six bands were not adequately compensated for lands ceded under the Nelson Act and for improper timber valuations. All six bands equally shared the risk and expense of prosecuting the cases. The United States Court of Federal Claims awarded a $20 million settlement for Docket Nos. 19 and 188. These funds have been held in trust since June 22, 1999, and with interest they total $28.5 million.

### Nelson Act of 1889

The Nelson Act was established to provide a way for the federal government to negotiate with the Chippewa Indians of Minnesota to obtain land cessions for certain lands that had been reserved for them under various treaties. After land surveys and valuations had been completed, tribal lands were then ceded to the United States and those ceded lands were opened for settlement under the homestead laws (usually sold at public auctions). The money received

from the land sales was then deposited into the United States Treasury for the benefit of the Chippewa Indians of Minnesota.

**Minnesota Chippewa Tribe/Tribal Executive Committee**

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). The governing body for the Tribe is the Minnesota Chippewa Tribal Executive Committee which has the authority to allocate the proceeds of the judgment funds, according to their Constitution.

On October 27, 1997, the Tribal Executive Committee authorized a referendum to its tribal members seeking approval of the $20 million settlement (see Resolution 01–99). Then on September 9, 1999, the Tribal Executive Committee passed a resolution (see Resolution 40–00) that allocated each member band an equal share of the judgment funds. However, Leech Lake opposed this resolution and its formula.

**Indian Tribal Judgment Funds Use or Distribution Act**

This Act, first enacted on October 19, 1973, sets forth a convoluted procedure to handle the distribution of settlement funds where more than one tribe is involved and the parties do not agree on a distribution formula. The Bureau of Indian Affairs (BIA) was tasked with executing the responsibilities of the Act. On June 6, 2001, the BIA issued a Results of Research Report on the Judgment in Favor of the Minnesota Chippewa Tribe, et al., v. United States, Dockets 19 and 188 (Report). The Report "recommended an alternative distribution that would acknowledge the losses suffered by each of the Bands. Under the proposal, 35 percent of the fund would have been distributed to each of the bands in proportion to their losses. The remaining 65 percent would have been distributed to each of the bands in proportion to their current tribal enrollment."

After discussing this Report with the Tribal Executive Committee and the Bands' representatives, the BIA sent the Tribal Executive Committee a draft legislative proposal for the division of judgment funds on November 25, 2005. However, the Tribal Executive Committee was firm in its opposition to any legislative proposal that did not split the funds evenly. On May 1, 2006, Chairman Norman Deschampe of the Grand Portage Reservation Tribal Council sent a letter to the BIA requesting that the Department forego any recommendations to Congress.

However, as noted earlier, the BIA has a responsibility to prepare and submit to Congress a plan for the use and distribution of judgment funds awarded by the Indian Claims Commission or the United States Court of Federal Claims. It was not until April 26, 2007, that the BIA sent a letter to then-Speaker of the House of Representatives Nancy Pelosi with draft legislation to disburse the settlement funds. The draft bill would have divided the funds on a per-capita basis, as recommended in the 2001 Report by the BIA. However, on May 22, 2008, the BIA sent a letter to the then-Chairman of the Natural Resources Committee, Nick Rahall, withdrawing its support of the draft bill that was sent on April 26, 2007.

In the 110th Congress, two bills, H.R. 2306 and H.R. 3699, were introduced to provide for a distribution of the Minnesota Chippewa funds. H.R. 2306 (Collin Peterson, D–MN) would have distributed the funds on a per-capita basis. H.R. 3699 (James Oberstar, D–MN) would have split the funds evenly among the six bands. A hearing was held on both bills with the Bush Administration supporting H.R. 2306. No further action was taken on either bill.

In the 112th Congress, on March 1, 2012, a legislative hearing was held on H.R. 1272. Witnesses included Congressmen Peterson and Chip Cravaack (R–MN), the Director of the Bureau of Indian Affairs, the President of the Minnesota Chippewa Tribe, the Chairwoman of the White Earth Band, the Chief Executive of the Mille Lacs Band, and the Chairman of the Leech Lake Band of Ojibwe.

The Department of the Interior supports H.R. 1272 because the bill "respects the decisions of the governing body of the Minnesota Chippewa Tribe." However, it should be noted that H.R. 1272 does not have unanimous support among the six member bands. As noted above, the Leech Lake Band of Ojibwe expressed its opposition to the distribution plan.

**Leech Lake Band**

The Leech Lake Band of Ojibwe is a sovereign tribe and is one of six bands which make up the Minnesota Chippewa Tribe. Leech Lake Band opposes H.R. 1272 because it alleges more actual damages (land and timer sold improperly or taken and mismanaged) were suffered on its reservation as a result of the Nelson Act than the reservations for the other five bands. Therefore, Leech Lake does not agree with H.R. 1272 providing of per-capita payments for all the bands' members and then evenly splitting the difference among the bands.

During Full Committee consideration of the bill, the Committee adopted an amendment offered by Congressman Don Young (R–AK) that would clarify: (1) that parents or legal guardians can accept per capita payments on behalf of dependents; and (2) the liability of the Secretary of the Interior once a Band withdraws such funds. These amendments were suggested by the Department of the Interior in its oral and written remarks.

## COMMITTEE ACTION

H.R. 1272 was introduced on March 30, 2011, by Congressman Collin Peterson (D–MN). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Indian and Alaska Native Affairs. On March 1, 2012, the Subcommittee held a hearing on the bill. On April 25, 2012, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Indian and Alaska Native Affairs was discharged by unanimous consent. Congressman Don Young (R–AK) offered en bloc amendment designated #1 to the bill; the amendment was approved by unanimous consent. The bill, as amended, was then adopted and ordered favorably reported to the House of Representatives by unanimous consent.

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on

Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

*H.R. 1272—Minnesota Chippewa Tribe Judgment Fund Distribution Act of 2012*

H.R. 1272 would authorize the Secretary of the Interior to disburse amounts held in trust for the Minnesota Chippewa Tribe. In 1999, a $20 million settlement was transferred from the Treasury's Judgment Fund to the Department of the Interior (DOI) and held in trust for the Minnesota Chippewa Tribe pending legislation to release the funds. Under the Indian Tribal Judgment Funds Use or Distribution Act of 1973, if the Secretary of the Interior cannot obtain consent from the tribal governing body concerning the distribution of an award within 180 days after the funds have been appropriated, legislation is required to authorize the distribution of such funds. In fiscal year 2010, the Chippewa's Tribal Executive Council (TEC) approved a resolution describing how to distribute the settlement amount among the bands of the Tribe and individuals. Though the federal government transferred ownership of the funds to the Tribe when the funds were expended from the Judgment Fund, the federal government has retained fiduciary responsibility over the amounts until they are distributed. The bill would make the disbursement of the funds contingent on the Tribe submitting updated membership rolls.

Based on information provided by DOI, CBO estimates that implementing H.R. 1272 would have no significant cost to distribute the settlement funds. The settlement amount was considered a federal expenditure when it was transferred from the Judgment Fund to DOI because the Tribe received ownership of the funds. Therefore, the ultimate distribution of the settlement and accrued interest is not a budgetary outlay of the federal government. CBO estimates that the total amount to be distributed under the bill would be about $29 million, which includes the $20 million settlement and about $9 million in accrued interest payments. Enacting H.R. 1272 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1272 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. Enacting the bill would benefit the Minnesota Chippewa Tribe.

The CBO staff contact for this estimate is Martin von Gnechten. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill, as ordered reported, is to provide for the use and distribution of the funds awarded to the Minnesota Chippewa Tribe, et al., by the United States Court of Federal Claims in Docket Numbers 19 and 188.

## EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

## COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

## PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

## CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

## ADDITIONAL VIEWS

I write to express my concerns as well as those of the Leech Lake Band of Ojibwe, with regard to the distribution plan proposed in H.R. 1272.

Congress enacted the Indian Tribal Judgment Fund Use or Distribution Act ("Judgment Fund Act" or "the Act"), 25 U.S.C. 1401 et seq., to establish an administrative process to determine a formula for the division of settlements approved by the U.S. Court of Federal Claims that involve two or more tribal beneficiaries. The Judgment Fund Act directs the Bureau of Indian Affairs ("BIA") to prepare a distribution plan for such settlements. In preparation of the plan, the BIA must use the "legal, financial and other expertise of the Department" and examine the "needs and desires of any groups or individuals who are in a minority position, but who are also entitled to receive such funds," among other factors. Under the Act, the plan must provide that not less than 20 percent of the settlement funds be set aside for the educational and economic development purposes of the beneficiary tribes.

The BIA, acting pursuant to the Judgment Fund Act, conducted "research necessary to identify the present-day beneficiaries of the funds awarded by the U.S. Court of Federal Claims in *Minnesota Chippewa Tribe, et al.,* v. *United States,* Dockets 19 and 188." The BIA's Report reviewed the long history of the underlying legal claims that are the subject of the settlement funds that would be impacted by H.R. 1272. The BIA stated that "[w]e do not find any compelling reasons to support a six-way split of the fund. . . ." However, H.R. 1272 would distribute nearly half of the settlement funds in this manner.

The concern raised by H.R. 1272 is that Congress will simply stamp its approval on the distribution of a federal court settlement when a group of tribal governments enters into an agreement over the objection of a minority tribe that may have a majority interest in the proceeds of the settlement.

Members of the Subcommittee on Indian and Alaska Native Affairs raised a number of questions during the March 1, 2012 legislative hearing on H.R. 1272. The BIA was unable to answer many of those questions.

The example of a recent congressionally approved tribal water rights settlement was raised at the hearing. The settlement involved the water rights of four pueblos in the State of New Mexico. The approved legislation distributed the settlement based on damages of priority water rights. Thus, each of the Pueblos was compensated based on their prior rights and how those rights were damaged. In our hearing on H.R. 1272 on March 1, 2012 the BIA was asked, "Does the Secretary believe the plan proposed in H.R. 1272 is equitable?" The BIA responded, "This is an agreement that was reached by the MCI and we're trying to support that decision."

When later asked "In the future if we have disputes and the tribes get together you're going to support that?" The BIA representative responded "I don't know if I have a good answer."

Members of the Subcommittee acknowledged that this is a complex issue. To gain a better understanding, the BIA was asked an additional series of questions: When the Department of the Interior considers settlements, does it consider damages? Should congress consider damages? Can the Department give direction on this? Are damages one of the main criteria in distributing court settlement funds? Congress enacted the White Earth Lands Settlement Act in 1985, which involved losses that occurred under the Nelson Act. How was that compensation distributed? Was it based on damages? The BIA responded, "I don't have answer, but will get you an answer." To my knowledge, these questions have not been answered.

In sum, while I acknowledge that MCT, as a whole, and the Committee on Natural Resources have come to an agreement on this longstanding legal claim, I am concerned that the Leech Lake band will be unfairly impacted as a result of this approval. Indeed, time has come to distribute the proceeds of the settlement, but at the very least the payments should reflect the damages incurred by individual parties to the settlement.

BEN RAY LUJÁN.

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