

105TH CONGRESS
1ST SESSION

H. R. 2822

To reaffirm and clarify the Federal relationship of the Swan Creek Black River Confederated Ojibwa Tribes as a distinct federally recognized Indian tribe, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 5, 1997

Mr. KNOLLENBERG (for himself and Mr. BARCIA) introduced the following bill; which was referred to the Committee on Resources

A BILL

To reaffirm and clarify the Federal relationship of the Swan Creek Black River Confederated Ojibwa Tribes as a distinct federally recognized Indian tribe, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Swan Creek Black
5 River Confederated Ojibwa Tribes of Michigan Act”.

6 **SEC. 2. DEFINITIONS.**

7 For purposes of this Act—

1 (1) the term “Tribe” means the Swan Creek
2 and Black River Confederated Ojibwa Tribes of
3 Michigan;

4 (2) the term “member” means an individual
5 who is eligible for enrollment in the Tribe pursuant
6 to section 4; and

7 (3) the term “Secretary” means the Secretary
8 of the Interior.

9 **SEC. 3. FINDINGS.**

10 The Congress finds the following:

11 (1) The Tribe is the descendant of, and political
12 successor to, the signatories of the 1785 Treaty of
13 McIntosh (7 Stat. 16); the 1789 Treaty of Fort
14 Harmar (7 Stat. 28); the 1795 Treaty of Greenville
15 (7 Stat. 49); the 1805 Treaty with the Wyandot (7
16 Stat. 87); the 1807 Treaty of Detroit (7 Stat. 105);
17 the 1808 Treaty of Detroit (7 Stat. 112); the Treaty
18 of 1815 (7 Stat. 131); the Treaty of 1816 (7 Stat.
19 146); the Treaty of 1817 (7 Stat. 160); the Treaty
20 of 1833 (7 Stat. 431); the 1836 Treaty of Washing-
21 ton (7 Stat. 503); the 1855 Treaty of Detroit (11
22 Stat. 633); and the Treaty of 1864 (14 Stat. 657).

23 (2) The aboriginal lands of the Tribe comprise
24 the area which is now known as Monroe,
25 Shiawassee, Lenawee, Wayne, Oakland, Macomb, St.

1 Clair, Lapeer, Sanilac, Livingston, Washtenaw, Gen-
2 esee, and Tuscola Counties in southeastern lower
3 Michigan. The boundaries of the Tribe's aboriginal
4 lands extend from Monroe County in the Southeast,
5 to Sanilac County in the North, to Genesee County
6 in the West.

7 (3) The cession treaties, from the 1807 Treaty
8 of Detroit through the 1836 Treaty of Washington,
9 legitimated seizure of tribal lands by settlers, forced
10 the Tribe to relinquish most of its rich aboriginal
11 lands in southeastern Michigan, relegating the Tribe
12 to small tracts of land in Macomb, Wayne,
13 Washtenaw, and St. Clair counties in Michigan, and
14 its members to small annuity payments by the Unit-
15 ed States.

16 (4) The 1836 Treaty of Washington compelled
17 the Tribe to relinquish the small tracts of land
18 granted in the 1807 Treaty of Detroit, purportedly
19 in exchange for future annuity payments and an
20 equivalent amount of land in Kansas. The 1807
21 treaty did not require the Tribe to relocate to the
22 lands in Kansas and only 51 members actually did
23 so. According to the 1845 United States Richmond
24 census documents, the majority of the Tribe mi-
25 grated north to Lapeer County, Michigan or re-

1 mained in the counties of Macomb, Wayne,
2 Washtenaw, and St. Clair.

3 (5) Pursuant to the 1855 Treaty of Detroit,
4 members of the Tribe were requested to relocate
5 from their homes in Lapeer, Macomb, Wayne,
6 Washtenaw, and St. Clair counties in Michigan to
7 non-aboriginal lands further north in Isabella Coun-
8 ty, Michigan, where tribal members were entitled to
9 individual land allotments. Many members remained
10 in Lapeer, Macomb, Wayne, Washtenaw, and St.
11 Clair counties. For the administrative convenience of
12 the Federal Government, the 1855 Treaty of Detroit
13 also relocated the Saginaw Band of Chippewa Indi-
14 ans, including some Potowatomis and Ottawas to the
15 newly-established reservation lands in Isabella Coun-
16 ty. Article 6 of that treaty also provided that the or-
17 ganization of the Tribe and of the Saginaw Band of
18 Chippewa Indians was dissolved, “except so far as
19 may be necessary for the purpose of carrying into ef-
20 fect” the provisions of the treaty.

21 (6) Another 1855 Treaty of Detroit (11 Stat.
22 624) similarly grouped different bands of Ottawa
23 and Chippewa Indians for administrative conven-
24 ience. Article 5 of that treaty provided for dissolu-
25 tion of the organization of these bands except so far

1 as may be necessary for the purpose of carrying into
2 effect the provisions of that treaty. Subsequent judi-
3 cial interpretation of that article determined that its
4 intent was to dissolve the Federal Government's fic-
5 tional coupling of these tribes, not to destroy their
6 independent sovereign existence. Public Law 103-
7 324 confirmed this interpretation by reaffirming the
8 Federal recognition of the Little River Band of Ot-
9 tawa Indians as a tribe separate and distinct from
10 the Chippewa Indians.

11 (7) The Treaty of 1864 confirmed continued
12 Federal acknowledgement of the Tribe by specifically
13 naming the Swan Creek and Black River Chippewas
14 in that treaty's preamble.

15 (8) Over time and without justification, the
16 Federal Government unilaterally withdrew from the
17 Federal relationship established with the Tribe
18 through the aforementioned treaties. The Tribe
19 brought suit against the Federal Government for
20 amounts past due under the treaties. In 1910 and
21 1924, the Congress enacted jurisdictional acts (36
22 Stat. 829 and 43 Stat. 137, respectively) to enable
23 the Tribe and the Saginaw Band of Chippewa to file
24 their respective claims against the United States.
25 These claims, filed in 1927, were later incorporated

1 into Indian Claims Commission Dockets 57, 59, and
2 13–E, and United Claims Court Docket 13–F.

3 (9) Beginning in 1935, the Tribe petitioned for
4 reorganization and assistance pursuant to the Act of
5 June 18, 1934 (25 U.S.C. 461 et seq., commonly re-
6 ferred to as the “Indian Reorganization Act”). Due
7 to misinterpretation of Article 6 of the 1855 Treaty
8 of Detroit, the Commissioner of Indian Affairs con-
9 cluded that the Tribe could not organize separately
10 from the Saginaw Band of Chippewa Indians. Due
11 to the lack of funding available for tribal land acqui-
12 sition, the Swan Creek Black River Ojibwa Bands
13 were unable to purchase their own reservation lands.

14 (10) In 1939, agents of the Federal Govern-
15 ment made an administrative decision not to provide
16 services or extend the benefits of the Indian Reorga-
17 nization Act to any additional Indian tribes located
18 in Michigan’s lower peninsula, as recognized by the
19 1807 Treaty of Detroit (7 Stat. 105), the 1819
20 Treaty of Saginaw (7 Stat. 203), the March 28,
21 1836 Treaty of Washington (7 Stat. 491), and the
22 May 9, 1836 Treaty of Washington (7 Stat. 503).

23 (11) In 1986, Congress enacted Public Law
24 99–346 (100 Stat. 674) to distribute judgment
25 funds awarded in settlement of the claims brought

1 by the Tribe and the Saginaw Band in Dockets 57,
2 59, 13–E, and 13–F in a nondiscriminatory manner
3 to the claimants and their descendants. This Act,
4 like the jurisdictional Acts of 1910 and 1924, con-
5 tained no clear and unambiguous intent to terminate
6 the Federal relationship with the Tribe. To the con-
7 trary, these Acts acknowledged that the Tribe pos-
8 sessed collective sovereign rights in tribal lands and
9 funds, a primary criterion for Federal recognition.

10 (12) Despite administrative denials of requests
11 by the Tribe to organize its own federally recognized
12 tribal government, the Tribe continued to carry out
13 its governmental functions through various formal
14 and informal political and social structures, includ-
15 ing a Tribal Council. Between 1937 and 1991, the
16 Tribe conducted many of its government functions
17 through associations organized by Swan Creek mem-
18 bers, including the Saginaw Rural and Urban Indian
19 Association. In 1991, the Tribe chartered a State-
20 sanctioned, non-profit tribal government and agreed
21 to seek Federal recognition of its confederation of
22 Swan Creek and Black River Ojibwa Bands as a dis-
23 tinct tribe.

24 (13) Other tribes in Michigan, whose members
25 are descendants of the signatories to one or more of

1 the treaties listed in paragraph (1) have been recog-
2 nized by the Federal Government as distinct Indian
3 tribes, including the Pokagon Band of Potawatomi
4 Indians, the Huron Potawatomi Band of Indians,
5 the Grand Traverse Band of Ottawa and Chippewa
6 Indians, the Sault St. Marie Tribe of Chippewa Indi-
7 ans, the Bay Mills Band of Chippewa Indians, the
8 Saginaw Chippewa Tribe of Michigan, and the Little
9 Traverse Bay Bands of Odawa Indians.

10 (14) The Tribe has at least 300 eligible mem-
11 bers who continue to reside close to what was recog-
12 nized in the 1807 Treaty of Detroit as their ances-
13 tral homelands in southeastern lower Michigan.

14 (15) The United States Government, the gov-
15 ernment of the State of Michigan, and local govern-
16 ments have had continuous dealings with the recog-
17 nized political leaders of the Tribe since 1785.

18 (16) In light of the treaty relations between the
19 Tribe and the United States, the Tribe's recognition
20 as a tribe in Acts of Congress, and Federal recogni-
21 tion of the Tribe's rights in tribal lands and funds,
22 it is appropriate for Congress to reaffirm and clarify
23 the Federal relationship of the Tribe in the same
24 manner as Congress has reaffirmed Federal recogni-
25 tion of the Lac Vieux Desert Band of Lake Superior

1 Chippewa Indians, the Pokagon Band of Potawatomi
2 Indians, the Little Traverse Bay Bands of Odawa
3 Indians, and the Little River Band of Ottawa Indi-
4 ans.

5 **SEC. 4. FEDERAL RECOGNITION.**

6 (a) FEDERAL RECOGNITION.—Federal recognition of
7 the Swan Creek Black River Confederated Ojibwa Tribes
8 of Michigan Indians is hereby affirmed. All laws and regu-
9 lations of the United States of general application to Indi-
10 ans or nations, tribes, or bands of Indians, including the
11 Act of June 18, 1934 (25 U.S.C. 461 et seq.) (commonly
12 referred to as the “Indian Reorganization Act”), which are
13 not inconsistent with any specific provision of this Act
14 shall be applicable to the Tribe and its members.

15 (b) FEDERAL SERVICES AND BENEFITS.—

16 (1) IN GENERAL.—The Tribe and its members
17 shall be eligible, on and after the date of the enact-
18 ment of this Act, for all future services and benefits
19 furnished to federally recognized Indian tribes with-
20 out regard to the existence of a reservation for the
21 Tribe or the location of the residence of any member
22 on or near any Indian reservation.

23 (2) SERVICE AREA.—For purposes of the deliv-
24 ery of Federal services to enrolled members of the
25 Tribe, the Tribe’s service area shall be deemed to be

1 the area comprised of Monroe, Shiawassee, Lenawee,
2 Wayne, Oakland, Macomb, St. Clair, Lapeer,
3 Sanilac, Washtenaw, Genesee, and Tuscola Counties
4 in southeastern lower Michigan. Such services shall
5 be provided notwithstanding the establishment of a
6 reservation for the Tribe after the date of enactment
7 of this Act. Services may be provided to members
8 outside the named service area unless prohibited by
9 law or regulation.

10 **SEC. 5. REAFFIRMATION OF RIGHTS.**

11 (a) IN GENERAL.—All rights and privileges of the
12 Tribe, and the members thereof, which may have been ab-
13 roigated or diminished before the date of enactment of this
14 Act are hereby reaffirmed.

15 (b) EXISTING RIGHTS OF TRIBE.—Nothing in this
16 Act shall be construed to diminish any right or privilege
17 of the Tribe, or the members thereof, that existed prior
18 to the date of enactment of this Act. Except as otherwise
19 specifically provided in any other provision of this Act,
20 nothing in this Act shall be construed as altering or affect-
21 ing any legal or equitable claim the Tribe might have to
22 enforce any right or privilege reserved by or granted to
23 the Tribe which was wrongfully denied to or taken from
24 the Tribe prior to the enactment of this Act.

1 SEC. 6. TRIBAL LANDS.

2 The Tribe's tribal lands shall consist of all real prop-
3 erty, now or hereafter held by, or in trust for, the Tribe.
4 The Secretary shall acquire real property for the benefit
5 of the Tribe. Any such property shall be taken by the Sec-
6 retary in the name of the United States in trust for the
7 benefit of the Tribe and shall become part of the Tribe's
8 reservation. All lands restored to the Tribe pursuant to
9 this section, whether now or hereafter held, shall be within
10 those lands previously ceded by the Tribe in the 1807
11 Treaty of Detroit (7 Stat. 105).

12 SEC. 7. MEMBERSHIP.

13 Not later than 18 months after the date of the enact-
14 ment of this Act, the Tribe shall submit to the Secretary
15 membership rolls consisting of all individuals eligible for
16 membership in the Tribe. The qualifications for inclusion
17 on the membership rolls of the Tribe shall be determined
18 by the membership clause in the governing documents of
19 the Tribe in consultation with the Secretary. Upon com-
20 pletion of the rolls, the Secretary shall immediately publish
21 notice of such in the Federal Register. The Tribe shall
22 ensure that such rolls are maintained and kept current.

23 SEC. 8. CONSTITUTION AND GOVERNING BODY.

24 (a) CONSTITUTION.—

25 (1) ADOPTION.—Not later than 24 months
26 after the date of the enactment of this Act, the Sec-

1 retary shall conduct, by secret ballot and in accord-
2 ance with the provisions of section 16 of the Act of
3 June 18, 1934 (25 U.S.C. 476), an election to adopt
4 a constitution and bylaws for the Tribe.

5 (2) INTERIM GOVERNING DOCUMENTS.—Until
6 such time as a new constitution is adopted under
7 paragraph (1), the governing documents in effect on
8 the date of enactment of this Act shall be the in-
9 terim governing documents for the Tribe.

10 (b) OFFICIALS.—

11 (1) ELECTION.—Not later than 6 months after
12 the Tribe adopts a constitution and bylaws pursuant
13 to subsection (a), the Secretary shall conduct elec-
14 tions by secret ballot for the purpose of electing offi-
15 cials for the Tribe as provided in the constitution.
16 The election shall be conducted according to the pro-
17 cedures described in subsection (a) except to the ex-
18 tent that such procedures conflict with the constitu-
19 tion of the Tribe.

20 (2) INTERIM GOVERNMENT.—Until such time
21 as the Tribe elects new officials pursuant to para-
22 graph (1), the governing body of the Tribe shall be
23 the governing body in place on the date of the enact-
24 ment of this Act, or any new governing body selected

1 under the election procedures specified in the in-
2 terim governing documents of the Tribe.

3 **SEC. 9. JURISDICTION.**

4 The Tribe shall have jurisdiction to the full extent
5 allowed by law over all lands taken into trust for the bene-
6 fit of the Tribe by the Secretary. The Tribe shall exercise
7 jurisdiction over all its members who reside within its serv-
8 ice area, as specified in section 4(b)(2) in matters pursu-
9 ant to the Indian Child Welfare Act of 1978 (25 U.S.C.
10 1901 et seq.) as if the members were residing upon a res-
11 ervation as defined in that Act.

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