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H.R. 1272, MINNESOTA CHIPPEWA TRIBE JUDGMENT FUND DISTRIBUTION ACT OF 2011

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

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LEGISLATIVE HEARING ON H.R. 1272, MINNESOTA CHIPPEWA TRIBE JUDGMENT FUND DISTRIBUTION ACT OF 2011.

Thursday, March 1, 2012
U.S. House of Representatives
Subcommittee on Indian and Alaska Native Affairs
Committee on Natural Resources
Washington, D.C.

The Subcommittee met, pursuant to notice, at 11:08 a.m., in Room 1324, Longworth House Office Building, Hon. Don Young [Chairman of the Subcommittee] presiding.

Present: Representatives Young, Denham; Boren, Kildee, Faleomavaega, and Luján.

Mr. YOUNG. The Chairman notes the presence of a quorum. The Subcommittee on Indian and Alaska Native Affairs is meeting today to hear testimony on H.R. 1272, the "Minnesota Chippewa Tribe Judgment Fund Distribution Act of 2011."

Under Committee Rule 4(f), opening statements are limited to the Chairman and Ranking Member of the Subcommittee, so that we can hear from the witnesses more quickly. However, I ask unanimous consent to include any Member's opening statement in the hearing record, if submitted to the Clerk by the close of business today.

[No response.]

Mr. YOUNG. Hearing no objection, so ordered.

STATEMENT OF THE HON. DON YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA

Mr. YOUNG. H.R. 1272, the "Minnesota Chippewa Tribe Judgment Fund Distribution Act of 2011," authorizes the distribution of funds that belong to the six bands of Indian tribes that make up the Minnesota Chippewa Tribe. This bill does not concern any new or pending Indian claim, it does not cost any taxpayer money, and it does not create a new Federal program.

H.R. 1272 resolves an issue that has been pending in some form since 1948, when the first of several claims were filed by all the Chippewa Bands in Minnesota, except the Red Lake Band, regarding Federal mismanagement of Chippewa lands and resources. The judgment funds concerned in this bill are currently held in trust by the Secretary of the Interior. The tribes and tribal members to whom the money legally belongs have not been able to collect the funds for many years, largely because of disagreement from one of the Bands of Indians over its distribution.

Unfortunately, the applicable law that provides for the distribution of tribal claims judgment fund awards has failed. Congress no doubt had good intentions when it wrote the Indian Tribal Judgment Funds Use or Distribution Act in 1973—by the way, I was

here—but the complex process it established did not work in the present case. It appears legal deadlines during that—which funds were supposed to be paid to the Chippewa Bands have been missed.

This legislation sponsored by the gentlemen from Minnesota, Mr. Peterson and Mr. Cravaack, will bring finality to a long saga involving Minnesota Chippewa Indian claims. I am pleased to be able to hold a hearing on the important bill today.

I look forward to hearing from our witnesses, and I will recognize Mr. Boren, the Ranking Member, for five minutes for any statement he might make.

[The prepared statement of Mr. Young follows:]

Statement of The Honorable Don Young, Chairman, Subcommittee on Indian and Alaska Native Affairs

H.R. 1272, the Minnesota Chippewa Tribe Judgment Fund Distribution Act of 2011, authorizes the distribution of funds that belong to the six bands of Indian tribes that make up the Minnesota Chippewa Tribe. This bill does not concern any new or pending Indian claim, it does not cost any taxpayer money, and it does not create a new federal program. H.R. 1272 resolves an issue that has been pending in some form since 1948 when the first of several claims were filed by all the Chippewa Bands in Minnesota except the Red Lake Band, regarding federal mismanagement of Chippewa lands and resources.

The judgment funds concerned in this bill are currently held in trust by the Secretary of the Interior. The tribes and tribal members to whom the money legally belongs have not been able to collect the funds for many years, largely because of disagreement from one of the Bands of Indians over its distribution.

Unfortunately, the applicable law that provides for the distribution of tribal claims judgment fund awards has failed. Congress no doubt had good intentions when it wrote the Indian Tribal Judgment Funds Use or Distribution Act in 1973, but the complex process it established did not work in the present case, and it appears legal deadlines during which the funds were supposed to be paid to the Chippewa Bands have been missed.

This legislation sponsored by the Gentlemen from Minnesota, Mr. Peterson and Mr. Cravaack, will bring finality to a long saga involving Minnesota Chippewa Indian claims and I'm pleased to be able to hold a hearing on this important bill today.

STATEMENT OF THE HON. DAN BOREN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. BOREN. Thank you, Mr. Chairman. Thank you, Mr. Chairman, for holding this hearing on H.R. 1272, which would provide for the distribution of funds awarded to the Minnesota Chippewa Tribe. Let me begin by welcoming our colleagues, Mr. Peterson and Mr. Cravaack, and thank them on coming together to support this legislation.

I want to also acknowledge and commend the efforts of the Minnesota Chippewa Tribal Executive Committee for their efforts to resolve their differences through negotiations. They worked hard to reach an agreement on a distribution plan that is reflected in the bill that we have before us today.

In 1948 and 1951, the Minnesota Chippewa Tribe filed complaints before the Indian Claims Commission. The cases claimed that the proceeds from the sale of the land and timber on the six reservations were misspent, and that the land and the timber were sold at less than full value. On May 26, 1999, the claims were settled by a majority of the Tribal Executive Committee, and the judgment was entered. The judgment was simply that the Minnesota

Chippewa Tribe shall recover the sum of $20 million from the U.S. Government.

The Minnesota Chippewa Tribe is composed of six bands. Under the tribal constitution, the governing body is the Tribal Executive Committee, which is comprised of two elected officials from each band. On September 9, 1999, the Tribal Executive Committee allocated each band an equal share of the net proceeds of the judgment funds. Only the two Leech Lake representatives on the Tribal Executive Committee did vote no.

On June 6, 2001, the Bureau of Indian Affairs prepared a report suggesting funds be allocated pro rata between the bands, based on the number of tribal members currently enrolled. The recommendations of this report were incorporated in legislation that was introduced in the 110th Congress. However, both before and after its issuance, the Minnesota Chippewa Tribe objected that it was inconsistent with tribal law. And, as a result, the previous bill went nowhere.

H.R. 1272, and a companion measure, S. 1739, reflect the results of an October 2009 Tribal Executive Committee resolution that approved a new distribution plan. The new plan provides more funds to the bands with greater populations through per capita payments to the members. However, the distribution formula set out in H.R. 1272 does not enjoy unanimous support of the 6 member bands, and is opposed by the Leech Lake Band.

Again, I want to thank the Chairman for holding this important hearing. And we welcome our witnesses and look forward to hearing their testimony.

[The prepared statement of Mr. Boren follows:]

Statement of The Honorable Dan Boren, Ranking Member, Subcommittee on Indian and Alaska Native Affairs

Thank you Mr. Chairman for holding this hearing on H.R. 1272, which would provide for the distribution of funds awarded to the Minnesota Chippewa Tribe.

Let me begin by welcoming our colleagues from Minnesota, Representatives Colin Peterson and Chip Cravaack. I want to commend you both for coming together and sponsoring a single bill to provide for the distribution of these funds.

I want to also acknowledge and commend the efforts of the Minnesota Chippewa Tribal Executive Committee for their efforts to resolve their differences through negotiations. They worked hard to reach an agreement on a distribution plan that is reflected in the bill before us today.

In 1948 and 1951, the Minnesota Chippewa Tribe filed complaints before the Indian Claims Commission. The cases claimed that the proceeds from the sale of land and timber on the six reservations were misspent, and that the land and timber were sold at less than full value. On May 26, 1999, the claims were settled by a majority of the Tribal Executive Committee and judgment was entered.

The judgment was simply that the Minnesota Chippewa Tribe shall recover the sum of $20 million from the United States.

The Minnesota Chippewa Tribe is composed of six Bands. Under the Tribal constitution, the governing body is the Tribal Executive Committee which is comprised of two elected officials from each Band. On September 9, 1999, the Tribal Executive Committee allocated each Band an equal share of the net proceeds of the judgment funds. Only the two Leech Lake representatives on the Tribal Executive Committee voted "NO."

On June 6, 2001, the Bureau of Indian Affairs prepared a report suggesting funds be allocated pro rata between the Bands based on the number of tribal members currently enrolled. The recommendations of this report were incorporated in legislation that was introduced in the 110th Congress. However, both before and after its issuance, the Minnesota Chippewa Tribe objected that it was inconsistent with tribal law and, as a result, the previous bill went nowhere.

H.R. 1272 and a companion Senate measure, S. 1739, reflect the results of an October 2009 Tribal Executive Committee resolution that approved a new distribution plan. The new plan provides more funds to the Bands with greater populations through per capita payments to members. However, the distribution formula set out in H.R. 1272 does not enjoy unanimous support of the six member bands as it is opposed by the Leech Lake Band.

Thank you again Mr. Chairman for holding this important hearing. I want to once again welcome our witnesses and look forward to receiving their testimonies.

Mr. YOUNG. With that, we will recognize our first panel, our colleagues, Mr. Peterson and Mr. Cravaack.

Mr. Peterson, you are up first.

STATEMENT OF THE HON. COLLIN PETERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. PETERSON. Well, thank you, Mr. Chairman and Ranking Member Boren, for holding this hearing. This is something I have been working on for a long time. And we have tried to work this out, as both of you have noted in your opening statements, to try to get unanimous support. But it has become clear, I think, that that is not going to happen. So I think the Minnesota Chippewa Tribe has made the best effort they can and, you know, they—we just need to get this resolved. It has been sitting there since 1999. And the bands have needs on those reservations that will be met by these funds, and the individual members, and so forth.

So, you know, largely—I mean there has been this disagreement within the bands, but one of the problems was there was disagreement between myself and Mr. Oberstar over the years. We had different bills. And we could not resolve, between the two of us, you know, a final outcome. And that is part of what held everything up, you know, the fact that we had two different bills.

So, I really appreciate Mr. Cravaack—we have discussed this at length, and I appreciate him coming on board to support the agreement that has been made by the Tribe on behalf of the bands. And, you know, we wished it was unanimous, but you know, I could go into the facts of the situation, but I think you have done a good job of laying those out. You are accurate in what you have said.

And, you know, it is—this is clear, that the Minnesota Chippewa Tribe has the authority to make this decision. They are the ones that were named in the settlement. As you said, these funds are not considered new money, so there is no budgetary impact. I think we have a CBO position on that. So it just—you know, at some point it is time to get these things resolved. And, you know, we—Mr. Cravaack and I—think that the time has come. And we appreciate your willingness to have a hearing.

And hopefully we can move this bill ahead and resolve this issue, because it will do a lot of good for my band. My band that is involved in this is the White Earth Band, which is the largest in the state. And the other bands, they have a lot of needs, and this will be very helpful to them. And they have worked very hard on this. So thank you, and I will yield back.

Mr. YOUNG. Thank you, Mr. Peterson. I can say that you have been very diligent and worked very hard on this legislation for many, many years, as you have said before. And then we got into

this argument about what it was, an earmark or not, and we solved that, I believe.

And I hope to move this bill forward because, as you mentioned, that is about—if I got the numbers right—the 13 years that they have been waiting, and we probably have lost a percentage of those tribal members during that period of time to natural causes. But it is wrong to hold up a payment.

Mr. Cravaack, you are up.

STATEMENT OF THE HON. CHIP CRAVAACK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. CRAVAACK. Thank you, Chairman Young and Ranking Member Boren, for holding today's important legislative hearing. And I thank the whole Subcommittee for kindly allowing me to testify on behalf of H.R. 1272, the "Minnesota Chippewa Tribe Judgment Fund Distribution Act of 2011." I would also like to thank Mr. Peterson for his leadership in this area, as well. Being a freshman Member of Congress, I had to lean on him a couple of times in moving this bill forward.

This bill would provide for the long-overdue release of—distribution of funds awarded to the Minnesota Chippewa Tribe in a 1999 legal settlement of claims against the United States for damages stemming from the implementation of the Nelson Act of 1889.

Mr. Chairman, I represent five of the six bands that constitute the Minnesota Chippewa Tribe, a sovereign, Federally recognized tribal government that includes six Chippewa bands. It was the Minnesota Chippewa Tribe that was the sole plaintiff in the litigation whose settlement gives rise to this legislation. The five bands that reside in my district are: Bois Forte, Grand Portage, Mille Lacs, Leech Lake, and Fond du Lac.

I have met with representatives from all five Bands on a number of occasions in the 112th Congress, and have made it very clear to me that it is more than past time that we bring this resolution its long-standing issue. And I agree.

The 20 million legal settlement on behalf of the Minnesota Chippewa Tribe entered into the 1999 agreement has been sitting in a Department of the Interior trust fund ever since. And, with interest, has grown to about $28 million. That money now rightfully belongs to the Minnesota Chippewa Tribe. The United States's only role is to temporarily hold it in trust for them until it can be distributed.

Pursuant to the Judgment Fund Distribution Act of 1973, legislation is now required to disburse these trust funds, because the Department of the Interior failed to distribute the funds within the year of the 1999 judgment. Thus, I have joined with my fellow Minnesota Representatives, Mr. Collin Peterson and Mr. Erik Paulsen, in cosponsoring the legislation before you today that will fulfill this obligation.

The distribution formula put forth in H.R. 1272 seeks to reflect and honor the formula decided democratically by the governing body of the Minnesota Chippewa Tribe known as the Tribal Executive Committee, an elected body consisting of two representatives from each of the six tribal bands.

On October 1st, 2009, the Minnesota Chippewa Tribe Executive Committee voted for, and passed by a vote of 10-2, a resolution that supported a per-capita apportionment of $300 per member enrolled in each of the 6 bands, followed by an equal 6-way split of the remaining settlement funds. H.R. 1272 will distribute the settlement funds according to this formula.

I acknowledge that the Leech Lake Band of Ojibwe does not join the other five member Bands of the Minnesota Chippewa Tribe in support of the distribution formula set forth in H.R. 1272. It is always difficult to craft a compromise between six different and competing interests, and I would prefer that the distribution plan have unanimous support.

However, Representative Peterson and I agree that H.R. 1272 is the solution that must be enacted in order to fulfill the United States Government's legal obligation, conclude its litigation with the Minnesota Chippewa Tribe, and release the over $28 million in settlement funds in an expeditious manner.

Plus, the distribution formula in H.R. 1272 was chosen democratically by a majority vote of the stakeholders themselves. H.R. 1272 respects the decision of the governing body of the entity that brought forth the claim on behalf of all six bands, and that the U.S. Court of Federal Claims recognizes as having the constitutional authority to enter into a proposed settlement on behalf of all six bands. That governing body is the Minnesota Chippewa Tribe Tribal Executive Committee, and that Tribal Executive Committee has asked us to enact H.R. 1272.

All six bands shared equally in the expense and risk of prosecuting the case, and the Tribal Executive Committee provided the six bands an equal opportunity to vote on how the judgment funds should be disbursed. The release of these $28 million dollars to the members of the Minnesota Chippewa Tribe will have positive implications far beyond righting a past wrong. This money will flow directly into the hands of the bands and their members, sparking much needed consumer activity, and hopefully investment, in these reservations and in Northern Minnesota. This will benefit the entire region.

Thus, I am hopeful that the House Natural Resources Committee will move quickly to report H.R. 1272 out of Full Committee, ready it for the Floor consideration, and bring resolution to this longstanding issue as requested by the super majority of the six constituent bands of the Minnesota Chippewa Tribe.

Again, I thank Chairman Young and Ranking Member Boren, and all members of the Subcommittee for allowing me the opportunity to testify today, and I yield back.

Mr. YOUNG. Thank you, Mr. Cravaack, and very well done. For a freshman, you kept within the five minutes, and I want to congratulate you.

Mr. CRAVAACK. Thank you, sir.

Mr. YOUNG. It means you have a great future ahead of you.

Mr. CRAVAACK. Thank you, sir.

Mr. YOUNG. Now, you have to leave, I take it.

Mr. CRAVAACK. Yes, sir. I do.

Mr. YOUNG. Well, you are excused. I love saying that. I used to be a school teacher. You are excused.

[Laughter.]

Mr. YOUNG. Mr. Peterson, I don't have any questions. Mr. Boren, do you have any questions?

Mr. BOREN. No.

Mr. YOUNG. I do thank both of you, and have a good weekend.

As the gentlemen are slowly moving, I would like now to call up Michael Black, Bureau of Indian Affairs. If you will, come up, Michael. Good to see you, Mr. Black, again. Welcome. Proceed.

STATEMENT OF MICHAEL S. BLACK, DIRECTOR, BUREAU OF INDIAN AFFAIRS

Mr. BLACK. Chairman Young, Ranking Member Boren, and members of the Subcommittee, my name is Mike Black, and I am director of the Bureau of Indian Affairs. Thank you for the opportunity to present the Department's views on H.R. 1272, the "Minnesota Chippewa Tribe Judgment Fund Distribution Act." The "Minnesota Chippewa Tribe Judgment Fund Distribution Act" is intended to provide for the distribution of funds owed to the Minnesota Chippewa Tribe by order of the United States Court of Federal Claims in docket numbers 19 and 188.

The Department appreciates the effort by the Tribal Executive Committee of the Minnesota Chippewa Tribe to resolve their differences through negotiation, and to reach agreement on a distribution plan. However, the Department acknowledges that the distribution formula set forth in H.R. 1272 does not have the unanimous support of the Minnesota Chippewa Tribe's six member bands, as one band has expressed its opposition to the distribution plan.

The Department supports H.R. 1272 because it respects the decisions of the governing body of the Minnesota Chippewa Tribe. The Minnesota Chippewa Tribe is a sovereign government established in 1934, pursuant to the Indian Reorganization Act. The Secretary approved the Tribe's constitution in 1936. Under that constitution, the Minnesota Chippewa Tribe consists of six member bands on six different reservations: Bois Forte, Fond Du Lac, Grand Portage, Leech Lake, Mille Lacs, and White Earth. Each band has two representatives on the Tribal Executive Committee, which is the governing body of the entire Minnesota Chippewa Tribe. Each constituent band, however, also functions as a distinct sovereign government.

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 number 19 for an accounting of all funds received and expended through the Nelson—or to the Nelson Act.

On August 2, 1951, the Minnesota Chippewa Tribe filed a number of claims before the Indian Claims Commission on docket number 188 for an accounting of the government's obligations to each of the member bands of the Tribe under various statutes and treaties that are not covered by the Nelson Act.

On July 1, 1998, the TEC, or Tribal Executive Committee, enacted Resolution 01-99, which approved the settlement of the claims for a sum of $20 million. The vote was six in favor of adopting the resolution and three against. The United States Court of

Federal Claims accepted the TEC's decision and awarded $20 million to the Minnesota Chippewa Tribe in May 1999, and the funds were transferred to the Department on June 22, 1999, and have been held in trust ever since.

On October 1, 2009, the TEC passed Resolution 146-09 by a vote of 10 in favor and 2 against to distribute the judgment funds in accordance to a formula similar to that set forth in H.R. 1272.

The Department understands that disagreements among the Minnesota Chippewa Tribe's constituent bands, and between the Department and the Tribe, have prevented the distribution of the settlement funds for a number of years. The Department also understands that one band opposes the distribution formula set out in H.R. 1272. The Department appreciates the concerns of the band, and would prefer a unanimous agreement among the six bands regarding the best method to distribute the settlement funds. Nevertheless, the recognized governing body of Minnesota Chippewa Tribe has voted in favor of the distribution formula set forth in H.R. 1272.

Out of respect for the decision of the Minnesota Chippewa Tribe, and in light of the need to distribute the settlement funds in an equitable and expeditious manner, the Department supports H.R. 1272. The Department would prefer that any distribution plan have the unanimous support of all the Minnesota Chippewa Tribe's constituent bands. Should the Committee and sponsors of H.R. 1272 wish to consider amendments to the bill in an effort to gain the unanimous support of the Minnesota Chippewa Tribe, the Department is willing to participate in that effort.

Nevertheless, the 1999 settlement itself was not reached with the unanimous consent of the Minnesota Chippewa Tribe's constituent bands. And the Department's view on H.R. 1272 is that it is the most equitable and expeditious means to distribute the funds agreed upon in that settlement, and to provide a small measure of justice to the citizens of the Minnesota Chippewa Tribe.

Mr. Chairman, this concludes my statement, and I will be happy to answer any questions that you may have.

[The prepared statement of Mr. Black follows:]

Statement of Mike S. Black, Director, Bureau of Indian Affairs, United States Department of the Interior

Good morning, Chairman Young, Ranking Member Boren, and Members of the Subcommittee. My name is Mike Black, and I am the Director of the Bureau of Indian Affairs (BIA). I am pleased to be here today to testify on H.R. 1272, Minnesota Chippewa Tribe Judgment Fund Distribution Act. The bill is intended to provide for the distribution of funds owed to the Minnesota Chippewa Tribe by order of the United States Court of Federal Claims in Docket Nos. 19 and 188. The Department appreciates the effort by the Tribal Executive Committee of the Minnesota Chippewa Tribe to resolve their differences through negotiation and to reach agreement on a distribution plan. However, the Department acknowledges that the distribution formula set forth in H.R. 1272 does not have the unanimous support of the Minnesota Chippewa Tribe six member bands as the Leech Lake Band of Ojibwe (Leech Lake) has expressed its opposition to the distribution plan. The Department supports H.R. 1272 because it respects the decisions of the governing body of the Minnesota Chippewa Tribe.

Background

Congress enacted the Nelson Act, dated January 14, 1889, 25 Stat. 642, (Nelson Act) to establish a process "for the complete cession and relinquishment in writing of all of [the Chippewa Indians in the State of Minnesota's] title and interest in and

to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations. The Nelson Act provided that proceeds from the sale of lands of the Chippewa Indians in Minnesota were to be placed into a fund within the Treasury for a period of 50 years, with annual payments of interest made to individual Chippewa Indians. Section 7 of the Nelson Act provided that, after the expiration of 50 years, "the said permanent fund shall be divided and paid to all of the said Chippewa Indians and their issue then living, in cash, in equal shares[.]" Those funds were to be distributed in equal shares, without regard to which reservation lands they were tied.

Following the 50-year period contemplated by the Nelson Act, there were no remaining funds to distribute in equal shares to the individual Chippewa Indians in Minnesota.

The Minnesota Chippewa Tribe was established in 1934, pursuant to the Indian Reorganization Act. The Secretary approved the Tribe's constitution in 1936. Under that Constitution, the Minnesota Chippewa Tribe consists of six member bands, on six different reservations: Bois Fort, Fond du Lac, Grand Portage, Leech Lake, Mille Lacs and White Earth. Each Band has two representatives on the Tribal Executive Committee (TEC), which is the governing body for the entire Minnesota Chippewa Tribe.

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 Nelson Act, 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 obligations to each of the member bands of the Tribe under various statutes and treaties that are not covered by the Nelson Act. The Department understands that the expenses for prosecuting the Minnesota Chippewa Tribe's claims in Docket Nos. 19 and 188 were shared equally by the six Bands.

The primary claims asserted by the Minnesota Chippewa Tribe in Docket Nos. 19 and 188 were that the proceeds from the sale of land and timber on the six reservations pursuant under the Nelson Act were misspent, and that the Tribe's land and timber were sold at less than full-value.

On July 1, 1998, the TEC enacted Resolution 01–99, which approved the settlement of the claims for a sum of $20 million. The vote was 6 in favor of adopting Resolution 01–99 and 3 against. The United States Court of Federal Claims accepted the TEC's decision, and awarded $20 million to the Minnesota Chippewa Tribe in May 1999, in Docket Nos. 19 and 188. The court specifically stated "[t]he Tribal Executive Committee has the constitutional authority to enter into the proposed settlement on behalf of the Minnesota Chippewa Tribe." The funds were transferred to the Department on June 22, 1999 and have been held in trust since.

The Indian Tribal Judgment Funds Act (Act) of October 19, 1973, 87 Stat. 466, 25 U.S.C. § 1401 *et seq.,* as amended, requires the Secretary of the Interior to submit to the Congress a plan for the use or distribution of funds to an Indian tribe. Under subsections 2(c) and (d) of the Act, should the Secretary determine that circumstances do not permit for the preparation and submission of a plan as provided under the Act and the Secretary cannot obtain the consent from the tribal governing body concerning the division of the judgment funds within 180 days after the appropriation of the funds for the award, the Secretary is required to submit to the Congress proposed legislation to authorize use or distribution of such funds.

Pursuant to the Act, the Acting Deputy Commissioner of Indian Affairs 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) on June 6, 2001. The Report recommended that 35 percent of the funds should be distributed to each of the six Minnesota Chippewa Bands (Bands) in proportion to their losses and 65 percent should be distributed to each of the Bands in proportion to their current tribal enrollment.

Also pursuant to the Act, in April of 2007, the Department submitted a legislative proposal to the Speaker of the House of Representatives and to the President of the Senate. The Minnesota Chippewa Tribe expressed opposition to both the 2001 and the 2007 distribution plans, for varying reasons.

The Department's 2007 proposal was introduced in the 110th Congress by Congressman Collin Peterson on May 14, 2007 as H.R. 2306. H.R. 2306 provided that the fund should be allocated pro rata between the six Minnesota Chippewa Bands based upon the number of tribal members currently enrolled within each of the

Bands.[1] The House Natural Resources Committee held a hearing on the bill, but no further action was taken on H.R. 2306.[2]

On October 1, 2009, the TEC passed Resolution 146–09, by a vote of 10 in favor and 2 against, to distribute the judgment funds. H.R. 1272 incorporates many of the provisions in the Tribal Resolution 146–09.

H.R. 1272

Section 5 sets aside for each Band a portion of available judgment funds equivalent to $300 for each member enrolled within each Band. After the funds are divided, those funds will be placed in separate accounts. "Per Capita" account for each Band and an "Equal Shares" account for each Band.

After the Secretary of the Interior deposits the available funds into the "Per Capita" accounts and "Equal Shares" accounts, a Band may withdraw all or part of the monies in its account. All funds shall be used for the purposes of distributing one $300 payment to each enrolled member of the Band.

Each Band may distribute an additional $300 to the parents or legal guardians for each dependent Band member instead of distributing $300 payments to the Band members themselves, or deposit into a trust account the $300 payments of each dependent Band member for the benefit of such dependent Band members to be distributed under the terms of said trust.

Section 5(f) addresses the distribution of unclaimed payments. This section provides that one year after the distribution all unclaimed payments for the Tribe to be returned to the Secretary who shall divide the funds equally among the Bands and deposit the divided shares into "Equal Shares" accounts.

If a Band exercises its right to withdraw monies from its accounts, the Secretary shall not retain liability for the expenditure or investment of the monies after they are withdrawn.

Department's position on H.R. 1272

H.R. 1272 raises a unique and complex question involving the United States' respect for the sovereignty of tribal governments. The Minnesota Chippewa Tribe is a sovereign government, formed in 1936 under the Indian Reorganization Act, and the TEC is the governing body of the Tribe. The TEC is comprised of twelve members, two from each of the six constituent Bands. Each constituent Band, however, also functions as a distinct sovereign government.

On October 1, 2009, the TEC passed Resolution 146–09, by a vote of 10 in favor and 2 against, to distribute the judgment funds in accordance to the formula set forth in H.R. 1272. The Department understands that disagreements among the Minnesota Chippewa Tribe's constituent bands, and between the Department and the Tribe, have prevented the distribution of the settlement funds for a number of years. The Department also understands that the Leech Lake Band opposes the distribution formula set out in H.R. 1272. Leech Lake has consistently supported the view that the distribution should be based upon total damages suffered by each band. The Department appreciates the concerns of Leech Lake, with whom it has a government-to-government relationship, and would prefer a unanimous agreement among the six bands of the Minnesota Chippewa Tribe regarding the best method to distribute the settlement funds.

Nevertheless, the recognized governing body of the Minnesota Chippewa Tribe has voted 10–2 in favor of the distribution formula set forth in H.R. 1272. Out of respect for the decision of the Minnesota Chippewa Tribe, and in light of the need to distribute the settlement funds in an equitable and expeditious manner, the Department supports H.R. 1272.

The Nelson Act originally contemplated a common-fund for the benefit of individual Chippewa Indians of Minnesota, which would have been distributed to individuals on a per capita basis. H.R. 1272 differs from previous plans to distribute

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[1] By letter dated May 22, 2008, then-Assistant Secretary of Indian Affairs, Carl Artman, rescinded the June 6, 2001 Results of Research Report which forms the basis for H.R. 2306. By letter dated May 30, 2008, Legislative Counsel for the Department clarified that Mr. Artman's letter "does not reflect the views of the Department of the Interior or the Administration on this issue."

[2] 25 U.S.C. § 1405 states "[t]he plan prepared by the Secretary shall become effective, and he shall take immediate action to implement the plan for the use or distribution of such judgment funds, at the end of the sixty-day period (excluding days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) beginning on the day such plan is submitted to the Congress, unless during such sixty-day period a joint resolution is enacted disapproving such plans." The Department could not find a joint resolution from Congress disapproving the plan.

the settlement funds, and reflects the original intent of Congress to distribute the common proceeds to individuals on a per capita basis.

The Minnesota Chippewa Tribe filed Docket Nos. 19 and 188 for the common benefit of all its constituent Bands and members. All six bands equally shared the expense and risk of prosecuting the cases. H.R. 1272 also reflects the equal risk shared by the constituent bands when the Minnesota Chippewa Tribe initiated its claim more than 60 years ago.

The TEC's 1998 vote to settle the cases for $20 million was not unanimous, as three members voted against the proposed settlement. But for the TEC's vote to settle the case, Dockets Nos. 19 and 188 could still be in litigation. The TEC's settlement vote, however, was respected by all Bands and the federal court, which stated "[t]he Tribal Executive Committee has the constitutional authority to enter into the proposed settlement on behalf of the Minnesota Chippewa Tribe."

Once again, the Department would prefer that any distribution plan have the unanimous support of all of the Minnesota Chippewa Tribe's constituent bands. Should the Subcommittee, and the sponsors of H.R. 1272, wish to consider amendments to the bill in an effort to gain the unanimous support of the Minnesota Chippewa Tribe, the Department is willing to participate in that effort.

Nevertheless, the 1999 settlement itself was not reached with the unanimous consent of the Minnesota Chippewa Tribe's constituent bands, and the Department views H.R. 1272 as the most equitable and expeditious means to distribute the funds agreed upon in that settlement, and to provide a small measure of justice to the citizens of the Minnesota Chippewa Tribe.

In addition, the Department does have two suggested amendments to the bill. The Department suggests amending the language in Section 5 of the bill to clarify that parents or legal guardians of dependents will not receive an additional $300 for each dependent but rather, that parents or legal guardians of dependents may receive a $300 payment on ***behalf*** of their dependent.

Section 5(g) provides that, the Secretary shall not retain liability for the expenditure or investment of the monies after they are withdrawn by the Bands. Pursuant to Section 5(c) and 5(f), a Band may make separate withdrawals: once for per capita distribution, after which remaining funds are returned to the Secretary; and, once again from the "Equal Shares account." The Department recommends amending Section 5(g) to clarify that the Secretary shall not retain liability for the expenditure or investment of the funds after ***each*** withdrawal.

Mr. Chairman, this concludes my statement and I will be happy to answer any questions the Subcommittee may have.

Mr. YOUNG. That is one of the better testimonies I have had from the BIA, so thank you. I appreciate it. Very well done.

Mr. BLACK. Well, thank you.

Mr. YOUNG. Mr. Boren, you have any questions?

Mr. BOREN. Sure, just a couple questions. One, now this money, the $20 million, it has been sitting in a trust account, or some kind of an account, and it has been accruing interest. Is that correct?

Mr. BLACK. Yes, sir.

Mr. BOREN. How much interest is there in the account?

Mr. BLACK. From what I understand, it is approximately about $28 million now. So it would be around $8 million in interest.

Mr. BOREN. Wow. OK. That is one question. So when this—like, let's say this legislation is approved. All $28 million is split that way?

Mr. BLACK. Yes, in accordance with the formula set forth in the bill, yes.

Mr. BOREN. Oh, wonderful. So, basically, you all support the bill. You would rather it be unanimous, but it is—you know, but you still support the bill. I am a little curious about you would be willing to work on an amendment to the bill, be willing to be a part of that process. I don't see if you amend it in some way you end up making all the—you know, there is one band that would be happy, and all the other bands wouldn't be happy. How would

this—how could this be amended where everyone would get along? It doesn't sound like it could be amended in that way.

Mr. BLACK. I don't know that—I mean, honestly, sir, I don't know that it could. I think, you know, if it was decided to make one more effort to do that, you know, we would be more than happy to participate in that. But it has been an ongoing effort, as it was stated earlier, for 12 years.

Mr. BOREN. Yes. From what I can tell, this has been going on for so long. I think people are ready to get the money and get this thing on down the road.

But I yield back, Mr. Chairman.

Mr. YOUNG. Mr. Denham?

Mr. DENHAM. Nothing.

Mr. YOUNG. Nothing? Mr.—go ahead, sir.

[Laughter.]

Mr. FALEOMAVAEGA. You can call me John Wayne, it is all right. Thank you, Mr. Chairman. I want to welcome Mr. Black, also, in testifying before the Committee. Just a couple of questions, just for clarifying purposes.

What is the BIA's obligation under the Indian Tribal Judgment Funds Distribution Act?

Mr. BLACK. Well, there was a couple things that—called out for there, you know, to basically develop a plan for the distribution within 180 days of appropriation of the funds. You know, that—there was a study done back in 2001 that was submitted. And in addition, if we are not able to do that, or reach unanimous consent of the bands, we were to propose legislation which, again, was done in 2007.

Mr. FALEOMAVAEGA. And we are talking about how many years that we have been going through this exercise, 20 years, 25 years, 30 years?

Mr. BLACK. Roughly about 12 years since the appropriation of——

Mr. FALEOMAVAEGA. Yes, but the funds have been there, sitting there, for how many years?

Mr. BLACK. About 12 years since——

Mr. FALEOMAVAEGA. I thought it was before——

Mr. BLACK. It was first distributed in 1999.

Mr. FALEOMAVAEGA. OK. Correct me if I am wrong. There is involvement of—the Indian Claims Commission was involved in this. Has the Indian Claims Commission ever adjudicated the situation among the tribes, the division of the funds?

Mr. BLACK. Not that I am aware of.

Mr. FALEOMAVAEGA. OK, what about the U.S. Court of Federal Claims?

Mr. BLACK. They are the ones that awarded the judgment, I believe, sir.

Mr. FALEOMAVAEGA. OK. I remember years ago we had this hearing in terms of—you know, it was bad enough to bring issues affecting our Native American Indian tribes before the Congress. Even more difficult is the fact that there is division even among the different tribes. And it makes it very difficult. Now the Congress has to be the judge and jury over an issue I thought maybe

the U.S. Court of Federal Claims has made—is given that responsibility.

I—as it is right now, the pot is about, what, $28 million?

Mr. BLACK. Approximately, from——

Mr. FALEOMAVAEGA. And basically, you are in agreement with the decision made by the Court of Federal Claims, apportioning by population? Am I correct on that?

Mr. BLACK. The Court of Federal Claims, I don't believe, made that decision. That was—that is what is being set forth in——

Mr. FALEOMAVAEGA. Oh, it was the Committee, the Executive Committee, that decided that apportionment of the funds be done by population. Am I correct on that? And I think there were some problems here.

As I read the background information of the problems that we were confronted with is the fact that the damages—the tribe most affected, the losses—whatever took place at the time was 68 percent losses was the problem with the Leech Lake Band. And then we have here the situation—the division of the population, if that is the factor, is that the White Earth Band is 53 percent of the population.

So it is the question of how the funds should really be divided equitably. Should it be done according to the loss of damages, or should it be done according to population? What is your opinion on that?

Mr. BLACK. You know, I don't know that I have an opinion on that, sir. I think that has been one of the issues at question over the past 12 years, in trying to reach an agreement amongst all of the bands.

Mr. FALEOMAVAEGA. And if—wasn't there some consideration that maybe the funds be distributed evenly among the different bands?

Mr. BLACK. That was another——

Mr. FALEOMAVAEGA. That was the original——

Mr. BLACK. That was another option, I believe, that was considered, yes.

Mr. FALEOMAVAEGA. OK. And then the next option was divided according to population. That is the latest decision right now.

Mr. BLACK. Well, that is part of this decision, yes.

Mr. FALEOMAVAEGA. And that is what the proposed legislation tends to do.

Mr. BLACK. The proposed legislation proposes to basically issue it out per capita, based on the membership of the different bands, with the balance of funds remaining to be distributed out equally amongst the six bands.

Mr. FALEOMAVAEGA. And if we were to calculate the losses, though, if you want to look at it in terms of how each of the bands had these losses, would you say the Leech Lake Tribe is the worst one off?

Mr. BLACK. I don't have those numbers in front of me, sir.

Mr. FALEOMAVAEGA. Could you provide that for the record? I would be very curious if there was a—I mean I am sure that the—there is legitimate concerns of the Leech Lake Band, in terms of saying, "Well, we suffered the most. Shouldn't we be given a more

reasonable amount in that effect?" Or should it be done strictly by population?

Mr. BLACK. Yes, we can see what we can provide you, sir.

Mr. FALEOMAVAEGA. Well, I mean, do you agree to that?

Mr. BLACK. Oh, I don't——

Mr. FALEOMAVAEGA. You don't have an opinion.

Mr. BLACK. [No response.]

Mr. FALEOMAVAEGA. All right, Mr. Chairman. Thank you.

Mr. BLACK. Thank you.

Mr. YOUNG. Mr. Denham?

Mr. DENHAM. Thank you, Mr. Chairman. In the opinion of the Department, is there a legal way for the Minnesota Chippewa Judgment Funds concerned in this bill to be distributed to the tribes or tribal members without an Act of Congress?

And let me just explain. If you were able to get an agreement with all the tribes, would you still need an Act of Congress? Would it still be required to authorize these funds?

Mr. BLACK. You know, we would still have to present any plan like that before Congress. And I think at this point that it probably will require an Act of Congress. Because we have submitted proposed legislation on a distribution plan, and that—back in 2007, and we missed the 180-day deadline. I believe it would require an Act of Congress at this point.

Mr. DENHAM. So the BIA is not able to—assuming there was an agreement by all parties, BIA does not have the authority to disperse funds without us—congressional approval?

Mr. BLACK. Without at least some kind of a plan submittal to Congress? Under the Indian Tribal Judgment Funds Act, we are required to submit a report or a distribution plan to Congress. And there are—there is some language in there that basically says if it is not acted upon it would become deemed approved. So I think there may be some question as to what that would do.

Mr. DENHAM. Thank you.

Mr. YOUNG. Mr. Luján?

Mr. LUJÁN. Mr. Chairman, thank you very much. And I want to thank you for bringing us together with all of our tribal leaders and all of our witnesses today. This is a complex issue, and I am glad that we can get additional information in order to help us make this decision.

Mr. Black, when the Department is making decisions or taking into consideration settlements, does it consider damages to tribes?

Mr. BLACK. I think that would be based on what the issue is, how the settlement is written up.

Mr. LUJÁN. Should Congress take into consideration damages to tribes when considering settlements?

Mr. BLACK. There again, I don't know that I have an answer for that, sir.

Mr. LUJÁN. Is there direction that the Department can give the Congress when settlements are before us? They take positions on settlements, do they not?

Mr. BLACK. There again, I think it is probably dependent upon what is at issue, what the claims are within the suit, or whatever the issue may be.

Mr. LUJÁN. But it would be fair to say that the damages that are—that the tribes bring forward is one of the main criteria that we should weigh when taking these settlements into consideration?

Mr. BLACK. There again, I guess I don't know if I have a good answer for you on that, sir.

Mr. LUJÁN. OK. Let me back up with where these questions are coming from. In 1985, the Congress enacted the White Earth Land Settlement Act, or W-E-L-S-A, WELSA. This was a claim involving payment for 175,000 acres. Can you tell us how the money was distributed among the six bands? And was it based on damages?

Mr. BLACK. On WELSA I don't have an answer. I can get that to you, though.

Mr. LUJÁN. Appreciate that. This also stems back to back in 2009 Congress enacted the Aamodt Water Settlement involving four Pueblos, Tesuque, Nambe, San Ildefonso, and Pojoaque in my congressional district. The settlement was based on the damages and prior rights of the four Pueblos.

For example, the first priority water rights of the Pueblos ranged from 1,400 acre-feet per year to 236 acre-feet per year. I don't believe the four Pueblos would have agreed to just split up the settlement evenly, and I don't think that Congress would have approved such a plan that didn't take into account damages each of the tribes would suffer.

In H.R. 1272, part of the distribution plan directs the Secretary to make an even six-way split. And so I think my questions are along the lines of Mr. Faleomavaega. Can you tell us if the Secretary believes that this is equitable, and if the damages respective to each band should be considered?

Mr. BLACK. You know, this is really an agreement that was reached by the Tribal Executive Committee of the Minnesota Chippewa Tribe, and we are basically trying to support that at this point.

Mr. LUJÁN. So, in the future, if we have disputes in New Mexico and other parts of the country, and the tribes get together and provide a settlement option to the Secretary, you are going to approve it? You are going to support what comes from our Tribes, directly?

Mr. BLACK. Well, I think it is going to depend on what that is, what information is before us, what the settlement itself said, and the language of that settlement.

Mr. LUJÁN. So it is going to be a case-by-case basis? In some instances the Secretary and the Department will intervene and say, "We don't agree with your settlement," but in other instances it will say, "We embrace your settlement"?

Mr. BLACK. Possibly. I don't have a good answer for you on that, sir.

Mr. LUJÁN. All right. Well, Mr. Chairman, I hope to get some direction from you as we go through this, as well. Then maybe, you know, with some of the staff there you can help me with some of the facts there as well, and I would like to learn a little bit more——

Mr. FALEOMAVAEGA. Will the gentleman yield?

Mr. LUJÁN. Absolutely. I yield to Mr. Faleomavaega——

Mr. FALEOMAVAEGA. Real quick, I just wanted to ask Mr. Black. What is the total population of the six bands that we are talking about here, for the record?

Mr. BLACK. I don't have that, but I can get that for you.

Mr. FALEOMAVAEGA. Don't have it? Six bands? We don't have the tally of the population of all the bands?

Mr. BLACK. I do; I don't know it off the top of my head, sir.

Mr. FALEOMAVAEGA. Could you submit that for the record?

Mr. BLACK. I can submit——

Mr. FALEOMAVAEGA. When you talk about the tribes, is it just the State of Minnesota? Because I think that part of the Chippewa Nation also covers Wisconsin, even up in Canada, even North Dakota. How are they involved? Are they in any way——

Mr. BLACK. They are not involved in this. This is the Chippewa Tribes of Minnesota.

Mr. FALEOMAVAEGA. OK. But we don't have—you don't have the record of how many people we are talking about here.

Mr. BLACK. Yes, we do. I just don't have that on the top of my head, sir.

Mr. FALEOMAVAEGA. OK. Well, I don't have it on the top of my head, either. Well, thank you.

Mr. BLACK. OK.

Mr. LUJÁN. I yield back, Mr. Chairman. Thank you.

Mr. YOUNG. Mr. Kildee, you just arrived. And you will have questions for the rest of them, I am sure.

Mr. KILDEE. I may want to submit questions later.

Mr. YOUNG. For Mr. Black? OK, thank you.

Mr. Black, first let me say thank you. And for the Members, this is a court decision. And whether you believe it was equitable or not, it was a court decision by the tribal council. I believe there is 12 members on that council.

Mr. BLACK. Yes, sir.

Mr. YOUNG. Two for each tribe, ten to two the vote was taken. Now, I know we are going to have testimony from one tribe that doesn't agree with it. But I have lived and worked and fostered American Indians, and I love them with all my heart. But to get everybody to agree all the time is very nearly impossible. My wife and I very rarely agreed, and I was right twice in 46 years. Now you think about that a moment.

But this is a way to distribute the monies as I think were done in 1999—is that correct? And it has been approximately 13 years, 12 or 13 years. And by one group saying no, it deprives five groups of saying yes, and they don't get the money distributed.

Now, if there is a working way they can get together and say, "Maybe we can come up with some kind of an agreement," I would be more willing to look at it. But I plan on moving this bill, because it is time. This goes on and on and on, even with $8 million worth of interest, which sounds like a lot, but if you include inflation and depreciation, they haven't gained any money.

So, I think it is time to do this. That is where I am coming from.

Thank you, Mr. Black, I appreciate it.

Mr. BLACK. Thank you.

Mr. YOUNG. Now I will recognize the members of, I believe, Chippewa Tribes. Deschampe, Mr. Norman Deschampe, Erma Vizenor,

Marge Anderson, and Arthur LaRose. And they are tribes—the Chippewa Tribe for Mr. Norman. Ms. Erma is the Earth Band Tribe, and Marge Anderson is the Lacs Tribe, and Arthur's is Lake Band Tribe. These are four of the tribes of the six that are available in this organization. They will be the people that testify. So, please take your seats.

OK. Norman—I think all of you know the rules. Five minutes, you see the clock in front of you. If you are really doing well, I might let you go, but not very long. And when we finally finish with the panel, we will ask questions. Mr. Boren will ask the first question and I will work back and forth on the aisle. I will be the last one up.

With that, Norman, you are up first. Turn your mic on.

STATEMENT OF THE HON. NORMAN W. DESCHAMPE, PRESIDENT, MINNESOTA CHIPPEWA TRIBE

Mr. DESCHAMPE. Thank you, Mr. Chairman. I am Norman Deschampe, I am President of the Minnesota Chippewa Tribe and Chairman of the Grand Portage Reservation and Tribal Council.

Mr. Chairman Leecy and Chairwoman Diver from Bois Forte and Fond du Lac couldn't be here today, but they have submitted testimony for the record.

This is the second time I have testified in the House of Representatives about the Nelson Act claims distribution. In 2008, I testified in favor of a bill that would have distributed the Nelson Act claims award in a manner consistent with the decision of the tribal governing body. Today I testify in favor of H.R. 1272 because it also allocates the funds in the manner decided by the Tribal Executive Committee. When I was here in 2008, it became clear that we were at an impasse, that compromise was necessary to achieve the distribution of the funds. We spent the next sixteen months discussing alternatives and ending up with the allocation in H.R. 1272.

Under our Constitution, it is the responsibility of the Tribal Executive Committee to allocate funds belonging to the Tribe as a whole to the various reservations. Although it would be nice to have a unanimous vote on all decisions, the majority rules and this was a 10-2 decision. The White Earth, Bois Forte, Grand Portage, Mille Lacs and Fond du Lac Bands support this formula.

The money that has been held in a trust account for the Minnesota Chippewa Tribe since 1999 is a result of claims arising under the Nelson Act of 1889. The funds belong to the Minnesota Chippewa Tribe and a brief historical background may be useful to understand how that came to be. Between 1847 and 1873, there were various treaties, acts and executive orders that created reservations for the sole use of different Chippewa bands in Minnesota. In that process, the United States accepted cessions from one or more separate bands and those bands received compensation for those lands.

For example, in 1854 the Lake Superior Bands ceded approximately five (5) million acres—essentially the Arrowhead region of Minnesota—to the United States, and reservations were created for the Minnesota bands which joined in that cession: Grand Portage, Fond du Lac and Bois Forte. Later, when the Indian Claims Com-

mission awarded additional compensation because the United States paid too little for the land, it was the eleven Lake Superior Bands—the three in Minnesota and others in Wisconsin and Michigan—that received that money.

The Nelson Act was different. The Nelson Act of 1889 represented a fundamental change in how the Federal Government dealt with Chippewa Bands. In 1938 the Court of Claims discussed the impact of the Nelson Act and observed that the bands ceded their separate reservations and agreed to participate on an equal basis in the benefits to be derived from doing so.

In other words, like it or not, our ancestors agreed that the reservation lands ceded were to be disposed of for the common good, that the lands ceded were tribal lands, and that proceeds from their sale would be tribal.

Looking back on it more than a century later, we may have different views of the wisdom of that decision or whether tribal choices were freely made, but that was the reality of what happened under the Nelson Act. Today, we are dealing with the reality that the funds we were awarded in our Nelson Act claims are tribal funds to be distributed pursuant to legislation that respects our sovereignty and Constitution.

At the bottom line, the amount that we settled for was an amount that belongs to us as a whole, as the entity that brought the claim, prosecuted the claim, and settled the claim. H.R. 1272 will authorize the distribution of that claim in accordance with the tribal decision on allocation.

I am going to read the last paragraph of Resolution 14609, which approves the distribution formula in H.R. 1272. It says, "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."

This is tribal law. And I urge you to move forward with H.R. 1272 to finish what began decades ago. Thank you.

[The prepared statement of Mr. Deschampe follows:]

Statement of The Honorable Norman W. Deschampe, President, Minnesota Chippewa Tribe

Mr. Chairman and Members of the Committee:

I am Norman Deschampe, President of the Minnesota Chippewa Tribe and Chairman of the Grand Portage Tribal Council. This is the second time I have testified in the House of Representatives about the Nelson Act claims distribution. In 2008, I testified in favor of a bill that would have distributed the Nelson Act claims award in the manner consistent with the decision of the tribal governing body. Today, I testify in favor of H.R. 1272 because it also allocates the funds in the manner decided by the Tribal Executive Committee (TEC).

When I was here in 2008, it became clear that we were at an impasse—that compromise was necessary to achieve the distribution of the funds. We spent the next sixteen (16) months discussing alternatives and ended up with the allocation in H.R. 1272.

Under our Constitution, it is the responsibility of the Tribal Executive Committee to allocate funds belonging to the Tribe as a whole to the various Reservations. Although it would be nice to have a unanimous vote on all decisions, the majority rules and this was a 10–2 decision. The White Earth, Bois Forte, Grand Portage, Mille Lacs and Fond du Lac Bands support this formula.

The money that has been held in a trust account for the Minnesota Chippewa Tribe since 1999 is the result of claims arising under the Nelson Act of 1889. The

funds belong to the Minnesota Chippewa Tribe and a brief historical background may be useful to understand how that came to be.

Between 1847 and 1873, there were various treaties, acts and Executive Orders that created reservations for the sole use of different Chippewa Bands in Minnesota. In that process, the United States accepted cessions from one or more separate Bands and those Bands received compensation for those lands. For example, in 1854 the Lake Superior Bands ceded approximately five (5) million acres—essentially the Arrowhead region of Minnesota—to the United States and reservations were created for the Minnesota Bands which joined in that cession: Grand Portage, Fond du Lac and Bois Forte. Later, when the Indian Claims Commission awarded additional compensation because the United States paid too little for the land, it was the eleven (11) Lake Superior Bands—the three in Minnesota and others in Wisconsin and Michigan—that received that money.

The Nelson Act was different. The Nelson Act of 1889 represented a fundamental change in how the federal government dealt with the Chippewa Bands. In 1938 the Court of Claims discussed the impact of the Nelson Act and observed that "the bands [ceded] their separate reservations" and agreed to "participate on an equal basis in the benefits to be derived from doing so." In other words, like it or not, our ancestors agreed that the reservation lands ceded were to be disposed of for the common good—that the lands ceded were tribal lands and that the proceeds from their sale would be tribal.

Looking back on it more than a century later, we may have different views of the wisdom of that decision or whether tribal choices were freely made, but that was the reality of what happened under the Nelson Act. Today, we are dealing with the reality that the funds we were awarded in our Nelson Act claims are tribal funds to be distributed pursuant to legislation that respects our sovereignty and Constitution.

At the bottom line, the amount that we settled for was an amount that belongs to us as a whole—as the entity that brought the claim, prosecuted it, and settled it. H.R. 1272 will authorize the distribution of that claim in accordance with the Tribal decision on allocation.

Next, I want to assure you that the Tribal Executive Committee has considered the Leech Lake objections to any distribution that does not give them the lion's share of the award. I am sure you will hear that Leech Lake believes that because the greatest amount of damage occurred at Leech Lake, it should get the greatest amount of the settlement. The problem with that argument is that it is only speculation that damages of that amount occurred. First, there never was a court order or finding that a specific percentage of the claimed damages were suffered on a given Reservation. Second, the courts had already ruled that the United States was not obligated to do a band-by-band accounting. Third, this settlement included claims for both inadequate compensation and for a failure to spend what was collected for the benefit of the Chippewa. We never split the settlement into percentages for any purpose because we had no factual basis for such a division. And, finally, it is literally impossible to divide up the award based on Leech Lake's theory because that was an appraiser's estimate of a timber value—not of damages. The damages were the difference between what it was worth and what the United States sold it for and that number was never calculated in the litigation.

The time has come to finish what began decades ago. I urge you to move forward with H.R. 1272.

Nelson Act Settlement Timeline

January 14, 1889—Nelson Act enacted; Minnesota Chippewa Indians deprived of lands and timber resulting in a loss of millions of dollars.

1936—The Minnesota Chippewa Tribe (MCT) organized as sovereign, federally-recognized tribe under the Indian Reorganization Act.

1948, 1951—The MCT filed lawsuits against the U.S. government based on damages from the 1889 Nelson Act land sale program.

May 26, 1999—U.S. government and the MCT settled for $20 million.

June 22, 1999—Full settlement amount was transferred to the Department of the Interior and placed in trust for the MCT.

October 1, 2009—The Tribal Executive Committee (TEC) of the MCT approved its settlement distribution plan by a democratic vote of 10–2.

2011—House and Senate introduced bipartisan legislation to approve the MCT settlement distribution plan.

NELSON ACT LAND IMPACT

RESERVATION	ACREAGE IN 1889	NELSON ACT CEDED	NELSON ACT ALLOTTED
Bois Forte (Nett Lake)	103,875	47,377	56,076
(Deer Creek)	22,413	22,117	296
(Vermilion)	1,080	0	0
Fond du Lac	97,857	65,566	40,903[1]
Grand Portage	40,441	16,042	24,359
Leech Lake	658,764	463,008[2]	75,575
Including: Pillager, Lake Winnibigoshish, Chippewas of the Mississippi and White Oak Point Bands			
Mille Lacs	61,028	31,692[3]	0
White Earth	796,676	89,319	673,257

[1] Allotted acres include pre-Nelson Act "1854 Treaty" allotments that were also included in the "CEDED" acreage.
[2] Figure excludes 171,577 acres used for Leech Lake dam sites. A separate judgment was entered for these lands in 1985
[3] Figure excludes 29,336 acres sold prior to the Nelson Act.

Prepared by MARK A. ANDERSON, Jacobson, Buffalo, Magnuson, Anderson & Hogen, P.C., General Counsel, Minnesota Chippewa Tribe, as a supplement to the Testimony of Norman Deschampe, on H.R. 1272, March 1, 2012, before the House Subcommittee on Indian and Alaska Native Affairs

Minnesota Chippewa Tribe
Enrollment Membership: 3/1/2012

3,331	Bois Forte
4,232	Fond du Lac
1,102	Grand Portage
9, 136	Leech Lake
4,329	Mille Lacs
19,147	White Earth
41,147	Total membership

Mr. YOUNG. Thank you very much for that—Norman, for that testimony. I really do appreciate it.

Erma, you are next.

STATEMENT OF THE HON. ERMA VIZENOR, CHAIRWOMAN, WHITE EARTH BAND

Ms. VIZENOR. Thank you, Chairman Young, Ranking Member Boren, members of this important Committee. I am Erma Vizenor, Chairwoman of the White Earth Reservation Tribal Council. Thank you for holding this hearing, and for the opportunity to speak to you today on this very important issue for the White Earth Tribal Members, and for all Tribal Members of the Minnesota Chippewa Tribe.

I want to take a moment to thank Congressman Peterson and Congressman Chip Cravaack for their tireless efforts to move this important issue forward by cosponsoring H.R. 1272. We are very appreciative of those efforts. As you know, all the bands involved in this decision are located in their two congressional districts.

Since President Deschampe of the Minnesota Chippewa Tribe has already provided an excellent background to the suit that eventually brought this distribution, I am going to focus my comments on several areas that are important to the discussion as the Committee considers this bill.

The White Earth Band is the largest of the six bands that comprise the Minnesota Chippewa Tribe. The enrolled members of the White Earth Band make up 50 percent of the enrollment of the Minnesota Chippewa Tribe. The White Earth Band and the other four Minnesota Chippewa Tribe bands that together support the passage of H.R. 1272 account for approximately 80 percent of the Minnesota Chippewa Tribe enrollment.

I want to emphasize to the Committee again the Tribal Executive members of the Minnesota Chippewa Tribe that voted to support this distribution plan comprise 80 percent of the enrolled members of the Minnesota Chippewa Tribe.

The issue has been raised the present judgment fund was intended to be distributed to the six Minnesota Chippewa bands according to the degree of damage sustained by each reservation. However, the stipulation for settlement executed by the Minnesota Chippewa Tribe and the United States is completely silent on the issue of the distribution of settlement proceeds.

There is no hint in the stipulation for settlement proceeds would be distributed according to the relative damages sustained at each of the six Minnesota Chippewa Tribe reservations. There was never an agreement between the six Minnesota Chippewa Tribe bands the judgment fund would be distributed according to the degree of damage sustained by each reservation.

The White Earth Band—the White Earth Reservation also sustained substantial damages because of the United States Government's mismanagement of land and timber sales pursuant to the Nelson Act. In fact, the White Earth Reservation lost four full townships of land amounting to approximately 90,000 acres of land, among other parcels. Nevertheless, the White Earth Band recognizes that the beneficiaries of the proceeds from the present Nelson Act settlement belong to the Chippewa Indians of Minnesota, and not to individual bands. Reaching this distribution plan has been a painful process for all of us.

Shortly following the judgment fund being deposited into the account in the late 1990s, the Bureau of Indian Affairs asked members and their staff to complete results of research pursuant to the Agency's responsibility through the Judgment Funds Act. The BIA personnel assigned—the complete report determined the present judgment award should be awarded on a per capita distribution. White Earth Band, therefore, has solid support rooted in the congressional intent of the Nelson Act—claim 50 percent of the present judgment funds.

Four years ago, we came to this Committee supporting a bill that supported the BIA results of research. After listening to each band's testimony, the Committee at that time instructed us to go home and to reach an agreement. Although it took several years, that is exactly what we tried to do.

The White Earth Band decided, following that hearing, rather than rigidly clinging to the results of research distribution formula that was certain to be rejected by the other five bands, we would work together with the other bands and make our compromises in a position and an effort to bring closure to this matter. It was far too important to our people not to do so.

In fact, we believe we have offered five different compromise plans to the MCT prior to agreement by the majority of this plan, which is the basis of this important bill.

In closing, this method of distributing the settlement funds that is embodied in H.R. 1272 is the most equitable to the intended beneficiaries of the Nelson Act. And I plead with this Committee to enact H.R. 1272 into law.

We thank you for holding this hearing, listening to the support of 80 percent of the Minnesota Chippewa Tribe people.

[The prepared statement of Ms. Vizenor follows:]

Statement of Chairwoman Erma J. Vizenor, White Earth Band of Ojibwe, White Earth, Minnesota

Honorable Chairman Don Young and members of this Committee, I am Erma J. Vizenor, the Chairwoman of the White Earth Reservation Tribal Council. Thank you for the opportunity to provide testimony to your Committee with respect to H.R. 1272.

H.R. 1272 provides for the distribution of the judgment awarded to the Minnesota Chippewa Tribe in 1999 in Docket Nos. 19 and 188 in the United States Court of Federal Claims. The governing body of the Minnesota Chippewa Tribe has voted to

distribute the judgment funds. On behalf of the White Earth Nation, the largest of the six bands that comprise the Minnesota Chippewa Tribe, I respectfully request that H.R. 1272 be approved. The bill is sponsored by Congressmen Collin Peterson and Chip Cravaack, and the bill reflects the decision of the governing body of our sovereign tribal government.

The Unique Status of the Minnesota Chippewa Tribe

Each of the six constituent bands of which the Minnesota Chippewa Tribe is comprised is a separate federally-recognized Indian tribe. Additionally, the Minnesota Chippewa Tribe itself is a federally-recognized Indian tribe. The Minnesota Chippewa Tribe ("MCT") was formed under the Indian Reorganization Act in 1936, and its constitution was approved by the Secretary of the Interior. The MCT revised its constitution in 1964, and such revised constitution was approved by the Secretary of Interior. Pursuant to the revised constitution, the governing body of the MCT is the Tribal Executive Committee ("TEC"). Each of the six constituent bands of the MCT has equal representation on the TEC with two seats, with a total of twelve members. The constitution authorizes the TEC to act by majority vote.

The Minnesota Chippewa Tribe Brought the Original Claims and Ultimately Settled the Litigation

The Minnesota Chippewa Tribe was the only plaintiff in Docket Nos. 19 and 188 before the Indian Claims Commission. After the Indian Claims Commission ceased to exist, the Tribe's claims in these dockets were transferred to the United States Court of Federal Claims, where the Tribe remained the only plaintiff in the case. The Tribe ultimately resolved its claims by entering into a settlement agreement with the United States. The Tribe and the United States were the only parties to the settlement agreement.

It is important to note that the many decisions to undertake, finance and prosecute the litigation, and to negotiate, reach and approve the settlement agreement, were all made by the TEC on behalf of the Tribe. It is also important to note that the Court specifically recognized and affirmed the TEC's constitutional authority to act on behalf of the Tribe before approving the settlement agreement.

This is confirmed by the key steps leading to entry of the final judgment in the case.

First, on July 1, 1998, the TEC enacted Resolution 01–99, which approved the negotiated settlement of the Tribe's claims. The vote was 6 to 3, with 10 members present.

Second, on May 21, 1999, the Tribe and the United States filed a Joint Motion and Stipulation for Entry of Final Judgment in the Court of Federal Claims. The stipulation called for the Court to enter judgment in the amount of $20,000,000 "in favor of plaintiff Minnesota Chippewa Tribe." The parties submitted the TEC resolution, which reflected the 6 to 3 vote, to the Court in support of their motion.

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

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

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

The Tribe Approved a Distribution Plan for the Judgment Fund

The Tribe's constitution authorizes the TEC to make decisions to administer, expend and apportion funds within the control of the Tribe. Each band of the TEC was fully involved in the many debates over a period of several years over the appropriate distribution of the judgment fund.

On October 1, 2009, the TEC enacted Resolution No. 146–09, which approved a plan to distribute the Tribe's judgment funds and requested Congress to authorize the distribution in the manner described. The resolution was approved by five of the six bands, and reflects the carefully considered and legally binding decision of the Tribe. H.R. 1272 would authorize the distribution of the Tribe's judgment fund in accordance with the Tribe's decision.

Federal Law Requires that Congress Enact Legislation to Distribute the Judgment Fund

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

H.R. 1272 Should be Passed

The Minnesota Chippewa Tribe has patiently pursued our claims arising under the Nelson Act of 1889. We have endured the nearly 60 years from the time the claims were filed and the judgment funds are still not distributed. The governing body of the MCT has voted on the proper distribution of our judgment fund. On behalf of the White Earth Nation I respectfully request that you enact H.R. 1272, which will permit the decision of the sovereign governing body of the Minnesota Chippewa Tribe to be carried out.

Mii gwetch

Mr. YOUNG. Thank you. Well done. Thank you very much.

Marge, you are up next.

STATEMENT OF THE HON. MARGE ANDERSON, CHIEF EXECUTIVE, MILLE LACS BAND

Ms. ANDERSON. Thank you. I am Marge Anderson, Chief Executive of the Ojibwe——

Mr. YOUNG. Is your mic on?

Ms. ANDERSON. Thank you. I am here to support H.R. 1272, sponsored by our congressman, Chip Cravaack, and Congressman Peterson.

Four years ago this committee told us to go back to Minnesota and reach an agreement on distribution. After much effort, that is what we have done. We have three principal reasons for supporting H.R. 1272.

Sovereignty and property rights. Congressman Peterson's and Cravaack's bill respects the sovereignty and property rights of the Minnesota Chippewa Tribe. Under the MCT constitution the Chippewa Executive Committee acts by majority vote. And the settlement was approved by majority vote of the TEC. Appropriately, the vote was then accepted by the Department of Justice and the Department of the Interior, and by the Court of Federal Claims. It is appropriate that Congress now gives the same respect to the Tribe's decision regarding the distribution of the judgment, as the government gave to the Tribe's decision to settle the case. If the government does not recognize the sovereign authority and property rights here, it is a problem not just for the Minnesota Chippewa Tribe and its six constituent bands, but for all tribes across this country.

Number two is history. In the early 1980s, my predecessor, Chief Executive Arthur Gahbow, testified in front of this very Committee on dividing up another judgment obtained by the Minnesota Chippewa Tribe in another Indian Claims Commission case. He argued that the special unfairness of our band requires unique consideration, was told that he needed to go back to Minnesota, and the

decision was up to the Minnesota Chippewa Tribe, not Mille Lacs. MCT acted then and now, and this decision should be honored.

Resolution. If we do not do this today, this decision will linger for a generation, or even longer. There has been countless hours and diverted precious resources to finally finalize a strong distribution plan embraced by five of the six bands, and supported by the huge majority of members. In 2008, you told us to bring you an agreement, and you would embrace it. We have it in H.R. 1272, and we ask you to pass without greater delay.

The bands of the Minnesota Chippewa Tribe worked together on virtually all issues. Our story is a story of survival. It is also a story of occasional differences. Each of the six bands have separate stories to tell of the injustices, the hardships, and the terrible insults caused by the Nelson Act. Our elders, our histories, and our experts are persuasive as to the real tragedies caused by each of the bands. We all have maps showing huge losses to our people. Some of us look at the sheer numbers of people, some at land, some at trees, some at dollars taken by agency crooks. While these differences are real, we have resolved them with close to full consensus.

We discussed proposal after proposal. Ultimately, we voted. Five of the six bands are in agreement, representing 80 percent of our members. The Minnesota Chippewa Tribe has spoken as a sovereign, self governing Indian Nation.

The Natural Resources Committee of the U.S. House of Representatives—truly respect sovereignty, self-determination, and self-governance. Indeed, it has given them life and meaning in modern times. Now here, after too much time, too many tears, and too much time wasted, and—please end this.

After a century-and-a-half of losses, after six decades of litigation, and after dozens of years of our money in a dusty account at Interior, it is time. Now here, give our people our money and our sovereign plan.

I respectfully request that the Committee do the right thing. The right thing is to respect the sovereignty of the Tribe and pass H.R. 1272.

[The prepared statement of Ms. Anderson follows:]

Statement of Chief Executive Marge Anderson,
Mille Lacs Band of Ojibwe, Onamia, Minnesota

Mr. Chairman, Members of the Committee, I am Marge Anderson, Chief Executive of the Mille Lacs Band of Ojibwe Indians, located in east central Minnesota. Thank you for the opportunity to submit testimony to your Committee.

I am here today on behalf of the Mille Lacs Band of Ojibwe regarding the distribution of a judgment awarded to the Minnesota Chippewa Tribe in Docket Nos. 19 and 188 in the United States Court of Federal Claims in 1999. After over twelve years, it is time these monies went to the people who were harmed. Four years ago this Committee told us to go back to Minnesota and reach an agreement on distribution. After much effort, that is what we have done. The Tribe has voted to distribute the judgment, and I support the Tribe's sovereign authority and property right to determine the distribution of the judgment awarded to the Tribe. The Tribe's determination is reflected in H.R. 1272, a bill sponsored by our Congressman, Chip Cravaack, and Congressman Collin Peterson.

THE MILLE LACS BAND SUPPORTS H.R. 1272.

The Minnesota Chippewa Tribe

The Mille Lacs Band of Ojibwe is one of the six constituent bands which comprise the Minnesota Chippewa Tribe. Each of the constituent bands is, in its own right,

a distinct sovereign government. This fact is reflected in the bands' Self-Governance Compacts with the United States Department of the Interior and the Department of Health and Human Services.

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

While this structure is unusual in Indian Country, it has been in place for more than 70 years. Just as the Court made clear in approving the settlement, now, here, in providing for the distribution of the judgment in Docket Nos. 19 and 188, Congress should respect the sovereignty of the Tribe.

The Judgment Fund

The Minnesota Chippewa Tribe was the only plaintiff in Docket Nos. 19 and 188 before the Indian Claims Commission (*See* Order attached). After the Indian Claims Commission ceased to exist, the cases were transferred to the United States Court of Federal Claims, where the Tribe remained the only plaintiff. The Tribe ultimately resolved its claims by entering into a settlement agreement with the United States. The Tribe and the United States were the only parties to the settlement agreement.

It is important to note that **the many decisions to undertake the litigation, finance and prosecute the litigation, negotiate, reach and approve the settlement all** were made by the TEC. It is also important to note that the Court specifically recognized and affirmed the TEC's constitutional authority to act on behalf of the Tribe before approving the settlement agreement.

The TEC approved the settlement of its claims on July 1, 1998, when it enacted Resolution 01–99. The vote was 6 to 3, with 10 members present.

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

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

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

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

Under the Tribe's constitution, the TEC is authorized to make decisions to administer, expend and apportion funds within the control of the Tribe. On October 1, 2009, the TEC enacted Resolution No. 146–09, which approved a plan to distribute the funds and requested Congress to authorize the distribution in the manner described.

Need for Legislation

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

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

Reasons for Supporting H.R. 1272

We have three principal reasons for supporting H.R. 1272:

1. Sovereignty and Property Rights. Congressmen Peterson's and Cravaack's bill respects the sovereignty and property rights of the Minnesota Chippewa Tribe.

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

   If the Minnesota Chippewa Tribe is truly a government, and it is, its votes cannot be overruled on matters under its jurisdiction, including the distribution of a fund awarded to the Tribe. The defendant in a lawsuit cannot agree to settle a case by paying a sum of money to the plaintiff and then, when the plaintiff determines how the money is to be distributed, disregard that decision and pay the money to someone else. This would be a taking. Moreover, this result would be especially galling considering that it was the disregard, incompetence and misfeasance of the government that caused the very real harm to the Tribe and its members. Further, it would seemingly void the settlement and open the government to further, compounded litigation.

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

2. History. In the early 1980s, my predecessor, the Chief Executive of the Mille Lacs Band, Arthur Gahbow, testified in front of this very Committee on dividing up another judgment obtained by the Minnesota Chippewa Tribe in another Indian Claims Commission case. He argued that the special unfairness to our Band required unique consideration. He was told by the late Congressman Bruce Vento that he needed to go back to Minnesota, and that the decision was up to the Minnesota Chippewa Tribe, not Mille Lacs.

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

   This important Committee and its leaders have traditionally respected the sovereignty of Indian Nations. In fact, it has often single-handedly spoken truth to power in this city on the issue of sovereignty. Often it has had to explain it, help employ it, and sometimes celebrate it. We ask you to do so again, here, now.

3. Resolution. This is a moment in history when we can resolve a longstanding conflict. If we do not do this today, this decision will linger for a generation, or even longer. That would not be responsible governance. We have spent countless hours and diverted precious resources to finalize a strong distribution plan, embraced by five of the six bands and supported by a huge majority of members. We have the common goal of wanting to do good things on our reservations, and this money from past harms can help. Today, we can and should move forward. In 2008, you told us to bring you an agreement and you would embrace it. We have in H.R. 1272 and we ask you to pass it without greater delay.

CONCLUSION

The bands of the Minnesota Chippewa Tribe work together on virtually all issues—law enforcement, child welfare, economic development, and more. We have a long, distinguished and unified history together. Ours is a story of survival. It is also a story of occasional differences. Each of the six bands has separate stories to tell on the injustices, the hardships, the terrible insults caused by the Nelson Act. Our elders, our histories and our experts are persuasive as to the real tragedies caused to each of the Bands. Some of us look at sheer numbers of people, some at

land, some at trees, some at dollars taken by Agency crooks. While these differences are real, we have resolved them with close to unanimity. We did so after debating and discussing these matters at length. We discussed proposal after proposal. Ultimately, we voted. Five of six bands are in agreement, representing eighty percent of our members. The Minnesota Chippewa Tribe has spoken as a sovereign, self-governing tribal nation.

As members of the Executive Committee of the MCT, and separately as leaders of six sovereign tribes, we have devoted thousands of hours and countless tribal resources to this distribution plan now before Congress. We know the facts, the history, the legal theories and the injustices and the horrible harms done to our people that are the basis of our claims. We lived through the litigation, undertook the negotiations, and finally embraced a settlement. We are, like you, elected by our people. And daily we are asked to make decisions, face very real, and sometimes life or death, problems and needs that stagger human imagination and certainly tribal resources.

Now, here, we have our MCT funds, our peoples' funds, languishing in a trust account in the very agency that over a century ago did the terrible harm that led to the claims. Now, here, we must get the assent of the Congress that, at the least, allowed the agency to do the harm. It is an irony and a legacy of paternalism that should give way to sovereignty, self governance, self determination and respect.

The Natural Resources Committee of the U.S. House of Representatives has come to truly respect concepts like sovereignty, self determination and self governance; indeed, it has given them life and meaning in modern times. Now, here, after too much harm, too many tears, and too much time, wasted work and lost resources, please end this. After a century and half of losses, after six decades of litigation, and after a dozen years of our money in a dusty account at Interior, it is time. Now, here, **give our people. . ..our money. . ..in our sovereign plan.**

On behalf of the Mille Lacs Band, we thank our two Congressmen and our two Senators for respecting tribal sovereignty. We thank this Committee and you, Mr. Chairman and Mr. Ranking-Member, for your long-standing respect for sovereignty. I respectfully request that the Committee do the right thing.

The right thing to do is to respect the sovereignty of the Tribe and pass H.R. 1272.

Mii gwetch.

Mr. YOUNG. Thank you, Marge.

Arthur?

STATEMENT OF THE HON. ARTHUR "ARCHIE" LaROSE, CHAIRMAN, LEECH LAKE BAND OF OJIBWE

Mr. LAROSE. Good afternoon, Chairman Young, Ranking Member Boren, and members of the Subcommittee. My name is Archie LaRose, and I am the Leech Lake Reservation Chairman. On behalf of my people watching and listening back at home, thank you for giving me this opportunity.

You have heard some of the history behind the settlement. I am here to tell the rest of the story. Leech Lake suffered 68.9 percent of the damages. H.R. 1272 does not reflect the harm done to my people. That is why we strongly oppose the bill.

The story starts with the establishment of the Leech Lake Reservation. My ancestors entered into treaties and executive orders from 1855 to 1874. These treaties promised that reservation would be our permanent homelands forever.

Back in 1874 our closed reservation consisted of 640,000 acres. We owned it all. Under the Nelson Act, our reservation was cut to less than 40,000 acres. I have a map here that compares our treaty reservation. It is up on both TV screens. I have a map here that compares our treaty reservation with our reservation today. Our current trust lands are highlighted in red. You can barely see them. They total less than 30,000 acres. This gives you an idea of the damages that the Nelson Act inflicted on our reservation.

I am here today, more than a century later, to ask the Committee to right this wrong, and not compound our problem under this bill. The bill directs the Secretary to distribute the settlement fund based on a proposal by the Minnesota Chippewa Tribe. It does not honor sovereignty, it ignores fairness, and it only satisfies the four smaller bands.

Congress passed the Indian Tribal Judgment Funds Act to take politics out of the equation. This is a court settlement. But unless we know who was harmed, Congress is blindly giving settlement funds that belong to one tribe to other tribes.

The BIA did its job under this Act. In 2001, the BIA studied the case and found that there is no compelling reason to give preferential treatment to the four smaller bands. The four smaller bands control the MCT, and they want to collect payment for harm suffered by the Leech Lake Reservation.

The MCT hired an expert to justify the settlement amount. This expert spent more than six years, and the MCT paid him more than $1 million to study the damages. The expert found that Leech Lake suffered 68.9 percent of the damages. The amounts of damages for the other bands ranged from less than 1 percent to 12 percent. The MCT used this report to advance the settlement.

However, now the MCT wants to sweep this report under the rug. DOJ also filed an expert property list with the court. This list shows that most lands from the settlement came from the Leech Lake Reservation to form the Chippewa National Forest, 600,000 acres. Based on these expert appraisals, the court based a settlement on damages.

Unfortunately, damages aren't considered in the bill before the Subcommittee today. Instead of asking who was harmed, the bill looks to an MCT resolution that would give bands who suffered as little as .09 percent of the damages the same share as Leech Lake, who suffered 68.9 percent of the damages.

In addition, Grand Portage, Fond du Lac, and Bois Forte relinquished all claims to our lands involved in the settlement in the 1854 treaty. Also, White Earth received 10,000 acres of land and $6.6 million in compensation under the Nelson Act in 1985. None of the other five bands shared in this compensation.

Our reservation was established long before the MCT was even formed. Likewise, the Nelson Act and the damages that it inflicted occurred long before the MCT existed. Federal courts have also ruled that the MCT acts only in a representative capacity. The MCT is not a beneficiary. They have no treaties. Federal courts in past Nelson Act claims made awards to the individual bands based on which of the treaty bands had a legal treaty right to the settlement funds.

If Congress is going to ignore the Judgment Funds Act, it should at least look to those cases. It makes no sense to now completely ignore damages. We have been trying to negotiate with the other bands. However, if this bill is enacted without a compromise, Leech Lake will sue the government to stop this unjust distribution.

Mr. Chairman, just as you raised concerns with the unfair distribution in the Cobell settlement, this bill gives the property of Leech Lake to the other bands. As a result, the bill violates Congress's constitutional obligation to protect our property and

treaty rights. This bill disrespects Leech Lake's sovereignty. It compounds the injustice done to our treaties, our lands, and our people. In our view, a consensus position is the only way to resolve this dispute.

Thank you for this opportunity. Mii gwetch.

[The prepared statement of Mr. LaRose follows:]

Statement of The Honorable Arthur "Archie" LaRose, Chairman, Leech Lake Band of Ojibwe

INTRODUCTION

Good afternoon Chairman Young, Ranking Member Boren, and Members of the Subcommittee. I am Archie LaRose, Chairman of the Leech Lake Band of Ojibwe. Thank you for the opportunity to testify on H.R. 1272. This bill would direct the Secretary to distribute funds from a 1999 settlement of a case to resolve claims brought for federal mismanagement of funds and undervaluing of lands and timber sold off under the 1889 Nelson Act according to a prescribed formula advocated by the Minnesota Chippewa Tribe (MCT), which is comprised of the bands of Leech Lake, Bois Forte, Fond du Lac, Grand Portage, Mille Lacs, and White Earth. All six bands are individual federally recognized Indian tribes. Under the formula set forth in H.R. 1272, MCT would be paid attorney fees and other expenses first. The Secretary must then allocate the remaining funds on a per capita and per band basis. Damages inflicted under the Nelson Act to the individual bands, their lands, and their treaties, which was the basis for the settlement amount of $20 million, is not a consideration in the mandated distribution.

The Nelson Act and the damages that it caused to the treaty-protected reservations in Minnesota represents yet another sad chapter in this Nation's history of dealing with Indian tribes. I agree that time has come to put this issue behind us. However, it must be done in an equitable and just manner. H.R. 1272 would not accomplish this goal. Instead, the bill will compound the injustice that was done to the people of the Leech Lake Band of Ojibwe, our Reservation, and our Treaties and will only result in additional costly and time-consuming litigation.

SUMMARY OF STATEMENT

H.R. 1272 disregards the sovereignty of the Leech Lake Band of Ojibwe and would result in gross injustice to the Band. Respecting tribal sovereignty means honoring the position of Leech Lake, not sacrificing justice owed it to appease others. H.R. 1272 is based on the improper assumption that the Nelson Act dissolved all the bands' prior interests in land. While the Nelson Act sought to establish a common permanent fund, federal courts have found that the wrongs inflicted under the Nelson Act relate back to the individual treaty-beneficiary bands. Federal courts approved monetary judgments in at least 25 Nelson Act-related claims that were brought by the MCT as the named plaintiff. The awards were then distributed to the individual bands that were the parties to the various treaties that established the reservation lands in the first place. In other words, the United States has never abrogated the sovereign rights of the Leech Lake Band of Ojibwe or transferred its lands or treaty rights at any point to the MCT or anyone else as some have suggested. If that were the case, then Leech Lake looks forward to sharing in the lucrative gaming revenues of the other bands. The MCT has no treaty rights and cannot speak for Leech Lake on matters impacting our treaty-protected Reservation.

Instead of following court precedent of distributing settlement funds to the individual bands, H.R. 1272 ignores actual damages suffered by individual federally recognized bands, their individual treaties, and their reservations. The court-approved settlement amount of $20 million was based upon the damages incurred (land and timber sold improperly or taken and mismanaged) on each reservation under the Nelson Act. The MCT commissioned Wesley Rickard, Inc., as its expert in the case to conduct an appraisal of the lands and timber subject to the claims. The resulting MCT Comparison Report found that the Leech Lake Indian Reservation incurred 68.9% of the damages; Grand Portage 0.9%; Mille Lacs 2.40%; Bois Forte 8.60%; White Earth 9%; and Fond du Lac 10.20%. It would not be fair to allocate the funds based solely upon a per capita and per band basis while ignoring damages incurred by each band given the settlement amount was based upon damages. The parties would not have agreed to the $20 million settlement amount if it had not been for the 68.9% of damages suffered by Leech Lake.

The Indian Tribal Judgment Funds Use or Distribution Act (Judgment Funds Act), 25 U.S.C. § 1401 et seq., was enacted to keep politics out of federal court settlements. The Act sets forth the procedure to handle the distribution of settlements

where more than one tribe is involved and where they do not agree on a distribution formula. That Act governs the distribution of this settlement. The Bureau of Indian Affairs (BIA) executed its responsibility under the Judgment Funds Act in 2001 and then again in 2007 by submitting a report and draft legislation to Congress proposing certain distribution allocations to Congress based upon its review of the case, the facts upon which the settlement was based, and the legal equities. The BIA's recommendation to Congress initially supported a distribution based on damages and per capita. The BIA's legal analysis under the Judgment Funds Act found "no compelling reason to support a six way split of the fund that would result in giving the preferential treatment to the membership of the four smaller bands." The controlling voice of MCT (the four smaller bands) has opposed the BIA's recommendation for the past decade. These bands have supported a per band split that would benefit them to a greater degree than other alternatives on the table. H.R. 1272 is their effort to attain the per band split they seek.

Further, H.R. 1272 mandates payments that are beyond the scope of those approved in the Judgment Funds Act. The bill would mandate payment to the MCT for costs and interest incurred resulting from the MCT's work on "the distribution of the judgment funds," which could include lobbying, consulting fees, and other related costs to develop and advocate in favor of H.R. 1272. Such work was done in direct conflict with the interests of the Leech Lake Band of Ojibwe. Such expenditures are not authorized under the Judgment Funds Act.

To resolve this long-standing dispute, the Leech Lake Tribal Council proposed a compromise position that would acknowledge damages along with the views of the other bands. A consensus position is the only way to achieve the goal of putting the settlement funds in the hands of the rightful beneficiaries. We respectfully request that the Congress and the Administration facilitate discussion among the six bands to develop an equitable solution to this problem.

BACKGROUND/HISTORY

Treaties with the Leech Lake Band of Ojibwe and other Indians of Minnesota

The United States entered into 43 treaties with the Chippewa Indians between 1785 and 1870. The Leech Lake Indian Reservation was established through a series of treaties with the United States and presidential executive orders. See Treaties of February 22, 1855 (10 Stat. 1165) & March 19, 1867 (Article I, 16 Stat. 719); Executive Orders of October 29, 1873, November 4, 1873, and May 26, 1874. These treaties and executive orders promised to make the reserved lands the "permanent home" for the Leech Lake people.

Nelson Act of 1889

In the 50th Congress, Minnesota Congressman Knute Nelson sponsored a bill formally titled, "An Act for the relief and civilization of the Chippewa Indians of Minnesota." Congress passed the bill and President Cleveland signed it on January 14, 1889. 25 Stat. 642 (Jan. 14, 1889). The Act, known as the Nelson Act, is the Minnesota version to the failed Dawes Act (also known as the General Allotment Act). Established during the federal government's era of Allotment and Assimilation, the United States—through the Nelson Act—sought to destroy the governing structures of the Minnesota bands, parcel out tribal government lands to individual Indians, and open up our reservation timber and lands to settlers and private companies in clear violation of existing treaties. A primary goal of the Nelson Act was to open up the northern white pine forests for lumber companies for logging.

Section 1 of the Nelson Act provides that, "in any case where an allotment in severalty has heretofore been made to any Indian of land upon any of said reservations, he shall not be deprived thereof or disturbed therein. . .." This provision acknowledges the vested rights of the individual Indians to choose land and remain on their reservations. The remaining residents, the allotted reservation lands, and their tribal governing bodies were not dissolved.

Section 3 of the Act provided for parcels to be allotted to individual Indians. Sections 4 and 5 directed pinelands to be sold at public auction to non-Indians. Section 6 directed agricultural lands to be sold to non-Indian settlers as homesteads.

Section 7 of the Act provides:

> "That all money accruing from the disposal of said lands. . .shall. . .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. . .and which interest and permanent fund shall be expended for the benefit of said Indians in manner following: One-half of said interest shall. . .be annually paid in cash in equal shares to the heads of families and guardians of orphan minors for their use; and one-fourth of said interest shall, during the same period and with the like exception, be annually paid in cash in equal shares

per capita to all other classes of said Indians; and the remaining one-fourth of said interest shall, during the said period of fifty years, under the direction of the Secretary of the Interior, be devoted exclusively to the establishment and maintenance of a system of free schools among said Indians, in their midst and for their benefit; and at the expiration of the said fifty years, the said permanent fund shall be divided and paid to all of said Chippewa Indians and their issue then living, in cash, in equal shares." (emphasis added.)

Amendments to the Nelson Act/Establishment of the Chippewa National Forest

In 1900 the League of Women Voters petitioned Congress to protect the remaining forestlands surrounding the Leech, Cass, and Winnibigoshish Lakes on the Leech Lake Indian Reservation. The Chippewa National Forest (CNF), originally named the Minnesota Forest Reserve, was established through passage of the Morris Act (June 27, 1902) by taking these lands from the Leech Lake Indian Reservation. Approximately 75% of the CNF lands are within the treaty boundaries of the Leech Lake Indian Reservation.

The Morris Act amended the Nelson Act, opening 25,000 acres of agricultural land to settlement. It also reserved 10 sections and areas of Indian land and allotments from sale or settlement and provided for the sale of 200,000 acres of pine timber with proceeds to be paid "to the benefit of the Indians."

Section 2 of the Morris Act read:

"Provided further, That in cutting the timber on two hundred thousand acres of the pine lands, to be selected as soon as practicable by the Forester of the Department of Agriculture, with the approval of the Secretary of the Interior, on the following reservations, to wit, Chippewas of the Mississippi, Leech Lake, Cass Lake, and Winnebigoshish, which said lands so selected shall be known and hereinafter described as 'forestry lands,'. . .: Provided further, That there shall be reserved from sale or settlement the timber and land on the islands in Cass Lake and in Leech Lake, and not less than one hundred and sixty acres at the extremity of Sugar Point, on Leech Lake. . .on which the new Leech Lake Agency is now located,. . .and nothing herein contained shall interfere with the allotments to the Indians heretofore and hereafter made. The islands in Cass and Leech lakes and the land reserved at Sugar Point and Pine Point Peninsula shall remain as Indian land under the control of the Department of the Interior." (emphasis added.)

I quote the Morris Act for two reasons. First, this quote demonstrates that a majority of Leech Lake's treaty lands were taken from it to establish the CNF and to sell its timber. Second, this excerpt shows that the U.S. still maintained its government-to-government relationship with the Leech Lake Band on our Reservation even as it was taking our lands in 1902. Today, the Leech Lake Band now holds only approximately 4% of our Reservation lands promised by treaty and executive order. This amounts to approximately 29,000 acres of trust lands, most of which are swamplands that no one wanted to purchase. As a result, much of the trust lands within the Leech Lake Indian Reservation are swamplands and not suitable for housing, infrastructure, or economic development needs. The U.S. Forest Service and the state of Minnesota now hold most of the usable lands within the boundaries of the Leech Lake Indian Reservation.

The CNF today has 115 employees and an annual budget of $12.5 million. It also makes payments to local counties. Fiscal year 2008 saw $1.1 million go to the counties. No similar payments are made to the Leech Lake Indian Reservation. The Leech Lake Indian Reservation should have more than a right to comment on the annual forest plans. The Supreme Court has held that the forest and lakes remain our ecosystem and remain subject to our treaty hunting, fishing, and gathering rights. The Leech Lake Indian Reservation should be given an opportunity to engage in self-determination-type contracting with the CNF and have a meaningful say in how environment and natural resources located within our reservation boundaries are used.

After the damage caused by the Nelson Act, the Leech Lake Band continued to govern the remaining tribal and allotted lands of the Leech Lake Indian Reservation. The leaders of the Leech Lake Indian Reservation continued to act on a government-to-government basis with the U.S. to ensure the protection of our treaty rights and to hold the federal government to its trust obligations. Attached to this testimony is a photo taken during the 1920's of delegations from the Leech Lake Band of Ojibwe and the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation during a visit to the White House. In the photograph, the tribal delegations are accompanied by BIA Commissioner Charles Burke.

In 1925, representatives from Leech Lake corresponded with BIA Commissioner Burke urging the U.S. to take action to address the wrongs committed by the Nelson and Morris Acts. This correspondence includes a petition written by Leech Lake tribal leaders to Congress. The petition led to the 1926 legislation that authorized the Nelson Act claims to go forward in federal court. I'm here today, more than a century after our lands were wrongly taken, to ask this Committee to right this wrong—not exacerbate it as would be done under H.R. 1272.

Establishment of the Minnesota Chippewa Tribe

The Secretary of the Interior recognized the MCT on July 24, 1936, pursuant to the authority granted under the Indian Reorganization Act (IRA) long after the 1889 Nelson Act and 1902 Morris Act. Governed by a constitution, the MCT's limited powers are delegated to it from the six bands. In addition to the Leech Lake Band, the other bands include the Bois Forte, Fond du Lac, Grand Portage, Mille Lacs, and White Earth. The initial primary purpose of the MCT was to ease the administrative burden on the six bands, who had little infrastructure and few resources. As will be shown below, the bands entrusted the MCT to bring a series of Nelson Act and similar claims on behalf of the treaty beneficiary tribes. This was again done for ease of administration and so that the bands could hire one attorney as opposed to six. Being jointly represented by one attorney does not mean that we agreed to commingle settlement proceeds as some have suggested.

At no time have any of the bands ceded sovereignty or treaty rights to the MCT. The individual member bands are separate, federally recognized tribal governments. No law or court ruling has taken away the Leech Lake Band's sovereignty or acknowledgement as a federally recognized tribe. Further, the Chippewa Indians of Minnesota and the individual bands are different from the MCT. To say that they are the same is like saying the citizens of the United States and the fifty states are the same as the governmental body of the United States.

The Leech Lake Band of Ojibwe Today

The Leech Lake Band of Ojibwe is a federally recognized Indian tribe with a long history of relations with the United States. The Leech Lake Tribal Council is the governing body of the Leech Lake Band. Our existing Reservation consists of 29,717 acres of trust lands, less than 4% of the total of our initial Reservation.

In the early 1990's, Leech Lake contracted with the BIA to operate programs as one of ten tribes in a second group allowed into a self-governance pilot project. Pursuant to Public Law 83–280, the state of Minnesota has concurrent criminal jurisdiction over crimes occurring on the Reservation. Leech Lake's court system exercises partial criminal and full civil jurisdiction over Indians on our Reservation.

The Leech Lake tribal community consists of approximately 10,000 enrolled members. We have retained a strong and vibrant culture and continue to exercise and protect our treaty rights to hunt, fish, and gather on the lands promised as our permanent homelands.

While our culture and way of life remains strong, our community faces high unemployment, concerns with substance abuse, and challenges in providing adequate health care and education to our people. A glaring gap on our Reservation is the longstanding need to replace the Bug-O–Nay-Ge-Shig High School facility, which is administered by the Bureau of Indian Education, located in Bena, Minnesota.

The current High School facility is a metal-clad pole barn, formerly used as an agricultural building. One-third of the high school facility was destroyed in a gas explosion in 1992. The facility has serious structural and mechanical deficiencies and lacks proper insulation. The facility does not meet safety, fire, and security standards due to the flimsiness of the construction materials, electrical problems, and lack of alarm systems. The building lacks a communication intercom system, telecommunication technology, and safe zones, which puts students, teachers, and staff at great risk in emergency situations. The facility jeopardizes the health of the students and faculty due to poor indoor air quality from mold, fungus, and a faulty HVAC system. The facility also suffers from rodent infestation, roof leaks and sagging roofs, holes in the roofs from ice, uneven floors, poor lighting, sewer problems, lack of handicap access, and lack of classroom and other space. These are just a few of the facility's numerous deficiencies.

One of the primary purposes of the Nelson Act permanent fund was to provide funding for educational institutions for the various bands. We urge the Committee to consider amending H.R. 1272 to address this long-standing unmet need.

NELSON ACT LITIGATION AND SETTLEMENT

As noted above, Congress first acknowledged the wrongs inflicted by the Nelson Act upon the Chippewa Indians of Minnesota in 1926, in part, due to the work of the past leaders of the Leech Lake Band of Ojibwe when Congress first authorized

the federal courts to hear claims brought by the various bands for damages incurred under the Nelson Act. See Act of May 14, 1926.

Pursuant to this Act of 1926 and its subsequent amendments, the Indian Claims Commission (ICC) and the U.S. Court of Federal Claims, in at least 25 other Nelson Act-related claims, awarded monetary judgments that were distributed to the individual bands based upon damages incurred on their specific treaties/reservations. While the Chippewa Indians of Minnesota and later the MCT were the named plaintiffs in these cases, the awards were distributed on a per capita basis to the members of the bands whose reservations suffered losses of land and timber.

The BIA, in its 2001 Results of Research Report (conducted under the Judgment Funds Act) (BIA Report), discussed some of the previous Nelson Act claims brought under the jurisdictional Act of 1926. The BIA Report notes, "in Docket 18, the MCT pursued additional claims in a representative capacity on behalf of the Lake Superior, Mississippi and Pillager Chippewa, before the Indian Claims Commission. It also represented all Chippewa bands in Minnesota. . .in Dockets 19 and 188." The BIA Report then lists previous Nelson Act dockets and the beneficiaries of the earlier awards that were distributed. The chart lists the total money damages awarded in that specific docket along with the percentages allocated to the beneficiary bands. While the MCT was the named plaintiff in each claim, none of these awards went to the MCT.

The settlement that is the subject of H.R. 1272 stems from Dockets 19 and 188. These claims are the remaining unresolved Nelson Act claims for damages incurred by the various six bands that were transferred to the U.S. Court of Federal Claims when the ICC dissolved in 1978. To advance the settlement, the MCT hired Wesley Rickard, Inc., to compile a report, which found that Leech Lake sustained the bulk of the damages under the Nelson Act. The following is a list of the damages appraised by Wesley Rickard, Inc., and put forward by the MCT: Leech Lake incurred 68.9% of the damages; Grand Portage 0.9%; Bois Forte 8.60%; Fond du Lac 10.20%; Mille Lacs 2.40%; and White Earth 9%.

While the MCT heavily relied on the Wesley Rickard Report (Report) in settlement negotiations, it now attempts to discredit the Report. Wesley Rickard, Inc. worked years to locate historical records to document the history and value of the subject property of the claim. They acquired over 300 boxes of research to support their work. The value indications referenced above were derived from market sales of standing timber, market sales of log production costs, and other timely documentation of timber values (valuation dates were from 1879 to 1933). These figures are based upon professional appraisals—market based analyses—not estimates. The Report was prepared for use in court. However, the parties settled shortly after this Report was compiled. The Report assessed the subject property and determined the value of loss to be $26.3 million—$17.4 million of which were losses incurred by Leech Lake. The parties settled for $20 million, which is within the ballpark of the $26.3 million valued by MCT's Report. The MCT spent more than $1 million on this research. Now it seeks to discredit and sweep this research and its results under the rug. We hope that the Subcommittee sees through this hypocrisy.

On May 21, 1999, the Department of Justice, as part of the litigation, hired its own expert, Morgan Angel & Associates, to prepare a "subject property list" that described the disposition of the lands ceded under the Nelson Act. This list was filed with the Court. The listing clearly shows that the great majority of the lands ceded came from the Leech Lake Indian Reservation to establish the CNF. The listing also acknowledges that the majority of the listed Leech Lake lands were pine lands, which were far more valuable than the agricultural lands ceded under the Nelson Act and which were more often subject to the fraud that led to these claims. In 1999, the $20 million settlement agreement incorporated by reference this subject property list.

SPECIFIC CONCERNS WITH H.R. 1272

The Judgment Funds Act governs the distribution of this settlement. 25 U.S.C. § 1401 et seq. Through this Act, Congress sought to keep politics out of federal court settlements. In settlements involving more than one tribe and where tribes disagree on the formula of distribution, the Act requires the BIA to identify the present day beneficiaries of the claim, examine the legal equities of the case, and consider the needs and desires of groups in a minority position. 25 U.S.C. § 1402–03. The Act then requires the BIA to submit a report to Congress that includes a plan for distribution of the settlement.

The BIA issued the BIA Report pursuant to the Judgment Funds Act, which acknowledged that the Nelson Act, and its amendments, consistently refers to the "Chippewa Indians of Minnesota," not the MCT, as the beneficiaries of any distribution of funds. The BIA Report concluded, "We do not find any compelling reasons

to support a six-way split of the fund that would result in giving preferential treatment to the membership of four smaller bands at the expense of the membership of the two larger bands." BIA Report, p. 10.

The BIA Report acknowledges that past claims were distributed to the individual treaty beneficiary bands harmed and that, while the MCT was the named plaintiff, it acts only in a representative capacity on behalf of the treaty beneficiary bands. As noted above, the BIA Report acknowledges that past Nelson Act money damage awards were allocated to the beneficiary bands based upon the percentage of harm incurred. The BIA Report also acknowledges that, "the lands sold [under the Nelson Act] from each of the reservations were originally reserved to the bands under treaty. Under the terms of the Nelson Act, Leech Lake gave up the most land and received the least compensation per acre."

The BIA Report notes that the BIA first recommended a compromise that would have distributed the funds based on damages (35%) and per capita (65%). The majority of the MCT (the four smaller bands) rejected this compromise proposal. The BIA revised its recommendation and submitted the BIA Report to Congress pursuant to the Judgment Funds Act. Then, in 2007, the BIA sent proposed legislation setting forth a per capita distribution to Congress under the Judgment Funds Act.

Instead of following court precedent or relying upon the BIA's legal analyses, H.R. 1272 is based on an MCT Resolution that supports the distribution formula set forth in the bill. However, the sovereignty of the MCT flows from its six member bands, not the reverse. The MCT should have no say in the distribution of the Nelson Act settlement funds. The Treaties and Executive Orders between the United States and the Leech Lake Band that established our Reservation took place long before the MCT was established. None of these treaty rights were transferred or delegated to the MCT. Likewise, the 1889 Nelson Act and the damages it caused our Reservation occurred well before the MCT came into existence. Finally, the Act of Congress that authorized the claim to be brought forward was also enacted prior to the existence of the MCT.

In addition to the BIA, federal courts have also acknowledged that the MCT acts only in a representative capacity in these claims. The U.S. Court of Claims, in MCT v. United States, overturned an ICC ruling in part by finding that the treaty rights to lands are held by the tribal entity that entered into the treaty, not the individual Indian descendants. The Court stated:

> The Commission's order declared that the [MCT] "is entitled to maintain this action in a representative capacity on behalf of all the descendants of the Mississippi bands of Chippewas and the Pillager and Lake Winnibigoshish bands of Chippewas who were parties to the Treaty of February 22, 1855," regardless of their present-day membership in the Tribe.. . .At the oral argument the defendant suggested that the Commission's order and findings should be modified to delete the references to "descendants," and to provide instead that the [MCT] is entitled to maintain this action in a representative capacity on behalf of those bands of Chippewas (the Mississippi bands and the Pillager and Lake Winnibigoshish bands) who were parties to the 1855 Treaty. We agree. Tribal lands are communal property in which the individual members have no separate interest which can pass to their descendants who are no longer members of the group. . .. At least in such proceedings the [ICC] requires that the awards be made, not to individual descendants of tribal members at the time of the taking, but to the tribal entity or entities today. In this case, the tribal entity is the Minnesota Chippewa Tribe on behalf of the Mississippi, Pillager, and Lake Winnibigoshish bands.

MCT v. U.S., 315 F.2d 906 (Ct. Cl. 1963) (interlocutory appeal of ICC No. 18–B decision finding that the Mississippi, Pillager, and Winnibigoshish held recognized title to the 1855 territory) (emphasis added).

We urge the Subcommittee to look to the federal courts' previous treatment of claims for money damages caused by the Nelson Act before finalizing this distribution formula. As stated above, the ICC and U.S. Court of Claims, in at least 25 judgments, acknowledged the damages incurred under the Nelson Act by the specific bands. These awards were distributed to each of the six bands individually based upon the damages inflicted to the respective reservations pursuant to specific treaty or executive order.

1854 Treaty Rights and Descendants

There is also concern that some entities may not be entitled to share in the settlement. The 1854 Treaty rights of the Mississippi are described in Article I as follows:

> The Chippewas of the Mississippi hereby assent and agree to the foregoing cession, and consent that the whole amount of the consideration money for

> the country ceded above, shall be paid to the Chippewas of Lake Superior, and in consideration thereof the Chippewas of Lake Superior hereby relinquish to the Chippewas of the Mississippi, all their interest in and claim to the lands heretofore owned by them in common, lying west of the above boundry-line.

This is an expressly reserved, treaty property right with clearly identified valuable consideration, which, under contract and property law, legally precludes any right for recovery for the Chippewas of Lake Superior with regard to compensation for damages for losses of lands and timber in the 1855 ceded territory—the territory directly west of the 1854 boundary line.

The U.S. Supreme Court has repeatedly ruled that Congress may abrogate Indian treaty rights, but it must clearly express its intent to do so. United States v. Dion, 476 U.S. 734, 738–40 (1986); see also Washington v. Washington State Commercial Passenger Fishing Vessel Assn., 443 U.S. 658, 690 (1979); Menominee Tribe v. United States, 391 U.S. 404, 413 (1968). There must be "clear evidence that Congress actually considered the conflict between its intended action on the one hand and Indian treaty rights on the other, and chose to resolve that conflict by abrogating the treaty." United States v. Dion, supra, at 740; see also Minnesota v. Mille Lacs Band of Chippewa Indians, 526 U.S. 172, 203 (1999).

H.R. 1272 contains no such "clear evidence" of congressional intent to abrogate the Chippewas' 1854 treaty right. In fact this Act is silent on the subject of treaty rights and provides no indication that Congress is considering the 1854 treaty reserved rights of the Chippewas of the Mississippi.

Thus, as the Subcommittee considers H.R. 1272, we urge it to first recognize the past treaties and executive orders that established the various reservations. It is the damage to these reservations upon which the original claims and the resulting settlement are based.

Alternative Proposals Presented by the Leech Lake Band of Ojibwe

For a number of years, the Leech Lake Band held the position that we would only support a distribution formula solely based upon damages. However, in 2011, the Council put forward a compromise to the other five bands. This compromise would acknowledge the significant harm done to our people while incorporating the positions of the other bands. This straightforward compromise would bring closure to this matter. We are also open and interested in working with the Subcommittee, the Administration, and the other bands to find a solution.

H.R. 1272 Distribution will not Withstand Judiciary Scrutiny

I agree with the 2008 testimony of White Earth Chairwoman Erma Vizenor when she stated that the result of a plan to distribute funds on a per band formula "would be to give 75% of the proceeds of the Settlement to 25% of the beneficiaries. We frankly do not believe that such a finding would withstand judicial scrutiny."

If H.R. 1272 or similar legislation is enacted without provisions addressing Leech Lake's concerns, we are prepared to file a lawsuit to challenge the inequitable distribution of the settlement funds.

In Chippewa Indians of Minnesota v. United States, the U.S. Supreme Court stated:

> "Our decisions, while recognizing that the government has power to control and manage the property and affairs of its Indian wards in good faith for their welfare, show that this power is subject to constitutional limitations, and does not enable the government to give the lands of one tribe or band to another, or to deal with them as its own."

301 U.S. 358, 375–76 (1937). This same rule of law must be applied to the Nelson Act settlement judgment funds that are the subject of H.R. 1272. As a result, H.R. 1272 would amount to an unjust taking in violation of the U.S. Constitution.

The four bands that support the per band split comprise only 27% of the total membership of all Chippewa Indians of Minnesota as that term was used under the Nelson Act. More importantly, these four bands suffered 22% of the total damages. Distributing the settlement funds as proposed in H.R. 1272 effectively gives property of the Leech Lake Band to other bands. Passage of H.R. 1272 will further prolong this debate through time-consuming litigation at the expense of tribal and federal government resources.

CONCLUSION

Thank you for this opportunity to testify. While we agree that the time has come to get the settlement funds in the hands of the Chippewa Indians of Minnesota, we strongly disagree on the proposed formula for distribution set forth in H.R. 1272. It is undisputed that the great majority of the damages that occurred under the Nelson Act resulted from takings and mismanagement of lands and timber protected

by treaty for the benefit of the Leech Lake Band of Ojibwe. Enacting legislation that completely ignores these damages would constitute yet another violation of our treaty rights and only serve to compound the injury done to our community.

I look forward to continuing this dialogue with the other five bands, our Minnesota congressional delegation, the Administration, and this Subcommittee to work together to resolve this matter in a way that is fair.

Above: Delegation of the Leech Lake Band of Ojibwe and the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation with BIA Commissioner Charles Burke during a visit to the White House (estimated date 1920s).

Leech Lake Band of Ojibwe

LEGAL MEMORANDUM

Date: February 14, 2012

To: Arthur "Archie" LaRose, Chairman

From: Frank Bibeau, Tribal Attorney

Re: Nelson Act 2011 Judgment Funds Distribution
And Leech Lake Reservation's 1854 Treaty Rights
S. 1739 and H.R. 1272

I have had the opportunity to review the March 29, 2011, and October 24, 2011, documents prepared by the Minnesota Chippewa Tribe Attorney re-asserting that *he* "does 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 of the funds awarded in Dockets 19 and 188." Important to note is that the MCT Attorney's Memorandum of October 24, 2011 does not cite to any supporting case law.

What both LLBO legal memos argue is that "All Lake Superior Bands relinquished to the Mississippi bands their rights, title and interests *in the Chippewa lands west of the 1854 Cession"* which means any damage award for losses in the 1855 Ceded Territory or 78% of the Nelson Act damages Judgment Award, legally, should only be distributed to the Chippewa Bands which actually hold exclusive Indian title, which are the Mississippi, Pillager and Winnibigoshish members of the MCT. The Lake Superior Bands do have rights to recovery for Nelson Act damages awarded for losses in the 1854 Ceded Territory.

The United States Supreme Court reaffirmed that

> it had long been the settled rule in respect of the Chippewa Indians in Minnesota that a band or bands occupying a separate reservation should be regarded and dealt with as having the full Indian title to the lands therein. The Indians both recognized and gave effect to the rule. Many cessions were negotiated and carried out in conformity with it. The band or bands occupying a reservation ceded it in whole or in part without any participation by other bands and received and enjoyed the compensation without sharing it with others. Under the rule each of the bands existing in 1889 had theretofore made cessions and received pay therefore quite independently of the other bands.

See Chippewa Indians of Minnesota v. U.S. (Red Lake Band of Chippewa Indians of Minn., Intervenors), 301 U.S. 358, 57 S.Ct. 826, 81 L.Ed. 1156 (1937). The Nelson Act attempted to change this practice to where all tribal lands would be pooled for the benefit of all Chippewa Indians in Minnesota. This Supreme Court case separated out Red Lake and Pembina lands from the Nelson Act's common lands because of exclusive tribal ownership under the land cession treaties. This is the same rule of law that must be applied now to the Nelson Act settlement judgment funds here, to protect our exclusive, 1854 treaty property rights from the Lake Superior band members of the MCT.

The Supreme Court went on to remind Congress that

> Our decisions, while recognizing that the government has power to control and manage the property and affairs of its Indian wards in good faith for their welfare, show that this power is subject to constitutional limitations and does not enable the government to give the lands of one tribe or band to another, or to deal with them as its own.

(Id. at 375–376, see Art. V, Bill of Rights which protects citizens' from being "deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.")

These same *constitutional limitations* apply to the MCT as a representative tribal government in the Nelson Act proceedings. The MCT Constitution provides in part that

> 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 [. . .] the right to petition for action or the redress of grievances, and due process of law.

(See MCT Const., Art XIII).

Additionally, Congressional protections for tribal members' rights under the Indian Civil Rights Act of 1968 provides that "No Indian tribe in exercising powers of self-government shall [. . .] take any private property for a public use without just compensation." (See ICRA, 25 U.S.C. § 1302(5)). This very same constitutional limitation or protection is very important to note for purposes of any Act of Congress in that the U.S. Supreme Court has repeatedly ruled that

> Congress may abrogate Indian treaty rights, but it must clearly express its intent to do so. United States v. Dion, 476 U.S. 734, 738–740, 106 S.Ct. 2216, 90 L.Ed.2d 767 (1986); see also Washington v. Washington State Commercial Passenger Fishing Vessel Assn., 443 U.S., at 690, 99 S.Ct. 3055; Menominee Tribe v. United States, 391 U.S. 404, 413, 88 S.Ct. 1705, 20 L.Ed.2d 697 (1968). There must be "clear evidence that Congress actually considered the conflict between its intended action on the one hand and Indian treaty rights on the other, and chose to resolve that conflict by abrogating the treaty." United States v. Dion, supra, at 740, 106 S.Ct. 2216.

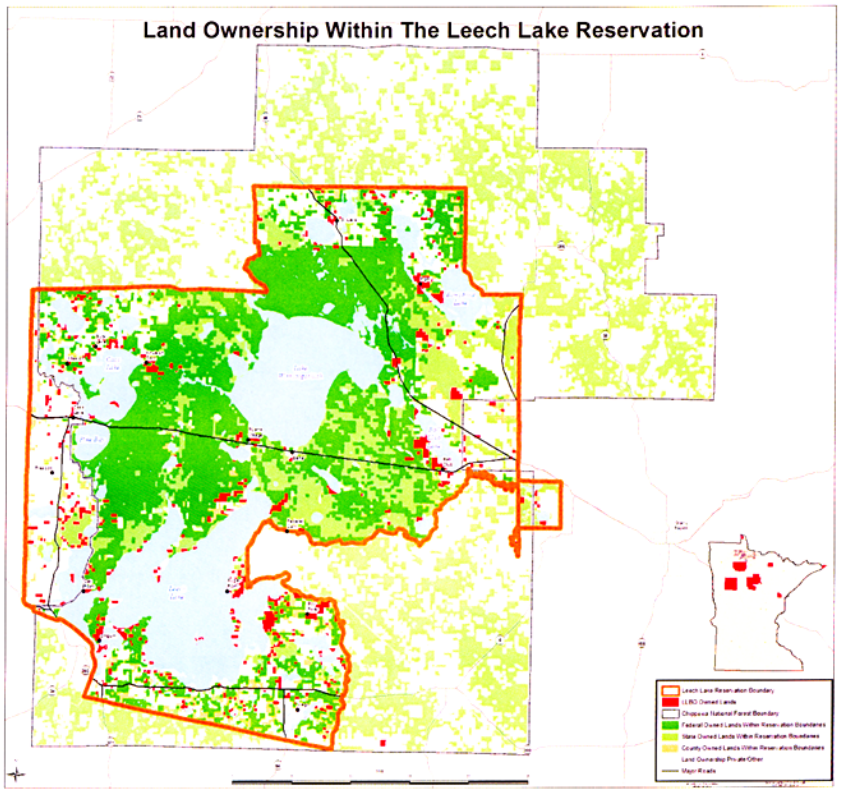
See Minnesota v. Mille Lacs Band of Chippewa Indians, 526 U.S. 172, at 203, 119 S.Ct. 1187, at 1204 (1999).

In reviewing the "Minnesota Chippewa Tribe Judgment Fund Distribution Act of 2011", there is no such "clear evidence" of congressional intent to abrogate the Chippewas' of the Mississippi 1854 treaty right. In fact, this Act is silent and makes no mention of our Indian treaty rights; it provides no clue that Congress is even considering abrogation of the 1854 treaty reserved, property rights of the Chippewas of the Mississippi.

Leech Lake has given formal Notice to the House Committee on Natural Resources by Chairman LaRose, April 14, 2011, of our 1854/1855 Treaty Rights to warn Congress' Minnesota Delegation and certain Committee Chairs, of the imminent violation by Congress under the Act. Chairman LaRose also gave Notice to the Senate in his verbal and written testimony at the Legislative Hearing for S. 1739 on February 2, 2012.

Finally, the 1999 Joint Motion and Stipulation that settled these Nelson Act claims expressly provided that " 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 right, on any lands or waters within any of the reservations of plaintiff's six constituent bands." (See MCT Testimony Attachment 5, Item 11).

Therefore, before Congress can take the Nelson Act compensation due the Chippewa of the Mississippi, Pillager, and Winnibigoshish Bands, and give it away to other Minnesota Chippewa Bands' members, this present legislation, S. 1739 and H.R.1272, must show clear evidence that Congress actually considered the conflict and chose to resolve that conflict by abrogating our 1854 treaty right.



MINNESOTA CHIPPEWA TRIBE COMPARISON REPORTS

Reservation	#1 Reservation percentages of APPRAISED TIMBER & LAND VALUES	#2 Percentages of land and/or timber ACRES SUBJECT TO CLAIM	#3 Reservation Acres to which 1889 NELSON ACT APPLIED		#4 Current Reservation Acreage		# 5 Reservation Population at time of Nelson Act 1889
Bois Forte	8.6%	7.5%	127,373	15.0%	127,373	7.6%	743 - 10.7%
Fond du Lac	10.2%	9.3%	97,857	11.5%	97,857	5.9%	671 - 9.7%
Grand Portage	0.9%	1.3%	40,450	4.8%	40,450	2.4%	294 - 4.2%
Leech Lake	**68.9%**	**64.5%**	**463,008**	**54.5%**	**634,585**	**38.0%**	**2,212 - 32.0%**
Mille Lacs	2.4%	4.6%	31,692	3.7%	61,028	3.7%	895 - 12.9%
White Earth	9.0%	12.7%	89,316	10.5%	707,360	42.4%	1,826 - 26.4%
Gull Lake	0	0	0	0		0	277 - 4.0%
TOTAL	100%	99.9%	849,696	100%	1,668,653	100%	6,918 - 99.9%

#1: (Mille Lacs) excludes 29,336 acres sold prior to the Nelson Act.
#2: (Mille Lacs) excludes 29,336 acres sold prior to the Nelson Act.
#3: Not all of these lands were actually sold. Some were allotted to individual Indians and some were returned to tribal ownership. Figures for Leech Lake exclude the 171,577 acres used for Leech Lake Dam Sites. A separate settlement judgement was entered for these lands in 1985. Figures for Mille Lacs exclude the 29,336 acres sold prior to Nelson Act.
#4: (Mille Lacs) Original four (4) fractional townships.

ADDENDUM TO THE TESTIMONY OF
CHAIRMAN ARTHUR LAROSE OF THE LEECH LAKE BAND OF OJIBWE

Before the House Natural Resources
Subcommittee on Indian and Alaska Native Affairs
Legislative Hearing to Examine
H.R. 1272, the MCT Judgment Fund Distribution Act

March 1, 2012

ATTACHMENTS

1. MCT Comparison Reports of damages inflicted on each Treaty established Reservation, prepared by Wesley Rickard, Inc.
2. MCT Schedule of Per Capita Distribution Funds Judgments (Listing of prior Nelson Act judgments approved by Congress and the Courts)
3. Map of Land Ownership within the Leech Lake Reservation
4. Legal Memo Re: Nelson Act 2011 Judgment Funds Distribution and Leech Lake Reservation's 1854 Treaty rights (February 14, 2012)
5. Legal Memo Re: H.R. 1272 MCT Judgment Fund Distribution Act of 2011, Notice of 1854/1855 Treaty Rights Violation (April 7, 2011)

ADDITIONAL LIST OF DOCUMENTS related to H.R. 1272 and the Court Settlement in *Minnesota Chippewa Tribe v. U.S.* Docket numbers 19 and 188

* Report on the Fair Market Value Appraisal of Ceded Timber under the Nelson Act of 1889 in Dockets 19 and 188 by Wesley Rickard, Inc. (1996) (MCT Expert in Settlement Negotiations) (Research and report conducted under contract by MCT)
* Morgan & Angel Subject Property List (May 21, 1999) (DOJ Expert in Settlement Negotiations)
* BIA Results of Research Report (June 6, 2001) (Conducted pursuant to Indian Tribal Judgment Funds Distribution Act, 25 U.S.C. 1401 et seq.)
* Legal Memo Re: Judgment Funds Distribution And Leech Lake Reservation's 1854 Treaty rights (Oct. 26, 2011)

404: Nett Lake (Bois Forte) 405: Fond du Lac 406: Grand Portage		Minnesota Chippewa Tribe Schedule of Per Capita Distribution Funds Judgements				407: Leech Lake 408: White Earth 410: Mille Lacs	
18B P.L. 90-94	144	18C&T P.L. 97-458	18D	18S&U P.L. 99-146	18S P.L. 99-377 Sec. 4B	188 P.L. 93-134 Sec. 7	113, 191, 221, 246 P.L. 97-403 Sec. 9
407B MISSISSIPPI $94.99 410B MISSISSIPPI $94.99 408B MISSISSIPPI $94.99 407C PILLAGER $331.68 408C PILLAGER $331.68	407C PILLAGER $45.87 408C PILLAGER $45.87	407B MISSISSIPPI $177.23/.24 410B MISSISSIPPI $139.83/.84 408B MISSISSIPPI $228.47/.48 405A LAKE SUPERIOR 452.28/.29 406A LAKE SUPERIOR $442..46/.47 408A (REDL) $515.86/.87 404A LAKE SUPERIOR $358.57/.58	404A LAKE SUPERIOR $514.29/.30	404A LAKE SUPERIOR $564.94/.95 405A LAKE SUPERIOR $778.24/.25 406A LAKE SUPERIOR $833.79/.80 408A LAKE SUPERIOR $975.60/.61	407B MISSISSIPPI $224.96/.97 410B MISSISSIPPI $169.22/.23 408B MISSISSIPPI $313.18/.19	407B MISSISSIPPI $415.76 407C PILLAGER $415.76	408D PEMBINA $1,720.47/.48
12/13/68	12/16/78	02/05/80 ll&ml 02/12/80 we 02/05/80	05/17/80	05/16/86 nl fdl 05/20/86	04/16/87	12/14/87	05/27/88

Mr. YOUNG. Thank you, sir. I appreciate it. Mr. Boren?

Mr. BOREN. Thank you, Mr. Chairman. You know, I just had a group in my office earlier. We were talking about water rights issues. And we were talking about litigation and everything. And you hate to see something like this get to this point, where you have people obviously with shared interests, but you have issues, you have dollar figures, you have other things that you are fighting over. And what you don't want to see is, at the end of the day, no one getting any benefit out of this settlement.

So, my question is to the Chairman LaRose, who just spoke. Do you feel like, you know, when Norman over here—when they put it together, when there was an effort to have consensus among the bands, was there enough effort?

And I would like to get your thoughts, and then I would like to get your thoughts. Was there enough effort at trying to get that consensus without getting to where we are now, where we are sitting here with a bill before Congress and—you know, obviously, I can tell you, having, you know, Mr. Peterson as an author of the bill, being a chairman of a committee, very highly respected, you know, that is something that we do all look at. But we also have to look at all the facts.

And I don't want to prejudge anything, so I want to make sure I get all the facts on how the consensus was reached. But I just hate when it gets into litigation and everything else. It would be really nice where everyone could walk away and be happy. But it looks like this may not be able to happen.

Could you talk to us a little bit about how this occurred, how the effort for consensus occurred? Mr. Chairman?

Mr. LAROSE. Yes, thank you. For the record, I have been on the TC level since 2002 as the past Secretary-Treasurer for the Leech Lake Reservation. Back in 2002, all the way up until right around 2007, there was a 3-way argument between the 6 reservations. Our argument has always been based on 68.9 percent of the damages. The 4 smaller reservations' argument has always been a 1/6 split. And the White Earth's argument has always been based on population.

Well, I think we all remember right around 2007 the White Earth Reservation, along with Collin Peterson, tried to introduce a bill based on population, and that bill didn't go anywhere. And right after that bill didn't go anywhere, the four smaller reservations compromised with White Earth, leaving Leech Lake out of the picture.

So, from day one we have never compromised with the five bands. They never sat down and asked us what we felt was fair. You know, we have been left out of this whole picture. And you know, we are talking 600,000 acres of land we lost from this Nelson Act settlement. And, you know, we feel we should be fully compensated for the damages that happened and occurred on the Leech Lake Reservation.

In fact, these three smaller bands, they signed the 1854 treaty. When they signed that 1854 treaty—I am talking about Mille Lacs—or, excuse me, I am not talking about Mille Lacs, I am talking about Fond du Lac, Bois Forte, and Grand Portage. They signed an 1854 treaty where they waived all rights and claims west of the 1854 treaty. And I, myself, the Leech Lake Reservation, White Earth, and part of Mille Lacs sit in the 1855 treaty. But the 1855 treaty itself, where the Nelson Act happened, sits right in the middle of Leech Lake Reservation, and that is where a majority of the damages happened and occurred.

Mr. BOREN. Well, can we speed up from where the treaties were to where the distribution plan occurred?

My question is, is there any room to give—from your position, is there any negotiating room? Or are we just stuck?

Mr. LAROSE. Yes. We have been willing——

Mr. BOREN. Like that—I have only got a minute left, so real quick, and then I would like to go to Norman over here.

Mr. LAROSE. OK. Yes, we were willing to negotiate with the other five bands. We are willing to compromise with them. But the current bill that is at stake right now disrespects and doesn't do anything positive for the Leech Lake Band of Ojibwe.

Mr. BOREN. OK. Sir?

Mr. DESCHAMPE. Thank you. With all due respect, Chairman LaRose, Leech Lake was very much a part of all the negotiation process from day one. In every session that took place, Leech Lake was there. As a matter of fact, Leech Lake requested a second vote on this issue, and was granted that. And the vote really didn't change.

So, to say that Leech Lake was left out of the picture is not really true. Leech Lake's position was not—they didn't get their—in

the end. But they were at the table, they were part of the discussion. And to say that they weren't is really not true.

And the other thing is it is all about compromise. I mean if Leech Lake wants 68.9 percent of this for damages, White Earth is 70 percent of the population. What does that add up to, 130 percent? So there has to be compromise somewhere. And we understood that. And we worked diligently on that. And we did, I guess, the hard work.

And we understand that, with all due respect, that I really have a—share Archie's issue with the land issue. But I think there was no property transfer in this. To say that Leech Lake's property was transferred to the other bands, that is really not true. Nowhere in here was there any transfer of property of any kind. I think the map that was up there, I think a lot of the red trust land within that boundary is all—a lot—most of it is MCT lands.

So, there is a lot of compromising that takes place. There is a lot to this issue that we don't have time today to go through. And I don't—I really don't think we are here to relitigate what happened——

Mr. BOREN. Yes.

Mr. DESCHAMPE [continuing]. In the court case. We are here to talk about what is a fair way to settle this, based on the circumstances.

And like I say, I appreciate Leech Lake's position, and support that. We were all wronged.

Mr. BOREN. Well, let me reclaim my time, because we are kind of running out here. To me there is a lot of different factors going on here. There is land, there is population, there is the court case, obviously. There is the timeliness of this. I mean do we want to keep fighting over this for another decade, and no one gets any money?

So, we are going to have to weigh—that is why we have this hearing, is to weigh all these factors, and whether or not this bill is the right way to go.

And I remember in the last Congress, when Mr. Oberstar and Mr. Peterson were kind of going back and forth on all this. But this has been very educational for me. And I appreciate everyone's opinion. And certainly I think everyone is trying to do what is in the best interest of—from their respective parties. And I appreciate everyone's testimony.

Mr. YOUNG. Mr. Kildee?

Mr. KILDEE. Thank you, Mr. Chairman, and thank the witnesses. I have met each one of you, individually.

Was there much effort or discussion on taking elements of the three approaches—the one-sixth approach, the population approach, and the damages approach—and see if you can blend those together in some way, using elements? But was that discussed much during your negotiations?

I will ask Mr. LaRose.

Mr. LAROSE. That was brought up by Leech Lake in the past, but we never received any feedback from any of the other five reservations on that three-way split.

Mr. KILDEE. In other words, using the three elements? Because there is——

Mr. LAROSE. Yes, based on——

Mr. KILDEE [continuing]. One-sixth——

Mr. LAROSE. Yes, based on population, based on damages, and the one-sixth split——

Mr. KILDEE. One-sixth——

Mr. LAROSE [continuing]. Straight across the board. That was suggested at a meeting in the past, but never no follow-up from the other five reservations.

Mr. KILDEE. No great pursuit on that, then?

Mr. LAROSE. No. It wasn't pursued. It was brought up as a compromise. But, you know, nothing ever happened from that, just brought up as a compromise.

Mr. KILDEE. OK. Well, you know, I have been involved in Congress for 36 years on Indian matters, and then 12 years back in the State Legislature, where I introduced the Indian Tuition Waiver Act. And in Michigan, any Indian under my bill can go to college in Michigan without paying tuition. That is still a law in Michigan. So I have been involved.

And you try to pursue justice. But sometimes you are not sure what really is the most just approach. And we don't have the wisdom of Solomon here. I think the one thing we would all agree upon, we want this money to be distributed, and not just lying somewhere, but have as much justice as we can find on that.

I, first of all, say Mii gwetch to all of you. This is difficult. You know, you are friends and yet you have differences. Right? You are brothers and sisters and you have differences. And—but we don't want that money—and neither do you—just sitting there and not being distributed. And I am not sure where we have all the wisdom to come up with the right answer.

But I do appreciate your efforts, and I appreciate our obligation to try to work with you, but also recognizing that we can't diminish your sovereignty, too. I mean we are not dealing with a corporation, we are not dealing with General Motors or Chrysler or Ford. We are dealing with sovereignties out there, and we have to be very sensitive to that.

Marge, I will never forget the time you put that eagle in my arms and let me release the eagle. And I kept watching that eagle's eyes all the time. But I visited your sovereign territory out there, and say to you Mii gwetch for what you have done in trying to arrive at a solution here, and hope we have the wisdom to do what will be helpful to move toward justice. Thank you very much.

Mr. YOUNG. Thank you, Mr. Kildee.

Erma, you mentioned five compromises. Can you give me an example of that? I think you said that. Didn't you?

Ms. VIZENOR. Well, we have—Mr. Chairman, over the years, the past 12 years, White Earth was one of the tribes that did not agree. And it was in 2000, the year 2000, that we made the appeal to the Department of the Interior, because White Earth, the White Earth Reservation, was well over 950,000 acres of land, and history shows it was swindled.

And at the end of the 1800s, we had less than 50,000 acres of land. We lost four townships as a result of the Nelson Act. The four townships, if you go through, is Itasca State Park. That is how our

four townships look with timber. And it was not a part of the settlement.

And so, we appealed to the Department of the Interior, and thus the results of research happened. And what the Department of the Interior stated, found, was that the most equitable way for this distribution was on a per capita. And this is based on research.

And so, that was our position for a number of years. However, we knew that we could not cling to this position, that there had to be a compromise, and that we had to give and take, which we did. And today we—our tribal members—and it is very true, as stated, that our tribal members are—the elders are dying. They are waiting for this money. They want the money.

And so, as responsible tribal leaders, it is our responsibility to give due what our elders have lost, and to move this forward. And we made the compromise. We give and take. And yes, I totally support the bill that is on the table today.

Mr. YOUNG. I just—you know, I think most of you can understand where I am coming from. This is about a settlement by a court. Is that correct?

Ms. VIZENOR. That is correct.

Mr. YOUNG. OK.

Ms. VIZENOR. The Claims Court.

Mr. YOUNG. And the distribution—and I don't disagree. All of the tribes that I know, the lands that were taken away from tribes by actions of the BIA—that is why I am not overly fond of the BIA—they allowed this to happen. They had leases—we just settled one settlement for less than I think was necessary, because I believe it was about $27 billion settled for $2.5 billion—most of that is trying to go to lawyers, which upsets me. So I am trying to, you know, expedite this process.

But second, each—under this settlement, is the $300 per tribal member? OK. What—is that the total amount of money of the $28 million, or does some go to the tribes in an amount, a big amount?

Mr. DESCHAMPE. Yes, $300 to each tribal member. That is approximately, I think, like $12 million.

Mr. YOUNG. OK. And then the rest of it will go to the six tribes?

Mr. DESCHAMPE. Divide it up equally, yes.

Mr. YOUNG. Equally, the six tribes.

Mr. DESCHAMPE. Right.

Mr. YOUNG. Which would amount—so say it is $20 million, you got 6 tribes, you are probably getting $1.8 million. Is that right?

Mr. DESCHAMPE. Yes, a little over $2 million.

Mr. YOUNG. A little over $2 million. There is $8 million in interest.

Mr. DESCHAMPE. Right.

Mr. YOUNG. OK.

Mr. DESCHAMPE. But that is factored in, too.

Mr. YOUNG. I—you know, I have listened to Mr. LaRose, and all three of you, and I have also—as Mr. Boren said, we are going to solve this problem. And all due respect, Mr. LaRose, don't threaten us with a lawsuit. You can have your lawyers make a lot of money out of this.

But we can—we do write the law. And don't ever forget that. And your lawyer tells you any different, you can file it, but you won't

get any money, you will just pay your damn lawyers, and they turn around and send their kids to college. And after 12, 13 years, probably a lot of lawyers' kids have gone to college on this issue. And I don't appreciate that, because they are sucking off the final settlement. So keep that in mind. You are all Chippewas. And if you are not Chippewas, let me know that. And you are one tribe. And that is what the decision was made on in the court decision.

So, I do appreciate all of you being here. And I understand that you have differences of opinion. But we are going to—you end up maybe not liking what I might do. I am very good at this, being a single Member from Alaska, I sometimes cut the baby in half, and everybody is unhappy with me. I might do that. I just want you to keep that in mind.

So, I want to thank the total panel, and I appreciate your—yes, go ahead. I am sorry. Where have you been? You just can't come walking back and forth in here. Come on. OK, Mr.——

Mr. FALEOMAVAEGA. I realize——

Mr. YOUNG. You can come say something.

Mr. FALEOMAVAEGA. I realize Alaska is the largest state in the union, and I realize I am the smallest. No. But I do want to thank you, Mr. Chairman. I think there is some real very serious and strong issues that have been brought before by our respective leaders representing the Chippewa Tribe.

And I want to say for the record that in the 20 years that I have served as a member of this committee, specifically dealing with Native American issues—because, as an indigenous person myself, I have a very strong feeling about these issues. And you could not find a better champion than the gentleman from Alaska. And I am just so happy and proud that, as Chairman of this Subcommittee, that he knows the heart and minds and hopes and—of everything that we can try to resolve problems and the needs of our Native American community. Also at a tremendous loss is my dear colleague, who is about to retire this year. As Co-Chairman of our Native American Indian Congressional Caucus with Congressman Tom Cole, I am really, really sad to see that my good friend and colleague, Dale Kildee, will be retiring this year, also a tremendous champion of the Native American community.

A couple of questions I just wanted for the record, if possible. Mr. Deschampe, can you give me a breakdown of the population of the different six bands that we are talking about? I can't even get that figure from the Director of the Bureau of Indian Affairs. I am just curious. The Bois, the Fond du Lac, the Grand Portage, the Mille Lacs, the White Earth, the Leech Lake, do you have a breakdown of the populations of the different bands?

Mr. DESCHAMPE. Yes. Fond du Lac, 4,000; Mille Lacs——

Mr. FALEOMAVAEGA. Can you submit that for the record?

Mr. DESCHAMPE. Sure.

Mr. FALEOMAVAEGA. Yes, OK, because I have my time problem here.

Mr. DESCHAMPE. OK.

Mr. FALEOMAVAEGA. In terms of the population breakdown, we understand that. Now, just wanted to know that based on that breakdown, what are we talking about, both principal and interest,

that has been collected with this fund? It is about, what, $28 million?

Mr. DESCHAMPE. Yes, yes.

Mr. FALEOMAVAEGA. OK, this is the part that we are talking about.

Mr. DESCHAMPE. Yes, it is.

Mr. FALEOMAVAEGA. And this has been the problem for the past 12 years that we cannot resolve.

Mr. DESCHAMPE. Yes.

Mr. FALEOMAVAEGA. And you are all Chippewas.

Mr. DESCHAMPE. Yes, we are.

Mr. FALEOMAVAEGA. And you fight like hell with each other.

[Laughter.]

Mr. FALEOMAVAEGA. That is the spirit, I like that. I just wanted to know that, as a result of the Nelson Act, am I correct to say that each one of you have lost a certain number of acres in this problem that Nelson—literally dismantled your ownership of these acres?

And if I could just start—am I correct, Mr. LaRose? Your particular reservation and band lost 600,000 acres?

Mr. LAROSE. Yes, you are correct.

Mr. FALEOMAVAEGA. OK. How about the Bois Band? How many acres did you lose, or whoever—do you have a breakdown of the number of acres that each of the bands have lost, as a result of the Nelson Act? So I am clear now. Mr. LaRose addresses specifically 600,000 acres his band lost. How much did the Bois Band lost, and the Fond du Lac, and the Grand Portage and the Mille Lacs and the White Earth? Do we have that as a matter of record? Can you submit that for the record?

Mr. DESCHAMPE. Yes, I can. I think it is 50,000 acres, sir.

Mr. FALEOMAVAEGA. OK. Now, you say that you have a disagreement respectfully with the statements made by Mr. LaRose, President Deschampe. Was there a Chippewa Nation, as a nation, having a single treaty with the United States, or were—all of you have all your own separate individual treaties relationship with the United States——

Mr. DESCHAMPE. Yes——

Mr. FALEOMAVAEGA [continuing]. In the course of history?

Mr. DESCHAMPE. And it gets complicated when you are talking about——

Mr. FALEOMAVAEGA. Well, let's not complicate it. Let's make it simple. Each one of you had your own separate treaty relationships with the U.S. Government.

Mr. DESCHAMPE. Yes. And there are other Chippewas, too——

Mr. FALEOMAVAEGA. Yes, I know, I know.

Mr. DESCHAMPE. Yes.

Mr. FALEOMAVAEGA. Let's just talk about Minnesota. Forget Wisconsin and North Dakota. Let's just talk about Minnesota.

Mr. DESCHAMPE. OK.

Mr. FALEOMAVAEGA. Now, among all the six bands, do any of you have your acres comparable to the losses that Leech Lake—600,000 acres is what they are saying they lost. Erma?

Mr. DESCHAMPE. Go ahead, Erma.

Ms. VIZENOR. Yes.

Mr. FALEOMAVAEGA. Erma?

Ms. VIZENOR. Yes, your——

Mr. FALEOMAVAEGA. You lost how many acres?

Ms. VIZENOR. White Earth was a—the original land base was 950,000 acres of land, and now these Acts of Congress were in sequence and——

Mr. FALEOMAVAEGA. Yes, we just cut you to pieces.

Ms. VIZENOR. Yes.

Mr. FALEOMAVAEGA. We know that, yes.

Ms. VIZENOR. Yes, yes.

Mr. FALEOMAVAEGA. OK.

Ms. VIZENOR. And so, today we own—and it is in common ownership with the Minnesota Chippewa Tribe—we have approximately 60,000 acres of land.

Mr. FALEOMAVAEGA. Yes.

Ms. VIZENOR. Of that land base.

Mr. FALEOMAVAEGA. As a result today, Mr. LaRose, how many acres do you have left?

Mr. LAROSE. We own four percent of our land.

Mr. FALEOMAVAEGA. Four percent, but how many acres? Ms. Anderson, how——

Mr. LAROSE. Forty thousand acres we own today.

Mr. FALEOMAVAEGA. Forty thousand?

Mr. LAROSE. From 640,000 acres.

Mr. FALEOMAVAEGA. OK. And, Ms. Anderson, how many acres did your band lose?

Ms. ANDERSON. Sixty thousand acres.

Mr. FALEOMAVAEGA. OK.

Ms. ANDERSON. It was dwindled down to 60 acres because of the Nelson Act.

Mr. FALEOMAVAEGA. So I realize that there has been all kinds of mixtures, that we didn't honor some 389 treaties that the U.S. Government had with all the Indian Nations, we know that. We broke every one of them. But in the process where each of the tribes or the bands were able to maintain their sense of ownership of these acres, as I am trying to suggest here, Ms.—and when you said that 900,000 acres among your people were lost, was there proper documentation to verify that?

Ms. VIZENOR. Yes.

Mr. FALEOMAVAEGA. OK.

Ms. VIZENOR. And if you look—if you read the results of research, that would be a start.

Mr. FALEOMAVAEGA. OK. Well, Mr. Chairman, I know my time is up. But I will submit the rest of my questions in writing, Mr. Chairman. But I really believe I have to associate myself with the gentleman from Oklahoma. Some very serious concerns, in terms of how we can do this.

I realize you either fish or cut bait when you come to the Congress, and I don't know if the Congress is the best institution to give you a solution to your problem.

Mr. YOUNG. Well, I——

Mr. FALEOMAVAEGA. Sadly, sadly——

Mr. YOUNG. All due respect, sir, the Congress is the only solution. That is our trust with all Native tribes. And not even the BIA.

Mr. FALEOMAVAEGA. I agree with you, Mr. Chairman.

Mr. YOUNG. And that is something we will work on, and I——

Mr. FALEOMAVAEGA. All right. Look forward to working with you in that regard.

Mr. YOUNG. Good, because I know this is not a good subject for everybody.

Mr. FALEOMAVAEGA. Yes.

Mr. YOUNG. We do have something that—and I want to talk to all the tribal members here—in Alaska we have a 7(I) provision. We have actually 12 large tribes in our state, and 214 small tribes, all related to the 12 big tribes. But when one tribe makes money off of any activity of natural resources, be it timber or anything else, they all share equally with all Alaska Natives. And that is sort of interesting. It was objected to, but it takes some areas—you know, like southeast had timber, they had to give other tribes part of the revenue they generated from their timber. If they had minerals, they have to give the other tribes a percentage of the oil, same thing.

And that makes every one of the Alaska Natives considered 1 big tribe, although there is 12 smaller tribes and 214 tribes below that. You think this is confusing? It makes it equitable, as far as resources. So that is just a little history. With that, I thank the——

Mr. FALEOMAVAEGA. Mr. Chairman, I want to thank you. I look forward to working with you.

Mr. YOUNG. I thank the panel and we look forward to hearing from you again. Thank you very much. The Subcommittee is adjourned.

[Whereupon, at 12:25 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows:]

Statement submitted for the record by Hon. Karen R. Diver, Chairwoman, Fond du Lac Band of Lake Superior Chippewa, on H.R. 1272: To Provide for the Use and Distribution of the Funds Awarded to the Minnesota Chippewa Tribe in Minnesota Chippewa Tribe V. United States, Docket Nos. 19 and 188, United States Court of Federal Claims.

CHAIRMAN YOUNG and Members of the Committee:

I am pleased to testify in favor of H.R. 1272 and join my esteemed colleagues from the Minnesota Chippewa Tribe (MCT) who have testified also in favor of H.R. 3699, in 2008, and wish to state the Fond du Lac Band's full support of their remarks.

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

Today, however, we find ourselves in a difficult position wherein one Band of our Tribe seeks to delay final resolution of this issue in an effort to increase its gain. The question for this Congress is whether it is willing to respect the sovereignty of the Minnesota Chippewa Tribe, give effect to the Tribe's decision, and finally bring a half century of litigation and over a century of damages to a conclusion.

Although my fellow Tribal members from Leech Lake make an emotional appeal to the damages they claim to have suffered, the simple fact is that their claims lack a basis in fact or law. This case was settled, with the approval of Leech Lake, without an accounting of specific Band-by-Band damages by the court. Although the ar-

guments of Leech Lake may be heartfelt, they fail to justify continued delay in the ultimate distribution of the funds awarded to the Minnesota Chippewa Tribe.

The facts of H.R. 1272, and the litigation underpinning it are simply this: the Minnesota Chippewa Tribe was the named party in the litigation—not the individual Bands; the decision to settle the lawsuit was not unanimous, yet both the Claims Court and the Federal government found that the resolution by the Tribal Executive Committee adopting the settlement was a proper expression of MCT law and binding on all of the Bands. If Minnesota Chippewa Tribe law was good for settling the lawsuit it is equally good for distributing the proceeds from that lawsuit. The Tribal Executive Committee operates much like the United States Senate when it comes to its legislative work. The number of Senators is set without respect to population yet they are not required to adopt legislation unanimously. Fond du Lac has not always agreed with the majority and as a result has been in the minority on many occasions. Indeed, Fond du Lac did not agree with the decision to settle this lawsuit; however, we recognize that the decisions of the Tribe must be respected. To do otherwise invites anarchy and does what others have failed to do—bring an end to the Minnesota Chippewa Tribe.

A century of uncompensated damages, a half century of litigation, and over a decade awaiting Congressional action before settlement funds can be distributed seems more like a Dickensian novel than justice for an aggrieved party. Unfortunately that is what this is. On behalf of the Fond du Lac Band I request that the Committee report out H.R. 1272 favorably and with all due speed; thereby allowing the Bands access to badly needed resources. We have been waiting far too long by any measure. I thank the Committee for addressing this issue and for all that has been done for Indian Country in the United States of America.

Statement submitted for the record by Hon. Kevin W. Leecy, Chairman, Bois Forte Band of Chippewa, on H.R. 1272: To Provide for the Use and Distribution of the Funds Awarded to the Minnesota Chippewa Tribe in Minnesota Chippewa Tribe V. United States, Docket Nos. 19 and 188, United States Court of Federal Claims.

Chairman Young and Members of the Committee:

My name is Kevin Leecy and I am the Chairman of the Bois Forte Band of Chippewa. I am pleased to testify in support of H.R. 1272, a bill that will distribute funds awarded to the Minnesota Chippewa Tribe in a case that began in the Indian Claims Commission more than sixty (60) years ago.

I want to thank Representatives Collin Peterson and Chip Cravaack for their efforts to move this legislation forward. Together they represent all of the Chippewa Reservations in our state; and it was shortly after Congressman Cravaack took office that I visited him to enlist his support in getting this finally resolved. This bipartisan legislation will benefit all of the members of the Minnesota Chippewa Tribe and I urge the Committee to move this bill forward.

Much has been said about the formula for the distribution of this award. The five Bands that represent 80% of the membership support it and believe it is fair for all. We have discussed the concerns of the Leech Lake Band at many of our meetings and we have tried to assist with Leech Lake's concerns about the Chippewa National Forest. I would like to address that issue further.

The Chippewa National Forest was created by Act of Congress in 1908 and it resulted in taking a large tract of the Leech Lake Reservation for that purpose. For purposes of this bill, the key is that the appropriation of the land and timber was after the Nelson Act of 1889 and that meant that the lands were then held in trust for the entire Chippewa Tribe and not just Leech Lake. It also meant that the proceeds of sale of those lands were shared with all Chippewa—not just Leech Lake. See the Act of May 23, 1908, 35 Stat. 268.

The Department of the Interior summarized the impact of the Nelson Act this way:

> Where ceded lands have been set apart by the Government for other purposes, such as a forest reserve, the Government paid the value of the lands into the general fund for the benefit of all the Chippewa Indians of Minnesota.

Leech Lake was not alone in suffering a loss of its lands. On the Bois Forte Reservation, more than half of our 100,000 acres was sold off. At White Earth, the four northeast townships were separated from the Reservation and sold for its timber. In each case, the money received went to all the Chippewa of Minnesota and not to the Band that suffered the loss.

We all recognize how devastating the Nelson Act was to all of the Reservations and we also realize that, in the end, the lands sold to others should be restored to tribal ownership. That is why the Tribe made sure that the stipulation of settlement in this case made it clear that we would not be barred from seeking legislation to return land. But that is not what this legislation is about. This legislation will allow the Minnesota Chippewa Tribe to close the book on compensation under these claims and to move on to other issues.

As I mentioned, the Minnesota Chippewa Tribe has tried to assist Leech Lake. When the Tribal Executive Committee adopted the formula for sharing these funds, we adopted a resolution supporting Leech Lake's efforts to return management of the Chippewa National Forest to the Leech Lake Band. The Tribal Executive Committee believed that Leech Lake would realize long-term economic benefits from doing that and we wanted to help.

I want to emphasize, however, that Leech Lake's concern about the Chippewa National Forest is a separate issue from what is before you today. Again, I ask you to report out H.R. 1272.