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S. 356, S. 908, AND S. 1739

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

SECOND SESSION

ON

S. 356, A BILL TO AMEND THE GRAND RONDE RESERVATION ACT TO MAKE TECHNICAL CORRECTIONS, AND FOR OTHER PURPOSES

S. 908, A BILL TO PROVIDE FOR THE ADDITION OF CERTAIN REAL PROPERTY TO THE RESERVATION OF THE SILETZ TRIBE IN THE STATE OF OREGON

S. 1739, A BILL TO PROVIDE FOR THE USE AND DISTRIBUTION OF JUDGMENT FUNDS AWARDED TO THE MINNESOTA CHIPPEWA TRIBE BY THE UNITED STATES COURT OF FEDERAL CLAIMS IN DOCKET NUMBERS 19 AND 188, AND FOR OTHER PURPOSES

FEBRUARY 2, 2012

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S. 356, S. 908, AND S. 1739

THURSDAY, FEBRUARY 2, 2012

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 5:53 p.m. in room 628, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

The CHAIRMAN. The Committee will come to order.

Aloha, and I want to start by thanking all of you for being with us today and staying while the 18 votes were completed. I wanted to do this hearing anyway, and I am glad you are patient enough to be here.

The fact that all the Tribal leaders stayed with us despite the long delays highlights how important these bills are to each of the Tribes and their members.

For purposes of hearing from all of the witnesses in a timely manner, my full opening statement will be entered into the record. The views of the Department of the Interior will also be entered into the official record. I encourage any other interested parties to submit written comments to the Committee. And the hearing record will remain open for two weeks.

I know my good friends and colleagues, Senators Franken, Merkley and Wyden have done a significant amount of work on these bills. I look forward to working with all of them as we move these bills through Congress.

Again, I want to welcome Senator Merkley. Let me welcome also my good friend and member of the Committee Senator Al Franken, and ask for any comments he may have at this time.

[The prepared statement of Senator Akaka follows:]

PREPARED STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

Aloha! Today the Committee will hold a legislative hearing on three bills dealing with issues of great importance to the Tribes involved.

We are all aware that prior federal policies often resulted in significant land and resource losses for Tribes. The bills we will consider today seek to restore some of those losses and make sure Tribes are adequately compensated for those losses and ensure Tribal land bases are restored.

The first bill S. 1739, the "Minnesota Chippewa Tribe Judgment Fund Distribution Act of 2011" would distribute settlement funds to the Minnesota Chippewa Tribe. Senator Franken introduced this bill and I am certain he will have more to say about it in his opening statement.

The other bills we will hear about today would streamline the land into trust process for two restored Oregon Tribes so they can better provide for the housing, education, and infrastructure needs of their members.

I know that my good friends and colleagues Senators Merkley and Wyden have done a significant amount of work on these bills. I look forward to working with them and Senator Franken as we move these bills through Congress.

STATEMENT OF HON. AL FRANKEN, U.S. SENATOR FROM MINNESOTA

Senator FRANKEN. Thank you, Mr. Chairman, for holding this important hearing. I introduced the Minnesota Chippewa Tribe Judgment Fund Distribution Act with my friend and colleague from Minnesota, Senator Klobuchar. This legislation will finally allow for distribution of funds owed to the Minnesota Chippewa Tribe.

It has been a long road getting to this point. The Minnesota Chippewa Tribe first filed a claim before the Indian Claims Commission in 1948. Their claims were finally settled in 1999. For over 60 years, members of the Minesota Chippewa have been waiting for these funds, and it is time to get this done.

The United States Court of Federal Claims awarded $20 million to the Minnesota Chippewa Tribe. This money is to compensate Tribal members for the improper taking and sale of land and timber under the Nelson Act of 1889. The Federal Government owes the Minnesota Chippewa Tribe this money. In fact, in 1999, the $20 million settlement was deposited in a trust fund account for the Minnesota Chippewa at the Department of the Interior, where it has been since collecting 1 percent interest.

The Tribal members in my home State of Minnesota have never received a dime. And that is because before any money can go to the Tribe, Congress must pass legislation detailing how to allocate the funds between the six bands that make up the Minnesota Chippewa Tribe. My bill does just that. It will provide $300 to each Tribal member and then allocates the remaining funds equally to each of the six bands.

My bill reflects the distribution plan that was agreed upon by the Tribe through its sovereign, democratic processes. Under the Minnesota Chippewa Tribal constitution, the Tribe is governed by an executive committee. This is a democratic body comprised of two elected officials from each of the Tribe's bands.

The Tribal executive committee voted ten to two in favor of this distribution plan. One band, Leech Lake, voted against. And its esteemed chairman, Archie LaRose, is here today to testify. I am sympathetic to their concerns and I sincerely hoped that a consensus agreement could have been reached. However, I deeply respect Tribal sovereignty and therefore believe we must respect the decision of the Tribal executive committee of the Minnesota Chippewa.

I also worry that any further delay will only cause hardship for individual Tribal members. The thousands of Tribal members across Minnesota cannot afford to wait another decade. It is time for Congress to act to allow for the distribution of the funds owed to the Minnesota Chippewa Tribe.

Thank you again, Mr. Chairman, for holding this hearing. We have so many members of the Tribes who have come here, and I am so sorry that we had all those votes in the chamber and we got started so late. I am sure you made mention of that at the beginning of this hearing. I want to thank all the witnesses for coming today and I look forward to your testimony.

I thank you again, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Franken.

Now I welcome Senator Merkley of Oregon to speak on the bills impacting the Siletz and Grande Ronde Tribes. Thank you for being patient, too, Senator Merkley. Please proceed with your testimony.

STATEMENT OF HON. JEFF MERKLEY,
U.S. SENATOR FROM OREGON

Senator MERKLEY. Thank you very much, Mr. Chairman, for holding this hearing. I would also like to recognize the staff of the Indian Affairs Committee for their hard work on these issues.

We have coming before the Committee this evening Chair Kennedy, the Confederated Tribes of the Grand Ronde Community, Chair Pigsley, of the Confederated Tribes of the Siletz Indians of Oregon, and Chair Garcia of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians. I am delighted that they can all be here to share their thoughts directly with the Committee.

I appreciate that the Committee is considering Senate Bill 356 and Senate Bill 908, both of which I have co-sponsored. They address a fundamental issue facing Indian Tribes, that is, ensuring that Tribal communities are able to successfully secure their own future through the expansion of their Tribal reservations.

The story of the people who comprise the Confederated Tribes of the Grand Ronde and the people who comprise the Confederated Tribes of the Siletz Indians is a difficult story to tell, a complicated story. But it is one that has been and continues to be inspiring. Like many other communities in Oregon and the Pacific Northwest, the bands of Indians that make up the two Confederated Tribes suffered through decades upon decades of broken treaties, failed promises and neglect on the part of the Federal Government. Ultimately, the Federal Government terminated the trust status of both Tribes.

It was only through very hard work on the part of the groups themselves and some representatives in Congress that led to Congress restoring and reestablishing the trust relationship with the Tribes. And in this case, I want to particularly thank Senator Hatfield, who served in this body for 30 years, and I had the privilege of serving as an intern to him and saw how hard he worked on behalf of fairness and restoring the trust relationships.

In the years since restoration, both Tribes have worked to rebuild their communities. Of course, a critical piece of rebuilding includes the purchase of land for the expansion of the reservations. Unfortunately, as this Committee knows well, the current process that a Tribe must follow to restore land to a reservation is not an easy process and has not worked well for these two Tribes. As the Committee will hear during testimony this afternoon, the current process is not only cumbersome and expensive for the Tribes to fol-

low, it also will often take years and years for the land which is owned by the Tribe to be formally added and recognized as part of the reservation.

I firmly believe that the two bills before this Committee simplify the process and should receive favorable consideration. I certainly look forward to reviewing the testimony of all the leaders who have gathered this afternoon, and I certainly appreciate that three leaders from Oregon can come to share their thoughts. I thank all of you for your commitment to improving the current fee to trust process and your participation in this evening's hearing.

Thank you.

The CHAIRMAN. Thank you very much. And I thank you again, Senator Merkley, for your participation in this hearing. Thank you.

I would like to now invite the first panel to the witness table. Serving our first panel is the Honorable Norman Deschampe, President of the Minnesota Chippewa Tribe; the Honorable Arthur LaRose, Chairman of the Leech Lake Band of Ojibwe; the Honorable Cheryle Kennedy, Chairwoman of the Confederated Tribes of Grand Ronde Community; the Honorable Delores Pigsley, Chairman of the Confederated Tribes of Siletz Indians; and the Honorable Robert Garcia, Chairman of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians.

Welcome, everyone, and thank you so much for your patience. Mr. Deschampe, please proceed with your testimony.

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

Mr. DESCHAMPE. Thank you, Chairman Akaka and members of the Committee. My name is Norman Deschampe, I am President of the Minnesota Chippewa Tribe as well as Chairman of the Grand Portage Band of Lake Superior Chippewa Indians.

I am here in support of S. 1739, a bill that would provide for the use and distribution of the funds awarded to the Minnesota Chippewa Tribe in Minnesota Chippewa Tribe v. United States, Dockets Nos. 19 and 188, United States Court of Federal Claims.

Also with me are Chairman Leecy from the Bois Forte Reservation, Chief Executive Marge Anderson from Mille Lacs, Chairman Visinor from White Earth, and Chairman Diver had to leave. So they are here also.

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

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

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

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

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

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

We need these funds released now. It has been too long and our members are constantly asking about the Nelson Act claims. In addition, a small part of the distribution plan in S. 1739 is that the Tribal government can be reimbursed the expenses it has incurred. This is important, because the Tribe has carried that amount on its books and the result has been a negative balance on our account. Our auditors have made it an issue and we have had to borrow to stay above water. Perhaps the Federal Government can do that, but we cannot. Just two weeks ago, the Tribe was denied a $25,000 grant for a program for elders because of that audit issue. As I said, it is time to get these fund distributed.

Finally, I want you to know that the Tribal leadership has carefully considered Leech Lake's argument that it should receive 68.9 percent of the award because it suffered that amount of the damages. Chairman Goggleye made that argument in his testimony before the House Resources Committee on June 5, 2008, and Chairman LaRose has made that same argument time after time before the Tribal Executive Committee. The problem with that argument is that it is based only on speculation and not on any court find-

ings. My written testimony explains the problems with Leech Lake's claim in full detail, but I want to make it clear that over nearly 20 years, the Tribe has considered all arguments about what is fair, and the result is the formula in Senator Franken's bill.

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

[The prepared statement of Mr. Deschampe follows:]

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

CHAIRMAN Akaka and Members of the Committee:

My name is Norman Deschampe. I am President of the Minnesota Chippewa Tribe as well as Chairman of the Grand Portage Band of Lake Superior Chippewa Indians. I am here to testify in support of S.1739, a bill that would provide for the use and distribution of the funds awarded to the Minnesota Chippewa Tribe in Minnesota Chippewa Tribe vs. United States, Docket Nos. 19 and 188, United States Court of Federal Claims.

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

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

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

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

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

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

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

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

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

There are several problems with that argument:

1. Leech Lake did not deduct the amount that the government actually paid the Tribe for timber and land.

2. The appraisals done by the experts were estimates for settlement purposes that were never tested in the Court.

3. The estimates were hotly contested by the United States. In fact, the government's first offer of compensation for land and timber was zero. The government believed that the Tribe got at least what the timber and land were worth - $14.8 million.

4. There never was a Band-by-Band accounting and the Claims Court ruled decades ago that the government was not obligated to do that kind of accounting.

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

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

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

Attachments retained in Committee files

The CHAIRMAN. Thank you very much.

Let me call on Chairman LaRose for your testimony. Please proceed.

STATEMENT OF HON. ARTHUR LAROSE, CHAIRMAN, LEECH LAKE BAND OF OJIBWE

Mr. LAROSE. Good afternoon, Chairman Akaka and Senator Franken. My name is Archie LaRose, I am the Leech Lake Reservation Chairman.

On behalf of my people watching and listening at home, I want to thank you for giving me this opportunity. You have heard some history behind the settlement. I am here to tell the rest of the story. Leech Lake suffered 68.9 percent of the damages. S. 1739 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 a series of treaties and executive orders from 1855 to 1874. These treaties promised that the reservation would be our permanent home lands 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.

According to the map there, this map 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 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 set up an administrative process when there is a disagreement in the dis-

tribution of settlement funds. The Act takes politics out of the equation. This is a court settlement. But unless we know who was harmed, Congress is giving settlement funds that belong to one Tribe to other Tribes. The BIA did its job under the Judgment Fund Act. The BIA studied the case and in 2001, 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 Leech Lake.

The MCT hired an expert to justify the settlement amount. The expert found that Leech Lake suffered 68.9 percent of the damages. The amounts of damages for other bands ranged from 1 percent to 12 percent.

In 1999, the MCT used this report to advance the settlement. MCT now wants to sweep it under the rug. The DOJ also filed a property list with the court that the settlement is based on. This list shows that most lands from the settlement came from the Leech Lake reservation to form the Chippewa National Forest. In 1999, the court based the settlement on damages. Unfortunately, damages are not even considered in the bill before the Committee today.

Instead of asking who was harmed, the bill looks to an MCT resolution that would give bands who suffered as little as 0.9 percent 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 this settlement in the 1854 treaty. Our reservation was established long before the MCT was even formed. None of our treaty rights were delegated to the MCT. Likewise, the Nelson Act and the damages 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 at least 25 other 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. After 25 courts issued judgments based on damages, it makes no sense to now ignore damages. We have been trying to negotiate a fair distribution. However, if this bill is enacted without a compromise, we will bring a lawsuit to stop this unjust distribution. This bill doesn't meet judicial scrutiny. It gives the property of Leech Lake to the other bands. This clearly violates your constitutional responsibilities to protect our Tribal property and treaty rights.

The 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.

Thank you for this opportunity. Mii-gwich.

[The prepared statement of Mr. LaRose follows:]

PREPARED STATEMENT OF HON. ARTHUR LAROSE, CHAIRMAN, LEECH LAKE BAND OF OJIBWE

INTRODUCTION

Good afternoon Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee. I am Archie LaRose, Chairman of the Leech Lake Band of Ojibwe. Thank you for the opportunity to testify on S. 1739. This bill would direct the Secretary of the Interior 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 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. Under the formula, 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. Harm done to the individual bands, 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. S. 1739 would not accomplish this goal. Instead, the bill will compound the injustice that was done to the people of the Leech Lake Indian Reservation and result in additional costly and time-consuming litigation.

SUMMARY OF STATEMENT

S. 1739 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. S. 1739 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 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. MCT cannot speak for Leech Lake upon matters impacting the Leech Lake people or the Leech Lake Indian Reservation.

Instead of following this precedent of distributing settlement funds to the individual bands, S. 1739 ignores *actual* damages suffered by individual federally recognized bands, their individual treaties, and harm to 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 and Rickard, Inc., as its expert in the case to conduct an appraisal of the lands 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 disregarding 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., sets forth the procedure to handle the distribution of settlements where more than one tribe is involved in the settlement 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 their responsibilities 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 circumstances, the facts in the case upon which the settlement was based, and the equities. In other words, the BIA's recommendations to Congress were not based upon the formula sought by MCT (where the four smaller bands have a majority vote). The four smaller bands (and, therefore, the controlling voice of MCT) have not agreed with the BIA's recommendations for the past decade because the BIA did not recommend a division of the settlement based upon the number of bands, which would benefit them to a greater degree than other alternatives on the table. S. 1739 is their effort to attain the per band split they seek.

Further, S. 1739 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 S. 1739. 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 governmental lands to individual Indians, and open up our reservation lands to settlers and private companies in clear violation of existing treaties between the United States and the various Chippewa bands. 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.

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.[1] 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, 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.*"

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 a forest 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 its lands in 1902. Today, the Leech Lake Band now holds only approximately 4% of the reservation lands promised by treaty and executive order.[2] 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.

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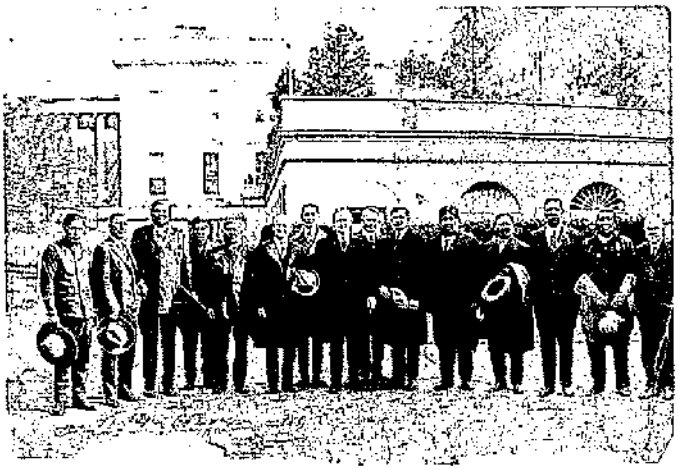
[1] The forest's name was changed to CNF in 1928 to respect the Chippewa Indians from whose land it was created.

[2] Attached is a map showing the percentage of land owned by the Leech Lake Band in comparison to the CNF and the state of Minnesota within our Reservation's boundaries.

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. Above is a photo taken during the 1920's of delegations from the Leech Lake Band 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.

Attached to this statement is correspondence between Commissioner Burke and a representative of the Leech Lake Band of Ojibwe. This correspondence includes a petition written by Leech Lake Band of Ojibwe tribal leaders to Congress. The petition led to the 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 S. 1739.

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 governmental 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.

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 established through the Treaties and Executive Orders from 1855 to 1874.

In the early 1990's, the Band 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. The Band retains full civil jurisdiction over Indians on the 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 (which is quoted on page 3) permanent fund was to provide funding for educational institutions for the various bands. We urge the Committee to consider amending S. 1739 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 on damages incurred to 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 the loss of land and timber.** The settlement that is the subject of S. 1739 is the result of 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 of the case (docket numbers 19 and 188), 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%.[3]

On May 21, 1999, the Department of Justice, as part of the litigation, commissioned a "subject property list" that described the disposition of the lands ceded under the Nelson Act. This list was filed with the Court and is also attached to this statement. 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 Court based its approval of the $20 million settlement on the subject property list.

SPECIFIC CONCERNS WITH S. 1739

The Judgment Funds Act governs the distribution of this settlement. Pursuant to that Act, the BIA prepared a Results of Research Report dated June 6, 2001 ("BIA Report"). The BIA Report opposed distribution of the settlement fund on a per band basis. The BIA Report 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

[3] An excerpt from this report is attached.

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 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 rejected this compromise proposal; and the BIA Report, thus, recommended that the settlement be distributed on a per capita basis. Pursuant to the Judgment Funds Act, the BIA then submitted the BIA Report to Congress. Then, in 2007, the BIA sent proposed legislation setting forth a per capita distribution to Congress under the Judgment Funds Act. The BIA Report is attached.

S. 1739 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.

Federal courts have acknowledged that the MCT acts only in a representative capacity in these claims. The U.S. Court of Claims, in *MCT v. United States*, 315 F.2d 906 (Ct. Cl. 1963), 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. In that case, 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. The same rule is applicable under the Indian Claims Commission Act.... At least in such proceedings the [ICCA] 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).

If the Committee decides to advance S. 1739, we urge the Committee 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 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 on the damages inflicted to their reservations pursuant to specific treaty or executive order. A chart of the individual awards is attached.

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 United States 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).

S. 1739 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 Committee considers S. 1739, 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 Committee, the Administration, and the other bands to find a solution.

S. 1739 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 S. 1739 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). 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 S. 1739 effectively gives property of the Leech Lake Band to other bands. Passage of S. 1739 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 S. 1739. 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 Committee to work together to resolve this matter in a way that is fair.

Attachments retained in Committee files

The CHAIRMAN. Thank you very much, Chairman LaRose.

Chairwoman Kennedy, would you please proceed with your testimony?

STATEMENT OF HON. CHERYLE KENNEDY, TRIBAL COUNCIL CHAIRWOMAN, CONFEDERATED TRIBES OF GRAND RONDE, OREGON

Ms. KENNEDY. Thank you Chairman Akaka, Senator Franken.

My name is Cheryle Kennedy, I am the Tribal Chairwoman of the Confederated Tribes of Grand Ronde in Oregon. I appreciate your time and for affording me the ability to testify on S. 356, a bill to amend the Grand Ronde Reservation Act, to make technical corrections and S. 908, a bill to provide for the addition of certain real properties to the reservation of the Siletz Tribe in Oregon.

S. 356, Grand Ronde, is a common sense approach to streamlining the BIA process for putting land into trust. As Senator

Merkley articulated, the Tribes of Oregon suffered great injustices, including termination, which took all of our land holdings. That is the basis for our testimony here.

In 1983, we were restored, and in 1988, the Tribe pursued the goal of securing its sovereignty by acquiring additional parcels of its original reservation and providing on-reservation jobs and services to Tribal members. Today the Tribe owns a total of 12,500 acres, in various lands of either some in reservation status or fee or that are in the pile to go to be approved for in trust status.

The Tribe is hampered in its effort to restore land within its original reservation by a lengthy and cumbersome Bureau of Indian Affairs process. The lands that we are talking about here are treated as off-reservation designation, even though the lands that we purchased are across from our reservation. It means that we go through a more rigorous process of scrutiny, of filing plans, and then after even that process is through by the BIA, we then have to come back here to Congress to amend our Grand Ronde Restoration Act to include those lands into our reservation land bases.

In order to make both the fee in trust to trust and reservation designation process less cumbersome, Senator Merkley and Senator Wyden introduced S. 356, which would establish real property located within the boundaries of the Tribe's original reservation. They shall be treated as on-reservation land, a very important point, for the purpose of processing acquisitions of real property into trust, and deemed a part of the Tribe's reservation once taken into trust, establish that the Tribe's land held in trust on the date of the legislation would automatically become part of the Tribe's reservation and correct technical errors in the legal descriptions of the parcels included in the Reservation Act.

House companion legislation, H.R. 726, was introduced by Representative Kurt Schrader, Representative Bluemenauer and Representative DeFazio. Both S. 356 and H.R. 726 have the unanimous support of Polk and Yamhill County Commissioners, the two counties affected by this bill.

In order to streamline this, it would save the Tribe a lot of resources and funds. It would also eliminate a lot of the time that the Bureau has to spend in processing these applications, and of course, the Congressional time for when we come back here to change our reservation bill.

Senate 908, the Siletz legislation, is materially different from our bill, to amend the Grand Ronde Reservation. And this would significantly infringe on the rights of Grand Ronde and other Tribes in western Oregon. S. 908 does nothing to streamline or improve the process by which lands are taken into trust or given reservation status. In fact, it does the opposite. It is precedent-setting and is not good Indian policy.

We support the Siletz' objective of taking land into trust in Lincoln County as contained in the Siletz Indian Tribe Restoration Act, but not rewriting history to expand the Siletz Reservation. I urge the Committee not to proceed with further consideration unless these issues are remedied. We do support the effort that other Tribes have made in making sure that the land into trust process goes well and is streamlined.

I thank you and I thank my people for putting together and standing behind us as we present this bill, in all due respect to the Siletz Tribe.

[The prepared statement of Ms. Kennedy follows:]

PREPARED STATEMENT OF HON. CHERYLE KENNEDY, TRIBAL COUNCIL CHAIRWOMAN, CONFEDERATED TRIBES OF GRAND RONDE, OREGON

Chairman Akaka, Co-Chairman Barrasso, Members of the Committee:

My name is Cheryle Kennedy. I am the Tribal Council Chairwoman of the Confederated Tribes of Grand Ronde in Oregon. I am proud to be here today representing our approximate 5,000 members and appreciate the opportunity to provide views on S. 356, a bill to amend the Grand Ronde Reservation Act to make technical corrections, and S. 908, a bill to provide for the addition of certain real property to the reservation of the Siletz Tribe in the State of Oregon. I ask that my complete written testimony, which includes *An Administrative History of the Coast Reservation* authored by Dr. David G. Lewis and Dr. Daniel L. Boxberger and supporting resolutions from Polk and Yamhill County Commissioners, be included in the record.

I was a young girl when Congress passed the Western Oregon Indian Termination Act ending federal recognition of all western Oregon tribes, including Grand Ronde. As a result of the federal government's allotment and termination policies, Grand Ronde lost both its federal recognition and its original reservation of more than 60,000 acres. Following the Tribe's termination in 1954, Tribal members and the Tribal government worked tirelessly to rebuild the Grand Ronde community. In 1983, these efforts resulted in the Grand Ronde Restoration Act, followed by the Grand Ronde Reservation Act in 1988, which restored 9,811 acres of the Tribe's original reservation to the Grand Ronde people. Since 1988, the Tribe has pursued the goal of securing its sovereignty by acquiring additional parcels of its original reservation and providing on-reservation jobs and services to Tribal members.

The Tribe's restored reservation is located in the heart of the original Grand Ronde Reservation. Today, the Tribe owns a total of 12,513.03 acres of land, 10,312.66 of which have reservation status. 10,052.38 acres of the reservation land is forested timber land, and the remaining 260.28 acres accommodates the Tribe's headquarters, housing projects, casino complex, Pow Wow Grounds, and supporting infrastructure.

The Tribe is hampered in its efforts to restore land within its original reservation by a lengthy and cumbersome Bureau of Indian Affairs ("BIA") process. After it acquires a parcel in fee, the Tribe must prepare a fee-to-trust application package for the BIA. The BIA then processes the application as either an "on-reservation acquisition" or an "off-reservation acquisition." Because

the Tribe does not have exterior reservation boundaries (instead it has distinct parcels deemed reservation through legislation), all parcels are processed under the more rigorous off-reservation acquisition regulations – even if the parcel is located within the boundaries of the original reservation. After the land is accepted into trust, the Tribe must take an additional step of amending its Reservation Act through federal legislation to include the trust parcels in order for the land to be deemed reservation land. Grand Ronde has been forced to come to the United States Congress twice in the last 20 years to amend its Reservation Act to secure Reservation status for its trust lands. This process is unduly time consuming, expensive, bureaucratic, and often takes years to complete.

In order to make both the fee-to-trust and reservation designation process less burdensome, Senator Merkley and Senator Wyden introduced S. 356 which would (1) establish that real property located within the boundaries of the Tribe's original reservation shall be (i) treated as on-reservation land for the purpose of processing acquisitions of real property into trust, and (ii) deemed a part of the Tribe's reservation, once taken into trust; (2) establish that the Tribe's lands held in trust on the date of the legislation will automatically become part of the Tribe's reservation; and (3) correct technical errors in the legal descriptions of the parcels included in the Reservation Act.

House companion legislation, HR 726, was introduced by Representative Kurt Schrader, Representative Blumenauer, and Representative DeFazio. Both S. 356 and H.R. 726 have the unanimous support of the Polk and Yamhill County Commissioners, the two counties affected by this bill.

S. 356 would not only save Grand Ronde time and money which could be better utilized serving its membership, but would also streamline the Department's land-into-trust responsibilities to Grand Ronde, thus saving taxpayer money.

I look forward to any questions you may have on S. 356.

I would like to take my remaining allotted time to provide views on S. 908.

S. 908, the Siletz legislation, is materially different from Grand Ronde's bill to amend the Grand Ronde Reservation Act, and would significantly infringe on the rights of Grand Ronde and other tribes in western Oregon.

Unlike Grand Ronde's bill – which seeks to improve the process of acquiring lands in trust and return to reservation status those lands the Tribe reacquires within its original reservation – we believe the purpose of the Siletz legislation is to eliminate the historic claims of other tribes to the former Coast Reservation (which was set aside for all tribes in western Oregon) by equating the boundaries of the Siletz Reservation (established 1875) with the boundaries of the Coast Reservation (established 1855). The Coast Reservation, as described in the Executive Order dated November 9, 1855, was never designated exclusively for the Siletz. It was set aside for Indians throughout western Oregon, including the antecedent tribes and bands of the Grand

Ronde such as the tribes of the Willamette Valley, Umpqua Valley, and Rogue River Valley. The Siletz are aware that Grand Ronde has made historic claims to the Coast Reservation. Their proposed legislation is nothing more than a veiled attempt to eradicate the claims of Grand Ronde and other western Oregon tribes to the Coast Reservation.

The intent of the Siletz legislation is clear as the legislation does nothing to streamline or improve the process by which lands are taken into trust or given reservation status. The provisions of the legislation are not effective unless the affected counties submit a resolution or similar document accepting the provisions of the legislation and there is no certainty that the affected counties would actually do this.

The proposed legislation is also inconsistent with Section 7(d) of the Siletz Indian Tribe Restoration Act (25 U.S.C. 711e(d)), which provides that "the Secretary shall not accept any real property in trust for the benefit of the tribe or its members unless such real property is located within Lincoln County, State of Oregon." The property described in the proposed legislation is much more expansive, covering Lincoln, Lane, Tillamook, Yamhill, Benton, and Douglas Counties. Moreover, since the proposed legislation includes property in Tillamook and Yamhill Counties, the proposed legislation infringes on interests of Grand Ronde. Specifically, Section 8 of the Grand Ronde Restoration Act (25 U.S.C. 713f(c)), provides that "the Secretary shall not accept any real property in trust for the benefit of the tribe or its members which is not located within the political boundaries of Polk, Yamhill, or Tillamook County, Oregon."

As you will hear from Chairman Bob Garcia of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians also are opposed to S. 908 as it infringes on their historical lands.

S. 908 also includes a troubling provision that only allows a land application to be considered as an on-reservation proposal if the Board of County Commissioners or other appropriate county executive in the county where the proposed land acquisition is being made approves of the acquisition. If the county does not send such an approval, the land acquisition application shall be considered under the regulations governing off-reservation applications.

Even more complicated, the proposal allows a Board of County Commissioners or other appropriate county executive who have submitted an approval letter to the Secretary to change position and revoke such approval. Upon receiving this second disapproval notice, the Secretary would be required to consider the tribe's trust land as off-reservation land under the relevant regulations governing the acquisition of off-reservation trust land. There are no time limits for these "opt-in" and "opt-out" provisions.

Both of these provisions involving the counties are troubling. As a matter of Indian policy, Congress should not delegate to a local government the ability to determine whether a proposed Indian land acquisition shall be considered off-reservation or on-reservation land. These determinations have been and should continue to be made by Indian tribes working in consultation with the federal government.

The "opt-out" provision also creates confusion as to how it would work as a matter of practice. Although the bill includes a provision that says that the opt-out clause shall not be applied retroactively to lands already taken into trust, the language of the bill seems to contemplate that an opt-out revocation can be made even after the lands have been taken into trust. Once taken into trust as on-reservation lands, would the Secretary after a revocation notice be required to retroactively analyze the trust land acquisition under the regulations governing off-reservation acquisitions? If so, and the Secretary determines that the land cannot be taken into trust under those regulations, would the federal government return title over the land to the tribe as fee simple land? The legislation does not address these important questions.

The considerable restrictions placed upon lands proposed to be taken under the provisions of the legislation are further indication that the Siletz's interest has more to do with establishing the primacy of the Siletz Reservation over the Coast Reservation.

For these reasons, we urge the Committee not to proceed with further consideration of S. 908 until the issues of the Siletz Reservation boundaries can be resolved, and the mechanism by which land is to be acquired is appropriately modified. We support the Siletz's objective of taking into trust land in Lincoln County that has historically been within the exclusive reservation land of the tribe, but not the re-writing of history to expand the Siletz Reservation, and thereby excluding other federally recognized tribes from their hereditary land claims.

Attachments retained in Committee files

The CHAIRMAN. Thank you very much, Chairwoman Kennedy. Ms. Pigsley, will you please proceed with your testimony?

STATEMENT OF HON. DELORES PIGSLEY, CHAIRMAN, CONFEDERATED TRIBES OF SILETZ INDIANS, OREGON

Ms. PIGSLEY. Yes, thank you. My name is Delores Pigsley and I am the Chairman of the Confederated Tribes of Siletz Indians in Oregon. I too want to thank the Committee for allowing me to testify today in support of S. 908, legislation to designate the original 1855 Siletz Reservation as on-reservation for purposes of processing our Tribe's fee to trust applications.

I also want to thank Senators Wyden and Merkley for sponsoring this important legislation. This bill has been a long time in coming and is sorely needed by the Siletz Tribe to fully achieve the restoration that was started in 1977. We have submitted written testimony and exhibits, which we ask be made part of the record.

The Siletz Tribe, for 200 years, has survived every negative policy thrown at it by the Federal Government. The Tribe's history is set out in great detail in Professor Charles Wilkinson's recent history of the Siletz Tribe, called The People Are Dancing Again. The Tribe is not one single historic Tribe; rather, it is a confederation of approximately 30 Tribes and bands of Indians covering all of western Oregon. We were thrown together under a Federal policy in the 1850s to combine as many Tribes as possible on one Reservation.

The Tribes and bands that make up the Siletz ceded approximately 22 million acres in a series of ratified and non-ratified treaties, and were moved to a 1.1 million acre reservation that stretched over 100 miles along the Oregon coast. We have a map to show you what it looks like. All of the 30 Tribes and bands were moved to the Siletz Reservation by the Federal Government. The reservation was slowly taken away by executive order, by statute,

the Allotment Act, and finally by termination in 1954, until the Tribe was left with nothing.

The Siletz Tribe was restored to Federal recognition by Congress in 1977, the second Tribe in the Nation, but without any land base. A reservation bill was ultimately passed by Congress in 1980 establishing a Siletz reservation. The reservation that was established was a modest 3,600 acres of scattered timber lands, designed to support Tribal government, a Tribal cemetery, and pow-wow grounds. Since that time, the Tribe has added more than 800 acres in trust. The Tribe has purchased land that were once allotments and tried to build a land base.

The need for additional land is still great. The modest amount of land the Tribe has acquired in trust has not met even our most modest needs. The fee to trust process has been completely frustrating for the Siletz Tribe and has taken years to acquire land in trust. And the Tribe has currently seven fee to trust requests that have been pending for several years.

Because the Tribe's restored lands consists of 52 scattered parcels of trust land without an exterior reservation boundary, the Bureau of Indian Affairs reviews all of our trust applications under the more restrictive and difficult off-reservation criteria. The Tribe has to prove a higher justification for taking land into trust, and go through additional procedural hoops, even for land that is adjacent to our reservation.

S. 908 will place the Tribe in the same position as other Tribes with regard to fee to trust requests as Tribes with existing reservations and exterior boundaries. It does not create a reservation. It does not establish Siletz Tribal jurisdiction over the area, and it does not affect the rights of any other Tribe.

The first issue that we had discussed with this legislation many, many years ago was to be able to act like any other Tribe. Because we are a restored Tribe that wasn't possible. And with the taking of all of our land and trying to get it restored under a simple process, it is just not there. And we wanted also to respond to issues in our bill that the Bureau and other Tribes have taken issue to, which is the issue with the county provision. It was a provision that Lincoln County wanted to have in the bill. We suggested it would not likely pass, and actually, we would like to have that provision removed from the bill.

We also wanted to briefly respond to statements that are on the record with regard to the Coos Tribe, Lower Umpqua and Siuslaw, to talk about the removal of those Tribes to the Siletz Reservation. We have many members on our reservation who are descendants of these three Tribes. The modern day Coos Tribe is comprised of off-reservation Coos, Lower Umpqua and Siuslaw Indians who either never moved to the Siletz Reservation or who individually left the Siletz Reservation. They renounced any connection to the reservation. Federal case law clearly rejects their claims to anything on the Siletz Reservation.

Secondly, the Grand Ronde Tribe's claim to the Siletz coastward reservation were made and rejected in several court claims. They have no legal basis and are contrary to existing Federal law. The Grand Ronde Tribe is the Indian Tribe recognized by the Federal

Government with authority over the Grand Ronde Reservation. They were never part of the Siletz Reservation.

The Grand Ronde Tribe Restoration Act says specifically that their Tribe is comprised of Indians from the Willamette Valley who were settled on the Grand Ronde Reservation. There is no mention of the Siletz Coast Reservation or any claim of the Grand Ronde Tribe to the Siletz Coast Reservation and it doesn't appear anywhere in history.

We support, very much support a *Carcieri* fix. I know that has been discussed by many Tribes across the Nation, a fix to legislation that settles who is an Indian Tribe and what Tribe has a right to take land into trust. And how that gets fixed we don't know. But we know, Senator Akaka, that you have worked toward a fix, and we truly support your efforts. We have sent letters in support of your efforts.

That concludes my testimony.

[The prepared statement of Ms. Pigsley follows:]

PREPARED STATEMENT OF HON. DELORES PIGSLEY, CHAIRMAN, CONFEDERATED TRIBES OF SILETZ INDIANS, OREGON

Need for this Legislation:

The Confederated Tribes of Siletz Indians of Oregon ("Siletz Tribe") is seeking federal legislation to define the boundaries of the Tribe's original 1855 reservation, established by Executive Order of Franklin Pierce on November 9, 1855, as "on-reservation" in order to clarify the Secretary of Interior's authority to take land into trust for the Siletz Tribe under the Interior Department's fee-to-trust regulations at 25 C.F.R. Part 151. Enactment of this legislation will not create a reservation for the Siletz Tribe, and by itself will not affect the jurisdiction or authority of state or local governments. The purpose of the legislation is to allow for more timely processing of the Siletz Tribe's fee-to-trust applications by allowing those applications to be approved at the Bureau of Indian Affairs' regional level, and to provide an historical reference for the Bureau to process those applications under the Department's on-reservation rather than off-reservation criteria. No land acquired in trust by the Siletz Tribe under the proposed legislation may be used for gaming purposes

The Siletz Tribe's modern situation is a product of a number of federal policies, laws and history that, working together, adversely affected the Tribe over the last 175 years. Most Indian tribes have reservations with well-defined exterior reservation boundaries where the Tribe owns all or a large portion of the land within that boundary. The definition of "Indian country" under federal law, which defines the outer extent of tribal territorial authority, includes all land within the boundaries of an Indian Reservation. *See* 18 U.S.C. § 1151. The Siletz Tribe's original 1.1 million acre reservation was reduced over time by Executive Order, statute, the Allotment Act, and was finally, completely extinguished by the Tribe's termination in 1954.

When the Siletz Tribe was restored to federally recognized status in 1977 by federal statute, 25 U.S.C. § 711 et seq., no lands were restored to the Tribe although the Act called for the future establishment of a reservation. 25 U.S.C. §711c. Congress created the new Siletz Reservation in 1980 and added to that reservation in 1994. Pub.L.No. 96-340, Sept. 4, 1980, 94 Stat. 1072; Pub.L.No. 103-435, Nov. 2, 1994, 108 Stat. 4566. The Siletz Tribe's reservation consists of approximately 50 separate, scattered parcels of reservation land. Each parcel has its own "exterior" boundary. Most of the parcels are separate from each other, and there is no overall exterior reservation boundary that encompasses the individual parcels. A map showing

the Siletz Tribe's original 1855 reservation and the Tribe's current reservation and other trust lands is attached as Exhibit A. Because of this history, any additional land the Siletz Tribe seeks to have placed in trust status under federal law is considered to be "off-reservation" because it necessarily is beyond the boundaries of the Siletz Tribe's current reservation.

Authority must be found in federal law or in treaties for the Secretary of Interior to take land into trust for Indian tribes. The authority for most fee-to-trust transfers appears in Section 5 of the 1934 Indian Reorganization Act ("IRA"), codified at 25 U.S.C. § 465. This law was made expressly applicable to the Siletz Tribe in its Restoration Act, at 25 U.S.C. § 711a(a). This provision was enacted to reverse the devastating loss of lands suffered by Indian tribes between 1887 and 1934 (over 90 million acres) and to restore a minimally adequate land base for those tribes.

There are no geographic limitations on the Secretary of Interior's authority to take land into trust for an Indian tribe in Section 465. No regulations implementing this provision of the 1934 IRA were enacted until 1980. *See* 45 Federal Register 62036 (Sept. 18, 1980). The regulations currently appear at 25 C.F.R. Part 151. No distinction between on and off reservation fee-to-trust requests by Tribes was included in the original regulations. It was not until passage of the Indian Gaming Regulatory Act in 1988 and the subsequent requests from some tribes to place off-reservation land in trust for gaming purposes that changes to the regulations were considered. The Department began enforcing an internal on-reservation/off-reservation fee-to-trust policy in 1991, and in 1995 added this distinction into the fee-to-trust regulations. *See* 60 Federal Register 32879 (June 23, 1995). No consideration or discussion of the Siletz Tribe's factual situation factored into the regulatory changes.

The current fee-to-trust regulations distinguish between on-reservation trust acquisitions (25 C.F.R. § 151.10) and off-reservation trust acquisitions (25 C.F.R. § 151.11). The requirements for a Tribe obtaining land in trust are more restrictive, more costly and time-consuming, and require additional justification. Because of the Siletz Tribe's unique history, all fee-to-trust requests by the Tribe are reviewed under the off-reservation process, even close to the Tribe's current reservation lands and even within the boundaries of the Tribe's historical reservation.

S. 908 will place the Siletz Tribe on the same legal footing as all other federally-recognized Indian tribes who did not suffer through the tragedy of termination and the loss of their reservations. It will treat the Siletz Tribe's fee-to-trust requests within its historical reservation the same as fee-to-trust requests from other tribes within their historical reservations. It will facilitate the restoration of a tribal land base for the Siletz Tribe so the Tribe can meet the needs of its members. It will reduce cost, time and bureaucratic obstacles to the Tribe obtaining approval of its land into trust requests. The legislation is consistent with the definition of on-reservation as set out in the current fee-to-trust regulations at 25 C.F.R. §151.2(f).

The Siletz Tribe has an ongoing critical need to acquire additional lands in trust to meet the needs of the Tribe and its members. The Tribe received a modest approximately 3630 acres in trust as a Reservation in 1980, comprised of 37 scattered parcels. This land was primarily former BLM timber lands, and was calculated at the time to allow the Tribe to generate revenue to provide limited services to its members and to support tribal government. The revenue generated from these parcels has been insufficient to meet growing tribal needs. The Reservation Act also returned a tribal cemetery and Pow-Wow grounds to the Tribe. Since 1980 the Tribe has obtained additional 804 acres of land in trust to meet some of the Tribe's needs for housing, health and social services, natural resources, and economic development including a gaming operation. Currently the Tribe has a total of 63 separate trust properties, for a total acreage of 4434.01 acres. Tribal needs have not been satisfied, however, and the Tribe has a continuing need to acquire additional lands in trust. This is a long-term objective of the Tribe because of the Tribe's limited financial resources, which only allow it to purchase land a little at a time.

Historical and Legal Background:

Numerous bands and tribes of Indians resided aboriginally in Western Oregon, from the crest of the Cascade Mountains to the Pacific Ocean. Early federal Indian policy was to enter into treaties with Indian tribes to obtain the cession of their aboriginal lands to clear title for non-Indian settlement. A "reservation policy" evolved to place the Indians who entered into these treaties on small remnants of their aboriginal lands, but to open most of those lands for future development and settlement. In most cases each tribe that entered into a treaty was left with its own reservation somewhere within its aboriginal territory. Entering the 1850s, this federal policy evolved into a new reservation policy, particularly along the west coast, to place as many tribes as possible on one reservation. This freed up additional land for settlement and simplified administration of the remaining Indians. *See* Charles F. Wilkinson, The People Are Dancing Again: A History of the Siletz Tribe (U. of Washington Press 2010).

Treaties negotiated with western Oregon Indian tribes in the early 1850s by Anson Dart were rejected by the Senate because they did not implement this new policy and instead provided for individual reservations within a tribe's historical territory. The subsequent Indian Superintendent in Oregon in the1850s, Joel Palmer, was given the task of negotiating treaties with all of the tribes in western Oregon and finding a permanent reservation where they could all be settled. Superintendent Palmer first considered moving all the western Oregon tribes east of the Cascade Mountains to the Klamath Reservation, but none of the western Oregon tribes wanted to go there. In early 1855 he located what became the Siletz or Coast Reservation and communicated its suitability as the permanent reservation for all the western Oregon tribes to his superiors in Washington, D.C. Because of the long time lag in communication between the east and west Coasts in the 1850s, Palmer provisionally set aside the Coast Reservation on his own authority on April 17, 1855. This action was subsequently ratified by the Department of Interior.

There was no one method or procedure by which the tribes and bands that are part of the Confederated Tribes of Siletz Indians entered into treaties or came to the Siletz Reservation. A map showing the ancestral lands and tribes that make up the Siletz Tribe is attached as Exhibit B. The Siletz Tribe has a legal relationship to seven ratified treaties (Treaty w/ the Rogue River, Sept. 10, 1853, 10 Stat. 1018; Treaty w/ the Umpqua-Cow Creek Band, Sept. 19, 1853, 10 Stat. 1027; Treaty w/ the Rogue River, Nov. 15, 1854, 10 Stat. 1119; Treaty w/ the Chasta, Nov. 18, 1854, 10 Stat. 1122; Treaty w/ the Umpqua and Kalapuya, Nov. 29, 1854, 10 Stat. 1125; Treaty w/ the Molala, Dec. 21, 1855, 12 Stat. 981; Treaty w/ the Kalapuya, Jan. 22, 1855, 10 Stat. 1143), and one unratified treaty (Treaty with the Tilamooks and other confederate tribes and bands residing along the coast, Aug. 11,1855 ("Coast Treaty")). To complicate things further, there are also several additional unratified treaties negotiated in 1851 with the northern Oregon coastal tribes and bands, known as the Anson Dart treaties. Indians from all of these tribes and bands ended up on the Siletz/Coast Reservation. In some of these treaties, such as the 1854 Rogue River Treaty and the unratified Coast Treaty, the signatory tribes were "confederated" by the federal government into one tribe. The Confederated Tribe of Siletz Indians is the federally-recognized Tribe that is the legal and political successor to these original tribes. *See United States v. Oregon*, 29 F.3d 481, 485-86 (9th Cir.1994)(Yakama Nation comprised of the Indians who moved to the reservation under the Yakama Treaty; Nez Perce Tribe comprised of Nez Perce Bands who signed Nez Perce Treaty and moved to diminished Nez Perce Reservation).

Movement of the tribes, bands and Indians to the Siletz Reservation was also not clean or uniform. Some tribes moved in several waves to the Siletz Reservation, at different times. In some cases only parts of the tribe, smaller groups or individual families ended up on the Reservation. In other cases individuals or small groups who were moved to the Siletz Reservation left the Reservation and returned to their aboriginal areas; other individuals hid and were never moved. Some of the individuals who left the Siletz Reservation and returned to their aboriginal areas were rounded up and returned to the Siletz Reservation. For example, member of the Coos and Lower Umpqua Tribes who left the Siletz Reservation and returned to their aboriginal area were forcibly returned to the Reservation.

In all of these cases and under all of these treaties, both ratified and unratified, the tribes and bands in question were moved to the Siletz Reservation and became part of the Confederated Tribes of Siletz Indians. This early history of the Siletz Tribe and Siletz Reservation is set out in various federal court decisions, including *Rogue River Tribe v. United States*, 64 F.Supp. 339, 341 (Ct.Cl. 1946); *Alcea Band of Tillamooks v. United States*, 59 F.Supp. 934, 942 (Ct.Cl. 1945); *Coos, Lower Umpqua, and Siuslaw Indian Tribes v. United States*, 87 Ct. Cl. 143 (1938); and *Tillamook Tribe of Indians v. United States*, 4 Ind. Cl. Comm'n 31-65 (1955). Copies of these decisions are attached as Exhibit C. The Siletz Tribe also submits some of the Interior Department and Oregon Indian Agency correspondence from this period (1855-75), documenting the settlement of various tribes and bands on the Siletz Reservation pursuant to these treaties, as Exhibit D. The settlement of various tribes on the Siletz Reservation is also documented in various academic publications such as a report prepared by Historian Dr. Stephen Dow Beckham. *See* "The Hatch Tract: A Traditional Siuslaw Village Within the Siletz Reservation, 1855-75," prepared by Dr. Stephen Dow Beckham for the Confederated Tribes of Coos, Lower Umpqua and Siuslaw, Dec. 4, 2000, pp.12-14 ("On July 20, 1862, Linus Brooks, Sub-Agent, confirmed that the removal of the Coos, Lower Umpqua, and Siuslaw Indians onto

the Siletz Reservation was complete," and "On July 21, 1864, Sub-Agent George W. Collins confirmed the presence of the tribes on the Siletz Reservation".).

The Confederated Tribes of Siletz Indians was recognized as the governing body and tribe representing all of the tribes and bands settled on the Siletz Reservation as early as 1859. *See, e.g.*, Indian Traders License issued by the Siletz Indian Agent on June 16, 1859, to trade with "The Confederated Tribes of Indians . . . within the boundary of the Siletz Indian agency district Coast Reservation." (Copy attached as Exhibit E); *Tillamook Tribe of Indians, supra*, 4 Ind. Cl. Comm'n at 31 ("Confederated Tribes of Siletz Indians, . . . a duly confederated and organized group of Indians having a tribal organization and recognized by the Secretary of the Interior of the United States" is the only entity with standing to prosecute claims against the United States involving the Siletz Reservation). It has consistently been recognized as the tribe representing the original Siletz or Coast Reservation since that time. As such it is the legal and political successor to all of the tribes and bands of Indians settled on or represented on the Siletz Reservation.

This legal principle was established and has been repeatedly confirmed in the *U.S. v. Washington* Puget Sound off-reservation treaty fishing rights litigation. *See, e.g.*, *See United States v. Washington*, 593 F.3d 790, 800 at n.12 (9th Cir. 2010)("*Samish*"), citing to *U.S. v. Washington*, 384 F.Supp. 312, 360 (W.D.Wash. 1974)(Lummi) and to *U.S. v. Washington*, 459 F.Supp. 1020, 1039 (W.D. Wash. 1978)(Swinomish)(Lummi and Swinomish successors in interest to tribes and bands settled on their reservations under Treaty of Point Elliott; both tribes successors in interest to the Samish Indian Tribe[1]; modern day Samish Tribe also a successor in interest to the historical Samish Tribe for non-off-reservation treaty fishing rights purposes); *Evans v. Salazar*, 604 F.3d 1120, 1122 n. 3 (9th Cir. 2010), citing *U.S. v. Washington*, 459 F.Supp. 1020, 1039 (W.D.Wash. 1978)(Tulalip Tribes recognized governing body and successor to tribes and bands settled on the Tulalip Reservation under the Treaty of Point Elliott); *U.S. v. Washington*, 520 F.2d 676, 692 (9th Cir. 1975)(Muckleshoot Tribe, which did not exist at the time of the Treaty of Point Elliott and Treaty of Medicine Creek, recognized as a tribe by the United States and is a successor in interest to its constituent tribes which were settled on the Muckleshoot Reservation under the two treaties).

Two other legal principles, confirmed by Ninth Circuit Court of Appeals decisions, also confirm the Confederated Tribes of Siletz Indians as the only federally-recognized Indian tribe representing the tribes and bands who were settled on the Siletz Reservation, and as the only Indian tribe with a legal interest in and title to the original 1855 Siletz or Coast Reservation. The first legal principle involves groups or bands of Indians who either refused or did not move to the reservation designated for them under a treaty or other federal action, or who subsequently left that reservation or refused to move to a reconfigured reservation. In *U.S. v. Oregon*, 29 F.3d 481, 484-85 (9th Cir. 1994), the Ninth Circuit rejected the claim of the Colville Confederated

[1] Like the situation of Lummi and Swinomish, whose reservations were set aside for all the Indians who signed the Point Elliott Treaty, both the Siletz and Grand Ronde Reservations were expressly set aside for settlement of the Willamette Valley Tribes, and members of those tribes settled on both the Siletz and Grand Ronde Reservations. Under the Ninth Circuit's decisions in *U.S. v. Washington*, both the Siletz and Grand Ronde Tribes are successors to the historical Willamette Valley Tribes and the three ratified treaties signed by those tribes.

Tribes to have treaty and successorship rights under the Yakoma and Nez Perce Treaties of 1855 because bands of the tribes that had signed those treaties had refused to move to the reservations established under those treaties, or had subsequently left those reservations, and instead had ended up settling on the Colville Reservation. The Ninth Circuit concluded that those bands, by refusing to move to the treaty reservations or subsequently leaving those reservations, had abandoned their right to treaty status or successorship of the original tribes.

This legal principle applies to the claims of the modern day Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (comprised of individual Indians from those tribes who either refused to move to the Siletz Reservation or who subsequently left the Siletz Reservation and moved back to the Coos Bay area) to have legal claim to the original Siletz Reservation. It also applies to the claim of the Confederated Tribes of the Grand Ronde Community of Oregon to be a successor to the Rogue River Tribe (a band or small group of Rogue River Indians refused in 1857 to move to the Siletz Reservation, designated as the permanent reservation for that Tribe, and stayed instead on the Grand Ronde Reservation), and to have a claim through that tribe to the Siletz Reservation.

The second additional legal principle applies to the factual situation where one tribe is not settled on a reservation under a treaty, but individual members of an "unaffiliated" tribe end up on the reservation of another tribe, either by obtaining allotments on that reservation or for other reasons. This was the situation in *United States v. Suquamish Indian Tribe*, 901 F.2d 772, 777 (9th Cir. 1990), where the Ninth Circuit rejected the Suquamish Tribe's claim to be the successor to the Duwamish Tribe on the grounds that "individual Duwamish had moved to and settled at" the Suquamish Reservation, obtaining allotments there. The court found that no group or band of Duwamish moved there. *Id.*[2] This test was clarified in *United States v. Oregon*, *supra*, where the Ninth Circuit concluded that for one tribe to be able to claim successorship to another tribe, the first tribe would have to show "a cohesive communal decision by the Duwamish to unite with the Suquamish," otherwise the Suquamish "could not successfully claim that it was a 'political successor' to the treaty time Duwamish Tribe." 29 F.3d at 484. Movement and settlement of individual Indians does not result in successorship, under settled principles of law.

This legal principle applies to the claims of the Grand Ronde Tribe that it has an interest in the original Siletz Reservation through its asserted successorship to the Nehalum Tribe, for example. Case law to which the Grand Ronde Tribe was a party and is therefore bound concluded that the Siletz Tribe is the successor the Nehalum Tribe: "Plaintiffs Chinook, Clatsop and the Ne-ha-lum tribes were placed on the Coast Reservation." *Alcea Band of Tillamooks*, *supra*, 59 F.Supp. at 954. Grand Ronde claims successorship to the Nehalum Tribe because some individual Nehalum Indians later moved to and settled on the Grand Ronde Reservation. Under established federal precedent, the fact that some individual Nehalum Indians moved to the Grand Ronde Reservation did not make the Grand Ronde Tribe a successor to the Nehalum Tribe.

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[2] The Court contrasted this factual situation with that of the Muckleshoot and Tulalip Tribes, who were not tribes at the time of the treaty but became tribes comprised of small neighboring bands of Indians who signed the treaties and moved as bands to the designated reservation. 901 F.2d at 776. Those bands who resided together on the same reservation then "became known as the Tulalip and Muckleshoot Indians." *Id.*

The Siletz Reservation has been referred to by various names in its history, but has been known most often as the Siletz Reservation since 1857. The Reservation was originally referred to as the Coast Reservation before it was reserved by Oregon Indian Agent Joel Palmer because it was located on the Oregon Coast and because it was set aside for the "Coast, Umpqua, and Willamette Tribes of Indians in Oregon Territory." After official establishment by Executive Order on November 9, 1855, it was referred to variously as the Siletz, Siletz or Coast, or Siletz/Coast Reservation. Starting in 1857, use of the term Siletz Reservation became most common, see, *e.g.*, Letter dated July 20, 1857 (Annual Report of Grand Ronde Indian Agency), attached as Exhibit D, page *("Early in the month of May the greater portion of the Rogue River and all of the Shasta Indians were removed, with their own consent, to the Siletz coast reservation . . . In consequence of the removal of the majority of these tribes to the Siletz reservation" , and Congress formally referred to the Reservation as the Siletz Reservation in legislation enacted in 1868 and 1875. Act of July 27, 1868, 15 Stat. 198, 219("For Indians upon the Siletz reservation . . . to compensate them for losses sustained by reason of executive proclamation taking from them that portion of their reservation called Yaquina Bay"); Act of March 3, 1875, 18 Stat. 420, 446("Secretary of the Interior . . . is authorized to remove all bands of Indians now located upon the Alsea and Siletz Reservation, set apart for them by Executive order dated November ninth, eighteen hundred and fifty-five"). Copies of these statutes are attached as Exhibit F.

The Siletz Reservation was established by Executive Order on November 9, 1855 as a permanent homeland for all the Tribes and Bands of Indians in western Oregon, who were to confederate upon it and make the remaining ceded land available for settlement. The original Siletz Reservation stretched for over 100 miles along the central Oregon Coast, from the ocean to the western boundary of the 8th Range, Willamette Meridian, around 1.1 million acres. A copy of the original map of this reservation made sometime between 1857 and 1865 is attached as Exhibit G. Treaty tribes such as the Rogue Rivers, Shastas and Umpquas were moved to the Siletz Reservation by May 1857 in fulfillment of the terms of their treaties to settle them on a permanent treaty reservation. The Siletz Reservation under well-established case law became a treaty reservation at that time. The Siletz Reservation was then reduced over the coming years by various federal actions – Executive Order in 1865, federal statute in 1875, and an Agreement and legislation implementing allotment and surplusing of the remaining reservation in 1892. A map of the original Siletz Reservation showing the various reductions of the Siletz Reservation is attached as Exhibit H. A map showing the original Siletz Reservation in context to the State of Oregon and to modern Oregon cities is attached as Exhibit I.

Various Court of Claims and Indian Claims Commission cases have addressed whether the Tribes that were located on the Siletz Reservation were entitled to compensation for the taking of their aboriginal reservation, or for the various diminishments of the Siletz Reservation. These cases – *Rogue River*, *Alsea Band of Tillmooks*, *Coos, Lower Umpqua and Siuslaw Indian Tribes*, and *Tillamook Tribe of Indians*, are cited above. These cases document the connection of the Siletz Tribe to the original Siletz Reservation. As such, they also show that the original Siletz Reservation meets the definition of on-reservation as set out in the fee-to-trust regulations at 25

C.F.R. § 151.2(f): "[W]here there has been a final judicial determination that a reservation has been disestablished or diminished, *Indian reservation* means that area of land constituting the former reservation of the tribe." *See Citizen Band Potawatomi Indians v.* Collier, 17 F.3d 1325 (10th Cir. 1998)(processing fee-to-trust request within former reservation of Potawatomi Tribe). Enacting S.908 will allow the Siletz Tribe to request fee-to-trust transfers on the same basis as other Indian tribes within their original reservations.

Response to Specific Issues:

Some questions have been raised before this hearing about specific aspects of the proposed legislation. I want to address some of those issues here, and can respond to other issues during my oral testimony.

1. Does this bill make the original Siletz Reservation into a reservation for the Siletz Tribe, or create tribal jurisdiction or authority over the original Siletz Reservation area?

Answer: No. All S.908 does is to designate a geographic area within which the Siletz Tribe's fee-to-trust requests will be processed under the BIA's on-reservation rather than off-reservation fee-to-trust criteria. The jurisdictional status of individual fee-to-trust parcels changes once those parcels go into trust status, but that happens whether or not this bill passes, and whether or not the on-reservation or off-reservation criteria are used. This issue was addressed by the federal courts in *Yankton Sioux Tribe v. Podhradsky*, 606 F.3d 994, 1013 (8th Cir. 2010)("While it is true that the original 1858 [reservation] boundaries are no longer markers dividing jurisdiction between the Tribe and the state, that does not mean they have lost their historical relevance for the Secretary's discretionary acts [of taking land into trust pursuant to 25 U.S.C. §465]." Under S.908, the original 1855 Siletz Reservation will become an historical reference point for the BIA in deciding whether to process a Siletz fee-to-trust application as on-reservation or off-reservation under the fee-to-trust regulations at 25 C.F.R. Part 151. The bill does nothing more.

2. Does the Siletz Restoration Act limit the Siletz Tribe to taking land into trust only within Lincoln County?

Answer: No. The original Siletz Reservation extends into six current Oregon counties, although the heart of the original Siletz Reservation became Lincoln County. The counties within the original Siletz Reservation is located are shown on the map attached as Exhibit A. As you can see, two of the counties have barely any land involved. Some parties have asserted that federal law – the Siletz Restoration Act – limits the Siletz Tribe to taking land into trust only within Lincoln County. The section of the Restoration Act in question, at 25 U.S.C. § 711e(d), is addressed to the reservation plan called for by the Restoration Act. It limits any land designated under the reservation plan to Lincoln County.

The question of whether this provision of the Siletz Restoration Act, 25 USC § 711e(d), limited the BIA from taking land in trust for the Siletz Tribe only to Lincoln County was addressed immediately after passage of the Siletz Restoration Act by the Office of the Solicitor, in 1978 and 1979. Those opinions concluded that the statutory restriction at § 711e(d) applied only to the original Siletz Reservation Plan, and did not limit the authority of the Secretary from taking land in trust for the Siletz Tribe elsewhere?. This conclusion was reached in part because the Siletz Restoration Act expressly makes 25 U.S.C. § 465 - Section 5 of the IRA - applicable to the Siletz Tribe, without restriction. This is not true of any other restored tribe in Oregon. Copies of the two Solicitor Opinions reaching this conclusion are attached as Exhibit J.

The Siletz Tribe has acquired land in trust outside of Lincoln County since Restoration. For example, the Tribe has a 20 acre parcel of land in trust in Salem, Marion County, Oregon, within the Tribe's historical territory.

3. Does the County approval provision of S. 908 give the counties within which the original Siletz Reservation is located veto power over Siletz fee-to-trust requests?

Answer: No. The Siletz Tribe was aware going into this proposed legislation that there have been repeated attempts by states and counties to restrict or eliminate taking land into trust for tribes under 25 U.S.C. § 465, including proposals to give counties and states veto authority over tribal trust requests. S. 908 does not give local Oregon counties veto power over the Siletz Tribe's request to take any land in trust. All the relevant provision of the bill does is to give a County the option to have a particular Siletz fee-to-trust request treated as on-reservation or off-reservation. If a County objects to having a particular Siletz fee-to-trust request treated as on-reservation, it is processed under the off-reservation criteria of the existing fee-to-trust regulations, as though S. 908 had not passed. The Siletz Tribe still has the right to have land taken into trust even if a County objects; it just has to satisfy the more stringent off-reservation criteria.

The Siletz Tribe did not include this County language on its own initiative. Lincoln County, the County with which the Siletz Tribe has the closest relationship, requested this language. Because the language does not give the County any veto power over actually taking land into trust and because the Siletz Tribe is comfortable with its long-standing positive relationship with Lincoln County and its ability to satisfy any County concerns that might arise in the future, the Siletz Tribe agreed to include the County approval language in its draft legislation. At the same time, the Tribe recognized that any county approval language of any kind might raise concerns from the Department or from Congress, and informed Lincoln County that such concerns might necessitate changes to the proposed legislation. The Siletz Tribe's continued support for S. 908 is not dependent upon survival of the county language in its current form.

4. Will S. 908 allow the Siletz Tribe to acquire land in trust and use that land for gaming under the Indian Gaming Regulatory Act?

Answer: No. There is an express prohibition in S. 908 on using land acquired in trust under the bill for gaming. The Siletz Tribe already has a successful gaming operation at Chinook Winds Casino Resort on its current reservation. The Tribe does not need to acquire land in trust for a gaming operation within its original reservation boundaries.

This concludes the written testimony of the Confederated Tribes of Siletz Indians in support of S. 908. I would be glad to respond to any questions from the Committee.

Attachments retained in Committee files

The CHAIRMAN. Thank you very much, Chairman Pigsley.

Chairman Garcia, please proceed with your testimony.

STATEMENT OF HON. ROBERT GARCIA, CHAIRMAN, CONFEDERATED TRIBES OF COOS, LOWER UMPQUA AND SIUSLAW INDIANS

Mr. GARCIA. Thank you very much, Chairman Akaka, members of the Committee. My name is Robert Garcia. I am an enrolled member and Chairman of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians.

I appreciate the opportunity to be here. We support helping Tribes getting land into trust for a variety of purposes. It is a goal we share. Unfortunately, we cannot support Senate Bill 908 as introduced. This bill gives unfair advantage to one Tribe over others with similar claims to the land.

But before turning to our specific concerns, I want to provide the Committee with some relevant history. The Coos, Lower Umpqua and Siuslaw live on approximately 1.6 million acres of our ancestral lands outlined by the blue boundary on our maps with our written testimony. Members of the Coos and Lower Umpqua Tribes were forcibly removed in 1860 from our ancestral lands, moved north to the reservation established by executive order by President Pierced in the fall of 1855. The boundaries of that reservation are outlined in red on the submitted map.

The solid yellow region on the map is the area of overlap between the reservation established by President Pierce and our ancestral lands. While the Coos and Lower Umpqua were forcibly removed to the reservation, the Siuslaw Indians remained in their homeland. Indeed, we believe the 1855 Coast Reservation referred to in S. 908 might as accurately be called the Siuslaw Coast Reservation as it can be called the Siletz Coast Reservation.

Our existence has been acknowledged by the Federal Government at least since the summer of 1855, when Joel Palmer negotiated on behalf of the United States the Empire Treaty with our Tribes and others. Neither the reservation referred to in the Empire Treaty nor the reservation referred to in Senate Bill 908 were established by ratified treaty. The Coast Reservation is shared by many Tribes, including ourselves and the Siletz.

The United States terminated our Tribe in 1954, and we were restored in 1984 by the Coos, Lower Umpqua and Siuslaw Restoration Act. We have since established a casino, Three Rivers Casino, and built Tribal housing near Florence near the heart of our Siuslaw lands, while our Tribal headquarters is based in Coos Bay, situated in our Coos territories. Today we provide approximately 600 jobs for Indians and non-Indians alike.

We support Senators Wyden and Merkley for introducing S. 356 and S. 908. They understand the emotive and tangible connection between Native peoples and our aboriginal lands. Indeed, we have our own aspirations for acquiring more homelands. While we have no concerns about S. 356, we support it and applaud the delegation for helping the Tribe secure its land aspiration in a targeted way that avoids impinging on the interests of other Tribes.

We object to Senate Bill 908. We do not agree that the Siletz Tribe is the successor Tribe to the Oregon Coast Reservation. And

we believe that S. 908 has fairness and equity problems. We are going to leave the county government issue to others and move on. But under S. 908, the Siletz, and only the Siletz, are entitled to have treated as an on-reservation acquisition all property they propose for trust within the 800,000 Coast reservation. To give the Siletz favorable treatment with respect to all of this land is unsupported by law, is historically inaccurate and is just plain unfair to my people.

Siletz currently have on-reservation status for lands within the reservation established as a result of the restoration in Lincoln County. S. 908 expands that reservation status to 800,000 acres of the Coast Reservation, a reservation we feel is shared by many Tribes. But only gives reservation status on those lands for the Siletz. Our Tribe has a casino, Three Rivers Casino, as previously mentioned, in Florence, Oregon, centered in our Siuslaw lands. Under S. 908, our casino would be in the midst of their reservation. If we buy land for housing Tribal members in our Siuslaw lands, it would be considered on the Siletz reservation.

The Siletz and we have both intended to purchase property for timber. Suppose both Tribes of the adjacent lands wish to place them in trust. If S. 908 becomes law, the Siletz would be free of the obligation to satisfy the Secretary's escalated scrutiny for acquisition far distant from the Tribe's headquarters. If the acquisition were proposed for business purposes, the Siletz would not be required to provide the Secretary with a business plan to show the anticipated economic benefits of the proposed use. Finally, the Siletz acquisition would be processed within 30 days and without notice to the State and local government.

In contrast, our application for adjacent parcels would be subject to exacting scrutiny by the Secretary. We would be required to write a business plan and we would then be required to give notice and allow for comment by State and local governments. This distinction is not justified by history or by law. It is inherently unfair.

The complex history of Tribes on the Oregon Coast demonstrates that it would be an error to jump to the conclusion that the reservation created by President Pierce conveyed special status to the Siletz then, or supports today Congress extending such unfair advantage.

In conclusion, I would like to paraphrase George Orwell in 1984: S. 908 makes some Tribes more equal to others. And we do not believe that is fair or right.

Thank you very much.

[The prepared statement of Mr. Garcia follows:]

PREPARED STATEMENT OF HON. ROBERT GARCIA, CHAIRMAN, CONFEDERATED TRIBES OF COOS, LOWER UMPQUA AND SIUSLAW INDIANS

Chairman Akaka, Co-Chairman Barrasso, Members of the Committee:

I am Robert Garcia. I am an enrolled member and Chairman of the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians (CTCLUSI). I am pleased to be here to represent the members of my Tribes.

Indisputable historical and archeological evidence establishes that the three tribes making up the CTCLUSI continuously have made the Siuslaw, Lower Umpqua, and Coos River watersheds our homes. Our ancestral lands are outlined by the blue boundary on the map appended to this testimony.

Members of the Coos and Lower Umpqua tribes were forcibly removed in 1860 from their ancestral lands north to the "Coast reservation" established by Executive Order by President Pierce in the fall of 1855. The boundaries of that reservation are outlined in red on the appended map. The yellow region on the map is the area of overlap between the reservation established by President Pierce and the ancestral lands of my people.

The Siletz Tribe is just one of many tribes forced to reside within the Coast reservation. History teaches that we are no less heirs to the Coast reservation than other tribes forced into its boundaries. The Coast reservation -- and particularly its southern third -- is no more the "former reservation" of the Siletz than it is of any of the other tribes forced to remove or to remain there. We believe the 1855 Coast Reservation referred to in S. 908 might just as accurately be called the "Siuslaw Coast Reservation," "Coos Coast Reservation," or "Lower Umpqua Coast Reservation" as it could be re-named the "Siletz Coast Reservation."

In fact, in 1860, the northernmost of the three tribes now making up our confederation, the Siuslaw Indians, were able to remain in place in the Siuslaw River region which was made part of the Coast reservation. That territory is centered on modern-day Florence, and again, is the yellow region on the appended map. The people of the Siuslaw Indians have resided there since before contact. Although other Indians, forcibly displaced from their own ancestral lands, have from time-to-time occupied land in the Siuslaw watershed, no other tribe ever has permanently inhabited the territory of the Siuslaw.

Our existence has been acknowledged by the federal government at least since the summer of 1855, when Joel Palmer negotiated on behalf of the United States the "Empire Treaty" with our tribe and others. That treaty -- which predated the Executive Order establishing the Coast reservation referred to in S. 908 -- subsequently was lost by the federal government. The Empire treaty never was ratified by the United States. The text of the Empire Treaty and the documents transmitting it from the President to Congress are available at Confidential Executive Document 9, 34th Cong., 3rd sess., "Articles of Agreement Entered Into on the Eleventh and Seventeenth Days of August," S 34B-C14, RG 46, NARA-DC. For a thoroughly documented history of the negotiation of the Empire Treaty and the failure of the United States to ratify it, please refer to David R.M. Beck, *Seeking Recognition: The Termination and Restoration of the Coos, Lower Umpqua, and Siuslaw Indians, 1855 - 1984* (2009: University of Nebraska Press) (Particularly Chapter Two).

Like other Oregon tribes, the United States purported to terminate the CTCLUSI in 1954. The United States enacted into law the Coos, Lower Umpqua, and Siuslaw Restoration Act in 1984. Although every other federally-recognized tribe in Oregon received either money or land as a result of restoration, we did not.

Since this fresh start toward self-determination, we have established a casino near Florence in the heart of the northern part of our ancestral territory. Our headquarters are in the North Bend/Coos Bay area in the southern part of our ancestral lands. Today, we number 1,017 enrolled members and provide approximately 600 jobs for Indians and non-Indians alike.

Someday soon we expect to be before Congress seeking to restore tribal control over a painfully thin remnant of our former ancestral lands . Our history makes us uniquely sensitive and uniquely respectful of the aspirations of any tribe to enlarge the tribe's control over their respective ancestral lands. We, least of all, begrudge no tribe that aspiration. We are encouraged by Senator Wyden and Senator Merkely's attention to the aspirations of the Confederated Tribes of Siletz Indians of Oregon (Siletz Tribe) and Confederated Tribes of Grand Ronde (Grand Ronde) to add to their respective land bases. I sincerely acknowledge the fact that the Senators' co-sponsorship of these measures is evidence of their recognition of the importance of land in the life of all tribes.

We have no objections to S. 356. Indeed, we support it and applaud our delegation for helping the Grand Ronde secure their land aspirations in a targeted way that avoids impinging on the interests of any other tribe.

I regret that we must oppose S. 908 as introduced.

S. 908 grants counties unprecedented power over the Siletz Tribe's aspirations to secure land in trust. Under the bill, six Oregon counties have absolute authority to determine whether an application will be subject to the comparatively relaxed standards of an "on-reservation" acquisition or will be subjected to the more exacting scrutiny of the "off-reservation" procedures. This mechanism transforms a question of federal law into a question of local politics. We strongly believe in collaboration and in building consensus with the people and governments of the political subdivisions of our state. We do not believe, however, that it is in the interest of our tribe for Congress to establish a precedent for legislation which cedes control of such a key piece of the federal decision-making process to local authorities.

However, our fundamental objections to S. 908 are independent from the "county veto" provisions and even if those were removed, we profoundly object to S. 908

S. 908 would grant the Siletz Tribe a unique right to claim favorable on-reservation treatment under federal law for all land acquisitions in an area of the Coast reservation that is in fact our ancestral land. Under S. 908, the Siletz Tribe, and only the Siletz Tribe, are entitled to have treated as an on-reservation acquisition all property it proposes for trust within the 800,000 acre Coast reservation. To give the Siletz Tribe favorable treatment with respect to land within the area of overlap is unsupported by law, is historically inaccurate, and is just plain unfair to the people of my tribe.

In *City of Lincoln City v. U.S. Department of Interior*, 229 F. Supp. 2d 1109 (D. Or. 2002), the Siletz Tribe asserted that the Bureau of Indian Affair's approval of a fee-to-trust transfer of land in the central region of the Coast reservation near but not on the Siletz Tribe's existing reservation lands should have been approved under the "on-reservation" criteria of 25 CFR Section 151.10. In support of its theory, the tribe claimed the geographic area of the Coast reservation established by Executive Order in 1855 as its "former reservation." The Department of the Interior disagreed. It took the position that only the Siletz Tribe's then-current reservation lands qualified for "on-reservation" treatment.

No tribe other than the Siletz Tribe was a party to *City of Lincoln City*. The District Court upheld the BIA's approval under the "off-reservation" criteria -- which subsume the less stringent "on-reservation" standards. Because it had upheld BIA's approval under the more stringent standards, the court did not rule on the tribe's argument that the approval should have been granted under the less stringent "on-reservation" standards.

At least as to the area of overlap between the Coast reservation and our ancestral lands, we agree with the position taken by the BIA in 2002 and disagree with the position asserted by the Siletz Tribe. Simply put, the historical evidence does not support the Siletz Tribe's claim that the area of overlap is any part of that tribe's "former reservation."

S. 908 would bestow on the Siletz Tribe the benefit of the rule the tribe invited the District Court to adopt in *City of Lincoln City*. And yet no tribe other than the Siuslaw ever have inhabited the area of overlap between our ancestral lands and the Coast reservation. S. 908 gives a tribe with no historic connection to that area a superior claim to lands within that region.

The Siletz Tribe has acquired and holds in fee thousands of acres of land within the area of overlap between the Coast reservation and the ancestral lands of my tribe. The legal effect and fundamental unfairness of S. 908 are made clear by adding two assumed facts to the reality of the Siletz Tribe's ownership of lands within the area of overlap. First, suppose my tribe purchases land adjacent to the lands owned by the Siletz. Second, suppose further that both tribes apply to have their respective lands transferred to trust.

Under current law, both applications would be evaluated under "off-reservation" standards. If S. 908 becomes law, the application by the Siletz Tribe would be treated as an "on-reservation" acquisition whereas our application for the adjacent parcel would be treated as an "off-reservation" acquisition. The Siletz Tribe would be free of the obligation to satisfy the Secretary's escalated scrutiny of acquisitions far distant from the applicant tribe's reservation. If the acquisition were proposed for business purposes, the Siletz Tribe would not be required to provide the Secretary with a plan specifying the anticipated economic benefits of the proposed use. Finally, the Siletz Tribe's acquisition would be processed within 30 days and without notice to state and local governments, assuming that the county opt-in/opt-out provisions of S. 908 are jettisoned before passage.

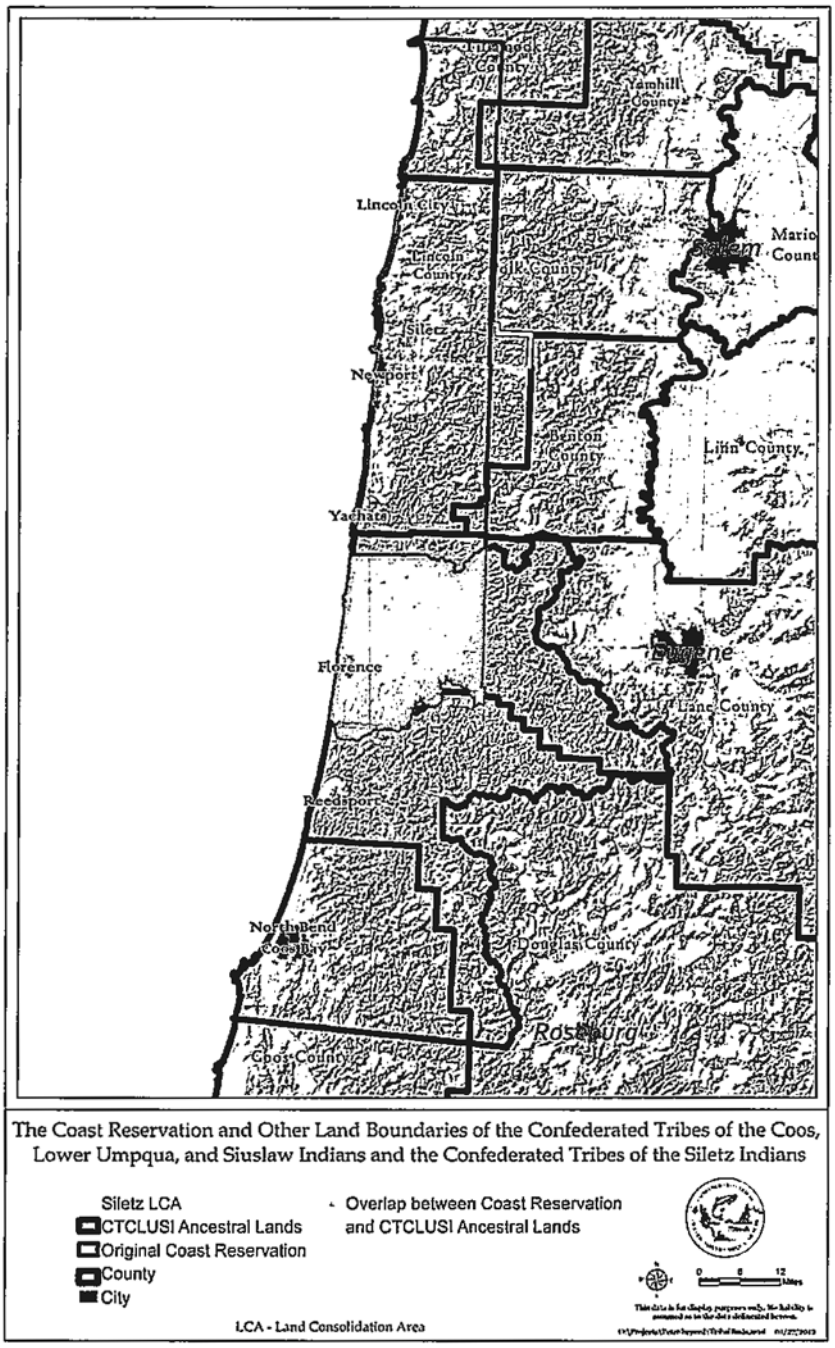
In contrast, we would be subject to exacting scrutiny by the Secretary, we would be required to provide a business plan, and we would be required to give notice and allow for comment by state and local governments. *Compare*, 25 CFR Section 151.11 ("off-reservation" criteria) (requiring, in addition to all "on-reservation" criteria, scrutiny proportional to distance from reservation lands, business plans, and notice and comment period to local governments), *with*, 25 CFR Section 151.10 ("on-reservation" criteria) (not requiring proportional scrutiny, business plan, or notice and comment period). As the federal District Court put it in *City of Lincoln City*, "land that is within or adjacent to the reservation carries with it a 'presumption' that a fee-to-trust transfer will benefit the tribe, while no such presumption exists for off-reservation land." 229 F.Supp. 2d at 1129.

In the hypothetical posed above, my tribe would confront an additional burden arising from S. 908. 25 CFR Section 151.8 states that if one tribe wants to convert land into trust which lies in another tribe's "reservation," the governing body of the tribe "having jurisdiction over such reservation" must give its consent in writing. The Siletz Tribe asserts that its ancestral lands extend south along the Oregon Coast into northern California, north into southwest Washington, and east to the Cascade mountains. *See*, map attached to the prepared statement of Delores Pigsley, Tribal Chairman, Confederated Tribes of the Siletz Indians, page 43 of the record of the December 9, 2009 hearing of the Senate Committe on Indian Affairs, United States Senate. The Siletz Tribe has publicly asserted that "any land transfers/disposals within the original boundaries of the Siletz (Coast) Reservation should initially be offered to the Confederated Tribes of the Siletz Indians." Letter from Delores Pigsley, Tribal Chairman, Confederated Tribes of the Siletz Indians, to Team Leader, Western Oregon Plan Revisions Office (December 14, 2007).

The bill does not expressly make the area of overlap between the Coast reservation and our ancestral lands Siletz "reservation" land; it only treats the land as such for fee-to-trust applications. But there exists a significant risk that, once armed with S. 908, the Siletz Tribe could persuade a court that our application to take a part of our ancestral land into trust is dependent on the consent of the Siletz Tribe pursuant to 25 CFR Section 151.8. Congress should not give one tribe priority and dominion over land which historically belongs to another.

Conclusion

Tribes face many challenges. I strongly prefer that we face them shoulder-to-shoulder and facing in the same direction. I regret the necessity of expressing my people's heartfelt objections to S. 908 as introduced.



The CHAIRMAN. Thank you very much, Chairman Garcia, for your testimony.

I would like to call on our Vice Chairman for any remarks that he may have. Senator Barrasso?

STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM WYOMING

Senator BARRASSO. Thank you very much, Mr. Chairman. First of all, I would like to thank the witnesses for your patience in waiting for us to finish with the votes. I know you here today are here because you have a lot at stake. The bills involve issues of critical importance to the Tribes and they are issues that we need to look at very carefully. So I appreciate your patience, I also want to thank the staff.

Since we do things, Mr. Chairman, in a bipartisan way, you know that the staffs are here late at night, both sides of the aisle, because of their commitment. I also want to thank Senator Franken for being here, and specifically you, Mr. Chairman, for your gracious leadership. It would have been very easy to have canceled this hearing.

But you know how important these issues are and how far these people have traveled. But this has been the hallmark of your entire career in the Senate, gracious leadership, a wonderful gentleman. I just want to thank you for making sure that these people were heard and this hearing was held. So thank you, Mr. Chairman. I have nothing else to add.

The CHAIRMAN. Thank you very much, Senator Barrasso, for your remarks. I really appreciate that.

I would like to hold my question, and I am going to ask Senator Franken to proceed with his questions of the Minnesota Tribes. Senator Franken?

Senator FRANKEN. Thank you, Mr. Chairman.

This isn't an easy hearing for me. This has been a dispute a long time with the Minnesota Chippewa Tribe. And earlier today we took a picture. We have all the chairmen and chairwomen of all the bands here, Chairman Deschampe from Grand Portage, who is also the president of the MCT, and we have Kevin Leecy, who is here from Bois Forte, Marge Anderson from Mille Lacs, Karen Diver from Fond du Lac, who had to leave, Chairman Visinor, Erma Visinor from White Earth, and Chairman LaRose. And it was nice to have the picture, it really was. This has been a long-time dispute. And boy, I wish this had been unanimous. It would have made it a lot easier.

Chairman LaRose and I met today, in the morning. And we talked about other conversations we have had about speaking from the heart. So I am speaking from the heart now, where this is not easy for me. Because of the lateness, Michael Black, the Director of the Bureau of Indian Affairs, was going to testify about this. But I can read from his written testimony. And I think he framed this pretty much exactly as I see it. He said, "The Department appreciates the concern of Leech Lake, with whom it has a government to Government relationship, and would prefer a unanimous agreement among the six bands of the Minesota Chippewa Tribe regarding the best method to distribute the settlement funds. Nevertheless, the recognized governing body of the Minnesota Chippewa Tribe has voted ten to two in favor of the distribution formula set

forth in S. 1739. 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 S. 1739."

There are little excerpts of this I can read, all six bands equally shared the expenses and risk of prosecuting the cases and dockets, numbers 19 and 188. The TEC's 1998 vote to settle the cases for $20 million was not unanimous, as three members voted against the proposed settlement. The TEC's settlement vote, however, was respected by all the bands and the Federal court, which stated: "The Tribal Executive Committee has the constitutional authority to enter into the proposed settlement on behalf of the Minnesota Chippewa Tribe." It says, once again, the Department would prefer that any distribution plan have the unanimous support of all the Minnesota Chippewa Tribes' constituent bands, and so do I.

Nevertheless, the 1999 settlement itself was not reached with the unanimous consent of the Minnesota Chippewa Tribes' constituent bands, and the Department views S. 1739 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. And perhaps that is why this is so difficult, Mr. Chairman, because of those words, small measure of justice.

The source of all this is, in my mind, the historic mistreatment of Indian Tribes by the Federal Government. Would you agree with that, Chairman LaRose?

Mr. LaRose. I would agree that we are the biggest victims of this case. We suffered the majority of the damages.

Mr. Franken. I understand. Chairman Deschampe, if Congress enacts the bill, S. 1739, and may I ask for a little extra time, Mr. Chairman? We have waited several hours for this, and this is of tremendous importance.

Mr. Chairman, if Congress enacts this bill, each Tribal member will receive $300. Can you describe the economic condition of most of these recipients? Will that amount of money make a difference in their lives?

Mr. Deschampe. Yes, Senator, I think it will make a huge difference, especially now. I don't know how long it would take to get the money here. But the reservations all have high unemployment rates. This money would go to help families pay heating bills, buy groceries. It is not a lot of money in most people's mind. But it is something. And it would go a long way towards helping make, for a little bit, make life better for some of these people.

Senator Franken. The bill would also distribute approximately $2.5 million to each of the six bands. What would the bands be able to accomplish with these funds?

Mr. Deschampe. I don't know. That is up to each individual band to make that decision. But I think we were talking earlier, we have been through seven elections since this was approved. So it would be really hard to make any kind of plans, when nobody really has, through the process, had any faith that the money was even going to be there. So that makes it real difficult to plan.

But I do know the White Earth's plan was to work on three community centers. And that didn't happen. I don't think that plan is still on the books. But everybody has needs.

Senator FRANKEN. And let me ask you one last question. Chairman Deschampe, under the Minnesota Chippewa Tribe constitution, the Tribal Executive Committee makes decisions for the Tribe by majority vote, is that right?

Mr. DESCHAMPE. Yes, it is.

Senator FRANKEN. And does this way of resolving differences work well for the Tribe? Has it?

Mr. DESCHAMPE. Yes, it does. Sometimes we don't get what we want, every, each individual band. But our constitution requires us to settle issues based on a majority vote. My reservation is a good example of this. We voted against the settlement originally. But we went on to say, okay, the majority vote wanted to settle this case, so that is the way it is.

Senator FRANKEN. The original in 1998?

Mr. DESCHAMPE. Yes.

Senator FRANKEN. It was three against, and my understanding was that White Earth and Grand Portage voted to comprise those three, is that correct?

Mr. DESCHAMPE. Yes. I was chairing the meeting, so our other rep was the one vote that made the odd vote. And yes, we voted against the settlement. But majority rules.

Senator FRANKEN. And the majority was respected?

Mr. DESCHAMPE. Yes, we respected the majority's rule.

Senator FRANKEN. And Leech Lake voted in favor?

Mr. DESCHAMPE. Yes.

Senator FRANKEN. Okay.

Chairman LaRose, we have discussed this today and we have discussed this before, and this is a complex issue. You know that we have looked at, through the legal documents and that my staff and I have come to the same conclusion as the Bureau of Indian Affairs. Nevertheless, I just want to tell you that I totally respect your point of view and that again, this is not an easy hearing for me. I just feel the best thing right now is for members living now to get them the funds. I just want to throw it to you to ask you to say whatever you want to say.

Mr. LAROSE. I want to thank you for that, Senator Franken. Our people have been waiting at least a century for our land back. We lost the majority of our land in this Nelson Act, 68.9 percent of the damages happened and occurred on Leech Lake. We are the biggest victims and we have to live with the damages. That is what this hearing should be all about, is the damages in itself.

And I am going to speak from the heart, how I was taught. Our ancestors taught us some wonderful values in life and they passed the values down to our Anishinabe Indian people. And those values are for us to be there for one another, for us to share and care for one another.

And I am going to give you one example here, of Leech Lake Reservation and the Grand Portage Reservation. Grand Portage had .9 percent damage. Grand Portage has 1,400 band members enrolled. Grand Portage owns, or has 98 percent of their land in trust. And now I am going to give you Leech Lake's side: 68.9 percent of the

damage happened and occurred on Leech Lake reservation. We have 9,500 band members and we only own 4 percent of our land. We are in dire need of our land, and that is where we are hurting.

So I just wanted to bring that across to everyone in here, that we are the real victims in this whole settlement case. We always felt we should be fully compensated for the damages that occurred from this Nelson Act. Thank you.

Senator FRANKEN. Thank you, Mr. Chairman.

I want to thank all the Chairs of all the bands for being here today. I do want to get the settlement to the members of the Minnesota Chippewa Tribe, to the Ojibwe. And again, I thank you, Chairman LaRose, I thank you, Chairman Deschampe.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Franken.

Let me just ask one question of Chairwoman Kennedy, Chairwoman Pigsley, and Chairman Garcia. The Department testified of the need for a Carcieri fix to alleviate backlogs of land into trust applications at the Department of Interior. My question to you is, do you support a Carcieri fix? Chairwoman Kennedy?

Ms. KENNEDY. I believe that the issues do need to be resolved. I do support that Tribes have been waiting for years, many for years. We have also pending applications that have not been resolved yet, and I do believe that yes, we need to have an answer.

The CHAIRMAN. Thank you. Chairman Pigsley?

Ms. PIGSLEY. Yes, we support a Carcieri fix. We have sent supporting resolutions when a fix was, it looked like a fix might happen, and a fix be added to another bill. We supported that. And we truly support it and we believe it needs to happen.

The CHAIRMAN. Chairman Garcia?

Mr. GARCIA. Chairman Akaka, we support a Carcieri fix. We believe that all Tribes are Carcieri-afflicted, if not directly, indirectly by means of the additional uncertainty in financial transactions. We believe it has an adverse economic effect on all Tribes. So I believe that the Carcieri issue is much broader than it may be, that more Tribes are affected by it than many may think.

The CHAIRMAN. I want to thank you very much. I am going to submit my other questions for the record, and I know it is getting late. So I want to express my warm mahalo, thank you, to all our witnesses at today's hearing. I truly appreciate how important these bills are to you and look forward to continuing to work with you as we move these bills through the Committee.

Because of the delay in starting the hearing, as I said, I won't be asking any further questions. I will submit them for the record, and to you for your writing on it. Are there any further comments?

Senator FRANKEN. Again, I would like to thank everybody for coming.

The CHAIRMAN. Again, I thank you all so much, but I wanted to finish this hearing, especially to take on your testimonies, so that as we consider these bills, we know we have heard from you and know what positions you have. I can see there are some difficulties. And yet, we use the democratic process, and we call the votes as they come. So that will happen through the Committee, too, but at least we will have your thinking on these questions.

So with that, Senator Franken and our witnesses, this hearing is adjourned.

[Whereupon, at 6:50 p.m., the Committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF MIKE S. BLACK, DIRECTOR, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

S. 356

Chairman Akaka, Vice-Chairman Barrasso, and Members of the Committee, my name is Mike Black, and I am the Director of the Bureau of Indian Affairs. Thank you for the opportunity to present the Administration's views on S. 356, to amend the Grand Ronde Reservation Act to make technical corrections, and for other purposes. The Department of the Interior (Department) supports S. 356.

Taking land into trust is one of the most important functions that the Department undertakes on behalf of Indian tribes. Homelands are essential to the health, safety, and welfare of the tribal governments. Thus, the Department has made the restoration of tribal homelands a priority.

S. 356 amends an Act to establish a reservation for the Confederated Tribes of the Grand Ronde Community of Oregon, Pub. L. No. 100–425 (Sept. 9, 1988), to authorize the Secretary of the Interior to place in trust approximately 288 acres of real property located within the boundaries of the original 1857 reservation of the Confederated Tribes of the Grand Ronde Community of Oregon if the real property is conveyed or otherwise transferred to the United States by or on behalf of the Tribe. Furthermore, the bill provides that the Secretary is to treat all applications to take land into trust within the boundaries of the original 1857 reservation as an on-reservation trust acquisition, and that all real property taken into trust within those boundaries after September 9, 1988, are to be considered part of the Tribe's reservation.

Again, the Department supports S. 356. Thank you for the opportunity to present testimony on S. 356. I will be happy to answer any questions you may have.

S. 908

Chairman Akaka, Vice-Chairman Barrasso, and Members of the Committee, my name is Mike Black, and I am the Director of the Bureau of Indian Affairs. Thank you for the opportunity to present the Department of the Interior's (Department) views on S. 908, a bill to provide for the addition of certain real property to the reservation of the Siletz Tribe.

Taking land into trust is one of the most important functions that the Department undertakes on behalf of Indian tribes. Homelands are essential to the health, safety, and welfare of the tribal governments. Thus, this Administration has made the restoration of tribal homelands a priority. This Administration is committed to the restoration of tribal homelands, through the Department's acquisition of lands in trust for tribes, where appropriate. While the Department is working hard to live up to this commitment, we cannot support S. 908 as currently drafted.

S. 908 would amend the Siletz Tribe Indian Restoration Act, 25 U.S.C. § 711e, to authorize the Secretary of the Interior to place land into trust for the Siletz Tribe. The lands lie within the original 1855 Siletz Coast Reservation and are located in the counties of Benton, Douglas, Lane, Lincoln, Tillamook, and Yamhill, which are all located within the State of Oregon. S. 908 would require that such land would be considered and evaluated as an on-reservation acquisition under 25 C.F.R. § 151.10 and become part of the Tribe's reservation if the county in which the land is located submits a written approval to the Secretary of the Interior. If a county does not approve of land being considered an on-reservation acquisition under 25 C.F.R. § 151.10, the bill provides that any real property taken into trust "shall be considered and evaluated under the appropriate provisions of part 151 of title 25, Code of Federal Regulations (or successor regulations), as determined by the Secretary."

The Department believes its regulations, at 25 C.F.R. §§151.10 and 151.11, already provide sufficient opportunities for state and local units of government to provide views on applications for land to be acquired in trust.

Under those regulations, State and local governments are given a 30 day period to submit written comments concerning jurisdictional problems and potential regulatory conflicts as well as tax impacts that may result from the land acquisition. In addition, state and local governments, as well as the general public, may submit comments related to environmental impacts in the review process under the National Environmental Policy Act (NEPA). These comments may encompass a variety of issues such as social and economic impacts, law enforcement concerns, social services, and environmental concerns. Under NEPA, many local governments serve as "cooperating agencies," and thus participate very closely in the Department's NEPA review process.

Finally, if the Department decides to acquire land in trust, it must publish at least 30-days notice of this decision pursuant to 25 C.F.R. § 151.12(b) prior to acquiring trust title to the land. The 30-day notice period provides an opportunity for interested parties, including state and local units of government, to initiate a legal challenge to the proposed trust acquisition.

The Department does not believe it is necessary to legislatively insert county approval of a particular tribe's fee-to-trust applications into our regulations governing this process. While the Department gives serious consideration to the views of local units of government in processing applications for the acquisition of land into trust, we must also be mindful of the unique and important role the Department plays in managing the relationship between the United States and tribal nations. The decision to acquire land in trust for a tribal nation must ultimately rest with the Secretary in managing that relationship.

In April of this year, the United States Government Accountability Office (GAO) stated that the uncertainty in acquiring land in trust for tribes, as a result of the *Carcieri* decision, is a barrier to economic development in Indian Country. The GAO predicted that, until the uncertainty created by the *Carcieri* decision is resolved, Indian tribes would be asking Congress for tribe-specific legislation to take land in trust, rather than submitting fee-to-trust applications to the Department.

As evidenced by S. 908, this prediction is coming to fruition, and Indian tribes are asking their Members of Congress for tribe-specific legislation to take land in trust. This will lead to a patchwork of laws governing the land into trust process, rather than the uniform process that Congress envisioned in enacting the Indian Reorganization Act in 1934. Such a patchwork would be difficult for the Department to administer.

The Department opposes S. 908 as introduced, but could support the bill if the provisions regarding county approval are removed from the bill. Thank you for the opportunity to present the Department's views on this legislation. I will be happy to answer any questions you may have.

S. 1739

Good afternoon, Chairman Akaka, Vice-Chairman Barrasso, and Members of the Committee. I am pleased to be here today to testify on S. 1739, 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 S. 1739 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 S. 1739 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 (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. S. 1739 incorporates many of the provisions in the Tribal Resolution 146–09.

S. 1739

Section 4 of S. 1739 provides that the Secretary is to reimburse the Minnesota Chippewa Tribe for attorneys' fees, and litigation expenses.

Section 5 of the bill provides the Minnesota Chippewa Tribe with 90 days to submit an updated membership roll for each Band of the Tribe to include the names of all enrolled members of that Band living on the date of enactment of the Act.

After the attorneys' fees and litigation expenses have been disbursed and the Secretary has received the updated membership rolls, Section 5 directs the Secretary to deposit a "per capita account" of $300 for each member enrolled within each Band. Any remaining funds are to be deposited in a separate account and divided equally among the Bands. After the Secretary deposits the available funds into the "per capita account," a Band may withdraw all or part of the monies in its account. All funds in that account 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(d) 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.

Lastly, Section 5(e) provides that, the Secretary shall not retain liability for the expenditure or investment of the monies after they are withdrawn by the Bands.

Department's position on S. 1739

S. 1739 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 S. 1739. 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 S. 1739. 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 S.1739. 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 S. 1739.

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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] 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 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. S. 1739 differs from previous plans to distribute 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. S. 1739 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 Committee, and the sponsors of S. 1739, 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 S. 1739 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.

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

PREPARED STATEMENT OF MARGE ANDERSON, CHIEF EXECUTIVE, MILLE LACS BAND OF OJIBWE INDIANS

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. 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 S. 1739, a bill sponsored by our Senators, Al Franken and Amy Klobuchar.

THE MILLE LACS BAND SUPPORTS S. 1739

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.

The Judgment Fund

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's Decision

Under the Tribe's constitution, the TEC is authorized to make decisions to administer, expend and apportion funds within the control of the Tribe. The members of the TEC—that is, the leaders of the six sovereign tribes that comprise the Minnesota Chippewa Tribe—have devoted thousands of hours and countless tribal resources to come up with a plan for the distribution of the Tribe's judgment fund. *We know the facts, the history, the legal theories and the injustices and the 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. This is not a decision we took lightly or made in haste.

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. S. 1739 would authorize the distribution of the Tribe's judgment fund in accordance with the Tribe's decision.

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.

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.

Reasons for Supporting S. 1739

We have three principal reasons for supporting S. 1739:

1. *Sovereignty and Property Rights.* Senator Franken's bill respects the sovereignty and property rights of the Minnesota Chippewa Tribe.

   In 1998, 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, the Department of the Interior and the Court of Federal Claims. Congress should give 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. 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 the House Interior and Insular Affairs Committee on the distribution of another judgment obtained by the Minnesota Chippewa Tribe in another Indian Claims Commission case. 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 the Mille Lacs Band.

   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 at issue here. The claims were brought by the Tribe, prosecuted 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 august 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 tribal sovereignty. Often this Committee has had to explain tribal sovereignty, 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 finalizing 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.

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. Here we resolved our differences with close to unanimity. We debated and discussed this matter at length. We discussed proposal after proposal. Ultimately, we voted. Five of six bands are in agreement. The Minnesota Chippewa Tribe has spoken as a sovereign, self-governing tribal nation.

Our Tribe's funds, our peoples' funds, are languishing in a trust account in the Department of the Interior—the very agency responsible for the mismanagement that gave rise to our claims in the first place—and we now need the assent of the Congress to access and use our own funds. It is an irony and little legacy of paternalism that should give way to sovereignty, self governance, self determination and respect.

This august body 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, accept the sovereign decision of our Tribe and *give our people . . . our money.*

On behalf of the Mille Lacs Band, we thank our Senators and our two Congressmen for respecting tribal sovereignty. We thank this Committee and you, Mr. Chairman and Mr. Vice Chairman, 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 S. 1739.

Mii gwetch.

JOINT PREPARED STATEMENT OF HON. KEVIN W. LEECY (CHAIRMAN) AND DAVID C. MORRISON, SR. (SECRETARY-TREASURER), BOIS FORTE BAND OF CHIPPEWA

Chairman Akaka and Members of the Committee:

We are, respectively, the Chairman and Secretary-Treasurer of the Bois Forte Band of Chippewa—one of the six constituent Bands of the Minnesota Chippewa Tribe (MCT). Pursuant to the Revised Constitution and Bylaws of the MCT, we sit on the Tribal Executive Committee (TEC). In addition, Mr. Morrison is the Treasurer of the MCT and has served in that position since 1992.

On behalf of the Bois Forte Band, we submit this statement in support of S. 1739. Our support is based on the fact that the distribution of the Nelson Act proceeds reflected in S. 1739 is consistent with the law of the Minnesota Chippewa Tribe and we have both taken an oath to uphold that law.

For us, the distribution of the funds awarded to the Minnesota Chippewa Tribe must be guided by the Constitution of the Tribe. The claims that led to the award were first brought in the name of the Minnesota Chippewa Tribe under the Constitution approved by the Secretary of the Interior on July 24, 1936. From the time of filing until the claims were settled in 1999, decisions about the filing and prosecution of the claims and, ultimately, settlement of the claims, were decisions made by the TEC.

Each of the Bands has two representatives on the Tribal Executive Committee and under our Constitution, it is that body which has the power "to apportion all funds within its control." Although each Band has the power to deal with funds over which it has exclusive ownership or control, there is no doubt that the Tribal Executive Committee has the sole power to make decisions about funds owned by the Tribe as a whole. The funds at issue here are just that: owned by the Tribe as a whole.

Throughout the Tribe's history the Tribal Executive Committee has made decisions about how to apportion funds belonging to the Tribe as a whole. Following the Nelson Act land sales, in the late 1930's vacant and unsold lands on the six Reservations were restored to the ownership of the Minnesota Chippewa Tribe. Proceeds from those lands (primarily lease revenues and timber stumpage) on all of the Reservations were treated as Tribal funds and the Tribal Executive Committee used them to fund Tribal programs. In about 1980, the Tribal Executive Committee decided—by a majority vote—to allow the Reservations to retain the proceeds from leasing Tribal lands on their Reservation. Because of that vote by the Tribal Executive Committee, Leech Lake has been the beneficiary of more that $1 million annually for the last 30 years. Until 1995, the Tribe continued to use timber stumpage from its lands on all Reservations (primarily at Bois Forte) to fund its administrative programs. In 1995, the Tribal Executive Committee—again by majority vote—decided to apportion timber stumpage proceeds to the Reservation on which the timber was located. The point is: the Tribal Executive Committee decided how to allocate Tribal funds.

When the Department of Justice was engaged in settlement discussions with the Tribe's attorneys in 1998, it wanted to be sure that a settlement with the Tribal Executive Committee would be constitutionally sufficient to bind the Minnesota Chippewa Tribe and its constituent Bands. There was never any doubt on the tribal side, but apparently the Department of Justice wanted reassurance and so it asked the Department of the Interior to address the issue. On January 7, 1999, the Department's Associate Solicitor for Indian Affairs responded and concluded that "the TEC has the constitutional authority to make a settlement agreement with the United States and to approve the settlement of these claims which relate to the disposition of tribal lands, interests in land or other tribal assets." If a decision of the TEC was sufficient to settle the claim, its decision on apportionment should also be binding. Under our Constitution, decisions made by a majority vote are the law. The Minnesota Chippewa Tribe is governed by the rule of law and that is why I support this legislation (S. 1739) that gives effect to the Tribe's law.

As Treasurer of the MCT, Mr. Morrison has seen the financial problems that face the Tribe today as a result of its inability to access the funds awarded in 1999. The MCT now has an operating deficit that requires it to access a line of credit, but that would not be necessary if the Tribe is able to be reimbursed its expenses from the claims award. S. 1739 would allow the Tribe to return to financial stability.

Bois Forte is aware of the fact that the Leech Lake Band opposes the distribution formula embodied in S. 1739 and persist in its position that because (as they assert) Leech Lake has incurred the most damages and should receive a share commensu-

rate with those damages. However, neither the actual damages suffered nor the amounts misspent were specified in the Nelson Act settlement. For example, Bois Forte and the other Bands located far from the Consolidated Chippewa Agency could argue that they received a pittance of Nelson Act proceeds while Leech Lake received the lion's share simply because of proximity to the Agency. We have not argued about disproportionate benefit because the hard evidence was never developed in the Court. Similarly, we cannot agree with Leech Lake's claim of disproportionate harm for the same reason—the facts were never decided by the Court.

The Bois Forte Band supports S. 1739 and urges the Committee to adopt it.

PREPARED STATEMENT OF HON. ERMA J. VIZENOR, CHAIRWOMAN, WHITE EARTH TRIBAL NATION

Thank you Mr. Chairman and Members of this important Committee. I am Erma Vizenor, the Chairwoman of the White Earth Tribal Nation. I submit this written testimony in strong support of S. 1739.

We certainly appreciate your scheduling a hearing on this very important legislation for our people. In addition, I want to thank you and Members of the Committee for your efforts to support improvements to the life of all people in Indian Country. We appreciate your hard work and the improvements in many conditions we have seen due to your decisions. We saw firsthand the wide variety of efforts needed for this work when the Committee honored us by holding a Field Hearing at the White Earth Tribal Nation in the fall of 2010. We were very appreciative of being included in this important work.

I want to take a moment now to thank the tireless efforts of Senator Al Franken and Senator Amy Klobuchar of Minnesota for moving this important legislation forward. In addition, I want to thank Cong. Collin Peterson and Cong. Chip Cravaack for sponsoring a companion bill in the U.S. House of Representatives. These four elected officials represent every Member of Congress and Senator who represent all six bands of the Minnesota Chippewa Tribe. I think this is very important to note since they have listened to all sides of this issue for many years, but decided it was important now to support the decision of the governing body of the MCT and sponsor the legislation that would reflect the majority vote for allocating these funds at this time.

This is a critical piece of legislation to the people of the Minnesota Chippewa Tribe. We believe it is the beginning of a chance to heal many wounds that have been present from the issue of timber sales made from Indian reservations throughout Minnesota, particularly at the White Earth Tribal Nation. Did each of us in the settlement get everything we wanted in this compromise?—certainly not. The White Earth Tribal Nation has taken the greatest loss of funds considering that the White Earth Band comprises 50 percent of members of the MCT, and the Results of Research Report sponsored by the Department of Interior determined the best allocation was on a per capita basis by enrollee. We have negotiated and negotiated—we believe we have put forward as many as four or five different alternatives to divide these funds. But we also have listened to our fellow MCT Members, made compromises, and believe this allocation of funds is the fairest for all bands of the MCT and acceptable to the White Earth Tribal Nation.

We are now thirteen years past the date of the settlement of this litigation. The $20 million has not been helping the people of the Minnesota Chippewa Tribe as was intended by the litigation, but has instead been earning 1 percent interest as we have continued to discuss the proper allocation of these funds. While there has been disagreement about the allocation of these funds, our people have gone hungry, lived in cold homes in the winter, and lost opportunities for education, jobs, and other opportunities that might have been available if these funds would have been a part of our budget. We do not want this to continue. We all have made significant compromises to arrive at this point.

Mr. Chairman, I understand one of the six bands of the Minnesota Chippewa Tribe still does not support this bill. However, five bands do support this legislation, and I believe that represents a very strong reason to move forward with the bill very quickly. The present judgment fund was deposited in 1999. There is no reason to delay the distribution any longer.

Thank you for your consideration.

Attachment retained in Committee files

PREPARED STATEMENT OF CHARLES WILKINSON, DISTINGUISHED PROFESSOR/MOSES LASKY PROFESSOR OF LAW, UNIVERSITY OF COLORADO

I express my appreciation to Chairman Akaka, Vice Chairman Barrasso, and members of the Committee for receiving this statement.

I have been actively involved in Indian matters as a practicing lawyer and scholar since 1971. In the 1970s and early 1980s, while I was on the faculty of the University of Oregon Law School, I represented the Siletz Tribe in the passage of the Siletz Restoration Act of 1977 and the Siletz Reservation Act of 1980. My many articles and fourteen books include *Federal Indian Law: Cases and Materials* (with Getches, Williams, and Fletcher) (West; 6th ed., 2011); *Felix S, Cohen's Handbook of Federal Indian Law* (Managing Editor) (Michie Bobbs-Merrill; 1982); *American Indians, Time, and the Law: Native Societies in a Modern Constitutional Democracy* (Yale; 1987); *Messages From Frank's Landing: Salmon, Treaties, and the Indian Way* (University of Washington Press; 2000); and *Blood Struggle: The Rise of Modern Indian Nations* (W.W. Norton (2005). My most recent book is a comprehensive history of the Siletz Tribe, *The People Are Dancing Again: A History of the Siletz Tribe of Western Oregon* (University of Washington Press; 2010), in which I explored in depth the basic issues involved in Senate Bill 908.

It is my understanding that a question has arisen as to whether the Grand Ronde Tribe, and perhaps other tribes, have a legal interest in the Siletz Reservation. I will address that issue here.

The events of the mid-19th century in Western Oregon were tumultuous and enormously complicated, but the legal results that emerged from that era are straightforward insofar as Senate Bill 908 is concerned. The Federal Government moved more than 30 tribes and bands to the Siletz Reservation, established by Executive Order on November 9, 1855; President Pierce took this action under authority granted to him by the Table Rock Treaty of September 10, 1853 and other Western Oregon treaties. Later, by Executive Order of June 30, 1857, President Buchanan proclaimed the Grand Ronde Reservation; he did this pursuant to authority granted to him by the Treaty with the Willamette Valley Tribes of January 22, 1855, and other Western Oregon treaties. The Federal Government moved Western Oregon Indians to that reservation also. All of this was haphazardly done. For many of the tribes and bands, some of their people went to the Siletz Reservation and some went to the Grand Ronde Reservation. In some cases, members of individual families ended up on one reservation with other family members on the other reservation.

Over the years, the Federal Government felt an increasing need to facilitate ease of administration and create legal order out of the complex and often chaotic settlement of the two reservations. The Siletz Tribe and Grand Ronde Tribe each became known as a confederation of the tribes on its reservation, with the people on each reservation being members of the respective confederated tribes. Each confederated tribe was acknowledged to be a separate federally recognized tribe. Later, the BIA developed tribal rolls for each of the tribes. In the Western Oregon Termination Act, each tribe had its own separate roll. Then, a generation later, each tribe was restored by separate legislation with separate tribal rolls. Today the United States continues to recognize the Confederated Tribes of Siletz Indians and the Confederated Tribes of Grand Ronde as two separate tribes with separate rolls.

This process of forcibly moving tribes from their homelands, placing several tribes on one reservation, and amalgamating individuals in one confederated tribe, in addition to being cruel, was ethnologically and politically arbitrary in terms of deviating from traditional tribal identities. Yet there is no question about Congress' broad constitutional authority to take such action. Similar historical progressions have led to other confederated tribes across the nation, especially in the Northwest.

If passed, Senate Bill 908 would declare that future fee-to-trust applications by the Siletz Tribe for property within the boundaries of the original 1855 Siletz Reservation would be treated as on-reservation acquisitions. No other tribe has a legal interest in this kind of proposal, just as the Siletz Tribe would have no interest in a similar proposal made by another tribe.

In my judgment, this bill is a most worthy initiative. The land within the magnificent 1855 Siletz Reservation was taken from the tribe illegally or under intense coercion. Recognizing the 1855 boundaries in this fashion provides some measure of long-due justice.

PREPARED STATEMENT OF HON. DONALD L. FRY, CHAIRMAN, CONFEDERATED TRIBES OF THE LOWER ROGUE

Chairman Akaka, Co-Chairman Barrasso, Members of the Committee;

I am Donald L. Fry. I am an enrolled member and Chairman of the Confederated Tribes of the Lower Rogue. I am honored to represent the Chetco and Tututni peoples.

We have concerns with S. 908 and how it will impact our restoration efforts.

The members of the Confederated Tribes of the Lower Rogue are the descendants of the Chetco and Tututni Indians who resided in southwestern Oregon since time immemorial. After disease and violent clashes with invading settlers decimated SW Oregon's tribes, the surviving Indians were forcibly removed north to the "Coast Reservation" in the mid-1850s. Some Chetco and Tututni hid to avoid to the bounty hunters who tracked us, or escaped the reservation and came back when it was safe to do so. These resilient Indians—the ancestors of our Tribe's current members—remained in our traditional homelands.

The Federal Government has acknowledged our tribal existence since at least the 1850s, as evidenced by treaties signed with our ancestors in 1851 and 1855.

In 1954, the Federal Government terminated its relationship with the Chetco and Tututni, along with almost sixty other Western Oregon tribes and bands. By the 1970s, tribal termination had been discredited and was no longer federal policy, and between 1977 and 1989, Congress restored federal recognition to six terminated Oregon tribes: Confederated Tribes of Siletz; Confederated Tribes of the Grand Ronde Community of Oregon; Klamath Tribes; Cow Creek Band of Umpqua Indians; Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians; and Coquille Tribe.

We have been pursuing our goal of restoring federal recognition of our Tribe for over sixteen years. While we struggle to obtain the political support needed to introduce a restoration bill, the Confederated Tribes of the Lower Rogue are organized as a non-profit 501(c)(3) organization and work tirelessly to preserve our history and culture.

For these reasons, we urge the Committee not to proceed with further consideration of S. 908 until the issues affecting our concerns for clarifying our Tribe's Federal status can be identified and resolved.