

TESTIMONY OF REPRESENTATIVE COLLIN PETERSON
BEFORE THE
U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON NATURAL
RESOURCES
HEARING ON
H.R. 1272, MINNESOTA CHIPPEWA TRIBE JUDGMENT FUND
DISTRIBUTION ACT
March 1, 2012

Good Morning Chairman Young, Ranking Member Boren, and Members of the Subcommittee on Indian and Alaska Native Affairs, thank you for this opportunity to discuss H.R. 1272, the Minnesota Chippewa Tribe Judgment Fund Distribution Act.

BACKGROUND

Thirteen years ago, the United States Court of Federal Claims awarded and appropriated \$20 million to the Minnesota Chippewa Tribe. This settlement appropriation was to compensate the descendants of the Chippewa Indians of Minnesota for the improper valuation of timber and the taking of land under the Nelson Act of 1889. Now, because of the Indian Judgment Fund Act of 1983, Congress must pass legislation detailing how the settlement should be distributed among the six Bands that make up the Minnesota Chippewa Tribe.

My position has always been that Congress should not take an active role in these types of issues. I believe that all of the Bands should come to an agreement on how to distribute this award and only then should Congress get involved. Unfortunately, after thirteen years the Bands are still unable to agree. Although I am dismayed that a unanimous resolution has not yet been achieved, I think H.R. 1272 is the best and most realistic compromise to release this long overdue settlement to people that really need it, the members of the Minnesota Chippewa Tribe.

The Department of the Interior has properly followed the process laid out in the Indian Judgment Funds Act. In their 2001 "Results of Research Report," the Department of the Interior concluded that had the Chippewa Indians of Minnesota received just compensation for their land and timber in the first place, the money would have been distributed per capita under the Nelson Act. This led the Department of Interior to conclude that the current judgment fund should be divided pro rata among the six Bands based upon the number of currently enrolled

tribal members. I agreed with these findings and so in 2007 when the Department of the Interior sent draft legislation to implement its findings to Congress, I introduced it as H.R. 2306, the Minnesota Chippewa Tribe Judgment Fund Distribution Act.

However, the Minnesota Chippewa Tribe expressed opposition to the Department of Interior's legislation so I encouraged all six Bands to go back to the table and work on another resolution. They came back in 2009 with Resolution 146-09, which is what H.R. 1272 is based on.

H.R. 1272, MINNESOTA CHIPPEWA TRIBE JUDGMENT FUND

The Minnesota Chippewa Tribe Judgment Fund Distribution Act, H.R. 1272, authorizes the Secretary of the Interior to release the funds plus interest earned that were appropriated into a trust for the Minnesota Chippewa Tribe in 1999. Being the expenses for prosecuting the Minnesota Chippewa Tribes claims were shared equally by all six Bands these expenses should be expended equally from the fund. H.R. 1272 requires each of the six Bands to provide the Secretary with updated membership rolls and directs the Secretary to set aside \$300.00 to each member enrolled, and then, divides the remaining funds into equal shares for each Band.

It is important to note that H.R. 1272 does not need an appropriation and has no budgetary impact because the \$20 million settlement proceeds were appropriated and paid to the Minnesota Chippewa Tribe in 1999. At the time the judgment was entered into, the funds were placed in trust and as a result of that judgment are no longer considered government funds; the funds that are held in trust are considered the property of the beneficiary, not the government. The Supreme Court explained in *United States v. Dann*, "'payment' occurs . . . when funds are placed by the United States into an account in the Treasury of the United States for the Tribe."

Distribution of the Minnesota Chippewa Tribe's funds would not be considered an "earmark" under any definition as no new spending is "provided," "authorized," or "recommended" through H.R. 1272. The funds were appropriated and spent when they were deposited in a trust fund for the benefit of the Minnesota Chippewa Tribe back in 1999. Because the fund already belongs to the Minnesota Chippewa Tribe, such legislation is neither an appropriation nor an earmark, and is not included in the U.S. Budget.

SOVEREIGN RIGHTS

Some have alleged that the pro rata and equal shares distribution formulas undermines the sovereign rights of the individual Bands that make up the Minnesota Chippewa Tribe. Although the Minnesota Chippewa Tribe is the umbrella organization, all six Bands are also federally recognized Indian entities. Each of the six Bands, along with the Minnesota Chippewa Tribe, is "acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States," according to the Department of the Interior.

Each of the six Bands also participates individually in the Title IV Self-Governance program—something the Minnesota Chippewa Tribe does not. These facts make it very clear that from the perspective of the federal government, the Minnesota Chippewa Tribe is an Indian tribe made up of six Indian tribes. So when we talk about the sovereignty of Indian tribes, it is important to remember that it is not only the wishes and views of the Minnesota Chippewa Tribe that must be respected, but the wishes and views of all of its component Bands as well.

It is with these thoughts in mind that we must go back to the original U.S. Court of Federal Claims judgment that specifically states it is the Tribal Executive Committee that has the constitutional authority to enter into the proposed settlement on behalf of the Minnesota Chippewa Tribe. It is not my decision to entrust the distribution of these funds to the Minnesota Chippewa Tribe but rather the U.S. Court of Federal Claims and the agreement of all six Bands to bring this case against the United States government using their umbrella organization, the Minnesota Chippewa Tribe.

Rep. Cravaack and myself are simply fulfilling our obligation to the majority of the Minnesota Chippewa Tribal members and respecting the wishes of the majority of sovereign Bands wishing to move forward in the releasing of these funds.

CONCLUSION

I think it is high time that this settlement is finally distributed and put to work within these communities. The sooner we resolve this issue the sooner these funds can be released and go to work within these economically depressed areas. There is a great need on these Reservations for things like schools, health care facilities and infrastructure improvements. If the six Bands remain unable to agree, Congress will more than likely not act and the money will continue to sit in a bank account in Washington, doing no good for anyone.

In a perfect world I would have liked to see all six Bands be in unanimous agreement on how these funds should be distributed, we cannot allow the perfect to be the enemy of the good. We have been working towards a unanimous agreement for thirteen years now. It makes no sense for anyone to draw a hard line position when, judging from experience, no hard line position has any chance of succeeding. It is time for everyone to come together and find an agreement that maybe not everyone will love, but everyone can benefit from.

Thank you for the opportunity to be here today.