

**TESTIMONY OF
MIKE S. BLACK
DIRECTOR OF THE BUREAU OF INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
ON
S. 356, TO AMEND THE GRAND RONDE RESERVATION ACT**

FEBRUARY 2, 2012

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.

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MIKE S. BLACK
DIRECTOR OF THE BUREAU OF INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
ON
S. 1739, MINNESOTA CHIPPEWA TRIBE JUDGMENT FUND DISTRIBUTION ACT**

FEBRUARY 2, 2012

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.

¹ By letter dated May 22, 2008, then-Assistant Secretary of Indian Affairs, Carl Artman, rescinded the June 6, 2001 Results of Research Report which forms the basis for H.R. 2306.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

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

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.

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.

**TESTIMONY OF
MIKE S. BLACK
DIRECTOR OF THE BUREAU OF INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
ON
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.**

FEBRUARY 2, 2012

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 *Carciari* decision, is a barrier to economic development in Indian Country.¹ The GAO predicted that, until the uncertainty created by the *Carciari* 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.

¹ See, Testimony of Anu K. Mittal, Director, Natural Resources and Environment, *Observations on Some Unique Factors that May Affect Economic Activity on Tribal Lands*, Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform, Committee on Oversight and Government Reform, U.S. House of Representatives (April 7, 2011) at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=112_house_hearings&docid=f:68049.pdf, 70-71.