

TESTIMONY  
OF  
NORMAN W. DESCHAMPE

Before the

Senate Indian Affairs Committee

February 2, 2012, at 2:15 p.m.

Room SD-628 Dirksen Senate Building

Legislative hearing on

**S. 1739 (Franken):** 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.

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 Goggeye 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 Goggeye 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.