

Testimony of Millard J. (Sonny) Myers
Before the Senate Committee on Indian Affairs
June 3, 2003

Mr. Chairman, members of the Committee, my name is Sonny Myers. I am the Executive Director of the 1854 Authority in Minnesota.

The 1854 Authority is a tribal organization created by the Bois Forte and Grand Portage Bands of the Minnesota Chippewa Tribe. The purpose of the 1854 Authority is to manage, regulate, preserve and protect the natural resources that are subject to the rights reserved in the Treaty of September 30, 1854.

Along with the Fond Du Lac Band, the Grand Portage and Bois Forte Bands reserved the right to hunt, fish and gather in the approximately 5 million acres ceded to the United States in the Treaty of 1854. For reference, the ceded territory is the "arrowhead" of Northeastern Minnesota. The area contains a great deal of public land, including the Boundary Waters Canoe Area Wilderness and nearly all of the Superior National Forest. The Bands reserved the right in the Treaty of 1854 not only because the area contained the fish, game and plant resources that supported a subsistence lifestyle, but also because the area was a historic homeland containing sites that were then, and remain today, significant in Chippewa history and culture.

The 1854 Authority is 15 years old and, as a result, can speak directly to the status of this fish and wildlife management program. In short, the 1854 Authority is slowly but surely beginning to feel the effects of funding that remains relatively level while expenses increase. For example, when my predecessor testified before this Committee 10 years ago, we employed five (5) conservation officers to patrol 5 million acres. Today we have four (4), and as the cost of health insurance, liability insurance, gas and nearly everything else increases, we may soon be faced with cutbacks in hours or positions. We appreciate that Congress has consistently

earmarked funds for the 1854 Authority in the Interior appropriation, and those funds are the lifeblood of the Authority. The level of funding, however, has never been enough to enable the Authority to develop a program that fully meets the needs of the Bands.

Additional funding would allow the Authority to take a more substantial role in fish and wildlife research, in long-term planning by various public and private non-profit entities, and in habitat improvement projects. Our participation in habitat projects has been limited but successful. The limitation is due not to a lack of need but to a lack of funds. The success has been because we have joined with other agencies and entities and thereby made our Circle of Flight funds go much further. In the opinion of the Authority, the Circle of Flight program has been an extremely cost effective way to do projects with lasting impact on fish and wildlife resources. The Authority urges Congress to make that program permanent and to fund it at a level that will allow us to realize significant gains in project numbers and size.

The Circle of Flight Program is one example of efficient use of funds to improve habitat used both by those exercising treaty-reserved rights and others. Because of the federal land holdings in the ceded territory, the 1854 Authority has many opportunities to join with federal land managers on projects that are mutually beneficial. Our opportunities are limited, however, by the fact that we have little to “bring to the table.” More funding would mean that two or more contributors would be able to do something that one alone found impossible. It should be emphasized that the benefits of projects in which the 1854 Authority has been able to participate are realized not only by tribal members but by all who take advantage of recreational activities on public lands and waters.

Environmental review and compliance is an area of concern for the 1854 Authority. Federal actions, state actions and private activities subject to federal and state permitting all have a potential impact on treaty resources. One of the obligations of the 1854 Authority is to protect those resources and, whenever possible, ensure that the actions of others either avoid negative impacts on treaty resources or are mitigated. To fulfill that obligation, we need staff

that can review proposed actions from a tribal prospective and provide comments to state, federal and local decision-makers. Proposals such as a Superior National Forest Management Plan or a State forest management plan have a multitude of implications for fish, game and wild rice populations, and today the 1854 Authority lacks the funds – and staff – to be confident that treaty resources are being protected adequately. Similarly, the Authority needs more funding to be able to participate in long-range planning efforts such as the Lake Superior Bi-National Program. A basin-wide effort to evaluate the source and impact of toxins on a fishery that is vital to treaty fishermen, that program is one in which the Authority would actively participate if it had the staff.

During the fifteen years the 1854 Authority has been in existence we have seen the Bureau of Indian Affairs continue to focus on trust resources on the reservations. While that is certainly a necessary part of the government's trust responsibility, too often it has resulted in the subordination of off-reservation ceded territory resources when it comes to funding. Most recently, the furor over historic accounting claims has diverted resources away from programs – like ours – which are more forward-looking. The Congress should consider action which will resolve past wrongs behind us and allow the BIA to refocus on the future. There is much to be done in both areas, but we believe that generations which follow will benefit from a renewed effort to protect and enhance the natural resources that will provide subsistence in the future.

The final point the 1854 Authority wants to make is that Congress needs to strengthen the role of entities such as ours in terms of our relationship with federal agencies. As I mentioned earlier, resources in the ceded territory are managed by many, and the 1854 Authority often tries to influence them to do no harm – or at least minimize the harm – to treaty resources. Those land managers – including federal land managers – rarely consider the Authority to be a voice it should listen to with care. We are lumped with “special interests” and the fact that a treaty resource may be impacted is of little consequence. Federal agencies like the Forest Service pay only lip service to the trust responsibility of the United States to protect

treaty resources. It is discouraging when there is only perfunctory “consultation” and little substantive attention given to how a federal action affects treaty resources both long and short term. The Authority suggests that Congress mandate federal agencies to recognize tribal regulatory bodies such as ours and give us a seat at the table when decisions affecting trust resources are made.

An example of the different treatment of tribal entities which manage and regulate off-reservation treaty resources can be found in the Federal law known as the Lacey Act Amendment, of 1981, 16 USC §§ 3371 to 3378. That law makes it a federal offense to import, export, transport, sell, receive, acquire, or purchase fish or wildlife or plants taken, possessed, transported, or sold in violation of Federal law or in violation of any Indian tribal law. “Indian tribal law”, however, is defined by statute as being tribal rules or regulations applicable within Indian country as defined in 18 U.S.C. § 1151. That means, essentially, reservations. As a practical matter it means that tribal rules applicable in a ceded territory – where perhaps a major part of hunting, fishing and gathering is occurring - are relegated to second – class status. A simple amendment to the definition of “Indian tribal law” in the Lacey Act Amendments would mean that the treaty resources in the ceded territory would have the same protection as resources on the reservation. If the Secretary of the Interior truly wants to protect resources that she has a trust responsibility to protect she should support that amendment and then, use existing law to deputize tribal conservation offices with authority to enforce Federal conservation laws. This would be a small step towards elevating the role of the 1854 Authority in management of trust resources, but it would be an important step in terms of Congressional recognition that off-reservation trust resources are as important as those within reservations.

In summary, the status of our fish and wildlife program is that funding shortfalls cause us to do the bare minimum. We need the funding to do what we must to protect the resources that

make the treaty rights meaningful. Along with funding, we need the other governmental resource managers to recognize that we have a place in the management of the resources.

Thank you for the opportunity to present testimony to the Committee on behalf of the 1854 Authority and the Grand Portage and Bois Forte Bands.