

**Testimony of President Doreen Blaker  
Keweenaw Bay Indian Community  
Senate Committee on Indian Affairs  
Legislative Hearing  
S. 195, Keweenaw Bay Indian Community Land Claim Settlement Act  
Wednesday, May 3, 2023**

**Introduction**

Chairman Schatz, Vice Chair Murkowski, and honorable Members of the Senate Committee on Indian Affairs, my name is Doreen Blaker and I have the honor of serving as President of the Keweenaw Bay Indian Community (“Community”, “KBIC”, or “Tribe”). Thank you for the opportunity to provide testimony on S. 195, the Keweenaw Bay Indian Community Land Claim Settlement Act (“KBIC Settlement Act”), which would provide compensation to the Community for the taking of land by the United States inside the exterior boundaries of our L’Anse Indian Reservation. This land was guaranteed to the Community as a permanent home under a treaty signed in 1854 without just compensation. The takings were facilitated by two federal statutes and achieved by the federal government’s lack of protection of these treaty-protected lands.

The Keweenaw Bay Indian Community is located on the L’Anse Indian Reservation, in Baraga County, Michigan on the shores of Lake Superior’s Keweenaw Peninsula. The L’Anse Reservation is the oldest and largest reservation within the state of Michigan. Our ancestors dwelt, hunted, fished, and gathered for hundreds of years in the forests, lakes, and wetlands near the Keweenaw Bay in the Upper Peninsula of Michigan.

**Treaties**

The expansion of the western frontier and the federal government’s growing interest in the mineral resources of the south shore of Lake Superior led the United States to approach our ancestors and convince them to sign the 1842 Treaty of LaPointe (7 Stat. 591) (“1842 Treaty”) and the 1854 Treaty of LaPointe (10 Stat. 1109) (“1854 Treaty”). The main goal of these treaties, from the perspective of the federal government, was the cession of our people’s lands for the expansion of the United States. In return the treaties guaranteed our Tribal Nation certain Constitutionally protected rights including usufructuary rights to the ceded territory, and the right to all of the lands within the exterior boundaries of the L’Anse Indian Reservation.

***1842 Treaty***

The 1842 Treaty addressed mineral rights and provided for the cession of lands west and south of Lake Superior, including those in the Keweenaw Bay area. However, the terms of the 1842 Treaty were specific and unequivocal regarding our ancestors’ rights to continue to occupy, hunt, fish, and gather in our homelands located within the ceded territory, including the Keweenaw Bay area.

***1854 Treaty***

The 1854 Treaty provided that the signatory bands would transfer extensive and valuable land claims in Michigan and Wisconsin in exchange for permanent reservations in their ancestral homelands. In addition, it described the L’Anse Reservation, which was reserved for KBIC, by its exterior boundaries. Both the United States and the Community understood that all land

within these boundaries was reserved for the sole use of our people. Article 11 of the 1854 Treaty expressly provided that “the Indians shall not be required to remove from the homes hereby set apart for them.” This was an incredibly important promise to my people. As ethnohistorians James McClurken and Heather Howard confirmed through their research, my ancestors understood the establishment of the L’Anse Reservation as recognition of their existing claims to use and occupancy within the Keweenaw Bay area, and assurance that they would never have to remove or be removed from their reservations. See “Canal Lands on the L’Anse Reservation and Chippewa Use and Occupancy of the Keweenaw Bay Region” authored by James McClurken, Ph.D. and Heather Howa Howard, Ph.D., at p. 218. Article VI, Clause 2 of the United States Constitution recognizes that treaties are the “supreme law of the land.” Therefore, the Community has rights to the L’Anse Indian Reservation that are both recognized and protected by the United States Constitution.

### **Broken Promises**

Unfortunately, the promises made through these treaties were not kept and in the latter half of the 19<sup>th</sup> Century and early in the 20<sup>th</sup> Century, various lands within the boundaries of the L’Anse Indian Reservation were wrongfully transferred from the United States to the State of Michigan (“State”) through the Act of September 28, 1850 (“Swamp Land Act”) (9 Stat. 519, chapter 84) and the Act of August 26, 1852 (10 Stat. 35, chapter 92) (“Canal Land Act”). These takings took place under these two statutes but the actual transfer of lands spanned more than three-quarters of a century.

### ***Swamp Land Act***

In 1850, Congress enacted Swamp Land Act, which authorized the State of Arkansas and other States, including the State of Michigan, to “construct the necessary levees and drains, to reclaim” certain unsold “swamp and overflowed lands, made unfit thereby for cultivation.” Shortly after the signing of the 1854 Treaty, the State of Michigan began demanding that the federal government issue it patents to wetlands within the L’Anse Reservation on grounds that the Swamp Lands Act granted such lands to the State. For many years, the federal government flatly rejected Michigan’s contentions and the United States General Land Office (“GLO”) refused to issue patents to Michigan.

The United States Department of the Interior informed Michigan that the State’s submission of a swamplands list did not obligate the United States to issue patents for such lands where the land was occupied and appropriated for the Indians. The United States Supreme Court ratified the legal rationale of this position in a 1906 decision, *Wisconsin v. Hitchcock*, 201 U.S. 202, holding that the signatory bands to the 1854 Treaty had never abandoned their physical presence or right of occupancy to the lands confirmed as their “permanent reservations” under the 1854 Treaty and this trumped any statute granting any portion of reservation lands to the states.

Unfortunately for unknown reasons, the GLO nonetheless eventually patented 2,743 acres of the Community’s land within the L’Anse Indian Reservation (“Reservation Swamp Lands”) to the State of Michigan between 1893 and 1937. These patents not only violated federal law, they subverted the established policies of the Department of the Interior and the Indian Affairs Office with respect to the creation of the L’Anse Indian Reservation through the 1854 Treaty. The right of the Community to the Reservation Swamp Lands had not been extinguished when the United

States patented these treaty-protected lands to the State, nor has the Community received just compensation for the taking of these lands in violation of the Fifth Amendment of the U.S. Constitution.

### ***Canal Land Act***

The Community was also dispossessed of more than 1,300 acres of land that was reserved for the L'Anse Indian Reservation and set aside in the 1854 Treaty through a separate federal statute. In 1852, Congress enacted the Canal Land Act, to help finance the construction of the Sault Ste. Marie Canal at the Falls of the St. Mary's River, to connect Lake Superior to Lake Huron. Pursuant to the Canal Land Act, the United States granted the State the right to select 750,000 acres of unsold public land within the State to defray the cost of construction of the Sault Ste. Marie Canal. The State identified and selected, among other land, a minimum of 1,333.25 and up to 2,720 acres within the exterior boundaries of the L'Anse Indian Reservation ("Reservation Canal Lands").

Through carelessness, expediency, or worse, the Department of the Interior approved the State's land selections, including the Reservation Canal Lands, after ratification of the 1854 Treaty. The Secretary noted that the approval was "subject to any valid interfering rights." As a result, the 1854 Treaty set apart from the public domain the Reservation as of September 30, 1854, which preceded the date on which the State established legally effective title to the Reservation Canal Lands. The L'Anse Reservation lands were withdrawn from sale by the order of the President on March 7, 1855, but the title to the "canal lands" selected by Michigan, including those within the L'Anse Reservation, was transferred to the Canal Company in accordance with the orders of the Michigan Attorney General.

### ***KBIC Land Claims & Its Approach to Resolution***

The United States, through the actions of the GLO, deprived the Community of the exclusive use, occupancy, and property right to the Reservation Swamp Lands and the Reservation Canal Lands within the L'Anse Indian Reservation, without just compensation as required under the Takings Clause of the Fifth Amendment to the Constitution of the United States. The Community presented these claims to the Department of the Interior by providing a legal analysis and ethnohistorical reports supporting these claims. In December 2021, the Department of the Interior stated that "We have carefully reviewed pertinent documents, including the Tribe's expert reports, and have determined that the Tribe's claims to the Swamp Lands and Canal Lands have merit."

### ***Impact of Loss of Lands***

The uncompensated loss of Reservation Swamp Lands and the Reservation Canal Lands has impacted the exercise by the Community of cultural, religious, and subsistence rights on the land; caused a harmful disconnect between the Community and its land; impacted the ability of the Community to fully exercise its economy within the Reservation; and had a negative economic impact on the development of the economy of the Community.

### ***KBIC Efforts to Resolve Claims***

The Community has strengthened its efforts to resolve these longstanding land claims in the last few years. In the spirit of cooperation, we worked closely with our neighboring communities, the

State of Michigan, the Department of the Interior, and our U.S. Congressional Delegation to develop the Keweenaw Bay Indian Community Land Claim Settlement Act. This bipartisan, bicameral legislation was introduced on January 31, 2023, by Senators Gary Peters and Debbie Stabenow (S.195), and the House companion bill (H.R. 650) was introduced by Representative Jack Bergman. The Community understands that our neighbors who currently hold this land have clean hands and we do not seek to disturb their ownership. However, the Community is still entitled to just compensation. The Tribal Council sought this approach because we believe in an approach to justice that restores harmony and relationships while making the aggrieved whole. The Keweenaw Bay Land Claims Settlement Act achieves this goal by ensuring that our neighbors are not harmed, the Community is made whole, and harmony amongst our collective communities is preserved.

### ***KBIC Settlement Act***

The KBIC Settlement Act acknowledges the Federal Government's uncompensated taking of the Reservation Swamp Lands and the Reservation Canal Lands and provides compensation to the Community for those takings. The legislation also resolves issues related to the title of those lands. Through the taking of our treaty-protected tribal lands, certain non-Indian individuals, entities, and local governments now occupy land within the boundaries of the Reservation. The Community believes that the ownership interests in Reservation Swamp Lands and Reservation Canal Lands were acquired in good faith by the current land owners. For this reason, our legislation extinguishes all claims by the Community to the Reservation Swamp Lands and the Reservation Canal Lands and confirms the ownership by the current landowners. Finally, the bill extinguishes all potential claims by the Community against the United States, the State, and current landowners concerning title to, use of, or occupancy of those lands.

### ***Support for the Bill***

Our neighboring communities—Baraga County, the Village of Baraga, and the Village of L'Anse—support this legislation; Michigan Governor Gretchen Whitmer expressed her strong support for the legislation; and the Department of the Interior stated that “the Tribe’s claims to the Swamp Lands and Canal Lands have merit.” This broad and bipartisan support is a testament to the Community’s non-adversarial approach to our claims and our neighbors’, elected leaders’, and friends’ willingness to listen and understand this history. Our Council is immensely proud of how far we have come to finally obtaining the justice that our Tribe has long sought.

### **Conclusion**

In closing, the Keweenaw Bay Indian Community would like to express our utmost gratitude to Senator Peters and Senator Stabenow for introducing the KBIC Settlement Act in the Senate, as well as Representative Bergman for introducing companion legislation in the House. The Community also very much appreciates the Committee holding this legislative hearing on the bill. Enactment of the KBIC Settlement Act would have wide-reaching benefits. KBIC would finally be compensated for the taking of our invaluable lands and the resulting missed opportunities; our neighbors would have clear title to their lands; and the State and federal government would right a historical wrong.