



## Leech Lake Band Of Ojibwe

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*Kyle Fairbanks, District I Representative*

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### **TESTIMONY OF LEONARD FINEDAY, SECRETARY-TREASURER LEECH LAKE BAND OF OJIBWE**

#### **BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS**

#### **LEGISLATIVE HEARING TO EXAMINE, S. 616, THE LEECH LAKE RESERVATION RESTORATION ACT TECHNICAL CORRECTION**

**JULY 12, 2023**

Good afternoon Chairman Schatz, Vice Chair Murkowski and Members of the Committee. My name is Lenny Fineday, and I am honored to serve as Secretary-Treasurer of the Leech Lake Band of Ojibwe (“Leech Lake” or “Tribe”).

The Leech Lake Band of Ojibwe is a Federally recognized Indian tribe with approximately 10,000 Tribal citizens and a Reservation located almost wholly within the Chippewa National Forest.

I’m here today to speak to the need for the Leech Lake Reservation Restoration Act Technical Correction and to briefly share the appalling history of illegal takings and loss of land from the Leech Lake Reservation.

I first want to thank Senator Smith and this Committee for your efforts to enact the Leech Lake Reservation Restoration Act (“LLRRA” or “Restoration Act”), which directs Secretary of Agriculture to return “approximately 11,760 acres” of lands under control of the Chippewa National Forest (“CNF”) and located within Cass County, Minnesota to the Interior Secretary to be held in trust for the benefit of the Leech Lake Band of Ojibwe.

The Restoration Act is the culmination of generations of work by hundreds of people to restore a small portion of our homelands. Restoring our homelands has been Leech Lake’s focus for more than a century.

The Restoration Act and the Technical Correction will enable Leech Lake to address the severe housing needs of our citizens, improve access to wild rice beds and culturally significant areas of our Reservation, and restore a sense of justice to our people.

The Leech Lake Reservation was established through a series of treaties and executive orders dating from 1855 to 1874. As this Committee knows well, the United States did not give us our lands or Reservation. Instead, through these treaties we ceded millions of acres of our homelands to help establish what is now the State of Minnesota. In return, the United States promised that the Leech Lake Reservation, which included more than 550,000 acres of surface lands and more than 300,000 acres of lakes, would serve as our permanent home.

However, shortly after the last executive order was signed to finalize the boundaries of the Leech Lake Reservation, Congress enacted a series of laws designed to take our lands, dismantle our government, and destroy our way of life.

Below is a more detailed discussion of the history of these takings, which started with the Nelson Act of 1889, the establishment of the Minnesota Forest Reserve and later the Chippewa National Forest – which were carved out of our Reservation, the Weeks Act of 1911, and a series of administrative takings termed “Secretarial Transfers” that occurred in the 1940s and 50s.

As a result of these takings, only 29,000 of the original 550,000 acres remain in trust. This is less than five percent of the Reservation that treaties promised would be our permanent home.<sup>1</sup> Many Leech Lake trust/allotted lands are swamplands and not suitable for housing, infrastructure, or economic development. The U.S. Forest Service and the state of Minnesota now hold most of the usable lands within the boundaries of the Leech Lake Indian Reservation.

The Restoration Act focused restoration on the Secretarial Transfer lands that Interior illegally transferred without consent of the Indian landowners to the Chippewa National Forest through a series of transfers in the 1940s and 50s. The Interior Solicitor found that the transfers violated the Indian Reorganization Act, and the illegal transfers stopped in the late 1950s.

The Tribe and individual tribal members sought to restore the lands through various efforts, including litigation, but a federal court found that the claims were time barred<sup>2</sup> - and only Congress could accomplish the restoration.

The need for this Technical Correction arose during implementation of the Restoration Act. As the agencies worked to identify parcels for restoration, the BLM Indian Land Surveyor completed an audit of all Chippewa National Forest land holdings within Cass County. He discovered that the illegal Secretarial Transfers were more widespread than initially estimated.

Instead of the “approximately 11,760 acres” listed in the Restoration Act, the surveyor found 16,122 acres were acquired by the Forest Service through Secretarial Transfers. The injustice that took place more than a half century ago was clearly underestimated. And that’s why we are back before this Committee today.

I truly want to thank BLM for its transparency, the Forest Service for its partnership throughout this process, and Senators Smith and Klobuchar for introducing the Technical Correction. The Technical Correction simply amends the Restoration Act to meet the original intent of the Act, which is to restore all the lands that were wrongly taken by the United States from our Reservation.

The additional lands that would be impacted by the Technical Correction are located within Cass County. The County passed a resolution in 2017 that it did not oppose the Restoration Act and it stands by that position for purposes of the Technical Correction.

In addition, Leech Lake entered into an “Agreement Regarding Existing Electric Utility Easements on Lands Subject to the Leech Lake Band of Ojibwe Reservation Restoration Act” with Beltrami Electric Cooperative, Inc., Crow Wing Cooperative Power and Light Company, and Lake Country Power on September 17, 2020.

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<sup>1</sup> A current day map of the Reservation and the overlapping boundaries of the Forest is attached below.

<sup>2</sup> See *United States v. Mottaz*, 476 U.S. 834, 851 (1986).

The Agreement clarifies the rights of the three Rural Utilities to continue to provide services to Leech Lake citizens on all lands “administratively transferred from the National Forest Service to the Secretary of the Interior and held in trust for the benefit of the Band pursuant to the Act.” These rights include their ability to access and service existing utility easements and related infrastructure to ensure that the electric transmission and distribution systems of the Rural Utilities continue to provide safe, reliable, and affordable electrical services to all residences and businesses located on the Reservation. As noted above, the Agreement applies to all lands that will be transferred pursuant to the Restoration Act, including any amendments made to the Act. We appreciate the strong relationship we have with the rural utilities and the critical services they provide throughout our Reservation.

Our lands – our Reservation – are the very foundation of the Leech Lake Tribal Government’s sovereignty. After a century of targeted takings, the Restoration Act and the Technical Correction represent the most significant pieces of land restoration in our history. The lands that would be restored to the Leech Lake Reservation will help the Tribe address the severe housing needs of our citizens, address needs for community and economic development, and provide access to places of cultural importance to better enable our citizens to exercise treaty rights, conduct ceremony, and maintain our way of life.

In closing, I want to thank the Committee for its focus on righting a portion of the historic injustices that have been inflicted on the Leech Lake Band of Ojibwe, and for helping the Tribe restore our homelands for future generations.

I ask the Committee to advance the Technical Correction so that we can fully accomplish these goals. Thank you for the opportunity to testify today.

### **History of Land Tenure of the Leech Lake Reservation**

Before contact with European Nations, Indian tribes were independent self-governing entities vested with full authority and control over their lands, citizens, and visitors to Indian lands. The Nations of England, France, and Spain all acknowledged tribes as sovereigns and entered into treaties to establish commerce and trade agreements, form alliances, and preserve the peace.

Upon its formation, the United States also acknowledged the sovereign authority of Indian tribes and entered into hundreds of treaties. Through these treaties, Tribes ceded hundreds of millions of acres of their homelands to help build this great Nation. In return, the United States promised that the reserved lands would be the Tribe’s permanent home. Treaties also promised to provide for the education, health, public safety, and general welfare of Indian people. The U.S. Constitution specifically acknowledges these treaties and the sovereign authority of Indian tribes as separate governments.<sup>3</sup>

Tribal government land bases are the very foundation of tribal sovereignty and strong economies. However, federal policies implemented throughout the 1800s and revisited in the

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<sup>3</sup> The Commerce Clause provides that “Congress shall have power to ... regulate commerce with foreign nations, and among the several states, and with the Indian tribes.” Tribal citizens are referred to in the Apportionment Clause (“Indians not taxed”) and excluded from enumeration for congressional representation. The 14<sup>th</sup> Amendment repeats the original reference to “Indians not taxed” and acknowledges that tribal citizens were not subject to the jurisdiction of the United States. By its very text, the Constitution establishes the framework for the federal government-to-government relationship with Indian tribes. The Constitution finally acknowledges that Indian treaties, and the promises made, are the supreme law of the land.

mid-1900s resulted in the takings and significant loss of Tribal government lands. The legacy and impacts of these taking continues to impact Tribal governments today. Many tribes have an insufficient land base upon which to address the housing needs of their citizens, develop their economies to generate revenue to provide essential Tribal governmental services, or to access places of cultural importance to maintain their way of life.

Every federally recognized Indian tribe suffers from this tragic legacy. The loss of land from the Leech Lake Reservation was massive, intentional, targeted, and – like other Tribes – continues to blunt the progress of our people to this day.

The Leech Lake Indian Reservation was established through a series of treaties and executive orders from 1855 to 1874.<sup>4</sup> These treaties and executive order established the Leech Lake Reservation, provided that the Reservation consisted of 588,684 acres of land and nearly 300,000 acres of our sacred lakes.<sup>5</sup> Article 2 of the 1855 Treaty promises that “There shall be, and hereby is, reserved and set apart, a sufficient quantity of land for the permanent homes of the said Indians.”<sup>6</sup>

However, as noted above, shortly after the last executive order regarding the Leech Lake Reservation was signed, Congress enacted a series of laws designed to weaken our governments, take our lands – and more directly, our resources, and destroy our way of life.

### **Nelson Act of 1889**

The first, and possibly the most damaging Act of Congress to adversely impact the Leech Lake Reservation was the Nelson Act of 1889.

The timber industry has a long history in Minnesota. Many lakes and rivers were dammed in order to facilitate the transportation of timber. By the late 1800’s the logging industry had reached the borders of the Leech Lake Indian Reservation but could not access the large expanses of virgin white and red pine forests that it contained as the entire Leech Lake Reservation was protected by Treaty as our permanent home.

Minnesota’s timber industry saw the General Allotment Act (Dawes Act) of 1887 as a blueprint to access Ojibwe Reservation lands. They successfully lobbied Congress, and in the 50th Congress, Minnesota Congressman Knute Nelson sponsored a bill formally titled, “An Act for the relief and civilization of the Chippewa Indians of Minnesota.” Congress passed the bill and President Cleveland signed “the Nelson Act” into law on January 14, 1889. The Nelson Act was

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<sup>4</sup> See Treaty with the Chippewa of February 22, 1855 (10 Stat. 1165); Treaty with the Chippewa, Mississippi, Pillager, and Lake Winnibigoshish Bands of 1863 (12 Stat. 1249); Treaty with the Chippewa, Mississippi, Pillager, and Lake Winnibigoshish Bands of 1864 (13 Stat. 693); Treaty with the Chippewa of the Mississippi of March 19, 1867 (16 Stat. 719); and Executive Orders Oct. 29, 1873, Nov. 4, 1873, and May 26, 1874.

<sup>5</sup> See <https://www.leechlakeneeds.com/wp-content/uploads/2018/02/1855-Treaty.pdf>; *Leech Lake Band of Chippewa Indians v. Herbst*, 334 F. Supp. 1001, 1002 n.1 (D. Minn. 1971)(providing a detailed description of the boundaries of the initial Leech Lake Indian Reservation, and upholding the Tribe’s continued right to exercise treaty hunting and fishing rights on lands throughout the Reservation).

<sup>6</sup> Annual reports of the Commissioner of Indian Affairs from the mid- to late-1800s referred to the bands that occupied the territory at the headwaters of the Mississippi around Cass Lake, Lake Winnibigoshish, and Leech Lake as the Chippewa of the Mississippi, the Pillager Chippewas, the Lake Winnibigoshish Band, the Cass Lake Band, the Leech Lake Band, the White Oak Point Band, and the Mississippi Band. These bands are now known as the “Leech Lake Band of Ojibwe”.

specific to Ojibwe Reservations in Minnesota, affecting the Grand Portage, Mille Lacs, Leech Lake, Boise Forte, Fond du Lac and White Earth Bands.

The Act opened the door to the Leech Lake Reservation and began the shift in ownership from communally held Tribal Government-owned land to the mixed ownership of Tribal, public, and private lands that we have today.

The United States – through the Nelson Act – sought to destroy the governing structures of the Minnesota bands, parcel out tribal governmental lands to individual Indians, and open “surplus” reservation lands to settlers and private companies in clear violation of existing treaties. A primary goal of the Nelson Act was to open the northern white pine forests to timber companies for logging.

Under the Nelson Act, the Allotment process on the Leech Lake Reservation spanned twenty-one years from approximately 1896 to 1917. By the end of the process, Leech Lake tribal citizens were allotted approximately 90,000 acres, while more than 500,000 acres were “deemed” surplus lands that were opened for settlement.<sup>7</sup>

The Burke Act of 1906 authorized the Interior Secretary to issue fee patents to Tribal Allottees if they were deemed by the government to be “competent and capable.” Because of the Burke Act, allotted Indian lands were often taken out of trust without the knowledge of the individual Indian, and were subjected to forced fee patents, and thus, state taxation. These lands were seized by the state due to an individual’s inability or failure to pay taxes. As a result, “[b]y 1937, only 45,684 acres of allotted Leech Lake remained in trust status.”<sup>8</sup>

### **Establishment of the Minnesota Forest Reserve and the Chippewa National Forest**

Problems were rampant with implementation of the Nelson Act, which led to a push to preserve the forest lands on the Leech Lake Reservation. The primary groups involved in this debate were the timber industry, which wanted greater access to Reservation lands for logging, and the Minnesota Federation of Women’s Club, who sought to preserve the forest. Of course, the voice of the key stakeholder in this debate, the Leech Lake Band of Ojibwe, was largely ignored. At the time, Native Americans were not United States citizens and had no right to vote in federal or state elections.

These efforts led to enactment of the Morris Act of 1902. The Act amended the Nelson Act by setting aside approximately 200,000 acres of “surplus lands” within the Leech Lake Reservation for use as the “Minnesota Forest Reserve”. This was the first national forest reserve created by congressional act. The Morris Act also reserved ten sections of land within the Leech Lake Reservation for the Tribe, while at the same time opening 25,000 acres of “agricultural land” to settlement. However, the timber industry also benefited from the Act, which authorized the sale of pine lands and timber within the forest reserve.

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<sup>7</sup> See Leah J. Carpenter, *Tracking the Land: Ojibwe Land Tenure and Acquisition at Grand Portage and Leech Lake*, pages 172-76 (2008).

<sup>8</sup> *Id.* at 177, citing Consolidated Chippewa Agency Annual Statistical Reports on Leech Lake Reservation, White Oak Point Reservation, Cass and Winnibigoshish Reservation (1936). NARA, Washington, D.C., RG75, Records of the Bureau of Indian Affairs, Records of the Statistics Division, Reports and other Records, 1933-1948, Box 15, PI-163, Entry 963.

The continued push to preserve the forest led to the official establishment of the Minnesota National Forest in 1908 (eventually renamed the Chippewa National Forest). These lands were carved out of the Leech Lake Reservation for that purpose and the boundaries of the forest were essentially superimposed upon the boundaries of the Leech Lake Reservation. While the size of the Chippewa National Forest has increased over the past century, to this day, the Leech Lake Indian Reservation makes up 75 percent of the Forest.

### **Secretarial Transfers / Non-Consents: the “Termination Era”**

The loss of Leech Lake Reservation lands slowed during the era of “Indian Reorganization.” Congress enacted the Indian Reorganization Act (“IRA”) in 1934 to halt the federal policy of allotment and assimilation and to secure for all Indian tribes a land base on which to engage in economic development and self-determination. The IRA expressly authorized the Interior Secretary to extend indefinitely the trust status of Indian lands “and any restriction on alienation thereof” (See 25 U.S.C. 5102); restore to tribal ownership the remaining surplus lands of any Indian reservation “heretofore opened” (See 25 U.S.C. 5103); and to take additional lands into trust for the benefit of tribal governments (See 25 U.S.C. 5108). Under the BIA’s brief “tribal land restoration project”, approximately 5,600 acres were restored to the Leech Lake Reservation.<sup>9</sup>

However, this brief period of positive federal policy towards Tribal Governments was short-lived. Congress formally changed federal Indian policy in 1953 through enactment of House Concurrent Resolution No. 108. The stated purpose of the Resolution was to terminate, via legislation, the federal-tribal relationship, eliminate tribal land holdings, and relocate Native Americans from Indian lands to urban areas.

Under “Termination Era” policies, Congress ended the federal-tribal government-to-government relationship with 109 tribes and sold off the lands of these tribes. In addition, in 1952, the Bureau of Indian Affairs implemented what it called the “Voluntary Relocation Program”, which encouraged Native Americans to move to urban areas throughout the United States by providing a one-way bus ticket and moving expenses. Congress formalized this policy through enactment of the Indian Relocation Act of 1956.

While Leech Lake was not a direct target for termination legislation in Congress, the Termination Era served as another means of dispossessing the Tribe of its Treaty-promised Reservation lands.

In the run-up to the Termination policy, Interior Department officials sought opportunities to reduce its “burden” of administering Indian trust land. To reach this goal, beginning in the late 1940s, the BIA began a process that prioritized “supervised sales” of allotted Indian lands.

However, allotted lands were highly fractionated – ownership in the original allotments had passed on to numerous heirs over the generations. Heirs of an original allottee own undivided interests in the allotment. Some allotments have hundreds and even thousands of individual owners. In addition, the Indian Reorganization Act made it more difficult for the BIA to implement its new priority. The IRA requires the government to obtain the consent of all Indian landowners prior to approving a sale.

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<sup>9</sup> See Leah Carpenter, *Tracking the Land* at 214-15.

The BIA targeted Leech Lake allottees for the supervised land sales, in part because of their lands' ties to the Chippewa National Forest. The Bureau "began to advocate that the United States Department of Agriculture should be considered the primary purchaser of the fractionated allotted lands."<sup>10</sup> The administrative process of transferring ownership of allotted Indian lands from the Interior Department to another federal agency became known as "Secretarial Transfers".

While these administrative policies impacted reservations nationwide, the impact was particularly severe at Leech Lake, again, because of its connection to the Chippewa National Forest. More than 25,000 acres of allotted Leech Lake land were sold by the Secretary of the Interior, without the full consent of the Indian owners, the bulk of which was transferred to the United States Forest Service, for inclusion in the Chippewa National Forest.<sup>11</sup>

In 1979, the Interior Solicitor, in a Memorandum interpreting the Act of May 14, 1948, determined that all Secretarial Transfers required the "unanimous consent [of all heirs] before all interests in those IRA reservation allotments can be conveyed."<sup>12</sup> The Department acknowledged that many of the Secretarial Transfers of allotted Indian lands were sold without the consent of all the rightful, legal heirs.

The history of the Secretarial Transfers was a focus of the Minnesota Chippewa Tribe's (MCT) Section 2415 Land Claims Project. The Project's research revealed that the BIA's notification process violated federal law. The Bureau made a policy assumption to the detriment of the Indian owners/heir. If the Bureau did not receive a written response from an individual heir after an official notice to transfer the land had been sent to the heir, then it was assumed by the Bureau that it had obtained the consent. Often, however, the Bureau's notice was never received by the heir, which left that heir without a legal opportunity to respond or disapprove the proposed land sale.<sup>13</sup>

Just days after the Interior Solicitor's 1979 Memorandum admitted that many of the Secretarial Transfers were illegal, a Minneapolis Field Solicitor notified the Minneapolis Area Director that they would not litigate the Secretarial Transfers on behalf of the allottees, promising instead to advance legislative proposals that never came.<sup>14</sup> This resulted in the decades long effort of Leech Lake, working with our congressional delegation, to develop and pass the Leech Lake Reservation Restoration Act and now the Technical Correction to the Act.

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<sup>10</sup> *Id.* at 245.

<sup>11</sup> *Id.* at 250.

<sup>12</sup> *Id.* at 248 citing Memorandum from the Solicitor, Leo M. Krulitz, to All Regional Solicitors (August 20, 1979). The Memorandum is regarding "28 U.S.C. 2415 claims: conveyances of inherited allotments pursuant to the Act of May 14, 1948, 25 U.S.C. §483 (August 20, 1979).

<sup>13</sup> *Id.* at 249-50.

<sup>14</sup> *Id.* at 251, citing Letter from Elmer T. Nitzschke, Field Solicitor, to Edwin L. Demery, Minneapolis Area Director, August 24, 1979, accompanied by Solicitor's Memorandum of August 20, 1979 regarding 2415 land claims (August 24, 1979).

