

Congress' Findings on 'The Burt Lake Band of Ottawa and Chippewa Indians Reaffirmation Act', March 19, 2007

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H.R.1575

Burt Lake Band of Ottawa and Chippewa Indians Reaffirmation Act (Reported in House)

SEC. 2. FINDINGS.

Congress finds as follows:

- (1) The members of the Burt Lake Band of Ottawa and Chippewa Indians, whose historic name is the Cheboigan (or Cheboygan) Band, are descendants and a political successor to signatories of the 1836 Treaty of Washington and the 1855 Treaty of Detroit. The treaty signatories were twice recognized by the United States, on a government-to-government relationship basis, through the execution and ratification of those treaties.
- (2) The 1836 Treaty of Washington provided that the Cheboigan Band would receive a reservation of 1,000 acres on the Cheboigan, within its aboriginal territory, for a period of 5 years after ratification of that treaty but the United States failed to provide that reservation. The 1855 Treaty of Detroit provided that Ottawa and Chippewa Indians could select individual allotments of land within designated reserves, and 2 townships were set aside for selection by the `Cheboygan Band' in Cheboygan County. Those members who selected allotments within that area were not awarded those individual land holdings until 3 years after a special Act of Congress was passed in 1872.
- (3) Between 1845 and 1850 the Band's members used treaty annuity payments to purchase land for the Band in Burt Township, Cheboygan County, Michigan. That land, called Colonial Point, was placed in trust with the Governor of Michigan on the advice of Federal Indian agents.
- (4) During the next 50 years, questions arose regarding the taxability of the property, and the acreage was ultimately sold for back taxes in 1900.
- (5) After the Band was forcibly evicted from Colonial Point and its village was burned to the ground by its new owner, John McGinn, the majority of the Band's families took up residency on nearby Indian Road on lands which other Band members had purchased or received as treaty allotments or homesteads.
- (6) In 1911, the United States filed suit in the United States Federal District Court for Eastern Michigan seeking to regain possession of the Colonial Point Lands (United States v. McGinn, Equity No. 94, filed June 11, 1911). In its complaint, the United States advised the Court that it was suing on behalf of the `Cheboygan band of Indians [which] is now and was at all the times mentioned in this bill of complaint a tribe of indians [sic] under the care, control, and guardianship of the plaintiff and said band is now and was at all times mentioned in this bill of complaint recognized by the plaintiff through its chiefs or head men which it annually elects.'
- (7) In 1917, the Federal District Court decided the McGinn case against the United States finding that the language in the Colonial Point deeds did not prevent the Colonial Point land from being taxed.
- (8) Over the next 20 years, Acting Chief Enos Cabinaw, acting on behalf of the Cheboygan Band, asked the United States to appeal or otherwise rectify the District Court's decision, but no Federal action was taken.

Throughout this period, the United States continued to provide the Band and its members with many of the same Federal services that were being provided to other Indian tribes in Michigan.

(9) The Act of June 18, 1934 (hereafter in this Act referred to as the `Indian Reorganization Act'), authorized and directed the Bureau of Indian Affairs to provide technical assistance and Federal funds to petitioning tribes to assist them in reorganizing their governments and improving their economies. Members of the Cheboigan Band, as well as members of other landless treaty Tribes in Michigan, submitted petitions to receive that assistance. Similar petitions were also submitted by 4 Michigan bands that still held communal lands. Possession of a tribal land base was a prerequisite to the receipt of most of the Federal funds and services provided for in the Indian Reorganization Act.

(10) While the Indian Reorganization Act directed the Secretary to assist landless bands, like Burt Lake, and authorized Federal funds to acquire land, no Federal funds were appropriated to acquire new tribal lands for any of the landless bands in Michigan. After struggling with this dilemma, the Bureau of Indian Affairs extended the benefits of the Indian Reorganization Act to only those 4 Michigan tribes that had an existing land base on the date of the enactment of the Indian Reorganization Act. Of the Ottawa and Chippewa Tribes who signed the 1836 and 1855 Treaties, only 1 group, the Bay Mills Indian Community, was organized under the Indian Reorganization Act.

(11) The failure of the Bureau of Indian Affairs to grant Indian Reorganization Act benefits to the Cheboigan Band did not terminate the band's government-to-government relationship with the United States, and Congress has never taken any action to terminate Federal acknowledgment of the Burt Lake Band.

(12) The Bureau of Indian Affairs does not have the legal authority to terminate a tribe that has been acknowledged by an Act of Congress.

(13) Since 1972, the following Michigan tribes that were not organized under the Indian Reorganization Act, have been recognized or reaffirmed as federally recognized Indian tribes:

(A) The Sault Ste. Marie Tribe of Chippewa was reaffirmed by a Memorandum of the Commissioner of Indian Affairs on September 7, 1972.

(B) The Grand Traverse Band of Ottawa and Chippewa Indians was acknowledged by the Assistant Secretary of Indian Affairs on May 27, 1980.

(C) The Little Traverse Bay Bands of Odawa Indian and the Little River Band of Ottawa Indians each had its Federal status reaffirmed by an Act of Congress on September 21, 1994.

(D) The Lac Vieux Desert Band of Lake Superior Chippewa Indians had its Federal status as a separate Indian tribe reaffirmed by an Act of Congress at the request of the Administration on September 8, 1988.

(E) The Pokagon Indian Nation had its Federal status reaffirmed by an Act of Congress on September 21, 1994.

(F) The Huron Potawatomi Nation had its Federal status acknowledged by the Assistant Secretary of Indian Affairs on March 17, 1996.

(G) The Gun Lake Tribe (Match-She-Be-Nash-She-Wish) had its Federal status acknowledged by the Assistant Secretary of Indian Affairs on August 23, 1999.

(14) The Burt Lake Band has been consistently recognized by third parties as a distinct Indian community since well before 1900.

(15) The Burt Lake Band consists of members who are the children, grandchildren, or great grandchildren of Indian persons who resided on or near Colonial Point or Indian Road prior to 1910. The majority of the Band's adult members grew up on or near Indian Road or had an immediate family member who did. As the result, the Band's members have maintained very close social and political ties. The Band has its own, well-defined membership criteria, which requires the maintenance of tribal relations.

(16) The Burt Lake Band consists of families who have and continue to provide mutual aid to each other, visit each other regularly, mobilize to assist each other in times of need, practice traditional arts and crafts, gather for Ghost Suppers, decorate the graves of their ancestors, and participate in other traditional tribal ceremonies and events.

(17) Since 1829 the Burt Lake Band's members have attended and consistently mobilized to maintain the Indian Mission Church of St. Mary's, first on Colonial Point and later on Indian Road. The Burt Lake Band's members have also worked together to maintain the Tribe's 2 Indian cemeteries. They have also dug the graves and buried their relatives in those 2 Indian cemeteries for almost 200 years.

(18) The Burt Lake Band's members have throughout time made formal and informal decisions for the community. The Burt Lake Band has also organized its own modern tribal government without the assistance of the Bureau of Indian Affairs.

(19) The majority of the Band's elders have a high degree of Indian blood and continue to speak the Ottawa language when they gather with each other. Before World War II, more than 50 percent of the Burt Lake families were still speaking the traditional language in their homes, and more than 50 percent of those tribal members who were married were married to other Ottawa and Chippewa individuals.

(20) There is no evidence that the Band has willfully abandoned tribal relations and there is no evidence that the Congress has taken any legal action to terminate its government-to-government relations with the Burt Lake Band.

(21) Because the Bureau of Indian Affairs failed to review the Band's petition for over 20 years, a percentage of the Band's members enrolled in other Tribes in order to obtain the Federal services, most notably health care and prescription drug assistance, that they were legally entitled to, but denied as members of Burt Lake. This step was often taken on the advice of one or more employees of the Bureau of Indian Affairs. This dual enrollment situation has now created a new problem for the Band's reaffirmation, because the Bureau of Indian Affairs' current regulations prohibit it from recognizing a tribe when a part of the tribe's community is or was enrolled in another federally recognized tribe.

(22) In September 2006, the Assistant Secretary of Indian Affairs denied the Burt Lake Band's petition for recognition even though it found that the Burt Lake Band has been identified as an Indian entity by scholars, local and State officials, and other tribes, and even though it found that the members of the Burt Lake Band maintain a strong Indian community. In its letter denying the Burt Lake Band's petition, the Bureau of Indian Affairs stated that 'Congress may consider taking legislative action to recognize petitioners that do not meet the specific requirements of the acknowledgment regulations but may have merit.'

(23) The Burt Lake Band has exhausted its administrative remedies, therefore this Act is both necessary and appropriate.