



## **THE BAY MILLS INDIAN COMMUNITY**

### **TESTIMONY OF THE HON. WHITNEY GRAVELLE, PRESIDENT**

on

**H.R. 412**

**TO AUTHORIZE THE BAY MILLS INDIAN COMMUNITY  
TO CONVEY LAND AND INTERESTS IN LAND OWNED BY THE TRIBE**

Before

**THE HOUSE NATURAL RESOURCES COMMITTEE,  
SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS**

**February 5, 2025**

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#### **INTRODUCTION**

Aanii, and good morning Chairman Hurd, Ranking Member Leger Fernandez, and Honorable Members of the House Natural Resources Committee's Indian and Insular Affairs Subcommittee. My name is Whitney Gravelle, and I am the President of the Bay Mills Indian Community. Thank you for giving me the opportunity to provide testimony today on H.R. 412. I also want to express our deep gratitude to our Congressman, the Hon. Jack Bergman, for introducing and championing our legislation, and for being here today to help introduce it.

For the reasons discussed in my testimony below, passage of H.R. 412 is vitally important to the Bay Mills Indian Community. This legislation will free our Tribe to manage land that we hold in fee without further federal oversight, and to sell that land without congressional approval, enabling our Tribe to engage in self-determination and strengthen our tribal economy.

## THE BAY MILLS INDIAN COMMUNITY

Gnoozhkekaaning (meaning Place of the Pike), more widely known as the Bay Mills Indian Community, is an Ojibwe Tribal Nation located on the south shore of Lake Superior in Michigan's Upper Peninsula. We have lived in what is now the State of Michigan since time immemorial. In 1836, we and some of our sister Ojibwe (Chippewa) and Odawa (Ottawa) Tribes entered into a treaty with the United States by which we ceded an enormous amount of land that today comprises about 40% of the State of Michigan. Indeed, the name "Michigan" is derived from our Ojibwe word "michigami," meaning Place of many Great Lakes.

## OUR NEED FOR PASSAGE OF H.R. 412

In the modern era, federal law provides important protections for tribal lands that are held in trust for us by the federal government. Unfortunately, confusion about whether that same federal law is applicable to our *non-trust* land is materially hindering our Tribe from being able to freely benefit from, and from being able to freely dispose of, non-trust lands. In particular, title insurance companies are so confused about the status of our fee land that we have great difficulty securing clear title, making it nearly impossible to transfer fee property to willing buyers.

This conundrum has been recognized by the Department of the Interior in testimony relating to a similar bills. For example, Interior testified on legislation similar to H.R. 412 for a group of tribes in Oregon:

The Department understands that the Tribes listed in this legislation [H.R. 3225]<sup>1</sup> wish to lease, sell, convey, warrant, or otherwise transfer all or any part of their interests in any real property that is *not* held in trust by the United States for the benefit of the Tribes without further approval, ratification or authorization by the United States.

Interior expressly supported the legislation: "the Department supports H.R. 3225 and *believes this authority should be extended to all Tribes for fee simple lands.*"<sup>2</sup> (Emphasis added).

## LEGAL BACKGROUND

Congress enacted the Indian Trade and Intercourse Act (also known as the "Nonintercourse Act"), now codified at 25 U.S.C. § 177, to protect Indian lands from being sold without express

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<sup>1</sup> H.R. 3225 was considered and enacted in the 115<sup>th</sup> Congress, *see* Pub. L. 115-179.

<sup>2</sup> Testimony of John Tahsuda, III, Acting Assistant Secretary – Indian Affairs, before the House Natural Resources Subcommittee on Indian, Insular and Alaska Native Affairs on H.R. 3225, The "Oregon Tribal Economic Development Act" (Nov. 15, 2017) (the Department "believes this authority should be extended to all Tribes for fee simple lands.").

authorization from Congress. This protection clearly applies to lands held in trust. But there have been conflicting views on whether the Nonintercourse Act's prohibitions apply to *lands held in fee*.

The Supreme Court has contributed to the confusion. In *Cass County, Minnesota v. Leech Lake Band of Chippewa Indians*, 524 U.S. 103, 115 n.5 (1998), the Court noted it “has never determined whether the Indian Nonintercourse Act . . . applies to land that has been rendered alienable by Congress [i.e., non-trust land]. . . we decline to consider it for the first time in this Court.” The Court’s pronouncement caused uncertainty because some federal and state courts that addressed the issue before *Cass County* determined that the Nonintercourse Act does not apply to fee lands.<sup>3</sup>

There has also been uncertainty within Congress. The House Natural Resources Committee and the Senate Committee on Indian Affairs have interpreted the Nonintercourse Act as prohibiting tribes from selling non-trust lands without federal approval.<sup>4</sup> And the Natural Resources Committee has highlighted the confusion and the need for tribes to seek legislation “for transactions of non-trust land over an abundance of caution by both the tribal and non-tribal parties.”<sup>5</sup>

It is for these reasons that Congress has passed legislation for many tribes confirming those tribes’ authority to sell or encumber non-trust land without the need for federal approval. Two of these are Michigan sister tribes, the Saginaw Chippewa Indian Tribe<sup>6</sup> and the Sault Ste. Marie Tribe of Chippewa Indians.<sup>7</sup> Other tribes for which Congress has provided similar clarifying language include the Seminole Tribe of Florida, the Miami Tribe of Oklahoma, the Lower Sioux Indian Community in Minnesota, the Coushatta Tribe of Louisiana, and from Oregon, the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community, the Confederated Tribes of the Siletz Indians, the Confederated Tribes of Warm Springs, the Cow Creek Band of Umpqua Tribe, the Klamath Tribes, and the Burns Paiute Tribe.<sup>8</sup>

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<sup>3</sup> See, e.g., *Lummi Indian Tribe v. Whatcom County*, 5 F.3d 1355 (9th Cir. 1993), *cert. denied*, 512 U.S. 1228 (1994) (holding that a tribe’s fee land is not subject to the restrictions of the Nonintercourse Act); *Saginaw Chippewa Tribe v. State of Michigan*, 882 F. Supp. 659 (E.D. Mich. 1995), *rev’d on other grounds*, 106 F.3d 130 (6th Cir. 1997), *cert. granted and judgment vacated sub. nom.*, *Michigan v. United States*, 524 U.S. 923 (1998) (holding the same); *Anderson & Middleton Lumber Co. v. Quinault Indian Nation*, 929 P.2d 379 (Wash. 1996) (holding same).

<sup>4</sup> See S. Rept. 117-10, at 2 (Apr. 14, 2021); H. Rept. 115-564, at 2 (Feb. 15, 2018); H. Rept. 115-507, at 2 (Jan. 18, 2018); H. Rept. 110-275, at 2 (July 30, 2007); H. Rept. 110-274, at 2 (July 30, 2007); H. Rept. 106-502, at 1-2 (Feb. 29, 2000).

<sup>5</sup> H. Rept. 114-250, at 1-2 (Sept. 8, 2015); see also S. Rept. 115-175, at 2-3 (Oct. 17, 2017) (“The legislation is intended to remove the uncertainties created by the *Indian Non-Intercourse Act* over Indian land transactions involving non-trust real property.”).

<sup>6</sup> Pub. L. 110-76 (2007).

<sup>7</sup> Pub. L. 110-453 (2008).

<sup>8</sup> See Pub. L. 117-65 (authorizing the transfer or conveyance of fee lands owned by the Seminole Tribe of Florida); Pub. L. 115-179 (authorizing the same for seven tribes in Oregon); Pub. L. 114-127 (authorizing the same for the Miami Tribe of Oklahoma); Pub. L. 110-75 (authorizing the same for the Coquille Indian

The Bay Mills Indian Community needs and deserves the same federal legislation that has benefited these other tribes. H.R. 412 is that legislation.

### **CONCLUSION**

We ask that the Subcommittee urge the full House Natural Resources Committee to vote in favor of this bill and to do whatever it can to ensure its enactment. Through passage of H.R. 412, Congress will honor our Tribe's right to self-determination and will materially help strengthen our tribal economy.

Thank you for your time, and for your consideration of this important legislation. I am happy to answer any questions you may have or to provide additional information.

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Tribe); Pub. L. 106-127 (authorizing the same for the Lower Sioux Indian Community of Minnesota); Pub. L. 106-568 (authorizing the same for the Coushatta Tribe of Louisiana).