

Testimony of President Robert “RD” Curtis, Jr.
Keweenaw Bay Indian Community
House Natural Resources Subcommittee on Indian & Insular Affairs
Legislative Hearing
H.R. 411, Keweenaw Bay Indian Community Land Claim Settlement Act
Wednesday, June 11, 2025

Introduction

Chairman Hurd, Ranking Member Leger Fernandez, and honorable Members of the House Natural Resources Subcommittee on Indian & Insular Affairs, my name is Robert “RD” Curtis, Jr. 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 H.R. 411, the Keweenaw Bay Indian Community Land Claim Settlement Act (“KBIC Settlement Act”), which would provide compensation to the Community for the taking of land inside the boundaries of our L’Anse Indian Reservation by the United States without just compensation as required under the United States Constitution. This land was guaranteed to the Community as a permanent home under a treaty signed in 1854. The takings were facilitated by two federal statutes that were applied in an unlawful manner despite the federal government’s promises and duty to protect our treaty-guaranteed 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 in the forests, lakes, and wetlands near the Keweenaw Bay in the Upper Peninsula of Michigan since time immemorial.

KBIC 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”). In return the treaties guaranteed our Tribal Nation certain Constitutionally protected rights including usufructuary rights to the ceded territory, and the right to all 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. 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 19th Century and early in the 20th 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 unlawfully 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, but they also 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 unlawfully 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. The Community asked the Department to exercise its obligation to evaluate these claims pursuant to the trust responsibility. In December 2021, the Department of the Interior stated that "[w]e 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. It has also deprived the Community

of our Constitutionally protected right to just compensation when the federal government takes property.

Indian Claims Commission

The Community did not pursue its claims relating to the Canal Lands and Swamp Lands in the Indian Claims Commission (“ICC”) for several reasons. Primarily, the Community viewed the State of Michigan as the principal party responsible for the land takings since it accepted and held title, and at the time viewed the ICC to entertain only claims against the United States. Additionally, the ICC offered only monetary damages, which would not have adequately addressed the Community’s needs, particularly given that the State denied the lands were within the reservation. Pursuing a claim for damages could have also undermined the Community’s position that the lands were part of the 1854 reservation. It was not until after the ICC ceased operations that court decisions such as *Keweenaw Bay Indian Community v. Michigan*, 784 F. Supp. 413 (W.D. Mich. 1991), reaffirmed that lands within the exterior boundaries described in the 1854 Treaty, including the disputed lands, constituted “Indian country” within the meaning of 18 U.S.C. § 1151

A subsequent case, *Keweenaw Bay Indian Community v. Naftaly*, 452 F.3d 514 (6th Cir. 2005), cert. denied, 127 S. Ct. 680 (2006), further upheld the Community’s claims, reinforcing that both aboriginal and treaty-based rights protected their title. The ICC’s limited jurisdiction and narrow interpretation of claims, predominantly addressing inadequate compensation and asset mismanagement, deterred the Community from filing. Of the more than 600 claims that the ICC eventually heard, over 90% were unconscionable consideration claims, and nearly all others sought accountings for mismanagement of tribal assets. Nancy Oestreich Lurie, *The Indian Claims Commission*, 436 *Annals Am. Acad. Pol. & Soc. Sci.* 97, 99 (1978). Furthermore, the Community’s request for legislative relief follows precedent, as other tribes have received Congressional settlements for historical grievances such as ours, including the Puyallup Tribe, Seneca Nation, and Crow Tribe. These examples illustrate that legislative remedies are a recognized path for tribes whose claims were either outside ICC scope or poorly addressed through prior legal channels.

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 15, 2025, by Representative Jack Bergman (H.R. 411), and the companion bill was introduced by Senators Gary Peters and Elissa Slotkin (S. 642). Last Congress, the Senate bill received a legislative hearing in the Senate Committee on Indian Affairs, was favorably reported without amendment, and passed the Senate by unanimous consent on December 14, 2023. This Congress, the Senate Committee on Indian Affairs favorably reported S. 642 without amendment on March 5, 2025.

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 under the United States Constitution. The Tribal Council sought this approach

because we believe in seeking 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 landowners – however there is a legal cloud on title despite the good faith acquisition. For this reason, our legislation extinguishes all claims by the Community to the Reservation Swamp Lands and the Reservation Canal Lands, clears title, 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 legitimacy Community's claims and our non-adversarial approach, as well as 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 Representative Bergman for introducing the KBIC Settlement Act in the House, as well as Senator Peters and Senator Slotkin for introducing companion legislation in the Senate. The Community also very much appreciates the Subcommittee 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.