

TESTIMONY OF MIKE CHRISTENSEN, COUNCILMAN
LAC DU FLAMBEAU BAND OF LAKE SUPERIOR CHIPPEWA INDIANS
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
PRIORITIES FOR THE 107TH CONGRESS JUNE
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Chairman Inouye, Vice Chairman Campbell, and members of the Committee. I am Mike Christensen, Councilman from the Lac du Flambeau Band of Lake Superior Chippewa Indians, from Wisconsin. I greatly appreciate the opportunity to testify here today – and I applaud the Committee's efforts to reach out to hear from Tribal leaders from all parts of the United States regarding our concerns and priorities. I would like to address a topic of great importance – trust lands.

As the Committee is aware, Indian tribes have always had a special connection to our lands. This connection touches all parts of our lives – as our lands have cultural, spiritual, subsistence, historic and economic importance to us. The lands we live on, and the natural resources derived from those lands, help to define who we are as a people. Preserving those lands, and assuring a viable homeland for our people, is one of our greatest challenges for the future.

Like many Tribes, Lac du Flambeau has suffered the loss of a substantial part of the land that was promised to us by the United States and set aside for us as our Reservation. Our Reservation was allotted – which resulted in the loss of a significant portion of our lands, including most of the desirable shorelands around the lakes in our Reservation. Today more than one-third of our Reservation lands are held in fee by non-Indians. Trust and fee lands are mixed together throughout many parts of the Reservation in ways that basically make it impossible for the Tribe to protect and use those lands effectively. The checkerboard land pattern on our Reservation is one of the greatest obstacles to our ability to achieve our goals of self-determination and self-sufficiency.

In addition to the loss of trust lands, at Lac du Flambeau the allotted lands that remain in trust are heavily fractionated. We have a serious heirship problem, which creates difficulties in making effective use of a major portion of our trust lands. To begin to address this, Lac du Flambeau is one of the tribes participating in the BIA's Land Consolidation Project – under which we are seeking to purchase for the Tribe some of the most heavily fractionated interests in trust land. We believe these kinds of efforts – to purchase and restore fractionated tracts to Tribal ownership – is important and should be expanded. We urge the Committee to support increased funding for the Land Consolidation Project. We would also like to thank the Committee for its leadership last year in enacting amendments to the Indian Land Consolidation Act, to provide greater opportunities to address the fractionated heirship problem.

Beyond measures to deal with fractionated heirship, we need an effective way to purchase fee lands and have those lands put into trust. Restoring fee lands to our Tribal trust land base is a key part of our efforts to move from the harmful consequences of allotment to the promise of Self-Determination. Unfortunately, the existing process for taking lands into trust has not served tribes well. One major

problem has been that tribal applications to have lands taken into trust have not been processed by the BIA in a timely manner. At Lac du Flambeau, we have several fee to trust applications pending before the BIA. These applications all address trust acquisition of lands on our Reservation, and many are not even controversial. But these applications have been pending for years – some dating as far back as 1989. The BIA provides us with no reason for this delay – and no excuse would justify this kind of treatment. It is fundamental that we are entitled to a timely decision on our trust land applications. The bottom line is that the current system for administering fee to trust applications is not working properly.

Taking land into trust is important for both historic and current reasons. On the historic side, Congress provided authority to the Secretary to take land into trust for tribes in Section 5 of the Indian Reorganization Act. That statute was landmark measure, which Congress enacted in 1934 to address the terrible decline in tribal life in the United States that was caused by the allotment policy. Allotment led to the loss of more than two-thirds of Indian lands nationwide, and left Indians facing terrible conditions of poverty and despair. The IRA was an effort to change federal policy, by ending allotment and moving toward a policy of tribal self-sufficiency. Congress recognized that a key part of this new policy was helping tribes restore some portion of the lands that had been taken from them. Basically, the fee to trust process contained in the IRA is a modest effort to provide a remedy for a major historical wrong that occurred as a result of the federal policy of allotment.

In terms of current need for trust lands, tribes have a wide variety of interests. Tribes have a historic interest in lands where their ancestors lived – and practiced their way of life by hunting, fishing and gathering. Tribes have a cultural interest in areas where religious or burial sites are located. Tribes have self-government interests in having lands sufficient to provide housing, schools, health care facilities and other tribal services for their people. Tribes have economic interests in advancing the opportunities for their people to work and thrive. And tribes have conservation interests, in protecting their natural resources from unwanted development. Tribes need the ability to acquire fee land and have it placed in trust for all of these reasons. At Lac du Flambeau, for example, the vast majority of our trust land acquisitions are for two purposes. First, we are seeking to acquire lands for housing for our people. And second, we are seeking to acquire lands in trust for conservation purposes – to protect our forests and other natural resources for future generations.

We are aware that sometimes the fee to trust process becomes controversial. We think the process, if better understood, would not be so controversial. There are important historical reasons why Congress authorized land to be taken into trust for tribes. Trust land acquisition today must be understood as a process for addressing the wrong that the federal government did to the tribes under the allotment policy. There are also important current purposes for tribes to take land into trust - purposes that are essential for us to move toward self-determination and self-sufficiency. Trust land acquisition is not – as some opponents argue – just about gaming. Instead, trust land acquisition is about enabling tribes to address their historic, cultural, economic, self-government and conservation interests by obtaining some small part of the lands they need to move forward. This ability to acquire lands for a broad range of positive purposes is one of the most important challenges facing tribes today.

As the Committee is aware, there are new final regulations regarding the fee to trust process.

The Interior Department published those regulations in final form on January 16, 2001. The new Administration has delayed the effective date of those new regulations, and has asked for comments on them. Those comments were due last Friday (June 15th). The Department has indicated that it will determine whether to go forward with the new regulations by August 13th.

We would like the Department to go forward with the January 16 regulations and make them effective. We see three major benefits from the new regulations.

First, the new regulations carry out the purposes of the Indian Reorganization Act, by providing a process for taking land into trust, as a way to advance tribal self-sufficiency. The new regulations are consistent with the principle that taking land into trust is necessary for tribes to be able to improve the lives of their people.

Second, the new regulations provide clear standards for taking lands into trust. This is important to be sure that the process is fair and applied evenly.

Third, the new regulations provide for an open and fair process in which the views of all sides are heard, and they require the Department to make a decision by a fixed deadline. As I indicated, the delay in trust land applications has been a very frustrating issue for tribes. The new regulations impose a deadline of 120 days for the BIA to act on trust land applications.

There are some things we did not like in the new regulations. For example, the new regulations do not provide favorable treatment to lands that are contiguous to a Reservation. In our view, the acquisition of contiguous lands is in many instances the best (and in some cases, the only) opportunity for tribes to undertake land acquisition in an economically useful manner. The regulations should not make it burdensome for tribes to make such acquisitions. In fact, one of Lac du Flambeau's current efforts to acquire lands in trust shows that it is unreasonable to treat contiguous lands in the different manner than on-reservation lands. At Lac du Flambeau we are seeking to purchase and have taken into trust a parcel that is partially on the reservation, and partially contiguous to the Reservation. This is one parcel, and the on-reservation and off-reservation use of the parcel would be the same – for a cranberry farm. From any reasonable standpoint, this parcel should be treated as an on-reservation parcel. The same is true more broadly with regard to contiguous lands.

In any event, although the new regulations are not in all respects what we would like, we think overall they are reasonable and beneficial and should be implemented. The new regulations were the result of a long decisionmaking process by the Department, and they are balanced and fair. We have waited a long time to gain some certainty regarding this area, and it is time for the new regulations to become effective, so the tribes can move forward in their efforts to restore their lands.

We would very much appreciate the Committee's help in assuring that an effective process is available to the Tribes for taking lands into trust. We hope that the Committee will express to the Interior Department the importance of this issue to the Committee, and to Indian country. We hope that the Committee will indicate its support for making the new regulations effective – as a step toward a

better process for taking land into trust. And we hope that the Committee will make sure that the results of the current review of the regulations by the Department results in a fair process that will help us achieve our self-determination goals. We trust that after the Department makes its determination on August 13, the Committee will review that decision and consult with the Tribes about whether additional action is needed.

Again, my thanks to the Committee for your continued support of Indian country. I appreciate the opportunity to be here and I look forward to working with the Committee on the trust lands issue.