



CLEARWATER COUNTY COMMISSIONERS

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STENSENG**
District #5

January 9, 2015

Lessard-Sams Outdoor Heritage Council
100 Rev. Dr. Martin Luther King Jr. Blvd.
State Office Building, Room 95
St. Paul, MN 55155

Dear Council Members:

While Clearwater County is in support of the conservation of our lands, we are troubled by the fact that the White Earth Tribe has requested funding from the Lessard-Sams Outdoor Heritage Council (LSOHC) for \$2,188,000 for the purchase of 1,994 acres on the White Earth Reservation and within Clearwater County. Our concerns are that the lands, as described in the White Earth application, would be put into federal trust status. Trust status would result in the removal of state regulations, non-member rights to freely use the land, and removal of the land from the Clearwater County property tax roll.

The transfer from private land ownership to trust status will transfer all management rights, licensing, game regulation and enforcement to the Tribe. The Tribe can set their own limits and seasons, which are normally a longer season and a higher game limit than the state.

Once the land becomes trust status, the Tribe can and probably will restrict the access to the property for multi-use access such as hunting, hiking and the all-around enjoyment of the land by members and non-members. The intention of the legislature when they voted to authorize the creation of the Lessard-Sams Outdoor Heritage Fund (LSOHF) was the open access to public lands for everyone. In trust status the Tribe has the right to restrict access anyway they see fit without the oversight of the State of Minnesota. This can be through outright exclusion or the issuing of permits to allow individual access. (See WHITE EARTH, ETC. V Alexander, 518 F. Supp. 527, . Footnote)

The effect of funding this request will mean that sales taxes from Minnesota will be used to purchase land for the Tribe and the federal government. Trust land status will result in the removal of the property from the property tax rolls. This will shift about \$12,000 of property tax from the current fee owner to other property owners in the local taxing authorities including county, school districts and the township. We do not believe the intent of the legislature was to make the schools suffer while funding the federal government.

Over the years local governments, the legislature and the governors have expressed concern about increasing property taxes. The loss of tax base does in fact increase taxes on the people owning property in the areas where these large exemptions occur.


Although the county would prefer to keep this property in the local tax base, a better option than turning the land into federal trust status would be to allow the Minnesota Department of Natural Resources (DNR) to acquire the property. If this property is of significant conservation interest, the DNR manages numerous parcels of land adjacent to the subject property and the Payment in Lieu Program would support the revenue needed to provide local services. Clearwater County and the DNR manage over 2,000 acres in that area that could be landlocked, as is what happened in a recent lake access issue on Heart Lake in land held by the Tribe. There is currently unobstructed access across the Potlatch land but in trust status this land could be posted as restricted as other tribal lands are now. With state ownership, access to county and state managed property would be maintained and public access would not be in jeopardy.

It is very concerning that page four of the tribal application shows that local governments will not be consulted in regards to this action. We believe that any time funding from the LSOHC, and with the effects of this type, the local government should and must be consulted.

Map 2 erroneously included 4 townships that are not part of the reservation. The application also states that there are 829,000 acres in the reservation, which is incorrect. The tribe included the acres in the ceded 4 townships (see footnotes below). As such, the reservation does not border the west edge of Itasca State Park as described in the application.

As outlined in this letter, we are very concerned of the long range effects that allowing the funding and the conversion of the land into trust status can have on the citizens of Clearwater County. Everyone is aware Indian law is very complicated and can put non- members that cross onto trust land at the mercy of the Tribal Court, as seen in Red Lake fishing violations in 2006. We plead to the Council not to approve this request and if it has already moved to the House, that the Council makes further recommendations to the House not to approve the funding.

Sincerely,



Daniel C. Stenseng, Chairman



Neal Illies, Vice Chairman

cc: Rep Steve Green
Rep Dave Hancock

Footnotes:

WHITE EARTH, ETC v ALEXANDER 518 F. Supp. 527 (1981)

The White Earth Band of Chippewa Indians is one of six Chippewa bands comprising the Minnesota Chippewa Tribe. The White Earth Reservation was established by the Treaty of 1867, and consisted of 36 townships of land in a square form, consisting of townships 141 through 146 North, Ranges 37 through 42 West, 5th Principal Meridian. The four northeastern townships² of the original reservation were ceded to the United States by an agreement made

July 20, 1889 between the White Earth Band and the United States pursuant to the Nelson Act. The agreement provided that the band did "grant, cede, relinquish and convey to the United States all ... [their] ... right, title and interest ..." in those townships.

The four northeastern townships are comprised of approximately 92,000 acres. Following the Indian Reorganization Act of 1934, 48 Stat. 987, 25 U.S.C. § 476, approximately 2,900 acres of these townships were returned to trust status. *Clark Stipulation* ¶ 37.

In the four northeastern townships, no allotments were ever made. Some of the ceded lands in the four northeastern townships have been restored to trust status. A rice reserve has been established on these lands. *State v. Clark*, 282 N.W.2d 902 (Minn. 1979),

It is also true that the Band may condition or prohibit entry by non-members on Indian-owned and trust lands for the purpose of hunting, fishing and rice gathering by requiring compliance with permit requirements, seasons, limits, and rules regarding means of taking game, fish, and rice. This authority of the Band over non-members is grounded upon 18 U.S.C. § 1165,⁵ its inherent right to exclude nonmembers [518 F.Supp. 535] from its lands, *see Williams v. Lee*, 358 U.S. 217, 219, 79 S.Ct. 269, 270, 3 L.Ed.2d 251 (1959), and the Band's power to govern itself as granted by its Constitution. *See Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, Alexander Band Exhibit 37; United States v. Montana*, ___ U.S. at ___, 101 S.Ct. at 1254, 67 L.Ed.2d 493 *aff'd in part*, 604 F.2d 1162, 1165-66 (9th Cir. 1979); *Quechan Tribe of Indians v. Rowe*, 531 F.2d 408, 410-11 (9th Cir. 1976); *People of the State of California v. Quechan Tribe of Indians*, 424 F.Supp. 969, 974 (S.D.Cal.1977), *vacated on other grounds*, 595 F.2d 1153 (9th Cir. 1979).

Accordingly, we hold that, as to Indian-owned and trust lands within the White Earth Reservation, the Band may prohibit or condition entry by issuing and charging a fee for permits, setting limits and seasons, and prescribing permissible means of taking fish and game.

Accordingly, we declare that: 1) The White Earth Band of Chippewa Indians [518 F.Supp. 538] is entitled to hunt, fish, and gather wild rice on the White Earth Reservation without interference from or regulation by the State of Minnesota; 2) the White Earth Reservation, as established by the Treaty of 1867, was diminished by the cession of the four northeastern townships of the White Earth Reservation by an agreement between the White Earth Band and the United States dated July 20, 1889; 3) the White Earth Band has the statutory right to condition entry by non-members of the Band for the purposes of hunting, fishing and wild rice gathering on lands owned by the Band and its individual members and lands held in trust for the Band or its members by the United States. The State of Minnesota is permanently enjoined from enforcing its game and fish laws on the White Earth Reservation against members of the White Earth Band.

LAPRAIRIE (NORTH) T.145N. - R.38W.



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