

109TH CONGRESS
2D SESSION

H. R. 4802

To reaffirm and clarify the Federal relationship of the Burt Lake Band as a distinct federally recognized Indian Tribe, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 2006

Mr. STUPAK introduced the following bill; which was referred to the Committee on Resources

A BILL

To reaffirm and clarify the Federal relationship of the Burt Lake Band as a distinct federally recognized Indian Tribe, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Burt Lake Band of
5 Ottawa and Chippewa Indians Reaffirmation Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds as follows:

8 (1) The members of the Burt Lake Band of Ot-
9 tawa and Chippewa Indians, whose historic name is
10 the Cheboigan (or Cheboygan) Band, are descend-

1 ants and political successors to signatories of the
2 1836 Treaty of Washington and the 1855 Treaty of
3 Detroit. The Band was twice recognized by the
4 United States, on a government-to-government rela-
5 tionship basis, through the execution and ratification
6 of those treaties.

7 (2) The 1836 Treaty of Washington provided
8 that the Cheboigan Band would receive a reservation
9 of 1,000 acres on the Cheboigan, within its aborigi-
10 nal territory, but the United States failed to provide
11 that reservation. The 1855 Treaty of Detroit pro-
12 vided for the withdrawal of unsold lands in 2 Michi-
13 gan townships 35 North and 36 North Range 3
14 West for the use of the Cheboygan Band, but due
15 to the Federal Government's failure to act, those
16 members who selected allotments within that area
17 were not awarded those individual land holdings
18 until 3 years after a special Act of Congress was
19 passed in 1872.

20 (3) Between 1845 and 1850 the Band's mem-
21 bers used treaty annuity payments to purchase land
22 for the Band in Burt Township, Cheboygan County,
23 Michigan. That land, called Colonial Point, was
24 placed in trust with the Governor of Michigan on the
25 advice of Federal Indian agents.

1 (4) During the next 50 years, questions arose
2 regarding the taxability of the property, and the
3 acreage was ultimately sold for back taxes in 1900.

4 (5) After the Band was forcibly evicted from
5 Colonial Point and its village was burned to the
6 ground by its new owner, John McGinn, the major-
7 ity of the Band's families took up residency on near-
8 by Indian Road on lands which other Band members
9 had purchased or received as treaty allotments or
10 homesteads.

11 (6) In 1911, the United States filed suit in the
12 United States Federal District Court for Eastern
13 Michigan seeking to regain possession of the Colo-
14 nial Point Lands (United States v. McGinn, Equity
15 No. 94, filed June 11, 1911). In its complaint, the
16 United States advised the Court that it was suing on
17 behalf of the: "Cheboygan band of Indians [which]
18 is now and was at all the times mentioned in this
19 bill of complaint a tribe of indians [sic] under the
20 care, control, and guardianship of the plaintiff and
21 said band is now and was at all times mentioned in
22 this bill of complaint recognized by the plaintiff
23 through its chiefs or head men which it annually
24 elects."

1 (7) In 1917, the Federal District Court decided
2 the McGinn case against the United States finding
3 that the language in the Colonial Point deeds did
4 not prevent the Colonial Point land from being
5 taxed.

6 (8) Over the next 20 years, members of the
7 Band asked the United States to appeal, or other-
8 wise rectify the District Court's decision, but no
9 Federal action was taken. Throughout this period,
10 the United States continued to provide the Band
11 and its members with many of the same Federal
12 services that were being provided to other Indian
13 tribes in Michigan.

14 (9) The Act of June 18, 1934 (hereafter in this
15 Act referred to as the "Indian Reorganization Act"),
16 authorized and directed the Bureau of Indian Af-
17 fairs to provide technical assistance and Federal
18 funds to petitioning tribes to assist them in reorga-
19 nizing their governments and improving their econo-
20 mies. Members of the Cheboigan Band, as well as
21 members of other landless treaty Tribes in Michigan,
22 submitted petitions to receive that assistance. Simi-
23 lar petitions were also submitted by 4 Michigan
24 bands that still held communal lands. Possession of
25 a tribal land base was a prerequisite to the receipt

1 of most of the Federal funds and services provided
2 for in the Indian Reorganization Act.

3 (10) While the Indian Reorganization Act di-
4 rected the Secretary to assist landless bands, like
5 Burt Lake, and authorized Federal funds to acquire
6 land for landless tribes, no Federal funds were ap-
7 propriated to acquire new tribal lands for any of the
8 landless bands in Michigan. After struggling with
9 this dilemma, the Bureau of Indian Affairs extended
10 the benefits of the Indian Reorganization Act to only
11 those 4 Michigan tribes that had an existing land
12 base on the date of the enactment of the Indian Re-
13 organization Act. Of the Ottawa and Chippewa
14 Tribes who signed the 1836 and 1855 Treaties, only
15 1 group, the Bay Mills Indian Community was re-
16 affirmed.

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

1 (12) The Bureau of Indian Affairs lacked and
2 lacks the legal authority to terminate a tribe that
3 has been acknowledged by an Act of Congress.

4 (13) In recent years, the Federal recognition of
5 the following Michigan tribes, who were also denied
6 the benefits of the Indian Reorganization Act, has
7 been reaffirmed:

8 (A) The Sault Ste. Marie Tribe of Chip-
9 pewa was reaffirmed by a Memorandum of the
10 Commissioner of Indian Affairs on September
11 7, 1972.

12 (B) The Grand Traverse Band of Ottawa
13 and Chippewa Indians was reaffirmed by the
14 Bureau of Indian Affairs Branch of Acknowl-
15 edgment on May 27, 1980.

16 (C) The Little Traverse Bay Bands of
17 Odawa Indian and the Little River Band of Ot-
18 tawa Indians each had its Federal status re-
19 affirmed by an Act of Congress on September
20 21, 1994.

21 (D) The Lac Vieux Desert Band of Lake
22 Superior Chippewa Indians had its Federal sta-
23 tus reaffirmed by an Act of Congress at the re-
24 quest of the Administration on September 8,
25 1988.

1 (E) The Pokagon Indian Nation had its
2 Federal status reaffirmed by an Act of Con-
3 gress on September 21, 1994.

4 (F) The Huron Potawatomi Nation had its
5 Federal status reaffirmed by the Bureau of In-
6 dian Affairs' Branch of Acknowledgment and
7 Research on March 17, 1996.

8 (G) The Gun Lake Tribe (Match-She-Be-
9 Nash-She-Wish) had its Federal status re-
10 affirmed by the Bureau of Indian Affairs' Of-
11 fice of Federal Acknowledgment on August 23,
12 1999.

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

16 (15) All of the Band's adult members are the
17 children, grandchildren, or great grandchildren of
18 Indian persons who resided on or near Colonial
19 Point or Indian Road at the time of the Burn Out.
20 Most of the Band's adult members grew up on or
21 near Indian Road or had an immediate family mem-
22 ber who did. As the result, the Band's members
23 have maintained very close social and political ties.

24 (16) The Band's families have and continue to
25 provide mutual aid to each other, visit each other

1 regularly, mobilize to assist each other in times of
2 need, practice traditional arts and crafts, gather for
3 Ghost Suppers, decorate the graves of their ances-
4 tors, and participate in other traditional tribal cere-
5 monies and events.

6 (17) Since 1829 the Band's members have at-
7 tended and consistently mobilized to maintain the
8 Indian Mission Church of St. Mary's, first on Colo-
9 nial Point and later on Indian Road. The Band's
10 members have also worked together to maintain the
11 Tribe's 2 Indian cemeteries. They have also dug the
12 graves and buried their relatives in those 2 Indian
13 cemeteries for almost 200 years.

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

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

1 were married to other Ottawa and Chippewa individ-
2 uals.

3 **SEC. 3. DEFINITIONS.**

4 For purposes of this Act—

5 (1) the term “Band” or “Tribe” means the
6 Burt Lake Band of Ottawa and Chippewa Indians
7 which was previously called the Cheboigan or Che-
8 boygan Band of Ottawa and Chippewa Indians;

9 (2) the term “Burn Out” means the destruction
10 of the Colonial Point Indian Village of the Burt
11 Lake Band in 1900;

12 (3) the term “OFA” means the Office of Fed-
13 eral Acknowledgment, a Branch of the United States
14 Department of Interior’s Bureau of Indian of Indian
15 Affairs; and

16 (4) the term “Secretary” means the Secretary
17 of the Interior.

18 **SEC. 4. FEDERAL RECOGNITION.**

19 (a) FEDERAL RECOGNITION.—Federal recognition of
20 the Burt Lake Band of Ottawa and Chippewa Indians is
21 hereby reaffirmed. All laws and regulations of the United
22 States of general application to Indians or nations, tribes,
23 or bands of Indians including the Act of June 18, 1934
24 (25 U.S.C. 461 et seq., commonly referred to as the “In-
25 dian Reorganization Act”), which are inconsistent with

1 any specific provision of this Act shall not be applicable
2 to the Band and its members.

3 (b) FEDERAL SERVICES AND BENEFITS.—

4 (1) IN GENERAL.—Notwithstanding any other
5 provision of law, after the date of the enactment of
6 this Act, the Band and its members shall be eligible
7 for all services and benefits provided by the Federal
8 Government to Indians because of their status as
9 federally recognized Indians without regard to the
10 existence of a reservation or the location of the resi-
11 dence of any member on or near any Indian reserva-
12 tion.

13 (2) SERVICE AREA.—For purposes of the deliv-
14 ery of Federal services to the enrolled members of
15 the Band and to other Indians, all of Cheboygan
16 County Michigan, and any area in the State of
17 Michigan that is outside of Cheboygan County, but
18 located within 25 miles of the Tribe's Cemetery at
19 the St. Mary's Indian Mission Church, shall be
20 deemed to be within the Service Area of the Burt
21 Lake Band. Nothing contained herein shall prohibit
22 the Federal Government from providing services to
23 members of the Band who reside or are domiciled
24 outside this Service Area, or from otherwise expand-
25 ing the Band's Service Area in compliance with ap-

1 plicable Federal law and policy. If any part of the
2 Band's service area overlaps with the service area of
3 another federally recognized Indian tribe, that over-
4 lap shall be addressed in compliance with existing
5 Federal policies and regulations.

6 **SEC. 5. REAFFIRMATION OF RIGHTS.**

7 (a) IN GENERAL.—All rights and privileges of the
8 Band and its members, which may have been abrogated
9 or diminished before the date of the enactment of this Act
10 are hereby reaffirmed.

11 (b) EXISTING RIGHTS OF TRIBE.—Nothing in this
12 Act shall be construed to diminish any right or privilege
13 of the Band or of its members that existed before the date
14 of the enactment of this Act. Except as otherwise specifi-
15 cally provided in any other provision of this Act, nothing
16 in this Act shall be construed as altering or affecting any
17 legal or equitable claim the Band may have to enforce any
18 right or privilege reserved by or granted to the Band which
19 was wrongfully denied to or taken from the Band before
20 the enactment of this Act.

21 **SEC. 6. TRIBAL LANDS.**

22 The Secretary shall acquire real property in Che-
23 boygan County in trust for the benefit of the Burt Lake
24 Band of Ottawa and Chippewa Indians, if at the time of
25 such acceptance by the Secretary, there are no adverse

1 legal claims on such property including outstanding liens,
2 mortgages or taxes owed. Such lands shall become part
3 of the initial reservation of the Band at the request of
4 the Band. The Secretary is also authorized to acquire and
5 accept real property in other geographic areas into trust
6 for the benefit of the Band and to declare those lands to
7 be a part of the Band's Reservation or Initial Reservation
8 to the full extent otherwise authorized by applicable law.

9 **SEC. 7. MEMBERSHIP.**

10 (a) IN GENERAL.—Membership in the Burt Lake
11 Band of Ottawa and Chippewa Indians shall consist of
12 persons who can present evidence, acceptable to the Tribe,
13 showing that they meet the requirements of subsection (b),
14 and persons who meet such other requirements as are
15 specified by the Tribe in its Tribe's Constitution and En-
16 rollment Ordinance as the same may be from time to time
17 amended.

18 (b) MEMBERSHIP CRITERIA.—

19 (1) To qualify for membership in the Burt Lake
20 Band of Ottawa and Chippewa Indians, a person
21 must be able to demonstrate through evidence ac-
22 ceptable to the Tribe that the person meets at least
23 one of the following requirements:

24 (A) The person descends from one or more
25 tribal members who were domiciled at Colonial

1 Point, Burt Township, Cheboygan County,
2 Michigan before or at the time that the Tribe's
3 village was burned in October 1900, as said
4 tribal members are identified in the United
5 States v. McGinn litigation and related docu-
6 ments, and/or the 1950 Albert Shananaquet list
7 of Colonial Point Residents.

8 (B) The person descends from one or more
9 tribal members who are listed on the 1900 and/
10 or the 1910 Burt Lake Township Federal Cen-
11 sus, Indian Enumeration Schedule.

12 (C) The person has an Indian ancestor
13 who was, prior to 1910, living in tribal relations
14 with the Burt Lake Band of Ottawa and Chip-
15 pewa Indians as the Burt Lake Band is defined
16 in this Act.

17 (D) The person descends from Rose
18 Midwagon Moses.

19 (2) In addition to the requirements under para-
20 graph (1), to qualify for membership in the Burt
21 Lake Band of Ottawa and Chippwa Indians, a per-
22 son must be able to demonstrate through evidence
23 acceptable to the Tribe that the person meets all of
24 the following criteria:

1 (A) That the person is in tribal relations
2 with other Burt Lake Band members.

3 (B) That the person's ancestors have lived
4 in tribal relations with other Burt Lake Band
5 members on a substantially continuous basis
6 from 1910 to the present.

7 (C) That the person has a completed tribal
8 membership enrollment file as prescribed by the
9 Tribal Enrollment Ordinance.

10 (D) That the person's membership applica-
11 tion has been processed and that the person has
12 been approved for membership in the Burt
13 Lake Band in the manner prescribed by the
14 Tribal Enrollment Ordinance.

15 (c) BASE ROLL.—The base roll of the Burt Lake
16 Band of Ottawa and Chippewa Indians shall consist of the
17 320 persons whose names were listed on the official roll
18 of the Burt Lake Band which were members submitted
19 by the Band to the Bureau of Indian Affairs' Office of
20 Federal Acknowledgment on May 2, 2005, and shall also
21 include the biological sons and daughters who were born
22 to those members between the submission of that list and
23 the enactment of this Act.

1 **SEC. 8. CONSTITUTION.**

2 The initial Constitution of the Burt Lake Band of
3 Ottawa and Chippewa Indians shall be the Constitution
4 which the Band submitted to the Bureau of Indian Af-
5 fairs' Office of Federal Acknowledgment on May 2, 2005.

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