Testimony
of
Aurene Martin
Principal Deputy Assistant Secretary - Indian Affairs
Before the
Committee on Resources
United States House of Representatives
on
H.R. 831, To provide for and approve the settlement of certain land claims of the Bay Mills Indian Community
and
H.R. 2793, To provide for and approve the settlement of certain land claims of the Sault Ste. Marie Tribe of Chippewa Indians

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Good afternoon, Mr. Chairman and Members of the Committee. My name is Aurene Martin, and I am the Principal Deputy Assistant Secretary – Indian Affairs, at the Department of the Interior. I am pleased to be here today to testify on H.R. 831, a bill to provide for and approve the settlement of certain land claims of the Bay Mills Indian Community, and on H.R. 2793, a bill to provide for and approve certain land claims of the Sault Ste. Marie Tribe of Chippewa Indians. For the following reasons, the Department is unable to support these bills as written.

H.R. 831 would approve and ratify an agreement executed on August 23, 2002, between the Governor of the State of Michigan and the Bay Mills Indian Community. H.R. 2793 would approve and ratify an agreement executed on December 30, 2002, between the Governor of the State of Michigan and the Sault Ste. Marie Tribe. The settlement agreements provide the basis for Congress to extinguish the two tribes' claims to the Charlotte Beach lands. In consideration for the extinguishments of the tribes' claims, Section 2 of H.R. 831 would require the Secretary to take into trust for the Bay Mills Indian Community alternative land located in Port Huron, Michigan, some 250 miles from the Tribe's reservation. Section 1(b) of H.R. 2793 would require the Secretary to take into trust for the Sault Ste. Marie Tribe two parcels of land, one located in Otswego County, subject to the approval of the Village of Vanderbilt and the Little Traverse Bay Bands of Odawa Indians, and the other one located in the City of Romulus, Michigan, subject to the approval of the City.

The settlement agreements are similar and contain, in pertinent part: (1) provisions relating to the tribes' agreement to relinquish all legal and equitable claims to the Charlotte Beach lands; (2) the Governor's concurrence in the trust acquisition of the alternative lands for gaming purposes; (3) tribal payments to the State of Michigan in an amount equal to 8% of the net win derived from all Class III electronic games of chance in consideration for limited geographical exclusivity, and payments in the aggregate amount equal to 2% of the net win from all Class III electronic games of chance to local

units of state governments; (4) limitation of the tribes' Class III gaming operations in Michigan; (5) the Governor's forbearance from exercising the State's unilateral right to renegotiate the Compact pursuant to Section 12(c) of the Compact; and (6) a statement that Section 9 of the compact is not implicated by provision of the alternative land to the Tribe, and the Governor's waiver of this provision to the extent it is determined to be implicated.

We are concerned with the mandatory nature of the land acquisition provisions in the bills for two reasons. First, the bills would require that alternative lands be taken into trust even if the Department determines that potential liabilities exist on these lands. In this regard, we would recommend that any acquisition in trust be conditioned upon the lands meeting applicable environmental standards. Second, we believe that the 30-day time frame to take the lands into trust after receipt of title insurance policies is too short, and would make it impossible for the Department to comply with its existing regulation, 25 CFR 151.12, that a notice be published in the Federal Register at least 30 days before land is taken into trust. The Department asks that Congress consider the cost to and potential liability of the United States Government with respect to legislative transfers of land into trust, both in this particular instance and all future mandatory trust transactions.

We also are concerned with the lack of consultation with other Michigan tribes that may be impacted by the terms of these settlements, especially since the agreements purport to waive Section 9 of the Michigan compacts to the extent it is implicated by the settlements.

Finally, we believe that the gaming-related provisions of the settlement agreements should be evaluated under the Indian Gaming Regulatory Act (IGRA) through the submission of compact amendments to the Secretary. It is our view that IGRA requires that all substantive provisions relating to the operation of gaming activities be included in a tribal/state compact. These bills arguably carve an unwise exception to this requirement, especially since the revenue-sharing provisions of the settlement agreements may be in violation of Section 11(d)(4) of IGRA.

This concludes my remarks. I will be happy to answer any questions the Committee may have. Thank you.