

Frank Bibeau  
ATTORNEY AT LAW  
51124 County Road 118  
Deer River, Minnesota 56636  
218-760-1258 or [frankbibeau@gmail.com](mailto:frankbibeau@gmail.com)

November 8, 2018

Patricia Olby, Superintendent  
Minnesota Agency  
Bureau of Indian Affairs  
Federal Building, Room 418  
522 Minnesota Avenue, NW  
Bemidji, Minnesota 56601-3062

Re: MCT Land rights, responsibilities, privileges and concerns

Dear Ms. Olby:

I write this letter with regard to several MCT land concerns, issues and requests for information for myself and others. I am asked questions which I cannot answer and have my own questions as an individual tribal member. I have been present when Mr. Dale Greene has asked you about Bureau of Indian Affairs (BIA) federal supervision of individual Indians and of tribes and to whom does the BIA have primary trust responsibilities and duty to protect resources? As you know, the MCT is looking to distribute common trust lands of the Minnesota Chippewa Tribe (MCT), between the 6 MCT reservations, through a gifting mechanism.

I am concerned as an individual, treaty beneficiary, tribal member about my *individual* and *in common* rights with lands regulated by the MCT and/or Reservation Business Committees (RBCs) becoming exclusively for the benefit of each reservation, including rights of exclusion. While I am enrolled in the Minnesota Chippewa Tribe (White Earth), I am also a Pillager Band treaty descendant member living on MCT trust land on Leech Lake Reservation (LLR). Not long ago, LLR cancelled lake shore leases on non-LL people, including MCT members of White Earth. The act of taking

lease lands from certain, treaty beneficiary Chippewa (Mississippi and Pillager) to give to favored LL (MCT) Chippewa treaty beneficiaries is unethical, if not unlawful, since everyone has equal treaty beneficiary interests. These equal, Chippewa treaty beneficiaries' interests are mostly for lands held *in common* across all 6 MCT reservations, not allotments.

The Nelson Act Settlement required an Act of Congress because the Indian Reorganization Act (IRA) RBCs wanted half of about \$30M, which by Nelson Act provisions was to be distributed equally among the Minnesota Chippewa Tribal members (treaty beneficiaries) as a *per capita* distribution. The MCT is a federally created corporation under the IRA, which can only represent our collective interests, not become a successor in interest. So instead, Congress made it possible for the 6 MCT RBCs to receive about half of the Nelson Act proceeds. How is it that the Nelson Act does not apply now, with regard to the same land and resources of the MCT?

The Nelson Act litigation took decades and ultimately an Act of Congress to resolve. Normally all of the proceeds for compensation with regard to nonpayment or underpayment of land and timber would go to the tribal member, living treaty beneficiaries in a *per capita* distribution. Is it not an equal protection violation (conflict of interests) for the individual Tribal Executive Committee (TEC) members to seek lands by gift for their reservations (that are really held in common by and for all MCT members) for their respective, exclusive reservation title and or use?

The 1842 Treaty speaks directly to lands being held *in common* by the Chippewa of the Mississippi and Lake Superior. How is it now that not even a referendum of the living member, treaty beneficiaries is required for the commonly held lands transfer to individual reservations? The US Supreme Court in the 1999 Mille Lacs decision held that treaties are to be construed as the Indians would have understood them. As an enrolled MCT member I presently would have use and occupation rights on at least MCT lands on all 6 MCT reservations. Will tribal members and future beneficiaries lose these important and significant fundamental rights under this land gifting?

These are important tribal members' interests at stake and the Eighth Circuit found at White Earth Reservation, the taking of tribal members'

To: Patricia Olby, Supt. MN Agency, BIA

Re: MCT Land rights, responsibilities, privileges and concerns

November 8, 2018, page 2.

(fractionated) property rights *with just compensation*, and an opt-out period for the compensation was provided for the takings under the White Earth Land Settlement Act whereby

Members of White Earth Band of Chippewa Indians sought declaration of unconstitutionality of White Earth Reservation Land Settlement Act, or order that Secretary of Interior and others perform trust duties before taking any further action under Act. . . . The Court of Appeals, Buckley, Circuit Judge, held that even if six month limitation period for bringing claims under White Earth Reservation Land Settlement Act is unreasonably short and, as consequence, Act effectively “takes” Indian band members' property rights, statute provides Indians with a just compensation.<sup>1</sup>

Here, the due process, notice of the taking, opportunity to be heard or opt-out and just compensation were planned and provided as required under the any of the Fifth Amendment analysis for Indian Civil Rights Act (ICRA), US Constitution and MCT Constitution. Isn't this gifting a constitutional, due process violation of treaty protected rights to lands held in common, of the living Chippewa beneficiaries? What about opting out? Don't these Chippewa Indians' land rights precede the IRA? Is it not true that if the MCT were disestablished and lands taken by Congress, that the compensation could only go to the living Chippewa treaty beneficiaries?

My second area of concern and question is with regard to consent of Allottee heirs for Line 3 survey and ultimately a land lease payment (via IIM distributions). How is Fair Market Value (FMV) for land leasing, fair for Allottee heirs, when millions of dollars are negotiated by the IRA RBC agreement? Is it not true that if federal recognition and reservation lands were taken by congress, the compensation would be distributed *per capita* to the living tribal members under the Nelson Act and not the IRA RBCs? Is this a scenario for a new Cobell-like BIA mis-management of tribal resources?

---

<sup>1</sup> See Littlewolf, et al., v. Lujan, Jr., Secretary of the Interior, et al., 877 F.2d 1058 (1989).

To: Patricia Olby, Supt. MN Agency, BIA  
Re: MCT Land rights, responsibilities, privileges and concerns  
November 8, 2018, page 3.

I have reviewed the Notice Letter of Intent from Enbridge to Fond du Lac (FDL) heirs, which suggests that without written consent of heirs, surveying and use for 20 years is not granted. Do IRA tribes have power of *eminent domain* over individual Indians' property rights? Or would a forced RBC Pipeline agreement be a *trespass*, if not unjust taking, of individual Indians' trust lands and resources? Are Allottee heirs' consents an indispensable part of due process protections that require a minimum, sufficient, individual consent mandatory?

Third, this letter is a public information request for the FDL and LL Enbridge Clipper Pipeline agreements with the RBCs and all individual Allottee heir notice of intent and consent forms executed and filed for the Enbridge Clipper Pipeline leases. I understand there may be per page charges for photocopying.

I look forward to your responses as we MCT individual Indians try to understand our individual rights and the limitations of an IRA federal tribal corporation called the Minnesota Chippewa Tribe.

If you have any questions or if I can be of further assistance, please call on me at 218-760-1258 or via email.

Mii gwitch,

*/s/ Frank Bibeau*

Frank Bibeau

cc: Gary Frazier, MCT Executive Director  
Dale Greene, Jr.

To: Patricia Olby, Supt. MN Agency, BIA  
Re: MCT Land rights, responsibilities, privileges and concerns  
November 8, 2018, page 4.