

110TH CONGRESS
1ST SESSION

H. R. 1575

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

MARCH 19, 2007

Mr. STUPAK (for himself and Mr. KILDEE) introduced the following bill; which was referred to the Committee on Natural 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] is
18 now and was at all the times mentioned in this bill
19 of complaint a tribe of indians [sic] under the care,
20 control, and guardianship of the plaintiff and said
21 band is now and was at all times mentioned in this
22 bill of complaint recognized by the plaintiff through
23 its chiefs or head men which it annually elects."

24 (7) In 1917, the Federal District Court decided
25 the McGinn case against the United States finding

1 that the language in the Colonial Point deeds did
2 not prevent the Colonial Point land from being
3 taxed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (15) All of the Band's adult members are the
14 children, grandchildren, or great grandchildren of
15 Indian persons who resided on or near Colonial
16 Point or Indian Road prior to 1910. Most of the
17 Band's adult members grew up on or near Indian
18 Road or had an immediate family member who did.
19 As the result, the Band's members have maintained
20 very close social and political ties. The Band has its
21 own, well-defined membership criteria, which re-
22 quires the maintenance of tribal relations.

23 (16) The Band's families have and continue to
24 provide mutual aid to each other, visit each other
25 regularly, mobilize to assist each other in times of

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

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

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

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

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

3 (20) There is no evidence that the Band has
4 willfully abandoned tribal relations, nor is there any
5 evidence that the Congress has taken any legal ac-
6 tion to terminate its government-to-government rela-
7 tions with the Band.

8 (21) Because the Bureau of Indian Affairs
9 failed to review the Band's petition for over 20
10 years, a percentage of the Band's members enrolled
11 in other Tribes in order to obtain the Federal serv-
12 ices, most notably health care and prescription drug
13 assistance, that they were legally entitled to, but de-
14 nied as members of Burt Lake. This step was often
15 taken on the advice of one or more employees of the
16 Bureau of Indian Affairs. This dual enrollment situ-
17 ation has now created a new problem for the Band's
18 reaffirmation, because the Bureau of Indian Affairs'
19 current regulations prohibit it from recognizing a
20 tribe when a part of the tribe's community is or was
21 enrolled in another federally recognized tribe.

22 (22) In September 2006, the Bureau of Indian
23 Affairs denied the Band's petition for reaffirmation
24 even though it found that the Band has been recog-
25 nized as a distinct tribe by scholars, local and State

1 officials, and other tribes from treaty to the present,
2 and even though it found that the Burt Lake’s mem-
3 bers still maintain a strong and unique Indian com-
4 munity. In its letter denying the Band’s request for
5 reaffirmation, under the section informing the Band
6 of its current options, the Bureau of Indian Affairs
7 stated that “Congress may consider taking legisla-
8 tive action to recognize petitioners that do not meet
9 the specific requirements of the acknowledgment
10 regulations but may have merit.”.

11 (23) Because the Tribe has exhausted its ad-
12 ministrative remedies, and because the Bureau of
13 Indian Affairs has found that its regulations pro-
14 hibit it from reaffirming the Band’s government to
15 government relationship through its Office of Fed-
16 eral Acknowledgment, this legislation is both nec-
17 essary and appropriate.

18 **SEC. 3. DEFINITIONS.**

19 For purposes of this Act—

20 (1) the term “Band” or “Tribe” means the
21 Burt Lake Band of Ottawa and Chippewa Indians
22 which was previously called the Cheboigan or Che-
23 boygan Band of Ottawa and Chippewa Indians;

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

4 (3) the term “OFA” means the Office of Fed-
5 eral Acknowledgment, a Branch of the United States
6 Department of Interior’s Bureau of Indian of Indian
7 Affairs; and

8 (4) the term “Secretary” means the Secretary
9 of the Interior.

10 **SEC. 4. FEDERAL RECOGNITION.**

11 (a) FEDERAL RECOGNITION.—Federal recognition of
12 the Burt Lake Band of Ottawa and Chippewa Indians is
13 hereby reaffirmed. All laws and regulations of the United
14 States of general application to Indians or nations, tribes,
15 or bands of Indians including the Act of June 18, 1934
16 (25 U.S.C. 461 et seq., commonly referred to as the “In-
17 dian Reorganization Act”), which are inconsistent with
18 any specific provision of this Act shall not be applicable
19 to the Band and its members.

20 (b) FEDERAL SERVICES AND BENEFITS.—

21 (1) IN GENERAL.—Notwithstanding any other
22 provision of law, after the date of the enactment of
23 this Act, the Band and its members shall be eligible
24 for all services and benefits provided by the Federal
25 Government to Indians because of their status as

1 federally recognized Indians without regard to the
2 existence of a reservation or the location of the resi-
3 dence of any member on or near any Indian reserva-
4 tion.

5 (2) SERVICE AREA.—For purposes of the deliv-
6 ery of Federal services to the enrolled members of
7 the Band and to other Indians, all of Cheboygan
8 County Michigan, and any area in the State of
9 Michigan that is outside of Cheboygan County, but
10 located within 25 miles of the Tribe’s Cemetery at
11 the St. Mary’s Indian Mission Church, shall be
12 deemed to be within the Service Area of the Burt
13 Lake Band. Nothing contained herein shall prohibit
14 the Federal Government from providing services to
15 members of the Band who reside or are domiciled
16 outside this Service Area, or from otherwise expand-
17 ing the Band’s Service Area in compliance with ap-
18 plicable Federal law and policy. If any part of the
19 Band’s service area overlaps with the service area of
20 another federally recognized Indian tribe, that over-
21 lap shall be addressed in compliance with existing
22 Federal policies and regulations.

23 **SEC. 5. REAFFIRMATION OF RIGHTS.**

24 (a) IN GENERAL.—All rights and privileges of the
25 Band and its members, which may have been abrogated

1 or diminished before the date of the enactment of this Act
2 are hereby reaffirmed.

3 (b) **EXISTING RIGHTS OF TRIBE.**—Nothing in this
4 Act shall be construed to diminish any right or privilege
5 of the Band or of its members that existed before the date
6 of the enactment of this Act. Except as otherwise specifi-
7 cally provided in any other provision of this Act, nothing
8 in this Act shall be construed as altering or affecting any
9 legal or equitable claim the Band may have to enforce any
10 right or privilege reserved by or granted to the Band which
11 was wrongfully denied to or taken from the Band before
12 the date of the enactment of this Act.

13 **SEC. 6. TRIBAL LANDS.**

14 The Secretary shall acquire real property in Che-
15 boygan County in trust for the benefit of the Burt Lake
16 Band of Ottawa and Chippewa Indians, if at the time of
17 such acceptance by the Secretary, there are no adverse
18 legal claims on such property including outstanding liens,
19 mortgages or taxes owed. Such lands shall become part
20 of the initial reservation of the Band at the request of
21 the Band. The Secretary is also authorized to acquire and
22 accept real property in other geographic areas into trust
23 for the benefit of the Band and to declare those lands to
24 be a part of the Band's Reservation or Initial Reservation
25 to the full extent otherwise authorized by applicable law.

1 **SEC. 7. MEMBERSHIP.**

2 (a) IN GENERAL.—The initial membership of the
3 Burt Lake Band of Ottawa and Chippewa Indians shall
4 consist of persons who can present evidence, acceptable
5 to the Tribe, showing that they meet the requirements of
6 subsection (b), and persons who meet such other require-
7 ments as are specified by the Tribe in its Tribe’s Constitu-
8 tion and Enrollment Ordinance as the same may be from
9 time-to-time amended.

10 (b) MEMBERSHIP CRITERIA.—

11 (1) To qualify for membership in the Burt Lake
12 Band of Ottawa and Chippewa Indians, a person
13 must be able to demonstrate through evidence ac-
14 ceptable to the Tribe that the person meets at least
15 1 of the following requirements:

16 (A) The person descends from one or more
17 tribal members who were domiciled at Colonial
18 Point, Burt Township, Cheboygan County,
19 Michigan before or at the time that the Tribe’s
20 village was burned in October 1900, as said
21 tribal members are identified in the United
22 States v. McGinn litigation and related docu-
23 ments, the 1950 Albert Shananaquet list of Co-
24 lonial Point Residents, or both.

25 (B) The person descends from one or more
26 tribal members who are listed on the 1900 and/

1 or the 1910 Burt Lake Township Federal Cen-
2 sus, Indian Enumeration Schedule.

3 (C) The person has an Indian ancestor
4 who was, prior to 1910, living in tribal relations
5 with the Burt Lake Band of Ottawa and Chip-
6 pewa Indians as the Burt Lake Band is defined
7 in this Act.

8 (D) The person descends from Rose
9 Midwagon Moses.

10 (2) In addition to the requirements under para-
11 graph (1), to qualify for membership in the Burt
12 Lake Band of Ottawa and Chippewa Indians, a per-
13 son must be able to demonstrate through evidence
14 acceptable to the Tribe that the person meets all of
15 the following criteria:

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

18 (B) That the person's ancestors have lived
19 in tribal relations with other Burt Lake Band
20 members on a substantially continuous basis
21 from 1910 to the present.

22 (C) That the person has a completed tribal
23 membership enrollment file as prescribed by the
24 Tribal Enrollment Ordinance.

1 (D) That the person's membership applica-
2 tion has been processed and that the person has
3 been approved for membership in the Burt
4 Lake Band in the manner prescribed by the
5 Tribal Enrollment Ordinance.

6 (c) BASE ROLL.—The Tribe shall provide a copy of
7 the base roll of the Burt Lake Band of Ottawa and Chip-
8 pewa Indians to the Assistant Secretary for Indians Af-
9 fairs not later than 12 months after the date of the enact-
10 ment of this Act. The base roll shall consist of the 320
11 persons whose names were listed on the official roll of the
12 Burt Lake Band which were members submitted by the
13 Band to the Bureau of Indian Affairs' Office of Federal
14 Acknowledgment on May 2, 2005, and shall also include
15 the biological sons and daughters who were born to those
16 members between the submission of that list and the en-
17 actment of this Act. The Base Roll shall also include those
18 descendants of Burt Lake members who resided at Colo-
19 nial Point prior to the Burn Out, who—

20 (1) meet the enrollment criteria established by
21 this section;

22 (2) seek enrollment in the Burt Lake Band not
23 later than 12 months after the date of the enact-
24 ment of this Act; and

1 (3) are accepted for enrollment in the Band in
2 the manner prescribed by the Band's Constitution.

3 **SEC. 8. CONSTITUTION.**

4 The initial constitution of the Burt Lake Band of Ot-
5 tawa and Chippewa Indians shall be the constitution which
6 the Band submitted to the Bureau of Indian Affairs' Of-
7 fice of Federal Acknowledgment on May 2, 2005.

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