

107TH CONGRESS
1ST SESSION

H. R. 939

To reaffirm and clarify the Federal relationship of the Swan Creek Black River Confederated Ojibwa Tribes of Michigan as a distinct federally recognized Indian tribe and to restore aboriginal rights, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 2001

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

A BILL

To reaffirm and clarify the Federal relationship of the Swan Creek Black River Confederated Ojibwa Tribes of Michigan as a distinct federally recognized Indian tribe and to restore aboriginal rights, 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 “Swan Creek Black
5 River Confederated Ojibwa Tribes of Michigan Act”.

6 **SEC. 2. DEFINITIONS.**

7 For purposes of this Act—

1 (1) the term “Tribe” means the Swan Creek
2 and Black River Confederated Ojibwa Tribes of
3 Michigan;

4 (2) the term “member” means an individual
5 who is eligible for enrollment in the Tribe pursuant
6 to section 7;

7 (3) the term “Secretary” means the Secretary
8 of the Interior; and

9 (4) the “Indian Reorganization Act” means the
10 Act of June 18, 1934 (25 U.S.C. 461 et seq.).

11 **SEC. 3. FINDINGS.**

12 The Congress finds the following:

13 (1) The Tribe is the political descendant of cer-
14 tain signatories of the 1785 Treaty of McIntosh (7
15 Stat. 16); the 1789 Treaty of Fort Harmar (7 Stat.
16 28); the 1795 Treaty of Greenville (7 Stat. 49); the
17 1805 Treaty with the Wyandot (7 Stat. 87); the
18 1807 Treaty of Detroit (7 Stat. 105); the 1808
19 Treaty of Detroit (7 Stat. 112); the Treaty of 1815
20 (7 Stat. 131); the Treaty of 1816 (7 Stat. 146); the
21 Treaty of 1817 (7 Stat. 160); the Treaty of 1833
22 (7 Stat. 431); the 1836 Treaty of Washington (7
23 Stat. 503); the 1855 Treaty of Detroit (11 Stat.
24 633); and the Treaty of 1864 (14 Stat. 657).

1 (2) The Tribe is the political successor to the
2 Swan Creek Black River leadership who signed 4 of
3 the forenamed treaties: the 1807 Treaty of Detroit
4 (7 Stat. 105); the 1836 Treaty of Washington (7
5 Stat. 503); the 1855 Treaty of Detroit (11 Stat.
6 633); and the Treaty of 1864 (14 Stat. 657).

7 (3) The aboriginal lands of the Tribe, as de-
8 fined in the aforementioned treaties, comprise the
9 area which is now located in the State of Michigan,
10 beginning at a point north of the mouth of the
11 Miami River at the present day western boundary of
12 Lenawee County where it intersects with the north-
13 ern boundary of the State of Ohio, and running due
14 north to a point in Shiawasee County that intersects
15 a parallel of latitude equal to the outlet of Lake
16 Huron which forms the mouth of the St. Clair River,
17 thence running northeast in a direct line to White
18 rock in Huron County, at the shoreline of Lake
19 Huron, thence east until it intersects the boundary
20 lines between the United States of America and
21 Canada at the midpoint of Lake Huron, and thence
22 due south along the centerline of Lake Huron
23 through the River St. Clair, Lake St. Clair, the De-
24 troit River, and into Lake Erie, to a point where the
25 boundary line of Michigan, Ohio, and Ontario cov-

1 erage and intersect, and thence due southwest along
2 said boundary of Michigan to the boundary line be-
3 tween Michigan and Ohio, and thence due west to
4 the point and place of beginning.

5 (4) As a result of the cession treaties, from the
6 1807 Treaty of Detroit through the 1836 Treaty of
7 Washington, the Tribe was compelled to withdraw
8 from most of its intrinsically valuable aboriginal
9 lands in southeastern lower Michigan. In return, the
10 Federal Government dedicated specific tracts of res-
11 ervation land in Macomb and St. Clair Counties in
12 Michigan, and nominal annuity payments by the
13 United States Government were available to tribal
14 members. These annuity payments resulted in 17
15 separate Swan Creek Black River annuities that sur-
16 vived from 1818 to 1867.

17 (5) The 1836 Treaty of Washington compelled
18 the Tribe to further withdraw from the small tracts
19 of land granted in southeastern lower Michigan by
20 the 1807 Treaty of Detroit, in return for future an-
21 nuity payments and land west of the Mississippi
22 River. The 1836 treaty did not require any member
23 of the Tribe to move to Kansas and only 51 mem-
24 bers actually relocated. According to the 1845
25 United States Richmond census, the vast majority of

1 the Tribe under the leadership of Ona Way Tuck
2 Quod Too, migrated north to Lapeer County, Michi-
3 gan, or remained on smaller tracts of land situated
4 within the boundaries of Macomb, western Wayne,
5 eastern Washtenaw, St. Clair, and southern Oakland
6 Counties.

7 (6) Pursuant to the 1855 Treaty of Detroit,
8 members of the Tribe withdrew and relocated from
9 their remaining lands in Lapeer, Macomb, Wayne,
10 Washtenaw, St. Clair, and Oakland Counties in
11 Michigan, to nonaboriginal, nonhistoric, reservation
12 lands further north in Isabella County, Michigan,
13 where tribal members were eligible for individual
14 land allotments. Many tribal members, however, con-
15 tinued to remain on land holdings in their aboriginal
16 lands in Lapeer, Macomb, Wayne, Washtenaw, and
17 St. Clair Counties. For administrative convenience,
18 the Federal Government placed multiple tribes on
19 these newly established reservation lands in Isabella
20 County.

21 (7) The stated purpose of the 1855 Treaty of
22 Detroit was to resolve the multiple outstanding legal
23 and equitable claims of all the tribes on the Isabella
24 Indian Reservation against the United States by
25 providing land, annuity payments, and other bene-

1 fits. The intent to maintain separate tribal identities
2 was reflected throughout the 1855 Treaty by refer-
3 ences to the distinct tribes as separate political en-
4 tities to the agreement. The Preamble text clearly
5 identified each of the tribes by reference to the sepa-
6 rate treaties previously signed by each chief or head-
7 men of their respective tribes. Article 2 of the treaty
8 makes an implied reference to separateness. In Arti-
9 cle 3, the tribes were expressly separated and indi-
10 vidually identified by the words “the said Chippewas
11 of Saginaw, and of Swan Creek and Black River”.
12 Finally, Article 6 specifically dispels the notion that
13 the grouping of the Swan Creek and Black River
14 Tribes and the Saginaw Chippewa Tribe should be
15 for anything more than the specific purpose of Fed-
16 eral administrative convenience. The temporary
17 counsel as a tribal organization, was without perma-
18 nent delegation by providing that: “The tribal orga-
19 nization of said Indians, except so far as may be
20 necessary for the purpose of carrying into effect the
21 provisions of this agreement, is hereby dissolved.”
22 The reference to the “Tribal Organization” dissolved
23 refers only to the entity that would provide distribu-
24 tion of land as required by the treaty of 1855.

1 (8) Over time and without justification, the
2 Federal Government unilaterally lapsed its relation-
3 ship with the Tribe through the treaties described
4 above. The Tribe brought suit against the Federal
5 Government for amounts past due under those trea-
6 ties. In 1910 and 1924, the Congress enacted juris-
7 dictional acts (36 Stat. 829 and 43 Stat. 137, re-
8 spectively) to enable both the Tribe and the Saginaw
9 Band of Chippewa, as distinct plaintiffs, to file their
10 respective claims against the United States. These
11 claims, filed in 1927, were later incorporated into a
12 combined cause of action for purposes of Federal ad-
13 ministrative convenience into Indian Claims Com-
14 mission Dockets 57, 59, 13-E, 13-H, and 13-1,
15 and United Claims Court Docket 13-F. However,
16 the 2 distinct tribes were retained in the distribution
17 judgment, and Congress ratified the same in 1986
18 through enactment of Public Law 99-346 (100 Stat.
19 674).

20 (9) In 1935, the Tribe petitioned for reorga-
21 nization and sought to reaffirm its sovereign status
22 by requesting assistance pursuant to the Indian Re-
23 organization Act.

24 (10) In 1939, without resolution of the Tribe's
25 demand for recognition and reaffirmation, agents of

1 the Federal Government made an administrative de-
2 cision not to provide services or extend benefits pur-
3 suant to the Indian Reorganization Act to any addi-
4 tional Indian tribes located in Michigan's lower pe-
5 ninsula. The Swan Creek Black River Ojibwa was a
6 signatory and recognized by the following treaties;
7 the 1807 Treaty of Detroit (7 Stat. 105), the 1819
8 Treaty of Saginaw (7 Stat. 203), the March 28,
9 1836 Treaty of Washington (7 Stat. 491), and the
10 May 9, 1836 Treaty of Washington (7 Stat. 503),
11 therefore, their petition under the Indian Reorga-
12 nization Act should have been honored as other
13 Michigan tribes. Additionally, the Swan Creek Black
14 River Tribe has never been formally dissolved by the
15 Federal Government.

16 (11) Despite administrative denials of requests
17 by the Tribe to establish an organization according
18 to Federal forms of tribal government, the Tribe
19 continued to carry out its traditional sovereign tribal
20 functions through various formal and informal polit-
21 ical institutions, social structures, and actions, in-
22 cluding a representative Tribal Council. Between
23 1937 and 1991, the Tribe conducted many of its
24 governmental functions through tribal based associa-
25 tions organized by Swan Creek Black River mem-

1 bers, including the Saginaw Rural and Urban Indian
2 Association. In 1991, the Tribe chartered within the
3 State a historic, nonprofit, tribal government, and
4 agreed to seek Federal reaffirmation of its Confed-
5 eration of Swan Creek and Black River Ojibwa
6 Bands as a distinct sovereign tribe.

7 (12) Other tribes in Michigan, whose members
8 are descendants of the signatories to 1 or more of
9 the treaties listed in section 3(1) have been acknowl-
10 edged, reaffirmed, and restored by the Federal Gov-
11 ernment as distinct Indian tribes, separate and
12 apart, including the Pokagon Band of Potawatomi
13 Indians, the Huron Potawatomi Band of Indians,
14 the Grand Traverse Band of Ottawa and Chippewa
15 Indians, the Sault Ste. Marie Tribe of Chippewa In-
16 dians, the Bay Mills Band of Chippewa Indians, the
17 Little Traverse Bay Bands of Ottawa Indians, and
18 the Match-E-Be-Nash-She-Wish Potawatomi. Due
19 process and treaty rights require that restoration be
20 provided for the Tribe.

21 (13) In light of the Federal treaty relations be-
22 tween the Tribe and the United States, recognition
23 as a tribe as defined by Acts of Congress, to provide
24 Federal restoration of the Tribe's rights in lands
25 and funds, it is appropriate for Congress to restore,

1 affirm, and clarify the Federal relationship of the
2 Tribe in the same manner as Congress has affirmed
3 Federal recognition of the Lac Vieux Desert Band
4 of Lake Superior Chippewa Indians, the Sault St.
5 Marie Band of Chippewa, the Pokagon Band of Pot-
6 awatomi Indians, the Little Traverse Bay Bands of
7 Odawa Indians, and the Little River Band of Ot-
8 tawa Indians.

9 **SEC. 4. FEDERAL REAFFIRMATION AND RESTORATION.**

10 (a) FEDERAL REAFFIRMATION AND RESTORA-
11 TION.—Federal recognition of the Swan Creek Black
12 River Confederated Ojibwa Tribes of Michigan Indians is
13 hereby restored and reaffirmed. All laws and regulations
14 of the United States of general application to Indians or
15 nations, tribes, or bands of Indians, including the Act of
16 June 18, 1934 (25 U.S.C. 461 et seq.) which are not in-
17 consistent with any specific provision of this Act, shall be
18 applicable to the Tribe and its members.

19 (b) FEDERAL SERVICES AND BENEFITS.—

20 (1) IN GENERAL.—The Tribe and its members
21 shall be eligible, on and after the date of the enact-
22 ment of this Act, for all future services and benefits
23 provided by the Federal Government to federally rec-
24 ognized Indian tribes without regard to the existence
25 of a reservation for the Tribe or the location of the

1 residence of any member on or near any Indian res-
2 ervation.

3 (2) SERVICE AREA.—For purposes of the deliv-
4 ery of Federal services to enrolled members of the
5 Tribe, the Tribe’s service area shall be deemed to be
6 the area comprised of Monroe, Lapeer, Lenawee,
7 Wayne, Oakland, Macomb, St. Clair, Washtenaw,
8 and portions of Sanilac, Shiawassee, Genesee, and
9 Tuscola Counties that were lands in southeastern
10 lower Michigan reserved to the Swan Creek Black
11 River Bands in the 1807 Treaty of Detroit (as later
12 confirmed in the Treaty of 1864).

13 **SEC. 5. REAFFIRMATION OF RIGHTS.**

14 (a) IN GENERAL.—All rights and privileges of the
15 Tribe, and the members thereof, which may have been ab-
16 rogated or diminished before the date of enactment of this
17 Act are hereby restored.

18 (b) EXISTING RIGHTS OF TRIBE.—Nothing in this
19 Act shall be construed to diminish any right or privilege
20 of the Tribe, or the members thereof, that existed prior
21 to the date of enactment of this Act. Except as otherwise
22 specifically provided in any other provision of this Act,
23 nothing in this Act shall be construed as altering or affect-
24 ing any legal or equitable claim the Tribe may have to
25 enforce any right or privilege reserved by or granted to

1 the Tribe which was wrongfully denied or taken from the
2 Tribe prior to the enactment of this Act.

3 **SEC. 6. TRIBAL LANDS.**

4 The tribal lands of the Tribe shall consist of all real
5 property, now or hereafter held in trust for the Tribe. Pur-
6 suant to section 5 of the Act of June 18, 1934 (25 U.S.C.
7 465), not later than 6 months after the date of the enact-
8 ment of this Act, the Secretary shall acquire and take into
9 trust for the benefit of the Tribe not less than 250 acres
10 of land located in the service area specified in section
11 4(b)(2) as restored lands for the Tribe. Such land shall
12 become the initial reservation of the Tribe. Thereafter, the
13 Secretary may accept additional land in trust for the ben-
14 efit of the Tribe within its service area and such additional
15 land shall become part of the Tribe's reservation.

16 **SEC. 7. MEMBERSHIP.**

17 Not later than 18 months after the date of the enact-
18 ment of this Act, the Tribe shall submit to the Secretary
19 a membership roll consisting of all individuals enrolled as
20 members of the Tribe. The qualification for inclusion on
21 the membership roll of the Tribe shall be determined in
22 accordance with Article II, section 1, paragraph (a) of the
23 Tribe's Constitution. The Tribe shall ensure that such
24 membership roll is maintained and kept current.

1 **SEC. 8. CONSTITUTION AND GOVERNING BODY.**

2 (a) CONSTITUTION.—

3 (1) ADOPTION.—Not later than 24 months
4 after the date of the enactment of this Act, the
5 Tribe shall conduct, by secret ballot, an election to
6 adopt a constitution and bylaws for the Tribe.

7 (2) INTERIM GOVERNING DOCUMENTS.—Until
8 such time as a new constitution is adopted under
9 paragraph (1), the governing documents in effect on
10 the date of enactment of this Act shall be the in-
11 terim governing documents for the Tribe.

12 (b) OFFICIALS.—

13 (1) ELECTION.—Not later than 6 months after
14 the Tribe adopts a constitution and bylaws pursuant
15 to subsection (a), the Tribe shall conduct elections
16 by secret ballot for the purpose of electing officials
17 for the Tribe as provided in the constitution and by-
18 laws.

19 (2) INTERIM GOVERNMENT.—Until such time
20 as the Tribe elects new officials pursuant to para-
21 graph (1), the governing body of the Tribe shall be
22 the governing body in place on the date of the enact-
23 ment of this Act, or any new governing body selected
24 under the election procedures specified in the in-
25 terim governing documents of the Tribe.

1 **SEC. 9. JURISDICTION.**

2 The Tribe shall have jurisdiction to the full extent
3 allowed by law over all lands taken into trust for the ben-
4 efit of the Tribe by the Secretary. The Tribe shall exercise
5 jurisdiction over all its members, who reside within its
6 service area, as specified in section 4(b)(2), in matters
7 pursuant to the Indian Child Welfare Act of 1978 (25
8 U.S.C. 1901 et seq.) as if the members were residing upon
9 a reservation as defined in that Act.

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