

The Upper Red Lake “Land Back” Claims are Not Supported by the Facts and the Law.

A bill in the 2024 Minnesota Legislature (H.F. 4780) seeks to transfer to the Red Lake Band of Chippewa Indians without payment “all state-owned land and real property. . .within one mile of the lakeshore of the portion of Upper Red Lake that is in state ownership” and transfer without payment “all state-owned land and real property within the boundaries of the Red Lake State Forest.” The Red Lake State Forest encompasses 84,105 acres and is used for hunting, fishing, camping and hiking.

The basis for this land transfer is to rectify what is claimed to be fraudulent acts by the United States in connection with the 1889-90 Nelson Act and Agreement. The facts and the law simply don’t support this claim.

The “Land Back” transfer, if accomplished, would mean that there would be no public boat landings on Red Lake, the largest lake entirely within the boundaries of the State of Minnesota. The purpose of granting a one mile of ownership around the portion of Upper Red Lake that is not within the Red Lake Reservation is to accomplish the Band’s goal of having control over the entirety of Upper Red Lake. The “Land Back”

legislation would devastate the community and businesses that exist along or near Upper Red Lake, who depend on tourism and access to Upper Red Lake for their survival, including the towns of Waskish and Kelliher.

The claims made by the Band regarding this supposed fraud do not withstand scrutiny or legal analysis. The claim that the Band is entitled to the entirety of Upper Red Lake, including one mile around Upper Red Lake, is not borne out by the Journal that recorded the negotiations under the Nelson Act. The Nelson Act negotiations occurred in July 1889 at Red Lake. Representing the United States were Commissioners Henry Rice, Joseph Whiting and Bishop Martin Marty. B.P. Shuler, the U.S. Indian Agent, was present and W.C. Hubbell acted as Secretary to the Commission. There were two interpreters, P.H. Beaulieu and John Morrison. The vast majority of the adult males of the Red Lake Band, which numbered nearly 400 members, attended and signed the Nelson Act Agreement in July 1889. [This 1889 Agreement is sometimes, erroneously, referred to as a “treaty.” The United States stopped negotiating treaties with Indian tribes in 1871. The Nelson Act

Agreement is similar to other agreements signed with Indian tribes after the end of treaty making.]

Nothing in the record of the 1889 negotiations supports the claim that the Red Lake Band was promised a one-mile boundary around Upper Red Lake. The “Land Back” supporters claim that the Band wanted the entirety of Upper Red Lake within the reservation and drew lines on a map to show what they agreed as the boundaries of the new reservation, but that map was lost or deliberately destroyed.

What is true is that one of the principal negotiators for the Band, May-dway-gon-on-ind stated: “My friends, I ask that we reserve the whole of the lake as ours and our grandchildren hereafter.”

A-h-nuh-ne-ay-ge-shig stated: “If you fix the boundaries as we have outlined, we are ready to sign.” But those statements made on July 6, 1889 were not the end of the negotiations. Mr. Rice subsequently stated:

“We have heard your proposition, and we think we can perhaps change the lines so as to give you all you want, and very much more than you will have use for – . . . and still please the Great Father much better than by following accurately the lines you suggest. You have made some mistakes in your lines; we think we can change them so that it will be much better for you. I do not know that your Great Father would think you were very liberal in wishing to keep all the fish to yourselves.”

“. . .we will consult a moment and see if we can change the lines so that it will be satisfactory to you. . . .”

The Commissioners then consulted with each other and the Indians individually about the lines of the proposed reservation.

“. . .we will to-night draw this just as we have agreed and submit to your principal men to see if it is alright.”

While the Band initially sought to include the entire lake in the new reservation, through negotiations the line was fixed as it currently exists in which the eastern boundary of the reservation excludes a portion of Upper Red Lake. The plain language of the 1889 Agreement includes a description of the eastern boundary of the Red Lake Reservation, which follows a line north and south from “a point one mile east from the easterly end of Lower Red Lake” to the northerly shore of Upper Red Lake. The interpreter certified that the Agreement signed by the Indians was fully interpreted and explained to the Indians of the Red Lake Band, and that the interpreters were present and witnessed the signatures of each.

Indian understanding does not control over the plain language of an agreement. Indian understanding is only looked to if the plain language is unclear. Here the plain language of the reservation boundary

was agreed upon by the Band and excludes the eastern portion of Upper Red Lake.

The Nelson Act Agreement also provides that “all water-ways within the [Red Lake] reservation above described are to be free for all commercial purposes to all citizens of the United States.”

Payment for the Lands in Question

The land ceded by the Red Lake Band under the Nelson Act Agreement was paid for when the lands were sold by the United States on behalf of the Red Lake Band. This means that all the lands around Upper Red Lake that are either privately owned or owned by the State or local governments were paid for when sold under the Nelson Act. Under the terms of the Nelson Act, the payments went into a trust fund for the Chippewa Indians of Minnesota. There is no basis to claim that the Band was not paid for the land, since on February 22, 1945, by Order of the Secretary of the Interior, all unsold lands that were formerly in the Red Lake Reservation were restored to tribal ownership. This is why there is a checkerboard of Red Lake lands scattered throughout northwestern Minnesota, outside of the boundaries of the large Red Lake

Reservation that encompasses all of Lower Red Lake and more than half of Upper Red Lake.

The Claims of the Red Lake Band are Barred by the Indian Claims Commission Act.

In 1946, the United States Congress passed the Indian Claims Commission Act, 70 Stat. 624. This law gave Indian tribes and bands the ability to file claims against the United States, not only for wrongs recognized by the law, but also for moral claims such as violating notions of fair and honorable dealings. Claims of any kind or nature from the creation of the United States to 1946 were required to be filed by August 1951 or they would be forever barred. The Red Lake Band filed claims regarding its various agreements with the United States, including the Nelson Act, and was successful in obtaining compensation. It does not matter, however, whether the claim to all of Upper Red Lake was filed or not, because if the claim wasn't filed by August 1951 but had arisen before 1946, the claim is forever barred. This claim, that the Band was promised certain lands in 1889 but the reservation failed to include those lands, was known and existed before 1946. The communities of Kelliher and Waskish were created in the decades before 1946. The land in and around Upper Red Lake was drained in the 1900s as a result of judicially

approved ditches and the drained lands were sold to the individuals who settled, farmed, hunted and fished in and around the eastern portion of Upper Red Lake.

Moreover, there is no basis to claim that the State of Minnesota is responsible for the actions of the federal government under the Nelson Act. Even if it was, the State of Minnesota could not be sued by the Red Lake Band for the return of lands it claims were improperly taken from it under the Nelson Act, because it would essentially be a claim against the United States. *See Oglala Sioux Tribe v. United States*, 650 F.2d 140 (8th Cir. 1981), *cert. den.* 455 U.S. 907 (1982) and *Oglala Sioux Tribe v. Homestake Mining Co.*, 722 F.2d 1407 (8th Cir. 1983).

The facts are that the Red Lake Band negotiated the current reservation boundaries that expressly excluded a portion of Upper Red Lake under the Nelson Act Agreement. The Journal of the negotiations and Agreement itself fully support the Upper Red Lake boundary of the reservation that exists today. Payment was made for the lands around Upper Red Lake that were sold pursuant to the Nelson Act. The Band was required to file a claim regarding any issues it had with the Nelson Act Agreement or its implementation by 1951, and the Band did file

claims. Even if it had not, however, the claims would have been time barred if not filed by 1951.

The facts and the law do not support the effort to take all public lands of the State of Minnesota within one mile of Upper Red Lake and give them to the Red Lake Band. The facts and the law do not support the claim that the Red Lake Band is entitled to exclusive use of Upper Red Lake. The Red Lake Band was already paid for these lands. The communities around Upper Red Lake were settled in accordance with the Nelson Act Agreement. There is no basis to transfer public land to the Red Lake Band free of consideration, giving control over the entirety of Upper Red Lake to the Red Lake Band. There is no basis to destroy the value of businesses and properties owned by residents around Upper Red Lake, a consequence that would occur under the “Land Back” legislation. The public lands of Minnesota belong to all of its citizens, Band members and non-Band members alike. They are open to use by all and must remain owned by the State of Minnesota for the benefit of all.

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