

**TESTIMONY OF BRYAN NEWLAND
PRESIDENT OF THE BAY MILLS INDIAN COMMUNITY**

and

**MEMBER OF THE CHIPPEWA OTTAWA RESOURCE AUTHORITY BOARD OF
DIRECTORS**

BEFORE THE

**COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND RELATED AGENCIES
UNITED STATES HOUSE OF REPRESENTATIVES**

on

MAY 9, 2018

Introduction

Aanii (Hello)! My name is Bryan Newland, and I am the President of the Bay Mills Indian Community, which is an Ojibwe tribe located on Lake Superior in Michigan's Upper Peninsula. I am appearing before the Subcommittee in my capacity as a Member of the Board for the Chippewa Ottawa Resource Authority ("CORA").

CORA is a consortium of five federally recognized tribes in Michigan that are parties to the 1836 Treaty of Washington with the United States: Bay Mills Indian Community, the Grand Traverse Band of Ottawa and Chippewa Indians, the Little River Band of Ottawa Indians, the Little Traverse Bay Bands of Odawa Indians, and the Sault Ste. Marie Tribe of Chippewa Indians.

Purpose

I appreciate the opportunity to present testimony to the Subcommittee to urge your continued support for funding the *Rights Protection Implementation* (RPI) program at the Department of the Interior. RPI funds are necessary to ensure that tribes are able to exercise their judicially-recognized reserved treaty rights in a meaningful way. Tribes use these funds to monitor and protect natural resources, enforce tribal, state, and federal laws, and to protect their reserved treaty rights.

In FY2018, Congress appropriated \$39.4 million for the RPI program, of which \$5,999,614 was allocated to the CORA Tribes. We are urging Congress to maintain this funding in FY2019.

Background

In 1836, the Ojibwe (Chippewa) and Odawa (Ottawa) tribes (the "CORA Tribes") in Michigan negotiated a treaty with the United States to cede much of the lands that were used to establish the

State of Michigan in 1837. Those ceded lands comprise more than forty percent (40%) of what is now the State of Michigan. In exchange for this valuable cession of land, the CORA Tribes reserved the right to hunt and fish throughout the ceded territory, including the adjoining waters in Lakes Michigan, Huron and Superior.

The citizens of the CORA Tribes continued to exercise their treaty rights following the ratification of the 1836 Treaty of Washington. In the 1950's and 1960's, the State of Michigan began efforts to regulate hunting and fishing activities by our tribal members, and to curtail the rights our tribes reserved in the Treaty of 1836. Many tribal members, including Bay Mills Indian Community member Albert "Big Abe" LeBlanc, resisted the State's efforts to erode our reserved treaty rights by continuing to catch fish with gill nets and without state licenses.

In 1971, the State of Michigan issued a citation to Big Abe LeBlanc for fishing with gill nets, and prosecuted him under Michigan's criminal laws. Bay Mills Indian Community defended LeBlanc against the charges by arguing that the rights reserved by the 1836 Treaty Tribes continued to exist, and that they superseded state hunting and fishing regulations under the supremacy clause of the United States Constitution. The case of *People of Michigan v. LeBlanc* was ultimately resolved by the Michigan Supreme Court in 1976, which held that the fishing rights expressly reserved in the 1836 Treaty remained in effect.

As a result of the State of Michigan's prosecution of Big Abe LeBlanc, in 1973 the United States filed a lawsuit against the State of Michigan on behalf of the 1836 Treaty tribes to uphold and enforce the fishing rights reserved in the 1836 Treaty. That case was titled *United States v. Michigan*. In 1979, Judge Fox of the U.S. District Court for the Western District of Michigan entered an opinion and order upholding the Tribes' fishing rights in what is now known as "the Fox Decision."

Following Judge Fox's famous decision, the parties to *United States v. Michigan* – the Federal Government, the Bay Mills Indian Community, the Grand Traverse Band of Ottawa and Chippewa Indians, the Sault Ste. Marie Tribe of Chippewa Indians, and the State of Michigan – began court-supervised negotiations regarding how the tribes would exercise and regulate our treaty rights. In 1985, the parties reached a tentative agreement to establish joint fishery management of the fishery with the State of Michigan, and to allocate harvest opportunities among tribal and state-licensed fishers. The U.S. District Court entered an order putting that agreement into effect.

The 1985 Consent Judgment remained in effect until August 2000. At that time, the Federal Government, the 1836 Treaty Tribes, and the State of Michigan negotiated a successor agreement to regulate tribal fishing activities on the Great Lakes. That agreement expires in August 2020, and the parties are preparing to negotiate another agreement to take its place.

In 2007, the United States, the CORA Tribes, and the State of Michigan finalized a separate agreement to implement the Tribes' reserved treaty rights on the "inland" portion of the territory ceded by the 1836 Treaty. That agreement was also entered as a consent decree by the U.S. District Court in the *United States v. Michigan* case as a means to regulate tribal hunting, fishing, and gathering activities under the 1836 Treaty, to establish joint management protocols with the State of Michigan, and to allocate harvest opportunity for certain species.

From 1985 until today, the Federal Government, the CORA Tribes, and the State of Michigan have worked together to manage the commercial fishery in the upper Great Lakes. Since 2007, we have also worked together to manage game and other natural resources across the ceded territory. While we have had disagreements over the years, this framework has allowed us to cooperate to ensure the protection of natural resources and the continued vitality of tribal treaty rights. This cooperative framework is now an accepted part of the fabric of natural resource protection and conservation law enforcement across much of the State of Michigan.

Funds appropriated to the *Rights Protection Implementation* program are used to implement this cooperative framework.

It is important to note that this framework is mandated by order of the U.S. District Court in the *United States v. Michigan* litigation; and, that the Federal Government negotiated the terms of the cooperative resource management framework on behalf of, and with, the 1836 Treaty tribes.

FY 2019 Budget Request: Rights Protection Implementation

The CORA tribes receive funding through the “Treaty Fisheries” line item in the *Rights Protection Implementation* program. Those funds are used to support the following activities:

- Establishment of conservation-based fishing regulations;
- Biological support services to monitor the fishery;
- Resource protection and enhancement programs;
- Conservation law enforcement activities and tribal courts for violation of fishing regulations; and,
- Intertribal coordination of activities and policies with federal and state agencies.

The CORA tribes also receive RPI funding to implement the 2007 Consent decree relating to the exercise of “inland” treaty rights. Those funds support the following activities:

- Establishment of conservation-based hunting, fishing, and gathering regulations;
- Biological support services to monitor wildlife, plant-life, and habitat;
- Resource protection and enhancement programs;
- Invasive species monitoring and controls;
- Conservation law enforcement activities and tribal courts for violation of hunting, fishing, and gathering regulations; and,
- Intertribal coordination of activities and policies with federal and state agencies.

CORA does not support the President’s budget request of \$24.7 million for *Rights Protection Implementation* in the FY 2019 Budget. The President’s proposal would cut funding by 37%, and would leave inadequate funding to ensure that we are able to successfully able to implement the terms of the 2000 and 2007 Consent Decrees in *United States v. Michigan*. If enacted, the President’s budget request will require the CORA tribes to scale back our conservation, monitoring, and enforcement activities. This will result in staff layoffs, increased risk of conflict

between tribes and other communities over resources, and a reduction in protection of the fishery, wildlife, and habitat throughout the ceded territory.

CORA is urging Congress to appropriate maintain \$39.4 million for *Rights Protection Implementation* in the FY 2019 Budget, and to maintain the CORA Tribes' share at \$5.999 million. We believe that this funding is adequate to allow us to successfully work with federal and state agencies to implement the terms of the 2000 and 2007 Consent Decrees.

CORA is also requesting that Congress appropriate \$1.9 million to the Bureau of Indian Affairs for "Litigation Support" for tribal treaty rights litigation. While "Litigation Support" funds are not used to directly implement tribal treaty rights, they are used by tribes – like the CORA Tribes – to negotiate consent decrees that ensure cooperative resource management and avoid litigation between the United States and state governments over tribal treaty rights.

The Department of the Interior does not presently have adequate "Litigation Support" funds to ensure that the CORA Tribes are able to gather data, hire experts, and retain legal counsel to negotiate a new consent decree in the *United States v. Michigan* litigation.

The Department of the Interior has provided Litigation Support funding to the CORA Tribes throughout the forty-five year history of the *United States v. Michigan* case to litigate important issues and negotiate consent decrees. But, in the past year, the Department has denied our requests for \$308,000 in Litigation Support funding to prepare to negotiate a new consent decree in *United States v. Michigan*. This is a dramatic departure from the Department's prior support to the CORA Tribes throughout this litigation; and, we are deeply concerned that the Department will not provide the resources necessary to negotiate a new consent decree. This will increase the odds of litigation over our treaty rights, and jeopardize our cooperative management framework.

CORA estimates a need for \$450,000 in FY 2019 to negotiate a new consent decree (or, to prepare to litigate the scope of our treaty rights beyond 2020). This funding will ensure that the CORA Tribes can participate in negotiations for a successor agreement to the 2000 Consent Decree.

Conclusion

The *Rights Protection Implementation* Program is necessary to ensure that the United States continues to meet its obligations under treaties with tribes across the country. These funds are also necessary to ensure that tribes can meet our obligations under Federal Court orders applicable to our reserved treaty rights. As Supreme Court Justice Hugo Black famously proclaimed: "Great nations, like great men, keep their word."

For these reasons, the CORA Tribes respectfully request your support for FY 2019 RPI funding at the level of \$39.4 million, with \$5,999,614 allocated for the CORA Tribes. Miigwetch (thank you) for the opportunity to present our views. I am happy to answer any questions that you may have.