



The Hon. Jeff Hurd
Chairman, Indian and Insular Affairs Subcommittee
House Committee on Natural Resources
1329 Longworth House Office Building
Washington, D.C. 20515

Re: Response to Questions for the Record Relating to H.R. 412

February 25, 2025

Dear Chairman Hurd:

The Bay Mills Indian Community very much appreciates the questions you asked in your letter of February 10, 2025, as we think they help further highlight why H.R. 412 is of such crucial importance to us.

As a preliminary matter, I do want to underscore that the fee lands acquired by the Bay Mills Indian Community with Michigan Indian Land Claim Settlement Act (MILCSA) funds are only a small subset of the fee lands we own and for which we seeking clear, federally-confirmed authority to alienate. It is our view and intention that the language of H.R. 412 would provide to our Tribe the authority to alienate *all* of our fee lands, including lands acquired with MILCSA settlement funds.

Following below are more specific answers to your questions.

- 1.a. Does the Bay Mills Indian Community still support and maintain the legal arguments it made in the prior litigation and continue to hold the view that any fee lands the tribe purchases with funds from the Michigan Indian Land Claims Settlement Act automatically become “held as Indian lands are held” as a matter of law, which are equivalent to Indian Reservation land and subject to federal restraints on alienation?**

Answer:

It is correct that the Bay Mills Indian Community has interpreted the phrase “held as Indian lands are held” in Section 107(a) of MILCSA as meaning that lands acquired with MILCSA settlement funds have some sort of status beyond being just fee lands, because otherwise Section 107(a)’s “held as Indian lands are held” language appears to be superfluous. But a federal district court that

reviewed this question disagreed, and so has the Department of the Interior – both found that land acquired with MILCSA funds are alienable. We have accepted that the executive and judicial branches have not shared our reading of MILCSA, and we have not made any further challenges to the executive and judicial branches reading of MILCSA. Exercising its plenary authority, Congress puts a final end to this debate with enactment of H.R. 412 – *the bill provides no exception for fee lands purchased with MILCSA settlement funds*, and therefore would make *all* of the Bay Mills Indian Community’s fee lands clearly alienable.

- 2. a. Does the Bay Mills Indian Community take the position that all fee lands currently held by the Tribe are freely alienable and that the purpose of H.R. 412 is to clarify that the Non-Intercourse Act does not apply to these fee lands when the tribe chooses to transfer, lease, encumber, or otherwise convey these fee lands?**

Answer:

The Bay Mills Indian Community owns certain fee lands that *were not* acquired with MILCSA settlement funds and legally should be “freely alienable,” but these have not actually been “freely alienable” because of the confusion caused by the Non-Intercourse Act for local title companies.

The Bay Mills Indian Community also owns other certain fee lands that *were* acquired with MILCSA settlement funds. Although our view has been that these fee lands should be treated as restricted from alienation as discussed above, a federal court and the Department of the Interior have disagreed, finding that these lands instead are alienable. Yet, *despite the court decision and Interior’s position that lands acquired with MILCSA settlement funds are alienable*, we *still* are not been able to obtain clear title insurance for these lands and so *as a practical matter cannot* alienate them. For these lands, we have been left in an ongoing “damned if we do, damned if we don’t” situation. H.R. 412 will remove all uncertainty, allowing us to alienate these fee lands too. And by making clear that these lands are alienable, H.R. 412 effectively also confirms that they cannot be used for gaming under the Indian Gaming Regulatory Act.

- 2.b. Does the language of H.R. 412 fully clarify this for the title of the tribally owned fee land, or are there other clarifications that may need to be made considering previous litigation regarding the legal status of fee lands (as mentioned in question 1).**

Answer:

H.R. 412 makes *all of our fee lands*, including the subset of fee lands we have purchased with MILCSA funds, freely alienable. We favor H.R. 412's clear, simple approach to resolving our fee lands issues.

In conclusion, I hope these responses are helpful to you, and of course we are happy to answer any additional questions the Committee might have. I want to thank you again for holding a hearing on H.R. 412, and for giving the Bay Mills Indian Community the opportunity to testify on why passage of the bill is so crucially important for our Tribe.

Respectfully,



Whitney B. Gravelle
President,
Bay Mills Indian Community

cc: The Hon. Jack Bergman