**Testimony of**
**Carl Artman**
**Assistant Secretary - Indian Affairs**
**Department of the Interior**
**Before the**
**Committee on the Judiciary**
**United States House of Representatives**
**on**
**H.R. 2176, To Provide For And Approve The Settlement Of Certain Land Claims Of The Bay Mills Indian Community**
**and**
**H.R. 4115, To Provide For And Approve The Settlement Of Certain Land Claims Of The Sault Ste. Marie Tribe Of Chippewa Indians**

**March 14, 2008**

Good morning, Mr. Chairman and Members of the Committee. My name is Carl Artman and I am the Assistant Secretary - Indian Affairs, at the Department of the Interior. I am pleased to be here today to testify on H.R. 2176, a bill to provide for and approve the settlement of certain land claims of the Bay Mills Indian Community, and on H.R. 4115, a bill to provide for and approve certain land claims of the Sault Ste. Marie Tribe of Chippewa Indians. Because of the potential for liability to the United States, and because the settlement agreements go beyond those required for the settlement of a land claim and circumvent an established process, the Department cannot support these bills.

Background

H.R. 2176 would approve and ratify an agreement executed on August 23, 2002, between the Governor of the State of Michigan and the Bay Mills Indian Community. H.R. 4115 would approve and ratify an agreement executed on December 30, 2002, between the Governor of the State of Michigan and the Sault Ste. Marie Tribe. The settlement agreements provide the basis for Congress to extinguish the two tribes' claims to the Charlotte Beach lands. In consideration for the extinguishments of the tribes' claims, Section 2 of H.R. 2176 would require the Secretary to take into trust for the Bay Mills Indian Community alternative land located in Port Huron, Michigan. Section 1(b) of H.R. 4115 would require the Secretary to take into trust for the Sault Ste. Marie Tribe two parcels of land, one located in Oswego County, subject to the approval of the Village of Vanderbilt and the Little Traverse Bay Bands of Odawa Indians, and the other one located in the City of Romulus, Michigan, subject to the approval of the City.

Problematic Provisions

Both bills would establish a 30 day requirement for the Secretary to take land into trust for the Tribe once the Secretary receives a title insurance policy for the alternative land that indicates it is not subject to any mortgage, lien, deed of trust, option to purchase, or

other security interest. The mandatory nature of the land acquisition provisions would require that alternative lands be taken into trust even if the Department determines that potential liabilities exist on these lands. The legislation precludes the Department from evaluating the subject property to determine whether hazardous materials are present. The Department asks that Congress consider the cost to and potential liability of the United States Government with respect to legislative transfers of land into trust, both in this particular instance and all future mandatory trust transactions. We recommend any acquisition in trust be conditioned upon the lands meeting applicable environmental standards. The mandatory nature of the land acquisition would also preclude consultation with affected tribal, State, and local governments that takes place under our regulations.

In addition, section 2710(d) of the IGRA requires that a tribe and State enter into a compact approved by the Secretary and that notice of such approval be published in the Federal Register before Class III gaming may occur.

The settlement agreements include many provisions commonly found in a tribal-state compact under the Indian Gaming Regulatory Act (IGRA):

(1) the Governor's concurrence in the trust acquisition of the alternative lands for gaming purposes;

(2) Tribal payments to the State of Michigan in an amount equal to 8 percent of the net win derived from all Class III electronic games of chance in consideration for limited geographical exclusivity, and payments in the aggregate amount equal to 2 percent of the net win from all Class III electronic games of chance to local units of state governments;

(3) limitation of the Tribes' Class III gaming operations in Michigan;

(4) the Governor's forbearance from exercising the State's unilateral right to renegotiate the Compact pursuant to Section 12(c) of the Compact; and

(5) a statement that Section 9 of the compact is not implicated by provision of the alternative land to the Tribe, and the Governor's waiver of this provision to the extent it is determined to be implicated.

However, these bills appear to circumvent the tribal-state compact approval process by bypassing the approval of the Michigan State legislature. The Department respects tribal and state rights and supports the tribal-state compact negotiation and approval process. Therefore, we believe that these provisions would best appear in a compact.

Finally, we are concerned with the lack of consultation with other Michigan tribes that may be impacted by the terms of these settlements since the legislation would waive Section 9 of the Michigan compacts to the extent it is implicated by the settlements.

This concludes my remarks. I will be happy to answer any questions the Committee may have. Thank you.