

112TH CONGRESS
1ST SESSION

H. R. 2322

To reaffirm and clarify the Federal relationship of the Burt Lake Band as a distinct federally recognized Indian Tribe, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2011

Mr. BENISHEK (for himself and Mr. KILDEE) introduced the following bill;
which was referred to the Committee on Natural Resources

A BILL

To reaffirm and clarify the Federal relationship of the Burt Lake Band as a distinct federally recognized Indian Tribe, 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 “Burt Lake Band of
5 Ottawa and Chippewa Indians Reaffirmation Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds as follows:

8 (1) The members of the Burt Lake Band of Ot-
9 tawa and Chippewa Indians, whose historic name is
10 the Cheboigan (or Cheboygan) Band, are descend-

1 ants and a political successor to signatories of the
2 1836 Treaty of Washington and the 1855 Treaty of
3 Detroit. The treaty signatories were twice recognized
4 by the United States, on a government-to-govern-
5 ment relationship basis, through the execution and
6 ratification of those treaties.

7 (2) The 1836 Treaty of Washington provided
8 that the Cheboigan Band would receive a reservation
9 of 1,000 acres on the Cheboigan, within its aborigi-
10 nal territory, for a period of 5 years after ratifica-
11 tion of that treaty but the United States failed to
12 provide that reservation. The 1855 Treaty of Detroit
13 provided that Ottawa and Chippewa Indians could
14 select individual allotments of land within designated
15 reserves, and 2 townships were set aside for selec-
16 tion by the “Cheboygan Band” in Cheboygan Coun-
17 ty. Those members who selected allotments within
18 that area were not awarded those individual land
19 holdings until 3 years after a special Act of Con-
20 gress was passed in 1872.

21 (3) Between 1845 and 1850 the Band’s mem-
22 bers used treaty annuity payments to purchase land
23 for the Band in Burt Township, Cheboygan County,
24 Michigan. That land, called Colonial Point, was

1 placed in trust with the Governor of Michigan on the
2 advice of Federal Indian agents.

3 (4) During the next 50 years, questions arose
4 regarding the taxability of the property, and the
5 acreage was ultimately sold for back taxes in 1900.

6 (5) After the Band was forcibly evicted from
7 Colonial Point and its village was burned to the
8 ground by its new owner, John McGinn, the major-
9 ity of the Band's families took up residency on near-
10 by Indian Road on lands which other Band members
11 had purchased or received as treaty allotments or
12 homesteads.

13 (6) In 1911, the United States filed suit in the
14 United States Federal District Court for Eastern
15 Michigan seeking to regain possession of the Colo-
16 nial Point Lands (United States v. McGinn, Equity
17 No. 94, filed June 11, 1911). In its complaint, the
18 United States advised the Court that it was suing on
19 behalf of the "Cheboygan band of Indians [which] is
20 now and was at all the times mentioned in this bill
21 of complaint a tribe of indians [sic] under the care,
22 control, and guardianship of the plaintiff and said
23 band is now and was at all times mentioned in this
24 bill of complaint recognized by the plaintiff through
25 its chiefs or head men which it annually elects."

1 (7) In 1917, the Federal District Court decided
2 the McGinn case against the United States finding
3 that the language in the Colonial Point deeds did
4 not prevent the Colonial Point land from being
5 taxed.

6 (8) Over the next 20 years, Acting Chief Enos
7 Cabinaw, acting on behalf of the Cheboygan Band,
8 asked the United States to appeal or otherwise rec-
9 tify the District Court’s decision, but no Federal ac-
10 tion was taken. Throughout this period, the United
11 States continued to provide the Band and its mem-
12 bers with many of the same Federal services that
13 were being provided to other Indian tribes in Michi-
14 gan.

15 (9) The Act of June 18, 1934 (hereafter in this
16 Act referred to as the “Indian Reorganization Act”),
17 authorized and directed the Bureau of Indian Af-
18 fairs to provide technical assistance and Federal
19 funds to petitioning tribes to assist them in reorga-
20 nizing their governments and improving their econo-
21 mies. Members of the Cheboigan Band, as well as
22 members of other landless treaty Tribes in Michigan,
23 submitted petitions to receive that assistance. Simi-
24 lar petitions were also submitted by 4 Michigan
25 bands that still held communal lands. Possession of

1 a tribal land base was a prerequisite to the receipt
2 of most of the Federal funds and services provided
3 for in the Indian Reorganization Act.

4 (10) While the Indian Reorganization Act di-
5 rected the Secretary to assist landless bands, like
6 Burt Lake, and authorized Federal funds to acquire
7 land, no Federal funds were appropriated to acquire
8 new tribal lands for any of the landless bands in
9 Michigan. After struggling with this dilemma, the
10 Bureau of Indian Affairs extended the benefits of
11 the Indian Reorganization Act to only those 4 Michi-
12 gan tribes that had an existing land base on the
13 date of the enactment of the Indian Reorganization
14 Act. Of the Ottawa and Chippewa Tribes who signed
15 the 1836 and 1855 Treaties, only 1 group, the Bay
16 Mills Indian Community, was organized under the
17 Indian Reorganization Act.

18 (11) The failure of the Bureau of Indian Af-
19 fairs to grant Indian Reorganization Act benefits to
20 the Cheboigan Band did not terminate the band's
21 government-to-government relationship with the
22 United States, and Congress has never taken any
23 action to terminate Federal acknowledgment of the
24 Burt Lake Band.

1 (12) The Bureau of Indian Affairs does not
2 have the legal authority to terminate a tribe that has
3 been acknowledged by an Act of Congress.

4 (13) Since 1972, the following Michigan tribes
5 that were not organized under the Indian Reorga-
6 nization Act, have been recognized or reaffirmed as
7 federally recognized Indian tribes:

8 (A) The Sault Ste. Marie Tribe of Chip-
9 pewa was reaffirmed by a Memorandum of the
10 Commissioner of Indian Affairs on September
11 7, 1972.

12 (B) The Grand Traverse Band of Ottawa
13 and Chippewa Indians was acknowledged by the
14 Assistant Secretary of Indian Affairs on May
15 27, 1980.

16 (C) The Little Traverse Bay Bands of
17 Odawa Indian and the Little River Band of Ot-
18 tawa Indians each had its Federal status re-
19 affirmed by an Act of Congress on September
20 21, 1994.

21 (D) The Lac Vieux Desert Band of Lake
22 Superior Chippewa Indians had its Federal sta-
23 tus as a separate Indian tribe reaffirmed by an
24 Act of Congress at the request of the Adminis-
25 tration on September 8, 1988.

1 (E) The Pokagon Indian Nation had its
2 Federal status reaffirmed by an Act of Con-
3 gress on September 21, 1994.

4 (F) The Huron Potawatomi Nation had its
5 Federal status acknowledged by the Assistant
6 Secretary of Indian Affairs on March 17, 1996.

7 (G) The Gun Lake Tribe (Match-She-Be-
8 Nash-She-Wish) had its Federal status ac-
9 knowledged by the Assistant Secretary of In-
10 dian Affairs on August 23, 1999.

11 (14) The Burt Lake Band has been consistently
12 recognized by third parties as a distinct Indian com-
13 munity since well before 1900.

14 (15) The Burt Lake Band consists of members
15 who are the children, grandchildren, or great grand-
16 children of Indian persons who resided on or near
17 Colonial Point or Indian Road prior to 1910. The
18 majority of the Band's adult members grew up on
19 or near Indian Road or had an immediate family
20 member who did. As the result, the Band's members
21 have maintained very close social and political ties.
22 The Band has its own, well-defined membership cri-
23 teria, which requires the maintenance of tribal rela-
24 tions.

1 (16) The Burt Lake Band consists of families
2 who have and continue to provide mutual aid to each
3 other, visit each other regularly, mobilize to assist
4 each other in times of need, practice traditional arts
5 and crafts, gather for Ghost Suppers, decorate the
6 graves of their ancestors, and participate in other
7 traditional tribal ceremonies and events.

8 (17) Since 1829 the Burt Lake Band's mem-
9 bers have attended and consistently mobilized to
10 maintain the Indian Mission Church of St. Mary's,
11 first on Colonial Point and later on Indian Road.
12 The Burt Lake Band's members have also worked
13 together to maintain the Tribe's 2 Indian ceme-
14 teries. They have also dug the graves and buried
15 their relatives in those 2 Indian cemeteries for al-
16 most 200 years.

17 (18) The Burt Lake Band's members have
18 throughout time made formal and informal decisions
19 for the community. The Burt Lake Band has also
20 organized its own modern tribal government without
21 the assistance of the Bureau of Indian Affairs.

22 (19) The majority of the Band's elders have a
23 high degree of Indian blood and continue to speak
24 the Ottawa language when they gather with each
25 other. Before World War II, more than 50 percent

1 of the Burt Lake families were still speaking the tra-
2 ditional language in their homes, and more than 50
3 percent of those tribal members who were married
4 were married to other Ottawa and Chippewa individ-
5 uals.

6 (20) There is no evidence that the Band has
7 willfully abandoned tribal relations and there is no
8 evidence that the Congress has taken any legal ac-
9 tion to terminate its government-to-government rela-
10 tions with the Burt Lake Band.

11 (21) Because the Bureau of Indian Affairs
12 failed to review the Band's petition for over 20
13 years, a percentage of the Band's members enrolled
14 in other Tribes in order to obtain the Federal serv-
15 ices, most notably health care and prescription drug
16 assistance, that they were legally entitled to, but de-
17 nied as members of Burt Lake. This step was often
18 taken on the advice of one or more employees of the
19 Bureau of Indian Affairs. This dual enrollment situ-
20 ation has now created a new problem for the Band's
21 reaffirmation, because the Bureau of Indian Affairs'
22 current regulations prohibit it from recognizing a
23 tribe when a part of the tribe's community is or was
24 enrolled in another federally recognized tribe.

1 (22) In September 2006, the Assistant Sec-
2 retary of Indian Affairs denied the Burt Lake
3 Band’s petition for recognition even though it found
4 that the Burt Lake Band has been identified as an
5 Indian entity by scholars, local and State officials,
6 and other tribes, and even though it found that the
7 members of the Burt Lake Band maintain a strong
8 Indian community. In its letter denying the Burt
9 Lake Band’s petition, the Bureau of Indian Affairs
10 stated that “Congress may consider taking legisla-
11 tive action to recognize petitioners that do not meet
12 the specific requirements of the acknowledgment
13 regulations but may have merit.”.

14 (23) The Burt Lake Band has exhausted its ad-
15 ministrative remedies, therefore this Act is both nec-
16 essary and appropriate.

17 **SEC. 3. DEFINITIONS.**

18 For purposes of this Act, the following definitions
19 apply:

20 (1) The term “Burt Lake Band” means the
21 Burt Lake Band of Ottawa and Chippewa Indians,
22 a continuously existing historical tribe of Indians de-
23 scending from the Cheboygan band which was in-
24 cluded in treaties with the United States in 1836

1 and 1855 and descending from the Indian Village at
2 Burt Lake in 1900.

3 (2) The term “Indian Reorganization Act”
4 means the Act of June 18, 1934 (25 U.S.C. 461 et
5 seq.).

6 (3) The term “OFA” means the Office of Fed-
7 eral Acknowledgment, a branch of the United States
8 Department of the Interior’s Bureau of Indian Af-
9 fairs.

10 (4) The term “Secretary” means the Secretary
11 of the Interior.

12 **SEC. 4. FEDERAL RECOGNITION.**

13 (a) FEDERAL RECOGNITION.—The Burt Lake Band
14 of Ottawa and Chippewa Indians is hereby reaffirmed as
15 a federally recognized Indian tribe. All laws and regula-
16 tions of the United States of general application to Indi-
17 ans or nations, tribes, or bands of Indians, including the
18 Indian Reorganization Act, which are inconsistent with
19 any specific provision of this Act shall not be applicable
20 to the Burt Lake Band and its members.

21 (b) FEDERAL SERVICES AND BENEFITS.—

22 (1) IN GENERAL.—Notwithstanding any other
23 provision of law, after the date of the enactment of
24 this Act, the Burt Lake Band and its members shall
25 be eligible for all services and benefits provided by

1 the Federal Government to Indians because of their
2 status as federally recognized Indians without regard
3 to the existence of a reservation or the location of
4 the residence of any member on or near any Indian
5 reservation.

6 (2) SERVICE AREA.—For purposes of the deliv-
7 ery of Federal services to the enrolled members of
8 the Burt Lake Band and to other Indians, all of
9 Cheboygan County Michigan, and any area in the
10 State of Michigan that is outside of Cheboygan
11 County, but located within 25 miles of the Burt
12 Lake Band’s Cemetery at the St. Mary’s Indian
13 Mission Church, shall be deemed to be within the
14 Service Area of the Burt Lake Band. Nothing con-
15 tained herein shall prohibit the Federal Government
16 from providing services to members of the Burt
17 Lake Band who reside or are domiciled outside this
18 Service Area, or from otherwise expanding the Burt
19 Lake Band’s Service Area in compliance with appli-
20 cable Federal law and policy. Nothing in this sub-
21 section is intended to diminish or alter the service
22 area of another federally recognized Indian tribe. If
23 any part of the Burt Lake Band’s service area over-
24 laps with the service area of another federally recog-
25 nized Indian tribe, that overlap shall be addressed in

1 compliance with existing Federal policies and regula-
2 tions.

3 **SEC. 5. REAFFIRMATION OF RIGHTS.**

4 (a) IN GENERAL.—All rights and privileges of the
5 Burt Lake Band and its members, which may have been
6 abrogated or diminished before the date of the enactment
7 of this Act are hereby reaffirmed.

8 (b) EXISTING RIGHTS OF BURT LAKE BAND.—Noth-
9 ing in this Act shall be construed to diminish any right
10 or privilege of the Burt Lake Band or of its members that
11 existed before the date of the enactment of this Act. Ex-
12 cept as otherwise specifically provided in any other provi-
13 sion of this Act, nothing in this Act shall be construed
14 as altering or affecting any legal or equitable claim the
15 Burt Lake Band may have to enforce any right or privi-
16 lege reserved by or granted to the Burt Lake Band which
17 was wrongfully denied to or taken from the Burt Lake
18 Band before the date of the enactment of this Act.

19 **SEC. 6. TRIBAL LANDS.**

20 The Secretary shall acquire real property in Che-
21 boygan County in trust for the benefit of the Burt Lake
22 Band of Ottawa and Chippewa Indians, if at the time of
23 such acceptance by the Secretary, there are no adverse
24 legal claims on such property, including outstanding liens,
25 mortgages or taxes owed, and the Secretary has confirmed

1 that the National Environmental Policy Act of 1969 has
2 been complied with regarding the trust acquisition of the
3 property. After being taken into trust, such lands shall
4 become part of the initial reservation of the Burt Lake
5 Band at the request of the Burt Lake Band. The Sec-
6 retary is also authorized to acquire and accept real prop-
7 erty in other geographic areas into trust for the benefit
8 of the Burt Lake Band and to declare those lands to be
9 a part of the Burt Lake Band's Reservation consistent
10 with applicable law.

11 **SEC. 7. MEMBERSHIP.**

12 (a) IN GENERAL.—The initial membership of the
13 Burt Lake Band of Ottawa and Chippewa Indians shall
14 consist of persons who can present evidence, acceptable
15 to the Burt Lake Band, showing that they meet the re-
16 quirements of subsection (b), and persons who meet such
17 other requirements as are specified by the Burt Lake
18 Band in its Burt Lake Band's Constitution and Enroll-
19 ment Ordinance as the same may be from time-to-time
20 amended.

21 (b) MEMBERSHIP CRITERIA.—

22 (1) To qualify for membership in the Burt Lake
23 Band of Ottawa and Chippewa Indians, a person
24 must be able to demonstrate through evidence ac-

1 ceptable to the Burt Lake Band that the person
2 meets at least 1 of the following requirements:

3 (A) The person descends from a tribal
4 member who was domiciled at Colonial Point,
5 Burt Township, Cheboygan County, Michigan,
6 before or at the time that the Burt Lake
7 Band's village was burned in October 1900, as
8 the tribal members are identified as Colonial
9 Point residents in the case files of the litigation
10 initiated by John W. McGinn to evict former
11 residents from that land, or in the list prepared
12 in or about 1950 as the Albert Shananaquet list
13 of pre-1900 village residents, or both.

14 (B) The person descends from a tribal
15 member who is listed on the 1900 or 1910 Burt
16 Lake Township Federal Census, Indian Enu-
17 meration Schedule.

18 (C) The person has an Indian ancestor
19 who was, prior to 1910, living in tribal relations
20 with the Burt Lake Band of Ottawa and Chip-
21 pewa Indians as the Burt Lake Band is defined
22 in this Act.

23 (2) In addition to the requirements under para-
24 graph (1), to qualify for membership in the Burt
25 Lake Band of Ottawa and Chippewa Indians, a per-

1 son must be able to demonstrate through evidence
2 acceptable to the Burt Lake Band that the person
3 meets all of the following criteria:

4 (A) That the person is in tribal relations
5 with other Burt Lake Band members.

6 (B) That the person's ancestors have lived
7 in tribal relations with other Burt Lake Band
8 members on a substantially continuous basis
9 from 1910 to the present.

10 (C) That the person has a completed tribal
11 membership enrollment file as prescribed by the
12 Tribal Enrollment Ordinance.

13 (D) That the person's membership applica-
14 tion has been processed and that the person has
15 been approved for membership in the Burt
16 Lake Band in the manner prescribed by the
17 Tribal Enrollment Ordinance.

18 (c) BASE ROLL.—The Burt Lake Band shall provide
19 a copy of the base roll of the Burt Lake Band of Ottawa
20 and Chippewa Indians to the Assistant Secretary for Indi-
21 ans Affairs not later than 12 months after the date of
22 the enactment of this Act. The base roll shall consist of
23 the 320 persons whose names were listed on the official
24 roll of the Burt Lake Band which were members sub-
25 mitted by the Burt Lake Band to the OFA on May 2,

1 2005, and shall also include the biological sons and daugh-
2 ters who were born to those members between the submis-
3 sion of that list and the enactment of this Act. The Base
4 Roll shall also include those descendants of Burt Lake
5 members who—

6 (1) meet the enrollment criteria established by
7 this section;

8 (2) seek enrollment in the Burt Lake Band not
9 later than 12 months after the date of the enact-
10 ment of this Act; and

11 (3) are accepted for enrollment in the Burt
12 Lake Band in the manner prescribed by the Burt
13 Lake Band's Constitution.

14 **SEC. 8. CONSTITUTION.**

15 The initial constitution of the Burt Lake Band shall
16 be the constitution that the Burt Lake Band submitted
17 to the OFA on May 2, 2005.

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