

TESTIMONY
OF
DOUGLAS G. LANKFORD

Before the

House Committee on Natural Resources

Subcommittee for Indigenous Peoples of the United States

Wednesday, April 27, 2022, 1:00 p.m. Eastern Time

1324 Longworth House Office Building

Legislative Hearing on **H.R. 6063** (Rep. Betty McCollum), to provide for the equitable resolution of certain Indian land disputes regarding land in Illinois, and for other purposes.

CHAIRPERSON LEGER FERNANDEZ and Honorable Members of the Subcommittee:

Aya akima eecipoonkwia weenswiaani niila myaamia. My name is Douglas Lankford, and I am the Chief of the Miami Tribe of Oklahoma. I want to thank the Subcommittee for this opportunity to testify in support of H.R. 6063, a bill that would permanently resolve the Tribe's treaty-based land claim to the Wabash River Watershed in east-central Illinois and permanently resolve

the cloud it creates on title held by landowners in east-central Illinois.

The Bill accomplishes this by doing two things:

- 1) First, it grants the United States Court of Federal Claims (CFC) jurisdiction to decide whether the United States took lands that were protected by the 1805 Treaty of Grouseland without paying the Tribe; and
- 2) Second, it extinguishes the Tribe's claim to those lands, which forever eliminates the cloud on title for landowners.

The Miami Tribe of Oklahoma is a federally recognized Indian tribe. Our ancestral homelands are located south of the Great Lakes, in what are now the states of Indiana, Illinois, and Ohio.

In 1846, the Tribe was removed from its homelands to what is now the state of Kansas and, in 1867 was again removed from Kansas to the Indian Territory, now the State of Oklahoma. Our seat of government is located in Ottawa County in northeast Oklahoma.

In 1805, the Miami Tribe and its historical constituents Eel River Band and Wea signed the Treaty of Grouseland with the United States (Appendix 1). Article 4 of that Treaty made it clear that the Tribe reserved lands in the Wabash River Watershed (Appendix 2, pp. 1-2), and the United States agreed that it would not take any part of that reserved land without the consent of each of the Miami, Eel River, and Wea tribes (Appendix 1, p. 2). Thereafter, the United States never negotiated with the Miami Tribe for the cession of the reserved land, nor paid the Tribe for that land. Yet, over time, the United States transferred the land to non-Indians.

The Miami Tribe of Oklahoma is the sole contemporary tribal body politic with a treaty title claim

under Article IV of the Treaty of Grouseland. As explained below, the Eel River Miami have for over a century been a part of the Miami Tribe of Oklahoma. The Wea, now a part of the Peoria Tribe, ceded their 1/3 interest in the reserved land in 1818.

Because the recognized title granted under the Treaty of Grouseland is central to the Tribe's claim, a brief history surrounding the Treaty of Grouseland is warranted. Historically, the Miami Indian Confederacy consisted of a major group of people located in the Native diaspora that existed just south of the central Great Lakes when the French penetrated the Lakes in the 1620s. Within the Confederacy, the three bands that consistently intermarried and forged a clear alliance as a "tribe" were the Miami Proper, the Eel River Miami, and the Wea.

Throughout the Eighteenth Century, the Miami Confederacy came into increasingly frequent contact with fur traders at trading posts established throughout the region. In 1801, the federal government sent a territorial

governor, William Henry Harrison, to administer the region occupied by the Miami Confederacy. The encroachment of non-Indians on Indian lands generated tensions and made clear the need for the United States to negotiate Indian treaties and purchase land. From 1802 to 1804, Harrison negotiated a series of land cession treaties with various tribes,¹ including a series of 1804 treaties that cleared a path for non-Indian occupation along the north bank of the Ohio all the way to the Mississippi River.² The Miami disputed many of the agreements, arguing that they had rightful claim to large swaths of the lands ceded.

The mess caused by Harrison's approach and the resulting treaties set the stage for the Treaty of Grouseland. On August 21, 1805, the three Miami Bands ceded a small strip of land in present-day southern Indiana. In exchange for this cession, the Miami demanded and received acknowledgement of ownership to the vast regions of the

¹ See Treaty with the Delawares, Etc., June 7, 1803 (7 Stat. 74); Treaty with the Eel River, Etc, Aug. 7, 1803, (7 Stat. 77).

² See Treaty with the Delawares, Aug. 18, 1804 (7 Stat. 81); Treaty with the Piankeshaw, Aug. 27, 1804 (7 Stat. 83).

Wabash River Watershed, some of this land being west of the Wabash River in present-day Illinois.³ Because of Harrison's past practice of attempting to negotiate cessions from more "cooperative" tribes regardless of their title to the land, and the mess he made in the 1802-1804 treaties, the Miami, Eel River, and Wea insisted on the reservation of land as joint owners with an undivided interest in the whole,⁴ and further secured the United States' express agreement "not purchase any part of the said country without the consent of *each* of the said [three] tribes."⁵

The Article IV reservation of lands vested the Miami, Eel River, and Weas with *treaty recognized title* to lands on the Wabash and its waters above Vincennes, including the area in Illinois subject to the Tribe's claim under H.R. 6063.⁶ Because Article IV vested the Tribe with treaty-recognized title, the United States was thereafter required

³ Treaty of Grouseland, Aug. 21, 1805, 7 Stat. 91.

⁴ *Id.*, art. IV.

⁵ *Id.* (emphasis added).

⁶ *United States v. Kickapoo Tribe of Kansas*, 174 Ct. Cl. 550, 554 (Ct. Cl. 1966) (holding that Article IV of the Treaty of Grouseland "plainly recognizes title to and ownership of the designated lands").

to provide compensation to the Tribe under the Fifth Amendment of the United States Constitution if that title was subsequently taken.⁷ The Tribe's treaty-recognized title is in contrast to "original Indian title," which is based solely on aboriginal occupancy and use,⁸ and which can be taken by the United States without compensation because it—unlike treaty-recognized title—does not constitute "property" within the meaning of the Fifth Amendment.⁹

Between 1805 and 1840, the Tribe's lands came under ever increasing pressure from white settlers and the federal government, and the Tribe ultimately ceded most of its

⁷ *United States v. Sioux Nation*, 448 U.S. 371, 408 (1980) (explaining that Congressional power over tribal lands "does not extend so far as to enable the Government to give the tribal lands to others, or to appropriate them to its own purposes, without rendering, or assuming an obligation to render, just compensation" (internal quotation marks omitted)); *Tee Hit-Ton v. United States*, 348 U.S. 272, 277-78 (1955) (explaining that although Congress has no constitutional obligation to compensate tribes for the taking of land held under original Indian title, "[w]here the Congress by treaty or other agreement has declared that thereafter Indians were to hold the lands permanently, compensation must be paid for subsequent taking").

⁸ *Tee Hit-Ton*, 348 U.S. at 279.

⁹ *Id.* at 285 (stating that "the taking by the United States of unrecognized Indian title is not compensable under the Fifth Amendment").

lands reserved under the Treaty of Grouseland through a series of subsequent treaties.¹⁰ However, the Tribe never ceded or otherwise relinquished title to the 2.6-million-acre treaty reservation in present-day east central Illinois that is the subject of H.R. 6063.

Despite its lack of title, in 1821 the United States, through the Illinois Land Office, began selling parcels of land within the Tribe's unceded territory to white settlers until settlers fully occupied the area with United States land patents in hand. The United States did not seek or obtain consent of the Miami before making these sales in violation of Article IV of the Treaty of Grouseland, and the United States has never compensated the Tribe for the taking.

¹⁰ Treaty of September 30, 1809 (7 Stat. 13); Treaty of September 30, 1809 (7 Stat. 115); Treaty of October 6, 1818 (7 Stat. 189); Treaty of October 23, 1826 (7 Stat. 300); Treaty of February 11, 1828 (7 Stat. 309); October 23, 1834 (7 Stat. 458, 463); Treaty of November 6, 1838 (7 Stat. 569); Treaty of November 28, 1840 (7 Stat. 582). Many of these were signed under coercion, and the last was signed in 1840 shortly before the Tribe was forcibly removed by the United States to Kansas in 1846.

Because of the Tribe's reserved ownership, the United States did not transfer good title to the land it sold, and its actions give rise to a claim for a treaty taking from the Tribe. These issues have created a cloud on title to the reserved lands, affecting some 2.6 million acres of east-central Illinois. Through no fault of their own, and despite having worked the land for generations, the landowners in the reserved area have a cloud on their title.

HR 6063 seeks a resolution that provides for mutual benefit. The Tribe has no desire to see the current landowners to be dispossessed as the Tribe was, and so the bill would extinguish the cloud on title created by the Tribe's land claim in exchange for a one-year window for the Tribe to bring its case before the United States Court of Federal Claims. To be clear, the extinguishment of the cloud on title could occur upon passage of the legislation, and does not depend on the Tribe's success in that litigation. The claim is extinguished and title cleared regardless of the result of CFC litigation. The Tribe would remain responsible for proving its claim before the Court.

The Tribe has worked closely and diligently with the Congressional Leadership from Illinois, with local leaders from Illinois, especially those in the affected treaty area, and with the Illinois Farm Bureau to develop a bill that will resolve, once and for all, this claim and its effect on title and are gratified that the Farm Bureau supports the proposed legislative solution (Appendix 3).

The proposed legislative solution reflected in H.R. 6063 is common-sense, straight-forward, mutually beneficial legislation that has enjoyed broad bipartisan support. While Congress has passed numerous jurisdictional bills over the prior decades, H.R. 6063 is unique because of its mutuality, which provides Congressional relief to the current and historic landowners at the same time.

Finally, it is important to note in this time of tight budgets at home, in the states, and here in D.C., H.R. 6063 is not a land claim settlement bill. Neither is it an

appropriation bill. It does not pass on the merits of claims or defenses that that might be brought, and does not declare any winners, except for the landowners in the reserve area. The Tribe would still have to make its case and win. And, if the Tribe wins and a recovery is ordered, the United States would pay the judgment from the federal Judgment Fund that Congress has already appropriated. So, the CBO does not have to score it, and it wouldn't be an "earmark."

Mihši neewe. Thank you, Madam Chair and Committee members for your time and the opportunity to testify in support of the bill and a special thank you to Congresswoman McCollum as chief sponsor and Congressman Mullin as lead co-sponsor for their leadership and assistance on this bill.

I am happy to answer any questions that the Committee may have.

INDIAN AFFAIRS: LAWS AND TREATIES

Vol. II, Treaties

Compiled and edited by Charles J. Kappler. Washington : Government Printing Office, 1904.

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TREATY WITH THE DELAWARES, ETC., 1805.

Aug. 21, 1805. | 7 Stat., 91. | Proclamation, Apr. 24. 1806.

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Margin Notes
Delawares relinquish their claim.
Cession of the Miamies, etc.
An additional permanent annuity to be given to the Miamies, etc.
Miamies, etc., determine not to part with any of their territory without the consent of all parties.
Potawatomies, etc., acknowledge the right of the Delawares to sell, etc.
Annuities, how to be paid.
Treaty, when to take effect.

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A treaty between the United States of America, and the tribes of Indians called the Delawares, Pottawatimies, Miamies, Eel River, and Weas.

ARTICLES of a treaty made and entered into, at Grouseland, near Vincennes, in the Indiana territory, by and between William Henry Harrison, governor of said territory, superintendent of Indian affairs, and commissioner plenipotentiary of the United States, for treating with the north western tribes of Indians, of the one part, and the tribes of Indians called the Delawares, Putawatimis, Miamis, Eel River, and Weas, jointly and severally by their chiefs and head men, of the other part.

ARTICLE 1.

[Appendix 1](#)

Whereas, by the fourth article of a treaty made between the United States and the Delaware tribe, on the eighteenth day of August, eighteen hundred and four, the said United States engaged to consider the said Delewares as the proprietors of all that tract of country which is bounded by the White river on the north, the Ohio and Clark's grant on the south, the general boundary line running from the mouth of Kentucky river on the east, and the tract ceded by the treaty of fort Wayne, and the road leading to Clark's grant on the west and south west. And whereas, the Maimi tribes, from whom the Delewares derived their claim, contend that in their cession of said tract to the Delewares, it was never their intention to convey to them the right of the soil, but to suffer them to occupy it as long as they thought proper, the said Delewares have, for the sake of peace and good neighborhood, determined to relinquish their claim to the said tract, and do by these presents release the United States from the guarantee made in the before-mentioned article of the treaty of August, eighteen hundred and four.

ARTICLE 2.

The said Maimi, Eel River, and Wea tribes, cede and relinquish to the United States forever, all that tract of country which lies to the south of a line to be drawn from the north east corner of the tract ceded by the treaty of fort Wayne, so as to strike the general

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boundary line, running from a point opposite to the mouth of the Kentucky river, to fort Recovery, at the distance of fifty miles from its commencement on the Ohio river.

ARTICLE 3.

In consideration of the cession made in the preceding article, the United States will give an additional permanent annuity to said Miamis, Eel River, and Wea tribes, in the following proportions, viz: to the Miamis, six hundred dollars; to the Eel River tribe, two hundred and fifty dollars; to the Weas, two hundred and fifty dollars; and also to the Putawatemies, an additional annuity of five hundred dollars, for ten years, and no longer; which, together with the sum of four thousand dollars which is now delivered, the receipt whereof they do hereby acknowledge, is to be considered as a full compensation for the land now ceded.

ARTICLE 4.

As the tribes which are now called the Miamis, Eel River, and Weas, were formerly and still consider themselves as one nation, and as they have determined that neither of these tribes shall dispose of any part of the country which they hold in common; in order to quiet their minds on that head, the United States do hereby engage to consider them as joint owners of all the country on the Wabash and its waters, above the Vincennes tract, and which has not been ceded to the United States, by this or any former treaty; and they do farther engage that they will not purchase any part of the said country without the consent of each of the said tribes. *Provided always*, That nothing in this section contained, shall in any manner weaken or destroy any claim

which the Kickapoos, who are not represented at this treaty, may have to the country they now occupy on the Vermillion river.

ARTICLE 5.

The Putawatimies, Miami, Eel River, and Wea tribes, explicitly acknowledge the right of the Delawares to sell the tract of land conveyed to the United States by the treaty of the eighteenth day of August, eighteen hundred and four, which tract was given by the Piankashaws to the Delawares, about thirty-seven years ago.

ARTICLE 6.

The annuities herein stipulated to be paid by the United States, shall be delivered in the same manner, and under the same conditions as those which the said tribes have heretofore received.

ARTICLE 7.

This treaty shall be in force and obligatory on the contracting parties as soon as the same shall have been ratified by the President, by, and with the advice and consent of the Senate of the United States.

In testimony whereof, the said commissioner plenipotentiary of the United States, and the sachems, chiefs, and head men of the said tribes, have hereunto set their hands and affixed their seals.

Done at Grouseland, near Vincennes, on the twenty-first day of August, in the year eighteen hundred and five, and of the independence of the United States the thirtieth.

William Henry Harrison, [L. S.]

Delawares:

Hocking Pomskan, his x mark, [L. S.]

Kecklawhenund, or William Anderson, his x mark, [L. S.]

Allime, or White Eyes, his x mark, [L. S.]

Tomague, or Beaver, his x mark, [L. S.]

Pattawatimas:

Topanepee, his x mark, [L. S.]

Lishahecon, his x mark, [L. S.]

Wenamech, his x mark, [L. S.]

Miamis:

Kakonweconner, or Long Legs, his x mark, [L. S.]

Missinguimeschan, or Owl, his x mark, [L. S.]

Wabsier, or White Skin, his x mark, [L. S.]

Mashekanochquah, or Little Turtle, his x mark, [L. S.]

Richardville, his x mark, [L. S.]

Eel Rivers:

Wanonecana, or Night Stander, his x mark, [L. S.]

Metausauner, or Sam, his x mark, [L. S.]

Archekatauh, or Earth, his x mark, [L. S.]

Weas:

Assonnonquah, or Labossiere, his x mark, [L. S.]

Misquaconaqua, or Painted Pole, his x mark, [L. S.]

Ohequanah, or Little Eyes, his x mark, [L. S.]

Delawares:

Missenewand, or Captain Bullet, his x mark, [L. S.]

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Done in the presence of—

B. Parke, secretary to the commissioner,

John Gibson, secretary Indiana Territory,

John Griffin, a judge of the Indiana Territory,

B. Chambers, president of the council,

Jesse B. Thomas, Speaker of the House of Representatives.

John Rice Jones,

Samuel Gwathmey,

Pierre Menard,

Members legislative council, Indiana Territory,

Davis Floyd,

Shadrach Bond,

William Biggs,

John Johnson,

Members house of representatives Indiana Territory,

W. Wells, agent of Indian affairs,

Vigo, colonel of Knox County Militia,

John Conner,

Joseph Barron,

Sworn interpreters.

ADDITIONAL ARTICLE.

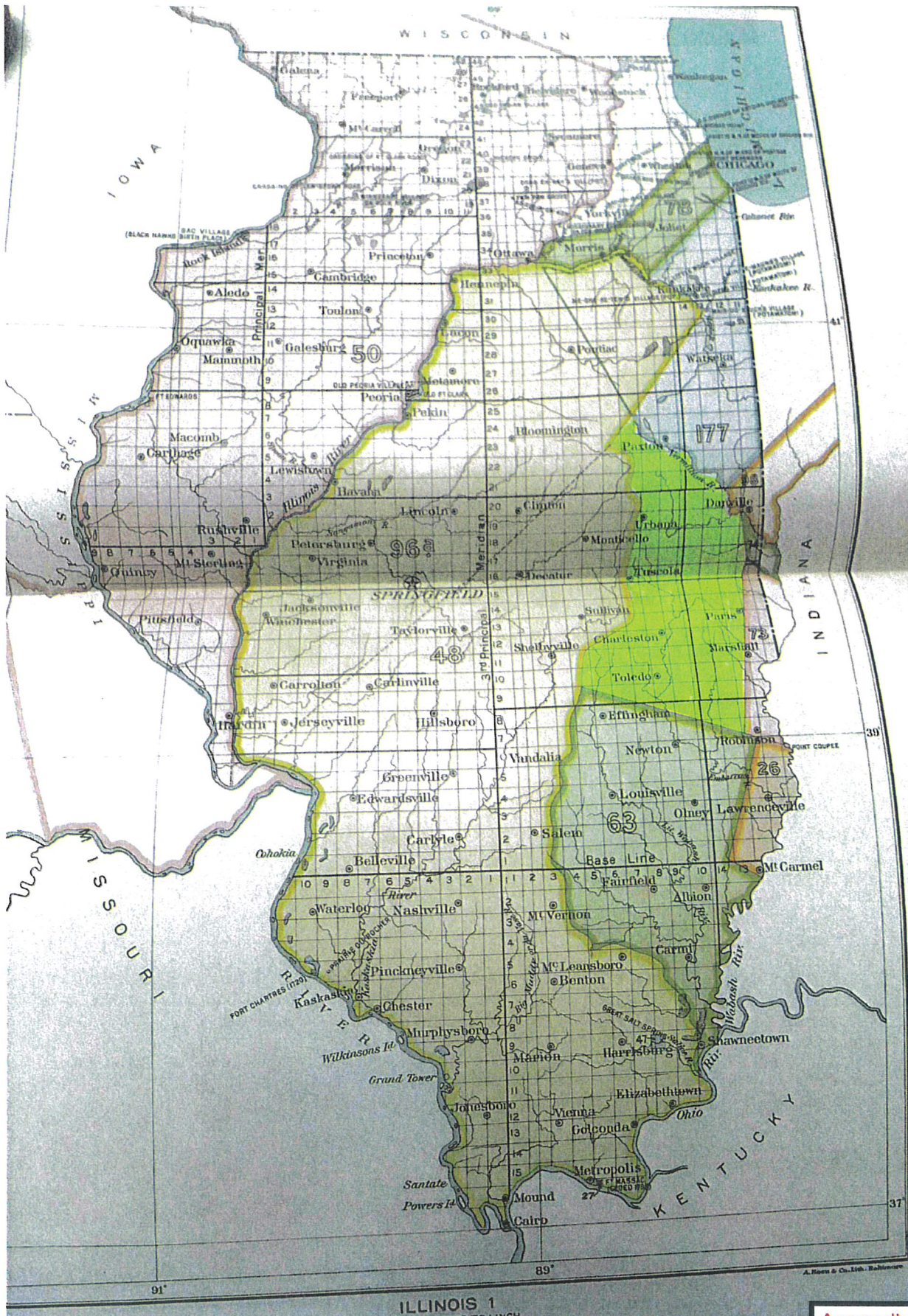
It is the intention of the contracting parties, that the boundary line herein directed to be run from the north east corner of the Vincennes tract to the boundary line running from the mouth of the Kentucky river, shall not cross the Embarras or Drift Wood fork of White river, but if it should strike the said fork, such an alteration in the direction of the said line is to be made, as will leave the whole of the said fork in the Indian territory.

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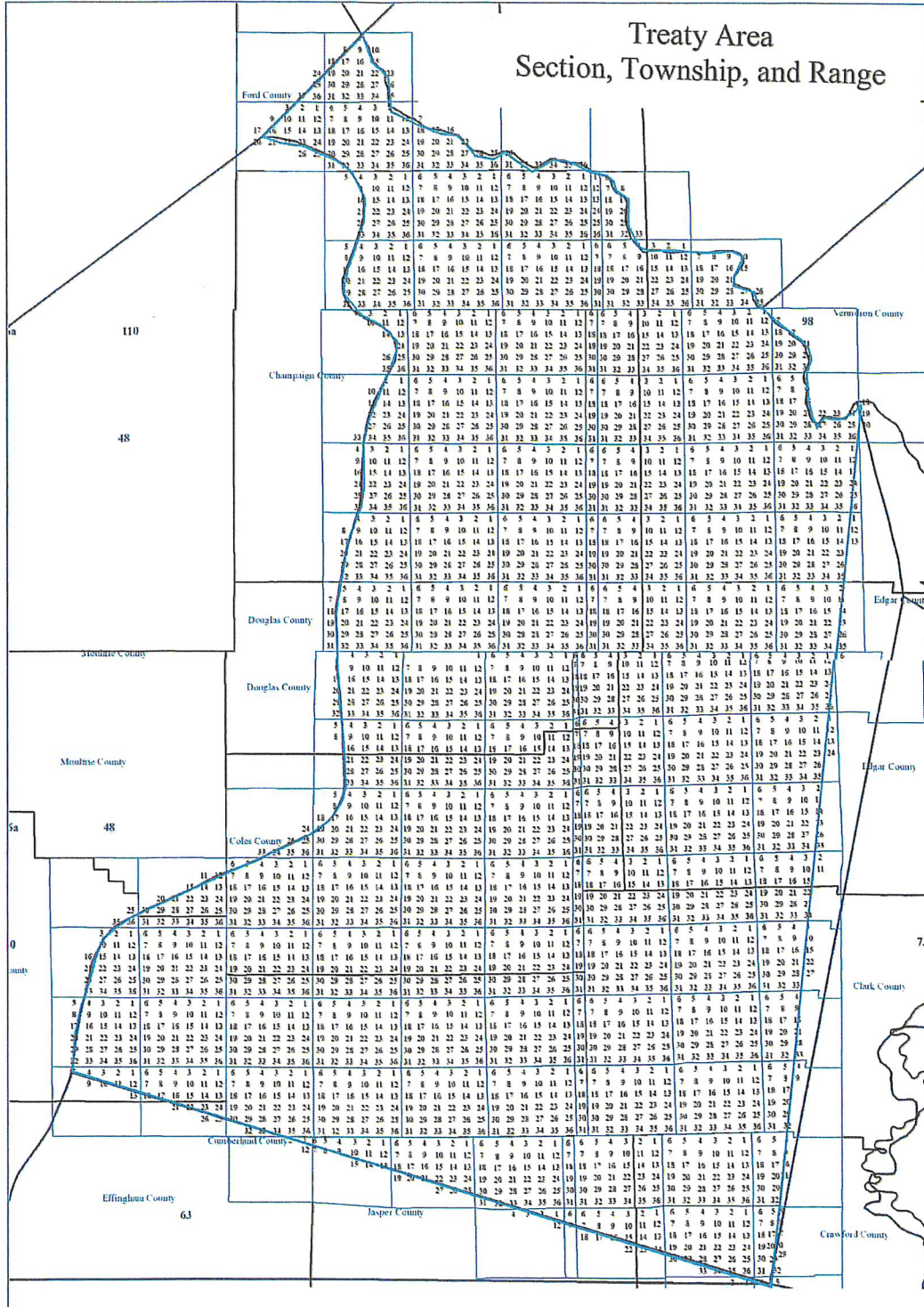
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Grouseland Treaty Area



Grouseland Treaty Area



Joint statement of the Miami Tribe of Oklahoma and Illinois Farm Bureau on H.R. 396

October 11, 2019

Illinois Farm Bureau members and landowners in eastern Illinois may remember efforts about two decades ago by the Miami Tribe to lay claim to hundreds of thousands of acres of Illinois farmland under the 1805 Treaty of Grouseland. In recent years, the Miami's representatives approached Illinois Farm Bureau to write federal legislation that would resolve the tribe's two century-old claim in a way that forever holds private landowners harmless.

Under H.R. 396, sponsored by Oklahoma Republican Markwayne Mullin, Congress would remove any cloud on title resulting from the Miami Tribe of Oklahoma's claim to 2.6 million acres of eastern Illinois farmland. Under the bill's provisions, the Tribe waives all claims to the land under any possible legal theory against Illinois landowners but may argue its claim against the United States before the United States Court of Federal Claims. If the Tribe prevailed in its claim against the federal government, the Court of Claims could provide only monetary damages.

"We are pleased to work with the Miami on this legislation. While IFB takes no position on the Tribe's monetary claims, we support passage of H.R. 396," said Illinois Farm Bureau President Richard Guebert, Jr.

"The Tribe is focused on a solution to the Grouseland Treaty claim that is fair to Illinois farmers. The IFB has been exceptional to work with toward this end," said Miami of Oklahoma Chief Doug Lankford.



Richard L. Guebert Jr.
Illinois Farm Bureau
President



Douglas Lankford
Miami Tribe of Oklahoma
Chief

