

RED LAKE FORESTRY GREENHOUSE PROGRAM

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In 1916, The Red Lake Indian Forest Act was created. The Red Lake Band of Chippewa in Minnesota stood alone and refused to consent to allotment.

Consequently, The Red Lake Band is the

only tribe in Minnesota for which a congressional act was passed to secure a permanent economic foundation for the band and its future.

Over the years and back in history, through two "cessions" beginning in 1863 and relating to the Dawes/Nelson Acts of 1887-89, millions of acres of tribal timber land were coercively taken from The Red Lake Band.

The Nelson act promised that the government would determine the quantity, quality, and full fair market value of timber on 2.9 million acres. Sale proceeds would be deposited for the Band into a "Nelson Act Trust Fund" to earn 4% interest for 50 years. The story of what actually happened to the 2.9 million acres is one of many broken promises. Nothing was done to determine the quantity, quality, and value of timber. In fact, much of the timber was essentially given away to greedy Minnesota logging companies.

Among forest scholars, the manner in which Minnesota logging companies acquired The Band's ceded timber is known to be one of the greatest timber frauds that ever occurred in the history of the United States. The Red Lake Band filed a lawsuit on August 2, 1951, for 13

claims for damages because of the way in which the United States had treated it unfairly or dishonorably.

In 1954, the government initiated a Forestry Management Plan, which was very limited. Very little was done to require the government to perform its forest management activities. Meanwhile this case was being litigated.

In 1977 the federal government funded Forest Development programs for Tribes across the United States. Tribes complained because there was not enough money being provided to reforest acres that were cut.

In 1978, the Red Lake Forestry Greenhouse was built by tribal members. The greenhouse was originally built in Red Lake but was moved and rebuilt in Redby in 1980. Expansion took until the fall of 1981 to get to its present size of 68' x 96'. Total capacity per crop is currently at 325,000 seedlings. We grow 2 crops per year for a total of 650,000 seedlings per year. An average of 400 acres is planted annually. Overall total seedlings grown to present is over 13,000,000.

In 1983, the Wright Report documented continuing failures by the government to manage The Red Lake Indian Forest in any meaningful way.

In 1997, The Bands first 5 Nelson Act claims were settled by payment to the Red Lake Band in the amount of \$27,105,000. The claims were for tribal land and timber that was undervalued and the 4% interest was not paid. The 8 remaining claims concern the mismanagement of the Red Lake Indian Forest and mismanagement of Tribal Trust Funds connected to the sales of the reservation timber.

Combined total sought for all 8 claims is \$494,559,216.

The Red Lake Band alleged that the government failed to manage and care for the Red Lake Indian Forest in accordance with the principles of scientific forestry as required by the 1916 Act of Congress creating the forest. As a trustee of the forest, the government should have properly managed the forest so that there would be successive crops of valuable timber and should also have accounted for all monies it collected from timber-related activities. But it did not do this.

The claims are as follows:

- **Claim 6.** This claim is for the difference between the value of the timber in the Red Lake Indian Forest as it exists today and as it would exist, had the government done a proper job. This included profits lost because the government failed to engage in commercial thinning of the pine site area.
- **Claim 7.** This claim concerns the failure of the government to properly manage the lands outside of the Red Lake Indian Forest but inside the Red Lake Indian Reservation. The Band alleges that the value of timber outside the Red Lake Indian Forest is less valuable because of improper management and that this resulted in a loss of profits that could have been earned from proper commercial thinnings.
- **Claim 8.** Apart from the Nelson Act, 4 other trusts were established for the Red Lake Band. Two of these trusts were established to receive funds from the disposition of timber and interest earned therein. Two additional trusts were established to receive proceeds from Red Lake Indian Labor. The claim is for reimbursement for improper expenditures from these 4 trust funds.
- **Claim 9.** This claim relates back to claim 6, since the band lost profits in the way of unrealized commercial pine thinning revenues, and since the 1916 Act required that these profits should have been deposited into a principle trust fund at 4% interest. The Band is also entitled to interest income damage from these lost profits.
- **Claim 10.** This claim arises from the government's failure to credit deposits and

interest receivables into the Bands trust funds. Under this claim, The Band alleges damage from the loss of interest income from the failure to post these deposits and the loss of the ability to "sweep the accounts" over night.

- **Claim 11.** This claim asserts that the government's failure to properly manage the Red Lake Indian Forest also includes a failure to deposit net stumpage sales proceeds to the Bands trust accounts.
- **Claim 12.** The government sold Red Lake Indian Forest pine timber to the Red Lake Indian Mills at less than fair market value. In doing so, it did not do what was in the best interest of the Band. Because money from the sales to the Red Lake Indian Mills was required to be deposited into its 4% trust fund, the Band lost money this way, too.
- **Claim 13** relates back to claim 9. It is for interest income losses from profits lost as a result of the government's failure to thin the pine site area outside the Red Lake Indian Forest. Under a separate statute, the government as a trustee of forest lands is required to invest income from net harvest sales. The Band lost money from the government's failure to invest properly.

The likelihood of winning a case depends in large measure on what courts have done in similar cases in the past. This is called Historical Precedent. When we look at decisions made in the United States Court of Federal Claims, we see a meager history of adequate recovery in claims against the United States Government, particularly with respect to timber claims. The court is willing to go far indeed to create novel theories of law to avoid making very large awards in timber cases. And so, despite having a basis that will support a prima facie case of damages of over \$400 million, the general history of Indian Claims cases which have gone to trial in the United States Court of Federal Claims indicated overwhelmingly that a resolution at trial resulting in an award commensurate with such damages is extremely remote. Finally, when comparing this history with the fact that the proposed settlement amount exceeds any recovery ever received by a single tribe in the history of the United States Court of Federal Claims, and in fact, is one of the 20 largest awards ever, regardless of the

kinds of cases, the dimension of the settlement proposal becomes very significant.

The case itself has been in litigation since 1951; nearly a half a century. There is no other case like it.

The Award won by the Red Lake Band of Chippewa Indians is for a total of \$53,500,000.

A major reason that led to the government's willingness to settle is its unwillingness to have to restore the Red Lake Indian Forest. It is their resistance to any obligation toward restoration of the Red Lake Indian Forest that has led to their insistence on the establishment of a permanent fund. Not only is remediation an expensive process, it is a painstaking process.

It is precisely the government's insistence on a permanent fund that can provide the way to fund a plan of remediation of the Red Lake Indian Forest. The resolutions and ordinance establishing the permanent fund authorizes the use of the monies on a priority basis for: 1) restoration of the Red Lake Indian Forest; 2) for other natural resource restoration; 3) for other purposes to benefit the band as may be determined by the Tribal Council.

Of the \$53.5 million, \$40 million has been placed in a permanent fund. The Red Lake Band of Chippewa Indians has hired a private investment firm. This fund will be used for reforestation activities that will provide economic opportunities for all members of the Band. The plan of operations of the permanent fund provides important protections with respect to utilization of the funds.

The fund will be owned and controlled by the Band; the Secretary of Interior may not make changes in the utilization of the fund. Changes may not be made to the Resolutions or Ordinance creating the fund without approval of the Secretary of the Interior, whose approval may not unreasonably be withheld. The Secretary's role in any such process is that of trustee. He may not substitute his judgment of what is best for the Band, and the establishment of the permanent fund does not absolve the government of its on-going obligations under the 1916 Act after the date of settlement.

The original pine acreage for The Red Lake Indian Forest was 60,000 acres. Only 10,000 acres are left today.

Some of the things the Red Lake Band of Chippewa Indians and The Red Lake Forestry Program have done include:

- **1996:** A Forest Policy/Advisory Committee was formed at the request of the Tribal Council because of stumpage issues.
- **1997:** The Red Lake Band of Chippewa Indians went to Self-Governance.
- **1999:** The Red Lake Forest History book was written.
- **1999:** The Red Lake Fire Management Plan was completed.
- **2000:** The Integrated Resource Management Plan was completed.
- **2001:** The Forestry Technician School on The Red Lake Indian Reservation through Northwest Technical College was completed. Training will be held at the Whitefeather/Moe Education Complex, also known as "New Beginnings" building. Classes began August 20, 2001. This is a 2-year program for a Forestry Technician certificate (33 credits) for 20 students. Four students out of the original 20 students will be selected to continue their education for a 4-year degree through a University.

In the works is the Red Lake Forest Management Plan.

The Red Lake Band of Chippewa Indians and the Forestry Department are planning ahead by instituting the Forestry Technician school and the building of the New Greenhouses & Fire Facilities with future expansions included. Construction is planned to begin in Spring 2002.

By the year 2006, we will begin reforestation work on the Red Lake Indian Forest. The Red Lake Band of Chippewa Indians has plans to reforest the Red Lake Indian Forest at the rate of 1,000 acres per year for the next 50 years. Overall projections of this major project will take time to implement. A 20% increase per year from 2006 to 2011 of all Forest Development activities will be implemented. Twenty-seven additional positions will be developed to manage its resources.

At this time I would like to thank these people for their expertise in helping the Red Lake Band of Chippewa Indians and the Red Lake Forestry Department with their future plans in reforestation.

Dr. Tom D. Landis, National Nursery Specialist, who gave us information on contacts of people to call and ask if they would be interested in helping us with our developments and research. Also for providing funds to help with consultant fees and travel scholarships for 2 students.

Dr. Richard W. Tinus, U.S. and international expert in tree seedlings and greenhouses, who came to visit with us. Dr. Tinus did a critique on our existing facilities, looked over potential proposed sites for new facility, gave us ideas for the new facility, initial planning for a new facility, and other alternatives in reaching our goal of planting 1,000 acres per year for 50 years. Dr. Tinus was introduced on our behalf to the Red Lake Tribal Council where he discussed our present and future plans.

Mr. Dick Rose, Landscape Architect, who developed the proposed site plan for the utilization of the proposed 40-acre site next to the Red Lake Elementary School in Red Lake. Also for continued support with budget predictions and his willingness to help in many other ways.

Dr. Kas Dumroese, University of Idaho, who looked into research done with growing tree seedlings with the ebb & flow system.

Dr. Ron Overton, Regeneration Specialist, Purdue University, for always listening and helping us to make connections to other experts. Also for the opportunity to host part of "The Russian Forester Delegation" at Red Lake.

Our Greenhouse Task Force, who is a mixture of tribal planners, grant writers, realty, historian, foresters, architects, engineers, plant physiologist, greenhouse manager and all others who have input and been working hard over the past 1 1/2 years.

Mr. Eric Stuewe, Stuewe & Sons, Inc., who is always interested and helpful in production of tree seedlings with insight to other people and businesses.

Dr. John Bartok Jr., Agricultural Engineer and Greenhouse Consultant, who is happy to work with us by providing overall insight regarding developments, design, planning, and whole concept of greenhouse operations.

Summary Table.

YEAR	EVENT	RESULT OR INTENT
1916	Red Lake Indian Forest Act	Congressional act passed to secure a permanent economic foundation for The Band
1863		Cession of Tribal land
1887-1889	Dawes/Nelson Act	Further cession of 2.9 million acres of Tribal land
1951	Lawsuit filed by Red Lake Band	13 claims made against the US government
1954	Forestry Management Plan	Limited government responsibility
1977	Forest Development Funds	Very little money given to tribes
1978	Red Lake Greenhouse	Built by Tribal members
1983	Wright Report	Documented continuing government failure to the Tribes
1996	Forest Policy/Advisory Committee formed	Dealt with stumpage issues
1997	Red Lake Self-Governance	Ceded Lands Settlement (\$27,105,000)
1999	Red Lake Fire Mgt. Plan Red Lake History Book	
2000	Red Lake Integrated Resource Management Plan	
2001	US Court of Federal Claims Decision Red Lake Forestry Technician school	8 remaining claims settled for \$53.5 million \$40 million permanent fund established Education for Tribal members