

IN THE UNITED STATES  
COURT OF FEDERAL CLAIMS

SHELDON PETERS WOLFCHILD,  
et al.

Case No. 03-2684L  
Judge Charles F. Lettow

Plaintiffs,

vs.

UNITED STATES

Defendant.

**SIXTH AMENDED COMPLAINT**

The Plaintiffs in the above-referenced matter for their Sixth Amended Complaint allege as follows:

1. Pursuant to the Court's order dated October 27, 2004, the Plaintiffs filed their Second Amended Complaint in the United States Court of Federal Claims pursuant to jurisdiction granted under 28 U.S.C. §§ 1491, 1505, et. seq., in order to recover damages for Defendant's trust mismanagement and breach of fiduciary duties as hereinafter alleged in Count I.

2. Pursuant to the Court's order dated October 27, 2004, the Plaintiffs petitioned the Court to use its powers under 28 U.S.C. § 1491(a)(2) to issue an order for such other and further relief as the Court deems to be

proper and just including but not limited to the following: (1) directing the Secretary of the Interior that the Plaintiffs as Lineal Descendants of the May 20, 1886 Minnesota Mdewakanton census are hereby restored to class beneficiary status; (2) directing the Secretary of the Interior to create and maintain a list of trust beneficiaries and to send to each an inventory as of November 28, 1969 and annual trust accountings from November 28, 1969 forward; and (3) directing the Secretary of Interior to ensure that the Plaintiffs receive all monetary benefits and rights and privileges associated with being Indian Class Beneficiary of about 950 acres or more of the Shakopee, Prairie Island and Lower Sioux Reservations.

3. In the October 27, 2004 Order, the Court dismissed Plaintiffs' breach of contract claims. The Plaintiffs have not included Count II in their Revised Third Amended Complaint, nor in this Sixth Amended Complaint, but have not waived and expressly do not waive their rights to appeal after final judgment is entered from the Court's partial summary judgment dismissing those claims.

4. In the October 27, 2004 Order, the Court stated that the separately-pled claims of the minor plaintiffs in Count III were deemed subsumed into Count I. Plaintiffs, as in previous complaints, do not repeat the allegations of Count III herein. Plaintiffs do not waive and expressly preserve their right to appeal from said order after final judgment is entered.

5. On an interlocutory appeal, the United States Court of Appeals for the Federal Circuit on March 10, 2009, reversed the decision of this Court regarding the trust mismanagement claims of the Plaintiffs as expressed in Count I and remanded for further proceedings on the statutory use restriction elements of the 1888, 1889, and 1890 Appropriation Acts as further delineated within this Complaint. Plaintiffs expressly preserve and do not waive their right to appeal from that decision after final judgment is entered.

6. Plaintiffs now seek the United States Court of Federal Claims to exercise its jurisdiction under 28 U.S.C. §§ 1491, 1505, et. seq., for the recovery of damages for the violations of the 1888, 1889, and 1890 Appropriation Acts' statutory use restrictions as described within Counts IV and V of this Sixth Amended-Complaint.

7. Plaintiffs further petition this Court under the its statutory powers under 28 U.S.C. § 1491(a)(2) to grant the relief requested that the Court deems just and equitable, inclusive of: requiring the United States to (1) repeal, revoke, or abrogate all actions it approved expressly, impliedly, directly, or indirectly that this Court finds repugnant to the statutory use restrictions or any element of the statutory use restriction; (2) to remand appropriate, related matters to Interior with such direction as the Court may deem proper and just; (3) directing the Secretary of Interior that the

Plaintiffs be restored to class beneficiary status; (4) directing the Secretary of the Interior to create and maintain a list of beneficiaries and to send each an annual accounting; and (5) directing the Secretary of Interior to ensure that the Plaintiffs receive all the benefits and privileges associated with being Indian Class Beneficiary of the Prairie Island Indian Community, the Lower Sioux Indian Community, and the Shakopee Mdewakanton Sioux Community.

## **COUNT I**

### **TRUST MISMANAGEMENT**

8. Pursuant to the United States Court of Appeals for the Federal Circuit decision dated March 10, 2009, this trust mismanagement claim was, for all intents and purposes, in part dismissed when the case was reversed and remanded. The part that was not dismissed has been subsumed into Counts IV and V below. Plaintiffs do not here repeat the allegations supporting Count I stated in previous complaints. Plaintiffs expressly preserve and do not waive their right to appeal any decision after final judgment is entered.

## **COUNT II**

### **BREACH OF CONTRACT**

9. Pursuant to the Court's order dated October 27, 2004, this breach of contract claim was dismissed. Plaintiffs do not here repeat the allegations

supporting Count II stated in previous complaints. Plaintiffs expressly preserve and do not waive their right to appeal any order after final judgment is entered.

### **COUNT III**

#### **SEPARATELY-PLED CLAIMS OF MINOR PLAINTIFFS**

10. Pursuant to the Court's order dated October 27, 2004, these claims have been subsumed into Count I. So, Plaintiffs do not repeat here the allegations supporting Count III stated in previous complaints. Plaintiffs expressly preserve and do not waive their right to appeal any order after final judgment is entered.

### **COUNT IV**

#### **VIOLATION OF STATUTORY USE RESTRICTION**

11. All of the allegations in this Complaint are incorporated in their entirety herein by reference.

12. Count IV is part of and derived from existing Count I and reflects the statutory use restriction of the 1888, 1889 and 1890 Appropriation Acts (“Statutory Use Restriction”).

#### **Background**

13. After the 1862 Sioux uprising in Minnesota, Congress in 1863 passed an Act — the Act of Feb. 16, 1863, 12 Stat. 652 (“the 1863 Act”) — that “abrogated and annulled” all treaties between the federal government

and Minnesota Sioux Indians and “forfeited to the United States” “...all lands and rights of occupancy within the State of Minnesota....” The federal government removed all Sioux from Minnesota with the exception of some Mdewakanton Sioux who remained in Minnesota.

14. The reward for rescuing whites under the 1863 Act included “eighty acres in severalty to each individual of the before-named bands who exerted himself in rescuing whites from the late massacre of said Indians [as] an inheritance to said Indians and their heirs forever.”

15. The 80-acre parcels described in the 1863 Act were never set aside and loyal Mdewakanton remained without land in Minnesota for approximately 25 years.

16. Through Appropriations Acts in 1888, 1889, and 1890 (“the Appropriations Acts”), Congress authorized the Secretary of the Interior to purchase land and other needed items for the loyal Mdewakanton in such a manner as the Secretary deemed best and to ensure that each Indian beneficiary receive “an equal amount in the value of the appropriation.”

17. The Department of the Interior spent approximately \$15,600 of the \$40,000 appropriated under the 1888, 1889, and 1890 Appropriations Acts to purchase various parcels of land in southern Minnesota for certain Mdewakanton as referenced in the Acts.

18. The lands purchased under the Appropriation Acts are referred

to as the “1886 lands.”

19. The Appropriation Acts provide that the appropriations would be for the exclusive benefit of all Mdewakanton who resided in Minnesota since May 20, 1886 or who were then engaged in moving to Minnesota as of that date and their lineal descendants. This is an element of the Statutory Use Restriction.

20. The Appropriation Acts also state that as nearly as practicable an equal value of the appropriation is to be shared among the 1886 Mdewakanton and their lineal descendants. This is an element of the Statutory Use Restriction.

21. The Appropriation Acts do not require the 1886 Mdewakanton to move from their location and move onto appropriated lands to receive an equal value as practicable of the appropriation. This is an element of the Statutory Use Restriction.

22. The Mdewakanton who are statutorily eligible for benefits under the Statutory Use Restriction are commonly referred to as “the 1886 Mdewakanton.”

23. The Mdewakanton who are statutorily eligible for benefits under the Statutory Use Restriction include the lineal descendants of the 1886 Mdewakanton.

24. As of 1980, notwithstanding several intervening exchanges and

sales, the 1886 lands had remained largely intact, totaling approximately 950 acres. The tracts are located in or near three Minnesota counties: Scott County, Redwood County and Goodhue County.

25. Until 1980, the Department of the Interior assigned individual plots from those lands to qualifying Mdewakanton for their use and occupancy as long as they resided on or otherwise used the land. After a particular assignee died or abandoned the property, the Department of the Interior reassigned the land to another qualifying Mdewakanton. The new assignment was often made to a descendant of the previous assignee. The Department of the Interior, however, did not regard the interest of the assignees in the property as rights that passed through inheritance.

26. The land assignment system of the Department of the Interior was consistent with the Statutory Use Restriction of the Appropriation Acts.

27. Pursuant to the Indian Reorganization Act of 1934, ch. 576, 48 Stat. 984 (IRA) and the Statutory Use Restriction, three Mdewakanton communities were formed. The statutory basis of the formation of the communities under the IRA was the Appropriation Acts' Statutory Use Restriction.

28. Two communities were formed under the IRA and Statutory Use Restriction in 1936: the Prairie Island Indian Community ("PIIC") and the Lower Sioux Indian Community (LSIC).

29. A third community was formed in 1969 under the IRA and the Statutory Use Restriction: the Shakopee Mdewakanton Sioux Community (SMSC).

30. The enrolled membership of PIIC and LSIC consist largely of 1886 Mdewakanton lineal descendants. Since about 1980, all enrollments to these communities have been closed to 1886 Mdewakanton lineal descendants.

31. The enrolled membership of the SMSC since 1969 has not largely consisted of 1886 Mdewakanton lineal descendants. Since about 1980, all enrollments to this community have been closed to 1886 Mdewakanton lineal descendants.

32. Plaintiffs are 1886 Mdewakanton lineal descendants.

33. Over 95 percent of known 1886 Mdewakanton lineal descendants are not enrolled members of PIIC, LSIC and SMSC.

34. Since the original purchases of the 1886 lands, the United States has purchased an additional 414 acres for the Prairie Island community and an additional 872.5 acres for the Lower Sioux community. Those lands have been regarded as “reservation” lands and as such, held in trust for those two communities established under the IRA and Statutory Use Restriction.

35. Prior to 1980, those reservation lands were treated as having a legally distinct status from the 1886 lands, even though parcels of the two

classes of property were intermingled in the same areas within the geographical boundaries of the Prairie Island and Lower Sioux communities.

36. During this period, and prior to 1980, the Department of the Interior implemented its land-assignment program allowing for the orderly use and occupancy of the 1886 lands by the 1886 Mdewakanton and lineal descendants.

37. Furthermore, the Department recognized that there was insufficient land for all of the 1886 Mdewakanton and their lineal descendants to reside on those lands; but, the Appropriation Acts commanded that no Indian living off of the 1886 lands would be required to move from his or her location to move onto the acquired lands. This is consistent with the Appropriation Acts' Statutory Use Restriction.

38. In 1980, Congress enacted legislation designed to give the three communities political control over all the property within the communities that had been set aside for the 1886 Mdewakanton and their lineal descendants, including the 1886 lands. The legislation sought to enhance economic development and mortgage loan possibilities by overcoming the "checkerboard pattern" of the two classes of property.

39. The 1980 Act provides that the 1886 lands, which "were acquired and are now held by the United States for the use or benefit of certain Mdewakanton Sioux Indians" under the Appropriations Acts' Statutory Use

Restriction, would henceforth be “held by the United States ... in trust for” the three communities established under the IRA and the Appropriation Acts’ Statutory Use Restriction. Pub.L. No. 96-557, 94 Stat. 3262 (1980).

40. The 1980 Act contains a savings clause stating that the Act would not alter any rights under any contract, lease, or assignment entered into or issued prior to the Act. Thus, all of the individuals then holding assignments to the 1886 lands retained their rights to use the land unaffected by the 1980 legislation. Since 1980, the Department of the Interior has ceased making any new land assignments to 1886 Mdewakanton lineal descendants.

41. The 1886 lands and acquired lands have created economic wealth for the 1886 Mdewakanton and their lineal descendants before and after 1980. Such wealth includes revenue relating to, but not exclusive to, quarry operations and leases.

42. Wealth continues to be created from economic enterprises on lands held in trust and subject to the Appropriation Acts’ Statutory Use Restriction.

43. The United States did collect and retain moneys derived from the Communities’ economic enterprises in trust accounts for purposes of disbursement to 1886 Mdewakanton lineal descendants. The trust accounts are identified as U.S. Treasury Account Nos. 147436 and 147936. This is

consistent with the Statutory Use Restriction.

44. The United States continues to hold certain moneys in the Trust Accounts of no less than \$60,000.

45. The United States has not continued the collection of moneys from the Communities created through economic enterprises for disbursement to the 1886 Mdewakanton and their lineal descendants. This is inconsistent with the Appropriation Acts' Statutory Use Restriction.

46. Although the 1886 and other acquired lands are presently held in trust by the United States for the communities, the Statutory Use Restriction of the Appropriation Acts still requires the Department of the Interior to ensure that the uses and benefits of all reservation lands benefit exclusively and equally all 1886 Mdewakanton lineal descendants.

47. Due to the Department of the Interior's violations of the Statutory Use Restriction, the 1886 Mdewakanton lineal descendants not enrolled in the existing three Mdewakanton Communities have not received an equal share of any disbursement that would have been created from economic enterprises on the reservations.

48. In 1988, Congress passed the Indian Gaming Regulatory Act (IGRA).

49. The IGRA assisted and encouraged the creation of economic enterprises to generate wealth for the benefit of individuals and their

respective Indian tribes and Indian communities.

50. The IGRA requires the United States to ensure certain moneys are retained by Indian tribes and Indian communities for economic development.

51. The moneys set-aside are also used for the creation of a variety of economic enterprises and other benefits.

52. The IGRA allows for the disbursement of certain moneys, services, or other wealth among individuals inclusive of Indian tribal members and Indian communities but not exclusive of non-tribal or non-community members derived from this type of economic enterprise.

53. The Department of the Interior is responsible and must approve the revenue allocation plans under the IGRA.

54. Since 1988, the Department of the Interior has approved IGRA revenue allocation plans and related ordinances and resolutions for PIIC, LSIC and SMSC.

55. The Secretary of the Interior's decisions under various federal statutes of generally applicability, specifically the 1934 IRA and 1988 IGRA, have economically damaged the lineal descendants. The Secretary of the Interior's decisions under these statutes have been made in violation of the Statutory Use Restriction.

**“The Appropriation Acts Are Best Interpreted as Appropriating Funds  
Subject to a Statutory Use Restriction”**

56. The 1888, 1889 and 1890 Appropriation Acts impose upon the United States through the Department of the Interior a Statutory Use Restriction.

57. The Appropriations Acts’ Statutory Use Restriction includes the appropriation of funds subject to that restriction.

58. Prior to 1980, the Department of the Interior recognized the 1886 Mdewakanton as the specific beneficiaries of the Appropriations Acts, as Congress intended.

59. The Secretary of the Interior did acquire lands for the benefit of the 1886 Mdewakanton. With respect to those land purchases, the Secretary adopted a policy designed to promote Congress' intent and assigned lands to individuals from within the group of 1886 Mdewakanton and subsequently to individuals from within the class of the descendants of those Mdewakanton as the designated beneficiaries for their use and benefit.

60. Contemporaneous documents show that the Secretary of the Interior considered himself bound by the terms of the statutes to reserve the usage of the 1886 lands for the 1886 Mdewakanton and that he did so by selecting assignees from within that group.

61. The IRA expressly extended the Appropriation Acts’ Statutory

Use Restriction under 25 U.S.C. § 462 – “[t]he existing periods of trust placed upon any Indian lands and any restriction on alienation thereof are extended and continued until otherwise directed by Congress.” (Emphasis added.)

62. Beginning in 1905, the Department formalized the assignments through Indian Land Certificates. The assignments, made through land certificates, stated the 1886 lands as “held in trust by the Secretary of the Interior for the exclusive use and benefit of said Indian ... [and] subject to [re]assignment by the Secretary of the Interior to some other Indian who was a resident of Minnesota on May 20, 1886 or a legal descendant of such resident Indian.”

63. The Indian Land Certificates authorized each assignee to reside on or use the land either for his lifetime or until he abandoned the land. When a particular assignment ended, whether by the death of the assignee or when the assignee abandoned the land or otherwise violated the terms of the assignment, the Department of the Interior would select another assignee. Frequently, the Interior would assign the plot to the child of the previous assignee, but sometimes another descendant of the 1886 Mdewakanton would be given the assignment.

64. In some instances, the lands were leased to persons other than the descendants of the 1886 Mdewakanton.

65. Where revenue was acquired from created economic enterprises

or endeavors, the Department of the Interior collected and deposited the proceeds in a U.S. Treasury account for the 1886 Mdewakanton and their descendants.

66. The United States, upon information and belief, holds moneys from revenue of such economic enterprises or endeavors in U.S. Treasury Account Nos. 147436 and 147936.

67. The Department of the Interior has consistently recognized that in the Appropriation Acts, Congress intended for the appropriated funds to be expended for the equal benefit of the 1886 Mdewakanton.

68. Consistent with the principle that there is a “general trust relationship between the United States and the Indian people,” *United States v. Mitchell*, 463 U.S. 206, 225 (1983), the Department of the Interior officials characterized the 1886 lands as being held in trust for the 1886 Mdewakanton and their descendants, even though the 1886 Mdewakanton were not a tribe of Indians, but rather were viewed as a group of individuals who had severed their tribal relations and were in need of assistance. This is consistent with the Appropriation Acts’ Statutory Use Restriction.

**“The 1980 Act, As Construed by the Government, Does Not Affect a Repeal of the Appropriation Acts, Implied or Otherwise”**

69. In 1980, Congress enacted a statute that terminated the assignment system and placed the 1886 lands in trust with the United States

for the three communities of Prairie Island, Lower Sioux, and Shakopee.

70. The 1980 Act altered the ownership status of the 1886 lands.

The 1980 Act converted the United States' interest in the lands into a trust for the three communities. Thus, the United States holds legal title to the lands and each of the three communities has equitable title to the portions of the 1886 lands allocated to it:

That all right, title, and interest of the United States in [the 1886 lands] **which were acquired and are now held by the United States for the use or benefit of certain Mdewakanton Sioux Indians [under the Appropriations Acts]** are hereby declared to hereafter be held by the United States-

(1) with respect to the some 258.25 acres of such lands located within Scott County, Minnesota, in trust for the Shakopee Mdewakanton Sioux Community of Minnesota;

(2) with respect to the some 572.5 acres of such lands located within Redwood County, Minnesota, in trust for the Lower Sioux Indian Community of Minnesota; and

(3) with respect to the some 120 acres of such lands located in Goodhue County, Minnesota, in trust for the Prairie Island Indian Community of Minnesota.

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... The lands so transferred are hereby declared to be a part of the reservations of the respective Indian communities for which they are held in trust by the United States.

94 Stat. at 3262 (emphasis added).

71. The 1980 Act is not a repeal of the Appropriations Acts' Statutory Use Restriction.

72. The 1980 Act did not affect the obligations of the United States to the 1886 Mdewakanton lineal descendants under the Statutory Use Restriction.

**The Statutory Use Restriction Requires the Secretary of the Interior To Ensure in All Related Matters that the Lineal Descendants Receive Exclusive Use and Benefit from SMSC, LSIC and PIIC and that the Lineal Descendants Receive Equal Amounts in Value of the Appropriation**

73. The Statutory Use Restriction requires the Secretary of the Interior to preserve SMSC, LSIC and PIIC for the exclusive use and benefit of the lineal descendants and that the Secretary of the Interior ensure that each lineal descendant receive “an equal amount in value of the appropriation.”

74. The IRA made the Secretary of the Interior’s duties perpetual until Congress directed otherwise — “[t]he existing periods of trust placed upon any Indian lands **and any restriction on alienation thereof** are extended and continued until otherwise directed by Congress.” 25 U.S.C. § 462 (emphasis added).

75. The 1889 Act applies the exclusivity and equality requirement to appropriated funds under both the 1888 Act and the 1889 Act and bars the Secretary of the Interior from pre-conditioning non-land use and benefits to lineal descendants based on re-locating:

And, provided also, That the Secretary of the Interior may appoint a suitable person to make the above-mentioned expenditure under his direction: and all of said money which is to

be expended for lands, cattle, horses, implements, seeds, food, or clothing shall be so expended that each of the Indians in this paragraph mentioned shall received, as nearly as practicable, an equal amount in value of the appropriation and that made by said act of June twenty-ninth, eighteen hundred and eighty-eight: And provided further, That as far as practicable lands for said Indians shall be purchased in such locality as each Indian desires and no Indian shall be required to remove from where he now resides and to any locality or land against his will.

76. The 1890 Act has the same exclusivity and equality requirements as the earlier Acts and bars the Secretary of the Interior from pre-conditioning non-land use and benefits to lineal descendants based on re-locating:

Provided, further, That the Secretary of the Interior may appoint a suitable person to make the above-mentioned expenditure under his direction, whose compensation shall not exceed one thousand dollars: and all of said money expended for lands, cattle, horses, implements, seeds, food, or clothing shall be so expended that each of the Indians in this paragraph mentioned shall received, as nearly as practicable, an equal amount in value of this appropriation: And provided further, That as far as practicable lands for said Indians shall be purchased in such locality as each Indian desires and no Indian shall be required to remove from where he now resides and to any locality or land against his will.

77. Additionally, contemporaneous dictionaries show the Appropriation Acts' text establishes a mandatory duty that the Secretary of the Interior ensure that an equal share of the worth of the Secretary of Interior's use of the appropriated funds be given to each lineal descendant. The critical words for interpretation are "shall," "equal," "value" and

“appropriation.” The dictionaries generally state in relevant part: “shall” used in statutes is “imperative” or “mandatory”; “equal” means “equitable, just, fair; not unduly favorable to any side”; “value” means “its worth”; and “appropriation” is “an act of the legislature by which a named sum of money has been set apart in the treasury, and devoted to the payment of a particular demand. *Black’s Law Dictionary* (2<sup>nd</sup> ed. 1910). *See also* Samuel Johnson’s *Dictionary of the English Language* (1843); John Bouvier’s *Law Dictionary* (14<sup>th</sup> ed. 1880); *The Century Dictionary and Cyclopedia* (1899).

**The Department of the Interior Violated the Statutory Use Restriction  
For Failure to Disburse Funds held for the Lineal Descendants in U.S.  
Treasury Accounts Nos. 147436 and 147936**

78. Pursuant to the Statutory Use Restriction, Interior collected funds into U.S. Treasury Accounts Nos. 147436 and 147936 for disbursement to the lineal descendants.

79. The money collected by the Department of the Interior in these accounts included, but was not limited, to royalties from reservation quarries and lease money paid by tenants on leases of PIIC, LSIC and SMSC lands.

80. After collecting such lease and other money into U.S. Treasury Accounts Nos. 147436 and 147936 for disbursement to the lineal descendants, the Department of the Interior has a money-mandating duty to disburse such U.S. Treasury Account funds to the Plaintiffs in accord with the Statutory Use Restriction.

81. The Department of the Interior violated the Statutory Use Restriction by never disbursing the funds collected to the Plaintiffs.

82. The Department of the Interior's violations of the Statutory Use Restriction in this regard damaged Plaintiffs.

**Interior Violated the Statutory Use Restriction  
After the 1980 Act By Failing to Continue  
To Collect Revenues from the SMSC, PIIC and LSIC Enterprises  
For Disbursement to the Lineal Descendants**

83. After the 1980 Act, under the Statutory Use Restriction, the Department of the Interior should have continued to collect revenues from PIIC, LSIC, and SMSC enterprises and leases and deposit such funds into U.S. Treasury Account Nos. 147436 and 147936 for disbursement to the lineal descendants.

84. The Department of the Interior, after the 1980 Act, failed to continue to collect revenues from PIIC, LSIC, and the SMSC enterprises and leases and deposit such funds into U.S. Treasury Accounts Nos. 147436 and 147936 for equal disbursement to all the lineal descendants.

85. Department of the Interior has a money-mandating duty to collect such revenues into U.S. Treasury Accounts and to disburse such funds to the Plaintiffs in accord with the Statutory Use Restriction.

86. Department of the Interior violated the Statutory Use Restriction, after the 1980 Act, by failing to collect lease and other revenues

from PIIC, LSIC, and SMSC enterprises and depositing such funds into U.S. Treasury Accounts Nos. 147436 and 147936 for disbursement to Plaintiffs.

87. Interior's violations of the Statutory Use Restriction in this regard damaged Plaintiffs.

**The 1988 Indian Gaming Regulatory Act, Interpreted In Harmony With the Statutory Use Restriction Obligations of the United States, Created a Money-Mandating Duty on the Department of the Interior to Ensure Revenue Generated Through Economic Enterprises Governed Under this Act Were Distributed Exclusively and Equally as Practicable to Lineal Descendants**

88. The Statutory Use Restriction required the United States, through the Department of the Interior, to apply the restrictions in a manner that would not cause harm to the people the Acts sought to assist, namely, the 1886 Mdewakanton and their lineal descendants.

89. The elements of the statutory use restrictions included the mandatory duty to collect certain revenues created from economic enterprises within the land boundaries of PIIC, LSIC and SMSC.

90. The 1988 IGRA, 25 U.S.C. § 2701, et seq., allowed Indian tribes and Indian communities to create revenue through created economic enterprises and to use that wealth to develop other enterprises to create revenue from other resources.

91. Under the IGRA, the United States approved of revenue allocation plans to disburse collected revenues from certain economic enterprises and wealth to and inclusive of Indian tribal and Indian

community members.

92. The United States did not collect revenues from the economic enterprises from Indian tribes or Indian communities before the disbursement of revenues under approved revenue allocation plans under the IGRA.

93. The United States approved the IGRA revenue allocation plans for PIIC, LSIC and SMSC.

94. Under the Statutory Use Restriction, the United States had a money-mandating duty to collect revenue generated from economic enterprises created under or subject to the IGRA.

95. The Statutory Use Restriction further requires the distribution of generated revenue disbursed under any United States' approved revenue allocation plans for PIIC, LSIC and SMSC to result in exclusive and equal distributions to all 1886 Mdewakanton lineal descendants.

96. The IGRA also states that the United States, through the Department of the Interior (inclusive of the National Indian Gaming Commission and its Chairman) "shall approve tribal ordinances or resolutions concerning the conduct, or regulation of class II gaming on the Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that...(B) net revenues from any tribal gaming are not to be used for purposes other than...(ii) to provide for the general welfare of the Indian tribe

and its members.”

97. The Statutory Use Restriction, as applied under the IGRA, prohibited the United States, through the Department of the Interior, to approve any community revenue allocation plan, constitution, ordinance, resolution, census, roll, or any other such actions that failed to provide distributions of revenue from economic enterprises created as a result of the IGRA exclusively and equally benefit the all 1886 Mdewakanton lineal descendants. The United States failed to create appropriate measures to apply the Statutory Use Restriction to its approval of the community’s revenue allocation plans and related resolutions and ordinances and in its other actions under the IGRA as required by the Appropriation Acts.

98. As a result of the Department of the Interior’s failures to apply the Statutory Use Restriction elements under the IGRA, the United States has caused harm to the Plaintiffs.

**The Department of the Interior’s Adoption of a “Recognition Test” Applicable to Determining 1886 Mdewakanton Lineal Descendants Violated the Statutory Use Restriction**

99. The Appropriation Acts embody elements of a Statutory Use Restriction that includes (1) as nearly as practicable, an equal value of the appropriation (2) be for the use and benefit of all Mdewakantons who resided in Minnesota since May 20, 1886 or who were then engaged in moving to Minnesota as of that date, and (3) that those specific individuals living on

other lands would not be required to move to acquired Minnesota lands purchased by the United States (for the 1886 Mdewakanton and their lineal descendants) to share in the use and benefit of the appropriation.

100. The United States failed to create appropriate measures to apply the Statutory Use Restriction to identify lineal descendants of the 1886 Mdewakanton.

101. The United States has consistently been involved in the identity of 1886 Mdewakanton lineal descendants regarding issues related to PIIC, LSIC and SMSC.

102. Nonetheless, the Department of the Interior has never had an accurate and complete list of the lineal descendants, the beneficiaries of the Statutory Use Restriction.

103. Prior to and after enactment of the 1988 IGRA, the United States, through the Department of the Interior, adopted a “recognition test” to determine 1886 Mdewakanton lineal descendants.

104. The United States applied the recognition test in approving and interpreting provisions in the PIIC, LSIC and SMSC constitutions, ordinances, and other acts affecting 1886 Mdewakanton lineal descendants, resulting in the exclusion of certain 1886 Mdewakanton lineal descendants from the distribution of revenue from created wealth of lands through economic enterprises such as quarry, leasing and gaming operations.

105. The United States allowed the recognition test or other similar measures as the basis under the IGRA for the approval of the communities' revenue allocation plans and related resolutions and ordinances regarding revenue from economic enterprises created as a result of and under the IGRA. The Department of the Interior's approval resulted in the exclusion of 1886 Mdewakanton lineal descendants from receiving revenue of economic enterprises as contemplated under the Statutory Use Restriction, IGRA and IRA.

106. The United States' violations of the Statutory Use Restriction caused harm to the Plaintiffs.

**The Department of the Interior's Violations of the Statutory  
Use Restriction Have Caused Economic Injury  
to the Lineal Descendants**

107. The Department of the Interior's Statutory Use Restriction violations as described above – violations relating to failure to properly manage and distribute U.S. Treasury Account Nos. 147436 and 147936, relating to continued failure to collect PIIC, LSIC, and SMSC enterprise revenues into U.S. Treasury accounts for disbursement to the lineal descendants, relating to mis-allocation of SMSC revenue proceeds and per capita payments, relating to mis-allocation of PIIC revenue proceeds and per capita payments and relating to mis-allocation of LSIC revenue proceeds and per capita payments -- have caused and cause economic injury to lineal

descendants.

**The Lineal Descendants Have Been Damaged By the Department of the Interior's Violations of the Statutory Use Restriction**

108. The lineal descendants have been damaged and are being damaged by the Department of the Interior's Statutory Use Restriction violations in decisions made relating to failure to properly manage and distribute U.S. Treasury Account Nos. 147436 and 147936, relating to continued failure to collect PIIC, LSIC and SMSC enterprise revenues into U.S. Treasury accounts for disbursement to the lineal descendants, relating to mis-allocation of SMSC revenue proceeds and per capita payments, relating to mis-allocation of PIIC revenue proceeds and per capita payments and relating to mis-allocation of LSIC revenue proceeds and per capita payments

**Claim for Damages**

109. The lineal descendants claim damages resulting from Interior's Statutory Use Restriction violations in excess of one billion dollars (\$1,000,000,000).

## COUNT V

### 28 U.S.C. § 1491(a)(2) COURT SET-ASIDE OF COMMUNITY DOCUMENTS TO ENSURE INTERIOR COMPLIANCE WITH STATUTORY USE RESTRICTION

110. All of the allegations of this Complaint are incorporated herein by reference in their entirety.

111. The Court under 28 U.S.C. § 1491(a)(2) has the following powers:

(2) To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just.

112. To provide an entire remedy and to complete relief afforded by this Court's judgment, the Court may issue an order and remand appropriate matters to Interior with such directions as the Court may deem proper and just.

113. The Plaintiffs in this case assert that the Department of the Interior has approved and interpreted provisions in SMSC's Constitution, ordinances, resolutions, censuses, rolls, tribal revenue allocation plans, and other actions in ways which are repugnant to the Statutory Use Restriction.

114. The Plaintiffs in this case assert that Interior has approved and

interpreted provisions in PIIC Constitution, ordinances, resolutions, censuses, rolls, tribal revenue allocation plans, etc. in ways which are repugnant to the Statutory Use Restriction.

115. The Plaintiffs in this case assert that Interior has approved and interpreted provisions in LSIC Constitution, ordinances, resolutions, censuses, rolls, tribal revenue allocation plans, and other actions in ways which are repugnant to the Statutory Use Restriction.

116. Based on the foregoing, the Plaintiffs petition the Court (1) to issue an order setting aside provisions in SMSC's, PIIC's and LSIC's Constitutions, ordinances, resolutions, censuses, rolls, tribal revenue allocation plans, etc. which are repugnant to the Statutory Use Restriction and (2) to remand appropriate, related matters to Interior with such direction as the Court may deem proper and just.

## **COUNT VI**

### **CLAIM FOR ATTORNEY'S FEES**

117. All of the allegations of this Complaint are incorporated herein by reference in their entirety.

118. Pursuant to 28 U.S.C. § 2412(b), the Equal Access to Justice Act, prevailing parties against the United States are entitled to reasonable attorney's fees and related costs.

119. If the Plaintiffs prevail in this lawsuit against the United States,

they further request a court order awarding attorneys fees and costs against the United States as permitted by law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray for judgment from the Court as follows:

1. That the United States has violated the Statutory Use Restriction under the 1888, 1889, and 1890 Appropriation Acts.

2. That the United States has failed to collect revenue under the Statutory Use Restriction and has failed to make distributions of that revenue as required under the Statutory Use Restriction.

3. That the Plaintiffs are entitled for damages to be paid by the United States to the Plaintiffs in an amount in excess of one billion dollars (\$1,000,000,000).

4. For all litigation costs, costs, expenses and expert witness fees and reasonable attorney's fees allowed by law.

5. For prejudgment and post-judgment interest.

6. For an order under 28 U.S.C. § 1491(a)(2) for such other and further relief as the Court deems to be proper and just including but not limited to the following: (1) requiring the United States to repeal, revoke, or abrogate all actions it approved expressly, impliedly, directly or indirectly

that this Court finds repugnant to the statutory use restrictions or any element of the statutory use restriction; and (2) to remand appropriate, related matters to Interior with such direction as the Court may deem proper and just.

7. For an order under 28 U.S.C. § 1491(a)(2) for such other and further relief as the Court deems to be proper and just including but not limited to the following: (1) directing the Secretary of Interior that the Plaintiffs are restored to class beneficiary status; (2) directing the Secretary of the Interior to create and maintain a list of beneficiaries and to send each an annual accounting; and (3) directing the Secretary of Interior to ensure that the Plaintiffs receive all the benefits and privileges associated with being Indian Class Beneficiary of the Shakopee Community, Prairie Island Community and Lower Sioux Community.

8. For such other and further relief as the Court deems to be proper and just.

Dated: July \_\_, 2010

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