

March 26, 2013

Senator Susan M. Collins
U.S. Senate
413 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Collins:

We, the Maine Indian Tribal-State Commission (MITSC), function as an intergovernmental body under the Maine Implementing Act of 1980 (30 MRSA §§ 6201, *et. seq*) as ratified by the Maine Indian Claims Settlement Act (MISCA) (25 U.S.C. §§ 1721, *et. seq.*). Our charge is to “continually review the effectiveness of this Act and the social, economic and legal relationship between the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and the State.” Accordingly, we understand that our primary function is to serve as the body charged by law to examine and offer recommendations in regard to questions or disputed provisions concerning the Maine Implementing Act (MIA).

Late last year we received a copy of a November 14, 2012 memo from Maine Assistant Attorney General Paul Stern to Carol Woodcock of your staff concerning the Stafford Act Amendments (S. 2283) that were pending before the US Senate. This letter details a singular interpretation of the Maine Indian Claims Settlement Act. While we recognize that the Maine Attorney General’s office provides a particular perspective on questions concerning MISCA, the body charged by the land claims settlement legislation to continually review the legislation is MITSC. MITSC, composed of equal numbers of Tribal and State appointees, has a deep knowledge and a long history examining these issues. We invite you to work with us to develop a formal protocol between your office and MITSC to better inform your understanding of the Maine Indian Claims Settlement Agreement.

**Background, Statutory Authority, and Responsibilities
of the Maine Indian Tribal-State Commission (MITSC)**

During the extensive negotiations that culminated in the Maine Indian Claim Settlement Act (MISCA), the State of Maine and Wabanaki Tribal Governments recognized that unresolved matters remained. In the interest of completing the negotiations, negotiators for the State of Maine and the Tribal Governments involved decided to create by statute a *permanent intergovernmental body* to address both unresolved issues and issues that might arise over time. The legislative record amply demonstrates that MITSC was envisioned as a body that would consider issues related to the implementation of the Settlement Act.

John Patterson, a Deputy Attorney General for the State of Maine during the period of the Settlement Act negotiations and principal negotiator for the State, reiterated those expectations to the Tribal-State Work Group (TSWG) in November 2007. “It (referring to MITSC) was intended to be a forum in which agreements could be reached and then go back to the Legislature and the Tribes, and to recommend that they both adopt -- the Tribes would have to adopt the change to the legislation and the Legislature would do it too.” The governments charged MITSC with continually reviewing the effectiveness of the Act and making recommendations for amendments to the Act and resolutions to lingering problems.

Reuben “Butch” Phillips, a member of the Penobscot Nation Negotiating Team, also spoke at the November 19, 2007 TSWG regarding MITSC’s origin and purpose.

He said (referring to Andrew Akins, head of the Tribal Negotiating Team) let’s form a commission or committee of State and Tribal people to look at these disputes on these waters and from there it expanded. This commission would be the liaison between the Tribes and the State, and they would listen to disputes and try to come up with some resolutions, and, if you recall, we had an equal number of Tribal members and State people.

MITSC derives its statutory authority directly from the Maine Implementing Act (30 M.R.S.A. §§ 6201, *et. seq.*), the legislation passed by the Maine Legislature in April 1980 and ratified as part of the Federal agreement upon the enactment of MICA in October 1980. MITSC’s mandate under 30 M.R.S.A. § 6212, §§ 3 is to:

continually review the effectiveness of this Act and the social, economic and legal relationship between the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and the State and shall make such reports and recommendations to the Legislature, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation as it determines appropriate.

MITSC also holds responsibility for regulating fisheries in MITSC waters (30 M.R.S.A. § 6207, §§ 3) offering its recommendation on any additions to Passamaquoddy or Penobscot Indian Territory (30 M.R.S.A. § 6205, §§ 5); and responding to petitions from Passamaquoddy or Penobscot Nation citizens to establish extended reservations (30 M.R.S.A. § 6209-A, §§ 5 and 30 M.R.S.A. § 6209-B, §§ 5).

While MITSC faithfully strives to fulfill all of its statutory responsibilities, our recommendations for resolving disputed interpretations of MICA constitute our most essential function. In order to effectively carry out this responsibility, substantive issues related to the tribal-state relationship must specifically be brought to the attention of MITSC. The opinion of the Maine Attorney General’s Office is a one-sided interpretation of the MICA and the MIA. We would expect US Senators and Congresspeople representing the State of Maine to uphold federal and tribal as well as state interests. Thus, the actions of your office, undertaken after consulting only with the Maine Attorney General not only undermine and subvert MITSC’s role in resolving disputes but this practice has unnecessarily antagonized tribal-state relations.

Barriers to MITSC’s Statutorily Mandated Function to Examine Disputed Interpretations of the Act and Render Recommendations to Resolve Them

MITSC experiences two prevailing practices that hinder our ability to serve as the problem solving body envisioned by the Settlement Agreement negotiators:

- 1) the consistent lack of attention to the statutorily mandated process for addressing issues inherent in the Settlement Agreement by bringing issues to MITSC;
- 2) the repeated use of section 6204 of the MIA by the Maine Attorney General’s Office to downplay the practical necessity of all of the parties to have a voice in resolving conflicts.

The result of this consistent pattern of response to Wabanaki-Maine disputes leaves no clear avenue for the Maliseets, Passamaquoddies, and Penobscots to have their concerns heard and acted upon in a forum that recognizes their right to participate in solving problems that arise from the Settlement Agreement. This failure to comply with this key provision of MICA demonstrates a lack of commitment to the joint resolution of concerns fundamental to a well-functioning Tribal-State relationship. Such tensions don’t comport with the vision expressed by the Settlement Act negotiators:

I cannot promise you that the adoption of this settlement will usher in a period of uninterrupted harmony between Indians and non-Indians in Maine. But I can tell you, however, that because we sat down at a conference table as equals and jointly determined our future relationship, in my view there exists between the State and the tribes a far greater mutual respect and understanding than has ever existed in the past in the State of Maine. I can also tell you that if this matter is litigated over a period of years, the atmosphere in Maine certainly will be quite different. I cannot put a price tag on human relationships, nor am I suggesting that this factor alone justifies enactment of the legislation before you. I am asking only that you give appropriate consideration to the historical significance not only of the settlement itself, but also of the manner in which it was reached. (Hearings Before the Select Committee on Indian Affairs, United States Senate On S. 2829, July 1 & 2, 1980, Maine Attorney General Richard Cohen, p.164.)

At the public hearing for the bill at the Augusta Civic Center, Andrew Akins, chair of the Tribal Negotiating Committee, stated: ““We are interested in building a new relationship with Maine, one of mutual trust and respect.”” (The Original Meaning and Intent of the Maine Indian Land Claims: Penobscot Perspectives, Thesis, Maria Girouard, May 2012, p. 57)

The key words in Attorney General Cohen’s and Negotiating Committee Chair Akins’ remarks involve the manner in which the Settlement Agreement was reached, through work “as equals and jointly determined our future relationship” and “building a new relationship...one of mutual trust and respect.” The promise of mutual determination of the meaning and interpretation of the Settlement Agreement operating in a relationship of trust and respect has been badly damaged as state or federal courts have issued decisions interpreting some of the Act’s most contentious provisions. The extensive litigation that has taken place over nearly three

decades has eroded the relationship between the State of Maine and the Tribes. This tension is exacerbated when, outside of a lawsuit, only the Maine Attorney General—the legal representative of only one of the three parties—is sought out for comment.

During its history as the body charged to “continually review the effectiveness of this Act,” MITSC has consistently received reports that efforts to include the federally recognized tribes residing in Maine in federal legislation intended to benefit all tribes has been met with efforts to exclude them. We must remind you that section 1735 (b) of the MICSA was intended to limit the automatic inclusion of Maine tribes in federal Indian legislation only under certain conditions. 1735 (b) is tempered by 1725 (h) which states:

the laws and regulations of the United States which are generally applicable to Indians, Indian nations, or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations, or tribes or bands of Indians shall be applicable in the State of Maine except that no law or regulation of the United States (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians, and also (2) which affects or preempts the civil, criminal, or regulatory jurisdiction of the State of Maine, including, without limitation, laws of the State relating to land use or environmental matters, shall apply within the State.

This section of law was crafted to provide the means to ensure that federal legislation that is not in conflict with Maine civil and criminal code *would* benefit the Maine Wabanaki Tribes, and thus the State of Maine.

Our job, along with all who inherit the trust of all of the negotiators, is to look for the best solution to conflicts arising from different interpretations of the legislation. Finding the best solution requires hearing all of the voices. We want to work with you and other members of the Maine Congressional Delegation to practice inclusion rather than exclusion when dealing with these issues. The State of Maine and the Tribes stand to gain when the Wabanaki Tribes are included as recipients of essential federal services and benefits that accrue to all federally recognized tribes.

For example, the amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act passed by the Congress in January would not have adversely affected the State of Maine in any way. In fact, the Tribes’ ability to declare emergencies in their communities has the potential to draw more total dollars coming into Maine than is currently the case when only the Governor of the State of Maine can make such declarations. Likewise, applying the Tribal Law and Order Act can provide hundreds of thousands of dollars in new law enforcement resources flowing into Maine. Inclusionary language making explicit the applicability of the acts to the Wabanaki should be added to this law and to the to the Violence Against Women Act.

MITSC encourages you to use the power of your office to improve the relationship between the Wabanaki Tribes and the State of Maine to recognize the inherent sovereignty of the Wabanaki Tribal Governments, which are the oldest formal allies of the US based on the Treaty of Watertown signed July 19, 1776. The State of Maine has committed itself to respecting the

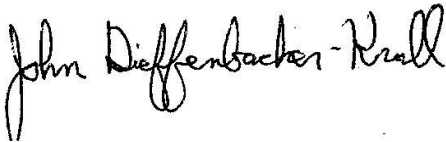
human rights of the Wabanaki and all Indigenous Peoples when it expressed its support on April 15, 2008 for the UN Declaration on the Rights of Indigenous Peoples. Yet Maine's commitment to the human rights of the Maliseets, Micmacs, Penobscots, and Passamaquoddies is called into question by UN Special Rapporteur on the Rights of Indigenous Peoples James Anaya. In his report on his official visit to the US conducted last year, Rapporteur Anaya reports:

Maine Indian Claims Settlement Act and Maine Implementing Act create structural inequalities that limit the self-determination of Maine tribes; structural inequalities contribute to Maine tribal members experiencing extreme poverty, high unemployment, short life expectancy, poor health, limited educational opportunities and diminished economic development. (*Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: The situation of indigenous peoples in the United States of America*, p. 36)

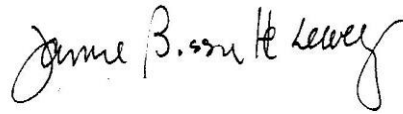
We recommend that when you examine federal legislation that may benefit Wabanaki Tribal Governments you consider how that legislation might benefit both the State and the Tribes and work to include them whenever possible. We stand ready to work with you to advance this process. Additionally, we recommend a formal protocol be established between the congressional delegation and MITSC that ensures that the statutorily mandated process of reviewing issues relative to the Settlement Agreement is routinely followed rather than ignored. The designation of one of your staff as the MITSC point of contact might be a helpful action to ensure the desired communication takes place.

We would welcome an opportunity to speak to you about this matter in Maine. MITSC Executive Director John Dieffenbacher-Krall will be in contact with your scheduler to set up the meeting.

Sincerely,



John Dieffenbacher-Krall
Executive Director



Jamie Bissonette Lewey
Chair



Denise Altvater
Passamaquoddy Representative to MITSC



John Banks
Penobscot Representative to MITSC



John Boland
State Representative to MITSC



Harold Clossey
State Representative to MITSC



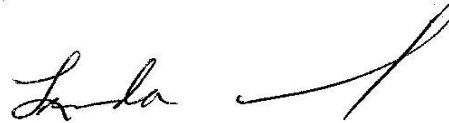
Matt Dana
Passamaquoddy Representative to MITSC



Gail Dana-Sacco
State Representative to MITSC



Roy Partridge
State Representative to MITSC



Linda Raymond
Maliseet Representative to MITSC



Brian Reynolds
Maliseet Representative to MITSC

Cc: Chief Reuben Clayton Cleaves
Chief Brenda Commander
Chief Kirk Francis
Chief Richard Getchell
Chief Joseph Sockabasin
U.S. Senator Angus S. King
Representative Michael H. Michaud
Representative Chellie Pingree
Governor Paul R. LePage
Attorney General Janet T. Mills