

John Banks, Penobscot Nation, Director of Department of Natural Resources and Sam St. John, Houlton Band of Maliseet, Water Resources speak at the legislative Judiciary Committee's public hearing for LD 2094: "An Act To Implement the Recommendations of the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act". February 14, 2020.

John Banks, Penobscot Nation, Director of Department of Natural Resources:

Good afternoon, Representative Bailey. Thank you for the opportunity to speak today. I want to thank the Task Force and the Judiciary Committee for the great work that you've done here on this bill. My name is John Banks. I'm the Natural Resources Director for the Penobscot Indian Nation, a position I've held since I graduated from the University of Maine with a Forestry Degree in 1980. So I went to work for my Tribe in 1980 and began setting up the various Land and Natural Resources policies, procedures, and programs that we operate under today. And I want to provide an overview of the Natural Resources Department and tell you all what we do and how we operate, particularly in light of the previous discussions and the questions that were going back and forth.

I was chomping at the bit to jump up here because I knew the answer to most of those questions. So like any other government, we take our Land and Natural Resource management and administrative responsibilities very seriously. And so we have adopted systems and procedures that other governments develop, such as we have operating procedures administratively. We have a whole code of Fish and Game Laws that we enforce and administer under the terms of the Settlement Act of 1980. We do enjoy, presently, the exclusive jurisdiction to regulate the taking of all wildlife within our Penobscot Indian territory. And so we have a whole set of Fish and Game Laws, regulations, and ordinances.

We have a committee structure that reviews those annually. They have a lot of public hearings with the Tribal membership and with our Tribal member guides. Then that goes on to the Tribal Council for adoption, any revisions in our Fish and Game codes. And then finally it goes to the General Meeting of the Penobscot Nation, which is a meeting that the entire Tribe attends once a year. And that is the body within our Tribal government structure that actually makes laws. So it's the entire Tribe that is involved with making these Fish and Game Laws.

So I wanted to address the question of posting and boundary line. There were some questions brought up earlier that, you know, "How do people know if they're crossing onto Tribal Land," or... So, the Settlement Act has specific posting requirements. Because of the difference in jurisdiction between the Tribe and the State, we're obligated under the 1980 Settlement Act to post our lands to notify the public that there is a different jurisdiction and there may be permits required for certain activities. So that's the reason I spent a few days in Washington in 1980

lobbying and to get \$10,000 out of the Bureau of Indian Affairs to buy 8,000 signs to post on our properties.

And we have posted all of our Trust Lands. And in the 40 years since I've been involved, I'm only aware of one instance where a hunter mistakenly crossed into our territory and he was in the pursuit of a moose that he had shot off from Indian land and it crossed into Indian land. And the moose died on our side of the border so to speak. And our wardens were called in and they reviewed the whole situation and did their investigation and they determined that it was an honest mistake so there was no enforcement action taken. The other thing that I wanted to mention, which was brought up earlier several times about, you know, "Which laws are more protective of the environment and the resources. Is it State law or is it Federal law? Which is—" Nobody mentioned Tribal law. We have our own Tribal laws in the environmental arena, in the Natural Resources arena, and in Fish and Game. We have our own comprehensive Land Use plan. We have our own zoning. We have ordinances that apply to these different zones that allow for certain activities.

So we very much operate like any other responsible government. In addition to that, what we do have, that other governments don't have, is a very deep seeded, inherent stewardship responsibility for these resources that derives from 10,000 years of evolving with the reciprocal relationship with the natural world. The natural world, the woods, the animals, the critters, have sustained my Tribe for 10,000 years. Today, we remember that, and we apply that philosophy in addition to modern Western science, when we develop rules and regulations and so forth. In our Land Use plan, many of our standards are actually a bit stricter than what you'll find under State law, under what's LUPC now or Maine DEP. In many cases, we have wider buffers. We really believe strongly in the importance of protecting the riparian zones and the water. Many Tribal members understand the sacredness of water, and from the science standpoint, if you protect the water you're going to protect a lot of other things in the woods.

I see that my time is up, but I also wanted to mention that in addition to my job, my day job—I also am currently the longest reigning member of the Maine Indian Tribal State Commission. I've been the Penobscots Representative to the Commission since 1987. So I've been through all three of the iterations of trying to get some clarity in respect to the relationship that Representative Talbot Ross mentioned earlier. And I'm very pleased to see that this time it's gone a little bit farther so far. And, you know, I have to go back to what Mr. Trahans just said recently about not knowing what it's going to look like or how we're going to work together.

The reason he doesn't know is because he has not asked for 40 years. He doesn't know that we've adopted Title 12 Maine Fish and Game Law as our own Tribal law, as a backstop in instances where we don't have an ordinance or a law. He doesn't know that our lands are posted and there have never been any problems other than the one I mentioned, who by the way was a retired State Trooper that shot the moose. [general laughter] So with that, I'll—

Chair, Rep. Donna Bailey:

—Thank you.

John Banks, Penobscot Nation, Director of Department of Natural Resources:

—I'll entertain any questions.

Chair, Rep. Bailey:

Just one point of clarification for me, which is are you the same John Banks who signed up to speak in the public portion?

John Banks:

God I hope so.

Chair, Rep. Bailey:

Okay.

John Banks:

I hope there's not two of us. [general laughter]

Chair, Rep. Bailey:

Okay. I just want to cross you off the list. That's all.

John Banks:

Thank you.

Chair Rep. Bailey:

So, Representative Fay. Did you have a question?

Rep. Jessica Fay, Committee on Environment and Natural Resources :

Thank you Representative Bailey. It's nice to see you again Mr. Banks.

John Banks:

Thank you.

Rep. Fay:

And I appreciate your comments. Actually, I think you answered the question that I was going to ask. As a newish member on the Inland Fisheries and Wildlife Committee, we haven't had a lot of conversations this session about interactions between Tribal State and Title 12. So I was going to ask, are there differences? And actually I think you just answered...

John Banks:

Yeah, the primary differences is that the State of Maine Title 12 doesn't address the issue of sustenance hunting by Indigenous people. So we have our own separate laws dealing with

sustenance hunting and fishing. And that is also provided for under the 1980 Act. But we've, I believe and given our Game Wardens... By the way I also forgot to mention that our Game Wardens, as a result of the Settlement Act, have the same training requirements and responsibilities of the State of Maine Game Wardens. So they all have to go to the main Criminal Justice Academy, as well as the basic police school. So, um, yeah.

Chair, Rep. Bailey:

Thank you. Follow up front.

John Banks:

I lost my train of thought.

Rep. Fay:

So you're really good. I'm impressed you keep anticipating the questions that I'm going to ask. So I was going to ask about, about Game Wardens and training. But in practice, and correct me if I'm wrong, I understand this would be a philosophical change. In current practice though, the way that the Tribal and the State Fish and Game laws interact wouldn't necessarily change that much? Is that what I'm hearing?

John Banks:

No, not in the area of Fish and Game.

Rep. Fay:

Okay. Thank you.

Chair Rep. Bailey:

Representative Babbidge?

Rep. Christopher Babbidge:

Mr. Banks, thank you very much for an enlightening and helpful testimony. Just two quickies. One would be, like for instance, sustenance fishing on the Penobscot. State and Federal, they have 3 mile, 12 mile limits and so forth. Do you have those kinds of restrictions with the State currently or not on the Penobscot River?

John Banks:

We just operate within our Reservation Waters, which is all freshwater. It's above the—

Rep. Babbidge:

—But is that defined, what does Reservation Water mean on a river where you are an Island—

John Banks:

—Well, in our case it's currently under litigation in Federal court.

Rep. Babbidge:

Okay. And the second question I had was Fee Lands. Who owns those? Are those posted? What's that? Just help me with that.

John Banks:

Yeah, the Fee Lands, we own several parcels of Fee Lands. We own half of Carrabassett Valley up in Western Maine. And—

Rep. Babbidge:

—So, so the ownership belongs to?

John Banks:

The Tribe.

Rep. Babbidge:

The Tribe.

John Banks:

Yeah. And those are managed just like any other large land owners in the State. All State laws apply and either municipal ordinance, municipal land use ordinances apply. We pay regular taxes, ad valorem taxes—

Rep. Babbidge:

—And in those situations, your own like hunting permits don't apply?

John Banks:

Not at all, no. It's all under State law.

Rep. Babbidge:

Thank you very much.

Chairwoman Rep. Bailey:

Representative Harnett?

Rep. Thom Harnett:

Thank you, Madam Chair. Thank you Mr. Banks, and thank you for your service on MITSC since 1987. I believe that I might've served with you on one of the iterations of the commissions that looked at the Land Claims Act. Maybe the first one. Can, can you tell me in the 33 years that you've served on MITSC and participated in those commissions, how many times has the Act been amended?

John Banks:

Very few times. Very small. Minor.

Rep. Harnett:

How many times has it been amended in a significant way?

John Banks:

Not at all.

Rep. Harnett:

Not at all.

John Banks:

No.

Rep. Harnett:

Do you view the Act as a living document?

John Banks:

Yes.

Rep. Harnett:

Would you imagine given the level of discord over the 40 years since its enactment, that a living document might have been amended in a significant way if we were taking that obligation seriously?

John Banks:

Well, possibly. Hopefully. I'd like to think of that retrospectively that that might've happened, but I also want to say that the Tribes are very different now, today, than they were 40 years ago. We had just received Federal Recognition in 1980, just a few years before that, in like '76. And so we were just starting to work closely with the Federal government and apply for funding for various programs. And we were really all just getting started then. We didn't have a lot of history and experience with what it's like to be a real Federally Recognized Tribe.

So one of the things that I did early in my career was, I went all over the country. I joined up with some of the national Indian organizations such as the Native American Fish and Wildlife Society and the Intertribal Timber Council. And I got involved with those groups and got to have a lot, get a lot of experience all across the country, including Alaska, on how other Tribes operate their Natural Resource Management programs.

Rep. Harnett:

Just to follow up, in that 40 years, is it fair to say that the level of capacity, competence and expertise on the part of the Tribes has increased dramatically?

John Banks:

That was what I was trying to get to. You beat me to the punch. I would say it's, I don't know what the number would be, at least 10 times greater now.

Rep. Harnett:

Thank you very much.

John Banks:

Thank you.

Chair, Rep. Bailey:

Representative Evangelos?

Rep. Jeffrey Evangelos:

Thank you Madam Chairman. Thank you for your service, Mr. Banks. I have two areas I want to explore with you. First, and I want to make sure my understanding is correct to frame the question. But in regards to the lawsuits that occurred around the Penobscot river, I'm not sure the people in my State have a clear understanding of the work you've done, the regulations you have in regards, regarding the environmental stewardship of the river, which are stricter than Maine's, and that you want the river to be extra clean because of sustenance fish and the dependence upon your people to have a clean, natural resource to depend upon. So can you just briefly address that in regards to, was, was part of the focus of those lawsuits, the fact that Lincoln Pulp & Paper was polluting the river along, along with some others, and the Penobscots were downriver from that. And was that a, was that a chief component of what those lawsuits were about?

John Banks:

Well. Yeah. I mean the whole issue of contaminated fish was a huge issue in 1980. The ink was fairly just dried on the Settlement Act in which we reaffirmed our Sustenance Fishing Rights within our reservation and we find out that, within about a five year period, we found out that our Tribal members are continuing to catch and consume large amounts of fish from the river. We did fish consumption surveys with our Tribal membership. We found out that a lot of the fish that they are consuming were loaded with dioxin as a result of paper mill discharges.

We found out through an international panel of scientists that dioxin was elevated to be a known human carcinogen, one of the most potent human carcinogens that the Federal government had ever looked at, or the science community had ever looked at. We also did a health study, a cancer review of the cancer data. We cooperated with CDC out of Atlanta, the Indian Health Service, the State of Maine, Department of Health and Human Resources, Penobscot Nation Health Department. I forget the other one. There were five organizations that got together and reviewed the cancer statistics for Indian Island.

What came out of that was the fact, or the realization, that our cancer rate was just over two times the cancer rate in the rest of the State of Maine. So we have Tribal members consuming

fish, fish are contaminated with dioxin. Our people are getting sick and dying. So we have, what we have here—had until we fixed it—we had Tribal members, Indigenous people that have been on that river for thousands and thousands of years getting sick and dying simply by practicing their cultural traditions.

Rep. Evangelos:

Thank you for putting that on the record. My second line of questioning, if I may? I do a lot of digging in the law library and I actually found the communication that was sent out by William Snyder, the Attorney General. And I do remember, at the time, there had been pretty good collaboration between the Penobscot Nation's Game Wardens in the State in regards to things. And I think it was just one little incident and then you know, the State jumped on it and sort of rescinded the cooperative agreement. Am I remembering that right?

John Banks:

That's my recollection as well.

Chair, Rep. Bailey:

Senator Bellows.

Senator Shenna Bellows:

So, you said something that I found really interesting and I just wanted to make sure that I fully understood. So some of the confusion, or some of the concerns, about what might happen if we adopted the recommendation for exclusive Tribal jurisdiction over hunting and fishing laws comes from a perception that there might be an absence of law. Did you say that the Tribes have already adopted all of Title 12 and potentially a more robust protection for game?

John Banks:

No. I said the Penobscot Nation has adopted Title 12 as Tribal law. And there's so many great laws on the books in the State, why, you know, we don't want to recreate the wheel if there's a good set of laws such as some of Maine's environmental laws that the Maine DEP enforces now. I suspect that if the Land Use jurisdiction issue is clarified and that we do have that authority, that we would work cooperatively with the State and perhaps adopt a great number of State environmental laws. We don't want to, like I said, we don't want to spend a lot of time reinventing the wheel where the State has many good laws on it's books.

Senator Bellows:

So if Sportsman's Alliance of Maine, or any other advocacy group that has a particular interest in preservation of traditional hunting and fishing or environmental protection, do those groups sometimes reach out to Tribal government to say, we have some suggestions or we'd like to have a meeting? Like would that be at potential avenue for them to advocate if they want to? As they might do with any other—

John Banks:

—Absolutely, absolutely. We work hand in hand with many organizations, both within and outside of the government. We have, for instance, we have an ongoing water quality monitoring agreement with Maine DEP, where we do most of the sampling and monitoring on the river. We share our data with the State, with Maine DEP, which allows Maine DEP to be in compliance with the Clean Water Act. So, yeah, absolutely.

Senator Bellows:

Thank you.

Chair, Rep. Bailey:

Further questions? Representative Babbidge.

Rep. Babbidge:

If, um.. Thank you, Mr. Banks. If 10 years from now there's a new Chief and he doesn't seem to be particularly protective of some of the same values you have, some of the same laws...I guess what I would like to know, if somebody should come to the Tribe with a lucrative offer that could benefit the Tribe in different ways, but that would be environmentally challenging....um, the two questions I have is...The the structure of decision making and, and then how much, well first of all ask that— How might the new Chief, who has an agenda, go about enforcing his agenda despite your opposition? What is necessary to happen for him to be able to do that?

John Banks:

We have, as I said, a set of procedures. We have a comprehensive Land Use plan. It has permit, permitting procedures that require input in consultation with various Departments within the Tribe. So it's, it's a lot like—

Rep. Babbidge:

—The two questions—

John Banks:

—It's a lot like the way the State would do it, you know, a proposal would come, you know, and—

Rep. Babbidge:

—Yes, okay. The two questions I had—

John Banks:

—I mean look at the CNP power line issue as an example.

Rep. Babbidge:

Yeah.

John Banks:

You know there's, there's always differences of opinion perhaps, and there's, those get worked out. But in our case it is the general Tribal membership that has the final say. And if a Tribal Chief brought forward a development proposal that many of the Tribal members didn't like because of the potential environmental consequences, there is a process to get that item on the agenda of the General Meeting and addressed that way through the Tribal general.

Rep. Babbidge:

Thank you. That, that's what I wanted to hear about, what I wanted explained. And then, secondly, if the proposal were to go through, if this process goes as we expect, we grant the sovereign powers requested in the Task Force followed by a new relationship between the Federal government and the Tribes. Federal restrictions would also kick in to that decision, isn't that right?

John Banks:

Oh absolutely. All the Federal laws would apply. NEPA would apply, if it still exists after this administration in Washington. [General laughter]

Rep. Babbidge:

Okay.

John Banks:

Sorry, I couldn't help that.

Rep. Babbidge:

Thank you for that.

Chair, Rep. Bailey:

Senator Bellows, did you have another question?

Senator Bellows:

Well, I think following up on that hypothetical, if State laws...or is it conceivable if we were, if we were to move forward with this Legislation, that in fact Tribal environmental laws, land use laws, and or hunting and fishing laws might be stronger than some of the State and Federal protections?

John Banks:

Yeah, they are now.

Chairwoman Rep. Bailey:

Further questions from committee members? Seeing none. Thank you Mr. Banks.

John Banks:

Thank you.

Chair, Rep. Bailey:

Thanks. Before you leave, I have a favor to ask you, which is do you think you would be able to make yourself available for our work session?

I will.

Chair, Rep. Bailey:

Thank you.

John Banks:

John Banks:

Thank you.

Chair, Rep. Bailey:

That would be much appreciated.

Sam St. John, Houlton Band of Maliseet, Water Resources

Sam St. John:

I'm here speaking on behalf of the Houlton Band of Maliseet Indians. My name is Sam St. John and I am a Water Resources Technician with the Houlton Band and a new MITSC member, thanks in part to John. But my testimony's going to be in line with what John said, but we don't currently as Maliseets enjoy any of the rights that Passamaquoddies and Penobscots have. So, we follow the signage laws and we follow the Clean Water Act and all that stuff. Kind of, 'cause we have to, but it's also in good, in good faith that we do that.

I, speaking specifically for recommendation number nine, and being a Maliseet Tribal member, the cultural importance of environmental conservation and stewardship is instilled from birth for most Tribal members. The experience in, experiences they enjoy of nature are mostly personal and anecdotal, but I'm lucky enough to experience it on a professional level. And since we are held to the standards that are proposed by the Clean Water Act, we try to build our credibility in whatever way we can. So, we are trained in many ways above and beyond what's required of State officials.

And we attend a lot of the same trainings as State officials and Federal and government—Federal and State. But other than, further into that, our design, our goal for what these recommendations will give to us is to maintain and improve on the Water Quality Standards that are already in place. And our goal is just to only improve.

Since 2016, I've had the opportunity to work in the Tribe's Natural Resources Department. Many projects done by Houlton Band of Maliseet Indians (HBMI) not only include improvements to hunting and fishing on Tribal land, but involve maintaining those improvements. Therefore, it behooves the Tribe to become experts in environmental conservation and stewardship. For nearly two decades the flagship project of HBMI has been the monitoring of water quality on the Meduxnekeag River, a tributary to St. John that runs through Houlton, with the assistance of from all State and Federal agencies on that project and many other projects pertaining to conservation stewardship. It would not be unreasonable to say that Tribal expertise on our local environment exceeds or meets the expertise of people in charge of creating the current hunting and fishing regulations that we follow on our land.

HBMI working side by side as a trusted partner with those agencies is a testament to that. Being Maliseet, on a personal level, this recommendation is of deep significance to myself and many other people, not just within Houlton and the surrounding area, but Maliseets in other, other parts of the State.

I've heard from many other people working in the science field that emotional and spiritual burnout is not, is not uncommon among career scientists. The uneven ratio of bad news to good news wears on even the most optimistic of scientists in their professional psyche. I haven't been in the field long enough to, for any of that to happen, but I'm always aware, I'm always aware of, of pessimism. But the inherent cultural values that the Maliseets, that we are instilled with in birth, I only see as an asset to continuing the standards that the State and Federal agencies have upheld, and hopefully will continue if these recommendations are passed. Very much like the process of parenting, Mother Nature has taken care of us for many years, and now we'd like an opportunity for us to take care of her.