

December 20, 2013

Governor Paul R. LePage
1 State House Station
Augusta, ME 04333

Dear Governor LePage:

We write with deep concern about the Elver Project as described in media reports published last month. The Elver Project is a joint investigation of potential income fraud involving the Department of Health and Human Services (DHHS) in collaboration with Maine Revenue Services (MRS) and the Department of Marine Resources (DMR). Although the media has contacted the Maine Indian Tribal-State Commission (MITSC) seeking comment on this issue, we have decided that the appropriate response is conveying our concerns to you directly before entering the public arena. It is in this spirit of conflict resolution and the development of strong tribal-state relations that we write to you with considerable urgency. While the MITSC understands the importance of investigating welfare fraud, we think there are deeper issues that will come to the forefront if the Elver Project is implemented the way that it has been framed by the media.

Last spring, 432 individuals received licenses to harvest elvers from the DMR, while the Passamaquoddy Tribal Government issued 575 licenses to its citizens in 2013. The MITSC questions why the State of Maine has chosen to focus on this particular fishery when many other commercial fisheries exist including lobster, clams, urchins, and worms for which harvesters may have failed to disclose income earned from the sale of their catch. With the number of Passamaquoddy fishers exceeding the number of other elver harvesters by approximately 133%, the Elver Project will undoubtedly impact Passamaquoddy fishers more than those fishing with state licenses. This potential disproportionate scrutiny becomes more questionable when considering the data that the Passamaquoddy catch was significantly less than 10% of the total elver harvest statewide. Such facts will raise more questions about focused attention on Tribal fishers.

If the Passamaquoddy license holders become the focus of this investigation just by virtue of their level of participation in the fishery and the depth of poverty they endure, the Maine Indian Tribal-State Commission fears that relations between the Wabanaki and the State will be adversely affected. Additionally, the MITSC is very aware that the vast majority of Wabanaki participants in the elver fishery are very poor people. Any income derived from sustenance fishing efforts needs to be weighed against the grueling poverty the Tribe has endured as a direct result of the Settlement Acts—persistent poverty that the elver fishery did little to abate.

Furthermore, we must recognize that the fundamental disagreements over the inclusion of salt-water fishing rights under the natural resource provisions of the 1980 Settlement, and the disproportionate number of Passamaquoddy citizens singled out for civil and criminal fishing penalties stemming from the last elver fishing season are the backdrop for the Project. Given the complexity of these existing conversations between the Passamaquoddy Tribe and the State, we encourage you to weigh carefully the imposition of additional sanctions on Tribal citizens.

Governor, the MITSC has been very impressed by the level of attention your administration has given to Wabanaki-State issues. One of your greatest achievements is Executive Order 21 FY 11/12 which explicitly obligates every department and agency of State Government “to engage Tribal Governments at the earliest possible juncture of the development of any legislation, rules, and policies proposed by the State agency on matters that significantly or uniquely affects those Tribes.” Our reports from Passamaquoddy MITSC Commissioners lead the MITSC to conclude that no consultation has taken place concerning the Elver Project between the Passamaquoddy Tribal Government and the State of Maine.

Lastly, it is crucial to raise the State of Maine’s leadership in the area of Indigenous rights when the Maine Legislature to the best of our knowledge became the first governmental body in North America to express its support for the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The Maine Legislature adopted the resolution in support of UNDRIP on April 15, 2008. Article 19 of UNDRIP reads:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

The UNDRIP Resolution in combination with EO 21 FY 11/12 should lay the foundation for healthy tribal-state relations. We encourage you and the Tribes to utilize these strong tools to work out a solution that will not further exacerbate the poverty experienced by Wabanaki people.

You have expressed your concern about this deeply entrenched poverty experienced by the Passamaquoddy People and all of the Wabanaki Tribes within the State of Maine. We urge you to use your authority to order DHHS, MRS, and DMR to transform the Elver Project from an investigative and potentially punitive effort to an educational one ensuring all people accepting State benefits understand their responsibilities, and have the tools to come into compliance with any income reporting subject to benefit determinations.

Sincerely,

John Dieffenbacher-Krall
Executive Director