

Fulfilling Ojibwe Treaty Promises – An Overview and Compendium of Relevant Cases, Statutes and Agreements

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I. Treaty Rights Recognition and Affirmation

The eleven member tribes of the Great Lakes Indian Fish & Wildlife Commission (GLIFWC or Commission)¹ each entered into one or more treaties with the United States in the 1800s. In treaties signed in 1836², 1837³, 1842⁴, and 1854⁵, the tribes reserved hunting, fishing and gathering rights in the areas (land and water) ceded to the United States. It must be emphasized that these ceded territory rights were not given or granted by the United States, but were reserved by the tribes for themselves.

The exercise of these rights was and continues to be fundamental to the tribes' culture and way of life, and explains their insistence on explicitly reserving them in the treaties. The tribes share a traditional and continuing reliance upon fish, wildlife and plants to meet religious, ceremonial, medicinal, subsistence and economic needs. Therefore, to maintain this lifeway and meet these needs, the tribes reserved the rights to hunt, fish and gather in the ceded territories.⁶ In proper

¹GLIFWC member tribes are: in Wisconsin -- the Bad River Band of the Lake Superior Tribe of Chippewa Indians, Lac Courte Oreilles Band of Lake Superior Chippewa Indians, Lac du Flambeau Band of Lake Superior Chippewa Indians, Red Cliff Band of Lake Superior Chippewa Indians, St. Croix Chippewa Indians of Wisconsin, and Sokaogon Chippewa Community of the Mole Lake Band; in Minnesota -- Fond du Lac Band of Lake Superior Chippewa, and Mille Lacs Band of Ojibwe Indians; and in Michigan -- Bay Mills Indian Community, Keweenaw Bay Indian Community, and Lac Vieux Desert Band of Lake Superior Chippewa Indians.

²Treaty of 1836, 7 Stat. 491. "Article Thirteenth. The Indians stipulate for the right of hunting on the lands ceded, with the other usual privileges of occupancy, until the land is required for settlement."

³Treaty of 1837, 7 Stat. 536. "Article 5. The privilege of hunting, fishing, and gathering the wild rice, upon the lands, the rivers and the lakes included in the territory ceded, is guaranteed to the Indians, during the pleasure of the President of the United States."

⁴Treaty of 1842, 7 Stat. 591. "Article II. The Indians stipulate for the right of hunting on the ceded territory, with the other usual privileges of occupancy, until required to remove by the President of the United States. . ."

⁵Treaty of 1854, 10 Stat. 1109. "Article 11. . . And such of them as reside in the territory hereby ceded, shall have the right to hunt and fish therein, until otherwise ordered by the President."

⁶In affirming the treaty rights of GLIFWC's member tribes, the courts took a "snapshot" of Ojibwe life at treaty times in order to determine the nature and extent of the rights that were reserved. In reaching their decisions, the courts made extensive findings on the Ojibwe's extensive knowledge and use of natural resources where each species played a role in supporting some part of the Ojibwe's lifeway and constituted the essence of Ojibwe culture. *See, e.g., Lac Courte Oreilles Band v. Wisconsin* (LCO III), 653 F. Supp. 1420, 1422-1429 (W.D. Wis. 1987); *Mille Lacs Band v. State of Minnesota*, 861 F.Supp. 784, 791-793 (D. Minn. 1994).

perspective, this reservation of sovereign rights is part of the Ojibwe's ongoing struggle to preserve a culture – a way of life and a set of deeply held values – that is best understood in terms of the tribes' relationship to *Aki* (earth) and the circle of the seasons.

Although the tribes themselves never doubted the continued existence and viability of these rights, other governments did. GLIFWC member tribes' efforts to gain recognition and re-affirmation of their treaty reserved rights have been the subject of numerous court cases over the past forty years. Courts, including the United States Supreme Court in its 1999 *Minnesota v. Mille Lacs* ruling, have consistently recognized and upheld these rights.

Although the language of particular treaties may vary, there are common principles that courts use when they interpret treaty provisions. These general rules are called canons; they derive from contract law and recognize that there are instances in which parties to a contract are not equal, as might be the case where the language of the contract is not spoken by one of the parties, or where the drafters of the contract have the ability to slant the language to their advantage. The canons of treaty construction are that: i) ambiguous expressions must be resolved in favor of the Indian parties concerned, ii) Indian treaties must be interpreted as the Indian themselves would have understood them, and iii) Indian treaties must be liberally construed in favor of the Indians.⁷ The courts that upheld the treaty rights of GLIFWC's member tribes used these canons, as well as historical records and information from treaty times, to discern the tribes' understanding of the treaties.⁸ They found that the tribes intended to preserve and continue to practice their traditional lifeways using ceded territory resources.⁹

Not all aspects of treaty rights affirmation and implementation have been the subject of contentious court proceedings. Often the parties are able to agree on at least some aspects of rights affirmation and/or implementation. Where litigation is already underway, the parties often enter into stipulations that resolve certain issues; for example, in the *Lac Courte Oreilles v. Voigt* litigation, the parties were able to agree on many issues, and ultimately entered into 11 stipulations that memorialize those agreements. Trials were held on the remaining more contentious issues. In the *U.S. v. Michigan* case that involved inland portions of the 1836 ceded territory, the parties were able to resolve all of the relevant issues and no trials were held. The federal court found that the agreements made by the parties, were a "fair and equitable resolution of the Parties' respective claims" and ordered that the proposed Consent Decree become the court's judgment in the case.¹⁰

In some cases, litigation has been avoided altogether in favor of intergovernmental agreements that acknowledge and implement ceded territory, treaty reserved rights. For example, ten of GLIFWC's member tribes are signatories to a Memorandum of Understanding with the U.S. Forest Service that governs the tribes' gathering rights on four National Forests within the ceded territory.¹¹

⁷ *Jones v. Meehan*, 175 U.S. 1 (U.S. 1899).

⁸ *Minnesota v. Mille Lacs Band*, 526 U.S. 72 (U.S. 1999); *Lac Courte Oreilles Band v. Voigt*, 700 F.2d 341 (7th Cir. 1983); *United States v. Michigan*, 471 F.Supp. 192 (W.D.Mich. 1979).

⁹ See, note 6, *supra*.

¹⁰ *United States v. Michigan*, Case No. 2-73-CV-26 (W.D. Mich. 2007)(unpublished consent decree).

¹¹ *Memorandum of Understanding Regarding Tribal - USDA Forest Service Relations on National Forest Lands*

In other instances, there are statutes in place that affirm and reinforce the tribes' treaty rights in a modern day context. These are not generally the products of litigation, but represent a need and/or desire to acknowledge and harmonize the exercise of one sovereign's prerogatives and authorities with those of another sovereign. For example, 2007 Wisconsin Act 27 is premised on the tribes' sovereign authority to regulate themselves in the exercise of their ceded territory rights. This law recognizes the law enforcement capabilities of GLIFWC's conservation enforcement personnel and extends many of the same statutory safeguards and protections to GLIFWC officers that are afforded to other law enforcement officers in the state.¹²

Following this introduction is an annotated compendium of cases, statutes and intergovernmental agreements involving GLIFWC's member tribes and their treaty reserved rights. The cases, statutes and agreements listed above and many others can be found in this compendium. In examining this compilation of cases, certain types of cases emerge. One category of early cases involves prosecutions of individual tribal members by states.¹³ These members bore the burden of demonstrating the existence of their tribe's (and consequently, their own) treaty reserved right to harvest natural resources within the ceded territory. Another category of cases involves tribal governments asserting treaty rights in a more proactive manner.¹⁴ Once the tribes were able to demonstrate the existence of the rights, another type of case emerged in which states were required to show that their regulation of treaty rights activity was necessary to achieve certain compelling state interests.¹⁵ The statutes and agreements included in the compendium either explicitly or implicitly acknowledge or are premised on the existence of the tribes' rights, and are often focused on practical implementation issues related to those rights.

II. Treaty Rights Implementation – The Nature and Scope of the Rights

The existence of the tribes' sovereignty and authority over its treaty rights exercise carries responsibilities. Tribes have managed ceded territory resources and harvest for hundreds of years. In more recent times, where these rights have been recognized and affirmed by other governments (whether by litigation, agreement or statute), tribes continue to assume the responsibility to implement their rights in a way that provides opportunities for tribal members, that assures the continued quantity and quality of natural resources, and that respects and coordinates the exercise of sovereignty and management by other governments that exercise concurrent authority in the ceded territories.

The treaties represent a reservation of rights by each tribe individually, but also by all the signatory tribes collectively. Each tribe continues to authorize and regulate its members in the

Within the Territories Ceded in Treaties 1836, 1837, and 1842. Ratified August 6, 1998, amended June 3, 1999. See, www.glifwc.org.

¹²*GLIFWC Warden Bill*, 2007 Wisconsin Act 27. See, www.glifwc.org.

¹³See, e.g. *Michigan v. Jondreau*, 384 Mich. 539, 185 N.W. 2d 375 (Mich. 1971), and *Wisconsin v. Gurnoe*, 53 Wis. 2d 390, 192 N.W. 2d 892 (Wis. 1972).

¹⁴See, e.g. in the attached compendium, the *Lac Courte Oreille v. Voigt*, *Mille Lacs v. Minnesota* and *United States v. Michigan* lines of cases.

¹⁵See, e.g. *Wisconsin v. Newago*, 134 Wis. 2d 420, 397 N.W. 2d 107 (Wis. App. 1986), *Michigan v. LeBlanc*, 399 Mich. 31, 248 N.W.2d 199 (Mich. 1976); *Wisconsin v. Big John*, 409 N.W. 2d 455 140 Wis. 2d 322 (Wis. Ct. App. 1987), and *Wisconsin v. Matthews*, 248 Wis. 2d 78, 635 N.W. 2d 601 (Wis. Ct. App. 2001).

exercise of their ceded territory rights; however, the rights are also shared intertribally. This means that tribes regularly must address issues related to intertribal resource allocation, coordination of harvest and natural resource management. In some areas, GLIFWC member tribes have entered into specific agreements that contain binding co-management mechanisms.¹⁶ These agreements obligate the tribes to coordinate harvest declarations and make joint management decisions.¹⁷ This often involves discussions of intertribal resource allocation, as is also the case where individual tribes assert a right to exclusive management of, or harvest within certain areas of the shared ceded territory. When asked, courts have been reluctant to interfere in these intertribal allocation issues, and have left them to be decided by the tribes themselves.¹⁸

In addressing how tribes can preempt state regulation of their ceded territory rights, courts have said that the tribes must be able to effectively regulate themselves and protect legitimate state conservation, health and safety interests.¹⁹ This necessarily involves another aspect of co-management, communication, and coordination with non-tribal governments that exercise management authority within the ceded territory.

The requirement that tribes have in place effective self-regulation has a variety of implications in a shared rights context. Tribes must, individually as well as collectively, 1) undertake effective management programs and adopt and enforce regulations consistent with the standards above (ie. reasonable and necessary for conservation, public health and public safety), 2) remain within the tribal allocation of resources, and 3) engage in intertribal co-management to accomplish effective self-regulation.

The Great Lakes Indian Fish & Wildlife Commission (GLIFWC) is an example of an organization, created by its member tribes, to help fulfill the self-regulatory requirements listed above.²⁰ GLIFWC was formed in 1984 through the merger of two already existing entities – the Voigt Intertribal Task Force and the Great Lakes Indian Fisheries Commission. GLIFWC is governed by a Board of Commissioners that sets policy; a Voigt Intertribal Task Force that focuses on issues in the 1837 and inland portion of the 1842 ceded territory; and a Great Lakes Indian Fisheries Committee, whose focus is Lake Superior.²¹

GLIFWC's existence is based upon the sovereignty of each of its member tribes and it is an agency of delegated authority from those tribes. It is structured to facilitate intertribal consensus on issues of common concern regarding off-reservation treaty rights.²² It exercises delegated

¹⁶See, Chippewa Intertribal Agreement Governing Resource Management and Regulation of Off-Reservation Treaty Rights in the Ceded Territory (Intertribal Co-management Agreement) available in the attached compendium.

¹⁷See, Footnotes 18-19, *infra*.

¹⁸*Keweenaw Bay Indian Community v. Minneapolis Area Director*, Bureau of Indian Affairs, 24 ILR 7010, 29IBIA 72 (1997).

¹⁹*Lac Courte Oreilles v. Voigt (LCO IV)*, 668 F. Supp. 1233, 1241-1242 (W.D. Wis. 1987), *U.S. v. Michigan*, 471 F. Supp. 192, 273 (W.D. Mich. 1979), *Mille Lacs v. Minnesota*, 861 F.Supp. 784, 836 (D. Minn. 1994).

²⁰GLIFWC's website contains a variety of information about its ongoing activities, including harvest reports, off-reservation harvest regulations, reports on particular research projects, management activities, and public information materials. See, www.glifwc.org

²¹See, Constitution of the Great Lakes Indian Fish and Wildlife Commission, Charter of the Voigt Inter-tribal Task Force Committee, and Charter of the Great Lakes Indian Fisheries Committee. See, www.glifwc.org

²²"It is the intent of the tribes by means of this Agreement to establish a binding mechanism for intertribal co-management and regulation, in recognition of the fact that each tribe cannot on its own effectively manage and

authority²³ and provides expertise in areas of biology, conservation law enforcement, and the development of tribal ordinances which can then be adopted by its member tribes.²⁴ It has now been in existence for twenty-five years, helping to secure the full and successful exercise of treaty rights that provides for the needs of tribal members, as well as helping to protect and enhance the natural resources and habitats of the ceded territory.

As will be demonstrated through this and other papers, the affirmation of GLIFWC's member tribes' treaty rights involves much more than simply courts making judgments – there are a myriad of concrete issues that tribes must address as they go about exercising and implementing those rights. Coordinated management, both intertribal and with other governments, is an ongoing and evolving process and is the subject of its own paper in this proceeding. Individuals and communities (both tribal and non-tribal) are impacted by the decisions of courts and the implementation of those decisions, and those impacts will also be explored in other papers. What some may consider to be dry, legal opinions by courts in far away places, have significant and ongoing implications for tribes, tribal members, and for those, like GLIFWC, that have been afforded the responsibility of helping tribes in the continuing exercise of their sovereignty.

regulate the exercise of treaty rights in the ceded territory.” Intertribal Comanagement Agreement, Section 2, Intent.

²³“The [Voigt Intertribal] Task Force shall have the primary responsibility for intertribal comanagement and regulation.” Intertribal Comanagement Agreement, Section 5, Task Force Responsibilities.

²⁴“The Commission shall have the primary responsibility for the provision of biological and resource management support services, and for the enforcement of tribal treaty rights regulation through Commission conservation law enforcement personnel, as adopted by each individual tribe.” Intertribal Comanagement Agreement, Section 6, Commission Responsibilities.

Appendix A.

Compendium of the relevant cases, statutes and agreements pertaining to recognition, affirmation, and implementation of ceded territory treaty reserved rights by Great Lakes Indian Fish & Wildlife Commission member tribes.

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United States of America, et al., v. State of Michigan, et al. - Major Decisions

1. ***United States v. Michigan*, 471 F. Supp. 192 (W.D. Mich. 1979):** The district court (Chief Judge Fox) held that: (1) the Ottawa and Chippewa Indians of Michigan had exercised aboriginal fishing rights in waters of the Great Lakes ceded to the United States in the 1836 Treaty; (2) nothing in either such treaty nor 1855 Treaty abrogated or otherwise diminished such fishing rights; (3) to extent that Michigan fishing laws or regulations are inconsistent with treaty rights of plaintiff tribes, as successors to signatories of the treaties, such laws and regulations are void ab initio; (4) regulation of treaty-right fishing by plaintiff tribes preempts any state authority to regulate fishing activity of tribal members, and (5) the Submerged Lands Act did not repeal by implication the Indians' treaty fishing rights. Declaration issued.
2. ***United States v. Michigan*, 505 F. Supp. 467 (W.D. Mich. 1980):** The district court (Judge Fox) held that: (1) the Indians preserved and unabridged 100% of their aboriginal right to take fish, while the State fishermen have only a privilege; and (2) the partial stay of judgment pending outcome of its appeal was denied since it would not only alter the status quo but the regulations sought to be imposed on treaty fishermen in the interim was wholly inconsistent with treaty fishing rights, discriminated against them, denied the Indians their traditional gear and excluded them from the fishery so it might be preserved for sportsmen and other state licensees. Stay denied.
3. ***United States v. Michigan*, 89 F.R.D. 307 (W.D. Mich. 1980):** The district court (Judge Fox) held that a conservation club and local fishing association were not entitled to intervene in the proceedings following remand even though appeal from such case had been consolidated by the Court of Appeals. The conservation club and local fishing association, had taken from a separate order, entered in action brought by the United States and the Indian bands seeking to enjoin the state court action brought by the club and the association to obtain injunction prohibiting the Indian bands from violating state law in exercise of fishing rights established in the principal case. The club and the association were permitted to proceed in capacity of amicus curiae.
4. ***United States v. Michigan*, 508 F. Supp. 480 (W.D. Mich. 1980):** The United States sought preliminary injunction to halt state court from implementing its order finding Indian in contempt of court for willfully violating an ex parte restraining order based on Indian's presence in boat with box of gill nets, but without any fish. district court (Judge Fox) held that: (1) anti-injunction statute did not prohibit issuance of injunction, and (2) preliminary injunction was properly issued.
5. ***United States v. State of Michigan*, 623 F.2d 448, (6th Cir. Mich. 1980):** The Sixth Circuit Court of Appeals held that in view of fact that the Secretary of Interior, after decisions of district court and after stay of injunctive orders of district court, issued comprehensive regulations governing Indian fishing in Great Lakes, including gill net fishing, under treaties entered into between the United States and Indian tribes, case would be remanded

to district court for consideration of preemptive effect of the new federal regulations. Case remanded; jurisdictions retained, and stay continued in effect.

6. ***United States v. Michigan*, 653 F.2d 277 (6th Cir. Mich. 1981)**: The Sixth Circuit Court of Appeals held that until modified by district court upon remand, comprehensive rules regarding gill net fishing previously enacted by Secretary of Interior, which were withdrawn by the new Secretary of Interior, would remain in effect as the interim rules regarding gill net fishing. The district court further considered questions of necessity of state regulations and irreparable harm to fisheries within territorial jurisdiction of the state, where the Court of Appeals could not determine whether the state's new regulations met federal standards.
7. ***United States v. Michigan*, 520 F. Supp. 207 (W.D. Mich. 1981)**: The district court (Judge Fox) held that: (1) unless the State showed necessity, irreparable harm and absence of effective Indian tribal self-regulation, the State could not regulate gill net fishing by Indians in Great Lakes, and, if the State met those criteria, any regulations must be necessary conservation measure, and must be the least restrictive alternative method available for preserving fisheries in Great Lakes from irreparable harm and must not discriminatorily harm Indian fishing or favor other classes of fishermen, and (2) doctrine of abstention did not apply where federal district court's orders were in aid of jurisdiction, state case was brought after federal case was pending and orders of state court had effect of interfering with and obstructing orderly adjudication of federal questions in the district court.
8. ***United States v. Michigan*, 454 U.S. 1124 (U.S. 1981)**: Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.
9. ***United States v. Michigan*, 712 F.2d 242 (6th Cir. Mich. 1983)**: The Court of Appeals (Judge Merritt) held that contempt orders violated supremacy clause as interfering with pending federal court resolution of fishing rights dispute.
10. ***United States v. Michigan*, 12 ILR 3079 (W.D. Mich. 1985)**: The District Court (Judge Enslen) adopted the allocation plan contained in March 28, 1985 agreement that established management zones and rejected Bay Mills proposal that would have allocated fifty percent of the commercial catch to the treaty tribes. The court held the zonal plan superior to the Bay Mills plan in protecting the Indian reserved treaty fishing right, preserving and managing the resource, reducing social conflict, stabilizing the fishery, and assuring both federal and state funding. The issue of legality of the Bay Mills Indian Community's action rejecting the March 28, 1985 agreement was rendered moot by the court's adoption of the zonal plan.
11. ***United States v. Michigan*, 424 F.3d 438 (6th Cir. Mich. 2005)**: The Sixth Circuit Court of Appeals (Judge Ryan) held that: (1) owners were not entitled to intervene as matter of right; (2) owners' concerns about future management and regulatory issues did not provide basis for mandatory intervention; and (3) district court did not abuse its discretion in denying motion of owners for permissive intervention.

Lac Courte Oreilles Band v. State of Wisconsin (Voigt) - Major Decisions

1. ***Lac Courte Oreilles Band v. Voigt, United States v. Bouchard, 464 F. Supp. 1316 (WD Wis 1978)***: The district court (Judge Doyle) in a declaratory judgment involving whether the Chippewa Indians have the right, pursuant to the treaties of 1837 and 1842, to hunt and fish on non-reservation lands in northern Wisconsin free from State regulation held that: (1) by signing 1837 Treaty, Chippewa Indians relinquished their aboriginal right of occupancy to land at issue; (2) the President's removal order of 1850 was not authorized by treaties of 1837 or 1842, was beyond scope of President's powers, and was without legal effect; (3) the 1854 Treaty terminated Chippewa's right of permissive occupation in territory ceded in 1837 and 1842 and not included in reservation contemplated by 1854 Treaty; and (4) Chippewa Indians did not have right to hunt, fish and gather wild rice without state regulation or control in non-reservation areas ceded by Indians in 1837 and 1842 treaties.

2. ***Lac Courte Oreilles Band v. Voigt, 700 F2d 341 (7th Cir. 1983) (LCO I)***: The Seventh Circuit Court of Appeals (Judge Pell) reversed the district court and held that: (1) the qualifying language in the treaties of 1837 and 1842 did not confer unlimited discretion on the executive to terminate the Indians' usufructuary rights, but rather required that Indians be denied such privileges only if they were instrumental in causing disturbances with white settlers; (2) the doctrines of res judicata or collateral estoppel did not preclude consideration of the question of the validity of the removal order of 1850; (3) the 1850 removal order exceeded the scope of the 1837 and 1842 treaties and was therefore invalid; and (4) the Indian band's usufructuary rights established by the 1837 and 1842 treaties were neither terminated nor released by the 1854 Treaty.

3. ***Lac Courte Oreilles Band v. Wisconsin, 595 F. Supp. 1077 (W.D. Wis. 1984)***: The Wisconsin Chippewa Bands brought an action against the State for retroactive monetary relief alleging violation of hunting and fishing rights. The district court (Judge Doyle) held that statute which provides that district court shall have original jurisdiction of all civil actions brought by any Indian tribe on federal law grounds abrogated State's immunity, under Eleventh Amendment to Federal Constitution to Indian tribes' action for retroactive monetary relief for State's alleged violation of hunting and fishing rights.

4. ***Lac Courte Oreilles Band v. Wisconsin, 760 F2d 177 (7th Cir. Wis. 1985) (LCO II)***: Actions were brought involving whether hunting and fishing rights exist on lands publicly owned at the time of the exercise of the right. The Seventh Circuit Court of Appeals (Judge Pell) held that: (1) the Court of Appeals had jurisdiction over the state's appeal, and (2) setting of date preserving usufructuary rights into perpetuity was not warranted.

5. ***Lac Courte Oreilles Band v. Wisconsin, 653 F. Supp. 1420 (W.D. Wis. 1987) (LCO III)***: The "Doyle decision" ruling on the historical phase, with partial declaratory judgment on the nature of the rights, commercial activity, settlement, allocation, and the state's right to

regulate. The District Court (Judge Doyle) held that: (1) Indians were not confined to hunting and fishing methods their ancestors relied upon at treaty time, but could take advantage of improvements in the hunting and fishing techniques, and could trade and sell to non-Indians in a modern manner from current harvests; (2) usufructuary rights reserved by Chippewa Indians in 1837 and 1842 treaties had been terminated as to all portions of ceded territory which were privately owned as of times of contemplated or actual attempted exercise of those rights; but (3) the allocation of resources in which rights had been reserved between Indians and non-Indians was currently unwarranted.

- 6. *Lac Courte Oreilles Band v. Wisconsin*, 663 F. Supp. 682 (W.D. Wis. 1987):** The Wisconsin Chippewa Bands petitioned for attorneys' fees under 42 USC §1988 in regard to its 42 USC §1983 action involving treaty based hunting and fishing rights. The State of Wisconsin, the Wisconsin Natural Resources Board, and various individual defendants filed a motion to dismiss on the ground that district court lacked subject matter jurisdiction over 42 USC §1983 claims. The district court (Judge Crabb) held that: (1) the district court had subject matter jurisdiction of a §1983 claim; (2) Wisconsin was not a "person" within the meaning of §1983 and claims against it based on §1983 would be dismissed; and (3) the Bands prevailed on the significant issues for the first phase of the litigation such that it was entitled to award of attorneys' fees.
- 7. *Lac Courte Oreilles Band v. Wisconsin*, 829 F.2d 601 (7th Cir. Wis. 1987):** The Seventh Circuit Court of Appeals (Per Curium) held that: (1) the order refusing to dismiss complaint was non-appealable; (2) the order awarding interim attorney's fees was interlocutory and non-appealable, and the State had failed to show that it came within the narrow scope of the collateral order doctrine; and (3) the Wisconsin Chippewa Bands were entitled to an award of attorney's fees incurred in connection with the State's frivolous appeal from order refusing to dismiss the § 1983 claim.
- 8. *Lac Courte Oreilles Band v. Wisconsin*, 116 F.R.D 608 (W.D. Wis. 1987):** The case proceeded into the phase addressing the permissible scope and extent of state regulation of the treaty-based rights. A sport fishing and conservation organization sought to intervene as a defendant. The district court (Judge Crabb) held that: (1) the organization was not entitled to intervene as a matter of right as a defendant, and (2) the organization would not be permitted to intervene, given its lack of a direct, substantial, legally protectable interest in the lawsuit and given the potential for prejudice and undue delay.
- 9. *Lac Courte Oreilles Band v. Wisconsin*, 668 F. Supp. 1233 (W.D. Wis. 1987) (LCO IV):** The district court (Judge Crabb) held that: (1) the State could regulate the exercise of the Wisconsin Chippewa Bands off-reservation usufructuary rights in the interest of the conservation and in the interest of public health and safety; (2) the State could not regulate in the interest of any other purpose; and (3) State regulations had to be reasonable and necessary to conservation of particular species or resource in particular area, could not discriminate against Indians, and the State could not regulate to insure tribal compliance with moderate living standard unless or until allocation of particular resource became necessary.

- 10. *Lac Courte Oreilles Band v. Wisconsin*, 686 F. Supp. 226 (W.D. Wis. 1988) (LCO V):**
The district court (Judge Crabb) held that evidence supported finding that Indians could not achieve “modest standard of living” even if they were permitted to harvest every available resource in ceded territory and even if they were capable of doing so.
- 11. *Lac Courte Oreilles Band v. Wisconsin*, 707 F. Supp. 1034 (W.D. Wis. 1989) (LCO VI):**
The district court (Judge Crabb) held that the regulation of off-reservation usufructuary facts to harvest walleye and muskellunge within ceded territory is reserved to tribes on the condition that they enact a management plan that provides for regulation of their members in accordance with biologically sound principles necessary for the conservation of the species being harvested.
- 12. *Lac Courte Oreilles Band v. Wisconsin*, Case No. 74-C-313-C (W.D. Wis. March 30, 1989)(unpublished decision):** Judge Crabb Order ensuring that it is necessary to the State's orderly management of the resources to require the tribes to secure advance approval of scientific studies, in order to ensure that the State has an opportunity to coordinate its efforts with the tribes' and to ensure that state research projects are not impeded or interfered with.
- 13. *Lac Courte Oreilles Band v. Wisconsin*, Case No. 74-C-313-C (W.D. Wis. May 5, 1989) (unpublished order) and (W.D. Wis. May 8, 1989) (unpublished memorandum):** Order and accompanying Memorandum denying the State’s motion for preliminary injunction to stop the exercise of the Tribes’ spearfishing rights during the state open- water walleye fishing season.
- 14. *Lac Courte Oreilles Band v. Wisconsin*, 740 F. Supp. 1400 (W.D. Wis. 1990) (LCO VII):**
The district court (Judge Crabb) held that: (1) Indians and non-Indians were each entitled to one half of game harvest; (2) the State could properly prohibit Indians from hunting deer during the summer and at night; and (3) private riparian owners were indispensable parties to determination of Indians' right to trap on stream beds.
- 15. *Lac Courte Oreilles Band v. Wisconsin*, 749 F. Supp. 913 (W.D. Wis. 1990) (LCO VIII):**
The district court struck the State's Eleventh Amendment immunity defense. Seeking reconsideration of that ruling, defendants moved for partial summary judgment as to all monetary claims against them. The district court (Judge Crabb) held that the statute giving the district court original jurisdiction over civil actions brought by Indian tribes under federal law did not abrogate the States' Eleventh Amendment immunity from suit in federal court, and the tribes thus could not pursue their claims for money damages.
- 16. *Lac Courte Oreilles Band v. Wisconsin*, 758 F. Supp. 1262 (W.D. Wis. 1991) (LCO IX):**
The Wisconsin counties intervened in this action of the Wisconsin Chippewa Bands’ seeking a declaration that tribes’ had usufructuary right to harvest commercial timber resources. Intervenor (Counties) moved to dismiss the tribe's claim or to vacate prior order prohibiting re-litigation of this issue, which had been determined during earlier trial. The district court (Judge Crabb) held that: (1)the Chippewa tribes did not reserve usufructuary right to harvest commercial timber resource under their treaties with United

States, and thus, Wisconsin could regulate the tribe's harvesting of the resource in same manner that it regulated non-Indian harvest, and (2) a permit system for the gathering of miscellaneous forest products under which state and counties would issue permit for requested product within 14 days of tribal request was reasonable and necessary for conservation and did not discriminate against the Indians. Motions for reconsideration and clarification were granted; the prior order was vacated.

- 17. *Lac Courte Oreilles Band v. Wisconsin*, 17 Indian Law Rep. 3046 (W.D. Wis. 1990):** The district court (Judge Crabb) denied the request by TV stations and other parties to allow cameras into the courtroom.
- 18. *Lac Courte Oreilles Band v. Wisconsin*, Case No. 74-C-313-C (W.D. Wis. February 21, 1991)(unpublished decision):** The district court (Judge Crabb) held that the State retains authority to enforce state boating laws into state court.
- 19. *Lac Courte Oreilles Band v. Wisconsin*, 775 F. Supp. 321 (W.D. Wis. 1991) (LCO X):** Final Judgment.

***Mille Lacs Band, et al., v. State of Minnesota, et al. and
Fond du Lac Band, et al. v. Carlson, et al. - Major Decisions***

1. ***Mille Lacs Band v. Minnesota, 989 F.2d 994 (8th Cir. Minn. 1993)***: The Eighth Circuit Court of Appeals ruled that 9 Minnesota counties and 6 private landowners may intervene in the case. The lower court had denied intervention.
2. ***Mille Lacs Band v. Minnesota Dep't of Natural Resources, 853 F. Supp. 1118 (D. Minn. 1994)***: The district court (Judge Murphy) ruled on a number of defenses raised by the state, counties and landowners. The Court held: (1) the delay based defenses (such as statute of limitations) did not bar the Tribe's lawsuit; (2) the lawsuit could be brought against the State and its officials under federal civil rights laws (i.e. 42 U.S.C. §1983); (3) the tribe's claims had not be previously litigated before the Indian Claims Commission or the Court of Claims; (4) the 11th Amendment to the U.S. Constitution did not provide immunity to the State and its officials; and (5) the landowners could not maintain counterclaims against the United States.
3. ***Mille Lacs Band v. Minnesota Dep't of Natural Resources, 861 F. Supp. 784 (D. Minn. 1994)***: The district court decision after the Phase I trial. Judge Murphy held that: (1) the 1850 Executive Order did not terminate the 1837 usufructuary rights; (2) the 1855 Treaty did not extinguish the 1837 rights; (3) the 1837 usufructuary rights include the right to harvest resources for commercial purposes, and are not limited to any particular technique, methods, devices or gear; (4) the State could regulate the exercise of the rights to ensure conservation, public and public safety, but the tribe could prevent state regulation by effectively self-regulating; and (5) the case should not be certified for immediate appeal, but instead should proceed to Phase II.
4. ***Mille Lacs Band v. Minnesota, 864 F. Supp. 102 (D. Minn. 1994)***: The district court (Judge Murphy) denied counties' and landowners' request to reconsider the Phase I decision and for an injunction to prevent exercise of treaty rights while the case was pending.
5. ***Mille Lacs Band v. Minnesota, 48 F.3d 373 (8th Cir. Minn. 1995)***: The Eighth Circuit Court of Appeals held that the attempt by the state, counties and landowners to appeal Judge Murphy's Phase I decision was premature, and that Phase II should proceed.
6. ***Fond du Lac v. Carlson, 68 F.3d 253 (8th Cir. Minn. 1995)***: The Eighth Circuit Court of Appeals held that the 11th Amendment to the U.S. Constitution did not bar the tribe's claim that state officials had violated important federal rights. The lower court had made the same holding.
7. ***Fond du Lac v. Carlson, Case No. 5-92-159 (D. Minn. March 18, 1996) (unpublished opinion)***: The district court (Judge Kyle) ruled that Fond du Lac retains usufructuary rights in the 1837 and 1854 ceded territory. The court held that: (1) the *Mille Lacs* case ruling on the 1837 Treaty rights controls the same issues in the *Fond du Lac* case; (2) the

previous court rulings in the *Lac Courte Oreilles* case and in *U.S. v. Bresette*, 761 F. SUPP. 658 (D. Minn. 1991), clearly establish the existence of the 1854 Treaty rights; (3) the previous Indian Claims Commission proceedings did not resolve the 1837 and 1854 treaty rights issues; (4) the Tribe may prevent state regulation of the treaty rights by effectively self-regulating; and (5) the treaty rights were not extinguished by Minnesota's statehood.

- 8. *Mille Lacs Band v. Minnesota*, Case No. 3-94-1226 (D. Minn. March 29, 1996)(unpublished decision):** The district court (Judge Davis) held that: (1) the Wisconsin Chippewa Tribes' 1837 ceded territory rights extend to the Minnesota portion of the ceded territory; and (2) the nature and scope of the Wisconsin Bands' rights are the same as defined for Mille Lacs in Judge Murphy's previous rulings in this case. In making these holdings, the court: (1) rejected the landowners' claim that treaty rights extend only to "full-blooded" Chippewa; (2) held that the 1837 rights were not terminated upon Minnesota's statehood; (3) held that 1854 Treaty did not extinguish the 1837 rights; and (4) the bands' rights extend throughout the ceded territory and are not limited by historic use or occupancy considerations.
- 9. *Mille Lacs Band v. Minnesota*, Case No. 3-94-1226 (D. Minn. June 11, 1996)(unpublished decision):** The district court (Judge Davis) granted the State's request to consolidate the Phase II proceedings of the *Mille Lacs* case and the 1837 Treaty Phase II proceedings of *Fond du Lac v. Carlson*, Case No. 5-92-159 (D. Minn.). The 1854 Treaty Phase II proceedings of the *Fond du Lac* case would remain separate.
- 10. *Fond du Lac Band v. Carlson*, 1996 U.S. App. LEXIS 30924 (8th Cir. Minn. 1996):** The Eighth Circuit Court of Appeals held that two private landowners were entitled to intervene in the case. The lower court previously had denied the intervention.
- 11. *Mille Lacs Band v. State of Minnesota*, 952 F. Supp. 1362 (D. Minn. 1997):** The district court (Judge Davis) issued a ruling on the 1837 Treaty Phase II proceedings in the *Mille Lacs* and *Fond du Lac* cases and entered a final judgment in the *Mille Lacs* case. The court held that: (1) the State's authority to determine the harvestable surplus of a resource was subject to judicial review, (2) treaty rights could be exercised throughout lakes partially located within the ceded territory, (3) harvestable surplus determinations may not be reduced on basis of portion of lake outside of the ceded territory or portion of wildlife populations on private lands, (4) exercise of treaty rights on private lands would be limited to those lands open to the public by operation of state law, (5) until the tribes have had the opportunity to exercise their treaty rights in the Minnesota 1837 ceded territory, the court will not address the "moderate standard of living" doctrine, and (6) when appropriate, an allocation of resources must be made in a manner that will give full force and effect to the intent and purpose of the treaty.
- 12. *Mille Lacs Band v. Minnesota*, Case No. 3-94-1226, and *Fond du Lac Band v. Carlson*, Case No. 5-92-159 (D. Minn. March 7, 1996)(unpublished decision):** The district court (Judge Davis) denied requests by state, counties, and landowners to delay the implementation of the final judgment note in #10.

13. ***Mille Lacs Band v. Thompson*, Case No. 97-1764/97-1770MN (8th Cir. April 9, 1997)(unpublished opinion)**: The Eighth Circuit Court of Appeals granted the defendants' request to postpone implementation of the lower court's final judgment pending resolution of the case on appeal and ordered an expedited handling of the case.
14. ***Mille Lacs Band v. Minnesota*, Case No. 97-1757 (8th Cir. April 16, 1997) (unpublished opinion)**: The Eighth Circuit Court of Appeals clarified its previous order suspending enforcement of the final judgment to allow for a limited ceremonial harvest on Lake Mille Lacs by Mille Lacs tribal members.
15. ***Mille Lacs Band v. Minnesota*, 124 F.3d 904 (8th Cir. Minn. 1997)**: The Eighth Circuit Court of Appeals upheld all of the lower court's decisions as to the existence of the 1837 ceded territory treaty rights.
16. ***Mille Lacs Band v. State of Minnesota*, Case No. 97-1757 (8th Cir. October 27, 1997) (unpublished opinion)**: The Eighth Circuit Court of Appeals vacated its previous order that suspended the implementation of the final judgment pending appeal.
17. ***Minnesota v. Mille Lacs Band*, 526 U.S. 172 (U.S. 1999)**: In a 5-4 decision written by Justice Sandra Day O'Connor, the United States Supreme Court held that the 1837 ceded territory treaty rights continue to exist and were not extinguished by the 1850 Executive Order, the 1855 Treaty, or Minnesota's statehood. Justice O'Connor was joined by Justices Ginsberg, Souter, Stevens, and Breyer. Chief Justice Rehnquist filed a dissenting opinion, and was joined by Justice's Scalia, Kennedy and Thomas. Justice Thomas also filed a dissenting opinion.
18. ***Mille Lacs Band v. Minnesota*, Case No. 3-94-1226 (D. Minn. December 10, 1999) (unpublished decision)**: The district court (Judge Davis) granted the tribes' petitions for attorney's fees from the State. The court ordered the State to pay the tribes a combined total of over \$3.95 million in attorneys' fees, litigation expenses and court costs.

Lac du Flambeau Band, et al., v. Stop Treaty Abuse-Wisconsin, et al. - Major Decisions

1. ***Lac du Flambeau Band v. Stop Treaty Abuse-Wisconsin*, 759 F. Supp. 1339 (W.D. Wis. 1991)**: The district court (Judge Crabb) issued a preliminary injunction against Stop Treaty Abuse, Dean Crist, and other protestors to prevent interference with exercise of treaty fishing rights. The court found that the protestor's actions would likely violate tribal members' civil rights and issued the injunction pending a full trial.
2. ***Lac du Flambeau Band v. Stop Treaty Abuse-Wisconsin*, 781 F. Supp. 1385 (W.D. Wis. 1992)**: The district court (Judge Crabb) granted the Tribe's summary judgment motion and issued a permanent injunction against the interference with the exercise of treaty fishing rights. The court found that the treaty rights are property rights protected by federal civil rights laws and that the defendants' interference with those rights was racially motivated.
3. ***Lac du Flambeau Band v. Stop Treaty Abuse-Wisconsin*, 991 F.2d 1249 (7th Cir. 1993)**: The Seventh Circuit Court of Appeals reversed the lower court's ruling in #2 finding that the lower court should have held a trial on the issue of whether the defendants' actions were racially motivated. The Appellate Court reinstated the preliminary injunction issued by Judge Crabb in #1 pending the trial, stating that "the stench of racism is unmistakable."
4. ***Lac du Flambeau Band v. Stop Treaty Abuse-Wisconsin*, 843 F. Supp. 1284 (W.D. Wis. 1994)**: The district court (Judge Crabb) held after a trial that the defendants' actions were racially motivated and again issued a permanent injunction to prevent interference with the exercise of treaty fishing rights. The court also ordered the defendants' to pay the tribe's attorneys fees and costs.
5. ***Lac du Flambeau Band v. Stop Treaty Abuse-Wisconsin*, 41 F.3d 1190 (7th Cir. Wis. 1994)**: The Seventh Circuit Court of Appeals affirmed the lower court's permanent injunction by finding that the evidence produced at trial supported the finding that the defendants' interference with the treaty rights was racially motivated. It also held that the tribe was entitled to attorneys fees from the defendants.
6. ***Crist v. Lac Du Flambeau Band*, 514 U.S. 1096 (U.S. 1995)**: The United States Supreme Court denied Dean Crist's request for review.

Great Lakes Indian Fish and Wildlife Commission
Member Tribes' Treaty Rights - Other Major Decisions

1. ***In Re Blackbird*, 109 F. 139 (W.D. Wis. 1901)**: A Bad River tribal member was arrested and sentenced to thirty days hard labor for setting a net on the Bad River reservation. The district court (Judge Bunn) found that the State of Wisconsin does not have authority to enforce state fish and game laws on the Bad River reservation.
2. ***Wisconsin v. Morrin* , 136 Wis. 552, 117 N.W. 1006 (Wis. 1908)**: A tribal member was convicted of trapping fish with gill nets in Lake Superior. The Supreme Court of Wisconsin (Judge Siebecker) found that the admission of Wisconsin into the Union abrogated the tribes' treaty rights, citing *Ward v. Race Horse*. The Court stated that to exempt tribal members from state fish and game laws would deprive the State of its sovereign power to regulate hunting and fishing, and would violate the equal footing doctrine.
3. ***People v. Chosa*, 252 Mich. 154, 233 N.W. 205 (Mich. 1930)**: A L'Anse (KBIC) tribal member was convicted of illegally possessing lake trout. The Supreme Court of Michigan (Judge Fead) found tribal member guilty, determining that it would be "foreign to our system of government" for state sovereignty (over game laws) to be given to another sovereign (ie the US). The Court also relied on the fact that tribal members were US citizens and said that, therefore, they were subject to all state laws.
4. ***State v. Johnson*, 212 Wis. 301, 249 N.W. 284 (Wis. 1933)**: A Bad River tribal member was convicted of manslaughter in the fourth degree and illegally hunting deer out of season. The tribal member was hunting deer out of season and mistook a non-Indian for a deer and shot and killed him on land fully patented in fee located within the exterior boundaries of the Bad River Indian Reservation. The Supreme Court of Wisconsin (Judge Nelson) found that: (1) state courts have jurisdiction to try Indians for offenses committed upon fully patented lands even though such lands are located within the exterior boundaries of an Indian reservation; when the lands are fully patented by the United States they cease to be territory of the United States and become subject to the jurisdiction of the State and its laws; and (2) all of the treaty provisions which reserve hunting and fishing rights to the Chippewa Indians obviously relate to the lands ceded rather than to the lands reserved and retained. The lands upon which the defendant hunted deer during the closed season, therefore, were not within any area ceded by the treaties mentioned, but were lands within the boundaries of the Bad River (La Pointe) Reservation retained by them in the Treaty of 1854 to which they retired as their permanent abode. Therefore, any reservation land retained in said treaties can have nothing to do with the treaty provisions which reserve ceded area hunting and fishing rights since such rights related to the lands ceded rather than to the lands retained.
5. ***Mole Lake Band et al v. United States et al*, 134 Ct. Cl. 478, 139 F. Supp. 938 (U.S. Ct. Cl. 1956)**: A suit by the Wisconsin Chippewa tribes was brought against the United States

regarding reservation land reserved in the 1854 Treaty. The government set aside reservations for the tribes in the 1854 Treaty. However, in the Swamp Lands Act of 1850, the government granted swamp lands to the states. The tribes' complaint alleged that the tribes were denied some of their reservation land as well as the proceeds of timber cut from those lands. The United States Court of Claims (Judge Madden) found that tribes had undisturbed possession of reservation lands for the past 100 years and had eventually been paid for the timber harvested in disputed areas. Therefore, the only damage was an unproven cloud on their title. The U.S. was obligated to provide tribes with land and the proceeds of land, which they did, regardless of whether the US had good title to the land it purported to grant.

- 6. *Michigan v. Jondreau*, 384 Mich. 539, 185 N.W. 2d 375 (Mich. 1971):** A L'Anse (KBIC) tribal member was convicted of illegally possessing lake trout. The Supreme Court of Michigan (Judge Swainson) overturned the conviction. The Court construed the Treaty of 1854 as including the right to fish, since the tribe was living on land bordering the bay and would have understood its right to fish as including the right to fish in the bay. The Court overruled *People v. Chosa* and held that game regulations were invalid as applied to *Jondreau* and other tribes protected by the Treaty of 1854. *Note:* The court declined to address the issue of who holds title to the water and submerged lands of Keweenaw Bay.
- 7. *Wisconsin v. Gurnoe*, 53 Wis. 2d 390, 192 N.W. 2d 892 (Wis. 1972):** Red Cliff and Bad River tribal members were charged with violations of gill net regulations and fishing without a license in Lake Superior adjacent to their respective reservations. The Supreme Court of Wisconsin (Judge Wilkie) found that the Treaty of 1854 granted a right to continue fishing in Lake Superior. The court remanded the case for a determination of whether state regulations were reasonable and necessary for the preservation of fish or were a necessary exercise of state police powers.
- 8. *Michigan v. LeBlanc*, 55 Mich. App. 684, 223 N.W.2d 305 (Mich. App. 1974):** A Bay Mills tribal member was convicted of fishing without a license and fishing with a prohibited gill net. The Court of Appeals (Judge Brennan) held that the 1836 fishing rights granted Chippewa Indians by treaty were not relinquished by any subsequent treaty, the conviction for fishing without a commercial license must be reversed since it conflicted with a federal treaty right and the conviction for fishing with gill net would be remanded for determination as to whether statute, insofar as it outlawed use of such nets, was necessary to prevent a substantial depletion of fish supply, and if so, then conviction would be affirmed.
- 9. *Michigan v. LeBlanc*, 399 Mich. 31, 248 N.W.2d 199 (Mich. 1976):** A Bay Mills tribal member was convicted of fishing without a license and fishing with a prohibited gill net. The Supreme Court of the State of Michigan (Judge Williams) held, inter alia, that the Chippewa Indians did reserve fishing rights in off-reservation waters pursuant to Treaty of 1836, that such fishing rights were not relinquished by the Treaty of 1855, that conviction for fishing without a commercial license could not stand, and that conviction for using a gill net could stand only if prohibition against use of gill nets was necessary

for conservation and did not discriminate against treaty Indians. Decision of Court of Appeals affirmed with directions.

10. *United States v. Bouchard*, 464 F. Supp. 1316 (W.D. Wis. 1978): This action is a consolidation of three cases all requiring a determination of the property interests and hunting and fishing rights of the Chippewa Indians in northern Wisconsin and the interpretation of treaties between the Chippewa and the United States in 1837, 1842 and 1854, as well as an executive order issued in 1850. *United States v. Bouchard* is a criminal trespass proceeding involving a tribal member's use of the Kagagon Slough, a navigable waterway within the boundaries of the Bad River Indian Reservation for the purpose of fishing. *United States v. Ben Ruby and Sons, et al.* is a civil action for declaratory judgment involving the title in fee to three sections of "section 16" land within the boundaries of the Lac Courte Oreilles reservation. *Lac Courte Oreilles Band of Lake Superior Chippewa Indians, et al. v. Voigt, et al.*, is a civil action for declaratory judgment involving whether the Chippewa Indians have the right, pursuant to the treaties of 1837 and 1842, to hunt and fish on non-reservation lands in northern Wisconsin free from State regulation. The district court (Judge Doyle) held that: (1) the statute regulating hunting, trapping, or fishing on Indian land required, as element of offense, that United States hold legal title to land at issue in trust for Indians; (2) the title to navigable waterways within reservation passed to state in 1848 and United States did not regain title from the State after that time, so that indictment charging defendant with violating statute regulating hunting, trapping, or fishing on Indian land had to be dismissed; (3) by signing 1837 Treaty, Chippewa Indians relinquished their aboriginal right of occupancy to land at issue; (4) the President's removal order of 1850 was not authorized by treaties of 1837 or 1842, was beyond scope of President's powers, and was without legal effect; (5) the 1854 Treaty terminated Chippewa's right of permissive occupation in territory ceded in 1837 and 1842 and not included in reservation contemplated by 1854 Treaty; (6) under Wisconsin Enabling Act and 1873 agreement fixing reservation boundaries, state of Wisconsin obtained title to sections 16 in dispute, and (7) the Chippewa Indians did not have right to hunt, fish and gather wild rice without state regulation or control in non-reservation areas ceded by Indians in 1837 and 1842 treaties. *Note:* This is the original decision in the *Voigt* line of cases. See the annotations beginning on page four of this compendium for further information.

11. *Peterson v. Christensen*, 455 F. Supp. 1095 (E.D. Wis. 1978): A commercial fisherman, who was an enrolled member of the Lake Superior Chippewa Indians, brought action seeking a declaration that the Wisconsin Department of Natural Resources regulation pursuant to which a DNR conservation warden had seized his fishing nets violated his rights under an 1854 Treaty between the Chippewa Indians and the United States. The district court (Judge Gordon) held that: (1) the plaintiff's fishing methods, whether modern or aboriginal, were protected by the treaty; (2) the plaintiff was not entitled to judgment declaring that he could fish in Lake Superior free from state regulation; (3) Wisconsin was not required to demonstrate the reasonableness of and necessity for regulation before a regulation could be enacted or enforced; (4) the Wisconsin DNR was not required to negotiate an agreement with the Chippewa whereby the Chippewa would regulate their own fishing activities or to attempt to eliminate non-Indian fishing in order

to preserve fish before enacting regulations governing fishing on Lake Superior, and (5) the DNR official who lifted plaintiff's nets could not reasonably be required to have known that the regulation pursuant to which he acted was unconstitutional.

12. ***Wisconsin v. Peterson*, 98 Wis. 2d 487, 297 N.W. 2d 52 (Wis. App. 1980)**: Red Cliff tribal members were cited for transporting untagged lake trout. The Wisconsin Court of Appeals (Judge Foley) focused on the process by which the State could prove the reasonableness and necessity of its regulations. The Court found that the State could provide its proof at a hearing after a citation is issued, but before a trial on the merits.
13. ***Wisconsin v. Whitebird*, 110 Wis. 2d 250, 329 N.W. 2d 218 (Wis. App. 1982)**: Bad River tribal members were convicted of operating boats on Lake Superior without a "certificate of number" required under Wisconsin law. Wisconsin Court of Appeals (Judge Foley) held that the State's statute does not regulate fishing rights and does not infringe on the time, place or manner of fishing. In addition, the state requirement is an appropriate exercise of the state's police power and is necessary for public safety.
14. ***Wisconsin v. Lowe*, 109 Wis. 2d 633, 327 N.W. 2d 166 (Wis. App. 1982)**: St. Croix tribal members were convicted of possessing fish during the closed season, and of possessing a spear on Big Round Lake in Wisconsin. Big Round Lake is adjacent to the St. Croix reservation. The Wisconsin Court of Appeals (Judge Foley) found that the St. Croix members had the same right to fish in Big Round Lake that Red Cliff and Bad River members had in Lake Superior under the *Gurnoe* decision. The court reviewed the treaty and reservation history related to St. Croix and found that part of the intent of establishing the St. Croix reservation was to provide access to the lake. The case was remanded for a determination of whether state regulation was reasonable and necessary.
15. ***Wisconsin v. Lemieux*, 110 Wis. 2d 158, 327 N.W. 2d 669 (Wis. 1983)**: Bad River tribal members were convicted of violating a statute that prohibits possession or transportation of uncased firearms in vehicles. Members were on a public highway within the Bad River reservation when cited. The Supreme Court of Wisconsin (Judge Callow) found that the enforcement of the statute against the tribal members on-reservation would be an impermissible infringement on their treaty guaranteed hunting rights.
16. ***Wisconsin v. Baker*, 698 F. 2d 1323 (7th Cir. Wis. 1983)**: State brought action for a declaratory judgment regarding whether Lac Courte Oreilles Band could regulate non-Indian hunting, fishing, gathering and boating on lakes within reservation boundaries. The Seventh Circuit Court of Appeals (Judge Cummings) held that: (1) federal court jurisdiction was appropriate; (2) tribe's sovereign immunity did not bar state's action; and (3) because 1854 Treaty did not reserve exclusive rights in navigable waters within reservation to the tribes, and where the treaty could not be read to infer those rights, the tribe did not have sovereignty over those waters. Rather, exclusive sovereignty over those waters rests with the State. Therefore, the band could not restrict public hunting and fishing in those waters.

- 17. *Bad River Band v. Besadny*, Case No. 81-C-57 (W.D. Wis. March 18, 1983)**
(unpublished stipulation): Stipulation between Bad River and the State of Wisconsin that certain provisions of the Wisconsin statutes and administrative regulations are not applicable to tribal member activities on reservation. The listing includes regulations related to hunting, fishing and gathering.
- 18. *Attorney General v. Hermes*, 127 Mich. App. 777, 339 N.W. 2d 545 (Mich. App. 1983):** State filed complaint seeking damages based upon unjust enrichment and fraud for unlawful taking of fish from public waters. Defendants interposed as defense their tribal memberships at time fish were taken. The Michigan Court of Appeals held that: (1) Treaty fishing rights vested in defendants by virtue of their membership, albeit mistaken, in tribe of Chippewa Indians; (2) defendants could properly exercise tribal fishing rights prior to their disenrollment in tribe; (3) the evidence was sufficient to show that defendants knew or should have known they were formally disenrolled from tribal membership at time of fishing excursions; (4) civil action for damages may be maintained by the State to protect its fisheries; (5) the theory of conversion, while not asserted as such in State's complaint, was sufficiently within scope of complaint; (6) elements of conversion were fairly proved by State; and (7) wholesale value of fish, enhanced by expense of harvest and transportation to point of sale, should not have been used as measure of damages.
- 19. *Wisconsin v. Newago*, 134 Wis. 2d 420, 397 N.W. 2d 107 (Wis. App. 1986):** Bad River tribal members were convicted of fishing in a restricted off-reservation area in Lake Superior. The Wisconsin Court of Appeals (Judge Cane) found that the state's regulations were reasonable and necessary by a "preponderance of the evidence" standard, that they did not discriminate against Indians, and that the regulations were not preempted by tribal sovereignty or federal law. The convictions were upheld.
- 20. *Wisconsin v. Big John*, 140 Wis. 2d 322, 409 N.W. 2d 455 (Wis. App. 1987):** Lac du Flambeau tribal members were charged with operating unregistered motor boats off the reservation. The lower court found that requiring registration would infringe on the members treaty-protected fishing rights. The Wisconsin Court of Appeals (Judge Myse) found that the state could regulate to the extent that the tribe had not adopted its own ordinance requiring boat registration. The court disagreed with the lower court, finding that the state would have a compelling interest related to public safety in the absence of tribal regulation. In this case, the tribe had an ordinance, with which the members had complied; therefore, the citations were dismissed.
- 21. *Grand Portage Band v. State of Minnesota*, Case No. 4-85-1090 (D. Minn. February, 1988) (unpublished memorandum and order):** The Memorandum of Agreement between Grand Portage, Bois Forte, Fond du Lac and the State of Minnesota could not come into force until Bois Forte and Fond du Lac joined the case and the court approved the consent judgment that had been ratified by the parties. The court permitted the intervention of Bois Forte and Fond du Lac. It also found that the terms of the agreement were fair, reasonable and appropriate, and approved the amended MOA. *Note:* This

agreement and order was implemented into Minnesota law pursuant to MN Stat. 97A.157 - 1854 Treaty Area Agreement.

- 22. *Bay Mills Indian Community v. Ferroclad Fisheries Limited*, Case No. M88-69 (W.D. Mich. July 19, 1988) (unpublished opinion):** The 1836 signatory tribes brought suit alleging that defendant's fishing boat was commercially harvesting fish in an area of Lake Superior in which the tribes had exclusive fishing rights. Tribes sued the Canadian owner of the boat, but not the State of Michigan. The district court (Judge Enslin) dismissed the defendant's motion for summary judgment for failure to state a claim upon which relief can be granted. The court found that the tribes' interest in the fish, while not a "fee interest," is a property right that is enforceable. The court also found that the tribes may protect their interest via suit against a private entity and not, as defendants had argued, solely against the state or federal government.
- 23. *Bigelow v. Michigan Dep't of Natural Resources*, 727 F. Supp. 346 (W.D. Mich. 1989):** Non-Indian commercial fishers whose rights to fish commercially in portions of Lake Michigan were displaced as a result of superior tribal fishing rights, brought suit against MiDNR alleging violations of due process, equal protection, taking property without just compensation, and breach of contract. The district court (Judge Enslin) dismissed, on summary judgment, all of the claims against the state. As to the breach of contract allegation, the court found that there was no legally binding contract between the state and the fishers for compensation. The court found there was no mutuality of agreement or obligation, and that the DNR lacked the authority to enter into a contract. As to the equal protection argument, the court found that the tribes' rights were *superior* to the non-Indian's rights; therefore, there was no "equal" right to fish. As to the taking claim, the court found that the non-Indians had no property right to harvest fish in those waters. Finally, as to the due process claim, the court found that since the plaintiffs had no property right to fish, no due process protections were required.
- 24. *United States v. Bresette*, 761 F. Supp. 658 (D. Minn. 1991):** Red Cliff Tribal members were charged with the sale of migratory bird feathers in violation of the Migratory Bird Treaty Act. The district court found that the tribes had a treaty right to sell feathers. Congress had not abrogated that right when it passed the Migratory Bird Treaty Act, and that the Act's prohibition on the sale of migratory bird feathers was not a permissible regulation of the tribes' treaty rights.
- 25. *P.A.R.R. v. Wisconsin*, Case No. 91-CV-1698 (Dane County Cir. Ct. April 30, 1992) (unpublished memorandum decision):** PARR challenged the WDNR/GLIFWC deputization agreement alleging a variety of claims including an open meetings law violation, equal protection violations, violations of the privileges, immunities clause of the Constitution, and violations of the Guaranty clause of the Constitution, etc. The Circuit Court (Judge Jones) found that PARR lacked standing to challenge the agreement, the matter was not ripe for adjudication, and the plaintiffs had failed to join as a necessary party to the suit.

26. ***Keweenaw Bay Indian Community v. Michigan*, 152 F.R.D. 562 (W.D. Mich. 1992):** The Keweenaw Bay Indian Community filed a motion to alter judgment that dismissed its case for failure to join indispensable parties. The district court (Judge Bell) ruled that the dismissal of the case was warranted. The court found that there was an open question surrounding the “home waters” issue, and that the issue should not be resolved in the absence of Bad River and Red Cliff, who might have an interest to protect.
27. ***Sokaogon Chippewa Community v. Exxon Corporation*, 805 F. Supp. 680 (E.D. Wis. 1992):** The Sokaogon Chippewa Community sued Exxon, the State of Wisconsin and Forest and Langlade Counties for the right to possess and occupy land. The district court (Judge Warren) held that: (1) the 1854 Treaty did not confer any rights to the tribe’s alleged reservation, (2) the tribe had a limited right to harvest minerals under the Treaty of 1842, (3) the 1854 Treaty extinguished the tribe’s right to possess and occupy any land other than what was set aside in the 1854 Treaty, (4) the tribe had no treaty rights on Exxon’s private land, and (5) the court did not have jurisdiction over the part of the complaint that named the state as a defendant.
28. ***Sokaogon Chippewa Community v. Exxon Corporation*, 2 F.3d 219 (7th Cir. Wis. 1993):** The Sokaogon Chippewa Community appealed the findings by the lower court; specifically the tribe argued that it did not sign the 1854 Treaty and so can continue to assert its rights under the 1842 Treaty, or that if the tribe was a party to the 1854 Treaty, the Treaty did not extinguish the tribe’s right to occupy the land in question. The Seventh Circuit Court of Appeals (Judge Posner) found that the Treaty of 1854 is unambiguous in ceding lands in exchange for reservations and payments. It refers to *Voigt’s* interpretation that the 1854 Treaty extinguished *occupancy* rights in the 1842 ceded territory, but not *use* rights. The court also finds that the tribe is a party to the Treaty because its chiefs signed it, and it clearly makes provisions for other tribes (for which a reservation was not created in the 1854 Treaty), i.e. at Lac du Flambeau or La Pointe.
29. ***Keweenaw Bay Indian Community v. State of Michigan*, 11 F.3d 1341 (6th Cir. Mich. 1993):** The Keweenaw Bay Indian Community appealed the dismissal of its case for failure to join indispensable parties. The Sixth Circuit Court of Appeals (Judge Martin) affirmed the lower court’s ruling and held that: (1) there was no abuse of discretion in determining that the other two bands (Bad River and Red Cliff) were necessary parties; (2) the absent bands were indispensable parties; (3) the district court was not required to pursue a factual inquiry into whether the absent bands actually possessed the claimed interest to fall within the definition of a necessary party; (4) there was no error in failing to consider claims set forth in KBIC’s proposed amended complaint; and (5) there was no abuse of discretion in the denial of the tribe’s motion for preliminary injunction.
30. ***Wisconsin v. LaBarge*, Case No. 92-CM-173 (Vilas County Cir. Ct. April 27, 1993) (unpublished decision):** Lac du Flambeau tribal members were charged with hunting without a license, unlawful possession of game during the closed season, and discharging a firearm within 100 yards of a building without permission of the owner. The members were on private land within the ceded territory. The Circuit Court (Judge Mohr) dismissed the charges related to hunting without the required approvals and unlawful

possession of game during the closed season. The court found that the State had not enacted a criminal or civil forfeiture offense for tribal members hunting on private land, and could not bootstrap the facts of the case into a violation of either of the first two charges. The court refused to dismiss the third charge related to firing a weapon within 100 yards of a building. Relevant court orders provided for state prosecutions of violations of that chapter of the criminal code, and the statute had nothing to do with the regulation of treaty rights.

- 31. *Ackley v. Majewski*, Case No. 94-C-1012 (E.D. Wis. February 13, 1996) (decision and order):** The Sokaogon Chippewa Community sued Forest County Parks Administrator under federal civil rights law (42 USC 1983) for closing a boat landing that tribal members wished to use to launch boats for spearing. The defendant moved for summary judgment. The district court (Judge Stadtmueller) denied defendant's motion, finding that the landing could be closed only if reasonable and necessary for conservation, public health or public safety. The court found that there were genuine issues of fact about whether those conditions were met. The court also held that there was no qualified immunity for the defendant because it would be a violation of clearly established law to impose unnecessary restrictions that would interfere with the tribes' ability to use the landing.
- 32. *Keweenaw Bay Indian Community v. Minneapolis Area Director, Bureau of Indian Affairs*, 24 ILR 7010, 29 IBIA 72 (1997):** The Keweenaw Bay Indian Community appealed a decision of the Minneapolis Area Director disapproving KBIC's fishing ordinance. The Board of Indian Appeals (Chief Administrative Judge Lynn) affirmed the Director's decision, noting that the BIA owes an equal trust responsibility to all tribes, and should be careful when asked to approve an action by one tribe that would work to the detriment of others, particularly where there is a disagreement among the tribes. The Board noted that this is essentially an inter-tribal matter. "The decision on how the treaty fishing rights in Lake Superior should be utilized should be made by the Chippewa bands which have that right."
- 33. *Wisconsin v. Bearheart*, 212 Wis. 2d 642, 570 N.W. 2d 62 (Wis. App. 1997) (unpublished opinion):** State appeals order dismissing its prosecution of a St. Croix member for hunting during a closed season. The member was hunting on private land off-reservation. The issue was whether the member's prosecution in tribal court would bar State prosecution for the same offence. Also, the member claimed that the State had no authority to prosecute even if it would not constitute double jeopardy. The Wisconsin Court of Appeals (Judge LaRocque) found that the State's prosecution was not barred by double jeopardy, because each sovereign possesses a prosecutable offense, thus the "dual sovereignty" exception to double jeopardy applies. The court found that the State does have authority to prosecute because the defendant was not engaged in treaty protected activity, i.e. hunting on private land is not an activity recognized or protected by the treaties (citing *LCO VII*).
- 34. *Grand Traverse Band v. Michigan Dep't of Natural Resources*, 141 F. 3d 635, 28 (6th Cir. Mich. 1998):** The Grand Traverse Band brought an action against the MIDNR and

two municipalities for preventing tribal members from mooring commercial fishing vessels at public marinas. The Sixth Circuit Court of Appeals (Judge Jones) held that the Treaties of 1836 and 1855, giving access to traditional fishing grounds, included implied easement of access; therefore, gave the band the right to moor fishing vessels in the marina because commercial fishing would not be possible without the use of the marinas. The court also found that the consent decree under *US v. Michigan*, expressly provided the Band the right to fish in its traditional fishing grounds and was binding on the municipalities.

35. ***United States v. Gotchnik*, 222 F. 3d 506 (8th Cir. Mich. 2000):** Bois Forte tribal members were convicted of using motor boats in the Boundary Waters Canoe Area, a wilderness area. Another member had been charged with possessing an ice augur, but the district court granted a motion to acquit, citing cases that upheld the use of modern hunting and fishing implements under the treaty, and finding no conservation interest sufficient to prohibit the ice augur. This finding was not on appeal. The Eighth Circuit Court of Appeals (Judge Wollman) found that Congress did not abrogate the tribes' rights under the Treaty of 1854 when it passed the Boundary Waters Canoe Area Wilderness Act, but that the bands' right to hunt and fish did not include the right to use modern transportation methods while hunting and fishing in areas where motorboats/vehicles were prohibited. The court distinguished between the implements used to do the actual hunting/fishing versus mode of transportation to access the hunting/fishing areas. It also distinguished cases in the northwest and the Grand Traverse case where impediments to access arose after the treaty was signed. It noted that the tribes have the same access to the Boundary Waters that they did when the treaties were signed.
36. ***Wisconsin v. Matthews*, 248 Wis. 2d 78, 635 N.W. 2d 601 (Wis. App. 2001):** Keweenaw Bay tribal members were charged with shining deer while hunting, as parties to a crime. The Wisconsin Court of Appeals (Judge Cane) found that the State may regulate KBIC members' exercise of treaty reserved hunting rights for the protection of public health and safety if the State shows that the regulation is reasonable and necessary for the purpose and does not discriminate against Indians.
37. ***Minnesota v. Cash*, Case No. K7-04-1370 5-92-159 (Mille Lacs County District Ct. July 13, 2006) (unpublished order):** A Mille Lacs tribal member was charged with transporting an uncased firearm and illegal possession of a handgun. The tribal member was on fee land owned by the Mille Lacs Band when cited. The Mille Lacs County district court found that the tribal member was not hunting at the time he was stopped by the conservation officers. Therefore, the court found that he was not exercising his treaty rights. The court cited the *Mille Lacs* case for the determination that hunting and fishing rights were extinguished on private land. The court found that the land in question was neither trust land nor reservation land, was not public land, and was not private land open to public hunting. Thus, the court found that the State had subject matter jurisdiction to enforce state law on the land in question.

**Great Lakes Indian Fish and Wildlife Commission
Member Tribes' Treaty Rights - Major Legislation**

- 1. *Act of August 30, 1935, Pub. L. No. 74-410, § 1; 49 Stat. 1049, 1049-50:*** Act of Congress allowing for Chippewa Tribes or Bands of Indians of Wisconsin to bring legal claims against the United States for the determination of the amount, if any, due said Indians from the United States under any treaties, agreements, laws of Congress, the misappropriation or waste of any of the funds or lands of said Indians, band, bands thereof, or for the failure of the United States to pay said Indians any money or other property due.
- 2. *Warrants; Arrests; Police Powers; Tribal Code Enforcement. Wis. Stat. § 29.921(4)(2011):*** Wisconsin State statute providing that if a federally recognized American Indian tribe or band consents to the enforcement of its conservation code by the department or if a federal court order authorizes or directs the enforcement, the department and its wardens may execute and serve warrants and processes issued for violations of the tribe's or band's conservation code that occur outside the exterior boundaries of American Indian reservations; and may arrest a person, with or without a warrant, who is detected committing such a violation, or whom the warden has probable cause to believe is guilty of such a violation, and may take the person before the tribal court of appropriate jurisdiction and make proper complaint. For the purpose of enforcing a tribe's or band's conservation code, any warden may stop and board any boat and may stop any vehicle, if the warden reasonably suspects there is a violation of such a conservation code.
- 3. *Interference with Hunting, Fishing or Trapping. Wis. Stat. §29.083(2011):*** Wisconsin State statute providing that no person may interfere or attempt to interfere with lawful hunting, fishing or trapping with the intent to prevent the taking of a wild animal by doing any of the following: (1) harassing a wild animal or by engaging in an activity that tends to harass wild animals; (2) impeding or obstructing a person who is engaged in lawful hunting, fishing or trapping; (3) impeding or obstructing a person who is engaged in an activity associated with lawful hunting, fishing or trapping; (4) disturbing the personal property of a person engaged in lawful hunting, fishing or trapping; or (5) disturbing a lawfully placed hunting blind. Furthermore, no person may knowingly fail to obey the order of a warden or other law enforcement officer if the warden or other law enforcement officer personally observed such conduct by the person, or if the warden or other law enforcement officer has reasonable grounds to believe that the person has engaged in such conduct that day or that the person intends to engage in such conduct that day.
- 4. *Indian Tribal Documents: Full Faith and Credit. Wis. Stat. § 806.245:*** Wisconsin State statute providing that the judicial records, orders, and judgments of an Indian tribal court in Wisconsin, and acts of an Indian tribal legislative body shall have the same full faith and credit in the courts of this state as do the acts, records, orders and judgments of any other governmental entity, as long as certain conditions are met.

5. *Income Derived by Indians from Exercise of Fishing Rights.* 26 U.S.C.A. § 7873, I.R.C. §

7873: Statute providing that income derived by Indians from a fishing rights-related activity is exempt. A fishing rights-related activity of an Indian tribe is any activity directly related to harvesting, processing, or transporting fish harvested in the exercise of a recognized fishing right of such tribe, or to selling such fish, if substantially all the harvesting was performed by members of such tribe. Recognized fishing rights of an Indian tribe are fishing rights secured as of March 17, 1988, by a treaty, an executive order, or an Act of Congress. In the case of a member of an Indian tribe having recognized fishing rights, income earned by that individual from a fishing rights-related activity of the tribe, either directly or through a qualified Indian entity, is exempt from both federal income tax and federal self-employment (SECA) tax. Any distribution with respect to an equity interest in a qualified Indian entity of an Indian tribe to a member of the tribe is treated as derived by the member from a fishing rights-related activity of the tribe, and thus is exempt from these taxes, to the extent the distribution is attributable to income derived by the entity from a fishing rights-related activity of the tribe. Income earned by a corporation, partnership, or other business entity from a fishing rights-related activity of a tribe also is exempt from federal income tax if the entity constitutes a qualified Indian entity of the tribe. Wages paid to a member of a tribe employed by another member of the same tribe, or by a qualified Indian entity, for services performed in a fishing rights-related activity of the employee's tribe are exempt not only from federal income tax, but also from both the employer's and employee's share of social security (FICA) tax, and from unemployment compensation (FUTA) tax.

6. *Conservation Law Enforcement Authority.* Minn. Stat. § 626.94 (2010): Minnesota State statute providing that upon agreement by the Minnesota Commissioner of Natural Resources, an Indian conservation enforcement authority of a federally recognized American Indian tribe or band or an Indian conservation agency having the authority to adopt or enforce game, fish, and natural resources codes and regulations governing the conduct of Indians in the 1854 or 1837 ceded territories may exercise authority to serve as conservation officers having the same powers as conservation officers employed by the Department of Natural Resources. The exercise of these powers is limited to the geographical boundaries of the reservation or ceded territory; if the following minimum requirements are satisfied: (1) the Indian conservation enforcement authority agrees to be subject to liability for its torts and those of its officers, employees, and agents acting within the scope of their employment or duties arising out of the conservation enforcement powers conferred by this section to the same extent as a municipality and the Indian conservation enforcement authority further agrees, notwithstanding section to waive its sovereign immunity for purposes of claims arising out of the liability; (2) the Indian conservation enforcement authority files with the Board of Peace Officer Standards and Training a bond or certificate of insurance for liability coverage; (3) the Indian conservation enforcement authority files with the Board of Peace Officer Standards and Training a certificate of insurance for liability of its conservation law enforcement officers, employees, and agents for lawsuits under the United States Constitution; (4) the Indian conservation enforcement authority agrees to be subject to laws of the state relating to data practices of law enforcement agencies; (5) the Indian

conservation enforcement authority enters into a written cooperative agreement with the commissioner of natural resources to define and regulate the provision of conservation law enforcement services under this section and to provide conservation officers employed by the Department of Natural Resources with authority described in the cooperative agreement to enforce Indian codes and regulations on lands agreed upon within the reservation or ceded territory; and (6) the Indian conservation enforcement authority appoints a licensed peace officer to serve as a chief law enforcement officer with authority to appoint and supervise the authority's conservation officers under this section.

- 7. *Gaylord A. Nelson Apostle Islands National Lakeshore Wilderness Act, Enacted as part of Public Law 108-447. Signed by President G.W. Bush December 8, 2004:*** This legislation, named the “Gaylord A. Nelson National Wilderness,” after Wisconsin’s former Governor and Senator designates 80 percent of the Apostle Islands Lakeshore as wilderness. The “wilderness” designation essentially preserves in law existing management practices and protections for approximately 33,500 acres of federally owned land inside the Lakeshore boundaries - emphasizing continued motorized boat access to the mostly-wild islands, but no motorized travel on the islands themselves. The waters of Lake Superior within the National Lakeshore are not included in the wilderness area, nor are the lighthouses or other existing developed areas of the park. Sand, Basswood, and Long Islands were kept out of the wilderness boundary in their entirety, along with the park’s 12-mile mainland strip. The wilderness designation legislation specifically provided that “nothing in this section shall modify, alter, or in any way affect any treaty rights.”
- 8. *GLIFWC Warden Bill, 2007 Wisconsin Act 27:*** This law extends the same statutory safeguards and protections to GLIFWC officers that are afforded to other law enforcement officers. This includes: access to the criminal history of suspects encountered in the field, access to emergency services radio frequencies, operation of statutorily-authorized emergency vehicles, and coverage by statutes that protect state and local officers from threats and assaults. This law also extends the same statutory authority and responsibility that is now conferred upon other law enforcement officers operating outside their areas of primary jurisdiction to GLIFWC officers, including stop and arrest authority over tribal members and non-tribal members. This includes the requirement to promptly call in the agency with primary jurisdiction and to develop and implement the appropriate policies for exercising this authority consistent with Wisconsin law. In order for GLIFWC officers to invoke their secondary authority pursuant to this law, they must: (1) Be on duty and engaged in official business; (2) meet all the requirements for state certification by the Wisconsin Law Enforcement Standards Board; (3) Agree to accept the duties of a law enforcement officer; (4) be under GLIFWC’s officer liability insurance (pursuant to this law, GLIFWC must agree to waive its tribally delegated sovereign immunity to the extent of its mandated insurance coverage (\$2,000,000) for the acts or omissions of its officers while utilizing this secondary authority); and any of the following circumstances apply: (a) the officer witnesses an emergency situation that poses a significant threat to life or a significant threat of bodily harm; (b) acts that the officer believes, on reasonable grounds, constitute a felony; and (c) rendering assistance

to a law enforcement officer of primary jurisdiction (tribal or local county sheriff ...) during an emergency or the specific request of the law enforcement agency of primary jurisdiction.

**Great Lakes Indian Fish and Wildlife Commission
Member Tribes' Treaty Rights - Major Agreements**

- 1. *Chippewa Intertribal Agreement Governing Resource Management and Regulation of Off-Reservation Treaty Rights in the Ceded Territory. As implemented in *Lac Courte Oreilles v. State of Wisconsin (LCO VI)*, 707 F. Supp. 1034, 1050-1055 (W.D. Wis. 1989).*** This agreement recognizes that the treaty signatory Tribes share the ceded territories and they must work together on overall ceded territory natural resource management and harvest regulation. Pursuant to this agreement, the tribes established a binding mechanism for intertribal co-management and regulation, in recognition of the fact that each tribe cannot on its own effectively manage and regulate the exercise of treaty rights in the ceded territory (Section 2). Also, in this Agreement, the Tribes delegated to GLIFWC “the primary responsibility” for providing a biological and resource management program and for enforcing tribal off-reservation conservation regulations (Section 6).
- 2. *A Joint Strategic Plan for Management of Great Lakes Fisheries. Ratified June 1981, amended June 10, 1997:*** The Joint Strategic Plan for Management of Great Lakes Fisheries (Plan) represented, for the Great Lakes, the first formal commitment to a set of procedures intended to ensure that the actions of one fishery-management agency would not jeopardize the interests of a sister agency. The Plan recognized that varied interest groups had become more active and influential in determining the uses of and the delivery of fishery management on the Great Lakes and that a more-coordinated, structured approach was needed. The Plan was revised to better coordinate fishery and environmental management, especially with the initiation of the Lakewide Management Plan (LaMP) process called for in the Great Lakes Water Quality Agreement (GLWQA) and by a need to refine the procedures for settling conflicts between agencies. While undertaking this review, the parties reaffirmed once more their commitment to two vital aspects of the original plan—the ecosystem approach and management by consensus. Also important, the same steering committee approach employed successfully in producing the original plan was used to undertake the revision.
- 3. *Memorandum of Agreement: Grand Portage Band v. State of Minnesota, Case No. 4-85-1090 (D. Minn. February, 1988) (unpublished):*** This document is the Memorandum of Agreement between Grand Portage, Bois Forte, Fond du Lac and the State of Minnesota regarding the exercise of hunting and fishing rights in the 1854 ceded territory. The MOA contains provisions regulating commercial harvest, fishing (inland and Lake Superior) hunting, trapping, and wild rice gathering. It discusses enforcement issues and arbitration of disputes. An amendment to the MOA provides that any party may withdraw from the agreement on one year’s written notice. *Note:* This agreement and order was implemented into Minnesota law pursuant to MN Stat. 97A.157 - 1854 Treaty Area Agreement.

- 4. *Deputization Agreement Between the Great Lakes Indian Fish and Wildlife Commission and the Wisconsin Dep't of Natural Resources. Signed February 6, 1991, amended April 27, 1998:*** This agreement was made between the Great Lakes Indian Fish and Wildlife Commission and the Wisconsin Department of Natural Resources for the purpose of the effective enforcement of the Wisconsin hunting and fishing regulations (state Conservation Laws) with respect to hunting and fishing by nonmembers of the Wisconsin Chippewa Bands. Pursuant to this agreement both parties recognize that natural resource protection will be enhanced if GLIFWC officers are commissioned by the WDNR to enforce State Conservation Laws. GLIFWC officers holding WDNR credentials under this agreement may enforce state conservation laws under the following conditions: (1) only when on duty, and in uniform or upon display of proper credentials, and (2) only when the officer has a reasonable suspicion that a state conservation law violation is about to occur, is occurring, or has recently completed in his/her presence, or when requested by WDNR officers.
- 5. *Memorandum of Understanding Regarding Tribal - USDA Forest Service Relations on National Forest Lands Within the Territories Ceded in Treaties 1836, 1837, and 1842. Ratified August 6, 1998, amended June 3, 1999.*** The Memorandum of Understanding (MOU) is based on the principle of government-to-government interactions between the United States Government and the Lake Superior Chippewa tribes. The purpose of the agreement is to establish standards by which the Forest Service and the Tribes will act consistently across national forest lands within areas ceded in the treaties of 1836, 1837, and 1842. This MOU recognizes the existing treaty rights of the Tribes to hunt, fish, and to gather wild plants on national forest lands in accord with the applicable regulatory authorities of the States or other federal agencies having jurisdiction over such activities.
- 6. *Memorandum (s) of Understanding Between the Lake Superior Tribe(s) and the United States Coast Guard, Commercial Fishing Vessel Safety Regulations. Ratified 2000:*** The Bad River, Bay Mills, Keweenaw Bay, and Red Cliff bands each entered into an MOU with the United States Coast Guard and enacted commercial fishing safety regulations that parallel similar federal regulations. These agreements protect the safety and welfare of tribal members engaged in commercial fishing activities pursuant to the Bands treaty reserved rights as part of an orderly system of tribal control and self-regulation. These agreements call for: inspections to be completed, the use of navigation lights, sound signals, visual distress signals, life preserver / immersion suits, ring life buoys, survival crafts, emergency frequency indication radio beacons, fire extinguishers, backfire flame controls, as well as other jurisdictional and enforcement issues. These agreements coordinate law enforcement patrols on waters of concurrent jurisdiction; refer possible violations of tribal regulations to tribal or GLIFWC officers, and to refer possible violations of matters within exclusive federal jurisdiction to the Coast Guard. GLIFWC wardens have been trained and authorized as inspectors for the

purposes of implementing these agreements and commercial fishing safety regulations.

- 7. *General Interim Agreements Comprising Tribal-National Park Service Relations Regarding the Apostle Islands National Lakeshore: Ratified annually beginning August, 5, 2004.*** This General Agreement recognizes that the Apostle Islands region is located within the heart of the ancestral homeland of the Anishinaabeg (also known as Ojibwe or Chippewa) people. It recognizes that the areas that now comprise the Apostle Islands National Lakeshore are historically and culturally significant for the Anishinaabeg and that Tribal members rely upon the natural resources found in and around the Lakeshore for subsistence, medicinal, cultural, religious and economic purposes as they have for many generations. This General Agreement deals with the relationships of a number of sovereign federally recognized tribes and of the National Park Service, as an agency of the government of the United States. It is based upon the principle of government-to-government interactions between the United States Government and the Lake Superior Chippewa tribes. The purpose of this agreement is to establish standards by which the Service and the Tribes will conduct their relationship and carry out their respective responsibilities regarding protection and use of the islands and mainland area that comprise the Apostle Islands National Lakeshore. This General Agreement recognizes the existing treaty rights of the Tribes to hunt, trap, and to gather wild plants on the Apostle Islands National Lakeshore in accord with the applicable regulatory authorities of the States or other federal agencies having jurisdiction over such activities.

- 8. *United States Fish and Wildlife Service / Migratory Bird Hunting Enforcement Memorandum of Agreement. Ratified 2000:*** The Memorandum of Agreement (MOA) is based on the principle of government-to-government interactions between the United States Government and the Lake Superior Chippewa tribes. The purpose of the agreement is to establish standards by which the USFWS and the Tribes will act consistently across the areas ceded in the treaties of 1836, 1837, and 1842. In this agreement USFWS officers are authorized to enforce tribal off-reservation migratory bird hunting regulations into tribal courts while the USFWS retains authority to prosecute under federal law at its discretion.

Appendix B.

Chippewa Intertribal Agreement Governing Resource Management And Regulation Of Off-Reservation Treaty Rights In The Ceded Territory.

CHIPPEWA INTERTRIBAL AGREEMENT GOVERNING RESOURCE MANAGEMENT AND REGULATION OF OFF-RESERVATION TREATY RIGHTS IN THE CEDED TERRITORY

WHEREAS, the Chippewa tribes of Wisconsin have established off-reservation usufructuary rights reserved by the Treaty of 1837, 7 Stat. 536, and the Treaty of 1842, 7 Stat. 591; and

WHEREAS, the tribes are co-plaintiffs in the litigation filed to secure those rights, *Lac Courte Oreilles Band, et al. v. State of Wisconsin, et al.* W.D. Wis. No. 74-C-313; and

WHEREAS, the tribes are all members of the Great Lakes Indian Fish and Wildlife Commission, which has provided biological and other technical services for the development of management plans and regulations, conservation law enforcement services for the enforcement of codes and ordinances, and other supportive services; and

WHEREAS, the tribes have formed and are all members of the Voigt Intertribal Task Force Committee of the Commission, which since 1983 has successfully developed intertribal agreements on regulations governing the exercise of treaty rights; and

WHEREAS, the tribes have the capability and responsibility to regulate the exercise of treaty rights and to co-manage the resources in cooperation with the State of Wisconsin; and

WHEREAS, intertribal cooperation is required in order to make co-management feasible and self-regulation effective;

NOW, THEREFORE, THE TRIBES DO HEREBY COVENANT AND AGREE AS FOLLOWS:

Section 1: Purpose

The purpose of this Agreement is to protect the resources of the ceded territory and promote, preserve and protect the exercise of treaty rights by establishing an effective intertribal mechanism for co-management of the resources subject to the treaty right and for tribal self-regulation of the exercise of the treaty right.

Section 2: Intent

It is the intent of the tribes by means of this Agreement to establish a binding mechanism for intertribal co-management and regulation, in recognition of the fact that each tribe cannot on its own effectively manage and regulate the exercise of treaty rights in the ceded territory.

Section 3: Application

This Agreement applies to the co-management of resources and the regulation of the exercise of treaty rights in the off-reservation portions of the ceded territory, except for the waters of Lake Superior. It does not apply to resources or activities on the reservations of the tribes.

Section 4: Definitions

As used in this Agreement:

(a) “Ceded territory” means the area of Wisconsin ceded by the tribes to the United States in the Treaty of 1837, 7 Stat. 536, and the Treaty of 1842, 7 Stat. 591, excluding the waters of Lake Superior.

(b) “Commission” means the Great Lakes Indian Fish and Wildlife Commission.

(c) “DNR” means the Wisconsin Department of Natural Resources.

(d) “Task Force” means the Voigt Inter-Tribal Task Force Committee of the Commission.

(e) “Treaty right” means the off-reservation usufructuary rights to hunt, fish and gather within the ceded territory.

(f) “Tribes” means the Lac Courte Oreilles Band of Lake Superior Chippewa Indians; the Red Cliff Band of Lake Superior Chippewa Indians; the Sokoagon Chippewa Indian Community, Mole Lake Band of Wisconsin; the St. Croix Chippewa Indians of Wisconsin; the Bad River Band of Lake Superior Chippewa Indians; and the Lac du Flambeau Band of Lake Superior Chippewa Indians.

Section 5: Task Force Responsibilities

(a) The Task Force shall have the primary responsibility for intertribal co-management and regulation. It shall review and approve resource management plans, develop and recommend seasonal agreements and regulations, and coordinate consultation with the DNR.

(b) All Task Force actions affecting the treaty right must be approved by an affirmative vote of a majority of the tribes as defined in § 4(f) who have adopted this Agreement.

Section 6: Commission Responsibilities

The Commission shall have the primary responsibility for the provision of biological and resource management support services, and for the enforcement of tribal treaty right regulations through Commission conservation law enforcement personnel, as adopted by each individual tribe.

Section 7: Management Plans; Harvest Goals and Quotas

(a) The Task Force shall with the assistance of Commission biologists develop and approve management plans for the resources within the ceded territory subject to treaty right harvest. The tribes agree to regulate the exercise of the treaty right in accordance with the management plans developed and approved by the Task Force.

(b) The Commission biologists shall develop, and the Task Force shall review and approve, intertribal harvest goals and quotas which shall insure that the tribes shall not harvest more of any resource than is permitted under the treaty right allocation of that resource.

(c) The tribes agree to regulate the exercise of the treaty right in a manner which assures that the intertribal harvest goals and quotas adopted by the Task Force shall not be exceeded.

(d) No treaty right harvest of any resource for which the Task Force has not adopted harvest goals and quotas shall be authorized or permitted.

Section 8: Regulation of the Treaty Right

(a) The Task Force shall develop intertribal seasonal agreements and model regulations for each harvest activity which are consistent with the management plans and which insure that the intertribal harvest goals and quotas shall not be exceeded.

(b) The seasonal agreements shall allocate harvest opportunity and shall assure the protection of public health and safety.

(c) The tribes shall employ their best efforts to secure tribal adoption of the seasonal agreements and regulations in conformity therewith; provided, that nothing herein shall prevent a tribe from adopting more restrictive regulations.

(d) The tribes shall authorize the enforcement of tribal treaty right regulations by Commission conservation law enforcement personnel.

(e) No treaty right harvest of any resource shall be authorized or permitted except in accordance with the seasonal agreement adopted by the Task Force to govern that harvest.

Section 9: Harvest Data

The tribes agree to develop and implement methods for gathering data on treaty right harvest of resources by tribal members, and to provide such data promptly to the Commission biologists upon request.

Section 10: Emergency Closures

(a) Notwithstanding any other provision of this Agreement or of tribal law, the Director of the Biological Services Division of the Commission is hereby authorized and empowered to order the closure of any harvest activity, generally or with respect to a particular location or body of water, whenever in his or her professional opinion and judgment the continuation of the harvest activity is likely to result in a harvest exceeding the harvest goals and quotas adopted pursuant to Section 7 or would otherwise cause biological harm to the resource.

(b) Every reasonable effort shall be made to consult with and obtain the approval of the Task Force prior to ordering an emergency closure, but such closure may be ordered without consultation or approval if circumstances require.

(c) An emergency closure shall become effective immediately upon issuance or at such other time or date as the closure order may direct. Such closure shall be communicated to the tribes by the best and swiftest practicable method.

Section 11: Cooperation With DNR

The tribes acknowledge the responsibility and authority of the DNR to co-manage the resources subject to the treaty right and to regulate the harvest activities of persons not entitled to exercise the treaty right. The tribes pledge to cooperate with the DNR in the following ways:

(a) By sharing harvest data and other biological information through the Commission biological staff in a timely and professional manner.

(b) By inviting DNR consultation and review of management plans and harvest goals and quotas prior to their adoption by the Task Force.

(c) By inviting DNR consultation and review of seasonal agreements and model regulations prior to their development by the Task Force and recommendation to the tribes.

(d) By coordinating emergency closure activities with the DNR, should closure of activities by non-treaty harvesters be required.

(e) By providing DNR with copies of tribal ordinances regulating the exercise of treaty rights.

(f) By adopting harvest goals and quotas, seasonal agreements, and regulations in a timely fashion, recognizing that the DNR may need to adjust its regulations governing the nontreaty harvest to take account of the treaty right harvest, and that the state administrative process requires some lead time for the development and adoption of such regulations.

(g) By continuing Commission staff cooperation in joint technical working groups to develop biological data, population models, overall harvest limits, and the like.

(h) By reviewing and commenting upon DNR management plans and regulations, and by advocating for the resource before state legislative, executive and administrative bodies.

(i) By authorizing DNR conservation wardens and deputy conservation wardens to enforce tribal regulations regulating the exercise of the treaty right by instituting proceedings in tribal court.

(j) By otherwise fostering a spirit of cooperation with the DNR.

Section 12: Adoption of Agreement

This Agreement shall take effect among the tribes adopting it upon its adoption by a majority of the tribes.

Section 13: Withdrawal from Agreement

A tribe may withdraw from this Agreement only upon provision of 90 days written notice of intent to withdraw, which shall be sent to each tribe, the Commission, and the DNR, and shall be filed with the court in *Lac Courte Oreilles Band v. State of Wisconsin*, W.D. Wis. No. 74-C-313