

George Meyer

I'm George Meyer. I am currently the Executive Director for the Wisconsin Wildlife Federation. I'd like to thank the Great Lakes Fish & Wildlife Commission for this invitation. When Jim Zorn finally called I think it took me about 10 to 15 seconds to say yes, I would be here. I really wanted to take part in this celebration.

Before I get onto the topic, I just want to pick up on the point of what George Newago talked about in the last panel. He talked about the heroes that Fred and Mike Tribble were. That clearly is the case in setting the way for reaffirmation of the treaty rights of the Ojibwe people.

What is really great to see here, besides a large turnout of many old friends and colleagues of this era, are the many young people in this room. I mean this is 25 years ago, the *Voigt* decision. It's an important history and legacy of all of you. Besides the heroes and Tribbles, those first people that exercised treaty rights especially their spear fishing rights on the lakes of northern Wisconsin are truly heroes.

I was on those boat landings because of my responsibility as head of law enforcement for the DNR. The credentialed officers had the responsibility for overseeing the landings on a general basis and they should get credit for all the work that they did trying to keep the peace, especially on the water. But I saw those boat landings and it was a dangerous situation for someone to be spearing fish. Some nights were calm and we were all blessed on those nights, but there were many nights where it was not calm. My good friend Tom Maulson, his leadership and the other tribal leaders providing leadership are true heroes.

I was at my desk on January 25, 1983 and I received a phone call. I was the first one in the DNR to receive a phone call from the Assistant Attorney General, Mary Bowman, who had handled the state side of the appeal and she told me about the *Voigt* decision. This was a case the Attorney General's Office was handling and there was virtually nobody in the top management of the DNR that had any background in the case. And Mary explained this decision that the state had lost and she said that nobody could say what it meant in total. I knew it was a life changing moment. And it was a life changing moment for everyone in this room.

Now, at the time, the secretary of the DNR was really a gifted individual known as Buzz Besadny. We had to start figuring out as the state government agency responsible for this, how this would get implemented. How would this interaction take place with ourselves as the state resource agency and the state enforcement agency. The six Chippewa tribes had the responsibility for the exercise of the rights, the use of the usufructary rights.

Secretary Besadny made I believe the right call, and I'm going to give a lot of credit to a third person, and that was our Native American liaison at the time, Bob Deer. And he provided us with a strong calming influence because obviously there was a lot of stress and worry about what this was. Bob, as was his nature, was a very calm individual and especially in these times.

Buzz asked me to head up the department's team involved in the negotiations. I had some responsibility during the work with the Red Cliff and Bad River Tribes including as Henry had mentioned the implementation of *State v. Gurnoe* decision, in terms of the Lake Superior rights. But I can recall Bob's advice that we need to approach the tribes and sit down and try to figure out how we're going to interact. There were hunting and fishing seasons coming up. We needed to sit down and reach some kind of understanding or agreements as to how this is going to be done and how both sides can live with it. The scope of the rights and what the long term regulations and responsibilities were going to be took about eight years before that was

completed at the trial court level. Secretary Besadny through Bob Deer contacted the tribal leaders. There was one meeting cancelled due to a conflict with the state's open meetings law. There was a follow-up meeting I believe it was at Lac du Flambeau with the tribal leaders from the six tribes.

We had experience with the Commission because of the implementation of the Lake Superior rights. It was our hope and desire that the six tribes would band together to work with us and to work together basically to implement the rights. It would have been virtually impossible for us to have six sets of negotiations and it probably wouldn't have been good for the state and it could have been a nightmare for the tribes also. So that was an encouragement made by Buzz at that time that the tribes band together to come up with a common perspective on what they were thinking about. The other hope going into the meeting was that the tribes would use the resource of the Great Lakes Indian Fish & Wildlife Commission.

Why would we do that? Well, for one it would provide a unifying force in terms of the knowledge what the resource was and how was going to be used. Everyone was dealing with the same set of facts and understandings. It gave our biologists someone with skills to talk about wildlife techniques. We had to get a common set of facts for understanding what the resource was for each season to be able to go forward and to sit down and negotiate.

There were going to be plenty of disagreements about the negotiations already without having a different set of understandings of the resource. That was the great value that the Great Lakes Indian Fish & Wildlife Commission brought to the table, and that was before the first negotiation.

The first time we talked about the 1983 deer season, and we ended up back in court and the judge ruled in favor of the State. And I also remember what he said. He said, "You folks get back together again and figure this out." Now, we had won one lawsuit. Judge Doyle was a greatly respected person and we had a lot of respect for him. We knew he had been deciding all these other issues and we surely didn't want to be the big bad State and have to go back to the courtroom every few years. We saw what happened in Michigan. The government in Michigan had taken a much more adversarial role and we wanted to stay on the good side of the Judge. So we went back with the tribes and sure enough, there was a deer season implemented with the tribes in 1983.

Let me jump to the issue of co-management. There was going to be litigation on what the scope of the treaty rights were going to be, how they could be exercised, what regulations there would be and who would implement those regulations. We had responsibility for seeing that they were implemented, and that was going to take a lot of time and those were difficult issues. There was always this other issue out there and that was: who had the responsibility in the ceded territory for actual management of the resource?

One part of that is the tribal exercise. The Court was very clear that, in fact, when the capability was adopted by the tribes in terms of law enforcement and biological experience, they were to be the implementer and managers from the biological and enforcement standpoint. The Great Lakes Indian Fish & Wildlife Commission could hire additional staff and they could handle the biological responsibilities and meet the court standards fairly quickly. But we understood that was coming and the way to do it, but there was a lot more to management of the resource besides biological and law enforcement from the tribe's perspective. There's the matter of who issues permits for activities that have impact on the resource such as stocking, fish surveys and things of that nature.

As much as the state's denial of exercise of the reserved right was a clear attack on the sovereignty of the tribal governments. The state had a concern that the loss of management responsibility over the non-tribal aspects of the resource was a pretty serious threat to the sovereignty of the State of Wisconsin. This is a pretty bottom line issue. Sovereigns of both sides are pretty important to each of the sides. And this is an issue on who had management responsibilities and lawyers could debate this for years, and they've done it. And I'm one of those that had, as a lawyer, and some pretty strong perspectives that the state had management responsibilities. This is not the kind of issue you want to toss in the Judge's hands too easily though, as you know, because you can lose.

We worked on agreements over the years, that very successful. What about the other aspects? What could the tribes do besides that and where did it start intruding on the state rights? Now, I've got an anecdote to tell you of where that line was and how the line was drawn in the sand.

Obviously to go upon a lake with a shock boat and put electricity into the water to bring fish up to do fish surveys is not something that can be done by average citizens of the state. That can be done by the State Department of Resources staff and people working for them. It's something we didn't do as part of the usufructuary rights. The tribe surely wanted to exercise that responsibility though and do it independent of the state. You know there one thing about working with the state being an agent in some legal matter out there and with agreement to be out on the lake, but to go out independently and not talk to state biologists, whether they be state law enforcement people about where you were going to be, was something that the state could not accept. There were discussions about that. Now, at one point in time the U.S. Fish and Wildlife Department had, because of their fiduciary responsibility to the tribe, proposed to do some fish surveys and we made it very clear to the U.S. Fish and Wildlife Service that we considered that if that was not coordinated work through the state agencies, that would be a violation of the law.

I think it was a fall day or a spring day, I get a call at home from the conservation warden somewhere in northwestern Wisconsin. The warden said, "I'm out on such and such a lake and there's this boat out there operated by the U.S. Fish and Wildlife Service and they're boom shocking the lake. I told them to stop, that that's a violation of state law." He asked, "What do I do?" And I did what my job told me to do. I told that warden to issue a citation. So Hannibal Bolton who was a biologist for Fish and Wildlife Service out of the Twin Cities received a citation from the State of Wisconsin for using improper equipment on a body of water.

Now, obviously we didn't like to do that, but it was pretty clear writing in the sand. It had to be done. We considered that a management responsibility of the state. I know Hannibal didn't pay a cent of that ticket he got because state, tribal, and federal biologists had chipped in together and paid it. The point had been made. Hannibal and I are very good friends. We see each other every couple years and we laugh about this a lot, but that was the issue and that was kind of the low point in co-management in the State of Wisconsin.

We had to figure some way around this legal dilemma. We knew we had to work with the tribes in terms of responsibilities, in terms of surveys and things of that nature, but we could not and our legislature and public would not allow us to say go ahead and just do those things. So in fact over time the state came up with the principal in our minds of using the term cooperative management. There were technical teams put together to work on these issues.

As an example, I'll use the fish survey sample. More lakes had to be surveyed so the technical teams would meet together to work on and decide what was going to be done and when it was going to be done. Under the cooperative management model, that was sort of a blessing by

the state on the tribes. Whether the tribes viewed it that way or not, as long as it was done pursuant this plan, was the state assumed that it still has the ultimate responsibility.

Now that is a good way to avoid a lot of lawsuits and that is one of the things that has developed in terms of the long sort of management of this resource. There's a high degree of that interaction going on. There is excellent work being done cooperatively by the state and Commission biologists. You heard John Olson this morning in terms of wildlife and tribal perspective and they add great value to the knowledge of the wildlife resources in northern Wisconsin. The same is true in terms of the fishery resources. There's more fishery surveys done in northern Wisconsin, the ceded territory in one year than there are in the rest of the United States put together. It's highly studied and protected resource. You saw the results, it's better than it was, because of that.

Law enforcement was another issue that hasn't been talked about. The chief warden in the State of Wisconsin at the time, Ralph Christensen, he fairly early understood the importance of developing cooperative relationships of state law and conservation law enforcement with tribal and Commission law enforcement for the ceded territory. And over a period of time under his leadership, he agreed to things such as cross-deputization. This was controversial within the workforce. It was controversial to the public, but he saw the benefits and an opportunity to upgrade the knowledge and technical capabilities of those individuals and there are some in this room that go back that far.

In fact, when I talked to Randy Stark the current Chief Warden, he gave high praise to Chief Warden, Fred Maulson, for his efforts in expanding that. There's joint training for individuals which is greatly beneficial and helps both sides. There's also a selfish aspect to this. There's a shortage of wardens in northern Wisconsin. Having more people being able to exercise the law enforcement responsibilities is a great benefit, and it benefits everyone.

Environmental threats are probably the greatest threats to all of our rights, whether they're state rights or tribal rights. And the question was raised this morning, do treaty rights give protection if in fact the resource is going to be depleted resulting in a loss or diminishment of the preserved right? I'll tell you my perspective, and I don't know what the state position might be now. I haven't asked. It clearly does. I think it's something that should be used wisely and in the right situation, will probably give you a test case.

But let me give you an example. I was the legal counsel for DNR prior to being division of enforcement administrator and had responsibility for being the legal counsel for the water regulatory program which included permits for diverting water from streams. There were many permits out there. When they were first issued right before my time there wasn't a protection level put in to set a minimal level that would have to be left in the stream. So farmers could pump water and because of dry years could take too much.

So the state embarked on a course of setting minimal levels in each of these permits. The permits had been out there many years and whether its golf courses or farmers, because there was no limit, they could just continue to divert water. There were a number of those permits issued in Langlade County to potato growers for pumping water out of the Wolf River upstream of the Menomonie Indian Reservation.

Now we were using our fisheries biologist to try to defend those rights and we knew it would be a tough fight. We approached John Wiley and Ada Deer, Ada Deer was tribal chair, and we took the position that the flow of the water through the Menomonie Indian Reservation gave the Menomonie tribe a say in what the minimal levels should be on those permits for the upstream permits. I can remember the public hearing that was held with myself as legal counsel

for the state, John Wiley representing the Menomonie tribe and Ada Deer on the witness stand testifying about the rights of the Menomonie people. If that could happen then, and in fact those levels were affirmed by the hearing examiner, I surely would have no trouble understanding why the off-reservation reserve rights in the ceded territory would afford similar responsibilities.