

Michael Lutz

The DNR has not always been the fun-loving, open-end minded, wild and crazy group that you know today. Prior to 1983 we were a little uptight about off-reservation treaty rights. In fact, we didn't recognize off-reservation treaty rights except for a limited exercise on Lake Superior. Part of that was based on a Wisconsin Supreme Court case from the 1908, *State versus Morin*, which held that treaty rights were extinguished upon statehood. In other words, off-reservation treaty rights were extinguished. If we were to look deeply into that, we would have recognized that that was not the soundest legal theory on which to base the State's position. We were also quite willing to believe the Department of Justice's position of "don't worry; this is a case we can't lose." The rest is history.

I'll move back a little bit to 1980 when I first started. And learning about treaty rights and having grown up in Shawano, which is near the Menominee reservation. We went to school with Menominee students and not too far in the other direction was the Stockbridge-Munsee Indian Reservation. I realized when I started with the DNR I knew absolutely nothing of what it really meant to live next to an Indian reservation, so I was starting anew. Nonetheless, the physical proximity with the Menominee reservation was enough in the eyes of my supervisor to make me our treaty rights attorney. I then started asking questions and asking about the Chippewas, who I hadn't had much experience with. I was told that we get along with them pretty well, but Lac du Flambeau, they keep leaving the reservation and they keep going off and violating. Mole Lake wasn't far behind. It's that actually plays a lot in terms of my perception of the treaty rights.

Then came January 1983 when we learned that the federal court recognized the treaty rights. What do we do next? I remember George Meyer pulling me into his office and he said, "Well, what next?" "I don't know. What do you think?" We talked it over, spent a lot of time about it, and we decided to call the tribes and offer to negotiate. Now, when you think about this, I'm certain there were tribal members who wondered what does this mean to have the treaty right recognized. My perception is to some it probably meant we can now do it and go off the reservation and do what we want when we want like it was 100 years ago. That was probably not an unreasonable perception to have. There we were in the face of that possible tribal perception saying, you know, we need some rules, we need some regulations. We weren't sure how we would be perceived when we contacted the tribes and there was no GLIFWC then so I'm sure it was the tribal attorneys that we called.

And ultimately there was an agreement that we did need to talk. What's going to happen next? There was no injunction on the State. The Court didn't say, "State, you can no longer enforce your laws", but I'm certain there was a Tribal perception that they were not subject to state law anymore. So, you know, we show up and say we are here to talk about some rules.

To the Tribes' credit, they agreed. They said we agree you can't just go and have a system without rules. We don't have a tribal enforcement system in place. We don't have tribal codes for dealing with the off-reservation treaty rights. They were willing to sit down with us and try to find a way to start working on the exercise of that right. That began my education on working with Chippewa tribes in terms of what the regulations would and should be. We began about eight years of negotiated seasons where we tried to sit down each year, each season, and work out a way for the treaty rights to be exercised.

These negotiations were important for a number of reasons. They defined what issues were going to be remaining for litigation. There were some things we just couldn't agree on. The negotiations set the stage for the stipulations that we operate under today, because much of what we were able to agree on prior to the litigation on what the exercise of the treaty should look like, was done through the interim negotiation process. Probably the biggest one is the recognition that we would use tribal courts. The state entered this with the perception that there should be a state enforcement rule, not only on the ground through law enforcement but also judicially. The state did agree to back away from that and that's what really opened the door for making these interim seasons work. That also set the stage for the tribal courts taking over enforcement of the treaty rights.

My personal perspective of these eight years of negotiations is that it opened my eyes to what these treaties meant to the tribes and individual Tribal members. We were able to have discussions not only with the formal negotiating team that each tribe put together but also with the Tribal elders who would be there. We'd eat lunch together, spend many long days together and started then to get a perception for what a treaty right really meant to the Tribe. I was involved with the state settlement team trying to work out the options available to the state. Can we settle this through payment of large sums of cash to the Tribes? I was somewhat of a voice that it was not going to work. Nonetheless, the state went ahead with that effort and spent a lot of time on it. It didn't work. It didn't work because the treaty right was more important to the Tribe than any of us initially perceived and even to this day I can't say I can appreciate that. I think the door is open to begin to appreciate how important it is. As an outsider it's hard for me to describe how it would fit in my life as compared to yours.

I mentioned Lac du Flambeau and Mole Lake as the violating tribes according to the perception of some. You know, what was going on there? What was going on was they never quit believing that they had a treaty right and it took a long time for us to recognize what was really happening. Prior to the recognition of that treaty right the tribal members firmly believed that they never lost that treaty right, this it hadn't been given away and they were merely exercising what they perceived to be their rights. They didn't perceive it to be breaking the law. These were not poachers. These were not violators. They were exercising their treaty rights.

The tribe had the belief that the treaty right existed, the treaty right was never lost. We didn't have that. And I think, you know, a good part of the tribe's success was the fact that they never gave up their belief that the treaty right existed.

So, congratulations. I think the tribe fought hard and won a battle they deserved to win. Thank you.