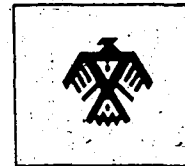


Special Edition

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MASINAIGAN



A CHRONICLE OF THE
LAKE
SUPERIOR
OJIBWAY

VOLUME ONE • DECEMBER 1983

How The Courts Look At Treaties

THE VOIGT DECISION

THE VOIGT DECISION

On January 25, 1983, the U. S. Court of Appeals for the 7th Circuit agreed with the Lake Superior Chippewa that hunting, fishing and gathering rights were reserved and protected in a series of treaties between the Chippewa and the United States Government.

This landmark decision ostensibly puts an end to over a century of practices by the State of Wisconsin of illegally denying Lake Superior Chippewa members from exercising these rights. However, considerable change has happened since the treaties and some of these changes will need to be taken into account before there is an absolute final legal resolution to this issue.

Yet to be resolved in federal court are two sticky issues: First, what is the "scope of regulation" that the state can exercise to protect the resources? And, which specific "public lands" can a tribal member exercise the right?

Until these questions are answered, status quo remains for off-reservation hunting, fishing, trapping and gathering. These activities are termed "usufructuary rights" in the 7th Circuit decision. Status quo is that tribal members must abide by existing state regulations or agreements such as that negotiated for this year's fall-winter deer hunting season. (See additional story on this page).

A status conference to establish a timeline for final agreements of this case was held on Friday, November 9th, in the Western District Court in Madison. Judge James Doyle, whose findings were overturned by the 7th Circuit, will hear these final arguments.

Because of the urgency to establish an interim off-reservation deer season for this year, as well as delays in Doyle receiving the 7th Circuit's findings, the timeline for final arguments remain unclear. It could be a matter of a few months but possible another year or more.

In the meantime, the state, Tribal governments, state citizens and tribal citizens will all have their patience tested as rumor and speculation rises on both sides. If the current off-reservation Treaty deer season (November 19-January 31) agreement is any indication it bodes well for future negotiations and an end to the sensationalism of the past, by outdoors writers.

In preparation for the implementation of the court decision, members of Lake Superior Chippewa formed the Voigt Inter-tribal Task Force. Wisconsin members include representatives from the Red Cliff, Bad River, St. Croix, Lac Courte Oreilles, Lac du Flambeau and Mole Lake Reservations. Participants also included Mille Lacs Reservation from Minnesota and Keweenaw Bay from Michigan—both anticipating ultimate application in their states.

In the Supreme Court of the United States
 OCTOBER TERM, 1983

CARROLL D. BESADNY, ET AL., APPELLANTS

v.

LAC COURTE OREILLES BAND OF LAKE SUPERIOR
 CHIPPEWA INDIANS, ET AL.

An initial meeting of affected tribes was called by Lac Courte Oreilles on February 2, 1983. The Task Force was formally constituted by each member tribe on March 16. Since that time they have met regularly to prepare for implementation of the decision.

The Task Force was faced with formulating an implementation plan for hunting, fishing and gathering activities by members over millions of acres of land and water. Until the court decision, no tribe had contemplated regulating its members off its reservation.

The first agenda item therefore, was to obtain funding to develop the capacity to regulate off-reservation natural resource activity. Furthermore, it is apparent that regardless of final court action on the "scope of state regulation," not all regulations will be applicable. In short, the Task Force must come up with a comprehensive resource management plan, enforcement mechanism and convince tribal members and non-Indians that it is in everyone's best interest.

(continued on Page 2)

Task Force State Reach Pact

Reserved Rights

Despite a landmark court decision affirming that Lake Superior Ojibway members reserved the right to hunt in the northern third of Wisconsin, Tribal representatives have agreed to deer hunting restrictions this fall and winter.

This 1983 "Treaty Deer Season" agreement was reached following a series of negotiating sessions between the Wisconsin Department of Natural Resources and members of the Voigt Inter-Tribal Task Force.

According to negotiators for both sides, agreements are a series of concessions on both sides. While it is far from perfect, it is proving to be workable.

Heading the negotiations for the DNR was George Meyer, head of the Bureau of Law Enforcement. Jim Schlender, an attorney and officer with the Lac Courte Oreilles Tribal Governing Board, was the lead Task Force negotiator which he chairs.

The agreement was termed "historic" by Meyer. It came at 9:30 p.m. following six and a half hours of negotiations on Monday, November 14. The details of the agreement were released at a joint press conference held two days later and broadcast live over public radio station WOJB-FM.

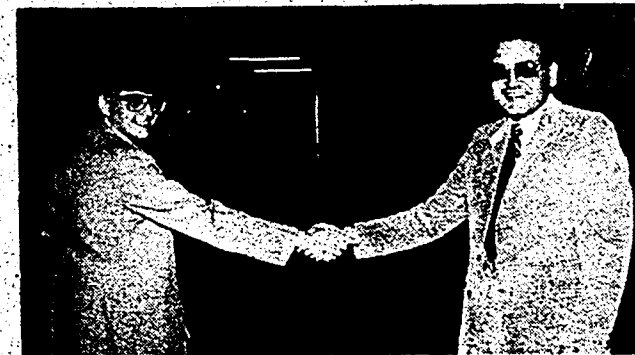
The release of the details was somewhat anticlimactic since leaks of the agreement had been circulating in the media since the previous week. The publication of an impending agreement had stymied an early start for the Treaty season.

Both sides have previously worked out an agreement with only the starting date unresolved. They agreed to let the court decide, but Judge Doyle refused, saying he would issue an order only after there was full agreement including the starting date.

The Task Force had sought a starting date of November 12, one week before the nine-day state deer hunt was to begin. The state opted for the 19th date. Due to Doyle's refusal to set a date additional negotiations ensued, with some changes in the agreement. On Friday, November 18th, Judge Doyle issued an order making the agreement law.

The major points of the agreement state that the season shall be from November 19, 1983 through January 31, 1984. Tribal members can hunt on public land in ceded territory and an initial count of 6,250 deer could be taken. The agreement also addresses enforcement procedures, safety issues, and further methods to resolve unanticipated disputes.

For details of this agreement contact your district DNR office or the Tribal Councils of Bad River, Red Cliff, St. Croix, Lac Courte Oreilles, Lac du Flambeau or Mole Lake. (For an additional summary see "Agreement" on page 2.)



George Meyer and Jim Schlender at the conclusion of the Treaty Deer Season negotiations. Meyer is administrator for the DNR's Division of Law Enforcement. Schlender is a member of the LCO Tribal Governing Board and Chairman of the Voigt Inter-Tribal Task Force.



(L-R) John Bushman, BIA Washington, Nancy Cobe, BIA Minneapolis and Jim Sansaver, Minneapolis BIA at Voigt Task Force meeting discussing BIA budget commitments to Task Force and proposed Fish & Wildlife Commission.

VOIGT DECISION

(continued from Page 1)

While the Task Force has been successful in initial funding for biological and ordinance development, it will require a significant monetary commitment to effectively implement the decision. To this end, a merger is being discussed with the existing Great Lakes Indian Fisheries Commission. If OK'd by each tribal Council the Task Force would become part of the Great Lakes Indian Fish and Wildlife Commission.

In the meantime, the "Voigt" case is slowly working its way to a final resolution. As one newspaper reported: "March 9, 1974, as the history of Wisconsin continues to be written, it may be recorded as one of the most significant dates, ever, in the story of the state and the people who live there."

March 8, 1974

On this date Fred and Mike Tribble, enrolled members of the Lac Courte Oreilles Band of Lake Superior Indians, were arrested by Milton Dieckman and Larry Miller, Wisconsin Department of Natural Resources wardens. They were found guilty by Circuit Judge Alvin Kelsey (Sawyer County) of possession of a spear for taking fish on inland waters and for occupying a fish shanty without name and address attached.

They were fishing on Chief Lake, outside the boundaries of the Lac Courte Oreilles Reservation. According to the wardens and the judge, they had violated Wisconsin law. That case is still active pending appeal.

March 18, 1975

On this date, the Lac Courte Oreilles tribe, on behalf of all its members, filed a suit in Western District Federal Court (Madison, WI) with Judge James Doyle presiding. They requested that the court order the State of Wisconsin to stop enforcing state law against LCO Tribal members because Lac Courte Oreilles, as a member of Lake Superior Chippewa Band, had reserved the rights to hunt, fish, trap and gather in the Treaties of 1837 and 1842.

Named as defendants were Lester P. Voigt, the Secretary of the DNR who represented the State of Wisconsin; Donald Primley, Sawyer County Sheriff; Norman Yackel, Sawyer County district attorney; and Milton Dieckman and Larry Miller, DNR Wardens.

A unique feature of this suit was that Lac Courte Oreilles was the plaintiff, not the United States which typically originates these types of legal actions. The legal team on this case was led by Wisconsin Judicare, headed up by Jim Janetta.

In reviewing this case, Judge Doyle chose to consider and consolidate two other similar cases before issuing his decision. Four years later, he decided against Lac Courte Oreilles, concluding that Lake Superior Band members had given up their off-reservation rights when they accepted permanent reservations pursuant to the later Treaty of

1854. He also concluded that an 1850 Presidential Removal Order had also withdrawn the rights in question.

January 25, 1983

The Lac Courte Oreilles Tribe appealed Doyle's decision to the U. S. Court of Appeals, Seventh Circuit, located in Chicago. This three judge panel reversed Doyle's findings and returned the case to Doyle to "determine the scope of state regulation" in the exercise of off-reservation Treaty rights. The 7th Circuit's decision was slow in coming.

A briefing schedule began in October of 1981 and oral arguments were heard in September of 1982.

The 7th Circuit concluded that Judge Doyle misinterpreted standard canons of construction when interpreting Indian law. This construction directs the court to the history surrounding the treaty, the negotiations, and how Indians would have interpreted the treaty.

In summary, the 7th Circuit found that the Treaty of 1854 establishing permanent reservations did not give up rights reserved in the 1837 or 1842 Treaty, thus those rights still exist.

Regarding the 1850 removal order, the court found that on one hand the order went beyond the presidential authority established in the previous treaties which stated that the tribes could only be removed if they "misbehaved" and since they had not, the order was ineffective. They also concluded that since there in fact was no removal, thanks in part to a request to rescind the order by the state of Wisconsin, there was no effect on the previously reserved rights.

The following is the direct quote of the 7th Circuit findings:

CONCLUSION

As to the collateral matters posed by this appeal, the tribe's motion to dismiss the defendants' cross-appeal in *Ben Ruby* and *LCO* is denied. The defendant's motion to strike the tribe's collateral estoppel argument and the tribe's references in their brief to documents not in the record are denied.

The LCO band enjoyed treaty-recognized usufructuary rights pursuant to the Treaties of 1837 and 1842. The Removal Order of 1850 did not abrogate those rights because the Order was invalid. These aspects of our holding are consistent with the conclusions reached by the judge below. We disagree with the district judge's conclusion that the Treaty of 1854 represented either a release or extinguishment of the LCO's usufructuary rights. At most, the structure of the treaty and the circumstances surrounding its enactment imply that such an abrogation was intended. Treaty-recognized rights cannot, however, be abrogated by implication. The LCO's rights to use the ceded lands remain in force.

Having considered all the arguments urged by the parties, the district court's summary judgment in favor of the defendants as to the continued existence of the LCO's usufructuary rights is reversed. The exercise of these rights is limited to those portions of the ceded lands that are not privately owned. The case is remanded to the district judge with instructions to enter judgment for the LCO band on that aspect of the case and for further consideration as to the permissible scope of State regulation over the LCO's exercise of their usufructuary rights.

REVERSED AND REMANDED.

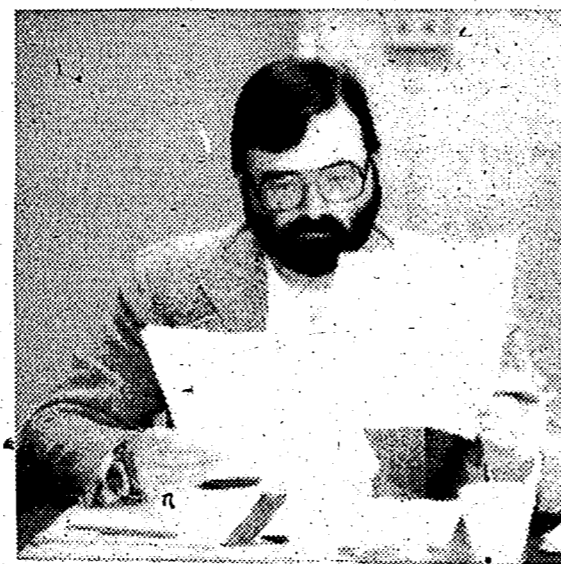
The state originally asked the 7th Circuit to reconsider their finds but to no avail. Their next step was to take it to the highest court in the land.

MASINAIGAN

This special edition publication is designed to begin chronicling the continuing history of a people known as the Lake Superior Chippewa. The more subtle "Ojibway" is also commonly used although the anglicized "Chippewa" is used in most legal documents. We once exclusively referred to ourselves as Anishinabeg, or original beings. However, as we look around our communities and at our neighbors, we must recognize that a lot besides our language has changed since we were Anishinabe.

MASINAIGAN, which means paper in our language, was chosen for two reasons. First, the obvious descriptive identification. Secondly, because for many years the elders would refer to the treaties as "gitchi-masinaigan" or big paper. In this publication and through other efforts we hope to begin understanding legacy of the gifts given us when our elders put their X's on gitchi-masinaigan.

If you would like more information about the Lake Superior Chippewa or about our treaties, contact the Voigt Inter-tribal Task Force. Speakers are available if you would like a presentation. Write the Task Force, Lac Courte Oreilles Reservation, Route 2, via Hayward, WI 54843. Or, contact representatives at the Red Cliff, Bad River, St. Croix, Lac du Flambeau or Mole Lake Reservations.



Jim Janetta, the lead attorney from Judicare who successfully argued the Voigt Decision. Janetta is now in private practice.

October 3, 1983

On October 3rd, 1983, the United States Supreme Court refused to hear the appeal of the Voigt Decision by the State of Wisconsin. Thus, there is no disagreement that indeed the right to hunt, fish, trap and gather on ceded territory remains on land once owned in common by members of the Lake Superior Chippewa.

And now we face the final step in this century old controversy - to what extent and by whom should tribal members be regulated? Judge James Doyle will once more have a hand in answering this question as he presides over the final arguments. Arguments that refused to die and quietly arose when the Tribble brothers crossed the imaginary line on Chief Lake one cold day in March, 1974.

Post Script

Although the legal proceedings up til now have only named Lac Courte Oreilles, the application of the Voigt Decision will effect other signatories to the Treaties of 1837 and 1842. Now joining in the final arguments will be Red Cliff, Bad River, St. Croix, Lac du Flambeau and Mole Lake.

AGREEMENT

On Wednesday, November 16, a joint press conference announcing the details of the Treaty deer season was held. Attending on behalf of the Wisconsin DNR was John Brasch, Rhinelander District director; David Jacobson, Northwest District Director; and George Meyer, director of law enforcement and head negotiator for the state. Representing the tribes was Dave Seigler, attorney for Bad River; Joe Bresette, Red Cliff Tribal Chairman; Mike Chosa, Lac du Flambeau Task Force member; and Jim Schlender, Task Force chairman and lead negotiator for the tribes.

The press conference was held on the Lac Courte Oreilles Reservation and broadcast live over public radio station WOJB-FM. Representatives from the press included: Rocky Barker, Rhinelander Daily News; Bill Hutchins, TV 13 Eau Claire; Paul Lowrey, WHSM Hayward; Dave Masik, WRLS Hayward; Sue Erickson, Ashland Daily Press; Gene Prigge, freelance writer; and Bob Albee and Mary Al Balber, WOJB-FM, Lac Courte Oreilles. The following is a summary of the press conference beginning first with statements from Meyer and Schlender.

OPENING STATEMENTS

SCHLENDER: We view this agreement as an exercise of sovereignty. We feel that the whole process of agreement in a negotiation is one which involved concessions on both sides, and given the short notice that the agreement was worked out after the Supreme Court ruled on October 3, we feel that this is the best agreement that could be reached in that short amount of time. I think the conduct of these negotiations and the agreement that was reached sets the tenor of future negotiations and that bodes well for both the tribes and the State of Wisconsin. For it is through the process of agreeing and negotiating to reach agreement that the tribes really exercise the full measure of their sovereignty.

Foremost in the minds of both Indians and non-Indians is the resource and in this particular instance we are talking about the resource of the deer, and in the Indians minds that too is the foremost thing that needs to be conserved here. But in light of that, and I would like to point out to both the Indian and non-Indian public that there has been a great deal of forbearance on behalf of the tribal members and there has been a great deal of prudent judgement on behalf of the tribal members, and the voluntary restraint of the exercise of their tribal member rights under the treaties that were concluded early in the century's preceding this one.

"Please summarize some of the salient points of the agreement."

MEYER: One important sort of prefatory comment would be that the agreement is just for this year. And, there have been provisions placed on this basically it is not to be precedent setting, and in fact when we have to try to work out a long term agreement, we will have to look at the long term effects, and we will be back to square one from negotiation stand point.

The Chippewa treaty season will extend from the sunrise of November 19 which is concurrent with state gun deer season this year and will go through January 31, 1984. The tribes have been issued 6,250 combination back tags, carcass tags and 6,250 registration tags to match those back tags and carcass tags. Tribal members have agreed to use identification cards to present those cards to law enforcement officers enforcing the terms of this agreement. The agreement will be enforced by state conservation wardens and other local law enforcement law officers.

The Chippewa members who are exercising this right do not have to have state gun deer licenses except they can purchase state gun deer licenses for exercising their state hunting privileges on public or private land (with permission) during the State gun deer season, and if they are exercising that right, all state regulations would be applicable for that situation.

The tribes will be maintaining registration stations on their reservations, and will be providing the same type of information that our normal registration stations would have. This information will be fed back to the department and will be used in the calculations for the total 1984 deer hunt for tribal and non-tribal members.

MEYER: Not too long ago, Governor Earl in speaking to a conference of national tribal leaders in Green Bay stated that it would be the practice of the State of Wisconsin to deal with the sovereign tribes of the State of Wisconsin with respectful diplomacy. And that is what has been done in the reaching of this agreement, which will be submitted to Judge Doyle on November 18. The DNR and the attorney generals office who together have worked with the tribes to reach this agreement have viewed this process as a way of developing and continuing to develop progressive tribal relations.

Other states have not been as fortunate to decide to go along the path of constructive negotiations in resource matters; as a result in those states there has been significant injury to the natural resources of the state; there has been bad community relations between tribal and non-tribal members and in some cases violence. As we entered into the pre-negotiation goals the state had basically three primary objectives: 1. To protect the natural resources in the State and primarily for the purpose of this agreement the deer population in the ceded territory; 2. The protection of public safety for both tribal and non-tribal members during the exercise of the tribal treaty rights; 3. To provide a tangible meaning to the Chippewa treaty right to hunt deer on ceded land this fall. I am confident that we have met each of these goals.

There are certain provisions that are being adopted by some of the tribes as ordinances and these provisions are applicable to the deer hunt. Blaze orange shall be worn during the 1983 state season; it will also be impermissible to discharge a gun within 50 feet of or across a public paved road while hunting; juveniles shall not be allowed to hunt without supervision that corresponds to the state law; shining and night hunting as defined by Wisconsin law will not be permitted; and hunting in deer management units that will be restricted to bucks only will be applicable to tribal members.

For the provisions I just read, if the tribal government has adopted a tribal code covering those provisions and has a tribal court, the prosecution of those particular cases would be in the tribal court. If a tribe does not have both the corresponding code and the court, those violations would be prosecutable in State court.

There are other provisions that require that the back tag be validated immediately in the same manner as with any other state hunter. Failure to register a deer would be something that would be prosecutable either under the state system or the tribal system based upon the qualification I just made. State laws against sale of deer would be enforced; loaded and uncased guns while not in the act of lawful hunting are enforceable and those violations would be enforced in state court. There are other provisions which are not part of the hunting code but are state public safety requirements, that will be enforceable in state court, such as carelessness, reckless use of firearms.

Shooting within 100 yards of a dwelling and there are certain other buildings identified in the statute that type of a provision is applicable, and there would be prosecution in state court. Posses-

"Will blaze orange be required after the state season is over?"

SCHLENDER: No. I think that is pretty much up to the hunter. I think that those people who have made the investment to buy blaze orange are pretty much set for the season. The other part of it is the concern for safety of the hunter and I think there is two points to be visible: One is to be visible so that you don't become a target, the other is to become visible and you become a target, and I think those considerations were taken into account.

"Could you outline what steps the DNR will be taking on an ongoing basis to inform non-Indian hunters of what the rights are?"

JACOBSON: I think I can address that best by the effort that the media will be making with the information that they gather tonight - it will go a long way towards informing others of what is happening here. We are using various publications that are produced by the department to cover the agreement as well as we can. The short time frame prior to this season doesn't allow us to do a very adequate job. It is one of the concerns that we have, but because of the terms of the agreement, I doubt that that should be a significant problem once the hunt is underway.

"Could you outline what is planning to be done on the tribal level to brief each individual hunter on what rules they have to follow?"

SCHLENDER: We are having a meeting tonight and we will be going through with the tribal membership in detail both the agreement and the laws that were adopted by the Lac Courte Oreilles tribes.

MEYER: Last week we had briefed the conservation wardens in the ceded areas of the provisions of the proposed agreement and tomorrow we are briefing those officers so that they will be fully informed. Also last week, we had a session in which we briefed the state patrol and the sheriff's department in northern Wisconsin on what they could expect and we are providing them with updated information.

(continued on Page 4)

tion of a handgun by a minor, is also a state court type of prosecution. Carrying concealed weapons--all the normal public safety provisions would be applicable. We mentioned earlier that in fact these rights are to be exercised only on public land and the normal trespassing laws on private land would take place and the only time that the tribal member can be hunting this fall on private land would be in a situation of state gun deer license and the permission of the property owner.

"We view this agreement as an exercise of sovereignty."

SCHLENDER: There are a couple of things that George didn't touch on. One of them was that the tribes will be exchanging the information that they collect from the hunt as well as the state will be exchanging information that they collect from the hunt as well as the state will be exchanging information on the deer hunt this year with the tribes. Another point with regard to safety, the tribes strongly encourage tribal members to avoid conflict with snowmobilers, skiers, hikers, and other outdoor winter users especially highly publicized organized events. The state strongly encourages non-tribal members to avoid conflict with treaty hunters and to be aware that tribal members may be exercising their treaty right to hunt deer on public land through January 31, 1984.

AGREEMENT

(continued from Page 3)

mation also as to what can be done. I think the long term as far as getting the information out, we have various publications such as the Natural Resource magazine. I had an article in the last issue by Bob Deer, our Native American Coordinator, to share what the basically whole treaty rights issue was all about. We will continue in that magazine to update as many people as we can.

We are in the process of calling as many of the local leaders and state leaders and letting them know; obviously, those are individuals that are points of contact for the public in general. So, in short term, I think we will rely on that. Long term, there will be things like state hunting and fishing pamphlets information going out to information and new types of informational tools.

"Given the short notice of this agreement—two days before the deer season—do you expect problems in getting the word out to tribal members and hunters which will avoid confrontation on opening day through misunderstanding?"

SCHLENDER: There has been a great deal of press on this already, a great deal of information that has already gone out that comes close to what was actually concluded in the agreement. Getting the word out is the primary focus and the scope of what we wish to do today. In regard to confrontation, we will be instructing our tribal members to avoid confrontation at all costs. I trust that the State of Wisconsin will also be informing their citizens as well. What should be kept in mind is that the tribal members have the right to exercise off-reservation fishing rights under this agreement. Citizens of the State of Wisconsin are enjoying the privilege that is granted by the State of Wisconsin. The tribes are exercising a right that was entered into and agreed to between the United States and the tribes themselves and I would hope that there would be no confrontations on either side.

MEYER: I agree that there has been quite a bit of publicity already and people should have started to be aware that there is an issue regarding the Chippewa treaty season for this year. I believe that more information will result from the exposure this evening; I am quite aware that the wire services will be covering this on a statewide basis, and most of the television stations in northern Wisconsin, and also some in southern Wisconsin will be covering this information.

The way the agreement is structured and some of the restrictions on the exercise of the right this year I think would tend to minimize any potential for confrontations. I believe the way the right is going to be exercised this year, in fact, will be basically pretty acceptable to the great majority of non-tribal individuals once they have had it explained to them.

Over the next year or two there is going to have to be a major educational process. It is not going to be done in one or two days, there are many different ways by which this treaty right will be exercised; whether it is trapping, fishing, hunting, gathering of wild rice, whatever, and it will be a long term educational process.

"You are going to be getting 6,250 deer tags, do you have any ideas at this time how many people are going to be applying for those?"

SCHLENDER: That is a real difficult question to answer and it is something that will be guided by how this particular hunt goes this year. I guess the short answer to your question is no, we do not know how many. The best we can say is that we issued more than 700 Tribal Member identification cards. And that is only from Lac Courte Oreilles and there are five other tribes that we are discussing. The number 6,250 was a negotiated number based upon a surplus of deer as gathered by DNR statistics and the estimate of the tribal members need.

"Is there a bag limit?"

SCHLENDER: No, there is no bag limit. The Lac Courte Oreilles tribe has adopted a position that we will issue those tags one at a time and as those are filled a tribal member may attain another tag and go about filling that tag as well. We have negotiated for a total number of tags, and it is a tribal decision as to how we will implement and enforce tribal laws with respect to filling those tags and conducting the hunt this year.

"Are the number of tags available, essentially unlimited because it says they can reapply for more tags if they give a 72 hour notice?"

MEYER: I wouldn't go so far as to say they are unlimited. I would say that the amount that the tribal members need after having depleted the tags already issued is a subject for future negotiation. I see two prime factors coming into play there, one is the basically stated agreement that, in fact, the tags have to be all used up, or reasonably anticipated that it is getting to the end. The other factor, in fact we do reach that point, we will have to make a biological determination on the condition of the deer herd then. Obviously, if the deer herd cannot withstand the additional hunting pressure, that would be the decision of the State of Wisconsin. If it could, there would be some flexibility we would have to deal with as far as additional tags.

"Tribal members presently can carry loaded guns on the reservation; will they be able to do this off the reservation on public land?"

MEYER: Yes. Obviously, one of the major concerns is public safety. I believe the individual asking the question is familiar with the Wisconsin Supreme Court Decision which basically stated that when tribes are exercising their treaty rights, in hunting, that in fact they can have loaded and uncased guns in their car. However, the agreement also states that there will not be night hunting. For instance, anytime after dark a tribal member would not be engaged in lawful hunting. Therefore, in no situation can a tribal member have a loaded gun in a car or an uncased gun at night.

"It would seem that during those nine days when we have a large number of hunters in the north woods there could be a real safety problem particularly allowing shooting over unpaved roads, how do you respond to that?"

MEYER: Currently, anyone can shoot across an unpaved road while hunting, so there is no change really. Obviously we felt it inappropriate, I am sure the tribes felt it inappropriate for us to place more restrictive provisions on the exercise of the treaty, hunting rights than those currently applicable to anyone exercising state hunting privileges.

"Is there anywhere in this agreement that the caliber of the weapons is addressed or will there be no restrictions on that?"

SCHLENDER: I am not going to speculate on what may be coming in the future, I am just going to say that the Tribal Members have in the past used proper caliber weapons to exercise their rights, and I would expect them to do so in the future.



Voigt Task Force members from Lac du Flambeau at meeting in Odenah, Gilbert Chapman and Mike Chosa.

"Hunting and deer management units 25, 27, 29B, 31, 33, 29A, 34, 36, 48, 57A, 57B will be restricted to buck only. Several of those units are surrounding or include Lac du Flambeau reservation. Is that going to make it a little harder for Lac du Flambeau members to hunt?"

CHOSA: There has never been a problem for Lac du Flambeau members to hunt. I would suspect that there were portions of the agreement that made members of the other reservations unhappy as well, but that is why we have negotiations—to iron out our differences.

"Over the next year or two there is going to have to be a major educational process."

"Do you expect any problems in the districts and if so how will you deal with the problems from the non-tribal members?"

JACOBSON: I don't anticipate any problem, I think there is a level of misunderstanding and it is going to have to be clarified, hopefully the media is going to help us with that. I have heard some of the rumors that are going around regarding conflict which are really difficult to appreciate, and I am hoping that in the course of the time available before the season begins that the people will begin to realize that this agreement is not very drastic and if it weren't publicized many hunters wouldn't even be aware that an agreement had been negotiated.

The number of people involved in tribal hunting is rather small, the harvest that they are hoping to make is going to be rather insignificant biologically. They have agreed to confine their hunt to the regulations that would apply to other hunters such as during the daylight hours, there would be no hunting at night for example. I think under those conditions, why we don't anticipate any serious problems, and of course we expect there should be restraint exercised by all people. This is a treaty right, and it has been made very clear by the court and we are people of law and order and I would expect that they would take that in mind and conduct themselves accordingly.

"Why does the tribe enter an agreement at all with the DNR, doesn't the U. S. Supreme Court just say go ahead?"

SCHLENDER: They say go ahead with respect to the fact that we have treaty rights. They leave open, however, the scope of state regulation of that right. I think George Meyer put it well before that the litigation process would be the only other process left open for the tribes to vindicate the right that they have already acquired.

There are other kinds of factors that go into any sort of determination as to the scope of that right. One of those being the biological considerations. And given the fact of such short notice that the tribal members have a treaty right to hunt and fish off the reservation they have exercised very prudent judgment in their forbearance in the exercises of that right. They should be able to exercise the right that is lawfully theirs, rather than face a confrontational situation, an adversarial situation, and multiple suits which would probably result from prosecutions under state law with respect to the deer hunt.

The agreement clarifies a lot of the situations and as I said before, the agreement is not necessarily good for either side because it contains concessions on both sides, and that is the nature of agreements. But what you attain is a clarity on those points on which you do agree. And it is that clarity that we seek in this particular hunt without any prejudice or any precedent or any other sort of binding situation with respect to this agreement in regard to the negotiations of future agreements.

(continued on Page 12)

THE TREATIES

The Lake Superior Chippewa is the anglicized legal name for one branch of the nation of people who once called themselves "Anishinabeg"—or, "original people." The Anishinabeg once ruled territory from Niagara Falls to the upper great plains, on both sides of the Great Lakes Basin.

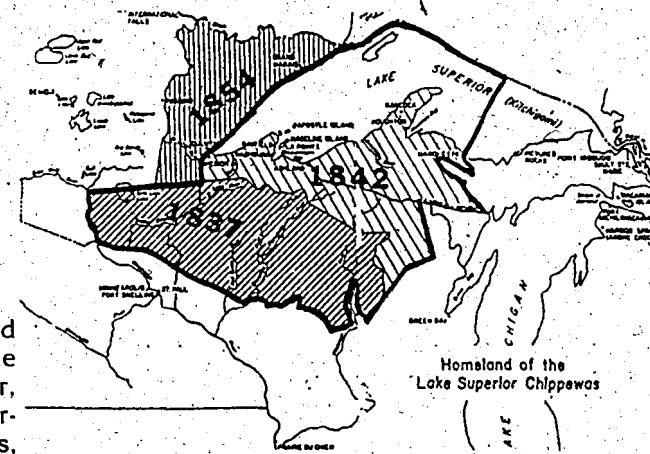
Historically, they spoke an Algonquin language, maintained a woodlands lifestyle, established religious and political institutions, engaged regularly in territorial battles, and in recent years played an important role in the trade which ultimately lead to the repopulation of the upper Great Lakes as we know it today. Tribal legends, archeological studies, and modern historians agree that the Anishinabeg migrated from the Atlantic coast and established the current homeland at about the same time Columbus reached San Salvador.

One common method of drawing distinctions among the Anishinabeg nation is to use the newer boundaries of new nations and states. As an example, the people of Lac Courte Oreilles are one group of six who comprise the Wisconsin-based Lake Superior Chippewas. There are others in both Michigan and Minnesota who are Lake Superior Chippewa Band members. The Lake Superior Chippewa is one band of many which comprise the southern Chippewa—those residing within the United States. When you combine the Southern Chippewa with the Chippewa of Canada, we once more speak of the Anishinabeg nation. Once the largest on the continent, now numbering about 100,000.

Intertribal conflicts threatened the peace of the frontiers, and the United States sought to prevent such hostilities by having the Indian tribes agree to definite boundary lines and specific areas which each claimed. Tribes from the upper Mississippi were assembled at Prairie du Chien in the summer of 1825 to conclude such a pact.

Treaty with the Sioux and Chippewa Sacs and Fox, Menominee, Ioway, Sioux, Winnebago, and a portion of the Ottawa, Chippewa, and Potawatomie Tribes.

The United States of America have seen with much regret, that wars have for many years been carried on between the Sioux and the Chippewas, and more recently between the confederated tribes of Sacs and Foxes, and the Sioux; and also between the Ioways and Sioux; which, if not terminated, may extend to the other tribes, and involve the Indians upon the Missouri, the Mississippi, and the Lakes, in general hostilities. In order, therefore, to promote peace among these tribes, and to establish boundaries among them and the other tribes who live in their vicinity, and thereby to remove all causes of future difficulty, the United States have invited the Chippewa, Sac, and Fox, Menominee, Ioway, Sioux, Winnebago; and a portion of the Ottawa, Chippewa and Potawatomie Tribes of Indians living upon the Illinois, to assemble together, and in a spirit of mutual conciliation to accomplish these objects; and to aid therein, have appointed William Clark and Lewis Cass, Commissioners on their part, who have met the Chiefs, Warriors, and Representatives of the said tribes, and portion of tribes, at Prairie des Chiens, in the Territory of Michigan, and after full deliberation, the said tribes, and portions of tribes, have



The Lake Superior Chippewa achieved its legal identity by participating in the 1825 Treaty at Prairie du Chien. As the below document states, various tribes were called together to delineate for the U.S. government, the specific areas that they owned. Following this agreement, the various chiefs and other leaders were viewed as one body who owned the land in common—they were referred to thereafter as the "Lake Superior Chippewas."

In the eyes of the representatives of the United States, whose constitution authorized that treaties be entered into with the various Indian Tribes who owned land sought by the U.S., the Lake Superior Chippewa was viewed as a distinctive political entity with full sovereign power. It is this recognition at this time in history and through the treaty-making process that makes clear the nature of future treaties and their continuing legitimacy and impacts which carry through to today.

We will look at four treaties between the Lake Superior Chippewa and the United States of America. The first three, 1825 at Prairie du Chien; 1837 at St. Peters; and 1842 at La Pointe are

TREATY OF PRAIRIE DU CHIEN August 19, 1825

agreed with the United States, and with one another, upon the following articles:

ARTICLE 1. There shall be a firm and perpetual peace between the Sioux and Chippewas; between the Sioux and the confederated tribes of Sacs and Foxes; and between the Ioways and the Sioux.

ARTICLES 2-9. [Designation of boundary lines between tribes and description of areas claimed by specific groups of Indians.]

ARTICLE 10. All the tribes aforesaid acknowledge the general controlling power of the United States, and disclaim all dependence upon, and connection with, any other power. And the United States agrees to, and recognize, the preceding boundaries, subject to the limitations and restrictions before provided. It being, however, well understood that the reservations at Fever River, at the Ouisconsin, and St. Peters, and the ancient settlements at Prairie des Chiens and Green Bay, and the land property thereto belonging, and the reservations made upon the Mississippi, for the use of the half breeds, in the treaty concluded with the Sacs and Foxes, August 24, 1824, are not claimed by either of the said tribes.

ARTICLE 11. The United States agree, whenever the President may think it necessary and proper, to convene such of the tribes, either separately or together, as are interested in the lines left unsettled herein, and to recommend to them an amicable and final adjustment of their respective claims, so that the work, now happily begun, may be consummated. It is agreed, however, that a Council shall be held with the Yancton band of the Sioux, during the year 1826, to explain to them the stipulations of this treaty; and to procure their assent thereto, should they be disposed to give it, and also with the Ottos, to settle and adjust their title to any of

reprinted in full and represent the land and rights reserved by members of the Lake Superior Chippewa. The fourth, the Treaty of 1854 at La Pointe, which established permanent reservations will be briefly summarized first.

As the Treaties of 1837 and 1842 state, the Lake Superior Chippewa ceded, or sold, to the United States what is now northern Wisconsin, and parts of Michigan and Minnesota. In exchange they reserved the right to occupy and harvest the resources in this former homeland. Within the treaties is the proviso that if they "misbehaved" the President may order their removal to lands yet unceded in Minnesota.

In 1850, such an order was issued but in fact was never implemented. In the eyes of the leaders of the Chippewa, peace was prevailing and therefore adamantly refused to move. The new Wisconsin legislature (Wisconsin joined the union in 1848) agreed and in early 1854 petitioned the U.S. Congress to rescind the removal policy. Tribal leaders travelled to Washington in 1852 seeking a negotiated settlement.

In fact the negotiations were successful and another Treaty was concluded at La Pointe. On September 30, 1854 the Lake Superior Chippewa ceded their remaining homeland in Minnesota. In exchange, they reserved permanent sites which we know today as the Wisconsin-based Indian Reservations of Red Cliff, Bad River, St. Croix, Lac Courte Oreilles, Lac du Flambeau and Mole Lake; other reservations were secured in Michigan and Minnesota.

The Lake Superior Chippewa, once known as "Gitche-gummi-wininniwag" "Great Lake Men," first become a distinctive political force, but as a consequence of land cessions returned to small, specific and separate reservations. Over a period of a century of separation these reservation islands fared poorly amidst a sea of wealth and development by their non-Indian neighbors. More recently there has been a revival.

(continued on Page 8)

the country claimed by the Sacs, Foxes, and Ioways.

ARTICLE 12. The Chippewa tribe being dispersed over a great extent of country, and the Chiefs of that tribe having requested, that such portion of them as may be thought proper, by the Government of the United States, may be assembled in 1826, upon some part of Lake Superior, that the objects and advantages of this treaty may be fully explained to them, so that the stipulations thereof may be observed by the warriors. The Commissioners of the United States assent thereto, and it is therefore agreed that a council shall accordingly be held for these purposes.

ARTICLE 13. It is understood by all the tribes, parties hereto, that no tribe shall hunt within the acknowledged limits of any other without their assent, but it being the sole object of this arrangement to perpetuate a peace among them, and amicable relations being now restored, the Chiefs of all the tribes have expressed a determination, cheerfully to allow a reciprocal right of hunting on the lands of one another, permission being first asked and obtained, as before provided for.

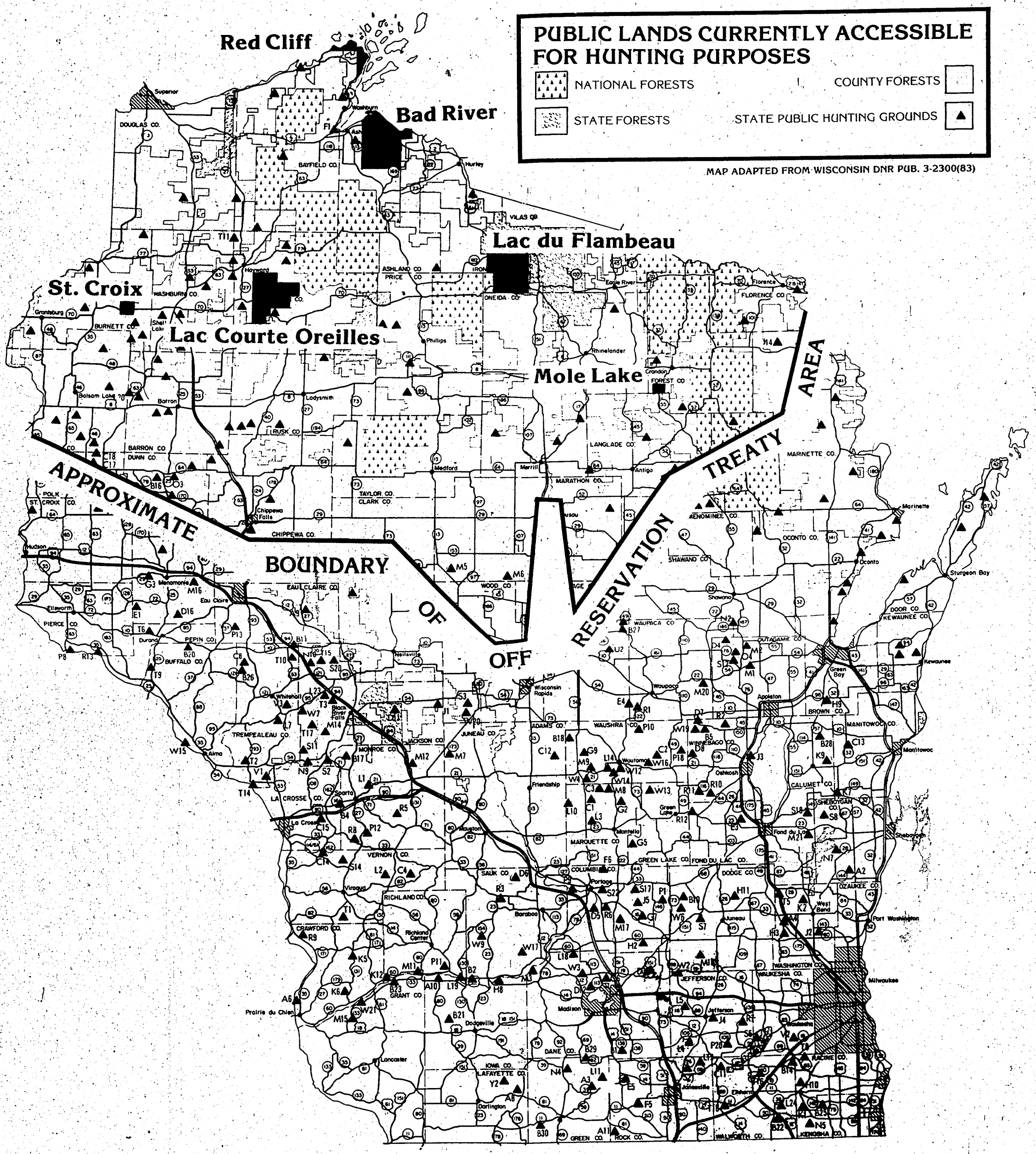
ARTICLE 14. Should any causes of difficulty hereafter unhappily arise between any of the tribes, parties hereunto, it is agreed that the other tribes shall interpose their good offices to remove such difficulties; and also that the government of the United States may take such measures as they may deem proper, to effect the same object.

ARTICLE 15. This treaty shall be obligatory on the tribes, parties hereto, from and after the date hereof, and on the United States, from and after its ratification by the government thereof...

[Charles J. Kappler, ed., *Indian Affairs; Laws and Treaties*, 2:250-54.]

CEDED TERRITORY UNDER VOIGT DECISION

WISCONSIN ONLY



MAP ADAPTED FROM WISCONSIN DNR PUB. 3-2300(83)

MASINAGAN

This map of Wisconsin shows the overall territory of the lands impacted by the Voigt Decision. Shown here are the locations of the six Chippewa Reservations, the approximate southern boundary on the ced-

ed territory, and the Wisconsin DNR listing of public lands currently open to hunting.

For more specific details contact your Tribal Council or District DNR office.

THE TREATIES

(continued from Page 5)

It has been only in the past few decades amidst individual court actions that the separate reservations have refound the political strength entrenched in those early treaties by the former leaders of the Lake Superior Chippewa. The current court action known as the "Voigt Decision" points clearly to the foresight and strength of the Lake Superior Chippewa. Once more, the separate groups are working together and this legal process may open avenues for additional ventures by the Lake Superior Band members.

TREATY WITH THE CHIPPEWA, 1837

Articles of a treaty made and concluded at St. Peters (the confluence of the St. Peters and Mississippi rivers) in the Territory of Wisconsin, between the United States of America, by their commissioner, Henry Dodge, Governor of said Territory, and the Chippewa nation of Indians, by their chiefs and headmen.

ARTICLE 1. The said Chippewa nation cede to the United States all that tract of country included within the following boundaries:

Beginning at the junction of the Crow Wing and Mississippi rivers, between twenty and thirty miles above where the Mississippi is crossed by the forty-sixth parallel of north latitude, and running thence to the north point of Lake St. Croix, one of the sources of the St. Croix river; thence to and along the dividing ridge between the waters of Lake Superior and those of the Mississippi, to the sources of the O-ha-sua-sepe a tributary of the Chippewa river; thence to a point on the Chippewa river, twenty miles below the outlet of Lake De Flambeau; thence to the junction of the Wisconsin and Pelican rivers; thence on an east course twenty-five miles; thence southerly, on a course parallel with that of the Wisconsin river, to the line dividing the territories of the Chippewas and Menomones; thence to the Plover Portage; thence along the southern boundary of the Chippewa country, to the commencement of the boundary line dividing it from that of the Sioux, half a days march below the falls on the Chippewa river; thence with said boundary line to the mouth of Wah-yap river; at its junction with the Mississippi; and thence up the Mississippi to the place of beginning.

ARTICLE 2. In consideration of the cession aforesaid, the United States agree to make to the Chippewa nation, annually, for the term of twenty years, from the date of the ratification of this treaty, the following payments:

1. Nine thousand five hundred dollars, to be paid in money.
 2. Nineteen thousand dollars, to be delivered in goods.
 3. Three thousand dollars for establishing three blacksmiths shops, supporting the blacksmiths, and furnishing them with iron and steel.
 4. One thousand dollars for farmers, and for supplying them and the Indians, with implements of labor, with grain or seed; and whatever else may be necessary to enable them to carry on their agricultural pursuits.
 5. Two thousand dollars in provisions.
 6. Five hundred dollars in tobacco.
- The provisions and tobacco to be delivered at the same time with the goods, and the money to be paid; which time or times, as well as the place or places where they are to be delivered, shall be fixed upon under the direction of the President of the United States.
- The blacksmiths shops to be placed at such points in the Chippewa country as shall be designated by the Superintendent of Indian Affairs, or under his direction.

If at the expiration of one or more years the Indians should prefer to receive goods, instead of the

nine thousand dollars agreed to be paid to them in money, they shall be at liberty to do so. Or, should they conclude to appropriate a portion of that annuity to the establishment and support of a school or schools among them, this shall be granted them.

ARTICLE 3. The sum of one hundred thousand dollars shall be paid by the United States, to the half-breeds of the Chippewa nation, under the direction of the President. It is the wish of the Indians that their two sub-agents Daniel P. Bushnell, and Miles M. Vineyard, superintend the distribution of this money among their half-breed relations.

ARTICLE 4. The sum of seventy thousand dollars shall be applied to the payment, by the United States, of certain claims against the Indians; of which amount twenty-eight thousand dollars shall, at their request, be paid to William A. Aitkin, twenty-five thousand to Lyman M. Warren, and the balance applied to the liquidation of other just demands against them—which they acknowledge to be the case with regard to that presented by Hercules L. Dousman, for the sum of five thousand dollars; and they request that it be paid.

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.

ARTICLE 6. This treaty shall be obligatory from and after its ratification by the President and Senate of the United States.

Done at St. Peters in the Territory of Wisconsin the twenty-ninth day of July eighteen hundred and thirty-seven.

Henry Dodge, Commissioner.

TREATY WITH THE CHIPPEWA, 1842

Articles of a treaty made and concluded at La Pointe of Lake Superior, in the Territory of Wisconsin, between Robert Stuart commissioner on the part of the United States, and the Chippewa Indians of the Mississippi, and Lake Superior, by their chiefs and headmen.

ARTICLE I.

The Chippewa Indians of the Mississippi and Lake Superior, cede to the United States all the country within the following boundaries; viz: beginning at the mouth of Chocolate river of Lake Superior; thence northwardly across said lake to intersect the boundary line between the United States and the Province of Canada; thence up said Lake Superior, to the mouth of the St. Louis, or Fond du Lac river (including all the islands in said lake); thence up said river to the American Fur Company's trading post, at the southwardly bend thereof, about 22 miles from its mouth; thence south to intersect the line of the treaty of 29th July 1837; with the Chippewas of the Mississippi; thence along said line to its southeastwardly extremity, near the Plover portage on the Wisconsin river; thence northeastwardly, along the boundary line, between the Chippewas and Menomonees, to its eastern termination, (established by the treaty held with the Chippewas, Menomonees, and Winnebagoes, at Butte des Morts, August 11th 1827) on the Skonawby river of Green Bay; thence northwardly to the source of Chocolate river; thence down said river to its mouth, the place of beginning; it being the intention of the parties to this treaty, to include in this cession, all the Chippewa lands eastwardly of the aforesaid line running from the American Fur Company's trading post on the Fond du Lac river to the intersection of the line of the treaty made with the Chippewas of the Mississippi July 29th 1837.

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, and that the laws of the United States shall be continued in force, in respect to their trade and intercourse with the whites, until otherwise ordered by Congress.

ARTICLE III.

It is agreed by the parties to this treaty, that whenever the Indians shall be required to remove from the ceded district, all the unceded lands belonging to the Indians of Fond du Lac, Sandy Lake, and Mississippi bands, shall be the common property and home of all the Indians, party to this treaty.

ARTICLE IV.

In consideration of the foregoing cession, the United States, engage to pay to the Chippewa Indians of the Mississippi, and Lake Superior, annually, for twenty-five years, twelve thousand five hundred (12,500) dollars, in specie, ten thousand five hundred (10,500) dollars in goods, two thousand (2,000) dollars in provisions and tobacco, two thousand (2,000) dollars for the support of two blacksmiths shops, (including pay of smiths and assistants, and iron steel &c.) one thousand (1,000) dollars for pay of two farmers, twelve hundred (1,200) for pay of two carpenters, and two thousand (2,000) dollars for the support of schools for the Indians party to this treaty; and further the United States engage to pay the sum of five thousand (5,000) dollars as an agricultural fund, to be expended under the direction of the Secretary of War. And also the sum of seventy-five thousand (75,000) dollars, shall be allowed for the full satisfaction of their debts within the ceded district, which shall be examined by the commissioner to this treaty, and the amount to be allowed decided upon by him, which shall appear in a schedule hereunto annexed. The United States shall pay the amount so allowed within three years.

Whereas the Indians have expressed a strong desire to have some provision made for their half breed relatives, therefore it is agreed, that fifteen thousand (15,000) dollars shall be paid to said Indians, next year, as a present, to be disposed of, as they, together with their agent, shall determine in council.

ARTICLE V.

Whereas the whole country between Lake Superior and the Mississippi, has always been understood as belonging in common to the Chippewas, party to this treaty; and whereas the bands bordering on Lake Superior, have not been allowed to participate in the annuity payments of the treaty made with the Chippewas of the Mississippi, at St. Peters July 29th 1837, and whereas all the unceded lands belonging to the aforesaid Indians, are hereafter to be held in common, therefore, to remove all occasion for jealousy and discontent, it is agreed that all the annuity due by the said treaty, as also the annuity due by the present treaty, shall henceforth be equally divided among the Chippewas of the Mississippi and Lake Superior; party to this treaty, so that every person shall receive an equal share.

ARTICLE VI.

The Indians residing on the Mineral district, shall be subject to removal therefrom at the pleasure of the President of the United States.

ARTICLE VII.

This treaty shall be obligatory upon the contracting parties when ratified by the President and Senate of the United States.

In testimony whereof the said Robert Stuart commissioner, on the part of the United States, and the chiefs and headmen of the Chippewa Indians of the Mississippi and Lake Superior, have hereunto set their hands, at La Pointe of Lake Superior, Wisconsin Territory, this fourth day of October in the year of our Lord one thousand eight hundred and forty-two.

Robert Stuart, Commissioner
Jno. Hulbert, Secretary

THE VOIGT TRIBES

There are six national groups within the borders of Wisconsin. These are the Oneida, Stockbridge-Munsee, Winnebago, Menominee, Potawatomi and Chippewa. The accompanying map identifies where they're located.

Below is a brief listing of the Chippewa Reservations that will be impacted by the implementation of the "Voigt Decision." All are members of the Voigt Inter-Tribal Task Force, currently headquartered on Lac Courte Oreilles Reservation.

Lac Courte Oreilles Reservation

The LCO (La-coot-oray) Reservation has about 70,000 acres within Sawyer County in northwestern Wisconsin. It was LCO who initiated the Voigt proceedings when their members were arrested for ice fishing on Chief Lake, one of the many inland lakes that are part of the reservation. For more information write the LCO Tribal Governing Board, Route 2, Hayward, WI 54843 or call 715/634-8934.

Red Cliff Reservation

The Village of Red Cliff is nestled around Buffalo Bay on the shores of Lake Superior. The reservation is located in northeastern Bayfield County and has about 14,000 acres within its boundaries. For more information write the Red Cliff Tribal Council, Box 529, Bayfield, WI 54814 or call 715/779-5805.

Mole Lake Reservation

Also known as the Sokaogon Chippewa, this is one of the smaller reservations with a contiguous land base. They have about 2,000 acres in Florence county and is the easternmost Chippewa reservation in Wisconsin. For more information write the Mole Lake Tribal Council, Route 1, Candor, WI 54520 or call 715/478-2604.

St. Croix Reservation

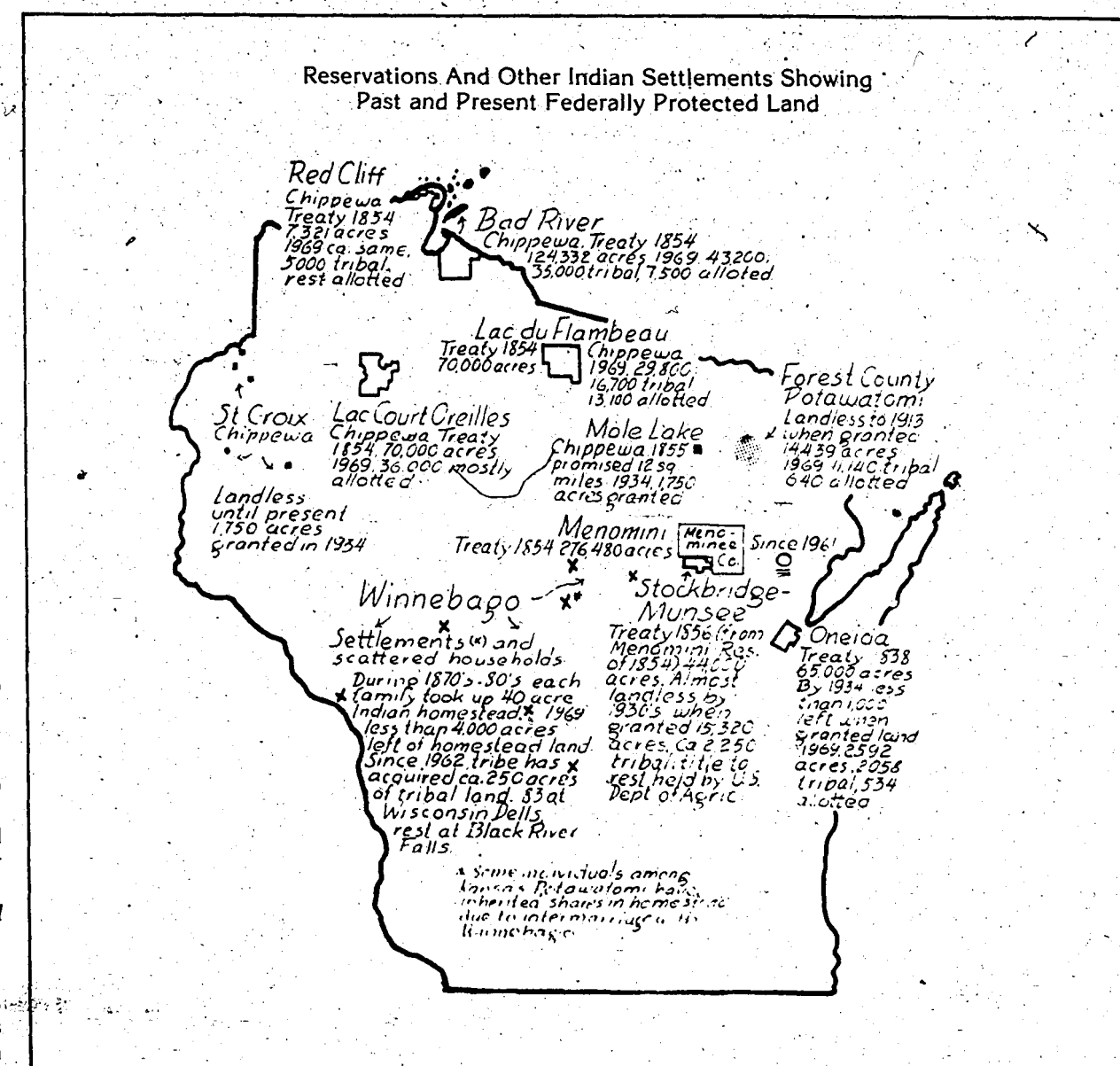
Rather than a contiguous area there are a number of separate land parcels which comprise the St. Croix Reservation. They are the westernmost Chippewa site in Wisconsin and hold lands in Barron, Polk and Burnett counties totaling about 2,000 acres. For more information write the Tri-County Ojibwa Center, Star Route, Webster, WI 54893 or call 715/349-2295.

Lac du Flambeau Reservation

This inland reservation in northeastern Wisconsin is also known for its northwoods beauty of lakes and forest. "Flambeau" has about 70,000 acres within Vilas, Oneida and Iron counties. For more information write the Lac du Flambeau Tribal Council, Box 529, Lac du Flambeau, WI 54538 or call 715/588-3303.



Voigt Task Force members at recent meeting on the Bad River Reservation (Front Row L-R): Dewey Schwalenberg and Gilbert Chapman (Lac du Flambeau), Arlyn Ackley (Mole Lake), Mike Chosa



Bad River Reservation

With an approximate size of 125,000 acres it is the largest of the Wisconsin-based Chippewa reservations. The Bad River flows through the reservation and into the rice beds of the Kokagon Sloughs. Bad River has lands in both Ashland and Iron counties and borders the south shore of Lake Superior. For more information write the Bad River Tribal Council, Route 2, Box 400, Ashland, WI 54806 or call 715/682-4212.

Other Reservations

There have been two other Chippewa reservations who have been regularly involved in the Voigt Inter-tribal Task Force. For more information write:

- Mille Lacs Tribal Council
Star Route
Onamia, MN 56359 612/532-4181
- Keweenaw Bay Tribal Council
Tribal Office Building
Baraga, MI 49908 906/353-6623

WISCONSIN BECOMES STATE

Wisconsin became a territory in 1836 and a state in 1848.

The area was in the French sphere of influence as a result of the Marquette-Joliet exploration of 1673. In 1763, at the end of the French and Indian wars, it was ceded to England. In the second treaty of Paris in 1783, the British not only gave formal recognition to the independence of the United States—they also ceded to the new nation the territory including Wisconsin. However, actual English control of the area did not end until the conclusion of the War of 1812. As part of the United States, Wisconsin was successively governed by the northwest ordinance of 1787, the laws of the Indiana territory, the Illinois territory, the Michigan territory and, finally, the Wisconsin territory.

On August 6, 1846, the congress of the United States authorized the people living in what was then called the territory of Wisconsin "to form a constitution and State government, for the purpose of being admitted into the Union." Based on this enabling act, the Wisconsin people called a constitutional convention to draft a fundamental law for the government of their state. The convention submitted its draft constitution to the people in April of 1847, but this first draft was rejected by the voters with only 14,119 votes cast for the proposed constitution, while 30,231 votes were cast against it.

A second draft, submitted in March of 1848, was ratified by a vote of 16,799 "for" and 6,384 "against." The constitution then adopted has remained the Wisconsin constitution to this day; however, in the intervening years the electorate has voted 130 times to ratify changes affecting over 59 sections of the constitution.

Wisconsin became a state on May 29, 1848. It was the 30th state to be admitted to the nation. It became a state, according to the Wisconsin enabling act passed by the U.S. congress in 1846, "on an equal footing with the original States in all respects whatsoever."

NEWSCLIPS

The following are from various newspapers reporting on the "Voigt Decision." Although there has been some hysteria by individuals, the reporting of this complex issue has been surprisingly thorough. In an additional note regarding media coverage, public radio station WOJB FM has run numerous stories and forums on Treaty Rights issues. To find out more about their coverage write WOJB FM, Route 2, Hayward, Wisconsin 54843 or call 715/634-2100.

Reed, Milwaukee Journal 2/20/83

An Indian, a warden and a spear

Hayward, Wis. — March 8, 1974 ... only a handful of people remember it now.

But in time yet to come, as the history of Wisconsin continues to be written, it may be recorded as one of the most significant dates, ever, in the story of the state and the people who live here.

On March 8, 1974, you see, there occurred an event that was to trigger a nine-year legal battle that culminated in the recent, highly publicized court decision giving Indians unrestricted hunting, fishing and trapping rights off their reservation.

If that decision withstands the test of further legal appeal, it will, almost certainly, mark the end of one era and the beginning of another in Wisconsin's attempt to regulate, conserve and perpetuate its fish and game resources.

Unique place in history

Beyond that, the date and the event have given seven men a unique place in Wisconsin history.

Inescapably linked, now, to legend and lore are Frederick and Michael Tribble, brothers

and enrolled members of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians.

Milton Dieckman and Larry Miller, Wisconsin conservation wardens employed by the state of Wisconsin.

Lester P. Voigt, then secretary of the Wisconsin Department of Natural Resources.

Donald Primley, then Sawyer County sheriff.

Norman Yackel, then Sawyer County district attorney.

Each are named, specifically and individually, in public document No. 74-C-313, which is a summons for civil action in US District Court for the Western District of Wisconsin.

The suit was filed March 18, 1975, on behalf of the Lac Courte Oreilles Band. It was signed by Peter Sferrazza, of Wisconsin Judicare, Inc., Wausau, attorney for the Indians.

Dieckman, Miller, Voigt, Primley and Yackel were named defendants.

Rights violated

It was the suit that brought about the present situation. It argued that treaties that were still valid gave the Tribble brothers and, indeed, the Lac Courte Oreilles Band the right of unrestricted hunting, fishing and trapping activities off the reservation and that those rights had been violated.

Dieckman is the only one of the defendants currently functioning in an official capacity in Sawyer County. Miller is assigned to the law enforcement division in Madison. Voigt, Yackel and Primley are engaged in other pursuits.

Frederick and Michael Tribble continue to reside on the Lac Courte Oreilles Reservation.

Dieckman remembers, now, how it was on March 8, 1974.

"It was a raw, cold day and we had a pretty good snow cover. I got a complaint that some Indian fish spearing shacks had been moved across the reservation line on Chief Lake and that fish were being taken out of them from public water. Miller, who was my area warden at the time, and I went out to investigate."

prisingly thorough. In an additional note regarding media coverage, public radio station WOJB FM has run numerous stories and forums on Treaty Rights issues. To find out more about their coverage write WOJB FM, Route 2, Hayward, Wisconsin 54843 or call 715/634-2100.

Not a first

It was not the first time that state conservation wardens had been called to the Chief Lake location. Other similar incidents had happened there before.

Chief Lake is a part of the Chippewa Flowage, one of Wisconsin's most famous walleye and musky fishing waters.

From an access point known as Pat's Landing you look out across the lake. The reservation line is invisible to anyone not familiar with the location, but it is well known to reservation residents, wardens and others who live in the area.

When Dieckman and Miller arrived, they found Frederick Tribble fishing from a shack across the reservation line on public waters.

Dieckman arrested him. Miller was the assisting warden.

What happened immediately after that is recorded on Form 4100-4, a pink sheet called a Violation Disposition Record.

The sheet for Frederick Tribble notes that he was charged with one count of possession of a spear for taking fish on inland waters and a second for occupying a fish shanty without name and address attached.

Here's the key

It notes that Frederick Tribble was found guilty by Circuit Judge Alvin Kelsey and was fined \$50 on the first count and \$10, plus \$9 costs, on the second. Under a line called "Facts of the Case" there is this notation:

"Defendant is an Indian. Fine stayed pending result of appealed cases." And that's the key to all that is happening now.

The cases were, indeed, appealed. And the suit was filed. And the long legal battle began. It is not yet over.

Wisconsin has indicated that it will appeal the most recent decision. And it will seek a stay of the order pending appeal which, if granted, would seem to put, for a while, the situation back to where it was when the wardens and Indians met in the snow and the cold and the wind on Chief Lake back on March 8, 1974.

In the meantime, there has been much weeping, wailing and gnashing of teeth out and about the state. Calls for moderation and restraint and patience have come from both sides.

There have been meetings. There will be more. There have been reports of vandalism and harassment.

The mood is ugly in places.

The truth is, though, at least as of this writing, that the Indians have shown no great inclination to take advantage of a situation that is obviously theirs.

After having talked with dozens of people on both sides of the issue, people in official capacity and just plain citizens, I offer this general overview, which has no more real value than the time it takes to read it:

There is no sense, no optimism that Wisconsin will win its appeal.

Except for pockets of die-hard resentment here and there, there is no real fear that Indian hunting will do great damage to the state-wide deer herd.

There is genuine fear that unregulated Indian fishing activity this spring, and in springs to come, will do extensive damage to the population of muskies and walleyes.

The bulk of the white population in Northern Wisconsin plainly and simply do not believe Indian authorities who say the tribe has a deep interest in conservation and will develop and control that interest among its membership.

So now we come back to March 8, 1974. You bet it's an important date. You bet.

Deer hunting conflict needs cool heads

Forbearance will be needed, from Chippewa and non-Chippewa hunters alike, if the tribe's special deer-hunting rights are to be implemented without ugly incidents.

Non-Chippewas must adjust to the fact that the tribe possesses such rights in much of the northern third of the state under legally valid treaties signed in the 1800s. A US Court of Appeals has so ruled, and the Supreme Court has sustained the decision. The question is not whether, but how, the rights will be guaranteed.

It would have been good if the details had been worked out well before the start of the regular deer season next Saturday, but that hasn't happened. Federal Judge James Doyle, citing procedural reasons, refused to rule on a proposal that would have let Chippewas start hunting deer outside their reservations a week before the official season.

Commendably, some Chippewa leaders have urged members of the tribe to observe the regular starting date this year, even though many members would prefer an earlier start as a symbol of their treaty status. Such restraint by the Chippewas should help ease opposition to the Indians' special hunting rights when fully implemented.

One thing that must be achieved in negotiations between the Chippewas and the Department of Natural Resources is a policy that will adequately protect the deer population. That is vital, not just to reassure non-Indians that there will be enough deer to go around, but to assure everyone that deer will be plentiful in the future.

Duluth News Tribune 8/3/83

Court urged to hear hunting rights case

LANSING, Mich. — Michigan Attorney General Frank Kelley urged the U.S. Supreme Court Tuesday to hear a Wisconsin case involving Indian hunting and fishing rights off the reservation.

Kelley said the key issue is whether an 1854 treaty eliminated Indian hunting and fishing rights reserved by the Chippewa Indians in two earlier treaties. Wisconsin has appealed a decision by the 7th U.S. Circuit Court of Appeals, which reversed a ruling that the 1854 treaty abolished off-reservation hunting and fishing rights.

The 1854 treaty established a number of reservations, including those for three Michigan-based Lake Superior Chippewa bands in the Upper Peninsula. But Kelley said the treaty was not clear about whether Indians would continue to enjoy off-reservation hunting and fishing rights reserved in treaties of 1837 and 1842.

Milwaukee Sentinel Editorial 9/10/83

Prompt ruling on Indian rights grows important

Those who had hoped for a clear exposition of Indian rights under 19th century treaties were disappointed when the US Supreme Court said this week that it lacks jurisdiction in a case involving the state and the Lac Courte Oreilles band of Chippewa Indians.

At issue in the dispute is whether, under an 1854 treaty, members of the tribe can disregard state hunting and fishing laws on public lands in northern Wisconsin.

A Federal Court ruling restricting the Indians was overturned when the Appeals Court returned the case to the Federal Court with instructions to spell out the Indians' rights.

The Supreme Court decision,

in effect, does the same thing. (It lacks jurisdiction because no state law is overturned in the lower court ruling.)

However, cool heads have prevailed on both sides. The tribal government has restrained its more militant members and has been meeting with state officials on how to implement the expected decision in favor of the Indians.

But, both sides deserve to know where they stand. The Federal Court should move as swiftly as possible to spell out those ground rules.

Fish and Wildlife Commission Proposed

ODANAH—At the bi-monthly meeting of the Great Lakes Indian Fisheries Commission, a proposal to expand commission authority to inland wildlife was received favorably.

The existing Fisheries Commission consists of tribal chairmen from six reservations bordering Lake Superior. These include Grand Portage and Fond du Lac from Minnesota, Keweenaw Bay and Bay Mills from Michigan, and Red Cliff and Bad River in Wisconsin.

According to Henry Buffalo, Jr., executive administrator, the present commission goals are tribal coordination to effective fishery management, technical assistance to participating lake tribes, and educational information to the public about treaty fishing rights.

On Tuesday, the commissioners were joined by representatives of the Inter-Tribal Voigt Task Force to discuss the joint commission proposal. Task Force representatives include the six Wisconsin-Ojibway reservations, Mille Lacs in Minnesota and Keweenaw Bay in Michigan.

The "Voigt Task Force" was formed early this year following federal court affirmation of off-reservation hunting and gathering rights in the landmark January 25, 1983 "Voigt Decision."

Since their formation the task force has been discussing resource management policies, tribal self-regulation options, and inter-tribal cooperation regarding interim measures for hunting pending final court action.

The next court appearance to set a schedule for final legal agreements is set for today. Yet to be determined is the scope of regulation that the state of Wisconsin will have over tribal members in off-reservation activity. Which lands in the ceded territory can be hunted will also be clarified by the court.

Although there was widespread support for the proposal to expand the commission it will require adoption by each of the Tribal Councils. When that happens, according to the draft constitution, the Great Lakes Indian Fish and Wildlife Commission will be created.

Under this proposal the existing Fisheries Commission staff would also administer projects currently being developed by the Voigt Task Force. There would be separate working committees: One for the Lake Fishery and another for the Inland Fish and Wildlife.

The meeting was held at the new headquarters of the Fisheries Commission, located in the old St. Mary's School on the Bad River Reservation.

For more information about the Great Lakes Indian Fisheries Commission, write Henry Buffalo, Jr., P.O. Box 9, Odanah 54861, or phone 682-6619.

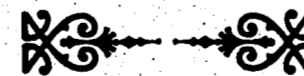
—THE DAILY PRESS—Ashland, Wis.—Thurs., Nov. 10, 1983



Henry Buffalo, Jr. discussing different options in the proposed Indian Fish and Wildlife Commission.

PETITION TO KEEP CHIPPEWA IN WISCONSIN

The following is a petition by the State of Wisconsin to the U.S. Congress requesting that Lake Superior Chippewa Band members not be removed from their traditional homeland. This petition was used in arguments in both the "Voigt" decision and in "Gurnoe."



PETITION TO RESCIND REMOVAL ORDER

On February 6, 1850, President Zachary Taylor invoked the power granted by the 1842 treaty and by executive order directed all of the Chippewa to remove themselves to unceded lands. Despite this order the Chippewa continued to reside in the northernmost part of the State of Wisconsin and to fish in Lake Superior.

Then, on February 27, 1854, in response to the presidential order of 1850, the Wisconsin legislature memorialized Congress as follows:

"MEMORIAL to the President and Congress of the United States, relative to the Chippewa Indians of Lake Superior.

To His Excellency the President of the United States, and to the Senate and House of Representatives in Congress assembled:

"The Memorial of the Legislature of the State of Wisconsin respectfully represents:

"That the inhabitants of the counties of La Pointe and Douglass have nearly unanimously signed a petition showing to your memorialists, that the Chippewa Indians in the region of Lake Superior are a peaceable, quiet, and inoffensive people, rapidly improving in the arts and sciences; that they acquire their living by hunting, fishing, manufacturing maple sugar, and agricultural pursuits; that many of them have intermarried with the white inhabitants, and are becoming generally anxious to become educated and adopt the habits of the 'white man.'

"Your memorialists would therefore pray His Excellency, the President of the United States, to rescind the orders heretofore

GURNOE VS. WISCONSIN

Three year before LCO members began the long legal fight to retain off-reservation treaty rights, a similar battle had been fought and won. The battle this time was the right to fish in Lake Superior—technically outside the boundaries of any reservation.

State vs. Gurnoe differs from Voigt on two points: First, it was a court action exclusively in state court. Secondly, it used the 1854 Treaty to establish fishing rights in Lake Superior.

Two separate cases were consolidated in Bayfield County Court by Judge Walter Norlin. On September 17, 1969, six enrolled members of the Red-Cliff Band, including Richard Gurnoe, were arrested. On October 9, 1969, two enrolled members of the Bad River Band were arrested.

Both parties were fishing adjacent to the shores of their respective reservations and both were arrested by state conservation wardens and charged with several violations of Wisconsin Statutes relating to size, location, and marking of gill nets while fishing in Lake Superior.

Both the county court and an appeal to Circuit Court Judge Lewis Charles denies the assertion that the activity was protected from state enforcement by the 1854 Treaty. The parties then appealed to the Wisconsin Supreme Court. Oral arguments were heard on December 1, 1971 and the Wisconsin Supreme Court decided on January 6, 1972 in favor of the Bad River and Red Cliff members.

The tribes argued successfully that while there was no specific language in the Treaty giving fishing rights it would be an inconsistency in Treaty interpretation to argue otherwise. It was also shown that the Chippewa had a 300 year history of continuous fishing in waters adjacent to what is now Bayfield and Ashland Counties. The court concluded that the Chippewa would not have entered the Treaty without the understanding that they would continue to fish in Lake Superior.

Like Voigt, the state must show that any regulations which it seeks to enforce against the Chippewa are reasonable and necessary to prevent a substantial depletion of the fish supply.

Following this case, the State of Wisconsin and the Red Cliff Band have negotiated an agreement on continued use as well as resource management.

Richard Gurnoe, whose name identifies the case, continues as a commercial fisherman. He is currently on the Red Cliff Tribal Council and was previously chairman of that council.

given for the removal of said Indians, and that such orders may be given in the premises, as shall secure the payment to said Indians, of their annuities at La Pointe, in La Pointe county on Lake Superior, that being the most feasible point therefor.

"And your memorialists also pray that the Senate and House of Representatives in Congress assembled will pass such laws as may be requisite to carry into effect such design and orders; and to encourage the permanent settlement of those Indians as shall adopt the habits of the citizens of the United States.

"And your memorialists firmly believing that justice and humanity require that such action should be had in the premises, will every pray, etc.

"Approved, February 27, 1854." On September 30, 1854, President Franklin Pierce signed the treaty. The 1854 treaty represents a fundamental change in federal policy toward the Chippewa inasmuch as it sanctioned their remaining in Wisconsin instead of removal to the unceded lands.

TREATY DEER SEASON

One day before the Wisconsin deer season was to begin, a negotiated agreement between Wisconsin and Chippewa Tribes was okayed by Judge James Doyle.

Under the terms of the agreement, both sides would exchange information about the fall-winter deer hunt. The tribes agreed to establish registration stations on each of their reservations and keep tabs on off-reservation Treaty hunting activity.

Although estimates for the overall state deer kill was high, the total for the nine day state season was still a record. According to DNR information the kill was 195,000 statewide, a new record for the state. The kill for the twelve northern counties however were down—these are the areas where much of the treaty hunting will occur.

The following is the record for the treaty deer kill up through and including December 8 (the Treaty deer season goes through January 31, 1984.) These include the Red Cliff, Bad River, St. Croix, Lac Courte Oreilles, Lac du Flambeau and Mole Lake Chippewa reservation in northern Wisconsin. A total of 6,250 tags were allocated, including 149 for Mille Lacs (Minnesota) members—these will be administered by the St. Croix tribe—Mille Lacs is eligible as a signatory to the 1837 Treaty.

OFF-RESERVATION TREATY KILL

NAME	ALLOCATION	TAGS		As of 12/8 TOTAL
		ISSUED	(Nov. 19-27) KILL	
Lac Courte Oreilles	1848	602	101	110
Lac du Flambeau	1632	530	110	140
Bad River	1514	400	34	41
Red Cliff	1011	352	45	50
Mole Lake	391	188	15	18
St. Croix	305	152	26	28
Mille Lacs	149	32	4	4
TOTAL	6250	2256	335	391

Total 1983 Wisconsin Deer Kill (November 19— November 28) 195,000



AGREEMENT

(continued from Page 4)

"Mr. Bresette, Red Cliff is already in an agreement with the state regarding Treaty fishing in Lake Superior. How has that gone? Has that worked well for both sides?"

BRESETTE: We feel that the negotiations that we have had on regulating the catch in Lake Superior reflects not everything that we want nor everything that the state wants. But through the negotiating process we were able to harvest through tribal members a commercial catch and provide jobs that otherwise wouldn't be available unless we went through a long litigation process.

MEYER: That was the first major agreement we have had with the tribe in the State of Wisconsin and it was an educational process and I think it helped us reach the agreement we are talking about today having gone through that process. It is not a perfect agreement, but if you look at the lake trout resource on Lake Superior, it has been well protected and I think if you compare it to the lake trout resource on at least one of our neighboring states you can see where the absence of an agreement has really hurt bad.

I think we are also going to agree there is always refinements and we learn from that agreement in this process. I think we would like to enter into some minor discussions to retouch that agreement. But basically it has done its job which was to protect the resource. Dave Jacobson, who has the responsibility in the Northwest Division to implement that agreement, will need more first hand information.

JACOBSON: I think my reaction is that we spent about 4 years working with the Red Cliff tribe working up that agreement and as George mentioned it is certainly an imperfect agreement. But, I guess I would like to focus on the reaction of that agreement at the time it was in place compared to the agreement we about to see in place this deer season. There was the same skepticism in the public at that time that I kind of feel there is now. I think the experience we had with the Red Cliff agreement has served us well and that it has been beneficial not only to the tribe and the white commercial fishermen, it has also been a boon to the sport fishermen. We have areas in Lake Superior, for example, that are set aside exclusively for sport fishing. And the conflict between tribal fishermen, white fishermen, and rod and reel fishermen is generally been eliminated. So there are tremendous advantages to negotiating process in recognizing that it is imperfect. And I believe the same thing could be said for the agreement we are about to implement now.

"Have all the tribes passed the ordinances necessary to activate this agreement? What about the court systems? Does each tribe have a court system set up in order to handle any problems that might ensue?"

SCHLENDER: You don't need to have a court system nor do you need to pass a code to implement the agreement. There is a provision in the agreement that those tribes that do not wish to exercise, or in some manner prohibit from exercising the tribal jurisdiction, that those matters would be sent to state court. There are three tribes that are in a position to implement and exercise tribal jurisdiction over violations occurring in the ceded territory by tribal members violating the agreement. I believe those to be Lac Courte Oreilles, Lac du Flambeau, and Red Cliff.

"Dave Jacobson, you said earlier there is a level of misunderstanding that should be clarified. What is that level and what is that misunderstanding?"

I think the misunderstanding that I see is the belief that this is going to be an unregulated hunt conducted by the tribes. It is not going to be an unregulated hunt; the tribes have clearly committed themselves to a series of rules and to conduct this hunt in a way that will be compatible with existing state statutes regarding hunting deer in this state.

I don't expect to see any wholesale slaughter of the herd and I believe that hunt is going to be carried out in a very orderly manner.

"What is the level of misunderstanding; is it predominate or is it a few people?"

JACOBSON: Deer hunting is a big business in Wisconsin with about 650,000 people involved and if the level of calls received in our office in Spooner and our area offices around the northwest district is any indication the level of misunderstanding and concern is relatively low. I doubt that in a combination of offices today that we received more than 25-30 calls inquiring about the nature of this agreement.



LCO members Frank Link, conservation warden and Goshkibosh, Tribal Governing Board member observing the negotiations at Lac Courte Oreilles.

"Is discouragement from hunting certain areas rather than prosecution a risky way to manage the resources?"

MEYER: In the agreement deer management units were developed into three categories. Those that were in the opinion of our department biologists, above goal is the area where we strongly encouraged the tribal members and the tribes have agreed to encourage their members to conduct the portion of their hunting. The second category is a category that you refer to, and that is an area where we are at about goal. Our biologists feel there could be some hunting pressure there without adverse impact on the deer herd. Obviously, we would rather have the herd thin in those areas than above goal and that is why we have asked the tribes to encourage their members to go into the first category. There is a third category where the deer herd is below goal, and in those areas there is a binding commitment by the tribes and tribal members that buck only hunting would take place in those areas, and that is enforceable either in tribal court or state court, depending on which tribe.

"Will there be further negotiations after January 31, 1983 to put together a new agreement for the 1984 deer season; and what about the fishing and ricing rights with respect to further negotiations with next years hunt?"

SCHLENDER: Yes, I would hope that there would be some negotiations entered into to come about to agree on the rules of that particular hunt. With regard to the fishing and ricing questions, that is something that has yet to be explored, there is no agreement as to whether or not the state of Wisconsin will sit down in negotiation with the tribes. We haven't gone to the point where we have confirmed that.

MEYER: From the State's standpoint obviously we will be watching carefully how this fall's treaty deer season unfolds, but we are very confident of the fact that it will be a successful use of the treaty hunting rights. We would be anticipating that the long term and also for the short term that the method of negotiation and reaching positive agreements is much preferable to litigating individual cases which is a very confrontational approach and often results in bad resource management.

Some of the other states have gone in this direction, and basically the long term law that got set up by court decisions ended up having adverse effects on the resources. So we are watching this approach this fall very carefully and if it develops the way we think it will it will hold well for continued negotiations for both short term and long term on the various regulations for the various fish and wildlife species.