Special Edition

THE VOIGT DECISION IN REVIEW

MASINAIGAN

A CHRONICLE OF THE LAKE SUPERIOR OJIBWAY

January, 1985 Supplemental Edition

THE CONTINUING SAGA OF VOIGT

The rights reserved by six Wisconsin Chippewa tribes in the early Treaties of 1837 and 1842 were affirmed by a three judge panel of the U.S. Court of Appeals Seventh Circuit on January 25, 1983. This decision was supported by the U.S. Supreme Court of Appeals when they refused to hear the appeal on October 3, 1982. To the tribes, many of whom had lost faith in signed agreements, this was a major victory for their legal rights; to the general public it became a matter of dismay, a threat, a source of misunderstanding and, sometimes, of jealousy.

Largely due to misinformation and ignorance - ignorance not only of the law, but of tribal government, tribal sovereignty, tribal resource management programs and of Indian culture as a whole - the non-Indian public responded in fear to the Voigt Decision, falling prey to the scare tactics of a few who proclaimed publically that the tribes now had "unlimited" hunting and fishing rights.

The Voigt Decision - one of a series of federal court rulings which upholds treaty rights granted to Indian people a century or more ago, has taken northern Wisconsin by storm since its final affirmation in January, 1983. Essentially, it granted six Chippewa tribes limited hunting, fishing and gathering rights on ceded territory in northern Wisconsin. The degree of state regulation allowable in the exercise of those rights has still not been decided, but a decision from Judge James Doyle, U.S. Federal Circuit Court, 7th District is expected in May, 1985.

Through paid advertisements, letters to the editors and public meetings, both individuals and organizations frightened area residents by saying the tribes would ravage the resources, destroy all the game, frighten away tourists, and consequently, destroy the economic base of tourism for the entire area. Finding little to substantiate their "resource depletion" themes, they also began to pick at old myths and prejudices, relying on images of the "drunken Indian," of Indian people lolling around welfare offices, of laziness and carelessness. Speakers at meetings proclaimed the Indian culture was dead and said that reservations should be terminated. Signs appeared with "Save a DEER, Shoot an Indian" and other comparable slogans. Talk bandied about communities and in private conversations of killing Indians seen hunting or fishing.

Meanwhile, tribes were busy with the tasks of providing adequate management to the expanded hunting and fishing privileges. Tribal courts were being enhanced or begun on various reservations, enforcement staff improved and resource management staff and programs expanded. Representatives were also sent to the negotiating tables where interim agreements for the exercise of hunting, fishing and gathering rights could be hashed out between the tribes and the Wisconsin Department of Natural Resources (DNR) for each season, interim agreements being necessary until Doyle's final decision is reached.

A polarization between Indian and white communities, provoked by misunderstanding, and doomsday rhetoric, began to appear and deepened as the issues of treaty rights landed in the middle of the 1984 electioneering process, and politicians were forced to make a stand in front of an angry and confused public. Treaty issues became a political hot potato.

Still, few members of the public understood the Voigt Decision. Few still understand much of the Voigt Decision, or much in regard to the status of tribes in this country, their privileges and their restrictions. Perhaps too few care to understand, and we must continue to wage battles in ignorance, charging at windmills with Quixotic bravado.

However, for those who seek more background on the Voigt Decision, on tribal hunting and fishing rights in northern Wisconsin, this special edition of the Masinaigan intends to provide both background and a review of events as they have been played out thus far.

GLIFWC's Executive Director, Ray DePerry discusses concerns with Voigt Task Force Chairman, James Schlender, LCO. Both men have been involved in the process of implementing the Voigt Decision since the rights of the Chippewa were affirmed. (Photo Bob Albee)

INSIDE

TRAILS OF TREATIES

Although the drama of Indian-white warfare has always captured the popular imagination, Native Americans lost far more of their land and independence by the bloodless process of signing treaties than they ever did on the battlefield. Indeed, most of the violence between Indians and whites flared up because Native Americans were being deprived of the very land promised them in earlier treaties. "You give us presents, and then take our land," complained the Cheyenne spokesman Buffalo Chief at the famous Treaty of Medicine Lodge in 1867. "That produces war."

To the Indians the practice of drafting a written agreement to settle political and territorial disputes was alien and unfamiliar, and as a result, it was used against them to great advantage. As Red Cloud, the Oglala Sioux leader, recalled, "In 1868 men came out and brought papers. We could not read them, and they did not tell us truly what was in them... When I reached Washington the Great Father explained to me what the treaty was, and showed me that the interpreters had deceived me."

At first the European powers drew up treaties to cement relations with influential tribes, to "bury the tomahawk"—to use the famous phrase found in an early southern Plains treaty—with hostile Indians, and to formalize trading partnerships. During the period of New World colonization, the warring European nations used treaties to bolster their forces with Indian auxiliaries. As the white population grew, however, and Indian power waned, the documents became thinly disguised bills of sale, transferring ancient tribal lands into white hands.

In the fine print, these treaties usually called for Indians to move to the least fertile corner of their existing lands, to abandon their homes altogether and move elsewhere, or to slice up their holdings into single-family allotments, which the Indians were supposed to cultivate while selling off the rest to white land speculators. In some cases, whites reserved the right to run their wagon trails or railroad tracks across Indian land. Inevitably this brought trouble as settlers homesteaded and prospectors mined in country they were supposed to be only passing through.

The legal basis for making treaties with the Indians was established as early as the sixteenth century by lawyers for the Spanish court. Although vast portions of the New World were claimed by the conquistadors, Spain still felt that the Indians enjoyed some vague "aboriginal title" to the country. Ideally the king's envoys were to obtain the "voluntary consent" of Native Americans before usurping their lands. Other European and American legalists also granted Indians a "right of occupancy." Behind these manipulative phrases and contradictory postures lay the white man's vacillation between greed and conscience. He was determined to take possession of the territories he "discovered," but he needed to feel he was acquiring them fairly and legally. The muddled, controversial saga of Indian land loss shows the white man alternately behaving as the fair-minded negotiator trying to strike an honest bargain for the lands he had to have, and then as the ruthless land grabber employing any pseudo-legal scheme and threat of military power to drive the Native American from his home. By the mid-eighteenth century, treaty making was standard operating procedure for getting what one wanted from the Indians.

Reprinted from Native American Testimony, Edited by Peter Nabokov

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MARCH 8, 1974

THE BEGINNING

March 8, 1974

On this date Fred and Mike Tribbble, 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, outsidse 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 defendents 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 Circuits 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.

The beginnings of the case which led to Voigt were humble - a small incident involving minor infractions of the State's ice fishing laws provided the seed for the Voigt Decision, following eight years of litigation.

In affirming the tribes' rights to hunt, fish and gather on ceded lands, the Courts had to not only examine the Treaties, but also consider the history of tribal use of the resources and legal precedents in interpreting Indian law.

LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS, et al., Plaintiffs-Appellants, Cross-Appellees,

Lester P. VOIGT, et al., Defendants-Appellees, Cross-Appellants.

UNITED STATES of America, Plaintiff-Cross-Appelles,

v.

STATE OF WICONSIN, a sovereign state, and Sawyer County, Wisconsin, Defendants-Cross-Appellants.

Nos. 78-2398, 78-2443 and 79-1014.

United States Court of Appeals, Seventh Circuit.

Argued Sept. 14, 1982.

Decided Jan. 25, 1983.

As Amended on Denial of Rehearing and Rehearing En Banc March 8, 1983.

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.

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 LacCourte Oreilles Tribe originally filed the suit, five other tribes who were signatures to the Treaties of 1837 and 1847 joined the final arguments. They include Red Cliff, Bad River, St. Croix, Lac du Flambeau, and Mole Lake.

THE VOIGT TRIBES

There are six national groups within the borders of Wisconsin. These are the Oneida, Stockbridge-Munsee, Winnebago, Menominee, Potawatomi and Chippewa.

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.*

Lac Court Oreilles Reservation

The LCO (La-coot-oray) Reservation has about 70,000 acres within Sawyer County. 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.*

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.*

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 I. Crandon, WI 54520 or call 715/478-2604.*

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.*

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.*

BASIS OF LEGAL INTERPRETATION: U.S. COURT OF APPEALS, 7TH CIRCUIT

Actions were brought involving property interests and hunting and fishing rights of Lake Superior Chippewa Indians in northern Wisconsin. The United States District Court for the Western District of Wisconsin, 464 F.Supp. 1316, James E. Doyle, J., granted defendants' motion for summary judgment, and plaintiffs appealed. The Court of Appeals, Pell, Circuit Judge, held that : (1) the qualifying language in the treaties of 1837 and 1842 did not confer unlimited discretion on executive to terminate the Indians' unufructuary rights, but rather required that Indians be denied such privileges only if they were instrumental in causing disturbances with white settlers; (2) the doctrines of res judicata or collateral estoppel did not preclude consideration of the question of the validity of the removal order of 1850; (3) the 1850 removal order exceeded the scope of the 1837 and 1842 treaties and was therefore invalid; and (4) the Indian band's usufructuary rights established by the 1837 and 1842 treaties were neither terminated nor released by the 1854 treaty.

Reversed and remanded.

1. Federal Courts

Traditional standard that summary judgment will not lie unless, construing all inferences in favor of party against whom the motion is made, no genuine issue of material fact exists was applicable to case which was decided on cross motions for summary judgments rather than standard that some deference must be accorded the findings of trial judge, and that no appellate presumptions against judgment should apply, where plaintiffs did not stipulate to trial based on documents before the court, and indicated that if summary judgment were not granted they would call expert witnesses at trial, since case was not essentially a bench trial involving documentary evidence. Fed. Rules Civ. Proc. Rule 56, 28, U.S.C.A.

2. Indians

Indian treaties must be construed as the Indians understood them.

3. Indians

Canons of construction pertinent to Indian law mandated that Court of Appeals adopt a liberal interpretation of Indian treaties in favor of Indians, considering history of the treaty, the negotiations, and the parties' practical construction; such same principles had to also be applied construing an act of Congress that purported to extinguish treaty rights of the Indian.

4. Indians

Aboriginal title is the right of native people in the new world to occupy and use their native area, and is title good against all but the United States.

5. Indians

"Treaty-recognized title," which refers to congressional recognition of a tribe's right permanently to occupy land, constitutes a legal interest in the land and, therefore, could be extinguished only upon the payment of compensation.

6. Indians

Both aboriginal and treaty-recognized titles carry with them a right to use the land for the Indians' traditional subsistence activities of hunting, fishing, and gathering.

7. Indians

A termination of Indians' treaty-recognized rights by subsequent legislation must be by explicit statement or must be clear from the surrounding circumstances or legislative history.

8. Indians

Statements in 1837 and 1842 treaties with Lake Superior Chippewa Indians explicitly reserving usufructuary rights to the Indians "during the pleasure of the President of the United States," and stating that the stipulated rights would endure until the Indians were "required to remove by the President of the United States," did not confer unlimited discretion on the executive, but rather required that the Indians be denied their usufructuary privileges only if the Indians were instrumental in causing disturbances with white settlers where only evidence of the Indians' understanding of the treaties indicated that such was their belief as to what the treaties meant. Treaty with the Chippewas, Arts. 1, 5, 7 Stat. 536, Art. II, 7 Stat. 591.

9. Indians

An act of Congress should be construed as extinguishing Indians' usufructuary rights only if the legislation expressly stated that such was the intent of Congress of if the legislative history and surrounding circumstances made clear that abrogation of treaty-recognized rights was intended by Congress.

10. Federal Courts

A grant of summary judgment may stand if a reviewing court finds any sufficient basis for the judgment in the record.

11. Judgment

Doctrine of res judicata bars subsequent suit between same parties or their privies based on the same cause of action.

12. Judgment

Doctrine of res judicata did not preclude consideration of question of whether 1850 removal order which required removal of Lake Superior Chippewa Indians frm land ceded by treaty was valid where action was brought by bands of Indians against state officials, in prior action bands of Indians sued the United States, state's intervenor petition in prior action was dismissed and neither issue framed by parties in prior action nor court's holding required consideration of the 1850 removal order.

13. Judgment

Doctrine of collateral estoppel did not preclude consideration of question of whether 1850 removal order which required removal of Lake Superior Chippewa Indians from land ceded by treaty was valid where, in prior case, to the extent removal order was deemed relevant by court, it was in a limited context, and validity of removal order was not an issue.

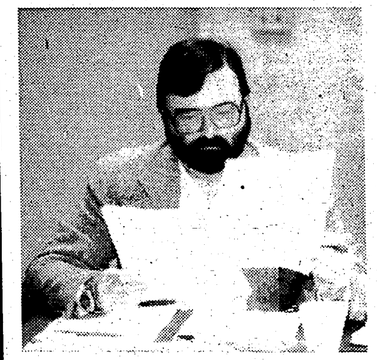
14. Indians

Congress has plenary authority over Indian affairs derived from the treaty power and the Indian Commerce Clause. U.S.C.A. Const. Art. 1, § 8, cl. 3; Art. 2, § 2, cl. 2.

15. Indians

An executive order cannot exceed scope of the authority delegated by Congress, and thus president cannot purport to implement an Indian treaty by action which in fact exceeds limits of that treaty. U.S.C.A. Const. Art. 1, § cl. 3; Art. 2, § 2, cl. 2.

Based largely on the Treaties of 1837 and 1842, the Voigt Decision recognizes that the Chippewa leaders did, indeed, intend to provide for their people by maintaining their means of existence - reserving their rights to hunt, fish and gather on territories sold. The Treaty of 1825 essentially established the tribes of northern Wisconsin into a legally recognizable entity - the Great Lakes Chippewa. The Treaty of 1854 provided for the retention of lands which became the present-day reservations of the various Chippewa bands.



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

16. Indians

Removal order of 1850 which required removal of Lake Superior Chippewa Indians from land ceded by treaty, exceeded scope of the 1837 and 1842 treaties and was therefore invalid, since treaties authorized termination of Chippewas' right to exercise the usufructuary privileges on ceded land only if the Indians misbehaved by harassing white settlers, and evidence sustained finding that the Indians had not misbehaved. Treaty with the Chippewas, Art. 5, 7 Stat. 536; Art. II, 7 Stat. 591.

17. Indians

Usufructuary rights of band of Lake Superior Chippewa Indians established under 1837 and 1842 treaties were neither terminated nor released by 1854 treaty made no reference whatsoever to usufructuary rights of the Chippewas who had previously ceded their territory to the United States, and where nothing compelled the conclusion that the band understood the 1854 treaty as abrogating their treaty-recognized usufructuary rights. Treaty with the Chippewas, Art. 5, 7 Stat. 536; Art. II, 7 Stat. 591; Arts. 1, 2, 11, 10 Stat. 1064.

(from LCO vs. VOIGT transcript)

A HISTORY OF CHIPPEWA HUNTING AND FISHING

Taken from the legal manuscript of the Voigt Decision, this history provides a background to the Chippewa's use of the resource as a matter of subsistence. It was, and still is for many, an integral part of their culture and existence.

FACTS

Because one of the subsidiary issues in these cases is whether they were appropriate for resolution by summary judgment, a rather detailed recitation of the evidence before the district court is required.

The LCO band was one of many bands of Chippewa Indians who lived in areas of northern Wisconsin, the Upper Peninsula of Michigan, and northeastern Minnesota. Together with several other bands, the LCO band was referred to as "Lake Superior Chippewas." The Chippewa bands subsisted mainly by hunting, fishing, trapping, harvesting wild rice, making maple sugar, and engaging in various gathering activities.

During at least the first half of the nineteenth century, the policy of the federal Government was to buy Indian lands where white settlement was anticipated and to provide for removal of the Indians to lands farther west. This is called the "removal policy."

In 1837, Wisconsin Territorial Governor Henry Dodge was authorized to negotiate a treaty with the Chippewas for the purchase of land in northern Wisconsin, just south of the Lake Superior basin. On March 3, 1837, Congress appropriated $10,000 for "holding treaties with the various tribes of Indians east of the Mississippi River, for the cession of lands held by them... and for their removal west of the Mississippi." 5 Stat. 158, 161. On May 13, 1837, the Office of Indian Affairs wrote Treaty Commissioner Dodge concerning the Government's purposes in seeking a treaty at that time. The letter indicated that the land was valuable for its pine timber and that acquisition by the United States would open the territory for white settlement.

A treaty council was held. According to the notes of Verplanck Van Antwerp, secretary of the council, Commissioner Dodge told the assembled Indian chiefs in July 1837 that the Government wished to buy a portion of their land that was barren of game and not suited for agriculture. Dodge described the land sought as "abound[ing] in pine timber, for which their Great Father the President of the United States wished to buy it from them, for the use of his white children." The Indians responded that they wanted to be able to continue their gathering and hunting activities on the lands, that they wished annuities for sixty years, after which their grandchildren could negotiate for themselves, and that they desired provisions for the half-breeds and traders. Governor Dodge pointed out to the Indians that the "Great Father" never buys lands for a term of years, but that he would agree on behalf of the President to grant the Indians the "free use of the rivers, and the privilege of hunting upon the lands you are to sell to the United States during his pleasure."

The following day the Indians reiterated, through their spokesman Aish-ke-bo-gi-ko-she, that they wished to reserve the privilege of using the land for gathering, hunting, and fishing activitives. They said that they could not live, deprived of these means of sustenance. Commissioner Dodge replied in part: "I will make known to your Great Father, your request to be permitted to make sugar, on the lands; and you will be allowed during his pleasure, to hunt and fish on them. It will probably be many years before your Great Father will want all these lands for the use of his White Children.

The Treaty of 1837, which was signed by a Lac Courte Oreilles chief, among others embodied these understandings. Article 1 of that treaty states that the Chippewas "ceded to the United States all that tract of country" described in the article. The United States agreed to pay annuities to the Indians, to distribute money to the half-breeds, and to pay some Indian debts. Article 5 of the Treaty states:

> 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 [sic] to the Indians during the pleasure of the President of the United States.

In 1841, Congress appropriated $5,000 for the expenses of negotiating a treaty to extinguish Indian title to lands in Michigan, a portion of which was held by the Chippewa bands. In July 1842, Robert Stuart, Superintendent of the Michigan Indian Agency wrote to the Secretary of War. He stated that, subsequent to the 1841 appropriation, it had been learned that the mineral district Congress wished to acquire extended beyond northern Michigan into Wisconsin as well as the Michigan land, stating that "the main importance of immediately acquiring this territory, is owing to its supposed great mineral productivity." He noted that it would not be necessary to remove the Indians from the land until the land was required for white settlement. A month later, Stuart was appointed commissioner to negotiate the proposed treaty with the Chippewas. His instructions stressed the importance of gaining the mineral lands and acquiring control over the south shore of Lake Superior. He was told that general removal of the Indians from the territory would not occur for "considerable time."

Stuart reported the outcome of his negotiations with the Chippewas in an annual report to the Bureau of Indian Affairs dated October 28, 1841. He noted the importance of the mineral deposits on the land and indicated that the concluded treaty had arranged a sharing of annuities between the Lake Superior tribes and the Mississippi tribes. This sharing was necessary to end a feud that had developed between the tribes after the 1837 treaty.

The 1842 treaty included a cession of land north of that ceded in 1837. Article II of the Treaty of 1842 stated:

> 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.

The December 5, 1842, report on the treaty by the Commissioner of Indian Affairs to the Secretary of War stressed the importance of acquiring the minerals and of the commanding the south shore of Lake Superior. A report by the Superintendent of the Wisconsin Indians to the Commissioner of Indian Affairs the following year noted that exclusive possession of the Lake Superior shore would be commercially important, especially as settlements and mineral trade expanded.

Copper mining along the south shore of Lake Superior, as well as white settlement on the ceded areas, increased greatly following the Treaty. As early as 1845, the Commissioner of Indian Affairs again suggested that the Chippewas be removed to land set apart for them west of the Mississippi. The reports of the period indicate that the Commissioner envisioned "improvement of the Indian race" by decreasing their reliance on traditional activities such as hunting and fishing and by compelling them to "resort to agriculture and other pursuits of civilized life." The fact that whites were selling whiskey to the Indians was seen as another reason for removal.

During the summer of 1847, two Government agents attempted to secure Chippewa agreement to a plan of resettlement. They were unsuccessful. In 1847, the Commissioner of Indian Affairs again suggested that the resettlement was desirable. His report did not mention conflicts between the Indians and whites. The La Pointe subagent was more specific. He recorded two incidents of violence between the Chippews and white settlers. In one, an Indian was acquitted of a murder charge on the ground of self-defense. In the other, the investigating agent concluded that the whites were at fault. The Commissioner wrote:

> I fear, that in our accounts of outrages and crime, we have done the Chippewas, if no other tribe, injustice in many cases; for I find on comparing them with almost any civilized community of the same size, for four years, there will be found the smaller aggregate of crime on the part of the savage; and every crime of any magnitude which has been committed may be traced to the influence of the white man.

In his 1848 Report, the Commissioner noted that, although most other Wisconsin tribes had been removed, the Chippewas remained in Wisconsin. The Commissioner stressed the desirability of "civilizing" the Indians by requiring them to settle on smaller grounds where they would have to rely on agriculture. No conflicts between Indians and whites were reported.

"Behind the squaw's light birch canoe
The steamers plow the waves.
And village lots are staked for sale
Above old Indian graves.
They crossed the lakes as of old
The pilgrims crossed the sea.
To make the west as they had the east
A home for trusts and monopoly."

From Benjamin Armstrong

The 1849 Report of the Commissioner of Indian Affairs again repeated the reasons for removal stressed in earlier years. Additionally, he referred to white "citizens who suffer annoyance and loss from depredations." The report of the LaPointe subagent for 1849 had specifically addressed this problem and had concluded that the sale of whiskey by the whites to the Indians was causing the most difficulty. The subagent acknowledged that it was possible the Indians were punished for acts they committed whereas whites who committed similar acts went free.

In 1849, the Lake Superior Chippewas petitioned Congress for twenty-four sections of land at "LaCotore" and at "LaPointe." They indicated that they wanted the land for permanent cultivation and permanent homes. Further, in October of that year, the Legislative Assembly of the Minnesota Territory requested the President to remove the Chippewas to another unsettled area.

continued page five

A HISTORY

continued from page four

At the urging of the Commissioner of Indian Affairs and the Secretary of the Interior, the President issued an executive order of February 6, 1850. This Order stated in relevant part:

> The privileges granted temporarily to the Chippewa Indians of the Mississippi, by the fifth article of the treaty made with them on the 29th of July 1837 "of hunting, fishing and gathering the wild rice upon the lands, the rivers and the lakes included in the territory ceded" by the treaty to the United States, and the rights granted to the Chippewa Indians of the Mississippi and Lake Superior by the second article of the treaty with them of October 4th, 1842, of hunting on the territory which they ceded by that treaty, with the other usual privileges of occupancy until required to remove by the President of the United States, are hereby revoked and all of the said Indians remaining on the lands ceded as aforesaid, are required to remove to their unceded lands.

A further effort to effect removal to the western lands was made in 1850 by changing the place for payment of the Chippewas' annuities from LaPointe to Sandy Lake in the Minnesota Territory. The trip resulted in the death of many Indians. The following February 1851, subagent Watrous suggested paying the annuities in early spring and late fall in the Minnesota Territory. He hoped that this would be more effective in inducing the Indians to stay at Sandy Lake. Watrous was subsequently appointed superintendent of removal.

On August 24, 1851, Indian Commissioner Lea of the Office of Indian Affairs advised Watrous by telegram to "Suspend action with reference to the removal of Lake Superior Chippewas for further orders." On September 5, 1851, Lea confirmed that the suspension had been ordered by the Secretary of the Interior, pending the President's decision as to whether the Indians would be permitted to remain on their lands.

Also in September 1851, Assistant Superintendent Boutwell reported to the Minnesota Territorial Governor concerning the problems encountered in trying to effect removal of the Chippewas. Boutwell reported that a compromise had been achieved concerning the place for payment of annuities and indicated that, despite the telegram suspending removal operations, "as the Indians are ready to go I shall start them."

September 20, 1851, Watrous reported to the Territorial Governor that 900 Chippewas remained on the ceded lands. He expressed apprehension that those who had been removed would return. These observations were reported to the Commissioner of Indian Affairs in Superintendent Ramsey's annual report dated November 27, 1851.

In the meantime, Chippewa Chief Buffalo had written the Commissioner on November 6, 1851, complaining about the hardship caused by the removal attempts and particularly the designation of where the annuities were paid. He requested that all future payments be made at La Pointe.

The Indians were dissatisfied with the provisions given them during the winter of 1851. On April 5, 1852, a group of Chiefs went to Washington to see the President. They were accompanied by Benjamin Armstrong who subsequently reported much that transpired. According to Armstrong, on June 12, 1852, Chief Buffalo dictated a memorial to President Fillmore. He again expressed his understandings that treaty annuities were to be paid at LaPointe and that the Indians were to be permitted to remain on their lands for "one hundred years to come." The Chief beseeched the President and his agents to honor the Treaty of 1842 as the Indians understood it. President Fillmore told the delegation that he would countermand the Removal Order of 1850 and that annuity payments would henceforth be made at LaPointe. He gave Chief Buffalo a written instrument explaining these promises. The delegation returned home. There is apparently no current record of the President's explicit contravention of the removal order.

The Indians were surprised and dismayed by the order. Benjamin Armstrong, a trader who lived in Chippewa territory and reported in a book his experiences with the Indians wrote:

> No conversation that was held [during the 1842 treaty negotiations] gave the Indians an inkling or caused them to mistrust that they were ceding away their lands, but supposed that they were simply selling the pine and minerals, as they had in the treaty of 1837, and when they were told in 1849, to move on and thereby abandon their burying grounds—the dearest thing to an Indian known—they began to hold councils and to ask each other as to how they had understood the treaties and all understood them the same, that was: that they had understood the treaties, and all understood them the same, that was: that they were never to be disturbed if they behaved themselves.

B. G. Armstrong, Early Life Among the Indians 12 (1892). Armstrong also reported that the Indians' attempts thereafter to learn of any depredations which could have been the cause of removal were unsuccessful. In short, the Indians believed they would not be removed unless they misbehaved and they found no evidence of misbehavior.

This understanding was repeated in a letter written to the white settlers in Minnesota by a Chippewa chief in 1850. He stated that the treaty commissioner had told the Indians in 1842 that they would not be removed for at least 20 years and probably never. The chief indicated that the treaty had been signed on the reliance that it was only the copper on the land that was sought by the United States. A letter written January 21, 1851, from the Secretary of the American Board of Commissioners for foreign Missions informed the Commissioner of Indian Affairs that the Indians had been told they could remain where they were for an indefinite period, "except so far as they might be required to give place to miners; and the Commissioner said to them: 'You and I shall never see the day when your Great Father will ask you to removed.' "

The Secretary indicated that, absent that promise, the treaty would never have been signed. The Secretary's version of the treaty was corroborated by several sources including C. Mendenhall, a miner who wrote to the Commissioner of Indian Affairs on January 6, 1851, W.W. Warren, a farmer who was employed by the Government to teach farming to the Indians, and Indian Agent Henry Gilbert in his 1853 report to the Commissioner of Indian Affairs.

There is some inconsistency in reports as to what transpired thereafter. Armstrong reported that the annuities for 1852 were paid at LaPointe, that the President's letter was explained to Chief Buffalo and that the Chief also stated that there was yet one more treaty to be made with the President, "and that he hoped in making it they would be more careful and wise than they had heretofore been and reserve a part of their land for themselves and their children." Armstrong, supra, at 32.

In his October, 1852 report, however, Superintendent Ramsey reported that the Chippewas had been told there would be no further payment of annuities upon ceded land. Ramsey stated that limiting annuities to those Indians who had removed was the best way to further the removal goal.

Armstrong's report that the 1853 and 1854 annuity payments were made at LaPointe was corroboratd by a report of Indian Agent Henry Gilbert. Gilbert reported that the Indians would "sooner submit to extermination than comply with [the Removal Order]." Further, he reported that the whites and Indians were living harmoniously.

In the annual report of the Office of Indian Affairs dated November 24, 1854, the Commissioner noted that some bands of Lake Superior Chippewa were still living on the lands ceded by the treaties of 1837 and 1842. He stated: "It has not, thus far, been found necessary or practicable to remove them." He observed that:

> [I]t may be necessary to permit them all [the Chippewas] to remain, in order to acquire a cession of the large tract of country they still own east of the Mississippi, which, on account of its great mineral resources, it is an object of material importance to obtain. They would require but small reservations; and thus permanently settled, the efforts made for their improvement will be rendered more effectual.

The reservation idea was apparently acceptable to the white settlers of Wisconsin. In February, 1854, of that year the Wisconsin legislature sent a memorial to the President and Congress. This memorial noted 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."

'They made us promises, more than I can remember, but they never kept but one. They promised to take our land and they took it.'

The memorial requested the President to rescind the prior Removal Order and to guarantee the payment of annuities to the Indians at LaPointe. The memorial also requested laws to "encourage the permanent settlement of those Indians as shall adopt the habits of the citizens of the United States.

In a letter dated August 11, 1854, the Indian Affairs Commissioner directed agent Gilbert to attempt to reach a treaty with the Chippewas, extinguishing their title to lands in Minnesota and Wisconsin. Gilbert was authorized to reserve 748,000 acres for permanent homes of the Indians in areas which did not include mineral lands and which were out of the path of white settlement.

The Indians requested Armstrong to be the interpreter, expressing their conclusion that interpreters at other treaty negotiations had made mistakes. Armstrong recorded Chief Buffalo as saying, in part:

> We do not want to be deceived any more as we have in the past. We now understand that we are selling our lands as well as the timber and that the whole with the exception of what we shall reserve, goes to the great father forever.

Armstrong, supra, at 38.

The Treaty of LaPointe was concluded September 30, 1854. It provided that the Lake Superior Chippewas living in Minnesota ceded their territory to the United States. These Minnesota bands were granted usufructuary rights on the ceded land pursuant to Article 11. Article 2 specified that the United States agreed to withhold from sale, for the use of the Chippewas, certain described tracts of land. One was set aside for the LCO band. The treaty provided that the boundaries would thereafter be fixed under the direction of the President. Other Articles of the treaty provided for annuity payments, provisions for half-breeds and traders, the provision of various hunting devices and ammunition to the Indians, a ban on spirituous liquors, and a promise that the Indians would not be removed from the homes permanently set apart for them.

Even after the reservation boundaries were settled, many Chippewa Indians continued to roam throughout the ceded area, engaging in their traditional pursuits.

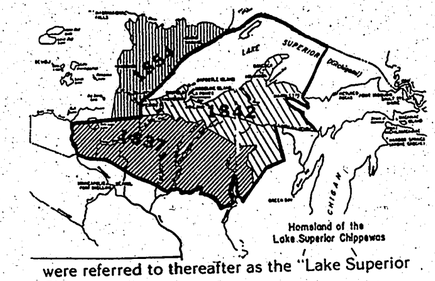
THE TREATIES

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 Niagra 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 Anishnabeg nation. Once the largest on the continent, now numbering about 100,000.

The Lake Superior Chippewa achieved its legal identity by participating in the 1825 Treaty at Prarie 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



Homeland of the Lake Superior Chippewas

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 Prarie du Chien; 1837 at St. Peters; and 1842 at La Pointe are 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 "Gitchi-gummi-wininninway", "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 faired poorly amidst a sea of wealth and development by their non-Indian neighbors. More recently there has been a revival.

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 OF PRARIE DU CHIEN
August 19, 1825

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 Prarie du Chien in the summer of 1825 to conclude such a pact.

Treaty with the Sioux and Chippewa Sacs and Fox, Menominie, Ioway, Sioux, Winnebago, and a portion of the Ottawa, Chippewa, and Potawattomie 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, Menominie, Ioway, Sioux, Winnebago, and a portion of the Ottowa, 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 Prarie du Chien, in the Territory of Michigan, and after full deliberation, the said tribes, and portions of tribes, have 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 Wisconsin, 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 Ottoes, to settle and adjust their title to any of 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.]

THE TREATIES

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 juntion 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 Menomonies; 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-tap 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 mation, 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.

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 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 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 bounderies: viz: beginning at the mouth of Chocolate river of Lake Superior; thence northwardly across said lake to intersect the boundery 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 boundery 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 IIth 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.

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 Presidential Policy towards the Indian tribes has been one of recognition of them as dependent, sovereign nations, encouraging expanded self-regulation. The U.S. Government recognizes its commitment to the tribes because of treaties signed between nations. The rulings of federal court reflect this commitment.

Likewise, Wisconsins' Governor Anthony Earl has supported the Voigt Decision, despite widespread public objections and an unfavorable attitude in the political arena. Earl has encouraged continued negotiations between the tribes and the Wisconsin DNR to reach agreements which both provide the tribes with a meaningful exercise of their rights and protect Wisconsin's resources.

Governor Anthony Earl shakes hands with Rick St. Germaine, LCO Tribal Chairman. Earl spoke out strongly in support of treaty rights and the negotiating process at a pre-election dinner meeting of the Sawyer County Democrats in the fall of 1984.

EARL'S ORDER: STATE-TRIBAL COOPERATION

The State of Wisconsin

EXECUTIVE DEPARTMENT

EXECUTIVE ORDER NO. 31

WHEREAS, there are eleven federally recognized Tribal governments located within the State of Wisconsin, each retaining attributes of sovereignty, authority for self-government within their territories and over their citizens; and

WHEREAS, our Nation, over the course of two centuries has dealt with American Indian tribes through the application of international common law, negotiation of treaties, and constitutional interpretation of law, each recognizing the special government-to-government relationship as the basis for existance; and

WHEREAS, the Supreme Court has consistently upheld this unique political relationship developed between Indian tribes and the United States government; and

WHEREAS, the State of Wisconsin was established in 1848 with a continuous vested interest in service to all of its citizens regardless of specific jursidiction, ethnic or cultural background, religious affiliation or sex; and

WHEREAS, it is in the best interest of all units of government, federal, tribal, state and local to recognize the pluralistic diversity of our government and society;

NOW, THEREFORE, I, ANTHONY S. EARL, Governor of the State of Wisconsin, order my administration, state agencies and secretaries to work in a spirit of cooperation with the goals and aspirations of American Indian Tribal Governments, to seek out a mutual atmosphere of education, understanding and trust with the highest level of tribal government leaders.

AND, FURTHERMORE, all State agencies shall recognize this unique relationship based on treaties and law and shall recognize the tribal judicial systems and their decisions and all those endeavors designed to elevate the social and political living conditions of their citizens to the benefit of all.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done at the Capitol in the City of Madison this 13th day of October in the year of Our Lord one thousand nine hundred eighty-three.

Anthony S. Earl

ANTHONY S. EARL

By the Governor:

Douglas La Follette

Sentinel Madison Bureau

Madison — Gov. Earl said Thursday that some of the vocal opposition to Chippewa Indian hunting and fishing rights was from people who just didn't like Indians.

Earl said he was opposed to congressional action to abrogate 19th century treaties giving to the Chippewas hunting and fishing privileges that are not accorded others in northern Wisconsin.

"Some people are genuinely concerned," he said at a news conference. "But some find this as reason to go after a segment of the population they don't like."

The US treaties with the Chippewa tribes were upheld in federal courts last year, and those decisions led to state negotiations with tribes to exercise the rights.

Earl said he had met with a number of tribal leaders, suggesting that they agree to urge tribal members not to carry loaded, uncased weapons even though the agreements permit them to. There has been "some success" on that score, he said.

That approach is "more useful" than to suggest that Congress rescind and renegotiate the treaties of 1837 and 1842, he said.

"The treaties are the law and the treaties are not going to be abrogated by Congress," Earl said, disagreeing with Rep. David Obey (D-Wis.) who has suggested action along those lines.

Earl also said that the proposed $3.3 million tourism budget called for by Lt. Gov. James T. Flynn in his Department of Development budget request for 1985-'87 was "a bit rich for my blood."

"That's a bit high," said Earl. "Some more promotion dollars makes some sense," he said, but the potential effect of drawing more tourism to Wisconsin shouldn't be measured in dollars.

Michigan is one Midwest state that has spent large amounts for promotion, and Earl said he would be interested in seeing how its "Say Yes to Michigan" promotion came out.

"Or, as they say in the Upper Peninsula, "Say Ya to the UP," he added.

Earl also said:

He believed the Democratic ticket of Walter F. Mondale and Geraldine A. Ferraro was "doing a bit better" in Wisconsin than he had previously thought.

He had earlier called the Mondale-Ferraro challenge of President Reagan "50-50, pick 'em" in Wisconsin.

Earl said he doubted the polls showing the Mondale ticket trailing, and recalled state polls in gubernatorial primary races in 1978 and 1982. Former Gov. Lee S. Dreyfus was behind Robert W. Kasten Jr., now a US senator, in the Republican primary in 1978, but won, he said.

And in 1982, Earl said, he was well behind former Acting Gov. Martin Schreiber in the Democratic primary, but won.

As evidence of the Democrats doing better than some expect, he said, "I even saw a Mondale-Ferraro yard sign in Maple Bluff the other day. That's quite a harbinger."

Maple Bluff is the wealthy Madison suburb where the executive residence is located.

LANDMARKS: LEGISLATIVE ACTS, COURT DECISIONS, TREATIES

1825 TREATY OF PRARIE DU CHIEN
Representatives of the Chippewa tribes were called together for several reasons at this treaty session. For one, they were to delineate their land holdings for the U. S. government. The United States was also encouraging them to stop intertribal warring. The treaty established the gathered bands of Chippewas as the Lake Superior Chippewa, one body owning land in common. In subsequential treaties, the Lake Superior Chippewas were viewed as a distinctive political entity will full sovereign powers.

1837 TREATY WITH THE CHIPPEWA
Signed at St. Peters—This was the first of several cession treaties which ceded a large tract of land in north central and eastern Minnesota. The Chippewa received cash to settle trader's claims, cash for influential half-breeds and annuity payments for 20 years. The Chippewa, however, retained their right to hunt, fish and gather on ceded territories.

1842 TREATY WITH THE CHIPPEWA
Signed at LaPointe—Succombing to further pressure of lumber and mining needs, the Lake Superior Bands sold the last of their lands in northern Wisconsin and in the upper peninsula of Michigan as far east at Marquette.

With terms comparable to those in 1837, the treaty provided for payoffs to trades and half-bloods and a 25-year annuity schedule, divided equally between the Mississippi and Lake Superior Chippewa. Again, the Chippewa leaders specifically retained the right to hunt and fish on the territory they ceded.

1848 May
Wisconsin became the 30th state in the union.

1850 PRESIDENTIAL REMOVAL ORDER
In February of 1850 President Zachary Taylor ordered the Chippewa living in ceded lands to prepare for removal, disregarding a request from Chippewa leaders who had come to Washington in 1849 to grant them lands surrounding seven of their villages, plus their sugar orchards and their rice lands. The tribes insisted they had no intention of ever leaving and had signed the 1842 Treaty only to accommodate copper mining pursuits. The order was suspended in 1851.

1852 CHIEF BUFFALO'S APPEAL
A delegation of Chippewa led by Chief Buffalo, then 93, trekked to Washington D.C. with a petition to countermand the removal order. The Chippewa, who had been living peacefully in Wisconsin, could see no reason for the removal.

1854 STATE PETITIONS AGAINST REMOVAL ORDER
A petition from the Wisconsin legislature asking the President to rescind his removal orders was sent to Washington. The petition also asked that permanent settlements be established for the Chippewa.

1854 TREATY OF 1854
Signed at LaPointe—This treaty formally abandoned the removal policy by establishing permanent homes (reservations) for the Chippewa in Wisconsin. Remaining Chippewa land in Minnesota was also ceded at that time.

1924 THE CITIZENSHIP ACT
This act of the U. S. Congress granted citizenship to all Native Americans in the country; however, it did not provide that they give up their tribal membership or identity.

1934 REORGANIZATION ACT
The policy of the United States Federal Government supporting tribal self-regulation was confirmed through this Act. It established nationally a policy of tribal self-government through a tribal governing body, the tribal council, and the ability of those elected governments to manage the affairs of their respective tribes.

1972 GURNOE VS. WISCONSIN
The Wisconsin Supreme Court decided in favor of the Bad River and Red Cliff tribes that, based on the 1854 Treaty fishing in the off-reservation waters of Lake Superior was a protected treaty right and that any regulation that the state seeks to enforce against the Chippewa are reasonable and necessary to prevent a substantial depletion of the fish supply.

The State and the Red Cliff Tribe have successfully negotiated agreements for treaty commercial fishing.

1974 U.S. VS. WASHINGTON (BOLDT DECISION)
This decision made by the U.S. District Court upheld the right of tribes in the northwest to fish and to manage fisheries under early treaties, determines they are entitled to an opportunity to equally share in the harvest of fish in their traditional fishing areas, and finds the State regulations which go beyond conserving the fishery to affect the time, place, manner and volume of the off-reservation treaty fishery are illegal. This decision was upheld by the U.S. Circuit Court of Appeals and the U. S. Supreme Court declined to review District Court rulings.

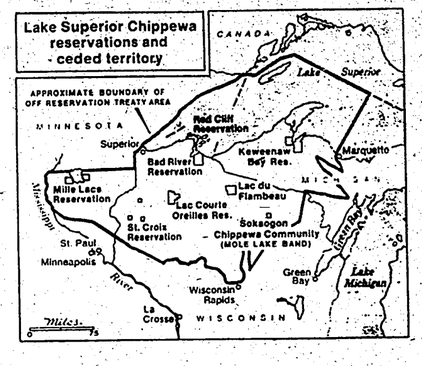
1981 UNITED STATES VS. MICHIGAN (FOX DECISION)
The U.S. Federal District Court, Western District of Michigan affirmed the rights of Bay Mills, Sault Ste. Marie and Grand Traverse Tribes of Michigan Chippewa to fish in ceded areas of the Great Lakes in the boundaries of Michigan based on the 1836 Treaty. Judge Fox ruled the rights retained were not abrogated by subsequent treaties or congessional acts. Subsequent proceedings also upheld the tribes' rights to regulate their members.

1983 LAC COURTE OREILLES VS. VOIGT (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 reversed and protected in a series of treaties between the Chippewa and the United States Government. Later, the United States Supreme Court refused to hear the appeal of the Voigt Decision by the State of Wisconsin, affirming the ruling of the 7th Circuit.

Based on rights to hunt, fish and gather on ceded lands in the Treaties of 1837, 1842, 1854, the Lac Courte Oreilles tribe filed suit against the State asking that the State of Wisconsin stop enforcing state law against LCO Tribal Members.

The three-judge panel in the U.S. Court of Appeals, 7th Circuit, did return the case to Judge Doyle to "determine the scope of state regulation." Meanwhile, "interim agreements with the State Department of Natural Resources are being made for each hunting, fishing or gathering season.

Behind the Voigt Decision is a history not only of Treaties, but also of legislative acts and judicial decisions which provide a basis for the ultimate affirmation of the Chippewa's reserved rights.



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 neacessary to prevent a substantial depletion of the fish supply.

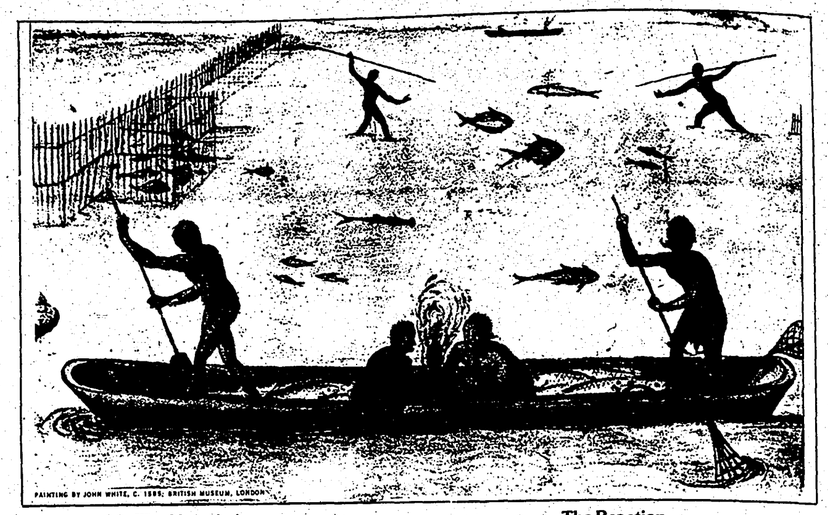
Following this case, the State of Wisconsin and the Red Cliff Band have negotiated an agreement on continued use as well as resource management.

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.

Bust of Chief Buffalo, Housed in the Capitol Building, Washington, D.C.

While waiting for a final decision as to the scope of state regulation allowed over the Chippewa hunting and fishing, the Wisconsin DNR has been faced with a number of hunting and fishing gathering seasons. In order to prevent resource depletion and manage the harvest, they have negotiated agreements which regulate each season, establishing both season, methods and quotas. To date they have proved effective, and tribal harvests have been well below allowable quotas.

VOIGT



The First 500 Days

It has been a long and arduous journey between these annual July dances. Especially for those concerned with "Voigt".

Although the legal proceedings began a decade ago, it was on January 25, 1983 that a three judge federal panel in Chicago handed down their decision. Since then Voigt, Indians and resources has been the topic of northern Wisconsin.

The 7th Circuit Court of Appeals said that yes, the Lake Superior Chippewa did indeed reserve the right to hunt, fish and gather food in lands they sold to the United States. The treaties in question were signed in 1837 and 1842. The lands are the northern-third of what is now Wisconsin.

The federal court, after affirming the treaty rights of the Lake Superior Chippewa, remanded the case back to Judge James Doyle in Madison, Wisconsin. They said that Judge Doyle must consider "....the permissible scope of State regulation of ceded lands."

Although it's now called "Besadny v LCO, et al", this case continues on. It's popularly known as the Voigt decision after Lester P. Voigt then (1974) the Secretary of Wisconsin's Department of Natural Resources. Carrol Besadny is the current secretary. Regardless of name, the case plods on or rushes like a roller-coaster through northern Wisconsin.

Immediately after the decision there was confused reaction. The media, particularly print, reported that the Chippewas were "given unlimited rights." In fact strict limitations were part of the decision.

Equally swift was the response from the DNR. They first said that they would not enforce Wisconsin game laws against the Chippewa. They've since changed this particular tune.

And, in reaction to both the media and the DNR emerge a rumble from the public. They feared the worse for Wisconsin's resources and began organizing an anti-Indian campaign. Few who were concerned contacted the tribes.

The Voigt Task Force

Although surprised with the timing of the decision, the Chippewa tribes reacted differently. On February 2, 1983, Lac Courte Oreilles Chairman Gordon Thayer convened a meeting of all potentially affect Chippewa tribes in Wisconsin, Minnesota and Michigan (ten in all, six in Wisconsin).

By March 16th all of the member tribes had ratified the creation of the "Voigt Inter-tribal Task Force." Jim Schlender, an attorney and officer on the Lac Courte Oreilles tribal governing board was selected to chair the task force.

The task force was responsible for developing plans to implement the decision. This meant finding funds, developing resource management and enforcement systems, and to find avenues to ensure the meaningful exercise of the treaty rights. All this in the midst of a confused and increasingly volatile public.

The Bureau of Indian Affairs soon came up with some funds to get the task force off the ground. Out of that came more meetings, technical work groups, model enforcement and management plans, a couple of biologists and a fledgling public information program. It was a start.

Eventually the Great Lakes Indian Fisheries Commission, already dealing with resource management issues on the Great Lakes, was viewed as the most likely organization to help implement the decision. By early 1984 an agreement was reached and the task force

Through this combined effort as well as pressing timelines a staff of six biologists, 12 wardens and an consolidated with the fisheries and formed the Great Lakes Indian Fish & Wildlife Commission.
administrative and support staff has been assembled to help implement the Voigt Decision. One time-consuming effort has been the negotiating of interim agreements with the state.

The Negotiations

In July 1983, the State of Wisconsin filed an appeal of the 7th Circuit's decision to the U.S. Supreme Court. On October 3, the highest court denied the appeal. Shortly thereafter, the state entered into negotiations to establish interim agreements for the exercise of off-reservation hunting rights.

Representatives from each of the six Voigt tribes appointed to the Voigt Task Force composed the body of the tribes' negotiating team. On behalf of the state, the DNR has negotiated for agreements for each hunting and fishing season, with the chief negotiator being DNR attorney George Meyer.

To date, they have negotiated seven agreements including: Off-Reservation Deer Hunting for 1983 and 1984; 1984-85 Off-Reservation Trapping; 1984-85 Off-Reservation Small Game Agreement; Off-Reservation Ice Fishing for both 1984 and 1985; Off-Reservation Open-Water Fishing for 1984. No official agreement was reached for the 1984 Wild Rice Season, however, a Wild Rice Technical Committee was formed. Approaching quickly is the controversial 1985 Off-Reservation Open Water Fishing Agreement with negotiations to be begin on February 6.

Although the negotiating process has proven successful, it has met with some difficulties and detractors. Sportswriters, apparently not confident with the state's negotiators, have chastised the process as secretive. Tribal members, long denied the rights affirmed by the federal court argue that the tribes are giving away at the negotiating table what the state has been unable to win in court.

However, Wisconsin is viewed by some as a model in terms of successfully implementing the negotiating process. Other states have lost hundreds of thousands of dollars, as has the State of Washington, in lengthy litigation procedures which have gotten them nowhere.

As George Meyer commented, "Other states have not been as fortunate to decide to go along the path of constructive negotiations in resource matters; as a result, there has been significant injury to the natural resources of those states—there has been bad community relations between tribal and non-tribal members and some cases of violence."

Following the signing of the first Deer Hunt agreement, Voigt Task Force Chairman Jim Schlender said, "We feel that the whole process of agreement through negotiations is one which involves concessions on both sides. 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.

Despite the apparent willingness to embrace the negotiating process, it has neither solved all the points of conflict nor has it quelled a vocal anti-Indian fervor.

The most recent development in negotiations is the DNR's request to open the negotiation process to the public; and suggestions by Governor Earl that members of ERFE be allowed in negotiations. The tribes say "no" to opening negotiations to the public. Open negotiations would, indeed, be highly unusual for any such negotiating process.

The DNR does currently receive formal public input from Citizen Advisory Committees which represent a spectrum of public interest. DNR officials meet with the Advisory Committee prior to negotiating a season's agreement and receive input from the public sector as to their specific concerns and suggestions for the agreement.

The Reaction

Although there had been severe criticism of the initial decison it was the open-water negotiations that brought the full force to the forefront. Wisconsin, often characterized as a progressive state, resembled Mississippi under seige of freedom riders.

Legislators, DNR officials, nearly every sportswriter in the state (and some in other states), editorials, radio and TV newscast attacked the tribes. Although the points of attack varied it was clear that tribes and their treaty rights were unwanted in progressive Wisconsin.

In a letter ostensibly to Jim Schlender (it was relased to the media first), Congressman Dave Obey threatened the tribes with a cut-off of other federal support if they insisted on pursuing their stand on open water fishing.

The DNR, apparently unable to get the political okay to reach a negotiated settlement, argued in the media and in court that the tribes enforcement capabilities and their biological data was not credible. This questioning of the tribe's credibility got the headlines and fueled a confused and growing anti-Indian public.

Shortly after the Voigt decision was made an organization called Equal Rights for Everyine (ERFE) was formed. There stated purpose is to fight the Voigt decision and to "unite the voice of the people."

Another anti-Indian group called WARR (Wisconsin Alliance for Rights and Resources) added to the *contras* of northern Wisconsin. WARR and ERFE now use Dave Obey as their model of informed legislators, condeming Senators Kasten and Proxmire as unenlightend.

Recently, democratic Senator Lloyd Kincaid joined the group of northern Wisconsin wavemakers, critizing the open-water fishing agreement between the tribes and the state. He urged Governor Earl not to sign the agreement who wisely ignored the sage's advice.

Add Senator Dan Theno to the list and you have an interesting mix of state and federal legislators, sports groups and sportswriters, white equal rights groups who've become the new frontiersmen who believe that Indians are more dangerous to the natural resources than nuke waste, mining and acid rain.

Although past agreements here in Wisconsin and elsewhere belies this "Chicken Little" alarmism, they have effectively raised concern and "War in the Woods" headlines.

The tribes, in response to the attacks have continued to develop their resource management and enforcement capabilities, continued to negotiate with the state and also began holding informational forums around the state.

Jim Schlender, Chairman of the Voigt Inter-Tribal Task Force; displays signs found in the woods near the LacCourte Orellies Reservation.

Great Lakes Indian Fish & Wildlife Commission

The Voigt Decision gave both rights and responsibilities to the tribes, responsibility for sound resource management and enforcement. These responsibilities have been met by the tribes through the formation of the Voigt Task Force, the Great Lakes Indian Fish and Wildlife Commission and by individual tribes.

INTRODUCTION

The long-awaited reassumption of cooperative tribal authority over the vast natural resources has finally come into sight. The tribe's traditional role of fish and wildlife managers has been re-established and now the tribes are faced with the challenge to develop the necessary tools that will guide tribal decision-makers as they exercise these treaty responsibilities.

Early in 1982 six Lake Superior Chippewa bands were faced with a rapidly expanding tribal fishery on the Great Lakes with minimal to non-existant resources to meet the self-regulation needs. Individually there had been limited success in attracting the resources necessary to carry out tribal management responsibilities. This experience and greater competition for dwindling funds led the tribes to conclude that the proper vehicle to achieve common goals was to organize as an inter-tribal unit. The mold was set and the Great Lakes Indian Fishery Commission was established. The original members include: Grand Portage and Fond du Lac in Minnesota, Red Cliff and Bad River in Wisconsin, and Keweenaw Bay and Bay Mills in Michigan.

The second important phase of the organization's development occured on Janauary 25, 1983 when the 7th Circuit Court of Appeals reversed a lower court ruling, reaffirming the existence of the treaty rights to fish, hunt and gather in the territories ceded by the Lake Superior Chippewas in the treaties of 1837 and 1842.

The expanded responsibilities included and expansion of the number of tribes to the present 10. The Commission provides coordination of inland and lake activities, biological services, public information, inter-tribal enforcement and administration of the PL 638 contract to meet the tribal goals to protect, conserve and enhance the valuable off-reservation resource ensuring a meaningful exercise of the treaty reserved rights.

The Commission, in carrying out the policies and mandates, have accomplished the following in its short existance.

Administrative:
- Develop organic documents for the organization
- Developed a comprehensive Personnel Policy and Procedure Manual, Property and Financial Management Systems
- Expanded staff size from an original three employees to a present total of 21.

Biological Services:

Reports Written:
- "Report to the Fond du Lac Band of Lake Superior Chippewas: Potential Yield of Major Fish Stocks in Western Lake Superior."
- "Lake Trout Stocking Patterns in the Upper Great Lakes, with Special Reference to Treaty-Ceded Waters."
- "Assessment of Tribal Fisheries Management Program Needed."
- "General Description of Great Lakes Treaty Fisheries."
- "Summary of Technical Data Pertinent to Great Lakes Tribal Fisheries Management.

Fish and Wildlife Priority:
- The Grand Portage and Keweenaw Bay Bands have commercial fisheries on Lake Superior, but not biological programs. GLIFC commenced data collection from these fisheries in 1983, beginning to give those tribes the ability to verify or contradict the conclusions of state resource agencies. Also trained tribal wardens and fisheries aides in data collection procedures.
- The Biological Services Division has also provided assistance in the development of biological data and follow up monitoring of several agreements dealing with the inland resources.

Public Information Office:
- Published a bi-monthly newsletter "Geego-ikay."
- Published an informational brochure "The Indian Fisher" on the Great Lakes.
- Published an informational newspaper on the *Voigt* decision called "Masinaigan."
- Developed a series of news releases on the activities of both inland and lake activities.
- Published an article in the newsletter "Horizons" for their Spring Issue, 1984.

Inter-Agency Liason:

In order to fully implement tribal resource management the tribes have initiated dialogue with federal, state and tribal entities. This dialogue has produced a spirit of cooperation which has resulted in:

The establishment of an official seat on the Lake Superior Lake Trout Techinical Committee, a sub-committee of the Great Lakes Fishery Commission.
- *Establishment of four interim agreements between the State of Wisconsin and the six Wisconsin tribes providing an exercise of the rights reserved by the treaties of 1837 and 1842.*
- *Establishment of inter-tribal agreement between the six Wisconsin bands and the Mille Lacs Band that provide for exercise of their rights in Wisconsin.*
- *Support for on-going discussions of both lake and inland committees.*
- *Assisted in initiating contacts between the bands located in Michigan and Minnesota and the respective state agencies.*
- *Established contacts with resource biologists in State, tribal, provincial, federal and inter-national agencies.*

The benefits of the organization and its resultant accomplishments will not be fully understood until the organizational needs are fully met. Until then it may seem that some tribes are benefiting more than others. Part of the reason for such an observation is the diversity of individual tribal needs. This is basically a matter of time and hopefully patience will prove a valuable characteristic to those tribes who are parties to this effect. If the organization continues at its present pace it may be sooner than planned.

GREAT LAKES INDIAN FISHERIES COMMISSION
BAD RIVER • BAY MILLS • FOND DU LAC
GRAND PORTAGE • KEWEENAW BAY • RED CLIFF

- Various staff have participated on panels on informational forums and presentations to the general public and special interest groups.
- Staff has appeared in two documentaries, one specifically dealing with treaties produced and presented in Northern
- Michigan and the second in a presenatation on the State, shown nationally.
- Staff has also particiapted on numerous radio programs discussing impact of exercise of treaty rights.

Enforcement
- In response to establishing inter-tribal enforcement capabilities the tribes have hired 6 seasonal and 6 full time officers to carry out duties as assigned.

GLIFWC HISTORY

The Great Lakes Indian Fish and Wildlife Commission was formed as a result of a common concern of tribes in the Great Lakes region for their rights and responsibilities to use and manage the lake and inland resources to maximum benefit of their members while practicing proper conservation methods.

The GLIFWC, as it is today, is the product of a consolidation of the Great Lakes Indian Fisheries (GLIFC) and the Voigt Inter-Tribal Task Force. The common goal is the sound management and regulation of resource use. The consolidation procides a central body for its member tribes on issues relating to tribal hunting, fishing and gathering activities.

In June, 1982 six Chippewa tribes concerned with tribal commercial fishing on the Great Lakes, origianally formed the GLIFC. They recognized primarily the need for assistance in self-regulation of tribal fisheries and for a voice in decisions which impact on fishing in their regions.

Orginal members of the GLIFC were the Grand Portage Band and the Fond du Lac Band, Minnesota; the Red Cliff Band and the Bad River Band, Wisconsin; and the Keweenaw Bay Band and the Bay Mills Indian Community, Michigan.

One of the precipitating factors leading towards the formation of the GLIFC was an agreement signed between the Red Cliff Band and the State of Wisconsin in September of 1981. The tribe was in need of a system of regulation for Indian fisheries in order to fulfill the agreement with the state to manage their commercial fisheries. Red Cliff, along with the five other Great Lakes Chippewa tribes, felt it was imperative to seek support for the development and management of the fishing industry, one second only to timber in importance for the area.

Consequently they formed the GLIFC and for the first sixteen months operated with only a director, one Great Lakes fisheries biologist, and a part-time secretary. Their first initiatives included biological assessment of the tribes' impact on the resource and ultimately, providing the essential data to members which would enable them to regulate their fishing industry. Secondly, they were concerned with obtaining a voice in the international Great Lakes Fishery Commission, which acts as the policy-making body for Great Lakes commercial fishing activities. Currently, the GLIFWC has representation at the technical committee level on the organization. They still seek representation on the Commission.

The Voigt Inter-Tribal Task Force was formed in response to the U.S. Supreme Court's ruling which upheld the Voigt decision, affirming the rights of six Chippewa tribes to hunt, fish and gather on ceded territories. The Task Force was faced with the responsibility of providing resource management and enforcement sustems to affected Chippewa tribes in order to implement those treaty rights.

In recognition of the common roles of the Voigt Inter-Tribal Task Force and the GLIFC, the two consolidated in 1984 in an effort to prevent duplication of procedures and to provide a common coordinating agency to the member tribes.

Subsequent to the consolidation, five additional tribes became members of the GLIFWC. The Lac du Flambeau Band, the Mole Lake Band, St. Croix Band, Lac Courte Oreilles Band all of Wisconsin and the Mille Lacs Band, Minnesota.

With the expansion of resource management and regulation responsibilities, both in terms of area and in the kind and quantity of resources, the GLIFWC has increased its technical staff to provide expertise also in wildlife management and inland fishing.

The GLIFWC currently recognizes as areas of primary responsibility the provision of 1) Fish and Wildlife Management 2) Fish and Wildlife Enforcement 3) Public Information and Education for its member tribes. The goal is assure the protection of treaty hunting, fishing and gathering rights for its members using the biological tools necessary to establish, maintain, compliment and enhance their tribal role as co-managers of the resource.

TECHNICAL ASSISTANCE TO TRIBES

Soon after the formation of the Great Lakes Indian Fisheries Commission, it became evident that Keweenaw Bay and Grand Portage had the greatest immediate need for technical assistance. Both of the tribes have commercial fisheries on Lake Superior, yet have not fisheries management programs. In the spring of 1983, the biological staff initiated a lake trout population assessment program at both reservations, in which the catch of tribal fishermen was sampled for biological information. In the fall of 1983, Keeweenaw Bay hired two Fisheries Aides to collect the field data. GLIFWC's biological staff has trained the aides in data collection, and has performed the necessary technical analysis of the data. This arrangement seems to work well, making use of tribal and GLIFWC capabilities. Reports on the 1983 data collection were prepared for the tribes, and were presented at the Great Lakes Fishery Commission's 1984 Lake Superior Committee meeting.

Data from the tribal fisheries was utilized along with information provided by other agencies to formulate manangement recommendations for Grand Portage and Keweenaw Bay. Detailed analysis of stocking records along the Minnesota shore was also utilized in recommending a lake trout harvest limit for Grand Portage. Management recommendations to Keweenaw Bay include a closure of the lake trout spawning season (even though the state-regulated fishery remains active during that period) and fishing effort limitations. The Keweenaw Bay Tribal Council enacted the recommended regulations prior to the 1984 fishing season.

In 1983 the Fond du Lac Band requested an estimate of the potential yield of fish stocks in the waters of interest to the tribe (southwestern Lake Superior). Potential catches were estimated for lake trout, herring, walleye, smelt, and chubs, and were presented in a report entitled "Potential Yield of Major Fish Stocks in Western Lake Superior."

Other requests for assistance were received from biologists working for member tribes. The staff participated on a technical committee comprised of biologists from the U.S. Fish and Wildlife Service, the Wisconsin Department of Natural Resources, and the Red Cliff Fisheries Department, investigating the status of the lake trout population on the Gull Island Refuge. The committee concluded that the native lake trout of the refuge are still increasing, and should be afforded refuge protection for at least a few more years.

The staff was requested by Bay Mills biologists to participate in some work of the Tripartite Technical Working Group for the 1836 treaty-ceded waters of Lakes Superior, Michigan, and Huron. The group defined the approach and methodology necessary for the determination of whitefish total allowable catches (TAC's). GLIFWC staff provided support for the preferred approach of Bay Mill's biologists and performed computer simulations comparing gradual and sudden changes in TAC's.

The hunting, fishing and gathering rights given to the tribes are largely a matter of self-regulation of those activities rather than a special privilege. Those privileges of self-determination also relate to tribal sovereignty, the right to self-govern in a manner similar to the separate governments and regulations that exist from state-to-state, even country-to-country. It is not a matter of "more or less" rights than others or of being "more equal," as some would contend, but of recognizing basic rights which were reserved and are presumed by the tribes.

TRIBAL RESOURCE MANAGEMENT

Fish hatcheries are operated by the Lac du Flambeau tribe, which has an extensive and expanding walleye stocking program, and by the Bad River tribe, which is also expanding its facility. Above Bad River WCC crew assist with the spawning of walleye in the spring.

INLAND FISHERIES AND WILDLIFE

The inland fisheries and wildlife components of GLIFWC have been developing rapidly to assist in both management for the resource and in the provision of data necessary for informed negotiations.

Two biologists were hired by the Voigt Inter-Tribal Task Force in early 1984 and became part of the Biological Services Division of the Great Lakes Indian Fish and Wildlife Commission following the merger of the Great Lakes Indian Fisheries and the Voigt Task Force.

Since that time, the staff has expanded to include six biologists and one aide. Four of the staff deal specifically with either inland fishery or wildlife management.

INLAND FISHERIES

The inland fisheries staff provided biological advice to the Inter-Tribal Task Force for use in implementing off-reservation fishing rights in 1984 and continues to provide information. Of particular interest are the impact of traditional gear of Ojibwa fishermen, spears and gill nets, which have long been prohibited by the State of Wisconsin due to their efficiency and the potential conflict with recreational fisheries.

One of the major tasks of the inland fisheries biologists has been to quantify the efficiency of these gear types and to devise regulatory strategies to accommodate their use while not harming the resource.

Information has been gathered through the use of creel surveys, which provided statistical data on the catch by spearing through the ice. GLIFWC biologists have also performed gillnetting experiments on Lake Escanaba in conjunction with the DNR to determine the efficiency and impact of gill nets. The report will be available in February.

GLIFWC biologists have also been assisting in the management of tribal fish hatcheries, and have surveyed the walleye population in inland lakes through the use of an electro-fishing boat.

Longer range plans include adapting DNR surface water inventories for tribal use; development or adaptation of biologically sound lake and stream classification assessment systems; refinement of fish population and community assessment techniques; and identification of fish populations and/or habitats most sensitive to traditional Ojibwa harvest methods. Monitoring of the quantity and biological characteristics of treaty harvest will remain a top priority.

WILDLIFE

The wildlife biologists are concerned with both summarizing and analyzing the harvest and biological data obtained from deer registrations as well as providing technical assistance and information for the negotiations of trapping, small game and deer seasons.

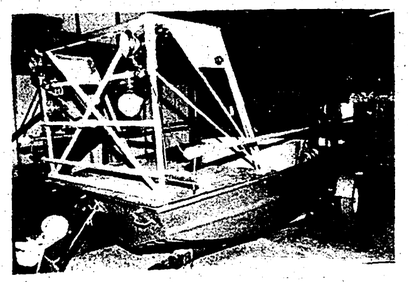
They have been instrumental in assisting tribes with deer pellet surveys, ruffed grouse, roost counts, snowshoe hare counts; and this fall performed the first waterfowl survey in the Chequamegon Bay area.

Future plans of the wildlife biology staff include assessment of hunter pressure through mail surveys, which will be sent out in February, and through hunter interviews. They also plan expanded deer population surveys on the larger reservations; development of big game population models; vegetative cover-type mapping; identification of critical habitats and limiting factors; and continued monitoring of the treaty harvest. The staff will also provide technical assistance to the tribes as needed in the areas of waterfowl and wild rice management.

WILD RICING

Recommendations from the tribes regarding more restrictive regulations of wild ricing in the state have precipitated a Wild Rice Technical Committee which is in the process of revising the state's wild ricing regulations.

Several areas of concern include regulation of more lakes as well as stricter controls on the types of paddles and boats used in the ricing beds.



The electro-fishing boat above was constructed by GLIFWC biological staff to facilitate walleye surveys on Lake Escanaba near Lac du Flambeau Reservation.

TRIBAL ENFORCEMENT

Many reservations operate their own tribal courts where violations of tribal hunting and fishing codes are prosecuted. Above is Judge Irvin Soulier, Bad River Tribal Judge, in the tribe's courtroom with court clerk, Pat Zackovec.

Tribal courts go hand-in-hand with the right of self-regulation held by the tribes as sovereign, dependent nations. As sovereign entities they have the right to make the laws which regulate tribal members to enforce them.

Tribal courts are presided over by trained tribal judges. The prosecutor is generally the tribal attorney, operating in a capacity similar to a district attorney. Regular court hours are maintained by the various tribal courts.

Currently, by federal law, tribal courts are limited to imposing fines up to $500; they have the power to revoke the license of a violator or confiscate equipment.

With enforcement being a major responsibility of the tribes since the affirmation of off-reservation hunting, fishing and gathering rights, a law enforcement staff was a matter of top priority to the Voigt tribes.

Through the Great Lakes Indian Fish and Wildlife Commission, six wardens, fully trained in law enforcement, have been hired with one warden allotted to each tribe. Six more wardens are scheduled to join the staff, making a total of twelve wardens to patrol the ceded territories.

PRESIDENTIAL POLICY

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release — January 24, 1983

STATEMENT BY THE PRESIDENT
INDIAN POLICY

This Administration believes that responsibilities and resources should be restored to the governments which are closest to the people served. This philosophy applies not only to state and local governments, but also to federally recognized American Indian tribes.

When European colonial powers began to explore and colonized this land, they entered into treaties with sovereign Indian nations. Our new nation continued to make treaties and to deal with Indian tribes on a government-to-government basis. Throughout our history, despite periods of conflict and shifting national policies in Indian affairs, the government-to-government relationship between the United States and Indian tribes has endured. The Constitution, treaties, laws, and court decisions have consistently recognized a unique political relationship between Indian tribes and the United States which this Administration pledges to uphold.

In 1970, President Nixon announced a national policy of self-determination for Indian tribes. At the heart of the new policy was a commitment by the federal government to foster and encourage tribal self-government. That commitment was signed into law in 1975 as the Indian Self-Determination and Education Assistance Act.

The principle of self-government set forth in this Act was a good starting point. However, since 1975, there has been more rhetoric than action. Instead of fostering and encouraging self-government, federal policies have by and large inhibited the political and economic development of the tribes. Excessive regulation and self-perpetuating bureaucracy have stifled local decisionmaking, thwarted Indian control of Indian resources, and promoted dependency rather than self-sufficiency.

This Administration intends to reverse this trend by removing the obstacles to self-government and by creating a more favorable environment for the development of healthy reservation economies. Tribal governments, the federal government, and the private sector will all have a role. This Administration will take a flexible approach which recognizes the diversity among tribes and the right of each tribe to set its own priorities and goals. Change will not happen overnight. Development will be charted by the tribes, not the federal government.

This Administration honors the commitment this nation made in 1970 and 1975 to strengthen tribal governments and lessen federal control over tribal governmental affairs. This Administration is determined to turn these goals into reality. Our policy is to reaffirm dealing with Indian tribes on a government-to-government basis and to pursue the policy of self-government for Indian tribes without threatening termination.

In support of our policy, we shall continue to fulfill the federal trust responsibility for the physical and financial resources we hold in trust for the tribes and their members. The fulfillment of this unique responsibility will be accomplished in accordance with the highest standards.

HUNTING & FISHING RIGHTS

Reproduced from a publication by the Institute for Development of Indian Law.

HUNTING AND FISHING RIGHTS

The rights of Indian people to take fish and game and gather food are and have historically been an integral part of their subsistence as well as their cultural and religious heritage. In turn they have formed a foundation for their trade and commerce. These rights were widely recognized in treaty negotiations and have been found by the courts to exist even where not specifically reserved in treaties. The regulation of these resources, so significant to Indian self-sufficiency and survival, has been the subject of much judicial definition.

American Indian Policy Review
Commission of the United States
Congress—1977

For many Indian tribes, hunting and fishing constituted the most important activities of their existence. They are as important to the Indians as agriculture is to Western man. Without hunting and fishing Indian tribes could not survive. The Supreme Court has described hunting and fishing rights as "not much less necessary to the existence of the Indians than the atmosphere they breathe..."

As the white man encroached more and more on the Indians' lands many tribes realized that they could not survive without control over their traditional food supply. Therefore, they signed treaties with the United States reserving for tribal members an unqualified right to hunt and fish at accustomed places.

For a long time these rights remained unchallenged. Now, as a result of over-exploitation of natural resources by the United States the supply of fish and game is rapidly being depleted, and non-Indians are challenging the right of tribal Indians to fish and hunt pursuant to their treaty and aboriginal rights.

A. Nature of the Right

It is a common misperception that Indians have special rights because of their race. This is not the case. Indians as individuals do not enjoy any privileges or special rights. Hunting and fishing rights belong to various Indian tribes not because they are made up of Indians but because they are political entities which have been recognized by the United States in treaties and in other ways as being legitimate political governments enjoying special rights. In other words, Indian poeple can share and enjoy certain rights not because of their race but because they are members of certain tribes. The special hunting and fishing rights are not racial rights but political rights.

Through treaties and agreements the United States guaranteed to Indian tribes that their hunting and fishing rights would be respected. In exchange, the tribes gave huge amounts of land to the United States. Indian tribes paid a high price to retain their hunting and fishing rights.

B. Nature of the Problem

Although many people view the conflict in racial terms, the dispute involves three political entities that cut across racial lines: states, tribes and the federal government. The states and the tribes are usually on opposite sides of the issues, and the federal government has been mediating the disputes. One must remember that the legal problems and the extent of tribal rights are not uniform but differ with respect to each treaty, tribe and state. The solution has not been to rule for or against Indians or non-Indians but to recognize the extent of state and tribal jurisdiction over hunting and fishing activities and reconcile the interest of treaty and non-treaty hunters and fishermen.

C. Nature of State Claims and Objections

States have generally supported the various non-Indian interest groups that seek the abolition of hunting and fishing rights. These interest groups mainly consist of commercial and sport fishermen. These non-Indian groups view Indian hunting and fishing rights as an unfair advantage for the tribes. They feel that this advantage threatens the profit-making capability of commercial fishermen. They claim that treaty rights make the Indians "super-citizens" and therefore violate the equal protection clause of the U. S. Constitution.

For the states, control over natural resources such as fish and wildlife is a matter of political and jurisdictional power. Most states do not want Indian tribes to independently control important natural resources without state approval. The states would prefer to have the tribes under their political control and jurisdiction. The controversy over hunting and fishing rights seems to generate enough anti-tribal feeling to provide a good battleground for the accomplishment of such a goal.

D. The Tribes Position and the Nature of Their Interest

Along with the rights of the tribes to fish at certain accustomed places free from interference exists the power of the tribes to control without state interference all hunting and fishing activities within their reservations.

Tribes have always resisted the encroachment of state jurisdiction on their reservations. The U.S. Constitution vests in Congress the power to regulate Indian affairs. As a result of Congress' so-called plenary power in Indian afairs the states have no jurisdiction over Indian tribes and Indian lands.

Tribes view themselves as independent political entities whose sovereignty has been recognized by the United States through numerous treaties. As independent governments, the tribes should control hunting and fishing within the reservations. They also wish to exercise jurisdiction over tribal members fishing outside the reservations pursuant to tribal treaty rights.

For tribes, control over hunting and fishing activities is both economically and politically essential. For many Indians hunting and fishing provides the main source of income. Tribes can remain viable and credible as governments only if they can control what happens on their reservations.

Finally, hunting and fishing is important to Indian cultural and religious life. For Indians these activities are neither game nor sport. They do not fish and hunt for profit. Most Indians practice subsistence hunting and fishing. This means that they only take what they will use. Their catch may be used in religious ceremonies.

E. Nature of the Federal Government's Response

The federal government is composed of three branches. Each branch has different roles in the controversies over Indian hunting and fishing rights.

Although Congress has plenary power in Indian affairs, it has chosen wisely to abstain from interfering in the dispute because the issues are politically too controversial and involve many complex constitutional questions.

The executive branch has done very little. Legally, the United States is the "trustee" for Indian tribes and as such is obligated to uphold Indian treaty rights. Although the executive branch is supposed to carry out this trust relationship, it has decided to leave the resolution of the whole issue to the judicial branch.

The judicial branch, i.e., the federal courts has become the forum in which these disputes are resolved. The courts have recognized the validity of Indian hunting and fishing rights, yet they have tried to reach a compromise between the various competing interests. As a result, the tribes' jurisdiction over hunting and fishing on reservations has been upheld. Although tribes' hunting and fishing rights outside the reservations have also been upheld, federal courts have allowed states to assume jurisdiction over hunting and fishing activities for conservation purposes this means that states can control Indian hunting and fishing rights in order to protect a vitally endangered natural resources such as fish and other wildlife.

ABROGATION: BREAKING AGREEMENTS

ABROGATION OF INDIAN TREATIES

> The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken from them without their consent; and in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful war authorized by Congress; but laws founded in justice and humanity shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them.
>
> The Northwest Ordinance, 1787

The "discovery" of America by the European nations made it necessary for them to turn to various doctrines of international law in order to formalize their relationship with the Indian nations on this continent. By the time the United States came into existence as a nation, European government had come to recognize that Indian nations were sovereign, and as such the only legal and civilized way of establishing relations with them was by treaty.

Simply stated, a treaty is a binding international agreement between two or more sovereign nations. Since the birth of the nation, over 400 treaties stand as evidence that Indian tribes were recognized and treated by the United States as sovereign nations.

Through treaties, Indian nations granted certain rights to the United States and reserved lands and rights for themselves. Treaties are therefore very important in understanding the rights of Indian people today. The treaty rights of tribal members result from the distinct p olitical identity of Indian governments as recognized in these treaties.

Today, for reasons of racism and greed, some organized forces are working to destroy tribal governments and are challenging the validity of Indian treaties, saying that the treaties are not real treaties, that they have become invalid with age and circumstance, and that they should be abrogated for the benefit of Indian and non-Indian citizens alike. There are many sympathetic people unfamiliar with Indian history and Indian law, who fail to support Indian treaty rights, because they believe that the breach or violation of the treaties on the part of the United States has somehow nullified them. But age has not invalidated the treaties any more than it has invalidated the *Constitution* which recognizes them as "the supreme law of the land." Nor does breach or violation of treaties nullify them any more than does the act of committing a crime nullify the law that forbids that crime.

Are the treaties that important to the Indians of today? To Indians, treaties are vital for many reasons. First, they represent a legal and binding agreement made between the tribal governments and the United States. Often, before a treaty agreement had been reached, many Indians had given their life in wars to protect the land and rights now guaranteed by the treaty. The United States signed treaties with Indian governments in order to gain political, economic and territorial advantages. In exchange for millions of acres of land, the U.S. agreed that Indian governments would be able to reserve forever for themselves certain lands, and the Indian people would be able to live there in peace and harmony, governing their own nations as they had done from time immemorial. In addition, the United States promised to protect the Indian nations from harm by its own citizens or foreign nations.

Should Indian treaties be important to the United States? If the United States cares about its honor and integrity and does not wish to breach both its *Constitution* and international law, then Indian treaties are very important to the country.

A bill was introduced in the 95th Congress by Rep. John Cunningham (D-Wash.) calling for the abrogation by the President of all treaties with Indian tribes entered into by the United States. This piece of legislation, which is deceptively titled *The Native American Equal Opportunities Act,* calls for the unilateral abrogation of treaties, the termination of the trust relationship between the tribes and the federal government, and the liquidation of all tribal lands and assets, which would be distributed to individual tribal members.

Abrogation of treaties might result in the termination of the special relationship between the tribes and the federal government. *Termination,* a federal Indian policy which has failed miserably when pursued in the past, would put to an end the federal programs for Indians in health, education, economic development, and other areas. States could expect to assume financial responsibility for health, education, law enforcement and other services if the federal government terminates its responsibility.

So, is it really worth it to abrogate Indian treates? For the Indian people the answer is "No," since abrogation could amount to the loss of Indian culture and sovereignty for which no amount of money could compensate. For the United States the answer should be obvious. As Supreme Court Justice Black once said, "Great Nations, like great men, should keep their word." If this nation means to live up to its *Constitution,* if it has any sense of morality and justice, and if it cares about its integrity in the world, then it will respect the solemn promises made in its treaties with the Indian nations.

Abrogation of treaties means breaking agreements, changing them without the consent of all signing parties. Several movements and resolutions have been made encouraging abrogation of treaties. In the State of Washington, hundreds of thousands of dollars were expended on litigation towards abrogation - but the U.S. Courts uphold the agreements time and again. Abrogation of treaties would set a precedent towards abrogation of any usufructuary rights held by citizens (usufructuary pertains to property rights). We must think carefully before establishing a course of action which could threaten not only the rights of Indians but also of any U.S. citizen.

Paul Mullaly, above, is President of Equal Rights for Everyone, Inc. (ERFE), an organization campaigning loudly for the abrogation of treaties.

"Great nations, like great men, should keep their word."
Supreme Court Justice Black

TRIBAL GOVERNMENT

> Self-government is not a new or radical idea. Rather, it is one of the oldest staple ingredients of the American way of life. Indians in this country enjoyed self-government long before European immigrants who came to these shores did. It took the white colonists north of the Rio Grande about 170 years to rid themselves of the traditional pattern of the divine right of kings...and to substitute the less efficient but more satisfying Indian pattern of self-government. South of the Rio Grande the process took more than three centuries, and there are some who are still skeptical as to the completeness of the shift.
>
> Felix Cohen
> *The Legal Conscience*

Many people look on Indian reservations as internment camps in which Indians were confined and then forgotten by European conquerors. Others see the reservations as sanctuaries where a threatened species of wildlife/mankind is protected for future generations to behold. Others view the reservations as temporary holding pens where atavitic Indians are allowed to live out fantasies of a long-dead lifestyle until such time as they can be willingly or unwillingly brought into the mainstream of American life.

In truth, Indian reservations are the land base for tribes of people, who have exercised self-government from time immemorial and who refuse to surrender their right to self government. Indian reservations are the homelands of Indian tribes, and Indian tribes ae legal "dependent sovereign" nations within the United States.

Tribal governments were recognized as nations by the earliest Europeans who dealt with them—the Dutch, the Spanish, the French, and the English. In spite of the inherent sovereignty of Indian nations, and in spite of its repeated affirmation in old and recent United States law, many Americans believe that tribal governments were created by treaties and conferred upon Indians as a benevolent dispensation of federal law. The reverse is true: the tribal governments entered into treaties and conferred certain rights to the colonials and later to the United States.

The United States makes treaties only with other governments, and for over 200 years the United States has recognized the governments of Indian nations and tribes. In its relations with tribal governments the federal government acts under authority of the *Constitution.* In *Article I, Section 8,* the Constitution states:

"The Congress shall have power...to regulate commerce with foreign nations, among the several states, *and with Indian tribes.*"

The relationship between Indian nations and the United States government is unique in a number of respects. First, the Indians are the only group specificaly identified in the Constitution. Persons unfamiliar with Indian law mistake this distinction as one of a *racial* nature. Such is not the case. Indian tribes are *distinct political entities*— governments with executive, legislative, and judicial powers. Members of the tribes may be citizens of both their Indian nation and the United States.

Tribal sovereignty as well as tribal government are concepts which have been difficult for the non-Indian public to accept, primarily because they are foreign notions. Too few schools have given adequate attention to either tribal history, politics or culture. Consequently, the majority of U.S. citizens are unaware of the legal and political status of the tribes or even the operation of tribal governments which may, in some cases, be adjacent to their own communities.

Today, we are primarily concerned with tribal governments which have been shaped or influenced by the *Indian Reorganization Act.* In 1934, the Congress enacted the *Indian Reorganization Act* in an effort to correct many destructive Indian laws enacted previously, and to provide for the "formalization" of the tribal governments through written constitutions and charters. The *IRA* did not "give" tribes a government, but rather reaffirmed that tribal governments are for real.

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MYTH VS. FACT

WHY WERE INDIANS GIVEN SPECIAL HUNTING AND FISHING RIGHTS IN THE VOIGT DECISION?

The federal courts do not give rights, they interpret the law. Under the "Voigt Decision," the court agreed with the Lake Superior Chippewa that according to the 1837 and 1842 treaties, the Chippewa reserved (didn't sell) the rights to hunt, fish and gather. So these treaty rights were something they always had and explicitly kept when they sold the land to the United States. The U.S. agreed to these terms.

IF INDIANS HAVE UNLIMITED TREATY RIGHTS, WON'T IT HURT THE RESOURCES?

According to the "Voigt Decision," the federal court placed extreme limitations on these rights. Although the treaty reserved rights for all of the land sold, the judges said that they can exercise the rights only on lands that were "public" as of May, 1983. Also, the court must still decide what involvement the state has in protecting the resources. Until this is decided, interim agreements between the tribes and the Wisconsin DNR establish limits, length of season, and regulation enforcement proceedings.

ARE TREATY FISHERS UNREGULATED?

In addition, the tribes have developed their own resource management, natural resource codes and enforcement systems. Plus, they've created an inter-tribal fish and wildlife commission to help implement off-reservation treaty activity. The tribes and the Commission have codes, courts, trained enforcement officers and biologists.

Also, the tribes work closely with the natural resource departments of each state, and with the U.S. Fish and Wildlife Service. Through the negotiating process, the state speaks for non-Indian interests and concerns on these issues.

DO INDIANS PAY TAXES?

Like churches, businesses, other governments and some individuals, there are some exemptions for some Indians. However, all Indians pay income and other federal taxes. Although the state acquired certain powers under Public Law 280, the right to tax Indians who live on the reservation was not one of them. However, various other state taxes are paid, such as sales, gasoline; and, all state taxes are paid if a tribal member is living off the reservation.

WHY SHOULD INDIAN TREATIES MADE OVER A CENTURY AGO BE VALID TODAY?

First of all, treaties are constitutionally recognized contracts between governments. With regard to the treaty rights of the Chippewa under the "Voigt" decision, the treaties of 1837 and 1842 were real estate contracts. The Chippewa sold land (about 19 million acres) but retained the rights to use these lands for hunting, fishing and gathering. It is similar to land sold but mineral rights are retained.

IF WE DIDN'T SIGN THE TREATIES, WHY SHOULD WE HAVE TO ABIDE BY THEM?

Today's citizens also didn't sign the U.S. Constitution, the Bill of Rights or the Wisconsin Constitutions, legal documents that are older than the last U.S.-Chippewa Treaty. To argue that age has an effect on their legitimacy also raises questions about the other documents.

WHY DON'T THE INDIANS FISH IN THEIR TRADITIONAL WAYS, THE WAY THEY DID AT THE TIME OF THE TREATIES?

The treaties, like other laws, protect rights. They do not prescribe that people freeze their development at the time that the documents were signed. The treaties, agreements between the U.S. government and Indian governments, establish rights, not methods.

If the Indians who signed the treaties could foresee the extermination of forest, fauna, and wildlife no doubt they wouldn't have signed the treaties. As one tribal leader put it, "We'll go back to canoes and flintlock guns just as soon as the acid rain stops falling, the lakes are cleaned up, and the population of non-Indians returns to that of the treaty era."

WHAT IS SOVEREIGNTY?

Sovereignty is the term used to describe the power of the nation—it is usually vested in the nation's government, unless the people reserved certain sovereign rights unto themselves. It is an internationally recognized concept developed after the Europeans arrived in the western hemisphere; it is a concept of mutual recognition and it provides the method for international relations and treaty-making.

WHAT IS TRIBAL SOVEREIGNTY?

Tribal sovereignty, because the U.S. government has assumed certain powers through treaties, is a limited version of international sovereignty. It allows for self-goverment over one's territory, determination of one's memberships, and social and cultural integrity. Through this status termed "domestic, dependent nations," the tribes are under the protection of the United States. As such, the tribes are prohibited from entering into treaties with other nations or from making war with other nations. Through the treaties, the U.S. has assumed a "trust responsibility" in the relation to tribal governments and their people, and an obligation to defend the treaties they've signed.

HOW CAN INDIANS BE CITIZENS OF THE UNITED STATES AND INDIAN CITIZENS?

Dual citizenship is common throughout the world. In the 1930's, the U.S. Supreme Court declared that Indian tribes were "domestic dependent nations." In 1924, following the voluntary enlistment in the armed forces by American indians, the U.S. Congress unilaterally declared the American Indians would henceforth be declared citizens of the United States. Article 3, Section I of the Wisconsin Constitution states that "Persons of the Indian blood, who have been declared by law of congress to be citizens of the United States," shall have voting rights in Wisconsin.

Despite these acts by state and federal legislators, American Indians are still fighting for human and civil rights. It wasn't until 1946 that Indians were allowed to vote in some stations; Indians were prohibited from buying liquor in Wisconsin until 1954; and, it wasn't until 1978 that congress passed the American Indian Religious Freedom Act.

WHO IS AN INDIAN?

If one is to acquire the benefits of the U.S. "trust responsibility," you must be an enrolled member of a federally-recognized tribe. Determining one's membership is an act of tribal sovereignty, a right tribes have always had—a right not given up or taken away. Therefore, there is no federally-imposed definition. Some use blood quantum, each with varying criteria; others use birthright (like the United States) as long as one parent is an enrolled member. Some tribes have an adoption or naturalization procedure. Also, there are some Indians who are racially high in blood quantum but due to legal or political changes are no longer recognized by the United States.

Tribal Government

continued from page fourteen

While a majority of the tribes adopted a written constitutional form of government as encouraged by the IRA, some did not. But a tribe's right to retain a traditional form of government with an unwritten constitution has been implicitly reaffirmed many times by the Supreme Court. The Pueblos and the Iroquois are examples of federally-recognized tribes with traditional constitutions.

Dramatic improvements have taken place as tribal governments have begun to assume legal, contractual and administrative responsibility for the many-sided aspects of modern economic and social existence. Tribal governments are improving their courts and expanding their judicial role and are more actively encouraging and regulating economic enterprise. They are taking greater initiatives to protect their natural resources and environment and to deliver educational and social services to their people.

Indian tribal governments have not always had the opportunity to perform many of their governmental functions. The Bureau of Indian Affairs is the federal agency with the greatest responsibility for delivering services and for exercising the trust responsibility inherent in the federal-tribal relationship.

The *Economic Opportunity Act* of 1964 acted indirectly to break the BIA monopoly over funding sources and services to Indians. As an alternative to the BIA, the *Act* provided an opportunity for tribal governments to develop versatility and administrative initiative. In 1973, the *Indian Self-Determination Act* provided the administrative mechanisms for the tribes to contract for and fully administer federal funds for services which previously had been provided by the bureaucracy. The tribes have demonstrated repeatedly that they are more effective administrators of their own programs than are their federal tutors and administrative overseers.

However, there are those who ask the question, "If the tribes want to be self-governing and self-sufficient, why do they ask for federal subsidy?" The answer is quite simple. As governments, the tribes receive assistance on the same basis that state and other local governments receive federal subsidies for road and school constructions, for impact aid in education, for public transportation, for urban renewal, and for other projects and services.

Tribal governments are often referred to in derrogatory terms by anti-tribal groups who describe them as inept and corrupt. A quote from the **The Legal Conscience** by Felix Cohen, who is known among Indians as the "father of modern Indian law," probably best answers that charge:

"Not all who speak of self-government mean the same thing by the term. Therefore, let me say at the outset that by self-government I mean that form of government is which decisions are made not by the people who are wisest, or ablest, or closest to some throne in Washington or in Heaven, but rather by the people who are most directly affected by the decisions. I think that if we conceive of self-government in these matter-of-fact terms, we may avoid much confusion." "Let us admit that self-government includes graft, corruption, and the making of decisions by inexpert minds. Certainly these are features of self-government in white cities and counties, and so we ought not be scared out of our wits if somebody jumps up in the middle of a discussion of Indian self-government and shouts 'graft' or 'corruption.'

The tradition of self-government is not a foreign idea, but one of the fundamental concepts that guided the founding of the United States. As they have from time immemorial, tribes will continue to be permanent ongoing political institutions exercising the basic powers of government necessary to fulfill the needs of tribal members.

Reproduced from a publication by the Institute for Development of Indian Law.

VOIGT LINKED TO RACISM: AD HOC COMMISSION

For some people in Wisconsin, the Voigt Decision midwived that ugly babe - racism. It provided a perfect hook to hang pent-up and deep-seated prejudices held against Indian people, many feelings which have been passed down from generation to generation. Others result from jealousies and insecurities, from inexplicable fears of Indian people, perhaps partly a result of hard economic times for many in the north. In a response to threats on Indian lives and dignity, the Lac Courte Oreilles tribe formed the Ad Hoc Commission on Racism which listened to testimony and produced a report which should help our Wisconsin communities address problems of racism, which are not new with the Voigt Decision, only given an opportunity for public ventilation and, unfortunately, consent.

Members of the Ad Hoc Commission on Racism listened to several days of testimony which provided the basis for their report and recommendations. Chairing the Commission was Veda Stone, UW-Eau Claire, pictured above with Rick St. Germaine, LCO Tribal Chairman. (Photo Bob Albee)

"Racism denies the basic equality of mankind"

DEFINITION OF RACISM

Racism: Roots in Fear, Ignorance and Oppression

Racism is an ideologically indefensible belief in the inherent superiority of a particular segment of the population. It denies the basic equality of humankind and correlates ability and virtue with physical or cultural traits and characteristics. Racism is that form of oppression which is expressed as an action, attitude or institutional structure which subordinates a person or a group because of color or ethnic derivation. As with most forms of oppression, the racist group often seeks economic benefits from the pattern of oppression. However, since racism is rooted in misinformation (stereotyping), fear (of people and behavior which is different) and hatred (a frequent manifestation of suppressed fear or anger), it is debilitating to all human culture, including the oppressor. Because racism feeds on and fosters ignorance, fear, and hurt, it saps the creativity, rationality and the health of mind and spirit of both the victims of racism and the racist group or individual.

AD HOC COMMISSION ON RACISM IN WISCONSIN

INTRODUCTION TO THE FINAL REPORT

The State of Wisconsin has served as a living laboratory for experiments by the United States in policy initiatives toward its Indian tribes and their people. In the 1830's, Wisconsin Territory was viewed as the northern "Indian territory," to which Indian populations from the more "civilized" East should be removed. The Oneida from New York, and Stockbridge and Munsee and Brethertons from Massachusetts were removed to the territory. At almost the same time, white settlers in the southern portion of the Territory came into conflict with the Indian population of that area. The result was that Pottawatomi and Winnebago were removed farther west, to Kansas and Nebraska. Many Winnebago people returned in small groups and bands to their home territory, and they resisted all further efforts at removing them. The United States finally consented to their presence and enacted legislation granting homesteads to the Winnebago. This legislation prohibited the homesteads from having contiguous boundaries and Winnebago homestead land was scattered through ten Wisconsin counties.

The Chippewa and Menominee, located farther north, were also scheduled for eventual removal. That policy was formally abandoned by the United States in the 1850's and was replaced by the Reservation policy, reserving portions of the Tribes' homeland for permanent homes for the bands. The Menominee Reservation and that of the Chippewa bands of the Bad River, Red Cliff, Lac du Flambeau and Lac Courte Oreilles, were established by treaties signed in 1854; all the treaties authorized allotment to individual tribal members. Allotment was not mandated, so that allotments were granted to individual Chippewa throughout the remainder of the century, and on into the twentieth century. The last allotments were issued to individuals in 1915, 1916 and 1917. The Menominee Reservation was never subjectedto allotment.

Allotment of Reservation land was formally abandoned in 1934, through passage of the Indian Reorganization Act. The Act authorized the establishment of reservations for Indian bands which did not already have them. Land was purchased in the late 1930's for the Chippewa Bands of Mole Lake and St. Croix. Additional land could also be purchased for Tribes under the legislation, and such sums were expended on behalf of the Stockbridge-Munsee.

In the 1950's, it was assumed that some Indian tribes had progressed politically and economically to the point that continued relationship with the United States government was no longer needed for their protection. The Menominee Tribe was assumed to be such a tribe, and legislation providing for its eventual termination was adopted in 1953, to be effective in 1962. The result of that action was so adverse that Congress re-established the Menominee Tribe and Reservation in 1973.

The other Tribes in the State were subjected to another type of remedial legislation, commonly known as Public Law 280; by its terms, the State of Wisconsin was authorized to impose its criminal laws on Indian persons living on the Reservations of the State; the civil courts of the State were also authorized to adjudicate the personal disputes of Indian person. The consent of the Tribes, or of their members to such jurisdiction was neither required nor sought.

In the 1970's Congress sought again to recognize the status of Tribal units of government appropriate to administer federal programs. Tribes were mentioned in revenue sharing programs,in grant in aid programs, in standardized regulatory programs. The programs administered by other units of government were also administered by Tribes. This policy continues to be in effect.

The precipitating factor for the recent occurrences of hostility and anger directed toward the Indian people of the State of Wisconsin was the decision in January, 1983 of the federal Court of Appeals which recognized the continued existence of rights reserved by the Chippewa in the State to hunt, fish and gather in treaties signed with the United States in 1837 and 1842. The decision was reached in a case filed by the Lac Courte Oreilles Band of Lake Superior Chippewa in 1974 against the Wisconsin Department of Natural Resources, in which the then-Secretary, Lester C. Voigt, was the first named defendant The case has become popularly known as the "Voigt" decision.

The lawsuit was filed by the Tribe on the ground that its treaties with the United States guaranteed the right to hunt, fish, and gather on the lands sold by the Chippewa to the United States (an area comprising the northern one-third of Wisconsin), and that the State could not regulate the treaty-guaranteed activities of the tribal members. The 1983 decision, which the United States Supreme Court later declined to review, made clear that the reserved treaty rights continue to exist. The decision did not determine what, if any, regulations could be applied to treaty activities by the State. In order to remove uncertainty while the issue of regulation was under consideration by the federal trial court, the Wisconsin Department of Natural Resources negotiated interim season-by season and species-by species agreements with representatives of the six Lake Superior Chippewa Tribes in the state. These agreements provided different regulations of hunting and fishing for tribal members that are included in state law and regulations, and also provided grounds for criticism of the different standard of rules for Indian and non-Indian.

Reaction to the decision from several sporting groups and several new groups formed expressly to voice opposition to the decision, was negative and highly vocal. The groups claimed that implementation of the decision would lead to depletion of all natural resources and eventual destruction of northern Wisconsin's tourism industry.

Verbal attacks and demonstrations against what were called "unequal rights" and "unconstitutional favoritism" were not the only reaction. Bumper stickers, hats, signs and flyers appeared advocating the shooting of Indians. Tribal representatives received harassing phone calls, statements were made in the media threatening violence to tribal members hunting and fishing off-reservation; local Indian communities were subject to increased tensions; a general atmosphere of intimidation in off-reservation establishments grew, through casual comments directed at Indians.

The Voigt decision resulted in these responses directed against all Indian persons in the state. It also fueled other long-existing disputes between Indian tribes and non-Indian community. The decision was seen as a prime example of the existence of different rules of conduct and law which apply to Indian and non-Indian people. The underlying assumption of persons and groups opposing the decision was that any such difference is wrong and without foundation in modern society. In fact, the Voigt decision was based upon the continued existence of centuries-old rules of law which govern the relationship of Indian people and their governments (tribes) with non-Indian people and their governments (at all levels). The premise of opponents then, is that these rules of law are outdated, unfair, and unsupportable.

Under challenge is the continued existence of Indian governments with the power to make their own laws to govern the conduct of their members and to control their territory. The existence of resevations is challenged; the existence of land not subject to the taxing and regulatory power of state and local governments is challenged; and the continued existence of Indian people as Indians is challenged by some.

The challenges are based superficially on matters of policy and principle. Underlying them are several assumptions which can be summarized as follows: (1) Indian governments are anachronisms and untrustworthy; (2) Indian people are subsidized by welfare and government programs at the expense of non-Indian citizens.

In turn, Indian groups, including the Lac Courte Oreilles tribal Governing Board have challenged such assumptions as being racist.

Action towards abrogation of treaty rights have been taken within the State of Wisconsin. The Wisconsin Counties Association (WCA) has passed Resolution-59 advocating Congressional abrogation of treaties. An advisory referendum, a result of a petition sponsored by Equal Rights for Everyone, Inc., was also on the Sawyer County Ballot, asking that Congress reconsider the hunting and fishing rights of the Chippewas on ceded lands. In Washington State, where treaty battles have waged for ten years, Initiative 456, an abrogation initiative urging Congress to renegotiate the treaties, passed in the November election, as did Sawyer County's referendum question.

WCA RESOLUTION TOABROGATE

The Wisconsin Counties Association, after establishing a joint working committee with the tribes, voted at their annual meeting in Green Bay failed to pass Resolution #59, an abrogation resolution.

The conclusion of the Resolution reads as follows:

> "THEREFORE BE IT RESOLVED that the Wisconsin Counties Association, in convention assembled, formally request the U.S. Congress to enact legislation which would limit the usufructuary rights granted to Chippewa Indians by the Treaties of 1837 and 1842 to tribal individual reservations and Indian trust lands."

The rationale for the above conclusion is stated as such..."agreements between the tribes and the Wisconsin Department of Natural Resources have proved ineffective to regulate these rights to the mutual satisfaction of the tribes and the public..."

The above rationale, however, has no evidence supporting it. Nothing has, indeed, been evidenced to show that the agreements have been "ineffective." With the conclusion of each season, hunting or fishing, no signs of depletion of any resource have occurred. In fact, the tribes have harvested well below quotas which were established as being biologically safe. There has been no evidence of waste, mismanagement or incidence where public safety has been threatened.

The WCA Resolution #59 stands witness to the fact that conclusions are drawn and accepted, even by our leadership, with little or no supportive fact.

STATE SEEKS TO LIMIT TREATY HUNTING LAND

The WCA has also expressed concern because the counties own 2.27 million acres of land in the approximately 18,000 square miles of ceded territory.

They had intended earlier to file an amicus appeal (friend of the court) with the State of Wisconsin asking the 7th Circuit Court to change its decision in a way which would limit the exercise of treaty hunting on lands which have never been privately owned. Currently, the ceded territory open to the exercise of treaty rights by the Chippewa includes all lands public since March, 1983. Arguments on the appeal were heard on January 11, 1985, though no decision has been made. The WCA presented argument on the state's side of the case, although they did not file an amicus as originally intended. The change being sought would limit treaty hunting on ceded territory to a mere 100,000 acres of land, substantially diminishing the land base of the present ceded territories. However, it would have no bearing on exercise of treaty rights on bodies of water.

SAWYER COUNTY REFERENDUM

Treaty question on referendum

HAYWARD (AP) — A referendum question regarding treaty rights of northern Wisconsin Indians has been approved for the Nov. 6 ballot in Sawyer County by the Board of Supervisors.

The advisory referendum was requested by the Hayward-based group Equal Rights for Everyone, which presented a petition with 822 signatures asking that it go on the general election ballot.

It asks: "Should legislation be drafted and introduced to Congress to clarify the many problems that have arisen concerning tribal jurisdiction of titled land in Sawyer County and the question of hunting and fishing on ceded lands?"

A federal court ruling last year upheld treaty rights of the northern Wisconsin Chippewa to hunt, fish, trap and gather wild rice on public lands off reservations in an area covering about the northern third of the state.

Agreements between the state and the Chippewa tribes on hunting and fishing seasons for Indians, in accord with the court ruling, have become a subject of controversy, with some non-Indians criticizing what they consider special privileges for Indian hunters.

Tribes lose treaty vote

HAYWARD (AP) — An advisory referendum supported by opponents of Indian hunting and fishing treaty rights in northern Wisconsin drew lopsided support Tuesday.

With all 28 Sawyer County voting districts reporting, 5,202 voted "Yes" and 1,528 voted "No," according to County Clerk Frank Duffy.

The referendum asked: "Should legislation be drafted and introduced to Congress to clarify the many problems that have arisen concerning the tribal jurisdiction of titled land in Sawyer County and the question of hunting and fishing on ceded land?"

Equal Rights for Everyone (ERFE), a Hayward-based group opposing Indian treaty rights, had requested the referendum by presenting a petition with 822 names.

Paul Mullaly, founder of ERFE, called the referendum "a real opinion of how the people feel."

"It's not just a poll, it's a legal (although non-binding) referendum," he said. "I think the Congress should take note of this."

Mullaly said the treaty rights should be abolished because they create ill feelings between tribal members and non-Indians.

"We all have to live here as neighbors. All they (treaty rights) are doing is pitting us against each other and that's got to stop."

Rick St. Germaine, tribal chairman of the Lac Courte Oreilles Chippwa, whose reservation is headquartered in Sawyer County, said the referendum results indicate an underlying "hostility and jealousy" by non-Indians toward the tribes.

"I do not believe the referendum is a valid means of determining this issue. The treaty rights are based on historic agreements between the tribes and the federal government. They're not based upon popular opinion in 1984. I think the referendum was a waste of taxpayer's money," he said.

Board won't meet with Indians

Hayward, Wis. —UPI— The Sawyer County Board has rejected overwhelmingly a resolution to establish a joint committee of county and tribal governments to help resolve differences with the Lac Courte Oreilles tribe.

A group called Equal Rights for Everyone presented more than 700 signatures at Tuesday night's meeting asking the board to turn down the resolution.

The tribe and the county have clashed over issues, including the tribe's highly profitable bingo parlor and Indian hunting and fishing rights.

"The message to send is that we're not going to talk to the tribe," Board Chairman Wayne Summerville said after the vote.

Board member Andrea Marple-Wittwer, who supported the proposal, said the decision was short-sighted.

"This board doesn't understand the real ramifications of that resolution," she said. "I think that by not having this committee, the federal government, the state government, the tribe and the DNR will continue in their negotiations and we will be left out, as always."

Lac Courte Oreilles attorney Duane Slayton called the rejection another example of "a hand being extended from the tribe and being refused."

THE CONDEMNED INITIATIVE

INITIATIVE 456: ANTI-INDIAN MOVEMENT NATIONAL IN SCOPE

A Report on Initiative 456
Walt Bresette, PIO
December 1984

In response to a recent meeting with C. Montgomery Johnson Associates, the director of the NIX 456 Campaign, I've assembled this narrative along with pre- and post- 456 materials. As I pieced the materials together along with various meetings, it seems likely that the anti-Indian movement is becoming well-organized and is national in scope.

One specific example is the passage of Initiative 456, ostensibly a Washington State anti-Indian bill. However, as you review the draft bill resulting from 456, it's clear that all fish harvested by Indians are the target of the movement. Although it's clear that 456 legislation has no chance of getting out of congressional committee, the anti-Indian proponents are prepared to launch similar measures in an additional 20 states which have the Initiative process. The prevailing thought is that if enough states pass anti-Indian bills, the U.S. Congress will eventually begin listening *and* acting. Within our region it's likely that there will be a Michigan Initiative during the 1986 elections. If so, a campaign to offset or pre-empt Michigan anti-Indian initiative should begin immediately.

A complete report of Initiative 456 will soon be available. The report is being prepared by "Gunimie" Johnson, the NIX 456 campaign director. In it he'll outline what went right and wrong and what should happen in the near and longer term regarding both 456 and other projected initiatives. If anyone has information about anti-Indian groups, hears about an initiative movement, or has other suggestions, I suggest you contact him directly, preferrably with a copy to our offices so that coordination of information will occur. Enclosed are some preliminary analyses of the 456 initiative.

My understanding of 456 is that it has no legal teeth and that although congress will be approached, it's unlikely anything will happen immediately. The post-456 coalition committee, however, is continuing and will probably make some recommendations. It's likely they'll do some in-state (Washington) activities, contact tribal leaders in other targeted states, and move to get a national campaign underway, probably with NCAI.

In summary, it looks like the 456 supporters will be taking their efforts on the road. It also looks like they are interconnected with groups such as MUCC (Michigan United Conservation Clubs), WARR (Wisconsin Alliance for Rights and Resources), ERFE, (Equal Rights for Everyone), a new group TEA (Totally Equal Americans) and other such anti-Indian organizations.

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Mashkisibi Center
BAD RIVER BAND OF LAKE SUPERIOR
TRIBE OF CHIPPEWA INDIANS
P.O. Box 39, Odanah, WI 54861

RESOLUTION NO. 11-7-84-139

WHEREAS, the Bad River Band of Lake Superior Tribe of Chippewa Indians recognizes the importance of cooperation and communication between the Bad River Tribe and the Ashland County Government in order to further the economic and social well being of all the citizens and members of the respective governments, and

WHEREAS, the Bad River Tribe and Ashland County have common goals including economic development, environmental preservation, tourist promotion, wildlife and forest management, natural resource identification and any other matters of mutual concern and benefit;

NOW THEREFORE BE IT RESOLVED, that a committee as suggested by the Ashland County Board be formed consisting of three members of the Bad River Tribe, to be appointed by the Tribal Chairman, and three members of the Ashland County Board, to be appointed by the Board Chairman. The appointed members of this committee shall serve two year terms and shall meet not less than six times a year in a place determined by the members. The Ashland County Board Chairman and the Bad River Tribal Chairman shall be ex officio members of this committee. The Ashland County Board members shall serve without any type of compensation, as a public service to promote open and positive communication between the citizens and members of Ashland County and the Bad River Tribe.

CERTIFICATION

I, the undersigned, as Secretary of the Bad River Band of Lake Superior Tribe of Chippewa Indians, an Indian Tribe organized under Section 16 of the Indian Reorganization Act, hereby certify that the Tribal Council is composed of 7 members, of whom 5 members, constituting a quorum, were present at a meeting hereof duly called, noticed, convened, and held on the 7th day of November, 1984; that the foregoing resolution was duly adopted at said meeting by an affirmative vote of 4 members; 0 against; and 0 abstaining, and that the said resolution has not been rescinded or amended.

Carol Scott
Carol Scott, Secretary
Bad River Tribal Council

COOPERATIVE COMMITTEES EMERGE

The controversy over the Voigt decision has raged in Northern Wisconsin for nearly two years now and essentially taken both white and Indian citizens, as well as state, tribal, and county officials through a difficult period of adjustment to the affirmed rights of the Chippewa to hunt, fish and gather on ceded territories. Despite the turmoil, however, some positive movements towards increased tribal - community cooperation are emerging in the wake of considerable strife.

With initial statements from the media characterizing the Voigt Decision as granting the Chippewa "unlimited" hunting and fishing in the ceded territories, the public reaction was first one of dismay and anger as well as concern over the resources and their livelihoods. With misinformation running rampant through the northern third of Wisconsin in regard to the extent of priviledges allowed the tribes, groups such as Equal Rights for Everyone, Inc., formed, advocating the abrogation of treaty rights. Literature and signs appeared which reeked of racial hatred throughout the region, such sentiments finding a fertile breeding ground in the confusion of the citizentry.

The two years since the first "shock" of Voigt, however, have also included numerous forums, conferences, press releases and attempts to provide the facts regarding the Voigt decision to the tribes and white communities alike. The actuality that treaty rights are limited, are regulated and that the resource is well-protected, slowly began to infiltrate communities.

Two years has also seen several agreements successfully negotiated between the Wisconsin Department of Natural Resources (DNR) and the tribes as each hunting and fishing season approached. These agreements have successfully protected the resource while allowing an exercise of treaty rights.

The tribal harvest of deer has gone on without significant incident and with a harvest far beneath the allotment of deer, contrary to the many doomsday predictions that tribal members are ravaging the forests. Likewise, fishing agreements have been reached and tribal members, to date, have shown an ability to exercise those rights with no cause for alarm.

With the "threatening Indian problem" coming more into perspective, several community members have made advances towards alleviating tensions which have arisen, and here and there in Indian country, hands are being extended in an attitude of cooperation predicting joint efforts for white and Indian communities to bridge gaps and work toward the future together.

Lac du Flambeau

Lac du Flambeau (LDF) is one region where such progress is being made. Initial contacts made by Boulder Junction's town chairman, Jerry Long with white community members aimed at problem solving, mutual development and a reduction of racial hostility.

According to Jerry Maulson, LdF planner, Long has become increasingly disturbed by the effect the tensions and negative publicity could hace on the tourist-oriented economy of the area. Consequently, Long addressed the Tribal Council, as a business person, suggesting that Lac du Flambeau and surrounding communities begin to explore areas in which they can work together, rather than harbor hostilities.

Since then several meetings have taken place with representatives from various communities surrounding the reservation. Many of the visitors had never seen the reservation,so Maulson arranged a tour to acquaint them with current tribal enterprises.

In a recent meeting subsequent to the tour, which also included Ruth Goetz from the Wisconsin Department of Tourism, the group discussed various needs and directions they could pursue. Maulson says several areas were identified by the group as important, including a fish stocking program; the need to support and train Indian entrepeneurs to better develop the reservation's ability to attract tourism to the area; need for low interest tourist-oriented loans for both Indian and white; and the need for more advertising dollars for the area.

Maulson, who was appointed tribal laison between the tribe and Long's group of community and business leaders, feels the group's activities are a movement "beyond Voigt." To Maulson, fighting over already established rights is useless, but tribes must both show the public they have management capability and "rub elbows" much more frequently. He feels both white people and Indian peoples have much to learn from each other through joint involvement in projects and planning.

All the furor and social upset provoked by the Voigt Decision alarmed members of some communities and organizations. They could see rifts growing between tribes and neighboring communities which could only be detrimental socially and economically for the entire area. Consequently, a few hands have been stretched across the gaps of fear and ignorance in efforts to begin cooperation and develop mutual understanding and respect.

JOINT COMMITTEE

An early January meeting is tentatively scheduled for the Committee on County/Tribal Relations, which was proposed in June at the Northern Counties Treaty Rights Conference at Telemark. The Wisconsin Counties Association (WCA) has elected five representatives to sit on the committee, and five representatives from the tribes have been appointed by the Great Lakes Inter-Tribal Council.

The purpose of the committee, according to the WCA, is to promote dialogue and communication between county and tribal governments. According to Jack Miller, Chairman of the GLITC, it should provide a forum to explore various areas of mutual concern to counties and tribes, including but not exclusively treaty rights issues.

The five representatives appointed by the GLITC include Gene Taylor, St. Croix; Joseph Cobine, Bad River; Richard Gurnoe, Red Cliff; Hillary Waukau, Menomonie; and Jack Miller, Stockbridge-Munsee.

The county representatives are Charles Tollander, Burnett Co.; Tony Lorbetske, Oneida County; Larry Gleasman, Dane County; Al Skinner, Barron County; and George Schroeder, Outagamie County.

The initial meeting will be organizational in nature, Miller says, primarily identifying key areas of concern which the committee will continue to address.

Bad River - Ashland Co.

Similar to efforts being made to Lac du Flambeau are those between the Ashland County Board of Supervisors and the Bad River Tribe. The Ashland County Board passed a resolution which recognized the "importance of continual and expanded cooperation and communication" between the county and the tribe, in order to "further the economic and social well-being" of all.

The resolution also called for the establishment of a joint committee to work on common goals, including economic development, environmental preservation, tourist promotion, game and forest management, natural resource identification and other matters of mutual concern.

The Bad River Tribe passed a comparable resolution in response, and consequently a six member committee composed of three tribal and three county representatives has been established with the first organizational meeting set for December 13.

Committee members see the joint committee as a way to forge stronger county-tribal relationships, explore avenues of mutual concern, and as forum for the exchange and trust one another" is an accomplishment in itself.

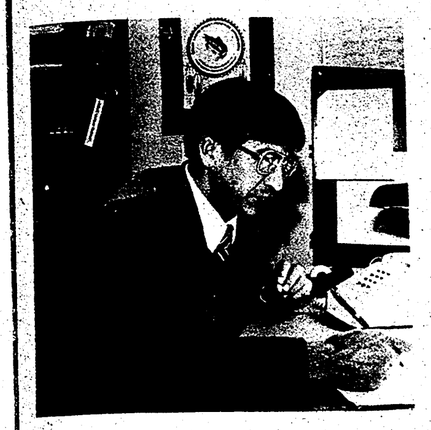
Marvin Hunt, vice-chairman of the Ashland County Board and initiator of the resolution, identifies law enforcement and tourism as two key areas which the committee may be exploring.

Bayfield-Redcliff

Returning from the recent Lutheran Conference on Treaty Rights at Telemark, Dick Bodin, Bayfield Chamber of Commerce member, felt it was necessary that information such as he acquired at the conference be distributed community-wide. He was concerned that citizens may be reacting from an uninformed base and that such tensions may affect the otherwise positive relationship between the Red Cliff tribe and the Bayfield community..Bodin expects the town meeting will be scheduled following the holidays.

The Bayfield Chamber of Commerce also took action in recognition of the need for public information to quell fears and hostility provoked by distortions of the Voigt situation. They passed a resolution to sponsor a community-wide town meeting for the purpose of educating the public on Voigt and treaty issues.

INDIAN— WHAT DOES IT MEAN ?



The Voigt Decision has been much in the news since January 1983, and has had an impact on many lives in northern Wisconsin. With it has surfaced fears, hatred, distrust, confusion - many of these feelings the result of ignorance or misinformation. On the other hand, a growing consciousness of these feelings has also come to light with a realization that too little is really understood of tribal communities or of the impact of the Voigt Decision. With this awakening, cooperative efforts between communities have blossomed. Yet there remain many "miles to go..." before Voigt is finally resolved legally, politically, and socially. As the controversy and the legal proceedings surrounding the Voigt Decision unfold, history is in the making. Hopefully, Wisconsin will be able to be proud of the course its citizens choose and will be able to leave a legacy of cooperation and respect for human rights.

Perhaps we need to better understand just what it means to be Indian.

Twelve years old stood at the microphone,
As a panel of professors shuffled papers, preparing to listen,
And the audience stared up - two hundred adult eyes focused
On twelve years old; whose head would not lift up to look out,
But whose mouth struggled to tell of being an Indian girl in school,
Who murmured quietly of loneliness and derision.
Twelve years old,
Only the top of her head showed, covered with thick black hair,
Shining in the glare of spotlights, bobbing
As she spoke, the silky mop
A convenient curtain for shy eyes.
Friends could not be friends, she said, because Moms and Dads
Warned of being with an Indian, an Indian
Girl, who cannot understand what evil lurks beneath her skin,
Or why she has been shut out with jeers,
Why school halls become gauntlets of taunts
Mouthed from puppet peers,
Reciting words flung from supper tables or flaunted over beers....
Mini-mimicks, small torturers, building bars in elementary years,
Constructing traps for the innocent made from ignorance and fear....
"because I am an Indian," she said again, never looking up,
Black hair still hiding the child face.
Briefly she went on, groping for words to tell of these things;
And then, she was done.
All eyes dropped, as twelve years old left the podium.

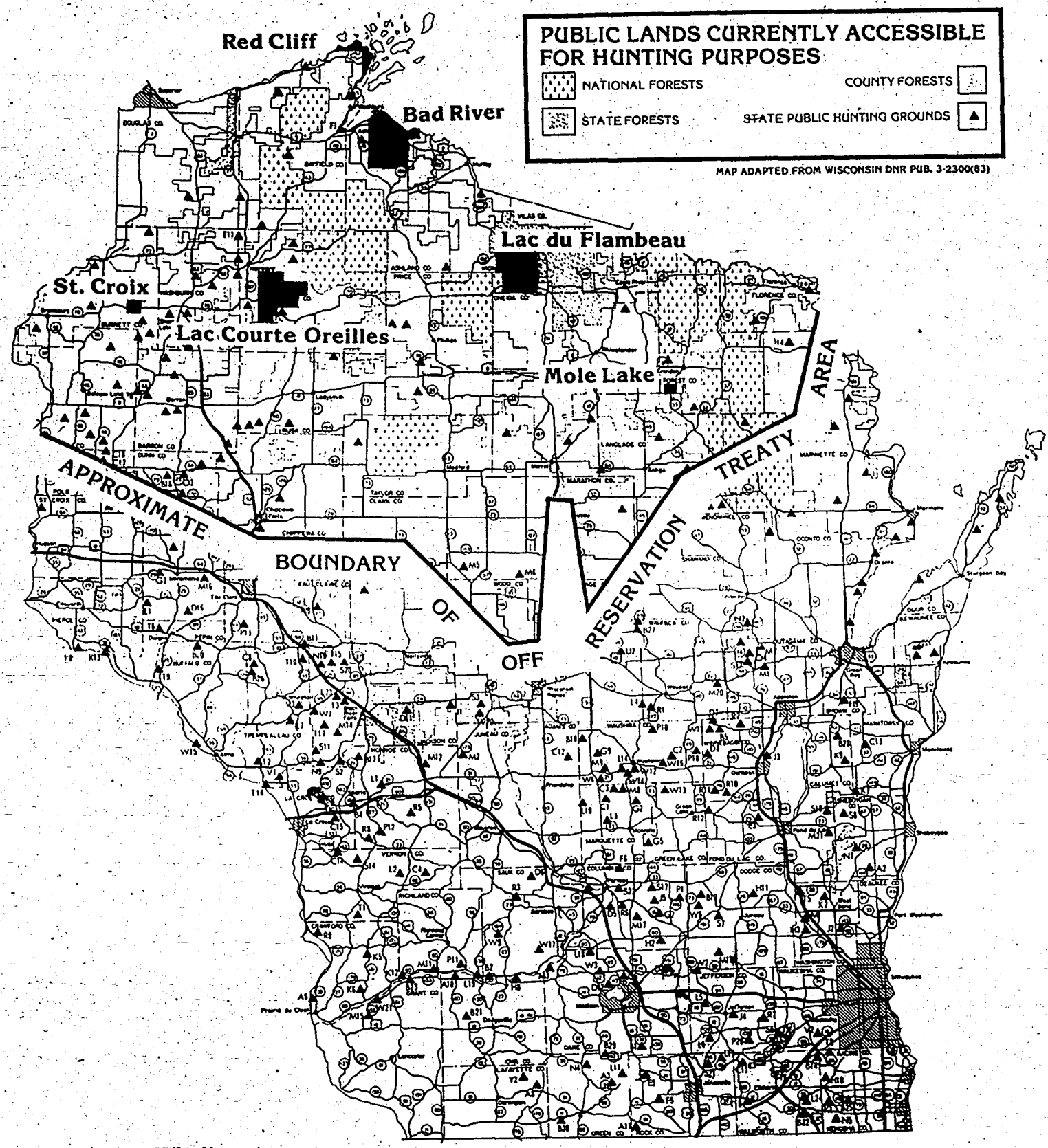
My blue eyes, time-rimmed with lines now, have seen
Only small crosses dimly, it seems.
I fear that, were that my daughter there, tears
Would freeze into diamond-hard hate difficult to break.

This poem was written by **Sue Erickson**, Ashland, an observer of the public hearings of the Ad Hoc Commission on Racism in Wisconsin.

Within the Old Indian Cemetery on Madeline Island a cross leans against a tree— symbolic of the mixing of two cultures, European and Indian.

CEDED TERRITORY UNDER VOIGT DECISION

WISCONSIN ONLY



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 ceded 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.

715/682-6619

Great Lakes Indian Fish & Wildlife Commission
P.O. Box 9 Odanah, WI 54806