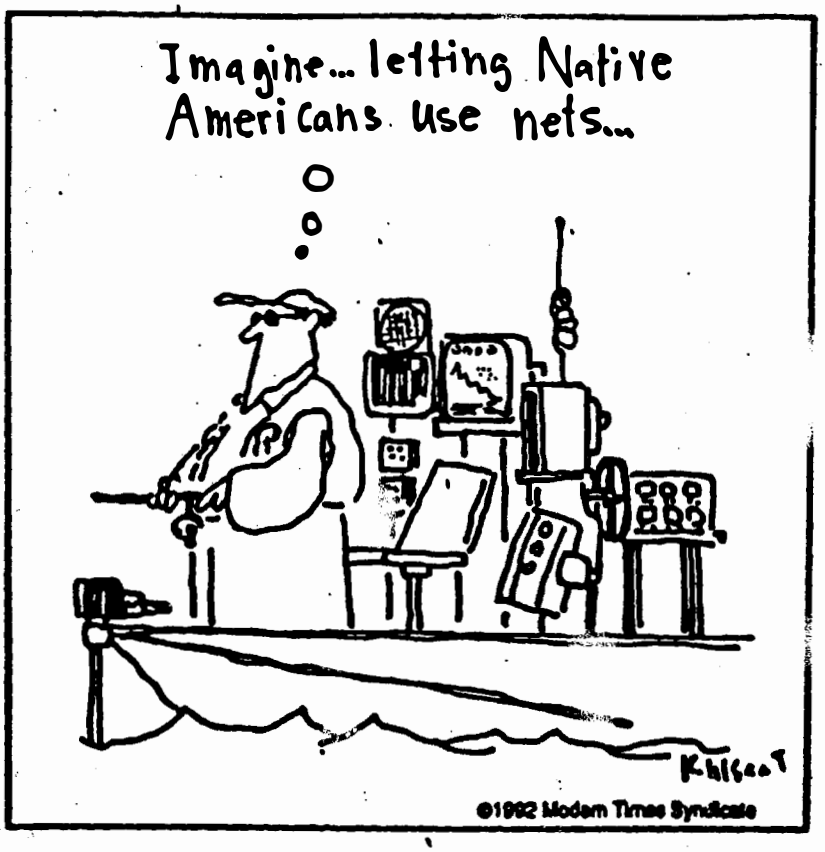
Attachment A
Sen. Env. & Nat. Res.
4-22-93

MILLE LACS TREATY SETTLEMENT

SENATE FILE #1619

SPONSORED BY SENATOR STEVEN MORSE

INTRODUCED APRIL 21, 1993



Star Tribune
1/27/92

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TABLE OF CONTENTS

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SUMMARY OF MAJOR SETTLEMENT PROVISIONS
MILLE LACS BAND OF CHIPPEWA AND THE STATE OF MINNESOTA

This is a summary of the major elements of a tentative settlement agreement between the Mille Lacs Band of Chippewa and the State of Minnesota concerning Band claims to hunting, fishing, and gathering rights in the ceded territory under the Treaty of 1837. This tentative settlement addresses the major areas of concern, but final details of the agreement still must be agreed to.

This settlement is subject to approval of the Minnesota State Legislature and the government of the Mille Lacs Band of Chippewa.

This agreement, if approved, will provide:

1. A final court approved settlement of the Mille Lacs Band's claims to hunting, fishing, and gathering rights under the 1837 Treaty and claims to fishing rights on Lake Mille Lacs under the 1855 Treaty.

2. Recognition of the Mille Lacs Band's hunting, fishing, and gathering rights with the following limitations.
   - All harvesting rights will be exercised pursuant to a Band conservation code;
   - Commercial harvest of big game, game fish, and timber will be prohibited, other resources may be harvested commercially under a band code;
   - No spearing or netting of game fish except for subsistence in a tribal fishing zone in Lake Mille Lacs, Ogechie, Onamia, Shakopee Lakes and their connecting rivers; three additional lakes to be determined through mutual agreement, and 20 miles on the St. Croix River;
   - Hunting, fishing, and gathering on private lands will be prohibited unless the lands are open to public hunting or fishing by land owner consent.

3. A tribal fishing zone of about 6,000 acres of Lake Mille Lacs adjacent to the reservation, (approximately 4.5% of the lake.)
   - Opportunities for Band regulated sport angling by non-Band members in the tribal zone;
   - There will be no commercial harvest in the tribal zone by Band members or non-Band members;
   - Fishing in the tribal zone will be managed so that the total annual harvest of walleye is similar to the rest of the lake (approximately 4 pounds per acre in a typical year).

4. Cooperative management, protection, and enhancement efforts to insure the continued health of the shared resources in the state.

5. The State will convey 7,500 acres of land to the Band.
   - Precise locations of the land have not yet been determined. Parcels will be located contiguous to or near Band lands;
   - Selection of the lands will be subject to a procedure that will include opportunity for comment by affected local governments and the public;
   - No casinos will be permitted on these lands;
   - The State will continue to make payments in lieu of taxes to the counties for the lands.

6. The State will pay the Band a total of $10 million over the next five years.
   - The Band will invest 50 percent of the $10 million payment in a fund that for 10 years, may be used only for environmental and natural resource management and law enforcement.

12/11/92 - MDNR

QUESTIONS AND ANSWERS ON THE TENTATIVE SETTLEMENT AGREEMENT BETWEEN THE MILLE LACS BAND OF CHIPPEWA AND THE STATE OF MINNESOTA

Why reach a negotiated settlement? Why not let the courts decide?
When parties negotiate a settlement to a dispute, they, not the court, control the outcome. Each side is forced to examine its position and decide what is truly important and what is not. The negotiation process compels compromise and reasonable accommodation of the true needs of both sides. It results in an intelligent resolution of the dispute.

Litigation poses risk for both sides in this dispute. Both sides have good arguments to make; either side could win or lose some or all of the case. When you go to trial, you are committed to try your hardest to win, but ultimately the court decides. It is likely that neither side would be very happy with a potential court resolution.

A negotiated settlement is especially desirable in this particular case because it involves a government-to-government dispute over a matter of significant social and political concern. It is in the best interest of the State and the Band, and their respective constituents, to work this out themselves, and not leave it to the court.

What is the significance of the 1855 Treaty in this case?
Although this lawsuit is about hunting and fishing rights of the Mille Lacs Band under the 1837 Treaty, the 1855 Treaty plays a key role in this dispute and the proposed settlement. The 1855 Treaty is one of the main elements of the state's defense, for it contains language that the state believes revoked any hunting and fishing rights created by the 1837 Treaty.

However, the 1855 Treaty also created the Mille Lacs reservation which lies along the southern shore of Lake Mille Lacs. There is a strong argument that the creation of a reservation carries with it the right to fish in the adjacent waters, which in this case would be Lake Mille Lacs. While the Band is not raising this claim in this lawsuit, it clearly could in the future. Even if the state prevailed in its argument in this lawsuit that there are no longer any hunting or fishing rights under the 1837 Treaty, similar rights in Lake Mille Lacs might well exist under the 1855 Treaty by virtue of the existence of the reservation. In the proposed agreement, the Band has agreed to settle all of its claims to fishing rights within Mille Lacs Lake under both the 1837 and 1855 treaties.

What does this settlement do?
The agreement provides a final, permanent solution to the question of the treaty hunting and fishing rights of the Mille Lacs Band under the 1837 treaty.

In the agreement, the Band has agreed:

- to not commercialize big game, game fish, or timber;
- to restrict its subsistence netting and spearing harvest to six lakes, a Tribal Fishing Zone (TFZ) on the Lake Mille Lacs, and 25 miles of river;
- to regulate the walleye harvest in the TFZ at the same level as the rest of the lake;
- that there can be an opportunity for non-Band members to fish in the TFZ.

The State has agreed:

- to designate 6,000 acres on Lake Mille Lacs (approximately 4.5 percent of the lake) as a TFZ where the harvest will be regulated by the Band;
- to transfer 7,500 acres of land to the Band after a process of public input and input from local governments no casinos will be built on the land;
- to pay the Band $10 million over five years. For at least 10 years, 50 percent of the payment will be dedicated to natural resource law enforcement, management, and environmental protection.

What does it mean that this is a final agreement?

If the agreement is accepted by the Minnesota State Legislature and the Band government and approved by the court, it will be the final resolution of the matters in dispute, just as if the case were fully litigated and decided by the court. This agreement is different from other agreements because it utilizes a land transfer and a one time money payment. Other agreements require ongoing annual payments by the State, which leave questions open about the future existence of those agreements. One-time land and money compensations results in a done deal--a permanent agreement.

What is subsistence harvest? Given the success of the casinos does the Band need subsistence harvest?

Subsistence harvest is harvest for personal use. Big game, game fish, or timber cannot be sold commercially. The success of the casinos has been sudden and extreme. The settlement is permanent, the continued success of the casinos may not be. Treaty rights are regarded as fundamental rights by Indian people. Regardless of the success or failure of the casinos, these rights are extremely important to Indian people because of their traditional, ceremonial and cultural significance. The subsistence harvest right also assures that, if needed or desired, Band members will have the right to harvest resources for personal use.

Will the agreement allow spearing and netting?

No spearing or netting of game fish will be allowed except in the Mille Lacs TFZ; lakes Onamia, Ogechie, and Shakobeh and approximately five miles of the Rum River that connects them; three other areas to be determined in the future; and 20 miles on the St. Croix River (south from the dam where the river becomes the Minnesota Wisconsin border). Spearing and netting will only be allowed for subsistence harvest. Harvest by Band members in those areas will be regulated by a Band Conservation Code. Band and State Conservation Officers will be cross-deputized and jointly ensure compliance with the Band code and State laws relating to game and fish.

Why spearing?

Spearing is a traditional method of harvest. It has been used by Band members for centuries and is also allowed for non-Band members for certain species in some parts of Minnesota under State regulation. Band member spearing activities will be limited to subsistence harvest and will be regulated under the Conservation Code to assure the health of the resources.

What is a Band Conservation Code?

Just as the State has hunting and fishing regulations, the Conservation Code is the Band's regulations. Like the State, the Band bases its conservation code on sound, established principles of resource management. The goal is to allow sustained harvest while

maintaining a healthy, viable resource base. The current Band Conservation Code is similar to State regulations. The Conservation Code will be used by the Band to regulate hunting and fishing activities of Band members and those non-Band members licensed by the Band to use the TFZ.

Why aren't Band members subject to State regulations?
While states regulate most fishing and hunting, federal law can preempt state law if the federal government chooses to do so. For example, the federal government regulates waterfowl harvest in all 50 states. The Mille Lacs Band entered into a treaty with the United States in 1837, before Minnesota was a state. That treaty is a binding, enforceable federal law, and preempts state law. Under the treaty the Band gave up possession of a large portion of land but may have reserved the right to hunt, fish, and gather on that land. And so, any hunting and fishing rights reserved by the Band under the treaty are not subject to state law.

Do the hunting, fishing, and gathering rights extend only to land on the reservation?
No, the rights extend to all public land in the ceded territory, but not to private land unless the landowner allows public hunting.

Where is the 7,500 acres of land to be transferred?
No decisions have been made on specific parcels of land. The land will probably be contiguous with or near property the Band now owns. The decision on specific parcels will be made with input from affected local governments and individuals. The process for determining the land will be part of the final agreement. In addition, the State will continue to make in lieu of tax payments to the counties where the land is located.

Will the land include private land?
No.

Will this agreement be tied to gaming issues?
Indian gaming is a separate issue and should not be linked to issues of treaty rights.

Where will the money come from to pay the Band?
It is the DNR's position that money should come from the State General Fund. It should not come from the Game and Fish Fund. This is not just a fish and wildlife issue nor is it only a local issue. It is a social issue that has broad implications for the state as a whole.

How will the money that is dedicated to natural resource management and protection be spent?
The Band's decisions will be based on the needs and priorities of the resources. The State and the Band have agreed to work cooperatively to regulate the state's resources to ensure their continued viability.

How will the Band regulate fishing in the TFZ?
The first concern for the Band will be health of the resources in the TFZ. In addition, the agreement states that the Band will regulate the walleye harvest in the TFZ at a level similar to the harvest in the rest of the lake. Regulations will be established to meet Band member needs. Once those needs are met, opportunities for non-Band members to use the TFZ can be made available.

Does this mean that non-Band members are guaranteed the right to fish in the TFZ?
Opportunities for angling in the TFZ by non-Band members can be provided by the Band as the needs of Band members and the health of the fishery allows. Riparian owners will continue to be able to fish in the TFZ under State regulation. Access to the TFZ for navigational purposes will not be restricted.

The agreement allows for commercial harvest of "other resources." What are those?
Other resources are plants (but not timber) and wildlife (other than big game and game fish). Many of these resources are currently commercially harvested under State regulation (such as wild rice, rough fish, and furbearers).

What fish are included in the harvest limit in the TFZ and how will the take of other species be regulated?
The limit refers specifically to walleye and includes all walleye taken in the TFZ whether by Band members or others. Treaty harvesting of all species will be consistent with conservation standards. This will include minimum size requirements and harvest limits. That means that harvest goals for other species in the TFZ, such as northern and muskies, will be similar to the rest of the lake.

How will non-Band members be able to use the TFZ? Will launches be allowed? What will the limits be?
Band regulations will govern activities of Band members and non-Band members in the TFZ. Those have not yet been determined, and like State regulations, will be subject to change to protect the resources.

Will the Band allow netting and spearing during spawning?
Band regulations could allow that, but the Band has not yet made a determination to do so. However, Band regulations will be based on sound biological information and will be designed to maintain a healthy fishery.

How will the Band monitor the harvest in the TFZ and in the other lakes? What will happen when the harvest limit is reached?
The Band and State will work together to devise a system that will allow for accurate determination of harvest in these waters. This could include a system of licenses, tagging, monitored weighing, and many other methods. In addition, Band and state conservation officers will be cross-deputized. Once the harvest in the TFZ reaches the pre-determined annual ceiling, no further harvest will be allowed that year.

Will the TFZ affect bag limits on other parts of Mille Lacs, or will the netting and spearing on the other lakes have an effect there?
Since harvest in the TFZ will be at the same level as elsewhere in the lake, it will have no impact on harvest in the rest of the lake. In other waters, it is not expected that subsistence harvest will affect bag limits either. Of course, resource management requires that bag limits be adjusted from time to time, but this is unrelated to Band harvest.

What about hunting? What rights will Band members have?
Band members will be subject to Band regulations when hunting on public land, reservation land, or private land on which the landowner allows public hunting in the ceded territory. Seasons and limits will be set by the Band and will be based on sound biological information and concern for issues of public safety and hunting ethics. The agreement

does not allow for commercial sale of big game.

Will the final agreement spell out exactly what the Band regulations are?
Band regulations will be subject to change to meet the Band needs and will be based on available resources just as State regulations are changed for similar reasons. The Band and the State have agreed to work cooperatively to ensure the continued health of the shared resources.

What is the approval process required now?
The DNR will present the final agreement to the Minnesota State Legislature during the 1993 session. The agreement will need to be implemented by the Legislature and signed by the
governor. It is also subject to the approval of the Band government and the court.

Can the Legislature or Band government make changes?
If there are any substantial changes, it will be difficult to maintain the agreement.

What if either government says no?
The case will then be resolved in the courts through litigation. Both the Band and the State are fully prepared to litigate the case if necessary.

What is the timeline for approval?
We would hope to have the agreement finalized and in place by July 1, 1993.

If the agreement is not approved, what will the timeline be for the trial?
The Band and the State have requested a 60-day delay for the start of the trial. Originally scheduled to begin in February 1993, that would mean it would begin in April 1993. However, if approval appears likely, further delays can be requested from the court. It is impossible to know how long litigation would take. In Wisconsin, it took 17 years to reach a final conclusion, but Band members began exercising treaty rights, including netting and spearing much sooner.

What is the relationship between Band members and non-Band members in the Mille Lacs area? Does this agreement have a chance of succeeding and avoiding the kind of confrontation that was seen in Wisconsin?
People are generally cautious concerning the agreement. There is a need for additional information and for clarification so that reasoned and sound judgments can be reached. While some local residents are no doubt opposed to the agreement, there is indication of support from local business owners and local officials. Supporters see this agreement as a way to avoid the confrontation experienced in Wisconsin.

What did happen in Wisconsin?
The Wisconsin case involved the same treaty. The conclusion of the court in that case was that the Bands were entitled to take up to 50 percent of the harvestable surplus of game and fish in the ceded territory, that they could use the Indian people's traditional methods of harvest (including netting and spearing) as well as modern methods, and that they could harvest the resources (including game fish and big game) for commercial as well as subsistence purposes.

Who will author the legislation?
We don't know yet, but we would like to work with some of the legislators in the ceded territory.

What has been the reaction to the proposed agreement?
The most prevalent reaction has been caution and wanting to find out more details. Some people are opposed to any type of spearing or netting and so will never be able to accept an agreement that includes those, no matter how reasonable or fair it is.

What is the basis of this agreement?
The most important consideration of the State and the Band in negotiating this settlement has been resource conservation. Within this framework the Band and the State have tried to balance the needs and rights of Band members and other citizens of our state. The State and the Band feel that this settlement does a good job of balancing those interests, while offering an opportunity to avoid the mistakes made in Wisconsin, where the litigation polarized citizens and led to years of confrontation.

Weren't the claimed treaty rights under the 1837 Treaty extinguished by Zachary Taylor's Presidential Removal Order in 1850?
The 1837 Treaty states that the Band's hunting, fishing and gathering rights could be revoked by the President in the future. The Removal Order included language arguably revoking those rights.

However, the Removal Order may be tied to the issue of Indian misbehavior, which the Band argues never occurred and which it also argues might make the Order ineffective.

The Removal Order was raised by the State of Wisconsin as a defense in Voigt, but rejected by the Seventh Circuit court. Minnesota is in the Eighth Circuit, so the Voigt case is not binding on the Minnesota court. However, the same Treaty was at issue in the Wisconsin case and the Band won a significant victory in that court. Although the record would be more extensive in this case, arguments made in Wisconsin could be persuasive to the Minnesota court.

Didn't the 1855 Treaty revoke all rights previously held by the Band within the Ceded Territory?
The 1855 Treaty may have revoked any rights previously held within the Ceded Territory under the 1837 Treaty, but the 1855 Treaty also created the Mille Lacs Reservation on the southern shore of Lake Mille Lacs. Common law (court-made law as opposed to statutes or treaties) establishes that the Band may well have fishing rights in the waters adjacent or contiguous to the Reservation, which in this case is Lake Mille Lacs.

That means that even if we were to win our argument in court about the 1855 Treaty extinguishing other treaty rights, the Band potentially could sue for rights to fish in all of Lake Mille Lacs as water adjacent to their Reservation. The court could conceivably award the Band unrestricted rights of up to half the lake's resource if it followed precedent from Wisconsin.

A very big benefit to this Agreement is that in addition to settling claims under the 1837 Treaty, it also settles the Band's fishing rights in Lake Mille Lacs under the 1855 Treaty, and there could not be another lawsuit on this issue.

Didn't the Band already have a chance to litigate the question of treaty rights before the Indian Claims Commission, and wasn't the Band paid in full at that time for giving up all hunting and fishing rights under the 1837 Treaty?
Yes, there is a strong argument to be made that the Indian Claims Commission was the proper forum for resolving all Indian claims. The Mille Lacs Band did make claims and did receive payment. It can be argued that the Band has relinquished its hunting and fishing claims, and has been paid for them.

This is not a foolproof argument, however. The ICC ruling on the Mille Lacs Band's case never enumerated precisely what rights it was making payment in exchange for. It is unclear whether hunting and fishing rights were included in the list of other rights given up by the Band, and paid for by the government.

What is the Shoshone case and doesn't it "win" this for the State?
The case is Western Shoshone National Council v. Molini, out of Nevada in the Ninth Circuit. It is not a Supreme Court decision; the Supreme Court simply declined to review it. The Shoshone Indians brought suit against the Nevada Dept. of Wildlife alleging that the State regulations interfered with treaty-reserved rights to hunt and fish. The court found in favor of the State, finding that the Shoshone rights were extinguished in full in the prior case before the Indian Claims Commission.

Yes, this is a strong case for us to use in support of our ICC arguments. However, there are some noteworthy distinctions:

- The treaty in Nevada was different from the 1837 Treaty in a significant way. The Nevada treaty did not expressly reserve hunting and fishing rights for the Indians when they gave up their land. The 1837 Treaty language did reserve these rights. The absence of the express reservation of hunting and fishing rights in the treaty was a major factor in the Ninth Circuit's ruling in favor of Nevada.

- This case is not binding on the federal court in Minnesota, and the precedent from the Wisconsin cases may cut against us.

What is the Klamath case, and doesn't it also "win" this for the State?
This case is Oregon Dept. of Fish and Wildlife v. Klamath Indian Tribe, and is a U.S. Supreme Court decision, which is binding on all federal courts. The Supreme Court ruled against the Klamath Indians' claims that they had reserved hunting and fishing rights within territory given back to the United States from a prior-established reservation.

Yes, this is another good case for us for the proposition that the 1855 Treaty may have revoked the hunting and fishing rights reserved in the 1837 Treaty. It does not assist the State in convincing the court that the 1855 Treaty does not create independent fishing rights in Lake Mille Lacs. This case is also different in that the court was looking at different treaty language from what is contained in the 1837 Treaty. The case also involved a different type of land transfer back to the United States, which changes the analysis of what rights were extinguished.

Since these treaties were between the Band and the federal government, why doesn't the Band have to sue the federal government rather than the State?
The primary reason is that the State, not the federal government, is attempting to regulate

the Band's hunting and fishing and gathering activities through State regulations. Therefore, the Band is taking action against the government that is responsible for the laws that prevent the Band's desired activities.

Why isn't this Agreement a form of unconstitutional race discrimination?
Courts have ruled in a number of cases that a government body may enact special legislation or programs dealing with indians without it being unconstitutional discrimination. This is because there is a historically unique relationship between Indians and the federal government which gives them a distinct constitutional and historical status. This special constitutional status distinguishes Indians from other classes of citizens, and entitles them to different treatment.

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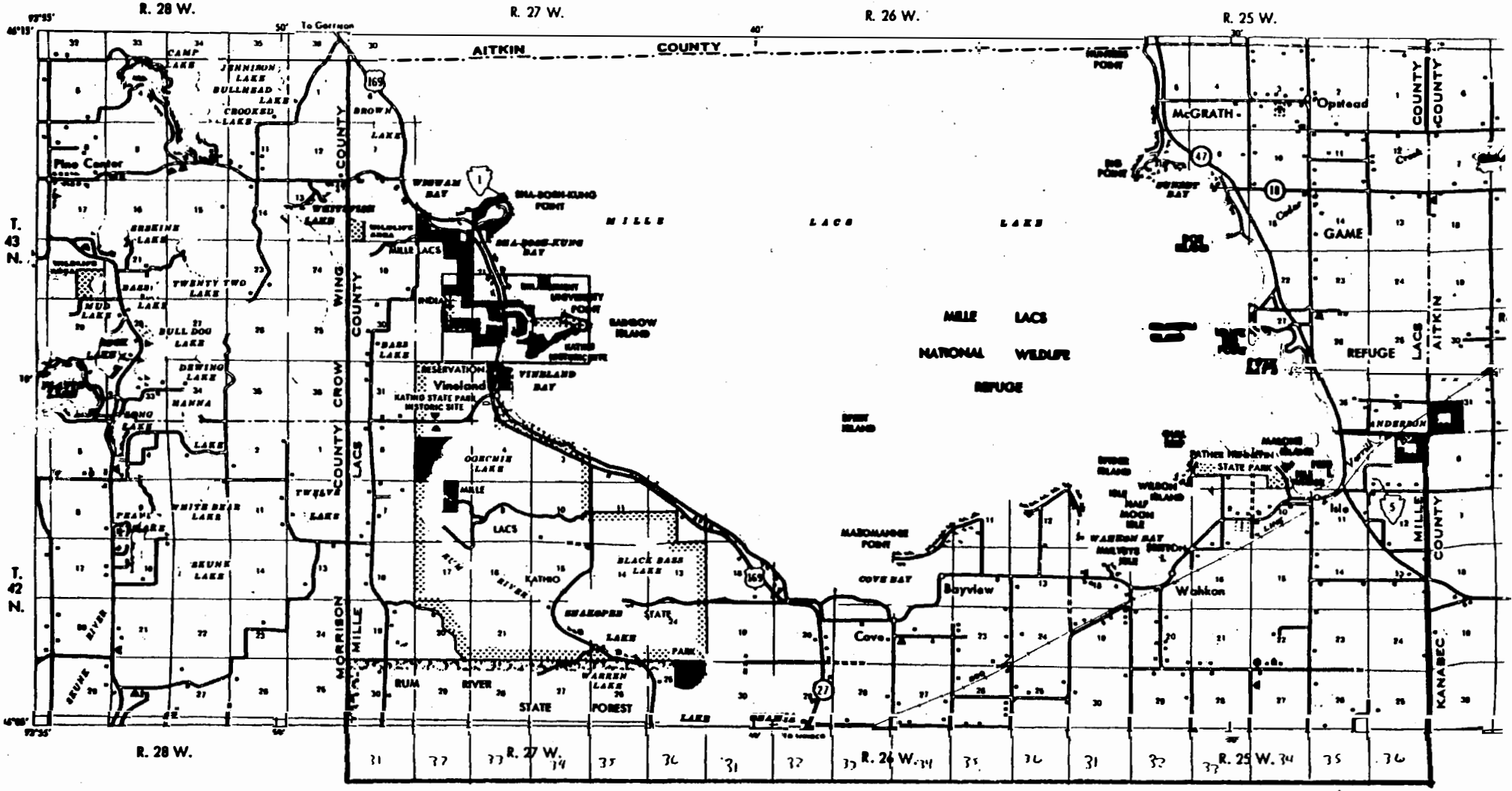
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Vineland
Onigum
McGRATH
Opstead
Pine Center
Isle
Wahkon
Bayview
Cove
KATHIO STATE PARK
MILLE LACS INDIAN RESERVATION
SCALE OF MILES
HIGHWAY SYSTEM MAP
MINNESOTA INDIAN AGENCY, MINNESOTA
U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
MINNEAPOLIS AREA OFFICE
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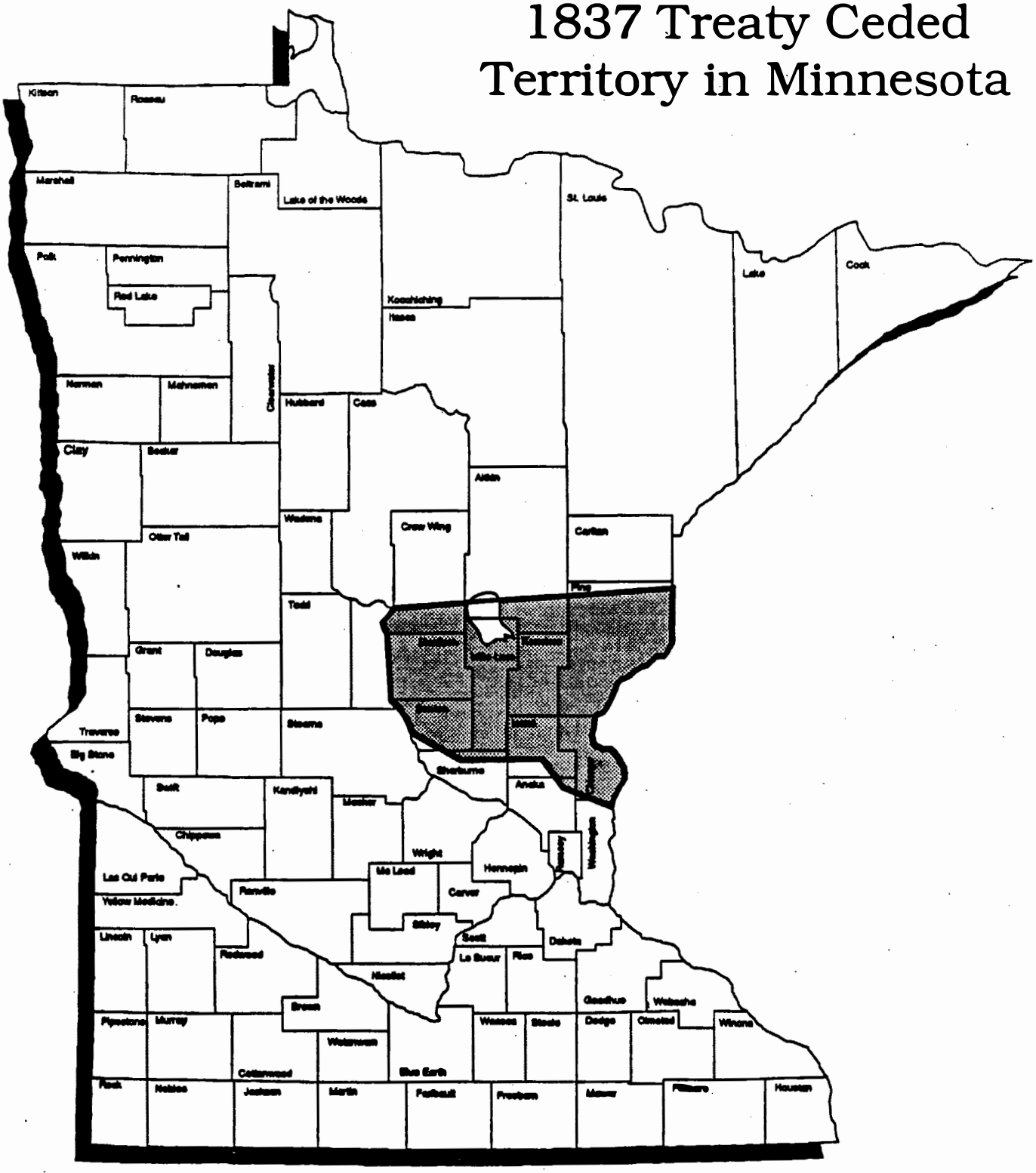
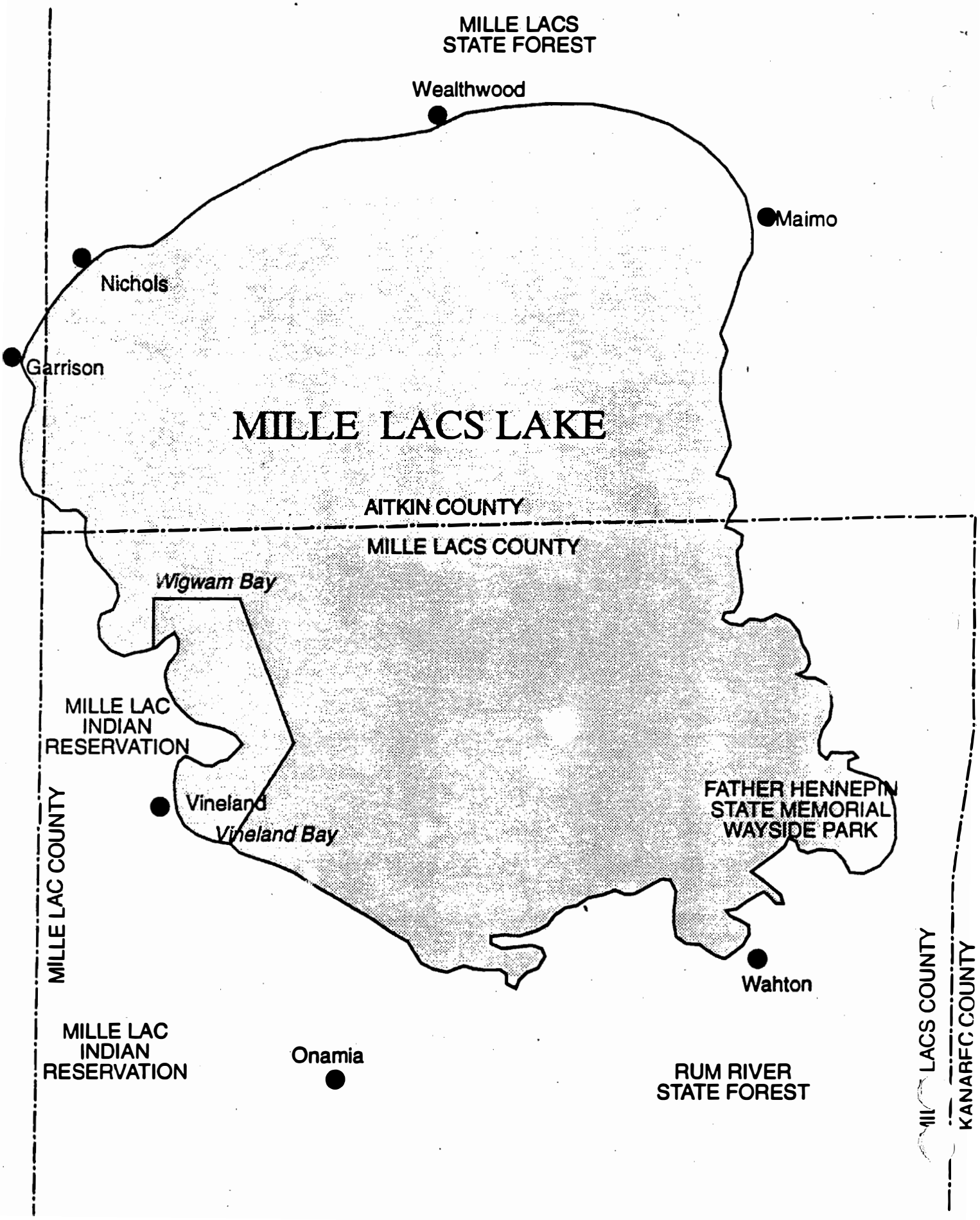
1837 Treaty Ceded Territory in Minnesota

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STATE FOREST
Wealthwood
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STATE MEMORIAL
WAYSIDE PARK
MILLE LAC COUNTY
Wahton
MILLE LAC
INDIAN
RESERVATION
Onamia
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STATE FOREST
LACS COUNTY
KANABEC COUNTY

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State of Minnesota

TO: Senator Steve Morse

FROM: Hans Bjornson, Greg Knopff, and Julie Fedje-Johnston
Senate Counsel and Research

DATE: February 25, 1993

RE: Background on Legal Issues Regarding
the Mille Lacs Band v. State of Minnesota

I. INTRODUCTION

This memo is intended to provide information on the major documents and legal issues in the Mille Lacs Band's lawsuit against the State of Minnesota. The Band is seeking a declaratory judgment stating their rights to hunt, fish, and gather under the 1837 Treaty with the Chippewa. Part II of the memo describes some canons of Indian law construction the court would likely apply. Part III is a brief discussion of the difference between aboriginal and treaty-based rights. Part IV is a factual background and discussion of the major historical documents related to the case. Included in the discussion is information on relevant court decisions.

There are three appendices. Appendix A provides summaries of some of the more significant court cases. The cases discussed include the Wisconsin (Lac Courte Oreilles) cases dealing with the same 1837 Treaty at issue in the Mille Lacs case, and two recent court decisions affecting bands in other states that may have some bearing on this case (the *Shoshone* and *Klamath* cases). Appendix B is a map showing the various treaty areas in Minnesota. Appendix C is a letter from the Office of the Solicitor of the U.S. Department of the Interior discussing the boundaries of the Mille Lacs Reservation.

This memo, while not comprehensive, will help sort out some of the legal issues in the Mille Lacs case. Although the memo concentrates on legal, not factual, issues, it should provide a better understanding of which facts would be relevant in deciding the case. If the case goes to trial, the outcome will depend heavily on the facts as determined by the court. According to counsel for both the State and the Band, there are approximately 20,000 pages of discovered documents that both sides would use to establish the facts in court.

II. CANONS OF INDIAN LAW CONSTRUCTION

The United States Supreme Court applies several basic principles in interpreting Indian treaties. First, treaties are construed as the Indians understood them. *Worcester v. Georgia*, 31 U.S. 515, 528 (1832). Second, doubts concerning the meaning of treaties are resolved in favor of the Indians. *Oregon Department of Fish and Wildlife v. Klamath Indian Tribe*, 473 U.S. 753, 766, 105 S.Ct. 3420, 87 L.Ed.2d 542 (1985). Third, explicit language or clear congressional intent is required to abrogate Indian treaty rights. *U.S. v. Dion*, 476 U.S. 734 740, 106 S.Ct. 2216 (1986).

These principles of construction must be considered when trying to determine the meaning of the various treaties and other congressional documents discussed below.

III. ABORIGINAL v. TREATY-RECOGNIZED RIGHTS

In considering the various historical documents and court decisions that are relevant to the Mille Lacs lawsuit, it is important to understand the difference between "aboriginal" and treaty-recognized rights. The distinction is important in terms of how the two types of rights may be extinguished.

What is commonly referred to as "aboriginal title" or "Indian title" has been described by the U.S. Supreme Court as follows:

> It is well settled that in all the States of the Union the tribes who inhabited the lands of the States held claim to such lands after the coming of the white man, under what is sometimes termed original Indian title or permission from the whites to occupy. That description means mere possession not specifically recognized as ownership by Congress. After conquest they were permitted to occupy portions of territory over which they had previously exercised "sovereignty," as we use that term. This is not a property right but amounts to a right of occupancy which the sovereign grants and protects against intrusion by third parties but which right of occupancy may be terminated and

> such lands fully disposed of by the sovereign itself without any legally enforceable obligation to compensate the Indians.

Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 279, 75 S.Ct. 313 (1955). Extinguishment of aboriginal title, and rights to use the land included within it, does not require explicit language, but may be accomplished implicitly. *United States v. Santa Fe Pacific Railroad,* 314 U.S. 339, 62 S.Ct. 248, 86 L.Ed. 260 (1941).

Treaty-recognized rights of use, also known as "usufructuary rights," may exist independently from title to the land. See *Oregon Department of Fish and Wildlife v. Klamath Indian Tribe*, 473 U.S. 753, 766-67, 105 S.Ct. 3420, 87 L.Ed. 2d 542 (1985); *Lac Courte Oreilles Band v. Voigt,* 700 F.2d 341, 352 (7th Cir.), *cert. denied,* 464 U.S. 805 (1983). The U.S. Supreme Court has stated that treaty-recognized rights are extinguished only by an *explicit* congressional statement or where there is clear evidence that this is what Congress intended. *United States v. Dion*, 476 U.S. 734, 740, 106 S.Ct. 2216, 90 L.Ed. 2d 767 (1986). This is essentially the same rule applied by the U.S. Court of Appeals for the Seventh Circuit in the *Voigt* case in Wisconsin, where the court stated that "a termination of treaty-recognized rights by subsequent legislation must be by *explicit* statement or must be *clear* from the surrounding circumstances or legislative history." 700 F.2d at 354 (emphasis in original).

IV. HISTORICAL DOCUMENTS – FEDERAL TREATIES, ACTS, AND ORDERS

The following is a summary of the major federal documents relevant to the Mille Lacs Band of Chippewa's lawsuit against the State of Minnesota. Also included are brief discussions of how various courts have interpreted these documents. Summaries of most of the cases can be found in Appendix A.

A. Treaty with the Chippewa, 1837

1. Factual Background

The 1837 Treaty with the Chippewa ceded large tracts of Chippewa land in Minnesota and Wisconsin to the United States in exchange for $870,000. The treaty includes the following language pertaining to hunting, fishing, and gathering in the ceded territory:

> The privilege of hunting, fishing, and gathering the wild rice, upon the lands, the rivers and the lakes included in the territory ceded, is guarantied [sic] to the Indians, during the pleasure of the President of the United States.

Treaty with the Chippewa, 1837, article 5.

2. Discussion

The U.S. Court of Appeals for the Seventh Circuit interpreted the language quoted above as an express reservation of hunting, fishing, and wild rice gathering rights in the 1837 ceded territory. *Lac Courte Oreilles Band v. Voigt*, 700 F.2d 341, 351 (7th Cir.), *cert. denied*, 464 U.S. 805 (1983). This interpretation was recently adopted by a federal district court in Minnesota. See *U.S. v. Bresette*, 761 F.Supp. 658, 661 (D.Minn. 1991).

Under the canons of construction stated previously, treaties are interpreted as the Indians understood them. In the *Voigt* case, the Wisconsin federal district court found, and the Seventh Circuit concurred, that the Chippewa understood the reservation provision in the 1837 Treaty to mean that they could use the land for an unlimited time unless they misbehaved by harassing white settlers. 700 F.2d at 356-357.

B. 1850 Presidential Removal Order

1. Factual Background

In 1850, President Zachary Taylor issued the following order:

> 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 that treaty to the United States; and the right 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.

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2. Discussion

Does the 1850 Order constitute an express revocation of hunting, fishing, and gathering rights (usufructuary rights)? In the *Voigt* case in Wisconsin, the Seventh Circuit held that the Order was invalid. 700 F.2d at 362. The court reasoned that since the Chippewa believed their usufructuary rights could be terminated only if they harassed white settlers, the Order was valid only if the Chippewa misbehaved. 700 F.2d at 361. The court found no evidence of misbehavior justifying the Order. Accordingly, the court held that the President exceeded his authority in issuing the Order.

A federal district court in Minnesota has agreed with the Seventh Circuit's interpretation of the 1850 Order. In *United States v. Bresette*, 761 F.Supp. 658 (D. Minn. 1991), the court addressed whether members of the Red Cliff and Fond du Lac Bands of Chippewa possessed hunting, fishing, and gathering rights on territory ceded under treaties signed in 1842 and 1854. Both treaties specifically reserved these rights. In determining that the Chippewa did possess hunting, fishing, and gathering rights, the court noted that the Chippewa nonviolently resisted the 1850 Order because it "contradicted their understanding that they could remain living on ceded territory as long as they conducted themselves peaceably and did not cause trouble with European settlers." 761 F.Supp. at 661. As a result, the court held that the Chippewa had the right to sell bird feathers.

In *Fond du Lac Band of Chippewa v. Carlson*, CV 5-92-159 (D.Minn. 1992), another federal judge in Minnesota recently reviewed the argument that the 1850 Order terminated usufructuary rights reserved under the 1837 Treaty. The court ruled on a motion by the Fond du Lac Band to prohibit the state from enforcing state game laws in the territory ceded in the 1854 Treaty. (See Appendix B.) One of the factors considered by the court in determining whether to grant the motion was whether the Band was likely to succeed on the merits of the case at trial. In opposition to the motion, the state made the argument, among others, that the 1850 Order terminated the rights reserved under the 1837 treaty. The court's response was as follows:

> In the time available, the Court has reviewed these arguments, and is not persuaded that the federal courts in Wisconsin, or Judge Magnuson [in the *Bresette* case in Minnesota], would, or should, have reached different results had the arguments been presented to them. The State will, of course, be offered every opportunity to develop its arguments and evidence during the course of the litigation, but on the face of the arguments now before the Court, the issue of "probability of success on the merits" favors the plaintiff Band.

Id. at 10-11 (footnote omitted).[1]

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[1] Although the judge found the Band likely to prevail on the merits, he prohibited the Band from hunting outside the state seasons for bear, moose, and deer in the fall of 1992 because the state did not have time to adequately warn the public of Band hunting. The court stated that in the future there should be no public safety concern because the state would have time to adequately warn citizens of Band hunting.

In what appears to be the only Minnesota state court decision addressing this issue, the Minnesota Supreme Court stated that the 1850 Order did extinguish hunting, fishing, and gathering rights in territory ceded by the 1837 Treaty. *State v. Keezer*, 292 N.W.2d 714 (Minn.), *cert. denied*, 450 U.S. 930 (1980). In *Keezer*, two Chippewa who were cited for gathering wild rice without a license argued, among other things, that their activities were authorized under the 1837 Treaty. The court rejected this argument, noting that the area in which the Chippewa had been gathering wild rice was not within the territory ceded in the 1837 Treaty. The court also stated that the 1850 Order revoked the hunting, fishing, and gathering rights reserved in the 1837 Treaty. However, this statement was not a necessary part of the court's decision and thus may be of limited precedential value.

Finally, the argument has been made that the 1850 Order was suspended and never enforced. In the *Voigt* case in Wisconsin, the federal appeals court recited facts to this effect, including a description of a telegram from the Office of Indian Affairs in 1851 directing that the removal of Lake Superior Chippewa be suspended "for further orders." 700 F.2d at 347. Moreover, in a motion filed with the U.S. Supreme Court to affirm the Seventh Circuit's decision in the case, the U.S. Solicitor General argued on behalf of the United States that the 1850 Order "did not abrogate the Chippewas' rights, either of occupancy or of use, because the Order was not enforced and was abandoned as national policy shortly after its promulgation." The Supreme Court declined to hear the case.

C. Treaty with the Chippewa, 1855

1. Factual Background

The 1855 Treaty with the Chippewa ceded more land to the federal government and contained the following language:

> And the said Indians do further fully and entirely relinquish and convey to the United States, any and all right, title, and interest, of whatsoever nature the same may be, which they may now have in, and to any other lands in the Territory of Minnesota or elsewhere.

1855 Treaty, article 1.

The treaty also established the Mille Lacs Reservation on land along Lake Mille Lacs and three islands in the southern part of the lake. In the opinion of the United States Department of the Interior, the original boundaries established by the 1855 Treaty remain intact. (See Appendix C.)

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2. Discussion

a. Court Decisions

Although several courts have discussed the issue of the revocation of hunting and fishing rights through general statements relinquishing rights, no court decision is clearly dispositive as to whether the 1855 Treaty extinguished treaty-reserved hunting, fishing, and gathering rights under the 1837 Treaty.

The Minnesota Supreme Court's opinion in *State v. Keezer*, 292 N.W. 2d 714 (1980), contained language suggesting that the 1855 Treaty extinguished the hunting, fishing, and gathering rights reserved in the 1837 Treaty. The court stated that the 1855 Treaty language conveying "all right, title and interest" operated as a complete extinguishment of Chippewa title in those areas. It is unclear, however, whether the court was addressing aboriginal rights or treaty-recognized rights. (See Part III above for an explanation of the difference between aboriginal and treaty-recognized rights.)

In *Oregon Department of Fish and Wildlife v. Klamath Indian Tribe*, 473 U.S. 753, 105 S.Ct. 3420 (1985), the U.S. Supreme Court addressed whether conveyance language similar to that in the 1855 Treaty extinguished fishing and gathering rights in reservation land ceded to the federal government. An 1864 treaty with the Klamath Tribe, which established the reservation, contained language retaining for the Tribe "the exclusive right of taking fish in the streams and lakes, *included in said reservation*, and of gathering edible roots, seeds, and berries within its limits . . . " (italics added). No right to hunt or fish was preserved outside of the reservation. In 1901, the United States agreed to pay the Tribe $537,007.20 for 621,824 acres of reservation land "erroneously excluded from the reservation in previous Government surveys." The Tribe agreed to "cede, surrender, grant, and convey to the United States all their claim, right, title and interest in and to" that land. As a result, the size of the reservation was diminished.

The Supreme Court found that the general conveyance of aboriginal title in the 1864 Treaty with the Klamath Tribe carried with it hunting and fishing rights outside of the reservation, but reserved to the Tribe exclusive hunting and fishing rights within the reservation. The court reasoned that the exclusivity of the rights under the 1864 Treaty foreclosed the possibility that hunting and fishing rights were intended to exist outside of the reservation, since exclusivity was not possible on lands open to non-Indians. Therefore, the court ruled, no hunting and fishing rights existed on reservation lands ceded to the federal government under the 1901 agreement.

The Mille Lacs Band's situation may be distinguished from the facts in the *Klamath* case. Unlike the rights at issue in *Klamath*, the hunting, fishing, and gathering rights reserved in the 1837 Treaty were not limited to a reservation (the Mille Lacs Reservation did not exist before 1855), but instead extended to the entire territory ceded in the treaty.

Moreover, in the Mille Lacs case the Chippewa, in the 1837 Treaty, expressly reserved hunting, fishing, and gathering rights that were not tied to occupancy of the land. In *Klamath*, the issue was "whether any off-reservation rights were intended to be preserved at all." 105 S.Ct. at 3429.

In *United States v. Minnesota*, 466 F.Supp. 1382 (D. Minn. 1979), *aff'd sub nom., Red Lake Band of Chippewa Indians v. Minn.*, 614 F.2d 1161 (8th Cir.), *cert. denied*, 449 U.S. 905, 101 S.Ct. 279, 68 L.Ed.2d. 136 (1980). The U.S. Court of Appeals for the Eighth Circuit addressed the Red Lake Band of Chippewa's hunting and fishing rights in territory the Band ceded in 1889 and 1904. The Red Lake Band did not reserve these rights in any treaty (although, according to the court, records of negotiations indicate the Band was promised continued hunting and fishing rights in the ceded territory). The court determined that the cessions extinguished aboriginal title to these areas and that, as a result, any aboriginal hunting, fishing, trapping, and wild ricing rights also were extinguished. This case did not deal with *treaty-recognized* rights and thus can be distinguished from the Mille Lacs case.

In *State v. Clark*, 282 N.W.2d 902 (Minn. 1979) *cert. denied*, 445 U.S. 904, 100 S.Ct. 1080, 63 L.Ed.2d 320 (1980), members of the White Earth Band of Chippewa were arrested on land that was within the White Earth Reservation created in 1867 but was not owned by or for the Minnesota Chippewa Tribe. The Band members asserted that the state did not have jurisdiction to enforce its game and fish laws against enrolled Band members on non-Indian-owned land within the reservation. The court ruled that the 1855 Treaty extinguished the White Earth Band's *aboriginal* hunting and fishing rights outside the reservation but that the Band members had retained these rights within the boundaries of the reservation. Like the *Red Lake* case above, *Clark* did not involve treaty-reserved hunting and fishing rights.

b. Mille Lacs Band's Rights Under the 1855 Treaty

What are the Mille Lacs Band's rights on Lake Mille Lacs? This issue is not part of the case with regard to the 1837 Treaty, but would be an important issue if the state prevailed using the 1855 Treaty as a defense. The 1855 Treaty does not specifically include any part of the lake on the reservation but does include within the reservation "three islands in the southern part of Mille Lac."

Does the Mille Lacs Reservation include Mille Lacs Lake? In *Alaska Pacific Fisheries v. United States*, 248 U.S. 78, 39 S.Ct. 40 (1918), a case decided by the U.S. Supreme Court, the Metlakahtla Indians sought to prohibit a California corporation from setting a fish trap in navigable waters surrounding their reservation. The reservation consisted of a group of islands in Alaska. At the time the reservation was created, the Metlakahtla relied on fishing for subsistence. As noted by the court, "[t]he Indians naturally looked on the fishing grounds as part of the islands and proceeded on that theory in soliciting the reservation." As a result, the court concluded that the reservation included the waters adjacent to the islands and the corporation was prohibited from setting the fish trap.

Even if the Mille Lacs Reservation does not include any part of Lake Mille Lacs, does the Mille Lacs Band have any implied rights to the lake because it borders the reservation? When determining whether Indians have fishing rights in waters, courts look to the intent of the parties and to the custom or practice at the time the treaty was made. For example, in *State v. Gurnoe*, 192 N.W.2d 892 (Wis. 1972), the Wisconsin Supreme Court found that the Lake Superior Chippewa had an "uninterrupted history" of fishing on Lake Superior and had continued their reliance on the lake after entering into a treaty with the United States in 1854. In holding that fishing rights under the treaty extended to Lake Superior, the court also noted that the Chippewa never would have consented to the treaty if they had thought their fishing rights to the lake would be extinguished as a result.

As shown by these cases, the determination of whether the Mille Lacs Band has rights to Lake Mille Lacs would be a fact-based decision. It would be important to know the Band's understanding of its fishing rights under the treaty and the nature of the Band's use of the lake both before and after the treaty was made.

D. Treaty with the Chippewa, Mississippi, and Pillager and Lake Winnibigoshish, 1864

This treaty ceded the Mille Lacs and other reservations to the United States in exchange for the Leech Lake Reservation. The treaty, however, stated:

> *Provided*, That, owing to the heretofore good conduct of the Mille Lac Indians, they shall not be compelled to remove so long as they shall not in any way interfere with or in any manner molest the persons or property of the whites.

Treaty with the Chippewa, Mississippi, and Pillager and Lake Winnibigoshish, 1864, Article 11.

Thus, the treaty allowed the Mille Lacs Chippewa to remain on their reservation land as long as they did not "interfere with or in any manner molest" white people. The Department of Interior found no evidence of harassment of settlers by the Mille Lacs Band. (See Appendix C, page C-2.)

E. Nelson Act, 1889

1. Factual Background

With the Nelson Act of 1889, 25 Stat. 642, Congress sought to cede the remaining Chippewa reservation land in Minnesota to the federal government, except for the Red Lake and White Earth Reservations. The Act provided for a commission to negotiate with the

Chippewa Bands for the cession of their reservation lands. The Act stated that cession would be subject to the approval of the President and would operate as a complete extinguishment of Chippewa title. However, instead of mandating that all Chippewa move to the White Earth reservation, the Act provided that any Chippewa Band member could remain on the reservation and take an allotment of land:

> *Provided further*, That any of the Indians residing on any of said reservations may, in his discretion, take his allotment in severalty under this act on the reservation where he lives at the time of the removal herein provided for is effected, instead of being removed to and taking such allotment on White Earth Reservation.

Nelson Act, §5.

As discussed in the letter from the Department of Interior, some of the Mille Lacs Band took allotments at White Earth while the great majority remained at the Mille Lacs Reservation. (See Appendix C, page C-4.)

2. Discussion

Did the Nelson Act disestablish Chippewa reservations? In ***Leech Lake Band of Chippewa Indians v. Herbst***, 334 F.Supp. 1001 (D. Minn. 1971), a federal district court in Minnesota held that the Nelson Act did not result in the disestablishment of the Leech Lake Reservation, and that the Leech Lake Band continued to possess the right to hunt, fish, and gather wild rice, free of state regulation, on public lands and waters in the reservation. Other courts, both federal and state, have ruled similarly. See, for example, ***White Earth Band of Chippewa Indians v. Alexander***, 683 F.2d 1129 (8th Cir.), *cert. denied*, 459 U.S. 1070 (1982); ***State v. Clark***, 282 N.W.2d 902 (Minn. 1979), *cert. denied*, 445 U.S. 904, 100 S.Ct. 1080, 63 L.Ed.2d. 320 (1980), and ***State v. Forge***, 262 N.W.2d 341 (Minn. 1977) (Appendix A, cases 3, 7, and 6).

In ***United States v. State of Minnesota***, 466 F.Supp. 1382 (D. Minn. 1979), *aff'd sub nom., Red Lake Band of Chippewa Indians v. State of Minn.*, 614 F.2d 1161 (8th Cir.), *cert. denied*, 449 U.S. 905, 101 S.Ct. 279, 66 L.Ed. 2d 136 (1980), the U.S. Court of Appeals for the Eighth Circuit held that a cession of land by the Red Lake Band of Chippewa under the Nelson Act in 1889 terminated the Band's hunting, fishing, trapping, and gathering rights in the ceded area. The court found that "[n]either the Nelson Act, the agreement [ceding the land], nor the transcript of the negotiations contain any reference to reserved hunting, fishing, trapping, or wild ricing rights in the ceded area." 466 F.Supp. at 1384.

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F. Indian Claims Commission

1. Factual Background

The Indian Claims Commission was established by Congress in 1946 to resolve disputes against the United States on behalf of Indian tribes. Payment of a claim by the Commission was to be "a full discharge of the United States of all claims and demands touching any of the matters involved in the controversy." 25 U.S.C. §70u. The Commission had jurisdiction to determine, among other things, claims arising under treaties.

The Mille Lacs Band was involved in claims submitted to the Indian Claims Commission. In 1968, 1971, and 1973, the Commission issued findings of fact and opinions regarding disputes over the value of the 1837 ceded territory. Most of these findings addressed the value of timber in the ceded territory. Nowhere in these findings and opinions were hunting, fishing, or gathering rights addressed. The Commission determined the fair market value of the ceded land to be $9,875,000.

2. Discussion

In *Western Shoshone National Council v. Molini*, 951 F.2d 200 (9th Cir.), *cert. denied*, 113 S.Ct. 74 (1991), the U.S. Court of Appeals for the Ninth Circuit addressed the issue of whether an Indian Claims Commission payment extinguished hunting and fishing rights. In 1951, on behalf of the Western Shoshone, a lawsuit was filed under the Indian Claims Commission Act based on extinguishment of tribal rights to certain lands. The Commission concluded that Shoshone title had been extinguished by encroachment of "whites, settlers and others, and the acquisition, disposition or taking of their lands by the United States." The Shoshone received $26 million for "full title extinguishment." In their claim before the Ninth Circuit, the Shoshone sought to prohibit Nevada from enforcing wildlife laws that interfered with Shoshone aboriginal and treaty-reserved rights to hunt and fish. The Shoshone argued that hunting and fishing rights were distinct from title and were not extinguished under the Indian Claims Commission's "full title extinguishment." In holding that the Shoshone's aboriginal hunting and fishing rights were extinguished, the Ninth Circuit distinguished the case from the *Voigt* case in Wisconsin and others involving rights expressly granted by treaty. As stated by the court, "these cases are inapplicable here, because there is no treaty which grants the Shoshone hunting and fishing rights." 851 F.2d at 203. Of course, this also distinguishes the case from the Mille Lacs case, where hunting, fishing, and gathering rights were expressly reserved in the 1837 Treaty.

In a ruling by the federal district court in Minnesota in *Fond du Lac Board of Chippewa v. Carlson*, CV 5-92-159 (D. Minn. 1992), the judge considered the state's

argument that the Band's claim of treaty-recognized hunting, fishing, and gathering rights could not be pursued in court because it had been, or could have been, adjudicated by the Indian Claims Commission. The judge was not persuaded that the state's argument was likely to be successful at trial.

HB:GK:JFJ:jb

APPENDIX A

I. MINNESOTA COURT CASES

A. Minnesota Federal Court Cases

1. *Leech Lake Band of Chippewa Indians v. Herbst*, 334 F.Supp. 1001 (D. Minn. 1971)

Declaratory judgment was sought to determine whether the Leech Lake Band of Chippewa Indians could hunt, fish, and gather wild rice on public lands and waters of the Leech Lake Reservation without complying with Minnesota game and fish laws. The court held that the Leech Lake Reservation, created by the 1855 Treaty, was not terminated by the Nelson Act of 1889 and that the Band's right to hunt, fish, and gather on the reservation free of state game and fish laws was not extinguished. The Act's purpose, the court found, was not to terminate the reservation or end federal responsibility, but to permit sale of land to homesteaders and to "civilize" the Chippewa. The Act is silent with regard to treaty hunting and fishing rights.

2. *United States v. Minnesota*, 466 F.Supp. 1382 (D.Minn. 1979), *aff'd sub nom., Red Lake Band of Chippewa Indians v. Minnesota*, 614 F.2d 1161 (8th Cir.), *cert. denied*, 449 U.S. 905, 101 S.Ct. 279, 66 L.Ed. 2d 136 (1980)

The Red Lake Band of Chippewa sought declaratory judgment to determine their aboriginal rights to hunt, fish, trap, and gather wild rice in territory ceded to the federal government in 1889 and 1904. The main land cessions were in 1863, 1889 (under the Nelson Act), and 1904. No express reservations of hunting, fishing, trapping, and ricing rights were included in these cessions.

The federal district court held that the Band did not retain hunting, fishing, trapping, or wild ricing rights in the areas ceded in 1889 and 1904. In reaching this result, the court reasoned that if the cessions extinguished aboriginal title to the ceded areas, aboriginal rights to hunt, fish, trap, and rice also were extinguished. The court noted that language in the

cession agreements by which the Band relinquished "all its right, title and interest in and to" the ceded areas eliminated the Band's aboriginal title.

3. *White Earth Band of Chippewa Indians v. Alexander*, 683 F.2d 1129 (8th Cir. 1982), *cert. denied*, 459 U.S. 1070, 103 S.Ct. 488

The White Earth Band sought a declaration that its members could hunt and fish on the White Earth Reservation without state regulation or licensing and that it had jurisdiction to regulate activities of non-Band members on the reservation. The U.S. Court of Appeals for the Eighth Circuit held that the issue of disestablishment of the reservation under the Nelson Act had been settled in the *Clark* case (see case 7 below) and that the parties were therefore barred from relitigating the issue. The purpose of the Act, the court noted, was to restore lands to the public domain and not to disestablish Indian reservations.

In addition, the court found that non-members hunting and fishing on reservation land are subject to state and Band regulation. The court ruled that state regulation over non-members is not preempted by federal law and dual regulation does not impinge on the Band's right of self-government.

4. *United States v. Bresette*, 761 F.Supp. 658 (D. Minn. 1991)

The defendants, Chippewa Indians, were arrested under the Migratory Bird Treaty Act for selling migratory bird feathers. The feathers were gathered from land ceded under the treaties of 1842 and 1854 and used to make Indian "dream catchers." Although the 1837 Treaty was not at issue in the case, the court did find persuasive the Seventh Circuit's decision in the *Voigt* case in Wisconsin (see case 9 below) that full usufructuary rights continue to exist under the 1837 Treaty, notwithstanding the 1850 Presidential Removal Order.

Furthermore, the court cited a Supreme Court decision stating that, absent explicit statutory language, courts are reluctant to find congressional abrogation of treaty rights. There must be clear evidence that Congress actually considered the conflict between its intended action and Indian treaty rights and chose to resolve that conflict by abrogating the treaty.

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5. *Fond du Lac Band of Chippewa v. Carlson*, CV 5-92-159 (D. Minn. 1992)

In this case, a federal judge in Minnesota ruled on a motion by the Fond du Lac Band to prohibit the state from enforcing state game laws in the territory ceded in the 1854 Treaty (see Appendix B). One of the factors considered by the court in determining whether to grant the motion was whether the Band was likely to succeed on the merits of the case at trial. In opposition to the motion, the state made several arguments, including that the 1850 Presidential Removal Order terminated any rights the Band might have had under the 1837 Treaty and that the Indian Claims Commission was the proper forum for the Band's claims. The court's response was as follows:

> In the time available, the Court has reviewed these arguments, and is not persuaded that the federal courts in Wisconsin, or Judge Magnuson [in the *Bresette* case in Minnesota], would, or should, have reached different results had the arguments been presented to them. The State will, of course, be offered every opportunity to develop its arguments and evidence during the course of the litigation, but on the face of the arguments now before the Court, the issue of "probability of success on the merits" favors the plaintiff Band.

Id. at 10-11. Although the judge found the Band likely to prevail on the merits, he prohibited the Band from hunting outside the state seasons for bear, moose, and deer in the fall of 1992 because the state did not have time to adequately warn the public of Band hunting. The court stated that in the future there should be no public safety concern because the state would have time to adequately warn citizens of band hunting.

B. Minnesota State Court Cases

6. *State v. Forge*, 262 N.W.2d 341 (Minn. 1977)

Non-Chippewa members were convicted of illegally fishing on the Leech Lake Reservation. The defendants challenged a statute requiring non-tribal members to pay a special licensing fee in order to fish within the reservation. They argued that the statute violated equal protection and a state constitutional prohibition against special legislation.

The Minnesota Supreme Court found that the Nelson Act did not disestablish the Leech Lake Reservation and that the Band retained hunting, fishing, trapping, and gathering rights on the reservation. The court also found that the licensing fee did not violate state or federal equal protection or the prohibition against special legislation. According to the

court, the statutory classification had some natural and reasonable basis. The charge was the result of an agreement between the Band and the state to resolve competing claims to Leech Lake. Furthermore, the practical effect was to preserve the valuable fishing resource found at Leech Lake.

7. *State v. Clark*, 282 N.W.2d 902 (Minn. 1979), *cert. denied*, 445 U.S. 904 (1980)

Members of the White Earth Band of Chippewa Indians were arrested on land that was within the White Earth Reservation created in 1867 but was not owned by or for the Minnesota Chippewa Tribe. The Band members asserted that the state had no jurisdiction to enforce its game and fish laws against enrolled Band members on non-Indian-owned land within the reservation.

In holding that the state could not enforce its game and fish laws against Band members on reservation land, the court addressed whether the reservation was disestablished. The court noted that a reservation is terminated only by clear congressional intent. The state argued that the reservation was extinguished by the Nelson Act. The court affirmed the holding in the *Forge* case (see case 6 above) that congressional intent to disestablish the reservation was lacking. If Congress wanted to disestablish the reservation, it would have more definitely expressed that intent.

In addition to holding that the Nelson Act did not disestablish the reservation, the court found that the 1855 Treaty extinguished the Band's aboriginal hunting and fishing rights but that these rights were reacquired under subsequent treaties.

8. *State v. Keezer*, 292 N.W.2d 714 (Minn.) *cert. denied*, 450 U.S. 930 (1980)

In this case, two Chippewas who were cited for gathering wild rice without a license argued, among other things, that their activities were authorized under the 1837 Treaty. The Minnesota Supreme Court rejected this argument, noting that the area in which the Chippewa had been gathering wild rice was not within the territory ceded in the 1837 Treaty. The court also stated that the 1850 Order revoked the hunting, fishing, and gathering rights reserved in the 1837 Treaty. However, this statement was not a necessary part of the court's decision and therefore may be of limited precedential value.

The court's opinion also contained language suggesting that the 1855 Treaty extinguished the hunting, fishing, and gathering rights reserved in the 1837 Treaty. The Court stated that the 1855 Treaty language conveying "all right, title and interest" operated as a complete extinguishment of Chippewa title in those areas. It is unclear, however, whether the court was addressing aboriginal rights or treaty-recognized rights. (See Part III.

of the memo for an explanation of the difference between aboriginal and treaty-recognized rights.)

II. THE WISCONSIN CASES

The Lac Courte Oreilles Band sought a determination of whether they have treaty-reserved off-reservation hunting, fishing, trapping, and gathering rights on public lands in northern Wisconsin. Case 9 below establishes that the Band has usufructuary rights in territory ceded under the 1837 and 1842 Treaties with the Chippewa. Cases 10 through 15 further define the nature of these rights.

9. *Lac Courte Oreilles Band v. Voigt*, 700 F.2d 341 (7th Cir. 1983) (LCO I)

This case, decided by the U.S. Court of Appeals for the Seventh Circuit, involves an action for a declaratory judgment that the Lake Superior Band of Chippewa Indians (LCO) retained treaty-reserved off-reservation hunting, fishing, trapping, and gathering rights, in territory ceded under the Treaties of 1837 and 1842. The main issues were the nature of the rights, whether the rights were extinguished by the 1850 Presidential Removal Order, and whether the rights were extinguished by the Treaty of 1854.

a. Rights Under the 1837 and 1842 Treaties

The 1837 Treaty ceded land to the United States but reserved usufructuary rights "during the pleasure of the President of the United States." The 1842 Treaty ceded land north of the land ceded in 1837 and stipulated that the Indians had the right to hunt on the ceded territory along with other privileges of occupancy until the president ordered their removal.

The court discussed the difference between aboriginal title and treaty-recognized title. Basically, aboriginal title is title good against all others but the United States. The government need not compensate Indians for taking such title. Treaty-recognized title refers to congressional recognition of a tribe's right to occupy land. It can be extinguished only upon payment. Furthermore, abrogation of treaty-recognized title requires an explicit statement by Congress or must be clear from the circumstances and legislative history surrounding a congressional act.

b. The 1850 Presidential Removal Order

The defendants argued that the 1850 Presidential Removal Order terminated the Chippewa's usufructuary rights. In disagreeing with the defendant's argument, the court found that the President exceeded his authority in ordering the removal. According to the court, the 1837 and 1842 Treaties authorized termination of the Chippewa's usufructuary rights only if the Indians misbehaved and the court found no misbehavior that would have warranted removal.

c. The 1854 Treaty

The court also ruled that the 1854 Treaty did not terminate the Chippewas' usufructuary rights because it did not contain express termination language.

10. *Lac Courte Oreilles Band v. State of Wis.*, 760 F.2d 177 (7th Cir. 1985) (LCO II)

The federal appeals court held that the prohibition on exercising usufructuary rights on private property cannot be fixed based on private property owned as of a particular date.

11. *Lac Courte Oreilles Band v. State of Wis.*, 653 F.Supp. 1420 (W.D. Wis. 1987) (LCO III)

The federal district court held that the Chippewa could use modern hunting and fishing techniques and could trade and sell to non-Indians. In addition, the court ruled that the Chippewa could not exercise usufructuary rights on off-reservation privately owned lands ceded under the 1837 and 1842 Treaties unless required to sustain a moderate living.

12. *Lac Courte Oreilles Band v. Wis.*, 668 F.Supp. 1233 (W.D. Wis. 1987) (LCO IV)

The federal district court ruled that the state could regulate for conservation, public interest, and safety purposes and that the regulations must be reasonable, necessary, and non-discriminatory.

13. ***Lac Courte Oreilles Band v. Wis.*, 686 F.Supp. 226 (W.D. Wis. 1988) (LCO V)**

The federal district court found that the "modest living" standard was not practical because the LCO had shown that their modest living needs could not be met from the available harvest.

14. ***Lac Courte Oreilles Band v. State of Wis.*, 707 F.Supp. 1034 (W.D. Wis. 1989) (LCO VI)**

The federal district court ruled that the LCO could regulate their harvest of walleye and muskie within the ceded territory provided the regulation reflected biologically sound conservation principles. Failure of the LCO to adequately regulate would allow regulation by the state.

15. ***Lac Courte Oreilles Band v. Wis.*, 740 F.Supp. 1400 (W.D. Wis. 1990) (LCO VII)**

The federal district court ordered, among other things, that: (1) the harvestable natural resources in the ceded territory be apportioned equally between the LCO and non-Indians; and (2) the state could enforce its prohibition on summer deer hunting until the LCO adopted a regulation prohibiting all deer hunting before Labor Day.

III. COURT CASES IN OTHER STATES

16. ***Western Shoshone National Council v. Molini*, 951 F.2d 200 (9th Cir. 1991), *cert. denied*, 113 S.Ct. 74 (1992)**

The Western Shoshone National Council (Shoshone) sought to prohibit the state of Nevada from enforcing certain wildlife laws and regulations against them. The Shoshone asserted that the state's regulations interfered with their aboriginal and treaty-reserved rights to hunt and fish.

The Shoshone argued that a $26 million award they received from the Indian Claims Commission did not bar their lawsuit against Nevada. The court (the U.S. Court of Appeals

for the Ninth Circuit) rejected this argument. The court also noted that the purpose of the Indian Claims Commission Act was to dispose of the Indian claims problem with finality.

The Shoshones also argued that the Claims Commission compensation was for aboriginal title and their case was for protection against interference with hunting and fishing rights that existed independent of aboriginal title. The court held that absent an express reservation, hunting and fishing rights were included in the conveyance of title.

The court specifically distinguished this case from the *Voigt* case in Wisconsin (see case 9 above), stating that the *Voigt* case was "inapplicable here, because there is no treaty which grants the Shoshones hunting and fishing rights." 951 F.2d at 203.

17. *Oregon Department of Fish and Wildlife v. Klamath Indian Tribe*, 753 U.S. 453, 105 S.Ct. 3420, 87 L.Ed.2d 542 (1985)

The Klamath Tribe sued to prohibit the Oregon Department of Fish and Wildlife from interfering with tribal members' hunting and fishing activities on lands ceded to the United States.

An 1864 treaty ceded Klamath lands to the federal government. The treaty also created a reservation and provided that the Tribe would have "the exclusive right of taking fish in the streams and lakes, included in said reservation, and of gathering edible roots, seeds, and berries within its limits." No right to hunt or fish was preserved outside the reservation.

The boundaries of the reservation were inaccurately set and excluded certain lands. A boundary commission was established to determine the value of the excluded lands. The Commission's report was based largely on timber and meadow lands and was silent as to hunting and fishing rights.

In 1901, the United States agreed to pay the Tribe $537,007.20 for 621,824 acres of the reservation land. The Tribe agreed to "cede, surrender, grant, and convey to the United States all their claim, right, title and interest in and to" that land. As a result, the size of the reservation was diminished.

The Klamath Reservation was eventually terminated by Congress. The Termination Act specified that it would not "abrogate any fishing rights or privileges of the tribe or the members thereof enjoyed under Federal treaty."

The Tribe received an Indian Claims Commission award of about $4 million for additional compensation for lands ceded by the 1901 Agreement. The Claims Commission's opinion did not mention hunting or fishing rights.

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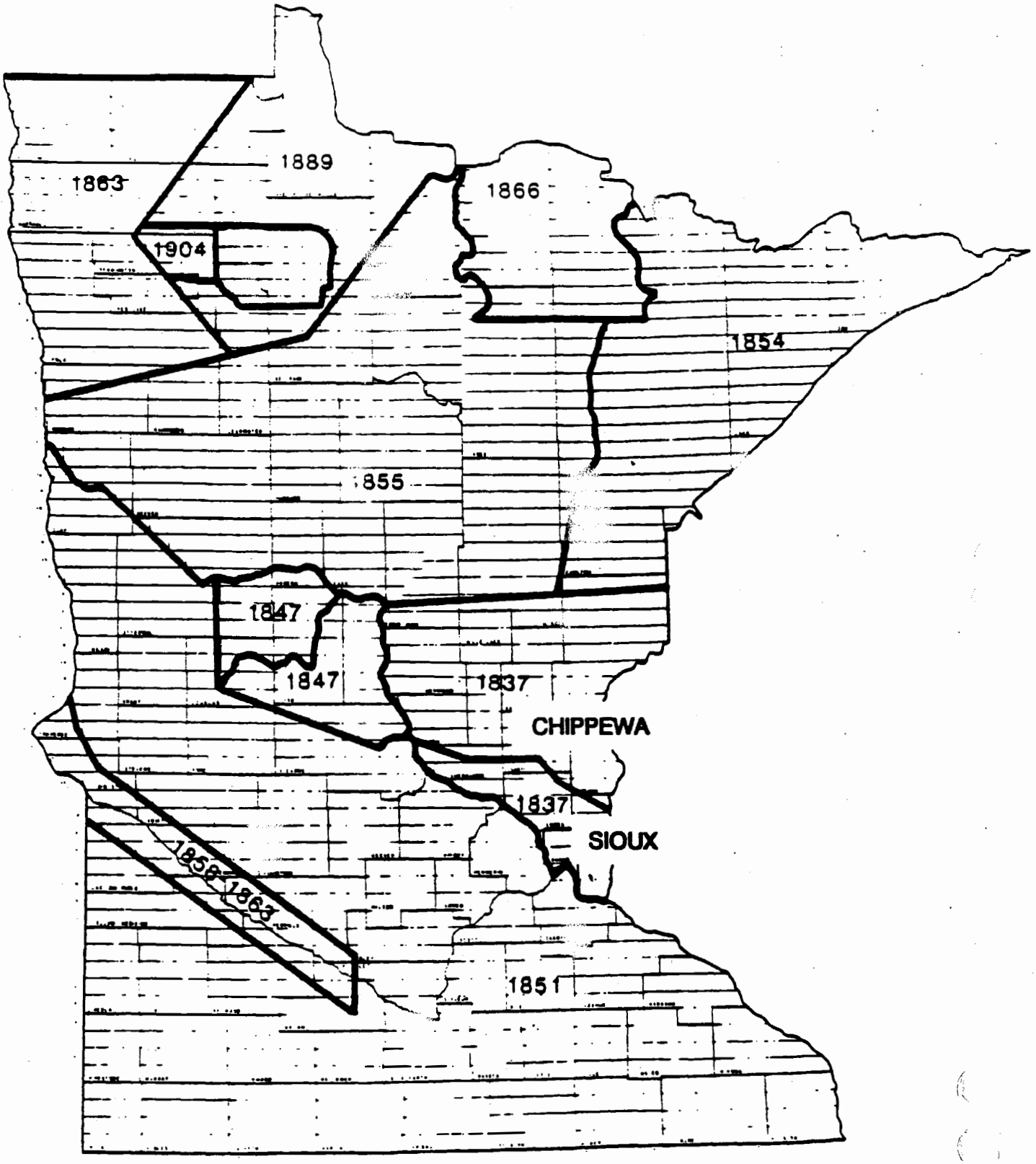
The U.S. Supreme Court found that the general conveyance of aboriginal title in an 1864 Treaty with the Klamath carried with it hunting and fishing rights outside of the reservation, but that the treaty also specifically reserved exclusive hunting and fishing rights within the reservation. The court reasoned that the exclusivity of the rights under the 1864 treaty foreclosed the possibility that hunting and fishing rights were intended to exist outside of the reservation, since exclusivity was not possible on lands open to non-Indians. Therefore, the court ruled, no hunting and fishing rights existed on reservation lands ceded to the federal government under the 1901 agreement.

In addition, the court determined that the silence regarding hunting and fishing rights during the 1901 Agreement negotiations and the Indian Claims Commission's proceedings are consistent with the view that the parties did not understand that hunting and fishing rights existed.

APPENDIX B

MINNESOTA TREATY AREAS



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United States Department of the Interior

IN REPLY REFER TO

OFFICE OF THE SOLICITOR
Office of the Field Solicitor
686 Federal Building, Fort Snelling
Twin Cities, Minnesota 55111

February 28, 1991

BIA.TC.3397

Mr. Earl J. Barlow
Minneapolis Area Director
Bureau of Indian Affairs
15 South 5th Street
Minneapolis, Minnesota 55402

Re: Mille Lacs Reservation Boundaries

Dear Mr. Barlow:

This is in response to your request that we provide an opinion on the issue of the boundary of the Mille Lacs Indian Reservation. From time to time, various entities have speculated that the boundaries established by the Treaty of February 22, 1855, 10 Stat. 1165, have been disestablished such that the reservation has been diminished and presently consists only of lands held in trust for the Mille Lacs Band (or the Minnesota Chippewa Tribe). For the reasons set for the below, it is our opinion that the boundaries established by the 1855 treaty remain intact and that the reservation has not been diminished.

The current analytic structure for determining whether a statute had the effect of terminating or diminishing a reservation is summarized in the Supreme Court's decision in Solem v. Bartlett, 465 U.S. 463 (1984). In that case, the court set out guidelines to aid in the interpretation of statutes affecting the status of reservations. Those "pronouncements" in Solem are summarized in Pittsburg and Midway Coal Mining Co. V. Yazzie, 909 F.2d 1387 (10th Cir. 1990) as follows:

> First, it is well established that Congress has the power to diminish a reservation unilaterally. [Citations omitted.] Nonetheless, diminishment will not be lightly inferred [Citation omitted]. Congress must clearly evince the intent to reduce boundaries, [citations omitted], and traditional solicitude for Indian rights favors the survival of reservation boundaries in the face of the opening up of reservation lands to settlement and entry by non-Indians. [Citations omitted]. Courts may not, however, "ignore plain language that, viewed in historical context and

> given a 'fair appraisal' clearly runs counter to a tribe's later claims." [Citations omitted]. 909 F.2d 1387 at 1393.

The foregoing approach to analyzing the impact of Congressional action on reservation boundaries involves the application of judicial presumptions and standards that have developed in the absence of clear Congressional intent in the so-called "surplus land" statutes. That is, Congress opened reservations to non-Indian settlement and set up schemes for the passage of title, but failed to recognize a distinction between title and boundary interests. That failure is a result of the reality that contrary to expectations in the late 1800's, the reservations and the tribes did not disappear into the amalgam of American society. When they did not disappear, disputes arose over reservation boundaries and in resolving those conflicts, the Supreme Court has applied a presumption that ambiguous congressional action affecting Indian rights is to be resolved "to the benefit of the Indians". See, Decoteau v. District County Court, 420 U.S. 425 (1975).

Because the distinction between title and boundaries has become increasingly important in the wake of the development of principles of Indian tribal sovereignty, the Supreme Court has required that an alleged diminishment statute must clearly reflect specific Congressional intent to diminish both boundaries and Indian title. The specific intent requirement in analyzing alleged diminishment statutes gives affect to a judicial presumption that Congress intended to deal fairly with the Indians, and it is in the light of that "fair deal" presumption that each boundary issue must be judged.

The history of the Mille Lacs Reservation following its creation in 1855 encompasses a complex, convoluted succession of treaties, agreements, Executive branch rulings, and Congressional enactments. Although the official acts of the government evince a great effort to remove the Mille Lacs Band from the reservation and an effort (albeit not without vacillation) to legitimize the presence of white settlers, there is no clear Congressional intent to reduce the boundaries of the Mille Lacs Reservation.

A summary of Congressional action begins with the Treaty of 1864. By that treaty, the Band ceded the 1855 Reservation to the United States, but expressly retained the right to remain on the reservation so long as its members did not interfere with or molest the whites. There is no doubt that the Band did not violate that "good conduct" provision, but in the two decades that followed the federal government - despite efforts to stem the flow of trespassers onto the reservation and to protect the interests of the Indians in the lands - eventually allowed claims on or issued patents to 5/6 of the reservation's approximately 61,000 acres. It is important to note, however, that the claims

and patents were not the result of a Congressional enactment throwing the reservation open to settlement under the public land laws. Instead, the entries were made on the basis of directives and orders of the Department of the Interior under intense pressure from timber and land interests.

Following the incursion into the reservation and the debate over its propriety within the Executive Branch, Congress enacted the Act of July 4, 1884, 23 Stat. 89. That statute recognized the controversy surrounding the settlement of the Mille Lacs Reservation and prohibited additional disposition of lands within the Reservation until further action by Congress. That further action come in the form of the Act of January 14, 1889, 25 Stat. 642, also known as the Nelson Act. By that statute, Congress created the framework for the cession of all Chippewa reservations in Minnesota except portions of the White Earth and Red Lake Reservations. A commission was appointed to negotiate with the Chippewa for the removal of the Grand Portage, Fond du Lac, Mille Lacs, Bois Forte and Leech Lake Bands to the White Earth Reservations, but Section 3 of the Nelson Act allowed any member of those five Bands to remain on their home reservations and take an allotment of land there rather than remove to White Earth.

Under the auspices of the Nelson Act, an agreement with the Mille Lacs Band was negotiated and approved. Although the agreement with the Mille Lacs Band contained cession language with respect to the 1855 reservation and the right of occupancy reserved in the 1864 treaty, it is clear that the Band members intended to exercise their right to remain on their ancestral homeland and to take allotments there rather than relocate to White Earth.

Subsequent to the Nelson Act and the agreement made pursuant to it, the Mille Lacs Indians endeavored to secure the promised allotments but were frustrated by actions of the Executive Branch with respect to renewed entries and settlement on the reservation. By the turn of the century, the government had allowed so many non-Indians to enter and settle upon the reservation, and did so little to preserve the right of allotment reserved to the Mille Lacs members, that few lands suitable for allotment remained in government hands. Notwithstanding the fact that title to the land passed to others, there is no clear evidence that Congress considered the reservation boundaries either diminished or terminated. To the contrary, in both the Act of July 22, 1890, 26 Stat. 290, and the Act of May 27, 1902, 32 Stat. 268, Congress referred to the rights of Indians "within [the] Mille Lacs Reservation." The latter statute provides evidence that Congress believed the reservation continued to exist in that the act offered the Indians inducements - as well as exceptions - to removal from the Mille Lacs Reservation. If the reservation had ceased to exist by virtue of the Nelson Act agreement (which had been approved years earlier), there is

nothing in the 1902 act which evinces a Congressional understanding that that was so.

The Mille Lacs Band persisted in its insistence that the Band's understanding of the right to remain and take allotments under the Nelson Act. As with the other Chippewa Bands, some moved to White Earth and took allotments. However, the great majority remained and by the Act of August 1, 1914, 38 Stat. 582, Congress specifically appropriated $40,000 for the purpose of acquiring lands to be allotted to the Mille Lacs Indians remaining on the reservation. The acquisition of lands by purchase was necessary because in the preceding decades the government had allowed others to acquire reservation lands and had not honored the legitimate expectation of allotment under Section 1 of the Nelson Act.

Given that history and keeping in mind the judicial standards applicable to the issue of boundary disestablishment, the question of the impact of other Minnesota boundary cases must be addressed. The situation most analogous to that of Mille Lacs is discussed in Leech Lake Band of Chippewa Indians v. Herbst, 334 F.Supp. 1001 (D.Minn. 1979). In that case, the court held that the Nelson Act did not terminate or diminish the Leech Lake Reservation - one of the five reservations which like Mille Lacs were "ceded" pursuant to Nelson Act agreements. The Leech Lake boundary was again at issue in State v. Forge, 262 N.W.2d 341 (Minn. 1977), appeal dismissed, 435 U.S. 919 (1978), and State v. Clark, 282 N.W.2d 902 (Minn. 1979), cert. denied, 445 U.S. 904 (1980), dealt with the White Earth boundary. Both decisions concluded that the reservation boundaries had not been disestablished.

At about the same time, in United States v. Minnesota, 446 F.Supp. 1382 (D.Minn. 1979), aff'd sub nom. Red Lake Band v. Minnesota, 614 F.2d 1161 (8th Cir. 1980), the federal court held that the Nelson Act had terminated a portion of the Red Lake Reservation. Similarly, in White Earth Band v. Alexander, 518 F.Supp. 527 (D.Minn. 1981), aff'd, 683 F.2d 1130 (8th Cir. 1982), the federal court found that four townships of the White Earth Reservation were removed from the reservation. Those decisions, however, do not compel a conclusion that the Mille Lacs boundaries were disestablished. In both the case of Red Lake and the "four townships", there is clear evidence of the areas at issue were to be dealt with differently than the ceded reservations (Mille Lacs, Leech Lake, and the others) where the Indians could remain and take allotments. The "diminished" area of the Red Lake Reservation consisted of a vast area of sparsely inhabited lands. Even after diminishment, the remaining Red Lake Reservation encompassed hundreds of thousands of acres, including the historic population centers of that Band. With respect to the four townships in the northeastern portion of the White Earth Reservation, the record is clear that those specific lands were

to be treated differently than the balance of the reservation. (In fact, it is clear that the Secretary of the Interior treated the Red Lake ceded lands and the four townships as exceptions to the general rule, and the judicial decisions have confirmed that different treatment. See, H.R. Ex. Doc. No. 247 at 10.)

In short, the circumstances of the Mille Lacs Reservation do not parallel either the Red Lake ceded area or the four townships ceded at White Earth. There is no clear evidence that Congress intended to reduce the boundaries. Given the judicial standards governing analysis of boundary issues, we are of the opinion that the Mille Lacs Reservation boundaries encompass the territory described in the Treaty of 1855.

Sincerely yours,

Mark A. Anderson
For the Field Solicitor

nmc

Special Rules for Interpreting Indian Law

The United States Supreme Court in a series of decisions dating from the early nineteenth century has held that the federal government has a special trust responsibility with the Indian tribes.[34] These trust principles have developed in several ways. One important result is that the Court has developed a special set of rules or "**canons of construction**" for construing treaties, statutes, and executive orders affecting Indian tribes and peoples. These rules of construction or interpretation are important in shaping the development of the law and, in particular, in establishing and protecting the rights of the tribes and their members.

The canons of construction initially grew out of rules for construing treaties with tribes.

They represent, in part, an acknowledgement of the unequal bargaining positions of the federal government and the tribes in negotiating these treaties. More importantly, the canons reflect the view, arising from the fundamental trust relationship, that the actions of Congress are presumed to be for the benefit and protection of the tribes and Indian peoples. Therefore, the canons assume that Congress -- absent a "clear purpose" or an "explicit statement" -- intended to preserve or maintain the tribal rights.

The canons are expressed in various different ways.

In general, they provide that treaties, statutes, executive orders, and agreements are to be construed liberally in favor of establishing or protecting Indian rights and that ambiguities are to be resolved in favor of Indians.[35] For example, unless Congress clearly indicated or an agreement or treaty specifically stated otherwise, it is presumed that tribal hunting, fishing, and water rights are retained.[36] As another example, it is presumed that Congress did not intend to abrogate tribal tax immunities, unless it "manifested a clear purpose" to do so.[37]

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Tribal Sovereignty -- Limits on State Power

Indian tribes have a special legal status that derives from their status as sovereign nations under the United States Constitution and federal law. When the United States was founded, the tribes were self-governing, sovereign nations. Their powers of self-government and sovereign status were not fully extinguished by the constitution. Establishment of the United States subjected the tribes to federal power, but did not eliminate their internal sovereignty or subordinate them to the power of state governments.[24] The tribes lost their "external sovereignty," i.e., they were no longer able to deal with foreign nations. However, they still retain their sovereignty within their tribal territories.[25] The tribes retain the powers of self-government over their lands and members. In some ways, this gave the tribes equal status with states.

An important tenet of federal policy has been to protect the self-government rights and sovereignty of tribes.

Chief Justice Marshall characterized the federal-tribal relationship as one of "domestic dependent nations" to whom the federal government had essentially a fiduciary relationship.[26] One element of this fiduciary relationship has been to preserve tribes' status as self-governing entities within their territories, including protection from state interference.[27] For example, Chief Justice Marshall described the situation as follows:

> The Cherokee nation * * * is a distinct community * * * in which the laws of Georgia can have no force * * * but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of Congress.[28]

Federal Indian affairs policy has varied significantly over the years with the importance accorded by Congress to sovereignty and tribal self-government rising and waning. Assimilationist policies at times downplayed its importance. However, it is an important theme throughout and currently is a central principle of federal policy.

Under the Indian Commerce Clause, Congress has plenary authority over Indian affairs and tribes.

The Constitution gives Congress complete authority over Indian tribes, including the powers to repeal treaties, eliminate reservations, and grant the states jurisdiction over particular tribes. The only constraints binding upon the federal government are the guarantees contained in the Bill of Rights and provisions of the Fourteenth Amendment of the U.S. Constitution.

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Tribal sovereignty and tribes' right of self-government is the important touchstone that affects tribal relations with state government.

Congress has the exclusive power to regulate Indian affairs. A state, by contrast, only has the power over Indian affairs within tribal territory (Indian country or lands) that Congress has specifically given it. State power over tribal territory is limited to those powers which Congress has delegated to it or which have not been preempted by the exercise of federal or tribal law.

20. 25 Stat. § 642.

21. Only about six percent of the original acreage of the White Earth Reservation remains in Indian control. E. Peterson, That So-Called Warranty Deed: Clouded Land Titles on the White Earth Indian Reservation in Minnesota, 59 N.D.L. Rev. 159, 163 (1983).

22. 25 U.S.C. § 462.

23. See *County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nations*, 112 S.Ct. 683 (1992) and discussion below under taxation, page 61.

24. The special status of Indian tribes is recognized in the language of the United States constitution. For example, congress was given authority "*[t]o regulate commerce with* foreign nations, and among the several states, and with *the Indian tribes*." U.S. Const. art. I § 8 (emphasis added). This provision is commonly called the "Indian commerce clause."

25. These basic principles of Indian law were established initially in *Worchester v. Georgia*, 31 U.S. 515 (1832).

26. *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); see generally the discussion in Cohen, supra note 8, at 232-37 (1982).

27. *Id.* at 234.

28. *Worchester v. Georgia*, 31 U.S. 515, 561 (1832), cited in Cohen, supra note 8, at 235.

29. The Red Lake Reservation was excluded from this grant of jurisdiction in Minnesota.

30. These states are Arizona, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, and Washington.

31. In 1973, the state of Minnesota retroceded its criminal jurisdiction over the Bois Forte Reservation.

32. 426 U.S. 373 (1976).

33. 408 U.S. 202 (1987).

34. See, e.g., *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); *Worchester v. Georgia*, 31 U.S. 515 (1832).

35. See generally Cohen, supra note 8, at 221-25 for a discussion of the canons.

36. See, e.g., *Menominee Tribe v. United States*, 391 U.S. 404 (1968).

37. See, e.g., *Bryan v. Itasca County* 426 U.S. 373, 392-39 (1976).

A.

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Senate
State of Minnesota

March 2, 1993

TO: All Senators

FROM: Senator Steve Morse

RE: Mille Lacs Treaty Settlement

Attached for your review is some additional background material relative to my Senate File 220, the bill to ratify the negotiated settlement of the hunting, fishing, and gathering claims of the Mille Lacs band of Chippewa under the treaty of 1837.

This document is offered in support of the legislation. It is intended to respond to questions you may have, or to questions raised by your constituents.

As always, please feel free to contact me with any questions you may have relative to this legislation.

SM:jk

COMMITTEES: Chair, Environment Division of Finance, Agriculture and Rural Development. Education, Higher Education Subcommittee, Environment & Natural Resources, Governmental Operations
SERVING: Winona and Houston Counties

Mille Lacs Band of Ojibwe v. Minnesota Settlement: a Summary

The proposed settlement between the Mille Lacs Band of Ojibwe (Chippewa) and the state of Minnesota is a sensitive and complex issue that has generated a strong response from individuals and groups all across the state of Minnesota. These individuals and organizations have their own "facts" about the settlement which they hold as truth. As a result, there is an extraordinary amount of information and *mis*information circulating.

A Historical Overview

The lawsuit is a result of the fact that the state of Minnesota has not recognized the Mille Lacs Band's claims of hunting and fishing rights in the territory that was ceded to the U.S. in the 19th century. Hence, they have been holding the Band accountable for its harvesting activities under state regulation, rather than under the Band code. While the treaties in question were signed by the Federal government, the Band is suing Minnesota because it is the body of government that is attempting to regulate the activities of a sovereign government and people with rights defined by the Federal government and protected by the U.S. Constitution.

The documents that have led up to this point are numerous and, in some cases, ambiguous. The documents listed below are those which are generally considered relevant to the defense and the complainants.

- **The 1837 Treaty** is the basis of the Band's claims to hunting and fishing rights on the ceded lands. It is the treaty in which the Ojibwe ceded lands in exchange for monetary and material compensation with the provision that they maintain their rights to harvest the territory.

- **The 1850 Presidential Removal Order** by Zachary Taylor is an integral part of the defense in that it dictates specifically that all rights of the Ojibwe to harvest and live upon the ceded land "are hereby revoked". While the state maintains that the order removes the rights dictated in the 1837 treaty, the Federal courts in Wisconsin have previously ruled the removal order invalid.

- **The 1855 Treaty** is important to the Band in that it creates the reservation upon which they are currently residing. The state claims that with the creation of the reservation, additional lands were ceded to the state and that any remaining hunting and fishing rights on previously ceded land were revoked. The band claims that nowhere in the document are hunting and fishing rights specifically mentioned, thereby leaving the rights intact. The Band also maintains that, with the creation of the reservation, they have full hunting and fishing rights on the adjacent waters, which is Lake Mille Lacs. As there are three islands in Lake Mille Lacs included in the reservation, litigation could result in the court granting harvesting rights to the Mille Lacs Band.

- **The 1864 Treaty** and **The 1889 Nelson Act** are also used as part of the defense by the state, claiming that both of these documents terminate the "reservation and all of the hunting and fishing rights". However, the 1864 Treaty specifically excludes the Mille Lacs Band, as long as their good conduct is upheld. The Band also maintains the Nelson Act allowed the Mille Lacs Band members to take allotments on the 1855 reservation, rather than moving to the

White Earth Reservation. Supporting their claims, other documents written after the Nelson Act expressly recognize the Mille Lacs Reservation, authors varying from Federal courts and Congress to the Office of the Solicitor for the U.S. Department of the Interior.

●**The 1973 Indian Claims Commission Payment** of approximately $9,000,000 is considered by the state to be the final reparation and payment for lands ceded and the rights to them. The payment was an attempt to compensate the Band for timber and land ceded in the earlier treaties. The issue of hunting and fishing rights was not specifically addressed. Further, the ICC lacked the jurisdiction to compensate the Band for lost hunting and fishing rights.

Litigation vs. Settlement: the Pros and Cons

It is obvious what the state of Minnesota would gain by winning the case - it would not have to grant the Mille Lacs Band of Ojibwe any land or harvesting rights outside of the reservation. However, extensive research has failed to produce a single example of a court decision whereby Native Americans have lost their off-reservation hunting and fishing rights that were previously expressly reserved and were not subsequently expressly extinguished. This is the situation Minnesota finds itself in today. Minnesota stands to lose much more in the event of a loss than it would gain in winning. If the result of this case is anything similar to that of the case in Wisconsin, Minnesota could potentially be required to grant full hunting and fishing rights in the ceded territory to all Ojibwe tribe members under the 1837 treaty, including those from out-of-state. This may include commercial harvesting on both public and private lands. Other problems could ensue as a result of a negative verdict for the state, such as racial tensions and fighting, extensive costs for law enforcement, legal fees and payments, economic hardship for the businesses in the area affected, and possible embarrassment for the state of Minnesota for allowing such an outcome. Wisconsin set an example of how not to handle a situation such as this.

While the most desirable circumstance may be to litigate and win, there is such risk involved that settling proves to be the best option. In an agreement such as this one, Minnesota significantly decreases its potential losses. It was able to negotiate with the Band to come up with the best possible agreement for the two parties for a final solution between them. If approved, this settlement would become an order of the Federal District Court in Minnesota. If the case goes to court, the appeals process could extend for many years. The settlement is a negotiated agreement in which, once finalized, the terms can no longer be altered. The settlement is very clear and definitive in its conservation efforts, allowing the state to intercede if the band is not enforcing its conservation code. It also prevents any commercial game fish harvesting, which is a major concession on the part of the Band. The settlement requires increased and regular communication between the state and the Band so that future problems may be avoided. This settlement gives Minnesota the opportunity to set an example for the other states in the U.S. as one being willing to settle disputes with Native Americans in a timely, peaceful and responsible fashion that is best for all parties involved.

The Mille Lacs Band of Ojibwe v. Minnesota :
Constituent Question-and-Answer Reference Sheet

This is a compilation of questions and concerns raised thus far by constituents regarding the Mille Lacs Band of Ojibwe v. Minnesota settlement. This reference sheet is intended to offer answers which will help educate constituents about this settlement while making the process of responding to mail received less difficult and time-consuming.

The reactions to this agreement range from genuine concerns about the effects of the settlement on the lands, waters and people involved to prejudicial statements inspired by a lack of understanding of Native American culture and its unique relationship with the United States government. While it is relatively simple to correct some of the myths circulating about this issue, addressing an opinion mired in racism is much more complex and involved — particularly for one letter. As a result, some responses will inevitably be more effective than others. Hopefully this document will assist you .

Questions and Concerns:

Conservation/Law Enforcement

Settlement fails to define "subsistence" harvesting, which will allow for abuse of this right to occur.

> The explicit definition of "subsistence uses" in the settlement is as follows: "...the use of natural resources for direct personal or family consumption by Band members as food, medicine, shelter, fuel, clothing, tools or transportation; for the making or selling of handicraft articles; or for barter."

What is the difference between commercial harvesting and bartering?

> Commercial harvesting is the harvest of any natural resource for the purpose of its sale, with the exception of subsistence uses. Commercial sale allows for the marketing of a good. Barter is the process of trading a good for another good *within the tribe.*

Settlement allows off-season harvest, including during spawning.

> The Band has proposed to refrain from walleye spearing on Lake Mille Lacs during spawning, though it does retain the right to do so. However, the Band will have harvesting limits, based on harvestable surpluses of a resource as determined in conjuction with the Minnesota Department of Natural Resources (DNR).

Band code can be changed at any time to redefine conservation laws.

> According to the settlement, the Band, like the DNR, may change its code to suit tribal and conservation needs, although the DNR must be notified if any significant adjustments are made.

The Band will deplete the game fish population.

> Both the state and the Band have declared that conservation is a top priority,

making preservation of resouces a major focus of the Band conservation code. However, in the event that the code does not meet the state standards for conservation, the state has maintained the right to intervene and set regulations that apply to the Band. It is in the best interest for the Band to preserve the land upon which they will be exercising their harvesting rights, as the resources must last as long as the Band wishes to harvest for subsistence. The commercial harvest of game fish is expressly prohibited.

How are the laws, as established by the settlement, going to be enforced and by whom?

Part of the settlement includes payment of 8.6 million dollars to the Band ($10 million if paid over a period of five years), a portion of which must be applied to law enforcement and conservation efforts. The Band conservation code, as proposed, will include a system of licensing and tagging, among other techniques intended to keep track of how much has been harvested. Also, according to the settlement, there will be the cross-deputization of Band and state officials so that both may enforce state and Band policies.

Settlement Process

The negotiation meetings were secretive, not allowing for any feedback from the public or parties affected by the outcome.

The DNR released information in late 1991 about an initial settlement reached between the Band and the DNR, which allowed the commercial harvest of game fish. After evaluating the public's reaction to it, the DNR re-entered into negotiations with the Band.

Costs of the prosecution and settlement should be paid out of the state General Fund and handled by the Attorney General, rather than paid from the Fish and Wildlife Fund and handled by the Department of Natural Resources (DNR).

The DNR was involved with the negotiations due to conservation being its primary focus. The Attorney General's office has coordinated this settlement and the monies paid to the Band will be taken from the state General Fund.

Who gave the DNR the authority to convey land in public trust?

The legislature is required to authorize the transfer of these lands.

How can we afford $10 million at a time where we a tremendous budget shortfall?

The amount that would be paid at the time the settlement is approved is $8.6 million, with the option to make payments totalling $10 million over a five-year period. While it is unfortunate that a payment must be made, the potential costs of litigation and enforcement are much greater than the payment upon which the state has settled.

Land Distribution

Some of the lakes in the Treaty Fishing Zone (TFZ) are outside the 1837 ceded territory.

Only the 4.5% of Lake Mille Lacs, which is located within the original 1837 treaty

area, designated for exclusive use by the Band is considered the TFZ. The 6 other lakes and 26 miles of river that have been selected for non-exclusive use by the Band are all within the 1837 ceded territory.

The final settlement does not specify which lands will be transferred to the Band.
The settlement establishes a process for transferring land to the Band. As a part of that process, the DNR will solicit comments from the local units of government affected and the public.

The counties are not reimbursed for lost property taxes from land given to the Band.
The legislation continues Payment In Lieu of Tax payments to the local governments on *any* transferred lands.

Harvesting Techniques

Non-Band members have given up spearing and netting of game fish...why should the Band members be permitted to do so?
Most individuals who fish on Lake Mille Lacs do so for recreational purposes. Consequently, this is reflected in the methods authorized under state regulation of fishing practices. The state has chosen to not allow its citizens to spear and net game fish in this manner. The Band maintains that spearing and netting are not only more traditional methods of harvest than angling, but they are also more practical techniques for meeting their objective, which is subsistence rather than sport. However, the Band may also restrict spearing and netting as they refine their resource management.

Multi-pronged spears and nylon gill nets were not traditional fishing methods.
Harvesting fish through the use of spears and nets is a tradition that has carried through to modern-day Native American life, to the extent to which it could be exercised. The "passing-on" of tradition has included technological advances in harvesting, such as the gill net and multi-pronged spears. As the Band maintains that its intent is subsistence harvest, the tools can be more efficient for their needs.

The gillnet will more than just indiscriminately deplete the supply of game fish, it will also kill other animals, including loons, otters, beavers, muskrats, etc...
The Band has expressed the intent to require the checking of nets with enough frequency to release any fish or animals not intended to be caught. They are also proposing to require a conservation officer to be available at the time of net removal to monitor and limit the number of fish taken. Additionally, a recent article in the Minneapolis Star-Tribune by outdoorsman Ron Schara (2/14/93) describes a fisheries biologist's experience netting on Lake Mille Lacs. After more than 130 settings last year 3 birds had been caught.

Non-Native American Rights

Owners of lands adjoining the waters in the Tribal Fishing Zone (TFZ) will be allowed to fish off their land, but their guests will not, including family members that do not live at

the residence.

The Band will issue boat licenses to allow land owners the flexibility of whom they may bring with them fishing. These licenses will allow anyone in the boat with the boat owner to fish in the TFZ. Also, as the TFZ is open to public access for all other purposes, it is possible to access both the TFZ and non-TFZ water by boat from the boat-owner's land.

Other Property owners who have cabins near the TFZ will lose access to choice fishing spots within the TFZ.

The Band is considering the sale of licenses to non-Band members for fishing within the TFZ.

A number of resorts are located on or near the TFZ in Lake Mille Lacs. Business will inevitably suffer due to their proximity to the TFZ.

This may be an unfortunate aspect of the settlement. However, if a resort owner's business is failing due to the location of the Treaty Fishing Zone, they may request that the state purchase their property to compensate for their losses.

Non-native limits will be lowered because of the Band's harvesting on Lake Mille Lacs.

The non-native harvesting limits will not be affected by the Band's harvesting. Regardless of when they fish or how, they will maintain a maximum walleye harvest per year which is consistent with the levels taken from the rest of the lake. If the limit is lowered, it is due to the cyclical fluctuation of the fish population, i.e. the population was larger this year than last which will most likely result in a smaller population and lower limits next year. These limits will be regulated as usual by the DNR.

Native American "Special" Rights

The settlement gives exclusive harvest rights to the Band, which is not a part of the original 1837 treaty.

While the 1837 treaty does not give exclusive rights to the Ojibwe, it does, according to the Band, give them rights to hunt and fish in the ceded territory, which includes hundreds of lakes and an area larger than that agreed upon in the settlement. In exchange for relinquishing their rights to the majority of lakes in the ceded territory and limiting their harvest under the Band code, the Band would be allowed to harvest of 4.5% of Lake Mille Lacs, 6 lakes and 26 miles of river using traditional methods of harvest, as regulated by the Band code.

Why is it that the Native Americans get special rights to land and resources when they do not pay taxes? This settlement gives unequal rights on the basis of race.

The treaties signed by the U.S. and the Native American tribes in the 19th century were contracts between sovereign nations. In these treaties, rights were being granted to the United States by the tribes and whatever rights were not given to the U.S. were retained in these documents. In 1905, the Supreme Court recognized this fact in the case of U.S. v. Winans. In short, the U.S. is not granting "special rights" to the Native Americans, but rather upholding the rights reserved by the Native Americans through the treaties signed and protected under

the U.S. Constitution (1787).

What is the Band sacrificing in this settlement?

The most significant concessions being made by the Band in this settlement are the right to commercially harvest some fish, such as walleye and muskie, and accepting quotas on how much walleye can be harvested per year. What distinguishes the Mille Lacs Band's major contribution to the settlement is that Lake Mille Lacs is large enough to actually establish and maintain a commercial fishery, which would, if created, significantly reduce the walleye population, causing bag limits for non-Band members to decrease. By relinquishing its rights to commercial harvest and limiting the Band's take to what is needed for subsistence, not to exceed 50% of the harvestable surplus, the bag limits for non-Band members should not be affected by this settlement.

The Band has casinos, hence they are doing well. Why do they need this lawsuit?

The Band states that it is attempting to return to a more traditional, self-sufficient and healthier lifestyle. One way in which it hopes to accomplish this goal is through the exercising of its treaty rights.

Settlement vs. Litigation

The treaties in question are so old...why are they still valid?

The treaties and presidential orders that are part of the lawsuit and settlement are all official documents drafted and approved by the U.S. Government. They pre-empt state law under the U.S. Constitution (1787). When they were written has little bearing on their validity.

This is a temporary solution to a problem that will resurface.

One of the provisions of this settlement is that it is the final solution to the question of the 1837 and 1855 treaties for the Mille Lacs Band. If this settlement is approved by the Band and the Minnesota State Legislature, it will become an order of the U.S. District Court. Any future disputes between the Band and the state on natural conservation resource issues must be dealt with through the process established in the agreement. The final arbitrator of the conflict will be the U.S. District Court.

As a result of this settlement, other bands will file suit against the state.

Whether this case is litigated or settled, any band has the right to file suit. If the state litigates and loses, other bands may come forward. If the state wins, other bands may still file suit, as the state does not address in this particular case the other treaties that affect the Native Americans in Minnesota. The settlement does, however, expressly preserve all of the state's defenses against other bands, so that it may litigate other suits filed.

In two cases, the Western Shoshone Council v. Molini and the Oregon Department of Wildlife v. the Klamath Tribe, the courts found in favor of the states involved. Doesn't that guarantee a win for Minnesota?

The Shoshone case was weaker than that of the Mille Lacs Band in that the treaty

in question, unlike the 1837 treaty, did not expressly reserve any hunting and fishing rights. In Klamath, the hunting and fishing rights were only reserved *within* the reservation. In both cases, there was different language used, therefore making the potential interpretation different.

What happened in the Wisconsin case?

In the case of Lac Courte Oreilles v. Voigt and the cases following it, the Ojibwe were suing under the same 1837 treaty as the Mille Lacs Band. Wisconsin's defense in this case was the 1850 Removal Order. It took 17 years, 12 attorneys and $12,000,000 for litigation and law enforcement, yet Wisconsin lost. The decision resulted in the Ojibwe gaining rights to spear, net, and commercially harvest up to 50% of all of the harvestable surplus in the Northern 1/3rd of Wisconsin. The outcome caused protests, riots and racially-motivated violence against the Ojibwe as they exercised their rights, pitting the native and non-native populations against one another. The civil and economic hardships caused by the lawsuit and violence that ensued were considerable.

Why did the Federal Courts in Wisconsin rule the 1850 Presidential Removal Order invalid?

In the case of Lac Courtes Oreilles Band of Ojibwe v. Voigt, the courts found that the 1837 treaty was written in such a way that the Native Americans could not have understood that their rights were so easily revoked, for if they had full understanding of the treaty and the language, they would not have agreed to its terms. Also, the removal order was not in direct response to "misbehavior" of the tribe and needed to be such for the revocation to be within Taylor's power. In other federal cases as well, any ambiguity found in the language of the documents has been decided in favor of the Native Americans, as they were written in English and signed under questionable circumstances.

Other than the Wisconsin case, have there been any other cases acknowledging the 1837 Treaty?

In U.S. v. Bresette, the U.S. Federal District Court found on behalf of two Ojibwe being prosecuted for the use of migratory bird feathers in traditional crafts that were being sold, based on the Voigt ruling. In this case, Minnesota recognized the same 1837 treaty rights as in both the Mille Lacs and Wisconsin cases.

Minnesota Department of Natural Resources

Proposed 1837 Treaty Agreement Presentation to the Senate Environment and Natural Resources Committee

Tuesday, February 9, 1993

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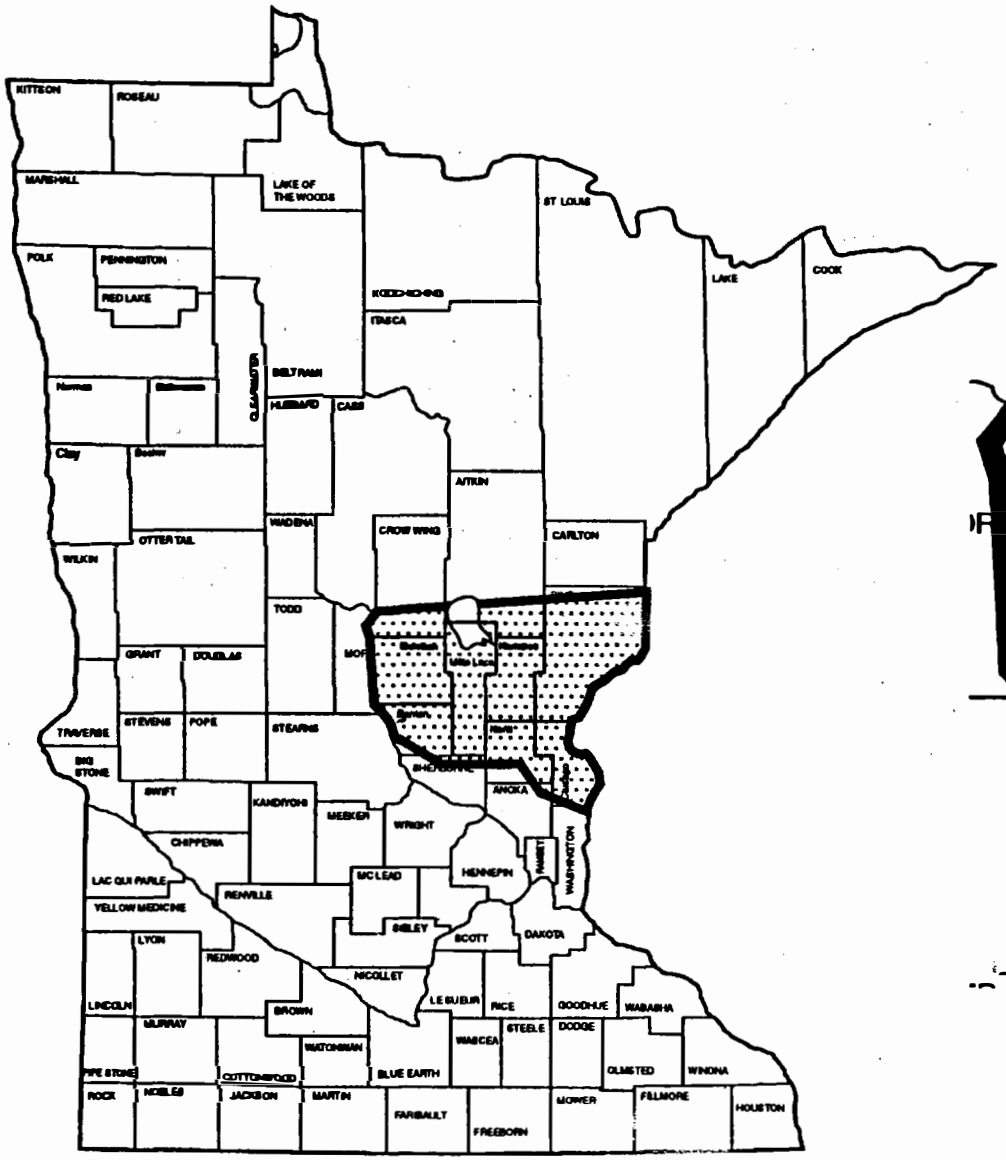
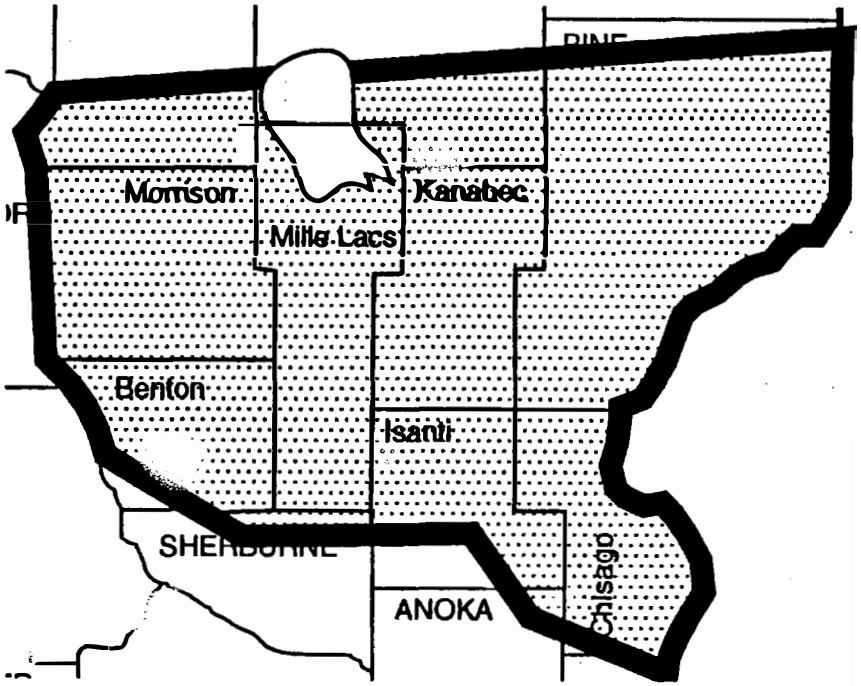
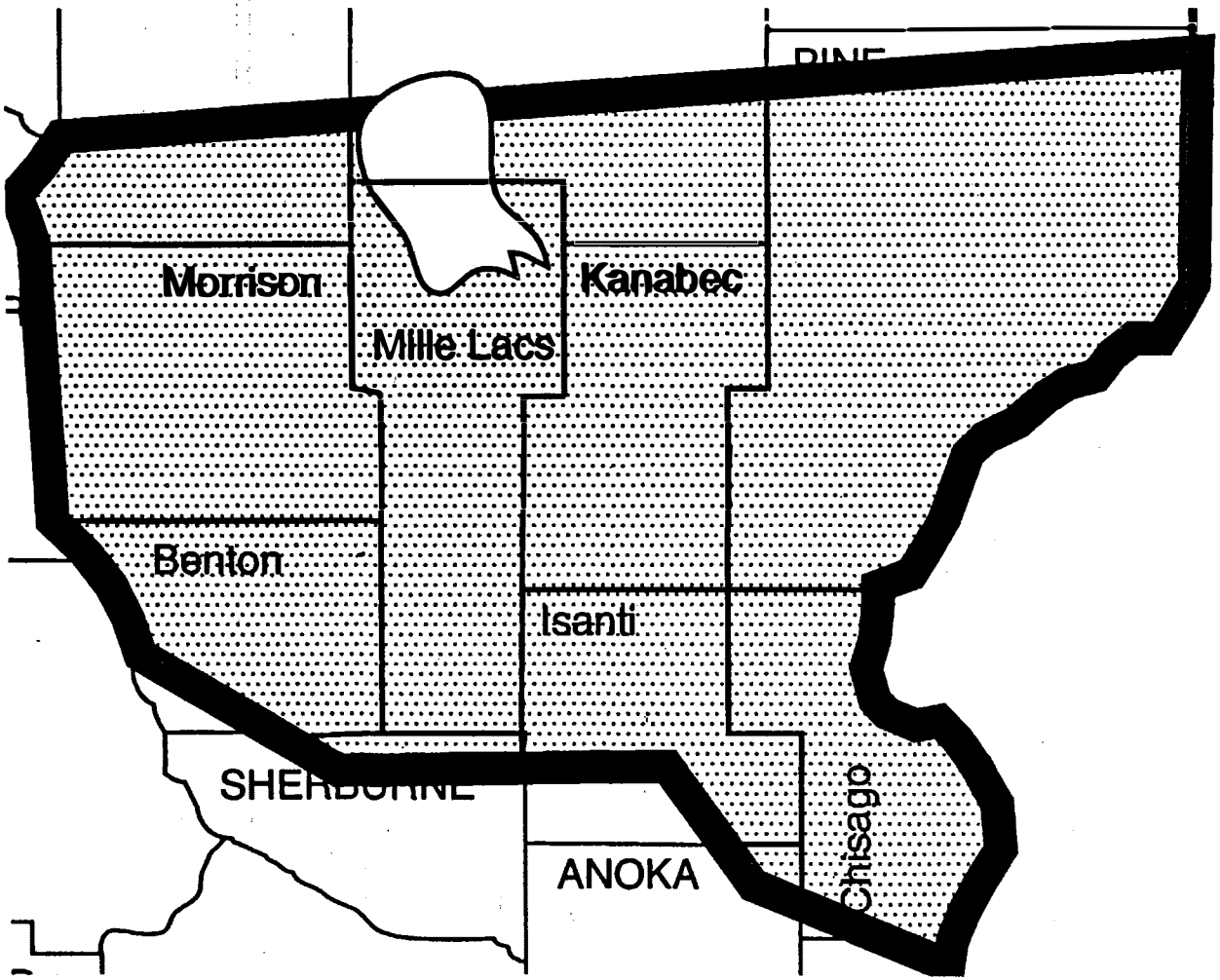
1837 Treaty Ceded Territory in Minnesota



Ceded Territory



No Commercialization of Game Fish Big Game Timber



Limited Netting & Spearing

* There are 137 lakes in the 1837 ceded territory. Only 7 lakes and and specific portions of the Rum and St. Croix rivers are open to spearing and netting.

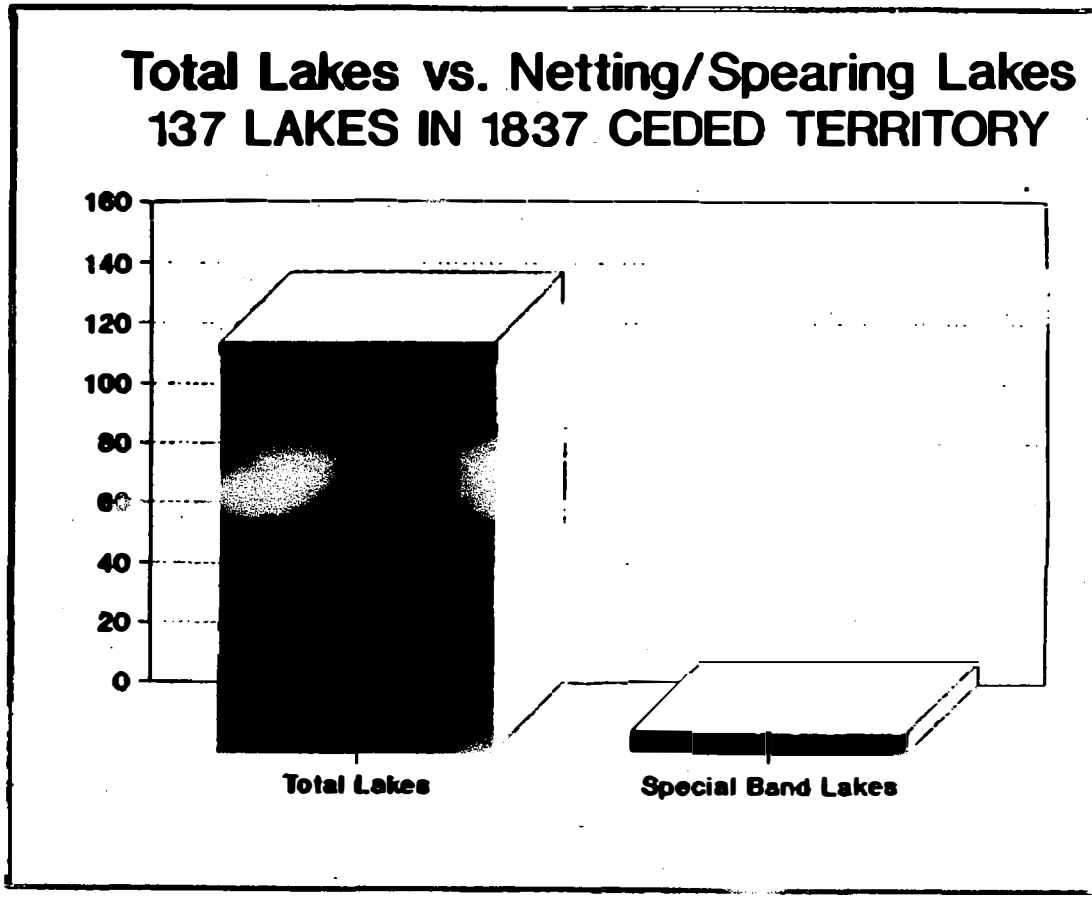
* Spearing and netting will be allowed for subsistence harvest only. Game fish cannot be sold or bartered among non-Band members.

* Band and DNR conservation officers will be cross-deputized and jointly ensure compliance with the Band code and state laws relating to game and fish.

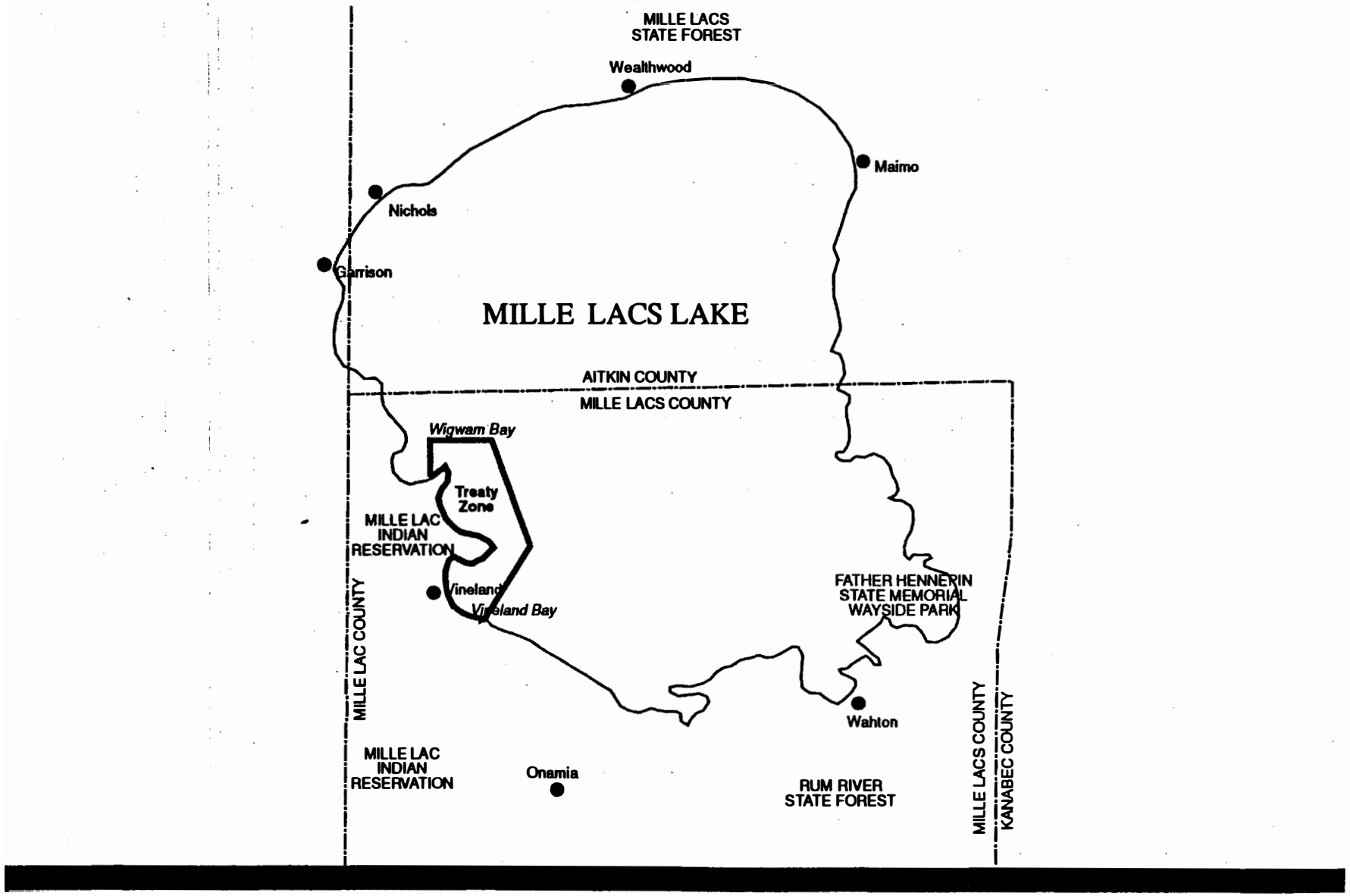
* Spearing is a traditional method of harvest. Under state law, all anglers can spear for certain species in some parts of Minnesota.

* Spearing and netting harvests will be regulated by the Band's conservation code.

* Game fish taken by Band members within the Treaty Fishing Zone will be monitored by the Band and DNR.



Treaty Fishing Zone



Treaty Fishing Zone Facts & Figures

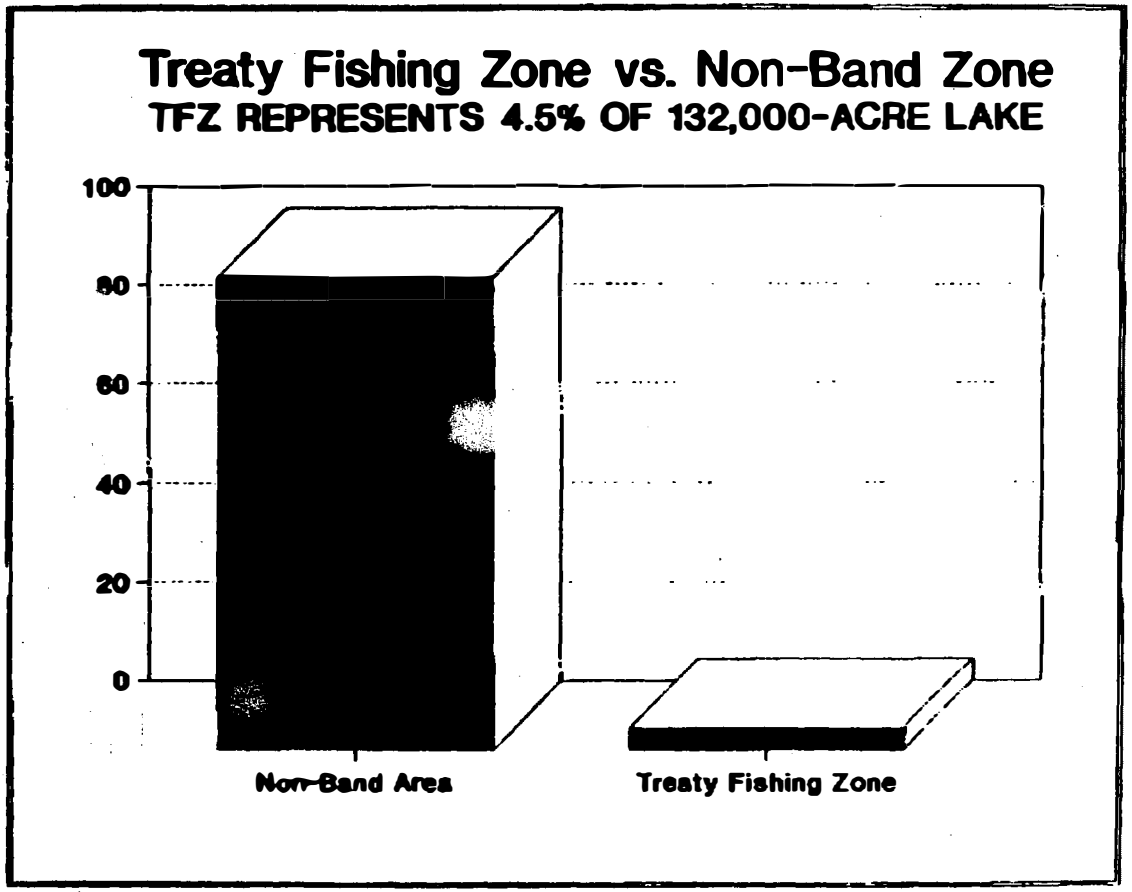
* Treaty Fishing Zone is 4.5 percent of the surface of Lake Mille Lacs. The zone starts and ends on the Mille Lacs Band reservation. No resorts are located within the zone.

* Tens of thousands of non-Band anglers fish Lake Mille Lacs each year. The entire Mille Lacs Band membership is about 2,500. Of these, about 1,250 live on the reservation. Of these, only a portion actively fish.

* Opportunities for angling in the Tribal Fishing Zone by non-Band members can be provided by the Band as the needs of Band members and the harvest of the fishery allows.

* Access to the Treaty Fishing Zone will not be restricted. Non-Band members can boat, ski, swim, sail, hunt, and enjoy other recreational activities within this body of public water.

* Harvest goals for northern pike, muskie and other game species will be similar to the rest of the lake.



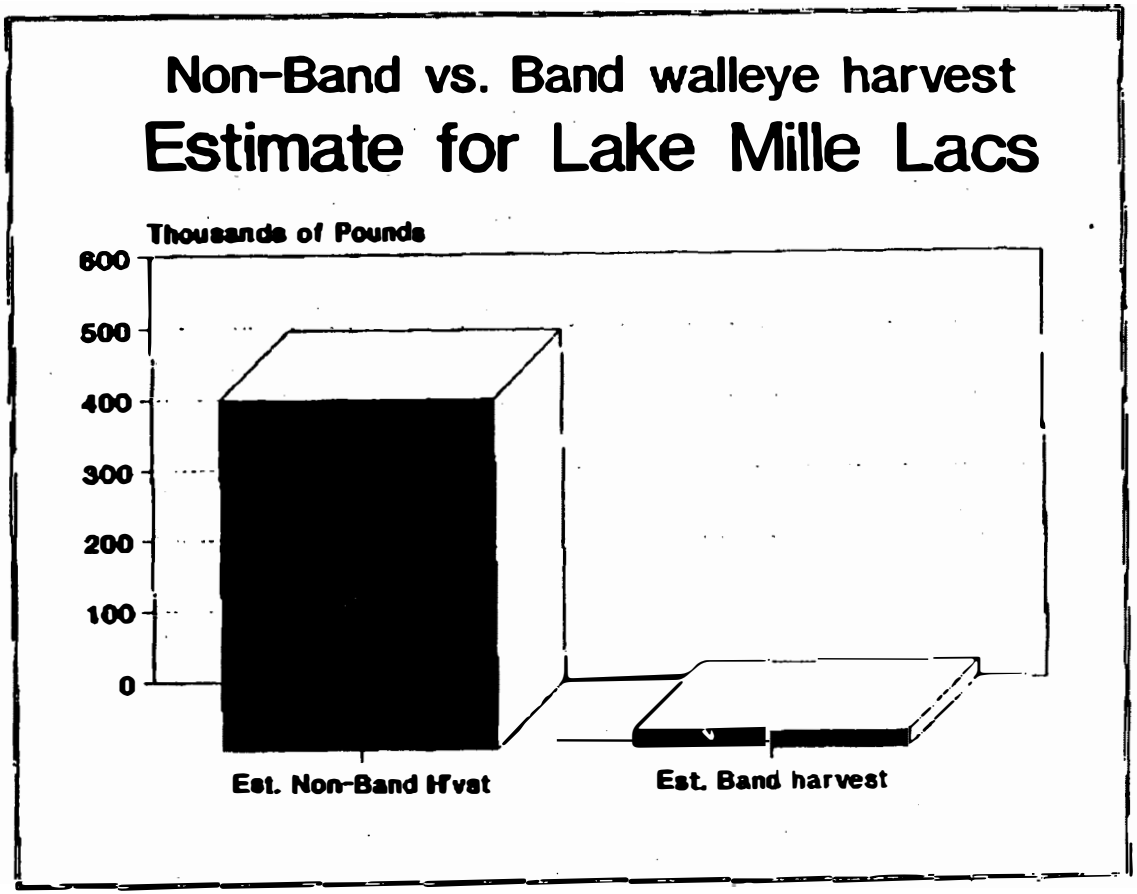
Limited Harvest

* Annual walleye harvest is about 519,000 pounds. Under the agreement, the Band would be able to harvest about 24,000 pounds per year.

* The Band's annual harvest of game fish within the Treaty Fishing Zone represents about the same number of fish taken by non-Band members on Lake Mille Lacs during the first one or two days of the fishing season.

* The walleye harvest within the Treaty Fishing Zone will be managed at the same rate of harvest as the rest of the lake.

* The average angler will not be impacted by the Treaty Fishing Zone. That's because 95.5 percent of the lake will remain open to non-Band anglers, the Band's harvest will be at the same rate of catch as non-Band members, and there is no plan to reduce bag limits.



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Land Issues in the 1837 Territory

* Under the tentative agreement, the state will transfer 7,500 acres of state-owned land to the Band.

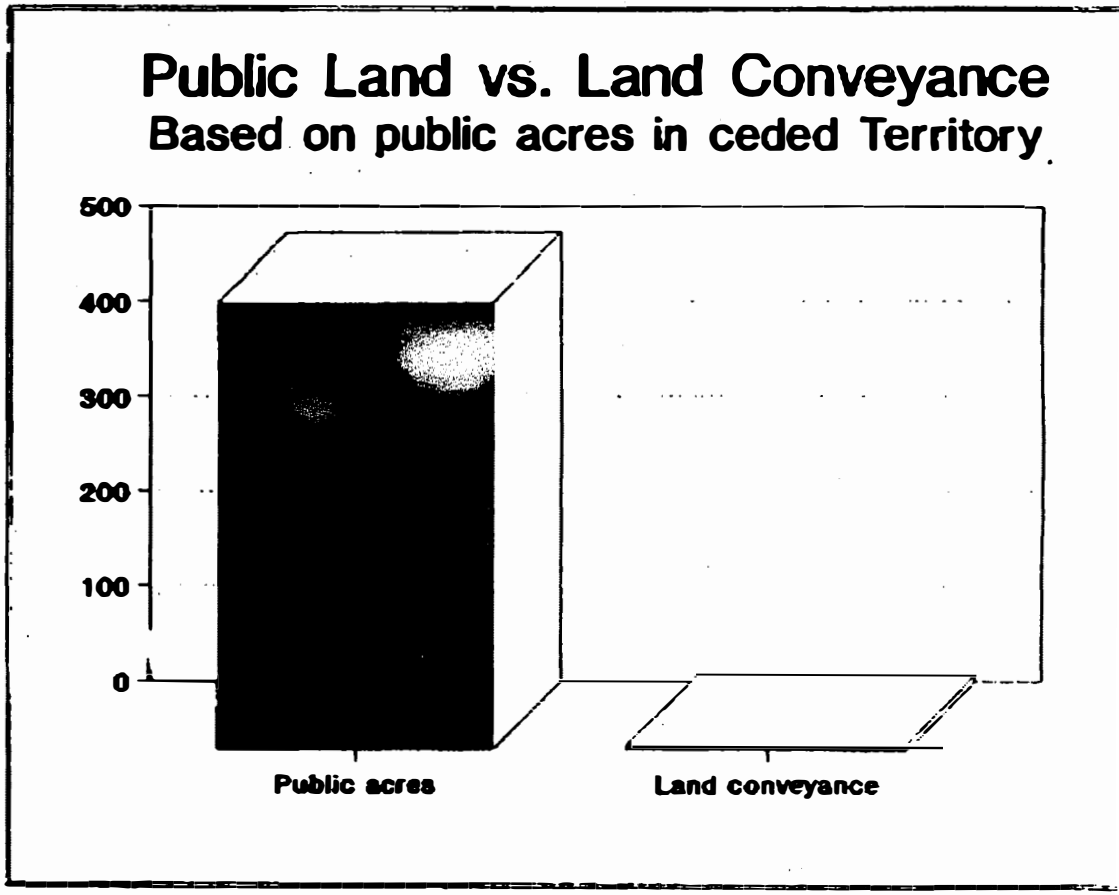
* No land will be transferred until a public input process involving citizens and local governments has been completed.

* No casinos will be built on the land.

* The State of Minnesota owns approximately 472,000 acres in the 1837 ceded territory. The 7,500 acres represents about 1.6 percent of state-owned land within the territory.

* The land the Band is most interested in is located near the reservation on Lake Mille Lacs and close to satellite tribal communities in Pine County and north of Lake Mille Lacs.

* The land conveyance does not include any private land



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STATE OF MINNESOTA

Office of the Attorney General

TO : ROD SANDO, Commissioner
RON NARGANG, Deputy Commissioner
MN Department of Natural Resources

FROM : SCOTT R. STRAND
Assistant Attorney General

SUBJECT: Finality of Proposed Settlement of the 1837 Treaty Lawsuit

You have advised us that there is some confusion about the "finality" of the proposed settlement of the current lawsuit concerning hunting and fishing rights claimed by the Mille Lacs Band under the 1837 Treaty.

The settlement would be a final resolution of the claims made in this suit. If adopted by the State and the Band governments and approved by the federal court, the settlement agreement will be incorporated into a court order that will bring this litigation to an end. The settlement agreement would be as final as any judgment rendered by the court at the conclusion of a trial.

Some people are of the impression that such a final resolution means that no 1837 Treaty hunting and fishing right claims could be made against the State by bands other than the Mille Lacs Band, and perhaps even that no such claims under any treaty could ever be brought against the State. This is incorrect. The current lawsuit involves only the Mille Lacs Band and the State, and any resolution of it, whether by agreement or as a result of trial, will bind only the Mille Lacs Band and the State. Claims under other treaties remain a possibility (though note that the proposed settlement resolves potential claims of the Mille Lacs Band to fish in Mille Lacs Lake under the 1855 Treaty), but this has always been true and probably always will. It is also possible that the other bands that signed the 1837 Treaty could bring claims under it, but there are several reasons why we are not terribly concerned about this prospect:

1. Any individual Indians or any "bands" that do not have federally recognized status, such as the individuals who call themselves the "Sandy Lake Band," would not have standing in the courts to make claims under this treaty. Treaty rights belong to recognized bands, not to individuals, and nonrecognized groups have no more standing than a group of non-Indian Minnesotans who declared that they constituted the "true" government of Minnesota. These claims are very weak.

2. The Minnesota Bands who were signatory to the 1837 treaty, but who did not then and never did occupy the 1837 ceded territory, such as the Fond du Lac, Leech Lake,

and Red Lake Bands, could make claims, but would have to argue that they "reserved" hunting and fishing rights on territory they never occupied. As a result, their claims have nowhere near the strength of the claim of the Mille Lacs Band.

3. The Wisconsin Bands who were signatory to the 1837 Treaty could come across the border and sue Minnesota for a declaration of their 1837 rights. Theoretically, they would have the strongest remaining claim. Practically speaking, however, to do so would put what they have won in Wisconsin in jeopardy, since this is a different court, not necessarily bound by what the courts decided over there. If there were an appeal and a higher court were to decide that their 1837 rights were extinguished, they could lose everything. Moreover, they would be taking that risk in order to exercise hunting and fishing rights far from home when they already have the rights recognized by the courts in their own backyard. Therefore, we believe there is little likelihood that the Wisconsin bands would pursue another round of 1837 Treaty litigation over here.

There is no settlement or court decision that will forever resolve all Indian hunting and fishing rights disputes. This settlement, however, does permanently resolve what is the most significant remaining Indian hunting and fishing rights claim in this state, and it should be judged on that basis.

If you have any additional questions, please give me a call.

cc: Gail Lewellan, MN Department of Natural Resources

stras.bo7

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STATE OF MINNESOTA

Office of the Attorney General

TO : SENATOR STEVE MORSE
G-24 State Capitol

DATE : March 15, 1993

FROM : WILLIAM A. SZOTKOWSKI
Special Assistant
Attorney General

PHONE: 296-0697

SUBJECT: **1837 Treaty - Finality Issue for Other Signatory Bands**

There still seems to be some confusion about "finality" of the proposed settlement with respect to the other Bands and in particular the Sandy Lake Band.

The Chippewa Bands attending the 1837 Treaty included the following:

Residing in What is Now Minnesota	Residing in What is Now Wisconsin
Leech Lake	St. Croix River
Gull Lake	Lac Courteoville
Mille Lac	Lac du Flambeau
Sandy Lake	La Pointe
Snake River	Red Cedar Lake
Fond du Lac	
Red Lake	

Four of the Bands who signed the 1837 Treaty also took part in the 1855 Treaty as either Chippewa of the Mississippi, Pillager, or Lake Winnibigoshish Bands. These included Leech Lake, Mille Lac, Sandy Lake and the Snake River Band. Reservations were also established in 1855 at the locations where each of the Bands resided.

Fond du Lac was grouped with the Lake Superior Chippewa and received a reservation as part of the 1854 Treaty. The 1837 Treaty indicates that Red Lake was not represented by any of its Chiefs or Warriors, although a person named Francois Goumean was identified as being from Red Lake.

In responding to the question of which Bands may bring a claim under the 1837 Treaty, the claim by Red Lake is doubtful because very little, if any, participation on Red Lake's part took place.

Fond du Lac has plead in the most recent round of 1854 litigation that it has a claim based on the 1837 Treaty. The strength of that claim is questionable because Fond du Lac did not reside in the territory ceded by the 1837 Treaty.

Of the remaining Bands that participated in the 1837 Treaty from Minnesota, Mille Lacs was the sole Band that resided in the territory ceded. These Bands would also be subject to the defense that the 1855 Treaty extinguished rights that they had in the Territory of Minnesota. (For discussion of Wisconsin Band claims see Scott Strand Memo of February 19, 1993 attached hereto).

The claim that the Sandy Lake Band can raise its own lawsuit under the 1837 Treaty is also doubtful. Although Sandy Lake participated in the 1837 Treaty, its ability to bring a claim was merged with Mille Lacs when Sandy Lake was grouped with Mille Lacs under the Indian Reorganization Act in 1934. 48 Stat. 984. The relevant provision in section 16 explains how tribal constitutions are to be developed, a copy of which is attached, as well as a chart showing organization of the Minnesota Chippewa Tribe. To have a separate claim, Sandy Lake would have to successfully seek status as a recognized tribe or have the tribal constitution amended to grant it a separate status. The federal government does not recognize Sand Lake as a federally recognized tribe as can be seen by letters demonstrating the position of the United States, copies of which have been included.

Moreover, if a Band or tribe chooses to bring an action in court to clarify the existence of hunting or fishing rights, Congress has dictated that jurisdiction shall be granted only where the tribe or Band has "a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1362. Thus, an unrecognized Band, such as Sandy Lake, would not have recognition sufficient to bring it before the federal district court in this type of case.

1837:AU8

Act of May 29, 1908 (25 (35) Stat.L. 451), or under any prior Act, and who have the prescribed status of the head of a family or single person over the age of eighteen years, and his approval shall be final and conclusive, claims therefor to be paid as formerly from the permanent appropriation made by said section 17 and carried on the books of the Treasury for this purpose. No person shall receive in his own right more than one allowance of the benefits, and application must be made and approved during the lifetime of the allottee or the right shall lapse. Such benefits shall continue to be paid upon such reservation until such time as the lands available therein for allotment at the time of the passage of this Act would have been exhausted by the award to each person receiving such benefits of an allotment of eighty acres of such land.

No person to receive more than one allowance.

No Indian claim or suit impaired by this Act.

SEC. 15. Nothing in this Act shall be construed to impair or prejudice any claim or suit of any Indian tribe against the United States. It is hereby declared to be the intent of Congress that no expenditures for the benefit of Indians made out of appropriations authorized by this Act shall be considered as offsets in any suit brought to recover upon any claim of such Indians against the United States.

Indians residing on same reservation may organize for common welfare.

Effective, when ratified.

Revocation, amendments, etc.

SEC. 16. Any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and bylaws when ratified as aforesaid and approved by the Secretary of the Interior shall be revocable by an election open to the same voters and conducted in the same manner as hereinabove provided. Amendments to the constitution and bylaws may be ratified and approved by the Secretary in the same manner as the original constitution and bylaws.

Additional powers vested in tribe.

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local Governments. The Secretary of the Interior shall advise such tribe or its tribal counsel of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress.

Secretary to acquaint tribe of contemplated appropriation estimates.

Charters.
Issue of, to each tribe, upon petition therefor.
Proviso.
Ratification condition precedent to operation.
Powers conferred.

SEC. 17. The Secretary of the Interior may, upon petition by at least one-third of the adult Indians, issue a charter of incorporation to such tribe: *Provided*, That such charter shall not become operative until ratified at a special election by a majority vote of the adult Indians living on the reservation. Such charter may convey to the incorporated tribe the power to purchase, take by gife, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with law, but no authority shall be granted to sell, mortgage, or lease for

48 Stat. 984 § 16 62

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

January 4, 1993

Mr. John Schneider
Save Lake Mille Lacs Association
MN Sport Fishing Congress
159 LaFond
St. Paul, MN 55103

Re: Proposed Settlement--*Mille Lacs Band of Chippewa v. State of Minnesota*

Dear Mr. Schneider:

Several months ago, we had a meeting to discuss the *Mille Lacs Band* litigation. At that meeting, we discussed some of the strengths and weaknesses of the State's case, and the relative merits of settlement and litigation.

To set the record straight, I want to emphasize that, at no time during that discussion did either Chief Deputy Jack Tunheim or I ever suggest that the State was certain to win this litigation. Our evaluation of the case is now and always has been that, while both sides have good arguments, the better course and the only way to assure protection of the natural resources at stake was to negotiate a fair agreement that the parties could control.

All of the legal issues in the case--the effect of President Taylor's 1850 removal order, the effect of the extinguishment language in the 1855 treaty, the possibility that the creation of the original Mille Lacs Band reservation on the south shore of Lake Mille Lacs in the 1855 treaty created its own set of Indian fishing rights on the lake, and the impact of the Indian Claims Commission process--are subject to dispute. The State does have strong arguments, but so does the Band, and the smart course is the one the DNR has taken--to negotiate a fair agreement that assures preservation of our state's natural resources.

If this case goes to trial, with all of the likely appeals, either side could "win" and either side could "lose." The costs to the taxpayer of this litigation will be high, no matter what the outcome. The real loss, however, would be to lose this opportunity to put this matter behind us and move forward together.

Best regards,

HUBERT H. HUMPHREY III
Attorney General

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STATE OF MINNESOTA

Office of the Attorney General

TO : ROD SANDO
Commissioner
Minnesota Department of Natural Resources

SEN. STEVEN MORSE

DATE : March 29, 1993

FROM : SCOTT R. STRAND by SRMatso
Assistant Attorney General

PHONE: 296-0693

SUBJECT: Mille Lacs Band v. State
Risks of Litigation

You asked us to provide some clarification on three claims made by those who wish to minimize the down-side risk of litigating this case: that, if we litigate, the State can buy time because the Band would not be able to exercise hunting and fishing rights until the litigation is over; that the court could not order the State to pay money to the Band; and that the State could always renegotiate even if the court ruling is adverse. All three of those statements are wrong.

ARGUMENT NO. 1: If we litigate, the Band cannot win the right to hunt and fish free of state regulation until the litigation is over, which could take years, even decades.

This is clearly incorrect. If the settlement is not ratified, the Band can proceed to seek a temporary injunction, or interim order, allowing them the right to exercise treaty-based hunting and fishing rights while the litigation proceeds. To get such an injunction, they would need to establish irreparable harm, likelihood of success on the merits, that the balance of hardships favors granting interim relief, and that such an order would not be inconsistent with public policy.

Obviously, we would resist such a motion, but our experience with Judge Kyle in the Fond Du Lac case suggests that the State's vulnerability to such a request for a temporary order is significant. An order to that effect could be in place as soon as this summer, or could come down at any time during the litigation process. In any event, we consider it highly likely that we will have a court order telling us whether our defenses are likely to succeed by sometime in 1994.

ARGUMENT NO. 2: The court cannot order the State to pay money to the B[illegible]

It is probably now true that the Band could not win an award of compensatory damages from the State for past denial of hunting and fishing rights, at least not in federal court, because of the Eleventh Amendment bar. If the Band prevails, however, even in part, they would be presumptively entitled to an award of attorney fees under the Civil Rights Attorney Fee Award Act of 1976, 42 U.S.C. § 1988. That could easily reach millions of dollars alone. In addition, the courts have routinely ordered states to make whatever expenditures are necessary to enforce and implement the injunctions, e.g. preventing citizen interference, which could also conceivably entail millions of dollars.

ARGUMENT NO. 3: The State can always renegotiate, even if the court rules for the Band.

While technically true, renegotiation after a loss might well be a practical impossibility. Wisconsin offered one of the six 1837 bands involved in their litig[illegible]on a package with $50 million to waive the hunting and fishing rights they won, and the Band turned them down. Post-verdict renegotiations are extremely difficult; obviously, if the State prevails, it will be highly unlikely that we will then be making a settlement offer.

I hope this discussion is helpful. Please let us know if you have any questions.

strss.bs2

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United States Senate

SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450

March 23, 1993

The Honorable Steve Morris
Senate Author
G-24, Capitol
State Capitol Building
St. Paul, Minnesota 55111

Dear Senator Morris:

I am prompted to write based on information that has recently reached me concerning inaccurate statements that have been attributed to me regarding negotiated settlements of Indian claims. First, however, I want to take this opportunity to commend your leadership in resolving the 1837 Treaty claims of the Mille Lacs Band of Chippewa Indians. While treaty issues between tribal and state governments can be contentious and challenging, it has been my experience that these matters can be amicably resolved in the manner that you have now successfully concluded.

Quite to the contrary of views attributed to me, I am a strong supporter of negotiated settlements, as an alternative to costly and lengthy litigation which typically leaves the parties in adversarial positions -- one side has lost, the other side has won -- and bitter feelings linger long after the litigation is concluded. Negotiations, on the other hand, encourage the parties to work together to develop mutually-satisfactory and mutually-beneficial solutions to their problems. Through the negotiation process, the parties begin to plan for the future and to recognize that their future is a shared one.

I wish you well in securing the state legislature's approval of the agreement with the Mille Lacs Band.

Sincerely,

DANIEL K. INOUYE
Chairman

STATE OF MINNESOTA

Office of the Attorney General

TO : SENATOR STEVE MORSE
G-24 State Capitol

DATE : March 15, 1993

FROM : SCOTT R. STRAND
Assistant Attorney General

PHONE : 296-0693

SUBJECT : Mille Lacs Treaty Settlement Issues

You left a message on my voice mail, asking about two questions that have come up in your discussions about the Mille Lacs Treaty settlement.

The first one, as I understand it, has to do with the language in the settlement agreement's definition section, providing that "Mille Lacs Reservation" shall mean the Reservation established for the Band in Article 2 of the Treaty with the Chippewa, 1855, 10 Stat. 1165. The concern is that, by including this definition, the State is somehow giving up its right to challenge whether the 1855 reservation still exists, with potential consequences for jurisdiction, taxation, and other issues not related to hunting and fishing rights.

That concern is misplaced. We defined "Mille Lacs Reservation" for purposes of the agreement simply to clarify the difference between the original reservation created in 1855 and the newer, smaller reservation created following the Indian Reorganization Act of 1934. It is the creation of the 1855 reservation that might bring with it fishing rights in the "adjacent waters," namely, Mille Lacs Lake, and therefore, that is the reservation we refer to in the agreement. There is no language in the settlement which in any way limits the prerogative of the State to challenge any Band assertion of jurisdiction in the old reservation, save for the hunting and fishing rights expressly acknowledged and regulated by the agreement.

You also asked about the Winnebagos and claims they might be making. I presume this refers to the published notice circulated by opponents of the settlement involving a land dispute. As far as we can tell, this is an internal, tribal land dispute between members of that tribe to be resolved in tribal court. It has nothing to do hunting and fishing rights, any of the relevant treaties, or any question of concern to the State, and should have no bearing on the legislature's deliberation of the Mille Lacs issue.

If you have additional questions, please do not hesitate to contact us.

stras.br0

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STATE OF MINNESOTA

Office of the Attorney General

TO : RODNEY W. SANDO
Commissioner
Minnesota Department of Natural Resources

RONALD NARGANG
Deputy Commissioner
Minnesota Department of Natural Resources

DATE : January 26, 1993

FROM : SCOTT R. STRAND
Assistant Attorney General

SUBJECT : Mille Lacs Band of Chippewa v. State of Minnesota
--Post-1855 Developments

As I understand it, opponents of the proposed settlement are now arguing that developments after the 1855 Treaty guarantee that the State will prevail if this case is litigated. Much of the focus is on the Treaty of May 7, 1864 and the Nelson Act of 1889, two documents with which we are quite familiar. The 1864 treaty contains language providing that the six reservations established in 1855, including the original Mille Lacs Reservation, were to be ceded back to the United States in exchange for a much larger Leech Lake reservation. The Nelson Act in turn provided for the cession of all remaining reservations in Minnesota, except Red Lake and White Earth, and the sale of former reservation lands not needed for the Indian allotment program. Both the 1864 Treaty and the 1889 Nelson Act were enacted in response to considerable non-Indian settlement pressure, and the U.S. Supreme Court eventually held that the intent of the 1889 Act was to ratify non-Indian settlement within the original 1855 reservation.

If this case goes to court and the existence of the reservation is an issue, the State's argument will be that the 1864 Treaty and the 1889 Nelson Act terminated the 1855 reservation and all of the hunting and fishing rights that may have gone along with that. The Band, however, would make the case against termination as follows:

1. Congressional intent to terminate or diminish reservations is not to be lightly inferred and the courts' traditional solicitude of Indian rights favors the survival of reservation boundaries. Solem v. Bartlett, 465 U.S. 463 (1984); Pittsburg & Midway Coal Mining Co. v. Yazzie, 909 F.2d 1387 (10th Cir. 1990). Any ambiguity is to be resolved "to the benefit of the Indians." Decoteau v. District County Court, 420 U.S. 425 (1975).

2. The 1864 treaty contained a proviso expressly excepting the Mille Lacs Band from being forced to remove from the 1855 reservation "so long as they shall not in any way interfere with or in any manner molest the persons or property of the whites." That concession was due to what the treaty called the "good conduct" of the Mille Lacs Band, particularly during the 1862 Indian uprising.

3. The Nelson Act also expressly allowed members of the Mille Lacs Band to remain on the home reservation and to take allotments there rather than move to White Earth although very few, if any, Mille Lacs allotments were actually made.

4. In at least two later statutory enactments, in 1890 and 1902, Congress referred expressly to the rights of Indians "within the Mille Lacs Reservation," suggesting that Congress believed it had not terminated the reservation with the Nelson Act.

5. In previous cases involving other 1855 reservations supposedly terminated by the Nelson Act, courts have held that the Nelson Act neither terminated nor diminished them. E.g. Leech Lake Band v. Herbst, 334 F.Supp. 1001 (D. Minn. 1971).

6. The position of the Office of the Solicitor of the U.S. Department of the Interior is that the 1855 Mille Lacs reservation remains intact today. (February 28, 1991 opinion letter, attached.)

If the case is litigated, we will contend that the 1855 treaty extinguished any hunting and fishing rights reserved in the 1837 treaty that may have survived President Taylor's 1850 removal order, and that the 1864 Treaty, the Nelson Act of 1889, and the Indian Claims Commission process extinguished any hunting and fishing rights claims that were left. The Band has strong arguments on those issues as well, however, and, as we have always said, it is not possible to predict with certainty what the court will do.

If you have additional questions, please give me a call.

strea.b13

ZIONTZ, CHESTNUT, VARNELL, BERLEY & SLONIM
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Via Telefax

April 20, 1993

Jeffry R. Chaffee
Special Assistant County Atty.
Mille Lacs County Courthouse
Milaca, MN 56353

Stephen G. Froehle
Persian, MacGregor & Thompson
1530 International Centre
900 Second Avenue South
Minneapolis, MN 55402

Dear Jeff and Steve:

This responds to your April 13, 1993, letters. I received Steve's letter on Friday, April 16, and Jeff's letter on Monday, April 19.

Your letters ask the Band to abandon the agreement it negotiated over a two-year period with the Department of Natural Resources and the Attorney General's Office and instead join in a new series of negotiations to explore settlement with the counties, the landowners, and the State. Neither of you identify what changes your clients' will seek in the existing agreement or otherwise disclose your settlement positions. Steve appears to suggest that the so-called "adjacent property owners" and perhaps other as-yet-unidentified landowners be included in the negotiations as well.

You each urge the Band to pursue this course on the ground that, even if it is approved by the Legislature, the settlement agreement between the Band and the State cannot be approved by the district court without your clients' consent. The Band is not prepared to embark on this course for the following reasons.

First, we do not agree that your clients' consent is required for the current agreement to be approved by the court. Indeed, we are surprised you would take this position in light of your contrary representations to the Eighth Circuit.

In oral argument, you each stated that the State and the Band could settle their dispute, at least in substantial part without the consent of your clients. When asked whether allowing the landowners to intervene would "put a wrecking ball to the whole settlement process," Steve responded:

> I don't see how that could be, because the band and the State can settle their differences in this litigation and submit it to the Legislature whether or not landowners are granted intervention. Because their settlement is with public resources and the landowners do not really have a say as to public resources.

Trans. at 8-9 (emphasis added). When pressed on this issue, Steve limited the issues on which the landowners would "want" to have input to the recognition of treaty rights on private lands, and characterized such recognition as being "very limited" in the current agreement:

> It's the landowners' position that they would be allowed to negotiate issues of settlement which affect the private landowners. Public resources are not incidents of ownership or private land; in other words the fish or the deer on the land. Therefore, the State can submit their settlement to the Legislature on those issues. To the extent that any recognition of rights as they pertain to private land which is one aspect of the settlement, that is something that landowners would want input in. The Band has already agreed to limits on those rights . . . .
>
> [And so if you're allowed to intervene here, what does that do with the plan that is now advertised as being submitted to the Legislature?]
>
> I do not think it stops that plan from being submitted to the Legislature. Landowners would like input on those issues regarding private property which at this point are very limited in the settlement.

Id. at 9-10 (emphasis added).

Jeff was also asked whether intervention would mean that the parties would have to return to the negotiating table. He too assured the court that this would not necessarily be required:

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> My understanding is that parties to a lawsuit can settle with the opposing parties independently of other parties. And that very easily could be the case here.

Id. at 23. Jeff agreed with Steve that, to the extent the agreement addresses hunting and fishing resources, it is within the State's power to make: "[P]ublic waters are not owned by the County. It's a state issue. And the resources are a State issue as well, as far as deer, fish or any of those." Id. at 27 (emphasis added).

Your current position, that the district court has no authority to approve a consent decree without your clients' approval, cannot be reconciled with your representations to the Eighth Circuit. Contrary to Steve's assertions, the Eighth Circuit did not rule that "any impact upon the public resources . . . requires Landowner input and approval." 4-13-93 Ltr. at 2 (emphasis added). Indeed, the court did not address the requirements for negotiation or approval of a consent decree at all.

Any impact on your clients' interests that may result from the settlement agreement in this case will be the result of State legislation. Although legislation frequently affects the interests of State citizens or subdivisions, their consent is not required for the legislation to be valid. The Eighth Circuit's opinion does not suggest, much less hold, that a special rule applies to this case, giving State citizens and subdivisions the right to block State legislation on the use of public natural resources merely by withholding their consent.

Second, your clients have had and retain substantial input into the current settlement process. Jeff participated in all settlement meetings from May 22, 1991 (when he first asked to participate) until early March, 1992, and received all materials exchanged by the Band and the State up until that point. Virtually every major issue was addressed, and most were resolved, during those meetings. (Steve and his clients did not seek to participate in these meetings.)

Further, you and your clients have been extremely active participants in the legislative process. We have been present at hearings at which you, your clients and others with similar interests and positions have submitted extensive written materials as well as oral testimony. We understand that, in addition, you,

your clients and your allies have had numerous opportunities to present your views to legislators outside of the formal hearing process.

These efforts have had a substantial impact on the process. We understand that the Governor, the Attorney General, the Commissioner of Natural Resources, the Senate and House leadership, and the Senate and House sponsors of the proposed legislation held a press conference today to propose a revisions in the agreement, which would eliminate any exclusive fishing zone in Mille Lacs Lake. This revision addresses a concern that has been asserted strenuously in the legislative process, by your clients among others.

As intervenors, your clients will also have an opportunity to present their views to the district court if the settlement agreement is approved by the legislature. Given the substantial opportunities your clients have had and retain to have input into the current process, and their ability to influence the process as reflected in the revisions proposed today, the Band does not believe it is reasonable or necessary to abandon the existing agreement and start the process anew.

Third, your failure to identify the specific changes your clients seek in the current agreement is of great concern to the Band. Without knowing what changes you are seeking, the Band cannot judge whether there is any realistic prospect of success in a new negotiation effort. Moreover, your clients' decision to launch a full out legislative and public relations assault on the settlement agreement, without first having the courtesy of communicating their concerns directly to the Band, casts substantial doubt on your assurances that they are genuinely interested in a settlement that is fair to all parties.

Fourth, given the length of time this case has been pending, the continuing harm inflicted on the Band and its members from the denial of its treaty rights, and the current uncertainties surrounding settlement, the Band is determined to move forward with the litigation. If the current settlement effort is unsuccessful the Band will have to evaluate whether it is feasible, let alone desirable, to undertake a new settlement effort at the same time it is preparing its case for trial. The Band has made no decision on these matters at this time.

I will be in Minnesota Tuesday and Wednesday next week (April 27 and 28) to attend the scheduling conference, and can meet with either or both of you to discuss these matters further at that time. Please call me if you would like to arrange a meeting.

Very truly yours,

ZIONTZ, CHESTNUT, VARNELL,
BERLEY & SLONIM

Marc Slonim

Marc D. Slonim

cc: Anderson
Wedll
Szotkowski

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STATE OF MINNESOTA

Office of the Attorney General

TO : ROD SANDO
Commissioner
Minnesota Department of Natural Resources

SEN. STEVEN MORSE

DATE : March 29, 1993

FROM : SCOTT R. STRAND by SRS
Assistant Attorney General

PHONE: 296-0693

SUBJECT: Mille Lacs Band v. State
Standing of Individual Indians; Dismissal Without Prejudice

You have asked two related questions:

1. What standing in court do individual Indians have to bring treaty harvest rights claims?

2. What is the effect of the provision in the proposed settlement agreement providing that the individual plaintiffs will be dismissed "without prejudice?" Would it make any difference if they were instead dismissed "with prejudice?"

The plaintiffs in this lawsuit are the Mille Lacs Band and four individual Band members: Arthur Gahbow, Walter Sutton, Carleen Benjamin and Joseph Dunkley. Mr. Gahbow is now deceased. These four assert in the Complaint that they harvest natural resources for subsistence purposes, and that the state has interfered with their rights to do so under the 1837 Treaty. They sue on behalf of themselves and all other Band members. The Band and the four individuals ask the court to determine their treaty rights and prohibit the state from interfering with the exercise of those rights.

Four individual Band members were included as plaintiffs in this lawsuit to show that the claimed harvest rights, which obviously can only be exercised by actual human beings, were in fact being infringed by the state. This is typically the way these cases are pled. The Band could probably have brought this lawsuit with only itself as plaintiff, but including several individuals adds a degree of tangibility. The key point is that although the Band could have brought this lawsuit without the individuals, the individuals could not have brought this lawsuit without the Band.

The U.S. Supreme Court made it clear long ago that treaties do not vest rights in individuals, because the government dealt with the bands and all promises were made to the bands. Sac and Fox Indians (Iowa) v. Sac and Fox Indians (Oklahoma), 220 U.S. 481, 483-84, 31 S. Ct. 473, 474-75 (1911). This principle has been specifically applied to treat hunting and fishing rights; these are recognized as rights held communally by Indian bands,

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not as individual rights owned by band members. See, e.g., Whitefoot v. United States, 293 F.2d 658 (Ct. Cl. 1961), cert. denied, 369 U.S. 818 (1962)(treaty-guaranteed use of accustomed fishing places on or off the reservation is a tribal right for adjustment by the tribe); United States v. Washington, 520 F.2d 676, 690-91 (9th Cir. 1975), cert. denied, 423 U.S. 1086 (1976)(even in instances where treaty commissioners identified certain "fish stations" as the property of individual Indians, regulation of the use of such stations was a matter vested wholly in tribal government).

Both state and federal courts in Minnesota have applied this principle to treaty hunting and fishing rights claims here. In the 1985 lawsuit involving hunting and fishing rights claims under the 1854 Treaty, which was ultimately resolved by negotiated settlement in 1988, an individual plaintiff attempted to block court approval of the settlement. The federal judge specifically relied upon United States v. Washington in ruling that individual band members could not stand in the way of the negotiations conducted by the band. Grand Portage Band of Chippewas of Lake Superior v. Minnesota, No. 4-85 Civ. 1090, slip op. (D. Minn. June 8, 1988). Just a year ago, in a case briefed and argued by the Attorney General's Office, the Minnesota Court of Appeals ruled that treaty hunting and fishing rights belong to recognized band governments, not to individual band members. State v. Shabaiash, 485 N.W.2d 724 (Minn. Ct. App. 1992).

Because it is the Band that owns the treaty right, the Band must be involved in any lawsuit claiming it. If the only plaintiffs were individual Band members, they would be without standing to bring the lawsuit because they do not own the treaty right at issue.

In light of all of this, it should be clear that dismissing the individual plaintiffs without prejudice is not detrimental to the state. It simply puts these three remaining individuals back into the same position as every other member of the Mille Lacs Band. Dismissal without prejudice means that these individuals are free to raise their claims again in the future, just as any other Band member could. However, the fact that none of these people would have standing, and the fact that the treaty harvest rights would already have been finally determined by the current lawsuit, mean that they will not get very far.

You should keep in mind that the dismissal provision in the proposed agreement (Part III, p. 10) applies only to the individual plaintiffs, not to the Band. The Band is not being dismissed at all. Rather, the court will retain continuing jurisdiction over the Band and the State (Part VI, Sec. C, ¶ 3, p. 29; see also Appendix C, Consent Decree, pp. 38-39). This is necessary to insure that questions that may arise under the agreement in the future can be resolved.

Would the situation be any different if the individual plaintiffs were dismissed with prejudice? Not in any significant way. Dismissal with prejudice would mean that these individuals could not raise these claims in any future lawsuit, but it is clear that they would not be able to do that anyway without Band involvement. The Band can never again raise these claims because they will be resolved, either by settlement or litigation, by this lawsuit. Whether the individual plaintiffs are dismissed with or without prejudice makes no material difference.

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STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

PUBLIC RESOURCES SECTION
SUITE 200
525 PARK STREET
SAINT PAUL, MN 55103
TELEPHONE (612) 296-4676
FACSIMILE (612) 296-1563

March 11, 1993

Mr. Ted Grindal
Opperman, Heins & Paquin
2200 Washington Square
100 Washington Avenue South
Minneapolis, Minnesota 55401

Re: Bob DeVries Memorandum--Finality of Mille Lacs Settlement

Dear Ted:

Thank you for sending me a copy of Bob DeVries's memorandum, which raises concerns about the finality of the proposed Mille Lacs settlement. I hope the following information will help allay those fears.

The language "dismissed without prejudice" applies only to the claims of individual plaintiffs, which means those individual people who are listed as co-plaintiffs in the lawsuit with the Mille Lacs Band. It does not apply to the Mille Lacs Band, and, if this agreement is ratified, no future Band government will have the option to reinstate the lawsuit if they no longer wish to abide by the settlement agreement.

Individual Band members who do not approve of the settlement may try to sue the State and claim 1837 or 1855 treaty rights, whether or not they ever joined the original complaint. That is of very little concern. The courts have made it quite clear that treaty rights belong to recognized band governments, not to individual band members, and our office has been successful in defeating claims brought by individual members on that basis. E.g. State v. Shabaiash, 485 N.W.2d 724 (Minn. Ct. App. 1992)(individual could not assert 1854 treaty rights). By dismissing the individual plaintiffs' claims without prejudice, they are in the same position as any other individual member. They can sue, but they will not get very far.

Mr. DeVries also is concerned about language in the agreement where he claims the State has recognized the Band's 1837 and 1855 treaty rights. The point he is missing is that the agreement provides that the State recognizes those rights but only as defined and limited by the agreement. As the document says at the end of paragraph 1 on page 10, the parties agree "that the nature and extent of these 1837 and 1855 treaty harvest rights are fully and exclusively defined by this Agreement." The scenario that Mr. DeVries describes, where the State is at a disadvantage because it has conceded the issue away, therefore is not supported by the language of the agreement in any way.

I hope this information helps clarify the settlement guage. If you or anyone else wish to discuss these issues further, please give me a call.

Very truly yours,

SCOTT R. RAND
Assistant Attorney General

(612) 296-0693

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Finally, the Court finds it appropriate to dismiss without prejudice the claims of plaintiffs Gagnon and Hendrickson from this action. Because the treaty rights at issue are collective rights of the tribes, and not individual rights of the tribe members, see, e.g., United States v. State of Washington, 520 F.2d 676, 691 (9th Cir. 1975), cert. denied, 423 U.S. 1086 (1976), it is inappropriate to permit Gagnon to stand in the way of the negotiations conducted by his own governmental representatives.[1]

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[1] Grand Portage Band of Chippewas of Lake Superior, James Hendrickson, Curtis Gagnon v. The State of Minnesota and Joseph N. Alexander, Commissioner, Department of Natural Resources of the State of Minnesota, CIVIL 4-85-1090, (1988).

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STATE OF MINNESOTA

Office of the Attorney General

TO : ROD SANDO
Commissioner
Minnesota Department of Natural Resources

SEN. STEVEN MORSE

DATE : March 29, 1993

FROM : SCOTT R. STRAND by SBMata
Assistant Attorney General

PHONE : 296-0693

SUBJECT : Mille Lacs Band v. State
Exclusive Rights in Waters Adjacent to Reservations

The creation of an exclusive tribal fishing zone in Lake Mille Lacs as part of the proposed settlement of the above case has given rise to the following question:

QUESTION

What fishing rights in Lake Mille Lacs could the Band be awarded through litigation, and could those rights include an exclusive zone?

ANSWER

Federal courts have found exclusive fishing rights, apportioned fishing rights, and rights to fish free of state regulations based on claims of rights to fish in waters adjacent to a reservation. The notion that federal courts cannot create exclusive tribal fishing zones is wrong. See Cohen, Handbook of Federal Indian Law 501-07 (1982) and cases cited.

Some courts have found tribal fishing rights in off-reservation waters based on their interpretation of the original intent and expectations of the parties to a treaty. In cases where fishing rights are found to exist, courts have sqmetimes found this right to be exclusive and sometimes to be shared-in-common with non-Indians. Courts have allowed states to regulate both exclusive and "shared-in-common" off-reservation rights, but only for conservation or health and safety reasons. Conservation measures will fail if they are not reasonable, if application to Indians is not necessary to the government purpose, or if the measure subjects Indians to discriminatory treatment. Courts vary widely as to what constitutes a reasonable, necessary, and non-discriminatory measure.

The varied treatment of these issues by state and federal courts means that in this case, predicting the likelihood that the band will be awarded exclusive fishing rights in the waters off the reservation, and the extent to which the state can regulate the band's fishing activities in those waters is at best difficult. Determinations depend on the language of the treaty and the history of the band involved.

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The state supreme court in Wisconsin considered the issue in a case with important similarities to the key facts in the instant case. In State v. Gurnoe, 192 N.W.2d 892 (1972), the court found that two bands of Lake Superior Chippewa had rights to fish in Lake Superior waters adjacent to their reservations. There, the language of the 1854 treaty creating the reservations made no specific mention of fishing rights in waters adjacent to the reservations. The reservation lands were set aside "for the use of" the Chippewa. The court found that this language was sufficient to include rights to fish in Lake Superior because the Chippewa had historically fished there. In this case, the 1855 treaty creating the Mille Lacs Reservation set aside a "sufficient quantity of land for the permanent homes" of the Mille Lacs Band. While not identical, this language is similar to that examined in Gurnoe.

The United States Supreme Court considered the question of rights in waters adjacent to an Indian reservation in Alaska Pacific Fisheries v. United States, 248 U.S. 78, 89, 39 S. Ct. 40, 42 (1918). In that case, there was no explicit grant of fishing rights in adjacent waters in the statute creating the reservation. The Court concluded that fishing rights extended to the adjacent waters because:

> The Indians could not sustain themselves from the use of the upland alone. The use of the adjacent fishing grounds was equally essential. Without this the colony could not prosper in that location. The Indians naturally looked on the fishing grounds as part of the islands and proceeded on that theory in soliciting the reservation. . . . Evidently Congress intended to conform its action to their situation and needs.

Id. at 901.

If the court were to find that the band had rights to fish in Mille Lacs stemming from placement of the reservation on its shores, questions remain regarding the exclusivity of the right and the state's ability to regulate the right. In Gurnoe, the bands did not claim exclusive rights to fish in Lake Superior, so the court did not address the issue. Other courts have found exclusive rights to fish in adjacent waters. In some cases, the treaties provide for exclusive use. In others, the treaties are silent. Regardless of whether the right is exclusive, courts have recognized the state's ability to regulate fishing for limited purposes.

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STATE OF MINNESOTA

Office of the Attorney General

TO : ROD SANDO
Commissioner
Minnesota Department of Natural Resources

RON NARGANG
Deputy Commissioner
Minnesota Department of Natural Resources

DATE : March 15, 1993

FROM : SCOTT R. STRAND
Assistant Attorney General

PHONE : 296-0693

SUBJECT : Mille Lacs treaty settlement--Authority of State to enter into negotiated agreement with Indian tribe

You asked for our evaluation of the concern raised that the State does not have the authority to enter into negotiated agreements with Indian tribes on the grounds that the U.S. Constitution provides in article 1, section 10 that "[n]o state shall make any treaty. . . ." The argument is, as I understand it, that any agreement between the Mille Lacs Band and the State, particularly an agreement that purports to permanently resolve the hunting and fishing rights dispute, is really making a new "treaty" and is therefore unconstitutional.

There is no basis for that argument. If the legislature ratifies this agreement, we will submit it to the federal court for approval, and we anticipate that the judge will enter judgment along its terms. That document will therefore have the same effect as if we had litigated the case to a conclusion, and the judge had entered her own judgment. In either case, we will have a document, enforceable in federal court, construing and interpreting the rights of the Mille Lacs Band to hunt and fish in the ceded territory and in Mille Lacs Lake.

The Band clearly has the right to assert, waive, or compromise any claim, including its claim that certain state game and fish laws are preempted as applied to them because of treaties. Likewise, the State has unquestionable authority to change those game and fish laws, and can do so in a way intended to avoid preemption challenges. Those who claim that the State does not have the authority to negotiate can bring that argument to the judge, but the judge is not going to deny the authority of the parties to settle this dispute.

In the Tri-Band litigation four or five years ago, a group of Fond Du Lac Band members tried to convince Judge MacLaughlin that the settlement was an alteration of the treaties. The judge rejected that argument, made the unexceptionable statement that states cannot enter into treaties, and upheld the settlement. From the attorneys who were

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present at that hearing, there is absolutely no basis to conclude that Judge MacLaughlin was reading some new requirement into the law that settlement agreements terminable at will are acceptable, but settlement agreements which are not terminable at will are unacceptable. There simply no legal basis in the caselaw for that distinction.

If you have additional questions, please give me a call.

strss.brl

LEECH LAKE CITIZENS COMMITTEE et al., Plaintiffs,

v.

LEECH LAKE BAND OF CHIPPEWA INDIANS et al., Defendants.

No. 6-72-Civ-325.

United States District Court, D. Minnesota, Sixth Division.

March 28, 1973.

Action, by non-Indian hunters, fishermen and resort owners living in general vicinity of Leech Lake, seeking to enjoin all citizens of Minnesota and of the United States from violating Minnesota conservation laws and to free officers and agents of Minnesota to bring violators of such laws to federal district court for contempt proceedings and also seeking to enjoin Minnesota, Leech Lake band of Chippewa Indians and the United States from entering into a settlement ageement on regulation of hunting, fishing and ricing on Leech Lake Reservation. On defendants' motions to dismiss for lack of jurisdiction over parties and for failure to state claim on which relief can be granted, the District Court, Devitt, Chief Judge, held that doctrine of separation of powers precluded the Court from enjoining ratification by Minnesota Legislature of the agreement on regulation of hunting, fishing and ricing. The Court further held that agreement in question was simply a settlement designed to bring an end to litigation and did not constitute a "treaty" within meaning of relevant articles of the Federal Constitution.

Motions granted.

1. Contempt ⇐33

Federal district court cannot undertake to enforce a state's system of criminal law via its contempt power; it can only pass on validity of the system under constitutional standards and in light of current federal law.

2. Constitutional Law ⇐70.1(7)

Doctrine of separation of powers precluded federal district court from enjoining ratification by Minnesota Legislature of agreement on regulation of hunting, fishing and ricing on Indian reservation.

3. Constitutional Law ⇐70.1(1)

Questions as to whether legislation should be enacted and as to form it should take are committed to the legislative branch, and courts must refuse to interfere with such process.

4. Courts ⇐298
Indians ⇐3

Agreement on regulation of hunting, fishing and ricing upon Indian reservation between State, specific band of Indians and the Federal Government constituted a settlement designed to bring an end to declaratory judgment actions previously brought to determine whether the Indians might fish, hunt and harvest wild rice on the reservation without complying with State game and fish laws and did not constitute a "treaty" within meaning of Federal Constitution articles relating to jurisdiction of courts and prohibiting a state from entering into any treaty, and thus federal district court could not enjoin State in question or its representatives from entering into such agreement. U.S.C.A.Const. art. 1, § 10; art. 3, § 2.

See publication Words and Phrases for other judicial constructions and definitions.

5. Indians ⇐3

In honoring Indian treaties, neither State nor Federal Government did violence to proscriptions in Federal and State Constitutions as to denial of equal protection of the laws. U.S.C.A.Const. Amends. 5, 14.

6. Courts ⇐262.4(1)

Where action, seeking to enjoin State from entering into settlement agreement with specific band of Indians and the United States on regulation of hunting, fishing and ricing upon Indian reservation, was not grounded on un-

constitutionality of any state statute and resulting lack of lawful authority for official action taken under it since no statute had yet been passed, there was no basis from which injunction could issue from federal district court. U.S.C.A. Const. Amend. 11.

7. Indians ⇐6

While individual Indians may be subject to suit, Indian tribes under tutelage of the United States are not subject to suit without consent of Congress.

C. John Forge, Jr., Independence, Mo., for plaintiffs.

Robert G. Renner, U. S. Atty., Warren R. Spannaus, Atty. Gen., State of Minn., Morris M. Sherman, Sp. Asst. Atty. Gen., Eldon G. Kaul, Sp. Asst. Atty. Gen., Bernard P. Becker, Legal Aid Society of Minneapolis, Inc., Minneapolis, Minn., Kent P. Tupper, Walker, Minn., for defendants.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

DEVITT, Chief Judge.

This action seeks to enjoin all citizens of Minnesota and of the United States from violating Minnesota conservation laws; to free officers and agents of the state to bring violators of those laws to this Court for contempt proceedings; and to enjoin the State of Minnesota, the Leech Lake Band of Chippewa Indians, and the United States from entering into a settlement agreement on regulation of hunting, fishing, and ricing on the Leech Lake Reservation. It also asks for $35,000 in attorney's fees and litigation expense.

The state defendants move to dismiss under Rule 12(b), Federal Rules of Civil Procedure, for lack of jurisdiction over the parties and failure to state a claim on which relief can be granted. Grounds for the motion are: (1) immunity under the Eleventh Amendment; (2) lack of standing; and (3) non-justiciability. The Indian defendants move to dismiss on essentially the same grounds, although their immunity is claimed as sovereigns of the United States. The federal defendants join in these motions. By order of December 21, 1972, the Court dismissed plaintiffs' cause of action against Richard M. Nixon, President of the United States.

In Leech Lake Band of Chippewa Indians v. Herbst, 334 F.Supp. 1001 (D. Minn.1971), this Court declared that the Leech Lake Band held a treaty right to hunt, fish, trap, and gather wild rice within the Reservation free of Minnesota game and fish laws. The present plaintiffs were not parties to that case. The State of Minnesota appealed the judgment to the Circuit Court of Appeals. The Leech Lake Band and the United States filed cross-appeals on the issue of the Band's exclusive right to regulate non-Indians as well as Indians on the Reservation. Four of the present plaintiffs sought to intervene in the Appellate Court. The Court of Appeals denied intervention on June 8, 1972, and denied remand to this Court for consideration of a motion to intervene. But it did grant them the right to file a brief *amicus curiae*.

Shortly thereafter, parties to the appeal moved jointly for remand to this Court for entry of a consent judgment on the basis that a settlement had been reached which would be approved by the Minnesota Legislature. The Court of Appeals granted the motion on June 30, 1972. It amended its order on July 24, 1972, to provide ". . . . that in the event the legislation necessary heretofore agreed by the parties is not enacted by the Minnesota Legislature, the parties retain their right to reinstate their appeals without prejudice."

Since then the parties have come to agreement. The Governor and Commissioner of Natural Resources, the United States Attorney, and the Chairman and Secretary of the Leech Lake Band of Chippewa Indians all are signatories to it. A bill to effectuate its terms is now being considered by the Minnesota Legislature. Plaintiffs are dissatisfied with

the proposed settlement and pending legislation. They fear the state has not and will not represent their interests as non-Indian hunters, fishermen, and resort owners living in the general vicinity of Leech Lake. They want this Court to put a stop to the settlement and to assume the role of administering Minnesota's conservation laws in that area.

[1] What plaintiffs ask, this Court cannot do. The Court cannot undertake to enforce a state's system of criminal law via its contempt power. It only can pass on the validity of the system under constitutional standards and in light of current federal law. With respect to Indians' hunting, fishing, and ricing on the Leech Lake Reservation, it has passed judgment. A vigorous and able defense was presented by the State of Minnesota. There is no reason to reopen that judgment now.

[2, 3] The Court is without authority to enjoin the Legislature from ratifying the agreement. The doctrine of Separation of Powers forbids it. Marbury v. Madison, 1 Cranch 137, 2 L.Ed. 60 (1803) established the federal courts' power to review the constitutionality of state legislation after its passage, not before. Questions as to whether legislation should be enacted and the form it should take are committed to the legislative branch, and courts must refuse to interfere with that process. *See* Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962); Communist Party v. S. A. C. Board, 367 U.S. 1, 81 S.Ct. 1357, 6 L.Ed.2d 625 (1961).

[4] The Court cannot enjoin the State of Minnesota or its representatives from entering into its agreement with the Indians and the federal government. This is not a "treaty" within the meaning of Article 1, § 10 and Article III, § 2, as plaintiffs contend. It is simply a settlement, designed to bring an end to litigation.

There is no federal question which would confer jurisdiction on this Court. In *Herbst* jurisdiction was founded on 28 U.S.C. § 1331, the federal question statute, and 28 U.S.C. § 1362, which confers on Indians the right to institute civil actions in certain cases. The question in that case was the Indians' rights under treaty and in light of the Nelson Act, 25 Stat. 642.

[5] To the extent that this litigation differs from *Herbst*, the only tenable federal question arising from the pleadings is plaintiffs' right to equal protection of the laws. As the United States Attorney pointed out at oral argument, however, the historical fact is that Indians and non-Indians have been treated differently over the years. Indians and their land are protected by the federal government. Treaties, such as those referred to in *Herbst*, are the source of this protection. The State of Minnesota, in honoring these treaties, does no violence to the proscription:

> "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

The same holds for the federal government under the Fifth Amendment. *See* Bolling v. Sharpe, 347 U.S. 497, 499, 74 S.Ct. 693, 694, 98 L.Ed. 884 (1954); Kills Crow v. United States, 451 F.2d 323 (8th Cir. 1971).

In addition, defendants' claims of immunity are not without foundation. By its express terms the Eleventh Amendment precludes suits against a state:

> "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

Although the Amendment by its terms bars only suits against the states by citizens of other states, it has been consistently interpreted as barring suits against a state by its own citizens. Hans v. Louisiana, 134 U.S. 1, 10 S.Ct. 504, 33 L.Ed. 842 (1890). As pointed out in *Hans*, the amendment was passed in consequence of Chisholm v. Georgia, 2 U.S. (2 Dall) 419, 1 L.Ed. 440 (1793), which held that states were subject to suits by

individuals. This decision created "such a shock of surprise throughout the country that, at the first meeting of congress thereafter, the eleventh amendment to the const[illegible]n was almost unanimously proposed." *[illegible]ns, supra*, 134 U.S. at 11, 10 S.Ct. a[illegible]

[6] D[illegible] this history, the Supreme Court made inroads on the Amendment in Ex parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908), when it held that an injunction could issue to rest[illegible]fficial action taken pursuant to st[illegible]w which was unconstitutional or [illegible]onflict with federal law. This was the basis for the injunction issuing in *Herbst*. The present suit, however, is not grounded on the unconstitutionality of a[illegible]tate statute and the resulting lack of lawful authority for official action taken under it. None has been passed. Thus, there[illegible] no basis from which [illegible]njunction [illegible]sue from this Court [illegible] no indica[illegible] that the State of Minnesota waived its immunity by its defense in *Herbst*.

[7] The immunity of the Leech Lake Band of Chippewa Indians and the Reservation Business Committee of the Band is well settled under the law. While individual Indians may be subject to suit, "Indian tribes under the tutelage of the United States are not subject to suit without the consent of Congress." Twin Cities Chippewa Tribal Council v. Minnesota Chippewa Tribe, 370 F.2d 529, 532 (8th Cir. 1967).

This action is premature in that it calls on the Court to rule on legislation not yet passed. It lacks any colorable federal jurisdictional basis. It asks this Court to do things it is without the power to do—interfere with a state's legislative process and as[illegible]e its criminal administrative func[illegible]s. And it names defendants who are immune from suit.

The plaintiffs are not without a remedy. They may assert their claims in the Court of Appeals by way of amicus brief if the legislation is not enacted, and in the state court[illegible]way of chal[illegible]lenge to the validity o[illegible]islation if enacted.

Defendants' motions to dismiss are granted.

PACIFIC FRUIT EXPRESS COMPANY, a corporation, Plaintiff,

v.

AKRON, CANTON & YOUNGSTOWN RAILROAD COMPANY, et al., Defendants.

No. 44601.

United States District Court, N. D. California.

March 2, 1973.

Car line company engaged in the business of furnishing to railroads c[illegible] containing mechanical refrigeratio[illegible] units brought action seeking damages[illegible] amount of compensation claimed to be due for the use of such cars, and injunction to compel ra[illegible]roads to comply with an order of the In[illegible]te Commerce Commission. The Dis[illegible] Court, Sweigert, J., held that thoug[illegible] ICC order directing railroads receiving mechanical protective service against heat and cold to enter into new contract within 120 days reflecting the cost of such services did not in itself invalidate preexisting contracts upon failure of railroads to file new contracts within the time specified and did not itself constitute a contract between railroads and car [illegible] companies in the sense that the [illegible] itself conferred substantive righ[illegible]e car line companies, failure of railroads to enter into new contracts constituted violation of the order and of the Interstate Commerce Act itself, giving car line company right of action for injunctive and damage relief under sections of the [illegible] specifying remedies for violations of the

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United States Department of the Interior

IN REPLY REFER TO:

For the Field Solicitor

OFFICE OF THE SOLICITOR
Office of the Field Solicitor
686 Federal Building, Fort Snelling
Twin Cities, Minnesota 55111

BIA.TC.4123

June 23, 1992

Mr. Frank Annette
Superintendent
Minnesota Agency
Bureau of Indian Affairs
R.R. #3, Box 112
Cass Lake, Minnesota 56633

Re: Sandy Lake

Dear Mr. Annette:

This is in response to your request that we respond to a letter from the Mille Lacs Band of Chippewa Indians regarding the status of the Sandy Lake trust lands. The Solicitor General of the Band has asked that the Department provide certain statements pertinent to the claim of Clifford Skinaway that the "Sandy Lake Band" is a separate, federally-recognized Indian tribe, band, or group; and that he is its "hereditary chief".

It is the position of the United States that the Sandy Lake Band is not a federally-recognized Indian tribe, band, or group. Mr. Skinaway has filed suit against the Secretary of the Interior and the United States seeking a declaration that his group is entitled to separate recognition, and the federal government has moved to dismiss that suit. See, Clifford Skinaway v. Manuel Lujan, Civ. No. 5-91-170, U.S. District Court, District of Minnesota. It is the government's position that the Sandy Lake Band is one of many historical bands which comprise the recognized entity, i.e., the Mille Lacs Band of the Minnesota Chippewa Tribe.

Next, to the extent that Clifford Skinaway claims to be the political leader of the Sandy Lake Band based on his lineage, that is a claim which is without foundation in either federal law or, so far as we know, tribal law.

Finally, the Minnesota Chippewa Tribe (MCT) and the Mille Lacs Band have authority to determine uses of the lands set aside as the Sandy Lake Reservation. Our understanding of tribal land laws is that the MCT has delegated authority to deal with these lands to the Mille Lacs Band of Chippewa Indians.

Please let me know if you have any questions.

Sincerely yours,

Mark A. Anderson
For the Field Solicitor

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WHY SLMLA OPPOSES THE NEGOTIATED SETTLEMENT

Following are the main reasons why the Save Lake Mille Lacs Association (SLMLA) is opposed to the agreement to settle the dispute between the State of Minnesota and the Mille Lacs Band of Chippewa over hunting and fishing rights on lands ceded (sold to the Federal government) in the Treaty of 1837:

1. The agreement formally recognizes the band's right to harvest natural resources in the ceded territory and on Mille Lacs Lake. We believe the rights granted by the 1837 and 1855 treaties have been extinguished by subsequent treaties, Presidential orders, Congressional Acts, Court of Claims payments and Indian Claims Commission payments. Therefore, these rights should not be acknowledged.

2. Even though the State's case is strong, the new agreement gives up more than the one the DNR *withdrew* last spring. Instead of a 3,900-acre netting zone, it offers a 6,000-acre zone. Instead of a 16,000-pound quota, it offers a 24,000-pound quota, which could increase if the overall harvest on the lake increases. Although the harvest is now called "subsistence" fishing rather than "commercial" fishing; the fish can still be bartered or traded among band members. The land offer of 7,500 acres is also much more generous.

The agreement allows spearing and netting on six other lakes and 20 miles of the St. Croix River, which was not allowed in the earlier proposal. Some of the lakes may be outside the ceded territory.

3. The waters to be speared and netted can be changed by mutual consent of the State and the Band. Thus, every lake or stream in the ceded territory is at risk.

4. SLMLA strongly objects to the precedent set by the giveaway of important public fishing waters, namely the 6,000-acre *exclusive use* zone in Mille Lacs Lake. The Band has stated they would allow sportfishing by landowners within the zone (but not their guests), launches carrying casino customers, and possibly a few other non-Band members. The regulations on who can fish the zone could be changed from year to year. *Even if the State lost the case in court, the Band would not gain exclusive use of any portion of the ceded territory.*

5. Seasons, limits and methods of harvesting game and fish by Band members will be regulated by the Band's conservation code, which could be far more liberal than the State code. Deer hunting, for instance, could open as early as Labor Day; waterfowl hunting, as early as the Federal framework allows, which may be several weeks before the statewide opener. Netting, spearing and hook-and-line fishing could be allowed during the spawning season.

6. The Tribal conservation code may be changed at any time after the agreement is approved. *The DNR has no authority in regard to content of the code.*

7. Tribal hunting would be allowed on all public lands, except those expressly intended for wildlife conservation. Thus, Band members could hunt on lands that are off-limits to non-Band members, such as State Parks. They could also hunt with rifles on game refuges open only to archery hunting by non-Band members.

8. All violations by Band members on the ceded territory will be tried in Tribal rather than State court. History has shown that enforcement of Tribal regulations and quotas has often been lax, and even when arrests are made, Tribal courts are soft on offenders.

9. Even with a concerted effort, monitoring of the actual number of fish harvested in the exclusive-use zone would be nearly impossible. The agreement requires non-Band members using the zone to come and go through a checkpoint, but the regulation does not apply to Band members. There is no way to ensure that fish netted inside the zone will not be claimed as hook-and-line fish caught outside the zone to avoid having to count them against the quota.

10. Band members will be allowed to take *up to 50 percent* of the allowable annual harvest of all resources on the ceded territory.

11. Commercial gillnetting and spearing of roughfish will be allowed in *all* waters in the ceded territory, including all of Mille Lacs Lake. It is inevitable that the nets will catch and kill many gamefish.

12. The psychological impact of spearing and netting would squelch the catch-and-release attitude that has been developed among sport anglers.

13. Several resorts would likely be damaged by this agreement because much of their prime fishing territory is within the spearing and netting zone. The value of other property in or near the zone and on the other lakes to be speared and netted is also likely to nosedive.

The DNR has proposed a buy-out of Mille Lacs resorts that are damaged. But what about resorts on other waters that are to be netted and speared? Do we keep buying out resorts as the lakes are rotated?

14. The land giveaway includes the main public access site on the west shore. Even if funds are obtained to replace the landing, there is currently no land available that could be developed into a landing of the same size and quality that would provide easy access to the west-side mud flats.

15. Special regulations, such as size limits, will become useless as a management tool under the proposed agreement. It is impossible to protect certain size classes of fish if they are to be harvested with gillnets and spears.

16. Darkhouse spearers have given up their sport on Mille Lacs, and muskie anglers are releasing the majority of their fish. In light of the contributions these groups have made, it would be highly unjust to now allow Tribal spearing and netting of these fish.

17. The agreement does not specify the source of funding for the $10 million settlement or the new boat landing. If any of this comes from the Game and Fish Fund, other conservation programs will be crippled.

18. Many other Chippewa bands in Minnesota and Wisconsin were signatories to the 1837 Treaty. There is a good chance that some of these bands will file suit to claim the same treaty rights that this agreement grants to the Mille Lacs Band. At least one other band has threatened to spear Mille Lacs if the agreement is approved.

19. The DNR contends this agreement is preferable to a court settlement because (a) it provides a more peaceful settlement of the issue, (b) the outcome can be "controlled" and (c) it provides a final resolution to the problem.

SLMLA disputes these conclusions. We believe the discriminatory nature of the exclusive-use zone will cause tremendous racial strife, probably more than would a court settlement. We do not consider the outcome controllable, when the Band Conservation Code can be changed at any time. And the agreement does not provide a final settlement because there is no binding arbitration should irreconcilable differences arise. ***This means the agreement could wind up in court.***

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To request more information or make a donation, contact:

Save Lake Mille Lacs Association
1306 Hewitt Ave., St. Paul, MN 55104
Phone and Fax (612) 925-0249

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MILLE LACS BAND OF CHIPPEWA INDIANS
RESPONSE TO SLMLA 19-POINT OPPOSITION TO SETTLEMENT AGREEMENT

1. SLMLA bases its opposition on its "belief" that the Band's hunting, fishing and gathering rights have been extinguished. It gives no consideration to the consequences of a Band victory in court or the costs of the litigation. In essence, SLMLA wants the State to gamble on the outcome of the court case. If SLMLA is wrong, the State will have to pay the price: millions of dollars expended in years of litigation; commercial harvesting by Band members of game fish and big game; and the potential for public unrest, new law enforcement burdens and adverse impacts on tourism if the Wisconsin pattern is repeated.

2. There was no agreement last spring, and no useful purpose is served by comparing the agreement now before the Legislature with a withdrawn DNR proposal never accepted by the Band.

3. The Agreement does not permit the Band to fish out a lake and then substitute another one. Treaty harvests are capped at 50% of the harvestable surplus, regardless of the harvest method. No lakes in the ceded territory are "at risk."

4. The Band has very strong claims. The Agreement is a compromise which defines and limits the Band's rights. In a compromise of this sort, nothing is being given away. SLMLA's objection to the "giveaway" of public resources simply presumes the Band will lose its case in court. The State must decide whether it wants to take that gamble.

The Settlement Agreement caps treaty harvests at 50% on a lake-by-lake basis, assuring continued non-Indian access to all lakes. The "treaty fishing zone," comprising only 4.5% of Mille Lacs Lake, is designed to provide a small area in which Band members can exercise their treaty rights without the conflict with non-Indian fishermen that has plagued Wisconsin. Moreover, by concentrating spearing and netting in a small portion of the lake, the zone will make management of spearing and netting more practical and efficient and, thus, better protect the resource.

5. Specific limitations on seasons and methods of harvesting game and fish are set forth in the Agreement and are binding on the Band. All Band harvests must be consistent with conservation and public safety standards.

6. See item 5 above. The Agreement requires consultation regarding changes in the Band Conservation Code in order to promote cooperative management.

7. See item 5 above.

8. The Agreement provides that if the Band fails to enforce conservation or public safety regulations, the State may apply and enforce its own regulations in its own courts. The Band has a very good law enforcement record and one of the best tribal courts in the country. SLMLA's attempt to slander all tribal courts is deeply offensive.

9. The Band has a very strong interest in protecting the resource in the treaty fishing zone, since it will suffer most if the resource is over harvested there. It intends, through a biological team or Band or State wardens, to monitor all spearing and netting harvests and anticipates no difficulty in implementing the maximum target harvest level.

10. The 50% limit is an outside cap by harvest management area and assures continued non-Indian access to all resources in all harvest areas in the ceded territory. See item 4 above.

11. Commercial gillnetting of roughfish is already allowed by State law. Incidental impacts on game fish have not been a problem. The Agreement prohibits the retention of game fish caught incidentally and, thus, eliminates any incentive for targeting game fish while harvesting for roughfish.

12. SLMLA could play a constructive role by explaining Chippewa treaty rights. There is no reason to believe that sports anglers will be less concerned about resource protection simply because the Band's treaty rights are recognized. If anglers believe catch and release is desirable for the sports fishery, the practice will continue.

13. There is no reason to believe that spearing or netting -- both of which are subject to conservation and public safety standards under the Agreement -- will impair property values at all. See item 3 above.

14. There is no "giveaway." See item 4 above. The State is already investigating alternative sites for public access. If resorts are bought out, they would provide logical sites.

15. The State's professional fisheries managers disagree; they do not believe the limited spearing and netting allowed by the Agreement will impair these management tools. Chippewa experience in Wisconsin shows that large fish can be protected notwithstanding spearing and netting.

16. See item 12 above.

17. The Legislature will make an appropriate choice about the source of funding in light of other budgeting needs.

18. Whether or not this Agreement is approved, other Bands may make claims under the 1837 treaty. The Agreement expressly preserves the State's defenses against such Bands. If the State gambles in court and loses, it will have lost its defenses against those Bands as well.

19. See items 1, 4, 5, 6 and 12 above. The Agreement contains detailed provisions to facilitate resolution of technical and policy disputes out of court. If a dispute cannot otherwise be resolved, the court would be available as the final arbiter, not to change the Agreement but to interpret and enforce it to protect the interests of the Band and the State.

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MAR 24 1993 A

American Fisheries Society

Minnesota Chapter

M E M O R A N D U M

TO: Environment and Natural Resources Committee Members, Minnesota Legislature

FROM: Minnesota Chapter of the American Fisheries Society; Carl Richards, Resolutions Committee Chair

SUBJECT: Biological Issues Surrounding the Proposed Mille Lacs Settlement Agreement

DATE: March 23, 1993

The American Fisheries Society is a scientific and professional organization dedicated to strengthening the fisheries profession, advancing fisheries science, and conserving fisheries resources throughout the world. AFS is the largest and oldest such group in North America. Since its founding in 1870, AFS has grown to an international organization with over 8,500 individual, official, sustaining, and associate members as well as 1,000 library members. One of the major goals of AFS is to promote the formation of rational public policy concerning aquatic resources based on sound scientific principles.

The Minnesota Chapter of the American Fisheries Society has approximately 200 members, the majority of whom are professional fisheries biologists working for various academic, federal, state, tribal, and private organizations. The enclosed resolution was developed by a nonpartisan committee following a discussion and vote by the chapter membership at our recent annual meeting. The Minnesota Chapter Executive Committee then endorsed the resolution by unanimous vote. It represents the concerns of our membership on biological issues concerning the proposed Mille Lacs Settlement Agreement.

Should you have any questions concerning this resolution or the Minnesota Chapter of the American Fisheries Society, please feel free to contact Carl Richards (Executive Committee Member and Resolutions Committee chair) at 218-720-4332.

RESOLUTION OF THE MINNESOTA CHAPTER OF THE

AMERICAN FISHERIES SOCIETY

Concerning Biological Issues of the Proposed

Mille Lacs Settlement Agreement

Whereas the Minnesota Chapter of the American Fisheries Society is a non-partisan group of fisheries professionals that work for academic, state, federal, tribal, and private organizations and institutions within Minnesota;

Whereas the Minnesota Chapter of the American Fisheries Society supports sustainable management and wise use of fisheries resources and the exchange and dissemination of fisheries and aquatic science knowledge;

Whereas the proposed settlement agreement between the Mille Lacs Band of Chippewa Indians and the State of Minnesota regarding Treaty Hunting, Fishing, and Gathering Rights does not compromise existing management objectives for conservation and sustained yield of gamefish populations in Minnesota Ceded Territory and Mille Lacs Lake;

Whereas the proposed settlement agreement allows both the members of the Mille Lacs Band of Chippewa Indians, non-Band members, and non-Indians to harvest fisheries resources in the Minnesota Ceded Territory and Mille Lacs Lake;

Be it firmly resolved that the Minnesota Chapter of the American Fisheries Society believes that the proposed Settlement Agreement continues to allow for sustainable utilization and conservation of gamefish populations in the Minnesota Ceded Territory and Mille Lacs Lake;

<u>Further be it resolved that the Minnesota Chapter of the American Fisheries Society believes there is no fundamental biological reason based on sound resource management principles to reject the proposed Settlement Agreement.</u>

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SIERRA CLUB

North Star Chapter

RESOLUTION REGARDING THE TREATY AGREEMENT BETWEEN THE MILLE LACS BAND OF OJIBWE AND THE STATE OF MINNESOTA

January 6, 1993

The North Star Chapter of the Sierra Club supports the negotiated 1937 Treaty agreement between the Department of Natural Resources (DNR) and the Mille Lacs Band of Ojibwe. This agreement, in our opinion, represents the fairest resolution of this issue while being protective of Minnesota's environment.

The agreement allows the band to take up to fifty percent of the DNR established harvest level of game on treaty lands and fish in six lakes and designated portions of the St. Croix and Rum Rivers. It also creates a tribal zone on Lake Mille Lacs, within which the band may take fish at the same rate as elsewhere on the lake. No commercial harvesting will occur anywhere within the tribal lands covered by the agreement. Moreover, the DNR will be involved in establishing the total harvest levels of the treaty ceded lands.

By agreeing to these restrictions, the band has demonstrated their desire to limit their impact on the natural resources of the area and to claim only those treaty rights needed for subsistence. In contrast, the 1837 treaty, as written, could allow the band to harvest at unsustainable levels that could be harmful to the resource base as well as the ecosystem.

Regarding the concerns raised by the use of gill nets for fishing, we have been assured by tribal representatives and DNR staff that the impact of these fishing methods will be limited. It is our understanding that the band intends to write netting permits for only twenty-four hour periods and will require the nets be checked on a regular basis during that time. These restrictions will greatly reduce the number of dead fish in the nets and will allow incidental catches to be released, which are the main issues related to gill netting.

The North Star Chapter of the Sierra Club commends the tribal representatives and the staff at the DNR who negotiated this difficult and controversial issue and strongly urge the Minnesota state legislature to ratify the treaty agreement.

Chuck Meyer

Chuck Meyer
Chapter Chair

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1313 Fifth Street SE, Suite #323 • Minneapolis, MN 55414 • (612) 379-3853

National Audubon Society

Minnesota Audubon Council
26 East Exchange Street, Suite 207
St. Paul, MN 55101
(612) 225-1830
FAX: (612) 225-4686

The Minnesota Audubon Council of the National Audubon Society supports the resolution of the treaty rights of the Mille Lacs Band through a negotiated agreement reached between the Band and the Department of Natural Resources, subject to approval by the Minnesota Legislature.

We believe this approach to resolving these issues will result in better natural resource management and protection than a court-mandated settlement. Accordingly, we urge all interested persons to work towards an equitable settlement agreeable to all parties.

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FISH & WILDLIFE LEGISLATIVE ALLIANCE

POSITION STATEMENT

Mille Lacs Treaty Settlement
March 3, 1993

The Fish & Wildlife Legislative Alliance is the legislative voice of several of Minnesota's most popular and powerful sporting and conservation groups. We take our responsibility for representing the interests of sportsmen and women before the state legislature very seriously. These are matters of priority and importance to thousands of men and women across our state. When we speak we hope to always do so in an informed and thoughtful fashion.

In this light, the FWLA Board of Directors has spent the past four months gathering information and debating the settlement agreement that has been reached between the State of Minnesota and the Mille Lacs Band of Ojibwe over the legal challenge brought by the Band in asserting its right to hunt, fish and gather in the territory ceded under the 1837 Treaty. We have talked with representatives of the Mille Lacs Band, the State of Minnesota, and the Save Lake Mille Lacs Association. We have met with legislators and leaders within the sporting community. We have sought out the opinions of outdoor leaders, legal scholars and just plain folks. And, we have spent many hours discussing this matter within the groups we represent.

At a special meeting of the FWLA Board of Directors held on March 3, 1993, those present voted to support the treaty agreement reached between the DNR and the Mille Lacs Band. In fairness, the vote of the Board was very close. However, we hope that it will set an example for the Minnesota Legislature and others to follow.

The issue before the Legislature is one of protection of the resources of Mille Lacs lake and surrounding areas. We believe that the agreement and the Band Conservation Code do an adequate job of assuring sound resource protection.

The issue before the Legislature is one of sound judgement in view of the possible outcome of the underlying legal dispute should this matter be resolved in the federal courts. We believe the better judgement is to support an agreement reached by the parties to the dispute rather than placing our fate in the hands of the court. And, we need only look to the result in Wisconsin to understand that the better judgement is also to avoid the potential for civil and racial conflict that a protracted legal fight carries with it.

The FWLA did not reach its position in haste or without thorough and soul searching deliberation. To do less would not do justice to the confidence that our member organizations have shown through their continued support. Nor would it give credence to the respect that so many legislators have given to what we have to say on behalf of sportspersons and conservationist across this state.

We encourage others to join in supporting the treaty agreement and the spirit of good faith that it embodies.

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LUTHERAN COALITION FOR PUBLIC POLICY IN MINNESOTA
An Advocacy Ministry of the Evangelical Lutheran Church in America

POLICY BOARD POSITION STATEMENT: MILLE LACS TREATY AGREEMENT

CONTEXT

On September 2, 1991, at its biennial Churchwide Assembly, the Evangelical Lutheran Church in America passed a resolution marking the Quincentenary of European presence in the Americas. The resolution was titled "1992: Year of Remembrance, Repentance, and Renewal," and calls for advocacy in the area of Native American treaty rights, tribal sovereignty, and religious freedom. It also calls for an increase in "efforts in this area, including advocacy for justice for Native Americans by the Bishop of this Church.....by synods and their bishops, by congregations and by individuals throughout this Church."

In addition to this Churchwide resolution, all six of the Minnesota synods of the Evangelical Lutheran Church in America have passed companion resolutions echoing the sentiments and imperatives of the Churchwide statement.

It is always a challenge to translate resolution language into the practical economic and social arenas of day-to-day life. This is especially true when the issues addressed are controversial. Families and communities frequently have substantial investments in various aspects of the issue at hand. Nonetheless, or for that very reason, it is crucial that the voice of the Church be heard. Our speaking, in such cases, must flow out of this denomination's commitment to social justice and the common good - informed by our Scriptural heritage.

PRESENT ISSUE

The Mille Lacs Band of Ojibwe and the State of Minnesota (through the efforts of the Department of Natural Resources) have negotiated an agreement regarding rights reserved in the Treaty of 1837. This Agreement avoids costly, protracted litigation and possible social disruption. The Band has spent several years in research and legal preparation to pursue its rights through the courts. It is acting in the context of the precedent established in Wisconsin regarding the same 1837 Treaty. In that case, the courts ruled in favor of the Ojibwe people.

It is clear that both sides have compromised and negotiated an agreement that seems honorable and just. The Agreement represents an effort to honor the terms of the Treaty and balance them with present-day economic and social realities.

POLICY BOARD ACTION

We believe that speaking out on this issue translates our ELCA and Minnesota synods' resolutions into the social, economic and legal arenas which must be addressed to advocate for the rights guaranteed in treaties with Native Peoples. It seems to us that the underlying issue is not a question of walleyes and nets; **it is a matter of justice.** Native Americans entered into treaties with our government in good faith - expecting the terms of treaties, as they understood them, to be upheld. Almost without exception, this good faith has been dishonored and abused.

Consequently, we will advocate for the ratification of this Agreement at the Minnesota State Legislature. We will counsel our constituent synods and their congregations to support ratification by the Minnesota Legislature. In addition, we will work with each synod council in Minnesota and request a public statement regarding the Agreement and their help in disseminating informational materials. We believe it is crucial that ELCA congregations seek to foster dialogue among opposing groups and call for justice and understanding among all those involved.

THIS SUMMARY REPRESENTS ACTION TAKEN BY CONSENSUS ON JANUARY 6, 1993.

For more information: R. James Addington, Director, 105 W. University Ave., St. Paul, MN 55103, 612/224-5499

JRLC
Joint Religious Legislative Coalition

122 West Franklin Avenue
Minneapolis, Minnesota 55404
Brian A. Rusche
Executive Director
Telephone (612) 870-3670

Agreement between Mille Lacs Band of Chippewa and the State of Minnesota: Extension of a Previous JRLC Position

In the report entitled "Indians," published in *Evaluation and Progress Report of the Joint Religious Legislative Committee, July 1970 to May 1971*, JRLC sponsors affirm self-determination as the first priority for guiding policy involving Native Americans. The report explains this means Native Americans are competent to determine their own destinies and should be allowed to deal directly with policy makers to address public policy issues, including disputes over treaty rights such as control over hunting, fishing and wild-ricing on reservation property.

In its 1973 position paper, "To Liberate Them and Us...," JRLC applied the principle of self-determination to a specific treaty rights dispute. It recommended that the Minnesota Legislature enact legislation to embody the terms of a settlement defining hunting, fishing, and ricing rights on Leech Lake Reservation. This settlement, prompted by a 1971 United States District Court ruling which recognized Leech Lake Reservation treaty rights, was negotiated by Native Americans on the Leech Lake Reservation and the Minnesota Governor's Office and the Department of Natural Resources. Per JRLC's recommendation it was ratified by the Minnesota Legislature.

Current Situation

Early in 1990 the Mille Lacs Band of Chippewa requested that Minnesota recognize the terms of an 1837 Treaty reserving territory around Lake Mille Lacs for a Mille Lacs Band reservation. This treaty and subsequent treaties specified that Band members could hunt and gather indefinitely on reservation land as well as land which had been ceded to the United States government by the Chippewa. The State of Minnesota refused to recognize these rights.

In August of 1990, the Mille Lacs Band brought suit against the State of Minnesota in United States District Court to secure recognition of its treaty rights. Then at the invitation of the State, tribal representatives began negotiations to reach a settlement out of court. A proposed settlement was reached in January 1993. To have the force of law, the settlement must be approved by the Minnesota State Legislature and the government of the Mille Lacs Band of Chippewa.

The general terms of the Mille Lacs settlement are similar to the Leech Lake Reservation settlement ratified twenty years ago. The state recognizes the Band's hunting, fishing and gathering rights, the Band greatly limits how and where it exercises its rights, and the state makes cash payments and other considerations to the Band. The calm that has prevailed at Leech Lake shows this arrangement can work.

Recommendation

Extend 1970-71 and 1973 JRLC recommendations for Native American self-determination and legislative ratification of a treaty rights settlement to the settlement reached by Mille Lacs Band of Chippewa and State of Minnesota.

Attachments

JRLC, "Indians," *Evaluation and Progress Report of the Joint Religious Legislative Committee, July 1970 to May 1971.*

JRLC, "To Liberate Them and Us..." (Leech Lake Settlement), *1973 Legislative Guide of the Joint Religious Legislative Committee.*

Summary of the Major Settlement Provisions, Mille Lacs Band of Chippewa and the State of Minnesota

THE LEAGUE
OF WOMEN VOTERS
MINNESOTA
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cc
TO: 1837 Treaty Team
1837 Treaty Communications Team
FR: Gail Lewellen
2-8-93

LWVMN Statement re
Proposed Settlement of Court Case
concerning the 1837 Treaty Rights
of the Mille Lacs Band of Objibwe Indians
February 1, 1993

The League of Women Voters of Minnesota supports the proposed settlement of the court case concerning the 1837 Treaty rights of the Mille Lacs Band of Ojibwe Indians.

League position states: "Where Indians are singled out for special attention, that attention should be directed towards solving existing jurisdictional conflicts in order to guarantee equal treatment of Indian citizens by all levels of government. Programs should have the explicit recognition that the basic decisions regarding Indian lives and property are to be made by the Indians themselves."

Our review of the 1837 Treaty and the proposed settlement show fair compromises are being made by both the State and the Band. Of primary importance to the Indians in the agreement is that the Band is to control the use of the resources by Indians on treaty land. Since the treaty's original language could mean the Indians have 100% to 50% of the natural resources to use anyway they wish, what the Indians have given up in economic terms is significant:

*They have given up the right to commercially harvest large game.
*They have given up any commercial right to timber.
*They have given up the right to commercially harvest game fish.
*They have given up the right to use spears or nets on 95-1/2% of Mille Lacs and other lakes and streams, except for six smaller lakes and some 20 miles of designated river ways.
*They have agreed to restrict themselves to the Band's fishing limits standards which correspond to the state's standards.

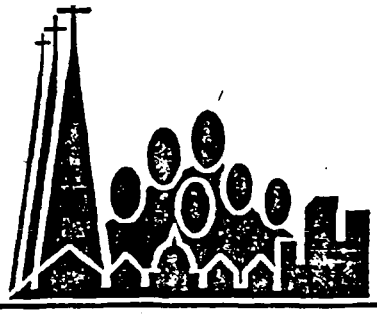
Meanwhile, the state has made significant concessions also:

*It acknowledges that a 4-1/2% zone of Mille Lacs Lake and the other designated waters would be under tribal regulation and the Band could harvest it as it wished, under the tribal fishing codes for subsistence needs.
*It will pay $10 million to the Band, half of the money to be used for ten years solely for environmental and natural resource law enforcement and management.
*It will transer 7,500 acres of land to the Band.

The League of Women Voters of Minnesota finds questionnable the arguments, by persons opposed to the settlement, that the 1855 Treaty and Claims payments of the 1960s-70s extinguished Indians' rights to hunt, fish and gather on the land involved. In addition, we do not wish our state to endure anything similar to Wisconsin's years of fighting and violence and

the millions of dollars spent in court and enforcement costs over settlement of that same 1837 Treaty as it applied to Wisconsin. We urge the Legislature to act quickly to accept this compromise to silence immediately the hostility or violence which can only build as the court case continues. We recognize that in cases of compromise there are always persons or groups who desire making "just one slight change" in the settlement. We strongly urge members of the Legislature to resist this desire.

Recognizing that over two years have been spent already to get to an agreement acceptable to representatives of the State and the Band, and further recognizing that a costly court fight looms ahead this spring if a settlement is not reached, the League urges our legislature to accept the agreement as proposed, with the hope that the Band too will accept it, and thus bring about a peaceful settlement which will both protect our natural resources and treat all Minnesotans, Indian and non-Indian, fairly.



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Saint Paul Area Council of Churches
1671 Summit Avenue • Saint Paul, MN 55105-1884 • (612) 646-8805 • FAX: 646-6866

NEWS RELEASE

For Immediate Release
CONTACT: Thomas A. Duke
Executive Director
St. Paul Area Council of Churches
612/646-8805

February 2, 1993

The Board of Directors of the St. Paul Area Council of Churches, at its regular meeting on January 28,1993, voted to support the settlement agreement between the Mille Lacs Band of Chippewa and the Minnesota Department of Natural Resources as announced on November 5, 1992.

The action was taken out of concern for Indian people in Minnesota who continue to suffer from injustices perpetrated by government actions in the past and discriminating policies and practices in the present. The Council has ties with the Indian population in Minnesota through its Department of Indian Work which has over forty years of history serving American Indian persons. Many of these persons have had and continue to have close ties to the Mille

Lacs Reservation, as well as other reservations throughout the state.

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The Council Board of Directors also spoke from a theological perspective, saying that the Christian community is called to act on behalf of the interests of people who have been the victims of greed and insensitivity of others who use power and violence to exploit others. Also, the Council seeks to endorse efforts to advance reconciliation and peacemaking. The agreement is seen as a significant step involving compromise for all involved and the best prospect for resolution of the issues at question and a major contribution toward the goal of wholeness of community with respect for differences of culture.

The St. Paul Area Council of Churches is an 86-year old ecumenical organization made up of 145 St. Paul area congregations representing 18 denominations. It operates programs which unite member congregations in local cooperative ministries related to children and youth, American Indians, the criminal justice system and intercultural/interracial relationships.

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APRIL 1993
SATURDAY

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8 PAGES

ANALYSIS

Chippewa organization invites Indians from across the country to gather at Sandy Lake Reservation April 23-26. Page 4B.

Tribal fishing zone is treaty red flag

No one has blinked yet, so fight may go to court

GARY DAWSON STAFF WRITER

It's a treaty in trouble — mainly because of one little line on a map.

Stiff opposition to an exclusive tribal fishing zone, a central part of a proposed out-of-court settlement between the state and the Mille Lacs band of Chippewa over 1837 treaty rights, has stopped treaty legislation dead in its tracks at the state Capitol.

Key supporters have backed away, and other legislators say that unless the band drops its demand for an exclusive zone, the legislation approving the settlement is dead. Someone has to blink in the showdown over the zone, and that has yet to happen.

If not, the settlement will be rejected, and the state and band will join landowners and nine affected counties that also have sued in a battle to the finish in federal court.

That could be disastrous, as state lawyers caution about the possibility the courts would award the band much wider rights to harvest fish and game in a 12-county area of east-central Minnesota. That could result in bitter confrontations between whites and the tribe and ruin a 20-year precedent of settling such disputes peacefully — beginning with the historic Leech Lake Agreement of 1972. That was the first settlement of its kind in the country over hunting and fishing rights between a state and an Indian tribe.

There have been others since. One is the 1854 Treaty Agreement of 1987, sponsored in the Senate by a powerful and respected northeastern legislator, Sen. Douglas Johnson, DFL-Cook, chairman of the Tax Committee. Johnson also came forward this year to co-sponsor the Mille Lacs agreement with chief architect Sen. Steven Morse, DFL-Dakota. But Johnson backed away recently, as did a number of Independent-Republican and DFL lawmakers.

Minnesota's Indian tribes have long considered Johnson an ally. When he said he won't support the agreement because the zone sets up an exclusive, non-public inland lake area — unlike any other treaty agreement signed to date — band lobbyists took note.

"I won't support any bill with a zone or I would have to be assured that the zone won't be enforced before I would vote for it," Johnson said.

It isn't that he opposes spearing and netting by the band in the lake. He prefers alternate arrangements covering Leech Lake and Lake Vermillion, for example, that allow tribes to

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TREATY

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net their share of game fish anywhere in the lake. In return, there are no restrictions on where the public can fish.

"I believe the Mille Lacs tribe will protect the fish and game resources as have the other tribes," Johnson said. "That's in their own best interest, so we don't have to confine them to a zone that discriminates against the public as well."

The legal tradition of lakes being public waters in Minnesota is sacred to legislators and their constituents — and certainly to Mille Lacs property owners. While a relatively few property owners in the zone will be allowed to fish, a majority would not. To date, those adjacent owners have been the most vocal opponents of the treaty, contending their property and recreational rights are being impaired. Last week, a federal appeals court agreed that the threat to their property rights gives them the right to participate in the lawsuit along with nine affected counties.

The Mille Lacs band, which had opposed intervention in the lawsuit by the counties and the landowners, received another blow last week. An effort by Senate Majority Leader Roger Moe, DFL-Erskine, to get a key treaty opponent, Senate Environment and Natural Resources Chairman Bob Lessard, DFL-International Falls, and Morse to agree on a plan to get the tabled treaty out of Lessard's committee failed.

"I don't think they have the votes," said Lessard, who has refused to call for a vote on the treaty after Morse, sensing defeat, asked that the bill be tabled several weeks ago. "And I'm not sure they have them in the Rules Committee to yank the bill out of my committee," Lessard added, noting an alternate procedure than can be used under Senate rules to get the bill to the floor for a vote.

The standoff may be the reason the band made overtures to adjacent landowners in the past two weeks. Although these offers have been rejected by a landowner executive committee, the owners will meet April 3 to discuss the overtures.

Late this week, band lobbyist John Knapp made another conciliatory gesture: "If that's not acceptable to them, then they need to tell us what would be acceptable," said Knapp.

He said the band might consider dropping the zone if the state makes a counter-offer, but the band will not request such a move. Deputy Natural Resources Commissioner Ron Nargang said the state won't, either.

So, despite the treaty chill at the Capitol, the band may be about to blink. If a line that cordons off 4.5 percent of Mille Lac's surface on the southwest portion of the lake is removed, even treaty opponent Lessard says the ballgame is over.

"If the zone goes, the bill will pass," he said at the Easter break.

The columnists: Doug Grow/C.J./Jim Klobuchar

Time for compromise is now in Mille Lacs treaty brawl

Will anybody who claims to know the one and only hassle-proof solution to the Mille Lacs Indian treaty brawl please now stand?

Will you swear it is the most logical, generous and wonderful solution available to the human mind? That it is so good it would be blessed by the ghosts of Hubert Humphrey, Luther Youngdahl and Hiawatha?

If you are still standing and you are still holding your ground, you are either an alien from Mars or too arrogant to be taken seriously. If nonetheless you continue to argue that your solution could outlast Gibraltar and the I-35W construction you are more than arrogant.

You are nuts.

There is no such solution.

But you have to believe there are enough people left in the state willing to settle this without pulling down the golden horses from the Capitol. You have to believe, in other words, that it can be solved sensibly.

They have got such a solution, or the outlines of it, in St. Paul today.

Jim Klobuchar

When he endorses it, the governor of Minnesota sounds both tired and fearful. He is tired because the squabble has drained most of the energy in St. Paul left over from the telephone embarrassments and the money wrangles. He's fearful, because if this doesn't work, it's not only a political debacle but a possible forerunner to violence.

When a DFL leader like Doug Johnson endorses it and an Independent-Republican like Duane Benson endorses it, they are saying, "If we can't come together on this, with give and take, what hope is there for any real harmony if the federal court imposes a verdict?"

What they want to do is to increase the amount of land the state gives to the Indians to 15,000 acres from the original 7,500. Instead of getting exclusive rights to net and spear first in a 6,000-acre section of the lake, the Indians would have to share it with non-Indians using hooks and lines.

Is this a perfect solution? Good grief, no. Is it one we ought to be able to live with? Good grief, yes.

On the scale of world-stopping clashes of value and interest, the Mille Lacs treaty fight is not the Reformation or apartheid. It can be settled. It comes down to issues such as these: It is the Indians' assertion of a status once obliterated by their captors, their insistence that treaties mean something or once did. It is the assertion by non-Indian people who fish and people who live in the disputed territories that their own tradition and qualities of life mean something, and they were not responsible for the original swindling of the Indians.

The people not to listen to are the ones who claim a personal and an exclusive possession of right and justice.

Other people who ought not to be listened to are the ones who say if you give some ground to the Indians on this, you are opening the windows even wider to the gambling epidemic to which the Indian casinos have contributed mightily and which the bar owners now want to expand.

Those are threats.

The gambling epidemic can be stopped without denying the Indians some reasonable concessions.

The gambling epidemic, incidentally, will be stopped eventually the way it is going to be stopped in Wisconsin, by the people in their ballot boxes saying: It's time to stop it. That time ought to be coming here in a few years. It will mean the shutdown of the Indian casinos as well as the charitable pulltab skimming and the state's own heist, the lottery.

But this is another issue.

For months the calls have been coming in here forecasting the wildest and most lurid results of a simple compromise on the Mille Lacs questions. Landowners up there are claiming their lives will be ruined, their resorts turned into shantytowns. People who fish say they are being betrayed, sandbagged and dry-gulched by their very own — meaning white folks in the government. I got a call from an Indian who said unless fishing rights are restored to the Indians, it will be a desecration of Indian religion comparable to the crucifixion of Christ.

In other words, mess with us in any way politically and you are doing something sacrilegious.

Come to think of it, I've heard Christians, Arabs and Jews at different times make the same argument.

You have to listen to these people on the Mille Lacs issue to realize that they are serious, and when you realize that, you're a little more worried than you were before.

One man said the giving of land to the Indians would open up casino gambling and related motel businesses on a scale to match Disney World. And the only way you could match that would be to bring in two dozen slot machines to every bar in Minnesota.

What about that argument, Duane Benson?

"Indians already own enough property to build what they want to build on reservation land near the casinos they run," he said. "They went in and bought some property in Duluth, obviously with permission to do it. So this new land isn't going to aggravate a situation or opportunity that already exists. If we want to slow or stop casino gambling, and business that's related to it, then that's a decision that rests at other levels of government and is not an issue in this compromise plan."

The best part of the compromise bill is that it was introduced by Sen. Steve Morse of Dakota. If there's anybody in the Legislature who makes much more sense than Morse, I don't know him or her, and if the Democrats eventually get around to finding somebody to run for governor, they don't have to look past the guy from Dakota.

[redacted]

St. Paul Pioneer Press 4-6-92

Decision won't deter Ojibwe from seeking Minnesota legislative pact

GARY DAWSON STAFF WRITER

A federal appeals court decision Monday allowing nine counties and some landowners to intervene in a lawsuit between the state and the Mille Lacs band of Ojibwe will not deter the band and state from seeking legislative approval of a proposed settlement of disputed hunting and fishing rights.

But critics of the agreement, now stalled in a state Senate committee, insisted the decision of the U.S. 8th Circuit Court of Appeals means the proposed settlement involving 1837 treaty rights should be scrapped.

The court overturned federal Judge Diana Murphy's decision not to allow affected landowners and counties to intervene in the suit. The appeals judges said both parties "easily" qualify as intervenors, noting that if they are adversely affected by either a settlement or court judgment their property values could be diminished.

"A judgment or settlement favorable to the band may impair those interests, since it may permit band members to exercise treaty rights upon the proposed intervenors land," the court said. "Even if the band's rights under the 1837 treaty are limited to public land, a resulting depletion in fish and game stocks may reduce the proposed intervenors' property values."

An outspoken treaty critic, Sen. Charles Berg, DFL-Chokio, said the decision justifies the Senate's refusal thus far to approve the treaty.

"It makes everything we do here moot; the proposed settlement's not valid anymore," Berg said. "It appears that the Senate has done the responsible thing."

Sen. Bob Lessard, DFL-International Falls, a treaty critic who is chairman of the Senate Environment and Natural Resources Committee, and Sen. Dan Stevens, IR-Mora, called for negotiating a new settlement.

But lawyers and representatives for the state and band strongly disagreed. They said the state still can settle its differences with the band while the federal court can consider the interests of the other parties.

Sen. Steven Morse, DFL-Dakota, chief sponsor of the treaty bill in the Senate, said he will continue to push for passage in the Senate. He and the bill's chief sponsor in the House, Rep. David Battaglia, DFL-Two Harbors, said they had no problem with the landowners and counties being heard in federal court.

Attorney Zenas Baer, representing other Chippewa who oppose the settlement, said the state should scrap the proposed agreement and start a new round of negotiations with all affected parties, including the federal government. He is scheduled to argue before Murphy on Friday that his clients should be allowed to intervene.

All parties to the suit agreed the intervention of additional parties will complicate settlement efforts and the lawsuit. That was one of the reasons the Mille Lacs band opposed intervention of the counties and landowners after it first sued the state in 1990.

The settlement proposal before the Legislature would create a 6,000-acre tribal fishing zone on the southwest portion of Lake Mille Lacs, consisting of 4.5 percent of the surface of one of the state's premier walleye lakes. Spearing and netting of game fish would be allowed until an annual quota of 24,000 pounds is harvested. Spearing and netting of game fish would also be allowed on six other lakes, a portion of the Rum River and 20 miles of the St. Croix River. Rough fish spearing and netting would be allowed throughout a 12-county area included in lands ceded by the Indians to the federal government in 1837.

The tribe would receive 7,500 acres of public land and an $8.6 million payment from the state.

The counties seeking intervention are Aitkin, Benton, Chisago, Crow Wing, Isanti, Kanabec, Mille Lacs, Morrison and Pine. The landowners are John W. Thompson, Jenny Thompson, Joseph Karpen, Leroy Burling, Glenn Thompson and Gary Kiedrowski.

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Post-Bulletin

Jean Alice Small, Chairman

Len Robert Small, President & CEO

Thomas P. Small, Senior Vice President

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Rochester P.B.

Mille Lacs: Look at facts

3-10-93

"We're elected to do more than listen to polls. We have to take all the information we have and use our best judgment." — Sen. Steve Morse, DFL-Dakota, on ratifying an agreement on Indian fishing rights.

It will take courage for Minnesota legislators to take the right course in the dispute over Indian fishing rights.

The right course, in this case, is the one which will cause the least damage to natural resources and the least interference with the rights of other anglers and outdoor enthusiasts. It also the course which will avoid serious future conflicts.

The Legislature is being asked to approve an agreement between the Department of Natural Resources and the Mille Lacs band of Ojibwe which was reached after two years of negotiations. The agreement, if approved, would settle a lawsuit pending in U.S. District Court in St. Paul.

The Mille Lacs band filed the suit to obtain fishing rights which they believe was granted by a treaty with the United States government in 1837. If the agreement is not ratified, the lawsuit will go to trial. In a similar case in Wisconsin, the Chippewa Indians won the suit and won much broader rights than are granted in the proposed Minnesota agreement. Since the same treaty and the same federal court system are involved and the issues are similar, there is every reason to believe that the Ojibwe will win if the case goes to trial.

That could set the stage for years of conflict — which is exactly what happened in Wisconsin. After winning the suit, the Chippewa exercised their rights under the treaty to use nets and spears in fishing. These practices were vigorously opposed by other Wisconsin residents and a number of serious clashes occurred. The controversy stretched over four years and caused serious damage to resort businesses in the areas affected.

The Minnesota Legislature has a chance to avoid repeating that mistake. The proposed agreement limits the Ojibwe's fishing rights to 4.5 percent of Lake Mille Lacs and to six other smaller lakes and parts of two rivers. More importantly, the agreement would prohibit commercial fishing by the Ojibwe. By contrast, the court settlement in Wisconsin *permitted* commercial fishing.

If the Ojibwe prevail in court, they would be permitted to engage in spear and net fishing in a much larger area. That is the best reason for approving the agreement which involved concessions from both sides.

It is significant that the Fish and Wildlife Legislative Alliance, a 34,000-member organization representing hunting and fishing groups, has recommended approval of the agreement. Members of the alliance are enthusiastic about outdoor sports and about conservation; they recognize that the agreement will be less damaging to their interests than an Ojibwe victory in court.

In a recent statewide poll, 49 percent of the respondents opposed the agreement and 41 percent favored it. We believe that is because many people do not realize the danger of an Ojibwe victory in court.

Legislators have the facts. They should base their decision on those facts and on their good judgment.

By approving the agreement, they will head off a potential for years of confrontations — like those in Wisconsin — which will serve no one's interest.

Editorial

A time to keep quiet

In the delicate world of political negotiations there is a time to speak and a time to keep quiet.

With the proposed settlement of a fishing rights treaty dispute on shaky ground in the Legislature, Marge Anderson, tribal chief executive of the Mille Lacs Band of Chippewa, chose this week to speak out.

About a day after Tuesday night's 12-hour marathon, which ended when the settlement bill's sponsor pulled it from consideration before a Senate vote, Anderson told the news media her tribe would seek to begin a commercial fishing operation on Lake Mille Lacs if Legislature scuttle the compromise.

The image of walleyes being commercially harvested from Mille Lacs — arguably the state's most popular fishing spot — made anglers and conservationists around the state cringe.

Backers of the proposed settlement had stressed that it would ban commercial fishing. They reassured anxious anglers that it was certainly not in the Indians' best interests to deplete the natural resources of the lake. The Mille Lacs Band has invested a great deal of money in its casinos and are as reliant on tourism and fishing as any other group of Minnesotans.

The tribe certainly has every right to seek court permission for such an operation, but to raise that specter now when the matter is still before the Legislature was ill-advised, to say the least.

There are also plenty of ill-advised statements being made on the opposite side of this argument. For the most part, they are coffee shop comments by whites hinting trouble if the Indians try to start commercial fishing on Mille Lacs.

There's nothing funny about such comments. They can, in time, foment the type of violent situations in our lakes area which we should all be working hard to avoid.

The Mille Lacs treaty rights issue is not likely to go away soon. All of the involved parties are going to have to steer clear of inflammatory rhetoric if it is eventually going to be resolved in a fair and peaceful manner.

Each of us are going to have to learn when to be quiet.

SPEAK OUT

YOU CAN REACH REP ROD GRAMS OF MINNESOTA'S SIXTH DISTRICT AT (202) 225-2271, 1713 LONGWORTH BLDG., WASHINGTON, D.C. 20515, OR (612) 427-5921 IN ANOKA.

OPINION

TOMORROW

CAL THOMAS COMPLAINS ABOUT THE SO-CALLED "CIVIL LIBERTARIANS" WHO DELIGHT IN USING FRAUDULENT RELIGION TO CONDEMN THE PRACTICE OF THE REAL THING.

NICK COLEMAN

▼

On Mille Lacs deal, Grant tries to extend his losing record

COLUMNIST

Bud Grant is not one to rest on his laurels. No, sir. Not satisfied with leading Minnesota to four losses in the Super Bowl, he is on the verge of crowning an impressive career by pushing us into one final, spectacular disaster, a debacle of monumental (even for him) proportions.

But this time, it's not a football that's being kicked around. It's the Mille Lacs band of Chippewa. And the Chippewa aren't the only ones who could get hurt. Ultimately, the victims of Grant's Last Stand could include every Minnesota taxpayer and every sportsman, including the fish-crazy ones with the glazed-over eyes who are trying to derail the Mille Lacs treaty settlement.

Grant's just a front man, of course, an empty suit with a buzz cut who has rented his fame to the kamikaze cause of those who want to torpedo the settlement. But there is something fascinating about Grant's involvement in this Death Wish Crusade of the Panicky Walleye Eaters. Grant is the guy who dressed up in an ersatz Indian headdress for a charity stunt a couple of years ago and got all gooey about how he would have enjoyed growing up Indian.

"I would have liked to have lived with the Indians and experienced their way of life," Grant said. "It always bothered me that in the movies they were always the bad guys and always lost the fights they were in."

It was a revealing moment. First, Grant displayed a common prejudice that the Indians and their way of life are things of the past, an attitude that often fuels cavalier dismissals of the legitimate claims of today's Indian people. Secondly, Grant's fantasy showed his ignorance: Anyone who thinks it would have been a blast to grow up Indian — suffering the poverty, isolation and prejudice that entails — has been playing football without a helmet.

But there he was, the old coach, testifying against the Mille Lacs treaty settlement in front of a state Senate committee Tuesday. And for a second, he almost sounded like a real Indian instead of a play-acting one. For a second, he almost got it right, complaining that the settlement would "(give) away our land, our water, our money and our resources."

That's precisely the problem with most treaty settlements over the past 200 years. The Indians were forced to sign away their land and their water. And even when they were promised their land for as long as the water flows and the grass grows, it got taken anyway. Now, when the state wants to resolve problems in treaty interpretations by returning to the Indians a tiny portion of their original patrimony, Grant's group whines about losing "our" land and "our" water.

How do you like them apples, Coach? But a little suggestion, if you don't mind. When we talk about "our" land and "our" water, let's pause for a second and remember whom we took them from, shall we? For decency's sake, OK?

Grant and his allies slickered the Senate Environment and Natural Resources Committee, keeping the senators up until 4 in the morning and hooking the nervous nellies on the committee. The result was that Sen. Steven Morse, the sponsor of the settlement, had to withdraw his bill to save it from defeat in the dark of night. Now, the fate of the settlement is up in the air, which is good news for Lobbyin' Bud but a disaster-in-waiting for the rest of Minnesota, including any citizens who are as interested in racial harmony and justice as they might be in walleyes.

The situation is grim.

The settlement would give the Chippewa $8.6 million, 7,500 acres of public land and a small portion of Mille Lacs (about 4 percent of the lake) for tribal fishing. This modest deal has outraged the Fish-finder set that believes God meant every man with a $5,000 fishing rig to have an equal shot at every walleye in creation, regardless of whatever land-grabbing swindle might have been pulled on the "real" Indians of yore. And in order to guarantee their right to every walleye, the Fish-finders are willing to risk everything.

MIKE BLUMBERG/'HOMELESS DREAMS'

Bud Grant posed in paint and headdress for a portrait in a book sold to benefit Minnesota's homeless.

They are willing to undo a negotiated settlement to risk years, perhaps decades, of protracted court hearings and appeals. They are willing to fan the flames of ignorance, prejudice and racial resentment to fight for unrestricted access to their worm-gulping god, the walleye. And, stupidly and self-defeatingly, they are willing to pass up a low-cost deal to risk a court order, like the one that came down in Wisconsin, that could give the long-neglected, long-suffering Indian people of Minnesota the right to half of the wildlife resources so precious and dear to our sportsmen and women.

If Bud and his pals are willing to risk all that, then they will deserve the defeat they will in all probability bring upon themselves. And they will end up kissing a lot of walleyes goodbye.

They're like the dog in the fable, the one with the bone in his mouth who is crossing a bridge. When he sees his reflection in the water, he thinks the "other" dog has a better bone so he tries to snatch it and ends up watching the real one sink out of sight. It is awesome to watch Bud and his pals outwit themselves. But it is depressingly dumb.

All those years that Grant coached the Vikings, we called him "Stoneface." But if he torpedoes the Mille Lacs deal, we will need to revise Grant's nickname. It's not just his face that has rocks in it.

Coleman's column regularly appears Sundays, Tuesdays and Thursdays.

Parting the Waters in Land of 10,000 Lakes

Minnesota Resort Divides Over Settlement in Chippewas' Claim to Fishing, Hunting Rights

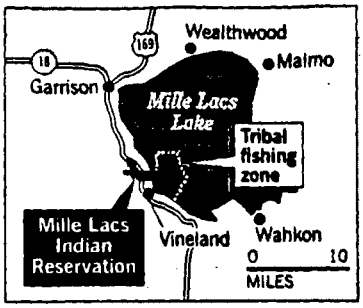
By Edward Walsh
Washington Post Staff Writer

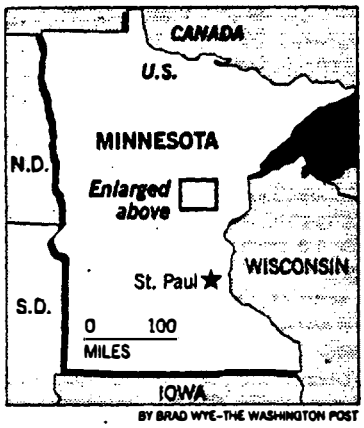
MILLE LACS RESERVATION, Minn.—In winter, the lake's beauty is hidden beneath a thick layer of ice and snow. But soon the ice will break under spring's warmth, and thousands of people will descend to enjoy the lake's waters and fish for the bounty of what a state official calls "a jewel" in this land of 10,000 lakes.

The jewel is Mille Lacs Lake and, like many things of value, it has become the object of a dispute that has divided the people who live on its shores and fish its waters. The modern-day battle of lawyers and lobbyists traces its roots to the 19th century, before Minnesota was a state and when the federal government negotiated land acquisition with native people of the region.

The dispute centers on a proposed settlement of a lawsuit against the state government by the Mille Lacs band of Chippewa Indians to assert unlimited hunting and fishing rights granted them under a 1837 federal treaty. It involves a convoluted thicket of treaty rights, court decisions and presidential proclamations and is riddled with uncertainty.

But beyond the legal issues are more explosive, emotional questions involving access to public lands and waters and protection of precious natural resources. In the background, pushing both sides toward the compromise settlement they announced last month, is the specter of a similar case in neighboring Wisconsin, where violent confrontations between Chippewa





BY BRAD WYE—THE WASHINGTON POST

fishermen and sport anglers followed a federal court decision affirming the tribe's right to practice traditional methods of fishing with spears and nets on lakes there.

Joe Karpen is among the most vehement opponents of the proposed settlement, which awaits approval by the tribal government and the state legislature. "I don't see how you can avoid violence with this settlement," he said in the small fishing resort he owns on the east side of the lake. "This is a great body of water a Great Spirit created—my God. The white man didn't provide the fish; the red men didn't either."

What most riles opponents is a provision that would create an exclusive Tribal Fishing Zone of 6,000 acres adjacent to the Mille Lacs reservation in the southwest corner of the lake where band members could fish with spears and nets. Others would have access to the zone but could not fish there without the band's permission. While the zone would cover less than 5 percent of the huge lake, granting exclusive fishing rights in any part of the lake outrages sport fishermen such as Karpen.

"The biggest thing is it's dividing our people," Karpen said. "It's happening already. They're starting to draw lines. You see an Indian, and your blood pressure goes up."

The 2,600-member Mille Lacs band, of which about half lives on the reservation, filed suit in August 1990. The 1837 treaty ceded more than 3 million acres of land in present-day Minnesota and other land in Wisconsin and Michigan to the federal government but guaranteed Chippewas "the privilege of hunting, fishing and gathering wild rice" in the ceded territory "during the pleasure of the president of the United States." The suit was filed against the state because it regulates hunting and fishing in the territory.

The precedent that concerns Minnesota officials was set in Wisconsin, where six bands of Chippewa filed a similar suit under the same treaty in the early 1970s. After a 17-year legal battle that cost millions of dollars, the Indians prevailed, winning the right to commercial fishing and to take half of the annual harvestable surplus of game and fish in the ceded territory.

Federal courts also recognized the Wisconsin Chippewas' right to fish with spears and gill nets, methods that enrage sport fishermen and led to the confrontations at boat landings on dozens of lakes in northern Wisconsin in the 1980s.

Settlement opponents argue that 1850 proclamation by President Zachary Taylor and agreements reached with the Indian Claims Commission in the 1930s negated hunting and fishing rights in the 1837 pact. State lawyers note that many similar contentions were rejected by courts in the Wisconsin case.

If Minnesota loses in court, state officials tell critics, the pristine waters of Mille Lacs Lake could become home to Chippewa commercial fishing vessels, devasting the sport fishing and tourism industries here. They decided that an uncertain court battle was too risky.

"You don't take one of your prime resources and roll the dice and see how it comes out," said Gail Lewellan, assistant commissioner of the state Natural Resources department.

In addition to establishing the exclusive fishing zone, the proposed settlement would allow Chippewas to spearfish and use nets for "subsistence" fishing on six small lakes and parts of two rivers and would transfer 7,500 acres of state-owned land and $10 million to the Mille Lacs band. In return, the band would cede other claims to fishing and hunting rights under its federal treaties, limit spearfishing and netting to designated areas and agree not to engage in commercial fishing.

In a state where hunting and fishing are enormously popular, the proposed settlement, including what critics call the state land and money "giveaway," has aroused powerful opposition. The Hunting and Angling Club of Minnesota has imported Bud Grant, former coach of the Minnesota Vikings who now lives in Wisconsin, to address rallies opposing the settlement. State Rep. LeRoy Koppendrayer (R), who represents the Mille Lacs Lake area, said his calls are running "100 to 1 adamantly opposed."

"I better be," he said when asked if he is against the agreement.

"This is stirring up every bit as much emotion as the court case in Wisconsin," said Jeffrey R. Chaffee, an attorney who represents nine county governments that are in the ceded territory, object to the settlement's scope and are seeking to intervene in the court proceedings. Like other critics, Chaffee noted that the Chippewas could not expect to be awarded an exclusive fishing zone, 7,500 acres of land and $10 million in court and asked, "So why are they being given?"

But the opposition, even on the shores of Mille Lacs Lake, is by no means unanimous. Ron Nelson, who owns a fishing resort and campground just north of the proposed Tribal Fishing Zone, said some opponents are driven by "outright bigotry."

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BY EDWARD WALSH—THE WASHINGTON POST

Resort owner Ron Nelson says "outright bigotry" drives some opposition of plan.

"Anytime anything went wrong on the lake, they blamed the Indians," he said. "It's a lot easier for them to look down rather than look up. That's what's happening. They've looked down on the Indians so long, it hurts."

In principle, Nelson said, he agreed that no one should be granted exclusive fishing rights on any lake but "there is give and take on everything." One purpose of the zone is to limit access to the area where Chippewas would be allowed to spearfish and use nets, reducing the chance of violent confrontations with sport angiers. "The Tribal Fishing Zone is a simple tradeoff," he said. "It's much better than the alternative."

Nelson, president of the Mille Lacs Tourism Association, also scoffed at opponents' contention that Chippewas would use the state land and money for developments to enhance a gambling casino that the band opened on its reservation in 1991.

The casino has been a boon, virtually wiping out unemployment on the reservation and creating hundreds of jobs for non-Indians. But many property owners resent it because Chippewas on the reservation do not pay state or local taxes.

"More power to them," Nelson said to suggestions that the reservation might soon include golf courses and even an airport. "The more they develop, the better off we'll all be."

Don Wedll, who is commissioner of natural resources for the band and played a key role in negotiating the proposed settlement, said there are no plans for such development. His most immediate concern is a tribal referendum on the issue Tuesday in which approval of what he calls "a pretty good deal for the band and also the state."

Wedll said some members are suspicious of the $10 million payment, considering it a "sellout," while others feel strongly about asserting rights granted their ancestors in all of the ceded territory. "They just want to litigate it," he said. "They're so mad, they just want to do it."

A negative vote almost certainly would doom the settlement, sending the dispute to a scheduled August showdown in federal court. Approval would leave the final decision to the Minnesota Legislature. State Sen. Steven Morse (D), sponsor of legislation to approve the pact, said he is "pretty confident" about approval "but I don't think it will be easy."

"I'm convinced that, if we don't pass this, we will look back and cover our behinds and end up with something much worse," he said.

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Star Tribune

Sunday
February 28/1993

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Confusion on Mille Lacs

A settlement's possible; let's leave courts out of it

Wrestling with the Mille Lacs issue:

Next Tuesday, the Mille Lacs Band of Ojibwe is expected to vote on a proposed settlement with the state of Minnesota regarding historic hunting and fishing rights.

Soon after, the Legislature will vote to accept or reject.

In the meantime, many Minnesotans are trying to decide where they stand on the issue.

What is the right thing to do? Accept the agreement and its terms? Or choose a more uncertain path to court, where a federal judge would decide who gets what and how much of the fish, wildlife and timber resources in a vast 12-county chunk of Minnesota?

Considering the high stakes, voting the "right" course is no easy task. Some Minnesotans and Ojibwe members already have decided and are pushing their point of view, which is the democratic way.

The rest of us struggle with our own quandaries. Sometimes we're frustrated. Sometimes angry. And sometimes uncertain.

In one man's opinion, this is a lose-lose option for all parties.

There is nobody in this country, starting with the President and Congress, who can claim that the historic relationship between the United States and American Indians has been successful.

The Mille Lacs treaty dispute does nothing to change 200 years of misguided policy toward the American Indian; it is merely more of the same. It is a policy that, by its nature, sustains racism and promotes division between U.S. citizens. It is a policy that has kept Indian leaders looking back with anger instead of ahead with hope.

It is a policy that desperately needs the attention of Congress.

Ron Schara

But that's not what the Mille Lacs issue is about.

As DNR commissioner Rod Sando put it, "This is an issue of property rights."

If this is a property-rights issue, Bud Grant argues, then let a judge decide. That's what courts are for, Grant insists. Some members of the Mille Lacs Band of Ojibwe have said they also prefer a court decision.

Maybe a judge's view is best.

The negotiated settlement creates almost as many issues as it solves, ranging from lost property tax revenues for counties to an exclusive fishing zone in one of the world's most prolific natural walleye producing waters.

Some say the proposed agreement is yet another example of hoodwinking Indians out of their hunting and fishing rights. Still others have personal reasons for opposing the settlement.

If the agreement is approved, a 6,000-acre portion of Mille Lacs will forever be fenced off by floating buoys with warning signs, "No Fishing."

The DNR's agreeing to a portion of Mille Lacs as an exclusive fishing grounds for Band members or guests is undoubtedly the most explosive and divisive part of the proposal. The DNR negotiators view it as a compromise.

"At one time we were arguing over gillnets on the east side of Mille Lacs, too," a DNR official recently confided.

Critics say the tribal fishing zone is like giving public water to a special-interest group. That's not an accurate description of tribal government, however. A tribal government is not viewed as a special-interest group in the eyes of the U.S. government or, for that matter, the State of Minnesota.

In essence, tribal governments are wards of the federal government and maintain a position of sovereignty in relationships with state or local governments.

Going to court also would answer another nagging question: Does the Mille Lacs Band still have the treaty hunting and fishing rights? Or did it, as court advocates insist, subsequently sign or sell them away?

It's a question many non-Indian anglers and hunters would rather the court answer. While it might be a simplistic view, most sport anglers and hunters question the tribal insistence on using modern monofilament gillnets for subsistence under the guise of tribal tradition or custom.

On the contrary, previous court decisions have said the use of modern devices or harvest techniques does not alter historic treaty rights. There's no turning back a clock.

But going to court also places the outcome in the hands of a federal judge.

Look at Wisconsin's mess.

In Wisconsin, the federal court gave 50 percent of the fish and wildlife resources to the Ojibwe who went to court under the same 1837 Treaty.

Members of the Save Mille Lacs group insist that wouldn't happen in

Schara continued on page 15C

Schara Continued from page 16

Minnesota. They insist they have a better case, and they might have.

Only by going to court will anybody know.

But what if they're wrong? If Minnesota loses its case, the Band might be awarded as much as 50 percent of the resource. In other words, a judge could decide the Band is entitled to 50 percent of the allowable walleye catch per year throughout all of Mille Lacs, not merely in a specific zone.

Critics contend losing in court is no worse than the proposed settlement, so consequently there is nothing to lose. They say the DNR is or will be sued by other Indian bands, if the settlement is accepted. "A court fight would show the tribes that Minnesota will fight for the rights of its non-Indian citizens," critics say.

Court proponents say they'll be willing to live with the judge's decision.

Yes, but how peacefully? Like in Wisconsin? And for how long?

The appeals process could string out the treaty tension around the lake for years. The turmoil could hurt property values, tourism traffic and increase tensions between Indians and non-Indians. And it would filter down into the schools, hurting innocent kids.

These are among the reasons tribal leaders and the DNR have worked at hammering out an agreement.

The Band's recently released "conservation code" is a conservative document that errs on the side of resources. If, it can be changed by the tribal government. Minnesota can change its laws, too.

A question to ask is: Why would the Mille Lacs Band be eager to exploit or otherwise squander the lake's walleyes? The proposal clearly prohibits the commercial exploitation of fish and wildlife. In other words, there won't be any trucks loaded with Mille Lacs walleye filets heading for the Twin Cities fish markets.

The Mille Lacs Band also is up to its blackjack chips in the tourism business. Fishing is the region's largest tourist attraction. It makes no sense to think the Band is eager to jeopardize the fish that helps lure the gamblers.

So — what's the right thing to do?

I think Minnesota's Legislative leaders should offer an addendum to the proposed agreement. The use of gillnets and the presence of an exclusive fishing zone are inflammatory irritants to the agreement. Isn't it possible to have tribal gathering of fish for subsistence without gillnets? Isn't it possible to have tribal fishing rights or control of the zone without making it exclusive, without buoys with "no fishing" signs?

It ought to be.

The Legislature also can bring to the negotiations what the DNR could not: the issues of gambling and tribal exclusivity.

A peaceful and lasting Mille Lacs settlement is possible with a few more concessions. Until the last card is dealt, why gamble in court?

THE WEEKLY REVIEW
EMMONS
Freeborn Co.

FEB 18 1993

Do the right thing

Is it any wonder that the Mille Lacs Ojibwe Indians are standing strong in their fight for rights to hunting and fishing on Lake Mille Lacs?

DNR officials informed the Legislature last week that those rights were never "expressly eliminated" when the territory was ceded to the federal government in 1837.

Perhaps it is true what Don Wedll, natural resources commissioner for the Band, told the members of the Environment and Natural Resources Committee last week, that problems with the Indians' rights arose in the 1950's when tourism became an economic factor for the state.

State enforcement on the Indians grew strong in the 1960's, but the Indians had no funds for legal recourse. It took them 20 years to save and hire legal historians to work on the issue, Wedll noted.

Sen. Steven Morse (DFL-Dakota) sponsored the bill which provides a negotiated settlement to the 1837 Treaty dispute between the state and the Mille Lacs Band. I echo his sentiment of: "It's the right thing to do," both morally and economically in accepting the Band's concessions in exchange for cash.

Obviously, the Indians are not asking for their rights to be enlarged but to regain the ones which have been withheld. Band members are set to vote on the negotiated agreement March 2.

If it is not approved by both the Legislature and the Band, the continued litigation could escalate to the cost Wisconsin faced — which lasted 17 years to the tune of $12 million. The Indians in Wisconsin were granted commercial fishing, netting and spearing rights.

In Minnesota, the negotiated settlement calls for the Band to relinquish its commercial fishing and hunting rights in the territory, in exchange for $10 million, a transfer of 7,500 acres of land and a 6,000 acre fishing zone on Mille Lacs Lake. The original treaty granted the federal government 3 million acres of rich timberland from the Ojibwe.

DNR officials say that the fish taken from Mille Lacs through the agreement would result in only a "minute portion of the total harvest" of the lake.

Some groups, such as the "Save Lake Mille Lacs Association," are calling the agreement the "wrong thing to do." They contend that spearing in the spawning season is not significant and that the Band's offer to use small-mesh gillnets catch too many young fish. They are calling the DNR's stance "biopolitics."

That's such an ironic contention, considering the Band is the one who could have used such a term years ago, if the concept had been so defined at that time.

I call the DNR's acknowledgment that the hunting and fishing rights may never have been relinquished as a step in the right direction to the return to the original agreement.

After 150 years, I hope the Legislature will "do the right thing" and approve the negotiated agreement and give back what's rightfully the Band's.

Robin Honsey
Managing Editor

2/17/93

Brainerd Dispatch reconsiders

Brainerd Dispatch
Friday, Feb. 5, 1993

Since it's too warm and slushy for ice fishing and too cold and icy for open-water fishing, anglers are antsy a lot these days. At least they have plenty to talk about — and not just about the fish they aren't catching.

Hunters and fishermen are still keeping a close eye on the legislature. It's up to legislators to consider a proposed settlement between the DNR and the Mille Lacs Band of Ojibwe that covers hunting and fishing for Mille Lacs Lake and 12 counties in east-central Minnesota.

There seems to be a slight shift in sentiment. Some sportsmen who favored taking the issue to federal court and who were dead set against the settlement apparently see promise in a conservation code soon to be released by the Ojibwe.

This newspaper, one of only a couple of Minnesota papers that came out editorially against the out-of-court settlement, also is reassessing position. We await the conservation code and possibility it will defuse the argument.

We have the highest regard for the DNR and for the Ojibwe. We know both parties are interested in the protection of our natural resources.

But we still have to be convinced the settlement will be binding. Our worst fear is that even if the legislature and the Indians approve the settlement, the opposition from sportsmen might continue and then the issue still could wind up in the courts where maybe it belonged in the first place.

In the meantime, the bickering could leave the whole area a black eye that would tarnish tourism and strain relations between Indians and sportsmen. Others fear that the image would suffer even more if there were a long court fight.

But, as we said, the conservation code soon to be released by the Indians may ease tension. Concessions in the code would require Band members to use smaller mesh nets to take game fish and limit them to two deer per year in the 12-county area covered by the treaty.

State Sen. Steven Morse, DFL-Dakota, the senate sponsor of the bill that would ratify the agreement, has listed three reasons for approving the settlement:

- ❑ Treaty commitments ought to be honored.
- ❑ Mille Lacs and the 12-county area could be opened to unlimited commercial fishing if the state lost its case in federal court.
- ❑ The financial and social costs of a bitter court fight would be high.

Still, some sportsmen are not convinced. A leader of the Save Lake Mille Lacs Association claims that small mesh nets would lead to the unnecessary death of small and large fish. The president of a Hopkins sportsmen's club says Indians in other states are illegally netting and selling walleye. The tribes and DNR deny this allegation.

So on and on go the arguments. Who knew a piece of paper signed in 1837 would be raising such a ruckus in 1993?

I support the agreement

I recently attended an open house at St. Cloud State University on the 1837 Tentative Treaty Agreement between the Mille Lacs Band of Ojibwe and the Minnesota Department of Natural Resources.

I believe the open house provided a wealth of information and was extremely beneficial in dismantling the cloud of ambiguity surrounding this issue.

The Save Lake Mille Lacs Association (SLMLA) united the sportsmen and legitimized their racist beliefs. Their main purpose was to "oppose any settlement" between the DNR and the Band of Ojibwe and "assist the state in every way possible to win the lawsuit, if the case goes to court."

The material they distributed supported these goals by careful omittance — as well as distortion and manipulation — of facts. Their dogmatic ideas became the springboard for most of the questions directed at the other participants.

The state's representatives made the treaty seem like the lesser of two evils, instead of presenting it as a positive arrangement for all parties involved.

Even after the threat of victory for the Indians in court, many sportsmen still wanted to take that route. One explanation for this view was the attorney general's assurance it would take many years (10 to 20) and more money than the Chippewa could afford. The Mille Lacs Band knew the importance of money and started saving for this case in 1982, now possessing one-half million dollars. I'm certain if they didn't have the amount they do, there wouldn't be a tentative treaty agreement at all.

Almost all of the sportsmen viewed the agreement as a "toe in the door;" Mille Lacs Lake was the "toe" for them. Despite the many times the Chippewa and others refuted this idea, the sportsmen simply couldn't comprehend the treaty would be final. Their greed, disguised as patriotic duty, is the second component of saving Mille Lacs Lake. They felt it was their patriotic duty to keep the Indians from getting any more rights or land than what their ancestors had parceled out.

Obviously, these men didn't consider the outright genocide committed against Native Americans by the founders of our country as a special privilege.

Misunderstood

I was appalled by their ignorance of Indian culture and life. These statements revealed their assumptions that the Chippewa will act similarly to the white man's systematic exploitation, pollution and destruction of the environment. I doubt they are aware of the symbiotic relationship Indians traditionally have with their surroundings. Chippewa custom necessitates honoring, cherishing and caring for their environment through prudent use of the resources.

I feel this tentative treaty agreement indicates continuing injustice in the relationship between the government and the Ojibwe. The Mille Lacs Band shouldn't have to defend themselves against indignant sportsmen or government officials. Instead, the supporters of Save Lake Mille Lacs Association and the state of Minnesota should eagerly embrace and ratify this agreement as a minuscule way to right the grave injustice inflicted upon the Chippewa.

Diane T[illegible]
St. Cloud

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TREATY NEWS DIGEST

WEEK OF
Feb. 15, 1993
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OPINION

RED WING REPUBLICAN EAGLE 2/16

EDITORIAL

Treaty looks more inviting

Protection of the resource ought to be the main priority in any treaty between the Minnesota Department of Natural Resources and the Mille Lacs Band of Chippewa Indians.

A new tribal conservation code, announced last week, puts a more positive spin on the proposed pact. It bans spearing of walleye in the tribal fishing zone on Mille Lacs Lake during during a special walleye netting season from March 30 to April 15.

The proposed agreement is an out-of-court settlement with the Chippewa, who have been pushing a lawsuit in federal court to enforce rights granted them in a 1937 treaty.

Opponents to the treaty say it puts the resource at risk. The annual walleye harvest allowed under the DNR-Chippewa agreement would be 24,000 pounds, or roughly the same amount of fish caught by anglers on a good three-day weekend on Mille Lacs.

Supporters point to the risk of losing in court. If the Chippewa prevailed, they would be able to net and spear fish in more than 100 lakes. They could harvest fish commercially, taking 250,000 pounds of game fish a year from Mille Lacs and half of the harvestable resources from the other affected lakes.

The tribal conservation code sets special seasons for taking northern pike by spearing and walleye by netting in an exclusive zone of 6,000 acres on Mille Lacs Lake. Walleye would be netted from May 30 to April 15. Bag limit would be six; walleye spearing would be banned. A conservation officer would be required to monitor spearing and netting for fish. In addition, smaller mesh nets would be used to take game fish.

The code also would ban deer shining and limit tribal members to two deer per season. Commercial harvesting of game fish, big game and timber would be prohibited.

Specific provisions will not be part of the agreement or the ratifying legislation. And, indeed, nothing says the tribe cannot change the code any time it wishes. But the self-imposed restrictions send a strong signal that the Indians do not intend to take advantage of territorial hunting and fishing rights.

The settlement also would free Minnesotans from following the path of neighboring Wisconsin. The issue raged there for 17 years before the Native Americans finally won in court, giving them sweeping hunting and fishing rights in northern Wisconsin. The lawsuit was based on the same 1837 treaty being contested in Minnesota.

The concessions are significant and offer assurances that the band intends to be generally as protective of the resource as the state of Minnesota. If those signals continue, the Legislature should approve the treaty.

Distributed by The Information & Education Bureau DNR Building, 500 Lafayette Rd., St. Paul, MN 55155-4046
Scott Pengelly, editor, (612) 296-0903

Ratify the Mille Lacs treaty, pronto

Legislators should get their heads out from under the ice fast and ratify the proposed Mille Lacs treaty before it gets away. This is clearly a case where the leadership of both the Department of Natural Resources and the Mille Lacs band of Ojibwe, who negotiated the compromise, know what they are doing, and the irate public, namely sport fishermen and tribal conservatives, do not.

The Mille Lacs tribal council is giving up far more by supporting this settlement than it stands to gain with a victory should its lawsuit on the 1837 treaty be affirmed. The right to 50 percent of all the fish, deer and possibly timber in 17 Minnesota counties is pretty big stakes to trade for limited control of 4.5 percent of Lake Mille Lacs and a few other lakes and streams. Further concessions by tribal authorities last week restricting deer harvests, banning spring spear fishing and reducing net sizes show the tribe is taking its conservation responsibilities more seriously than do its counterparts in Wisconsin, where spring spearing was a major irritant.

Still, tribal gains in the agreement are significant. The council needs to protect its fragile gambling franchise, which brings economic development and jobs to the reservation. That arrangement would be badly damaged by protracted public bitterness. Tribal conservatives, who don't care about gambling revenues, should still value the acquisition of 7,500 acres close to the reservation — a transfer relatively easy for the state to make, yet a significant addition for the band.

Tribal chair Marge Anderson has worse problems than state legislators do. The Legislature should help her out by passing the compromise before the tribal referendum scheduled for March 2. They should also firmly sink the casino gambling bill that is bad public policy and threatens Indian casinos.

The proposed DNR-Mille Lacs band agreement is nonpartisan, but includes a lot of delicate balances. If grandstanding anglers, angling politicians or tribal spearers win the day and a disruptive court ruling results, the state's environment of honor and civility may be the biggest casualty.

Mille Lacs Ojibway band votes 200-134 to approve fishing, hunting rights pact

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DENNIS LIEN STAFF WRITER

A compromise treaty rights agreement that would give the Mille Lacs Band of Ojibway limited fishing and hunting rights in east-central Minnesota passed a crucial test Tuesday when band members approved it.

Two hundred members voted for the agreement, 134 voted against it, and 5 ballots were declared invalid.

The decision essentially throws the issue to the Minnesota Legislature, where its future is unclear. "We're hoping they can bring their side along," said Don Wedll, the band's natural resources commissioner.

The band's four-member assembly still must vote on the compromise reached last fall by band leaders and state Department of Natural Resources officials. But Wedll said Tuesday night that he expects the assembly to ratify the agreement.

He said reservation residents generally supported the compromise, while those living in the Twin Cities opposed it. "I think what people are saying is, 'We can live with this and we don't want to go to court,' " Wedll said.

Urban residents, he said, "have a whole different philosophy. They wanted more money. They don't see what benefit this is to them."

The compromise, an attempt to settle off-reservation hunting, fishing and gathering rights the band believes it reserved in an 1837 treaty, has been subject to rancorous debate since it was announced last fall.

Sportsmens' organizations representing thousands of Minnesotans have urged legislators to vote

VOTE CONTINUED ON 10B ▶

VOTE

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against it, and let a federal court decide the issue.

They contend the court would give them a better deal, but the DNR and other compromise advocates, mindful of a nasty battle over Indian spearfishing rights in Wisconsin during the 1980s, say that gamble isn't worth taking. A federal judge gave Wisconsin Ojibway extensive off-reservation rights over much of the northern half of the state.

Until recently, it was believed the compromise would be approved easily by a majority of the band. But it appeared to become increasingly fragile, as many Ojibway, tired of non-band members' complaints, favored going to court to get broader rights.

Ballots were cast last week in the metro area and at four locations in east-central Minnesota on Tuesday.

The compromise was the product of an effort to settle a lawsuit filed by the band in 1990 to assert the 19th-century rights.

It calls for the transfer of 7,500 acres of land from the state to the band, cash payments totaling $10 million and limited fish netting and spearing rights in the 12-county section of Minnesota that is part of the 1837 ceded territory.

Under terms of a recently released band conservation code, the Mille Lacs band would net a limited amount of walleyes each year from an exclusive fishing zone on Lake Mille Lacs and spear some game fish from six other lakes in the ceded territory, as well as about 20 miles of the St. Croix River.

The code also governs deer hunting and other fishing, hunting and gathering activities in the ceded territory by band members.

If the Legislature approves the agreement, Gov. Arne Carlson has indicated he would sign it, according to Wedll. Only a fairness hearing before a federal judge would then stand in the way of the agreement becoming law, he said.

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Settlement better than long litigtion

124

by Elmer Andersen

Commissioner Rod Sando and the Department of Natural Resources has come to an agreement with the Mille Lacs Chippewa Indian band to settle a suit relative to fishing rights on Mille Lacs Lake and hunting and fishing rights on other named lakes and rivers in the Mille Lacs Lake area. It involves Minnesota transferring 7,500 acres of public land, paying $10 million dollars, permitting netting and spearing on 6000 acres of Mille Lacs Lake (4.5 percent of the lake's area) and other fishing rights on nearby lakes and streams. Netting and spearing of some fish will be permitted in the designated area of Mille Lacs Lake. There are other limitations, and the Department of Natural Resources continues to have a role. The entire agreement is a complicated 40-page document. It does provide for permanent settlement of issues arising out of treaties of 1837 and 1855 between the U .S. and the Indian tribe before Minnesota was a state. It requires approval by the tribe, by the legislature and the District Court. There is a large body of case law relating to similar treaties.

There is some pressure on the legislature to refuse to approve and let the matter go to court. The Wisconsin experience in a similar situation is not encouraging. Its case went to court, was litigated for 17 years before settlement, cost the state $12 million in legal fees, and the state lost the case. Other states have won cases. On balance it would seem Minnesota would be well advised to settle the matter now, retain amicable relations with the tribe which has its own public relation reasons to prefer settlement to long drawn out litigation and tense confrontation. Concern and irritation by sportsmen and women is understandable. On the whole matter of U.S. treaties with the Indians, they have much more cause for complaint and dissatisfaction than do the non-Native Americans of the United States.

What begs for attention and negotiation is a termination of all the treaties in a fair and legitimate settlement to put an end to sovereign Indian nations within the United States. It will only become a more and more difficult problem that ultimately must be resolved. Native Americans must be integrated into full participation in the American system while retaining the rich personal traditions and heritage. Right now, in the present case, settlement is to be preferred to long and expensive litigation with uncertain result.

Editorials

Consider Indian issues separately

Minnesota legislators are juggling two controversial issues involving American Indians — the Mille Lacs L[illegible] fishing settlement and a video lottery bill. The smart money in St. Paul says many lawmakers are considering a compromise on the two issues.

Many people lump these issues into a single fear that Indians are getting "all the breaks." Legislators are getting the message. As one longtime Capitol observer put it: "For political reasons a lot of legislators will say, 'I voted for Indians on video lottery but I've got to go with the sportsmen on the other.' "

Elected officials should know better. Each of these issues should be considered on its merits.

Legislators could be compromising more than votes; they could be compromising principles in order to please confused constituents.

The only thing these two issues have in common is their relationship — at least in the minds of many Minnesotans — to Indian rights. Many who oppose the Mille Lacs Lake settlement see it as giving up hunting and fishing rights to the Mille Lacs Band of Chippewa. And many who support allowing video gambling in bars, restaurants, service clubs and resorts see it as "leveling the playing field" with Indian-operated casinos.

There's a disturbing undercurrent of racism in the dialogue circulating about these issues. There isn't much squawking when a group of white Minnesotans gets a tax break or some other special favor from the state. The Iron Range, for example, has received several breaks to jumpstart that region's economy. And Iron Rangers didn't have any historical treaties to support those favors.

The tentative agreement between the Minnesota Department of Natural Resources and the Mille Lacs Chippewa involves complex questions. Do historical treaties apply? Does the proposed settlement give up too much to avoid a lawsuit? Would the settlement have an adverse economic impact on the state's tourism industry?

The video lottery proposal also should be judged according to its merits. Lawmakers should consider whether they want to expand gambling opportunities and what impact such a move would have on charitable gambling, on state lottery revenues and on individuals.

Legislators should form an opinion about these two complex bills only after careful study — then vote their principles. They should not be swayed by constituents who feel threatened by the sudden progress of American Indians.

Mille Lacs treaty

Since it's too warm and slushy for ice fishing and too cold and icy for open-water fishing, anglers are an antsy lot these days. At least they have plenty to talk about — and not just about the fish they aren't catching.

Hunters and fishermen are still keeping a close eye on the Legislature. It's up to legislators to consider a proposed settlement between the DNR and the Mille Lacs Band of Ojibwe that covers hunting and fishing for Mille Lacs Lake and 12 counties in east-central Minnesota.

There seems to be a slight shift in sentiment. Some sportsmen who favored taking the issue to federal court and who were dead set against the settlement apparently see promise in a conservation code soon to be released by the Ojibwe.

This newspaper, one of only a couple of Minnesota papers that came out editorially against the out-of-court settlement, also is reassessing its position. We await the conservation code and the possibility it will defuse the argument.

We have the highest regard for the DNR and for the Ojibwe. We know both parties are interested in the protection of our natural resources.

But we still have to be convinced the settlement will be binding. Our worst fear is that even if the Legislature and the Indians approve the settlement, the opposition from sportsmen might continue and then the issue still could wind up in the courts where maybe it belonged in the first place.

In the meantime, the bickering could leave the whole area a black eye that would tarnish tourism and strain relations between Indians and sportsmen. Others fear that the image would suffer even more if there were a long court fight.

But, as we said, the conservation code soon to be released by the Indians may ease tension. Concessions in the code would require band members to use smaller mesh nets to take game fish and limit them to two deer per year in the 12-county area covered by the treaty.

State Sen. Steven Morse, DFL-Dakota, the Senate sponsor of the bill that would ratify the agreement, has listed three reasons for approving the settlement:

— Treaty commitments ought to be honored.

— Mille Lacs and the 12-couty area could be opened to unlimited commercial fishing if the state lost its case in federal court.

— The financial and social costs of a bitter court fight would be high.

Still, some sportsmen are not convinced. A leader of the Save Lake Mille Lacs Association claims that small mesh nets would lead to the unnecessary death of small and large fish. The president of a Hopkins sportsmen's club says Indians in other states are illegally netting and selling walleye. The tribes and DNR deny this allegation.

So on and on go the arguments. Who knew a piece of paper signed in 1837 would be raising such a ruckus in 1993?

Editorial

Legislature should support DNR on Chippewa

BY ELMER L. ANDERSEN

Commissioner Rodney Sando and the State Department of Natural Resources have come to an agreement with the Mille Lacs Chippewa Indian band to settle a suit relative to fishing rights on Mille Lacs Lake and on other named lakes and rivers in the Mille Lacs Lake area and hunting in the area. It involves Minnesota transferring 7,500 acres of public land, paying $10 million dollars, permitting netting and spearing on 6,000 acres of Mille Lacs Lake (4.5 percent of the lake's area) other fishing rights on nearby lakes and streams. Netting and spearing of walleye will be permitted in the designated area of Mille Lacs Lake, but no netting or spearing of game fish.

There are other limitations, and the DNR continues to have a role. The entire agreement is a complicated 40 page document. It does provide for permanent settlement of issues arising out of treaties of 1837 and 1855 between the U.S. and the Indian tribe before Minnesota was a state. It requires approval by the tribe, the legislature and the District Court. There is a large body of case law relating to similar treaties.

There is some pressure on the legislature to refuse to approve and let the matter go to court. The Wisconsin experience in a similar situation is not encouraging. Its case went to court, was litigated for 17 years before settlement, cost the state $12 million in legal fees, and the state lost the case. Other states have won cases. On balance it would seem Minnesota would be well advised to settle the matter now and retain amicable relations with the tribe which has its own public relation reasons to prefer settlement to long drawn out litigation, and tense confrontation. Concern and irritation by sportsmen and women is understandable. On the whole matter of U.S. treaties with the Indians, they have much more cause for complaint and dissatisfaction than do the non Native Americans of the United States.

What begs for attention and negotiations is a termination of all the treaties in a fair and legitimate settlement to put an end to sovereign Indian nations within the United States. It will only become a more and more difficult problem that ultimately must be resolved. Native Americans must be integrated into full participation in the American system while retaining their rich personal traditions and heritage. Right now, in the present case, settlement is to be preferred to long and expensive litigation with uncertain result.

Mankato Free Press

January 25, 1993

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Mankato Free Press 1-25-93

Editorial

Adopt Mille Lacs treaty agreement

No other issue before the Legislature will stir emotions more than the proposed fishing agreement with the Mille Lacs Band of Chippewa. The debate hits at the center of Minnesotans' greatest passion: fishing.

Mille Lacs, more than any other lake, represents fishing in the state. And Mille Lacs' bountiful pool of walleye represents the quintessential catch for most anglers.

So it's no surprise that a proposed agreement between the state and the Chippewa to allow Indian netting and spearing of walleye on the lake is stirring deep feelings among Minnesota sportsmen.

While the pact agreed to by the Department of Natural Resources and the Mille Lacs Chippewa is imperfect, it is in the best interests of conservation, anglers and Indians. The Legislature should approve the pact.

■

This fishing agreement is, in effect, an out-of-court settlement with the Chippewa, who had been pushing a lawsuit in federal court to enforce rights granted them in an 1837 treaty.

Some sporting groups opposed to the agreement argue that the Legislature should reject the pact and take its chances in court. That would be folly. The Chippewa band has a very good chance of winning such a lawsuit.

If the Chippewa were to succeed in federal court, they would be able to net and spear fish on more than 100 lakes. They could harvest fish commercially, taking 250,000 pounds of game fish a year from Mille Lacs and half of the harvestable resources from the other lakes.

The out-of-court agreement would cover only seven lakes, including just 4.5 percent of Lake Mille Lacs. The Chippewa would not be allowed to harvest fish for commercial sale. The band would be limited to catching about 24,000 pounds of game fish on Mille Lacs each year.

Some sports groups and resort owners argue that the agreement goes too far — allowing too many fish to be harvested and inviting economic hardship as fewer anglers head for Mille Lacs.

But the yearly harvest allowed the Chippewa under the plan will not deplete the lake's game fish population. The 24,000-pound yearly limit is about the same amount of fish caught by anglers on a good three-day weekend on Mille Lacs.

It's questionable whether resort owners would be hurt. There might, at first, be perception problems, but the fact is that walleye fishing would not be seriously harmed if the agreement were passed. It is difficult to imagine that Mille Lacs, which remains so popular with anglers and vacationers, would suddenly see a dramatic drop in visitors if the agreement were approved.

It is in the best interest of Minnesotans to settle this debate out of court. We do not need a replay of the bitter 17-year battle that took place in Wisconsin. Indians there finally won a federal court case that gave them sweeping hunting and fishing rights in much of northern Wisconsin. That lawsuit was based on the same 1837 treaty now being debated in Minnesota.

Legislators should still try to improve the agreement to make it more palatable to anglers and to those with an economic interest in Lake Mille Lacs.

But in the end, the Legislature needs to reach a settlement with the Mille Lacs Band of Chippewa. To do otherwise will likely result in a court decision that will seriously harm the premier game fishing lake in Minnesota.

Outdoor Notes . . .

By [illegible]nn Meyer, Publisher

TAKE TIME TO DECI[illegible]EN TAKE ACTION. Falling in line with the general tr[illegible]being skeptical of our elected officials is easy to understa[illegible] The "what's the use" attitude overcomes some people, and I'll admit there are times when there isn't much we can do about some issues.

This is not the case with the Mille Lacs treaty suit. Not many groups or individuals will be as deeply involved as the outdoor community. Your opinion can and should be heard. That's w[illegible] Outdoor News has dedicated pages 29 and 30 of this issue to information needed to direct your call or letter to the proper people.

With the freedom to exp[illegible] our views that we enjoy in this country comes responsibility. You owe it to yourself and your fellow sportsmen to educate yourself on this case as completely as possible before making your decision. Believe me...this one is not a simple matter.

KEEP AN OPEN MIND. When I first heard of Indian tribes challenging these old treaties my impression was that someone was looking for something for nothing. As I started to read of treaty court rulings involving land, mineral rights and hunting/fishing rights, it seemed likely that some of the tribal claims were valid.

Remember, these treaties were originally signed by the U.S. government not the individual states. However, the federal government does little to help settle these disputes, instead lets the state governments and the tribes try to work out their differences. If they are not successful, the dispute finds its way to the U.S. Supreme Court and both parties live with that ruling. And that's my point! The Supreme Court has ruled favorably for the Indians in most of the situations similar to the Mille Lacs case... but not all. Some cases used as examples for thinking the state has a good shot at winning in court are not [illegible]ar.

C[illegible]DER ALL SIDES OF THE STORY. Outdoor News readers, so far, have basically only heard one side of the story. In order to make a good decision you need to hear all sides. During the next few weeks Outdoor News will try to provide you with this information.

Many peo[illegible]ave used the Wisconsin episode as a pattern by which to [illegible] the Mille Lacs case. I don't know if the State of Wisconsi[illegible]ungl[illegible]he case or not as some have said. Whether the State of Minnesota has a better chance to win in court because of what was or was not done in Wisconsin is not an easy call. That's for lawyers to argue. One thing is for sure, no one wants that situation to replay in Minnesota.

. STILL TOO MANY QUESTIONS. How does this case affect you. Will it change your fishing and hunting? What happens if the case goes to court and the state wins? Settled once and for all? Hardly. The losers appeal, and the public debate goes on. These cases don't get settled for years. I read an article which cla[illegible]d the Wisconsin case lasted fourteen years.

What if the Band wins? Will their hunting and fishing rights be exactly like those granted the Chippewa in Wisconsin? Don't let anyone tell you that they know what the outcome will be. That's in the hands of the judge. But if the judge rules in favor of the Band, the state will probably file an appeal, and the debate goes on.

Another question to ask yourself. What about the people who live in the ceded territory, both In[illegible] and non Ind[illegible]? They ha[illegible]o live with the consequence[illegible] a treaty ag[illegible]ent or co[illegible]decision. Is it important that we as Minnesota[illegible] "go to the wall" over this case. Will a court decision set the pace for the other law suits yet to come? Will losing open the floodgates of contested treaties in Minnesota? Will winning prevent other bands from filing law suits?

THERE IS NO RUSH. Sounds like I'm in favor of an agreement...to tell the truth, I have not decided. Just moments before press time we [illegible]eived a copy of the proposed agreement. However,the [illegible]d's conservation code has not yet been completed. During [illegible] week we'll study the pro[illegible]al, hopefully some of our questions will be answered.

MILLE LACS CHIPPEWA CASE ▼ St Paul 1/19/93

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State should settle fishing rights suit...

Are non-Indian Minnesotans' interests better served by settling lawsuit or fighting it?

You don't settle a lawsuit because you believe your adversaries to be "right." You settle because you fear your adversaries might win in court.

If Minnesotans would focus on this idea, debate over the proposed settlement of the fishing rights lawsuit being pressed by the Mille Lacs Chippewa would be more fruitful.

Our purpose here is not to argue fairness or justice, or to offer a tribal perspective on the dispute. Rather, we address ourselves to the public policy question before legislators: whether the interests of non-Indian Minnesotans are better served by settling this lawsuit or fighting it.

The issue before the Legislature is *not* whether Indian treaty claims are an offense against "equal rights." Perhaps they are, perhaps not. But federal judges have demonstrated repeatedly that they believe these rights exist. This is the reality legislators must face.

We believe, as we have stated before, that the risks of litigation are too great, and a settlement the better part of wisdom for the state. The agreement between the Department of Natural Resources and the Mille Lacs Band could no doubt still be improved, in the sense of being made more palatable to many Minnesotans. We hope room for some such adjustment remains.

But one way or another, legislators should settle this case while they still can.

Is the settlement perfect or painless? Of course not. Few lawsuit settlements are. Yet the 24,000 pounds of walleye the tribe would be allowed to net and spear from a tribal fishing zone is about what non-Indian sport anglers take from the lake on a good three-day weekend. And while it's possible that Indian netting and spearing rights will discourage some anglers from visiting Mille Lacs, inflicting economic harm on the area, that outcome will have resulted more from the exaggerated predictions of a destroyed fishery now being proclaimed by settlement opponents than from the actual impact of tribal fishing.

It could also be argued, of course, that settling this dispute amicably is the honorable thing for Minnesota to do, the best way to minimize hard feelings and the best way to keep anglers coming to Mille Lacs.

But putting all that aside, on purely cold-blooded, self-interested grounds, non-Indian Minnesotans would be foolish not to settle this case.

...Cases favor tribes

History makes settlement look like quite a bargain.

In arguing that the state should fight the fishing rights lawsuit filed by the Mille Lacs Chippewa, settlement opponents cite two treaty rights cases lost by Indian tribes: in Nevada and Oregon. In those cases federal courts held that tribes had given up hunting and fishing rights when they accepted payment for "all right and title" to a tract of land.

But those cases are different from Minnesota's. Neither of the treaties in the West had expressly reserved hunting and fishing rights to Indians, as did the 1837 treaty at issue in Minnesota. In its Nevada decision, the 9th U.S. Circuit Court of Appeals specifically drew this distinction. The case most like Minnesota's was Wisconsin's, which involved the same 1837 treaty. In that case, the tribe was awarded rights to half the total walleye harvest in the territory covered by the treaty.

Minnesota's most persuasive claim is that the Mille Lacs Chippewa surrendered their fishing rights under an 1855 treaty that established the Mille Lacs reservation. The band will reply that whatever the language of that treaty says, it is implausible that Indians in the 1850s willingly gave up rights that were then crucial to their very survival. And it is an established principle that what tribes believed a treaty to mean is what it means.

Even under the 1855 treaty, the Mille Lacs Chippewa probably have fishing rights, including commercial fishing rights, on Lake Mille Lacs — the big prize in Minnesota's case — because the reservation was placed on its shore.

And because Mille Lacs is extraordinarily large, commercial fishing is a viable option for the Mille Lacs Chippewa, who now have resources to launch such a venture through their casino profits.

All of which makes the settlement agreement, under which the Chippewa agree to forego commercial harvest and to disavow future claims under either the 1837 or 1855 treaties, look like quite a bargain.

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Mille Lacs agreement should be ratified

The proposed Mille Lacs fishing treaty with the Ojibwe band is a contentious and sensitive issue that is expected to tie the Minnesota Legislature in knots.

There are strong emotions on both sides of the issue, but anyone deliberating on the subject should get all the facts before reaching a decision.

The Legislature will be asked to ratify an agreement reached after two years of negotiations, by Department of Natural Resources and the Mille Lacs Band of Ojibwe. If the agreement is not ratified, the Ojibwe will resume a lawsuit in U.S. District Court in St. Paul to enforce rights that they believe was granted them under an 1837 treaty with the U.S. government.

A similar lawsuit, based on the same treaty, was won by the Chippewa Indians in federal court in Wisconsin. The suit dragged on for 17 years at a cost of $12 million to the State of Wisconsin. The result was far more advantageous to the Chippewa and far more injurious to the state than is the current proposed agreement in Minnesota.

ting and spear fishing if the agreement is approved. That is a tiny fraction of the 2 *million* Minnesotans who have fishing licenses and is not likely to have a significant impact on natural resources.

The agreement also provides for a one-time payment of $10 million to the band for giving up treaty rights. Fifty percent of the money would be used for the next 10 years for natural resource management and law enforcement. The state also would convey 7,500 acres of land to the Ojibwe.

Another thing to remember is that the current agreement is not unique. A similar agreement affecting Leech Lake was approved by the Legislature in 1973 and other agreements affecting Grand Portage and Nett Lake were approved in 1988. DNR officials say these agreements work so well that "no one ever hears about them."

An even more cogent argument in favor of ratifying the agreement lies in what happened in Wisconsin. After the court ruling in favor of the Chippewa, the state experienced four years of confrontation as

(Continued on next page)

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"MILLE LACS AGREEMENT . . ." (continued)

Rochester Post-Bulletin, January 18, 1993

The court ruling allowed the Chippewa to engage in commercial fishing, which is *prohibited* by the DNR-Ojibwe agreement. In addition the ruling gave the Chippewa fishing rights in the northern *two-thirds* of Wisconsin, whereas the Minnesota agreement covers only 4.5 percent of Lake Mille Lacs plus six smaller lakes.

If the suit goes to trial and the state loses, the Objibwe would be permitted to harvest fish commercially in 137 Lakes, the Mississippi River and the St. Croix River. The total harvest allowed would be 250,000 pounds of game fish a year from Lake Mille Lacs and 50 percent of the harvestable resources from the other lakes. Under the DNR-Ojibwe agreement, the Ojibwe could take only the amount of fish allowed in the rest of Lake Mille Lacs — four pounds per acre. This provision would be enforced by game wardens deputized both by the Ojibwe band and by the DNR.

A key issue is that the agreement permits the Ojibwe to use nets and spears for fishing in a section of Lake Mille Lacs covering only 4.5 percent of the lake. Netting and spear fishing obviously are objectionable to most anglers and this prompts an emotional response from many Minnesotans. It should be remembered, however, that there are only a relatively small number of Ojibwe residents (800 to 1,000 on the reservation adjacent to the lake and 1,000 to 1,500 in the Twin Cities). Jim Genia, deputy solicitor general for the Ojibwe, estimates that only 15 to 20 people would actually be engaged in netanglers attempted to prevent the Chippewa from using the rights granted by the court. The adverse publicity damaged the state's resort business throughout this period and caused substantial financial loss to resorts and other businesses.

In some cases, National Guard troops had to be called out and law enforcement agencies were used to prevent violence. One leader of the anti-treaty groups eventually was fined $182,000 for civil rights violations.

Avoiding such dangerous confrontations was one of the motives of the DNR and the Ojibwe in reaching an agreement under which both sides made substantial concessions.

Minnesota does not need to repeat the Wisconsin experience. The agreement is a reasonable compromise and can be put into effect without friction, just as was done in the case of Leech Lake.

The full text of the treaty agreement is scheduled to be published and distributed soon. Legislators and others would do well to study it carefully and to weigh the consequences if the treaty is rejected. If the lawsuit is resumed, the court is likely to follow the Wisconsin precedent and rule in favor of the Ojibwe.

If that happens, the impact for the state and for Minnesota anglers will be severe.

The Legislature can avoid damaging consequences and potenial violence by ratifying the agreement reached by the DNR and the Ojibwe.

OPINION

Duluth 1/17

Don't narrow legislative focus

As party control wanes, we must not lose our common goals amid special interests

Most of Minnesota is outdoors, especially in the Northland, where there are more trees than people and more mosquitoes than anything.

So we're receptive to an "outdoors caucus" in the Minnesota Legislature. Democratic government means diverse interests seeking common ground in compromise and to win the day with persuasion or votes.

But we also look with a certain trepidation on formation of the Legislative Sportsmen's Caucus.

Since we support a tentative agreement between the Minnesota Department of Natural Resources and the Mille Lacs Chippewa, we hope this new group is not coalescing to fight that pact, as some believe. Sen. Bob Lessard, Senate leader of the group insists it is not.

The other reason for our concern is that we'd hate to see a Balkanization of the Legislature along special interest lines. With the gradual weakening of political party influence and the rise of lobbyist power, there's already been too much of this.

Many people scorn partisan labels and motives. It's true some bad things are done in the name of party loyalty, but we don't know of a better system for letting people with broad common goals have their views reflected in government.

As party discipline has declined at state and national levels, lobbyists representing special interests have rushed to fill that vacuum — and have done it so effectively many thoughtful people are seeking ways to limit that influence.

Members of the politically incorrect sportsmen's group (no women anglers or hunters?) have a right to join on issues of mutual concern. They cite apathy or opposition from urban lawmakers as one reason they formed. But then the Twin Cities metro area now holds more than half of all Minnesotans and should wield a dominant influence.

Protecting interests of outdoor sports enthusiasts can be a noble goal; creating the first of many special interest fiefdoms that will defy even party discipline would not.

COMMENTARY

The opinions expressed by letter writers or commentary articles are not necessarily those of Outdoor News.

Several years ago I spent a warm spring evening shooting pool with a friend in a tavern in northern Wisconsin. The walleyes were running, and boat landing confrontations between Indian spearers and protesters occurred nearly every night. Yet, in the bar, the most popular song on the jukebox was "Beds Are Burning," by the Australian band Midnight Oil. The lyrics to that song go like this:

The time has come
To say fair's fair
To pay the rent
To pay our share.
The time has come
A fact's a fact
It belongs to them
Let's give it back.

How ironic that the number one song in northern Wisconsin that spring was about restoring the rights of Australia's Aborigines. Before going any further, I'd best make something clear. I have concerns about the potential impact upon the environment and conservation programs that can result from the settlement – in or out of court – of treaty rights disputes. However, I also worry that a handful of sign-waving yahoos at a protest or rally can do more damage to the future of hunting and fishing than Fund for Animals, People for the Ethical Treatment of Animals, and the Humane Society of the United States combined.

Think of what we've already seen occur in northern Wisconsin. Sorry, but wearing a T-shirt that says Save A Walleye, Spear An Indian does nothing to further the cause of conservation. It does, however, send a powerful message to the general public that persons who call themselves "sportsmen" are really racist certainly. Anyone who wears such a shirt is certain ignorant of the definition of the word "sportsman," which means someone who enjoys open-air sports such as hunting and fishing, and embodies such human qualities as fairness and courtesy. Let's put the shoe on the other foot. How would you feel if you saw an anti-hunter wearing a T-shirt which said Save A Deer, Shoot A Hunter?

In fact, let's walk a mile in those shoes. You often hear the criticism of treaty rights that "Those treaties are over 150 years old," and should be rendered meaningless or nullified by Congress. If the rights do indeed exist, this thinking goes, then

(See Commentary, Page 3)

Commentary

(From Page 2)

Indians should be required to use only the methods of hunting and fishing available to them when the treaties were signed.

Hmm, now that makes sense, doesn't it? Well, if you follow the same logic, then no one should be able to own anything other than a muzzleloading gun, because that's all that was available when the Second Amendment was enacted. Certainly few people believe we should nullify the U.S. Constitution and the Bill of Rights just because they are over 200 years old. If anything, those documents have become more significant because they have survived two centuries.

Among the rights which all of us – Indian and non-Indian -- share are the freedom of speech and the freedom of assembly. Unfortunately, some who choose to exercise those rights are extremists who say they speak for others. In northern Wisconsin, too often it seemed that boat landing protests were no more than an excuse for locals to get out and drink some beer on a week night. Yet the media never had trouble finding someone wearing a racist T-shirt or carrying an offensive sign who was willing to speak out for sportsmen.

Now it doesn't take a rocket scientist to figure out that emotional issues, alcohol and the press don't mix. These situations are where racism is most likely to rear its ugly head and be duly recorded by the media. The general public may never understand how a treaty rights settlement impacts natural resources, but they darn sure get the message when the camera flashes on the guy wearing a Save A Walleye, Spear and Indian T-shirt.

This is why it is up to the state's sportsmen to act responsibly and target their criticism at real concerns and not the color of someone's skin. Start by educating yourself about the specifics of the proposed settlement -- Outdoor News has published as much as is known. Then, as you weigh the issue in your mind, try to look at the big picture. Consider not only the fate of walleyes, but also of people who live in the Mille Lacs community. They are the ones who ultimately must live with whatever is decided. Realize, too, that treaty rights are as important to Indian people as your right to bear arms is to you.

Also, don't be afraid to speak out when you hear a so-called sportsman say racist remarks. To criticize a gillnet is one thing; to criticize the man who uses it is quite another. Remember, even though the Mille Lacs Treaty rights dispute affects all Minnesota citizens, the state's sportsmen are the ones in the public eye. It is imperative to put our best foot forward and demonstrate to the public that we deserve to be called sportsmen.

Shawn Perich

OP/ED

Opinions and editorials from our staff of contributing editors.

Greg Hohlen

Treaty should be settled out of court

I would like to caution everyone in the local area as to what is at stake with the treaty issue. The proposed settlement between the DNR and the Band offers a solution far superior to the potential outcome of a court case.

The 1837 Treaty is a legal document between the U.S. government and the Mille Lacs Band. This document is older than the state of Minnesota. It recognizes certain rights of the Mille Lacs Band in exchange for land. Among these rights are the rights to the natural resources in this area. It recognizes the Mille Lacs Band as a legitimate governmental body. Subsequently the state imposed regulations and ignored the implications of the treaty. The Band has spent several years preparing for a legal remedy or clarification of what these rights are and how they should be articulated.

In past cases, the Federal courts have consistently recognized the Tribe's rights as described in these treaties. In fact, the 1837 Treaty in question here, has already been decided in a Federal Court in Wisconsin. The Mille Lacs Band is forced to pursue its rights through a separate district court but the issue before the court is essentially the same.

As a result of the Wisconsin Voight decision, the court recognizes the Tribe to have significant rights. As a result of the decision, the local economy lost enormously due to the high level of protest and confrontation that ensued.

A settlement could avoid much of the serious confrontations and losses to the local economy that were witnessed in Wisconsin. The main differences between the proposed settlement and litigation are detailed as follows: (Outcomes due to litigation are based on the Voight decision)

1. The settlement prohibits commercialization of big game and game fish. Litigation would allow commercialization of up to 50 percent of fish harvest.

2. In the settlement, netting and spearing are restricted to a small portion of Mille Lacs (4.5 percent) and the remaining lakes in the ceded area. Litigation would allow netting and spearing throughout the ceded area, including all of Mille Lacs Lake.

3. The settlement will allow for bag limits to remain unchanged. A court decision would result in a reduction in bag limits.

4. The settlement allows for control of the outcome and an agreement that reduces confrontation. Litigation will polarize sides and will result in more confrontation and loss of business to the local area.

Having followed this issue closely, and having talked to key people from several aspects of this issue, I am quite certain that the state's case is no better than the case Wisconsin brought to court. A case that Wisconsin list badly.

The DNR likes to state publicly that "We have a good case," however, in more private conversations they clearly indicate serious questions about the strength of the state's case, and hope to settle to avoid the very serious losses that may result from litigation.

Most of the pressure to go to court comes from people who have little history or experience with constitutional or treaty laws. Many of these people are also from outside the local area. They have nothing to lose if this case is lost. The local people and businesses are faced with the biggest potential loss. A loss of community as a result of the hatred that has been surfacing, an economic loss as a result of negative publicity and a loss due to people failing to work together.

The Legislature, the DNR and the governor are in a strange situation. If the political heat gets bad, they can take the easy way out and "let the court decide." It is up to the local community to be heard, and to help the Legislature make a tough decision — a decision in favor of the local economy and community and a decision to settle.

So, if you believe as I do, that the state's case is uncertain, and that a negotiated settlement is in favor of the local economy and the local community, please speak out. I would like to challenge the local leadership to consider what is at stake, and take an active roll in avoiding the situation that developed in Wisconsin. A situation that resulted in a high level of hatred and violence. Let the Legislature know of your concerns. Please don't let outsiders control what happens to our economy and our community and our resources.

Editor's Note: Greg Hohlen is a contributing columnist and lives in the Mille Lacs area.

Messenger Mailbag

Don't give away my freedom

The following address was delivered to the Hunting and Angling Club's rally last Saturday on the steps of the State Capitol.

I am a homeowner on the west side of Mille Lacs Lake and am here to express my agreement with those who oppose what we understand is the intent of the negotiations between the Mille Lacs Band of Ojibwe and the DNR under the direction of Governor Arne Carlson.

The issue of "rights" is being used to manipulate feelings with the purpose of obscuring, clouding and detracting from the issues at hand. Which are to insure responsible governmental policy and management of our natural resources, and to insure equal rights to all citizens regarding their use.

The person who uses personal prejudice to discriminate against another in order to gain superior privilege or position is in violation of the principles of equal rights.

Likewise, so is the person who claims to be discriminated against in order to draw sympathy and attention from the facts as a ploy to cloud the issues to gain superior privilege for position for himself.

Some things are right! Some things are wrong!

Equal responsibility

The responsibility to protect, preserve and restore the natural resources of our land, our waters and our air belongs to all of us equally. Likewise, the privilege to use them within the protective restrictions of law and sound government policy applies to all citizens.

With increasing awareness of the worth and dignity of every person with increasing awareness of the fragility of our environment — and our misuse of it, the people of our nation and our state have been treading the trail to recovery. We are not there yet! But, we do not take a step along the way while our progress toward the right goals is smashed away.

I object to special privileges being given to any individual or group above and beyond what I am given. I object especially when particular decision would [illegible] rights which we already have equally within the law. I object even more when [illegible] jeopardize the existence and quality of natural resources themselves, and provide a possible means for their destruction — both now and in the future.

No bargains

Governor, senators, representatives, all of you elected officials who have been given the job by us to speak and act and vote for us in government, we say: "Do not bargain away, make deals, set policies, or enact laws without our consent. Do not make decisions against our will which will deprive many of us of our equal rights for the sake of any special interest groups.

Just as taxation without representation is wrong, so is privilege without responsibility.

Regardless of any other issue, what we must come to agreement upon is the preservation of our right to equal treatment, and the guarding of our resources into the future.

Should our lakes or forests or any of our natural resources be damaged, depleted or destroyed by improper management, or our freedoms qualified by irresponsible government policy, it is a loss for all Minnesotans, all Americans for all of our tomorrows!

Yes is a time to negotiate.

Yes is a time to compromise.

But there is never a time to negotiate away my freedom in order to give someone else special privilege.

There is never a time to compromise any person's right to equal treatment — or to compromise the health of our environment.

Mary Jane Griffin
Onamia

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West Central Tribune

Willmar, MN

January 12, 1993

Agreement with Mille Lacs band a good compromise

Editorial

The proposed agreement between the Mille Lacs Chippewa band and the state over hunting and fishing rights is reasonable and fair to all sides. It will avoid a long court battle. It will defuse potential for violent confrontation.

The issue already has generated a lot of conflict. A vocal minority opposing the agreement strikes fear in the hearts of lawmakers. But, once informed about the background and provisions of the agreement, a majority of Minnesotans will support it. We hope the state Legislature has the foresight and courage to authorize the agreement.

Compared to the 1837 treaty on which the Chippewa lawsuit is based, the Mille Lacs band is giving up the most. If the state does not approve and accept the agreement, there's a good chance the band would prevail in a pending lawsuit.

If it did, get ready for confrontation similar to what occurred in Wisconsin several years ago. A similar lawsuit there lasted 17 years. In 1987 a judge ruled in favor of the Chippewa plaintiffs, reaffirming hunting and fishing rights from the same 1837 treaty.

Things have settled down in Wisconsin now. We don't need a replay in Minnesota. The verbal clashes this weekend between Indians and opponents of the agreement strongly suggest that violence could develop.

In the original 1837 treaty the Chippewa (Ojibwe) bands ceded 12 million acres of land to the U.S. for timber cutting. This included much of east central Minnesota, including Lake Mille Lacs. In return the Indians retained the right to hunt, fish and gather wild rice on the ceded lands.

In the ensuing years the Indians were gradually pushed on to small reservations as land-hungry settlers moved in. Only recently did the Mille Lacs band begin researching past treaties.

In 1990 the band filed suit against the state, seeking to have its rights under the treaty recognized. The state Department of Natural Resources has been working closely with band, and supports the proposed agreement. Conservation of natural resources is one of the agreement's strong points.

In return for giving up hunting, fishing and ricing rights to 12 million acres, the agreement would give the band the following:

- 6,000 acres on Lake Mille Laces (4.5 percent of the lake's surface) for tribal fishing.
- 7,500 acres of state land.
- $10 million over a five-year period, half of which would be used for natural resources.
- Netting and spearing in six additional lakes, part of the Rum River, and 20 miles of the St. Croix.

In addition, the proposal would:

- Make payments to counties in lieu of taxes for the land.
- Prohibit casinos on the new land.
- Prohibit the band from commercial harvesting of game, fish, or timber.
- Limit the walleye harvest in the tribal fishing zone to the same level as the rest of the lake.
- Allow the general public to fish in the Mille Lacs tribal zone under band fishing regulations.

Looking at both sides, the agreement seems fair and workable. It compensates the band for the 1837 treaty. It does not unduly restrict the general public from hunting and fishing resources. It places a high priority on environmental preservation.

The only real basis for opposition is underlying racism. That is much worse than any environmental damage that might be feared.

Duluth News-Tribune
January 4, 1993

Talk to your state legislators

If you want state spending limited make sure lawmakers know about your feelings

When Minnesota's 201 state legislators gather in St. Paul Tuesday, a lot of others will be on hand — or will join them soon — and most want one of two things: more money for pet projects or lower taxes for their special interest.

Lawmakers will show up with some reason to want to control state spending, but there will be much pressure during the session to spend more or tax less. Unfortunately for those who think the state must start to hold the line on spending — and we're in that group — there was no such mandate in the election in which the 201 legislators were chosen.

In the last two elections, voters have turned out the only two Independent-Republican lawmakers hailing from in or near the Northland — Rep. Doug Carlson of Sandstone in 1990 and Rep. Ben Boo of Duluth in 1992. The fact Northland voters have sent a solid DFL delegation to St. Paul does not bode well for those seeking to hold down spending.

It also does not bode well for those seeking innovative reforms in the way state government raises and spends its money. Bill Clinton may be "reinventing government" in Washington this year — and some other states have caught on to that needed reform — but we've seen precious little of it among Minnesota lawmakers. Therefore, we hope the projected $769 million budget shortfall for the biennium that begins July 1 will be dealt with in innovative ways.

Of course, lawmakers should do things in St. Paul this year other than cut spending. The MinnesotaCare health care reform needs work, most notably changing its financing mechanism from a tax on hospitals and practitioners to the state income tax.

Like it or not, lawmakers must act on a controversial agreement between the state and the Mille Lacs Band of Ojibwe Indians. That is opposed by many sportsmen's groups and some Indians. It's not a long-term answer to the thorny question of who to deal with the rights Indians have under 19th century treaties, but it is a good short-term solution and should be approved.

Gov. Arne Carlson, who has grown in our eyes during his two years in office, has suggested three constitutional reforms to improve the operation of state government.

We like all three and hope lawmakers will put them on the ballot for a decision by voters. We don't expect the DFL-dominated Legislature to do that, but we hope they'll at least have the courage to take a recorded vote as they stifle them, so residents can talk to their representatives about them later.

The three reforms would impose term limits on lawmakers, put a lid on how much state government is allowed to spend and create a one-house legislature.

As we said earlier, the term limits issue is an easy one and will pass if lawmakers let voters have their say.

An artificial lid on spending — likely tied to the Consumer Price Index or some other measure of inflation — is a good idea as long as it allows for some supermajority (two-thirds or three-fourths) to override the limit in the few cases where special circumstances require spending beyond the inflation rate.

A one-house legislature wouldn't be needed if lawmakers would correct their terrible conference committee system. If they don't, a unicameral legislative body would do much to correct those abuses.

As we said, we expect DFLers to try to keep a lid on those proposed reforms and — if they have their way — you'll hear little of them. We hope residents won't let that happen. Even lawmakers with a solid majority listen to voters when they call or write, and we hope you will.

That communication should go on about all key issues facing lawmakers this session. We have often urged residents to familiarize themseves with important issues, consider running for office and vote for legislators who represent their views.

Not enough of that happens, and the result in Minnesota and other states has been legislatures filled too much with career lawmakers who listen more to special interests who fill their campaign coffers and too little to the rest of us.

The fruits of our Nov. 3 efforts are now in place, and they'll begin their important jobs on Tuesday. It'll be about 18 months before we can do anything about our roles in filing for office and voting on candidates, but we can always communicate with our lawmakers.

We commend that role to your attention.

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Star Tribune

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18A

Tuesday/December 15/1992

Into the nest of the mad walleye

The wary handshake agreement late last month between the state Department of Natural Resources and the Mille Lacs band of Ojibwe will receive its first test today at public hearings near Lake Mille Lacs. If all parties in this fishing dispute come prepared to listen and learn and not tell fish stories, the settlement should sail through with a breeze of relief.

Opponents of the settlement — on both tribal and angling sides — feel that the big one got away. It did, for good reason. The tribal trophy was huge — a right to hunt and fish without state restriction on public lands in portions of 12 counties in east central Minnesota. The angler trophy is the prized status quo of careful state game management and a growing sport fishing ethic of catch-and-release.

The problem is that both sides are hooked into the same fish. The compromise shares it. A federal court ruling, the only alternative, would almost certainly apportion the rights heavily to one side.

The risk to anglers of a successful tribal suit is greater than to the tribe in a loss, with more than 100 lakes affected versus seven. Then the agreement's hot button issue of tribal subsistence gill netting and spearing on 4.5 percent of Lake Mille Lacs, with the quantity sensibly capped at the same level as the rest of the lake's sport fishing catch, could seem like paradise lost. The proposed settlement covers familiar territory in shared state and tribe conservation management. Similar agreements at other lakes work so well that few anglers are aware of them.

The proposed settlement must be ratified by the band and the Legislature. Hotheads on both sides are already blowing steam. Will their noisy example ultimately lead to battles at boat landings between white and Indian anglers? Or can everyone accept the inevitable compromises involved in a negotiated agreement? Minnesotans sometimes gaze overseas at bitter factional eruptions and wonder how such self-destructive hostility could arise. They should look homeward. Emotions burn hot around tribal versus state rights.

Will something so small as a walleyed pike cause strife here? Negotiators for the Mille Lacs band and the Department of Natural Resources have done a good job in reaching out to see that doesn't happen. Anglers and legislators of all colors should follow their wise lead.

DEC 9 1992

BULLETIN OPINION

Mille Lacs plan deserves support

To a walleye angler — or perhaps even any person who wets a line — Lake Mille Lacs is right up there as one of the seven natural wonders of the world.

This year, anglers harvested an estimated one million pounds of walleyes from this "dead sea". That's a record.

JIM SCHWARTZ

Bulletin Editor

Of course many more fish were caught, only to be released by people committed to sustaining such an amazing natural resource.

Now the state of Minnesota and the Mille Lacs Band of the Chippewa have reached a tentative agreement that could avert a court trial over the band's 1837 treaty and the rights granted in it. The agreement would also, hopefully, prevent the bitter destructiveness experienced in Wisconsin a couple of years ago.

The tentative agreement is comprehensive, covering everything from hunting and fishing rights to logging and mining, but for anglers the concern is one: Mille Lacs walleyes.

Under the agreement, a 6,000-acre section of the lake would be set aside for management by the Chippewa. Band members would be allowed to fish the area for food only for their own private use. Their catch would be limited to 24,000 pounds annually. There would be no commercial fishing in the area. The 1837 Treaty, in contrast, would have allowed unlimited commercial harvesting throughout Mille Lacs and in many other area lakes.

The state, under the agreement, would also pay the Chippewa $10 million; half must be invested by the band in natural resources projects. That could mean additional walleye stocking in Mille Lacs and other area lakes.

Championship walleye angler Leon Houle, who has fished the lake for more than 40 years, said the agreement is a good one. But he said two issues remain to be worked out. Residents on the west side of the lake, where the Chippewa zone will be located, want to continue to fish in front of their property. It is also unclear whether boats will be able to drive through the zone, Houle added.

Houle, who has a summer cabin on the lake, said the Chippewa zone will have no more than a minimal impact on Mille Lacs fishing. Walleyes by their nature, he said, are a very mobile fish. In other words, they don't respect man-made boundaries.

In the spring, for example, walleyes tend to concentrate in shallow, rocky areas. By mid-summer, they move to the deepest, coolest parts of the lake, often called the mud flats, in the center of Mille Lacs.

While everyone may not favor the agreement, Houle said it is his hope that it doesn't create a backlash of anglers believing they, too, are entitled to take more fish. Such people are appropriately called fish hogs, in the most disparaging meaning of the term. They are also lawbreakers, possessing more — many times much more — than their legal limits of fish.

Mille Lacs, after all, is a minor miracle in the history of modern fisheries. Less than a decade ago, the lake was given up as fished out, as a dead sea. But resort owners and residents around the lake adopted a vigorous catch and release program to return the lake to its glory.

Now it is not uncommon for people to release all the walleyes they catch. More importantly, people are releasing the prime breeding females, walleyes in the three- to six-pound range. This, combined with several outstanding years of natural reproduction, has people with itchy casting fingers flocking to the lake. That's also part of the reason one million pounds of fish were caught this year. There's every indication that winter fishing will be just as good.

The agreement with the Chippewa will not make a major difference in productivity on Mille Lacs. In fact, it might enhance it. The agreement deserves everyone's support.

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Duluth News-Tribune
Monday, Nov. 9, 1992

OPINION

Approve Indian-DNR pact

A permanent agreement on political dispute unlikely if right to spear and net fish included

It is good news state government has decided not to test in court the treaty rights of the Mille Lacs band of Chippewa Indians.

It is also good news the state and band have tentatively agreed to a $10 million payment and state grant of 7,500 acres of public land as the state's payment in exchange for the Indians' agreement to not exercise hunting and fishing rights they hold under a 19th century treaty.

We hope the Minnesota Legislature will approve the tentative and temporary agreement, but it is unlikely to work as a permanent solution. That is because the agreement calls for the Mille Lacs band to have rights to spear and net fish on Lake Mille Lacs and some nearby lakes and rivers.

That will arouse so much anger among anglers it will be hard to reach a political settlement of the issue. Indeed, state Sen. Charles Berg said the agreement will not be approved by the Legislature — and repeated earlier vows to end Indian monopoly on casino gambling in the state if the Mille Lacs band insists on the right to spear and net fish.

Even if the state didn't expand casino gambling to non-Indian businesses, it's likely some fishing or hunting group would seek to boycott Indian casinos if the Chippewa kept the spearing and fishing rights.

The Indians have special rights to harvest natural resources under 19th century treaties in which the Indians ceded large tracts of land to the federal government. Federal courts in Wisconsin confirmed those rights exist, which is why it would be a costly mistake for the state to take the matter to court.

But if it is to be resolved acceptably for all groups, an agreement must be reached under which Indians forego most of the special rights in return for compensation.

The tentative agreement between the Mille Lacs band and the state Department of Natural Resources can ease the dispute for now, but negotiations should continue on a long-term or permanent pact. Such an agreement need not include identical seasons or bag limits, but it almost certainly must preclude the right to spear or net fish.

November 9, 1992

PIONEER PRESS
EDITORIALS

INDIAN TREATY RIGHTS

Proposed settlement should avert conflicts

This looks like a decent bargain for the state.

As if the 1993 legislative session wasn't already shaping up as contentious, it is now certain the new Legislature will confront the emotional issue of Indian treaty rights. Fortunately, the tentative settlement agreement announced last week between the Department of Natural Resources and the Mille Lacs Band of Chippewa appears to be a sensible one. It should receive careful, sympathetic consideration at the Capitol.

The Mille Lacs Band, like scores of other Indian bands across Minnesota and the nation, believes it retains spacious hunting and fishing rights under 19th century treaties that conveyed great tracts of Indian land to the United States. Where controversy most appears is that the Mille Lacs Band claims the right to net and spear walleyes in Lake Mille Lacs, free from state regulation. The case is headed for federal court this winter unless a settlement is approved by the Legislature and the Mille Lacs band's government.

Such a settlement is now on the table, thanks in part to federal Judge Jonathan Lebedoff, who brought the parties together in late October after direct negotiations had been suspended for many months. The deal that emerged should soothe most Minnesotans' fears about potential damage to the walleye population in Mille Lacs, one of the state's premiere fisheries.

Under the agreement, the Chippewa may conduct no commercial harvest of walleyes whatever; they may net and spear for subsistence in a tribal fishing zone amounting to 4.5 percent of Mille Lacs' surface; they will limit the tribal zone harvest to the levels allowed on the lake as a whole (about four pounds per acre); and non-Indians will also be able to fish in the tribal zone.

In exchange for the Chippewa accepting these modest treaty rights, the state will cede 7,500 acres to the band, after consultations with local governments, and will pay the band a single lump-sum compensation of $10 million, half of which will be reserved for environmental protection.

This looks like a decent bargain for the state. Commercial harvest would be by far the greatest threat to the walleye. The $10 million payment is cheap compared with the perpetual annual stipends Minnesota has granted other Indian bands, and cheaper still compared with the scores of millions Wisconsin and other states have spent on losing efforts to fight treaty rights claims in court.

Federal judges have almost always found for Indians in such disputes. Wisconsin not only lost its case but in recent years has endured ugly lakeside confrontations between Indians and treaty-rights opponents — a scene Minnesota can surely live without.

While some details remain unsettled, and while some sport angler groups may oppose any compromise, legislators should give the proposed settlement every chance. It may well represent the best possible outcome for all Minnesotans.

SAINT PAUL PIONEER PRESS TUESDAY, MARCH 23, 1993

Proposed walleye harvest up 8% over '92

ROBERT BURIE ASSOCIATED PRESS

WAUSAU, Wis. — Wisconsin's six Chippewa bands plan to spear 42,394 walleye this spring — half the number they are permitted to catch under a court-approved formula, but 8 percent more than a year ago.

Unless the quota can be reduced, anglers will be allowed to take only two walleye daily on about 100 lakes in northern Wisconsin, including some of the most popular fishing spots, said Steve Hewett, the treaty fisheries coordinator at the Department of Natural Resources.

The agency won't announce daily bag limits for anglers for the season starting May 1 until negotiations with the Chippewa are completed, Hewett said.

The Chippewa could spear about 105,000 walleye under the court-approved formula. Anglers are expected to catch about 450,000 walleye this year, the agency said.

The Indian practice of spearing spawning walleye in the spring under 19th century treaty rights has triggered protests in Wisconsin. Spearfishing resumed in 1985.

The state and Chippewa agreed in 1991 not to appeal the final rulings in the 17-year legal battle over treaty rights that led to the resumption of off-reservation spearfishing.

Last spring, there were no boat-landing demonstrations to oppose spearfishing and treaty rights. In other years, the protests escalated into incidents of rock-throwing and racial slurs, leading to hundreds of arrests.

The Chippewa designated 220 lakes for the ninth modern-day spearfishing season, which should begin in mid-April when ice melts off northern lakes and walleyes head to the shallow waters to spawn, Hewett said.

In the last eight seasons, the Chippewa have never speared their full quota of walleye, generally taking about 22,000 walleye during the three-week season.

The Lac du Flambeau Chippewa band spears about half of the walleye that are taken, mostly on lakes in Vilas, Oneida, Iron, Lincoln and Marathon counties.

In some lakes, if a Chippewa band reduced its walleye quota by just one fish, it would be enough to raise the daily bag limit for anglers from two to three walleye, under a complicated, federal court-approved formula for sharing the fishery, Hewett said. But on other lakes, it would require a band to reduce its quota by hundreds of walleye to increase the daily rod-and-reel limit.

Henry St. Germaine, vice chairman of the Lac du Flambeau band, which has the most active group of Chippewa spearfishers, said many Indian leaders believe the DNR is too rigid in setting walleye limits and seeks to blame the tribe for the lower limits.

"You hear the same old story every year," St. Germaine said. "Politics. That is probably all it is."

139

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Brainerd Dispatch 3/18/93

Indians threaten to commercial fish if treaty deal fails

Tribal chief Marge Anderson rules out any renegotiation

ST. PAUL (AP) — The leader of the Mille Lacs Band of Chippewa says the band will seek court permission to [illegible] a commercial fishing operation on Lake Mille Lacs if the Legislature scuttles a compromise to a treaty dispute.

Tribal chief executive Marge Anderson said the Indians will not renegotiate the compromise between the band and the Minnesota Department of Natural Resources, which cleared its first legislative test Wednesday.

Sixty percent of the band's voters ratified the compromise in a plebiscite this month.

"This is it," Anderson said of the agreement. "The members spoke, and this is what they want."

The action was a measure of the hostility against the bill, which would dedicate a corner of the state's most famous walleye lake for use by the Chippewa, and an indication that Gov. Arne Carlson has a huge sales job on his hands if he is to get the measure passed.

The proposed settlement bans commercial fishing, considered a threat to sport fishing on Lake Mille Lacs. But if the compromise fails and the dispute goes to trial, Anderson said, the band will assert treaty claims to sell 50 percent of the available game fish in Lake Mille Lacs to stores, restaurants and other outlets.

"If that's what the court rules, then that's what we're going to do," she said, referring to commercial fishing.

Backers of the compromise said it isn't dead yet.

During a marathon 12-hour hearing that ended early Wednesday, the bill's sponsor — in a surprise move — pulled it from consideration at about 4 a.m. just before a vote. Sen. Steven Morse, DFL-Dakota, said members of the Senate Environment and Natural Resources Committee needed time to digest the testimony, much of it from opponents.

But committee chairman Sen. Bob Lessard, DFL-International Falls, said he would refuse to schedule another hearing on the bill.

The House Environment and Natural Resources Committee was expected to consider the bill today.

Committee chairman Rep. Willard Munger, DFL-Duluth, said he personally supports the bill but would give it an impartial hearing.

Fish, Wildlife Alliance votes to back Mille Lacs deal

DENNIS ANDERSON
OUTDOORS EDITOR

The Mille Lacs treaty rights conflict took an unexpected turn Friday when an alliance of sportsmen's and conservation groups told a Senate panel they support a compromise that would keep the issue out of court.

Most sportsmen who have voiced opinions on a deal struck by the Mille Lacs band of Chippewa and the Minnesota Department of Natural Resources have opposed it and want the Legislature to force the matter into court for resolution.

But the Fish and Wildlife Legislative Alliance, an umbrella group that tracks conservation and wildlife proposals in the Legislature, voted 8-7 to support the off-reservation hunting and fishing agreement.

Mille Lacs band members approved the pact last week. For the deal to become effective, the Legislature must also approve it.

Lance Ness, in his fourth year as FWLA president, told the Senate Environment and Natural Resources Committee on Friday that he cast the vote that broke a 7-7 FWLA board-member deadlock on whether to support a treaty rights compromise that would pay the Mille Lacs band $10 million, give the band 7,500 acres of land and grant members limited off-reservation fish netting and spearing rights.

Ness, 37, of Minneapolis said he voted his conscience, based on information provided to the FWLA board by the state attorney general's office, the Mille Lacs band and the Save Lake Mille Lacs Association, which opposes the deal.

Each group had been invited to make presentations to the FWLA board in recent months.

Ness is a past president of the Minnesota Waterfowl Association, past president of the Advanced Hunter Education Foundation and that group's 1989 citizen conservationist of the year.

Major conservation groups represented by the FWLA include the Minnesota Waterfowl Association, the Minnesota Deer Hunters Association, the Minnesota Trappers Association, the Minnesota State Archery Association, Minnesota Bow Hunters Inc., Trout Unlimited, Safari Club International and the Nicollet Conservation Club.

The Minnesota Waterfowl Association abstained from the treaty rights vote; the Nicollet Conservation Club was not represented when the March 3 vote was taken.

"I voted the way I did because I can read as well as the next guy and my conclusion upon reviewing the information is that the Indians did in fact reserve the rights they claim to have reserved," Ness said Wednesday. "One option is to go to court and fight this thing. But I'd rather see a settlement. I think the resource is being protected and that it's better to settle rather than get into a prolonged legal fight that carries with it the possibility of racial and civil conflict."

Ness told the Senate panel that in his opinion the Mille Lacs band should remove voluntarily the establishment of an exclusive Mille Lacs Lake treaty fishing zone from the treaty rights agreement.

Ness said Wednesday he has had "strong" negative reactions to his vote from about 60 percent of people who have contacted him since Friday. The remaining 40 percent supported his position, he said.

He also said it's possible the Minnesota Waterfowl Association might meet to reconsider its abstention from the FWLA vote. No other FWLA voting members have contacted him about reconsidering their votes, Ness said.

Meanwhile, the Minnesota Conservation Federation, a similar umbrella group, voted last week to continue its opposition to the DNR/Mille Lacs band treaty agreement.

The federation represents about 60 sportsmen's clubs and affiliate groups such as the Minnesota Conservation Officers Association, the Minnesota Fish and Wildlife Employees Association, the Minnesota Sharp-tailed Grouse Society, the Minnesota Sportfishing Congress, the Minnesota Taxidermy Guild, Turn In Poachers and the Minnesota Waterfowl Association.

MCF members believe the Mille Lacs band has been compensated for whatever hunting and fishing rights it may have reserved in 1837.

"Our members believe that if the Legislature is being asked to ratify this agreement, then the Legislature should have the right to modify it into terms that would be more suitable or marketable to their constituencies," said Bob Neuenschwander, a former state representative who is the group's government affairs liaison.

Neuenschwander added that if the three major components of the treaty rights agreement — land, money and the exclusive fishing zone — were mixed somewhat differently "there might be some more support for the agreement" by MCF members.

The Senate Environment and Natural Resources Committee will hear testimony on the treaty rights deal again Friday, when the Mille Lacs band's Seattle-based lawyers are expected to be at the Capitol.

A vote on the agreement by committee members could occur as early as next week.

Dennis Anderson's column regularly appears Thursdays, Fridays and Sundays.

34,000-member sports group endorses Mille Lacs treaty

Dispatch 3-6-93

GARY DAWSON STAFF WRITER

A prominent outdoor sports organization gave the proposed Mille Lacs treaty agreement a boost Friday, endorsing the pact in testimony before the Minnesota Senate Environment and Natural Resource Committee.

The Fish and Wildlife Legislative Alliance, an umbrella group representing 34,000 members of a number of outdoor recreation organizations, revealed before the committee that its board of directors had endorsed legislation implementing the agreement. Lance Ness, alliance president, said he cast the deciding vote in an 8-7 board decision.

"The issue before the Legislature is one of protection of the resources of Mille Lacs Lake and surrounding areas," Ness said in a prepared statement. "We believe that the agreement and the (Mille Lacs Chippewa) Band Conservation Code do an adequate job of assuring sound resource projection."

Ness' testimony was disappointing to treaty agreement critics on the committee, including Sen. Charles Berg, DFL-Chokio, and Sen. Gary Laidig, IR-Stillwater. It boosted the spirits of proponents, however. An estimated 275 citizens attended the first day of formal hearings on the emotionally hot treaty legislation.

TREATY CONTINUED ON 5D ▶

TREATY

3-6-93

▼ CONTINUED FROM 1D

The crowd jammed a large Senate hearing room and overflowed into an adjacent hall where television monitors and chairs were set up to accommodate spectators and witnesses.

The proposed agreement, which needs approval of the Legislature, allows limited spearing and netting of game fish in a 12-county area of east-central Minnesota. It creates a tribal fishing zone on Mille Lacs with an annual game fish quota in return for $10 million of state payments and the transfer of 7,500 acres of public land to the Mille Lacs band of Chippewa. No walleye spearing would be allowed on Mille Lacs.

The committee, which heard more than four hours of testimony, almost all of it from proponents, will resume hearings next Friday when it will hear mostly from opponents of the out-of-court settlement who want the issue tried in a federal court. Sen. Bob Lessard, DFL-International Falls, committee chairman, scheduled final committee debate on the bill and a vote on March 16.

"It's fish-or-cut-bait time," Lessard said in announcing his goal of bringing the committee's deliberations to an end by that date. It would be the first legislative committee vote on the treaty following a favorable referendum on the agreement by the Mille Lacs band. No hearings have been scheduled yet in the House.

Dan Nelson, operator of Izaty's Resort on Mille Lacs, said approval of the settlement is a much better option than taking the dispute to a trial and risking the prolonged bitterness and violence over Indian treaty rights that has occurred in Wisconsin.

"The split in the community is real, it's painful and it's dominating our lives," Nelson said of tensions in the area and the need for a peaceful solution.

"I think that's garbage," Berg told Nelson, saying he doesn't believe challenging the treaty in the courts would necessarily produce violence.

A tribal elder, David Sam, opened testimony in support of the treaty bill sponsored by Sen. Steven Morse, DFL-Dakota, by speaking in Chippewa. He said he did that to illustrate the point that when the Chippewa signed an 1837 treaty with the federal government, they probably understood little of what they were being promised. Proponents say that's why courts in recent years have leaned toward strong enforcement of treaty rights.

Berg skirmished with Morse when the sponsor of the bill said one reason a settlement was preferable to a court decision is that federal Judge Diana Murphy is known as a political liberal who has supported black and American Indian causes. The suit that led to the proposed agreement was filed in Murphy's court.

Berg said it sounded like Morse was saying Murphy was "biased" — adding that it was "unfortunate" the courts might not rule on the merits of the issue.

Morse said Berg misinterpreted his remarks. Murphy was not available for comment. Berg said later that perhaps the judge ought to remove herself from the case.

142

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Commentary

143

Treaty rights: a deal's a deal

Despite the whining, there's plenty of fish

When British Prime minister Benjamin Disraeli told Parliamentary backbenchers, "It's much easier to be critical than correct," he could just as easily been referring to opponents of the Mille Lacs fishing settlement. The motley crew fighting the Mille Lacs Band of Chippewa's efforts to exercise their treaty rights have resorted to tactics ranging from absurd to desperate.

Finally the Mille Lacs Band, fed up with the illegal interference to their birthright, sued the state of Minnesota in federal court. Despite what even the state concedes to be a strong position, the band has offered a generous settlement package, one that gives the politicians a chance to salvage political victory from the jaws of likely legal defeat. The politicians should accept this settlement now for three very good reasons:

- The Mille Lacs treaty rights are still valid and enforceable.
- Minnesota's legal position is shaky.
- The proposed settlement is fair and reasonable.

When Europeans arrived in America, the Indians were an independent, free people with dominion over a huge, abundantly rich land. Therefore, the Europeans, who coveted the Indians' land, had two options: forcibly take the land or persuade the Indians to give it to them. Both approaches, by definition, acknowledged Indian [illegible] over what was to become [illegible] states.

Clinton Collins Jr.

In a series of landmark decisions in the 1830s, the Supreme Court ruled that Indian tribal lands are akin to "domestic, dependent states." In other words, tribal lands are not quite "sovereign," or independent nations completely free to do as they please. However, they are a lot closer to being independent nations than many people realize. A series of treaties, laws and court decisions collectively guarantee them a high degree of autonomy over their own affairs.

Over the years, the Constitution has been interpreted by the federal courts as affirming Indian tribes' power to regulate their internal affairs, free from interference by any individual state. Furthermore, federal courts have ruled that Indian treaties must be construed as they were understood by the tribal representatives who negotiated them. Any ambiguities are to be resolved in the Indians' favor.

One important consequence of their unique status is that they generally do not have to answer to state governments. Only the federal government, which negotiated the treaties, passed the laws and [illegible] judicial decisions, has the authority to change the terms or to renounce the treaties altogether.

In practical terms, this means that individual states such as Minnesota cannot take away treaty rights Indian tribes negotiated with the federal government. Therefore, misguided and resentful Minnesotans who want our state to interfere with Indian hunting and fishing rights had better understand that Minnesota has no legal authority to do so.

This legal and historical perspective is the filter through which one must analyze the 1837 treaty at issue in the lawsuit. The treaty called for the Chippewa to relinquish a huge tract of land that included Lake Mille Lacs and much of present-day Minnesota. In return, the government paid the Indians a pittance and guaranteed "the privilege of hunting, fishing, and gathering the wild rice, upon the lands, the rivers and the lakes included in the territory ceded . . . during the pleasure of the President of the United States."

So, what's a non-Indian-Minnesotan hunting and fishing enthusiast to do?

Accept the inevitable. Indians have valid treaty rights that in all probability will be rightly upheld. A recent Star Tribune/WCCO poll reported that nearly half of those surveyed wanted the state to continue to fight in court over the treaty rights, even if the state is likely to lose. That kind of thinking is crazy. In the same article, one confused soul claimed that Indians "feel the world owes them a living because they were here first . . . they are making out pretty good right now with their gambling casinos. . . . What the hell more do they want?"

From Frank B. Mayer's "Treaty of Traverse des Sioux, 1851": Treaties gave Indians some autonomy.

Indians only want the rights to which they are entitled under federal law. Those who believe that the passage of time somehow dilutes the force of these treaties are sadly mistaken. Do not forget that the Constitution, which is our philosophical core, was written more than 200 years ago. Does that make it any less real or binding on us today?

Significantly, poll results show that the less education or income one had, the more likely one was to oppose settling the lawsuit. Simply stated, those with less information were likely to resent the Indians more. In other words, it's almost as if these people believe that enforcing Indian rights can be achieved only at their expense.

This is so sad and so very wrong. There is enough in the settlement agreement to protect the interests of both the Mille Lacs Band and the state of Minnesota. For example, in the settlement agreement, the band agree to take only a small fraction of the walleye from Lake Mille Lacs that they are legally entitled to. As a result, there still will be plenty of fish left for recreational fishing, despite the whining of settlement opponents.

The Mille Lacs Band, despite the overwhelming strength of their legal position, are pragmatists willing to settle this case in order to avoid the inevitable political and racial fallout from a protracted court battle. I hope state officials avoid catching the same combination of hubris and stupidity that led Minneapolis officials to miss settling the disastrous LSGI lawsuit on decent terms.

According to writer Jonathon Lazear, "when our fists are clenched . . . our thinking is clouded and we see everyone as an enemy. There are real enemies and there are imagined ones." In the Mille Lacs lawsuit, the real enemy is ignorance, fear and prejudice, not Indian hunting and fishing rights. If Minnesota settles this case now, the state can fight the real enemy while being legally prudent and politically correct. Given the alternative, deciding not to settle would not just be incorrect; it would be downright dumb.

Clinton Collins Jr. is a law professor and a part-time Anoka County prosecutor.

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Friday
March 19/1993
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Mille Lacs talk: Carlson says settlement is better for state than running risk of federal court decision

By Robert Whereatt
Staff Writer

With his political clout being tested, Gov. Arne Carlson is pushing the Legislature to ratify a proposed settlement of disputed hunting and fishing treaty rights with the Mille Lacs band of Chippewa.

Under the settlement, the band would limit its hunting, fishing and gathering rights in a large area of east-central Minnesota in exchange for $8.6 million, exclusive use of 4.5 percent of Lake Mille Lacs and fishing and spearing rights on six smaller lakes. The settlement seeks to prevent the band's U.S. District Court suit from going to trial.

Earlier this week, a bill ratifying the agreement bogged down in a Senate committee. But last night a House committee approved the treaty settlement with an 18-8 vote, giving impetus to the governor's effort.

Carlson has been working behind the scenes and has not publicly talked about the issue. But on Thursday he spoke about the proposed settlement with the Star Tribune.

Here are excerpts from that interview:

Q. Governor, you know there is a significant segment of Minnesotans who oppose the Mille Lacs treaty settlement. Why, in your view, is it so important that it be ratified by the Legislature?

A. You've got to take a long-term view. To us and to our attorneys it's clear that the settlement is far more beneficial for Minnesotans than it would be to run the risk of a federal court decision.

Q. It appears the most contentious single part of the settlement is the exclusive fishing zone. Does that bother you at all?

A. The most contentious part has, frankly, been a moving target. Currently it would appear to be the fishing zone. But bear in mind the court settlement could very easily be 50 percent of Mille Lacs as opposed to 4 percent . . . So I have a problem understanding why anybody would want to risk losing 50 percent. . . .

Q. Would you accept a bill if it were amended by the Legislature, which in all likelihood would have to go back to the band for its approval?

A. The band has made it clear that they're not going to renegotiate, so it's a moot point.

Q. Is it fair to non-Indians that band members would get 6,000 acres of Lake Mille Lacs for their exclusive use?

A. Fair is a hard word to define. Is it fair in

Carlson continued on page 2B

State House panel approves settlement

By Mary R. Sandok
Associated Press

A Minnesota House committee approved a proposed hunting and fishing rights settlement with the Mille Lacs Band of Chippewa Thursday night. The Senate version of the treaty settlement stalled in committee the day before.

The House Environment and Natural Resources Committee approved the ratification bill on an 18-8 bipartisan vote. The bill now goes to a subcommittee of the same panel for consideration of financial provisions.

Following the vote shortly after 10 p.m., angry opponents shouted at legislative backers and officials of the state Department of Natural Resources who negotiated the agreement with the band.

"We're mad as hell and we ain't gonna take it any more," some opponents chanted. Others yelled that they had been

Settlement continued on page 2B

144

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Carlson/ Risks weighed; settlement made sense

Continued from page 1B

the context of the old treaties? Yes, it is. Is it something that we would put together [if] there were no treaties? No. But beyond, we have to [get] off of some realities. The reality is that those treaties are accepted and honored by the federal government, and they make it abundantly clear that the Indian tribes are sovereign nations. They have certain well-defined rights and more often those rights have no limitations on them.

Q. You're a fan of basketball like no other Minnesota governor before you. If your sport were restricted in some way, such as not being allowed to go to games in a particular arena, how would you react?

A. Well, we were. We were kept out of the NCAA tournament. [Laughter] Look, nobody is totally comfortable with the settlement. We understand that. I think I can speak for the Indians as well as the non-Indians on that issue. ... We have two Indian treaties. No one alive today negotiated those treaties. The circumstances under which those treaties originated are vastly different than the circumstances today. But the fact is, the federal government regards those treaties as valid. The courts accept them as valid.

Q. What will happen if the Legislature does not approve the settlement?

A. I think that by the fall of 1994, the [U.S.] District Court will have already ruled. I think it would be a very disappointing decision from our perspective. And I am fearful of a very strong emotional response.

Q. Governor, if you were allowed to continue through the federal court, isn't it likely that people, including opponents, would have greater faith in the outcome, rather than feeling it is something imposed on them by the state?

A. I think some people would, and therein lies much of the problem. Any kind of a settlement always raises doubts about whether you could have had a better outcome in the courts. The problem is once the court has spoken you can't go back and negotiate, and you have to weigh the risks accordingly. We weighed those risks and came down on the side of a settlement.

Q. Supporters say they need the settlement to maintain civil calm between non-Indians and Indians. Isn't it possible that unrest will result because of the settlement and some of its most unpopular provisions such as the exclusive fishing zone.?

A. We feel comfortable that there would be less potential for harm under the settlement than there would be if there were a disappointing court decision. This kind of an issue always has the potential to raise the uglier issues involving human relations.

Q. To what extent is racism involved in this controversial and sensitive issue?

A. It's hard to tell. You do hear of isolated incidents, you hear of taunts. That's very disconcerting because it's very non-Minnesotan, but some of that has erupted. But I don't want to use a broad brush and say that one side of the issue clearly is motivated by that and the other side is motivated by virtue. ... There are many sincere people who simply believe that this case should be resolved in the court.

Q. Is it fair for legislators to use the threat of allowing casino-style gambling to spread to neighborhood bars in an attempt to kill the treaty or win some concessions from the band?

A. Each of these proposals has a right to stand or fall on its own merit. The linkage raises some very disturbing questions. I would hope the legislative leadership would put an end to that. In this case [Senate DFL Majority Leader] Roger Moe has to play a very decisive role in restraining the instincts of Charlie Berg [chairman of the Senate Gaming Regulation Committee].

Q. How is your arm-twisting going? You talked to some House IR members Thursday about the treaty bill. What are you telling them and asking them?

A. It's tough going. Very tough going. I'm just trying to sell them on every aspect of the treaty. One of the things I've wanted to dispel is this notion that ... we don't have to worry about it too much because it's a [pure] political concern. ... That's nonsense. The District Court decision will very likely come down before your next election.

Q. Are you disappointed that Independent-Republicans have not given you more support so far?

A. I could tolerate a few more votes. I would prefer that there [be] more Republican votes ... [but] I don't [look] to the minority party and blame them for something passing or not passing. I have to assume responsibility for the development and the execution of this agreement ... It's the responsibility of the [DFL] leadership to make sure that the treaty goes to the House and Senate floors for a vote, so that every member, all 201, can vote. At that point I think we can pass it and we can pass it with bipartisan support.

Band's voting on treaty rights may be close

DENNIS ANDERSON OUTDOORS EDITOR

The treaty rights agreement struck between the Mille Lacs Band of Ojibway and the Minnesota Department of Natural Resources faces its first public test Tuesday when band members put the agreement to a vote.

Until recently, it was believed the agreement would be approved easily by a majority of the approximately 500 band members expected to vote.

But opposition organized in recent weeks among some Mille Lacs band members, as well as some Ojibway from other bands in Minnesota and Wisconsin, may mean the vote will be close.

Ojibway who oppose the agreement appear to fall into three categories:

- Those who believe the Mille Lacs band should go to court to seek an even broader interpretation of hunting and fishing rights the band says it reserved under an 1837 treaty with the federal government.
- Those who are tired of nonband members' complaints about the agreement and want the issue to go to court to gain even broader treaty rights.
- Those who disapprove of the politics and/or actions of various Mille Lacs band tribal officials.

Mille Lacs band Department of Natural Resources Commissioner Don Wedll cautions that Tuesday's vote is only a referendum and is nonbinding on the band assembly, which consists of four people and the band's chief executive, Marge Anderson.

"This vote is essentially a referendum that the assembly will use to guide their actions," Wedll said. "A simple majority is all that's needed to approve the agreement, but clearly the assembly will take a hard look at everything if the vote is close.

"If the referendum is approved by only a few votes, it's unclear how the assembly will act."

The Minnesota Legislature must also approve the agreement for it to become effective.

The Mille Lacs band has about 2,600 enrolled members, about 1,200 of whom live on the reservation. Only about half of the 2,600 members are 18 years of age or older, making them eligible to vote.

The agreement calls for the transfer of 7,500 acres of land from the state to the band, cash payments totaling $10 million and limited fish netting and spearing rights in the 12-county section of Minnesota that is part of the 1837 ceded territory.

Under terms of a recently released band conservation code, the Mille Lacs Ojibway would net a limited amount of walleyes each year from Lake Mille Lacs and spear some game fish from a handful of other lakes in the ceded territory, as well as about 20 miles of the St. Croix River.

The conservation code also governs deer hunting and other fishing, hunting and gathering activities in the ceded territory by band members.

The recently released conservation code is more restrictive than many observers believed it would be, but it has nevertheless been dismissed as "irrelevant" by some nonband agreement critics because the code can be changed from year to year if the band desires.

Opposition to the agreement has made odd bedfellows of some agreement critics. Many Ojibway who oppose the agreement believe the band is selling short the full panoply of treaty rights that could be won in court, while many nonband critics of the agreement believe a court settlement of the conflict would deny the band any off-reservation hunting and fishing rights.

Should the efforts of these groups result in either the band assembly or the Legislature voting down the agreement, their union likely will fall apart as the two factions begin working again toward opposite ends — band members for broader court-ordered treaty rights; nonband members for narrower.

Some non-Indian Wisconsin treaty-rights opponents have also been supporting their counterparts in Minnesota in past months in efforts to derail the agreement, perhaps hoping the U.S. Supreme Court may someday rule that Minnesota and Wisconsin Ojibway have no off-reservation hunting and fishing rights under the 1837 treaty.

Wisconsin Ojibway have already won in federal court extensive off-reservation hunting and fishing rights under the 1837 treaty. Court decisions rendered in the Wisconsin treaty rights cases don't necessarily apply to the Minnesota conflict, however, because the two states are in different federal judicial districts.

Star Tribune 2/4/93

Tribe intends to limit own fishing rights

Mille Lacs Band ready to curtail walleye take

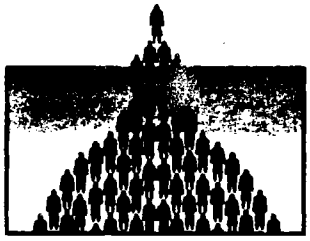
By Robert Whereatt
Staff Writer

In what is considered a major concession by the Mille Lacs Band of Chippewa, a new tribal conservation code is expected to ban walleye spearing by band members on Mille Lacs Lake during spawning season.

The code, which will be announced next week, is also expected to require band members to use smaller mesh nets to take game fish and limit them to two deer per year in 12 counties of east-central Minnesota.

Those anticipated provisions could reduce resistance by some hunters and fishermen to a proposed settlement between the Chippewa band and the state.

The concessions were disclosed Wednesday by Sen. Steven Morse, DFL-Dakota, who said he will be the main Senate sponsor of a bill ratifying the agreement.



Legislature '93

■ Le[illegible]e Briefing, 2B.

While [illegible]tics in the band's conservation code are not part of the agreement or the ratifying legislation, Morse said it should allay some concerns among legislators, several of whom have expressed doubts about voting to approve the agreement.

Spearing continued on page 4B

Spearing/ Legislature, band members must give OK

Continued from page 1B

Don We[illegible]he band [illegible]al resources commissioner, [illegible]dicated in the past that the co[illegible]ould be conservative because th[illegible]and, too, has an interest in preserving and propagating the resources.

Yesterday, though, was the first indication that walleye spearing during spawning season, use of smaller nets that do not catch and kill larger fish, and a deer-taking limit that is similar to that permitted by the state for non-Indians would be part of the code.

The Legislature and band members must approve the settlement. The band will vote March 2. Morse's bill, if passed by the [illegible]ouse and Senate, will constitute appr[illegible]val by the state.

The agreement would keep the issue from going to trial in federal court. The band has filed a lawsuit claiming that an 1837 treaty with the federal government gives it unlimited rights to fish and hunt outside its reservation [illegible] east-central Minnesota counties.

Some opponents of the agreement contend that the state should risk the court fight.

The Department of Natural Resources, though, has said that the state would probably lose and that a judge would allow the band to take 50 percent of the available game fish from 137 lakes, including Mille Lacs, the most prolific walleye spawning ground in the state.

How t[illegible]gh in Mille L[illegible] treaty

Next hear[illegible] [illegible]p.m. Tuesday, Room [illegible] Capitol.

Committee[illegible] [illegible]te Environment and Natural Resources. Three hearings expected in three consecutive weeks.

Key forces: [illegible]D Lessard, DFL-In[illegible]Falls, the committe[illegible](612-296-4136); Se[illegible]Morse, DFL-Dakota, the [illegible]sponsor (612-296-5649).

How to testify: Public testimony is not expected to be taken at the first [illegible]wo hearings. Contact Lessar[illegible]s office for more informa[illegible]

Morse predicte[illegible]day that the Legislature w[illegible]e the agreement, despite [illegible]ized opposition from sp[illegible]s groups that argue that it wo[illegible]ve the Indians an unfair advantage and deplete the state's fishing resources.

"It's much more than just a hunting and fishing issue," Morse said at a news conference.

There are three primary reasons to support the agreement, he said.

"First, we have the responsibility to honor the treaties of our forefathers. Second, I don't believe the state will win in court. Third, the financial and social costs of going to court are too high."

Sponsors of a companion bill in the House have not yet been announced. Some DFLers, who hold a majority in the House and Senate, want Independent-Republicans to sponsor the bill since it is being pushed by Independent-Republican Gov. Arne Carlson's administration, according to Morse.

Legislature braces for debate on Mille Lacs hunting, fishing rights

3-4-93

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By Robert Whereatt
Staff Writer

Now it is the Legislature's turn to decide on a compromise with the Mille Lacs Band of Chippewa over fishing, hunting and gathering rights.

Sixty percent of the voters in a tribal plebiscite approved the proposal on Tuesday. That may have been the surest vote.

"I thought at the onset that we knew how Mille Lacs felt," said Sen. Bob Lessard, DFL-International Falls. "I expected it to pass."

But Lessard said the agreement's chances are more doubtful in the Environment and Natural Resources Committee, which he chairs, and where the proposal faces its first legislative vote.

"I don't think it [Tuesday's vote by the band] changes either way the opinions of the Environment and Natural Resources Committee," he said. "This is one of those votes that you're not going to be able to count until the day we vote on it."

Without saying how he will vote, Lessard said, "I have some very deep reservations about it."

Lessard has scheduled eight hours for public testimony on the contentious issue, starting Friday.

Sen. Steven Morse, DFL-Dakota, the chief sponsor of a bill that would ratify the compromise, said Tuesday's vote was not an overwhelming endorsement by the Chippewa.

"It shows the ambivalence within the band that I think is also in the general public," Morse said. "There are extremes on both sides that want to go to court."

That was the choice for the band and it is the choice for the Legislature: Ratify the compromise or seek a settlement in court.

The compromise would settle a lawsuit by the band against the state. The band asserts a right to fish, hunt and gather without state regulation in 12 counties in east central Minnesota.

The band gave the territory to the federal government under an 1837 treaty, but retained broad hunting and fishing rights. Some who opposed the compromise contend the band subsequently gave up those rights.

If the band lost in court, it is possible members would be subject to all game and fish regulations, like any other Minnesota residents.

On the other hand, if the state lost, the band could take up to 50 percent of the fish and other natural resources in the 12-county area.

The compromise, already agreed to by Gov. Arne Carlson, would:

- Limit Indian netting and spearing to an exclusive tribal zone on 4.5 percent of Lake Mille Lacs, six other lakes and parts of two rivers.
- Give the band 7,500 acres of public land.
- Require the state to give the band $8.6 million now or $10 million over four years.
- Dismiss the lawsuit against the state.

HOW TO WEIGH IN

Mille Lacs treaty

Committee: Senate Environment and Natural Resources.

Next hearings: 10 a.m. to 2 p.m. Friday and 10 a.m. to 2 p.m. Friday, March 12. If more time is needed, testimony will be heard 10 a.m. to noon Tuesday, March 16. All hearings in Room 15, State Capitol.

Committee vote: March 16.

Sponsor: Sen. Steven Morse, DFL-Dakota, 296-5649.

How to testify: Contact Tony Kwilas, administrative aide to Sen. Bob Lessard, 296-4136.

POLITICAL EDITOR: Kate Parry
PHONE: 228-5522
FAX: (612) 228-5500

POLI

Moe says Mille Lacs treaty needs push from Carlson

GARY DAWSON STAFF WRITER

Gov. Arne Carlson will need to show more leadership on the proposed Lake Mille Lacs treaty settlement if he wants it to pass, Senate DFL Majority Leader Roger Moe said Wednesday after the pact failed its first test in a Senate committee.

Moe said the Independent-Republican governor's inability to deliver votes of IR senators for the settlement means the issue is bogged down in the Senate Environment and Natural Resources Committee. The bill's sponsor, Sen. Steven Morse, DFL-Dakota, declined to call for a vote early Wednesday after a 12-hour hearing because of a lack of support from a coalition of IR and DFL committee members.

The proposed settlement, which would avoid a federal court trial with a judge deciding the extent of Indian hunting and fishing rights, creates an exclusive 6,000-acre tribal fishing zone in the southwest corner of the lake with limited spearing and gill netting of walleyes. It also allows game fish spearing and netting on a half dozen other lakes and two rivers and rough fish spearing and netting in 136 lakes and rivers in 12 counties in east-central Minnesota.

"It's kind of indicative of a lack of leadership if the governor can't get senators of his own party to go along with a bill that is his own initiative," Moe said.

Senate Minority Leader Dean Johnson, IR-Willmar, however, said the governor has been working hard and the two will continue to attempt to persuade IR senators to support the pact.

"The issue is not dead," Johnson said, noting that emotions are running high on the settlement issue and senators need more time to understand the merits of avoiding a federal trial that might give more hunting and fishing rights to the Mille Lacs Chippewa.

"I don't agree that Republican senators need to be persuaded by the governor to vote for this bill," said Sen. Bob Lessard, DFL-International Falls, an opponent of the settlement. "They are an independent breed of cats, not a bunch of trained seals." Lessard also said as far as he is concerned the issue is "dead" in his committee, but Moe and Morse said action can be resumed.

Carlson's chief of staff, Ed Stringer, said the governor is doing his part but expects Moe, whose party holds a 45-22 majority in the Senate, to make an equal effort.

The House Environment and Natural Resources Committee is scheduled to hear the bill at 10 a.m. today in Room 10 of the State Office Building and again following a 2:30 p.m. House session.

[redacted]

1-2-92 St. Paul Dispatch

FISHING

Mille Lacs pact with Chippewa already is controversial

Rod Sando
The Natural Resources Commissioner favors the settlement.

GARY DAWSON STAFF WRITER

The proposed treaty agreement allowing limited Chippewa spearing and netting of game fish on Lake Mille Lacs could be the most controversial piece of legislation Minnesota's 201 lawmakers face this session.

Emotions are running high over the state's most popular walleye lake; influential legislators want the treaty thrown out and a new one negotiated or the dispute left to federal courts to settle.

But Department of Natural Resources Commissioner Rod Sando and Gov. Arne Carlson say the settlement will preserve Mille Lacs' fishing and end the risk of a possible adverse ruling in a lawsuit that would open the lake to virtually unlimited commercial fishing by the tribe.

The governor, and some legislators — including Rep. Willard Munger, DFL-Duluth, chairman of the House Environment and Natural Resources Committee — say an adverse court decision could create ugly racial confrontations like those experienced in Wisconsin. That could have a severe impact on tourism and poison generally positive white-Indian relations in Minnesota.

But other lawmakers, encouraged by the Save Lake Mille Lacs Association, whose honorary chairman is former Vikings Coach Bud Grant, and additional groups opposed to the treaty settlement, want it defeated and the state's lawyers to go back to court.

"Politicians are always making deals — everything to them is a deal," said Grant. "Well, this involves right and wrong. It's wrong to put nets in the lake, it's wrong to spear fish. And you can't be half right and half wrong."

Dick Sternberg, Save Lake Mille Lacs vice president and a former DNR fisheries biologist, maintains the DNR bowed to political pressure from Carlson to settle the dispute so it wouldn't drag on and become a political issue in 1994, when he is expected to seek re-election.

"That's absolutely false. We have said from the beginning we thought a negotiated settlement was a good idea if it was a good settlement,"said Marcy Dowse, DNR information and education director.

Disagreeing about the "good" is Sen. Charles Berg, DFL-Chokio, chairman of the Senate Fish and Wildlife subcommittee, who says DNR officials proved to be "poor" negotiators.

"Spearing and netting in Lake Mille Lacs, six other designated lakes and 20 miles of the St. Croix River is something that sport fishermen cannot accept," Berg said. "I don't think it will pass with those provisions in it."

Sen. Bob Lessard, DFL-International Falls, chairman of the Senate Environment and Natural Resources Committee, also has doubts. "I'd be less than candid if I didn't say there is overwhelming opposition to some provisions, including the exclusive tribal fishing zone," he said.

Sen. Gene Merriam, DFL-Coon Rapids, considered a voice of moderation in the Legislature, said, "I'm not convinced it's a very good deal."

But Munger, though he doesn't like spearing, also said the DNR "has done the best job under the circumstances." And he's not surprised Berg, a frequent critic of the DNR, opposes the treaty. "He would oppose the second coming of Christ if DNR arranged it," Munger said.

The proposed agreement allows subsistence spearing and netting of as much as 24,000 pounds of fish on a 6,000 acre zone in the southwest portion of Mille Lacs, six other lakes and 20 miles of the St. Croix River and includes a $10 million state payment. Spearing and netting nongame fish would be allowed on 136 other lakes.

While the treaty granted fishing and hunting rights to the Chippewa at the pleasure of the president, opponents say President Zachary Taylor rescinded those rights in 1850. Critics also point out that the Mille Lacs band later received $9 million in compensation for several claims.

But Don Wedll, natural resource chairman of the Mille Lacs Chippewa, says the band retained its hunting and fishing rights in subsequent federal actions and that the settlement is a reasonable one.

Rep. Willard Munger
Fears impact of an adverse court ruling on tourism.

150

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Mille Lacs Band ratifies compromise

By Pat Doyle
Staff Writer

Mille Lacs Indian Reservation

The Mille Lacs Band of Chippewa approved a compromise with the state Tuesday over fishing, hunting and gathering rights, setting the stage for a showdown in the Legislature with sporting groups that oppose it.

[illegible]nt of the Mille Lacs voters ratified the agreement, which was fashioned by their leaders and state game officials. The strongest support for the agreement came from on the reservation, north of Onamia, while band members who live in Minneapolis and voted in the plebiscite opposed it.

Tribal chief executive Marge Anderson had pushed hard for the agreement visiting band members' homes to explain its terms. "It's wonderful," she said last night after the results came in. "This is what the people want, and we'll go for it."

Because the plebiscite was not binding, tribal officials considered rejecting the deal if the vote had been very close. But Anderson said the wide margin of support among band members would prompt the council to give the agreement final approval this week, and send it to the Legislature, which also must ratify any deal.

Vote continued on page 14A

151

Vote/ Band would get 7,500 acres and $10 million

Continued from page 1A

The compromise would settle a lawsuit by the band against the state that asserts claims to fish, hunt and gather without state regulation in a region that includ[illegible] lakes and stretches from Cro[illegible] to Chisago counties. The band ceded the territory to the federal government under an 1837 treaty, but the Indians claimed they retained broad harvesting rights there.

Wisconsin Chippewa went to trial over the [illegible] treaty and won rights to take up to 50 percent of harvestable fish and other natural resources throughout the northern one-third of Wisconsin. The court victory was followed by ye[illegible] of loud and sometimes violen[illegible] in which sport-fishing group[illegible]ged on lakes to protest the spe[illegible]shing, an activity that is generally forbidden under state laws in Wisconsin and Minnesota.

"I didn't want our kids to go through (the turmoil) the kids went through in Wisconsin," Anderson said. "If we go to court and win, it would be a repeat of Wisconsin — confrontations."

The agreement, which was accepte[illegible] by 200 of 334 vote[illegible]day, to[illegible] two years to negoti[illegible]e drawn opposition from l[illegible]nd sport-fishing groups.

If the Legislature rejects the agreement, the dispute probably will be taken to federal court, where it could take years to resolve, according to officials of the band and the state Department of Natural Resources.

Band officials said last night that the turnout for [illegible]s strong.

As children played basketball in one end of the Nay-Ah-Shing School gymnasium yesterday, adults cast ballots on the issue, which spans generations. And few issues strike a more emotional chord than Indian treaties and the distribution of natural resources.

The history of Indian and white relations, the value of money and the pull of family alliances played a role [illegible]sters' decisions.

[illegible] deal would limit Indian netting and spearing to an exclusive tribal zone on 4.5 percent of Lake Mille Lacs, six other lakes and parts of two rivers. It would also give the band 7,500 acres of publicly held land and $10 million over four years. In exchange, the band would drop its lawsuit.

Hank Bonga, 56, said the compromise "has everything in here that the band needs or wants. It makes allowa[illegible]he opposition."

[illegible] rejection of the [illegible]mpromise by band members would [illegible]reated "ambiguity about the reputation of this band. It's the band's wish that this issue not reach volatility."

Another voter, Fred Smith, 66, said he favored the compromise as a quick way to hold the state accountable for some of its obligations under the treaty. Whites got the land in the 12-county ceded territory a century ago, and now sport-fishing groups "don't want to give us what we wanted," he said.

One of the strong[illegible]ources of opposition to the agreement comes from members of the band who live in the Twin Cities. Although they were able to vote last week in Minneapolis, some drove to the reservation yesterday to cast ballots.

Even though the agreement passed by a comfortable margin, some band members still wanted to go to court, where they felt they could win a judgment similar to that won by Wisconsin Chippewa.

"[illegible] the land up [illegible]il of our [illegible]ghts," said Rose Boy[illegible], who said she voted against the deal. She said the band should take the dispute to trial. "It will most likely succeed because of what happened in Wisconsin," she said.

"If the courts agree with us, we get everything," said Jackie Benjamin, 38. "But if we go with this agreement, we're very limited in wh[illegible]ould do."

Earlier in the day she brou[illegible] 4-year-old daughter, Cassandra Beaulieu, along to the polling place at Nay-Ah-Shing School. She said the band had little to lose in court because it's not exercising rights it claims under the treaty.

"The treaty is part of our culture and tradition," Benjamin said.

She [illegible]er opposition to the deal was influenced by [illegible]rt-fishing groups who have dismissed the treaty as irrelevant. "I'm tired of that. They are so against the agreement and want to take it to court and fight. Well, let's do it. If it takes seven to 10 years, let it. My kids are still young."

Ballots were cast at four voting places: the reservation north of Onamia on the west shore of Mille Lacs Lake, in Isle and McGregor and at a location west of the St. Croix River, where many members live. About half of registered voters live on the reservation.

Legislators had been waiting to see whether the band would approve it before acting.

"They were worried about how some of this would come out," Anderson said. "They thought there was a possibility we would vote it down. I didn't know either. We don't have a poll to determine what the feeling was out there."

Star Tribune
Sunday
March 7/1993

Legislature confronts a dicey proposition in settlement

Ron Schara

The Mille Lacs Band of Chippewa put its bet on the table last week and passed the dice to the Minnesota Legislature.

One side now has agreed to the proposed settlement of tribal hunting and fishing rights over the 1837 Treaty area.

It's now the Legislature's turn to play.

Big stakes.

It's more than walleyes. This is about people's lifestyles and businesses. It's about taxes and property values.

The other day, a Wahkon, Minn., woman who lives on the lake called to say her concerns didn't include fish quotas. She wonders about lost county taxes and who'll make up the payments. She's concerned about property values on the lakes affected by the proposal. The tax questions haven't been raised much by the media, she argued.

Another Mille Lacs resident called about his predicament, which included the use of his lake cabin within the proposed tribal fishing zone. He has angling friends who traditionally come to his lake cabin. It's one of the reasons he has the cabin, he said, for the fishing fellowship.

Under the proposal, he would be able to fish the zone, but his buddies would be prohibited, unless they're in his boat. "How can I put eight friends in my boat?" he asked. He says he pays taxes on the cabin but that the agreement will mean "I can't enjoy it like before."

This is also about settling historical contracts and cultural differences.

A reporter suggested the other day to Don Wedll, the band's commissioner of natural resources, that the settlement controversy might disappear if the use of gillnets and the exclusive zone were eliminated — provided the tribe's wants and needs could be fulfilled, too.

Wedll said he had another idea for solving the dispute. He suggested that the band's problems also would disappear if most of us (including this reporter) went back to Europe.

We laughed.

The white man's question and the Indian's answer might have placed the issue in sharper focus.

Now the vote moves to the

Schara continued on page 14C

[redacted]

[redacted]

Schara

Continued from page 16C

Legislature.

Sen. Steve Morse, DFL-Dakota, is author of the agreement bill. He agreed that there are concerns in the proposal that can't all be addressed. "The fact of the matter is, there are tradeoffs," he said.

Morse said last week that he dislikes the idea of gillnetting in Mille Lacs, "but I feel the agreement is the right thing to do." He said he would rather risk having gillnets in a small area (6,000 acres) of Mille Lacs than turn over the entire lake plus hundreds of other lakes within the 12-county 1837 Treaty area.

"But I have to admit the mail I'm receiving is running mostly against the agreement," Morse said.

Other legislators agree that the majority of phone callers and letter writers are opposed to the settlement.

"The reason there's an agreement is because Minnesota is being sued," Morse said. "I may not like the settlement, but I think it'll be better than a court decision. We don't have a good court case.

"If we lose in court we could lose control of all resources in the Treaty area. If the Band loses in court, they are where they are today."

Morse said he's considering other factors, including the strong probability that a federal judge will be more inclined toward the Indians' position.

If Doug Iverson were a legislator, he would vote "no" to the agreement. Iverson is one of the leaders of the most vocal critics, the Save Mille Lacs Association, an umbrella group of hunting and fishing organizations.

"I'm not anti-settlement. It's just that we're against this one," Iverson said. "We were not allowed any input. The exclusive zone is just like building another fence between Indians and non-Indians."

Iverson says the Legislature should vote down the agreement and reopen negotiations. However, according to tribal leaders, that's not an option.

"This is like rolling the dice over the best walleye lake in the world," Morse said.

One roll is on the table. The dice have been passed.

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Fargo Forum Press

3-19-93

Editorial

Get full vote on treaty settlement

A treaty settlement with the Mille Lacs band of Chippewa was dealt a severe blow this week when the Senate sponsor pulled the bill just before a vote.

Sen. Bob Lessard, DFL-International Falls, said he doesn't know if he'll resubmit his bill for consideration. He pulled the bill from a committee just before committee members were scheduled to decide whether to send it to the full Senate.

While the bill likely would have narrowly passed out of the committee, Lessard said a head count of his colleagues in the full Senate showed the treaty didn't have enough support to pass.

The bill deserves an on-the-record vote by the full membership of both the House and Senate. If the bill is defeated, Minnesota voters have a right to know who to hold responsible if and when the courts give the Indian band much broader hunting and fishing rights in the Mille Lacs area.

The agreement would allow band members to net and spear game fish in an exclusive fishing zone on a small portion of Mille Lacs Lake. It would settle a lawsuit in which the band claims the right under an 1837 treaty to fish and hunt in 12 east-central Minnesota counties without state regulation.

The compromise negotiated by state and band officials would create a 6,000-acre band fishing zone comprising less than 5 percent of Lake Mille Lacs, one of Minnesota's premier walleye lakes.

While opponents of the agreement say it gives too much to the Indians, rejecting the deal likely will lead to the Indian band winning a federal court case, which would give them sweeping fishing rights to much of Mille Lacs and as many as 100 other area lakes.

If the band wins such a lawsuit, tribe members would be able to take fish for commercial sale from Mille Lacs with virtually no limits on how many fish could be harvested.

While support for the treaty seemed fairly strong among lawmakers a few weeks ago, hours of testimony against the treaty began to take its toll. With action in the Senate suspended, House leaders say they will likely delay acting on the bill until they see what happens in the other chamber.

We hope backers of the bill force the bill onto the floor of both chambers so a recorded vote can be taken. Those lawmakers, who want to risk fighting a lawsuit the state will in all probability lose, should be willing to go on record saying they're willing to be so foolhardy.

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MILLE LACS CONFLICT

Special Report: *In keeping with more than a century of tradition, Minnesota may again undermine the Ojibwe Indians' bid for treaty rights. But this time, it is sportsmen, resort owners and taxpayers who could lose.*

Traditions At Stake

Pioneer Press April 4, 1993

Treaty fight tests old, new claims to Mille Lacs

Despite 150 years of concessions to state and federal governments, the people of the Mille Lacs band of Ojibwe have had their lands seized, their homes burned, their families divided, their traditions outlawed and their treaty rights largely ignored.

Now the Minnesota Legislature seems poised to repeat history.

Lawmakers are blocking ratification of a pact between the Ojibwe and the state Department of Natural Resources that would give the band $8.6 million, 7,500 acres of land near their reservation and exclusive fishing rights to 4.5 percent of Lake Mille Lacs — the state's premier walleye sport fishing lake.

The pact also would give the Indians something even more valuable to them — the right to practice the traditional netting and spearfishing methods of their ancestors.

It is the specter of nets and spears in Mille Lacs that is so disturbing to Minnesota's sport fishing industry and that has opponents saying they will fight the agreement at any cost.

BY DENNIS ANDERSON
STAFF WRITER

But failure to reach a negotiated settlement with the Ojibwe band could drive the Indians into court to seek full restoration of their original treaty rights.

If the case is settled in court rather than by compromise, state conservation officials fear, the band could win much more than the state would settle for — and Minnesota taxpayers could pay millions in the process.

A victory in federal court could give the Mille Lacs band sole rights to as much as half the fish and game in a 12-county region of east-central Minnesota — an area that was ceded by the band to the federal government in 1837.

There is considerable precedent for that outcome: Similar court battles have been won by Indian bands in Wisconsin, Washington state and Michigan. The Wisconsin suit, which involved the same 1837 treaty but was tried in a different federal judicial district, took 17 years to settle, cost $12 million and awarded Ojibwe bands rights to half the fish and game in the northern third of that state.

MILLE LACS CONFLICT

THE SERIES

▼ TODAY
Controlling fish, game and other Mille Lacs-area natural resources has been the goal of whites in Minnesota for more than 150 years.

▼ MONDAY
The Indian treaty rights movement is the product of failed government policies and the turbulent '60s.

▼ TUESDAY
Mille Lacs agreement is stalled in the Legislature, despite warnings that state could suffer significant losses in a treaty court battle.

But money and land would not be the only things at risk in a court fight. The tense detente that exists between Indian activists and white sportsmen and sportswomen in Minnesota could be shattered, spawning possibly violent confrontations at boat landings and hunting sites.

"Any state faced with this type of conflict should consider greatly the many benefits of a negotiated settlement," says George Meyer, head of the Wisconsin Department of Natural Resources, and a leading lawyer in Wisconsin's protracted court fight with Ojibwe bands. "I believe that any court rulings that follow precedents ... will generally result in greater resource allocations to tribes, and away from nontribal interests."

Under the proposed Mille Lacs agreement, the 2,660-member Mille Lacs band could harvest about 24,000 pounds of Mille Lacs walleyes in an average year, compared to 355,000 pounds taken by sport anglers.

The percentage of walleyes allowed the Indians under the agreement would be relatively low. Yet anglers and resort owners fear that there would be no way to control the number of fish actually caught in Indian nets, and that the presence of nets and spears would discourage tourism — a $42 million-a-year industry in the Mille Lacs area.

Netting of fish also offends the sensibilities of sport anglers who practice conservation by returning caught fish to the water.

The compromise has been approved by the band, but is stalled in the Legislature, where some lawmakers call it "dead," and where opponents are threatening to undermine Indian casino profits if the pact passes.

If the Legislature fails to pass the agreement, the band's treaty-rights lawsuit will return to federal court in August.

If that happens, and if the Mille Lacs band wins extensive off-reservation fishing and hunting rights in court, band members say they will feel free to commercially fish Lake Mille Lacs, which could place band fishing nets throughout the lake, rather than in a small, restricted area.

And, band leaders say, they may not stop at Mille Lacs walleyes; a court victory may give them the go-ahead to harvest and resell other fish and game in the 12-county ceded territory.

Still, opponents of the agreement say they want the conflict returned to court, where they believe they have at least an even chance of winning.

"I believe the state would present a very strong case in court," argues state Sen. Gary Laidig, IR-Stillwater.

Some settlement opponents concede, however, that their strategy is to oppose the Mille Lacs band now and in the future — even if the band wins off-reservation hunting and fishing rights in court.

"The band isn't going to net Mille Lacs, and they're not going to fish it commercially, even if they win in court," promises DFL Sen. Charlie Berg, who says he represents sportsmen and who leads opposition to the pact in the Legislature. "There will be too much pressure put on them from both inside and outside the band to fish the lake commercially."

There have been no explicit physical threats. But in Wisconsin, even after the court affirmed the Ojibwe treaty rights, Indian spearfishers were harassed at boat landings, where raucous, occasionally violent demonstrations by non-Indians sometimes erupted.

Berg is explicit about his legislative threats: If the Indians attempt to net or spear walleyes in Lake Mille Lacs, Berg says, he'll continue his attempts to legalize video slot machines at taverns throughout the state. Berg says such an expansion of gambling in Minnesota would cut profits at the Mille Lacs band's two casinos.

Berg is not alone in his ire. A recent statewide survey showed that about half of Minnesotans questioned want the state to fight the Mille Lacs band's treaty rights claims in court rather than approve the compromise bill.

Agreement faces hostility

January 1993.

A few hundred people are gathered at a St. Paul hotel for an informational meeting sponsored by the Minnesota Department of Natural Resources. The subject: The fishing and hunting treaty rights agreement signed by the DNR and the Mille Lacs band of Objwe.

Standing together behind a table, facing a small crowd and answering questions, are Don Wedll and Jim Genia.

Wedll is the Mille Lacs band DNR commissioner. Genia is the band's deputy solicitor. Wedll is white, but his wife is Ojibwe and a Mille Lacs band member. Genia, who grew up in St. Paul, is half Indian; his father is Ottawa and Choctaw, his mother white.

Time goes by.

Eventually, the meeting gets pretty heated. A few whites — mostly fishermen — crowd around the table, jabbing fingers at Wedll and Genia, promising that the band will never be allowed to put nets and spears in Mille Lacs.

Wedll and Genia just listen.

They know that for many non-Indians, "going up north" for the weekend to fish Mille Lacs has become a Minnesota tradition. They also know a lot of people in the Mille Lacs area depend on sport fishing for their livelihoods.

So the [illegible] that side of the s[illegible]

But [illegible]a and Wedll know, [illegible], that the Mille Lacs Indians have been kicked around for longer even than band elders can remember.

Unemployment. Poverty. Discrimination. Genia and Wedll know that each of these plagues American Indians, a race of people struggling to reclaim cultural pride and to instill in its children positive identities and hope for the future.

Matters have improved lately for the Mille Lacs Ojibwe, thanks largely to income from their two casinos — one near Lake Mille Lacs, the other near Hinckley.

But casino profits haven't get the band through 150 years of hard times. Ojibwe thoughts, beliefs and practices did that — practices like the traditional netting and spearing of fish, which band men and women's ancestors did in Lake Mille Lacs long before whites "discovered" the lake.

So while Indian harvest methods may be meaningless, even offensive, exercises to some whites, Genia and Wedll know that to many Indians they are rituals that represent a link to the past — and promise for a better future.

The meeting ends.

As the room empties, Genia and Wedll pack up their treaty-agreement literature and drive north, leaving the county named for the first territorial governor, Alexander Ramsey, a Minnesota politician who, like many others past and present, curried favor with whites by playing hardball with Ojibwe.

A history of intolerance

The 1993 conflict between the Mille Lacs band and Minnesota's mostly white sport fishing industry is mainly over control of Lake Mille Lacs walleye, the state's most popular game fish, and the backbone of the state's summer tourism industry.

Conflicts between the two groups date to their first meetings. Whites who came to settle the region wanted — and took — Mille Lacs area land for homesteading and development. Before that, whites took the region's timber.

Now the conflict is over fish and game. And this conflict, like those of the past, bears witness to an entrenched intolerance by many Minnesotans of Indians, and of Indian game and fish harvesting methods.

But these harvest methods are essential to many Mille Lacs band members, who say their existence as Indian people depends in part on their continued practice of tribal customs.

Some Indians even [illegible] the current treaty-rights fight is less about fish than about cultural identity — about re-establishing in themselves and their children a sense of their history.

And, the Indians say, the treaty rights controversy also is about making the federal government finally own up to its obligations.

Such claims have drawn mostly [illegible]s in the 1993 Minnesota Legislature, particularly in the Senate, where the bill has failed to pass its initial hurdle, the Environment and Natural Resources Committee.

Legislative roadblocks aside, the Indians do have an ally in Gov. Arne Carlson.

Carlson says the pact is a wise compromise. It would keep the matter out of federal court, would allow the state and the Mille Lacs band to work together to control the conflict's outcome, and would prevent the type of shoreline confrontations that occurred in Wisconsin.

Carlson believes that racism drives some of the efforts to thwart the Mille Lacs band's limited natural resources claims — an attitude which he says is "non-Minnesotan."

But historical records reviewed by the Pioneer Press over four months indicate such efforts are in fact typically Minnesotan, and have been since the disputed treaty was signed in 1837.

Consider:

■ In 1849, when Minnesota became a territory, the state's newly formed legislative assembly passed a resolution urging abrogation of Ojibwe hunting, fishing and gathering rights reserved under 1837 and 1842 treaties with the federal government. Then-Gov. Ramsey approved the resolution and successfully petitioned President Zachary Taylor, a former Indian fighter, to act on the request.

■ In 1852, Ramsey essentially conspired to bring Minnesota and Wisconsin Ojibwe to north-central Minnesota in autumn to receive annual treaty payments, rather than gathering the Indians in a more central location, as had been customary. Thinking that white traders could quickly move the Indians' money to their own pockets, Ramsey's intent was to bolster the economy of the young territory.

But a government representative didn't reach the Indians until six weeks after his scheduled arrival, and then he informed the Indians their money had not been approved by Congress. Returning empty-handed to their homes amid November snow and cold that year, some Indians burned canoes for warmth. An estimated 400 died.

■ Between 1860 and 1900, timber companies and other non-Indians claimed — illegally, by some accounts — large sections of the original 61,000-acre Mille Lacs reservation, established by treaty in 1855.

The land was appropriated even though the band had at one time sent as many as 800 warriors to defend a white settlement against a threatened attack by other Indians -- a gesture that won the band the right to remain at their Lake Mille Lacs homeland in an 1863 treaty.

■ In 1902, many Mille Lacs families were forced to move from the lake that had been their ancestral home for 150 years to the newly established White Earth Indian Reservation.

This relocation was a direct violation of past treaties, agreements and understandings between the Mille Lacs band and the government. But federal and state officials, pressured then as now by white voters and business interests, consolidated the Minnesota Ojibwe on remote reservations, thus clearing the Mille Lacs area for white settlement and development.

■ In 1911, the Mille Lacs lakeside village of Chief Wadena was burned by a county sheriff and an armed posse. Wadena was a leader of the "nonremoval" Mille Lacs Ojibwe — those who had refused to go to White Earth.

Indians driven from land

In burning Chief Wadena's home, Minnesota authorities were continuing a drive for Indian land and resources that began with the nation's earliest settlers and swept west to Minnesota and beyond.

Many white settlers who reached Minnesota in the early to mid-1880s were confident in their belief that America's colonization was divinely inspired, and that "heathen" Indians were impeding progress.

Newspaperman James Goodhue wrote vividly of the settlers' thirst for land and profit in the Minnesota Pioneer on Jan. 22, 1852, arguing that the time had come for whites to take their rightful place as proprietors of the Middle West:

"We want treaties made for every foot of Indian territory within our limits, east of the Mississippi River. We want the pine lands purchased, surveyed and sold, on the head waters of the Mississippi River. Not only do the interests of the territory require this, but the whole valley of the Mississippi River cries aloud for it.

"We want ten thousand farmers, with strong hands and courageous hearts, with their plows and their oxen and cattle and sheep, and their wives and children ... to raise large crops and obtain large prices and enjoy vigorous health, and build up valuable institutions of religion and learning.

"We want manufacturing capital enough, invested in sawmills, planing mills, lath mills, shingle mills, lathes, and the manufacture of wooden ware and the building of boats, to manufacture into all possible uses, every pine log that can be cut. We want thousands of lumbermen, to supply the pine logs; and we want the permission of the government to buy the pine lands north of us, and to continue in and to extend, this our legitimate business, for our own profit and the evident profit and advantage of the Great West."

In this highly charged environment the federal government "negotiated" treaties with Minnesota Ojibwe that usurped the Indians' land and nearly extinguished their cultures.

In doing so, whites enjoyed many advantages over Indians, primary of which was familiarity with written language.

In fact, in signing the treaty of 1837, many Ojibwe may have believed they were selling only their timber "from the usual height of cutting down a tree to the top," not the land itself, according to Ronald Satz, University of Wisconsin-Eau Claire Indian studies professor and author of a book on Ojibwe treaty rights.

Also, the fact that in the 1837 treaty the Ojibwe reserved the right of "fishing," yet had no specific word in their language at the time meaning "fishing," is indicative of the language gulf that existed between the two groups at the time, Satz says.

Whatever the Indians' understanding of the treaty, in exchange for a relative handful of supplies and a small amount of money, Minnesota and Wisconsin Ojibwe signed away everything — their land and their timber.

It was one loss of thousands.

Gone already to a large degree was the Ojibwe's traditional lifestyle, in which clans and bands moved from location to location, fishing, hunting and gathering to support their needs.

Many Ojibwe by 1837 were instead largely dependent on white traders, who exchanged supplies with Indians for pelts. In effect, many traders held Indians hostage, tempting them with alcohol — with which Indians had little physiological tolerance or models of moderation.

At the time, white leaders seemed to have no qualms about their actions. The prevailing wisdom among Christian, European settlers was that Indians were incapable of becoming civilized.

In his book, "Savagism and Civilization, a study of the Indian and the American Mind," Roy Harvey Pearce says that in settlement days Indians were considered by many whites to be the "zero of human society."

Rather than represent early civilization, Pearce says Indians were believed "bound by noncivilization: and so the Indian must vanish, for noncivilization is not life."

This mindset excused and encouraged the abrogation of Indian treaties.

A Kansas newspaper summed up the sentiment many whites felt against Indians a century ago:

"A set of miserable, dirty, lousy, blanketed, thieving, lying, sneaking, murdering, graceless, faithless, gut-eating skunks as the Lord ever permitted to infect the earth, and whose immediate and final extermination all men, except Indian agents and traders, should pray for."

ABOUT THE AUTHOR

The special report, "Traditions at Mille Lake," was reported and written by Pioneer Press Outdoors Editor Dennis Anderson, 42, a sportsman who has won several national awards for his journalism, including the Edward J. Meeman National Journalism Award for environmental reporting and the Associated Press Sports Editors investigative reporting award. In 1989, he was one of three finalists for a Pulitzer Prize in specialized reporting for his investigative series on the decline of North America's ducks. He has an English degree from the University of Minnesota-Morris and a master's in journalism from the University of Minnesota.

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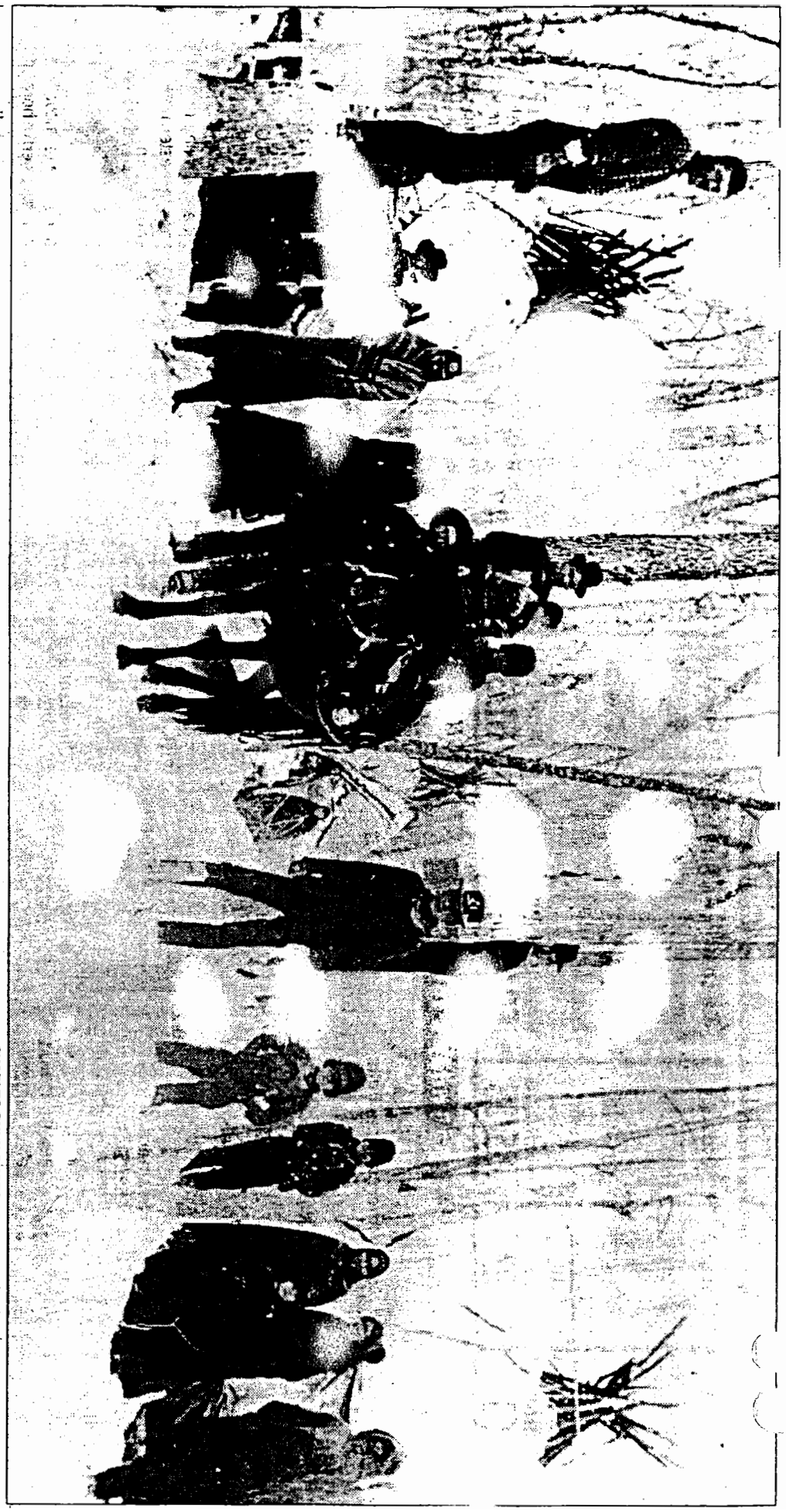
Library research for the project was done by Ruth Ehmcke.

Design and planning were done by Bill Bradley, Ellen Simonson, Laura Hopple Treston and Nancy Ward.



Ojibwe band members endured the hardships of a cold Minnesota winter in their village on the Lake Mille Lacs reservation in 1885.

CHARLES RUNK PHOTO/ COURTESY MINNESOTA HISTORICAL SOCIETY

Twin Cities sportsman views treaty as a threat

Mike Carlson is from the Twin Cities, but spends much of his free time on Lake Mille Lacs, where his family has a cabin.

Carlson opposes the treaty rights agreement struck between the Mille Lacs band and the state, and thinks the conflict should be taken to court, where he believes the state will prevail. He is an active member of the Save Lake Mille Lacs Association, which opposes the treaty rights agreement.

As do the Ojibwe, Carlson has his own Lake Mille Lacs traditions. Big water. Walleye. Friends at the lake. Each of these is important to Carlson, and each, he feels, is at risk if the compromise agreement between the state and the band is approved by the Legislature.

Better for the state to go to court, Carlson believes, where the Mille Lacs band's off-reservation fishing and hunting claims will be proved invalid.

This is Carlson's story:

Lake cabin becomes tradition

"I was born in 1961 in St. Paul, and went to my family's cabin on Mille Lacs before I could walk. In summer, everyone would come up to the lake. Cousins. Neighbors. Everyone.

"My great-grandfather was a farmer near Cambridge who bought property on Mille Lacs in 1950. He fished the lake long before that, but didn't buy the lot until 1950. He put a concrete block house up on the lot, and that's the cabin we still own.

"It was my grandfather and my father who taught me to fish. I can still remember going out in our 16-foot Starcraft when I was a kid. I was so small that sometimes I could barely peek over the gunwales.

"We had a 10-horsepower Johnson and we'd go out to the flats, seven or eight miles out, and sometimes all I could see was water, the waves were so big. We'd lose sight of the horizon, seeing nothing but waves. But we'd catch walleyes.

"At one point when I was very young, my grandfather and my father were talking about selling the place. I told them if they did, I would disown them. I don't know if that played any role in their decision process. But if it did, I'm glad it did. Because we still have the place.

"When I was a kid, we always stayed within game laws. At the time, catch-and-release was not part of what we did. Now times have changed. Today, I release most of the big fish I catch.

"What do I like most about going up to Mille Lacs? The fishing. The camaraderie. Being able to invite people up for the weekend. You know, sometimes there will be four or five boats tied up at our dock.

"That's why the establishment of an exclusive Tribal Fishing Zone sticks in my craw so much. I know how important it is to me to bring my friends up. And I know the people on the west side of the lake won't be able to do that anymore if the Tribal Fishing Zone is established. I feel sorry for them.

"Don't get me wrong, I'm not 100 percent against *any* agreement between the state and the Mille Lacs band. I'm just against *this* agreement.

"The band says its culture is different from ours, and that it wants to be able to exercise some of its traditional methods of fishing and hunting. If that's what they really want to do, I would think some subsistence spearing on Mille Lacs would be good enough.

"But that's not the argument we've been getting out of the band.

"The band wants to net Mille Lacs, and that's where I draw the line. I'm against nets because I believe they are detrimental to the environment.

"I agree the band has a legal argument. But so does the state. That's why I think the issue should go to court. If it goes to court, it's answered. If the settlement between the state and the band becomes effective instead, it will do nothing but generate more lawsuits.

"The state says the settlement would produce a final result to this conflict. Not true. There's nothing final about the settlement.

Sportsmen oppose agreement

"Our group, the Save Lake Mille Lacs Association, is opposed to the agreement. I'm secretary of the group, and head of our research committee.

"Essentially, we're an umbrella group that represents about 100 other sportsmen's groups.

"It's our position that the Mille Lacs band has no off-reservation hunting and fishing rights, other than those that we all have. This opinion is based on historical evidence and legal opinions.

"When I got into this Mille Lacs thing, I said to myself, 'If anyone can show me that the Indians have the rights they say they have, then I'm done with it.'

"I don't want to take anything away from the band. But I don't think they have the rights they claim. I'll grant you the band did reserve the right to hunt and fish in the 1837 treaty. But in my opinion, those rights were extinguished by the 1850 presidential removal order.

"Furthermore, during negotiations for the 1855 treaty with the Chippewa, the Indians talked about giving up their nomadic way of life, and of wanting to live like whites. In my interpretation, this is just one more thing that extinguished these rights.

"You see, you can't look at this in terms of one or two things that have happened. There are 150 years of history that have gone into this.

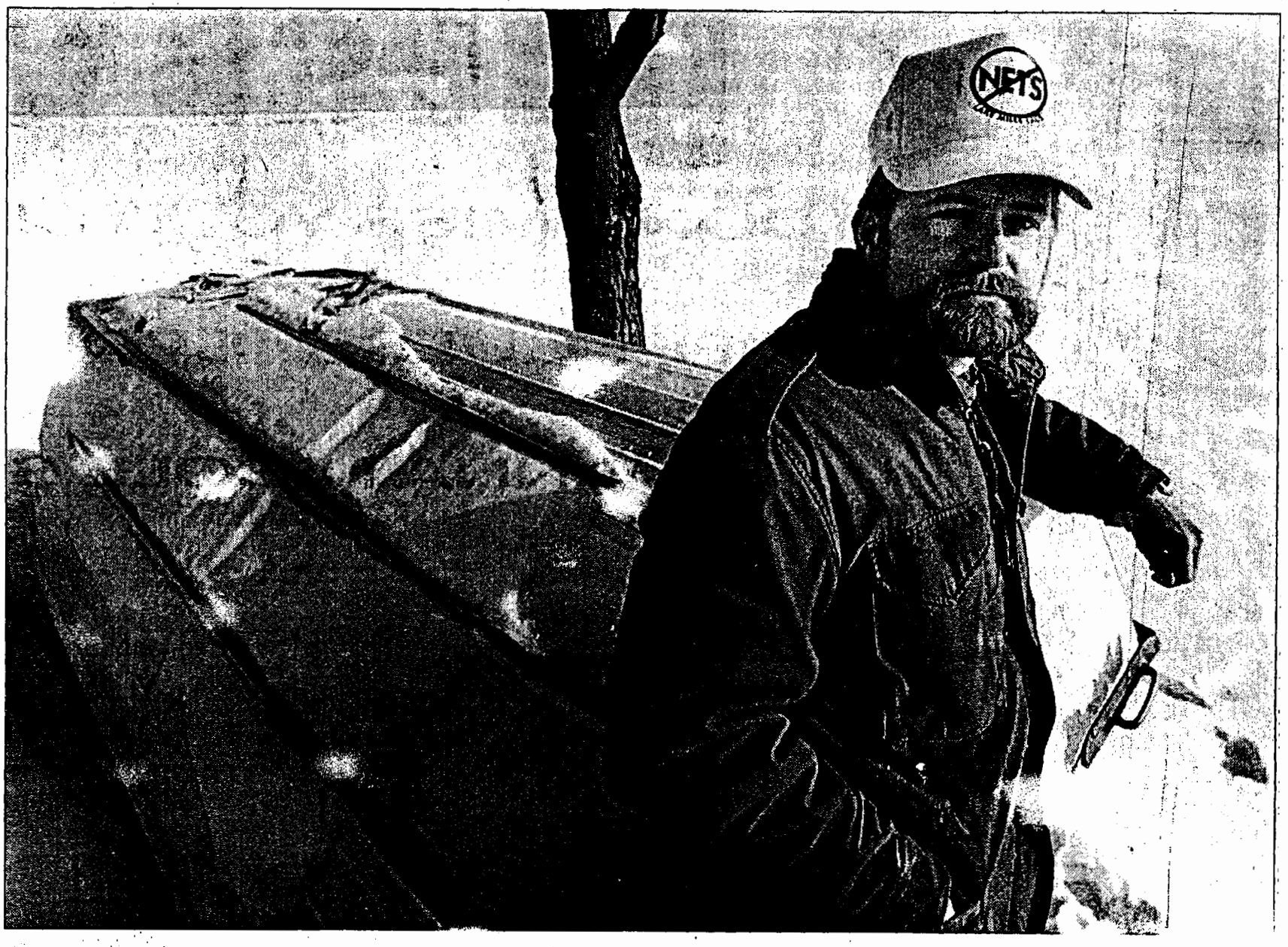
"Granted, during that time, a lot of things happened to the Mille Lacs band that shouldn't have happened.

"None of this was right. But does that justify what is going on now? The only argument I've heard for signing the settlement reached between the state and the band is that it's 'the right thing to do.'

"I agree the Indians have been screwed throughout history. But that's history. Let's pick up the pieces and move forward.

"And if the state goes to court and loses? Even if that happens, and the band wins the right to commercially harvest Mille Lacs, I don't think they would do it.

"It would cause so much trouble for them; it would just kill their casinos."



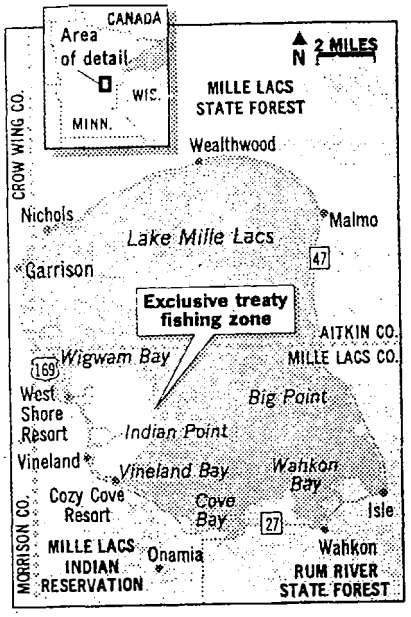
Mike Carlson with the boat his grandfather used on Lake Mille Lacs: "I can still remember going out in our 16-[illegible] was so small that sometimes I could barely peek over the gunwales."

About 'Ojibwe'

The spelling of "Ojibwe" varies. Sometimes "Ojibway" is used; other times "Ojibwa." For this series, "Ojibwe" has been selected, primarily because it is the preferred spelling of the Mille Lacs band. Many Ojibwe bands prefer "Chippewa," which refers to the same Indians. Historically, Ojibwe or Chippewa Indians also have been known as "Anishinabe." Based on a poll of Ojibwe bands in Minnesota and Wisconsin, Pioneer Press style, in stories apart from this series, is to use "Chippewa." Also in this series, references to Indians commonly referred to as "Sioux" appear as "Dakota," which is the more traditional reference. An alternate spelling is "Dacotah."

Lake Mille Lacs area

A tentative settlement between the Mille Lacs band of Ojibwe and the Minnesota DNR gives the band exclusive fishing rights to a small area of Lake Mille Lacs.



Proposal's main points

Here are the key elements of the treaty compromise reached between the state and the Mille Lacs band:

- The band has exclusive fishing use of 4.5 percent of Mille Lacs, from which it can take by net or spear 24,000 pounds of walleye in an average harvest year. This compares to 355,000 pounds for non-Indian sport anglers.
- The band can also net or spear in six other lakes in the 12-county ceded territory, as well as a small section of the Rum River and 20 miles of the St. Croix River.
- The band receives 7,500 acres of land and $8.6 million.
- Fish and game harvesting by band members in the 12-county ceded territory will be regulated by band code. The code has been released and is considered restrictive, but can be changed unilaterally by the band.
- No fish or game taken by band members can be sold.
- The state and the band will cooperatively manage many natural resources in the ceded territory.
- Agreement is final between the Mille Lacs band and the state over any rights the band might have reserved under 1837 and 1855 treaties with the federal government.

Manifest Destiny exacted heavy toll on Ojibwe band

Before settlement by whites could occur near Lake Mille Lacs, Ojibwe had to be cleared off their traditional homelands. The most dramatic relocation occurred in 1902, when the White Earth Indian Reservation was opened in northwest Minnesota.

Though government officials forced many Mille Lacs band members to go to White Earth, some refused, splitting families and becoming, in the words of one historian, "landless people in their own homeland."

Those who remained were run off by authorities to make room for white development and white sporting and recreation interests.

What follows is the story of the day Mille Lacs Ojibwe Chief Wadena, who resisted the move to White Earth and was put in irons. His village was burned by a local sheriff.

The story was reported in this newspaper in 1911.

The expulsion from paradise

"The whites, in opening the Mille Lacs Indian reservation to settlement, have burned a village — the ancient city of the tribe, a seat of government, a battlefield, a place of the burial of the dead, a place of religious and military and historical renown — and the Mille Lacs band of Chippewas, after standing back and shouting with ironic laughter, have begun that last hopeless wandering in the wilderness which will culminate only with the vanishing of the race from the Earth.

"Nowadays, only one difference of opinion remains between the whites and the Indians: The Indians do not wish to go to White Earth to be schooled, policed, and converted — and consequently they play hooky as often and systematically as possible with no sort of excuse. . . .

"Year by year, a patient procession of Indian agents have persuaded the various wandering bands of the tribe to go into modest retirement at Leech Lake, until that reservation had a population of 3,000 and only 75 bad little Indians remained near the site of their ancient village with its earthen works, mounds, monuments and burying grounds on the shores of that mythically beautiful lake of a thousand lakes, Mille Lacs.

"It was this remnant of the band who were evicted from the newly platted summer colony on the south shore, stimulated to stubborn resistance by the magician 'Wadena,' wrongfully called 'medicine man,' an individual of strong personality and quiet, if smoldering temperament.

"The village at the time was situated upon the south shore of the beautiful lake — a shore whose sweeping curves of blue water are broken in irregular grace by long, projecting points of land, heavily timbered, darkly green and rimmed with yellow beach.

"When Wadena had been saying nothing for about a year, living in the exact middle of the street . . . with his campfires smoking, pots boiling, dogs howling and children sprawling right where various magnates and potentates were aching to build stucco and cobblestone and concrete palaces — why, then the agent decided to get a pulley or something to lift him out of the foreground of the scenery and set him gently somewhere in the middle distance — which would tone him down in various ways and make him a more acceptable detail of the picture.

"Wadena was duly notified of the eviction, and he broke silence long enough to say the land was his by right of descent and possession, that he would not voluntarily give it up, and if necessary he would sue for his property.

"It was by this time late spring, and highly necessary to the white settlers to open the highway bisecting the point and to clear the cross streets leading to the small private docks on either side.

"The sheriff was summoned from the county seat . . . and early in May he came with two wagons to move the effects of the Indians, and an armed posse of settlers. . . .

"It may be doubted whether Wadena meant to make serious and harmful resistance. The chief characteristic of the Chippewas these latter days is their air of complete submission and the broken spirit of them.

"White settlers are no longer afraid of the Indians, they are so thoroughly cowed and have a notably long memory for punishment. As for Wadena, a man of 60, he is for all his fierce resentment a man of sense; so what followed was a shameful and unnecessary thing.

"Wadena awoke to bitterness. The fat and swarthy squaws tumbled lazily out of the tepees, sullen and blinking in the bright light; little Indian children scampered affrightedly into the bush; men and boys, with soft felt hats, pulled low over their faces, stood around waiting. . . .

"Hardly had the blue and pungent smoke of the morning fires cleared away when the sheriff ordered the work begun.

"The squaws shrouded themselves in their heavy plaid shawls, in the world-old fashion of women grieving, and whimpered. Small bronze statues children peered wide-eyed from leafy coverts. Wadena glowered from among the trees.

"The boys and men, however, willingly turned to and began to carry out furniture and personal effects — stoves, blankets, cooking utensils, looms for weaving rush mats, rugs, all the simple furniture and equipment of their simple lives.

"The white men unroofed and tore down the frame structures, and piled the lumber at one side, not caring to destroy property; they also unroofed the winter cabins and piled the logs in heaps.

"It was by this time afternoon; the farther shore of the bay threw deep purple shadows across the bright water; broad rays of yellow light struck in upon the scene; a silence fell upon the wood and upon the humble disinherited.

"The sheriff set fire to the ruined village — the Indians laughed.

"Wadena, heir of a long line of illustrious magicians, himself a man of mystery — Wadena, athwart, stocky, typically Indian, hands in pockets and sullen eyes downcast, stood back, still saying nothing.

"The red flames crept around the heap of timber that had been his home for 10 years. . . . He glowered in resentment, and if he had been less a man, no doubt he would have wept in the fury of his despair; or had he been white, he would have made a monkey of himself with impotent mutterings.

"But threats of what he would do in this event were fresh in the minds of white men in the crowd; it was whispered in the ear of the sheriff that a dozen Indians or so were armed; Wadena himself made a move toward his rifle.

"The sheriff immediately seized Wadena, and after a sharp struggle put him in irons; a man of rank and importance but nevertheless a man with a breaking heart. In irons he watched his home burn and then he was deported a mile or two and liberated.

"The band had to move — where? There was no longer a spot to which they were entitled, where they could spread their 'tents of peace.'

"As twilight stole over the great lake, the two wagons laden with household goods lumbered along the highway to dump their burdens in some other spot the Indians did not own, and from which they would be compelled to move in time. Women and children plodded after them, patiently, silently, hopeless and hunted.

"They may go to White Earth? Yes, and one may also go to prison.

"This is the triumphant supremacy of the white race over the red; it is logical, inevitable, but not less cruel or unjust for all that. The drama of the red race is played out; the merry masque is lifted from the face of their tragedy; the curtain is down, the lights are out."

A

MILLE LACS

The Ojibwe At Mille Lacs

For 250 years, Minnesota's most popular walleye lake has been home to Ojibwe Indians, who hunted, fished and gathered in the region.

EARLY OJIBWE HISTORY

1600
Dakota Indians are believed to inhabit Minnesota, including the area around Lake Mille Lacs.

1600-1625
Ojibwe migrate west, probably from the region near the mouth of the St. Lawrence River on the East Coast. Ojibwe live for many years near Sault St. Marie, Mich., where they trade furs to whites for various utensils and other goods and, especially, guns.

1659
Minnesota Dakota and Ojibwe living at Chequamegon Bay on the south shore of Lake Superior agree to peaceful sharing of hunting regions in western Wisconsin and eastern Minnesota.

1680
Some migrating Ojibwe move west along the southern shore of Lake Superior, coming to what, after statehood, would become Minnesota.

1690
Ojibwe and Dakota trade Minnesota furs with whites, with Ojibwe often acting as middlemen between Dakota and fur-trading companies. Guns help Ojibwe harvest game and furs effectively.

1727
French expand fur-trading operations and begin trading directly with the Dakota. After a trading post is established on the north end of Lake Pepin, relations between Ojibwe and Dakota deteriorate.

1730
In part due to fur-trading disputes, Ojibwe and Dakota begin warfare that lasts more than 100 years. Over time, Ojibwe, with help of guns they gained through trading, expel Dakota from northern half of Minnesota.

1745-1750
Dakota are run from their camps near Lake Mille Lacs by Ojibwe, who establish permanent villages in the area.

1825
Government agents draw demarcation line diagonally across central Minnesota, separating Ojibwe to the north from Dakota to the south. The line runs from the St. Croix River in the east to the Red River just north of present-day Moorhead, Minn.

1837
Federal government signs treaty with various Ojibwe bands in which the bands cede a large section of Minnesota between the Mississippi and St. Croix rivers. The Dakota are party to this treaty. Ojibwe reserve right to hunt and fish; Dakota don't.

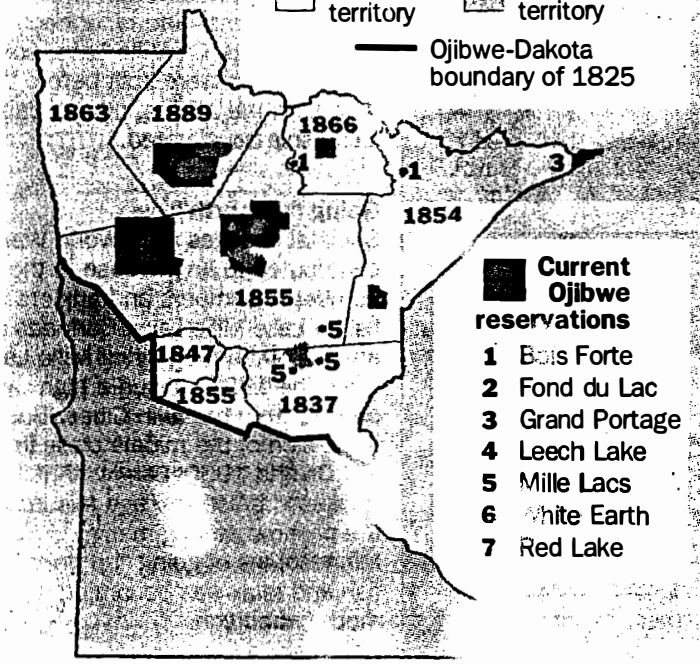
Photo credits:
Spring: Smithsonian Institution
Summer: Carl Gustaf Linde photo, Minnesota Historical Society
Fall: Courtesy of the State Historical Society of Wisconsin
Winter: Charles A. Zimmerman photo, Minnesota Historical Society

Mille Lacs band of Ojibwe today

■ **Reservation:** Established by treaty, Feb. 22, 1855.
■ **Location:** Three separate districts in Aitkin, Crow Wing, Mille Lacs and Pine counties.
■ **Trust acreage:** 4,030 acres.
■ **Reservation population:** 1,600.
■ **Tribal membership:** 3,660 members.
■ **Tribe organized** under the Indian Reorganization Act of 1934.
■ **Tribal constitution adopted** June 18, 1934. Approved, Sept. 17, 1937. Ratified, Nov. 13, 1937.
■ **Government structure:** Executive, judicial and legislative.
■ **Executive branch:** Chief Executive is Marge Anderson, elected June 1992 to four-year term.
■ **Legislative branch:** Speaker of four-person assembly is Dave Matrious, who is elected. Representatives elected to assembly from each district.
■ **Judicial branch:** Chief Justice is Natalie Weyaus, who is elected. Two judges from each of three districts are also elected.
■ **Reservation's criminal jurisdiction** is limited to misdemeanors. Reservation has no jail. Serious crimes referred to county and state.
■ **The band has a tribal police department** comprising a chief and four officers. Band members charged with crimes can be prosecuted in both state and tribal courts. Determinations on whether to prosecute are made independently by state and tribal authorities.
■ **Tribal school:** Two new schools under construction will offer pre-kindergarten through 12th grade beginning [illegible]. Band school administrators have developed curriculum and will begin next year teaching children in an innovative way, involving elders and other family members.
■ **Primary businesses:** Two casinos.
■ **Employment:** About 2,200 in casinos, about 35 percent of whom are Indian.
■ **Average monthly gambling profit** (net): $80[illegible],000. Earnings are used by the band to build new schools and community centers.

Areas ceded by Ojibwe

Dates on map show years that Minnesota regions were ceded by Ojibwe to U.S. government.



Between 1776 and 1868 more [illegible]00 treaties were signed between the federal government and various Indian tribes nationwide, 42 with Ojibwe.

■ Treaty-making was the method the U.S. employed to deal with Indians and [illegible]. By using treaties, the federal government acknowledged Indian tribes were sovereign nations.

■ Various laws have been enacted in the time since, and certain court decisions have been handed down, that modify Indians' sovereign status. But federally recognized Indian tribes and bands remain in many respects sovereignties, with their own governments, court systems and enforcement of laws.

■ In 1871, the U.S. ended the treaty-making process with Indians, replacing it with congressional agreements.

Artist/Designer: Nancy Ward
Research: Dennis Anderson
Library researcher: Ruth Ehmcke

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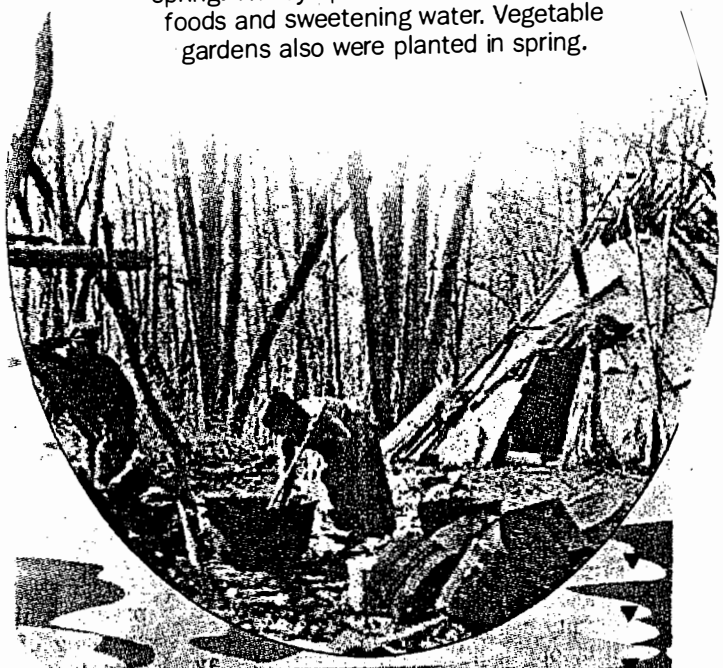
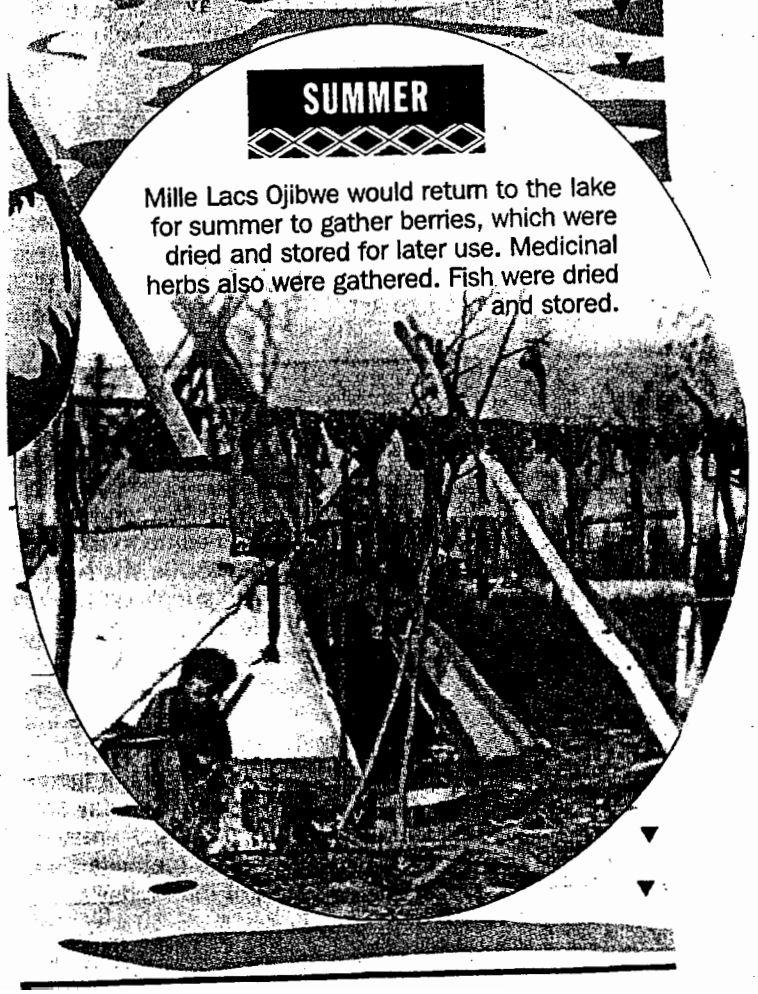
SPRING

Making maple sugar was the main activity in spring. The syrup was used for seasoning foods and sweetening water. Vegetable gardens also were planted in spring.



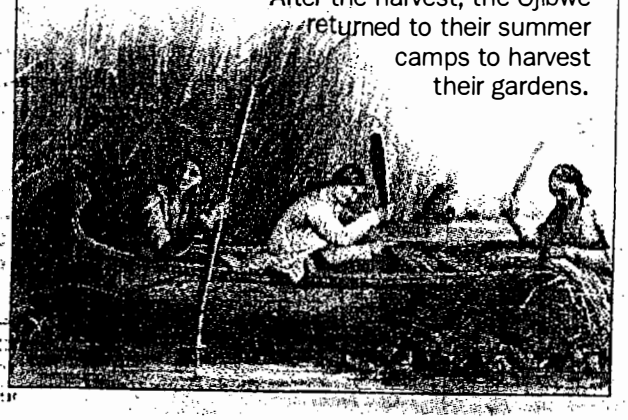
SUMMER

Mille Lacs Ojibwe would return to the lake for summer to gather berries, which were dried and stored for later use. Medicinal herbs also were gathered. Fish were dried and stored.



FALL

Much of autumn was spent harvesting wild rice in waters far from summer camps. Portions of the rice beds were allocated to family groups. After the harvest, the Ojibwe returned to their summer camps to harvest their gardens.

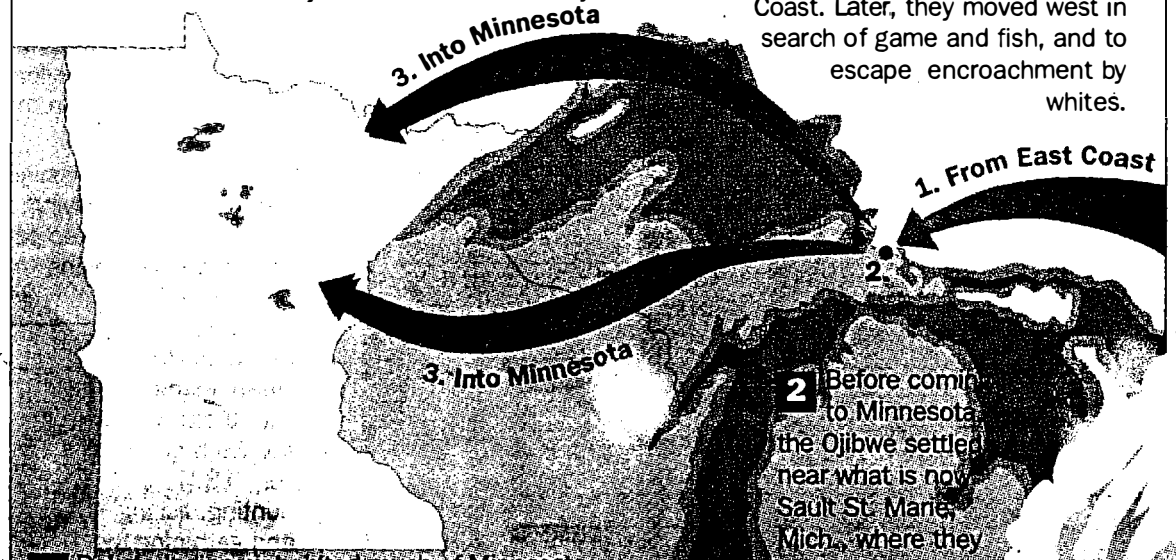


WINTER

In late fall, the men left the summer camps to trap furbearers. Later, the tribe moved to hunting camps. Small animals such as wolves and fox were hunted, as were deer and moose. Ojibwe hunted deer at night with the aid of a pitched torch. Ojibwe hunters carried knives and sometimes small sleds to transport downed game. Rabbits and grouse were hunted. Black bear were trapped.

Migration to Mille Lacs

The Mille Lacs band of Ojibwe is believed to have migrated to Minnesota with other Ojibwe bands around the year 1680.



1 The Ojibwe originally settled near the mouth of the St. Lawrence River on the East Coast. Later, they moved west in search of game and fish, and to escape encroachment by whites.

2 Before coming to Minnesota, the Ojibwe settled near what is now Sault St. Marie, Mich., where they traded furs with whites, exchanging pelts for guns and other items.

3 Dakota Indians inhabited much of Minnesota when the Ojibwe arrived. For some years, the Ojibwe and Dakota traded cooperatively with whites, then began bloody intertribal warfare that lasted more than 100 years. Because they had guns, the Ojibwe were able to push the Dakota from the northern half of Minnesota.

Fishing at night

Fish spearing in spring and fall was done at night with the aid of a torch. Ojibwe fishing techniques were different from those used for deer hunting. For fishing, birch bark torches were refitted with fresh bark throughout the night.

Fishing with nets

The primary Ojibwe method of catching fish year-round was with nets, which were used in deep as well as shallow water. Nets were made of nettle-stalk twine. Hooks used for fishing were made of deer bone and later wire. Ojibwe anglers also developed their own type of bobber.

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JOE ROSSI/ PIONEER PRESS

Lawyer Jim Genia, deputy solicitor to the Mille Lacs band of Ojibwe, is among those leading the charge for Indian treaty rights.

MILLE LACS CONFLICT

'NEW' INDIANS RISE UP

Treaty rights is new battleground in fight to preserve culture

Jim Genia lives in two worlds.

The son of an Indian father and white mother, Genia grew up in St. Paul, where he went to high school and law school. Though only half Indian, he now serves as the deputy solicitor to the Mille Lacs band of Ojibwe and stands on the leading edge of the Ojibwe treaty rights movement in Minnesota.

One of two lawyers employed directly by the band — which has sued Minnesota over what it claims are lost treaty rights — Genia is smart and tough.

Especially when discussing treaties.

"I have some very strong feelings about how Indian people have been mistreated throughout history," says Genia, 28. "Because I am Indian, I also have very strong feelings about treaty rights, particularly those that have been blatantly ignored."

As a kid, Genia sometimes hid his Indian heritage to avoid teasing by classmates. As an adult, he is among the nation's "New Indians," a term

INDIANS CONTINUED ON 8A ▶

By DENNIS ANDERSON
STAFF WRITER

THE SERIES

▼ SUNDAY
Controlling fish, game and other Mille Lacs-area natural resources has been the goal of whites in Minnesota for more than 150 years.

▼ TODAY
The Indian treaty rights movement is the product of failed government policies and the turbulent '60s.

▼ TUESDAY
Mille Lacs agreement is stalled in the Legislature, despite warnings that state could suffer significant losses in a treaty court battle.

INSIDE

Today's conflicts have their roots in the '60s.

coined in the 1960s to refer to a new generation of Native American leaders who refused to tolerate the second-class citizenship forced on their grandparents and great-grandparents.

Uncle Tomahawks.

That's what radical New Indians three decades ago labeled "Old Indians" of the past — Indians so resoundingly defeated over so many generations that they lacked the cohesive will to confront whites, challenge the government or stage public protests.

While middle-class college students railed against America's Vietnam policy and blacks marched in Selma and Birmingham and Washington, young Native Americans reconsidered what it meant to be Indian.

Paiute. Navajo. Tuscarora. Dakota. Ojibwe.

No matter the tribe or band, they suffered disproportionately from poverty, ill health, alcoholism and lost treaty rights — the latter, the New Indians believed, figuring prominently as a cause of the former.

Monday
April 5, 1993

Indians of the '60s, '70s and '80s were too smart to accept these conditions — too knowledgeable of history, both white and Indian.

They had been to school.

Between 1950 and 1960, Indian high school students increased from 24,000 to 57,000. The number of Indians attending college for one year or more rose during the same period from 6,500 to 17,000.

With education came an understanding of how to use the white government to advance the Indian cause — not defeat it. New Indian leaders organized demonstrations, developed political agendas and filed lawsuits. This time they would defend themselves not on the prairies, but in the courtrooms — on the white man's turf with the white man's laws.

Many of the lawsuits filed since the '60s sought redress of lost hunting and fishing rights that tribes believed were reserved under treaties signed in the 1800s by the federal government — then abrogated.

None of this was lost on the Mille Lacs band of Ojibwe, which filed suit in 1990 claiming that in 1837 it reserved off-reservation hunting and fishing rights in a 12-county area of east-central Minnesota.

A compromise to the conflict is stalled in the Legislature.

At stake is the fate of Lake Mille Lacs, the state's premier walleye sport fishing lake, and centerpiece of an annual tourism economy valued at $42 million.

▼

"I didn't grow up on an Indian reservation, I grew up in the Twin Cities. I have to be honest. When I first took this job with the Mille Lacs band, because I had never lived or worked on a reservation before, I was a little uncomfortable about how I would be looked at, because I'm an outsider. But my experiences here have reinforced my belief that all people are far more alike than they are different."

— Jim Genia

▼

New Indians arose in part from federal programs developed under presidents Harry Truman and Dwight Eisenhower.

Believing it was time for Indians to join American culture on modern-day terms, the federal government terminated ties to many tribes in the 1950s. The government also encouraged Indians to move from reservations to cities by subsidizing transportation, housing costs and job training.

It was the latest of the government's many Indian-to-white assimilation attempts, the first of which, legalized in the 1880s, broke up reservation lands and allotted 160-acre plots to individual Indians.

The hope last century was that, like whites, Indians would learn to farm for profit. Fundamental to this effort was the belief that all people are the same, or can be, if exposed to Western-style culture. Lofty goals aside, critics of the plan called it a legalized land grab, with relatively small acreages given to a few Indians, and remaining lands sold to whites.

Under the program, a lot of Indians cut their hair, dressed in whites' clothing, and, as required, sent their children to white schools to be "civilized."

But most Indians failed at farming-for-profit, which clashed with their beliefs about the use of the land. And many Indian kids ran away from the white man's schools.

Conceding these "failures," government officials changed their minds about the possibility of quickly assimilating Indians into the dominant culture. Indians would shift from native to modern society slowly, if at all, these officials believed. The reasoning: Tribal culture was just too different from white European-based ways.

Under Indian assimilation policies begun in the 1880s, ownership of about 60 million acres of land — 40 percent of Indian holdings — shifted to whites.

That much had changed.

But by 1920, when the government declared its first major assimilation program dead, Indians were still Indians.

▼

"For the Mille Lacs band, the hunting, fishing and gathering rights that are being argued today are part of an effort that involves band members becoming self-sufficient and self-dependent, while maintaining ties to, and interacting with, the non-Indian community. The two cultures, Indian and non-Indian, are vastly different, so I don't believe there can ever be a full meshing of them. What the band would like to see is an understanding by all people of various cultures, a respect and an awareness that ultimately we all have to get along."

— Jim Genia

▼

Fast forward to 1968.

Bobby Kennedy is killed.

The Tet offensive is launched.

The American Indian Movement is founded.

Dennis Banks, Clyde Bellecourt and others in the inner sanctum of AIM were tired, Bellecourt says, of discrimination and poverty; tired, too, of police harassment.

Their response: Organize and protect themselves.

AIM's founders benefited by the white man's ultimate failure to stamp out Indian language, ceremonies and religion. Rekindling those pockets of tamped-down traditions helped spark new interest in Indian culture in the 1960s, and with it, interest among Indians in traditional rituals such as sun dances and powwows.

Indian ceremonies were particularly popular in large cities, where newly arriving Indians — rather than joining the dominant social and economic structure, as the federal government had hoped — instead gathered to assert their unique identities.

For them, weekend powwows were more of a national pastime than baseball games.

AIM's roots grew deep in this fertile environment, as did a renewed interest in treaty rights. Bellecourt explains:

"We were sick of the cultural genocide that had taken place on Indian people, where our kids were forced to go to white schools, and where they were physically punished if they tried to practice Indian ways.

"Those of us who founded AIM felt that too little was being done to retain Indian culture and history. Today, we've proven that our programs work; that Indians who are on booze and drugs can be helped. But these things have to be replaced with something, and we do it with Indian culture.

"It's the same with our kids. Traditionally, they haven't done well in white schools because everything is taught from a white perspective. Whites teach history, but that's just it, they teach *his*-story. By putting Indian culture in our school programs, by teaching history from an Indian perspective, we teach *our* story. We tell how the West was *really* won.

"When we take this approach, we find that our children feel good about themselves. Rather than dropping out of school, as they do in white schools

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because they feel so bad about being Indian, they want to continue.

"They want to get an education."

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"It was last April or May that Sen. Charlie Berg said that if the Mille Lacs band wants to net Lake Mille Lacs, then the Legislature will open up gambling statewide. A day after Sen. Berg made that statement, the Minnesota Indian Gaming Association met and passed a unanimous resolution saying that if it comes down to Indian treaty rights or our casinos, we'll take the treaty rights. This may be hard for non-Indians to understand, but these rights are more important than money."

— Jim Genia

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Jim Genia graduated from Como Park High School, Augsburg College and William Mitchell College of Law.

But he wasn't the first person in his family to go to college. Nor was his brother, who is a doctor, or sister, who is in law school.

"My father, who is Ottawa and Choctaw Indian, was the first in our family to go to college," Genia says. "And he had to defy *his* father to do it. His father wanted him to go to trade school to learn a skill."

Similar thinking — that nonwhites in America were best suited for nonprofessional occupations — was offered by some cultural anthropologists, sociologists and government officials after Indian assimilation policies of the late 1800s and early 1900s failed. According to the thinking of the day, Indians and blacks would be laborers, eastern Europeans would be merchants and tradesmen, Anglos would be politicians and professionals.

Those ideas have since been challenged as both racist and nonproductive.

Today, the problems and opportunities of multiculturalism dominate American political, social and anthropological thinking, which views America less as a melting pot and more as a patchwork quilt.

In Minnesota in 1993, Jim Genia and other New Indian thinkers of the Mille Lacs band are trying to reclaim a bigger patch from that quilt. Their claims are justified, they say, by past promises from the U.S. government.

This scares a lot of people.

Resort owners worry about their businesses.

Anglers worry about fish.

Landowners worry about property values.

However the conflict is decided, this much is sure: the New Indians are here to stay.

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"I think we're involved in a process that in 20 or 30 years, people will consider a turning point. For many, many years, Indians were either pushed aside or ignored. Or people tried to mold them into some kind of perception of what a good white person is supposed to be. But through education and a change in government policies, and through a new awareness in the non-Indian community of Indian values and rights, a new environment has been created in which Indian people are finally standing up and being heard from."

— Jim Genia

PIONEER PRESS

Clyde, left, and Vernon Bellecourt, brothers who were instrumental in founding the American Indian Movement in Minneapolis, spoke during a 1975 AIM news conference inSt. Paul.

ASS .D PRESS

An Indian man, oar in hand, lunges at federal agents who are handcuffing his friend in 1978 on t Klamath River Northern California during the so-called Salmon War, a confrontation between gill netters and authorities who bann fishing on the Klamath because of what authorities said was a decline in the salmon run.

As a tepee is erected behind him on the Pine Ridge Reservation in South Dakota in 1973, Oscar Be Runner guards t ea. The tepee wa to host negotiations between the Indians' attorney and the U.S. Justice Department.
ASSOCIATED PRESS

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MAX WINTER/ ASSOCIATED PRESS

An unidentified Indian man holding a hunting rifle and using an old automobile as a shield stands guard at Wounded Knee, S.D., on April 17, 1973.

SAINT PAUL PIONEER PRESS

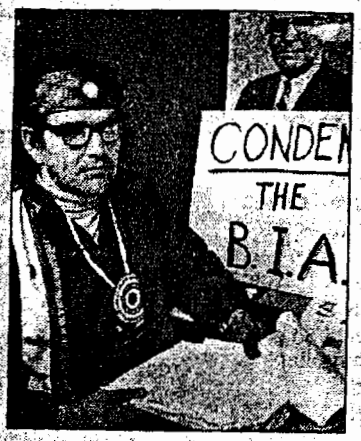
TRADTIONS AT STAKE

Treaty Fights Rooted in Radical '60s

During a "Trail of Broken Treaties" protest in 1972, demonstrators chant outside Minneapolis City Hall. Indians came from throughout the United States to a mass demonstration in Washington, D.C., in November 1972.

1960s

AIM Founded



Clyde Bellecourt, 1970.

Founded in Minneapolis in 1968 by Dennis Banks, George Mitchell, Clyde Bellecourt and Annette Oshie, the American Indian Movement was the product of more than 150 years of failed U.S. Indian policy.

Described as radical and subversive by the FBI and other federal authorities, AIM assigned itself many missions.

By forming its adjunct, the American Indian Patrol, AIM intended to protect Twin Cities Indians from what it believed to be police discrimination and brutality. But AIM also hoped to improve Indian housing and health care, and to redress what many of its members believed was an effort by the U.S. government to commit cultural genocide on Indians.

AIM's primary enemies were the Bureau of Indian Affairs, which it believed to be corrupt; organized white religion, which for hundreds of years had attempted to convert Indians from their own religions; and the U.S. educational system, which AIM founders believed degraded Indian people and recorded American history only from the vantage point of whites.

"Indian kids realized that outside of hula hoops and Cadilliac fins, white society had nothing to offer them spiritually."

VINE DELORIA JR., '60S INDIAN ACTIVIST

To accomplish these goals required public protests and radicalism, AIM founders believed.

AIM's primary contribution to the treaty rights movement was that it crystalized — in ways that sometimes included violence or the threat of violence — the growing political activism of American Indians, and provided a forum for "new Indians" to take direct action against what they perceived to be governmental and societal abuses.

AIM still protests what it believes are injustices against Indians — the use of "Redskins" as a team nickname, for example — but it also develops and provides a wide array of Indian social services.

1970s

Wounded Knee

Offering a prayer at Wounded Knee, S.D.

When an American Indian Movement caravan of 54 cars carrying some 250 Indians arrived in Wounded Knee, S.D., Feb. 27, 1973, a standoff between militant Indians and federal officials began that would last more than two months.

Involved would be local and state police, the National Guard, the FBI, the Bureau of Indian Affairs, federal marshals and key Nixon administration officials, as well as a host of Indians and Indian factions, most of them Dakota.

Many at Wounded Knee during the siege carried guns. Shots were fired. Several people were wounded. Two Indians died.

The siege occurred on ground where on Dec. 29, 1890, the U.S. 7th Cavalry under Col. George Forsyth surrounded 340 Sioux led by Big Foot. The U.S. regiment killed almost 300 Indians, about two-thirds of them unarmed women and children.

"The Anglo must realize that many who are poor...have rich and priceless traditions."

AMERICAN INDIAN MAGAZINE

AIM's concerns in occupying Wounded Knee were more immediate. "We decided Wounded Knee would be where we would make our stand," said Clyde Bellecourt, an AIM founder. "We wanted to draw the world's attention to the racism and tyranny Indian people have lived under in the United States, and the gross poverty conditions that Indian people have been forced to suffer."

Much was at stake at Wounded Knee in 1973. Indian faction was pitted against Indian faction. Indians faced off against whites. Radicals were armed against government soldiers.

The long-term gain to most Indians of the occupation was that the words "treaty" "treaty rights" and "treaty justice" were broadcast every day over radio and television worldwide, and printed daily in newspapers, raising awareness among many non-Indians of the Indians' argument that the U.S. government had for centuries abrogated its responsibilities to Indians.

The result was renewed optimism among Indians, and a refueling of the growing treaty rights movement.

1980s

Ojibwe vs. Wisconsin

A Wisconsin Ojibwe spearfisherman

The Mille Lacs band's oral and written history is filled with details of treaty rights lost and land taken illegally by white Minnesotans.

For generations, Mille Lacs band members hoped one day they would regain some of what they had lost, and would again cast fishing nets in Mille Lacs and spear fish in spring as their forefathers had.

Incidents in the 1960s and 1970s — from the first "fish-in" staged in Washington state in 1963 by the Indian Youth Council, to the occupation of Wounded Knee, S.D. — raised the specter of treaty-rights justice for Indians nationwide.

"Spearing fish in the spring is what got me in touch with my heritage."
WISCONSIN OJIBWE FISHERMAN, 1989

For the Mille Lacs band, these and other events proffered the possibility that someday the band could act on its own treaty-rights agenda.

That dream was brought closer to reality when, in the early 1970s, Wisconsin Ojibwe bands sued the state of Wisconsin seeking legal validation of off-reservation hunting and fishing rights the bands believed they reserved under an 1837 treaty.

The same treaty had been signed by the Mille Lacs band.

Seventeen years passed before the state of Wisconsin finally ended its appeal efforts and acknowledged that Wisconsin Ojibwe did indeed have the off-reservation rights they claimed.

In 1990, the Mille Lacs band sued Minnesota, seeking rights it believed it has under the 1837 treaty. When the Mille Lacs band acted, it did so confident that recent legal history was on its side.

Thanks to a strong and renewed interest in traditional tribal customs, the band also was confident in itself as a people; more so, perhaps, than at any time since the band signed the 1837 treaty.

Top, left and right photos: Pioneer Press Library
Middle photo: Associated Press
Page Design: Laura Hopple Treston, Ellen Simonson
Research: Dennis Anderson
Library researcher: Ruth Ehmcke

U.S. INDIAN POLICY

■ **1887:** U.S. attempts to assimilate Indians into Anglo culture by passing Dawes Act, which allots tribal lands to individual Indians. Surplus tribal lands to be sold to benefit Indian programs. Critics say plan defrauded Indians of millions of acres of land.

■ **1934:** Indian Reorganization Act authorizes right of tribes to establish governments and businesses. Allotment process ends; land unsold reverts to tribes.

■ **1946:** Indian Claims Commission established to consolidate and process Indian claims against federal government. Commission dissolved in 1983; unresolved claims transferred to U.S. Court of Claims.

■ **1956:** Following 1953 federal termination of many Indian tribes, U.S. government attempts to move Indians to cities by providing transportation, settlement costs, vocational training and counseling for up to 24 months.

■ **1963:** Washington State Supreme Court nullifies Treaty of Medicine Creek, prompting newly formed Indian Youth Council to stage first modern-day "fish-in" to protest lost treaty fishing rights.

■ **1970:** President Nixon ends government's 100-plus year effort to assimilate Indians into dominant U.S. culture, instead advocates "self-determination," in which Indians will be freed of many government controls without being cut off from U.S. aid.

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St. Paul
Pioneer Press
4-6-93

JOE ROSSI/ PIONEER PRESS

Principal players in the Ojibwe compromise include the bill's sponsor, Sen. Steven Morse, left, Sen. Bob Lessard, Environment and Natural Resources Committee chairman, and Sen. Charlie Berg.

MILLE LACS

Treaty Conflict Avoidable

Rights to half the fish and game in northern Wisconsin were won in 17-year battle in court system.

Given another chance, George Meyer would settle Wisconsin's 17-year Ojibwe treaty rights battle out of court.

"I wish we would have had the opportunity to resolve our treaty rights cases with Wisconsin Ojibwe at the same stage Minnesota is now at, in the process," Meyer said. "It would have been a far better resolution to the matter, and would have helped us avoid the trauma we went through."

BY DENNIS ANDERSON
STAFF WRITER

Meyer, a lawyer, heads Wisconsin's Department of Natural Resources. But during the 1980s, he helped defend Wisconsin in its $12 million fight over off-reservation hunting and fishing rights.

The Ojibwe ultimately prevailed, winning rights to half the fish and game in the northern third of the state.

Meyer said state officials' refusal to negotiate with the Indians early in the conflict precluded a more favorable resolution; the state's political climate was too hot, and sportsmen too irate, to allow a negotiated settlement.

TREATY CONTINUED ON **10A** ▶

THE SERIES

▼ SUNDAY
Controlling fish, game and other Mille Lacs-area natural resources has been the goal of whites in Minnesota for more than 150 years.

▼ MONDAY
The Indian treaty rights movement is the product of failed government policies and the turbulent '60s.

▼ TODAY
Mille Lacs agreement is stalled in the Legislature, despite warnings that state could suffer significant losses in a treaty court battle.

INSIDE: Others can join in treaty suit. Page 10A

TREATY/ Fishing rights pact is stalled in Legislature

▼ CONTINUED FROM 1A

Now Minnesota faces the same dilemma. The Department of Natural Resources and the Mille Lacs band have developed a compromise to their treaty-rights conflict, but the pact — approved by the band — is stalled in the Legislature, where Sen. Charlie Berg, DFL-Chokio, says the compromise is "dead."

The deal would give the band $8.6 million, 7,500 acres of land and exclusive fishing rights to 4.5 percent of Lake Mille Lacs — much less than the band may win in federal court.

Under the compromise proposal, the band could net or spear an average of 24,000 pounds of Lake Mille Lacs walleyes annually, compared to 355,000 for sport anglers. Band members also could net or spear six other lakes in a 12-county area of east-central Minnesota, as well as a short stretch of the Rum River and 20 miles of the St. Croix River.

Failure to ratify the agreement is sure to send the treaty fight back to federal court to be settled. And if that happens, Minnesota officials fear the band could win even broader hunting and fishing rights — perhaps as much as half the fish and game in the region, which it ceded to the federal government in an 1837 treaty.

A Minnesota House panel has approved the compromise measure, but the same bill is on hold in the Senate Environment and Natural Resources Committee, chaired by Sen. Bob Lessard, DFL-International Falls.

Lessard says the bill's Senate sponsor, Steven Morse, DFL-Dakota, missed his chance for a committee vote.

"I've been through the BWCA and Voyageurs Park wars," Lessard said, "and you can't keep putting people through the process, bringing them back to committee hearings time and time again. . . . I will not hear the bill."

Morse said he may bypass the committee and take his bill directly to the Senate floor for a vote. But a federal appeals court decision Monday said nine counties in the affected area may be included in the band's lawsuit, which could further hamper efforts to ratify the pact.

State sportsmen, including retired Minnesota Vikings coach Bud Grant, have applied intense pressure to kill the compromise.

"I don't think it should be up to the Legislature how this issue is decided," Grant said. "The case is complicated, and should go to court for settlement."

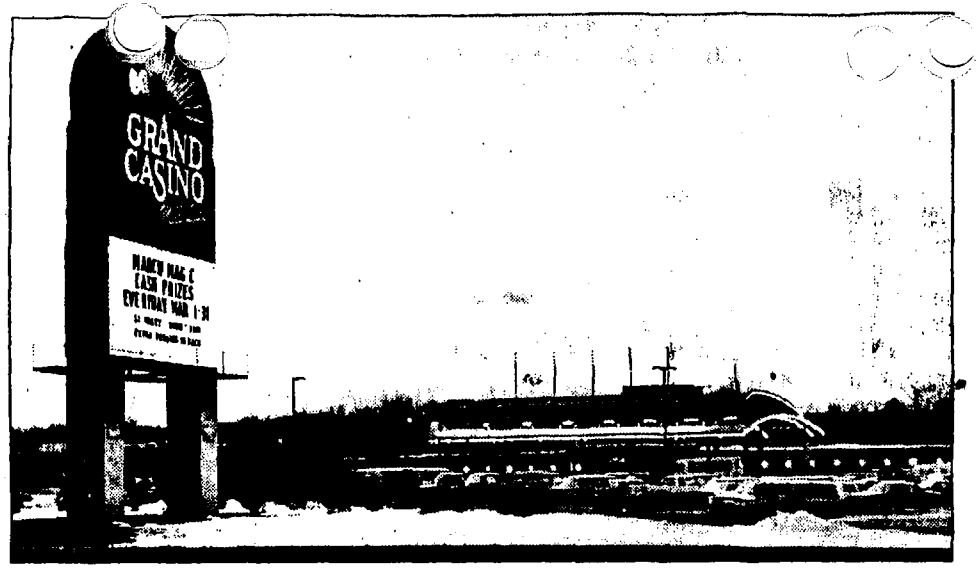
The Minnesota case is winnable, Grant says, adding that he and various sportsmen's groups have incurred about $70,000 in unpaid legal bills opposing the pact.

Even if opponents fail to convince a court that the Mille Lacs band long ago lost any rights to off-reservation hunting and fishing, they argue that the Indians are unlikely to fully exercise those rights. Berg and other opponents have threatened to pass legislation that would expand gambling, and thus undermine Indian casino profits, as revenge if the band tries to net or spearfish in Mille Lacs.

"I don't think they'll net Mille Lacs to the extent they say — it would hurt their casino business too much," Grant says. "And however a court might decide the case, it's not going to give the Mille Lacs band millions of dollars or 7,500 acres of land or a part of Mille Lacs for their exclusive use."

Grant may be wrong on that point. Similar treaty-rights court rulings in Washington state and Michigan, as well as Wisconsin, have favored Indians.

Jim Addis, a Wisconsin Department of Natural Resources administrator, says U.S. Indian tribes nearly always prevail in court in hunting and fishing treaty cases, if those rights have not been explicitly extinguished.



JOE ROSSI/ PIONEER PRESS

Treaty rights opponents, among them Sen. Charlie Berg, DFL-Chokio, have threatened to expand gambling, possibly undermining profits at places such as the Grand Casino at Mille Lacs, owned by the Mille Lacs band of Ojibwe.

The 1837 treaty signed by the Mille Lacs and Wisconsin Ojibwe bands clearly reserves the bands' hunting and fishing rights.

Wisconsin defended itself against Ojibwe claims in part by saying an 1850 removal order issued by President Zachary Taylor extinguished hunting and fishing rights the bands may have had. The argument failed.

Treaty-interpretation standards developed over many years by the U.S. Supreme Court heavily favor Indians in hunting and fishing cases. Among the standards used:

- Ambiguous expressions in treaties must be resolved in favor of Indians.
- Treaties must be construed as Indians would have understood them at the time of negotiation.
- Treaty rights cannot be extinguished by implication, but rather explicit action must be taken and "clear and plain" language used to abrogate them.

The court justifies the standards by saying Indians were at significant disadvantages during treaty negotiations.

Most Indians in the early to mid-1800s, for example, didn't speak English. And Indians often didn't clearly understand the principle of committing agreements to writing, rather than reaching agreements orally. Because of this, some Indians left treaty negotiations thinking what was important was what was *said* — while whites left knowing that, legally, what was important was what had been written and signed.

Translators at the negotiations have also been shown to be inaccurate in their recordings.

If the Mille Lacs conflict is returned to court and decided in favor of Indian hunting and fishing rights, the state and the band mostly likely will be ordered to negotiate a new resolution to the lawsuit.

The state then could find itself in a significantly weaker negotiating position.

"You're really rolling the dice if you go into court," said Meyer, the head of the Wisconsin DNR. "First, you've got all those precedents stacked against you from courts dealing with similar cases in Washington state, Michigan and here in Wisconsin. Then you have the rules of treaty interpretation.

"Most contracts are interpreted according to how both sides would have understood them at the time of signing. But with treaties, it's how one side, the Indians, would have interpreted them. Consequently, the court's interpretations in treaty cases are very, very broad."

In 1989, six years after a federal appeals court ruled that six Wisconsin Ojibwe bands had off-reservation hunting and fishing rights in the 1837 treaty area, the state reached a tentative agreement with leaders of the Mole Lake band in which the state would "lease" the band's hunting and fishing rights for $10 million over 10 years.

Mole Lake was the poorest of the six bands, yet its members rejected the deal overwhelmingly, in part because they were empowered by the court's decision and believed the $10 million deal no longer was good enough.

By comparison, the Mille Lacs agreement — which is *final* — appears to be a good deal for Minnesota taxpayers, tourists and resort owners.

Said Addis, the Wisconsin resource management official: "If we could have ever negotiated a deal like that, we would have run out the door to get it approved."

"Once you're in court, and once it's determined that a band has treaty rights, now you'll have to live with what the court decides is the breadth of those rights, and how to implement them," Addis said. "You've lost the ability to say, 'Let's sit down and see if we can develop a solution that is best for everyone in the state, including the bands.' You've lost your latitude, your options. . . . You not only have to work out a very difficult issue in a very complex environment, you have to do it within boundaries that have been tightened up considerably."

In Washington state, which has a long history of treaty fishing rights conflicts, fish and wildlife officials no longer will fight Indian claims in court.

"For many years, our policy was simply to deny any tribes' claims to treaty hunting and fishing rights," said Ed Isenson of the Washington Department of Wildlife.

A federal court decision forced a change in that attitude, and Washington state officials now negotiate fish and wildlife harvests and regulations with state tribes.

"[illegible] director has said we do not want to go to court with the Indians, because the state's record is not good," Isenson said. "The courts have found that tribes have rights to up to 50 percent of the safe allowable harvest. The fact is, when you go to court, you end up with an allocation to the tribes that far exceeds the take that would exist in an agreement. . . . We figure that we all live here together, so we'll just have to work it out."

The policy is not uniformly popular, Isenson says, especially among sportsmen: "Indians are different than some other people, and nobody wants to get along with somebody who's different."

DNR Commissioner Rod Sando still believes the state's agreement with the Mille Lacs band is good for both sides, and that it represents the best chance for a peaceful, cooperative solution to the band's off-reservation hunting and fishing claims.

But significant opposition — far more than Sando or other state officials had expected — has arisen and legislative support for the measure appears to be weakening.

Part of the problem is that the issue is so complex and historically convoluted that few legislators are willing to spend time enough to understand it. The complexity at once makes the compromise difficult to sell and easy to undermine.

Opposition sportsmen and area landowners also have raised significant doubts about the merits of the compromise, and what it portends.

They fear that property values near the Lake Mille Lacs Treaty Fishing Zone will fall, and that the agreement could spawn additional treaty demands by other Ojibwe bands or individuals.

So for better or worse, Minnesota may end up in court to settle the Mille Lacs issue.

"It's entirely possible that Bud Grant and his friends will get their wish, and we'll go to court," said Don Wedll, the commissioner of natural resources for the Mille Lacs band. "We're ready for that."

TRADITIONS AT STAKE

ALEXANDER GARDNER/ MINNESOTA HISTORICAL SOCIETY

dian delegations representing their respective sovereig[n] nations were hono[red] ing a visit to W[ash]gton, D.C., in the 1860s. Treaty-i[nter]pretation standards developed [o]ver years by the Supreme Court heavily favor Indians in hunting and fishing cases, and the 1837 treaty clearly reserves Ojibwe hunting and fishing rights. Wisconsin claimed an 1850 removal order by President Z[achary] T[aylor] extinguished hunting and fishing rights. The argumen[t] failed.

SAINT PAUL
PIONEER PRESS
EDITORIALS

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TREATY AGREEMENT

Legislators must not shirk responsibility

The state may lose far more by pressing its shaky case in court.

If legislators allow the treaty rights agreement with the Mille Lacs band of Chippewa to die in committee, they will merely be continuing a venerable Minnesota tradition — a tradition of treating the state's Indian population shabbily.

That's the sad message of Pioneer Press outdoors writer Dennis Anderson's three-part series, which concluded Tuesday, on the treaty deal. Anderson has reviewed a long, shameful history of broken promises, land seizures and forced "removals" that must make the state's current reluctance to compromise on legitimate claims all too predictable and familiar to the Chippewa.

It's time to end this tradition of abuse. The treaty deal, resolving Mille Lacs band claims to fishing and hunting rights retained under 19th century treaties, would recognize the dignity of Indian customs and the sovereignty of the Chippewa nation.

As the Anderson series made clear, there also is great danger the state may lose far more by pressing its shaky case in court. Even Minnesotans who care nothing about fairness should fear turning this issue over to a federal judge. The history of federal rulings in similar cases raises serious questions about whether the state could prevail.

Monday's court ruling that affected counties and landowners can intervene in the proceedings complicates matters, but perhaps helpfully. It now appears there may yet be room for compromise between the band and nearby residents on the exclusivity of the tribal fishing zone the agreement creates. In any case, opponents have long argued they want this issue resolved by a judge. Monday's decision means they will get their day in court.

Sadly, political calculations explain the widespread legislative retreat from the treaty agreement. By giving many angry white Minnesotans what they want — a court battle — legislators can shirk the blame for the ultimate outcome. A federal judge, and the Indians themselves, will be the villains, and who will remember the legislators who let it happen?

It is still not too late for the treaty agreement. If the band and its neighbors can negotiate an improved understanding on the tribal zone, they should do so. Gov. Arne Carlson must accept the challenge from DFL legislative leaders to step forward boldly in support of the deal his administration has negotiated. Legislators must summon the courage to do the right thing.

The wrongs of history cannot be righted. But they need not be endlessly repeated.