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American Indian Communities in Minnesota

Prepared by
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This report was developed by the staff of Senate Counsel & Research and was edited by Gregory C. Knopff. Staff who contributed to the report are: Tom Bottern, David Giel, Patrick McCormack, Daniel Mueller, Jack Paulson, Kathy Pontius, Jo Anne Zoff Sellner, Christopher Turner, Maja Weidmann, and Joan White. Special recognition is due to Laura McLain, research assistant, who conducted extensive research on the American Indian bands and communities in Minnesota. Maureen Fedor prepared the manuscript.

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INTRODUCTION

This document is intended to provide background information on American Indian communities in Minnesota. The first part of the document provides descriptive information on the 11 reservations recognized by the U.S. Bureau of Indian Affairs (BIA) and the American Indian population located in the Twin Cities Metropolitan Area. The second part of the document contains policy information on how specific laws and issues affect American Indian communities in Minnesota. Even though many of the policy issues involving American Indians are very complex in nature, the information on these issues is provided in summary form using a question-and-answer format. For more information on specific policy issues, contact our office or consult with the references listed in the document.

The first part also contains a glossary of terms used in the document. A variety of terms may be used to describe the American Indian racial group and the two broad American Indian communities in Minnesota. In this document, the term "American Indian" is used in general references to the group. Several different names may be used to describe each of the two larger American Indian communities in the state. The terms "Chippewa" and "Ojibwe" are used to refer to one large community of American Indians and the terms "Sioux," "Dakota," and "Lakota" are used to refer to the other large community. In this document, the historic terms "Chippewa" and "Sioux" are used to describe these communities. These terms were chosen because they are used in state laws that reference these communities. The two larger American Indian communities are also organized into distinct specific communities: the Chippewa are referred to as bands and the Sioux are referred to as communities. Whenever possible in this report, reference is made to specific American Indian bands or communities.

Since the census information on income and housing for American Indian reservations is from 1990 and does not necessarily reflect the current situation on specific reservations, we chose not to include the information in this report.

DEFINITIONS

Allotment: Reservation land specified for an individual or family, originally held in trust by the federal government. Titles can be transferred to the individual to allow for the sale of the land. Reservation land was allotted through the General Allotment Act (Dawes Act) of 1887 and the Nelson Act of 1889, and was ended by the Indian Reorganization Act of 1934.¹

American Indian: There is general agreement that there is no single definition or criterion for declaring someone to be an American Indian. The Census Bureau, individual tribes and the Bureau of Indian Affairs (BIA) all have varying criteria. These definitions range from people who identify themselves as American Indians, to tribal members, to those having one-fourth or more American Indian ancestry. Tribes generally have the power to determine tribal membership.²

Indian Country: An area where the tribe has the power of self-government. As defined by federal law, it consists of reservations, dependent American Indian communities, and American Indian allotments. The definition of "Indian Country" includes non-Indian owned lands within the boundaries of reservations.³

Reservation: An area of land reserved for the use of American Indians. The reservation can be created through treaty, congressional legislation or executive order.⁴

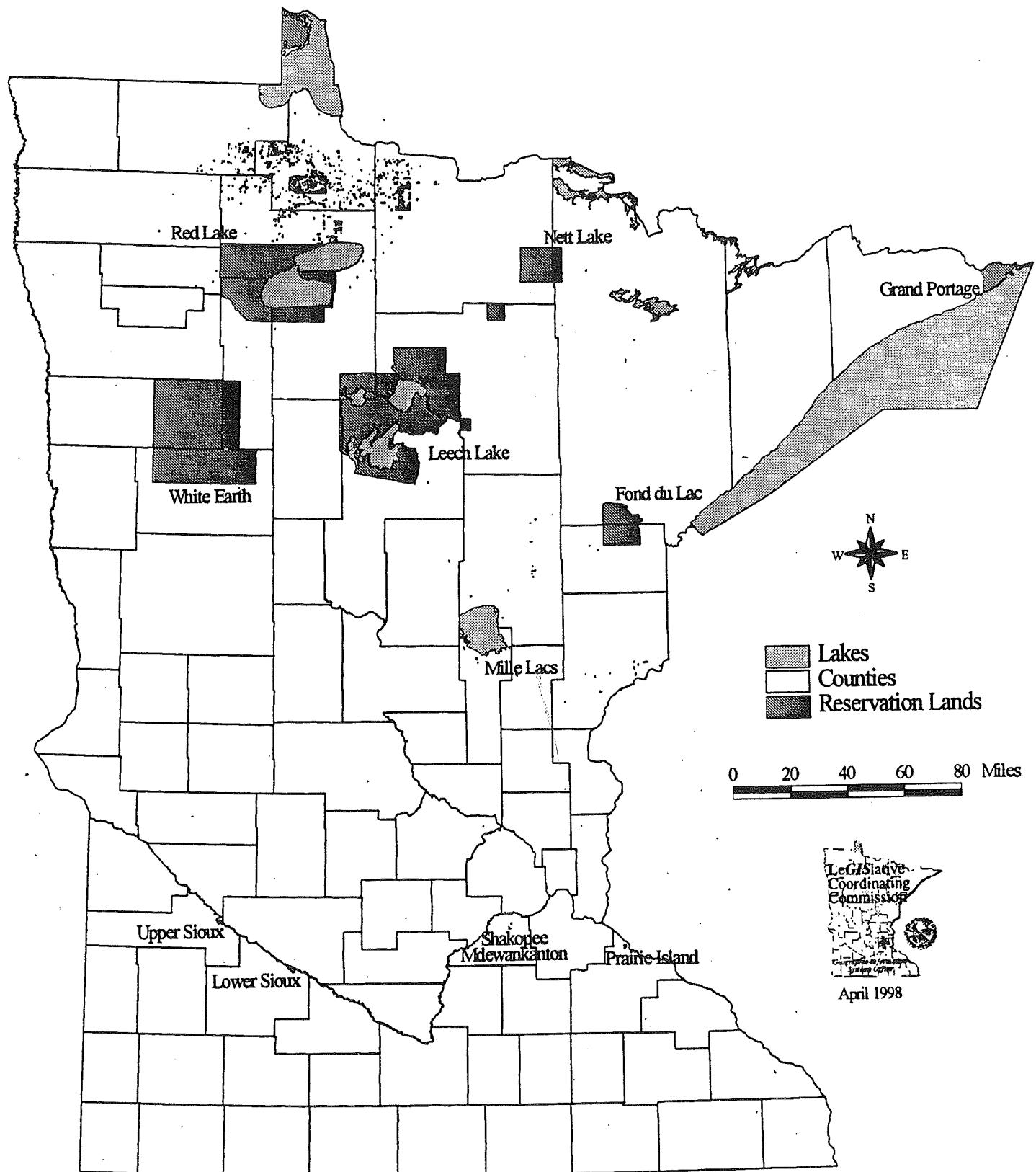
Treaty: Legal agreements made between two or more sovereign nations. American Indians and the U.S. government signed 371 treaties from 1777 to 1871 over land allocation and use. These treaties were made when American Indians relinquished much of their land to the federal government.⁵

Tribal Trust Land: Communal reservation land held in trust for a tribe by the U.S. government, which holds the legal title. The tribes control the use of this land through their governing body.⁶ This is distinct from the tribal fee land, where the band or community itself holds the legal title.

Tribal Member: An individual formally recognized by a tribe as a member. The requirements for recognition vary and are set by each tribe.⁷

Tribe: There are both federally recognized and ethnological tribes. A federally recognized tribe has a special legal relationship with the U.S. government. These are often based on ethnological tribes which are groups of "people bound together by blood ties who were socially, politically, and religiously organized, who lived together in a defined territory and who spoke a common language or dialect."⁸

AMERICAN INDIAN RESERVATION LANDS⁹



April 1998

ENDNOTES

1. Rosenblatt, Judith, Indians in Minnesota, University of Minnesota Press, Minneapolis (1985).
2. "Answers to Frequently Asked Questions," Bureau of Indian Affairs.
3. 18 U.S.C., section 1151.
4. "Answers to Frequently Asked Questions," Bureau of Indian Affairs, and Indians in Minnesota.
5. Black's Law Dictionary, 5th Edition and 100 Questions, 500 Nations, A Reporter's Guide to Native America, Native American Journalists Association, May 1998.
6. 100 Questions, 500 Nations, A Reporter's Guide to Native America.
7. "Answers to Frequently Asked Questions," Bureau of Indian Affairs, and Indians in Minnesota.
8. "Answers to Frequently Asked Questions," Bureau of Indian Affairs.
9. From the Topologically Integrated Geographic Encoding and Referencing (TIGER) data base, U.S. Census Bureau. The map shows both American Indian Reservations identified by the Bureau of Indian Affairs (BIA) and the American Indian Trust Lands as identified by the BIA.

CHIPPEWA (OJIBWE) AMERICAN INDIAN BANDS OVERVIEW

A significant number of American Indians in Minnesota are Chippewa, with reservations located in central and northern parts of the state, including the Bois Forte (Nett Lake), Fond du Lac, Grand Portage, Leech Lake, Mille Lacs, White Earth, and Red Lake Reservations.

At one time, the Chippewa nation was one of the largest nations north of Mexico. When settlers arrived in Minnesota, the Chippewa occupied more than half the state. They had a tendency to remain in forests and avoid the farming areas of the settlers, lessening the effects of white encroachment.¹

Beginning in 1854, the treaties creating reservations for these bands were enacted. After the reservations were formed, the Dawes Act of 1887 and the Nelson Act of 1889 initiated the allotment of American Indian land. In addition, it allowed for all Chippewa in Minnesota to be persuaded to move to the White Earth Reservation. The move to White Earth was resisted, especially by the Red Lake people who were eventually excluded from the act. Their resistance was possible because the act designated that the allotments could be taken up where American-Indians were currently residing. Most Chippewa remained on their respective reservations, taking the option of choosing allotted land at their current location. The allotment process had negative results for American Indians, leading to massive land losses by the turn of the century. The effects of allotment were somewhat lessened through the Indian Reorganization Act of 1934 which, among other things, increased tribal land acreage.²

The Chippewa originally were governed by hereditary chiefs. Today, each of the seven Chippewa Bands is governed by an elected representative government. Those bodies exercise authority over all matters within the band's tribal jurisdiction, and the individual band governments are the key decision makers for these communities.

There is also an organization called the Minnesota Chippewa Tribe, governed by an Executive Committee consisting of the chair and secretary-treasurer (or equivalent) of six of the seven Chippewa Bands in Minnesota.

The Red Lake Band is independent of the Minnesota Chippewa Tribe, has no allotted land, and has a closed legal status.³

ENDNOTES

1. Tiller, Veronica Velarde; Tiller's Guide to Indian Country: Economic Profiles of American Indian Reservations, BowArrow Publishing Company, Albuquerque, New Mexico (1996).
2. Indians in Minnesota.
3. Red Lake Nation: Portraits of Ojibway Life and "Indian Affairs Council Annual Report," (1996 and 1997).

BOIS FORTE (NETT LAKE) BAND

Reservation Area: 105,284 acres

Tribal Land: 30,035 acres

Allotted: 11,744 acres

Tribal Enrollment: 2,561 (1995)

Communities: Nett Lake (tribal headquarters), Vermillion and Deer Creek.

Number of Residents: 2,162 (1995)

BRIEF HISTORY/BACKGROUND

The Bois Forte people originally lived in Canada and were involved with the fur trade. The reservation was established by a treaty in 1866 with an original size of 103,863 acres. Further establishment of the reservation took place through an Executive Order on December 30, 1881. The Bois Forte Band is a part of the Minnesota Chippewa Tribe.

Governance

Type of Government: Five-member representative elected committee, serving four-year staggered terms.

Election Process: Members are elected by enrolled tribal members. Those not living on the reservation may vote by absentee ballot.

Employment (1995)

Labor Force: 1,147
Unemployment: 38%

Economic Development

Tribal Businesses: Casino, Bois Fort Sawmill, Multi-Service Center

Other Businesses: Bois Forte Reservation Forestry Program, Chippewa Construction Company, Voyager Trucking Company, Strong's Wild Rice,

Summertime Painting and Sign

School Attendance

Nett Lake School District
Enrollment (1997-1998): 110

Health Care (1994)

Number of Clinics: 1
Number of Doctors: 1.2 (FTE - Full Time Equivalent)

Casinos

Number: 1 - Fortune Bay Casino, Tower

FOND DU LAC BAND

Reservation Area: 100,000 acres

Tribal Land: 4,213 acres

Allotted: 17,154 acres

Tribal Enrollment: 3,572 (1995)

Communities: Cloquet (tribal headquarters), Sawyer and Brookston.

Number of Residents: 6,676 (1995)

BRIEF HISTORY/BACKGROUND

The treaty establishing the Fond du Lac Reservation was signed in 1854. The Band is part of the Minnesota Chippewa Tribe.

Governance

Type of Government:
Representative government through a five-member elected committee. Three of the five officials represent the three reservation districts and the other two are at-large positions.

Election Process: The Business Committee is elected by enrolled tribal members. Those not living on the reservation may vote by absentee ballot.

Employment (1995)

Labor Force: 3,733
Unemployment: 63%

Economic Development

Tribal Businesses: Fond du Lac Heavy Equipment and Construction Company, Casinos, Fond du Lac Print Shop

School Attendance

BIA - Fond du Lac Ojibwe School
Enrollment total (1997-1998): 124
Elementary (K-6): 66
Junior High (7-8): 27
High School (9-12): 31

Other children attend school in Cloquet.
Enrollment (1997-1998): 361

Health Care (1994)

Number of Clinics: 1
Number of Doctors: 2.6 (FTE)

Casinos

Number: 2 - Black Bear Casino, Cloquet and Fond-du-Luth Casino, Duluth

GRAND PORTAGE BAND

Reservation Area: 47,000 acres

Tribal Land: 37,390 acres

Allotted: 7,283 acres

Tribal Enrollment: 968 (1995)

Community: Grand Portage
(tribal headquarters)

Number of Residents: 394
(1995)

BRIEF HISTORY/BACKGROUND

The city of Grand Portage was an important depot in the fur trade industry during the late 1700s. The reservation was established by a treaty signed in 1845. The Band is part of the Minnesota Chippewa Tribe.

Governance

Type of Government:
Representative government
through the five-member
Business Committee serving
staggered four-year terms.

Election Process: Committee
members are elected by
enrolled tribal members. Those
not living on the reservation
may vote by absentee ballot.

Employment (1995)

Labor Force: 222
Unemployment: 5%

Economic Development

Tribal Businesses:
Construction company, casino,
forestry, sawmill/pallet plant

School Attendance

Elementary students attend a
public school on the
reservation.
Enrollment (1997-1998): 42

High school students attend
school in Grand Marais.

Health Care (1994)

Number of Clinics: 1
Number of Doctors: .1 (FTE)

Casinos

Number: 1 - Grand Portage
Casino, Grand Portage

LEECH LAKE BAND

Reservation Area: 602,880 acres

Tribal Land: 14,069 acres

Allotted: 12,693 acres

Tribal Enrollment: 7,567 (1995)

Communities: Cass Lake (tribal headquarters), Bena, Federal Dam, Ball Club, Onigum, Squaw Lake, Inger, Alwood, Spring Lake, Boy River, Mission, Pennington and Sugar- Point.

Number of Residents: 6,260 (1995)

BRIEF HISTORY/BACKGROUND

The reservation was established by treaties in 1855 and 1864. An additional treaty was signed in 1867 and Executive Orders implemented in 1873 and 1874 which changed the reservation area. The Band is a part of the Minnesota Chippewa Tribe.

Governance

Type of Government: Five-member representative Tribal Council elected to four-year staggered terms.

Election Process: The members are elected by enrolled tribal members. Those not living on the reservation may vote by absentee ballot.

Employment (1995)

Labor Force: 2,161

Unemployment: 26%

School Attendance

Bug-O-Nay-Ge-Shing School:
Elementary (K-6): 79
Junior High (7-8): 23
High School (9-12): 63

Other students attend public and private schools in Bemidji, Cass Lake, Deer River, Walker and Longville.

Cass Lake Public School Enrollment (1997-1998): 883

Economic Development

Tribal Businesses: LL Construction Building, casinos, fishery, Che Wah Kah E Gon Complex (gift shop, restaurant, gas station, and convenience store), Ojibwe Foods

Other Businesses: Resorts and manufacturing businesses

Health Care (1994)

Number of Clinics: 1

Number of Doctors: 5.7 (FTE)

Casinos

Number: 2 - Northern Lights Casino, Walker and Palace Bingo and Casino Cass Lake

MILLE LACS BAND

Reservation Area: 61,000 acres

Tribal Land: 3,937 acres

Allotted: 107.35 acres

Tribal Enrollment: 2,864 (1995)

Communities: Vineland (tribal headquarters), Lake Lena, Isle, East Lake, Minnewawa and Sandy Lake.

Number of Residents: 1,408 (1995)

BRIEF HISTORY/BACKGROUND

Tribal ancestors became established in the area around Lake Mille Lacs in the mid-1700s. The reservation was established in 1855. There are three distinct areas of the reservation which are located in Aitkin, Pine, Crow Wing, and Mille Lacs counties. The Band is a part of the Minnesota Chippewa Tribe.

Governance

Type of Government: Representative government through a four-member elected legislative body and an elected chief executive. There are also legislative and judicial branches of the government.

Election Process: Council members are elected by enrolled tribal members. Those not living on the reservation may vote by absentee ballot.

Employment (1995)

Labor Force: 591

Unemployment: 8%

Economic Development

Tribal Businesses: Woodlands National Bank, Onamia Bakery, Gas Station and Convenience Store, Restaurant, Convention Center, Casinos, Hotels, and the Mille Lacs Indian Museum

School Attendance

Nay Ah Shing Enrollment (1997-1998):
Elementary (K-6): 275
Junior High (7-8): 66
High School (9-12): 106

Public Schools (1997-1998):
Onamia: 152
Hinckley: 40
Milaca: 71

Health Care (1994)

Number of Clinics: 1
Number of Doctors: .8 (FTE)

Casinos

Number: 2 - Grand Casino Mille Lacs, Garrison and Grand Casino Hinckley

WHITE EARTH BAND

Reservation Area: 837,120 acres

Tribal Land: 56,116 acres

Tribal Enrollment: 20,852 (1995)

Communities: White Earth (tribal headquarters), Callaway, Ogema, Waubun, Mahnomen and Bejou.

Number of Residents: 4,546 (1995)

BRIEF HISTORY/BACKGROUND

The reservation was established by treaty in 1867. The Clapp Amendment of 1906 reduced land transfer restrictions, leading to significant acreage loss for the tribe. The White Earth Land Recovery Project, a nonprofit advocacy group, works to rebuild the land base through contesting government-owned lands on the reservation and promoting other alternatives to do so. The Band is part of the Minnesota Chippewa Tribe.

Governance

Type of Government: Representative government though the five-member Tribal Council, serving four-year staggered terms.

Election Process: Enrolled tribal members elect council members. Those not living on the reservation may vote through absentee ballots.

Employment (1995)

Labor Force: 1,910
Unemployment: 55%

Economic Development

Tribal Businesses: Manitok Marketing Program, casinos, White Earth Garment Manufacturing Company, Ojibway Lumber and Building Supply, joint ownership of Manitok Mall, limousine company

Other Businesses: Wild rice mill, Waubun Steel, trucking companies, limousine company, construction

related businesses

School Attendance

Circle of Life School Enrollment (1997-1998):
Elementary (K-6): 187
Junior High (7-8): 44
High School (9-12): 84

Public schools (1997-1998):

Pine Point: 59
Waubun: 402
Mahnomen: 471

Health Care (1994)

Number of Clinics: 1
Number of Doctors: 3.0 (FTE)

Casinos

Number: 1- Shooting Star Casino, Mahnomen

RED LAKE BAND

Reservation Area: 825,654 acres

Tribal Land: 825,654 acres

Tribal Enrollment: 8,039 (1995)

Communities: Red Lake (tribal headquarters), Redby, Ponemah and Little Rock.

Number of Residents: 8,111 (1995)

BRIEF HISTORY/BACKGROUND

The Red Lake people have lived in the area since the early 1700s. The reservation was reserved by the Band in 1889. They were successful in resisting the allotment process that affected other reservations, and all land has remained within the responsibility of the tribe. The area includes land surrounding Upper and Lower Red Lake, near Lake of the Woods, as well as scattered sites in between the two areas. The Band is independent of the Minnesota Chippewa Tribe.

Governance

Type of Government: Representative government through the 11-member Red Lake Council. The chairman, secretary and treasurer are elected at large. The other council members are representatives of the four reservation districts. Tribal members residing in these districts elect two council members as representatives.

Election Process: The enrolled adult tribal members elect council members. Those not living on the reservation may vote by absentee ballot.

Employment (1995)

Labor Force: 2,588

Unemployment: 36%

Lake Chippewa Cedar Fence Plant, Red Lake Pre-Fab Housing Plant

School Attendance

Red Lake Public School District
Enrollment (1997-1998): 1,306

Health Care (1994)

Number of Clinics: 1

Number of Doctors: 4.5 (FTE)

Casinos

Number: 3 - Red Lake Casino, Red Lake; River Road Casino, Thief River Falls; and Lake of the Woods Casino, Warroad

Economic Development

Tribal Businesses: Red Lake Indian Sawmill, Wild Rice production, Red Lake Fishing Industry, Red Lake Builders, Casinos, Chippewa Trading Post, Red Lake Shopping Center, Red Lake Housing Finance Corp., Red

SIOUX (DAKOTA/LAKOTA) AMERICAN INDIAN COMMUNITIES OVERVIEW

A relatively small number of American Indians in Minnesota are Sioux compared to the Chippewa. Their reservations are located in southern Minnesota, and include the Lower Sioux, Prairie Island, Shakopee Mdewakanton, and Upper Sioux Reservations.

Prior to 1600, the Sioux inhabited much of Minnesota and were later forced to occupy lesser areas by the Chippewa.¹ The Sioux signed two treaties in 1851, which established adjacent reservations on either side of a section of the Minnesota River. In 1858, these were reduced to an area on the southern bank of the river.²

Existence on the diminished reservation led to a situation where it was extremely difficult for the Sioux to support themselves by traditional means. They were starving and had been lied to by the government. This resulted in the Sioux conflict of 1862. Around 1,400 people died in the conflict, both American Indians and white settlers. In addition, 38 Sioux were hanged in Mankato. After the conflict ended, the Forfeiture Act of 1863 negated the established reservation and treaty rights. Most tribal members were expelled from Minnesota. Of those who remained, many were homeless and wandering. The current Sioux reservations were established beginning in 1886 through a federal trust for those still residing in Minnesota who were friendly to non-Indians.³

Originally, the Sioux government was a democracy with the people holding all the power, only delegating it temporarily and for special purposes. At that time, decisions were made by councils and a similar situation exists today. In the recent past (1971-84), the Sioux communities had an umbrella organization, but the members decided that handling affairs individually would be most beneficial, so the organization was dissolved. Currently, the governing body on the reservations is the Community Council, composed of five members elected to two-year terms by each reservation community.⁴

Note: Sioux communities operate tribal health services through means other than providing direct physician services. This includes contracting for local physician services and purchasing health insurance for tribal members. Health service information listed on the following pages for Sioux communities is presented in contract user format, which is utilized as a description of tribal members receiving health care.⁵

ENDNOTES

1. Anderson, Dennis; "Mille Lacs: A History. Chippewa History in Minnesota Dates to 1600s," *Star Tribune*, March 23, 1997.
2. Indians in Minnesota.
3. Pond, Samuel, and Anderson, Gary Clayton; The Dakota Sioux in Minnesota As They Were in 1834, Minnesota Historical Society Press, St. Paul, (1986).
4. Tiller's Guide to Indian Country.
5. Conrey, Phoebe; "1994 Primary Care Access Plan," Minnesota Department of Health, Office of Rural Health and Primary Care (January 1995).

LOWER SIOUX COMMUNITY

Reservation Area: 1,743 acres

Tribal Land: 1,743 acres

Tribal Enrollment: 842 (1995)

Community: Morton (tribal headquarters)

Number of Residents: 393 (1995)

BRIEF HISTORY/BACKGROUND

The original reservation was established by treaty in 1888. Acreage was increased through the 1934 Indian Reorganization Act. It is the largest Sioux community in Minnesota.

Governance

Type of Government: Representative government through the five-member Tribal Council, consisting of a chair person, vice-chairperson, secretary and treasurer serving two-year terms.

Election Process: The general membership of the reservation elects council members. Those not living on the reservation may vote by absentee ballot.

Employment (1995)

Labor Force: 100

Unemployment: 25%

School Attendance

Public schools are located in Redwood Falls.

Enrollment (1997-1998): 133

Dakota Open - charter school with a focus on language and culture.

Enrollment (1997-1998): 45

Health Care (1994)

Contract Health Users: 462

Casinos

Number: 1 - Jackpot Junction, Morton

Economic Development

Tribal Businesses: Casino, hotel, gravel pit, and gift shops (pottery).

PRAIRIE ISLAND COMMUNITY

Reservation Area: 400 acres

Tribal Land: 400 acres

Tribal Enrollment: 501 (1995)

Communities: near Welch (tribal headquarters on Prairie Island)

Number of Residents: 285 (1995)

BRIEF HISTORY/BACKGROUND

The reservation was established in 1889 by an act of Congress. It is located on a low-lying island on the banks of the Mississippi River.

Governance

Type of Government: Representative government through the five-member Community Council serving two-year terms.

Election Process: Those not living on the reservation may vote by absentee ballot.

Employment (1995)

Labor Force: 41

Unemployment: 0%

School Attendance

Children attend school in Red Wing
Enrollment (1997-1998): 88

Health Care (1994)

Contract Health Users: 321

Casinos

Number: 1 - Treasure Island Casino,
Red Wing

Economic Development

Tribal Businesses: Casino and shuttle bus service.

SHAKOPEE MDEWAKANTON COMMUNITY

Reservation Area: 1,500 acres

Tribal Land: 1,500 acres

Tribal Enrollment: 251 (1997)

Community: Prior Lake (tribal headquarters)

Number of Residents: 517 (1995)

BRIEF HISTORY/BACKGROUND

The reservation was formed through appropriations by the US government in 1886 and 1891. The Shakopee Mdewakanton were affiliated with the Lower Sioux Reservation until 1969. Today, the community is independent.

Governance

Type of Government: Representative government through the three- member Tribal Business Council consisting of a chairperson, vice-chairperson, and secretary/ treasurer. Additionally, the community has established a five- member gaming commission and a General Council which consists of all community members over 18.

Election Process: The General Council elects the Business Council and the Gaming Commission. Those not living on the reservation may vote by absentee ballot.

Employment (1995)

Labor Force: 105

Unemployment: 70%

Economic Development

Tribal Businesses: Casino (Little Six Inc.), Dakota Convenience Mall, Dakota! Meadows Campground, Dakota! Sport and Fitness Center, and South Metro Credit Union.

Other Businesses: Shakopee Travel

School Attendance

Public Schools for reservation children are located in Prior Lake and Shakopee.

Enrollment (1997-1998):

Prior Lake: 43

Shakopee: 98

Health Care (1994)

Contract Health Users: 466

Casinos

Number: 1 - Mystic Lake/Little Six Casino, Prior Lake

UPPER SIOUX COMMUNITY

Reservation Area: 746 acres

Tribal Land: 746 acres

Tribal Enrollment: 321 (1995)

Community: Near Granite Falls (tribal headquarters)

Number of Residents: 362 (1995)

BRIEF HISTORY/BACKGROUND

In 1935, the Secretary of the Interior purchased lands for the reservation. Additional acres were purchased by the tribe in 1995.

Governance

Type of Government: Representative government through the Upper Sioux Board of Trustees. This is composed of five staggered-term elected positions: tribal chairman, vice-chairman, secretary, treasurer, and member at large.

Election Process: Those not living on the reservation may vote by absentee ballot.

Employment (1995)

Labor Force: 97

Unemployment: 8%

Economic Development

Tribal Businesses: Farming, casino, smokeshop and day care facility.

Other Businesses: Upper Sioux Community Carpentry Crew

School Attendance

Reservation children attend school at the Granite Falls/Clarkfield Public School System.

Granite Falls/Clarkfield Enrollment (1997-1998): 94

Health Care (1994)

Contract Health Users: 280

Casinos

Number: 1 - Firefly Creek Casino, Granite Falls

Reservation Summary Table

		Reservation Area (Acres)	Tribal Land Area (Acres)	Number of Residents (1995)	Labor Force (1995)	Unemployment (1995)	Casinos
C	Boré Forte	105,284	30,035	2,162	1,147	38%	1
H	Fond Du Lac	100,000	4,213	6,676	3,733	63%	2
D	Grand Portage	47,000	37,390	394	222	5%	1
P	Leech Lake	602,880	14,069	6,260	2,161	26%	2
E	Mille Lacs	61,000	3,937	1,408	591	8%	2
W	White Earth	837,120	56,116	4,546	1,910	55%	1
A	Red Lake	825,654	825,654	8,111	2,588	36%	3
S	Lower Sioux	1,743	1,743	393	100	25%	1
O	Prairie Island	400	400	285	41	0%	1
U	Shakopee Mdewakanton	1,500	1,500	517	105	70%	1
X	Upper Sioux	746	746	362	97	8%	1

Reservation Information Sources

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2. Mille Lacs - Information provided by Thomas Burr, Bureau of Indian Affairs, Cass Lake MN.

Number of Residents/Reservation Enrollment:

1. Number of residents gives figures for American Indians living on or near the reservation.
2. Indian Service Population and Labor Force Estimates, Department of the Interior, Bureau of Indian Affairs, 1995.
3. Shakopee Mdewakanton: Service Population and Labor Force Estimates, January 1997.

Employment:

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School Attendance:

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BIA schools: Portra, Terry; Bureau of Indian Affairs Office of Indian Education Minneapolis Area Office, "Enrollment Data for Minnesota Schools," February 1998.

Health Care:

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Casino:

Doyle, Pat; "The Casino Payoff" - three-part *Star Tribune* Special Report, November 2, 1997, November 3, 1997, and November 4, 1997.

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Brief History:

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TWIN CITIES AMERICAN INDIAN COMMUNITY

Number of Residents

Seven-County Metro Area (1997)¹: 25,957 *Hennepin County (1997)¹:* 15,857

19 and under: 11,632
20-64: 13,862
65 and over: 643

19 and under: 7,329
20-64: 8,165
65 and over: 363

Anoka County (1997)¹: 2,404

19 and under: 1,097
20-64: 274
65 and over: 33

Ramsey County (1997)¹: 4,903

19 and under: 2,129
20-64: 2,622
65 and over: 152

Minneapolis and St. Paul (1995)²:

Total: 19,744

Governance

No tribal organizations have governance authority off the reservations. American Indians have the option of participating in governmental affairs on the reservation of the community or band they are enrolled in, if any.

Employment

Minneapolis (1990):³

Labor Force Participation

Rate: 53.8%

Unemployment: 22.2%

St. Paul (1990):⁴

Labor Force Participation

Rate: 61.8%

Unemployment: 21.6%

Seven County Metro Area (1990):⁴

Unemployment: 16.07%

Economic Development

Estimated number of American Indian owned businesses: 82 (1996)⁵

School Attendance

St. Paul: approximately 834 American Indian youth are enrolled in public elementary or high school 1997-1998, constituting 1.85% of students.⁶

Minneapolis: 2,838 American Indian youth are enrolled in public K-12 education 1997-1998, constituting 5.83% of students.⁷

TWIN CITIES AMERICAN INDIAN COMMUNITY

BRIEF DESCRIPTION

One third of Minnesota American Indians live in the central city areas of Minneapolis and St. Paul, with an additional 15 percent living in the suburbs.⁸ The Twin City's minority population has increased rapidly from 1980 to 1990, growing by 81 percent.⁹ The American Indian population is a part of this increase. One percent of metro area residents are American Indians, the third highest percentage of the 25 largest U.S. cities.¹⁰ Forty-three percent of the American Indian population are children under the age of 18.¹¹

Most American Indians living in the metro area live in census tracts where they account for less than 2 ½ percent of the population. However there is one census tract in South Minneapolis where American Indians account for almost 50 percent of the population.¹² This is the area located in the Phillips neighborhood that contains Little Earth, the American Indian controlled housing program.¹³ There are also a number of American Indians residing in North Minneapolis.¹⁴ Areas in St. Paul with the highest concentration are the Payne-Phalen, Thomas-Dale, and North End planning districts.¹⁵ Twin Cities American Indians have ties with Minnesota reservations as well as those in North and South Dakota and Wisconsin.¹⁶ There are many organizations in the metro area which focus on meeting the needs of the American Indian community.¹⁷

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BASIC PRINCIPLES

THE FEDERAL TRUST RELATIONSHIP AND THE INTERPRETATION OF AMERICAN INDIAN LAWS

What is the federal trust relationship with American Indians?

The United States Supreme Court has established a federal trust relationship between the federal government and American Indian people. The trust relationship provides that any treaties, agreements, laws, or administrative decisions are presumed to benefit American Indians.¹

Are there special rules for interpretation of federal laws and treaties affecting American Indians?

Yes, the U.S. Supreme Court has developed a set of rules for interpreting treaties, agreements, laws, or administrative decisions with American Indians. The rules were first developed in cases involving treaties and are commonly referred to as the "canons of construction" for American Indian Law. The rules are:

- (1) Treaties are construed as the American Indians understood them;²
- (2) Doubts concerning the meaning of treaties are resolved in favor of the American Indians,³ and;
- (3) Explicit language or clear Congressional intent is required to abrogate American Indian Treaty rights.⁴

The court has also held repeatedly that these "canons" cannot rewrite the "plain language" of treaties or other enactments. Obviously, that is one of the reasons so many of these issues have landed in the courts.

Can Congress abrogate treaty provisions and other laws affecting American Indians without violating the trust relationship?

Yes, the U.S. Supreme Court has ruled that Congress can unilaterally abrogate treaty provisions even to the point of terminating the trust relationship.⁵ However, because of the trust relationship between the federal government and the American Indian people, the abrogation of treaty provisions is not taken lightly.⁶ For Congress to abrogate the treaty rights of American Indians the intent of the language must be clear and convincing. Congressional abrogation of treaty rights can also, in some circumstances, trigger federal liability for "just compensation" under the fifth Amendment of the U.S. Constitution.

TRIBAL SOVEREIGNTY AND STATE AUTHORITY

What is American Indian tribal sovereignty?

Black's Law Dictionary defines "sovereignty" as follows:

The supreme, absolute, and uncontrollable power by which any independent state is governed; supreme political authority; paramount control of the constitution and frame of government and its administration; the self-sufficient source of political power, from which all specific political powers are derived, the international independence of a state, combined with the right and power of regulating its internal affairs without foreign dictation; also a political society, or state, which is sovereign and independent.

The power to do everything in a state without accountability, – to make laws, to execute and to apply them, to impose and collect taxes and levy contributions, to make war or peace, to form treaties of alliance or of commerce and foreign nations, and the like.⁷

American Indian tribal sovereignty includes some of the attributes included in the general definition of "sovereignty," but with some limitations and modifications that are a consequence of the tribes' being subject to the overriding sovereignty of the United States. The U.S. Supreme Court described this status as follows:

Upon incorporation into the territory of the United States, the Indian tribes thereby come under the territorial sovereignty of the United States and their exercise of separate power is constrained so as not to conflict with the interests of this overriding sovereignty.⁸

Thus, the tribes are sometimes described as "semi-sovereign" or "quasi-sovereign" entities that have the power to determine tribal membership and exercise authority over their members within their territory. This authority is subject to the overriding authority of the U.S. government but is generally not subject to the authority of state governments.

What is the origin of the concept of American Indian tribal sovereignty?

It is most significant to recognize that American Indian tribal sovereignty is not dependent on any action by the federal government. Instead, it is derived from the inherent power of the American Indian people that existed because the American Indian tribes were independent nations occupying much of the North American territory when the Europeans arrived here. It has been estimated that at that time, 5 million American Indians resided in what is now the U.S., comprising over 600 tribes or communities.⁹ When the United States was created as a nation, the American Indian tribes were perceived as coming under the overriding sovereignty of the federal government, but continuing to be able to exercise self-government powers. Article I, section 8, of the United States Constitution includes a provision commonly referred to as the "Indian commerce clause" which provides that Congress has the exclusive authority "(t)o regulate Commerce . . . with the Indian Tribes." Between 1778 and 1871, Congress

ratified 371 treaties with American Indian tribes, in most of which the tribes gave up their rights to land in exchange for the federal government's promises of recognition of tribal rights and reservation areas. These treaties were described by the U.S. Supreme Court in 1905 as not being a grant of rights to the American Indians, but instead a grant of rights from them, which reserve to the tribes the rights that they did not grant under the treaties.¹⁰ This perspective reinforces the concept that the tribes retain their status as sovereign entities. Still, the tribes do not have all powers normally intrinsic to a sovereign nation; for example, they may not deal directly with foreign nations on a sovereign-to-sovereign basis.

In 1831, the U.S. Supreme Court characterized this unique status as follows:

Though the Indians are acknowledged to have an unquestionable, and heretofore, unquestioned right to the lands they occupy until that right shall be extinguished by a voluntary cession to our government, yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the U.S. can, with strict accuracy, be denominated foreign nations. They may more correctly be denominated domestic dependent nations.¹¹

How does American Indian tribal sovereignty affect the states' relationships with the tribes?

The states have no power to limit the tribes' sovereign powers. In general, state civil regulatory laws do not apply to American Indians on reservations. A state has authority to act within the reservation only to the extent that Congress explicitly authorizes it to act as it did, for example, in Public Law 280, discussed on pages 43 - 46. Thus, even though a reservation is located within the boundaries of a state, and the state has some responsibilities to the members of the tribe, the state may exercise few of its normal powers of regulation and taxation within that reservation. As noted in a National Conference of State Legislatures publication, "Any state jurisdiction over activities on the reservation creates confusion on the part of the regulated community, jurisdictional disputes between the regulators, and often fuels difficult relations between states and tribes."¹²

Are there any recent developments in the area of American Indian tribal sovereignty?

On February 27, 1998, Senator Slade Gorton (R-Washington) introduced S. 1691, the American Indian Equal Justice Act, which includes a statement of purpose contending that ". . . the doctrine of sovereign immunity frustrates justice and provokes social tensions and turmoil inimical to social peace." The substance of the bill imposes state tax collection duties on the tribes, and explicitly provides that the tribal immunity of the tribe is waived in order to enforce this requirement as well as for purposes related to personal injury claims and contract claims.

Hearings were held on this bill in March and May 1998 in the Senate Committee on Indian Affairs, but no further action was taken on the bill. American Indian leaders have expressed concern that there may be growing receptiveness in Congress to curtailment of certain aspects of American Indian tribal sovereignty.¹³

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2. Worcester v. Georgia 31 U.S. 515, 528 (1832).
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4. U.S. v. Dion, 476 U.S. 734, 740, 106 S. Ct. 2216 (1986).
5. Rosebud Sioux Tribe v. Kneip 430 U.S. 584, 97S.Ct. 1361 and Lone Wolf v. Hitchcock, 187 U.S. 553, 566 (1903).
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12. National Conference of State Legislatures, Tribal Sovereignty (Jeanette Wolfley and Susan Johnson, 1996).
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K-12 EDUCATION

How many American Indian students are there in Minnesota and where do they attend school?

About 16,200 American Indian students attend public schools in Minnesota. An additional 2,000 American Indian students attend tribal contract schools in the state and about 400 American Indian students are in alternative programs.

Four tribal contract schools operate in the state, along with three American Indian magnet programs and one American Indian charter school. Three public school districts are entirely composed of American Indian students, and two other school districts have American Indian students as a majority of their enrollment.

SCHOOLS	LOCATION
<u>Tribal Contract Schools</u> Circle of Life Bug-O-Nay-Ge-Shig Fond du Lac Ojibwe Nay Ah Shing	White Earth Reservation Leech Lake Reservation Fond du Lac Reservation Mille Lacs Reservation
<u>Public School Districts with 100% American Indian Enrollment</u> Pine Point ¹ Red Lake Nett Lake	White Earth Reservation Red Lake Reservation Near Nett Lake Reservation
<u>Public School Districts with Majority American Indian Enrollment</u> Mahnomen Waubun	White Earth Reservation White Earth Reservation
<u>Magnet Programs</u> Four Winds Magnet Mounds Park All Nations Magnet Nettleton Elementary Magnet	Minneapolis St. Paul Duluth
<u>Charter School</u> Dakota Open School ²	Renville County

What special programs are offered by the state for American Indian students?

The Minnesota American Indian Education Act of 1988 requires that the state of Minnesota provide unique services to meet the needs of American Indian people within the state.³ The act also recognizes the need for American Indian teachers in the state. The legislature appropriates money for a variety of programs to benefit American Indian students and to assist more American Indian people to become teachers. The legislature appropriated about \$7.4 million for the 1997-1999 biennium for American Indian Education programs. The programs include:

American Indian Language and Culture Education - A competitive grant program offered to schools to provide services to promote positive self-image and reinforcement for American Indian students.⁴

Support for American Indian Education - Funding for American Indian education programs for 6 school districts that have high concentrations of American Indian students.⁵

American Indian Post-Secondary Preparation - A competitive grant program for students in grades 7-12 who are at least one-fourth American Indian. The program offers career counseling and assistance in applying for post-secondary admission.⁶

American Indian Scholarships - Scholarships for full- and part-time college students in undergraduate and graduate education.⁷

Indian Teacher Preparation Grants - Grants to be made jointly to a school district and a post-secondary institution to assist American Indian people in becoming teachers.⁸

Parent Advisory Committees - Committees are established in school districts where 10 or more American Indian children are enrolled. There is no state appropriation for these committees.⁹

Indian Adult Basic Education Program - This is a program that provides American Indian adults with basic education instruction in order to meet GED requirements.

How are the needs of American Indian students different from those of other children in the state?

The drop out rate for American Indian students is the highest in the state for any minority group. Approximately 60 percent of American Indian students drop out of school before reaching high school graduation.¹⁰

Both federal and state laws have mandated that American Indian children must receive education that acknowledges the heritage and culture of the American Indian people. This requires some special programs and some additional funding from state and federal governments.

What are the sources of funding for teaching American Indian children?

Since 1924, Minnesota has assumed the responsibility for educating American Indian children residing in the state, on or off the American Indian reservations. In addition to the state programs listed above, school districts are eligible for federal money to educate American Indian children. The federal Indian Education Act of 1988 calls for grants to be made to school districts to develop programs for American Indian students.¹¹ Title 9 grants were made to 64 Minnesota school districts in 1997. Most American Indian students are also eligible for federal Title 1 funding which is a program for children from low-income families.

American Indian-controlled tribal contract or grant schools are eligible to receive tribal contract school aid and early childhood family education (ECFE) aid from the state.¹² The state determines an amount of revenue on a per pupil basis that the tribal schools shall receive and funds only the amount not covered by federal Bureau of Indian Affairs education aid. Minnesota appropriated about \$5.2 million for tribal contract school aid and ECFE for the 1997-1999 biennium.

Although no official statistics are kept by the state, individual tribal governments have played a role in contributing resources to school districts and tribal contract schools in helping to construct school facilities and educate American Indian students.

ENDNOTES

1. Minnesota Statutes, chapter 128B. The Pine Point school district receives special consideration in Minnesota Statutes. The school is a public school, but the state allows the White Earth Reservation Tribal Council to act as a school board. The 1997 Legislature repealed the sunset of the Pine Point school district making its status permanent.
2. The state Board of Education recently voted to terminate Grades 7 through 12 of the Dakota Open Charter School. The charter school will remain open to operate grades kindergarten through 6 under audit of the board.
3. Minnesota Statutes, sections 126.45 to 126.55.
4. Minnesota Statutes, section 126.48.
5. 1997 Minnesota Laws, First Special Session, chapter 4, article 2, section 51, subdivision 3.
6. Minnesota Statutes, section 124.481.
7. Minnesota Statutes, section 124.48.
8. Minnesota Statutes, section 125.62.
9. Minnesota Statutes, section 126.51.
10. Minnesota High School Graduates and Dropouts, Minnesota Department of Children, Families, and Learning, 1994-95.
11. 25 U.S.C. 5301 et seq.
12. Minnesota Statutes, section 124.86.

HIGHER EDUCATION

Are there any specific statutory provisions addressing the post-secondary education of American Indian students?

Two such provisions exist. First, American Indian students attending the University of Minnesota-Morris can attend Morris tuition-free. Second, at the request of ten or more full-time American Indian students, post secondary institutions are required to establish an advisory council to recommend instructional programs and student services to meet the needs of American Indian students.

What unique post secondary education opportunities are available to American Indian students?

Minnesota has three tribal colleges that receive federal funds under the Tribally Controlled Community College Act to subsidize their operation. Each of the colleges is unique in its mission and revenue sources.

Fond du Lac Tribal and Community College was chartered in 1987 by the Fond du Lac Reservation Business Committee and initially operated in conjunction with Mesabi Community College. In 1988, Fond du Lac Community College established itself as a tribal college. In 1994, Fond du Lac was designated a land-grant institution and a co-governance relationship between the Fond du Lac Band of Lake Superior Chippewa and the Board of Trustees of the Minnesota State Colleges and Universities was created. Fond du Lac enrolls 704 students, 133 of whom are American Indians.

Leech Lake Tribal College was chartered by the Leech Lake Band of Chippewa in 1990 and is governed by the sovereignty and constitution of the tribe. The college has a board, whose members are enrolled members of the Leech Lake Nation. The college awards two-year degrees and states that its mission is to "center on the transmission of the Anishinabe language and culture." In 1994 it was designated a land grant institution.

The college recently entered into an agreement with Bemidji State University that allows students to pursue a four-year degree at the tribal college site. The college enrolls 250 students, only 8 percent of whom are non-Indian.

White Earth Tribal College is currently going through the application process to be designated a tribal college. Their goal is to specialize in the following programs: basic education, business, computer literacy, and computer science. They also plan to work with the Minnesota State Colleges and Universities to make programs available to students.

What special programs are available to American Indian students?

Both the University of Minnesota and the Minnesota State College and Universities (MnSCU)

offer programs for American Indian students.

Examples of programs offered by the University of Minnesota are:

American Indian High School Research Apprenticeship Program: An eight-week summer program that offers hands-on work experience in forest research and natural resource management.

American Indian Science and Engineering Society Summer Math Camp: A three-week summer program for junior high school students.

American Indians Into Marine Sciences: Recruits undergraduate students in biology, chemistry, and natural resources, business administration, geology, or pre-law to participate in marine/aquatic sciences research.

Duluth Indian Teacher Training Program: Offers six to nine scholarships annually to undergraduate students working towards teacher licensure.

Family Mentor Program: Pairs American Indian students with local professionals.

Indians Into Medicine: Sponsors health career awareness workshops, focusing on tribally controlled secondary schools and tribal community colleges; offers math and science programs, courses, and science-related summer camps.

Examples of programs offered by the Minnesota State Colleges and Universities are:

Addressing Minority Student Underrepresentation in Mathematics and Science: Offered by St. Cloud State; a one-week summer camp serving students in grades 3 through 8.

Increasing Science Expertise on the Grand Portage Indian Reservation: Offered by Mankato State; provides summer activities in various areas of science for students in kindergarten through grade 12.

Minority Math, Science, and Computer Camps: Offered by St. Cloud State; summer residential science program for elementary and junior high students.

Native Americans Into Medicine: Offered by Bemidji State University to students interested in health careers. The program assists students with academic and career counseling, entrance exam preparation, and special projects associated with the medical environment. Program participants attend a six-week summer enrichment program at the University of Minnesota in Duluth. This program also is available to American Indian students at the University of Minnesota.

Summer Institutes in Computer Science: Offered by Fond du Lac Community College; two week-long summer institutes, one for students in grades 5 through 8, one for students in grades 9 through 12.

Summer Teen Research Encouraging Attitudes in Mathematics (STREAM): Ten-day experience for students in grades 7 and 8; also serves middle school students.

Both University of Minnesota and MnSCU campuses offer a broad range of support services to American Indian students on their campuses. Services include advising, mentoring, financial aid counseling, Indian student association, academic tutoring, and Indian cultural events. MnSCU offers courses on the following reservations: Fond du Lac, Mille Lacs, Red Lake, and White Earth.

GAMING

Congress passed the Indian Gaming Regulatory Act (IGRA) in 1988, to provide a regulatory structure for gambling in Indian country. A broad generalization about this law: IGRA permits American Indian tribes on American Indian lands to conduct, with minimal state regulation, any type of gambling allowed in any fashion by a state for the state's non-Indians.

Why was IGRA necessary?

Gambling started on tribal land before IGRA passed in 1988. Large-scale bingo games were conducted at many locations, including in Minnesota, as early as the 1970s. As gambling spread, states challenged the rights of tribal governments to conduct gambling. A series of court cases established that tribes could legally gamble with only limited state involvement. IGRA was passed by Congress in order to codify those court decisions, which had already established the right of tribal governments to conduct gambling.

What does IGRA require?

Among other provisions, IGRA establishes a National Indian Gaming Commission (NIGC) with federal authority over tribal gambling. IGRA also sets a regulatory framework in place, attuned to the nature of the gambling game in question. Finally, it requires states to negotiate gambling compacts with tribes, in good faith.

IGRA divides gambling by American Indian tribes into several categories:

- Class I Games: primarily for religious and ceremonial purposes, allowable without any regulatory or state oversight;
- Class II Games: games such as keno, bingo, pull-tabs, punchboards, and nonbanked card games (player vs. player with no house stake). For a tribe to conduct a Class II game, it must pass a tribal ordinance and have that ordinance approved by the NIGC; and
- Class III Games: games such as video poker, video slots, blackjack, roulette, craps, chemin de fer, baccarat, and poker. For a Class III game to be allowed, a tribe must negotiate a compact with the relevant state government. The compact should specify the regulatory role of the state, any stake the state might have in tribal gambling, and the games that may be played at tribal casinos.

Before a tribe may operate Class III games, the tribe must request that the state enter into negotiations for a gaming compact. The compact can cover such provisions as the application of criminal and civil laws of the state and the tribe, assessment by the state for costs related to regulation, taxation by tribes to defray regulation costs, remedies for breach of contract, and any other subjects related to gaming. Once the compact is concluded, it is submitted to the Secretary of the Interior for approval.

What if the state does not want a compact?

Good faith negotiations are required of states, which means the state is not able to unduly hamper the compact process. Specifically, IGRA provides that if a state fails to negotiate, the tribe may initiate a cause of action in U.S. District Court, alleging failure of the state to enter into negotiations or to conduct the negotiations in good faith. The burden of proof lies with the state to prove that it did negotiate in good faith.

If the court finds for the tribe, the state and tribe have 60 days in which to negotiate a compact. If after 60 days a compact has not been concluded, each side must present a proposed compact to a court-appointed mediator. The mediator must select the compact that most closely complies with the IGRA and any other applicable federal law. If the state refuses to accept the mediator's compact, the Secretary of the Interior is notified, and the Secretary will prescribe, in consultation with the tribes, the procedures under which Class III gaming may be conducted. The procedures must be consistent with mediator's compact, the IGRA, and state laws.

In 1996, however, these provisions in IGRA were effectively struck down when the U.S. Supreme Court held that the Eleventh Amendment to the U.S. Constitution prohibited Congress from giving the federal courts jurisdiction over the states to hear IGRA claims absent the state's consent in *Seminole Tribe v. Florida*, 116 S. Ct. 1114 (1996). Since that decision, the issue has been whether IGRA should be amended to permit the Secretary of the Interior to impose gambling procedures on recalcitrant states. The exact nature of federal, state, and tribal relationships regarding gambling has been the subject of Congressional debate for the past four years, but no legislation on the issue has been passed during that time.

Are there limits on what compacts may contain?

Compacts are the result of either good faith negotiations or court orders. The negotiations could, in theory, contain any idea agreeable to the tribe and state. However, there are constraints:

- If a state allows some regulated version of a form of gambling, the state cannot prohibit tribes from conducting a less-regulated version of that game. The state's right to control American Indian gambling is sharply limited under federal law;
- The states have no role in regulating bingo and other Class II games;
- If a state allows blackjack, slot machines, and other Class III games for non-Indians, the state cannot refuse to negotiate a compact with an American Indian tribe that requests one; and
- States are not allowed to levy taxes or fees on tribal gambling, unless the compact is negotiated to allow a tax or fee. Fees to cover some of the costs of basic regulation contained in a compact are common among states. In Connecticut, for example, the state receives 20 percent of gambling proceeds.

What do Minnesota compacts require?

Minnesota has 11 tribes and two compacts signed with each tribal government. The first round of compacts allows video slot machines, video poker, video craps, video blackjack, video keno, video roulette, video horse racing, and other video gambling games. The second round of compacts allows blackjack card games.

The compacts allow Minnesota to attempt to ensure fair comportment of games, including requirements that gambling devices meet state specifications, that games be played according to set rules, specific payouts be ensured to players, and other negotiated provisions to ensure the integrity of games. Minnesota's compacts require the 11 tribal governments to pay a modest amount each year to defray the costs of regulation.

Minnesota compacts do not have a termination date. There is a provision allowing either the state or the tribal governments to request further negotiations at any time, with the agreement of the other party.

There are 17 casinos operating in Minnesota. Revenues and other economic data on these casinos are not publicly available. Projections have been made, but these projections, although generally favorable, are not definitive. Generalizations about casino gambling should note the fact that while some tribal casinos in Minnesota are large and have high traffic volume, most are smaller and serve a modest clientele.

CRIMINAL JURISDICTION AND LAW ENFORCEMENT IN INDIAN COUNTRY

What factors determine criminal jurisdiction on Indian lands?

Criminal jurisdiction to prosecute and punish crimes committed in Indian country in Minnesota depends upon a number of factors including where the incident took place, what type of law was violated, and whether either the perpetrator or the victim was a member of an American Indian tribe.

Under what circumstances does the federal government retain criminal jurisdiction?

The federal government has criminal jurisdiction over federal crimes of nationwide application on all American Indian lands and felonies committed by an American Indian against an American Indian or non-Indian, or by a non-Indian against an American Indian on the Red Lake or Bois Forte Reservations.

Under what circumstances does the state government retain criminal jurisdiction?

The state has criminal jurisdiction over any state crime committed by a non-Indian against a non-Indian on American Indian lands and, with certain exceptions, any state crime committed by or against an American Indian on American Indian land, except on the Red Lake or Bois Forte Reservations. The state does not retain jurisdiction to enforce state criminal statutes which are "civil-regulatory" rather than "criminal-prohibitory" under a series of court decisions interpreting Public Law 280, *California v. Cabazon Band of Mission Indians*, 408 U.S. 202 (1987).

Under what circumstances do tribal governments retain criminal jurisdiction?

The tribal governments of Red Lake and Bois Forte have criminal jurisdiction over misdemeanors and gross misdemeanors committed by an American Indian against an American Indian on land owned or controlled by the bands.

How does Public Law 280 affect criminal jurisdiction in Indian country?

In 1953 Congress enacted Public Law 280, in part because of the absence of adequate tribal institutions for law enforcement. Public Law 280 applies to six states, including Minnesota. It required the state to assume complete criminal jurisdiction over all Indian reservations within the state with the exception, as noted above, of Red Lake and Bois Forte. That jurisdiction does not extend, however, to criminal statutes the courts would classify as "civil-regulatory" rather than "criminal-prohibitory" under Public Law 280.

What entity retains law enforcement authority in Indian country?

The Red Lake and Bois Forte Bands have tribal law enforcement agencies that are funded and administered by the federal Bureau of Indian Affairs.

The Mille Lacs Band of Chippewa and the Lower Sioux Indian Community have concurrent jurisdiction with the Mille Lacs and Redwood county sheriff's departments respectively. They have jurisdiction over all persons in the geographic boundaries of the bands' trust lands; all tribal members within the boundaries of the reservations; and all persons within the boundaries of the reservations who commit or attempt to commit a crime in the presence of a Band police officer. The sheriff of the county in which the violation occurred is responsible for receiving persons arrested by the band's peace officers, and the Mille Lacs and Redwood County Attorneys are responsible for prosecuting such violators.

The Fond du Lac Band of Chippewa is negotiating a similar jurisdictional agreement with St. Louis and Carlton counties. This agreement will go into effect July 1, 1998.

Law enforcement authority on the other reservations is the responsibility of the respective county sheriffs.

TRIBAL AND STATE JURISDICTION OVER CIVIL CASES

What factors are important in determining the scope of state civil jurisdiction in Indian country?

It is important to emphasize that this is not a black and white area of law and the result in a particular case will depend on the nature of the law, the parties involved, and where an action took place. However, there are some general principles that provide guidance in determining the scope of state authority.

As noted in the earlier discussion dealing with basic principles, Indian tribes are sovereign nations with the right and power to regulate their own internal affairs. However, this power is subject to the overriding authority of the United States government through Congress to regulate and control Indian affairs. In the absence of federal regulation, Indian tribes retain inherent power to govern activities within their jurisdiction. The authority of states to regulate civil activity on Indian land is limited. States may regulate on-reservation activities where the state interest is consistent with or outweighs federal and tribal interests.¹ In addition, Congress may give states additional power. Public Law 280 is a good example of this principle.

How does Public Law 280 affect civil jurisdiction in Indian country?

Public Law 280 affects civil jurisdiction in Indian country, just as it affects criminal jurisdiction. Congress granted certain states, including Minnesota, special civil jurisdiction in Indian country, excluding the Red Lake Reservation.

Under Public Law 280, a distinction is made between a civil law of general application (for which the state will have jurisdiction) versus a civil regulatory law (for which the state will not have jurisdiction). State laws governing private matters between individuals, including contract law, family law and tort law, apply on Indian reservations.² However, general civil regulatory laws are not part of the civil jurisdiction that Public Law 280 grants to states over Indian land.

Also, it is important to note that Public Law 280 only confers jurisdiction for a statewide law, and does not apply to local ordinances, which do not apply on reservations. Tribal ordinances that are not in conflict with state law are usually given full force in effect in civil actions.³

What are the key cases in Minnesota dealing with how Public Law 280 governs civil jurisdiction?

Two Minnesota Supreme Court cases that were issued in 1997 are very helpful in understanding the scope of Public Law 280, particularly to the extent that it does not confer general civil regulatory power over Indian lands.⁴ In *State v. Stone*, the issue was whether Minnesota laws regarding speeding, driver licensing, vehicle registration, seatbelt use, child

restraint seat, motor vehicle insurance, and proof of insurance were civil regulatory laws for purposes of Public Law 280. The Minnesota Supreme Court held that the state did not have jurisdiction under Public Law 280 to enforce those laws against members of an Indian tribe for conduct occurring within the boundaries of the reservation and that no exceptional circumstances justified the state's enforcement of those laws.

Similarly, in *State v. Robinson*, the Minnesota Supreme Court held that the state law dealing with failure to yield to an emergency vehicle could not be enforced against a tribal member for conduct occurring on tribal land. However, the court held that the state did have jurisdiction to enforce the law dealing with underage consumption of alcohol, finding that it was a criminal law for purposes of Public Law 280 rather than a state regulatory provision.

It is also important to note that in many cases, tribal governments have laws that deal with civil regulatory issues.

How does sovereign immunity affect civil cases?

In some cases, the doctrine of sovereign immunity may prevent a person from bringing an action against an Indian tribe in state court, because of its status as a government. For example, *Gavle v. Little Six, Inc.*⁵ involved a lawsuit by a non-Indian employee of a casino alleging sexual harassment, pregnancy and race discrimination, civil rights violations, and related torts. Although the Minnesota Supreme Court held that the state court had jurisdiction to consider the claims, it found that tribal sovereign immunity protected the tribe itself from being sued in the matter. Most significantly, the court held that the fact that the tribe was involved in a private or commercial enterprise, such as gambling, rather than a more traditional government activity, did not affect its sovereign immunity. However, as an example of how complicated these issues are, two of the seven justices filed dissenting opinions, arguing that a huge for-profit business such as a casino should not be able to rely upon the same sovereign immunity defense that is available to a tribe.

ENDNOTES

1. American Indian Law Desk Book, (Julie Wrend and Clay Smith, ed.) 98, 102 (1993); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 208 (1978).
2. *Bryan v. Itasca County*, 426 U.S. 373 (1976).
3. 25 U.S.C., sectionesw 1322 (c).
4. *State v. Stone*, 572 N.W.2d 725 (Minn. 1997) and *State v. Robinson*, 572 N.W.2d 720 (Minn. 1997).
5. 555 N.W.2d 284 (Minn. 1996).

NATURAL RESOURCES

WILDLIFE MANAGEMENT

What game and fish regulations are enforced on American Indian reservations?

Members of a band may hunt and fish on any reservation under regulations provided by the band or tribe that have authority over the reservation. This applies to both trust and nontrust land within the boundaries of the reservation.¹

State jurisdiction on hunting and fishing laws over nonmembers is maintained for all but one reservation area of the state. The diminished original Red Lake Reservation that contains only trust land within its boundaries is considered a closed reservation and nonmembers are not subject to state regulation within its boundaries. Other areas of the Red Lake Reservation on restored ceded lands, lands within the Northwest Angle and all other reservations of the state are considered "open" reservations. The reservation areas are considered "open" because the reservation trust lands are interspersed with nontrust lands. On "open" reservations nonmembers are subject to state jurisdiction. The question of state jurisdiction over nonmembers was litigated in federal court for both Leech Lake and White Earth Reservations. State jurisdiction was affirmed in both cases.²

Are American Indians subject to federal fish and wildlife laws?

Yes. For migratory bird hunting, American Indian reservations and ceded lands are treated like states in establishing seasons and limits. The U.S. Fish and Wildlife Service publishes specific seasons and limits for migratory birds on certain American Indian reservations and ceded lands.

Are American Indians subject to state fish and game laws?

If a Band member is fishing or hunting on the band's reservation or under treaty-recognized rights of use available to the Band, the member is not subject to the state's fish and wildlife laws but is subject to Band fish and wildlife laws. A Band member is only subject to state regulation when fish and wildlife are taken on land that is:

1. outside of the member's reservation; and
2. in an area that is not subject to treaty recognized rights of use for the Band member.

What treaties covering Minnesota have included treaty-recognized rights of use?

Both the 1837 and the 1854 treaties with the Chippewa included language on treaty-recognized rights of use. The 1837 treaty area covers all or part of 11 counties in east-central Minnesota; the 1854 treaty area covers the northeastern part of the Minnesota commonly

referred to as the arrowhead.

The rights of use under the 1837 Treaty are subject to a federal court case that will be appealed to the U.S. Supreme Court. The 8th Circuit Court of Appeals has determined that the treaty-recognized rights of use under the 1837 treaty continue to exist.³ While the case is under appeal to the U.S. Supreme Court, the signatory bands are able to exercise treaty-recognized rights of use in the 1837 Treaty Area.

In 1988 the Minnesota Legislature approved an agreement with the bands in the 1854 Treaty Area.⁴ The agreement was originally signed by the three signatory bands – Fond du Lac, Grand Portage, and Bois Forte. After further consideration, the Fond du Lac Band withdrew from the agreement. The agreement provides that the State of Minnesota makes payments to the bands based on a formula that is tied to the revenue from hunting and fishing license sales. In exchange for the payments, the bands are obligated to restrict their harvest of fish, game, and wild rice according to the agreement.

Does Minnesota have other agreements with any American Indian Bands over rights of use?

Yes. In 1972 the Leech Lake Band was successful in asserting their right to hunt, fish, and gather wild rice free of state regulation on the Leech Lake Reservation.⁵ While the case was under appeal, the state and the Leech Lake Band signed an agreement providing for limitations on the Band's right to hunt, fish, and gather in exchange for compensation from the state. The agreement was ratified by the Legislature in 1973.⁶ The original agreement called for the establishment of special Leech Lake licenses, with money from the special licenses going to a special Leech Lake Band Account. Later the agreement was amended to provide, in lieu of the special license, for a payment from the state of five percent of the license revenue collected by the state for fishing, hunting, trapping, and taking bait.

Also, as part of the Mille Lacs case, the state, the Mille Lacs Band and other parties involved in the 1837 Treaty lawsuit have filed a stipulation agreement with the U.S. District Court to resolve some of the specific issues where the state, the Band, and the other parties could agree (e.g., enforcement, record keeping, and harvest data). That stipulation is subject to the ultimate decision of the U.S. Supreme Court in the case.

The Legislature has authorized an agreement with the White Earth Band under terms similar to those reached with the Leech Lake Band.⁷ To date no agreement has been made with the White Earth Band.

LAND CLAIMS

Has Minnesota been involved in any major land claims issues with American Indians in recent years?

Yes, during the 1980s both the State of Minnesota and the U.S. were involved in a dispute over land claims on the White Earth Reservation.

In a recent negotiation over land claims to which the State is not involved, the Minnesota Chippewa Tribe has tentatively agreed to a \$2 million settlement with the U.S. Bureau of Indian Affairs.

What were the issues involved in the White Earth Land Claims with the United States and the State of Minnesota?

The White Earth Land Claims were the result of transfers of over 100,000 acres of White Earth Indian Reservation Lands that were determined to be improper by the U.S. Department of Interior (DOI). Because of the improper transfers, title to these lands were subject to dispute. The improper transfers were in four categories:⁸

1. Unapproved land sales;
2. Improper forfeiture;
3. Improper probate by state courts; and
4. Forced fee patents by the U.S. DOI.

The improper forfeiture claims were the result of several court cases determining that a 1906 federal law referred to as the "Clapp Amendment" was unconstitutional.⁹

How were the White Earth Land Claims resolved?

In 1983 Senators Boschwitz and Durenberger introduced S. 885 and Congressman Arlen Strangeland also introduced a House companion, H.R. 2246, to provide legislative relief to the land title problems. Congress did not take action on the proposal because the White Earth Band was opposed to the legislation.

In 1984 the Minnesota Legislature¹⁰ provided 10,000 acres of state-owned land to be transferred to the United States to be held in trust for the White Earth Band of Chippewa Indians and \$500,000 to be used by the U.S. DOI to assist in implementing the settlement. Minnesota's participation was contingent on Congress passing appropriate legislation by December 31, 1985.

After further negotiations, Congress again proceeded to try to work out an agreement. In spite of the continued opposition by the White Earth Band,¹¹ Congress passed the White Earth Reservation Land Settlement Act of 1985¹² to provide for the federal government's part of the settlement. The Act provided compensation to members of the Band for their loss of allotment plus interest accrued at 5 percent per year from the date of loss. The Act was contingent on:

1. The State of Minnesota entering into an agreement to transfer 10,000 acres of land to the United States to be held in trust for the White Earth Band;
2. The State of Minnesota appropriating \$500,000 for technical and computer assistance; and
3. The U.S. appropriating \$6.6 million for economic development benefitting the White

Earth Band.

The 1986 Minnesota Legislature extended the provisions of the 1984 law until December 31, 1990.¹³

INDIAN BURIAL GROUNDS

Are American Indian burial grounds found on private property protected from disturbance?

Yes. Minnesota Law protects all human skeletal remains or burial grounds from disturbance. An intentional, willful or knowing violation of the law is a felony.¹⁴ The law also provides protection from disturbance any removal of a tombstone, monument, or structure placed in any human burial ground; an intentional, willful or knowing violation of this provision is a gross misdemeanor.

If someone finds buried remains that may be American Indian remains on their property, what can they do with them?

First contact the State Archeologist at the Minnesota Historical Society who is responsible for authenticating all burial sites, including pioneer and American Indian sites. This responsibility includes the costs of authentication, identification, and marking of the site. If the site is an American Indian burial ground, it may only be relocated after the approval of the Indian Affairs Intertribal Board.

What is the Minnesota Native American Reburial Project?

The project is a Minnesota Indian Affairs Council program that began with specific legislative funding in fiscal year 1991.¹⁵ The purposes of the program are to identify American Indian human remains, create an inventory and database, identify and prepare individuals for reburial, and arrange reburial ceremonies.

ENDNOTES

1. State v. Clark, 282 NW 2d 902 (Minn. (1979), Cert. Denied, 445 U.S. 904 (1980).
2. Leech Lake Band of Chippewa Indians v. Herbst, 334 F.Supp. 1001 (D.Minn. 1971) and White Earth Band of Chippewa v. Alexander, 683 F.2d 1129 (8th Cir. 1982), cert. Denied, 459 U.S. 1070, 103 S. Ct. 488.
3. Mille Lacs Band v. State of Minnesota.
4. Minnesota Statutes, section 97A.157.
5. Leech Lake Band of Chippewa Indians v. Herbst, 344 F.Supp. 101 (D.Minn 1971).
6. Minnesota Statutes, section 97A.151.
7. Minnesota Statutes, section 97A.161.
8. Written Submission of Hubert H. Humphrey, III, Attorney General State of Minnesota to the United States Senate Select Committee on Indian Affairs, regarding S.885. November 17, 1983.
9. The most noted case was State of Minnesota v. Zay Zah, 259 NW 2d 580 (1977). Under this case, the Minnesota Supreme Court affirmed a lower court ruling that the "Clapp Amendment" could not allow the U.S. Department of Interior to terminate a trustee relationship. The court determined that the land under dispute did not forfeit to the State of Minnesota for nonpayment of taxes.
10. Laws 1984, Chapter 539.
11. Committee Report on S. 1396 from the House Committee on Interior and Insular Affairs, March 10, 1986.
12. Public Law 99-264.
13. Laws of Minnesota 1986, Chapter 429, section 2.
14. Minnesota Statutes, section 307.08.
15. Laws of Minnesota 1990, Chapter 565, section 18.

ENVIRONMENTAL LAW ON AMERICAN INDIAN RESERVATIONS

Do state environmental laws apply on American Indian reservations?

To the extent that state law is “prohibitory” as opposed to “regulatory,” it applies to American Indian reservations under the operation of Public Law No. 280, which provides Minnesota with the authority to enforce criminal and prohibitory law on American Indian reservations, with the exception of the Red Lake Reservation.¹ Whether individual environmental laws are prohibitory or regulatory is a complex question that is ultimately determined on a case-by-case basis by the courts. In *California v. Cabazon Band of Mission Indians*, the United States Supreme Court applied Public Law 280 to provide some guidance in making this determination:

[I]f the intent of a state law is generally to prohibit certain conduct, it falls within Pub.L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and does not authorize its enforcement on an Indian Reservation. The shorthand test is whether the conduct at issue violates the state's public policy.²

The Minnesota Supreme Court recently clarified when a state law should be considered “criminal” for the purposes of a Public Law 280 analysis, stating that it will use the following factors in making the determination:

- (1) the extent to which the activity directly threatens physical harm to persons or property or invades the rights of others;
- (2) the extent to which the law allows for exceptions and exemptions;
- (3) the blameworthiness of the actor; and
- (4) the nature and severity of the potential penalties for a violation of the law.

This list is not meant to be exhaustive, and no single factor is dispositive.³

Under this approach, Minnesota’s environmental laws that use a permitting scheme to regulate certain types of polluting activity, such as air and water discharge permits, probably do not apply on American Indian reservations because they allow considerable exceptions and variations. On the other hand, Minnesota does have several environmental laws that place an absolute prohibition on certain activities. For example, state law prohibits the sale or use of certain pesticides (Minnesota Statutes, sections 18B.11 and 18B.115), placement of certain waste items in or on the land (Minnesota Statutes, sections 115A.904 (waste tires), 115A.915 (lead acid batteries), and 115A.916 (used motor oil)). These environmental laws may apply on American Indian reservations in Minnesota under the Public Law 280 analysis

applied by the U.S. Supreme Court in *Cabazon*, because they place an outright ban on certain types of activity and provide criminal penalties.⁴

Minnesota environmental laws that are generally regulatory and not criminal (i.e., permit certain activity but limit the amount or nature of such activity) could conceivably apply to regulate the activities of non-tribal individuals operating on tribal lands.⁵

Do federal environmental laws apply to American Indian Reservations in Minnesota?

Federal environmental laws apply to American Indian reservations where Congress has specifically indicated that tribes are subject to particular laws.⁶ Under the federal approach, "Where Congress clearly indicates that Indian tribes are subject to a given law, no tribal sovereignty exists to bar the reach or enforcement of that law."⁷ For example, the Eighth Circuit Court of Appeals determined that the Resource Conservation and Recovery Act (RCRA) applied to the Oglala Sioux Tribe of Indians in South Dakota.⁸ The court noted that Congress permitted a compliance lawsuit under RCRA to be brought against any "person," and that Congress defined "person" in RCRA to include municipalities, which was subsequently defined to include Indian tribes. The Eighth Circuit also determined that Congress placed exclusive jurisdiction for the enforcement of RCRA in the federal courts rather than requiring exhaustion of any remedies in tribal court before proceeding to federal court.⁹

Who enforces federal environmental laws on Indian reservations?

Many federal environmental laws provide the U.S. Environmental Protection Agency (EPA) with the authority to approve tribal management of federal environmental programs, similar to the EPA's oversight and approval authority over state administration of these laws.¹⁰ Where there is no EPA-approved program for tribal administration of a federal environmental law on an American Indian reservation, most such laws typically provide that the federal government has jurisdiction to enforce the law on the reservation.¹¹

Federal environmental laws which have been amended to permit the EPA to authorize tribal management of federal environmental programs include: the Safe Drinking Water Act (amended to permit authorization of tribal programs in 1986); the Clean Water Act (amended in 1987); and the Clean Air Act (amended in 1990).¹² The EPA has also made several determinations that it has the discretion to allow tribal management of environmental programs under certain federal laws even though Congress has not specifically provided for tribal assumption of responsibility in the legislation. The EPA has determined that it has this authority under the Resource Conservation and Recovery Act and the Toxic Substance Control Act.¹³

In addition, three other federal environmental laws enforced by the EPA provide for a limited tribal role similar to the role provided for states under these statutes. These laws include: the Federal Insecticide, Fungicide and Rodenticide Act, the Emergency Response and Community Right to Know Act, and the Comprehensive Environmental Recovery, Compensation and Liability Act (CERCLA).¹⁴

Federal laws that authorize the EPA to approve tribal administration of environmental programs typically do so by providing the EPA the authority to grant "treatment-as-a-state" status to an individual tribe through the rulemaking process. "Treatment-as-a-state" status allows the tribe to administer the regulatory program under the federal law on the reservation in the same way states administer such programs on the statewide level. One example of legislation providing for "treatment-as-a-state" status is the Safe Drinking Water Act, which provides the criteria a tribe must satisfy to be granted this status:

- (1) the American Indian tribe is recognized by the Secretary of the Interior and has a governing body carrying out substantial governmental duties and powers;
- (2) the functions to be exercised by the American Indian tribe are within the area of the tribal government's jurisdiction; and
- (3) the American Indian tribe is reasonably expected to be capable, in the EPA administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this subchapter and of all applicable regulations.¹⁵

In addition to the application for "treatment-as-a-state" status, a tribe seeking to administer federal environmental law typically must make a program application to the EPA detailing the regulatory program it intends to implement, including the scope of jurisdiction the tribe seeks for the program.

The application can result in a jurisdictional battle between the applicant tribe and the state because the EPA must determine whether the tribe has jurisdiction to exercise civil authority over non-Indians who live on fee lands within American Indian reservations. To determine whether American Indian tribes have inherent power to regulate the conduct of non-Indians on reservation lands, the EPA has stated it will look to the analysis in *Montana v. United States*, 450 U.S. 544 (1981).¹⁶ In that decision, the U.S. Supreme Court made an exception to the general rule that tribes do not possess regulatory authority over non-Indians within reservation boundaries, stating that a tribe may retain "inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the integrity, the economic security or the health or welfare of the tribe."¹⁷

In Montana and Wisconsin, litigation has resulted from the EPA's approval of tribal applications for "treatment-as-a-state" under the Water Quality Standards program.¹⁸ In the Montana litigation, the federal 9th Circuit Court of Appeals upheld the EPA's approval of the application made by the Confederated Salish & Kootenai tribes for "treatment-as-a-state" status under the Water Quality Standards program.¹⁹ In Wisconsin, the EPA approved the application of four tribes for "treatment-as-a-state" status under the Water Quality Standards program. The state then sued the EPA and subsequently presented evidence that reports justifying the EPA's decision were prepared after the decisions were made. The EPA subsequently withdrew the "treatment-as-a-state" decision for two of the four bands that had been approved and moved for dismissal of the lawsuits. The state of Wisconsin received a

settlement payment in exchange for dismissal of its motion for sanctions.²⁰

One method of avoiding protracted litigation and controversial jurisdictional determinations by the EPA is for states and tribes to enter into cooperative agreements to jointly administer federal environmental programs on reservation lands. Historically, cooperative agreements have been easier to make when they are negotiated prior to an EPA determination of jurisdictional issues arising from granting "treatment-as-a-state" status. The Minnesota Pollution Control Agency and the Grand Portage Band of Chippewa recently used this approach and negotiated a cooperative agreement which was subsequently approved by the EPA. The agreement provides for the joint operation of a Water Quality Standards program within the waters of Lake Superior, where jurisdiction is disputed by the state and the Band. The agreement avoids a jurisdictional battle by a mutual reservation of rights that allows either party to request the EPA to determine the jurisdictional issue if the agreement breaks down in the future.²¹

Numerous Minnesota tribes have applied for "treatment-as-a-state" status with respect to various federal environmental laws. Many tribes have been granted "treatment-as-a-state" status with respect to funding components of various statutes, while a few have received "treatment-as-a-state" status with respect to regulatory standards. No Minnesota tribe has yet implemented a regulatory program. The EPA has currently put the approval procedure for regulatory programs on hold while it revises those procedures.²² The table following this section shows the "treatment-as-a-state" status of individual Minnesota American Indian tribes under each of the federal environmental laws providing that status.

ENDNOTES

1. Act of August 15, 1953, Pub.L. No. 83-280, 67 Stat. 588, as amended by the Indian Civil Rights Act of 1968, Pub.L. No. 90-284, 82 Stat. 78.
2. California v. Cabazon Band of Mission Indians, 480 U.S. 202, 209 (1987).
3. State v. Stone, 572 N.W.2d 725 (Minn. 1997).
4. California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987).
5. Moe v. Confederated Salish & Kootenai Tribes, 425 U.S. 463 (1976) (state tax on sales of cigarettes to non-tribal members on tribal lands upheld).
6. Blue Legs v. U.S. Bureau of Indian Affairs, 867 F.2d 1094, 1096 (8th Cir. 1989).
7. Id. at 1096.
8. Id.
9. Id. at 1098.
10. "Working Effectively with Tribal Governments," Participant Manual, U.S. Environmental Protection Agency Training Seminar, Chapter 3, August 1996 (<http://www.epa.gov/indian/train.htm>).
11. Id.
12. Id.
13. Id.
14. Id.
15. 42 U.S.C.A. Sec. 300J-11 (1991 and Supp. 1997).
16. "Working Effectively with Tribal Governments," Participant Manual, U.S. Environmental Protection Agency Training Seminar, Ch. 3, Pt. IV, Paragraph E, August 1996 (<http://www.epa.gov/indian/train.htm>).
17. Montana v. United States, 450 U.S. at 565-66.
18. Beverly M. Conerton, "Tribal 'Treatment as a State' Under Federal Environmental Laws," National Environmental Enforcement Journal at 11 (November 1997).
19. State of Montana v. U.S. EPA, 137 F.3rd 1135 (9th Cir. 1998).

20. Beverly M. Conerton, "Tribal 'Treatment as a State' Under Federal Environmental Laws," National Environmental Enforcement Journal at 12 (November 1997).
21. Cooperative Agreement between Grand Portage Band of Chippewa and Minnesota Pollution Control Agency (July 16, 1996).
22. Telephone conversation with Diane Nelson, Water Division, State and Tribal Branch, EPA Region Five, November 1997.

MINNESOTA AMERICAN INDIAN RESERVATIONS – “TREATMENT AS A STATE” STATUS UNDER FEDERAL ENVIRONMENTAL LAWS

CLEAN WATER ACT

Sec. 106 Water Pollution Control Designations (Funding Only)	Sec. 303 Water Quality Standards (Regulatory)	Sec. 314 Clean Lakes (Funding Only)	Sec. 319 Nonpoint Source Control (Funding Only)	Sec. 402 NPDES Regulations	Sec. 404 Dredge & Fill
Received Designation – <ul style="list-style-type: none"> Bois Forte Band of Chippewa Fond du Lac Band of Chippewa Grand Portage Band of Chippewa Mille Lacs Band of Ojibwe Minnesota Chippewa Tribe Prairie Island Dakota Community Red Lake Band of Chippewa Shakopee Mdewakanton Sioux White Earth Band of Chippewa 	Received Designation – <ul style="list-style-type: none"> Fond du Lac Band of Chippewa Grand Portage <p style="text-align: center;">Application Submitted –</p> <ul style="list-style-type: none"> Bois Forte Band of Chippewa Leech Lake Band of Chippewa Mille Lacs Band of Ojibwe Red Lake Band of Chippewa 	Received Designation – <ul style="list-style-type: none"> Leech Lake Band of Chippewa Mille Lacs Band of Ojibwe Minnesota Chippewa Tribe Red Lake Band of Chippewa White Earth Band of Chippewa 	Letter of Interest Submitted – <ul style="list-style-type: none"> Mille Lacs Band of Ojibwe 	No MN tribes have applied	No MN tribes have applied

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT*

Cooperative Agreements

- White Earth Band of Chippewa
- Leech Lake Band of Chippewa

SAFE DRINKING WATER ACT

Secs. 1422, 1425, 1433(b) (Regulatory)
Received Designation – <ul style="list-style-type: none"> Mille Lacs Band of Ojibwe (not finally approved)

* The EPA uses cooperative agreements under section 23A of FIFRA, rather than the “Treatment as a State” designation.

HEALTH CARE AND HUMAN SERVICES

What is the health and economic status of Minnesota's American Indian population?

According to a recent Minnesota Department of Health publication, "Populations of Color in Minnesota Health Status Report," American Indians fare poorly on many measures of health status and economic well-being. For example:

- The infant mortality rate for American Indians actually increased between the 1978-1982 time period and the 1989-1993 time period, from 13.9 up to 16.2 deaths per 1,000 live births. The rate for other Minnesota minority groups declined.
- For some age groups, American Indians have death rates three times higher than for whites. For example, among persons aged 25 to 44, the death rate for American Indians was 338 per 100,000, and for whites was 106 per 100,000.
- American Indians have high rates of death from accidental injury, suicide, cirrhosis of the liver, heart disease, diabetes, and other causes.
- 21.5 percent of American Indians lack health insurance, compared with 8.8 percent of the white population.
- Between 1979 and 1989, the percentage of American Indians living in poverty rose from 30 percent to 44 percent. Among whites, it remained unchanged at 9 percent. In 1989 the poverty rate for American Indian children was 54.2 percent, compared to 8.4 percent for white children.
- In 1990 the unemployment rate for American Indian males was 24.2 percent, compared to 5.6 percent for white males. For females, the American Indian unemployment rate was 14.9 percent, versus 3.9 percent for whites.
- 28.9 percent of American Indian households lack a vehicle and 22.2 percent have no telephone. The comparable rates for white households are 7.8 percent and 2.1 percent.

For which public health care programs do American Indians qualify?

American Indians are eligible for all of Minnesota's public health care programs, including Medical Assistance (MA), General Assistance Medical Care (GAMC), and MinnesotaCare, if they meet income, asset, and other eligibility requirements. In addition, the federal government funds the Indian Health Service (IHS), which provides health care to American Indians, and many of the American Indian tribes and bands in Minnesota operate health programs. The 1998 Legislature authorized a tribal purchasing model for health care services under which tribe could operate the MA and GAMC programs for Indians who reside on or near a reservation.

A number of public health care programs include funding specifically set aside to meet the

needs of American Indians. For example, the state Consolidated Chemical Dependency Treatment Fund formula includes allocations for American Indians living on and off reservations. The federal Alcohol, Drug Abuse and Mental Health block grant includes an allocation for American Indian services. The state law establishing community health boards authorizes special grants to these boards to provide services to American Indians living off reservations. These grants are administered by the Minnesota Department of Health and awarded on a competitive basis. Current grantees serve the Bemidji area, Duluth, Minneapolis, and St. Paul.

How do American Indians get access to public health care programs?

American Indians living on or near American Indian reservations typically use health care services provided directly by the federal Indian Health Service (IHS), offered by other providers under contract with IHS, or provided by their reservation government. The most common arrangement is to have clinic services provided on the reservation by the IHS or the tribe, with contract services available in local communities for more complex needs. The Leech Lake and Red Lake reservations have their own hospitals. The Lower Sioux reservation does not operate a clinic, but provides health care through contracts with local providers. The Shakopee-Mdewakanton reservation provides health insurance coverage to members. In addition, many of the reservations operate community health nursing programs.

Low-income urban Indians generally obtain health care by applying for the MA or GAMC programs. A number of public health clinics, such as the Indian Health Board of Minneapolis and the Model Cities Health Center in St. Paul, provide services to Indians through the Prepaid Medical Assistance Program (PMAP). Many American Indians seek services through these clinics in order to obtain culturally appropriate services not generally available from private providers.

Specialized services for American Indians are available for mental health and chemical dependency problems. Funded through the federal block grant and other sources, 13 programs operated by the American Indian community provided mental health services to over 10,000 clients in 1996. Most tribes provide chemical dependency services on the reservation or nearby. In addition, the state regional treatment center in Brainerd provides culturally appropriate services through the Four Winds Lodge.

Do large numbers of American Indians use public health care programs?

American Indians, who comprise roughly one percent of the state population, are over-represented in the MA caseload. For fiscal year 1996, 4.6 percent of MA fee-for-service recipients were American Indians, and they accounted for 2.9 percent of MA fee-for-service expenditures.

For which public welfare programs do American Indians qualify?

American Indians qualify for all programs available in Minnesota, including General Assistance, Minnesota Supplement Aid, Food Stamps, and the Minnesota Family

Investment Program - Statewide (MFIP-S) (which replaced the AFDC program on January 1, 1998), if they meet eligibility requirements.

How do American Indians access public welfare programs?

Access is attained through county human service agencies under the same procedures used for other Minnesotans. A number of tribes that operated the employment and training services component of the AFDC program are continuing to provide employment and training services under MFIP-S.

The 1996 federal welfare reform legislation authorized tribes to also operate the income maintenance portion of this program. The Mille Lacs Reservation government has decided to operate MFIP-S for families with an adult enrolled in the Band who reside in the six county area that includes Aitkin, Benton, Crow Wing, Mille Lacs, Morrison, and Pine counties. The reservation will also administer the Food Stamp and Medical Assistance programs for these clients. The startup date is expected to be January 1, 1999. The tribe plans to operate a program identical to the MFIP-S program operated in the remainder of Minnesota and will utilize the statewide computer system and state forms for ease of administration. Other administrative details will be included in a contract to be negotiated between now and the startup date.

The Mille Lacs tribal government is one of only 12 in the nation that have decided to assume the responsibility of operating an income maintenance program since they were authorized to do so in 1996, according to the Department of Human Services (DHS). Other Minnesota tribes have expressed an interest in operating MFIP-S but have not yet made a final decision, according to DHS.

Do large numbers of American Indians receive public welfare benefits?

American Indians are over-represented on AFDC caseloads. In September 1997, about 12,600 American Indians were receiving AFDC, representing 8.7 percent of the AFDC caseload. They also represent 7.2 percent of the state's Food Stamp caseload.

What is the Indian Child Welfare Act?

The Indian Child Welfare Act (ICWA)¹ is a federal law that was enacted in 1978 to re-establish tribal authority over the adoption of American Indian and Native Alaskan children. The goal of the act was to strengthen and preserve American Indian families and culture. The ICWA regulates placement proceedings involving American Indian children, including child protective cases, adoption, guardianships, termination of parental rights, runaway/truancy matters, and voluntary placement of children.

What is the Minnesota Indian Family Preservation Act?

The Minnesota Indian Family Preservation Act² is the state law that is substantially similar to the federal ICWA. If there are conflicts between the two laws, the federal ICWA takes precedence.

To whom do the laws apply?

The laws apply to American Indian children who are unmarried and under the age of 18. The child must be either a member of a federally recognized American Indian tribe or must be eligible for membership in a federally recognized American Indian tribe.

What do the laws do?

The laws require that placement cases involving American Indian children be heard in tribal courts if possible, and permit the child's tribe to be involved in state court proceedings. They require testimony from expert witnesses who are familiar with American Indian culture before a child can be removed from his or her home. If a child is removed from the home, the laws require that the American Indian child be placed with extended family members, other tribal members, or other American Indian families, if possible.

What is the Indian Child Welfare Law Center?

The Indian Child Welfare Law Center is located in Minneapolis, and its mission is to work with the American Indian community to preserve and reunite American Indian families by providing culturally appropriate legal services to American Indian children, parents, extended family members, and tribes in cases governed by the American Indian Child Welfare Act, and to serve as a community development resource for American Indian Child Welfare Act education, advocacy, and public policy.

The Law Center provides legal representation for extended American Indian family members who wish to obtain custody of or adopt an American Indian child. The Law Center also provides legal representation to parents and American Indian custodians who want their fostered children back, and it has created a foster care diversion program to help prevent foster placement of American Indian children. The Law Center also provides public education for attorneys, social workers, battered women's shelter staff, guardians ad litem, American Indian agency staff, and other groups involved with American Indian child welfare.

ENDNOTES

1. 25 U.S.C., section 1915.
2. Minnesota Statutes, section 257.35.

TAXATION

Are American Indians required to pay federal income and excise taxes?

In general, American Indians pay federal income tax on earnings from personal services or investments whether earned on or off the reservation with the exception that income directly derived from allotted trust land such as agricultural production, rents or mineral extraction is not taxable. American Indians pay federal excise taxes.

Are American Indians required to pay state income, sales and excise taxes?

An American Indian tribal member is not required to pay state income taxes on income earned on the reservation of the tribe in which the Indian is enrolled. Similarly, sales transactions occurring on the reservation between tribal members or between tribal members and the tribal government are not subject to state sales or excise taxes. Certain excise taxes such as the tax on liquor and cigarettes are collected by the state from the wholesale distributor. In these instances, the state refunds the amount of tax collected to the Indian tribal government on a per capita basis. Income earned by an American Indian off the reservation is subject to state income tax. Sales transactions to American Indians made off the reservation are subject to the applicable sales and excise taxes.

Are American Indians required to pay local property taxes?

Property taxes cannot be imposed on land held in federal trust status for an Indian tribe or an individual Indian. Land for which a fee patent has been issued to a tribe or an individual Indian is subject to local property tax.

In June 1998, the U.S. Supreme Court ruled, in a case involving Cass County, Minnesota, that local governments were authorized to levy property taxes on reservation land that had been made alienable by Congress even after that land was repurchased by the tribe.

Can American Indian tribal governments impose taxes?

Tribal governments have the power to impose taxes on activities occurring within their jurisdiction on the reservation including the power to tax income, sales transactions, property ownership and mineral extraction activity.

Can the state tax the income of non-Indians earned on the reservation, and apply sales and excise taxes to sales made to non-Indians on the reservation?

The state can tax the income of non-Indians earned on the reservation. Sales transactions made to non-Indians on the reservation are taxable under the state sales and excise taxes. Because Indian tribes are immune from lawsuits and most of the other collection mechanisms which might be used by the state to enforce tax collections on the reservation, the state has entered into agreements which share the collection of sales and excise taxes collected on reservation sales to non-Indians with the American Indian tribal governments.