AMERICAN INDIAN CULTURE AND RESEARCH JOURNAL 13:2 (1989) 69–95

Destroying a Homeland: White Earth, Minnesota

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The White Earth reservation is located in west central Minnesota. Forty years after it was created as a permanent homeland for all of Minnesota's Ojibwa (Chippewa) people, most of its land had been legally stolen. Its unusual history has led to unique land claim problems.

"AN EXCEEDINGLY DESIRABLE HOME FOR THE INDIANS"[1]

In the seventeenth century, French-speaking trappers and traders began to penetrate the western Great Lakes country. Soon these Europeans came into contact with the Ojibwa population, known among themselves as the Anishinabe ("first people").

By the time the Europeans arrived, the Ojibwa were living in villages, each of which had up to several hundred people. From these bases they pursued a woodlands cultural pattern, hunting and fishing, gathering berries and wild rice. Speaking a language of the widespread Algonquin family, they traded for grain with the Huron-speaking farmers in the south, were loosely confederated with the Ottawa and Potawatomi farther east, and fought the Fox and Dakota (Sioux) who lived to the west.

In their marshy environment, the Ojibwa's trapping skills were valuable to the whites. This had two long-term results. First, the Dakota moved west, with some groups eventually leaving the woodlands altogether. The reasons for this move were complex.

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In part it may have been due to the fact that the Ojibwa could not obtain guns for use in the frequent battles with the Dakota; also, the long-term demand for buffalo skins which the Dakota could supply also may have played a part.[2] Whatever the factors, the Ojibwa ultimately occupied most of Minnesota and Wisconsin.

Second, trappers and traders settled into the tribal villages. In time, a substantial number of Ojibwa were able to claim some European ancestry. Often these "mixed-bloods" (to use the official term) were less traditional and more entrepreneurial than many of the so-called "full-bloods," and became important intermediaries in the fur trade between the whites and the tribal groups west of the Great Lakes.[3] This rough division of the Ojibwa along social and economic lines was to have profound consequences for the White Earth Reservation.

American interests in the upper Mississippi region eventually supplanted those of the Canadian-based traders. However, conditions remained generally peaceful. Other than the Battle of Sugar Point, which was fought on the Leech Lake Reservation in 1898, there never were any serious armed conflicts between the Ojibwa and the federal government.[4]

After 1849, when the Territory of Minnesota was established, the federal government began to consider moving the Ojibwa from the most desirable areas. The reservation system began in 1854, and the following year the bands were forced to cede much of central Minnesota; other treaties soon followed.[5]

In previous decades the establishment of local reservations often had been a prelude to the forced removal of tribes to the West.[6] By the 1860s, this policy largely had been abandoned. In Minnesota, which had become a state in 1858, a violent event led to a new system.

White Earth's creation was inspired by the "Sioux Uprising" of 1862. A bloody event, it led to the starving exile on the Missouri of most of Minnesota's Dakota people. Because a major Ojibwa hereditary chief, Bug-O-Nay-Ge-Shig, known to whites as Hole-in-the-Day, had been persuaded not to let his people join the fighting, the tribe was not expelled.[7] Instead, it was to be concentrated far from white settlement. The Treaty of March 19, 1867 began this process by creating the White Earth Reservation.[8]

In 1879, the reservation was enlarged,[9] but four years later it

was restored to its original boundaries. These ignored local topography in favor of the range-and-township system, defining White Earth as a square thirty-six miles on each side (Figure 1). This comprised thirty-six townships with a total area of 1,296 square miles (3,356 square kilometers).

White Earth is on the border between the northern forests and the fertile open lands bordering the Red River. Originally, its western two tiers of townships were fertile rolling prairie, the middle two a mix of hardwood and white pines, and the eastern ones composed of white and Norway pines. About 500 million board-feet of pine and 100 million of hardwood were present.[10]

Although the only requirement in the 1867 treaty was that the reservation consist of thirty-six townships, including White Earth Lake, when the boundaries were laid (with the help of Hole-in-the-Day), the intention was to provide a substantial area where "economic development" could occur. A physically varied land, with adequate water for both fishing and harvesting of wild rice, reasonably close to transporation routes in both the Minnesota and Red River Valleys and with no significant settlements by any group, it was an excellent choice.[11] In retrospect, it was no more likely to succeed than any other "permanent" nineteenth-century solution involving the land rights of Native Americans.

THE RESERVATION BEGINS

Simply establishing a reservation did not solve Minnesota's Ojibwa "problem." One major factor which needed to be addressed was the deep social division within the tribe between the "mixed"- and "full"-bloods.

Continuing traditions which reached back a century to the fur trade, mixed-bloods often acted as storekeepers and interpreters on the reservations. With White Earth scheduled to become the only place for Minnesota's "full-blood" Ojibwa to live (and where annuities would be given to the residents), it appeared that a substantial number of the mixed-bloods wished to relocate there.

Although the mixed-bloods could have been useful as an intermediary group between the full-bloods and the whites, there were substantial divisions between the two groups of Ojibwa.

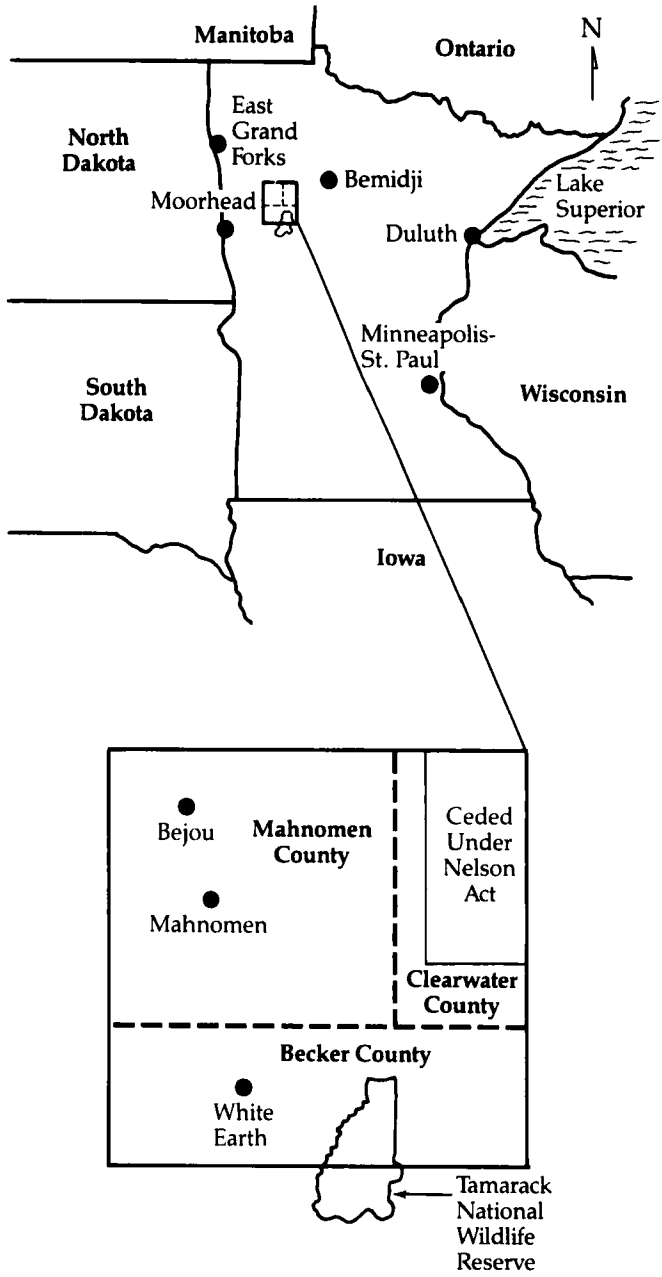

FIGURE 1. White Earth Reservation.

Very broadly, to the Ojibwa the degree to which a person maintained the traditional cultural and economic customs determined whether or not that individual was "mixed-blood." The tribe could consider even an assimilated white to be a "full-blood." This view was at odds with the American legislative actions of the period, which linked white ancestry with personal competence.[12]

At this socially and politically complex time in the tribe's history, Hole-in-the-Day vehemently stated his opposition to a quick migration. Interpretations differ as to whether this move was to retain his own power, or, as he claimed, to force the government to fulfill its promises to build adequate schools and other facilities there. Whatever the reason, he also had consistently opposed mixed-bloods coming to reservations. His vision of a traditional society, buttressed by federal support, was clearly at odds with mainstream views.

In 1868, as he was preparing to return to Washington, the chief was shot, allegedly by members of the Leech Lake band hired by mixed-bloods. The murderers were never caught, and shortly afterward significant numbers of mixed-bloods were enrolled in the White Earth band.[13]

Even though the way was now clear for both mixed- and full-bloods to come to White Earth, many Ojibwa refused to move. Content to remain where they had long been settled, they resisted eviction attempts. Even the inducement that for each ten acres which an adult man farmed at White Earth another thirty would be given him, until he had a maximum of 160 acres, was not enough to get many to relocate.

With the assistance of whites and some mixed-blood families, reservation Ojibwa slowly came to the new reservation. The first group of 200 arrived from Gull Lake in 1867, but by 1876 there were only 1,427 residents at White Earth, far fewer than the several thousand who could have resettled there. While for decades the government attempted to force all the Ojibwa to move, this consolidation never occurred, and today Minnesota has six other Ojibwa reservations.[14]

The major problem with White Earth was that, given the political climate of the nineteenth century, it was simply too tempting for whites to leave it to the Ojibwa people. The limited Indian population allowed whites to justify taking back the land. As the number of settlers in northern Minnesota increased, so did their demands for this rich and sparsely settled territory. As early as

1883, the farmers of the Red River Valley petitioned for an opening of the reservation. Six years later, the process began.

As on most reservations in America, the instrument to "open" the White Earth reservation was the allotment system. White allotment systems had been in use on some reservations for decades; the critical national legislation, the General Allotment, or Dawes, Act, passed in 1887.[15]

The purpose of this legislation was to ultimately turn all of the country's reservation Indians into independent farmers. Under the law, each Native American family head could apply for 160 acres of land (unmarried males over eighteen could receive eighty acres, and younger orphans forty). The actual titles would be held in trust for twenty-five years by the Bureau of Indian Affairs, after which, if a person had reached an undefined degree of "civilization," the allottee would receive both citizenship and full title. Subsequent legislation made it considerably easier for allottees to receive, and thus often quickly lose, their titles.[16] Although no one had to take an allotment, the law gave preference for reservation jobs to those who had done so. Those lands not allotted eventually were thrown open to white homesteaders.

In Minnesota, the Nelson Act implemented the allotment process.[17] Passed in 1889, its stated purpose was the "relief and civilization of the Chippewa Indians." The "relief" was accomplished by a team of commissioners visiting the state's Ojibwa reservations and forcing the allotment system on all but the distant Red Lake band. For unknown reasons, the Nelson Act also made optional the relocation of Minnesota's Ojibwa to White Earth. This destroyed the rationale for the reservation's creation. Nevertheless, serious attempts to concentrate the Ojibwa continued. At Mille Lacs, the resistance was so great that most of the band would not move until their homes were burned.

By 1902, people from nine different reservations, plus the landless Otter Trail Ojibwa, had been brought to the reservation. In addition, there were about 500 mixed-bloods from the Red River Valley, the Pembina Chippewa band. The Otter Trail and Pembina had received townships to settle on, and because they were not part of the original settlement plan, the reservation received $25,000 for each group.[18] With immigration from these different areas, White Earth's population was growing. Although questions have been raised concerning its accuracy, the 1900 Census recorded 2,742 people there.[19]

Official figures reflect that by 1914, a total of 5,154 allotments

of eighty acres each had been granted at White Earth. However, far fewer persons actually were living on the reservation. It appears that in some cases allottees returned to their original homes after receiving their lands. Also, the data are questionable because in 1902 a law was passed which allowed the heirs of deceased allottees to sell their lands to non-tribal members.[20]

On every reservation where it was tried, the allotment system was a disaster. Besides spelling the end of a unitary tribal land base, the arrangements increasingly were open to fraud or the creation of a welfare system in which allottees lived off land rents paid by white farmers. Ultimately, many landholders lost their allotment through failure to pay taxes, or else over the generations the plots were so divided among heirs as to become useless for farming.

On White Earth, all of these problems existed. In addition, since during the first years of the system relatively few allotments were granted because there were few residents, it soon appeared that not all the land would be claimed. Rather than retain the remainder for future needs, pressure began to build to sell these "surplus" lands. Once the decision to do so was made, the only question was which specific parcels would be sold.

In 1904, the Minneapolis, St. Paul and Sault Sainte Marie (Soo Line) Railroad built a track through the four northeastern townships of the reservation. Along the way, five towns were laid out. This land was then formally detached from White Earth.

Various issues of jurisdiction arising from this "diminishment" of the reservation were not settled until 1981, when a federal district court heard a relevant case. The reservation government's claim that all of this land remained within White Earth was rejected, but the court did confirm that the band could regulate hunting and fishing on all lands which it owned.[21] Since the tribe has retained a few parcels in the four townships, this decision effectively gave it the legal right to control these exclaves outside the reservation's boundaries. This situation frequently is found on other reservations.[22]

CREATIVE LEGISLATION GETS THE TIMBER

If White Earth had been subjected only to the usual series of acts which accelerated the process of breaking up tribal land, the course of events would have been similar to that on most other

reservations. A fragmented jurisdiction of tribal, trust, and private land holdings would have developed, perhaps with a range of administrative and title disputes. At White Earth, the situation was complicated by a unique piece of legislation, one which was to lead to massive title problems.

By the early twentieth century, much of northern Minnesota had been logged over. A major stand remained on White Earth, because the allotment policy limited trust lands to agricultural plots, with the timber remaining in tribal hands.

By this time, timber on Indian lands was becoming a point of contention between logging and conservation interests. What occurred on White Earth was similar to the mismanagement which affected other reservations and which ultimately led to the creation of a separate Forestry Division in the Bureau of Indian Affairs. To provide monies for some tribes, an 1889 law allowed the removal of "dead and down" timber on their reservations,[23] and in 1897 this act was extended to White Earth.[24] The result was the large-scale cutting or burning of live trees. Also, there was much fraud as Ojibwa sold their logging permits to whites.[25] As a result of these abuses, the federal government suspended logging operations in 1899.

When sales of fallen timber again were allowed in 1902, most of the forest was still standing. As this forest represented one of the last major reserves of virgin timber in the region, the question facing the logging companies was how to obtain this resource with a minimum of both cost and formality. Several pieces of legislation neatly accomplished these ends.

In the Clapp Rider of 1904, authority was granted for all Minnesota's Ojibwa, with the consent of the Secretary of the Interior, to sell their timber.[26] Since there was little forested land on the agricultural allotments, this oversight was corrected four days later in the Steenerson Act.[27] This legislation authorized the President to make additional eighty-acre allotments to each White Earth tribal member.

If the original allotment system had been carried out, the Steenerson Act never would have been written. In 1889, an additional eighty acres was promised to all Ojibwa moving to White Earth, but this promise was rescinded in 1891. Some tribal members had, by farming under the rules established by the Dawes Act, obtained grants beyond their eighty acres. These grants, however, consisted of more agricultural lands, and in any case most

of the farmland now was sold or in trust. Thus, virtually the only lands left to deed were the pine forests.

When in 1905 the time came to give out these new allotments, it was discovered that the logging companies had surveyed the land, had found about 300 million board-feet available, and had staked out the best territories for themselves. As employees of the logging companies, many of the mixed-bloods were familiar with surveying and had noted these areas.

Unlike most of the full-bloods, many of the mixed-bloods lived close to the reservation headquarters in the town of White Earth. It was thus very easy for them to assemble a day before the land selections were to be made. On allotment day, when the full-bloods arrived, they were confronted by a line of mixed-bloods who intended to pick the best lands first.

A riot was averted when the federal agent present formed the groups into two lines and agreed to alternate between them. However, it was later alleged that most of the mixed-bloods' claims had been recorded unofficially before the first allotment was made.

There was a final irony. Since in earier years much of the "surplus" land on the reservation had been sold to whites, there was not enough left to go around. About 500 tribal members never received new allotments.[28]

The last stage in opening White Earth's lands occurred with the two Clapp Amendments. The first was passed as a one-paragraph amendment to the Indian Appropriations Act of 1906. The second, which made minor wording changes, passed a year later.[29] Taken as a whole, this unique legislation provided that all restrictions on selling, taxing or mortgaging mixed-bloods' past or future trust land at White Earth could be removed immediately at the allottee's request. The same provisions applied to those full-bloods determined by the Secretary of the Interior to be "competent."

The history of the Clapp Amendments is obscure, since there was virtually no Congressional debate at the time. The 1906 Amendment was slipped in at the conference committee, and was enacted just before Congress adjourned.

Limited information comes from the 75th Anniversary booklet of Mahnomen County. Here it is noted that, a year after the county was organized in 1905, local interests paid for a banker to go to Washington and attempt to "open" the reservation,

which, as non-taxable land, took up most of the jurisdiction. This lobbyist is said to have found a willing friend in Moses "Black Eagle" Clapp, one of his state's U.S. Senators and Chairman of the Senate Committee on Indian Affairs (and also a former attorney for several Minnesota lumber companies).

Perhaps because they were hastily written, the Clapp Amendments were obscure as well as short. One glaring problem was that they included no definition of what constituted a mixed-blood Ojibwa. The Department of Justice sided with the band, holding that this term meant any Ojibwa of at least one-half white ancestry. The Department of the Interior (and thus its Indian Office) argued for *any* identifiable white ancestry. In 1914, the U.S. Supreme Court held that, since Congress had not differentiated among mixed-bloods when it passed the Clapp Amendments, any degree of white ancestry was sufficient for an individual to fall under the law.[30] This decision allowed most members of the tribe to sell their lands.

The continued pressure on the Ojibwa lands throughout Minnesota also had an effect on the reservations' governments. In 1913, an informal coalition, the General Council of the Chippewa Indians of Minnesota, was formed. Despite a 1916 dispute between mixed- and full-blood groups who both claimed to represent White Earth, and despite the withdrawal of Red Lake in 1927, the Council survived.[31] In 1936, the six remaining reservations loosely federated under the constitution of the Minnesota Chippewa Tribe. Although each band elects its own officers, they, together with locally chosen delegates, form an overall body representing about 50,000 tribal members.

Despite the beginnings of a broader organization, the erosion of tribal power continued. In 1917, the U.S. Supreme Court ruled that anyone who accepted privately deeded land under the Clapp Amendment had to accept state jurisdiction.[32] Further, shortly thereafter the Court held that since these lands were now under the jurisdiction of Minnesota, the federal government was prevented from bringing suit over title disputes on behalf of these individuals.[33] Since 1910, the United States had pressed about 1,600 such suits, but this decision effectively blocked the best legal avenue White Earth had.

The suits had arisen out of the grotesque ways in which most of the lands available under the Clapp Amendment had been lost. Within three weeks of the passage of the 1906 legislation, 250

mortgages against reservation lands were recorded. Those who took them out had absolutely no training or help from the government in how to retain or use their money, and most was soon wasted. By 1910 three-quarters of the allotments had been sold, and logging was rapidly destroying White Earth's pine forest.

Conditions on White Earth became so bad that in 1908 an anthropologist, Warren Moorehead, received a presidential commission to investigate the area. His study was cut short by death threats and a total lack of local help, but the next year he returned with federal agent Edward Linnen.

Moorehead and Linnen's final report on what they found, heard as part of the extensive Graham Commission hearings of 1911–12, stated,

> Fully 90 percent of these full-bloods have sold their land, and they have been swindled and defrauded by every scheme possible. . . . The physical condition of (White Earth's) Indians is very bad . . . fully 60 percent are suffering with tuberculosis in its various forms; 30 to 35 percent are afflicted with trachoma and eye disease, which is spreading to an alarming extent and making many totally blind, 15 to 20 percent are syphilitic. The whisky traffic problem . . . is an exceedingly bad one, and I doubt if a worse condition exists on any reservation in the United States.[34]

These hearings brought out an appalling record of fraud and swindling. Whites, often using mixed-bloods as their agents, found seemingly endless ways to grab land. Illegal sales by full-bloods were common. The sums written on checks made out to people who couldn't read were often far less than what the recipients were told they were getting. Sometimes they were given tokens or discounted script good only at local stores. Loans on allotments were granted at usurious rates. Signatures of dead or distant Indians were forged. Minors did not have the right to sell their lands, but both those on White Earth and in off-reservation schools were often cajoled into doing so. Three hundred white farmers suddenly became mixed-blood allottees. Over 80 percent of the reservation was now privately owned, although some of this land was held by tribal members.

Although a few Ojibwa, particularly mixed-bloods on the western part of the reservation, had succeeded as farmers, most of

the reservation's population had failed in agriculture. This failure was not surprising, since much of White Earth was not suited for farming, and the allottees had no significant help in learning agriculture. Federal inspectors had recommended that an Indian logging industry be fostered, but the government ignored this proposal.

A bill was introduced to repeal all land sales under the Clapp Amendment. It failed, but a 1917 Court decision (*Morrow v. United States*) at least slowed the loss of lands by declaring that fee simple (full) titles to mixed- and full-blood allottees on White Earth were untaxable for their twenty-five-year terms.[35] In later years, this ruling was to have major effects on the land claims issue.

TWO ANTHROPOLOGISTS GET AN ASSIGNMENT

One matter which the government did act upon was establishing a blood roll for the tribe. As noted above, one of the great failings of the Clapp Amendment was that it provided absolutely no guidelines as to who could be considered "mixed-blood," and hence eligible for a land title. Moorehead and Linnen made a start by interviewing tribal members and establishing genealogical charts. Because they were not able to reach everyone on the reservation, it was recommended that a new roll be created. This was done in 1910 by Marsden L. Burch and John H. Hinton, employees of the Justice Department.

The 1910 roll specifically listed the degree to which each tribal member was mixed-blood, thus making it easier to determine who should fall under the Clapp Act. Perhaps to avoid doing so, Congress in 1913 authorized Ransom Powell to make up a new roll, listing people as either "full"- or "mixed-bloods."

Powell's work was aided greatly by two anthropologists, Ales Hrdlicka, a physician employed at the Smithsonian Institution, and Albert E. Jenks, late of the Ethnological Survey for the Philippine Islands and now a professor at the University of Minnesota.

Some idea of the sophistication of their approach can be gleaned from Hrdlicka's suggestion that the Ojibwa's future lay with an "amalgamation with the whites." Theirs was the simple physical anthropology of measuring and classifying. While this method certainly might have had some scientific value, it was confused

with a rigid and subjective rating of all peoples, one to which not all anthropologists of the period subscribed.

To "determine" if an Ojibwa had European ancestors, the two men studied hair, eyes, nails, gums, head shapes, and teeth. One exam involved pressing a fingernail across the chest of a subject to see how irritated the skin became.[36] Another was to ask about "curly"-haired ancestors—a questionable test, since the term sometimes translated as "matted."

After three years of work, Powell had recorded 5,173 allottees. Of these, only 126 were listed as full-bloods, and 22 of them died before the roll was accepted. Full-blood status was also accepted for another 282 dead persons. The work reclassified 740 full-bloods on Moorehead and Linnen's list as being of mixed ancestry, although after a federal suit was instituted, 110 were returned to their earlier status.

Reclassifying as mixed-bloods a large percentage of the White Earth band significantly broadened the number of people eligible for land under the Clapp Amendment. Of particular concern later was the decision by the anthropologists that, if one member of a family was mixed-blood, then every other relative could be so classified. Because family members were examined at different times and in different places, in the 1980s a tribal group involved with the land claims issue contended that some errors had occurred. Allegedly, full siblings were split between two groups, and occasionally the same person was listed on both of them.

Problems with tribal rolls certainly are not unique to White Earth, or to Powell's list. Hinton's roll also had errors, and when a listing was created for the Oklahoma Osage, where a somewhat analogous full- and mixed-blood situation existed, bribes to get on the roll seem to have been common.[37] Nevertheless, given the importance of this work, some further review could have been done. None occurred, and despite the problems with the roll, it was accepted in 1920. It remained (and remains) the basis for later federal acceptance of claims concerning tribal membership and benefits.

FIFTY YEARS OF CALM

With the creation of the 1920 Blood Roll, land title conditions at White Earth quieted down. There was little land left to take from

the tribe, and in any case the legal criteria to do so were in place. Losses continued to occur, with a ruling in 1926 by the U.S. Supreme Court that an 1860 law gave Minnesota some of the reservation's swamp lands.[38] By 1933, a total of 8,334 allotments had been made at White Earth. To see the effects of allotment, one simple comparison from this year is enough. On the reservation 99.5 percent of the land had been allotted, and almost 94 percent had then been sold. The system of turning Ojibwa into independent farmers had not worked.

Over the years, the federal and state governments made a few efforts to repair the damage. In the 1920s, some monies were appropriated to pay attorneys to press tribal land claims. In 1927, an executive order stopped for a decade all scheduled changes of land from trust to private ownership status, and this moratorium was extended indefinitely under the provisions of the Indian Reorganization (Wheeler-Howard) Act.[39] This law, the effective end of the nation's allotment policy, also returned to the tribe abandoned homesteads within the reservation.

These small shifts in ownership had little effect on restoring the tribal land base. However, in 1939, one resource was saved on all of Minnesota's reservations. For the Ojibwa, wild rice has long had both a physical and a spiritual significance.[40] To protect this important crop, the bands successfully worked for state legislation which gave only Indians and those living on reservations the right to harvest wild rice on the public waters within these jurisdictions. Interestingly, the law defined these areas as including the "original boundaries," thus giving the tribe some rights in the four lost northeastern townships.[41]

In 1938, one of the last largely untouched sections of White Earth was taken from the tribe. By executive order and subsequent legislation, the swampy southernmost part of the reservation became part of the Tamarack Wilderness Area.[42] However, this was the last loss. In just over a generation, the legal situation on White Earth was to change completely.

THE STORM BREAKS

In 1974, a suit was filed in state district court. In dispute were forty acres in Clearwater County which Eugene and Laurie Stevens claimed they owned.

The Clapp Amendment was directly responsible for this action. In 1927 Charles Aubid, a mixed-blood member of the White Earth band who was better known as Zay Zah, received a trust allotment to this land. As was usual under the law, the allotment was scheduled to become a fee simple property twenty-five years later. Zay Zah could have applied immediately for full ownership of his land, but he never did so. Then, in 1934, well before the trust period expired, the Wheeler-Howard Act indefinitely extended all trusts on reservation lands throughout the country "unless otherwise directed by Congress."

On the basis of non-payment of taxes for what was considered to be his land under the Clapp Amendment, in 1941 the county declared Zay Zah's property forfeit. Six years later, perhaps looking at the *Morrow* decision, which appeared to make the land non-taxable, the county reversed itself. However, after further claims of non-payment of taxes, a district court ruled in 1956 that under the Clapp Amendment the trust term had run out in 1952, and in 1961 the land again was declared forfeit. Twelve years later, the state sold the land to the Stevenses. Shortly afterwards, George Aubid, Zay Zah's son, was asked to sign a quitclaim deed to the property, thereby relinquishing any title which he held to it. A student at nearby Bemidji State University, he refused, and, with the help of the Indian Legal Assistance office in Duluth, defended himself in the resulting suit.

The question was whether under the Clapp Amendment Zay Zah had received full title to his land in 1952, or if in 1934 the Wheeler-Howard Act had changed the law and made the trust status permanent. If the law *was* changed, then Zay Zah's lands remained in trust, he never owed the state taxes, his forfeiture was illegal, and his heirs held clear title.

The local district court hearing the case decided that the trusteeship arrangement developed under the Clapp Amendment had been extended indefinitely by the Wheeler-Howard Act. Thus, Zay Zah's title in trust remained good.

On appeal, the Minnesota Supreme Court upheld this ruling.[43] The United States Supreme Court refused to hear arguments in the matter, and so the decision stood.[44] Aubid held title to his father's land, and the Clapp Amendment effectively was dead.

The effects of the *Zay Zah* decision were immediate and far-reaching. Although the decision was concerned with tax forfeiture lands, its implications were clearly wider. This fact was

reinforced when the decision was quickly followed by another blow to outside ownership of the White Earth lands. Because the Clapp Amendment in effect had provided an end to trust lands held by mixed-bloods on White Earth, in 1915 the Department of the Interior determined that it no longer had probate jurisdiction on the reservation.[45] This authority was given to Minnesota, which in any case had been probating estates there since 1907.

Since the Clapp Amendment no longer was in force, the Interior Department reversed its earlier stand and in 1979 began probating again.[46] Because this was a retroactive decision, a reprobating of all mixed-bloods' wills for the previous 72 years was ordered, and thousands of heirs scattered across the United States had to be located.

With a highly confused legal status, all non-tribal landowners within the reservation now had potentially cloudy titles. This uncertainty of ownership was soon reflected in general difficulties which they had in either selling or mortgaging their properties.

In late 1979, the feelings of those non-tribal owners whose lands were now in a legal limbo were further inflamed when they received letters from the Bureau of Indian Affairs threatening them with suits as a means to clear the titles. Soon afterward, the United Township Association was formed by many of the potential defendants in these proposed suits. The group began a vigorous campaign to quickly settle the entire matter. In time, national notice of the problem appeared when an English professor at Bemidji State wrote a popular novel about the reservation.[47]

Effectively, on one side of the conflict were the heirs of allottees, who often were unlisted and perhaps did not even know they were parties in the dispute. Supporting them as an interested party was the tribe. These claims were pursued by the Department of the Interior. On the other side were the current landholders, supported by Minnesota and by Becker, Clearwater, and Mahnomen Counties, all of which owned some of the disputed lands. Largely, the dispute was over personal titles to individual parcels and was not a claim by the reservation as a separate legal entity to regain its lost tribal lands.[48]

Although the situation was legally and personally very difficult for many of those immediately affected, it could have been much worse. In particular, if there had been major jurisdictional problems between tribal and trust lands on the one hand and private

and state properties on the other, serious administrative problems could have arisen in the disputed lands. Fortunately, some jurisdictional issues already had been settled. Unlike many states, Minnesota claimed civil and criminal jurisdiction on all its reservations (except Red Lake).[49] Also, since 1899, there had been no dispute that tribal members had traditional hunting and fishing rights on White Earth lands.[50] This potentially gave the reservation government the right to issue hunting, fishing, trapping, and bait collecting licenses for non-tribal members on its lands. The problems which could have arisen have been avoided by Minnesota's paying the tribe 2.5 percent of all statewide revenues which it collects from its own licenses in return for a tribal guarantee not to institute its own program.[51]

Geographically, the white and Native American populations were somewhat separated, and perhaps this separation also helped reduce the potential for violence between them. As figure 2 shows, except for a noticeable Native American population around the town of Bijou in the northwest corner of the reservation, most Ojibwa were concentrated in the east and south.[52] Generally these lands were less affected by farming than those to the east—the southern end includes the Tamarack Wilderness Area, as well as several lakes of moderate size. Most of the remaining tribal land holdings are along the eastern end of Mahnomen County. The high concentration of Ojibwa in the southeastern corner of the reservation is due to the early settlement here of many full-bloods. Meyers considered the local settlement at Pine Point to be the most traditional of the reservation's villages.

The first step in defining the claims of the parties involved was to survey exactly what lands were in dispute. Funds for the complex tracing of claims were made available under the federal "2415" legislation which had been passed earlier to deal with such issues.[53] Extensive deed examinations were done, with much of the final mapping by Holly Youngbear Tibbs, an Ojibwa graduate geography student at Bemidji State. In 1982, before the land study could be completed, funds were terminated under the law's statute of limitations.[54]

Trying to get a more complete picture of the issue, in 1985 Minnesota used several sources to obtain a rough figure of outstanding claims.[55] At this point, several classes of disputes were

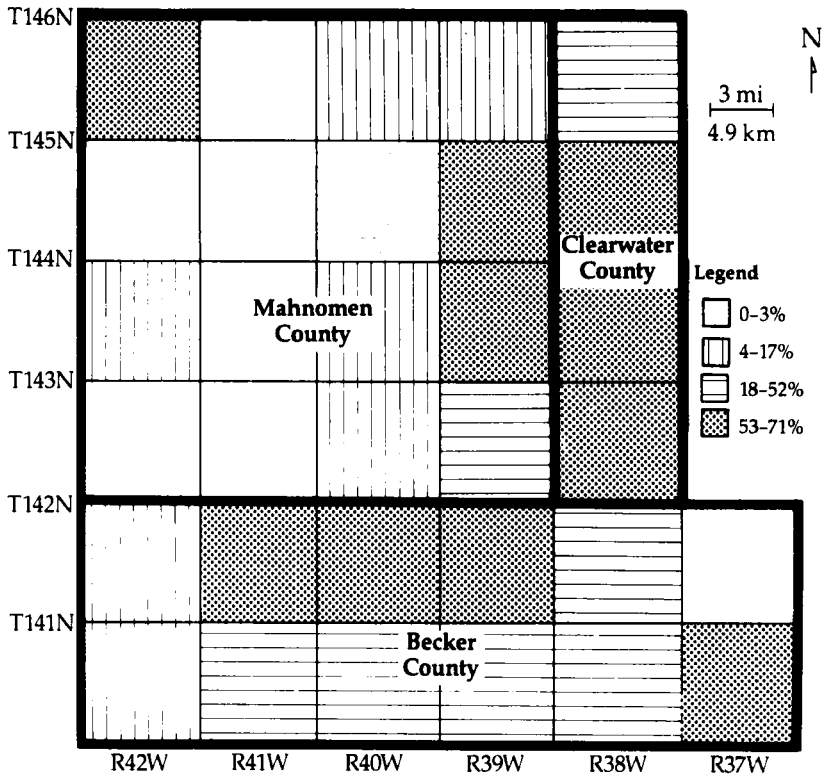

FIGURE 2. White Earth Reservation, percent Native American population per township, 1980.*

*Including towns enumerated in 5 townships

Source: Census of Population, 1980. STF-1 (Minnesota)

identified. In the first group were those lands obtained through invalid tax forfeitures of the type discussed in *Zay Zah*. A total of 223 cases involving 18,930 acres now were held by either the U.S. government, the state, or Becker, Clearwater or Mahnomen County or were in private hands.

Second were the estates of mixed-bloods which had been transferred through probate in state courts; these were the so-called "Dead Indian Lands." They amounted to at least 107 tracts and 10,379 acres. Locating the heirs would be a major task in itself.

The third group consisted of sales without federal authorization. These were in a legal limbo. Under the Clapp Act, sales by mixed-blood and "competent" full-blood adults were legal, but there was never a definition of "adult." After 1906, a number of sales were made by women aged 18 to 21. These sales were valid under Minnesota, but not federal laws. Now serious questions were raised regarding these transactions. In this category were 61,235 acres involving 526 tracts.

In addition to these major categories, there were a number of other groups. Eighty-six files (8,405 acres) involved forced fees patent, which occurred in 1919 when tribal members received allotments of lands illegally removed from trust status. Five others (400 acres) were improper deed cancellations, school land designation, or illegal transfers of real estate. About twenty tracts (2,000 acres) simply had been taken by outside parties. A few tracts were misdesignated as swamplands, were improperly filed, or had their status changed by error.

In all, at least 99,350 acres of land were tied up in 947 disputes, although some members of the tribe thought that if the 2415 study had been completed, two or three times as much real estate could have been claimed. Of the land whose status was officially in question, 69 percent was in private hands, 25 percent belonged to the state or counties, and 6 percent to the federal government.

In 1983, as an immediate means of solving tthe White Earth land ownership questions, Minnesota passed an act offering to transfer to the tribe 10,000 acres of state-owned land. To pay for registering it, $600,000 would be allotted. The only requirement was that the federal government agree to this transfer before 1985 ended.[56] Congress held extensive hearings but failed to pass the required legislation.

Two years later, Minnesota made a similar proposal. The Boards of Commissioners of the three counties involved accepted this plan. The tribal government was involved in developing the plan, and initially the White Earth Tribal Council lent its support, but it later reversed itself.

Some members of the White Earth band strongly opposed this legislation, considering 10,000 acres and some money to be a poor trade for the vast amounts of land which had been lost. They formed the Anishinabe Akeeng (People's Land). This group countered the federal-state plan with a proposal that white landowners be bought out and as much real estate as possible be returned to the tribe. At the same time, the Minneapolis-St. Paul Coalition of Chippewa Heirs became involved, investigating (without resolution) allegations of suppressed findings of valuable minerals which were said to exist under many reservations in Minnesota.

Since this time, the land dispute has been a major issue for the reservation's government. Darrell (Chip) Wadena, who since 1976 has simultaneously held the chairs of both the reservation and the Minnesota Chippewa Tribe, supported a settlement. As he was later to explain his position,

> I knew we didn't have the votes to block it [a land settlement law], so my position was: What could we do to add something to the bill? He (Representative Morris Udall of Arizona) said, "Chip, you have to understand that politics are politics and sometimes they can be cruel. You will not get a congressman on the hill to displace non-Indian landowners, nor will they allow the courts to do it. Go back and get a consensus and tell Congress what you want or Congress will do it for you."[57]

Despite allegations of corruption, Wadena was able to win subsequent elections, including a second challenge by Vernon Bellecourt, prominent in the Indian Rights movement and the leader of Anishinabe Akeeng. However, his transfer of the reservation offices from Pine Point to White Earth town led, by one report, to a "government in exile" in the former community.[58]

With the bill again before Congress, in the early 1980s extensive hearings were once more held.[59] In October of 1986, a bill virtually identical to one introduced in 1983 was passed with the

support of Minnesota's entire Congressional delegation.[60] In the same year, the state's expired enabling legislation was reenacted.[61] Next, the United States and Minnesota agreed to transfer the necessary funds. Finally, on the 17th of September, 1987 —precisely the Bicentennial of the Constitution—a letter of agreement to transfer the lands was signed by the Assistant Secretary for Indian Affairs.[62]

Lands to be placed in trust for the White Earth band were transferred from both state and county jurisdictions. Minnesota yielded 3,006 acres. Two-thirds of this land was in Mahnomen County; some of this portion was a state park. Becker, Clearwater, and Mahnomen Counties each provided about 2,330 acres. To avoid odd lots, a total of 10,002 acres were offered.[63] To provide flexibility in the event of disputes or unacceptable offerings, 960 additional acres were designated for substitute selections.[64]

Figure 3 shows the lands which the state and counties offered to the tribe. In comparison with figure 2, it is evident that these largely have been concentrated around areas of tribal population. This concentration is understandable, since in the areas with high white populations the lands are generally privately owned.

Under the terms of the law, land claims by allottees had to be brought within 180 days after the final land and money transfer agreements were signed. For those who did not sue, the fair market value of their lands when taken, with compound interest of 5 percent, plus the rate of interest on Department of Interior funds over this period, would be paid. Minnesota would raise $500,000 to pay for the mechanics of transferring its 10,000 acres to the tribe, and Congress appropriated $6.6 million for economic development on White Earth.

Although the band had won some lands back, it was only a very partial victory. From an initial reservation area of 829,444 acres, in 1983 there were only 54,125 acres in tribal hands, and 1,953 under allotment on the reservation.[65] Adding 10,000 acres still gave the Ojibwa less than 8 percent of their original territory there.

Since some of the band continued to oppose anything less than a full settlement, it is not surprising that a suit was quickly filed against the agreement. After hearings before the District of Columbia's District Court, the judge summarily upheld the legislation.[66] Following this ruling, the tribe was allowed to pick the

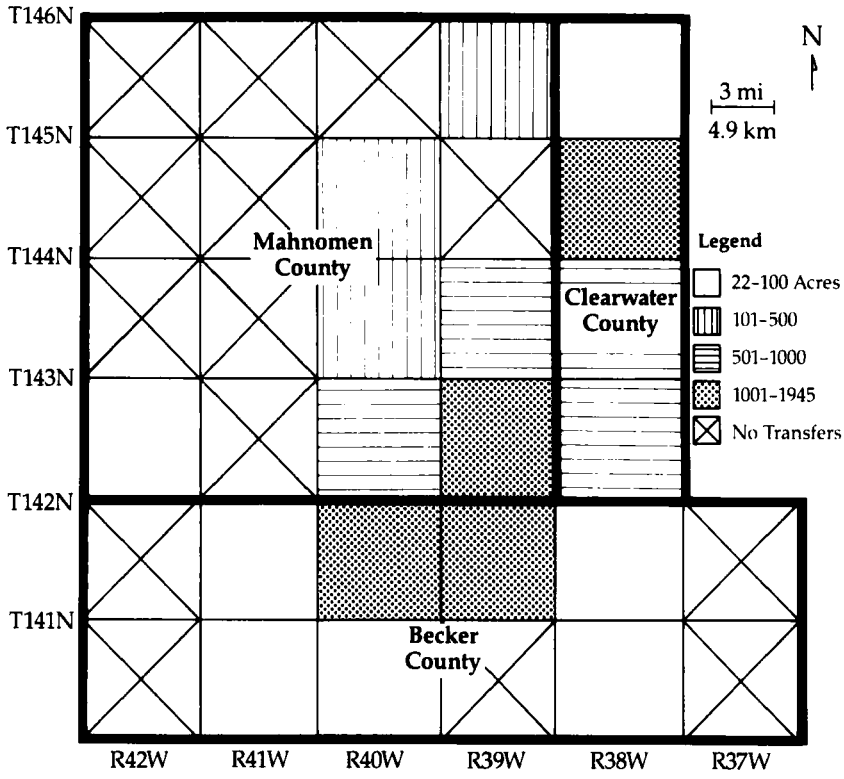

FIGURE 3. White Earth Reservation: State and county lands by township, offered to tribe, 1987.

Source: State of Minnesota, Office of the Attorney General.

state land it wanted. The 1988 ruling is being appealed, and in 1989 a "Treaty Rights of the Anishinabe Nation Forum" was held in Minneapolis.[67] But, as far as the state and federal governments are concerned, the White Earth land problem essentially has been solved.

"MAHNOMEN" MAY MEAN "WILD RICE" IN ANISHINABE, BUT THEY ARE NOT GETTING THE LAND BACK

The above line is the author's opinion. Whatever one's views about the concept and reasons for White Earth's development and the handling—or mishandling—of its land base, a resolution which today can satisfy everyone appears politically and economically out of the question.

Part of the problem is that the population of the area has changed. From being a sparsely settled area where Native Americans could be concentrated with impunity, the territory around White Earth Lake has become a region of farms, towns, and resorts.

The change is shown by the 1980 census figures for Becker, Clearwater, and Mahnomen Counties, all or part of which are within the original boundaries of the reservation. With a total population of 43,632, only 3,425 people (7.8 percent) were classified as Indian. In Mahnomen, the heart of White Earth, the percentage was only 18.4 (1,018 out of 5,535).[68] Even if a count of the total enrolled tribal membership, which includes off-reservation persons, is accepted as giving a potential population to White Earth, the band still remains a minority in its own homeland. Indeed, a relatively small percentage of the band appears to even live on the reservation. While in 1982 a tribal census counted 19,836 people on the rolls, two years earlier both the Bureau of Indian Affairs and the Indian Health Service had reported just under 3,600 people on or near the reservation.[69] Given this situation, it is hard to justify to the white majority why they should lose the lands which they bought and developed in good faith. Several owners removed from the original speculators, they would consider this outcome grossly unfair. But to the Ojibwa who, after losing most of Minnesota, also were cheated out of this little corner, to dismiss their claims without returning

more of what was originally theirs is also wrong. Indeed, initially no government helped the tribal members press their claims, and they would have received nothing if Charles Aubid had not taken a stand for what was his birthright.

In many places around the world, two or more people can make claim to one piece of real estate. In the United States, this problem in Minnesota was dealt with not with bombs or bullets, but through legislation which attempted a compromise. Like most such attempts, it fully satisfied no one. Although a little was returned to the band, over 90 percent of the reservation remains in private hands. Few are happy with this result, but it is at least a small victory for the legal forces which a century ago should have protected *all* of the homeland they created.[70]

NOTES

1. U.S. Congress, House Committee on Expenditures in the Interior Department, *Report in the Matter of the Investigation of the White Earth Indian Reservation Situated in the State of Minnesota, July 25, 1911 to March 28, 1912.* Two Volumes (The "Graham Commission Report".) 62nd Cong., 3rd Sess., 1913, Rept. 1336, 5.

2. Tim Holzhamm, "Eastern Dakota Population Movements and the European Fur Trade: One More Time," *Plains Anthropologst* 28 (1983): 225-233.

3. Jacqueline Peterson, "Prelude to Red River: A Social Portrait of the Great Lakes Metis," *Ethnohistory* 25 (1978): 41-67.

4. William W. Folwell, *A History of Minnesota,* (St. Paul: Minnesota Historical Society, 1969), 4: 312-323.

5. Ronald A. Janke, "Chippewa Land Losses," *Journal of Cultural Geography* 2 (1982): 84-100.

6. For a discussion of sources see Imre Sutton, *Indian Land Tenure: Bibliographical Essays and a Guide to the Literature* (New York: Clearwater, 1975).

7. Gerald R. Vizenor, *Escorts to White Earth 1868 to 1968: 100 Year Reservation* (Minneapolis: Four Winds, 1968), 93-106. This is the account by the man who negotiated the truce; like much else in this book, it is a reprint of an article which appeared in the White Earth newspaper, *The Progress.*

8. 16 Stat. 719.

9. Executive Order, March 18, 1879.

10. Vizenor, 107-118.

11. U.S. Congress, Senate, *Report to Accompany S. 1396. Settling Unresolved Claims Relating to Certain Allotted Indian Lands on the White Earth Indian Reservation, to Remove Clouds from the Titles to Certain Lands, and for Other Purposes.* 99th Cong., 1st Sess, 1985.

12. David L. Beaulieu, "Curly Hair and Big Feet: Physical Anthropology and the Implementation of Land Allotment on the White Earth Chippewa Reservation," *American Indian Quarterly* 8(1984): 281-314.

13. Vizenor, 126-127.

14. These are Bois Forte, Fond du Lac, Grand Portage, Leech Lake, Mille Lacs, and Red Lake. There are also four Dakota reservations, and one Winnebago reservation, in Minnesota.
15. 24 Stat. 338.
16. On a national basis, particularly damaging were the 1902 Indian Appropriations Act (32 Stat. 888) and in 1906 the Burke Act (34 Stat. 182).
17. 25 Stat. 642.
18. Vizenor, 223.
19. Melissa L. Meyers, "The Historical Demography of White Earth Indian Reservation: The 1900 U.S. Federal Manuscript Census Considered," *American Indian Culture and Research Journal* 6, no. 4 (1983): 29–62.
20. 32 Stat. 275.
21. *White Earth Band of Chippewa Indians v. Joseph N. Alexander, Counties of Mahnomen, Clearwater, and Becker, and Elmer Winter et al.*, 518 F. Supp. 527 (1981).
22. Richard H. Weil, "The Loss of Lands Inside Indian Reservations," in *A Cultural Geography of North American Indians*, Thomas E. Ross and Tyrel G. Moore, eds. (Boulder, CO: Westview, 1987).
23. 25 Stat. 673.
24. 30 Stat. 90.
25. Alan S. Newell, Richard L. Clow, and Richard N. Ellis, *A Forest in Trust: Three-Quarters of a Century of Indian Forestry, 1910–1986* (Washington: Litigation Support Services, 1986).
26. 33 Stat. 204.
27. 33 Stat. 539.
28. Folwell, 261–83.
29. Act of June 21, 1906, ch. 3504 34 Stat. 325, 353, *amended by* Act of March 1, 1907, ch. 2285 34 Stat. 1015, 1034.
30. *United States v. First National Bank of Detroit, Minnesota*, 234 U.S. 245 (1914).
31. Melissa L. Meyers, "Warehousers and Sharks: Chippewa Leadership and Political Factionalism on the White Earth Reservation, 1907–1920," *Journal of the West*, 23, no. 3 (1984): 32–45.
32. *Dickson v. Luck Land Company*, 242 U.S. 371 (1917).
33. *United States v. Waller*, 243 U.S. 452 (1917).
34. Graham Commission Report, 732–33.
35. *Morrow v. United States*, 243 F. 854 (8th Cir. 1917).
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38. *United States v. Minnesota*, 270 U.S. 181 (1926).
39. 25 U.S.C. 462.
40. Charlene L. Smith, and Howard J. Vogel, "The Wild Rice Mystique: Resource Management and American Indian Rights as a Problem of Law and Culture," *William Mitchell Law Review*, 10 (1984): 743–804.1. See also Thomas Vennum, Jr., *Wild Rice and the Ojibway People* (St. Paul: Minnesota Historical Society, 1988).
41. Minn. Stat. 84.10 (West, 1989).
42. Executive Order 7902, May 31, 1938, supplemented by state support in

1955 under Minn. Stat. 1.049 (West, 1989), and condemnation action in 1976, 90 Stat. 2634.

43. *State v. Zay Zah*, 259 N.W. 2d 580 (Minn. 1977).

44. *Cert. denied.* 435 U.S. 917 (1978).

45. Solicitor's Opinion No. D-29636, Department of the Interior, Office of the Solicitor, August 2, 1915.

46. Memorandum from the Office of the Solicitor, Department of the Interior, to the Assistant Secretary, Indian Affairs, May 9, 1979.

47. Will Weaver, *Red Earth, White Earth* (New York: Simon and Schuster, 1986).

48. Written Submission of Hubert H. Humphrey III, Attorney General of the State of Minnesota, to the United States House of Representatives Committee on Interior and Insular Affairs Regarding Indian Land Claims on the White Earth Indian Reservation in Minnesota. Hearings, November 16, 1983, Washington, D.C.

49. State of Minnesota, Office of the Attorney General. Opinion 240g: June 2, 1960.

50. *State v. Cooney*, 77 Minn. 518, 80 N.W. 696. However, a tribal member who had neither land nor residency on the reservation could lose these rights. *State v. Bush*, 195 Minn. 413, 263 N.W. 300 (1935).

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53. 28 U.S.C. 2415.

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56. 1984 Minn. Sess. Law Serv., ch. 539 (West).

57. Pat Doyle, "In Reservation Politics, Wadena is Chief," *Minneapolis Star Tribune*, August 8, 1989, 1A, 5A.

58. Doyle, 5A.

59. U.S. Congress, Senate, *Report to Accompany S. 1396* (Washington: Government Printing Office, 1985).

60. 100 Stat. 61.

61. 1986 Minn. Sess. Law Service, ch. 429 (West).

62. Letter of agreement between Ross Swimmer, Department of the Interior, and Hubert H. Humphrey III, Attorney General of Minnesota (September 17, 1987).

63. Memo from Jim Schoessler, Assistant Attorney General State of Minnesota, to Joe Alexander, Commissioner, Department of Natural Resources, September 22, 1987.

64. Letter from Gail I. Lewellan, Special Assistant Attorney General, State of Minnesota, to Jim Wilson, Assistant Clearwater County Attorney, May 23, 1986.

65. Elizabeth Ebbott, *Indians in Minnesota*, 4th ed. (Minneapolis: University of Minnesota Press, 1984), 25.

66. *Edna Emerson Littlewolf, et al. v. Donald Paul Hodel, et al. and State of Minnesota*, 681 F.Supp. 929 (1988).

67. The advertisement announcing the conference ran in *The Circle*, vol. 10, no. 8 (August, 1989): 5.

68. More telling is that in 1979, the per capita income of Mahnomen County was $4,176, versus a state rural average of $5,924. U.S. Government Department of Commerce, Bureau of the Census, *U.S. Census of Population: General Social and Economic Characteristics* (Washington: Government Printing Office, 1983).

69. Ebbot, 42. The BIA count was 3,584, the IHS count 3,547. The latter defines counties adjacent to a reservation as being "near."

70. The author extends his deepest thanks to the reviewers for their helpful comments, and to Randy Croce, producer of the video documentary "Clouded Land," for giving permission to use his extensive research materials.