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Reclaiming the Reservation: The Geopolitics of Wisconsin Anishinaabe Resource Rights[1]

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INTRODUCTION

At the center of many disputes among indigenous people and nation-states is the question of resource sovereignty. Control over and access to natural resources is critical to the economic, cultural, and political survival of indigenous peoples situated within the political boundaries of nation-states such as the United States and Canada. The power to define and command space or territory is fundamental to the ability of sovereigns, both indigenous and non-indigenous, to control access to natural resources and thus the use and development of these resources.[2] Conflict between indigenous groups and nations-states is not only about different and often opposing cultural, economic, or biological visions of natural resource management and development, but also different understandings of who legitimately controls a particular space and territory. Struggles over resource use and claims of resource sovereignty are contests about locating political boundaries and delineating political jurisdictions.

Because control over territory defines political sovereignty, the historical and contemporary efforts of the Wisconsin Anishinaabe to retain control over their reservation territories and to share control of off-reservation ceded territories may be understood as a geopolitical struggle to retain, protect, and expand Anishinaabe sovereignty.[3] This struggle over territory and sovereignty has occurred in the face of persistent efforts by state government to diminish Anishinaabe territoriality and extend state territoriality to on-reservation

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space.[4] While scholars have examined in detail the social, political, legal, economic, and territorial aspects of the Wisconsin Anishinaabe off-reservation treaty-rights controversy, few have explored the territorial and spatial politics of natural resource use and management on-reservation.[5] Yet a more complete understanding of the Anishinaabe off-reservation treaty-right conflict requires an appreciation of the less publicized and less analyzed Anishinaabe geopolitical struggle to resist state jurisdiction and control over on-reservation space. The struggle over off-reservation hunting, fishing, and gathering rights is inseparable from Anishinaabe claims that they should have greater control and territorial sovereignty over what occurs to the natural environment on their reservations.

In this article I examine the geopolitics of resource sovereignty over Wisconsin Anishinaabe reservation space. First I discuss the historical resistance of the Anishinaabe to the state of Wisconsin's effort to restrict and regulate Anishinaabe on-reservation hunting and fishing. The state's regulatory claims were based upon the assertion that state territoriality extended to reservation space and that with statehood and allotment, reservations ceased to exist as distinct political spaces. For the Anishinaabe, however, their reservations were viewed as a separate and distinct political space, a homeland in which state conservation laws were inapplicable. Second I examine Anishinaabe efforts during the 1970s and 1980s to restrict non-Indian access to the natural resources of the reservation by controlling non-Indian hunting and fishing on-reservation. This effort reflects an attempt to define the reservation as Anishinaabe political space to enhance tribal sovereignty. Third I look at the recent struggle of the Wisconsin Anishinaabe, particularly the Mole Lake or Sokaogon community, to expand their control over reservation space and environment by seeking treatment-as-state status under the federal Clean Water Act (33 USC §§1251–1387); a strategy designed to preempt state jurisdiction over reservation environmental regulation and protect the reservation from the effects of a proposed copper-zinc mine adjacent to the reservation.

TREATIES AND ANISHINAABE HARVESTING RIGHTS: DEFINING TERRITORIALITY AND RIGHTS OF ACCESS

The roots of Anishinaabe-Wisconsin geopolitical relations can be traced to the 1830s when the United States negotiated the first land cession treaties with the Anishinaabe of Michigan, Minnesota, and Wisconsin. The purpose of these treaties, from an American perspective, was to open up Anishinaabe lands to non-Indian settlers and to facilitate the incorporation—spatially, culturally, economically—of the Anishinaabe into American society and the American territorial system. In the land cession treaties of 1837 and 1842 the Wisconsin Anishinaabe reserved the right of access and the right to harvest fish, wildlife, and plants on the ceded lands. The Treaty of 1854 created four reservations for the Anishinaabe in northern Wisconsin. For the Anishinaabe, these reservations and the promise of access to off-reservation resources on the ceded lands were viewed as essential to their economic and cultural survival.[6]

Anishinaabe Land Cessions in Wisconsin

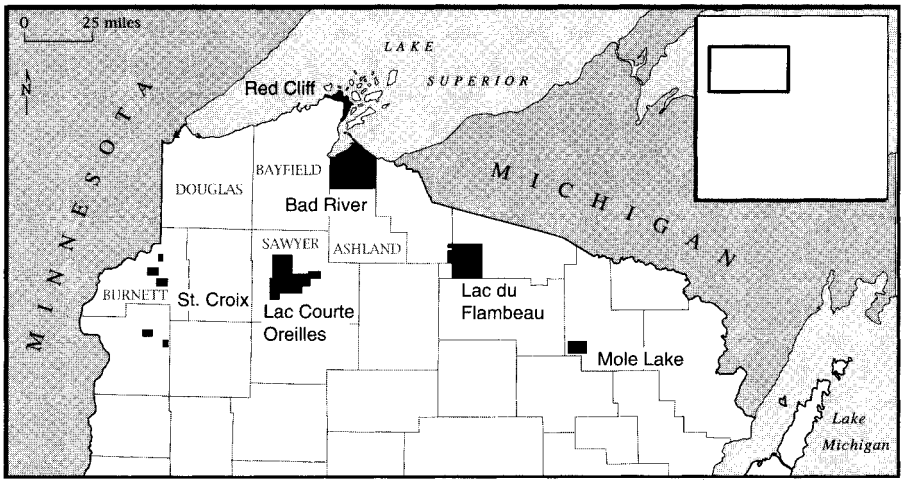

FIGURE 1. *Map prepared by the University of Wisconsin Cartography Laboratory.*

Anishinaabe Reservations in Wisconsin

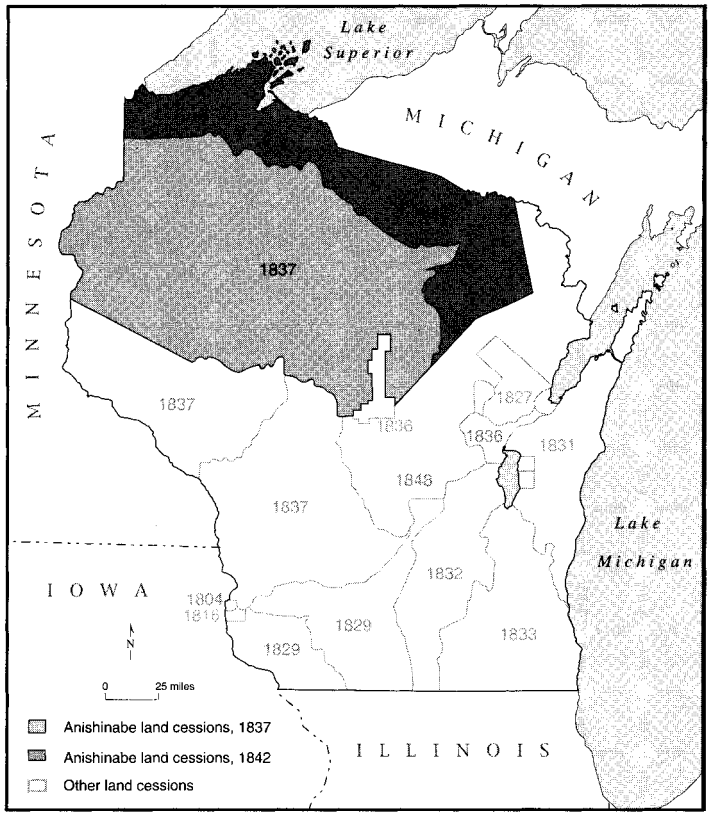

FIGURE 2. *Map prepared by the University of Wisconsin Cartography Laboratory.*

Throughout the second half of the nineteenth century the Wisconsin Anishinaabe continued to hunt, fish, and gather on and off the reservation. The Anishinaabe survived economically through a combination of subsistence hunting, fishing, and gathering and participation in the local market economy as sawyers, log drivers, or graders for railroad. Because subsistence activities remained such an important part of their economy, the Anishinaabe required more natural resources than their reservations could provide. Many went off-reservation to hunt, taking advantage of the increasing size and distribution of Wisconsin deer herds caused by agricultural development and the clear-cutting of Wisconsin's northern forests. In the 1890s only one-half of the Anishinaabe were reported to be living permanently on their reservations.[7]

The federal government, in keeping with the assimilationist mind-set of the nineteenth century, worked to keep the Wisconsin Anishinaabe on their reservations and prevent them from practicing their "traditional" means of subsistence. Government officials sought to transform the Anishinaabe into individualized, capitalistic farmers through allotment, which was part of the 1854 treaty. Allotment broke up Anishinaabe communal land holdings and provided individuals with their own plots of land. Attempts at farming on these northern Wisconsin reservations, however, were usually unsuccessful due to the region's short growing season and poor soils.[8]

Despite the social, economic, and environmental changes brought about by increasing non-Indian settlement, mining, and lumbering, the Wisconsin Anishinaabe, both the interior and lake shore bands, continued to pursue their "traditional" subsistence activities and maintain their cultural practices. Removal, allotment, and other attempts to "civilize" the Anishinaabe represent the first of many efforts to deny the Wisconsin Anishinaabe their spatial, political, and cultural identities. Efforts by Wisconsin conservation officials to eliminate Anishinaabe harvesting rights represent another aspect of this "civilizing," assimilationist logic.

By the turn of the century, Anishinaabe hunters and fishers encountered increasing competition for the fish and wildlife of their reservations and the ceded territory from commercial fishers, market hunters, and non-Indian sport fishers and hunters. By the 1880s railroads had connected northern Wisconsin to a large pool of potential visitors from Chicago, Milwaukee, and the Twin Cities. Tourists were attracted to the area's scenery, its relatively close location—three to four hundred miles from Chicago and Milwaukee and one to three hundred miles from the Twin Cities—and the north's summer climate of warm days and cool nights. Deer and abundant game fish rounded out the appeal of northern Wisconsin for the sportsmen. For example, in its 1895 publication entitled *Hunting and Fishing Along The North-Western Line*, the Chicago and Northwestern Railroad identified for the north woods traveler "the location of the best places where the devotees of the rod and gun can enjoy their favorite sport with reasonable certainty of satisfactory results."[9] In a 1905 publication entitled *The Lakes and Summer Resorts of the Northwest*, the Chicago and Northwest Railway described the north woods as a region "practically untouched by man" and where "nature's balm builds up tired nerves, and makes the man who spends a time here feel new strength

and vigor to take up his every day routine." The north woods offered either quietude or the "thrill of a well-fought tussle with bass or muskellunge or at sight of a deer."[10]

After 1900 the automobile and improved roadways increased the accessibility of the north woods to even larger numbers of sport fishers and hunters. In addition to transportation improvements, advertising stimulated increased flows of tourists to the north woods. During the 1920s and 1930s, northern Wisconsin was promoted as "a great natural playground."[11] Potential tourists were promised that the north woods was "a glorious wilderness of woods and lakes" and a "veritable paradise of the outdoors."[12]

Alongside competition from tourists for the fish and game of northern Wisconsin came efforts by the Wisconsin Conservation Department to regulate and restrict Anishinaabe harvesting activities. State regulation of non-Indian hunting and fishing began in 1851 when closed seasons for hunting deer, prairie chickens, quail, and pheasant were first established by the legislature. Enforcement of these laws was the duty of local police officers. It was not until 1879, however, that the legislature authorized the state fish commission to appoint a state fish warden for three counties—Bayfield, Ashland and Douglas—located in northern Wisconsin. In 1887 the first state game wardens were appointed, and in 1890 the separate positions of fish warden and game warden were combined into a single fish-and-game warden position.[13]

The state first applied its fish and game laws to the Anishinaabe, off-reservation, in 1889. In August 1889, Anishinaabe from Red Cliff and Bad River were arrested for violating state fish laws for fishing in Lake Superior. Also, during that same month, three Indians were arrested for killing deer outside their reservation. The arrested Anishinaabe defended their actions, claiming a treaty right to hunt and fish outside their reservations. Despite these and many other arrests, the Anishinaabe continued to hunt, fish, and gather both on- and off-reservation.[14]

The state, however, became more aggressive in its application of state conservation laws to Anishinaabe harvesting on- and off-reservation. In 1896 the state issued a formal declaration of its policy on restricting Anishinaabe hunting and fishing within state borders; a declaration that reflected the assumption that treaty rights and reservation boundaries were not a barrier to state territorial sovereignty. Adopting the equal-footing doctrine as the centerpiece of his argument, Wisconsin Attorney General W. H. Mylrea asserted that Wisconsin assumed exclusive control over its territory when it became a state in 1848, and therefore possessed "unquestioned" police powers "to regulate and control the taking of fish and game" anywhere within the state's borders. The state claimed that its police powers extended to on-reservation Anishinaabe harvesting, whether for subsistence or commercial purposes.[15]

The state's regulatory power over on-reservation Anishinaabe harvesting activities was legally tested in 1901 when John Blackbird, a member of the Bad River Band, was arrested for violating state fishing laws while setting a net on a small stream on the Bad River Reservation. Blackbird was tried and convicted in the Ashland Municipal Court and the case was appealed to the federal district court for the Western District of Wisconsin in Madison. The

court ruled that the state had no authority over Anishinaabe on-reservation hunting and fishing because Congress had exclusive jurisdiction over Indians within the borders of an Indian reservation. The court criticized the state's territorial ambitions and defended Anishinaabe on-reservation resource use:

> After taking from them the great body of their lands . . . it would be adding insult to injury as well as injustice now to deprive them of the poor privilege of fishing with a seine for suckers in a little red marsh-water stream upon their own reservation.[16]

Blackbird, however, represented only a temporary legal setback for the state. The state's authority to regulate and restrict Anishinaabe usufructuary rights, both on and off the reservation, was confirmed in the 1908 Wisconsin Supreme Court Case *State* v. *Morrin.* In *Morrin,* the court convicted Michael Morrin, an Anishinaabe, for illegally fishing with a gill net in Lake Superior. The court stated that:

> the stipulations in the treaty with the Chippewa Indians respecting their right to hunt and fish *within the borders of this state* were abrogated by the act of Congress admitting the state into the Union and making no reservation as to such rights.[17]

The court ignored the Blackbird ruling and used the equal footing doctrine to affirm the state's territorial jurisdiction over both the off- and the *on*-reservation usufructuary activities of the Wisconsin Anishinaabe. Despite the ruling, however, the Wisconsin Anishinaabe resisted the state's territoriality and continued to harvest fish, game, and plants both on and off their reservations.

STATE EFFORTS TO ELIMINATE ANISHINAABE ON-RESERVATION HARVESTING, 1910–1953

In the 1920s and 1930s state conservation officials continued to claim that Anishinaabe harvesting rights had been extinguished by statehood and allotment, and that the state had jurisdiction over Indian hunting and fishing within the borders of Indian reservations. Conservation officials regarded allotment as a process that eliminated the distinct political-geographical status of the reservations. Once a reservation, such as Lac Courte Oreilles, had been allotted, its separateness from the space of the state was interpreted as being eliminated. The state often referred to such reservations as "so-called" reservations to indicate their understanding of its diminished status and integration into the state.[18] At Lac du Flambeau, conservation officials also claimed that the state could stop spear fishing because the state could claim jurisdiction over navigable waters on the reservation.[19] They perceived Indian spearing of spawning fish as a "wholesale slaughter," and were concerned with the impact of spearing on the tourist trade.[20]

In the 1930s the Wisconsin Conservation Department put pressure on the Bureau of Indian Affairs to stop what they labeled the "slaughter" of fish and

game on Anishinaabe reservations. Wisconsin Conservation Director Paul Kelleter told Commissioner of Indian Affairs Charles Rhoads that the state was "vitally concerned" with "its" natural resources.[21] Kelleter wanted to know what the Bureau of Indian Affairs was doing

> to have the Indian take an active interest in the propagation and protection of fish and game to the end that violations be reduced to a minimum and particularly that the commercialization of the hunting and fishing be abolished.[22]

In response to Kelleter, Rhoads defended the Anishinaabe's right to hunt and fish free of state laws while on their reservations. He said that the state should "recognize the rights and standpoints of the Indians, and to deal with them on the basis of their cooperation with the state rather than attempt to coerce them."[23]

Despite Rhoads' defense of Indian on-reservation harvesting rights, the state continued to prosecute the Anishinaabe for violations of state fish and game laws both on and off their reservations. *State* v. *Johnson*, a 1933 Wisconsin Supreme Court decision, provided the state with some, but not complete, power to regulate Indian hunting and fishing on Indian reservations. In this case, a Bad River Anishinaabe, Frank Johnson, was hunting deer presumably out of season when he mistook a non-Indian, Frank Gervais, for a deer and shot and killed him. The killing took place within the exterior boundaries of the Bad River Reservation on lands that had been fully patented to the heirs of an Indian. The heirs then sold the land to a non-Indian. In keeping with the assimilationist logic of the time, the court interpreted allotment and subsequent land transactions to mean that "when the lands are fully patented by the United States they cease to be the territory of the United States and become subject to the jurisdiction of the state and its laws." The court ruled that Johnson could therefore be tried in state court for the manslaughter of Gervais.[24]

The Wisconsin Supreme Court also ruled on the question of whether Johnson could be tried in state court for hunting deer out of season. In an amicus curiae brief on behalf of the defendant, Thomas St. Germain, a lawyer and member of the Lac du Flambeau Band, argued that Johnson was immune from state hunting and fishing laws on any lands within the reservation as well as on ceded lands because of the provisions reserving usufructuary rights in the treaties of 1837, 1842, and 1854. St. Germaine argued that the

> original Indian signers and their descendants to the several treaties have always understood and do now understand the treaties as granting them—the Indians—the right to hunt and fish in perpetuity upon the lands within the boundaries set off for them, even the ceded lands . . . .[25]

The court agreed that state fish and game laws were "without force and effect" when Indians were hunting or fishing on reservation lands that "were not fully patented." But on fully patented lands, the court found that "in the absence of

a treaty or express reservation" the defendant did not have unrestricted rights and could therefore be prosecuted under state law for hunting deer during the closed season.[26] *State* v. *Johnson* was a partial victory for the state and a partial victory for the Anishinaabe, for it geographically limited state jurisdiction over Indian harvesting to lands patented to Indians or sold to non-Indians within the borders of a reservation.

The state's jurisdictional claims over all the Anishinaabe's reservation space did not, however, disappear. They resurfaced once again during the 1950s when assimilationist federal Indian policies were dominant. In 1953 Congress passed Public Law 280 transferring civil and criminal law enforcement on reservations from the federal government to state governments. Public Law 280 provided that five states, California, Minnesota, Nebraska, Oregon, and Wisconsin,

> shall have jurisdiction over offenses committed by or against Indians . . . to the same extent that such State has jurisdiction over offenses committed elsewhere in the state, and the criminal laws of such State shall have the same force and effect within such Indian country as they have elsewhere within the state.

An important exception to Public Law 280 were hunting and fishing rights reserved by treaty. The law did not "deprive any Indian or Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof."[27]

Public Law 280, northern Wisconsin's rapidly growing tourist trade, and a conservation department dedicated to promoting sport hunting and fishing created a context within which state officials could restate their claim that state conservation laws applied to Indians while hunting and fishing anywhere on their reservations. But despite a desire on the part of some Conservation Department officials to extend state jurisdiction to all lands and waters within the borders of Indian reservations, the department continued to operate as it had in the past: it did not enforce its game and fish laws on Indians while they were on non-patented allotments and tribal lands.[28] State conservation wardens often could not arrest Indians suspected of violating conservation laws because they could not determine with any certainty whether Indian hunting and fishing occurred on tribal or private land holdings within the reservation.[29] The checkerboard of land holdings created by allotment made law enforcement on Indian reservations a difficult, if not impossible, task.[30]

In 1965, however, the state officially extended its jurisdiction to Indian hunting and fishing on all lands and waters within reservations. Wisconsin Attorney General George Thompson issued a formal opinion stating that Public Law 280 "extinguished the federal immunity of Wisconsin Indians" and therefore "the state conservation laws may be made applicable to Indians on non-patented reservation lands within the state." According to Thompson, Public Law 280 applied to hunting and fishing because the rights reserved in the 1837 and 1842 treaties were abrogated by admission of the state to the

union. Thompson also said that because the 1854 treaty did not expressly reserve hunting and fishing rights, and because there was no federal statute conferring such rights, Public Law 280 "effectively extinguished such rights."[31] In 1965 and 1966 Conservation Department officials urged state wardens to "uniformly" apply state laws to Indians both on and off their reservations.[32]

CHALLENGING STATE TERRITORIALITY ON-RESERVATION: ANISHINAABE REGULATION OF NON-INDIANS

The Anishinaabe and other Wisconsin tribes complained and sought judicial relief from Wisconsin's application of Public Law 280 to their on-reservation hunting, fishing, and trapping. In 1966 the Great Lakes Inter-Tribal Council, representing all Wisconsin's Indian tribes, asked Wisconsin Judicare, a legal assistance project sponsored by the State Bar of Wisconsin and the federal Office of Equal Opportunity, to request a new opinion from the attorney general on Public Law 280 and on-reservation harvesting rights.[34] In 1967 Wisconsin Attorney General Bronson LaFollette issue a formal opinion on Attorney General Thompson's 1964 opinion. According to LaFollette, the intent of Congress in enacting Public Law 280 was to "subject the Indians to all criminal laws of the state, but to leave the hunting, fishing and trapping rights as they were prior to the enactment of the law." LaFollette disagreed with Thompson's interpretation of the effect of the 1854 treaty on tribal hunting and fishing rights. He said that "specific mention of the right to hunt and fish [in the treaty] is not necessary to preserve such rights in the Indians." Indians, he stated, have an "ancient and immemorial right" to hunt, fish, and trap on the "lands and in the waters of their reservations." LaFollette concluded that

> the state of Wisconsin is not free to apply its hunting, fishing and trapping laws to Indians residing on non-patented reservation lands when hunting, fishing or trapping on non-patented lands within the confines of the reservation.[35]

In defiance of LaFollette's opinion, the Conservation Department continued to enforce state laws against Indian hunting and fishing everywhere on-reservation. For example, in April 1967 two Bad River members were arrested and found guilty for illegal fishing in the Kagagon Sloughs on the Bad River Reservation. Their net and four walleyes were confiscated. Conservation Department Attorney Emil Kaminski encouraged northern Wisconsin district attorneys to "prosecute all cases which our wardens bring to your attention." In keeping with the long-standing Conservation Department's interpretation of state territoriality, he said:

> It is our opinion that the State of Wisconsin has the power to enforce conservation laws and rules relating to hunting and fishing by Indians on reservations.... [W]e have instructed our wardens to enforce Wisconsin hunting and fishing laws equally against all citizens of the State of Wisconsin including Indians.[36]

The Conservation Department, working with the Ashland County District Attorney, hoped to "initiate a test case" in the Wisconsin Supreme Court that would confirm or deny "the authority of the Division [*sic*] of Conservation to enforce its regulations on Indians on non-patented lands on Indian reservations." The underlying goal in pursuing a test case would be to confirm the extension of the Conservation Department's jurisdiction over reservation space. A positive court decision would give the department "more uniformity of enforcement throughout the state."[37]

Throughout 1967 the issue of state regulation of Indian hunting and fishing rights on reservations was discussed at meetings of the Great Lakes Inter-Tribal Council (GLITC). At a 25 May 1967 GLITC meeting held in Oneida, Wisconsin, Wisconsin Judicare Director Joseph Preloznik suggested that the tribes band together and ask or sue the state for a judicial ruling on Attorney General Bronson LaFollette's 1967 opinion on Indian rights to hunt and fish on the reservation.[38] In June 1968, Wisconsin Judicare, representing GLITC, the Bad River, Mole Lake (Sokaogon), and Red Cliff Anishinaabe, the Forest County Potawatomi, the Oneida, and Stockbridge-Munsee tribes, sued the state in the federal district court in Madison. The suit—*GLITC* v. *Voigt et al.*—asked for a restraining order against further enforcement of state conservation laws against Indians while hunting, fishing, and trapping on "Indian lands." Wisconsin Judicare asked for a ruling as to whether or not Public Law 280 affected treaty-protected on-reservation hunting, fishing, and trapping rights.[39]

While *GLITC* v. *Voigt* was pending in the federal district court, Anishinaabe political activism and resistance to intrusive state territorial efforts grew and many test cases and challenges to state territoriality arose in the ceded territory of northern Wisconsin. In September 1969 the St. Croix Anishinaabe, led by James Taylor, held a deer hunt-in on the St. Croix Reservation. Taylor was arrested for hunting deer out of season. His trial was first postponed, and the case was eventually dropped by the state in 1973.[40] In another challenge to state territoriality, the Red Cliff Anishinaabe, led by Peter Gordon, staged a fish-in by setting gill nets in Lake Superior on 17 September 1969. Gordon, along with five other Red Cliff Anishinaabe, was arrested for violating state laws regarding the size, location, and marking of gill nets in Lake Superior. Both actions were planned to test whether the 1854 treaty prevented the state from applying its conservation laws to the Anishinaabe while hunting on-reservation and while fishing off-reservation in Lake Superior.[41]

On 9 October 1969 two members of the Bad River Band were similarly arrested for fishing with gill nets in Lake Superior. Both fishing cases were consolidated in the county court of Bayfield County.[42] The Anishinaabe, represented by Wisconsin Judicare, claimed their actions were protected by the Treaty of 1854 and asked that the case be dismissed. The court declined and the Anishinaabe appealed to the Circuit Court. On 21 August 1970, Circuit Court Judge Lewis Charles ruled in favor of the state. He found that the Anishinaabe did not retain a treaty right to fish adjacent to their reservations in Lake Superior. Judge Lewis, however, gave the Anishinaabe a partial victory. He ruled that the state had no jurisdiction over Indian hunting and fishing

"upon their reservation and within its described borders." He said Article 2 of the treaty of 1854, which reads "the United States agree to set apart and withhold from sale, for the use of the Chippewas of Lake Superior the following described tracts of land . . .," gave the Anishinaabe "the right to use reservation lands as had their ancestors; and that using the 'tribal' lands necessarily included hunting and fishing therein, free from foreign interference."[43]

Meanwhile, the suit filed against the Wisconsin Department of Natural Resources (DNR), formerly the Conservation Department, by GLITC languished in the federal court. Federal District Court Judge James Doyle moved very slowly on the case. By 1973 Wisconsin Judicare filed a motion to dismiss the case or an alternative motion for separate trial for the several tribes. Judicare attorneys filed this motion because of the growing expense of the suit, Judge Doyle's slowness (the suit was filed in 1968 and had made little progress), the tribes' perceptions that Doyle was unsympathetic to their cause, and changes in DNR's enforcement policy.[44] Attorney Steven Caulum, outside counsel hired by DNR for this case, opposed the tribes' motion to dismiss and filed a counterclaim for declaratory relief. In keeping with the state's territorial sovereignty claims, he asked the court to find that tribal members had no "greater right" to hunt, fish, and trap, than non-Indians in the state.[45] In March 1977, Doyle, ruling for the tribes, dismissed the case.[46]

Despite their outside counsel's aggressive posture and desire to pursue *GLITC* v. *Voigt*, DNR had by 1973 changed its policy of enforcing the state's hunting and fishing regulations against Indian hunting and fishing while on tribal trust lands, restricted allotments, and other government lands on reservations.[47] The policy change came about because of Lafollette's interpretation of Public Law 280 and the many difficulties in enforcing state laws on reservations, which were a "checkerboard" of Indian and non-Indian lands.[48] By 1973 the state's policy was to exempt Indians from state hunting and fishing regulations while on tribal trust lands, restricted allotments, and other government lands within the original boundaries of the reservations. The changes in DNR law enforcement policy originally affected only those reservations created by treaty—Lac du Flambeau, Lac Courte Oreilles, Bad River, and Red Cliff—not those reservations created by executive agreement or order (Mole Lake and St. Croix). By 1976, however, DNR changed its policy to include these two reservations and by the 1980s DNR's policy became one of non-enforcement of state hunting and fishing regulations against tribal members anywhere within the boundaries of Indian reservations.[49]

Throughout the 1970s and into the 1980s, the Wisconsin Anishinaabe would continue the legal-territorial battle for their on- and off-reservation treaty rights. Although there were numerous court cases, particularly at the county court level, involving Indian treaty rights to hunt and fish on and off the reservation, two federal court cases stand out as most important during this time period: *State* v. *Odric Baker* and *Lac Courte Oreilles (LCO)* v. *Voigt*.[50] Both cases are important because they are an expression of tribal claims of sovereignty and tribal challenges to the state's claim of absolute territorial sovereignty. *Baker* and the related *State of Wisconsin* v. *Mebane* and *United States* v. *Bouchard* represent tribal struggles to gain control over reservation space and

natural resources by controlling non-Indian/non-member hunting and fishing within the reservations' borders.[51] *Voigt*, perhaps the more well-known and controversial of the two cases, and certainly the one that most challenged state territoriality, involves the question of tribal access to natural resources outside the reservation in the ceded territory. In the 1983 Voigt decision, the United States Seventh Circuit Court of Appeals ruled that the Wisconsin Anishinaabe had a treaty right to hunt, fish, and gather on ceded lands off the boundaries of their reservations. Similar to the off-reservation fishing treaty rights cases in Michigan, Oregon, and Washington state, the *Voigt* ruling resulted in the formation of anti-Indian groups, massive anti- Indian protests, and efforts by the state to eliminate Anishinaabe off-reservation harvesting rights through litigation and negotiation.[52]

ANISHINAABE EFFORTS TO CONTROL ON-RESERVATION NON-INDIAN HUNTING AND FISHING

The *Baker* Case

In the 1970s, having gained judicial recognition of their treaty rights to fish in Lake Superior through the *Gurnoe* decision and to hunt and fish free of state regulation on non-patented, tribally owned lands within the reservation, the Wisconsin Anishinaabe directly challenged the state for control over access to fish and game *on* their reservations.[53] In the 1950s Lac Courte Oreille members and the Bad River Tribal Council, in two separate events, explored the idea of closing off tribally owned lands or the whole reservation to non-Indian hunting and fishing.[54] By the 1970s the Anishinaabe tribes took action and directly challenged state territorial jurisdiction over their reservations by passing resolutions and tribal conservation codes closing Indian lands to non-Indian hunters and fishers and requiring non-Indians fishing within the boundaries of the reservation to purchase a tribal fishing license.[55]

The first of these resolutions was passed in late April 1973 by the Lac du Flambeau Tribal Council. The resolution required non-Indians to pay a $3.25 fee to fish within the exterior boundaries of the reservation. The resolution was passed in order to raise money to support the tribal fish hatchery. Tribal officials complained that they annually released over 30 million walleye fry into reservation lakes but they never received any financial assistance from the state or the town of Lac du Flambeau in support of the hatchery. In May the town of Lac du Flambeau agreed to provide funds in support of the fish hatchery and the resolution was never put into effect.[56]

At Lac Courte Oreilles (LCO) similar efforts were undertaken to extend tribal jurisdiction over non-Indians within reservation boundaries. In 1973 the LCO tribal council posted tribally owned lands to non-Indian hunting and fishing: non-Indians were banned from hunting on Indian lands. There was no enforcement of this ban, however. In May 1974 LCO members approved amendments to the tribal constitution that would allow the tribe to impose fishing licenses on non-Indians. LCO tribal leaders argued that the money spent by tourists visiting the reservation was not going to the Indians living on

the reservation. Instead, they said, the funds were going into state coffers or into the pockets of non-Indian resort and business owners. According to Rick Baker, tribal chairman, "The resources of the reservation belong to the tribal membership, but they haven't been receiving any kind of compensation."[57]

On 1 May 1976 the LCO tribal government enacted a conservation code "designed to restrict, control and regulate hunting and fishing on lands and waters inside the exterior boundaries of the reservation." Violations of the code could lead to a $500 fine and a six-month jail sentence. Three days later the state filed suit in Sawyer County Circuit Court against the tribe's governing board. The state, interpreting the tribe's actions as a challenge to its territorial sovereignty, claimed that it had sole authority over the state's navigable waterways, including those located within the reservation. The tribes moved the suit to the federal district court in Madison.[58]

On 23 October 1981 Judge James Doyle ruled against LCO's claim that the reservation was distinct political space within which the tribe, not the state, controlled access to and use of fish and wildlife resources. Doyle, ruling in favor of the state, said that the state had "exclusive sovereignty" over the navigable waters within the LCO Reservation. According to Doyle there was no presumption that the United States, in the treaty of 1854, granted the LCO sovereignty over the navigable waters within the reservation. Doyle clearly viewed reservation boundaries as permeable when he held that the LCO "enjoy no jurisdiction" to regulate hunting and fishing by non-members on navigable waters within the reservation.[59]

LCO attorney James Schlender responded to the decision and non-Indian lack of understanding of tribal territorial sovereignty by saying: "We feel that the general public just does not have the right to come within the reservation and utilize the resources that tribal members rely upon as part of their subsistence without the tribe having something to say about it."[60] LCO appealed the decision and the case was argued before the United States Seventh Circuit Court of Appeals in Chicago on 14 September 1982. On appeal the tribe argued that the Treaty of 1854 creating the reservation gave them exclusive rights to hunt and fish on the navigable lakes within the reservation and that they therefore had the power to control public fishing and hunting on those lakes.

In its 26 January 1983 ruling, the Seventh Circuit Court of Appeals agreed with the lower court's ruling and found that the tribes did not have power to regulate public hunting and fishing on the reservation's navigable waters. The Seventh Circuit found that the congressional act creating the state of Wisconsin in 1848 granted the state the power to regulate hunting and fishing in navigable lakes. The intent of the federal government, the court said, was to admit Wisconsin on an "equal footing" with the other states of the Union. Thus a provision in the Treaty of 1854 reserving land "for the use" of the Anishinaabe could not be interpreted as granting the Indians sovereignty over navigable lakes on the reservation. Without explicit language in the 1854 treaty granting the LCO such power, the court said, "we will not interpret the treaty as conferring that power" upon the Anishinaabe.[61] On 27 June 1983 the United States Supreme Court denied the LCO petition for writ certiorari.[62]

The LCO band also met resistance to their attempt to regain control over reservation space and natural resources from non-member/non-Indian property owners, resort owners, and business persons residing on or adjacent to the reservation. Concerned that the LCO's conservation code would keep tourists away from the reservation and therefore destroy their livelihood, they formed Citizens League for Civil Rights. They said that the tribal licenses were a form of taxation without representation and were therefore unconstitutional. The group argued that tribal members were citizens of the United States and that Indians should assimilate into the "majority society." It claimed that Indian tribes received a disproportionate amount of federal funds and that this amounted to "inverse discrimination." The league said that Indian tribes were receiving special treatment and rights. They argued that the league was neither racist nor bigoted, but merely "struggling for preservation of our rights and freedoms, and insisting that 'all segments of society' share equally in the bounties and responsibilities."[63] The concerns of this group were clearly not just about the potential economic impacts of LCO's conservation code. Like the anti-Indian-rights groups that emerged in the Pacific Northwest in the 1970s and Wisconsin during the 1980s' off-reservations spearfishing controversy, the Citizens League was opposed to the tribe's distinct political and territorial sovereign status.[64]

The league filed its own law suit in federal district court against the LCO. It claimed that the LCO conservation code infringed upon its members rights to hunt and fish in the reservations' navigable waters. The league argued that the LCO conservation code violated the equal protection clause of the US Constitution and deprived them of the right to "life, liberty, and the pursuit of happiness" and "the rights, privileges and immunities secured to said non-members of the [Band] by the United States Constitution and the laws thereunder." The league asked the court for $50 million in damages. Judge Doyle dismissed the league's suit on jurisdictional grounds and denied monetary damages based upon the tribe's "legislative immunity."[65]

State v. *Mebane and U.S.* v. *Bouchard*

Similarly, on 14 April 1976 the Bad River Tribal Council passed an ordinance that prohibited non-members from fishing and hunting within the exterior boundaries of the reservation. In May the tribe posted signs on the reservation that read: "No trespassing. No fishing, hunting or trapping on Indian lands or waters without permission." Bad River posted these signs pursuant to federal law (18 USC §1165), which made trespass on all Indian lands within the boundaries of Indian reservations for the purpose of hunting and fishing a federal offense. Like LCO's actions, the decisions of the Bad River Tribal Council were motivated by a desire for greater control over reservation space and its natural resources. According to Bad River Tribal Chair Raymond Maday, posting tribal lands

> is part of our efforts toward self determination.... We feel that under treaty agreements and laws, we have a right to control who uses our

> property and how it is used. About all we have is some timber and natural resources and we have to develop a plan for protecting what we have.[67]

In May 1976 federal marshals arrested five non-Indians for fishing in the Kagagon Sloughs located at the northern end of the Bad River Reservation. United States District Attorney David Mebane was preparing to prosecute the five non-Indians in the federal district court in Madison on 29 September 1976, in what would have become *United States* v. *Bouchard*, when on 21 September the state of Wisconsin initiated a law suit against Mebane and five other federal employees. As in the *Baker* case, the state argued that the congressional enabling act creating the state in 1848 vested title in the beds of all navigable lakes and streams in the state. The state claimed it was the trustee for the public's rights in navigable waterways and that the post-statehood creation of the Bad River Reservation in 1854 did not divest the state's title to the beds of navigable waters and thus did not eliminate the state's jurisdiction over the reservations waterways. The state, therefore, claimed that these federal employees' arrests and prosecutions of "members of the public" while hunting and fishing on the navigable waterways of the Bad River Reservation violated the state's "sovereign authority over navigable waters and the public's right to free access to navigable waters under the public trust doctrine."[68]

Because identical legal issues would be addressed by the federal district court in *United States* v. *Bouchard*—the United States' case against the five non-Indians arrested for illegally fishing on the Bad River Reservation—the court dismissed the *Mebane* case. In 1978 Judge Doyle issued an opinion in the *Bouchard* case. He ruled, as he would in *Baker*, that the beds and waters of the Kagagon Sloughs "passed to Wisconsin upon admission as a state in 1848," and that the Treaty of 1854 did not divest that state of title to the reservation's navigable waterways. The state, he said, retained title to the Kagagon Sloughs. Because the state held title to the sloughs, Doyle held that federal law (18 USC §1165) was inapplicable. This federal law, he said, was only applicable in instances in which the tribe or the United States held title to land and waterways. Doyle concluded that the Bad River Band could not prevent non-Indians from fishing in the reservation's navigable waters and he dismissed the indictment against the defendants.[69]

TERRITORIALITY AND THE LEGAL BATTLE OVER ENVIRONMENTAL REGULATION AT MOLE LAKE

The preceding narrative describes how the federal and state courts have not supported Anishinaabe claims that their reservations are a distinct and homogeneous Anishinaabe political space over which tribes have exclusive territorial sovereignty and the right to regulate both member and non-member use of fish and game resources. In these cases, reservation boundaries are not a strict barrier to state jurisdiction over Indian and non-Indian use of the reservation's natural resources. The reservation was not legally constructed or

understood as a unified and distinct political space. Instead, Anishinaabe reservations are understood as a divided political space where the harvesting of fish, game, and plant resources is governed by either the tribal government, state government, or, depending on specific circumstances, the federal government. But in the area of environmental pollution regulation it appears that the federal government, specifically Congress, the Environmental Protection Agency (EPA), and the federal courts are currently in favor of treating Indian reservations as a unified political space under the jurisdiction of tribal governments.

Since 1963, when the US Congress first passed legislation to clean up and protect the environment, state governments have been accorded "primacy" by the United States Environmental Protection Agency and have administered major federal environmental laws such as the Clean Water Act, Clean Air Act, Safe Drinking Water Act, and the Resource Conservation and Recovery Act. Beginning in 1986, Congress amended most of these federal pollution control statutes to allow the EPA to treat Indian tribes as states (TAS) and to have the tribes administer provisions of these laws within the boundaries of reservations.[70] EPA has interpreted congressional policy as (1) recognizing tribes as the primary governmental unit for administering federal environmental laws on reservations and (2) a rejection of "environmental checkerboarding" where the tribe regulates Indians activities and the state regulates non-Indian activities. The result is the federal government and the courts "have all acknowledged that tribal environmental authority extends to the entire territory of the reservation."[71]

In 1994 the Mole Lake, or Sokaogon Anishinaabe, community applied to the EPA for treatment as a state under the provisions of the Clean Water Act. The 1,437-acre reservation was created in 1934 and is un-allotted. There are no non-Indian landholdings on the reservation. Mole Lake's TAS application was motivated by a desire to adopt strict water-quality standards in order to protect Rice Lake, which lies within the reservation's borders, and Swamp Creek, which flows into Rice Lake, from the environmental pollution created by a proposed copper-zinc mining adjacent to the reservation. Rice Lake is the site of one of the largest wild rice lakes in the world and is central to the Mole Lake tribe's diet and cultural identity.

In 1995 the EPA approved the tribe's application, making the tribe eligible to administer a water-quality standards program for the reservation. The state of Wisconsin subsequently filed a lawsuit in federal court contesting EPA's decision to allow the tribe to set water-quality standards on the reservation. The state's objections, not surprisingly, were identical to the arguments made during the *Baker* case. Wisconsin argued that it retained exclusive authority to administer the Clean Water Act at Mole Lake because the state, not the tribe, possessed sovereignty over the waters of the reservation, based upon territorial sovereignty rooted in the public trust doctrine, the creation of the state on an equal footing with the original states, and the post-statehood creation of the Mole Lake Reservation.

Federal District Judge C. N. Clevert rejected the state's sovereignty claims and ruled instead in favor of EPA and Mole Lake's legal and territorial

interpretation of the Clean Water Act. He found that the EPA's and Mole Lake's claim that the tribe could regulate all waters "within the borders of an Indian reservation" was "reasonable and permissible." Despite the fact that non-Indians own no land on Mole Lake, the judge agreed with EPA's claim that the tribe possessed authority to regulate water resources within the reservation because non-member activities could have impacts on reservation water quality and cause substantial harm to human health and welfare.[72] Judge Clevert deferred to EPA's interpretation of the Clean Water Act and Mole Lake's "inherent regulatory" authority over reservation water resources. EPA, he stated, "is entitled to considerable deference in its interpretation of the Clean Water Act because it is charged with administering the Act." As might be expected, the state plans to appeal the decision to the Seventh Circuit Court of Appeals in Chicago.[73]

CONCLUSION

This paper has explored aspects of the changing political geography of Anishinaabe resource use and control in Wisconsin since the treaty-making period of the nineteenth century. It is a political geography that over time became increasingly restricted and narrowly defined as access to traditional territories was restricted by Wisconsin authorities. Until the second half of the nineteenth century the Anishinaabe freely moved about their traditional territory within the state of Wisconsin. This included both ceded lands and reservation lands set aside for their permanent occupation. By the turn of the century, however, the state began to use its police powers to restrict the harvesting activities of the Anishinaabe outside the boundaries of their reservations. The state used all means available in an attempt to uniformly apply its conservation laws throughout its territory. This uniform or equal application of conservation laws fits into the state's interpretation of its territory as a homogeneous political space; Anishinaabe reservations were not considered a distinct political space immune from state laws. Restricting Indian access to the natural resources of the ceded territory and attempting to impose state laws on Indians within the borders of their reservations became the norm throughout the twentieth century.

The attempts of the state to maintain and extend its territorial sovereignty were not passively accepted by the Wisconsin Anishinaabe. Tribal members continuously complained to government officials that they were being denied their treaty-defined and -protected political rights. Legal challenges, such as those waged by Lac du Flambeau attorney Thomas St. Germain, were made, but met little success. Later, with legal assistance from Wisconsin Judicare, the Anishinaabe were able to translate their long-held belief that they possessed treaty rights to hunt, fish, and gather both on and off their reservations, into legal victories with tangible results. In the 1970s tribal councils challenged state authority inside and outside reservation boundaries. Although *Baker* and *Bouchard* represent significant defeats in the Anishinaabe battle for extensive and more complete control over non-Indian activities on their reservations, the *Voigt* decision in 1983 represents a successful challenge to the state's

absolute control over lands and natural resources adjacent to and outside of their reservations in the ceded territory.

The last case study shows that Anishinaabe control over reservation space may be best accomplished by tribes applying for the power to administer federal environmental pollution control laws. The federal government and courts have supported tribes' authority to administer these laws and rules everywhere within the boundaries of the reservation. Mole Lake's case is unique because it was never allotted; thus non-Indians cannot and do not own land within the reservation. Nevertheless, treatment as a state under federal pollution statutes might be the best strategy for the Anishinaabe in their struggle to control reservation natural-resource use and development and to enhance the tribes' political, cultural, and economic sovereignty.

NOTES

1. A version of this paper was presented at Anishinaabeg of the Great Lakes Region: Symposium on History, Culture, and Contemporary Issues (Eau Claire: University of Wisconsin, 28 September–1 October 1999).

2. Peter Vandergeest and Nancy Lee Peluso, "Territorialization and State Power in Thailand," *Theory and Society* 24 (1995): 385–426; Robert D. Sack, *Human Territoriality: Its Theory and History* (Cambridge: Cambridge University Press, 1986); and Raymond L. Bryant, *The Political Ecology of Forestry in Burma, 1824–1994* (Honolulu: University of Hawaii Press, 1997).

3. I use the term *Anishinaabe* to refer the indigenous communities that are also called Ojibwe and Chippewa. There is a growing preference among members of these communities for the terms *Ojibwa* and *Anishinabe.* In Wisconsin, there are six Anishinaabe communities/reservations, each with its own form of government: St.Croix, Lac Courte Oreilles, Lac du Flambeau, Mole Lake, Bad River, and Red Cliff.

4. For a general discussion of Wisconsin's efforts to extend state criminal jurisdiction over Anishinaabe reservations from the 1870s to the 1930s, see Sidney L Haring, *Crow Dog's Case: American Indian Sovereignty, Tribal Law, and United States Law in the Nineteenth Century* (Cambridge: Cambridge University Press, 1994).

5. The best historical treatment of off-reservation Wisconsin Anishinaabe treaty rights is found in Ronald N Satz, "Chippewa Treaty Rights: The Reserved Rights of Wisconsin's Chippewa Indians in Historical Perspective," *Transactions, Wisconsin Academy of Sciences, Arts and Letters* 79 (1991): 1–251. For an examination of the spatial and territorial aspects of off-reservation Anishinaabe treaty rights, see Steven E. Silvern, "Nature, Territory and Identity in the Wisconsin Treaty Rights Controversy," *Ecumene* 2 (1995): 265–282; and id., "Scales of Justice: Law, American Indian Treaty Rights and the Political Construction of Scale," *Political Geography* 18 (August 1999): 639–668. There has been little published research on Anishinaabe on-reservation natural resource and territorial politics. For a limited discussion of on-reservation lumbering, see Patricia Loew, "Natives, Newspapers, and 'Fighting Bob': Wisconsin Chippewa in the 'Unprogressive Era,'" *Journalism History* 23 (Winter 1997–1998): 149–158. For a history of Winter Dam and its impact on the Lac Courte Oreilles Anishinaabe, see James Oberly, "Tribal Sovereignty and Natural Resources: The Lac Courte Oreilles Experience," in Mark Lindquist and Martin Zanger, eds., *Buried Roots*

and Indestructible Seeds: The Survival of American Indian Life in Story, History, and Spirit (Madison: University of Wisconsin Press, 1995).

6. Satz, "Chippewa Treaty Rights," 68–69; Charles Kappler, *Indian Treaties: 1778–1883* (Mattituck, NY: Amereon House, 1972 [1904]).

7. Patricia Shifferd, "A Study in Economic Change: The Chippewa of Northern Wisconsin: 1854–1900," *The Western Canadian Journal of Anthropology* 6 (1976): 16–41; Edmund Danziger, *The Chippewas of Lake Superior* (Norman: University of Oklahoma Press, 1979).

8. Satz, "Chippewa Treaty Rights," 73–78; Tim Pfaff, *Paths of the People: The Ojibwe in the Chippewa Valley* (Eau Claire: Chippewa Valley Museum Press, 1993), 42.

9. William B Leffingwell, *Hunting and Fishing Along The North-Western Line* (Chicago: Rand, McNally & Company, Printers, 1895), 2.

10. *The Lakes and Summer Resorts of the Northwest* (Chicago and North-Western Railway, Passenger Department, 1905).

11. Paul W Glad, *The History of Wisconsin,* vol. 5: War, A New Era and Depression, 1914–1940 (Madison: The State Historical Society of Wisconsin, 1990), 214.

12. C. M. Cheadle, *Northward Trails in Wisconsin* (Madison: Democrat Publishing Company, 1933), 8, 13.

13. Wisconsin Department of Natural Resources, *1979 Wisconsin Conservation Wardens Yearbook* (Madison: Wisconsin Department of Natural Resources, 1979), 30.

14. D. M. Browning, commissioner of Indian Affairs, to W. A. Mercer, acting Indian agent, La Pointe Agency, 25 June 1894 (Madison: State Historical Society of Wisconsin Archives, Series 644, Wisconsin Department of Justice Closed Case Files, Box 2, Folder 5).

15. W. H. Mylrea to G. H. McCloud, 26 June 1896 (Madison: State Historical Society of Wisconsin, Wisconsin Department of Justice Closed Case Files, Series 644, Box 2, Folder 5[36]).

16. *In Re Blackbird,* 109 Federal Reporter 145 (1901).

17. *State* v *Morrin,* 136 Wis. 556 (1908) (author's emphasis).

18. F. H. Abbott to T. S. Palmer, 23 December 1910 (Washington, DC: National Archives, Central Classified Files, 1907–1939, 85146-09-052 to 94846-14-053, RG 75).

19. H. W. Mackenzie to Paul D. Kelleter, 3 April 1931 (Madison: State Historical Society of Wisconsin, Wisconsin Conservation Department Subject Files, Series 271, Box 419, Folder 1).

20. H. W. Mackenzie to Paul D. Kelleter, 9 June 1932 (Madison: State Historical Society of Wisconsin, Wisconsin Conservation Department Subject Files, Series 271, Box 419, Folder 1).

21. Paul D Kelleter to Charles J. Rhoads, 17 June 1932 (Madison: State Historical Society of Wisconsin, Wisconsin Conservation Department Subject Files, Series 271, Box 419, Folder 1).

22. Kelleter to Rhoads, 17 June 1932.

23. Charles J Rhoads to Paul D. Kelleter, n.d. (Madison: State Historical Society of Wisconsin, Wisconsin Conservation Department Subject Files, Series 271, Box 419, Folder 1).

24. *State* v *Johnson,* 212 Wis. 309 (1933).

25. Defendants Brief, Amicus Curiae, *State of Wisconsin* v *Frank Dakota Johnson,* Wisconsin Supreme Court Cases and Briefs, Volume 1881, 9.

26. *State* v *Johnson*, 212 Wis. 311–313 (1933).

27. *US Statutes at Large* 67 (1953), 588–590. For a general discussion of Public Law 280 and state jurisdiction over Indian reservations, see Carole E. Goldberg, *Public Law 280: State Jurisdiction Over Reservation Indians* (Los Angeles: University of California, Los Angeles, 1975).

28. Walter J Zelinske to V. A. Skilling, memorandum, 17 September 1953 (Madison: State Historical Society of Wisconsin, Wisconsin Conservation Department Subject Files, Series 271, Box 419, Folder 2).

29. Joyce M Erdman, *Handbook on Wisconsin Indians* (Madison: State of Wisconsin, Governor's Commission on Human Rights with the Cooperation of the University of Wisconsin Extension, 1952), 60.

30. Harold Hettrick, telephone interview with author, 28 September 1994.

31. George Thompson, *Opinions of the Attorney General of the State of Wisconsin,* vol. 53 (Madison: State of Wisconsin, 1964), 222–231; "Thompson Says State Can Control Indians' Hunting," *Capital Times* (Madison, Wisconsin), 1 January 1965.

32. Charles F. Wilkinson, *To Feel the Summer in the Spring: Treaty Fishing Rights of the Wisconsin Chippewa* (Madison: University of Wisconsin Law School, 1990), 22. For the Wisconsin Conservation Department's reaction to Attorney General Thompson's opinion, see Emil Kaminski to Walter Zelinske, memorandum, 12 May 1966; Walter Zelinske to David W. Waggoner et al., memorandum, 18 May 1966; and David W. Waggoner to Walter Zelinske, memorandum, 26 May 1966 (Madison: State Historical Society of Wisconsin, Wisconsin Conservation Department Subject Files, Series 271, Box 420, Folder 6).

33. Court cases already discussed, such as *Blackbird, Morrin,* and *Johnson,* are evidence of earlier and extensive Anishinaabe resistance to state regulatory efforts. Other evidence exists that points to Anishinaabe efforts to question and resist state regulation and jurisdiction over on- and off-reservation harvesting activities. For examples, see Peter Lemieux to Hurbert Volk, 15 January 1924; E. B. Meritt to Peter Lemieux, 25 June 1924; File 4099–1924—La Pointe Subagency, 115, Central Classified Files, RG75, National Archives; letter from Bad River Indian Chiefs to Charles H. Burke, Robert M. LaFollette, and H. H. Peavy, 16 December 1925 (Madison: Wisconsin Department of Justice, *Lac Courte Oreilles et al.* v *Voigt et al.* Closed Case File, Box 11663, Historical Research-Voigt File); minutes of the Ojibwa General Council, 3–6 November 1931 (Madison: State Historical Society of Wisconsin, Ojibwa General Council Papers); Michael V. Wolf to John O. Moreland, 8 September 1950 (Madison: State Historical Society of Wisconsin, Wisconsin Conservation Department Subject Files, Series 271, Box 419, Folder 3); and "A Declaration of War," 10 November 1959 (Madison: State Historical Society of Wisconsin, Wisconsin Conservation Department Subject Files, Series 271, Box 419, Folder 4).

34. "Judicare Director Asks if State Can Enforce Rules on Indian Reservations," *Capital Times* (Madison, Wisconsin), 16 September 1966; "Judicare Seeks La Follette rule on Reservations," *Wisconsin State Journal,* 18 September 1966.

35. Bronson C. La Follette, *Opinions of the Attorney General of the State of Wisconsin,* vol. 56 (Madison, State of Wisconsin, 1967), 16, 18–19. Also see Bronson C. La Follette, Text of remarks of Attorney General Bronson C. La Follette before the Fifth Annual Indian Leadership Conference, Eau Claire, Wisconsin, 16 June 1967.

36. Emil Kaminski to William E. Chase, 1 November 1967 (Madison: State Historical Society of Wisconsin, Wisconsin Conservation Department Subject Files, Series 271, Box 421, Folder 1).

37. Walter Zelinske to David W. Waggoner et al., 6 November 1967 (Madison: State Historical Society of Wisconsin, Wisconsin Conservation Department Subject Files, Series 271, Box 421, Folder 1).

38. "Editors Column," *Great Lakes Indian Community Voice,* 8 May 1967; "Hunting and Fishing," *Great Lakes Indian Community Voice,* 5 June 1967.

39. R. Jaeger, "Indian Tribes Ask for Right to Fish," *Wisconsin State Journal,* 12 June 1968; and Complaint, *Great Lakes Inter-Tribal Council et al.* v *Lester Voigt et al.,* Case No. 68-C-95(M) (United States District Court, Western District of Wisconsin, 11 June 1968).

40. Clerk of the Court, Burnett County Circuit Court, telephone interview with author, 28 September 1994 and "Chippewa Indian Deer Hunt Test Case Delayed 30 Days", *Green Bay Press Gazette,* 25 September 1969.

41. "Chippewa Indians Challenge State Game, Fish Laws", *Capital Times,* 16 September 1969; "Indians Seek Arrest to Test Rights", *Capital Times,* 18 September 1969; and Great Lakes Inter-tribal Council, Meeting Minutes, 23 August 1969, Veda Stone American Indian Reference Collection, University of Wisconsin, Eau Claire Library, Box 9, Folder 5.

42. The first case is *State* v *Gurnoe et al.* The second is *State* v *Connors et al.* The citation to the consolidated case is *State* v *Gurnoe,* 53 Wis. 2d 390 (1971).

43. "Indians Get Split Decision on Hunting, Fishing," *Capital Times,* 27 August 1970.

44. Thomas A Lockyear, telephone interview with author, 18 August 1994; Joseph F. Preloznik, telephone interview with author, 27 September 1994.

45. Steven J. Caulum to Edward D. Main, 4 October 1973 (Madison: Wisconsin Department of Natural Resources Central Files, Indian Section, *GLITC* v *Voigt* file). The Wisconsin Attorney General's office refused to handle the case for DNR, which in turn employed the law firm of Aberg, Bell, Blake, and Metzner to handle its defense.

46. Steven J. Caulum to Robert B. McConnell, 25 March 1977 (Madison: Wisconsin Department of Justice Closed Case Files, *GLITC* v *Voigt* file).

47. Theodore L. Priebe to Edward D. Main, 16 November 1973 (Madison: Wisconsin Department of Natural Resources Central Files, Indian Section, 1973 File).

48. Information on the DNR's problems enforcing fish and game laws due to the checkerboard land ownership patterns on-reservation was provided by Harold Hettrick, telephone interview with author, 28 September 1994; and Robert B. McConnell, telephone interview with author, 28 September 1994.

49. Michael Lutz to Omar Stavlo, 5 January 1989 (Madison: Wisconsin Department of Natural Resources Central Files, Indian Section, 1989 File). In this letter, Lutz, a staff member of the DNR's legal section, told Stavlo, chief of law enforcement for the Kansas Department of Wildlife and Parks that, "As a general rule we do not enforce state hunting and fishing regulations within the boundaries of Indians reservations against tribal members."

50. *State of Wisconsin* v *Odric Baker et al.* 524 F.Supp. 726 (1981); *State of Wisconsin* v *Odric Baker et al.* 698 F.2d 1323 (1983); *Lac Courte Oreilles Band of Lake Superior*

Chippewa Indians et al. v *Lester Voigt et al.* reported sub. nom. *United States* v *Ben Ruby and sons et al.* 464 F. Supp. 1316 (1983).

51. *State of Wisconsin* v *David Mebane et al.* was commenced in the United States District Court for the Western District of Wisconsin but was later abandoned by the state because identical issues were being tested and eventually decided in *United States* v *Jerome Bouchard*, reported sub. nom. *United States* v *Ben Ruby and Sons et al.*, 464 F.Supp. 1316.

52. For a general discussion of the impacts of the *Voigt* decision and off-reservation treaty rights in Wisconsin, see Satz, "Chippewa Treaty Rights"; Steven E. Silvern, "Nature, Territory and Identity in the Wisconsin Treaty Rights Controversy," *Ecumene* 2 (1995): 265–282; and Rick Whaley and Walter Bresette, *Walleye Warriors: An Effective Alliance Against Racism and for the Earth* (Philadelphia: New Society Publishers, 1994). The *Voigt* decision was affirmed by the United States Supreme Court in *Minnesota et al.* v *Mille Lacs Band of Chippewa Indian et al.* 526 US 172 (1999).

53. For discussion of the *Gurnoe* decision see Steven E. Silvern, "Nature, Territory and Identity in the Wisconsin Treaty Rights Controversy," (Ph.D. diss., University of Wisconsin, Madison, 1995).

54. Michael J. Wolf to John O. Moreland, 8 September 1950 (Madison: State Historical Society of Wisconsin, Wisconsin Conservation Department Subject Files, Series 271, Box 419, Folder 3). "A Declaration of War," 10 November 1959 (Madison: State Historical Society of Wisconsin, Wisconsin Conservation Department Subject Files, Series 271, Box 419, Folder 4). The idea of closing off the reservations to non-Indians was not a new idea. Bad River members considered closing off the reservation to non-Indian sportsmen on reservation in the 1930s.

55. See "Indians Consider Barring Sportsmen," *The Milwaukee Journal*, 1 April 1973. This article is a report of a two-day conference held at Ashland, Wisconsin. The tribal chair from Red Cliff was quoted as saying, "There is growing sentiment in Indian communities throughout the state that it is to the Indians' best interest and that of future generations, if our lands are closed to non-Indian hunters and fishermen." The Wisconsin Anishinaabe were probably aware and inspired by the Anishinaabe at Leech Lake and at White Earth in Minnesota who similarly sought regulation on non-Indian hunting and fishing on-reservation.

56. "Indians Set Levies," *The Milwaukee Sentinel*, 25 April 1973.

57. "Indians Seek Way To Tax Tourists," *The Milwaukee Journal*, 10 April 1974.

58. Press Release, Lac Courte Oreilles Tribal Government, 29 March 1976 (Madison: State Historical Society of Wisconsin, Governor Patrick Lucey Papers Mss 785, Box 376, Indian Affairs, 1974–76).

59. *State of Wisconsin* v *Odric Baker et al.* 524 F. Supp. 733, 735.

60. "Tribes to Appeal Fishing Decision," *The Milwaukee Sentinel*, 1 December 1981.

61. *State of Wisconsin* v *Odric Baker et al.*, 698 F.2d 1334.

62. 463 US 1207 (1983).

63. Burt Wolf to Patrick Lucey, 20 December 1976, and 30 December 1976, (Madison: State Historical Society of Wisconsin, Governor Patrick Lucey papers, Mss 785, Box 376, Indian Affairs, 1974–1976 File); and "Whites Lobby For Rights On Indian Lands," *Green Bay Press Gazette*, 20 February 1977.

64. See Fay G Cohen. *Treaties on Trial: The Continuing Controversy over Northwest Indian Fishing Rights* (Seattle: University of Washington Press, 1986).

65. *Citizens League for Civil Rights, Inc* v *Odric Baker et al.* 464 F.Supp. 1390–1392.

66. See *United States* v *Bouchard,* 464 F.Supp. 1333–4 (1978). This particular federal law was not part of the *Baker* case because the tribe was arguing only for control of navigable waterways while the law's language explicitly mentions lands only.

67. "Indians, Whites Dispute Rights," *The Milwaukee Journal,* 22 June 1976.

68. Complaint, *State of Wisconsin* v *David C. Mebane et al.*, 6. Wisconsin Department of Justice, executive Staff Working Files, 1970–1986, Box 33, State Historical Society of Wisconsin.

69. *United States* v *Bouchard,* 464 F. Supp. 1338, 1342 (1978).

70. Beginning in 1994, EPA would modify its TAS language, using treatment "in a manner similar to a state."

71. J. Royster, "Environmental Protection and Native American Rights: Controlling Land Use Through Environmental Regulation," *The Kansas Journal of Law and Public Policy* 1 (Summer 1991): 94.

72. *Montana* v *United States* 450 US 544 (1981).

73. Unpublished Order, *State of Wisconsin* v *U.S. Environmental Protection Agency and Carol Browner and Sokaogon Chippewa Community,* 96-C-90, issued 28 April 1999.