

When angling lingo gets wacky, and heavier fish topics

By Joe Fellegy, Outdoor News, July 17, 2015

Commentary Excerpt

Meanwhile, some high-impact issues (too academic and boring for some folks) escape necessary hard questions. For example, behind ongoing pipeline politics, the Ogechie Project at Rum River headwaters, and recent federal court-hearings for tribal fish poachers charged in Operation Squarehook lurk big challenges to state management authority and citizen rights to Minnesota resources:

Recall the fish-in by Leech Lake and White Earth Chippewa gillnetters at Lake Bemidji before the 2010 Minnesota fishing opener. Their goal: get arrested for violating state law and spawn a major court-case claiming "treaty rights" across the 1855 Treaty ceded territory, a huge swath from the north end of Lake Mille Lacs and the Brainerd lakes area to the Canadian border at one point, and reaching the Dakota border at another. The DNR didn't bite. But efforts to gain tribal harvest and co management rights in that 1855 territory, and possibly across all of northern Minnesota, are-very much alive today.

Winona LaDuke strongly supports this would-be dramatic power grab. LaDuke—White Earth-Chippewa activist, Ralph Nader's running mate (Green Party Ticket) in the 1996 and 2000 presidential elections, and Honor the Earth anti-pipeline leader—emphasized her backing of 1855 "treaty rights" at a Brainerd meeting I attended last fall, and also at the June 5 seven-hour anti-pipeline extravaganza hosted by Mile Lacs Band government at East Lake Community Center near McGregor. As usual, behind cushy talk about fish, ducks, wild rice, water quality, culture, heritage and tradition, tribal governments and their -attorneys are seeking more tribal -harvest rights and management authority.

Note the presence of law professor Peter Erlinder at that June 5 pipeline hearing, and his ongoing advocacy for expanded tribal "treaty rights" harvests, and resource management. Erlinder made headlines in 2010 via his involvement in legal-political issues regarding Rwandan genocide. Closer to home, a decade, after the U. S. Supreme Court's 5-4 anti-Minnesota ruling in the Mille Lacs 1837 Treaty case, Erlinder produced a complex legal tome: "State of Minnesota v. Mile Lacs Band of Chippewa Indians, Ten Years On." (Legal Studies Research Paper No. 2011-02, William Mitchell College of Law.) Erlinder's new 2015 updated version draws from more-recent law and court opinions: *Minnesota v Mile Lacs Band of Chippewa 19th Century U.S. Treaty-Guaranteed Usufructuary Property Rights*, the Foundation for 21st Century Indigenous Sovereignty." (Law and Inequality, a Journal of Theory and Practice, Vol. XXXIII, Winter 2015, No. 1, University of Minnesota Law School.)

Erlinder references U. S. District Judge John Tunheim's dismissal of fish-poaching charges against certain Leech Lake, Red Lake, and White Earth Chippewa members.

Tunheim ruled an individual's 1837 treaty rights trump state, tribal, and federal law. Down-the-road impacts? Individual enrollees from outside the 12-county 1837 Minnesota ceded territory claiming new, "rights" at Mille Lacs and across hundreds of lakes, umpteen miles of streams, and millions of land-acres?

Erlinder's bottom-line argument is that treaties (including some rarely cited ones) and evolving law support much-expanded tribal harvest rights and tribal management authority across all of northern Minnesota—about everywhere north of Interstate 94. Given the powerful legal and political forces embracing such arguments, with potentially giant costs and negatives for Minnesota, what's state government's response plan?

And then there's the Ogechie Project with dam work at the headwaters of Rum River. Billed as a win-win for wild rice, ducks, Mille Lacs Ojibwe, and the State of Minnesota, the unreported biggie is whether the Lake Mille Lacs outlet and upper Rum are in an Indian reservation, legal Indian Country. At its quarterly meeting last March, the Minnesota Indian Affairs Council passed a resolution chiding state government for not using Mille Lacs Band government's version-of "Mille Lacs Indian Reservation," the long-off-the-maps- (state, federal, and tribal) original Mille Lacs reservation.

Tons of law here, with implications for state, county, and local governments, plus watershed districts and citizens, along the Rum from Lake Mille Lacs to Anoka. Hey, which "Mille Lacs Indian Reservation" is used by Minnesota's U.S. senators and House members—the one on Minnesota highway maps or one 15 times larger? Future Minnesota Department of Transportation "official" state maps? How, will Dayton Unbound respond, if at all? Attorney General Lori Swanson?

Given the enormous power of the modern tribal corporate-legal-political machine from St Paul to Washington-D.C., does Minnesota government have an Indian policy?