

M I N U T E S

Subcommittee on Wild Rice and Natural Resource Management  
On Minnesota Indian Reservations

November 17, 1972

The third interim meeting of the Natural Resources Committee Subcommittee on Wild Rice and Natural Resource Management On Minnesota Indian Reservations was called to order by the Chairman, Representative James Ulland, at 10:00 A.M. on Friday, November 17, 1972 in Room 15 of the State Capitol.

The following members were present:

Representative Ulland, Chairman  
Graba  
Judge

The following members were absent:

Representative DeGroat  
Schumann

REPRESENTATIVE ULLAND: This subcommittee was asked by the Chairman of the House Natural Resources Committee, Representative Becklin, to explore the problems and suggest solutions to the wild rice situation, both commercial and natural wild rice; and secondly, to monitor the department's negotiations with the Minnesota Chippewa Tribe and the bands thereof on the Treaties of 1854 and 1855. The purpose of this meeting is to ask the department to review the rice season just concluded and to cite problems that came up this last harvesting season, to provide a general price comparison of this season and last season, and possibly make some future comments, and to comment if legislative action is needed in this area. Secondly, we will go to the department once again for an initial presentation on the current status of the treaty negotiations. The legislative session is soon upon us, and I would expect that this would be valuable information for the Legislature.

At the end of the table are the minutes from the July 5, 1972 meeting of this subcommittee which was held in Red Lake in the Tribal Chambers. The minutes have not been edited except for the fact that one or two technical presentations on entomology and wild rice have not been included at the end of this report. All testimony of the department and all questions by the committee members of the treaties, and not the technical nature of the meeting, have been left verbatim in the report. These are available to you at the end of the table.

Of some distress is the fact that Commissioner Herbst indicated to us in a letter dated November 14th and received yesterday, that he could not be here. I have felt that the matters discussed today would be of sufficient import that two weeks notice would have

allowed him to rearrange his schedule to be here. The Commissioner was invited to attend and asked to testify prior to November 3rd, and when a conflict came up with other people who wished to testify, and whose testimony was essential, the meeting was moved from November 13th to November 17th. The Commissioner had that notification on November 3rd, two weeks prior to our meeting. A copy of his letter to Mr. Helland is contained in the member's folders, and it says in effect that he sent his assistant, Mr. Alexander, who was going to come anyway.

Mr. Krueger, why don't you give us the information on last season's wild rice harvest and those factors included within that harvest which you would think would be of interest to the committee. The committee members will respond with questions at any time to either clarify or expand the scope of your testimony.

MR. PAUL KRUEGER: [Wild Rice Supervisor.] I don't know just how far back the Chairman wants me to go in reference to this last rice season, and especially in reference to our meetings with the Indian Committee, but I will give you a resume of what actually did happen. I was appointed as Wild Rice Project Supervisor early last year, and in late July I began to realize with Judge Devitt's decision that there was going to be some problems within the White Earth Reservation boundaries, or the Leech Lake Reservation boundaries. Now as I told the Indian people when I met with them, in Judge Devitt's decision, the right to harvest wild rice was not given exclusively to the Indian people within the Leech Lake Reservation boundaries; that the white residents who lived within the boundaries of the reservation would have the right to harvest wild rice within it during the season. If the Indians had had the exclusive right, then we would have left the whole thing entirely to the Indians -- the whole management of the wild rice season. But the fact that there was whites involved, involved the Resource Department. Now knowing that we were going to have problems, and I could foresee problems, I asked for a meeting with Simon Howard and his precinct chairmen in the latter part of July, and we discussed the coming wild rice season. I wasn't sent there by the department. I took this upon myself when I was appointed the Wild Rice Project Supervisor, knowing that these problems would come up. We discussed the problems and didn't come to any definite conclusions. At that time there was some question in my mind as to the boundaries of the Leech Lake Reservation, of which I informed you when we met at Red Lake. The Indians produced a map at this meeting, of which they felt were the boundaries of the Reservation, and I had had the opportunity to survey a map in the Director of Enforcement and Field Service's office that did not coincide with the map that the Indians were using. I told them that the Boy River, Mud Lake, the beds in Leech in Boy Bay, and the big bed off Blackduck Point could be problem areas, and certainly being that the year was progressing and the season was getting closer, we would have to solve the questions that might come up over the boundaries of the reservation. So I went to the meeting in Red Lake and met with this committee.

Following that, in the middle of August, we again met with the Indian Committee with their attorneys and Don Fultz, the Director of Enforcement and Field Service, and the state's attorneys, at the BIA office in Minneapolis, and we went over the boundaries and the fact that there could be problems in these areas which we had discussed. Now everything was done up and above board. Everything was laid on the table. A good discussion was held, and we had recommended to the Indian Committee that they choose a wild rice committee who would set the opening date -- the days and hours of harvest within the boundaries of the Leech Lake Reservation, and to include the boundary waters of the Boy River and its contiguous waters, back waters, Mud and Goose Lakes, the two beds in Boy Bay, and the big bed off Blackduck Point.

Now, leaving that meeting, we agreed, the state agreed, to serve and work with this committee. We agreed to publish their schedule of their wild rice harvest along with our own, the statewide harvest, over all the news media. We agreed to furnish them with posters with which to post the wild rice beds within the boundaries of the Leech Lake Reservation, and then our officers were to cooperate with this Indian Committee. I met again with them about August 29th and I informed them that the season wasn't far away. I had been up in the Bowstring area within the boundaries of the Leech Lake Reservation and the Bigfork River and Squaw Lake -- the rice was beginning to fall at that time and the season was not far away and we should get our schedules in order and be able to put them out over the air so that we didn't lose the crop in that particular area. In that particular area I am referring to most of the good rice is within the boundaries of the Leech Lake Reservation and it was the best rice crop that we had in the state of Minnesota this last fall. I met with the committee, and their attorney, Mr. Tupper, was there, and we came up with an agreement that they would furnish me the schedule and I would announce it over the news media at whatever time. I told them that they could set the number of hours they wanted and the days of harvest -- it was immaterial to us. The only thing, if they wanted me to publish it, I had to have time to get it on with the news media, and I would appreciate it if they would give me at least a couple of days because of the ramifications of trying to get this in the press. I talked to Dave Munnell on the telephone and I set this schedule up for them. I read it back to him after I had typed it out, and asked if he wanted any changes in it or if he approved of it as it was, and he so advised me that he approved it as I had written it and that's the way he wanted me to put it on the air. In the meantime, I felt that having one area open and not the state in itself, all the rest of the wild rice, could create a big problem and we'd have an influx of harvesters up in that area, so I opened the whole state of Minnesota for the same opening date that the Indians had picked.

REPRESENTATIVE ULLAND: You said you expected an influx of pickers. You expected an influx of non Indian pickers within the reservation?

MR. KRUEGER: Right. And the reason for it would be that that would be the only rice that would be open to the harvesting if we opened just the Leech Lake Reservation. Under their schedule it would create

an influx of harvesters from the outside who would have no business being there.

REPRESENTATIVE ULLAND: So what you expected, Mr. Krueger, was a substantial violation of Minnesota Statutes?

MR. KRUEGER: Right. This was strictly a guess. I just felt that this might happen, and knowing this, and I did have within the state and outside of the Leech Lake Reservation boundaries, a good deal of rice that was ripe at the time and should be harvested, it was no problem. In fact, it was good management to open it at the same time and I have to commend the Indian Committee on their choice of the opening date. It was a tremendous job done.

Now after the season was open, I did have some comments from some of the Indian people and from Simon Howard that there was some violations within the reservation of whites who were not entitled to be in there who were not prosecuted, which is possible. I won't deny this -- this could be possible. But our officers were instructed to enforce the regulation to the hilt that any non resident white who was there harvesting within the reservation boundaries should be prosecuted to the fullest extent of the law. This was the order from our director, and from the reports I got and the fact that I was out there myself, I know that the officers did work and worked hard. I would also like to say that before the season was announced by the schedule, I had any number of complaints from Indian people of Indian people harvesting within the Leech Lake Reservation, and they wanted me to go out and stop them from harvesting rice, especially on the Bowstring Chain, over which we had no jurisdiction. I told Simon Howard that there was nothing we could do about it.

REPRESENTATIVE ULLAND: What you are saying is because the department has not concluded negotiations, no enforcement has come about in the agreement.

MR. KRUEGER: This is right.

REPRESENTATIVE ULLAND: In other words, you can't just tell the committee that there was nothing the department could do about it. In other words, agreement hadn't been reached, and that is the reason.

MR. KRUEGER: No. This is not true. Judge Devitt's decision says that we should not enforce the law. There was no agreement made. Judge Devitt's decision said that we as officers were not to prosecute the Indian and we were to leave him alone within the Leech Lake Reservation, that he had this right, and we as officers lived up to Judge Devitt's decision. This is what we were following, not any possible agreement that might be made in the future. We were living up to that, and we had a registered letter that came from the office with a copy of Judge Devitt's decision and the attention was called that the enforcement officers were being told by Judge Devitt that we were not to enforce the law within the reservation in regards to the Indian and his harvesting wild rice

or his hunting or fishing rights, and so this is what we were doing.

REPRESENTATIVE ULLAND: The committee understands that, Mr. Krueger. The point is two fold -- first off, if there were a settlement, either there would be some type of enforcement settlement or the Minnesota Chippewa Tribe would have the funds to hire their own enforcement officers. Neither of these two points having been resolved then, there was no enforcement.

MR. KRUEGER: Right.

REPRESENTATIVE ULLAND: At least you are saying there was none. I am not sure.....

MR. KRUEGER: There was enforcement as far as the non resident whites who were not entitled to be within the reservation, yes.

REPRESENTATIVE ULLAND: To your knowledge, did the Ricing Committee provide for an Enforcement Subcommittee or something for the band?

MR. KRUEGER: I don't know. I can't answer that. The only thing I can say is that at the meeting we were discussing enforcement, and the Indian Committee so advised me that they did not have the finances to hire some enforcement people, some Indian people, within the reservation, and that they would like us to assist them and at the time we were not eligible to help them. Si Howard called me in reference to a picker up on a small rice bed north of Ball Club Lake which is being operated by Indian people in public waters within the reservation, and we could not help them. There was restrictions on the help that we could give them. When I left this meeting we were discussing the law enforcement by their people and I was left with the impression that their precinct chairmen were going to be given the authority to enforce their regulations over their Indian people. Whether they gave them that authority later, I don't know, but I do know that the Indian Committee worked hard and worked long hours and they did a tremendous job of posting their beds. They did a tremendous job among their people. There was some violations, but they were limited. The possible arguments between the whites and the Indians that we anticipated did not come about and the reason for it was that the Indian Committee did avoid any possible confrontation with the whites that they possibly could.

Now in reference to the season, I would say that the season as far as the harvesting of wild rice last year -- the figures are not in on the amount of wild rice harvested -- they will not be available until after the first of the year. The number of harvesting licenses are not in, so they will not be available until after the first of the year. I would safely say that we have less harvesters this year and we have harvested more rice and of a better quality this year than we have for many years, and this was due, I would say, to the fact that we maybe had less harvesters. They went about it more nonchalantly. They picked in the ripe rice, stayed out of the green. The Indians within the Leech Lake and the Bowstring area had good rice to pick and they did a good job of picking it. I sent out questionnaires to 37 buyers and producers, and their reports coming

back to me indicate that this was some of the finest rice that they had ever bought from our public waters. I can safely say that we had a successful season with not too much arguments. Possibly there are some gripes among the Indian people of whites sneaking in here and there that I am not acquainted with, or wasn't reported to me. I haven't had one adverse comment from the Indian people, from the white harvesters, the processors, or the buyers on this past season. Everybody seemed to be satisfied with it and were happy with it. We have nothing to do with the prices. We are interested in it due to the fact that it is a natural resource and economically it is valuable to our state. The price paid for rice, according to my survey, ranged from 40¢ to 70¢ and I would venture to say that maybe 80% to 85% of the rice was bought in the neighborhood of 50¢ a lb., green. Now this compares to other years where rice was bought at \$1.00, \$1.50 a lb., but after meeting with many of the harvesters, and even the Indian people, the fact that they had less harvesters and they had better rice to pick, and they picked more of it, the only complaint they had was that they feel that we should do away with some of the rest days and give them more hours of picking because there were less pickers. We are giving some thought to this now. They made more money at 50¢ a lb. than they did at \$1.50 because more rice was available to them. This may not be true in every instance. Maybe we'll hear a different side.

As far as the Fond du Lac Reservation, I set up a committee for them of their choice, and I am sorry to say that they had a heavy rain and wind that destroyed their crop for them so they didn't have too successful of a season in that particular area. This same thing applied to the five counties across the bottom of the state in the rice area, which would include Mille Lacs, Morrison, Todd, Crow Wing, Aitkin, and over in the Fond du Lac, Carlton County. We lost those due to all the heavy rains that went through there. The crop was poor. We didn't have a bumper crop of rice to work with, and yet our production this year was way up from last year, and the fact that the good Lord did bless us with some ideal weather during the ricing season had a lot to do with the amount of rice that we harvested. I made a number of trips to meet with the Indian people over this. We did have some problems over their licenses that were solved without any difficulty. They were very cooperative with me. I can only say that I was gratified that we could meet and come up with regulations to their satisfaction, and they felt that the regulations set up last year were only for that year because there was going to be other meetings and boundaries would be defined and there would be differences in the coming years; but this was done, and they went along with it for just last year, for this 1972 season, knowing that possibly there will be some changes in it next year. I personally felt that we had a very good season. Like I say, I've had no complaints from anyone and I sincerely hope that they have had as good a season as I felt they had.

REPRESENTATIVE JUDGE: You mentioned the difference in the department maps and the Indian maps. What was the substantial difference in those maps?

MR. KRUEGER: Well of course this is within the legal end of it. I

am really not qualified to say. The only thing I can say is that the word contiguous waters -- for instance in Judge Devitt's decision he refers to the Mississippi River, the boundary being the main channel. But on the Boy River it's not defined as the main channel. All it says is the Boy River. The Boy River, if you are not familiar with it, has big backwaters. It floods great big areas off to the east side of the Boy River that the whites and the Indians have harvested for years together, and these backwaters are east of the Boy River itself, so the question arose, is this within the boundaries or is it not? The channel running through Mud Lake and Goose Lake, Goose Lake without a doubt is on the outside of the reservation, but the state's contention is that the new channel running from the west side of Mud Lake across to the outlet is the boundary, and the Indian people contend that the old riverbed should be the boundary line. We have the same thing applying, but not with near as much difficulty up on Rice Lake and Squaw Lake up in the Bowstring Chain where we have a pretty good idea -- that is, over the years we have always known where this boundary was and this was posted. Pimushe Lake was another example. The contiguous waters, the lines within Leech Lake itself are debatable and the attorneys are working on this now, so I really can't answer your question definitely sir. I am sorry.

REPRESENTATIVE GRABA: Do you have any idea how many non resident whites were arrested for ricing on Leech Lake?

MR. KRUEGER: Off-hand I couldn't give that to you, sir.

REPRESENTATIVE GRABA: There were some?

MR. KRUEGER: There were some, yes. And there was some question of Indians harvesting on the outside of the reservation.

MR. JOSEPH ALEXANDER: [Assistant Commissioner of Natural Resources.] Mr. Chairman, there were six whites arrested on the Leech Lake Reservation.

REPRESENTATIVE ULLAND: Even though I indicated that the last subcommittee meeting was July 5th, Representative Graba and I did fly over on September 1st, over the ricing area, and we had an opportunity to fly over Leech Lake, and at that time we did not see either any non Indians ricing or any Conservation officers, except the one we were with.

MR. KRUEGER: Let me clarify this. I am not saying that it was strictly the Indian people that were harvesting within the boundaries of the reservation out of season. There could have been whites. When you fly in an airplane and you see two individuals in a canoe, and this could have just as well been whites, but there was ricing before the Indian season. This is what I was trying to get at. I did have some complaints from the Indians themselves and their committeemen that there was some Indian people that were harvesting ahead of time and that they were doing their best to stop it so it was no great problem. I only mentioned it because we had violations of the whites and we had violations of the Indians, and it was a pretty uniform thing. There has been some trouble, but very little.



REPRESENTATIVE ULLAND: Mr. Krueger, other than the resolving of the treaty negotiations, do you see any legislation that is necessary, or any changes in legislation that are necessary for the state to properly manage that part of this natural resource for which we have responsibility?

MR. KRUEGER: The only thing that I could say is if it remains as it is, I would only hope that by the time we have a wild rice season next year that the boundary lines are properly defined, and that the Indian people will have the funds available to have law enforcement officers, whether they are state officers or they are strictly Indian officers; and that they have a system of cards to properly identify who is an Indian and who is not. If these could be resolved, I am sure that I can't foresee any problems any more than we had this year, and maybe less; and as far as their capabilities of managing their wild rice, there is not doubt in my mind that they are capable. They proved that this year.

REPRESENTATIVE ULLAND: We haven't set up an agenda of speakers from either the Leech Lake Band or from the other bands, but if Mr. Munnell or Mr. Howard would like to elaborate on problems they saw or ways in which it was difficult for them because of pricing structure or because of difficulty in cooperation or difficulty in services, or if there are any matters concerning wild rice, we will try to resolve this problem first. If there are any matters concerning wild rice that any members of our Indian community would like to speak to, we'd be happy to hear from them.

MR. DAVID MUNNELL: [Chairman of the Leech Lake Reservation.] I'll elaborate on what Mr. Krueger said, that we met with him about five times and we set up our rules and regulations for our reservation. We had a thirty man ricing committee. We had people from all our precincts and we had five boats and four canoes out patrolling in the evenings. We had a night patrol set up. We couldn't cover all the lakes and rivers due to the fact that we've got a lot of rice on our reservation. We held down the violators to a minimum, although we've got a group on the reservation that says that they weren't going to pay any attention to any rules and regulations, it was just a minority. I think our committee did a real fine job in getting our lakes ready. What I mean by ready is they picked the appropriate times to harvest. We had a few difficulties before ricing due to the fact that before we set up our committee, or rather before we had them working right, we did have some violators out, both non Indians and Indians. We know this. And we held it down to the minimum, once our season got started, because we had people out there patrolling at all times. I'll say that we had excellent cooperation from Mr. Krueger.

I'll elaborate a little further on law enforcement. Although we had problems on some of our boundary lakes that we tried to settle before the season started, I think we brought out some of the places that we expected trouble from. Some of our trouble spots. And also that we knew that people would point the finger at us in certain instances, and these are the areas that we are going to have to iron out this coming fall, especially these boundary waters. If it isn't ironed out this coming fall, we can always expect trouble in



those areas. Another one is that I think we might have to elaborate a little further as we go along this winter is law enforcement on the reservation, talking about non Indians and Indians both, and we know on the reservation that even right now, right today, law enforcement seems to be looking the other way on violations. We've got two men out steady right now available to us practically every night out patrolling and we catch complaints and send these people out. We're finding more non Indian violators out there in the field right today. The same with our netting. We're worried about netting, especially on Leech Lake. We know some of our Indian people haven't got the equipment like some people. You've got waves out there. The water gets pretty rough. The Indian people haven't got the equipment to be out there. Sure they have little boats and canoes and stuff and a few nets. We're worried about the people that come in there that have the equipment -- the pickups and the launches and the big boats coming in. Not with just one or two nets. We're talking about people that come with 6, 8, and 11 nets -- this has us worried. I think that I saw a piece in the paper yesterday saying that we're netting real heavy, which isn't so. We have just got a certain element of our Indian people that do net. We've got those people down. We've met with them and they have fishing permits from the reservation committee. Any time you see one Indian net out on Leech Lake, there's at least 10 to 11 non Indian nets out, and I think we're getting the blame for 99% of the netting, which isn't fair. We know something has to be done in that direction. I have talked to old timers and I know this personally myself. I have netted in the past. Not within the last three or four years, but in the past I have netted to help my grandfather and my mother when they made their living netting, and I know on Leech Lake even back then, fifteen years ago or twenty years ago, or ten years ago, that we were always outnumbered netting, but we always caught the blame for every game fish that was found on shore, or fish that was steaked out. Surely I think a percentage of this was done by us, but I say the majority of the netting is done by non Indians right today, and I think law enforcement there needs some overhauling, especially on the Leech Lake Reservation, because it seems to us since we won the decision, people are looking the other way. There's more shiners out. That's another field that we are getting blamed for -- that Indians are out there killing deer. We have violators and we know the ones that are doing it to us, but also we're getting reports that there's people out there nearly every night in the farming country shooting deer. Sometimes we won't score all the time, but any time you see a shiner out there, usually we get the credit for it. That's some of the points I want you people to think over when you make your decision. Thank you.

REPRESENTATIVE ULLAND: Is there any further comment from the Indian community, just limiting ourself to wild rice?

MR. GEORGE CARDINAL: I am interested in Indian rights, primarily because I have seen some confusion in Judge Devitt's decision. I have analyzed most of the major cases that have come up on Chippewa rights, Jondreau in Michigan, and Gurnoe with Red Cliff and Bad River Bands in Wisconsin, and the Leech Lake case here; and I have approached some of the Indian community in this state with the

question, but I haven't had too much results, perhaps, in projecting myself to them. I don't know if I am interjecting in this committee hearing anything that shouldn't be here, but I do feel that if we are considering Chippewa Indian rights or ricing, which is tribal property, that we have to consider whether the question has really been answered by Devitt's decision, and what I am trying to say is that from my study of the works of Kapler and from the various legal pamphlets on the Indian law and the major cases themselves going back to 1800 -- State vs. Cloud, Bush, Selkirk, all of them. Primarily what they have ignored in all of the pamphlets and all of the court decisions, including Devitt, is that Indian rights are based on a communal rights concept. In other words, whatever title an Indian has in tribal property, the property belongs to the tribe, and as an individual he shares communally in it, indivisibly and without any one Indian having more rights than the other. This is based on federal guidelines that have been established in various cases.

Then what I have also found is that perhaps in State vs. Gurnoe that came out in 1971, they came closest to defining what Chippewa rights really are, and they quoted a case, I think it was Hilton from Texas, which said that it is the meaning of the treaty or the intent of the parties at the time of the treaty that holds. And if that would hold then, the artificial divisions that have been projected to the Chippewa Tribe, the aboriginal tribe -- at one time this tribe shared in a communal hunting ground that now covers across four states, even part of North Dakota, from the Chockly River in Michigan to the head of the Salt River in North Dakota, bounded by the Canadian border, north, and a parallel running northwest of Stevens Point, Wisconsin through the state into North Dakota, so that if we come back to the contention that a treaty or the intent of the parties at the time would hold, then these communal rights the Chippewa held at that time are apart from any real estate, so that when we find artificial divisions in the tribe created both by treaties and by the Wheeler Howard Act, the language within the Wheeler Howard Act itself would nullify these divisions. I think it's Section 15 of the Wheeler Howard Act that says, "Nothing in this act is meant to impune or impair or prejudice any suit or trial of the tribe in this United States." This would nullify all of these artificial divisions created by the Wheeler Howard Act. For instance, we have here a Wheeler Howard tribal identity that went into court -- the Minnesota Chippewa Tribe. In my study of Kapler, some 370 treaties ratified with some 270 tribes, I have yet to find one treaty that has been made by a Minnesota Chippewa Tribe -- that's an illegal identity. They should have quoted themselves in the proper identity which is the Chippewa of Lake Superior and the Mississippi. This is our aboriginal identity. Then we find that if it is a communal right; if it belongs to the Chippewa Tribe and we abrogate the language of the Wheeler Howard Act, such rights then do not belong to the state identified tribes, but they belong to the aboriginal within the aboriginal context. In other words, we break it down to two different meanings of treaties. We have treaty readings under what I call a real property context, where the divisions would hold in cases of annuity or questions where perhaps they ask for more money that they haven't

received in the past. That would be one reading. That would be on real property issues only. The second reading then of treaties would be under the communal rights aspect which would foreclose any attempt by Wheeler Howard identity bands or tribes, such as we've had; Jondreau in Michigan going into court on his own with a Wheeler Howard tribal identity which caused mass confusion in Michigan at that time; and we had Red Cliff and Bad River in court in the State vs. Gurnoe, trying to establish their rights under a Wheeler Howard identity tribal thing which were aboriginal bands -- merely integral parts of a big tribe -- the Chippewa of Lake Superior and Mississippi. The Wheeler Howard Act has now imbued to these bands a tribal identity that they are erroneously using in court to retrieve their rights. We shouldn't have three cases separating. This is a communal right held by these tribes.

Then, if we understand that, we can see then that Indian rights arise in three different geographical spheres. We have rights on the reservation for the various bands who are established on these reservations, and their rights therein would arise as an automatic incidence to the erection of that reservation -- when that reservation was established, and that's how federal court reads them. It's an automatic incidence of the rights within that reservation, and they are exclusives. They were exclusives in their date. The Red Lake Band is an example of it, and Devitt has decided that indeed the Indians had aboriginal rights. That was the basis of part of his decision. Then we say that if the Indian had the aboriginal right as the courts decreed, then the commission of that right arises also. If that right arose as an exclusive right within a reservation, then it holds today. You can't separate the condition of the right from the right itself. If the Nelson Act did not abrogate Indian rights, then it did not abrogate the condition of it itself.

The second question then of Indian rights would be on the ceded land on the ceded land of the Chippewa Tribe, and how you would arrive at what had been in its date the total aboriginal's land within which they exercised this communal right. You would not take this one treaty or three treaties like the bands have been doing in Jondreau and Gurnoe and Leech Lake; the rights then belong communally from one spectrum of the tribe to the other, but to the individual. The individual then shares indivisibly in that right on ceded lands. How you would arrive at what area he has this communal right in, you would then take all of the treaties that the aboriginal Chippewa Tribe made with a different reading now, not as real property reading or under the real property contention, but under the communal rights prospect, so you would reverse the process. You wouldn't have bands of Indians going into court with just particular treaties that cite their real estate cessions, you would take one Indian into court as a member of the Chippewa Lake Superior Mississippi and at his disposal would be all fourteen treaties plus the Nelson Act and any other congressional Act that directed his rights, and you would have this aboriginal ceded hunting ground across four states in which as a communal property and in common with every other band or reservation, regardless of his state identity or his Wheeler Howard tribal affiliation now, he would share communally in the use of that ceded land.

Then we have the third geographical position. This question has never been litigated anywhere. Now the ceded lands, questions on reservations or ceded lands have very definite federal guidelines to go by, and Devitt followed these guidelines. But now we come to our reciprocal right. The question has often been asked, does a tribe, not a Wheeler Howard Tribe, I am talking about the aboriginal tribe like the Sioux, -- do the Sioux have the legal right to allow another person or another tribe the right to the use of his, or to exercise the same rights that he holds? We say yes, under treaty. Under treaty there is a reciprocal right established. Now the 1825 Treaty of Prairie du Chien was the first treaty, not only for the Chippewa, but for many of the other tribes. I think particularly for the Sioux it was their first treaty too, and you'll see this Treaty of Prairie du Chien when you find it in Kapler. It will be sometimes under the Sioux name, under the Chippewa, because it is within their series, but more importantly for the Chippewa it is the first treaty of the series -- the 1825 Treaty. And in Article XIII of that Treaty it calls for a reciprocal right to hunt on the lands of one another. So we have an aboriginal communal right now erected by treaty, not only amongst the bands that make up the full context of the Chippewa Tribe, but we also have a communal right between other tribes -- the Chippewa, the Sioux the Sauk and Fox, the Aukwa, the Menominee, the Potawatomi, the Ottawa and the Chippewa of the Illinois. These are all of the Indians who were native to this area at the time and who shared in this communal right of using a twelve state area. So if you are going to consider legislation involving Indian rights or particularly ricing rights, these questions are being litigated. We have one case now, Carol White. She was arrested in 1970 for ricing without a valid license [Minn. 84.151 or 85.151] in Aitkin County, and the state held her case in abeyance until April of this year, and she was remanded to the court. We erected a defense for her based upon her aboriginal communal rights to have access to the communal property as a tribal right within the four state area that would have been her aboriginal hunting ground. This has been processed through the municipal county court and they found her guilty therein, primarily because of a misreading of the treaty. Now he read the treaty under the real property context. Any language in a treaty dealing with such as he did where it lets go any of the rights in the area or in any other, that's explicit language detailing only ceded condition of the real estate. But as hunting and fishing rights do not go with the real estate, that would be a separate question. The only way that an Indian tribe or band can relinquish hunting rights is by explicit language within the treaty. It has to be explicit. The Supreme Court has determined that these rights shall not be taken by implication.

The Menominee started out with Sanepaw in the Menominee case so that when a treaty remains silent as to rights by implication, it is retained. The Supreme Court in 1905 in the Williams case established this. They said that a treaty is not a grant to the Indian, it is a grant from the Indian. It is a reservation of those things not ceded. Therefore, from 1954 on we have seven treaties who remain silent as to hunting and fishing rights. By implication then, the right not only to an exclusive right within the reservations, as established by federal law, remains to the Chippewa, at Leech Lake



and White Earth, to be used in the same way that Red Lake has. Red Lake is an example of how those rights should be for those other tribes. But also, because it contains no language of hunting or fishing rights, ceded or otherwise, by implication then they are retained, and aside from that, the communal rights concept of hunting and fishing rights alone would abrogate any contention that half of this tribe, this aboriginal tribe, the Mississippi band, may not convey away from the tribe or themselves a non conveyable tribal property, -- and that's how hunting and fishing rights are recognized in federal law. These are non conveyable hunting and fishing rights, and just as no single person or any band out of context of the aboriginal group may convey away from himself or the tribes such rights, then the decision that was rendered to White in Aitkin Court is wrong, and now she is going to Ninth District Court. These questions are in litigation.

We have a young man, Everett Keezer, who made his first appearance at Anoka Court on the 7th of this month, and he is holding aloft the Treaty of 1825, the reciprocal right. And we can't see where these rights can be denied by these treaties, because under the constitution and under federal guidelines in the Arthur case that Jondreau used and I am sure that Devitt used it in this case here, a treaty right supersedes any state law. A treaty right is paramount to state sovereignty. That's where the clash between Indian rights and sovereignties arise. But it's been determined that if it is in the treaty language, then that holds; so that the reciprocal rights that Mr. Keezer is taking into Anoka Court (and I am sure that he'll be convicted there and he'll have to go further because Indians just do not receive justice in the lower courts. We're well aware of that. But I would like to point out to this committee that these questions are under litigation and that under our constitution we are guaranteed as Indians and as citizens of this state an equal protection under the law. Not only under the state constitution but under the federal constitution. Our special relationship to government is enhanced by this civil rights equal protection, because in our day what communal rights merely were, and as the federal government at the time recognized, the communal right was just an aboriginal way of assuring each and every individual Chippewa Indian the same thing. A communal right spreads this right throughout the tribe. No one is left out. That's a communal right. It was our way of making sure that each Indian had the right to life, liberty and the pursuit of happiness, and all I am saying is that we should consider these things.

I'd like to talk with some of your analysts, your legal people. I'd rather see this legislated than battled through the courts. That's how things should be done. Indians don't have to .... you don't have to be on a reservation or in violations to be an Indian. You are an Indian, and ricing is part of your traditional culture. I am saying that the state, not only this state, but the other states who are involved in this litigation or who will be, should recognize this. I think that that's how we should attack it. We should attack it not how or when an Indian takes game, but how much? It's unimportant if an Indian goes at night and takes his game. If he needs it, or if that's the only time he has to go, it's not important

how or when, but how much. If we were to base it on that, Indians would be able to exercise their traditional rights at any time they pleased anywhere in the twelve state area, but based on the idea that you don't waste game or threaten the ecology. Now on ceded land, federal guidelines have established a protective clause. Now it's been a policy of both state and federal government to have a hands off policy on rights within a reservation. That's up to the council to handle that. That's their jurisdiction. But on ceded rights, there is court precedence to show that a state has a certain power there to watch over this so that the right isn't abused, and if it is abused, they can step in under federal guidelines to stop this. But only first if they exercise every other control. They control the non white commercial interests who are really the threat to the ecology, not the pittance that the Indians take. These are the ones who are raising the action against Leech Lake. It's almost inevitable that whenever a tension arises between the Indian rights and state sovereignty, you'll have two spectrums. You'll have two ends of the spectrum and you'll have this group from Leech Lake now saying that there is no rights, or that they have a very restricted right; and then we have Leech Lake in the middle with Devitt's decision which is the middle ground, saying that, yes, they have the right; and of course I am projecting the view that they have an unrestricted right throughout the total ceded area and on the reservation and on the ceded lands of the other tribes, parties of the Treaty of 1825. This is the question you have to resolve. The Indian question isn't restricted just to Leech Lake. Leech Lake aren't the only Indians in the area. We have the Upper Sioux and the Lower Sioux. We have the Sauks and Fox. We have the Auhwa people and they all have their treaty rights, and I say that this is what the state and any committee that is investigating these should be involved with.

REPRESENTATIVE ULLAND: Thank you Mr. Cardinal. I think the point you made is certainly an interesting one. What I'd like to do is hold the questions to you, and perhaps Mr. Sherman who is the department's attorney would care to comment to that. I would think that the committee would wish that he might, if that indeed has been considered. But before we go to further discussion on this, which is really the fundamental treaty discussion, I'd like to finish with our wild rice topic. We do have one of the noted agronomists from the University with us today and perhaps he would like to make a couple of comments. Do you have any insights that you could provide on the technical problems in the rice harvest? We'll just give you a short shot, and then we'll go to the treaty rights.

DR. ERWIN OELKE: [University of Minnesota, Department of Agronomy.] I came primarily this morning as an interested bystander, particularly on the natural crop as it existed. I was concerned about the natural crop and where we were. As you know, the University of Minnesota was made available some funds to do some work in the research area of wild rice production and there were some problems in the commercial paddies and also in the natural stands, as was pointed out here primarily in the Aitkin area. The weather, I think was a great factor there. Diseases were quite severe in some of the commercial paddies in that

area. They were not as severe, of course, in the Red Lake area. Very good production in that area. So over all, it was a good season, but the Aitkin area was a poor season, and consequently from the commercial production, I don't think we had as much wild rice as we had anticipated. I think you'll find this to be the problem until we get the bugs worked out. We're encouraged with some of the research.

I might make one comment on this pricing situation. It was \$1.50 or \$1.00 a couple of years before, but those were years where the production was down as well; and then of course the price fluctuates with production to some extent, and we have had a lot of activity in the marketing. I am sure you have seen the advertisements on TV lately. We've had interest from other commercial companies, and I have a strong feeling that we are going to market a lot more in the very near future than we have in the past, and I do think that at least for the near future that the price will stay up relatively reasonable for a time yet.

Our research program is going quite well at the University. We had a meeting with the growers and we are going to have meetings in March at Bemidji for all interested individuals in growing wild rice and harvesting wild rice to discuss some of the work that we are carrying on. This will be held in Bemidji on March 8th and 9th.

REPRESENTATIVE ULLAND: Mr. Alexander, why don't we change topics now. Mr Cardinal led us into the second part of the agenda which is an updating for the committee on the negotiations the department has been hopefully holding with the bands. Perhaps you could give us the status of those negotiations. You did at the last committee meeting enumerate perhaps ten areas where there were unresolved issues. After the governor had announced substantial agreement, you came in and told us there substantial lack of agreement in many of the areas. Perhaps you could bring the committee up to date on where we stand today?

MR. ALEXANDER: Mr. Chairman, committee members, I'm going to turn this over to Mr. Sherman, if it is agreeable to you, Mr. Chairman. I believe that the negotiations and the points of difference that I mentioned the last time, have all been resolved at this time; and if not, there are just one or two minor areas of disagreement. But I believe that our bill now is almost ready for presentation, and Mr. Sherman can bring you right up to date on that, along with Mr. Becker's comments that they have had as far as the Indian attorneys are concerned.

There are one or two questions on your wild rice here that I had the answer for that I looked up that are not definite answers. On licensing, we have a little bit to base it on on last year's licenses. There were a little over 11,000 licenses sold last year for harvesters. The wild rice dealers number 111, the processors 16. This was for 1971. The returns are not in for this year. I believe that we have all of the rice processors in, or just about. There's 15 listed so far this year. The dealers licenses are in at 73 right now. This will probably approach the 111 of last year. An estimate by our



license section (Larry Brown) estimates that there is going to be quite a drop in the number of harvesters, and we're estimating it this time at approximately 7,000 to 8,000 harvesters, based on the returns that are in at the present time.

On the negotiations, the questions you ask Mr. Chairman, in the letter, deal with just a little bit on the number of meetings and dates. I have a copy of that for you that I can give to you with a copy of the formal dates that we have met. The number of formal meetings with the attorneys number 35 at the present time. There have been some group meetings with the Commissioner present, and others -- six group type meetings. The Wild Rice Director, Mr. Krueger, has met, I believe, somewhere in the neighborhood of 12 times. This is a bit of a guess. There is documenting meetings of about 6, and about 6 informal meetings. In addition to that, I have met with the Indian Affairs Commission at every meeting that they have had. I believe I may have missed one, I am not sure. But every meeting they have had since last October when I got this job, and I am continuing in that capacity, appointed just recently by the Commissioner as the Indian liaison officer for the Department of Natural Resources between our department and the Indian community, which I hope will be a temporary job inasmuch as we are now negotiating with civil service and our personnel department to appoint an Indian liaison officer who will be handling all of our meetings and our problems and communications with the Indian community, which I think will be a great addition to the department in our understanding and our negotiations if we can get the right job title and get this thing through our present freeze. Not only in this particular case, but in anything that might come up in the future -- and we have approval of this. We have verbal approval of it. The Commissioner is behind it 100%, and I don't think that we'll have any trouble establishing this position. That brings it up just about to the point, unless you have a question directed to me that I could turn it over to Mr. Sherman for a run down on the status of the negotiations.

REPRESENTATIVE ULLAND: Mr. Sherman, I'll leave it to your conscience to weigh the level of knowledge that you want to bring us to, recognizing our responsibility with the people of the state and the responsibility as the bargaining agent to keep certain items which may be sensitive from public knowledge. This is a public meeting, and you know the Legislature doesn't hold private meetings.

MR. MORRIS SHERMAN: [Special Assistant Attorney General, Leonard, Street and Deinard, Attorneys at Law.] We appreciate that. We would almost prefer to answer questions. I think it would be an easier format. The initial question is where do we stand? We have some formalities to conclude. We have yet to definitively draw the map that has been discussed, although there doesn't appear to be a great problem. We have one outstanding issue which relates to the rights of non Indians to take non game fish within the reservation by netting, for consumption purposes only. Aside from those two issues, I am really not aware of any matters of substance that stand between us in concluding the agreement. It's largely been a question of getting the people together and getting the document drawn.

REPRESENTATIVE ULLAND: Perhaps you could relate the problem of the non Indian, non resident commercial rough fisherman.

MR. SHERMAN: Well, it's not the commercial rough fisherman that's the problem. The state and the band have agreed that the commercial taking of rough fish within the reservation would be the exclusive province of the band. In the past, however, in addition to commercial taking, the commissioner has issued licenses from time to time permitting the netting of non game fish -- of rough fish, whitefish, tullibee, what have you, by residents for consumption purposes. The band has, as I understand it, objected to the continuation of that practice. Netting -- not taking for consumption. It's the department's position that it's a traditional right; that the major problem that we have had in the past is getting enough of the rough fish out. We have had to pay to get rough fish out and our guiding principle in the negotiation has been to avoid depriving the non Indian resident of the state of Minnesota of any privileges which he has had in the past to the furthest extent we could. In addition, he may have to pay for something that he didn't pay for before, but we are going to try and avoid taking things away from the general populace. This was one item we felt the general populace could live well without the commercial taking of rough fish. We felt there was no real need to limit the taking of rough fish and the method thereof for consumption purposes only. That's the issue and I doubt whether the whole agreement is going to rise and fall on that.

REPRESENTATIVE ULLAND: So, Mr. Sherman, it would be correct to assume that the band is concerned that the individual coming in allegedly to net for rough fish for his own purposes is netting non rough fish or sport fish for his own, or other fish. Is that the problem?

MR. SHERMAN: No. I really can't speak for the band. I presume the problem is that the band feels that the privilege has been abused and that they face the same problem that we face. Under their code, Indians may net any fish for consumption purposes only, and so I suppose there is a judgment question when you find a man with a net with 1,000 fish in it. There is some question as when is it consumption and when is it commercial. Obviously he can't eat 1,000 whitefish or walleye and I presume what we are saying to the Indians is that we take you on faith that you will police your people and that your taking by netting of game fish will be for consumption and you will not sell them because you have agreed to do so, and we're saying to the Indians we expect the same in this peculiar limited area of netted non game fish. There will be no netting of game fish by non Indians. I suppose that's the issue. When a net is available, the temptation to take more than one can use, and therefore to sell, exists, and we're suggesting that since we are prepared to extend our faith saying you may continue to net game fish for consumption, we see no reason why the reverse is not true. In fact to be honest with you, the department is concerned with an agreement that everybody will live with, and that means one that is palatable and one that disturbs the status quo as little as possible. That's the issue.

REPRESENTATIVE ULLAND: In other words, Mr. Sherman, this is a particularly sensitive local point, but not of any particular state-

wide significance, or no game management significance, but the non Indian community might get very upset, is that what you are saying?

MR. SHERMAN: I think you'd properly characterize it's not an issue of statewide significance. It's an issue of trying to maintain an overall relationship in the area with as little friction as possible, and that's one of the items. We don't want to create any more friction by virtue of this element than necessary. This is one area that people in the Leech Lake greater geographical area have raised with the department and we feel that if we can reach an accommodation which includes that, we would very much agree to it.

REPRESENTATIVE ULLAND: Are there questions of the committee from Mr. Sherman? We have a number of points in the minutes that were unresolved, and I should go to them if the committee would choose to do that. Why don't I just go through on page two for those of you who have the minutes. At the bottom is a series of statements that Mr. Alexander made where he indicated matters were unresolved. The last paragraph of Mr. Alexander's comments, beginning, "Some of the things that we disagree on...." Would you care to address yourself to those points in that paragraph?

MR. SHERMAN: I can explain to you historically what the problem was. I think each of these problems have since disappeared and so if you have any interest in what the problem was at the time, we could tell you, but I don't see that any of them are any longer a problem.

REPRESENTATIVE ULLAND: Maybe you could, since we do have it recorded as problems, we may as well record it as a solution.

MR. SHERMAN: Well, I am referring to the last paragraph. The first thing Mr. Alexander mentioned was the start of the deer season. Some of our conservation people felt that the proposed start of the deer season as per the Indian code was too early because of does still being then in milk and young fawns. The Indian leadership felt it was appropriate to start when it was and right now I can't remember whether it was July 1st or July 15th. I think the compromise that was reached was that does would not be taken, but that bucks could be taken in that early part of the season. A Solomon-like decision, I think, and therefore will defer the time when small fawn would be left or the does could be left, but earlier in the season a buck could be taken.

We had a dispute, I think, about whether or not animals could be shot from motor vehicles. As proposed, the code allowed taking from motor vehicles and we were of course worried about moving motor vehicles as well which provides a hazard, or just multiplies the hazard, and we have agreed that animals will not be taken from moving motor vehicles.

Starting the closing dates, I think, related to the deer and to some of the other animals -- pelt bearing animals, fur bearing animals, what have you. I think they have all since been resolved.

REPRESENTATIVE ULLAND: Do you expect that these dates will be set by statute then or will that be in the form of Judge Devitt reaffirming

your negotiated point. The Legislature hesitates to set dates in statutes.

MR. SHERMAN: No. Of course what we are talking about now are days for Indian taking by tribal members or band members within the reservation. These are not to affect the general citizenry in the state of Minnesota and we would assume that these dates are fixed by the agreement which would become part of a consent order issued by Judge Devitt, but that the band can alter them from year to year by narrowing the dates, not by expanding them, so that we have allowed for all practical years a six to seven month deer season. We don't anticipate that each and every year. The band will so choose, but as the agreement now stands as I read it, they could cut it down. They could not expand it without renegotiation and the consent of the state. I mean if some peculiar situation arose, I am sure that there would be a mechanism for handling that, but as it now stands that's what's anticipated. It would not be a legislative function. This is a rule to govern conduct by Indians, enforced by Indians in what has now been decided to be Indian country.

REPRESENTATIVE ULLAND: What will be the procedure for making changes?

MR. SHERMAN: We have provided in the proposed settlement agreement a form of arbitration and what we're talking about is a very simple businesslike method whereby if a disagreement comes up or some change is desired, and we can't agree on it, they'll pick an arbitrator and we'll pick an arbitrator, and if we can't pick a third one, Judge Devitt or whoever is then Chief Judge of the Federal District Court will pick a third one, and we'll arbitrate the dispute. We tried to make the mechanism as simple and direct as possible.

REPRESENTATIVE ULLAND: One of the additional points that Mr. Alexander mentioned in his testimony was the decision whether or not we can charge this surcharge. You infer that that's been resolved. How is that resolved?

MR. SHERMAN: Well, I think what Mr. Alexander was referring to is whether or not the Legislature would authorize the surcharge, and we have agreed -- the Governor's office has agreed, to propose an agreement to the Legislature which would include the surcharge. The decision will remain with the Legislature as to whether or not that will be implemented.

REPRESENTATIVE GRABA: Mr. Sherman, I assume that all of the negotiations that have been heard to this point have dealt only with the Leech Lake Reservation. Is that correct?

MR. SHERMAN: Well, not exactly. We have attempted, and have in fact done some negotiating with Grand Portage. We have met from time to time with representatives of White Earth. On one occasion or more we have met with representatives from Mille Lac so that while the agreement itself does relate only to Leech Lake, there have been parallel negotiations with other bands in the state, none of which have progressed this far. It's hard to say why. I think possibly were I on the other side, I'd like to see how this one came out before I got into the next one, and that may be the problem we're facing.

REPRESENTATIVE GRABA: My concern is that in the legislation that I assume

is going to be coming in the next session, are we going to authorize the charging of a sur charge for only Leech Lake or are we going to spread it statewide in the assumption that we would be saving considerable court costs on both the state and the Indians.

MR. SHERMAN: We have tried our very best, and Mr. Becker who is here will affirm that, to do just exactly what you suggest. The Department has from the beginning of the negotiation taken the position that it would be far better for all involved if we could establish one system to govern all Indian country within the state. We have, however, been faced with the other side of this aspect -- that is, that all Indians don't want to negotiate right now, and we do have a present problem so that we have gone forward with Leech Lake in a sense as if it were a unique problem, but fully understanding that the best solution would be one that covered the major Indian reservations within the state, and we have told our opposite numbers a dozen times or more that that's what we would prefer to do and we frankly think that such legislation would stand a far better chance at passing. I fear that very problem --- that cutting it up piecemeal leaves the state open to a repetition of the process and it may become more costly at a later date. But we've had the aim clearly in mind that you suggest, but you can't force somebody to negotiate with you, and we've then gone forward with the one problem which is pressing and tried to resolve it as best we could, knowing what the problems are.

REPRESENTATIVE GRABA: It's your opinion then that these negotiations will not be completed in time for the session.

MR. SHERMAN: I think it's a misnomer to even call them negotiations. I think we have invited suggestions. Mr. Alexander has been up to White Earth. Except for Grand Portage, it would be really unfair to call them negotiations. We have extended invitations for bids, and we have really gotten no positive response. I don't say that with any sense of criticism. I think each individual area has their own problems and that White Earth is not Leech Lake and Mille Lac is not Fond du Lac, and I think within each community the problems have to be sorted out. Some areas have peculiar needs. For example, Grand Portage. You of course are more familiar with it than I. It is really very remote in area and largely solid Indian land mass. They are really not interested in this licensing system because they don't want to open the area to a great number, and right now they can post it. It's like private ground. They are not interested in a great influx of hunters. Well, we have to tailor something to meet that situation so that in all honesty and fairness to our opposite numbers, we have invited them to come forward, but I think they are still sorting out their own needs and desires. It's quite a shock that we are willing to negotiate, and I suppose they have to get used to that to begin with.

REPRESENTATIVE GRABA: Mr. Sherman, what's been done with the deputization of people on the reservation? Let's use Leech Lake as an example. Will white wardens have authority to enforce the code? Will Indian wardens have authority to arrest whites and that sort of thing? Who is paying the salaries? What standards do they have to meet in order to become qualified enforcement officers?

MR. SHERMAN: The arrangement as now contemplated, is that white enforcement, or state conservation officers, be they white, green or red, will have the rights of arrest under the tribal or band conservation code. Conversely, duly authorized and identified band conservation officers will have the right to arrest under the state law. In both cases we're talking about misdemeanors committed in their presence. All these hunting violations are misdemeanors, and by state law you are talking about a misdemeanor committed in your presence. We would envision that if a state conservation officer observed a violation of a tribal code provision such as shining a deer, he would be authorized to take the man and deliver him to the tribal conservation court or arresting officer, or what have you, and the converse would be true as well. We are not attempting to set standards for the tribal conservation officer. In other words, we are not suggesting that he must have two years of college and a training course. We are relying on the fact that they will be duly trained. The BIA has such a program and I have offered to Mr. Tupper just a few weeks ago when the question came up, that we would be perfectly willing to put any Indian conservation officer through the state school that we run for our deputies, but we do not take it upon ourselves to determine what Indian is or is not qualified. We feel if the band has sufficient confidence in him, 99% of his contact, we assume, is going to be with the band members, and we feel it's their decision. The only thing we would insist on, as they insist on, is that people be properly identified. As to the financing, there are two possibilities. There should be adequate money to finance it itself. The state doesn't feel it is obligated to take the burden of paying the salary. There are also certain grant moneys available and I have been asked to meet with the State Crime Commission next week. Apparently there are federal moneys available through the State Crime Commission to train these peace officers and they may or may not get the money there. We're not anticipating any kind of a budget request for it.

REPRESENTATIVE GRABA: Mr. Sherman, are there any legal problems concerning the arresting of Minnesota residents by enforcement officers hired by units other than state authorized units of government?

MR. SHERMAN: I don't think so. I think you and I could perform the arrest. It's a citizen's arrest. We're talking about a misdemeanor committed in your presence. It would be otherwise if we were talking about felones and arresting on suspicion and arresting on information and belief, but here we're talking about arresting for misdemeanors committed in your presence, and I think any of us could do the same. The only reason we are formalizing it is because we think it is a good relationship to maintain and we hope that there will be a cross fertilization of ideas and people, and one of the sore points of the community has always been enforcement and hopefully in this way we can bring the communities together.

REPRESENTATIVE ULLAND: Mr. Sherman, has the I.D. card been resolved, and who is providing it? Who is paying for it?

MR. SHERMAN: The Indian I.D. card? It's anticipated that the state will provide it. There is available through the Highway Department machinery whereby you print what is like a driver's license with a picture and the cost is not great. I think somewhere about \$1.00 or



\$1.50 if you do it on a large scale, and it would be anticipated that we would go up to Leech and set up a schedule and try and get this done as quickly as we can. With respect to non Indian identification, there was a question too -- it comes up at ricing for example, and we think that in view of what's going on now that the driver's license is very adequate and would probably serve the purpose.

REPRESENTATIVE ULLAND: Mr. Cardinal contends that the wrong group is suing the state and maybe the party suing does not have proper authority to sue under the treaties. Would you care to comment on this point?

MR. SHERMAN: Mr. Cardinal made several points. It was a very learned dissertation. I think he knows as much about treaty law as anyone I have heard speak in a long time. But this a problem that we are well aware of, and that we have tried to absent ourselves from. Let me put it briefly. He is correct. The Minnesota Chippewa Tribe is a construct. In other words, at the time of the Wheeler Howard Act, there were scattered bands and a group was defined as the Minnesota Chippewa Tribe. The Leech Lake Band is a constituent member. There has, as I understand it (and I am sure Mr. Skenandore, Mr. Howard, and Mr. Munnell are better informed of it), for years been a dispute within the Indian community as to who possessed what rights. In other words, whether members of the Superior Band that reside in the Northern Peninsula or the Upper Peninsula of Michigan possess rights at Leech Lake, etc. The state feels that the internal disputes, and you needn't go that far, the question is whether the Red Lake Indians can come to Leech Lake or whether the White Earth Indians can come to Leech Lake -- these are internal political problems we feel, of the Minnesota Chippewa Tribe. We don't feel that the improper party brought the lawsuit. This is the juridical entity properly recognized, properly party to the lawsuit. What we have tried to avoid is to resolve the internal disputes within the Minnesota Chippewa Tribe or within the greater group which is the Chippewa Tribe of the Great Lakes and Mississippi -- Upper Great Lakes and Mississippi, so that we would disagree with Mr. Cardinal in the sense that we think the proper parties were in the lawsuit. We would agree that there are internal disputes among the members of the greater entity and it's our position that that is something that we would like to stay out of. That's their problem, and not ours.

REPRESENTATIVE ULLAND: Mr. Cardinal, did you want to make a comment on that one?

MR. CARDINAL: The point I was trying to present is that there is not a conflict between... I'm not saying that Red Lake has the right to exercise a right within the Leech Lake Reservation as such. What I said was that each individual reservation does have that absolute jurisdiction within their reservation. They do have under reciprocal rights by permission, the right to ask permission to exercise the communal right within that reservation, but that particular council does have the jurisdiction perhaps for ecology purposes not to permit this. What I am saying is that outside of the reservation, on the ceded land, such right is a communal property.



REPRESENTATIVE ULLAND: Mr. Cardinal, what you are talking about is the northern two-thirds of Minnesota, half of Wisconsin and northern Michigan is the.....

MR. CARDINAL: Is the communal rights aboriginal hunting ground. I'm saying that all bands that made up the aboriginal tribe, and are now established on reservations, have a communal right to access to that ceded land outside of the reservation. That communal right can be exercised freely by all the bands outside of the reservation and within the ceded territory of the total Chippewa Tribe across four states. Then what I said was that they also have a reciprocal right between tribes, the Chippewa Tribe and the other six tribes parties to the 1825 Treaty. That right there by treaty under the Arthur Rule would also be outside the jurisdiction of any state in which -- any twelve states -- it's a twelve state area actually. They would have no jurisdiction in there. The only jurisdiction then would be the immediate representatives of that particular tribe such as the Sioux allowing permission to any Chippewa or the Chippewa allowing permission to the Sioux, and so forth, within what had been their ceded territory. For the Chippewa it would be the four state area. I'm saying that these other six tribes have a reciprocal right -- the right to ask the Chippewa for permission to the use of that four state area, which would include all of northern Michigan, outside of the reservation.

REPRESENTATIVE ULLAND: Thank you Mr. Cardinal. So, Mr. Sherman, what you indicated was that your case was involved exclusively within the boundaries of the reservation -- that would not be in conflict with what Mr. Cardinal said.

MR. SHERMAN: No. I think two things should be drawn from this. First, the agreement with the Minnesota Chippewa Tribe, the Leech Lake Band, does provide that the band may license any Minnesota Chippewa tribal member to exercise rights within the Leech Lake Reservation. So the discretion is in the band. If the band so chooses, it may authorize the Red Lakers to come over and rice. The likelihood of that is remote. But it is still within their jurisdiction. I think the other thing that should be drawn from Mr. Cardinal's testimony is that we have not seen the end of this problem. I have cautioned everyone that I have spoke with since I first became involved with this almost two years ago -- the Governor's office, the Commissioner, and I think it should be brought home to you -- this settlement, if it comes to fruition, is not the end. It is no where near the end. It is but the beginning. And in all good faith and with all credit to our counterpart and to our opposite number, this is but the first of many lawsuits. I am morally convinced of that, and I think the Legislature.... It may not be hunting and fishing the next time. It may be taxation, and it may be off reservation rights, if any. And it may be rights on the ceded territory. Goodness knows what it will be. But I think that if the Legislature goes into session and passes legislation on the assumption that this will with regard to this reservation is going to put away forever the problem of Indian rights to hunting and fishing, freedom from taxation, or whatever the case may be, they are kidding themselves. This will not be the end, and I think you know -- Mr. Cardinal has told you that. I think we have to keep in mind that we are dealing with an ad hoc situation as the Commissioner has said many

many times. We're dealing with a difficult situation in which we have found ourselves and we're trying to put our finger in the dike and do it as justly and fairly as possible, but it is not within our control or within the Legislature's control to sit down and renegotiate the whole spectrum of problems. There will be continuing problems, I would guess, for many many years to come.

REPRESENTATIVE ULLAND: What you are suggesting to the committee, Mr. Sherman, is that there may in fact be a similar suit or similar agreement on non reservation lands over the whole northern two-thirds of Minnesota.

MR. SHERMAN: I don't mean to lecture you on Indian treaty law. It's a long and involved problem and possibly you know more about it than I do, but there are three distinct areas. There are those which are reservations which Judge Devitt has found here that this is an extant reservation. There are areas of ceded land in which there are reserved rights. In other words, it was quite common in the middle nineteenth century for large areas to be ceded. This was particularly true on the West Coast. A lot of the litigation arises out of the Washington and Oregon areas as related to taking salmon, for example, and in Alaska where large areas were ceded, but the treaty specifically said the Indians reserved the right to hunt and fish in the traditional manner at the traditional places, or some such language. That's a second category. There's been a lot of litigation in those cases. And then there's a third category where there was simply a cession where the tribe involved, or the tribes involved, simply ceded without any form of reservation, large areas of land -- actually most of the area west of the Mississippi. That's a third and distinct category. We don't recognize that without a specific reservation of rights, that there remain these rights that Mr. Cardinal has suggested. I just don't accept that as good treaty law. I think there are areas in Minnesota in which there are specific reserved hunting rights. Your area is one of them. And that will be another category, you know, in the Arrowhead country, and there will be undoubtedly an attempt in the future by the department to resolve that question. And if it can't be resolved satisfactorily, presumably there will be another lawsuit. We have yet to hear from the Sioux. All the litigation has been with the Chippewa.

REPRESENTATIVE ULLAND: Mr. Sherman, maybe you could tell us. Many of these things are going to be decided without the Legislature having to render a decision one way or the other. What are the specific areas within which the Legislature must act to effect the decision?

MR. SHERMAN: Well, we anticipate that the Legislature will of course have the whole agreement before them. We don't anticipate holding part of it in a drawer and saying, "You've got to act on Article II, but Article III you can't see." We would expect the whole program would be presented. We specifically feel there is need for legislation in certain areas. One of course is the license system. The fee and the ability of the state to collect a fee and transmit a fee to another part. Another area in which we feel that the Legislature may have to help us is there are certain existing laws which should

properly be amended. For example we have provided by this agreement that the game confiscated within the area by our conservation officers will be given free of charge to the Indian community if they so wish. Presently the statute requires that that game be sold, so again we only need an amendment to cover that. We have some legislation; regulations on hunting and fishing that will have to be amended, we think, to bring it into conformity with the agreement. But while there will more likely be specific bills covering specific areas, we would anticipate that the whole of the agreement will be passed upon by the Legislature. Maybe there won't be a formal bill that says, "We're passing this whole package," but we would like the Legislature to know all of it, to review all of it and to give us its judgment on all of it and it will give us its judgment by passing those specific items that we need. But we don't anticipate fragmenting it, and we have clearly provided in the agreement that the whole of it is dependent upon the appropriate legislation, so that even if the Legislature rejected the confiscated game provision or the provision that Indians will no longer need Minnesota licenses, the rest of the agreement will not go into effect. It's got to be passed in its entirety. The department and the Governor's office feels that this is of such significant precedential value that the Legislature must be consulted in the entirety of the agreement. It's a rather unique agreement, and I think one that if passed and if implemented in the spirit we think it will be, may well set a precedent not only for Minnesota but for the nation. It's really a very far sighted agreement. But it is such a departure from past practice that the feeling generally has been whether or not in the specific item we need legislative approval, we would want the Legislature to review the whole of the agreement.

REPRESENTATIVE GRABA: I think you have probably answered some questions which I had -- at least one of them. It's your assumption then that the agreement will become regulation from the Commissioner and that's where you get the power of law enforcement. Is that right? In other words, the agreement will not become statutory.

MR. SHERMAN: No. I think actually the agreement will become a consent decree as part of the decision. We will go back to Judge Devitt and hopefully with his cooperation, Judge Devitt will revise and amend his judgment and we will enter a decree to this effect, and insofar as he will presumably direct the Commissioner and the Governor to enforce and enact such regulations as are necessary and consistent with the agreement. Most of this would be handled by administrative regulation, except for the very key items, like the money.

REPRESENTATIVE GRABA: One more question. Who hands down the punishment for violations?

MR. SHERMAN: Of whom? Of Indians?

REPRESENTATIVE GRABA: Or whites.

MR. SHERMAN: Well of course the punishment of whites is unchanged. There is nothing in this agreement save and except the extra dollar and the ability to commercially take rough fish in very limited areas.

There is nothing in this agreement that in any way changes the present state law and state regulations as applied to non Indian hunting, fishing, ricing, or what have you. It's exactly as it always has been. That's probably the dispute about the rough fish. We think as a matter of our duty to the citizenry generally we have tried to maintain the non Indian aspect of this as much as is conceivably possible within the former framework. With respect to Indians, the punishment of Indians is solely within the discretion of the band. It's their decision as to what they are going to do with their own people. We feel, I feel, that the system which has been adopted is best calculated to accomplish a mutually satisfactory end, which is this. We talked about an A & B licensing system, or whatever -- restricted, unrestricted licensing system. In all reality, the extent of the income to the band which they will use as they desire -- we have no strings on that money. They can build houses or factories or cut it up among the members or do whatever they want with it. But to the extent the money will flow in, it will be a coefficient of the number of people who want to go to the area. People will not pay the extra money if they read in the press or what have you that the area is depleted, that the conditions are unsatisfactory, that there is civil strife in the community. And, conversely, those whites in the community benefit, because after all, the money is going to be spent in the community, so we feel that by creating this system, as imperfect as it is, the greatest incentive to the residents of the area, Indian and non Indian is: (A.) to live in harmony; and (B.) to protect that resource. There is no question in our mind that the system we have devised, if it works, will produce far more revenue for the tribe, and therefore for the community generally, (because after all the tribe is going to spend the money in the community) than would be the case should the tribe undertake to commercially fish Leech Lake. And we know from the Red Lake experience and other like experiences, how much money you can get out of how many acres of water by commercially fishing. We've discussed this matter with the economists in the department and the fish specialists at the federal level, and it's really not a heck of a lot of money compared to what could be produced if this area were developed as a key tourist area -- Indian country, with the resources in prime condition, and the atmosphere of the community conducive to people from the outside coming to vacation there. And therefore, as imperfect as the model is, it's our feeling that such a model is best calculated to benefit both the band and the state by preserving the resource and developing the economy. We may be kidding ourselves, but we just won't know until we try. Theoretically it's sound, and I think as long as we know that theoretically it is sound and people in good faith are willing to try it, we feel that that's a better way to try and resolve it than with blood shed, which has been the case elsewhere. In Michigan that really got down to people shooting one another. And that's the last thing we want to have happen here is to have whites and Indians shooting one another over a deer. There is just no deer that is that valuable.

REPRESENTATIVE ULLAND: Thank you, Mr. Sherman, for the scholarly presentation. You have done the 3.8 million people of the state some justice, and probably exonerated the Commissioner for his absence.

MR. BERNARD BECKER: I am an attorney in Minneapolis and one of the attorneys for the Leech Lake Band and the litigation which precipitated the tentative agreement on almost every issue. Let me just echo Mr. Sherman's remarks. We are down now to a single unresolved issue. I won't go into the band's position on why they feel that it is imperative that there be no netting of whitefish and tullibee, which to them are a valuable commercial crop of non game fish, except to point out something that I was unaware of until Mr. Howard advised me -- that the bulk of the people that they observe non commercially fishing -- for non game fish, that is, with nets, somehow always end up to be from North Dakota, South Dakota, and Iowa. Now how many non resident licenses are issued in there, I don't know.

MR. SHERMAN: I raised a fair question. It's my understanding that a non resident may not get any license for rough fishing in the state of Minnesota, and if that is the problem, it can be very easily resolved. We issue no non resident licenses.

MR. BECKER: The only other point that I would make is to echo what Mr. Sherman said about your not putting this agreement in the position of solving the Indian state relationships for the future. The Indian tribes, not only in this state, but in this country, are reasserting their tribal sovereignty and rather than have a dual system of government, that is the federal government and the state government, for many areas of this country where there are reservations, there will be a tribe apartheid system of government. The federal government, the state government, the tribal government where the tribal government has its legal sphere of influence in some areas of the country. In Red Lake in this state, that sphere is complete just about over the lives of Indians and to a certain extent that means the commercial life of the band and its constituent members. In Leech Lake that's a little different. Civil and criminal jurisdiction rests with the state, but there are spheres of tribal governmental influence, and as the band or tribe develop commercially, and the members and leaders become more economically oriented, there are going to be more disputes. This is the nature of the kind of society we have. The main issue from what I see is that there be an ability to recognize, negotiate, and settle those issues where they can be settled. If they can't be settled, to resolve them in the courts. This agreement does one thing. It will at least set the climate for some mutual trust that there is some ability on both sides to negotiate these kinds of issues, and that open warfare in whatever capacity it would be engaged, does not have to be engaged in. Mr. Sherman is correct in asserting that this would be the first such agreement between a state and an Indian tribe in the U. S. The relationships between state governments and Indian tribes have been historically marked, and that continues right up until 1972, with the greatest degree of animosity. If you think there is bad feeling by the Indians toward the BIA, there's worse feelings toward the state governments in most places in this country where there are non open reservations. So I think that, if anything, is one of the primary values of this agreement. It does and will foster some degree of mutual trust on the parts of the tribal governments and state government.

REPRESENTATIVE ULLAND: Thank you, Mr. Becker. I also thank you for

the state for your role and the Minnesota Chippewa Tribe for their wisdom in choosing a skilled attorney to represent them. Are there any further questions from the committee, or are there any further comments from those who are in attendance today on problems relating to wild rice or treaty negotiations that have not been resolved by the testimony we have received?

MR. SIMON HOWARD: Do you intend to have more meetings before you get into the legislative session?

REPRESENTATIVE ULLAND: Mr. Howard, I am not sure. I had anticipated, if we had not found the negotiations in the shape they were presented to us today, I had anticipated another meeting before the session. The presentations would not deem that necessary. If there are other matters that this subcommittee should discuss and provide some guidance to the next session of the Legislature, then it would be appropriate to have another meeting or other meetings, and if you have matters that you would like to bring to our attention, there is time and the committee is willing to have more meetings before January.

MR. HOWARD: I would ask one other question. If there are any other committees or subcommittees that would be dealing with this? Or any other group or people where they might put their input into the meetings?

REPRESENTATIVE ULLAND: The Legislature to my knowledge has created the Indian Affairs Commission which deals with many of the affairs of the Chippewa Nation and the Sioux. I am not sure what the Senate is doing. I don't think the Senate has done anything with the treaty rights question. There will be, at the beginning of the session, new assignments for committee members and new legislators; and in this regard, we may have a lack of continuity and I would hope that the Speaker of the House would try to retain some continuity with those three of us who have spent some time studying this issue -- Representative DeGroat, Representative Graba and myself. I would hope that continuity would be maintained. We have no assurance of this.

MR. HOWARD: I understand now you have a Tourism Committee also that goes around the country meeting. It was at Little Falls a couple of months ago. I don't think we're invited, yet we find ourselves being placed as the bad guys. At least we'd like the privilege of being there.

MR. ALEXANDER: Mr. Chairman, I believe I know what he is talking about. The Department of Natural Resources was not involved in this particular thing, other than by invitation of members. This was our Department of Economic Development to do with their Section of Tourism or Bureau of Tourism that sets up meetings like this. In fact there is one that is going to be in Grand Rapids next year -- Outdoor Writers Association. It is going to attract 800 writers, I guess -- families and this sort of thing, into that area. I'm almost certain Commissioner Baker could be approached, and anyone who would like to be included in those meetings would certainly be welcome. I don't believe there is any problem with it.

MR. HOWARD: Is there a direct invitation to any persons or groups?

MR. ALEXANDER: I would have to ask Commissioner Baker on that. I don't know. I'm on their committee for this big deal that they are going to have in Grand Rapids next summer -- this writers association deal. Other than that, I don't attend any of their meetings either and I don't even see any of the notices, other than that particular one.

MR. HOWARD: There have to be notices though, otherwise the people wouldn't know.

REPRESENTATIVE ULLAND: Mr. Howard, I am going to instruct our secretary to draft a letter to Mr. Baker, the Commissioner for the Department of Economic Development to inquire how they do set up their invitations to their regional conferences and further to express the committee's concern and displeasure at the oversight, at what we assume is the oversight, of not notifying the Indian community, and I assume at that meeting there were members of the resort community who were critical of the Indian communities, is what happened.

MR. HOWARD: [Chairman of the Minnesota Chippewa Tribe.] As you know, you're looking at probably the most sued organization in the country. We just got a new one this morning, so I wonder, have you been served with papers by this new organization?

MR. ALEXANDER: No. We heard about it in the newspaper, that's all.

MR. HOWARD: That's all I have to say. Thank you.

REPRESENTATIVE ULLAND: Mr. Howard, I think you too are to be complimented on the results you have achieved from the state. It should be nationwide recognition.

MR. SKENANDORE: [Executive Director of Indian Affairs Commission.] Mr. Chairman, and members of the committee, this is one of the very issues that the Indian Affairs Commission has complained about is the avenues of communication with the various departments throughout the state in their development of the various programs and conferences, for the inclusion of the Indian Affairs Commission in their development of these plans. We very recently at the Indian Affairs Commission at Duluth took great issue with the Alcohol and Drug Commission because they are scheduling a major meeting in Rochester. There was no inclusion for any portion of the Indian Affairs Commission or the Indian Alcohol Drug Programs that are presently existing in participating in that particular conference. I did take issue with Commissioner Baker in regards to the development of the Tourism Conference without invitation of the Indian community. Again, they said we would be glad to have you participate, however, no direct inclusion in not only the development but the planning. So I would appeal again and I think that Mr. Alexander has been a tremendous asset in the dissemination of information and the development of this entire hearing - the development of all of the various developments in the negotiations, utilizing our office for dissemination of information. I think that we have to commend the Department of Natural Resources in this regard. I do think that we do need this



kind of improvement of communication with all of the departments. I also say, and I recommend, that we would have a greater development in fact of specialized training for circumventing the restrictions of civil service in the development of Indian employment. I think this is very important. We need that not only in the Department of Natural Resources, we need it in every department within the state.

REPRESENTATIVE ULLAND: Those who are here today and would like a written copy of the minutes may leave their name with the secretary and we will mail those out to you. If there is no further business before the subcommittee today, thank you for coming. We appreciate your attention.

MEETING ADJOURNED.