

Tribal protest on Lake Bemidji buries the facts

Recent articles in the Star Tribune and Pioneer Press (below) reported on Chippewa tribal members' protest involving a one-day "fish-off" the day before fishing opener. This will be the third such public violation of Minnesota's conservation laws to make a point.

The tribe is claiming that off-reservation hunting, fishing, gathering rights exist in the 1855 ceded territory area. They deny the plain language of the [1855 Treaty](http://perm.org/articles/a040.html) <http://perm.org/articles/a040.html> and the long-standing position and regular assertions of the DNR that no such rights exist.

A new tactic this time is to conflate treaty rights claims with opposition to the proposed Enbridge pipeline. Actually, exercise of non-existent rights to hunt, fish, gather in ceded territory over which they have no jurisdiction is not affected by the pipeline. But drawing on the sympathy many people have for claims of environmental threats by the pipeline is a tactic to garner (somewhat confused) support. It's also great for building the narrative about the existence of 1855 "treaty harvest rights."

What Rights?

The most buried fact is the 1855 Treaty itself. It states that the Indians "do further fully and entirely relinquish and convey to the United States, any and all right, title, and interest, of whatsoever nature the same may be..."

If "fully and entirely" could possibly leave anything to the imagination, the all-inclusive, totally un-ambiguous "of whatsoever nature" covers it.

The 1855 Treaty further clarifies "fully and entirely relinquish" to include "which they may now have in, and to any other lands in the Territory of Minnesota or elsewhere." That would include the 1837 Treaty ceded territory. That would also preclude the "inheritance" of any harvest rights affirmed by the Supreme Court's 1837 Treaty case ruling.

Potential Court Case?

The 2010 walleye netting violation was aborted after the Crow Wing County attorney refused to prosecute the DNR-cited tribal members. Prospects for another 1837 Treaty style Supreme Court ruling disappeared.

The 2015 walleye netting violation also has gone nowhere. After an extensive delay, numerous reschedulings, and the recusals of three judges, the case before Crow Wing County Court has entered a state of limbo. Charges against three of the four defendants have been dismissed. At the last hearing, the sole remaining defendant never even showed up.

The recent "fish-off" violation in part builds on the failure of Minnesota's legal system to enforce the law. The DNR's spokesman was reported to have said "Persons who violate state law will be subject to enforcement action that may include warnings, citations, seizure of fishing equipment, nets, and spears."

No adjudication? No problem. Lots of nets and spears on hand.

Rights by Default?

If the legal system abdicates its responsibility to enforce the law, then the tribe has free rein to build the narrative that off-reservation treaty harvest rights do exist. If not actually creating a de facto legal existence of such rights.

Working a case all the way up to the Supreme Court, as was done with the 1837 Treaty, may be a long shot. It may soon be unnecessary. A well-established narrative will be all that's needed to cow the Governor, Legislature, and Attorney General to cave on respecting the actual terms of the 1855 Treaty.

"Property Rights" Poison Pill

The biggest threat from acceding to any 1855 Treaty harvest claims comes from the tribe's addition of "usufructuary property rights" to claimed treaty harvest rights. This is treaty rights expansion on steroids.

The property rights concept springs from attorney Peter Erlinder's analysis of treaties going back to 1795. His analysis of treaties found them to be likely sources of "as yet unrecognized" and of "as yet undeveloped" property rights "for the 21st Century."

If anyone thinks the "co-management" of 1837 Treaty harvest rights is an impenetrable disaster, imagine adding "property rights" to the mix. Over the entire 1855 ceded territory. Protection of these rights will have land-use management implications far beyond wildlife harvest.

Arthur LaRose, chairman of the "1855 Treaty Authority," has said that having these property rights would allow the tribe to "more forcefully assert management or regulatory rights on larger environmental issues such as the burying of oil pipelines or the relaxation of mining-related sulfate standards for wild rice." Or even where you can put an outhouse.

Keep in mind, the 1855 Treaty ceded territory includes a small portion of Mille Lacs. That makes all of Mille Lacs' contiguous water subject to any newly recognized or newly developed property rights. **See Map** <http://perm.org/articles/a040.html> showing the extent of the 1855 Treaty ceded territory and its intersection with Mille Lacs.

Tribal protest planned before Minnesota's fishing opener

By Mary Lynn Smith, Star Tribune, May 10, 2018

In an effort to exercise what they say are their treaty rights, Chippewa tribal members plan to fish on Lake Bemidji one day before the Minnesota fishing opener.

The one-day "fish-off" protest was sparked by the tribe's opposition to a new Enbridge pipeline across northern Minnesota, to be built either in a new corridor across ceded land where tribal members exercise their rights to hunt, fish and gather food, or in the existing corridor that crosses two reservations.

The idea behind the rally is to send a message to Minnesota officials that they don't have the right to "sell out our terrain, our environment, our ecosystem, our clean water, our fresh fish," said Frank Bibeau, executive director of the 1855 Treaty Authority, which represents about 25,000 Chippewa tribal members who are current beneficiaries of the 1855 Chippewa treaty with the United States.

The tribes retained the rights to hunt, fish and gather when they made the treaties, and they need a territory that sustains those things, Bibeau said. A pipeline could contaminate or jeopardize natural resources in the future, he said.

In the meantime, the "fish off" will allow tribal members to exercise their treaty rights, he added. Friday's protest is similar to one on Lake Bemidji the day before the 2010 fishing opener, when tribal members wanted to assert their belief that the 1855 treaty doesn't restrict their off-reservation rights to fish, hunt and gather. Two

Leech Lake Band members placed fishing nets in the lake and, two hours later, conservation officers from the Department of Natural Resources confiscated the nets and about a dozen suckers, walleyes and northerns.

"As the agency has said in the past, the DNR position is that off-reservation harvest rights do not exist in the 1855 treaty area and that state laws will be upheld," DNR spokesman Chris Niskanen wrote in a statement Thursday. "Persons who violate state law will be subject to enforcement action that may include warnings, citations, seizure of fishing equipment, nets, and spears."

Read more <http://perm.org/articles/a040.html>

Tribal members cited for illegal fishing in contested treaty-area lake

By Grace Pastoor May 12, 2018, twincities.com (Pioneer Press)

Two men who placed a net in Lake Bemidji were waiting, along with about 30 White Earth and Leech Lake band members, were waiting for conservation officer Demo Regas to cite them. Joseph Rousu and Leonard Thompson were cited for fishing a day before the state's opener.

Rousu, Thompson and a small group casting off of a nearby dock defied fishing regulations in an attempt to push authorities toward recognizing fishing rights they believe were guaranteed by an 1855 treaty.

"It's just acknowledgment of the treaty rights that were established through treaty agreements many years ago," said Leech Lake Tribal Chairman Farron Jackson. "Just to have them properly recognized and acknowledged is important to the members residing in the 1855 treaty area."

The 1855 treaty ceded a swath of land in northern and central Minnesota, and the 1855 Treaty Authority is composed of the beneficiaries of that treaty, including several Bemidji-area Ojibwe bands. Treaties similar to the 1855 treaty specifically allow tribes to hunt, fish and harvest on ceded land, but the 1855 one doesn't say one way or the other.

The Friday demonstration echoed a similar event eight years ago. Although the DNR confiscated nets and other fishing gear at that event, activists said there were no charges.

In 2015, the group attempted to make a similar statement at Hole-in-the-Day Lake north of Brainerd by harvesting wild rice without state-required harvest permits. That event led to citations, though lawmakers later passed a bill allowing tribal members to gather wild rice without permits.

This year's event aimed to draw attention to the bands' opposition to Enbridge Energy Co.'s Line 3 replacement project, as well as the treaty rights activists feel are being violated. The Canadian company hopes to replace an aging oil pipeline that crosses northern Minnesota on its journey from Canada to Wisconsin.

DNR spokesman Chris Niskanen said Thursday that the department does not believe off-reservation harvest rights exist in the 1855 treaty area. Those cited plan to bring the issue to the courts. "We have no choice but to continue to come out to protect our environment and our resources for our future generations," Bibeau said. "These are what these actions are really about."

Read more <http://perm.org/articles/a040.html>