



# CERF/CERA REPORT

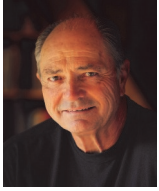


MEMBER UPDATE

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## A Message from the Chair of CERA By Butch Cranford

### “Misinforming” Federal Courts

Recent media reports about how a FISA warrant to spy on a United States citizen was obtained by high ranking Department of Justice officials and attorneys by “misinforming” the FISA Judge about the source of the dossier and the veracity of the content of the dossier is cause for serious concern. If federal attorneys and officials at the highest levels of the Justice Department will intentionally misinform the FISA Court one has to ask: Is there a Federal Court they will not misinform by providing false information or withholding information? The answer unfortunately appears to be NO.

In the well publicized federal case against rancher Cliven Bundy the Federal Judge dismissed all charges after she became aware that federal attorneys had “misinformed” her by withholding evidence beneficial to Mr. Bundy and others.

In 2009, during briefing for the *Carciari* case at the Supreme Court, federal attorneys “misinformed” the Supreme Court by claiming the Department of Interior had no lists of tribes and reservations existing in 1934. This “misinformation” to the Court was exposed when a group of CERA

researchers discovered lists of tribes and reservations prepared by Commissioner of Indian Affairs John Collier. The lists were in the National Archives in Washington D.C. and the lists were provided to the Supreme Court in the CERA Amicus Brief.

These are but three of many examples that expose this practice of “misinforming” federal Judges and federal Courts. “Misinforming” federal courts appears to be a routine and accepted practice by federal attorneys at every level of our Federal Court system from the District and Circuit Courts, to the FISA Court and even to the Supreme Court.

I make this assertion not solely on the three examples above but also based on my own experience with the federal District and Circuit Courts in a case challenging a Department of Interior 2012 record of decision (ROD) approving a fee to trust for an Indian casino. Since challenging the ROD in June 2012 it has been frustrating and disappointing to observe firsthand how federal attorneys so often and routinely “misinform” federal Judges.

In this case examples of providing “misinformation” by federal attorneys is not rare but rampant. “Misinformation” abounds in this case. The following “misinformation” example is a claim made repeatedly in multiple federal briefs filed and is simply, as a matter of fact and law, impossible.

Since 2012 federal attorneys have consistently briefed to federal courts that the failed attempt to purchase 40 acres of land for unorganized landless California Indians from 1916 to 1933 was being purchased to provide reservation trust land for the unorganized landless Indians. The claim is legally impossible and to repeatedly state it in briefs grossly misinformed the court. Many properties were purchased under several Congressional authorizations for the purchase of land for unorganized landless California Indians prior to 1934. The Congressional authorizations made no mention that the purchases were to be reservation trust lands. When completed, these purchases were owned by the United States in fee.

The authority for the Secretary to acquire land for Indians in trust and declare new reservations did not exist until Congress enacted the IRA in 1934. It was impossible for any land purchases pursuant to the authorizations passed by Congress prior to 1934, if completed, to have resulted in reservation trust land because the Secretary did not have authority to acquire land in trust or create reservations until Congress delegated those authorities to the Secretary in the Indian Reorganization Act of 1934.

Given the fact that the Secretary of Interior did not have authority to take land in trust or to create new reservations prior to the 1934 IRA it is a mystery how an attempt to purchase land began in 1916 and not completed prior to 1934 could have resulted in reservation trust land.

Yet federal attorneys have repeatedly misinformed the Federal Judges in the case that if the land purchase had been completed it would have resulted

in reservation trust land. This is simply false, with no basis in fact, and impossible under the law as it existed prior to 1934. Sadly, the Judges in our case have either overlooked or ignored this and the many other “misinformations” routinely provided to them by federal attorneys. I suspect there is nothing they will not misinform federal Judges about in order to prevail.

Most disturbing is that federal officials or their attorneys are rarely held accountable for the “misinformation” they so routinely peddle. It is “misinformation” included in approved fee to trust applications, environmental studies, and final decisions. And it does not matter how many times concerned citizens comment and inform these officials and attorneys that the information they are providing is false; they do not change it.

Sadly, federal attorneys routinely “misinform” federal Judges in their defense of Department decisions. Decisions based on lies, half truths, and agency created fictions, (ie“misinformation”). Where I come from we use a less politically correct term for misinforming – we call it lying. Whatever you call it, it has no place in our Government or our Courts and any federal official or federal attorney engaging in such activity should be held accountable immediately pursuant to 18 USC 1001 or sanctioned by the Court.

If you have experienced, been subject to, or are aware of any examples of “misinformation” by attorneys representing the Bureau of Indian Affairs, the National Indian Gaming Commission, or the Dept. of the Interior please share them with me and CERA with an email to: [branford4588@att.net](mailto:branford4588@att.net)

## Do Indian Reservations Prosper?

by *Darrel Smith*

Are Indian Reservations examples of financial, social and human success? Most people say no. It's difficult to find examples of reservation financial, social and human successes. Why is that? Most reservation failures can be explained by one word—government. The problem isn't what the government did to Indians over a century ago; the problem is what the government is doing to reservations right now. That one word—government—can be expanded to include three words—Federal Indian Policy.

How does Federal Indian Policy (FIP) destroy Indian reservations? To understand we need to return to the foundations of America. For thousands of years, government authority and sovereignty were controlled by kings who often had absolute authority over subjects. The American Revolution turned this idea of authority and sovereignty upside down. In America the people are sovereign. This change transformed America and eventually the rest of the world but the change doesn't apply to Indian reservations.

On Indian reservations the federal government has plenary (absolute, unqualified, complete in every respect) authority over Indian reservations. Using this plenary authority over Indian reservations, the national government has said that tribal governments are sovereign governments. A sovereign is one possessing supreme or ultimate political power and authority. So we have two different sovereign governments ruling reservations. Federal plenary power ultimately overpowers tribal sovereignty.

Sovereignty isn't unlimited. What this means is that tribal members on reservations are not sovereign like the rest of us Americans. They are the subjects of two governmental sovereigns—the national government and tribal governments.

Tribal sovereignty includes sovereign immunity which means that a tribe generally can't be sued without the tribe first agreeing to the suit. The benefit of this power is that the tribe is protected from being challenged in court. The negative of this power is that tribes can't be held accountable for their decisions, rulings and promises. They can make them, and then change them at any time without immediate consequences. The long term consequences are that reservations are sometimes not trustworthy places to live and do business which damages reservation prosperity. This questionable transfer of sovereign power from tribal members, who are American citizens, to two different sovereign governments creates a destructive cascade of negative influences on reservations. This transfer of sovereignty from citizens to governments was accomplished through the efforts of people like John Collier who was the Commissioner for the Bureau of Indian Affairs from 1933 to 1945. He was primarily responsible for the Indian Reorganization Act of 1934. Collier imposed communal and cooperative practices on reservations. In his last book, "from Every Zenith" published in 1963, he praises communist Red China on pages 396 to 399. He expected that Americans would see the benefits of these communal Indian reservations and eventually our whole country would seek a similar transformation.

Another major founder of the current reservation system was President Richard Nixon. He gave a speech in 1971 that transformed reservations by encouraging tribal government sovereignty while guaranteeing continuing national financial support. It is now apparent that Nixon wanted to expand the authority of Federal plenary power over Indian reservations to the general authority of the US government in other matters. It is this significant and continual national financial support that allows these communal experiments to continue to function. Without that support reservations would need to more actively encourage freedom, individual sovereignty, civil rights, and free enterprise in order to prosper.

About a century ago, many reservation lands were opened up to homesteading. This was encouraged by Indian rights groups and done to encourage development and integration on reservations. The non-Indian homesteaders were promised, and they expected, the reservation system would end within twenty-five years. There are now almost as many non-Indians as Indians living on many reservations. These non-Indians developed infrastructure and local city, township, county and educational entities. Now there are two different governments serving in the same areas. Non-tribal members can't vote in tribal elections and generally aren't subject to the tribal government. Tribal members can vote in county elections but aren't subject to county government. Thus neighbors and communities often live under different rules and governments. In some areas, tribal members have taken over county governments even though they are not subject to the rules and jurisdiction of that

government. How American is that? These differences also potentially create a destructive cascade of negative influences on reservations.

The idea that the US government has "stolen" or "taken" Indian land is basically a lie. For over two centuries governments have been buying Indian land. A very good analysis of these land payments is available in "The Final Report of the United States Indian Claims Commission." The good side is that, in general, we have fairly bought Indian land. The bad side is the negative result of government payments to Indian tribes that have extended over centuries because of land purchases, treaties and many other benefits. Most of these payments, of course, should have been made, but they have often created a sense of dependency that has, and still is, destroying Indian individuals, families and culture. Tribal members are generally very capable people and many overcome the numerous obstacles they face to develop and prosper. Others don't do as well. Some writers have described reservations as being very similar or worse than inner city welfare communities. Many don't experience the personal need to excel in education and self development, families are often devastated, and alcohol and drug use is common often leading to fetal alcohol abuse and sexual abuse. Many people aren't capable of being effective workers and work opportunities on reservations are limited. All these factors create a destructive cascade of negative influences on reservations.

Much of the harm of Federal Indian Policy can be laid at the feet of our government but our government is directed by people. Many people have gotten their understanding of history from movies—movies that are pushing ignorant, phony propaganda as much as they are selling entertainment. These people think, sometimes correctly, that we have treated Indians terribly and they want to go to bed thinking good about themselves. They demand benefits for Indian people without realizing that when you “help” people too much and for too long, you are not really helping them any longer. People demand privileges for Indians without knowing that often these supposed benefits contribute to an increased level of deception, destruction, and death for tribal members.

## **United States Supreme Court**

### **Accepts Washington’s Culvert Case**

*by Marlene Dawson - Cera advisory board*

Does Washington State have an obligation to protect and restore salmon habitat as part of its obligation to respect tribal treaty fishing rights? Washington culvert lawsuit against 21 tribes began in 2001. It is officially referred to as the United States of America et al. versus the State of Washington and is up for review before the United States Supreme court. The lower courts have upheld the tribes claims and Washington State is being required to repair road culverts that may never see a fish. This is because dams or federal culverts block salmon from ever reaching the State’s culvert. Moreover, many of the state culverts being dismantled followed federal standards. Consequently, federal monies to

replace the culverts are being requested.

Additionally, Washington asserts the lower courts decisions have been too broad. While it will be asserted that the lower courts decisions open the door to tribes halting logging and farming, we know efforts are already underway with tribes trying to control these activities. If farming and logging can be managed by the tribes, then century old water law for the Western States, that have similar treaty language, will also be affected.

While there is no effort to halt culvert replacement, the argument will be made that no court order should set the schedule for culvert replacement. This should depend upon the State legislature and its authority to appropriate funds. Whether the treaties guaranteed tribes a moderate living from fishing will be another element for consideration. Discussions to reach an out of court resolution continue despite the United States Supreme courts acceptance for a hearing. It is felt that the State must preserve their ability to challenge aspects of the Ninth Circuit’s opinion.

The culvert case is only one of the many phases brought forward by a lawsuit decided in 1974 by District Court Judge George Boldt. In that suit, Judge Boldt granted treaty tribes 50% of the fisheries resource. Co-management was subsequently assigned. Judge Boldt stated that no matter how large or small a sovereign, that nations divide the resource on an equal basis. That decision ignored the constitutional underpinning that there are only two sovereigns, the state and the federal government. It appears that Judge Boldt entered his findings based on a false pre-court agreement that aboriginal, unceded



lands and reservation lands remained and were assigned to tribes. The fact is, all of Washington State treaties were cession treaties where all rights, all title and all interests in the land and country occupied by them was ceded. Such was done for the sum total of payment. The reservations holding the natives were either trust or remained in the public domain where they were subsequently assigned to the individual native in his own name as restricted fee. Instead, the State of Washington has asserted that the tribes received “exclusive title” to defined lands. It is quite clear that Judge Boldt interpreted this agreement statement as lands that remained with aboriginal title. At some point, this false land classification will have to be corrected.

## **Elusive Truth at Mille Lacs**

*by Clare Fitz, CERF Chairman*

So who is telling the truth regarding Mille Lacs in Minnesota? Here is the timeline – you decide!

**Treaty of July 29, 1837** “The Chippewa Nation cede to the United States all that tract of country within the following boundaries ...” **(Those boundaries negotiated at the St. Peters Agency by representatives of the Chippewa bands and Wisconsin Territory Governor Dodge included the 61,000 acres in northern Mille Lacs County which was then part of Wisconsin Territory.)** “The privilege of hunting, fishing & gathering the wild rice, upon the lands, the rivers and the lakes, included in the territory ceded, is guaranteed to the Indians, during the pleasure of the United States.” **(Gov. Dodge was primarily interested in securing the abundant pine trees for the lumber they would furnish the rapidly expanding settlement. The land and the resources being used by the Indians was secondary. Gov. Dodge summarized saying, “It will probably**

**be many years, before your Great Father will want all these lands for the use of his white children.” This is the first time these lands were bought and paid for by the United States.)**

**Treaty of February 22, 1855** “The Mississippi, Pillager, and Lake Winnibigoshish bands of Chippewa Indians hereby cede, sell, and convey to the United States all their right, title, and interest in, and to, the lands owned and claimed by them, in the Territory of Minnesota ...” **(This includes the Mille Lacs band and the 61,000 acres which would become the Mille Lacs Reservation.)** “There shall be, and hereby is, reserved and set apart, a sufficient quantity of land for the permanent homes of the said Indians ...” **(The area set apart for the Mille Lacs Band was the 61,000 acres in northern Mille Lacs County. It is no secret that the United States government was trying to get the Indians to give up their wandering style of life and settle on a permanent spot where they hoped they would till the soil and provide for their families like white settlers did. This was the second time these lands were bought and paid for by the United States.)**

**1862 – The Sioux Uprising** during which the Sioux Indians attempted to kill or chase away all the Whites in Minnesota. A portion of the Chippewa under the leadership of Gull Lake Chief Hole-in-the-Day attempted to join the Sioux in this effort. At the time this uprising started, Commissioner of Indian Affairs William Dole was visiting Fort Ripley in an effort to secure agreement to a new treaty being formed. The Mille Lacs Band, having no love for Chief Hole-in-the-Day, sent warriors to defend Fort Ripley, which effectively ended the Chippewa involvement in the uprising. Commissioner Dole, probably as a payback for having his life spared, promised the Mille Lacs Indians that they would not be forced to remove.

**Treaty of March 11, 1863** “The reservations known as Gull Lake, Mille Lac, Sandy Lake, Rabbit Lake, Pokagomin Lake, and Rice Lake as described in the second clause of the second article of the treaty with the Chippewas of the 22d February, 1855, are hereby

*(Elusive continued on page 9)*

## From the Book “WAMPUM”

by Don Mitchell

Excerpted with Permission From Don Mitchell

Published by Overlook Press, New York, NY

Donald Craig Mitchell is an attorney and nationally recognized expert on Indian law and history. He is the author of “*Sold American: The Story of Alaska Natives and Their Land*” and “*Take My Land Take My Life: The Story of Congress’s Historic Settlement of Alaska Native Land Claims*.” He lives in Anchorage Alaska.

The CERA Report very much appreciates Mr. Mitchell allowing the Report to use excerpts from his latest book “WAMPUM”. For anyone interested in Indian Law and Indian Gaming it is required reading and we highly recommend WAMPUM.

### From Chapter 1: Sovereignty and Cigarettes

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“Four months after President Roosevelt signed the IRA into law, in October 1934 the Department of the Interior published a legal opinion Felix Cohen had written entitled “Powers of Indian Tribes,” in which Cohen purported to analyze the intent of Congress embodied in the words “existing law” in section 16. According to the opinion:

Perhaps the most basic principle of all Indian law, supported by a host of decisions hereinafter analyzed, is the principle that *those powers which are lawfully vested in an Indian tribe are not, in general delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereignty which has never been extinguished....*What is not expressly limited remains within the domain of tribal sovereignty, and therefore properly falls within the statutory category, “powers vested in any Indian tribe or tribal community by existing law.” (emphasis in original)

In other words, every Indian tribe possesses “inherent sovereignty,” except to the extent

***Federal Indian Policy is unaccountable, destructive, racist, and unconstitutional. It is, therefore CERF and CERA’s mission to ensure the equal protection of the law as guaranteed to all citizens by the Constitution of the United States.***

Congress has enacted a statute that has taken an attribute of that sovereignty away. But as Vine Deloria notes, “Since Congress had never presumed that tribes had this astounding set of powers it was unlikely that they [sic] would have thought to limit them specifically.” Deloria goes on to say:

Had Collier’s original legislative package been approved without amendment, tribes would have been able to exercise these same powers, except that they would have been *delegated* powers, and delegated by Congress in an experiment in social engineering....With the opinion as the basis of authority, tribal governments could exercise powers of self government, but those powers were regarded as *inherent* powers, powers that could only be surrendered on the initiative of the tribe or changed, but not abolished by the Congress....Modern tribal sovereignty thus begins with this opinion. (emphasis in original)

In other words, to give Indian tribes the legal authority to govern themselves on their reservations that Senator Wheeler and the other members of the Senate and House Committees on Indian Affairs intentionally withheld, Felix Cohen intentionally misconstrued Wheeler’s and the other members intent.

But that was not Cohen’s only prestidigitiation. At the U.S. Department of Justice, attorneys who worked in the Lands Division represented the Department of the Interior in lawsuits that involved Indian-related legal issues. Because the federal treaties and statutes, Department of the Interior regulations and legal opinions, and judicial decisions that formed the corpus of “Indian law” were a disorganized muddle, in 1938 Assistant Attorney General Carl McFarland, the head of the lands division, decided that the attorneys he supervised needed a manual on Indian law. By 1938 Felix Cohen, who by then had worked at the Department of the Interior

for five years, was considered the department's Indian law expert. So McFarland borrowed Cohen to supervise the writing of an Indian law manual. Cohen arrived at the Lands Division in January 1939 and by April had assembled a staff of eight attorneys, two law clerks, and eleven file clerks and secretaries. That same month Norman Littell ..... replaced McFarland as the head of the Lands Division.

Littell initially thought that developing a manual on Indian law was worth the expense because .... "[T]he present confusion of the law invites litigation, and a clarifying manual currently maintained would seem to an essential instrument in discharging our legal responsibilities." But he soon began to question whether a manual would have any "practical value" so he appointed an attorney in the Lands Division named Robert Fabian to .... monitor the project.

When he read the first draft chapters Cohen and his staff had written Robert Fabian advised Assistant Attorney General Littell that

All the material submitted gives evidence of inadequate research and lack of experience in the preparation of a law book designed to serve as a complete and accurate handbook for lawyers engaged in actual litigation. .... Citations that are made do not support the propositions for which they are cited.

Littell agreed and terminated the project. Cohen then returned to the Department of the Interior with the draft chapters and the boxes of research material his staff had assembled. Nathan Margold, the solicitor of the Department of the Interior, then allowed Cohen to continue writing the book he wanted to write, which in 1941 the Department of the Interior published as the *Handbook of Federal Indian Law*.

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Charles Wilkinson, the Moses Lasky Professor of Law at the University of Colorado Law School and a dean of the Indian law bar, has celebrated the *Handbook* as "one of the greatest treatises in all of the law." Perhaps without appreciating the import of the admission, Professor Wilkinson has also praised the *Handbook* as "one of the more voluminous lawyer's briefs ever produced for the revival of tribal sovereignty."

And it was, because beneath its veneer of erudition, the *Handbook of Federal Indian Law* was a polemic. Nowhere is that fact more apparent than in the Chapter entitled "The Scope of Tribal Self-Government." The chapter begins with Cohen's assertion that the powers to govern themselves that Indian tribes possess are not "delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereignty which has never been extinguished." The *Handbook* then opines that "Each tribe begins its relationship with the Federal government as a sovereign power, recognized as such in treaty and legislation." What was the legal authority the *Handbook* cited for the statements of purported law? The sole footnote cites two: "Powers of Indian Tribes," the legal opinion Felix Cohen wrote in 1934, and an article Cohen wrote in 1940 for the *Minnesota Law Review*.

The Department of the Interior published the *Handbook of Federal Indian Law* in August 1941. In September Cohen sent a copy to each justice of the Supreme Court. Several Days later, he received a letter from Doris Williamson, a friend who worked at the Court, who reported that she had "showed the book around generally, and it was borrowed immediately for reference." Miss Williamson also predicted that the *Handbook* "will probably be cited before long in some opinion."

Less than three months later this prediction proved prescient when in the opinion he wrote in *United States v. Sante Fe Pacific Railway Company*, Justice William O. Douglas cited the *Handbook of Federal Indian Law* in a footnote as legal authority for



*(continued from page 8)*

a principal of law. For the next forty years, the U. S. Supreme Court and the lower federal courts would cite the *Handbook* in hundreds of judicial decisions. The influence the *Handbook* had in persuading the U. S. Supreme Court to Accept Felix Cohen’s assertion that inside the boundaries of their reservations Indian tribes possess inherent sovereign powers and the state in which a reservation is located has no authority to enforce its laws inside reservation boundaries except to the extent Congress has delegated the state that authority cannot be overstated.

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This is just a sample of the informative and compelling writing you will enjoy in Don Mitchell’s latest book.

WAMPUM is on CERA/CERF’s highly recommended reading list. Published by Overlook Press ISBN978-1-4683-0993-5 Available from Barnes & Noble and Amazon.

*(Elusive continued from page 6)*

ceded to the United States ...” **(and included is Commissioner Dole’s promise in Article 12 which says in part)** “...owing to the heretofore good conduct of the Mille Lac Indians, they shall not be compelled to remove so long as they shall not in any way interfere with or in any manner molest the persons or property of the whites.” **(This article being so devoid of explanation as to what it really meant, was the cause of vacillating Washington policy for the next 150 years and continues today. Did it mean that although the reservation was sold it somehow still existed? Did it mean that the federal government thought they could convince the Mille Lacs to vacate without doing it by force? Did it mean that the Mille Lacs Band would be provided with the amount of land that the government decided they needed and the remainder would be settled? As the government policy pendulum swung back and forth, settlement of the lands involved continued, sometimes under contention and sometimes with full government support. After more than**

**150 years, still no clear answer. But at any rate, this was the third time that these same lands would be bought and paid for by the United States.)**

**Treaty of May 7, 1864** This treaty was negotiated simply because Gull Lake Chief Hole-in-the-Day and the Sandy Lake Chief were unhappy with the terms. They convinced the federal government to renegotiate the treaty with sweeter terms for them. So this treaty replaces the 1863 treaty and is essentially identical except for additional cash payments to the Indians and a section of land in fee being given to each of the three chiefs of Gull Lake, Mille Lac and Sandy Lake.

**Nelson Act – October 5, 1889** In 1887 the Dawes Act was passed by congress. Senator Dawes was chairman of the Senate Indian Affairs committee which was responsible for that act becoming law. The purpose of the Dawes act was to eliminate the life style of the Indians based on hunting, fishing and gathering and to provide them with the means of becoming tillers of the specific parcel of soil allotted to each of them. This the federal government considered “civilization” and would be their path to citizenship and assimilation. But in Minnesota there was a problem, specifically the contested Mille Lac Reservation which by now had become practically all settled by homesteaders or pre-emption. The Dawes Act would not work with no land to allot. Senator Nelson was an active member of that same Senate Indian Affairs Committee and the author of the Nelson Act designed specifically for Minnesota. The Nelson Act gave all Chippewa Indians in Minnesota the option of taking their allotment on the White Earth Reservation or on the reservation where they now lived. Any excess land not allotted would be sold to the public and the proceeds placed in a fund for the Indians. But this wouldn’t work at Mille Lacs because there was no available land to allot. After four days of council negotiations the Mille Lacs Band agreed, “We the undersigned being male adult Indians over eighteen years of age of the Mille Lac band of Chippewas of the Mississippi ... do also hereby forever relinquish to the United States the right of occupancy on the Mille Lac Reservation, reserved to us by the twelfth

article of the treaty of May 7, 1864...” **That essentially meant that they gave away the promise made to them, whatever it really was, by Commissioner of Indian Affairs Dole. At some time later they were able through the Court of Claims to at least get payments for the homestead, pre-emption or script claims that were fraudulently done. So while this was a bit messy the Indians got paid for the same land a fourth time.**

**May 27, 1898** 55<sup>th</sup> Congress, Session 2, Statutes at Large, Vol. 26, p. 1097 “Resolved by the *Senate and House of Representatives of the United States of America in Congress assembled*, ‘That all public lands formerly within the Mille Lac Indian Reservation, in the State of Minnesota, be, and the same are hereby, declared to be subject to entry by any bona fide settler under the public land laws of the United States...” **Perhaps a bit tardy since the settlement had for all practical purposes already happened, but this made legal the fact that the Mille Lac Reservation no longer existed and was open for settlement.**

**Agreement of May 27, 1902** “For payment to the Indians occupying the Mille Lac Indian Reservation ... the sum of forty thousand dollars ... to pay said Indians for improvements made by them ... on the Mille Lac Indian Reservation ... that this appropriation shall be paid only after said Indians ... have accepted the provisions hereof ... and ... upon removing from the Mille Lac Reservation ...” **This was one last effort to get the remaining Indians living on the former Mille Lac Reservation, on someone else’s land, to move to White Earth and a fifth time of paying for the same property. The Mille Lacs in council accepted the offer but only a few removed to White Earth. Most of the Indians still remained on the former reservation and became known as the “homeless Mille Lacs.”**

**1913 U.S. Supreme Court decision [No. 736 The United States v The Mille Lac Band of Chippewa Indians in the State of Minnesota]: In 1909 Congress authorized the Mille Lac Indians to bring suit against the United States in the Court of Claims for losses they claimed as a result of the Nelson Act and of opening the Mille Lac Reserva-**

**tion to public settlement. The Court of Claims gave judgement against the United States in the amount of \$827,580.72. The Supreme Court opined that** “The judgment was sought and was rendered on the theory that the lands were set apart and reserved for the occupancy and use of the Mille Lacs band by treaties of February 22, 1855 ... March 11, 1863 ... and May 7, 1864 ... and were subsequently relinquished to the United States pursuant to the act of January 14, 1889 ... and that in violation of those treaties ... and that act they were opened to settlement ... to the great loss and damage of the Mille Lac band or the Chippewa of Minnesota.” **The Court further opined that, True, it is said on behalf of the Indians that they did not so understand that existing entries could be thus carried to patent. But the agreement and act to which the Indians had agreed said in Proviso 6, “That nothing in this act shall be held to authorize the sale or other disposal under its provision of any tract upon which there is a subsisting, valid, pre-emption or homestead entry, but any such entry shall be proceeded with under the regulations and decisions in force at the date of its allowance, and if found regular and valid, patents shall issue thereon:” The Supreme Court continued,** “But of this it is enough to observe that the language of the proviso to 6 is plain and unambiguous; that the agreement recites that the Mille Lacs ‘do hereby accept and consent to and ... ratify the said act, and each and all of the provisions thereof’; and that the Indians, no less than the United States, are bound by the plain import of the language of the act and agreement. Not only so, but the act conferred upon the Mille Lacs many very substantial advantages which doubtless constituted the inducement to the adjustment and composition to which they assented.” “We are accordingly of the opinion that the act of 1889, to which the Indians fully assented, contemplated and ... authorized the completion, and the issuing of patents on, all existing pre-emption and homestead entries in the Mille Lac tract which, in the course of the proceedings of the Land Department, shall be found to be within the terms of the proviso 6, and therefore no rights of the Indians were infringed in so disposing of lands embraced in such

entries...” “The judgement [of the Court of Claims] is reversed.

**August 1, 1914 – 63<sup>rd</sup> Congress:** By this time it was obvious that even though there was an area reserved for allotments at White Earth for these so called homeless non-removal Indians, they were not about to leave Mille Lac. So in the 1914 appropriations bill for the Indian service Congress said, “That not to exceed \$40,000 of this amount may be used in the purchase of lands for the homeless non-removal Mille Lacs Indians, to whom allotments have not heretofore been made ... said lands to be held in trust and may be allotted to said Indians ...” **The result was that the Indian Service started the successful search for available properties in the areas where the Indians were squatting. So this was another \$40,000 spent by the federal government for the Mille Lac Indians.**

**April 29, 1936:** Assistant Solicitor Charlotte T. Westwood wrote to the Land Division of the Indian Office. She stated that the proposed constitution for the Minnesota Chippewa talked about 6 reservations: Fond du Lac, Grand Portage, Leech Lake, Mille Lac, Nett Lake and White Earth. Westwood said, “The Mille Lac Reservation is frequently officially referred to as ‘Purchased Lands’ rather than a reservation. The lands involved were purchased under the act of August 1, 1914 ... for the homeless non-removal members of the Mille Lac Band. Is it proper to refer to these lands as a reservation?”

**May 1, 1936:** J.M. Stewart, Director of Lands, replied to Assistant Solicitor Westwood saying, “These purchased lands may be considered as the reservation of the non-removal Mille Lac Indians.” **By what authority could Stewart make that determination? None, because less than a year later, March 18, 1937, Commissioner of Indian Affairs John Collier produced a list of Indian Tribes under the Indian Reorganization Act which listed the reservations of the Minnesota Chippewa Tribe as: White Earth, Leech Lake, Fon du Lac, Bois Fort and Grand Portage.**

**November 20, 2015 Solicitor Opinion M-37032:** “This opinion provides my legal conclusion regarding the current status of the Mille Lacs Band of Ojibwe’s (Band) Reservation boundaries ... we find that the Mille Lacs Reservation, as it was established by the 1855 Treaty, remains intact ...” **Signed: Hilary C. Tompkins, Solicitor, Dept. of Interior**

**November 17, 2017:** Using the work of fiction produced by Solicitor Tompkins, the Mille Lacs Band filed suit against Mille Lacs County saying, “The boundaries of the Reservation as established in 1855 have not been disestablished or diminished. In particular, the treaty ... (Mar. 11, 1863) and the treaty ... (May 7, 1864) preserved the Reservation for the Mille Lacs Band, and the Act of January 14, 1889 ... did not disestablish or diminish the Reservation or alter the Reservation’s boundaries ... All lands within the Reservation as established in 1855 are Indian country within the meaning of 18 U.S.C. §1151.”

**Why is this important? In 2013 the Mille Lacs Band petitioned the United States Justice Department for Concurrent Federal Jurisdiction over lands encompassed in the 1855 Reservation. That request was granted on January 20, 2016. By this designation the Band is claiming jurisdiction over lands that are the exclusive jurisdiction of Mille Lacs County. By that claim non-tribal members of the northern part of Mille Lacs County would be subject to criminal jurisdiction by a government in which they have no voice.**

**Does something smell fishy to you? It does to me! Is this the smelly swamp that we have heard so much about recently?**



*Federal Indian policy in unaccountable, destructive, racist and unconstitutional. It is therefore CERF and CERA's mission to ensure the equal protection of the law as guaranteed to all citizens by the Constitution of the United States*

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