

GREAT LAKES INDIAN FISH & WILDLIFE COMMISSION

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• MEMBER TRIBES •

MICHIGAN

Bay Mills Community
Keweenaw Bay Community
Lac Vieux Desert Band

WISCONSIN

Bad River Band
Lac Courte Oreilles Band
Lac du Flambeau Band

MINNESOTA

Fond du Lac Band
Mille Lacs Band

Red Cliff Band
St. Croix Chippewa
Sokaogon Chippewa

October 12, 2012

Ms. Cathy Stepp, Secretary
Wisconsin Department of Natural Resources
101 South Webster Street
P.O. Box 7921
Madison, WI 53707-7921

Re: ***Lac Courte Oreilles Indians v. State of Wisconsin*** – Proposed Tribal Night
Hunting Regulations/Commission Order 2012-05

Dear Secretary Stepp,

Thank you for your letter of October 5, 2012 in response to the Tribes' proposed Commission Order 2012-05, promulgated pursuant to the authority granted by §3.33 of the Tribes' Off-Reservation Conservation Codes and established in the *Stipulation for Technical, Management and Other Updates: Second Amendment of Stipulations Incorporated into Final Judgment*. This proposed Commission Order was drafted to be, and is, consistent with the recent enactment of 2011 Wisconsin Act 169, which changed state hunting hours for wolves and provided for the use of a light at the point of kill.

I agree that it is necessary to continue the consultation about this issue that was initiated at this year's initial stipulation review meeting in May at Red Cliff, and that has been ongoing ever since. The "other liberalization amendment" provision of the *Stipulation for Technical, Management and Other Updates: Second Amendment of Stipulations Incorporated into Final Judgment* requires the Department to make a timely and good faith effort to review and respond to the proposed Order with any reasonable questions or concerns over the merit of the proposal. While the Department has communicated a desire to change the timing of the Order to GLIFWC staff, this is not a response to the merits of the proposed Order. Therefore, I suggest that we establish a November 1, 2012 deadline for consultation to occur. To aid in more focused consultation on the specifics of the Tribes' proposal, the Tribes have authorized me to provide a revised proposed Order (enclosed) that would be effective for deer only. This should simplify the Department's review of the public safety, biological and legal issues involved.

As a reminder of our consultation thus far, the Tribes and Commission staff already have discussed many of the principles and concepts underlying the Tribes proposed Order with Department enforcement, biological, legal and policy staff in meetings, phone calls and other communications. It is my understanding that, while the Department stated to the Tribes that it had no reasonable objection to the implementation of this proposed Order at a meeting of the Parties in Stevens Point on August 1, the Department has also expressed the desire that the Tribes not pursue this option for the current year, asking the Tribes instead to wait until next

year. While this may be the Department's policy preference, that desire does not address the merits of the proposal, and thus is an insufficient basis on which to object to the Order's issuance.

I also must address your interpretation of the consultation requirement as requiring consultation with me as the Commission's Executive Administrator, and that no one else, including "the Tribes, the Task Force Chairman, or any other can act like a surrogate to replace the required State consultation." The Tribes and the state are the Parties to the *Lac Courte Oreilles* case. As the Parties, both the Tribes and the state agreed to the Commission Order process. As part of this agreed-upon process, consultation to date has been, and should continue to occur between the Parties. Contrary to your stated interpretation, the Tribes' delegation of specific responsibilities to the Voigt Intertribal Task Force, to me, or to Commission staff does not substitute for consultation directly between the Parties to the litigation.

Furthermore, I must make it clear that the proposed Commission Order was never intended as a circumvention of the stipulation review process. In fact, it is entirely consistent with that process and well-established practice between the Parties. To date, the Tribes have issued ten Commission Orders overall, with seven of these Commission Orders having been issued with the State's consent under the "other liberalization amendment." These Orders have each addressed inequity in certain opportunities that were provided under state law but not under tribal law. This established practice has not supplanted the regular stipulation review process; it has supplemented it exactly as the Parties intended.

In proposing this Order, the Tribes are well within the letter and intent of the "other liberalization amendment" provision to seek to change hunting hours for a species that inhabits the same areas as wolves, consistent with the recently-enacted change in state hunting hours for wolves. It makes no difference whether one hunts a wolf or a deer if hunting is taking place at the same time and location using the same methods. This is precisely the circumstance that the "other liberalization amendment" was intended to address. Moreover, the proposed Order contains safety precautions not contained in the state law allowing wolf hunting at night, making the proposed Order more stringent on safety requirements. These extra safety requirements include the same precautions that the state requires for CWD night hunting, such as advanced hunter safety training, marksmanship proficiency, and a site plan.

You have characterized the "other liberalization amendment" process as providing increased treaty harvest opportunities *only* to the extent that such opportunities are consistent with those extended under state law. In fact, your characterization is more accurately a characterization of the "technical amendment" process established in the *Stipulation for Technical, Management and Other Updates: First Amendment of Stipulations Incorporated into Final Judgment*. The "other liberalization amendment" process was established to allow changes that do not exactly parallel state changes that pertain to all "other fish and game-related regulatory amendments" consistent with those available under state law to state harvesters.

I am dismayed by your characterization of the Tribes' actions, motives and conduct in the implementation of their treaty-reserved rights and the law of the *Lac Courte Oreilles Indians v.*

Ms. Cathy Stepp, Secretary

October 12, 2012

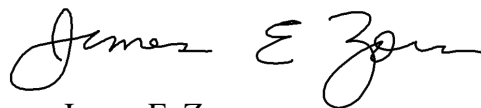
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Wisconsin case. In my view, they have done nothing more than to diligently seek to implement their rights following well-established practices, and to protect the ecosystems of the ceded territory. I am not aware that either party has ever halted the negotiation process or instructed their staff to abandon on-going efforts, as you now have done with respect to the October 11 fishery stipulation issues workgroup, when they were dissatisfied with the other party's actions. The Tribes have had ample reason to do so on a number of occasions. Yet the Tribes respected and followed the prescribed and agreed-upon processes through numerous Administrations, many Department re-structurings and re-organizations, and in the face of scores of legislative and administrative rule changes that were enacted over their objection or without their full participation and that affected their treaty-reserved resources and supporting habitats.

Finally, the Department's linkage of the proposed Order with other issues and on-going discussions seems retaliatory at best, and, in any event, does not alleviate the Department of its obligation under the "other liberalization amendment" to timely consider the merits of the proposed Order and to respond accordingly. The Department's dissatisfaction with the Tribes for proposing the Order in the first place does not constitute a reasonable basis for withholding consent.

In order to most expeditiously address both the broader issues and this proposed Order, I have spoken with Deputy Secretary Gunderson and we have scheduled a meeting to address both of these matters on October 22, 2012 in Stevens Point. As in the past, I will ask Kekek Jason Stark of my staff to work with Quinn Williams to develop an agenda and otherwise facilitate the meeting. In the meantime, I encourage your staff to contact mine prior to the 22nd so that they can learn as much as possible about this proposal and thereby focus our discussions. We look forward to a full and substantive discussion with you and your staff on October 22.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Zorn". The signature is fluid and cursive, with the first name "James" being the most prominent.

James E. Zorn
Executive Administrator

Enclosure

cc: *Lac Courte Oreilles* Case Chairs and Representatives
Lac Courte Oreilles Case Tribal Attorneys
Ann McCammon Soltis, Director, Division of Intergovernmental Affairs
Kekek Jason Stark, Attorney/Policy Analyst, Division of Intergovernmental Affairs