



October 5, 2012

James E. Zorn
Executive Administrator
Great Lakes Indian Fish and Wildlife Commission
P.O. Box 9
Odanah, WI 54861

Dear Administrator Zorn:

It is with great concern that I write to you today regarding an ongoing pattern by the six Plaintiff Ojibwe Bands (the Tribes) involved in the current third round of the *Voigt* case (*Lac Courte Oreilles Indians v. State of Wis.*, 775 F. Supp. 321 (W.D. Wis. 1991) stipulations (Stipulations) of stepping outside of the mutually agreed upon biennial review process. As you are well aware, the Stipulation process was expressly established to make provisions for adjusting tribal harvest opportunities in the event, inter alia, of "changed circumstances [including] significant changes in the ceded territory's natural resource populations." The logic of establishing this process was to ensure that the Department and the Tribes (the Parties) were given appropriate time to consider and assign limited resources to thoughtfully work on issues of mutual importance so that those issues would not be addressed in a non-uniform and haphazard manner.

The Department has diligently and in good faith implemented the court-approved Stipulation process for many years, and in doing so has provided numerous enhanced Tribal resource harvesting opportunities. This long list includes, but is not limited to: threshold limits for Tribal harvest of a host of species; self-regulation of gathering miscellaneous forest products on State lands; alternative monitoring of walleye; youth hunt mentoring; a better and more accurate GIS layer map establishing the formal southern boundaries of the ceded territory in Wisconsin; and a responsive and flexible State Park hunting opportunities mechanism – all of which have operated almost exclusively for the Tribes' benefit. In fact, as the Tribes know, the Parties are in the midst of negotiating proposed changes to the Stipulations through the biennial review process, almost all of which would significantly enhance tribal harvesting opportunities for various resources.

Over the past year, however, the Tribes have either abandoned or circumvented the established Stipulation process when they found it convenient to do so through actions such as:

- (1) using an explicitly individual Memorandum of Understanding between the Department and one Tribe (Lac du Flambeau) regarding walleye harvest in and around that reservation to try to open up broader Voigt Stipulation fisheries issues affecting all Tribes;
- (2) unilaterally pursuing a ceremonial elk harvest without Department consultation and in violation of previously agreed upon population goals ; and,
- (3) most recently, proposing a Commission Order using the inapplicable "liberalization amendment" process to extend night hunting opportunities to Tribal members for a host of species for which night hunting is prohibited by State law.

These actions not only circumvent the court-sanctioned Stipulation process, but also serve to erode the type of relationships envisioned by the court in the Stipulation process between the Department and the Tribes.

As you know, I have made strengthening tribal relationships, and in particular the Department's relationship with the six Ojibwe Bands in Wisconsin, a priority in my administration. This latest tactic has left me deeply frustrated and concerned that the Tribes are no longer interested in holding up their end of the bargain by continuing good faith negotiations under the approved Stipulation process. As noted in your letter dated June 12, 2012, the general principles that arose during the *Voigt* litigation negotiations "should apply as much now as they did then – 'start slow,' 'crawl before you walk,' and 'haste makes

waste' were the watchwords of the day." The recent actions by the Tribes over the past year are not consistent with those principles.

With respect to the latest of these actions, I must remind the Tribes that the "other liberalization amendment" process was designed to provide increased treaty harvest opportunities *only* to the extent that such opportunities are consistent with those extended to State harvesters under State regulation. Since there is currently no State law allowing State harvesters to engage in night hunting of non-predator species such as deer, bear, elk and turkey, the Tribes' request that the Department grant their members such opportunities is not "consistent with [opportunities] available under State law to State harvesters." As a result, the "other liberalization amendment" process cannot, and was never intended to, provide the result the Tribes now seek.

We are concerned that if the Tribes interpretation of the "other liberalization amendment" process as it relates to night hunting for all of the species named in the proposed Commission Order were to apply, then the formal Stipulation process would not simply be diminished. Rather, it would be completely supplanted, and replaced with a new system beyond the review of the court. This result could not have been intended, as evidenced by the plain language of Section 3.33(2) of the Off-Reservation Model Code, which provides:

This section does not diminish the ability of either party to propose formal stipulation amendments and the process for achieving these amendments.

Finally, there has been no consultation between the Department and you, the GLIFWC Executive Administrator, on this issue. This is minimum prerequisite prior to any attempt to reach an agreement. Moreover, the express language of the "other liberalization amendment" provision – if, indeed, it is applicable – does not allow for the Tribes, the Task Force Chairman, or any other surrogate to replace the required State consultation with the "GLIFWC Executive Administrator." I can tell you that the State will – as it must – take a hard look at the public safety and conservation issues raised by the commission's wide-ranging proposed night hunting order before we can adequately consult with you. I can tell you, too, that we believe those issues to be significant. Please let me know when you would like to consult on the proposed Commission Order issue.

The apparent willingness of the Tribes to circumvent the established Stipulation process when they deem it expedient to do so raises questions in my mind about the wisdom – and the possible futility – of continuing this very resource intensive process. The Department is committed to continuing to engage in good faith negotiations on a variety of issues, including those put forth by the Tribes for this round of Stipulations. However, there must be a mutual understanding of and respect for the integrity of the Stipulation process moving forward. That being said, I have directed staff to put on hold any meetings regarding the current Stipulation negotiations until the Tribal negotiating team and I can discuss how we move forward. I propose that the Tribal negotiating team meet with me in the next 90 days, depending on availability and scheduling. Please let me know when the Tribal negotiating team would like to meet for such a discussion.

Sincerely,



Secretary
Wisconsin Department of Natural Resources

cc Voigt Task Force