

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LAC COURTE OREILLES BAND OF LAKE
SUPERIOR CHIPPEWA INDIANS; RED CLIFF
BAND OF LAKE SUPERIOR CHIPPEWA INDIANS;
SOKAOGON CHIPPEWA INDIAN COMMUNITY,
MOLE LAKE BAND OF WISCONSIN; ST. CROIX
CHIPPEWA INDIANS OF WISCONSIN; BAD
RIVER BAND OF THE LAKE SUPERIOR CHIPPEWA
INDIANS; and LAC DU FLAMBEAU BAND OF LAKE
SUPERIOR CHIPPEWA INDIANS,

Plaintiffs,

v.

Case No. 74-C-313-C

STATE OF WISCONSIN, WISCONSIN NATURAL
RESOURCES BOARD; CATHY STEPP;
KURT THIEDE; and TIM LAWHERN,

Defendants.

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

STATE OF WISCONSIN)
) SS
COUNTY OF ASHLAND)

The affiant, CHRIS D. MCGESHICK, being first duly sworn, upon oath deposes and states as follows:

1. My name is Chris D. McGeshick, and I reside at 3160 Indian Route 10, Crandon, Wisconsin, 54520. I am a member and the Chairman-Elect of the Sokaogon Chippewa Indian Community, Mole Lake Band ("Sokaogon Band") of Wisconsin.
2. I am the Sokaogon Band's representative to the Great Lakes Indian Fish and Wildlife Commission's Board of Commissioners ("GLIFWC Board"). I am the vice-chairman of the Board and am a member of the Voigt Intertribal Task Force.

3. From 1991 to 2006, I was employed as a conservation law enforcement warden with the Wisconsin Department of Natural Resources (“WI DNR”). During my employment I was a field warden, a warden supervisor, and a section chief for special investigations.
4. My duties for the WI DNR were to enforce the natural resource regulations of the State, to assist in the development of conservation enforcement policies and procedures, as well as managerial responsibilities.
5. As a conservation law enforcement warden with the WI DNR, I participated in the State DNR's chronic wasting disease (“CWD”) nighttime deer eradication hunt, which entailed sharpshooting (hunting) deer at night. I also participated in the WI DNR’s advanced safety training, which qualified participants to hunt at night and execute shooting plans.
6. I am an experienced hunter. I have been hunting since the age of nine and I have participated in night deer hunting activities on my reservation, where hunting of this type is permitted. I have hunted deer as well as other species, including migratory birds, bear, rabbit, squirrels, raccoon, coyote and fox.
7. Based upon my experience as a conservation law enforcement warden and as a hunter, I assisted in the development and drafting of Commission Order 2012-05 on behalf of the Plaintiff Tribes. I used the WI DNR’s night hunting safety parameters as a base, to which I added further safety measures.
8. For example, in drafting Commission Order 2012-05, I evaluated and analyzed hunting incident report data from the deer trial (1987 and 1988) and current incident report data (2006-2011 and 2012 preliminary data). In considering this data, it

became apparent that the vast majority of hunting accidents occurred at 100 yards or less (with most of these accidents being self-inflicted or occurring within the shooters hunting party); all accidents detailed on these reports occurred within 500 yards or less. This formed the basis for the requirement in the Commission Order that certain locations within a one-quarter mile area be marked on the shooting plan.

9. Based on my experience as a warden with the WI DNR and my knowledge of the requirements of Commission Order 2012-05, the safety measures contained in Commission Order 2012-05 go significantly beyond what the WI DNR requires for its own night hunting effort and address all legitimate safety issues:

- a. Tribal Night Hunting Permit. In the development and drafting of Commission Order 2012-05, we require that tribal members hunting at night must possess a night hunting permit. This allows the tribal conservation stations to ensure that the member has a marksmanship certificate, that a marksmanship certificate number has been submitted, and that the necessary shooting plans are submitted prior to issuing the night hunting permit.
- b. Tribal Shooting Plans. In the development and drafting of Commission Order 2012-05, we require tribal members to submit a signed shooting plan to the tribal conservation department prior to receiving a night hunting permit. The shooting plan serves a number of functions:
 - i. As part of creating a shooting plan, members must preselect their “point of kill” by designating a “safe zone of fire.” Members may

be cited if they provide false or misleading information or otherwise fail to submit a shooting plan when required.

- ii. By formulating a shooting plan, tribal members must select a hunting location ahead of time, making a conscientious consideration of shooting locations, likely areas from which animals will approach, and assess the terrain and potential hazards – thus mitigating potential safety concerns.
 - iii. In my opinion, shooting plans help ensure that members plan their hunt for safety and success, safety being the first priority and success secondary.
 - iv. I know that a database has been established for the Conservation Enforcement Division (“Division”) to have field access to all submitted tribal shooting plans, allowing officers from the Division to verify the information submitted on the plan and enforce it in the field.
 - v. In my experience participating in the State’s nighttime CWD eradication hunt, I was required to complete a shooting plan when harvesting deer on private property. On the occasion that a shooting plan had already been completed by other hunters, I was allowed to utilize these plans and was not required to complete an individualized plan. When harvesting on public land, I was not required to complete a shooting plan.
- c. Marksmanship Requirement. In the development and drafting of Commission Order 2012-05, we require that tribal members complete an

advanced hunter safety course, receive marksmanship training, and receive a marksmanship proficiency rating prior to receiving a night hunting permit. This is similar to the certification I was required to attain when I was certified to participate in the State's nighttime CWD eradication hunt. These provisions ensure that only informed, highly trained, and proficient shooters receive night hunting permits. To my knowledge, the WI DNR has not asked to participate in, nor have they suggested any amendments to, this established advanced hunter safety course.

- d. Harvest from a Stationary Position at the Point of Kill. In the development and drafting of Commission Order 2012-05, we require members to hunt from a stationary position at the point of kill, mirroring the requirement for state hunters hunting wolves at night. However, unlike state hunters, tribal hunters will be hunting pursuant to a predefined shooting plan and established "safe zone of fire." Commission Order 2012-05 also allows permitted hunters to hunt with the use of bait, electronic calls, or other calling techniques. This allows the member to lure the hunted animal to his or her stationary location within the "safe zone of fire." Based on my knowledge and experience it is not necessary to require the use of these luring techniques, since the hunter will be hunting within a predetermined "safe zone of fire" and will know that it is safe to harvest a deer that enters that area. In my experience participating in the State's nighttime CWD eradication hunt, I was not required to harvest from a stationary position,

but was allowed to hunt from all types of situations, including hunting from a moving vehicle.

- e. Use of High Powered Flashlights, Infrared Scope, Night Vision Scope, and Thermal Imaging Scope. Commission Order 2012-05 allows members to use high powered flashlights, infrared scopes, night vision scopes, and thermal imaging scopes. The rationale for encouraging the use of high-powered flashlights and other modern equipment is so members can adequately see their intended target and what lies beyond. Furthermore, the use of night equipment enhances the likelihood of a deer being killed, reducing the likelihood of wounding and subsequent loss. However, a member is also allowed to harvest without the use of this equipment if they desire to harvest by natural light (the light of the moon), as long as they are otherwise harvesting pursuant to their established shooting plan from a stationary position at the point of kill.
- f. Required Notice. In the development and drafting of Commission Order 2012-05, we require that Tribal Conservation Departments, at a minimum, provide for the advance notification of appropriate federal, state, and local officials once a tribal night hunting permit has been issued. By “appropriate” officials, the Order means those that oversee the management of the particular land being hunted. This provision mirrors the notice requirement approved by the court for night hunting in the Minnesota portion of the 1837 ceded territory in the *Mille Lacs* case. The rationale for requiring this notification is to ensure that people are aware

that night hunting has been authorized within their vicinity. In my experience participating in the State's nighttime CWD eradication hunt, I was required to receive landowner permission to harvest on private property, however no other notice requirement existed.

- g. Prohibited Use of Jacketed Bullets. In the development and drafting of Commission Order 2012-05, we prohibit members from using jacketed bullets, again mirroring the requirements for tribal night hunting in the Minnesota portion of the 1837 ceded territory, and as approved by court in the *Mille Lacs* case. The rationale for requiring the use of non-jacketed bullets is to diminish the likelihood that a bullet will ricochet outside the intended "safe zone of fire."

10. Based on my knowledge and experience, Commission Order 2012-05 addresses legitimate safety concerns while regulating the Plaintiff Tribes' night hunting in a manner more restrictive than, but fully consistent with, the standards governing the present night hunting offered to state hunters.

Further affiant sayeth not, dated this 26th day of November 2012.

/s/ Chris D. McGeshick
Chris D. McGeshick

Subscribed and sworn before me
this 27th day of November 2012.

/s/ Ann McCammon Soltis
Notary Public, State of Wisconsin
My Commission: is permanent