

April 18, 2006

Chairman Floyd Jourdain Jr. Red Lake Tribal Council PO Box 550

Red Lake, MN. 56671

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RED LAKE TRIBAL CHAIRMAN RED LAKE MN 56671

Dear Chairman Jourdain:

RE: Questions regarding ownership of Upper Red Lake, Lower Red Lake and all navigable tributaries to and from Red Lake.

On January 26, 2002 Red Lake law enforcement seized a Cessna 172 from Justin Fuhrer. They charged Fuhrer with trespassing on the Red Lake Reservation and took him to Tribal Court. I questioned several actions taken by the Red Lake Reservation in regard to this matter. 1. Non-members of a Reservation cannot be compelled into Tribal Court and do not have to abide by the decisions of that Court. Federal and State Courts have jurisdiction over non-members for crimes on a Reservation. 2. It is illegal to trespass on a Federal Indian Reservation only if you "willingly and knowingly" trespass. It was obvious that Fuhrer didn't understand that he should have been taken to Federal Court not Tribal Court and he didn't intend to trespass. Fuhrer had heard that crappies were being caught on Red Lake, flew his plane to Red Lake and started fishing oblivious to the ownership of the lake. There are no signs delineating the boundaries on the Lake. These two issues prompted my research into the history, laws and treaties of Red Lake Reservation. I was astounded by what I found in Federal Case Law. For the purpose of this letter Upper Red Lake and Lower Red Lake will be referred to as Red Lake. If my research is correct Red Lake Reservation and/or the Federal Government do not own any of Red Lake or any of the navigable rivers and streams that flow into or out of the Lake. The state of Minnesota owns the water, bed and shores of Red Lake. The fishing and fish should be managed by the State of Minnesota.

In 1926 the United States Supreme Court addressed this very issue in the decision *U.S. v. Holt State Bank, 270 U.S. 49 (1926)*. This case was specific to Red Lake and all navigable waters in or *on the Reservation* proper or ceded lands off the Reservation. The Court ruled that when the United States Government acquired Territories they acquired all water rights. When the

United States created states from these lands they gave all water rights to the states. At that time in our nation's history, commerce was dependant on navigable waters. If Treaties were made with Indian Bands or Tribes the Treaty has to specifically say that the Reservation has exclusive use to the waters. The Treaty and all Amendments with the Red Lake/Pembina Bands of 1863 are silent on this point. Therefore, all of Red Lake and its navigable tributaries are Minnesota public waters.

In 1981 the State of Montana used the Holt case as valid case law to ascertain ownership of the Big Horn River which passed through the Crow Indian Reservation. The United States Supreme Court again [ruled in *Montana v. United States, 450 U.S. 544 \(1981\)*](#). The Supreme Court cited the Holt case as valid case law. The *Montana* case further strengthened the Holt case by saying that the State of Montana had ownership of not only the water in the Big Horn River, but the banks and bed also. The court further stated that fishing on the Big Horn River within the Reservation was not the exclusive right of the Crow Reservation, but under the jurisdiction of the State of Montana. The 1863 Treaty with the Red Lake/Pembina Bands nowhere suggested that Congress intended to grant exclusive use of Red lake for fishing or navigation to the Red Lake/Pembina Bands.

In 1913 the Minneapolis and Manitoba Railway Co. put in the tracks from Bemidji to Redby and owned and occupied 320 acres in Redby. At that time history shows that non-members were free to go to Redby by train and fish in the lower lake whenever they wanted, free from interference from the Red Lake/Pembina Bands. This activity went on until the road to Waskish was improved and it was then more convenient to go fishing on the east end of Upper Red Lake. It appears to me that Red Lake acquired most of the lake due to "adverse possession" (Like the adage "ownership is nine tenths the law".) Unfortunately for Red Lake adverse possession is not valid against a government entity. During World War I the State of Minnesota built the first commercial fishery at Redby, not the Red Lake/Pembina Bands or the Federal Government. The commercial fishermen were members of Red Lake and non-members.

I would like to know if there are any other laws, rules or treaties that I have overlooked. I would appreciate it if you could be specific. Is there any agreement with the State of Minnesota and the Federal Government or Red Lake Reservation that gives exclusive use of the lake to Red Lake Reservation? Please give cites for your arguments. I believe the United States Supreme Court

has already resolved these issues in favor of the State of Minnesota, but welcome any contradictory facts or laws you believe relevant in this matter.

If you elect to ignore this letter or fail to give legal cites or valid agreements I will assume you are acquiescing to my arguments that the State of Minnesota owns the lakes and should be controlling all the fishing on the lake. I would like to test the ownership of Red Lake in Federal Court. If you would like we could arrange to have me summoned into Federal Court for trespassing on Red Lake Reservation waters. I would navigate from Upper Red Lake into the waters that Red Lake currently insists belongs to them. I would welcome the chance to argue in-Federal Court the above Supreme Court rulings and other items I have found concerning who owns the lake and natural resources in the lake. I would like to start using the whole lake and possibly will start a fish guiding service and use all of Minnesota's public water.

I would like a response by Minnesota fishing opener, May 13, 2006. I anticipate your response. Thank you.

Respectfully,

Greg Spaulding- 507 340th St. Bagley, MN. 56621