

# Appendix 9

## State of Wisconsin's Acceptance of Judge Barbara Crabb's Final Judgment

Statement by Attorney General James E. Doyle, Jr.  
Madison, Wisconsin  
May 20, 1991, 9:30 A.M.

Sixty days ago, Judge Crabb entered a final order in the treaty rights litigation. The Federal District Court has issued a set of decisions on a variety of issues involving the treaty. Last week, lawyers for the various bands of the Chippewa tribe involved in the litigation informed us that they would not appeal any of the issues, if the State also did not appeal.

After extensive consideration and consultation, Secretary Besadny and I are announcing today that the State will not appeal to the U.S. Court of Appeals for the Seventh Circuit. This means that a long and costly legal battle has been put to rest. It allows us to open a new chapter in state, community and tribal relations.

This case has been fully litigated. Wisconsin and the tribe have been in court for nearly 17 years. Judge Crabb has heard a great deal of testimony and she has issued well-reasoned, comprehensive decisions. The matter has already been to the Seventh Circuit Court of Appeals twice.

This decision has required an extensive legal review of what the state could win or lose through a possible appeal. The D-N-R, as the client agency, in consultation with the lawyers in this office, has concluded that a further appeal of this case would serve no useful purpose, and might jeopardize the gains we have made. And, I concur.

The fundamental question of off-reservation treaty rights has already been decided by the Seventh Circuit Court of Appeals in this litigation. In 1978, my father ruled that the Chippewas' off-reservation rights set out in the treaties of 1837 and 1842 had been extinguished. On appeal, in 1983 the Seventh Circuit said my father's ruling was incorrect and declared that the off-reservation rights were valid. The State asked the U.S. Supreme Court to review that decision and the Supreme Court declined.

I know that many people in Wisconsin hold out hopes that another appeal would produce a different outcome. The general rule of law is that an issue once decided cannot be litigated again. There is no reasonable basis for a belief that the Seventh Circuit, or the Supreme Court, would deviate from this general rule and that the outcome on this basic issue would be any different today.

Our decision was reached after an exceptionally thorough legal review by many lawyers in this department over the last sixty days and extensive consultation with the D-N-R, the Department of Administration and the Governor's Office.

Wisconsin has won many significant victories in this case, all of which would be jeopardized in any appeal. These victories include:

1. The tribe cannot sue the state for past monetary damages . . . A claim the tribe has said is worth over \$300 million.
2. The treaties do not extend to the commercial harvest of timber. A contrary ruling would cost the counties of this state millions of dollars annually.
3. The state has the ultimate authority to protect and manage the resources in the ceded territory.
4. Tribal members cannot enter onto privately-owned lands to exercise their rights.
5. Treaty rights do not extend to privately-owned stream beds, river bottoms and overflowed lands.
6. The tribe is not entitled to all the available resources necessary to sustain a modest standard of living. Rather, the resources must be shared on a 50-50 basis.
7. The State can impose on tribal members its boating and safety regulations, even when the Chippewa are engaging in treaty protected activity. Thus, the tribe cannot shine deer or engage in summer deer hunting.

An appeal would put all of these significant victories at risk. And, for those who doubt that, let's remember that the fundamental off-reservation rights were granted on an appeal.

This is an appropriate time to put this case to rest. The people of northern Wisconsin are tired of fighting with each other. They know that we have far more important issues facing us.

Because of outstanding community and tribal cooperation and an excellent job by law enforcement, the 1991 spearfishing season was remarkably quiet. We have had two consecutive years now of improved relations and a real understanding that both sides need to get on with their lives. Rather than spending millions of dollars on law enforcement and attorneys' fees, I think everyone in northern Wisconsin would prefer to support economic development, tourism and education.

I have been impressed with the many ways in which the citizens of northern Wisconsin . . . tribal and non-tribal . . . have been working together to bring about economic development and cultural understanding. The state has a responsibility to support those efforts through words and action.

In my short time as Attorney General, I've made seven trips to northern Wisconsin on this issue. I've seen firsthand community leaders and tribal leaders sitting down together at the same table to talk about how to improve tourism and the economy. I've seen tribal fish hatcheries that are stocking fish in off-reservation lakes for all of us to enjoy. And, I've heard the good people of northern Wisconsin talk frankly about the ugly image that some in the nation have had of our state.

I'm proud of what I've seen and the cooperation in the north convinces me even more that it is time to move on.

The long legal struggle is now over. It is time to recognize, as the Court has, that both sides have rights. The work of the Court is finished. It is now up to the State and all the people of Wisconsin to build on the relationship that we have begun.

Those of us who call Wisconsin home do so because we love the quality of life here. Our natural resources make this state special and the people here are second to none. I know that we still have a lot of work ahead of us. But, I am confident that our children will be much better off for the struggle.

