STATE OF WISCONSIN | CIRCUIT COURT BRANCH 3 | BROWN COUNTY

VILLAGE OF HOBART,

Plaintiff,

vs.

Case No. 06-CV-480

Case Code: 03405

ONEIDA TRIBE OF INDIANS OF WISCONSIN, FOX VALLEY & WESTERN LTD, and UNKNOWN PARTIES,

Defendants.

BRIEF OF DEFENDANT ONEIDA TRIBE OF INDIANS OF WISCONSIN IN SUPPORT OF MOTION TO DISMISS

INTRODUCTION

Plaintiff's complaint for a declaration of interests in the railroad right-of-way abandoned by defendant Fox, Valley & Western, Ltd. is not well-grounded in fact and is not supported by any law. First, as alleged in the complaint, the Oneida Tribe of Indians of Wisconsin (the "Oneida Tribe") is "a federally-recognized Indian government and treaty tribe recognized by the laws of the United States of America." (Plaintiff's Complaint, paragraph 2.) Under controlling federal and state court precedent, the Oneida Tribe is immune from suit and this Court lacks jurisdiction over the subject matter. In addition, this Court, as a general matter, lacks jurisdiction over claims against the Oneida Tribe and is pre-empted from exercising such jurisdiction by federal law.

Second, although plaintiff alleges that it possesses "an interest in the subject property" (Plaintiff's Complaint, paragraph 20), plaintiff has failed to allege any facts which might support this conclusion, and plaintiff's complaint otherwise reveals that plaintiff possesses no interest in use,

possession, or ownership of the property. Plaintiff has therefore failed to state a claim upon which relief may be granted, and is not entitled to file or maintain an action for a declaration of interests in the property.

Third, plaintiff has failed properly to join, and cannot join, indispensable parties -- the Oneida Tribe and the United States of America. The interest of the Oneida Tribe and the United States are readily apparent from plaintiff's complaint and attached exhibits. These interests are also documented in the legal history of the property which plaintiff neglected to include in its complaint. A vast area of Wisconsin, including the property at issue, was originally occupied by the Menominee Indians and claimed as "the exclusive property of their tribe." 1831 Treaty with the Menominee, 7 Stat., 342.[1] In 1831, the Menominee ceded approximately 500,000 acres, including the property at issue, to the United States, so that land "may be set apart as a home to the several tribes of the New York Indians," including the Oneida Tribe. Id. at Article 1. In 1838, the Oneida Tribe ceded its interest in the lands reserved under the 1831 Treaty with the Menominee, and the United States permanently reserved the present Oneida Indian Reservation, including the property at issue, for the use and occupancy of the Oneida Tribe. 1838 Treaty with the Oneida, Article I, 7 Stat., 566.[2] The boundaries of the reservation were subsequently surveyed, and all lands within those boundaries are Reservation lands. *See* State v. King, 212 Wis.2d 498, 571 N.W.2d 680 (Wis. App. 1997). In 1870, the Oneida Tribe granted a right of way to the Green Bay and Lake Pepin Railway Company for the use of the property at issue as a railroad line. (Plaintiff's Complaint, Exhibit C.) This right of way

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[1]For the Court's convenience, a copy of the 1831 Treaty with the Menominee is attached at App. 101-105.

[2]For the Court's convenience, a copy of the 1838 Treaty with the Oneida is attached at App. 106-107.

was subsequently approved by the United States Congress, as required by law. "An Act granting the Right of Way to the Green Bay and Lake Pepin Railway Company for its Road across the Oneida Reservation, in the State of Wisconsin," March 3, 1871, 16, Statutes at Large, 588.[3] As alleged in plaintiff's complaint, subsequent to the 1870 right of way agreement, "the record ownership" of the property "has not changed." (Plaintiff's Complaint, paragraph 13.) In 2003, defendant Fox Valley & Western, Ltd., the successor in interest of the Green Bay and Lake Pepin Railway Company, acknowledged that it did not obtain title to the property by virtue of the 1870 right of way agreement, and agreed to compensate the Oneida Tribe for its use of the land. (Plaintiff's Complaint, Exhibit D.) In proceedings before the federal Surface Transportation Board, defendant Fox Valley & Western, Ltd. subsequently consummated the abandonment of its right of way across the property. July 23, 2003 Decision and Order, STB Docket No. AB-402 (Sub-No. 8x).[4] The import of this legal history is clear: the United States holds title to the property at issue pursuant to the cession granted by the Menominee Indians in the 1831 Treaty with the Menominee, and the United States has permanently reserved the property for the use and occupancy of the Oneida Tribe pursuant to the 1838 Treaty with the Oneida.

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[3]For the Court's convenience, a copy of the Act is attached at App. 108-109.

[4]For the Court's convenience, a copy of the July 23, 2003 Decision and Order is attached at App. 110-111. Decisions of the Surface Transportation Board are also available on-line at http://www.stb.dot.gov.

ARGUMENT

I. STANDARD FOR MOTION TO DISMISS

A motion to dismiss tests the legal sufficiency of the pleadings. Evans v. Cameron, 121 Wis. 2d 421, 426, 360 N.W.2d 25 (1985). The court must accept the pleaded facts and reasonable inferences from those facts as true; however, the court need not accept legal conclusions or unreasonable inferences as true. Morgan v. Pennsylvania Gen. Ins. Co., 87 Wis.2d 723, 731, 275 N.W.2d 660, 664 (1979).

II. THE PRESENT ACTION IS BARRED BY TRIBAL SOVEREIGN IMMUNITY.

Indian tribes "exercise inherent sovereign authority over their members and territories." Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe, 498 U.S. 505, 509 (1991). They are "distinct, independent political communities, retaining their original natural rights in matters of local self-government." Santa Clara Pueblo v. Martinez, 436 U.S. 49, 55 (1978) (internal quotation marks and citation omitted). As independent sovereigns, Indian tribes possess "the common-law immunity from suit traditionally enjoyed by sovereign powers." Id. at 58. They are "subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." Kiowa Tribe of Oklahoma v. Manufacturing Technologies, 523 U.S. 751, 754 (1998) (citations omitted).

The Supreme Court of Wisconsin has recognized the vitality of tribal sovereign immunity and the concomitant limitations upon state jurisdiction. In Teague v. Bad River Band, 236 Wis. 2d 384, 612 N.W.2d 709 (2000), for example, the court stated:

> Historically, individual states have had almost no power to restrict or infringe upon [tribal] sovereignty. In Worcester v. Georgia, 31 U.S. 515, 6 Pet. 515, 8 L.Ed.2d 483 (1832), the Supreme Court, in an opinion written by Chief Justice Marshall, laid the foundation for the recognition of tribal sovereignty . . . . Marshall noted that: "The Indian nations had always been considered as distinct, independent

> political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial . . ." Id., at 559.
>
> The basic policy of Worcester has been a vital part of American jurisprudence and its recognition of tribal sovereignty has not only endured, but has expanded to restrict the jurisdiction of state courts when tribal issues are involved.

Id. at 397-398.

Similarly, in Landreman v. Martin, 191 Wis. 2d 787, 530 N.W.2d 62 (Ct. App. 1995), the Wisconsin Court of Appeals held that "Indian tribes enjoy sovereign immunity from lawsuits similar to immunity of the United States government. An Indian tribe cannot be sued without the consent of the tribe or of Congress." Id. at 801 (citation omitted). The Court of Appeals also noted that "long-standing policy dictates the promotion of tribal self-government and, consequently, sovereign immunity." Id. at 803-804.

The doctrine of tribal sovereign immunity not only bars suits against Indian tribes, but also operates to deprive the court of subject matter jurisdiction. In Buchanan v. Sakoagon Chippewa Tribe, 40 F.Supp.2d 1043 (E.D. Wis. 1999), for instance, the court noted:

> Courts have held that tribal sovereign immunity extends to claims for damages made against tribal officials. Therefore, the Plaintiffs' claims for damages from the three individuals in their official capacities must also be dismissed **for lack of jurisdiction**.

Id. at 1048 (citations omitted and emphasis supplied). Numerous other courts have also recognized the jurisdictional nature of tribal sovereign immunity. *See, e.g.*, Fletcher v. United States, 116 F.3d 1315, 1326 (10th Cir. 1997) (tribal sovereign immunity "deprived district court of jurisdiction"); Dillon v. Yankton Souix Tribe Housing Authority, 144 F.3d 581, 584 (8th Cir. 1998) (because the tribe "did not explicitly waive its sovereign immunity, we lack jurisdiction to hear this dispute"); Florida v. Seminole Tribe of Florida, 181 F.3d 1237, 1241 (11th Cir. 1999) (noting the

"fundamentally jurisdictional nature" of tribal sovereign immunity); and Garcia v. Akwesasne Housing Authority, 268 F.3d 76, 84 (2nd Cir. 2001) (stating that "[o]n a motion invoking sovereign immunity to dismiss for lack of subject matter jurisdiction, the plaintiff bears the burden of proving . . . that jurisdiction exists").

The Tribe has not waived its immunity for purposes of the present lawsuit, and the United States Congress has not authorized the present lawsuit. The doctrine of tribal sovereign immunity therefore bars the present lawsuit, and this Court is precluded from exercising subject matter jurisdiction.

III. THIS COURT LACKS JURISDICTION OVER CLAIMS AGAINST THE ONEIDA TRIBE.

State authority is limited not only by the doctrine of tribal sovereign immunity but also by Congress' plenary power over Indian affairs. White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 141-143 (1980). "The Federal Government's power over Indians is derived from Art. I, s. 8, cl. 3, of the United States Constitution, and from the necessity of giving uniform protection to a dependent people. Congress has also acted consistently upon the assumption that the States have no power to regulate the affairs of Indians on a reservation." Williams v. Lee, 358 U.S. 217, 220 (1959) (citations omitted). In Williams, the United States Supreme Court held that courts of the State of Arizona lacked jurisdiction over a civil lawsuit filed by a non-Indian against an Indian for a claim arising on an Indian reservation. "No Federal Act has given state courts jurisdiction over such controversies." Id. at 222.

Through the enactment of Public Law 280, Congress granted several states, including Wisconsin, criminal jurisdiction and civil jurisdiction over "Indians" for causes of action arising

within Indian country. The statute provides, in relevant part, as follows:

> [Wisconsin] shall have jurisdiction over civil causes of action **between Indians or to which Indians are parties** which arise [within Indian country within the state] to the same extent that [Wisconsin] has jurisdiction over other civil causes of action...

28 U.S.C. 1360(a) (emphasis supplied). Significantly, jurisdiction not granted to the state under the statute is "necessarily pre-empt[ed] and reserve[d] to the federal government and the tribe." Santa Rosa Band of Indians v. Kings County, 532 F.2d 655,658-659 (9th Cir. 1975).

Public Law 280 does not confer jurisdiction on state courts for causes of action against Indian tribes. The Ninth Circuit discussed this aspect of P.L. 280 in Bishop Paiute Tribe v. County of Inyo, 275 F.3d 893 (9th Cir. 2002), *vacated on other grounds*, 538 U.S. 701 (2003), as follows:

> [T]he statute was designed to address the conduct of individuals rather than abrogate the authority of Indian governments over their reservations. . . . Notably, the statute makes no mention of jurisdiction over Indian tribes.
>
> . . .
>
> In sum, in enacting Public Law 280, Congress neither waived the sovereignty of the tribes, nor granted state jurisdiction over Indian tribes. Accordingly, we hold that Public Law 280 did not confer jurisdiction over the Tribe.

Id., at 900, 901 (footnotes omitted). *See also* California Dept. of Fish and game v. Quechan Tribe of Indians, 595 F.2d 1153, 1156 (9th Cir. 1979) ("Neither the express terms of [P.L. 280], nor the Congressional history of the statute, reveal any intention by Congress for it to serve as a waiver of a Tribe's sovereign immunity").

Because Congress did not grant jurisdiction to states over Indian tribes or causes of action against Indian tribes, such jurisdiction is "necessarily pre-empt[ed] and reserve[d] to the federal government and the tribe." Santa Rosa Band, 532 F.2d at 658-659. This Court therefore lacks jurisdiction over the Oneida Tribe and the present lawsuit.

IV. PLAINTIFF HAS FAILED TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

In order to maintain a quiet title action, a plaintiff must demonstrate an actual and existing interest in the property. In this regard, the Wisconsin statutes provide:

> "The complaint shall describe the real property, **the interest of the plaintiff and how the plaintiff acquired the interest**, the interest of each person claiming an interest known to be adverse to the plaintiff, including unborn and unknown persons, and demand that the interest of the plaintiff be established against adverse claims."

Wis. Stat. § 841.02 (emphasis supplied). The Wisconsin statutes also make clear that the plaintiff's interest must be an interest in the use, possession, or ownership of the property. For instance, the right to seek a declaration of interests does not attach to a "lessee's interests in leases of one year or less." Wis. Stat, § 841.01(2). This provision reflects the legislative judgment that a possessory interest based upon a lease of one year of less does not merit protection under the statute.

The Supreme Court of Wisconsin has repeatedly affirmed that a plaintiff's interest must run to the use, possession, or ownership of the property. In 1920, the Supreme Court held that "[a]n action to remove a cloud from the title can only be maintained by one who shows title in himself, either legal or equitable, or at least shows that he owns a lien or encumbrance on the land. This seems to be simply good common sense, and good common sense is frequently law." Madler v. Kersten, 175 N.W. 779, 780 (1920). In 1961, the Supreme Court stated: "When a plaintiff has no title his complaint in an action to quiet title must be dismissed irrespective of the validity of the title of the defendant. In an action to quiet title plaintiffs must prove that they have title to the tract in question and they cannot prevail on the mere weakness of defendant's title." Saletri v. Clark, 13 Wis.2d 325, 331-332, 108 N.W.2d 548, 552 (Wis. 1961) (citing Kidder v. Pueschner, 211 Wis. 19, 22, 247 N.W. 315 (Wis. 1933); Schimmel v. Dundon, 1 Wis.2d 98, 83 N.W. 2d 143 (Wis. 1957);

Stone Bank Improvement Co. v. Vollriede, 11 Wis.2d 440, 105 N.W.2d 789 (Wis. 1960); Brody v. Long, 13Wis.2d 288, 108 N.W.2d 662 (Wis. 1961)).

Plaintiff has not alleged that it possesses an interest in the use, possession or ownership of the property, as required by the statute and relevant case law. Instead, plaintiff asserts that it needs to determine the ownership of the property in order to exercise the authority to tax, place tax liens upon, assess, and condemn the property. This assertion is patently false and, as a matter of law, is insufficient to support an action for a declaration of interests. First, plaintiff is not responsible for levying property taxes, collecting property taxes, placing tax liens on property, or enforcing tax liens through the issuance of tax deeds. These authorities are exercised by the county, and the county is then responsible for apportioning the taxes collected to the cities, towns and villages within its jurisdiction. *See* Wis. Stat. §§ 70.62, 74.07, 70.63, 75.14(1), and 75.16.

Second, the authorities referenced by plaintiff are derived from state statutes which provide specific mechanisms for their enforcement. These statutes do not require a county or village to file an action for a declaration of interests as a prerequisite to their implementation. They do not even require that a county or village know the identity of the owner of the property in question. Property taxes are imposed against the property, not the owner of the property, and become a charge against the property. Wis. Stat. § 70.01. In this regard, the Supreme Court of Wisconsin has noted:

> The state is not in its endeavor to assess and collect its revenues required at its peril to ascertain the true ownership of the property assessed as between private persons who may or might have claims thereto. Its tax claim against the property is the same whether it is assessed to the true owner or the ostensible owner or to an unknown person, except only that where it is not assessed to the owner, no personal liability may accrue for the tax so assessed and levied.

Aberg v. Moe, 198 Wis. 349, 224 N.W. 132, 135 (1929). Special assessments also become a lien

against the property, Wis. Stat. § 66.0701(1), and may be enforced by the county through tax foreclosure proceedings which may be instituted against unknown parties. "If the county as plaintiff in such action cannot ascertain who are the proper persons to make defendants as to any tract or parcel of land described in the complaint, it may allege the fact in the complaint and they may be proceeded against as nonresident defendants and shall be described in the proceedings as unknown owners." Wis. Stat. § 75.50. Similarly, the statutory procedure for condemning land for sewer and transportation facilities contemplates that the owner of the property may be unknown:

> Such notice may be given by personal service in the manner of service of a circuit court summons, or it may be transmitted by certified mail. . . If such owner or mortgagee is unknown or cannot be found there shall be published in the county wherein the property is located a class 1 notice, under ch. 985.

Wis. Stat. § 32.05(4).

Third, as discussed above, the property in question in the present case is held by the United States and permanently reserved by treaty for the use and occupancy of the Oneida Tribe. As a consequence, plaintiff and the county possess no authority to tax, place liens upon, assess or condemn the property. *See* 25 U.S.C. § 177 (prohibiting "sale or conveyance" of restricted Indian land absent congressional approval). *See also* Mescalero Apache Tribe v. Jones, 411 U.S. 145, 148 (1973) (holding that "in the special area of state taxation, absent cession or jurisdiction or other federal statutes permitting it, there has been no satisfactory authority for taxing Indian reservation lands . . .").

Plaintiff's assertion that it possesses "an interest" in the property for purposes of section 841.01 clearly cannot be taken at face value, and should be disregarded as an unfounded legal conclusion which is neither supported by factual allegations nor supported by the law. Morgan, 87

Wis.2d at 731. Because plaintiff does not possess any interest in the use, possession or ownership of the property, plaintiff is not entitled to file or maintain an action for a declaration of interests, and the present action must be dismissed for failure to state a claim upon which relief may be granted.

V. PLAINTIFF HAS FAILED PROPERLY TO JOIN NECESSARY AND INDISPENSABLE PARTIES.

In an action for a declaration of interests, state law requires joinder of all parties asserting a claim adverse to that of the plaintiff. In this respect, the relevant statute provides that "[p]ersons claiming interests adverse to the plaintiff which interests the plaintiff wants affected by the judgment shall be named as defendants; other persons with interests in the described property may be named as defendants." Wis. Stat. § 841.03. In addition, state law requires joinder of a person to an action if the person "claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may . . . [a]s a practical matter impair or impede the person's ability to protect that interest." Wis. Stat. § 803.03(1)(b).

Courts in the State of Wisconsin have long required that all parties who may have an interest adverse to the plaintiff to be joined as parties in a quite title action. In Ellis v. Northern Pac. R. Co., 45 N.W. 811, 77 Wis. 114 (1890), for instance, the Supreme Court of Wisconsin explained, "in cases of this character the object sought is to bring all parties before the court who are interested in the subject-matter of the action adversely to the plaintiff, to the end that all interests may be determined and all parties bound by a single decree." Id. at 812. *See also* Leinenkugel v. Kehl, 40 N.W. 683, 73 Wis. 238 (1888) (stating that the holders of different and distinct parcels of a tract of land, each having or claiming an interest adverse to that of plaintiff, must be joined as defendants in an action to quiet title).

Although plaintiff's complaint fails to establish that plaintiff possesses an interest in the property, the interests of the Oneida Tribe and the United States are readily apparent, and both the Oneida Tribe and the United States are therefore "necessary" parties. As discussed above, the Oneida Tribe possesses sovereign immunity and cannot properly be joined to the present action. The United States is also immune from suit, and cannot be joined to the present action. United States v. Testan, 424 U.S. 392, 399 (1976) (quoting United States v. Sherwood, 312 U.S. 584, 586 (1941), and holding that "[u]nder settled principles of sovereign immunity, the United States, as sovereign, is also immune from suit, save as it consents to be sued . . . and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit .")

Because the Oneida Tribe and the United States are necessary parties and cannot be properly joined to this action, this Court must determine whether the Oneida Tribe and the United States are "indispensable". "If a person cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable." Wis. Stat. § 803.03(3). In making this determination, the Court must consider four factors:

> (a) To what extent a judgment rendered in the person's absence might be prejudicial to the person;
>
> (b) The extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided;
>
> (c) Whether a judgment rendered in the person's absence will be adequate; and
>
> (d) Whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

Id.

The first two factors relate to the prejudice to the absent party. Both of these factors counsel dismissal of the present action, because the Court cannot determine the interests of the Oneida Tribe and the United States in their absence, and the Court cannot fashion a "protective" declaration of interests in the property by which this prejudice might be avoided. In this regard, courts have generally acknowledged that the immunity of a sovereign is a compelling consideration requiring dismissal of a lawsuit on indispensability grounds. *See, e.g.,* Fluent v. Salamanca Indian Lease Authority, 928 F.2d 542, 548 (2nd Cir. 1991) (where a tribe is immune from suit "there is very little room for balancing of other factors" because "immunity may be viewed as one of those interests compelling in themselves" (citations and internal quotations omitted)); Enterprise Management Consultants, Inc. v. United States, 883 F.2d 890, 894 (10thCir. 1989) (in determining whether to dismiss an action where an absent tribe is a necessary party, other considerations are "outweighed by the Tribe's interest in maintaining its sovereign immunity"); Clinton v. Babbitt, 180 F.3d 1081, 1090 (9thCir. 1999) (a tribe's "interest in maintaining its sovereign immunity outweighs the interest of the plaintiffs in litigating their claim," so action must be dismissed on indispensable party grounds (citation omitted)); Citizen Potawatomi Nation v. Norton, 248 F.3d 993, 1001 (10thCir. 2001) (noting a "strong policy favoring dismissal when a court cannot join a tribe because of sovereign immunity" (citation omitted)).

The third and fourth factors relate to the adequacy of the judgment and the adequacy of the remedy which may be rendered. Both of these factors also counsel dismissal of the present action. As discussed above, plaintiff has failed to state a claim upon which relief may be granted and is not entitled to file or maintain an action for a declaration of interests. Dismissal of the present lawsuit is therefore proper, and results in no prejudice to plaintiff.

CONCLUSION

For all of the foregoing reasons, this honorable Court should enter an Order dismissing the above-captioned case with prejudice and awarding the Defendant Oneida Tribe of Indians of Wisconsin costs and attorney's fees.

Dated: 4-20-06

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In presence of—

E. Breathitt, Secretary to Commissioners,
W. Ward, Agent for Choctaws,
M. Mackey, United States Interpreter,
John Pitchlynn, United States Interpreter,
R. P. Currin,
Jno. W. Byrn,
Geo. S. Gaines.

TREATY WITH THE MENOMINEE, 1831.

Feb. 8, 1831.
7 Stat., 342.
Proclamation, July 9, 1832.

Articles of agreement made and concluded at the City of Washington, this eighth day of February, one thousand eight hundred and thirty-one, between John H. Eaton, Secretary of War, and Samuel C. Stambaugh, Indian Agent at Green Bay, specially authorized by the President of the United States, and the undersigned chiefs and head men of the Menomonee nation of Indians, fully authorized and empowered by the said nation, to conclude and settle all matters provided for by this agreement.

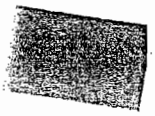
Boundaries of Menomonee country.

THE Menomonee Tribe of Indians, by their delegates in council, this day, define the boundaries of their country as follows, to wit;

On the *east* side of Green Bay, Fox river, and Winnebago lake; beginning at the south end of Winnebago lake; thence southeastwardly to the Milwauky or Manawauky river; thence down said river to its mouth at lake Michigan; thence north, along the shore of lake Michigan, to the mouth of Green Bay; thence up Green Bay, Fox river, and Winnebago lake, to the place of beginning. And on the *west* side of Fox river as follows: beginning at the mouth of Fox river, thence down the east shore of Green bay, and across its mouth, so as to include all the islands of the "Grand Traverse;" thence westerly, on the highlands between the lake Superior and Green bay, to the upper forks of the Menomonee river; thence to the Plover portage of the Wisconsin river; thence up the Wisconsin river, to the Soft Maple river; thence to the source of the Soft Maple river; thence west to the Plume river, which falls into the Chippeway river; thence down said Plume river to its mouth; thence down the Chippeway river thirty miles; thence easterly to the forks of the Manoy river, which falls into the Wisconsin river; thence down the said Manoy river to its mouth; thence down the Wisconsin river to the Wisconsin portage; thence across the said portage to the Fox river; thence down Fox river to its mouth at Green bay, or the place of beginning.

The country described within the above boundaries, the Menomonees claim as the exclusive property of their tribe. Not yet having disposed of any of their lands, they receive no annuities from the United States: whereas their brothers the Pootowottomees on the south, and the Winnebagoes on the west, have sold a great portion of their country, receive large annuities, and are now encroaching upon the lands of the Menomonees. For the purposes, therefore, of establishing the boundaries of their country, and of ceding certain portions of their lands to the United States, in order to secure great and lasting benefits to themselves and posterity, as well as for the purpose of settling the long existing dispute between themselves and the several tribes of the New York Indians, who claim to have purchased a portion of their lands, the undersigned, chiefs and headmen of the Menomonee tribe, stipulate and agree with the United States, as follows:

First. The Menomonee tribe of Indians declare themselves the friends and allies of the United States, under whose parental care and protection they desire to continue; and although always protesting that they are under no obligation to recognize any claim of the New York Indians to any portion of their country; that they neither sold nor



received any value, for the land claimed by these tribes; yet, at the solicitation of their Great Father, the President of the United States, and as an evidence of their love and veneration for him, they agree that such part of the land described, being within the following boundaries, as he may direct, may be set apart as a home to the several tribes of the New York Indians, who may remove to, and settle upon the same, within three years from the date of this agreement, viz: beginning on the west side of Fox river, near the "Little Kackalin," at a point known as the "Old Mill Dam;" thence northwest forty miles; thence northeast to the Oconto creek, falling into Green bay; thence down said Oconto creek to Green bay; thence up and along Green bay and Fox river to the place of beginning; excluding therefrom all private land claims confirmed, and also the following reservation for military purposes; beginning on the Fox river, at the mouth of the first creek above Fort Howard; thence north sixty-four degrees west to Duck creek; thence down said Duck creek to its mouth; thence up and along Green bay and Fox river to the place of beginning. The Menomonee Indians, also reserve, for the use of the United States, from the country herein designated for the New York Indians, timber and firewood for the the United States garrison, and as much land as may be deemed necessary for public highways, to be located by the direction, and at the discretion of the President of the United States. The country hereby ceded to the United States, for the benefit of the New York Indians, contains by estimation about five hundred thousand acres, and includes all their improvements on the west side of Fox river. As it is intended for a home for the several tribes of the New York Indians, who may be residing upon the lands at the expiration of three years from this date, and for none others, the President of the United States is hereby empowered to apportion the lands among the actual occupants at that time, so as not to assign to any tribe a greater number of acres than may be equal to one hundred for each soul actually settled upon the lands, and if, at the time of such apportionment, any lands shall remain unoccupied by any tribe of the New York Indians, such portion as would have belonged to said Indians, had it been occupied, shall revert to the United States. That portion, if any, so reverting, to be laid off by the President of the United States. It is distinctly understood, that the lands hereby ceded to the United States for the New York Indians, are to be held by those tribes, under such tenure as the Menomonee Indians now hold their lands, subject to such regulations and alteration of tenure, as Congress and the President of the United States shall, from time to time, think proper to adopt.

Cession of land to United States for the benefit of the New York Indians.

Boundaries.

Consideration.

Second. For the above cession to the United States, for the benefit of the New York Indians, the United States consent to pay the Menomonee Indians, twenty thousand dollars; five thousand to be paid on the first day of August next, and five thousand annually thereafter; which sums shall be applied to the use of the Menomonees, after such manner as the President of the United States may direct.

Further cession of lands to the United States.

Third. The Menomonee tribe of Indians, in consideration of the kindness and protection of the Government of the United States, and for the purpose of securing to themselves and posterity, a comfortable home, hereby cede and forever relinquish to the United States, all their country on the southeast side of Winnebago lake, Fox river, and Green bay, which they describe in the following boundaries, to wit: beginning at the south end of Winnebago lake, and running in a southeast direction to Milwauky or Manawauky river; thence down said river to its mouth; thence north, along the shore of lake Michigan, to the entrance of Green bay; thence up and along Green bay, Fox river, and Winnebago lake, to the place of beginning; excluding all private land claims which the United States have heretofore confirmed and

sanctioned. It is also agreed that all the islands which lie in Fox river and Green bay, are likewise ceded; the whole comprising by estimation, two million five hundred thousand acres.

Reservation.

Fourth. The following described tract of land, at present owned and occupied by the Menomonee Indians, shall be set apart, and designated for their future homes, upon which their improvements as an agricultural people are to be made: beginning on the West side of Fox river, at the "Old Mill Dam" near the "Little Kackalin," and running up and along said river, to the Winnebago lake; thence along said lake to the mouth of Fox river; thence up Fox river to the Wolf river; thence up Wolf river to a point southwest of the west corner of the tract herein designated for the New York Indians; thence northeast to said west corner; thence southeast to the place of beginning. The above reservation being made to the Menomonee Indians for the purpose of weaning them from their wandering habits, by attaching them to comfortable homes, the President of the United States, as a mark of affection for his children of the Menomonee tribe, will cause to be employed five farmers of established character for capacity, industry, and moral habits, for ten successive years, whose duty it shall be to assist the Menomonee Indians in the cultivation of their farms, and to instruct their children in the business and occupation of farming. Also, five females shall be employed, of like good character, for the purpose of teaching young Menomonee women, in the business of useful housewifery, during a period of ten years.—The annual compensation allowed to the farmers, shall not exceed five hundred dollars, and that of the females three hundred dollars. And the United States will cause to be erected, houses suited to their condition, on said lands, as soon as the Indians agree to occupy them, for which ten thousand dollars shall be appropriated; also, houses for the farmers, for which three thousand dollars shall be appropriated; to be expended under the direction of the Secretary of War. Whenever the Menomonees thus settle their lands, they shall be supplied with useful household articles, horses, cows, hogs, and sheep, farming utensils, and other articles of husbandry necessary to their comfort, to the value of six thousand dollars; and they desire that some suitable device may be stamped upon such articles, to preserve them from sale or barter, to evil disposed white persons: none of which, nor any other articles with which the United States may at any time furnish them, shall be liable to sale, or be disposed of or bargained, without permission of the agent. The whole to be under the immediate care of the farmers employed to remain among said Indians, but subject to the general control of the United States' Indian Agent at Green Bay acting under the Secretary of War. The United States will erect a grist and saw mill on Fox river, for the benefit of the Menomonee Indians, and employ a good miller, subject to the direction of the agent, whose business it shall be to grind the grain, required for the use of the Menomonee Indians, and saw the lumber necessary for building on their lands, as also to instruct such young men of the Menomonee nation, as desire to, and conveniently can be instructed in the trade of a miller. The expenses of erecting such mills, and a house for the miller to reside in, shall not exceed six thousand dollars, and the annual compensation of the miller shall be six hundred dollars, to continue for ten years. And if the mills so erected by the United States, can saw more lumber or grind more grain, than is required for the proper use of said Menomonee Indians, the proceeds of such milling shall be applied to the payment of other expenses occurring in the Green bay agency, under the direction of the Secretary of War.

Farmers, etc.

Dwelling houses.

Grist and saw mill

In addition to the above provision made for the Menomonee Indians, the President of the United States will cause articles of clothing to be distributed among their tribe at Green bay, within six months from

Clothing and flour.

the date of this agreement, to the amount of eight thousand dollars; and flour and wholesome provisions, to the amount of one thousand dollars, one thousand dollars to be paid in specie. The cost of the transportation of the clothing and provisions, to be included in the sum expended. There shall also be allowed annually thereafter, for the space of twelve successive years, to the Menomonee tribe, in such manner and form as the President of the United States shall deem most beneficial and advantageous to the Indians, the sum of six thousand dollars. As a matter of great importance to the Menomonees, there shall be one or more gun and blacksmith's shops erected, to be supplied with a necessary quantity of iron and steel, which, with a shop at Green bay, shall be kept up for the use of the tribe, and continued at the discretion of the President of the United States. There shall also be a house for an interpreter to reside in, erected at Green bay, the expenses not to exceed five hundred dollars.

Annuity, etc.

Education of Menominees.

Fifth. In the treaty of Butte des Morts, concluded in August 1827, an article is contained, appropriating one thousand five hundred dollars annually, for the support of schools in the Menomonee country. And the representatives of the Menomonee nation, who are parties hereto, require, and it is agreed to, that said appropriation shall be increased five hundred dollars, and continued for ten years from this date, to be placed in the hands of the Secretary at War, in trust for the exclusive use and benefit of the Menomonee tribe of Indians, and to be applied by him to the education of the children of the Menomonee Indians, in such manner as he may deem most advisable.

Certain privileges reserved.

Sixth. The Menomonee tribe of Indians shall be at liberty to hunt and fish on the lands they have now ceded to the United States, on the east side of Fox river and Green bay, with the same privileges they at present enjoy, until it be surveyed and offered for sale by the President; they conducting themselves peaceably and orderly. The chiefs and Warriors of the Menomonee nation, acting under the authority and on behalf of their tribe, solemnly pledge themselves to preserve peace and harmony between their people and the Government of the United States forever. They neither acknowledge the power nor protection of any other State or people. A departure from this pledge by any portion of their tribe, shall be a forfeiture of the protection of the United States' Government, and their annuities will cease. In thus declaring their friendship for the United States, however, the Menomonee tribe of Indians, having the most implicit confidence in their great father, the President of the United States, desire that he will, as a kind and faithful guardian of their welfare, direct the provisions of this compact to be carried into immediate effect. The Menomonee chiefs request that such part of it as relates to the New York Indians, be immediately submitted to the representatives of their tribes. And if they refuse to accept the provision made for their benefit, and to remove upon the lands set apart for them, on the west side of Fox river, that he will direct their immediate removal from the Menomonee country; but if they agree to accept of the liberal offer made to them by the parties to this compact, then the Menomonee tribe as dutiful children of their great father the President, will take them by the hand as brothers, and settle down with them in peace and friendship.

New York Indians.

The boundary, as stated and defined in this agreement, of the Menomonee country, with the exception of the cessions herein before made to the United States, the Menomonees claim as their country: that part of it adjoining the farming country, on the west side of Fox river, will remain to them as heretofore, for a hunting ground, until the President of the United States, shall deem it expedient to extinguish their title. In that case, the Menomonee tribe promise to

surrender it immediately, upon being notified of the desire of Government to possess it. The additional annuity then to be paid to the Menomonee tribe, to be fixed by the President of the United States. It is conceded to the United States that they may enjoy the right of making such roads, and of establishing such military posts, in any part of the country now occupied by the Menomonee nation, as the President at any time may think proper.

Expenses of delegation, etc.

As a further earnest of the good feeling on the part of their great father, it is agreed that the expenses of the Menomonee delegation to the city of Washington, and of returning, will be paid, and that a comfortable suit of clothes will be provided for each; also, that the United States will cause four thousand dollars to be expended in procuring fowling guns, and ammunition for them; and likewise, in lieu of any garrison rations, hereafter allowed or received by them, there shall be procured and given to said tribe one thousand dollars worth of good and wholesome provisions annually, for four years, by which time it is hoped their hunting habits may cease, and their attention be turned to the pursuits of agriculture.

In testimony whereof, the respective parties to this agreement have severally signed the same, this 8th February, 1831.

John H. Eaton, [L. S.]
S. C. Stambaugh, [L. S.]
Kaush-kau-no-naive, grizzly bear, his x mark, [L. S.]
A-ya-mah-taw, fish spawn, his x mark, [L. S.]
Ko-ma-ni-kin, big wave, his x mark, [L. S.]
Ko-ma-ni-kee-no-shah, little wave, his x mark, [L. S.]
O-ho-pa-shah, little whoop, his x mark, [L. S.]
Ah-ke-ne-pa-weh, earth standing, his x mark, [L. S.]
Shaw-wan-noh, the south, his x mark, [L. S.]
Mash-ke-wet, his x mark, [L. S.]
Pah-she-nah-sheu, his x mark, [L. S.]
Chi-mi-na-na-quet, great cloud, his x mark. [L. S.]
A-na-quet-to-a-peh, setting in a cloud, his x mark, [L. S.]
Sha-ka-cho-ka-mo, great chief, his x mark, [L. S.]

Signed, sealed, and delivered in presence of—

R. A. Forsyth,
C. A. Grignon,
Interpreters,
A. G. Ellis,
Richard Pricket, United States Interpreter, his x mark,
William Wilkins, of Pennsylvania,
Samuel Swartwout, of N. York,
John T. Mason, Michigan,
Rh. M. Johnson, Kentucky.

TREATY WITH THE MENOMINEE, 1831.

Feb. 17, 1831.
7 Stat., 346.
Proclamation, July 9, 1832.

WHEREAS certain articles of agreement were entered into and concluded at the city of Washington, on the 8th day of February instant, between the undersigned, Commissioners on behalf of the United States, and the chiefs and warriors, representing the Menomonee tribe of Indians, whereby a portion of the Menomonee country, on the northwest side of Fox river and Green bay, was ceded to the United States, for the benefit of the New York Indians, upon certain conditions and restrictions therein expressed: And whereas it has been represented to the parties to that agreement, who are parties hereto, that it would be more desirable and satisfactory to some of those interested that one or two immaterial changes be made in the *first* and *sixth* articles, so as not to limit the number of acres to one hundred for each soul who may be settled upon the land when the President apportions it, as also to make unlimited the time of removal and settlement upon these lands by the New York Indians, but to leave both these matters discretionary with the President of the United States.

Now, therefore, as a proof of the sincerity of the professions made by the Menomonee Indians, when they declared themselves anxious to terminate in an amicable manner, their disputes with the New York Indians, and also as a further proof of their love and veneration for their great father, the President of the United States, the undersigned, representatives of the Menomonee tribe of Indians, unite and agree

part of the Indians, based on such remainder, it is hereby agreed, that every such section, fractional section, or other unsold remainder, shall, at the expiration of five years from the ratification of this treaty, be sold for such sum as it will command, *Provided*, That no such sale shall be made for less than seventy-five cents per acre. Proviso.

ARTICLE 3rd. This treaty shall be binding from the date of its constitutional ratification; but its validity shall not be affected by any modification, or non-concurrence of the President and Senate, in the third and fourth articles thereof. Treaty binding when ratified.

In testimony whereof, the undersigned, Superintendent of Indian Affairs and commissioner on the part of the United States, and the chiefs and delegates of said bands, have hereunto set their hands, and affixed their seals, at the city of Saganaw on this twenty-third day of January, in the year of our Lord one thousand eight hundred and thirty-eight, and of the independence of the United States, the sixty-second year.

Henry R. Schoolcraft, commissioner.

Ogima Keegido,
Mo-cuck-koosh,
Oe-quee-wee-sance,
Saw-wur-bon,
Show-show-o-nu-bee-see,
Ar-ber-too-quet.

Signed and executed in presence of—

Jeremiah Riggs, overseer farmers I. D.
E. S. Williams,
Sam'l G. Watson,
Wm. F. Mosely,
D. E. Corbin,
Leon Tremble,
Jas. La-Schoolcraft,
Joseph F. Marsac,
William S. Lee.

(To the Indian names are subjoined a mark and seal.)

TREATY WITH THE ONEIDA, 1838.

Feb. 3, 1838.
7 Stat., 566.
Proclamation, May 17, 1838.

Articles of a treaty made at the City of Washington between Carey A. Harris, thereto specially directed by the President of the United States and the First Christian and Orchard parties of the Oneida Indians residing at Green Bay, by their chiefs and representatives.

ART. 1. THE First Christian and Orchard parties of Indians cede to the United States all their title and interest in the land set apart for them in the 1st article of the treaty with the Menomonies of February 8th, 1831, and the 2d article of the treaty with the same tribe of October 27th, 1832. Cession to the United States.

ART. 2. From the foregoing cession there shall be reserved to the said Indians to be held as other Indian lands are held a tract of land containing one hundred (100) acres, for each individual, and the lines of which shall be so run as to include all their settlements and improvements in the vicinity of Green Bay. Reservations to be made from said cession.

ART. 3. In consideration of the cession contained in the 1st article of this treaty, the United States agree to pay to the Orchard party of the Oneida Indians three thousand (3000) dollars, and to the First Christian party of Oneida Indians thirty thousand five hundred (30,500) dollars, of which last sum three thousand (3,000) dollars may be expended under the supervision of the Rev. Solomon Davis, in the erection of a church and parsonage house, and the residue apportioned, under the direction of the President among the persons having just claims thereto; it being understood that said aggregate sum of thirty-three thousand five hundred (33,500) dollars is designed to be in reimbursement of monies expended by said Indians and in remuneration of the services of their chiefs and agents in purchasing and securing a title to the land ceded in the 1st article. The United States further Consideration for said cession.

agree to cause the tracts reserved in the 2d article to be surveyed as soon as practicable.

Relinquishment by John Denny.

ART. 4. In consideration of the sum of five hundred (500) dollars to be paid to him by the chiefs and representatives of the said parties of Oneida Indians, John Denny (alias John Sundown,) their interpreter agrees to relinquish to them all his title and interest in the tract reserved in the 2d article of this treaty.

Expenses of this treaty to be paid by United States.

ART. 5. It is understood and agreed that the expenses of this treaty and of the chiefs and representatives signing it, in coming to and returning from this city, and while here, shall be paid by the United States.

Treaty binding when ratified.

ART. 6. This treaty to be binding upon the contracting parties when the same shall be ratified by the United States.

In witness whereof, the said Carey A. Harris and the undersigned chiefs and representatives of the said parties of Oneida Indians have hereunto set their hands at the City of Washington, this third day of February 1838.

C. A. Harris.

First Christians:
Henry Powles,
John Denny, alias John Sundown,
Adam Swamp,
Daniel Bread.
Orchard:
Jacob Cornelius.

In presence of—

Geo. W. Jones, Delegate Wisconsin Territory.
Solomon Davis.
Alfred Iverson.
O. S. Hall.
Jas. P. Maury.
Charles E. Mix.
Charles J. Love.
John Denny, alias John Sundown, Interpreter
(To the Indian names are subjoined marks.)

TREATY WITH THE IOWA, 1838.

Oct. 19, 1838.

7 Stat., 568. Proclamation, Mar. 2, 1839.

Articles of a treaty made at the Great Nemowhaw sub-agency between John Dougherty Agent of Indian Affairs on the part of the United States, being specially authorized, and the chiefs and headmen of the Ioway tribe of Indians for themselves, and on the part of their tribe.

Cession to United States by the Iowa.

ARTICLE 1st. The Ioway tribe of Indians cede to the United States,

First. All right or interest in the country between the Missouri and Mississippi rivers, and the boundary between the Sacs and Foxes, and Sioux, described in the second article of the treaty made with these and other tribes, on the 19th of August 1825, to the full extent to which said claim is recognized in the third article of said treaty, and all interest or claim by virtue of the provisions of any treaties since made by the United States with the Sacs and Foxes of the Mississippi.

Second. All claims or interest under the treaties of August 4th 1824, July 15th 1830, and September 17th 1836, except so much of the last mentioned treaty as secures to them two hundred sections of land the erection of five comfortable houses, to enclose and break up for them two hundred acres of ground to furnish them with a ferry boat, one hundred cows and calves, five bulls, one hundred head of stock hogs a mill and interpreter.

Consideration therefor.

ARTICLE 2d. In consideration of the cession contained in the preceding article, the United States agree to the following stipulations on their part.

PUBLIC LAWS

OF THE

UNITED STATES OF AMERICA,

PASSED AT THE THIRD SESSION

OF THE

FORTY-FIRST CONGRESS;

1870–1871.

Carefully collated with the Originals at Washington.

EDITED BY

GEORGE P. SANGER,

COUNSELLOR AT LAW.

TO BE CONTINUED ANNUALLY

BOSTON:
LITTLE, BROWN, AND COMPANY.
1871.

No part of the appropriation to be expended until, &c.

herein appropriated: *Provided*, That no money hereby appropriated shall be used or applied for the purpose until a valid title to the land for the site of such building shall be vested in the United States, and until the State shall also duly release and relinquish to the United States the right to tax or in any way assess said site, or the property of the United States that may be thereon, during the time that the United States shall be or remain the owner thereof.

APPROVED, March 3, 1871.

March 3, 1871.

CHAP. CXLII. — *An Act granting the Right of Way to the Green Bay and Lake Pepin Railway Company for its Road across the Oneida Reservation, in the State of Wisconsin.*

Right of way across the Oneida reservation granted to the Green Bay and Lake Pepin Railroad Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Green Bay and Lake Pepin Railway Company be, and is hereby, authorized to build and maintain its railway across the Oneida reservation, in the State of Wisconsin, and to take sufficient land, not more than a strip one hundred feet in width, for the purposes of said railway, in accordance with and subject to the conditions of an agreement made by the chiefs and headmen of the Oneida tribe of Indians, on the twenty-third day of May, eighteen hundred and seventy, approved by and on file with the Secretary of the Interior.

APPROVED, March 3, 1871.

March 3, 1871.

CHAP. CXLIII. — *An Act for the Recovery of Damages for the Loss of the Sloop-of-War Oneida.*

Damages to be recovered for loss of the sloop-of-war Oneida.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Navy be, and he is hereby, authorized and directed, after consultation with the Attorney-General, to take such measures, and institute and pursue to final judgment or decree such proceedings at law, or otherwise, as may be needful to obtain full damages and indemnification for the destruction and loss of the sloop-of-war Oneida, in the bay of Yeddo, Japan, in January, eighteen hundred and seventy, and to employ such legal counsel in the United States, or abroad, as he may find requisite to accomplish the purposes of this act.

APPROVED, March 3, 1871.

March 3, 1871.

CHAP. CXLIV. — *An Act authorizing the St. Paul and Pacific Railroad Company to change its Line in Consideration of a Relinquishment of Lands.*

St. Paul and Pacific Railroad Company may alter its branch lines.

New location.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Saint Paul and Pacific Railroad Company may so alter its branch lines that, instead of constructing a road from Crow Wing to St. Vincent, and from St. Cloud to the waters of Lake Superior, it may locate and construct, in lieu thereof, a line from Crow Wing to Brainerd, to intersect with the Northern Pacific railroad, and from St. Cloud to a point of intersection with the line of the original grant at or near Otter Tail or Rush lake, so as to form a more direct route to St. Vincent, with the same proportional grant of lands to be taken in the same manner along said altered lines, as is provided for the present lines by existing laws: *Provided, however*, That this change shall in no manner enlarge said grant, and that this act shall only take effect upon condition of being in accord with the legislation of the State of Minnesota, and upon the further condition that any purchases shall be

Proportional grant of lands.

Grant not enlarged, and to take effect only, &c.

33669
DO

SERVICE DATE - JULY 28, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-402 (Sub-No. 8X)

FOX VALLEY & WESTERN LTD.–ABANDONMENT
EXEMPTION–IN BROWN AND OUTAGAMIE COUNTIES, WI

Decided: July 23, 2003

By decision and notice of interim trail use or abandonment (NITU) served on March 2, 2001, Fox Valley & Western Ltd. (FVW) was granted an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad extending from milepost 4.78 west of Green Bay to milepost 38.98 in New London, in Brown and Outagamie Counties, WI. The exemption was made subject to employee protective, historic, environmental, and other conditions.[1] By decision served August 15, 2001, the historic condition was modified to require that FVW retain its interest in and take no steps to alter the integrity of the rail line located within the boundaries of the Oneida Indian Reservation until completion of the section 106 process of the National Historic Preservation Act, which will determine the effect on cultural and historic resources.

The Board's Section of Environmental Analysis (SEA) indicates that a Memorandum of Agreement (MOA) that was developed to mitigate the adverse effects of the proceeding on historic properties has been signed[2] and submitted to the Advisory Council on Historic

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[1] In that decision, the Board authorized FVW to negotiate an interim trail use/rail banking agreement with the Wisconsin Department of Transportation, on behalf of the Wisconsin Department of Natural Resources (WisDNR), pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). At the request of FVW and WisDNR, the negotiating period under the NITU was extended to August 24, 2002, by decisions served September 5, 2001, and February 25, 2002. By decision served August 20, 2002, the negotiating period under the NITU was extended to February 18, 2003, for the portion of the right-of-way between milepost 14.9 and milepost 38.98, and FVW was authorized to abandon the portion of the right-of-way between milepost 4.78 and milepost 14.9 if the environmental conditions imposed in this proceeding have been met.

[2] The MOA is signed by the Board, FVW, the Oneida Tribe of Indians of Wisconsin, Menominee Indian Tribe of Wisconsin, Ho-Chunk Nation, and the Wisconsin State Historic Preservation Office.

Preservation. The section 106 process has thus been completed and SEA therefore recommends that the section 106 condition be removed.

Accordingly, the proceeding will be reopened and the previously imposed section 106 historic condition will be removed.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.

2. Upon reconsideration, the section 106 historic condition imposed in the decision served on March 2, 2001, and modified by decision served August 15, 2001, is removed.

3. All other provisions and environmental conditions imposed in the March 2, 2001 decision in this proceeding will remain in effect.

4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary