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Dale G. Young / The Detroit News

Brothers Tim, left, and Larry Koon are angry the state is trying to restrict treaty-granted native hunting and fishing rights to areas like this Interlochen-area lake.

Michichigan, Indians clash over hunting rights

State wants to update treaty to tighten rules; tribes say deal is deal

By Charlie Cain / Detroit News Lansing Bureau

WALLOON LAKE -- You may have thought conflict between Indians and settlers was long over, but there are new fears of confrontation in Michigan's north country.

At issue is the highly emotional topic of hunting, fishing and gathering rights granted to five tribes under a 167-year-old treaty. Michigan Attorney General Mike Cox, fearing clashes between Indians and state-licensed hunters and anglers, says it's time to bring those guarantees into alignment with the modern world.

"An unsettling legal and

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explosive situation has arisen," Cox said in announcing the state is taking the issue to federal court.

The tribes say a deal is a deal. "Part of the 1836 treaty was that Indians retained the right to continue using the lands as they had before the treaty," said William Rastetter, a Leland attorney who has represented the Grand Traverse Band of Ottawa and Chippewa Indians on fishing issues since 1980. "If the state wants to undo the treaty, they better figure out how to give back nearly half of the state to the Indians."

In many places Indians have continued to exercise their treaty rights, taking game and fish according to tribal rules, which are far more liberal than state restrictions.

This has brought increasing protests, not only from state-licensed hunters and fishermen, but also from private landowners who fear unrestrained Indian game harvests will deplete local game and fish populations.

Fears of conflict, meanwhile, aren't unfounded. A similar dispute over Indian fishing rights in the Great Lakes in the 1970s brought dangerous confrontations between both parties -- and in other states and in Canada disputes over Indian treaty rights over the past 30 years have provoked armed standoffs.

Issues of stewardship

Tim Koon, a 45-year-old member of the Grand Traverse tribe, said it's unfair to ask Indians to surrender their rights. He believes the state is attempting to intimidate them.

"Native Americans were the

Treaty of Washington

In 1836, the Ottawa and Chippewa tribes ceded these lands to the U.S. government, but retained hunting and fishing rights.



■ Approximate land area of Michigan: **37.1 million acres**

■ Approximate land area of 1836 treaty: **13.8 million acres**

■ Portion of Michigan covered by 1836 treaty: **37.2%**

The Detroit News

Treaty tribes

The five Native American tribes covered by the 1836 Treaty of Washington have a combined membership of more than 40,000. The tribes are:

- * Bay Mills Indian Community in Brimley
- * Grand Traverse Band of Ottawa and Chippewa Indians in Peshawbestown
- * Little River Band of Ottawa Indians in Manistee
- * Little Traverse Bay Bands of Odawa Indians in Petoskey
- * Sault Ste. Marie Tribe of Chippewa Indians in Sault Ste. Marie

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very first managers of this land, and we were never a people to go out and take advantage of abundance," said Koon, a lifelong hunter who is now teaching his 7-year-old daughter, the youngest of his four children, to hunt.

"It's been the non-native Americans who have come in and taken advantage of the land and its resources," said Koon, who works for a roofing company in Traverse City and serves on the tribe's natural resources commission and its subcommittee on inland rights. "Take a look around, and we don't have as many trees as we used to. We were doing a damn good job before Plymouth Rock."

Elizabeth Lieberman, executive director of the Walloon Lake Trust and Conservancy, concedes she has not received complaints about Native Americans hunting or gathering on the 1,500 acres her group protects in the Walloon Lake watershed near Petoskey. But she worries that could change.

"Our land is there for people to walk in, to enjoy nature. So there is a safety concern that comes when people hunt outside the season," said Lieberman, whose group is a member of Michigan Fisheries Resource Conservation Coalition, which supports the state's action. The coalition includes sporting groups, lake associations and the Michigan Chamber of Commerce.

"What is gathering? Our attorney isn't sure of the answer," she said. "If gathering means collecting birch bark, does it also mean entire birch trees? Or oak trees? We have property in our trust with great timber value. Not in a money sense but in the sense that it can be enjoyed by generations to come. Our biggest concern is being able to control the land."

Confrontation concerns

U.S. District Judge Richard Enslin, based in Kalamazoo, has not set a court hearing date. Both sides suggest it could take years to resolve the thorny legal issues.

Cox alleges the tribes are "engaging in activities unsupported by Michigan law or federal law. We're seeking resolution of this case in order to prevent this situation from escalating."

DNR Director K.L. Cool said there have been "dozens and dozens and dozens of instances" in the past several years where DNR officers have confronted tribal members engaging in conduct that is illegal for non-Indians.

Cool said "we definitely have" worries over the safety of officers. "We've also feared to a degree for the safety of tribal members."



Dale G. Young / The Detroit News

Elizabeth Lieberman is executive director of the Walloon Lake Trust and Conservancy, which protects 1,500 acres near Petoskey. She said letting Indians hunt outside state-mandated seasons raises safety issues.

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He said the state's responsibility to effectively manage its resources is undermined when the tribes follow different rules and regulations.

Sam Washington, executive director of the 80,000-member Michigan United Conservation Clubs, which supports the state's position, said the implications are huge.

"Everyone who hunts, fishes, vacations, owns a cabin, or in any way recreates in any way in the state within the tribal boundaries is potentially affected by the outcome of this," Washington said.

The tribes deny they have any intent to use nets in inland lakes or pillage the forests. But they do fiercely contend the treaty, adopted a year before Michigan became a state, gives them unquestioned rights to set their own rules for hunting and fishing -- rules that in some cases are more liberal than the state's on bag limits, methods and seasons.

The federal court sided with the tribes in 1979 when U.S. District Judge Noel Fox ruled they could continue to use gill nets to fish the Great Lakes, even though the state had banned the practice in 1966. But state officials are now asking the federal court to review another issue -- the tribal claim that the treaty affords them special treatment on inland waters and land as well.

Treaty's extent debated

Cox and Department of Natural Resources officials say they fear the situation, which has not triggered violence, could easily blossom into a replay of the gill net dispute when ugly words were frequently exchanged, gunshots routinely fired, and cars and Indian fishing boats vandalized.

Nonsense, say the tribes.

"There have not been any problems, or incidents of any confrontation between Indian and non-Indian hunters or state conservation officers," since the tribes enacted new regulations in 1996, attorney Rastetter said.

"I've heard from some tribe members that they felt state officials are inciting to riot, so to speak, by comments that could be perceived as an invitation for a disgruntled non-Indian to take matters into their own hands."

Cox maintains the treaty language granted special rights to the tribes until "the land is required for settlement."

"It's our position that those rights extinguished ... decades ago," Cox said.

The tribes say that is not how the Indians who signed the treaty would have viewed it, a yardstick that the federal courts have often applied in similar disputes.

Jim Ekdahl, DNR deputy director for the Upper Peninsula and the state coordinator for Native American issues, said the state's chief concern is trying to manage the game and fish populations when there are two sets of rules and regulations.

He said the tribes have longer seasons for hunting and fishing. The Sault Ste. Marie Tribe of Chippewa Indians allows a deer season to run from Aug. 1 to Jan. 1. The state's bow-hunting deer season runs from Oct. 1 through Nov. 14. The firearms season lasts from Nov. 15-30.

Ekdahl said the Lower Peninsula tribes have a seven-month season for grouse, woodcock, pheasant, squirrel and rabbit, while the state regulated seasons last anywhere from 20 days to a couple of months.

And he said that when tribe members are allowed to use methods of

hunting and fishing not permitted for non-Indians, tempers can flare.

"It creates some hard feelings in the field and some unhappy campers when a non-Indian observes an Indian using a light at night to hunt, or fish by snagging, or taking a deer before the state firearms season begins," Ekdahl said.

He said tension is mounting, but nowhere near the level of a quarter-century ago.

"In the 1970s, we had windshields smashed out of cars, people toting deer rifles around and making threats at each other, shots fired in the general direction of people at night and so on. These are issues that can really heat up," he said. "It's in everybody's best interests to get this matter resolved."

Native harvests minimal

Attorney Rastetter, who represents the Grand Traverse Band, said the state is losing perspective.

He said a longer deer hunting season, for example, is not a threat to the resource. He said the tribe harvested only about 100 deer last season. The state sanctioned season, by comparison, harvested 480,000.

Larry Koon, a member of the Grand Traverse Band, said the treaty rights were given with a clear understanding that the tribes viewed them as a means of subsistence.

"My dad was a union sheet metal engineer who made good money, but it didn't pay enough for his 13 kids," said Koon, 35. "We had a large garden, lived off the land, literally. If it wasn't for our father exercising these rights, there is a good chance you wouldn't be talking to me today because I could have starved to death.

"That's spilled over into my life, and at times I supported my family by hunting and fishing when I didn't have enough money to buy hamburger and steaks," added Koon, who is joined by his 13-year-old daughter when he traps muskrat, mink, coon, fox and coyote.

He said the tribe is ever mindful of managing the resources. He said, for instance, the tribe has banned the harvest of snapping turtles in Grand Traverse Bay out of concern that their numbers are dwindling. But the state allows the harvest of turtles as small as 12 inches in diameter, he said.

John Sabina, a retired [General Motors Corp.](#) engineer from Troy, is chairman of the board of the Michigan Fisheries Resource Conservation Coalition.

"Many people will argue that back in 1836 the Indians were pretty well hoodwinked," said Sabina, former chairman of the Michigan Council of Trout Unlimited.

"But there is only one set of wildlife and only one set of fish, and you have five Indian bands and the state of Michigan all claiming they have the right to regulate them," Sabina said.

"Ultimately there will be some kind of federal court ruling. If you're a betting man, the suspicion is that it will not be as extensive as the tribes would like and not as limited as the general public would like."

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