

State & Tribal Affairs: Facilitating Relationships



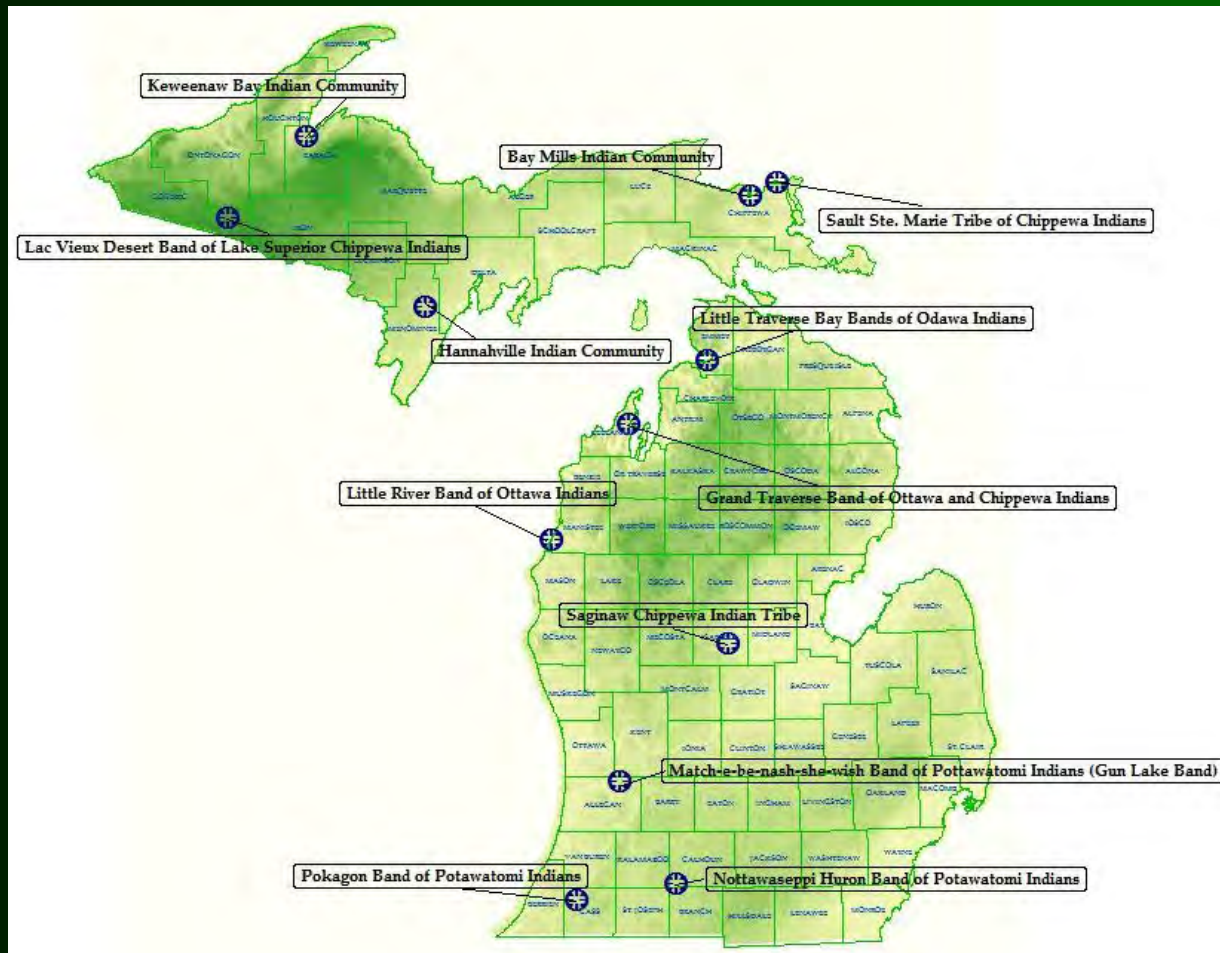
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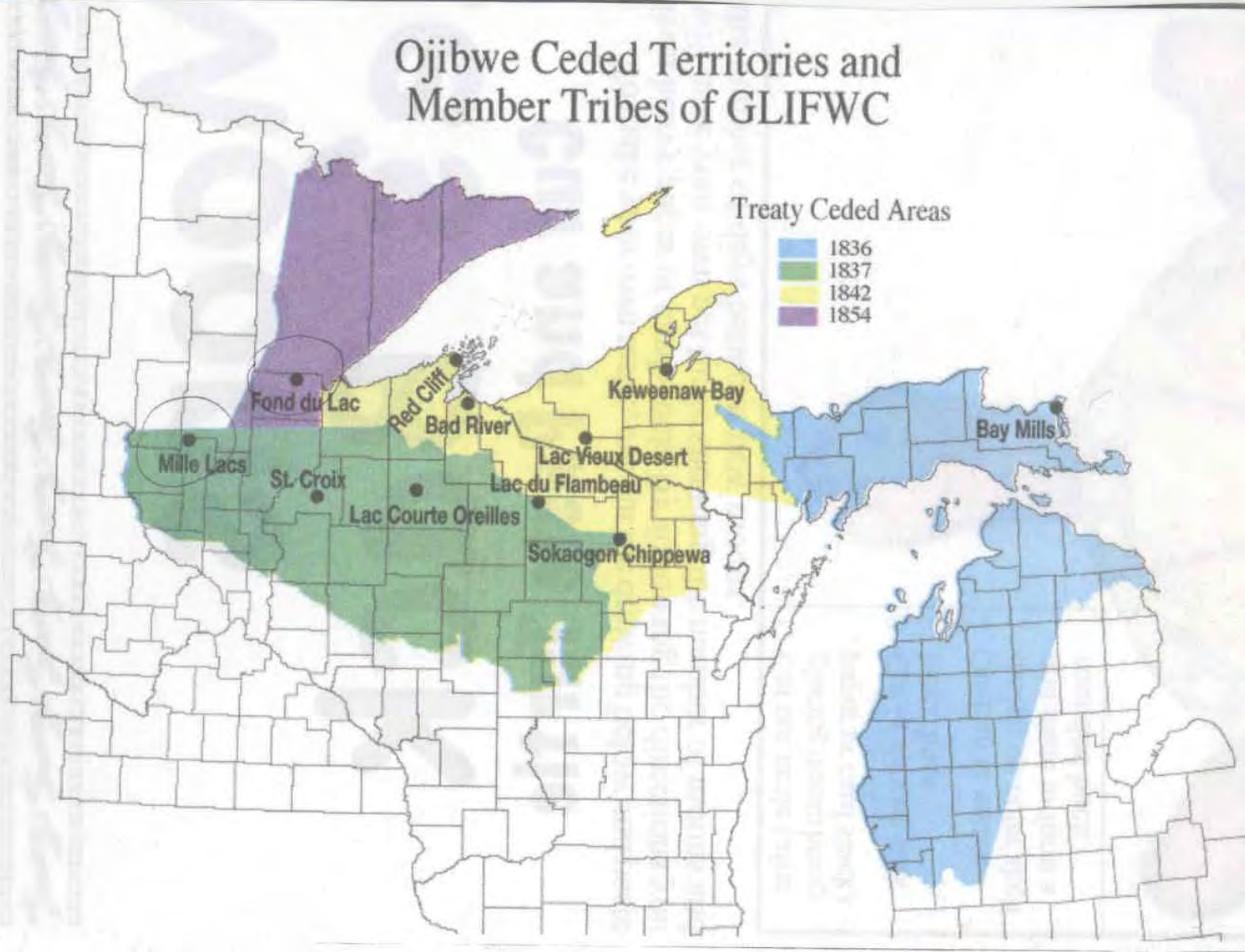
Eight Principal Treaties 1807 - 1842



Map of 12 Federally Recognized Tribal Governments in Michigan



Ojibwe Ceded Territories and Member Tribes of GLIFWC



Key Legal Concepts

- Treaties are the “supreme” law of the land
- Federal government has unique obligations toward Tribes based on trust responsibility, treaty provisions, and statutory mandates
- Sovereignty: Tribes are governments
- “Ceded Territory” refers to land transferred through treaty
- Reserved Rights



1836 Treaty Language

1836 Treaty, Article 13:

"The Indians stipulate for the right of hunting on the lands ceded, with the other usual privileges of occupancy, until the land is required for settlement"



Treaty Rights Litigation

- 1976 State of Michigan v. LeBlanc ruling held:
 - 1836 Tribes did reserve Great Lakes commercial and subsistence fishing rights in the 1836 Treaty
 - State may regulate Tribal fishing only when:
 - The regulation is necessary to preserve the fish
 - Application to the Tribe is necessary to preserve the fish
 - The regulation does not discriminate against the Tribe



Treaty Rights Litigation

- United States v Michigan
 - Filed in 1973
 - Assigned to District Judge Noel Fox
 - Three tribes eventually intervene as Plaintiffs:
 - Bay Mills Indian Community
 - Sault Ste. Marie Tribe of Chippewa Indians
 - Grand Traverse Band of Ottawa and Chippewa Indians



Treaty Rights Litigation

- 1979 Federal Court, Fox Decision
 - Tribes have a treaty right to fish in Great Lakes
 - State is without authority to regulate that right



Treaty Rights Litigation

- U.S. Court of Appeals in 1981:
 - Affirms existence of Great Lakes Treaty fishing right
 - State may regulate Tribal fishing only upon a showing that the regulation:
 - Is a necessary conservation measure
 - Is the least restrictive alternative to preserve the fishery from irreparable harm
 - Does not discriminatorily harm Tribal anglers or favor other classes of anglers



Case History: Great Lakes Fishing

- 1979 – Federal Court, Fox Decision
- 1985 – First Consent Decree, Great Lakes fishing
 - 15 year life span
- 1997 – Two additional Tribes Federally recognized; become part of the case
 - Little Traverse Bay Bands of Odawa Indians (Petoskey)
 - Little River Band of Ottawa Indians (Manistee)
- 2000 – Second Consent Decree, Great Lakes Fishing
 - 20 year life span
 - Deferred the inland issue until 2000 Great Lakes Consent Decree was finished



US v. Michigan: Inland Litigation

- 2003 – State Initiates Inland Case in Federal Court
 - Necessary to resolve ongoing dispute of continued existence of the Tribes' Inland Article 13 rights
- 2003 – 2005
 - Trial preparation and discovery
- 2005 – 2007
 - Settlement negotiations



2007 Inland Consent Decree

-a negotiated settlement

- Defines the extent of right to hunt, and the other usual privileges of occupancy, secured by the 1836 Treaty
- Establishes parameters that define where, when, and how the Tribes may exercise those rights
- No expiration date



2007 Consent Decree Structure

- Fishing
 - Species
 - Boundaries, closures
- Hunting
 - Species
 - Boundaries and Seasons
- Use of State Land
 - Gathering, access, structures



2007 Inland Consent Decree

- Restoration, Reclamation, & Enhancement Projects
- Assessment Activities
- Consultation & Information Sharing
- Dispute Resolution



Consent Decree Management Agencies

- DNR
 - Tribal Coordinator – Executive
 - Law Enforcement Division
 - Fisheries Division
 - Tribal Coordination Unit
 - Forest Resources Division
 - Wildlife Division
 - Parks & Recreation Division
- Tribes
 - 5 Natural Resources Departments
 - Law Enforcement Departments
- US Fish and Wildlife and US Forest Service



Inland Consent Decree Relationships

- Sovereign Governments
 - Should not be treated as stakeholders
 - Right to regulate themselves
- Consent Decree Language
 - Specific for certain activities
- Trust
 - History of strained relationship
 - Communication is key



Building Trust

- Relationships
 - Make time to introduce yourself
 - Attempt to understand who does what and where authority exists
- Plan to discuss issues or proposed actions early
 - Consider neutral locations or offer to go to their office
- Listen and be patient; building trust takes time
- Be respectful of differing views and processes
- “How can we make this work for all of us?”



Questions?

