

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LAC COURTE OREILLES BAND OF
LAKE SUPERIOR CHIPPEWA INDIANS;
RED CLIFF BAND OF LAKE SUPERIOR
CHIPPEWA INDIANS; SOKAOGON
CHIPPEWA INDIAN COMMUNITY;
ST. CROIX CHIPPEWA INDIANS OF
WISCONSIN; BAD RIVER BAND OF THE
LAKE SUPERIOR CHIPPEWA INDIANS;
and LAC DU FLAMBEAU BAND OF
LAKE SUPERIOR CHIPPEWA INDIANS,

Plaintiffs,

v.

Case No. 74-C-313-C

STATE OF WISCONSIN, WISCONSIN
NATURAL RESOURCES BOARD,
CATHY STEPP, KURT THIEDE and
TIM LAWHERN,

Defendants.

AFFIDAVIT OF SCOTT GUNDERSON

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Scott Gunderson, being first duly sworn on oath, deposes and says:

1. I make this affidavit on the basis of my own personal knowledge, and to the best of my recollections.

2. Since January 5, 2011, I have served as the Executive Assistant of the Wisconsin Department of Natural Resources (WDNR). In this position, I am the WDNR Secretary's Office

lead in fishing and wildlife-related issues. I am also charged with working to build the WDNR's relationship with the Wisconsin Legislature and the various tribes in Wisconsin on these issues. I understand that the WDNR has primary management authority with respect to all of the natural resources of the State of Wisconsin.

3. One of my responsibilities as WDNR Executive Assistant has been to work with the six plaintiff Tribes (Tribes) on numerous issues, including the implementation of their off-reservation treaty rights to harvest natural resources in the "ceded territory" of Wisconsin. In that context, I have regularly attended meetings, engaged in telephone conversations, and consulted with WDNR staff.

4. On May 23, 2012, I, along with WDNR Attorney Quinn Williams and a number of WDNR staff, met with various Tribal and Great Lakes Indian Fish and Wildlife Commission (GLIFWC) representatives at the Red Cliff "Legendary Waters" resort for the opening of the "Voigt Round III Stipulation Negotiations." At this meeting, I recall that the parties discussed the Tribes' interest in establishing no-harvest wolf zones on each of their reservations and with six mile off-reservation buffers as part of WDNR's proposed wolf hunting rule. Although we did not discuss any potential stipulation issues in detail, we did attempt to assign various joint WDNR/Tribal/GLIFWC teams with the tasks of developing certain issues in greater detail. At this meeting there was no mention or discussion of the Tribes' desire to seek or implement off-reservation night hunting of deer that I can recall.

5. On August 1, 2012, I, along with Mr. Williams, WDNR Northern Regional Director John Gozdziński, and over a dozen additional WDNR staff, attended a meeting between WDNR and Tribal representatives in Stevens Point, Wisconsin. The purpose of that meeting was to review issues under consideration during the bi-annual stipulation review process. At the

meeting, the Tribes and WDNR briefly reviewed and discussed 43 issues for ongoing stipulation discussions. Night hunting was one of those issues, but was not the focus of the meeting. I recall that Mr. Williams and I agreed to continue discussions on all 43 issues identified by the Tribes, noting that some issues would be more difficult than others. However, at no point during our meeting did I promise that the WDNR would agree to an off-reservation night hunting proposal. Indeed, as I recall indicating at the meeting, such an agreement could not even be contemplated until WDNR staff could review the Tribes' draft language. Furthermore, at no point do I recall the Tribes mentioning the possibility of pursuing night hunting by issuing a commission order through the "other liberalization amendment" procedure. Rather, it was my understanding at the end of the meeting that any future discussions on night hunting would move forward through the stipulation process.

6. On August 21, 2012, I, along with WDNR Secretary Cathy Stepp and Mr. Williams, participated in a call with GLIFWC Executive Director Jim Zorn. I recall that I reiterated my understanding of what occurred at the August 1, 2012, meeting to Mr. Zorn: specifically, that although the WDNR would continue to discuss night hunting and the other 42 issues raised by the Tribes, but that we had safety, enforcement and public education concerns. It is my recollection that Secretary Stepp did not propose a specific timeline for discussions on night hunting, but rather indicated that the WDNR would need adequate time to consult with staff, seek legal review of proposed stipulation language, and educate constituents about the issues. At no point during our conversation did I understand the Secretary to promise that either she or the WDNR would agree to an off-reservation night hunting proposal.

7. On August 23, 2012, a meeting took place on the Lac du Flambeau Reservation for the purpose of discussing off-reservation night hunting by Tribal members. Secretary Stepp;

Tom Maulson, President of the Lac du Flambeau Band of Lake Superior Chippewa and Chairman of the Voigt Task Force; Mr. Gozdziwski; and other Tribal representatives attended the meeting in person. Mr. Williams and I appeared by telephone. During the meeting, Mr. Maulson stated his belief that I had indicated on August 1, 2012, that the WDNR had “no objection” to off-reservation night hunting by tribal members (Tom Maulson Aff. at 2). I advised Mr. Maulson that he had misunderstood me, and stressed the need to evaluate stipulation language before meaningful discussion could take place. I also recall reiterating the need to work through the stipulation process. At no point during our conversation did I understand the Secretary to promise that either she or the WDNR would agree to an off-reservation night hunting proposal, or make any such promise myself.

8. It was not until September 28, 2012—just six business days before a meeting with the Voigt Task Force in Lac Vieux Desert was scheduled for October 4, 2012—that the WDNR received from Mr. Zorn a draft commission order on off-reservation night hunting of deer. A second draft was received on October 12, 2012. It is my impression, based on my own observations and participation, that WDNR staff worked diligently to attempt to review both of these drafts and thoughtfully consider the issue of night hunting, despite heavy workloads and short time constraints.

9. On October 22, 2012, I attended a meeting in Stevens Point, Wisconsin, with numerous WDNR and Tribal representatives. The purpose of this meeting was to continue consultation on night hunting and seek clarification regarding GLIFWC's revised draft commission order. During this meeting, WDNR staff asked Mr. Zorn and GLIFWC Policy Analyst Jason Stark a number of clarifying questions about the Tribes' most recent night hunting proposal. I gained several impressions as a result of this meeting. First, based on statements

made by several tribal members, I believed that the Tribes' night hunting proposal was directly linked to their frustration about the recent wolf hunting legislation and the likelihood of future mining legislation that would impact the Ceded Territory. Second, based on the questions asked by WDNR staff and the responses elicited from Tribal Representatives, I believed that the Tribes' interpretation of the revised commission order was not adequately captured in the language of the order, and that WDNR staff had accordingly identified a number of legitimate public safety concerns. Third, based on unambiguous statements made by Mr. Maulson, it was the Tribes intent to issue a commission order regardless of any review by the WDNR, and that it would go into effect on November 1, 2012. Finally, based on my understanding of statements made by Secretary Stepp and Mr. Williams, it was the WDNR's continued position that a commission order was not the proper mechanism for pursuing night hunting, and that a failure to work through the appropriate mechanism would enable the State to enforce its prohibition against shining towards Tribal members acting under a night hunting commission order.

Dated this 6th day of December, 2012.

/s/ Scott Gunderson

SCOTT GUNDERSON

Subscribed and sworn to before me
this 6th day of December, 2012.

/s/ Quinn L. Williams

Notary Public, State of Wisconsin

My Commission: is permanent