

Native American Treaty Project

Department of Defense Legacy Resource Management Program

DoD Conservation Conference

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BACKGROUND

- DoD develops American Indian and Alaska Native Policy, 1998
- Policy directs DoD to undertake actions and manage lands
 - *Consistent with the conservation of protected tribal resources and in recognition of Indian treaty rights to fish, hunt and gather resources at both on and off-reservation locations*



BACKGROUND cont.

- And to accommodate
 - *to the extent practicable and consistent with military training, security, and readiness requirements, tribal member access to sacred and off-reservation treaty fishing, hunting, and gathering sites located on military installations*
- Extent of treaty rights on DoD lands not known
- Legacy fund Native American Treaties Project



LEGACY PROJECT

- Cooperative agreement with NATHPO: National Association of Tribal Historic Preservation Officers
 - Sole sourced based on NATHPO expertise in tribal matters
- Scope of work
 - Report
 - GIS component



PROJECT PURPOSE

- To identify all extant, in-force treaties between Indian tribes and the federal government applicable to installations in the 48 states
- To define the nature and extent of treaty obligations for these installations
- To enhance DoD-tribal relationships and uphold federal legal obligations to tribes



PROJECT PURPOSE, cont.

- Study identifies those treaties with explicitly reserved, land-based, usufructuary rights
- Typically these rights consist of hunting, gathering, fishing rights



CURRENT STATUS

- Currently under review at DoD
- Now available on DENIX
- Will provide a tool for installations to use as part of government-to-government consultation responsibilities



ABOUT TREATIES

- Treaties are contracts between sovereign nations
 - Important component of the political relationship between American Indian tribes and the federal government
- The Constitution gives the President sole power to negotiate treaties, with 2/3 approval of Senate
- Force and effect of federal law



TREATIES WITH TRIBES

- Purpose: tribes grant federal government title to land and establish peaceful relationships in return for protection, goods, services
- Tribes retain rights not specifically ceded to the federal government in treaties
- Some treaties—specifically reserve usufructuary rights for tribes
 - Reserved rights are not grants from the US
 - Can only be extinguished by Congress



TREATIES, cont.

- US negotiated over 500 treaties with tribes before 1871
 - Not all were ratified
- Treaties and tribes do not have 1 on 1 relationship
 - Not every tribe has a treaty
 - Some treaties were made with multiple tribes



TREATIES, cont

- Congress ended treaty making in 1871
- Federal government made agreements with tribes, ratified by Congress and signed into law, have same effect as treaties
 - Included in this study
- Each treaty is unique
 - Represents a unique history of tribal interaction with the federal government, may have unique legal history



TREATIES, cont.

- Cannons of Construction for interpreting tribal treaties
- Courts recognize inequality of negotiation process
- Set forth following standards for interpreting treaties
 - Ambiguities must be resolved in favor of the tribes
 - Indian treaties must be interpreted as Indians would have understood them
 - Indian treaties must be construed liberally in favor of the Indians
 - Reserved rights must be explicitly extinguished by either later treaties or Congressional action



RESEARCH METHODS

- Project team from University of Kansas
- Read 488 treaties and agreements
- Found reserved rights in 71 treaties
- Mapped these land-based rights and compared to DoD installation locations
- Looked at all subsequent treaties negotiated with tribes holding reserved rights to see if rights extinguished



TREATIES, cont

- Searched for legal decisions affecting specific treaties, interpretations, and treaty rights in general
- Limits of the study:
 - Addressed only land-based usufructuary rights, not other treaty obligations
 - Limited to installations listed in 1999 Sikes Report
 - Does not address non-treaty rights or aboriginal rights which may exist outside of specifically reserved rights
 - Tribes may have conflicting views over interpretation of treaties and boundaries



FINDINGS

- 22 treaties that create potential obligations for existing military installations
- These treaties affect 58 installations in 12 states:

– Alabama	Michigan	Oklahoma
– Arkansas	Minnesota	Oregon
– Illinois	Nebraska	Utah
– Indiana	Ohio	Washington



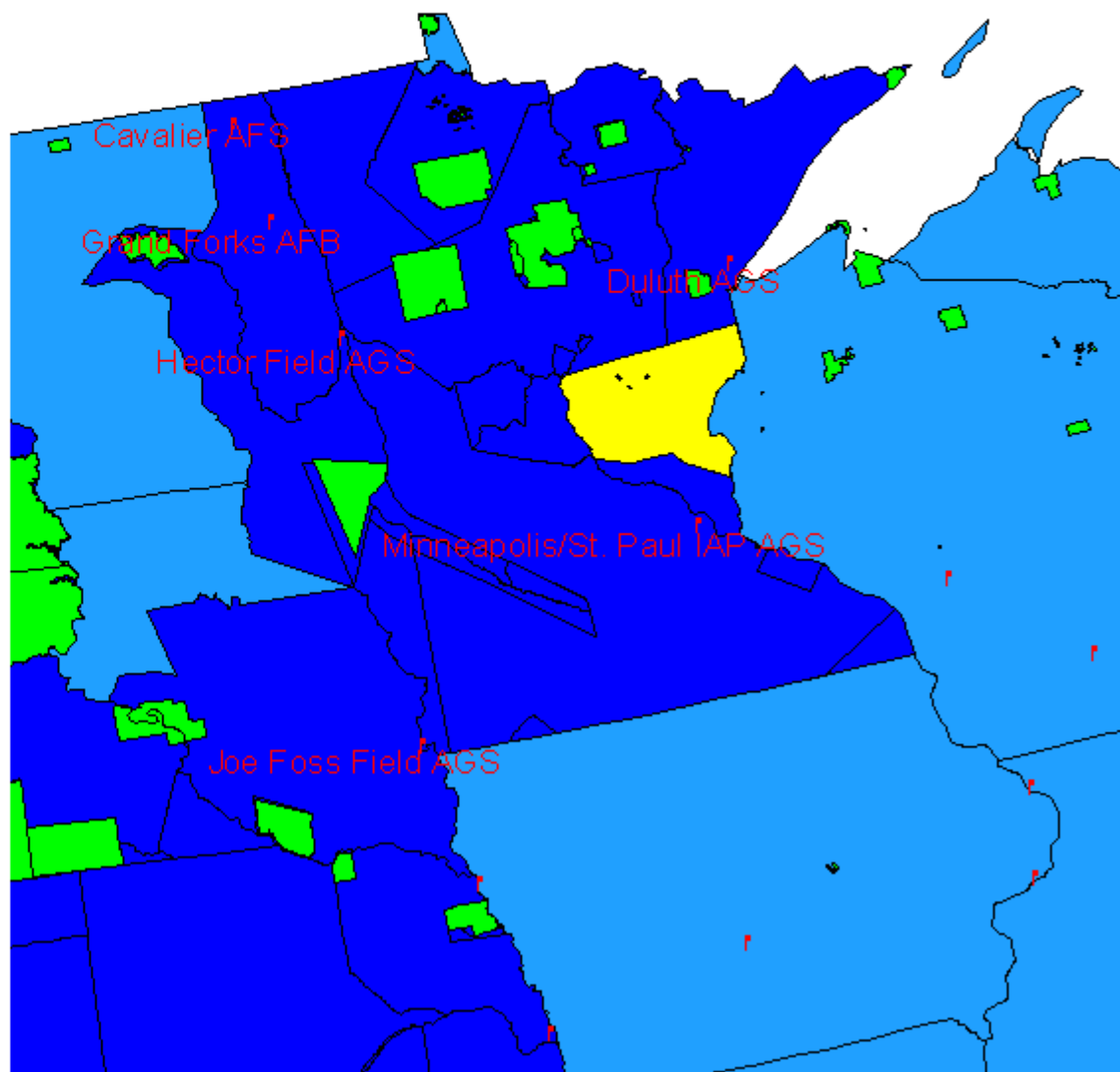
FINDINGS, cont.

- Presentation of Findings
 - Lists for each installation
 - Rights reserved
 - Treaty
 - Treaty tribe(s)
 - Treaty language stipulating the rights
 - All installations listed for the treaty
 - Court decisions located which affect those rights
 - Comments
 - Possible cession of rights in later treaties
- GIS component accompanies report

W	Type	Base Name	Notes	Notes
W	Army	Twin Cities AAP	243	Treaty with the Sioux. Sept. 29, 1837
W	Army	Camp Ripley	242	Treaty with the Chippewa. July 29, 1837
W	Air Force	Duluth AGS	332	Treaty with the Chippewa. Sept. 30, 1854
W	Air Force	Minneapolis-St. Paul IAP AGS	289	No # Treaty with the Sioux. Sept 23, 1805

Minnesota 2

- r Military
- Reservations
- Nebraska1
- Minnesota1
- Dakota1
- State





IMPLEMENTATION

- This study adds to tools available to installation commanders to assist in meeting federal obligations to tribes
- The report DOES NOT replace the consultation process as dictated by DoD American Indian and Alaska Native Policy
- Affected installations should review their government-to-government consultation policies with reference to treaty obligations
- This may add to existing encroachment issues



FUTURE RESEARCH AND PRODUCTS



- Current Legacy studies in process:
 - Expanded Indian Lands Research for DoD Installations: DoD non-treaty related responsibilities toward tribes who did not enter into treaty relations or have treaties ratified by Congress
 - Guide to Native American Treaty Reserved Rights for Fishing, Hunting and Gathering on Military Lands for Installation Resource Managers



AFFECTED INSTALLATIONS

- This list may be incomplete.
 - Difficulties with treaty language
 - Differing interpretations
- Alabama
 - Redstone Arsenal
- Arkansas
 - Camp Robinson
 - Fort Chaffee
 - Fort Smith AGS
 - Little Rock AFB
 - Pine Bluff Arsenal



AFFECTED INSTALLATIONS

- Illinois
 - Camp Marseilles
 - Charles Melvin Price SPT CTR
 - Chicago ARS
 - Greater Peoria AGS
 - Joliet AAP
 - Rock Island Arsenal
 - Savanna Depot ACT
 - Scott AFB



AFFECTED INSTALLATIONS

- Indiana
 - Crane Div, NAV Surface Warfare Ctr
 - Ft Wayne AGS
 - Hulman AGS
 - Indiana AAP
 - Newport Chem Activity
- Michigan
 - Camp Custer
 - Camp Grayling
 - Detroit Arsenal
 - Selfridge AGB
 - Garrison Selfridge
 - W.K Kellogg AGS



AFFECTED INSTALLATIONS

- Minnesota
 - Camp Ripley
 - Duluth AGS
 - Mpls-St. Paul IAP AGS
- Nebraska
 - Camp Hastings
- Ohio
 - Camp Perry
 - Camp Perry AGS
 - DEF Const. Supply Center
 - Lima Army Tank Plant



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- Ohio, cont. Lima Army Tank Plant
 - Gentile DEF Electronic Supply
 - Mansfield Lahm AGS
 - Ravenna AAP
 - Rickenbacker AGS
 - Springfield-Beckley AGS
 - Toledo Express AGS
 - Wright Patterson AFB
 - Youngston-Warren ARS
 - Oklahoma
 - Altus AFB



AFFECTED INSTALLATIONS

- Oregon
 - Umatilla Depot
- Utah
 - Camp Williams
 - Depot Ogden
 - Dugway Proving Ground
 - Hill AFB
 - Salt Lake City AGS
- Washington
 - Bangor Sub Base
 - Everett NS



AFFECTED INSTALLATIONS

- Washington, cont.
 - Fort Lewis
 - McCord AFB
 - NAS Whidbey IS
 - Navseawarfare
 - Puget Sound NS
 - Strategic Weapon Fac Pac
 - Yakima Firing CTR



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