



Title:WHO OWNS THE LAND?(Magazine Desk)

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LEAD: WE CROSS THE BOUNDARY OF THE White Earth Indian Reservation from the east, the same direction from which disparate bands of Mississippi, Pembina, Pillager, Lake Winnibigoshish and Lake Superior Chippewa arrived in the mid-19th century, pushed to this far edge of Minnesota by the crush of European settlement.

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Unfortunately, this future turned out to be a familiar story. White Earth in the 1980's is the locus of an acrimonious conflict over land ownership that has pitted Chippewa against Chippewa, small farmers against bureaucrats, and politicians against their constituencies. No one disputes that decades ago local Indians were unfairly deprived of hundreds of thousands of acres that were guaranteed to them in perpetuity by solemn treaty; yet no one can agree about what should be done to correct that injustice today.

There's a poignance to the beauty of White Earth. Of the 830,000 acres promised to the original Chippewa settlers, only about 53,100 acres -just over 6 percent of their former domain - remain in their possession.

We stop for gas in Naytahwaush, one of the few reservation communities where Chippewa form a majority. Like Ponsford and the village of White Earth, it is small, sleepy, peaceful-looking. Trailers and old board cabins are set deep in tangled scrub oak and box elder trees. A general store sells wild rice and other necessities. On the perimeter, brightly painted prefab houses are wedged close together. Just beyond the town limits, on land that once belonged to the Chippewa, are expanses of state-managed forests and fertile dark fields now tilled by non-Indian farmers.

FOR CHIPPEWA, THE nightmare began with the General Allotment Act of 1887, when Henry Dawes, a Massachusetts "reformer" and Senator determined to abolish Indian reservations, sponsored legislation that virtually halved all aboriginal holdings in the United States, subdividing reservations into 80- to 160-acre tracts. Twenty years later, the White Earth band was singled out for a special variety of pseudo-legal swindling, the scheme of Moses E. Clapp, a lumber baron and lawyer who became a Minnesota Senator.

Not content with the General Allotment Act's provision that Indians had to wait 25 years before they could be deprived of their parcels, Clapp pushed through a rider to the Indian Appropriations Bill of 1906 which declared that mixed-blood adults on White Earth were "competent" to dispose of them immediately.

What followed was a land-grab orgy so outrageous that to this day local people, regardless of ethnic heritage, speak of it with a sense of bewildered shame. Threatened, duped or plied with drink, many Chippewa signed away their deeds with an X or a thumb print and received as payment tin money, ancient horses, harnesses and sleighs, used pianos, gramophones and other worthless junk. Chippewa who disputed the sales were declared "mixed-bloods," which meant their land was not protected, via such scientific quackeries as the test developed by Dr. Ales Hrdlicka, an influential physical anthropologist long associated with the Smithsonian Institution. It "consisted of drawing with some force the nail of the forefinger over the chest." Real Indians were supposed to have skin so tough that a scratch would leave no mark. It is not surprising that by such criteria fewer than 200 out of more than 5,000 enrolled tribal members were judged to be "full-bloods," and more than half the original acreage assignments soon passed from Indian control.

The effect on the band was devastating. While lumber companies clear-cut millions of dollars' worth of pine from forests located within White Earth, dispirited and broken Indian families clustered 10 or more to single-room cabins on the allotments left to them. Trachoma, scrofula, tuberculosis and alcoholism became epidemic. The pattern of economic ruin, repeated over and over again on other reservations throughout the West, overtook the tribe that called itself "Anishinabe," the Original People.

For decades afterward, land within White Earth was bought, sold and often confiscated for lack of county tax funds. But in the collective memory of the Chippewa - many of whom were not even American citizens until a Congressional act in 1924 - the land

was theirs; and their claims to it were ultimately vindicated by the Federal courts.

In 1961, the auditor for Clearwater County, Minnesota, foreclosed on land owned by a tribal member named Zay Zah, (Continued on Page 52) or Charles Aubid, who had failed to pay county property tax. The ensuing landmark case, decided in 1977, effectively affirmed the trust status of White Earth land. Title for lost reservation property was suddenly open to litigation.

In 1985, state, county and tribal officials finally reached a compromise solution. (The tribe later rescinded its endorsement.) The proposed White Earth Reservation Land Settlement Act - known as WELSA - awarded each eligible individual compensation based upon value of land at the time it was lost, plus 5 percent compound interest; mandated that the Bureau of Indian Affairs locate all heirs and inform them of their benefits; ordered the United States Treasury to grant \$6.6 million for the economic development of White Earth; endorsed a plan to return to the band some 10,000 acres selected by the White Earth Reservation Tribal Council from more than 100,000 acres of designated land within the reservation's borders; quieted, then and forever, virtually all non-Indian land titles.

Any full or partial heir to an allotment who found these conditions unacceptable could bring suit for the outright return of land within a six-month period. In so doing, however, the plaintiff would concede all WELSA benefits, win or lose. After the termination of this statute of limitations, no further legal contests over disputed tracts would be heard. Thirty-nine Chippewa elected to sue; none have as yet prevailed. The WELSA bill became law in 1986; its constitutionality is being contested.

FOR LOCAL NON-INDIANS like Jane and John Reish, who moved to White Earth from the Twin Cities in 1975, the trouble started in 1980, when registered letters arrived from the Department of the Interior warning that title to their land was suspect. The 27-acre resort the family had purchased in good faith was suddenly in jeopardy - only instead of being forced from their land, the Reishes were stuck there. Uncertainty about the title made it virtually impossible to sell, trade or use the land for collateral until the issue was settled in Washington.

In keeping with state beautification laws, the highway turn-off to the Jolly Fisherman Resort, the Reishes' pride and joy, is marked only by a rectangular signpost. A long shady lane gives way to a clearing where teen-agers are raking pine needles from the brown grass lawns, preparing cabins for the coming season. Jane Reish, an energetic young woman with short brown hair, invites us into her kitchen, overlooking the waters of a dazzling lake.

Waiting for us are several members of the United Township Association, a grass-roots organization of local landowners, including farmers and resort owners. Bob Bruns, a quiet man with a level gaze and chiseled features, introduces himself as the owner of Whaley's Resort, which has been listed with a realtor for the past twelve months.

"I'm selling because of frustration," says Mr. Bruns. "I worked day and night for 18 years to build a profitable business. Yet I'd sell it." He sips his coffee and looks around the table. "But you know, this time I'd check the title."

He is answered by rueful and knowing laughter. Jim Jirava, a third generation Czech-American farmer, has taken a few hours from planting the 6,000 acres he tills with other members of his family in order to join us. He points out that 70 percent of those who now live on the reservation are non-tribal members. For him, as for Ann Schoenborn, a farmer who subscribes to the American Indian Law Review, dealing with state and Federal officials has been an exercise in disillusionment. Mrs. Schoenborn passionately opposed parts of what eventually became WELSA because she felt it unfairly increased the economic power of the Tribal Council over every non-Chippewa living within the reservation's borders. For her, as for many non-white residents, the issue has changed from fear of losing their land to fear of losing jurisdiction over it.

"The power to control is the power to destroy," Bob Bruns asserts. Ann Schoenborn nods. She's concerned about local trespass ordinances. "We have a farm, partly in the woods," she explains. "I have to know who's going on my property, whether they're putting traps in my fields." These are reasonable, hard-working, people; now they're frightened and indignant. It is impossible not to sympathize with their desire to defend their homes and, in some cases, legacies. "We weren't told the land was on a reservation," says Jane Reish. "We didn't understand all these implications when we paid our mortgages and our taxes. We are American citizens."

But the situation is even more complicated. It turns out that nearly everyone in the room is related by blood, marriage, god-parentage or long friendship to members of the White Earth Chippewa band. Despite everything, Jane Reish says, their group will never "look at our neighbors and say 'you are the cause of my problems.'"

That cause is buried in history and local politics. Some blame Darrell "Chip" Wadena, the chairman of the Tribal Council for 12 stormy years. He has a reputation for being despotic, but when we arrive at his home in Naytahwaush, not half an hour from the Jolly Fisherman, we meet a pleasant man of medium build, curly hair, a moustache and deep laugh lines. He waves to us from the door of a mobile home with brown siding and weathered steps. We pull into the yard and park between a pink Cadillac and a new GMC pickup truck that bears the reservation-issued vanity license plate, "CHIP 1."

Inside, at the kitchen table, we sit beneath a reproduction of Leonardo da Vinci's "Last Supper" and other inspirational pictures affixed to varnished wood. Our conversation is punctuated by the static hiss of a CB radio hook-up. It is obvious, from the first word, that Mr. Wadena has a firm grasp of political strategy and a mission. Among the more than 3,000 Chippewa on White Earth (more than 12,000 tribal members live away from the reservation much of the year), unemployment is 73.5 percent, and the median income a few years ago was \$2,523. Chip Wadena's sworn job is to improve these statistics.

The Zay Zah decision, a 1977 court ruling that in effect challenged more than 50 years of Federal law regarding White Earth Chippewa land policy, was a wedge in the door, the first sign of hope. It led to an investigation that called into question the propriety of deeds all over the reservation. This process soon led to the letters that non-Indian property owners received. "They were quite enraged, and you couldn't blame them," Mr. Wadena says mildly. "Nobody had the answers. The Bureau of Indian Affairs didn't have the answers. Our lawyers could only speculate. As a result, tempers flared, emotions ran amok."

Chip Wadena, members of the Council and an ad hoc and outspoken group called Anishinabe Akeeng, "the People's Land," at first opposed a legislative solution, believing that no one bill could fairly address all aspects of the complex situation. The initial proposal by Representative Arlan Stangeland, the local Congressman, did not pass, but as questions about land titles continued to arise, tensions mounted. Wadena recalls that Representative Morris Udall of Arizona, a longtime advocate for Indian interests, advised him, "If you don't come up with a consensus on what you want, Congress will make up your mind for you."

Now Chip Wadena defends WELSA, which he eventually endorsed over the strenuous objections of other elected tribal officials, as the best compromise available at the time, balancing a century of real-estate chicanery and a present-day Office of Management and Budget obsessed with international deficits. "My loyal opposition, AIM [American Indian Movement] people or Anishinabe Akeeng, took the all-or-nothing stance," he says, "and I couldn't explain to them that what you'll get is nothing."

Less than an hour down the road, in a small yellow cement-block building on the dusty outskirts of White Earth village, the loyal opposition is photo-copying the 1867 treaty. Anishinabe Akeeng, staffed by both young and veteran activists, funded in part by Christian churches and endorsed and broadly directed by a board of elders, officially rejects the Settlement Act.

Led by Marvin Manypenny, Winona LaDuke, John Morrin and Rich and Ray Bellcourt, this grass-roots organization has acted from the outset as a kind of conscience, a constant reminder of the deprivations Indians have suffered because of Federal mismanagement. Anishinabe Akeeng successfully raised the ante of previous settlement proposals as it stubbornly lobbied Congress for the return to the band of most of the land on the reservation as well as for a much larger damages payment. Recently supporters have brought suits in Washington and St. Paul challenging WELSA. "It's the non-Indians whose claim the Feds should buy out," argues the Harvard-educated LaDuke. "Not the Indians." Kurt BlueDog, a former Native American Rights Fund lawyer and a Sisseton Sioux, is handling the Minnesota case. "We're basically outgunned here all the time," he says. "We're like one David up against six Goliaths. It's hard to explain this to my clients. They're quiet people, disinherited people."

John Morrin, a slim, gentle-looking man whose long hair is held back in a tail, greets us at the door to the Anishinabe Akeeng office. He is a university-trained Lake Superior Chippewa who has become passionately involved in the struggle to reclaim White Earth land and who believes that chairman Wadena's support of WELSA stems from "mental slavery caused by the system." "Non-Indians on our reservation are afraid that if we get power, they'll be treated the way they treated Indians," he says. "But we could never turn around and do that to them." Morrin's manner is serene, earnest. "The issue here is not how much land we get back or they retain, but how we are going to coexist as human beings."

Marvin Manypenny, another member of the group, is an active participant in the lawsuits pertaining to WELSA. More aggressive than Morrin, more self-consciously a leader, he calls the bill "a non-Indian Relief Act" and accuses Federal officials of "dereliction in their trust responsibility. They screwed up, and consequently our estate was stolen out from under our noses."

While continuing their efforts to block the implementation of the Act, some members of Anishinabe Akeeng have also become pragmatists. Winona LaDuke proposes an ambitious, longterm land-recovery project. Endorsed by Chip Wadena as well as by her own organization, the plan "places no burden on any non-Indian," but rather stipulates that interest money from the Indian Claims Commission or other land settlements be used to repurchase acreage that over the years has passed out of tribal control.

For moral reasons, tax reasons, economic reasons, Winona LaDuke speculates, non-Indians on the reservation might sell to the tribe. Any lands so recovered would return to the Chippewa domain, thus giving the band a base for economic growth as well as something less tangible - a form of hope, a validation, and something terribly rare in Indian country, a victory.

SOUTH OF WHITE Earth, we pass through the rich loam fields of central Minnesota. Once on the Interstate highway, it is only hours to the Twin Cities, where we have appointments with the state officials who seem to have alienated just about everyone in White Earth, from United Township members to Anishinabe Akeeng. We are prepared to encounter villains. Instead, the next morning, in the state Capitol offices of Rudy Perpich, the Governor of Minnesota, beneath the huge Romantic oil painting by Francis Millet of Chief

Little Crow signing the Treaty of Traverse des Sioux, we meet a group of public servants whose views on Indian sovereignty put them light years ahead of their counterparts in most other states. "Indian tribes are nations," says Gov. Perpich, "and we deal with them as such."

James Schoessler, a slim, precise Minnesotan with degrees from Harvard and Princeton, has taken lots of heat in connection with the White Earth controversy. Assistant attorney general for natural resources, he first became involved with the dispute after the Bureau of Indian Affairs issued the notorious title letters and, as he says, "all heck broke loose."

"The problem cried out for a legislative solution," Schoessler explains. Along with Minnesota Attorney General Hubert H. Humphrey 3d, he earnestly believed that though the state was technically responsible only in a limited way, it owed "a philosophical and moral claim to the White Earth Chippewa as a people."

The conflicting claims were necessarily complex: up to 100,000 people, according to Chip Wadena, averaging 150 disputants for every individual 65-acre claim, could potentially bring suit. Furthermore, the legal waters were so murky that no one could firmly predict which side - the current or former landowners - would ultimately prevail after years of what promised to be rancorous and expensive litigation. If even a fraction of these cases went to court, Schoessler was convinced, "at the bitter, and I do mean bitter, end," no real justice would be done.

Under Humphrey's direction, Jim Schoessler attended more than 90 meetings, shuttling between White Earth and St. Paul and Washington, to explain why the terms WELSA proposed - the return of some land, no "cap" on the monetary allocation, the payment of compound interest to injured parties - would be an improvement over settlements that American Indians had gotten in the past.

Such logic is little comfort to Seraphine Rock, Fred Weaver and Margaret Norcross, plaintiffs in the St. Paul class-action suit, who insist they have a compelling entitlement to all the reservation land stolen from their ancestors. They insist upon a broad perspective: They have lived their whole lives on tiny lots in a village crowded into a corner of their own reservation; they have been denied the good life for which their parents peacefully bartered away most of Michigan, Wisconsin and Minnesota. Theirs is the argument of adamant Israelis or Palestinians, the insistence on an absolute, final right to a home.

THE DEBATE CON-tinues - in Washington and St. Paul and Naytahwaush - between disgruntled antagonists often related by blood or geography. As in a family, each position, though contradictory to all others, is persuasive, wrenching. There are no wild-eyed profiteers here, no evil geniuses; the authors of the turn-of-the-century deals that caused this mess are dead and mostly forgotten. None of the cliches seem to apply: the state is liberal, sensitive, the tribal government efficient, the protestors idealistic, the non-Indians salt-of-the-earth people whose complaint is with policy, not race. It's nothing personal, everyone seems to proclaim.

WELSA, meanwhile, passed Congress three years ago. A list of heirs is being composed; 10,000 acres, including a former state park, have been designated to be returned to tribal authority; a development plan for the use of the \$6.6 million awarded under the terms of WELSA is being considered. Though still in the shadow of a final judicial verdict, privately owned land within White Earth (with the exception of about 1,200 still-contested acres), has clear title and can theoretically be sold or used to guarantee loans. Hubert Humphrey 3d is running, like his father before him, for the Senate, and Jim Schoessler desperately yearns to go on to another issue.

At the Jolly Fisherman, vacationers unsophisticated in the vagaries of Indian history rise early to drop lines for walleyes. Perhaps they've bought their bait from Theodore Hoagland, a plaintiff in the class-action suit who hopes to regain some family land. For now he's selling minnows and leeches to make a living. Jim Jirava's crop of soy beans, barley and wheat bakes in a record drought. As Darrell Wadena prepares to take office for another term as tribal chairman, the Center for Constitutional Rights and the New York law firm of Weil, Gotshal & Manges have filed briefs in Washington to have WELSA overturned. Thousands of men and women throughout America, many as yet unaware that they are even eligible, will soon learn they are to receive a monetary award compensating them for the damages suffered by their White Earth ancestors.

In the end, of course, it all comes back to the land. Black, sloping gently into wild rice marsh and lake, forested with deep pine and brilliant stands of birch, it exerts a hold on its inhabitants more binding than history or legislation. "As you walk through this land, take time to appreciate the beauty of the flowers," exhorts a framed poster over Chip Wadena's window. "A woman is like a tea bag," a calendar stuck to Jane Reish's refrigerator warns. "You don't know how strong she is until you put her in hot water."

The protagonists in the White Earth dispute see themselves as righteous and heroic, for each is in the position of defending a birthright, a territory paid for by labor and affection and long residency, the immutable inheritance they have hoped to pass on to their children. "How firm we stand and plant our feet upon our land determines the strength of our children's heartbeat," proclaims a slogan above the copying machine at Anishinabe Akeeng's headquarters, a sentiment echoed by Jim Schoessler: "It's land. It touches the essence."

CAPTION(S):

Photo of Winona LaDuke and Indian leader (pg. 32); land in Minnesota (pg. 32); chairman of the White Earth Reservation Tribal Council and family (pg. 34); Indian children watching baseball game (pg. 34); Jane Reish and her husband, John (pg. 35); Stephanie Jirava (pg. 65) (Dilip Mehta/Contact)

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