

The Case For Wild Rice: Expanding Tribal Sovereignty Through Enforcement of the Rights of Nature and Treaty Rights

Manoomin v. Minnesota Department of Natural Resources



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Center for Democratic and
Environmental Rights



*Manoomin et al. v. Minnesota
Department of Natural Resources et al.*

Why was the case brought?

What is the case about?

Chippewa Treaties

Treaties signed between the Chippewa Tribe and the United States government guarantee “use” rights to tribal members.

- Article 5 of the 1837 Treaty provides, “The privilege of hunting, fishing, and gathering the wild rice, upon the lands, the rivers, and the lakes included in the territory ceded, is guaranteed to the Indians. . .”
- Chippewa Chief Ma-ghe-ga-bo: “Of all the country that we grant to you we wish to hold on to a tree where we get our living, & to reserve the streams where we drink the waters that give us life.” 1837 Treaty Journal.



Manoomin Laws

In 2018, the White Earth Band's tribal government, and the 1855 Treaty Authority, adopted laws recognizing the rights of wild rice ("Manoomin").

- Laws declare that wild rice possesses inherent rights to “exist, flourish, regenerate, and evolve, as well as inherent rights to restoration, recovery, and preservation.”
- Laws declare that Manoomin has the right to “pure water and freshwater habitat, and the right to a healthy climate system and a natural environment free from human-caused global warming impacts and emissions.”
- Laws give Manoomin itself, in addition to White Earth Band and tribal members, authority to directly enforce their rights.



Rights of Nature Laws

Indigenous understanding of nature as not property; laws establish legally enforceable rights of nature, species, and ecosystems.

- Rights of nature laws adopted by six tribal governments in the U.S., over thirty municipal governments in the U.S., and in Brazil and Canada.
- Embedded in Ecuador's Constitution, national laws in Bolivia and Uganda, and in court rulings in Ecuador, Colombia, India, and Bangladesh.

Enbridge Line 3 Tar Sands Oil Pipeline

The Project and its Impacts

The Project

- Pipeline carrying tar sands oil from Alberta to Lake Superior, crossing Treaty lands.
- One of the largest crude oil pipelines in the world, carrying up to 915,000 barrels per day.
- First Nations and tribal governments have been fighting for 8 years to stop the project.

Impacts

- Climate equivalent to the construction of forty-five new coal-fired power plants.
- Affects 389 acres of wild rice in 17 different wild rice waterbodies.
- Affects historic and sacred sites on Treaty lands.
- Aquifer pollution from spills (227 waterbody crossings).

Arrest of Water Protectors

Tribal members have been arrested for enforcing treaty rights and the rights of Manoomin against the construction of Line 3.

Tribal members have been involved in protesting the construction of Line 3, and have been arrested and charged with trespass, even though protests have been conducted on treaty-protected lands.



Dewatering Permit

June 4, 2021: Minnesota's Department of Natural Resources issued permit to Enbridge for the use of up to 5 billion gallons of water for the construction and testing of the pipeline.



Manoomin v. Minnesota Department of Natural Resources

Parties, Causes of Action, Status of Litigation

Manoomin Litigation

Plaintiffs and Defendants

Plaintiffs

- Manoomin;
- White Earth Band of Ojibwe, and individual tribal elected officials;
- Individual tribal members charged with trespass over Line 3 protests.

Defendants

- Officials, Minnesota Department of Natural Resources;
- Conservation Officers (those making arrests), Minnesota Department of Natural Resources.

Manoomin Litigation

Counts in Complaint

Count One

- Treaty rights override state claims of ownership with respect to Manoomin, and wild plants/animals in the public waters and public lands of ceded Treaty Territories.

Count Two

- State has “taken” treaty-recognized usufructuary property without due process, as required by the U.S. Constitution.

Manoomin Litigation

Counts in Complaint

Count Three

- State has treated different Treaties differently, thus violating equal protection guarantees of the U.S. Constitution.

Count Four

- Water rights unjustly seized and taken pursuant to the 4th Amendment of the U.S. Constitution.

Manoomin Litigation

Counts in Complaint

Count Five

- State has violated religious/cultural rights by failing to adequately train state staff, in the lawful status of federal Treaty rights.

Count Six

- State violated the rights of Manoomin by permitting 5 billion gallons of water to be taken, with such taking of water affecting Manoomin's ability to exist and flourish.

Manoomin Litigation

Relief Sought

- Rescind all water appropriation permits issued for the Line 3 project; and establish joint permitting agreements between the State and the Chippewa for all future permitting.
- *Declare that:*
 - Manoomin has certain rights, and those rights are violated by the water permit;
 - Minnesota must obtain free, prior, informed consent from the Chippewa before state permits can be issued;
 - Chippewa tribal members possess the right to harvest manoomin, and protect and save manoomin seeds within the 1855 ceded territory;
 - Chippewa tribal members possess a right of sovereignty and self-determination, which cannot be infringed by other governments or business entities.

White Earth Tribal Court

Lawsuit filed in tribal court on August 4, 2021, and served on the State of Minnesota.

- August 12 - State of Minnesota filed a motion to dismiss the case, asserting that the tribal court lacked jurisdiction over the State of Minnesota.
- August 18 - Tribal court rejected Minnesota's motion to dismiss, and declared that "In passing legislation to protect its vital resources, the Band must also be able to exercise jurisdiction to carry out that legislative purpose. To hold otherwise reduces Tribal sovereignty to a cynical legal fiction."



U.S. District Court

State of Minnesota sues the White Earth Tribal Court (Judge DeGroat).

- August 19 - the State of Minnesota filed a lawsuit against the White Earth Tribal Court in federal District Court, asking the Court to block the White Earth Tribal Court from ruling in the case.
- September 3 - the federal District Court denied the State's request, and dismissed its lawsuit, holding that the Tribe cannot be sued in federal court over the matter.
- September 10 - the State appealed the District Court ruling to the Eighth Circuit Court of Appeals.
- September 21 - the Eighth Circuit denied the State's emergency request to overturn the District Court, and set a December hearing date.



White Earth Tribal Court

Tribal Court Reiterates Jurisdiction; State of Minnesota appeals the ruling of the White Earth Tribal Court to the White Earth Appellate Court.

- After original Tribal Court judge recused himself from the case due to the filing of the federal District Court lawsuit, new judge assigned to the case reiterates that the Tribal Court possesses jurisdiction to hear the case.
- On September 13th, the State of Minnesota filed an appeal of the Tribal Court's ruling to the White Earth Court of Appeals, urging it to find that the tribal court lacks jurisdiction to hear the case. Case is stayed within the Tribal Court until appellate court rules.



Implications

Implications of the *Manoomin* litigation on tribal sovereignty, rights of nature, and how similar lawsuits could be used in other situations.

- **Frank Bibeau**, Tribal Attorney for the Plaintiffs in the *Manoomin* litigation.
- **Mari Margil**, Executive Director, the Center for Democratic and Environmental Rights (CDER).

