

**Online Event: The First Rights of Nature Case Goes to Tribal Court –
The Case for Manoomin (Wild Rice)**
Manoomin v. Minnesota Department of Natural Resources (White Earth Tribal Court)

The Center for Democratic and Environmental Rights (CDER) hosted this online event, on December 7, 2021. Frank Bibeau, Tribal Attorney with the White Earth Band of Ojibwe, CDER's Executive Director, Mari Margil, and CDER Senior Legal Counsel, Thomas Linzey, presented.

A recording of the event, and the PowerPoint presentation, may be found at:

<https://www.centerforenvironmentalrights.org/rights-of-manoomin>

The following is a transcript of the webinar.

Mari Margil: We have some sponsors of this event today, in which we're focusing on this case, this first of its kind case, Manoomin Versus the Minnesota Department of Natural Resources. The event today is sponsored by our organization, Center for Democratic and Environmental rights, as well as Honor the Earth, Menīkānaehkem, and the Native Organizers Alliance. And so we want to thank all of them. You'll see in the chat box that we have all of their names and organization website addresses, so you can please research those, as well.

So we are going to hear from two really great presenters today. The first is my colleague at the Center for Democratic and Environmental Rights, Thomas Linzey, he's our senior legal counsel. He's worked on the first rights of nature laws anywhere in the world, and he is assisting in this case, manoomin case, as well as Frank Bibeau, who is a tribal attorney with the White Earth Band of Ojibwe, and who also works with the 1855 Treaty Authority, as well as Honor the Earth.

Frank worked with White Earth on their rights of manoomin law, the first law to recognize rights of a plant species, and manoomin or wild rice, and this is the first case being brought forward in a tribal court in which a plant species, manoomin, or wild rice, is the lead plaintiff. So we're going to hear from Frank, he's the lead attorney, on this rights of nature enforcement case representing the wild rice and the White Earth Band. And so first, we're going to start with Thomas Linzey, who's assisting in the case. He's going to kind of give us the facts of the case, what's happened up until now, and then we'll hear from Frank. So Thomas, could you start us off?

Thomas Linzey: Great. Thanks, Mari. So there are a lot of moving parts to understanding this case. And so the thing that we thought we would do today is do a brief PowerPoint. We have both lawyers and non-lawyers on the call. So the lawyers are going to have to take a deep breath, and just understand that we're going to slow down a little bit here to understand what the case is

about. Couple moving pieces to the case, so we want to make sure that we cover all of those bases. So I'm going to share a screen right now to get up to the PowerPoint. So, everybody should be seeing the PowerPoint, at this point, that we put together for today.

The title for today's PowerPoint is, **The Case For Wild Rice: Expanding Tribal Sovereignty Through Enforcement of the Rights of Nature and Treaty Rights**. And the case that we're talking about today is *Manoomin vs. Minnesota Department of Natural Resources*. And again, we wanted to do the PowerPoint today, just to provide a foundation for the important conversation that's going to come from Frank and Mari, talking about what the implications of this case are. So again, we wanted to lay the groundwork, the foundation for understanding the case, then move to that important conversation about the implications of the case, what it means, how it can be extended in other places, et cetera.

You'll notice that in the title itself, there are these two big concepts. One is expanding tribal sovereignty through enforcement of the rights of nature, and the second concept is expanding tribal sovereignty through treaty rights. So when Frank and I talk about these issues, it's kind of like the perfect storm between this rights of nature concept, but these treaty rights that the Chippewa hold, that are enforced or attempted to be enforced through this particular lawsuit. So just keep in mind those two big topic areas, enforcement of the rights of nature as a tribal sovereignty issue, and enforcement of treaty use rights as an extension of tribal sovereignty.

So the case that we're talking about today, again, the formal title is manoomin, which is the Chippewa term for wild rice, versus the Minnesota Department of Natural Resources. So the two quick questions that we ask in the beginning was, why was the case brought? What's the case about? That's what we're going to try to cover during the PowerPoint presentation, before I turn it over to Frank and Mari.

So to start with, we talk about the law that's used within this particular lawsuit, the manoomin lawsuit. And we're focused on treaties made between the Chippewa and the United States government. So for folks who aren't familiar with treaties, treaties are essentially contracts that in this case are signed between the Chippewa tribe and the United States government, in which the Chippewa tribe seeded or gave away certain territory, while reserving what are called use of usufructuary rights or "use rights" on the property and territory that was seeded.

So, between 1778 and 1868, there were approximately 370 treaties signed between the United States government and tribes. Forty-four of those treaties were signed between the Chippewa and the United States

government. And just a quotation here on this slide from Article Five of the 1837 treaty between the Chippewa tribe and the United States government provided that reservation of rights that was taken by the Chippewa in return for that ceding of territory to the United States government. It declares 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.

So that's a reservation clause of hunting, fishing, and gathering rights, again, roughly known as use rights or, usufructuary rights, that were reserved in return for ceding territory to the United States government. And again, we also don't want to make it seem that most of these treaties were voluntarily given in terms of the ceded territories, we're just looking at the substance right now. But it's important to understand that none of this happened without pressure from the United States government for various items for a territory to be ceded.

Just a quote from one of the Chippewa chiefs that oversaw the 1837 treating negotiations. And the quote is, "Of all the country that we grant to you, we wish to hold onto a tree where we got our living, and to reserve the streams where we drink the waters to give us life." That's from the 1837, a treaty journal. Again, treaties between the Chippewa and the United States government. In 2018, the White Earth Bands tribal government, and the 1855 Treaty Authority... And the 1855 Treaty Authority is an entity that represents about 25,000 Chippewa tribal members who are beneficiaries of the 1855 treaty.

So the 1855 treaty made between the US government and the Chippewa that reserved rights to use, hunt, fish, and gather, there are beneficiaries of that reserved use, they're individual tribal Chippewa members, and those members are represented by this entity, the 1855 Treaty Authority. That in 2018, at the end of 2018, the White Earth Band's tribal government, and the 1855 Treaty Authority, both adopted laws recognizing the rights of wild rice, or manoomin. So legally-enforceable rights of wild rice. And we'll talk about rights of nature in a second, but how this fits into that rights of nature concept.

So a wild rice holding rights, not individual tribal members holding rights. These are in addition to treaty or use rights that those members have. But recognizing that manoomin itself as wild rice, as a cultural staple of the Chippewa people, actually possesses certain legally enforceable rights. And what do those laws say? Well, they declare that wild rice possesses inherent rights to "exist, flourish, regenerate, and evolve, as well as inherent rights to restoration, recovery, preservation." They declare that manoomin has a right to pure water and fresh water habitat, the right to a

healthy climate system, a natural environment free from human-caused global warming impacts and emissions.

It's important to understand the laws give manoomin itself, wild rice itself, in addition to the White Earth Band and tribal members, authority to directly enforce those rights. So again, the laws give manoomin itself the authority to directly enforce those rights. And that's why the name of the case, the lead plaintiff in this particular litigation, is manoomin. So when you look at the court case, the first party listed is manoomin, and it's because the laws recognized that wild rice itself, manoomin itself, has the authority to directly enforce the rights that were established by these laws passed by the White Earth Band and by the 1855 Treaty Authority.

So when we talk about manoomin having rights, or wild rice having rights, it kind of bends our brains, because we're used to talking about rights being held by people or by human only. But there's been a growth in this area of law known as rights of nature. Basically, the indigenous understanding of nature is not property, but that these rights of nature laws establish legally enforceable rights of nature, species, and ecosystems. So again, an indigenous understanding of nature is not property, and that the laws established legally-enforceable rights of nature, species, and ecosystems.

People on the call may be familiar with some of these laws, but rights of nature laws have been adopted by municipal governments in the U.S., over 30 municipal governments in the U.S., including places like the City of Pittsburgh, and the County of Orange. So Orange County, Florida, last year became the largest municipal government in the United States, at 1.5 million people, to adopt a rights of nature law protecting various rivers there. Again, those rivers having rights. Not necessarily just people having rights, but those rivers having certain rights, as well.

Of course, municipal governments in Brazil and Canada, most recently the Magpie River in Quebec received, or was recognized as having, certain rights by a municipal government and an indigenous community in Canada becoming the first in Canada to actually adopt those laws. The rights of nature laws are also embedded in Ecuador's Constitution, national laws in Bolivia and Uganda, and in court rulings in Ecuador, Columbia, India, and Bangladesh.

People might be familiar with the most recent Ecuadorian Constitutional Court ruling, which just came out last week, dealing with the Los Cedros forest preserve, and nullifying some mining permits and concessions that had been granted for that forest preserve as a violation of the rights of nature as recognized by the Ecuadorian Constitution. So, a big court case

just came down recently, but this is the rights of nature concept, and the manoomin laws passed by the 1855 Treaty Authority, and by the White Earth Band, reflect this kind of rights of nature legal understanding.

So, what's the project? What's the problem here? In other words, why are we in a lawsuit situation, litigation capacity? It's the Enbridge Line 3 Tar Sands Oil Pipeline. And for folks that aren't familiar with the pipeline, it's a pipeline that carries tar sands oil from Alberta to Lake Superior, and it crosses treaty-protected lands. In other words, these ceded territory lands between the Chippewa and the US government, it crosses those lands. It's one of the largest crude oil pipelines in the world, carrying up to 915,000 barrels per day, of this crude oil, tar sands oil, some of the worst oil for purposes of climate change.

First nations and tribal governments have been fighting for eight years to stop the project, and these are some of the impacts of Line 3. It's the climate equivalent to the construction of 45 new coal-fired power plants, it affects 389 acres of wild rice, and 17 different water bodies that support wild rice, it affects historic and sacred sites on treaty lands. And, of course, one of the big issues about the pipeline... not that those others are small, but one of the big issues is that the pipeline has 227 water body crossings. So there's been a lot of concern about aquifer pollution from potential spills from that pipeline.

There have been arrests of water protectors. So tribal water protectors have been arrested for enforcing treaty rights and the rights of manoomin against the construction of Line 3. These are tribal members involved in protesting the construction of Line 3 for some of those impact reasons that we just looked at, have been arrested and charged with trespass, even though those protests have been conducted on treaty-protected lands.

So even though the protests were conducted on territories ceded through the treaties, so therefore, treaty-protected, and even though the tribal members were involved in protesting the construction of Line 3 to protect manoomin, and also to protect hunting and fishing, and other use rights guaranteed under the treaty, that they have been arrested and charged with trespass in that capacity of protest.

The instant thing that gave birth to this lawsuit, the nexus of this lawsuit, was the dewatering permit that was issued from the state Department of Natural Resources to Enbridge on June 4th of this past year, which allowed Enbridge, permitted Enbridge, to use up to 5 billion gallons of water for the construction and testing of the pipeline. So dewatering permit issued from the state Department of Natural Resources permit to

Enbridge to use up to 5 billion... that's billion with a B, 5 billion gallons of water for the construction and testing of the pipeline.

So that's the background of treaty rights, the rights of nature laws, the project itself, and the permit, which is being challenged under this particular litigation. So the manoomin litigation focused on challenging this particular permit that was issued by the State of Minnesota to allow Enbridge to use up to 5 billion gallons of water for the project. So moving into the case itself. Again, the case is captioned. So if you look for the case name, it's called *Manoomin v. Minnesota Department of Natural Resources*, and we're going to talk very briefly before I turn it over to Frank and to Mari about the parties, causes of action, and finally, the status of the litigation as it today.

So, the manoomin litigation, who are the plaintiffs, who are the defendants? Well, the plaintiffs, as I mentioned earlier, one of the plaintiffs, the lead plaintiff is manoomin. So wild rice itself as a plaintiff. The second set of plaintiffs, the White Earth Band of Ojibwe. So the White Earth Band itself, and individual tribal elected officials serve as plaintiffs. So these are tribal elected officials for the White Earth Band. White Earth Band is, of course... sits on the White Earth reservation as part of the Chippewa tribe in Minnesota. And other plaintiffs include individual tribal members who have been charged with trespass over of these Line 3 protests.

Again, even though those tribal members were arrested for trespass on treaty-ceded territory, and even though they were acting to protect interest protected by those very treaties, have still been arrested and charged with trespass. Who are the defendants? Well, they're the officials with the Minnesota Department of Natural Resources. So in other words, the head people who make decisions within the Department of Natural Resources about the dewatering permit, and also conservation officers, these are the folks that have actually made the arrests for the... against the tribal members who are charged with trespass over the Line 3 protests.

So plaintiffs, folks seeking to protect treaty rights and the rights of nature, defendants, those entities and individuals who actually make the decisions about issuing the dewatering permit, which is the subject of the challenge in the lawsuit. So, there are six counts in the complaint. We'll go through this pretty quickly. But just to give people a framework for the case.

Count one asserts that treaty rights override State claims of ownership, basically with respect to the protection of resources within those ceded treaty territories. So count one is pretty clean, it's exclusively about treaty rights and how those treaty use rights override these State claims of ownership, i.e., the State claims to issue permits that may interfere with

the exercise of those use rights by adversely impacting the resources upon which those use rights are exercised.

Count two of the six counts and the complaint contends that the State has taken treaty-recognized use property. In other words, has taken these treaty rights, and has not given due process to the tribal, to tribal members as required by the U.S. Constitution, in response to taking those treaty rights. So again, count one, treaty rights overrides the State ability to issue permits that affect those treaty rights. Second, State has taken those treaty rights, and therefore, owes compensation, or at least has to give due process to the individuals that they're taking those treaty rights from.

Count three, that the State of Minnesota has treated different treaties differently. In other words, they've interpreted different treaties differently as to how the State has to respect or not respect use rights, and therefore, equal protection guarantees of U.S. Constitution have been breached, that basically says that every person has to be treated equally under the eyes of the law. And because the State has treated different treaties differently in terms of their application, especially in light of use rights, that there's a violation of the equal protection guarantee of the U.S. Constitution.

Count four of the six contends that water rights have been seized and taken illegally by the U.S. government, and that those water rights have to be restored. So basically, the taking of those 5 billion gallons of water was done illegally, and seized and taken in violation of the treaty guarantees and use rights.

Finally, rounding it out, count five and six, that the State has violated religious cultural rights by failing to adequately train their own staff. This is their own staff that are carrying out the arrests and charging with trespass for being on those... protesting on those treaty-ceded lands. So the State is violating religious and cultural rights by carrying out the those arrests by not training their staff to respect those treaty rights, and therefore not proceed with the arrests.

And then count six is pure rights of nature count. That the State has violated the rights of manoomin, or wild rice, by actually issuing the permit to take 5 billion gallons of water to be taken, because taking that amount of water affects wild rice's ability to exist and flourish as guaranteed by the tribal laws that have been passed.

So those are the six full counts that are in the manoomin litigation. And question we always get, well, what are they demanding? What does the lawsuit request? And the primary relief sought is to rescind all water appropriation permit issued for the Line 3 project. And it goes further than

that to demand that, to live up to the rights contained within the treaties, that the State must establish joint permitting agreements between the State and the Chippewa.

So that's no longer just the State's say about what happens to those resources, i.e., the State just can't keep issuing permits for projects that interfere or infringe upon those treaty rights, but that there has to be a joint permitting agreement between the State and the Chippewa for all future permitting to occur, because that permitting may have an impact on those treaty rights. And then some declarations. So the lawsuit asked the court to declare certain things, which under litigation practice is known as a declaratory judgment. So you're asking the court to make a judgment and actually make a statement, binding legal statement about the rights of various parties.

So in this respect, the litigation asked the court to declare that manoomin has certain rights, and those rights are violated by the water permit, that Minnesota must obtain consent. And it must be real consent, not fake consent; from the Chippewa, before State permits going to be issued, that Chippewa tribal members possess the right to harvest manoomin and protect and save manoomin seeds as part of that 1855 treaty that covers ceded territory, and that Chippewa tribal members possess the right of sovereignty and self-determination to actually adopt the laws that they've adopted, and those rights cannot be infringed or violated by governments or other... or business entities like Enbridge.

So, moving from substance to process. That's the substance of the lawsuit, and this is the process. The lawsuit was filed in tribal court. So again, in tribal court, not in federal district court, not in state district court, but in tribal court. So we're talking about the White Earth Tribal Court, on August 4th of this year. I was joking to Frank the other day, it seems like years, but it's actually been not that long. So August 4th, 2021, the lawsuit was filed. On August 12th, the State of Minnesota filed a motion to dismiss. And they filed that motion with the tribal court. Again, we're just in the tribal court.

They asserted that the tribal court lacked jurisdiction to sue the State of Minnesota. They're basically saying, we don't care what the content of the lawsuit is, you can't hold the State in the tribal court. So the tribal court lacks jurisdiction to make any ruling over the State. On August 18th, the tribal court denied Minnesota's motion to throw the case out for lack of jurisdiction, 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."

So at that point, case was filed, State of Minnesota attempted to dismiss it, tribal court Minnesota's motion to dismiss. What you would expect to happen next would be that the case would move through the tribal court process to a hearing, evidence would be produced, witnesses would be deposed, and then there would be a ruling in tribal court. Unfortunately, because of the state of affairs with states being challenged over their authority by tribes in the United States, and the lack of willingness of states generally agree to have their authority reviewed or co-permitted by tribes in the U.S., that the next thing that happened was that the State of Minnesota actually sued the White Earth Tribal Court.

Because of procedural rules we won't get into here, they had to sue the judge as an individual, rather than the White Earth Tribal Court as an entity. So they brought a lawsuit against Judge DeGroat, who was the initial judge in the White Earth Tribal Court. And again, the State of Minnesota actually filed a lawsuit against Judge DeGroat, the White Earth Tribal Court in federal district court. So they hauled the tribe from tribal court to federal court, and asked the federal court judge to block the White Earth Tribal Court from ruling in the case.

So again, this was an effort to block the tribal court from moving forward with the case. In September, the federal district court denied the State's request, denied the State of Minnesota's request to throw the case out, dismissing the State's lawsuit, and holding that the tribe couldn't be sued in federal court over the matter. So basically, not looking at substance, but holding that the State couldn't haul the tribe into federal court to actually try to stop it from proceeding with the case.

Instead of just washing their hands at the matter and watching the tribal court move forward with the case at that point, on September 10th, the State filed an emergency appeal. So it's the State of Minnesota filing an emergency appeal, appealing the district court's denial of its motion to dismiss the lawsuit to the Eighth Circuit Court of Appeals. And for the non-lawyers, obviously, this looks like, probably, a complicated maze, but the Eighth Circuit Court of Appeals has appellate authority over the federal district court. So this was the State of Minnesota arguing that the federal district court was wrong, and that the Eighth Circuit Court of Appeals had to fix the situation. And they asked the Eighth Circuit Court of Appeals, again, to block the tribal court from moving forward to make a decision in the case.

On September 21st, the Eighth Circuit Court of Appeals denied the State of Minnesota's emergency request to overturn the district court. But by law, because it's an appeal, they have to hear the case, and a December hearing date of December 16th has been set to actually hear that appeal.

So again, Eighth Circuit denied the State's emergency request to move it quickly, and instead set a December hearing date for a decision that would be issued sometime in 2022. So what was happening in White Earth Tribal court is all this was happening in the federal district court in the Eighth Circuit Court of Appeals?

Well, the original tribal court judge had to recuse himself, Judge DeGroat, due to the filing of the federal district court lawsuit, because it created a conflict of interest. He was now a defendant in the federal court lawsuit while presiding over the case in tribal court. He recused himself, a new judge was then assigned to the case. And the new judge assigned to the case, reiterated that the tribal court possessed jurisdiction to hear the case. So again, new judge coming in, affirmed or reiterated that the original tribal court's decision, tribal court judge's decision, that the tribal court had jurisdiction to hear this case and make a ruling on it was the right one, and reiterated the original tribal court judge's decision.

On September 13th, the State of Minnesota then filed an appeal of the tribal courts ruling to the White Earth Court of Appeals. So again, we're back in tribal court now, the case in the Eighth Circuit Court of Appeals kind of frozen until December 16th, the case that the State of Minnesota filed against the tribe in the federal court, we're back in tribal court now, and the State of Minnesota filed an appeal of the lower tribal court's decision that it had jurisdiction over the case, up to the White Earth Court of Appeals, and urged it to find the tribal court lacked jurisdiction to hear the case. So asked the White Earth Court of Appeals to reverse the ruling of the judges within the White Earth Tribal Court, that there was jurisdiction to hear the case.

By law, by rule, the case within the tribal court is currently stayed until the appellate court rules. So there's an automatic stay that was issued within the tribal court (until the appellate court rules). So again, complicated names, a lot of moving parts. Sufficing to say that the State of Minnesota was so afraid of the tribal court ruling, that they not only went to federal court and sued the tribe to stop it from ruling in the case, but also went back to the tribal court to try to get the tribal court's ruling overturned, to make sure that the tribal court couldn't hear the case, as well.

So, I think that gives some degree of urgency to the State of Minnesota in terms of the steps that they've taken to try to stop the tribal court from actually hearing this case and deciding it. So with that, that's the background. Again, the law itself, which is treaty rights, rights of nature. The project, which is Enbridge's Line 3. The permit that was issued to expedite Line 3, dealing with that 5 billion gallons of water, that permit that was issued by the State of Minnesota, and then the case itself, which

attempts to stop the watering permit, to nullify it, on the basis that it and the project itself violates the rights of nature and treaty use rights as guaranteed to Chippewa tribal members.

That's where we sit today, in terms of the posture of the case, and now we want to get to some of the more important conversation from Frank, who's one of the tribal attorneys representing manoomin and the other plaintiffs in the litigation, and handing it back to Mari, who's my colleague, executive director here at the Center for Democratic and Environmental Rights.

Mari Margil: Thank you, Thomas. Thank you, everyone, so much for your attention. There's been some questions about the PowerPoint, which we are going to make available after the event. And as I think everyone knows, this event is being recorded. So for those of you who are able to... had to join us a bit late, we will make the whole presentation, with the PowerPoint and the whole hour, of course, available, and we'll make sure that everybody gets that, as well. So, now we move on to hear from Frank. He's the tribal attorney with the White Earth Band of Ojibwe, and he is the lead attorney in this case. And so Frank, I first want to ask, do you want to speak first before we get to some questions?

Frank Bibeau: Mari, thank you very much. Thomas did a great job of updating everybody on everything. It was nice to listen to all that and not have to say it all myself. So why don't we try some questions, just looking at the time that we have to work with?

Mari Margil: Okay. We have plenty of time. So first Frank, a couple of questions about this idea of where we go from here. Thomas gave us sort of the bread and butter of the case itself. What do you see as happening and coming next in this case and with Line 3?

Frank Bibeau: Thank you. I see a couple of different pieces. For us Line 3, isn't over. Line 3 still has problems that need to be fixed and identified thoroughly. I think that's part of the reason the DNR is hiding right now and doesn't want to participate, I guess, in what's going on with the 5 billion gallon dewatering permit. So just to bring those pieces together a little bit, since the pipeline has been connected, and we understand that oil is flowing through it, the actual construction sites, primarily the water crossings, they appear to have a variety of frack-outs, and they have also breached the artesian aquifers.

And so part of the concept of dewatering is allowing the millions of gallons of water that's been leaking out of the aquifers to also go forward. The DNR tried to stop or get Enbridge to stop it, they haven't stopped it. They're fined them \$3.3 million. That's the price of them selling our

resources off without our consent again, which is very scary. And so when I look at what's going on with manoomin, and with what the future of that is, I think we're not only going to have to continue with our litigation in tribal court, which I think is very important, but I think also, we're going to have to look at maybe adding another party, maybe the Minnesota Pollution Control Agency, because they also have a role in this.

They have supposedly identified 28 frack outs, but they don't want to identify the locations of those places. What I'm seeing out there is that they're hoping that they can just go home, no one will look at these sites, there's nothing to look at here. But Ron Turner's been doing a really good job with a lot of the drone footage, we've just had to fly over with thermal imaging. And so we're going to identify those places, and we're going to make sure that they're followed up on it and protected, and that we use that same information in the same way as Line 3 converts over to Line 5 in Northern Wisconsin, and what's going on in Michigan and things like that, because it's all similar terrain, and it's all vulnerable to the same kinds of poor planning and poor execution of the construction plans.

And so I think... I think what's happening here may very well be what causes the stopping of new pipelines in North America, and may very well be the rebalancing of environmental tools and scales between tribes and states. And if tribes have the ability to require consent, then I think that's going to make the states have to think a lot more about how they go forward with their permitting, if they do it all.

Mari Margil:

Okay. So picking up on that, Frank, can you just speak a bit more to this idea of... You sit on the 1855 Treaty Authority, you work on treaty right issues all the time. Can you tell us a little bit more about the impacts of this particular case on White Earth Band's ability and other tribal nations' ability to protect their treaty rights, their rights to hunt, fish, gather? Can you just talk to us about it perhaps just for White Earth, if you want to talk about it from that perspective? But just in general, what do you see the implications of this case being for the ability of a tribal nation to protect its treaty rights?

Frank Bibeau:

I think it's very important for all of the Chippewa. And Tom talked about the 44 treaties that we have with the United States. Our territory, basically, runs through the Great Lakes, into North Dakota, and we have the same treaty rights. And those treaty rights, really, are meant to not only be able to protect our rights to hunt, fish, and gather, but to also protect the resources, so that we are always able to hunt, fish, and gather, and that those who come after us in perpetuity will be able to enjoy those same benefits and rights themselves.

And so when I look at what's going on, I think the State of Minnesota, the DNR, the PCA, with permitting all kinds of different activities, they have exhausted our resources. They've exhausted our resources without the consent of the people, without the consent of the Ojibwe, the Chippewa, however you'd like to call us, our treaty rights. And as that one slide from... I think it was on the third page or so, with Article Five, with the 1837 treaty, it talks about the rights to hunt, fish, and gather on the land... wild rice on the lands, rivers, and lakes in the territory being ceded. That is a big statement.

That means everything in the garden is still subject to our rights to access and to feed ourselves forever. We're talking about food sovereignty and food security, and that's what comes back to some of the tribal sovereignty and the enforcement mechanisms. Because if we can't defend our food sources, and if we can't defend our cultural sources, especially with rights to manoomin, then as the judge said in the part there, then it's meaningless, it's a fiction of law. And we should have the right to protect wild rice, in particular, because it is named in the treaty. Treaties are the supreme law of the land, according to the U.S. Constitution.

And so I think in this circumstance, this may very well be the turning point, I think, for a lot of the work that you guys have been doing with rights of nature, finding a way where there's a form that has a leg up on state agencies that have been actually permitting all the pollution.

Mari Margil: And Frank, from your perspective, you worked on advancing the rights of manoomin law with the White Earth Band. Can you talk to us, beyond this case, what do you see as needed in terms of policy or lawmaking at a tribal level with White Earth or other tribal nations, at a state level, or even at the federal level?

Frank Bibeau: Well, I think there's going to have to be more than what is normally called co-management. Co-management seems to leave secrets between the two parties about what's going on and things like that. I think if consent is required, then I think people are going to have to really be forward and honest about what they're going to do, because otherwise, they're not going to get there through any kind of public process that they're giving notice on. And I think this is going to improve the way resources are looked at. Because if we don't start protecting the resources even now, at this late date, then we may not have a whole lot to protect.

There are thousands of waterways and waters in Minnesota that are impacted already, where you don't have the same kinds of fish, you don't have the same kind of vegetation, you don't have the same water quality. And so people are concerned about not just the environment, even those

who have lakeshore property are concerned about the value of their property if these waters are degraded, and that's what's been happening. And so I think that when you look at what this litigation's about, with the rights of manoomin, it all comes back, I think, to really rights of water, and that's a lot of what the organization's been working on, too, is rights of nature, rights of rivers and things.

But manoomin, for us, I think, transcends the law into the cultural, spiritual side of things, and makes it a lot harder to say, that law doesn't make sense. That law makes perfect sense. And every tribal member knows exactly what that law's about. Groundbreaking, is what my friend, Joe, another tribal attorney that I'm working with... He thinks it's groundbreaking, and I think other people do, too. And I think that's why there were seven Chippewa bands who were on the *amicus* brief for what's going on in the Eighth Circuit right now because they see the power and the opportunity to change the balance in the environmental world of protection.

Mari Margil:

Let me ask you this. As folks who are watching may know, the Biden Administration recently, just in the last week or two, announced this interagency agreement among 17 different federal agencies. The agreement is focused on increasing consultation with tribal nations on federal treaty rights obligations. And I wonder, Frank, if you... what your perspective is on this new interagency agreement that the Biden Administration put into place, what difference it will make, or how do you think it might impact manoomin and what you're doing?

Frank Bibeau:

Well, I don't think it's going to impact what we're doing very much. If anything, I think it's almost camouflage for what the Biden Administration is doing. Personally, I think that the Biden Administration has kind of sold us out here with regard to Line 3 and protecting our waters, having the Corp of Engineers go through with Environmental Impact Statement, and things like that. And they've fought us in federal court about that, as well. What I'm seeing, even more so right now, in regards to the water quality, because water quality is what's going to affect manoomin, is also with regards to the mining that's going on in Minnesota.

PolyMet's been in a 10 year fight, and there's been a recent Supreme Court decision there from Minnesota, and that there may have to be other enforcement by the PCA with regard to water quality permitting and water quality standards. And I don't think that the PCA knows how to go forward and start defending the resources very well, yet. And so with the mining, what we see as copper, nickel, and other exotic metals, recently, I saw GM come out and they said that we need to have these metals right now. From Tesla, the same thing. They said, "We want to have... Anybody who's

involved in mining copper, nickel, and these metals, we need them to be actively doing more of that right now."

Those places are in the same exact places where wild rice grows, they're the same places that the pipeline went through. And so we believe our resources are being sacrificed by the Biden Administration, so that there can be this new access to metals and things for what people call the green wave for solar energy, for cell phones, and for things like that. And so in reality, what is and isn't green, and what they're talking about with treaty rights, they may help people down the road. But I think right now, I think what we're doing for ourselves with rights and manoomin is going to do a lot more for ourselves and for tribes across the United States, and I think you're going to see the other state attorney generals and other people start to look at how to maybe more respectfully conduct themselves and consult with tribes about what they should or shouldn't be doing in the environment.

I don't think whatever's happening at the federal government is going to happen soon enough for everything that's going on, because as Joe Biden says he wants to have all these electric cars accelerated. I get that, but that comes back to extracting those same exotic metals, and it comes back from doing it right at the Mississippi River waterways and things like that. So it's not good for us, it's not good for the planet, and it's not good for anything that's going on. And we still have to fight Line 3, and we have to prevent what's going on in Wisconsin from those same kind of waterways, the waters of the Great Lakes, Lake Superior.

I don't see the Biden Administration talking about it. They want to talk about the future, I think. Not tomorrow and the next day and the next couple years, they want to talk about 10 years from now. That's all rosy scenario. I'm all up for it, but how are we going to get there from here? And how are we going to get there safely and protect the resources we have now, that we know are being targeted and being degraded?

Mari Margil: So Frank, we have had several people ask about Attorney General Ellison and Minnesota. One is specifically, when we say that the state Department of Natural Resources is fighting this case, who is representing... particularly, who is representing the department in this case? So that's one question. And I'll ask you the second question. Is it the-

Frank Bibeau: Okay.

Mari Margil: ... AG that's representing the department? That's a question that we've received, or is it somebody else?

Frank Bibeau: No, it is the attorney general. There used to be something like a couple hundred attorney generals that work for the State of Minnesota. And usually, there's a half dozen to a dozen that work for each state agency, depending upon the size and the amount of work that's involved. And so we have attorneys who are directly working for Keith Ellison's office in the sense of the hierarchy, but they... as far as I know, they're based right with DNR.

Mari Margil: Okay. And then a related question is, where does Ellison sit? I think maybe many of us have heard his name quite a bit with the case related to George Floyd's murder. And so I think his name is sort of more popular than it might otherwise be. Where does he sit? What is his perspective on this case? Do you have any sense of that?

Frank Bibeau: Well, he sits all over, and he hopes to certainly be on the right side of things, and be reelected. Keith Ellison worked with legal services as an attorney a long time ago in Minneapolis. He understands the plight that have happened to Indian country over and over. And he also understands what we're doing right now is going to turn the page and show that Minnesota's going to have to learn to cooperate and step up and become cooperative with the tribes. And he should take that leadership role before we have to go to court and do more litigation against them. There's a better way to solve this, and it's through communication, consultation, cooperation, and consent. And we can do it the other way, but I think that it's scaring the other state governments, as well, and those attorney generals, because they see that what Minnesota's doing in federal court is opening up their vulnerability to the tribes that are in their states, as well. And so Keith should be thinking about what the decision is going to be from the Eighth Circuit Court of Appeals, as well, for the rest of the United States.

Mari Margil: Okay. So, one of the questions that was posted in the chat was, is there a feeling that the state is putting up such a fight on this by not only appealing in tribal court, its motion to dismiss, which was rejected by tribal court and appealing that, but also moving in the federal court? Is there a sense, the questioner asked, the fear that it could lose this case?

Frank Bibeau: Yes. I think they are worried about that. All of the actions, I would say in tribal court themselves, are the same kind of actions I would've done for lack of jurisdiction. And I've filed in state courts against the DNR or whoever, and I'm doing that right now, even with the Line 3 water protectors. So that part all seems normal. Normally, in law, you can only be arguing things in one place. And the DNR has said, well, we don't think you have the right to decide here in tribal court, but just in case, we're going to appeal right now in the federal court. That looks really weird.

Nobody is supposed to be having two gains going on at the same time, over the same issue. That tells me that the DNR is very afraid. They don't want to go through the tribal court process, they want to accelerate the answer, no.

They're not going to get to the answer, no, and it's going to be very interesting to see what they do when the Eighth Circuit basically upholds the federal district court in Minnesota and says, you have to go through and exhaust your administrative remedies. We don't have a way to stop the tribal court from exercising jurisdiction over the State. That was what the judge asked. What authority are you citing that gives me the right to tell the tribal court if they don't have the right to exercise their jurisdiction to protect manoomin? The DNR had no answer.

Mari Margil: Okay. Another question that's come up is, because oil is flowing through Line 3, what does this mean for the case?

Frank Bibeau: Well, in some ways, it means the same thing that happened with Dakota Access. The federal court there has said, hey, turn off that oil, and we're going to do the Environmental Impact Statement the right way. So in that sense, we're going to probably end up with the same kind of a concept with federal court and stuff. And that could still come out of the case in the D.C. circuit against the Corp of Engineers. But I think we're going to look at being able to turn off the oil in a different way, because it's a different jurisdiction than federal jurisdiction, and it's different than state jurisdiction.

If you're inside of our ceded territories, and if you're willfully exercising the destruction of our planet, our resources, the climate changing things... They've already had valve turners that were tried in Minnesota, and they didn't have another way to stop what's going on. If Enbridge can't obey the federal court, then it's really limiting the opportunities or the rights of people to protect themselves. And it may very well be that there could be a different court that says shut that valve off, and it may be looked at as a civil matter rather than a criminal matter, and it may be within our jurisdiction to do that, even though we haven't tried that before.

I think there's things coming down the road, that I haven't even thought about, and that other people are going to start realizing the opportunities, and we're going to learn each other. And we're going to find a different way to physically exercise our jurisdiction, because they can't be allowed to just thumb their nose at us and continue to pump the oil and get away with not having to comply with the court orders we would all have to comply with. They have only been charged with a misdemeanor for all the water destruction that they've done. Water protectors themselves are

facing felonies and things like that for exercising their rights to defend the water and defend the manoomin and prevent more climate change problems and things like that. This is probably the legal reckoning on a number of fronts, and it may very well be that tribal court is going to be the place that does it.

Mari Margil: Okay. So Frank, two last questions which are related. One is, what do you see as needing to happen, or you'd like to see happen with other tribal nations that would either be of service and solidarity, or of use in terms of valuable in terms of this particular case?

Frank Bibeau: Well, I think I'm already getting the solidarity from the *amicus* brief bands there, those Chippewa bands. That, I thought was really a good showing, that we all see our rights being impacted the same way, and we all want to exercise our rights the same way. I look out west at the Klamath and the river out there, with the Yoruk tribe, and I look up in the Northwest part of Washington. And right now, one of my friends up there, Jack got a case going on where they're looking at the three dams that create hydroelectricity for the City of Seattle are also the same things that are impeding the salmon from getting upstream to the place that they said, yeah, we'll stay and live as long as we got our food coming up river, but they're not getting it.

So it's going to be very interesting to see what a fully lit city like Seattle at night, if they're seeing the skyline... And that's part of what they do with their legal work, is to show just what's being taken from them and those expenses. And it may very well be that treaty rights are going to change those kinds of landscapes all across the United States. It might be slow at first, but it's getting the ball rolling and people seeing, is it the rights of fish? Is it the rights of trees? Is it the rights of wild rice? What needs to be protected, and how do we go about crafting that in such a way that the state can't permit further distraction?

Mari Margil: Okay. And related, for those of us just out in the world, learning about this, whether we're activists or part of a group, or just really interested in the work that you're doing, what sorts of things can folks do to be helpful?

Frank Bibeau: Well, right now, probably the most helpful thing is... I know that there's a different... we're at a different phase right now with the water protectors, so we still have little defenses going on for that, and people we're still working on raising funds and helping those water protectors out as we go through those parts. But probably, more importantly, what we're looking at right now is the actual monitoring of the frack-outs, and of the aquifer breaches, and what's going on there. Because one of the things that I learned recently... And it makes sense, but until you hear it, sometimes you

don't know. But the people that did our flyover with their airplane, they're looking at a temperature probably, say, from... ground temperature of, say, 25 degrees to water temperature that could be 40 or 45 degrees.

And so they can even detect frack-outs and aquifer breaches under the water of the Mississippi River, that we wouldn't normally be able to see, just because it's probably 40 or 45 degrees coming out into 35-degree river water and stuff. And so we're going to be looking for all of those places that the DNR and the PCA have walked away from, and we're going to make sure that people understand how the people who did the construction plans didn't follow those plans, how they secretly circumvented the protections that were supposed to be put in place, so that we didn't have these kinds of things happening, and how we hold those people accountable. And this is going to be the model for the future. It's going to be the model for the Chippewa, and it's going to be the model for all the water protectors across.

Mari Margil:

Frank, thank you so much for sharing some time with us today, and for taking the lead on advancing the rights of manoomin law, and advancing this case. There's a lot of folks who are watching this with a lot of hope, a lot of inspiration, and a lot of strategy. So I really want to say, from all of us, thank you so much for your time on this, and for the work that you're doing. I also want to thank my colleague, Thomas Linzey, for sharing with us sort of the nuts and bolts of the case.

As I said at the beginning, we are going to make this recording available. We'll get it to everybody who registered, and out into the world. We want it to be a resource. We'll have the PowerPoint available, as well, so that everybody can share it and learn from it. So we'll get that out to you as soon as we can.

The other piece is, I want to thank not only Frank and Thomas for their time today, and their work, but also, our event co-sponsors, Honor the Earth, Native Organizers Alliance, and Menīkānaehkem. And I know Guy Reiter from Menīkānaehkem joined us today. So thank him and his organization, as well. And lastly, I'll just simply say, thank you to all of you for joining. If you want to stay updated on this case, or in the rights of nature in general, we're putting into the chat ways to do that.

You can sign it for a newsletter, you can contact us directly at info@centerforenvironmentalrights.org. So there's lots of ways.

This is the beginning of a conversation, and if folks are interested in learning more, how they can become involved, strategies that they can take from this, we welcome that conversation. And if you're looking just for

more information, more resources, legal briefs, what have you, we can provide that. So with that, many thanks to Frank and Thomas, thanks to everyone for joining us today, we look forward to future conversations and sharing with everyone. Thank you.

Frank Bibeau: Goodbye.