

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.

---

NOTICE OF MOTION AND MOTION TO ENFORCE PROHIBITION ON SHINING DEER

---

PLEASE TAKE NOTICE that the defendants, State of Wisconsin, et al., by their counsel, Wisconsin Attorney General J. B. Van Hollen and Assistant Attorney General Diane L. Milligan, move the Court, pursuant to the terms of the final judgment entered in this matter, for an order confirming that the defendants have the right to enforce of the prohibition on off-reservation deer shining in Wis. Admin. Code § NR 13.30(1)(q) (incorporating Wis. Stat. § 29.314 by reference) against members of the plaintiff Tribes in the courts of the State of Wisconsin, and advising plaintiffs of the same.

As grounds for this motion, the defendants state:

1. In this Court's May 9, 1990 decision on the merits of the August 1989 deer hunting trial, it found that "the state's prohibition on shining deer is a narrowly drawn, non-discriminatory restriction on plaintiffs' hunting rights that is necessary to protect the safety of persons in the ceded territory. It imposes a minimal infringement on plaintiffs' rights in comparison to the great danger night hunting presents to public safety." *Lac Courte Oreilles Band of Indians v. Wisconsin*, 740 F. Supp. 1400, 1423 (W.D. Wis. 1990) (*LCO VII*). The Court's Order provided that "[d]efendants may enforce the prohibition on shining of deer contained in their proposed § NR 13.30(1)(q) [incorporating Wis. Stat. § 29.324 by reference], until such time as the plaintiff tribes adopt regulations identical in scope and content to § NR 13.30(1)(q)." *Id.* at 1427.

2. On or about August 15, 1990 the plaintiff Tribes amended § 6.1 of the Model Off-Reservation Conservation Code to prohibit deer shining. That provision reads: "No member shall hunt deer while shining as defined in Section 3.14." On information and belief, all six plaintiff Tribes incorporated Model Code § 6.1 into their Tribal ordinances shortly on or shortly after August 15, 1990. At that point the Tribal prohibitions on deer shining were essentially "identical in scope and content to § NR 13.30(1)(q)."

3. In the final judgment entered on March 19, 1991, this Court issued the following orders:

Defendants are enjoined from interfering in the regulation of plaintiffs' hunting and trapping on public lands within the ceded territory in Wisconsin, except insofar as plaintiffs have agreed to such regulation by stipulation, on the condition that plaintiffs enact and keep in force an effective plan of self-regulation that conforms to the orders of the court.

*Lac Courte Oreilles Indians v. State of Wis.*, 775 F. Supp. 321, 323 (W.D. Wis. 1991) (Final Judgment);

Defendants may enforce the prohibition on shining of deer contained in § NR 13.30(1)(q) until such time as plaintiffs adopt regulations identical in scope and content to § NR 13.30(1)(q).

*Id.* at 324; and

Plaintiffs' failure to enact an effective plan of self-regulation that conforms with the orders of the court, or their withdrawal from such a plan after enactment, or their failure to comply with the provisions of the plan, if established in this court, will subject them or any one of them to regulation by defendants.

*Id.*, at 325.

4. Effective November 26, 2012, acting under the purported authority of a Great Lakes Indian Fish and Wildlife Commission (GLIFWC) order, all six of the plaintiff Tribes will repeal and replace their regulations which had prohibited shining deer in the manner of Wis. Admin. Code § NR 13.30(1)(q). A copy of GLIFWC's Order No. 2012-05 is provided as an attachment to Exhibit D to the Affidavit of Wisconsin Department of Natural Resources Secretary Cathy Stepp. Pursuant to the GLIFWC Order, effective November 26, 2012, none of the six plaintiff tribes will have "regulations identical in scope and content to § NR 13.30(1)(q)" within the meaning of the Final Judgment.

5. As the Executive Commissioner of GLIFWC stated in a November 9, 2012 letter to Secretary Stepp, a copy of which is attached as Exhibit A to her affidavit, members of the plaintiff Tribes intend, beginning in five days, to engage in the night hunting of deer by shining while using high caliber firearms in off-reservation areas of the ceded territory. The GLIFWC Commissioner advised in that letter: "Please note that for 2012, the Order will be effective on November 26, 2012."

6. The plaintiffs' actions repealing and replacing their tribal prohibitions on deer shining constitute their withdrawal from an effective plan of self-regulation that had previously conformed with the orders of this Court.

7. As this Court has found, "night hunting [of deer] with high caliber weapons poses significant risks." *LCO VII* at 1423. Those significant risks will commence on November 26, 2012. Therefore, this motion presents an urgent matter with significant public safety implications. If these dangers are to be minimized, the prohibition on night hunting of deer must be enforced. Since the plaintiff Tribes are not enforcing the prohibition, the final judgment provides that the state may do so.

8. While the defendants believe the Final Judgment provides that the plaintiffs' withdrawal actions automatically subject them to regulation by defendants, they are concerned that plaintiffs may read it to provide that the defendants may regulate the plaintiffs only if the defendants show, and this Court finds, that the plaintiffs have withdrawn from a plan for regulating deer shining which conforms with the orders of the Court.

9. To prevent any dispute regarding this Court's Orders, the State respectfully requests that this Court issue a declaration to the effect that the state ban on night hunting applies to members of the plaintiff Tribes and issue a further order confirming that the State may immediately enforce the state law prohibition on off-reservation deer shining against members of the plaintiff Tribes until such time as the plaintiff Tribes amend their regulations to once again prohibit deer shining in accordance with the orders of the Court.

Dated this 21<sup>st</sup> day of November, 2012.

J.B. VAN HOLLEN  
Attorney General

/s/ Diane L. Milligan  
DIANE L. MILLIGAN  
Assistant Attorney General  
State Bar #1037973

Attorneys for Defendant State of Wisconsin

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-9595  
(608) 266-2250 (Fax)  
milligandl@doj.state.wi.us