



MINNESOTA

CAMPAIGN FINANCE BOARD

December 10, 2019

Jessica Seibert, County Administrator
Aitkin County
217 2nd St NW, Rm 134
Aitkin, MN 56431

From: Campaign Finance and Public Disclosure Board

Subject: Requirement for public officials to annually recertify statement of economic interest

You are receiving this notice because you are the contact person for an agency that has members or employees who are public officials. All public officials must update their statements of economic interest annually. The Board is asking for your help in reminding the public officials in your agency of this requirement. In doing so, please keep these things in mind:

- A public official must review and recertify his or her statement **even if he or she left the public official position during the year, or if nothing on it has changed**. Please be sure that the public officials leaving your agency at the end of the year are aware of the filing requirement.
- The annual recertification must be filed **after January 1, 2020, but no later than January 27, 2020**. A public official who does not file a recertification by the deadline will be subject to the imposition of late filing fees and a potential civil penalty.
- The Board will send letters directly to all public officials in late December notifying them of the requirement and giving them the information necessary to file online. Paper copies of the statement may be printed from the Board's website by any official unable to file online.

If you are not sure who in your agency is considered a public official, you can view the list of the public officials in your agency by entering your agency's name into the search box at <https://cfb.mn.gov/reports-and-data/officials-financial-disclosure/agency/> .

If you need to correct any inaccuracies on the list for your agency, or if you have questions about the reporting requirements in general, please contact Jodi Pope at 651-539-1183, 800-657-3889 or jodi.pope@state.mn.us.

Thank you in advance for your assistance.

**NOTICE OF AVAILABILITY, PUBLIC COMMENT OPPORTUNITY, AND
WRITTEN COMMENT PERIOD FOR THE REVISED FINAL ENVIRONMENTAL IMPACT
STATEMENT ON THE LINE 3 REPLACEMENT PROJECT**

Issued: December 9, 2019

In the Matter of the Applications of Enbridge Energy, Limited Partnership for a Certificate of Need and a Routing Permit for the Proposed Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border

PUC Docket Numbers: PL-9/CN-14-916 and PL-9/PPL-15-137

On October 8, 2019, consistent with the June 3, 2019 decision by the Minnesota Court of Appeals, the Minnesota Public Utilities Commission (Commission) issued an order that found the final environmental impact statement (FEIS) for the proposed Line 3 Replacement Project to be inadequate because it did not sufficiently address the potential impact of an oil spill into the Lake Superior watershed. The order requested that the Minnesota Department of Commerce revise the FEIS to include an analysis of the potential impact of an oil spill into the Lake Superior watershed, and to submit a revised FEIS to the Commission within 60 days. In accordance with the Commission's October 8 Order, the Department issued the revised FEIS for the Line 3 Replacement Project on December 9, 2019.

The Commission will provide an opportunity to submit written comments and present comments in front of an administrative law judge from the Office of Administrative Hearings. The following topics are open for comment:

- Is the revised FEIS adequate?
- In light of the revised FEIS, what action should the Commission take on the application for a certificate of need for the Line 3 Replacement Project?
- In light of the revised FEIS, what action should the Commission take on the application for a pipeline routing permit for the Line 3 Replacement Project?

Public Comment Opportunity

The Commission will provide interested persons the opportunity to present comments in front of an administrative law judge from the Office of Administrative Hearings at the time and place set forth below. This is solely an opportunity to comment on the topics listed above and is not a public meeting or public hearing for the purpose of providing information or answering questions. A transcript of the comments will be made by a court reporter. The transcript will be filed and become part of the record before the Commission.

Date: Thursday, December 19, 2019
Time: Session 1 (1:00 p.m. – 4:00 p.m.) Session 2 (6:00 p.m. – 9:00 p.m.)
Location: Radisson Hotel Duluth-Harborview
505 W Superior Street
Duluth, MN 55802

To find out if a meeting is canceled due to bad weather or other call 1-855-731-6208 or 651-201-2213 or visit mn.gov/puc.

Written Comment Period

The Commission will also accept written comments on the topics listed above.

Comment Period: Initial comment period closes **January 6, 2020** at 4:30 p.m.
Reply comment period closes **January 16, 2020** at 4:30 p.m.

Please include the Docket Numbers 14-916 and/or 15-137 in all communications. Comments received after the close of the comment period may or may not be considered by the Commission.

Submit Written Comments: Visit mn.gov/puc, select the *Comment* on the main menu to connect to the public comment page.

Filing Requirements: Utilities, telecommunications carriers, official parties, and state agencies are required to file documents using the Commission's electronic filing system at: <https://www.edockets.state.mn.us/EFiling>

Revised FEIS Availability

The revised FEIS and all other documents filed in this matter are available on the Commission's website: mn.gov/puc, select *eDockets*, and enter year (14) and the certificate of need docket number (916) or year (15) and the routing permit docket number (137), select *Search*.

- Morris Public Library, 102 E 6th St, Morris, MN 56267
- Olivia Public Library, 405 S 10th St, Olivia, MN 56277
- Park Rapids Area Library, 210 1st St W, Park Rapids, MN 56470
- Red Lake Falls Public Library, 105 Champagne Ave SW, Red Lake Falls, MN 56750
- Rice Lake Community Center, 26209 Water Tower Loop, Bagley, MN 56621
- Rochester Public Library, 101 2nd St SE, Rochester, MN 55904
- St. Peter Public Library, 601 S Washington Ave, St Peter, MN 56082
- Staples Public Library, 122 6th St NE, Staples, MN 56479
- Thief River Falls Public Library, 102 1st St E, Thief River Falls, MN 56701
- Wadena City Library, 304 1st St SW, Wadena, MN 56482
- Waseca-Le Sueur Library, 408 N State St, Waseca, MN 56093
- Wheaton Public Library, 901 1st Ave N, Wheaton, MN 56296
- White Earth Tribal & Community College, 102 3rd St NE, Mahanomen, MN 56557
- Willmar Public Library, 410 5th St SW, Wilmar, MN 56201

Questions about this docket or Commission process and procedure? Contact Commission staff member, Scott Ek at scott.ek@state.mn.us or 651-201-2255 or Charley Bruce, Public Advisor, at publicadvisor.puc@state.mn.us or 651-201-2251.

If any reasonable accommodation is needed to enable you to fully participate in these meetings, please contact the Commission at 651-296-0406 or 1-800-657-3782 at least one week in advance of the meeting. To request this document in another format such as large print or audio, call 651-296-0406 (voice). Persons with a hearing or speech disability may contact the Commission via their preferred Telecommunications Relay Service or email consumer.puc@state.mn.us for assistance.



CERF/CERA REPORT



MEMBER UPDATE

DECEMBER 2019

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An Educational Publication of Citizens Equal Rights Foundation and Citizens Equal Rights Alliance



A Message from the Chair of CERA

by Linda Eno, MN

Thank you for selecting me as the next CERA Chair. I would like to introduce myself and share a little bit of my journey. I grew up half in western Massachusetts and half in a small southern Illinois coal mining town outside of St Louis. After graduating from the University of Massachusetts Amherst, my job with Marriott Hotels took me from Boston to St Louis to Chicago to Minneapolis. I came to Minnesota to do my time and get back to Boston. I met my wonderful husband, Bill and never left.

The American Dream....

Twenty-five years ago, with four small children (ages 4, 5, 6, and 7), Bill and I decided to leave our successful corporate careers. We took our time and searched for the perfect family business. We were coming from the hospitality industry and Bill is a die-hard Minnesota outdoorsman. We found a year-around fishing resort on Mille Lacs Lake that looked like a perfect fit. Mille Lacs is located two hours north of Minneapolis/St Paul in central Minnesota. Our backgrounds, the reputation of the lake (the Walleye Capital of the Midwest) and the lake proximity to the Twin Cities seemed like a good formula for success. We did not just buy a business, we bought a lifestyle. It was 12 to 18 hour days, but you could stop and give a child a hug. Our children were able to be by our sides, eventually leading them to an amazing work ethic and excellent people and problem-solving skills. We began to expand, improve and create a super reputation. We were living the American Dream!!

The American Dream....Gone Wrong...

Our resort is located seven miles from an Indian casino. My first thought, "what a wonderful thing to be part of, another culture, a piece of history ..." My second thought, "a casino might draw people to the

area, it might be a nice alternative on a bad weather day." *NIEVE* It didn't take long for me to figure out the damage a casino does to a local economy. ABC's of gambling: Addiction, Bankruptcy, Crime.

The same tribe brought a lawsuit against the State of Minnesota for hunting and fishing rights from an 1837 treaty. It took me a little longer to realize that money equals power in the political world. *NIEVE* My grass-roots letters and calling campaigns were no match for the tribes casino lobbying money and power. The State lost the lawsuit giving the tribe special hunting and fishing rights based on race. It is this lawsuit that has turned our American Dream into an American Nightmare. It created an era of treaty co-management between the State Department of Natural Resources and the federal/tribal Department of Natural Resources. After twenty years of co-management, there are over sixty businesses gone around the lake. The last five years have lead to closing the Walleye fishing season, (Reminder: I am a FISHING resort and this is the WALLEYE capital). Our resort is running at fifty percent.

It is really not a hunting and fishing issue, it is an equal rights issue. How do you have United States citizens living side by side with two separate sets of rules? The government that we believed was there to protect and promote equal rights is now changing the rules. Our government is promoting special race-based rights. How do you fight this? That is the question that led me to become involved with CERA. CERA is an extraordinary group of people brought together by similar concerns from around the United States. Countless hours have been spent researching why and how our government thinks they can get away with special rights. The dots have been connected. CERA is now entering a phase of legally trying to fix it.

As Bill and I entered into the American Dream, the vision was to create a family business suitable for our children to carry on. But that American Dream has been dashed. You would never consider passing

a business on to your children under these circumstances. The political management has caused the collapse of the lake's economy!



Living The Dream

More details on my Mille Lacs Lake story to come. I look forward to being a part of this exciting CERA chapter.

What is Really Happening at Mille Lacs?

By Clare Fitz, MN

The economy of and surrounding Mille Lacs Lake, located 100 miles north of Minneapolis-St Paul, whose economy for many many years has been based on Walleye fishing and the tourism built around it, once known as The Walleye Capitol of the World, is being destroyed. Why?

Perhaps a little history is in order because I continue to believe that what we face at Mille Lacs is basically a land grab and with the land goes jurisdiction and power. And while on the surface it appears that the Indian tribes are the culprit, we have been able to prove through archival research that the culprit is actually the federal government, and that what we often blame on the Indians and sometimes the states is basically a fraudulent federal government scheme to assume more power over us all using the Indians as a vehicle.

We should pay attention to the January 14, 1989 State of the Band speech delivered by Art Gahbow,

then Chief Executive of the Mille Lacs Band. Why? Because that is exactly what is happening. In that speech he stated, "As of right now we are on the offensive. We are on the attack. **To state it simply, we will take it back ... The goal is to get back the original Mille Lacs, Sandy Lake and Rice Lake Reservations.** The Lake Lena area will also be expanded ... One way or the other, we will take it back ... The State of Minnesota does not understand that we are a sovereign government ... **Commissioner of Natural Resources Don Wedll, I want to have our 1837 treaty litigation underway within the next six months ...** All work hours, all business transactions, all contract negotiations will be aimed at one goal: Restoration of the Reservation lands ... We will not back down. We are on the attack. There is no surrender." (emphasis added).

Should we be surprised then at what is happening at Mille Lacs? Should we be surprised that the city of Onamia has become basically a tribal village? Should we be surprised that the Mille Lacs Band has purchased all except two store fronts on one side of the main street of the city of Wahkon and that they are now all vacant? Of the two remaining businesses on that side of the street, one is closed as a result of not having enough business to survive. Most of the tourists are going to other lakes. So only one business is still occupied and operating on the two-block area of that side of Main street. And should we be surprised that the Mille Lacs Band has recently applied to have a nearly 40-acre parcel in the city of Isle placed into federal trust, thereby potentially depriving the city, the county and the schools of sorely needed tax resources? And should we be surprised that the Mille Lacs Band has purchased the bait and tackle shop at the corner of Highways 169 and 27 that had been in existence for many many years and is essentially the gateway to Mille Lacs for those traveling from the south, and it now stands vacant? And should we be surprised that the Mille Lacs Band has sued Mille Lacs County, the Mille Lacs County Sheriff and the Mille Lacs County Attorney with the basic aim of restoring to reservation status the long since disestablished former Mille Lacs Reservation and by doing so is forcing Mille Lacs County to spend massive amounts of sorely needed taxpayer dollars in defense? And should we be surprised that the Mille Lacs Band and the State of Minnesota through the Department of Public Safety are pursuing a joint powers agreement which would expand the authority of tribal police officers beyond that authorized by the cooperative agreement with Mille Lacs County as prescribed by State law? And should we be surprised that the

agreement was negotiated without notifying Mille Lacs County until late in the process reminiscent of the Band's agreement with the Department of Natural Resources (DNR) back in 1993? And on and on and on.

But how did we get here? On August 13, 1990 the Mille Lacs Band sued the State of Minnesota asserting that the 1837 treaty with the United States gave them the right to hunt, fish and gather on land ceded in that treaty.

On January 15, 1993 the Minnesota DNR and the Mille Lacs Band signed a settlement agreement. In that agreement they agreed that the Band would drop their lawsuit, that the Band would limit their walleye harvest to 240,000 pounds and would adhere to their own conservation code, that Mille Lacs Lake would be divided into a tribal zone and a non-tribal zone and that the former 61,000 acre Mille Lacs Reservation would be recognized as still existing in addition to land and money being given to the Band by the State of Minnesota. Later that same year this agreement was narrowly defeated in the Minnesota legislature.

So, the Band's case continued in court. On August 24, 1994 Judge Murphy ruled that the Band retained the hunting, fishing and gathering rights they claimed and a second phase was ordered to determine allotments and to determine the extent of State regulation. In January 1997 Judge Davis ruled that the Band's conservation code would rule, not the State of Minnesota's code. The case was appealed and ended at the U.S. Supreme Court which ruled on March 24, 1999 in a 5 to 4 decision in favor of the Indians.

That is the end of my capsulized history lesson except to say that at least to me it is very clear that we should pay attention to history and the signals that are given us because that is exactly what is happening. As the tourism industry is being destroyed at Lake Mille Lacs, and it is, it becomes easier and easier for Art Gahbow's plan to become reality, and always with the backing and direction of the federal government.

But why does it matter that people like me who have long standing homes in an area that threatens to be claimed by the federal government and made into an illegal Indian reservation? And here I want to remind us of a statement made about the time this effort on the part of the Mille Lacs Band started, by Judge Randall in the Minnesota Court of Appeals case, Granite Valley Hotel v. Jackpot Junction. Judge Randall said in describing the legal deficiencies that apply on many Minnesota Indian reservations, "There is no guarantee that the Minnesota Constitution, the United States Constitution and its precious Bill of Rights will control. There are no guarantees that Civil Rights Acts, federal or state legislation against age discrimination, gender discrimination, etc. will be honored. There are no guarantees of the Veteran's Preference Act, no civil service classification to protect tribal government employees, no guarantees of OSHA, no guarantees of the Americans Disabilities Act (1990), no guarantees of the right to unionize, no right to Minnesota's teacher tenure laws, no right of federal and state "whistleblower" statutes, no guarantee against blatant nepotism, no guarantees of a fair and orderly process concerning access to reservation housing, and no freedom of press and no freedom of speech. In other words, all the basic human rights we take for granted, that allow us to live in dignity with our neighbors, are not guaranteed on Indian reservations under the present version of sovereignty ... The recent flow of Minnesota cases, trial and appellate, have nothing to do with cultural preservation. They have to do only with money and a tribal government's continued insistence on the right to be unaccountable to anyone, Indian or non-Indian, in any state court, unless they choose to go to state court. Otherwise they try to force parties into their own tribal courts."

And why does it matter that I am forced to either break the law or go to some other lake in order to furnish my grandchildren with a meal of Walleye that I have caught? Why am I being denied that experience that for so many years has been considered the cultural heritage of Minnesotans? Somewhere there has to be an answer to the abuse of my civil rights as a Minnesotan.

Federal Indian Policy is unaccountable, destructive, racist and unconstitutional. It is, therefore CERF and CERA's mission to ensure the equal protection of the law as guaranteed to all citizens by the Constitution of the United States.

CERA Membership Dues-\$35
Send to: CERA
PO Box 0379
Gresham, WI 54128
We need your support!

Please Consider This...

By Curt Knoke, WI

I've been a member of CERA for about 20 years and a CERF board member for about 15 years. During my early years with CERA I made the annual trek to Washington D.C. along with many others to attend the CERA/CERF conference. We met with the Washington establishment and encouraged them to do what's right for the Country regarding Federal Indian Policy (FIP) and the promotion of equality for all Americans. It was not an inexpensive trip and our message often fell on deaf ears.

In more recent years CERA/CERF has had a whole lot more success by directing our limited resources at educating the courts with amicus briefs (friend of the court briefs). Our other sizeable expense is to educate you our readers through the CERA/CERF REPORT with four updates every year on what's going on with FIP. Now, the dollars I used to spend on a 4 day trip to Washington go toward the briefs that are read and reviewed at the U.S. Supreme Court! And I know they are getting our message.

We are a totally volunteer organization. Legal fees for briefs are by far our biggest expense. **Please know that your membership dollars and generous donations are highly effective and most appreciated.**

For a tax deduction your check should be written to CERF. NOT CERA. If you are 70 ½ or older you can transfer up to \$100,000 directly from an IRA to a qualified charity like Citizens Equal Rights Foundation (CERF). These charitable gifts count toward the required minimum distribution. We can also accept appreciated stock.

Have a wonderful holiday season and thank you for considering CERF in your year-end giving plans.

Curt Knoke
CERF/CERA Treasurer

The Bill of Rights

Ratified December 15, 1791

Amendment I: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people

peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II: A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III: No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, not in time of war, but in a manner to be prescribed by law.

Amendment IV: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII: In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX: The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Brackeen v. Bernhardt

By Lana Marcussen, AZ

The most important pending case in Indian law is *Brackeen v. Bernhardt*. In this case several parties and the State of Texas are trying to have the Indian Child Welfare Act (ICWA) declared unconstitutional for being a race based federal statute forced upon the States to displace state law for any child that can be classified as an Indian. The federal district court struck ICWA down for multiple reasons finding it an unconstitutional race based law. The Fifth Circuit reversed with two judges ruling it constitutional and one judge making a very strong dissent. The private parties and Texas requested a rehearing en banc of all the judges of the Fifth Circuit that has just been granted.

Usually, when a Circuit Court accepts an en banc petition for rehearing it means that the majority of the judges in that Circuit disagree with the three judge panel decision. Sometimes it is the importance of the case itself that is the reason for the en banc review. This could be either reason. Because counsel for CERA/CERF was involved with helping set up this case, we have not submitted any briefs so far. Our position in believing that the whole of federal Indian policy is unconstitutional as race based should be well known to our readers and the courts. No matter what the Fifth Circuit decides the question of ICWA's unconstitutionality will ultimately be decided in the United States Supreme Court. CERF is planning to submit a brief when the case reaches the final hearing.

The *Brackeen* case is the first case to be presented using the federalism argument that CERA/CERF has spent many years developing. We hope that this is the first of many cases where we will be using these same arguments with one addition we have already proposed, to be able to attack the race based use of the Indians that has damaged all of our civil liberties. We have a very good chance of having the 14th Amendment activated against Indian law with the upcoming ruling in *Brackeen*. Once the 14th Amendment is considered to apply in an Indian case there will be no stopping the momentum to require all people to again be treated equally. We hope everyone will help us in achieving this goal. We promise to keep you updated in this upcoming exciting year as the *Brackeen* case is decided and other cases are begun to achieve our goal.

Endings and Beginnings

By Butch Cranford, CA

As 2019 comes to a close, CERA extends to our faithful supporters our hope that you and yours enjoy a Happy Thanksgiving, a Merry Christmas and a Prosperous New Year. An ending and new beginning.

The annual CERA Board meeting was held in conjunction with the CERF Board in early October. After many years of meeting at the home of CERA member Curt Knoke the Boards decided to meet at the Twin Pines Resort, Garrison, Minnesota this year. Twin Pines is located on Mille Lacs Lake (the Wall-eye Capital of the World) which is in a scenic and rural area of northern Minnesota. The resort is owned and managed by CERA Board member Linda Eno and her husband Bill. A productive meeting was had with plans set for CERF to file a number of Amicus Briefs in upcoming Supreme Court cases. More information will be available in upcoming CERA Reports as briefing for these cases is completed. A huge thank you for our meeting hosts Linda, Bill, and their capable staff for making the meeting a success and a well-deserved thank you for Curt and Marty Knoke for hosting the meeting for so many memorable years. An ending and a beginning.

After serving as the CERA chairman for the past 3 years I resigned as Chairman for personal reasons. It has truly been both an honor and a privilege to have served as CERA Chair and I look forward to supporting our newly elected Chairwoman, Linda Eno and to contribute to and assist Clare Fitz with future CERA Reports. An ending and a beginning.

I will be brief in my comments this month and write to let you readers and supporters of CERA know that I and the Board are extremely grateful for the support you have provided CERA during my tenure. For the coming year, the Board authorized the recovery of the CERA website and CERA is dedicated to get a new and improved website up and running. It is our hope that you find the Quarterly CERA Report informative, educational, and helpful with your local issues. We plan to provide more detailed and timely information on the website and provide an on line real time method to communicate issues, concerns, and questions from and to the CERA Board.

I am confident that all this and more will be accomplished under Linda Eno's capable leadership. She is a very capable and strong lady with a background in hotel and restaurant services which led her and her husband, Bill, to purchase and operate the Twin Pines Resort at Mille Lacs Lake, Minnesota. You can read more about Linda, her story, and her issues with federal Indian policy in another section of this report. Please join me in congratulating and supporting Linda as she embarks on her journey as Chairwoman of CERA.

In closing, I have written about the fee to trust issue here in Plymouth, CA on several occasions and I will conclude my comments with this. If not for my association with CERA since 2004 there would be a large Las Vegas style casino in my small rural hometown, pop. 900. It would have ruined our small town and surrounding communities which includes some of the finest winemakers and wines in California. Thankfully, there is no casino after 16 years. That's the good news. The not so good news is we are still in federal court and could be there for another 4-6 years before we prevail on the law and Constitution. Through my association with the CERA Board and its members I have learned much since 2004 and owe much to my fellow CERA/CERF Board members who are a group of extraordinary patriots. Based on my experiences, I encourage anyone who has an issue with Federal Indian Policy to contact CERA. I can be reached by text or phone at 209-217-7394 or by email at bcranford4588@att.net. Additional contact information will be available on the website.

Thank you for your continued support



“Never doubt that small group of thoughtful, committed citizens can change the world, indeed, it's the only thing that ever has.”

Margaret Mead



Larceny and Largesse in La Conner

By Bruce Elliot, WA

Washington State is home to 29 federally-recognized Indian tribes with populations ranging from fewer than 100 to more than 10,000 enrolled members residing on reservations (U.S. government lands held in trust) as small as 12 acres and as large as 1.4-million acres in area. Current census data (2019) reveals that the total American Indian population in Washington State is less than 2% of the total. However, their influence on the political landscape and thus state government is vastly disproportionate to their numbers.

For the past 25 years, I have resided on fee-simple property on Fidalgo Island within reservation boundaries claimed by the Swinomish Indian Tribe, and even that property is subject to certain tribal restrictions. Fidalgo Island is part of Skagit County, a scenic agricultural area located 60 miles north of Seattle, and is separated from the mainland by a navigable waterway, the Swinomish Channel. The island is accessed by highway bridges, one of which – the aptly named “Rainbow Bridge” because of its arched design and bright orange paint – connects the southeast part of the island to the incorporated waterfront town of La Conner with a population of about 1,000.

In 1968, a developer from Seattle negotiated a 75-year renewable lease of approximately 400 acres of raw land with the Swinomish Tribe on which he intended to build a planned residential community. The original agreement was based on the terms of a master lease arrangement that outlined a payment schedule to the tribe, and sub-lease terms to lot renters. Over time, lots were platted, some 800 homes were built, and amenities including a marina, golf course, clubhouse and swimming pools were added. This community, known as Shelter Bay, is now home to approximately 1,700 individuals. Residents pay a rental fee for the land usage, but own the homes and other improvements constructed on the land. Until recently, property taxes for those homes and improvements were collected by Skagit County.

In 2010, in Washington's Thurston County, the Chehalis tribe sued the county over property tax collections on Great Wolf Lodge, a resort operation partly owned by the tribe on reservation land. First heard in District Court, the ruling was in favor of the county. The tribe appealed that decision, and in 2013 the

lower court's ruling was overturned by the Ninth Circuit Court of Appeals in favor of the tribe, that the county could not tax property, regardless of ownership, on trust land leased from an Indian tribe. Thurston County, likely for financial reasons, did not elect to further appeal the case.

The Ninth Circuit's ruling was landmark in the State of Washington, and led the state Department of Revenue (DOR) to issue a "tax advisory" to all 39 county assessors in the state. The normal process for issuance of a tax advisory is for DOR to invite input and commentary from the state's county assessors prior to issuance. Not only was that not done in this case, it was later learned via a Freedom of Information Act request that tribal influence played the major role in the DOR's "advisory" action.

When the state DOR's "tax advisory" landed on the desk of the Skagit County assessor, it was interpreted as tantamount to law, and action was taken to remove the majority of properties in Shelter Bay (a few are on fee-simple land) and a few similar, separate leases from the county property tax roll – a total of 931 properties altogether. That meant local taxing districts, e.g., schools, hospital, library, fire, dike, etc., would lose about \$1.8-million in local tax revenue that would otherwise have been collected and distributed by the county.

This caused other "complications" regarding possible tax refund liabilities for prior year's tax collections that clouded the issue, but the major effect was to cause a shift in tax liability and rates to other taxpayers in the local taxing district to "make up the difference" as provided by law. This shift caused property taxes to increase by as much as 25% in one year in some cases, and a sense of shock and outrage throughout the community.

In Shelter Bay, the situation got even worse. The Swinomish Tribe saw an opportunity to fill the void created by the county's property tax withdrawal and set about to establish their own "tax authority," using county assessed values as the basis of their calculations. Since 2015 the tribe has collected a "use and occupation" tax on non-Indian Shelter Bay residents whose homes are on leased trust lands. A major and valid sore point for many is that the payers of tribal "use and occupation" taxes have no say what so ever in how their monies will be used, i.e., classic "taxation without representation!"

The tribe feels no obligation that it "owes" any of the taxes it collects to the local taxing districts, preferring to negotiate "contributions" they deem reasonable to cover the various revenue losses. The entire system is broken, with no apparent relief in sight. But there appears to be a possible "maybe" ...

Last year, Riverside County, California, appealed a property tax case in Palm Springs against the Aqua Caliente Indian tribe that on its face appears similar to the situation in La Conner. This appeal also was heard by the Ninth Circuit, which this time ruled in favor of the county. It is possible that this case – the only other case in the Ninth Circuit's nine western state jurisdiction that has generated any publicity – may have some bearing on the La Conner situation, and numerous affected taxpayers have urged the current county assessor to seek judicial review. (An initial consult by the assessor with the state DOR concluded there was no similarity. We believe only a court or judge should make that determination.)

Property taxes are not the only issue of concern in La Conner. Tribal influence now extends to areas never thought possible. More than half the students in the La Conner School District now reside on tax-exempt land (i.e., U.S. government land held in trust) which now, after Great Wolf, includes Shelter Bay. In Washington State, most school districts seek voter approval to raise additional funds needed to pay for school operations and services not funded by the state. They do this by periodically presenting special levy property tax proposals to the community for a vote of the people. A favorable vote (i.e., passage of the special levy) means that property owners agree to pay additional taxes that are distributed directly to the school district to be used to fund operation of the school's programs including the study of Indian history and culture mandated by Washington State law and in the La Conner public schools the offer of an elective class in the ancestral Swinomish language, Lushootseed. But in La Conner, the majority of residents live on trust lands that are property tax exempt, yet are permitted (actually, strongly encouraged!) to vote for taxes they don't have to pay, either directly as owners, or indirectly as renters. How is this travesty considered fair or even legal?

A significant part of the solution to remedying these troubling matters, it appears, is education – a concerted effort to make people aware of untenable situations like what has evolved in La Conner, Skagit County and elsewhere with the hope that eventually, sanity will prevail!

Federal Indian policy in unaccountable, destructive, racist and unconstitutional. It is therefore CERF and CERA's mission to ensure the equal protection of the law as guaranteed to all citizens by the Constitution of the United States

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