Native American Treaty Project

Department of Defense
Legacy Resource Management Program

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OACSIM
### Native American Treaty Project

**Report Documentation Page**

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BACKGROUND

- DoD develops American Indian and Alaska Native Policy, 1998
- Policy directs DoD to undertake actions and manage lands
  - Consistent with the conservation of protected tribal resources and in recognition of Indian treaty rights to fish, hunt and gather resources at both on and off-reservation locations
And to accommodate
  - *to the extent practicable and consistent with military training, security, and readiness requirements, tribal member access to sacred and off-reservation treaty fishing, hunting, and gathering sites located on military installations*

- Extent of treaty rights on DoD lands not known
- Legacy fund Native American Treaties Project
LEGACY PROJECT

• Cooperative agreement with NATHPO: National Association of Tribal Historic Preservation Officers
  – Sole sourced based on NATHPO expertise in tribal matters

• Scope of work
  – Report
  – GIS component
PROJECT PURPOSE

• To identify all extant, in-force treaties between Indian tribes and the federal government applicable to installations in the 48 states
• To define the nature and extent of treaty obligations for these installations
• To enhance DoD-tribal relationships and uphold federal legal obligations to tribes
• Study identifies those treaties with explicitly reserved, land-based, usufructuary rights

• Typically these rights consist of hunting, gathering, fishing rights
CURRENT STATUS

- Currently under review at DoD
- Now available on DENIX
- Will provide a tool for installations to use as part of government-to-government consultation responsibilities
ABOUT TREATIES

• Treaties are contracts between sovereign nations
  – Important component of the political relationship between American Indian tribes and the federal government
• The Constitution gives the President sole power to negotiate treaties, with 2/3 approval of Senate
• Force and effect of federal law
TREATIES WITH TRIBES

• Purpose: tribes grant federal government title to land and establish peaceful relationships in return for protection, goods, services
• Tribes retain rights not specifically ceded to the federal government in treaties
• Some treaties—specifically reserve usufructuary rights for tribes
  – Reserved rights are not grants from the US
  – Can only be extinguished by Congress
TREATIES, cont.

- US negotiated over 500 treaties with tribes before 1871
  - Not all were ratified

- Treaties and tribes do not have 1 on 1 relationship
  - Not every tribe has a treaty
  - Some treaties were made with multiple tribes
TREATIES, cont

- Congress ended treaty making in 1871
- Federal government made agreements with tribes, ratified by Congress and signed into law, have same effect as treaties
  - Included in this study
- Each treaty is unique
  - Represents a unique history of tribal interaction with the federal government, may have unique legal history
TREATIES, cont.

• Cannons of Construction for interpreting tribal treaties
• Courts recognize inequality of negotiation process
• Set forth following standards for interpreting treaties
  – Ambiguities must be resolved in favor of the tribes
  – Indian treaties must be interpreted as Indians would have understood them
  – Indian treaties must be construed liberally in favor of the Indians
  – Reserved rights must be explicitly extinguished by either later treaties or Congressional action
RESEARCH METHODS

• Project team from University of Kansas
• Read 488 treaties and agreements
• Found reserved rights in 71 treaties
• Mapped these land-based rights and compared to DoD installation locations
• Looked at all subsequent treaties negotiated with tribes holding reserved rights to see if rights extinguished
TREATIES, cont

• Searched for legal decisions affecting specific treaties, interpretations, and treaty rights in general
• Limits of the study:
  – Addressed only land-based usufructuary rights, not other treaty obligations
  – Limited to installations listed in 1999 Sikes Report
  – Does not address non-treaty rights or aboriginal rights which may exist outside of specifically reserved rights
  – Tribes may have conflicting views over interpretation of treaties and boundaries
FINDINGS

- 22 treaties that create potential obligations for existing military installations
- These treaties affect 58 installations in 12 states:
  - Alabama  Michigan  Oklahoma
  - Arkansas  Minnesota  Oregon
  - Illinois   Nebraska  Utah
  - Indiana   Ohio    Washington
FINDINGS, cont.

- Presentation of Findings
  - Lists for each installation
    - Rights reserved
    - Treaty
    - Treaty tribe(s)
    - Treaty language stipulating the rights
    - All installations listed for the treaty
    - Court decisions located which affect those rights
    - Comments
    - Possible cession of rights in later treaties

- GIS component accompanies report
Minnesota 1

Military
Reservations
Nebraska 1
Minnesota 1
Dakota 1
State
Minnesota 2

Military
Reservations
Nebraska1
Minnesota1
Dakota1
State
IMPLEMENTATION

• This study adds to tools available to installation commanders to assist in meeting federal obligations to tribes

• The report DOES NOT replace the consultation process as dictated by DoD American Indian and Alaska Native Policy

• Affected installations should review their government-to-government consultation policies with reference to treaty obligations

• This may add to existing encroachment issues
FUTURE RESEARCH AND PRODUCTS

• Current Legacy studies in process:
  
  Expanded Indian Lands Research for DoD Installations: DoD non-treaty related responsibilities toward tribes who did not enter into treaty relations or have treaties ratified by Congress.

AFFECTED INSTALLATIONS

- This list may be incomplete.
  - Difficulties with treaty language
  - Differing interpretations

- Alabama
  - Redstone Arsenal

- Arkansas
  - Camp Robinson
  - Fort Chaffee
  - Fort Smith AGS
  - Little Rock AFB
  - Pine Bluff Arsenal
AFFECTED INSTALLATIONS

• Illinois
  – Camp Marseilles
  – Charles Melvin Price SPT CTR
  – Chicago ARS
  – Greater Peoria AGS
  – Joliet AAP
  – Rock Island Arsenal
  – Savanna Depot ACT
  – Scott AFB
AFFECTED INSTALLATIONS

- **Indiana**
  - Crane Div, NAV Surface Warfare Ctr
  - Ft Wayne AGS
  - Hulman AGS
  - Indiana AAP
  - Newport Chem Activity

- **Michigan**
  - Camp Custer
  - Camp Grayling
  - Detroit Arsenal
  - Selfridge AGB
  - Garrison Selfridge
  - W.K Kellogg AGS
AFFECTED INSTALLATIONS

- Minnesota
  - Camp Ripley
  - Duluth AGS
  - Mpls-St. Paul IAP AGS
- Nebraska
  - Camp Hastings
- Ohio
  - Camp Perry
  - Camp Perry AGS
  - DEF Const. Supply Center
  - Lima Army Tank Plant
• Ohio, cont. Lima Army Tank Plant
  – Gentile DEF Electronic Supply
  – Mansfield Lahm AGS
  – Ravenna AAP
  – Rickenbacker AGS
  – Springfield-Beckley AGS
  – Toledo Express AGS
  – Wright Patterson AFB
  – Youngston-Warren ARS

• Oklahoma
  – Altus AFB
AFFECTED INSTALLATIONS

• Oregon
  – Umatilla Depot
• Utah
  – Camp Williams
  – Depot Ogden
  – Dugway Proving Ground
  – Hill AFB
  – Salt Lake City AGS
• Washington
  – Bangor Sub Base
  – Everett NS
AFFECTED INSTALLATIONS

- Washington, cont.
  - Fort Lewis
  - Mc Cord AFB
  - NAS Whidbey IS
  - Navseawarfare
  - Puget Sound NS
  - Strategic Weapon Fac Pac
  - Yakima Firing CTR
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