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Maine Tribes vs. Paper Companies & State

by Mark Chavaree

The Maine tribes are currently facing two issues that cut to the core of our identity as Indian people. The first issue involves the recent application by the State of Maine to the Environmental Protection Agency (EPA) for authority to administer the wastewater permitting program (known as the National Pollution Discharge Elimination System or NPDES) for Maine's water bodies. The Penobscot Nation has taken the position that, with respect to our reservation waters (the Penobscot River from Indian Island northward), EPA should retain the permitting authority. The basis for this decision is quite simply to better protect the Penobscot River.

The Penobscot Nation is a riverine tribe, and the Penobscot River and its resources have provided us with transportation, clothing, food, medicines and basically sustained us throughout time. Beyond this obvious physical tie and the fact that we share the same name, there is a spiritual connection between our people and the river. We regard the protection of the river as a sacred trust, and we know that the continued survival and the health and vitality of the river is interwoven with our own. Our tribe has lived in conjunction with this river for thousands of years, and we hope that we can continue to do so for thousands more. Therefore, in honor of our ancestors and to secure a future for our children, we are duty bound to do all we can to protect it.

The Penobscots are merely asking that the federal government retain its role as trustee on our waters as the best way to fulfill its trust responsibility to protect tribal resources and interests. The tribe's experience is that the federal government is more responsive to our concerns regarding the health of the river and less likely to be influenced by those who stand to benefit from less stringent regulation. Interestingly, the State, which has been joined in these arguments by the paper companies, argues quite

vehemently against the EPA retaining authority over tribal waters, going so far as to suggest the federal government has no trust responsibility to the Maine tribes. The trust relationship between the federal government and Indian tribes is an essential right of Indian people well established in law and treaty.

The State further argues that forty four states have already been given this authority, so it is a fairly routine matter for Maine to also obtain it. The important omission from that argument is that authority over Indian territory has never been granted in any of the forty-four state delegations. In fact, Indian territory has specifically been carved out, and that is what the Maine tribes are asking. The State and the paper companies assert that the Maine Indian Claims Settlement Act changed all that, and the Maine tribes no longer enjoy the same rights as other Indian people. This assertion is a clear distortion of the meaning and intent of the Settlement Act, and one to which the tribes will never agree.

The second issue is related to these efforts to strip the tribes of their inherent rights as Indian people. Several of the paper companies have asserted that the Penobscots and Passamaquoddies are subject to the Freedom of Access Act, a State law regulating Maine municipalities. Our tribe is first and foremost an Indian tribe, and we are not, as argued by the paper companies, merely a municipality of the State. Unfortunately, thus far, we have been unsuccessful in persuading the state courts to adopt our view. If the tribes fail in the appeal to the Maine Supreme Judicial Court, our leaders face jail time. We encourage all those who support the tribes to write or call your elected state leaders and congressional people and inquire why they are so intent on opposing tribal rights. Also, please write to your local newspapers voicing support for tribal efforts.

Finally, the Penobscot Nation and the Passamaquoddy Tribe are hosting a fundraising dinner the week of January 24, 2001. The funds from this event will assist us in our efforts to protect the rivers. Anyone interested in attending should contact Dee Lolar at 827-1123, ext. 7301.

Marc Chavaree is an attorney for the Penobscot Nation.

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