

CHAPTER 5: THE MUD LAKE WILD RICE CONFRONTATION

The previous chapters provide insight into the ways that the regional, and policy environments were shaped over time. This chapter provides a detailed chronology of the Mud Lake conflict, beginning with an introduction to the Ministry of Natural Resources (MNR) involvement in the region that led to the conflict under consideration. This is followed by a chronology of the four-year study period. The study period begins in 1979 when the original licence to *Lanark Wild Rice* (LWR) was granted. It is a point in time when interests, hitherto unaware or unconcerned with each other, suddenly come into conflict over a particular natural resource, at a particular site. At this point in time, provincial policy comes squarely into conflict with a long-standing local traditional authority and management system.

Evidence suggests that the community had no knowledge of the *Wild Rice Harvesting Act (WRHA)* which required users to make application to the MNR for a harvesting permit. Rather, a long-term local authority structure was in place. This local authority structure governed *Manomin* use and management. In addition, evidence suggests that local area MNR staff were unaware of, or considered extraneous, the long time community practice that was in place. Thus, a local system of authority and management existed in parallel to a provincial structure, with both parties presumably unaware of the other. The Mud Lake conflict represents a collision of these two systems.

The story of the Mud Lake conflict begins with the initial commercial harvest in 1979, the subsequent hearing under the *WRHA*, and the decision that followed. This period is characterized by an expectation that community wishes will be protected, once they are understood. The remainder of the study period has been divided into three sections, representing the real head to head conflict over wild rice/*Manomin* at

Mud Lake. The period from 1980 – 1981 is characterized primarily by a conflict, not so much about access, but about the granting of access to this local resource, to an outside party – expressly against the wishes of the local community. During this time-frame, the community endeavours to find a satisfactory working relationship with the MNR that will protect the continuation of local use, and management, as well as the long-term protection of the resource. The second period is the August – October 1981 standoff which represents the beginnings of community opposition, and resistance to MNR policy frameworks. The final period, 1981- 1982, marks the aggressive movement forward of the local community under the title IMSet (the Indian, Metis and Settler Wild Rice Association). While the community continues to seek a satisfactory arrangement with the MNR, their aggressive position on local management significantly impacts the final resolution of the dispute. Here, the dispute is recognized as being fundamentally based in MNR policy. The final resolution of the conflict is an accommodation, which provides for the critical positions of MNR and the community to be protected, while providing no resolution of the fundamental issues involved.

A special note must be made with reference to this chapter. At the time of the Mud Lake conflict, the term Métis was the only term with political salience for those without status, and recognition as ‘Indians’ under the Indian Act. Thus, the term Métis is used in various places throughout this chapter because it is the term found throughout the documentary sources used for this research. However, the Ardoch Algonquin community does not consider themselves to be Métis, a title that assumes mixed ancestry. Rather, the community is adamant in their reference to themselves as ‘Non-status Indians’ because intermarriage is not relevant to their identity as a community.

Collision of Interests (1979)

There has always been a question of how or why the MNR suddenly came to know about, and have an interest in, the wild rice at Mud Lake. A *Globe and Mail* editorial (Sept 8, 1981) suggests that, prior to the Mud Lake confrontation, Ardoch's 100 or so residents requested that a dam be established to raise water levels on the Mississippi river to accommodate recreation and boating needs despite the fact that such an undertaking would completely wipe out the *Manomin* present in that water system. This article suggests that it was the MNR who sought to discourage this venture because of the threat to the wild rice stand. This would suggest that the MNR was already aware of the wild rice present on Mud Lake, though they had made no contact with local residents regarding its use. The article also implies that the MNR acted to protect this resource, in contrast to the 'residents' who had requested the elevation of lake water levels which would have destroyed the crop.

While this is one version of cause and effect, there are some problems I find readily evident in the logic. Firstly, I have some reservations about how the term 'residents' is being defined in this article. A Mississippi Valley Conservation Authority (MVCA) report on the proposed dam states in its introduction that the MVCA "has received several complaints regarding navigation problems due to low summer water levels on Mud Lake". They continue that 'cottagers' requested the dam construction (Crysler and Lathem LTD 1979:1). In a September 3, 1981 presentation to Alan Pope (Minister, MNR post-1980), Bill Flieler (Reeve of Clarendon and Miller Township) stated that in 1979 due to the request of several people from the township "we hired a firm to do a study to raise the Lower Mississippi River" (Document 3:3). It is this that prompted the Crysler and Lathem

LTD report which found that raised water levels would wipe out the wild rice in the lake (Crysler and Lathem LTD 1979). As a result, the proposed dam was never undertaken. The MNR is noted as registering ‘stiff opposition’ to the dam proposal, in part, due to its potential environmental impact on the wild rice, walleye spawning sites, and waterfowl staging habitat which seems a logical concern within the MNR’s conservation mandate (1979). Furthermore, Harold Perry was also set against the dam proposal. In a documented oral history written at the time of the conflict he noted “I did not support the dam at anytime and was, I hope, partially responsible for it being turned down” (Document 4, 1980). Thus, while there seems to have been some community interest in raising water levels on the Mississippi there is no evidence that the whole community was behind such an endeavour.

Was it this proposed dam, which drew the MNR’s attention to the Mud Lake wild rice? There is considerable evidence in MNR files and newspaper reportage of interviews with MNR officials that the 1979 licence to harvest Mud Lake was granted to LWR to provide rice data for the Crysler and Lathem LTD report. The report does indicate that a licence was issued in 1979 as an “experiment to ascertain the value of the annual crop” (1979:19).

In addition, letters were exchanged in early 1980 between Mr. Richardson of LWR, and James Auld, which discusses a Research and Development Proposal for expansion of the Wild Rice Industry in Lanark County and Surrounding Regions (Document 5, Jan. 24, 1980). While this communication took place after the first wild rice harvest by LWR, and following the Ardoch community initial protests, they build on the fact that Mr. Richardson already had a prior history of harvesting wild rice in adjoining townships, and thus had a pre-existing relationship with MNR. A statement by Mr. Zarecki clearly states that they (LWR) had approached MNR about

harvesting at Mud Lake after a conversation with a local resident who commented that rice was present at this site (Document 2, Dec. 1981:118). Thus, clearly, Mr. Richardson and Mr. Zarecki had direct involvement in the interest taken by MNR towards the rice at Mud Lake. However, I cannot ascertain which came first.

With reference to any 'prior community interests' in the wild rice, legal or otherwise, John Williamson (Fish and Wildlife Branch, MNR Tweed Office) stated that they (MNR) had no knowledge of anyone harvesting the rice prior to the conflict (*Kingston Whig Standard (KWS)*, Aug.22, 1981). The confusion arose because local residents were unaware of their responsibility to obtain a harvesting licence. He indicates that when harvesting files were checked there was no record of prior use – a reflection of settlement history described in chapter four, which failed to recognize Aboriginal occupation as valid because their presence was not registered on the land patent maps. The purpose of the dam study, he suggests, was to address MNR's concern for the rice in the event of dam construction. MNR staff state that the 'permit' issued to LWR was non-renewable, issued on a test basis only, for the purpose of the study (*KWS*, Aug.22, 1981). However, Mr. Zarecki stated that he understood that they had been granted a harvesting license, which would be renewed annually (Document 2, 1981).

That said, an article by Earl McEwen (MPP Frontenac-Addington) states that there was no discussions with 'the township, the Indian people, or local residents' about the proposed 1979 harvesting licence. He suggests that this gesture would have eliminated the conflict by providing critical information to MNR about the pre-existing history of *Manomin* management and use at the site (*Tweed News*, Dec.2 1981; Document 2, 1981). Furthermore, statements by community members at the two hearings suggest that the local MNR was well aware of the rice use in the area

prior to the conflict (Document 6, July 1980; Document 2, 1981). In fact, in his testimony at the second hearing in 1981, Harold Perry states, “I don’t see how they could possibly help it (knowing about the ongoing rice harvesting) because I was actually talking to some of these people” (Document 2, 1981:236). This seems a logical point since stories of *Manomin* are part of the regional lore as presented in the published oral histories of the region (Armstrong 1976; Armstrong 1982; and Stewart 1982). They (MNR) actively enforced other regulations (i.e. hunting and fishing), but did not bring the *WRHA* to the attention of the local residents, and users of the crop, presumably because it was not a priority before this timeframe.

It remains unclear who within the Ardoch community supported the water elevation project. It also remains unclear what first prompted the MNR to show interest in the wild rice at Mud Lake. It may be that seasonal users interests in the area drew the MNR’s attention to the location. It is also possible that Mr. Richardson was the first to bring MNR’s attention to the site.

However, a number of factors clearly influenced the MNR’s actions at this time. MNR had knowledge of Mr. Richardson’s intent to develop a regional wild rice industry. There was a larger movement by business interests in Ontario to open up wild rice areas formerly reserved for Aboriginal communities for economic development (Thurston, 1992; see chapter 3). MNR is on record as stating that their mandate is to develop natural resources within Ontario for the benefit of all *Ottawa Citizens* of Ontario. The previous chapter illustrates a long-standing history of neglect regarding Algonquin occupancy and rights within the Ottawa valley. Finally, MNR assumed no local interests, either because of a failure to consider local use as a ‘prior interest’, or because of the lack of records under the *WRHA*. Thus, the MNR

went about its business of planning and licensing the wild rice on Mud Lake as a natural resource within its jurisdiction.

Initial Conflict (September 1979 – August 1980)

The initial response to the discovery of the commercial harvester was a series of calls and letters of protest and inquiry from various community members¹. The result was a meeting with the local MNR (Tweed) staff on May 6, 1980. A letter to Mr. Vonk (District Manager: Tweed) from Harold Perry clearly communicates the emotion and strong beliefs expressed at this meeting:

Aboriginal rights were mentioned at the meeting and have all the possibilities of a legal issue. Let this letter show on record that I Harold E. Perry lay claim to wild rice by Aboriginal right. As established at the meeting the very obvious wish of the local people involved is that the continued preservation and sensible management by the Indians and Metis... be maintained. ...The total disregard by Natural Resources for the people who live here and rely on the rice... the failure of Natural Resources to notify the local residents and representatives, the secrecy of the operation, the failure to talk to the Indians and Metis who harvest the rice, the taking of such a risk on the only single rice bed in the region, the persistent efforts to try a second year without even an assessment of last years damage with total disregard to the residents wishes shows arrogance and incompetence by Natural Resources and is inexcusable. (Document 7, May 8, 1980)

The text of the letter clearly shows that subsequent commercial harvesting was under consideration by the MNR. In this letter, Mr. Perry recommends that the no further permits be issued until “claims, legal rights and liabilities are resolved” (Document 7, May 8, 1980). This letter is supported by a letter from the Township of Clarendon and Miller, and also by a resolution in Council for the Township of Palmerston, North and South Canonto (Documents 8 and 9, May 9 and May 13, 1980). In response to this adamant position by the local community, local staff chose to refrain from issuing

¹ For a “Who’s Who” of people and organizations involved in this conflict, see appendix 2.

a harvesting licence for Mud Lake for the subsequent year (*Ottawa Citizen*, July 23, 1980).

In addition to local level action, however, events were also taking place at the provincial level. Letters regarding wild rice production in the region were exchanged in early 1980 between LWR, Doug Wiseman, and James Auld. Following the initial 1979 harvest, but prior to the May 6, 1980 meeting between MNR (Tweed) staff and local residents, Mr. Richardson forwarded a letter to Mr. Wiseman requesting his assistance in facilitating the development of the wild rice industry in the region (Document 5, Jan. 24, 1980). The letter mentions the inclusion of a draft titled Research and Development Proposal for expansion of the Wild Rice Industry in Lanark County and Surrounding Regions². On Feb 25, 1980 this material was forwarded from Mr. Wiseman to Mr. Auld (Document 10, Feb 25, 1980). The cover letter requests Mr. Auld's co-operation in having the proposal reviewed and expedited - if feasible.

In turn, Mr. Auld wrote to Mr. Richardson stating that the MNR was interested in the study. He indicated that the Lanark district office "will be pleased to work with you in identifying existing wild rice stands and to suggest discrete areas where experimental seeding would be allowed" (Document 11, Mar. 13, 1980). He noted that "your 1980 wild rice harvesting licence will be approved in specified areas in the Eastern Region where permission is granted by the District Manager" and that "the moratorium on wild rice harvest introduced in May, 1978 is still in effect and may restrict further harvest area expansion by your Company" (Document 11, Mar. 13,

² A copy of this document was not found. However, a later version titled A Proposal for the Expansion of Wild Rice Production in Eastern Ontario was located in AAFNA's files. This proposal references a July 1981 newspaper article giving some indication to the time it was written. It is stamped with the name of David Punter, a researcher who presented on behalf of Lanark Wild Rice at the second

1980). While this reply does not mention Mud Lake it does influence the evolution of Ministry thinking in regard to regional wild rice development. It also illustrates the varying levels from which this conflict was influenced.

First Hearing (24 July 1980)

The contradiction present in the development of activities at the local and provincial levels led to a collision of interests for the 1980-harvesting season. The LWR application to harvest Mud Lake for 1980 was turned down by local staff following the May 6, 1980 meeting in Ompah between the local community and the local MNR (Tweed) office. The *WRHA* 1970 has provisions for an appeal under s. 3(5) stating “before refusing to issue a licence or cancelling a licence, the Deputy Minister shall cause an officer in the Department to hold a hearing to which the applicant or licensee shall be a party” (SO 1971 c. 50 s.88). As a result, a hearing was called on the matter for all interested parties to attend. It was scheduled to take place on July 24, 1980 in order that a resolution should be found prior to the harvest period during late August, and early September.

The hearing was chaired by W.A. Buchan, Regional Mining Lands Administrator, North-western Region (Kenora), an official familiar with wild rice issues in that region. Approximately 100 people attended the hearing with significant representation from the local community. Residents of the Ardoch region were notified of the upcoming hearing through correspondence, and were invited to offer their views on the harvesting licence (Document 12, July 15, 1980).

The Ardoch community spokespersons included Harold Perry, Chief Marsden (Chief, Alderville Indian Reserve), Bill Flieler (Reeve, Township of Clarendon and

hearing (AAFNA's files). It is possible that this proposal is a later version of the initial document and

Miller), Roy Shenaur, Joanne Eadon, John Savigny, Helen MacDonald, and Glen Manion (non-aboriginal residents). Their submission (Document 6, July 24, 1980) opened with a statement of the community's distress at being 'a third party to these proceedings', and the lack of preparation time provided for the community to prepare their arguments for the hearing. Several critical players had very short notice to prepare for the hearing, including Mr. Perry, and Mr. McEwen who received notice on July 16th, and the township Reeve who had not received notice at all. They claimed that this 'third party' status prevented them from pursuing "a more vigorous defence of our indigenous rights to the rice and our concern for, the fish, and waterfowl of Mud Lake" (Document 6, July 24, 1980:2).

Their presentation then went on with, a Statement in Defence of our Indigenous rights and concern for the well-being of our culture, economy and environment (Document 6, July 24, 1980). The presentation was based on a number of key points: a history of Aboriginal occupation of the site; the oral history of the planting of the rice by an ancestor of Mr. Perry; the history of the Perry family and the ongoing planting and maintenance of the rice; the belief that the rice would die out without constant maintenance and reseeded because of the prevailing water current and winds; and the history of sharing without conflict between the Perry family, the Alderville Ojibwa, and the local non-aboriginal residents, especially during the Depression years. It also stated that the rice was doing poorly in the 1950s and 60s, and that the family had taken no rice for themselves, and worked instead to rejuvenate the rice beds through reseeded; that family efforts to rejuvenate the rice had led to the peak conditions of the rice bed in 1979; that LWR after harvesting did not engage

could be looked to for more information on this topic.

in upstream reseedling; and that Mr. Perry undertook this activity (Document 6, July 24, 1980).

In reference to the *WRHA*, the document states that the Perry family had never applied for a licence because they were unaware of the need. However, it was felt that local MNR staff “who are normally quite efficient at holding local residents accountable, did not make Mr. Perry or the local residents aware at the time when the Act came into being or in subsequent years” (Document 6, July 24, 1980:2). They indicated that the long time traditional practice was known well in the area, and that the local MNR officials were aware of the rice, and the community’s relationship with it. However, they declared that the intention of Mr. Perry and the community was to abide by the regulations requiring application (Document 6, July 24, 1980).

The statement speaks to the meaning that *Manomin* has for the community. It expressed that *Manomin* “means more to our community” than it could to a commercial interest, and the rice has become an “integral part of our environment”. It articulated their belief that this relationship has led to a greater abundance of fish and waterfowl species in the region (Document 6, July 24, 1980:3). The document also referred to evidence presented by Dr. Isobel Bailey (Wetlands specialist, Department of Biology, Carleton University) who concluded that the ecology of Mud Lake was fragile, and that the non-indigenous rice must compete with local water plants. The community expresses their concern that the rice would eventually be depleted due to the stress commercial harvesting would place on it.

The document expressed a community concern for the preservation of the community’s lifestyle because the local economy was tied up with the fishing, duck hunting, and the natural setting of the area. Their fear was that the stability of the local economy and region could be threatened. The document expressed the

community's desire to work 'hand in hand' with MNR in maintaining and preserving the local environment, and to protect the local culture and economy (Document 6, July 24, 1980). As a result they express their support for the MNR's decision to refuse a Harvesting licence to LWR.

While a letter to Dr. Reynolds (Deputy Minister, MNR) from Mr. Buchan located in the MNR files states that a transcript of this hearing is available, no transcript was made available to me through the search of the MNR files (see discussion in methodology – appendix 1). However, the final report submitted to the Deputy Minister, MNR from Mr. Buchan details the presentations as he saw them. The following details the presentations made by all parties as seen by Mr. Buchan.

Firstly, Mr. Buchan states that John Williamson presented the Ministry's position and policy regarding the situation, but provided no detail regarding the content of the presentation. A presentation by Mr. McLean, solicitor for LWR, followed. His presentation detailed the history of LWR operations from 1974 to present, including the 1979 harvest at Mud Lake of 5,300 pounds of rice. The report also reports that a 1980 ARDA grant for \$40,000 was given to LWR "to conduct studies over three years on the wild rice potential" in the region (Document 13:2), that LWR has a ten year history of such research in Manitoba, Minnesota, and Ontario, that a maximum mechanical harvest yield would take approximately 40% of the available rice and that the remaining 60% would be more than adequate for reseedling and the feeding of fish and ducks. The report indicated that the flail system (traditional method) does more damage and yields less than mechanical harvesters.

McLean also reviewed the MNR Policy in terms of the 1978 moratorium, suggesting that the terms of this moratorium did not, in his estimation, apply to existing licences. He noted that LWR had held a licence for all of Lanark County

since 1974, and that they had given up their block licence in favour of an 'area specific licence' which included the Mud Lake area as suggested by regional MNR staff. He argued that this did not represent a 'new licence', and therefore did not violate the terms of the moratorium. Mr. Buchan noted that LWR showed no incompetence or misdoing, and that they had an ongoing history of co-operation with MNR clearly indicated through the documents provided in their presentation.

Mr. Buchan then noted that the floor was opened to the local community, beginning with Harold Perry, who presented on his family's involvement with the rice over time, the fragility of the rice bed, and his indigenous rights. Chief Marsden presented on the history of flooding on Rice Lake, and the availability of rice in other areas along with his community's rice needs. Both presenters were noted as stating their lack of knowledge regarding the WRHA.

This was followed by the Reeves of the townships involved presenting on their views and objections to commercial harvesting, and by Roy Schonauer (a local muskrat trapper) and his concern about the effect of harvesting on the muskrat population. Mr. Buchan notes that he feels this later impact is "debatable by experts I am sure" (Document 13:4), clearly implying a lack of legitimacy on the part of Mr. Schonauer's concerns.

Mr. Buchan stated, "The major theme of the objections was that the harvest by commercial methods would affect the local pickers, muskrat population, and duck feeding beds. As the communities depend on the tourist traffic, fishermen, and duck hunters, for their livelihood, the wild rice beds were felt to be a major part of the overall plan" (Document 13:4). He noted that this same community supported the dam construction, which would have eliminated the rice beds (note: see discussion p. 6-10, this chapter). Mr. Buchan noted that the local people are 'fine, proud people;

proud of their heritages and extremely possessive of their surrounding lands'. He stated "emotions were controlled but were strongly evident during the hearing" (Document 13:4).

The final submission-proposal by McLean for LWR proposed an application for mutual use, and continuing use by local peoples. Local residents scoffed at these future plans, including a processing plant. However, LWR indicated that the local people could be involved in the harvest and processing of the rice.

In conclusion, the Buchan report recommended that the LWR application for the 1980 season be approved (Document 13). He also recommended that the Métis families, and the local residents be allowed to harvest their requirements through the application of a licence, and that these two parties "be given first opportunity to outline the area of their choice for picking" (Document 13:5). He indicated that the company should be granted the areas not designated for private use. Mr Buchan found that Harold Perry was the only testimony of 'valid private consumption', but that his interests were served by the proposed recommendation. He found that the moratorium had no basis in this matter, and that the 40% commercially harvested vs. 60% remaining yield, presented by the specialists for LWR, provided plenty for natural seeding, and for other users. Mr. Buchan commended the local MNR staff for their behaviour in co-operating with all of parties involved. He noted that it was time policy was developed for such cases, and that while the question of Indian rights to wild rice had not been documented, neither has it been refuted. He indicated that these rights should be established 'once and for all' (Document 13:6).

After consideration of the report, the Deputy Minister, Dr. Reynolds, still chose to deny a harvesting license to LWR for 1980. This decision, dated Aug. 15, 1980, was based on two points: 1) 5 year moratorium on additional licences; and 2) this

would constitute an additional licence. He also noted that the WRHA 1970 made provision for appeals (Document 14). The Deputy Minister's decision made it possible for the community to harvest the 1980 crop, although Harold Perry and other community members were now required to apply for a harvesting licence. Despite complaints from LWR that the rice was going to waste, a Nov. 7, 1980 letter from Deputy Minister Reynolds to Mr. McLean, stated that as a license had been issued to the Alderville status 'Indians' who harvested approx. 700 lbs, and as Mr. Perry harvested as well, the rice was not 'entirely wasted' (Document 14).

Clearly, two sets of events were taking place. At one level, discussions were proceeding regarding MNR/LWR co-operation in developing a wild rice industry, while at other levels MNR discussions were prompting a decision not to move forward with licensing Mud Lake. Either these reflect inconsistencies within the Ministry, or they represent an ongoing attempt to diffuse conflict, and mollify the various parties. Following this apparent resolution, events propelled the conflict forward.

Challenge for Access (September 1980 - July 1981)

This period began a process of manoeuvring by LWR for the upper hand - drawing on political power to gain access to the wild rice at Mud Lake. Ministry staff (under the signature of James Auld) corresponded with parties in the dispute, stating the Ministry's position on the Mud Lake. In a *Tweed News* editorial, Earl McEwen, reported that these letters stated no licence would be issued until 1983 due of the moratorium (Dec 2, 1981). However, a series of letters between James Auld and LWR influenced this position.

On September 29, 1980 Doug Wiseman asked for a ministerial order of the MNR to grant a licence to harvest the Mud Lake wild rice to LWR. He addressed a number of reasons why this should take place, including that the community (Métis and other) could harvest their needs through a personal use harvesting license, that LWR has received \$40,000 to improve harvesting in south-western Ontario and want to establish a plant for processing in the region, and because traditional harvesting methods were insufficient in harvesting the wild rice, allowing for a significant waste of the resource. In support of this statement Wiseman stated that Mr. Richardson and his partner had flown “over the area and paddled through most of the area and observed that forty-fifty per cent of the rice was ‘floating in the water’ and hadn’t been harvested by anyone”³ (Document 15, Sept. 29, 1980).

In response, a meeting was held on Nov. 27, 1980 between Mr. Auld, Mr. Wiseman, and Mr. Richardson of LWR, and several MNR staff members (Bill Foster, Ted Richardson, Rod Stanfield), leading to a revision of the Deputy Ministers decision citing the recommendations of the Buchan Report as justification (Document 16, Sept, 1981). As noted in Earl McEwen’s article in the *Tweed News*, the local Aboriginal and non-aboriginal community were not notified of this meeting, nor were they notified of the change after the fact (Dec. 2, 1981). Shortly after this November 1981 meeting, James Auld retired from the Ministry for health reasons, and was replaced by Alan Pope (*Globe and Mail*, Jan. 28, 1981). Mr. Pope was the Minister of the MNR for the remainder of the conflict period.

³ Note: Wild rice does not float due to its unique physiognomy. For a discussion of the nature of wild rice see chapter 3, especially p.33-34.

Interestingly, the possible lack of communication within different departments of the Ministry exhibited in the earlier documents is reinforced at this point. A May 6, 1981 memo to a Mr. Dixon (Assistant Deputy Minister, Southern Ontario) from J.R. Oatway outlines several options for dealing with the Mud Lake issue: 1) reverse the Deputy Minister's decision and grant a licence to LWR; 2) refuse to licence LWR based on the moratorium with the understanding that a licence would be granted to them after moratorium is over; and 3) divide Mud Lake into harvest areas or harvest dates for multiple users. Recommendation 2 is the one supported in this memo stating "the local and not so local Indian bands have indicated that they intend to exercise their rights to harvest the Mud Lake rice in 1981. While I doubt if this will be the case, any move to licence the lake to Lanark Wild Rice will give them further cause to claim rights to all wild rice beds" (Document 17). This was followed by a June 29, 1981 letter thanking Oatway for these options but notifying him of the new decision based on Sept. 29, 1980 meeting (Document 18). The fact that news of the change of status in regards to the issuance of licence took six months to filter from the senior levels of the Ministry is significant. It was not until July 1981 that a memo was sent to Oatway indicating that he was to issue a licence if LWR applied for one - possibly delaying the harvest date until after the time frame for local use permits (Document 16). As a result, the local residents were not informed of the change until the harvest season was approaching.

Community Resistance (August 1981 - October 1981)

When Harold Perry went to collect his harvesting licence for the 1981 season he discovered that the lake had been zoned, and that a commercial license would be issued to LWR for a portion of the harvest area. He had not been made aware of the

new situation until that time (Document 3, Sept 3, 1981). A Sept. 8, 1981 *Globe and Mail* editorial states that the local MNR knew that the ‘shit would fly’ when the community heard the news. Tweed (MNR) representatives told the local people that it was ‘a political decision’. That decision, Liberal MPP McEwen suggested, was in favour of conservative Doug Wiseman who supported the LWR development (*KWS* Aug 24, 1981). The result was a division of the lake into three zones: one for the Métis, one for other users, and one for commercial harvesting.

Initially, Harold Perry refused to pick up his harvesting licence for the portion of the lake allocated for his use. However, he changed his mind, and did so with the inclusion of a letter of protest (Document 19, Aug 18, 1981). In a letter to Mr. Vonk, Perry stated that he was obtaining a wild rice harvesting licence under protest. He reiterated the history of cultivation by his family and the shared use of the rice with Indians of Alderville, and with non-aboriginal neighbours of Ardoch. He also strongly protested the zoning of Mud Lake for harvesting which “will destroy the spirit of wilful sharing” that had been previously practised. He states,

I will receive my licence under protest and inform you that I intend to use whatever legal means possible to change these policies. I want you to be warned that political, public and legal means will be brought to bare on your Ministry as well as the current government in order that our heritage and rights are protected on Mud Lake (Document 19, Aug 18, 1981).

Community resistance then moved in to high gear drawing support from a great many sources. Over the subsequent month, public awareness was encouraged through the media (i.e. UOI, Press Release: Aug. 7, 1981 - Document 20). In addition, the MNR received numerous letters challenging their decision to issue a permit for Mud Lake (Document note 21). Letters were received from the two regional Townships (Clarendon and Miller, and Palmerston, North and South Canoto), and from the Mississippi Valley Conservation Authority. In addition,

letters supporting the local community, and challenging the MNR's decision were received from Earl McEwen, and Floyd Laughren (MPP Nickel Belt), the Kingston Industry and Tourism Committee endorsed by Kingston City Council, as well as numerous individual citizens⁴. Support was also expressed from Aboriginal Organizations. Letters were received from Grand Council Treaty 3, the Union of Ontario Indians (UOI), and the Chiefs of Ontario.

Despite this public response, LWR was issued a licence on August 19, 1981 to harvest an allocated portion of the wild rice on Mud Lake. The following day, the community erected tents, with a 24-hour watch posted to watch for the harvester (*Ottawa Citizen*, Aug 21, 1981:3, 16). Protest letters were sent to MNR, and the community issued a press release (Document 22, Aug 20, 1981). This press release clearly states that the community is at odds with the policies of the MNR, and are present to "resist any attempt to launch a commercial harvesting vessel" (Document 22:1). They indicate that they will undertake a 24-hour patrol of the site, and will "return in mass to non-violently impede its operation" (Document 22:1).

The document was clearly intended to provide as much material as possible to inform the media, and public of their views. It included a brief history of the Ardoch *Manomin*, and of the developing conflict. A section explaining the community's position, and the points of their argument supporting that position led into a direct statement of their intentions to resist the MNR and the commercial harvester:

In order to resist this 'taking' we will use legal, political, and civil disobedience to accomplish our resolve. Henceforth, until the harvest is over, we will join with our Indian friends in patrolling the lake and confronting any attempt to harvest rice for commercial purposes.

⁴ The names of private citizens in the MNR archived files were not released due to privacy legislation.

Finally, the document included the community submission to the July 24, 1980 hearing, and the letter submitted by Harold Perry with his licence permit in order to show the passion, and strength of their conviction.

At the Provincial level, a special meeting of the Indian Commission of Ontario (ICO) was called on August 21, 1981 at the request of the UOI to discuss the Mud Lake situation (Document 23). Representatives attended on behalf of the ICO, the Federal Government, the UOI, and Mr. Oatway representing Ontario. The meeting notes are terse, and to the point. Mr. Madahbee (President, UOI) spoke regarding the history of the Mud Lake situation, detailing the concerns of the Aboriginal peoples: that the license was issued contrary to the moratorium; the license was granted without consultation with the community; that “Indian people feel that it is their right to harvest wild rice”; that the crop is insufficient to address the needs of local people much less a commercial enterprise; that mechanical harvesters jeopardize the viability of the crop taking too much for reseeding causing the need for reseeding by Harold Perry; and that the local economy is dependent on the tourism trade which itself is supported by *Manomin*.

On behalf of OMNR, Mr. Oatway countered this presentation: he explained the development of the Mud Lake situation, detailing the history of LWR; the 1979 letter of permit in response to the Dam proposal; the hearing under the *WRHA* and subsequent decision to deny a licence; and the ministerial decision by James Auld to over-rule that decision. He indicated that the granting of the licence was consistent with OMNR policy of developing resources “to the fullest extent for the benefit of all Citizens in Ontario” (Document 23:4). He noted that licences had been issued to Harold Perry and other Bands who have applied for 60% of the crop, and that he

hoped this would provide for more effective use of the crop than had been the case in the past.

The parties agreed that there was a difference of opinion regarding the applicability of the moratorium to this situation. Mr. Madahbee expressed his concerns over the potentially explosive situation created by MNR's decision, while Mr. Oatway indicated that the licence would remain in effect. The parties agreed that there was little that could be done regarding the likely conflict because the positions of the two sides were so opposed. Mr. Oatway declared that he would bring this discussion to the attention of Mr. Pope later that day, while Mr. Madahbee declared that he would pursue the matter in more detail with Alan Pope himself (Document 23).

An August 21, 1981 status report on the Mud Lake conflict found in the MNR files detailed the situation from the Tweed district staff (Document 24). It noted that the Tweed district staff had divided Mud Lake into two harvesting zones - one for commercial harvesting, and one for local and Indian use. It also noted that the district staff had applications from LWR, the Alderville, Tyendinaga, and Golden Lake bands, and nine applications for personal use from local residents. LWR was issued a licence on Aug 19, 1981 to be harvested the week of Aug 24, 1981. Protest demonstrations were expected, and it was noted that the local residents of Ardoch were very upset with the commercial harvest. Harold Perry had gone on record as saying that there would be a confrontation if the harvester were brought to the area. The District staff noted that LWR would advise the MNR before moving to harvest (Document 24).

Letters of support for the community continued to be sent, in an effort to halt the inevitable conflict. Earl McEwen in an interview with the *Kingston Whig*

Standard (KWS), criticized Alan Pope for his disregard for the moratorium and local sentiment, and for failing to be available to discuss the matter with Mr. McEwen himself (*KWS*, Aug. 24, 1981).

While political efforts continued, the Ardoch community was a site of growing tension, the details of which can only be found in newspaper reportage, and letters written after the fact by individuals present at the time. Tents, and a 24-hour watch were put in place on Aug. 20 (*Ottawa Citizen*, Aug. 21, 1981). On Aug. 24 and 25th Mr. Zarecki toured the area to evaluate the crop but was intimidated by the presence of protestors (*Ottawa Citizen*, Aug 28, 1981). He was able to assess the readiness of the crop on Aug. 25, with the assistance of an OPP cruiser (*Ottawa Citizen*, Aug 31 1981:1). Harvesting by Aboriginal people from Alderville was initiated but was halted because the crop was as yet too green (*Ottawa Citizen*, Aug 31, 1981). On Aug. 28 protestors erected log barricades at the access points to Mud Lake (*Ottawa Citizen*, Aug 28, 1981).

A first attempt to approach the lake with the mechanical harvester, accompanied by two OPP cruisers, turned back on Aug 29 due to fears of conflict. Local residents blocked the access with their cars, and intimidated Mr. Zarecki, and Mr. Richardson by taking photographs (*Ottawa Citizen*, Aug 31, 1981; *KWS*, Aug 31, 1981).

Stand off (30 August 1981)

On Aug 30, the standoff that had been expected occurred, and was quickly nicknamed 'the rice wars' by the media. Much to the shock of those involved, Mr. Zarecki, and Mr. Richardson arrived with the mechanical harvester accompanied by a large force of OPP officers, and MNR staff (*Ottawa Citizen*, Aug 31). Early Sunday morning, the OPP erected roadblocks that prevented access to Whispering Pines Road

that runs the length of Mud Lake (see figure 12). It was necessary to find an alternative access point to allow the mechanical harvester to be put into the water because of the log blockades. It was thought that the Whispering Pines road allowance might reach the water's edge at its narrowest point, which would allow the harvester access. The Ministry blockades restricted access to the lake, including media access, and resident movement to and from their homes. This action angered the local community who felt that their wishes were to be brushed aside, with force if necessary (*Ottawa Citizen*, Aug 31 1981).

In response, residents took to the water in boats and canoes to protect the rice causing considerable concern for their safety (*Ottawa Citizen*, Aug 31; *KWS*, Aug 31, 1981). After the OPP located the narrowest point, the residents who were present insisted that the distance between the road and the water be measured. It turned out that the distance exceeded the road allowance by less than a meter (*Ottawa Citizen*, Aug 31 1981; *KWS*, Aug 31, 1981). The resident landowners of that stretch of property refused the harvester permission to cross their private property. When it was clear that there was no legal means to gain access to the river the OPP withdrew. LWR gave up around 2:30 pm (*Ottawa Citizen*, Aug 31, 1981; *KWS*, Aug 31, 1981).

The number of officers present, as well as their behaviour, caused a significant amount of discussion in the Newspaper coverage of the event (*Ottawa Citizen*, Aug 31, 1981; *KWS*, Aug 31, 1981; *Perth Courier*, Sept 2, 1981; *Globe and Mail*, Sept 2, 1981). The *Perth Courier* sighted local criticism that the 'show of strength' was 'unnecessary intimidation' (Sept 2, 1981:1, 25). Their presence also initiated several letters of protest to Mr Pope, and Mr. Davis (Premier of Ontario). A telex by Robert Lovelace (Sharbot Lake Ontario Community Legal Worker, North Frontenac Community Services) to Premier Bill Davis stated:

27 police cruisers, helicopter, 7 MNR boats and vehicles. People injured. Property trespassed on in Ardoch Ontario. Bureaucratic blunder. Obviously Allen Pope has not understood the complete situation here. Please address yourself to this matter (Document 25:Aug 31, 1981)

It was argued that the 'military force' was inconsistent with the scale of the non-violent protest. Local area MP Bill Vankoughnett stated, "the exercise bore little comparison to the value of the crop" (KWS, Aug 31, 1981:13). He indicated that the licence had been granted for a fee of \$1.00.

While no one was injured, OPP police cruisers passing the blockades aggressively pushed their way through the crowd of residents present at the roadblocks. Two residents were detained in a 'paddy wagon' for the duration of the blockade but were later released. Duke Redbird, representing the OMNSIA, suggested that the response was so extreme that it was possible the action was a test case for the larger issue of native rights (KWS, Aug 31, 1981).

In response, the OPP justified their action by stating that it was their job to defend the peace. They stated that, considering the numbers present at the site, a strong force was needed to ensure that violence did not result, and that public and private property were protected (*Ottawa Citizen*, Aug 31, 1981). When interviewed, OPP officials doubted that the same force would be provided a second day. Mr. Perry, on the other hand, was not convinced that the struggle was over. He said "I think it's going to be the whole thing again tomorrow. There's going to be a fight all the way until the rice is over" (*Ottawa Citizen*, Aug. 31, 1981:5).

With no way to gain access to the lake, LWR had no means of collecting the rice granted through the harvesting licence for the 1981 season. In response to the standoff, Alan Pope met with a group of residents and native groups in Toronto, on September 3, 1981 (Document 3). At this meeting the community again presented

their case. First, Barbara Sproule (Reeve, Palmerston, North and South Canonto) spoke regarding the history of the rice and the link the rice had to the local wild-life. She spoke of the relationship this had with the tourist trade, stating its importance to the economy of the economically depressed area. She stated that residents were fearful that the impact of commercial harvesting would be devastating to the local economy. She stated clearly that the community is not interested in the commercial development of the rice bed, but that their wish was for it to remain as it had been.

Harold Perry once again detailed the relationship his family had with the rice, the planting of the rice and tending of the beds, and the responsibility he felt to his daughter, and to his ancestors to protect the rice. He stated unequivocally that the commercial development of the rice bed was against the will of the people. He chastised the MNR for not consulting with the community beforehand. He stated, “I am against this zoning by-law. I helped plant this rice, cultivated it, so I feel I am in a position to harvest it” ... and further “I am in a position where I am responsible to my ancestors and to my daughter. They put their trust in me and I don’t want to let them down” (Document 3:1).

Robert Lovelace then detailed the development of the situation, how they had not been notified of the change of decision, and that the community had decided, “to guard the lake and stop trespassers and commercial harvesters from entering” (Document 3:2). The group presented their position that since a licence had been issued, the community was willing to share, but only on the basis that LWR harvest in a canoe, using the traditional method, and that no commercial harvesting should be permitted after 1981 (Document 3). They also informed Alan Pope of their interest in forming an umbrella organization of Aboriginal, Métis, and non-aboriginal residents to manage the *Manomin* at Mud Lake. They were adamant that they did not want to

have a confrontation with LWR. It was their understanding that LWR would try to harvest the following day. After much discussion, Mr. Pope stated that he would provide an answer on the following day.

The resident group was cautiously optimistic following the meeting. However, when the written response from MNR was received it did not indicate the consensus that the community had thought had been reached (Document 26, Sept 16, 1981). Rather, Mr. Pope reiterated that the province had the responsibility to develop wild rice for the benefit of all of the Citizens of Ontario, stating he was responsible to obtain the maximum economic benefit, and to guarantee a rational and responsible system to ensure a sustained yield. He stated that he could not interfere with a licence once it had been issued. He commented on the idea of an umbrella organization, suggesting that it “will create jobs and economic opportunities for the people in the area, this would appear to fall within all our priorities” (Document 26, Sept 16, 1981). He indicated that he would order a hearing on the matter in the fall.

After consideration of Mr. Pope’s response, Bob Lovelace, on behalf of the local community, sent a letter to Alan Pope indicating that his September 4 telex was not acceptable to the community (Document 27, September 25, 1981). He stated, “commercial harvesting of wild rice is not the only option for obtaining maximum economic benefit to our area” (Document 27:1). He drew attention to Mr. Pope’s failure to consider fully the statements made surrounding the established Moratorium. He noted that the telex “did not reflect our representation of Mr. Perry’s indigenous rights to the wild rice on Mud Lake” (Document 27:2). He also indicated the community’s desire to participate in the upcoming hearing.

The community decided to move forward with the formation and incorporation of a community group called the *Indian, Metis, and Settlers Wild Rice Association*

(IMSet). This organization was to have equal representation by three distinct cells representing the three major players, ‘status Mississauga’, Métis and ‘non-status Indian’, and non-aboriginal residents each with their own philosophy and mandate (Document 28, September 29). On October 7, 1981 they issued a press release (Document 29) giving notice of the incorporation of IMSet for the purpose of protecting the rice from commercial harvesting, co-ordinating an extensive domestic harvest, exploring the possibilities of using the resource more effectively, and to generally increase awareness of the cultural aspects of *Manomin* harvesting. Their first task was to prepare for the upcoming fall hearing.

The second hearing under the *WRHA* represents the final episode in the chronology of the Mud Lake dispute. It marked the organization and aggressive forward movement of the local community under the title of IMSET. This position significantly impacted the final resolution of the dispute. From this point on, the community took an aggressive position, refusing to allow MNR an unchallenged position of authority over the *Manomin* at Mud Lake. Here the dispute is no longer between the community, and LWR. Rather, LWR fades in significance as the vehicle through which the dispute has transpired. Rather, the dispute is recognized as being fundamentally based in MNR policy.

Second Hearing (30 November – 1 December 1981)

The Second Hearing took place on November 30, and December 1, 1981 (Document 2). The two-day event contained a triad of representation. Wynn Vonk representing the Ministry’s interests had an inconsequential presence, for the most part, providing only minimal input into the basic mandate and policies of the

Ministry. LWR was represented by Cliff Zarecki, and was supported by Dr. Punter from the University of Manitoba. Finally, Robert Lovelace was the legal counsel for IMSet, and was the orchestrator of the local argument put before the Commissioner. He was assisted by a large number of local residents, and other support persons. Mr. Lovelace introduced each person speaking on behalf of the local community, and was the primary representative for this group in asking questions of those making statement on behalf of the local community, or of those presenting on behalf of LWR. The Commissioner, seeking to maintain an informal structure, and to glean as much insight as possible into the best method of managing the wild rice at Mud Lake in the future, permitted questions from the floor at frequent intervals.

While all of the ‘community’ presentations came out in support of the local position to protect local interests on Mud Lake, there was no simple binary division in the presentations put forward. Some parties fundamentally opposed MNR authority over the Mud Lake *Manomin*, and in contrast supported Aboriginal rights to its management and use. In contrast, some presenters did not explicitly oppose MNR authority, but expressed a concern regarding the stability of the local ecology, and the continuity of the local economy with its significant reliance on the hunting and fishing sectors. I have attempted to illustrate these divisions where possible.

Lanark Wild Rice

The LWR position was presented by Cliff Zarecki and Dr. Punter. There were two aspects of this position. Firstly, Mr. Zarecki (Document 2) countered statements made in the press that suggested that LWR was a big business seeking to make a profit off of the backs of local residents. He stated that he and Mr. Richardson were ‘just two guys’ trying to make a living. He also reiterated his desire to work co-

operatively with local residents in developing the wild rice industry in the region, suggesting that there was the potential to eventually employ 30-40 families. He also challenged the notion presented in the press that mechanical harvesters are damaging to the crop. He stated that they have been used since 1917 and believed it to be “a proven fact that wild rice harvesting have never destroyed a wild rice stand” (Document 2:11). Furthermore, he challenged the notion that mechanical harvesters strip rice beds of all available rice. He countered that in a good year they are able to harvest up to 17% of the available rice, leaving plenty for other users, for reseeding, and for wildlife, contrasting significantly with the 40% suggested at the first hearing. He noted that there was great potential for seeding new beds in the region that would increase the available rice considerably. Finally he stated that if MNR choose to support the local community, that LWR would continue to be seen as the villain they were portrayed as in the press. He suggested that no matter what their past record, they would have problems in other lakes because of the bad publicity they had received.

Dr. Punter made the second part of the LWR presentation (Document 2). He presented information compiled and prepared by a graduate student under his supervision. This work surveyed the rice on Mud Lake. They made an estimate of the available rice as well as the efficiency of mechanical harvesters. One aspect of the presentation was that the rice bed was in need of proper management techniques because it was not producing to maximum potential. The research suggested that some portions of the lake were so dense with rice that it impeded the overall development of each plant. His recommendation was that a proper management plan for the rice would include thinning these dense patches for maximum efficiency. The research also suggested that too much biomass was accumulating on the lakebed

causing a stultifying effect, which would be reduced by a more efficient method of harvesting. Dr. Punter spoke about an ARDA grant received by LWR, and Dr. Punter in order to do scientific research into the potential to increase wild rice production in the area. In the end, the presentation suggested that the LWR/Dr. Punter team had the scientific expertise to be the best managers of the Mud Lake wild rice crop.

Ministry of Natural Resources

Wynn Vonk briefly answered questions on behalf of the Ministry (Document 2). He stated the Ministry's mandate "to manage natural resources for all the Citizens of Ontario" (Document 2:244). When asked if MNR had a policy to get the maximum sustainable yield he stated that there was no such blanket policy. He indicated that each resource was unique and was also dependent on "how the politicians interpret the benefits for the people of Ontario" (Document 2:244). The MNR did not submit a brief to the Commissioner leading the hearing. Mr. Vonk indicated that while the Ministry had no specific plans, they would do all they could to avoid further confrontation over the wild rice at Mud Lake.

Local Interests

The local argument included presentations by political figures (i.e. the local representatives to the provincial and federal parliaments), members of the three cells of IMSet (status Mississauga, Métis and 'non-status Indian' peoples, and the local non-aboriginal population), the Mississippi Valley Conservation Authority, and the Association of Anglers and Hunters. Also addressing the hearing were the Reeves of the townships of Clarendon and Miller, and Palmerston, North and South Canonto. Harold Perry was present in the company of his lawyer, Mr. Dewhurst. There were also a number of people from the Mississauga reserve communities. Also in

attendance was Chief Earl Hill (Chief, Tyendinaga Reserve), and Alan Roy (UOI). Finally, the local community was supported by a number of specialists including Dr. Bristow, an aquatic plant specialist in the Biology department, Queen's University, Dr. Lauren Snider, Department of Sociology, Queen's University, and Dr. Isabelle Bailey, a wetlands specialist in the Department of Biology, Carleton University.

Local Interests (Non-Aboriginal Residents)

The Association of Anglers and Hunters commented through Mr. Odette (Document 2). While they did not dispute MNR's mandate to manage resources within the province, they did have a concern that community and waterfowl needs be considered prior to any commercial needs. They were not averse to commercial harvesting in principle, but suggested that new beds be seeded for the purpose so that there were no grounds for contention. They further supported that the local peoples' use should come first, then the wildlife, and then could be harvested commercially if enough rice remained to support such a venture.

Winton Roberts, a resident of Palmerston Township submitted and gave a summation of a letter on behalf of the Mississippi Valley Conservation Authority (Document 2). The Conservation Authority reported that they had been involved in a great deal of conservation work over the years, including seeding of the *Manomin* beds. They indicated that they believed the rice on Mud Lake should be used for traditional and domestic use only, and that they were against a commercial harvest of this site. They also stated that they would help IMSet to manage the rice bed if MNR granted them (IMSet) sole harvesting rights.

Reeves of the local townships, along with Mr. McEwen, Mr. Gorham (Conservative Candidate), and Mr. VanKoughnet (MP) addressed their concerns as

political representatives for the local people. Mr. McEwen (Document 2) addressed the fact that a commercial licence had been issued without any form of local consultation. He detailed that letters under Mr. Pope's signature had been sent to local residents stating that no licence would be issued until 1983, and yet a licence had indeed been issued. He was also deeply concerned about the high cost of the consultation process, and the cost of personnel and resources during the standoff, in comparison to the \$1.00 license fee. He suggested that moderate sales to local residents were a viable option. However, he was adamant that the rice, planted by the Perry family, and nurtured for generations, should be left to them. He was not entirely against commercial harvesting but suggested that those wishing to harvest should seed new sites under the direction of MNR for their own use so that they do not interfere with existing use.

Mr. VanKoughnet said that he had pursued the matter with the Department of Indian Affairs but noted that they did not have jurisdiction because Ardoch was not a treaty area. He was surprised that a new licence was issued when the first hearing had seemed to resolve the dispute. He expressed his shame at the tactics that had been used against the community during the standoff, when they had resorted to action only because they were without power to influence the situation otherwise. His position was that the rice should be left for the local people since they had themselves successfully planted and nurtured the crop for many years. He did not feel that this point should be ignored (Document 2). Mr. Gorham reiterated that the Perry family had already managed the *Manomin* on Mud Lake for 100 years and had proven themselves capable of maintaining the resource. Furthermore, he stated that he did not want to see the rice destroyed. Since Mr Perry had a proven track record of

maintaining the rice crop year after year that he should continue to manage it, especially since he had the greatest interest in its survival (Document 2).

Bill Flieler spoke about the good relationship the community had had with the MNR, and the history of consultation that had been part of that history over time. He then spoke of a shift in policy with the closing of the Ranger Station in the area. Since then, he reported that there had been no consultation with the community, and that new restrictions and policies continued to be implemented and then fought by the community, the rice conflict merely being the most recent case (Document 2). He also addressed that this was not only an issue of consultation and local interest, but also an issue of Aboriginal Right. He stated, “this rice was established by the Indians, it has been cared for over the years by the Indians, and it’s my opinion that their rights should be recognized in this case” (Document 2:120). He stated that he believed IMSet would protect and provide for the rights of the Aboriginal users and that they should be given authority over the *Manomin* on Mud Lake.

Barbara Sproule echoed the sentiments of Mr. Flieler. She indicated that the local communities had contributed to many conservation initiatives over the years. She stated her displeasure that the same cooperation was not extended by MNR when it was the local community that was interested in the conservation and protection of a resource (Document 2).

Local Interests ('Status Indian' Representatives)

There were also a number of people from the Mississauga reserve communities who came to present. These included Chief Glen Marsden, John Crowe, and Mel Smoke from Alderville, his son Randy Smoke a resident of Gores Landing, and Murray Whetung from Curve Lake. These participants provided confirmation of Mr.

Perry's historical accounts of long-term status Mississauga harvesting at the site, that Mr. Perry would invite them to come to harvest when the crop was near ripe, or tell them if it needed to rest. They emphasized the cultural importance of the *Manomin* harvest to the Mississauga people, and the importance of this site due to the destruction of the rice at Rice Lake, and the absence of other secure and accessible sites to harvest. Chief Glen Marsden stated that he believed the rice at Mud Lake should be reserved for traditional use only. John Crow discussed Aboriginal cultural values in relation to *Manomin* (Document 2). He spoke emphatically about rice as a gift from the Creator that was not to be sold. Melvin Smoke added that many used to harvest another site at Calabogie but that once LWR began harvesting there it was no longer worth their effort because Mr. Richardson harvested before the Mississauga felt the rice was ready. By the time they did harvest, there was almost no rice remaining on the stalks (Document 2). They all reported on the Perry family as stewards and managers of the rice, and their ongoing efforts to maintain a healthy and abundant crop. They also declared their belief that harvesting should be reserved for the local people who took care of it, and "their invited guest – the Indian" (Document 2:194). In addition to the Mississauga contributions, Chief Earl Hill commented on his community's efforts to get *Manomin* established on their reserve. He proposed that his community would like to use seed from Mud Lake in their efforts (Document 2).

Alan Roy, a wildlife biologist with the UOI spoke at length of the historical relationship between the Mississauga people and *Manomin* (Document 2). He stated that *Manomin* was seen a gift of the creator, and the elders would not allow it to be purchased. He detailed the cultural protocol involved in the rice harvest including the offering of tobacco, and the role of the elders. He said that even seed could not be

purchased and must be arranged only through elders in a deeply respectful and ceremonial exchange. Mr. Roy spoke of the loss of the rice harvest as a critical loss for the people, and that any opportunity to provide for the rejuvenation of the practice would benefit Aboriginal communities. Several elders and communities had spoken of the desire to re-establish the tradition, especially as a teaching event for children, and as a cultural tradition.

Mr. Roy also addressed the issue of interconnectedness between all life, and the need for the people to be reconnected with their heritage and their environment. He stated that the elders had been instructing for some time that the rice harvest was a means of tying the people to the land and urging people to get involved in the rice harvest. Mr. Roy reported that, through his work with the UOI he had done a survey of potential sites for *Manomin* and had provided communities with information about the presence of *Manomin*, especially at Mud Lake where there was a positive social system in place. He proposed the development of a cultural training initiative that would provide a much needed cultural revitalization. He also proposed the harvesting of rice for seed purposes, which would then be provided to seed new rice beds for Aboriginal Communities, as well as for commercial harvesting.

Local Interests (Technical Support)

The community, in addition to the ample support provided by its members, sought and received assistance from a number of specialists from Queen's and Carlton Universities in order to engage in the technical discussions introduced by LWR and MNR. Dr. Bristow, Dr. Laurreen, and Dr. Isabelle Bailey were present at the hearing to provide expert testimony on *Manomin* and the local community.

Dr. Snider explained that she had worked for some years in the local area and had a feel for the nature of the community. She felt that the *Manomin* had become a symbol of a way of life in the community, that it was bound up with the local identity, and that its value could not be calculated in simply economic terms. She noted that the area had a long history of primary resource jobs and many economic losses as railroads were shut down, mines closed, forestry enterprises phased out. The Perry family had always shared the rice with those in need, and it had contributed to the survival of many in the area, especially during the depression years. This history, she said, has become a part of the collective identity and that its loss would be devastating. This fact was proven by the degree of cooperation and community building that had taken place in the wake of the crisis. When questioned about the fact that status Indians were not local, and travelled some distance to harvest at Mud Lake, she responded that they were part of a long history of harvesting at this site, and were bound together with the local Aboriginal residents through marriage. She stated that at rice time they were indeed seen as part of the local community by people in the region. She noted that this relationship was far more important than the economic value that could be gained from the commercial exploitation of the crop (Document 2).

Dr. Bristol spoke at length regarding the difficulty of accurately estimating the amount of wild rice available, and the need for care in determining appropriate quantities for harvest. He discussed several studies, which had been performed, first the Side Dam Rapids report and then the report submitted by Dr. Punter. He also noted his own study of the rice bed. He stated that the best anyone could do is hazard an educated guess regarding the potential harvest. This presentation suggested that there was a danger of overestimating the potential yield and therefore exceeding a

reasonable harvest allowance. He also noted the discrepancies between different presentations regarding the success rates of mechanical harvesters. Some reports indicate a 15% take while others indicate a 40% rate of retrieval. He noted that without a clear idea of what was present it was impossible to successfully determine the percentage of rice harvested. He also noted that it was entirely likely that mechanical harvester design would improve over time making the discussion irrelevant in the long-term (Document 2).

Dr. Bailey presented on the nature of the wild rice plant (Document 2). She discussed the interrelationship between wild rice and other species, fish, wildfowl, and other aquatic plants. Her position was that thinning of wild rice had been implemented in paddy rice situations, and that techniques useful in such protected and artificial sites were not necessarily transferable to plants in a natural setting. She countered Dr. Punter's recommendations by reporting that wild rice had its own form of chemical warfare that discouraged other plants from taking root but that it was only successful when the density was sufficient. She also noted that what you reap you do not sow, implying that the more rice is harvested, the fewer guarantees there are of a sustainable crop for the future. She clearly stated that green seed does not germinate, and that if green seed is dislodged through the harvesting process that it becomes lost as anything but food for wildfowl. This directly engaged with comments made by Aboriginal harvesters suggesting that the harvester took all but the greenest of rice from the stalk, leaving nothing for other users. Her presentation also indicated that because of the variability normally present in rice beds, commercial operators need multiple sites in order to guarantee a consistent supply of rice while domestic users could make allowances for a reduced yield by harvesting less rice.

Local Interests (Non-Status Indian/Métis Representatives)

Harold Perry gave testimony on the long-term history of the Mud Lake *Manomin* and the relationship between the Mississauga, and Algonquin peoples (Document 2). He also engaged in a discussion regarding his feelings about the *Manomin*, and his belief in his Aboriginal Right to continue to manage and harvest the Mud Lake crop. He stated that he was willing to join an organization like IMSet because it continued to give him a voice in the overall stewardship of the rice, and provided an option to accommodate other interests as well. He was anxious to avoid further conflict and so was willing to make this accommodation.

Mr. Perry detailed what he remembered regarding the health of the *Manomin* over time. He noted that the rice was good to his recollection in the 1930s and 1940s but remembered a significant decrease in the 1950s. There was no verifiable explanation for the decreased crop production. However, Harold testified that at the time, there were green algae on the lake. He also noted that the Hydro people were spraying a defoliant at the time. Mr. Perry stated that he asked the workers at the time what they were using and they said it was 2-4D and 2-45T (what he believed to be Agent Orange). The Hydro lines run roughly parallel to the lake at approximately a one-mile distance. Mr. Perry speculated that runoff was bringing the chemical into the lake through natural means, and that the chemicals may have influenced the aquatic environment. He stated that the 1960s continued to be lean rice years and that only in the 1970s after an aggressive seeding campaign did the rice begin to improve. Mr. Perry testified that the early 1970s, just prior to his father's death, was the first time in several years that they were able to harvest and take any rice home. Prior to that all harvested rice went to reseeded efforts. The crop gradually improved over the 1970s and finally produced a good healthy crop in 1978. The community

cautiously took a harvest that year but was unable to harvest in 1979 because of the commercial harvester. Mr. Perry was concerned about the issue of zoning. He commented that on any particular day a harvester was faced with weather conditions that caused choppy water. This caused a harvester to have to move to areas that were protected in order to get in a days work. Zoning further restricted the area that was harvestable thus making it difficult to avoid thin spots. He felt very strongly about not harvesting in thin areas. He expressed extreme distress that last year he had to harvest in spots he'd have otherwise left alone. He talked at length about his understanding of the *Manomin* crop. He discussed how he understood where it grew, what kind of soils it preferred, and how much to reseed as if it were instinct. He said "I know from years and years that I've been there, where it has grown before and where it will grow again... something that you know, sort of like eating with a knife and fork, you know, it comes to you." (Document 2:240). Finally, Mr. Perry stated that there was no way that he could ever enter into partnership with a commercial operator because their philosophies were too far removed. He said he felt strongly that *Manomin* was there for the people, to get them through hard times as it had in the past. He felt strongly that the rice should not be sold.

Mr. Dewhurst summed up Mr. Perry's position that his ancestors were responsible for planting and cultivating the rice for at least 90 years. Mr. Dewhurst explained that he was of the opinion that, apart from any claims that may result from Aboriginal Rights, he believed that Mr. Perry could also make claim for the *Manomin* based on Common Law, which provides for the rights of long-term users (Document 2:245).

Robert Lovelace on behalf of IMSet made final remarks (Document 2). He proposed an informal contract with MNR whereby IMSet would receive the sole

licence to harvest the Mud Lake site. He also stated that IMSet would be responsible to ensure the management of the resource for a sustainable yield, and to coordinate the domestic harvest. He noted that, if there was a surplus beyond domestic and conservation needs in any given year, IMSet would engage in job creation sighting harvesting, processing and marketing as potential job positions. He also stressed that they would participate with other communities to continue the advancement of cultural traditions, and community well being through training and other community initiatives. He also proposed the collection of surplus rice for a seed-only program in conjunction with any commercial endeavours.

Post-Second Hearing (1982)

Following the hearing, Pamela Purves (MNR, Communications Directorate) sent a brief letter to Alan Pope on December 7, 1981 noting the exceptional attendance at the informal hearing. It also noted that the hearing was “much better represented by those who opposed the Lanark licence than those who found favour with commercial harvesting principles” (Document 30). A report documenting the events of the two days was scheduled for preparation by the end of December, while media and other interested persons were informed to expect a decision by mid-January. The hearing report, dated Dec. 8, 1981 merely provided a summation of the various reports without making a proposal for action on the part of the Minister.

In the period following the second hearing IMSet began to put in place a management structure, and to make plans for the upcoming harvest. On March 1, 1982 Robert Lovelace sent a letter to Mr. Vonk stating that IMSet has begun to plan for the 1982 harvest, and asking to open a line of communication between IMSet and the Tweed office in the likelihood that Alan Pope’s decision was favourable for co-

operation (Document 31). Another letter was sent on April 5, 1982 requesting a decision, which had not yet been received by the community (Document 32).

Finally, a decision was made on the matter, continuing the previous decision of zoning. On April 20, 1982 a press release was issued by MNR stating that the decision was to license 70% of the rice harvest to local users, and to reserve 30% for commercial harvesting (Document 33). It states, “while my Ministry recognizes the need to conserve the wild rice resource of Mud Lake to ensure the supply for uses of both human and wildlife populations, approximately 30% of the rice crop on the lake has been designated for commercial use to ensure the development of a viable local industry”. He continues, “the commercial licence will be awarded by the Ministry to a qualified firm, thus providing a local source of job opportunities”, and “we must support, especially during these difficult economic times, local industries which offer job opportunities. It would be a shame to lose our Ontario wild rice market to out-of-province distributors now on the verge of entering the market. It would be preferable to see our local wild rice industries in a position of being able to seek new markets elsewhere” (Document 33). Local residents interested in harvesting for their domestic needs were encouraged to register with the Ministry and pay their \$1 fee for their yearly harvesting licence to harvest the remaining 70% of the crop. A meeting took place at Ompah on this date where Mr. Pope detailed his proposals for the wild rice in Mud Lake.

It would seem, however, that there was a lack of clarity around the intentions of the MNR because on June 2, 1982, Robert Lovelace sent a letter to Alan Pope stating “It has been almost six weeks since we met with you in Ompah and heard your proposals for the wild rice in Mud Lake. At that time you had indicated that a written statement would follow within a week or two. To date we have received nothing”

(Document 34). In this letter he commented on the approach of the harvest season, and detailed the list of harvest management plans that the community had developed (Document 34). He went on to state the community's intention to work in conjunction with Dr. Bailey, and Dr. Bristow to undertake a management assessment of the crop, establishing a domestic harvest accounting system to provide information to IMSet and MNR. In addition he noted their intent to hire a project manager and several workers to engage in harvesting and curing of the rice for a commercial component of the harvest. Mr. Lovelace also sent a letter to Mr. Vonk (Tweed) MNR to notify him that the community intended to move ahead with their plans despite no reply from Mr. Pope (Document 35: June 15, 1982).

The implication of these letters is that some discussion had been proposed regarding the issuing of the commercial license to IMSet for a commercial venture on the 30% of the harvest area designated for commercial use. There is some indication that this may be the case in a June 18, 1982 letter to Mr. Lovelace from Alan Pope (Document 36). The letter states, "the program of assessment and management that you outline in your letter appears well thought out. I must remind you however, that I would consider that proposal only for the area of the Lake that is licensed for commercial harvesting" (Document 36). He continued that the remaining 70% would be reserved for domestic use. He suggests that a licence would not be necessary for domestic use but that individual users would be required to sign a registry book at the local office and pay a \$1.00 fee for harvesting. He also indicated that harvest quotas would continue to be set by MNR.

The community took exception to the conditions of the Minister's decision, indicating that there had been some ambiguity about the exact nature of the MNR's decision. The decision maintained the absolute authority over the rice crop by MNR,

and did not allow for harvest quotas and decisions to be made by the community. It required individual residents to drive to the Tweed office to register, a 120 km round trip. The decision also completely failed to recognize the community's right to the rice through their generations-long relationship and traditional management practice.

The community's formal response to Mr. Pope was forwarded in a letter dated July 7, 1982. IMSet stated, "the Board of Directors of IMSet rejects the decision of the Honourable Alan Pope which are contained in his correspondence of June 18, 1982 and puts him on notice that IMSet will continue to exercise its indigenous rights and will continue to control the use of wild rice at Mud Lake, Ardoch" (Document 38:1).

This document is an impressive, and authoritative recitation of the community's emotional attachment to the rice, and their absolute refusal to have their rights appropriated by the Province of Ontario. They state their ongoing efforts to struggle within themselves "to prepare compromises which would allow for the meeting of your objectives as well as ours" (Document 37:1). They noted that they had played down the issue of community rights to the rice in order to 'establish peace and co-operation'. They also stated that the OMNR "does not have a legitimate right to the wild rice at Mud Lake and can not arbitrarily declare that it has responsibility and right to determine its use" (Document 37:1). While the letter affirms the community's willingness to meet with MNR to find a solution, they clearly state that the community will engage in their own management program, and that they would continue to "passively resist any force which attempts to diminish our members rights to peacefully harvest wild rice on any part of Mud Lake" (Document 37:2). Finally, they state "IMSet is dedicated to a strengthened union between native and rural people to ensure that the rights to this particular resource and the accompanying

cultural values and traditions will not be surrendered” (Document 37:2). IMSet issued a press release on July 12, once again providing a clear statement of their position and 3 letters to provide background information to the media (Document 38).

Resolution and Implications

A number of internal letters by various staff of the MNR to Mr. Pope were present in the MNR files drawing his attention to newspaper coverage of the most recent Ardoch developments. Finally, a meeting was called between IMSet and Mr. Pope for Aug. 20, 1982 in Kingston. The details of the meeting, and the resolution achieved are reported in letters exchanged between Mr. Lovelace and Mr. Pope on August 25, 1982 (Document 39), and September 3, 1982 (Document 40).

The first letter from Mr. Lovelace states that the community would co-operate by applying for licence and providing a list of harvesters and other information if the Ministry would acknowledge the unresolved jurisdictional dispute, and accept that by applying for or receiving a licence it did not waive or discredit those concerns (Document 39). Mr. Pope’s response was to send a letter acknowledging this agreement, stating, “I am issuing this licence, recognizing that there are unsettled disputes concerning Indian rights, Constitutional rights and jurisdiction. It is agreed that neither the application for the licence nor the issuance of the licence will jeopardize our respective positions in the ultimate resolution of these disputes” (Document 40).

At the beginning of the dispute, the struggle seemed to be about access to the resource. However, the root of this perspective was authority. The conflict began with strong emotion expressed against the audacity of the MNR to give the rice to a commercial operator, and without consultation with the local people. As the conflict

evolved, however, the terminology of the dispute shifted heavily towards a dialogue of limits, scientific management, economic development, and Ministry control. This was a period where community legitimacy came under heavy attack. Community efforts centred on ways to co-operate with MNR in order to avoid conflict, and to ensure continuing access and decision making involvement over the wild rice. However, the MNR remained firm in their belief of the absolute authority of the province to govern resources based on their legislated role, and on their technical and scientific expertise.

In April 1982, the community made what it saw as a significant concession to the Ministry involving limited commercial harvesting for seed only, on 30% of the lake, if the commercial licence was granted to IMSet, and the remainder of the lake was reserved for local access and control. This concession indicates that the community is more concerned with preservation and local control than in domestic vs. commercial uses – although the ‘for seed only’ stipulation did impose a social value upon the commercial harvest. However, in 1982, when the MNR refused to grant any concession beyond access to the community, the local community withdrew all concessions, and took an absolute stand regarding Aboriginal, and community authority over the Mud Lake *Manomin* crop.

The resulting agreement ended the four-year dispute with a resolution that provided for the critical positions of MNR and the community to be protected, while providing no clear winner. Rather, the resolution was a stalemate in which neither party could win absolutely. However, considering the considerable power of the MNR relative to this local community, this outcome is in reality a resounding win for the people of Ardoch. While MNR was able to maintain their legal authority over the wild rice on Mud Lake through the community’s agreement to apply for a licence to

harvest, the community's functional authority was maintained by MNR withdrawing from their involvement in the management and harvesting decisions regarding the crop and by providing for a future settlement to be reached at some later date. Thus the local authority to use and manage the crop according to their long-term customary practice was maintained, and the recognition of the disputed nature of the jurisdiction over the wild rice crop opened the door to a critical re-evaluation of broader jurisdictional issues in the future.