

Guide to the Larry Leventhal LCO-NSP Legal Papers, 1920-1986

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Overview of the Collection

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Reference Code: USGZE UHC 335

Accession Number: 10-021

Collection Number: University Historical Collection 335

Creators: Leventhal, Larry

Title: Larry Leventhal Lac Courte Oreilles-Northern States Power Legal Papers, 1920-1986.

Dates: 1920-1986

Quantity: 7 linear feet (7 record cartons)

Location of Collection: A9/1e-g

Languages: Collection materials are in English.

Summary: Larry Leventhal was one of the legal representatives of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin during a series of legal proceedings between the tribe and the Northern States Power Company during the 1970s and 1980s. The series includes Leventhal's own files as well as federal and state records pertaining to the trials.

Biographical / Historical Note

The legal proceedings between the Lac Courte Oreilles Indian tribe, represented by Larry Leventhal and others, and the Northern States Power Company (NSP) in the 1970s to 1980s were based on a

license granted to the power company (at that time the Wisconsin-Minnesota Power and Light Company) in 1921. In the early 20th century, the WMP&LC was seeking a site to build a dam along the Chippewa flowage. The prospective dam was not to produce power but instead supply a steady flow of water to hydroelectric dams downstream and control flooding. The company chose an area close to Winter, Wisconsin, but with further study it became clear that the nearby Lac Courte Oreilles reservation would lose land due the flooding caused by the dam. When the company sought permission to flood the land, the tribe repeatedly stated that the land that would be lost (including the reservation's town, school, many residential homes and burial grounds) was too meaningful and turned the company down in 1916 and 1919. In 1920, the Federal Water Power Act was passed, which created the Federal Power Commission (FPC). The FPC was given the right to grant licenses for projects like reservoirs, even on reservation land. In early 1921, the power company applied for a license to build the Winter Dam. Even with a public hearing in which reservation residents spoke strongly against the dam and despite the fact that the proposed dam would break several treaties between the tribe and the United States government, License 108 was granted on August 8, 1921. License 108 allowed WMP&LC to build the dam and lease the land on the reservation that was to be flooded for 50 years. In return, the company was required to build a new town for the reservation and replace all residential buildings lost due to flooding. Additionally, the company was ordered to move any burial grounds to areas that would not be flooded, restock fish in the Flowage and reseed wild rice that would be lost.

In 1934, the passing of the Reorganization Act allowed American Indian reservations to regulate the use of their lands. As the 50 year license expired in 1971, the Lac Courte Oreilles Tribe wanted to exert their power to do so and prevent a renewal of the license. The tribe insisted that they had never given permission for the dam to be built and that company had not met many of the requirements stipulated by the original license. It was argued that the rebuilt town, called New Post, was not equivalent to the reservation's previous settlement and many of the new structures that the company built to replace flooded property were meager. In addition, the company failed to move all the burial grounds that were flooded, the fish population was depleted, and, most important, the wild rice that was both economically and spiritually important to the tribe was wiped out. Due to annual "draw downs," or the changing of water levels used to control flooding downstream, the wild rice that was seeded by the company failed to survive. Therefore, the tribe argued that they had never agreed to the construction dam and when Project 108 was licensed regardless of tribal objections they did not receive appropriate compensation.

In 1971, as NSP pursued a license renewal, the Lac Courte Oreilles tribe filed a lawsuit against the company demanding that the national government should "reclaim" the project and give control of reservation land back to the tribe. Larry Leventhal of Minneapolis, Minnesota, was one of the lawyers hired by the tribe. Public and formal hearings were held by the FPC in August 1973, but no official decision was made. Over the course of the next decade the legal cases continued between the tribe and power company, while many politicians, federal organizations and environmentalists argued on behalf of the tribe. In 1984, after numerous studies on the reservation land and dam, a final settlement was reached between the tribe and the power company. The lease on the flooded land was renewed for NSP, and they were allowed 10 to 15 feet of draw down each year, much less than previously permitted. In return, the Lac Courte Oreilles tribe was paid \$500,000 and given 3,000 acres of land (including land adjacent to the dam) by the company. The tribe was also given the right to build a hydroelectric power plant on the land and sell the power generated by the dam to NSP.

Content Description

The collection includes legal files that Larry Leventhal accrued over the course of the legal cases between the Lac Courte Oreilles tribe and Northern States Power. The papers are divided to 6 series: Correspondence; Testimony, Exhibits and Supporting Evidence; Legal Briefs and Petitions; Federal Power Commission Hearing Records; Hydroelectric Development Project; and Settlement.

Administrative Information

Acquisition Information: Donated to the University Archives and Special Collections, University of Wisconsin--Eau Claire by Larry Martin of the American Indian Studies Department.

Access Restrictions: Collection is open to the public.

Use Restrictions: Researchers are responsible for using in accordance with 17 U.S.C. Copyright not owned by the University of Wisconsin--Eau Claire.

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Processing Note: Processed by Andrea Stepanik in November 2009.

Arrangement: By series.

Subjects

Personal Names: Leventhal, Larry

Corporate Names:

Northern States Power Company

Wisconsin-Minnesota Power and Light Company

Subject Terms:

Ojibwa Indians—Government relations.

Ojibwa Indians—Treaties.

Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin.

Indian reservations—Wisconsin.

Indians of North America—Wisconsin.

Geographical Terms:

Lac Courte Oreilles Reservation (Wis.)

Winter Dam (Winter, Wis.)

Detailed List of Contents

Series 1: Correspondence

Series contains correspondence pertaining to Leventhal's work with the Lac Courte Oreilles Tribe. The files include general correspondence with parties participating in the legal case and letters written by Leventhal on behalf of the Lac Courte Orielles tribe. Also included is correspondence pertaining to the development of settlement proposals, a management plan for the flowage and the hydroelectric development project.

Dates: 1972-1984**Extent:** 1 linear foot (1 record carton)

Container	Contents	Dates
Box/Folder 2/1-2/2	Correspondence	1972
Box/Folder 2/3, 5/14	Correspondence	1975
Box/Folder 2/4	Correspondence	July-December 1973
Box/Folder 2/9, 7/9	Correspondence	1981-1982
Box/Folder 3/5	Management Plan Deficiency Correspondence	1975-1976
Box/Folder 3/10-3/11	Correspondence - Hydroelectric Power Development	1981-1984
Box/Folder 5/2	Correspondence -Settlement Proposals	1981-1984

Box/Folder 5/5	Correspondence	1976
Box/Folder 5/15	Correspondence	1977
Box/Folder 5/16	Correspondence	1978
Box/Folder 5/20	Certificates of Service	1975, 1982
Box/Folder 7/13	Correspondence to and on behalf of LCO Tribe	1973-1984
Box/Folder 7/16	Correspondence - Final Settlement	1984
Box/Folder 7/19	Correspondence	1983

Series 2: Testimony, Exhibits and Supporting Evidence

Series contains direct testimony and exhibits from the various organizations involved in the legal proceedings surrounding the Winter Dam and NSP Project 108. Also included are appraisals of land on the Lac Courte Oreilles reservation, maps of the affected areas, copies of federal legislation pertaining to the case, studies on management of the flowage and development of a hydroelectric plant, and newspaper clippings.

Dates: 1920-1983

Extent: 2 linear feet (2 record cartons)

Container	Contents	Dates
Box/Folder 1/1	Appraisal map and photos of LCO property	1972
Box/Folder 1/2	Appraisal of Chippewa Flowage Lands - LCO Reservation	1973

Box/Folder 1/5	1921 License Documents	ca. 1921
Box/Folder 1/6	Maps - LCO Reservation, Northern Wisconsin and Chequamegon National Forest	ca. 1975
Box/Folder 1/9	US Federal Power Commission Reports	August 1969
Box/Folder 1/10	NSP Application for Project 108 License Renewal	February 18, 1970
Box/Folder 1/11	Chippewa Flowage Investigation Progress Report - Upper Great Lakes Regional Commission	February 1972
Box/Folder 1/12	Chippewa Flowage Investigations Part 1: Summary Report	June 1972
Box/Folder 1/13	Chippewa Flowage Investigations Part 3A-3B: Appendixes	June 1972
Box/Folder 1/14	US FPC Federal Power Act	1971
Box/Folder 1/15	Guide for Managing National Forests in the Lake States	August 1975
Box/Folder 1/16	FPC Project 108 Approval and LCO Tribe Constitution copies	ca. 1920-1948

Box/Folder 2/5	Miscellaneous Testimony	ca. 1973
Box/Folder 2/6	Testimony on behalf of LCO Tribe	ca. 1973
Box/Folder 3/4	Manual for Calculating the Capacity of a Lake for Development	undated
Box/Folder 3/9	Bill - "Chippewa Flowage Take Over Act of 1981"	1981
Box/Folder 3/14	FPC Direct Testimony Notes	1973
Box/Folder 3/16	Draft Reply to FPC Letter Concerning Flowage Management	1975
Box/Folder 3/18	Excerpts in Support of Tribe - Hearings, Newspapers	1921, 1937, 1971-1974
Box/Folder 3/21	Project 108 Chronology and License Copy	undated
Box/Folder 3/22	Wild Rice Feasibility Study and Environmental Impact	1972-1973
Box/Folder 3/23	Alpha Smaby - NSP Public Director Candidate	1972-1973
Box/Folder 3/24	Northland College AIS Program	1973-1975
Box/Folder 3/25	LOC Hydrologic Study	1971-1973
Box/Folder 3/31	Testimony for LOC	ca. 1975-1977

Box/Folder 3/33	LOC Ojibwa 2415 Claims Investigation Report	undated
Box/Folder 5/3	LOC Land Appraisals	1973
Box/Folder 5/4	Testimony - Lyman Williamson and Roy Tull	undated
Box/Folder 5/6	Return of the Chippewa Land Paper	ca. 1971
Box/Folder 5/7	Statement of Harrison Loesch - policies for energy resources on public lands	1972
Box/Folder 5/8	Indian Land Ownership Rights - Paper and Senate Records	1973-1975
Box/Folder 5/12	Studies on various aspects of Chippewa Flowage management	1969-1976
Box/Folder 5/13	Case summaries and position statements	ca. 1974-1976
Box/Folder 5/17	US Geological Survey on Chippewa Flowage	1976
Box/Folder 5/18	Testimony for NSP	ca. 1971-1973
Box/Folder 5/21	Dept. of Indian Affairs & LOC Press Releases	1971, 1973
Box/Folder 5/23	FPC Hearing Testimony	ca. 1973
	Ecological Aspects of Chippewa Reservoir	

Box/Folder 5/24	-Potential Rice Production	1973
Box/Folder 5/25	US Dept. of Agriculture Response to Project 108	1973
Box/Folder 5/26	FPC Environmental Expert Testimony	1973
Box/Folder 5/27	Testimony on behalf of NSP	ca. 1971-1974
Box/Folder 5/28	Testimony - Hayward Area Residents & Save the Chippewa Flowage Alliance	ca. 1973
Box/Folder 5/29	Testimony - Environmental and Economic Impact of Project 108	ca. 1973-1974
Box/Folder 5/30	Testimony - LOC tribe members and cultural impact of Project 108	ca. 1973-1974
Box/Folder 5/31	NSP Company Background & Project 108 Management History	1973
Box/Folder 5/32	Grounds for the recapture of the Chippewa Flowage	ca. 1971-1975
Box/Folder 5/33	Newspaper Clippings	1971-1976
Box/Folder 6/3	Analysis of Claims of LOC against NSP	Sept. 22, 1983
Box/Folder 6/10	Chippewa Flowage- Project 108 Investigation Maps	June 1972

Box/Folder 7/1-7/2	Direct testimony & exhibits of witnesses for undated NSP	
Box/Folder 7/3-7/4	Direct testimony & exhibits of witnesses for 1973 the LCO	
Box/Folder 7/5	FPC Staff Expert Testimony	1973
Box/Folder 7/7	Chippewa Flowage Land Appraisal Consultant Foresters Report	1973
Box/Folder 7/12	Regional EPA Commission Letter to FPC and Objections in Response	1976-1977
Box/Folder 7/15	Documents and Resolutions to support LCO case	ca. 1976

Series 3: Legal Briefs and Petitions

Series contains legal briefs and petitions filed by various parties over the duration of the legal proceedings. The briefs provide background information on the case, parties involved, flowage management and Winter Dam. Each brief presented by the Lac Courte Oreilles, Northern States Power or the Federal Power Commission portray their argument for or against the renewal of License 108 and responses to briefs presented by other participants.

Dates: 1968-1982

Extent: 1 linear foot (1 record carton)

Container	Contents	Dates
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Box/Folder 1/8	FPC Hearing Reply Briefs from LCO and FPC Staff	1974
Box/Folder 2/7	FPC Hearing Initial Brief of LCO Tribe and Secretary of the Interior	March 1977
Box/Folder 2/8	Miscellaneous FPC Hearing Briefs	1974
Box/Folder 2/10	Brief of LCO Tribe - Petition Against NSP	1974
Box/Folder 2/11	FPC Hearing Briefs of LCO Tribe	1974-1978
Box/Folder 2/12-2/13	FPC Hearing Briefs of NSP	1973-1974, 1978
Box/Folder 2/14	FPC Brief of NSP - Project 108 Reopened Proceedings	1977
Box/Folder 2/15-2/16	FPC Briefs of Commission Staff	1973,1977-1978
Box/Folder 3/17	FPC and NSP Response to LOC Appeals	1975
Box/Folder 3/19	LOC Reply Briefs	1973
Box/Folder 3/26	FPC Briefs and Opinion Statements	1973-1976
Box/Folder 3/28	Petitions to the FPC	1971-1973
Box/Folder 3/29-3/30	FPC Briefs of various parties	1971-1978

Box/Folder 5/1	Early Hearing Briefs and Orders	1970-1971
Box/Folder 5/10	LOC Response Brief to Draft Environmental Impact Statement	1973
Box/Folder 5/11	Briefs of LOC and NSP on Recapture of Project 108	1968-1973
Box/Folder 5/20	Certificates of Service	1975, 1982

Series 4: Federal Power Commission Hearing Records

Series contains the official stenographer's transcripts of hearings held in Washington, D.C. before the FPC in regard to NSP Project 108. Dates: 1921-1976

Extent: 1.5 linear feet (2 record cartons)

Container	Contents	Dates
Box/Folder 3/1	Project 108 – NSP Hearings Index	undated
Box/Folder 3/2	FPC Public Hearings Summaries	1973
Box/Folder 3/3	Public Hearing on Dam Construction	May 17, 1921
Box/Folder 4	Volume 6	September 13, 1973
Box/Folder 4	Volume 8	September 17, 1973

Box/Folder 4	Volume 9	September 18, 1973
Box/Folder 4	Volume 11	September 20, 1973
Box/Folder 4	Volume 12	September 21, 1973
Box/Folder 4	Volume 13	September 24, 1973
Box/Folder 4	Volume 14	September 25, 1973
Box/Folder 4	Volume 18	October 12, 1973
Box/Folder 4	Volume 19	October 15, 1973
Box/Folder 4	Volume 25-26	January 31-February 1, 1974
Box/Folder 4	Volume 27-28	February 4-5, 1974
Box/Folder 4	Volume 29	April 22, 1974
Box/Folder 4	Volume 33	December 1, 1976
Box/Folder 4/1	Volume 35	December 3, 1976
Box/Folder 4	Volume 36	December 6, 1976
Box/Folder 4	Volume 37	December 7, 1976
Box/Folder 6	Volume 38	December 8, 1976
Box/Folder 6	Volume 39	December 9, 1976
Box/Folder 6	Volume 40	December 10, 1976
Box/Folder 6	Volume 41	December 13, 1976

Box/Folder 6	Volume 42	December 14, 1976
Box/Folder 6	Volume 43	December 16, 1976

Series 5: Hydroelectric Development Project

Series contains documents pertaining to the Hydroelectric Development Project at the Winter Dam. Included are various studies performed to determine the feasibility of generating electricity with the dam, construction plans and agreements between NSP and the Lac Courte Oreilles in regard to the project. Dates: 1972-1986

Extent: .5 linear feet (1 record carton)

Container	Contents	Dates
Box/Folder 3/12	LCO Hydroelectric Development Project	1983-1984
Box/Folder 3/20	Power Sale Contract Drafts	1982-1983
Box/Folder 6/11	Invitation to Fund LCO Hydroelectric Project	ca. 1983
Box/Folder 6/12	Chippewa Reservoir Hydroelectric Development Feasibility Study	May 5, 1982
Box/Folder 6/13	Mead and Hunt Engineering Project Qualifications	ca. 1982
Box/Folder 6/14	US Dept. of Energy Financing of Small Hydroelectric Projects	1981

Box/Folder 6/15	LOC and NSP Joint Application for Hydroelectric License Exemption	1984
Box/Folder 6/16	Hydrologic Study Draft -Chippewa Flowage Project	August 1, 1972
Box/Folder 6/17	Hydrologic Study - Chippewa Flowage Project and Hydro plant blueprint	July 1973
Box/Folder 7/10	Hydroelectric Development Studies	1976-1984
Box/Folder 7/18	Development of LCO Power Project	1986

Series 6: Settlement

Series contains drafts and final copies of the settlement reached between the Lac Courte Oreilles Tribe and Northern States Power. Also included are draft and final copies of the Chippewa Flowage environmental statement and other agreements relevant to the management of the Chippewa Flowage.

Dates: 1971-1985

Extent: 1 linear foot (1 record carton)

Container	Contents	Dates
Box/Folder 1/3	Chippewa Project 108 Supplement to the Final Environmental Impact Statement	1976
Box/Folder 1/4	Chippewa Flowage	1975

	Management Plan	
Box/Folder 1/7	Chippewa Reservoir - Project 108 Environmental Impact Statement	1971
Box/Folder 3/6	Proposed Settlement Terms	1980-1981
Box/Folder 3/7	Draft Sales Agreement and Correspondence	1983
Box/Folder 3/8	LOC Response to Initial Draft Agreement	1981
Box/Folder 3/13	Proposed Settlement Recommendations	1981-1982
Box/Folder 3/15	Draft Environmental Statement	1972-1973
Box/Folder 3/27	Development of Environmental Impact Statement and Flowage Management Plan	1975-1977
Box/Folder 3/32	Draft Settlement Proposals	ca. 1981-1983
Box/Folder 5/9	Wisconsin DNR Resolution to protect land in settlement proposal	1980
Box/Folder 5/19	Ecological Impact Statements & Organizations	ca. 1975-1982
Box/Folder 5/22	Proposed Settlements from NSP and Wisconsin DNR/ LOC Response	1981
Box/Folder 6/1	FPC Staff Draft Environmental Impact Statement	April 1973
Box/Folder 6/2	FPC Staff Final Environmental Impact Statement	August 1973

Box/Folder 6/4	Chippewa Flowage Land & Water Resources Management Plan	undated
Box/Folder 6/5	Chequamegon National Forest Plan and Draft Environmental Statement	1972, 1985
Box/Folder 6/6	Chequamegon National Forest Proposed Management Plan	ca. 1985
Box/Folder 6/7	Chequamegon National Forest Draft Environmental Impact Statement Appendix	ca. 1985
Box/Folder 6/8	Chequamegon National Forest Draft Environmental Impact Statement	ca. 1985
Box/Folder 6/9	Chequamegon National Forest Management and Environmental Statement Maps	1985
Box/Folder 7/6	Chippewa Reservoir Settlement Agreement	undated
Box/Folder 7/8	Draft and Final LCO Resolutions	1982-1984
Box/Folder 7/11	Leventhal comments on Draft Flowage Management Plan	undated
Box/Folder 7/14	LCO Settlement Proposal Development	ca. 1981-1982
Box/Folder 7/17	Final Agreement	1984