

AN EVALUATION

*Kickapoo Reserve
Management Board*

99-9

May 1999

1999-2000 Joint Legislative Audit Committee Members

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May 18, 1999

Senator Gary R. George and
Representative Carol Kelso, Co-chairpersons
Joint Legislative Audit Committee
State Capitol
Madison, Wisconsin 53702

Dear Senator George and Representative Kelso:

We have completed an evaluation of the Kickapoo Reserve Management Board, as directed by 1993 Wisconsin Act 349. The Board was created in 1994 to manage the Kickapoo Valley Reserve, which encompasses nearly 8,600 acres in Vernon County. The Board is responsible for day-to-day management of the reserve under a lease agreement with the U.S. Army Corps of Engineers, which purchased the land in the early 1970s as part of a large flood control and dam-building effort.

The federal Water Resources Development Act of 1996 deauthorizes the Kickapoo dam project and provides for ownership of approximately 7,400 acres to be transferred to the State. The remaining 1,200 acres of tribally significant land is to be held in federal trust for the Ho-Chunk Nation. Federal legislation sets forth several conditions the Corps and the State must meet to effect the transfer. While the State has met most of its requirements, the Corps is in the process of cleaning up solid and potentially hazardous waste sites on the property and determining how it will reconstruct the state and county highways that cross the reserve. In addition, the Corps and the State must sign an agreement that holds the federal government harmless from any future claims related to the Corps' past ownership of the property. Transfer of the land is anticipated for spring 2000; however, any of these unresolved issues could postpone the transfer.

We found that the Board has performed its limited duties effectively, balancing the desires of local citizens and other visitors with its statutory requirements to protect the reserve's unique natural and cultural resources. Its management lease with the Corps allows it to collect voluntary user fees, develop land-use policies, and mark trails and boundaries. Currently, the Board is writing a comprehensive master plan for the reserve, planning the construction of pedestrian bridges across the Kickapoo River, and repairing and maintaining trails.

We appreciate the courtesy and cooperation extended to us by the Board and its staff. The response of the Board's Executive Director is Appendix II.

Respectfully submitted,

Janice Mueller
State Auditor

JM/DB/ao

SUMMARY

In 1994, the Legislature enacted 1993 Wisconsin Act 349, creating the Kickapoo Valley Reserve and the Kickapoo Reserve Management Board. The reserve encompasses nearly 8,600 acres along 14 miles of the Kickapoo River. The 11-member Board, which is appointed by the Governor and attached to the Department of Tourism for administrative purposes, is responsible for day-to-day management of the reserve under a lease arrangement with the U.S. Army Corps of Engineers.

The Corps purchased the land in the early 1970s as part of a large flood control and dam-building effort that was discontinued in 1975 because of environmental and cost concerns. Future use of the land became uncertain until passage of Section 361 of the federal Water Resources Development Act of 1996, which deauthorizes the dam project and provides for ownership of the land to be transferred from the Corps to the State and the Ho-Chunk Nation when certain requirements are met. In addition, the federal legislation authorized the Corps to request up to \$17.0 million from Congress to complete certain transfer-related duties. To date, Congress has appropriated approximately \$3.6 million for this purpose, and the Corps has spent about \$1.0 million.

Consistent with requirements of the federal legislation, the State and the Ho-Chunk signed a memorandum of understanding (MOU) setting the boundaries of the Ho-Chunk's 1,200 acre parcel and establishing the tribe and the Board as co-managers of the entire reserve. In addition, the Corps has met some of its federal requirements. It has prepared an environmental assessment of the reserve; identified cultural and historic sites; and surveyed the land to set property boundaries, which had been subject to encroachment over the years. However, three issues remain unresolved: cleaning potentially hazardous waste sites on the property, obtaining a hold-harmless agreement with the State, and providing for reconstruction of state and county highways that cross the reserve.

The Wisconsin Department of Natural Resources (DNR), which has jurisdiction over environmental issues on the reserve, considers two areas of the reserve to be potential hazardous waste sites. One area includes a former trap shooting range and land along the Kickapoo River where spent shot fell; the other is a former automobile dealership site that has car parts, including oil filters, buried near a stream bank. Working with DNR, the Corps has tested the soil and found lead contamination at the trap range and petroleum contamination at the former dealership site. DNR, however, has not yet made any remediation decisions.

The federal legislation directs the Corps and the State to enter into a written agreement “to hold the United States harmless from all claims arising from or through the operation of the lands and improvements subject to the transfer.” While the Corps has indicated that the State must assume full liability for any future claims, Wisconsin’s constitution and statutes limit the authority of State agencies to sign hold-harmless agreements. Corps district office staff have suggested the State enact legislation that would accept complete liability in this specific instance. State officials are reluctant to request such legislation during ongoing negotiations between the State and the Corps.

In the Corps’ original plan for the dam project, roads traversing the reserve would have been relocated outside the reservoir area. However, most of these roads have remained without major improvements since the project was halted in 1975, leaving them in a state of disrepair and questionable safety. Wisconsin’s Department of Transportation (DOT) has been planning for reconstruction of a portion of State Highway 131 within the reserve to start in 2001, and it estimates this project will require about \$15.4 million to complete. However, Corps officials believe that they do not have the authority to give the funding needed for highway reconstruction directly to DOT. Corps officials have stated that this issue, while a requirement in the federal legislation, may be resolved after the land is transferred to the State. However, if it is not resolved before the transfer, federal funds may not become available for reconstruction because Congress may be less inclined to appropriate funds for a state highway on state-owned land.

Despite these unresolved issues with the Corps, it appears the Board has performed its limited duties effectively, balancing local citizens’ and visitors’ desires for recreation and education with the State’s statutory requirements to protect the reserve’s natural and cultural resources. The Board began meeting in 1995, about a year after the state legislation creating it was passed. For nearly its first three years of operation, the Board concentrated on hiring staff, developing land-use policies and working with the Corps to enforce them, helping to negotiate the MOU with the Ho-Chunk, and writing the MOU’s plan to co-manage the land.

Since May 1998, when the Board signed the management lease with the Corps, the Board’s responsibilities have increased. Under the lease agreement, the Board has authority for the property’s day-to-day management. It may collect fees, mark boundaries and trails, and make policy decisions regarding use of the reserve. However, the Corps retains law enforcement authority over land use and the protection of archeological artifacts. In addition, the Board is developing a comprehensive master plan, which is intended to be completed and approved by both the Board and the Ho-Chunk by late 1999. The master plan will contain 12 smaller management plans, including plans for the reserve’s natural areas, education and recreation opportunities, and finances.

Regardless of when the transfer is effected, it appears likely that the Board will continue to request appropriations from the Legislature, as it has since fiscal year 1995-96. In fiscal year 1998-99, the Board received \$180,000 from of the Conservation Fund's parks account for its operations. The Board is actively pursuing other sources of income, such as user fees and project grants; however, they will not be sufficient to meet expenses in the foreseeable future. Further, it is unlikely that the reserve will experience a substantial increase in visitor attendance. Over the long term, any growth in programming or activities on the reserve will require either increased state funding or the development of alternative types of support.

INTRODUCTION

The Legislature created the Kickapoo Valley Reserve and the Board in 1994.

In 1994, the Legislature enacted 1993 Wisconsin Act 349, creating the Kickapoo Valley Reserve and the Kickapoo Reserve Management Board. The reserve encompasses nearly 8,600 acres of forest and once-cleared farmland along 14 miles of the Kickapoo River in Vernon County. The Board is required by statute to manage the land for low-impact recreation, including canoeing, hiking, camping, hunting, cross-country skiing, and snowmobiling, and for outdoor education activities.

The reserve holds unique natural and cultural resources, including remnants of natural hardwood forests and Indian burial grounds. Because of its concentration of sandstone cliffs and rare or endangered plants, most of the reserve has been designated a national natural landmark. About half of the land is hilly and forested, while the other half consists of wetlands, leased land for agriculture, and fallow fields. Approximately 35 miles of horseback trails and 25 miles of biking and snowmobile trails wind through the reserve.

Congress authorized transfer of the reserve land to the State and the Ho-Chunk Nation in 1996.

While the Board currently is responsible for day-to-day management of the reserve under a lease arrangement with the U.S. Army Corps of Engineers, the Corps holds title to the land, which was originally purchased as part of a large flood control and dam-building effort. When the Corps discontinued building the dam in 1975, future use of the land was uncertain until passage of Section 361 of the federal Water Resources Development Act of 1996. This legislation deauthorizes the dam project and provides for ownership of approximately 7,400 acres to be transferred to the State. The remaining 1,200 acres, which is tribally significant land, is to be held in federal trust for the Ho-Chunk Nation. In addition, the federal legislation authorized the Corps to request up to \$17.0 million in federal funds to complete certain duties related to the transfer. To date, Congress has appropriated approximately \$3.6 million for this purpose and the Corps has spent about \$1.0 million.

The federal legislation does not specify a date by which title to the reserve must be transferred. However, it requires:

- the State and the Ho-Chunk to sign a memorandum of understanding (MOU) detailing management of the reserve after it is transferred;

- the State and the Corps to enter into a written “hold-harmless” agreement that will address liability for potential damages caused by the Corps’ construction efforts and ownership of the land; and
- the Corps to complete safety and environmental modifications on the property and to reconstruct parts of State Highway 131 and county highways P and F.

On October 30, 1997, the State and the Ho-Chunk signed an MOU setting the boundaries of the Ho-Chunk’s parcels and establishing the tribe and the Board as co-managers of the entire reserve. Appendix I is a map showing the reserve’s boundaries, including the Ho-Chunk parcels. The Corps’ district office plans to complete its transfer-related activities by fall 1999, with the exception of the road reconstruction, which according to the Corps need not be completed before transfer may take place. Consequently, the Corps’ district office has proposed to transfer the land by April 2000, and its project completion report is currently being reviewed by Corps headquarters.

The 11-member board is appointed by the Governor.

The Board’s 11 members, which are appointed by the Governor, include six Kickapoo Valley residents, three non-residents, and, since 1998, two representatives of the Ho-Chunk. The Board is staffed by two unclassified, full-time employees—an executive director and a program assistant—as well as limited-term employees as needed to perform activities such as marking boundaries, writing publications, and organizing the Board’s long-term planning efforts. The Board is attached to the Department of Tourism for administrative purposes, such as legal and budgetary affairs.

The Board, which began meeting in June 1995, has been funded by an appropriation from the parks account of the State’s Conservation Fund. Since fiscal year 1995-96, the Legislature has appropriated \$674,600 to the Board; in fiscal year 1998-99, the Board received \$180,000. In addition, the Board collected program revenue of approximately \$500 from group events and other donations in 1998, which it may use for its general program expenses. Until staff were hired in 1997, most of the Board’s appropriations lapsed. Currently, most expenditures are for general operations, including salaries, rent, office supplies and printing, and Board members’ per diem and travel expenses.

1993 Wisconsin Act 349, which established the reserve, also directs the Legislative Audit Bureau to conduct a performance evaluation audit of the Board after it had been operating for three years. As part of this evaluation, we reviewed:

- the Board’s efforts to facilitate transfer of the reserve from federal to State and tribal control; and

- the Board’s administration of the reserve since it assumed responsibility for day-to-day management in May 1998.

In conducting our evaluation, we interviewed the Board’s executive director and its chairperson, representatives of the Corps and the Ho-Chunk Nation, and state agency staff who have worked with the Board. We also reviewed statutes and other legal documents, the Board’s minutes, management plans, and environmental assessments.

Project History

The Kickapoo Valley, historically subject to severe flooding, had been targeted for flood control measures since 1930. In 1962, Congress authorized a dam at LaFarge in northeast Vernon County, but plans to flood several thousand acres and develop a reservoir with recreation and tourism opportunities created controversy among local residents. By the early 1970s, the Corps had purchased 140 farms and 8,569 acres for the project, many of them from people who subsequently left the area. Table 1 provides a time line of the reserve’s history.

Table 1

Kickapoo Reserve Time Line

1970	Corps of Engineers acquires 8,659 acres for dam and reservoir
1975	Project halts because of environmental and cost concerns
1992	Local Citizen Advisory Committee meets to develop alternatives for the property
1994	State legislation establishes the reserve and the Board
1995	Board begins meeting in June
1996	Congress enacts the federal Water Resources Development Act, which authorizes transfer of the land from the Corps to the State and the Ho-Chunk
1997	State and the Ho-Chunk sign MOU for co-managing the reserve
1998	Board enters into management lease with Corps accepting day-to-day management responsibility for the reserve, and two Ho-Chunk members are added to Board

Construction of the dam was halted in 1975 for environmental and cost reasons.

Soon after the property was bought, the Corps began construction of a flood control structure, including portions of a dam and a tower to manage water levels. At the same time, to meet requirements of the federal Environmental Protection Act of 1970, the Corps prepared an environmental impact statement for the project. That process indicated the proposed reservoir would cover endangered plant species and would be unable to sustain fish because of poor water quality. While some design changes were made to address these concerns, in 1975 the project was halted by the Corps because of remaining environmental and cost issues. Further efforts to modify plans, as well as lawsuits to force completion of the project, failed.

In 1992, local citizens formed an advisory committee to help decide the future of the property. The committee recommended developing state and federal legislation to deauthorize the flood control project and transfer ownership of the land from the Corps to the State, keeping the land available for public use, and creating a local management board. With the support of the advisory committee, the Corps, state agency representatives, and area residents, the Wisconsin Legislature established the reserve and the Board in March 1994. Finally, the 1996 federal legislation established the parameters to transfer ownership of the land from the Corps to the State and the Ho-Chunk.

FEDERAL LAND TRANSFER REQUIREMENTS

Although the State and the Ho-Chunk signed an MOU that is consistent with requirements of Section 361 of the federal Water Resources Development Act, members of the Board and others have expressed concern that the Army Corps of Engineers is not meeting its obligations under the federal transfer legislation, which include funding road reconstruction in the reserve and negotiating a liability transfer agreement with the State. The Corps has not met several informal deadlines for transferring ownership of the land. Currently, there is concern that the Corps' district office will not meet its proposed goal of transferring the reserve from federal to state control by April 2000.

Agreement with the Ho-Chunk

The Ho-Chunk will receive 1,200 acres of the reserve and will co-manage the entire reserve with the Board.

In the October 1997 MOU, the State and Ho-Chunk agreed:

- on the boundaries of two parcels within the reserve that will constitute the Ho-Chunk's 1,200-acre portion;
- to co-manage the reserve according to the MOU's general management plan;
- that the State would amend its statutes to add two Ho-Chunk representatives to the Board;
- that the State would consider transferring to the Ho-Chunk additional reserve land if tribally important sites are discovered after the transfer from the Corps occurs; and
- to request that the Corps transfer the property no later than January 1, 1999.

1997 Wisconsin Act 194 added two Ho-Chunk representatives to the Board and offers the same legal protection against damaging archeological features on the reserve as is currently provided under federal law.

Both the state legislation that created the reserve and the Board and the federal legislation that deauthorizes the dam project specify that

the reserve's natural and cultural resources should be protected while allowing for limited recreational activities. Consequently, extensive recreational or commercial development on the property is not planned. The MOU's plan for co-management repeats this intention. For example, permitted activities include canoeing, hiking, cross-country skiing, and snowmobiling. Moreover, the plan prohibits building developed campgrounds on the property and permits only low-impact, rustic camping. Accordingly, neither electricity nor bathroom facilities are provided at the reserve's campsites.

Board representatives noted that the reserve will be different from state parks. Nearby Wildcat Mountain State Park, which is less than half the size of the reserve but receives about 150,000 visitors each year, contains canoe and horseback campgrounds, shower and bathroom facilities, and picnic tables. While about half of the approximately 3,000 visitors to the reserve last year were deer, pheasant, and waterfowl hunters, Wildcat Mountain State Park allowed fewer than 300 hunters on its land last year.

The plan also provides general land and recreation management policies to be followed throughout the reserve, while allowing for some differences for the Ho-Chunk portions. For example, it notes that the Board will continue the Corps' current practice of leasing farmland on the reserve once control of the reserve is transferred; however, the Ho-Chunk will likely restore the former farmland to prairie. Finally, the management plan requires that the Board develop a long-term master plan for the property and lists the topics to be addressed, such as plans for responding to emergencies, developing educational opportunities, and managing cultural resources on the reserve.

To ensure that the entire property has necessary law enforcement and emergency services, the Board and the Ho-Chunk agreed in the MOU that each party will provide for these services once the reserve has been transferred. The Board is planning to pay for hunting and environmental enforcement through an agreement with the Department of Natural Resources (DNR). The Ho-Chunk are exploring options for either paying for law enforcement on their land or co-deputizing a county sheriff as a Ho-Chunk law enforcement officer. However, until transfer of the land is completed, the Corps remains responsible for general law enforcement and paying for emergency services.

Responsibilities of the Corps of Engineers

The federal Water Resources Development Act of 1996 requires the Corps to reconstruct the state and county highways within the reserve, restore abandoned wells, and fulfill the requirements of other federal laws pertaining to the identification and protection of archaeological and historic sites on the land. From federal fiscal years 1995-96 through 1997-98, the Corps spent approximately \$1.0 million preparing an

environmental assessment of the reserve and identifying cultural and historic artifacts. In addition, it has nearly completed a survey of the land to set property boundaries, some of which have been subject to encroachment over the years. The Corps has stated that by September 1999, it will have completed safety modifications to the flood control structures, along with required federal environmental and real estate transfer documents.

Three issues, however, remain unresolved: cleaning hazardous waste sites on the property, obtaining a hold-harmless agreement with the State, and providing for reconstruction of the state and county highways. These issues could delay the transfer beyond the current April 2000 target.

Hazardous Waste Sites

Two potential hazardous waste sites exist on the reserve.

DNR, which has jurisdiction over environmental issues on the reserve, considers two areas to be potential hazardous waste sites. One area includes a former trap shooting range and land along the Kickapoo River where spent shot fell; the other is a former automobile dealership site that has car parts, including oil filters, buried near a stream bank. Working with DNR, the Corps has tested the soil and found lead contamination at the trap range and petroleum contamination at the former dealership site. DNR, however, has not yet made any remediation decisions.

To decide whether the sites should be cleaned up, DNR will examine several factors. First, waterfowl could be at risk from lead contamination in a wetland that is part of the general area where shot may have fallen. However, DNR is uncertain whether the wetland actually is contaminated. Additionally, DNR will determine from the testing results of the former dealership how extensive the petroleum contamination is and whether it is migrating toward the stream.

State environmental protection laws require owners of property to ensure that any petroleum on their land does not exceed certain numerical limits. Consequently, the Corps maintains responsibility for ensuring that the sites meet DNR's environmental standards, including paying for testing and any necessary cleanup.

The extent of cleanup activity depends on the degree of contamination and its circumstances. For instance, if DNR finds that petroleum from the car parts will not migrate to the groundwater and is likely to degrade naturally over time, cleanup may consist of monitoring the level of petroleum contamination to ensure that natural degradation continues. On the other hand, if the groundwater is contaminated above a certain level, required remediation could take the form of removing the car parts and the surrounding soil and mechanically extracting the petroleum. However, invasively cleaning the contaminated areas may prove destructive because

soil and vegetation will be removed and replaced with less dense soil that may be vulnerable to washing out, as the river still regularly floods its banks.

It is possible that DNR will decide that the lead contamination is inaccessible to wildlife and that the contamination at the former dealership site is not a threat to water quality or humans. In that case, the concern about remediation of potential hazardous waste would be eliminated, and the Corps would have completed one of the steps required by the federal legislation. DNR staff indicate that the extent of the remediation will be balanced against the threat of the contamination. Decisions about whether remediation is necessary are expected later in 1999.

Consent to Hold Harmless

A liability agreement between the Corps of Engineers and the State must be signed before the reserve can be transferred.

Section 361 of the federal Water Resources Development Act states:

the transfer...shall be made on the condition that the State of Wisconsin enters into a written agreement with the Secretary (of the Army) to hold the United States harmless from all claims arising from or through the operation of the lands and improvements subject to the transfer.

By signing this agreement, the State would assume liability for the property and for any future legal claims brought because of the Corps' past ownership or use of the land. Such claims could range from compensation for injuries caused by solid waste remaining on the land to environmental damage on the reserve or surrounding properties that started during the Corps' ownership. However, sections of Wisconsin's constitution and statutes limit the authority of state agencies to sign hold-harmless agreements. Specifically, the State may be held responsible only for acts that its employees or agents take within the scope of employment, and the State limits to \$250,000 the amount it will pay for the recovery of any claims.

Both the State and the Corps have drafted hold-harmless language and currently are in negotiations. Department of Tourism officials who handle the Board's legal affairs believe the State's proposed language conforms with the general nature of the federal legislation while keeping the scope of the State's liability narrow. However, Corps officials have indicated that the State must hold the federal government free from any damages caused by the Corps' activities on the land. The Corps' headquarters is reviewing proposed language, but district office staff have suggested the Legislature should enact legislation that accepts complete liability for any future claims or for the fiscal obligations that may arise from them.

DNR is the only state agency that currently has authority to enter into hold-harmless agreements with the federal government, and it has only used this authority once, for a project on the Fox River. 1987 Wisconsin Act 27 authorized DNR to enter into flood control development agreements with the federal government, including “any indemnification provisions required by federal law.” Department of Tourism officials indicate it is premature to consider asking the Legislature for similar authority, as negotiations are ongoing. They note there is little incentive for the State to take responsibility for potential liability claims and that the constitutionality of such legislation could be challenged.

Federal Funding for Highway Reconstruction

Federal legislation requires the Corps to reconstruct the state and county highways that cross the reserve.

The federal legislation also requires the Corps to reconstruct the state and county highways that traverse the reserve. Originally, the Corps planned to relocate approximately ten miles of State Highway 131 and portions of county highways P and F outside of the area that would have contained the reservoir. In the early 1970s, about five miles of State Highway 131 were relocated, and the old bridges and pavement were removed. Relocation activity was halted when the Corps stopped building the dam, and the other portions of the roads have remained without major improvements. At this time, the roads no longer meet Wisconsin Department of Transportation (DOT) safety specifications, and some bridges are in such disrepair that they are inspected monthly.

DOT has been working with the Board, the Ho-Chunk, and DNR to plan reconstruction of Highway 131 starting in 2001. Of the \$17 million in the Water Resources Development Act that Congress authorized for the Corps to complete all transfer-related activities, DOT estimates it will need approximately \$15.4 million to reconstruct the state and county highways in the reserve. DOT has already spent approximately \$1.6 million for engineering studies and other preparatory work. To date, Congress has appropriated approximately \$3.6 million to the Corps for all transfer activities. However, DOT has not received any funds yet, as the Corps has indicated it does not have the authority to give the funding needed for highway reconstruction directly to DOT.

The Corps’ district office asked headquarters for guidance on this issue in November 1998 and is still awaiting an answer. At this time, however, the Corps does not consider funding to be a pressing issue because it is willing to transfer the land before this issue is resolved.

Meeting a Transfer Deadline

**Transfer of the reserve
could take place by
April 2000.**

There have been some differences of understanding among the parties concerning past agreements for the date of the reserve's transfer from the Corps. Some people we interviewed told us that Corps officials had verbally agreed to the January 1, 1999 land transfer date requested in the MOU. Within months of the MOU's signing, however, the Corps stated that it could not commit to that date because of the number of tasks to be completed before the property could be transferred. Other dates were discussed, until the Corps' district office decided that it could finish its environmental remediation and document preparation activities by September 1999. Review by Corps headquarters is estimated to require another six months. Therefore, the district office prepared a project completion plan with the goal of transferring control of the reserve to the State and Ho-Chunk by April 2000.

As noted, Congress has appropriated to the Corps about \$3.6 million of the \$17.0 million originally authorized by the federal Water Resources Development Act for transfer activities. The funding had been inserted into federal appropriations bills upon motions by members of Wisconsin's congressional delegation, rather than through the Corps' annual budget request. Because the Corps has not requested any funding for the transfer, some Board members and local citizens of the Kickapoo Valley suggest the Corps does not support the project. However, officials in the Corps' headquarters respond that because the project does not meet the Corps' traditional primary missions of flood control, commercial navigation, and environmental restoration, transferring the reserve has not been viewed as a high enough priority among hundreds of authorized projects to be included in its annual budget request.

MANAGEMENT OF THE RESERVE

Despite difficulties caused by delays in the transfer process, it appears the Board has performed its duties effectively, balancing the desires of local citizens and visitors with the State's statutory requirements. However, continued uncertainty about the transfer could affect the Board's ability to manage the reserve in the future and could potentially harm the reserve for two reasons. First, the Corps retains some enforcement authority over the reserve but does not fund any enforcement personnel, making it difficult to apprehend offenders. Second, the Board's master plan for the reserve is scheduled for completion by this winter; however, the Board may be unable to carry out some of its plans until the reserve is transferred.

Board Actions

The Board held its first meeting on June 19, 1995, a year after the legislation that created it was passed. For nearly its first three years of operation, the Board had no management responsibility but concentrated its efforts on areas such as:

- writing organizational policies and hiring staff;
- developing land-use policies and working with the Corps to enforce them;
- helping to write Section 361 of the federal Water Resources Development Act and to negotiate the MOU; and
- writing the MOU's accompanying management plan.

Soon after the Board began meeting, some citizens raised concerns about damage to reserve property by off-road vehicles and horses. While off-road vehicle use on the property was a popular activity, DNR staff determined that the property's steep banks and highly Erodable Soils made it difficult to safely allow off-road vehicle use. In 1996, the Corps closed all reserve land to off-road vehicles and to horseback riding while the concerns were studied and some trails could be repaired. In February 1997, the Board and the Corps closed unpaved areas of the reserve permanently to all motorized vehicles except snowmobiles and restricted horseback riding and mountain biking to May through October.

Although the Corps has enforcement authority on the property, it has spent little to enforce its land use regulations since the dam project was halted. This allowed trails and campsites to be created without the Corps' permission and, at times, in culturally sensitive areas. Others took advantage of the lack of boundary markings to encroach on the property through farming unleased land and dumping trash. The Board has developed land-use policies, but violations have occurred, and offenders have not been caught. For example, the Board continues to experience problems with people illegally harvesting trees, dumping trash, and riding off-road vehicles.

Daily Management Responsibilities

Under a management lease with the Corps, the Board has day-to-day responsibility for the reserve.

Under the management lease agreement with the Corps that was signed in May 1998 and is in effect until April 30, 2000, the Board has authority for the property's day-to-day management. The Board may collect user fees, mark boundaries and trails, prepare maps and other informational material for the public, and construct facilities with the Corps' approval. However, as noted, the Corps retains law enforcement authority over recreational policies and cultural artifacts protection. In addition, the Corps is required to continue re-establishing boundary lines and repairing eroded hillsides.

For the past two years, the Board has organized an Earth Day clean-up of the reserve with interested local citizens. In addition, since May 1998, the Board has:

- hired a limited-term employe to mark boundaries and trails;
- collected fees for group events such as a Boy Scout camping trip and retrieving exercises for hunting dogs;
- helped fund a week-long outdoor education class for fifth- and sixth-grade students;
- surveyed the reserve's visitors by supplying area businesses with free voluntary registration permits; and
- considered designs for pedestrian bridges along old State Highway 131 and received a grant from the U.S. Forest Service to pay for a portion of the construction.

Long-term Planning

The Board is developing a long-term master plan for the reserve.

The Board also is engaged in developing a comprehensive master plan for the property, to assist in implementing its policy decisions and meeting its long-term goals. A limited-term employee has been hired to help the Board write the plan, which is intended to be completed and approved by both the Board and the Ho-Chunk in late 1999. The master plan will contain 12 smaller management plans, including plans for the reserve's natural areas, education and recreation opportunities, and finances. The Board encourages public participation in the planning process by allowing local citizens to be members of the committees responsible for developing the management plans, by inviting community members to attend its monthly meetings, and by distributing periodic newsletters. From our examination of the Board's master planning process, it appears that the plan will be comprehensive, has included local citizens throughout the process, and will be completed and approved on schedule.

To comply with the MOU, the Board will review the master plan with the Ho-Chunk every five years. One issue that may arise is protecting cultural or archeological sites. Terms of the MOU allow the Ho-Chunk to request the transfer of newly identified sites on state land after the reserve is transferred. Working with the Board, the Ho-Chunk plan to pursue further transfers of land to their control.

Developing performance measures could strengthen planning efforts.

While the master plan will include several individual plans for various activities or resources, planning efforts could be strengthened by integrating overall priorities with future budget considerations. For example, the Board could not only set priorities within each specific management plan, it could also identify its highest priorities within the master plan framework. In addition, to improve the usefulness of the master plan and facilitate accountability, the Board could establish specific performance indicators by which its progress could be measured. These could include setting goals for the number of educational opportunities presented, miles of trails created or repaired, or acres reforested. In addition, the Board could continue to measure both land use and visitors' level of satisfaction through surveys.

Four standing committees of the Board are developing specific management plans within the master plan. For instance, the Finance Committee is developing a long-term financial management plan to determine how to pay for added responsibilities, such as hunting and environmental enforcement, trail maintenance, and pedestrian bridges. The Finance Committee is planning to fund these activities, as well as general operations, through individual and group user fees, agricultural leases, project grants, and nonprofit fundraising, as well as through its current appropriation from the State's Conservation Fund.

In 1999, the Board plans to increase its group fees from \$25 per day to \$50 per day. In addition, it will begin to collect voluntary individual user fees by establishing self-registration collection boxes at entry points to the reserve. The Board plans to request \$3 per person for daily trail use, or a \$10 annual contribution, and \$10 per person for each night spent at one of its campgrounds. These amounts are comparable to the fees charged for similar activities in state parks. The Board projects that if the same number of people use the reserve as in 1998 and one-half of them contribute, it will collect about \$10,000 in 1999. Enforcing collection from all visitors would be difficult, as several roads into and out of the reserve allow multiple, unmonitored points of entry and departure.

Program revenue will also increase when the Board and the Ho-Chunk receive the agricultural leases originally negotiated by the Corps. The leases on about 1,000 acres, which were last signed in 1998 and extend until March 2003, currently generate about \$36,000 annually for the Corps. If the property transfer occurs in April 2000, the Board would begin to collect about \$31,000 and the Ho-Chunk about \$5,000 in 2001.

While the Board's revenues will increase once the reserve is transferred, so will its responsibilities and expenses. The Board has projected that hunting and environmental enforcement will cost around \$35,000 per year through an agreement with DNR. Consequently, most of the Board's new income will be used to fund its enforcement obligations. Expenses will also increase as the Board begins more intensive maintenance activities and safety modifications to trails this year, conducted by limited-term employees or contractors.

The State will be responsible for payments in lieu of taxes to Vernon County and other jurisdictions surrounding the reserve.

In addition, the State will assume responsibility for the Corps' payments in lieu of taxes to local governments whose jurisdictions extend into the reserve. In federal fiscal year 1997-98, the Corps paid approximately \$35,400. However, once the transfer occurs, the Department of Revenue estimates that the State will pay about \$125,000 each year to Vernon County and local towns, school districts, and the technical college. The reason for this large difference lies in the methods that the two governments use to determine payments. The federal government pays localities through two separate programs. The first is a \$1.47 per acre payment in lieu of taxes, which varies annually according to county population and other fiscal adjustments; the other originates from a requirement that federal agencies return 75 percent of income from sources such as agricultural leases to units of local government. The State bases its payment estimates on the assessed value of the land, the tax rate, and the value of the property in each jurisdiction. The Department of Revenue recently conducted a valuation of the reserve and found the fair market value to be \$4,943,300.

The Ho-Chunk also agreed in the MOU to make payments to the localities affected by the placement of reserve lands into trust for the tribe. The Ho-Chunk traditionally have developed individual agreements with municipalities to pay for police and emergency services, road maintenance such as snowplowing, and other locally provided services. However, since the MOU was signed, they have not made any decisions regarding payments to Vernon County and two towns whose districts cover the 1,200 acres of tribal land.

Future Considerations

The foremost issue facing the Board is uncertainty regarding the reserve transfer date.

The foremost issue facing the Board is uncertainty regarding the reserve transfer date. Although the Legislature's options are somewhat limited in situations that involve the federal government, a number of steps could be taken to help facilitate the transfer. For example, the Legislature may wish to consider legislation that would expedite signing the hold-harmless agreement. The Legislature also may wish to take additional steps to coordinate its efforts regarding the transfer through the State's congressional delegation. Finally, the Legislature may decide to further increase efforts by its federal-state relations office to facilitate the transfer.

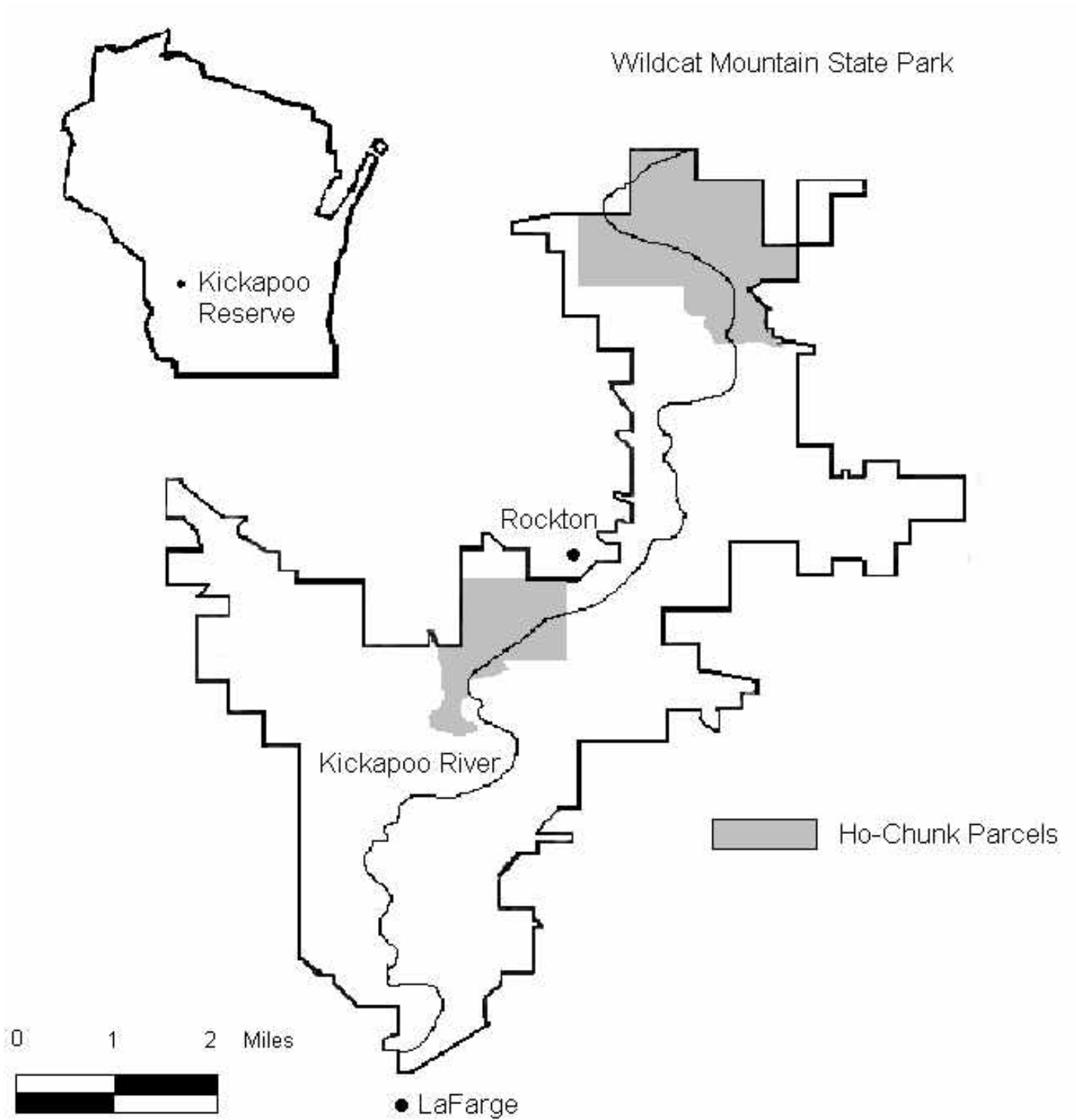
It would be desirable for the road reconstruction funding issue to be resolved before the reserve is transferred, because the Corps may have less of an incentive to request funding at a later date. Moreover, Congress may be less inclined to appropriate funds for a state highway on state-owned land, leaving the State to fund any reconstruction. In 2000, the State and the Legislature may need to decide whether to accept ownership transfer of the reserve and forego funding from the Corps for highway reconstruction, or to refuse the transfer until an agreement is negotiated with the Corps to release funding for this purpose.

Two options have been discussed related to negotiating an agreement. The first is for the Corps and the Federal Highway Administration to enter into a federal inter-agency agreement under which the Corps would transfer funds to the Federal Highway Administration, which has an established relationship with the Wisconsin DOT. Those funds would then be transferred to DOT as needed to complete the reconstruction. The other option is for the Corps to allow DOT to act as the contractor for this project. As part of any agreement, the Corps would seek from Congress appropriations for completion of the roadwork. While both options have certain drawbacks, they also hold the potential to find resolution for this issue.

Regardless of when the transfer is effected, it appears likely that the Board will continue to request appropriations from the Legislature. While the Board is actively pursuing other forms of income, the projected user fees of \$10,000 that it may collect this year will be only 5.5 percent of its fiscal year 1998-99 appropriation. The Board will take over agricultural leases when the property is conveyed, but it will also become responsible for paying for its law enforcement; funds collected from the leases will approximately equal law enforcement costs. Further, with the Board's and the Ho-Chunk's emphasis on protecting natural and cultural resources on the land and permitting only low-impact recreational activities, it is unlikely that the reserve will experience a substantial increase in visitor attendance in the near future. Over the long term, any growth in programming or activities on the reserve will require either increased State funding or the development of alternative types of support.

APPENDIX I

THE KICKAPOO VALLEY RESERVE
Vernon County



May 7, 1999

Janice Mueller
Legislative Audit Bureau
131 West Wilson Street
Madison, Wisconsin 53706

Dear Ms. Mueller:

Thank you for the opportunity to review this report. The Kickapoo Reserve Management Board (KRMB) will review the audit report at the May 20, 1999 monthly meeting. Should there be any specific questions or comments, we will provide them in written form following the meeting. As you can appreciate, this is a complicated project; and the Board is very interested in hearing the interpretation of an outside entity.

It is a high priority for the KRMB to follow the legislative objectives and requirements for this project as the statutes dictate. By doing so the Kickapoo Valley Reserve will be a success story for both the residents of the Kickapoo Valley and the State of Wisconsin. The completion of the audit accomplishes an important legislative requirement for the KRMB.

It was a pleasure to work with Don Bezruki and Rachel Holbert as they did the research for the audit report. Their thorough methods and professionalism were greatly appreciated.

Sincerely,

Marcy West
Executive Director