



*Ojibway Indians poling through wild rice fields;  
photograph by Frances Densmore, about 1910.*

# DAMS AND DAMAGES



## The Ojibway, The United States, and the Mississippi Headwaters Reservoirs

**“N**O ONE that comes here and stops for a while can know how important this is to us. When our lands were given to us by the Great Father we could do something, but if these dams are made we will all be destroyed.” These words were spoken by Flatmouth, chief of the Pillager band of Ojibway Indians, at a Leech Lake council in November, 1883.<sup>1</sup>

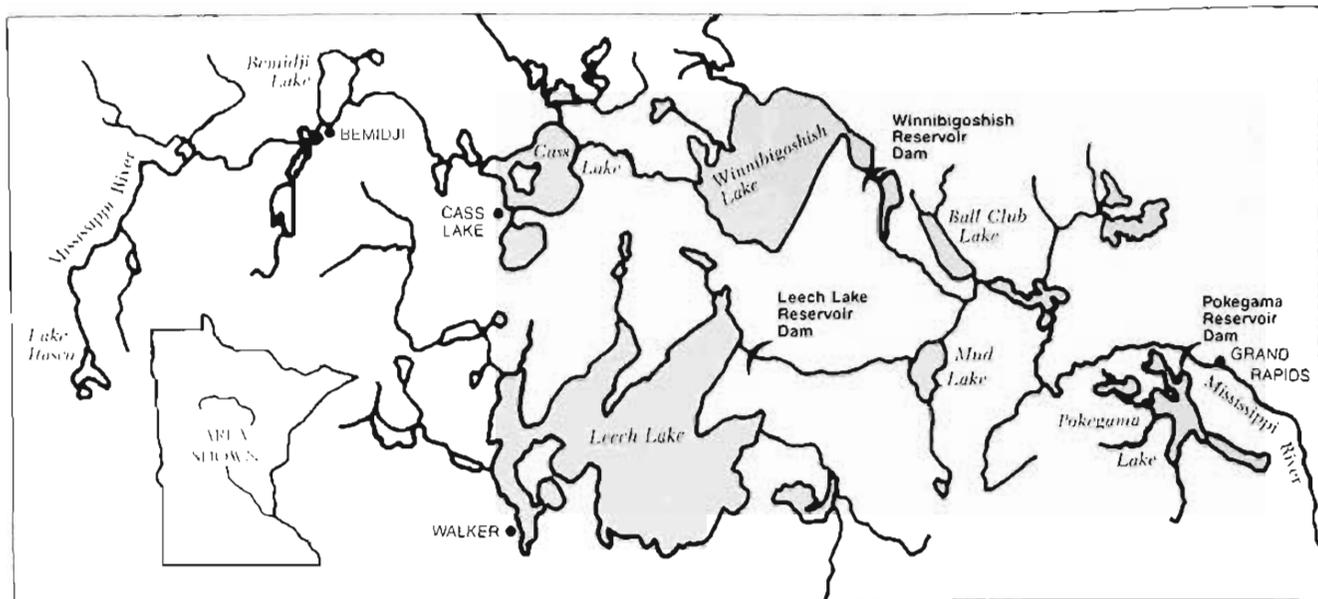
In September, 1985, the United States government, in an out-of-court settlement, agreed to pay the Leech Lake band \$3,390,288 for tribal land taken from them a century earlier. The land had either been confiscated or overflowed as part of a federal project to construct and maintain a system of dams and reservoirs at the major lakes that comprised the headwaters of the Mississippi River. The 1985 settlement pertained to land lost and damages sustained by the three Ojibway bands living in the vicinity of Lake Winnibigoshish, Leech Lake, and Lake Pokegama. Although Congress had appropriated \$150,000 in 1890 as compensation for damages resulting from the project, the Ojibway had long contended that the award was grossly inadequate and unjust; moreover, for reasons that are not clear, the government never paid the tribe the full amount. The

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<sup>1</sup> 48th Cong., 1st sess., 1884, *House Executive Document*, no. 76, “Damages to Chippewa Indians,” 29 (serial 2200).

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Mississippi River headwaters lakes, marked to show the location of the reservoirs authorized by Congress in 1880

Indians' persistent demand for fair compensation led them to challenge the government in court, which prompted the 1985 settlement.<sup>2</sup>

This controversy between the Ojibway of the Mississippi headwaters region and the federal government began in 1880, when Congress approved a plan to construct an experimental dam and reservoir at Lake Winnibigoshish. Since 1850 the Army Corps of Engineers, as well as private commercial interests, had been investigating the feasibility of damming the headwaters in order to regulate the flow of the river downstream. The millers and other users of water power in Minneapolis were especially eager to have a constant flow over St. Anthony Falls during low water periods. Prominent American engineers such as Franklin Cook, Charles Ellet, Jr., and Thomas M. Griffith supported the concept of a headwaters reservoir system; William D. Washburn, a leading Minneapolis miller and United States senator, led the campaign for a federally funded reservoir project; and town boosters along the Mississippi supported the proposal because they believed enhancing the river's flow would boost navigation and restore competition in the region's transportation industry, which was virtually monopolized by the railroads. The city of Minneapolis enthusiastically supported the idea, envisioning itself as the seat of navigation for a new and burgeoning river traffic between the Falls of St. Anthony and the northern Minnesota frontier.<sup>1</sup>

As it became clear that the construction and maintenance of a reservoir system in the Mississippi headwa-

ters would greatly benefit private business interests, Congress instructed the Corps of Engineers to investigate whether the public would benefit from the project. Members of the House of Representatives indicated that federal money would be spent only if such were the case. In 1878 Congress asked Captain Charles J. Allen of the Corps to examine the impact that the reservoirs would have on navigation, because the improvement of river traffic would be in the public interest. At the time, periodic changes in the water levels of the river between the headwaters and Lake Pepin made steamboat navigation impossible for weeks, and sometimes months, at a stretch. Because few boats plied the Mississippi above St. Anthony Falls, the Corps had to make the case that navigation below St. Paul could be improved by the release of water from reservoirs in north-

<sup>2</sup> On the settlement, see *Minnesota Chippewa Tribe v. United States*. Indian Claims Commission, 29:211 (1972); see also Bureau of Indian Affairs (BIA), memorandum to Minneapolis Area Director, BIA, "Results of the Research Report of Judgment Funds in Docket 188 before the U. S. Claims Court, Mar. 11, 1986," copy in legal dept., Corps of Engineers, St. Paul. The Pillager and Winnibigoshish bands received \$699,755.44 together, those of the Mississippi \$2,690,532.56.

<sup>1</sup> Raymond H. Merritt, *Creativity, Conflict & Controversy: A History of the St. Paul District U.S. Army Corps of Engineers* (Washington, D.C.: Government Printing Office, 1979), 68-73. See also Lucile M. Kane, *The Falls of St. Anthony: The Waterfall That Built Minneapolis* (Revised ed., St. Paul: Minnesota Historical Society [MHS] Press, 1987), 128-133.

ern Minnesota. For this reason the engineers recommended the reservoir system, and Congress authorized the construction of an experimental dam at the outlet of Lake Winnibigoshish in 1880. Construction began the following year and was completed in 1884. Additional congressional authorizations and appropriations allowed the Corps to build two more dams, one at Leech Lake and one at Lake Pokegama, between 1882 and 1884. Over the next 28 years the government engineers completed the last three dams in the system of headwaters reservoirs at Pine River (Cross Lake) and Sandy and Gull lakes. The development of these reservoirs required Ojibway land.<sup>4</sup>

IN 1881 the Ojibway of Minnesota resided on reservations scattered across the northern half of the state. The major lakes that comprised the headwaters of the Mississippi—Winnibigoshish, Leech, Pokegama, Sandy, and Gull—had been the sites of Ojibway villages since the early 18th century. These waters had also provided the primary means of subsistence for the headwaters bands, whose culture was intimately bound to the lakes and their nearby resources. The bands' yearly cycle revolved around seasonal variations in the bounty provided by the lakes and surrounding woods.<sup>5</sup>

In the early spring the women gathered maple sap while the men hunted; in the late spring they planted corn and potatoes. During the summer, people fished, picked berries, collected birch bark for canoes and wigwams, maintained their gardens, and wove mats from lake rushes; in late summer they harvested and processed wild rice. In the fall band members picked and dried cranberries; and during the winter the men left the villages to hunt and trap. The indigenous wild rice provided the Ojibway with one of their principal staples. They ate the grain year-round as a side dish, a filler in soups and stews, a snack, and as a main course. In lean times, especially during the long winter, wild rice was often the only food the bands had to eat. To the Ojibway, the grain possessed religious significance; they employed it as a ceremonial and ritual food, as well as for medicinal purposes, and made wild rice the

subject of their legends.<sup>6</sup> Life around the lakes defined the world of the headwaters bands, including beliefs, ceremonies, superstitions, and social activities. Their landscape was the woods and hay fields of the lakeshore, the wild rice marshes, cranberry bogs, and fishing shoals of the lake. Their pathways ran between and around the lakes and from them to their hunting grounds. The location, as well as the existence, of these water resources was integral to Ojibway culture. The reservoirs created by the federal government permanently altered the landscape around the headwaters and destroyed a significant portion of the bands' means of subsistence. In the late 19th and early 20th centuries the Corps operated reservoirs primarily to improve navigation. This operation meant frequent changes in the water levels, and these fluctuations were devastating to Ojibway resources. The reservoir system not only ruined the Ojibway economy, but also threatened to destroy their entire way of life.

The headwaters Ojibway had been relatively secure in their way of life since the mid-19th century. An 1855 treaty created reservations for them at Winnibigoshish, Leech, Pokegama, Sandy, and Gull lakes. Under an 1863 treaty, the Ojibway gave up the reservations at Gull, Sandy, and Pokegama in exchange for a single larger reservation surrounding Cass, Leech, and Winnibigoshish lakes, but discontent with the 1863 treaty led the bands to remain on the old reservations. The next year the Ojibway negotiated another treaty with the United States, which added a great deal of land to the Leech Lake Reservation and provided that the bands could stay on the 1855 reservations until the government made specified improvements at Leech Lake. Although the improvements were made, few Indians moved from the old reservations.<sup>7</sup>

In the treaty of 1867, the Ojibway ceded their right to the expanded Leech Lake reservation granted in 1864, retaining lands adjoining Cass, Winnibigoshish, and Leech lakes, and acquiring a new reservation west of the headwaters region called White Earth. The Mississippi band, whose members lived at Sandy, Pokegama, and Gull lakes, agreed to vacate its reservations, but while some of the band moved to White Earth, many did not. By 1872 only about 550 members out of an estimated total of 2,166 in the Mississippi band had moved. In 1873 President Ulysses S. Grant, by executive order, added White Oak Point to the 1867 reservation that surrounded Winnibigoshish and Leech lakes. (White Oak Point was a peninsula in the Mississippi River between Winnibigoshish and Pokegama where the easternmost members of the Mississippi band had been living since 1867.) By 1880 the largest concentrations of the headwaters bands were at Leech Lake, Lake Winnibigoshish, White Oak Point, and White Earth, although smaller groups remained at the sites of

<sup>4</sup> Merritt, *Creativity, Conflict & Controversy*, 72, 75.

<sup>5</sup> Harold Hickerson, *Chippewa Indians II: Ethnohistory of Mississippi Bands and Pillager and Winnibigoshish Bands of Chippewa* (New York: Garland Publishing, 1974). The headwaters bands included the Pillagers at Leech Lake, and the Mississippi, Winnibigoshish, and Cass Lake bands.

<sup>6</sup> Joseph A. Gilfillan, "The Ojibways in Minnesota," *Minnesota Historical Collections* (St. Paul: MHS, 1901), 9:71; Thomas Vennum, Jr., *Wild Rice and the Ojibway People* (St. Paul: MHS Press, 1988).

<sup>7</sup> William Watts Folwell, *A History of Minnesota* (Reprint ed., St. Paul: MHS Press, 1969), 4:193–195; United States, *Statutes at Large*, 10:1165, 12:1249, 13:693.

the 1855 reservations until the end of the 19th century. Government records reveal that in 1889, for example, there were still 277 of the Mississippi band living at Gull Lake.<sup>8</sup>

FROM THE BEGINNING of the reservoirs project, the Pillager band at Leech Lake was the most adamant critic of the federal government's activities. Repeatedly over the course of the 1880s, the Pillagers led the other headwaters bands in demanding fair dealing in the matter. The administration had early recognized that the Ojibway bands living on the Leech Lake Reservation would have to be paid for damages to their means of subsistence caused by damming the Mississippi. The government's ability to do justice to the tribe, however, was hindered by two factors: first, lacking understanding of the cultural significance of the headwaters lakes to the Ojibway, the government placed a simple monetary value upon the tribe's resources and lands; second, Congress made inadequate provisions to compensate the Ojibway in the legislation appropriating funds for the reservoir project. As a result of congressional shortsightedness, the actual payment for damages was delayed for almost ten years after the start of construction. During this time the government was embroiled in controversy with the tribe, and as the out-of-court settlement of 1985 indicated, the reservoirs project remained a source of controversy between the Minnesota Ojibway and the federal government for over a hundred years.

Congress approved in 1880 the construction of the dam at Lake Winnibigoshish. The fact that the proposed dams there and at Leech Lake were located on the reservation raised legal questions about the government's right to take and overflow Ojibway land. The Corps of Engineers could not begin work until that right to construct the dams and maintain the reservoirs had been established. Therefore, Secretary of War Alexander Ramsey requested an opinion from United States Attorney General Charles Devens. The attorney general concluded that, while the federal government had the power to take the reservation land under the legal doctrine of eminent domain, in the act of June 14, 1880, Congress had failed to exercise that power. A proviso attached to the act had stated that "all injuries occasioned to individuals by overflow of their lands shall be ascertained and determined by agreement, or in accordance with the laws of Minnesota, and shall not exceed in the aggregate five thousand dollars."<sup>9</sup>

Devens asserted that this proviso could not be extended to Ojibway tribal land because its language touched only upon individual property owners; there was no propriety in following state law in the matter, since the federal government had jurisdiction over Indian land; and because the proviso limited the amount

that could be paid for damages. Since the Corps of Engineers reported that the amount of damages resulting from the Winnibigoshish Dam would exceed the entire sum of money originally appropriated for the project, limiting the amount of damages to \$5,000 would amount to taking the tribe's land without just compensation. Devens concluded that Congress could not have intended to dispossess the Ojibway unfairly. He suggested further legislation was necessary before the government could proceed with the project.<sup>10</sup>

Congress appropriated additional funds on March 3, 1881, for the headwaters reservoirs and provided that the damages paid to the Ojibway should not exceed ten percent of the total amount of money appropriated up to that time. Since this sum equaled \$225,000, this proviso again limited the compensation that could be paid to the tribe, this time to the sum of \$22,500.<sup>11</sup>

Under the assumption that the 1881 legislation had addressed the legal issue of fair compensation, the government appointed a three-man commission in August of that year. Its mission was to assess damages that would result from the two dams at Winnibigoshish and Leech lakes, taking into account both individual and tribal lands. The commission recommended an award of \$15,466.90, which the Department of the Interior approved. Consequently, the Corps of Engineers resumed the construction of the Winnibigoshish Dam, which had been suspended pending settlement of the legal questions surrounding the project.<sup>12</sup>

The Ojibway, however, were far from satisfied. The tribe was so angry about the paltry award recommended that its members refused to accept the money. The degree of dissatisfaction and unrest was so great that Commissioner of Indian Affairs Hiram Price feared an uprising. Friends of the tribe, including Episcopal Bishop Henry B. Whipple and politician Henry M. Rice, persuaded the Ojibway to keep the peace and not interfere with dam construction in the hope that the authorities would reconsider the award and provide more just compensation. Other prominent Minneso-

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<sup>8</sup> Folwell, *Minnesota*, 4:195-197; *Statutes at Large*, 16:719; Charles J. Kappler, comp. and ed., *Indian Affairs, Laws and Treaties* (Washington, D.C.: GPO, 1904), 1:854; 51st Cong., 1st sess., 1890, *House Executive Document*, no. 247, "Chippewa Indians in Minnesota," 4 (serial 2747).

<sup>9</sup> *Statutes at Large*, 21:193; 47th Cong., 1st sess., 1881, *House Executive Document*, no. 1, vol. 2, part 2, "Report of the Chief of Engineers, U. S. Army," 1761, 1781-1783 (serial 2012), hereafter cited as "Report of Engineers."

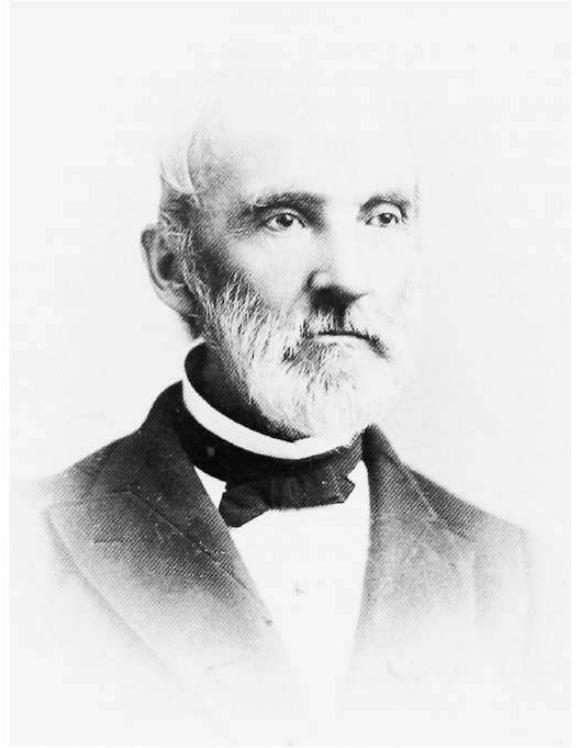
<sup>10</sup> "Report of Engineers," 1881, p. 1766. The original appropriation for the Winnibigoshish Dam was \$75,000.

<sup>11</sup> "Damages to Chippewa Indians," 1.

<sup>12</sup> The first commission consisted of Albion Barnard, Thomas Simpson, and Louis Morell; "Report of Engineers," 1882, p. 1828 (serial 2093).



*Bishop Henry B. Whipple*



*Henry Hastings Sibley*

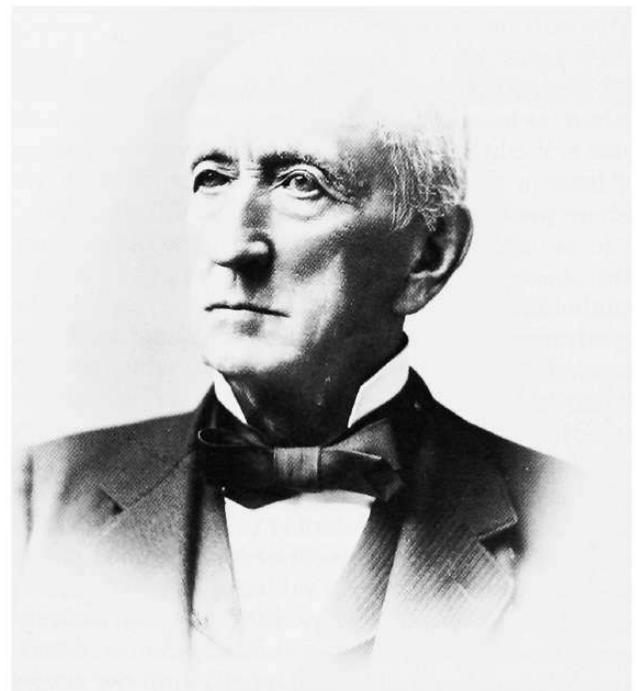
tans, including Henry Hastings Sibley, joined Whipple and Rice in pressuring the federal government to appoint a second commission to reassess the amount of damages done to the tribe.<sup>13</sup>

BISHOP WHIPPLE, who had served as a missionary to both the Dakota and Ojibway for many years, was most active on the behalf of the Indians in the reservoir controversy. During the fall of 1881, Whipple counseled the irate Ojibway to remain calm while he lobbied Commissioner Price to reopen the compensation matter. At the request of Whipple, White Cloud, an Ojibway chief living at the White Earth Reservation, wrote a letter to the leader of the Pillagers, Flatmouth. White Cloud advised Flatmouth to prevent his followers from sabotaging the dam project until the matter "is satisfactorily settled with the Great Father." White Cloud noted that the white friends of the Ojibway were working to change the situation and were concerned about the tribe's welfare.<sup>14</sup>

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<sup>13</sup> "Damages to Chippewa Indians," 1, 7, 10, 11.

<sup>14</sup> "Damages to Chippewa Indians," 5, 7. The letter is dated Dec. 26, 1881.



*Henry M. Rice*

Dissatisfaction among the Ojibway continued to mount as 1881 became 1882 and still no action had been taken by the government. Meanwhile, Bishop Whipple was pressuring Commissioner Price to meet with the Ojibway chiefs in Washington to negotiate a settlement. Indian resentment and anger grew to such an extent by spring that observers and friends again feared an uprising was imminent. In May several prominent Minnesotans, including Sibley and Rice, published an open letter in the *St. Paul Pioneer Press* to the commissioner warning of impending disaster if action were not taken soon to remedy the situation. The writers pointed out that the Ojibway had never given their consent to the construction of the dams and that the compensation offered to them in 1881 had been inadequate. Yet, they said, "the Government has nevertheless proceeded to erect a dam . . . and the Indians are naturally dissatisfied that some of their numbers are ousted from the village they have long occupied on the shore of the lake, and property taken without adequate remuneration." They warned Price that discontent was spreading among the Ojibway and required "only some rash act of a few young men" to bring about an Indian war. Recalling the bloodshed of the Dakota conflict in 1862, they advised Price that the situation was "delicate and dangerous."<sup>15</sup>

Bishop Whipple reaffirmed these warnings in a letter to Commissioner Price one week later: "I saw in the paper to-day a letter addressed to you by General Sibley and others, on behalf of the Chippewas [Ojibway]. I honestly believe that the statements made deserve your early attention. The Chippewas hold their present lands under the guarantee of the Government. They are poor, have always been our friends, and have received far less aid than Indians who are our enemies. A visit to Washington of the chiefs, possibly a commission of those in whom they have confidence, will settle this whole question. Believing that you desire their welfare, I do earnestly ask you to spare us the possibility of any disturbances, which may be perilous to us and will be fatal to the Indians. Highly as I do esteem some of the gentlemen who were connected with the commission last fall, I believe they failed to place before you the Indian side of the question, and the Indians did not accept their offers."<sup>16</sup>

By June, 1882, the Ojibway began to fear that the government would never reconsider the matter of the dams; a consensus was building that the Great Father intended to cheat them out of fair compensation. Many were worried that, having refused the initial award, the tribe would be left with nothing. White Cloud suggested to Whipple that the work on the dams at Winnibigoshish and Leech lakes be stopped until the matter was settled. The chief pointed out that the Ojibway had been waiting all winter and spring for a delegation



Ojibway leader White Cloud, about 1895

of their leaders to be called to Washington, but to no avail. A sense of panic was developing because tribe members could see the dams being built that would destroy their means of subsistence. White Cloud and his people believed that earlier treaties should protect their reservation land from being taken: "At Washington is an understanding, a strong one, in which a mention is made of our reservations . . . also that a white man should take nothing from those reservations. . . ."

<sup>15</sup> "Damages to Chippewa Indians," 6, 10. Whipple's letter is dated Jan. 9, 1882. *Pioneer Press*, May 11, 1882; the other signers of the letter were Francis Driscoll, David Day, and Robert Blakeley.

<sup>16</sup> "Damages to Chippewa Indians," 7.



*Winnibigoshish Dam, photographed in 1884 by the Army Corps of Engineers*

We understood that if the Great Father wished to take anything himself that there would first be an understanding. . . . We could and did not give assent to the damming of the river.”<sup>17</sup>

IN RESPONSE to Bishop Whipple and other friends of the Ojibway, as well as in recognition of the degree of unrest among the headwaters bands, Commissioner Price appointed a second commission in December, 1882, consisting of Henry Sibley, former Minnesota governor William R. Marshall, and the Episcopal mis-

sionary Joseph A. Gilfillan. Price directed the three men to ascertain how much wild rice the Leech Lake Reservation bands harvested yearly in order to place a cash value on the crop. Similar information was to be gathered about the harvest of cranberries, hay, fish, and maple sap.<sup>18</sup>

Despite the sincere intentions of the second commission to deal quickly and fairly with the Ojibway, the serious and protracted illness of Sibley, along with other delays, prolonged the commission’s work for nine months. (Robert Blakeley replaced Sibley late in the summer of 1883.) Before the commission submitted its official report in November, Marshall wrote Price suggesting that the government consider additional compensation to the Ojibway for “sentimental damage.”

<sup>17</sup> “Damages to Chippewa Indians,” 7, 8. The letter is dated June 8, 1882.

<sup>18</sup> “Damages to Chippewa Indians,” 20–23.

Marshall explained that there was more at stake for the headwaters bands than could be assessed simply in monetary terms: "As a question of material damage it is not easy to get at a just estimate. I doubt if any commission could arrive at it. The possessions of the Indians, the fishing privileges, rice marshes, sugar-making and canoe-making grounds, &c., have not a marketable and commercial value, such as the possessions and privileges of white men. . . . There is, too, a large sentimental damage, not material, but not less real, involved. Their accustomed haunts are broken up, their paths, roads submerged, they will feel compelled to relocate their villages, will have to adapt themselves to new surroundings, a thing a white man could readily do, but not an Indian."<sup>19</sup>

The commissioner refused requests of Marshall, Sibley, Whipple, and the Ojibway that a delegation of the Indian leaders be brought to Washington to negotiate a settlement. Price insisted that there was no money available to finance a delegation; moreover, he argued, there was no point in meeting until the second commission finished its work. In August the Pillager band took matters into its own hands and wrote directly to Price. Band leaders demanded "not to have built any dams until we have settled with you our rights." Again, Price's response was that nothing should be done until the second commission submitted its report.<sup>20</sup>

As the summer ended, the second commission still had not met with the bands on the Leech Lake Reservation to assess damages. By this time, Bishop Whipple, frustrated and angry over the inaction of the government and the commission, wrote to Price that he was "heart sick" over the entire matter, saying "it is one of the many instances where we have clearly violated principles of justice."<sup>21</sup>

The second commission finally met with the Ojibway and attempted to ascertain the monetary value of the damage that would be done to the Winnibigoshish, Pillager, and Mississippi bands living on the Leech Lake Reservation. In its report, the commission asserted that it had been virtually impossible to reach any "reasonable agreement" with the Ojibway as to dollar amounts for the harm that would be done to the bands because they were determined "not to give any information" on their harvests. When the commissioners asked the cash value of the annual harvest of lake resources, the Indians refused to co-operate because they had already decided among themselves to insist upon an award of \$250,000, to be paid every six months.<sup>22</sup>

Adamant about this amount, the Ojibway had agreed to stand firm against any attempts to give them less. Repeatedly during the course of the council at Leech Lake, the various spokesmen for the bands asserted this position and declared their unwillingness to compromise. They also tried to express to the commis-

sion the difficulty of reducing their losses to dollar amounts. One of the most outspoken Pillagers, Sturgeon Man, questioned the ability of the white commission to comprehend what his people would suffer: "No white man knows of the damage that will be done to us. As long as the sun shall pass over our heads we would have been able to live here if this dam had not been commenced. Every year what supports us grows on this place. If this dam is built we will all be scattered, we will have nothing to live on."<sup>23</sup>

Flatmouth claimed that the Indians had the right to set the price because it was their land that would be ruined. He argued that the government had been unjust in the matter and that the Great Father's actions had "startled" the Ojibway. Flatmouth believed the Great Father was trespassing on reservation land in building the dams; despite efforts by the commissioners to explain the law of eminent domain, he refused to accept the concept that reservation land could be taken without permission. The chief agreed with Sturgeon Man: "This matter is of the greatest importance to us. . . . if these dams are made we will all be destroyed."<sup>24</sup>

The commission made its own assessment of damages without the help of the Ojibway. It predicted, based upon reports of the Corps of Engineers, that the dams would flood 46,920 acres at Lake Winnibigoshish and Leech Lake. The commission, accounting for losses of subsistence and damage to property, recommended a one-time payment of \$10,038.18 for properties ruined and an annual award of \$26,800 to compensate for the loss of wild rice, berries, maple trees, hay, and fish.<sup>25</sup>

The commission did not, however, pay the Ojibway for the land occupied by the Corps of Engineers for the construction and maintenance of the dams or for the land overflowed by the reservoirs. Legally, the Indians did not own the reservation in fee simple; like other American Indians, they simply had the right to occupy the reservation, while the federal government retained title to the land. Under the law, the United States was not obliged to pay because, technically, it owned the

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<sup>19</sup> "Damages to Chippewa Indians," 18.

<sup>20</sup> "Damages to Chippewa Indians," 17, 18, 19-20. The band's letter is dated Aug. 2, 1883.

<sup>21</sup> "Damages to Chippewa Indians," 18. Whipple's letter is dated Aug. 17, 1883.

<sup>22</sup> For the report of the second commission, see "Damages to Chippewa Indians," 20-23.

<sup>23</sup> On the Leech Lake council, see "Damages to Chippewa Indians," 7, 26.

<sup>24</sup> "Damages to Chippewa Indians," 29.

<sup>25</sup> According to Carswell McClellan of the Corps of Engineers, Lake Winnibigoshish would be raised 14 feet, while Leech Lake would be raised four feet after construction of the two dams; "Damages to Chippewa Indians," 20-23, 24.



*The Leech Lake Dam, photographed between 1902 and 1909*

property. The injustice of failing to compensate the Ojibway for lost reservation land, however, was clear to both the second commission and the commissioner of Indian affairs. The commission tried to make up for the injustice by being liberal in its estimates of damages to the bands' subsistence. Price explained in his report to Congress that: "The estimate of the commission for annual damages for rice at 10 cents per pound, and hay at \$28 per ton, would appear at first sight to be rather extravagant; but when we consider that over 46,000 acres were taken from the Indians without any compensation whatever, it is believed that the estimate is not too high."<sup>26</sup>

Price went on to recommend that the one-time payment and the first annuity be paid together as he doubted the Ojibway would accept the \$10,038.18 award alone, since they had rejected the first commis-

sion's sum of \$15,446.90. But the legislation of 1880 and 1881 authorizing construction of the dams had not included provisions for the payment of annual damages to the Ojibway. Thus a new appropriation would be necessary to establish the annuity of \$26,800. Unfortunately for the Ojibway, Congress failed to take action and no annuity was ever paid. To make matters worse for the headwaters bands, Commissioner Price, reluctant to add insult to injury by offering the \$10,038.18, declined to give any money at all to the tribe.<sup>27</sup>

THREE YEARS later the Ojibway still had not been compensated. By that time the federal government had shifted its focus away from the reservoir controversy toward trying once again to consolidate the Minnesota Ojibway on the White Earth Reservation. In August, 1886, a third delegation, designated the Northwest Indian Commission, was sent to meet with the Minnesota bands and reach an agreement for their removal to White Earth. Bishop Whipple led the group, believing that it was in the tribe's best interest to live together on one reservation.<sup>28</sup>

The Northwest Indian Commission, upon meeting with the headwaters bands, discovered that the Ojibway refused to discuss the subject of removal to White Earth until the issue of damages from the reservoirs was addressed and settled to their satisfaction. The commis-

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<sup>26</sup> This legal doctrine was upheld by the United States Supreme Court in *Johnson v. McIntosh*, 21 U.S. (8 Wheat) 543 (1823), and still holds true today; see William Canby, Jr., *American Indian Law* (St. Paul: West Publishing, 1988), 45.

<sup>27</sup> "Damages to Chippewa Indians," 4.

<sup>28</sup> See 49th Cong., 2nd sess., 1886-87, Senate Executive Documents, no. 115, "Report of the Northwest Indian Commission," 8, 22 (serial 2449). Charles F. Larrabee and John V. Wright were the other commissioners.

sion, anxious to discuss plans for removal, found itself compelled instead to deal first with the reservoir controversy. Consequently, Article IV of the 1886 Northwest Indian Commission agreement provided for the payment of \$150,000 as compensation in full for the losses borne by the Ojibway as a result of the federal project.<sup>29</sup> Again, to the dismay of the tribe, Congress declined to approve any agreements made with the Northwest Indian Commission. After three commissions in five years, the damages controversy still had not been resolved.

Despite their apparent ineffectiveness, commissions continued to go to the headwaters region to negotiate with the Ojibway. The government appointed a fourth commission, led by Henry Rice, in February, 1889, to reach an agreement that would provide for the "relief

and civilization" of the Ojibway, under the provisions of the Nelson Act. The aim of this commission was the removal of the tribe to either the White Earth or the Red Lake Reservation, as well as the division of tribal land into allotments. A proviso of the Nelson Act, however, allowed individual Ojibway to take their allotments on the old reservation sites. As many of the tribe chose to remain where they were, the purpose of the law was effectively undermined.<sup>30</sup>

At the Leech Lake council with the Rice commission, the Pillagers insisted, as a prerequisite to further discussions, that all claims against the federal government be addressed. In fact, the Indians refused to allow the commission to proceed until its members had given their solemn promise, with hands upheld, that they would do their utmost to have the unresolved matters settled immediately. So serious were the Pillagers that they placed an honor guard upon the three men to prevent them from conducting any business until outstanding grievances were heard.<sup>31</sup>

The bands at Leech, Winnibigoshish, and Cass lakes claimed to be destitute as a result of the reservoirs. Mah-ge-gah-bow, a Pillager spokesman, said that the lake had been "spoilt" by the dams, and "That is the reason we are compelled to dig snake-root sometimes for subsistence. If it had not been for the action of the whites in stopping up the rivers with the reservoirs we would not be compelled to do that for a subsistence. We thought we had arrived at a time when a settlement for those reservoirs should be made; something of a sufficiency to support us; that is the idea we still entertain. And, my friend [*to Rice*], you are the one who told us to keep quiet and live in peace, and that is why we have; but we see that those dams are conquering us. If you had not spoken to us we would have opened those dams long ago."<sup>32</sup>

<sup>29</sup> The award was to be divided by giving \$100,000 to the Pillager and Winnibigoshish bands and \$50,000 to the Mississippi band; "Report of the Northwest Indian Commission," 45.

<sup>30</sup> The Nelson Act, passed Jan. 14, 1889, called for the removal of all the Ojibway in Minnesota to either the Red Lake or White Earth reservations. All Ojibway land was to be allotted and the remainder of unallotted land ceded to the United States. Folwell, *Minnesota*, 4:219-226.

<sup>31</sup> The Pillagers also had outstanding claims related to the Treaty of 1847 (*Statutes at Large*, 9:908), in which the United States took a portion of Pillager land for use by the Menominee Indians from Wisconsin. The idea was that this friendly tribe would act as a buffer between the Ojibway and their archenemies, the Dakota. However, the government never brought the Menominee to live on the ceded land, opening it instead to settlement by non-Indians, and it never paid the Pillagers for the land. "Chippewa Indians in Minnesota," 4, 17.

<sup>32</sup> "Chippewa Indians in Minnesota," 129-130.

*Flatmouth, the Pillager leader*



After this speech in the council, several of the Pillagers arose and angrily accused the commission of trying to bully them into signing the removal agreement. Sturgeon Man told the commission to go home, and the council was broken up until the next day. At subsequent meetings, some of the Pillagers continued openly to demonstrate their anger toward the proceedings. The councils at Leech Lake ended with a large number of the band refusing to sign the Nelson Act agreement. Although the Rice commission had promised to get the \$150,000 award warranted by the Northwest Indian Commission three years earlier, many of the band doubted whether they would ever see the money. In any case, many still felt that a one-time payment of \$150,000 was unsatisfactory. Sturgeon Man claimed that the Pillagers had never agreed to the amount and that in his view the matter of the award was still open for debate. He pointed out that since the agreements made with the Northwest Commission were void, the amount was irrelevant.<sup>33</sup>

The Pillagers who signed the removal agreement did so with a lack of confidence in the government's intentions to pay them for their losses. Too many unkept promises had been made to them by commissions in the past. Kay-ke-now-aus-e-kung expressed the frustration of his group when he declared, "I signed for the Northwest Commission, and it did not amount to anything. I am now about to sign again, and if this don't amount to anything I would rather be taken and strangled by the neck with a rope."<sup>34</sup>

At the Lake Winnibigoshish council, the band reported that its cemeteries had been overflowed and that a large number of graves had washed away. Skulls and



*Sturgeon Man, a Leech Lake spokesman, photographed about 1897*

bones lay scattered along the lakeshore. Their gardens had been ruined and village destroyed; the lakeshore had been made barren by the overflow.

The outcome of the Rice commission's work was the recommendation that the headwaters bands be paid the \$150,000 promised them in 1886, with the addition of 5 percent interest and the payment of \$1.25 per acre for overflowed reservation land. The commission estimated that 46,920 acres had been lost to water. Finally, in 1890, after several years of delay, Congress appropriated the \$150,000, although it did not provide any money to compensate the Ojibway for lost land. However, government actions in the matter continued to irritate the tribe. Rather than paying the full amount of the award immediately, as the tribe had anticipated, the government disbursed the money over a 34-year period and, in the end, failed to pay the entire sum.<sup>35</sup>

The Ojibway retained the conviction that the 1890 award was grossly inadequate for the irreparable harm done to their resources and way of life. In addition, the Winnibigoshish, Pillager, and Mississippi bands apparently disagreed as to whether the money was fairly distributed among them. The headwaters bands continued to feel resentment and bitterness over the reservoir project after 1890. This grievance, in addition to several others that the bands harbored against the federal government, fueled the anger of the Ojibway until it exploded in the Sugar Point uprising of 1898.<sup>36</sup>

<sup>33</sup> "Chippewa Indians in Minnesota," 130, 142.

<sup>34</sup> Here and below, see "Chippewa Indians in Minnesota," 146, 156.

<sup>35</sup> According to Whipple, the \$150,000 appropriation was made only after he himself went to Washington and asked President Grover Cleveland to urge Congress to act; Henry B. Whipple, *Lights and Shadows of a Long Episcopate* (New York: Macmillan Company, 1912), 314–315. The Ojibway received only \$147,434.15; *Minnesota Chippewa Tribe, et al. v. United States*, Docket no. 188, Indian Claims Commission, "Exceptions to the Defendant's Accounting Reports," Jan. 5, 1970, p. 2–5, 38.

<sup>36</sup> Here and below, see Folwell, *Minnesota*, 4:312–318, 321–322. The other grievances included the fraudulent estimation and sale of reservation timber; delays and irregularities in annuity payments; intrusion of Wisconsin Ojibway onto Minnesota reservations; promised, but unpaid, money for land taken from Leech Lake Reservation under past treaties; and the failure of the government to pay the Pillagers for land they ceded for use by the Menominees. The government never succeeded in consolidating all of the Ojibway in Minnesota onto the two reservations at Red Lake and White Earth; today there are six Ojibway reservations in the state, including one surrounding Leech and Winnibigoshish lakes.



*The dam at Lake Pokegama as it looked in 1908*

Although a seemingly trivial series of events precipitated the battle, this brief but violent action of the Pillager band represented the degree to which the headwaters Ojibway had been tormented by United States policy. The underlying causes of the battle were many, but they all resulted from unjust and inept administrative policies and practices. On the other hand, the Ojibway should not be viewed as helpless victims of government actions. Rather, as the reservoirs controversy demonstrates, the headwaters bands used the issue to their own advantage. They controlled the agenda of their relations with the United States by forcing the authorities to address the issue of fair compensation for damages, and they used it to block negotiations for consolidation. Furthermore, by constant pressure and threats of violence they were able to in-

crease the amount of their damages. Although dissatisfied with the 1890 award, the Ojibway had improved their situation by refusing to remain silent.

The tribe's persistence ultimately led to the out-of-court settlement of 1985, which included compensation for 178,000 acres of reservation land taken by the reservoirs, plus the loss of rice marshes and 5 percent accumulated interest since 1884. This settlement concluded a suit brought by the Minnesota Ojibway against the federal government in 1972. The suit came under the jurisdiction of the Indian Claims Commission, a court created by Congress in 1946 to hear Indian claims against the United States. Before 1946, such cases could be heard in the United States Claims Court only if Congress passed special legislation allowing particular tribes to bring suit. In the instance of the Minnesota

Ojibway, Congress had passed special legislation on May 14, 1926, conferring jurisdiction on the Court of Claims to hear claims arising under the Nelson Act or any subsequent act of Congress pertaining to the tribe. Since Congress appropriated the \$150,000 award in 1890, the 1926 legislation gave the tribe standing to sue the government on the reservoirs damages issue. However, other claims of the Minnesota Ojibway against the United States took precedence and delayed the settlement of the reservoirs controversy.<sup>37</sup>

IN THE FIRST half of the 20th century, the Corps of Engineers' policy in maintaining the Mississippi headwaters reservoirs remained primarily one of facilitating navigation on the upper Mississippi River. Conse-

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<sup>37</sup> *Chippewa Tribe v. U.S.*, Indian Claims Commission, 29:211; *Chippewa Tribe, et al. v. U.S.*, Docket no. 188, p. 2-5, 38; Canby, *American Indian Law*, 264-265; *Chippewa Tribe of Minnesota v. United States*, Court of Claims, 80:410, 411 (1935). The 1926 act was amended April 11, 1928. Most of the other claims arose out of controversy over the application of the Dawes Act, or General Allotment Act, of Feb. 8, 1887, and the Nelson Act of Jan. 14, 1889. The Dawes Act applied generally to tribes across the United States, whereas the Nelson Act was designed specifically for the allotment of Ojibway lands in Minnesota.

<sup>38</sup> The St. Paul District, Corps of Engineers, manages the Upper Mississippi River.

quently, the question of damages to Ojibway land and resources resulting from the construction and maintenance of the dams was not of major concern. Once the locks and dams on the Mississippi abrogated the navigational role of the reservoirs, however, policy changed. Since World War II, the Corps has become increasingly attentive to the effects of reservoir levels on Ojibway lands and resources. Today, it attempts to manage the headwaters reservoirs to enhance wild rice production, fish and game habitat, and recreation.<sup>38</sup>

The management and maintenance of the reservoirs remains potentially controversial, however; the interests of the tribe and the policies of the Corps do not always jibe. During the 1988 drought, for example, the Ojibway strenuously objected to proposals that the Corps release water from the reservoirs for the benefit of the Twin Cities and other downstream communities. As a result of this and other issues raised by the drought, the Corps of Engineers is developing a water control plan for the Mississippi headwaters reservoirs, for which it is requesting Ojibway opinion.

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The map on p. 4 is by Alan Ominsky; the photograph on p. 9 is used through the courtesy of the Corps of Engineers; the one on p. 12 is from Newton H. Winchell, *The Aborigines of Minnesota: A Report* (St. Paul: MHS, 1911), 703; all other illustrations are from the MHS audio-visual library.



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