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Indians Hope to Win Land

IN MARCH 1975, Connecticut's Schagticoke Indians filed suit to acquire 1,600 acres of undeveloped land in Kent. The tribe now has reason to hope for success.

In its lawsuit, the tribe has the backing of Pine Tree Legal Associates of Maine, the firm that has given technical support to most other major Indian land claims in New England.

The tribe's actions also come at a time when a significant amount of public opinion seems to have swung in favor of American natives for perhaps the first time in 200 years. Washington officials now reflect this by saying bluntly that the Indians should be repaid—where possible, given back—what was rightfully theirs and wrongfully taken from them in the past.

Leaders of the Schagticokes say that the 1,600-acre tract, adjacent to its 450-acre reservation on the west bank of the Housatonic River a few miles east of the New York State line, was part of a 2,000-acre parcel established for its use by Connecticut's General Court in 1752.

The Schagticokes based their suit on the Non-Intercourse Act of 1790, which "prohibits the conveyance of Indian lands" without a treaty between the United States Government and American natives. The tribe says its land was taken between 1800 and 1910.

The last survey was conducted more

than 200 years ago, so no one is sure how much land is involved. But most of it now belongs to the Kent School for Boys and the Preston Mountain Rod and Gun Club, and most is undeveloped.

The town of Kent built a \$235,000 sewer plant on eight acres leased from the school in 1970. For a while after the Indians began their suit, First Selectman Eugene O'Meara was worried. He said a local lawyer told him that the town might have to pay the tribe a lot more than the dollar a year it has been giving the school for the land.

But the Schagticoke chief, Irving Harris of Litchfield, has assured Mr. O'Meara that his people are not interested in the sewer plant or the land it occupies. Relieved of that concern, the town this summer offered to pave part of a dirt road on the reservation.

Fifty acres now belong to the Connecticut Light and Power Company. The rest is deeded to six or seven families. The power company agreed in March to give back its land in exchange for water rights within the reservation's boundaries. A Waterbury lawyer, James Robertson, summed up the company's reason. "We felt the cost of litigating the matter would far outweigh the cost of what we would lose to the tribe," he said.

The Bridgeport firm of Owens and

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Indians Hopeful on Land Claim

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Shine is technically handling the Schagticokes' case before the Federal District Court in Hartford. The suit was written by Pine Tree Legal Associates of Calais, Maine.

Pine Tree is also handling cases in Massachusetts, Rhode Island, New York and in Maine, where the Passamaquoddy and Penobscots claim 12.5 million acres—half the state's land.

The Schagticokes have had a relatively tranquil past. That made it easy for Chief Harris and his wife, Laurie, to document the tribe's movements from 1752. They also traced—with a bit more difficulty—the ownership of the land now claimed. "I'm not a lawyer," said Chief Harris, "but I can't see how so much land dwindled so fast."

The Schagticokes descended from the Pequots and Mohegans. They moved from coastal areas to Connecticut's western woodlands during the early 17th century. New Milford's records from that period mention the group specifically. And a few headstones in the tribe's burial grounds date to 1636.

Most Indian tribes in New England warred with settlers during that era. This one did not. Nor were the Schagticokes embroiled in territorial disputes with other Indians. They escaped such

conflicts by inadvertently settling into the buffer zone between Dutch colonies in New York and British ones in Connecticut.

They lived with Moravian missionaries, who helped them build a stone chapel—now a heap of rubble as a result of vandalism. They hunted and fished from New Milford north to West Cornwall. But they lived at Schagticoke, the Indian name for the place where they now claim 1,600 acres.

Tribesmen inhabited their reservation well into this century. In fact, they are most bitter about wrongs that they say were done to them since 1900.

The state managed the land and built 13 homes there during the 1850's. Before that, the Schagticokes survived the cold winters as they always had. They were hunters and fishermen. Later, they worked as mail carriers, silversmiths, preachers and midwives. They also sold rattlesnake venom for the production of antitoxin.

Whole families began leaving the reservation in about 1905 to get factory jobs in Bridgeport. Inadequate means of transportation made daily commuting impossible.

The Indians had already lost most of their land by then. A large part was sold by state-appointed white overseers in 1801, allegedly to pay off debts the tribe had incurred with local physicians.

Other sales occurred between 1850 and 1910. A few of the remaining 450 acres are usable for building. But from a riverside plateau, the reservation rises sharply to elevations more than 1,200 feet.

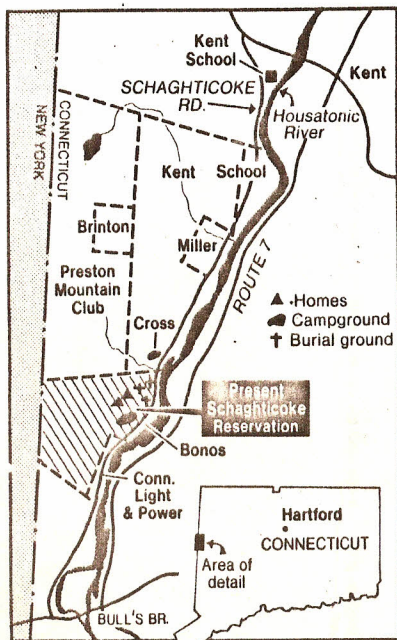
Chief Harris reported last month that he had found the last of the missing overseers' reports. He said he now had records dating from 1752 to 1919 with which to argue his tribe's case.

In 1925, the state turned over control of remaining Indian lands to the Parks and Forest Commission. Control was transferred to the Welfare Commission in 1947. The latter agency was hated for prohibiting gainful employment on the reservation—except in domestic and farm work. It also adopted what Chief Harris calls the "legal genocide" rule. Schagticokes had to have one-eighth Indian blood to live on their land. But centuries of intermarriage thinned the ranks of the purebred.

Those still remaining were forced to leave. Those who left were denied the right to return. Of the 13 homes there, 11 were burned or left to rot.

The Schagticokes began their legal battles in 1953, when Chief Howard Harris sued for the return of the acreage claimed or payment for it. The United States Supreme Court dismissed the case because his tribe had no treaty with the Federal Government.

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Chief Irving Harris resumed the fight after his father had died. He led the state's tribes in lobbying for an Indian affairs council. One was established in 1973. The Legislature then gave jurisdiction over Indian matters jointly to the new council and the State Department of Environmental Protection.

To avoid questions about his tribe's legal status, Chief Harris incorporated the Schaghticoke as a nonprofit organization. He and his wife then searched

government records, archives and libraries for the deeds and historical documents that support the group's case.

They completed a census and turned up 500 Schaghticoke across the state. A few families have moved to other regions.

With help from the Department of Environmental Protection, Chief Harris also established his tribe's eligibility for grants from the Federal Department of Housing and Urban Development. At his request, the region's planners will conduct soil, percolation and geological tests on the reservation this summer.

The Department of Environmental Protection's Indian Affairs spokesman, Brendan Kelaher, said the tribe's historical research clarified its identity in today's world and gave the people a new "understanding and pride in their background." Indeed, they hope eventually to construct a community house and several individual homes on the Kent land.

First Selectman O'Meara of Kent said there could be "serious financial impact on the town if they had homes untaxed." But, presumably, any homes built with Federal funds would also be granted aid for public services usually provided by local government.

Whether a new Schaghticoke community will emerge now depends on the decisions of others. The Kent School and Preston Mountain Club were barred late last year from using statutes of limitations to protect their ownership rights. This ruling swept away one of their major defense tactics.

On July 5, two Congressional commit-

tees that had been investigating lower New England's Indian claims recommended that President Carter appoint third-party mediators, as he did in Maine. If the President were not to act, it was implied that Congress should.

But the recommendations changed little. As Dennis Montgomery, a Pine Tree lawyer, puts it, "We're pleased, but we've always been willing to sit down with the defendants and negotiate."

The tribe is glad to see the Federal Government taking some responsibility, he said. "The burden should not be all on defendants." But the next move is up to the school and hunting club.

"If they want to talk about a settlement," Mr. Montgomery said, "they have to contact us. We would have no objections. We're not pushing it either. We're trying to be delicate, here."

Kent School officials and their lawyers in Hartford refused to comment. They will say nothing while their case is "still pending." The hunting club is represented by the school's counsel, and also remains silent. Williston B. Case, the club's manager, said statements "wouldn't be appropriate at this time."

If the Indians choose to go to trial, the undeveloped state of the land could be in their favor. The litigation would create economic chaos for no one because there are few, if any, developments on the land and no heavy investments are involved.

Chief Harris is confident, but says he counts on nothing until it happens. It will take time, he said, before his people will know whether "bureaucracy works for Indians." ■