
Appendix P

Tribal Resources and Impacts

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Resolutions, Policies, and Memoranda of Understanding

RESOLUTION 32-17

- WHEREAS,** the Minnesota Chippewa Tribal Executive Committee is the duly elected governing body of the Minnesota Chippewa Tribe, comprised of six member reservations (Bois Forte, Fond du Lac, Grand Portage, Leech Lake, Mille Lacs and White Earth), each of which is separately recognized by the United States as an Indian tribe; and
- WHEREAS,** the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe provides that the purposes of the tribal organization under the Act of June 18, 1934 (48 Stat. 984) include the conservation of tribal resources and promotion of the general welfare of members of the Tribe; and
- WHEREAS,** water sustains all life, and the protection of clean water is our sacred responsibility as Anishinabe people; and
- WHEREAS,** manomin, or wild rice, is also sacred to Anishinabe people, and because all waters are interconnected, even subtle changes in water quality or levels can profoundly harm the health of manomin, which is a trust resource with federal protections; and
- WHEREAS,** private companies are proposing and planning several oil and gas pipeline and other large infrastructure projects that would cross lands and waters where Tribal members gather wild rice and natural resources, and where Tribal cultural resources are located; and
- WHEREAS,** construction of such large infrastructure poses a threat to waters, natural resources and cultural resources from disturbance during construction and permanent destruction by project activities; and
- WHEREAS,** oil pipelines in particular pose a unique threat to Ojibwe in Minnesota where those pipelines cross over, under or through waters, wetlands and ecosystems on which Ojibwe depend for wild rice, fish, game, and other culturally-important natural resources; and
- WHEREAS,** impacts to natural and cultural resources from large-diameter pipeline construction include streambank degradation, increased sedimentation of waters, long-term wetland disruption, and destruction of fish and wildlife habitat corridors through permanent vegetation removal; and
- WHEREAS,** wild rice is particularly sensitive to changes in water levels, water quality, increased sedimentation, and pollutants; and
- WHEREAS,** pipeline proponents deliberately select new pipeline routes with the intent of avoiding all possible environmental review of pipeline projects; and

- WHEREAS,** as a result, routes for pipelines and other large infrastructure projects frequently avoid passing through Indian reservations and Tribal trust lands but still pass through treaty-ceded territories and tribal aboriginal lands where Tribal members hunt, fish, and gather, and where Tribal cultural resources are located; and
- WHEREAS,** Enbridge's proposed Line 3 Replacement Project will, if constructed, carry Canadian tar sands oil via 36-inch diameter pipeline through pristine wild rice lakes, waters, rivers and interconnected aquifers of Minnesota including the headwaters of the Mississippi and two other major North American watersheds; and
- WHEREAS,** many of those wild rice waters, rivers, lakes and aquifers are interconnected downstream and upstream with ecosystems which are the primary sources of natural resources important to Tribal members; and
- WHEREAS,** many of those interconnected waters flow through Ojibwe treaty-ceded territories and aboriginal lands where Tribal members exercise reserved hunting, fishing and gathering rights and where cultural resources are located, or through Tribal trust lands and Reservations; and
- WHEREAS,** the Line 3 Replacement Project proposed route fastidiously avoids actually crossing any Indian Reservations or Tribal trust lands yet will still impact important natural and cultural resources; and
- WHEREAS,** the significance of treaty rights and treaty resources in Minnesota has been acknowledged in judicial decisions that have addressed those rights both on and off reservations; and
- WHEREAS,** current federal law and state law governing permitting of oil pipelines places greater emphasis on meeting the needs of the pipeline proponent than ensuring that natural resources, cultural resources, and Tribal rights, interests and resources are considered and protected; and
- WHEREAS,** current Army Corps of Engineers tribal consultation policy requires consultation with tribes on activities that occur within a tribe's aboriginal lands, regardless of land status; and
- WHEREAS,** the Army Corps of Engineers has looked to guidelines drafted in 1997 (Attached as Exhibit A) when ascertaining its trust responsibilities to Indian tribes and since that time there have been developments in the law both generally and specifically with respect to treaties with Minnesota tribes; and

NOW THEREFORE BE IT RESOLVED that the Tribal Executive Committee hereby requests that the U.S. Army Corps of Engineers initiate early and robust tribal consultation for any infrastructure projects proposed to be located within Ojibwe aboriginal lands, regardless of land status or reservation status; and


BE IT FURTHER RESOLVED that the Tribal Executive Committee hereby requests that such tribal consultations be initiated at the earliest stages of project proposal to allow tribes to identify tribal natural and cultural resources that may be impacted; and

BE IT FURTHER RESOLVED that the Tribal Executive Committee hereby requests that the U.S. Army Corps of Engineers work with Ojibwe tribes in Minnesota and Wisconsin to develop new Clean Water Act Section 404 permitting processes for wild rice waters in recognition of the special impacts created to wild rice resources by activities covered under Section 404; and

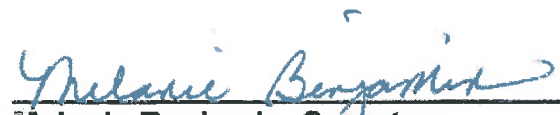
BE IT FURTHER RESOLVED that the Tribal Executive Committee hereby requests that the U.S. Army Corps of Engineers seek all necessary authority to condition Section 404 permit approval over infrastructure projects occurring within tribal aboriginal lands with serious potential impacts to tribal cultural and natural resources on receipt of the informed consent of the impacted tribes; and

BE IT FINALLY RESOLVED that the Tribal Executive Committee hereby requests that the U.S. Army Corps of Engineers: (1) consult with the Minnesota Chippewa Tribe and its constituent Bands to update the guidelines (Exhibit A); (2) make a firm unequivocal commitment that it will follow those guidelines and fulfill its trust obligations to Indian tribes; and (3) enter into agreements with the MCT or a constituent Band to establish protocols for tribal input and consultation on proposed actions impacting tribal cultural and natural resources.

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a vote of 9 For, 1 Against (Dennis Morrison), 0 Silent, at a Special Meeting of the Minnesota Chippewa Tribal Executive Committee, a quorum present, held on November 30, 2016 via electronic polling, Cass Lake, Minnesota.



Kevin R. Dupuis, President
THE MINNESOTA CHIPPEWA TRIBE



Melanie Benjamin, Secretary
THE MINNESOTA CHIPPEWA TRIBE



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #MSP-15-040

TITLE: Calling for Environmental Justice and a Full Environmental Impact Statement on Enbridge Energy's Proposed Tar-Sands Oil Pipeline Across Treaty-Ceded Territory in Minnesota

EXECUTIVE COMMITTEE

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Brian Cladoosby
Swinomish Tribe

FIRST VICE-PRESIDENT
Randy Noka
Narragansett Tribe

RECORDING SECRETARY
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*Sault Ste. Marie Tribe of Chippewa
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Ivan Posey
Shoshone Tribe

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Ron Richardson
Haliwa-Saponi Indian Tribe

SOUTHERN PLAINS
Stephen Smith
Kiowa Tribe

SOUTHWEST
Manuel Heart
Ute Mountain Ute Tribe

WESTERN
Len George
Fallon Paiute Shoshone Tribe

EXECUTIVE DIRECTOR
Jacqueline Johnson Pata
Tlingit

NCAI HEADQUARTERS
1516 P Street, N.W.
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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, Manoomin, or Wild Rice, is a sacred food to the Anishinaabe of tremendous spiritual and cultural importance, a federally-protected tribal resource, and tribal harvesters in Minnesota are the largest producers of hand-harvested wild rice in the United States; and

WHEREAS, tribal governments throughout Minnesota and Wisconsin have significant concerns that the development of, and any release from, Enbridge Corporation's Sandpiper oil pipeline along its proposed route would have devastating impacts on unique spiritual and cultural resources, as the proposed pipeline route will cross directly through the most sensitive wild-rice producing lakes and rivers within the treaty-ceded territories in Minnesota; and

WHEREAS, over tribal objections, the Minnesota Public Utilities Commission (MPUC) rescheduled its determination meeting to a date two weeks earlier than the notice provided to tribes, and no testimony from the tribes' own hearings could be entered into the MPUC record; and

WHEREAS, the MPUC issued a project determination of need approval on June 5, 2015, without any tribal consultation, consideration of testimony, investigation of impacts to tribal resources, or environmental justice issues—raising the concern that future approvals will issue in a similarly perfunctory manner; and

WHEREAS, Enbridge has begun initial consultation with the U.S. Army Corps of Engineers regarding Section 404 Permits for the project, and the U.S. Environmental Protection Agency (EPA) will perform, at least, a consulting role under Section 106 of the National Historic Preservation Act and oversight on the Army Corps' environmental impact statement, pursuant to Section 309 of the Clean Air Act.

NOW THEREFORE BE IT RESOLVED, that the NCAI calls upon EPA to engage with the Army Corps immediately to stress concerns and advocate for the most thorough environmental review possible, including respect of tribal resources and environmental justice issues; and

BE IT FURTHER RESOLVED, that EPA must assist the appropriate Bands of Chippewa/Ojibwe to become designated as "cooperating agencies" during NEPA review; and

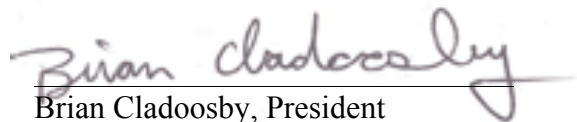
BE IT FURTHER RESOLVED, that EPA urge that a joint Federal-State Environmental Impact Statement be undertaken to enhance coordination around novel and complex tribal resource and environmental issues; and

BE IT FURTHER RESOLVED, that NCAI requests that EPA investigate whether the pipeline requires other federal environmental permits that fall within the agency's direct jurisdiction; require a jurisdictional determination be made by Army Corps; designate a high-level EPA official as a liaison to tribal governments on all aspects of the Sandpiper project; and meet with the affected tribes and bands following issuance of the recommendations from the June 5, 2015, hearing on the Sandpiper pipeline; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2015 Midyear Session of the National Congress of American Indians, held at the St. Paul River Centre, St. Paul, MN, June 28 to July 1, 2015, with a quorum present.


Brian Cladoosby, President

ATTEST:


Aaron Payment, Recording Secretary

RED LAKE BAND
of CHIPPEWA INDIANS
RED LAKE NATION HEADQUARTERS



OFFICERS:

DARRELL G. SEKI, SR., Chairman
DON R. COOK, SR., Secretary
ANNETTE JOHNSON, Treasurer

DISTRICT REPRESENTATIVES:

GARY NELSON
GLENDA J. MARTIN
JULIUS "TOADY" THUNDER
ALLEN PEMBERTON
ROMAN "DUCKER" STATELY
ROBERT "BOB" SMITH
RICHARD BARRETT, SR.
ROBERT "CHARLIE" REYNOLDS

ADVISORY COUNCIL:

7 HEREDITARY CHIEFS

PO Box 550, Red Lake, MN 56671

Phone 218-679-3341 • Fax 218-679-3378

RESOLUTION NO. 64-17

Upon a motion by Representative Smith and second by Secretary Cook, the following was enacted:

WHEREAS, the Tribal Council is the duly elected governing body of the Red Lake Band of Chippewa Indians pursuant to Article IV, Section 1 of the Revised Constitution and Bylaws of the Red Lake Band of Chippewa Indians; and

WHEREAS, pursuant to Article VII, Section 2 of the Revised Constitution and Bylaws, the Tribal Council is authorized to manage and otherwise deal with tribal lands, including impacts to tribal lands in the diminished Red Lake Reservation, as well as in the lands ceded to the United States through the Treaties of 1863 and 1889; and

WHEREAS, Enbridge Energy Resources, LLC (Enbridge) seeks to locate a crude oil pipeline, known as the Line 3 project, in locations that cross many sensitive land and wetland landscapes in Minnesota, including the lands ceded through the Treaties of 1863 and 1889; and

WHEREAS, Enbridge describes the Line 3 project as a "replacement", but we find the Company's reference to be a clear misnomer that downplays what the project really consists of: relocation of a pipeline to another more damaging route, enlargement of pipeline capacity by approximately 12 percent, transporting new product including tar sand oil, and the abandonment in place of the existing pipeline. Accordingly, we find that the project should more accurately be termed the "Line 3 Enlargement, Relocation and Abandonment Project"; and

WHEREAS, as an initial matter Enbridge must establish that there is a "need" for their proposed large energy project, and the Tribal Council finds that the analysis of the need for the Line 3 pipeline must consider the current capacity of the "Enbridge Mainline" which consists of the following pipelines and capacities:

-Line 1	237,000 barrels per day
-Line 2B	442,000 barrels per day
-Line 3	390,000 barrels per day (proposed increase to 760,000 barrels per day)
-Line 5	540,000 barrels per day
-Line 13	180,000 barrels per day
-Line 67	800,000 barrels per day

2,589,000 barrels per day = Existing capacity of Enbridge's Mainline

RED LAKE BAND of CHIPPEWA INDIANS

RED LAKE NATION HEADQUARTERS



OFFICERS:

DARRELL G. SEKI, SR., Chairman
DON R. COOK, SR., Secretary
ANNETTE JOHNSON, Treasurer

DISTRICT REPRESENTATIVES:

GARY NELSON
GLENDA J. MARTIN
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WHEREAS, the Tribal Council finds that the company's existing capacity to transport crude oil through our homeland does not justify the increased risks to the human and natural environment posed by the additional capacity proposed Line 3 project; and the Tribal Council strongly urges the Minnesota Public Utilities Commission (PUC) to conclude that there is no need for the Line 3 project, and deny the company a certificate of need; and

WHEREAS, because the Line 3 project is proposed to be located on a new route south of Clearbrook, Minnesota; and because the new pipeline is proposed to partially follow existing corridors, it is therefore clearly time for the Minnesota PUC and other federal and state agencies to address the cumulative environmental impact of these energy corridors, including the cumulative impact of oil release risk and consequences to sensitive water, wetland and other natural resources; as well as the additional impacts of pipeline abandonment; and

WHEREAS, the proposed new pipeline is projected to carry large amounts of toxic and profoundly damaging oil products, including tar sand oil from northern Alberta, Canada, the variety of crude oil that damaged more than 35 miles of the Kalamazoo River in Michigan in 2010 when another Enbridge pipeline ruptured; and

WHEREAS, there are other possible routes that have been proposed for the Line 3 project that do not cross wetland and water landscapes, and other environmentally sensitive and pristine areas; and the Tribal Council finds that these alternative routes should be fully explored, including an analysis of the risks and consequences of a crude oil spill in each of the alternative routes in addition to the company's preferred route; and

WHEREAS, because Enbridge has previously provided testimony before the Minnesota PUC that the market for the crude oil products to be carried by the proposed Line 3 pipeline is primarily in the Chicago vicinity, and that the proposed route as a general matter follows old pipeline routes established before environmental laws were enacted, the Tribal Council therefore finds that the "preferred route" is merely for the convenience of this private Canadian pipeline company; and

WHEREAS, the Tribal Council has determined that is essential for each federal and state agency having review and permit authority over the Line 3 pipeline firmly commit to conduct a scientifically sound and thorough assessment of the risks and consequences of leaks and ruptures of the proposed pipelines (including pipeline abandonment) over the more than 50 year project life in a manner that properly compares the company's proposed route, which crosses sensitive and pristine landscapes, with those alternative routes that do not cross such landscapes; and

WHEREAS, decisions concerning the location and abandonment of pipelines, as well as the protection of waters, wetlands and other important natural resources, cannot be rationally considered without a thorough understanding of the risk of oil releases and the consequences of such releases; and

RED LAKE BAND of CHIPPEWA INDIANS

RED LAKE NATION HEADQUARTERS



OFFICERS:

DARRELL G. SEKI, SR., Chairman
DON R. COOK, SR., Secretary
ANNETTE JOHNSON, Treasurer

DISTRICT REPRESENTATIVES:

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WHEREAS, generally accepted technical considerations involved in a responsible environmental analysis must be implemented with respect to Enbridge's proposed project, which entirely support our demand that the risk of oil releases and the consequences of such releases **must be** thoroughly understood; **and must be** understood in the context of route comparisons which include routes that do not cross sensitive water-rich environments; and

WHEREAS, in addition to the aforementioned environmental concerns, the Red Lake Band has also identified cultural resource concerns for Line 3 that could result in impacts to archaeological and traditional cultural properties that are eligible for listing on the National Register of Historic Places; and

WHEREAS, due to the manner in which the US Army Corps of Engineers interprets its mandate for carrying forth its agency responsibilities for compliance with the National Historic Preservation Act (NHPA) and its regulations set forth in 36 CFR 800.4, the Red Lake Band finds that the process for identification, evaluation, assessment of effects, and treatment of cultural resources cannot be seen as adequate to protect resources of importance to the Band or other Indian tribes; and

WHEREAS, this interpretation by the US Army Corps is too limited in scope, ignores vital upland areas, and ignores repeated requests by Indian tribes to broaden its scope or, if this is not possible, to relinquish its status as lead agency from purposes of NHPA oversight to another Federal agency who can provide a more comprehensive review of the entire Line 3 project that will ensure that tribal concerns are more thoroughly considered;

NOW THEREFORE BE IT RESOLVED, that the Tribal Council hereby makes clear that it strenuously opposes Enbridge's present Line 3 proposal, and also strenuously opposes any other pipeline project; and

BE IT FURTHER RESOLVED, that considering the staggering capacity that Enbridge currently has to transport crude oil through the "Enbridge Mainline", the Tribal Council strongly urges the Minnesota Department of Commerce to conclude through the agency's present Environmental Impact Statement (EIS) that there is no need for the Line 3 pipeline; and

BE IT FURTHER RESOLVED, that the Tribal Council concludes that a risk assessment and analysis of consequences of Enbridge's proposed project should be completed as a component of the EIS now in process with respect to the Line 3 proposal; and

BE IT FURTHER RESOLVED, that such EIS must be at least of the type and quality as the federal EIS that was completed with respect to the Keystone XL pipeline; and

RED LAKE BAND of CHIPPEWA INDIANS

RED LAKE NATION HEADQUARTERS



OFFICERS:

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DON R. COOK, SR., Secretary
ANNETTE JOHNSON, Treasurer

DISTRICT REPRESENTATIVES:

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ROBERT "CHARLIE" REYNOLDS

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BE IT FURTHER RESOLVED, that such studies must be developed in consultation with the Red Lake Nation and other Anishinaabe of Minnesota, and must specifically develop techniques and methods to determine the potential impacts to the loss and damage to the cultural, religious and historic significance of the environment to the Anishinaabe people; and that such methods and techniques **by necessity** have the ability to specifically address extremely sensitive and important site-specific wetlands and watersheds, where oil releases at proposed water crossings could rapidly enter the wetlands with catastrophic results; and

BE IT FURTHER RESOLVED, that because pipeline failure can occur on new pipelines; can occur from failure of modern pipeline monitoring systems; and will likely occur over the more than 50 year project life of the proposed Line 3 pipeline, the Tribal Council is very concerned that the decision whether to locate this pipeline through pristine and sensitive waters and wetlands will not receive the proper degree of analysis, and the Tribal Council thus demands the most careful attention from unbiased, objective experts; and

BE IT FURTHER RESOLVED, that such studies be accomplished prior to any permits being granted for the Line 3 Relocation/Enlargement project; and that such studies be accomplished for alternative routes selected without regard to Enbridge's contracts with shippers or its present system of pipeline configurations; and

BE IT FINALLY RESOLVED, that the Tribal Council hereby requests that in addition to the Minnesota Department of Commerce, which is conducting the present EIS with respect to the Line 3 proposal, that the Bureau of Indian Affairs, other agencies of the Department of Interior, the Army Corps of Engineers, the Environmental Protection Agency, as well as the Anishinaabe tribes of Minnesota and Wisconsin also participate in such risk and consequence analyses prior to granting any permits.

FOR: 10

AGAINST: 0

We do hereby certify that the foregoing resolution was duly presented and acted upon at the Regular Meeting of the Tribal Council held on Tuesday, April 11, 2017, with a quorum present, at the Red Lake Nation Headquarters, Red Lake.

DARRELL G. SEKI, SR., CHAIRMAN

ANNETTE JOHNSON, SECRETARY PROTEM

TRIBAL COUNCIL Organized April 18, 1918 (Revised Constitution & By-Laws, January 6, 1959)

CHIEF COUNCIL OF 1889: May-dway-gwa-no-nind, Nah-gaun-e-gwon-abe, Mays-co-co-caw-ay, Ahnah-me-ay-ge-shig, Naw-ay-tah-wowb; Nah-wah-quay-ge-shig
page 10

RED LAKE BAND
of CHIPPEWA INDIANS
RED LAKE NATION HEADQUARTERS



OFFICERS:
DARRELL G. SEKI, SR., Chairman
DON R. COOK, SR., Secretary
ANNETTE JOHNSON, Treasurer

DISTRICT REPRESENTATIVES:
GARY NELSON
GLENDA J. MARTIN
JULIUS "TOADY" THUNDER
ALLEN PEMBERTON
ROMAN "DUCKER" STATELY
ROBERT "BOH" SMITH
RICHARD BARRETT, SR.
ROBERT "CHARLIE" REYNOLDS

ADVISORY COUNCIL:
7 HEREDITARY CHIEFS

PO Box 550, Red Lake, MN 56671

Phone 218-679-3341 • Fax 218-679-3378

RESOLUTION NO. 257-16

Upon a motion by Treasurer Johnson and second by Representative Reynolds,
the following was enacted:

WHEREAS, the Red Lake Tribal Council is the governing body of the Red Lake Band of Chippewa Indians, a federally recognized Indian Tribe; and

WHEREAS, pursuant to the Constitution and Bylaws of the Red Lake Band the Red Lake Tribal Council is entrusted with the responsibility to protect the human and natural environment throughout the diminished Reservation and the ceded territories; and

WHEREAS, chief among the Tribal Council's responsibility is the protection of water, which sustains all life, and the protection of clean water is our sacred responsibility as Anishinabe people; and

WHEREAS, manoomin, or wild rice, is also sacred to Anishinabe people, and because all waters are interconnected, even subtle changes in water quality or levels can profoundly harm the health of manoomin, which is a trust resource with federal protections; and

WHEREAS, private companies, including Enbridge are proposing and planning multiple oil and gas pipeline and other large infrastructure projects that would cross lands and waters where Tribal members gather wild rice and other natural resources, and where Tribal cultural resources are located; and

WHEREAS, construction of such large infrastructure poses a threat to waters, natural resources and cultural resources from disturbance during construction and permanent destruction by project activities; and

WHEREAS, oil pipelines in particular pose a unique threat to the Red Lake Nation where those pipelines cross over, under or through waters, wetlands and ecosystems on which tribal members depend for wild rice, fish, game, and other culturally-important natural resources; and

WHEREAS, impacts to natural and cultural resources from large-diameter pipeline construction include streambank degradation, increased sedimentation of waters, long-term wetland disruption, and destruction of fish and wildlife habitat corridors through permanent vegetation removal; and

RED LAKE BAND of CHIPPEWA INDIANS

RED LAKE NATION HEADQUARTERS



OFFICERS:
DARRELL G. SEKI, SR., Chairman
DON R. COOK, SR., Secretary
ANNETTE JOHNSON, Treasurer

DISTRICT REPRESENTATIVES:
GARY NELSON
GLENDA J. MARTIN
JULIUS "TOADY" THUNDER
ALLEN PEMBERTON
ROMAN "DUCKER" STATELY
ROBERT "BOB" SMITH
RICHARD BARRETT, SR.
ROBERT "CHARLIE" REYNOLDS

ADVISORY COUNCIL:
7 HEREDITARY CHIEFS

PO Box 550, Red Lake, MN 56671

Phone 218-679-3341 • Fax 218-679-3378

- WHEREAS,** wild rice is particularly sensitive to changes in water levels, water quality, increased sedimentation, and pollutants; and
- WHEREAS,** pipeline proponents deliberately select new pipeline routes with the intent of avoiding all possible environmental review of pipeline projects; and
- WHEREAS,** as a result, routes for pipelines and other large infrastructure projects frequently avoid passing through Indian reservations and Tribal trust lands but still pass through treaty-ceded territories and tribal aboriginal lands where Tribal members hunt, fish, and gather, and where Tribal cultural resources are located; and
- WHEREAS,** Enbridge's proposed Line 3 Replacement Project will, if constructed, carry Canadian tar sands oil through a 36-inch diameter pipeline through pristine wild rice lakes, waters, rivers and interconnected aquifers located in the Red Lake Nation's ceded territory, as well as the headwaters of the Mississippi and two other major North American watersheds;
- WHEREAS,** many of those wild rice waters, rivers, lakes and aquifers are interconnected downstream and upstream with ecosystems which are the primary sources of natural resources important to Tribal members; and
- WHEREAS,** many of those interconnected waters flow through Red Lake treaty-ceded territories and aboriginal lands where Tribal members exercise reserved hunting, fishing and gathering rights and where cultural resources are located, or through Tribal trust lands, as well as the diminished Red Lake Reservation; and
- WHEREAS,** the Line 3 Replacement Project proposed route fastidiously avoids actually crossing any Indian Reservations or Tribal trust lands, yet will still impact important natural and cultural resources ; and
- WHEREAS,** the significance of treaty rights and treaty resources in Minnesota has been acknowledged in judicial decisions that have addressed those rights both on and off reservations; and
- WHEREAS,** current federal law and state law pertaining to the permitting of oil pipelines places greater emphasis on meeting the needs of the pipeline proponent than ensuring that natural resources, cultural resources, and Tribal rights, interests and resources are considered and protected; and
- WHEREAS,** current Army Corps of Engineers tribal consultation policy requires consultation with tribes on activities that occur within a tribe's aboriginal lands, regardless of land status; and

RED LAKE BAND of CHIPPEWA INDIANS

RED LAKE NATION HEADQUARTERS



OFFICERS:
DARRELL G. SEKI, SR., Chairman
DON R. COOK, SR., Secretary
ANNETTE JOHNSON, Treasurer

DISTRICT REPRESENTATIVES:
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HEREDITARY CHIEFS

WHEREAS, the Army Corps of Engineers has looked to guidelines drafted in 1997 (Attached as Exhibit A) when ascertaining its trust responsibilities to Indian tribes and since that time there have been developments in the law both generally and specifically with respect to treaties with Minnesota tribes; and

NOW THEREFORE BE IT RESOLVED that the Tribal Council hereby requests that the U.S. Army Corps of Engineers initiate early and robust tribal consultation for any infrastructure projects proposed to be located within Red Lake aboriginal lands, regardless of land status or reservation status;

BE IT FURTHER RESOLVED that the Tribal Council hereby requests that such tribal consultations be initiated at the earliest stages of project proposal to allow tribes to identify tribal natural and cultural resources that may be impacted;

BE IT FURTHER RESOLVED that the Tribal Council hereby requests that the U.S. Army Corps of Engineers work with the Red Lake Nation and other Ojibwe tribes in Minnesota and Wisconsin to develop new Clean Water Act Section 404 permitting processes for wild rice waters in recognition of the special impacts created to wild resources by activities covered under Section 404;

BE IT FURTHER RESOLVED that the Tribal Council hereby requests that the U.S. Army Corps of Engineers seek all necessary authority to condition Section 404 permit approval over infrastructure projects occurring within tribal aboriginal lands with serious potential impacts to tribal cultural and natural resources on receipt of the informed consent of the impacted tribes; and

BE IT FINALLY RESOLVED that the Tribal Council hereby requests that the U.S. Army Corps of Engineers: (1) consult with the Red Lake Nation to update the guidelines (Exhibit A); (2) make a firm, unequivocal commitment that it will follow those guidelines and fulfill its trust obligations to Indian tribes; and (3) enter into an agreement with the Red Lake Nation to establish protocols for tribal input and consultation on proposed actions impacting tribal cultural and natural resources.

FOR : 9
AGAINST: 0

We do hereby certify that the foregoing resolution was duly presented and enacted upon at a Special Meeting of the Tribal Council held on November 30, 2016, with a quorum present, at the Red Lake Nation Headquarters, Red Lake.

DARRELL G. SEKI, SR., CHAIRMAN

DONALD R. COOK, SR., SECRETARY

TRIBAL COUNCIL Organized April 18, 1918 (Revised Constitution & By-Laws, January 6, 1959)

page 13
CHIEF COUNCIL OF 1889: May-dway-gwa no-nind, Nah-gaun-e-gwon-abe, Mays-co-co-cnw-ay, Ahnah-me-ay-ge-shig, Naw-ay-tah-wowb, Nah-wah-quay-ge-mhig

Page 1 of 2

WERTC Resolution

ND Pipeline Opposition

**WHITE EARTH RESERVATION TRIBAL COUNCIL
A/K/A WHITE EARTH BUSINESS COMMITTEE
WHITE EARTH BAND OF CHIPPEWA INDIANS**

Resolution No. 001-14-012

- WHEREAS,** the White Earth Reservation Tribal Council is the duly elected governing body of the White Earth Reservation pursuant to Article IV, Section 1, of the revised constitution of the Minnesota Chippewa Tribe, as amended, and organized under Section 16, of the Act of June 18, 1934 (48 Stat. 984), and
- WHEREAS,** the White Earth Reservation Tribal Council, also known as the White Earth Reservation Business Committee, is the duly authorized governing body of the White Earth Band, and
- WHEREAS,** the White Earth Reservation Tribal Council, as the duly elected governing body of the White Earth Reservation has the power under the constitution and by-laws to promulgate resolutions governing the conduct of business on the Reservation; as well as conduct taking place within or having a direct impact upon the 1855 Treaty Ceded territory, and
- WHEREAS,** the White Earth Reservation Tribal Council has reviewed the application filed by North Dakota Pipeline Company LLC with the Minnesota Public Utilities Commission ("PUC") with respect to a routing permit for a petroleum pipeline between Tioga, North Dakota and Superior, Wisconsin, and
- WHEREAS,** the White Earth Tribal Government and staff have been active in work to protect the environment for our present Tribal members and for our future generations through the approval and implementation of a body of tribal laws and regulations, and
- WHEREAS,** the White Earth Reservation Tribal Council is concerned about the potential impact to lands, wetlands and waters if a leak or rupture of North Dakota Pipeline Company's pipeline were to occur near the White Earth Reservation or in the 1855 Treaty Ceded territory, and
- WHEREAS,** the White Earth Reservation Tribal Council is mandated to take steps to protect tribal members; and to protect habitat for animals, plants and especially wild rice from the devastating potential effects of a pipeline leak or rupture, and
- WHEREAS,** the White Earth Reservation Tribal Council has not been provided with any assurances by the North Dakota Pipeline Company or any other party that additional pipelines for the transportation of crude oil, tar sands and diluents will be any safer than the current pipelines which have leaked and ruptured on countless occasions, now

Page 2 of 2
WERTC Resolution
ND Pipeline Opposition

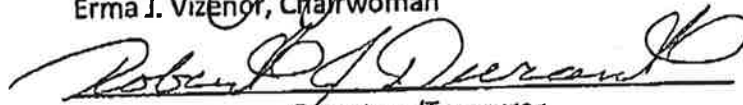
THEREFORE BE IT RESOLVED, that the White Earth Reservation Tribal Council hereby declares that it is opposed to the application filed by the North Dakota Pipeline Company with the Minnesota PUC with respect to a routing permit for the Sandpiper petroleum pipeline between Tioga, North Dakota and Superior, Wisconsin, and

BE IT FURTHER RESOLVED, that the White Earth Reservation Tribal Council hereby directs Tribal environmental and legal staff to formally intervene in the proceedings now pending before the Minnesota PUC involving the North Dakota Pipeline Company's application for a routing permit for the purpose of informing the PUC of the White Earth Nation's opposition to the grant of such permits, now

BE IT FINALLY RESOLVED, that the White Earth Reservation Tribal Council further directs Tribal environmental and legal staff to document the potential harmful impacts to the White Earth Nation, its people, its natural environment, its water, both within the boundaries of the White Earth Reservation and in the 1855 Treaty Ceded territory.

We do hereby certify that the foregoing resolution was adopted by a vote of 3 for, 0 against, 0 silent, a quorum being present at a special meeting of the White Earth Reservation Tribal Council held on February 13, 2014 in Notrondan Minnesota.


Erma J. Vizenor, Chairwoman


Robert J. Durant, Secretary/Treasurer

Field Archeology Act

138.40 COOPERATION OF STATE AGENCIES; DEVELOPMENT PLANS.

Subdivision 1. Cooperation.

The Department of Natural Resources, the Department of Transportation, and all other state agencies whose activities may be affected, shall cooperate with the historical society and the state archaeologist to carry out the provisions of sections 138.31 to 138.42 and the rules issued thereunder, but sections 138.31 to 138.42 are not meant to burden persons who wish to use state property for recreational and other lawful purposes or to unnecessarily restrict the use of state property.

Subd. 2. Compliance, enforcement, preservation.

State and other governmental agencies shall comply with and aid in the enforcement of provisions of sections 138.31 to 138.42. Conservation officers and other enforcement officers of the Department of Natural Resources shall enforce the provisions of sections 138.31 to 138.42 and report violations to the director of the society. When archaeological or historic sites are known or, based on scientific investigations are predicted to exist on public lands or waters, the agency or department controlling said lands or waters shall use the professional services of archaeologists from the University of Minnesota, Minnesota Historical Society, or other qualified professional archaeologists, to preserve these sites. In the event that archaeological excavation is required to protect or preserve these sites, state and other governmental agencies may use their funds for such activities.

Subd. 3. Review of plans.

When significant archaeological or historic sites are known or, based on scientific investigations, are predicted to exist on public lands or waters, the agency or department controlling said lands or waters shall submit construction or development plans to the state archaeologist and the director of the society for review prior to the time bids are advertised. The state archaeologist and the society shall promptly review such plans and within 30 days of receiving the plans shall make recommendations for the preservation of archaeological or historic sites which may be endangered by construction or development activities. When archaeological or historic sites are related to Indian history or religion, the state archaeologist shall submit the plans to the Indian Affairs Council for the council's review and recommend action.



Minnesota Department of Commerce Minnesota Tribal Nations Consultation Policy

I. Introduction

A unique government-to-government relationship exists between the 11 Federally-recognized Minnesota Tribal Nations, the State of Minnesota, and the federal government. The U.S. Constitution, numerous treaties, statutes, federal case law, regulations, Executive Orders, as well as political, legal, moral, and ethical principles legally recognize the inherent self-governance and self-determination rights of Indian Tribes. On August 8, 2013, Governor Mark Dayton issued Executive Order 13-10 (EO 13-10) affirming this unique and legally established relationship between the State of Minnesota and Minnesota Tribal Nations and requiring certain Cabinet-level agencies to implement a Tribal Consultation Policy.

II. Policy Statement

- 2.1** The Minnesota Department of Commerce ("Commerce") recognizes Minnesota Tribal Nations ("MTNs") as sovereign entities, not political subdivisions of States or other governmental units, with the inherent authority and responsibility for self-governance.
- 2.2** In accordance with best practices and in support of EO 13-10, Commerce is implementing the following policy ("Policy") to create an accountable, mutual, and intentional consultation process that encourages and promotes dialogue between MTNs and Commerce when input and guidance is necessary because Commerce's proposed actions and/or policies may implicate or affect the interests of MTNs.
- 2.3** Commerce will encourage cooperation between tribal, federal, state, and local governments to resolve issues of mutual concern.
- 2.4** Commerce will intentionally and proactively identify and consider when its actions and/or decisions may affect Tribal Interests and facilitate informed decision-making with the ultimate goal of reaching consensus on any proposed actions and/or decisions.

III. Definitions

- 3.1 **“Commerce”** - is the agency, Agency Leadership, staff and/or designated officials including directors, managers, supervisors, and technical staff responsible for supporting and implementing this policy.
- 3.2 **“Consultation”** - is the process of meaningful communication and coordination between Commerce and Tribal officials prior to Commerce taking actions or implementing decisions that may directly affect Tribal Interests. Consultation emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinions among parties, which leads to mutual understanding and comprehension.
- 3.3 **“Coordination”** - is the process by which each party:
- Shares and compares, in a timely manner, its plans, programs, projects and schedules with the related plans, programs, projects, and schedules of the other parties; and
 - Adjusts its plans, programs, projects, and schedules to optimize the efficient and consistent delivery of Commerce-related projects and services.
- 3.4 **“Effective Date”** – the effective date of this Policy is the date of execution. The Policy will remain in effect until it is amended, superseded by a Commerce Administrative Order, or revoked.
- 3.5 **“Minnesota Tribal Nations” (MTNs)** - Minnesota’s 11 Federally-recognized Tribes: Bois Forte Band of Ojibwe; Fond Du Lac Band of Lake Superior Chippewa; Grand Portage Band of Chippewa Indians; Leech Lake Band of Ojibwe; Lower Sioux Indian Community; Mille Lacs Band of Ojibwe; Prairie Island Indian Community; Red Lake Nation; Shakopee Mdewakanton Sioux Community; Upper Sioux Indian Community; and the White Earth Nation.
- 3.6 **“Tribal Interests”** - shall include the health and well-being of Tribe members; Tribal sovereignty and other legal rights of Tribes and Tribe members; Tribal lands and property; and policies, issues, and events that MTNs have communicated, through the consultation process established in this Policy to Commerce as being significant to Tribes.

IV. Implementation

- 4.1 **Identification of Required Consultation.** The analysis, planning, and implementation of Consultation should take into account all aspects of the action under consideration, including but not limited to, the complexity, implications, and resource constraints of the activity.
- 4.2 **Timing.** Commerce will consult with MTNs prior to the agency taking action or implementing decisions that may directly affect Tribal Interests about whether, how, or

when to act on a matter under consideration. Consultation is required on an ongoing basis, including any additions or amendments that occur later in the process.

- 4.3 Notification.** Consultation may be initiated by written notification or other method either by Commerce or any of the MTNs. Commerce's notification will be from the Commissioner, addressed to a Tribal Chairperson and the highest ranking applicable Executive Administrator, or Tribal Council officer and should include sufficient information for the MTN to make informed decisions about participation.
- 4.4.1 Presence of Third-Parties.** Either the MTN or Commerce may invite third-parties to participate in consultation with the agreement of the consulting parties.
- 4.4.2 Record-Keeping.** An Administrative Record shall be created by Commerce, if needed, and sent to the most senior Tribal Official involved in the consultation. The MTN will review and make changes and/or comments to be incorporated into a final administrative record created by and distributed by Commerce.
- 4.4.3 Input.** Either Commerce or the MTN can provide input at meetings, through written and oral exchanges of information, phone calls, or other ways depending on the specific circumstances.

V. Roles and Responsibilities

- 5.1.1 Commissioner of Commerce.** In accordance with this policy, the Commissioner will engage in Consultation with the identified Tribal Leader. The Commissioner will also appoint a person from Commerce to serve as the Department Tribal Liaison.
- 5.1.2 Tribal Liaison.** The Tribal Liaison is responsible for the coordination and implementation of Consultation in accordance with this Policy and has the authority to:
- i. Identify and define appropriate issues for Consultation;
 - ii. Evaluate the adequacy of that Consultation;
 - iii. Ensure that Commerce program and Consultation practices are consistent with this Policy;
 - iv. Ensure that a formal record of the Consultation is maintained, if needed; and
 - v. Identify the appropriate and essential Commerce staff necessary for Consultation.

VI. Preemption

- 6.1** Nothing in this policy shall require Commerce to violate or ignore any laws, rules, directives or other legal requirement or obligations imposed by state or federal law, set forth in agreements or compacts between one or more of the MTNs and the State or its agencies.

- 6.2 Consultations are not intended to preclude or replace the existing, ongoing, and future meetings, communications, and exchanges of information and input that occur between Commerce and MTN.
- 6.3 If any provision of this policy conflicts with state or federal law, administrative rules, or other legal requirements or obligations, state and federal law shall control.

Responsible Manager(s):

Contact Person(s):

Related Commerce Policies:

Agency Signature:
[Signature gif/jpg of Commissioner]

Tribal Liaison Signature:

Effective date of this policy:

307.08 DAMAGES; ILLEGAL MOLESTATION OF HUMAN REMAINS; BURIALS; CEMETERIES; PENALTY; AUTHENTICATION.

Subdivision 1. **Legislative intent; scope.** It is a declaration and statement of legislative intent that all human burials, human remains, and human burial grounds shall be accorded equal treatment and respect for human dignity without reference to their ethnic origins, cultural backgrounds, or religious affiliations. The provisions of this section shall apply to all human burials, human remains, or human burial grounds found on or in all public or private lands or waters in Minnesota.

Subd. 2. **Felony; gross misdemeanor.** (a) A person who intentionally, willfully, and knowingly does any of the following is guilty of a felony:

(1) destroys, mutilates, or injures human burials or human burial grounds; or

(2) without the consent of the appropriate authority, disturbs human burial grounds or removes human remains.

(b) A person who, without the consent of the appropriate authority and the landowner, intentionally, willfully, and knowingly does any of the following is guilty of a gross misdemeanor:

(1) removes any tombstone, monument, or structure placed in any public or private cemetery or authenticated human burial ground; or

(2) removes any fence, railing, or other work erected for protection or ornament, or any tree, shrub, or plant or grave goods and artifacts within the limits of a public or private cemetery or authenticated human burial ground; or

(3) discharges any firearms upon or over the grounds of any public or private cemetery or authenticated burial ground.

Subd. 3. **Protective posting.** Upon the agreement of the appropriate authority and the landowner, an authenticated or recorded human burial ground may be posted for protective purposes every 75 feet around its perimeter with signs listing the activities prohibited by subdivision 2 and the penalty for violation of it. Posting is at the discretion of the Indian affairs council in the case of Indian burials or at the discretion of the state archaeologist in the case of non-Indian burials. This subdivision does not require posting of a burial ground. The size, description, location, and information on the signs used for protective posting must be approved by the appropriate authority and the landowner.

Subd. 3a. **Authentication.** The state archaeologist shall authenticate all burial grounds for purposes of this section. The state archaeologist may retain the services of a qualified professional archaeologist, a qualified physical anthropologist, or other appropriate experts for the purpose of gathering information that the state archaeologist can use to authenticate or identify burial grounds. If probable Indian burial grounds are to be disturbed or probable Indian remains analyzed, the Indian Affairs Council must approve the professional archaeologist, qualified anthropologist, or other appropriate expert. Authentication is at the discretion of the state archaeologist based on the needs identified in this section or upon request by an agency, a landowner, or other appropriate authority.

Subd. 4. [Repealed by amendment, 2007 c 115 s 1]

Subd. 5. **Cost; use of data.** The cost of authentication, recording, surveying, and marking burial grounds and the cost of identification, analysis, rescue, and reburial of human remains on public lands or waters shall be the responsibility of the state or political subdivision controlling the lands or waters. On private lands or

waters these costs shall be borne by the state, but may be borne by the landowner upon mutual agreement with the state. The state archaeologist must make the data collected for this activity available using standards adopted by the Office of MN.IT Services and geospatial technology standards and guidelines published by the Minnesota Geospatial Information Office. Costs associated with this data delivery must be borne by the state.

Subd. 6. [Repealed by amendment, 2007 c 115 s 1]

Subd. 7. **Remains found outside of recorded cemeteries.** All unidentified human remains or burials found outside of recorded cemeteries or unplatted graves or burials found within recorded cemeteries and in contexts which indicate antiquity greater than 50 years shall be dealt with according to the provisions of this section. If such burials are not Indian or their ethnic identity cannot be ascertained, as determined by the state archaeologist, they shall be dealt with in accordance with provisions established by the state archaeologist and other appropriate authority. If such burials are Indian, as determined by the state archaeologist, efforts shall be made by the state archaeologist and the Indian Affairs Council to ascertain their tribal identity. If their probable tribal identity can be determined and the remains have been removed from their original context, such remains shall be turned over to contemporary tribal leaders for disposition. If tribal identity cannot be determined, the Indian remains must be dealt with in accordance with provisions established by the state archaeologist and the Indian Affairs Council if they are from public land. If removed Indian remains are from private land they shall be dealt with in accordance with provisions established by the Indian Affairs Council. If it is deemed desirable by the state archaeologist or the Indian Affairs Council, removed remains shall be studied in a timely and respectful manner by a qualified professional archaeologist or a qualified physical anthropologist before being delivered to tribal leaders or before being reburied. Application by a landowner for permission to develop or disturb nonburial areas within authenticated or recorded burial grounds shall be made to the state archaeologist and other appropriate authority in the case of non-Indian burials and to the Indian Affairs Council and other appropriate authority in the case of Indian burials. Landowners with authenticated or suspected human burial grounds on their property are obligated to inform prospective buyers of the burial ground.

Subd. 8. **Burial ground relocation.** No non-Indian burial ground may be relocated without the consent of the appropriate authority. No Indian burial ground may be relocated unless the request to relocate is approved by the Indian Affairs Council. When a burial ground is located on public lands or waters, any burial relocations must be duly licensed under section 138.36 and the cost of removal is the responsibility of and shall be paid by the state or political subdivision controlling the lands or waters. If burial grounds are authenticated on private lands, efforts may be made by the state to purchase and protect them instead of removing them to another location.

Subd. 9. **Interagency cooperation.** The Department of Natural Resources, the Department of Transportation, and all other state agencies and local governmental units whose activities may be affected, shall cooperate with the state archaeologist and the Indian Affairs Council to carry out the provisions of this section.

Subd. 10. **Construction and development plan review.** When human burials are known or suspected to exist, on public lands or waters, the state or political subdivision controlling the lands or waters or, in the case of private lands, the landowner or developer, shall submit construction and development plans to the state archaeologist for review prior to the time bids are advertised and prior to any disturbance within the burial area. If the known or suspected burials are thought to be Indian, plans shall also be submitted to the Indian Affairs Council. The state archaeologist and the Indian Affairs Council shall review the plans within 30 days of receipt and make recommendations for the preservation in place or removal of the human burials or remains, which may be endangered by construction or development activities.

Subd. 11. **Burial sites data.** Burial sites locational and related data maintained by the Office of the State Archaeologist and accessible through the office's "Unplatted Burial Sites and Earthworks in Minnesota" Web site are security information for purposes of section 13.37. Persons who gain access to the data maintained on the site are subject to liability under section 13.08 and the penalty established by section 13.09 if they improperly use or further disseminate the data.

Subd. 12. **Right of entry.** The state archaeologist may enter on property for the purpose of authenticating burial sites. Only after obtaining permission from the property owner or lessee, descendants of persons buried in burial grounds covered by this section may enter the burial grounds for the purpose of conducting religious or commemorative ceremonies. This right of entry must not unreasonably burden property owners or unnecessarily restrict their use of the property.

Subd. 13. **Definitions.** As used in this section, the following terms have the meanings given.

(a) "Abandoned cemetery" means a cemetery where the cemetery association has disbanded or the cemetery is neglected and contains marked graves older than 50 years.

(b) "Appropriate authority" means:

(1) the trustees when the trustees have been legally defined to administer burial grounds;

(2) the Indian Affairs Council in the case of Indian burial grounds lacking trustees;

(3) the county board in the case of abandoned cemeteries under section 306.243; and

(4) the state archaeologist in the case of non-Indian burial grounds lacking trustees or not officially defined as abandoned.

(c) "Artifacts" means natural or artificial articles, objects, implements, or other items of archaeological interest.

(d) "Authenticate" means to establish the presence of or high potential of human burials or human skeletal remains being located in a discrete area, delimit the boundaries of human burial grounds or graves, and attempt to determine the ethnic, cultural, or religious affiliation of individuals interred.

(e) "Burial" means the organic remnants of the human body that were intentionally interred as part of a mortuary process.

(f) "Burial ground" means a discrete location that is known to contain or has high potential to contain human remains based on physical evidence, historical records, or reliable informant accounts.

(g) "Cemetery" means a discrete location that is known to contain or intended to be used for the interment of human remains.

(h) "Disturb" means any activity that significantly harms the physical integrity or setting of a human burial or human burial ground.

(i) "Grave goods" means objects or artifacts directly associated with human burials or human burial grounds that were placed as part of a mortuary ritual at the time of interment.

(j) "Human remains" means the calcified portion of the human body, not including isolated teeth, or cremated remains deposited in a container or discrete feature.

(k) "Identification" means to analyze organic materials to attempt to determine if they represent human remains and to attempt to establish the ethnic, cultural, or religious affiliations of such remains.

(l) "Marked" means a burial that has a recognizable tombstone or obvious grave marker in place or a legible sign identifying an area as a burial ground or cemetery.

(m) "Qualified physical anthropologist" means a specialist in identifying human remains who holds an advanced degree in anthropology or a closely related field.

(n) "Qualified professional archaeologist" means an archaeologist who meets the United States Secretary of the Interior's professional qualification standards in Code of Federal Regulations, title 36, part 61, appendix A, or subsequent revisions.

(o) "Recorded cemetery" means a cemetery that has a surveyed plat filed in a county recorder's office.

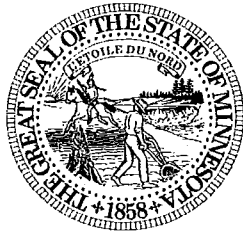
(p) "State" or "the state" means the state of Minnesota or an agency or official of the state acting in an official capacity.

(q) "Trustees" means the recognized representatives of the original incorporators, board of directors, or cemetery association.

History: (7632) *RL s 2964; 1976 c 48 s 1; 1980 c 457 s 1; 1983 c 282 s 1-4; 1986 c 463 s 1; 1989 c 335 art 1 s 199; 1993 c 326 art 4 s 9; 1999 c 86 art 1 s 64-67; 1Sp2003 c 8 art 2 s 17; 2007 c 115 s 1; 2010 c 392 art 1 s 14; 2013 c 134 s 30; 2013 c 142 art 3 s 36*

STATE OF MINNESOTA

EXECUTIVE DEPARTMENT



MARK DAYTON
GOVERNOR

Executive Order 13-10

Affirming the Government –to-Government Relationship between the State of Minnesota and the Minnesota Tribal Nations: Providing for Consultation, Coordination, and Cooperation; Rescinding Executive Order 03-05

I, Mark Dayton, Governor of the State of Minnesota, by virtue of the power invested in me by the Constitution and applicable statutes, do hereby issue this Executive Order:

Whereas, the United States and the State of Minnesota have a unique legal relationship with federally recognized Tribal Nations, as affirmed by the Constitution of the United States, treaties, statutes, and case law; and

Whereas, the State of Minnesota is home to 11 federally recognized Tribal Nations (“the Minnesota Tribal Nations”) with elected or appointed Tribal Governments; and

Whereas, the State of Minnesota recognizes and supports the unique status of the Minnesota Tribal Nations and their right to existence, self-government, and self-determination; and

Whereas, the Minnesota Tribal Nations are comprised of a majority of the State’s 61,000 American Indians and provide significant employment in the State; and

Whereas, members of the Minnesota Tribal Nations are citizens of the State of Minnesota and possess all the rights and privileges afforded by the State; and

Whereas, the State of Minnesota and the Minnesota Tribal Nations significantly benefit from working together, learning about one another, and partnering where possible; and

Whereas, meaningful and timely consultation between the State of Minnesota and the Minnesota Tribal Nations will facilitate better understanding and informed decision making by allowing for collaboration on

matters of mutual interest, and helping to establish respectful relationships between the State and the Minnesota Tribal Nations.

Now, Therefore, I hereby order that:

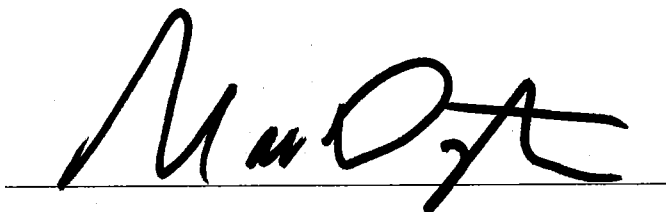
1. All Executive Branch agencies of the State of Minnesota shall recognize the unique legal relationship between the State of Minnesota and the Minnesota Tribal Nations, respect the fundamental principles that establish and maintain this relationship, and accord Tribal Governments the same respect accorded to other governments.
2. By March 10, 2014, the following Cabinet-level Executive Branch agencies (hereinafter "Cabinet Agency" and "Cabinet Agencies") shall, in consultation with the Minnesota Tribal Nations, develop and implement tribal consultation policies to guide their work and interaction with the Minnesota Tribal Nations: the Department of Corrections, Department of Education, Department of Health, Housing Finance Agency, Department of Human Rights, Department of Human Services, Department of Natural Resources, Pollution Control Agency, Department of Public Safety, Department of Transportation, and Department of Veterans Affairs. All other Cabinet-level Executive Branch agencies shall coordinate, as needed, with the tribal liaison in the Governor's Office to consult with the Minnesota Tribal Nations. Prior to February 1 of each year, each Cabinet Agency shall consult with each of the Minnesota Tribal Nations to identify priority issues for consultation.
3. As appropriate, and at the earliest opportunity, Cabinet Agencies shall consult with the Minnesota Tribal Nations prior to undertaking actions or policies related to the list of priority issues identified in Paragraph 2. Cabinet Agencies shall consider the input generated from tribal consultation into their decision-making processes, with the goal of achieving mutually beneficial solutions.
4. Each Cabinet Agency shall designate a staff member to assume responsibility for implementation of the tribal consultation policy and to serve as the principal point of contact for the Minnesota Tribal Nations. Each Cabinet Agency's designated staff member shall work with a representative(s) designated by the Minnesota Tribal Nations, who shall serve as the Cabinet Agency's principal point of contact.
5. All Cabinet Agencies shall provide training for designated staff who work with the Minnesota Tribal Nations in an effort to foster a collaborative relationship between the State of Minnesota and the Minnesota Tribal Nations.

Nothing in this Order shall require state agencies to violate or ignore any laws, rules, directives, or other legal requirements or obligations imposed by state or federal law, or set forth in agreements or compacts between one or more of the Minnesota Tribal Nations or any other Tribal Nation and the State or its agencies. This Order is not intended to, and does not create, any right to administrative or judicial review, or any other right or benefit or responsibility, substantive or procedural, enforceable against the State of Minnesota, its agencies or instrumentalities, its officers or employees, or its subdivisions or any other persons. Nothing in this Order prohibits or limits any state agency from asserting any rights or pursuing any administrative or judicial action under state or federal law to effectuate the interests of the State of Minnesota or any of its agencies.

If any provision in this Order conflicts with any laws, rules, or other legal requirements or obligations imposed by state or federal law, state and federal laws shall control.

Under Minnesota Statutes, section 4.035, subdivision 2, this Executive Order is effective 15 days after publication in the State Register and filing with the Secretary of State and shall remain in effect until rescinded by proper authority or it expires in accordance with Minnesota Statutes, section 4.035, subdivision 3.

In Testimony Whereof, I have set my hand on this 8th day of August, 2013.

A handwritten signature in black ink, appearing to read "Mark Dayton", written over a horizontal line.

Mark Dayton
Governor

Filed According to Law:

A handwritten signature in black ink, appearing to read "Mark Ritchie", written over a horizontal line.

Mark Ritchie
Secretary of State

MEMORANDUM OF UNDERSTANDING



between the
**Leech Lake Reservation
Tribal Council**
and the
Chippewa National Forest



In a spirit of mutual respect and understanding, the Leech Lake Reservation and the Chippewa National Forest will cooperate in their roles as stewards of the lands and resources within the Leech Lake Reservation and the Chippewa National Forest.


This partnership is a new beginning for cooperative management of the natural and human resources of the Leech Lake Reservation and the Chippewa National Forest.

We recognize and acknowledge our government to government relationship and our separate authorities and responsibilities, but believe they are not a barrier to significant interaction and cooperation.

To the greatest extent possible, the Leech Lake Reservation Tribal Council and Chippewa National Forest shall seek opportunities to form partnerships in natural and human resource management and will share knowledge, discuss and resolve issues, and exchange ideas, concepts and theories about the most effective strategies for managing the natural and human resources of the Leech Lake Reservation and Chippewa National Forest for the benefit of this and future generations.

Signed on this 9th day of August, 1993.


ALFRED R. PEMBERTON
Chairman
Leech Lake Reservation Tribal Council


STEVEN T. EUBANKS
Forest Supervisor
Chippewa National Forest

Anishinabe (Ojibwe/Chippewa) Pictograph of a Bald Eagle.
The Eagle Symbolizes Courage and Vision, Attributes of Leadership.

MEMORANDUM OF UNDERSTANDING

REGARDING

TRIBAL - USDA-FOREST SERVICE RELATIONS

ON

NATIONAL FOREST LANDS

WITHIN THE TERRITORIES CEDED

IN

TREATIES OF 1836, 1837, AND 1842

PREAMBLE

The Memorandum of Understanding (MOU) deals with the relationships of sovereign and federally recognized tribes of Lake Superior Chippewa Indians and of the USDA Forest Service, an agency of the government of the United States. The MOU is based on the principle of government-to-government interactions between the United States Government and federally recognized Indian tribes. The purpose of the agreement is to establish standards by which the Forest Service and the Tribes will act consistently across national forest lands within areas ceded in the treaties of 1836, 1837, and 1842.

The policies of the Forest Service toward federally recognized tribes are intended to strengthen relationships and further tribal sovereignty through fulfilling mandated responsibilities and through support and assistance of various kinds to tribal governments. The relationships between the Tribes and Forest Service are comprised of several parts, including honoring treaty-based usufructuary rights as well as policies of the Forest Service toward Indian nations. While court decisions, laws, regulations, policies and Executive Orders from the President of the United States have all shaped the Forest Service's policy toward Indian tribes, nothing in this agreement is in any way intended to abrogate or affect in any fashion judicial decisions which have interpreted such treaty rights.

This MOU recognizes existing treaty rights of Tribes to hunt and fish and to gather wild plants on national forest lands in accord with applicable regulatory authorities of the States or other federal agencies having jurisdiction over such activities. Reference in the MOU to such

1836, 1837 and 1842 Ceded Territory National Forest Memorandum of Understanding

Amended March 2012

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activities as hunting and fishing are designed to recognize that the Forest Service manages and provides access to ecosystems which support these activities.

I. CEDED TERRITORIES AND NATIONAL FORESTS INVOLVED (Figure 1).

- A. **Ceded Territories.** This MOU specifically pertains to the territories ceded [hereafter ceded territories] by various Chippewa Tribes in the following Treaties: Treaty of 1836, 7 Stat. 491; Treaty of 1837, 7 Stat. 536; and Treaty of 1842, 7 Stat. 591.
- B. **National Forests.** This MOU specifically pertains to the portions of the following National Forests [hereafter National Forests] located in the ceded territories: Chequamegon-Nicolet in Wisconsin; and Ottawa, Hiawatha and Huron-Manistee in Michigan.

II. PARTIES. The following entities may ratify this MOU in accordance with their respective applicable laws and procedures, and, upon proper ratification, shall be deemed a party to this MOU:

- A. **Tribes.** In their respective sovereign capacities, the following federally-recognized Tribes [hereafter Tribes] that are members of the Great Lakes Indian Fish and Wildlife Commission [hereafter GLIFWC]: Bad River Band of the Lake Superior Tribe of Chippewa Indians; Fond du Lac Band of Lake Superior Chippewa Indians; Lac du Flambeau Band of Lake Superior Chippewa Indians; Lac Courte Oreilles Band of Lake Superior Chippewa Indians; St. Croix Chippewa Indians of Wisconsin; Sokaogon Chippewa Community of the Mole Lake Band; Red Cliff Band of Lake Superior Chippewa Indians; Mille Lacs Band of Chippewa Indians; Bay Mills Indian Community; Keweenaw Bay Indian Community; and Lac Vieux Desert Band of Lake Superior Chippewa Indians.
- B. **USDA-FS.** On behalf of the United States Department Agriculture, Forest Service [hereafter Forest Service] as an agency of the United States Government: the Forest Service's Eastern Region; the Eastern Region's Law Enforcement and Investigations; and the Forest Service's Northern Research Station.

III. GOVERNING PRINCIPLES AND FUNDAMENTAL ASSUMPTIONS. The parties agree that the MOU is based upon the following governing principles and fundamental assumptions and that the MOU shall be interpreted in accordance with them:

- A. **Existence of Ceded Territory Rights.** The parties acknowledge and recognize the Tribes' treaty-guaranteed hunting, fishing and gathering rights [hereafter ceded territory rights] that may be exercised on lands administered by the Forest

Service located within the ceded territories.

B. Tribal Sovereignty and Self-Regulatory Capacity. The parties acknowledge and recognize:

1. The Tribes' inherent sovereignty and retained regulatory authority regarding their ceded territory rights; and
2. The Tribes' ability to administer and implement a system of effective tribal self-regulation regarding tribal member exercise of those rights.

C. Federal Trust Responsibility and Treaty Obligations. The parties acknowledge and recognize that the Forest Service shares in the United States Government's trust responsibility and treaty obligations to work with the Tribes on a government-to-government basis to protect the Tribes' ceded territory rights on lands administered by the Forest Service.

D. Forest Service's Native American Policies. The parties acknowledge and recognize the Forest Service's American Indian and Alaska Native Relations policies as presently set forth in Forest Service Manual 1563, Forest Service Handbook 1509.13, and other directives implementing provisions of the Food, Conservation, and Energy Act of 2008, Public Law 110-246 [hereinafter the "2008 Farm Bill"], to:

1. Maintain a governmental relationship with federally-recognized tribal governments consistent with Executive Order 13175 of November 6, 2000, Consultation and Coordination with Indian Tribal Governments, the President's Memorandum of November 5, 2009, Tribal Consultation and the President's Memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments;
2. Implement programs and activities in a way that honors Indian treaty rights and fulfills legally-mandated trust responsibilities to the extent they apply to National Forest System lands;
3. Administer programs and activities to address and be sensitive to traditional Native religious beliefs and practices; and
4. Provide research, transfer of technology, and technical assistance to tribal governments.

E. Forest Service's Forest Management Responsibilities. The parties

acknowledge and recognize that the Forest Service is the agency of the United States Government authorized and responsible for implementing law and policies related to National Forest management.

F. **Forest Service's Law Enforcement Responsibilities.** The parties acknowledge and recognize that the Forest Service's Law Enforcement and Investigations Branch is responsible for enforcement of alleged violations of federal laws and regulations occurring on lands administered by the Forest Service.

G. **General Tribal/USDA-FS Government-to-Government Relationship Unaffected.** This MOU applies to the parties' government-to-government relationship, other Tribal -Forest Service interactions, the Tribes' ceded territory rights applicable on lands administered by the Forest Service, and the parties' relationships and dealings involving those rights. It is not intended, and should not be construed, to abrogate or otherwise affect any party's authority or responsibility in other areas. Similarly, it is not intended, and should not be construed, to otherwise define or restrict the parties' obligations, relationships or dealings in other areas of their respective authorities, responsibilities, or sovereign prerogatives.

H. **Effect of MOU on Non-Ratifying Tribes.** The parties' specific intent is that this MOU shall not bind or in any way affect the rights or claims of any GLIFWC member Tribe that chooses not to become a party or of any other Tribe that is a signatory to any of the treaties identified in Section I.B., above.

I. **Reservation of Rights, Claims and Defenses.**

1. The termination of or withdrawal from this MOU shall be without resulting liability to any other party or prejudice to any claim a party may have against any other party.
2. Except as expressly provided herein, the fact that any Tribe or the Forest Service is or may have been a party to this MOU shall not be construed as a waiver of any rights, claims or defenses that, absent this MOU, any of those entities may have under any treaty between the United States and a Tribe, or under other applicable law of the United States.
3. The parties acknowledge that this MOU contains provisions that may be the result of compromise and policy choices. As such, these provisions may not reflect the full extent of the Tribes' ceded territory rights or of the Forest Service's responsibilities to manage the National Forests. Therefore, in the absence of or outside the scope of this MOU, the

provisions contained herein are not intended to alter or abridge:

- a. The Tribes' underlying ceded territory rights or those rights of any other treaty signatory Tribe that is not a party to this MOU; or
 - b. The Forest Service's authorities to manage the National Forests in accordance with applicable law.
4. This agreement is not intended to alter usufructuary rights recognized in *Lac Courte Oreilles Band v. Voigt*, 700 F.2d 341 (7th Cir. 1983) or *Minnesota v. Mille Lacs Band*, 119 S.Ct. 1187 (1999). The MOU does not alter the authority of any government regarding the regulation of treaty rights under those decisions.

IV. **PURPOSES.** To accomplish the primary purposes of recognizing and implementing the Tribes' ceded territory rights and furthering Forest Service Native American policies, the parties intend to:

- A. **Government-to-Government Relationship.** Establish a framework for a cooperative, government-to-government relationship between the Tribes and the United States Government that:
1. Ensures the meaningful exercise of the Tribes' ceded territory rights on the lands administered by the Forest Service within the ceded territories;
 2. Facilitates consistent and timely communication between parties at the appropriate levels of government; and
 3. Fosters effective participation by the Tribes in National Forest management, in the development, revisions and implementation of Land and Resource Management Plans [hereafter Forest Plans] and in subsequent Forest Plan implementation decisions.
- B. **Exercise of Ceded Territory Rights.** Establish agreed-upon parameters under which the Tribes' ceded territory gathering rights may be exercised within the provisions of and the protections afforded by this MOU on lands administered by the Forest Service within the ceded territories.
- C. **Conservation of Natural Resources.** Protect, manage and enhance ecosystems and communities that support the natural resources subject to the Tribes' ceded territory rights on lands administered by the Forest Service.

V. **RECOGNITION OF THE PARTIES' MUTUAL INTERESTS.** Underlying the purposes of and specific agreements contained in this MOU, the parties recognize a number of mutual interests that they wish to address:

- A. **Tribal Self-Determination and Self-Governance.** One of the Tribes' primary goals is to achieve self-determination and self-governance through the exercise of their retained sovereign governmental authority regarding their ceded territory rights. A key Forest Service policy is to administer its programs and activities in a manner that recognizes the governments of the Tribes and the authority that they carry out on behalf of the Tribes. Therefore, the parties seek to establish a government-to-government relationship that promotes collaboration and communication in the management of the National Forests, that provides for effective tribal self-regulation of the exercise of ceded territory rights on lands administered by the Forest Service, and, as noted below, that promotes efficient and effective law enforcement.
- B. **Collaborative Approach in the Management of Natural Resources.** The Tribes' ceded territory rights include the right to gather wild plants and to harvest wild animals on lands administered by the Forest Service, and the Tribes want to ensure that management of these lands protects their ability to meaningfully exercise these rights. The Forest Service is tasked with the administration of the National Forests and is the federal agency responsible for the care and management of the land and natural resources that are part of the National Forests. Therefore, the Tribes and the Forest Service seek to establish a relationship and associated processes that facilitate consistent and timely communication between them and that integrate the Tribes' needs and wishes for the desired state of the National Forests into Forest Plans and subsequent Forest Plan implementation decisions.
- C. **Sustainability of Ecosystems.** Since time immemorial, the Tribes have traditionally harvested certain plants and other resources found on lands now managed as the National Forests to meet subsistence, religious, cultural, medicinal and commercial needs. The Tribes' culture and lifeway depends on this harvest activity, and they wish to protect and enhance the natural resources upon which they rely. The Tribes measure the protection of these resources in terms of ensuring their sustainability for use by the seventh generation hence. The Forest Service is the federal agency responsible for managing the National Forests for the benefit of present and future generations. In addition, the Forest Service's policy is to carry out its programs and activities in a manner that is sensitive to the Tribes' traditional practices and beliefs. Therefore, the Tribes and Forest Service seek to collaboratively promote ecosystem management that protects and restores native communities and species, furthers the diversity of species, and ensures the

sustained yield and availability of natural resources that are subject to the Tribes' ceded territory rights.

- D. Efficient and Effective Law Enforcement.** As part of their self-regulatory system, the Tribes recognize the need to provide for the enforcement and adjudication of alleged violations of tribal laws governing the exercise of the ceded territory rights. To further compliance with tribal laws and to mete out meaningful and effective penalties, they recognize that the administration of justice in this context is best accomplished within their own communities and in their own forums. The Forest Service also recognizes that justice is best served in the communities most involved and affected. Therefore, the parties seek to establish a mutually beneficial efficient and effective system for enforcing applicable laws.
- E. Consistent Ceded Territory Gathering Regulations.** The meaningful exercise of the Tribes' ceded territory rights requires a consistent, conservation-based harvest regulatory system throughout the National Forests. To avoid administrative inefficiency and the associated confusion, the Forest Service recognizes the need for a consistent gathering policy and regulatory scheme in each of the National Forests. Therefore, the parties seek to establish a ceded territory-wide policy and regulatory framework that provides for the exercise of the ceded territory rights in a consistent manner that meets conservation goals, protects the public health and safety, and promotes efficient and effective law enforcement.
- F. Implementation of the Federal Trust Responsibility.** The Tribes continually seek to have United States Government and its agencies properly discharge the federal trust responsibility to assist in the development of the Tribes' governmental capabilities and to take actions for the Tribes' benefit. The Forest Service's policy is to administer its programs and activities in a manner sensitive to the Tribes' needs, beliefs, and practices, and to provide research, transfer of technology and technical assistance to the Tribes. Therefore, the parties seek to establish a framework for collaboration, communication and information exchange that will nurture understanding and maximize mutual benefits, and that will enhance the development of the Tribes' capabilities necessary to ensure effective tribal participation in the processes and procedures established in this MOU.

VI. SPECIFIC AGREEMENTS TO IMPLEMENT THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP. This section sets forth the specific agreements to implement the parties' government-to-government relationship in these areas: (A) MOU administration and implementation; (B) National Forest planning and decision-

making; (C) natural resource harvest management; (D) natural resource research and monitoring; (E) law enforcement; and (F) amendment of the MOU and its Appendices.

A. MOU Administration and Implementation.

1. The parties shall strive to reach consensus in all decisions, actions and processes contemplated by the MOU.
2. Unless otherwise specifically provided in this MOU, the parties shall attempt to resolve any dispute arising under the MOU at the lowest possible level on a government-to-government basis between properly authorized representatives of the parties who have the authority to resolve the dispute in question.
3. To facilitate on-going communication and the resolution of outstanding issues, the parties:
 - a. Shall meet at least annually to facilitate on-going communication, to review progress made and discuss issues arising under this MOU, to ensure that the parties are faithfully and effectively implementing this MOU and adhering to its terms, and to discuss trends, issues or other matters that may effect the MOU. The Forest Service will accept comments from interested citizens about the implementation of the MOU at any time and, prior to the annual meeting, the Forest Service will solicit public comments. The parties will consider any comments at the annual meeting and jointly approved minutes will be made available for public review.
 - b. Hereby establish a Technical Working Group (hereafter TWG) whose purpose shall be to review any scientific, technical or natural resource management issue referred to it in this MOU or by subsequent agreement of the parties. The TWG is empowered to make recommendations to the parties regarding the matters referred to it, such as the development and coordination of research projects, possible harvest monitoring and regulatory responses to particular circumstances, and data/information exchange regimens. The TWG also is empowered to suggest to the parties issues that may require the parties' attention and consideration.

The TWG will be comprised of qualified natural resource scientists, managers and researchers designated by the Forest Service and the Tribes, and should include designates from the Northern Research Station and GLIFWC. Law enforcement

personnel should participate in the TWG as necessary to address enforcement-related issues.

The Forest Service and the Tribes will each appoint a TWG co-chair to coordinate communication and planning for the group's work. The TWG may appoint one or more working subgroups to address specified issues.

- c. May, in addition to matters referred to the TWG, agree to refer specific questions or issues to designated representatives or *ad hoc* working groups for discussion, development of information, formulation of recommendations, or specific action.
 - d. Agree to provide such data and information as another party might request pertaining to matters addressed by the MOU, such as natural resource population and harvest data, law enforcement statistics and tribal court statistics.
- 4. The parties shall cooperate in identifying and seeking adequate funding for the enhancement of their infrastructures necessary to improve the implementation of this agreement. However, the parties acknowledge that this MOU does not modify or restrict the budgetary authority of any party.
 - 5. The parties shall undertake cultural sensitivity training for their personnel who will be responsible for implementing this MOU. The parties also shall engage in joint and coordinated public education efforts to inform the public about this MOU and its underlying purposes.

B. National Forest Planning and Decision-making. The parties recognize that Forest Service decisions vary in their effects on the abundance of, distribution of or access to the natural resources on the lands that it administers. For example, the Forest Service, at various levels, makes a number of decisions that relate to such matters as the development, revision and implementation of Forest Plans for each of the National Forests covered by this MOU. They include decisions that commit to particular land management actions, such as project level decisions (including closures of temporary and permanent roads), and decisions that establish the policies or guidelines that govern these actions. Other decisions relate to such matters as the internal administration of the Forest Service as an agency regarding personnel, property and budgets, and do not commit to particular land management actions or establish policies governing those actions.

The Tribes and Forest Service agree that they shall consult on a government-to-

government basis on all Forest Service decisions that affect the abundance, distribution or access to the natural resources on lands administered by the Forest Service. In addition, they agree that the goal of such consultation shall be that any such Forest Service decision should expressly recognize and accommodate the Tribes' ceded territory rights, protect and enhance treaty-reserved natural resources, and accommodate exercise of ceded territory rights by tribal members under tribal regulations.

To achieve this end, the Tribes and Forest Service specifically agree that:

1. As to decisions that result in particular land management actions, in policies or guidelines governing those actions, or in research projects to be conducted by the Northern Research Station:
 - a. The Forest Service shall consult with and facilitate effective participation by the Tribes at all stages and levels of the decision-making process. This collaboration is recognized as a dynamic process that must include consultation on a consistent and timely basis at the appropriate levels of government and that must be flexible to deal with ever-changing circumstances and adaptive natural resource management responses.
 - b. The Forest Service shall consider the effects of its decisions on treaty resources and the ability of the Tribes to exercise treaty gathering rights. In decision and analysis documents, including those required by the National Forest Management Act and the National Environmental Policy Act, decision-makers will show how tribal information and involvement was taken into account in analyzing the effects of potential management actions and in making the decision.
 - c. The Tribes and the Forest Service will strive to reach consensus. Where consensus cannot be reached:
 - 1) They will attempt to resolve any dispute or disagreement first by good faith discussions between the affected Tribe(s) and the Forest Service deciding official. The Tribe(s) may raise any matter not resolved at this level to a higher Forest Service official, including the appropriate Forest Supervisor and the Regional Forester. The Forest Service agrees to delay a final decision on the unresolved matter until this process has had the opportunity to take place within a reasonable amount of time.

- 2) The Forest Service may make and implement the decision.
 - 3) In addition to the procedures provided by the MOU, a Tribe may challenge or appeal any Forest Service decision or action in accordance with applicable law.
2. As to decisions relating to the administration of Forest Service budgets, personnel or property, the parties shall cooperate in identifying and seeking adequate resources for the Tribes' and Forest Service's capabilities necessary to implement this MOU. In particular, the Forest Service shall seek input from the Tribes in a timely manner regarding the development of its budget proposal for upcoming fiscal years.
 3. During the course of their dealings, the Tribes and Forest Service shall ensure that they have identified their representatives with whom the other parties should interact regarding particular decisions or particular types of decisions.
 4. Nothing in this MOU shall preclude the Tribes and Forest Service from discussing matters or advancing particular requests that are not part of a particular pending Forest Plan implementation decision.

C. **Natural Resource Harvest Management.** The Tribes and Forest Service acknowledge their mutual interests in undertaking a collaborative approach in managing the harvest of natural resources on lands administered by the Forest Service to ensure the sustainability of ecosystems and the sustained yield of natural resources, in ensuring that the Tribes' ceded territory rights are meaningfully exercised, and in providing for a consistent conservation-based system under which the Tribes will exercise their ceded territory rights on those lands. Specifically, the Tribes and Forest Service agree:

1. Within the bounds of their respective authorities, to regulate and monitor the harvest of natural resources on lands administered by the Forest Service in a manner that provides for a sustained harvest of those resources and affords the Tribes the opportunity to harvest an equal allocation of the harvestable surpluses of those resources.
2. That the Tribes will regulate tribal member gathering on lands administered by the Forest Service by adopting regulations and implementing permit systems that are no less restrictive than those set forth in the Model Off-Reservation National Forest Gathering Code

[hereafter Model Code], which is attached as Exhibit A and specifically incorporated into this MOU.

3. That any changes making the Model Code, or any Tribe's enactment based upon the Model Code, less restrictive will fall within the scope of the MOU if the Forest Service's consent is obtained in accordance with the provisions of subsection F, below.
4. To monitor harvest levels in the most effective and precise manner needed to ensure resource protection and to exchange harvest monitoring data on a regular basis.
5. To designate areas for tribal sugar bushes that will meet needs identified by the Tribes and to jointly develop specific sugar bush management plans. The parties further agree to consider complementary and conflicting resource values, location of historical sugarbushes, proximity to reservations, and other relevant factors in choosing sugarbush locations.
6. To locate species of interest to the Tribes and to provide gathering opportunities for those resources, particularly regarding gathering opportunities associated with National Forest timber sales.
7. That once the Forest Service decides that it intends to solicit bids for timber sale contracts for down or damaged trees, trees in the designated timber salvage stands having a diameter of four inches or greater, whether they are alive, dead, down or standing, will be regulated in the same manner as standing live trees for treaty harvest purposes. For the purposes of the MOU and attached Model Code, the term "Forest Service timber salvage stand" means any stand of trees where the Forest Service has notified the Tribes of its decision to solicit bids for a salvage timber sale contract, and the term "salvage timber" means any tree in that stand, whether alive, dead, down or standing, having a diameter of four inches or greater.
8. That the Tribes will not issue a permit for the harvest of timber or of salvage timber, as set forth below, without the Forest Service's consent.
 - a. In seeking the Forest Service's consent, the requesting Tribe shall inform the other Tribes that are parties to the MOU of the request and shall indicate in writing to the Forest Service the types and amounts of trees sought, the use to which the trees will be put, and the anticipated time frame for the harvest. The Forest Service shall promptly consider the request, consult with the requesting Tribe as

to the specifics of the proposal, and provide in writing its decision and the underlying rationale. The Forest Service shall make every attempt to accommodate the request and, before withholding consent, shall discuss with the Tribe possible alternatives. In any event, Forest Service consent shall not be unreasonably withheld. The Tribes will conduct inter-tribal coordination on requests for timber.

- b. To further the purpose of this Section, the Tribes will implement a harvest management system pertaining to requests for timber, as set forth in the Tribal Timber Harvest Framework Agreement [Management Framework Agreement], which is attached as Appendix C and specifically incorporated into this Agreement. Any changes to the Management Framework Agreement or to any Tribe's enactment based upon it, which would result in less restrictive provisions relating to treaty rights exercise within the National Forest, will fall within the scope of the MOU only if the Forest Service's consent is obtained in accordance with the provisions of subsection F.6, below.
- c. The tribes may issue a permit for the harvest of timber or of salvage timber for the following purposes:
 - 1) For domestic purposes, as this term is defined in the attached Model Code (authorized pursuant to 16 U.S.C. 477, and the treaties between the United States and GLIFWC's member Ojibwe Tribes, specifically Treaty of 1836, 7 Stat 491, Treaty of 1837, 7 Stat. 536, and Treaty of 1842, 7 Stat. 591).
 - 2) For non-commercial traditional and cultural purposes, as this term is defined in the attached Model Code (authorized pursuant to 25 U.S.C. 3055, and the treaties between the United States and GLIFWC's member Ojibwe Tribes, specifically Treaty of 1836, 7 Stat 491, Treaty of 1837, 7 Stat. 536, and Treaty of 1842, 7 Stat. 591).
- 9. That any requests for timber or miscellaneous forest products, as these terms are defined in the attached Model Code, from national forests made by Tribes not party to this MOU within the ceded territories will require immediate consultation with the signatory Tribes prior to the granting of such request.

10. That the Tribes and their members use National Forest campgrounds in the exercise of their ceded territory rights and that Forest Service fees and length of stay restrictions at campground should not interfere with the exercise of the rights. The parties acknowledge that, prior to completion and ratification of the MOU, time constraints have prevented them from developing the necessary Exemption Agreement and accompanying Implementation Plan regarding campground fee and length of stay exemptions for tribal members. Upon ratification of the MOU, the parties commit to immediately developing the Agreement and Implementation Plan. Once properly approved, the Exemption Agreement and Implementation Plan shall become part of the MOU and be specifically incorporated by reference herein as if set forth in their entirety.
11. That the parties have not resolved their disagreement regarding the Tribes' request for unrestricted motorized use of Crooked Lake in the Sylvania Wilderness located in the Ottawa National Forest. While the parties agree to disagree on this matter at this time, they will continue to strive for a resolution using the procedures and processes contained in the MOU. The parties acknowledge that on all other matters regarding wildernesses, their agreement is properly reflected in the provisions of the attached Model Code, including specifically those of §3.06(1)(a) that establish Tribal National Forest Wildernesses.
12. That, in accordance with the provisions of subsection F, below, the Forest Service will notify the Tribes of and obtain the Tribes' input on proposed changes in federal laws or regulations that are intended to regulate or otherwise restrict the harvest of natural resources on lands administered by the Forest Service within the ceded territories.
13. That the Tribes have implemented harvest management regulatory systems that govern the exercise of off-reservation treaty-reserved tribal deer hunting, bear hunting, migratory bird hunting, small game hunting and trapping, and wild rice gathering. To the extent that these activities occur within National Forests, the provisions of the Tribe's Off-Reservation Conservation Code are hereby declared, and shall be construed, to govern tribal members engaged in the exercise of these treaty-reserved rights within National Forests.

D. Monitoring and Evaluation. To ensure the sustainability of ecosystems, the Tribes and Forest Service acknowledge the importance of inventorying and monitoring the status of species and their habitats within the National Forests, evaluating the impacts of harvest on the resources subject to the Tribes' ceded

territory rights, and evaluating the effects of other land management activities on those resources. With the input and recommendations of the TWG, the Tribes and Forest Service agree to:

1. Review their respective existing research projects and administrative studies as needed for the purpose of encouraging research coordination.
2. Establish and implement a program of research, monitoring and evaluation regarding the resources subject to the Tribes' ceded territory rights that specifically would:
 - a. Inventory species status and habitat requirements.
 - b. Monitor the population dynamics and habitats of species as Forest Plans are implemented.
 - c. Determine the effects of land management activities, such as timber harvest, on species' populations.
 - d. Determine the effects of wild plant harvest on the status of the species being harvested.
 - e. Evaluate such other matters that relate to the resources subject to the Tribes' ceded territory rights.

E. Law Enforcement. The parties acknowledge the Tribes' capabilities to implement a self-regulatory system governing the exercise of ceded territory rights applicable on lands administered by the Forest Service. The parties specifically agree that:

1. Any regulation adopted by Tribe consistent with the MOU will govern the exercise of the Tribes' ceded territory gathering rights within the National Forests and is within the scope of the MOU. Any Tribe's regulation that is not consistent with the MOU's provisions is outside the MOU's scope.
2. The enforcement of the Tribes' regulations and of any federal statute or regulation governing the conduct within the scope of a Tribe's regulations that are consistent with the terms of the MOU shall be governed by a properly ratified agreement that is no less restrictive than the Tribal Self-Regulation Agreement [hereafter Self-Regulation Agreement], attached as Appendix B and specifically incorporated into the MOU. For the purposes of this subsection, "properly ratified" means a party's approval of

and the agreement to be bound by the Self-Regulation Agreement in accordance with that party's required governmental procedures.

3. That any changes in the Self-Regulation Agreement shall be made in accordance with the provisions of subsection F, below.
4. Primary enforcement and administration of justice responsibilities for the Tribes' regulations lies with the Tribes and their properly authorized agencies.
5. The Tribes and Forest Service will coordinate their respective law enforcement activities and establish cooperative law enforcement ventures, such as joint patrols, effective communication systems, information and potential violation referral processes, and joint training activities. These coordinated law enforcement activities shall include at least annual meetings between designated enforcement personnel.

F. Process for MOU Amendments, Regulatory Changes and Self-Regulation Agreement Changes. The parties recognize the dynamic nature of their government-to-government relationship. They also recognize that changes in federal and tribal regulation and management of the harvesting of the National Forests' natural resources in the ceded territories are inevitable. To facilitate open communication and minimize disputes arising from the dynamics of their relationship and from the need to change harvest regulations, the parties agree:

1. Consensus/Resolution of Disputes. As for the matters addressed by this subsection F, the affected parties shall strive to reach consensus on the matter at hand. Where consensus cannot be reached:
 - a. The affected parties will attempt to resolve any dispute or disagreement first by good faith discussions at the appropriate governmental level. A party may raise any matter not resolved at this level to a higher official of another party. If it has the authority to do so, a party will delay a final decision on the unresolved matter until this process has had the opportunity to take place within a reasonable amount of time.
 - b. A party claiming the requisite authority may make and implement a decision on the unresolved matter.
 - c. In addition to the procedures provided by the MOU, a party may challenge or appeal another party's decision or action in

accordance with applicable law.

2. MOU Amendment. Any party may propose an amendment to the MOU in writing to the other parties. Within 60 days of receipt, the parties shall convene a meeting to consider the proposal. An amendment may be adopted by and binding upon less than all of the parties provided that the adopting parties include at least one tribal party and the Forest Service.
3. Federal Laws and Regulations. The Forest Service agrees to seek the input of the Tribes on proposed changes to the Forest Service's regulation of natural resource harvesting within the ceded territories by providing written notice, including an explanation of the underlying rationale, to the Tribes at least 60 days in advance of the desired effective date of the proposed change. The Tribes shall have 45 days, or such other time period as may be agreed upon, to provide comments.

In addition, the Tribes may submit a written request to the Forest Service for changes in the Forest Service's regulation of natural resource harvesting, including an explanation of the request's rationale. The Forest Service agrees to respond to the request within 45 days, or such other time period as may be agreed upon.

Unless other time frames are specifically imposed by applicable law, the Forest Service and the Tribes agree to afford as much time as is necessary and appropriate for consensus to be reached on the Forest Service proposal and on a Tribe's request.

4. Model Code or Tribal Enactments Based Upon the Model Code. The Tribes agree to notify the Forest Service in writing of any proposed change that would make the Model Code, or any Tribe's enactment based upon the Model Code, less restrictive than provided for in the MOU. In addition, the Forest Service may request the Tribes to change the Model Code, or any Tribe's enactment based upon the Model Code, to be more restrictive than provided for in the MOU.

Except in cases of emergency, such notices and requests will be provided at least 60 days in advance of the desired effective date of the change and will include an explanation of the proposal's rationale. Within 45 days of receipt, or such other time period as may be agreed upon, the receiving party or parties shall respond expressing any objections and indicating any changes that are agreeable. The failure to object in writing to a proposed change within the 45-day period, or any extension thereof, will be deemed as agreement to the proposal.

The Forest Service and the Tribes agree to afford as much time as is necessary and appropriate for consensus to be reached on any objection to a proposed or requested change.

A properly amended Model Code shall replace the then-current Appendix A to the MOU and is specifically incorporated by reference herein as if set forth in its entirety.

5. Tribal Self-Regulation Agreement. Any party may submit a written request to the other parties for a change in the Self-Regulation Agreement. Except in cases of emergency, such request will be provided at least 60 days in advance of the desired effective date of the change and will include an explanation of the proposal's rationale. Within 45 days of receipt, or such other time period as may be agreed upon, the receiving party or parties shall respond expressing any objections and indicating any changes that are agreeable. The failure to object in writing to a proposed change within the 45-day period, or any extension thereof, will be deemed as agreement to the proposal.

The Forest Service and the Tribes agree to afford as much time as is necessary and appropriate for consensus to be reached on any objection to a proposed change.

A properly amended Self-Regulation Agreement shall replace the then-current Appendix B to the MOU and is specifically incorporated by reference herein as if set forth in its entirety.

6. Tribal Timber Harvest Framework Agreement. Any party may submit a written request to the other parties for a change in the Timber Harvest Framework Agreement. Except in cases of emergency, such request will be provided at least 60 days in advance of the desired effective date of the change and will include an explanation of the proposal's rationale. Within 45 days of receipt, or such other time period as may be agreed upon, the receiving party or parties shall respond expressing any objections and indicating any changes that are agreeable. The failure to object in writing to a proposed change within the 45-day period, or any extension thereof, will be deemed as agreement to the proposal.

The Forest Service and the Tribes agree to afford as much time as is necessary and appropriate for consensus to be reached on any objection to a proposed change.

A properly amended Timber Harvest Framework Agreement shall replace the then-current Appendix C to the MOU and is specifically incorporated by reference herein as if set forth in its entirety.

G. **Special Closures.** It is agreed that the Tribes or the Voigt Intertribal Task Force may submit a written request to the Forest Service requesting the temporary closure from public access areas of the National Forest to protect the privacy of tribal activities for traditional and cultural purposes.

1. The parties agree that in the implementation of the request the parties will cooperatively determine the smallest practicable area for the minimum period necessary to accommodate the requested activity.
2. It is further agreed that Tribal officials on behalf of the Tribe making the request or Voigt Intertribal Task Force Representatives shall be prepared to help the Forest Service understand the request, if necessary, by explaining how the intended activity is identifiable by the Tribe as traditional or cultural because of the long-established significance or ceremonial nature of the activity to the Tribe.

VII. **CONGRESSIONAL INVOLVEMENT.** Pursuant to 42 U.S.C. Section 22, no Member of or Delegate to the Congress of the United States shall be admitted to any share or part of this instrument, or any benefits that may arise therefrom.

VIII. **MOU EFFECTIVE DATE/TERMINATION.** The MOU shall take effect on the date when at least one Tribe, the Forest Service's Eastern Region, the Region's Law Enforcement and Investigations Branch, and the Northern Research Station have properly ratified it in accordance with their respective governmental procedures. The MOU shall be binding as to and between those entities upon notice to the other parties of their ratification as provided in Section IX, below. Any party may withdraw from this agreement at any time following the notice of withdrawal procedures of Section IX.B., below. This MOU shall no longer be in effect if the Forest Service withdraws or if all ratifying tribes have withdrawn.

IX. **REQUIRED NOTICES/PARTIES' DESIGNATED REPRESENTATIVES.**

- A. **Notice of Ratification.** Within 30 days of ratification of the MOU, an entity shall notify all other entities listed in Section II, above, of the date of ratification. Each party's Notice of Ratification is specifically incorporated into the MOU as if set forth in its entirety.
- B. **Notice of Withdrawal.** A party shall provide written notice to the other parties

of its intent to withdraw from the MOU at least 60 days in advance of the proposed withdrawal date. Within 45 days of such notice, or such other time period as may be agreed upon, the parties shall convene a meeting to discuss the intent to withdraw and to attempt to reach consensus on ways to prevent the withdrawal. Should a party ultimately withdraw from the MOU, it shall provide a written Notice of Withdrawal to the other parties, and such Notice is specifically incorporated into the MOU as if set forth in its entirety.

- C. **Designated Representatives.** In providing notice of its ratification, a party may designate its representative for receiving the notices from the another party that are required by the MOU. Where a party has not formally designated a representative either with its Notice of Ratification or with respect to particular matters addressed by the MOU, another party may provide a required notice ex officio to the office of the official that provided the party's Notice of Ratification.

- X. **INITIAL MEETING OF THE PARTIES.** Within 90 days of the MOU's effective date, the parties shall convene an initial meeting for the purposes of: (A) identifying those matters that require immediate attention in implementing the MOU's provisions, such as the agreement and implementation plan regarding campground fees and length of stay restrictions; (B) identifying and addressing any other matter regarding the MOU that requires the parties' attention; (C) setting forth a timetable for addressing those matters; and (D) identifying their representatives that will serve as their "keepers of the process" in ensuring that the MOU is faithfully implemented. These representatives may be persons other than a party's designated representative for receiving required notices from another party provided for in Article IX, above.

As Approved and Recommended for Tribal Adoption at 3/1/12 Voigt Task Force Meeting

APPENDIX A

MODEL

OFF-RESERVATION NATIONAL FOREST GATHERING CODE

OF THE

CHAPTER 1 - INTRODUCTION

1.01 Title.

This ordinance shall be known as the _____ Off-Reservation
National Forest Gathering Code.

1.02 Authority.

This ordinance is enacted pursuant to Article _____, Section _____ of the Constitution
and By-Laws of the _____ Tribe.

1.03 Purpose.

It is the purpose of this ordinance to:

(1) Provide an orderly and effective system for tribal control and regulation of treaty-reserved gathering activities applicable to National Forests located in the ceded territory.

(2) Supplement the Tribal Off-Reservation Conservation Code for the purposes of regulating the exercise of treaty-reserved off-reservation gathering rights applicable to National Forests located in the ceded territory.

(3) Implement the provisions of the *Memorandum of Understanding Regarding the Recognition and Implementation of Tribal Ceded Territory Rights Guaranteed by the Treaties of 1836, 1837, and 1842*, as may be amended from time to time, which has been ratified by the Tribe and which is incorporated by reference herein as if set forth in its entirety.

1.04 Effective Date.

This ordinance shall be effective on the date adopted by the Tribe's governing body.

1.05 Interpretation.

The provisions of this ordinance:

(1) Shall be interpreted and applied as minimum requirements governing the exercise of treaty-reserved gathering rights applicable to National Forests located in the ceded territory;

(2) Shall be liberally construed in favor of the tribe;

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(3) Shall be construed consistent with the purposes and provisions of the *Memorandum of Understanding Regarding the Recognition and Implementation of Tribal Ceded Territory Rights Guaranteed by the Treaties of 1836, 1837, and 1842*, as may be amended from time to time, which has been ratified by the Tribe and which is incorporated by reference herein as if set forth in its entirety; and

(4) Shall not be deemed a limitation or repeal of any other tribal power or authority.

1.06 Severability and Non-Liability.

If any section, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby. The Tribe further asserts immunity on its part and that of its agencies, employees, and/or agents from any action or damages that may occur as a result of reliance upon and conformance with this ordinance.

1.07 Relationship to Tribal Off-Reservation Conservation Code and other Tribal Ordinances.

(1) All other ordinances and resolutions that solely govern treaty-reserved ceded territory gathering rights applicable to National Forests located in the ceded territory are hereby repealed.

(2) (a) This ordinance is not intended to repeal or replace any provision of the Tribe's Off-Reservation Conservation Code. It is intended to supplement that Code for the purposes of authorizing or governing the exercise of treaty-reserved wild plant gathering rights applicable to National Forests. It is not intended to apply to the exercise of any other treaty-reserved ceded territory right that is authorized or governed by the Tribe's Off-Reservation Conservation Code.

(b) Unless otherwise specifically indicated in this ordinance, it is the intent of this ordinance that the provisions of the Tribe's Off-Reservation Conservation Code that generally govern the conduct of tribal members exercising treaty rights applicable in the ceded territory shall apply to tribal members exercising treaty-reserved off-reservation gathering rights applicable to National Forests pursuant to this ordinance, including but not limited to regulations pertaining to the gathering of wild rice. Such provisions of the Tribe's Off-Reservation Conservation Code are hereby declared, and shall be construed, to govern tribal members engaged in the exercise of treaty-reserved gathering rights applicable to National Forests.

1.08 Religious or Ceremonial Use of Natural Resources.

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(1) Nothing in this ordinance shall prohibit the harvest or use of natural resources in a manner otherwise prohibited by this ordinance which is harvested, taken or otherwise obtained in a National Forest within the ceded territory for religious or ceremonial purposes in accordance with the traditions and customs of the Tribe and with the consent of the Tribe's governing body, or its designee.

(2) In reviewing and taking action on any request for religious or ceremonial harvest, the Tribes' governing body, or its designee, shall take into account the biological impact of the harvest, shall ensure that the harvest takes place in a manner that does not cause biological harm, and shall consult with the local National Forest District office if the requested gathering is to take place in a National Forest Research Natural Area (see Section 3.06(1)).

(3) No member shall fail to comply with the terms and conditions of the any permit issued pursuant to this section or to otherwise comply with the requirements imposed by the Tribe's regarding religious or ceremonial harvest of wild plants in National Forests in the ceded territory.

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CHAPTER 2 - DEFINITIONS

2.01 Definitions.

(1) Except for specific terms defined in subsection (2), terms in this ordinance shall have the same definition as provided in the Tribe's Off-Reservation Conservation Code.

(2) The following terms, wherever used in this ordinance, shall be construed as follows:

(a) **"Ceded Territory"** means those off-reservation lands ceded by the Tribe or another signatory tribe to the United States of America in the Treaty of 1836, 7 Stat. 491, the Treaty of 1837, 7 Stat. 536, or the Treaty of 1842, 7 Stat. 591.

(b) **"Bark"** means the tough outer covering of the woody stems and roots of trees, shrubs, and other woody plants. It includes all tissues outside the vascular cambium.

(c) **"Bough"** means any branch of a tree less than 2 inches in diameter.

(d) **"Domestic Purpose"** means the use of timber or salvage timber, harvested for the construction of any structure, building or appenditia to be used for community or residential domestic purposes.

(e) **"Firewood"** means any dead tree or part thereof, either standing or downed, which is harvested for and is to be used as fuel.

(f) **"Forest Service"** means the United States Department of Agriculture, Forest Service.

(g) **"Forest Service Salvage Timber Stand"** means any stand of trees where the Forest Service has notified the Tribe of the decision to solicit bids for a Forest Service salvage timber sale contract.

(h) **"Gather"** or **"gathering"** means to take or acquire or attempt to take or acquire possession of any wild plant, or part thereof.

(i) **"Gathering Products"** means all products of miscellaneous forest products other than non-timber forest products such as: branchlets, roots, berries, fruits, nuts, and seeds.

(j) **"Lodgepoles"** means any tree that is less than 5 inches DBH (diameter at breast height).

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(k) **“Miscellaneous Forest Products”** means any wild plant including: non-timber forest products, wild plants that are not trees such as herbaceous plants and shrubs, gathering products, endangered or threatened plant species, and species of special concern, but for the purposes of this ordinance excludes timber.

(l) **“National Forest”** means those lands located within the ceded territory owned by the United States of America and part of the Chequamegon-Nicolet National Forest, the Hiawatha National Forest, the Huron-Manistee National Forest, or the Ottawa National Forest.

(m) **“Non-Commercial Traditional and Cultural Purpose”** means the use of timber harvested with respect to a definable use, area, or practice, identified by an Indian tribe as traditional or cultural because of the long established significance or ceremonial nature of the use, area, or practice to the Indian tribe; and is not for commercial purposes.

(n) **“Non-Timber Forest Products”** means any of the following miscellaneous forest products: bark, boughs, firewood, lodgepoles, and sap as further defined in this section.

(o) **“Salvage Timber”** means any tree in a Forest Service salvage timber stand, whether alive, dead, down or standing, having a diameter of four inches or greater.

(p) **“Sap”** means the watery fluid that circulates through a tree or plant, carrying food and other substances to the various tissues.

(q) **“Shrub”** means a woody perennial plant usually branched several times at or near the base giving it a bushy appearance, and is usually less than five meters tall.

(r) **“Signatory Tribe”** means an Indian Tribe which is a signatory to the Treaty of 1836, 7 Stat. 491, the Treaty of 1837, 7 Stat. 536, or the Treaty of 1842, 7 Stat. 591, or such tribe's successor in interest.

(s) **“Species of Special Concern”** means any wild plant which is contained on the tribal species of special concern list.

(t) **“Timber”** means any tree that is not a lodgepole as defined in Section 2.01(2)(i) of this ordinance, or is not firewood as defined in Section 2.01(2)(d) of this ordinance.

(u) **“Tree”** means a woody, perennial plant with a single trunk that is typically unbranched at or near the base, and is usually greater than five meters tall.

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(v) **“Wild Plant”** means any undomesticated species, or part thereof, of the plant and fungi kingdoms occurring in both forested and non-forested natural ecosystem, but for the purposes of this ordinance excludes wild rice.

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CHAPTER 3 - GENERAL REGULATIONS

3.01 Regulatory Authority.

(1) The Tribe asserts legal authority to regulate the exercise of the Tribe's treaty-reserved ceded territory gathering rights applicable to wild plants found in National Forests.

(2) Any person authorized to enforce this ordinance may seize forthwith wherever found:

(a) any wild plant taken or reduced to possession in violation of this ordinance;
or

(b) any wild plant lawfully taken or reduced to possession under this ordinance, upon violation of any provision of this ordinance relating to the possession, use, giving, sale, barter or transportation of such wild plant.

3.02 Permits and Identification -- General.

(1) No member shall gather any wild plant off-reservation in a National Forest without possessing a valid off-reservation harvesting permit approved by the Tribe, which may be the member's tribal identification card required by Subsection (2), or such other permit as this ordinance may require validated for the particular type of activity to be engaged in for the particular season in question, as follows:

(a) Generally. Except as provided in subs. (b) [Non-Timber Forest Products and Ginseng Gathering Permits], no member shall gather any miscellaneous forest products without possessing a valid general gathering permit issued by the tribal conservation department while harvesting off-reservation in a National Forest.

(b) Non-Timber Forest Product and Ginseng Gathering Permits.

(i) No member shall harvest or gather non-timber forest products or ginseng pursuant to this ordinance without possessing a valid gathering permit issued by the tribal conservation department as follows:

1) Small Scale Harvest Activity. For small scale activity, a tribal member may harvest the following non-timber forest products while possessing a valid gathering permit up to the following limits:

a) Bark; Twenty (20) Trees

b) Boughs; Two (2) Tons

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c) Firewood; Ten (10) Cords

d) Lodgepoles; Seventy-Five (75) Lodgepoles

2) Large Scale Harvest Activity. For large scale activity, a tribal member may harvest non-timber forest products while possessing a valid large scale harvest activity gathering permit above the limits established for small scale harvest activity as follows:

a) No member shall gather non-timber forest products on a large scale without a valid large scale harvest activity gathering permit valid for a designated area established by the tribal conservation department in consultation with the Forest Service.

b) "Designated Area" means a specific site identified and established by the tribal conservation department, in consultation with the Forest Service, for which a species harvestable surplus has been determined and for which the appropriate number of large scale harvest activity permits are available for the designated area.

c) The tribal conservation department may issue a large scale harvest activity permit to one or more members based upon the determined species harvestable surplus and may impose such terms and conditions as it deems necessary or appropriate.

d) No member shall fail to comply with the terms and conditions of a large scale harvest activity permit.

(ii) No gathering permit is required of helpers of a permittee who participate only in the collection of the resource once it has been reduced to possession of a permittee.

(iii) The tribal conservation department may impose such other terms and conditions as it deems necessary or appropriate, including biological monitoring requirements in addition to those contained in Section 3.04 of this ordinance.

(2) No member shall gather any wild plant off-reservation in a National Forest except while carrying a valid picture identification card issued by the tribe, or other form of identification approved by the tribe for such gathering activities.

(3) No member shall refuse to display his or her identification documents upon request

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of any tribal, Great Lakes Indian Fish and Wildlife Commission, federal, state, or local law enforcement officer.

(4) No member shall fail to comply with the terms, conditions and location restrictions of a permit issued pursuant to this ordinance.

(5) The tribal conservation department is authorized to issue to members permits required by this ordinance and to impose such terms, conditions and location restrictions in those permits as it deems necessary or appropriate. Except as otherwise required by this ordinance, the form of such permits shall be left to the discretion of the tribal conservation department, provided such form shall require the name, address and member's tribal identification number.

(6) The tribal conservation department may issue such harvesting permits to members of a signatory Tribe, provided such other Tribe has enacted an ordinance governing gathering in National Forests that is at least as restrictive as this ordinance.

3.03 Sale of Miscellaneous Forest Products Authorized.

(1) Nothing contained in this ordinance shall be construed to prohibit members from selling any miscellaneous forest products, or any part thereof, lawfully harvested pursuant to this chapter.

(2) With respect to the sale of any miscellaneous forest products, or part thereof, lawfully harvested pursuant to this ordinance in a National Forest, any requirement for maintaining records of commercial transactions contained in the Tribe's Off-Reservation Conservation Code shall not apply.

3.04 Harvest Monitoring.

(1) Generally. No member to whom any permit has been issued under this ordinance shall fail or refuse to provide harvest information when requested by the tribal conservation department, any person authorized to enforce this ordinance, or the Great Lakes Indian Fish and Wildlife Commission.

(2) Records of Ginseng Transactions.

(a) Unless otherwise required under the provisions of GLIFWC's and the Tribes' approved CITES export program, no member shall sell any ginseng harvested pursuant to this ordinance to any person unless the member maintains a written record of all transactions on forms prescribed by the tribal conservation department indicating the amount of ginseng involved, the parties to the transaction, the date of the transaction and the National Forest in which harvest occurred.

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(b) Records maintained pursuant to this section shall be forwarded annually to the tribal conservation department, or its designee.

(c) No member shall fail to comply with the reporting requirements of this section.

(d) With respect to ginseng gathered in a National Forest, this section supersedes any requirement for maintaining records of commercial transactions contained in the Tribe's Off-Reservation Conservation Code.

3.05 Emergency Closures.

(1) Notwithstanding any other provision of this ordinance, the Director of the Biological Services Division of the Great Lakes Indian Fish and Wildlife Commission or the tribal conservation department may order the closure of the harvest activity of any wild plant in a National Forest generally or with respect to a particular location, whenever the continuation of the harvest is likely to cause biological harm to the species involved.

(2) Every reasonable effort shall be made to consult with and obtain approval of the Tribe prior to ordering an emergency closure, but such closure may be ordered without consultation or approval if circumstances require.

(3) An emergency closure shall become effective immediately upon issuance or at such time or date as the closure order may direct. Such closure shall be communicated to the Tribe by the best and swiftest practical method.

(4) No member shall violate the terms, conditions or restriction of an emergency closure order issued pursuant to this section.

3.06 Harvest and Other Location Restrictions.

(1) Tribal Wilderness, Research Natural Areas, and Special Use Areas Established. The following Great Lakes Indian Fish and Wildlife Commission document, as it may be amended from time to time, is hereby adopted and incorporated in this ordinance as if fully set forth herein, and no member shall fail to comply with the closures and other restrictions established by this document:

Tribal Wildernesses, Tribal Research Natural Areas, and Tribal Vehicle Permit Areas on National Forests, Version 1: [August 1998].

(2) Forest Service Administrative Sites. No member shall gather wild plants under authority of this ordinance on a Forest Service administrative site. For the purposes of this

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ordinance, a "Forest Service administrative site" means a specific site where an office, storage or other building or structure is located and maintained by the Forest Service as part of its operation and management of a National Forest. It is the member's responsibility to be certain about a Forest Service administrative site. Any uncertainty should be resolved by contacting the tribal conservation department, Great Lakes Indian Fish and Wildlife Commission or the local National Forest District office.

(3) National Forest Campgrounds.

(a) Gathering in Developed Campgrounds.

(i) Except as provided in subs (ii), no member shall gather wild plants under authority of this ordinance on any land located within a developed National Forest Campground. For the purpose of this ordinance, a "developed National Forest Campground" means a location that is clearly marked and identified as a campground by the Forest Service and on which improvements clearly have been made to develop and maintain the site as a campground. It is the member's responsibility to be certain about a developed National Forest campground. Any uncertainty should be resolved by contacting the tribal conservation department, Great Lakes Indian Fish and Wildlife Commission or the local National Forest District office.

(ii) Except where firewood is provided at no cost by the campground or where firewood will be used while camping in the campground, no member shall gather firewood in a developed National Forest campground.

(b) Camping Fees and Length of Stay Restrictions. The Tribe and the Forest Service have entered into a Memorandum of Understanding that will exempt members from certain camping fees and length of stay restrictions that the Forest Service requires of the general public in the National Forests. Once the Tribe and the Forest Service have entered into a campground fee and length of stay Exemption Agreement and accompanying Implementation Plan, and the Tribe has ratified the Agreement and Plan, no member shall fail to comply with the requirements and restrictions contained in the Agreement and Plan. Information about the Exemption Agreement and Implementation Plan can be obtained by contacting the tribal conservation department, Great Lakes Indian Fish and Wildlife Commission or local National Forest District office.

(4) Non-National Forest Lands. No member shall gather wild plants under authority of this ordinance on any land located within the boundaries of a National Forest that is not owned by the United States of America and part of a National Forest. This provision does not apply to or otherwise restrict any wild plant gathering on non-National Forest lands that is authorized by another tribal ordinance.

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3.07 Harvest of Trees Subject to a Timber Sale Contract or Located Within a Forest Service Timber Sale Contract Area.

(1) No member shall gather any tree under authority of this ordinance without a permit issued pursuant to subs. (4) that is subject to the harvest rights of another in a valid Forest Service timber sale contract. Sometimes these trees are marked with orange, green or yellow paint. However, it is the member's responsibility to be certain about trees that are subject to a valid Forest Service timber sale contract. Any uncertainty should be resolved by contacting the tribal conservation department, Great Lakes Indian Fish and Wildlife Commission or the local National Forest District office.

(2) Within an open Forest Service Timber Sale Contract Area as defined in subs. (3), no member shall undertake any of the following activities under authority of this ordinance without a permit issued pursuant to subs. (4):

- (a) Cut down any live tree;
- (b) Remove the bark of any live tree;
- (c) Trim or remove the branches from the top half of any live tree; or
- (d) Trim or remove the branches or other parts, except cones, of any tree that has been cut down by another person.

(3) For the purposes of this ordinance, an "Open Forest Service Timber Sale Contract Area" means a defined location of a National Forest which has been delineated by the Forest Service for the purposes of a timber sale offering and for which a valid Forest Service timber sale contract has been executed. Typically, a Forest Service Timber Sale Contract Area is marked with orange paint on trees around the perimeter of the Area. It is the member's responsibility to be certain about an open Timber Sale Contract Area. Any uncertainty should be resolved by contacting the tribal conservation department, Great Lakes Indian Fish and Wildlife Commission or the local National Forest District office.

(4) (a) The tribal conservation department, after first consulting with the Forest Service, is authorized to issue permits under this section on such terms and conditions as it deems necessary and appropriate.

(b) No member shall fail to comply with the terms and conditions of a permit issued pursuant to this section.

3.08 Harvest of Certain "Marked" Trees.

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(1) No member shall cut down any tree that has been designated with any of the following markings, and no member shall remove, alter or deface any of the following markings:

(a) Orange Paint. Orange paint designates the boundaries of a payment unit within a Forest Service Timber Contract Sale Area;

(b) Red Paint. Red paint indicates boundaries between National Forest land and other ownerships, or may designate a witness tree at a legal corner;

(c) White Paint Stripes or Other White Bands. White stripes or bands indicate a tree being used to collect cones or seeds for nursery stock; or

(d) Metal or Wood Forest Service Signs. These signs designate property or National Forest boundaries, indicate legal corners or other survey data, indicate nursery stock, or provide other similar information.

3.09 Permissible Conduct/Assistance by Non-Members.

(1) Conduct which is not expressly prohibited, restricted or otherwise regulated by this ordinance shall be deemed permissible.

(2) Except as provided in subs. (3) or as otherwise provided herein, nothing in this ordinance shall be construed to prohibit a member from gathering in a National Forest with any other person who is not a member of the Band, provided that such other person possesses a license or permit, or is otherwise not prohibited from engaging in the activity involved and complies with applicable laws.

(3) No member shall allow any person who is not a member to assist, and no such person shall assist, in the activities authorized by this ordinance except that persons of the member's immediate family, including but not limited to grandparents, parents, spouses, siblings, wenh'enh, doodem, and bami'aagin may assist the member provided the member is present when the assistance is rendered.

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CHAPTER 4 - ENFORCEMENT

4.01 Enforcement by Deputized Conservation Wardens and Issuance of Citations.

(1) Any provision of this ordinance may be enforced by tribal conservation wardens or by conservation wardens of the Great Lakes Indian Fish and Wildlife Commission. Said Commission wardens are hereby deputized by the Tribe as tribal conservation wardens for the purposes of enforcing this ordinance.

(2) Such Tribal and Commission wardens may issue a citation on a form approved by the Tribe or tribal court to any person whose conduct is regulated by the provisions of this ordinance upon reasonable belief that such person has violated or breached a provision of this ordinance.

4.02 Search and Seizure; When Authorized.

Tribal and Great Lakes Indian Fish and Wildlife Commission conservation wardens, and properly identified Forest Service law enforcement officers are empowered to:

(1) Conduct a search of an object, place or person whose conduct is regulated by the provisions of this ordinance, and may seize things when the search is made:

(a) with consent;

(b) pursuant to a valid search warrant;

(c) with the authority and within the scope of a right of lawful inspection as provided in this section;

(d) incident to the issuance of a lawfully issued citation under this ordinance; or

(e) as otherwise authorized by law or by the provisions of this ordinance;

(2) Conduct routine inspections, in a manner and at such times and locations as are reasonable and appropriate in the ordinary course of routine enforcement activities, of vessels, boats, wagons, trailers, automobiles, snowmobiles, off-highway vehicles, containers, packages, and other receptacles contained therein, utilized by a person in a harvest activity authorized by this ordinance and of record of commercial transactions required under this ordinance with have not yet been forwarded to the tribal conservation department;

(3) Execute and serve warrants and other process issued by the tribal court in accordance with applicable law;

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(4) Stop any automobile or other vehicle as part of a lawful inspection authorized by this section or if the person reasonably suspects there is a violation or breach of this ordinance;

(5) With or without a warrant, open, enter and examine vessels, boats, wagons, trailers, automobile, vehicles, snowmobiles, off-highway vehicles, and packages and other receptacles contained therein, in which the person has probable cause to believe that contraband wild plants, may be contained or pursuant to a lawful inspection authorized by this section; and

(6) Seize and hold subject to the order of the tribal court any alleged contraband or property which such person reasonably believes may be needed as evidence in connection with the institution of proceedings in tribal court or any property otherwise authorized to be seized by the provisions of this ordinance.

4.03 Seized Items.

Any wild plant which is seized in connection with cases referred to Tribal Court for prosecution shall be turned over to the Tribe. No seized wild plant shall be returned by the tribal court or tribal officials to a convicted violator, his or her immediate family or other member of the gathering party.

4.04 Penalties.

Any person who, for himself or herself, or by his or her agent, servant or employee, or as an agent, servant or employee of another, violates this ordinance, shall be liable as follows:

(1) For any violation, a civil remedial forfeiture of not more than \$5000.00;

(2) For any violation, a revocation or suspension of off-reservation National Forest gathering privileges for a period of time within the discretion of the court;

(3) For any violation, the court may order a natural resources assessment not to exceed 75% of the amount of the civil remedial forfeiture; and

(4) For any violation, appropriate court costs within the discretion of the court.

4.05 Civil Damages.

(1) In addition to any other penalty allowed by this ordinance, the tribal court may award to the Tribe or, in addition to an action to impose penalties, the Tribe may bring a civil action for recovery of, damages against any person unlawfully gathering or having unlawfully in possession any wild plant taken from a National Forest. The sum assessed for damages for each wild plant shall not be less than the amount stated in this section:

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Model Off-Reservation National Forest Gathering Code

(a) Any endangered or threatened species protected under this ordinance, \$875.00.

(b) Any wild plant for which a fair market value can be established, the fair market value.

(c) Any other wild plant, \$17.50.

(2) Where the Forest Service or another person or entity has sustained damages as a result of unlawful harvest, the court may, with the consent of the Tribe, award all or part of any civil damages obtained pursuant to this section to the Forest Service or to such person or entity.

4.06 Enhancement of Forfeiture and Penalties.

Upon conviction of any member for a violation of this ordinance when such person has been convicted of a previous violation of this ordinance within a period of one year, the court may enhance any civil remedial forfeiture or other penalty as the court deems appropriate.

4.07 Collection of Money Penalties.

Enforcement of the money penalties imposed pursuant to this ordinance may be had through the collection of penalties from funds of the violator held by the Tribe, through the imposition of community service work requirements in lieu of money payment, through debt collection mechanisms of the courts of other jurisdictions, or through any other method authorized by law.

4.08 Parties to a Violation.

(1) Whoever is concerned in the commission of a violation of this ordinance shall be deemed a principal and may be charged with the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

(2) A person is concerned in the commission of the violation if the person:

(a) directly commits the violation;

(b) aids or abets the commission of it; or

(c) is a party to a conspiracy with another to commit it, or advises, hires, or counsels or otherwise procures another to commit it.

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4.09 Harvesting After Revocation or Suspension.

No person whose off-reservation National Forest wild plant gathering privileges have been revoked or suspended pursuant to Section 4.04(2), shall gather any wild plant in a National Forest, the harvest of which is regulated by this ordinance, during such revocation or suspension.

4.10 Schedule of Money Penalties; No Contest.

The tribal court, in consultation with the Tribe's Governing Body, may adopt a schedule of forfeitures to be imposed by the court upon the receipt of an admission that a violation of this ordinance has occurred, or a plea of not contest, which may be done either in person or in writing. This schedule shall not bind the court as to forfeitures assessed by the court after adjudicating a violation where the defendant has entered a plea of not guilty.

4.11 Hearings in Tribal Court.

The Tribal Court shall adjudicate all matters arising under this ordinance pursuant to the provisions of the Tribal Court Code.

4.12 Members of Other Tribes, Tribal Court Adjudications.

The tribal court is authorized to adjudicate alleged violations by any member of a signatory tribe of any off-reservation National Forest gathering code of that Tribe provided:

- (1) The relevant provisions of such ordinance are in essential conformance with the parallel provisions of this ordinance; and
- (2) The other Tribe has authorized the adjudication.

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CHAPTER 5 -- SPECIFIC HARVEST REGULATIONS

5.01 Conifer Boughs.

No member shall:

- (1) Cut down a tree for the purpose of gathering conifer boughs;
- (2) Remove boughs from the upper half of a tree; or
- (3) Gather for subsequent sale northern white cedar or hemlock boughs.

5.02 Princess Pine.

No member shall gather any *Lycopodium* species except by cutting the vertical above ground stem.

5.03 Sheet Moss.

No member shall harvest sheet moss except by harvesting no more than fifty percent (50%) of a species in any particular harvest area, including leaving the edges of the patch.

5.04 Lodgepoles.

No member shall harvest lodgepoles except by harvesting no more than fifty percent (50%) of a species in any particular harvest area, unless the location is a designated area as defined:

(1) "Designated Area" means a specific site identified and established by the tribal conservation department, in consultation with the Forest Service, for which a species harvestable surplus has been determined and for which the appropriate number of large scale harvest activity permits are available for the designated area.

5.05 Firewood.

(1) No member shall cut any live tree or gather any salvage timber for firewood unless the tree is included within a National Forest "firewood sale," other area designated for firewood either generally or on a case-by-case basis, or as permitted pursuant to a valid sugarbush site permit issued pursuant to Section 5.05.

(2) No member shall cut any standing dead tree more than 100 feet from the cleared edge

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of any road where it is legal for highway vehicles to travel.

(3) No member shall cut any standing dead tree within 200 feet of any pond, lake, stream or river.

(4) No member shall use a farm tractor, rubber tired skidder, or similar vehicle for gathering firewood without written permission from the Tribe.

5.06 Ginseng.

No member shall gather ginseng from November 1 through August 31.

5.07 Maple Sap/Sugarbushes.

(1) No member shall gather maple sap without a sugarbush site permit valid for a designated tribal sugarbush or for such other location approved by the tribal conservation department in consultation with the Forest Service.

(2) "Designated tribal sugarbush" means a specific site identified and established by the tribal conservation department, in consultation with the Forest Service, for which a site management plan has been developed and for which a sugarbush site permit has been issued.

(3) The tribal conservation department may issue a sugarbush site permit to one or more members and may impose such terms and conditions as it deems necessary or appropriate.

(4) No member shall fail to comply with the terms and conditions of a sugarbush site permit.

5.08 Unsustainable Harvest Activity.

Member compliance with tribal harvest guidelines (bmp) shall be considered sustainable harvest activity, otherwise no member shall harvest any miscellaneous forest product in such a manner so as to impair the future viability and continued success of the miscellaneous forest product on the landscape or ecosystem from which the member is harvesting, as conditioned by the type of miscellaneous forest product, and must take reasonable precautions to prevent unsustainable harvest activity.

5.09 Harvest of Timber and Salvage Timber.

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(1) Harvest for Sale as "Lumber" or Similar Wood Products.

(a) No member shall under authority of this ordinance cut down any timber or gather any salvage timber for the purposes of selling all or part of it, or any product derived from its wood, as bolts, pulpwood or lumber.

(b) No member shall sell under authority of this ordinance all or part of any timber, or any product derived from its wood, as bolts, pulpwood or lumber.

(2) Harvest for Domestic and Non-Commercial Traditional and Cultural Purposes.

(a) No member or tribal entity shall cut down any timber or gather any salvage timber under authority of this ordinance for domestic purposes, such as constructing a structure or dwelling, or for non-commercial traditional and cultural purposes, as those terms are defined in subs. (b), without a valid harvest permit issued pursuant to subs. (c).

(b) (i) For the purposes of this section, the terms "structure or dwelling" mean a building or other larger structure to be used for residential, commercial, or storage purposes, and include, for example, a home, cabin, garage, storage shed, store, office building, and manufacturing facility. The terms do not include smaller structures, such as hunting blinds, fish houses or sugarbush shacks, that are used in the exercise of treaty-reserved hunting, fishing or gathering rights. It is the member's responsibility to verify that the intended construction use is not prohibited by this ordinance. Any uncertainty should be resolved by contacting the tribal conservation department or the Great Lakes Indian Fish and Wildlife Commission.

(ii) For the purposes of this section, the terms "non-commercial traditional and cultural purpose" shall be defined by the Tribe issuing the harvest permit. Tribal officials on behalf of the Tribe issuing the harvest permit shall be prepared to help the Forest Service understand the request, if necessary, by explaining how the intended use is identifiable by the Tribe as traditional or cultural because of the long-established significance or ceremonial nature of the use to the Tribe. It is the member's responsibility to verify that the intended use is not prohibited by this ordinance. Any uncertainty should be resolved by contacting the tribal conservation department or the Great Lakes Indian Fish and Wildlife Commission.

(iii) For the purposes of this section, "tribal entity" means an agency, business, partnership, corporation, committee, body or other entity, and the officers, employees and agents thereof, that is chartered, directed, controlled, or

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Model Off-Reservation National Forest Gathering Code

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majority owned by the Tribe.

(c) (i) The tribal conservation department is authorized to issue harvest permits for domestic and non-commercial traditional and cultural purposes on such terms and conditions as set forth in the attached Tribal Timber Harvest Framework.

(ii) Prior to issuing a harvest permit for domestic or non-commercial traditional and cultural purposes, the tribal conservation department must consult with and obtain the concurrence of the Forest Service.

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APPENDIX B

TRIBAL SELF-REGULATION AGREEMENT

This Tribal Self-Regulation Agreement [hereafter Self-Regulation Agreement] is entered into as part of the parties' ratification of the *Memorandum of Understanding Regarding the Recognition and Implementation of Tribal Ceded Territory Rights Guaranteed by the Treaties of 1836, 1837, and 1842* [hereafter MOU]. Specifically, the Self-Regulation Agreement implements the MOU's provisions regarding the Administration of Justice outlined in MOU Section VI.E.

1. **Parties.** The entities that may be parties to the Self-Regulation Agreement are the same as those that may be parties to the MOU, as set forth in MOU Section II.
2. **Incorporation of MOU's Provisions.** The MOU, as may be amended from time to time, is specifically incorporated by reference into the Self-Regulation agreement as if set forth in its entirety. The Self-Regulation Agreement shall be construed consistent with the purposes and provisions of the MOU, and, except as otherwise specifically provided herein, terms in the Self-Regulation Agreement shall have the same definition as provided in the MOU.
3. **Scope and Purposes of the Self-Regulation Agreement.** The Self-Regulation Agreement pertains to the administration of justice regarding the Tribes' exercise of their treaty-reserved ceded territory rights. Its primary purposes are to:
 - a. Facilitate the exercise of the Tribes' self-regulatory authority over the exercise of those rights; and
 - b. Prevent dual prosecution in tribal and federal forums stemming from conduct regulated by a Tribe's Off-Reservation National Forest Gathering Code that complies with the MOU's provisions [hereafter Complying Tribal Code].
4. **Enforcement and Prosecution of Alleged Violations of Tribal Law.** The parties acknowledge that conduct governed by a Complying Tribal Code also might be governed by federal statutes or regulations which the Forest Service is authorized to enforce in federal forums. Where the underlying conduct or act would be a violation of a Complying Tribal Code and of a federal statute or regulation, the parties agree that the Tribe's court is the preferred forum for dealing the alleged violation. Specifically, the parties agree:
 - a. Except as provide in subs. b, any conduct or act which is an alleged violation of a Complying Tribal Code shall be administered and prosecuted in accordance with the provisions of the Complying Tribal Code, provided:

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Tribal Self-Regulation Agreement

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- i. The Complying Tribal Code is in force at the time of the alleged violation; and
 - ii. The Tribe maintains a tribal court with jurisdiction to enforce the Complying Tribal Code.
 - b. After consultation with the affected Tribe, the Forest Service may initiate a federal enforcement action where the underlying conduct is egregious in nature. Factors to determine egregiousness shall include: the type of conduct involved; the amount of natural resources illegally taken; the nature and extent of the natural resource damages caused by the illegal act; considerations for specific and general deterrence; and considerations for compensating those persons or entities harmed or damaged by the conduct or act.
5. **Agreement Effective Date/Termination.** The Self-Regulation Agreement shall take effect when at least one Tribe, the Forest Service's Eastern Region and the Region's Law Enforcement and Investigations have properly ratified it in accordance with their respective governmental procedures. The Self-Regulation Agreement shall be binding as to and between those entities that ratify it upon notice to the other parties of their ratification as provided in MOU Section IX.
- The Self-Regulation Agreement shall automatically terminate at such time when the requisite combination of parties to make it effective no longer exists, or when the MOU terminates.
6. **Dispute Resolution.** The parties agree that any controversies, disputes, differences or misunderstandings arising out of the Self-Regulation Agreement shall be addressed as disputes under the MOU and handled in accordance with the MOU's provisions.
7. **Amendment of Agreement.** The parties agree that amendments to the Self-Regulation Agreement shall be addressed in accordance with the provisions of MOU Section VI.F.
8. **Required Notices/Parties' Designated Representatives.** The parties agree that the provisions of MOU Section IX shall apply to Notices of Ratification of and Withdrawal from the Self-Regulation Agreement and to the parties' designation of representatives regarding the Self-Regulation Agreement.

APPENDIX C

TRIBAL TIMBER HARVEST FRAMEWORK AGREEMENT

This Tribal Timber Harvest Framework Agreement [hereafter Timber Harvest Framework] is entered into as part of the parties' ratification of the *Memorandum of Understanding Regarding the Recognition and Implementation of Tribal Ceded Territory Rights Guaranteed by the Treaties of 1836, 1837, and 1842* [hereafter MOU]. Specifically, the Timber Harvest Framework implements the MOU's provisions regarding Natural Resource Harvest Management outlined in MOU Section VI.C. It is through the implementation of the Timber Harvest Framework that the Forest Service exercises its authority pursuant to 16 U.S.C. 477; 25 U.S.C. 3055; and the treaties between the United States and GLIFWC's member Ojibwe Tribes, specifically the Treaty of 1836, 7 Stat 491, the Treaty of 1837, 7 Stat. 536, and the Treaty of 1842, 7 Stat. 591.

1. **Parties.** The entities that may be parties to the Timber Harvest Framework are the same as those that may be parties to the MOU, as set forth in MOU Section II.
2. **Incorporation of MOU's Provisions.** The MOU, as may be amended from time to time, is specifically incorporated by reference into the Timber Harvest Framework as if set forth in its entirety. The Timber Harvest Framework shall be construed consistent with the purposes and provisions of the MOU, and, except as otherwise specifically provided herein, terms in the Timber Harvest Framework shall have the same definition as provided in the MOU:
 - a. For the purpose of this Timber Harvest Framework, timber shall be defined as any "tree" as defined in the attached Model Code, that is not a "lodgepole" or "firewood" as defined in the attached Model Code.
3. **Scope and Purposes of the Timber Harvest Framework.** The Timber Harvest Framework pertains to the Natural Resource Harvest Management principles regarding the Tribes' exercise of their treaty-reserved ceded territory rights. Its primary purposes are to:
 - a. Facilitate the exercise of the Tribes' self-regulatory authority over the exercise of those rights through the implementation of a timber harvest management system; and
 - b. To detail the process pertaining to the Tribes' implementation of the harvest of timber and salvage timber for domestic and non-commercial traditional and cultural purposes.
4. **Timber Harvest Conditions.** The Parties acknowledge the following conditions to the

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Tribal Timber Harvest Framework Agreement

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Timber Harvest Framework:

- a. Timber and salvage timber harvested pursuant to the Timber Harvest Framework may not be used for commercial purposes.
- b. The harvesting of timber and salvage timber pursuant to the Timber Harvest Framework must comply with relevant land management plans, the National Environmental Policy act, and all other applicable laws and regulations.
- c. The harvesting of timber and salvage timber pursuant to the Timber Harvest Framework shall be in compliance with 36 C.F.R. 223.8.
- d. The harvesting of timber and salvage timber pursuant to the Timber Harvest Framework may be conditioned or denied for reasons including:
 - i. Protecting public health and safety,
 - ii. Preventing interference with Forest Service and/or tribal activities,
 - iii. Complying with federal, tribal, and state laws and regulations,
 - iv. Ensuring the sustainability of a forest product or tribal sensitive species;
 - v. Otherwise protecting ceded territory land and resources.

5. **Timber Harvest Framework Principles.** The parties agree to the implementation of the following Timber Harvest Framework:

- a. A tribe initiating a request for the harvest of timber or salvage timber for domestic or non-commercial traditional and cultural purposes shall inform the Voigt Intertribal Task Force [hereafter VITF] of such intent for the purpose of conducting intertribal coordination.
- b. Once the VITF has conducted the proper intertribal coordination, the Commission shall send a letter to the tribe of such intent, thereby notifying it whether there is an intertribal conflict with the request.
- c. If the VITF determines that there is no intertribal conflict with a request, the Commission staff shall notify the Forest Service that the VITF has conducted intertribal coordination pertaining to the tribe's initial intent to harvest timber or salvage timber for domestic or non-commercial traditional and cultural purposes and that there is no intertribal conflict pertaining to the request. Thereby, the notification shall include a request to consult on the tribe's initial desire to make a request for the harvest of timber or salvage timber for domestic or non-commercial traditional and cultural purposes.

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Tribal Timber Harvest Framework Agreement

- d. The Commission, in consultation with the tribe, shall set up a meeting with the Forest Service, the Tribe and the Commission to discuss the specifics of the potential formal request, which shall include the following:
- 1) Potential locations where the Tribe may desire to harvest;
 - 2) Approximate number of trees the Tribe desires to harvest;
 - 3) The species and size of timber the Tribe desires to harvest;
 - 4) The approximate year and season when the Tribe desires to harvest;
 - 5) The purpose for which the timber or salvage timber will be put:
 - i) For domestic purposes, as this term is defined in the attached Model Code.
 - ii) For non-commercial traditional and cultural purposes, as this term is defined in the attached Model Code.
- e. The Forest Service, the Tribe, and the Commission shall set up a site evaluation(s) to determine the feasibility of the proposed harvest location(s). Proposed harvest locations shall be agreed to by consensus of all parties.
- f. The Tribe shall submit a formal "Letter of Request of the Tribe for Timber Harvest Purposes" to the District Ranger. The letter of request shall include:
- 1) The location of harvest;
 - 2) The approximate number of trees to be harvested;
 - 3) The species and size of timber to be harvest;
 - 4) The approximate year and season the timber shall be harvested; and
 - 5) The purpose for which the timber or salvage timber will be put:
 - i) For domestic purposes, as this term is defined in the attached Model Code.
 - ii) For non-commercial traditional and cultural purposes, as this term is defined in the attached Model Code.

The Tribe shall provide a courtesy copy (cc) of this letter of request to the Forest Supervisor, the Tribal Liaison for the Chequamegon-Nicolet, Hiawatha and Ottawa National Forests, the VITF, and Commission staff.

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Tribal Timber Harvest Framework Agreement

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- g. The Forest Service in consultation with the Tribe and the Commission shall develop an area of operation map.
 - h. The Forest Service in consultation with the Tribe and the Commission shall develop the necessary decision and analysis documents, including those required by the National Forest Management Act and the National Environmental Policy Act. If either the Tribe or the Commission has the capacity, they may exercise the option to jointly develop the necessary decision and analysis documents for the requested site location.
 - i. The Commission, the Tribe and the Forest Service shall develop the specific provisions of the "Operating Plan".
 - j. The Tribe shall issue a tribal permit to the "member" or "tribal entity" as defined in the attached Model Code.
 - k. The Tribe in consultation with the Commission and the Forest Service shall conduct the necessary monitoring and evaluation of the timber harvest operation.
 - l. The Tribe in consultation with the Commission shall provide the Forest Service with a final notification that the filed operations on the timber harvest operation are complete.
 - m. The Tribe in consultation with the Commission shall provide the Forest Service with a final briefing (success story) on the results of the timber harvest request.
5. **Agreement Effective Date/Termination.** The Timber Harvest Framework shall take effect when at least one Tribe, and the Forest Service's Eastern Region have properly ratified it in accordance with their respective governmental procedures. The Timber Harvest Framework shall be binding as to and between those entities that ratify it upon notice to the other parties of their ratification as provided in MOU Section IX. The Timber Harvest Framework shall automatically terminate at such time when the requisite combination of parties to make it effective no longer exists, or when the MOU terminates.
6. **Dispute Resolution.** The parties agree that any controversies, disputes, differences or misunderstandings arising out of the Timber Harvest Framework shall be addressed as disputes under the MOU and handled in accordance with the MOU's provisions.
7. **Amendment of Agreement.** The parties agree that amendments to the Timber Harvest Framework shall be addressed in accordance with the provisions of MOU Section VI.F.
8. **Required Notices/Parties' Designated Representatives.** The parties agree that the provisions of MOU Section IX shall apply to Notices of Ratification of and Withdrawal from the Timber Harvest Framework and to the parties' designation of representatives regarding the Timber Harvest Framework.

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Tribal Timber Harvest Framework Agreement

Tribal Communication - Written

Fond du Lac Band of Lake Superior Chippewa

Reservation Business Committee

1720 Big Lake Rd.
Cloquet, MN 55720
Phone (218) 879-4593
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Chairman
Wally Dupuis

Secretary/Treasurer
Ferdinand Martineau, Jr.

Dist. II Representative
Bruce M. Savage

Dist. III Representative
Kevin R. Dupuis, Sr.

Executive Director,
Tribal Programs
Chuck Walt

Executive Director,
Tribal Enterprises
Michael Himango

May 25, 2016

Jamie MacAlister, Environmental Review Manager
Minnesota Department of Commerce
85 7th Place East, Suite 500
St. Paul, MN 55101

Pipeline.Comments@state.mn.us

RE: Scoping Comments Regarding the Sandpiper Pipeline and Line 3 Replacement Projects, PUC Docket Numbers for Sandpiper: PL-6668/CN-13-473 and PPL-13-474; Line 3: PL-9/CN-14-916 and PPL-15-137

Dear Ms. MacAlister:

The Fond du Lac Band of Lake Superior Chippewa is a federally-recognized Indian tribe located in Northeastern Minnesota with a reservation consisting of roughly 100,000 acres. In addition to the reservation, the Band also retains usufructuary rights in an additional 9.5 million acres surrounding the reservation. These lands were ceded to the U.S. Government in the Treaties of 1837 and 1854. The Band retains all rights in the Ceded Territories that were not specifically reserved by treaty, including hunting, fishing, and gathering.

The proposed routes for both Sandpiper and Line 3 cut through the Band's Ceded Territories. The Fond du Lac Band of Lake Superior Chippewa submits the following comments regarding Enbridge's Sandpiper Pipeline and Line 3 Replacement projects.

Climate Change

Any new oil transportation infrastructure serves to encourage the country's reliance on an energy resource that is inherently damaging to the world's climate, locking us into an uncertain future for our children, grandchildren, and all future generations. The pipeline would lead to increasing greenhouse-gas emissions, killing our chances of meeting pollution-reduction targets. Continued reliance on energy from oil is altering many resources on Earth, contributing to devastating climate change.

The effects of a changing climate impact the resources on our reservation and Ceded Territories. Several species of interest to the Band are already being adversely impacted by climate change. Wild rice, for instance, is very dependent on steady water levels during the floating leaf stage. Floods on the Reservation in 2012 destroyed the wild rice crop that year. The steep decline of the moose population in northern Minnesota that has been noted over the past twelve years is believed to have been

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Sandpiper: PL-6668/CN-13 473 and PPL-13-474

Line 3: PL-9/CN-14-916 and PPL-15-137

exacerbated by hotter summers and the increased occurrence of pests. The emerald ash borer has destroyed stands of ash around the state. The health of many Native people, many of whom suffer from asthma, is worsened by mold outbreaks caused by wetter weather and higher ozone levels caused by a hotter climate. A study completed by the National Wildlife Federation (“Facing the Storm: Indian Tribes, Climate-Induced Weather Extremes, and the Future for Indian Country”, 2011) details the many ways in which tribes are disproportionately impacted by climate change and the many challenges tribes face in responding to climate-related disasters.

In evaluating the no-action alternative, the DOC must consider the fact that because of the relatively easy availability of things like the tar sands oil, companies like Enbridge continue to exploit damaging energy sources rather than exploring more sustainable alternatives. Projects like this contribute to a significant loss of carbon sequestration related to the forests and wetlands that will be converted or degraded. This continues to bring us down an unsustainable path of reliance on dirty fossil fuels and more carbon emissions, while simultaneously diminishing the natural landscape’s inherent resilience and the natural resource services it provides.

Instead of investing in the Sandpiper Pipeline and re-routing Line 3, the no-action alternative allows more investment in alternative energy infrastructure and promotion. Alternative energy resources like solar, wind, and water have the potential to ultimately replace our reliance on dirty oil.

1837 and 1854 treaty rights

The proposed Sandpiper route would pump 375,000 barrels per day of fracked oil across the Band’s Ceded Territories. The Treaties of 1837 and 1854 promised the Band a continuation of sustenance from Reservation and Ceded Territories’ water and land. Leaks and ruptures would endanger the Mississippi headwaters, Lake Superior watershed, and the wetlands that the Band relies on for our way of life.

Enbridge has a demonstrated history of negligence in pipeline safety. For instance, in 2010 in Michigan, an Enbridge pipe spilled dilbit into the Kalamazoo River, contaminating nearly forty miles of the river. It’s not clear if the river will ever go back to pre-spill quality, as it is now six years after the spill and there remain lingering chemicals and crude oil in the river. In 2012, an Enbridge pipe spilled more than 50,000 gallons of light crude oil in rural Wisconsin.

Any spill from the proposed pipelines would likely render cooking, cleaning, and drinking water unusable for hundreds of years. In addition, many of the wetlands on the reservation are peat; any oil spilled into peat will continue to contaminate our resources for eons.

System Alternative

Any route alternative proposed will impact the Great Lakes, as well as the treaty-protected resources of the Band. If Enbridge is allowed to proceed with the Sandpiper and Line 3 projects, they should be required to move the system entirely away from our forest resources, wetlands, and essential water systems. The route alternative options bring pipelines through the Duluth area and create unnecessary harms to the Band’s treaty resources, and to Lake Superior.

Pipeline rights-of-way (ROW) do not allow forest cover, causing fragmentation of the forest, including forested wetlands. In turn, that fragmentation disrupts the free movement of wildlife. In addition, fragmentation provides a corridor for invasive plant species to move through the area, since

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most invasive plant species in this area are dependent upon full to partial sunlight provided by pipeline ROWs.

Existing pipelines on the Reservation, both active and inactive, have already negatively impacted our wetlands and forests through fragmentation and wetland degradation. The Band needs very clear assurances that our future generations are not left with an Enbridge graveyard to remember us by.

If the Band is to support a pipeline project at all, any system alternative must completely avoid the Great Lakes, not only in Minnesota but in our Ceded Territories in Wisconsin and Michigan as well. The projects should be moved to more agricultural areas of the state, where the cleanup of the anticipated spills will be easier to access and contain.

Cathodic protection and access road and locations

At numerous locations throughout any pipeline route, Enbridge will need to install cathodic protection as well as access roads. When Enbridge completed their installation of Line 67 (Alberta Clipper) and Line 13 (Southern Lights) through the Fond du Lac Reservation, they did not include any cathodic protection or access road locations in their original wetland permit application. The Band later received a separate wetland permit application for Enbridge to install cathodic protection and access roads in wetlands adjacent to MN Highway 210, essentially “piecemealing” the pipeline project. Enbridge needs to identify all locations to be impacted in their project description so that those facilities can also be properly evaluated.

Eco-system valuation

In 2015 Earth Economics published an eco-system valuation of the St. Louis River watershed, finding that

[t]he St. Louis River watershed provides an estimated \$5 billion to \$14 billion in ecosystem service benefits per year which provides each of the approximately 177 thousand people living in the watershed an annual benefit of \$28,248 to \$79,096.

<https://www.glifwc.org/Events/Earth%20Economics%20St%20Louis%20River%20Project%20Report.pdf>.

This innovative study recognizes that quantifying the value of our eco-systems gives us better tools to understand the impact that environmental decisions have on the economy as a whole.

A similar study of the eco-systems that could be impacted by the Sandpiper and Line 3 projects should be done by an independent third party, such as the Great Lakes Indian Fish & Wildlife Commission.

Financial assurances

Enbridge must be held responsible for any oil spill that might happen from its pipelines. Before the company is allowed to take on these projects, it should be required to provide evidence of financial assurance, such as insurance or alternative financial security, which covers the full cost of recovery from any disaster which could happen as a result of the presence of its pipelines. The cost should be evaluated using an eco-system valuation study as discussed in the previous section. Enbridge must show that it has

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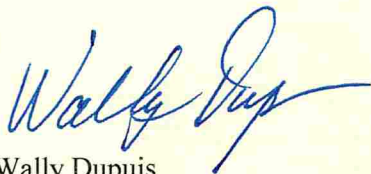
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the resources to cover the full costs of pollution damage as well as both remediation and restoration costs incurred by public and tribal agencies in preventing and cleaning up any spill that could happen.

Enbridge's purpose and need for this project is based on the assumption that the global economy will need more oil. This assumption is not well-founded, given recent international commitments to reduce carbon emissions as well as recent plunges in global oil markets. The DOC should fully analyze the no-build, no-replacement alternative, including a full quantification carbon impacts.

The Band looks forward to continued consultation on these issues.

Sincerely,

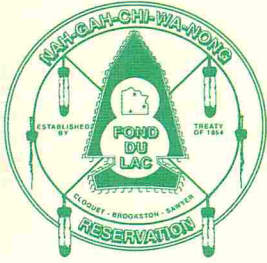


Wally Dupuis
Chairman

Fond du Lac Band of Lake Superior Chippewa Reservation Business Committee

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June 7, 2016



Jamie MacAlister, Environmental Review Manager
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85 7th Place East, Suite 500
St. Paul, MN 55101

RE: Scoping Comments Regarding the Sandpiper Pipeline Project and the Line 3 Replacement Pipeline Project, PUC Docket Numbers for Sandpiper: PL-6668/CN-13-473 and PPL-13-474; Line 3: PL-9/CN-14-916 and PPL-15-137

Chairman
Wally Dupuis

Secretary/Treasurer
Ferdinand Martineau, Jr.

Dist. II Representative
Bruce M. Savage

Dist. III Representative
Kevin R. Dupuis, Sr.

Executive Director,
Tribal Programs
Chuck Walt

Executive Director,
Tribal Enterprises
Michael Himango

Dear Ms. MacAlister:

The Sandpiper Route Alternative-37 (RA-37), which would traverse through the southern edge of the external boundary of the Fond du Lac Reservation, has been reviewed pursuant to the responsibilities given to the Fond du Lac Tribal Historic Preservation Office (THPO) by the National Historic Preservation Act (NHPA) of 1966 and the Procedures of the Advisory Council on Historic Preservation (36CFR800).

A spatial/graphic review of Fond du Lac's Cultural Resources Inventory identified that RA-37 would traverse within Fond du Lac's Cultural Preservation Zone that includes significant cultural/natural resources that provide a water source and several wild rice waters that the Band depends upon. Wild rice is basic to the traditional diet and important both culturally and spiritually as well as a central element in feasts and ceremonies. The quality of these waters and the aquatic habitat is essentially important to Band members.

From a cultural perspective, in recognition of the ecological importance of key cultural/natural resources within the external boundary of the Reservation, our concerns in regard to RA-37 footprint from both direct and indirect damage potential are substantial.

The Fond du Lac Band of Lake Superior Chippewa strongly requests that the Route Alternative RA-37 be omitted from the EIS Scoping Decision Document and no further analysis of this alternative be conducted.

The Band looks forward to continued coordination and consultation on this issue.

Sincerely,

Wally Dupuis
Chairman



Fond du Lac Band of Lake Superior Chippewa

TRIBAL HISTORIC PRESERVATION OFFICE

1720 Big Lake Road, Cloquet, MN 55720

Phone 218-878-7129 E-Mail jillhoppe@fdlrez.com

March 16, 2017

Jamie MacAlister
Environmental Review Manager
Minnesota Department of Commerce
85 7th Place East, Suite 500, Saint Paul, MN 55101

Dear Jamie,

Per the Fond du Lac Resource Management meeting with the Minnesota Department of Commerce held on 3/2/17, we discussed that if Fond du Lac Resource Management provided concerns in regard to Enbridge Line 3 Replacement Project by 3/17/17, the Minnesota Department of Commerce would include concerns provided in the Draft Environmental Impact Statement. As a result, Fond du Lac Resource Management has documented concerns, which are attached to this letter.

Please let me know if you have any questions or comments.

Sincerely,

Jill Hoppe
Fond du Lac Tribal Historic Preservation Officer

Summary of Fond du Lac Resource Management Concerns Regarding Enbridge Line 3 Replacement Project

1 Treaty Rights

- Any Line 3 Route Alternatives, with exception of Line 3 System Alternative Route, would cut through the Band's Ceded Territories where the Band retains usufructuary rights. These lands were ceded to the U.S. Government in the Treaty of La Pointe of September 30, 1854, 10 Stat. 1109, the Treaty with the Chippewa October 4, 1842, 7 Stat., 591, and the Treaty with the Chippewa July 29, 1837, 7 Stat. 536. Pipeline leaks and ruptures would endanger the Mississippi headwaters and Lake Superior watersheds, and the wetlands that the Band relies on for our way of life. Any spill from the proposed pipelines would likely render cooking, cleaning, and drinking water unusable for hundreds of years or more.
- Within the external boundary of the Fond du Lac Reservation alone, 47% is water resources/wetland. Many of the wetlands on the Reservation are peat; any oil spilled into peat will continue to contaminate our resources for an unknown period of time.
- As Indigenous people of North America, we have been marginalized through the extraction of resources in this hemisphere, our socio economic means have been displaced and the emphasis on extraction of the resources of our homeland has appropriated our ways of life.

2 Wild Rice

- Wild rice is central to Ojibwe culture; it is considered a special gift from Manidoo, the Great Spirit.
- Wild rice waters are recognized by the Ojibwe as Traditional Cultural Properties—wild rice is basic to the traditional diet and important culturally, spiritually, economically as well as a central element in feasts and ceremonies.
- Wild rice plants are very sensitive to pollution, invasive species, changes in water levels and land use development and practices. A history of environmental degradation has taken its toll on wild rice waters with western expansion and development.
- Deadfish Lake on the Fond du Lac Reservation is an important wild rice lake upon which Band members depend. Although this wild rice lake is located more than 1,200 feet from Line 3 Existing Route, there is a location of a ditch that Line 3 Existing Route crosses that feeds directly into Dead Fish Lake. Any spill, regardless of size will likely impact this important wild rice water. If this were to occur, it is unlikely any member of the Fond du Lac Band of Lake Superior Chippewa would willingly harvest rice from this lake, regardless of the extent of spill recovery and remediation.

3 Water

- It is important to clearly articulate the importance of water to the Ojibwe people. Nibi (water) is the lifeblood of Mother Earth, coursing through streams and rivers like blood through vessels; for earth to be strong and healthy, capable of sustaining life for generations to come, it must be kept clean. Nibi is sacred and it is our responsibility to keep it pure; it is our source of life and the lives of all plants and animals that share the earth.
- Any Line 3 Route Alternatives, with exception of the Line 3 System Alternative, will pose a threat to the Lake Superior watershed and ultimately the Great Lakes, as well as the treaty-protected resources of the Band.
- Line 3 Existing Route and other pipelines in proximity have altered hydrology in areas within Fond du Lac Reservation and Ceded Territories.

- With the exception of the Line 3 System Alternative Route, all Line 3 Routes through Minnesota have the potential to impact millions of acres of freshwater wetlands.
- **Line 3 Applicant Preferred Route** would traverse at least 14 named rivers and 13 unnamed tributaries in the 1854 Ceded Territory, and 3 named rivers and 6 tributaries in the 1842 Ceded Territory. **Line 3 Route Alternative** would traverse at least 22 named rivers and 26 unnamed tributaries in the 1837 Ceded Territory, 4 named rivers and 4 tributaries in the 1854 Ceded Territory, and 3 named rivers and 6 tributaries in the 1842 Ceded Territory, and 3 named rivers and 6 tributaries in the 1842 Ceded Territory. **Line 3 Existing Route** traverses at least 2 named rivers and 7 tributaries in the 1854 Ceded Territory and 3 named rivers and 6 tributaries in the 1842 Ceded Territory.

4 Cultural Resources

- All Line 3 Route Alternatives in Minnesota would traverse numerous wetlands, streams, lakes, and fisheries. The quality of these waters is vitally important to Band members and possible effects from contaminated water include disruption of the Bands' traditional way of life based on the harvest of fresh water fish, game, wild rice and other aquatic habitat culturally significant to the Bands.
- The pipeline right-of-way permanently removes forest cover which fragments the forest and leaves unnatural open spaces which may lead to reduction of wildlife habitat and animal pattern/migration changes.
- FDL Ordinance #03/14 – Preservation of Cultural Resources was enacted to protect and preserve FDL Cultural Resources; a subsequent Cultural Preservation Zone was established around culturally sensitive areas within the external boundary of the FDL Reservation. Line 3 Existing Route traverses near FDL's Cultural Preservation Zone where there exists Traditional Cultural Properties, archaeological and historic sites and other cultural resources, all of which are vulnerable to the potential impact of contaminants from a crude oil release reaching cultural sites.

5 Climate Change

- The increase in capacity for pumping oil and bitumen will result in impacts to the climate. These impacts need to be accounted for through quantification of climate change impacts. For example, the cost of petroleum extraction, the cost to our climate from production of the steel used to transport the oil, the cost of pumping the oil, the cost of trucking to transport the pipe and other assorted materials used in construction of the pipeline, the cost of the refining process, and the cost of using the oil once it is transported and refined.
- Any new oil transportation infrastructure serves to encourage the country's reliance on an energy resource that is inherently damaging to the world's climate, locking us into an uncertain future for our children, grandchildren, and all future generations. The pipeline would lead to increasing greenhouse-gas emissions, reducing our chances of meeting pollution-reduction targets. Continued reliance on energy from oil is altering many resources on Earth, contributing to devastating climate change.

6 Air Emissions

- Air emissions generated during the pipeline development phase may include digging, increased vehicle traffic, and continuous idling. Spill mitigation can release significant amount of air emissions. Air emissions from refining and final usage are of significant local and global concern.

7 Invasive Species

- The pipeline corridor encourages the overgrowth of invasive non-native species such as wild parsnip (*Pastinaca sativa*), which was not present on the Fond du Lac Reservation prior to Enbridge pipeline work in 2009, but has now spread outside the corridor and is found along some roads within the external boundaries of the Reservation. Although an official survey has not occurred, Fond du Lac conservatively estimates at least 80 acres has been infested with wild parsnip which forms dense stands that compete with native plant growth thereby reducing plant biodiversity and altering the natural setting. Wild parsnip contains chemicals that cause severe dermatitis making it problematic in infested areas for harvesting/gathering medicinal plants, berries, and other forest products culturally significant to the Bands. Pipeline construction and maintenance activities have also introduced purple loosestrife (*Lythrum salicaria*) to new areas along the Enbridge pipeline; the locations of which are often difficult to access for proper control efforts. Other invasive species including sweet clover, tansy, and spotted knapweed are also a concern on the Enbridge right-of-way, the Reservation and in the Ceded Territory. The presence of invasive species diminishes resources on Reservation and Ceded Territories.

8 Land Use

- Line 3 Existing Route that traverses through the FDL Reservation takes up approximately 360 acres. Line 3 Applicant Preferred Route takes up approximately 482 acres in the 1854 Ceded Territory and approximately 124 acres in the 1842 Ceded Territory. This diminishes Reservation/Treaty resources.

9 Environmental Justice

- Line 3 Existing Route traverses through Fond du Lac and Leech Lake Reservations. If significant impacts were to occur, the damage could disproportionately affect tribal and low-income populations.
- Pipeline proponents anticipate pipeline development could benefit low-income, minority, and tribal populations by creating job opportunities and stimulating local economic growth; however, noise, dust, visual impacts, wildlife and plant habitat destruction, introduction of invasive species, adverse land use changes, and increased risks to the quality of water and land which the Bands depend upon for sustenance may adversely affect traditional tribal lifeways and sites of spiritual and cultural significance. Additionally, an insignificant number of Native Americans are employed by pipeline development.
- An increase in the Line 3 pipeline flow/expansion (from 34" to 36" pipe) certainly leads to an increase in the potential for spills and for the magnitude of the affected spill area to be large. Any diminishment of natural resources or access to those resources amounts to a diminishment of Treaty-protected rights, which are also tribal property rights. Accidental spills do occur, and any expected loss of natural resources should be analyzed and quantified.

10 Soil Disturbance

- Vegetation and topsoil removal and mixing of soil horizon leads to reduction in plant diversity, potential for increased erosion and introduction/perpetuation of invasive, noxious plant species.

11 Financial Assurance

- Through time, all pipelines will need to be removed or decommissioned. What is the financial assurance for total remediation and restoration of Line 3 Existing Route pipeline corridor?

12 Eco-System Valuation

- In 2015 Earth Economics published an eco-system valuation of the St. Louis River watershed, finding that the St. Louis River watershed provides an estimated \$5 billion to \$14 billion in ecosystem service benefits per year which provides each of the approximately 177 thousand people living in the watershed an annual benefit of \$28,248 to \$79,096. This innovative study recognizes that quantifying the value of our eco-systems gives us better tools to understand the impact that environmental decisions have on the economy as a whole. The study can be found here: <https://www.glifwc.org/Events/Earth%20Economics%20St%20Louis%20River%20Project%20Report.pdf>. A similar study of the eco-systems that could be impacted by Line 3 projects should be done by an independent third party, such as the Great Lakes Indian Fish & Wildlife Commission.

13 Energy Alternatives

- Since 2007, Fond du Lac has reduced our carbon footprint and reduced energy usage by 40%. It is FDL Resource Management's position that although the United States is currently dependent upon crude oil, the world needs to begin a concerted effort to greatly reduce this dependence. The construction of new crude oil pipelines and the increase of capacities of existing pipelines encourage an increase in our dependence. Discussion of this reduction should be included to help illustrate what a less dependent scenario would look like.
- Extractive industries should take a percentage of their profits and contribute towards alternative energy.



LEECH LAKE BAND OF OJIBWE

Carri Jones, Chairwoman
Donald Finn, Secretary-Treasurer

Robbie Howe, District I Representative
Steve White, District II Representative
LeRoy Staples-Fairbanks III, District III Representative

Friday, October 25, 2013

Tracy Smetana
Minnesota Public Utilities Commission
121 7th Place E., Suite 350
St. Paul, Minnesota 55101

Re: MN-PUC Docket No. PL6668/CN-13-473

To Tracy Smetana:

The Leech Lake Band of Ojibwe (the "Band") is in receipt of your letter dated October 4, 2013 regarding the Notice of Certificate of Need Application for the Sandpiper Pipeline Project to Chairwoman Carri Jones. I am writing this letter regarding the proposed alternate route, which runs through the Leech Lake Indian Reservation (the "Reservation").

Enbridge Pipelines (North Dakota) ("Enbridge") does not have legal or regulatory approval to expand its existing corridor through the Reservation. I understand that Minnesota State law may require the Public Utilities Commission ("PUC") to have applicants outline a preferred route and an alternate route, but the Band needs to inform the PUC and the State of Minnesota at this early stage that Enbridge does not have legal or regulatory approval to build an additional pipeline across the Reservation. Therefore, I respectfully request that the PUC insist on a new alternate route that does not enter the exterior boundaries of the Reservation.

Enbridge lists the route through the Reservation as an "alternate route" and not the "preferred route." However, the "alternate route" is not an alternate at all as it is an impossible route. The perplexing aspect of this situation is that Enbridge is fully aware that it has neither the legal nor regulatory capability to build another pipeline through the Reservation, and should have listed their alternate route as a route that does not enter the exterior boundaries of the Reservation.

The reason Minnesota law requires applicants to list both a preferred route and an alternate route is in the event the preferred route does not work for one reason or another. Because Enbridge's proposed alternate route is a legal impossibility at this time, I respectfully ask the PUC to insist on a new alternate route that does not enter the Reservation.

115 Sixth St NW, Cass Lake, MN 56633
Telephone: 218-335-8200 Fax: 218-335-8309

Thank you for your time and attention to this important matter. I look forward to hearing your response at your earliest convenience. If you have any questions or concerns, please contact me at (218) 335-8200.

Sincerely,

A handwritten signature in black ink, appearing to read "SH", is positioned above the printed name.

Steven Howard
Executive Director
Leech Lake Band of Ojibwe

Cc: Leech Lake Tribal Council Members
Lenny Fineday, LLBO Legal Director
Jim Crawford, Enbridge Project Director



**LEECH LAKE BAND OF OJIBWE
DIVISION OF RESOURCE MANAGEMENT
115 6th ST. NW Suite E, Cass Lake, MN 56633**

Date 1/2/17

Daniel Wolf, Executive Secretary
Minnesota Public Utilities Commission
121 7th Place E Suite 350
Saint Paul, Minnesota 55101



Re: Final Scoping Decision

Dear Mr. Wolf,

I'm writing to ensure decision makers are not make conflicting decisions and clarity between our two entities in regards to work that Minnesota Department of Commerce (MNDOC) is preforming on the Line 3 Replacement Proposed Final Scoping Decision Document undertaken at the order of the Minnesota Utilities Commission (MNPUC). There are several flaws with the document which have yet to be rectified by MNDOC which I have specifically outlined in the bullets;

- ✱ Scoping Document lists Tribal Coordination with the 2 sentences injected in the Environmental Review Process Section 2.0 of the Proposed Scoping Decision Document. There are two standalone Route Alternatives that are listed in your scoping document that cross the Leech Lake Indian Reservation (LLIR) this section does not accurately portray the role of Leech Lake Band of Ojibwe and other decision makers within the LLIR.
- ✱ Page 13, of the Proposed Scoping Decision Document states that RA-03 AM was eliminated because it was based on Screening Analysis of economic and regulatory feasibility, Environmental impacts and socioeconomic effects. Routes RA- 07 and RA - 08 should be dropped as well because they too overriding reasons such as regulatory feasibility (See Attached Leech Lake Resolution) that eliminates these routes from consideration.
- ✱ Section 3.3.5 of the Proposed Scoping Decision Document discusses evaluating removing line in place and replacing it with new pipe with no discussion with other governmental decision makers to discuss whether that would be regulatory feasible.
- ✱ The First Paragraph on page 19 of the Proposed Scoping Decision Document is not only inaccurate it seems to have a mischievous intend to escape the issue that the Leech Lake Band of Ojibwe and other federal agencies will be issuing permits and making decision if

RA -07 and RA-08 are selected. None of the required permits or approval decisions is listed in section 7.0 which the document is portraying. Yet all the requirements for the Applicants proposed route are listed.

- ✱ The State Environmental Impact Statement (EIS) will be analyzing the removal of existing line and construction of pipeline in same trench and yet does not list any of those permits and decisions that will have to take place within the exterior boundaries of the LLIR.
- ✱ Section 4.4.4.3 Wild Rice and Other Tribal Resources There is mention of Leech Lake Band of Ojibwe hunting and fishing agreement with the State of Minnesota which clearly states that LLBO has exclusive authority to regulate Wild rice within the exterior boundaries of the LLIR.

I understand that this scoping document is being drafted for state use but strongly urge you share these issues with alternative routes or lack of information with the decision makers to ensure that integrity of the EIS is protected. I'm also aware there was not a public meeting on the LLIR when developing this state document which has selected two alternatives to be scoped that lie within the LLIR. In closing Routes RA-07 and RA-08 cross an Indian reservation and/or the National Forest which it shares a common border and the document which state officials will be making a decision fail to address this in any shape or form. If there are questions or comments please contact myself at (218)-335-7400.

Sincerely,



Levi Brown, Director
Environmental-Land Department
Leech Lake Band of Ojibwe

Cc:
U.S. Forest Service
Bureau of Indian Affairs
Army Corp of Engineers

Attachments: LLBO Letter to MNDOC Dated April 3, 2015



LEECH LAKE BAND OF OJIBWE
DIVISION OF RESOURCE MANAGEMENT
115 6th ST. NW Suite E, Cass Lake, MN 56633

Date 4/3/15

Jamie MacAlister
Environmental Review Manager
Minnesota Department of Commerce
85 7th Place East, Suite 500, Saint Paul, MN 55101

Re: Comments to Scoping Request of MN Department of Commerce

Dear Ms. MacAlister,

We appreciate the conversation that was had on February 16th, 2016 at the Leech Lake Division of Resource Management in Cass Lake on the Leech Lake Indian Reservation. To ensure clarity my letter in no way speaks for the White Earth government or any other Minnesota tribal entity, it is only meant to clarify and ensure the conversation was captured correctly. Below I have bulleted all the major discussion items from our February 16th, 2016 conversation;

- ✦ The Line 3 Project application is not only a requesting of a new corridor but reviewing whether current placement is appropriate and also the decommissioning of the existing Line 3 which a portion would take place within Indian country. Leech Lake Band of Ojibwe would be the decision maker on how any decommissioning would be implemented within our regulator boundaries.
- ✦ Scoping of the alternative route through Indian country should involve the decision makers along that route. In this case ACOE, CNF, BIA and EPA.
- ✦ If these decision makers are not included in the scoping process as decision makers it makes the NEPA process incomplete and no federal agency can use the State EIS document.
- ✦ The alternative route would have an incomplete review of a section of 46 miles through the LLR and my recommendation is that it is dropped from the alternative routes because of the lack of decision making authority.
- ✦ All appropriate regulators along a route should be listed as cooperatives agencies because the permits and activities needed will and should be scoped in any MEPA/NEPA process.

Why do Tribal and Federal trustees need to be cooperative agencies when scoping involves Indian Country?

- ✱ Because Tribes are adversely affected by climate change because of the subsistence lifestyles and cultural identification.
- ✱ Environmental Justice issues such as why would a route currently with 6 crude pipelines, 2 natural gas pipelines, railroad corridor and major powerline corridor **even be considered.**
- ✱ Historically it is easier for applicants of such permits to get approved permits through the lands of minority people who are perceived to historically have a limited voice.
- ✱ The socio-economic impacts to natural resource access and loss of resources mitigation would be required to offset these impacts.
- ✱ NEPA requires that decision making authorities be addressed up front and not as general public entities but instead as cooperating agencies.
- ✱ In this case LLBO is a decision maker along alternative route through LLR with our federal partners and we are not cooperating agencies to the NEPA document which would be a fundamental flaw in the NEPA process or document.
- ✱ The Alternative routing issue can be easily addressed by simply dropping the route through LLR from consideration.

Why is the cooperative approach to decision making important through Indian country?

- ✱ Shared information
- ✱ Accurate and defensible Studies/NEPA Documents
- ✱ Reach Common Decisions in multiple jurisdictional routes

In closing it is our hope that the Minnesota Department of Commerce recognizes that to properly scope the existing corridor for Line 3 as an alternative route that there is a whole spectrum of issues and regulators would need to be addressed outside of a Minnesota State Environmental Impact Statement. If there are questions or comments please feel free to contact my office at (218)-335-7400.

Sincerely,



Levi Brown, Director
Environmental-Land Department
Leech Lake Band of Ojibwe



Misi-zaaga'igani Anishinaabeg Cultural Resources Statement Definition

The Mille Lacs Band of Ojibwe (Misi-zaaga'igani Anishinaabeg), defines its cultural resources as the ceremonial areas, cemeteries, archaeological sites and artifacts, bodies of water, wild rice lakes and rivers, wildlife, and medicinal plants within the historical Ojibwe native region. Cultural resources also include the language, customs, beliefs, and significant items of the Ojibwe people. The Mille Lacs Band of Ojibwe's cultural resources were inherited from previous generations, sustaining the Ojibwe people of today, and are carefully managed for future generations.

Archaeological resources have been defined by the Mille Lacs Band of Ojibwe as, "' Archaeological Resources' means any remains of the past human life or activities which are of archaeological or historical interest. Such material remains shall include, but not limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, talus slide depressions, cairns, graves, human skeletal remains, or any portions or piece of any of the foregoing items. The material may also include non-fossilized or fossilized paleontological species, or any portion or piece thereof, whether or not found in an archaeological context. No item shall be treated as an archaeological or historical resource unless such an item is at least fifty years of age."

The Mille Lacs Band of Ojibwe Department of Natural Resources adheres to the Cultural Resources Code (1072-MLB-23) for all cultural resource management activities, and specific definitions. The Cultural Resources Code was enacted prior to the formation of the Tribal Historic Preservation Office, but cultural resource management practices were always practiced by taking only what we needed from the environment and thanking the creator for what was taken.

To better understand when we talk cultural resources such as the wildlife, ceremonial areas, cemeteries, archaeological sites and artifacts, bodies of water, wild rice lakes and rivers, and medicinal plants within the historical Ojibwe native region, that these areas were named in Ojibwe and hold a cultural significance to its name. Below is a list of some Ojibwe wildrice lake names. Ojibwe place names of the wild rice lakes within the proposed pipeline route are: Waukenabo Lake - Waakonaaboo-zaaga'igan, White Elk Lake - Waabadiko-zaaga'igan, Steamboat Lake - Gaa-bakezaagidawaag-zaaga'igan, Portage Lake - Nitamaa-makandwe-zaaga'igan, Mud Lake - Gaa-baagwajiishkiwagaag-zaaga'igan, Island Lake - Gaa-minisiwaang-zaaga'igan, Rice Lake - Baagwaan-manoominikaani-zaaga'igan, Mud Lake - Gaa-baagwajiishkiwagaag-zaaga'igan, Washburn Lake - Jiiga'awe-zaaga'igan, Pine Lake -

Azhiganegamaag-zhingwaakokaag-zaaga'igan. It is important to note many Ojibwe names may have been forgotten. Therefore, many of the English names listed below once had Ojibwe names associated with them.

The Ojibwe lived amongst many village sites, located along the lakes and rivers, for subsistence. Hunting the animals of the region, the fish of their choice, medicines needed, and gathering certain plants and berries. The Ojibwe did not place boundaries around their homeland; families buried the deceased near their villages, usually along the lakes and rivers. For better understanding read Mille Lacs Band of Ojibwe statute Title 11. In particular 1.(d) states:

"(d) It is the purpose of Subchapters I and II of this chapter, to perpetuate commonly held traditional beliefs, amongst American Indian people that human beings have a duty to peacefully co-exist within the natural environment. Human beings further have a natural duty to protect the environment which provides humans with life-sustaining natural resources."

Due to the preferred route crossing many rivers, streams and running next to many lakes is why inadvertent discovery of artifacts and old village sites and even human remains may happen in the corridor of this pipeline.

Submitted by:

Tribal Historic Preservation Office of the Mille Lacs Band of Ojibwe

Natalie Weyaus, Tribal Historic Preservation Officer

John Reynolds, THPO Review and Compliance Officer

Terry Kemper, THPO Assistant and Cultural Advisor



Misi-zaaga'igani Anishinaabeg EIS Fisheries Concerns

Introduction:

This document was compiled by the Misi-zaaga'igani Anishinaabeg (Mille Lacs Band of Ojibwe) Fisheries Department. It addresses the Mille Lacs Band of Ojibwe (MLBO) fisheries concerns regarding the construction of Enbridge's Line 3 Applicants Preferred Route pipeline. We give permission and encourage all government agencies and private parties drafting the Environmental Impact Statement (EIS) to utilize the information below at any step in the EIS process (especially the analysis). Please don't hesitate to contact the MLBO fisheries department for any questions or concerns relating to this document (contact information on last page).

McGregor, MN, area fisheries:

The MLBO has tribal members and lands less than 10 miles south of McGregor, MN, as well as in the Big Sandy region just north of Enbridge's Line 3 Applicant's Proposed Route (APR). Tribal members in this region subsistence fish the culturally important Ooga (walleye) as well as other fish species. Consequently, an oil spill in the watersheds in this region would contaminate aquatic resources thus posing a threat to the fish and thus our tribal members fishing rights. In particular the following waterbodies are of concern to the MLBO. Brief rational are included below:

Rice Lake, Rice River, and Wayfield Brook: If oil spilled where the Rice River HUC-10 watershed intersects the APR, Rice Lake (MN-DNR DOW #: 01006700), Rice River, and Wayfield Brook would be contaminated. Oil contamination would first occur in Wayfield Brook and eventually travel to Rice River, Rice Lake, and then into other waterbodies located in the Rice River watershed region. These three waterbodies are fished by tribal members. They contain the sacred Ooga (walleye), other fish species, crayfish, and clams all of which are great cultural importance.

Big Sandy Lake Reservoir: The APR goes almost entirely through the Big Sandy Lake HUC-10 watershed. A spill anywhere in this watershed would contaminate Big Sandy Lake (MN-DNR DOW #: 0100620) destroying or causing serious problems for fish species and other aquatic organisms. Big Sandy Lake contains one of the most valuable walleye fisheries in the region. While the walleye fishery in Big Sandy Lake remains stable, surveys conducted by the Minnesota DNR indicate that the walleye population suffers from poor recruitment. Several factors make this walleye fishery threatened and particularly sensitive to oil spills. First, Big Sandy Lake already has a pollution problem that is impacting resident fish species. The

Minnesota Pollution Control agency has listed the lake as “impaired” due to high phosphorus levels. Second, Big Sandy Lake is home to the culturally important odoonibiins (tullibee). The tullibee is not found in most Minnesota lakes as it is sensitive to warm summer water temperatures. Consequently the best walleye fisheries in Minnesota also have tullibee present as they are an important prey item. The APR poses a direct threat to tullibee (and therefore walleye). If pollutants get any greater they could destroy the tullibee population. Changes in water clarity, food web alteration, and increased water temperatures are just a few examples of how tullibee could be impacted by an oil spill. Tullibee are also modeled to become extinct in many Minnesota lakes due to climate change. Therefore, adding more stressors to the tullibee could create a population crash that would directly impact walleye abundance. All fish species, clams, crayfish, and other aquatic organisms are especially important to the Ojibwe in this region. The Ojibwe that survived in this region relied on these organisms for food and ceremonial purposes. When the oil spills, tullibee, walleye, other fish species, crayfish, and clams will become contaminated. This contamination will adversely impact our band member’s health as they still consume these organisms. Furthermore, ceremonies to celebrate aquatic life in the spring are still conducted. It would be offensive to the Ojibwe if they had to conduct these ceremonies in an oil polluted lake.

Lake Minnewawa- This lake also has tribal lands and members in the vicinity. Lake Minnewawa also contains walleye and other fish species our tribal members harvest. Unfortunately, according to Minnesota DNR data poor walleye natural reproduction occurs and the population is well below their long term management goal. Like Big Sandy Lake an oil spill would be catastrophic as the walleye population is already vulnerable due to anthropogenic environmental changes.

Sandy River: The APR directly crosses the Sandy River. If an oil spill occurred at this location Big Sandy Lake, Flowage Lake, Sandy River Lake, Rat Lake, Lake Minnewawa, and any lakes in the Big Sandy Lake watershed would be contaminated and have their fish species negatively impacted. It is also possible that even the construction of the APR could cause problems for fish populations in this watershed. Sandy River is the source of water for these lakes. Disturbances resulting from pipeline construction could increase water temperatures primarily from increased erosion, deforestation, and diverted water flow. Furthermore, construction equipment could contaminate the water as well as bring in aquatic and terrestrial invasive species from other construction locations.

Trout Streams: If oil spilled in the Rice River watershed Long Lake Creek (M-115-4-1) would be impacted. Long Lake Creek is a Minnesota DNR designated trout stream and has contained a harvestable population of Brook Trout. The creek is also home to the Central Mudminnow, Blacknose Shiner, Creek Chub, and Pearl Dace.

Scientific description of oil spills impact on fish and humans: Oil containments have many negative short and long term effects on fish populations (Rosenthal and Alderdice 1976; Teal and Howarth 1984; Eisler 1987; Bue et al. 1996). These effects include reductions in embryonic survival, disrupted spawning activities, reduced growth, and genetic abnormalities that are passed on to offspring. (Bue et al. 1996; Marty et al. 1997; Murphy et al. 1999; Heintz

2000; Dubansky 2013). Oil spill contaminants would also reduce and disrupt benthic organisms which are essential to fishes survival (Elmgren et al. 1983; Jewett et al. 1999). Furthermore, Polyaromatic Hydrocarbons (PAH's) increase in fish tissues after oil spills (Birkholz 1988; Allan et al. 2012). PAH's may increase cancer risks in people that consume contaminated fish if concentrations get to high (Eisler 1987; Cheung 2007; Zhonghuan et al. 2010). Therefore our Band member's health could be jeopardized by consuming Ooga (walleye) or other fish species when the spill occurs.

Baseline data required: Prior to completion of the APR the MLBO would like to see an extensive fisheries baseline data collection completed in Big Sandy Lake, Lake Minnewawa, Rice Lake, and other surrounding lakes that are connected to the Sandy River. Therefore, when the oil spill occurs its impact can be evaluated and fisheries management adjustments can be made. This baseline data set should include compiling a microchemical profile on otoliths extracted from fish species. These otoliths should be analyzed and an elemental profile should be compiled using at least 33 concentrations of isotopes. This will enable future otolith microchemistry studies once the spill occurs and will allow for managing agencies to identify chemicals associated with oil spills in Minnesota for use in future studies. For further explanation of methodology we suggest following the procedures outlined in Nelson et al. 2015. We also suggest establishing baseline abundances, growth rates, and relative condition of walleye and other fish species before construction of the APR. We suggest that this approach be used when considering any pipeline construction in Minnesota.

Mille Lacs Band of Ojibwe greater Minnesota concerns:

Mille Lacs Band of Ojibwe members have the right to fish anywhere in Minnesota. Therefore in this section I address the MLBO's fisheries concerns along the APR's route outside of the Big Sandy/Rice Lake region. Additionally, the concerns below mainly analyze the APRs impact in the 750 foot right of way (here on referred to as the 750 ROW). We hope that the agencies tasked to compile the EIS analyze the impacts of oil spills at the watershed level as well.

Trout streams – 750 ROW: There are approximately 7 trout streams the APR crosses directly (750 ROW). When the oil spills contamination will be immediate. Trout in general are a very sensitive fish that need cold/clean water to survive. Construction of the pipeline alone would cause damage to these trout populations. These streams are within the 750 ROW (Minnesota DNR ID in parentheses):

King Creek (M-050-046-029-023)
Unnamed Stream (M-050-046-029-023-002)
Straight River (M-096-035-002-002)
Spring Brook (M-106-004-002-001)
Blackhoof River (S-001-003)
Unnamed Stream (S-001-003-029)
LaSalle Creek (M-163)

Furthermore, many of the above trout streams are located in remote areas which will make oil spill clean-up difficult.

Trout Streams – 2 mile radius: 41 streams, comprising over 221 miles of trout and coldwater fish habitat, are located within 2 miles of the APR. While some do not have direct contact, based on their HUC-10s contamination from an oil spill will be likely.

Tullibee sensitive lakes: As the plant warms due to climate change tullibee will start to go extinct in many Minnesota lakes. The Minnesota DNR along with the University of Minnesota conducted a study identifying lakes (refuge lakes) that tullibee will survive in despite climate change (Fang et al. 2010). Using data from this study we have identified two lakes along the APR 750 ROW that are considered tullibee refuge lakes. County names are listed in parentheses below.

Lakes: Roosevelt (Cass) and Washburn (Cass).

Walleye Lakes: The following walleye lakes come in direct contact with the APR or have streams/rivers that come in contact with the APR that flow into them. Therefore, these are the lakes that will be impacted if a spill occurs within the APR 750 ROW. Note that many lakes are connected. So if the first lake upstream is impacted more lakes further downstream will be impacted as well. County names are listed in parentheses below.

Lakes: Big Lasalle (Clearwater), Two Inlets (Becker), Island (Hubbard), Blueberry (Wadena), Twin Lakes (Wadena), Roosevelt (Cass), Bass (Aitkin), Park (Carlton), Washburn (Cass), Upper Twin (Hubbard), Lower Twin (Hubbard), First Crow Wing (Hubbard).

The MLBO recommends looking further than the APR 750 ROW to assess the impact of oil spills on walleye and other fish species. Many of these lakes that are further downstream have invasive species and an oil spill could magnify the negative impacts already caused by these species.

Muskie Lakes: Roosevelt Lake (Cass County) is a designated Minnesota DNR muskie lake. Muskie are very important to non-native recreational anglers. When the oil pipeline bursts it will have negative impacts on muskie spawning habitat and survival.

Sentinel Lakes: These lakes are being monitored by the Minnesota DNR, USGS, University of Minnesota, and other government entities. These lakes were chosen for long-term monitoring so the impacts of invasive species and climate change could be evaluated. Sentinel Lakes are crucial as they provide data that is used to improve and construct other lake management plans. Below are lakes that are within or have streams that cross the APR 750 ROW. If oil spilled or even construction equipment disturbed the area, the research would be impacted. This would impact other lake management plans, thus interfering with the Minnesota DNRs ability to manage lakes within the 1837 Ceded Territory. The lakes below will be impacted. County names are listed in parentheses.

Lakes: Roosevelt (Cass).

Invasive Species Concerns: Several lakes that have water sources that intersect the pipeline have invasive species in them. Most invasive species present a direct threat to walleye and other native fish populations. An oil spill, pipeline construction, or any other anthropogenic disturbance could magnify the negative impacts aquatic invasive species have on resident fish communities. Below is list of infested lakes that would be negatively impacted by the APR. County names are listed in parentheses below.

Lakes: Upper and Lower Twins (Hubbard County): Faucet Snail, Washburn (Cass): Eurasian Milfoil, First Crow Wing (Hubbard County): Faucet Snail, Crow Wing River (Hubbard): Faucet Snail.

All aquatic species concerns: In Ojibwe teachings the creator created all living things. Therefore, all aquatic organisms were made in the eyes of the creator and should be respected. Additionally, it is our ethical obligation as natural resource managers (and humans) to protect all aquatic life. Therefore, we hope that the professionals drafting this EIS analyze the impact of an oil spill on all aquatic organisms and not just gamefish species of monetary value.

Data sets to add:

After further review of the EIS impact assessment draft the MLBO fisheries department is suggesting the following data sets be added:

- <https://gisdata.mn.gov/dataset/biota-muskie-lakes-in-mn>
- <https://gisdata.mn.gov/dataset/water-dnr-hydrography>
- <https://gisdata.mn.gov/dataset/env-sentinel-lakes-slice-program>
- <http://dnr.state.mn.us/invasives/ais/infested.html> (Download the spreadsheet). The current invasive species ARC GIS file does not list the actual invasive species names that infested waterbodies contain.
- <https://gisdata.mn.gov/dataset/water-fisheries-reclamations>
- **Tullibee Refuge Data:** http://files.dnr.state.mn.us/fish_wildlife/fisheries/slice/slice-sim-cisco.pdf. The impact the oil spill will have on tullibee refuge lakes should be analyzed. The above link is to a study containing 620 of them. The Minnesota DNR should be contacted to get the shapefile so these lakes can be plotted in ARC GIS. The authors are listed in this paper. It is also recommended that the impact of the oil spill on all tullibee lakes be analyzed, not just the refuge ones.

References*

- Fang, X., S. R. Alam, L. Jiang, P. Jacobson, D. Pereira, H. G. Stefan. 2010. Simulations of Cisco Fish Habitat in Minnesota Lakes under Future Climate Scenarios. St. Anthony Falls Laboratory. Retrieved from the University of Minnesota Digital Conservancy: <http://hdl.handle.net/11299/115600>.
- Nelson, T. R., D. R. Devries, R. A. Wright, and J. E. Gagnon. 2015. *Fundulus grandis* Otolith Microchemistry as a Metric of Estuarine Discrimination and Oil Exposure. *Estuaries and Coasts* 38: 2044.

*Additional references can be provided upon request

** This document was completed by utilizing all data outlined in the current EIS impact assessment draft. Additional data was obtained from the Minnesota Geospatial Commons/Minnesota DNR. All data analyses were completed using ARC GIS 10.4.1.

Contact information:

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MILLE LACS BAND OF OJIBWE

Executive Branch of Tribal Government

Susan Klapel-Commissioner of Natural Resources
Mille Lacs Band of Ojibwe
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Minnesota Public Utilities Commission
Dr. Burl Haar, Executive Secretary
121 7th Place East-Suite 350
St. Paul, MN 55101-2147

Re: Docket number 13-473 and 13-474

March 29, 2014

Honorable Commissioners,

As Commissioner of Natural Resources for the Mille Lacs Band of Ojibwe, I am responsible for protecting natural resources for the Band and its members. The proposed route for the Enbridge Sandpiper pipeline project borders our Minisinaakwaang (East Lake) Community and threatens the Big Sandy Lake and Rice Lake watersheds, in which the Band's members and their ancestors have gathered wild rice and harvested other natural resources for generations. Accordingly, it is with deep respect that I ask you to not grant Enbridge the corridor permit for the proposed southern route. The Band supports the existing Northern Main corridor where a thorough Federal, Tribal and State review process has occurred. This route avoids the Big Sandy Lake and Rice Lake watersheds that support culturally significant wild rice ecosystems.

Reasons for opposition of the proposed Sandpiper southern route include:

- Concern over historical spills and consequent risk to surface and ground water.
- Concern over vital Band self-sufficiency and cultural practices, such as harvesting wild rice within the Big Sandy Lake and Rice Lake watersheds, including the Rice Lake National Wildlife Refuge.
- Lack of Tribal consultation, specifically with the Mille Lacs Band's Tribal Historic Preservation Office (THPO) to identify lands of historical, archeological and cultural significance.
- Procedural Considerations, Minnesota Public Utilities Commission role versus Federal Agency Lead.

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Concern over historical spills and consequent risk to surface and ground water

Enbridge was responsible for more than 800 spills in the U.S. and Canada between 1999 and 2010, totaling almost 7 million gallons of oil. In 2010, the News Tribune (see attached article) reported that over the previous 30 years nearly 1.5 million gallons of oil had spilled out of Enbridge pipelines in northern Minnesota, much of it into wetlands and some of it close to the Mississippi River. In one case, tens of thousands of spilled gallons were set on fire to avoid causing more serious environmental damage. The biggest spill was near Michigan's Kalamazoo River in July 2010, when a pipeline that connects to the Alberta Clipper burst, sending more than 1 million gallons of oil into the river. Enbridge is still working on the cleanup, and earlier this month it asked the U.S. Environmental Protection Agency for an extension to complete dredging of the Kalamazoo River, saying it would be unable to meet the Dec. 31 deadline to finish the cleanup.

Concern over vital Band self-sufficiency and cultural practices, such as harvesting wild rice, within the Big Sandy Lake and Rice Lake watersheds, including the Rice Lake National Wildlife Refuge

Harvesting wild rice has been central to the Band's culture, subsistence and economy for generations. Many Band members harvest wild rice in the Big Sandy Lake and Rice Lake watersheds, including in the Rice Lake National Wildlife Refuge.

Section 7852.2700 **B** of Enbridges Pipeline Routing Permit Application states:

Water Resources – Surface-Ground water "Ground disturbance associated with pipeline construction is primarily limited to the upper 10-feet, which is above the water table in most of the regional aquifers."

Enbridge's generalized claim depicting the water table as 10-feet deep or deeper is not accurate in the Big Sandy Lake and Rice Lake watersheds. Based on Natural Resource Conservation Service (NRCS) soil data, the depth of the water table in these watersheds is measured in inches not feet. Characterizing seasonal water tables may more accurately reflect hydrological connectivity and vulnerability of these watersheds.

Lack of Tribal consultation, specifically with Tribal Historic Preservation Office (THPO) to identify lands of historical, archeological and cultural significance

Enbridge states: "EPND prefers to avoid recorded or unrecorded sites and may resort to: minor route deviations around identified sites: installing the pipeline beneath the site using conventional bore or HDD technology; and/or fencing sites or portions of sites to ensure that they are not disturbed during construction."

It is not possible to identify, let alone to avoid, sites of historical, archeological and cultural significance without consulting early in the process with the relevant Tribal Historic Preservation Offices (THPO). Although the Enbridge EIR discusses State Historic Preservation Office input, the Mille Lacs Band's THPO has not been contacted yet (personal communication). To choose a route other than the existing (Clipper) corridor that borders our Minisinaakwaang community without THPO input raises serious concerns regarding Enbridge's ability to identify and avoid sites of historical, archeological, and cultural significance and the thoroughness of the selection process.

Procedural Considerations, Minnesota Public Utilities Commission role versus Federal Agency Lead

The Minnesota Environmental Policy Act, MINN. STAT. 116D.04(6) (2008), provides:

“No State action significantly affecting the quality of the environment shall be allowed, nor shall any permits for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the State’s paramount concern for the protection of the air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct.”

Procedurally, it appears that Enbridge has determined the preferred route from the alternative routes that have been identified. The Minnesota Public Utilities Commission is being asked to approve Enbridge’s preferred route **before** the respective Federal Agencies will be asked to permit and determine appropriate mitigation measures for that route (including, within the corridor chosen, avoiding significant features if possible). This process commits the State to Enbridge’s preferred route and limits the choices reasonably available to the Federal Agencies *before* there has been a full consideration of the alternatives, and is inconsistent with both State and Federal law that requires such alternatives to be considered before a commitment is made to Enbridge’s preferred route. This process creates a cloud of confusion in regards to the sequence of environment assessment (EA) and a determination about the need to conduct an environmental impact statement (EIS).

In conclusion, the Mille Lacs Band supports the existing Northern Main corridor where a thorough Federal, Tribal and State review process has occurred. This route avoids the Big Sandy Lake and Rice Lake watersheds that support culturally significant wild rice ecosystems. This route also promotes co-location consistent with the strategy proposed west of Clearbrook, MN. (MNEIR November 2013, page 2-8).

Respectfully,



Susan Klapel
Commissioner of Natural Resources
Mille Lacs Band of Ojibwe

CC: Chief Executive Melanie Benjamin
Secretary/Treasurer Curt Kalk
District I Representative Sandra Blake
District II Representative Marvin Bruneau
District III Representative Diane Gibbs

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REPLY TO MINNEAPOLIS

September 30, 2015

Ms. Jamie MacAlister
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Environmental Review Manager
Minnesota Department of Commerce
Energy Environmental Review and Analysis
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Re: Comparative Environmental Analysis Draft Scoping Document for Sandpiper
Pipeline and Line 3 Pipeline Replacement – PUC Dockets PPL-13474 and
PPL15-137

Dear Ms. MacAlister:

Mille Lacs Band of Ojibwe (“Mille Lacs Band”) submits the following comments regarding the scope of the Comparative Environment Analysis (“CEA”) for the Sandpiper and Line 3 Pipeline Replacement projects. The proposed projects have the potential to cause serious and irreparable environmental impacts. The environmental review must be thorough and demonstrate that the Department has taken a hard look at the potential impacts of the proposed projects and has given careful consideration to all feasible and prudent alternatives. Moreover, to the extent that the Public Utilities Commission intends to use the CEA to satisfy the environmental review requirements for the Certificate of Need (“CON”) proceedings for both projects, the CEA must include analysis of alternative routes and potential impacts necessary to make fully informed decisions regarding the CON applications consistent with the requirements of the Minnesota Environmental Policy Act.

Both projects are proposed to pass through Minnesota’s lake country and have the potential to impact numerous pristine lakes, streams, and wetlands, including sensitive aquatic ecosystems where the Ojibwe people have gathered wild rice for hundreds of years. Wild rice is not merely a source of food; it is a spiritual resource and the act of harvesting wild rice remains an integral part of the Ojibwe culture. Moreover, wild rice is the product of a healthy environment and actions taken to protect wild rice will serve to protect the entire ecosystem. The CEA is the mechanism to identify and determine how to avoid or mitigate the proposed

projects' adverse impacts. As such, it must include a comprehensive analysis of potential impacts and evaluate alternative alignments which avoid these sensitive ecosystems altogether.

Mille Lacs Band provides the following specific comments regarding the scope of the CEA:

1. The CEA must evaluate all feasible and prudent alternatives for the proposed projects. Many alternative routes, such as the current SA-03 alternative, exist which would avoid the sensitive aquatic ecosystems. No decisions regarding the projects can be made without fully evaluating these alternatives. Also, as is typical in the course of environmental review, the Department should continue to consider and evaluate additional alternatives which may avoid unanticipated or particularly serious adverse impacts that are revealed through the course of the analysis.
2. The CEA must evaluate water quality impacts. This includes anticipated impacts to surface and groundwater resources resulting from construction of the projects and the potential short- and long-term impacts of a major spill along the route of either pipeline. The analysis also must include evaluation of the costs of, and likely success of, remedial actions in the event of a spill.
3. The CEA must evaluate water quantity and hydrologic impacts. Groundwater and surface waters interact in complex systems and the grading, excavation, compaction, and filling necessary to construct the pipeline likely will impact these systems. Wild rice and other aquatic species are sensitive to changes in water quality and water levels and the impacts on water quantity and flow must be understood in order to determine the scope of potential on these sensitive and interconnected aquatic ecosystems.
4. Construction of the pipelines along the proposed route likely will unearth Native American cultural items. The CEA must address this possibility and describe the process that will be used to ensure the preservation and repatriation of such items as is required under the Native American Graves Protection and Repatriation Act. The CEA also must address the potential impacts to wild rice waters not only from the ecological perspective but also from the cultural perspective. Adequately addressing the potential cultural impacts of the proposed projects will require consultation with Mille Lacs Band officials. Mille Lacs Band is willing and prepared to meet with the Department to address these issues.

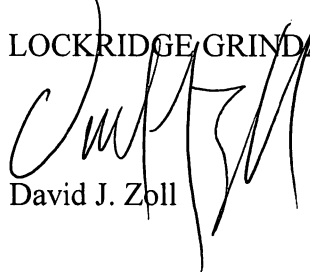
5. The Draft Scoping Document indicates that a single CEA will be prepared for both the Sandpiper and Line 3 Replacement projects. The CEA must evaluate the cumulative impacts that will result from constructing and operating both projects along the same route. Moreover, because economic efficiency dictates that it is preferable to co-locate pipelines along a single route, the CEA should address how the potential impacts may change in nature or magnitude if additional pipelines are developed along the route.
6. At this time, it is unknown whether either of the proposed projects will be approved and constructed or whether, if constructed, they will follow the same route. Accordingly, the CEA should address any potential impacts which may change in nature or magnitude if only one of the pipelines is constructed along a route.

Finally, we remind the Department of its obligation, pursuant to Governor Dayton's Executive Order 13-10, to engage in government-to-government consultation with Mille Lacs Band and other Indian tribes. Allowing tribal governments to participate in proceedings in the same capacity as members of the public is not sufficient. Rather, the Department must affirmatively consult with the Band to identify and address issues relating to the projects which may affect the Band and its members. Mille Lacs Band looks forward to engaging in a substantive and productive dialogue with the Department relating to the environmental review of the proposed pipeline projects.

Thank you.

Very truly yours,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.



David J. Zoll

c: Mille Lacs Band of Ojibwe
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REPLY TO MINNEAPOLIS

May 26, 2016

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Re: Draft Scoping Decision Document for Sandpiper Pipeline Project – PUC Dockets
CN-13-473 and PPL-13-474; and Draft Scoping Decision Document for Line 3
Replacement Pipeline Project – PUC Dockets CN-14-916 and PPL-15-137

Dear Ms. MacAlister:

The Mille Lacs Band of Ojibwe (“Mille Lacs Band”) submits the following comments regarding the scope of the Environmental Impact Statement (“EIS”) for the Sandpiper Pipeline Project and the Line 3 Replacement Pipeline Project.¹ The proposed projects have the potential to cause serious and irreparable environmental impacts. The environmental review must be thorough and demonstrate that the Department has taken a hard look at the potential impacts of the proposed projects and has given careful consideration to all feasible and prudent alternatives consistent with the requirements of the Minnesota Environmental Policy Act.

Both projects are proposed to pass through Minnesota’s lake country and have the potential to impact numerous pristine lakes, streams, and wetlands, including sensitive aquatic ecosystems where the Ojibwe people have gathered wild rice for hundreds of years. Wild rice is not merely a source of food; it is a spiritual resource and the act of harvesting wild rice remains an integral part of the Ojibwe culture. Moreover, wild rice is the product of a healthy environment and actions taken to protect wild rice will serve to protect the entire ecosystem. The EIS is the mechanism to evaluate potential adverse impacts and determine how to avoid or mitigate such impacts. Accordingly, the EIS must include a comprehensive analysis of potential

¹ The Mille Lacs Band is simultaneously filing these comments in each of the PUC dockets for the Sandpiper and Line 3 Replacement projects.

impacts and mitigation measures and must evaluate alternative routes which avoid these sensitive ecosystems altogether.

The Mille Lacs Band provides the following specific comments regarding the scope of the EIS:

1. **The purpose of the project must be defined broadly to encompass reasonable alternatives to the proposed project.** Narrowly defining the purpose of a project (e.g., creating a system to transport oil from Clearbrook, MN to Superior WI) allows the exclusion of alternatives which may use different endpoints to the system. By defining the purpose broadly (e.g., creating system to transport oil to market from North Dakota), the EIS can encompass more alternatives which may lessen environmental impact while also meeting the applicant's needs even though they may be significantly different from what the applicant initially contemplated. This facilitates the outside-of-the-box analysis that is particularly valuable in the context of environmental review. Moreover, adopting a broad purpose allows the EIS to test the economic and other assumptions underlying the applicant's choice of its preferred alignment.
2. **The EIS must evaluate all feasible and prudent alternatives for the proposed projects.** Many alternative routes have been suggested which would avoid the sensitive aquatic ecosystems of north central Minnesota. By fully evaluating these alternatives, the EIS will allow the public and the regulators to understand how the potential impacts of the proposed alignment and the alternatives compare to each other and identify the least environmentally harmful alternative. The draft scoping decision document contemplates that no field-level data will be collected for the alternative routes. The draft scoping decision document should not foreclose the possibility of gathering field-level data if it is necessary for a full analysis of the alternatives. Also, as is typical, the EIS should incorporate new alternatives developed through the course of the environmental review which may avoid unanticipated or particularly serious adverse impacts including detailed analysis of all potential mitigation measures.
3. **The EIS must evaluate potential impacts on water quality and include modeling of several "worst-case" scenario spills along each route included in the EIS.** This evaluation should include the anticipated impacts to surface and groundwater resources resulting from construction of the projects and the potential short- and long-term impacts of a major spill along the route of either pipeline. In order to provide a meaningful comparison of the potential impacts of the various alternatives, the EIS should include modeling of the potential impacts of spills at several locations along each route. The modeling should include "worst-case" assumptions regarding the location (in particularly sensitive areas),

duration, and magnitude of the spill. Finally, the analysis also must include evaluation of the costs of, and likely success of, remedial actions in the event of a spill and whether the applicant should be required to provide financial assurances sufficient to cover the expected response and clean-up costs.

4. **The EIS must evaluate potential impacts on water quantity and hydrology.** Groundwater and surface waters interact in complex systems and the grading, excavation, compaction, and filling necessary to construct the pipeline likely will impact these systems as will the long-term maintenance, operation, and eventual decommissioning. Wild rice and other aquatic species are sensitive to changes in water quality and water levels and the impacts on water quantity and flow must be understood in order to determine the scope of potential impacts on these sensitive and interconnected aquatic ecosystems. The environmental review also should detailed proposals for mitigation and an analysis of their effectiveness.
5. **The environmental review must evaluate long-term and short-term impacts to wild rice harvesting and identify areas of uncertainty in the analysis.** The proposed route for the Sandpiper and Line 3 Replacement projects passes through five counties which account for nearly one-half of the wild rice harvesting trips according to a 2006 survey conducted by the Minnesota Department of Natural Resources. The shallow and sediment-rich waters where the wild rice thrives are particularly vulnerable to the negative impacts from a potential oil spill. The EIS must analyze how the water quality, quantity, and hydrology impacts mentioned relate to the potential long-term and short-term impacts on the sensitive wild rice waters across the region. This analysis should rely on the best available information regarding the cultivation of wild rice and, where there is uncertainty regarding the potential impacts, explain what additional information is needed and describe the range of the potential impacts (i.e., whether they are likely to be minor, moderate, or severe).
6. **The environmental review must address the potential impact of a spill on fragile fisheries.** The proposed route for the pipeline projects poses a significant threat to the fisheries near McGregor, Minnesota including Lake Minnewawa and Big Sandy Lake. Mille Lacs Band members live near both of these lakes, which are sacred to the Ojibwe people, and utilize the lakes for subsistence fishing of the culturally important Ooga (Walleye). A oil spill along the proposed route could contaminate both lakes and result in many negative short- and long-term effects on fish populations. Rosenthal and Alderdice (1976); Teal and Howarth (1984); Eisler 1987; Bue et al. (1996). These effects include reductions in embryonic survival, disrupted spawning activities, reduced growth, and genetic abnormalities that are passed on to offspring. Bue et al. 1996; Marty et al. 1997; Murphy et al. 1999; Heintz 2000; Dubansky (2013). The petroleum contamination also would

reduce and disrupt benthic organisms which are essential to fish survival. Elmgren et al. (1983); Jewett et al. (1999). Furthermore Polyaromatic Hydrocarbons (PAH's), which include potential carcinogens, tend to increase in fish tissues after oil spills and pose a risk to populations that are dependent upon the consumption of fish as part of their diets. Birkholz (1988); Allan et al. (2012); Eisler (1987); Cheung (2007); Zhonghuan et al. (2010).

7. **The environmental review must address impacts caused by further fragmentation of Minnesota forests.** Minnesota's North Central landscape has some of the State's largest and most unique continuous forest landscape including some of the last large unfragmented forests in the Midwest. Further fragmentation of Minnesota forests caused by the construction of the proposed pipelines will leave the remaining forests smaller, more susceptible to invasive species, and could potentially result in a loss of species diversity. Forest fragmentation also reduces and divides habitat for wildlife species that specialize in forest interiors. Construction of the pipelines along the proposed routes, along with the long-term maintenance, operation, and eventual decommissioning, also would undermine the objectives of the Minnesota DNR's Forest Legacy Program that aims to protect private forests from further threats on fragmentation.
8. **The environmental review must analyze potential impacts on bird species including the regional and extra-regional impacts on migratory bird species.** Disturbances along the proposed pipeline routes may result in abandonment, decreased breeding success, and, in the event of leakage or pipeline system failure, a degraded habitat the cumulative effects of which will threaten these species. These impacts must be evaluated through the environmental review process and include impacts to migratory species which have the potential to extend well beyond the region. The Palisade area of Northern Minnesota is a unique boreal forest which is well known by ornithologists as a breeding and wintering ground for several avian boreal species. In addition, several species with direct ties to the Ojibwe cultural practices have been documented wintering in the area including Great Gray Owls, Northern Hawk Owls, Boreal Chickadees, and sharp-tailed Grouse. The sharp-tailed Grouse are also a food source for the Ojibwe. The area around McGregor, Minnesota is known among ornithologists as the "McGregor Marsh" and is the breeding location for Yellow Rail, and Nelson's Sparrow.
9. **The evaluation of impacts to cultural resources will require a unique approach.** The Ojibwe have lived for centuries in the areas where the pipelines are proposed to be constructed and have a rich and long-standing cultural connection to the land. The cultural resources in the region include burial sites, lands used for hunting, fishing, and gathering, and various plants with medicinal

uses. While some of these resources, such as burial sites, are found in discrete locations, many are spread across the entire region. Understanding the nature of these cultural resources and how they must be protected will require close coordination between the Department and the Mille Lacs Band's Tribal Historic Preservation Office. Moreover, the Department must understand and respect the desire of the Mille Lacs Band to maintain secrecy regarding the location of some of the cultural resources which may be vulnerable to destruction through vandalism or well-intentioned but harmful overuse by visitors.

The EIS also must address the possibility that construction of the pipelines along the proposed route will unearth Native American cultural items and describe the process that will be used to ensure the preservation and repatriation of such items as is required under the Native American Graves Protection and Repatriation Act.

Finally, the EIS also must evaluate the potential impacts to natural resources, in particular to wild rice waters, not only from the ecological perspective but also from the cultural perspective.

10. **The environmental review must consider the impacts on traditional Ojibwe gathering and medicine with an understanding of the breadth and variety of resources upon which the Band depends.** The Ojibwe have long collected medicines from the lands they have inhabited. The proposed pipeline projects will pass through the lands of the Mille Lacs Band's District II community. The native plant communities in the area are classified as Northern Rich Tamarack Swamp, Northern Spruce Bog, Northern Poor Conifer Swamp, Northern Open Bog (McGregor Marsh), and Northern Poor Fen. Traditional Cultural Medicines found in this area include original cultural foods, spiritual medicines, and plants used for other traditional purposes. The Ojibwe consider food as medicine for our bodies and these resources are important to the survival of the culture and the Band.

Some traditional foods threatened by the pipeline include: Wild Rice, Cattails, fish, mushrooms, game animals, a variety of berries and roots. Some spiritual Medicines are Bitterroot (WeKay), Lily pad roots (blood pressure medicine), sage, sweet grass, Labrador Tea, Cranberry, & Red-osier Dogwood (Kinnikinnik), iron wood (Heart medicine), birch (aspirin and headache medicine), Cha Ga (fungus of birch trees along river areas used as a tea for the treatment of cancer), clams in water as well as the Megas Shell used in ceremonies, and red cedar (Ojibwe tobacco). Many other plants are used for traditional purposes, including reeds from wetlands (used for mats and housing), birch bark from birch trees (used for everyday utensils and containers), Tamarack (many uses in handmade structures for religious practices and crafts), Paper Birch (traditional basketry,

crafts and the inner bark is known as a traditional food), White Cedar (important tree for ceremonial purposes and medicinal values), Red Maple (sap is collected in the spring), and Balsam Fir (important tree where boughs are collected for ceremonial purposes). Many other culturally significant, even vital, species could be identified by the Band's gatherers. These are just a few of the many traditional and cultural resources that the Mille Lacs Band finds and uses in District II.

11. **The EIS must address cumulative impacts that would result from constructing both pipelines along the same corridor as well as the unique impacts that would occur if only one pipeline is constructed.** The EIS must evaluate the cumulative impacts that will result from constructing and operating both projects along the same route. Moreover, because economic efficiency dictates that it is preferable to co-locate several pipelines along a single route, the EIS should address how the potential impacts may change in nature or magnitude if additional future pipelines are developed along the routes for the Sandpiper and/or Line 3 Replacement projects. Finally, because it is unknown whether either of the proposed projects will be approved and constructed or whether, if constructed, they will follow the same route, the EIS should address any potential impacts which may change in nature or magnitude if only one of the pipelines is constructed.
12. **The EIS must include an analysis of socio-economic, mental health, and environmental justice impacts cause by the potential loss of cultural and environmental resources.** As noted above, the Ojibwe have a deep and long-standing connection to the natural environment. This connection is integral to their cultural identity and the loss of these resources has resulted in have profound impacts on mental health including increased incidence of alcoholism, depression, and suicide. The evaluation of health impacts in the EIS must include these impacts in addition to impacts to physical health resulting from potential exposure to pollutants, contaminants, and increased noise and dust during construction.
13. **The potential impacts are amplified by the fact that the proposed route for the pipelines runs through the middle of the Mille Lacs Band's District II Community.** District II's government services are located in the East Lake community south of the proposed pipelines while the Minnewawa and Sandy Lake communities are located north of the proposed pipelines. Closure of a roadway in the region as a result of a major pipeline failure would isolate the Minnewawa and Sandy Lake communities from the basic services provided through the East Lake community and would isolate family members living in different regions from each other. The effects of bisecting the community with the proposed pipelines would be particularly significant for the extremely

traditional community with strong ties to time-honored culture and the emotional toll of a spill in the area would be devastating.

14. **The environmental review must consider the consequences of abandonment of the old Line 3, as well as the long-term impact of a policy of abandoning defunct pipelines.** Enbridge currently proposes to leave the old Line 3 in the ground with only minimal remediation. The environmental review must evaluate the potential impacts of abandoning the existing Line 3 pipeline, the proposed pipelines at the end of their useful life, and the cumulative impacts of abandoning multiple pipelines in the same region.
15. **The environmental review should be informed by the unique information and expertise which the Mille Lacs Band and other tribal governments can provide.** The Mille Lacs Band's Department of Natural Resources has extensive information regarding the natural and cultural resources in the area along with a highly skilled and knowledgeable staff. Consistent with Governor Dayton's Executive Order 13-10, regarding government-to-government consultation with Indian tribes, the Mille Lacs Band is ready and willing to share its expertise with the Department in order to ensure that the best possible environmental impact statement is prepared. We appreciate the coordination that has occurred to date and look forward to engaging in a substantive and productive dialogue with the Department relating to the environmental review of the proposed pipeline projects.

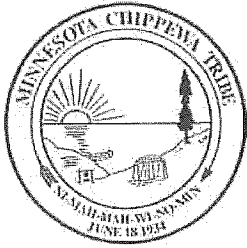
Thank you.

Very truly yours,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

David J. Zoll

c: Mille Lacs Band of Ojibwe
Charles N. Nauen
Rachel Kitze Collins



The Minnesota Chippewa Tribe

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February 7, 2014

John Linc Stine, Commissioner
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-419

Re: Definition of "waters used for the production of wild rice"; wild rice water quality standards

Dear Commissioner Stine:

The Minnesota Chippewa Tribe appreciates having the opportunity to continue discussions with your agency regarding the definition of "waters used for the production of wild rice." We commend the Minnesota Pollution Control Agency (MPCA) for the work done to clarify this definition and to strengthen protection for this critical resource. As you know, wild rice is a culturally significant resource for the tribes in Minnesota. From historical reports,¹ Band member accounts,² and current Minnesota Department of Natural Resources ("DNR") and tribal reports,³ wild rice has declined significantly throughout Minnesota, and in southern Minnesota wild rice has virtually disappeared. Minnesota tribes have a unique relationship with the state regarding the protection of wild rice, as demonstrated through multiple rulemaking processes⁴ and executive orders.⁵

¹ Jenks, A.E., The Wild Rice Gatherers of the Upper Great Lakes: A Study in American Primitive Economics (Washington: GPO, 1901), available on-line at <http://greatlakeswater.uwex.edu/library/articles-and-white-papers/wild-rice-gatherers-upper-lakes-study-american-primitive-economics> (last visited Oct. 12, 2012).

² Rosemary Berens, Bois Forte Tribal Historic Preservation Officer

³ See, e.g., 1854 Treaty Authority website, "Wild Rice Survey" (including list of wild rice waters in the 1854 Ceded Territory), available at <http://1854treatyauthority.org/wildrice/survey.htm> (last visited Oct. 12, 2012); MN DNR website, "Wild rice management," available at <http://www.dnr.state.mn.us/wildlife/shallowlakes/wildrice.html> (last visited Oct. 12, 2012).

⁴ See, e.g., Laws of Minnesota 2007, chapter 7, article 1, section 168

⁵ See, e.g., Executive Order 13-10, "Affirming the Government-to-Government Relationship between the State of Minnesota and the Minnesota Tribal Nations: Providing for Consultation, Coordination, and Cooperation."

Maintain the existing sulfate criterion for protection of wild rice waters

Minnesota tribal staff have participated in and followed closely the MPCA's research program related to the existing sulfate criteria for protecting wild rice waters⁶. Our thorough review and interpretation of the research results for the state-led hydroponics studies, the field surveys, the mesocosm studies, and the sediment studies leads to our conclusion that the existing federally approved sulfate criterion is well-supported by multiple lines of evidence, and should be maintained. There is no scientific defensible basis for raising this sulfate limit, which is the clear benchmark required by the US Environmental Protection Agency for considering approval of a revised criterion⁷, as was clearly communicated to the Minnesota legislative body in 2011⁸.

The MPCA proposed approach for listing wild rice waters is inconsistent with the Clean Water Act

The Minnesota tribes have fundamental concerns regarding MPCA's proposed approach for meeting the intent of the 2011 state legislation that directs the agency to establish criteria considering "history of wild rice harvests, minimum acreage, and wild rice density."⁹ In January of 2014, the Fond du Lac, Grand Portage, Leech Lake, White Earth and Bois Forte Bands communicated clear concerns for the agency's proposed 'watch list' approach in letters to MPCA; specifically, that this approach would violate the Clean Water Act (the Act) and Minnesota water quality standards (WQS). The agency had proposed to create a 'watch list' for those wild rice waters listed by the DNR for which the state lacked specific acreage and/or stand density measurements; only those waters with quantified stands would be formally listed as wild rice waters. The DNR list of Minnesota wild rice waters¹⁰ was compiled as part of a legislatively directed study of the threats to wild rice in Minnesota, and represented significant contributions from Minnesota tribal resource management staff. State and tribal staff also explicitly qualified this 2008 compiled listing as 'not comprehensive', and that it would be continuously updated as new data became available.

Under the Act, the Nation's waters are to be restored and maintained for the protection and propagation of fish, shellfish, and wildlife, and for recreation in and on the water.¹¹ The goal of a water quality standards program is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.¹² States and authorized Tribes adopt water quality

⁶ <http://www.pca.state.mn.us/index.php/water/water-permits-and-rules/water-rulemaking/minnesotas-sulfate-standard-to-protect-wild-rice.html#assessment>

⁷ See, generally, 40 CFR §§ 131.5, 131.11, and 131.21 (2013).

⁸ Letter from USEPA to Sens. Dill, Bakk, May 13, 2011.

⁹ Laws of Minnesota 2011, 1st Spec. Sess., chapter 2, article 4, section 32 –Wild Rice Rulemaking and Research)

<https://www.revisor.mn.gov/laws/?id=2&doctype=Chapter&year=2011&type=1>

¹⁰ MN DNR "Statewide Inventory of Wild Rice Waters" (2008) available at <http://www.dnr.state.mn.us/wildlife/shallowlakes/wildrice.html> (last visited Jan. 27, 2014).

¹¹ See 33 U.S.C. § 1251(a)(2).

¹² *Id.*

standards to protect public health, enhance the quality of water, and serve the purposes of the Clean Water Act¹³ and are free to add use classifications, as well as adopt any use classification system they see as appropriate (with the exception of waste transport and assimilation, which are not acceptable uses in any case). Among the uses listed in the Act, there is no hierarchy.

A primary objective for classifying a water body is to designate uses by evaluating and describing the ecosystem. "Designated uses" are based on the relationship and quality, i.e., the integrity, of all ecosystem components. States and authorized Tribes, through their approved WQS, specify appropriate, designated uses in order to achieve and protect existing and potential uses.¹⁴ They can select the level of specificity they desire for identifying designated uses and subcategories of uses. Subcategories of aquatic life uses may be on the basis of attainable habitat, innate differences in community structure and function, or fundamental differences in important community components. Special uses may also be designated to protect particularly unique, sensitive, or valuable aquatic species, communities or habitats.

The current state standard for listing wild rice waters is found at Minnesota Rule 7050.0224, "Specific Water Quality Standards for Class 4 Waters of the State: Agriculture and Wildlife," which at Subpart One states:

The numeric and narrative water quality standards in this part prescribe the qualities or properties of the waters of the state that are necessary for the agriculture and wildlife designated public uses and benefits. Wild rice is an aquatic plant resource found in certain waters within the state. The harvest and use of grains from this plant serve as a food source for wildlife and humans. In recognition of the ecological importance of this resource, and in conjunction with Minnesota Indian tribes, selected wild rice waters have been specifically identified [WR] and listed in part 7050.0470, subpart 1. The quality of these waters and the aquatic habitat necessary to support the propagation and maintenance of wild rice plant species must not be materially impaired or degraded. If the standards in this part are exceeded in waters of the state that have the Class 4 designation, it is considered indicative of a polluted condition which is actually or potentially deleterious, harmful, detrimental, or injurious with respect to the designated uses.

Natural Wild Rice Waters should be classified as a distinct aquatic life use

The fundamental use in §101(a) of the Act for 'protection and propagation of fish, shellfish and wildlife' may also include the protection of aquatic flora. However, the agricultural use class (Minnesota's Class 4 waters) is intended to define *waters that are suitable for the irrigation of crops, consumption by livestock, support of vegetation for range grazing, and other uses in support of farming and ranching and protects livestock and crops from injury due to irrigation*

¹³ See EPA's Water Quality Standards Handbook Chapter 2: *Designation of Uses* (40 CFR 131.10) at <http://water.epa.gov/scitech/swguidance/standards/handbook/chapter02.cfm>

¹⁴ See 40 C.F.R. § 131.10 (2013).

and other exposures.¹⁵ The Minnesota tribes have consistently recommended to the MPCA, during multiple consultation sessions over the past three years specifically focusing on wild rice water quality standards, that natural wild rice stands (manoomin) are more appropriately classified under a distinct aquatic life use (i.e., Minnesota's Class 2 waters). It may be appropriate to leave paddy rice, a true cultivated agricultural product, in Class 4, but it is inaccurate and inherently offensive to Minnesota tribes to classify manoomin as a 'crop', and ecologically ignorant to categorize the naturally occurring hydrology of a natural wild rice bed as "irrigation." Irrigation is defined as "...to supply (dry land) with water by means of ditches, pipes, or streams."¹⁶ This is simply not an appropriate or accurate concept for describing a native plant species growing without cultivation in a natural water body.

Wild Rice Waters listed by the Minnesota DNR and Tribes are an 'existing use'

Tribal staff have also elevated the importance of distinguishing between a "designated use" and an "existing use" in consultation with the MPCA. An "existing use" can be demonstrated by either a) that fishing/swimming has actually occurred since November 28, 1975, or b) that the water quality is suitable to allow the use to be attained--unless there are physical problems, such as substrate or flow, that prevent the use from being attained.¹⁷ Following, "No activity is allowable under the antidegradation policy which would partially or completely eliminate any existing use *whether or not that use is designated in a State's water quality standards*. The aquatic protection use is a broad category requiring further explanation. *Non-aberrational resident species must be protected, even if not prevalent in number or importance*. Water quality should be such that it results in no mortality and no significant growth or reproductive impairment of resident species. Any lowering of water quality below this full level of protection is not allowed. A use attainability analysis or other scientific assessment should be used to determine whether the aquatic life population is in fact an artifact or is a stable population requiring water quality protection."¹⁸

Designated uses may be changed only based upon findings of a use attainability analysis that has demonstrated that attaining the designated use is not possible because of naturally occurring pollutant concentrations, natural flow conditions, hydrologic modifications, substantial widespread economic impact resulting from more stringent controls, or human-caused pollution that cannot be remedied. A designated use cannot be removed if the use can be attained by implementing effluent limits and best management practices.¹⁹ Therefore, attainable uses are, at a minimum, the uses (based on the State's system of water use classification) that can be achieved: (1) when effluent limits under sections 301 (b)(1)(A) and (B) and section 306 of the

¹⁵ *Id.* at Chapter 2, EPA Water Quality Standards Handbook

¹⁶ Webster's II New College Dictionary (ISBN 0-395-70869-9) 1999. Houghton Mifflin Co.

¹⁷ *See* Chapter 4, Water Quality Standards Handbook, Protection of Existing Uses

¹⁸ *Id.*

¹⁹ Per 40 C.F.R. Section 131.10(d), "[w]hen designating uses, States may wish to designate only the uses that are attainable. However, if the State does not designate the uses specified in section 101(a)(2) of the Act, the State must perform a use attainability analysis under section 131.10(j) of the regulation. States are encouraged to designate uses that the State believes can be attained in the future."

Act are imposed on point source dischargers; and (2) when cost-effective and reasonable best management practices are imposed on nonpoint source dischargers.

Minnesota's existing WQS require that the quality of listed and unlisted wild rice waters, and the aquatic habitat necessary to support the propagation and maintenance of wild rice plant species, not be materially impaired or degraded. In other words, Minnesota already requires the listing of *all* wild rice waters, regardless of production—the rules make no distinction based upon productivity.²⁰ As noted, most of the waters that now appear on MPCA, DNR, and the 1854 Treaty Authority lists *already* have an “existing use” as “waters used for the production of wild rice,” whether or not they include an estimate of acres of wild rice present for any given year. These waters must remain on the wild rice waters lists for regulatory purposes. They cannot be pulled off and dropped instead onto the proposed “watch list,” in effect, de-listing them as Class 4 waters of the state with the stroke of a pen. The Clean Water Act clearly states that this can only happen after significant process, including a reasoned determination has been made that production of wild rice is a designated use, not an existing use, and based upon the findings of a use attainability analysis, that the designation of “waters used for the production of wild rice” should be eliminated.

If a *designated use* is an *existing use* (as defined in 40 CFR 131.3) for a particular water body, the existing use **cannot be removed** unless a use requiring more stringent criteria is added. However, uses requiring more stringent criteria may **always be added** because doing so reflects the goal of further improvement of water quality. This is entirely consistent with the intent of not only the Clean Water Act goals, but also the intent of the DNR and Tribes in continually updating the list of wild rice waters within the state.

Productivity thresholds are not appropriate for defining wild rice waters

Even if the Act did not prohibit the watch list, it makes no sense as a conservation measure. Minnesota Chippewa Tribe Bands have consistently urged the MPCA to broadly, not narrowly, define wild rice waters, and to be as protective of this diminishing resource as possible. An unnecessarily restrictive list of “waters used for the production of wild rice” is not consistent with the principles of ecosystem management, whereby a management or regulatory agency seeks to maintain ecosystems such as wild rice waters in the appropriate condition to meet that beneficial use, while recognizing that all ecosystems have limited ability to accommodate stressors and still maintain that desired state. Using an arbitrary threshold of productivity to define “waters used for the production of wild rice” ignores the entire body of published scientific research *and* traditional ecological knowledge provided by tribal staff and tribal members that provides substantial evidence of the interannual variability in even traditionally productive waters. Given the scarcity of wild rice productivity and stand density data that the MPCA has compiled at this point in time, it is entirely premature to attempt to incorporate a representative productivity or density metric into the actual definition of a wild rice water body.

Furthermore, the Minnesota tribes with authorized water quality standards would *not* move to a less-inclusive definition or less-protective criterion even if the state adopted it. So the “watch

²⁰ See Minn. R. 7050.0224 subp. 1.

list” would also likely mean an end to an ongoing, cooperative, state-tribal conservation effort and would likely have a ripple effect on other aspects of these relationships, as wild rice is of such central importance to the Bands. As a practical matter, the result would be that the state and tribes would no longer maintain the same wild rice waters lists (at least within the 1854 Ceded Territory and on the reservations), which would undoubtedly create both administrative and permitting problems.

The “watch list” approach would have additional consequences, including delays in the environmental review process for projects with the potential to affect wild rice waters. Minnesota’s wild rice waters, whether designated by the state or not, are also federally protected as tribal traditional cultural properties under Section 106 of the National Historic Preservation Act (NHPA).²¹ The NHPA requires not only that a project with the potential to impact traditional cultural properties must carefully analyze potential impacts, but also stipulates that appropriate mitigation must be done or a project cannot proceed. If the same waters are not also listed at the state level, it will create a disconnect between the state and federal permitting processes and records, to the detriment of applicants, tribes, and agencies alike.

The Legislative directive can be fulfilled through MPCA’s watershed-based monitoring and assessment processes

MPCA should instead continue to list all wild rice waters *regardless* of current levels of production, and should simply add productivity measurements to their assessment database as they become available over time. This is appropriately accomplished through the state’s established ten-year cycle for major watershed assessments. MPCA assesses state waters through physical, chemical and biological monitoring. Biological evaluations provide a more precise statement of which species exist in a water body and therefore should be protected, determine the biological health of the water body, and determine the species that could potentially exist in the water body if the physical and chemical factors impairing a particular use were corrected. Over time, with adequate data, the MPCA should be able to make reasonably specific recommendations concerning the natural potential of a water body, levels of attainability consistent with this natural potential, confirm appropriate use designations, and identify impairments. The MPCA can most directly and appropriately address the legislative requirement for considering minimum acreage and wild rice density **through their established monitoring and assessment processes**, rather than struggling to clarify it in the definition of the wild rice designated use.

MPCA should expedite the listing of impaired wild rice waters

We also urge MPCA expedite the listing of “impaired” wild rice waters in order to ensure that water-quality-based effluent limits can be applied to discharges that exceed WQS criteria - just as Minnesota Rules already mandate. Any water body that is currently listed by the DNR, 1854 Treaty Authority, or MPCA as a wild rice water body, and is known to exceed Minnesota sulfate WQS for wild rice, should be designated as “impaired.”²² This would be consistent with the

²¹ See 36 C.F.R. §§ 800 *et seq.* (2013)

²² See Minn. R. 7050.0224 subp. 1.

MPCA's approach to designating any other type of impairment with assigned numeric or narrative criteria.

Conclusion

Natural stands of wild rice (manoomin) should be protected as a distinct Class 2 aquatic life use in Minnesota WQS, and the existing sulfate criteria (10 mg/l) should be maintained for this use class. Paddy rice may continue to be appropriately designated for protection under the Class 4 agricultural use. Narrowly defining waters used for the production of wild rice, based upon an arbitrary measure of human harvest potential, is inconsistent with Clean Water Act requirements. Creating a "watch list" to determine if waters already known as "wild rice waters," and listed by on the MN DNR, MPCA, or 1854 Treaty Authority, but that do not have estimated acreages, is also inconsistent with the Act. In order to protect and restore wild rice waters, natural variability in stand density and annual changes in location of stands in both streams and lakes must be acknowledged. The legislative mandate to consider wild rice acreage and stand density is most appropriately dealt with as an integral part of the MPCA's water body monitoring and assessment programs, not as a component of the water quality standard definition.

The goal should be continuing to build an inventory of natural wild rice waters that facilitates both conservation and monitoring, and that will dovetail with other procedures the MPCA is already implementing to require dischargers to do improved quality-assured monitoring. And properly listing impaired wild rice waters will ensure that water quality based effluent limits can be applied to dischargers that exceed Minnesota WQS criteria for the protection of these waters.

Sincerely,



Norman W. Deschampe
President

cc. Patricia Engelking, MPCA
Katrina Kessler, MPCA
Shannon Lotthammer, MPCA
Susan Hedman, US EPA
Tinka Hyde, US EPA
Linda Holst, US EPA