OFFICERS **BOARD MEMBERS**
CHAIRMAN ARTHUR LAROSE
VICE-CHAIR STEVE CLARK
SECRETARY/TREASURER SANDRA SKINAWAY
STEVEN CLARK MONICA HEDSTROM
ALFRED Fox, JR.
ARCHIE LAROSE RICHARD ROBINSON DALE
GREENE, JR. SANDRA SK!NAWAY MICHAA AUBID

PO Box418

WHITE EARTH, MN 56591

1855 TREATY AUTHORITY

EAST LAKE + LEECH LAKE + MILLE LACS t SANDY LAKE + WHITE EARTH

December 30, 2016

Lawrence Roberts, Principal Deputy Assistant Secretary - Indian Affairs
lawrence robe1is@iios.doi.gov

Ms. Elizabeth K. Appel, Director BIA Office of Regulatory Affairs and Collaborative Action
1849 C St., NW, MS 3071
Washington, DC 20240
Email: elizabeth.appel@bia.gov

Jo-Ellen Darcy, Assistant Secretary of the Army (Civil Works)
108 Army Pentagon
Washington, DC 20310-0108 Email: moira.l.kelley.civ@mail.mil
Tracy Toulou, Director
U.S. Department of Justice Office of Tribal Justice
950 Pennsylvania Avenue, NW Washington, DC 20530-0001 Email:
tracy.toulou2@usdoj.gov

Re: Guidance on how federal agencies can better ensure
meaningful tribal input into infrastructure-related reviews
and decisions
AND
Minnesota Chippewa Tribe environmental
protection Resolutions 30-17 and 32-17

Dear Administrators:

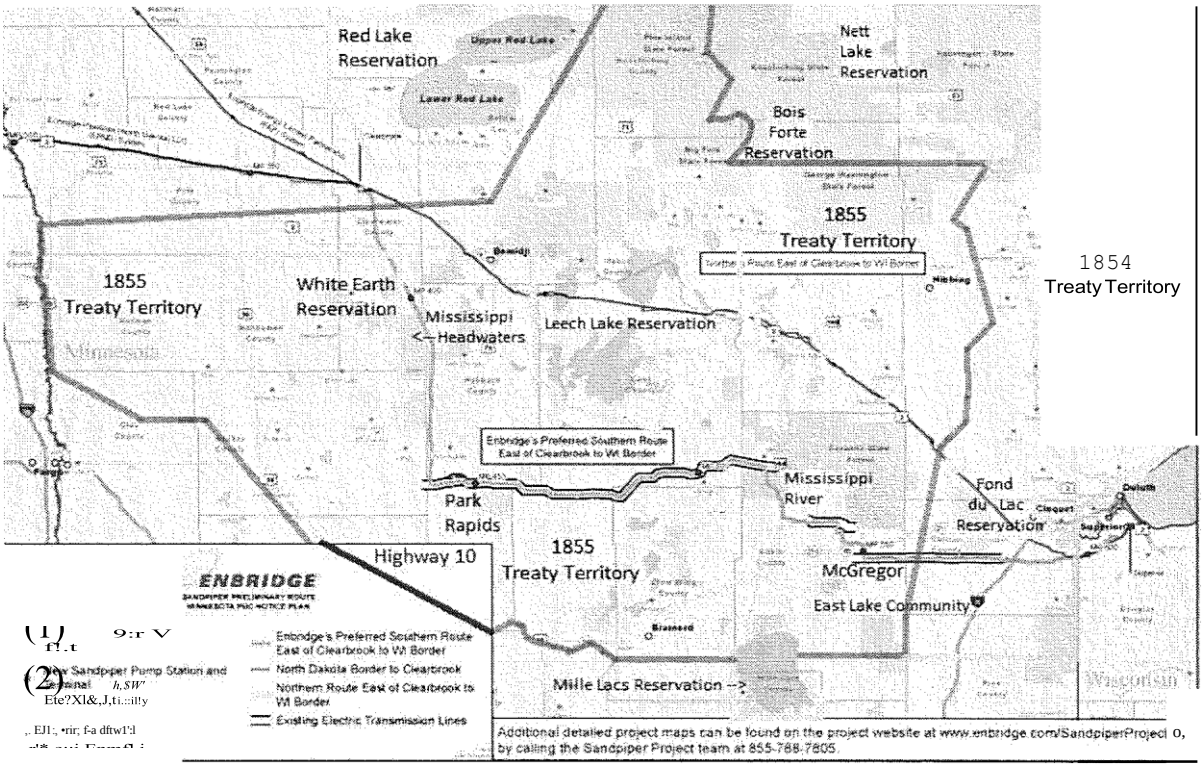
Please accept this letter along with the two (2) Minnesota Chippewa Tribe Resolutions adopted last month as tribal input for the 2016 consultation period that just concluded. We share your understanding the tribal nations voices must be heard with regard to federal decisions that will affect our treaties, homelands, environment, cultural properties, and sacred sites. The two (2) MCT resolutions provide tribal guidance on how federal agencies can better ensure meaningful tribal input into infrastructure-related reviews and decisions, to protect tribal lands, resources, and treaty rights within the existing statutory framework.

Additionally, the MCT Resolutions request federal coordination with US Army Corps of Engineers 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, and to condition 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 that the US 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.

The 1855 Treaty Authority is comprised of approximately 30,000 tribal members of the 40,000 enrolled members of the MCT. The majority of the environmental impacts from the proposed Line 3 Pipeline project will occur within the 1855 ceded territory by (1) establishing a new, east-west pipeline corridor where none previously exists, crossing new aquifers and wild rice lakes and rivers, and (2) by abandoning many miles of pipeline in the Mainline corridor of previously compromised wild rice lakes and rivers and aquifers. The Enbridge Sandpiper pipeline map has been modified to identify the 1855 and 1854 ceded territories and Minnesota Chippewa reservations and is the same preferred corridor for Enbridge's Line 3 Replacement route.



The concerns and goals represented in the two MCT Resolutions identify the same problem areas facing all of *Indian Country* and ultimately

resulting in the Dakota Access pipeline standoff; (1) States acting as though states can unilaterally risk important environmental and cultural tribal resources, and (2) the United States Army Corps of Engineers failing to fulfill trust responsibility described under the 1997 Issue Paper. (See Exhibit A attached to MCT Res. 32-17).

We believe it is important to work with the DOI, BIA, DOJ, EPA and USACE to develop a 2017 Issue Paper to provide guidance for all the federal agencies and states for tribal consultation. While the MCT EIS (Res. 30-17) process is important for self-governance and environmental protection, it will best be accomplished in a new cooperative model with the aforementioned federal agencies. A good place to start is with the EIS how to identify our necessary and important cultural resources while recognizing the number one global threat identified by the Department of Defense is climate change and will necessarily require a full cycle environmental analysis as described by the EPA. The MCTEIS Coordinator is Michael Northbird and may be reached at 218-335-8581, ext. 128 and mnorthbird@mnchippewatribe.org Meetings regarding the preparation of the MCT EIS and public notices for upcoming information sessions to take comments or other hearings are scheduled in the near future, starting with Leech Lake Reservation on January 4, 2017.

We look forward to hearing back from you in the near future about upgrading the 1997 Issue Paper with regard to Chippewa treaty rights and developing a broader tribal guidance paper of how the Corps of Engineers may better carry out its trust responsibilities.

If you have any questions, or if I may be of further assistance, please call on me at 218-760-1258 or via email at frankbibeau@gmail.com.
Miigwitch.

Best wishes,

Frank Bibeau
Executive
Director

Enclosures: (3)

cc: Kevin DuPuis, MCT President
Gary Frazer, MCT Executive Director
Michael Northbird, MCT Environmental Program Coordinator 1855 Treaty Authority
Danny Gogal, EPA Environmental
Justice Ken Westlake, EPA Region 5
Justin Lock, DOJ

Re: Guidance for federal agencies and MCT environmental protection Resolutions 30-17 and 32-17
Dec. 30, 2016, page 4.

RED LAKE BAND
of CHIPPEWA INDIANS
RED LAKE NATION HEADQUARTERS

PO Box 550, Red Lake, MN 56671 Phone 218-679-3341 • Fax 218-679-3378

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

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

ADVISORY COUNCIL:
7 HEREDITARY CHIEFS

December 2, 2016

Office of the Assistant Secretary-Indian Affairs
Attn.: Office of Regulatory Affairs & Collaborative Action
1849 C Street, NW, MS 3071
Washington, DC 20240

RE: Comments on Tribal Consultation for Army Corp of Engineers

Dear Assistant Secretary:

Enclosed please find comments respectfully submitted on behalf of the Red Lake Band of Chippewa Indians concerning Tribal Consultation for the Army Corp of Engineers (ACE). In a duly convened Special Meeting, the Tribal Council passed the attached Resolution stating our concerns and needs for robust consultation with ACE to protect our tribal cultural and natural resources.

Please contract Darrell G. Seki, Sr, Chairman at 218-679-3341 or myself, Charles Dolson, Executive Administrator at 218-679-1402 to discuss our comments and requests.

Very truly yours,

Charles Dolson

C: file
Attachment

RED LAKE BAND
of CHIPPEWA INDIANS
RED LAKE NATION HEADQUARTERS

PO Box 550, Red Lake, MN 56671 Phone 218-679-3341 · Fax 218-679-3378

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

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

PO Box 550, Red Lake, MN 56671 Phone 218-679-3341 • Fax 218-679-3378

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

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

PO Box 550, Red Lake, MN 56671 Phone 218-679-3341 · Fax 218-679-3378

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

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

SEP 29 1997

Construction-Operations
Regulatory (94-01298-IP-DLB)

Mr. James Schlender
Executive Administrator
Great Lakes Indian Fish & Wildlife Commission
P.O. Box 9
Odanah, Wisconsin 54861

Dear Mr. Schlender:

As a result of issues that have arisen during our evaluation of a permit application by Crandon Mining Company to establish a mining operation near Crandon, Wisconsin, the St. Paul District has been asked by several Native American tribes to address the nature and extent of the Corps trust responsibilities toward Indian tribes in the Corps regulatory permitting process. I have indicated at past consultation meetings that I had requested guidance from Corps Headquarters to address this question.

Enclosed is an issue paper that provides the guidelines that the District will follow to insure that it fulfills its trust obligations. This paper, while very useful for illustrative purposes, may not resolve issues that are specific to any individual treaty or pending permit action.

I propose that we hold a consultation meeting in approximately 60 days. This will provide you time to review the paper and to develop any questions or concerns that you may have regarding these guidelines, as well as to how they will be applied in our review of the Crandon Mining Company permit application. I suggest that the consultation meeting be held in early December in Eau Claire, Wisconsin. Mr. Dave Ballman, of my staff, will coordinate with your staff in scheduling the meeting.

Please contact me at (612) 290-5300 if you have any questions.

Sincerely,

/S/

J. M. Wonsik
Colonel, Corps of Engineers
District Engineer

SCANNED

Identical Letters:

Arlyn Ackley, Sokaogon Chippewa Community
Philip Shopodock, Forest County Potawatomi Community
Apesanahkwat, Menominee Indian Tribe of Wisconsin
James Schlender, Great Lakes Indian Fish & Wildlife Commission

Ballman CO-R DB 9/17
Ahlness CO-R 9/18/97
Hauger CO-R
Wopat CO-R 9/24/97
Haumersen CO
Adamski OC
Crump PP-PM
Breyfogle DDE 9/29

ISSUE PAPER
AND
DISTRICT RECOMMENDATION

THE AGENCY'S TRUST RESPONSIBILITIES TOWARD INDIAN TRIBES IN THE REGULATORY PERMITTING PROCESS

1. ISSUE. Work activities performed pursuant to permits issued under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act have the potential to impact Indian treaty rights[1] and to impact resources owned or used by Indian Tribes. Because of this, questions have arisen about the Corps' trust obligations to Indian tribes with respect to the Corps' permitting processes. This paper shall attempt to delineate trust issues related to the permitting process and will attempt to set forth guidelines with respect to those issues[2]. A question and answer format will be used to accomplish this purpose.

2. May the Corps issue a permit that will impinge on or abrogate treaty rights?

No, treaty rights[3], absent consent of Congress, may not be impinged or abrogated[4]. As the

---

[1]The term "treaty rights", as used in this paper, includes not only rights derived from treaties, per se, but also rights derived from federal statutes, agreements executive orders and the like. The terms "Tribal resources" or "Treaty resources", as used in this paper, refers to resources that the Tribe, pursuant to a treaty, has a right to exploit and includes resources that they own and resources that they have a right to gather. The term "trust resources" refers to resources held in trust by the United States (the title is held by the United States) for the benefit of the Tribe.

[2]The paper, other than as may be useful for illustrative purposes, will not attempt to resolve issues that are specific to any individual treaty or pending permit action, but will attempt to formulate guidelines which will insure that the agency fulfils all of its trust obligations.

[3]It should be noted that the terms "treaty rights" and "treaty resources" are not synonymous. For example, a treaty that guarantees a tribe the right to hunt and fish on its reservation, the "treaty right" is the right to take the resource (game or fish), the "treaty resource" .

SCANNED

Court held in *Northwest Sea Farms, Inc., v. U.S. Army Corps of Engineers*, 931 F. Supp. 1555 (W.D. Wash. 1996) 1519-1520:

> The Supreme Court has recognized "the undisputed existence of a general trust relationship between the United States and the Indian people." *United States v. Mitchell*, 463 U.S. 206, 225, 103 S.Ct. 2961, 2972, 77 L.Ed.2d 580 (1983). This obligation has been interpreted to impose a fiduciary duty owed in conducting "any Federal Government action"[5] which relates to Indian Tribes. *Nance v. Environmental Protection Agency*, 645 F.2d 701, 711 (9th Cir.), *cert. Denied*, 454 U.S. 1081, 102 S.Ct. 635, 70 L.Ed.2d 615 (1981), ... In previous cases, this Court has tacitly recognized that the duty extends to the Corps in the exercise of its permit decisions. *See e.g. Muckleshoot Indian Tribe v. Hall*, 698 F. Supp. 1504, 1523 (W.D.Wash.1988) (granting an injunction against the construction of a marina in consideration of the effect upon Indian treaty rights).
>
> In carrying out its fiduciary duty, it is the government's and subsequently the Corps', responsibility to ensure that Indian treaty rights are given full effect. *See e.g. Seminole Nation v. United States*, 316 U.S. 286, 296-297, 62 S. Ct. 1049, 1054-55, 86 L.Ed. 1480, 86 L.Ed.1777 (1942) (finding that the United States owes the highest fiduciary duty to protect Indian contract rights as embodied by treaties). Indeed, it is well established that only Congress has the authority to modify or abrogate the terms of Indian treaties. *United States v. Eberhardt*, 789 F.2d 1354, 1361 (9th Cir.1986). As such, the Court concludes that the Corps owes a fiduciary duty to ensure that the Lummi Nation's treaty rights are not abrogated or impinged upon absent an act of Congress.

3. How are treaty rights determined?

Treaty rights are determined on a case by case (treaty by treaty) basis. Each individual treaty or series of treaties must be examined to determine the specific rights provided by those treaties.

---

is the game or fish. Although courts have, almost universally held that treaty rights may not be impinged, they have not held that the resource may not be negatively impacted. See also question 6.

[4]Note, however, that the same Court that decided *Northwest Sea Farms, Inc.* issued an order in *Lummi Indian Nation v. Cunningham*, case No. C92-1023C on September 1, 1992, to the effect that before a claim that treaty rights have been impinged or abrogated is cognizable "the interference with the treaty right must reach a level of legal significance".

[5]A permit is a Federal Government action"

4. How are Indian treaties to be interpreted?

There are three basic rules of treaty construction. They are: (1) Ambiguities in treaties must be resolved in favor of the Indians, (2) Indian treaties must be interpreted as the Indians would have understood them at the time they consented to the treaty, and (3) Indian treaties must be construed liberally in favor of the Indians. This does not mean, however, that the treaties are to be construed in any manner that the Indians wish them to be construed. The rules of construction do not permit the clear intent of the treaties to be disregarded.

The Court in *Menominee Indian Tribe of Wisconsin v. Thompson*, 922 F.Supp. 184, (198-199), (W.D. Wis. 1996) described the rules of construction as follows:

> It is well known that Indian treaties must be interpreted as the Indians understood them, that doubtful expressions are to be resolved in favor of the Indians and that treaties must be construed liberally in favor of the signatory tribes. ... treaties are not to be construed by "the technical meaning of [their] words to learned lawyers, but in the sense in which they would naturally be understood by the Indians." *Id.*
>
> Determining the Indians' understanding may require expert testimony to explain the historical and cultural context in which the Indians viewed the treaty provisions. *See, e.g. McClanahan v. State Tax Comm'n of Arizona*, 411 U.S. 164, 174, 93 S.Ct. 1257, 1263, 36 L.Ed.2d 129 (1973) ... ("Doubtful expressions are to be resolved in favor of the weak and defenseless people who are the wards of the nation, dependent upon its protection and good faith."); *Winters v. United States*, 207 U.S. 564, 576-77, 28 S.Ct. 207, 211, 52 L.Ed. 340 (1908) ("ambiguities occurring [in treaties] will be resolved from the standpoint of the Indians").
>
> It is true that "[t]he cannon of construction regarding the resolution of ambiguities ... does not permit reliance on ambiguities that do not exist; nor does it permit disregard of the clearly expressed intent of Congress." *South Carolina v. Catawba Indian Tribe*, 476 U.S. 498, 506, 106 S.Ct. 2039, 2044, 90 L.Ed.2d 490 (1986). See also *Amoco Production Co. V. Gambell*, 480 U.S. 531, 555, 107 S.Ct. 1396, 1409, 94 L.Ed.2d 542 (1987) (citing *Catawba Indian Tribe*); *Choctaw Nation*, 318 U.S. at 432, 63 S.Ct. At 678 ("even Indian treaties cannot be rewritten or expanded beyond their clear terms to remedy a claimed injustice or to achieve the asserted understanding of the parties").

Moreover, many of the issues of treaty construction that are likely to arise in the permitting process, have already been determined by the Courts[6]. Thus, the first step in

---

[6]Even if the case law is not dispositive of the specific issue, it may provide rationale or additional information which will aid in the decision process. Additionally, it is recommend that Office of Counsel (or similar resource) be consulted before making a determination, in questionable cases, whether a treaty right exists or does not exist and whether the proposed

construing a treaty should be to review any Court decision that may be relevant.

5. How can we determine if treaty rights may be an issue with respect to a specific permit application?

The geographic extent[7] of all treaty rights and Tribal resources should be known to the regulatory staff. If the proposed activity could have any effect within that geographic area the treaties should be reviewed to determine if treaty rights may be affected. A determination should also be made as to whether the proposed activity may affect Tribal resources. Most importantly, the Indian Tribes that may be affected by the permitted activity should be apprised of the permit application and be given the opportunity to comment or consult with the Corps. If any Tribe asserts that the proposed permit activity would impinge on or abrogate its treaty rights or would negatively impact its resources, it should be requested[8] to provide all substantiating information it has available as to: (1) the existence of treaties, (2) claimed treaty rights, (3) any Court cases relevant to the Tribe's assertions, (4) an explanation of how the proposed activity would violate treaty rights, (5) identification of any Tribal resources that may be impacted, (6) an explanation of how the proposed activity would impact Tribal resources, and (7) a description of how the proposed activity would impact the Tribe[9]. BIA should also be informed of any proposed activity (needing a Corps permit) that might impact Tribal resources and should be requested to identify any treaty rights or Tribal resources that may be impacted by the proposed permit.

6. Does the Corps have a trust responsibility to protect Tribal resources from environmental degradation that may result from the proposed permit activity?

The Corps must consider the effect that the activity needing a Corps permit would have on the Tribe's resources, however, the fact that the Tribe's resource may be degraded, or reduced in value or utility, does not necessarily compel denial of the permit. This principle was explained by the Court in *Nez Perce Tribe v Idaho Power Co.*, 847 F.Supp. 791 807-813 (D.Idaho 1994) in a

---

permit will or will not violate those rights.

[7]Including the area within the external boundaries of any Indian reservation and the geographic area in which usufructuary rights, if any, may be exercised.

[8]The Tribes are not required to respond.

[9]This request would be made to afford the Tribes every practicable opportunity to present their views. Neither the failure of the Tribes to respond nor a response from the Tribes relieves the Corps of its obligation to consider all impacts the proposed activity would have on any treaty rights or any impacts to Tribal resources that Corps is aware of, or reasonably should have been aware of. See also *Pueblo of Sandia v. United States*, 50 F.3d 856 (10th Cir. 1995).

case concerning permanent usufructuary rights[10], as follows:

> ... In other words, the Tribe argues that developments such as dams which damage, reduce or destroy the fish runs violate their 1855 Stevens treaty fishing rights and entitles them to an award of monetary damages.
>
> b) *Treaty Rights to Preservation of Fish Runs*
>
> The ultimate issue presented is whether the treaty provides the Tribe with an absolute right to preservation of the fish runs in the condition existing in 1855, free from environmental damage caused by a changing and developing society. Only if such a right exists is the Tribe entitled to an award of monetary damages.
>
> The parties have cited, and the Court's own independent research has disclosed only three cases which directly address this ultimate issue. *United States v. Washington* (hereinafter *"Washington 1982"*), 694 F.2d 1374 (9th Cir. 1982); *Muckleshoot Tribe v Puget Sound Power and Light*, CV No. 472-72C2V (W.D. Wash.1986); and *Nisqually Tribe v. City of Centralia*, No. C75-31 (W.D. Wash.1981). However, *Washington 1982* was vacated by the Ninth Circuit on other grounds in a subsequent en banc decision. *United States v. Washington*, 759 F.2d 1353 (9th Cir. 1985). *Muckleshoot Tribe v. Puget Sound* expressly relied on the *Washington 1982* opinion which was not vacated until after the decision in *Muckleshoot* was issued. Therefore, it appears that this Court is required to address and determine an issue of first impression without the benefit of any binding guidance and direction. ...
>
> ... State regulation cannot discriminate against the Indian fishery. *Puyallup II*, 414 U.S. [44] at 48, 94 S.Ct. [330] at 333 [38 L.Ed.2d 254 [(1973)]. This principle is broad enough to encompass discriminatory granting of permits for projects with potentially adverse environmental effects.
>
> *Id.* At 1382.
>
> In addition, the Ninth Circuit rejected the trial court's conclusion that other previous cases implied a general right to environmental protection of the fish: ...
>
> Thus, according to the Ninth Circuit's persuasive reasoning in *Washington 1982*, the states may allow or even authorize development which reduces the number of fish in the annual runs as long as such action does not discriminate against treaty fishermen in determining what development will be authorized. Although the opinion was vacated on other grounds, the Court agrees with the

---

[10]The treaty at issue in the case has been interpreted as creating permanent usufructuary rights (non-exclusive) to fish in all of the Tribes usual and customary places. Not all usufructuary rights are permanent as some are subject to termination upon the occurrence of a defined event. For example, Chippewa usufructary rights with respect to territory ceded by them to the United States are terminated or extinguished whenever the land is owned by private entities rather than the public. The (trust) duty to mitigate for damage to resources that may be harvestable pursuant to permanent usufructuary rights discussed by the Court in *Nez Perce* may not be applicable to usufructuary rights that can be terminated or extinguished in their entirety.

legal analysis in *Washington 1982*. In the Court's view, the Stevens treaties do not protect the Indians from degradation of the fish runs caused by development which is not part of a pattern of discrimination against Indian treaty fish runs.

... In the Court's view, the 1855 treaty does not provide a guarantee that there will be no decline in the amount of fish available to take. The only method that would guarantee such protection would be to prevent all types of development, whether or not it is discrimatory of Indian treaty rights. The Stevens treaties simply do not provide the Tribe with such assurance or protection.

... Stevens treaties require that any development authorized by the states which injure the fish runs be non-discrimatory in nature *see Fishing vessel*, 443 U.S. 658, 99 S.Ct. 3055, 61 L.Ed.2d 823 but does not, however, guarantee that subsequent development will not diminish or eventually, and unfortunately, destroy the fish runs.

7. Does the Corps trust responsibility to Indian tribes require mitigation for impacts to off reservation resources that the Tribes have a right to harvest (usufructuary rights)?

The answer to this question depends on the nature of the usufructuary rights reserved or held by the Tribes. All usufructuary rights are not alike. For example, courts have held that a number of Tribes in the Pacific Northwest have usufructuary rights that are permanent in nature and are not subject to termination[11]. Those rights were held to have both a geographic component[12] and a component that entitled the Tribes to take a share of the available fish. Those courts have also held that while the Tribes were not entitled to be protected against off reservation activity that would result in a reduction of available fish, they were entitled to reasonable steps to mitigate adverse impacts from the activity.[13] The theoretical basis for the holding that reasonable mitigation is required was explained in *United States v. State of Washington*, 506 F.Supp. 187, 203 (1980)[14] as follows:

> At the outset the Court holds that implicitly incorporated in the treaties' fishing clause is the right to have the fishery habitat protected from man-made

---

[11]Other than by an Act of Congress.

[12]The right to fish forever in certain locations defined in the Treaty.

[13]"We do not find such an obligation in the treaty. Where the decision to allow development is not tinged with any discrimatory animus, the treaty fishing clause, as we read it, does not require compensation of the Indians on a make whole basis if reasonable steps, in view of the available resources and technology, are incapable of avoiding a reduction in the amount of available fish." *U.S. v. State of Washington*, 694 F.2d 1374, 1386 (1983)

[14]The Court's decision was vacated by the Ninth Circuit on other grounds in "*U.S. v. State of Washington*, 694 F.2d 1374. See also question 6.

> despoilation. Virtually every case construing this fishing clause has recognized it to be the cornerstone of the treaties and has emphasized its overriding importance to the tribes. ... The Indians understood, and were led by Governor Stevens to believe, that the treaties entitled them to continue fishing in perpetuity and that the settlers would not qualify, restrict, or interfere with their right to take fish. ...

In contrast to the Pacific Northwest cases, the Chippewa in Wisconsin and Minnesota have been found to have usufructuary rights to hunt, fish and gather that are extinguished upon the land passing to private ownership[15]. Thus the underlying rationale in the Pacific Northwest cases - perpetual usufructuary rights - for requiring mitigation, as a trust responsibility, is not present with respect to the Chippewa's usufructuary rights. Moreover, a determination that the United States' trust obligations would require it to ensure that mitigation would be performed would be logically inconsistent with case law which has held that the usufructuary rights were extinguished when the land over which they originally could have been exercised passed to private ownership. Under the relevant case law no compensation would be due the Tribes, even if all of the land passed to private ownership, as it was understood that usufructuary rights "were subject to and limited by the demands of the settlers." *Lac Courte Oreilles Band v. State of Wisconsin*, 760 F.2d 177, 183 (1985)

Therefore, the specific usufructuary right in question should be examined to determine if mitigation would be required as a trust obligation. However, even if it is determined that mitigation would be required, it is not unlikely that mitigation that is or would be required in conjunction with the permit, even absent a trust responsibility,[16] would be sufficient to satisfy any Government trust obligation to mitigate.[17]

8. Does the Corps trust responsibility to Indian Tribes require mitigation for adverse impacts to Tribal resources on reservations?

Each treaty at issue must be reviewed to determine what is or is not required under that treaty. Under the rationale of the Pacific Northwest cases it would appear that mitigation, to the extent reasonable and practicable is owed. However, those cases do not indicate that there is an environmental servitude owed the Tribes such that mitigation must ensure that there is no net adverse effect resulting from the federal action. In fact, the Court in *United States v. State of*

---

[15] *Lac Courte Oreilles Band, Etc. v Voigt*, 700 F.2d 341 (1983) and *Lac Courte Oreilles Band v. State of Wisconsin*, 760 F.2d 177.

[16] Mitigation that would be required of the applicant even if there were no usufructuary rights or trust obligation to mitigate.

[17] See *Pyramid Lake Paiute Tribe v. U.S. Department of Navy*, 898 F.2d 1410 (9th Cir. 1990); *Havasupai Tribe v. United States*, 752 F. Supp. 1471 (D. Ariz. 1990); and *Nance v. Environmental Protection Agency*, 645 F.2d 701 (1981)

Washington, 694 F.2d 1374 (1982) has indicated that a resource may be rendered valueless without abrogation of treaty rights or trust responsibilities[18]. As stated by that Court at page 1381 "Any right may be subject to contingencies which would render it valueless." and at page 1382:

> The spectre the district court raises of tribal fishermen unprotected by the environmental right dipping their nets into the water and bringing them out empty, 506 F.Supp. at 203, cannot alter the scope of *Fishing Vessel*. Only the extension of the servitude to ban even non-discriminatory development occurring both within and without treaty fishing areas assure against any decline in the amount of fish taken. The treaty does not grant such assurance.

It is also not unlikely that any trust obligation owed to require mitigation would be satisfied by mitigation that would be required in conjunction with the 404 permit process, absent a trust obligation.

Accordingly, mitigation, to the extent it is reasonable and practicable, for impacts to Tribal resources sited on reservations should be required.

9. May an activity whose impact to a reservation's resources be such that it would defeat the purpose for which the reservation was established be permitted?

Before one can begin to address this question, in practice, the terms of the treaty in question must be examined to determine if the Treaty specifically contemplates the activity to be permitted and if that activity, under the terms of the treaty takes precedence over or is subservient to the interests of the Tribe[19] Assuming the treaty is not dispositive, the following is applicable.

I am not aware of a line of cases directly addressing this issue; however, *Pyramid Lake Paiute Tribe of Indians v. Morton*, 354 F.Supp. 252 (1973) gives us guidance as to how one court decided the issue and may be illustrative of how such issues would be decided in the future. The case concerned the Department of Interior's regulation, which the Tribe contended delivered "more water to the District than required by applicable court decrees and statutes, and improperly diverts water that otherwise would flow into nearby Pyramid Lake located on the Tribe's

---

[18]This discussion is not applicable to impacts which would defeat the purpose for which the reservation was established.

[19]See *Sokaogon Chippewa Community v. Exxon Corp.*, 805 F.Supp. 680, 706 (E.D.Wis, 1992) "If the Sokoagon were to prevent Exxon from mining on the subject territory, it would be in contravention of the very considerations prompting the two treaties. Even assuming that the Sokaogon have rights in the land, the language and intent of the 1842 and 1854 Treaties demand that mineral development should take precedence over those rights.

reservation." Although the Court could have analyzed the case under the Winters doctrine[20] It chose not to do so. The Court noted, at pages 254-255, that:

> This Lake has been the Tribe's principal source of livelihood. Members of the Tribe have always lived on its shore and have fished its waters for food. ...
>
> Recently, the United States, by original petition in the Supreme Court of the United States, filed September, 1972 claims the right to use sufficient water of the Truckee River for the benefit of the Tribe to fulfill the purposes for which the Indian Reservation was created, "including the maintenance and preservation of Pyramid Lake and the maintenance of the lower reaches of the Truckee as a natural spawning ground for fish and other purposes beneficial to and satisfying the needs of the Tribe. ...

The Court then determined (page 256) that:

> ... The Secretary's duty was not to determine a basis for allocating water between the District and the Tribe in a manner that hopefully everyone could live with for the year ahead. This suit was pending and the Tribe had asserted well-founded rights. The burden rested on the Secretary to justify any diversion of water from the Tribe with precision. It was not his function to attempt an accommodation.
>
> In order to fulfill his fiduciary duty, the Secretary must insure, to the extent of his power that, that all water not obligated by court decree or contract with the District goes to Pyramid Lake.

Accordingly, should the Corps determine that an activity needing a Corps permit would impact the reservation's resources to an extent that they would defeat the purpose for which the reservation was established the permit should be denied.[21]

10. What is the Winter's doctrine and is it applicable to permit decisions?

Felix S. Cohen's Handbook of Federal Indian Law, 1982 Edition, pages 575 to 576 offers a good explanation of the doctrine:

> The Supreme Court first articulated this doctrine in *Winters v. United States* in 1908 and reaffirmed it in 1963 in *Arizona v. California. Cappaert v.*

---

[20] *Winters v. United States, 207 US 564, (1908)*

[21] It is likely that if the impacts were so great as to defeat the purpose of the reservation that, even without considering the Corps' trust obligations, the permit would be denied as not being in the public interest. (A permit whose impact would deprive any community of the ability to maintain a moderate living standard is not likely to be in the public interest.)

United States contains the Court's most succinct and lucid statement of the governing principles of reserved water rights:

> This Court has long held that when the Federal Government withdraws its land from the public domain and reserves it for a federal purpose, the Government, by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation. In so doing the United States acquires a reserved right in unappropriated water which vests on the date of reservation and is superior to the rights of future appropriators. ... The doctrine applies to Indian reservations and other Federal enclaves, encompassing water rights in navigable and nonnavigable streams.
>
> In determining whether there is a federally reserved water right implicit in a federal reservation of public land, the issue is whether the Government intended to reserve unappropriated and thus available water. Intent is inferred if the previously unappropriated waters are necessary to accomplish the purpose for which the reservation was created.

This doctrine arose and has been applied extensively in appropriative water law states (generally western states that have limited supplies of water). The doctrine has not been applied to riparian water law states and may not be applicable to them.

11. When, in the permitting process sequence, should the Corps trust obligations be considered?

Since the Tribal trust issues, alone, may be determinative[22] of the outcome of the permit decision, those issues should be considered immediately after or in conjunction with consideration of the avoidance issue.

12. If the Tribal trust issues are not dispositive of the permitting decision, do we need to consider the Tribe's concerns further?

Yes. The Tribal concerns and the impacts of the proposed activity on Tribal resources should be considered in the public interest review just as any other similarly sized community would be. Such consideration should not be evaluated based on Tribal trust responsibility considerations[23] but should take into account the relative impact the proposed activity would have

---

[22]For example, if the permitted activity would violate a treaty provision, the permit application would be denied.

[23]These considerations should have been addressed previously.

on the community[24]. The same impact to natural resources may have a greater effect on individual Indians than it would on non-Indians, not only because of greater dependence on those resources, but also because the individual Indian may be more closely tied to the defined land area than his non-Indian counterpart. Additionally, any spiritual or cultural impact to the Tribe that would result from the proposed permit activity should be evaluated in the public interest review.

13. Should the Corps apply different criteria to permit applications for activities within a reservation's exterior boundaries than would be applied to a permit application for activities outside a reservation's exterior boundaries?

No. The criteria applied should be the same. However, it is very likely that an activity that is sited within the reservation's exterior boundaries would have a greater impact on Tribal resources than would an activity that is sited off reservation. Moreover, the applicant would still have to comply with all applicable local regulations, thus the Tribe may be able to impose its requirements[25] on the applicant. Such requirements would be independent of and in addition to any Corps' permit requirement or condition. Further, if the Tribe has jurisdiction over the activity and exercises its jurisdiction to prohibit the activity[26] the permit application to the Corps should be denied without prejudice.

14. Who is the Federal Trust Obligation owed to?

The Trust obligation is owed to Federally Recognized Indian Tribes.

Edwin C. Bankston
District Counsel

---

[24]For example, an activity that would diminish the supply of game may affect Indian communities to a greater degree than non-Indian communities, because the Indian community may be more dependent on game than the non-Indian community. This greater importance to the Indian community should be factored into the evaluation.

[25]Including preventing the activity if the Tribe has sufficient authority to do so.

[26]Such as denying a required Tribal permit.

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John A. Tuma	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Application of Enbridge Energy, Limited Partnership for a *Certificate of Need* and *Pipeline Routing Permit* for the Line 3 Replacement Project in Minnesota

PETITION TO INTERVENE

Docket Nos. PL-9/CN-14-916 and PL-9/PPL-15-137

To: The Minnesota Public Utilities Commission

Pursuant to Minnesota Rules 1400.6200, the White Earth Band of Ojibwe (White Earth Band) hereby respectfully petitions to intervene in the above-referenced Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need and Pipeline Routing Permit for the Line 3 Replacement Project in Minnesota.

Background and Issues

The Applicant, Enbridge Energy, Limited Partnership, applied for a Certificate of Need and Routing Permit for its proposed Line 3 Replacement Project in Minnesota, to be co-located in the corridor selected by the Applicant, Enbridge Pipelines d/b/a/ North Dakota Pipeline Company, LLC, for the proposed Sandpiper Pipeline Project. The proposed corridor for these projects traverses a significant portion of the 1855 Treaty-ceded territory, and goes through the northeast townships of the original White Earth Reservation. The White Earth Band is an intervening party to the Sandpiper Pipeline project proceedings, and has been since 2014. The interest of the White Earth Band in these proceedings is substantially similar to the interests of

White Earth in the Sandpiper Pipeline proceedings given the proposed co-location of these projects and the impact these projects could have on on-Reservation resources and usufructuary use rights resources within the 1855 Treaty-ceded territory.

Identity of Petitioner

The White Earth Band of Ojibwe (the White Earth Nation) is a federally recognized Indian Nation and a constituent member of the Minnesota Chippewa Tribe with its Reservation in west central Minnesota.[1] The members of the White Earth Band are amongst the successors in interest to a number of treaties entered into with the Ojibwe Bands between the 1830's and the 1860's.[2] The members of the White Earth Band hunt, fish, rice, and gather within the Reservation and the 1855 Treaty-ceded territory. The impact of large scale infrastructure energy projects like those proposed by Enbridge Energy, Limited Partnership and the North Dakota Pipeline Company, LLC during both construction and operation may have a significant impact on the health and availability of resources necessary to subsistence and use activities. The protection and health of wild rice within this region of the state is of particular concern to the White Earth Band given its supreme cultural significance to Ojibwe Anishinaabe people, and its importance as a source of food and income.

Argument

I. The State of Minnesota has an obligation to engage in meaningful consultation with the successors in interest to the 1855 Treaty including the White Earth Band of Ojibwe to address the impact of this Project to on-Reservation and off-Reservation usufructuary use rights resources prior to final determinations on the applications for permits.

---

[1] Indian Entities Recognized & Eligible To Receive Services From the Bureau of Indian Affairs, 77 Fed. Reg. 47,868, 47,870 (Aug. 10, 2012).

[2] *See*, Treaty of 1836, 7 Stat. 491 (March 28, 1836); Treaty of 1837, 7 Stat. 536 (July 29, 1837); Treaty of 1842, 7 Stat. 591 (Oct. 4, 1842); Treaty of 1854, 10 Stats. 1109 (Sept. 30, 1854); Treaty of 1855, 10 Stat. 1165 (Feb. 22, 1855); Treaty of 1864, 13 Stat. 693 (May 7, 1864); Treaty of 1867, 16 Stats. 719 (March 19, 1867).

a. The White Earth Band of Ojibwe retains off-reservation usufructary rights in the 1855 Treaty ceded territory which have not been abrogated.

The White Earth Reservation Tribal Council is the governing body of the White Earth Reservation, and is among the successors in interest to the signatories of the 1855 Treaty with the Chippewa (hereinafter "1855 Treaty").[3] Although the 1855 Treaty was a land cession treaty, it did not dispossess the signatories of their retained usufructuary rights in the ceded territory. The Court in *Mille Lacs* noted in its conclusion that the 1855 Treaty did not abrogate previously guaranteed reserved rights. The Court stated:

> The entire 1855 Treaty, in fact, is devoid of any language expressly mentioning-much less abgrotating-usufructuary rights. Similarly, the Treaty contains no language providing money for the abrogation of previously held rights . . . The 1855 Treaty was designed primarily to transfer Chippewa land to the United States, not to terminate Chippewa usufructuary rights.[4]

In addition to the reserved rights provided for in the 1837 Treaty, the 1854 Treaty "also guarantees usufructuary property rights to the Mississippi Chippewa in the *unceded* territory west of the 1854 Treaty boundary . . ."[5] The Mississippi Band was a signatory to the 1854 Treaty, and the 1855 Treaty territory is west of the 1854 Treaty ceded territory.

The retained usufructuary rights of the White Earth Band were intact after the execution of the 1855 Treaty, and have not been subsequently divested.

b. The State of Minnesota is obligated to engage in meaningful consultation with the White Earth Band of Ojibwe regarding the impact of this Project to on and off-Reservation resources including resources within the 1855 Treaty-ceded territory.

---

[3] 10 Stats. 1165 (Feb. 2, 1855). The signatory Bands to the Treaty of 1855 were the Mississippi, Pillager, and Lake Winnibigoshish Bands, whose people were among the Bands that would later organize under the Indian Reorganization Act (48 Stat. 987 (1934) as the Minnesota Chippewa Tribe, which is composed of White Earth, Leech Lake, Mille Lacs, Grand Portage, Bois Forte, and Fond Du Lac.

[4] *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 195, 196 (1999).

[5] Peter Erlinder, *Treaty-Guaranteed Usufructuary Rights:* Minnesota v. Mille Lacs Band of Chippewa Indians *Ten Years On*, 41 ELR 10921, 10930 (Oct. 2011) (emphasis added).

The White Earth Band and other successors in interest to the 1855 Treaty retain usufructuary use rights property interests in the 1855 Treaty-ceded territory.[6] The White Earth Band additionally retains original, sovereign jurisdiction over resources within the Reservation boundaries.[7] As demonstrated in the *Mille Lacs* case, tribes have the authority to regulate their membership within the treaty-ceded territories for the purposes of exercising usufructuary use rights in cooperation with the state agencies.[8] The State of Minnesota is unable to proceed with issuance of the Applicant's Certificate of Need and Routing Permit without the involvement of the White Earth Band and a detailed consideration of the impacts of the proposed project on resources both within the Reservation boundaries and within the 1855 Treaty-ceded territory.

The White Earth Band petitions for intervention in these proceedings as a necessary first step to meaningful consultation with the State of Minnesota for the preservation and protection of on and off-Reservation resources necessary to continued use by the members of the White Earth Band.

Conclusion

The State of Minnesota is required to meaningfully consult with the White Earth Band of Ojibwe regarding the impact of the Line 3 Replacement Project to on and off-Reservation resources, including resources necessary for the continued exercise of usufructuary use rights activities within the 1855 Treaty-ceded territory. The interests of the White Earth Band of

---

[6] *See, e.g.*, Minnesota v. Mille Lacs Band of Chippewa Indians, 526 U.S. at 176 (finding that the Mille Lacs Band of Ojibwe retained usufructuary use rights within the 1837 Treaty-ceded territory including the right to regulate its own membership in the use of such resources).

[7] *See, e.g.*, Worchester v. Georgia, 31 U.S. 515, 557 (1832) (finding that Tribal Nations are "distinct political communities, having territorial boundaries, within which their authority is exclusive. . .").

[8] *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 205 (1999); *United States v. Dion*, 476 U.S. 734 (1986); *Washington et al. v. Washington State Commercial Passenger Fishing Vessel Ass'n, et al.*, 443 U.S. 658 (1979); *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Voigt*, 700 F.2d 341, 365 (7th Cir. 1983); and *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin*, 653 F. Supp. 1420, 1430 (W.D. Wisc. 1987).

Ojibwe in these proceedings are substantially the same as the White Earth Band's interests in the Sandpiper Pipeline Project proceedings. The White Earth Band petitions for intervention in these proceedings to protect the interests of the White Earth Nation and its membership with regard to the continued health and production of on and off-Reservation resources, most important, the health of wild rice. The White Earth Band of Ojibwe does not believe that any other current or prospective party is able to represent and safeguard its interests.

Dated: 1/19/16

Joseph Plumer (MN# 164859)
Attorney for White Earth Band of Ojibwe
P.O. Box 238
White Earth, MN 56591
Telephone: (218) 983-3285
Fax: (218) 983-3269

Dated: 1/19/16

Jessica Miller (MN# 0393279)
Attorney for White Earth Band of Ojibwe
P.O. Box 238
White Earth, MN 56591
Telephone: (218) 983-3285
Fax: (218) 983-3269

Print Close

Service List Member Information

Electronic Service Member(s)

Last Name	First Name	Email	Company Name	Delivery Method	View Trade Secret
Anderson	Julia	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	Electronic Service	Yes
Barker	Kenneth	kenneth.barker@centurylink.com	Centurylink Communications, LLC	Electronic Service	No
Beatty	Richard	rjb1946@aol.com	N/A	Electronic Service	No
Beimers	Sarah	sarah.beimers@mnhs.org	Minnesota Historical Society	Electronic Service	No
Blackburn	Paul	paul@paulblackburn.net	N/A	Electronic Service	No
Brusven	Christina	cbrusven@fredlaw.com	Fredrikson Byron	Electronic Service	No
Cramer	Rebecca	rebacramer@gmail.com	N/A	Electronic Service	No
Drawz	John E.	jdrawz@fredlaw.com	Fredrikson & Byron, P.A.	Electronic Service	No
Ferguson	Sharon	sharon.ferguson@state.mn.us	Department of Commerce	Electronic Service	No
Frantz	Kate	kate.frantz@state.mn.us	Department of Natural Resources	Electronic Service	No
Gasele	John R.	jgasele@fryberger.com	Fryberger Buchanan Smith & Frederick PA	Electronic Service	No
Germundson	Travis	travis.germundson@state.mn.us	N/A	Electronic Service	No
Gratz	Emerald	emerald.gratz@state.mn.us	Office of Administrative Hearings	Electronic Service	Yes
Hayes	Doug	doug.hayes@sierraclub.org	Sierra Club	Electronic Service	No
Hill	Gary	hillx001@umn.edu	N/A	Electronic Service	No
Hill	Janet	janethillnew@gmail.com	N/A	Electronic Service	No
Hokenson	Terry	terryhokn@visi.com	N/A	Electronic Service	No
Hollander	Kathleen	kath77holl77@gmail.com	N/A	Electronic Service	No
Howe	Kari	kari.howe@state.mn.us	DEED	Electronic Service	No
Javaherian	Arshia	arshia.javaherian@enbridge.com	Enbridge Energy	Electronic Service	No
Jeffrey	Susu	susujeffrey@msn.com	Friends of Coldwater	Electronic Service	No
Jensen	Linda	linda.s.jensen@ag.state.mn.us	Office of the Attorney General-DOC	Electronic Service	No
Kirsch	Ray	Raymond.Kirsch@state.mn.us	Department of Commerce	Electronic Service	No
LaBerge	Kathy	labergeonthelake@yahoo.com	N/A	Electronic Service	No
LaDuke	Winona	winonaladuke1@gmail.com	Honor the Earth	Electronic Service	No
Lindell	John	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	Electronic Service	Yes
Mahlberg	Patrick	pmahlberg@fredlaw.com	Fredrikson & Byron, P.A.	Electronic Service	No
Mattison	Willis	mattison@arvig.net	Friends of the Headwaters and self	Electronic Service	No
Moynihan	Debra	debra.moynihan@state.mn.us	MN Department of Transportation	Electronic Service	No
Munter	John	mumooatthefarm@yahoo.com	N/A	Electronic Service	No
Neilson	Barbara L.	Barbara.Neilson@state.mn.us	Office of Administrative Hearings	Electronic Service	Yes
Patton	Bob	bob.patton@state.mn.us	MN Department of Agriculture	Electronic Service	No
Pearson	Andrew	stopthewar24@gmail.com	N/A	Electronic Service	No
Plouff	Abbie	abbie.plouff@gmail.com	N/A	Electronic Service	No
Plumer	Joseph	joep@whiteearth.com	White Earth Band of Ojibwe	Electronic Service	No
Pranis	Kevin	kpranis@liunagroc.com	Laborers' District Council of MN and ND	Electronic Service	No
Pust	Tammy	Tammy.Pust@state.mn.us	Office of Administrative Hearings	Electronic Service	No
Reents	James W.	jwreents@gmail.com	N/A	Electronic Service	No
Roe	Steve	roetreat@crosslake.net	N/A	Electronic Service	No
Ross	Jean	jfross@umn.edu	N/A	Electronic Service	No
Sattinger	Stan	sattinss@aol.com	N/A	Electronic Service	No
Schrenzel	Jamie	jamie.schrenzel@state.mn.us	Minnesota Department of Natural Resources	Electronic Service	No
Schrull	Claudia	CLAUDIA.SCHRULL@ENBRIDGE.COM	Enbridge Energy Company, Inc.	Electronic Service	No
Shaddix Elling	Janet	jshaddix@janetshaddix.com	Shaddix And Associates	Electronic Service	No
Smith	Mollie	msmith@fredlaw.com	Fredrikson Byron PA	Electronic Service	No

White Earth Reservation Tribal Council
P.O. Box 418
White Earth, Minnesota 56591
Tel. (218) 983-3285
Fax (218) 983-3641

CHAIRWOMAN
Erma J. Vizenor

SECRETARY-TREASURER
Robert J. Durant

DISTRICT I
Irene Auginaush

DISTRICT II
Terrence Tibbetts

DISTRICT III
Kenneth Bevins

Beverly Jones Heydinger, Chair
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
Saint Paul, Minnesota 55101-2147

Dear Chair Heydinger:

As Chairwoman of the White Earth Reservation Tribal Council, I can appreciate the many issues you must face as Chair of the Minnesota Public Utilities Commission.

I am writing today to ask for the comment period with respect to the routing permit requested by the North Dakota Pipeline Company for a petroleum pipeline between Tioga, North Dakota and Superior, Wisconsin be extended beyond the current April 4, 2014 deadline.

This company has done no outreach to the White Earth Tribal Nation or any other Tribal Nation in Minnesota. These lands are sacred to us. The pipeline company proposes to locate the pipeline through lands upon which our tribal members have off-Reservation gathering rights. The issue of locating a pipeline to transport crude oil through the Mississippi Headwaters Country cannot be rushed.

The information on this issue has been repeatedly changed by the pipeline company. We are very concerned about the potential for environmental destruction similar to the dumping of over 1.5 million gallons of oil from a ruptured oil pipeline through the Kalamazoo River. We are not speculating. Disasters of this magnitude have actually occurred.

Therefore, I am requesting that no action be taken by the Minnesota Public Utilities Commission at this time. At a minimum, this company needs to do serious outreach to Tribal Nations. Given the information I have received at this time, I am certain all Tribal Nations in Minnesota would oppose the location of the route now proposed by the North Dakota Pipeline Company.

I look forward to discussing this issue with you in the future, but we are very concerned the comment period not close on April 4 for many reasons.

Sincerely,

Erma J. Vizenor
Chairwoman

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

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 Mahnomen, Minnesota.

Erma J. Vizenor, Chairwoman

Robert J. Durant, Secretary/Treasurer

RECEIVED
APR 04 2014
MINNESOTA PUBLIC
UTILITIES COMMISSION

TO: Burl Haar UREEWT

From: **Barbara Rohde**
(202) 255-6971

Number of sheets including cover sheet 5

White Earth Reservation Tribal Council
P.O. Box 418
White Earth, Minnesota 56591
Tel. (218) 983-3285
Fax (218) 983-3641

CHAIRWOMAN
Erma J. Vizenor

SECRETARY-TREASURER
Tara Mason

DISTRICT I
Steven "Punky" Clark

DISTRICT II
Kathy Goodwin

DISTRICT III
Kenneth Bevins

September 30, 2015

Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

Re: Docket Nos. PPL-13-473 (Sandpiper)
PPL-15-137 (Line 3)

To the Minnesota Public Utilities Commission:

The White Earth Band of Ojibwe expects that an Environmental Impact Statement examining the cumulative effects of the Sandpiper Pipeline and the Line 3 Pipeline will be completed, considering all routes in consideration during the Sandpiper proceedings, and any additional route or project alternatives offered during the scoping period. Completion of an Environmental Impact Statement for both projects is consistent with the opinion of the Minnesota Court of Appeals,[1] and satisfies, in part, the obligations of the State of Minnesota to engage in meaningful consultation and co-management of resources with the Tribal Nations of the State.[2] Completion of an Environmental Impact

[1] *In the Matter of the Application of the North Dakota Pipeline Company, LLC for a Certificate of Need for the Sandpiper Pipeline Project in Minnesota*, No. A15-0016 (Sept. 14, 2015), slip op.

[2] *See, e.g.*, Minnesota v. Mille Lacs Band of Chippewa Indians, 526 U.S. 172, 205 (1999); United States v. Dion, 476 U.S. 734 (1986); Washington et al. v. Washington State Commercial Passenger Fishing Vessel Ass'n, et al., 443 U.S. 658 (1979); Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Voigt, 700 F.2d 341, 365 (7th Cir. 1983); and Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin, 653 F. Supp. 1420, 1430 (W.D. Wisc. 1987). As illustrated by *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 204, 208 (1999) and the agreements stemming from that litigation, and the litigation and subsequent agreement reached between the State of Minnesota and the Bois Forte Band of Chippewa and the Grand Portage Band of Lake Superior Chippewa, the State of Minnesota is well aware of its obligations to engage in co-management and meaningful consultation with the successors in interest to the Treaties for the management of resources within the treaty-ceded territories.

Statement is also consistent with the trust responsibility of the Federal Government to the Tribal Nations of the State.[3]

The following observations are offered, after participation in the Sandpiper Pipeline proceedings for approximately 18 months: the Commission and the Applicant have a preference for locating major pipeline infrastructure in less populated areas at the risk of damaging unimpaired natural habitats and burdening poorer, less politically mobilized populations. This is unequivocally "environmental injustice," and has measureable disproportionate impact on remote and impoverished communities within the State. This is unacceptable, and should be at the forefront of consideration for the Public Utilities Commission.

Additionally, the Applicant appears to be advantaged in the permitting proceedings, such that participation by the public and other State agencies has no impact at all on the substance of the proceedings. The Applicant and the Commission both asserted throughout the Sandpiper proceedings that no other party had met the specificity required for consideration of any alternative that did not closely mirror the route offered by the Applicant, despite the Applicant having the burden of proof in these proceedings, despite the Applicant acknowledging that it took years and significant man-power to develop its proposed route, and despite "failure of the Applicant to propose a viable alternative for consideration in this proceeding."[4] This cannot possibly be the intent of the statutes and rules governing pipeline permitting – what would be the purpose of allowing for public participation under these circumstances?

The White Earth Band of Ojibwe urges the Commission to use common sense and consider the policy and intent of the statutes and rules that govern permitting proceedings to meaningfully consider all reasonable alternatives offered (including the so-called "SA-03 to SA-08" alternatives in consideration for the Sandpiper proceeding). The statutes and rules cannot possibly be read to mean that only engineering firms with extensive time, resources, and man-power may offer route alternatives that deviate from the Applicant's route for consideration by the Commission. Moreover, the Applicant should be held to its obligations to propose "viable alternatives" at the risk of denial of its applications. What Enbridge (in any iteration including the North Dakota Pipeline Company, LLC) has asked of the State of Minnesota is to be "pass-through" state for a massive quantity of unrefined product, to be refined and placed into commerce elsewhere. The Company should be held to exacting standards given the gravity of its request, and must participate fully and meaningfully in an Environmental Impact Statement of all of the Company's pending and proposed projects within the State. If, as the Applicant avers, it has offered a technically sound and environmentally safe option, then it should have no objection to an Environmental Impact Statement which would demonstrate its position.

In the alternative, or additionally, the State of the Minnesota reaps the immeasurable benefit from an Environmental Impact Statement of being assured that all due consideration was made of the proposed locations for any major pipeline infrastructure project within the State. Although the Commission has given little weight to the comments of the public received to date, it is clear from the Commission's own materials, that thousands of members of the public have

---

[3] *See*, Petition to Intervene, White Earth Band of Ojibwe (May 1, 2014).
[4] Order Authorizing Recommencing of Route Permit Proceedings and Providing Direction for the Scope of the Comparative Environmental Analysis (August 3, 2015), at Order (2).

offered comment, many of whom expressed sincere and immediate concern that the Applicant's projects as proposed pose a significant risk to an impaired natural habitat within the State. This was evident at the public hearings regarding the scope of environmental review as well - the public testimony was replete with opposition to the proposed (co-)location of the Sandpiper and Line 3 as offered by the Applicant. Thorough environmental review now before consideration of the Applications for Certificates of Need and Routing Permits for both Sandpiper and Line 3 is required for the Commission to make informed decisions and for the public to have any meaningful participation.[5]

The environmental assessment ordered by the Commission and completed at DOC-EERA staff on the "system alternatives" SA-03 through SA-08 was invalidated by the Minnesota Court of Appeals. That environmental review was significantly insufficient to meet the requirements of the Minnesota Environmental Policy Act. The Commission recognized this in its order that qualitative as well as quantitative consideration must be made of the impact of the proposed routes, and that Sandpiper and Line 3 must be considered cumulatively.[6] The routes SA-03 through SA-08 must be considered in the Environmental Impact Statement, along with any other route alternative currently in consideration or any route or other alternative offered during the scoping period. The Commission previously held that environmental review of these six routes would "provide [the Commission] with valuable information to be weighed along with other information of record while making its need decision,"[7] and that environmental review would "ensure that the record in the certificate of need proceeding contains an adequate, albeit preliminary, environmental analysis of the system alternatives."[8] The parties now understand that "preliminary" review is inadequate, but the conclusions of the Commission are no less true – meaningful environmental review of the alternative routes in consideration by DOC-EERA in fall of 2014 is necessary to the Certificate of Need proceedings for both the Sandpiper and Line 3.

The White Earth Band of Ojibwe emphasizes again for the Commission that the State of Minnesota has an obligation to engage in meaningful consultation and co-management of resources within the 1855 Treaty-ceded territory with the Tribal Nation successors in interest to the Treaty *which cannot be abrogated* by State statute or any other internal policy of the

---

[5] *See*, In the Matter of the Application of the North Dakota Pipeline Company, LLC for a Certificate of Need for the Sandpiper Pipeline Project in Minnesota, No. A15-0016 (Sept. 14, 2015), slip op.pgs. 10-11 ("The United States Supreme Court has explained that early-stage environmental review . . . is critical because it ensures that that[sic] important environmental effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.") *citing* Robertson v. Methow Valley Citizens Council, 490 U.S. 349 (1989) (internal quotations and punctuation omitted).

[6] Order Authorizing Recommencing of Route Permit Proceedings and Providing Direction for the Scope of the Comparative Environmental Analysis (August 3, 2015), at Orders (9) & (10) (Although the Commission did not specifically find that the DOC-EERA environmental analysis was insufficient, its findings evidenced its acknowledgment of the criticisms made by many parties that to simple count resources in a proposed path of a pipeline is grossly inadequate and misleading because no consideration is made to the purity or impairment of the resources, a much more meaningful question for review.).

[7] Order of the Public Utilities Commission dated October 7, 2014 at VI(B), p. 11.

[8] *Id.* at p. 12.

Minnesota Department of Commerce or other Executive action of the State of Minnesota.[9] The obligations of the State of Minnesota are an extension of the Federal trust responsibility owed to Tribal Nations which cannot be met simply by participation of the White Earth Nation and Honor the Earth in the permitting proceedings. The obligation is one of nation-to-nation consultation, and must be done unequivocally and directly with the Tribal Nations. The White Earth Band of Ojibwe advises the Commission that to go any further with permitting of the Sandpiper Pipeline and the Line 3 Pipeline without meaningful consultation and co-management of usufructuary use rights resources is a violation of the trust responsibility.

The White Earth Band of Ojibwe looks forward to meaningful consultation with the State of Minnesota, and development of a co-management plan for usufructuary use rights resources within the 1855 Treaty-ceded territory. And, expects that an Environmental Impact Statement will be completed, considering all routes offered in the Sandpiper proceedings including SA-03, SA-04, SA-05, SA-06, SA-07, and SA-08, as well as all other route and alternative options offered during this scoping period, which considers both the proposal for the Sandpiper Pipeline and the proposal for the Line 3 Pipeline.

The White Earth Band of Ojibwe appreciates the consideration of the Commission in this matter.

Sincerely,

/s/ Joseph Plumer

Joseph Plumer
Tribal Attorney
White Earth Band of Ojibwe
P.O. Box 238
White Earth, Minnesota 56591
(218) 983-3285, ext. 5753
Joe.Plumer@whiteearth-nsn.gov

Jessica Miller
Tribal Attorney
White Earth Band of Ojibwe
P.O. Box 238
White Earth, Minnesota 56591
(218) 983-3285, ext. 5765
Jessica.Miller@whiteearth-nsn.gov

[9] *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831). This case and its progeny establish that the United States Federal Government, and by extension the States, have an obligation to the Tribal Nations of the country, and that this obligation is enduring.

Tribal Communication - Oral

July 26, 2017

From: Wichahpi To Wiyan

Eden Prairie, MN 55346

In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate Of Need for the Line 3 Replacement – Phase 3 Replacement – Phase 3 Project in Minnesota From the North Dakota Border to the Wisconsin Border

MPUC Docket No. PL-9/CN-14-916; OAH Docket No. 65-2500-32764 and MPUC Docket No. PL-9/PPL-15-137; OAH Docket No. 65-2500-33377

In the Matter of the Application of Enbridge Energy, Limited Partnership for a Pipeline Project in Minnesota from the North Dakota Border to the Wisconsin Border

Statement From Chief Arvol Looking Horse. This statement was gathered after a meeting with the Commissioner, Michael Rothman, Anne O'Connor the Deputy Commissioner, the Tribal Liaison, Danielle Molliver, Shelia Lamb of White Earth Reservation, her husband Terry, Mysti Babineau of Red Lake Debra Topping of Fond Du Lac, and myself, Wichahpi To Wi representing the Oceti Sakowin. This statement was gathered on Saturday July 22, 2017 on the Cheyenne River Reservation, in Eagle Butte, South Dakota.

I was told directly by the Commissioner that he would accept a consultation and made an agreement that I would go to Pine Ridge and Cheyenne River to gather consultation and would transcribe it. I am following through with my part. It is my understanding that the word of the Commissioner has been withdrawn. The State of Minnesota may work with the process of MEPA, however, requires to work with NEPA as well. And while the State of Minnesota may not "be required" to consult as the Commissioner stated in our meeting, NEPA is still involved as the only way that this can enter into the State of Minnesota, is through Presidential Permits, with that, the existence of this pipeline would require a formal consultation from the Great Sioux Nation per the Treaty. We are actually called the Oceti Sakowin, which is the Seven Fires Counsel. The correct statement of who are is the Lakota, Dakota and Nakota.

We met for the transparency of the situation with the Enbridge line. The commissioners spoke with us and offered assistance and see that it was nothing more than a farce to continue to support corporations over the people. Due to the lack of honoring the Constitution, Executive Orders, which they are willing to accept the Executive orders to push the pipelines through, but will not honor the Executive Orders to honor the tribes as well as the treaties to honor the tribes as well, I am submitting to provide the consultation they never sought to gain.
This document, is being formally served.

I am Chief Arvol Looking Horse, I live on Cheyenne River Reservation. And as of today, I am the 19th Generation Keeper of the Sacred Pipe. Lakota, Nakota, Dakota Oyate. Or known as the Great Sioux Nation by treaty.

Today I would like to speak about our first medicine, the mni wiconi and a year ago, we took a stand over at Standing Rock. And, first time in 150 years, we set up our camp called Oceti. Oceti is Seven Council Fires. And, uh, in the center of that fire, sacred fire, and then right in the middle of that camp, the Horn is the place is where my position, is called Cannupa owayanka, the pipe, sacred pipe keeper position, so we went up there and I took that position, with the, Dave Archambault, the chairman of Standing Rock. He called out, in fact he called all nations to come together. But we have to set up our Oceti, our council, the headsmen. So this was the, we put it all together a year ago. And, as of today, we are still together. Our headsmen.

I want to say it is an honor today to speak on behalf of our nation. I am a fluent Lakota speaker. I have been the keeper of the sacred pipe since I was 12 years old. I was like, a keeper of the sacred pipe is a leader, a spiritual leader, the whole great Sioux nation when the white buffalo calf woman brought the sacred pipe, and then the sacred bundle keeper was in the center of our nation. My family were taking care by the warriors, tokani, tokala, the leaders. So, my position is like a (inaudible). So, I never joined the military, I never raised my hand under the United States Flag. I never joined military. I never carried a, I don't allow a gun in my house.

Because that is a position of the, a spiritual leader, we are nonviolence. My position is about peace. Wolakota. And, I never use foul language. Because in our leadership role you got to have to have a good mind. I try to eat our traditional ceremonial food, so that that it does not corrupt our mind body and spirit and we are in good health and wellbeing.

So, my role as of today, I am very honored to be in that position, that leadership role for our Great Sioux Nation. Or the Lakota, Dakota, Nakota Oyate. And, today we talk about the mni wiconi, that first medicine. As I spoke about in Standing Rock. When we called the nations together in Standing Rock, we had over 300 flags, and it was more than the United Nations. All the nations in the world came and brough their flags. So, we honor each and every flag that came in. Because we look at them as a part of a way of life. In our way as a first nations, we believe in a way of life. Not like a freedom of religion, but it is a way of life and that we stand on our sovereignty we are we been going to United Nations on Geneva and are representing ourselves because we as survivors of a holocaust, massacres, and we still have our languages and culture and traditions. And that is what United Nations basically told us that if we have that you are recognized as a nation.

So today, I am a fluent speaker, and being a keeper of sacred pipe. Now we stand our ground on protecting our sacred sites and our livelihood, which is the water. And we signed a treaty with United States Government. The pipe, the sacred pipe was used to sign this treaty. So, today it's still ongoing. We have our elders, now the youth, and our position here is pretty well known all over the world today. Since all the nations in the world came to Standing Rock. And they stood with us. But from that time on, we say Standing Rock is everywhere in the whole world.

So we have a lot of people supporting us through our way of life. Knowing that Mother Earth is a spirit, and it is (inaudible) by our prophesies today, as traditional people. As traditional people, we have our prophesies like some day mother earth will be sick and has a fever. Well that is happening today. In our prophesy it says that some day people will not get along, even

down to the families. Brothers and sisters will be fighting. Well that is happening today. In our prophesies, it says when the white animals show their sacred colors, great changes would happen upon the earth. That is happening today. We have all these white animals being born all around the world. Now we have earth changes, climate changes, and global disasters. That's happening today. Volcanos and earth quakes. All this is happening that the elders said. Its all man made. What's supposed to happen in the future is happening now. Things escalate so fast, now we are all getting sick from this environment, the foods we are eating, and our livelihood. So we have the statistics from the hospitals, its said how bad, how sick our people are. And, they are telling us, we aer lucky to live until 60 years old.

As keeper of the sacred pipe, I met a lot of world leaders. And, When Obama ran for office, he told us the prison system has better health care than the reservation, because the treaties was never honored. We are still on the reservations, uh back in the 1800s there were concentration camps. And a lot of budget cuts still happening today. Our survival on the reservation. Now there is 80% no jobs. Now the budget cuts, even probably food stamps now. But our health and wellbeing, you know? our elders signed those treaties, with good health and well being through that cannupa, the sacred pipe.

And today like the United States, from Standing Rock, we wrote a letter to former President Obama, stating that the United States should honor the constitution. Because it says we honor all treaties. But that never happened. In fact they even made new laws to hold us down. And break us apart. Like in Standing Rock. These laws that are manmade is not for the health and wellbeing of our nation. This country, America was found on freedom of religion. And yet they outlawed our ways, First Nations. 1978 the Freedom of Religion Act, now we still have problems with that, because we say we are not a religion, it is a way of life. So, I strongly suggest that they make you honor the treaties and recognize our people for who we are, because we, by treat, by law we own this territory, first nations, we all got our different places of residency. We still have our sacred sites, our ceremonies we do throughout the whole year. This is our way of life here. So, I am very honored to speak on that today.

WI: Thank you is there anything you would like the DOC to directly understand regarding the pipeline going through?

ARVOL: Um hmm. We knew that there are ceremonies that they, that the laws, manmade laws that were forced upon us. Their manmade laws through our ceremonies they say that., you know, that in we would in time see, when the decision are made. So, it took a while but they finally owned up to it (inaudible) and respect us. So, that's that the, before they even start the pipeline or anything through our reservation, they should consult us. Never did. So, you know. We believe that everything goes round in a circle. So, we, so that is that is the way, we just pray about it, and it always comes out the way it should be.

Camera off.

INTERVIEW - 14-916 15-137

MARCH 17, 2017

MINNESOTA DEPARTMENT OF COMMERCE

In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 3 Pipeline Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border.

PUC DOCKET NO: CN-14-916

OAH DOCKET NO: 65-2500-32764

In the Matter of the Application of Enbridge Energy, Limited Partnership for a Route Permit for the Line 3 Pipeline Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border

PUC DOCKET NO: PPL-15-137
OAH DOCKET NO: 65-2500-33377

Mille Lacs Band of Ojibwe's
Department of Natural Resources
45380 US Highway 169
Onamia, Minnesota 56359

MR. TERRY KEMPER: So I know it's kind of different for everybody here, but if we could take our time just to say a little prayer. A little silence for those that are struggling. Say a prayer for that ecological system that we're going to talk about today, for your culture today. That we all have open minds and we're able to get out of this meeting this time that we're sharing together what we need to get out of it.

We thank -- for what's happening today, we're thankful. We're breaking new ground in things and we're really thankful for it and hope that everything goes good.

So right now we'll just take a little moment of silence for all of the people that are in a struggle today.

Miigwech.

(Silence.)

MR. TERRY KEMPER: So if we can just take our tobacco outside and put it someplace, wherever it feels comfortable to you.

(Break.)

MS. NATALIE WEYAUS: Thanks, Terry, for the prayer. We can get started if you want to start.

MS. JAMIE MACALISTER: Okay. Good morning. Boozhoo, Natalie. I just have a few questions for you today.

The first one is can you describe the interconnectiveness of land, identity, and spirituality? Can they be separated from one another? And if not, why?

MS. NATALIE WEYAUS: I can just give you my perspective on that. And being growing up as a Native American, my parents taught me that anything you take out of the environment, we just take what we need, and we always put tobacco for anything we take from the environment. We are not alone in this world. We are not above anything else. We're just part of the environment, and not better or not worse, just here with the environment.

And as I grow older, we were -- we are stewards of the environment and we don't waste anything that's out there. Even the little trees, we don't cut them down 'cause they need a chance to grow.

With that, then, I will pass and let John or Terry speak on what they want.

MR. TERRY KEMPER: Can you rephrase that question for me?

MS. JAMIE MACALISTER: Yes. Can you describe the interconnectiveness of land, identity, and spirituality? Can they be separated from one another? And if not, why?

MR. TERRY KEMPER: No, they can't be separated from one another. The land is who we are as people. In all of our ceremonies and all of our cultural teachings that we have, the land is part of us. And when we say the land is part of us, we are made up of iron or copper, zinc, we are water, this is our bodies. And in that we are the environment. Everything that's in the environment is what we are made of.

And so to us we can't separate the two and that's why it's such an impact to us as human beings, as Anishinabe people, as Native American people, when things are disrespected, moved around, cut down, hurt, trees are cut down, plants and ground is dug up, because basically you're digging up us. Our relatives, our ceremonies, our everything is interconnected to that earth, to those trees, to those plants. So you can't separate the two of those.

MR. JOHN REYNOLDS: I'd also like to add that for the Indigenous people of this area, the way

of life that they have is something that was given. And it's not something that they just live for today, it's something that they try and maintain for future generations. And that's not something that we really see taking place with government agencies today.

MS. NATALIE WEYAUS: Which is very true when you see and read our treaties. All of the grandfathers, our ancestors that signed the treaties were not only thinking of themselves then, they were thinking of the future generations. So when we get to practice our rights, our treaty rights to gather, hunt, and fish, that was thought of way before our time. They didn't give that up. That we're always connected to the land to do what we have to do to survive.

MR. TERRY KEMPER: And there's a big significance between that hunting, fishing, and gathering. To us it's a ceremony. To us it's not just sustenance, it's not just gathering something to eat, but it's bringing a whole community together to connect with the outside world. To connect with the trees, the water, the animals. And to honor them. So we do that in ceremony before we take anything from the land. Before we hunt, before we

fish, there's a ceremony that occurs. Before we even go into the woods we do a separate ceremony, we talk to the things that we go there.

So everything is thought of today, is what we do today is going to impact seven generations, how is it going to impact seven generations down the road. And our ancestors were very good at that.

One of the reasons why we're sitting here today, you know, 'cause we're talking about our environment. We're talking about making major changes to that environment. And any major changes to the environment affects not only our ceremony, our people, our mental, physical, our spiritual health, it affects all those. That's how interconnected we are to the earth, to everything, to the plants, to the animals.

MS. JAMIE MACALISTER: Does anyone have anything else they'd like to add to that?

MS. NATALIE WEYAUS: Just that there's a lot of medicines out there. We have medicine people that pick the medicines and know what they look like and where they can be found. And what they're trying to do now is to teach the younger generations, inviting them to come to their homes

and showing them how to make their fat grease, how to make these medicines that people need. There even is medicine for cancer that they use and they share with the community that comes to them for medicine. For doctors. And that is our connection to the land. 'Cause there are medicines out there that can help almost for every illness you can think of.

MR. TERRY KEMPER: So we've experienced in our -- in our lifetime, as Indian people, a continual digression and abuse of the world, of the outside world. With cutting timbers, with plowing the fields. We've continually seen this and it's affected us, whereas -- we know already by what's happened what will happen. Like we already know when you make major changes to the ecology, to the ecosystems, that there's major changes that happen not even to us as a people, but to the world itself.

And today we are struggling because we know that every plant has a purpose. Everything out there has a purpose and meaning to it. From the little rock, to the sand, to the gravel, to the dirt, to every leaf on the plant has a purpose and it has something to give to the people to help us.

But today we, because of all the things

that have happened to us as a people, we only know certain plants now that we're really trying to hang onto, that we understand the knowledge of them because it's been passed down.

But every plant out there today, they used to say every blade of grass had a significance to the whole world. And so that's what we're trying to retain. We don't want to see that more ecology, ecological system damaged more. We would rather be helping it to make it better than to see something major happen to the earth for miles and miles, you know.

We're talking impact of trees, animals, the whole works, the whole ecological system is the air quality, the water, the everything. Because when you change the environment, when you change the ground, even when it rains the waters will go a different way. You know, things happen, they get eroded.

And the animals lose home, you know. We consider like when you go into the woods that that's their home. That's where the animals all live, the squirrels, the mouse, the mole, everything from the little things to the insects, they all live there. It's not our home anymore 'cause we live in houses.

But we used to live with them and that's all their home so we respect that. So by our cultural standards and our spirituality, we're protecting their home. We're protecting what's already been damage to them. That's it.

MS. NATALIE WEYAUS: Water, too, is very sacred to the Anishinabe and all the Native American races, Nations. We talk about that pipeline coming through and there's a big watershed that comes down north of us that affects -- that'll affect everybody, not only the people, but the plants and the animals also.

We had rice lakes north of McGregor and the Army Corps of Engineers put in a big dam there and flooded out the rice lake. Now there's no rice lake there anymore. But people still remember that. And that's -- that's a hard thing to get over. When we had a meeting there, we had an Army Corps of Engineer woman there, and they really got after her as if she was the one that did that. But when you come to a meeting with the Native American people, it's things like that that they remember. And if you're part of that group, you're probably going to get a few words of reprimand. But she took it okay, she understood.

MS. JAMIE MACALISTER: Natalie, can you tell me about the obligations that the Anishinabe have to Mother Earth and how they're met today?

MS. NATALIE WEYAUS: We still teach our children to respect the earth, to respect the water, to respect the animals, the plants, even the bugs. My grandson was -- this summer was walking and seeing a bunch of ants crawling on the sidewalk and he starts stepping on them. And I said those are mommas and daddies, and he said I'm sorry. So just teaching them stuff, little stuff like that will teach them to respect the earth and the animals and the plants and the insects.

Our schools are teaching them that stuff also. So that's nothing that -- that isn't nothing new, we grew up with that. This is what we live, to respect the earth and the trees and the animals. We don't complain about the water, the rain, the snow. Look at what happened when Katrina came. We don't complain about the rain and the water. Too much rain, not enough rain, when stuff like that happens it makes you realize that you don't complain about stuff like that, just accept it. That's Mother Earth's way of, I suppose, taking care of us also.

MS. JAMIE MACALISTER: Can you tell me

how you see this pipeline threatening the Anishinabe way of life and your relationship to place? And is that different to other types of infrastructure around you?

MS. NATALIE WEYAUS: What -- you're a mom, aren't you?

MS. JAMIE MACALISTER: Yep.

MS. NATALIE WEYAUS: And somebody put something in you that was there before, and after a while it wasn't working, so are they just going to leave that in their body or are they going to take that out and clean it up? I would say I would take it out and clean it up. Why leave something that our mother, who takes care of us.

So they're going to remove that pipeline. Don't abandon it, take it out. There's always recycling you can do with the steel or whatever. But let the land come back to its natural state.

MR. TERRY KEMPER: So the -- she referred to the earth as Mother Earth because it gives us all the sustenance we need. It gives us our food, it gives us our spirituality. But most of it, all of it gives us love. It gives a kindness to us that helps us in our world. Because it's full of medicines, it's full of all kinds of things that we

use in ceremony. And like we said in the very beginning statement, it's interconnected to us. We are part of the earth.

So I think in the last meeting that we had we said when we go out to the woods we sing love to that, we sing love and we receive love from it. You can't love a pipeline. There's no love that comes back from a pipeline. It's just a tool they use to move stuff through. So thus being now they want to move it around to another place and leave something that's not loving to the environment there. Something that can't give us any love within what we love, what we receive our love from, we receive everything that we're about from. I mean, everything that we get as a people that has sustained us to this point in time in our lives today comes from out there.

So when you leave things behind like that, it's like -- or you create new avenues of putting those things in, it's like taking the love out of someplace and then how do you put that back? You know, how do you get that back into that area? So to us it's like -- it's like the whole ecological system is just set upside down. And so that affects us. It affects us mentally, physically, and

spiritually because we use all that.

The ceremony that you just did where we just used tobacco, we used sage, all comes from out there. All the plants and things that we use, kinnikinnick, cedar, all these things.

One of the major plants that we use is cedar. And cedar was such an aromic and beautiful wood that they cut down almost all cedar forests in the state of Minnesota. Not only here, but all across this country. And so you very rarely see a cedar forest. That affected us when they did that. Because it's such a ceremonial part for us.

When a baby is born, they're put on a cedar bed. And that cedar talks for us and it tells the whole world, it tells the universe that we're here. But they came in and took most of the cedar trees. Now we have to travel, you know, hundreds of miles, 50 miles, hundreds of miles away to get cedar.

So we know the impact that things have, just like the industry of cutting the trees down, you know. That industry came in and cut so many trees that we have babies out there now and those babies are little baby trees. They're even older than us but they're baby trees. And we go out to

the woods, and if you've ever been in a cedar forest, if you've ever experienced a cedar forest, we used to watch -- in the cedar forest there's like bowls, bowls of water. And in that forest, the roots are red, they run into the water and they're red. But we watch the animals go in there, is when they were sick and hurting, they would go into a cedar forest and drink out of that. And it was a tea from that tree and it would heal them, it would help them out. And here today we hardly have that. And we use that. We watched the animals, we learned that from them and we use that in a lot of our ceremonies and now we don't have that anymore. So our whole -- every time something happens out to that ecological system, there's outcomes that happen years later down the road.

Today, because we're striving for that cedar connection again, because we're trying to make that connection back to the cedar, we have to go to man-made bushes and plants that people are planting now in order to pluck that medicine, in order to get that medicine, because there's not very much of that tree around anymore.

So where people didn't see the impact that that would have on us at that time, we feel it

today, that impact, just of losing those cedar trees. Or even the pine trees. The pine trees are very -- even the people today, if you go and see an original pine tree, and it's just magnificent, you can feel it, you'll see that tree out of all the other trees and be drawn to that tree. But our people used to talk about how those pine trees covered this land from Mille Lacs Lake all the way to White Earth. And we were connected to that. And then they came in, and that was the worse thing that happened to us, was they chopped all those trees down and used them for something. And then we had to compromise and find other avenues in order to do.

Now, when we have certain medicines that we have, we have to travel a long ways to find those trees, you know. We're so interconnected to those things out there that even our Indian names are after them. Many people are named Zhingwaak for that pine tree. People are named after rocks, Asin, Asiniikaa, Asiniinini. They're named after these things 'cause that's how interconnected we are. We're interconnected so much that plants and things we're named after. The rocks, the earth, we're named after that. The universe and all the things that are there, people have names after that.

So when they say that, you know, there wouldn't be no damage, you know, digging eight feet in the ground and putting in a pipeline, that's not true to us. To us you're taking all of our relatives and you're turning them upside down. You're taking all of our medicines, all of our spirituality when you're turning it upside down and wasting it. And so it makes -- it hurts. It hurts the whole tribe to see something.

If you've ever gone and walked down or traveled down the road and have you ever seen clear cutting, if you know what clear cutting is, you walk, you drive down the road and you're just in awe of these beautiful forests and you can open your windows up and smell them. I mean, if you stopped along the side of the road you can hear these forests. And that's what we're connected to.

Then all of a sudden you come to a place where there's nothing but stumps. Nothing but stumps on the ground and just their arms and their legs and everything is laying about here and there 'cause they took the major stem, you know. That hurts us. I mean, you can't even explain.

That's like losing your grandmother, that's like losing your father or your little baby

that was just born. That's what it feels like to us when you see something like that. And it affects a whole community because all of our community is connected to that. We're taught from a young age that these things have meaning to them, they have life. And so now you have 100 miles of trees that are cut down, or 50 or 25 miles of trees that are just -- that's all death. They just took it. And then they come in and they plant the trees and they think that they're going to make up for it by creating a farm, you know, another ecological system. And that ecological system then is -- is like us as a people trying to survive. That ecological system is us trying to remember a time when this world was just beautiful. When this world was producing everything that we needed as a people in order for us to survive.

Now, with the things that have happened in the world, we have a hard time doing that. We have a hard time finding all those things that we once used because of the things that have happened. Because of big industry coming in and not taking into consideration how it affects the people that are here.

MR. JOHN REYNOLDS: I think something

else that's very important to acknowledge is that a lot of the resources or the environment that was in place prior to a lot of the things that Terry mentioned, such as clear cutting, they've been so substantially diminished that there's only really a fraction of the resources that once were, and that's something that Anishinabe people are trying hard to preserve. And that if a pipeline of this magnitude comes through, it has the potential to basically destroy, you know, just a very small amount of what's remaining.

MS. JAMIE MACALISTER: Can you tell us a little bit about sacred places and how they are different from sacred sites?

MS. NATALIE WEYAUS: Sacred places versus sacred sites. Sacred places, that would probably be like that stone in Garrison. There's a big stone on the shoreline that people used to stop and put tobacco there. And they still do today. And what happened is the highway, Minnesota Department of Transportation came through and destroyed a lot of mounds within that area. I presume it was an area where they had Ojibwe camps or Dakota camps all around the lake, the whole lake, and it has mounds and burials and camps.

And the only part of the lake, that became a national historic monument because of the archeology, was Kathio State Park. Because of the state park status, it got recognized for all its archeology there. But just by knowing that, how the whole Lake Mille Lacs, it has a lot of archaeological areas, sites, mounds, the old Brauer maps show that. But sacred sites, we consider those our sacred sites, and we want those protected. We don't want those dug up.

We just had a water sewer plant come through and we didn't really want it, but we had to do it 'cause we own a resort along the lakeshore now, and a gas station, so they needed that sewer, a sewer line. So we let them do that and sure enough they hit an -- we had inadvertent discoveries and there was a lot of artifacts found. Those are sites that are maybe not Anishinabe, but they are Dakotas, and we need to protect those, too. Not only ours, but everybody's. And so we contact, we let them know what was found and they have representatives from the other tribes come in and talk with us and that's how we decided what to do with what we found and we collaborated and made a decision on what happened.

Does that help any?

MS. JAMIE MACALISTER: Yeah, it does help. So in that description you see the work even done by the Band for things that you need to do --

MS. NATALIE WEYAUS: Oh, yes.

MS. JAMIE MACALISTER: -- a sewer line or sewer plants, as the same as other types of infrastructure that --

MS. NATALIE WEYAUS: Yes.

MS. JAMIE MACALISTER: -- cause damage.

MS. NATALIE WEYAUS: Any agency, state or federal or our local Bands, we monitor all those projects so they don't get into our sacred areas. We even had landowners that know there are mounds on their land that we work with and they respect our culture to not destroy those sites on their land.

MR. TERRY KEMPER: I think, too, is sacred sites, sacred places, you could almost break it down into a verbal or a communicational thing because a site is a place that you can still see. A site is a place that you can go and it's still there.

Sacred places are places of inadvertent discoveries, we don't discuss that with people. There's sacred places out there that we don't

discuss with people and tell where they're at. Sacred places for us is that whole waterway. Any waterway that's out there is a sacred place because it was a highway, a place that we lived. You can still see the water, the rivers, and stuff like that. Even though they've been damaged, they're still there and you can see them. So that's considered a sacred site to us, every river, every stream, every waterbed, every swamp that you see out there is a sacred site, you can see it.

Sacred places sometimes you can't see. You can't see those sacred places. The moon, that's a site, you can see it, it's sacred to us. Something in the earth, something in the water that's a sacred place, you can't see it. Sacred places are places you take in a spiritual journey that you can't see. When we get into a ceremony, we go places in a sacred site. Sacred places, when you go to sleep at night, you wander, your spirit wanders and travels. It's a place that is a sacred place, but when you come back into this world you can't see that site. You can't remember. You remember it as a human being, but you don't remember it as the place. You bring it into this world. So there's two different things there, and it's

basically language, and all your language sometimes doesn't fit into our language. It doesn't fit into how we categorize things out there.

Sure, we have infrastructure that we have to do, but we don't know where those sacred places are, those sacred places under this earth. And that's what we try to protect the most that we can. That's what our job is here. Is that we don't know if they're going to find an inadvertent discovery. If that place is there from a long time ago, there's a dinosaur bone, there's bones of our ancestors, there's sacred sites that people used to see all the time and go to, but now they're in the ground or buried there. So it's a place that we don't even know about. But we're trying to protect it. So we know it's there.

That's why archeology, when they're looking for our kind of sites, they'll look for places that are old sites, they'll look for places along river banks, along portages, between places where they know earth, you know, and so they'll go to that. But the thing they don't know is that how we -- how we moved from by the shorelines to end of the woods during the spring times and summer times and how our villages were set back away from lakes

and streams. And so they don't know those sites.

They don't know our hunting grounds. We would travel for miles hunting deer, caribou, moose, that were all here at the time, they used to be here. Again, another ecological thing that's happened that impacted us was the animals and stuff and what we sustained our lives on and now those aren't there either. And they're managing those again, too.

And so our village sites and things like that, those were sites, those were sites at one time, now they're places because you can't see them. So archeologists are out there trying to find those places and we don't want them found and we don't want them dug up.

So whenever you put -- you take a long tract, you can't go, as long as that pipeline is going to travel, there's no way that you can travel from that area to the other area without coming across our people, our villages, our sites. Because we've lived here long before America was here. And we traveled all that land. We lived in all that land, we died in all that land, and all the people before us we consider to be part of the trees, part of the, you know, they bury people today now and

they put them in boxes, you know, concrete boxes. When they buried us a long time ago we were buried in the ground or on top of the ground and we became one with everything.

So our bodies nourished the plants, the animals, the trees, everything was nourished by our bodies going back to the Mother Earth. So every tree that was out there, every old tree, every plant, everything is our relative. And literally it is our relative. And so if you have a plant that grew on top of one of our relatives, that plant died and a baby was born because it seeds out again too. So that baby that's born and all those plants that are born are now us. If a bird comes and eats a seed off of that plant and travels 100 miles away and that plant that was our relative that was created off our relative's bodies, then that seed 100 miles from here will be put back in the earth by that bird and that relative now becomes over there, part of over there.

That's how interconnected we are to this earth. That's how interconnected we are to the birds, to the trees, to the plants, to everything out there. And that's what we're looking at, that that will affect, when a pipeline, anything major

like that, highways, roads, anything like that that comes through affects us as a people. It affects our past, it affects everything that we're about.

MS. JAMIE MACALISTER: I feel this very strong disconnect in world philosophies with that.

MR. TERRY KEMPER: It's kind of interesting because there is a very big disconnect.

MS. JAMIE MACALISTER: Yeah.

MR. TERRY KEMPER: A very big disconnect. That's why you have such a hard time putting this into your EIS.

MS. JAMIE MACALISTER: Precisely.

MR. TERRY KEMPER: Because for a long period of time now, the companies and the organizations that have been in charge of this have not listened to our point of view. Have not listened to our world view. They do not know who we are as a people because systems have been putting us how they want us to be and taking us away from that environment to disconnect us.

Well, the problem with it is, what we seen with DAPL, was that even through all atrocities that they did to Native American people, taking our land, putting us in boarding schools, even killing us, murder, death, by the army, we're still

connected. And that's -- that is so profound to say that, to be sitting here and telling you that I still remember my relatives from long ago, hundreds of years ago, because they're in them trees and they are in them plants after all of everything that's happened. That's so profound because we've been under attack for many, many years. And it came out with DAPL because we're coming to a period of time where major companies and infrastructures of cities and towns and things like that are having impact to the water, to the medicines that are out there.

You know, main society looks at aspirin as a thing they use for migraine headaches. But aspirin came from Native American people. And knowing that the birch and the poplar had that medicine in it because we chewed that when we had toothaches, when we were sick, we chewed that medicine. And then their science came along and broke it down to where now they can synthesize it, you know. But they've disconnected themselves from the tree itself.

When we have a problem we still go out to that birch tree, if we have headaches and stuff we still utilize those medicines off that tree. We still take a piece of that tree and chew it to help

us because we're still connected to that. It's been passed down from our elders to us. And that's what we're trying to protect because our elders protected that for us to keep that.

And even today we're sharing that information back to you and your people because you guys have become disconnected from that. And there's such an awakening happening in the world today, because more and more people are realizing that everything out there has a life to it. That everything out there, the medicines, the trees and everything are actually what everybody uses today. Aspirins, morphine, all the things that people use today in their medicines come from out there. And it's just been synthesized. And broken down. But people are learning that today more and more.

And so that's why we stand up and we try to do the best that we can by explaining what that really means out there, what that system really means to not just Indian people, but to all people, you know. Because all people use it. In some way, some form. But the main system now is either recreation or, you know, something I own or something to be used as a resource, you know. And we've never viewed it like that. So I can

understand what you're saying.

MS. JAMIE MACALISTER: So you were talking about land use and land ownership and that's something I want to touch on here, in terms of what do you see as the biggest differences between how Anishinabe communal, traditional use of the land, and nonnative, or Anglo-Saxon private ownership and land use, that relationship?

MS. NATALIE WEYAUS: We have boundaries now. You have -- we have boundaries after they did the treaties, we were ceded land and all that stuff. We finally -- we were wild ricing and we had to buy a Minnesota license to do that. Then some of our elders said why are we buying licenses when we have treaty rights. So the Band finally took it to court and we won and now we got our treaty rights back, we can gather, hunt, and fish within our ceded territory. But the question was, again, was something about boundaries?

MS. DANIELLE OXENDINE MOLLWER: I think it was, basically, since the Anishinabe way is communal and there really is an ownership, and how that's different or how the contrast to the Anglo-Saxon where we want to own and have private ownership.

MS. NATALIE WEYAUS: We don't believe in we own the land. It belongs to everybody. And I know there is ownership now and you have a title and this land is my land and all that stuff, but the Anishinabe way of taking it is we all own the land, we all have to take care of it. Yeah, it may be in your name, but it's not yours.

MR. TERRY KEMPER: I was in a college class and an elder I think from Michigan came in. And we were talking about this subject, about that. Because we've been dealing with this since, you know, the coming of the jakanashi (phonetic) or what you call them Anglos, I think another one, what's the one that they're going to do now, is decolonizing. The colonists. You got so many nifty words for everybody nowadays.

But he explained to me, to our class at that time, that it's a made up man-made ideology that you own the land. He said you can't own the land. The only thing that you own is a piece of paper that says you own that land. But any government system, the United States government system by eminent domain can come and take that land or tell you it's this worth and that's it and give you your price for it. So he said that you can't

own the land, but you can own a piece of paper that says you own the land and that's it. That's all you own. That's all it is is a piece of paper that says you own that land.

Can you own your mother? Can you own your father? You know. Do you love your children or do you own your children? You know. Is that your ownership? You know. And when you put it in that kind of context, no, it's not, you wouldn't say, oh, I own my son here, he's mine, I own him. You wouldn't say that. And that's how we view the world. We view the earth.

We've been through this since farmlands became, they started putting up fences. When they started putting up fences that affected us. Because we travel from the lakes and the streams back into the woods to hunt and fish. They said a long time ago that we used to be able to run down the deer when we hunted. That we were such good runners that we would tire that deer out, we would stay doggedly on his trail and we would tire that deer out till we could get close enough to him and shoot him with a bow and arrow for food. And you could imagine how far that deer would run and we could still run that deer down. They still have that in Africa where

they do that. But we haven't done that -- I don't know, Natalie might have done that when she was a kid.

But that's how we used to live. So we could run these animals down and you can imagine how far we used to go. Well, now, even the animals have to jump fences, you know. So we've experienced this ownership deal for a long period of time.

Even from like minerals. People are claiming right now today that they own the water. And that's coming. People today are selling water and owning, buying up aquifers and the land above aquifers, governments are controlling water now. And ownership, they have ownership to that water, where in some states you can't even keep the rain water because they say they own it.

Electrical companies own electricity. You can't put a solar panel in an area without paying that company because they have rights to that electricity. So ownership, we don't understand that because it's not our cultural way. It's not our spiritual way. We don't own things. We live with them. They help us, we help them. It's part of our spiritual connection to all things.

So when it comes down to ownership and

things like that, it was a foreign thing to us. But with all the things in the assimilation process that we go through, we understand it, we know what it is because we have to have a car, pay our insurance and we have to have a place to live now, you know, that's like everybody else's. So we understand what ownership is, but we don't agree with it 'cause we cannot own things.

MS. JAMIE MACALISTER: Well, here is a really great question for all of you from our perspective. And that is how do you see us, as representatives of state agencies, more effectively understanding and respecting the inherent right of self governance when coordinating with these projects that affect tribal interests?

MR. TERRY KEMPER: Okay. Want to say that again?

MS. JAMIE MACALISTER: Yeah. How can we work more effectively with you and try to represent your interests in these processes? And maybe represent isn't really -- it's not the right word. But on these projects that affect --

MS. NATALIE WEYAUS: When agencies come to you to ask for your permit or whatever?

MS. DANIELLE OXENDINE MOLLWER: Yeah.

Also -- I'm Danielle, by the way, I apologize for arriving late, I got a little turned around. And I'm with the state. I'm an enrolled member with the Lumbee Tribe, which is back east.

But I think the basic idea is, unfortunately, like you said, there's consequent elements that now we have to adopt and we have projects in all of these things that we know will continue to go on. And the state is really trying to, as much as possible, be intentional and speak with people before we take action.

MS. NATALIE WEYAUS: That's what we need, is to speak with us before you send your archeologists out there. That's what you'll hear from all the tribes, not just before you, your archeology. We have our archeologists, too. They can do that, they can go out there and look and let you know if there's anything out there.

MS. DANIELLE OXENDINE MOLLWER: And so the other piece of the question is how can we, you know, balance sort of -- you know, how can we work better so that we can honor and respect the inherent right to self governance and sovereignty? And I'm hearing Natalie saying don't do it for us, talk to us and we can do it right.

MS. NATALIE WEYAUS: Yeah. Right. Include the tribes before you do the archeology and come to us and say here's what we found, all we need is your concurrence, so your agreement that this is what is there. And sometimes there isn't, there's more there than a lot of the projects in the city area, cold water springs, for instance, and around the Fort Snelling area, a lot of sites there that they should have spoke with the Native community first.

I like your coming here today to learn. And maybe your people need cultural sensitivity before you work with tribes, have somebody come in and talk to you and so you get a better understanding of where we're coming from.

MR. TERRY KEMPER: So one of the things that I hear you saying in your words were we have to adopt to things, right. And that's kind of how, whenever we deal with systems or agencies, that's what we get, we have to adopt to these things.

Indian people know firsthand that we don't have to adopt to things. We've been assimilated from the on-start. And one of the reasons why you guys are talking to us today is because we didn't have to adopt to those things. We

still retain the cultural information, we still retain spiritual connections to the things that have been tried to be taken away from us. Through military force, through policies and procedures, through education. It's all been tried. We haven't had to adopt to it.

We've learned to utilize it. We've learned to make it a part of what we are, but still retain our cultural information, our spirituality, our ceremony. And yet when a company comes in or an organization comes in they don't do that. They adhere to the policy that they had to adopt. They adhere to that, they don't break away. And so for many years we haven't sat at a table. Or we've sat at a table listening to them tell us what we need to do.

And so today, that's why it's so significant, and if you could get it and how you put it into this is that you're listening to the people now. You're not adopting to their rules and policies, you're actually breaking out of it and trying to implement something into it that should have been there from the very beginning of EISs, from the very beginning of all these programs that affected Native American cultures and people.

So there's a lot of other places. And I think one of the things that has pushed it is the realization with DAPL and stuff what a driving force the Native American community is. And so now organizations have to begin to look at that. And they have to see and try to work around it.

Now, are they going to listen? That's the question. Are they going to listen? Are they going to hear us? Because, you know, we as a people have been hurt. We sit at the table and we continually sit at the table from treaty rights to everything and we continually are hurt. We receive little victories every now and then, but we continue to sit at tables with organizations because that's the kind of people we are, because we're connected to the love that's out there in the system, ecosystem. And it gives us enough love to sit at these tables and continually to be heard over and over and over again because people won't listen.

And so we're moving ahead and we're happy to have you sit at the table, we were glad to hear that somebody's voices are now being heard a little bit. And that they can maybe make an impact that other people will take. Because I'm the kind of person that knows, okay, I know that there's --

whenever there's a change, there's going to be people that say no, but there's going to be people that say, hey, that's awesome, that's really great. And I'm a person that says, you know what, it's up to you to make that change as an individual. If you work at an organization or a company, to put your neck on the line and say, hey, you know what, enough is enough. Let's try it, let's at least do it, let's see what happens out of the whole thing. And we don't have enough of that. There are too many people that are scared by adopting to the policy and just living by that policy.

There's a lot of places we can go and we work together. We can actually become a community again. We don't have communities anymore because of the way things are looked at. Resources, owning. So we don't have community. Me, me, me, me, me, you know. I have to have this, I have to have that, I have to support this, I got to get that, I got to pay this, I got to get that. It's all about me. And then there's no family hardly anymore because it's only about me and my kids or, you know, we have no communities anymore.

If you look at the outside world as Native Americans view it, the trees are all of the

community. They live with the birch tree, the pine tree, a poplar tree, an oak tree. They live with these little plants that are on the ground. They live with these little insects and bugs. They live with the woodpeckers. And they all live together in a community and they all fit into that community and work together. Some form, some manner.

That's how Indian people used to be. Until assimilation came along and they tore our communities up. They took the trees down. They managed the lakes. They managed the swamp areas. They manage all these things that are our life. And they took our community away from us.

And now they try to manage that community out there and they're messing it up even more. They're saying this is good for that, so we'll introduce these ladybug beetles over here because it'll help the growth of the trees or it'll stop the aphids, or whatever they're called. So they introduce this bug. Now you got this bug in everybody's house. You got this little stink beetle that bothers everybody. That's their management of the system. But it affects our ecological system and it affects that community out there. And when it affects that community out there it affects the

people.

Now, I say the people because it affects the people, not just Native American people. The reason why you're talking to us today is because we're still connected to that environment. That environment is still our ceremony, it's still who we are as a people and will continue to be. And we'll continue to fight for that environment and that community out there no matter what they did.

The water system, what have they got now, the carps, you know, they got these flying carps that just jump in your boats, and it's coming this way up the Mississippi and up the major rivers. They introduced these fish to combat something else. They manage it with -- what's the weed that's out there? They introduced a weed to stop something, the little clams and little things that are out there now.

MR. CARL KLIMAH: Zebra muscles.

MR. TERRY KEMPER: Yeah, zebra muscles. So that's our system.

I can tell you that my friend here, you're a biologist, right?

MR. CARL KLIMAH: Yeah.

MR. TERRY KEMPER: So he got an education

as a biologist and he works for fish, right? He does fish and looks at the lakes and the waters and the temperatures of the waters and things like that and raises fish, right? When I introduced myself, Awaazisii domain, that means I'm from the Fish Clan, specifically the Bullhead Clan, which is from Mille Lacs Lake. There's a lot of Bullhead Clan here, a lot of Fish Clan here.

And being that as I'm from the water, I'm the Fish Clan, that teaches me everything I need to do as a human being. It teaches me my connection to water. It teaches me my connection to everything else. As a Fish Clan, how many of you have eaten my brothers and sisters, the fish? How many other clans eat that fish? The bear, the eagle, they eat me, they eat my brothers and sisters. They sustain life. I sustain life. My clan sustains life. And I have to know the water because the water is what I live in.

So what significant impact does the water have to us as a human being? When I walk outside, every animal, every plant outside perspires. When the sun comes out, the water leaves. What we see in this room today is the room, but what's in this room is water. There's 100 million molecules of water.

There's a swamp in this room right now that we don't see, but it's here. Within that lake is a hundred million years of DNA information from the very beginning of time lives in that lake. We know that. Because it is who we are.

We retain that cultural information to that. Whereas other people don't see that. Big companies don't see that. You know, people coming through here that want to cut the trees down, they don't see the connection between the water and the tree. They don't see the connection between that tree and that fish. They can't put the two together. But yet it's there. And we see that.

But the community has been broken up by major pipelines coming through, power lines coming through, gas lines coming through. All these things have disrupted that community out there and that affects us. It has impact on us as spiritual people, as people themselves. It has impact. Our whole communities are hurting because of the things that have happened. And that's the thing that we try to capture, but how do you capture that? How do you put that into what they want to see?

Now, they don't want to hear that shit. Oop, there I go. We don't hear that stuff, you

know, but that's basically how they look at it, they see it like that and they say that, you know. How do we put that in there? And for so long a period of time people haven't been trying to. They say, oh, we can't do it, we can't introduce that into that. But they can. It's what's going to affect people. And if it affects people, you know, that's what this is all about, you know, an environment impact not just to that environment, but everything around. And we are the environment and so how does it impact us? And we've been trying to explain that to people and it's sometimes hard to get it.

MR. JOHN REYNOLDS: I think another really progressive step and specific agencies working with our tribes is on specific environmental and cultural management policies such as this one. You can ask the tribe if this specific act is sufficient, and both acknowledging and managing whatever their resources are, whether that's an archaeological investigation, or how, with an EIS, you're asking tribes and putting in an additional chapter. And if we can somehow reach the point with whatever specific agency is overseeing whatever specific practice is taking place, if they can actually ask the tribes if they think that this is

sufficient, and then begin working with tribes to make adequate additions. And if that's unclear, I can explain further.

MS. JAMIE MACALISTER: No, I think that's great. And one of the things that we will be doing is trying to capture this information as best we can and get it in our document and let you review it before we put it out.

MR. JOHN REYNOLDS: And just two really clear examples is I don't think EISs in the past have really captured how tribes are perceiving this. And then further, I don't think archaeological investigations really capture how a tribe perceives its archaeological resources. And that if we're working government to government, that dialog needs to take place and figure out how we can expand these existing practices.

MS. JAMIE MACALISTER: Yeah. I think this is really just the beginning of our efforts here. You know, this helps fill in one little piece of the puzzle. But as we keep going forward with this, there will be many more ways that we will need to get information from you and keep getting information from you. Not just on this project, but certainly everything on this project, there's still

a ways to go on this, how this ends up turning out. But on other projects in the future, this is really the beginning of our work together.

MS. NATALIE WEYAUS: That is good.

MS. JAMIE MACALISTER: I really just have -- we kind of talked about this directly and indirectly, but are there other cultural elements, and I don't mean just sites or places, but traditions that you see being threatened by the pipeline?

MS. NATALIE WEYAUS: This will be made whether we have input or not. With our leadership now at the national level, we just don't know what's going to happen. And it's people like our President that will allow things to happen and that's something that we won't be able to control. But we'll be there. If our people are opposed to it, they will be standing there and opposing it. I'm sure we'll go through a lot. But you can just sit back and watch, you know, when things don't turn out the way they're supposed to, and I suppose we'll have to say we told you so.

MR. TERRY KEMPER: Just that in itself and how Natalie talks is the emotional part of our disconnect that's going to happen from these things.

We're already disconnected, just from the way she says, and most Native people believe this now, with the apple and stuff like that, is that why are we even, it's going to happen.

But, like I said, we're sitting at a table again, you know. And even though we know that, we still have hope, you know. But we have hurt. We also have hurt in us even just knowing that for so long this is the occurrence that's been happening to us as a people. That we can speak now about it like it's an everyday thing, you know, because it's happened so much.

We're waiting for the time when people begin to see it and hear it and say wait a minute, yeah, you know what, they do have a valid point, it will affect other people, and what if it does happen. What if they do do that, what's going to be the outcome of it, you know.

And for us, we know the outcome. We've been through it. We've been through it many times over, and over and over and over again we've been through it. And there will come a time in the world where all people will begin to see it. And there will just be garbage on the earth. In the earth, on the earth, it'll be all over. And then what? Like

Natalie said, we told you so, you know. And that's not -- that's not something we look forward to or that we want to pass down to our ancestors.

Seven generations from now, I don't want my ancestors telling your ancestors, you know, our ancestors told you so. It doesn't have to be like that. And that's kind of where we're at today, though, because with the tree cutting, with the ownership, farms, and with the mining, and we told you so. We told you it was going to happen.

And we're at a point in time where does it benefit any of us, you know, does it benefit really a lot of people? No. Who does it benefit? Rich people. That's what it benefits. Majority of the people in the United States or anywhere don't get benefit from it. And if you do get a benefit from it, it's only for a short period of time and you make wages to pay your living and who benefits from that? The same people that put the company there, the company that's putting the pipeline through. They get your dollars after.

So it's a system that's really corrupt, it's a system that's not going to go anywhere. You know, it's going to implode at some point in time.

And we have our ancestors, our elders

retaining information that says take a look at it. Take a look at it and see it for what's going to happen, what can occur, you know. What are the impacts in the long run of this? Seven years from now, what are the impacts? And then seven years after that, what are the impacts going to be?

We already know that when they put the original pipeline in there and it ran through there, there's six more pipes that lay next to it and so we already know the impact of that area. We already know that it messed up that whole area that comes through. That people are living in fear of oil spilling into lakes. People that live in that area are living in fear of that. When is it going to happen? And right now they're at a time where it's now, you know. They're living in fear that any day now that pipeline can burst because they haven't up kept it, they haven't taken care of it, they haven't monitored it, and they haven't done what they said they were going to do. And so now people are living in fear.

Native American communities, and not only them communities, but other communities are living in fear every day that a pipeline is going to burst in their backyard and pollute the water or pollute

that system. So, you know, the impact of that is just in itself. So seven years from now, who is, you know, and now they want to leave it. They want to leave that pipeline in a corridor and just leave it there. That's like, to us, okay, that was seven years ago, seven years ago and maybe beyond that that they put the pipelines in and they continue to do that, so we already know the impact. That impact is that we'll just leave the garbage in the ground. We'll just leave it.

So if you're going to just leave the garbage in the ground, what makes you think I want you to put more garbage in my backyard, you know? If you put a dump in my backyard, am I going to like that? No. And then you leave it without cleaning it out? No. So that's what they're doing. And they're just leaving it in there. And now there's six more pipes in there that'll have their lifetime coming up and what are they going to do with that? Leave that garbage in the ground, too?

And so now you got a whole ecosystem, 100 miles of ecosystem that's been damaged, 100 miles of ecosystem that's been hurt. You've got new plants that came in there that are foreign, foreign plants. You got plants that don't get along with other

plants, that don't allow other plants to live. You got plants that hurt human beings. You got plants that blister your skin now that grow in them lines. You know, they grow in them lines where they dug it all up. And you can walk through that area and it will be full of Poison Ivy, Poison Oak, different things like that. I mean, just massively full of it. And you can't walk through that area without having some impact to you as a human being. You're going to have blisters, you're going to have sores on you.

There's plants in there that have needles on them now because they turned that soil up and so there's plants with thorns on them now. You go anyplace where there's been a pipeline put through, you'll find thorny plants, you'll find Poison Ivy, Poison Oak, you'll find all these plants in that area that affect the human being.

And if they affect us as a human being, what do you think they do to the animals out there? You know, the birds and the different things that are in there. And you got these other plants that are in there now that are coming, invasive species coming in that are even worse than the Poison Ivy, you know. And then not only that, but you got a

ecosystem now that's harmful to the insects. The insects now are -- their whole areas are turned up and you got different plants in there and everything, you know.

So what I'm saying is you can look at these pipelines and the corridors that are there, they're dumps now. They're dumps. That's what they're going to call it, you know. If they don't have responsibility to take them out or clean up their mess, it's a dump. So if it's going to be a dump, you look at what the dump has in it. The dump has in it thorny bushes, Poison Ivy, all these things where people can't go anyhow.

People won't want to go there to collect medicines. There used to be a nice area where you can go. You can look at the corridor now, where it goes, and it used to be just a pristine area. I mean, just beautiful forests and everything. The lumber company came in, cut it down. Then the pipelines came in and then the overhead, what do you call, the lines came in. Now you look at that whole area in there and it's just full of invasive species, full of all kinds of other things, it's hard to find any medicines that are good in there. But there are medicines that are in there that are

trying to clean up that ecological system and we have to leave them sit there in order to try and clean it up. Because the system itself tries to clean itself up, but when you have that massive amount of moving things around and putting foreign objects in there.

Just a funny joke. Just imagine if you were walking from your living room to your bedroom and all of a sudden there's a wall. Just out of nowhere there's a wall, you know. And you walk into it and you say, well, who put that wall up in here? Well, this company came in and said that wall was the best thing for us so they just said they're going to put this wall in there.

You think about those little worms that come in there, boom, oh, there's a wall. Think about those little moles and mice and stuff that live in the ground and the woodchucks and the otters and other things that dig in a hole and, bam, they run into that pipe. Well, what the heck is this here? It messes up. They don't ever think of things like that. We do. We think about that whole ecological system out there because it affects us. And so all those animals now that live in the ground, all the insects that live in the ground with

a foreign object sitting right in there.

Like I said, imagine you going from your living room and having to go to the bathroom and all of a sudden you run into the wall, you know. Because somebody said it's the best thing for you, you know.

It'll mess up your environment. You got to figure out how to get around it, how to go over it, how to do whatever to get to the place you want to get to, you know. And that's what we're dealing with.

I don't know if that explains anything to you guys, but --

MS. JAMIE MACALISTER: I just have one --

MS. LOUISE MILTICH: Can I do a follow-up on this?

MS. JAMIE MACALISTER: Yeah, go ahead.

MS. LOUISE MILTICH: I guess the question was about how the impacts of this project, you know, change cultural practices, your experience with the land. We're discussing climate change in the EIS. Can you talk a little bit about climate change and how climate change is affecting the way you interact with the land, the way you experience it?

MS. NATALIE WEYAUS: Climate change is

not created by anything but the people. The cars, the airplanes, all the automobiles. So it's happening. With all the new technology in place now, climate change is happening. And you just have to accept it. And we believe the way nature will change itself is by maybe more rain, more snow, who knows. It's never happened before, has it? Or was there a big flood once upon a time or --

MR. TERRY KEMPER: So you look at the ecological system, climate changes the trees, the wind, the rain. But the trees and the plants, they all have a significant impact to everything. We know that. We know that they're alive and living.

If you have a flower in your house and you talk to it it's going to grow nice, you know. And it's going to put oxygen, H2O in the air for you to breathe. At one time they say in the earth here, it used to be like a forest, it used to be like a jungle just full of pines and things and stuff like that. And the ozone, like the H20 level of the earth was 100 percent. Can you imagine the H20 level of the earth being 100 percent?

And there's a scholar, Vine Deloria, that talks about if it was 100 percent, that would mean that you as a human being could justify being 10

feet tall. Because if you're breathing in 100 percent oxygen, ozone level, oxygen level, your body is nourished, there's a part of you that grows. And if you're 100 percent, that makes you grow, your 100 percent oxygen would make you grow. Thus, over 100 years, over the years that have happened with deforestation, with plowing, plowing of whole fields of natural stuff, the ozone layers continue to go down.

There used to be fires and things like that, now it's big companies, corporations, pumping in cars, pollutants, spraying on the ground. So now, over the period of time, everything is getting polluted. Everything. So your ozone layer, now the people are even getting smaller. So you don't have tall people anymore. You got littler people 'cause they're not breathing the good ozone level, they're not breathing good air, oxygen, it's depleted.

So then you got the ozone layer which oversees the earth and the universe and it goes out and they say that they got big holes in that. There was a time when that ozone layer was bad at one time. Whether it was the earth, the sun, whatever it was that happened, and the whole earth had to redo itself. So whether it was flooding, whether it

was tornadoes, storms, hurricanes, different things, but the earth had to replenish itself again and it had to have time to heal. So in that time to heal we became what we are today. But now it's getting worse again.

So now we got an ozone layer that's totally, you know, have you ever been to the Cascades, or you go up above, if you go above the tree line or anywhere where you breathe, you can tell the difference in the air quality if you're in different areas where there's more vegetation, where there's more everything, you can tell the difference.

You can walk outside on the lakeshore, smell the lake. You can walk into the woods and you can smell the woods. You can go to Los Angeles, Chicago, the Twin Cities area, you will not get that smell. You will not feel that nourishment. Your whole body will actually have a different -- but the whole world is getting like that now.

So with the ozone level comes heat. Look at everything that's happened to this day right now today. The birds are flying different. The weather is different. Everything is different because of those changes to those layers in the earth, to the

air. So everything is changing. And to us that's impact to all of us. To everything out there. That impacts the trees, the water, the air. Because there's a natural cycle that I talked about earlier that everything has. Everything has that.

There's things that the government does that we don't know about. They spray little molecules up in the air, you know, the chem trails, all these other kind of things that they do. And they don't ask our permission for that, they're not asking anybody's permission. They're just doing it to control weather, to control other things. We know that as Native American people. How do we know that? Do you want me to tell you how we know that? Back when the nuclear wars were going on, when there was a nuclear like threat from Russia, do you remember as little kids going underneath your desks.

MS. DANIELLE OXENDINE MOLLWER: Yes, practicing the drills.

MR. TERRY KEMPER: Practicing the drills. There used to be a drill that we had to practice as little kids. And the siren would go off and we'd all get underneath our desks in the classroom because it was for a nuclear fallout.

Well, what they did was they came over

with big military planes over the Chippewa National Forest, over reservations and different areas and they dropped down these particles to see how far, if there was a nuclear fallout, if the bomb hit, how far that would travel. So they did all these experiments already in Native communities, in different areas. And this is all stuff you can read about, it's all stuff that they did already to check out that. So we know that they're doing things still to this day that's affecting. Because that in itself affected it, because they used some kind of chemical that they let out of the planes when they did that to see how far the air currents would carry that if there was a nuclear disaster.

And they're doing this all the time because you have a nuclear reactor down here in Monticello, so they're doing these kind of things all the time but they're not telling you. They're not doing EISs on it, they're not doing all these things down there, they're just doing these things.

So I'm the kind of person, I don't know about any of you guys, but when I hear a big military plane coming over on our reservation, I'm like, awe, shit, what are they doing.

MR. CARL KLIMAH: I was going to say, so

you asked how does the climate change directly impact the culture here?

MS. JAMIE MACALISTER: And changing --

MR. CARL KLIMAH: You do not have to look far. The bottom line, we got a warming lake up there, already we've seen the burbot go extinct practically in Mille Lacs Lake. So now we've got a situation where Band members, they can't even harvest the burbot because it's not there anymore. And now with the law declining, now our quotas are going super low. Another big one is tullibee, if the water pressures get too warm, I mean, they're already projecting to go extinct. And so now what happens in the other parts is these pipelines is going to impact and put limitations on their rights and that's just what it comes down to. You don't have to look far, you know, so I was going to add in that.

MR. CHARLES LIPPERT: And one other difference. Biogenic climate change and anthropogenic climate change. Biogenic climate change is motivated by the planet earth and it allows for the change and allows all of the living entities on earth to move and change with earth. But the anthropogenic climate change, it's human

driven and it does not allow for any other life forms to change with it. So this is basically a suicide kill for all of us. And reality is, earth sustains for life, and if anything does not promote life, earth will make sure that we will no longer exist and replace us with something that is going to promote life.

MR. TERRY KEMPER: Dun-dun-dun-dah.

MS. JAMIE MACALISTER: Terry is getting a little punchy.

Our last question really has to do with the water protectors and how -- the importance that the water protectors are in the Anishinabe culture.

MR. TERRY KEMPER: Well, what we just talked about, they're standing up for, you know. In the world that we live in we try to maneuver around to figure out how to -- because people wouldn't come to the table, you know, because people aren't listening. So when you're backed into a corner, you use the avenues that are available to you in order to say things are going wrong. And those were the avenues that were given to them and to our people now in the world. And the water protectors are some of the most -- what do you want to say, beautiful people.

Before even DAPL started there was a group of ladies that started walking with water. They were called the water walkers. And they came from each shoreline, from the south, from east-west and from the north, they bring water in copper kettles. And they walk with this water to all meet at the Great Lakes here. And I got a chance to walk with them and sing with them and do ceremony with them.

And at that point in time there was a lady, Josephine Mandamin, who had a dream that we have to protect the water. And this was years before DAPL, before the pipelines. Because there's a pipeline going through the Great Lakes up there and she seen the pollution that was happening and that companies were coming to the Great Lakes to take water out of there. And so they did this walk, so there's been many walks since then, of water walkers and stuff. But the original people that was there, we sat in ceremony with them, we had that, and it's kind of progressed now down to this point where it's at now.

So these people are considered sacred on our part. They're considered to be people that are utilizing what tools we have today in order to make

it known how important it is, the water. Thus being why you're sitting with us, because this pipeline is going to go through a watershed. This pipeline is going to go through the Land of 10,000 Lakes. And we've already seen what has happened in other places where oil has hit and how much they have not took responsibility and cleaned it up. They've covered it up.

And so those water protectors to us and to the Anishinabe, to the Lakota, to all Indians, to even people of other countries are people that are making a statement that needs to be heard. And so we look at them, you know, we honor them.

I think last week we met with Army Corps of Engineers and when we met with them there was a man that was put in jail. And he told his story and it's such a sacred thing that he went to jail protecting the water, protecting the people that were there, the old people, because they were being pushed around, they were being sprayed, dogs were being put on them. They got military out there after people that are in prayer for the water. That's how that company reacted to the people saying water is sacred, we can't have you steal water. And he went to jail for that. And the little bit I

could do is I make drums so I give to him a hand drum and told him that I appreciate, that's how important it is. And we all sat up and we healed.

With what happened out there, there's a lot of people hurt, because of when President Trump came in and did what he did and allowed it to go through, there was a lot of people that were hurt by that. A lot of Indians, a lot of other people that just see where it's all going and they were really hurt. And so, again, we all came together and we'll continue to do ceremonies to help them out, but there's a lot of hurt out there. And there's a lot of, you know, this is the next battle right here, Minnesota, 10,000 lakes. So, you know, those people are considered very, very, you know, highly respected.

But, remember, it comes from -- that whole thing came not just because of the pipeline, it came from a long time ago. These ladies, Josephine Mandamin is her name, and she is the lady that started to have a dream that we would be sitting in a time where pipelines were coming through, other things were coming through to mess that water up. So it's like Indian people, when they're connected to these things, they already send

the people. They already created this movement long before that pipeline came through. Because they knew that there was going to be that people needed to stand up at some point in time for that water. They needed to stand up for them sacred sites. They needed to stand up for those things in the past because the future relies on it.

And we've been through this road, we've been down through this road, you know. With the archeology, you know, you got a pipeline coming through and then once you do archaeological survey, okay, so you're going to dig up, do shovel tests and all of a sudden you find the bones, you find the bones of our ancestors. So then what happens? Well, they call the police force, they call these people, they come in and what happens? They dig up our people.

If we went and took all the graves from the white man's graveyard, dressed it up and said, oh, it might be an archeological dig, we went and dug up their ancestors and, oh, we found bones, call the cops, how would they feel? You know. And you got a pipeline wanting to come through and then what happens is they're going to dig them up anyhow. If they find something, make an inadvertent discovery,

it's boom, and then what happens, we get hurt again, everything.

So you talk about impact, environmentally to us the impact is immeasurable. And we've been through that because they've been digging us up under an archaeological field, permitted to dig us up like we were some kind of, you know, I don't know what you want to call it. Putting us in museums, putting us in for show, show pieces and stuff. We've been through this road for many, many years and we're just sitting at the table now with archeologists trying to get them to understand, okay, you dug this little spot here, there's a bone that came up, but maybe this whole area here is a sacred place because they put somebody there.

If you go to your cemeteries where you bury your people at, isn't that a sacred place to everybody? On the Fourth of July's, and certain times, birthdays and stuff, people come there and pray. People come there and remember them, you know. But they don't treat us like that. They dig us up. And so those are the things that -- and they don't see that impact. Oh, it's just an archaeological survey. They don't see the impact of that.

I sat on an archaeological survey as a Native American person finding artifacts of our ancestors and I said where are they going? Well, we got a property owner, we got to do this, we got to do that. It's like why am I even here? Why do I want to dig up my past, my ancestors, the things that they used and then give them to somebody else and you're not going to put them back? That's what we're dealing with. The hurt. The pain.

And so now you got major companies coming through and they're going to make inadvertent discoveries, that's just the bottom line, they're going to find stuff. That's it. More hurt. More pain for all of our communities. And I just do not understand how one group of peoples cannot see that, you know. I mean, before we even got to where we're at with the archaeological field, we literally had Native American people going to white people's graveyards saying we're going to dig them up, then, before they recognized that we were significant, that what they were doing was hurting us.

I remember some of those protestors that went to the graveyards with shovels and got arrested in order for the archaeological field to begin to understand that they were digging us up. I remember

those times. I remember them when they did that. And here we are today. You got a major pipeline wanting to go through. Is it going have impact? You're darn right it's going to have impact. They're going to find something in that corridor and they're going to dig it up and they're going to wonder where does it go. There are either going to be inadvertent discoveries of bones and things and it's going to go to the thing where reburial process is all taking over and that hurts our people, you know. So there's impact in all of that.

I just can't understand how one group of people doesn't see that, you know. How they don't see that any kind of bones or any kind of things like that of our ancestors -- if it was your ancestors, is that okay? You know, I don't think so. You know, it wouldn't be okay. Well, I'm going to put your mom and dad on display over here, you know, or I'm going to go put them in a box someplace and leave them.

You know, I went to this place down in Indiana, and it was a room twice as big as this, right, twice the size of this, and every shelf stacked to the ceiling was full of Native American bones. Or the basement of the Smithsonian. And

that's what they did.

So now I'm going to shut up because it's time to eat.

(Concluded.)

D

E

S

Organizations – Tribal and Nontribal

From: Janet Hill [mailto:janet.hill@rocketmail.com]
Sent: Wednesday, March 12, 2014 1:27 PM
To: Hartman, Larry (COMM)
Subject: Public Comment for PPL-13-474 (Sandpiper Pipeline Route), Alternative Routes

To the Minnesota Public Utilities Commission:

The Big Sandy Lake Association submits the following comment in response to the request for alternative routes for the Sandpiper project.

Who we are. The Big Sandy Lake Association (BSLA) is a strong, not-for-profit lake association in Aitkin County with 540 members. The BSLA has been in existence since the 1950s. Part of our mission is to promote good lake management for Big Sandy Lake, serve as the voice for our membership in matters under consideration by federal, state, and local government bodies and agencies, and promote the welfare of the lake, its watershed, and surrounding area.

About our area: Big Sandy Lake is located in the Big Sandy Lake Watershed, the largest acreage of which is in Aitkin County, and which includes parts of Carlton and St. Louis counties. The map below shows the watershed and the proposed pipeline route passing through it.

Big Sandy Lake is at the receiving end of water flow from this watershed; our lake is the last stop before the water heads into the Mississippi River via a short stretch of the Sandy River. As such, Big Sandy Lake receives all runoff -- natural and man-made -- that finds its way into our watershed.

Big Sandy Lake is one of Minnesota's premier recreational lakes. At 6,526 acres, it is among the largest lakes in Minnesota, and is a popular fishing lake. It has between 950 and 1,000 lake homes, of which about half are homesteaded. Its islands and peninsulas enhance its beauty, and its proximity to the Twin Cities make it a popular destination for cabins and camps. Many residents have property on the lake that has been in the family for generations.

Our lake has rich historical significance, in that Big Sandy Lake (formerly called Sandy Lake) was part of what was once the main trade route between the eastern and western United States. Many generations of native Americans, and later, fur-trading voyageurs, used this route as their main "highway." Their trail -- the Savannah Portage -- includes a six-mile portage between the West and East Savanna rivers (now within Savanna State Park, which is also within the Big Sandy Lake watershed). Beginning around 1755, this trail was used for more than a century as the main route between east and west by fur traders, explorers, and missionaries. It hosted explorers such as Zebulon Pike, Lewis Cass, and Henry Rowe Schoolcraft, who all wrote about Sandy Lake in their journals. During the fur-trade era in the early 19th century, two fur trading posts were located on Big Sandy Lake, and artifacts from these posts are still being found by local residents.

Our concerns: The BSLA has two main concerns with the proposed Sandpiper Project:

- Our first concern is with the very real possibility of oil spills and leaks within the Big Sandy Watershed if the Sandpiper corridor is built. Despite claims by Enbridge, pipeline spills and leaks *do* happen, and they have caused well-documented and widespread damage to regions through which Enbridge has installed pipelines. Our mission -- as an organization established to protect our waters
  -- makes it impossible for us to approve of a pipeline and its accompanying risk of spills and leaks to be constructed through the watershed that feeds our lake.
- We also are concerned with the number of pipelines that will eventually be installed in the Sandpiper corridor. Despite claims by Enbridge that this corridor is for one pipeline only, if the Sandpiper Project is completed, Enbridge will have in place the established infrastructure, the environmental protocol, and the market connections it needs to reduce its cost of installing more pipelines in this corridor in the future. It would be a stretch to assume that Enbridge, with its

apparent “need” for more pipelines, would not add pipelines to the Sandpiper corridor in the future. Each new pipeline increases the risk of spills and leaks. We also know that tar sands are among the materials being transported by Enbridge, and that there is a possibility that future pipelines could carry tar sands.

Enbridge claims that we take issue with: In the *North Dakota Pipeline Company LLC Minnesota Environmental Information Repor*t, Section 9.1 Major Basins and Watersheds, Enbridge writes, “The [Sandpiper] project also crosses the Big Sandy Lake Watershed Management Project between MPs 540.5 and 562.4 in Aitkin and Carlton counties, which includes Big Sandy Lake and Lake Minnewawa. Both lakes are currently listed as 303(d) impaired Waters List due to excessive nutrients, specifically phosphorous loading. Neither lake is crossed by the Project.”

In this statement, Enbridge appears to be saying that because Big Sandy Lake would not be crossed by the Sandpiper pipeline, and because it is on the impaired waters list, that it can be dismissed from consideration for protection. We have a few comments to make on this:

- The impaired waters status of Big Sandy Lake is due in part to phosphorus levels. These phosphorus levels are, in turn, partly due to organic phosphorus being washed down from the many wetlands in our watershed. In other words, part of our higher-than-acceptable phosphorus numbers occur *naturally*.
- The impaired waters list was not designed by the state of Minnesota to condemn lakes that need no protection. Quite the opposite: listing lakes and rivers on the impaired waters list is the first step in attempts to repair them. Once they're on the list, the state works with local governments and citizen groups to design clean-up plans, and state funds are budgeted for this purpose. Forty percent of Minnesota’s waters are on the impaired waters list and are receiving state funds.
- Over the past years, Big Sandy Lake and watershed has been the recipient of grants to study and help clean up our watershed from phosphorus. We received a grant for about $250,000 and have completed a TMDL study, and are working on projects that monitor phosphorus reductions of the watershed so it can meet Minnesota’s water quality standards. Thousands of hours have been spent on protecting Big Sandy Lake over the decades, by Minnesota Pollution Control staff, DNR staff, Big Sandy Area Lakes Water Management Plan (BSALWMP), Big Sandy Lake Association, and other volunteers, all working to protect our water.
- The Big Sandy Lake was awarded Star Lake status in 2010. This award is given to lake and river associations who meet eligibility requirements: the development of a lake management plan, a membership of at least 50% of private shoreland owners, and participation in a water quality monitoring program meeting Minnesota Pollution Control Agency standards. In other words, residents on Big Sandy Lake are committed to our lake and we work hard to protect it. We reject the notion that its status as an impaired waters lake makes it unworthy of protection from an oil spill.

Because of the reasons stated above, the BSLA urges that the Minnesota Public Utilities Commission consider the Northern Route Alternative, as described in the Minnesota Environmental Information Report, as the route for the Sandpiper pipeline because:

- it meets Enbridge's own stated requirements.
- it is already established.
- it will impact far fewer Minnesota residents, lands, and waters than the added Sandpiper route.
- it limits future spills and leaks to just one pipeline corridor instead of spreading the potential of spills to additional Minnesota counties.
- we feel that Enbridge is merely looking for the most convenient and cheapest way to expand their pipeline corridors, and we don’t feel that Minnesotans, now and in the future, should

have to pay such a huge price for the convenience of a corporation.

- the great risk to all of the water and lands that oil pipeline corridors cross prompts us to urge that the MNPUC work on behalf of current and future Minnesotans to keep new oil and tar sands pipeline corridors to a minimum, or reject them outright, for the future health of our state. Our state's waters and lands are much more important than moving oil and tar sands from one place to another.

The Big Sandy Lake Association takes this position not to protest Enbridge, but to protect the Big Sandy Watershed, Big Sandy Lake, and our county from harm. Our legacy to future generations of Minnesotans cannot take into consideration the desires of a company who puts its own profits ahead of our land and water. When the North Dakota Pipeline Company presented its “Certificate of Need,” to the MNPUC, it sounded to us more like a “Certificate of Want.” We all need to look ahead not just twenty years, but fifty years or two hundred years, and think hard about what we’ll leave behind if we allow these pipeline corridors to proliferate, to benefit a handful of company executives.

Bruce Johnson
on behalf of the Big Sandy Lake Association Board of Directors

-----Original Message-----
From: Janet Hill [mailto:janet.hill@rocketmail.com]
Sent: Monday, March 24, 2014 11:50 AM
To: Hartman, Larry (COMM)
Subject: PUC Docket 13-474: Sandpiper

Dear MN PUC Commissioners,

The Big Sandy Lake Association submits the following comment in response to the request for alternative routes for the Sandpiper project, docket 13-474.

Who we are: The Big Sandy Lake Association (BSLA) is a strong, not-for-profit lake association with 540 members. The BSLA has been in existence since the 1950s. Part of our mission is to promote good lake management, serve as the voice for the membership in matters under consideration by federal, state, and local government bodies and agencies, and promote the welfare of the lake, its watershed, and surrounding area.

About our area: Big Sandy Lake is located in the Big Sandy Lake Watershed, the largest acreage of which is in Aitkin County, and which includes parts of Carlton and St. Louis counties. The attached map shows the watershed and the proposed pipeline route passing through it.

Big Sandy Lake is at the receiving end of water flow from this watershed; our lake is the last stop before the water heads into the Mississippi River via a short stretch of the Sandy River. As such, Big Sandy Lake receives all runoff -- natural and man-made -- that finds its way into our watershed.

Big Sandy Lake is one of Minnesota's premier recreational lakes. At 6,526 acres, it is among the largest lakes in Minnesota, and is a popular fishing lake. It has between 950 and 1,000 lake homes, of which about half are homesteaded. Its islands and peninsulas enhance its beauty, and its proximity to the Twin Cities make it a popular destination for cabins and camps. Many residents have property on the lake that has been in the family for generations. Our lake has rich historical significance, in that Big Sandy Lake (formerly called Sandy Lake) was part of what was once the main trade route between the eastern and western United States. Many generations of native Americans, and later, fur-trading voyageurs, used this route as their main "highway." Their trail -- the Savannah Portage -- includes asix-mile portage between the West and East Savanna rivers (now within Savanna State Park, which is also within the Big Sandy Lake watershed). Beginning around 1755, this trail was used for more than a century as the main route between east and west by fur traders, explorers, and missionaries. It hosted explorers such as Zebulon Pike, Lewis Cass, and Henry Rowe Schoolcraft, who all wrote about Sandy Lake in their journals. During the fur-trade era in the early 19th century, two fur trading posts were located on Big Sandy Lake, and artifacts from these posts are still being found by local residents.

Our concerns: The BSLA has two main concerns with the proposed Sandpiper Project:

* Our first concern is with the very real possibility of oil spills and leaks within the Big Sandy Watershed if the Sandpiper corridor is built. Despite claims by Enbridge, pipeline spills and leaks do happen, and they have caused well-documented and widespread damage to regions through which Enbridge has installed pipelines. Our mission -- as an organization established to protect our waters -- makes it impossible for us to approve of a pipeline and its accompanying risk of spills and leaks to be constructed through the watershed that feeds our lake.

* We also are concerned with the number of pipelines that will eventually be installed in the Sandpiper corridor. Despite claims by Enbridge that this corridor is for one pipeline only, if the Sandpiper Project is completed, Enbridge will have in place the established infrastructure, the environmental protocol, and the market connections it needs to reduce its cost of installing more pipelines in this corridor in the future. It would be a stretch to assume that Enbridge, with its apparent "need" for more pipelines, would not add pipelines to the Sandpiper corridor in the future. Each new pipeline increases the risk of spills and leaks. We also know that tar sands are among the materials being transported by Enbridge, and that there is a possibility that future pipelines could carry tar sands.

Enbridge claims that we take issue with: In the North Dakota Pipeline Company LLC Minnesota Environmental Information Report, Section 9.1 Major Basins and Watersheds, Enbridge writes, "The [Sandpiper] project also crosses the Big Sandy Lake Watershed Management Project between MPs 540.5 and 562.4 in Aitkin and Carlton

counties, which includes Big Sandy Lake and Lake Minnewawa. Both lakes are currently listed as 303(d) impaired Waters List due to excessive nutrients, specifically phosphorous loading. Neither lake is crossed by the Project."

In this statement, Enbridge appears to be saying that because Big Sandy Lake and Lake Minnewawa are not being crossed by the Sandpiper pipeline, and because they are on the impaired waters list, that they can be dismissed from consideration for protection. We have a few comments to make on this:

* The impaired waters status of Big Sandy Lake is due in part to phosphorus levels. These phosphorus levels are, in turn, partly due to organic phosphorus being washed down from the many wetlands in our watershed. In other words, part of our higher-than-acceptable phosphorus numbers occur naturally.

* The impaired waters list was not designed by the state of Minnesota to condemn lakes that need no protection. Quite the opposite: listing lakes and rivers on the impaired waters list is the first step in attempts to repair them. Once they're on the list, the state works with local governments and citizen groups to design clean-up plans, and state funds are budgeted for this purpose. Forty percent of Minnesota's waters are on the impaired waters list and are receiving state funds.

* Over the past years, Big Sandy Lake and watershed has been the recipient of grants to study and help clean up our watershed from phosphorus. We received a grant for about $250,000 and have completed a TMDL study, and are working on projects that monitor phosphorus reductions of the watershed so it can meet Minnesota's water quality standards. Thousands of hours have been spent on protecting Big Sandy Lake over the decades, by Minnesota Pollution Control staff, DNR staff, Big Sandy Area Lakes Water Management Plan (BSALWMP), Big Sandy Lake Association, and other volunteers, all working to protect our water.

* The Big Sandy Lake was awarded Star Lake status in 2010. This award is given to lake and river associations who meet eligibility requirements: the development of a lake management plan, a membership of at least 50% of private shoreland owners, and participation in a water quality monitoring program meeting Minnesota Pollution Control Agency standards. In other words, residents on Big Sandy Lake are committed to our lake and we work hard to protect it. We reject the notion that its status as an impaired waters lake makes it unworthy of protection from an oil spill.

Our proposed alternative route.

Because of the reasons stated above, the BSLA urges that the Minnesota Public Utilities Commission consider the Northern Route Alternative, as described in the Minnesota Environmental Information Report, as the route for the Sandpiper pipeline because:

* it meets Enbridge requirements.

* it is already established.

* it will impact fewer Minnesota residents, lands, waters, and counties than the additional "preferred" route.

* it limits future spills and leaks to just one pipeline corridor instead of spreading the potential of spills to additional Minnesota counties.

* we feel that Enbridge is merely looking for the most convenient and cheapest way to expand their pipeline corridors, and we don't feel that Minnesotans, now and in the future, should have to pay such a huge price for the convenience of a corporation.

* Enbridge has an available pipeline in the northern corridor -- the Alberta Clipper pipeline -- that it can use for transporting Bakken crude instead of tar sands.

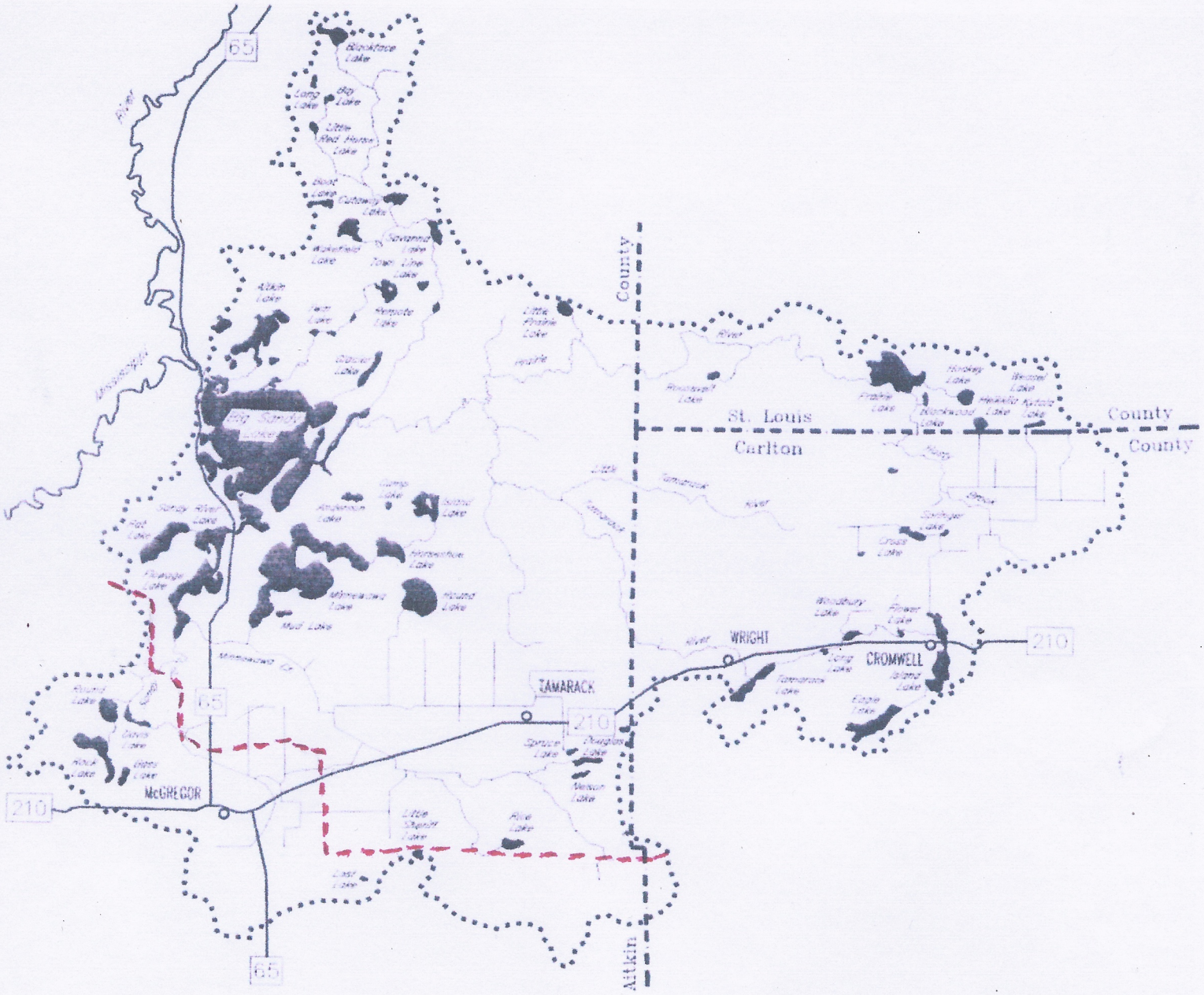
The great risk to all of the water and lands that oil pipeline corridors cross prompts us to urge that the MNPUC work for current and future Minnesotans to keep new oil and tar sands pipeline corridors to a minimum, or reject them outright. The Big Sandy Lake Association takes this position not to protest Enbridge, but to protect the Big Sandy Watershed, Big Sandy Lake, and our county from environmental and economic damage.

Our legacy to future generations of Minnesotans cannot continue to support a system that puts profits ahead of our

land and water. When the North Dakota Pipeline Company presented its “Certificate of Need,” to the MNPUC, it sounded to us more like a “Certificate of Want” for all parties involved in making money off this pipeline. We all need to look ahead not just twenty years, but fifty years or two hundred years, and think hard about what we’ll leave behind if we allow these pipeline corridors to proliferate, to benefit a handful of company executives.

Bruce Johnson
on behalf of the Big Sandy Lake Association Board of Directors

Map of the Big Sandy Area Lakes Watershed Management Project



PROPOSED SANDPIPER PIPELINE ROUTE ----

GREAT LAKES INDIAN FISH & WILDLIFE COMMISSION
P. O. Box 9 • Odanah, WI 54861 • 715/682-6619 • FAX 715/682-9294

• MEMBER TRIBES •

MICHIGAN	WISCONSIN		MINNESOTA
Bay Mills Community	Bad River Band	Red Cliff Band	Fond du Lac Band
Keweenaw Bay Community	Lac Courte Oreilles Band	St. Croix Chippewa	Mille Lacs Band
Lac Vieux Desert Band	Lac du Flambeau Band	Sokaogon Chippewa	

May 26, 2016

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

Ms. MacAlister,

Great Lakes Indian Fish and Wildlife Commission (GLIFWC) is an intertribal agency exercising delegated authority from 11 federally recognized Ojibwe (or Chippewa) tribes in Wisconsin, Michigan and Minnesota.[1] Those tribes have reserved hunting, fishing and gathering rights in territories ceded in the 1836, 1837, 1842, and 1854 treaties with the United States (Map 1). GLIFWC's mission is to assist its member tribes in the conservation and management of natural resources and to protect habitats and ecosystems that support those resources.

Enclosed are GLIFWC staff comments on the Draft Scoping Decision (DSD) documents for the Line 3 Replacement Pipeline Project and the Sandpiper Pipeline Project proposed by Enbridge Energy. At this stage of the Environmental Impact Statement (EIS), GLIFWC comments are general in nature. As the process moves forward, we expect that additional comment and interaction with the Minnesota Department of Commerce will occur. GLIFWC submits these comments from an off-reservation Ceded Territory perspective and an individual tribe may choose to submit comments from its own perspective.

---

[1] GLIFWC member tribes are: in Wisconsin -- the Bad River Band of the Lake Superior Tribe of 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, and Red Cliff Band of Lake Superior Chippewa Indians; in Minnesota -- Fond du Lac Band of Lake Superior Chippewa, and Mille Lacs Band of Chippewa Indians; and in Michigan -- Bay Mills Indian Community, Keweenaw Bay Indian Community, and Lac Vieux Desert Band of Lake Superior Chippewa Indians.

General Scoping Comments

Analysis of Impacts to Cultural Resources

The DSD Documents indicate that impacts to cultural and natural resources will be analyzed. However, it is important to note that for tribal members, natural resources *are* cultural resources. The Ojibwe have historically used and continue to use their natural resources within the Ceded Territories for spiritual, cultural, subsistence, medicinal and economic purposes. Tribal members harvest and consume freshwater fish, wild rice, and many other natural resources as part of their bimaadiziwin, or traditional lifeway, which incorporates culture, spirituality, language and traditions, including the harvest and consumption of traditional foods. The resources that tribal members depend on have been degraded over time through a combination of loss of access and environmental degradation. Pipelines are one of many constructed features that drastically alter the landscape and can diminish the resources tribes depend on.

The EIS, in its analysis of natural resources (surface and groundwater, wetlands, habitat, etc.) should recognize the importance of a healthy environment to tribes and describe the cultural ties of tribes to the potentially impacted areas of the proposed pipeline projects.

Spatial Extent of Analysis

The Sandpiper line is intended to transport Bakken shale oil from North Dakota to Superior, Wisconsin. Line 3 transports tar sands oil from Alberta Canada to Superior Wisconsin. Therefore, these projects are regional in scope and the impacts of these projects should be described at local and regional scales. We suggest that impacts of all existing pipelines in Minnesota should be done to define existing conditions for these projects. From GLIFWC's perspective, the impacts of pipeline projects on the 1837, 1842, 1836 and 1854 ceded territories should also be conducted (Map 1) with the Ceded Territories used as distinct geographic study areas.

Additionally, on a broader scale, the EIS should also use information developed for other pipeline environmental impact assessments in Wisconsin and North Dakota, and any pertinent information developed for other multi-jurisdictional pipeline projects, such as the Keystone XL project, because these proposals present similar permitting and environmental challenges as the Sandpiper project.

History of Pipeline Safety and History of Enbridge Energy

Enbridge Inc. has a questionable environmental record. From 1999 to 2010, Enbridge pipelines spilled over 7 million gallons of crude oil in over 800 different incidents across the United States and Canada (National Wildlife Federation, 2012). The

combined environmental effect of these incidents to wetlands and surface and ground waters has not been quantified. The most notorious spill involves a ruptured pipeline that spilled over a million gallons of heavy crude oil into the Kalamazoo River in the lower peninsula of Michigan in July of 2010. Thirty-five river miles downstream of the spill were closed by the EPA. Cleanup activities at this site continued until 2014 with costs exceeding 675 million dollars. Cleanup efforts were complicated by the heavy crude oil that, when spilled, sank to the bottom of the river and into the sediment. Line 3 replacement pipeline could transport this type of oil and the proposed Sandpiper pipeline could, potentially, transport heavy crude as well. Because of this, traditional oil cleanup techniques that involve surface skimming of affected waters could be ineffective and costlier dredging of substrates must be performed.

Given this history, the EIS must provide a complete accounting of all spills from pipelines. While it is important that Enbridge's historical operations record is identified, the information should include all companies operating in the region. Spills from local feeder lines should also be detailed. With each pipeline and feeder line operating in the region, the likelihood of spills increases and any cumulative impact of successive spills impacting the region is also potentially greater. This must be acknowledged by the EIS.

Surface and Groundwater Quality

The potential for these pipelines to rupture and cause an oil spill is a major concern. The EIS should document the environmental effects of past oil spills and scientifically assess the effects of a spill in the water rich regions of the Upper Midwest and Lake Superior regions. A systematic assessment of remediation and cleanup techniques must be provided for light and heavy crude oil along with a detailed review of the effectiveness of each technique. The EIS should also quantitatively assess the possible changes to surface and groundwater that may result from a spill.

The water quality assessment should pay special attention to potential impacts to Lake Superior. This analysis should be done in the context of the Great Lakes Water Quality Agreement, the bi-national Water Quality Agreement between Canada and the United States.

A cumulative assessment of all existing impacts from pipeline construction and pipeline spills on surface and groundwater should be conducted.

Wetland Impacts and Wetland Mitigation

Construction and expansion of pipelines involve wetland fill and hydrologic alteration that will affect wetland functions and values. Mitigation for wetland impacts that cannot be avoided will be required. However, the effectiveness of wetland mitigation, both through the use of wetland banks or rehabilitation of drained wetlands, is

questionable. The EIS should describe the effectiveness of wetland mitigation measures and assess whether all functions and values of lost wetlands are likely to be replaced.

Climate Change

Increased oil transportation capacity will contribute to existing CO2 emissions into the atmosphere and exacerbate global climate change. Potential impacts of climate change have been documented for the Ceded Territories through work of the Wisconsin Initiative on Climate Change Impacts (WICCI) and GLIFWC (Attachment 1). Potential impacts on the Lake Superior Basin have been described through the work of the Lake Superior Workgroup. Furthermore, the impacts on forest ecosystems have been described by the Northern Institute of Applied Climate Science (NIACS) of the USDA. The EIS should examine the effects that this project will have on carbon emissions as well as the effect on the climate change adaptation strategies that have been suggested for Minnesota and the Lake Superior region.

The DSD documents for both projects indicate that regional economic analysis of the effects of the projects will be conducted. These economic analyses should include information on the economic effects of climate change on the region and account for the contribution of the pipeline projects to these impacts.

The economic analysis should also describe treaty guaranteed usufructury rights of Tribes in the region and assess how the proposed pipeline projects would impact the ability of tribes to continue to exercise their rights.

Financial Assurance

As previously discussed, GLIFWC staff believe that spills of oil transported through these pipelines are likely. Cleanup and remediation are costly and require long periods of time to complete. The EIS should describe, in detail, the types of financial assurance that Enbridge will be required to provide to ensure that the public is not burdened with cleanup and remediation costs. Furthermore, financial assurance is needed to cover the costs of maintaining structural integrity of the abandoned Line 3 as well as the costs of ultimately removing pipelines from the right of way whenever that becomes feasible.

No Action Alternative

The no action alternative for the proposed Sandpiper project assumes that Bakken oil will continue to be shipped by other means. The assumption that oil extraction at current levels will continue to be necessary is not supported. The United States has decided against approving the Keystone XL pipeline. There are many reasons for this, but concerns over increased carbon emissions and their contribution to global climate change as well as concerns over accidental releases of oil are two of the most important reasons.

This same rationale applies to the proposed new Sandpiper line. The analysis in the EIS should acknowledge that the need for oil transported by the Sandpiper line and Line 3 is speculative and that this oil may not be needed nor desired, given the commitments the United States has made on climate change mitigation.

Cumulative Impact Analysis

In general, the description of cumulative impact analysis is appropriate. However, there are some points that should be clarified.

Page 13 of the Line 3 Replacement DSD document states:

> "Each project will have its own EIS, and the cumulative impacts of each project will be addressed in both EISs."

Page 15 of the Sandpiper Pipeline DSD Document states:

> "The Sandpiper EIS will analyze the potential impacts of the L3R Project as part of the EIS's cumulative impacts discussion. In addition, other projects throughout the Sandpiper corridor that may cause cumulative impacts will also be discussed at a local, county and larger regional levels."

Cumulative effects analysis must not be confined to the corridor of the pipeline projects. The analysis of cumulative effects should be broad enough to account for regional impacts such as habitat fragmentation and wetland fragmentation. Additional clarity on the spatial extent of the cumulative impact assessment is needed.

The EPA, in cooperation with Region 5 tribes, has developed a protocol for assessing cumulative effects on tribal resources. This guidance should be used in the EIS for the proposed pipeline projects.

Impacts of Routine Construction and Operation

The DSD documents for Sandpiper and Line 3 projects discuss the impacts of routine construction and operation activities. However, additional detail is needed to clarify the scope of the analysis. The EIS must describe the impacts of all activities related to pipeline maintenance into the future. This includes impacts from permanent and temporary access roads and activities needed to maintain cathodic protections in pipelines abandoned in place. The EIS must anticipate, based on past experience, all permits that the applicant will need over the lifetime of the pipelines and describe them in detail.

We look forward to working with the Minnesota Department of Commerce as the EIS process moves forward. Please contact me at 608-263-2873 with any questions.

Sincerely,

Esteban Chiriboga
GLIFWC Environmental Specialist

cc. Jonathan Gilbert, GLIFWC Biological Services Director (Acting)
Ann McCammon Soltis, GLIFWC Director of Intergovernmental Affairs
John Coleman, GLIFWC Environmental Section Leader
Philomena Kebec, GLIFWC Policy Analyst

Sources Cited

National Wildlife Federation, 2012, "The Anatomy of Enbridge's Once and Future Oil Spills, www.nwf.org.

Great Lakes Indian Fish & Wildlife Commission (GLIFWC)

Preliminary Climate Change Vulnerability Assessment for the Ceded Territories

Introduction

Sound conservation practices and management decisions are vital to GLIFWC's core mission of protecting and enhancing natural resources in the ceded territories. Climate data have shown that average temperature and precipitation in the ceded territories have been changing since the mid-1950's at least. These changes are due to increased greenhouse forcing in the atmosphere associated with the burning of fossil fuels. These rapid climate changes are, at best, another stressor on the ecosystems that tribes depend upon to exercise their treaty rights. At worst, these climate changes are a direct threat to the continued existence of treaty-protected natural resources that tribal members depend upon. GLIFWC has begun the process of assessing the predicted effects of climate changes on ceded territory ecosystems with the ultimate goal of developing a climate change adaptation strategy. This strategy will outline the conservation and management practices that can be implemented to protect traditional resources. It is important to note that climate change adaptation is a temporary measure that may reduce some of the impacts of climate change. The only permanent solution is to reduce the emissions of fossil fuels to the atmosphere.

This vulnerability assessment is the first step in developing an adaptation. It characterizes the potential climate changes expected within the Ceded Territory (e.g. temperature, precipitation, snow cover, etc.). It is important to note that this analysis treats the ceded territories as a distinct geographic unit and it is this ceded territory unit that is the focus of the study. The potential effects of climate change on a subset of species that GLIFWC member tribes harvest is also provided to add context to changes that the ceded territory is likely to experience. Finally, recommendations for additional, more detailed, risk assessment analyses are presented.

Predicted Climate Changes to the Ceded Territory

Temperature and precipitation are the driving variables in regional climate change research and are the basis of this vulnerability assessment. From those 2 variables, other factors that affect the ceded territory ecosystems like snow (quantity and timing), soil moisture, growing degree days, can be computed. This report relies on 2 datasets to examine the vulnerability of the ceded territory to predicted climate changes -- the National Center for Atmospheric Research (NCAR) and the Wisconsin Initiative on Climate Change Impacts (WICCI) downscaled climate change databases. Both the NCAR and WICCI datasets are computed by statistically downscaling the output of global climate change models (GCM). The underlying models used in the downscaling procedure are different for NCAR and WICCI, but at a ceded territory scale, the results are very similar. This dataset cross-check increases the confidence that the downscaling procedure is valid.

It is important to note that the downscaled climate change predictions that are the basis of this report are not without uncertainty. There are general conclusions that can be made with a great deal of scientific confidence. First, the climate of the Ceded Territories has changed and will continue to change in the future. Second, these changes are the result of enhanced greenhouse effect in the atmosphere that is caused by human emissions of carbon. Third, these climate changes, will have profound effects on plants and animals because these changes are occurring faster than ecosystems can change. What is uncertain, is the precise changes that will occur and the exact consequences that climatic changes will bring. Research in these areas is ongoing. For example, downscaled models of temperature and the associated vegetation shift have a greater degree of confidence that downscaled models of precipitation and lake levels. This report presents the best available information for the Ceded Territories in order to provide a preliminary assessment of changes and stresses to the ecosystems of the region.

This vulnerability assessment looks at predicted changes to ceded territory climate variable under two different global climate change scenarios -- A1 and A1B. These two scenarios were selected because, based on current carbon emission trends, they appear to be likely to occur in the future. The scenarios are defined by the Intergovernmental Panel on Climate Change (IPCC) as:

- A2. The IPCC A2 scenario describes a future world of intense fossil fuel use, rapid economic growth, global population that reaches 10 billion by mid-century, and the slow introduction of new and more efficient technologies. Major underlying themes are regional economic development and a lack of international cooperation. It can be considered a high emissions scenario.
- A1B. The IPCC SRES A1B scenario is marked by a balance in the use of fossil fuels and renewable energy sources. It is often thought of a mid-level scenario. It assumes very high economic growth and relatively low population growth . A convergence of global living standards results in a high per-capita demand for food, fiber, and energy. As a result, there is an increase in the human footprint on the landscape, with a decline in natural land covers such as grassland, forest, and wetland.

Changes to temperature and Precipitation are analyzed for the end of the 21st century (2099). While annual averages of temperature and precipitation are important in defining the scale of changes, considerable attention is given to the expected changes in climate during winter (monthly averages of December, January, February), Spring (monthly averages of March, April, May), Summer (monthly averages of June, July, August), and Fall (monthly averages of September, October, November). These seasonal changes are important in characterizing effects on the many seasonal activities in which tribal members engage.

Predicted Temperature Changes

Temperatures are expected to increase throughout the ceded territory. By the end of the century, average annual temperatures are predicted to increase on average across the Ceded Territories by approximately 4^{o}F under the A1B scenario (Map 1) and 5^{o}F to 6 ^{o}F under the A2 scenario (Map 2).

There are no significant seasonal differences in the magnitude of warming at a ceded territory scale The data indicate that greater warming is associated with the high emissions scenario.

Table 1: Predicted Seasonal Temperature Changes in the Ceded Territories by the End of the Century:

Emissions Scenario	Winter	Fall	Summer	Spring
A1B	2.7°F to 3.5°F	3.1°F to 4.1°F	2.7°F to 4.2°F	2.3°F to 3.4°F
A2	5.1°F to 6.9°F	4.8°F to 6.3°F	4.3°F to 6.8°F	3.4°F to 5.1°F

Interesting spatial patterns can be detected from the seasonal temperature data. During winter, the 1837 ceded territory is predicted to warm less than other ceded territories. This pattern is evident for both emission scenarios (Map 3 and 4). Maps for the Fall (Map 5 and 6) and Summer seasons (Map 7 and 8) indicate that the 1854 and 1837 ceded territories are predicted to warm more than the 1842 and 1836 ceded territories. This pattern is likely the result of Lakes Superior and Michigan moderating temperatures. The lakeshore areas and areas downgradient of the prevailing wind patterns are predicted to warm less than the areas upgradient of the lakes. Model predictions for the Spring season (Map 9 and 10) show different spatial patterns for the A1B and A2 scenarios. While springs are expected to be warmer, greater warming is expected in the western half of the ceded territories under the A1B scenario. The opposite prediction is evident during the A2 scenario. Spring is a notoriously difficult season to model because of the rapid changes that occur in the transition from snow and ice cover conditions to a dynamic growing season. The predictions are also complicated by the fact that there will be fewer days of snow and ice cover over the winter. Additional data are needed to provide greater clarity to spring season predictions.

Predicted Precipitation Changes

Precipitation is expected to increase throughout the ceded territories by the end of the century under both the A1B and A2 modeling scenarios (Map 11 and 12). The annual average increases are relatively small and the spatial pattern is the same for both emission scenarios. The modest increases in precipitation combined with the expected temperature increases suggest that the ceded territories are predicted to become drier as the evaporation potential created by the increased temperatures exceeds the additional precipitation.

Table 2: Predicted Seasonal Precipitation Changes in the Ceded Territories by the End of the Century

Emissions Scenario	Winter	Fall	Summer	Spring
A1B	0.3" to 0.9"	0.1" to 1.1"	0.2" to 1.8"	0.5" to 2.4"
A2	0.7" to 1.8"	0.5" to 1.5"	0.4" to 2.2"	0.5" to 1.6"

Downscaled model predictions of winter (Map 13 and 14) and fall (Map 15 and 16) precipitation indicate small increases and the predicted changes do not constitute significant deviations from existing

conditions at a ceded territory scale. At more detailed scales, topography and microclimates, including seasonal wind patterns, could have dramatic effects on precipitation patterns and their changes. Additional work in this area is needed. Summer precipitation is predicted to increase for both the A1B and A2 scenarios (Map 17 and 18). Under both scenarios, the models indicate that precipitation increases, if any, would be the smallest in the northern half of the ceded territory and increase to the south of Lake Superior. Large storm events are predicted to increase so the increased precipitation may come in the form of large storm events with drier periods in between. When combined with the temperature predictions it is reasonable to assume that conditions by the end of the century may be drier overall. Spring precipitation is also predicted to increase (Map 19 and 20) but As described in the temperature section, Spring is a difficult season to model because of the rapid changes that occur in the transition from snow and ice cover conditions to a dynamic growing season. Additional research is needed to provide greater clarity to spring season predictions.

Predicted Snowfall Changes

New research and downscaled modeling indicates that annual mean snowfall is expected to decline throughout the ceded territories. In addition, the beginning of the snow season is expected to occur later in the year and snowmelt is expected to occur earlier in the year. Thus, the duration of snow cover will decrease throughout the region. Individual snowstorms are predicted to become less common but more intense. Map 21 illustrates the predicted reduction in snow depth by comparing the average winter snow depth for the present, mid-21st century and late 21st century time periods. The location of the modeled 15 centimeter snow depth contour retreats to the north over time. By the end of the 21st century, the 15 centimeter contour is located almost entirely outside the ceded territory.

Predicted Change in the Frequency of Extreme Precipitation Events

Extreme precipitation events are expected to become more frequent. This is particularly important for the long term stability of existing infrastructure and of large-scale projects like metallic mines. Mines leave behind large tailings basins and waste rock stockpiles that become permanent features of the landscape. These facilities were designed and constructed with tolerances for climate extremes that will not exist in the future. New mines must incorporate additional safety and structural tolerances to account for increased climatic stresses. Extreme events will also likely impact natural ecosystems through increased flooding events, droughts, erosion, etc. Additional work is needed to characterize the effect these events may have on natural resources in the ceded territory.

Climate Change and Manoomin (Wild Rice)

Manoomin is highly important to the traditional lifeway and has a key role in Ojibwe history. The Sokaogon Chippewa Community established the location of their reservation because of the importance of Rice Lake to the band. The annual harvest of rice is a major event in the tribal year. Because of its unique characteristics, wild rice may be particularly vulnerable to climate change-related impacts.

Manoomin (Wild rice*)* Life Cycle (information from Peter David, GLIFWC Manoomin Biologist)

- Wild rice is an annual, cross-pollinated species.
- It generally grows in muddy shallow areas of lakes and streams.
- Wild rice requires about 2600 growing degree days (4.4° C base).
- Grows effectively in depths ranging from 6 to 36 inches (ranges are approximate) and site-specific hydrology is very important.
- Natural stands are found in water with <10 ppm of sulfate.
- Wild rice requires a certain amount of water flow,

Germination – Germination begins in late April to early May when the soil/water reach 5.6° C. During the seedling stage the leaves are submerged.

Some factors affecting plant growth:

- Turbidity/light penetration.
- Water Temperature
- Plant Competition and Shading
- Water Depth

Floating Leaf Stage – In May and early June, the next set of leaves that appear after the submerged seedling stage float on the surface of the water. All subsequent leaves are aerial.

Some factors affecting wild rice at this stage:

- Large storm/wave events can uproot the plant.
- Increased water level can drown the floating leaves.
- Herbivory by muskrat, deer, geese and swans.

Emergent Leaf Stage – In late June to early July additional aerial leaves and the main stem appear. This stage occurs earliest in shallow waters and later with increasing depth.

Some Factors affecting wild rice at this stage:

- Herbivory by muskrat, deer, geese and swans.
- Possible hail damage.

Flowering Stage – Flowering occurs in July. Pollen viability appears to be negatively correlated with temperature and positively correlated with humidity. In late July and August tillers begin to emerge and their maturity lags roughly 7 to 14 days behind the growth of the main stem. During August the grain is at an early stage of development.

Some factors affecting wild rice at this stage:

- Hot dry calm days at time of pollen release may hinder fertilization success and reduce seed set.
- Rice worm infestation (noctuid moth larva) can reduce seed yield by 10% per larva.
- Wind storms can knock the plant over or tissue can be damaged by hail.
- Drought can leave plants on exposed soil, stressing the plant in several ways.

Maturation Stage – Seeds mature and drop from the plant from late August through mid to late September. After dropping, the grains sink and are generally deposited in the sediment near the parent plant. Seeds will not germinate for at least 3 months after dropping and require a dormant period in water at or near freezing (<=35). The seed lies dormant in the sediment until the following spring when roughly 50% of the seed will germinate. Approximately 10% of the seed can remain dormant for up to 5 years, possibly longer.

Some factors affecting wild rice at this stage:

- Excessive sedimentation. Seed buried under >8 centimeters results in no emergence.
- Mild winters may contribute to poor rice season because the dormant period is too warm and because of the possibility of increased rice worm infestation.
- Over-winter drought conditions might lead to seed desiccation.

Other Concerns

- Climate change may alter wild rice's ability to compete with various species, including invasives.
- Brown spot (formerly called *Helminthosporium* brown spot) is the most serious disease affecting wild rice. This disease is caused by *Bipolaris oryzae* Luttrell (*Helminthosporium oryzae* B. de Haan) and *B. sorokiniana* Luttrell (*H. sativum* P.K. and B.). These fungi are considered to cause brown spot since both are found on infected plants and cause similar symptoms in wild rice plants. Every variety of wild rice, at each stage of development, is susceptible to brown spot. This disease is most severe when day temperatures range from 77 to 95° F and nights are 68° F or warmer. High relative humidity (greater than 89%), and the continuous presence of free water on leaf surfaces for 11 to 16 hours, can also favor infection. All parts of the plant are susceptible to infection.

Climate Change Parameters Important in Detailed Vulnerability Assessment:

GLIFWC staff developed an initial list of parameters that may be used in a detailed climate change vulnerability assessment for wild rice. The parameters are listed below.

Brown Spot Disease:

- Change in frequency of 77 to 90+ degree days.
- Change in frequency of night temp of 68 F or warmer.
- Change in frequency of relative humidity (>89%)

Risk of Uprooting:

- Change in frequency of 20 year flood events

Germination Success:

- Changes in winter temperature (more mild winters)
- Increased regional drought leading to lower water levels

Changes in Plant Competition

- Increase in number of growing degree days favor southern species

Risk of Pollination Failure -

- Increase in frequency of dry weather in July/August?

Map 22 indicates that by the end of the century summers in the western half of the ceded territory are predicted to be 5.9^{o}F to 6.8^{o}F warmer than current conditions under the A2 emissions scenario. Map 23 indicates that summers are predicted to warm between 2.7^{o}F to 4.2^{o} across the ceded territory, with the eastern half of the ceded territory predicted to warm somewhat less than the western half. All wild rice waters depicted in the map could be affected, but some areas may more severely impacted. As outlined above, brown spot disease is likely to become more common as the climate warms. The increase in extreme precipitation events will contribute to uprooting of plants during the floating leaf stage. At the same time, an overall drier climate may reduce pollination success. Additional work is needed to assess the effects on individual rice waters and the effect of the various climatic factors on the plant in increased spatial detail. The overall conclusion is that wild rice is vulnerable throughout the ceded territories with increased vulnerability on the western half of the region. It is possible that wild rice beds along the coast of Lake Superior may be sheltered from temperature-related impacts but the effects of Lake Superior level changes should be characterized.

Climate Change and Cold Water Ogaa (Walleye) Fishery

Coldwater habitats are defined by their maximum seasonal water temperatures (17 degrees Celsius during June and August). In general, rising air temperatures will be associated with rising lake and stream temperatures as well. Increasing temperatures have the potential to change coldwater habitats to cool water or even warm water habitats, subsequently affecting the ecology and species composition in lakes or rivers.

The spring walleye spearing season begins immediately after ice-out in inland lakes. Predicted spring temperature changes are likely to cause earlier ice out. Maps 24 and Map 25 indicate that the temperature of the air above many of the inland walleye lakes that are open for tribal spearing is predicted to warm between 2.3^{o}F and 5.1^{o}F during the spring season depending on the emissions scenario. Maps 26 and 27 characterize summer impacts to trout streams. Brook trout are among the most vulnerable species to water temperature increases because their habitat consists of shallow cold streams, which are highly affected by changes in air temperature. The maps indicate that some streams in the ceded territory are more vulnerable than others. Under both scenarios, the western end of the ceded territories is predicted to have greater impacts on coldwater habitats than the eastern side. However, the future water temperature in the individual walleye lake and trout stream will depend on many other factors, such as the health and quality of riparian environments and the amount of groundwater in the water budget for each individual waterbody.

Research conducted by the coldwater fisheries working group of WICCI indicated that brook trout, walleye and northern pike habitat is expected to decline throughout the ceded territory. However, at a ceded territory scale it is not possible to assess lake-specific vulnerability because lake temperatures in many cases are moderated by groundwater inflow, differences in lake morphology, and the characteristics of riparian zones. For example, deep natural lakes will warm less than shallow ones. Also, the degree of dependence of a lake on groundwater, its shape and depth, and the character of shorelines and riparian habitat will ultimately determine the water temperature increase and the viability of coldwater fish species. Trout streams with abundant shade trees will warm less than exposed stream banks. Generally, cold and cool water fish species are vulnerable to climate change, and vulnerability is greater in rivers, streams and shallow lakes. Additional work is needed to characterize vulnerability on a lake by lake basis because of the implications that climate change has on the different tribal activities that occur in the ceded territories. For example, it is known that lakes in the western side of the ceded territories are the first to thaw in the spring and therefore, tribal walleye spearing activities occur there and moves eastward as those lakes lose ice cover. If the eastern ceded territory warms at a faster rate, this pattern may change.

Climate Change and Mooz (Moose)

Moose habitat includes boreal forests and subarctic mixed forests. The southern limit of moose range coincides with the northern limit of the ceded territories for GLIFWC member tribes in Wisconsin and Michigan and have populations in northern MN and upper MI. Moose have specific temperature tolerances and prefer areas where the average summer temperature does not exceed 60^{o}F and winter temperatures that do not exceed 41^{o}F. Because of this, moose are easily heat stressed, and the effects of climate change upon moose are likely to be greatest in the southern limits of their range where temperatures and exposure to white-tailed deer parasites and ticks are greatest. Moose populations in Minnesota have declined substantially in recent years, and this decline has been correlated with increasing temperatures. In the Upper Peninsula of Michigan, recent population estimates suggest the growth rate of this re-introduced population may have slowed in recent years. The decline in moose populations are attributed to summer heat stress, increased mortality from parasites (more ticks survive in mild winters), and brain parasites carried by white tail deer. Maps 28 and 29 indicate that current moose ranges are in areas that are predicted to warm the most in the future for both emission scenarios. This suggests that winter stress from ticks will only increase. Maps 30 and 31 suggest summer indicating that summer heat stress will continue to be a problem throughout the ceded territories regardless of emission scenario. However, the moose range in the 1854 ceded territory is predicted to be more severely impacted than the moose ranges in the Upper Peninsula of Michigan. Regardless of the emissions scenario, the future of moose in the Ceded Territories seems uncertain.

Climate Change and Makwa (Black Bear)

Black bear habitat is found throughout North America in areas without significant urbanization. Because of their large range it is unclear how climate change may affect this species. Bears hibernate during the winter months when food is scarce; in the ceded territories, changes in temperature and shortening of the winter season are likely to change the timing of winter hibernation. Additionally, bears typically leave the den when ambient temperature is above 50^{o}F and snow is melting; this melting condition is predicted to occur earlier in the year, which may cause bears to emerge from hibernation before food is available. Map 32 and 33 depict the location of selected hibernacula and bear management zones where GLIFWC issues permits. The map indicates that spring temperatures are predicted to increase for both emission scenarios across the range of black bears in the ceded territories. It is therefore expected that bears will emerge from hibernation earlier in the year across all management zones. Additional research is needed to determine if this change in timing of hibernation is harmful to bear health, or if climate change will affect black bears in any other ways, such as impacts on food sources, access to water, etc.

Climate Change and Waabezheshi (American Marten) and Ochig (Fisher)

American Marten and Fisher are found in suitable habitats throughout the ceded territories. In the Wisconsin and Michigan ceded territories the Marten and Fisher are at the south fringe of their ranges and both species are sensitive to warm temperatures. The southern extent of the fisher range is determined by temperature. Aside from heat stress, a changing climate may provide fishers a competitive advantage over martens, because fishers appear to use a larger variety of forest cover types than martens. However, deep fluffy snow may give pine martens a competitive edge over fishers as well as thermal protection over the winter; the small rodents on which martens feed also need fluffy snow cover. The predicted reduction in winter snow cover (map 21) may allow fishers to outcompete martens throughout the ceded territory. Additional research is needed to fully characterize the effect that warmer temperatures and reduction of snow cover may have on these two species as well as the competitive relationship between them. In addition, both species have preferences for specific types of forest cover. The effect of climate change on those ecosystems should be assessed in greater detail.

Climate Change Parameters Important in Detailed Vulnerability Assessment:

- Change in temperature for summer and winter
- Change in snow depth
- Change in snow density
- Change in seasonal duration of snowpack
- Increased variability of spring temperature and precipitation. (Creates thawing and refreezing of snow which increase density.

Climate Change and Forest Species

Climate change is expected to affect the suitable habitat of tree species impacts to northern tree species are expected to lead to a conversion to other types of forests that are more common in southern parts of the country. This conversion is detailed in work conducted by the US Forest Service Northern Research Station. Three species are listed in this vulnerability assessment because of their importance to GLIFWC member tribes. The information is taken from the USDA tree atlas at http://www.fs.fed.us/nrs/atlas/. Additional information for other tree species is available at this site.

Wiigwaas (Paper Birch)

The historic range of paper birch encompasses the entire Ceded Territories (Map 34). Recently, a decline has been noted in populations of paper birch, potentially due to changes in climate. “Higher soil temperatures, windstorms and the arrival of new forest pests such as mountain pine beetles would impact almost every tree species found in the north woods today. Paper birch and Aspen would decline from increased drought. White cedar and white pine regeneration would be impacted by deer herds that expand thanks to milder winters”.

Paper birch is expected to decline in the ceded territories by between 58 and 87 percent depending on the emissions scenario (Maps 35 and 36). Paper birch are known to be fairly drought-intolerant, sensitive to higher temperatures, and dependent on productive soils. This is one of the species most severely impacted in the models.

Aninaatig (Sugar Maple)

Sugar maple is an important species for tribal members and is found throughout the Ceded Territory (Map 37). Warmer years can mean the sugar maple -tapping season can get shorter and shorter. Warmer weather can also lead to problems with pests such as the Asian longhorn beetle. An Environmental Protection Agency Climate Action Report from 2002 notes that "climate change is likely to cause long-term shifts in forest species, such as sugar maples moving north out of the Ceded Territories." This can mean that the migration of sugar maple northwards may be unavoidable and ultimately threaten this aspect of Ojibwe sustenance living.

Sugar maple is expected to decline in the ceded territories by between 38 and 69 percent depending on the emission scenario (Maps 38 and 39). It is not expected to be completely eliminated from the CT but this species is vulnerable throughout the ceded territories.

Giizhik (Northern White Cedar)

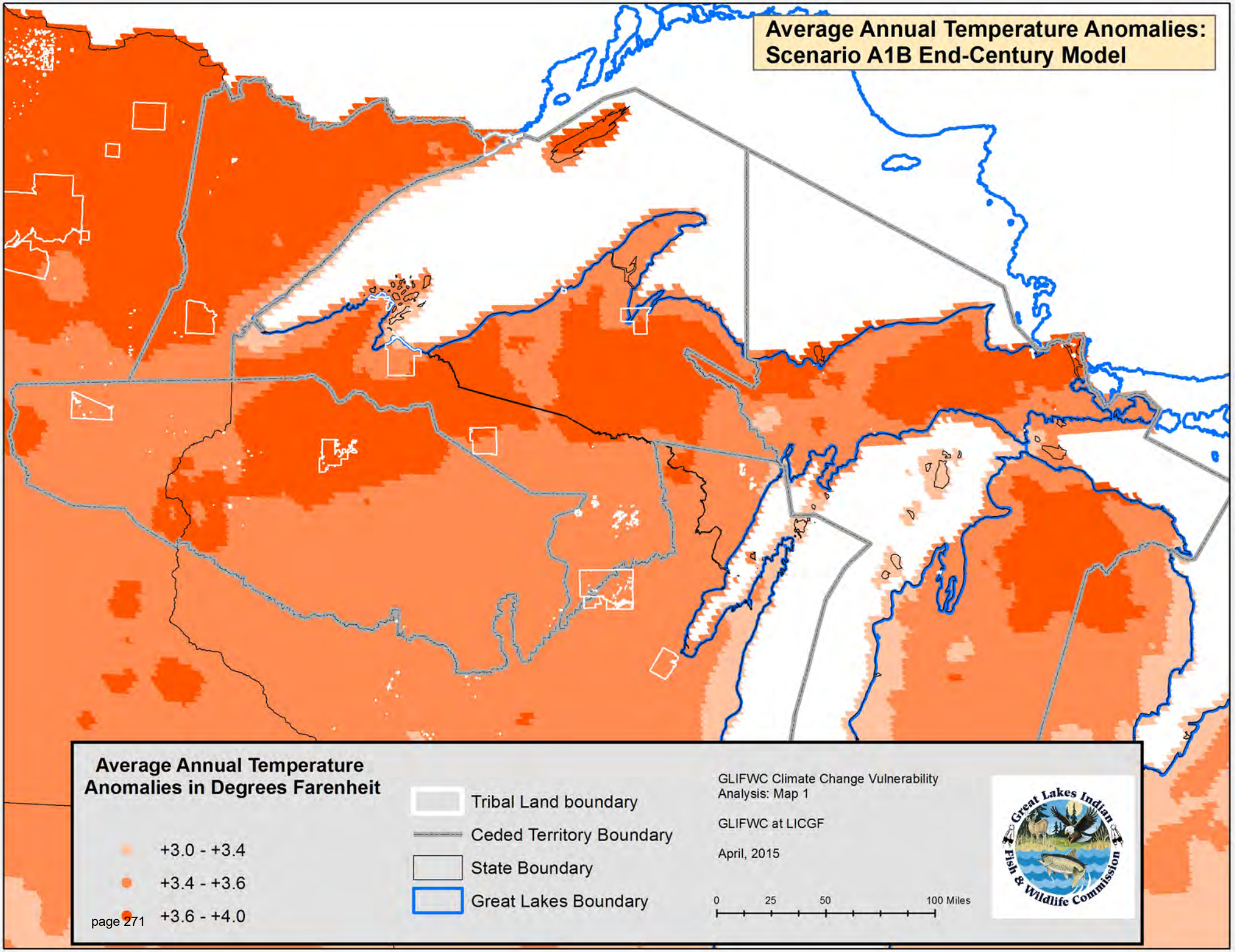
The current range encompasses the ceded territories but ends at the southernmost boundary, leaving it susceptible to northward migration, potentially eventually out of the ceded territories. In this area the warmer climates and longer growing seasons can have a “cumulative negative impact of all drivers of change. Storms, fires, invasive insects, and unsuitable climate will remove mature forests from the landscape, increasing deer populations will prevent reproduction of several species that would otherwise be resistant to the impacts of a warmer climate, including white pine, northern red oak, yellow birch, and northern white cedar”.

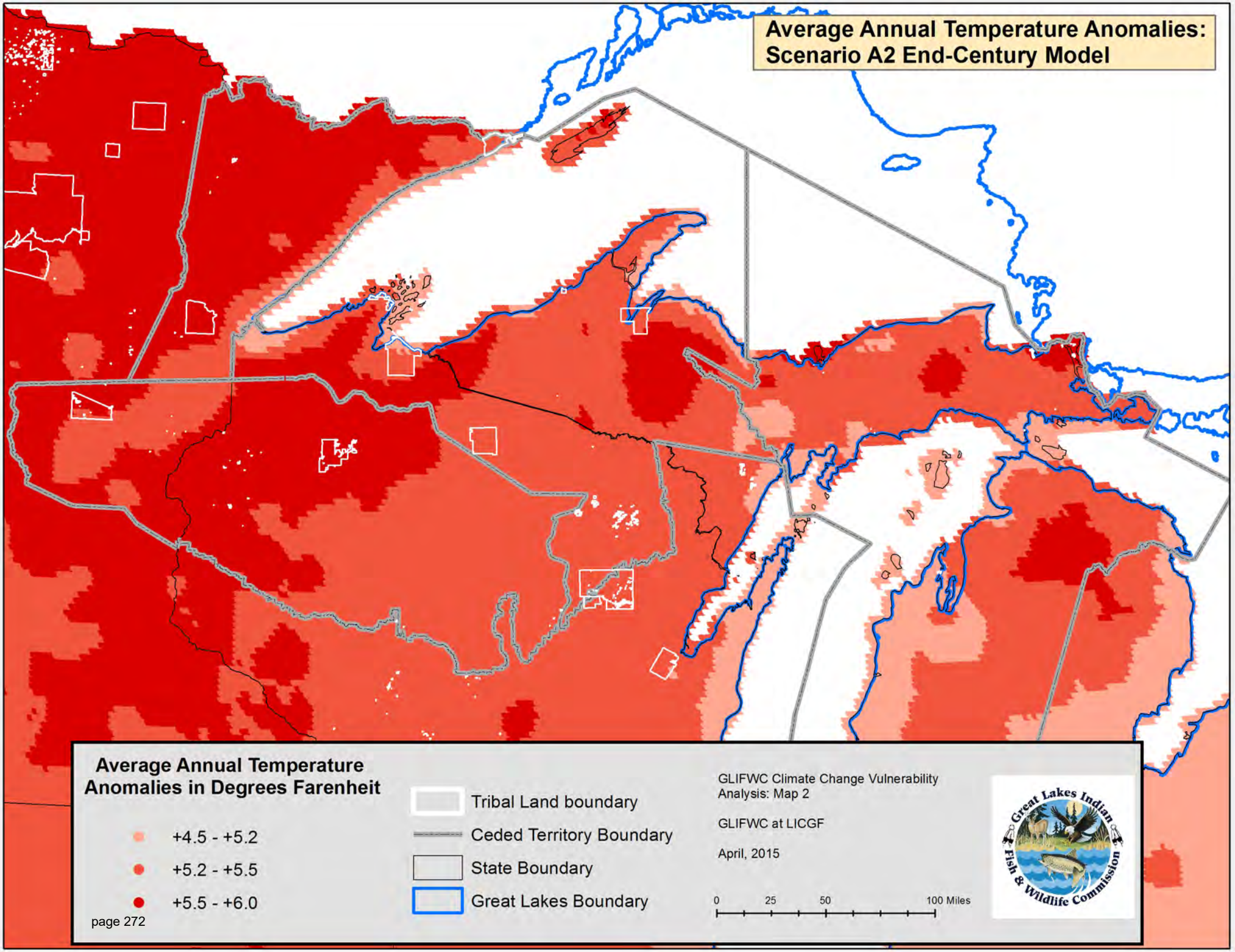
Discussion on Invasive Species

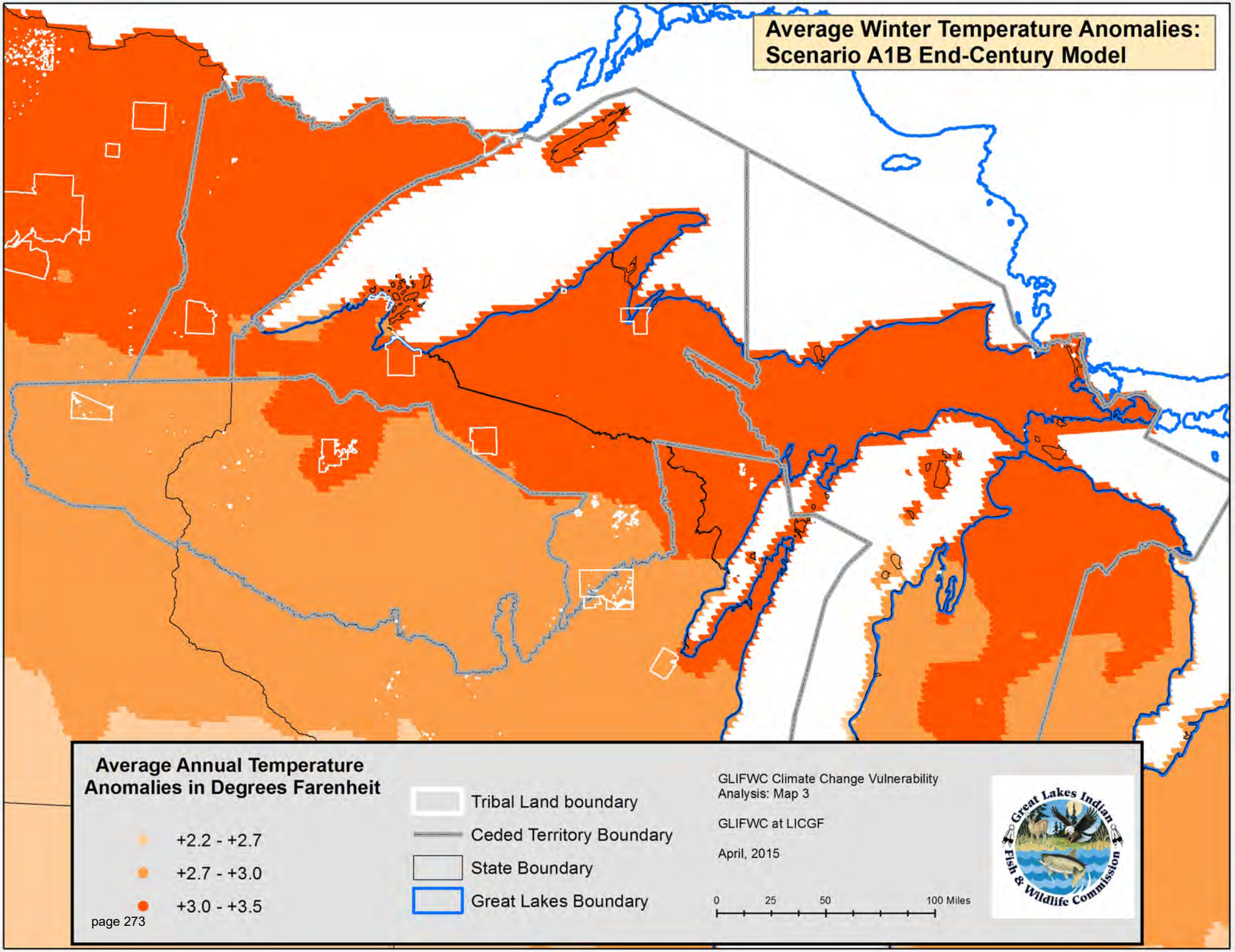
Invasive species are a non-climate stressor impacting habitats and species in the ceded territory. For example, emerald ash borer will have impacts on ash trees before the mid- and late century timeframes used in this assessment. Invasive species could create a positive feedback loop in which impacts from existing invasive species are expected to continue as climates change, and native habitats that have been degraded by invasive species become more vulnerable as climate changes. Future climates may then increase the likelihood of new infestations. For example, currently, the gypsy moth and asian carp cannot easily colonize areas of the ceded territory because they are limited by air and water temperatures. As both of these air and water temperatures rise, they may be able to invade areas farther north. This vulnerability assessment does not address invasive species in detail and additional research is needed to thoroughly assess each species and determine the potential impacts it may have on ecosystems throughout the Ceded Territories as climate change progresses.

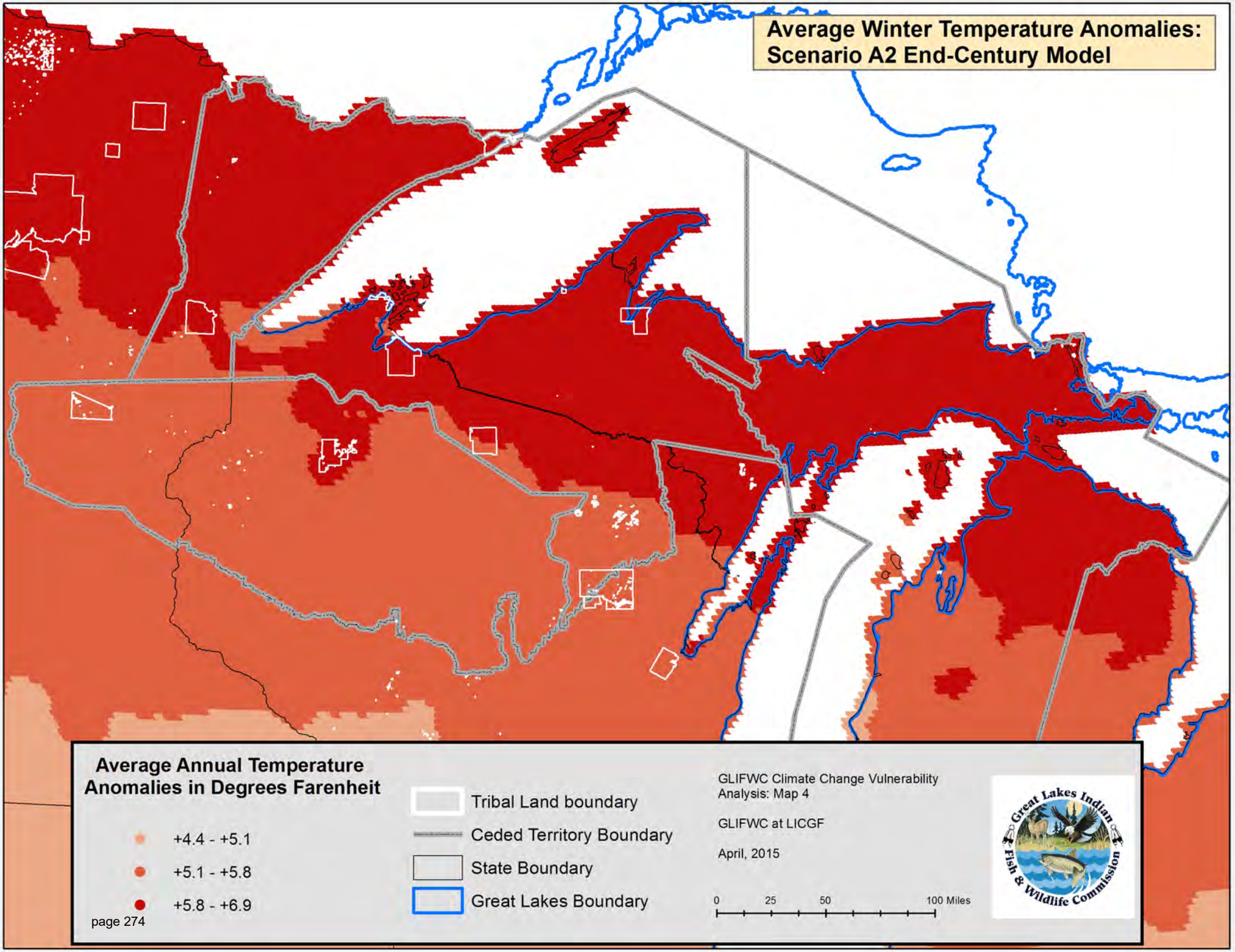
Acknowledgements

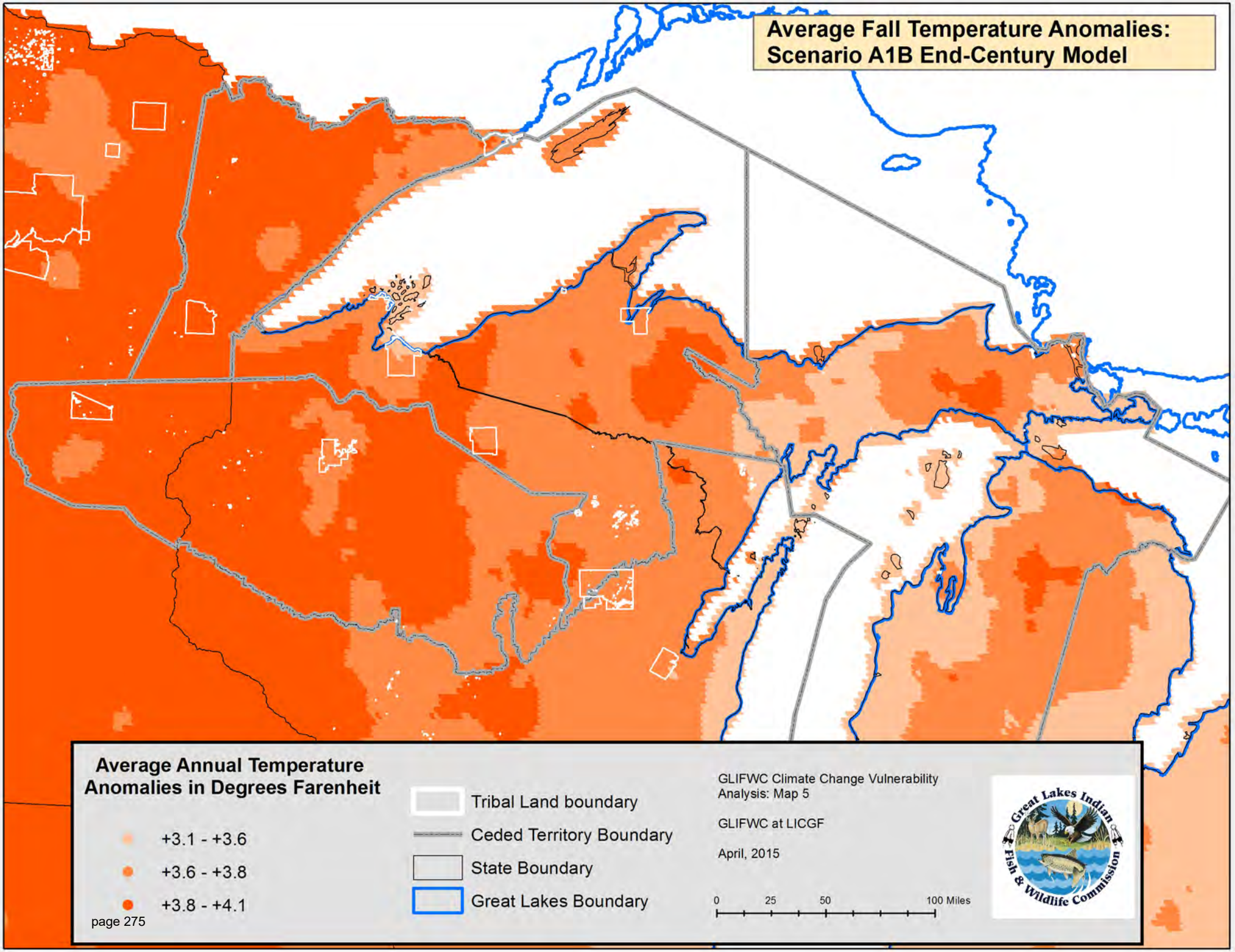
Downscaled climate change data were developed by University of Wisconsin-Madison researchers through the Wisconsin Initiative on Climate Change Impacts. Downscaled climate change data developed by the National Center for Atmospheric Research (NCAR) was also used to provide context to WICCI data. The biologic information (e.g. species range, habitat descriptions, etc) are based on the expertise of the GLIFWC wildlife section biologists.

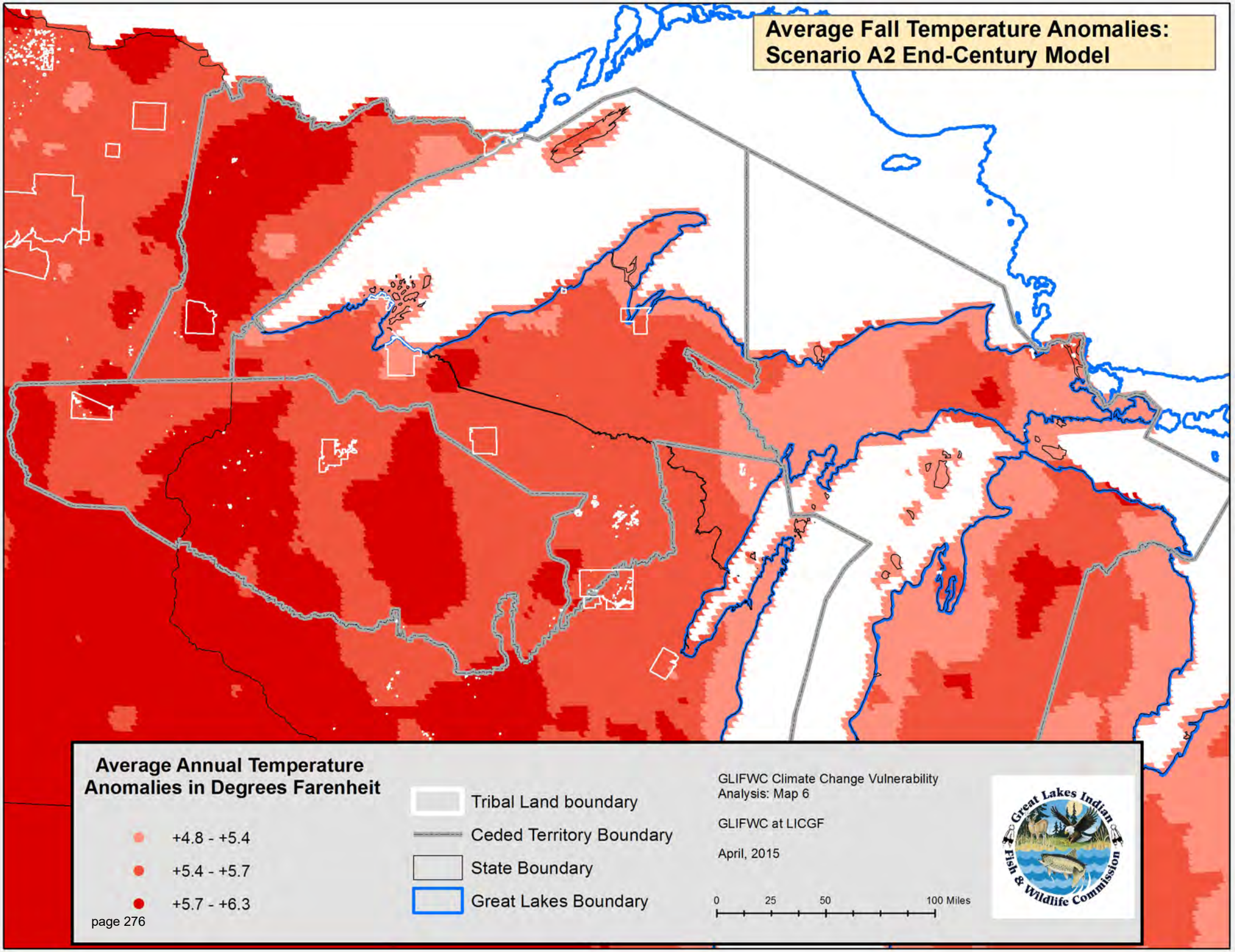

Average Annual Temperature Anomalies: Scenario A1B End-Century Model
Average Annual Temperature Anomalies in Degrees Farenheit
+3.0 - +3.4
+3.4 - +3.6
+3.6 - +4.0
Tribal Land boundary
Ceded Territory Boundary
State Boundary
Great Lakes Boundary
GLIFWC Climate Change Vulnerability Analysis: Map 1
GLIFWC at LICGF
April, 2015
0
25
50
100 Miles
Great Lakes Indian Fish & Wildlife Commission

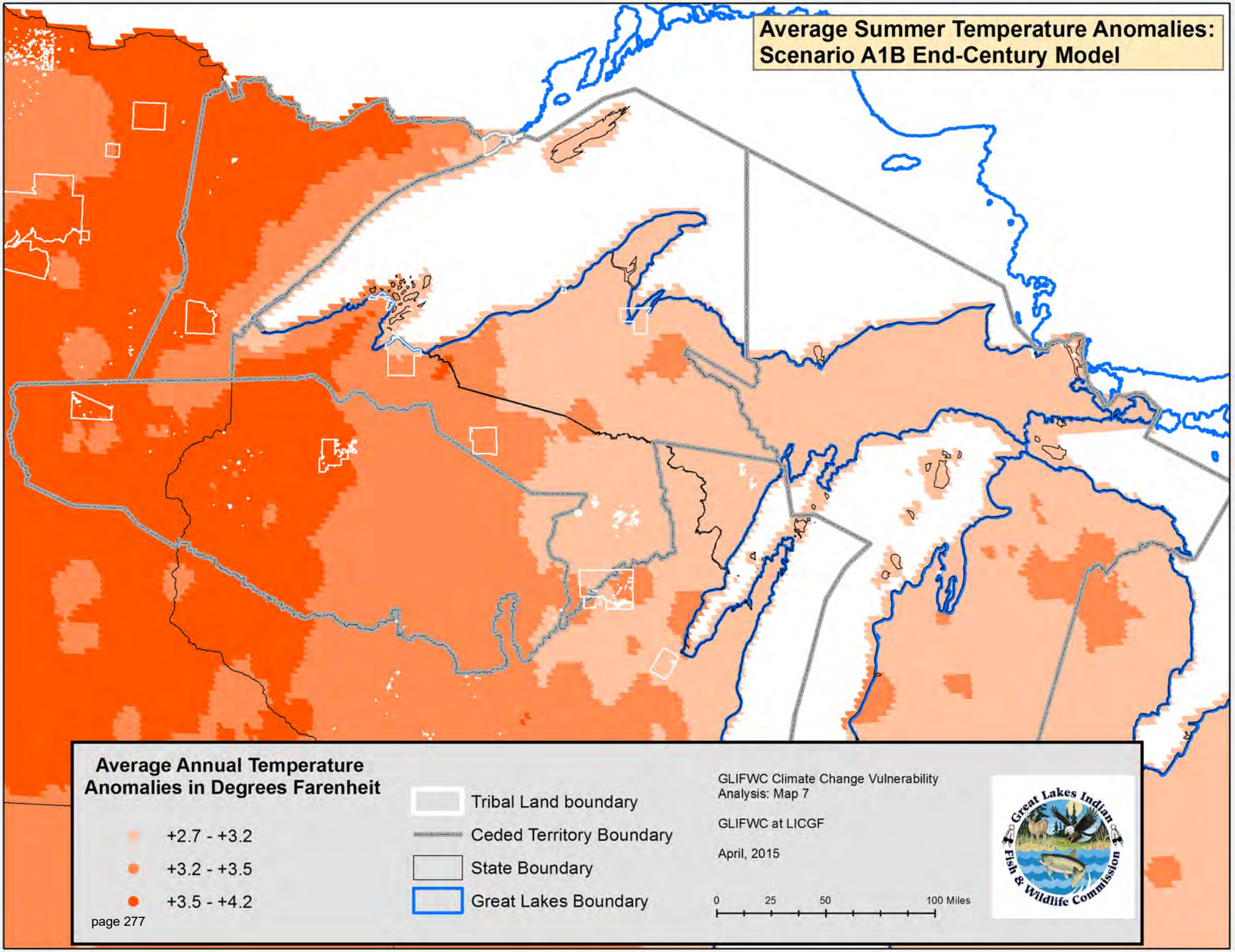

Average Annual Temperature Anomalies: Scenario A2 End-Century Model
Average Annual Temperature Anomalies in Degrees Farenheit
+4.5 - +5.2
+5.2 - +5.5
+5.5 - +6.0
Tribal Land boundary
Ceded Territory Boundary
State Boundary
Great Lakes Boundary
GLIFWC Climate Change Vulnerability Analysis: Map 2
GLIFWC at LICGF
April, 2015
0
25
50
100 Miles
Great Lakes Indian Fish & Wildlife Commission

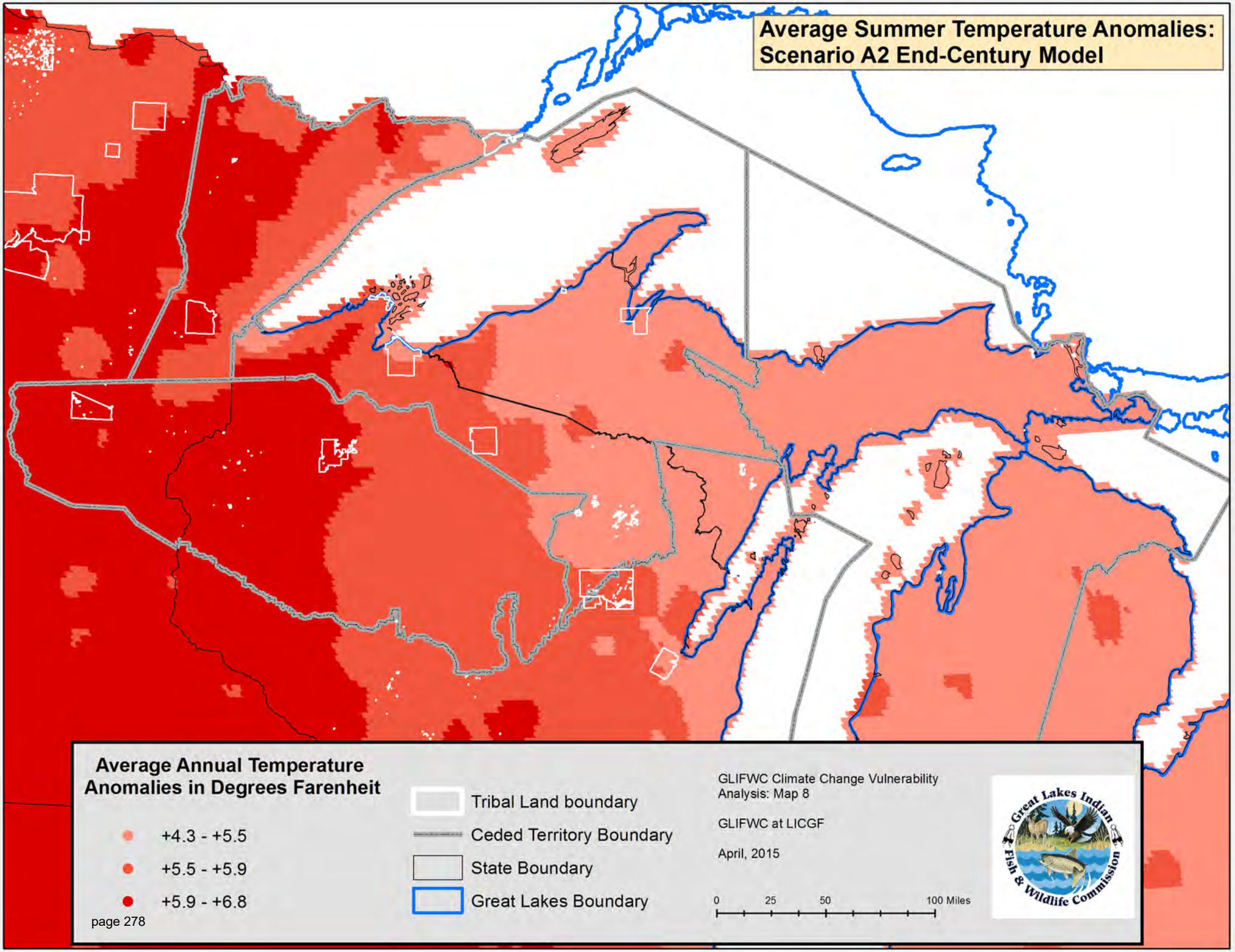

Average Winter Temperature Anomalies:
Scenario A1B End-Century Model
Average Annual Temperature Anomalies in Degrees Farenheit
+2.2 - +2.7
+2.7 - +3.0
+3.0 - +3.5
Tribal Land boundary
Ceded Territory Boundary
State Boundary
Great Lakes Boundary
GLIFWC Climate Change Vulnerability Analysis: Map 3
GLIFWC at LICGF
April, 2015
0
25
50
100 Miles
Great Lakes Indian Fish & Wildlife Commission

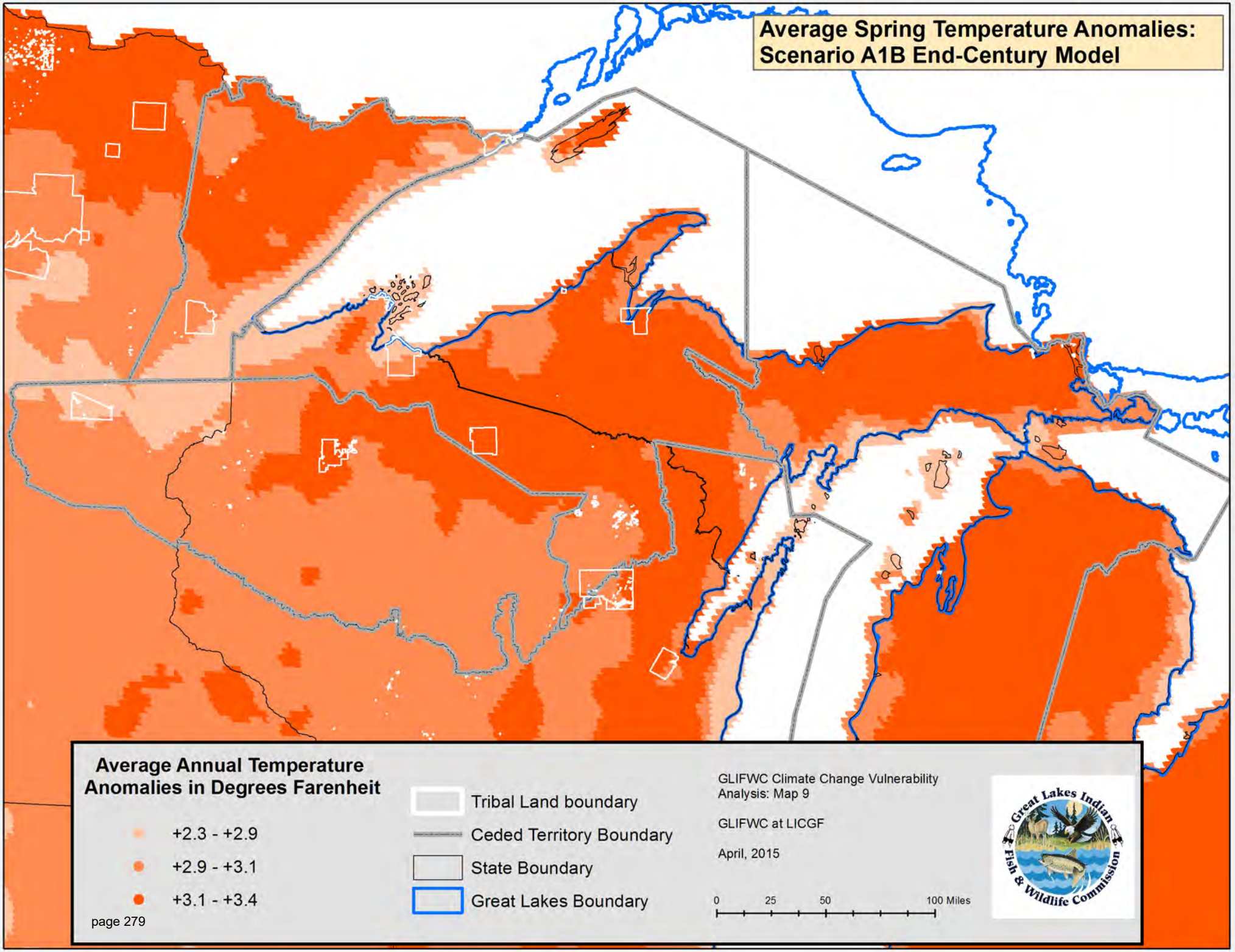

Average Winter Temperature Anomalies:
Scenario A2 End-Century Model
Average Annual Temperature Anomalies in Degrees Farenheit
+4.4 - +5.1
+5.1 - +5.8
+5.8 - +6.9
Tribal Land boundary
Ceded Territory Boundary
State Boundary
Great Lakes Boundary
GLIFWC Climate Change Vulnerability Analysis: Map 4
GLIFWC at LICGF
April, 2015
0
25
50
100 Miles
Great Lakes Indian Fish & Wildlife Commission

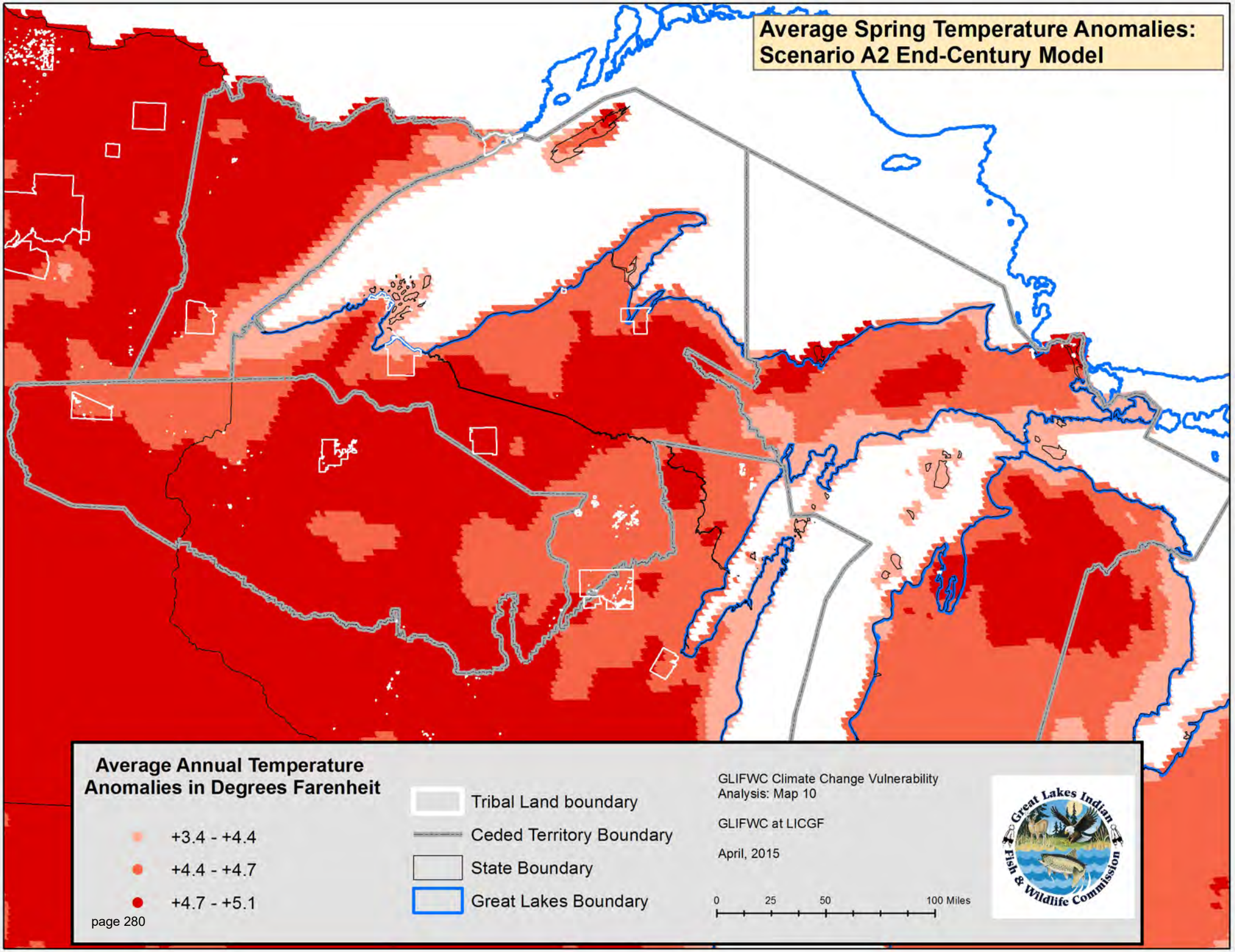

Average Fall Temperature Anomalies:
Scenario A1B End-Century Model
Average Annual Temperature Anomalies in Degrees Farenheit
+3.1 - +3.6
+3.6 - +3.8
+3.8 - +4.1
Tribal Land boundary
Ceded Territory Boundary
State Boundary
Great Lakes Boundary
GLIFWC Climate Change Vulnerability Analysis: Map 5
GLIFWC at LICGF
April, 2015
0
25
50
100 Miles
Great Lakes Indian Fish & Wildlife Commission

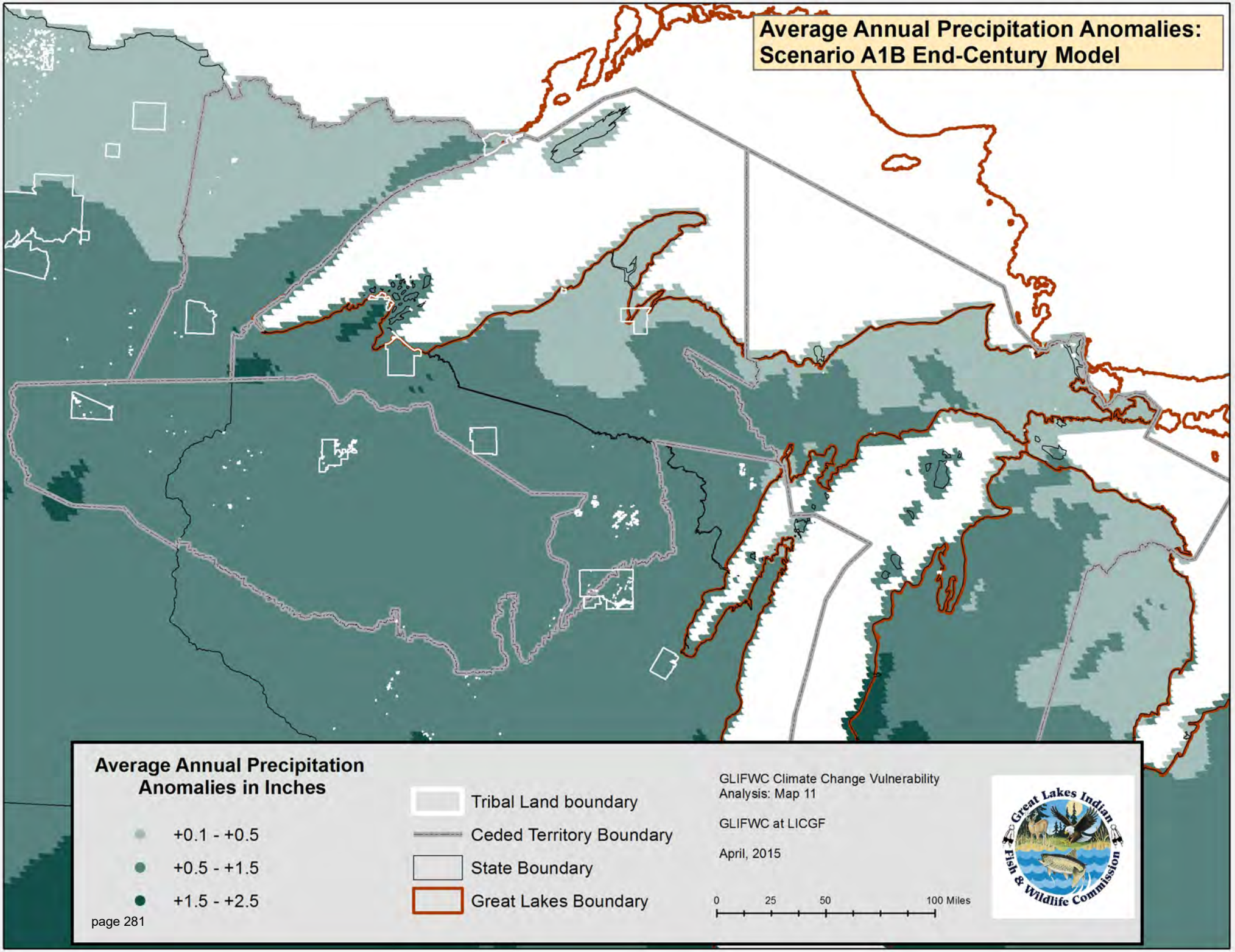

Average Fall Temperature Anomalies:
Scenario A2 End-Century Model
Average Annual Temperature Anomalies in Degrees Farenheit
+4.8 - +5.4
+5.4 - +5.7
+5.7 - +6.3
Tribal Land boundary
Ceded Territory Boundary
State Boundary
Great Lakes Boundary
GLIFWC Climate Change Vulnerability Analysis: Map 6
GLIFWC at LICGF
April, 2015
0
25
50
100 Miles
Great Lakes Indian Fish & Wildlife Commission

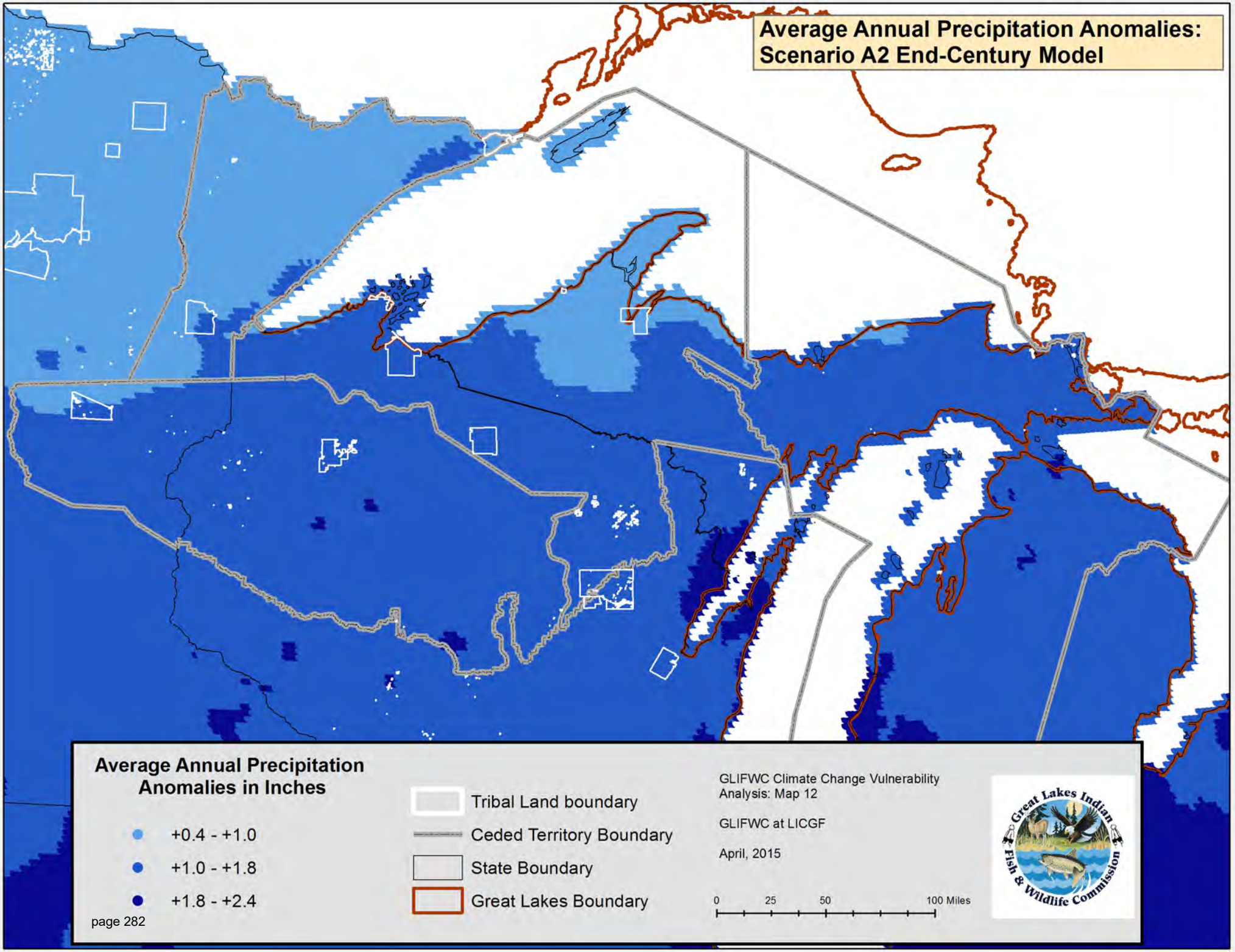

Average Summer Temperature Anomalies:
Scenario A1B End-Century Model
Average Annual Temperature Anomalies in Degrees Farenheit
+2.7 - +3.2
+3.2 - +3.5
+3.5 - +4.2
Tribal Land boundary
Ceded Territory Boundary
State Boundary
Great Lakes Boundary
GLIFWC Climate Change Vulnerability Analysis: Map 7
GLIFWC at LICGF
April, 2015
0
25
50
100 Miles
Great Lakes Indian Fish & Wildlife Commission

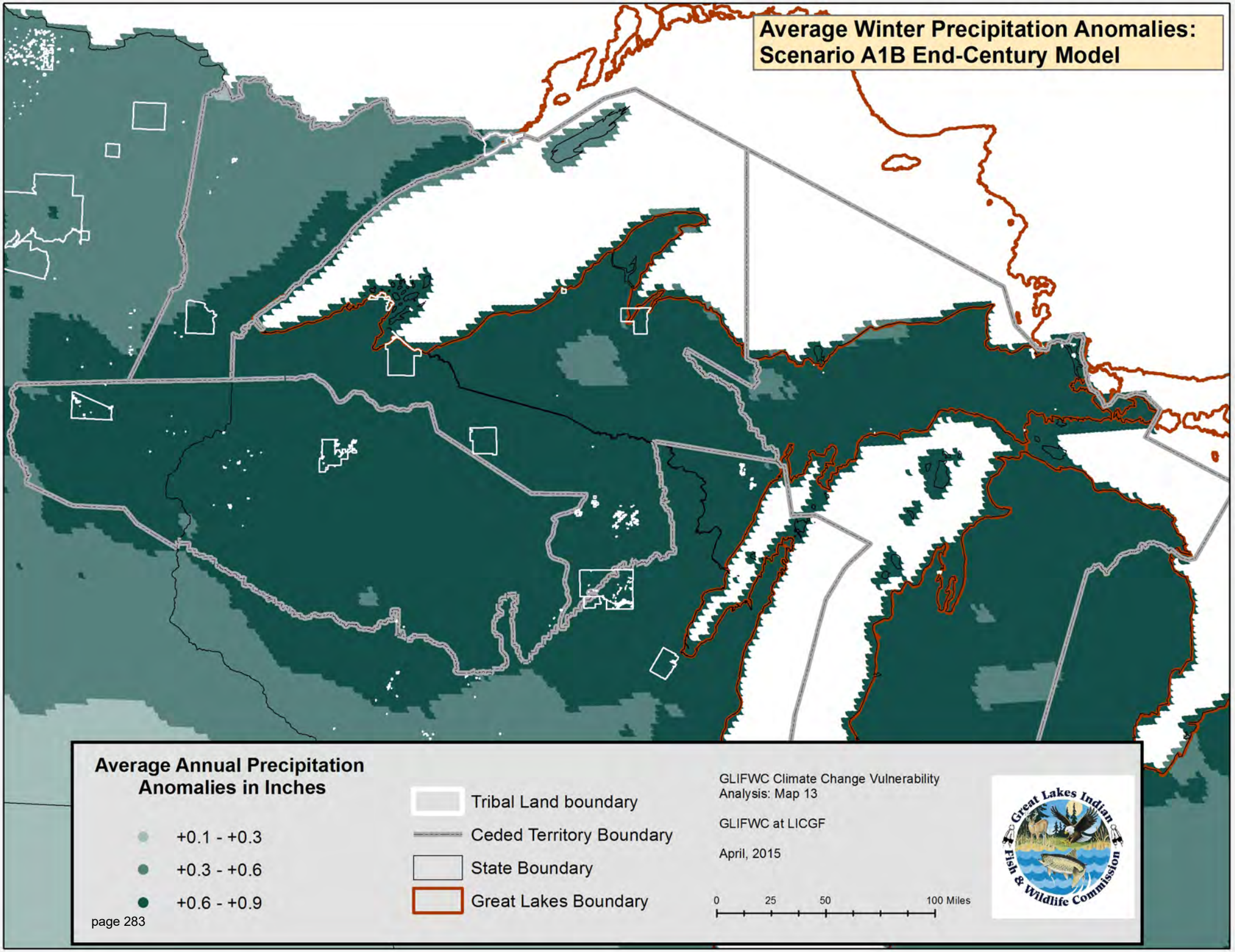

Average Summer Temperature Anomalies:
Scenario A2 End-Century Model
Average Annual Temperature Anomalies in Degrees Farenheit
+4.3 - +5.5
+5.5 - +5.9
+5.9 - +6.8
Tribal Land boundary
Ceded Territory Boundary
State Boundary
Great Lakes Boundary
GLIFWC Climate Change Vulnerability Analysis: Map 8
GLIFWC at LICGF
April, 2015
0
25
50
100 Miles
Great Lakes Indian Fish & Wildlife Commission

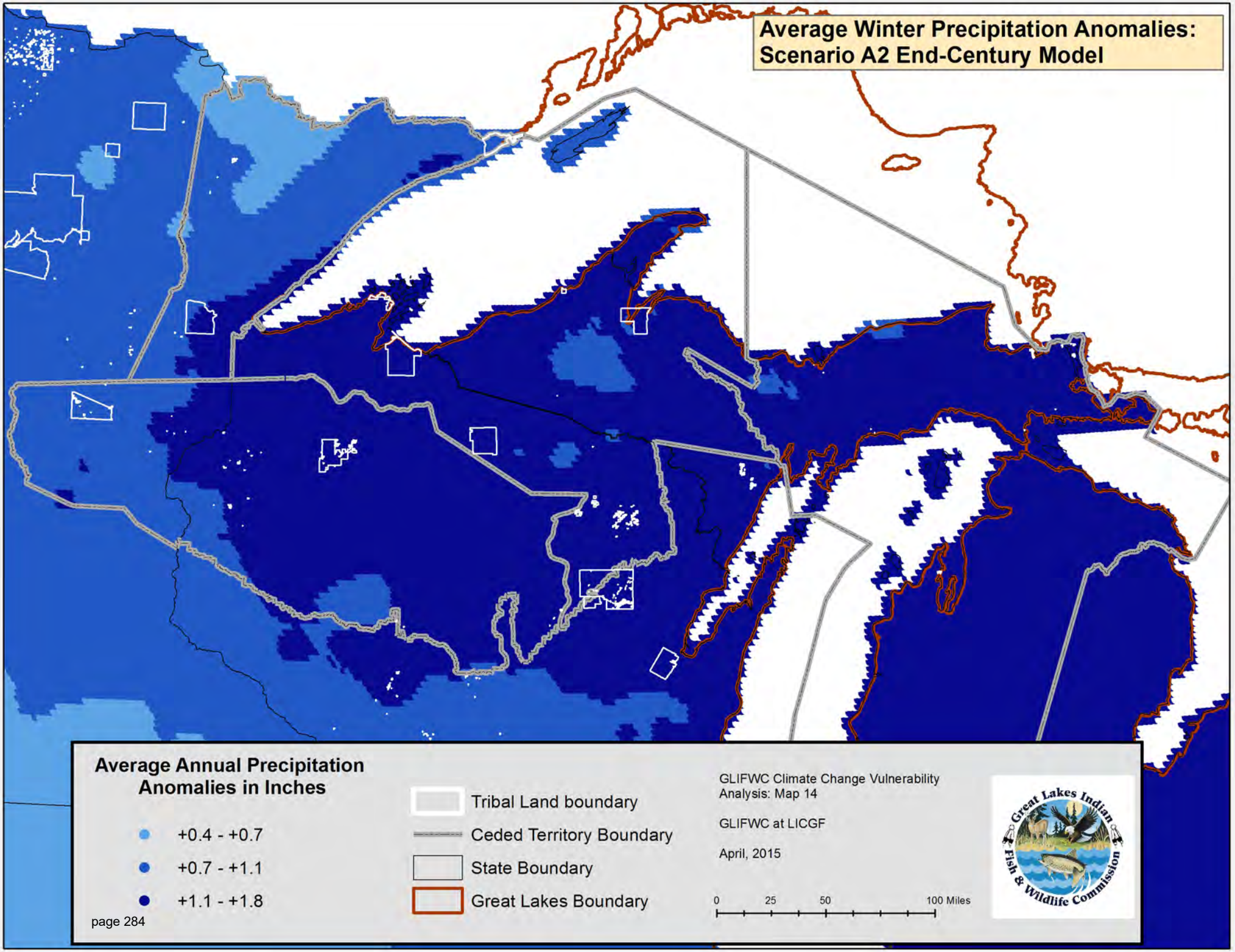

Average Spring Temperature Anomalies:
Scenario A1B End-Century Model
Average Annual Temperature
Anomalies in Degrees Farenheit
+2.3 - +2.9
+2.9 - +3.1
+3.1 - +3.4
Tribal Land boundary
Ceded Territory Boundary
State Boundary
Great Lakes Boundary
GLIFWC Climate Change Vulnerability
Analysis: Map 9
GLIFWC at LICGF
April, 2015
0
25
50
100 Miles
Great Lakes Indian
Fish & Wildlife Commission

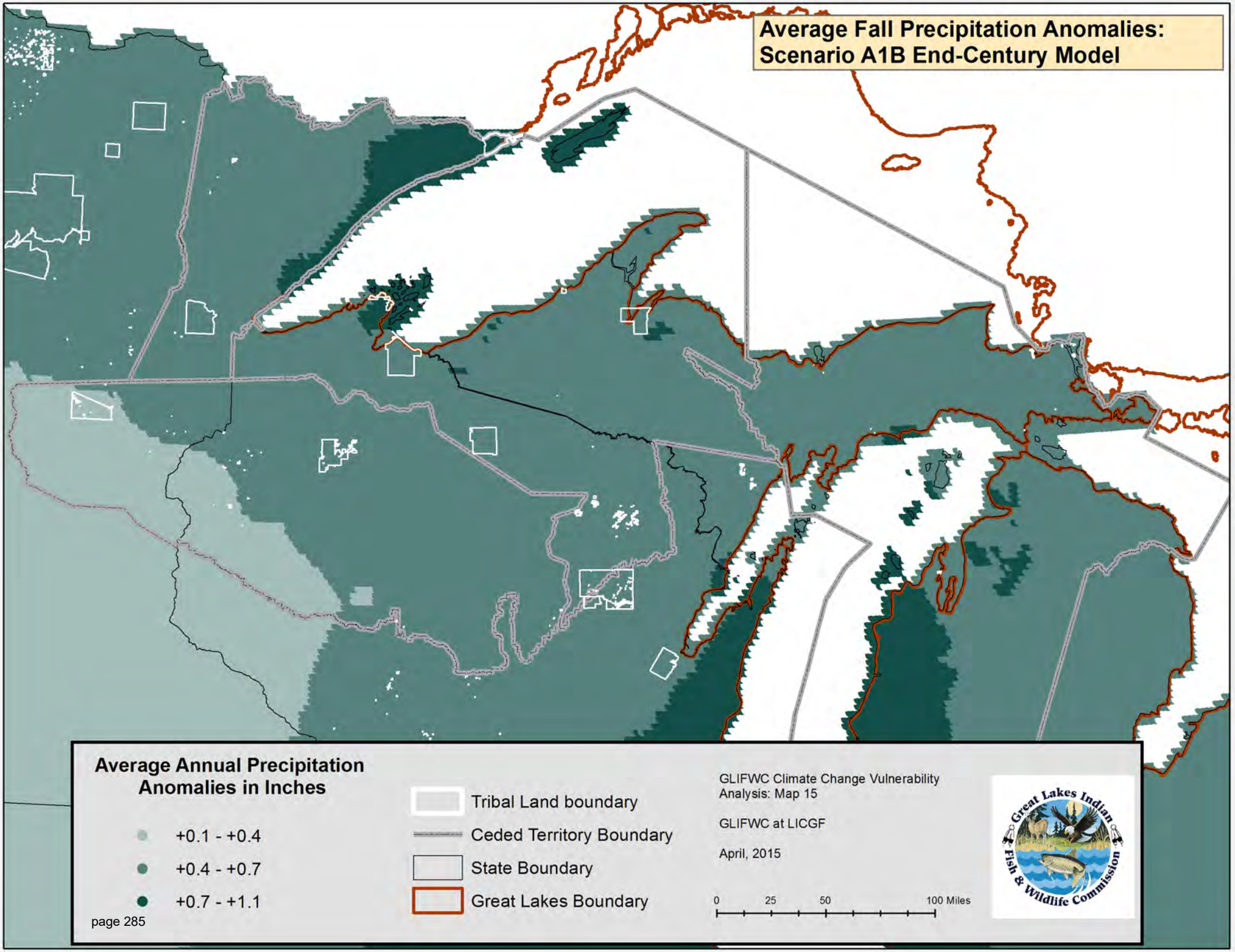

Average Spring Temperature Anomalies:
Scenario A2 End-Century Model
Average Annual Temperature Anomalies in Degrees Farenheit
+3.4 - +4.4
+4.4 - +4.7
+4.7 - +5.1
Tribal Land boundary
Ceded Territory Boundary
State Boundary
Great Lakes Boundary
GLIFWC Climate Change Vulnerability Analysis: Map 10
GLIFWC at LICGF
April, 2015
0
25
50
100 Miles
Great Lakes Indian Fish & Wildlife Commission

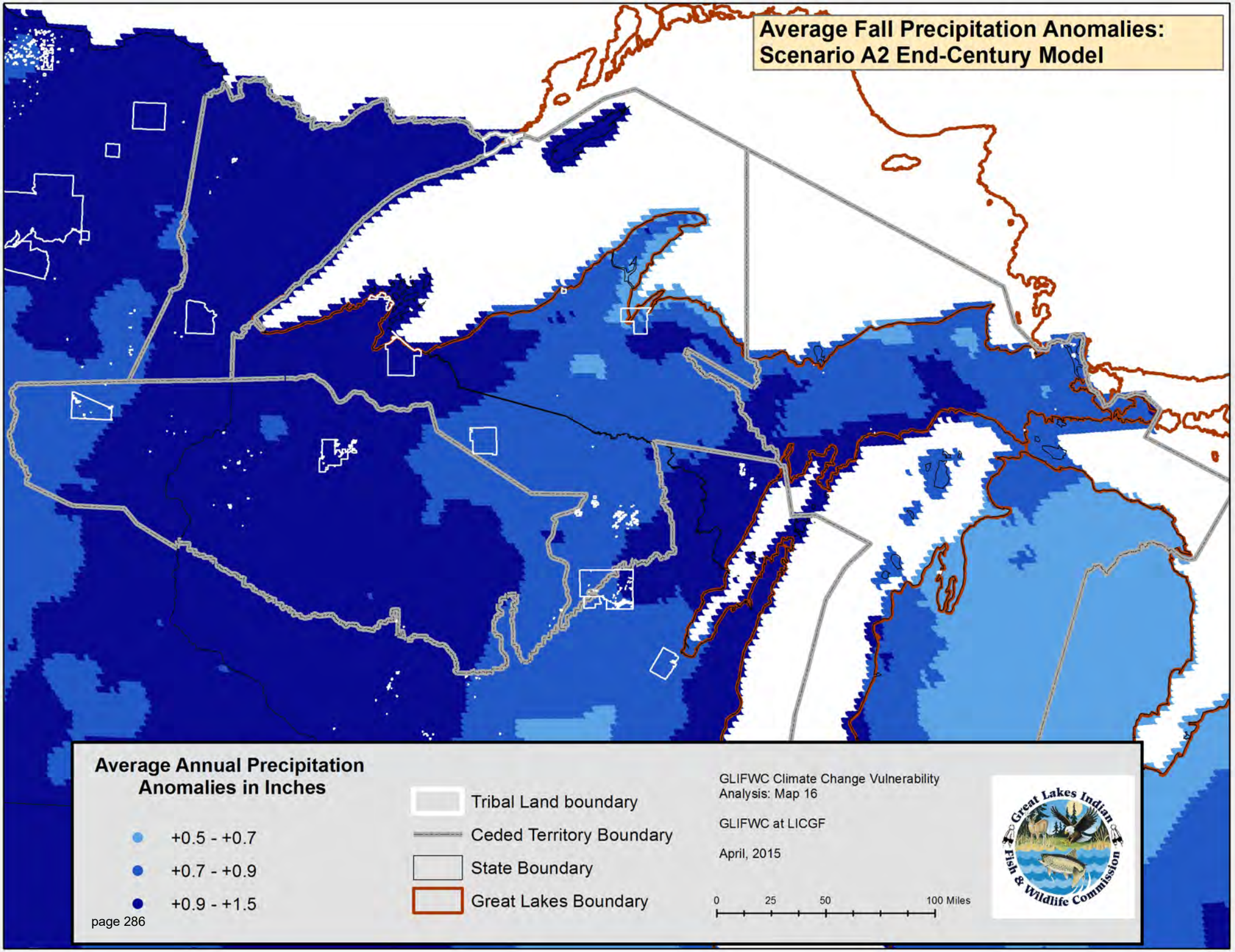

Average Annual Precipitation Anomalies: Scenario A1B End-Century Model
Average Annual Precipitation Anomalies in Inches
+0.1 - +0.5
+0.5 - +1.5
+1.5 - +2.5
Tribal Land boundary
Ceded Territory Boundary
State Boundary
Great Lakes Boundary
GLIFWC Climate Change Vulnerability Analysis: Map 11
GLIFWC at LICGF
April, 2015
0
25
50
100 Miles
Great Lakes Indian Fish & Wildlife Commission


Average Annual Precipitation Anomalies: Scenario A2 End-Century Model
Average Annual Precipitation Anomalies in Inches
+0.4 - +1.0
+1.0 - +1.8
+1.8 - +2.4
Tribal Land boundary
Ceded Territory Boundary
State Boundary
Great Lakes Boundary
GLIFWC Climate Change Vulnerability Analysis: Map 12
GLIFWC at LICGF
April, 2015
0
25
50
100 Miles
Great Lakes Indian Fish & Wildlife Commission


Average Winter Precipitation Anomalies:
Scenario A1B End-Century Model
Average Annual Precipitation Anomalies in Inches
+0.1 - +0.3
+0.3 - +0.6
+0.6 - +0.9
Tribal Land boundary
Ceded Territory Boundary
State Boundary
Great Lakes Boundary
GLIFWC Climate Change Vulnerability Analysis: Map 13
GLIFWC at LICGF
April, 2015
0
25
50
100 Miles
Great Lakes Indian Fish & Wildlife Commission


Average Winter Precipitation Anomalies:
Scenario A2 End-Century Model
Average Annual Precipitation
Anomalies in Inches
+0.4 - +0.7
+0.7 - +1.1
+1.1 - +1.8
Tribal Land boundary
Ceded Territory Boundary
State Boundary
Great Lakes Boundary
GLIFWC Climate Change Vulnerability
Analysis: Map 14
GLIFWC at LICGF
April, 2015
0
25
50
100 Miles
Great Lakes Indian Fish & Wildlife Commission


Average Fall Precipitation Anomalies:
Scenario A1B End-Century Model
Average Annual Precipitation Anomalies in Inches
+0.1 - +0.4
+0.4 - +0.7
+0.7 - +1.1
Tribal Land boundary
Ceded Territory Boundary
State Boundary
Great Lakes Boundary
GLIFWC Climate Change Vulnerability Analysis: Map 15
GLIFWC at LICGF
April, 2015
0
25
50
100 Miles
Great Lakes Indian Fish & Wildlife Commission


Average Fall Precipitation Anomalies:
Scenario A2 End-Century Model
Average Annual Precipitation Anomalies in Inches
+0.5 - +0.7
+0.7 - +0.9
+0.9 - +1.5
Tribal Land boundary
Ceded Territory Boundary
State Boundary
Great Lakes Boundary
GLIFWC Climate Change Vulnerability Analysis: Map 16
GLIFWC at LICGF
April, 2015
0
25
50
100 Miles
Great Lakes Indian Fish & Wildlife Commission