



WHITE EARTH RESERVATION

CHAIR Terrence "Terry" Tibbetts **SECRETARY-TREASURER** Leonard Alan Roy
DISTRICT I Raymond Auginaush, Sr. **DISTRICT II** Kathy Goodwin **DISTRICT III** Eugene "Umsy" Tibbetts

January 25, 2019

Honorable Tim Walz, Governor
State of Minnesota
130 State Capitol
75 Rev Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Re: Chippewas of the Mississippi *Rights of Manoomin*
and co-management to protect common, environmental resources

Dear Governor Walz,

Welcome to your new leadership role and we look forward to working with you and your team for One Minnesota where all of our rights are recognized and respected to protect our common, One Minnesota environment. One Hundred fifty years ago White Earth reservation was created to relocate the *Chippewas of the Mississippi* from our 1855 Treaty reservations to the headwaters of the Mississippi river. In 1999, the United States Supreme Court clearly explained in Minnesota v Mille Lacs that treaties are to be liberally construed in favor of the Indians and "how the Chippewa signatories to the Treaty understood the agreement because we interpret Indian treaties to give effect to the terms as the Indians themselves would have understood them"; and further concluded that "the historical record, purpose, and context of the negotiations all support the conclusion that the 1855 Treaty was designed to transfer Chippewa land to the United States, not terminate usufructuary rights."

We have attached a copy of White Earth Band of Ojibwe Resolutions (001-19-009 and 001-19-010) to give notice of our *Chippewas of the Mississippi* priority water quality rights to protect wild rice and fisheries which necessarily rely on pristine water, wetland, aquifers to sustain these treaty reserved resources, on and off reservation. Consequently, we challenge the State of Minnesota's unilateral authority to grant Section 401 Clean Water Act permits for Enbridge's Line 3R pipeline activities, without our consent, and request full hearing, with contested case proceedings, if Minnesota plans to exercise primary jurisdiction.

We are providing a copy of this letter and attachments to give direct notice to the Minnesota Pollution Control Agency Commissioner Laura Bishop and the Department of Natural Resources Commissioner Sarah Strommen. Additionally, we are providing a full copy to Attorney General

Keith Ellison to support developing a consent decree to permanently resolve these common environmental resources issues for One Minnesota.

We look forward to working together to protect our One Minnesota common, environmental resources which all require clean water. Time is of the essence as the United Nations has warned that we only have 12 years to curb climate change.

Thank you for your immediate attention to these timely and important matters. Please call on my office at 218-935 _____ or Frank Bibeau, Executive Director of the 1855 Treaty Authority at frankbibeau@gmail.com or 218-760-1258.

Miigwéch,



Terry Tibbetts, Chairman
WHITE EARTH BAND OF OJIBWE

Attachments: WEBO *Rights of Manoomin* Resolution No. 001-19-009
WEBO *Rights of Manoomin* Resolution No. 001-19-010
1855 Treaty Authority *Rights of Manoomin* Resolution No. 2018-05

cc: White Earth Band of Ojibwe
Cathy Chavers, President, Minnesota Chippewa Tribe
Robert L. Larsen, Board Chair, Minnesota Indian Affairs Council
Honorable Keith Ellison, Minnesota Attorney General
Honorable Peggy Flanagan, Minnesota Lt. Governor
Laura Bishop, Commissioner, Minnesota Pollution Control Agency
Sarah Strommen, Commissioner, Department of Natural Resources
Thomas Hingsberger, St. Paul District, U.S. Army Corps of Engineers
Patricia Olby, Bureau of Indian Affairs
Walt Ford, Tribal Liaison U.S. Fish and Wild Life Service
Cathy Stepp, Administrator, Environmental Protection Agency Region 5
Frank Bibeau, 1855 Treaty Authority

**WHITE EARTH RESERVATION BUSINESS COMMITTEE
WHITE EARTH BAND OF CHIPPEWA INDIANS**

Resolution No. 001-19-009

WHEREAS, THE White Earth reservation Business Committee is the duly elected governing body of the White Earth Reservation pursuant to Article VI, Section 1 of the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, as amended, and organized under Section 16, of the Act of June 18, 1934 (48 Stat. 984); and

WHEREAS, manoomin, or wild rice, is considered by the Anishinaabeg people to be a gift from the Creator, and manoomin is central to Anishinaabeg culture; and

WHEREAS, manoomin has been a staple in the diets of native people for generations, is a central element of the culture, heritage, and history of the Anishinaabeg people, and is an integral part of the ecosystems and natural communities of our traditional lands; and

WHEREAS, manoomin and the habitats it thrives in are threatened by hybridization, genetic modification, sterilization, privatization, climate change, and other industrial and corporate practices; and

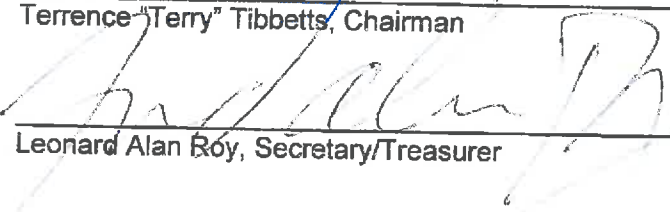
WHEREAS, we recognize that to protect manoomin and our people, we must secure their highest protection through the recognition of legal rights for the protection of manoomin.

NOW, THEREFORE BE IT RESOLVED, the White Earth Reservation Business Committee hereby adopts the attached Rights of Manoomin Ordinance.

We do hereby certify that the foregoing resolution was enacted by a vote of 3 for, 0 against, 0 silent, a quorum being present at a special meeting of the White Earth Reservation Business Committee held on December 31, 2018, in White Earth.



Terrence "Terry" Tibbetts, Chairman



Leonard Alan Roy, Secretary/Treasurer

**WHITE EARTH RESERVATION BUSINESS COMMITTEE
WHITE EARTH BAND OF CHIPPEWA INDIANS**

Resolution No. 001-19-010

- WHEREAS,** the White Earth Reservation Business Committee is the duly elected governing body of the White Earth Reservation pursuant to Article VI, 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 was established by Treaty in 1867 as a final relocation reservation for the *Chippewa of the Mississippi* from our reservations that were established through the 1855 Treaty at Gull Lake, Mille Lac, Sandy Lake, Rabbit Lake, Pokagomin Lake, and Rice Lake, and
- WHEREAS,** the federal government also previously attempted to remove the *Chippewa of the Mississippi* from the 1855 reservations through the 1863 and 1864 Treaties with the Chippewa, but such relocation was not carried through, and
- WHEREAS,** the White Earth reservation has approximately one-half of the 40,000 total tribal members enrolled in the Minnesota Chippewa Tribe, who are all treaty beneficiaries of the 44 Chippewa Treaties with the United States, and each tribal member retains the usual rights of occupancy and to earn a modest living across the 1855 ceded territory including the rights to hunt, fish, trap, and gather wild rice and other plants, and
- WHEREAS,** the United States Supreme Court decided the *Minnesota v. Mille Lacs* case in 1999, and explained that treaties are liberally construed in favor of the Indians and “how the Chippewa signatories to the Treaty understood the agreement because we interpret Indian treaties to give effect to the terms as the Indians themselves would have understood them”; and further concluded that “the historical record, purpose, and context of the negotiations all support the conclusion that the 1855 Treaty was designed to transfer Chippewa land to the United States, not terminate usufructuary rights,” and
- WHEREAS,** Chief Flatmouth of the Pillager Band at Leech Lake was an important treaty negotiator and signatory to the 1837 and 1855 treaties, and the 1837 treaty journal clearly demonstrates Chief Flatmouth’s intentions on behalf of the Chippewa as follows: “the Indians wish to reserve the privilege of hunting and fishing on the lands and making sugar from the Maple,” and
- WHEREAS,** Chief Flatmouth, further emphasized the importance of reserving usufructuary rights on the ceded lands through the following assertions during the 1837 treaty negotiations: “My Father. Your children are willing to let you have their lands, but they wish to reserve the privilege of making sugar from the trees, and getting their

living from the Lakes and Rivers, as they have done heretofore, and of remaining in this Country.... You know we cannot live, deprived of our Lakes and Rivers; ... we wish to remain upon them, to get a living," and

WHEREAS, the United States Supreme Court has described our usufructuary use and occupation rights, both on reservation and off reservation in the ceded territories, as follows: "treaty protected rights to hunt, fish, trap and gather wild rice are property rights to be used in whatever fashion the Indians, as owners, desire, whether to eat, clothe, or sell." As such, our usufructuary property rights are protected by Congressional due process, and are not subject to unilateral state action, and

WHEREAS, the 1855 Treaty ceded territory is at the top of three of the four North American continental divides/watersheds: the Red River north to Hudson Bay; the Mississippi River south to the Gulf of Mexico; and Lake Superior tributaries east to the Atlantic Ocean; and prior to European contact, and prior to any of the treaties, each of these water bodies were pristine and bountiful with natural resources provided as gifts from the Creator who guided us here to the place where the "manoomin" grows on the water, a place with which we have a spiritual covenant and responsibility to protect, and

WHEREAS, the Chippewa property rights in the 1855 ceded territory are not subject to state regulation and are legally described as an undivided one-half interest in the Minnesota ecosystem habitats to support our livelihoods, and necessarily include the right to defend and protect the Chippewa freshwater resources through the 401 and 404 permitting processes pursuant to the federal Clean Water Act, and

WHEREAS, in response to Enbridge's Line 3 proposal, the White Earth Band and the 1855 Treaty Authority previously coordinated with the Minnesota Chippewa Tribe, and ultimately adopted the Anishinaabe Cumulative Impacts Assessment, which concluded that climate change impacts of the Line 3 proposal are too significant to permit a new crude oil pipeline route through the treaty ceded territory, particularly in light of the fact that there is no need for additional oil production for the United States market, and

WHEREAS, we have determined that climate change impacts that would result from the Line 3 project must be considered within the 401 water quality certification process through the Minnesota Pollution Control Agency because climate change impacts could likely impact Minnesota water quality; and further that the 401 certification process must consider potential oil spill impacts on water quality standards, especially oil spills that exceed Minnesota's wild rice standard because once operational Line 3 has the potential to spill diluted bitumen which contains 3-4% sulfur compounds, and

WHEREAS, because the Minnesota Pollution Control Agency is currently in the process of revising the sulfate standard for the purpose of protecting wild rice, and because the agency has not finalized methods for identifying waters used for production of wild rice or for assessing impairment of waters based on the existing wild rice-related standard, the draft 2018 Impaired Waters List does not include any waters assessed as impaired because the waters exceed the sulfate standard pertaining to wild rice waters, and

WHEREAS, we have been informed of the decision of Minnesota Administrative Law Judge LauraSue Schlatter included in the *Report of the Administrative Law Judge* dated January 9, 2018, and entitled *In the Matter of the Proposed Rules of the Pollution Control Agency Amending the Sulfate Water Quality Standard Applicable to Wild Rice and Identification of Wild Rice Rivers, [and] Minnesota Rules (OAH 80-9003-34519)*, in which the following specific conclusions were reached:

- (1) MPCA's proposed repeal of the 10 mg/L sulfate standard is rejected. . . due to the Agency's failure to establish the reasonableness of the repeal, and because the repeal conflicts with the requirements of existing federal and state law,
- (2) the proposed equation-based sulfate standard . . . proposed rule fails to meet the definition of a rule under Minnesota Statutes,
- (3) in addition, the proposed equation-based sulfate standard is not rationally related to the Agency's objective in this proceeding, and is unconstitutionally void for vagueness, and
- (4) the proposed list of approximately 1,300 wild rice waters at Minn. R. 7050.0471, subps. 3 through 9 cannot be sustained because it violates 40 C.F.R. §§ 131.3 and .11(h)(1) , and

WHEREAS, we know that *Climate change affects lakes, and walleye in complex ways*¹ and that years later an *Ojibwe leader says Mille Lacs walleye have not recovered yet*², and we understand that any increase in tar sands extraction and production will only speed up climate change and compound environmental and aquatic problems in Minnesota; and when walleye fishing people can't fish Mille Lacs, they ultimately shift further north to Big Sandy, Pokegama, Winnibigoshish, Cass Lake and Leech Lake, which are all original 1855 reservations, and

WHEREAS, the Minnesota Governor established the Governor's Task Force on Wild Rice, Executive Order 18-08 on May 28, 2018 and Executive Order 18-09 amending Executive Order 18-08 recognizes that "wild rice is culturally important and spiritually sacred to Minnesota's Tribal Nations" and "the health of wild rice is dependent on water quality and other habitat conditions" and that "the restoration and protection of wild rice habitat requires collaboration among state

¹ See *Climate change affects lakes, walleye in complex ways*, by Elizabeth Dunbar on Minnesota Public Radio, Sept. 9, 2015 at <https://www.mprnews.org/story/2015/09/09/walleye-climate-change>

² See *Ojibwe leader says Mille Lacs walleye have not recovered yet* by Tony Kennedy Star Tribune OCTOBER 1, 2017 at <http://www.startribune.com/ojibwe-leader-says-mille-lacs-walleye-have-not-recovered-yet/448842053/>

agencies, Tribal Nations, wild rice harvesters, industry, conservation advocacy groups, and scientists,” but we find that the Executive Order fails to recognize the federally protected property rights of the Chippewa of the Mississippi, and our authority to take steps toward the protection of wild rice, and

- WHEREAS,** the pattern and practice of the Minnesota state government of disrespecting and oppressing the more than 20,000 *Chippewa of the Mississippi* from freely exercising their usufructuary rights violates our equal protection rights because the state respects the rights of some members of the signatory bands to Chippewa treaties, while simultaneously and unilaterally denying those same rights to the Chippewa of the Mississippi, whose ancestors were also signatories to the same treaties, and
- WHEREAS,** the White Earth Band has intervened in the Minnesota Public Utilities Commission (PUC) proceedings pertaining to both the Sandpiper (fracked Bakken crude) and the Line 3 Replacement (extracted tar sands crude) in an effort to protect the freshwater habitats that support wild rice and prevent related climate change impacts to air and water quality and our natural food resources that rely upon avoiding risk of further degradation to the overall upper Mississippi river, and
- WHEREAS,** the Mille Lacs Band of Ojibwe, Red Lake Band of Chippewa Indians and White Earth Band of Ojibwe, Honor the Earth and Friends of the Headwaters, each parties to the PUC proceedings involving Line 3, have appealed the PUC’s granting of a Certificate of Need and Route Permit, and
- WHEREAS,** the State of Minnesota has a legal obligation under federal law to honor and respect our right to parity recognition to the same treatment of Chippewa usufructuary property rights in the 1855 treaty ceded territory as has been accorded in the 1837 and 1854 treaty ceded territories, and the state is further obligated to recognize that co-management of on and off reservation resources must include Chippewa priority to water rights and the right to withhold consent as co-owner of the resources, and
- WHEREAS,** White Earth Band of Ojibwe is one of the founding members of the 1855 Treaty Authority, and in 2010 the Band adopted an off-reservation conservation code for the 1855 ceded territory, and
- WHEREAS,** the State of Minnesota has no trust responsibility to protect treaty rights or legal authority to regulate tribal members’ harvest rights under federal treaties, and
- WHEREAS,** the 1855 Treaty Authority has been regulating off reservation harvesting of wild rice or “manoomin” by treaty beneficiaries of the 1855 Chippewa Treaty since 2010, and

WHEREAS, manoomin, or wild rice, is considered by the Anishinaabe people to be a gift from the Creator and continues to be an important staple in the diets of native people for generations, is a central element of the culture, heritage, and history of the Anishinaabe people, and is an integral part of the wetland ecosystems and natural communities of our traditional lands, and

WHEREAS, manoomin and the habitats in which it thrives are threatened by hybridization, genetic modification, sterilization, privatization, climate change, and other industrial and corporate practices, and we recognize that in order to protect manoomin and our people, we must secure its highest protection through the recognition of legal rights, and call upon the bands of the Anishinaabeg Nation, and other relevant federations, commissions, and government entities, to secure and protect the legal rights of manoomin and our people.

NOW THEREFORE BE IT RESOLVED, that the White Earth Reservation Business Committee hereby determines that it is necessary to protect the health and welfare of our tribal members, as well as the economic security of the White Earth Band through the protection of Manoomin and the habitats in which it grows, and

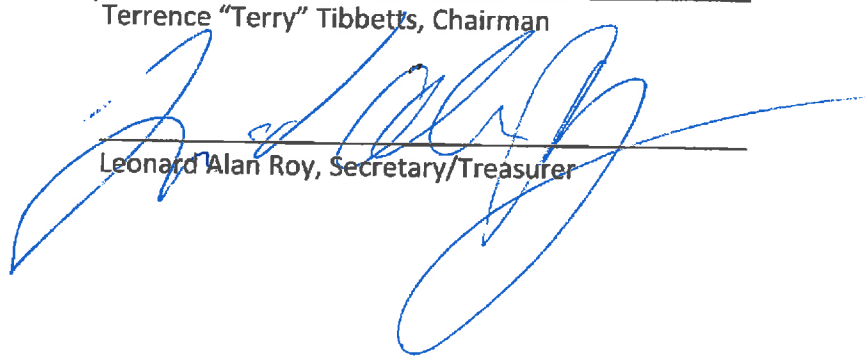
BE IT FURTHER RESOLVED, that the RBC hereby establishes a requirement for providing written notice to cease and desist to the State of Minnesota and other entities that take actions, or permit others to take actions that endanger the clean, freshwater resources and necessary habitats required for Manoomin to flourish, and

BE IT FINALLY RESOLVED, that the RBC hereby determines that it has become necessary to provide a legal basis to protect wild rice and fresh water resources as part of our primary treaty foods for future generations, and that such protections will be embodied in a tribal law entitled "The Rights of Manoomin."

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 Business Committee held on December 31, 2018 in White Earth, Minnesota.



Terrence "Terry" Tibbetts, Chairman



Leonard Alan Roy, Secretary/Treasurer

RIGHTS OF MANOOMIN

Section 1. Statements of Law – Rights.

(a) Rights of Manoomin. Manoomin, or wild rice, within the White Earth Reservation possesses inherent rights to exist, flourish, regenerate, and evolve, as well as inherent rights to restoration, recovery, and preservation. These rights include, but are not limited to, the right to pure water and freshwater habitat; the right to a healthy climate system and a natural environment free from human-caused global warming impacts and emissions; the right to be free from patenting; as well as rights to be free from infection, infestation, or drift by any means from genetically engineered organisms, trans-genetic risk seed, or other seeds that have been developed using methods other than traditional plant breeding.

(b) Rights of Tribal Members. Tribal members of White Earth Band possess the right to harvest manoomin, and protect and save manoomin seeds, within the White Earth Reservation. This right shall include, but is not limited to, the right to manoomin that is free from patenting, as well as free from infection, infestation, or drift by any means from genetically engineered organisms, trans-genetic risk seed, or other seeds that have been developed using methods other than traditional plant breeding.

(c) Right of Sovereignty. The White Earth Band and its members possess both a collective and individual right of sovereignty, self-determination, and self-government, which shall not be infringed by other governments or business entities claiming the right to override that right. This shall include the right to enforce this law free of interference from corporations, other business entities, governments, or other public or private entities. That right shall include the right of tribal members to be free from ceiling preemption, because this law expands rights-protections for people and manoomin above those provided by less-protective state, federal, or international law.

(d) Rights as Self-Executing. All rights secured by this law are inherent, fundamental, and unalienable, and shall be enforceable against both private and public actors without further implementing legislation.

Section 2. Statements of Law – Prohibitions Necessary to Secure Rights.

(a) It shall be unlawful for any business entity or government, or any other public or private entity, to engage in activities which violate, or which are likely to violate, the rights or prohibitions of this law, regardless of whether those activities occur within, or outside of, the White Earth Reservation.

(b) No government shall recognize as valid any permit, license, privilege, charter, or other authorization issued to any business entity or government, or any other public or private entity, that would enable that entity to violate the rights or prohibitions of this law, regardless of whether the authorized activities occur within, or outside of, the White Earth Reservation.

Section 3. Enforcement.

(a) The Tribal Government shall take all necessary actions to protect, implement, defend, and enforce the rights and prohibitions of this law.

(b) Any business entity or government, or any other public or private entity, that violates any provision of this law shall be guilty of an offense and, upon conviction thereof, shall be sentenced to pay the maximum fine allowable under tribal law. Each day or portion thereof, and each violation of each section of this law, shall count as a separate violation.

(c) Any business entity or government, or any other public or private entity, that violates any provision of this law shall also be liable for any damages to the manoomin and its habitat caused by the violation. Damages shall be measured by the cost of restoring the manoomin and its habitat to their state before the violation, and shall be paid to the White Earth Reservation Business Committee to be used exclusively for the full and complete restoration, recovery, and protection of the manoomin and its habitat.

(d) The White Earth Reservation Business Committee may enforce all of the provisions of this law through an action brought in any appropriate court. In such an action, the White Earth Reservation Business Committee shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

(e) Manoomin within the White Earth Reservation may enforce its rights and the prohibitions of this law through an action brought by the White Earth Reservation Business Committee in any appropriate court, in the name of manoomin as the real party in interest.

(f) Law enforcement personnel shall be prohibited from arresting or detaining persons directly enforcing these rights; and, enforcement shall be consistent with Article 13 (Rights of Members) under the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe.

(g) The White Earth Reservation Business Committee and manoomin shall have the right to intervene in any action concerning this law in order to enforce or defend it, and in such an action, other parties to that action shall not be deemed to adequately represent their particularized interests.

Section 4. Effective Date and Existing Permit Holders.

This law shall be effective immediately on the date of its enactment, at which point the law shall apply to any and all actions that would violate this law regardless of the date of any applicable local, state, or federal permit.

RESOLUTION 107-18

- WHEREAS,** the Minnesota Chippewa Tribe is comprised of six member reservations (Bois Forte, Fond du Lac, Grand Portage, Leech Lake, Mille Lacs, and White Earth); and
- WHEREAS,** the Tribal Executive Committee is the duly elected governing body of the Minnesota Chippewa Tribe and is comprised of the Chairpersons and Secretary/Treasurers from the six bands; and
- WHEREAS,** our people have lived along the lakes, rivers, and streams of northern Minnesota since time immemorial and Mother Earth has blessed our homelands with an abundance of clean water where our sacred manoomin (wild rice) flourishes; and
- WHEREAS,** manoomin is not simply a resource, it played a central role in the migration of Ojibwe and continues to hold a unique and sacred place in the lives and traditions of the Minnesota Chippewa Tribe and our over 41,000 members; and
- WHEREAS,** decreasing water quality and environmental degradation caused by irresponsible development and inadequate enforcement of the Clean Water Act pose an existential threat to our sacred manoomin and in turn our way of life; and
- WHEREAS,** it is critically important to protect clean water and the best way to protect water in today's society is to properly enforce the Clean Water Act; and we ask that the Governor of the State of Minnesota and Minnesota Pollution Control Agency to uphold State Water Quality Standards and the Clean Water Act; and
- WHEREAS,** on May 30, 2018, Governor Mark Dayton filed Executive Order 18-08 which provided for the establishment of the Governor's Task Force on Wild Rice; and
- WHEREAS,** the Governor's Task Force on Wild Rice was charged with reviewing scientific literature to identify information related to the impacts of sulfate or other sulfur compounds or habitat conditions on wild rice and shall prepare comments that address environmental conditions that contribute to wild rice population declines; and
- WHEREAS,** Executive Order 18-08 provided that the Governor's Task Force on Wild Rice would be comprised of: one representative nominated by the Minnesota Indian Affairs Council; one representative nominated by the Minnesota Chippewa Tribe; two independent scientists with expertise in wild rice research and plant-based aquatic toxicity; one non-native wild

rice harvester; one representative from the ferrous mining industry; one representative from the non-ferrous mining industry; one representative from a municipal wastewater discharger; one representative from an electric utility; one representative from a statewide labor organization; two representatives from environmental nongovernmental organizations; and one representative each from the DNR and MPCA to serve as ex officio members; and

WHEREAS, the Minnesota Chippewa Tribe responded to Executive Order 18-08 by passing a resolution and sending a correspondence to Governor Dayton informing him that each Band of the Minnesota Chippewa Tribe would like to have one representative on the Governor's Task Force on Wild Rice; and

WHEREAS, Governor Dayton responded by informing the Minnesota Chippewa Tribe that the composition of the Governor's Task Force on Wild Rice was governed by Minnesota Statutes 15.0593 and only fifteen (15) representatives could be appointed to the task force in question; and

WHEREAS, on June 28, 2018, Governor Mark Dayton filed Executive Order 18-09 which amended Executive Order 18-08 and changed the composition of the task force in the following manner: the representative appointed by the Minnesota Indian Affairs Council was deleted; one representative was to be nominated by the four Minnesota Dakota Tribes; and one representative was to be nominated by the Red Lake Nation; and

WHEREAS, the proposed composition of the Governor's Task Force on Wild Rice does not respect the sovereignty of the eleven federally-recognized Indian Tribes, Bands, and Communities in the State of Minnesota, and our unique status as federally recognized tribes that have guaranteed usufructory rights by Treaties, and

WHEREAS, the proposed Wild Rice Task Force composition does not acknowledge that Indian tribes will be disproportionately affected by the loss of a usufructory property rights directly related to legislation prohibiting enforcement of existing water quality standards and the composition minimizes the technical expertise, knowledge, and interests of Indian tribes; and

WHEREAS, the proposed Wild Rice Task Force composition directly relegates the Tribes to the status of special interest groups and industry rather than honoring Tribal sovereignty; and

WHEREAS, treating Indian tribes like special interest groups is disrespectful and contrary to Executive Order 13-10 which provides that “[a]ll Executive Branch agencies of the State of Minnesota shall recognize the unique legal relationships between the State of Minnesota and the Minnesota Tribal Nations, respect the fundamental principles that establish and maintain this relationship, and accord Tribal Governments the same respect accorded to other governments”; and

WHEREAS, the proposed composition of the Governor’s Task Force on Wild Rice is similar to the MPCA Wild Rice Advisory Board where during the process and through consultation, the comprehensive comments provided on behalf of Indian tribes to the MPCA was disregarded entirely and not incorporated in the proposed wild rice rule; and

WHEREAS, the Tribal Executive Committee of the Minnesota Chippewa Tribe finds that it is in the Tribe’s best interest to decline/reject the Governor’s offer to participate in the Governor’s Task Force on Wild Rice and instead will form a task force of its own expertise by inviting the other federally recognized Indian tribes in Minnesota to participate in gathering and reviewing information, preparing comments, and recommendations; and

BE IT RESOLVED, that the Minnesota Chippewa Tribe declines the Governor’s offer to participate in the Governor’s Task Force on Wild Rice; and

BE IT FURTHER RESOLVED, that the Minnesota Chippewa Tribe hereby establishes the Tribal Wild Rice Task Force which will be comprised, provided that such other federally-recognized tribes in Minnesota choose to participate, of:

- a. two representatives nominated by the Bois Forte Band;
- b. two representatives nominated by the Fond du Lac Band;
- c. two representatives nominated by the Grand Portage Band;
- d. two representatives nominated by the Leech Lake Band;
- e. two representatives nominated by the Mille Lacs Band;
- f. two representatives nominated by the White Earth Band;
- g. two representatives nominated by the Red Lake Nation;

- h. two representatives nominated by the Lower Sioux Indian Community;
- i. two representatives nominated by the Prairie Island Indian Community;
- j. two representatives nominated by the Shakopee Mdewakanton Sioux Community; and
- k. two representatives nominated by the Upper Sioux Community.

BE IT FURTHER RESOLVED, that the Tribal Wild Rice Task Force will review existing literature, including literature and information based on tradition, culture, and science, that is available to inform the understanding of the impacts of sulfate or other sulfur compounds on habitat conditions on wild rice, identify information gaps, make recommendations on priorities for wild rice research and prepare a report with recommendations in a similar fashion to that included in Executive Order 18-08, and provide such report to the Governor by December 15, 2018; and

BE IT FINALLY RESOLVED, that this Resolution shall serve as an official invitation to the other federally-recognized tribes in Minnesota to participate in the Tribal Wild Rice Task Force, shall serve as the official response to Governor Mark Dayton concerning the Governor's Task Force on Wild Rice, and shall serve as notice to the State of Minnesota and its agencies that the Minnesota Chippewa Tribe will only participate in government to government consultation on this issue with the Governor or an appropriately high ranking official.

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a vote of 9 For, 0 Against, 0 Silent, at a Special Meeting of the Minnesota Chippewa Tribal Executive Committee, a quorum present, held on August 21, 2018 in Onamia, Minnesota.



Kevin R. Dupuis, Sr., President
THE MINNESOTA CHIPPEWA TRIBE



Melanie Benjamin, Secretary
THE MINNESOTA CHIPPEWA TRIBE

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ARTHUR LAROSE

VICE-CHAIR

RAY AUGINAUSH SR

SECRETARY/TREASURER

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RICHARD ROBINSON

DALE GREENE, JR.

SANDRA SKINAWAY

MICHAA AUBID



PO Box 418
 WHITE EARTH, MN 56591

1855 TREATY AUTHORITY

EAST LAKE ♦ LEECH LAKE ♦ MILLE LACS ♦ SANDY LAKE ♦ WHITE EARTH

Immediate Release

January 11, 2019

CHIPPEWA ESTABLISH *RIGHTS OF MANOOMIN* ON WHITE EARTH RESERVATION AND THROUGHOUT 1855 CEDED TERRITORY

Rice Lakes, MN – Recently the White Earth Band of Ojibwe and the 1855 Treaty Authority adopted *Rights of Manoomin* for on and off reservation protection of wild rice and the clean, fresh water resources and habitats in which it thrives. The *Rights of Manoomin* were adopted because “it has become necessary to provide a legal basis to protect wild rice and fresh water resources as part of our primary treaty foods for future generations” according to resolutions.

“Look what’s happened to the sturgeon” said Terry Tibbetts, Chairman of White Earth Band of Ojibwe, “our most important foods have always been fish and wild rice. These are important treaty rights that are essential to protect and require consensually, co-managed natural resources and harvesting with the State throughout our ceded territories.”

Tribal leaders and Chippewa members are hoping the recent, federal legal experience as U.S. Representatives for Governor Walz and Attorney General Ellison means they already understand tribal sovereignty and treaty rights. Lt. Governor Flannigan, also a White Earth member, served as a member of the Minnesota House of Representatives from 2015 to 2019 and is well acquainted with Enbridge’s Line 3 and PUC challenges from tribal communities.

“Even Governor Dayton recognized that *wild rice is culturally important and spiritually sacred to Minnesota’s Tribal Nations and the health of wild rice is dependent on water quality and other habitat conditions* noting the restoration and

TREATY WITH THE CHIPPEWA, 1855.

Feb. 22, 1855. | 10 Stat., 1165. | Ratified March 3, 1855. | Proclaimed Apr. 7, 1855.

protection of wild rice habitat requires collaboration in his call for a wild rice task force” said Frank Bibeau, Executive Director of the 1855 Treaty Authority.

“Unfortunately, Governor Dayton stacked his task force with industry interests while cutting short tribal seats,” added Bibeau, “and fortunately, treaties are the supreme law of the land and we Chippewa have (U.S.) Constitutionally protected, usufructuary property rights to hunt, fish, trap and gather wild rice.”

The *Rights of Manoomin*, modeled after the *Rights of Nature*, codify the right of manoomin to the right to pure water and freshwater habitat; the right to a healthy climate system and a natural environment free from human-caused global warming impacts and emissions and more. The White Earth Band of Ojibwe and 1855 Treaty Authority worked with the [Community Environmental Legal Defense Fund \(CELDF\)](#), with its International Center for the Rights of Nature, in the development of the draft law. “This is a very important step forward in the Rights of Nature movement. This would be the first law to recognize legal rights of plant species,” explains Mari Margil, CELDF’s associate director.

“We understand that it is the individual tribal members’ usufructuary rights to gather food and earn a modest living that are essential to our lives and important for the success of future generations’ ability to maintain our culture and traditions” said Bibeau, adding “we understand *WATER IS LIFE* for all living creatures and protecting abundant, clean, fresh water is essential for our ecosystems and wild life habitats to sustain all of us and the Manoomin.”

This important ordinance will secure for manoomin much needed stronger protection from environmentally degrading projects. “Manoomin is sacred to the Anishinaabeg, and it is time the law reflects this,” explains Winona LaDuke, executive director, Honor the Earth. “I was very glad to be present when the White Earth Band of Ojibwe Tribal Council met to adopt Rights of Manoomin.”

Please find attached Resolutions for Rights of Manoomin for White Earth Band of Ojibwe and 1855 Treaty Authority. For more information about this release and the 1855 Treaty Authority please contact frankbibeau@gmail.com or call Frank Bibeau at 218-760-1258.

OFFICERS

CHAIRMAN
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MICHAA AUBID



PO Box 418
WHITE EARTH, MN 56591

1855 TREATY AUTHORITY

EAST LAKE ♦ LEECH LAKE ♦ MILLE LACS ♦ SANDY LAKE ♦ WHITE EARTH

RESOLUTION ESTABLISHING RIGHTS OF MANOOMIN RESOLUTION # 2018-05

WHEREAS, the 1855 Treaty Authority is comprised of treaty beneficiary members of the 1855 Treaty between the Chippewa Indians and prior Chippewa Treaties with the United States with regard to territory that became what is now known as Minnesota; and

WHEREAS, the many Chippewa signatory Bands have reserved hunting, fishing, gathering and resource management rights and responsibilities in the 1855 Treaty ceded territory; and

WHEREAS, the 1855 Treaty Authority has petitioned the Department of Interior and Bureau of Indian Affairs seeking federal protection of off reservation and perpetual usufructuary use and property interests in the 1855 Treaty ceded territory, which includes numerous unimpaired waters inclusive of waters vital to the production of wild rice, the plant of supreme cultural significance to the Chippewa; and

WHEREAS, the State of Minnesota has no federal trust responsibility or legal authority to regulate tribal members' harvest rights under federal treaties or the Congressional act granting limited civil or criminal jurisdiction under Public Law 83-280 (18 U.S.C. § 1162, 28 U.S.C. § 1360); and

WHEREAS, the 1855 Treaty Authority has been regulating off reservation harvesting by treaty beneficiaries of the 1855 Chippewa Treaty; and

TREATY WITH THE CHIPPEWA, 1855.

Feb. 22, 1855. | 10 Stat., 1165. | Ratified March 3, 1855. | Proclaimed Apr. 7, 1855.

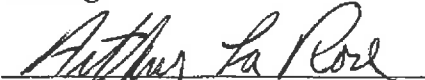
WHEREAS, manoomin, or wild rice, is considered by the Anishinaabe people to be a gift from the Creator or Great Spirit and continues to be an important staple in the diets of native peoples for generations, is a central element of the culture, heritage, and history of the Anishinaabe people, and is an integral part of the wetland ecosystems and natural communities of our traditional lands;

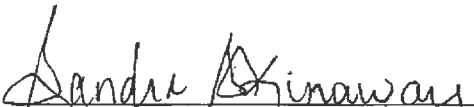
WHEREAS, manoomin and the habitats it thrives in are threatened by hybridization, genetic modification, sterilization, privatization, climate change, and other industrial and corporate practices, and we recognize that to protect manoomin and our people, we must secure its highest protection through the recognition of legal rights, and call upon the bands of the Anishinaabeg Nation, and other relevant federations, commissions, and government entities, to secure and protect the legal rights of manoomin and our peoples;

NOW THEREFORE BE IT RESOLVED, that the 1855 Treaty Authority now establishes the *Rights of Manoomin* to provide written notice to the State of Minnesota and other entities which threaten and endanger the clean, freshwater resources and necessary habitats for Manoomin, that it has become necessary to provide a legal basis to protect wild rice and fresh water resources as part of our primary treaty foods for future generations.

CERTIFICATION

We do hereby certify that the forgoing resolution was duly adopted at a regular meeting of the 1855 Treaty Authority, a quorum being present, held at Mahnomon, Minnesota on December 5, 2018, by a vote of 7 in favor, 0 against, and 0 abstaining at a meeting.


Arthur "Archie" LaRose, Chairman


Sandra Skinaway, Secretary-Treasurer

Rights of Manoomin

Section 1. Statements of Law – Rights.

- (a) Rights of Manoomin.** Manoomin, or wild rice, within all the Chippewa ceded territories possesses inherent rights to exist, flourish, regenerate, and evolve, as well as inherent rights to restoration, recovery, and preservation. These rights include, but are not limited to, the right to pure water and freshwater habitat; the right to a healthy climate system and a natural environment free from human-caused global warming impacts and emissions; the right to be free from patenting; as well as rights to be free from infection, infestation, or drift by any means from genetically engineered organisms, trans-genetic risk seed, or other seeds that have been developed using methods other than traditional plant breeding.
- (b) Rights of Tribal Members.** Tribal members of various Chippewa tribes and Bands possess the right to harvest manoomin, and protect and save manoomin seeds, within the 1855 ceded territory and beyond. This right shall include, but is not limited to, the right to manoomin that is free from patenting, as well as free from infection, infestation, or drift by any means from genetically engineered organisms, trans-genetic risk seed, or other seeds that have been developed using methods other than traditional plant breeding.
- (c) Right of Sovereignty.** Chippewa tribal members possess both a collective and individual right of sovereignty, self-determination, and self-government, which shall not be infringed by other governments or business entities claiming the right to override our rights. This shall include the right to enforce this law free of interference from corporations, other business entities, governments, or other public or private entities. These rights pre-date treaties and are derived from the individually held, usufructuary property rights protected by U.S. Constitutional due process, as part of the supreme law of the land.
- (d) Rights as Self-Executing.** All rights secured by this law are inherent, fundamental, and unalienable, and shall be enforceable against both private and public actors without further implementing legislation.

Section 2. Statements of Law – Prohibitions Necessary to Secure Rights.

- (a) It shall be unlawful for any business entity or government, or any other public or private entity, to engage in activities which violate, or which are likely to violate, the rights or prohibitions of this law, regardless of whether those activities occur within, or outside of, the 1855 ceded territory.
- (b) No government shall recognize as valid any permit, license, privilege, charter, or other authorization issued to any business entity or government, or any other public or private entity, that would enable that entity to violate the rights or prohibitions of this law, regardless of whether the authorized activities occur within, or outside of, the 1855 ceded territory.

Section 3. Enforcement.

- (a) The 1855 Treaty Authority shall take all necessary actions to protect, implement, defend, and enforce the rights and prohibitions of this law; and in particular Clean Water Act sections 401 and 404 permitting because we have a collective, one-half, undivided interest in the ecosystem that supports our way of life and because water is life and supports our primary foods of wild rice, fish and game which all rely on other important natural resources.
- (b) Any business entity or government, or any other public or private entity, that violates any provision of this law shall be guilty of an offense and, upon conviction thereof, shall be sentenced to pay the maximum fine allowable under tribal law. Each day or portion thereof, and each violation of each section of this law, shall count as a separate violation.
- (c) Any business entity or government, or any other public or private entity that violates any provision of this law shall also be liable for any damages to the manoomin and its habitat caused by the violation. Damages shall be measured by the cost of restoring the manoomin

~~and its habitat to their state before the violation, and shall be paid to an escrow account established by the tribunal to be used exclusively for the full and complete restoration, recovery, and protection of the manoomin and its habitat.~~

- (d) ~~The 1855 Treaty Authority, or any enrolled member of the Chippewa bands, may enforce all of the provisions of this law through an action brought in any appropriate court or other legal forum. In such an action, the 1855 Treaty Authority or the Band member shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.~~
- (e) ~~Manoomin within the 1855 ceded territory may enforce its rights and the prohibitions of this law through an action brought by the 1855 Treaty Authority or any Band member of the many and various Chippewa Bands in any appropriate court, tribunal or legal forum in the name of manoomin as the real party in interest.~~
- (f) ~~If the 1855 Treaty Authority fails to enforce or defend this law, or a court fails to uphold this law, any Anishinaabe Band member who is a treaty beneficiary may enforce the rights set forth in this law through nonviolent direct action. If nonviolent direct action is taken to enforce the rights set forth in this law, law enforcement personnel shall be prohibited from arresting or detaining persons directly enforcing these rights.~~
- (g) ~~Any Chippewa Band members, the 1855 Treaty Authority and manoomin shall have the right to intervene in any action concerning this law in order to enforce or defend it, and in such an action, other parties to that action shall not be deemed to adequately represent their particularized interests.~~

Section 4. Effective Date and Existing Permit Holders.

~~This law shall be effective immediately on the date of its enactment, at which point the law shall apply to any and all actions that would violate this law regardless of the date of any applicable local, state, or federal permit.~~