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PO Box 418
WHITE EARTH, MN 56591

1855 TREATY AUTHORITY

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

RESOLUTION FOR RIGHT TO TRAVEL, USE AND OCCUPY TRADITIONAL LANDS AND WATERS CODE RESOLUTION # 2018-01

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

WHEREAS, the 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 fisheries, wild rice, and related ecosystems for hunting and trapping; and

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

TREATY WITH THE CHIPPEWA, 1855.

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

WHEREAS, the 1855 Treaty Authority is regulating off reservation harvesting by Treaty beneficiaries through the Treaty Ceded Territory Conservation Code of the 1855 Treaty; and

NOW THEREFORE BE IT RESOLVED, that the 1855 Treaty Authority recognizes and respects all indigenous peoples' inherent and personal *rights to travel, use, and occupy (public) traditional lands and waters* are necessary to enjoy and to engage in traditional harvesting and customary practices are civil rights; and


BE IT FURTHER RESOLVED, that the Chairman of the 1855 Treaty Authority is authorized to take all steps necessary to give formal notice of this *Right to Travel, Use and Occupy Traditional Lands and Waters Code* to the Minnesota Department of Natural Resources and State and County Law Enforcement, which has separate jurisdictions, within the 1855 ceded territory in Minnesota.

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 Mahnomen, Minnesota on April 13, 2018, by a vote of 7 in favor, 0 against, and 0 abstaining at a meeting.



Arthur "Archie" LaRose, Chairman



Sandra Skinaway, Secretary-Treasurer

RIGHT TO TRAVEL, USE AND OCCUPY TRADITIONAL LANDS AND WATERS CODE
In support of the CEDED TERRITORY CONSERVATION CODE
OF THE 1855 TREATY TRIBES in Minnesota

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Chapter 1. General Provisions

The ***Rights to Travel, Use and Occupy Traditional Lands*** and spiritual places¹ for cultural purposes are part of each tribal members' individually held, historically inherent and inalienable rights that have existed for time immemorial, long before European contact and necessary to enjoying and exercising usufructuary gathering rights. To that end, this ***Right to Travel, Use and Occupancy of Traditional Lands and Waters Code*** expressly provides for:

- 1) a ***historical context*** to the long existing, ancient rights of all members of the indigenous peoples and Indians of North America to freely exercise their native spiritual beliefs and to travel and roam to wherever that may be, and which right are *not* constrained to a reservation or treaty boundaries; and
- 2) a ***legislative intent*** to provide an express tribal code to respect the individuals' beliefs and provide protection of religious freedoms and customs within the original exterior boundaries of the 1825 and 1855 Treaties with the various Chippewa and consistent with the United Nations Declaration on the Rights of Indigenous Peoples, Constitution of the United States various federal civil rights laws and/or other federal statutes and protections; and
- 3) an ***authorization*** by 1855 Treaty Authority to provide for civil jurisdiction (consistent with existing CEDED TERRITORY CONSERVATION CODE OF THE

¹ See *American Indian Religious Freedom Act of 1978* providing "access of sacred sites, repatriation of sacred objects held in museums, freedom to worship through ceremonial and traditional rites, including within prisons, and use and possession of objects considered sacred"

1855 TREATY TRIBES) off reservation, within the exterior boundaries of the 1855 Treaty consistent with this *Right to Travel, Use and Occupancy of Traditional Lands and Waters Code*, in order to establish justice, insure tranquility, preserve and exercise our inherent Tribal sovereign rights and protect the inalienable rights of the people to freely exercise their religion, enjoy freedom of speech and the right of people peaceably to assemble consistent with historical, individual rights.

- 4) The **1855 and 1825-26 Treaties' territories** involves many Chippewa tribes/members with similar rights, and this 1855 code is not meant to infringe on the rights of other Treaty beneficiaries, co-parties' reserved or inherent rights.
- 5) And **Protection of Private Rights** - mutual respect of each and everyone's inherent human inalienable and civil rights does not permit infringement on another's private, inherent human inalienable and civil rights, protected under US constitution and U.S. Bill of Rights and Amendments. An individual's right to travel, use and occupy are subject to the superior rights of the Treaties, of private property owners and tribal governmental regulation as provided herein.

Chapter 2. Definitions

American Indian Religious Freedom Act - (AIRFA) is a US federal law and a joint resolution of Congress that was passed in 1978, created to protect and preserve the traditional religious rights and cultural practices of American Indians, Eskimos, Aleuts and Native Hawaiians. These rights include, but are not limited to, ***access of sacred sites, repatriation of sacred objects held in museums, freedom to worship through ceremonial and traditional rites***, including within prisons, ***and use and possession of objects considered sacred***

Archaeological interest - means any material remains of human life or activities or fossil, which are at least 100 years of age, and which are archaeological interest, more specifically defined by 18 CFR part 1312, section 1312.3 (3), or other federal and tribal laws.

Camping – depending on the activity, use and occupancy could last for an extended period of time and necessarily involve camping or other temporary or private occupancy (like RV) meant to be a private dwelling place, protected under Bill of Rights “the right of the people to be secure in the privacy of their persons, houses, papers, vehicles, and effects against unreasonable searches and seizures.”

Ceremonial purposes – defined by traditions and customs, involving a single person or group, may also including drumming, singing and dancing for extended time periods over multiple days and nights.

Code - shall be defined as the 1855 members' Rights to Travel, Use and Occupy Traditional Lands and Waters Code.

Customs and traditions – historical practices passed down through family and community ceremonies. (See also this section **Retroactive** – See 28 U.S.C. § 1360(c) and 25 U.S.C. § 1322 (c) *Force and effect of tribal ordinances or customs*).

Fire – Use of fire is customary and traditional for many purposes, including but not limited to light, heat, cooking food, traditions and ceremonies and for protection etc.

Indian – Indian status shall be determined in accordance with community standards, Treaty mixed-blood beneficiaries, prevailing federal law as it applies within the jurisdiction of the United States Court of Appeals for the Eighth Circuit, and Indian status showing "members of the first nations of Canada", i.e., Canadian Indians.

Indian Country – includes but is not limited to reservations, ceded and unceded territories off reservation, where Indians enjoy certain inherent rights and freedoms that would otherwise be unlawful for non-Indians, (example *possession and use of eagle feathers*).

Non-Indian - shall mean any person not legally recognized or enrolled as a Native American by blood quantum, descent or community.

People – includes Indians and non-Indians who are in a familial or consensual relationship with 1855 and other tribal members.

Posted – Property that is posted with restrictions like; no trespassing, no burning and no hunting must be respected and only accessible with permission of the owner.

Rights of Indians and Tribes - See 28 U.S.C. § 1360(b) and 25 U.S.C. § 1322 (b) *Alienation, encumbrance, taxation, use, and probate of property*, “Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, ***including water rights, belonging to any Indian or any Indian tribe***, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; ***or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute, or with any regulation made pursuant thereto***; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

Right to privacy – “the right of the people to be secure in the privacy of their persons, houses, papers, vehicles,” wigwams, tents, mobile campers (RVs) and trailers, and other temporary structures for non-permanent *use and occupation*,

serving as temporary living habitat are private dwellings and vehicles of the individual(s) subject to the privacy and civil rights protections of American Indian Religious Freedoms Act, Indian Civil Rights Act of 1968, U.S. Constitution and Bill of Rights, and The United Nations Declaration on the Rights of Indigenous Peoples, endorsed by the United States in 2010.

Right to travel – Beyond traditional customs of the Chippewa (Ojibwe or Anishinabe) different treaties expressly provided for rights to roam, use and occupy. Freedom of movement under United States law is governed primarily by the Privileges and Immunities Clause of the United States Constitution which states, "*The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.*" See also Shapiro v. Thompson, 394 U.S. 618 (1969), a Supreme Court decision that helped to establish a fundamental "right to travel" in U.S. law. Although the U.S. Constitution does not mention the right to travel, it is implied by the other rights given/protected in the constitutions and bill of rights.

Retroactive – See 28 U.S.C. § 1360(c) and 25 U.S.C. § 1322 (c) *Force and effect of tribal ordinances or customs*, "Any tribal ordinance or custom heretofore or hereafter adopted by any Indian tribe, band, or community, in the exercise of any authority which it may possess must, if not inconsistent with the applicable civil law of this state, be given full force and effect in the determination of civil claims for relief pursuant to this section."

Spiritual places – are geographic places which can exist almost anywhere, and be as unique as Pipestone, Minnesota. The spiritual places are usually historic in nature, some more significant than others and can be created from a single iconic event in Indian country and history. Standing Rock Camps *became* a spiritual place and will forever remain.

Spiritual purposes – often include rituals, ceremonies and praying, by individuals, families and groups, which historically can last for extended periods of time.

Traditional lands – for purposes of this Code includes the off-reservation lands of the 1855 Treaty and within the 1825 Treaty boundaries.

Trespass – is provided for in the CEDED TERRITORY CONSERVATION CODE OF THE 1855 TREATY TRIBES, Section 103, Subd. 5) Prohibited Acts; Subd. 6) Trespass Prohibition.

Tribal Court - is provided for in the CEDED TERRITORY CONSERVATION CODE OF THE 1855 TREATY TRIBES, Section 103, Subd. 5) Prohibited Acts; Subd. 7).

Tribal members – can be Indians from any federally recognized tribe, because of the “*Duro fix*,” when Congress amended ICRA’s definition of the tribes’ “powers of self-government” to “recognize and affirm” the existence of “inherent power ... to exercise criminal jurisdiction over all Indians.” 25 U.S.C. § 1301(2). (See also United States v. Lara, 541 U.S. 193 (2004)). See **Indian** above.

Use and occupy – incidental to the natural right to roam and individual tribal members necessary activities involving use of lands and waters and natural resources to support cultural activities including but not limited to ceremonies and celebrations.

UN DRIP - The United Nations Declaration on the Rights of Indigenous Peoples, endorsed by the United States in 2010, a document endorsed by virtually the entire world, confirms the right of Indigenous Peoples to participate in decisions affecting them and the obligation of nation states to consult with them in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 37 of the UN Declaration explicitly recognizes the right of indigenous peoples to have their treaties, agreements, and other constructive arrangements with (international) States recognized, observed, and enforced.

Chapter 3. Right to Travel

From time immemorial the indigenous people of North America have enjoyed the ancient, individual right to travel, *roam, use and occupy* traditional lands and waters to support and access cultural and spiritual sites for traditional purposes, , all which pre-date European contact. (See also Shapiro v. Thompson, 394 U.S. 618 (1969), was a Supreme Court decision that helped to establish a fundamental "right to travel" in U.S. law. Although the Constitution does not mention the right to travel, it is implied by the other rights given in the Constitution).

Chapter 4. Reckless Use of Fire Prohibited.

Reckless Burning -- Any person who: (1) Recklessly starts, or causes a fire to be started, which endangers human life; or (2) Damages property of another by reckless use of fire; or (3) Having started a fire, whether recklessly or not, and knowing that said fire is spreading and will endanger lives or property of another; either fails to take reasonable measures to put out or control said fire or fails to give a prompt fire alarm, is guilty of reckless burning, which is a form of trespass.

Chapter 5 - Penalties.

Any 1855 Treaty beneficiary or other recognized Indian or person under this Code adjudged to have violated any provision of this Code shall be subject to the jurisdiction assessment by the Tribal Court of a penalty consistent with the existing CEDED TERRITORY CONSERVATION CODE OF THE 1855 TREATY TRIBES.

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

Resolution No. 019-21-002

- 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 Business Committee is the duly authorized governing body of the White Earth Band, and
- WHEREAS,** the White Earth Reservation Business Committee is the political successor tribal government to the relocated Chippewas of the Mississippi, and has the authority to enact ordinances and regulations providing an orderly system for tribal control and regulation of hunting, fishing, gathering, trapping and resources management in the territory ceded by the Treaty of February 22, 1855, 10 Stat., 1165; and
- WHEREAS,** the White Earth Reservation Business Committee previously adopted Resolution 057-10-008 to provide for the conservation and management of fish, wildlife, natural resources, plant populations and the pristine freshwaters that support the ecosystems in the 1855 Ceded Territory through the regulation of Treaty beneficiaries use and harvesting activities; and
- WHEREAS,** the White Earth Reservation Business Committee has always had an official role in the governing board of the 1855 Treaty Authority (Commission) since 2010, and the White Earth Reservation Business Committee has a duty to protect and promote public health and to effectively safeguard the rights, privileges and immunities for the Treaty beneficiaries throughout the territory ceded by the Chippewas of the Mississippi to the United States by the Treaty of February 22, 1855.
- WHEREAS,** the White Earth Reservation Business Committee previously provided for a Tribal Court in the Ceded Territory Conservation Code of the 1855 Treaty Tribes (See Section 103, Subd. 5), and supported the adoption of the 1855 off-reservation codes by and through 1855 Treaty Authority Resolution 2018-01 for the *Right to Travel, Use and Occupy Traditional Lands and Waters Code* and by 1855 Treaty Authority Resolution 2018-05 for the *Rights of Manoomin Code*; and
- WHEREAS,** the 1855 Treaty Authority has requested by Resolution 2021-01 that the White Earth Reservation Business Committee now, establish an 1855 off-reservation Tribal Court as a sub-division of the White Earth Reservation Tribal Court,

previously provided for in the Ceded Territory Conservation Code of the 1855 Treaty Tribes in Section 103, Subd. 5; and

WHEREAS, the White Earth Tribal Reservation Business Committee desires to establish an 1855 off-reservation Tribal Court as a sub-division of the White Earth Reservation Tribal Court to safeguard and protect natural resources in perpetuity and enforce tribal codes for the important and significant rights, privileges and immunities of the Treaty beneficiaries reserved in a series of Treaties between the Chippewas with the United States of America from 1825 through 1867, which includes the lands, waters and natural resources throughout the territory ceded under the Treaty of February 22, 1855; now,

THEREFORE BE IT RESOLVED, that the White Earth Reservation Business Committee hereby formally adopts the 1855 Treaty Authority Resolution 2018-01 for the *Right to Travel, Use and Occupy Traditional Lands and Waters Code* and by 1855 Treaty Authority Resolution 2018-05 for the *Rights of Manoomin Code* as part of the laws of the White Earth Band of Ojibwe.

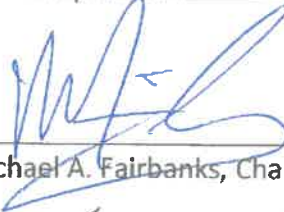
BE IT FURTHER RESOLVED, that the White Earth Reservation Business Committee hereby establishes an 1855 off-reservation Tribal Court as a sub-division of the White Earth Reservation Tribal Court to safeguard and protect the important and significant rights, privileges and immunities of the Treaty beneficiaries through the enforcement of tribal codes, which includes the lands, waters and natural resources throughout the territory ceded under the Treaty of February 22, 1855.

BE IT FURTHER RESOLVED, that the White Earth Reservation Business Committee hereby approves an amendment to the White Earth Judicial Code, Chapter 2, Section 1, by adding a new paragraph (j), stated as follows:

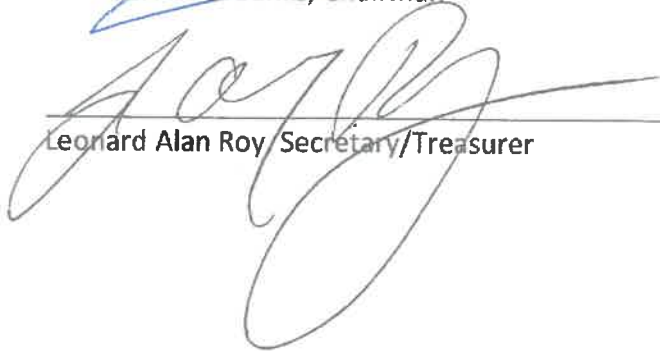
The Court shall have jurisdiction to hear all actions arising under any code, resolution or ordinance enacted to protect, preserve, or regulate the rights reserved for Chippewa people in treaties negotiated with the United States government regarding off-reservation resources. The Court shall also have jurisdiction to hear all actions arising under any code, resolution or ordinance enacted to conserve, manage, or protect the resources utilized by the Chippewa people, regardless of whether such code, resolution or ordinance contemplates conservation, management or protection within or without the boundaries of the Reservation.

BE IT FINALLY RESOLVED, that this Resolution, the Amendment to the Judicial Code, and the adoption of the 1855 Treaty Authority Resolutions 2018-01 and 2018-05 as part of the White Earth Tribal Code are effective immediately.

We do hereby certify that the foregoing resolution was adopted by a vote of 4 for, 0 against, 0 silent, a quorum being present at a regular meeting of the White Earth Reservation Business Committee held on March 11, 2021 in White Earth, Minnesota.



Michael A. Fairbanks, Chairman



Leonard Alan Roy, Secretary/Treasurer