

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

Resolution No. 001-17-003

- 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 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,** 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 is aware of the United States Army Corp of Engineer's present process to re-evaluate its policies with respect to permitting large energy projects in light of tribal rights to hunt, fish and gather in off-Reservation ceded territories, and the Tribal Council desires to provide meaningful input into the Army Corp's decision-making process; and
- WHEREAS,** the 1825 and 1826 treaties recognize Chippewa sovereignty, regulation of hunting and jurisdiction with regard to the exercise of usufructuary property rights over territories in states now known as Michigan, Wisconsin, Minnesota and North Dakota; and
- WHEREAS,** the federal courts have recognized

[t]he historical importance of these activities in Chippewa life and the emphasis of the Chippewa chiefs on usufructuary rights during their negotiations with the United States indicate that the Indians believed they were reserving unrestricted rights to hunt, fish, and gather throughout a large territory. [. . .]

The history suggests that the Chippewa Indians' exercise of their usufructuary rights included selling what they hunted, fished, or gathered in order to make a modest living.

See United States v. Brown, 777 F.3d 1025 (8th Cir. 2015). Citing Mille Lacs Band of Chippewa Indians v. Minnesota, 861 F. Supp. 784, 838 (D. Minn. 1994); Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin, 653 F. Supp. 1420, 1435 (W.D. Wis. 1987); and

WHEREAS, the Eighth Circuit in Brown distinguished Chippewa treaties from other western tribes' treaties clearly articulating that Brown

does not conflict with Sohappy¹ because that case evaluated rights under a particular treaty with materially different language and parties. The Supreme Court has instructed courts to analyze the history, purpose, and negotiations of the treaty at issue in a particular case. See Mille Lacs Band, 526 U.S. at 202. The Ninth Circuit determined in Sohappy that a right to take fish "in common with citizens of the Territory" was not an exclusive right. 770 F.2d at 819. In contrast, the 1837 treaty applicable here reserves broad usufructuary rights with no such limiting language, and the on reservation rights implied in the 1855 treaty are exclusive. These are critical differences which distinguish the [Brown] case before our court.

(Emphasis added). United States v. Brown, et al, 777 F.3d. 1025 (8th Cir. 2015); and

WHEREAS, the Chippewas' federal treaty protected usufructuary property rights to hunt, fish and gather wild rice in order to earn a modest living are in fact the same on and off reservation, *exclusive*, and that the U.S. Army Corps of Engineers applies different criteria to permit applications for activities within a reservation's exterior boundaries than would be applied to permit applications for activities outside a reservation's exterior boundaries as demonstrated by Regional General Permit-003-MN in the State of Minnesota Except for within the exterior boundaries of Indian Reservations currently posted for comment (REFER TO: MVP-2016-02832); and

WHEREAS, the U.S. Army Corps of Engineers (USACE) recognized and responded in their 1997 *Issue Paper and District Recommendation, the Agency's Trust Responsibilities Toward Indian Tribes in the Regulatory Permitting Process for Crandon Mine in Question*

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

[Answer]

¹ United States v. Sohappy, 770 F.2d 816 (9th Cir. 1985).

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" 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" the permit application to the Corps should be denied without prejudice.

See Exhibit A, *Issue Paper and District Recommendation, the Agency's Trust Responsibilities Toward Indian Tribes in the Regulatory Permitting Process* issued September 29, 1997 by J. M. Wonsik, Colonel, Corps of Engineers, District Engineer, St. Paul Office to James Schlender, Executive Administrator, Great Lakes Indian Fish Wildlife Commission, resulting from a permit application by Crandon Mining Company to establish a mining operation near Crandon, Wisconsin, the St. Paul District had 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; and

WHEREAS, various Reservation Business Committees of the Minnesota Chippewa Tribe have been compelled to engage in litigation with the Environmental Protection Agency, Minnesota state permitting agencies and the Minnesota Public Utilities Commission proceedings for new pipeline routes in efforts to protect the ecosystems upon which the Chippewa rely, and upon which the Chippewa have retained usufructuary gathering rights; and

WHEREAS, Congress has specifically set aside some of our most important wild rice waters in '*An Act Setting aside Rice Lake and contiguous lands in Minnesota for the exclusive use and benefit of the Chippewa Indians of Minnesota*, 44 Stat. 763, 1939. Upheld by the Eighth Circuit in 1942, in *State of Minnesota v. U. S.*, 125 F.2d 636 (C.C.A.8 (Minn.) Feb 11, 1942) (NO. 12094); and

WHEREAS, in 1939, the Minnesota Legislature declared an exclusive grant to the Chippewa Indians of Minnesota under Minn. Stat. 84.09 *Conservation of Wild Rice* (1939), which recognized that in order to discharge in part a moral obligation to those [Chippewa] Indians of Minnesota [. . . granted] *to those Indians the exclusive right to harvest the wild rice crop upon all public waters within the original boundaries of the White Earth, Leech Lake, Nett Lake, Vermillion, Grand Portage, Fond du Lac and Mille Lacs reservations.*

(Emphasis added). This Minnesota law was posted openly and in notorious fashion for over 50 years; and

- WHEREAS,** Rice Lake refuge is within the exterior boundaries of the White Earth Reservation, and downstream from the Wild Rice River crossing, in the Wild Rice watershed, and within Enbridge's preferred pipeline corridor for its Line 3 Replacement project—which plans to abandon more than 100 miles of known corrupted pipeline along the U.S. highway 2 Mainline corridor including within the Leech Lake and Fond du Lac Reservations and within the 1854 and 1855 ceded territories—carrying extreme extraction tar sands oil, from the same oil pipeline as the Kalamazoo oil spill, through new and pristine wild rice lakes, rivers, waters and interconnected aquifers; and
- WHEREAS,** the Chippewa ceded territories in Minnesota are the actual headwaters of 3 major North American continental divides; north from the Red River basin to Hudson Bay, East to the St. Louis and other rivers sourcing Lake Superior and the other Great Lakes, and south including all of the upper Mississippi River watershed to the Gulf of Mexico; and
- WHEREAS,** the circuitous nature of the Mississippi River in particular begins at the White Earth reservation (established by the 1867 Treaty) and then flows through the 1855 ceded territory reservations of Leech Lake, Pokegama, Sandy Lake, Gull Lake and Rabbit Lake, and then forms the border between the Chippewa territories ceded in 1847 and 1837, with interconnected upstream and downstream aquatic ecosystems which are the primary sources for important wild rice environments, wild life and fisheries; and
- WHEREAS,** the State of Minnesota has continuously failed to recognize important and exclusive, federally protected Chippewa rights and presently the Minnesota Public Utilities Commission is considering permitting and unilaterally granting eminent domain across irreplaceable wild rice and other natural resources in public waters and important fisheries that are generally considered 50% tribal resources; and
- WHEREAS,** the State of Minnesota has been actively engaged in permitting large infrastructure projects that pose permanent environmental damages to Chippewa tribal resources on and off reservations, which threaten the long-term health, safety and welfare of the Chippewa with federally protected usufructuary property rights to hunt, fish and gather wild rice in perpetuity throughout tribal aquatic resources in violation of a series of Chippewa Treaties with the United States of America, and in violation of Public Law 280, section (b); and which are ultimately violations of our Chippewa Indian civil rights under 42 U.S.C. §1983; now

THEREFORE BE IT RESOLVED, that the White Earth Reservation Tribal Council requires that the United States Army Corps of Engineers accord all "off reservation" Chippewa ceded territories in Minnesota with the same treatment and environmental **exception** as "on reservation" landscapes for environmental protection, health, safety and welfare with appropriate consultation and *required consent* of the Chippewa of the Mississippi and Lake Superior Bands; now

THEREFORE BE IT FURTHER RESOLVED, that the White Earth Reservation Tribal Council requires that any future permitting by the United States Army Corps of Engineers require a joint Minnesota Chippewa Tribe-Federal Environmental Impact Statement (or express waivers), which are culturally based on the long-term needs and protections of the natural, tribal resources and other usufructuary property of the Chippewa of the Mississippi and Lake Superior Bands; now

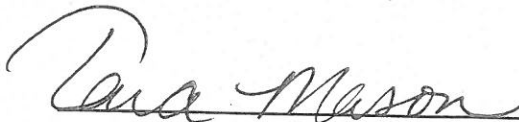
THEREFORE BE IT FURTHER RESOLVED, that the 1997 USACE *Issue Paper* is now two decades old and needs to be upgraded and developed cooperatively with the various Bands of the Minnesota Chippewa Tribe to reflect important court decisions such as Mille Lacs, Brown and Gotchnik to correctly analyze and distinguish our exclusive rights from the predominantly western Treaty analysis contained in the 1997 Issue Paper in order to better develop the analysis of long term cultural needs and rights as the legal basis requiring consent from the Chippewa; now

THEREFORE BE IT FINALLY RESOLVED, that as part of the current 2016 Federal Tribal consultation following environmental concerns for protection of tribal resources involving Standing Rock Sioux and Dakota Access Pipeline (DAPL), the White Earth Tribal Council requires publication in the Federal Register by the Army Corp that separate, free and pre-informed consent is required by the Chippewa of the Mississippi and Lake Superior Bands for large infrastructure project proposers such as pipelines and mines, which will ultimately cause irreparable damage to protected tribal resources, and large infrastructure project proposers are therefore subject to the original jurisdiction of the Chippewa of the Mississippi and Lake Superior Bands as original owners of the undivided, one-half interest in the ceded territories with the State of Minnesota regarding eminent domain over public waters and lands.

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 November 14, 2016 in White Earth Minnesota.



Terrence "Terry" Tibbetts, Chairman



Tara Mason, Secretary/Treasurer