

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

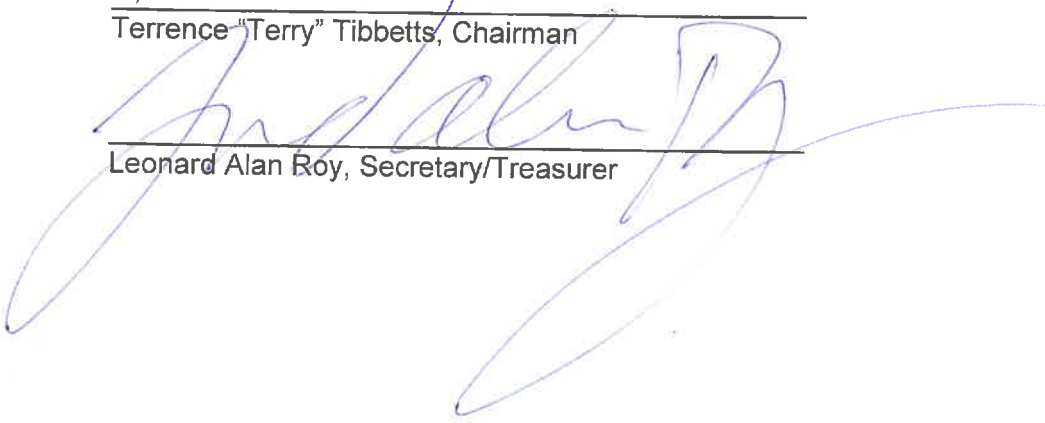
WHEREAS, we recognize that to protect manoomin and our people, we must secure their highest protection through the recognition of legal rights for the protection of manoomin.

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

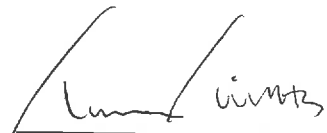
WHEREAS, manoomin and the habitats in which it thrives are threatened by hybridization, genetic modification, sterilization, privatization, climate change, and other industrial and corporate practices, and we recognize that in order to protect manoomin and our people, we must secure its highest protection 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

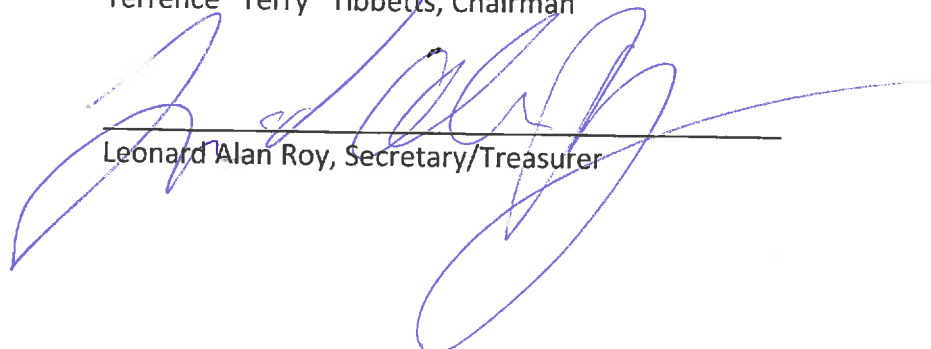
BE IT FURTHER RESOLVED, that the RBC hereby establishes a requirement for providing written notice to cease and desist to the State of Minnesota and other entities that take actions, or permit others to take actions that endanger the clean, freshwater resources and necessary habitats required for Manoomin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