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**PO Box 418
WHITE EARTH, MN 56591**

1855 TREATY AUTHORITY

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

June 1, 2021

Sent via email only

commissioner.dnr@state.mn.us

Sarah Strommen, Commissioner
Minnesota Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155

Re: NOTICE: White Earth off reservation tribal court
And Chippewa treaty protected uses of *public lands*

Dear Commissioner Strommen:

Please find enclosed a copy of the White Earth Reservation Tribal government's Resolution 019-21-002 (attached), providing for off-reservation, tribal court jurisdiction for tribal members and treaty beneficiaries in the ceded territories whereby

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.

Judicial Code, Chapter 2, Section 1, (j). White Earth Tribal Court, P.O. Box 289, White Earth, MN 56591, Phone: (218)-983-4648.

TREATY WITH THE CHIPPEWA, 1855.

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

White Earth Resolution 019-21-002 also formally adopts the 1855 Treaty Authority codes (attached) for *Right to Travel, Use and Occupy Traditional Lands and Waters Code* (1855 Res. 2018-01) and *Rights of Manoomin Code* (1855 Res. 2018-05), to expressly describe the rights of tribal members and beneficiaries engaged in activities “to conserve, manage, or protect the resources utilized by the Chippewa people” as part of our exercising our U.S. constitutionally protected usufructuary property rights to hunt, fish and gather and religious freedoms¹ in perpetuity.

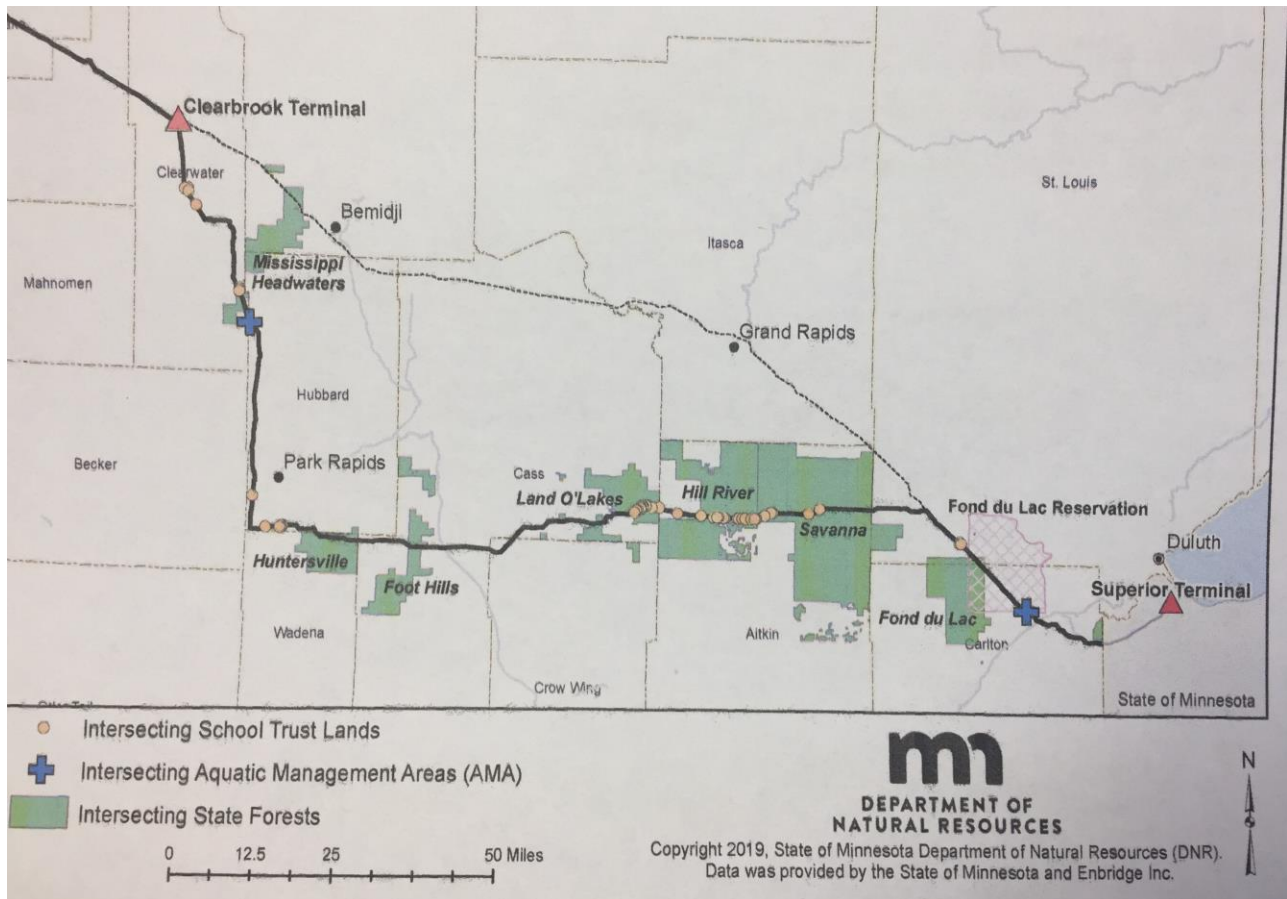


White Earth is an 1867 relocation reservation for Chippewa from Michigan to Turtle Mountain and political successor tribal government to several 1855 *Chippewas of the Mississippi* bands/reservations including Gull Lake, Rabbit Lake, Sandy Lake, Rice

¹ See American Indian Religious Freedom Act, Public Law No. 95-341, 92 Stat. 469 (Aug. 11, 1978) (commonly abbreviated to AIRFA), codified at 42 U.S.C. § 1996, is a United States federal law, enacted by joint resolution of the Congress in 1978. The law was enacted to return basic civil liberties to Native Americans, Inuit, Aleuts, and Native Hawaiians, and to allow them to practice, protect and preserve their inherent right of freedom to believe, express, and exercise their traditional religious rites, spiritual and cultural practices. These rights include, but are not limited to, access to sacred sites, freedom to worship through traditional ceremonial rites, and the possession and use of objects traditionally considered sacred by their respective cultures.

Lake and Pokegama. White Earth adopted the Ceded Territory Conservation Code of the 1855 Treaty Tribes May 17, 2010 (attached), which in particular provides for prohibited acts, prohibited “trespass” and tribal court. (See Sect 103, subs. 5-7 <https://whiteearth.com/assets/files/judicial/codes/judicial.code.pdf>).

Under the Mille Lacs² decision, the initial or primary places for Chippewa tribal members and treaty beneficiaries to exercise usufructuary rights, conservation and religious freedoms is across the same territory as the *public lands* and waters of the state, just as Minnesota recognizes for the 1854 and 1837 Chippewa ceded territories. Public Law 280 does not authorize Minnesota to regulate Chippewa treaty rights or water rights across *Indian Country*, which in this case is the 1855 ceded territory.



² See Minnesota v. Mille Lacs Band of Chippewa Indians, 526 U.S. 172 (1999), was a United States Supreme Court decision concerning the usufructuary rights of the Ojibwe (Chippewa) tribe to certain lands it had ceded to the federal government in 1837. (See Syllabus, In fact, the entire 1855 Treaty is devoid of any language expressly mentioning usufructuary rights or providing money for abrogation of those rights. These are telling omissions, since federal treaty drafters had the sophistication and experience to use express language when abrogating treaty rights. 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. Oregon Dept. of Fish and Wildlife v. Klamath Tribe, 473 U. S. 753, distinguished. Pp. 195-202.

It is readily apparent from the Line 3 Minnesota DNR map that state *public lands* are along much of the pipeline route. As such, the various White Earth codes for off-reservation tribal court, conservation and natural resources, rights of manoomin and rights to travel, use and occupy traditional lands and waters apply and protect tribal members' federally protected Treaty Rights. (See existing examples of off reservation jurisdiction for conservation codes and tribal courts; 1854 Treaty Authority, Fond du Lac and Great Lakes Indian Fish and Wildlife Commission).

The purpose of this Ceded Territory Conservation Code of the 1855 Treaty Tribes is to:

- a) Provide 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 and as further defined herein;
- b) Provide a means to promote public health and safety and the conservation and management of fish, wildlife, natural resources and plant populations in the Ceded Territory through the regulation of Band Member harvesting activities; and
- c) To the fullest extent possible, to promote and protect the rights of the 1855 Treaty Tribes retained under the Treaty of February 22, 1855.

See <https://whiteearth.com/assets/files/judicial/codes/judicial.code.pdf>), Section 101, subd. 3.

Presently, a number of 1855 Treaty beneficiaries have established a culture camp in the 1855 ceded treaty territory where fishing and harvesting traditional shells on the shell river and other seasonal gathering activities occur. The location of the culture camp is located on *public lands* at the Shell City Campground in Huntersville State Forest. Canoe activities, teaching lodges and ceremonies are planned. Additionally, the 1855 Treaty Authority adopted the *2021 Summer Fishing Season Resolution 2021-02* (attached).

I have been made aware by Winona LaDuke, who gave notice to the 1855 Treaty Authority that she is holding the Culture Camp at the Shell City Campground and has made arrangements for native and non-native campers with campground officials. Fees have been paid to the campground and next weekend some 60 church people and a number of native cultural leaders are coming. Over the weekend, LaDuke reported that a state DNR conservation officer named Jordan _____ threatened tribal members and others for being at the Campground. The Chippewa have a separate, right to travel, use and occupy *public lands*. Please take notice of the *Right to Travel, Use and Occupy*

Traditional Lands and Waters Code, which provides for and protects traditional, seasonal and cultural camping and for actively practicing religious freedoms and important civil rights. Tribal members have inherent rights to protect Manoomin (wild rice) and all the waters where it may live.

Important to note is that in the short time the Culture Camp has been operating, it is apparent there is an old Indian village site with burial mounds along the Shell River and confluence with Crow Wing River. We understand that the DNR and MPCA have permitted 5 water crossings by the Line 3 pipeline under the clean water act at the Shell River. We remember that the DNR did not hold a contested case, evidentiary proceeding for the water crossing permitting and we remember that the MPCA Administrative Law Judge did not consider (ignored our property rights as federal in his order) the *Chippewas' of the Mississippi* water rights as asserted and filed for the Line 3 MPCA contested case proceedings, and then both state agencies unilaterally granted water crossing permits for the route.

Identification of the old Indian village and burial mounds raises serious questions about the amount and thoroughness of historical preservation work conducted by the state and/or Enbridge that permitted 5 river crossings along this tribal historical property and cultural corridor for what might best be called the Shell River band. As such, it seems necessary and prudent for the White Earth Tribal Historical Preservation Officer to more closely examine the Tribal concerns and cultural impacts to this traditional village to initiate an investigative, archaeological study to determine cultural risks associated with this state approved pipeline route.

A second cultural camp has also been established on private lands by 1855 Treaty beneficiaries on the Great River Road at Hill River State Park in Aitkin, Minnesota. Of particular concern is a Medwiin ceremonial or teaching lodge physically erected and established by Winona LaDuke in December 2020, near the Mississippi River and later, marked as within the pipeline right of way easement. (See WE THPO Report attached) The DNR and local law enforcement have restricted some people's access to the lodge and LaDuke is very concerned that Enbridge security, DNR or law enforcement will simply disregard her first in time rights to practice her religion and simply destroy the lodge like the bulldozers at Standing Rock.

Minnesota's criminalized trespass law(s) are civil regulatory civil rights deprivation laws, on or off reservation throughout Minnesota's *Indian County* under Public Law 280, with regard to the shared natural resources on public lands and waters. (See Public Law 83-280 (18 U.S.C. § 1162, 28 U.S.C. § 1360)). Tribal codes prohibit trespass and White Earth judicial codes provision for off-reservation tribal court, pre-empt the state's *criminalized* trespass laws with regard to tribal members. Please ask DNR Conservation Officers to give the same deference and respect to the Chippewa in the 1855 territory as the 1854 and 1837, because the *Chippewas of the Mississippi* were signatories to those treaties as well. Please respect our treaty rights and obey the federal laws that protect our rights.

If you have any other questions or need of assistance with this matter please call on me at by phone or email at the above contacts. Mii gwitch!

Sincerely,

/s/ Frank Bibeau

Frank Bibeau
Executive Director

Attachments: (4) WE Res. 019-21-002
1855 Treaty Authority Res. 2018-01
1855 Treaty Authority Res. 2018-05
WE THPO Report Dec 2020 Medwiin lodge

cc: Tim Walz, Minnesota Governor
Peggy Flanagan, Minnesota Lieutenant Governor
Keith Ellison, Minnesota Attorney General
W. Anders Folk, Acting United States Attorney Minnesota
Michael Fairbanks, Chairman, White Earth
Alan Roy, Secretary/Treasurer, White Earth
Ray Auginaush, Sr., District 1 White Earth
Kathy Goodwin, District 2, White Earth
Cheryl 'Annie' Jackson, District 3, White Earth
Leonard Fairbanks, Legal Director, White Earth
Jaime Arsenault, Tribal Historic Preservation Office, White Earth
Monica Hedstrom, Director, Natural Resources, White Earth
Alfred Fox, Chief Conservation Officer, White Earth
1855 Treaty Authority members