

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

Resolution No. _____

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 *Chippewas of the Mississippi* following prior relocation attempts via the 1863 and 1864 Treaties with the Chippewa, moving us from our 1855 Chippewa reservations “known as Gull Lake, Mille Lac, Sandy Lake, Rabbit Lake, Pokagomin Lake, and Rice Lake” to Leech Lake reservation initially, then soon after to White Earth Reservation, and

WHEREAS, the White Earth Band of Chippewa (or Ojibwe) has approximately half of the 40,000 total tribal members enrolled in the Minnesota Chippewa Tribe (MCT), which are all treaty beneficiaries of the many Chippewa Treaties with the United States and who retain the usual rights of use and occupancy across the 1855 ceded territory and former 1855 reservations; including usufructuary property rights to hunt, fish, trap, gather wild rice as part of earning a modest living, and

WHEREAS, the White Earth Reservation Business Committee is the duly elected governing body authorized by the *Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota* as the constituent band of the Minnesota Chippewa Tribe organized under Section 16 of the Act of June 18, 1934 (48 Stat. 984) and therefore has the responsibility and authority to provide for the safety, health and welfare of its tribal members, and

WHEREAS, the White Earth Band is primarily comprised of *Chippewas of the Mississippi* from Gull Lake, Rabbit Lake, Mille Lacs, Rice Lake and Sandy Lake, Pokegama but also includes Pillager, Winnibigoshish, and Lake Superior band members and others relocated who are beneficiaries to many of the Chippewa treaties with the United States of America, and

WHEREAS, the Northwest Ordinance of July 13, 1787, Article III provides that the *utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent*, and the United State Constitution was ratified in 1788 providing in Article VI that treaties are the supreme law of the land, and Article I, Section 8 of the Constitution states that “Congress shall have the power to regulate Commerce with the Indian tribes” and the Bill of Rights ratified in 1791, Fifth Amendment provides for property

rights being protected by due process and from unjust taking, and shortly thereafter in the 1795 Treaty of Greenville “the United States relinquish[ed] their claims to all other Indian lands northward of the river Ohio, eastward of the Mississippi, and westward and southward of the Great Lakes *and the waters uniting them . . .*” (See Article IV), and

WHEREAS, the 1825 and 1826 Chippewa Treaties with the United States further recognized Chippewa national sovereignty, regulation of hunting and *jurisdiction* with regard to future land cessions and the exercise of usufructuary property rights over those territories in states now known as Michigan, Wisconsin, Minnesota and North Dakota, and

WHEREAS, various federal courts have recognized

the 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 (2015), citing Minnesota v. Mille Lacs Band of Chippewa Indians (1999), and Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin, see also United States v Gotchnik (2000)), 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, yet the U.S. Army Corps of Engineers appears to 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 as demonstrated by Regional General Permit-003-MN in the State of Minnesota Except for within the exterior boundaries of Indian Reservations, and

WHEREAS, the U.S. Army Corps of Engineers (USACE) recognized and responded to Chippewa treaty bands and the Great Lakes Indian Fish and Wildlife Commission 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] *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 MCT Tribal Executive Committee (TEC) Resolution 32-17, 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, 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, that the 1997 USACE Issue Paper is now over two decades (20+ years) old and that the Tribal Executive Committee of the Minnesota Chippewa Tribe requested that "the U.S. Army Corps of Engineers: (1) consult with the Minnesota Chippewa Tribe and its constituent bands to update the guidelines (Exhibit A) [the 1997 USACE Issue Paper]; (2) make a firm unequivocal commitment that it will follow those guidelines and fulfill its trust obligations to Indian tribes; and (3) enter into agreements with the MCT or constituent band to establish protocols for tribal input and consultation on proposed actions impacting tribal cultural and natural resources" by TEC Res. No. 32-17 duly adopted on Nov. 30, 2016, and

WHEREAS, the reservation of sovereign rights is an important part of our ongoing struggle to preserve a culture that is best understood in terms of our relationship with the natural environment and that there is no economic framework that can properly define the value of manoomin to the Ojibwe people because manoomin is central to Ojibwe cultural identity, spiritual traditions, and physical well-being and serves as an important indicator species to the ecology of Minnesota's lakes and rivers and provides critical food and habitat to both endemic and migratory species, and

WHEREAS, Tribal members continue to harvest and rely upon manoomin for religious purposes including naming ceremonies, funerals, Midewiwin ceremonies, and various seasonal feasts and these activities are critical components in perpetuating Anishinaabe lifeways and cultural practices, whereby the Ojibwe-Anishinaabe spiritual beliefs mandate the use of certain plants, animals, and fish in ceremonies attendant to hunting, fishing, and gathering activities and these ceremonies ensure the perpetuation of the resources and the physical, mental, and spiritual well-being of the person for *bimaadiziwin* “living a good life”, and

WHEREAS, White Earth Band and the 1855 Treaty Authority have adopted *Rights of Manoomin* ordinances to protect wild rice on and off reservation and given notice of consent required to Minnesota Governor Walz. (See Exhibits B-E; White Earth Chairman Tibbetts, Jan. 25, 2019 letter to Governor Walz Re: 401 water quality consent with the attachments; White Earth Band of Ojibwe Resolutions (001-19-009 and 001-19-010) and 1855 Treaty Authority Resolution 2018-05). We can see the Corps understands that

As part of the [Corps’] authorized mission of conserving and managing natural resources, the Headwaters attempt to maintain stable operating levels for the purpose of wild rice[, . . . which] grows in shallow to moderate water depths (1-3 feet) and is affected by water flow, turbidity, water quality and water level fluctuations. Wild rice is sensitive to varying water levels and production in individual stands from year-to-year is subjective, depending on local water conditions. Wild rice has special cultural and environmental significance to the Native Americans. From an environmental perspective, it is an important habitat component and is often viewed as an ecological indicator species due to its sensitivity to growing conditions.

(See **USACE- Mississippi River Headwaters Reservoirs Master Plan, Main Report October 2016**, at p 36).

According to the **2016 Main Report, 2.8.1 Climate Change and Wildlife Impacts** the Master Plan emphasizes the need to have adequate resource protection to maintain species diversity, habitat quality, and outdoor recreational opportunities. Environmental challenges beyond our control could significantly impact natural resources. Climate change may alter the landscape of the Headwaters in multiple ways, the most visible being changes in river flows and/or lake levels. More erratic high flows and droughts can influence rates of siltation, rim erosion, lake access for recreational boating, and flood protection. Wildlife can move or migrate as conditions change, but plants have difficulty surviving significant climatic change. Some species can be generalists across a wide range of

growing conditions, but more conservative species with very specific growth niches will likely be impacted. The exact impacts are difficult to predict, but climate is singularly the most influencing determinant of landscapes.

(See Main Report at p 48). **The Main Report also speaks to Tribal Trust responsibility** and that:

As part of the Corps' tribal trust responsibility, the Corps considers the relationship between local Native American tribes and the Federal Government on various operational elements of the Headwaters' projects. Portions of the Headwaters' project sites are located within the boundaries of Native American Reservations. The lakes and streams of the Mississippi Headwaters' area, as well as the plants and animals associated with them, hold spiritual, economic, and subsistence value to the various bands and tribes in the area. Natural resources are a fundamental aspect of their cultural identity.

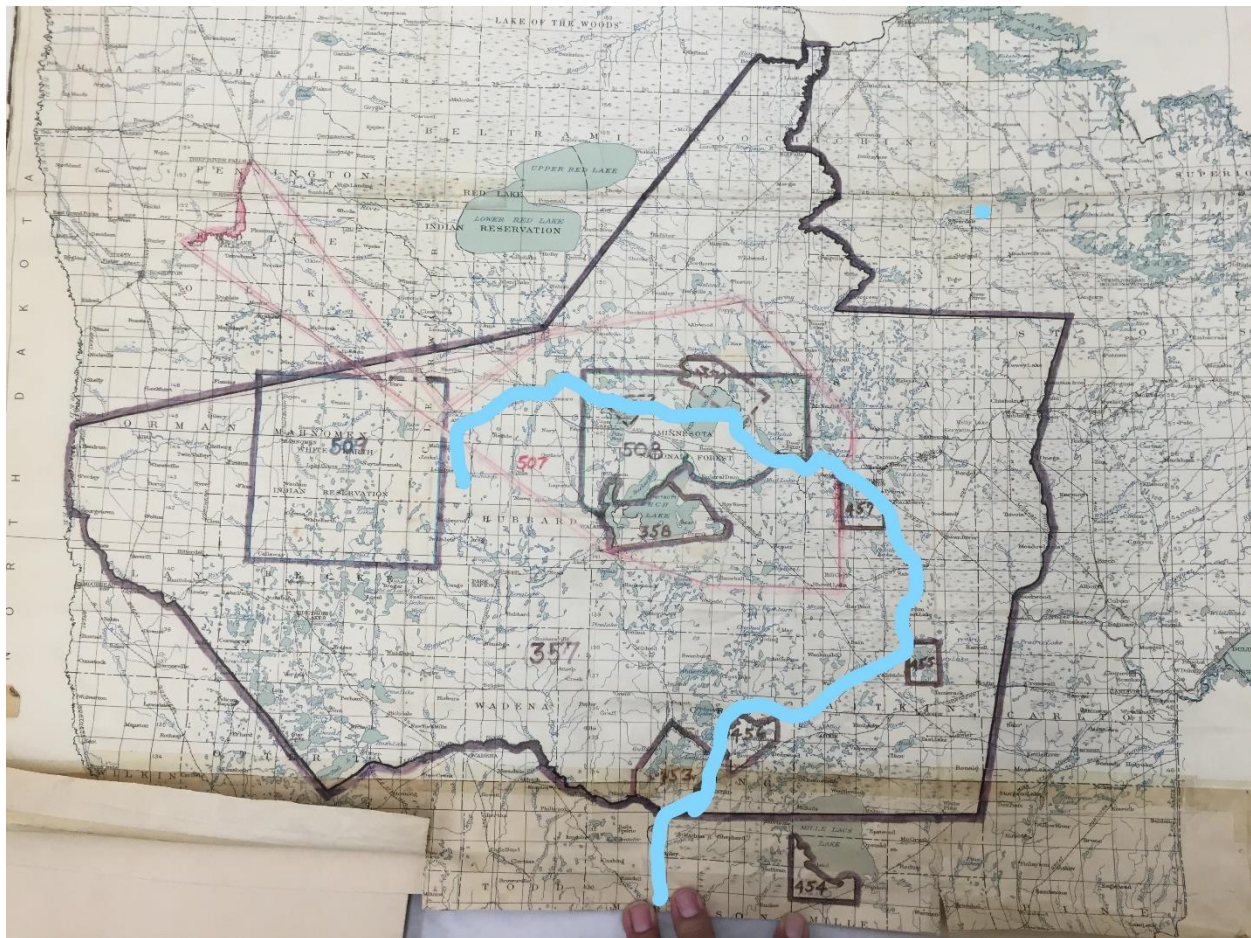
The greatest density of culturally important archeological sites in the Headwaters' area is typically found along the shorelines of lakes, rivers, and streams. These sites are located both above and below the current water levels. The primary tribal goal, with regard to cultural resources, is to ensure that the heritage of Native Americans is preserved as an integral part of community life, providing orientation to its people, their language, music, stories, and traditions. The preservation of these cultural sites is considered a vital legacy to be maintained for future generations.

(See **Main Report** at p 59), and

WHEREAS, the Chippewa ceded territories in Minnesota, including the 1855, are the actual headwaters of 3 of the 4 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 upper Mississippi River in particular begins adjacent to the White Earth reservation (established by the 1867 Treaty) and then flows through the 1855 ceded territory reservations of Cass Lake, Winnibigoshish, Pokegama, Sandy Lake, Gull Lake and Rabbit Lake, and then forms the border between the Chippewa territories ceded in 1847 and 1837, with interconnected tributaries, upstream and downstream in all aquatic ecosystems which are the primary sources for important wild rice environments, wild life and fisheries, and

WHEREAS, for the *Chippewas of the Mississippi*, abundant, clean water is inextricably linked to the self-sufficiency, economic development and security of present and future generations of northern Minnesota's tribal communities' health and welfare and consequently the upper Mississippi watershed (in light blue on the map), from the Headwaters of the Mississippi River adjacent to White Earth Reservation through the various 1855 reservations and ceded territories through Brainerd to St. Cloud, must be recognized as one, long, continuous, first in time, chain of reservations, seamlessly linked together as a common, *Chippewas' of the Mississippi* priority quality water property rights' under the *Winter's Doctrine* including all the upper Mississippi watershed tributaries, lakes, aquifers, wetlands and natural resources, reserved for the *Chippewas of the Mississippi* to enjoy and protect, and



WHEREAS, the White Earth Reservation has intervened in the Enbridge Application process for certificate of need and routing permits in the Minnesota Public Utilities Commission (PUC) for both Sandpiper (fracked Bakken crude) and Line 3 Replacement (Canadian extracted tar sands crude) pipeline projects to protect the freshwater resources habitat that support wild rice and prevent related

climate change impacts to air and water quality resources and our primary, natural food resources that rely upon avoiding further degradation to the overall upper Mississippi River from the Headwaters at Lake Itasca by White Earth to below Brainerd, and

WHEREAS, the Tribal Executive Committee of the Minnesota Chippewa Tribe directed on March 15, 2017 that a tribal cumulative impacts assessment be initiated immediately by TEC Res. No. 72-17 (See Exhibit F); the Anishinabe Cumulative Impacts Assessment (ACIA) was developed and Notice of public comment period issued, with a follow-up PUBLIC NOTICE Extension of Comment Period for Minnesota Chippewa Tribe's Cumulative Impact Assessment for Line 3 to February 2, 2018, (e-filed on the MN PUC e-docket Nov. 30, 2017 for Enbridge's certificate of need application at 14-916 and Enbridge's route permit application at 15-137) for all parties on the PUC Line 3 e-dockets, and

WHEREAS, the White Earth Reservation was an active partner in the development the Anishinabe Cumulative Impacts Assessment (ACIA) and did post the final, completed ACIA as a report on MN PUC e-docket for Enbridge's certificate of need application at 14-916 and Enbridge's route permit application at 15-137 on February 23, 2018, and

WHEREAS, the State of Minnesota has been actively engaging in 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) excluding state jurisdiction over *water rights* in Indian Country; and which are ultimately violations of our federally protected civil rights under 42 U.S.C. §1981 *et seq*, and

WHEREAS, on April 13, 2018 the 1855 Treaty Authority adopted the Anishinabe Cumulative Impacts Assessment (1855 TA Res. 2018-03, See Exhibit G) as the environmental risk analysis tool for the Line 3 pipeline projects across the 1855 ceded territory and finds that climate change and other consequential and collateral impacts are too great and therefore adopted a *No Build Option* to protect off reservation natural resources, and

WHEREAS, on Feb. 21, 2019, the 1855 Treaty Authority provided Comments on USACE Permit Application No.: 2014-01071-TJH, for Enbridge Line 3 Replacement, regarding environmental impacts to Chippewa Treaty Protected Resources and Cultural Properties to the U.S. Army Corps of Engineers that reveal the scope of the Corps' Line 3 Clean Water Act Jurisdiction primarily over 3 water crossings across navigable waters is insufficient to protect the more than 200 water bodies

of impacted Chippewa territorial water quality and usufructuary property rights of the upper Mississippi River watershed (See Exhibit H), and

WHEREAS, the bulk of the waters of the United States, the other party to the Chippewa treaties, have predominantly become public waters of Minnesota under Section 401 review of the Clean Water Act by the Minnesota Pollution Control Agency, and which Minnesota public waters are where most of the wild rice grows and consequently the White Earth Band cannot ignore that *Climate change affects lakes, walleye in complex ways*¹ and that years later an *Ojibwe leader says Mille Lacs walleye have not recovered yet*²; that any increase in tar sands extraction 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 usually shift further north to Big Sandy, Pokegama, Big Winnie, Cass Lake and Leech Lake, which are all original 1855 reservations, and

WHEREAS, the White Earth Band has adopted the Minnesota Chippewa Tribe's Anishinabe Cumulative Impacts Assessment as the White Earth Band's environmental risk and evaluation tool for the meaningful assessment of the short and long term impact of the abandonment of the existing Line 3 pipeline, as well as the impacts from tar sands extraction, greenhouse gases, climate change and additional, future pipeline abandonment from the decreased demand for crude oil, and

THEREFORE BE IT RESOLVED, that the White Earth Band *FINDS* that the Minnesota Chippewa Tribe's Anishinabe Cumulative Impacts Assessment is superior to the EIS that has been approved by the Minnesota PUC in examining the cumulative impacts from the proposed Line 3 project upon surface waters, groundwater, fish, wildlife, waterfowl, wild rice, plants, as well as the broader environmental consequences resulting from the proposed Line 3 project, which necessarily requires prohibiting the Line 3 Pipeline Replacement, new route corridor for the replacement pipeline across the 1855 ceded territory in violation of White Earth Band and 1855 Treaty Authority's established codes, laws and customs required *consent* as co-owners, and

NOW THEREFORE BE IT FURTHER RESOLVED, that the White Earth Band in exercise of original, retained jurisdiction from the Northwest Ordinance, 1795 Treaty of Greenville, the 1825 and 1826 Chippewa Treaties with the United States and sovereignty of the thousands of treaty beneficiaries and the jurisdiction of the federally recognized reservation with tribal regulatory authorities for the reserved, priority, water quality property rights and *Rights of Manoomin* now requires that the United States Army Corps of Engineers fulfill its legal obligation under federal laws to honor and respect the White Earth Band's and *Chippewas of the Mississippi*

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/>

rights to parity recognition of usufructuary property rights in the 1855 treaty ceded territory, same as the 1837 and 1854, and more importantly include all of the “off reservation” interconnected waters, quality property rights as describe and provided for in the *Winter’s Doctrine* for the upper Mississippi River in Minnesota, for the same environmental protection treatment and as “on reservation” for the Line 3 Clean Water Act permitting under 404/408 with appropriate consultation and *required consent* of the *Chippewas of the Mississippi*, and

BE IT FINALLY RESOLVED, that White Earth Band requires written confirmation by the Corps’ that separate, free and prior, informed *consent* (as required by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)) is required by and from the White Earth Band and *Chippewas of the Mississippi* as co-owner of the undivided, half interest in the ceded territories’ natural resources and waters that link them, within the State of Minnesota regarding eminent domain over public waters and lands for this Line 3 pipeline project.

We do hereby certify that the foregoing resolution was adopted by a vote of _____ for, _____ against, _____ silent, a quorum being present at a special meeting of the White Earth Reservation Business Committee held on _____, 2019 in _____, Minnesota.

Eugene “Umsy” Tibbetts, Vice-Chairman

Leonard Alan Roy, Secretary/Treasurer