

SETTLEMENT AGREEMENT

Between

THE MILLE LACS BAND OF CHIPPEWA INDIANS

and

THE STATE OF MINNESOTA

Regarding

TREATY HUNTING, FISHING AND GATHERING RIGHTS

Dated

JANUARY 15, 1993

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SETTLEMENT AGREEMENT

Recitals

WHEREAS:

1. The Chippewa nation and the government of the United States entered into a treaty on July 29, 1837, 7 Stat. 536 ("1837 Treaty");

2. Article 1 of the 1837 Treaty cedes to the United States certain described lands ("Ceded Territory");

3. Article 5 of the 1837 Treaty provides:

The privilege of hunting, fishing, and gathering the wild rice, upon the lands, the rivers and the lakes included in the territory ceded, is guarantied to the Indians, during the pleasure of the President of the United States;

4. The Mille Lacs Band of Chippewa Indians ("Band") is a federally recognized band of Indians, was a signatory to the 1837 Treaty, and is the principal band that then resided in that portion of the Ceded Territory located in what is now the State of Minnesota ("Minnesota Ceded Territory");

5. The Band is the only band that has, since the execution of the 1837 Treaty, continuously resided in the Minnesota Ceded Territory;

6. The Band claims rights to hunt, fish and gather free of most state regulation throughout the Minnesota Ceded Territory (including rights in Mille Lacs Lake, most but not all of which is within the Minnesota Ceded Territory) under the 1837 Treaty;

7. The Band entered into another treaty with the United States on February 22, 1855, 10 Stat. 1165 ("1855 Treaty");

8. Article 2 of the 1855 Treaty established a reservation for the Band ("Mille Lacs Reservation") described as follows:

The first to embrace the following fractional townships, viz: forty-two north, of range twenty five-west; forty-two north, of range twenty-six west; and forty-two and forty-three north, of range twenty-seven west; and, also, the three islands in the southern part of Mille Lac;

9. The fractional townships referred to in Article 2 of the 1855 Treaty border on Mille Lacs Lake;

10. The Band claims rights to harvest natural resources free of most state regulation throughout all of Mille Lacs Lake under the 1855 Treaty, which are in addition to the rights it claims under the 1837 Treaty in that portion of Mille Lacs Lake that is within the Minnesota Ceded Territory;

11. On August 13, 1990, the Band and four of its members (one of whom is now deceased) filed a civil action in the United States District Court for the District of Minnesota, Fourth Division, entitled Mille Lacs Band of Chippewa Indians, et al. v. State of Minnesota, et al., Civil No. 4-90-605 ("Litigation"), asking the court for a declaratory judgment that the Band has the right to hunt, fish and gather in the Minnesota Ceded Territory pursuant to Article 5 of the 1837 Treaty free of most state regulation and for other relief;

12. The Band and the State of Minnesota desire to compromise, settle and resolve all issues and claims for relief in the Litigation, including all issues concerning the rights of the Band

and its members to harvest natural resources in the Minnesota Ceded Territory under the 1837 Treaty; and

13. The Band and the State of Minnesota also desire to compromise, settle and resolve all issues concerning the rights of the Band and its members to harvest natural resources in Mille Lacs Lake under the 1855 Treaty;

NOW, THEREFORE, the parties agree as follows:

PART I. DEFINITIONS.

For the purposes of this Agreement, the terms defined in the foregoing recitals shall have the meanings set forth there, and the following terms shall have the meanings set forth in this Part:

A. Band Commissioner shall mean the Band's Commissioner of Natural Resources or his/her authorized representative.

B. Band conservation code shall mean all duly enacted laws, statutes, regulations and orders of the Band and the Band Commissioner governing: (1) natural resource harvesting activities by Band members in the Minnesota Ceded Territory and Mille Lacs Lake; and (2) fishing and wild rice harvesting activities by Band members at waters described in Part V of this Agreement.

C. Band member shall mean an officially enrolled member of the Band pursuant to Band law and any applicable federal law.

D. Big game shall mean deer, moose, elk, bear, antelope and caribou.

E. Commercial harvesting shall mean any harvesting of a natural resource in which the resource harvested, or any portion thereof, is sold, but shall not include harvesting of natural

resources for subsistence uses.

F. Conservation shall mean the protection and management of natural resources in a manner intended to achieve a sustained harvestable surplus.

G. Conservation officer shall mean an officer of the State or Band authorized to enforce natural resource harvesting laws, statutes, regulations, or orders.

H. Fish shall mean all varieties of fish including shellfish.

I. Furbearers shall mean all wild animals that bear fur except big game.

J. Game birds shall mean all birds other than migratory birds.

K. Game fish shall mean walleye, sauger, yellow perch, channel catfish, and flathead catfish; members of the pike family, Esocidae, including muskellunge and northern pike; members of the sunfish family, Centrarchidae, including largemouth bass, smallmouth bass, sunfish, rock bass, white crappie, and black crappie; members of the temperate bass family, Percichthyidae, including white bass and yellow bass; members of the salmon and trout subfamily, Salmoninae, including Atlantic salmon, chinook salmon, coho salmon, pink salmon, kokanee salmon, lake trout, brook trout, brown trout, rainbow (steelhead) trout and splake; members of the paddlefish family, Polyodontidae; and members of the sturgeon family, Acipenseridae, including lake sturgeon and shovelnose sturgeon. "Game fish" includes hybrids of game fish.

L. Harvest or harvesting shall mean: (1) pursuing, shooting, killing, capturing, trapping, snaring, angling, spearing, or netting

wild animals; (2) placing, setting, drawing or using a net, trap or other device to take wild animals; (3) collecting plants by any means; (4) attempting to harvest wild animals or plants; or (5) assisting another person to harvest wild animals or plants.

M. Harvest area shall mean an area in which a particular natural resource can be managed as a biological unit.

N. Harvestable surplus shall mean that portion of a species or resource population that may be harvested without having a long-term detrimental effect on the species or resource population in the harvest area.

O. Migratory birds shall mean all birds, the harvesting of which is regulated by the United States under the Migratory Bird Treaty Act or other federal law.

P. Mille Lacs Reservation shall mean the Reservation established for the Band in Article 2 of the Treaty with the Chippewa, 1855, 10 Stat. 1165.

Q. Minnesota Ceded Territory shall mean all lands and waters described in Appendix A to this Agreement.

R. Miscellaneous wild animals shall mean any wild animals other than fish, big game, small game, furbearers, or migratory birds.

S. Motor vehicle shall mean a self-propelled vehicle or a vehicle propelled or drawn by a self-propelled vehicle that is operated on a highway, on a railroad track, on the ground, in the water, or in the air.

T. Natural resources shall mean all wild animals and plants.

U. Non-commercial harvesting shall mean any harvesting of natural resources in which the resource is harvested for ceremonial, cultural, medicinal, educational, research or subsistence uses or for sport, but shall not include commercial harvesting.

V. Non-game fish shall mean any fish that is not a game fish.

W. Parties shall mean the Band, the State, the Minnesota Department of Natural Resources and the State Commissioner.

X. Plants shall mean all forms of vegetation and plant life and all parts thereof, including without limitation aquatic vegetation, wild rice, roots, berries, flowers, mushrooms, timber, timber products, firewood, tree bark, tree sap, lodge poles, boughs, marsh hay and other miscellaneous forest products.

Y. Public lands shall mean all lands held by or on behalf of the United States, any agency thereof, the State, any agency or subdivision thereof, or any municipal corporation or local governmental entity, but shall not mean trust lands or Band lands.

Z. Public waters shall mean: (1) any navigable lake, river or stream; (2) any lake, river, stream or flowage, the beds or banks of which are held by or on behalf of the United States, any agency thereof, the State, any agency or subdivision thereof, or any municipal corporation or other local governmental entity; (3) any lake, river, stream or flowage, which is or may hereafter be determined to be subject to public riparian rights, a public navigational servitude or the public trust doctrine; (4) any "public waters" within the meaning of Minn. Stat. § 103G.005 Subd. 15, as now in force or hereafter amended; or (5) any "wetlands" within the

meaning of Minn. Stat. § 103G.005, Subd. 18, as now in force or hereafter amended.

AA. Sale shall mean an exchange for valuable consideration, but shall not include any exchange which is part of a subsistence use.

BB. Shining shall mean the casting of rays of light on a field, forest or other area or on or across any public roadway for the purpose of harvesting wild animals.

CC. Small game shall mean game birds, gray squirrel, fox squirrel, cottontail rabbit, snowshoe hare, jack rabbit, raccoon, lynx, bobcat, red fox, gray fox, fisher, pine marten, opossum, badger, cougar, wolverine, muskrat, mink, otter, and beaver.

DD. State shall mean the State of Minnesota.

EE. State Commissioner shall mean the State's Commissioner of Natural Resources or his/her authorized representative.

FF. State DNR shall mean the Minnesota Department of Natural Resources.

GG. Subsistence Uses shall mean the use of natural resources for direct personal or family consumption by Band members as food, medicine, shelter, fuel, clothing, tools or transportation; for the making or selling of handicraft articles; or for barter. For purposes of this section, the term:

1. family means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis;

2. handicraft articles means articles produced, decorated or fashioned in the exercise of traditional Indian

handicrafts such as carving, weaving, beading, drawing or painting, without the use of mass copying devices; and

3. barter means the sale or exchange of natural resources or parts thereof for subsistence uses between Band members.

HH. Timber and timber products shall mean wood suitable for construction or carpentry, such as lumber, poles, saw logs and ties, and pulp, but shall not include bark.

II. Treaty Fishing Zone shall mean certain waters of Mille Lacs Lake described in Appendix B to this Agreement.

JJ. Trust lands shall mean lands held by the United States in trust for the Band, the Minnesota Chippewa Tribe (to the extent such lands are subject to the Band's jurisdiction) or one or more Band members.

KK. Wild animals shall mean all non-human and non-domesticated members of the animal kingdom and all parts thereof, including without limitation mammals, birds, fish, amphibians, reptiles, crustaceans, mollusks and arthropods or other invertebrates.

PART II. STATEMENT OF INTENT.

SEC. A. PURPOSE AND SCOPE OF SETTLEMENT AGREEMENT.

PARA. 1. Settlement. The purpose of this Agreement is to compromise, settle and resolve: (a) all issues and claims for relief presented in the Litigation, including all issues concerning the rights of the Band and its members to harvest natural resources in the Minnesota Ceded Territory under the 1837 Treaty; and (b) all

issues concerning the rights of the Band and its members to harvest natural resources in Mille Lacs Lake under the 1855 Treaty.

PARA. 2. Recognition and definition of treaty harvest rights. The further purpose of this Agreement is to recognize and define the rights of the Band and its members to harvest natural resources: (a) within the Minnesota Ceded Territory under the 1837 Treaty; and (b) in Mille Lacs Lake under the 1855 Treaty.

PARA. 3. Recognition and definition of additional harvest rights. The further purpose of this Agreement is to recognize and define certain additional rights of the Band and its members to harvest wild rice at specified locations in the State outside the Minnesota Ceded Territory and Mille Lacs Lake.

PARA. 4. Matters outside scope of settlement agreement. It is not the purpose of this Agreement to recognize, define, limit or otherwise affect any rights of the Band or its members to harvest natural resources: (a) in those portions of the Ceded Territory located outside the State; (b) that may be established by or arise under any treaty or law other than the 1837 Treaty and, with respect to rights to harvest natural resources in Mille Lacs Lake only, the 1855 treaty; or (c) that may arise from the establishment of the Mille Lacs Reservation or from the existence of any trust lands, except with respect to rights to harvest natural resources in Mille Lacs Lake. Nothing in this Agreement shall waive, limit or otherwise impair any argument, claim or defense that any party to this Agreement may have in response to any claim by any third party to rights to harvest natural resources under the 1837 Treaty, the 1855

Treaty or any other law.

SEC. B. CONSERVATION.

The parties understand that natural resources are finite and renewable, and must be protected and managed in their natural habitats in a way that will enhance their ability to be self-sustaining. The parties shall not permit any harvesting of a particular species or resource in a harvest area unless there is a harvestable surplus of that species or resource in that area.

PART III. CONDITIONS; EFFECTIVE DATE.

This Agreement shall not be effective unless by May 31, 1993, it is ratified by: (1) resolution adopted by the Band Assembly and signed by the Chief Executive of the Band; and (2) legislation enacted by the Legislature and signed by the Governor of the State. Upon such ratification, the parties shall jointly present a consent decree in the form attached as Appendix C to this Agreement to the United States District Court for the District of Minnesota in the Litigation. This Agreement shall not be effective unless and until such decree is entered by the Court and all claims of the individual plaintiffs in the Litigation are dismissed without prejudice. The "effective date" of this Agreement shall be the date on which the Court enters the consent decree.

PART IV. TREATY HARVEST RIGHTS.

SEC. A. GENERAL PROVISIONS.

PARA. 1. Recognition and definition of treaty harvest rights.

As of the effective date of this Agreement and thereafter the parties, their agents, officers, employees and successors in

interest, and all persons acting in concert or participation with any of them or under color of State or Band law, shall recognize that Article 5 of the 1837 Treaty secures certain rights for the Band and its members to harvest natural resources in the Minnesota Ceded Territory and that Article 2 of the 1855 Treaty secures certain rights for the Band and its members to harvest natural resources in Mille Lacs Lake, and that the nature and extent of these 1837 and 1855 treaty harvest rights are fully and exclusively defined by this Agreement.

PARA. 2. Treaty harvest rights definition is final. As of the effective date of this Agreement, the parties, their agents, officers, employees and successors in interest, and all persons acting in concert or participation with any of them or under color of State or Band law, shall be forever barred from raising any question as to the existence, validity, scope or meaning of the natural resource harvest rights secured to the Band and its members by Article 5 of the 1837 Treaty as it pertains to the Minnesota Ceded Territory or by Article 2 of the 1855 Treaty as it pertains to Mille Lacs Lake, except by reference to this Agreement, any revisions to this Agreement made in accordance with Part VIII below, and any interpretations of this Agreement made in accordance with Section VI.C below.

PARA. 3. Band code required. The harvest rights recognized and defined by this Agreement belong to the Mille Lacs Band for the benefit of its members. These harvest rights are not transferable, and may be exercised only by Band members, except as otherwise

specifically provided in Section IV.C below. These harvest rights may only be exercised pursuant to the Band conservation code.

PARA. 4. Geographic scope. This Agreement recognizes and defines harvest rights only in the Minnesota Ceded Territory and in Mille Lacs Lake, except as otherwise specifically provided in Part V below. This Agreement has no bearing upon treaty harvest rights that may exist elsewhere within the State or outside the State.

PARA. 5. Public and non-public lands and waters. Except as otherwise specifically provided in this Agreement, the treaty harvest rights recognized and defined by this Agreement may be exercised on: (1) public lands and waters; and (2) those non-public lands and waters on which harvesting by members of the public or Band members is permitted by the owner or other person authorized to give such permission, or is permitted by State law. This Agreement does not establish a right of access across non-public lands and waters to those lands and waters on which treaty harvest rights may be exercised.

PARA. 6. State regulatory authority. The parties agree that, except as otherwise specifically provided in this Agreement, neither the State nor any official, agency or subdivision thereof, nor any municipal corporation or local government, may regulate, license, condition, tax or otherwise encumber the harvesting activities of Band members who are exercising the treaty harvest rights recognized and defined in Part IV of this Agreement or the additional wild rice harvesting rights described in Part V of this Agreement. The general prohibition set forth in this paragraph shall include the prohibition

of any regulation of: the time, place and manner of harvesting; the gear or equipment used for harvesting; or the possession, transportation, processing, use or disposition of the natural resources harvested; and shall also include the prohibition of the registration or licensing of motor vehicles (except boats) used for harvesting. Boats used for harvesting shall be exempt from State licensing and registration provided such boats are subject to a Band licensing and registration program that, to the extent required by Federal law, is approved by the United States Coast Guard. The State may adopt regulations for purposes of conservation or public safety in accordance with the following subparagraphs:

Subpara. a. Conservation. The State may adopt regulations applicable to Band members in order to prevent a substantial risk to the ability of a particular natural resource to be self-sustaining if: (i) the Band conservation code does not contain, or the Band does not enforce, measures that are effective to prevent such risk; (ii) the regulations are reasonable and necessary to prevent such risk; (iii) application of the regulations to Band members is necessary to prevent such risk; (iv) the regulations are the least restrictive alternative available to prevent such risk; and (v) the regulations do not have a discriminatory impact on harvests by Band members.

Subpara. b. Public safety. The State may adopt regulations applicable to Band members in the interests of public safety if: (i) the Band conservation code does not contain, or the Band does not enforce, measures that are effective to address the

public safety concern; (ii) the regulations are reasonable and necessary to prevent a substantial risk to public safety; (iii) in the absence of the regulations a substantial hazard to public safety would exist or be imminent; (iv) application of the regulations to Band members is necessary to the prevention or amelioration of the public safety hazard; (v) the regulations are the least restrictive alternative available to accomplish their public safety purpose; and (vi) the regulations do not have a discriminatory impact on harvests by Band members.

Subpara. c. Burden of proof. In the event of a dispute over whether the conditions set forth in subparagraphs a or b above have been satisfied, the State shall have the burden to prove that such conditions have been satisfied.

PARA. 7. Resource to be shared. The treaty harvest rights recognized and defined by this Agreement do not preclude the rights of non-Band members to harvest natural resources in the Minnesota Ceded Territory or Mille Lacs Lake under State law except as provided in Section VII.A below. Band members are entitled to harvest that quantity of the harvestable surplus of natural resources in the Minnesota Ceded Territory and Mille Lacs Lake that is needed for the harvesting activities allowed by the Band conservation code consistent with this Agreement. Non-Band members are entitled to harvest all other natural resources available for harvest in the Minnesota Ceded Territory and Mille Lacs Lake, as provided by applicable law. To preserve harvest opportunities for non-Band members, the treaty harvest of a species or resource in a harvest

area shall not exceed 50% of the harvestable surplus in that area. The Band shall restrict harvests by Band members, and the State shall restrict harvests by non-Band members, as necessary to enable Band members and non-Band members to harvest their respective shares as set forth in this paragraph. Consistent with all other provisions of this Agreement and natural resources conservation, the State and the Band shall cooperate to ensure to the extent possible that desired harvest opportunities for Band members and non-Band members are made available in the Minnesota Ceded Territory and Mille Lacs Lake.

SEC. B. TREATY HARVEST RIGHTS OF BAND MEMBERS.

The harvest rights of Band members in the Minnesota Ceded Territory under the 1837 Treaty and in Mille Lacs Lake under the 1855 Treaty are set forth in this Section. These harvest rights may be exercised for subsistence and other non-commercial uses. Commercial harvesting is prohibited to the extent set forth in this Section.

PARA. 1. Plants. Plants may be harvested throughout the Minnesota Ceded Territory and in Mille Lacs Lake pursuant to the Band conservation code, subject to the following conditions.

Subpara. a. Public lands and waters. With respect to public lands and waters, the Band conservation code shall prohibit commercial harvesting of timber or timber products, and shall include special permit requirements for: (i) gathering bark; and (ii) non-commercial harvesting of timber or timber products. The Band shall consult with County and State forestry officials designated by the State Commissioner before issuing such special permits, and limit such activities to lands scheduled for commercial timber harvesting if possible. The Band shall not permit any plant harvest within State-designated scientific and natural areas or public campgrounds

or on public waters which are located on non-public lands, unless permission of the owner or other person authorized to give such permission has been obtained.

Subpara. b. Non-public lands and waters. The Band conservation code shall prohibit all harvesting of plants by Band members on non-public lands and waters unless permission of the owner or other person authorized to give such permission has been obtained.

PARA. 2. Migratory birds. Migratory birds may be harvested throughout the Minnesota Ceded Territory and on Mille Lacs Lake pursuant to the Band conservation code and applicable Federal regulations.

PARA. 3. Small game and furbearers. Small game and furbearers may be harvested throughout the Minnesota Ceded Territory pursuant to the Band conservation code.

PARA. 4. Fish. Fish may be harvested throughout the Minnesota Ceded Territory and in Mille Lacs Lake pursuant to the Band conservation code, subject to the following conditions.

Subpara. a. Commercial harvest and sale of game fish. The Band conservation code shall prohibit commercial harvesting and sale of game fish except to the extent allowed by State law in the Minnesota Ceded Territory or Mille Lacs Lake.

Subpara. b. Special permits. The Band conservation code shall include a special permit requirement for any authorized commercial harvesting of fish.

Subpara. c. Netting and spearing game fish. To the extent State law prohibits the use of nets or spears for harvesting

a game fish species by non-Band members, the Band conservation code shall also prohibit the use of nets and spears for harvesting such game fish species by Band members except in: (i) the treaty fishing zone; (ii) Ogechi, Onamia and Shakopee Lakes and approximately five miles of the Rum River connecting these lakes; (iii) Lake Eleven in Township 42 North, Range 22 West, Sections 2 and 11; (iv) Razor Lake in Township 41 North, Range 17 West, Sections 3 and 4; (v) South Stanchfield Lake in Townships 36 and 37 North, Range 25 West, Sections 4, 5, 8, 32 and 33; and (vi) the 20 miles of the St. Croix River downstream from the point where the river commences as the border between Minnesota and Wisconsin. Other suitable bodies of water may be substituted for these waters if necessary for conservation reasons or other legitimate concerns as agreed to by the Band Commissioner and the State Commissioner. The Band conservation code shall prohibit any Band member fishing with a net for non-game fish from retaining any game fish harvested incidentally in an area in which fishing with a net for such game fish is prohibited under this Agreement.

PARA. 5. Big game. Big game may be harvested throughout the Minnesota Ceded Territory pursuant to the Band conservation code, subject to the following conditions.

Subpara. a. Deer seasons. To the extent State law prohibits deer harvesting by non-Band members in the Minnesota Ceded Territory from January 1 through Labor Day, the Band conservation code shall also prohibit deer harvesting by Band members from January 1 through Labor Day, except by special permit for cultural or ceremonial purposes only. The Band shall give notice to a person

designated by the State Commissioner before the issuance of any such permit.

Subpara. b. Bear seasons. To the extent State law prohibits bear harvesting by non-Band members in the Minnesota Ceded Territory from November 15 through Labor Day, the Band conservation code shall also prohibit bear harvesting by Band members from November 15 through Labor Day, except by special permit for cultural or ceremonial purposes only. The Band shall provide advance notice to a person designated by the State Commissioner prior to the issuance of any such permit.

Subpara. c. Other big game seasons. To the extent State law prohibits the harvesting of other big game species by non-Band members in the Minnesota Ceded Territory from January 1 through Labor Day, the Band conservation code shall also prohibit harvesting of such species by Band members from January 1 through Labor Day, except by special permit for cultural or ceremonial purposes only. The Band shall provide advance notice to a person designated by the State Commissioner prior to the issuance of any such permit.

Subpara. d. Shining. To the extent State law prohibits big game harvesting by non-Band members by shining, the Band conservation code shall also prohibit big game harvesting by Band members by shining except by special permit issued with the prior written agreement of the State Commissioner. No such permits shall be issued without special precautions to prevent a public safety hazard.

Subpara. e. Commercial harvest and sale of big game.

The Band conservation code shall prohibit commercial harvesting and sale of big game except to the extent allowed by State law in the Minnesota Ceded Territory.

PARA. 6. Miscellaneous wild animals. Miscellaneous wild animals may be harvested throughout the Minnesota Ceded Territory and in Mille Lacs Lake pursuant to the Band conservation code.

SEC. C. HARVEST BY NON-BAND MEMBERS UNDER THE BAND CONSERVATION CODE.

PARA. 1. Special guest permits. The Band may issue a limited number of special guest permits to non-Band members authorizing such permittees to engage in the following non-commercial harvest activities in the Minnesota Ceded Territory and in Mille Lacs Lake when accompanied by a Band member: (a) deer hunting, up to a total of ten (10) deer per year collectively for all such permittees; (b) game fishing, up to a total of 100 game fish per year collectively for all such permittees; (c) migratory bird hunting, up to a total of 25 migratory birds per year collectively for all such permittees; and (d) wild rice gathering, up to a total of 500 pounds of wild rice per year collectively for all such permittees. Such activities shall be regulated by the Band conservation code only, provided that: (a) all provisions of this Agreement regarding the code shall be applicable to such activities; and (b) the State may regulate such activities in any circumstance under which it could regulate the harvest activities of Band members under this Agreement. As a condition of any such permit, the permittee must agree to abide by all applicable provisions of the Band conservation code.

PARA. 2. Treaty fishing zone permits. In addition to the

special guest permits described in paragraph IV.C.1 above, the Band may sell or otherwise issue permits to non-Band members authorizing such permittees to engage in non-commercial harvesting for sport of game fish in the treaty fishing zone. Such activities shall be regulated by the Band conservation code only, provided that: (a) all provisions of this Agreement regarding the code shall be applicable to such activities; and (b) the State may regulate such activities in any circumstance under which it could regulate the harvest activities of Band members under this Agreement. The Band conservation code shall provide that all fishing by such permittees shall be limited to gear permitted under State law for non-Band members fishing for game fish on Mille Lacs Lake. The code shall also establish a system, in cooperation with the State, for tagging all fish caught by such permittees to establish that such fish were harvested lawfully under the Band conservation code in the treaty fishing zone. As a condition for any such permit, the permittee must agree to abide by all applicable provisions of the Band conservation code.

PARA. 3. Assistance to disabled band members. In addition to the special guest permits and special treaty fishing zone permits described in paragraphs IV.C.1 and 2 above, the Band may issue permits to non-Band members to assist a Band member in exercising the treaty harvest rights recognized and defined by this Agreement if the Band member due to physical disability is unable to exercise such rights, provided that the disabled Band member must be present during any activity which constitutes such assistance, and further provided that the collective bag limit of the permittee and the disabled Band

member shall be that to which the Band member is entitled under the Band conservation code. Such assistance shall be regulated by the Band conservation code only, provided that: (a) all provisions of this Agreement regarding the code shall be applicable to such assistance; and (b) the State may regulate such assistance in any circumstance under which it could regulate the harvest activities of Band members under this Agreement. As a condition for any such permit, the permittee must agree to abide by all applicable provisions of the Band conservation code.

PARA. 4. Riparian owners fishing in treaty fishing zone. The Band shall allow non-Band members who own recorded interests in lands riparian to that portion of Mille Lacs Lake that is within the treaty fishing zone to fish in the zone pursuant to State law.

PART V. HARVEST RIGHTS OF BAND MEMBERS
OUTSIDE THE CEDED TERRITORY.

By virtue of and pursuant to this Agreement Band members may harvest wild rice at all federal wild rice camp locations and other traditional harvest locations identified in Appendix D to this Agreement or hereafter determined by written agreement between the Band Commissioner and the State Commissioner. Such harvests shall be regulated by the Band conservation code only, provided that: (a) all provisions of this Agreement regarding the code shall be applicable to such harvests; and (b) the State may regulate such harvests in any circumstance under which it could regulate the harvest activities of Band members under this Agreement. The State may authorize wild rice harvests by non-Band members at all such locations pursuant to State

law.

PART VI. ADMINISTRATION.

SEC. A. ENFORCEMENT.

PARA. 1. Jurisdiction and courts. Band courts shall have exclusive jurisdiction over Band members concerning violations of the Band conservation code. State courts may exercise jurisdiction over Band members concerning violations of State natural resource harvest laws within the Minnesota Ceded Territory, on Mille Lacs Lake, and on the waters identified in Appendix D to this Agreement only if such State laws apply to Band members under the provisions of this Agreement. Nothing in this Agreement shall affect the jurisdiction of any court over non-Band members.

PARA. 2. Cross-deputization and enforcement. Band and State conservation officers will be cross-deputized upon written request of their respective government and upon satisfying the requirements of this paragraph. Except on trust lands, cross-deputized State conservation officers shall be authorized to arrest and charge Band members for violations of the Band conservation code, and to appear in Band courts in connection with such violations or such other matters as the court may request. Cross-deputized Band conservation officers shall be authorized to arrest and charge non-Band members within the Minnesota Ceded Territory and on Mille Lacs Lake for violations of State natural resource harvest laws, and to appear in State courts in connection with such violations or other matters as the court may request. To be eligible for cross-deputization, a

conservation officer must be a Federal or State officer, certified by the Minnesota Board of Peace Officers Standards and Training, and duly appointed by his or her respective government. Cross-deputized conservation officers shall participate in appropriate training activities sponsored by the Band and the State.

PARA. 3. Fair, uniform and diligent enforcement. The Band and the State agree to fairly, uniformly and diligently enforce all natural resources harvest laws and regulations against all persons to whom such laws and regulations respectively apply.

PARA. 4. Law enforcement records. Law enforcement and court records of the Band or State pertaining to natural resource cases not currently in litigation shall be open for review and inspection by either party, as provided by law.

PARA. 5. Personal identification. When harvesting natural resources pursuant to this Agreement or the Band conservation code, Band members shall carry upon their persons a color photograph identification card issued by the Band identifying that person as a Band member, and shall show that card to any authorized conservation officer upon request.

PARA. 6. Identification of big game and game fish. All big game animals and all game fish in excess of one daily personal possession limit taken by Band members in the Minnesota Ceded Territory or Mille Lacs Lake pursuant to the Band conservation code shall, when transported outside the Minnesota Ceded Territory, be tagged or otherwise identified by the Band to verify that they were taken and are possessed lawfully.

SEC. B. MANAGEMENT.

PARA. 1. Fair management practices. Consistent with the provisions of this Agreement and natural resources conservation, the Band and the State shall manage the natural resources of the Minnesota Ceded Territory and Mille Lacs Lake in a fair and even-handed manner. The parties recognize that the State has the fiduciary obligation and authority to manage natural resources for the benefit of current and future users consistently with the rights of the Band and its members under this Agreement.

PARA. 2. Band participation in State management. The State acknowledges the Band's traditional interest in natural resource stewardship, and shall give weight to the findings and advice of the Band concerning natural resources management and conservation.

PARA. 3. Wild rice. The Band and the State will confer in good faith in order to agree upon opening dates for wild rice waters. The State agrees not to open any wild rice waters located within the original boundaries of the Mille Lacs Reservation or adjacent to trust lands, or which are identified in Appendix D to this Agreement, before such waters are opened by the Band. The Band may require proof of residency in order to effectuate the requirements of Minn. Stat. § 84.10, as now in force or hereafter amended, as a condition for harvesting wild rice within the original boundaries of the Mille Lacs Reservation.

PARA. 4. Exchange of information. The parties shall share all biological information pertaining to the harvest and management of: (a) natural resources in the Minnesota Ceded Territory, on Mille Lacs

Lake, and on trust lands; and (b) wild rice throughout the State; unless prohibited by the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, or similar but no more restrictive Band law.

PARA. 5. Advance notice and opportunity to comment. The Band and the State agree to notify one another of proposed changes in harvest or management codes or practices concerning: (a) natural resource harvesting within the Minnesota Ceded Territory, on Mille Lacs Lake, and on trust lands; and (b) wild rice throughout the State. Such notice shall be given sufficiently in advance of the effective date of the proposed change to allow reasonable time for comment and consultation, except in the case of emergencies. This paragraph is intended solely to promote consultation, and does not give either the Band or the State a right to veto the actions of the other.

PARA. 6. Band management in treaty fishing zone.

Subpara. a. Annual targets. In managing fishing for game fish in the treaty fishing zone by Band members and, pursuant to paragraphs IV.C.1, 2 and 3 above, non-Band members, the Band shall utilize the same targets for maximum total annual harvests by species per acre that are used by the State for the rest of Mille Lacs Lake unless the Band and the State agree otherwise.

Subpara. b. Possession limit restriction. The Band shall prohibit non-Band members fishing in the treaty fishing zone under a Band license from possessing while on the waters of the treaty fishing zone more than one daily limit of fish allowed by the Band conservation code.

Subpara. c. Access restriction. The Band shall require non-Band members fishing in the treaty fishing zone pursuant to paragraphs IV.C.1, 2 and 3 above to enter and exit the zone through a Band-operated land access point within the zone.

SEC. C. DISPUTE RESOLUTION.

PARA. 1. Technical and policy representatives. The Band Commissioner and the State Commissioner shall each appoint a technical and a policy representative to assist in the administration of, and the resolution of disputes arising under, this Agreement. The technical representatives shall endeavor to resolve all disputes arising under this Agreement that they agree to be of a technical nature. If the technical representatives are unable to resolve any such dispute, they shall prepare a joint written statement setting forth the disputed issue and their positions on it, and deliver such statement, along with any other documents they consider pertinent to the dispute, to the policy representatives. The policy representatives shall endeavor to resolve any technical disputes that the technical representatives are unable to resolve, as well as any other disputes arising under this Agreement.

PARA. 2. Arbitration. If the Band and the State are unable to resolve a dispute arising under this Agreement through the procedures described in paragraph VI.C.1 above, either the Band Commissioner or the State Commissioner may elect to refer the matter to an independent arbitrator.

Subpara. a. Notice of election to arbitrate. An election to arbitrate shall be made by the Band Commissioner or State

Commissioner in writing, be sent to the other Commissioner certified mail (return receipt requested), and state: (i) the nature of the dispute; (ii) the position of the Commissioner electing arbitration with respect to the dispute; and (iii) the name of the electing Commissioner's representative for purposes of the arbitration.

Subpara. b. Response to election to arbitrate. Upon receipt of an election to arbitrate, the Band Commissioner or State Commissioner shall within twenty days send a written response to the electing Commissioner by certified mail (return receipt requested). Such response shall: (i) concur in or set forth any disagreement with the description of the dispute in the election to arbitrate; (ii) state the responding Commissioner's position with respect to the dispute; and (iii) state the name of the responding Commissioner's representative for purposes of the arbitration. Unless the parties agree otherwise, failure to respond in a timely manner shall be deemed to be acquiescence by the responding Commissioner in the electing Commissioner's position as set forth in the election to arbitrate.

Subpara. c. Selection or appointment of arbitrator. The Commissioners' representatives shall, within twenty days of delivery of the response, agree upon and retain an independent arbitrator. If they are unable to do so, either the Band or the State may, upon such notice to the other as is required by applicable court rules, apply to the Court in the Litigation for the appointment of an independent arbitrator.

Subpara. d. Discovery and hearing procedures. As

promptly as practicable after the selection or appointment of the arbitrator, the arbitrator shall hold a preliminary meeting with the Commissioners' representatives to clarify if necessary the matter in dispute and determine the most expeditious method of assembling the evidence needed to resolve the dispute. The arbitrator may require the parties and witnesses to appear for depositions, produce documents, answer interrogatories and make admissions in accordance with the Federal Rules of Civil Procedure. Should either party fail to comply with any procedural requirement of the arbitrator, such failure may be given such weight as the arbitrator deems appropriate in the determination of the matter in dispute. The arbitrator may conduct one or more hearings and receive written or oral submissions of the parties as he or she deems appropriate.

Subpara. e. Arbitrator's decision; expenses of arbitration. The arbitrator shall prepare a written decision setting forth his or her resolution of the matter in dispute, which shall be delivered to the Commissioners' representatives by certified mail (return receipt requested). The expenses of arbitration shall be borne equally by the parties unless the Court in the Litigation orders otherwise in accordance with applicable law.

Subpara. f. Binding effect of arbitrator's decision; entry of judgment. Unless the Band or the State seeks a determination of the matter in dispute by the Court in the Litigation within twenty days of receipt of the arbitrator's decision, the decision shall be final and binding on the parties and either party may request, upon such notice to the other as is required by

applicable court rules, that judgment be entered in the Litigation on the basis of the decision.

PARA. 3. Continuing court jurisdiction. The Court shall retain continuing jurisdiction over the parties and the Litigation to enforce and resolve disputes arising under the Consent Decree (attached as Appendix C to this Agreement) and this Agreement. Any party may submit any dispute arising under the Agreement to the Court for determination. The parties recognize that some disputes may require expeditious judicial review. Accordingly, except for the provisions in subparagraph VI.C.2.f., nothing in paragraphs VI.C.1 or 2 of this Agreement shall be construed as limiting any party's right to seek judicial relief. However, the parties shall make all reasonable efforts to use the dispute resolution procedures set forth in those sections before seeking judicial relief. If, within the twenty day period prescribed in subparagraph VI.C.2.f, a party seeks judicial determination of a dispute after an arbitrator's decision, the arbitrator's decision shall be submitted in evidence and given such weight as the Court deems appropriate.

PART VII. STATE OBLIGATIONS.

SEC. A. TREATY FISHING ZONE.

PARA. 1. Harvesting restrictions. The State shall prohibit all harvesting of natural resources by non-Band members within the treaty fishing zone, except: (a) persons owning recorded interests in lands riparian to that portion of Mille Lacs Lake that is within the treaty fishing zone, who may be allowed to fish under State law; and (b)

persons authorized to fish in the treaty fishing zone by the Band in accordance with paragraphs IV.C.1, 2 and 3 above.

PARA. 2. Prohibition of harvest interference. The State shall regulate all activities by non-Band members in the treaty fishing zone in order to prevent undue disruption of natural resource harvesting by Band members.

PARA. 3. Possession limit restriction. The State shall prohibit non-Band members on Mille Lacs Lake from possessing more than either: one daily limit of fish taken from the treaty fishing zone under a Band license; or, one daily limit of fish taken under a State license.

PARA. 4. Access restriction. The State shall require non-Band members fishing in the treaty fishing zone pursuant to paragraphs IV.C.1, 2 and 3 above to enter and exit the zone through a Band-operated land access point within the zone.

PARA. 5. State law violations. The State shall make it illegal under State law for any non-Band member authorized to fish in the treaty fishing zone under paragraphs IV.C.1, 2 or 3 above to fish in violation of the Band conservation code.

SEC. B. LANDS.

PARA. 1. Lands to be conveyed. The State shall convey to the United States in trust for the Band 7,500 acres of land substantially in their present condition. The State shall make a good faith effort to complete this conveyance on or before July 1, 1997. The lands shall be contiguous to or in the vicinity of existing lands owned by or on behalf of the Band.

PARA. 2. Procedures for selecting parcels. The Band Commissioner shall provide to the State Commissioner a list of those lands the Band desires to be conveyed under this Section VII.B, including alternate parcels as the Band deems appropriate. The State Commissioner shall give notice of the lands included on the Band's list, as well as any other parcels he believes should be considered for conveyance under this Section, to interested units of local government and the public, and shall solicit comments from them regarding the conveyance of such lands. After receipt and consideration of such comments, but no later than 180 days following receipt of the Band's list, the State Commissioner shall respond to the Band's list by indicating which parcels on the Band's list the State agrees to convey, which ones it will not convey, and which additional parcels, not on the Band's list, it is willing to convey. Promptly thereafter the Band and the State shall meet and negotiate in good faith to resolve any remaining differences over the parcels to be conveyed. The State shall not reject the Band's selections without reasonable justification. If any parcel to be conveyed is subject to a Federal restriction on transfer, the Band and the State shall jointly seek a waiver of that restriction through Federal administrative or legislative action as appropriate.

PARA. 3. Conveyance of title. The State shall, at its sole expense: (a) convey marketable title, free of all liens, encumbrances and infirmities, unless waived in writing by the Band, but subject to legally protectable easements, leases, utility licenses, rights-of-way and other similar interests in existence or of record as of

January 1, 1993, to all lands to be conveyed under this Section; (b) furnish an attorney's title opinion for each parcel verifying such title; and (c) cooperate in the preparation, submission and processing of requests that the parcels be taken by the United States in trust for the Band, including the execution of any instruments necessary to complete that process. If the United States imposes any additional requirements as a condition of accepting any parcel in trust for the Band, the Band may in its discretion: (a) satisfy such additional requirements at its own expense; (b) elect to have the parcel conveyed in fee directly to the Band; or (c) reject the parcel and substitute another parcel which the State agrees to convey.

PARA. 4. Use of lands. The Band agrees not to conduct or permit to be conducted Class II or Class III gaming as defined in the Indian Gaming Regulatory Act (Pub. L. 100-497, 25 U.S.C. §§ 2701-2721) on lands conveyed under this Section. The Band also agrees to give advance notice to the counties in which such lands are located regarding plans for the development of such lands.

SEC. C. PAYMENTS.

PARA. 1. Date and amount of payments. The State shall make the following payments to the Band on or about the following dates:

July 1, 1993:	\$3,000,000
July 1, 1995:	\$3,000,000
July 1, 1997:	\$4,000,000

The State may, in the alternative, make a single payment of

\$8,600,000 on or about July 1, 1993, representing the value as of that date of the above payments.

PARA. 2. Use of payments. The Band shall invest 50 percent of the payments received from the State under this Section VII.C and, for a period of ten years following such investments, may only expend the principal for environmental, natural resource management or law enforcement purposes, and must expend any income earned thereon for such purposes. The Band will provide annual audited financial statements to the State Commissioner during such ten-year period(s) to confirm its compliance with this provision. The Band may use any payments it receives under this Section to qualify for matching grants or other similar programs available from the State.

PART VIII. SEVERABILITY; REVISIONS.

No portion of this Agreement shall be severable except by mutual consent given in writing by the Band and the State. This Agreement may be revised only by written agreement of the Band and the State and approval of the Court.

IN WITNESS WHEREOF, the parties signed this Agreement on the dates set forth below.

MILLE LACS BAND OF CHIPPEWA INDIANS

By: Don Wedll
Don Wedll, Commissioner of
Natural Resources

January 15, 1993
Date

STATE OF MINNESOTA

By: 
Rod Sande, Commissioner of
Natural Resources

1-18-93
Date

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Appendices

- A. Description of Minnesota Ceded Territory.
- B. Description of Treaty Fishing Zone.
- C. Form of Consent Decree.
- D. Designation of Wild Rice Lakes Outside Ceded Territory.

Appendix A

Minnesota Ceded Territory

The territory ceded by the Chippewa under the 1837 Treaty which is located in what is now the State of Minnesota is referred to in this Agreement as the Minnesota Ceded Territory. The boundary of the Minnesota Ceded Territory is depicted by a line drawn on a series of forty 7 1/2 minute United States Geological Survey Topographic quadrangle maps (identical sets of these maps are maintained by the State DNR and the Band DNR, and are available for inspection). This line follows the boundary described in Article 1 of the 1837 Treaty, as it falls within what is now the State of Minnesota, and is based upon the map illustration contained in the 18th Annual Report of the Bureau of American Ethnology, 1899, Indian Land Cessions in the United States, compiled by Charles C. Royce. The parties agree that where the boundary line of the ceded territory follows the Mississippi River, the line shall fall along the west bank. The parties further agree that the line depicted on the forty topographic maps shall be controlling for all purposes under this Agreement.

Appendix B

Treaty Fishing Zone in Mille Lacs Lake

The treaty fishing zone in Mille Lacs Lake shall include all lands and waters within the boundary that begins on the shore of Mille Lacs Lake in Wigwam Bay where the section line between Sections 16 and 17, Township 43 North, Range 27 West, intersects the same; thence North into said lake on a projection of said section line for a distance of one mile; thence East for a distance of two miles; thence southeasterly to a point one mile East of the most easterly point of Rainbow Island (Government Lot 1, Section 26, Township 43 North, Range 27 West); thence southwesterly to a point on the shore in Vineland Bay of said lake where the north-south quarter line of Section 3, Township 42 North, Range 27 West, intersects the same (in the vicinity of Drift Inn); thence northerly along the shore of said lake to the point of beginning.

Appendix C

Form of Consent Decree

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

MILLE LACS BAND OF CHIPPEWA)	
INDIANS, ARTHUR GAHBOW, WALTER)	Civil No. 4-90-605
SUTTON, CARLEEN BENJAMIN, and)	
JOSEPH DUNKLEY,)	
)	
Plaintiffs,)	CONSENT DECREE
)	
vs.)	
)	
STATE OF MINNESOTA, MINNESOTA)	
DEPARTMENT OF NATURAL RESOURCES,)	
and ROD SANDO, COMMISSIONER OF)	
NATURAL RESOURCES,)	
)	
Defendants.)	

Upon consent of the parties, Final Judgment is entered in this action as follows:

1. The attached Settlement Agreement is approved and adopted as the Judgment of the Court.
2. All parties are directed to implement and perform the terms of this Judgment, including all provisions of the attached Settlement Agreement.
3. This Judgment shall be binding upon plaintiffs and defendants, their successors, their officers, agents, servants, employees and attorneys, and on all persons acting in concert or participation with them.
4. The Court shall retain continuing jurisdiction to enforce

and resolve disputes arising under the Settlement Agreement.

Dated: _____, 1993.

Diana E. Murphy
Chief Judge, United States
District Court

Appendix D

Lakes and Waters in Which Band Members
May Harvest Wild Rice Under Part V of Settlement Agreement

<u>County</u>	<u>Bed Name</u>	<u>Location</u>
Aitkin	Aitkin Lake	T50-R23-S19,20,29
Aitkin	Big Pine Lake	T44-45-R27-S20,21,28
Aitkin	Big Sandy Lake	T49-R23-S4-9
Aitkin	Camp Lake	T47-R25-S27
Aitkin	Elm Island Lake	T46-R26-S15,16,21,22
Aitkin	Farm Island Lake	T44-45-R27-S4,5
Aitkin	Flowage Lake	T49-R24-S25
Aitkin	Flowage Lake	T45-R26-S4
Aitkin	Minnewawa Lake	T49-R23-S21,22,23
Aitkin	Newstrom Lake WMA	T27-R25-S17,18
Aitkin	Praire Riv Flowage	T49-R24-S23
Aitkin	Rat Lake	T49-R24-S23
Aitkin	Rathouse Lake	T51-R23-S26,35
Aitkin	Rice Lake (Mallard)	T44-R27-S2
Aitkin	Ripple River	T46-R27-S2,12
Aitkin	Sandy Riv Lake	T49-R24-S24
Aitkin	Sandy River	T48-R24-S36
Aitkin	Section Twelve Lake	T46-R26-S11,12
Aitkin	Sjodin Lake	T46-R26-S27
Aitkin	Swamp Lake	T46-R25-S26
Aitkin	Twenty Lake	T45-R25-S20
Aitkin	White Elk Lake	T50-R26-S27
Cass	Laura Lake	T140-R26
Crow Wing	Clarks	T136-R27-S35,36
Crow Wing	Clark & Rice	T135-R28-S18
Crow Wing	Dahler Lake	T138-R26-S33,34
Crow Wing	Deer Lake	T136-R25-S19
Crow Wing	Deerwood Rice Bed	T46-R28-S18,19
Crow Wing	Duck Lake WMA	T138-R25-S19,20
Crow Wing	Gilmore Rice Bed (N&S)	T136-R26-S5,6
Crow Wing	Johnson & Garden	T135-R28-S9,10
Crow Wing	Lost Rice Lake	T137-R26-S30
Crow Wing	Lower Dean Lake	T136-R25-S7,8
Crow Wing	Lower Mission Lake	T134-R27-S4,5,8,9
Crow Wing	Mississippi Garden	T46-R30,S23,24,27
Crow Wing	Mud Lake	T137-R26-S22,23
Crow Wing	Rice Lake (Bloomberg)	T46-R29-S23,24
Crow Wing	Rice Lake	T45-R28-S32,33
Crow Wing	Wolf Lake	T46-R29-S34,35

nf:b:mds-2:stl-2.agm January 14, 1993