

COMMISSIONER'S ORDER NO. 40-86
Natural Resources

A Commissioner's Order establishing Off-Reservation 1986 Migratory Bird Regulations.
East of the St. Croix River.

- WHEREAS: the Mille Lacs Band of Chippewa Indians is a signatory or successor to the Treaty of 1837, 7 Stat. 536, and the Treaty of 1842, 7 Stat. 591, and;
- WHEREAS: the Band resides in the ceded territories of the Treaty of 1837, 7 Stat. 536, and;
- WHEREAS: the U.S. Fish and Wildlife Service has, at the Wisconsin Tribes' request, promulgated regulations governing the 1986 Chippewa Indian Off-Reservation Migratory Bird Season, and;
- WHEREAS: the Mille Lacs Band has ratified the 1986 Off-Reservation Migratory Bird Hunting Agreement by and between the Tribal and State Parties in Lac Courte Oreilles, et al., v. State of Wisconsin, et al., and;
- WHEREAS: the Mille Lacs Band deem it appropriate to provide an orderly system of tribal control and regulation of off-reservation migratory bird hunting, and;
- WHEREAS: the Mille Lacs Band further deems it appropriate to provide conservation and management of migratory bird population found in the ceded territory through the regulation of member hunting occurring there, and;
- WHEREAS: the Commissioner of Natural Resources has the authority to regulate natural resources within the jurisdiction of the Mille Lacs Band of Chippewa Indians through Band Statute 1032-MLC-1, Sec. 29, Band Statute 1017-MLC-7, and Band Statute 1092-MLC-25, et seq., and;
- WHEREAS: the taking of migratory birds is a natural resources under the jurisdiction of the Mille Lacs Band of Chippewa Indians and;
- WHEREAS: nothing herein or the application thereof shall be construed by any government, agency, person or circumstance as a waiver by the Non-Removable Mille Lacs Band of Chippewa Indians of the solemn, special trust obligation of the United States of America, and;
- WHEREAS: pursuant to the provisions of Band Statute 1032-MLC-1, Section 25 and 29, the Commissioner of Natural Resources is empowered to execute the agreements regulatory Migratory Bird Hunting by members of the Mille Lacs Band for the area East of the St. Croix River and within the 1837 treaty area.

NOW THEREFORE, by the authority vested in me by the Mille Lacs Band of Chippewa Indians pursuant to Band Statute 1032-MLC-1, Section 29, I, Don Wedll, Commissioner of Natural Resources for the Mille Lacs Band of Chippewa Indians hereby establish the following Migratory Bird Hunting Regulations for members of the Band, east of the St. Croix River:

OFF-RESERVATION 1986 MIGRATORY BIRD HUNTING REGULATION
East of the St. Croix River

PART I - INTRODUCTION

- 101 Title. This Commissioner's Order may be cited as the Mille Lacs Band of Chippewa Indians (east of the St. Croix River) Off-Reservation 1986 Migratory Bird Hunting Regulations.
- 102 Authority. This Commissioner's Order is authorized pursuant to Band Statute 1032-MLC-1, Sec. 29, Band Statute 1017-MLC-7, and Band Statute 1092-MLC-25, et seq., of the Mille Lacs Band of Chippewa Indians.
- 103 Purpose. It is the purpose of this order to:
- a) provide an orderly system for tribal control and regulation of migratory bird hunting on the off-reservation lands and waters ceded by the Chippewa Indians in the Treaty of 1837, 7 Stat. 536 and the Treaty of 1842, 7 Stat. 591.
 - b) Provide a means to promote the conservation and management of migratory bird resources in the ceded territory through the regulation of member hunting occurring there.
104. Effective Date. This order shall be effective on the date of issuance and shall expire at 11:59 p.m. on September 1, 1987.
- 105 Interpretation. The provisions of this ordinance shall be interpreted and applied as minimum requirements applicable to migratory bird hunting and shall be liberally construed in favor of the Mille Lacs Band pursuant to Band Statute 1024-MLC-3, Section 19.01. The provisions shall not be deemed a limitation or repeal of any other Band power or authority.
106. Severability and Non-Liability. If any section, provision, or portion of this order is adjudged unconstitutional or invalid by the Court of Central Jurisdiction, the remainder of this order shall not be affected thereby. The Mille Lacs Band further asserts immunity on its part and that of its agencies, employees, and/or agents from any action or damages that may occur as a result of reliance upon and conformance with this order.
107. Repeal of Inconsistent Tribal Ordinances. All previous Commissioner's Orders inconsistent with this order are hereby repealed. To the extent that this order imposes greater restrictions than those contained in any other Commissioner's Orders, the provisions of this order shall govern.

PART II - DEFINITIONS

- 201 Definitions.
- a) "Member" means a member of the Mille Lacs Band of Chippewa Indians.
 - b) "Migratory bird" means any bird, whatever its origin and whether or not raised in captivity, which belongs to a species listed in 50 CFR S10,13, or which is a mutation or a hybrid of any such species, including any part, nest or egg of any such bird, or any product, whether or not manufactured, which consists or is composed in whole or in part of any part, nest, or egg thereof.

- c) "Migratory bird preservation facility" means:
 - 1) Any person who, at his residence or place of business and for hire or other consideration, or
 - 2) Any taxidermist, cold-storage facility or locker plant which, for hire or other considerations, or
 - 3) Any hunting club which, in the normal course of operations: receives, possesses, or has in custody any migratory game birds belonging to another person for purposes of picking, cleaning, freezing, processing, storage, or shipment.
- d) "Take" means to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture or collect.
- e) "Tribal Conservation Department" means the conservation department of the Mille Lacs Band of Chippewa Indians.
- f) "Tribal Court" means the Court of Central Jurisdiction.
- g) "Tribe" means the Mille Lacs Band of Chippewa Indians.

PART III - REGULATIONS

301 Open seasons.

- a) No tribal member shall take migratory birds except during the open seasons as provided by this section. All dates given are inclusive and refer to 1986.
 - 1) All ducks (except Canvasbacks) September 19 - November 12
 - 2) Scaup-only November 13 - November 28
 - 3) Canada geese September 25 - October 31
 - 4) Other geese (snow geese, blue geese September 25 - November 12
white-fronted geese).
 - 5) Coot and Gallinule September 19 - November 12
 - 6) Sora and Virginia rails September 15 - November 19
 - 7) Common Snipe September 15 - November 19
 - 8) Woodcock Septmeber 15 - November 19
- b) No tribal member shall take migratory birds at a locale during any period when the Great Lakes Indian Fish and Wildlife Commission, acting for the tribe pursuant to Sec. 410 of this ordinance, has closed the season for that locale.
- c) No tribal member shall take Canvasback ducks in 1986. Because of their precarious status, hunting of Canvasbacks is prohibited in the eastern half of the United States in the fall of 1986.

302 Duck bag and possession limits.

- a) No member shall take ducks in excess of the daily bag limit established by this section.
- b) No member shall possess ducks taken off-reservation in excess of double the daily bag limit, except for those ducks which are cleaned, dressed, and at the member's primary residence.
- c) The daily bag limit is reached when the point value, as established by this section, of the last duck taken plus the total value of ducks already taken during that day reaches or exceeds 100 points.
- d) Point values are established as follows:
 - 1) 100 points: Hen Mallard, Black duck
 - 2) 70 points: Wood duck, Red head, Hooded Merganser
 - 3) 35 points: Drake Mallard, Pintail, Ring-necked duck, Goldeneye, Bufflehead, All other duck species not listed.
 - 4) 20 points: Blue-winged Teal, Green-winged Teal, Wigeon, Gadwall, Shoveler, Scaup, Common Merganser, Red-breasted Merganser.

303 Bag and possession limits; migratory birds other than ducks.

- a) No member shall take migratory birds in excess of the daily bag limits established by this section.
- b) No member shall possess migratory birds taken off-reservation in excess of the possession limits established by this section, except for those birds which are cleaned, dressed, and at the member's primary residence.

c) Bag and possession limits are established as follows:

<u>Species</u>	<u>Daily Bag</u>	<u>Possession</u>
1) Scaup (during late scaup season, otherwise 20 pts, during regular season)	5	10
2) Canada geese	3	6
3) Other geese	5 minus the number of Canada geese taken (including no more than 2 white-fronted geese)	10 minus the number of Canada geese possessed (Including no more than 4 white-fronted geese)
4) Coot and Gallinule	15, singly or in aggregate	30
5) Sora and Virginia Rails	25, singly or in aggregate	25
6) Common Snipe	8	16
7) Woodcock	5	10

d) Location test. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal hunters on ceded lands will be considered to have been taken on those lands, unless tagged by a tribal or state conservation warden as taken on reservation. No migratory birds falling on reservation lands will be counted as part of a bag or possession limit.

304 Methods. Migratory birds on which open seasons are prescribed may be taken by any methods except those prohibited in this section. No member shall take migratory birds:

- a) with a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machinegun, fish hook, poison, drug, explosive, or stupefying substance;
- b) with a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells;
- c) from or by means, aid, or use of a sinkbox or any other type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water;
- d) from or by any means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind, except that paraplegics and persons missing one or both legs may take from any stationary motor vehicle or stationary motor-driving land conveyance;
- e) from or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off and/or the sails furled, and its progress therefrom has ceased: Provided, that the craft under power may be used to retrieve dead or cripple birds; however, cripple birds may not be shot from such craft under power;
- f) by the use or aid of live birds as decoys; although not limited to, it shall be a violation of this paragraph for any person to take migratory waterfowl on an area where tame or captive live ducks or geese are present unless such birds are and have been for a period of 10 consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl;
- g) by the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds;
- h) by the aid of baiting, or on or over any baited area. As used in this paragraph, "baiting" shall mean the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat, other grain, salt, or other feed so as to constitute for such birds a lure, attraction or enticement to, on, or over any areas where hunters are attempting to take them; and "baited area" means any area where shelled, shucked or unshucked corn, wheat, or other grain, salt, or other feed whatsoever capable of luring, attracting, or enticing such birds is directly or indirectly placed, exposed, deposited, distributed, or scattered; and such area shall remain a baited area for 10 days following complete removal of all such corn, wheat or other grain, salt, or other feed. However, nothing in this paragraph shall prohibit;

- 1) the taking of all migratory birds, including waterfowl, on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands, grain crops properly shocked on the field where grown, or grains found scattered solely as the result of normal agricultural planting, or harvesting; and
 - 2) the taking of all migratory birds, except waterfowl, on or over any lands where shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed has been distributed or scattered as the result of bona fide agricultural operations or procedures, or as a result of manipulation of a crop or other feed on the land where grown for wildlife management purposes: Provided, that manipulation for wildlife management purposes does not include the distributing or scattering of grain or other feed once it has been removed from or stored on the field where grown.
 - i) While possessing shotshells loaded with shot other than steel shot or such shot approved as non-toxic by the Director of Fish and Wildlife Service.
 - j) While possessing or having in control any shotshells loaded with a single slug or ball except during the open gun season for deer, or any shotshells containing shot larger than no. BB., except during the open seasons provided by this agreement, when non-toxic shot no larger than size T may be used for hunting migratory game birds. Except as provided by this paragraph, no member shall hunt any game bird with a rifle or shotgun loaded with a single ball or slug larger than no. BB.
 - k) By the use or aid of any water, air, or motor driven land conveyance used for the purposes of or resulting in stirring up, driving, or rallying.
- 305 Shooting hours. No member shall take migratory birds except from one-half hour before sunrise to sunset.
- 306 Wanton waste of migratory birds. No member shall kill or cripple any migratory bird pursuant to this part without making a reasonable effort to retrieve the bird, and retain it in his actual custody, at the place where taken or between that place and either a) his automobile or principle means of land transportation; or b) his personal abode or temporary or transient place of lodging; or c) a migratory bird preservation facility as defined by sec. 204 (c) of this ordinance; or d) a post office; or e) a common carrier facility.
- 307 Decoys. No member may take migratory birds with decoys which are:
a) placed beyond 200 feet from the cover in which the hunter is located;
b) placed in water prior to one hour before opening of hunting time; or
c) left in the water more than 20 minutes after the close of hunting time.
- 308 Structures. No member may take migratory birds from any pier, dam, dock, breakwater, or similar manmade structure.
- 309 Duck blinds. No member may establish a permanent duck blind on state property including the bed of any navigable lake prior to 7 days before the waterfowl season or leave it established beyond 7 days after the close of the waterfowl season. Any blind left on state property during the season must permanently bear the name and address (in lettering one-inch square or larger) of the person who constructed the blind.
- 310 Possession.
a) Prohibited if taken in violation of Sections 304-309. No member shall at any time, by any means, or in any manner, possess or have in custody any migratory bird or part thereof, taken in violation of any portion of Section 304-309.
b) During closed season. No member shall possess any freshly killed migratory birds during the closed season.

- d) Opening day of a season. No member on the opening day of the season shall possess any migratory birds freshly killed off of the reservation in excess of the daily bag limit, or aggregate daily bag limit, whichever applies.
- e) Field possession limit. No member shall possess, have in custody, or transport more than the daily bag limit or aggregate daily bag limit, whichever applies, of migratory birds, tagged or not tagged, at or between the place where taken and either a) his automobile or principle means of land transportation; or b) his personal abode or temporary or transient place of lodging; or c) a migratory bird preservation facility as defined by sec. 201(c) of this ordinance; or d) a post office; or e) a common carrier facility. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of a member on ceded lands will be considered to have been taken on these lands unless tagged by the tribal conservation department or the Wisconsin Department of Natural Resources as having been taken on reservation. All migratory birds which fall on reservation lands will not count as part of the bag or possession limit.
- f) Tagging requirement. No member shall put or leave any migratory birds at any place (other than his personal abode), or in the custody of another person for picking, cleaning, processing, shipping, transportation, or storage (including temporary storage), or for the purpose of having taxidermy services performed, unless such birds have a tag attached, signed by the hunter, stating his address, the total number and species of birds, and the date such birds were killed. Migratory birds being transported in any vehicle as the personal baggage of the processor shall not be considered as being in storage or temporary storage.
- g) Custody of birds of another. No member shall receive or having in custody any migratory birds belonging to another person unless such birds are tagged as required by paragraph (f) of this section.
- h) Possession of live birds. Every migratory bird wounded by hunting and reduced to possession by the hunter shall be immediately killed and become a part of the daily bag limit. No member shall at any time, or by any means, possess or transport live migratory game birds taken under authority of this part.
- i) Termination of possession. Subject to all other requirements of this part, the possession of migratory birds taken by any hunter shall be deemed to have ceased when such birds have been delivered by him to another person as a gift; or have been delivered by him to a post office, a common carrier, or a migratory bird preservation facility and consigned for transport by the Postal Service or a common carrier to some person other than the hunter.
- j) Gift of migratory birds. No member may receive, possess, or give to another, any freshly killed migratory birds as a gift, except at the personal abodes of the donor or donee, unless such birds have a tag attached, signed by the hunter who took the birds, stating such hunter's address, the total number and species of birds and the date such birds were taken.

311. Transportation.

- a) Prohibited if taken in violation of Part III, Section 304-309. No member shall at any time, by any means, or in any manner, transport any migratory bird or part thereof, taken in violation of any provision of Sections 304-309.
- b) Transportation of birds of another. No member shall transport migratory birds belonging to another person unless such birds are tagged as required by sec. 310(f) of this ordinance.
- c) Species identification requirement. No member shall transport within the United States any migratory birds, except doves and band-tailed pigeons (*Columba Fasciata*), unless the head or one fully feathered wing remains attached to each such bird at all times while being transported from the place where taken until they have arrived at the personal abode of the possessor or a migratory bird preservation facility.
- d) Marking package or container. No member shall transport by the Postal Service or a common carrier migratory birds unless the package or container in which such birds are transported has the name and address of the shipper and the consignee and an accurate statement of the number of each species of birds therein contained clearly and conspicuously marked on the outside thereof.

312 Exportation.

- a) Prohibited if taken in violation of Part III, Sections 304-309. No member shall at any time, by any means, or in any manner, export or cause to be exported, any migratory bird or part thereof, taken in violation of any provision of Section 304-309 of this order.
- b) Species identification requirement. No member shall export migratory birds unless one fully feathered wing remains attached to each such bird while being transported from the United States and/or any of its possession to any foreign country.
- c) Marking package or container. No member shall export migratory birds via the Postal Service or common carrier unless the package or container has the name and address of the shipper and the consignee and an accurate statement of the numbers of each species of birds therein contained clearly and conspicuously marked on the outside thereof.

313 Tribal Identification.

- a) No member shall hunt off-reservation except while carrying a valid picture identification card issued by the tribe, or other form of identification approved by the tribe for spearing activities.
- b) No member shall refuse to display his or her identification documents upon request of any tribal, state, or local law enforcement officer.

314 Permits. No member shall hunt migratory birds off-reservation except while carrying a tribal off-reservation natural resources harvesting permit validated for migratory bird hunting.

315 Closed areas. The following areas are closed for migratory bird hunting except for the purposes specified.

- a) Douglas County:
 - 1) Douglas County Hospital Fields, T48N, R13W, N1/2 Sec.16. Closed except for goose hunting.
 - 2) Brule River, T49N, R10W, W1/3 Sec. 34. Closed for all hunting.
- b) Taylor County: Pershing, T33N, R4W, W1/2 Sec.34. Closed for all hunting.
- c) Marathon County:
 - 1) Bean's Eddy, T26N, R6E, Sec. 13.
 - 2) Berkhahn Flowage, T26N, R6E, N1/2 Sec. 32.
 - 3) Honey Island Flowage, T26N, R5E, Town of Green Valley.
 - 4) McMillian Marsh, T26N, R2E, Sec. 13; T26N, R3E, Sec. 18.
 - 5) Mead, T26N, R5E, Town of Green Valley.Closed for all hunting. Note c(1)-(4) are no entry areas October 1 - November 15.
- d) Oneida County, Rice Lake, T38N, R10E, Sec.3; T39N, R10E, Sec.34. Closed all hunting.
- e) Burnett County:
 - 1) Fish Lake Wildlife Area, T37N, R19W, E 1/2 Sec.3; E 1/2 Sec. 10; N1/2 Sec. 11. Closed all hunting.
 - 2) Crex Meadows, T39N, R18W, Secs. 8, 17, 20. Closed all hunting.
 - 3) Crex Meadows, Burnett County Zone, bordered by Hwy. 70 on south, Route N and D and Clam Rd on east and north, and St. Croix River on west. No canada goose season; otherwise open.
- f) Chippewa County, Wissota, T29N, R7W, SW 1/4 Sec.30; T29N, R8W, Sec.25. Closed all hunting. Note: no loaded or uncased weapons.
- g) Portage County, Camp for the Bline, T25N, R10E, Sec.9; NE 1/2 Sec. 10. Closed all hunting. Note: no loaded or uncased weapons.
- h) Vilas County, Powell Marsh, T42N, R5E, S 1/3 sec.29; SW 1/4 Sec.28; Sec. 32, 33. Closed all hunting.

316 Cooperation. All tribal member(s) shall cooperate with and provide information to employees of the tribe, the Great Lake Indian Fish and Wildlife Commission, the United States Fish and Wildlife Service and the Wisconsin Department of Natural Resources who are conducting surveys and who are enforcing this order.

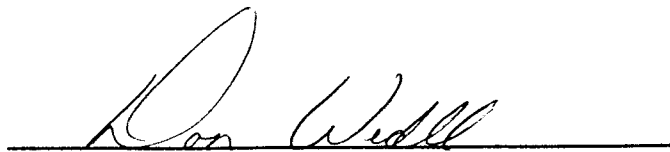
PART IV - ENFORCEMENT

- 401 Enforcement by Deputized Conservation Wardens. Any provision of this order may be enforced by the tribal conservation wardens or by conservation wardens of the Great Lakes Indian Fish and Wildlife Commission. Said Commission wardens are hereby deputized by the tribe as tribal conservation wardens for purposes of enforcing this ordinance.
- 402 Enforcement by Wisconsin Department of Natural Resources Wardens. Wisconsin conservation wardens and deputy wardens are hereby empowered to enforce the provisions of this ordinance and to institute proceedings in the Tribal Court by use of the citation forms of the Wisconsin Department of Natural Resources, as described in Wis. Stat. S23.054.
403. Enforcement by United States Fish and Wildlife Service Wardens. United States Fish and Wildlife Service Wardens are hereby empowered to enforce the provisions of this ordinance and to institute proceedings in the Court of Central Jurisdiction, pursuant to provisions of Commissioner's Order 41-86, dated August 28, 1986.
- 404 Penalties. Any tribal member found by the Court of Central Jurisdiction to have violated a provisions of this ordinance shall be subject to the following penalties:
a) For any violation, a forfeiture not to exceed \$500.
b) For any violation, a revocation of off-reservation migratory bird hunting privileges for a period of time to be determined by the Court.
- 405 Schedule of Money Penalties; No Contest. The Tribal Court may adopt a schedule of forfeitures to be imposed by the Court upon the receipt of an admission that a violation of this order has occurred, which may be done either in person or in writing. This schedule is not binding as to the forfeitures assessed by the Court after adjudicating a violation.
406. Collection of Money Penalties. Enforcement of the penalties imposed by Part IV, Section 404 and 405 of this order may be had through the collection of penalties from funds of the violator held by the Band, through the imposition of community service work requirements in lieu of money payment, through debt collection mechanisms of the Court of Central Jurisdiction, or through any other method authorized by band statute
407. Hearing in Tribal Court. The Court of Central Jurisdiction shall adjudicate all matters arising under this order, pursuant to the provisions of the Band Statute 1024-MLC-3.
408. Issuance of Off-Reservation Natural Resources Harvesting Permits. The conservation department of the tribe is authorized to issue and validate natural resources harvesting permits to members of the tribe and to members of any other tribe which has adopted an ordinance in conformance with the 1986 Chippewa Indian Off-Reservation Migratory Bird Agreement By and Between the State and Tribal Parties in Lac Courte Oreilles Band, et al. v. State of Wisconsin.
409. Authorization for Emergency Closure. The Great Lakes Indian Fish and Wildlife Commission (GLIFWC) is hereby delegated the authority to close any locale to tribal off-reservation migratory bird hunting during the period September 19 through 12:00 noon, October 4, 1986, provided:
a) GLIFWC, the United States Fish and Wildlife Service, and the Wisconsin Department of Natural Resources agree that waterfowl distribution at that locale has been significantly altered by Indian hunting pressure;
b) GLIFWC undertakes reasonable efforts over a 48 hour period to notify tribal migratory bird hunters that the closure will occur.

409. Issuance of Off-Reservation Natural Resources Harvesting Permits. The conservation department of the tribe is authorized to issue and validate natural resources harvesting permits to members of the tribe and to members of any other tribe which has adopted an ordinance in conformance with the 1986 Chippewa Indian Off-Reservation Migratory Bird Agreement By and Between the State and Tribal Parties in Lac Courte Oreilles Band, et al. v. State of Wisconsin.
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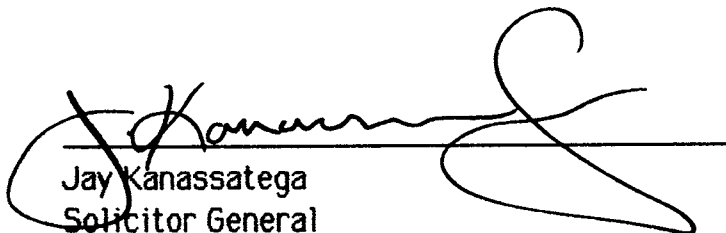
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DATED at Vineland, Minnesota this 28th day of August in the year one thousand nine hundred and eighty-six.



Don Wedl
Commissioner of Natural Resources

APPROVED AND NUMBERED AS TO
FORM AND EXECUTION



Jay Kanassatega
Solicitor General

OFFICIAL SEAL OF THE BAND