

COMMISSIONER'S ORDER NO. 62-87

Natural Resources

A Commissioner's Order establishing and regulating Off-Reservation Ricing Season east of the St. Croix River for members of the Mille Lacs Band of Chippewa Indians.

WHEREAS, Band Statute 1032-MLC-1, Section 29 mandates that the Commissioner of Natural Resources shall protect and regulate all matters of land and water for the Mille Lacs Band of Chippewa Indians; and

WHEREAS, the Seventh Circuit Court of Appeals has ruled that the hunting, fishing, and gathering right does exist; and

WHEREAS, the Chippewa Bands that reside within the ceded territories of 1837; and

WHEREAS, the Mille Lacs Band of Chippewa will regulate its members in the taking of rice within the area of 1837 Treaty east of the St. Croix River to prevent undue arrests by the Minnesota's Natural Resource Officers ; and

WHEREAS, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, Bad River Band of Lake Superior Chippewa Indians, the Lac du Flambeau Band of Lake Superior Chippewa Indians, the Red Cliff Band of Lake Superior Chippewa Indians, the St. Croix Band of Lake Superior Chippewa Indians, and the Mole Lake Band of Lake Superior Chippewa Indians have agreed to allow Mille Lacs Band of Chippewa to rice within their territorial jurisdiction for the purpose of ricing.

NOW THEREFORE, pursuant to the authority vested in me by the Mille Lacs Band of Chippewa Indians under tribal law, I, Don Wedll, Commissioner of Natural Resources for the Mille Lacs Band of Chippewa Indians hereby prescribe the following regulations applicable only for ricing east of the St. Croix River:

AGREEMENT

By and Between the Tribal and State Parties in
Lac Courte Oreilles Band v. State of Wisconsin
Governing the 1987 Chippewa Indian
Off-Reservation Ricing Season for the Ceded Area

This agreement is made and entered into by and between the following parties: the Plaintiffs, the Bad River Band of Lake Superior Chippewa Indians ("Bad River"); the Lac Courte Oreilles Band of Lake Superior Chippewa Indians ("Lac Courte Oreilles"); the Lac du Flambeau Band of Lake Superior Chippewa Indians ("Lac du Flambeau"); the Red Cliff Band of Lake Superior Chippewa Indians ("Red Cliff"); the St. Croix Chippewa Indians of Wisconsin ("St Croix"); the Sokaogon Chippewa Community of the Mole Lake Band ("Mole Lake"); (hereinafter collectively referred to as the "Tribes"); and the Defendants, the State of Wisconsin; the Wisconsin Natural Resources Board; Carrol D. Boodny, Secretary of the Wisconsin Department of Natural Resources; James Huntoon, Administrator, Division of Resource Management; and George Meyer, Administrator, Division of Law enforcement (hereinafter collectively referred to as the "State").

INTRODUCTION

The purpose of this Agreement is to state the terms and conditions which the parties have agreed will be in effect for the purpose of regulating ricing during the 1987 Chippewa Indian Off-Reservation Treaty Ricing Season ("1987 Treaty Season"). This agreement is effective from the date of execution through July 15, 1988. It may not be used for any purposes in this or any other proceeding after the expiration of this agreement, except that provisions of this agreement shall remain in effect to the extent needed for the prosecution and defense of violations occurring during the term of this agreement.

It is the position of the state that, pursuant to Munnichhoff v. Wisconsin Conservation Commission, 255 Wis. 252, 38 N.W. 2d 712 (1949), the treaty ricing rights covered by this agreement apply only to "navigable lakes" and as defined by NR 19.001 (4m), Wis. Adm. Code. It is the position of the Tribes that the rights do apply to all navigable streams and flowages and their beds.

ARTICLE I

The parties agree that ricing activities by members of the Tribes during the 1987 Ricing Season will be subject to the following conditions and regulations.

1. Ricing sticks. No tribal member may harvest or gather any wild rice by the use of any method other than smooth, rounded, wooden rods or sticks not more than 38 inches in length and which are held and operated by hand.
2. Boats. No tribal member may harvest or gather any wild rice by the use of any boat longer than 27 feet or greater than 38 inches in width or by the use of any boat propelled by other than muscular power using only a push pole or canoe paddle.
3. Closed seasons. Except for those lakes listed in Article II, section 2, of this Agreement, there is no closed season for ricing in any Wisconsin waters. For those waters listed in Article II, section 2, there is a closed season except as opened pursuant to the exclusive tribal season prior to August 15th or pursuant to Article II. No member may harvest rice during the closed season.
4. Hours. No tribal member may harvest or gather any wild rice between sunset and the following 10:00 a.m., Central Daylight Time.
5. Tribal identification. Any tribal member who has been issued a photo identification card by his tribe shall carry such card when ricing off-reservation. If a tribal member has not been issued such a card by his tribe, he shall when ricing off-reservation carry other identification documents approved by his tribe. A tribal member holding any such documents shall display it upon request by state and local law enforcement officials and are not required to hold or obtain a state license to rice under this agreement. The tribes agree to verify membership during normal tribal business hours.
6. Trespass. This agreement does not authorize trespass.
7. Waste of Natural Resources. No tribal member shall unreasonably waste, injure or destroy or impair natural resources while engage in ricing activities pursuant to this agreement as prohibited by parallel state statute sec. 23.095.
8. Cooperation. Tribal members shall cooperate with and provide information to employees of the Wisconsin Department of Natural Resources who are enforcing the terms of this agreement with tribal or commission enforcement officers.

ARTICLE II

1. Exclusive Season. If the rice on any of the lakes listed under subsection 3 is ripe before August 15, 1987, the lakes may be open pursuant to Section 2 of Article II, except that the opening will be exclusively tribal. The decision to open the lake will be based only on biological reasons.

2. Concurrent Season. On or after August 15, 1987 for those lakes for which a closed season is established pursuant to NR 19.09, Wis. Adm. Code, the parties agree to designate concurrent open seasons for state licenses and tribal members. Prior to designating an open season for each lake listed in NR 19.09, Wis. Adm. Code, the Wisconsin Department of Natural Resources shall consult with the tribe having tribal opening authority for that lake as provided by section 2 of this article. DNR consultation with the tribe shall be through the tribal chairman or his delegate. The Department or the Tribe with the tribal opening authority may open the season for an individual lake without consultation if:
 - (a) The Department has made good faith repeated efforts to contact the tribal chairman or his delegate for 24 hours, or the Tribe has made such effort to contact the Department's delegate; or
 - (b) The tribal chairman or his delegate has failed to respond to a message from the Department within 24 hours, or the Department's delegate has failed to respond to a message from the Tribe within 24 hours; or
 - (c) The tribal chairman or his delegate, or the Department's delegate, has failed to appear at the site following meeting arrangements.

3. Tribal opening authorities. For each of the lakes listed below, the DNR shall consult with the corresponding tribe:
 - (a) Barren County: Bear, Beaver Dam, Red Cedar. St. Croix
 - (b) Bayfield County: Totogatic. Lac Courte Oreilles
 - (c) Burnett County: Beehaw, Big Clem, Big Sand, Briggs, Geolyn, Long, Mud (town of Oakland), Mud (town of Swiss), Mud Men, Spencer, Trade. St. Croix
 - (d) Douglas County: Allouez Bay St. Croix
 - (e) Forest County: Atkins, Riley, Big Rice, Wabigon Mole Lake
 - (f) Oneida County: Big, Big Lake, Thoroughfare, Gary, Little Rice, Rice, Spur. Lac du Flambeau
 - (g) Polk County: Balsam Branch, Big Round, East, Glenton, Little Butternut, Nye, Rice, White Ash. St. Croix
 - (h) Sawyer County: Musky Bay (sec. 10 and 11, T39N, R9W in Big Lac Courte Oreilles). Lac Courte Oreilles
 - (i) Yilan County: Alleguash, Little Rice, Nixon, Irving, Kerura, West Plum, Devins, West Ellerson, Mchey Mud, Froot, Rice, Sand, Sugar Bush Chain. Lac du Flambeau

- (j) Washburn County: Bear, Gilmore, Little Mud, St. Croix
Nancy, Rice, Spring.
- (k) Washburn County: Tranus. Lac Courte Oreilles

ARTICLE III

1. Prosecution of Violations

- (a) Except as otherwise provided herein, the tribal court of each Tribe shall be vested with exclusive jurisdiction over violations of tribal regulations described in this Agreement arising from ricing activity within the ceded territory during the term of this Agreement. Any such case shall be referred for prosecution to the tribal court of the person's tribe, provided that the Tribe maintains a tribal court with jurisdiction over ricing by its members, and further provided that the Tribe has adopted and has in force at the time of the violation a code of regulations incorporating the regulations described in this Agreement, and a copy has been submitted to the Department. Tribal codes shall be submitted to the Department immediately upon their adoption. Said regulations shall apply to the Tribe's members when ricing off the reservation during the term of this Agreement and shall be no less restrictive than any parallel state regulations except as otherwise provided herein. No violation of regulations governing the act of ricing may be prosecuted in State court against members of the Tribe maintaining a court and a code of regulations as described above except as maybe specifically provided in this Agreement.
- (b) Nothing in this Agreement shall preclude the state from prosecuting in state court criminal code violations in Chapters 940 and 941, or violations of 29.64 (resisting conservation warden), 29.641 (false impersonation of warden).
- (c) As to violations occurring on public land or water, tribal members subject to tribal prosecution under this section, shall not be prosecuted by the state for violating the parallel state law for violations occurring on public land or water. (Except as allowed by paragraph (b) of this section.) State enforcement personnel may, however, seize evidence and issue citations to persons violating such tribal regulations, and refer the persons to the tribal court or other adjudicatory forum established by the Tribe.
- (d) With the exception of those statutory provisions expressly set forth in sub. (b), nothing herein shall be construed to preclude any tribal member from raising any and all defenses to state prosecutions for civil or criminal violations of state or local law, including the defense that the prosecution contravenes or infringes upon that member's exercise of treaty rights.
- (e) Rice seized in connections with cases referred to tribal court for prosecution shall be turned over to the Tribe. Such rice shall not be returned by the tribal court or tribal officials to the convicted violator, his immediate family, or ricing partner.

2. Law Enforcement

- (a) It is understood and agreed that state enforcement personnel will conduct themselves in the same manner whether the citation, if any, to be issued would be to tribal court or to state court.
- (b) The Department will strongly encourage state law enforcement personnel to use utmost discretion in the retention of seized equipment of tribal members apprehended in a violation of this agreement, thereby recognizing the hardship such retention may have on the exercise of the tribal member's treaty rights. Every reasonable effort shall be made to return the equipment as soon as possible when

ARTICLE IV

1. The filing and acceptance of this agreement and the issuance of an order approving the stipulation of which it is a part, shall not in any respect constitute a determination as to the merits of any allegation or contention, whether legal or factual, made by any party in this proceeding now or in the future.
2. After the date of expiration of this agreement, the order approving stipulation of which this agreement is part shall neither establish nor constitute any principle or precedent binding in this or any other proceeding upon the parties.
3. The execution and submission of this agreement shall not be deemed in any respect to constitute an admission by any part that any allegation made in this proceeding is true or valid or that any contention of law is correct or binding and shall not be deemed to foreclose any party from making any allegation or contention in this or any subsequent proceeding involving the same subject matter.
4. The discussions between the parties which have resulted in this Agreement have been conducted on the explicit understanding that all offers of settlement, and writing and discussion relating thereto, are and shall be privileged and shall be without prejudice to the positions of the parties and are not to be used in any manner in connection with this proceeding or otherwise, except in court proceedings as authorized by the applicable rules of evidence. The parties recognize that the admissibility into evidence of all such offers, writings, and discussion in this proceeding is governed by Rule 408 of the Federal Rules of Evidence.

ARTICLE V

1. The parties agree that any controversies, disputes, difference or misunderstandings arising out of this agreement shall be referred to designated representatives for consultation before any further action is taken by any party.

ARTICLE VI

1. Technical Working Group. The Wild Rice Technical Working Group shall be revived. Their duties shall include assessing the harvest of wild rice by both Tribal users and state users. In addition the Technical Working Group shall discuss where the money propagated by wild rice licenses for the State and an equal amount from the Tribes shall be spent. Such money must be spent to propagate and protect the resource. The final decision on using the monies belongs to the party who was the source of the money.

ARTICLE VII

This agreement shall be effective upon approval by the Federal District Court for the Western District of Wisconsin and, as to each of the tribes, upon notification to the state by each tribe of the tribe's approval.

This agreement is hereby executed as the date first written below on behalf of the following named parties by the individuals named below.

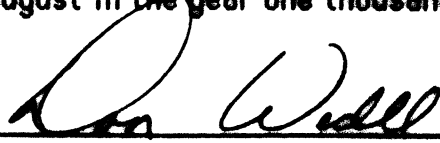
The _____ hereby ratifies the 1987 Chippewa Indian Off-Reservation Treaty Ricing Season.

By : _____

Position: _____

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DATED at Vineland, Minnesota, this 28th day of August in the year one thousand nine hundred and eighty-seven.



Don Wedl
Commissioner of Natural Resources

APPROVED AND NUMBERED AS TO
FORM AND EXECUTION

OFFICIAL SEAL OF THE BAND

Joy Kanassetege
Solicitor General