

NON-REMOVABLE MILLE LACS BANDS OF CHIPPEWA INDIANS
DEPARTMENT OF NATURAL RESOURCES

COMMISSIONER'S ORDER 19-01

An Order adopting and enacting the Model Off-Reservation Conservation Code ("Voigt Model Code") of the Great Lakes Fish & Wildlife Commission's Voigt Intertribal Task Force to Govern the Exercise of Hunting, Fishing and Gathering Rights in the Wisconsin Portions of the 1837 and 1842 Treaties

WHEREAS, pursuant to 4 MLBSA § 7(h) the Commissioner of Natural Resources has the general authority to issue Commissioner's Orders on any subject matter within his jurisdiction as conferred by Band Statute;

WHEREAS, pursuant to 2 MLBSA § 1107, the Commissioner of Natural Resources has the power to issue Commissioner's Orders for the purpose of promulgating all rules and regulations for the exercise of usufructuary rights by Band members in all the territory ceded by the Treaty of 1837 regardless of state boundaries and borders;

WHEREAS, pursuant to 11 MLBSA § 2002, the Commissioner of Natural Resources has powers of regulation over everything related to the conservation and protection of natural resources under the jurisdiction of the Mille Lacs Band of Chippewa Indians, including the powers to:

open and close all seasons for hunting, fishing, trapping, and the gathering of wild rice by the issuance of a Commissioner's order with the concurrence of the Spiritual Advisor on all matters related to his duties;

develop a natural resources management plan;

make any and all regulations for the taking, possession and transportation of wild animals, fish, bird or grain from trust territory under the jurisdiction of the Band; and

do all things deemed by him as desirable in the preservation, protection and propagation in their natural state of all desirable species of wild animal, bird or fish upon the concurrence of the Spiritual Advisor;

WHEREAS, pursuant to 11 MLBSA § 2005, the Commissioner of Natural Resources has the authority to promulgate by Commissioner's Order regulations controlling member fishing, spearing, netting, hunting, trapping, and ricing in the off-reservation territory as described by 2 MLBSA § 107 [probably should be § 1107];

WHEREAS, the Non-Removable Mille Lacs Bands of Chippewa Indians is a signatory or successor to the Treaty of 1837, 7 Stat. 536, which secures hunting, fishing and gathering rights to the signatory tribes in portions of present-day Minnesota and Wisconsin, and to the Treaty of 1842, 7 Stat. 591, which secures hunting, fishing and gathering rights to the signatory tribes in portions of present-day Wisconsin and Michigan;

WHEREAS, the Band accordingly holds rights to hunt, fish, and gather on lands and waters ceded in the Treaty of 1837, 7 Stat. 536, which rights were adjudicated by the United States District Court for the Western District of Wisconsin in *Lac Courte Oreilles, et al. v. State of Wisconsin, et al.* with respect to the Wisconsin portion of the ceded territory and by the United States District Court for the District of Minnesota in *Mille Lacs Band et al. v. State of Minnesota et al.* with respect to the Minnesota portion of the ceded territory; and

WHEREAS, the Band also hold rights to hunt, fish and gather on lands and waters ceded in the Treaty of 1842, 7 Stat. 591, which rights were adjudicated by the United States District Court for the Western District of Wisconsin in the *Lac Courte Oreilles* case with respect to the Wisconsin portion of the ceded territory;

WHEREAS, in accordance with the final decree in the *Mille Lacs Band* case, the Mille Lacs Band adopted the 1837 Treaty Conservation Code for the Minnesota Ceded Territory of the Mille Lacs Band of Ojibwe Indians, which is codified at 11 MLBSA §§ 4001 – 5268;

WHEREAS, in Commissioner's Order 105-89, the Commissioner of Natural Resources adopted the 1987-1988 Off-Reservation Conservation Code for Fishing by and between the Tribal and State Parties in the *Lac Courte Oreilles* case and the Off-Reservation Conservation Code of the Mille Lacs Band of Chippewa for the area East of the St. Croix River and within the 1837 Treaty Area;

WHEREAS, pursuant to 2 MLBSA §§ 1151 – 1160, the Band is a member of the Great Lakes Indian Fish and Wildlife Commission and the Voigt Intertribal Task Force;

WHEREAS, the *Lac Courte Oreille* case provides that the signatory Tribes to the 1837 and 1842 Treaties shall continue to enjoy a sovereign and self-regulated status over their members' exercise of treaty-reserved activities within the Wisconsin portion of the Off-Reservation Ceded Territories, so long as they adopt laws at least as restrictive as the Model Off-Reservation Conservation Code ("Voigt Model Code"), approved by the District Court, and adhere to the established system of intertribal co-management of off-reservation resources;

WHEREAS, the Voigt Intertribal Task Force, pursuant to delegations from the Tribes (including the Mille Lacs Band) in the *Chippewa Intertribal Agreement Governing Resource Management and Regulation of Off-Reservation Treaty Rights in the Ceded Territory*, has approved and recommended that its member tribes adopt the current version of the Off-Reservation Conservation Code ("Voigt Model Code"), which is attached hereto as Exhibit A, into tribal law;

WHEREAS, the Mille Lacs Band has followed the provisions of predecessors to the Voigt Model Code in Commissioner's Order 105-89 and in otherwise exercising hunting, fishing, and gathering rights on the Wisconsin portions of the 1837 and 1842 Ceded Territories; and

WHEREAS, the Commissioner of Natural Resources had determined, in consultation with the Band's Spiritual Advisor, that it is advisable to formally adopt by Commissioner's Order the current version of the Voigt Model Code to govern the exercise of hunting, fishing and gathering rights by Band members in the Wisconsin portions of the 1837 and 1842 Ceded Territories and to repeal the predecessors to the Voigt Model Code that were adopted in Commissioner's Order 105-89;

NOW, THEREFORE, BE IT RESOLVED, that the Commissioner of Natural Resources, pursuant to authorities conferred by Band Statutes:

1. adopts the current version of the Off-Reservation Conservation Code ("Voigt Model Code"), which was approved by the United States District Court in the *Lac Courte Oreilles* case on October 21, 2016, and has been subsequently amended by duly issued Orders of the Great Lakes Indian Fish and Wildlife Commission and which is attached hereto as Exhibit A to govern the exercise of hunting, fishing and gathering rights by Band members in the Wisconsin portions of the 1837 and 1842 Ceded Territories; and
2. directs that the regulations be called the 1837 and 1842 Treaty Conservation Code for the Wisconsin Ceded Territory of the Mille Lacs Band of Ojibwe Indians; and
3. repeals the 1987-1988 Off-Reservation Conservation Code for Fishing by and between the Tribal and State Parties in the *Lac Courte Oreilles* case and the Off-Reservation Conservation Code of the Mille Lacs Band of Chippewa for the area East of the St. Croix River and within the 1837 Treaty Area, both of which were adopted in Commissioner's Order 105-89; and
4. establishes that this Commissioner's Order and the 1837 and 1842 Treaty Conservation Code for the Wisconsin Ceded Territory of the Mille Lacs Band of Ojibwe Indians shall become effective on January 1, 2019; and
5. further establishes that this Commissioner's Order shall remain in effect until December 31, 2028 or superseded by duly enacted law; and

BE IT FURTHER RESOLVED, that nothing in this Order or the attached 1837 and 1842 Treaty Conservation Code for the Wisconsin Ceded Territory of the Mille Lacs Band of Ojibwe Indians shall waive the sovereign immunity of the Mille Lacs Band of Ojibwe Indians and, to the contrary, the Band asserts to the fullest extent allowed by law immunity on its part and that of its officers, employees and/or agents from any claims, actions or damages that may arise under or as a result of this Order or said Code; and

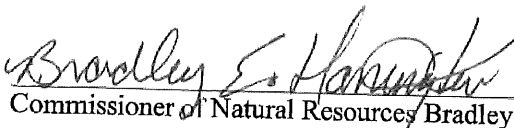
BE IT FURTHER RESOLVED, that nothing in this Order or the attached 1837 and 1842 Treaty Conservation Code for the Wisconsin Ceded Territory of the Mille Lacs Band of Ojibwe Indians

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shall alter, amend or repeal any provision of the 1837 Treaty Conservation Code for the Minnesota Ceded Territory of the Mille Lacs Band of Ojibwe Indians, which is codified at 11 MLBSA §§ 4001 – 5268.


Commissioner of Natural Resources Bradley E. Harrington, Jr.

2/4/19
Date

APPROVED AS TO FORM,ⁱ EXECUTION,ⁱⁱ AND NUMBERINGⁱⁱⁱ:


Marc Slonim, Solicitor General

2/5/2019
Date

ⁱ The Office of the Solicitor General (“OSG”) intended that the above attestation correspond with footnotes first appearing in a 2015 commissioner’s order template. *See* DNR COMM’R ORDER 15-01 n.1 (“The commissioner’s order conforms to standard resolution format. ROBERT’S RULES OF ORDER § 10, at 105-09 (Sarah C. Robert et al. eds., 2011); *cf.* 3 MLBSA § 9 (“All parliamentary decisions shall be rendered . . . in accordance with Robert’s Rules of Order.”)). The above format includes modifications made pursuant to legislative recommendation.

ⁱⁱ The Office of the Solicitor General must aid in the drafting of orders, 4 MLBSA § 18(e), and, hereby attests that this order includes the required statutory components. 4 MLBSA § 7(h); *see also* BLACK’S LAW DICTIONARY 649 (9th ed. 2009) (defining the verb, “execute,” in relevant part, as: “To make (a legal document) valid by signing; to bring (a legal document) into its final, legally enforceable form.”). This Commissioner’s Order may be executed and delivered in counterparts by facsimile, each of which so executed and delivered counterpart is original, and such counterparts, together, shall constitute but the same instrument.

ⁱⁱⁱ The OSG intended that the above attestation correspond with footnotes first appearing in a 2015 commissioner’s order template. *See* DNR COMM’R ORDER 15-01 n.3 (“Commissioner orders are numbered consecutively within each calendar year.”). The above order number represents a modification made pursuant to legislative recommendation.

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EXHIBIT A

This Exhibit contains the Voigt Model Code referenced in the foregoing Commissioner's Order. As set forth in the Commissioner's Order, the regulations set forth in the Voigt Model Code shall be known as the 1837 and 1842 Treaty Conservation Code for the Wisconsin Ceded Territory of the Mille Lacs Band of Ojibwe Indians.