

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

Grand Portage Band of  
Chippewas of Lake Superior,  
James Hendrickson, Curtis  
Gagnon,

Plaintiffs,

vs.

State of Minnesota and  
Joseph N. Alexander,  
Commissioner, Department  
of Natural Resources of  
the State of Minnesota,

Defendants.

Civ. No. 4-85-1090

MEMORANDUM OF AGREEMENT

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Plaintiffs,

vs.

MEMORANDUM OF AGREEMENT

State of Minnesota and  
Joseph N. Alexander,  
Commissioner, Department  
of Natural Resources of  
the State of Minnesota,

Defendants.

WHEREAS, the Lake Superior Chippewa and the Government of the United States entered into a treaty on September 30, 1854 ("the 1854 Treaty") that was ratified by the United States Senate on January 10, 1855 (10 Stat. 209); and

WHEREAS, the Bois Forte Band of Chippewa Indians and the Government of the United States entered into a treaty on April 7, 1866 ("the 1866 Treaty") that was ratified by the United States Senate on April 26, 1866 (14 Stat. 765); and

WHEREAS, in Articles 1 and 4 of the 1854 Treaty and in Articles 2 and 3 of the 1866 Treaty certain described land, hereinafter referred to as the ceded territory, was ceded to the United States in consideration for payment of money, goods, blacksmith services, and other items; and

WHEREAS, Article 11 of the 1854 Treaty provided that: "And such of them as reside in the territory hereby ceded, shall have

the right to hunt and fish therein, until otherwise ordered by the President;" and

WHEREAS, the Grand Portage, Bois Brte, and Fond du Lac Bands of Chippewa Indians were signatories to the 1854 treaty and were the only Bands signing the treaty that resided in the ceded territory and

WHEREAS, on August 20, 1985, the Grand Portage Band and two of its members filed a civil action in the United States District Court for the District of Minnesota, Fourth Division, entitled Grand Portage Band of Chippewas, et al. v. State of Minnesota, et al., Civ. No. 4-85-1050 which asked the Court for a declaratory judgment that the Grand Portage Band has the right to hunt and fish in the ceded territory and in Lake Superior pursuant to Article 11 of the 1854 Treaty free of most state regulation; and

WHEREAS, the Grand Portage, Bois Brte, and Fond du Lac Bands and the State of Minnesota desire to settle the dispute with respect to the issues in the above entitled litigation and all other issues concerning hunting and fishing rights under the 1854 Treaty;

NOW, THEREFORE, the parties to this Agreement agree as follows:

I.

#### DEFINITIONS

For the purposes of this Agreement, certain terms shall be defined as follows:

A. Assessment Netting Contracts shall mean the contracts signed between the State and private persons under which the private person is obligated to net lake trout according to prescribed conditions in certain areas of Lake Superior, and to report the

resulting catch to the State to assist its fishery management program, and under which the private person is entitled to sell lake trout according to the terms of the contract.

B. Band Member shall mean an Indian who is duly enrolled in the Minnesota Chippewa Tribe and duly enrolled as a member of one of the Three Bands.

C. Big Game, Furbearing Animals, Game, Game Birds, Game Fish, Migratory Waterfowl, Minnows, Predator, Protected Birds, Protected Wild Animals, Rough Fish, Small Game, Sunfish, Unprotected Birds, Unprotected Wild Animals, and Wild Animals shall have the meanings ascribed to them by Minn. Stat. Sec. 97A.015 (1986) and subsequent amendments, and shall also be construed to include all parts thereof.

D. Bois Forte Reservation shall mean the area reserved for the Bois Forte Band by Article 3, 1st paragraph of the 1856 Treaty. The Bois Forte Reservation includes the Deer Creek, Nett Lake, and Vermillion Reservations, as those areas have been or might be altered by Acts of the United States Congress, authorized officials of the United States Government, or the United States Courts.

E. Ceded Territory shall mean the area described in Article 1 of the 1854 Treaty, the boundaries of which are set forth in the set of maps and explanatory notes that are attached hereto, incorporated herein by reference, and are collectively referred to as Exhibit A. Ceded territory does not include the Grand Portage Reservation, the Bois Forte Reservation, or the Fond du Lac Reservation.



F. Commercial purposes shall mean for purposes of sale or barter.

G. Commissioner shall mean the Commissioner of the Minnesota Department of Natural Resources.

H. Conservation shall mean the protection and management of fish and wildlife in their natural habitats in a manner intended to achieve a sustained harvestable surplus.

I. Conservation Officer shall mean a conservation officer duly licensed and appointed by the Three Bands or by the State.

J. Fish and Wildlife shall have the same meaning as "wild animals" as that term is defined by Minn. Stat. Sec. 97A.015 (198 and subsequent amendments, and shall also include plants.

K. Fond du Lac Reservation shall mean the area reserved for the Fond du Lac Band by Article 2, 4th paragraph of the 1854 Treaty, as that area has been or might be altered by Acts of the United States Congress, authorized officials of the United States Government, or the United States Courts.

L. Gathering shall mean the taking or harvest of plants.

M. Grand Portage Code shall mean a conservation code enacted by the Grand Portage Band regulating fishing in the Grand Portage Zone. The Grand Portage Code shall incorporate by reference the Tri-Band Code.

N. Grand Portage Reservation shall mean the area reserved for the Grand Portage Band by Article 2, 5th paragraph of the 1854 Treaty, as that area has been or might be altered by Acts of the United States Congress, authorized officials of the United States Government, or the United States Courts.

O. Grand Portage Zone shall mean the area in the Minnesota waters of Lake Superior bounded by a line as follows: beginning at the mouth of the Reservation River, thence due south to the Minnesota boundary in Lake Superior, thence northeastward along such Minnesota boundary to the Canadian boundary in Lake Superior, thence westward along such Canadian boundary to the shore of Lake Superior, thence southwestward along the shore of Lake Superior to the point of beginning.

P. Hunt and Fish, and Hunting and Fishing shall mean taking or attempting to take by any means any wild animal, and shall also include the gathering of plants.

Q. Motor Vehicle shall have the meaning ascribed to it by Minn. Stat. Sec. 97A.015 (1986) and subsequent amendments.

R. Non-Commercial and Non-Commercial Purposes shall mean for purposes of sport or subsistence.

S. North Shore Streams shall mean those rivers and streams in the ceded territory that flow directly into Lake Superior.

T. Parties shall mean the State and the Three Bands.

U. Plants shall include all parts thereof.

V. Possession, transportation and sale shall have the meanings ascribed to them by Minn. Stat. Sec. 97A.015 (1986) and subsequent amendments.

W. Public Waters shall mean public waters and wetlands as defined by Minn. Stat. Sec. 105.37, subs. 14 and 15 (1986) and subsequent amendments.

X. Shining shall mean the use of an artificial light to locate wild animals while in possession of a firearm or bow and

arrow as more fully described by Minn. Stat. Sec. 97B.081, subd. 1 (1986) and subsequent amendments.

Y. State shall mean the State of Minnesota.

Z. Taking shall have the meaning ascribed to it by Minn. Stat. Sec. 97A.015 (1986) and subsequent amendments, and in addition shall include the harvesting and gathering of plants.

AA. Three Bands shall mean the Grand Portage, Bois Forte, and Fond du Lac Bands of Chippewa Indians.

BB. Tri-Band Code shall mean a conservation code jointly enacted by the Grand Portage Band, Bois Forte Band and Fond du Lac Band regulating hunting and fishing in the ceded territory and Lake Superior. The Tri-Band Code shall incorporate by reference the Grand Portage Code.

## II.

### STATEMENT OF PURPOSE

A. The purpose of this Agreement is to resolve all issues in the currently pending litigation entitled Grand Portage Band of Chippewas, et al. v. State of Minnesota, et al., and to agree upon those hunting and fishing rights that the Grand Portage, Bois Forte, and Fond du Lac Bands will exercise under the 1854 Treaty.

B. The parties agree that by the execution of this Agreement, neither the Three Bands nor any Band member conveys or waives any legal rights that may have been retained under the 1854 Treaty. The parties further agree that the State does not waive any defenses or arguments it may have with regard to legal rights under the

1854 Treaty. By this Agreement the parties seek to resolve legal issues without the necessity of final judicial rulings.

C. The Grand Portage, Bois Forte, and Fond du Lac Bands and the State of Minnesota wish to define the manner in which hunting and fishing rights under the 1854 Treaty will be exercised, and to insure that the fish and wildlife resource will be preserved in perpetuity. The parties further agree that they are striving by this Agreement to foster good relationships between Indian and non-Indian communities in the State of Minnesota.

D. The parties agree that the fish and wildlife resource is a finite, renewable natural resource that must be protected and managed in its natural habitat in a way that will enhance its ability to be self-sustaining. The parties therefore further agree that there should be no taking of a particular species unless there is a harvestable surplus population of that species in the harvest area.

E. The parties recognize that Band members claim rights to hunt and fish pursuant to Article 11 of the 1854 Treaty. These rights do not preclude the claimed rights of non-Band members to hunt and fish in the ceded territory and Lake Superior pursuant to State law. The parties agree that the fish and wildlife resource is to be utilized by all citizens of the State.

F. By this Agreement, the Three Bands agree to forbear the exercise of certain rights that they claim are reserved by the 1854 Treaty in consideration for the commitments of the State recited herein.

G. The parties agree that the right of the Three Bands to hunt and fish for commercial purposes or otherwise utilize fish and wildlife for commercial purposes in the ceded territory and Lake Superior shall be limited to the instances described in this Agreement or otherwise allowed by state law.

### III.

#### CONDITIONS

A. This Agreement is contingent upon adoption by the Minnesota Legislature, at the 1988 session thereof, of legislation effectuating the terms of this Agreement, and is further contingent upon the Governor signing such legislation into law.

B. This Agreement is contingent upon ratification by the governing bodies of the Grand Portage, Bois Forte, and Fond du Lac Bands.

C. This Agreement is contingent upon dismissal by James Hendrickson and Curtis Gagnon of any claims they have in the above referenced civil action pending before the above referenced Court.

D. If legislation effectuating the terms of this Agreement is enacted into law, all parties will apply to the Court for entry of a consent judgment consistent with the terms of this Agreement and the legislation enacted pursuant hereto. This Agreement is contingent upon the entry by the Court of such a consent judgment.

E. This Agreement is contingent upon the Bois Forte Band and the Fond du Lac Band joining this lawsuit as parties and being bound by the consent judgment of the Court.

F. Until such time as a Tri-Band Code and a Grand Portage Code have been duly adopted pursuant to this Agreement, the Three Bands shall abide by all provisions of state law when hunting and fishing in the ceded territory and Lake Superior.

#### IV.

#### OBLIGATIONS AND RIGHTS OF THE STATE

A. Annual Payment. The State shall pay annually to the Grand Portage Band and the Bois Forte Band the sum of one million six hundred thousand dollars (\$1,600,000.00) each, and to the Fond du Lac Band the sum of one million eight hundred and fifty thousand dollars (\$1,850,000.00). In addition, any amounts in excess of one million five hundred thousand dollars (\$1,500,000.00) paid by the State pursuant to the settlement of the litigation referenced in Minn. Stat. Secs. 97A.151 and 97A.155 (1986) shall be matched, dollar for dollar, in the payments made to each of the Three Bands. This formula shall continue to apply to the Three Bands even if it may in the future no longer apply to the Leech Lake Band. No payments shall be made by the State until after July 1, 1988. Each annual payment shall be made in full as soon after July 1 as possible.

B. Assessment Netting Contracts. The State shall issue all, and in no event less than three, assessment netting contracts in the Grand Portage Zone to members of the Grand Portage Band; and the State shall issue one assessment netting contract in the lower end of Lake Superior near Duluth to members of the Fond du

Lac Band. Band members fishing under these contracts shall be subject to all the same terms and conditions that apply to non-Band contractors. The State shall provide instruction to Band assessment netters to insure adequate and accurate gathering of assessment data.

C. State Commercial Small Mesh Fishing Licenses. The State agrees to allocate to the Fond du Lac Band, on a first right of refusal basis, (1) any of the small mesh fishing licenses vacant at the time of entry of the judgment under this Agreement, and (2) up to 50 percent of all future small mesh fishing licenses that may become available. Band members applying for and fishing under these licenses shall be subject to all applicable provisions of state law, except that entry standards will be waived. The Commissioner shall notify the Fond du Lac Band by certified mail, return receipt requested, of the availability of such licenses. The Fond du Lac Band shall respond to such notice within sixty (60) days. If after sixty (60) days the Band has failed to exercise its option with respect to such licenses, it shall be deemed to have waived any rights to the licenses that were the subject of the notice.

D. Grand Portage Zone. The State recognizes the right of the Grand Portage Band to commercially fish in the Grand Portage Zone of Lake Superior pursuant to the terms of this Agreement, the Tri-Band Code and the Grand Portage Code. The State will issue no commercial licenses in the Grand Portage Zone.

E. Grand Portage Bay. The State recognizes the exclusive right of the Grand Portage Band to fish, commercially and non-

commercially, in Grand Portage Bay pursuant to the terms of this Agreement, the Grand Portage Code and the Tri-Band Code.

F. Identification Cards. The State will issue, upon request and free of charge, color photograph hunting and fishing identification cards to members of the Three Bands upon proof of Band membership.

G. Cross Deputization. The State will cross-deputize qualified Band conservation officers as Minnesota conservation officers empowered to enforce the State's hunting and fishing laws and regulations throughout the ceded territory and Lake Superior, and to charge violators in state courts. In order to qualify for such cross-deputization, persons must be official Band conservation officers and must be licensed as certified peace officers by the Minnesota Board of Peace Officer Standards and Training. Upon request and at Band expense, the State shall include cross-deputized Band conservation officers in the continuing education training programs provided to State conservation officers.

H. Conservation.

1. The State will manage in a non-discriminatory manner the fish and wildlife resource, including habitat, of the ceded territory and Lake Superior, including the Grand Portage Zone, for conservation purposes in the best interests of all citizens of Minnesota. All stocking of fish in public waters, importation of fish and wildlife into the State, introduction of new fish or wildlife species into the ceded territory or Lake Superior and all habitat development on public lands and public waters shall be performed by the state or subject to prior approval by the State. The State will determine the populations and harvestable



surpluses of fish and wildlife throughout the ceded territory and Lake Superior in accordance with sound conservation principles.

2. The State hereby acknowledges the Three Bands' traditional interest in stewardship of fish and wildlife resources. The State will solicit and carefully consider the findings and advice of the Three Bands concerning conservation of the fish and wildlife resource in the ceded territory and Lake Superior.

I. Records. The State will provide to the Three Bands copies of all State records and data pertaining to hunting and fishing in the ceded territory and Lake Superior unless prohibited by the Government Data Practices Act, Minn. Stat. ch. 13 (1986) and subsequent amendments. Requests by the Three Bands shall be treated the same as requests made by other governmental entities.

V.

OBLIGATIONS AND RIGHTS OF THE THREE BANDS

A. On Reservations. Fish and wildlife taken on the Grand Portage, Bois Forte, and Fond du Lac Reservations shall be tagged with tags provided by the respective Band or otherwise positively identified if transported or possessed off the reservation. Off-reservation sale of fish and wildlife taken on these reservations shall be limited to such species and subject to such conditions as apply in the ceded territory pursuant to this Agreement.

B. Grand Portage Zone. The Grand Portage Code shall include at a minimum the following provisions regulating fishing in the Grand Portage Zone:

1. Licensing. Each member of the Three Bands commercial fishing in the Grand Portage Zone shall possess and have upon him

person while fishing, possessing, or transporting fish a commercial fishing license issued by the Grand Portage Band.

2. Commercial Species. Fish taken for commercial purposes in the Grand Portage Zone shall be limited to the following species: lake trout, smelt, ciscoes, herring, whitefish, burbot and suckers. Other species incidentally taken in connection with commercial fishing may be sold only on the Grand Portage Reservation at retail for personal consumption.

3. Identification of Fish. All lake trout and whitefish taken for commercial purposes shall be identified with locking tags. When in the round, each such fish shall have a locking tag attached. When filleted, fillets shall be packaged in pairs with one locking tag included in each package. These tags shall remain affixed or packaged until the fish or package is delivered to a processor or consumer.

4. Limit of Annual Catch of Lake Trout. The total catch of lake trout taken in the Grand Portage Zone for both commercial and non-commercial purposes combined, including lake trout taken under assessment netting contracts, shall not exceed 27,000 pounds annually, unless a higher limit is agreed upon in writing by the Commissioner and the Grand Portage Band. A higher limit shall only be set if a higher limit is in compliance with the Lake Trout Rehabilitation Plan of the Great Lakes Fisheries Commission.

5. Records. The Grand Portage Band shall keep detailed and up-to-date records of all fish taken from the Grand Portage Zone. Copies of all such records shall be provided to the Commissioner upon request.

C. Lake Superior Outside Grand Portage Zone. The Tri-Band Code shall include at a minimum the following provisions regulating fishing in Lake Superior outside the Grand Portage Zone:

1. No Commercial Fishing. The Three Bands shall issue no permits for, nor otherwise allow, taking of fish for commercial purposes in Lake Superior outside the Grand Portage Zone, unless such taking is otherwise in accordance with state law.

2. No Nets. The Three Bands shall not allow the use of nets in Lake Superior outside the Grand Portage Zone, unless such taking is otherwise in accordance with state law.

3. Harvest by Angling Only. The Three Bands shall allow taking outside the Grand Portage Zone by angling only, unless otherwise in accordance with state law.

4. North Shore Streams. The Three Bands shall allow taking in North Shore Streams by angling only, unless otherwise in accordance with state law.

D. Inland Waters. The Tri-Band Code shall include at a minimum the following provisions regulating fishing in all inland waters of the ceded territory:

1. Commercial Harvest of Game Fish. There shall be no taking of game fish for commercial purposes.

2. Commercial Harvest of Non-Game Fish. Commercial taking of non-game species shall be allowed only in designated lakes to be selected by the Three Bands after notice to and consultation with the Commissioner. Game fish species incidentally taken in connection with commercial fishing may not be sold.

3. Non-Commercial Netting. The use of nets for the taking of fish for non-commercial purposes shall be prohibited except in the following waters:

a. The St. Louis River adjacent to the Fond du Lac Reservation; and

b. Those portions of Lake Vermilion adjacent to the Vermilion Reservation, including Pike Bay and Everetts Bay.

4. Licenses. Each member of the Three Bands commercially fishing for non-game fish in inland waters of the ceded territory pursuant to this Agreement shall possess and have upon his person while fishing or possessing or transporting fish a commercial fishing license issued by the Three Bands.

5. Records. The Three Bands shall keep detailed and up-to-date records of all fish commercially taken from inland waters. Copies of all such records shall be provided to the Commissioner upon request.

E. General Fishing Provisions. The Tri-Band Code and Grand Portage Code shall include at a minimum the following provisions:

1. Spawning. There shall be no taking of any fish during that species' spawning season unless the State season for that species is open. No gill nets shall be placed in any river or stream within 300 feet of the outlet of any river or stream from the opening day of the State fishing season in May until June 15, both dates inclusive, unless such placement is approved by the Commissioner.

2. Spearing. There shall be no spearing of any fish at any time except in accordance with state law.

3. Minnows et al. All taking of minnows, leeches, clams, mussels, frogs, and turtles shall be regulated to ensure that such harvest is consistent with conservation purposes.

4. Eggs. The Three Bands shall not interfere with State fish egg collection and collection sites. No egg collection shall take place within reservation boundaries without Band approval. If the State collects eggs within the Grand Portage Zone, the State will use a reasonable percentage of such eggs for restocking within the Grand Portage Zone.

5. Assessment Netting Contracts. All assessment netting contracts shall be required to comply with the terms and conditions of their assessment netting contracts. Failure to comply will render any such contract void and allow the State to enter into a new contract with a different Band fisherman or, if no Band fisherman is available, with a non-Band fisherman.

6. Non-Commercial Nets. No fisherman shall use for non-commercial fishing purposes more than 200 feet of net at any one time. Nets used for non-commercial fishing shall be set at least 50 feet apart.

7. Marking of Nets. All nets in use by any Band member for either commercial or non-commercial purposes shall have a metal or plastic tag, bearing in the English language the owner's name and address, attached to one end of the float line near the first float.

F. Hunting and Trapping. The Tri-Band Code shall include at a minimum the following provisions regulating hunting and trapping in the ceded territory:

1. No Commercial Harvest. Band Members shall not be permitted to take big game or small game in the ceded territory for commercial purposes, except that Band Members are permitted to trap furs for commercial purposes in accordance with Tri-Band Code provisions.

2. No Shining of Big Game. Band Members shall not be permitted to take big game by shining.

3. Methods of Taking Big Game. Big game shall be taken only by means of firearm or bow and arrow.

4. Big Game Seasons. The seasons for the taking of big game each year shall be the same as the seasons established under state law.

5. Moose Harvest. The harvest of moose shall be limited to 60 animals per each biennial open season. In the event the State opens a moose season annually, then the Three Band harvest of moose shall be limited to 30 animals per each annual open season. The Three Band harvest numbers shall be increased proportionately if the number of State-issued moose permits for the Ceded Territory is increased.

6. Big Game Tags. Band members shall be required to tag big game taken in the ceded territory at the time and place of taking with locking tags.

7. Fur Tags. Band members shall be required to tag or otherwise positively identify and account for all fur taken in the ceded territory.

G. Gathering. The Tri-Band Code shall contain at a minimum the following provisions:

1. Wild Rice. The Three Bands shall not allow the harvest of wild rice by mechanical means on public waters or waters where mechanical harvest is prohibited by state law.

2. Commercial Harvest Prohibited. Except for wild rice and berries, the Three Bands shall not allow plants to be harvested for commercial purposes unless the harvesting is otherwise in accordance with state law.

H. General Provisions. The Tri-Band Code and the Grand Portage Code shall contain at a minimum the following provisions:

1. Hunting and Fishing in Designated State Areas. If the State prohibits hunting and/or fishing in a state park, forest campground, wildlife management area, scientific and natural area, wayside, game refuge, designated trout stream or stream trout lake, or experimental lake, then hunting and/or fishing by Band members in such area also will be prohibited. If hunting and/or fishing is permitted in any such area under state law or regulation, then Band members shall be permitted to hunt and/or fish on such area in accordance with the Tri-Band Code.

2. Federally Listed Endangered and Threatened Species. Band members will comply with the taking prohibitions applicable under the Federal Endangered Species Act of 1973, as amended, to Federally Listed Endangered and Threatened Species when hunting or fishing in the ceded territory or Lake Superior.

3. Shooting From Motor Vehicles. Discharge of firearms for hunting purposes from within moving motor vehicles shall be prohibited. Discharge of firearms for hunting purposes from stationary motor vehicles shall be limited to handicapped persons possessing

a handicapped permit issued by the Three Bands. Except for such handicapped permittees, the possession of loaded or uncased firearm in motor vehicles shall be prohibited.

4. Public Safety Restrictions. The Three Bands shall regulate hunting and fishing to minimize public safety hazards. Such regulations shall include but not be limited to prohibitions against the setting of any trap, pit, deadfall, or snare capable of taking big game; the placing of set guns and the use of poison for the taking of any fish or wildlife; and the discharge of firearms and bows and arrows across public roads.

5. Identification. The Three Bands shall require all Band members to carry on their persons a color photograph hunting and fishing identification card at all times while taking, possessing or transporting wild animals or plants and to show such identification card to any conservation officer upon request.

6. Conservation. The taking of all protected species of wild animals and plants shall be regulated by season, bag limit and method of take restrictions to ensure that harvest is consistent with conservation purposes.

7. Cross-Deputization. The Three Bands will cross-deputize duly appointed conservation officers of the State of Minnesota as Three Band conservation officers empowered to enforce the Tri-Band Code, and to charge violators in Band courts. The Grand Portage Band will cross-deputize duly appointed conservation officers of the State of Minnesota as Grand Portage conservation officers empowered to enforce the Grand Portage Code in the Grand Portage Zone, and to charge violators in Band court.



8. Possession and Transportation. The possession and transportation of all protected species of wild animals and plants shall be regulated to ensure that harvest is consistent with conservation purposes.

9. Trespass. When hunting or fishing on privately owned land, Band members shall comply with the provisions of Minn. Stat. Sec. 97B.001 (1986), a copy of which is attached hereto as Exhibit B and made part of this Agreement.

I. Conservation.

1. The Three Bands recognize the State's responsibility to conserve the fish and wildlife resources in the ceded territory and in Lake Superior for the benefit of all citizens of Minnesota.

2. The Three Bands will regulate their harvest of fish and wildlife resources in the ceded territory and Lake Superior for conservation purposes.

3. The Three Bands will provide to the State whatever information they may obtain concerning the status of the fish and wildlife resources, as well as advice concerning the conservation of that resource.

J. Code Review and Approval. The Three Bands shall not adopt or amend a Tri-Band Code, nor shall the Grand Portage Band adopt or amend a Grand Portage Code, until the State has had the opportunity to review and approve such Code or amendments as follows:

1. Right of Approval. No Code or amendment shall be adopted or, if already in effect at the time of this Agreement, continued in force without State approval for compliance with the terms of this Agreement.

2. Right of Review. No Code or amendment shall be adopted until the State has been provided a copy and given at least 60 days' notice and an opportunity to review the Code or amendment and submit comments concerning it.

K. Statutory Definition Review and Approval. In the event any of the Minnesota statutory definitions referenced in part I of this Agreement are amended after the date of execution of this Agreement, the Three Bands shall have the right to review such amended statutory definitions for conformity with this Agreement, and to approve the continued use of such amended statutory definitions for purposes of this Agreement.

#### VI

#### STATEMENT OF CLAIM RESOLUTION

This Agreement constitutes a settlement of all claims against the State of Minnesota pertaining to hunting and fishing rights under the 1854 Treaty, and all claims raised in the above referenced litigation.

#### VII

#### JURISDICTION

A. On Reservations. Within the Grand Portage, Bois Forte, and Fond du Lac Reservations, the respective governments of those reservations shall have exclusive rights to regulate hunting and fishing of enrolled members of the Minnesota Chippewa Tribe.

B. Off Reservations.

1. In the ceded territory and in all Minnesota waters of Lake Superior, hunting and fishing by members of the Grand Portage, Bois Forte, and Fond du Lac Bands shall be regulated by

a Tri-Band Code and a Grand Portage Code, and prosecuted in Band courts. Hunting and fishing by others will be regulated by applicable state law and violations prosecuted in state courts.

2. The Grand Portage, Bois Forte, and Fond du Lac courts shall have jurisdiction over all Band members when such members are arrested or cited for violating the Tri-Band Code or the Grand Portage Code.

3. State courts shall have jurisdiction over all persons arrested or cited for violating state law, including Grand Portage, Bois Forte, and Fond du Lac Band members when state law applies to such members. Band members cited for violations in connection with state-licensed commercial activities shall be prosecuted in state courts under state law.

## VIII.

### ENFORCEMENT

#### A. Cross Deputization.

1. Properly cross-deputized State conservation officers shall have the power to arrest and charge Band members for violation of the Tri-Band Code or the Grand Portage Code.

2. Properly cross-deputized Band conservation officers shall have the power to arrest and charge non-Band members for violations of state game and fish laws.

#### B. Fair, Uniform and Diligent Enforcement.

1. The Three Bands agree to fairly, uniformly and diligently enforce the provisions of the Tri-Band Code and the Grand Portage Code against their members in the ceded territory, the Grand Portage Zone, and in all waters of Lake Superior. The

State agrees to fairly, uniformly and diligently enforce its state game and fish laws against non-Band members in the ceded territory, the Grand Portage Zone, and in all waters of Lake Superior.

2. It is expressly understood and agreed that in the event the Tri-Band Code or Grand Portage Code is not fairly, uniform and diligently enforced by the Three Bands, the State may withhold all sums due the Band that is not fairly, uniformly and diligently enforcing until such time as fair, uniform, and diligent enforcement is resumed. The State shall give prompt notice of its intent to withhold funds because of unfair enforcement by the Band. Upon receipt of said notice, the Three Bands or any one of them may request arbitration as described in Article IX. The arbitrators shall decide if there has been a breach of any one of the Bands' duty to enforce the Tri-Band Code or Grand Portage Code and the period of time during which said breach has occurred.

3. In the event that it is determined by the arbitrators that there has not been fair, uniform and diligent enforcement of the Tri-Band Code or Grand Portage Code, the sums withheld by the State during the period in which there has not been fair, uniform and diligent enforcement shall be forfeited by the Band from which it has been withheld. In the event that it is determined by the arbitrators that enforcement has been fair, uniform and diligent, all sums withheld by the State shall be promptly paid with the addition of interest at the rate established pursuant to Minn. Stat. Sec. 549.09, subd. 1(c) (1986) and subsequent amendments.

C. Records. Law enforcement and court records of the Three Bands and the State pertaining to fish and wildlife cases not

currently in litigation shall be open for review and inspection by either party.

## IX.

### ARBITRATION

A. Right to Arbitrate. Any dispute or disagreement between the parties concerning violations of this Agreement shall be settled by arbitration at the request of any party. Arbitrable issues shall include but not be limited to:

1. Fair, uniform and diligent enforcement of the Tri-Band Code, Grand Portage Code and state law;
2. Fair and even-handed management;
3. Amendments to the Tri-Band Code or the Grand Portage Code; and
4. Omissions from this Agreement, the Tri-Band Code or the Grand Portage Code.

B. Procedure: Parties and Appointment of Arbitrators. In any arbitration under this Agreement, the State shall be considered as one party, and one or more of the Three Bands shall be considered as the other party, although if more than one of the Three Bands participates they need not act unanimously in any matter other than in the selection of arbitrators, and each of the Three Bands may demand arbitration of any dispute with the State without the consent of the others. The party desiring to initiate arbitration shall serve on the other party, by certified mail (return receipt requested), a written demand for arbitration setting forth (1) the nature of the dispute to be resolved, (2) the claim of the party initiating arbitration with respect to such dispute, and

(3) the name and address of one arbitrator selected by the party initiating arbitration. The other party shall have ten days after the receipt of such demand to select a second arbitrator. If no second arbitrator is selected within such ten-day period, then the sole arbitrator shall be the one selected by the party initiating arbitration. If within such ten-day period the party receiving the demand for arbitration selects a second arbitrator by giving written notice of the arbitrator's name and address to the party initiating arbitration and to the first arbitrator by certified mail, then the two arbitrators so selected shall choose a third arbitrator within ten days after the receipt by the first arbitrator of notice of the selection of the second arbitrator. If the first two arbitrators fail to choose a third arbitrator within the prescribed ten-day period, then either party to the arbitration, on notice to the other, may apply to the Chief Judge of the United States District Court for the District of Minnesota for the appointment of a third arbitrator.

C. Procedure: Discovery: As promptly as practicable after their appointment, the arbitrators shall hold a preliminary meeting with the parties to determine the most expeditious method of assembling all pertinent evidence. The arbitrators, in their discretion, may require the parties to appear for depositions and produce documents, answer interrogatories and make admissions in accordance with the discovery procedure specified in the Federal Rules of Civil Procedure. Should any party fail to comply with any procedural order or requirement of the arbitrators, such failure may be given

such weight as the arbitrators deem appropriate in the determination of the issue presented for arbitration.

D. Procedure: Decision. After presentation of the evidence, the matters in dispute shall be arbitrated by the three arbitrators so chosen, and the award of the arbitrators, or a majority of them, shall be final, and judgment upon the award rendered may be entered in the United States District Court for the District of Minnesota. The arbitrators may include in their award a determination of responsibility for the expense of the arbitration. Prior to the making of the award by the arbitrators, none of the parties to this agreement shall (except as specifically authorized herein) commence any lawsuit or other proceeding against any other party hereto, if such lawsuit or proceeding arises out of any dispute or disagreement between the parties relating to the matters set forth in this Agreement. When an award has been made by the arbitrators hereunder, all parties shall be subject to the personal jurisdiction of the United States District Court for the District of Minnesota for the entry of judgment thereon, and all parties may be served by certified mail in any proceeding in such Court for the entry of such judgment.

X.

#### NON-TRANSFERABILITY

A. All rights, duties, and privileges recognized or granted by this Agreement are exclusively the property of the Three Bands and not of any individual member thereof.

B. This Agreement is nonassignable. None of the rights, duties, and privileges recognized or granted in this Agreement

may be assigned or delegated by the Bands to other than their administrative and judicial agencies, save and except that the Bands may permit their members to hunt and fish pursuant to the Tri-Band Code and the Grand Portage Code.

XI.

SEVERABILITY

A. No portion of this Agreement or the legislation enacted pursuant thereto shall be severable except by mutual consent then given by all the signatory parties hereto.

B. In the event that this Agreement or any portion of this Agreement or any portion of the legislation enacted pursuant to this Agreement is held void, illegal or unconstitutional by the Supreme Court of the State of Minnesota or by any Federal Court of competent and final jurisdiction, then in that event, this Agreement and all legislation enacted pursuant to this Agreement shall be deemed to have terminated, and any party hereto may apply to the United States District Court for the District of Minnesota for a new judgment.

SIGNATURES OF PARTIES

James Hendrickson  
JAMES HENDRICKSON, Chairman

2/4/88  
Date

Norman Deschampe  
NORMAN DesCHAMPE, Secretary-Treasurer  
Grand Portage Band of Chippewas

2/4/88  
Date

Copy of Resolution of Grand Portage Reservation Business Committee must be attached.



Daniel Morrison Sr.  
DANIEL MORRISSON, SR., Chairman

2/5/88  
Date

Lester Drift Sr.  
LESTER DRIFT, SR., Secretary-Treasurer  
Bois Forte Band of Chippewas

2/5/88  
Date

Copy of Resolution of Bois Forte Reservation Business Committee must be attached.

William J. Houle  
WILLIAM J. HOULE, Chairman

2/12/88  
Date

Peter J. DeFoe  
PETER J. DEFOE, Secretary-Treasurer  
Fond du Lac Band of Chippewas

2/16/88  
Date

Copy of Resolution of Fond du Lac Reservation Business Committee must be attached.

Joseph N. Alexander  
JOSEPH N. ALEXANDER, Commissioner  
Minnesota Department of Natural Resources

16 Feb 88  
Date

Steven G. Thorne  
STEVEN G. THORNE  
Deputy Commissioner  
Minnesota Department of Natural Resources

16 Feb 88  
Date

SIGNATURES OF COUNSEL

Kent P. Tupper  
KENT P. TUPPER

2/5/88  
Date

John E. Jacobson  
JOHN E. JACOBSON

2/12/88  
Date

Attorneys for Grand Portage and  
Bois Forte Bands

Henry M. Buffalo, Jr.  
HENRY M. BUFFALO, JR.

2/12/88  
Date

Attorney for Fond du Lac Band

HUBERT H. HUMPHREY, III  
Attorney General  
State of Minnesota

*Stephen Masten*  
\_\_\_\_\_  
STEPHEN E. MASTEN  
Special Assistant Attorney General

*Beverly Conerton*  
\_\_\_\_\_  
BEVERLY E. CONERTON  
Special Assistant Attorney General

Attorney for State of Minnesota  
Department of Natural Resources

*February 16, 1988*  
\_\_\_\_\_  
Date

*February 16, 1988*  
\_\_\_\_\_  
Date

## EXHIBIT A

All of the territory ceded by the Chippewa under the 1854 treaty is located in what is now the State of Minnesota. The boundary of the ceded territory is depicted by a line drawn on a series of 32 7 1/2 minute United States Geological Survey topographic quadrangle maps (Exhibits A-1 through A-32). This line for the most part follows the line described in Article 1 of the 1854 treaty. The following is a list of instances where the line drawn on the maps is either not clearly described in the treaty or varies from the description in the treaty, and a statement of how the location of the line on the map was determined by the parties. In all of these instances, the parties have striven to locate the line where the treaty intends it to be.

- a. Quads 1-9 show the "southern boundary-line of the Chippewa country." This boundary was established as the northern boundary of a cession by the Chippewa under the July 29, 1837 treaty with the Chippewa, 7 Stat. 536. Thus, this line became, for the purposes of the 1854 treaty, the southern boundary of the remaining Chippewa country in Minnesota.
- b. Quads 8 and 9. Following the east branch of the Snake River from the point where it "crosses the southern boundary-line of the Chippewa country, running thence up the said branch to its source, thence nearly north . . ." results in a line which backtracks and makes little sense. All existing maps of the ceded territory

of which the parties are aware use instead the mouth of the east branch of the Snake River, which is at a point where the Snake River crosses the southern boundary line of Cippewa country, as the beginning point of the treaty description. Quad 9 depicts this beginning point.

- c. Quad 22. In Section 1, Township 57 North, Range 20 West and Section 6, Township 57 North, Range 19 West, the East Swan River (called Dempsey Creek on Quad 22) flows through Six Mile Lake. The line depicted through this lake is the best approximation of the East Swan River flowage.
- d. Quads 22 and 23. In proceeding "up the East Swan River to its source" (the East Swan River is called Dempsey Creek on Quads 21-23), the river disappears in an area of mining as shown on the northern portion of Quad 22. The river appears again in the southeastern portion of Quad 23 and its source apparently lies in Section 8, Township 18 North, Range 19 West. Since the original course of the East Swan River between its source and the point to the south where it currently re-emerges from the mining area is indeterminate, and because only a short distance is involved, a straight line has simply been drawn between these two points.
- e. Quads 23-29. The treaty describes a straight line from the source of the East Swan River "to the most westerly bend of Whellion River." Some previous map makers

(C. Royce, and J. William Trygg in reliance upon Royce) have depicted a treaty boundary which deviates to the east of this straight line. A satisfactory explanation for this deviation from the treaty language is not known to the parties and the straight line described in the treaty has therefore been followed.

- f. Quad 32. The treaty description of the boundary line ends at the mouth of the Vermillion River. Previous map makers have extended this line to the Canadian border by what is apparently the shortest water route. The parties have elected to do likewise.
- g. In cases where the treaty describes the boundary as following a watercourse, the line, unless otherwise stipulated, has been drawn along the outer bank (the bank outermost to the described area) of the watercourse.

## 97B.001 TRESPASS.

Subdivision 1. Agricultural land definition. For purposes of this section, "agricultural land" means land:

- (1) that is plowed or tilled;
- (2) that has standing crops or crop residues; or
- (3) within a maintained fence for enclosing domestic livestock.

Subd. 2. Permission required to enter agricultural land to hunt or operate vehicles.

Except as provided in subdivisions 5 and 6, a person may not enter agricultural land to hunt or operate a motor vehicle for pleasure purposes, unless the person obtains permission of the owner, occupant, or lessee.

Subd. 3. Entering land prohibited after notice. Except as provided in subdivisions 5 and 6, a person may not enter any land to take a wild animal after being notified not to do so orally by the owner, occupant, or lessee.

Subd. 4. Entering posted land prohibited. (a) Except as provided in subdivision 6, a person may not enter any land that is posted under this subdivision to take a wild animal unless the person has obtained the permission of the owner, occupant, or lessee.

(b) The owner, occupant, or lessee of private land, or an authorized manager of public land may prohibit unauthorized hunting, trapping, fishing, or trespassing on the land by posting signs that:

- (1) display letters at least two inches high;
- (2) are signed by the owner, occupant, lessee, or authorized manager; and
- (3) are at intervals of 1,000 feet or less along the boundary of the area, or in a wooded area where boundary lines are not clear, at intervals of 500 feet or less.

(c) A person may not erect a sign that states "no hunting," "no trapping," "no fishing," "no trespassing," or another sign that prohibits trespass on land or water where the person does not have a property right, title, or interest to use the land.

Subd. 5. Retrieving wounded game from agricultural land. A hunter, on foot, may retrieve wounded game, during the open season for the game, from agricultural land that is not posted under subdivision 4, without permission of the landowner. The hunter must leave the land immediately after returning the wounded game.

Subd. 6. Retrieving dogs from private land. A person may, without permission of the landowner, enter private land on foot to retrieve a dog that has treed or is at bay with a raccoon, bobcat, coyote, or fox. After retrieving the dog, the person must immediately leave the premises.

Subd. 7. Taking with firearms in certain areas. (a) A person may not take a wild animal with a firearm within 500 feet of a building occupied by a human or livestock without the written permission of the owner or occupant:

- (1) on another person's private agricultural land; or
  - (2) on a public right-of-way.
- (b) A person may not take a wild animal with a firearm without the written permission of the owner within 500 feet of a stockade or corral containing livestock.
- (c) A person may not take a wild animal with a firearm:
- (1) on land other than agricultural land within 200 feet of a building occupied by a human without the oral permission of the owner or occupant of the building; or
  - (2) within 500 feet of a burning area.

Subd. 8. Destruction of property; gate closing. A person may not:

- (1) wound or kill another person's domestic animal;
- (2) destroy, cut, or tear down another person's fence, building, grain, crops, live tree, or sign erected under subdivision 4; or
- (3) pass through another person's closed gate without returning the gate to its original position.

History: 1986 c 386 art 2 s 1

RESOLUTION NO. 9-78

WHEREAS, the Grand Portage Reservation Business Committee is the duly elected governing body of the Grand Portage Band of Chippewa Indians, a federally recognized Indian Band, organized under the Indian Reorganization Act as set forth in Title 25, United States Code, Section 476 et seq and operates under a written Constitution approved by the Secretary of the Interior, and whereas

The Grand Portage Reservation Business Committee has the authority to enter into agreements with the State of Minnesota under the approved authority contained in said constitution and

WHEREAS, the Grand Portage Band of Lake Superior Indians were one of the signatory Bands to the treaty between the Lake Superior Bands and the United States in 1854, that was ratified by the United States Senate on January 10, 1855 (10 Stat. 1109), and

WHEREAS, Article 11 of said treaty reserved to the Lake Superior Band members who resided in the territory ceded by said treaty "the right to hunt and fish therein, until otherwise ordered by the President.", and

WHEREAS, the Grand Portage Band filed a civil action in the United States District Court for the District of Minnesota, entitled Grand Portage Band of Chippewas, et al. vs. State of Minnesota, et al., Civil No. 4-85-1090 which seeks a declaratory judgement that the Grand Portage Band has the right to hunt and fish in the territory ceded in the 1854 treaty, free of State Regulation, and

WHEREAS, the Grand Portage, Bois Forte and Fond du Lac Bands acting thru their elected representatives have expressed a desire to settle the dispute over hunting and fishing rights reserved under said treaty, and

WHEREAS, the State of Minnesota acting thru its Department of Natural Resources has agreed to a settlement which has been reviewed by the Grand Portage Reservation Business Committee, who finds that it is in agreement with the terms set forth in said Agreement,

NOW THEREFORE, the Grand Portage Reservation Business Committee does hereby agree to enter into said agreement with the State of Minnesota on the terms set forth in said agreement, subject to approval by the Legislature of the State of Minnesota and the Grand Portage Reservation Business Committee does hereby authorize its Chairman James Hendrickson and its Secretary/Treasurer Norman Duchampe to execute said agreement on behalf of the Grand Portage Band of Chippewa Indians.

CERTIFICATE

The foregoing resolution was adopted at a Special Meeting of the Grand Portage Reservation Business Committee duly held at Duluth, Minnesota on the 4<sup>th</sup> day of February, 1988, a quorum being present by a vote of 4 for, 0, against 0 silent.

Norman W. Duchampe  
Secretary/Treasurer



RESOLUTION NO. 77-88

WHEREAS, the Bois Forte Reservation Business Committee is the duly elected governing body of the Bois Forte Band of Chippewa Indians, a federally recognized Indian Band, organized under the Indian Reorganization Act as set forth in Title 25, United States Code, Section 476 et seq and operates under a written Constitution approved by the Secretary of the Interior, and whereas

The Bois Forte Reservation Business Committee has the authority to enter into agreements with the State of Minnesota under the approved authority contained in said constitution and

WHEREAS, the Bois Forte Band of Lake Superior Indians were one of the signatory Bands to the treaty between the Lake Superior Bands and the United States in 1854, that was ratified by the United States Senate on January 10, 1855 (10 Stat. 1109), and

WHEREAS, Article 11 of said treaty reserved to the Lake Superior Band members who resided in the territory ceded by said treaty "the right to hunt and fish therein, until otherwise ordered by the President.", and

WHEREAS, the Bois Forte Band of Chippewas further ratified the cession of 1854 in the Treaty of 1866 (14 Stat. 1109), and

WHEREAS, the Grand Portage Band filed a civil action in the United States District Court for the District of Minnesota, entitled Grand Portage Band of Chippewas, et al. vs. State of Minnesota, et al., Civil No. 4-85-1090 which seeks a declaratory judgement that the Grand Portage Band has the right to hunt and fish in the territory ceded in the 1854 treaty, free of State Regulation, and

WHEREAS, the Grand Portage, Bois Forte and Fond du Lac Bands acting thru their elected representatives have expressed a desire to settle the dispute over hunting and fishing rights reserved under said treaty, and

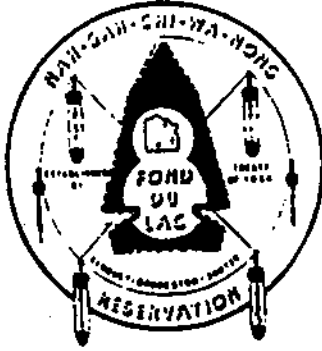
WHEREAS, the State of Minnesota acting thru its Department of Natural Resources has agreed to a settlement which has been reviewed by the Bois Forte Reservation Business Committee, who finds that it is in agreement with the terms set forth in said Agreement,

NOW THEREFORE, the Bois Forte Reservation Business Committee does hereby agree to enter into said agreement with the State of Minnesota on the terms set forth in said agreement, subject to approval by the Legislature of the State of Minnesota and the Bois Forte Reservation Business Committee does hereby authorize its Chairman Daniel Morrison, Sr. and its Secretary/Treasurer Lester Drift, Sr. to execute said agreement on behalf of the Bois Forte Band of Chippewa Indians.

CERTIFICATE

The foregoing resolution was adopted at a Special Meeting of the Bois Forte Reservation Business Committee duly held at Nett Lake, Minnesota on the 5<sup>th</sup> day of February, 1988, a quorum being present by a vote of 2 for, 0, against 0 silent.

(Victory) (Winnell) L. Drift  
Secretary/Treasurer



# FOND DU LAC RESERVATION BUSINESS COMMITTEE

WM. HOULE, Chairman  
PETER J. DEFOE, Sec./Treas.  
DENNIS W. OLSON SR Executive Director  
Spiritual Leadership

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105 UNIVERSITY ROAD  
CLOQUET, MINNESOTA 55720  
PHONE 1-216-879-4593

## RESOLUTION # 29/88-54

The Fond du Lac Reservation Business Committee on behalf of the Fond du Lac Band of Lake Superior Chippewa enacts the following Resolution:

- WHEREAS, the Fond du Lac Reservation is a sovereignty, possessed of the jurisdiction and authority to exercise regulatory control within the boundaries of the Fond du Lac Reservation, and within the territories ceded by the Treaty of 1854, 10 Stat. 1109, and
- WHEREAS, it is the obligation of the Fond du Lac Reservation under the Treaty of 1854 and P.L. 93-638 the Indian Self-Determination Act to assume responsibilities of Self-Government, and
- WHEREAS, The Fond du Lac Band of Lake Superior Chippewa is a signatory to the Treaty of 1854 between the United States and the Chippewa Indians, and
- WHEREAS, Article II (eleven) of the Treaty of 1854 reserved to the Reservation Business Committee of the Fond du Lac Band along with other Lake Superior Band governments, usufructuary rights in the territories ceded by the Treaty, and
- WHEREAS, The Grand Portage Band of Lake Superior Chippewa instituted a suit against the State of Minnesota in August of 1985 requesting that the federal court reaffirm the existence of the usufructuary rights reserved by the Bands in the Treaty of 1854, and
- WHEREAS, The Fond du Lac Band joined in discussion with the Bois Forte and Grand Portage Bands, together known as the Tri-Band, and the State of Minnesota to determine if the dispute may be settled short of final judicial determination, and
- WHEREAS, The Bands and the State have now concluded those discussions and have developed an Agreement that provides for Tri-Band self-regulation, a requirement of fair resource management, and an exercise of certain rights by Tri-Band members along with the forbearance

of exercise of certain other commercial rights in the ceded territories.

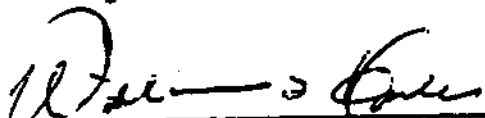
NOW THEREFORE BE IT RESOLVED, That the Fond du Lac Band of Lake Superior Chippewa represented by the Reservation Business Committee hereby ratifies said Agreement by this Resolution:

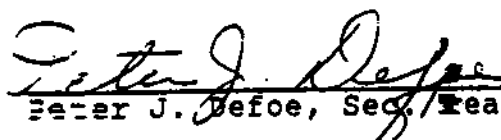
1.) That the proposed Agreement in its Statement of Purpose part B states as follows: "The parties agree that by execution of this Agreement, neither the Band... conveys or waives any legal rights that may have been retained under the 1854 Treaty."

2.) That in reliance on the aforesaid provision of the Statement of Purpose of said Agreement by which the Fond du Lac Band retains all of its legal rights under the Treaty of September 30, 1854, and in the best interest of the resources, the Fond du Lac Band and its members, and the citizens of the State of Minnesota, the Reservation Business Committee authorizes the Chairman and Secretary-Treasurer to fully execute said Agreement.

3.) The Reservation Business Committee also authorizes, by its Attorney, the intervention of the Fond du Lac Band as a party to the Grand Portage litigation and to execute fully all documents pertaining to said litigation and Agreement.

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a vote of 4 for, 0 against, with a quorum of 5 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on February 11, 1988 at Cloquet, Minnesota.

  
William J. Houle, Chairman

  
Peter J. Defoe, Sec/Treas.