

Protocol # 2

MINNESOTA 1837 CEDED TERRITORY WILDLIFE AND PLANT RESOURCES
COMMITTEE

A. Committee Purposes and Tasks.

1. This protocol between the State of Minnesota and its Department of Natural Resources ("State") and the plaintiff and plaintiff-intervenor Bands in Mille Lacs Band v. Minnesota, No. 3-94-1226 (D. Minn.) ("Bands") establishes an 1837 Ceded Territory Wildlife and Plant Resources Committee. The purpose of the Wildlife and Plant Resources Committee is to facilitate free and open communications between the State and the Bands regarding natural resource management within the boundaries of the 1837 Ceded Territory. The Bands and the State will encourage such communications to the greatest extent practicable, and nothing herein shall limit such communications inside or outside formal Committee meetings. The State and the Bands believe that such communication will benefit natural resources management in the 1837 Ceded Territory, and will help avoid (or at least minimize the number and complexity of) disputes that will require judicial resolution.

2. As set forth below, the Wildlife and Plant Resources Committee will develop, analyze and review data relevant to wildlife and plant management within the 1837 Ceded Territory; provide for coordination among State and Band studies and surveys in the 1837 Ceded Territory; consider harvestable surplus levels; review proposed changes in Band and State management units; review proposed changes in Band and State hunting, trapping, and gathering regulations and codes; and address other wildlife and plant management issues. The Committee will perform these tasks in accordance with the provisions of this Protocol and Protocol Nos. 4 (Information Exchange Procedures) and 5 (Natural Resources Management).

B. Composition of the Committee; Working Groups.

1. The Wildlife and Plant Resources Committee shall be composed of qualified wildlife and plant scientists and managers designated by the State and the Bands. Representatives from the State could include: Wildlife Program Manager, Wildlife Research and Surveys Manager, Regional Wildlife Manager, Forest Wildlife Program Leader, Farmland Wildlife Program Leader, Furbearer Program Leader, Forest Wildlife Populations and Survey Group, Scientific and Natural Areas Program, Farmland Wildlife Populations and Surveys Group, Wetland Wildlife Populations and Survey Group, and Nongame/Natural Heritage Program. Attendance and participation by

the above people would vary depending on the agenda of meetings. Representatives from the Bands could include Band natural resource officials, staff or consultants, and Great Lakes Indian Fish and Wildlife Commission [GLIFWC] personnel. Other State, Band or Federal experts or representatives may be invited by the State or the Bands to attend as necessary to discuss or resolve a particular issue. A Band and State representative for enforcement/public safety issues is encouraged to attend the meetings to address enforcement-related concerns.

2. The State and the Bands will each appoint a Committee co-chair to coordinate communication and planning for the Committee's work.

3. The Committee may appoint one or more working groups to address specified issues. The composition and functions of a working group shall be set forth in a written document approved by consensus of the Committee.

C. Meetings.

1. The Wildlife and Plant Resources Committee will meet at least once each year. The timing of Committee meetings will be variable depending on the species or issues needing discussion, and will be held by mutual consent of the parties. Issues will be addressed as needed. The meetings will be hosted alternately by the State and Bands, with the host responsible for any direct meeting costs and for chairing the meetings. A working group may meet as often as is appropriate in light of its designated functions.

2. Unless the parties agree otherwise, the State and the Bands shall exchange the following items at least 30 days prior to each Committee meeting. The information exchange required by this paragraph shall be in addition to and complimentary with the exchange of information required by other protocols (see especially Protocol No. 4, Information Exchange Procedures).

a. Each party shall produce a list of items it wishes to address at the meeting. The co-chairs shall prepare and circulate at least 14 days before the meeting a consolidated agenda incorporating all items listed by the parties, and a list of those representatives that the parties' anticipate will be attending the meeting on their behalf.

b. Each party shall produce all wildlife and plant harvest and survey data for the 1837 Ceded Territory collected since the last meeting that has not previously been exchanged. This shall include raw data in standard machine readable form upon request, as well as any summaries or analyses generated from the data. The data should include all State and Band harvest data pertaining to the 1837 Ceded Territory, and all data from studies,

surveys or research conducted within the 1837 Ceded Territory.

c. Each party shall produce a preliminary written analysis of any proposal or position it intends to present at the meeting. Such analyses may be revised in light of data or analyses received from the other party or other new information. The revised analyses shall be presented at or before the meeting. Such analyses may be revised further in light of discussions at the meeting.

D. Committee Functions.

The Committee shall:

1. Discuss the wildlife and plant harvest and survey data that have been collected since the last meeting, and the implications of such data for wildlife and plant management and harvests.

2. Discuss means to coordinate all wildlife and plant studies, surveys or research to be conducted in the 1837 Ceded Territory, and share information on all 1837 Ceded Territory Wildlife and plant studies, surveys and research projects. This should include:

a. Review of all new or outstanding wildlife or plant study, survey or research proposal, including any outstanding Band proposal that requires State approval pursuant to Protocol No. 5; and

b. Making recommendations to the parties regarding revisions to or discontinuation of on-going studies, surveys or research, or the initiation of new studies, surveys or research, within the 1837 Ceded Territory.

3. Develop recommendations on harvestable surplus numbers by species and management area in accordance with Protocol No. 5.

4. Discuss proposed changes in State or Band management units and hunting, trapping and gathering regulations and codes.

5. Address other wildlife and plant management issues, including technical and coordination issues, of interest to the parties.

E. Committee Decision-making, and Meeting Reports and Dispute Resolution.

1. The representatives of the Bands and the State serving on the Committee shall strive for consensus on all issues, and no Committee decision or recommendation on a particular issue shall be made in the absence of a consensus on that issue. As used here,

"consensus" means the agreement of all such representatives present at a meeting, provided that a consensus shall be obtained if some representatives disagree but choose not to object formally to the agreement of all other representatives. All Committee decisions and recommendations shall be subject to the opinions, orders and decrees in Mille Lacs Band v. Minnesota, No. 3-94-1226 (D. Minn), and any protocols, agreements or stipulations among the parties.

2. An agreed Meeting Report shall be prepared by the Co-Chairs upon the conclusion of a Committee Meeting. The report shall include the consolidated meeting agenda, a list of participants, a brief summary of the presentations and discussions, a statement of all decisions and recommendations made by the Committee, and a list of all issues on which consensus was not reached, including a concise statement of the parties' respective positions with respect to such issues. A final, typed version of the Meeting Report shall be prepared and circulated by the Co-Chairs within 10 days after the meeting. All preliminary and revised analyses prepared in accordance with ¶ C.2.c. above shall be included as appendices to the final, typed version of the report.

3. Issues on which consensus was not reached by the Committee will be referred to the State Wildlife Chief and to the Bands' designated wildlife and plant manager(s) upon the written request of the State or the Bands. These individuals shall strive to reach consensus on the issue.

4. If no consensus is reached, upon the written request of the State or the Bands the parties shall jointly choose a mediator to convene and conduct a mediation session to seek consensus on the issue. The cost of the mediation shall be borne equally by the State and the Bands. The State Fish and Wildlife Director and the State DNR Commissioner, or their appointed representatives, shall attend the mediation session on behalf of the State. The Mille Lacs Commissioner of Natural Resources, GLIFWC Biological Services Director and other designated Band officials, or their appointed representatives, shall attend the mediation session on behalf of the Bands. The State and the Bands may also invite such other experts as may be needed to reach resolution of the matter.

5. If consensus still cannot be reached, the parties have the option of involving the court's continuing jurisdiction to seek resolution of the matter, unless the Court has determined that one party has authority to resolve the matter unilaterally and that its decision cannot be challenged in Court.¹

¹ The State contends it has authority to resolve disputes over the harvestable surplus of a species unilaterally, and that its decision cannot be challenged in Court. The Bands dispute this. They propose that, in the event of a dispute over harvestable

6. Except for those situations described in ¶ 7 below, any dispute between the parties about wildlife or plant biology or resources must be brought to the Wildlife and Plant Resources Committee and submitted to a mediator for assistance, if necessary, prior to seeking a court resolution.

7. There may be a matter in dispute that, because of imminent threat to a resource or public safety or imminent loss of harvest opportunity, cannot be handled through the established committee and mediation process. In those situations, before seeking judicial relief a party shall give at least such notice to the opposing party of the issue in dispute as is required by the Federal Rules of Civil Procedure for applications for temporary restraining orders.

F. Public Information.

The parties shall cooperate in making Meeting Reports and all analyses and technical data developed by or for the Committee available to the public. As a professional courtesy, Committee members shall notify each other before issuing press releases or other statements to the media.

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surplus levels, a neutral wildlife expert, jointly selected by the State and the Bands, be given authority to determine such levels on an interim basis, pending resolution of the matter by the parties or the court.