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Subject: **Mille Lacs Time Line for Reservation Boundaries set in Treaty of 1855**

Comments: background info on boundaries issue in County's litigation. call with questions.

Number of Pages(*including cover sheet*): 5

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TIME LINE - MILLE LACS RESERVATION 1855 TREATY BOUNDARIES

1855 By the Treaty of February 22, 1855, the United States provided the Chippewa of the Mississippi with reservations in specified areas. For the Mille Lacs Band the reservation was described as embracing the fractional townships bordering the southern part of Lake Mille Lacs, as well as the three islands in the southern part of the Lake.

1864 By the Treaty of 1864 the Chippewa ceded Mille Lacs and other reservations in Minnesota to the US, but were not compelled to remove from the land. Instead the Band expressly retained a right of occupancy so long as its members did not bother the whites. Thus this "cession" did not alter the original reservation boundaries. According to historical data, including, for example an 1897 delegation from the Band testifying to the Department that the Band had understood the Treaty and contemporaneous statements made by the US negotiators to mean that their Reservation would remain Indian land to be occupied by the Band whose rights to the Reservation under the 1855 Treaty would continue undisturbed.[1]

1884 By the Act of July 4,1884, (23 Stat.89) Congress recognized the ongoing controversy as to the propriety of executive branch authorizations of non-Indian settlement on the Mille Lacs Reservation, and explicitly prohibited further disposition of lands within the Reservation without express Congressional authorization.

1889 The Nelson Act (Act of January 14,1889, 25 Stat. 643) authorized and created a framework for making allotments to enable further disposition of Chippewa Indian lands in Minnesota. In that Act, Congress created a commission and substantive requirements for negotiations with the Grand Portage, Fond du Lac, Mille Lacs, Bois Forte, and Leech Lake Bands (hereinafter Five Bands) for cession of their remaining reservation lands in Minnesota. One of the goals of the Nelson Act and the commission was to remove those Five Bands to a consolidated Chippewa reservation at White Earth. Despite this general objective, Section 3 of the Nelson Act expressly provided an option for members of those Five Bands to take allotments on their original reservations rather than at White Earth.[2]

1889 Under the authorization of the Nelson Act, on Oct 5, 1889, an agreement was negotiated with the Mille Lacs Band, for relinquishment of their rights of occupancy on their

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[1] Despite the fact that Congress had not explicitly opened the Reservation for settlement by non-Indians under the public land laws (as well as sporadic attempts by the government to stop or prevent trespasses on the Reservation), over the next several decades in response to intense pressure from timber and other interests, the government issued claims and patents to non-Indians pursuant to executive orders and directives.

[2] As noted, Section 3 of the Nelson Act specifically authorized allotments on the original or "home" reservations for any member of the five enumerated bands, thus creating the option for a member of any of the Five Bands to remain on his home reservation and to take an allotment there instead of removing to White Earth.

1920's The Band is still treated as a recognized tribe occupying its original (Mille Lacs) reservation despite disposal of title to much of the land within the 1855 Treaty reservation boundaries to non-Indians. Government made allotments to Band members funded by the 1914 and subsequent appropriations.

1934 In the Act of June18, 1934 (48 Stat. 984) (generally referred to as the Indian Reorganization Act (IRA)), Congress declared an end to allotments to individual Indians and disposal of "surplus" Indian lands, extended the trust periods for trust and restricted Indian lands, and otherwise authorized DOI to acquire and supervise trust lands for Indians, as well as authorizing Indian tribes to form tribal government organizations and corporations by adopting constitutions, by-laws, and charters in accordance with specific provisions of the IRA.

1930's Minnesota Chippewa Tribe and component Bands[3] including Nonremoval Mille Lacs Band Reservation Business Committee, are organized under the IRA.

1962 By Act of June 27, 1962, (76 Stat. 1320) Congress authorized leasing of "land located on [specified] Indian reservations,"and then extended to the applicability of this authority to the *Mille Lacs Indian Reservation*, indicating its continued existence in *Pub. L.* 101-630, 1990. *See also* House Report 101-686, (101st Congress, Second Session, Sept. 10, 1990).

1967 By Act of September 27, 1967, (81 Stat. 230) Congress authorized distribution of judgment funds for purposes designated by tribal governing bodies for the ". . .White Earth, Leech Lake and Mille Lacs Reservations," using the same terminology as the Constitution of the Minnesota Chippewa Tribe in referring to the governing bodies of the component bands.

1970's and 1980's - Both federal and state courts in Minnesota hold that reservations on which Indians were entitled to allotments under Section 3 of the Nelson Act were not disestablished. *See, e.g. Leech Lake Band of Chippewa Indians v. Herbst*, 334 F. Supp. 1001 (D. Minn. 1979); *State v. Clark*, 282 N.W.2d 902 (Minn. 1979); *State v. Forge*, 262 N.W.2d 341 (Minn. 1977) These decisions were reached without the benefit of the high standard - clear and specific Congressional intent - for finding disestablishment or diminishment of reservation boundaries articulated by the Supreme Court affirming the Eighth Circuit Court of Appeals in *Solem v. Bartlett*, 465 U.S. 463 (1984).

1990's The Solicitor's Office for DOI and Office of Regional Counsel, Region V, EPA both

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[3] The governing bodies of the five Bands of Minnesota Chippewa identified in the Nelson Act for removal to the White Earth Reservation, *i.e.* the Leech Lake, Fond du Lac, Bois Forte (Nett Lake), Grand Portage, and Nonremoval Mille Lac Bands, along with the White Earth Band, are defined and referred to in the Minnesota Chippewa Tribe's Constitution as the "six Reservations" whose Reservation Business Committees (along with the Tribal Executive Committee) comprise the governing bodies for the Minnesota Chippewa Tribe. (Tribal Constitution, Minnesota Chippewa Tribe, Art III *as amended* 1963, approved 1964)

reservations in exchange for specific allotments of land to be held in fee by individual members of the Band, thus allowing unalloted remaining lands on the Reservation to be sold to non-Indians. Contemporaneous information indicates that the parties executed the agreement with the understanding that Band members retained the option under Section 3 of the Nelson Act to remain on their original home reservation and take an allotment there rather than remove to White Earth and that the reservation would continue to exist.

1890 By the Act of July 22, 1890, (after negotiation of the Nelson Act agreement, but before removal) Congress granted a right-of-way to a railroad company *through the Mille Lacs Indian Reservation*, specifying among other things, for example, that the railroad had to be constructed with regard to the rights of the Indians, and that the lands would revert to the nation or tribe of Indians from which it had been taken upon cessation of its use as a railroad. (26 Stat. 290, 291) The statute refers to the Reservation and the rights of the Band to its occupancy as still in existence.

1902 Appropriations for the Department of Interior authorized "payment to the Indians occupying the Mille Lac Indian Reservation" in an attempt to persuade them to relocate. (Act of May 27, 1902, 32 Stat. 245, 268). The inducements to removal (as well as exceptions to required removal) in this statute provide evidence that Congress presumed the continued existence of the Reservation after the Nelson Act and the Nelson Act Agreement.

1913 *United States v. Mille Lac Band,* 229 U.S. 498 (1913) involved a dispute between the Band and the US over the extent of the Band's interest in disposal of lands on its reservation for purposes of compensation. In this appeal from a compensation judgment in the Court of Claims, the Supreme Court briefly summarized the pertinent treaties and statutes outlined above, concluding that the government's disposition of lands under the general land laws, rather than the [Nelson] Act of 1889, was a violation of the US's trust obligations to the Band members for disposition of that category of reservation lands, and thus remanded the case to the Court of Claims for reassessment of the damages to be paid in compensation by the US. (The Act of Feb. 22, 1909, 35 Stat. 619, was cited as providing specific jurisdiction for the Court of Claims to adjudicates the Band's claims.) Although the central issue was the amount of compensation to be paid to the Band for reservation lands improperly disposed of under the public land laws by the US (in violation of the trust established by the Nelson Act), there is dicta which acknowledges both that there was a dispute as to the continued existence of the reservation at the time and that the government had in effect "waived its earlier position respecting the status of the reservation and consented to recognized the contentions of the Indians." (*Id.* at 507)

1914 By the Act of August 1, 1914, (38 Stat. 582) Congress earmarked up to $40,000 specifically for "purchase of lands for homeless **non-removal Mille Lacs Indians**" who had not previously had allotments, authorizing the purchased allotments to be held in trust at the discretion of the Secretary of the Interior. This appropriation reflects Congressional recognition that many Mille Lacs Band members had remained on the 1855 reservation seeking allotments there, rather than at White Earth, under Section 3 of the Nelson Act.

determine that the Mille Lacs reservation boundaries as established in the1855 Treaty continue to exist. *See, e.g.* DOI Field Solicitor's Office Opinions dated February 28, 1991; November 5, 1998; August 16, 2001; and EPA Regional Counsel's Memorandum dated September 25, 1993 relating to the Band's application for treatment as a state under the Safe Drinking Water Act. (Copies attached.) In *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 195 (1999) the Supreme Court affirms the principle that the standard for finding Congressional intent to abrogate rights created in Indian treaties is very high. With respect to reservation boundaries established by the 1855 Treaty which the plaintiff County argues were disestablished by the Nelson Act, contrary authority is found in *Cass County v. Leech Lake Band*, 524 U.S. 103, (1998) where the continued existence of the Leech Lake Reservation is assumed by the Supreme Court, and explicitly recognized as never having been disestablished or diminished by the Eighth Circuit Court of Appeals in its decision below, (*Leech Lake Band v. Cass County*, 108 F. 3d 820 (8th Cir. 1997), *rev'd in part on other grounds,* 524 U.S. 103, (1998)). Similarly, the continued existence of the Grand Portage Reservation (like Leech Lake and Mille Lacs, another of the five Minnesota reservations from which removal was authorized by the Nelson Act) is recognized by the federal district court in *Melby v. Grand Portage Band of Chippewa, et al.*, (D. Minn., *unpublished,* August 13, 1998.

1930's to Present - Band still treated as a recognized tribe occupying its original (Mille Lacs) reservation with the federal government providing or funding[4] services such as housing, education, social services, health care and economic development on the reservation as defined in the 1855 Treaty. For example, with federal "Self-Governance" funding, the Band provides services to tribal members within the 1855 Treaty boundaries. In the fee-to-trust acquisition process, the BIA continues to process land acquisition applications for land within the 1855 Treaty boundaries at Mille Lacs[5] as on-reservation.

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[4] The Mille Lacs Band was one of the first Indian tribes to be approved for "Self-Governance" funding under the amended Indian Self Determination Act (25 U.S.C. §§ 450 *et seq.*), having received approval for participation in the Self-Governance Demonstration Project, and funding beginning June 28, 1991.

[5] Under current regulations BIA would treat these applications as on-reservation *even if 1855 boundaries were judicially altered.* 25 C.F.R. § 151.2(f)