



October 1, 2018

The Honorable Donald Trump
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Request for Presidential Order Terminating the 1837 Hunting and Fishing Privilege of the Chippewa

Dear Mr. President:

I am writing to you as President of PERM (Proper Economic Resource Management), a Minnesota nonprofit that supported the landowners who intervened in the lawsuit filed by the Mille Lacs Band of Ojibwe against the State of Minnesota. In 1998, this lawsuit reached the United States Supreme Court, where an activist Court erroneously and improperly overruled the 1850 Presidential Order of Zachary Taylor that had revoked the temporary 1837 hunting and fishing privileges, which were defined as being “during the pleasure of the President of the United States.”

The four conservative Justices, writing in dissent, summarized their opposition to the Court’s decision:

“The Court today invalidates for no principled reason a 149-year-old Executive Order, ignores the plain meaning of a 144-year-old treaty provision, and overrules *sub silentio* a 103-year-old precedent of this Court.” Chief Justice Rehnquist dissenting, *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 220 (1999).

The 1837 Treaty entrusted to the President of the United States – not the courts – the decision of whether or not to terminate the 1837 hunting and fishing privilege. But it wasn’t just President Zachary Taylor that had revoked the 1837 hunting and fishing privilege: his decision to revoke the privilege was affirmed by President Franklin Roosevelt in a 1938 letter. 526 U.S. at 216-217. Instead of giving heightened deference and wide latitude to the Executive Order, the Supreme Court improperly usurped the power granted to the President under the 1837 privilege. In doing so, the United States Supreme Court, in its majority opinion, states:

“We do not mean to suggest that a President, now or in the future, cannot revoke Chippewa usufructuary rights in accordance with the terms of the 1837 Treaty.” 526 U.S. at 194.

The effect of the Supreme Court decision has been devastating to Lake Mille Lacs, which used to be the crown jewel of walleye fishing in Minnesota. This in turn has

devastated the dozens of resorts and businesses that depended upon and supported the fishing community. For a lake that regularly produced half a million pounds of walleye for anglers each year, Lake Mille Lacs has been closed to any non-tribal walleye fishing except catch and release for the third straight year. Numerous resorts and businesses have closed. The widespread financial and natural resource damage caused by the Supreme Court's decision has not been offset by any significant benefit to the Mille Lacs Band, except to buy up properties from landowners whose businesses have failed at bargain basement prices. Nor is the fishing privilege needed for subsistence by the Mille Lacs Band that operates two very successful casinos and today owns major hotels in downtown St. Paul.

The Supreme Court's decision allows the Chippewa to spear and net walleyes during the spawn, a virtually unprecedented action in natural resource management. The State of Minnesota, while trying to co-manage the resource for both this tribal harvest and angler harvest, has brought the walleye population in Lake Mille Lacs to the brink of collapse. Treaty-based management simply does not work, but instead of addressing the problem squarely, the State of Minnesota blames climate change.

The 1837 ceded territory extends from the center of Minnesota eastward across central Wisconsin. This is the heart of Trump country, and the voters who supported you are asking you to hear their pleas to review this matter and issue the Presidential Order.

As President, you have a rare opportunity to correct the Court, which erred egregiously, interfered with the prerogatives vested in the President of the United States under the 1837 Treaty, and overrode other precedents in reaching this unprincipled decision that has done so much damage.

Hunting and fishing is an important recreation in Minnesota and Wisconsin. It is also a key to economic vitality in both central Minnesota and central Wisconsin. Issuing a President Order revoking the 1837 privilege, and reestablishing the decisions made by both Presidents Zachary Taylor and Franklin Roosevelt, would electrify and energize your political base in Minnesota and Wisconsin. The supporters of these hunting and fishing activities in Minnesota and Wisconsin reach far beyond the boundaries of the 1837 Treaty. Your courage in reestablishing the power of the Presidency and the prerogatives of the Presidency in these matters would be widely supported and applauded across Minnesota and Wisconsin.

Mr. President, we have no one to turn to but you. We humbly implore you to hear our plea for action.

With deep respect and hope,

Douglas Meyenburg
President, PERM

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