

**STATE OF MINNESOTA  
IN COURT OF APPEALS**

**Case No.**

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Save Mille Lacs Sportsfishing, Inc.,  
Proper Economic Resource Management,  
Twin Pines Resort, Incorporated,  
Bill Eno and Fred Dally,

Petitioners,

vs.

Minnesota Department of Natural  
Resources,

Respondent.

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**PETITION FOR DECLARATORY JUDGMENT AND ORDER TO SHOW  
CAUSE**

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TO: The Court of Appeals of the State of Minnesota.

**INTRODUCTION**

1. The petitioners Save Mille Lacs Sportfishing, Inc., Proper Economic Resource Management (PERM), Twin Pines Resort, Incorporated, Bill Eno and Fred Dally petition the Court of Appeals under Minnesota Statute § 14.44 for declaratory judgment determining the invalidity of Adopted Expedited Emergency

Game and Fish Rules for Mille Lacs Lake Fishing, amending Rule 6264.0400, subpart 4. The Minnesota Department of the Natural Resources (DNR) adopted and published the Rule on April 21, 2014.

2. Petitioners challenge the constitutionality of the Rule on the grounds that the Rule violates the Minnesota Constitution, Article XIII, section 12 -- Minnesota's Preserve Hunting and Fishing Heritage amendment adopted in 1998 -- which recognizes a specific cultural heritage of all Minnesota citizens regardless of race, ethnicity, religion, or origin -- and the Rule violates Minnesota's related public trust doctrine.

3. Minnesota's Preserve Hunting and Fishing Heritage amendment creates, establishes, and preserves certain rights of the people regarding the preservation of fish and wildlife for the purpose of hunting and fishing:

Hunting and fishing and the taking of game and fish are a valued part of our heritage that shall be forever preserved for the people and shall be managed by law and regulation for the public good.

Minnesota Constitution, Article XIII, Section 12 (adopted November 3, 1998).

4. The Petitioners also seek a Court order to show cause to require the DNR within 30 days to file a response with the Court to:

(A). show why the DNR failed to consider and to take public comment before publishing its emergency Rule on the cultural heritage protections afforded the Petitioners under Article XIII, section 12 of the Minnesota Constitution and the public trust doctrine;

(B). show what specific statutory authority gives the DNR the right to disregard the requirements of Article XIII, section 12 of the Minnesota Constitution and to disregard the related public trust doctrine before publishing its emergency Rule affecting the cultural heritage of Mille Lacs Lake; and

(C). show how the DNR has not mismanaged the Mille Lacs Lake walleye population directly affecting the cultural heritage of Mille Lacs Lake in violation of the obligations the DNR has to the Petitioners under Article XIII, section 12 of the Minnesota Constitution and under the public trust doctrine.

5. The petition is based on the following publicly-known facts and legal allegations.

### **PARTIES**

6. Petitioner Save Mille Lacs Sportsfishing, Inc. is a non-profit corporation organized to save sportsfishing on Mille Lacs Lake.

7. Save Mille Lacs Sportsfishing, Inc. members engage in hunting or fishing and other engagements to ensure the enjoyment of these activities and derivative economic enterprises that arise for the public good. Through oversight of governmental and private acts, Save Mille Lacs Sportfishing, Inc. and its members seek to preserve the cultural heritage of Mille Lacs Lake through efforts to ensure the sustainability of game wildlife and fish, particularly the walleye. Thus, Save Mille Lacs Sportfishing, Inc. has protected rights and privileges under Minnesota's Preserve Hunting and Fishing Heritage constitutional provision.

8. Petitioner Proper Economic Resource Management is a non-profit association organized to promote proper use of Minnesota's resources. Members engage in political and other related activities to ensure the people of Minnesota can enjoy hunting and fishing as a cultural heritage through oversight of governmental and private acts that may be detrimental to the sustainability of game wildlife and fish. Thus, Proper Economic Resource Management has protected rights and privileges under Minnesota's Preserve Hunting and Fishing Heritage constitutional provision.

9. Petitioner Twin Pines Resort, Incorporated operates a fishing resort on Mille Lacs Lake – including operation of licensed charter fishing boats. Twin Pines Resort, Inc. was incorporated under Minnesota law in April 1995. Since that time, it has embraced and preserved the cultural heritage of Mille Lacs Lake fishing, particularly walleye fishing. Twin Pines is a derivative economic enterprise arising from the preservation interests of the Mille Lacs Lake cultural heritage of fishing. Thus, Twin Pines has protected rights and privileges under Minnesota's Preserve Hunting and Fishing Heritage constitutional provision.

10. Petitioner Bill Eno is an owner of Twin Pines Resort, Incorporated, is an avid sportsfisherman of Mille Lacs Lake walleyes, and supports the cultural heritage of Mille Lacs Lake. The cultural heritage includes walleye fishing. Eno is a Minnesota citizen residing in Garrison, Minnesota. As a Minnesota citizen,

Minnesota Constitution, Article XIII, section 12, provides him certain rights regarding fishing and expectations of the preservation of game fish through governmental regulatory or private acts. Governmental or private acts that he deems detrimental to the protection of the cultural heritage of fishing, as he asserts here, is violative of his legal rights and privileges under Minnesota's Preserve Hunting and Fishing Heritage constitutional provision.

11. Bill Eno voted for Minnesota's Preserve Hunting and Fishing Heritage constitutional amendment in 1998.

12. Petitioner Fred Dally is a former owner of the Red Door Resort on Mille Lacs Lake, is an avid sports fisherman of Mille Lac Lake walleyes, and supports Mille Lacs Lake walleye fishing heritage. Dally is a Minnesota citizen residing in Minnesota. As a Minnesota citizen, Minnesota Constitution, Article XIII, section 12, provides him certain rights regarding fishing and expectations of the preservation of game fish through governmental regulatory or private acts. Governmental or private acts that he deems detrimental to the protection of the cultural heritage of fishing, as he asserts here, is violative of his legal rights and privileges under Minnesota's Preserve Hunting and Fishing Heritage constitutional provision.

13. Respondent Department of Natural Resources is an agency of the State of Minnesota. The DNR does regulate fishing within the State of Minnesota.

The DNR regulates fishing on Mille Lacs Lake. The DNR adopted the Rule challenged in this Petition.

## **JURISDICTION**

14. The Court of Appeals has jurisdiction over this petition under Minnesota Statute § 14.44:

The validity of any rule may be determined upon the petition for a declaratory judgment thereon, addressed to the Court of Appeals, when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair the legal rights or privileges of the petitioner. The agency shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question, and whether or not the agency has commenced an action against the petitioner to enforce the rule.

15. Minnesota Statute § 14.44 is satisfied for Court of Appeals jurisdiction. Petitioners seek declaratory judgment to determine the invalidity of the Rule on the grounds that the DNR failed to consider the Mille Lacs Lake cultural heritage and the cultural heritage of Minnesota citizens as preserved under Minnesota Constitution, Article XIII, section 12. The DNR's failure to apply the constitutional standard to the adopted emergency Rule has violated the Petitioners' protected rights under Minnesota Constitution, Article XIII, section 12 and under the related public trust doctrine.

**The Mille Lacs Lake Walleye Fishing Heritage is Extirpated Because of DNR Mismanagement.**

16. Under Minnesota Constitution, Article XIII, section 12's provision "shall be managed by law and regulation for the public good," the constitution imposes a duty upon the State as a universal benefit to multiple groups and all populations of the state, through the DNR, to preserve "[h]unting and fishing and the taking of game and fish." The duty is a protectable right of the people.

17. The DNR cannot manage one type of fish to enhance the advancement or population of another type of fish to the detriment of a fish species recognized as part of the cultural heritage of a specific lake – here Mille Lacs Lake, the long-recognized "Walleye Capital of the World."

18. Notably, the DNR is under a contractual obligation to engage in certain treaty rights and has enacted regulations to benefit a specific public or government enterprise — the preservation of treaty rights to harvest fish. This engagement recognizes a cultural heritage of certain tribal populations regarding fishing in Mille Lacs Lake.

19. The tribal culture of fish harvesting on Mille Lacs Lake for subsistence is part of a rich tribal heritage; yet, the life of tribal members is no longer the life as once lived by their ancestors, but one of a blend between the past culture and the culture of the larger society that surrounds them as witnessed

through benefits to tribal members of business and other economic development enterprises including casinos and casino revenues.

20. Likewise, the cultural heritage of Minnesota anglers to Mille Lacs Lake co-exists with the recognition of Indian cultural heritage and acceptance of the culture of the larger society.

21. The Minnesota cultural heritage of fishing and the protection of fish to engage in fishing is embraced and expressly protected under Article XIII, section 12 of the Minnesota Constitution.

22. That the DNR's actions to meet certain treaty obligations and amendments to existing regulations without consideration and public review regarding the cultural heritage directly affected by those determinations made is violative of the constitutional amendment meant to preserve the right to fish and hunt as found under Minnesota Constitution, Article XIII, section 12.

23. When the DNR fails to consider or affect public review to include Minnesota's cultural heritage of Mille Lacs Lake of any non-tribal population that is inclusive of multiple groups who exercise hunting or fishing of game or fish in the Mille Lacs Lake area, it has violated Minnesota Constitution, Article XIII, section 12.

24. In the publication of the emergency Rule, the DNR did not consider or affect public review to include Minnesota's cultural heritage of Mille Lacs Lake



regarding the non-tribal population and thus violated Minnesota Constitution, Article XIII, section 12.

25. The DNR, since 1998, has so mismanaged the Mille Lacs Lake walleye fishing population that it has created an unnecessary crisis.

26. The DNR, since 1998, could not have designed better plans to destroy the Mille Lacs Lake walleye fishing heritage than the plans that the DNR implemented since 1998.

27. Certainly, this “tragedy of the commons” was avoidable with proper DNR planning and administration, taking into account (as legally required) both tribal and non-tribal fishing heritages. Both cultural heritages can peacefully co-exist.

28. With the enactment and enforcement of the emergency Rule, the DNR has placed restrictive prohibitions upon the Petitioners that are so narrow and limiting that it seeks to enhance the population of other fish species to the detriment of walleyes and therefore, change the cultural heritage of walleye fishing in Mille Lacs Lake to other species such as smallmouth bass and northern pike. With the governmental enforcement upon the Petitioners to exchange one culture for another, the State has interfered with the Petitioners’ rights to their cultural heritage on Mille Lacs Lake as it relates to walleye fishing.

29. Due to the DNR's mismanagement and emergency Rule, Minnesotans are no longer fishing for Mille Lacs Lake walleyes because the governmental enforced change and loss of the cultural heritage on Mille Lacs gives the impression and notice that there are no walleyes to catch meaning the emergency Rule is not for the public good and therefore has caused harm to the Petitioners and the protected right afforded to them under Article XIII, section 12 of the Minnesota Constitution.

30. In short, the mismanagement by the DNR has caused the elimination of Mille Lacs Lake walleyes as a valued part of Minnesota citizens' heritage which, in turn, has caused the Mille Lacs Lake walleye cultural fishing heritage to be extirpated.

**Minnesota's Preservation of its Hunting and Fishing Heritage as a Constitutional Protected Interest and the Related Public Trust Doctrine are Required Legal Standards Applicable to the DNR Rule-Making Determinations and Must be Applied Accordingly.**

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31. Minnesota's Preserve Hunting and Fishing Heritage constitutional amendment and Minnesota's related public trust doctrine require the preservation of the walleye fishing heritage on Mille Lacs Lake.

32. Both are part of the legal standards the DNR is required to apply to restore Mille Lacs Lake walleye fishing as a cultural heritage of Minnesota citizens.

33. The public trust doctrine applies to Mille Lacs Lake.

34. The Minnesota Supreme Court since 1942 has recognized that the public trust doctrine provides that “[t]he state, in its sovereign capacity, as trustee for the people, holds all navigable waters and the lands under them for public use.” *Nelson v. De Long*, 213 Minn. 425, 431, 7 N.W.2d 342, 346 (1942). In *State v. Longyear Holding Co.*, the Minnesota Supreme Court in 1947 discussed the origin of the doctrine, the purpose of the trust, and the state's duty under the trust:

[W]e have repudiated the doctrine that the state has any private or proprietary right (as had the king) in navigable waters, but that it holds them in its sovereign capacity, as trustee for the people, for public use....

In the exercise of its trust, it cannot be seriously doubted that the state has the power, and, in fact, the duty rests upon it, to use such lands for the greatest public good, and, where they can be put to productive use, not to permit them to lie waste and unproductive. In so doing, of course, it cannot parcel or alienate them or otherwise interfere with the public purposes of the trust in which they are held.

224 Minn. 451, 473, 29 N.W.2d 657, 670 (1947) (quotation omitted). The “primary purposes” of the state's trust are “to maintain such waters for navigation and other public uses.” *Id.*

35. The state is the administrator of the public trust.

36. In the State of California, where the public trust doctrine is also applied, the California Supreme Court in a landmark environmental case applied

the public trust doctrine to protect a single lake – Mono Lake – from ecosystem degradation including lower lake levels, dewatered and damaged stream habitat and severe air quality impacts. *Nat'l Audubon Soc'y v. Superior Court of Alpine Cnty.* (Mono Lake Case), 658 P.2d 709 (Cal. 1983). *See also* Sax, Joseph L., "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention," 68 Michigan Law Review 471 (1970).

37. More recently, the Court of Appeals in two cases acknowledged the public trust doctrine, but declined to expand the scope of the public trust doctrine. The Court of Appeals held that the doctrine does not apply to the state's management of land and does not apply to the state's management of the atmosphere, respectively. *Larson v. Sando*, 508 N.W.2d 782, 787 (Minn.App.1993), *review denied* (Minn. Jan. 21, 1994); *Aronow v. State*, A12-0585, 2012 WL 4476642 (Minn. Ct. App. Oct. 1, 2012).

38. In 1998, Minnesota's Preserve Hunting and Fishing Heritage constitutional requirement was adopted.

39. The people adopted Minnesota's Preserve Hunting and Fishing Heritage constitutional requirement in 1998 understanding the public trust doctrine already applied to Minnesota and its state agencies including the DNR.

40. After the 1998 adoption of Minnesota's Preserve Hunting and Fishing Heritage constitutional requirement, both the public trust doctrine and the Preserve Hunting and Fishing Heritage constitutional amendment applied to the DNR.

41. Minnesota's Preserve Hunting and Fishing Heritage constitutional amendment and the related public trust doctrine require the government to preserve the walleye fishing heritage on Mille Lacs Lake.

42. Mille Lacs Lake walleye fishing is part of Minnesota's fishing heritage protected by the Preserve Hunting and Fishing Heritage constitutional amendment.

43. Mille Lacs Lake, with 132,516 acres, is the second largest lake within Minnesota.

44. Mille Lacs Lake is accessible by automobile from the Twin Cities – approximately a 90 mile trip.

45. Mille Lacs Lake has outstanding natural walleye habitat and topography.

46. For over 100 years, Mille Lacs Lake has been recognized as a tremendous walleye lake.

47. For centuries, Mille Lacs Lake has been fished for walleyes.

48. More walleye is eaten in Minnesota than in any other jurisdiction of the United States.

49. Mille Lacs Lake has been known as the "Walleye Capital of the World."

50. The City of Garrison has a large statue of a walleye on its lake shore in the middle of town.

51. Over the decades, the DNR has marketed Mille Lacs Lake as a tourist destination for walleye fishing.

52. Since 1965, the walleye has been legally recognized as Minnesota's state fish. *See* Minn. Stat. § 1.146. Mille Lacs Lake walleye fishing is a part of Minnesota's fishing heritage.

53. As such, Mille Lacs Lake walleye fishing is legally protected by the public trust doctrine and Minnesota Constitution, Article XIII, section 12 — the Preserve Hunting and Fishing Heritage constitutional amendment.

**The DNR Emergency Rule Failed to Apply Applicable Legal Standards of Article XIII, Section 12 and the Public Trust Doctrine and is, Therefore, Invalid.**

54. The emergency Rule, published by the DNR on April 21, 2014, does not apply or even mention the applicable legal standards – the public trust doctrine and the Preserve Hunting and Fishing Heritage constitutional amendment.

55. Instead, the Rule states:

Minnesota Department of Natural Resources (DNR)  
Adopted Expedited Emergency Game and Fish Rules: Mille Lacs Lake  
Fishing

NOTICE IS HEREBY GIVEN that the above entitled rules have been adopted through the process prescribed by *Minnesota Statutes*, section 84.027, subdivision 13 (b). The statutory authority for the contents of the rules is *Minnesota Statutes*, sections 97A.045, subd. 2; 97C.005; and 97C.401.

The emergency conditions that do not allow compliance with *Minnesota Statutes*, sections 97A.0451 to 97A.0459, are that under the terms of the Federal District Court the Mille Lacs Band, Fond Du Lac Band, and six Wisconsin Bands of Chippewa are not required to declare their harvest intentions on inland waters until mid-March. The Mille Lacs proposed regulations are based on a safe harvest level determined for 2014. Final harvest threshold levels to be included in the proposed rules were not available until March. These new threshold levels and regulations need to be put in place as soon as possible to ensure that angler harvest does not exceed state angler harvest thresholds for the 2014 open water fishing season.

Dated: 27 March 2014  
Tom Landwehr, Commissioner  
Department of Natural Resources

#### 6264.0400 DESIGNATED SPECIAL MANAGEMENT WATERS.

[For text of subps 1 to 3, see M.R.]

Subp. 4. Mille Lacs Lake and associated tributaries special management regulations.

A. While a person is on or fishing in Mille Lacs Lake or its associated tributaries to the posted boundaries, ~~all northern pike in possession must be less than 24 inches in length or greater than 36 inches in length. All northern pike that are 24 to 36 inches in length, inclusive, must be immediately returned to the water. A person's possession limit may not include more than one northern pike over 36 inches in length.~~ the possession limit for northern pike is ten. Only one northern pike in possession may be greater than 30 inches in length. The season for taking northern pike is the Saturday two weeks prior to the Saturday of Memorial Day weekend to the last Sunday in March.

B. While a person is on or fishing in Mille Lacs Lake or its associated tributaries, the possession limit for largemouth and smallmouth bass in aggregate is one six, with only one smallmouth bass greater than 18 inches in length. ~~While a person is on or fishing in Mille Lacs Lake or its associated tributaries to the posted boundaries, all smallmouth bass in possession must be 21 inches or greater in length. All smallmouth bass less than 21 inches in length must be immediately returned to the water. The season for taking largemouth and smallmouth bass is the Saturday two weeks prior to the Saturday of Memorial Day weekend to the last Sunday in February. Notwithstanding part 6262.0200, subpart 1, item A, subitem (2), the catch and release season for bass does not apply to Mille Lacs Lake or its associated tributaries.~~

C. Mille Lacs Lake is closed to the taking of fish between the hours of 10 p.m. and 6 a.m. daily during the period commencing at 10 p.m. on the Monday following the Saturday two weeks prior to the Saturday of Memorial Day weekend and ending at 12:01 a.m. on ~~Monday, four weeks after the date of commencement~~ December 1. During the closure, no person shall be on the waters of Mille Lacs Lake while having in possession any equipment whereby fish may be taken. ~~Spearing is prohibited from December 1 through April 30. A person may not have a spear in possession while on or fishing in Mille Lacs Lake during this period.~~

[For text of item D, see M.R.]

E. While a person is on or fishing in Mille Lacs Lake or its associated tributaries to the posted boundaries:  
(1) the daily and possession limit for walleye is two, with only one over 28 inches in length; and  
(2) except as provided in subitem (1), all walleye in possession must be equal to or greater than 18 inches in length or equal to or less than 20 inches in length. All walleye that are less than 18 or greater than 20 inches in length must be immediately returned to the water.

~~E.~~ F. While a person is on or fishing in Mille Lacs Lake or its associated tributaries to the posted boundaries, the possession and daily limit for Northern cisco (tullibee) is ten fish.



~~F.~~ G. Fish that are taken by angling and not immediately released into the water after capture are considered to be in possession and part of the bag limit. Once a fish has been reduced to possession, culling or live-well sorting (the act of exchanging one fish for another) is not allowed.

~~G.~~ H. This subpart applies to the following waters.

Name Location County

Mille Lacs T.42-45, R.25-28, S.Various Aitkin, Mille Lacs

Borden Creek T.44, R.25, S.5 Aitkin

Seastade Creek T.45, R.26, S.22 Aitkin

Marmon (Twenty) Creek T.45, R.25, S.32 Aitkin

Grave Creek T.45, R.25, S.8 Aitkin

Peterson Creek T.43, R.25, S.5 Mille Lacs

Thains River (Malone Creek) T.42, R.25, S.2 Mille Lacs

West Sucker Creek T.42, R.25, S.18 Mille Lacs

South Sucker Creek T.42, R.25, S.18 Mille Lacs

Garrison (Borden) Creek T.44, R.28, S.12 Crow Wing

Seguchie Creek T.44, R.28, S.36 Crow Wing

Reddy Creek T.45, R.26, S.23 Aitkin

Whitefish Creek T.43, R.27, S.7 Mille Lacs

Seventeen Creek T.44, R.25, S.17,18,29 Aitkin

Cedar Creek T.43, R.25, S.15 Mille Lacs

McCleans Creek T.45, R.27, S.34 Aitkin

Unnamed T.43, R.25, S.8 Mille Lacs

Unnamed T.42, R.26, S.11 Mille Lacs

Unnamed T.42, R.26, S.22 Mille Lacs

Unnamed T.43, R.27, S.8 Mille Lacs

Unnamed T.43, R.27, S.6 Mille Lacs

Unnamed T.43, R.27, S.21 Mille Lacs

Unnamed T.44, R.27, S.31 Crow Wing

Unnamed T.44, R.28, S.36 Crow Wing

Unnamed T.44, R.27, S.4 Aitkin

Unnamed T.45, R.27, S.25 Aitkin

Unnamed T.44, R.25, S.29 Aitkin

Unnamed T.44, R.25, S.31,32 Aitkin

Unnamed T.44, R.28, S.24 Crow Wing

Unnamed T.44, R.28, S.13 Crow Wing

Rum River Outlet T.43, R.27, S.33 Mille Lacs

[For text of subps 5 to 116, see M.R.]

REPEALER. The expedited emergency amendments to *Minnesota Rules*, part 6264.0400, subpart 4, published in the *State Register*, volume 37, page 1477, April 15, 2013, are repealed.

56. The Rule, published by the DNR on April 21, 2014, is invalid because the Rule did not result from applying the applicable legal standards: the public trust doctrine and the Preserve Hunting and Fishing Heritage constitutional requirements.

## COUNT I

### **In Adopting the Emergency Rule, the DNR Failed to Apply Applicable Legal Standards Including the Constitutional Demand to Preserve Minnesota's Hunting and Fishing Heritage and the Public Trust Doctrine.**

57. The previous paragraphs of this petition are incorporated herein by reference as if they were fully restated herein.

58. The Rule interferes or impairs, or threatens to interfere or impair, with the Petitioners' legal rights and privileges to Minnesota's Mille Lacs Lake walleye fishing heritage.

59. The Rule is invalid because the DNR failed in its rule-making process to apply the Preserve Hunting and Fishing Heritage constitutional requirement as part of its legal standard in determining the Rule.

60. The Rule is invalid because the DNR failed in its rule-making process to apply Minnesota's public trust doctrine as part of its legal standard in determining the Rule.

61. Based on the Rule being invalid because the DNR used the wrong legal standards, the petitioners request the Court to issue declaratory judgment to Petitioners and against Respondent pursuant to Minnesota Stat. § 144 declaring that the Rule is invalid because it violates the Preserve Hunting and Fishing Heritage constitutional requirement and the public trust doctrine.

## **COUNT II**

### **The Emergency Rule Itself Violates the Hunting and Fishing Heritage Constitutional Requirement and the Public Trust Doctrine.**

62. The previous paragraphs of this petition are incorporated herein by reference as if they were fully restated herein.

63. The Rule interferes or impairs, or threatens to interfere or impair, with the Petitioners' legal rights and privileges to Minnesota's Mille Lacs Lake walleye fishing heritage.

64. The Rule itself violates the Preserve Hunting and Fishing Heritage constitutional requirement and public trust doctrine.

65. The Rule is invalid because it violates the Preserve Hunting and Fishing Heritage constitutional requirement and violates the public trust doctrine by eliminating the Mille Lacs Lake walleye fishing heritage.

66. First, Rule 6264.0400 states in relevant part:

E. While a person is on or fishing in Mille Lacs Lake or its associated tributaries to the posted boundaries:

(1) the daily and possession limit for walleye is two, with only one over 28 inches in length; and

(2) except as provided in subitem (1), all walleye in possession must be equal to or greater than 18 inches in length or equal to or less than 20 inches in length. All walleye that are less than 18 or greater than 20 inches in length must be immediately returned to the water.

67. The Rule severely limits walleye possession to only two Mille Lacs Lake walleyes. The Rule limits the two Mille Lacs Lake walleyes that can be taken and possessed to only those Mille Lacs Lake walleyes between eighteen inches and twenty inches with one of the two walleyes possibly being over twenty-eight inches. All other Mille Lacs Lake walleyes must be immediately returned to the water.

68. Second, for the first time ever, the Rule bans night fishing during from May through December making it even more difficult to catch Mille Lacs Lake walleye:

C. Mille Lacs Lake is closed to the taking of fish between the hours of 10 p.m. and 6 a.m. daily during the period commencing at 10 p.m. on the Monday following the Saturday

two weeks prior to the Saturday of Memorial Day weekend and ending at 12:01 a.m. on Monday, four weeks after the date of commencement December 1. During the closure, no person shall be on the waters of Mille Lacs Lake while having in possession any equipment whereby fish may be taken. Spearing is prohibited from December 1 through April 30. A person may not have a spear in possession while on or fishing in Mille Lacs Lake during this period.

Making it

69. The Rule has, for all intents and purposes, eliminated the Mille Lacs Lake walleye fishing heritage.

70. Because the Rule violates the Preserve Hunting and Fishing Heritage constitutional requirement and violates the public trust doctrine, the petitioners request the Court issue declaratory judgment to Petitioners and against Respondent pursuant to Minnesota Stat. § 144 declaring the Rule invalid.

### COUNT III

**The DNR, Prior to Issuing Any Rules or Regulations Governing Hunting and Fishing, Must Make Findings of Fact About Minnesotans' Hunting and Fishing Heritage — and Cannot Default to Pre- or Intra-Agency Determinations of Governmental Designed Hunting and Fishing Heritages Imposed Upon the Minnesota People.**

71. The previous paragraphs of this petition are incorporated herein by reference as if they were fully restated herein.

72. Minnesota's Preserve Hunting and Fishing Heritage constitutional amendment, and Minnesota's related public trust doctrine, require the preservation of the Minnesota people's hunting and fishing heritage.

73. Both are part of the legal standards the DNR is required to apply to preserve hunting and fishing as a cultural heritage of Minnesota citizens.

74. The DNR in order to properly apply these legal standards must, prior to regulating hunting and fishing, make findings of fact about the Minnesota people's hunting and fishing heritage.

75. After the findings of facts are made, the DNR is then required to take into account these findings of facts about Minnesota's hunting and fishing heritage in adopting its rules affecting hunting and fishing.

76. Significantly, the DNR in making findings of fact about the Minnesota people's hunting and fishing heritage, prior to regulating hunting and fishing, shall not default to a government-designed hunting and fishing heritage imposed on the Minnesota people – for that would be a violation of Minnesota's Preserve Hunting and Fishing Heritage constitutional amendment and Minnesota's related public trust doctrine.

77. Minnesota courts are capable of reviewing the DNR's findings of fact regarding the Minnesota people's hunting and fishing heritage to ensure such findings of fact are supported by the facts and that such findings of fact are sincere.

78. Because the Preserve Hunting and Fishing Heritage constitutional requirement and public trust doctrine requires the DNR, prior to regulating hunting and fishing, to make findings of fact regarding Minnesota's hunting and fishing heritage, the petitioners request the Court issue declaratory judgment to Petitioners and against Respondent pursuant to Minnesota Statute § 144 declaring that for any DNR hunting and fishing rules to be valid, prospectively, the DNR must make findings of fact regarding Minnesota's hunting and fishing heritage prior to adopting the hunting and fishing rules and, further, that the findings of fact must not be based on a government-designed hunting and fishing heritage imposed on the Minnesota people -- because that would be a violation of the Preserve Hunting and Fishing Heritage constitutional requirement and public trust doctrine.

#### **Count IV**

**The DNR, Prior to Issuing its Emergency Rule or Other Similar Regulations Tailored to Fishing on Mille Lacs Lake, Must Make Findings of Fact About the Mille Lacs Lake Fishing Heritage — and Cannot Default to Pre- or Intra-Agency Determinations of Governmental Designed Fishing Heritage Imposed Upon Minnesotans Directly Affected by Regulations Specifically Tailored to Mille Lacs Lake.**

79. The previous paragraphs of this petition are incorporated herein by reference as if they were fully restated herein.

80. Petitioners have unique ties to Mille Lacs Lake through their own enterprises or involvement with fishing on the lake and particularly as it relates to

walleye fishing. Petitioners are also part of the historical and preservation of the cultural heritage of Mille Lacs Lake and fishing on the lake for walleye.

81. Mille Lacs Lake has a unique overlap of cultures between Minnesotans and tribal heritages governing in part by treaty obligations and thus contractual obligations between certain tribes and the State of Minnesota.

82. Under Minnesota Constitution, Article XIII, section 12, the DNR has an obligation to the Minnesota people and the Petitioners under the unique overlap of cultures within and about Mille Lacs Lake that requires that the DNR cannot ignore the cultural heritage of Minnesotans to Mille Lacs Lake while meeting its treaty obligations to others.

83. Minnesota's Preserve Hunting and Fishing Heritage constitutional amendment, and Minnesota's related public trust doctrine, require the preservation of the Minnesota people's hunting and fishing heritage and, equally, the cultural heritage of Mille Lacs Lake.

84. Both are part of the legal standards the DNR is required to apply to restore Mille Lacs Lake walleye fishing as a cultural heritage of Minnesota citizens.

85. The DNR in order to properly apply these legal standards must, prior to regulating walleye fishing on Mille Lacs Lake, must make findings of fact about the Minnesota people's fishing heritage on Mille Lacs Lake.



86. After the findings of facts are made, the DNR is then required to take into account these findings of facts about Minnesota's fishing heritage on Mille Lacs Lake in adopting its rules affecting fishing on Mille Lacs Lake.

87. Significantly, the DNR in making findings of fact about the Minnesota people's fishing heritage on Mille Lacs Lake, prior to regulating fishing on Mille Lacs Lake, shall not default to an intra-agency government-designed hunting and fishing heritage imposed on the Minnesota people – for that would be a violation of Minnesota's Preserve Hunting and Fishing Heritage constitutional amendment and Minnesota's related public trust doctrine.

88. Because the Preserve Hunting and Fishing Heritage constitutional requirement and public trust doctrine requires the DNR, prior to regulating fishing on Mille Lacs Lake, to make findings of fact regarding Minnesota's fishing heritage on Mille Lacs Lake, the petitioners request the Court issue a declaratory judgment for the Petitioners and against the Respondent under Minnesota Statute § 144 declaring that for DNR fishing rules on Mille Lacs Lake to be valid, prospectively, the DNR must make findings of fact regarding Minnesota's fishing heritage on Mille Lacs Lake prior to adopting the fishing rules on Mille Lacs Lake and, further, that the findings of fact must not be based on an intra-agency government-designed fishing heritage for Mille Lacs Lake imposed on the

Minnesota people -- because that would be a violation of the Preserve Hunting and Fishing Heritage constitutional requirement and public trust doctrine.

## **COUNT V**

### **Petitioners' Claim for Attorney Fees, Expenses, Costs, and Other Disbursements is Just.**

89. The previous paragraphs of this petition are incorporated herein by reference as if they were fully restated herein.

90. If Petitioners prevail on their petition, they request that the Court award to Petitioners attorneys fees, expenses and costs under Minnesota Statute. § 15.471.

### **PRAYER FOR RELIEF**

For these reasons, the Petitioners request that the Court:

(1) Issue an order to show cause to require the DNR within 15 days to file a response with the Court to:

(A). show why the DNR failed to consider and to take public comment before publishing its emergency Rule on the cultural heritage protections afforded the Petitioners under Article XIII, section 12 of the Minnesota Constitution and the public trust doctrine;

(B). show what specific statutory authority gives the DNR the right to disregard the requirements of Article XIII, section 12 of the Minnesota Constitution and to disregard the related public trust doctrine before publishing its emergency Rule affecting the cultural heritage of Mille Lacs Lake; and

(C). show how the DNR has not mismanaged the Mille Lacs Lake walleye population directly affecting the cultural heritage of Mille Lacs Lake in violation of the obligations the DNR has to the Petitioners under Article XIII, section 12 of the Minnesota Constitution and under the public trust doctrine.

- (2) Issue a scheduling order allowing Petitioners to respond to the DNR's response to the Order to Show Cause within seven days of receipt of the response and to hold a hearing immediately after the Petitioners filing;
- (3) Issue declaratory judgment to Petitioners and against Respondent pursuant to Minnesota Statute § 144 declaring that the Rule violates the Preserve Hunting and Fishing Heritage constitutional amendment and the public trust doctrine because the DNR in adopting the Rule failed to include in the legal standard the Preserve Hunting and Fishing Heritage constitutional amendment and the public trust doctrine;
- (4) Issue declaratory judgment to Petitioners and against Respondent pursuant to Minnesota Statute § 144 declaring that for any DNR hunting and fishing rules to be valid, prospectively, the DNR must make findings of fact regarding Minnesota's hunting and fishing heritage, prior to adopting the hunting and fishing rules and, further, that the findings of fact must not be based on a government-designed hunting and fishing heritage imposed on the Minnesota people -- because that

would be a violation of the Preserve Hunting and Fishing Heritage constitutional amendment and the public trust doctrine; and,

- (5) Issue declaratory judgment to Petitioners and against Respondent pursuant to Minnesota Statute § 144 declaring that for DNR fishing rules to be valid regarding Mille Lacs Lake, prospectively, the DNR must make findings of fact regarding Minnesota's fishing heritage on Mille Lacs Lake, prior to adopting the fishing rules on Mille Lacs Lake and, further, that the findings of fact must not be based on a government-designed fishing heritage for Mille Lacs Lake imposed on the Minnesota people -- because that would be a violation of the Preserve Hunting and Fishing Heritage constitutional amendment and the public trust doctrine; and,
- (6) Award to Petitioners attorneys fees, fees, expenses and costs under Minnesota Statute § 15.471; and
- (7) Award any other relief, legal or equitable, that the Court allows.

Dated: April 24, 2014.

/s/Erick G. Kaardal  
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## ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minnesota Statute §549.211, subd. 3, to the party against whom the allegations in this pleading are asserted.

Dated: April 24, 2014.

/s/Erick G. Kaardal

Erick G. Kaardal