



Chippewa Flowage

Joint Agency Management Plan

Lac Courte Oreilles Band of Lake
Superior Chippewa Indians

Wisconsin Department of Natural Resources

United States Department of Agriculture-Forest
Service

August 2000



**Chippewa Flowage
Joint Agency
Management Plan**

**Memorandum
Of
Agreement**

MEMORANDUM OF AGREEMENT

WHEREAS, the State of Wisconsin, Department of Natural Resources, the Lac Courte Oreilles Band of Lake Superior Chippewa, and the United States Forest Service (the parties), agree that the protection and management of the Chippewa Flowage is best accomplished through cooperation; and

WHEREAS, the parties desire to avoid, to the greatest extent possible, jurisdictional disputes regarding the protection and management of the Chippewa Flowage; and

WHEREAS, the parties wish to recognize each other's duties and responsibilities to protect the Chippewa Flowage for the benefit of all citizens of the State of Wisconsin;

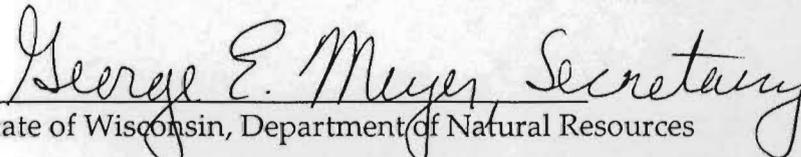
NOW, THEREFORE, the parties enter into this Memorandum of Agreement and agree as follows:

1. The parties will diligently work to cooperatively ensure the long term protection and management of the Chippewa Flowage and adjacent lands by following all terms and conditions of the Joint Agency Management Plan.
2. Execution of this Memorandum of Agreement shall constitute the ratification of the Joint Agency Management Plan anticipated by ch. 2, page 19, of the Plan. Withdrawal of ratification shall be governed by the Management Plan.

Dated this 31st day of August, 2000.



Lac Courte Oreilles Band of Lake Superior Chippewa



State of Wisconsin, Department of Natural Resources



United States Forest Service

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PREFACE

Before creation of the Chippewa Flowage, the area was, and still is, the homeland of the Lac Courte Oreilles (LCO) Band of Lake Superior Chippewa.¹ Band members traditionally relied upon the lakes for their subsistence living, including wild rice harvest and fishing. According to LCO, the reservation boundaries were uniquely configured to provide access to numerous water bodies in the region. Furthermore, the creation of the flowage was never approved by the tribe because they could foresee the devastation it would bring to their traditional lifestyle.

In 1921 a license was granted, under the 1920 Federal Power Act, to Northern States Power (NSP) authorizing flooding of the area to create the Chippewa Flowage. This was preceded by several unsuccessful attempts by NSP to gain approval from LCO to flood the wild rice rich basin of the Pahquahwong² area. The Federal Power Act enabled the newly created Federal Power Commission to issue a license to power companies for the usage, up to 50 years, of certain public and tribal lands, conditioned upon the payment by the power company of rental fees and abidance with other terms. The license was issued to NSP over the strong objections of the LCO Band. The flooding caused the loss of an annual 25,000 pound wild rice crop traditionally harvested by band members and drastically altered the self-sufficient, subsistence lifestyle of the tribe.

In 1970, NSP applied for relicensing. As a result of the relicensing procedure and the resultant settlement LCO claims (Appendix B), certain lands were transferred to LCO. In addition, the Wisconsin Department of Natural Resources (WDNR) and the USDA-Forest Service (FS) purchased additional shoreline lands from NSP. Presently the WDNR, LCO and FS³ own or administer a majority of the shoreline and most of the islands on the flowage, with a total land area of about 12,163 acres.⁴

The unique original configuration of the reservation boundary — designed to obtain full benefit from the lakes, rivers and lands that now comprise the flowage — underscores the importance of the

¹ Anishinabe is the correct name for the people since this is the term they use to describe themselves; Ojibwa is what other tribes called the Anishinabe; and Chippewa is what non-Indians called the Ojibwa. (Benton-Banai, E. The Mishomis Book, pp. 94 to 102). For the purpose of this plan we will be using the popularly accepted name of Chippewa.

² The 1998 book by Charlie Otto Rasmussen, Where the River is Wide: Pahquahwong and the Chippewa Flowage, tells the story of the Ojibwe village Pahquahwong which was flooded by the creation of the flowage.

³ For convenience, the term “agencies” is used in this document to refer collectively to the WDNR, LCO, and FS.

⁴ Acres of land ownership in the Chippewa Flowage, totaling 12,715 acres, are: WDNR - 6090 (47%) acres; FS - 1,585 acres (12%); and Lac Courte Oreilles Band - 4,500 acres (35%); private - 540 acres - (5%) Percentages of ownership of the 233 mile shoreline: WDNR - 50% (116.5 mi.); LCO 30% (69.9 mi.); FS - 12% (27.96 mi.); and private - 8% (22.69 mi).

flowage to LCO, and it continues to play a significant role in the lives of the LCO people today. While the wild rice crop has nearly been extirpated, band members rely on the fishery for subsistence, religious, cultural and economic purposes both on and off the reservation. Areas of the flowage not part of the reservation are part of the treaty ceded territory where LCO reserved the right to hunt, fish and gather. The flowage provides significant fishing opportunities for band members, not only during the spring spearing season and winter ice fishing, but also during the open water angling season. Specific areas within the flowage are also important cultural, and ceremonial sites for the LCO people.

PURPOSE OF THE JOINT MANAGEMENT PLAN

In November 1988, the WDNR, LCO and FS agreed to discuss formulation of a comprehensive management plan for the long-term management of the Chippewa Flowage. Development of the Joint Management Plan, a conceptual agreement, is the result of these discussions.

This unprecedented cooperative venture brings together the combined expertise of staff from all three agencies and the public to build a comprehensive management plan for this unique and important resource. Contained in this plan are specific guidelines for future management of the area, including governmental coordination and public involvement. These guidelines are based on an examination of the resources of the Chippewa Flowage and identification and evaluation of the key resource management issues. This plan will provide for uniform management and regulation and help reduce confusion for flowage visitors.

This management plan will contribute information and guidelines to the WDNR, LCO and FS as they plan, design, and implement management activities on their properties and other areas within their respective jurisdictions in the flowage management area. This plan does not apply to activities of private landowners on their own lands. However, the agencies agree that this plan shall guide their regulatory actions within their respective areas of jurisdiction regarding those lands.

Wisconsin Department of Natural Resources

The Department will use the Joint Agency Management Plan as a guide for its management and development activities within the Flowage Management Area.

USDA - Forest Service (FS)

The FS (the Great Divide Ranger District of the Chequamegon/Nicolet National Forest), will use this Joint Plan as a guide as it plans, designs and implements management activities near the flowage. Overall programmatic decisions for the National Forest lands will be made in Land and Resource Management Plans. Site-specific decisions for National Forest lands in the Flowage Management Area will be made on a project-by-project basis. Both planning steps will use a government-to-government consultation process with LCO and the public involvement and effects disclosure

procedures of the National Forest Management Act and the National Environmental Protection Act. In addition, as to the portions of the Flowage Management Area lying within the ceded territories that are outside LCO's reservation boundaries, the FS will undertake a government-to-government process with other Chippewa tribes and will comply with the terms and conditions of any agreements between the FS and the tribes.

Lac Courte Oreilles Band of Lake Superior Chippewa Indians (LCO)

The Lac Courte Oreilles Band will use this Joint Plan as a guide for resource and environmental management planning for the Tribal Management Area on the flowage. Through these resource and environmental plans, specific actions will be proposed for implementation and approved by the LCO Tribal Governing Board.

DEFINITIONS OF KEY TERMS USED IN THE MANAGEMENT PLAN

Parties: The entities eligible to ratify this agreement are the Lac Courte Oreilles Band of Lake Superior Chippewa Indians (LCO), the Wisconsin Department of Natural Resources (WDNR), and the United States Department of Agriculture -- Forest Service (FS). Any such entity or entities that have properly ratified the agreement shall be referred to as a party or parties.

Flowage Management Area: All lands within the management area boundary, as depicted on Map 2 (1985) [titled; *Management Agreement Boundary and Agency Management Areas*], or as that Map may be amended from time to time by agreement of the parties. Map 2, and any properly approved amended Map 2, hereby is attached to and incorporated into this agreement by reference as if fully set forth herein. These lands are subject to the Joint Management Plan.

Agency Management Area: Areas within the Flowage Management Area that are subject to the respective authorities and responsibilities of the parties. These areas also are depicted on Map 2, as that map and any properly approved amendments to that map are incorporated into this agreement.

Mainland Shoreline: Mainland shoreline consists of agency lands within the existing covenant zones of 100 and 200 feet horizontal distance landward from the shoreline above the 1,313 foot level and other agency mainland shoreline not covered by covenants extending at a minimum 100 feet horizontal distance landward from the shoreline above the 1,313 level.

Backlands: Backlands consist of mainland agency lands within the flowage management area landward of the mainland shoreline area.

Islands: Islands consist of agency lands in a landward (toward the island) direction above the 1,313 foot level and not considered mainland shoreline.

Water Area: Water consists of areas under the management jurisdiction of one or more of the agencies within the flowage area below the 1,313 foot level and not included in another category.

Designated Campsite: A designated campsite means a campsite open to use by the public within the Flowage Management Area . The designated campsites are owned or operated by any one of the parties and are depicted on Map 3 (1995) [titled; *Public Facilities*], or as that map may be amended from time to time by agreement of the parties. Map 3, and any properly approved amendments, is hereby attached to and incorporated into this agreement by reference as if fully set forth herein.

CHAPTER ONE:

INTRODUCTION AND OVERVIEW

Located in central Sawyer County near the city of Hayward, the Chippewa Flowage is Wisconsin's third largest lake. The 15,300 acre impoundment includes portion of the Lac Courte Oreilles reservation. In addition, this sprawling water body has a highly irregular shape, 233 miles of generally undeveloped shoreline, and is dotted with over 200 islands.

For decades the Chippewa Flowage has been highly regarded throughout the Midwest for its spectacular natural scenery and high quality recreation, especially fishing. The flowage enjoys a national reputation as a top musky lake. It also provides some of the finest walleye fishing in Wisconsin.

The flowage is one of Wisconsin's most unique water bodies. Its seemingly endless maze of islands, points, bays and channels, accented by birch and pine, offer visitors numerous opportunities for exploration, discovery and a feeling of intimacy with nature. Camping at one of the primitive island campsites is a cherished experience for many flowage visitors. Camping opportunities of this type are not common in Wisconsin. Visitors rate the scenery, undeveloped, natural or "wilderness" character, and the fine fishing as the flowage's most outstanding attributes. Because of the increased number of visitors, the Lac Courte Oreilles Band plans to implement a permit reservation system on its campsites, and is urging a permit system on state and federal campsites as well.

The Chippewa Flowage provides recreation for people from all around the Midwest. Current information indicates people from the local area and from as far as Milwaukee, Madison, Chicago, and Minneapolis/St. Paul regularly come to enjoy the flowage area. Many have been returning here for years to fish, boat, swim, camp or enjoy other outdoor pursuits. Aside from five public boat access sites and limited primitive island camping opportunities, all user facilities on the flowage are commercial or private.

Approximately 90% of the mainland shoreline and all islands except one are undeveloped. Resorts, campgrounds, cottages and boat access sites are the primary developments. Restrictive covenants (Appendix A) that were established according to terms of the 1984 Chippewa Reservoir Settlement Agreement (Appendix B) regulate building or redevelopment of the tribe's existing structures on most of the immediate shoreline.

The area's rolling topography forms a patchwork of small hills, valleys, streams and bogs. The flowage's shorelands are primarily wooded, with a mixture of aspen, birch, pine, northern hardwood and oak. Almost all birds and animals indigenous to northern Wisconsin are found within the area, including bald eagle, osprey and loon. Opportunities to see wildlife enhance the attractiveness of the flowage to visitors.

PRESENT LAND OWNERSHIP ON THE FLOWAGE

The State of Wisconsin, the Lac Courte Oreilles Band and the U.S. Government-Forest Service are the primary land holders on the Chippewa Flowage. The Forest Service lands lie within the Chequamegon National Forest, Great Divide Ranger District. The remainder of the adjacent lands are owned by Consolidated Papers, Inc. and other industrial forest landowners, Northern States Power Company (in the dam area), private businesses, residential and recreational owners.

FLOWAGE CREATION AND OPERATION

Northern States Power Company constructed the dam on the Chippewa River just below the confluence of the East and West Forks to form the flowage. The flowage first filled in 1924, following the removal of the Village of Post, its residents and the reinterment of graves. It was originally created to provide a reservoir to hold surplus water to supplement river flow for downstream power production during low flow periods of the year. Secondly, the flowage was created to aid downstream flood control. Operations of the dam are regulated by the Federal Energy Regulatory Commission (FERC). Guidelines for flowage water management were established through a 1984 license exemption agreement (Appendix B).

Winter is the primary flowage drawdown period (when extra water is released from the flowage to boost low flows downstream). Drawdown has begun as early as July and as late as December. The procedure and timing of the drawdown depends on the amount of fall precipitation and the extent of anticipated runoff from the large watershed upstream. Drawdowns have been as great as 24 feet, although usually the maximum annual fluctuation is in the range of 10 to 15 (Refer to page 21 for a discussion on Water Level Agreements and FIGURE 1: Chippewa Flowage Water Levels, 1923-1988).

From the 1920's until Northern States Power Company divested its land interests in the mid to late 1980's, NSP's land management focused on timber management, which included commercial harvesting. Only limited opportunities for public camping and commercial and cottage development on the shore were provided, thus keeping the flowage relatively undeveloped. The State of Wisconsin purchased the bulk of Northern States' holdings on the flowage in 1988. Some NSP lands were acquired by the USDA and added to the Chequamegon National Forest. Other NSP lands were transferred to the LCO as part of the 1984 settlement agreement.

PROTECTIVE SHORELAND BUFFER ZONE

The 1984 Chippewa Reservoir Settlement Agreement (Appendix B) established buffer zones around the flowage to protect the immediate shoreline and islands from further development. As a direct result of this agreement, NSP established restrictive covenants on its lands (i.e. the lands it retained after the transfer of lands to the LCO in the Settlement Agreement).

The LCO is required to establish by tribal ordinance and proclamation a similar buffer zone to protect

the natural appearance of the flowage on lands it acquired from NSP under the Settlement. The buffer zones are shown on Map 1 (1995) [titled; *Shoreline Protection Zones*], which is attached and specifically incorporated herein. The restrictive covenant provisions are detailed in Appendix A.

On non-Tribal lands, where the restrictive covenants apply, 70% of the shoreline has a 200 foot wide buffer zone. The remaining 30% has a 100 foot wide buffer strip. On the new Tribal lands acquired under the 1984 agreement and lying outside of the present reservation boundaries, there is a 200 foot wide buffer strip on 70% of the shoreline and the remaining 30% must be protected to a width that will adequately protect the natural appearance of the flowage.

On Tribal lands acquired under the agreement and lying within the present reservation boundaries, 50% of the shoreline is subject to a 100 foot wide buffer zone, with the remainder to be protected by a buffer zone adequate to protect the natural appearance of the flowage. The specific contours of the Tribal buffer zone are to be determined cooperatively by the LCO and WDNR. The LCO agreed not to permit any development on lands they acquired under the agreement until the buffer zones are established by tribal proclamation. Under the settlement agreement, the WDNR has the primary enforcement responsibility for the restrictive covenants established by NSP. WDNR with NSP is responsible for the approval of variances to or modifications of these covenants.

THE FOCUS OF THE JOINT MANAGEMENT PLAN

The WDNR, FS, LCO Joint Management Plan focuses on protecting the unique natural character of the flowage area and maintaining the high quality of its natural resources, its recreational opportunities, and its traditional tribal use for religious, ceremonial, medicinal, subsistence and economic purposes. The plan also provides other important elements, such as a mechanism to coordinate management of the flowage by the WDNR, FS and LCO, and to allow the public continuing opportunities to be heard on flowage management issues.

Issues Not Addressed by the Plan

Some issues are beyond the scope of the current joint planning effort and are not addressed in the plan. The first, tribal treaty rights, is a legal issue which the courts have decided. All parties recognize the treaty rights of the Chippewa in ceded territories. The 1837 off-reservation treaty rights are shared with other tribes who were signatories of the 1837 Treaty (Appendix C). The Joint Plan is not intended and should not be construed as authorizing any action by the WDNR or US Forest Service that restricts tribal harvest of treaty-protected resources that is not consistent with applicable treaty rights law. Second, hydropower plant operations and flowage water levels are regulated by the Federal Energy Regulatory Commission and the 1984 Settlement Agreement, and therefore, are beyond the scope of the management plan. (Refer to page 21, Water Level Agreements, for a description of current flowage water level management). Lastly, restrictive covenants exist on some property acquired from Northern States Power Company. Changes to these covenants are not considered at this time and will not be affected by this plan. Each party in the agreement retains its own regulatory authority. (Refer to Appendix A for a complete description of the restrictive

covenants that apply to the flowage's shoreline.)

The Joint Plan neither creates new nor takes away existing jurisdiction or authority of any signatory party over any person, land, water, animal or plant within the flowage area. By agreeing to the Joint Plan, no party makes any concession of fact or law, or waives any jurisdictional claim that it may maintain against another signatory party or a third party. Similarly, no party concedes the jurisdiction of any other signatory. A party's ratification of the Joint Plan shall neither preclude nor prejudice any right or claim that it may assert against another ratifying party or a third party.

In addition, the Joint Plan is not intended and should not be construed as in any way relieving the U.S. Department of Agriculture - Forest Service of its trust and treaty obligations toward LCO or any other affected Tribe.

STEPS OF THE PLANNING PROCESS AND CITIZEN INVOLVEMENT

A summary of the public participation activities and other key planning efforts is shown below:

- Questionnaire on flowage issues circulated to the public by the WDNR prior to the joint planning effort.
- Comprehensive questionnaire circulated to the public by the WDNR, LCO, and FS to further identify flowage issues and use information.
- Flowage planners formulated alternative ways to address each issue identified in the citizen involvement process.
- Array of management alternatives circulated back to the public for review and comment.
- Flowage planners developed proposed joint management plan with consideration given for public comments on alternatives.
- The draft Joint Management Plan circulated to the public and agency staff for review.
- The Joint Management Plan revised as appropriate based on review comments.
- The Joint Management Plan is presented to the WDNR, FS and LCO for adoption.

CHAPTER TWO:

MANAGEMENT CONCEPTS AND POLICIES

GOAL OF THE PLAN

The overall management goal is “to perpetuate the undeveloped shoreline character of the Chippewa Flowage and to manage for compatible resource opportunities and a sustainable and resilient ecosystem.”⁵

MANAGEMENT OBJECTIVES AND POLICIES

Property Ownership or Administration and General Management Policies

The following are the management objectives and strategies for each of the key Chippewa Flowage management issues.

Management Area Boundary; The Flowage Management Area (Refer to Preface for definition of Flowage Management Area, and see Map 2, attached), where this joint management plan applies, lies generally within the Chippewa Reservoir Project No. 108 boundary. The "108 boundary" was established in Northern States Power Company's original license from the Federal Energy Regulatory Commission to construct and operate the reservoir. The few, small deviations from the “Project 108 boundary” lie within the WDNR portion of the flowage.

The management concepts and policies expressed in this plan apply only to those lands lying within the designated flowage management area, unless otherwise specifically stated in this document.

The Flowage Management Area is divided into three separate Agency Management Areas, or administrative parts (Refer to Preface for definition of Agency Management Areas, and see Map 2, attached). The guidelines used to establish these management areas are as follows:

⁵ A sustainable and resilient healthy ecosystem refers to one which retains a full complement of its native species with all processes working properly, such as energy flow, nutrient cycling and sufficient natality and fatality. It is both stable and diverse.

- a. Consistent with its trust responsibility and treaty obligations to LCO and other treaty signatory tribes, the FS is responsible for administering those flowage management area lands lying within the proclamation boundary set for the Chequamegon National Forest by Congress.
- b. LCO is responsible for administering all flowage management area lands within the reservation boundary, plus those lands owned by LCO lying outside the reservation boundary.
- c. Subject to applicable treaty rights law, the WDNR is responsible for administration of those flowage management area lands lying outside of the National Forest and reservation boundaries, except for those lands owned by the LCO outside of the reservation.

Real Estate Management; The WDNR, LCO and FS are each solely responsible for the acquisition or disposition of lands within their own area of jurisdiction. The exchange of lands between the agencies is encouraged wherever practical to provide for more efficient land management and administration.

The acquisition or disposition of lands by or from FS ownership shall be done in a manner consistent with the Federal government's trust responsibility and treaty obligations toward LCO and other treaty signatory tribes. To this end, the FS agrees to notify and undertake consultation with LCO and other treaty signatory tribes prior to acquisition or disposition of any lands.

Acquisition of private lands, whether fee title or easement, will be on a "willing buyer-willing seller" basis only. Generally, the acquisition of undeveloped shorelands and islands will be the highest priority, with undeveloped backlands that are visible from the water a second priority. Other undeveloped lands are third priority. Developed lands are the lowest priority, which would be subject to acquisition only under special circumstances, such as if they affected key fish and wildlife habitat or endangered or threatened resources.

General Land Management Policy; The maintenance of a sustainable and resilient ecosystem and the long term protection and enhancement of the flowage's outstanding natural aesthetic and scenic character are overriding management considerations, especially for areas visible from the water and shore. On flowage management area lands owned, controlled or administered by the WDNR, FS and LCO, management activities will be designed to maintain and enhance the natural character of the flowage. These activities should be carried out in ways that minimize disturbance of the visual landscape. Further, management activities will be consistent with existing and future covenants and restrictions and with future tribal shoreline protection ordinances and proclamations established under the Settlement Agreement and with other flowage management goals; and will not impinge on tribal treaty harvests in violation of applicable treaty law.

Management activities will generally be of low intensity on lands visible from the flowage, and they will be focused on encouraging longer lived tree species, trees of larger size and forest habitats with

older growth characteristics. Management activities on lands not visible from the flowage may be more intensive to meet a variety of wildlife habitat and other management objectives, but will still emphasize healthy and sustainable ecosystems and aesthetic management.

Property Identification

Identification of WDNR, FS, and LCO ownership or management boundaries will be permitted. Small, unobtrusive signs may be placed at use areas and on WDNR, FS and LCO facilities and structures, consistent with existing and future covenants and restrictions and with future tribal shoreline protection ordinances and proclamations established under the Settlement Agreement (Appendix A).

Flowage Area Development

Management of the islands, mainland shoreline and backlands that are owned or controlled by the WDNR, FS and LCO will be done in a manner that minimizes development and its intrusion on the natural, visual landscape. Structures, facilities and materials used should blend in with the surrounding environment and repeat form, line and color of the (non-winter) landscape as much as possible. Development of Flowage Management Area lands that fall within the scope of the Chippewa Reservoir Settlement Agreement shall comply with the terms of that agreement (Appendix B). The development of primitive campsites in the mainland shore area may require a variance or modification of the restrictive covenant. All developments in other areas must comply with the terms of applicable laws.

The WDNR, FS and LCO will pursue opportunities to become involved in decisions regarding private development or other changes to the visual character of all lands that border or are visible from the flowage. The objective is to encourage the maintenance and enhancement of a naturally appearing landscape on private lands affecting the flowage. Compliance with the existing and future restrictive covenants and ordinances will be closely monitored and strictly enforced.

Recreation Management and Facilities Development

Recreational Use and Watercraft Management; The WDNR, FS and LCO will develop and propose to the appropriate units of government a comprehensive recreational use and watercraft management plan for the flowage. Key objectives of this plan will be to protect the undeveloped character of the flowage, to protect the high quality of recreational experiences, to protect public safety, to ensure the exercise of treaty rights, to prevent wildlife harassment and destruction of their habitat, to prevent the impairment of water quality by accelerated bank erosion and the suspension of bottom sediments caused by watercraft and recreational use, and to prevent the exposure of pre-flowage era Chippewa grave sites on islands due to soil erosion by boat wakes and other causes. The recreational use and watercraft management plan will be based on recreational use and environmental data, and will be developed with citizens and local

government involvement.

For land-based recreational activities (such as snowmobile and ATV use and camping), the recreational use and watercraft management plan should make the public aware that:

- Individuals must make sure that their desired activity is allowed on the particular land where they wish to recreate. Public access and use regulations may not be the same on DNR LCO and FS managed lands;
- Persons who violate properly enacted laws, regulations or orders governing the activity are subject to prosecution in the appropriate state, federal or tribal forum; and
- Entry onto LCO tribal lands or allotted lands within LCO's reservation without LCO's specific consent or contrary to a tribal ordinance may constitute a trespass subject to prosecution under state, federal or tribal law.

Prior to developing a comprehensive recreational use/watercraft management plan for the flowage, the WDNR, FS and LCO will complete recreational use surveys and other studies to identify any existing and potential use problems, user conflicts and preferred management strategies. The surveys and studies shall focus on, but not be limited to, the types and distribution of recreational use, user's recreational objectives/preferences, the possible need for a camper permit system or campsite reservation system, and information concerning the impacts of boating and other recreational activities on flowage resources.

Visitor Information Services; The WDNR, FS and LCO will coordinate the design, construction, and maintenance of informational bulletin boards at the primary access points. These bulletin boards may contain maps, brochures, interpretation and education materials and other visitor information. Information will stress proper use of the flowage and respect for area resources such as wildlife, cultural resources, floating bogs, etc. Visitor information will also be available at WDNR, FS and LCO offices, cooperating local businesses and other appropriate locations.

Camping; Designated public campsites (Refer to the Preface for definition of designated campsite, and see Map 3, attached) are available on a first-come, first-served basis until such time as a camping permit system may be established. Signs and maps will be used to designate the campsites open to public camping. The campsites will be primitive. The facilities provided will include only a fire ring, picnic table, and an open air pit toilet. One campsite will have a pier and other facilities to provide for access and use by persons with disabilities. All designated campsites will be regularly inspected for litter and maintenance needs throughout the camping season. Campsites will be regularly inspected for public safety hazards, such as dead trees, and the hazards will be removed or the site closed.

A number of campsites, in addition to those designated for public use, are designated and

maintained by the LCO for use by tribal members.

[Note: presently, LCO and WDNR allow camping only at designated campsites. In contrast, consistent with its general camping policy on the National Forest, the FS allows camping at any location unless specifically closed.. The FS maintains one designated, primitive island campsite on the flowage..]

The FS agrees to examine whether it should change its rules on unrestricted camping within the Flowage Management Area. This change would require camping at designated campsites only.

The parties agree that no more than 18 campsites will be designated and maintained for public use on the flowage, not including those sites designated by LCO for use by tribal members. However, if the FS changes its camping policy and requires camping to be only at designated sites within the Flowage Management Area additional campsites may be designated if demand warrants. The development and designation of additional campsites may be done only with the agreement of all three parties. Any proposal for developing more than 18 campsites will be discussed by all three parties on a government-to-government basis as provided in this Plan.

The current, designated campsites are shown on Map 3. Within its discretion and subject to the intergovernmental coordination requirements of this management plan, a managing party may close (temporarily or permanently) or relocate a designated public campsite. If consistent with this plan, a designated campsite may be located in the mainland shore area or backland area of agency managed lands. Campsites may be periodically rotated between use and non-use status over time. The parties will, as site conditions warrant, develop new campsites and close older worn sites to allow them to "rest" and recover. Site rehabilitation, such as vegetation establishment/re-establishment, maintenance or relocation of existing facilities, and similar activities, will be permitted. Campsites may also be closed, permanently or temporarily, to protect threatened, endangered or sensitive species and their habitats. Closed campsites will be identified and declared unavailable for camping or other public use.

LCO may require permits for camping at its designated campsites. The WDNR commits, in accordance with applicable laws and regulations, to actively investigate the development of a permit system for the campsites it administers.

Picnic and Beach Area Development; Public picnic and beach facilities will not be constructed on agency managed lands within the flowage management area, except that limited picnic facilities may be provided at selected boat landing sites.

Water Access and Related Facilities; No additional public boat access or new canoe access to the flowage will be constructed within the flowage management area. The public access sites are shown on Map 3, which is attached to and incorporated into this agreement. Existing facilities or sites may be relocated to better meet management objectives. Facilities may be maintained or upgraded, but the existing total capacity level will not be increased. Open access to tribal members engaging in treaty-guaranteed activities on flowage waters will be a priority. "Public" access does not include

tribal landings not depicted on Map 3.

One boat landing will be initially improved to provide access to all users. Whenever other boat landings are upgraded, they will be designed to provide adequate access to all users. A fishing pier or other suitable shore fishing facility will be developed to accommodate all users at a suitable location on the flowage. (As previously described under Camping, one campsite will be developed to accommodate persons with disabilities.)

Non-Motorized Trail Development; Pedestrian - Cross-country skiing and hiking are allowed. The development of cross-country skiing and hiking trails, primarily on the backlands, will be considered when and if a sufficient need is shown. **Horse /Mountain Bike Trails** - To protect aesthetic, cultural, and ecological resources, horse and mountain bike trails will not be proposed by the parties for development in the management area. External requests for trail development on “lands” administered by any of the parties will be discussed by all parties on a government-to-government basis before any decisions are made regarding the development of proposals. Horse ownership may be allowed on tribally leased land within the management area.

Snowmobile Trails and Use; The marked snowmobile trail system will be restricted to the existing system, except as otherwise provided herein. Relocation of existing snowmobile trails may occur to correct safety hazards, protect resource values, or reduce user conflicts. Maintenance of existing trails through the use of cooperative snowmobile trail management partnerships with local snowmobile alliances and clubs will be encouraged.

The operation of snowmobiles on the ice is allowed, but will not be encouraged. All appropriate measures will be taken to protect sensitive flowage resources that may be harmed by the operation of snowmobiles.

All Terrain Vehicle (ATV) Trails and Use; Subject to existing laws and regulations, ATV use should be limited to marked trails. Off-trail ATV use will not be encouraged. (Note: On DNR managed lands ATVs may be ridden only on designated ATV trails. There are no designated ATV trails on DNR managed flowage lands and none are planned. On reservation lands the operation of an ATV by non-tribal members without tribal permission is not allowed.)

Litter and Refuse Management; Flowage users will be responsible for their own refuse and will be required to carry it off the flowage. No facilities for litter disposal will be provided on the primitive campsites, along trails, or in other agency managed areas, except that recycling and refuse receptacles may be placed at public boat landings. All public use sites will be monitored to maintain a clean, well kept appearance.

Water Resource Management

Water Level Management; Water level fluctuations are governed by the Chippewa Reservoir Settlement Agreement of 1984 (Appendix B) and the Federal Energy Regulatory Commission license exemption granted September 28, 1984 (Refer to page 21 for a discussion on Water Level Agreements). Overall flowage water level management is outside of the scope of the Joint Management Agreement. However, it is recognized that on a case-by-case basis, there may be opportunities to negotiate with NSP and LCO for short-term water level management regimes to accomplish specific resource management objectives. In a manner consistent with the Settlement Agreement and the terms of the FERC license exemption, water level management should consider enhancement of wild rice populations.

Water Quality Management; The WDNR, FS and LCO will work together to establish baseline water quality information, to monitor water quality in the flowage and its watershed and to identify causes of water quality problems. As point discharges into the flowage are an on-going concern, the WDNR, FS and LCO will urge and cooperate with local governments and organizations to monitor point discharges on a regular basis. The parties agree to coordinate the exercise of their respective jurisdictions over water quality issues.

In addition, the agencies will cooperate on studies of the long-term water quality impacts of motor boat use on the flowage, specifically on bank erosion, sediment resuspension, and their potential as a non-point source of pollution that may adversely affect the flowage. The agencies will take appropriate corrective actions as needed.

Aquatic Plant Management; Native plant species should be managed to best maintain natural plant diversity to protect against the invasion of non-native species and to maintain high quality fish, wildlife and aesthetic values. The control of native and non-native aquatic plant species by private riparian landowners is allowed.

The parties commit to the development of an aquatic plant management plan, which will establish specific goals and identify methods and procedures to best achieve the goals. They also commit to seeking funding for projects designed to implement the aquatic management plan's provisions.

Aquatic plant management goals include: 1) the preservation and enhancement of wild plant species traditionally used by the Chippewa (especially the re-establishment, preservation and enhancement of wild rice beds); 2) the prevention of new exotic plant species introduction; and 3) the control and, where feasible, the eradication of already present exotic plant species, such as Eurasian water milfoil and purple loosestrife.

All feasible and environmentally sound control methods for exotic plants are allowed, including biological, mechanical and chemical control methods. However, chemical controls shall be used only when other practicable control measures are not available. All chemical control (including private citizen use) will be managed through the tribal and WDNR's normal permitting processes for chemical use in waters depending on the applicable jurisdiction. The parties will notify each other of each permit application for chemical use and will comply with other applicable laws regarding public

notice.

The WDNR, FS and LCO flowage managers will monitor and map aquatic vegetation for changes over time and will initiate control efforts only to achieve localized and specific resource management objectives.

Floating Bog Management; WDNR, FS and LCO may control the location and size of floating bogs where, in the judgment of the WDNR, FS and LCO, they are significant navigational obstructions. Since they are important historically to the region, all efforts will be made not to move the bogs.

Shoreline Erosion Management

Physical control measures, such as the use of natural rock riprap and planting of native vegetation to stabilize shoreline erosion, may be permitted in accordance with existing and future covenants and ordinances and with future tribal shoreline protection ordinances and proclamations established under the Settlement Agreement. Use of native vegetative screening is encouraged to maintain or enhance the shoreline's natural visual character.

Fishery Management

Fisheries management activities will recognize the existence of a mixed and shared fishery in the flowage, serving both sport recreational and tribal subsistence, religious, ceremonial and economic fishing needs. As such, management activities will emphasize the maintenance and protection of native species, genetic strains, and their spawning habitat, plus fairly balanced harvest opportunities for both fisheries.

Managers will continue surveys to annually assess the year class strength of walleye, muskellunge, and northern pike in standard index stations; strive to estimate the adult walleye population and angler harvest rate at least once every 7-8 years; and seek to develop indices for determining trends for other key fish species. Additionally, managers will continue to stock muskellunge annually.

More intensive management actions, such as spawning habitat modification and mechanical control of northern pike or other species, may be proposed if warranted by declines in muskellunge recruitment or habitat condition. However, spawning areas for both musky and walleye should be mapped with the quantity and quality of habitat described every 7-8 years. Mandatory registration of muskellunge may be proposed if better harvest data are needed to improve management of adults. If permanent shoreline modifications are needed for the enhancement of musky spawning, exemptions from existing or future restrictive covenants and ordinances may be required.

The status and health of lake sturgeon in the watershed shall be reported every ten years. If necessary, efforts should be made to restore a harvestable population in the flowage and to rear

sturgeon for restocking.

State-licensed ice fishing for panfish should be strictly and effectively enforced, as well as monitored and studied to assess impact on non-target species either through illegal harvest or incidental mortality, particularly regarding walleye and muskellunge.

Vegetation and Wildlife Habitat Management

Management on Islands and the Mainland Shoreline; Manage to maintain or enhance a naturally appearing landscape. Emphasis will be placed on promoting long-lived tree species, big tree character and mature vegetative communities. Emphasis is also placed on providing nesting and brood rearing areas for endangered, threatened, and sensitive species, including suitable habitat for eagles, osprey, great blue herons and loons. Manage vegetation to maintain flowage character and public safety in accordance with existing and future restrictive covenants and ordinances. Establishment/re-establishment of native vegetation is permitted.

Management on Backlands Visible from the Flowage; Within backland areas that can be seen from the water, vegetation will be managed to maintain or enhance the naturally appearing landscape and to provide for natural succession. Management emphasis will be placed on promoting long-lived tree species, big tree character, structurally diverse communities, mature communities, and encouraging a sustainable, resilient, and functioning ecosystem.

Unique and sensitive plants, such as cedar, hemlock and other species negatively impacted by herbivores, will be favored and perpetuated whenever possible. Understory plants gathered by the Chippewa will be given special consideration. Emphasis will also be placed on providing habitat for wildlife species that prefer mature forest communities. Nesting and brood rearing habitat will be provided for endangered, threatened, and sensitive wildlife species, including eagles and osprey.

Silvicultural (forest management) methods in this area will generally be limited to individual tree selection and thinning (selective cuts, shelterwood cuts and seed tree cuts). Other silvicultural methods may be used where needed to provide for public safety, fire hazard reduction, and insect or disease hazard reduction. Salvage harvest following natural disasters may be done, with the above objectives guiding harvest and reforestation decisions.

Management on Backlands Not Visible from the Flowage; Within areas not seen from the water, vegetation will be managed for timber of all age classes. The goal is to provide habitat for a variety of native wildlife and plant species, with particular regard to understory plants gathered by the Chippewa, and to encourage a healthy, functioning ecosystem.

Vegetation will be managed to provide or perpetuate sensitive and unique plant species, such as cedar and hemlock, as may be practicable. Nesting and brood rearing habitat for endangered, threatened, sensitive and other species, including eagles, osprey, fisher, bobcat, and marten will be provided. The full range of silvicultural methods may be used, including even-aged (i.e., shelterwood and

clearcut timber harvest) and uneven-aged (i.e., individual tree and group selection timber harvest) management.

Additional Guidelines For Wildlife Habitat and Timber Management; The parties agree to adhere to the following guidelines for managing wildlife habitat and timber within the Flowage Management Area:

- Retain appropriate amounts of dead and down logs and other ground material necessary to maintain viable populations of reptiles, amphibians, and other animals.
- Where feasible, reserve at least 3-5 large, live den trees of long-lived species per acre with at least one per acre greater than 50 centimeters.
- Reserve small clumps and scattered individual oak, cedar, and hemlock trees and scattered areas of upland brush (e.g. dogwood, thornapple, hazel).
- Allow clearcutting only in areas outside of visually sensitive zones and covenant areas (i.e. backlands not visible from the flowage), except under unusual and limited circumstances agreed to by all managing agencies. Aesthetic management techniques will be used in designing the harvest area. Clearcuts should generally be no larger than 40 acres, and will usually be 10-20 acres for aspen regeneration areas to provide habitat for deer, grouse, and early successional species.
- In visually sensitive areas, timber harvesting should be conducted only during leaf-off periods. In all other areas, limited harvesting at other times may occur. Any timber harvest should be done in a manner that minimizes negative impacts on other resources, on public use of the area, and on tribal treaty harvests.
- Appropriate scenic management techniques shall be emphasized in all harvest activities. Slash along roads and trails will be managed to benefit wildlife and recreation and to maintain aesthetics. Buffer zones shall be provided adjacent to covenant areas, other visually sensitive areas and residential areas.
- Timber type conversions will only be considered to enhance visual management objectives and wildlife habitat.
- Provide grassy openings for wildlife habitat and aesthetic value. As appropriate, in areas not visible from the flowage forest openings of one-half to five acres should be set aside and maintained as permanent wildlife habitat and for vistas providing visual variety.
- Inform the public about management practices through signing and informational brochures or other means.

Guidelines for the Management of Endangered, Threatened, Sensitive and other Species of Special Interest; The parties agree to adhere to the following management guidelines for managing endangered, threatened, sensitive and other particular species within the flowage management area:

- To the extent possible, protect the habitat of species listed by the State of Wisconsin and the LCO band as threatened, endangered, or sensitive species whose presence is known within the flowage area.

- Follow established existing or future federal and/or state guidelines for management of bald eagle and osprey, and take appropriate steps to protect blue heron rookeries, which should include:
 - (a) Prohibit all land uses within 330 feet of eagle, osprey and great blue heron nests. Prohibit all significant landscape changes such as clearcutting, land clearing, and construction activities between 330 and 660 feet of an eagle or osprey nest or great blue heron rookery. Activities such as pruning, thinning and opening restoration may be permitted between October 1st and February 14th. Limit land management activities in the 660 to 1,320 foot zone around eagle and osprey nests or great blue heron rookeries except during the non-nesting season of October 1st to February 14th. Prohibit the construction of new roads or motorized trails within 1,320 feet of an eagle or osprey nest or great blue heron rookery. These requirements may be waived by mutual agreement of the LCO, FS and WDNR if no feasible alternatives exist and use can be justified.
 - (b) Reserve scattered large canopy red and white pine trees within one-half mile of the flowage or any major river within the flowage management boundary for potential eagle/osprey nesting and perching sites. Artificial nesting structures should only be considered when it is determined there is a lack of suitable natural sites available.
- Protect loon habitat when considering developments adjacent to the flowage and islands.
- To the extent applicable, adhere to the guidelines and objectives set forth in wolf recovery plans, elk reintroduction programs and any future moose reintroduction program.

Fire Management

All wildfires will be actively suppressed. Decisions on the methods to be used to suppress fires will be made on a case-by-case basis. In making these decisions, maximizing the maintenance of the undeveloped shoreline character should be a priority. Restoration, reforestation, and protection of land that is damaged by fire will be permitted, within covenant and ordinance restrictions.

Prescribed fires may be used as a management tool within the flowage management area to further the objectives of the Joint Management Plan.

Transportation Systems

Public vehicular access will be limited to existing designated access points. Roads constructed for temporary uses, such as logging, will be closed to public vehicular use, and revegetated upon completion of the temporary activity.

New permanent road construction will be limited to roads essential to support ongoing resource management activities. All roads will be designed, located, constructed and maintained in a manner

that perpetuates the undeveloped shoreline character of the area.

Cultural Resources

Burial sites and other cultural resources will be inventoried, evaluated, and protected as required by law and intergovernmental agreements. Burial sites will not be publicly identified or interpreted, except by prior intergovernmental agreement. Other cultural resource sites may be identified and interpreted if these actions will not adversely affect the site.

Intergovernmental exchange of land for the purpose of exchanging burial sites and other cultural resource sites will be permitted.

Public Health and Pollution Control Activities

The use of the flowage management area for landfills, waste disposal sites, and similar activities will not be permitted.

Oil, Gas and Minerals Management

Prospecting for, exploration for, or extraction of oil, gas or minerals will not be permitted on LCO and WDNR lands. On FS lands, the statutorily required review and permitting process will be followed unless lands are classified for exemption.

Coordination of Law Enforcement Activities

The parties acknowledge the often overlapping and potentially conflicting jurisdiction that each has over the land, water and other natural resources of the Flowage Management Area (Refer to page 36 for a discussion on Local Governments, Regulatory Authorities and Conservation Law Enforcement).

Each party is responsible for exercising its authority for the protection and enhancement of the Flowage Management Area, and for enforcing the laws and regulations with its respective jurisdiction. This jurisdictional maze creates law enforcement problems that might undermine the purposes of this plan.

Because the parties want to better protect and enhance the natural resources of the Flowage Management Area, each party commits to exercising its respective law enforcement responsibilities in a cooperative and coordinated manner with the other parties. Toward this end the parties agree to explore ways to increase law enforcement effectiveness and efficiency, and will attempt to develop law enforcement arrangements that avoid duplication of effort, share information and evidence with appropriate officials on possible violations of another jurisdiction's regulations, and where possible, share law enforcement credentials.

The geography of the Flowage Management Area also creates law enforcement problems. The remoteness and relative inaccessibility of WDNR and FS lands within the area often make those agency's patrol and response activities difficult. Frequently, LCO and its officers are in the best position to observe events on the flowage and surrounding lands. Should it be possible for some or all of the parties to share law enforcement credentials, the parties agree to explore the concept of a "flowage warden" on a cost-sharing basis that would be stationed at LCO.

Intergovernmental Coordination and Joint Management Activities

The FS, LCO and WDNR are individually responsible for and will only undertake management activities on lands they own or administer, or that otherwise are within their respective jurisdictions, except as may be otherwise agreed under separate cooperative agreements, defined in court decisions or stipulations, or otherwise agreed to.

Management Coordination and Implementation of Management Plan; The FS, LCO and WDNR will coordinate their management activities that affect the Chippewa Flowage. Appropriate consideration for management decisions will include tribal needs for natural resource harvests to meet subsistence, religious, ceremonial, medicinal, and economic needs; environmental and resource capabilities; the maintenance of sustainable and resilient ecosystems; the maintenance of the natural ambiance of the flowage area; and public desires.

To facilitate on-going communication and the resolution of outstanding issues, the parties agree to establish a joint, non-regulatory team that will meet semi-annually. As appropriate, the team will:

- Review progress made and discuss issues arising under this management plan to ensure that the parties are faithfully and effectively implementing it and adhering to its terms, as well as to discuss trends, issues or other matters that may effect the flowage management area.
- Refer specific questions or issues to designated representatives or ad hoc working groups for discussion, development of information or formulation of recommendations.
- Act as a liaison between all agencies to assure active and timely exchange of information on management activities and concerns.
- Review past activities and discuss pending or anticipated actions related to the flowage.
- Review and assess public use in the flowage and take appropriate action to ensure the natural ambiance or character of the flowage is maintained.
- Explore opportunities for cooperative or shared management and enforcement activities on the flowage that could provide mutual economic and staffing efficiencies.
- Provide information to the public on management activities, and continue to solicit comments from flowage users, local governments and other interested parties regarding management and use issues.
- On a case by case basis, assess the need to amend the management plan prior to the

scheduled mandated ten year review.

The parties agree to cooperate in identifying and seeking adequate funding for the enhancement of their infrastructures necessary to improve the implementation of this management plan.

In exercising their respective authorities and in coordinating their management activities, the parties shall strive to reach consensus regarding all decisions, actions and processes that are contemplated by this management plan or that will affect the Flowage Management Area. Where consensus cannot be reached, the parties shall attempt to resolve any dispute or disagreement first by good faith discussions at the lowest possible level on a government-to-government basis between properly authorized representatives who have the authority to resolve the dispute in question. A party may make such decisions and take any lawful action regarding the Flowage Management Area that it deems necessary or appropriate subject to any available challenges or appeals by any other party pursuant to applicable law.

During the course of their dealings, the parties shall ensure that they have identified their representatives with whom the other parties should interact regarding particular decisions or particular types of decisions.

Resource Inventory and Survey Coordination; The WDNR, LCO and FS will coordinate and, where appropriate, jointly undertake natural resource inventories and recreational use surveys or studies that will improve the protection and management of the flowage area. Key issues to be addressed include:

- Recreational use, including boating
- The need for registration of island campers and/or a campsite reservation system
- Water quality monitoring and identification of sources of pollution
- Monitoring changes in aquatic plant communities
- Restoration of wild rice beds
- Monitoring the abundance and location of exotic species
- Monitoring threatened and endangered species
- Fish stocking
- Mapping and assessing walleye and muskellunge spawning habitat
- Annually assessing the year class strength of walleye, muskellunge, and northern pike.

Administrative Service Facilities; The WDNR, LCO and FS will jointly investigate the need for administrative and public contact facilities on the flowage.

Other Administrative Matters; **Management Plan Effective Date and Term** - The management plan shall take effect on the date when all eligible parties have properly ratified it in accordance with their respective governmental procedures, and proper notice of ratification has been provided to all

parties.

A party may withdraw its ratification of the management plan at any time provided it complies with the Notice of Withdrawal requirements provided below. The management plan shall remain in effect as long as no eligible party has withdrawn its ratification of the plan. Should any party withdraw its ratification, the management plan shall automatically terminate upon the effective date of the withdrawal.

The parties agree to review the management plan at least every 10 years.

Notice of Ratification - Within 30 days of ratification of the management plan, a party shall notify all other parties of the date of ratification. Each party's Notice of Ratification is specifically incorporated into the management plan as if set forth in its entirety.

Notice of Withdrawal - A party shall provide written notice to the other parties of its intent to withdraw its ratification of the management plan at least 60 days in advance of the proposed withdrawal date. Within 45 days of such notice, or such other time period as may be agreed upon, the parties shall convene a meeting to discuss the intent to withdraw and to attempt to reach consensus on ways to prevent the withdrawal. Should a party ultimately withdraw from the management plan, it shall provide a written Notice of Withdrawal to the other parties. The notice shall provide the effective date of the withdrawal.

Designated Representatives - In providing notice of its ratification, a party may designate its representative for receiving the notices from the other parties that are required by the management plan. Where a party has not formally designated a representative either with its Notice of Ratification or with respect to particular matters addressed by the management plan, another party may provide a required notice ex officio to the office of the official that provided the party's Notice of Ratification.

In addition, as soon as possible after ratification, a party shall inform the other parties of its designated representative for serving on the management coordination team established by the management plan and of such other representatives designated for other purposes related to the plan.

Congressional Involvement - Pursuant to 42 U.S.C. Section 22, no Member of or Delegate to the Congress of the United States shall be admitted to any share or part of this instrument, or any benefits that may arise therefrom.

CHAPTER THREE:
AFFECTED ENVIRONMENT
AND BACKGROUND INFORMATION

The 15,300 acre impoundment (not including island acreage) is Wisconsin's third largest water body. This sprawling water body has a highly irregular, generally undeveloped 233 mile shoreline. It's dotted with approximately 200 islands ranging in size from one half acre to 272 acres. The area's topography is one of numerous small rolling hills interspersed with valleys, streams and bogs, often called knob-and-kettle topography. Most of the shoreline is well drained upland with fairly steep banks. The shorelands are mostly wooded, with a mixture of aspen, birch, pine, northern hardwood and oak. Mature aspen is predominant. Almost all birds and animals indigenous to northern Wisconsin are found within the area, including bald eagle, osprey and loon.

For decades this unique water body has been highly regarded throughout the midwest for its spectacular natural scenery and recreational opportunities, especially fishing.

FLOWAGE HISTORY

Northern States Power Company constructed the dam on the Chippewa River just below the confluence of the East and West Forks. This action caused flooding over much of the homeland of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, thus forming the flowage. The Chippewa Reservoir Project was completed in 1923 under license from the Federal Energy Regulatory Commission (FERC). The flowage was primarily created to be a reservoir for surplus water, supplementing down-stream river levels to support power production during low-flow seasons. Secondarily, the flowage was created to aid flood control.

The Chippewa Flowage is a 15,300 acre drainage impoundment. It's fed primarily by the East Fork and West Fork Chippewa Rivers and the Chief River. In addition to these rivers, the flooded area originally contained ten named lakes - Crane, Chief (Akwawening)⁶, Tyner, Rice, Scott, Crystal, Pa-Kwa-Wong, Desire (Moonshine), Pokegama, Cranberry and several small unnamed lakes.

LCO opposed plans to flood the area from the time they were first discussed in the early 1900's. At that time, the flowage area was largely in the Town of Reserve, which had a predominantly tribal population, but also included a number of non-Indian settlers. The Town of Reserve first voted against the construction of the dam and flowage. However, the boundaries describing townships were later re-established, resulting in a lessening of the effectiveness of the tribal vote. Following resolutions passed on April 19, 1916, the Town of Reserve was detached and sections

⁶Geographical names for "Chief Lake" and "Squaw Bay" are not historical names and have been objected to by the Lac Courte Oreilles people. "Chief Lake" has always been called Akwawening by LCO people.

CHAPTER THREE AFFECTED ENVIRONMENT AND BACKGROUND INFORMATION

were added to the townships of Hunter, Hayward, Round Lake, Radisson, and Couderay (Appendix D). In a subsequent vote by the townships on the construction of the dam, the proposal passed. However, the Lac Courte Oreilles Band never gave its approval.

Prior to the flooding, the Tribe considered the area a primary wild rice gathering site, which produced about 25,000 pounds of rice annually. Wild rice, known as manomin, was a traditional mainstay in the Chippewa diet as well as important culturally and spiritually. The resulting high and fluctuating waters of the flowage has essentially eliminated wild rice from the area, much as tribal leaders had predicted.

This loss drastically changed the subsistence lifestyle of the LCO people. The flooding most affected the residents of the Village of Post, a small Indian community including a church and graveyard that was covered in the flooding. While some graves were reinterred, many remained on the original site now called Church Island. Remains from burial sites have floated to the surface, and erosion continues to damage and uncover the burial sites to this day.

After the initial 50 year license expired, the relicensing of the power project was strongly protested by some tribal members. Members of the LCO Band as well as members of the American Indian Movement (AIM) viewed the relicensing as a time to air long-standing grievances with the power project. In 1971, the Winter Dam was occupied by a small group of Indian people who hoped to block the license renewal. The takeover effectively gained the attention of the media as well as state and federal officials. The resulting lengthy litigation obtained several thousand acres for the LCO Band to replace some of the land flooded by the power project as well as the ability of the Band to generate its own power.⁷ NSP, the Secretary of the Interior, the Secretary of Agriculture, LCO, and the WDNR entered into negotiations under FERC “rules of practice and procedure” to determine the future ownership and management of the flowage.

WATER RESOURCES

Water Level Agreements

The negotiating parties, described above, entered into a Settlement Agreement on February 1, 1984 (Appendix B). The agreement includes the following language related to water levels:

“Northern States Power Company shall maintain water level elevations consistent with current practice (i.e., generally between 1,310 and 1,313 feet m.s.l. from June 1 through November 1, with a winter drawdown of approximately 16 feet) and continue to schedule releases of water from the reservoir for the benefit of NSP's downstream plants and for the benefit of the recreational and fishery uses which are made of the reservoir.”

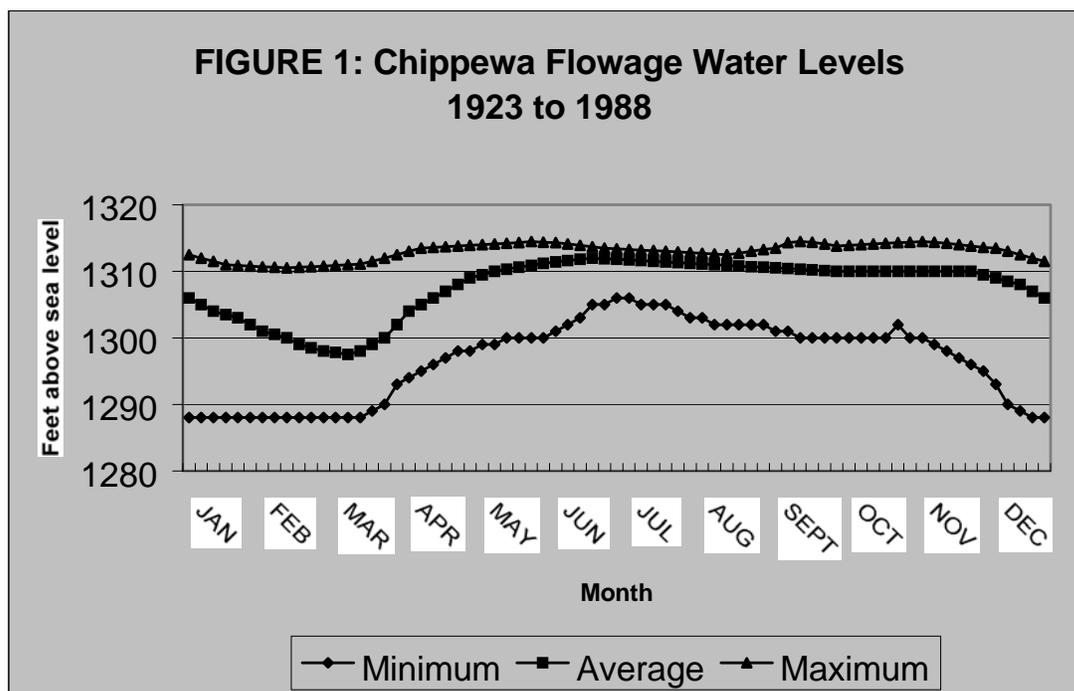
This language was subsequently included in the application of NSP and LCO for a license exemption

⁷ Pfaff, Tim, Paths of the People: The Ojibwe in the Chippewa Valley, Chippewa Valley Museum Press, 1993, pp. 75-78.

CHAPTER THREE ***AFFECTED ENVIRONMENT AND BACKGROUND INFORMATION***

from FERC. The exemption was granted and the settlement agreement was approved on September 28, 1984. After the exemption was granted, NSP, LCO, and WDNR entered into further negotiations on how water would be released from a hydro power plant being constructed at the dam. However, these negotiations were limited to modifying daily river fluctuations and did not affect overall flow releases from the dam or the water level regime on the Chippewa Flowage.

Because the settlement agreement and license exemption for this project simply state the water levels shall be maintained “consistent with current practice” it is important to review how water levels have been maintained over the years. Figure 1 illustrates flowage water levels between 1923 and 1988.



As shown in Figure 1, there is considerable variation within the general guidelines specified in the settlement agreement. NSP attempts to maintain summer full pool at 1,312 feet to avoid flooding private basements, which can occur at 1,313. The winter season sees the most extreme water level fluctuations, however, there hasn't been a full 16 foot winter drawdown since 1971. The extent of winter drawdown is determined by precipitation patterns. Usually drawdown is less during drought years or when there is little snow cover; this is to assure that the flowage can be refilled by June 1. During the recent dry years of 1987, 1988, 1989, and 1990 drawdown was less than 6 feet. Extended drought conditions or unanticipated wet conditions can have more severe impacts on water levels and may at times result in levels outside those specified in the agreement.

At full pool level (elevation 1,313) much of the flowage is between 15 and 20 feet deep. However, over three-fourths of the flowage is less than 20 feet deep and 16% is less than 3 feet deep. The maximum depth of the flowage at full pool level is 92 feet and the mean depth is 14 feet.

Surface Geology and Soils

The Chippewa Flowage area is covered with thick (approximately 100 feet) glacial deposits in the form of a ground moraine, pitted outwash, and interlobate moraines. Kettle lakes are common. The glacial sediment is largely sand and gravely sand, locally with very minor amounts of finer grained matrix material. A thin layer of loess mantles these glacial deposits in the eastern part of the flowage area. The unconsolidated sandy glacial materials lack cohesive properties, and are easily eroded when exposed to wind and water.

In general, sandy loam (Pence-Padus) and loamy sand (Crivitz-Vilas) soils cover the western part of the flowage area, giving way to silt loam soils (Stambaugh-Goodman) in the eastern part. In low areas widely distributed throughout the region, poorly-drained silt loam soils are underlain by coarse sandy loam subsoil. Wetlands filled with 20 inches or more of organic matter and supporting largely sphagnum or leatherleaf vegetation are common.

Shoreland Erosion

Flooding the Chippewa Flowage, as in any impoundment, produced a condition of disequilibrium, opening up virgin shoreland to attack by waves. The flowage shoreline is especially susceptible due to its highly erodible, sandy soils and underlying unconsolidated glacial deposits and rolling topography.

The continuing wave impact and erosion at the base of the sandy shoreland banks in the flowage prevents stabilization of those slopes, and perpetuates the disequilibrium condition by continually undercutting them. (Ice effects on the banks are not a significant erosion factor here because of the flowage's winter drawdown.) It is therefore no surprise that bank erosion is common, and is especially evident wherever wind or boat generated waves impact steep, sandy slopes. Over the years, many small islands have been eroded away.

Water Chemistry

The water chemistry of the flowage can generally be described as soft, near-neutral pH and stained. The water's chemistry (particularly alkalinity and total phosphorus) indicates the flowage should support relatively low levels of organic production. An interesting feature of the flowage is a noticeable dichotomy in water clarity between its east and west basins. Water in the east basin is more darkly stained due to the direct influence of drainage from the Chippewa River system. The flowage's west basin is clearer because it contains several natural groundwater fed lakes (Chief, Scott, and Crane) and clearer feeder streams. Some pools or bays become isolated by the winter drawdown, and low dissolved oxygen levels can become critical for fish survival in several locations.

Aquatic Vegetation

The aquatic plant community of the Chippewa Flowage was surveyed in 1971, and was discussed at length by Nichols in the Chippewa Flowage Investigations (Inland Lakes Demonstration Project, Appendix T 1972). Comprehensive aquatic plant surveys of the flowage have not been done since 1971.

The Nichols' study compared vegetation data between specific sites on the flowage, and between the flowage and other waters in the region to analyze the effects of drawdown on the aquatic plant community.

Drawdown was found to be an important determiner of the species composition and size of the littoral zone (zone of aquatic plant growth), and the density of its plant cover. Generally speaking, the greater the amount of drawdown the more shallow the littoral zone and the more open space within it. The Chippewa Flowage's aquatic macrophyte community is dominated by species well adapted to the fluctuating water level conditions, replacing the extensive wild rice beds that were present in the river/lake complex prior to flooding.

One trend that has become apparent by recent observations is the increasing amount of cattail, *Typha latifolia*. Dense cattail beds appear to be moving out into the open water zone, and they are assuming increased dominance over other emergent species, such as bulrush. In recent years, the WDNR has issued a number of permits for the control of nuisance aquatic plants to individuals to chemically eradicate cattails. Cattails are commonly acknowledged by resource managers to be poorer fish habitat, and generally less productive wildlife habitat than less dense species such as bulrush.

Floating bogs are unique plant communities that commonly occur on the flowage. When water levels were originally raised, shoreline bog mats floated loose and became mobile islands. Many of the smaller ones broke up and disappeared, but several larger ones still exist. Their free floating habit sometimes causes nuisances by blocking navigation channels or boat access points. The plant species of the typical floating bog consists of 26 aquatic, semi-aquatic, and terrestrial species. The two most commonly occurring species are sphagnum moss and leatherleaf, *Chamaedaphne calyculata*.

Fishery Resource

Comprehensive fishery surveys were conducted on the flowage in 1971 and 1990. A total of 35 fish species have been documented and are listed in Table 1. The walleye population was estimated at 5.2 adults/acre in 1990, well above the 3.0/acre density agreed upon by state and tribal biologists as indicative of a healthy reproducing population (Biological Issue Group 1988). Recruitment of juvenile walleye is monitored annually by index surveys. Year class strength is typically variable for walleye with some year classes strong and others weak.

Several significant changes have occurred in the fish community. Sturgeon are found in river segments both above and below the flowage, but the dam prevents fish from moving freely and only

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a remnant population exists in the flowage itself. The invasion of northern pike into the system in the 1980's may pose a threat to the wild muskellunge population by competition and predation on their young. Mature northern pike currently are believed to outnumber mature musky 14:1 (Table 2).

The flowage continues to be heavily fished. In 1971, open water fishing pressure was estimated at 55 hours/acre/year, and remained high at an estimated 44 and 47 hours/acre/year in 1990 and 1991, respectively. All values are on the high end for the county, the region, and for such a large body of water.

Walleye and muskellunge are the two gamefish species preferred and sought by anglers (Table 3). During the 1990 and 1991 seasons, an estimated 23,600 and 25,100 walleye were harvested by anglers with nearly three times as many being caught (70,100 and 78,800, respectively). Harvest of muskellunge was estimated at 427 in 1990 and 194 in 1994 with many more, including sublegal size fish, being caught (6,319 and 4,687, respectively).

In addition to this creel data, resort owners have been tracking harvest of muskellunge through voluntary registration. Over the past 30 years from 200 - 1,500 per year have been registered. After 1979, musky anglers' attitudes began shifting from a catch-and-keep to catch-and-release philosophy. As of 1997, an estimated 87% of the musky caught were released. Results of a long-term tagging study by Musky Inc. show that survival of released fish can be high, and that a significant number of musky are later recaptured. Also, average size of the harvest has increased since 1971. Half of the harvest now exceeds 40 inches as opposed to only 10% in 1971.

Tribal harvest from off-reservation waters during spring is completely monitored. During the 12 year period from 1985 - 1996, tribal spearfishers harvested from 17 - 1,744 walleye per year (average: 905) and from 3 - 22 muskellunge (average: 8 per year). The tribal off-reservation winter spear fishery was monitored by Great Lakes Indian Fish and Wildlife Commission from 1983/84 through 1988/89 and again in 1992/93 (Miller and Goyke 1994). Harvest was estimated at 169 walleye and 143 muskellunge during winter 1992/93. Tribal harvest on-reservation is not monitored, but it is likely to mirror the order of off-reservation harvest.

For the two fisheries combined, annual exploitation is likely around 35% for walleye and 27% for muskellunge. State and Tribal biologists agree these rates are sustainable (Biological Issues Group 1988).

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TABLE 1: CHIPPEWA FLOWAGE FISH SPECIES

Common Name	<u>Binomial</u>	Relative Abundance*	Comments
Walleye	<u>Stizostedion vitreum</u>	A	Most common predator
Muskellunge	<u>Esox masquinongy</u>	C	Native and stocked. Repro. success stable.
Northern Pike	<u>Esox lucius</u>	C	Recent invader. Present since 1980's. Population still expanding.
Largemouth Bass	<u>Micropterus salmoides</u>	P	Back bays and natural lakes' sections with heavy weed cover. More prevalent west basin; increasing.
Smallmouth Bass	<u>Micropterus dolomieu</u>	P	More common in riverine sections and east basin; increasing.
Channel Catfish	<u>Ictalurus punctatus</u>	R	More common in riverine sections above and below flowage.
Lake Sturgeon	<u>Acipenser fulvescens</u>	R	More common in riverine sections above and below flowage.
Brook Trout	<u>Salvelinus fontinalis</u>	R	Exclusively tributaries- Moss Creek & Hay Creek.
White Sucker	<u>Catostomus commersoni</u>	C	With shorthead redhorse, most common nongame spp.
Shorthead Red-horse	<u>Moxostoma macrolepidotum</u>	C	With white sucker, most common large nongame forage spp.
Golden Red-horse	<u>Moxostoma erythrum</u>	P	More common in riverine system.
River Red-horse	<u>Moxostoma carinatum</u>	R	Occasional specimen.
Greater Red-horse	<u>Moxostoma valecienns</u>	R	More common in riverine section.
Silver Red-horse	<u>Moxostoma anisurum</u>	R	More common in riverine system.
Carp	<u>Cyprinus carpio</u>	C	Mostly larger, older individuals.

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Common Name	<u>Binomial</u>	Relative Abundance*	Comments
Bluegill	<u>Lepomis macrochirus</u>	C	Mostly abundant in weedy areas in natural lake basins, smaller lakes on property; increasing.
Pumpkinseed	<u>Lepomis gibbosus</u>	P	Most abundant in weedy areas in lake basins, other lakes.
Rock Bass	<u>Ambloplites rupestris</u>	C	Widely distributed.
Black Crappie	<u>Pomoxis nigromaculatus</u>	A	Most important panfish spp.
Yellow Perch	<u>Perca flavescens</u>	C	Major prey for walleye. Recent trend toward larger size in sports fishery.
Log Perch	<u>Percina caprodes</u>	P	
Johnny Darter	<u>Etheostoma nigrum</u>	P	
Burbot	<u>Lota lota</u>	P	More common in riverine section.
Black Bullhead	<u>Ictalurus melas</u>	C	Most important bullhead spp.
Yellow Bullhead	<u>Ictalurus natalis</u>	R	
Brown Bullhead	<u>Ictalurus nebulosus</u>	R	
Tadpole Madtom	<u>Noturus gynnus</u>	P	Documented for first time in 1990 survey.
Trout Perch	<u>Percopsis omiscomoycus</u>	C	Important forage species
Common Shiner	<u>Notropis cornutus</u>	P	
Golden Shiner	<u>Notemigonus crysoleucas</u>	P	Probably bait bucket introduction.
Emerald Shiner	<u>Notropis atherinoides</u>	P	More common in Chippewa River below flowage.
Bluntnose Minnow	<u>Pimephales notatus</u>	P	
Creek Chub	<u>Semotilus atromaculatus</u>	R	Vicinity small tributary streams
Northern Red-belly Dace	<u>Phoxinus eos</u>	R	Vicinity small tributary streams.

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*A=abundant; C=common; P=present; R=rare

Note: It's highly likely that there are more species of small cyprinids and darters than have yet been documented and listed here.

TABLE 2: GAMEFISH POPULATION CHARACTERISTICS BASED ON THE 1990 COMPREHENSIVE FISHERIES SURVEY

Species	No. Sampled	Sizes	Estimated Total Population	Abundance*	Since 1970-71
Walleye	20,606	4.0 - 30.5	220,000 (76,000)	A	Down
Musky	646	9.0 - 50.5	6,700 (2,000)	C	Stable
N. Pike	2,082	8.5 - 36.5	60,000 (28,000)	A	Up (Not present in 1971)
L. Mouth Bass	406	7.0 - 15.4	No estimate	P (common east side)	Up
S. Mouth Bass	112	5.5 - 16.9	No estimate	P (common east side)	Up

*A=abundant; C=common; P=present

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TABLE 3: SPORT FISHERY PROFILE BASED ON CHIPPEWA FLOWAGE OPEN WATER CREEL CENSUS SYNOPSIS,

May - October 1990

Specimen	Caught	Kept	% Anglers Fishing for (Rank)	Average Size	Catch Rate (Fish/hour)	(# Caught vs. 1970 Trend)
Walleye	70,000	23,500	30% (1) Tie	14'	0.26	Down
Musky	6,300	429	30% (1) Tie	39'	0.02	Up
N. Pike	25,800	5,600	3% (6)	22'	0.15	Up
L. Mouth	9,000	800	2% (7)	14'	0.20	Up
S. Mouth	6,600	800	2% (8)	13'	0.24	Up
Bluegill	143,000	24,000	8% (4)	6.5'	1.90	Up
Crappie	327,000	195,000	22% (3)	9.5'	1.70	Up
Perch	62,000	17,000	4% (5)	8.5'	0.80	Up

*44 hours/acre estimated fishing pressure

May - October 1991

Specimen	Caught	Kept	% Anglers Fishing for (Rank)	Average Size	Catch Rate (Fish/hour)	(# Caught vs. 1970 Trend)
Walleye	78,000	25,000	46% (1) Tie	13'	0.23	Down
Musky	4,700	194	33% (3)	33'	0.02	Up
N. Pike	20,000	6,500	8% (4)	21'	0.07	Up
L. Mouth	15,500	2,600	3% (6)	13'	0.35	Up
S. Mouth	27,000	4,400	5% (5)	13'	0.22	Up
Bluegill	447,000	228,000	25% (4)	N/A	2.12	Up
Crappie	452,000	321,000	46% (1) Tie	N/A	1.31	Up
Perch	104,000	36,000	3% (7)	11'	1.04	Up

*47 hours/acre estimated fishing pressure

Fisheries Management Activities and Surveys

Baseline fishery investigations on the Chippewa Flowage were conducted in 1971, and are described in the Chippewa Flowage Investigations (Inland Lakes Demonstration Project, Appendices O & P 1972). The survey consisted of creel census, age-growth analysis, walleye tagging and population estimates, and comparisons between sampling sites to detect effects of overwinter drawdown. This survey design was repeated in 1990, as part of the Treaty Assessment program, and an additional survey was done in 1991. In 1973-74, fall electrofishing stations were established at 24 stations to index walleye and muskellunge abundance and recruitment. Anywhere from 3 - 6 sites are resampled annually to monitor long-term trends. Species specific management activities include:

Walleye

- In 1984-87, over 5,000 spawning walleyes were jaw-tagged. Based on voluntary returns from anglers, a minimum exploitation rate was estimated at 10-15%.
- The minimum size limit for walleye for state-licensed anglers was amended to no size limit in 1980, and it remains in effect at this time.
- The WDNR annually nets the flowage for walleye and sucker spawn for rearing and restocking in other waters.
- In 1996, the Great Lakes Indian Fish and Wildlife Commission began to survey walleyes as part of an on-going trend analysis for determining mercury levels in the fish.

Muskellunge

- Muskellunge catch and harvest has been monitored annually for over 30 years via a voluntary catch chart program.
- Between 1981 and 1987, the local Chapter of Musky Inc. and Guide Association tagged and released nearly 5,000 muskellunge. Recaptures indicate a high rate of survival from catch and release.
- Muskellunge have been stocked annually since 1982. This was in response to an invasion of northern pike and radical decline in wild muskellunge spawning success in early 1980's. Presently, about 17% of the musky population is believed to be comprised of stocked fish while the native population appears stable.
- A radio-telemetry study of muskellunge and northern pike spawning sites occurred from 1988 through 1992. Results suggest that spawning sites are more extensive than previously believed. The West Fork Chippewa River and the Hay and Moss Creek areas are major musky spawning/nursery sites.

Black Crappie

- A 15-fish daily bag limit for state-licensed anglers began in 1997.
- The Lake Chippewa Association has an active fish crib program. About 300 cribs were placed in the flowage in 1980-90, and 175 modular pre-fab structures were sunk during 1990-95. In cooperation with LCO, an additional 150 structures are planned for 3 more sites by 2000. This "hyper-habitat" management program is tailored to improve the fishery for black crappie.

Wetland Habitat and Representative Wildlife

Much of the wetland area associated with the flowage is bog, which is rather unproductive wildlife habitat. This limits the potential waterfowl use of this flowage. However, limited stands of more desirable aquatic plants do provide some waterfowl food and nesting cover. Mallards, blue winged teal, black ducks, in addition to loons, coots and mergansers, nest here. Muskrat and beaver are also common on the flowage and on the 2,000 plus acres of associated wetlands. Diver ducks and geese utilize the flowage area during spring and fall migration.

Nesting, denning, and rearing habitat for wetland and aquatic wildlife species is provided on the flowage by the miles of extensive shoreline (154 miles on the perimeter and 79 miles on the islands) and by beds of emergent aquatic vegetation, such as cattail and bulrush. The floating bog islands offer important special habitat for red-winged and yellow-headed blackbirds, and provide another measure of plant diversity.

The principal resident wetland or aquatic bird and furbearer species in the Chippewa Flowage area include:

Loon	Hooded Merganser	Kingfisher	Common Merganser
Woodduck	Blue-winged Teal	Mallard	Ring-neck Duck
Black Duck	Beaver	Otter	Muskrat

Flowage drawdowns have a strong impact on furbearers and waterfowl. It significantly limits their population levels and use of the flowage.

UPLAND RESOURCES

Timber and Other Vegetation

Mainland Vegetation; Up until the last half of the 19th century, the major timber types in the area were red and white pine and northern hardwood. The Chippewa people depended on the gathering of maple syrup, birchbark and many understory plants for food and medicines. Some of the finest pine in the state was harvested here. The cutting and burning that followed has produced the present aspen dominated mixture of aspen, birch, pine, northern hardwoods and oak.

As a result of the 1983 Voigt decision, the Chippewa exercise gathering rights off-reservation, so they can still access traditionally important foods, medicines, firewood, and other forest products in the area. The Chippewa have been working with the U.S. Forest Service to insure that tribal interests are also considered in management practices.

The aspen timber type comprises 60 to 70 percent of the acreage on the adjacent mainland. These stands occur as pure aspen, or a combination of aspen, birch, oak, pine and red maple, of which aspen is the major component. Very little seedling-sapling understory has developed under these natural aspen stands. The existing lower vegetation is mainly hazelbrush, Juneberry, chokecherry and

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dogwood. Pine and oak seedlings commonly exist under seed-bearing oak and pine trees. This is especially noticeable along the lake shore. Red maple is also present in the understory. Aspen age class diversity is lacking, as much of the aspen acreage is now mature, with the remainder being in the sapling stage due to harvesting over the last 10 to 15 years.

The large percentage of even-aged aspen, which is nearing the end point of its life cycle, presents a very difficult problem for land managers. Mature aspen trees and stands are vulnerable to natural forces, which they easily withstood when they were younger. If it is disease, the process could be spread over a few years. If it is wind (quite likely), most or all of a stand can go down in one storm. These processes are part of the natural cycle providing coarse woody debris and forest structure called for above. Historically, windstorms, insect blight, and most importantly fire, have been the major disturbance factors that have sustained the aspen forest communities. Certain aspen stands have a conifer understory. Left unharvested, these aspen stands would deteriorate naturally, allowing the understory conifers to replace them.

The other timber types in the area have greater age class distribution, except for red pine. However, these tree species live longer, so there is no immediate management concern. The site qualities and stand conditions of these species are generally above average.

The immediate forest succession trends on sandy soils hint of more oak-pine types becoming predominant. On the heavier clay soils, northern hardwood species will be found in greater percentages if succession is allowed to continue to the climax stage. Habitat type mapping is helpful to determine successional pathways. Over time, balsam fir acreage will also increase, mainly in the northeast portion of the flowage.

Common shrubs present include round leaf dogwood, redosier dogwood, sumac, Juneberry, chokecherry, alder, willow and leatherwood. Most common ground cover plants are bunchberry, partridgeberry, princess pine, raspberry, Lycopodium species, wintergreen, sedge and cinquefoil, strawberry, hepatica, fringed pyrola, violets, white trillium, leatherleaf and bog laurel.

Fungi are also represented. The edible Morchella angusticeps is associated with aspen stands, but does not appear to be heavily collected by people in the area.

Island Vegetation; Within the flowage there are approximately 200 islands ranging in size from 272 acres (Big Timber Island) to less than an acre. The islands have a total area of 2,132 acres.

Similar to the mainland, the vegetation type on the islands is also a mixture of species. Aspen and birch are associated with a mixture of pine, oak and maple. The vegetation on the islands compares very closely with the mainland. Aspen, the largest component of island timber acreage, is dominant on 60% of the island area. Most stands are at or close to maturity. Site qualities are very good; however, stand conditions will deteriorate rapidly as the stands age. Paper birch is dominant on 20 to 30% of island area; white pine on about 10%; red pine, black spruce, and sugar maple (northern hardwood) are minor types. Big Timber Island, the largest of the islands, contains the only extensive stand of large red and white pine in the flowage. Age class diversity is lacking in all species. The succession trend on the islands is toward more oak, pine, and eventually to northern hardwoods

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Floating bogs form special, unique islands on the flowage. There are approximately 20 floating bog islands drifting around the flowage. Vegetation on the floating bogs are typical bog species; the trees are a scattering of paper birch, black spruce, and tamarack.

Upland Habitat and Representative Wildlife

Both the type and quality of habitat determines what wildlife species will be present and their relative numbers. The mature aspen and other aging short lived pioneer tree species, an absence of forest openings, and the presence of sugar maple as a common understory species on many locations on the flowage indicate that overall the habitat is in transition. Younger, more newly established forest stages are gradually giving way to older forests characterized by longer-lived, shade-tolerant vegetation. The present “middle aged” forest habitats support lower populations of ruffed grouse, deer, and other species commonly associated with a young forest, but support greater populations of fishers, goshawks and pileated woodpeckers usually associated with older forest.

Wildlife species common to brushy edges are also in low numbers. Such birds as catbird, brown thrasher, eastern bluebird, and white-throated sparrow are present, but not common.

Conversely, mature forest habitat is lacking, particularly in the northern hardwoods. A scarcity of large snag and den trees, living or dead, is a limiting factor for cavity-nesting wildlife. Most small mammal species common to northern Wisconsin can be found within the Chippewa Flowage area. Porcupine girdling and beaver cutting have the most significant effect on the present vegetation. The birds of prey common to this area are the barred owl, red-tailed, broad-winged, and red-shouldered hawks.

Endangered, Threatened and Sensitive Species and Habitat

The number of eagle territories on the flowage has varied between 9-10 over recent years. Large trees suitable for eagle nesting are nearly absent. Additionally, most of the large snags on the water, which could be used by osprey, have disappeared over the years due to natural forces. There is at least one active osprey nest at this time. Great blue herons utilize the flowage, and there are reports of several rookeries in the area.

Many of the large pines that could offer nest sites for bald eagles, osprey, and great blue heron will fall into the lake as erosion proceeds. However, stopping the erosion would not be without a cost to other wildlife as these eroded banks offer nest habitat for kingfishers, rough winged swallows and bank swallows. A potential conflict between future eagle nesting and recreational use could occur, since most existing island campsites or picnic sites are located where white pine (the preferred nest tree) is dominant.

The lessor redhorse is the only endangered fish known to inhabit the flowage. No threatened or endangered plants or insects are known to occur within the management area; however, a complete survey has not been conducted.

A few small beds of wild rice are present on the flowage. Studies have shown that wild rice is highly sensitive to impacts from widely fluctuating water levels, such as occur on the flowage.

PRESENT FLOWAGE DEVELOPMENT AND USE

Existing Conditions

As much as 90% of the flowage's shoreline appears undisturbed by human activities. The other 10% of the shoreline is developed with resorts and campgrounds, service facilities, roadways, public boat access sites and island campsites. Approximately 160 private homes and cottages are scattered around the flowage. All islands are undeveloped except two.

Most of the developed areas are clustered, leaving large tracts of undeveloped shoreline. However, many developments strongly dominate the shoreline due to their proximity to the water's edge, large size, bright colors or highly reflective surfaces, non-harmonizing architectural styles or lack of vegetative screening. Some developments are located in back bays not visible from the more open expanses of the flowage, while others are visible from great distances across the water.

User Facilities

The majority of the facilities for recreational users are provided by about 40 resorts. These facilities vary from highly developed resorts to auto-accessible campgrounds. Services provided by individual resorts vary; many offer boat rentals, boat launch facilities, swimming beaches and guide services.

Boat access to the flowage is provided at 6 public boat access sites and at various commercial and private sites. However, many of the resorts that provide general boat access to the public (for a fee) do not publicize it, so the facilities are not as fully used as they might be. The quality of existing boat launching sites varies from well developed and maintained to quite undeveloped, primitive sites. Parking at many sites is limited.

Recreational Activities

Peak recreational use is in summer, however, use does occur year around. The most popular recreational activities include fishing, camping, water skiing, pleasure boating and nature observation. The fall season attracts hunters, fishermen, and fall color sightseers. Winter brings snowmobilers and cross country skiers to the area. A major snowmobile trail system in Sawyer County has trails that cross the flowage area.

Special organized fishing events have been carried out on the flowage in past years. They include *Fishing Has No Boundaries* for handicapped and disabled anglers, and the annual *Hayward Lakes Chapter of Musky, Inc.* fall tournament. Other popular general recreational activities include nature

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photography, nature study, berry picking, and Tribal member cultural use. While the most popular recreational pursuits on the flowage are well known from observation and a recent public survey, very little data exists regarding actual use numbers and present recreational use trends on the flowage.

Camping Opportunities

Developed camping facilities are provided at approximately 11 resorts with over 250 total units available. The largest is an 80 to 90 unit tent-trailer campground that fronts on the flowage near Herman's Landing. Electricity is available at individual camp spurs, and a trailer sanitary dump station is provided for use. User fees are charged. No formal swimming beach is maintained at the campground, although swimming occurs along the shore where people camp. Use of this campground and most other flowage recreational facilities is boating and fishing oriented.

Certain WDNR, FS and LCO owned islands have 16 designated sites where primitive, public camping is allowed. Four sites are on islands that are partially within the LCO Reservation, eleven sites are on state owned islands and one is on an FS administered island. The Lac Courte Oreilles Band is instituting a permit system for tribal members to use two on-reservation sites and is encouraging a permit system for the other campsites.

The primitive, public campsites are equipped with picnic tables, fire rings and small "open-air" sanitation facilities. These are small wooden boxes with a toilet seat on top, often referred to as "wilderness latrines". They are moved when the pit fills and becomes unusable. No drinking water is available at the public landings or island campsites. Water must be brought in or obtained at resorts or private campgrounds.

Shoreline erosion is prevalent and a problem at most of the island campsites. The high erosion rate is due to a combination of wave action and trampling down the sandy banks. Wooden steps have been built at some high bank sites, however, bank erosion continues to be a problem requiring maintenance. In addition, unauthorized picnic and camping use occurs on some non-designated islands. Litter and damage to vegetation and the banks is a problem at these locations.

Present Recreational Facility Maintenance and Management

Management and maintenance of the non-commercial facilities on the flowage continues much as it was prior to state purchase of the Northern States Power Company land. Law enforcement is carried out by WDNR Conservation Wardens, except on the LCO Reservation which is patrolled by Tribal Wardens. Maintenance of the WDNR campsites, the single designated FS campsite and the state operated boat landings is carried out by a WDNR work crew. The maintenance activities performed typically include collecting trash, providing firewood to campsites, sign maintenance, repairing tables and benches, brushing and litter pickup. The work crew also does some public contact work such as answering questions from flowage users. A LCO crew does similar maintenance on their island campsites and their public boat landing.

LOCAL GOVERNMENTS, REGULATORY AUTHORITIES AND CONSERVATION LAW ENFORCEMENT

Because of a maze of often overlapping and potentially conflicting jurisdictions, it is not possible to accurately and completely describe the authority of the many governmental entities over the flowage area. For example, overlapping or conflicting jurisdictional claims regarding water and air quality between the WDNR and LCO presently have not been resolved either by the courts or by agreement of the parties. Information relevant to the parties' respective jurisdiction includes:

- The Chippewa Flowage management area is within the Sawyer County townships of Hunter, Hayward, Round Lake, Radisson, and Ojibwa. The majority of the area is within the Town of Hunter. A significant portion of the management area also lies within the Lac Courte Oreilles Indian Reservation. The area is zoned by Sawyer County. Most of the land is zoned Forestry (F-1), with the remainder being Wetlands (W-1), and Residential/Recreational 1 & 2 (RR1 and RR2). LCO also retains some zoning authority over the portions of the flowage area lying within the reservation boundary.
- The restrictive covenants and any similar Tribal ordinances and proclamations protecting the undeveloped condition of the flowage shoreline are under the jurisdiction of the WDNR, per the 1984 Chippewa Reservoir Settlement Agreement (Appendix B).
- State laws and regulations concerning the surface waters of the flowage are under the jurisdiction of the WDNR. Towns can pass and enforce health and safety related navigation ordinances for their areas of jurisdiction. LCO also claims authority to regulate surface water quality and usage within the reservation boundaries. A lake district association has not been formed on the flowage
- LCO wardens enforce tribal conservation laws applicable to the flowage area. Great Lakes Indian Fish and Wildlife Commission (GLIFWC) wardens also enforce LCO's and other Tribes' ceded territory conservation codes in the portions of the flowage area located off the reservation. WDNR and GLIFWC wardens that carry WDNR credentials enforce state conservation laws within the flowage area. Forest Service Law Enforcement and Investigations officers enforce certain federal regulations on FS-administered lands within the flowage management area.
- Federal courts have decided that Chippewa Tribes have retained hunting, fishing, and gathering rights on lands ceded in treaties in the 1800's. This document does not affect those rights in any way.
- Northern States Power Company owns the dam and all of the lands under the waters of the Chippewa Flowage by virtue of a perpetual easement across federal tribal lands and has the right to fluctuate water levels according to their FERC license agreement. The Chippewa Reservoir Settlement Agreement allows the construction of a hydro-electric power facility at the dam, conveys the land for this facility and an access corridor from the reservation to the power house to the LCO Band, and requires NSP to purchase the power produced according terms of a power sale contract.

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APPENDIX A

RESTRICTIVE COVENANTS – CHIPPEWA FLOWAGE

The 1984 Chippewa Reservoir Settlement Agreement (Appendix B) provides for strict regulation of development on the flowage's immediate shoreline and islands. As a direct result of the Settlement Agreement, restrictive covenants were established by NSP on its lands (including islands) and the LCO is required to establish by tribal ordinance and proclamation a similar buffer zone to protect the natural appearance of the flowage on lands it acquired from NSP under the Settlement. The terms of the covenants are described below:

200 Foot Buffer Zone

This property is subject to a buffer zone the width of which shall be a 200-foot horizontal distance landward from the shoreline above elevation 1,313 Mean Sea Level (MSL) as measured perpendicular to the lake shore (see Map 1). Filling, grading, cutting of native vegetation or placement of structures, including buildings, signs or piers, within the buffer zone is prohibited, except as provided below:

1. One pier or wharf is allowed per 200 feet of shoreline. Any piers constructed shall be perpendicular to the shoreline and shall not exceed 4 feet in width or extend waterward beyond the 1,310 foot MSL contour. Any wharf constructed shall be parallel to the shoreline and shall not exceed 4 feet in width or 16 feet in length. A pier or wharf shall not include any accessory structures such as railings, flagpoles, signs, etc.
2. Underbrush and dead or fallen trees may be trimmed only to the extent necessary to maintain a footpath and a pier or wharf. Footpaths shall not exceed 4 feet wide and shall be located so as to minimize the need to trim vegetation.
3. Riprap may be used to protect the shoreline from erosion provided it consists of natural stone and is constructed in compliance with DNR permit requirements.

The exterior color of any structures which may be erected within the buffer zone or on the property outside the buffer zone, including roofs and signs, shall be natural wood and earth-tone color. No structure shall exceed thirty-five (35) feet in height. These restrictions shall apply to the subject property up to one thousand (1,000) feet landward from the shoreline.

100 Foot Buffer Zone

This property is subject to a buffer zone the width of which shall be a 100-foot horizontal distance landward from the shoreline above elevation 1,313 Mean Sea Level as measured perpendicular to the lake shore. Filling, grading, placement of structures and cutting of native vegetation within the buffer zone is prohibited, except as provided here:

1. Piers may be constructed for the owner's own use or for use associated with an on-site business. Piers may include a temporary boat hoist without roof or walls.
2. Signs associated with or required for a water-oriented use are allowed, but shall not exceed 16 square feet in area.
3. Native shrubbery and dead and dying trees may be cut, and ground vegetation may be mowed to provide a water access corridor. Access corridors shall not exceed 30 feet in width for any 100 feet of shoreline. Sufficient native tree seedlings shall be maintained or native tree species planted in the access corridor to maintain a wooded canopy.
4. The placement of natural appearing rock or gravel to prevent erosion is allowed. This may include graveled walkways or rock riprap shoreline protection subject to DNR permit requirements.
5. Native shrubbery and dead and dying trees may be cut and ground vegetation may be mowed up to a horizontal distance of twenty-five (25) feet inside the landward boundary of the buffer zone to permit a yard. Sufficient native tree seedlings shall be maintained or native tree species planted in the yard to maintain a wooded canopy.

The exterior color of all structures including roofs, signs and decks, or other structures which may be located within or outside of the buffer zone shall be natural wood and earth-tone color. No structure shall exceed thirty-five (35) feet in height. The restrictions imposed by the preceding two sentences shall apply to the subject property up to one thousand (1,000) feet landward from the shoreline. Existing structures or uses which are not in compliance with these covenants and restrictions are allowed to continue; however at such time as any structure is moved, repainted, or replaced, it shall be brought into compliance.

Except as provided below, if at any time any of the foregoing covenants and restrictions are violated, this property shall revert to and revest in the grantor, its successors or assigns without necessity of re-entry unless, within ninety (90) days after receipt of written notice of such violation from the Wisconsin Department of Natural Resources, the violator removes or corrects such violation. The reversionary provisions of the preceding sentence shall not take effect if during the ninety (90) day prior the Wisconsin Department of Natural Resources establishes terms and conditions under which the violation shall be removed or corrected and the violator agrees in writing to remove or correct the violation in accordance with such terms and conditions. If the violator fails to remove or correct the violation in accordance with the terms and conditions established by the Wisconsin Department of Natural Resources, the property shall revert to and revest in the grantor, its successors or assigns without necessity of re-entry upon written notification to the violator by the Wisconsin Department

of Natural Resources that such failure has occurred.

The above covenants and restrictions may be modified or varied only if future circumstances and the public interest justify such modification and upon joint written approval of the Wisconsin Department of Natural Resources and the grantor.

This property is also subject to the duly enacted zoning ordinances of Sawyer County. The foregoing covenants and restrictions do not supersede or replace the Sawyer County zoning ordinances, except to the extent that they impose greater limitations or more restrictions than those imposed by the zoning ordinances, in which case the foregoing covenants and restrictions shall control.

Islands

The islands are restricted to use for camping and picnicking. No construction is allowed on the islands, except as needed for primitive camping and/or picnicking. All clearing, tree planting or logging is prohibited, except as mutually agreed upon by NSP and the DNR.

APPENDIX B

CHIPPEWA RESERVOIR SETTLEMENT AGREEMENT

between and among

**LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS,
NORTHERN STATES POWER COMPANY,
THE SECRETARY OF THE INTERIOR,
THE SECRETARY OF AGRICULTURE and
THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES**

This Settlement Agreement is made and entered into as of the 1st day of February, 1984, by and between Northern States Power Company (“NSP”), the Lac Courte Oreilles Band of Lake Superior Chippewa Indians (“Band”), the Wisconsin Department of Natural Resources (“DNR”), the Secretary of the Interior, and the Secretary of Agriculture (all of whom are sometimes collectively referred to as “Parties”).

INTRODUCTION

This Settlement Agreement (hereafter “Agreement”) has been negotiated and entered into pursuant to section 385.602 of the Federal Energy Regulatory Commission's (hereafter “Commission”) Rules of Practice and Procedure, 18 C.F.R. § 385.602 (1983). This Agreement contains the terms and conditions which, if accepted and approved by the Commission, will resolve by settlement the pending proceeding on NSP's application for a new license for Chippewa Reservoir Project No. 108. The Agreement includes, in the event the Commission does not exempt Project No. 108 from licensing, the conditions of a new license under section 15(a) of the Federal Power Act.

AGREEMENT

The Parties agree as follows:

- 1) NSP will convey by warranty deed to the United States in trust for the benefit of the Band all of NSP's right, title and interest in the land above elevation 1315 m.s.l. described on the attached property description, identified as Appendix A⁸ and designated on the attached map, identified as Appendix B. The lands conveyed shall continue to be subject to all easements and rights of way previously granted by NSP. Such easements and rights of way are described on the attachment identified as Appendix B. All taxes to the date of transfer shall be paid by NSP.

8 Appendices are part of original Chippewa Reservoir Settlement Agreement and have not been reproduced for this document.

- 2) NSP shall convey to the Band an easement of access across all NSP-owned land between the elevation 1315 m.s.l. boundary line of the land conveyed under the preceding paragraph and the Chippewa Reservoir shoreline.
- 3) NSP shall pay the Band \$250,000.
- 4) The Band and the Secretary of the Interior will, in exchange for the undertakings of NSP under this Agreement, convey to NSP a perpetual flowage easement over all of the tribal lands (estimated to be 525.5 acres) now located within the boundaries of the Chippewa Reservoir Project No. 108. These lands are identified by their legal description on Appendix D attached hereto and are designated on the attached map, identified as Appendix E.
- 5) NSP shall permit the Band to construct and operate electric power generation facilities (hereafter "Facilities") at the Chippewa Reservoir dam site and shall purchase the output of those Facilities, all in accordance with the provisions of the Chippewa Reservoir Power Sale Contract ("Power Sale Contract") which is Appendix F of this Agreement. To this end, NSP will convey to the United States in trust for the benefit of the Band all of its right, title and interest to the land on which the Band's powerhouse will be located and a corridor extending from the Bands's reservation to land on which the powerhouse will be located and will convey perpetual easements to the Band for the location and placement of the Facilities on lands of NSP and on and through the Chippewa Reservoir dam, all as described in the Power Sale Contract and the exhibits thereto. In the event that the Band either does not complete the construction of the Facilities within the time period set forth in the Power Sale Contract or abandons the Facilities, the Band and the Secretary of the Interior shall within 90 days convey back to NSP the land conveyed to the Band pursuant to this Paragraph and execute appropriate releases with respect to any easements granted by NSP pursuant to this Paragraph.
- 6) Implementation of the Power Sale Contract is an essential term of this Agreement. Therefore, it is the Parties' intent that the application for an exemption or alternatively a license regarding the Facilities should be considered for approval by the Commission together with this Agreement. If both an exemption and a license for the Facilities are denied by the Commission, then either the Band or NSP shall be entitled to revoke this Agreement in accordance with the provisions of Paragraph 11 of Article III of this Agreement. To this end, the Band and NSP are concurrently with the filing of this Agreement applying jointly to the Commission for an exemption of Project No. 108 from licensing in connection with the installation of the Facilities. The Band and NSP will request in that application that the Commission issue a separate license to the Band for the Facilities and a separate license to NSP for Project No. 108 in the event that it declines to grant the exemption. The license issued to the Band would include the Facilities to be built by the Band and the land on which the powerhouse and appurtenant project works are located, but would not include the Chippewa Reservoir dam or any lands within the boundaries of Project No. 108. In the event that NSP determines in its sole judgment that any condition required by any fish and wildlife agency as part of an exemption would be unnecessarily burdensome, NSP reserves the right to withdraw the exemption application and to ask the Commission to proceed with the

issuance of a separate license for the Band's Facilities and for Project No. 108. NSP agrees to undertake at its own expense such measures as are necessary and appropriate to obtain FERC approval of this Agreement and of either an exemption or a license for the Facilities and Project No. 108. These measures shall include preparation of applications and consultations with Federal and state agencies. NSP shall not be responsible for either the design, the engineering, or any associated costs of the Facilities. Nor shall NSP be responsible for any costs which the Band has incurred or may incur for the purpose of representing its interests in this matter. NSP shall coordinate the preparation and filing of the application with the Band and shall keep the Band fully informed as to the status of the application after it is filed with the FERC.

- 7) All of the Parties to this Agreement agree to support the exemption of Project No. 108 from licensing or, alternatively if an exemption is denied, to support the issuance of a separate license to the Band for its Facilities and a separate license to NSP for Project No. 108 and further agree to support expedited consideration of the application for exemption or, alternatively, for separate licenses. It is the Parties' intent that the Commission shall approve this Agreement at the same time that it issues an order exempting the Chippewa Reservoir Project from licensing or, if the Commission declines to issue an exemption order, then at the time that the Commission issues a license to the Band for the Facilities.
- 8) In the event that a license is issued to the Band, the Commission shall also, at the same time, issue a new license to NSP for Project No. 108 which in all material respects, exclusive of the findings and opinion recommended by the Administrative Law Judge in his Initial Decision issued December 14, 1977 (which shall not be included as part of the license), shall be the same as his proposed license order but with the following modification:
 - (a) Articles 41, 42, 52, 53, 55, 56, 58, 59 and subparagraph iii of Article 60 shall be deleted. The standard Articles relating to amortization reserves and uses of project lands (Brazos River Article) shall be added. The words "on or about" shall be added where appropriate in subparagraphs (1), (2) and (3) of Article 40.
 - (b) The project boundary shall exclude all lands conveyed to the Band pursuant to this Agreement and all remaining NSP-owned lands (both islands and mainland) above elevation 1315. The project boundary shall include all remaining NSP-owned lands (both islands and mainland) below elevation 1315. NSP shall not be required as a condition of any new license for Project No. 108 to undertake any new survey (land, aerial or otherwise) for the purpose of determining the project boundary.
 - (c) The term of the license shall be changed from 30 to 50 years.
 - (d) Ordering Paragraph D shall be modified to make it inapplicable to the Exhibit J, K and R maps which were filed with the application for new license.
 - (e) A new license article shall be added requiring NSP to prepare and file within two years of the effective date of the license revised Exhibit K or Exhibit G land maps and a revised Exhibit R to reflect the implementation of this Agreement.
 - (f) A new license article shall be added authorizing NSP to continue, subject to further order of the Commission, its existing lease with the Chippewa and Flambeau Improvement Company which was originally approved by the Commission on November 26, 1921.

- 9) Any license issued by the Commission to the Band for the Facilities to be constructed at the Chippewa Reservoir dam shall be consistent, in all material respects, with the terms and conditions set forth in the Power Sale Contract.
- 10) Whether the Commission issues a new license to NSP for Project No. 108 or exempts Project No. 108 from licensing, NSP agrees that it shall comply with the commitments set forth below with respect to the islands and mainland shoreline lands which will remain in the ownership of NSP after the conveyance to the Band. Such islands and mainland shoreline lands are shown on the attached map which is identified as Appendix G.
- (a) NSP-owned islands - Any type of construction shall be prohibited on NSP-owned island, except such improvements for primitive camping and/or picnicking as may be mutually agreed upon by NSP and the DNR. All clearing, tree planting or logging shall be prohibited, except as may be mutually agreed upon by NSP and the DNR.
- (b) NSP-owned mainland shoreline - NSP will neither undertake nor permit any development of its mainland shoreline lands until a buffer zone has been determined as follows:
- i. 70% of the NSP-owned mainland shoreline lands shall be subject to a buffer zone the width of which shall be a 200-foot horizontal distance above elevation 1313;
 - ii. 30% of the NSP-owned mainland shoreline lands shall be subject to a buffer zone of such lesser width as will adequately protect the natural appearance of the Chippewa Reservoir.

Within two years after the date of Commission approval of this Agreement, NSP and the DNR will cooperate to determine the contours of the buffer zone. After the buffer zone has been determined, NSP will submit a map to the Commission and the DNR which shall set forth the NSP-owned lands included within the buffer zone. NSP agrees that its islands and mainland shoreline lands shall be subject to the foregoing commitments as long as NSP retains ownership of such lands. NSP further agrees that it will place appropriate covenants and restrictions on such lands so as to assure the preservation of such commitments if NSP ever conveys the lands, or any portion thereof, to other persons. The DNR shall approve reasonable variances to or modifications of the buffer zone if future circumstances and the public interest justify such modifications. If the DNR approves or does not object to any modification of the width of the buffer zone on the shoreline lands acquired by the Band pursuant to this Agreement, NSP may, at its option, apply the same modification to its mainland shoreline lands which are subject to the buffer zone established pursuant to this Paragraph.

- 11) The Band will establish by tribal ordinance and proclamation a buffer zone of variable width on shoreline lands acquired pursuant to this Agreement. The width of the buffer zone on acquired shoreline lands outside the present reservation boundaries will be 200 feet measured from elevation 1313, to which 70% of these lands will be subject, with the buffer zone on the remainder to be of such lesser width as will adequately protect the natural appearance of the flowage. The width of the buffer zone on acquired shoreline lands within the present reservation boundaries will be 100 feet measured from elevation 1313, to which 50% of these

lands will be subject, with the buffer zone on the remainder to be of such lesser width as will adequately protect the natural appearance of the flowage. The Band and the DNR agree to cooperatively seek to define the contours of the buffer zone in accordance with the requirements of this Paragraph. The Band shall thereafter establish the contours of the buffer zone which shall be described in a tribal proclamation. The Band further agrees not to permit any development on lands acquired pursuant to this Agreement until such proclamation has been issued. The buffer zone as so defined will be subject to variance under the terms of the tribal ordinance and proclamation for purposes of access and limited development. The Band will inform the DNR when a variance request has been made. As so defined, the ordinance and proclamation will remain in force for a period of 50 years from the date of closing, unless earlier modified by agreement between the DNR and the Band, provided that any modification in either the width of the buffer zone on NSP lands, or in the term for which such zone shall be maintained pursuant to Paragraph 10 of this Article, which the DNR approves or does not object to will, at the Band's option, also apply to lands subject to the buffer zone established by tribal ordinance and proclamation under this Paragraph. The Band further agrees to waive sovereign immunity as a defense to legal action brought by the DNR to enforce the terms of this Paragraph, and the ordinance and proclamation provided for herein, but only on the following terms: the waiver shall be set forth in a resolution to be provided to the DNR at the time of Closing, it shall apply only to actions to compel specific performance of the Band's obligations under this Paragraph and to actions to enjoin prohibited development on lands subject to the buffer zone as defined by tribal ordinance and proclamation, and further provided that the waiver shall remain in effect for only so long as the ordinance and proclamation described in this Paragraph are in force, but in no event for a period longer than 50 years from the date of Closing.

- 12) The undertakings and commitments of both NSP and the Band under this Agreement may be enforced by appropriate legal action in the courts of the State of Wisconsin or in the United States District Court for the Western District of Wisconsin, provided that actions against the Band may be brought only if permitted by the terms of the waiver of sovereign immunity provided for in Paragraphs 11 and 13 of this Article.
- 13) The Band hereby agrees to waive sovereign immunity as a defense to legal action brought by NSP to enforce this Agreement, provided that: the waiver shall be effective only when the order approving this Agreement has become final, shall run only to NSP, or successors and assigns to NSP's rights and obligations under this Agreement or those of its successors and assigns under this Agreement. The waiver shall be set forth in a duly certified resolution to be provided by the Band at the Closing.

UNDERSTANDING AND CONDITIONS

- 1) It is understood that the mean sea level (“m.s.l.”) elevations used in this Agreement are based on plant datum developed by NSP when the Project was constructed. There is a 1.3 foot difference between those elevation figures and the elevation figures which would have been derived by using the National Geodetic Vertical Datum (“NGVD”) measurements. Thus 1315 m.s.l. is equivalent to 1313.7 NGVD.
- 2) The approval of this Agreement by the Commission and the issuance of either an exemption from licensing or a new license pursuant to this Agreement shall not alter effect, transfer, create or in any respect diminish any of the treaty rights of the Band or its members, including but not limited to the hunting, fishing and ricing rights, or the water rights of the Band and its members, within or upon the lands and waters included within Project No. 108.
- 3) The implementation of Paragraphs 1, 2, 3 and 4 of Article II of this Agreement shall constitute a complete satisfaction of any obligation on the part of NSP, whether past, present or future, to pay any further annual charges, pursuant to section 10(e) of the Federal Power Act, for the use of the 525.50 acres of tribal land for project purposes. This satisfaction shall not extend to tribal land other than the 525.50 acres identified on Appendix D and designated on Appendix E. The Band reserves, however, the right to seek from NSP compensation for the use, prior to the effective date of this Agreement, of the 525.50 acres under whatever other laws or legal theories, if any, which may be applicable and NSP reserves the right to assert any and all appropriate legal defenses.
- 4) The implementation of this Agreement shall constitute a complete satisfaction of any obligation, whether past, present or future, on the part of the Band to make any payments to NSP for the use of either NSP lands or of the Chippewa Reservoir dam in connection with the development and operation of the Facilities in accordance with the terms of the Power Sale Contract.
- 5) Except as provided in Paragraph 3 of this Article, the Band and the United States of America Department of the Interior each reserve their respective rights to proceed against any party, including the Parties hereto, on any cause of action arising from the planning, construction, property acquisition, operation, or maintenance of Project No. 108.
- 6) The Band and the Secretary of the Interior may extend the boundaries of the Band's reservation for the purpose of including the lands acquired under this Agreement from NSP. No additional portions of the surface area of the Chippewa Reservoir, however, shall be included within the reservation boundaries.
- 7) The Initial Decision of the Administrative Law Judge shall neither establish nor constitute any principle or precedent binding in any other proceeding upon the Commission, its staff or any other Party to this Agreement.
- 8) The execution and submission of this Agreement shall not be deemed in any respect to constitute an admission by any Party or the Commission staff that any allegation or

contention made in this proceeding is true or valid and shall not be deemed to foreclose any Party from making any contention in any subsequent proceeding or investigation.

- 9) The approval of this Agreement and the issuance of either an exemption from licensing or a new license pursuant to this Agreement shall not in any respect constitute a determination as to the merits of any allegation or contention made by any Party in this proceeding.
- 10) The discussions between the Parties and the staff which have resulted in this Agreement have been conducted on the explicit understanding, pursuant to section 385.602 of the Commission's Rules of Practice and Procedure, that all offers of settlement and discussions relating thereto are and shall be privileged and shall be without prejudice to the positions of the Parties and are not to be used in any manner in connection with this proceeding or otherwise.
- 11) This Agreement, including its Appendices, is submitted by the Parties on the same explicit understanding and on the further condition that unless the Commission approves Agreement in its entirety pursuant to a final order, the Agreement may be revoked by any Party by a written notice to the other Parties and to the Commission within thirty days of the Commission's order and shall not constitute part of the record in this proceeding or be used for any other purpose. As used in this Paragraph, a final order is one which is no longer subject to rehearing by the Commission, and such order shall be deemed to have become final on the date that rehearing is denied or, if no application for rehearing is filed, the date on which the right to file application for rehearing expires.
- 12) This Agreement is subject in every particular to the conditions set forth in the Agreement in its entirety and is made with the understanding that each term of the Agreement is in consideration and support of every other term.

CLOSING DATE AND PROCEDURES

- 1) The transactions to which the Parties have agreed to in Paragraphs 1, 2, 3, 4, and 5 of Article II will be completed at a Closing to be held at 11:00 A. M. on the first Tuesday (or the following day if Tuesday is a holiday) after either 1) the 35th day following the issuance of an order by the Commission approving this Agreement to which no application for rehearing has been filed, or 2) the 70th day following the Commission's denial of any application for rehearing provided no notice of review has been filed in any Court of Appeals, or 3) the 30th day following the date on which the time for seeking any further judicial review of the Commission's order has elapsed; Provided, however, that regardless of the foregoing conditions, there will be a Closing on the date set forth in number 1) or 2) above, as appropriate, for the purpose of permitting NSP to grant the easements and to convey title to the lands described in Paragraph 5 of Article II of this Agreement for the purpose of enabling the Band, with the cooperation of NSP, to commence construction of the Facilities as soon thereafter as the Band desires. It is understood, however, that the Band assumes the risk of any adverse judicial ruling on the Commission's order and NSP shall be under no obligation to commence or complete the construction of the transmission line or to purchase the output of the project prior to the favorable disposition of any judicial review proceeding. Following the favorable disposition of any such proceeding, the Parties shall complete the Closing. If, in the meantime, the Band has proceeded with the construction of the Facilities, NSP shall be permitted a reasonable time, not to exceed nine months from the Closing, to complete the transmission line without incurring any charges or penalties under Article IV of the Power Sale Contract.
- 2) The Power Sale Contract is an important part of the consideration running to the Band in this Agreement. In order for the Band's power project to be feasible under the terms agreed to, the Band has determined that construction must commence as close to the start of the 1984 summer construction period as possible. Therefore, if this Agreement, including the exemption or licenses covering Project No. 108 and the Band's Facilities, is not approved by the Commission within 90 days after it is filed, or if the time periods specified in conditions 1), 2) and 3) in the immediately preceding paragraph are not met so that the Closing can occur within 35 days after it is approved by the Commission, then the Band shall have the right to terminate this Agreement by written notice to the Parties at any time prior to the date of the Commission's approval or prior to the Closing, whichever is applicable. NSP reserves the right to terminate this Agreement prior to the date of the Commission's approval if the Agreement is not approved within 180 days from the date it is filed with the Commission.
- 3) The Closing shall take place at the offices of NSP in Eau Claire, Wisconsin.
- 4) NSP shall provide all Parties with a written notice as to the time and place of the Closing at least 30 days in advance. NSP and the Band may by mutual agreement and by written notice to the other Parties change the time, date or location of the Closing. The Parties shall exchange drafts all Closing documents at least ten days prior to the Closing.
- 5) NSP shall be responsible for preparing the appropriate instruments of conveyance for the lands to be conveyed pursuant to Paragraphs 1, 2, and 5 of Article II and the Band and the

Secretary of the Interior shall be responsible for preparing the appropriate instruments of conveyance for the flowage easements to be conveyed pursuant to Paragraph 4 of Article II.

- 6) NSP, the Band, and the Secretary of the Interior shall provide to each other at the Closing certificates from a responsible officer and opinions of counsel as well as resolutions of the NSP Board of Directors and of the Band's Tribal Council attesting to the authority of their respective representatives at the Closing to consummate the transactions contemplated by Paragraphs 1, 2, 3, 4, and 5 of Article II on behalf of their principals.

EXECUTION

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all the Parties to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of the Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

This Agreement is hereby executed as of the 1st day of February, 1984, on behalf of the Parties by the following individuals who represent that they are fully authorized to do so on their behalf.

APPENDIX C

TREATY RESOURCE MATERIALS:

Published by the Great Lakes Indian Fish & Wildlife Commission Public Information Office and Administration for Native Americans program.

MASINAIGAN: A quarterly newspaper emphasizing treaty issues and treaty resource management activities.

A Guide to Understanding Chippewa Treaty Rights: Minnesota and Wisconsin editions available. The guide contains the pertinent treaties, discusses the nature of treaty rights, provides historical background on the treaty rights, and details tribal resource management and GLIFWC activities.

Where the River is Wide: Pahquahwong and the Chippewa Flowage: This book provides a look at historical events as they occurred in the Chippewa Flowage. Some events have been overlooked or forgotten as the region enjoys the benefits of the Chippewa Flowage as it is today.

Seasons of the Chippewa: Details Great Lakes Indian Fish and Wildlife Commission activities and harvest totals for major off-reservation tribal hunting and fishing seasons.

Tribal Hatcheries of the Great Lakes Region: This booklet reviews the activities of numerous tribal hatcheries including annual stocking figures.

Chippewa Treaties--Understanding and Impact: Revised in 1994, this publication is aimed at 4-8 grade students promoting cultural awareness and background information on Chippewa treaties.

Casting Light Upon the Waters: Released in 1991, this booklet contains the results of a joint assessment of the fishery in the ceded territories of northern Wisconsin as well as recommendations for future management. Federal, state and tribal resource managers were involved in both the assessment and formulation of the report.

1992 Accomplishment Report/Casting Light Upon the Waters: As a follow-up to the 1991 fishery assessment report, the Joint Fishery Steering Committee released this review of continued and increased joint assessment and fishery management activities during 1992.

Fishery Status Update: As a follow-up to the 1991 fishery assessment report, the Joint Fishery Steering Committee released this report in 1995 summarizing findings from five years of joint assessment and fishery management activities.

Brochures: Great Lakes Indian Fish & Wildlife Commission; Manomin (Wild Rice); Lake Superior Indian Fishery.

Videos: Poisoning the Circle: Mercury in the Environment; Chippewa Off-Reservation Treaty Rights: The Role of GLIFWC; HONOR video--Treaties, Truth and Trust.

Posters: *ogichidaa*. This poster suggests the need for warrior/leaders as protectors of the earth and the environment. *mashkiki*. This poster features Ojibwa use of plants and the significance of plants both in a practical and spiritual sense to the culture. *nibi*. This poster focuses on the traditional role of women as “Keepers of the Water” and water quality issues. Some issues of previous annual posters are also available.

APPENDIX D

MAPS OF TOWNSHIPS DETACHING THE TOWN OF RESERVE

[maps to be provided by GLIFWC]

APPENDIX E

PLANNING HISTORY AND PUBLIC INVOLVEMENT

Public involvement played a valued and vital role in the plan's development. Public comments and reviews of draft management alternatives were provided throughout the planning process. Public participation and input into the development of the plan was obtained through a wide variety of means. Meetings were held with local government leaders, the LCO Tribal Council, flowage landowners, interest groups and recreational users to discuss flowage issues and management alternatives at various stages of the planning process.

Another method which played a major role in the process was an informational newsletter and questionnaire distributed to a variety of interested individuals and organizations. This method was heavily used early in the planning process to identify public issues and concerns and to gather recreational use information for the flowage. Later, a similar process was followed to gather public thoughts on various management alternatives for dealing with the issues.

The WDNR also formed a six member citizen advisory committee to advise the Department on flowage issues and act as a sounding board during the planning process. The advisory committee's members by design come from a broad spectrum of interests (town government, county government, a resort owner, a flowage area home owner, a guide and a non-local recreationist). In addition, two drafts of the Joint Management Plan were widely circulated for review and comment. A summary of the planning history and public involvement in the development of the Joint Management Plan follows.

A Chronological Listing of Public Participation Activities and Other Planning Efforts:

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| Spring 1987 | Prior to DNR purchase of NSP lands, meetings were held with several groups to inform them of the DNR's intentions. The groups included area town boards, the county board, guide's association, sportsman's clubs, the property owners association, and the resort owners association. |
| July 1987 | DNR held an open house at Lake Chippewa Campground to talk with the public about the proposed purchase of NSP lands and the future of the flowage. |
| July 1988 | Distribution of the FS Two Axe Opportunity Area questionnaire (which includes the FS managed portion of the flowage lands). |
| July 1988 | WDNR purchases land from NSP. |
| July 1988 | WDNR's Issue Identification Questionnaire widely distributed by mail to interested persons and by handout at campgrounds, resorts and other local outlets. About 100 responses were returned. |

Sept 1988	The WDNR, FS and LCO agreed to work together to develop a joint management plan.
Jan 1989	First Joint Management Planning Taskforce meeting.
May 1989	The Joint Management Planning Taskforce distributed a questionnaire to gather additional information on flowage issues and uses. Received 352 responses.
Aug 1989	Mailed the 352 questionnaire respondents summaries of the questionnaire results and thanked them for their input.
Aug 1989	WDNR flowage Superintendent met with Chippewa flowage Area Property Owners Association to explain planning effort and contemplated management strategies.
Dec 1989	WDNR established a Citizen Advisory Committee to advise agency on flowage management matters.
July 1990	Draft flowage management alternatives completed and circulated to public for review. Over 300 copies were distributed and 101 responses were received.
Jan 1991	WDNR presented an early draft of the Joint Management Planning Taskforce's proposed management plan to the DNR Citizen Advisory Committee for comment.
July 1991	Draft Joint Management Plan sent out for WDNR, FS and LCO review.
Sept 1995	Draft Joint Management Plan released for public review and comment.
Nov 1995	LCO, WDNR and FS resume discussions to finalize Draft Joint Management Plan.
Sept 1996	LCO provides WDNR and FS with redraft of Draft Joint Plan.
Jan 1997	LCO, WDNR and FS meet to discussion LCO proposed redraft.
April 1997	Joint proposed redraft based upon discussions at Jan. 1997 meeting circulated for review and comment.
April 1998	LCO, WDNR and FS meet to discuss proposed joint redraft of the Joint Plan.
Feb 2000	LCO, WDNR and FS meet for final editing of the Joint Plan and agree to prepare a final document for ratification by each party.

APPENDIX F

PLANNING TEAM AND CONTRIBUTORS

Agency		Job Title or Position	Location
<u>Planning Core Team:</u>			
Ray Larsen	WDNR	Flowage Manager and Trail Superintendent	Hayward
Jim Schweiger *	WDNR	District Parks and Recreation Supervisor	Spooner
Tom Watkins	WDNR	Land Resources Specialist	Madison
Bill Clark *	WDNR	District Environmental Impact Coordinator	Spooner
Leslie Ramczyk *	LCO	Conservation Chief	LCO
Jim Smith *	LCO	Conservation Chief	LCO
Mic Isham	LCO	LCO Cons. Chief & Tribal Council	LCO
Don Howlett *	FS	Forest Planner, Supv. Office	Park Falls
Bob Tibbetts	FS	Forester, Great Divide Ranger District	Hayward
Al Flechsig *	FS	District Ranger, Great Divide Ranger District	Hayward
<u>Technical Support:</u>			
Frank Pratt	WDNR	Fish Manager	Hayward
Sam Moore	WDNR	Wildlife Manager	Hayward
John McGaver*	WDNR	Conservation Warden	Hayward
Roger Jasinski*	WDNR	Area Water Regulation & Zoning Specialist	Park Falls
Frank Koshere	WDNR	Water Quality Biologist	Superior
Frank Kies*	WDNR	District Real Estate Supervisor	Spooner
Dan Cobb*	LCO	Forester, Bur. of Indian Affairs	LCO
Rick Baker *	LCO	LCO Hydro - Coordinator	LCO
George Morrow	LCO	LCO Conservation Warden	LCO
Joe Grover *	LCO	Tribal Conservation Warden	LCO
Dale Higgins	FS	Forest Hydrologist, Supv. Office	Park Falls
Norm Weiland	FS	Forest Wildlife Biologist, Supv. Office	Park Falls
Dennis Jones *	FS	Forest Landscape Architect, Supv. Office	Park Falls
Susan Bush *	FS	Forest Landscape Architect, Supv. Office	Park Falls
<u>Other Contributors:</u>			
Paul Gottwald *	WDNR	Area Director	Park Falls
David Jacobson *	WDNR	District Director	Spooner
Bill Smith	WDNR	District Director	Spooner
Tim Miller	WDNR	Upper Chippewa Team Supervisor	Hayward
Bob Gothblad *	WDNR	Citizen Participation Specialist	Spooner
Jody Les*	WDNR	Planner	Madison
Bruce Taylor *	LCO	LCO Tribal Chair	LCO
Gaiashkibos *	LCO	LCO Tribal Chair	LCO
James Schlender	GLIFWC	GLIFWC Executive Administrator	Odanah

APPENDIX F***PLANNING TEAM AND CONTRIBUTORS***

John Vrablec*	FS	Forest Planning, Program Budget & Information Staff Officer	Park Falls
Mary Lobermeier	FS	Program Analyst, Supv. Office	Park Falls
Joanne Hammerstrom *	FS	Clerk-Typist, Supv. Office	Park Falls
Fran Hundt	FS	Clerk-Typist, Supv. Office	Park Falls
Pat Woodie	FS	Clerk-Typist, Supv. Office	Park Falls
Ray Wolf	LCO	LCO Tribal Council	LCO

* Indicates persons who have retired, transferred or for some other reason are no longer active in the flowage management planning process.