

[REDACTED] appeared on their own behalves, *pro se*.
Clearwater County Attorney Kathryn Lorsbach appeared for the State.

The twenty-three Fire Light Defendants previously had filed identical contested omnibus notices and motions seeking dismissal of their charges on grounds that they were invited guests of Anishinaabe people exercising their treaty-reserved rights, and thus had a claim of right to be present at the Fire Light camp. At the contested omnibus hearing on July 28, 2022, the Fire Light Defendants collectively presented four witnesses in support of their motions to dismiss: Jaime Arsenault, Justin Keezer, Nancy Beaulieu, and Dale Greene. The Fire Light Defendants also submitted sixteen exhibits, which were received into evidence.¹ The State did not present any witnesses, but submitted a *Florence* packet, which was received as Exhibit 17.

Following the hearing, the Court set a briefing schedule. The Defendant in the above-captioned case now submits this legal memorandum in support of the motion to dismiss the sole count of misdemeanor trespass for lack of probable cause or, in the alternative, for the State's violation of the Supremacy Clause of Article VI of the United States Constitution.

¹ A list of defense exhibits follows: (1) Table of Treaties Between the United States and the Chippewas from Beginning to 1871; (2) 1825 Treaty with the Sioux, etc.; (3) 1826 Treaty with the Chippewa; (4) 1837 Treaty with the Chippewa; (5) 1842 Treaty with the Chippewa; (6) National Archives, List of Bands reported by James P. Hays (1847); (7) 1855 Treaty with the Chippewa; (8) 1867 Treaty with the Chippewa; (9) Curriculum Vitae of Witness Jaime Arsenault; (10) Ceded Territory Conservation Code of the 1855 Treaty Tribes; (11) White Earth Reservation Tribal Council Resolution No. 057-10-008; (12) Leech Lake Reservation Tribal Council Resolution No. 2011-100; (13) 1855 Treaty Authority Resolution for Right to Travel, Use and Occupy Traditional Lands and Waters Code (2018-01); (14) 1855 Treaty Authority Resolution Establishing Rights of Manoomin (2018-05); (15) White Earth Reservation Business Committee Resolution No. 019-21-002; (16) Solidarity Statement of the Fire Light Camp. For ease of access, the defense additionally attaches to this motion, as Exhibit 18, the judicial order and opinion of the White Earth Tribal Court referenced by witnesses Justin Keezer and Nancy Beaulieu in their testimony.

I. FACTUAL AND PROCEDURAL HISTORY

On June 14, 2021, the Clearwater County Sheriff's Office issued citations to Anishinaabe people and their invited guests as they departed from an eight-day ceremony at the headwaters of the Mississippi River. The facts relevant to this case, however, date long before the day of the Defendants' arrests.

A. The Sovereignty of Anishinaabe People Predates the Arrival of Colonizers and Has Survived Despite the Genocidal Attempts of Settler-Colonial Governments.

The sovereignty² of Anishinaabe people³ long predates the arrival of European colonizers. For hundreds of years, Anishinaabe people have lived in dispersed and autonomous communities with complicated and overlapping systems of civil, military, and religious leadership, existing interdependently with each other as well as the land, water, and ecosystems across what is now North Dakota, Minnesota, Wisconsin, Michigan, and southern Canada. They have hunted, fished, gathered wild rice, traveled the rivers and lakes, and held sacred the water that made it all possible. *See* Tr. at 81, 110, 148-56, 160-62. They have engaged in religious ceremonies. *See id.* at 164-66, 168-69. They have sought to honor and protect the water and natural resources necessary to their religious ceremonies, cultural practices, and way of life. *See, e.g., id.* at 77-79, 164-167. And along with the myriad other exercises of sovereignty too

² For an explanation of the related yet distinct concepts of “tribal sovereignty” and “Indigenous sovereignty,” see “What is: Indigenous Sovereignty and Tribal Sovereignty,” INDIGENOUS ENVIRONMENTAL NETWORK (June 17, 2020), www.ienearth.org/what-is-indigenous-sovereignty-and-tribal-sovereignty.

³ “Anishinaabe” is a term of self-reference for the culturally related group of original inhabitants to the Great Lakes region of what is now North America. “Ojibwe” is a tribally specific reference to certain Anishinaabe groups in the southern part of the Great Lakes region colonized by the United States. “Chippewa” appears in many treaties and US communications as a mispronunciation or misspelling of Ojibwe. *See* ANTON TRUER, THE ASSASSINATION OF HOLE IN THE DAY 217 (2011); *see also* Tr. at 59.

numerous to name, they entered into treaties with each other, foreign invading nations from Europe and then the United States.

As part of their genocidal⁴ invasion of what is now called the United States, European colonizers entered into treaties with the sovereign Indigenous peoples they encountered. Later, the United States followed suit. Treaty-making served as a way to legitimize the taking of Indigenous land and resources, and the treaties themselves were typified by coercion, misrepresentation, and false promises. For example, many of these treaties purported to take land and rights away from people who had no leadership representation present for negotiations; were negotiated by translators who intentionally mistranslated the terms of agreements; were induced with promises of annuity payments that were undelivered, undelivered, or paid to settler trading posts to settle fabricated debts; and were obtained through coercive circumstances resulting from physical violence, land intrusions, disruption of traditional economies and food sources, starvation, and disease. *See* TRUER, *supra* note 3, at 41-55, 99-102, 111, 118, 127. Yet the very existence of these treaties also belies the fact that European nations, and later the United

⁴ Use of the word “genocidal” to reflect the relationship between settler-colonizers and Indigenous peoples is intentional and not hyperbolic. The Holocaust Museum in Houston gives a cursory overview of this genocide as follows:

When European settlers arrived in the Americas, historians estimate there were over 10 million Native Americans living there. By 1900, their estimated population was under 300,000. Native Americans were subjected to many different forms of violence, all with the intention of destroying the community. In the late 1800s, blankets from smallpox patients were distributed to Native Americans in order to spread disease. There were several wars, and violence was encouraged; for example, European settlers were paid for each Penobscot person they killed. In the 19th century, 4,000 Cherokee people died on the Trail of Tears, a forced march from the southern U.S. to Oklahoma. In the 20th century, civil rights violations were common, and discrimination continues to this day.

Genocide of Indigenous Peoples, HOLOCAUST MUSEUM OF HOUSTON, <https://hnh.org/library/research/genocide-of-indigenous-peoples-guide/> (last visited Apr. 24, 2022)

States, recognized the sovereignty of Indigenous peoples and their rights to the land, water, and natural resources that settlers sought to commandeer.

During the 18th and 19th centuries, various levels and configurations of Anishinaabe governments⁵ entered dozens of treaties with the United States government. *See, e.g.*, ERLINDER, *supra* note 5. The Treaty of 1855 was one of these purported agreements through which the United States government sought to legitimize its genocide.

In orchestrating negotiations for the 1855 Treaty, United States officials invited only a select few Anishinaabe representatives to the District of Columbia and did not inform them that the purpose of the invitation was to negotiate a treaty. *See* Andrew Stone, *Treaty of Washington, 1855*, MNOPEDIA, <https://www.mnopedia.org/event/treaty-washington-1855> (last visited Sept. 12, 2022). The United States intentionally invited only a small number of people to the negotiations, although the Treaty purported to bind all Anishinaabe people in the ceded area, including many who had no representative in the negotiations to advocate for their interests or convey their sovereignty. *See id.*

Ultimately, the 1855 Treaty ceded millions acres of land from Anishinaabe stewardship to the United States' ownership. *See* Ex. 7. In exchange, the United States offered token annuities to the three Anishinaabe groups who were signatories. *See* Ex. 7.

⁵ Colonizers did not understand the nonhierarchical structures of government they encountered: regional networks of autonomous villages with a collaborative decision-making structure that involved the multiple chiefs in each village making local and regional decisions as a counsel. As a result, United States officials decided that the various geographically proximate but distinct Anishinaabe communities could be negotiated with as a “band,” with any one representative from that “band” having unilateral authority to enter into treaties on behalf of everyone within the region. *See, e.g.*, PETER ERLINDER, THE ANISHINAABE NATION’S ‘RIGHT TO A MODEST LIVING’ FROM THE EXERCISE OF OFF-RESERVATION USUFRUCTUARY TREATY RIGHTS 14-15 (2010).

Despite the coercion that gave rise to the 1855 Treaty, Anishinaabe signatories were adamant that their agreement was for “the land, and the land only.” Tr. 148-152; see also Tr. at 62. Flat Mouth and Hole-in-the-Day had previously negotiated the rights of occupancy, or usufructuary rights,⁶ and thus understood that in ceding the land only, Anishinaabe people would retain their rights to hunt, fish, collect maple syrup, gather wild rice, travel, engage in religious ceremony, and otherwise live as they had done. *See id.* As navy veteran, Ojibwe Cultural Specialist, and 1855 Treaty Authority Board Member Dale Greene explained, this included “seasonal living” traditional to Anishinaabe peoples:

One season you may be in the northern part of Lake Mille Lacs setting a net, spear fishing, and winter came you might be sitting somewhere in a cedar swamp [] opening up your university [] - the wintertime was usually considered the story telling time, the exchange of knowledge and morals and values and teachings. The springtime you might have been back over in the ‘54 area [] catching the running of the fish [T]hey were pretty transitory on the seasonal living in the ceded territories. . . . [E]ven the big drum ceremonies aren’t locked into a specific area that they were traveling

Id. at 154-155.

As articulated by Dale Greene, “under the 1855’s negotiation of the rights of occupancy and the ceded territory [W]e had the understanding that we were gonna continue living like we always had [W]e’re gonna take our living from the trees, the streams, lakes, and waterways, and get our living from the woods.” Tr. at 152. These rights extend well beyond simply obtaining food, and include also innumerable cultural and religious rights; everything that

⁶ The right to usufruct is the right to use and benefit from a property that the right-holder (the “usufructuary”) does not own, with the caveat that such use “shall not cause damage to or diminution of the property, except where the property is subject to natural depletion over time.” *Wex Legal Dictionary: “Usufruct”*, CORNELL LAW SCHOOL LEGAL INFORMATION INSTITUTE, available at <https://www.law.cornell.edu/wex/usufruct> Legal Information Institute (last visited Sept. 12, 2022).

comes along with Native parties living as they had always been accustomed to. “If the right isn’t mentioned in the treaty negotiating it away or giving it away . . . it’s still retained. . . . [I]t’s important to remember the jurisdiction [] that’s retained and what jurisdiction means. That we *retained the right to invite people in and to stand in solidarity with us.*” *Id.* at 157 (emphasis added).

The territory ceded in the 1855 Treaty encompasses the region between the Snake, Mississippi, East Savannah, St. Louis, East Swan, Vermillion, Big Fork, Rainy Lake, Black, Wild Rice, Red, Buffalo, Leaf, and Crow Wing Rivers, as further enclosed by a few straight lines, the 1837 Treaty border, and the shorelines of several lakes. *See* Ex. 7. This territory includes the area of the Mississippi Headwaters where the Fire Light Defendants were arrested more than two and a half centuries later.

B. The Fire Light Ceremonial Camp Was Held at the Headwaters of the Mississippi, a Place of Profound Religious and Cultural Significance to the Anishinaabe People, to Protect These Sacred Waters.

The Anishinaabe people recognize “nibi gaa-bimaaji’iwemagak,” that water is life. In Anishinaabe culture, water itself is a sacred living being. Tr. at 109 (“Water is life and it is sacred. It’s where the fish swim and the food grows on the water. It’s where we do ceremony and offer prayer. It’s who we are. We are water.”); *see also id.* at 29, 65-66, 81. White Earth member Justin Keezer describes the centrality of water from the moment we “enter[] creation”:

[O]ur first 9 months of our life are spent in water [T]he water is what provides the milk that we drink when we’re still babies. . . . [T]he water is connected [P]lants won’t grow, animals won’t grow without water, you know. Without water the plants won’t grow, you have no oxygen to breathe.

Id. at 75. Water is also central to the migration story of the Anishinaabe, who traveled from the Atlantic Ocean across Turtle Island to the Mississippi River and surrounding lakes to find manoomin—the food that grows on water. *Id.* at 28-29.

Anishinaabe people hold the Headwaters of the Mississippi with particular reverence. White Earth Tribal Preservation Officer and Vice Chair of the Repatriation Review Committee of the Smithsonian Natural History Museum Jaime Arsenault describes the Headwaters as “where everything starts,” the site of centuries of historic events, meetings, and ceremonies. *Id.* at 29-30. One reason that Anishinaabe people hold so many ceremonies at or near the Mississippi Headwaters is because being upstream makes it “a particularly powerful place,” with prayers and ceremonies also benefitting everyone downstream, as well as the “very large wild rice watersheds” downstream. *Id.* at 34. As Ms. Arsenault explains:

[T]here’s a lot of significance [to the Mississippi Headwaters]. A lot of historic events took place there. A lot of meetings took place there, [] but also ceremonies take place there This is a very common thing. . . . [B]y being towards the Headwaters of the Mississippi, Ojibwe people having ceremony there, there is this belief that it benefits everyone else downstream and that’s one of the tenants of Ojibwe society, [that] you’re always looking out and looking at how you can care for everyone around you.

Id. at 29-30.

Manoomin (or wild rice) itself is also held with sanctity in Anishinaabe culture. Wild rice is “huge ... central to Ojibwe people.” *Id.* at 28. It is the reason Anishinaabe people traveled to the land from which all water flows, where the food grows on water. *Id.* at 58, 109. Translated to “the good berry,” manoomin “provides for [Anishinaabe] people.” *Id.* Anishinaabe people are “connected to that wild rice through our mind, our spirit, and our body. We [] consume it, we use it for trade, we use it . . . as gifts . . . , it’s priceless to us.” *Id.* at 58-59. As Leech Lake member Nancy Beaulieu explained, manoomin is “a big part of who we are,” used for eating, ceremony, and celebrations. *Id.* at 109. Critically, the relationship between Anishinaabe people and manoomin is also a reciprocal one: “Rice has been here to protect Ojibwe people and Ojibwe people protect that rice.” *Id.* at 28, *see also id.* at 75. Like the

significance of water to life through its connections to earliest and final moments, wild rice is “one of the first foods Anishinaabe babies are fed when they begin solid foods [and] one of those last foods that’s fed to someone as they are leaving this world. It’s part of every ceremony. It’s the foundation of Ojibwe society, historically and right now.” *Id.* at 28-29.

Water and wild rice are as intertwined biologically as they are spiritually. Wild rice is “highly sensitive.” *Id.* at 29. As Jaime Arsenault explains, “any changes in water level, any changes in sulfates, any [] new chemicals that it could be exposed to could wipe a watershed out.” *Id.* This is particularly important near the Mississippi Headwaters, because threats to the water and manoomin endater “the largest wild rice watersheds in the world.” *Id.*

Thus, when the Fire Light Defendants gathered at the Mississippi River near its headwaters, they joined Anishinaabe people at a place of supreme cultural and religious significance. Anishinaabe people had invited them to come, hold ceremony, pray, fast, uphold their treaty agreements and protect the sacred waters that give life to all else.

C. The Fire Light Camp was an Exercise of Anishinaabe Treaty-Reserved Rights to Hold Religious Ceremony and Protect Sacred Waters in Response to Threats Posed by Enbridge’s Line 3 Pipeline.

On December 1, 2020, Enbridge Energy Corporation began construction on the Line 3 oil pipeline. *Line 3 Pipeline Replacement*, MINN. COMMERCE DEP’T, <https://mn.gov/commerce/energyfacilities/line3> (last visited Apr. 24, 2022). Purportedly a “replacement” pipeline, the project allowed the Canadian fossil fuel corporation to construct a 337-mile, 3-foot-diameter pipeline to carry nearly a million barrels of tar sands oil per day through more than two hundred bodies of water and twenty rivers across Anishinaabe treaty territory, while the decrepit pipeline it claimed to replace remained underground. *Id.* Permits for the project issued despite numerous concerns raised by scientists, conservationists, public health experts, and Anishinaabe communities and tribal governments, all of whom saw the writing on the wall. *See* Laura

Triplett, et al., *MPCA Sidelines Science in Line 3 Water Permitting Process*, MINN. POST (Nov. 4, 2020) <https://www.minnpost.com/community-voices/2020/11/mpca-sidelines-science-in-line-3-water-permitting-process>.

Rightly so. The track record of fossil fuel pipelines is terrifying. The heavily-opposed Dakota Access Pipeline, for example, leaked five times in only its first six months of operation. See Alleen Brown, *Five Spills, Six Months in Operation: Dakota Access Track Record Highlights Unavoidable Reality—Pipelines Leak*, THE INTERCEPT (Jan. 9, 2018, 2:38 P.M.) <https://theintercept.com/2018/01/09/dakota-access-pipeline-leak-energy-transfer-partners>. The Keystone XL pipeline dumped a combined 12,000 barrels of oil in the Dakotas as the result of two major spills in 2017 and 2019. See Ben Lefebvre, *Severe Oil Leaks Worsened Keystone Pipeline’s Spill Record, GAO Finds*, POLITICO (Aug. 23, 2021, 3:16 P.M., updated Aug. 23, 2021, 5:02 P.M.), <https://www.politico.com/news/2021/08/23/oil-leaks-keystone-pipeline-spill-record-506613>. Another tar sands pipeline owned and operated by Enbridge in Michigan ruptured in 2010, spilling over one million gallons of oil into a tributary of the Kalamazoo River. *Kalamazoo River Disaster*, SIERRA CLUB, <https://www.sierraclub.org/michigan/kalamazoo-river-disaster> (last visited Apr. 25, 2022). Even closer to home, March 3, 2021, marked the thirtieth anniversary of the largest inland oil spill in United States history, in which 1.7 million gallons of oil burst into a tributary of the Mississippi River. Dan Kraker & Kirsti Marohn, *30 Years Later, Echoes of Largest Inland Oil Spill Remain in Line 3 Fight*, MPR NEWS (Mar 3, 2021, 11:22 P.M.) <https://www.mprnews.org/story/2021/03/03/30-years-ago-grand-rapids-oil-spill>. With respect to Line 3 in particular, Anishinaabe government officials were concerned that the permitting agency, the Army Corp of Engineers, had not issued any federal Environmental Impact Study and were “essentially allow[ing] for the pipeline company to assess itself.” Tr. at

41; *see also id.* (“This is also the company with the largest inland oil spill in the country [], and here we are with the largest wild rice watersheds in the world.”).

Nor was the threat posed by Enbridge’s Line 3 confined to the water. Before and after the permits issued, Indigenous people urgently warned government regulators that Line 3 construction would bring increased sexual violence and add to the existing epidemic of Missing and Murdered Indigenous Women and Relatives. Hilary Beaumont, *Sexual Violence Along Pipeline Route Follows Indigenous Women’s Warnings*, THE GUARDIAN (June 4, 2021, 7:00 E.D.T.), <https://www.theguardian.com/us-news/2021/jun/04/minnesota-pipeline-line-3-sexual-women-violence>; *see also MMIWG2S*, COALITION TO STOP VIOLENCE AGAINST NATIVE WOMEN, <https://www.csvanw.org/mmiw/> (last visited Apr. 24, 2022) (reporting that Indigenous women, girls, and two-spirits are murdered at a rate more than ten times the national average and that homicide is the third leading cause of death for young Indigenous women and girls); *see also* Tr. at 41. Anishinaabe leaders also feared increasing COVID-19 exposures in a region with limited medical facilities as Enbridge brought in thousands of out-of-state workers to the area. Tr. at 41.

Despite all of this, Enbridge received permits and commenced construction across the treaty territories of the Anishinaabe people, including the 1855 Treaty territory. The pipeline threatened sacred waters, including the Mississippi headwaters, as well as the concomitant ability to hunt, fish, gather, and engage in religious and cultural practices as the Anishinaabe had done since time immemorial and have continued to do pursuant to their treaty-reserved rights. The pipeline camps threatened the safety and wellbeing of Indigenous women, girls, and two-spirits, and brought increased risks of COVID-19 exposures to the entire region.

In the face of these threats, Anishinaabe water protectors and several dozen of their invited guests gathered at the Fire Light camp. On June 7, 2021, they lit a ceremonial fire at the

Mississippi River near its headwaters, just south of Great River Road in so-called Shevlin, Minnesota. Tr. at 112. The participants came together in ceremony and prayer, in exercise of Anishinaabe reserved treaty rights, and in defense of the water and all the life that depends upon it. *Id.* at 112-15. They camped over the Mississippi River itself, on the construction matting that stretched over the water so that Enbridge could build a pipeline through it. *Id.*

Notably, this ceremony was not a protest. *Id.* at 75-76, 86. Camp Fire Light was an exercise of treaty rights, both by descendants of the Native parties and by people who assumed the rights and responsibilities undertaken by the US government signatories to the Treaty. *See id.* at 76. As Justin Keezer explained, “we’re upholding our half and when [non Native guests] came, they’re actually upholding the United States’ half of that treaty and standing with us. So, that action was us all reaffirming that we recognize that treaty and those treaty rights, and it was never a protest.” *Id.*

As Nancy Beaulieu of Leech Lake described, “during those eight days ... we lit the fire. [W]hen you light the fire, we took instruction from the Gichi-Manidoo⁷ ... [W]e prayed to the spirits and to our ancestors and we asked for guidance and ... we were there in ceremony ... We had people every night fasting.” Tr. at 112. Other components of the ceremony included cultural awareness and sharing, singing songs, sharing stories, and exchanging prayers with people of other faith traditions. *Id.* “We were with creator and with our ancestors, and with each other and holding space in the best way that we knew how.” *Id.* at 113. Ms. Beaulieu shared the particular importance of having invited non-native guests, sharing that “our allies got to

⁷ Gichi-Manidoo translates to “great spirit, god.” OJIBWE PEOPLE’S DICTIONARY, *available at* <https://ojibwe.lib.umn.edu/main-entry/gichi-manidoo-na> (last visited Sept. 12, 2022).

understand who we are and show some respect for the treaty partnership ... It was a beautiful place for those eight days.” *Id.* at 112.

The religious ceremony ended on June 14, 2021, when participants departed peacefully at the direction of the Clearwater County Sheriff. *Id.* at 89, 135-39. As they had come in a good way, so they left, taking care that not a stray gum wrapper or cigarette butt remained. *Id.* at 89, 122. Defendants took great care to remain peaceful during their departure from camp to avoid risking someone being hurt unintentionally or inadvertently, and to keep the area as clean as the group had found it. Said Keezer about the condition of camp Fire Light when the defendants left: “I’da ate off that boardwalk. It was clean ... There was no sign that we had been there.” *Tr.* at 89. The Clearwater County Sheriff’s Deputies waited in patrol cars, lining the shoulder of Great River Road. *See Ex. 17.* Fire Light participants, including the Defendants, approached the patrol cars one at a time and received a citation for trespassing. *See Ex. 17.* Defendants and the people who had invited them were charged in Clearwater County Court. Their Native codefendants’ cases were subsequently transferred to White Earth Tribal Court and then dismissed by the White Earth Tribal Court Judge David DeGroat. *See Ex. 18.*

In the meantime, the threats that the Fire Light participants feared already have become a disastrous reality. Line 3 caused an aquifer breach that lost millions of gallons of groundwater near the Clearwater County Clearbrook Terminal during a drought, not far from the location of the Fire Light camp and ceremonial fire. Kirsti Marohn, *Enbridge Ordered to Pay \$3.3 Million for an Aquifer Breach*, MPR NEWS (Sept 16, 2021, 10:36 P.M.) <https://www.mprnews.org/story/2021/09/16/enbridge-ordered-to-pay-33-million-for-aquifer-breach>; *see also Tr.* at 41-42. Uncontrolled flow from the aquifer breach continued for almost a year at a rate of 100,000 gallons per day, resulting in the loss of millions of gallons of groundwater. *See Minnesota*

Environmental Partnership, Line 3 Aquifer Breach in Clearbrook, *available at* <https://www.mepartnership.org/wp-content/uploads/2021/10/Fact-Sheet-on-Line-3-Aquifer-Breach.docx.pdf> (last accessed Sept. 12, 2022). In response, Enbridge merely paid a fine and continued its business as usual. Earlier this year, the Minnesota Department of Natural Resources announced it had identified two more substantial aquifer breaches and was continuing to investigate others. Kirsti Marohn, *DNR Releases Details of Two More Line 3 Aquifer Breaches*, MPR NEWS (Mar. 21, 2022, 4:36 P.M.) <https://www.mprnews.org/story/2022/03/21/dnr-releases-details-of-2-more-line-3-aquifer-breaches>. As of last month, at least one aquifer breach caused by Enbridge Line 3 construction was continuing to leak as much as 20 gallons of groundwater per minute. Kirsti Marohn, *Line 3 Aquifer Breach Is Leaking More Groundwater*, MPR NEWS (Aug. 6, 2022, 8:55 A.M.) <https://www.mprnews.org/story/2022/08/06/line-3-aquifer-breach-is-leaking-more-groundwater>.

Line 3 construction also caused at least twenty-eight drilling fluid spills at no less than twelve river crossings, including multiple spills directly into the headwaters of the Mississippi at and near the site of the Fire Light camp. Rilyn Eischens, *Enbridge Line 3 Drilling Fluid Spills: What We Know So Far*, MINNESOTA REFORMER (Aug. 16, 2021, 6:00 A.M.). The spills, known as “frac-outs,” included bentonite clay with chemical additives used as lubricant in the drilling process and ranged in amount from 10 to 9,000 gallons per spill. *Id.*

The harmful effects of Enbridge’s numerous aquifer breaches and drilling fluid spills were immediately felt by Anishinaabe manoomin harvesters. As Ms. Arsenault testified:

It was, I think one of the most difficult years for ricing in recent memory. Um, there were a lot of people that were not able to access the rice at all and um, myself included. I, I attempted to go ricing, ah, a few miles downstream from where the aquifers and the frac-outs on the Mississippi had occurred um, and I was not able to um, get any rice at all because there was just this

film on top of the water, like about 16 miles away, and um, I was not able to safely harvest last year.

Tr. at 48; *see also* Tr. at 50 (describing the damage to wild rice as caused by “the drought and it was the frac-outs and the aquafer [sic] breaches caused by Enbridge during the Line 3 construction . . . and also the delays suffered when they themselves did not monitor or report that and it had to come from the people. Had [] many of the individuals that are in this room right now not been there, I firmly believe that the damage would have been far, far worse along the Mississippi”).

Tragically, predictions of increased violence against Indigenous women, girls, and two-spirits have similarly come to fruition. During Line 3 construction, thousands of workers came to stay in hotels, campgrounds, and rental housing on or near reservations. Crisis centers received dozens of reports of Line 3 workers harassing and assaulting women and girls, and two pipeline workers were charged in a sex-trafficking sting. Beaumont, *supra*; *see also* Tr. at 43-44. And in the State of Minnesota, American Indian people remained the most likely to die from complications of COVID-19. *See* Tr. at 44.

Yet despite this violence and devastation brought by Line 3 to the Anishinaabe people and their treaty territories and sacred waters, it is the Fire Light participants—those who came in ceremony to pray for and protect the water, who left behind not a single gum wrapper—who now stand before this Court charged with criminal misdemeanor trespass.

II. STANDARD OF LAW

A defendant unjustly or improperly charged must not be put through trial. *State v. Koenig*, 66 N.W.2d 36, 372 (Minn. 2003). A probable cause motion requires the Court to determine “whether probable cause exists to believe that an offense has been committed and that the defendant committed it.” MINN. R. CRIM. P. 11.04(a).

Minnesota Courts analyzing a probable cause challenge must determine whether, given the facts disclosed by the record, it is fair and reasonable to require a defendant to stand trial. *State v. Florence*, 239 N.W. 2d 892, 902 (1976).

Any statute that imposes criminal liability must be strictly construed in determining whether probable cause exists. *State v. Larson Transfer & Storage, Inc.*, 246 N.W.2d 176, 182 (Minn. 1976); *State v. Corbin*, 343 N.W.2d 874, 875-6 (Minn. App. 1984) (“[P]enal statutes must be construed strictly; any reasonable doubt must be interpreted in favor of the accused.”).

To bring a charge that infringes on a constitutionally protected right, the State must demonstrate that criminalization of an otherwise protected activity was the least restrictive means of furthering a compelling government interest. *State v. Hershberger*, 462 N.W. 2d. 393, 398-399 (1990).

III. ARGUMENT

Except where explicitly curtailed by federal statute or treaty, Anishinaabe sovereignty remains as it existed prior to the invasion of settlers from Europe. Anishinaabe people thus retain all rights not explicitly relinquished, and the 1855 Treaty did not abrogate pre-existing Anishinaabe usufructuary rights to hunt, fish, gather, and participate in religious ceremonies with invited guests of their choosing, among other traditional activities, on ceded lands. These rights are not only retained in their treaties, but have been codified by the 1855 Treaty Authority, and the White Earth and Leech Lake Bands of Ojibwe. The Fire Light Defendants were invited by Anishinaabe people to join them in exercise of these retained rights, by participating in the ceremonial Fire Light camp. As such, the Fire Light Defendants had a claim of right, made supreme under the United States Constitution, that bars their criminal prosecution for misdemeanor trespass.

A. Anishinaabe Sovereignty Predates Treaties and Requires a Broad and Potent Construction of the Rights Implicitly Reserved by Indigenous People.

The Supremacy Clause in the United States Constitution asserts that, where a state law conflicts with a treaty to which the US is a party, the terms of the treaty take precedence:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. CONST. art. VI, cl 2.

Such treaties include those entered into between the United States and the sovereign nations upon whose stolen land this country was built. Thus, where state law conflicts with a treaty provision, the treaty prevails. *See Worcester v. Georgia*, 31 U.S. 515 (1832); *see also Herrera*, 139 S. Ct. 1686 (holding that neither statehood nor admission to the union, nor state or federal regulations, abrogated Crow Tribe member's usufructuary hunting rights).

Treaties are not sources of Indigenous rights, but rather agreements between nations whose very existence proves the United States' recognition of inherent Indigenous sovereignty. Grants of rights and authorities flowed from the inherently sovereign Indigenous peoples to the United States government; Native peoples would not have needed the treaties, or any other formal acknowledgement of their own sovereignty, but for the attempts of settler-colonizers to erase it.

Properly understood, therefore, treaties are "not a grant of rights to the Indians, but a grant of rights from them, [as well as] a reservation of those rights not granted." *United States v. Winans*, 198 U.S. 371, 381 (1905). Due to the nature of these treaties, they listed only those rights that a sovereign tribe relinquished to the United States, not those they retained. For this reason, the United States Supreme Court has held that any right that a sovereign nation would

normally possess that is not expressly relinquished in a treaty or extinguished by federal statute is presumptively reserved by the tribe. *See Menominee Tribe v. United States*, 391 U.S. 404 (1968). This fundamental principle of treaty law is known as the reserved rights doctrine.

The reserved rights doctrine provides that, except where explicitly curtailed by federal treaty or statute, Indigenous sovereign rights remain as they existed prior to European invasion. These rights include the usufructuary property rights to hunt, fish, gather, hold religious ceremonies, otherwise engage in traditional activities on ceded lands, and protect the natural resources necessary to the exercise of these usufructuary rights. *See Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999); *see also United States v. Washington*, 853 F.3d 946 (9th Cir. 2017), *aff'd sub nom. Washington v. United States*, 138 S.Ct. 1832 (2018) (*The Culverts Case*); *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974) (*The Boldt Decision*); *Herrera v. Wyoming*, 139 S. Ct. 1686 (2019).

The United States Supreme Court, in recognition of the violent context in which most treaties with Indigenous peoples were signed, has established three canons of treaty construction. *See* Stephen L. Pevar, *The Rights of Indians and Tribes*, 4th Ed. (2012). First, ambiguities in treaties must be resolved in favor of the Indigenous signatories. *See Mille Lacs*, 526 U.S. at 200 (citing *Washington v. Washington State Commercial Passenger Fishing Vessel Assn.*, 443 U.S. 658, 675-76 (1979); *Choctaw Nation v. United States*, 318 U.S. 423, 432 (1943); *Winters v. United States*, 207 U.S. 564, 576-77 (1908)). Second, treaties must be interpreted as the Indigenous signatories would have understood them at the time of signing. *See Jones v. Meehan*, 175 U.S. 1, 10 (1899); *United States v. Shoshone Tribe*, 304 U.S. 111, 116 (1938); *Choctaw Nation v. Oklahoma*, 397 U.S. 620, 631 (1970). And Third, treaties must be construed liberally in favor of Indigenous people. *See Mille Lacs*, 526 U.S. at 200 (citing *Washington v.*

Washington State Commercial Passenger Fishing Vessel Assn., 443 U.S. 658, 675-76 (1979); *Choctaw Nation v. United States*, 318 U.S. 423, 432 (1943); *Winters v. United States*, 207 U.S. 564, 576-77 (1908)).

To date, neither treaty nor federal law purports to divest Anishinaabe people from their sovereign usufructuary rights on ceded lands, including their rights to hold religious ceremonies, invite guests of their choosing to share in those ceremonies, and protect the water that is life. As Ms. Arsenault explained:

Ojibwe people, they retained their rights. They weren't granted rights. They retained the right to be able to access land to be able to hunt, gather, fish, pray, harvest wild rice... [The 1855 Treaty] as well as all of the enrollment, rules for who is native, and who is not, and who is mixed blood, and who is full blood, all of these types of things came out at the same time, and those who are leading those initiatives were all paid by timber industry funds in a similar way to which oil industry funds were used to push a lot of the line 3 pipeline through. It's extractive industry and that relationship with Ojibwe people, or lack thereof.

Tr. at 30-31.

B. Anishinaabe People Reserved Usufructuary Property Rights to the 1855 Treaty Ceded Territory.

In light of water's sacred esteem in Anishinaabe culture, it is unsurprising that the forty-four treaties signed by Anishinaabe tribes and the United States at times explicitly reserved these usufructuary rights that connect to and stem from water, and not once explicitly relinquished them.

See generally Exs. 1-8.

In 1825, the United States signed a treaty with the "Sioux and Chippewa, Sacs and Fox, Menominie, Ioway, Sioux, Winnebago, and a portion of the Ottawa, Chippewa, [and] Potawattomie[] Tribes" who controlled territory not held, bought, or otherwise owned by the United States. *See* Ex. 2. The 1825 Treaty created boundaries which both the United States and tribal signatories agreed to recognize. *See id.* In particular, the 1825 Treaty established the

Prairie du Chien boundary line, north of which was recognized as Anishinaabe territory. *See infra* Figure 1 (marking the Prairie du Chien boundary line in red). This recognized Anishinaabe territory north of the Prairie du Chien line would later include the 1855 Treaty ceded territory, and more than 150 years later, the location of the Defendants’ Fire Light camp. *See id.* (highlighting the 1855 Treaty ceded lands in blue).

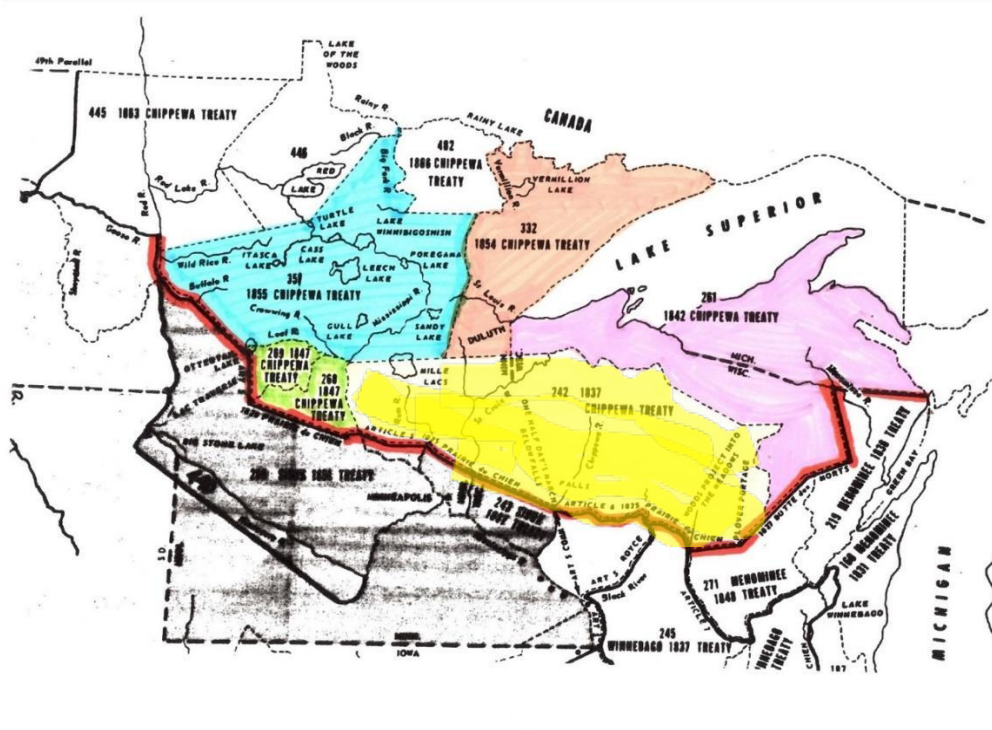


Figure 1: The 1825 Prairie du Chien boundary line is marked in red and the 1855 Treaty ceded territory is highlighted in blue.

The 1825 Treaty was proclaimed and ratified in 1826. *See* Exs. 2 & 3. That same year, the United States signed another treaty in which the Anishinaabe “grant[ed] to the government of the United States the right to search for, and carry away, any metals or minerals from any part of their country.” *See* Ex. 3. The 1826 Treaty made clear, however, that this grant of mineral rights would “not . . . affect the title of the land, nor the existing jurisdiction over it,” which remained that of the Anishinaabe peoples. *See id.* Thus, like the 1825 Treaty, the 1826 Treaty reflected

the Anishinaabe's retention of their sovereign Indigenous rights to the land, including all reserved usufructuary rights.

A decade later, the 1837 Treaty ceded designated lands from the Anishinaabe to the United States. *See* Ex. 4; *see also* Figure 1 (highlighting the 1837 Treaty ceded lands in yellow). In doing so, the 1837 Treaty expressly reserved to the Anishinaabe “[t]he privilege of hunting, fishing, and gathering the wild rice, upon the lands, the rivers and the lakes included in the territory ceded.” *See* Ex. 4.

In 1842, the United States entered another land cession treaty with the Anishinaabe. *See* Ex. 5; *see also* Figure 1 (highlighting the 1842 Treaty ceded territory in pink). In doing so, the 1842 treaty expressly reserved “the right of hunting on the ceded territory, with the other usual privileges of occupancy.” *See* Ex. 5. The Treaty also affirmed that “the whole country between Lake Superior and the Mississippi” had “always been understood as belonging in common to the Chippewas” and that all unceded lands continued to be held in common by the Bands.⁸ *See id.*

In 1855, the United States entered another land cession treaty with the Anishinaabe that included the land on which the Fire Light camp and ceremony were held. *See* Ex. 7; *see also* Figure 1 (highlighting the 1855 Treaty ceded territory in blue). The 1855 Treaty ceded “right, title, and interest” in these lands. *See* Ex. 7. While the 1855 Treaty did not expressly reserve usufructuary rights, as had the 1837 Treaty and, to a lesser extent, the 1842 Treaty, neither did it include any express intention to relinquish traditional usufructuary rights, such as hunting, fishing, or gathering wild rice. *See id.* To the contrary, Flat Mouth and Hole-in-the-Day

⁸ The National Archives includes an 1847 letter listing the tribes and bands that were treaty parties. *See* Ex. 6. While the White Earth Band is not listed, this is because White Earth was a relocation reservation formed in 1867, to which Minnesota Anishinaabe people were forcibly relocated. *See* Ex. 8.

expressly acknowledge their understanding that the United States wanted land, and land alone. *See* Tr. 148-152; *see also id.* at 62. The Lake Superior and Mississippi Bands of Ojibwe who held that land in common thus understood the 1855 Treaty to reserve those rights and, by extension, Anishinaabe people retain those rights today. *See Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 194 (1999) (holding that because the 1855 Treaty is “devoid of any language expressly mentioning—much less abrogating—usufructuary rights,” those rights enshrined in the 1837 Treaty were retained pursuant to the reserved rights doctrine); *see also, e.g.,* Ex. 11 at 1 (“Whereas the White Earth Tribal Council is the successor tribal government to the Mississippi Band of Chippewa, and has the authority to enact ordinances and regulations providing an orderly system for tribal control and regulation of hunting, fishing, gathering, trapping and resources management in the territory ceded by the Treaty of February 22, 1855.”); Ex. 12 (“Whereas the Leech Lake Reservation Tribal Council recognizes the present day, greater resource needs of the Anishinaabe of the 1855 Territory, which were never granted away by any treaty or removed by an Act of Congress.”); Ex. 14 (“Whereas the many Chippewa signatory Bands have reserved hunting, fishing, gathering and resource management rights and responsibilities in the 1855 Treaty ceded territory.”).

As shown in Figures 2 and 3, the Fire Light camp was within the 1855 ceded territory. Figure 2 depicts the 1855 treaty territory boundary in black, as well as the boundaries of reservations within the ceded territory. The Mississippi River, including the portion of the river on which the Fire Light camp was located, is outlined in blue.

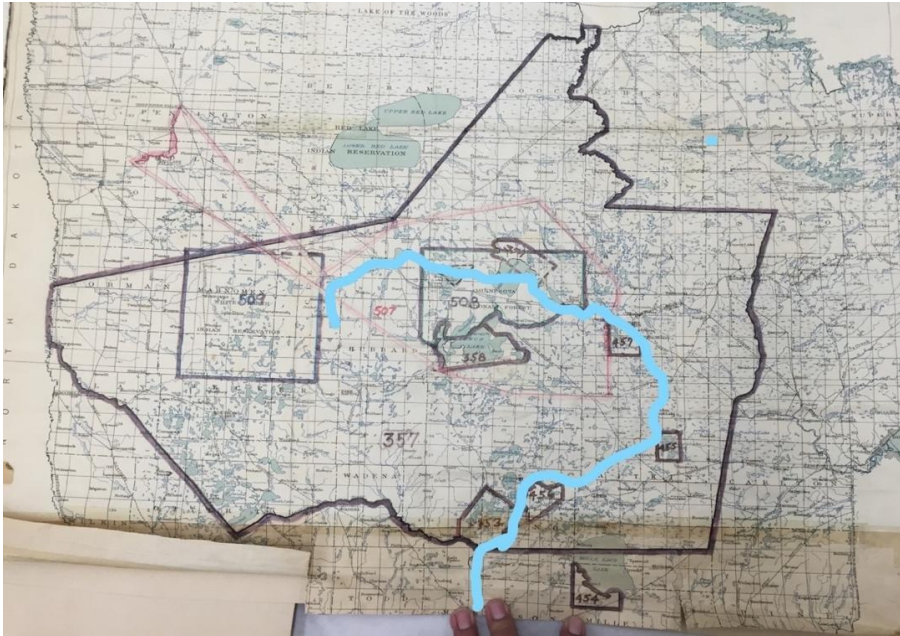


Figure 2: The 1855 Treaty Territory is outlined in black and the Mississippi River is traced in blue.

Figure 3 depicts the 1855 Treaty Territory boundary, highlighted in pink and red, over a more recent map of what is now called Minnesota.

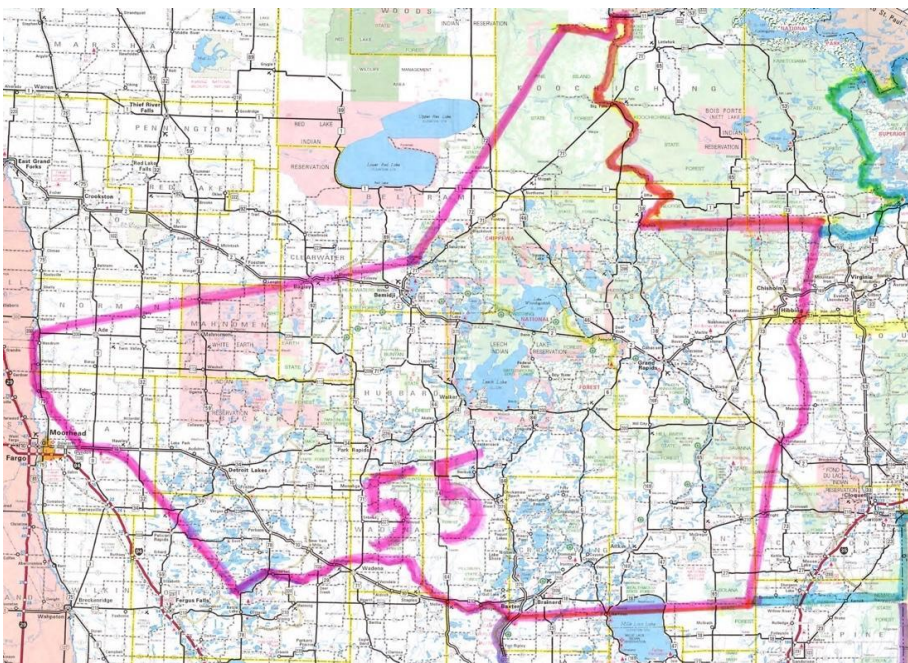


Figure 3: The 1855 Treaty Territory is outlined in pink and red.

Within this territory, therefore, Anishinaabe people reserved in common their sovereign usufructuary property rights to traditional uses of the land, including the rights to hunt, fish, gather, hold religious ceremonies, otherwise engage in traditional activities, and protect the natural resources necessary to the exercise of these usufructuary rights.

C. The Fire Light Camp Was Both a Lawful Exercise of Anishinaabe Treaty-Reserved Rights and in Conformity with the White Earth Tribal Codes.

In 2010, the 1855 Treaty Authority, comprised of Anishinaabe band members, adopted a Conservation Code for the 1855 Treaty ceded territories. *See* Ex. 10. Both the White Earth and Leech Lake Bands of Ojibwe adopted the Conservation Code shortly thereafter. *See* Exs. 11 & 12. In 2018, the 1855 Treaty Authority also adopted Resolutions codifying the “Right to Travel, Use, and Occupy Traditional Lands and Waters,” *see* Ex. 13, and the “Rights to Manoomin,” *see* Ex. 14, collectively the “Off-Reservation Codes.” In 2021, the White Earth Band of Ojibwe adopted the Off-Reservation Codes. *See* Ex. 15.

Pursuant to their treaties with the United States, and the rights reserved by Anishinaabe parties to those treaties, these resolutions and codes are lawful exercises of the Bands’ sovereign authority to “safeguard and protect natural resources in perpetuity and enforce tribal codes for the important and significant rights, privileges and immunities of the Treaty beneficiaries reserved in a series of Treaties between the Ojibwe with the United States of America from 1825 through 1867, which includes the lands, waters and natural resources throughout the territory ceded under the Treaty of February 22, 1855.” *See* Ex. 15.

The Off-Reservation Codes also reify the federal rights recognized in the American Indian Religious Freedoms Act (“AIRFA”) and proclaim that “the rights to travel, use and occupy traditional lands and spiritual places for cultural purposes are part of each tribal members’ individually held, historically inherent and inalienable rights that have existed for time

immemorial, long before European contact and necessary to enjoying and exercising usufructuary gathering rights.” *See* Ex 13. These rights extend beyond reservation boundaries to the 1855 and 1825 ceded territories, and the Codes recognize that spiritual places “can exist almost anywhere,” and may be the result of long-standing history or “created from a single iconic event” such as the Standing Rock camps that “*became* a spiritual place and will forever remain.” *See id.* The Codes explicitly apply to the “use of lands and waters and natural resources to support cultural activities including but not limited to ceremonies and celebrations,” as well as camping, rituals, prayer, drumming, singing, dancing, fire, and other spiritual practices, which may continue for extended time periods over multiple days and nights. *See id.*

The Off-Reservation Codes also place significant importance on the “numerous unimpaired waters” which include those “vital to the production of wild rice, the plant of supreme cultural significance to the Chippewa.” *See* Ex. 14. Thus the Codes explicitly recognize the rights of “[t]ribal members of various Chippewa tribes and Bands . . . to harvest manoomin, and protect and save manoomin seeds, within the 1855 ceded territory and beyond.” *See id.* In fact, the Codes not only provide for judicial enforcement of these rights, but explicitly allow “any Anishinaabe Band member who is a treaty beneficiary [to] enforce the rights set forth in this law through nonviolent direct action.” *See id.* This unique enforcement provision allowing for nonviolent direct action underscores the critical importance of manoomin, and the sacred waters that manoomin requires to grow, as a fundamental core of the sovereign rights reserved in their Treaties.

Anishinaabe participants thus had a clear claim of right to the Fire Light camp, not only by virtue of their Indigeneity and reserved rights as Anishinaabe people and treaty beneficiaries,

but pursuant to the codes adopted by the 1855 Treaty Authority and White Earth and Leech Lake Bands of Ojibwe.

In fact, the White Earth Tribal Court has already assessed the legal claims raised by three Minnesota Chippewa Tribal members who were similarly criminalized for their presence at the Fire Light camp, and found their actions to be lawful and protected exercises of their treaty-reserved rights in conformance with the White Earth Tribal Code. *See* Ex. 18. Following the transfer of their cases to White Earth Tribal Court, the Honorable David DeGroat determined following a review of the record and briefing by the parties that Nancy Beaulieu, Justin Keezer, and Todd Thompson, by participating in the Fire Light ceremony, acted in conformity with the White Earth Tribal Codes that effectuate treaty-reserved rights, and thus dismissed their cases on the merits. *See id.* The Fire Light Defendants now ask this Court to act in accordance with the Tribal Court and similarly recognize the treaty-reserved rights of Anishinaabe people, including their rights to invite guests to join them in ceremony, prayer, and cultural exchange, and the claim of right the Fire Light Defendants had by accepting their invitation.

D. The Fire Light Defendants Were Present as the Lawful Invited Guests of Anishinaabe People Exercising their Treaty-Reserved Rights, a Claim of Right That Is Supreme to State Law and Precludes a Finding of Probable Cause for Trespass.

The Fire Light Defendants each are charged with a single count of misdemeanor trespass for refusing to depart the property of another on lawful demand. To withstand this motion to dismiss, the State must establish that each of the Fire Light Defendants intentionally trespassed on the premises of another and, *without claim of right*, refused to depart from the premises on demand of the lawful possessor. Minn. Stat. 609.605.1(b)(3).⁹

⁹ The word “intentionally” means “that the actor either has a purpose to do the thing or cause the result specified or believes that the act performed by the actor, if successful, will cause that result.” MINN. STAT. 609.02, subd. 9(3). The actor must also “have knowledge of those facts

In Minnesota, the State bears the burden of proving that a defendant is “without claim of right.” *State v. Brechon*, 352 N.W.2d 745, 750 (Minn. 1984). At trial, this requires the State to present evidence “from which it is reasonable to infer that the defendant has no legal claim of right to be on the premises,” after which the burdens shifts to the defendant who may present “evidence of his reasonable belief that he has a property right, such as that of an owner, tenant, lessee, licensee or invitee.” *Id.*

Notably, “a claim of right [as a defense to trespass] is not limited to a claim of title or ownership. Express or implied consent a license to a person from one who has the authority to give such consent is a defense to a charge of criminal trespass.” *State v. Hoyt*, 304 N.W.2d 884, 889 (Minn. 1981). Furthermore, even the defendant is mistaken about their legal claim of right, a “bona fide belief” in the claim of right is a defense to a trespass charge. *Id.* at 890 (“The reason for allowing a defendant in a criminal trespass case the defense of a bona fide belief of claim of right is that the law generally does not punish persons who commit an offense without criminal intent. A bona fide belief, i.e., a good faith claim of right, negatives the criminal intent required.”).

Here, it is uncontroverted that the Fire Light Defendants’ claim of right was a bona fide belief made in good faith. But even more than that, their claim of right was *factually and legally correct*. And not only was their claim of right lawful, but as a treaty-reserved right it is a claim of right *legally supreme* to state trespass law pursuant to the Supremacy Clause of Article VI of the United States Constitution.

which are necessary to make the actor’s conduct criminal and which are set forth after the word ‘intentionally.’” *Id.*

In light of the reserved rights doctrine, the canons of treaty construction, the history of the 1855 Treaty, and the testimony presented to this Court, the right to invite guests to join in religious ceremonies and cultural practices is one of the treaty-reserved usufructuary rights retained by Anishinaabe people. The invitation of guests has had historical cultural significance to Anishinaabe peoples. *See, e.g.*, Tr. at 31-33, 159-64. And as evidenced by the testimony of the Fire Light Defendants' witnesses, inviting guests has remained an important part of Anishinaabe life up to and through the Fire Light ceremony. *See, e.g.*, Tr. at 32-33, 79-80, 118-21, 157-58, 159-60. Nothing in the treaties expressly abrogates the right of Anishinaabe peoples to invite guests to join them in exercising their usufructuary rights. And considering the liberal construction required by the canons, the belief of Anishinaabe signatories that the treaties did not sign away such a right must be given full effect. *See* Parts I(A), III(A)-(C), *supra*. To the contrary, as Flat Mouth and Hole-in-the-Day expressed, their understanding was that, in their treaties, the United States sought "the land, and the land only." Tr. 148-152; *see also* Tr. at 62.

At the time of the Fire Light camp, the dangers posed by the Line 3 pipeline were the latest iterations in a long history of violence and repression by the United States and Minnesota governments and extractive industries faced by Anishinaabe people and the fragile ecosystems and sacred waters of their treaty-ceded territories. In response, Anishinaabe people, including Nancy Beaulieu, Justin Keezer, Dawn Goodwin, and others, called on their allies to join them in ceremony near the headwaters of the Mississippi River. *See* Tr. at 95-97, 111-12. The invitation was written out as a solidarity statement, which was posted at the entrances to the Fire Light camp and incorporated throughout the eight days of ceremonial activities to mind invitees of the reason for their invitation. *See* Tr. at 83-87, 96-97, 118-21. Fire Light participants engaged by invitation in Anishinaabe religious and cultural practices. A ceremonial fire was lit and

Indigenous and non-Indigenous people alike camped, prayed, fasted, sang songs, made offerings, shared stories, and engaged in cultural exchanges, all together in ceremony and with the utmost care and respect for their surroundings. *See* Tr. at 77-79, 112-13. The group was in prayer for the entire duration of these eight days. *Id.* at 78. They did so in seeking to protect the water, sacred to Anishinaabe people, central to the exercise of all other usufructuary rights retained in the 1855 Treaty, and necessary for all life.

As expert Dale Greene explained, the invitation of guests has important historical roots for Anishinaabe people:

[W]e were always an inclusive people. . . . The old-world explorers got here, and they were leaving ecological damage in the old world where they're burning coal and had already deforested their lakes and streams, and they come here and they're breathing pristine air, drinking water from a lake or stream that rejuvenated them and they had a lot of love for this place called Minnesota. The first ones here were the French and as the British were pushing the French out [], the Chippewa Indians adopted many of the French into the Chippewa Tribes. They now belong to the [] the Martin Clans, the children of the Frenchmen. Under our [] system the American children belong to the migizi, the Bald Eagle Clan, they have a place to sit with us.

Id. at 161-62. The treaties themselves were made by Anishinaabe people as exercises of friendship. *Id.* at 162-63. More broadly, "in the Midewiwin there's an old saying on who shows up and who shows up to learn the Midewiwin is the ones that hear the drum calling them." *Id.* at 160. As Dale Greene explained, "those old-time Indians made sure that we understood that water and air are medicine. None of us can survive without it and I can't say that the non-Indian, non-Indigenous people didn't hear that calling. I want to believe that that medicine, those things that are alive, sent out a cry for help to whoever was able to answer the drum or hear the call." *Id.* at 160-61. And in fact, the invitation of guests was a critical component of the eight-day ceremony, as Nancy Beaulieu explained:

For once it felt like we could be heard and that . . . we could call on our allies, most importantly, to hold space with us ‘cause we feel when we’re standing alone that . . . our words continue to fall on deaf ears and that they continue . . . attacks on our sovereignty. [The allies gave] a beautiful line of protection in a sense of amplifying our struggle and telling our stories and honoring the treaties and showing up in a good way. So, [] the community, the sense of the community that was out there and the beauty... like I said, I’ll never forget those 8 days.

Id. at 130-31.

At the Fire Light camp, Anishinaabe ceremonial participants and their invited guests posed no threat, and did no damage. The same cannot be said of Enbridge’s Line 3. *See* Part I(C), *supra*. Yet it is the Fire Light Defendants who have faced ongoing prosecution despite their claim of right, both lawful and supreme, to peacefully join in ceremony with Anishinaabe people in support of their treaty-reserved rights and the sacred water that is life. It is for this reason that Defendants now ask this Court to dismiss their charges.

IV. CONCLUSION

For the foregoing reasons, the Defendant moves this Court to dismiss the sole charge of misdemeanor trespass for lack of probable cause or, in the alternative, for the State’s violation of the Supremacy Clause of Article VI of the United States Constitution, because the Fire Light Defendants were invited guests of Anishinaabe people exercising their treaty-reserved rights, and thus had not only a claim of right to be present at the Fire Light camp and participate in the ceremonies there, but a claim of right *legally supreme* to State law.

Respectfully Submitted,



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