

U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION 5

DECISION DOCUMENT:

APPROVAL OF THE  
**Leech Lake Band of Ojibwe**  
APPLICATION FOR TREATMENT IN A SIMILAR  
MANNER AS A STATE FOR THE CLEAN WATER ACT  
SECTIONS 303(c) WATER QUALITY STANDARDS  
AND 401 CERTIFICATION PROGRAMS

October 2021

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## I. Introduction and Index to the EPA Decision

### A. Introduction

This Decision Document provides the basis and supporting information for the U.S. Environmental Protection Agency's (EPA or Agency) decision to approve the application<sup>1</sup> from the Leech Lake Band of Ojibwe (LLBO or Tribe) for program eligibility for Clean Water Act (CWA) Section 303(c) Water Quality Standards (WQS) and Section 401 Water Quality Certification, pursuant to Section 518 of the CWA and 40 C.F.R. Part 131. CWA Section 518 authorizes the EPA to treat a tribe as a state (treatment in a similar manner as a state, or TAS) for purposes of administering various CWA programs over water resources “within the borders of an Indian reservation.” The Tribe’s TAS application includes all lands and waters within the exterior boundaries of Leech Lake’s Reservation. As described in Section III below, this decision does not constitute an approval of the Tribe's water quality standards. The EPA's review and approval or disapproval of the Tribe's water quality standards would be a separate, future Agency decision.

Section 303(c) of the CWA requires states to develop, review and revise (as appropriate) water quality standards for surface waters of the United States. At a minimum, such standards must include designated uses of waters, criteria to protect such uses, and an antidegradation policy. 40 C.F.R. § 131.6. In addition, Section 401 of the CWA provides that states may grant or deny “certification” for federally permitted or licensed activities that may result in a discharge to the waters of the United States. The decision to grant or deny certification is based on the state's determination regarding whether the proposed activity will comply with water quality standards it has adopted under CWA Section 303(c). If a state denies certification, the federal permitting or licensing agency is prohibited from issuing a permit or license.

Section 518 of the CWA authorizes the EPA to treat an eligible tribe in a similar manner as a state for certain CWA programs, including Sections 303(c) and 401. The EPA Water Quality Standards Regulation at 40 C.F.R. § 131.8 establishes the process by which the Agency implements that authority and determines whether to approve a tribal application for program eligibility for purposes of administering Sections 303(c) and 401 of the CWA. *See* 56 *Fed. Reg.* 64876 (December 12, 1991), as amended by 59 *Fed. Reg.* 64339 (December 14, 1994) (codified at 40 C.F.R. Part 131), and 81 *Fed. Reg.* 30183 (May 16, 2016).

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<sup>1</sup> Letter from Faron Jackson Sr., Chairman to Cathy Stepp, Regional Administrator, enclosing application for TAS for sections 303(c) and 401 of the CWA, January 29, 2018, and Attachments; and Supplemental information, including emails from Brandy Toft to David Horak, with attachments, June 28, 2021 and July 9, 2021; and letter from Ben Benoit, Environmental Department Director, to David Horak, EPA Tribal Program Manager, July 24, 2020 (hereafter, collectively, Application).

## **B. Index to the EPA Decision**

The following documents are relevant to this Agency decision. Appendix IV contains a selected index of materials considered by the EPA for this decision.

### **1. Application and Supporting Materials**

The Tribe's application for program eligibility for water quality standards and certifications under Sections 303(c) and 401 of the CWA includes the following letters and related documents from the Tribe:

- Letter from Faron Jackson Sr., Chairman, to Cathy Stepp, Regional Administrator, U.S. EPA Region 5, enclosing application for TAS for sections 303(c) and 401 of the CWA, January 29, 2018.
- Emails from Brandy Toft, LLBO, to David Horak, June 28, 2021 and July 9, 2021, containing supplemental information.
- Letter from Ben Benoit, Environmental Department Director, to David Horak, EPA Tribal Program Manager, providing response to public comments received during EPA's public comment period, July 24, 2020.

### **2. Comments Regarding Tribal Assertion of Authority**

On May 29, 2019, Cathy Stepp, Regional Administrator, notified appropriate governmental entities by letter of the substance and basis of the Tribe's assertion of authority contained in its application as provided at 40 C.F.R. § 131.8(c)(2). The letter provided a thirty-day period for submittal of comments on the Tribe's assertion of authority and it also enclosed a copy of the application.

Consistent with Agency practice, the EPA also placed notices in area newspapers including the *Cass Lake Times*, *DeBahJiMon Newspaper*, *Bemidji Pioneer*, and *the Star Tribune*, and provided the public an opportunity to comment on the Tribe's assertion of authority. The EPA also provided an opportunity for local governments (including Leech Lake Band of Ojibwe Government Center, Leech Lake Band of Ojibwe Justice Center, Leech Lake Band of Ojibwe Facility Center, Cass County Clerk, City of Cass Lake, Cass County Environmental Services, Itasca County Environmental Services) to review and comment on the assertion of authority in the Tribe's application. In addition, the EPA posted the application materials on its website and posted paper copies of the application at 10 tribal and local governmental offices) (*See list at Appendix II*). Additionally, the EPA published a *Fact Sheet and Frequently Asked Questions* document on its website.

During the May 29, 2019 through July 15, 2019 comment period, EPA received four comments. Appendix II provides a table of entities notified of the public comment opportunity and a list of comments received. Appendix III provides the EPA's response to comments.

### 3. Statutory and Regulatory Provisions

The following are certain statutory and regulatory provisions relevant to the EPA's decision.

- a. Section 518 of the Clean Water Act, 33 U.S.C. § 1377, authorizes the EPA to treat an eligible Indian tribe in the same manner as a state if it meets specified eligibility criteria.
- b. U.S. EPA, "Amendments to the Water Quality Standards Regulation that Pertain to Standards on Indian Reservations," 56 *Fed. Reg.* 64876 (December 12, 1991); as amended by 59 *Fed. Reg.* 64339 (December 14, 1994) (codified at 40 C.F.R. Part 131) (*see also* 81 *Fed. Reg.* 30183 (May 16, 2016)), establish the regulatory requirements for a tribe to administer water quality standards and certification programs.

### 4. Policy Statements

The following are guidance documents and policy statements relevant to the Agency's decision.

- a. EPA Policy for the Administration of Environmental Programs on Indian Reservations, November 11, 1984.
- b. Memorandum from Jonathan Cannon and Robert Perciasepe to Assistant Administrators and Regional Administrators, "Adoption of the Recommendations from the EPA Workgroup on Tribal Eligibility Determinations," March 19, 1998.
- c. Memorandum from Marcus Peacock to Assistant Administrators and Regional Administrators, "Strategy for Reviewing Tribal Eligibility Applications to Administer EPA Regulatory Programs," January 23, 2008.
- d. Memorandum from JoAnn K. Chase to Radhika Fox, and others, "Revision of EPA Review of Treatment as a State Applications," March 1, 2021.

## II. Requirements for Program Eligibility Approval

Under CWA Section 518 and the EPA's implementing regulation at 40 C.F.R. § 131.8(a), four requirements must be satisfied before the EPA can approve a tribe's program eligibility application for water quality standards under Section 303(c) and certification under Section 401. These are: (1) the Indian tribe is recognized by the Secretary of the Interior and exercises authority over a reservation; (2) the Indian tribe has a governing body carrying out

substantial governmental duties and powers; (3) the water quality standards program to be administered by the Indian tribe pertains to the management and protection of water resources that are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation; and (4) the Indian tribe is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions of an effective water quality standards program in a manner consistent with the terms and purposes of the Act and applicable regulations.

The EPA's regulation at 40 C.F.R. § 131.8(b) identifies what must be included in an application by an Indian tribe for program eligibility to administer water quality standards. The EPA separately reviews tribal water quality standards under 40 C.F.R. §§ 131.6 and 131.21. A program eligibility approval by the EPA under 40 C.F.R. § 131.8 does not constitute an approval of water quality standards. Where the EPA determines that a tribe is eligible to the same extent as a state for purposes of administering a water quality standards program, the tribe likewise is eligible to the same extent as a state for purposes of certifications conducted under CWA Section 401. *See* 40 C.F.R. § 131.4(c). Tribes authorized to administer the CWA water quality standards program are also “affected states” under CWA Section 402(b)(3) and (5) and 40 C.F.R. § 122.4(d). As “affected states,” they receive notice and an opportunity to comment on certain permits issued under the National Pollutant Discharge Elimination System program.

### **A. Federal Recognition**

Under Section 518 of the CWA and its implementing regulations, the EPA can approve a program eligibility application only from an “Indian tribe” that meets the definitions set forth in CWA Section 518(h) and 40 C.F.R. §§ 131.3(k), and (l). *See* 40 C.F.R. § 131.8(a)(1). The term “Indian tribe” is defined as “any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.” CWA Section 518(h)(2), 40 C.F.R. § 131.3(1). The term “Federal Indian reservation” means “all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.” CWA Section 518(h)(1), 40 C.F.R. § 131.3(k).

The Leech Lake Band of Ojibwe is a federally recognized tribe and is one of six member bands of the Minnesota Chippewa Tribe (MCT).<sup>2</sup> As discussed below, the Tribe is exercising governmental authority over its reservation as described in its Application. Thus, the EPA finds that the Tribe meets the requirements of 40 C.F.R. §§ 131.8(a)(1) and (b)(1).

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<sup>2</sup> U.S. Department of the Interior, *Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 86 *Fed. Reg.* 7554, 7556 (January 29, 2021), <https://www.federalregister.gov/documents/2021/01/29/2021-01606/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of>, last visited June 28, 2021. The Tribe's Application contains an older reference to this DOI-published list.

## **B. Substantial Governmental Duties and Powers**

To show that it has a governing body carrying out substantial governmental duties and powers over a defined area, 40 C.F.R. § 131.8(b)(2) requires that a tribe submit a statement that should: (i) describe the form of the tribal government; (ii) describe the types of governmental functions currently performed by the tribal governing body; and (iii) identify the source of a tribal government's authority to carry out the governmental functions currently being performed. Pursuant to 40 C.F.R. § 131.8(b)(6), where the tribe has previously qualified for eligibility or "treatment as a state" under the CWA, the tribe need only provide the required information which has not been submitted in a previous application. As explained below in more detail, LLBO's TAS Application describes the form of its government, types of governmental functions performed, and the Tribe's authority to carry out the governmental functions being performed.<sup>3</sup>

### **(i) Form of the Tribal Government**

The Application contains documentation showing that LLBO's tribal government is organized under the auspices of the MCT, which operates as a confederacy in which each member band controls its own governmental activities within the geographic extent of its respective reservation. MCT is organized under a federally approved constitution under which each member band is governed by a reservation business committee which functions as a tribal government and exercises legislative, executive, and judicial functions. The tribal government carries out authorities and programs to implement social services, education, taxation, land management, natural resource management, commercial businesses, and law enforcement. These indicia of governance meet and satisfy the requirement of demonstrating that the tribal government carries out substantial duties and powers.

The Tribe's government<sup>4</sup> is organized under the MCT Constitution, which provides that each of MCT's six member bands will be organized under a Reservation Business Committee,<sup>5</sup> now known as a Tribal Council. Pursuant to MCT Land Ordinance #3, Each member band is empowered to carry out all governmental functions within its respective reservation borders.<sup>6</sup> Pursuant to Chapter 1 of Land Ordinance #3:

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<sup>3</sup> The Tribe previously received TAS for CWA sections 106 and 314 on June 20, 1995. Additionally, the Tribe received TAS for Clean Air Act sections 105 and 505(a)(2) on September 27, 2007. EPA relied upon its previous TAS decisions and, additionally, EPA has reviewed the information provided by the Tribe in its Application.

<sup>4</sup> See Application Narrative at 1-3 and 14-15; Application at Attachment 58, LLBO, U.S. EPA Template for TAS Applications – WQS and Water Quality Certification Programs; Attachment 14: Attorney Letter: Letter from Richard A. Du Bey to Cathy Stepp, January 30, 2018 [Hereafter Attorney Letter]; Attachment 10: Memorandum, James Monchamp, Executive Director, to All LLBO Employees, "LLBO Org. Chart," February 24, 2017.

<sup>5</sup> Application Narrative at 2-3; Application at Attachment 8: Minnesota Chippewa Tribe, Revised Constitution and Bylaws of the Minnesota Chippewa Tribe (March 3, 1964).

<sup>6</sup> Application Narrative at 3; Application at Attachment 9: Minnesota Chippewa Tribe Land Ordinance #3 (October 22, 1997) [hereafter MCT Land Ordinance].

Each Band government shall retain the inherent authority to protect and manage the use of lands, waters and resources with respect to its Reservation so as to secure the political and economic security of the Band, and the health and welfare of its members.<sup>7</sup>

Pursuant to the terms of this Ordinance, each Band government “shall have the option to manage, lease, permit, or otherwise deal with the tribal lands within the Band’s jurisdiction.”<sup>8</sup>

The LLBO Tribal Government is comprised of:

- A Tribal Council, Executive Director, Judicial System,<sup>9</sup> and Administrative Boards.
- The Tribal Council is comprised of five members, including three members representing geographic districts, and two elected at large.<sup>10</sup> The Tribal Council’s authorities include negotiating on behalf of the Tribe, managing land, resources, and tribal assets; and management and protection of the lands, waters and resources of the reservation.<sup>11</sup>
- The Executive Director presides over the Tribe’s governmental departments, including the Department of Resources Management (DRM).
- The Tribe’s Judicial System is outlined in its Judicial Code, which provides for trial and appellate divisions and exercises civil jurisdiction over all members, members of MCT, non-member Indians who “reside or are found within the territorial jurisdiction of the Band,” as well as non-members within the scope of the Tribe’s jurisdiction.<sup>12</sup>
- The Tribe’s legislative ordinances provide the Tribe’s regulatory framework, including natural resource harvest, use, and protection; hazardous and solid waste management; and pesticide regulation.<sup>13</sup>

## **(ii) Types of Government Functions Performed by the Tribe**

Governmental functions performed by the Tribe include the following:

- Management of three casinos, two gas stations, and an office supply store;
- Management of commercial wild rice sales;
- Providing health programs for the reservation population, including community health clinics, behavioral health, drug treatment and recovery; occupational therapy; home health care assistance; and nutritional assistance;
- An Education Division that implements all levels of education from Head Start to a community college;

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<sup>7</sup> MCT Land Ordinance at Section 102, cited in Application Narrative at 3.

<sup>8</sup> MCT Land Ordinance at Section 302, cited in Application Narrative at 3.

<sup>9</sup> Application at Attachment 14, Attorney Letter at 5-6.

<sup>10</sup> Application at 2; MCT Constitution, Art. III, Sect. 2.

<sup>11</sup> Application at 2-3; MCT Land Ordinance.

<sup>12</sup> Application at Attachment 20, LLBO Judicial Code, Title I: Courts, Parts I (Establishment and Operation) and II (Jurisdiction); and at Attachment 14, Attorney Letter at 10.

<sup>13</sup> Application at Attachment 18, Pesticide Control; Attachment 22, Hazardous Substances Control Ordinance; Attachment 23, Interim Tribal Water Quality Standards; Attachment 24, Regulation of Bowstring River Segment; Attachment 25, Conservation Code; Attachment 26, Protection and Preservation of Wild Rice Beds; Attachment 27, Pine Bough Harvest; Attachment 28, Open Burning Restrictions and Permit Requirements. *See also* Application at Attachment 14, Attorney Letter at 8-10.

- Environmental regulation, including permitting and enforcement for fish and game conservation; wild rice harvesting, and forestry and logging;<sup>14</sup>
- A pesticide regulatory program;<sup>15</sup>
- An Underground Storage Tank (UST) program that coordinates with EPA's federal program implementation and provides compliance assistance for UST owner/operators;
- An Air Program that implements air quality control projects including diesel retrofitting and emissions reductions; alternative energies; radon testing and mitigation; a burn barrel ordinance; and air quality monitoring for a variety of parameters;<sup>16</sup>
- A solid waste and recycling program.<sup>17</sup>

### (iii) Source of the Tribe's Governmental Authority

The Tribe's Application contains documentation showing that its government is organized under a federally approved constitution and is divided into legislative, executive, and judicial functions. The Tribe asserts two primary bases of its authority. First, the Tribe asserts proprietary rights in regulation of the property held by the Tribe.<sup>18</sup> Second, the Tribe asserts inherent sovereignty to exercise civil regulatory authority over both its members and within the geographic extent of its reservation borders.<sup>19</sup> The Tribe's government carries out authorities and programs to implement social services, education, land management, natural resource management, commercial businesses, permitting, and law enforcement through tribal ordinances and codes adopted by the Tribal Council.<sup>20</sup> The above description of the basis of authority and of the functions carried out by the Tribe to regulate reservation conduct, control the disposition of property, and provide for the public health and environmental protection demonstrates that the Tribe has met the requirements of 40 C.F.R. § 131.8(a)(2) and (b)(2).

## C. Jurisdiction Over Waters within the Borders of a Reservation

Under 40 C.F.R. § 131.8(b)(3), a tribe is required to submit a statement of authority to regulate water quality. The statement should include: (i) a map or legal description of the area over which the tribe asserts authority over surface water quality; (ii) a statement by the tribe's legal counsel (or equivalent official) that describes the basis for the tribe's assertion of authority, which may include a copy of documents such as tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions that support the tribe's assertion of authority; and (iii) an identification of the surface waters for which the tribe proposes to establish water quality standards. 40 C.F.R. § 131.8(b)(3).

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<sup>14</sup> Application at Attachment 14, Attorney Letter at 10.

<sup>15</sup> Application at Attachment 14, Attorney Letter at 9-10.

<sup>16</sup> Application at Attachment 14, Attorney Letter at 9-10.

<sup>17</sup> Application at Attachment 14, Attorney Letter, at 10.

<sup>19</sup> Application at Attachment 14, Attorney Letter at 6-7.

<sup>19</sup> Application at Attachment 14, Attorney Letter at 5-8.

<sup>20</sup> Application at Attachment 14, Attorney Letter at 6-10; MCT Constitution, and MCT Land Ordinance.

The LLBO Application contains a detailed geographic description of the reservation and its water resources and lists waterbodies for which the Tribe is seeking authority to establish water quality standards. The Application also includes a statement of its legal counsel describing the basis of the Tribe's assertion of authority.

#### **(i) Map or Legal Description**

The Tribe's Application seeks TAS eligibility for purposes of administering water quality standards and certifications over lands located within the exterior boundaries of the Leech Lake Reservation.

The Tribe's reservation is located in north-central Minnesota and is comprised of 864,158 acres that are situated in portions of Itasca, Cass and Beltrami counties.<sup>21</sup> The Tribe's reservation was established through the 1855 Treaty of Washington, augmented by several subsequent treaties and three executive orders.<sup>22</sup> The current boundaries and legal description of the reservation were acknowledged and affirmed in a 1971 federal declaratory judgment and a 1973 consent judgment entered into by LLBO, the State of Minnesota, and the United States.<sup>23</sup> The Application recites this boundary description,<sup>24</sup> which is found at Appendix I of this Decision Document. Additionally, the Tribe's Application contains detailed maps delineating water resources within the Reservation.<sup>25</sup>

Based on the information described above, the EPA has determined that the Tribe has satisfied 40 C.F.R. § 131.8(b)(3)(i) by providing maps and a legal description of the area over which the Tribe asserts authority to regulate surface water quality.

#### **(ii) Statement Describing Basis for the Tribe's Authority**

In 2016, EPA issued a final interpretive rule clarifying the authority of tribes to administer regulatory programs over their reservations pursuant to CWA section 518. This clarification is described in EPA's *Revised Interpretation of Clean Water Act Tribal Provision*, 81 Fed. Reg. 30183 (May 16, 2016) (*Interpretive Rule*), which explains that Section 518 includes an express congressional delegation of civil regulatory authority to eligible tribes for purposes of

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<sup>21</sup> *Leech Lake Band of Chippewa Indians v. Herbst*, 334 F. Supp. 1001 at note 1 (D. Minn., December 10, 1971); *Leech Lake Band of Chippewa Indians v. Herbst*, Consent Judgment, 3-69 Civ. 64 and 3-70 Civ. 228 (D. Minn. June 13, 1973) at 3-5. See Application at Attachment 12. At issue in this case was an action for declaratory judgment brought by the Leech Lake Band and the United States against the Minnesota Commissioner of Natural Resources and the State of Minnesota to determine whether members of the Tribe could fish, hunt, and gather resources on the public lands and waters within the exterior boundaries of the Leech Lake Reservation without being regulated by the State. The Court affirmed tribal treaty rights to hunt, fish, and gather within the reservation, free from regulation by the State of Minnesota.

<sup>22</sup> Treaty of February 22, 1855, 10 Stat. 1165; Treaties with the Mississippi Bands of Chippewa, May 7, 1864 (13 Stat. 693) and May 19, 1867 (16 Stat. 719); and three Executive Orders dated October 29, 1873, November 4, 1873, and May 26, 1874. See Application at Attachment 14, Attorney Letter at 5-6; and Attachments 2 through 7.

<sup>23</sup> *Leech Lake Band of Chippewa Indians v. Herbst*, 334 F. Supp. 1001 at note 1; *Leech Lake Band of Chippewa Indians v. Herbst*, Consent Judgment, Application at Attachment 12.

<sup>24</sup> Application at 5-6.

<sup>25</sup> Application at Attachments 13, 15, 16 and 57.

administering CWA programs over their entire reservations. Pursuant to this congressional delegation, applicant tribes do not need to demonstrate their inherent authority over reservation water in order to obtain TAS eligibility to under the CWA. Instead, tribes can rely on the congressional delegation of authority as the source of their authority to regulate reservation waters under the CWA. *Id.* at 30190, 30194.

Accordingly, the main focus in determining the extent of an applicant tribe's jurisdiction for CWA regulatory purposes is to identify the geographic boundaries of the Indian reservation area over which the congressional delegated authority would apply. *Id.* at 30194. In the *Interpretive Rule*, EPA also recognized that there may be rare instances where special circumstances limit or preclude a particular tribe's ability to accept or effectuate the congressional delegation of authority over its reservation. *Id.* at 30192-193. Such special circumstance could arise, for instance, under a separate federal statute establishing unique jurisdictional arrangements for a specific state or reservation, or under the provisions of particular treaties or tribal constitutions that may limit a tribe's ability to exercise relevant authority. *Id.*

Although LLBO describes several bases of authority in its Application, including the Tribe's inherent sovereign authority over all lands and resources (including water resources) within the Reservation,<sup>26</sup> the Application states that the Tribe's primary basis of regulatory authority over surface waters on the Reservation is the congressional delegation of authority in CWA Section 518.<sup>27</sup> The Tribe also states that there is no limitation or impediment to its ability to accept and effectuate this congressional delegation of authority.<sup>28</sup> Moreover, EPA is not aware of any impediment limiting the Tribe's ability to effectuate the congressionally delegated authority for its reservation lands. We, therefore, conclude that the Tribe has properly asserted the congressional delegation of authority and has satisfied the application requirement of 40 C.F.R. § 131.8(b)(3)(ii).

### **(iii) Identification of the Surface Waters for which the Tribe Proposes to Establish Water Quality Standards**

A tribe's descriptive statement of authority in its application for TAS approval should also identify the surface waters for which it proposes to establish water quality standards. See 40 C.F.R. § 131.8(b)(3)(iii).

The Tribe's Application identifies the reservation lands over which the Tribe seeks to administer CWA program authorities.<sup>29</sup> The Application contains a description of waters

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<sup>26</sup> Application at Attachment 14, Attorney Letter at 5-31.

<sup>27</sup> Application at 7; and Attachment 14, Attorney Letter at 5. The Tribe's Application contains a recitation of the Tribe's sovereign inherent authority to regulate waters of the reservation. Because EPA's decision is based on CWA section 518 as an express congressional delegation of civil regulatory authority to eligible tribes, we do not evaluate the Tribe's sovereign inherent authority in relation to this Application.

<sup>28</sup> Application at Attachment 14, Attorney Letter at 5. The EPA received one comment that challenged EPA's interpretation of CWA section 518 as a congressional delegation of authority to eligible tribes. The response to this Comment is found in Appendix III, Response to Comment 3.

<sup>29</sup> Application at 4-7, and at Attachments 13, 15, 16 and 57.

located within the Reservation, including a list of surface waters.<sup>30</sup> Key waters identified by the maps and included in this approval are the named waters (and their tributaries) that occur within those portions of the counties of Itasca, Cass, Hubbard and Beltrami that compose the Reservation. The Band's Application indicates that the Tribe intends to set standards for all surface waters within the Reservation that meet the EPA's regulatory definition of the "Waters of the United States."<sup>31</sup> Thus, we find that the Tribe has satisfied 40 C.F.R. § 131.8(b)(3)(iii) by identifying surface waters over which it proposes to establish water quality standards.

(iv) **The EPA's Finding on the Tribe's Assertion of Jurisdiction:** Based on the information included in the Tribe's Application as discussed above, the EPA finds that the Tribe has satisfied the requirements set forth at 40 C.F.R. § 131.8(a)(3) and (b)(3).

#### **D. Capability**

##### **40 C.F.R. § 131.8(b)(4) *A narrative statement describing the capability of the Indian Tribe to administer an effective water quality standards program***

To demonstrate that a tribe has the capability to administer an effective water quality standards program, 40 C.F.R. § 131.8(b)(4) requires that the tribe's application include a narrative statement of the tribe's capability. The narrative statement should include: (i) a description of the tribe's previous management experience, which may include the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act, the Indian Mineral Development Act or the Indian Sanitation Facility Construction Activity Act; (ii) a list of existing environmental and public health programs administered by the tribal governing body and copies of related tribal laws, policies, and regulations; (iii) a description of the entity (or entities) that exercise the executive, legislative, and judicial functions of the tribal government; (iv) a description of the existing, or proposed, agency of the tribe that will assume primary responsibility for establishing, reviewing, implementing and revising water quality standards; and (v) a description of the technical and administrative capabilities of the staff to administer and manage an effective water quality standards program or a plan that proposes how the tribe will acquire additional administrative and technical capabilities. 40 C.F.R. § 131.8(b)(4)(i)-(v) requirements are addressed in more detail below.

(i) **40 C.F.R. § 131.8(b)(4)(i) *A description of the Indian Tribe's previous management experience which may include the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the Indian Mineral Development Act (25 U.S.C. 2101 et seq.), or the Indian Sanitation Facility Construction Activity Act (42 U.S.C. 2004a).***

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<sup>30</sup> See Application at Attachment 15, Leech Lake Reservation Waters; Attachment 57, Boundary Waters. These waters are also delineated on the map of the Leech Lake Reservation at Attachment 16.

<sup>31</sup> See Application at Attachment 15, Leech Lake Reservation Waters; and Attachment 57, Boundary Waters. These waters are also delineated on the attached map of the Leech Lake Reservation at Attachment 16.

See discussion in Section II.B above. The Tribe's Application provides information describing the Tribe's previous management experience, emphasizing existing environmental and public health programs administered by the Tribe. In addition to the Application materials, Region 5 staff gathered information on the Tribe's grant performance from regional tribal program managers. The Band has successfully managed its CWA Section 106 award since 1995, in addition to a Performance Partnership Grant that includes the Tribe's General Assistance Program grant and the Tribe's Clean Air Act Section 105 and Radon grants, all of which have been managed in compliance with the terms and conditions related to the fiscal management of the grant agreements.<sup>32</sup> The EPA has also considered the Tribe's long-time management of its CERCLA Support Agency Cooperative Agreement Grant. As part of the EPA's consultation with the Tribe regarding this issue, the Tribe provided a supplement to its TAS application on June 28, 2021 and on July 9, 2021, that explained the additional steps and plans the Tribe has and will implement in connection with its management of EPA grant funding.<sup>33</sup>

**(ii) 40 C.F.R. § 131.8(b)(4)(ii) *A list of existing environmental or public health programs administered by the Tribal governing body and copies of related Tribal laws, policies, and regulations.***

In addition to the description of governmental functions discussed in Section II.B above, the Tribe's Application contains a description of the Tribe's DRM which contains divisions covering eight program areas including air and water quality.<sup>34</sup> The DRM has some 64 employees, many with specialized degrees. Programs implemented by the DRM include water resources, fishery and wildlife management, conservation enforcement, cultural resources protection, forestry, and environmental regulation.<sup>35</sup>

**(iii) 40 C.F.R. § 131.8(b)(4)(iii) *A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the Tribal government.***

See discussion in Section II.B above.

**(iv) 40 C.F.R. § 131.8(b)(4)(iv) *A description of the existing, or proposed, agency of the Indian Tribe which will assume primary responsibility for establishing, reviewing, implementing and revising water quality standards.***

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<sup>32</sup> Region 5 Summary of Staff Capacity Assessments gathered during LLBO CWA TAS Application Review, October 26, 2021.

<sup>33</sup> Emails from Brandy Toft, Leech Lake Band, to David Horak, U.S. EPA, June 28, 2021, and July 9, 2021, with attachments.

<sup>34</sup> Application Narrative at 3-4, 7-14.

<sup>35</sup> Application Narrative at 7-14.

The Tribe's Application included resumes, the DRM organizational chart, and a description of the programs implemented by the DRM.<sup>36</sup> The Tribe's Application indicates the Tribe has trained and experienced staff to effectively implement its program, agencies and organizations. Programs implemented by the DRM include preservation and protection of reservation surface waters, an air quality protection program that was begun in 2001, an Underground Storage Tank program, and Brownfields and pesticides regulatory programs.<sup>37</sup> The Tribe also regulates solid waste transportation, disposal, and recycling within the Reservation.<sup>38</sup>

The Tribe's Application explains the position of the DRM within the larger Tribal government. The Application describes the DRM's Water Resources Program, which includes a water quality specialist and two water quality technicians.<sup>39</sup> Staff in the Water Resources Program hold advanced degrees in the environmental sciences and include a federally credentialled tribal inspector for stormwater and septic systems.<sup>40</sup> The Water Resources Program conducts watershed quality monitoring activities and partners with local, state, and EPA "to monitor, sample, develop and implement water quality projects that are necessary to improve Reservation lakes, rivers, streams, and wetlands, while also working on stormwater, wastewater, and erosion control issues."<sup>41</sup> The Tribe receives CWA section 106 funding and current activities include:

- Review and comment on permit applications for land use planning purposes;
- Source water protection, including for wetlands, groundwater, and surface water;
- Water quality planning, assessments, and surveys;
- Review of tribally permitted septic treatment systems applications and inspections;
- Wild rice management.<sup>42</sup>

The Tribe's Application included resumes, the DRM organizational chart, and a description of the programs implemented by the DRM and includes copies of many ordinances adopted and implemented by the Tribe to manage and protect Reservation resources and public health.<sup>43</sup>

The Tribe's Application states that the Tribal entity that will be responsible for conducting water quality certifications under CWA section 401 is the Director of the Division of Resources Management.<sup>44</sup>

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<sup>36</sup>Application at Attachment 14, Attorney Letter at 8-10; See also Attachment 10, LLBO Organizational Chart; Attachment 11, Organizational Chart Leech Lake Department of Resources Management; Attachment 21, LLBO Water Resources Staff – Programmatic Capability: List of LLBO Personnel in Water Resources Department.

<sup>37</sup> Application at Attachment 14, Attorney Letter at 8-10.

<sup>38</sup> Application at Attachment 14, Attorney Letter at 10.

<sup>39</sup> Application at Attachment 10, LLBO Organizational Chart; Attachment 11, Organizational Chart, Leech Lake Department of Resources Management.

<sup>40</sup> Application at Attachment 21, LLBO Water Resources Staff – Programmatic Capability.

<sup>41</sup> Application Narrative at 8.

<sup>42</sup> Application Narrative at 11.

<sup>43</sup> Application Narrative at 7-14; Attachment 23, Interim WQS; Attachment 24, Regulation of Surface Use of a Portion of the Bowstring River; Attachment 25, Conservation Code; Attachment 26, Protection and Preservation of Wild Rice Beds; Attachment 27, Pine Bough Harvest; Attachment 28, Open Burning Restrictions and Permitting Requirements.

<sup>44</sup> Application Narrative at 8.

(v) 40 C.F.R. § 131.8(b)(4)(v) *A description of the technical and administrative capabilities of the staff to administer and manage an effective water quality standards program or a plan that proposes how the Tribe will acquire additional administrative and technical expertise. The plan must address how the Tribe will obtain the funds to acquire the administrative and technical expertise.*

See discussion in Section II.D.iv above. Based on the information provided by the Tribe that describes its capability to administer an effective water quality standards and certification program (including the supplemental information described above) and based on EPA's experience in working with the Tribe on water quality programs to date, including the administration of the Tribe's CWA section 106 grant, the EPA finds that the Tribe meets the requirements in 40 C.F.R. § 131.8(a)(4) and (b)(4).

### **III. EPA'S TAS Determination is a Separate Process from an EPA Decision on a Tribe's Submittal of Water Quality Standards**

As described above, under the EPA's TAS regulations, the EPA provides notice and an opportunity to comment on an applicant tribe's assertion of authority to regulate reservation water quality. Any comments addressing the substance of actual water quality standards that an eligible tribe may develop and submit to the EPA in the future for review under CWA Section 303(c) are beyond the scope of the TAS process.

This TAS decision does not constitute an approval of the Tribe's water quality standards. The EPA's review and approval or disapproval of new or revised water quality standards is a separate Agency decision under the CWA, distinct from the EPA's decision on the Tribe's TAS application for eligibility to administer CWA Sections 303(c) and 401 programs. Under the CWA, a tribe must be approved for TAS for EPA to act on its submitted water quality standards under CWA Section 303(c). If the EPA approves a tribe's water quality standards, those standards then become federally applicable water quality standards for CWA purposes over those waters of the United States that are within the scope of the TAS approval.

Any water quality standards adopted by the Tribe and submitted to the EPA for action under the CWA would need to satisfy all CWA and regulatory requirements, including requirements for public involvement in the adoption process. For example, before adopting final standards, the Tribe must hold a public hearing, notify the public and affected parties and provide copies of relevant materials in advance, and for final rulemaking provide a responsiveness summary to the tribal decision-maker and the public. *See* 40 C.F.R. § 131.20(b) and 40 C.F.R. Part 25. These requirements will ensure an appropriate opportunity for interested entities to provide input on the Tribe's proposed water quality standards, and any concerns regarding the standards being proposed by the Tribe would be appropriately raised and addressed as part of that process.

The EPA also notes that Section 518(e) of the CWA addresses the possibility that disputes may arise between a state and an eligible Indian tribe as a result of differing federally approved water

quality standards on shared water bodies. This provision directs the EPA to promulgate regulations providing a mechanism for resolving any unreasonable consequences that may arise as a result of differing state and tribal water quality standards. This mechanism must provide for explicit consideration of relevant factors including, but not limited to, the effects of differing water quality permit requirements on upstream and downstream dischargers, economic impacts, and present and historical uses and quality of the waters subject to such standards. The EPA has promulgated such regulations at 40 C.F.R. § 131.7, which authorize the Regional Administrator to attempt to resolve (and provide a detailed process for resolving) such disputes between a state and a tribe with TAS approval in certain circumstances.<sup>45</sup>

It is the EPA’s understanding that the Tribe has participated in discussions with the State of Minnesota regarding the adoption of water quality standards. The Region supports these efforts and encourages the Tribe and Minnesota to continue these discussions, including other interested stakeholders as appropriate. The EPA encourages an inclusive discussion among all concerned entities in the area to help promote cooperative approaches to implementation of CWA programs.

#### IV. Conclusion

#### Recommendation

Based on the foregoing analysis of the Application and supporting documentation, EPA Region 5 WD, ORC, and TMPO conclude that the Leech Lake Band of Ojibwe meets the requirements of CWA Section 518 to be treated in a similar manner as a state for purposes of the CWA sections 303(c) and 401. EPA Region 5, WD, ORC, and TMPO recommend that the Regional Administrator adopt these conclusions and determine that the Tribe is eligible to be treated in a similar manner as a state under CWA section 518 for purposes of CWA sections 303(c) and 401.

**ROBERT  
KAPLAN**

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Robert A. Kaplan

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Office of Regional Counsel

**CHRISTOPH  
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Tribal and Multi-media Office

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<sup>45</sup> Where disputes between States and Indian Tribes arise as a result of differing water quality standards on common bodies of water, the Regional Administrator shall attempt to resolve such disputes where: (1) the difference in water quality standards results in unreasonable consequences; (2) the dispute is between a State and a Tribe with TAS approval; (3) a reasonable effort to resolve the dispute without EPA involvement has been made; (4) the requested relief is consistent with the provisions of the CWA and other relevant law; (5) the differing State and Tribal water quality standards have been adopted by the State and Tribe and approved by EPA; and (6) a valid written request has been submitted by either the Tribe or the State. 40 C.F.R. § 131.7.



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Water Division

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### Determination

Based on documentation provided by the Leech Lake Band of Ojibwe, and the above analysis, I have determined that the Tribe meets the requirements of CWA Section 518 and 40 C.F.R. § 131.8 for purposes of treatment in a similar manner of as a state for CWA section 303(c). Pursuant to 40 C.F.R. § 131.4(c), the Tribe is also eligible to the same extent as a state for the purposes of issuing certifications under CWA Section 401. By virtue of these decisions, the Tribe will also be an “affected state” within the meaning of CWA Sections 402(b)(3) and (5) and its implementing regulation at 40 C.F.R. § 122.4(d).



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Debra Shore

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11/02/2021  
Date

Regional Administrator & Great Lakes National Program Manager  
US EPA Region 5

## Appendix I: Reservation Boundary Description

The Tribe's Application states the following:

The Band is a signatory to the Treaty of February 22, 1855, 10 Stat. 1165, (Attachment 2) which established Reservations for the Pillager and Winnibigoshish Bands on Cass Lake, Leech Lake and Lake Winnibigoshish. The three Reservations were established by the Treaty of February 22, 1855 (10 Stat. 65) were augmented and connected by Treaties with the Mississippi Bands of Chippewa dated May 7, 1864 (13 Stat. 693) (Attachment 3) and May 19, 1867 (16 Stat. 719) (Attachment 4) and were further enlarged by Executive Orders dated October 29, 1873, November 4, 1873, and May 26, 1874 (Attachments 5-7).<sup>46</sup>

Following a 1971 decision by the Minnesota District Court, *Leech Lake Band of Chippewa Indians v. Herbst*, the Minnesota District Court set forth the "Leech Lake Indian Reservation Boundary Description" in a Consent Judgment<sup>47</sup> as follows:

Beginning at a point on the Mississippi River, opposite the mouth of the Wanoman River (Vermillion River in Cass County), as laid down on Sewell's map of Minnesota; thence north to a point two miles further north than the most northerly point of Lake Winnibigoshish; thence west to the range line between ranges 25 and 26 West; thence north on said range line to the twelfth standard parallel; thence west on said standard parallel to the range line between Ranges 28 and 29 West; thence south on said range line to the High-Water Mark on the north shore of the Dixon Lake; thence southerly along the High-Water Mark on the easterly shore of Dixon Lake to the High-Water Mark on the right bank (looking downstream) of the Third River at its outlet from Dixon Lake; thence southerly along the High-Water Mark on the right bank (looking downstream) of the Third River to a point two miles further north than the most northerly point of Lake Winnibigoshish; thence west to a point two miles west of the most westerly point of Cass Lake; thence south to the High water Mark on the left bank (looking downstream) of the Kabekona River; thence southeasterly along the High-Water Mark on the left bank (looking downstream) of the Kabekona River to its mouth at Kabekona Bay of Leech Lake; thence easterly along the High-Water Mark on the north shore of Kabekona Bay of Leech Lake to Walker Bay of Leech Lake; thence northeasterly along the High-Water Mark of Walker Bay of Leech Lake to the easterly extremity of Sand Point of Leech Lake, thence southerly through Walker Bay of Leech Lake to the most southern point of Leech lake (said point being the southwest corner of Government Lot 4 of Section 11, Township 141 North, Range 31 West); thence in a direct line to the southeast corner of Government Lot 6 of Section 32, Township 141 North, Range 27 West; thence northerly along the High-Water Mark on the West shore of Inguadona Lake to the High-Water

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<sup>46</sup> Application at Attachment 14, Attorney Letter at 5-6.

<sup>47</sup> *Leech Lake Band of Chippewa Indians v. Herbst*, 334 F. Supp. 1001 at note 1 (D. Minn., December 10, 1971); see also *Leech Lake Band of Chippewa Indians v. Herbst*, Consent Judgment, 3-69 Civ. 64 and 3-70 Civ. 228 (D. Minn. June 13, 1973) at 3-5. See Application at Attachment 12.

Mark on the right bank (looking downstream) of the Little Boy River at its outlet from Inguadona Lake; thence northerly along the High-water Mark on the right bank (looking downstream) of the Little Boy River to its inlet into Boy Lake; thence northerly through Boy Lake by the shortest water route to the High-Water Mark on the right bank (looking downstream) of the Little Boy River at its outlet from Boy Lake; thence northerly and westerly along the High-Water Mark on the right bank (looking downstream) of the Little Boy River to its mouth at Boy Bay of Leech Lake; thence in a direct line to the southern extremity of Sugar Point of Leech Lake; thence northeasterly along the High-Water Mark of Boy Bay of Leech Lake to the range line between Ranges 28 and 29 West; thence north on said range line to the High-Water Mark on the southerly shore of Waboose Bay of Leech Lake; thence northerly along the High-Water Mark of Waboose Bay of Leech Lake to the High-Water Mark on the right bank (looking downstream) of the main channel of the Leech Lake River, as it now exists, at its outlet from Waboose Bay of Leech Lake; thence easterly along the High-Water Mark on the right bank (looking downstream) of the main channel of the Leech Lake River, as it now exists, to its intersection with the original channel of the Leech Lake River, said intersection being approximately 4500 feet west of the inlet of the main channel into Mud Lake as it now exists; thence along the High-Water Mark on the right bank (looking downstream) of the original channel of the Leech Lake River in an easterly and northerly direction to its inlet into Mud Lake; thence southerly and easterly along the High-Water Mark of Mud Lake to the inlet of the Bear River; thence northerly along the High-Water Mark of Mud Lake to the High-Water Mark on the right bank (looking down-stream) of the main channel of the Leech Lake River, as it now exists, at its outlet from Mud Lake; thence easterly along the High-Water Mark on the right bank (looking downstream) of the main channel of the Leech Lake River, as it now exists, to its junction with the High-Water Mark on the right bank (looking down-stream) of the main channel of the Leech Lake River, as it now exists, to its junction with the High-Water Mark on the right bank (looking downstream) of the main channel of the Mississippi River; thence along the High-Water Mark on the right bank (looking down-stream) of the main channel of the Mississippi River to the mouth of the Wanoman River (Vermillion River in Cass County); thence northeasterly across the Mississippi River to the point of beginning.

Also, commencing at a point north of a point on the Mississippi River, opposite the mouth of the Wanoman River (Vermillion River in Cass County) as laid down on Sewell's map of Minnesota, where the section line between Sections 14 and 11, and 10 and 15, of Township 55 North, Range 27 West of the fourth principal meridian, if extended west would intersect the same; thence east on said extended section line to section corner between Sections 11, 12, 13 and 14; thence north on the section line between Sections 11 and 12, and 1 and 2, all of the same township and range above mentioned; to the township line between Townships 55 and 56 North; thence continuing north on the section line between Sections 35 and 36, and 26 and 25 to the northeast corner of Section 26, Township 56 North, Range 27 West; thence west on the section line between Sections 26 and 23, and 27 and 22 to the High-Water Mark on the easterly shore of Big White Oak Lake; thence westerly along the High-Water Mark on the north shore of Big White Oak Lake to a point north of a point on the Mississippi River, opposite the

mouth of the Wanoman River (Vermillion River in Cass County), as laid down on Sewell's map of Minnesota; thence south to the point of beginning.

Appendix II: Table of Entities Receiving Notice and Providing Comments

<b>Appropriate Government Entities (AGEs) Notified</b>	
	State of Minnesota, Tim Walz, Governor
	Minnesota Pollution Control Agency (MPCA), Katrina Kessler, Assistant Commissioner, and Laura Bishop, Commissioner
	Keith Ellison, Minnesota Attorney General
<b>Local Governments Notified</b>	
	City of Cass Lake
	Cass County Clerk
	Cass County Environmental Services
	Itasca County Environmental Services
	Leech Lake Band of Ojibwe Government Center
	Leech Lake Band of Ojibwe Justice Center
	Leech Lake Band of Ojibwe Facility Center
<b>AGE Comments Received</b>	
A	State of Minnesota, Offices of the Governor and Lieutenant Governor
	Kristofer Parson, Data Specialist, MPCA
<b>Tribal Government Comments Received</b>	
B	Nancy Schuldt, Water Projects Coordinator, Fond du Lac Band of Ojibwe
<b>Local Government Comments Received</b>	
C	Scott Bruns, Chair, Cass County Board of Commissioners
<b>Public Comments Received</b>	
D	Tom Richardson, Program Manager Remediation, Environment, Health & Safety, International Paper Company

## Appendix III: EPA Response to Comments

The Leech Lake Band of Ojibwe (LLBO or Tribe) applied to the EPA for treatment in a similar manner as a state (TAS) for purposes of administering the water quality standards (WQS) and water quality certification programs under Clean Water Act (CWA) Sections 303(c) and 401.

In accordance with EPA practice and pursuant to 40 C.F.R. § 131.8(c), the EPA notified appropriate governmental entities and the general public of, and provided an opportunity to comment on, “the substance and basis of the Tribe’s assertion of authority to regulate the quality of reservation waters.” Consistent with EPA policy and practice, the EPA provided the Tribe an opportunity to respond to the Agency regarding all comments received.

The EPA received four separate comments on the Tribe’s Application. Of these, three comments were in support. EPA’s response to the fourth commenter, International Paper, Inc., is explained below. Additionally, LLBO provided its own response to these comments.<sup>48</sup>

### 1. Comments Regarding the *Montana* Test

**Comment D:1:** “[International Paper] IP disagrees with the LLBO’s conclusion that it has civil jurisdiction to implement and enforce WQS that regulate the activities of nonmembers. Since Montana, federal law has protected nonmembers from being subjected to tribal law. . . . Because ‘efforts by a tribe to regulate nonmembers. . . are presumptively invalid,’ a tribe bears the burden of showing that its assertion of jurisdiction falls within one of these Montana exceptions. *Plains Commerce Bank v. Long Family Land and Cattle Co.*, 554 U.S. 316, 330 (2008).”

**Response:** EPA acknowledges and appreciates the comment but disagrees with IP’s assertion questioning LLBO’s jurisdiction for purposes of administering the subject CWA programs over non-Indian fee land located within the LLBO reservation and with IP’s citations to *Montana* and *Plains Commerce Bank*. As described in greater detail in response to comments below, the EPA’s decision approving the Tribe’s TAS application applies authority expressly delegated to tribes over their entire reservations by Congress through the statutory provisions of CWA section 518. Issues addressing tribal inherent authority to regulate nonmember conduct under the principles of *Montana* are distinct from such congressionally delegated authority and are not germane to EPA’s assessment and decision in this case. Because EPA’s conclusions address only the Tribe’s civil regulatory authority for purposes of the subject CWA programs, and do not address any other aspect of the Tribe’s authority with respect to its reservation, the Tribe has appropriately cited and EPA has appropriately applied the delegated authority included in the CWA tribal provision.

Although not pertinent to the decision in this case, the EPA appreciates that in *Montana v. United States*, 450 U.S. 544 (1981), the Supreme Court established that tribes generally lack inherent civil regulatory authority over the conduct of nonmembers on nonmember-owned fee land within a reservation, except when (1) a nonmember enters a consensual relationship with the tribe or its members, through commercial dealings, contracts, leases, or other arrangements;

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<sup>48</sup> Letter from Ben Benoit to David Horak, July 24, 2020.

or (2) a nonmember's conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. EPA also acknowledges that the Supreme Court in *Plains Commerce Bank* applied *Montana* and held that the tribal court in that case lacked jurisdiction over a nonmember bank's sale of its privately held land under the circumstances presented in that case. EPA notes that *Plains Commerce Bank* did not involve any issue or assessment of the relevant tribe's inherent authority to regulate environmental pollution under the standard established in *Montana* and that the Court expressly observed that a tribe "may quite legitimately seek to protect its members from noxious uses that threaten tribal welfare or security, or from nonmember conduct on the land that does the same." 554 U.S. at 336-37. Most importantly, and as described above and in greater detail below, *Montana* and *Plains Commerce Bank* do not address Section 518 of the CWA, a different statutory framework with a different basis and purpose than, for instance, real estate sales, and under which Congress has provided a delegation of authority to eligible tribes to administer CWA regulatory programs over their reservations. See also responses to Comments D:2 and D:3.

**Comment D:2:** "At least one district court applying the second *Montana* exception to the LLBO has held that '[t]he conduct in question must do more than injure the tribe – it must 'imperil the subsistence' of the tribal community" citing *Otter Tail Power Co. v. Leech Lake Band of Ojibwe*, 2011 WL 2490820, at \*5 (D. Minn. June 22, 2011). While the LLBO's application contends that nonmember conduct could pose a threat to tribal water quality, the application and the evidence before EPA also demonstrates that any such impacts from the Site has been appropriately addressed, are subject to on-going EPA-led investigation and remediation, and the risks of future impacts are limited in scope and duration."

**Response:** EPA acknowledges and appreciates the comment. However, of primary relevance, and as documented in EPA's Decision Document, the Tribe's Application is being analyzed under the authority of CWA Section 518, which includes an express delegation of civil regulatory authority by Congress to eligible Indian tribes to administer CWA regulatory programs over their entire reservations, including over reservation lands held in fee simple by nonmembers. The congressional delegation of authority in Section 518 of the CWA is established and supported by, among other things, the plain language of Section 518(e), which provides for TAS over areas "within the borders of an Indian reservation" and Section 518(h)(1)'s definition of Indian reservations "to include all lands within the limits of any Indian reservation notwithstanding the issuance of any patent, and including rights-of-way running through the reservation," which has no reference to, or limitation based on, ownership of the reservation land. By virtue of Congress' express delegation of authority, eligible applicant tribes are not required to demonstrate inherent authority to regulate under the CWA within their reservations, including over nonmembers on reservation fee land. EPA notes that Congress' treatment of tribal authority over reservation lands under the CWA is consistent with Congress' similar approach under the Clean Air Act, which also has express statutory language authorizing tribal regulation of Indian reservation areas. EPA notes that neither *Plains Commerce Bank* nor *Otter Tail Power Co.* involved an assertion of congressionally delegated authority. Instead, those cases turned on a test relating to tribal inherent authority set forth in *Montana*, a test that is not relevant to CWA TAS applications in light of the congressional delegation of authority. Because the express congressional delegation of authority to eligible tribes to administer

regulatory programs applies over their entire reservations, IP's location on fee-owned land within the exterior boundary of the LLBO Reservation is appropriately included in the Tribe's application and EPA's approval decision.

## 2. Comments Regarding the CWA as a Congressional Delegation to Tribes

**Comment D:3:** "IP also disagrees with the LLBO's reliance on EPA's recent reinterpretation of Section 518 of the Clean Water Act, 33 U.S.C. 1377, as including an express delegation of authority by Congress to Indian tribes to regulate water resources throughout their reservation as an independent basis for TAS status. . . .No court has yet reviewed EPA's interpretation of tribal regulation under the Clean Water Act on the question of whether Section 518 constitutes an express delegation of authority from Congress. . . .the significant differences between the Clean Water Act and the Clean Air Act and, more fundamentally, between water and air quality issues support treating potential delegation issues differently under the two statutes."

**Response:** EPA acknowledges and appreciates the comment but disagrees with the commenter's view questioning LLBO's reliance on CWA Section 518 as providing a congressional delegation of authority to eligible tribes to administer CWA regulatory programs over their reservations, including the commenter's view regarding alleged differences between water and air quality issues as addressed in the Clean Water Act and the Clean Air Act, respectively. EPA's rationale supporting the Agency's construction of CWA Section 518 is described in detail in the *Revised Interpretation of the Clean Water Act Tribal Provision*, final interpretive rule, 81 *Fed. Reg.* 30183 (May 16, 2016). Among other things, EPA noted therein that:

The TAS eligibility criteria in section 518(e) make no reference to any demonstration of an applicant tribe's regulatory authority to obtain TAS. Rather the relevant part of section 518(e) -- which is section 518(e)(2) -- requires only that the functions to be exercised by the tribe pertain to the management and protection of reservation water resources. . . . [S]ection 518(h)(1) also defines Indian reservations to include all reservation land irrespective of who owns the land. EPA nonetheless took a cautious approach when it issued the 1991 WQS TAS rule and subsequent regulations. . . . The 1991 approach required each tribe seeking TAS for the purpose of administering a CWA regulatory program to demonstrate its inherent authority under principles of federal Indian law, including gathering and analyzing factual information to demonstrate the tribe's inherent authority over the activities of nonmembers of the tribe on nonmember-owned fee lands within a reservation.<sup>49</sup>

EPA further noted that even at the time of the 1991 WQS TAS rule, there was significant support for the proposition that Congress had intended to delegate authority to otherwise eligible tribes to regulate their entire reservations under the Act. This background is surveyed and discussed in detail in the Interpretive Rule.<sup>50</sup> Additionally, EPA noted that the Clean Air Act (CAA) contains a similar provision for TAS. In relation to that provision, the Agency stated:

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<sup>49</sup> 81 *Fed. Reg.* at 30185-30186.

<sup>50</sup> See 80 *Fed. Reg.* 47430, 47433-34 (Aug. 7, 2015); and 81 *Fed. Reg.* at 30186.

The CAA TAS provision [CAA Section 301(d)], combined with the definition of Indian tribe in CAA section 302(r), established the same basic TAS eligibility criteria for CAA purposes that apply under the CWA: *i.e.*, federal recognition, tribal government carrying out substantial duties and powers, jurisdiction, and capability. With regard to jurisdiction, EPA carefully analyzed the language and legislative history of the relevant portion of the CAA TAS provision, CAA section 301(d)(2)(B), and concluded that Congress had intended to delegate authority to eligible Indian tribes to administer CAA regulatory programs over their entire reservations irrespective of land ownership—*e.g.*, including over nonmember fee lands within the reservation. 63 FR at 7254- 57. EPA determined that the language of the provision distinguished between reservation and non-reservation areas over which tribes could seek TAS eligibility and plainly indicated Congress' intent that reservations will be under tribal jurisdiction. *Id.* By contrast, for non-reservation areas, tribes would need to demonstrate their inherent authority to regulate under principles of federal Indian law. *Id.*

EPA noted at that time important similarities between the CAA and CWA TAS provisions. Most notably, the tribal provisions of both statutes expressly provide eligibility for tribal programs that pertain to the management and protection of environmental resources (*i.e.*, air and water, respectively) located on Indian reservations. *Id.* at 7256. For instance, CAA section 301(d) provides for tribal regulation of air resources “within the exterior boundaries of the reservation” without any requirement for a demonstration by applicant tribes of separate authority over such reservation areas. CAA section 301(d)(2)(B). Similarly, CWA section 518 provides eligibility for tribal programs covering water resources “within the borders of an Indian reservation” and expressly defines Indian reservations to include all land within the reservation notwithstanding the issuance of any patent and including rights-of-way. CWA sections 518(e)(2), (h)(1). By their plain terms, both statutes thus treat reservation lands and resources the same way and set such areas aside for tribal programs.<sup>51</sup>

EPA also explained in detail the litigation following promulgation of the CAA Section 301(d) rulemaking, which culminated in a D.C. Circuit decision upholding EPA’s interpretation of the CAA as consistent with congressional intent to delegate authority to eligible tribes. 81 *Fed. Reg.* at 30186. EPA noted also that while no court had yet rendered a final holding on the issue of whether CWA section 518 constitutes an express delegation of authority from Congress to eligible Indian tribes to regulate water resources throughout their reservations, “Importantly, members of the three courts that have considered the issue have favorably viewed such an interpretation: The U.S. Supreme Court in *Brendale*, the federal district court in *Montana v. EPA*, and the D.C. Circuit in *APS*.”<sup>52</sup>

EPA notes that although IP’s comment asserts there are differences in regulating air and water resources, the comment does not provide any detail regarding such alleged differences or explain

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<sup>51</sup> 81 *Fed. Reg.* at 30186-30187.

<sup>52</sup> 81 *Fed. Reg.* at 30187, citing *Brendale v. Confederated Tribes and Bands of the Yakima Nation*, 492 U.S. 408 (1989); *Montana v. EPA*, 141 F.Supp.2d 1259 (D.Mont. 1998); *Arizona Public Service Co. v. EPA*, 211 F.3d 1280 (D.C. Cir. 2000), *cert. denied*, 532 U.S. 970 (2001).

how they might be material to a construction of the statutory language in the two statutes' tribal provisions. EPA's thorough analyses of those provisions are detailed in relevant implementing rulemakings that explain Congress' use of substantively similar approaches in framing the TAS provisions in the CAA and CWA, both of which seek to regulate mobile sources of pollutants and pollution that have the potential to affect resources across land ownership lines.

### 3. Comments Regarding Application of Federally Approved Tribal Water Quality Standards

**Comment D:4:** “. . . LLBO seeks to control a portion of the [St. Regis Paper Company Superfund Site] cleanup process by attempting to establish legally applicable or relevant and appropriate requirements (“ARARs”) in the form of tribal [Water Quality Standards] WQS via the TAS process. In fact, the LLBO makes clear its goal in seeking TAS approval is to ‘establish Tribal ARARs for water’ that could be applied to the effluent from the groundwater extraction and treatment system at the Site.”

**Response:** EPA acknowledges and appreciates the commenter's concern regarding the potential application of federally approved tribal water quality standards to ongoing remedial activities at the St. Regis Paper Company Superfund Site. As stated in the Decision Document, the EPA's approval of the Tribe's TAS application addresses solely the Tribe's eligibility to administer CWA WQS and certifications and does not address any other aspect of the Tribe's jurisdiction or eligibility for any other purpose or make any finding regarding any other program under a statute administered by EPA. Any issues regarding potential application or implementation of tribal WQS for other programmatic purposes are thus outside the scope of this decision. Nor does EPA's TAS approval include any review or approval of any actual water quality standards under Section 303(c) of the CWA. Any such approval (or disapproval) of water quality standards would occur in a separate EPA decision following submission of standards adopted by the Tribe for EPA's review. The Agency notes that Minnesota Pollution Control Agency (MPCA) which is responsible for adopting water quality standards for the State of Minnesota, has not been federally authorized to adopt water quality standards for the LLBO Reservation.

Adoption by states or authorized tribes of CWA water quality standards is subject to public participation requirements as described in CWA Section 303 and 40 C.F.R. Parts 25 and 131, which require states and authorized tribes to hold widely-publicized public hearings and to solicit, consider, and respond to comments from interested and potentially affected parties and the public.<sup>53</sup> Any concerns regarding a state or authorized tribe's actual water quality regulations

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<sup>53</sup> Authorized tribes must comply with EPA's public participation requirements when administering water quality standards (WQS) programs under the Clean Water Act. 40 C.F.R. § 131.20(b). This means that tribes must hold well publicized public hearings when adopting their initial water quality standards and invite comments. 40 C.F.R. § 25.5(b). They must also do so when reviewing their water quality standards at least once every three years and when revising standards. 40 C.F.R. § 131.20(b). They must maintain lists of persons and organizations that have expressed an interest or could be affected by the standards, including adjacent states, tribes, local dischargers, and interest groups. 40 C.F.R. §§ 25.4(b)(5), 25.3(a). They must notify those listed and the general public at least 45 days before

should be addressed through the appropriate opportunity for comment when water quality regulations are proposed for adoption in the future. The EPA encourages the Tribe and its neighboring jurisdictions and other stakeholders to work collaboratively to develop and implement water quality standards.

#### 4. Comments that The Tribe would not Fairly and Equitably Carry out a Regulatory Program

**Comment D:5:** “. . . EPA should consider that the LLBO is not in a position to be able to fairly and equitably carry out the functions of an effective WQS program.

**Response:** EPA acknowledges the comment from IP but disagrees that any information presented in the Tribe’s CWA TAS Application or in the comment suggest that the Tribe would not fairly and equitably administer the subject CWA programs. EPA also notes that any issues regarding administration of the programs or actual WQS that may be adopted by the Tribe in the future are outside the scope of EPA’s decision approving the Tribe’s Application, which addresses only issues of the Tribe’s TAS eligibility under CWA Section 518.

#### 5. Comments in Support of the Application

The State of Minnesota, Office of the Governor (Comment A), the Fond du Lac Band of Ojibwe (Comment B), and the Cass County Board of Commissioners (Comment C) all provided letters in support of the LLBO Application and assumption of TAS authority. EPA appreciates the commenters’ support of the Tribe’s Application.

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WQS hearings, must invite comments on the current standards, must highlight significant issues and consequences of proposed actions, and must provide full documents and summaries at least 30 days before the hearing. 40 C.F.R. § 25.5(b). Finally, for final actions they must prepare a responsiveness summary that summarizes public comments and sets forth the agency’s responses for the appropriate tribal decision-making official and the public. 40 C.F.R. § 25.8.

**Administrative Record Decision Approving Leech Lake Band of Ojibwe  
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**Appendix IV  
Administrative Record - Selected Documents  
EPA Decision Approving Leech Lake Band of Ojibwe  
Application for "Treatment in the Same Manner as a State" (TAS) under  
Clean Water Act (CWA) Sections 303, 401 and 518**

<b>Date</b>	<b>Author</b>	<b>Addressee (or first if multiple)</b>	<b>Document Name or Location</b>	<b>Description</b>	<b>Number of Pages</b>
1/29/2018	Faron Jackson Sr., Chairman, Leech Lake Band	Cathy Stepp, Regional Administrator, U.S. EPA, Region 5	Application for Treatment as a State	Leech Lake Band of Ojibwe CWA Section 303(c) and 401 Programs Eligibility Application for Treatment in the Same Manner as a State (TAS), including attachments listed below:	
			Attachment 1	Letter from David Ullrich, Acting Regional Administrator, to Alfred Pemberton, Chairman, LLBO, June 20, 1995, Granting CWA 106 and 314 Approval	1
			Attachment 2	Treaty with the Chippewa 1855, 10 Stat. 1165 (April 7, 1855)	5
			Attachment 3	Treaty with the Chippewa, Mississippi, and Pillager and Lake Winnibigoshish Bands, 1864, 13 Stat. 693 (March 20, 1865)	
			Attachment 4	Treaty with the Chippewa of the Mississippi, 16 Stat. 719 (April 18, 1867)	3
			Attachment 5	E.O., Winnebogoshish (White Oak Point) Reserve, Land Withdrawal, October 29, 1873	1
			Attachment 6	E.O., Leech Lake Reserve, November 4, 1873; E.O., Reserve for Pillager and Lake Winnebogoshish Bands, May 26, 1874 [latter duplicated in Attachment 7]	2
			Attachment 7	E.O., Reserve for Pillager and Lake Winnebogoshish Bands, May 26, 1874	1

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<b>Date</b>	<b>Author</b>	<b>Addressee (or first if multiple)</b>	<b>Document Name or Location</b>	<b>Description</b>	<b>Number of Pages</b>
			Attachment 8	Minnesota Chippewa Tribe, Revised Constitution and Bylaws of the Minnesota Chippewa Tribe (March 3, 1964)	12
			Attachment 9	Minnesota Chippewa Tribe Land Ordinance #3 (October 22, 1997)	8
			Attachment 10	Memorandum, James Monchamp, Executive Director, to All LLBO Employees, “LLBO Org. Chart,” February 24, 2017	4
			Attachment 11	Organizational Chart, Leech Lake Department of Resources Management (March 2015)	1
			Attachment 12	<i>Leech Lake Band of Ojibwe v. Herbst</i> (D. Minn, June 18, 1973)	24
			Attachment 13	Maps: Lakes and Streams within the Leech Lake Reservation (16 maps)	17
			Attachment 14	Attorney Letter: Letter from Richard A. Du Bey to Cathy Stepp, January 30, 2018	32
			Attachment 15	Leech Lake Reservation Waters	6
			Attachment 16	Maps: Lakes and Streams within the Leech Lake Reservation (18 maps)	
			Attachment 17	Leech Lake Reservation Boundary Map	1
			Attachment 18	LLBO Pesticide Control Ordinance (No. 96-05) (May 24, 1996)	15
			Attachment 19	LLBO Solid Waste Transportation, Disposal & Recycling Ordinance (No. 95-01) (February 24, 1995)	6
			Attachment 20	LLBO Judicial Code, Title I: Courts	21
			Attachment 21	LLBO Water Resources Staff – Programmatic Capability: List of LLBO personnel in Water Resources Department	3

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<b>Date</b>	<b>Author</b>	<b>Addressee (or first if multiple)</b>	<b>Document Name or Location</b>	<b>Description</b>	<b>Number of Pages</b>
			Attachment 22	Letter from Joel Smith, Superintendent, US DOI, BIA, Minnesota Agency, to Richard Du Bey, Short Cressman & Burgess, PLLC, October 5, 2000 (BIA review of LLBO Hazardous Substances Control Ordinance)	38
			Attachment 23	LLBO Tribal Council Agenda Item Request, June 7, 2001, attaching Leech Lake Tribal Council Resolution No. [ ] -120 (Interim Tribal Water Quality Standards) (June 21, 2001)	3
			Attachment 24	Leech Lake Tribal Council Ordinance No. 99-02 (Regulation of Surface Use of a Portion of the Bowstring River) (April 8, 1999)	3
			Attachment 25	Conservation Code of the Leech Lake Band of Chippewa Indians (Revised Draft, May 30, 1991)	44
			Attachment 26	Leech Lake Tribal Council Ordinance No. 99-C (Protection and Preservation of Wild Rice Beds) (July 10, 1998)	3
			Attachment 27	Leech Lake Reservation Tribal Council Ordinance No. 94-01 (Pine Bough Harvest) (October 4, 1993)	2
			Attachment 28	Leech Lake Reservation Tribal Council, Resolution No. 2006-75 (Open Burning Restrictions and Permitting Requirements) (February 23, 2006)	18
			Attachment 29	Minnesota House of Representatives, Research Department, American Indians, Indian Tribes, and State Government, February 2014, pp. 116-17 (Excerpt regarding Leech Lake Reservation)	3
			Attachment 30	MDNR, "Natural Wild Rice in Minnesota," (February 15, 2008) (Excerpts)	8
			Attachment 31	LLDRM Wild Rice Report (2016)	8

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<b>Date</b>	<b>Author</b>	<b>Addressee (or first if multiple)</b>	<b>Document Name or Location</b>	<b>Description</b>	<b>Number of Pages</b>
			Attachment 32	Minnesota Chippewa Tribe Water Research Lab, Research Report No. 47	4
			Attachment 33	John B. Moyle, "Wild Rice in Minnesota," (Excerpt from uncited work)	2
			Attachment 34	Donald M. Waller, et al., "Heavy Metals in Wild Rice from Northern Wisconsin," Science of the Total Environment, March 2000	10
			Attachment 35	Minnesota Chippewa Tribe Water Research Lab, Research Report No. 28 (1997) (This appears to be an excerpt)	2
			Attachment 36	Leech Lake Reservation Business Committee, Land Use Map [No date]	1
			Attachment 37	MPCA, "Leech Lake River Watershed Monitoring and Assessment Report," (June 2016) (Excerpt)	5
			Attachment 38	LLBO and Minnesota Chippewa Tribe, "A Water Quality Assessment of the Leech Lake Watershed," July 1997	6
			Attachment 39	J.R. Stark, J.P. Busch, and M.H. Deters, "Hydrogeology and Water Quality of Glacial-Drift Aquifers in the Bemidji-Bagley Area, Beltrami, Clearwater, Cass, and Hubbard Counties, Minnesota," U.S. Geological Survey, Water-Resources Investigations Report 89-4136 (1991) (Excerpt)	4
			Attachment 40	"Aquatic Vegetation of Leech Lake, Cas County, Minnesota, 2002-2009, Excerpt map, and pp. 13-14	3
			Attachment 41	Cass County Environmental Services, Minnesota Board of Soil and Water Resources, "Cass County Large Lakes Assessment," 2012, Excerpt, p. 10	2
			Attachment 42	Chippewa National Forest 2011 Annual Report	6

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Date	Author	Addressee (or first if multiple)	Document Name or Location	Description	Number of Pages
			Attachment 43	Chippewa National Forest, [Report?], Excerpt: Appendix A: Summary of the Analysis of the Management Situation – Chippewa and Superior National Forests, pp. A-1, A-18, A-19	3
			Attachment 44	MPCA, “Big Fork River Watershed Monitoring and Assessment Report,” December 2013 (Excerpt containing Executive Summary)	3
			Attachment 45	[Untitled and uncredited] draft document titled “Tribal Rights and Interests” which is a “Compilation of reports included in the annual Monitoring and Evaluation Report for FY 2005 and 2009”	2
			Attachment 46	Greg Hagy, Mayor City of Cohasset, Press Announcement for Itasca Energy Center project, undated	1
			Attachment 47	MPCA, “Minnesota’s Plan to Reduce Mercury Releases,” Water Quality/Impaired Waters 1-28 (October 2009)	2
			Attachment 48	MPCA, “Sources of Mercury Pollution and the Methylmercury Contamination of Fish in Minnesota” (February 2013)	2
			Attachment 49	Walter K. Dodds, et al., “Eutrophication of U.S. Freshwaters: Analysis of Potential Economic Damages,” 43 Environmental Science & Technology 12-19 (November 12, 2008), <a href="http://pubs.acs.org">http://pubs.acs.org</a> , downloaded January 6, 2009	9
			Attachment 50	LLBO and Beltrami County, “A Nutrient Water Quality Assessment of the Lake: Big Wolf, Andrusa, Cass, and Winnigibosh,” January 2001	3

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<b>Date</b>	<b>Author</b>	<b>Addressee (or first if multiple)</b>	<b>Document Name or Location</b>	<b>Description</b>	<b>Number of Pages</b>
			Attachment 51	Enbridge, “Enbridge Pipelines in Minnesota: Fueling Minnesota’s Economic Engine” [No Date]	1
			Attachment 52	U.S. EPA, “Report to Congress on Implementing and Enforcing the Underground Storage Tank Program in Indian Country,” (August 2007)	3
			Attachment 53	Ingrid E. Schneider and Raintry J. Salk, University of Minnesota, Tourism Center, “Leech Lake Area Summer Visitor Profile: A focus on interest in culture and nature based experiences,” December 2004	8
			Attachment 54	Leonardo Trasande, et al., “Public Health and Economic Consequences of Methyl Mercury Toxicity to the Developing Brain,” 113 Environmental Health Perspectives 590-96 (May 2005)	7
			Attachment 55	Leech Lake Association, Lake Management Plan (2d ed.) (August 2012) (Excerpt regarding Leech Lake water quality)	3
			Attachment 56	Minnesota House of Representatives, Research Department, American Indians, Indian Tribes, and State Government, January 2017 (Excerpt regarding Leech Lake Reservation)	3
			Attachment 57	LLBO Boundary Waters – Lakes and Rivers (List)	
			Attachment 58	LLBO - U.S. EPA Template for TAS Application – WQS and Water Quality Certification Programs	3
				<i>Leech Lake Band of Chippewa Indians v. Herbst</i> , Consent Judgment, 3-69 Civ. 64 and 3-70 Civ. 228 (D. Minn. June 13, 1973)	24
8/14/2018	Benjamin Benoit, LLBO Environmental	David Horak, Tribal Program Manager, STPSB, R5	Administrative Record	Email including supplemental information relating to tribal position descriptions at Application Attachment 21	12

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<b>Date</b>	<b>Author</b>	<b>Addressee (or first if multiple)</b>	<b>Document Name or Location</b>	<b>Description</b>	<b>Number of Pages</b>
	Department Director				
2/12/2019	Faron Jackson Sr.	Cathy Stepp	Administrative Record	Letter requesting that U.S. EPA move forward with processing Leech Lake TAS Application.	2
3/12/2019	TAS review Team Barbara Wester, Darrel Harmon, Kathy Mayo, and David Horak	File	Administrative Record	2018 TAS checklist Leech Lake Band of Ojibwe	5
5/31/2019	Joan Tanaka, Acting Director, Water Division	Cathy Stepp	Administrative Record	Notice to Appropriate Governmental Entities of the Leech Lake Band of Ojibwe's Application for Eligibility to Establish Water Quality Standards and Water Quality Certifications under the Clean Water Act	3
5/28/2019	Cathy Stepp	Faron Jackson Sr.	Administrative Record	Letter to Chairman Jackson Sr. informing him that the TAS Application is complete and next steps of Public Notification.	2
5/28//2019	Cathy Stepp	Honorable Tim Walz	Administrative Record	Letter from Cathy Stepp, Region 5 Regional Administrator, to Tim Walz, Governor, State of Minnesota providing notification of the Leech Lake Band of Ojibwe Application and comment period on the Treatment as a State under Section 518, CWA Section 303 (c) and 401 Programs Application	3
5/28//2019	Cathy Stepp	Laura Bishop. MPCA Commissioner	Administrative Record	Letter requesting comments on the Treatment as a State under Section 518, CWA Section 303 (c) and 401 Programs Application for Leech Lake Band of Ojibwe	3
5/29//2019-7/15//2019	TAS review Team	Media	Administrative Record	Public Notice -Leech Lake Band of Ojibwe Water Quality Standards Application Public Comment period May 29 to July 15, 2019	2

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<b>Date</b>	<b>Author</b>	<b>Addressee (or first if multiple)</b>	<b>Document Name or Location</b>	<b>Description</b>	<b>Number of Pages</b>
7/10//2019	Tim Walz, Governor, Peggy Flanagan, Lieutenant Governor	David Horak	Administrative Record	Letter in support of the Band's Application to administer the impaired waters and water quality standards programs on waters within the boundaries of the LLBO Reservation	1
5/29/2019-7/17/2019	Public and government commenters	David Horak	Administrative Record	Public Notice comments received	30
6/17/2020	Brandy Toft, LLBO, Deputy Director LLBO DRM	Barbara Wester, Office of Regional Counsel	Administrative Record	Re: Leech Lake TAS update and associated email chain	
7/24/2020	Ben Benoit, Director, LLBO	David Horak	Administrative Record	LLBO TAS Public comments received on TAS application, enclosing undated Letter from Ben Benoit to David Horak	Cover email + 3 pages
7/24/2020	Ben Benoit	David Horak	Administrative Record	LLBO TAS Public comments received on TAS application, enclosing Letter from Ben Benoit to David Horak, July 24, 2020	Cover email + 3 pages
4/27/2021	Faron Jackson, Sr.	Michael Regan, EPA Administrator	Administrative Record	Re: Request for Consultation Regarding the Leech Lake Band of Ojibwe's Water TAS Application Backlog	6
5/27/2021	Cheryl Newton	Faron Jackson, Sr.	Administrative Record	Response to Control AX-21-000-3316	1
6/4/2021	Christopher Murray	Ashley Fisseha, EPA, SEMD	Administrative Record	Re: Check-in on LLBO TAS progress	
6/28/2021	Brandy Toft	David Horak	Administrative Record	Leech Lake Band of Ojibwe SACA Overview, with Attachment "Leech Lake Band of Ojibwe SACA Oversight and Management Overview"	Cover email + 14 pages

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<b>Date</b>	<b>Author</b>	<b>Addressee (or first if multiple)</b>	<b>Document Name or Location</b>	<b>Description</b>	<b>Number of Pages</b>
7/9/2021	Brandy Toft	David Horak	Administrative Record	Leech Lake Band of Ojibwe SACA Overview, with Attachment, "Leech Lake Band of Ojibwe SACA Overview Document V2 7.9.21.pdf"	Cover email + 3 pages
7/13/2021	David Horak	Brandy Toft	Administrative Record	Re: Leech Lake Band of Ojibwe SACA Overview Document	
7/13/2021	Ben Benoit	David Horak	Administrative Record	Re: Leech Lake Band of Ojibwe SACA Overview Document Updated, and associated email chain	
7/20/2021	Ben Benoit	David Horak	Administrative Record	Re: Leech Lake Band of Ojibwe SACA Overview Document Updated, and associated email chain	
7/20/2021	Brandy Toft	David Horak	Administrative Record	Re: Leech Lake Band of Ojibwe SACA Overview Document Updated	
7/20/2021	Christopher Murray	David Horak	Administrative Record	Re: Leech Lake Band of Ojibwe SACA Overview Document Updated, and associated email chain	
9/2/2021	David Horak	Ben Benoit	Administrative Record	For today's call – LLBO, with attachments: Leech Lake Band of Chippewa Indians v. Herbst.pdf, and LLBO TAS Application Appendix 12	
9/2/2021	Ben Benoit	David Horak	Administrative Record	Re: for today's call - LLBO	
9/3/2021	Christopher Murray	Barbara Wester	Administrative Record	TAS questions	
9/8/2021	Barbara Wester	Christopher Murray	Administrative Record	Re: TAS questions, attaching Outlook email from David Horak to Ben Benoit, et al., "for today's call," 9/2/2021, with attachments.	
9/9/2021	Christopher Murray	Barbara Wester	Administrative Record	RE: TAS questions	
9/10/2021	Ben Benoit	Darrel Harmon, TMPO	Administrative Record	Re: SACA call? And associated email chain	
9/14/2021	Barbara Wester	Christopher Murray	Administrative Record	Re: TAS questions	

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<b>Date</b>	<b>Author</b>	<b>Addressee (or first if multiple)</b>	<b>Document Name or Location</b>	<b>Description</b>	<b>Number of Pages</b>
9/15/2021	Barbara Wester	Christopher Murray	Administrative Record	Leech Lake Band TAS application - follow-up	
9/15/2021	Darrel Harmon	Ben Benoit	Administrative Record	EPA Call and associated email chain	
10/4/2021	Brandy Toft, LLBO	David Horak	Administrative Record	Re: TAS check-in update	
10/4/2021	Ben Benoit, LLBO	David Horak	Administrative Record	Re: TAS check-in update	1
10/14/2021	Christopher Murray, LLBO	David Horak	Administrative Record	Re: TAS check-in update	
10/15/2021	John Harte, Mapetsi Policy group	JoAnn Chase	Administrative Record	Meeting Request: Leech Lake Band of Ojibwe TAS, enclosing Letter from Faron Jackson, Sr. to Michael Regan, April 27, 2021, and	Email + Letter (6pp) and undated "Timeline" (4 pages)
10/19/2021	Andy Byrne, AIEO	John Harte	Administrative Record	Re: Meeting Request: Leech Lake Band of Ojibwe TAS	
10/26/2021	TAS review Team		Administrative Record	Region 5 Summary of Staff Capacity Assessments gathered during LLBO CWA TAS Application Review	4 pages