



LEECH LAKE BAND OF OJIBWE DIVISION OF RESOURCE MANAGEMENT

September 13, 2021

Deborah G. Nagle, Director
Office of Science and Technology
US Environmental Protection Agency
1201 Constitution Avenue NW
Washington, DC 20004

RE: Potential Revisions to the Federal Water Quality Standards Regulations to Protect Tribal Reserved Rights

Dear Ms. Nagle,

The Leech Lake Band of Ojibwe (LLBO) would like to thank the United States Environmental Protection Agency (US EPA) for the opportunity to comment on Potential Revisions to the Federal Water Quality Standards Regulations to Protect Tribal Reserved Rights. By the Leech Lake Band of Ojibwe commenting on this proposed rulemaking we are commenting at a government-to-government level for the protection and well-being of Tribal communities and Tribal Trust Resources by means of protecting water quality. The LLBO strongly supports EPA's effort to recognize Tribal reserved rights and to revise the federal WQS regulations to protect them.

The LLBO wishes to emphasize that the US EPA has the responsibility to protect Tribal trust resources and this rulemaking should not be used in an attempt to delegate trust responsibility to states. The LLBO sees this rulemaking requiring US EPA to take a significant role in mediator between the State and Tribes regarding rulemaking and potentially between Tribes that share Trust Resources within a given area. A delegation to the states to implement rulemaking would not be feasible. Consequently, if this rule is promulgated and US EPA's recommended water quality standards are established in areas where Tribes hold reserved rights, US EPA will be culpable for ensuring that those standards are upheld and that all Tribal designated uses of waterbodies within those areas are maintained.

Ideally, Tribes would have the option to co-manage water resources in areas where Tribal Reserved rights are retained. However, at a minimum US EPA must ensure that there is consistent consultation with Tribes for US EPA oversight regarding any Clean Water Act Section 401 permits or proposed variances that could negatively affect water resources within areas where a particular Tribe, or Tribes retain reserved rights. LLBO recommends that EPA expand its effort by interpreting Clean Water Act (CWA) Section 401 in a manner that provides for meaningful Tribal participation in commenting on and objecting to discharges within off-Reservation state and federal lands both as to Ceded Territories where Tribes hold retained rights.

Additionally, the LLBO recommends that US EPA institute a process by which Tribes can nominate high quality waters in areas where retained rights are held as a part of an anti-degradation. This process should not

be overly complicated and designated uses related to reserved rights should be given deference in nomination decisions compared to such uses as industrial, commercial, and agricultural. LLBO recommends looking at established framework contained within the Tribal Forest Protection Act of 2004 as a process example that provides clear timelines for responses from Federal agencies to Tribal inquiries.

Thank you for your time and consideration of the Leech Lake Band of Ojibwe's comments. If you have any questions or requests for clarifications, please contact Leech Lake's Water Quality Program Staff Eric Krumm at 507-450-0879 or Eric.Krumm@llojibwe.net or Jeff Harper at 218-252-2805 or Jeff.Harper@llojibwe.net.

Sincerely,



Benjamin Benoit
Environmental Director
Leech Lake Band of Ojibwe

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