



Little Traverse Bay Bands of Odawa Indians  
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September 9<sup>th</sup>, 2021

Administrator Michael S. Regan  
Oceans, Wetlands, and Communities Division, Office of Water (4502-T)  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460

**Re: Notification of Consultation and Coordination on Potential Revisions to the Federal Water Quality Standards Regulations to Protect Tribal Reserved Rights**

Dear Administrator Regan,

On behalf of The Little Traverse Bay Bands of Odawa Indians (LTBB), please accept this comment letter regarding the United States Environmental Protection Agency's (EPA) "Notification of Consultation and Coordination on Potential Revisions to the Federal Water Quality Standards Regulations to Protect Tribal Reserved Rights." LTBB appreciates this opportunity to provide feedback on this important proposal.

LTBB's traditional way of life and rights to hunt, fish and gather in the Ceded Territory were reserved in the 1836 Treaty of Washington and reaffirmed by Federal Court in the case of *United States v. Michigan* (WD MI Case 2: 73 CV 26). LTBB is party to the 2000 Great Lakes and 2007 Inland Consent Decrees entered in that case.

As mentioned above, our traditional way of life and rights to hunt, fish and gather were *reserved* by federal treaty and reaffirmed in federal court. We *reserve* these rights and the resources to exercise these rights are held in trust by federal and state government. The quality of these natural resources and therefore our ability to practice these rights and customs relies on the many processes and regulations found pursuant to the Clean Water Act and other legislation. We *reserve* these treaty rights and consequently, we reserve the right to clean water and an environment that facilitates these reserved treaty rights.

LTBB requests that EPA strive to institute rules that attain the highest degree possible of environmental quality. There is an outdated paradigm which pits economic and social benefit versus environmental integrity. Modern society has reached a tipping point wherein environmental integrity must be prioritized over the relatively short-term gains of economic or social benefit. There may be few examples clearer than the climate crisis and repercussions of year-round fire season in the western U.S. or the increasing prevalence of high category hurricanes in the south, among others. Society made the choice to utilize fossil fuels for the sake of social and economic benefit and that is understandable to a certain degree. The issue is the timing in which society has chosen to initiate change for the sake of environmental integrity long after the signs and scientific evidence revealed potentially damaging effects on a broad scale.

The signs of environmental degradation that have negatively affected treaty resources are evident. Where tribal citizens once harvested manoomin (wild rice), they can no longer. Where tribal citizens once lived off their harvested fish, they can no longer. Regulatory agencies must create and enforce stringent rules to preserve and restore environmental integrity. Tribal reserved treaty rights depend on that environmental integrity to which the federal government bears trust responsibilities to uphold.

LTBB requests that where possible, the assignment of Tier 3 Antidegradation protection be implemented. Tribal resources such as manoomin are culturally significant species (*Zizania palustris*, *Zizania aquatica*) that have faced severe degradation on a population level due to social development. These species demand high quality habitat and protection from degradation. Before the significant economic and social development of the Great Lakes region and concurrent with the 1836 Treaty of Washington which reserved LTBB treaty rights to hunt, fish and gather, manoomin was a staple in our tribal citizens' diet and a cultural tradition. Our tribal citizens are now lucky if they eat manoomin at all throughout the year. This is an infringement on tribal reserved treaty rights and regulatory agencies must institute rules that facilitate the restoration of these deeply significant species and traditions as well as treaty rights.

LTBB acknowledges EPA's proposed additional option for states with this rulemaking including, "establishing designated uses that explicitly incorporate protection of tribal reserved resources." While this option appears to facilitate the protection of tribal reserved resources, our concern is the argument for the "extent of protection" or "extent of useable tribal resources." It seems that this option could be implemented or neglected in such a way by the states with WQS regulatory authority that the standard of protection or the standard of available tribal resources could be argued and diminished.

LTBB also acknowledges EPA's proposed additional option, "establishing water quality criteria that protect tribal reserved rights in waters where those rights apply." While establishing criteria is an empirical method for regulating water quality, our concern is that states with WQS regulatory authority may not adopt stringent enough criteria to fully protect tribal reserved treaty rights based on potentially numerous factors but particularly the states' perspective that resources protected by tribal reserved treaty rights may not exist in certain bodies of water or the extent to which the resources exist. LTBB is also concerned about potentially "unforeseen criteria." It is only recently that the extensive damage of PFAS/PFOS to our aquatic resources has been discovered. These chemicals are toxic and persistent enough that our tribal citizens are burdened by recent additional fish consumption advisories in Lake Superior and degraded drinking water quality, locally. The true extent of the negative effects of this previously unforeseen contaminate are years from understanding and the possibilities for mitigation are currently lacking.

LTBB understands the circumstances in which Tier 3 Antidegradation policies may be adopted and the potential barriers preventing such implementation. However, EPA must strive to institute rules that aim high enough to achieve a level of environmental integrity which allow tribal citizens to utilize tribal reserved rights as they were intended to at the time those treaties were agreed upon. Since the ratification of treaties reserving rights to resources for tribes, tribal citizens have been dealt the burden of infringement on those treaty rights continuously. It is a failure of federal or state government to dismiss the appropriate standard of environmental integrity or treaty resource availability with a perspective concluding, "the contaminants are already there" or any similar notion that the damage is already done. This rulemaking should not only include the protection of treaty reserved rights but the restoration of treaty reserved rights.

LTBB would like to reiterate our appreciation for the opportunity to comment such an important proposal. Treaties are considered the supreme law of the land under the constitutional framework and must be treated with the highest degree of reverence and priority. Since the inception of federal treaties with tribes throughout the U.S., there has been a slow but steady chipping away of the integrity of these treaties and their explicit as well as implicit rights. LTBB sees this rule proposal as a step towards the restoration of these treaty rights but would like to urge EPA to institute rules that fulfill the intention of tribal treaties as they were meant to at the time of the agreement between the federal government and tribes throughout the U.S.

Sincerely,

Douglas Craven, Director  
Natural Resources Department  
Little Traverse Bay Bands of Odawa Indians