



STATE OF MINNESOTA

Office of Governor Mark Dayton

116 Veterans Service Building ♦ 20 West 12th Street ♦ Saint Paul, MN 55155

July 1, 2014

Via Mail and E-Mail Delivery

Tinka G. Hyde, Director
Water Division, W-15J
U.S. Environmental Protection Agency Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

RE: Red Lake Band of Chippewa Indians' Application

Dear Ms. Hyde:

Thank you for the opportunity to provide comments in response to the Red Lake Band of Chippewa Indians' request to have program authorization under the Clean Water Act (CWA). This office received comments from both the Minnesota Pollution Control Agency (MPCA) and Beltrami County in response to this invitation for comment. According to your letter, program authorization would allow the Band to adopt, review, and revise water quality standards and to certify that discharges comply with the water quality standards of the CWA for all surface waters within the Red Lake Reservation, as defined by U.S. Department of Interior and the Diminished Reservation. Historically, the State and the Band have worked successfully to protect natural resources, and the establishment of water standards is another opportunity to achieve similar successes.

The MPCA supports the Band's application to administer the water standards program on waters within the boundaries of the Red Lake Reservation. Further, MPCA provides four comments to the Band's application. First, the application does not contain a legal description of the approximately 157,000 acres of ceded restored lands that are scattered across nine counties in northern Minnesota. In order to ensure that the ceded restored lands are adequately identified for purposes of the U.S. Environmental Protection Agency's (EPA's) approval of the Band's Treatment as a State (TAS) water quality standards program application, the MPCA requests that EPA's approval with respect to the ceded restored lands or other trust lands outside of the Diminished Reservation be the legal description of the parcel recognized by the U.S. Department of the Interior. If the Band seeks authorization for the water quality standards program for

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Ms. Hyde
July 1, 2014
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additional lands in the future, the MPCA requests that the Band supplement its application so that the MPCA can comment on the jurisdictional aspects of any future application.

Second, the MPCA comments that the Band's application does not specifically identify the water bodies for which the Band is applying for TAS authorization, especially with respect to the ceded restored lands. An identification of the surface waters for which a tribe is proposing to establish water quality standards is required as part of the description of the tribe's authority to regulate water quality. *See* 40 C.F.R. § 131.8(b)(3)(iii). The MPCA had previously raised this issue in comments on the Band's previous application for TAS for the water quality standards program. *See* the MPCA's letters of April 30, 1996 and June 1, 2000, copies of which are enclosed with this letter. The Band's current application includes a list of watersheds and a map showing the general locations of land parcels (Attachments B and C to the application). It is not possible, however, to identify the specific water bodies from this information. Without the identification of specific bodies of waters for which the Band is applying for TAS, the MPCA cannot comment on whether the bodies are wholly within the boundaries of the reservation. This detailed information about water bodies is critical so that the MPCA will know what water bodies EPA is approving for tribal water quality standard authority and so that the MPCA can manage its own water quality standards program accordingly. One way that the identification of water bodies might be accomplished is to overlay the parcel ownership information with the National Hydrography Dataset map available for Minnesota. The MPCA would be happy to share spatial data layers with the Band to assist in this effort.

Third, the MPCA comments that the EPA's approval of the Band's application for TAS should be limited to waters within the boundaries of the Red Lake Reservation. The Band's application initially states that it is applying for TAS for waters within the Diminished Reservation, within the ceded restored lands, and within other land held in trust. *See* Band's application at page 8. However, on page 14 of the application, the Band indicates that it intends to establish water quality standards for all bodies of water within "or bordering" these areas. The CWA only authorizes TAS for waters within the borders of the tribe's reservation. *See* Clean Water Act section 518(e), 33 U.S.C. § 1377(e)(2), which limits TAS to "water resources which 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." *See also* 56 Fed. Reg. 64876, at 64881 (EPA's

Ms. Hyde

July 1, 2014

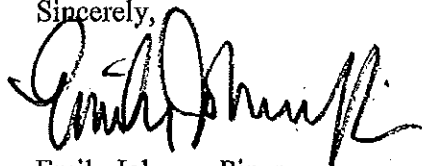
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statement that under section 518(e) of the CWA, tribes are limited to obtaining treatment as a state to water resources within the borders of the reservation). Because tribes generally have an interest in the water quality of waters that border its reservation, the MPCA has a practice of working closely with tribes on water quality issues on border waters, and will continue to do so as the Red Lake Band moves forward with developing and implementing a water quality standards program within the boundaries of the Red Lake Reservation.

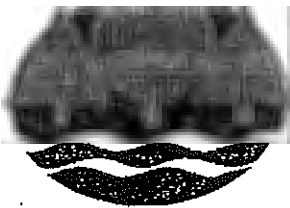
Finally, the MPCA comments that if EPA approves the Band's application for TAS, the MPCA is interested in working cooperatively with the Band on development by both parties of water quality standards to minimize the possibility of conflicts in the future on incompatible water quality standards on waters that cross jurisdictional boundaries, particularly with respect to Upper Red Lake. One way that this could be achieved is through a cooperative agreement under section 518(d) of the CWA, 33 U.S.C. § 1377(d).

The Beltrami County Administrator supports the Band's application, and commends the Band for establishing the goal of having water quality within the boundaries of Red Lake meet the same standards as the State of Minnesota.

Sincerely,

A handwritten signature in black ink, appearing to read "Emily Johnson Piper". The signature is written in a cursive, flowing style.

Emily Johnson Piper
Acting General Counsel



MINNESOTA POLLUTION CONTROL AGENCY

April 30, 1996

Mr. Valdas V. Adamkus
Regional Administrator
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Re: Red Lake Band Application for Treatment as a State - Water Quality Standards Program

Dear Mr. Adamkus:

On April 8, 1996, we received from U.S. Environmental Protection Agency (U.S. EPA), Region 5, an application from the Red Lake Band of Chippewa Indians (Band) for designation as a state under the Water Quality Standards Program of the Clean Water Act. The information forwarded to the Minnesota Pollution Control Agency (MPCA) included letters from the Band and its attorney dated November 7, 1995, and January 11, 1996, a computer printout showing the legal descriptions of parcels of property, and a map showing the location of the parcels of property.

After reviewing the information submitted to us, we do not believe that the application is sufficiently complete to allow us to comment on the jurisdictional aspects of the application. We believe that the application is incomplete in following aspects:

1. The map submitted with the Band's application shows that many of the parcels of property over which the Band is applying for treatment as a state are outside of the boundaries of the Red Lake Reservation (as shown on a map of the Reservation in the Band's previous application for treatment as a state for sections 106 and 314 of the Clean Water Act). The Band's application does not explain why these parcels of property should be considered to be within the boundaries of a reservation, as required by the Federal Pollution Control Act, 33 U.S.C. § 1377(e)(2). Without such information and explanation, the MPCA cannot adequately evaluate whether the MPCA has comments on the jurisdictional aspects of the Band's application.
2. The Band's application does not identify the bodies of water, as required by 40 C.F.R. § 131.8(b)(3)(iv), for which the Band seeks approval to establish water quality standards. The map submitted by the Band shows the general location of the parcels of property, but it does not identify the specific rivers, lakes, and wetlands that are potentially affected. Without

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Mr. Valdas V. Adamkus

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April 30, 1996

information on the identity of bodies of water over which the Band is seeking treatment as a state, the MPCA cannot determine whether the MPCA has a competing claim of jurisdiction. If the Band's mapping information on land ownership is in a compatible Geographic Information System (GIS) format, it may be possible to use that data coverage, in conjunction with data coverages that the MPCA has in its GIS to identify the water bodies on such properties.

3. The computer printout submitted with the application contains the legal descriptions of the parcels of property (along with other coded information which we cannot tell without a key whether such information is relevant to our or U.S. EPA review of the application). The legal descriptions on the printout are, in most cases, very difficult to read and, in some cases, illegible because it appears that the printer did not print dark enough. It may be possible to remedy this situation by reprinting the material. If this information is available electronically in an exportable database file, the MPCA would prefer to receive a computer disk containing this data along with the computer printout.

We request that the U.S. EPA make a determination that the Band's application is not complete and provide the state with an opportunity to comment on the application, in accordance with 40 U.S.C. § 131.8(c)(3), once the application is complete. The MPCA also reserves the right to make comments on the application if U.S. EPA determines that the application, as submitted, is complete.

If you have any questions, please call Duane Anderson of my staff at (612) 297-1831.

Sincerely,



Charles W. Williams
Commissioner

CWW:ls

cc: Claudia Johnson-Schultz, U.S. Environmental Protection Agency
Marc Radell, U.S. Environmental Protection Agency

1996 MAY -1 A 3: 12
GENERAL



Minnesota Pollution Control Agency

Office of the Commissioner

June 1, 2000

Mr. Frank Lyons
Regional Administrator
U. S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

RE: Red Lake Band's Application for Treatment as a State

Dear Mr. Lyons:

I am writing to you with regard to the application of the Red Lake Band of Chippewa Indians (Band) for treatment as a state (TAS) for purposes of the Clean Water Act § 303(c) Water Quality Standards Program and the Clean Water Act § 401 certification program. As you may recall, the Band applied for TAS in 1996, and the Minnesota Pollution Control Agency (MPCA) responded in an April 30, 1996 letter to U.S. Environmental Protection Agency (EPA). In the letter, MPCA stated that the Band's application was not sufficiently complete to enable the MPCA to comment on the jurisdictional aspects of the application. We asked that when the EPA determined that the application was complete, that MPCA be given an opportunity to comment on the application. The MPCA did not hear further about this matter until we received a telephone call from staff of the Band's Department of Natural Resources (DNR) asking for clarification of the MPCA's April 30, 1996 letter.

The purpose of this letter is to inform you of how the MPCA and Band have been working together to obtain the information needed for the MPCA to comment on the Band's application. The following is the status of each of the two issues originally raised by the MPCA in its April 30, 1996 letter.

1. The Boundaries of the Red Lake Reservation.

In our April 30, 1996 letter, the MPCA asked for an explanation of the legal basis for concluding that the 157,000 acres of scattered parcels of property located in nine counties were a part of the Red Lake Reservation (Reservation). The Band's application did not describe when this land became part of the Reservation and the legal basis for the Reservation status. Absent this information, the MPCA indicated that we could not adequately evaluate whether the MPCA had comments on the jurisdictional aspects of the Band's application.

Since that time, we have become aware of an Executive Order, dated February 22, 1945, in which the Secretary of the Interior restored 157,000 acres more or less of scattered parcels of property to trust status and declared them to be part of the Red Lake Reservation. With this

information, we have concluded that these 157,000 acres of property are a part of the Reservation along with what has been referred to as the "diminished reservation" near Upper and Lower Red Lakes. Since MPCA has no way to verify that the list of parcels of property attached as part of the Band's application corresponds to the 157,000 acres of ceded restored lands and the diminished reservation, we will leave to EPA the verification of that information. If the Band's application includes any other lands, we request that the Band or EPA let us know so that MPCA can determine whether we have additional comments on the application.

2. Identification of Water Bodies.

The second issue raised in our April 30, 1996 letter was the need to identify the bodies of water over which the Band is seeking to establish water quality standards, as required by 40 CFR § 131.8(b)(3)(iv). We noted in our letter that without this information, the MPCA could not determine whether the water bodies are inside or outside of the Reservation and, thus, whether MPCA has a competing claim of jurisdiction.

Since that time, the Band has provided the MPCA with a list of bodies of water for which the Band is seeking approval to establish water quality standards. The list, however, does not identify the location of these bodies of water with respect to the parcels of property. We have discussed this issue with the Band, and we have concluded that the easiest way to determine where the water bodies lie in relation to the parcels of property is to use the Geographic Information Systems (GIS) to overlay the water bodies onto the land parcels. This would allow us, as well as the Band and EPA, to identify whether the bodies of water for which the Band is seeking to establish water quality standards are within the Reservation or whether the water bodies are partly within and partly outside of the boundaries of the Reservation.

To accomplish this task, the MPCA is working with the Band's DNR and the U.S. Bureau of Indian Affairs (BIA), Aberdeen Title Office, to obtain electronically the land parcels information. We have been told by the Band and the BIA that obtaining this information will take several months. Once this information is obtained and merged with existing water location databases, the Band and the MPCA will be in a position to more accurately identify these affected waters. Once that is finished, all parties will have a better idea of the identity of the water bodies in relation to the parcels of property, and the MPCA can submit final comments on the Band's TAS application.

In addition to verifying whether the bodies of water are within the Reservation, we expect that the results of the GIS mapping will reveal that there are a number of bodies of water that cross the Reservation or are partly within and partly outside of the Reservation. The MPCA would like to work cooperatively with the Band to establish water quality standards for water bodies that cross or share jurisdictional boundaries in order to jointly protect the resource and minimize the possibility of conflicts in the future on incompatible water quality standards

Mr. Frank Lyons

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June 1, 2000

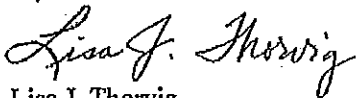
that cross jurisdictional boundaries. One way that this could be achieved is through a Cooperative Agreement under Section 518(d) of the Clean Water Act. That provision provides:

Cooperative Agreements – In order to ensure the consistent implementation of the requirements of this Act, an Indian tribe and the state or states in which the lands of such tribe are located may enter into a cooperative agreement, subject to the review and approval of the Administrator, to jointly plan and administer the requirements of this Act.

We believe that a cooperative agreement would be an especially appropriate tool for this situation where the 157,000 acres of reservation land are scattered throughout six counties. Additionally, the Band and the MPCA have common interests on Lower Red Lake since the Reservation boundary runs through the lake. Historically, the Band and the state have successfully worked together to protect natural resources. For example, the Minnesota DNR has worked with the Band on fishery issues on Red Lake. We believe that establishment of water quality standards provides an opportunity for the Band DNR and the MPCA to work together to achieve similar successes. While we recognize that the development of these cooperative agreements can be a time intensive process, we believe that it is worth the commitment since these agreements allow the governing bodies to build upon each other's programs, often times leading to a stronger level of protection for the waters involved. To begin the process of discussing the possibility of a cooperative agreement, I have talked with Ken McBride, Red Lake Band DNR. I am also sending a copy of this letter to the Band. We encourage EPA's oversight and facilitation of the development of a cooperative agreement between the Band and the MPCA and would appreciate any thoughts you may have on the subject.

We look forward to a continuing discussion with EPA and the Band on the Red Lake Band's application for TAS for the purposes of the Clean Water Act §§ 303(c) and 401 certification programs. Once the MPCA has received the information described above, we will promptly review it and make comments on the Band's TAS application. If you see any problems with the approach that we have outlined to facilitate MPCA being able to comment on the Band's application, please let me know. Thank you in advance for your response to this letter.

Sincerely,



Lisa J. Thorvig
Deputy Commissioner

LJT:jms

cc: See attached page

Mr. Frank Lyons

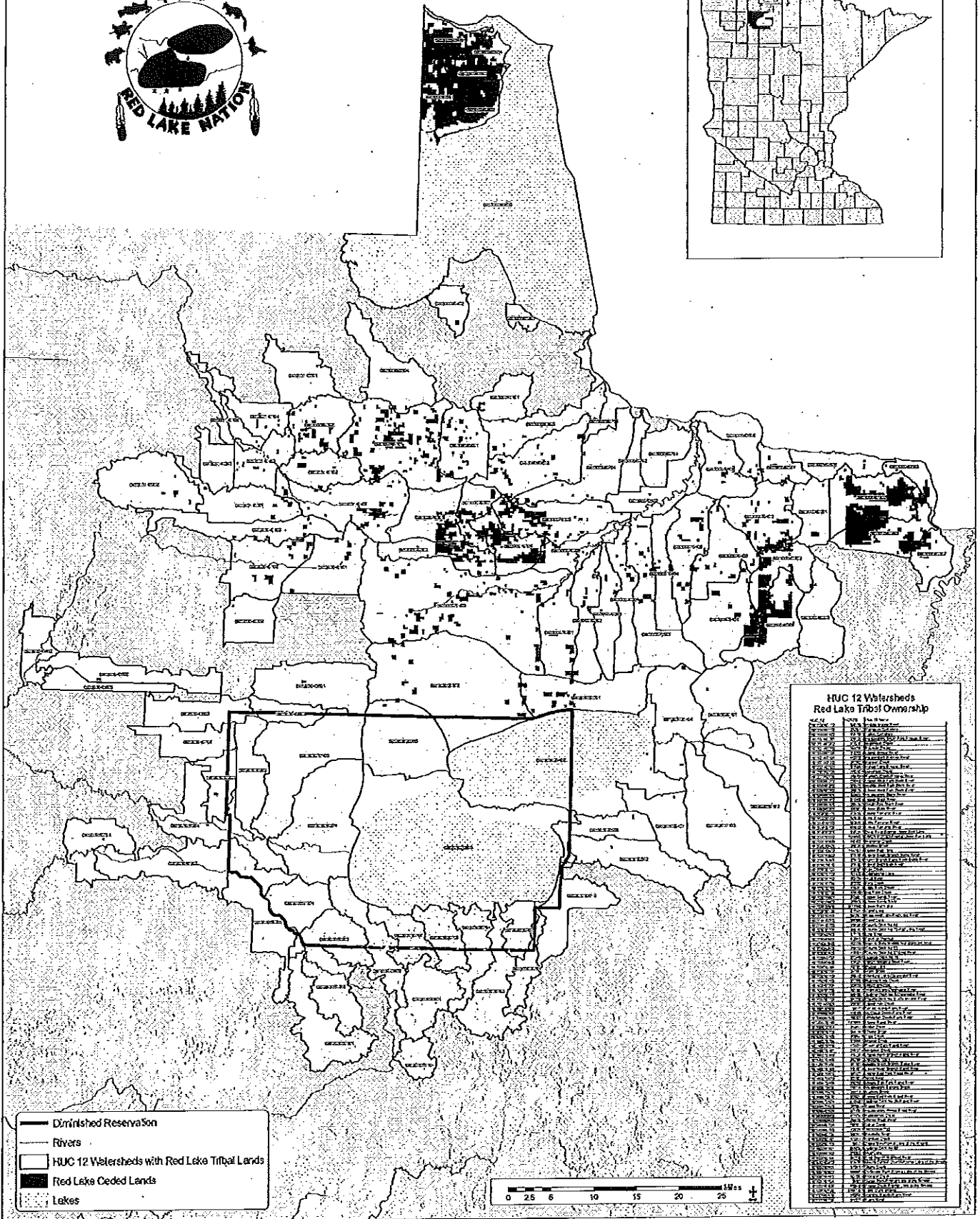
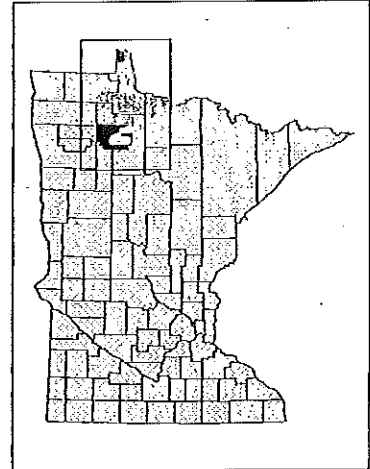
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June 1, 2000

The following people received a copy of the attached letter.

Bobby Whitefeather, Chairman, Red Lake Tribal Council
Ken McBride, Red Lake Band Department of Natural Resources
Chuck Meyer, Red Lake Band Department of Natural Resources
Beltrami County Administrator
Koochiching County Administrator
Clearwater County Administrator
Lake of the Woods County Administrator
Roseau County Administrator
Marshall County Administrator
Pennington County Administrator
Polk County Administrator
Red Lake County Administrator
Beverly Conerton, Assistant Attorney General
Karen Studders, Commissioner, Minnesota Pollution Control Agency

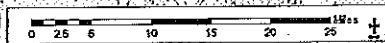
HUC 12 Watersheds within Trust Lands



**HUC 12 Watersheds
Red Lake Tribal Ownership**

HUC 12 Watershed	Red Lake Tribal Ownership
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01010100	0.00%

- Diminished Reservation
- Rivers
- HUC 12 Watersheds with Red Lake Tribal Lands
- Red Lake Ceded Lands
- Lakes



Attachment C

HU_12_Name	HUC_12
Mud River	090203020703
Pike Creek	090203020704
Upper Sandy River	090203020801
Buzzle Lake	090203050104
Middle Moose River	090203040102
Randeen Cemetery	090203040103
Valley Cemetery	090203040302
Headwaters South Fork Roseau River	090203140201
Mickinock Creek	090203140202
Paulson Creek	090203140203
Upper Moose River	090203040101
Headwaters Roseau River	090203140101
Hansen Creek	090203140102
Hayes Lake-Roscau River	090203140103
Severson Creek	090203140104
Rafferty Creek-Roseau River	090203140106
Headwaters Black River	090300080301
Upper Tamarac River	090203020101
Lost River	090203020102
Little Tamarac River	090203020103
Lower Tamarac River	090203020104
Deer River-Frontal Upper Red Lake	090203020201
090203020202-Frontal Upper Red Lake	090203020202
Manomin Creek	090203020300
Shotley Brook	090203020401
Upper Red Lake	090203020402
Lower South Branch Battle River	090203020502
North Branch Battle River-Battle River	090203020503
Lower Blackduck River	090203020610
Hay Creek	090203020701
Gibibwisher Lake	090203020702
Little Rock Creek	090203020705
Big Rock Creek	090203020706
Lower Sandy River	090203020802

HU_12_Name	HUC_12
Lower Red Lake	090203020900
Cahill Lake	090203030100
Roosevelt Lake-Red Lake River	090203030201
Good Lake	090203030202
County Ditch No 43	090203030203
County Ditch No 75-Red Lake River	090203030204
County Ditch No 39-Red Lake River	090203030206
City of Saint Hilaire-Red Lake River	090203030303
Lost River	090203040502
Town of Thorhult	090203040601
Hamre State Wildlife Management Area	090203040602
County Ditch No 32	090203040603
County Ditch No 27-Lost River	090203040605
Judicial Ditch No 13	090203040701
090203040802-Thief River	090203040802
Butcher Knife Creek	090203050203
090203050204	090203050204
Wilmoie Lake-Clearwater River	090203050205
Judicial Ditch No 3-Clearwater River	090203050207
County Ditch No 31-Clearwater River	090203050701
Upper Hay Creek	090203140301
Middle Hay Creek	090203140302
Upper Rapid River	090300070100
Miller Creek	090300070201
Chase Brook	090300070202
Troy Creek	090300070203
Moose Creek	090300070204
Meadow Creek	090300070301
090300070303	090300070303
Upper East Fork Rapid River	090300070401
Judicial Ditch No 20-Rapid River	090300070501
Judicial Ditch No 62	090300090301
Mud Lake	090300090302
Warroad River	090300090306
Springsteel Island-Frontal Lake of the Woods	090300090405
Ruffy Brook	090203050201

HU_12_Name	HUC_12
Stenlund Lake-Clearwater River	090203050202
Upper West Fork Black River	090300080201
Middle West Fork Black River	090300080202
Lower West Fork Black River	090300080203
Upper Black River	090300080302
South Fork Black River	090300080303
Lower Black River	090300080307
Smoot Island-Rainy River	090300080503
McCloud Creek-Rainy River	090300080507
Whitefish Creek-Rainy River	090300080508
Town of Carp-Rapid River	090300070205
Upper North Branch Rapid River	090300070302
Middle North Branch Rapid River	090300070304
Lower North Branch Rapid River	090300070305
Wing River	090300070402
Middle East Fork Rapid River	090300070403
Headwaters Bartons Brook	090300070404
Bartons Brook	090300070405
Lower East Fork Rapid River	090300070406
Rapid River	090300070502
Headwaters Winter Road River	090300080601
Peppermint Creek	090300080602
Winter Road River	090300080603
Silver Creek	090300080701
090300080702	090300080702
Baudette River	090300080704
Canfield Creek	090300090101
Zippel Bay-Frontal Lake of the Woods	090300090203
East Branch Warroad River	090300090304
Mount Carmel Church-Frontal Lake of the Woods	090300090402
County Ditch No 26-Frontal Lake of the Woods	090300090404
Stony Creek	090300090501
Driftwood Point-Frontal Lake of the Woods	090300090502
Pickeral Creek	090300090503
Sugar Point-Frontal Lake of the Woods	090300090504
Poplar Creek-Frontal Lake of the Woods	090300090505

HU_12_Name

Lake of the Woods

Manitou Rapids-Rainy River

Rainy River

HUC_12

090300090600

090300080506

090300080706