

**Red Lake Band of Chippewa Indians  
Treatment as an Affected State for the Purposes of  
Sections 303(c) and 401 of the Clean Water Act**

The Red Lake Band of Chippewa Indians (Band) is submitting this application for Treatment as a State (TAS) designation pursuant to the Clean Water Act (CWA) Section 518 for the purposes of implementing a water quality standards program under the CWA Sections 303 and 401.

Background

The Red Lake Indian Reservation, located in north-central Minnesota, is one of two closed reservations in the United States and contains the largest land base in USEPA Region V that is entirely under Tribal ownership. The Red Lake Band of Chippewa Indians owns nearly 59% of all Indian land in Region V, and total land holdings are in excess of 835,194 acres consisting of approximately 429,000 acres of forest, 240,000 acres of lakes, 466,000 acres of wetlands, and over 371 miles of rivers and streams.

The waters over which program authority will be exercised include any and all waters that are located on Reservation trust lands indicated in red on the attached map (Attachment A). These lands include the large block of contiguous land that is commonly referred to as the “Diminished Reservation” as well as all other trust lands outside the Diminished Reservation boundary. The term “Diminished Reservation” is based on treaty history and indicates that this land has never been ceded to or conquered by the U.S. government. Other trust parcels are found throughout the 1863 Treaty boundary area and are commonly referred to as the “Restored Ceded Lands.” This term refers to lands that were ceded to the U.S. government by agreement in 1889 but have been subsequently restored to the Band, most by an Order of the Secretary of the Interior on February 22, 1945. Lands restored under that Order have reservation status as a matter of law. These lands are commonly treated as a separate management area by natural resources staff.

**I. Federal Recognition of Red Lake Band of Chippewa Indians**

The Red Lake Band of Chippewa Indians is a federally recognized tribe, an independent Indian Nation which possesses all the powers of a sovereign state. The Tribe has continuously been listed as a federally recognized tribe in the Federal Register as long as the United States has published such listings, most recently at Volume 78, Number 87, Monday, May 6, 2013, Pages 26384-26389 (Attachment D).

Other documentation of federal recognition of the Band includes, but is not limited to, the following evidence of the Tribe’s direct relationship with the federal government:

Negotiation and signing of treaties with the federal government. The Band signed the Old Crossing Treaty of 1863 (Attachment E), ceding more than 11 million acres of the richest agricultural land in Minnesota in exchange for monetary compensation and a stipulation that “the President of the United States direct a certain sum of money to be applied to agricultural, education, and to such other beneficial purposes calculated to promote the prosperity and happiness of the Red Lake Indian...” Tribal sovereignty was recognized by the federal government again with the signing and approval of the Agreement of 1889 (Attachment F) and the Agreement of 1902 (Attachment G).

The Tribe has had an ongoing and direct relationship with the United States since the nineteenth century. For example, (1) treaty obligations have been in continuous force; (2) a subagency or agency office of the BIA was located at Red Lake and for Red Lake continuously from the nineteenth century until the Tribe signed a self-governance compact in the late 1990s; and (3) Congress has continually passed acts specifically acknowledging the Red Lake Band of Chippewa Indians, including creating the on-Reservation Red Lake Indian Forest in 1916 by statute which is still in force. In short, the Tribe’s government-to-government relationship with the United States has been continuous for well over 100 years, and no colorable challenge to the trust status of the Tribe’s lands could be raised.

The Red Lake Reservation was the only reservation in Minnesota, and one of only two in the United States, to be specifically excluded from Pub. L. 83-280 as originally enacted in 1953.

Since a new constitution was enacted in 1958 (Attachment H) to replace the earlier 1918 constitution, the Band has been governed by an elected Council of three officers: Chairman, Secretary, and Treasurer; and eight representatives, two from each of four districts that represent the Reservation. Under the leadership of the Tribal Council, the Band has successfully resisted encroachment upon the sovereign right of the Tribe to govern itself. Attempts by both State and Federal authorities to weaken that authority have been successfully halted. The Band has established precedent setting legal standards that apply to other Tribal Nations. Examples of important legal challenges taken to court by the Band include:

Commissioner of Taxation v. Brun, 174 NW 2nd MSC 120, (1970)  
The State lacks the power to tax income from wages earned on the reservation by an enrolled member living on the reservation.  
White v. Tribal Council, Red Lake Band, 383 F. Supp. 910 D. MN, (1974) Established that the Tribal Courts were the proper forum to decide issues of internal interest.

U.S. v. White, 508 F. 2d 453 8<sup>th</sup> Cir., (1974) Established that the Federal Bald Eagle Protection Act does not apply to the Red Lake Reservation.

Red Lake Band v. State, 248 NW 2nd 722 MSC (1976) Issuing motor vehicle license plates is an appropriate exercise of the Red Lake Band's unique power of self-government. Red Lake is entitled to exemption from the Minnesota auto registration statutes and to reciprocity in recognition, as with a state or territory of the United States.

The Band has received TAS designation for CWA Sections 319 and 106 programs, and currently USEPA Region V is in process of approving a Clean Air Act Section 105 application submitted in February of 2012.

## **II. Governing Body's Duties and Powers**

### **A. Form of Government**

Executive Branch. As described in Article IV, Sections 1 and 2 of the Tribal Constitution, the governing body of the Tribe is the Tribal Council, consisting of an elected Chairman, Secretary, and Treasurer, and 8 elected Representatives, two each from four Reservation Districts. In addition, there is an Advisory Council of 7 Hereditary Chiefs.

Every tribal department has experience with administrative review of citizen actions. Most relevant here, the Red Lake Department of Natural Resources (RL DNR) has extensive experience with administrative enforcement of Forest Management Policies, Fire Prevention, Public Burning policies, and illegal takings of game and fish. If further action requires civil or criminal enforcement, the Tribal Court is available. There are four tribal prosecutors who handle civil enforcement and criminal prosecution with three support staff. Other tribal departments, such as Human Resources, use administrative processes and hearings for personnel issues.

Legislative Branch. Before any ordinance or tribal code provision goes into effect, the Tribal Council requires a review by the Tribal Code Committee. This body is comprised of the Legal Department, Tribal Council Members, tribal court practitioners, law enforcement, and various department managers. Its purpose is to review proposed codes, ordinances, and policies for legal review and modification. When the Department of Natural Resources proposes water quality ordinances, including Water Quality Standards, there will be a legal review before consideration and enactment by the Tribal Council.

Judicial Branch. The Red Lake Nation Tribal Court has two Associate Judges. Support staff includes a Court Administrator, two probation officers, and five clerks. The Appellate Judges are drawn from a pool of six judges, from which

three will be drawn for an appellate case. Court is in session during regular business hours. All rules and procedures for the operation of Tribal Courts are set out in the Tribal Code. This document contains most laws of the Tribe. To an increasingly limited extent, Ordinances and Resolutions supplement the Code. All sources are regularly updated by legislative action by the Tribal Council.

## B. Governmental Duties and Functions

The Tribe currently has about 11,500 enrolled members, of whom about 6,500 reside on the Reservation. The total service population of the Reservation is about 10,800. As authorized in the Constitution, the tribal government exercises substantial duties and powers, including the provision of governmental services, regulation of public safety and the environment, and oversight of tribal and non-tribal business activities.

The Tribe's governmental activities include:

1. *Community services*  
Community services incorporate many programs. They include Americorps, CAP/Weatherization, Duluth Urban Office, Elderly Maintenance, Elderly Nutrition, Food Distribution, Minneapolis Urban Office, and Wisdom Steps.
2. *Education/Employment*  
There are a number of services provided under Education/Employment to Band Members. These include the following: Division of Rehabilitation, Red Lake Nation Tribal College, Tribal Archives and Library, Integrated Services, New Beginnings, Project Challenge, and Head Start. Additionally, there is one K-8 school, one K-6 school, one elementary school, one middle school, and one high school including an alternative learning program, all serving 1,600 students located on the Reservation. All but the K-6 school are operated by the State of Minnesota.
3. *Health*  
Comprehensive Health Care Services. Chemical Health provides drug and alcohol prevention activities and education, adult and youth outpatient treatment, and adult and youth inpatient treatment.
4. *Tribal Courts*  
The Tribal Courts include Courts, Prosecution (Adult and Juvenile), Child Protection, Child Support, Guardianship, Adoption, Civil Commitment, Marriage and Dissolution, CRAFT Program, Mediation Program, and DUI/Rule 25 Program. Court is in session daily with Criminal, Civil and Juvenile dockets. Jury trials are scheduled monthly during the third week of each month. Appellate hearings are scheduled as needed.
5. *Natural Resources*  
The natural resources of the Reservation are monitored by the Red Lake Department of Natural Resources (RL DNR). The RL DNR employs 75 full-time and seasonal employees and numerous interns. Departments

within the DNR include the Environmental Program (Air Quality and Brownfields), Fisheries Program, Forestry (Forestry Development, Inventory/GIS, Timber Sales, Fire, Fuels, and Fire Prevention), Water Resources (Wetlands and Nonpoint Source Pollution), and Wildlife.

6. *Public Safety*

Public safety activities consist of the Department of Public Safety employing 23 officers, Conservation Department with 5 conservation officers, Department of Detention, Community Fire Protection, and Project Safe Neighborhood.

7. *Public Works*

Public Works are comprised of an Engineering Department, Facilities Maintenance, Roads Maintenance, Sanitation which serves about 750 homes, Solid Waste Transfer Station which manages over 30,000 tons of solid waste annually, and Department of Transit.

8. *Self-Governance/Services*

Self-Governance/Services include Housing Improvement, Office of Special Trustee, Tribal Credit, Tribal Realty, and Tribal Operations.

9. *Social Services*

Social Services include Department of Family and Children Services, Women's Shelter, Homeless Shelter, Child Support Enforcement, and the Path of Life Program.

10. *Tribal Services*

Tribal Services includes a receptionist, Travel Department, Tribal Janitorial, Human Resources, Economic Development, Legal Services, Newsletter, Property and Supply, and Special Projects.

11. *Tribally Owned Businesses*

a. Red Lake Fishery

The Red Lake Fishery is tribally owned and operated providing hook and line caught walleye from Upper and Lower Red Lake.

b. Red Lake Nation Foods

Red Lake Nation Foods markets wild rice from a tribally owned farm as well as a variety of other natural food products, many of which are harvested by Band members on Red Lake lands.

c. Red Lake Gaming Enterprises

Red Lake Gaming Enterprises includes three casinos, a 151 room hotel, 44,000 sq. ft. indoor water park, and a 40 room hotel.

d. Other Tribally owned businesses

Other enterprises operated by the Tribe include Red Lake Builders construction company, Earthworks, Red Lake Fuels, Red Lake Housing Authority, Red Lake Housing Finance Corporation, Jourdain/Perpich Extended Care Facility, Red Lake Senior Apartments, Red Lake Foods, Red Lake Farms, Forest Products, and Red Lake Propane.

These services are financed primarily through transfers from related parties, taxes, investment income, contributions, Federal and State grants and contracts, and business income.

### C. Source of Governmental Authority

The sovereign governmental authority of the Red Lake Band of Chippewa Indians predates the formation of the United States government and the federal Constitution. Sovereignty of the Tribe was not bestowed upon the Tribe; it is a true exercise of the Members of Red Lake to govern themselves and enact laws for their benefit. Self-government and self-determination of and by its people are the core manifestations of the inherent sovereignty of the Tribe. As such, in creation myths and beliefs, Red Lake Ojibwe are given environment-sustaining values and practices by the Creator. Red Lake has continuously held onto and preserved these beliefs from time immemorial through early treaty negotiations and into its current laws.

Several provisions of the Revised Constitution authorize the Tribal Council to exercise powers over tribal lands and water resources. Article II of the Revised Constitution gives the Tribe jurisdiction over all of the Red Lake Reservation and such other lands as may be acquired by or on behalf of the Band. This includes, but is not limited to, all land and water acres held in trust for the Tribe by the United States (the Federal Indian Trust land). Article IV entrusts the Tribal Council with the governing powers of the Tribe. Article VI sets out the governmental authorities of the Tribal Council, including that the Tribal Council, or its authorized officers or delegates, shall have the sole right and authority to represent the Tribe and to negotiate with the Federal, State, and Local governments and with private persons and to make decisions not contrary to the Constitution and Bylaws or with existing Federal laws.

The authority of the Red Lake Band to govern its members' and others' activities on Tribal lands is affirmed by the recognition of the Tribe as a sovereign nation by the United States government and by the Tribe's Constitution and Bylaws.

The Tribe is governed by the Revised Constitution and Bylaws of 1958, which replaced the earlier Constitution adopted April 13, 1918. The Constitution grants and restricts governmental powers to the Tribal Council. The Revised Constitution of 1958 established a constitutional government to exercise its sovereign powers.

The Tribal Council, under its Constitutional authority, has also established a Tribal Code of Laws. The Tribal Code further identifies that the sovereignty and jurisdiction of the Tribe extends to all places within the boundaries of the Red Lake Reservation (and beyond to the extent allowed by law), including all restored parcels as defined in the treaties creating the Reservation and the documents restoring lands to the Tribe.

Several other historical actions speak to the sovereign authority of the Red Lake Tribe to govern itself. The Tribe withdrew in 1918 from the General Council for the Chippewa, intended to bring all Ojibwe into one tribal structure, and continued to maintain its own authority and its own identity separate from the Minnesota Chippewa Tribe (MCT). The Tribe has never been subject to state law. The Federal government has recognized the Tribe's unique authority to govern itself by declaring Red Lake specifically as exempt from the application of Public Law 83-280, which means the State has no civil jurisdiction on the Reservation and has only limited criminal jurisdiction. The Red Lake Reservation has been recognized by federal courts as a closed reservation.

Red Lake is a signatory to the 1863 Treaty, known as the Old Crossing Treaty. Later the Tribe signed the Agreement of 1889 and the Agreement of 1902. Red Lake is unique in that the Tribe always held, and never ceded, the approximately 650,000 acres known as the Diminished Reservation to the federal government. In 1889, the Nelson Act was passed which seemingly required allotment of reservation lands to individual Indians. But in negotiating the 1889 Agreement pursuant to that act, the Tribe refused to agree to allotment. For the next decade, Tribal Chiefs skillfully yet doggedly resisted Federal attempts to allot the Red Lake Reservation until finally the federal government gave up. The foresight of Red Lake's leadership resulted in the Tribe's diminished lands remaining intact and held in common by tribal members. Today, of 35 tribes in EPA Region 5, Red Lake owns greater than 55% of the Federal Indian Trust land and water in the Region.

### **III. Authority to Regulate Water Quality**

The Red Lake Band of Chippewa Indians understands that Water Quality Standards are the foundation of the Clean Water Act and exist to control pollution within a water quality regulatory framework. Goals for water quality will be defined by the Tribe in the form of designated waterbody uses, criteria to protect said uses, and the establishment of protections for those waterbodies. Water resources are best preserved when the Tribe can implement its own management practices and regulations. In doing so, the Tribe is poised to demonstrate that it has adequate jurisdictional authority over the water resources within the Reservation. The Red Lake Band is confident that the EPA is in agreement with the Tribe's jurisdictional authority on this issue and concludes that the Tribe can meet the statutory requirements of this program as required by Congress.

The Red Lake Band of Chippewa Indians jurisdictional authority to regulate water quality comes from a variety of legal authorities: inherent sovereignty of Tribe, Treaty rights reserved to the Tribe, the Tribal Code and Tribal Ordinances, and Federal and State law. Subject matter jurisdiction for the protection of land and water also includes enforcement powers of the Tribe in areas of administrative

regulatory powers and civil and criminal jurisdiction. Any noncompliance or violation of any law or regulation of the Tribe by a non-Indian will be assessed to determine who may exercise subject matter and personal jurisdiction under governing Tribal and federal law. In cases where issues present themselves on fee land within the Reservation, legal analysis will guide the Tribe within generally accepted legal principles. Fee land within the Diminished Reservation boundary is confined to a very small number of acres.

A. Area Over Which the Band Asserts Authority to Enforce Water Quality Standards

A map of the area over which the Band asserts authority for the purpose of Water Quality Standards application and enforcement is attached (Attachment A). The area includes all waters within the Diminished Reservation boundary, all restored ceded lands, and all other lands that are held in trust for the Band. The “Diminished” Reservation refers to 649,082 acres of Tribal land that was never ceded to or conquered by the United States. “Restored ceded lands” refer to lands that were ceded to the Federal Government through the agreements of 1889 and 1902 but have since been formally restored to trust status.<sup>1</sup> Total acreage of all trust land currently is stated to include 649,082 acres in the Diminished Reservation and 186,112 acres in the restored ceded lands, for a total of 835,194 trust acres. The Band maintains fishing and hunting rights on the waters of Lake of the Woods and reserves the right to assert authority to implement Water Quality Standards over those waters in the future but for purposes of this current application will restrict said authority to tributaries flowing into the lake from the Northwest Angle.

B. Basis of Authority to Regulate Water Quality

The Revised Constitution and Bylaws of 1958 is the supreme governing document for the Red Lake Band of Chippewa Indians. Article IV empowers the Tribal Council as the governing body of the Band. Article VI sets out the governmental authorities of the Tribal Council. Section 3 permits the Band to regulate and license all business and professional activities conducted upon the Reservation, specifically including nonmembers trading or residing upon the Reservation. Review of such regulation is subject to review by the Secretary of Interior.

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<sup>1</sup> There are unresolved issues regarding the scope of lands that were restored by the February 22, 1945 Secretarial Order and that should have been restored under that Order or otherwise. All lands meeting the definition in that Order were restored as of that date. However, the United States failed to publish a definitive list of those restored lands. A project is underway to identify those lands restored in 1945. The Tribe includes on Attachments A and B only lands which were indisputably restored. As further lands are identified as having been restored, the Tribe will decide whether to assert water quality authority and seek amendment of the lands and waters covered by this application. Resolution of disputed boundary surveys, Section 2415 claims, and other land issues may also increase the waters over which the Band asserts jurisdiction.



Article VII, Section 2 confers the authority of the Band to manage, lease, or otherwise deal with tribal lands and tribal resources.

Article VI, Section 5 authorizes the Tribal Council to establish the maintenance of law and order and the administration of justice by establishing a police force and a tribal court and defining their powers and duties.

According to Tribal Code (as amended), Section 100.01 establishes the sovereignty and jurisdiction to all places within the boundaries of the Reservation including all restored lands. Section 100.03 states that the Tribal Court shall have civil jurisdiction over any civil matter wherein the parties to the action are non-Indians, Indians, or the parties are an Indian and a corporation, partnership, association or other entity in which the same is owned in whole or the controlling interest therein is owned by an Indian or an Indian Tribe, and the cause of action arises under the laws of the Band or the transaction or occurrence giving rise to the cause of action occurred on the Red Lake Indian Reservation, which includes any restored lands.

The Tribal Code states that Red Lake courts maintain jurisdiction over matters within Reservation boundaries including actions when parties are non-Indians. The Band is aware of federal cases limiting tribal court jurisdiction over nonmembers on fee lands within reservation boundaries under some circumstances. See, e.g., Montana vs. U.S. 450 U.S. 544 (1981); Strate v. A-1 Contractors, 520 US.438 (1997).

In the case of water quality standards, as to be set by the Band, possible future litigation involving nonmember activities would appear to fall squarely within the second exception set forth in Montana, involving threats to the political integrity, economic security, or the health or welfare of a tribe. Especially in the context of the Clean Water Act, the Band asserts that threats to water quality are within the Tribal Court's jurisdiction. Nonetheless, the Tribe will bring any such water quality actions against nonmembers only after a thorough analysis of relevant precedent.

### C. An Identification of the Surface Waters for Which the Band Proposes to Establish WQS

#### The Water Resource

At least 240,000 acres of the Red Lake Band's 835,194 total acres are water. In addition to the more than 135 lakes, there are over 371 miles of rivers and streams on Band land. The spiritual and cultural importance of water to the Red Lake Nation is reflected in the Tribe's name, the image of Red Lake and tributaries on the Tribal flag and emblem, and in Tribal members' daily lives.

The largest lakes on and adjoining Band lands were originally known as a single body, Red Lake. Today, it is often divided into Upper and Lower Red Lakes, which cover 119,334 and 164,928 acres respectively. In this document, it is referred to as Red Lake as a whole, or Upper Red Lake or Lower Red Lake where necessary for clarity.

Of the 284,262 total acres comprising Red Lake, 236,513 (83%) are recognized as being owned and managed by the Band. The Tribal villages of Little Rock, Red Lake, Redby, and Ponemah are all situated on the shores of Lower Red Lake. The lake contains an extremely productive walleye fishery.

Located at the headwaters of the Red River drainage, which is part of the greater Hudson Bay drainage system, many of the Tribal lakes and streams are minimally impacted (low in nutrients, minimal shoreline development, etc.) due to minimal development within the relatively small watersheds. Most of the smaller Tribal lakes are located in a narrow band that parallels the southern shore of Lower Red Lake. Many of these lakes are popular recreation areas used for swimming, fishing, and hunting. Many are also used for the harvest of bait, wild rice, and furbearers. Some are nearly untouched and serve as refugia for wildlife.

Tribal waters located on trust lands of the Northwest Angle include a number of small streams and wetlands which are highly productive wild rice and wildlife areas. These streams all feed directly into the Lake of the Woods, an international water with a current listing in Minnesota for nutrient impairment.

Various small tracts of trust land, referred to as the "Restored Ceded Lands," contain waters used infrequently by Tribal members directly but remain a valuable resource as they provide habitat for game species such as deer, furbearers, waterfowl, and other species of importance. They also provide refugia in difficult access areas, just as do many small lakes and streams on the Diminished Reservation.

Red Lake has been used for subsistence purposes by Band members for as long as they have resided here. Fish have been an important component of the diet during the open-water season, and fish have always been dried and smoked for winter use. Many Band members maintain a close tie with Red Lakes and participate in a seasonal cycle of fish harvest. The commercial fishery has been in operation since 1917 and continues to support the Tribal economy. The principal species harvested include walleye, yellow perch, lake whitefish, northern pike, goldeye, black crappie, and freshwater drum. Other commercial species present include white sucker, black bullhead, rock bass, largemouth bass, pumpkinseed, bluegill, northern redhorse, quillback, and burbot. Forage species present in Red Lake include golden shiner, trout-perch, spottail shiner, emerald shiner, common shiner, blacknose shiner, mimic shiner, finescale dace, brook stickleback, Johnny darter, Iowa darter, and fathead minnow. Lake sturgeon were formerly present but had effectively been extirpated by the 1950's.

Many members still depend on fish for subsistence as well. After the collapse of the walleye fishery in the early 1990's, the Red Lake Band voluntarily suspended fishing to assist in a joint recovery project. The fishery has since rebounded and is regaining its place as an important economic resource for Tribal members. During the 2009-2010 fishing season, 584,786 pounds of walleye were harvested from Red Lake. Under new commercial fishery regulations, Red Lake members are allowed to catch up to 100 walleye per day using hook and line methods which may then be sold to the commercial fishery allowing individuals to take part in the commercial harvest. Approximately 70% of the fish harvested in 2009-2010 were caught using this method.

Historically, Red Lake and its tributaries were home to a large lake sturgeon fishery. However, over-fishing and water control structures decimated their population. The Red Lake Band has been involved in a cooperative project to return the lake sturgeon to Red Lake. Since 2007, 42,000 lake sturgeon fingerlings have been stocked in the lake and recovery has begun. The Band strongly supports the protection and restoration of these fish.

Wild rice, berries, and wildlife resources have been harvested from waters and wetlands and traded as well. Red Lake Foods, a tribally owned enterprise, provides employment and a retail outlet for wild rice, traditional crafts, maple syrup, and berry products. Wild rice, which is very dependent upon specific water conditions, is important not only as a subsistence food but plays a prominent role in the migration story of the Ojibwe people. Wild rice and walleye are served at nearly every traditional and ceremonial gathering and are a very important part Red Lake culture.

The following wetland resource information is a modified excerpt from the 2011 Red Lake Band of Chippewa Indians Integrated Resource Management Plan:

The wetland resources of the Red Lake Nation are both vast and diverse. Amongst the variety of wetland ecosystems native to the Red Lake Reservation are bogs and fens, the latter being some of the least common wetland systems in the world. There are a number of these areas, either within the primary block of the Red Lake Reservation (for example, south of the Butcher Knife Chain, and east of the Kiwosay), or amongst the restored ceded lands north of the diminished reservation. The area north of the diminished reservation, commonly known as the Red Lake Peatlands, contains some very large water track features which have been the object of worldwide research into peatland development and processes. Minnesota, with approximately 6.7 million acres of peatlands, contains the largest peatland area in the United States (excepting Alaska). Much of these peatlands lie within, or adjacent to, Red Lake's land base.

The Red Lake patterned peatlands have received worldwide scientific recognition. More importantly, though, is the recognition historically placed upon these swamplands by the Anishinabe people. During treaty negotiations, and especially during the days of the Volstead Act, the Red Lake leaders were adamant in voicing their opinion that the swamplands were central to the people's way of life. The Anishinabe people realized that these swamplands nurtured many of their critical resources. As they understood it, the entire Anishinabe subsistence cycle of hunting, fishing, and gathering depended upon the region's water system which itself was intricately connected to the region's vast wetland resources. Anishinabe traditional knowledge recognized that these wetlands were not only crucibles of life for a vast number of plants and animals but were an integral part of the people's life. The Anishinabe Elders recognized that the existence of these wetland systems was inevitably and undeniably linked to their own existence.

Wetlands have always played an essential role in the subsistence economy of the Red Lake people. This is even evidenced in the fact that the Ojibwe language reveals clear distinctions between swampy areas and what might be interpreted as peat areas. Vegetation commonly found in wetland areas was important as food and medicine, in religious and magical rituals, as raw materials for mats and baskets, and in the construction of houses and canoes. Many food plants were harvested from northern Minnesota marshes and swamplands. The most important of these included the wild turnip, the wild lily, and wild rice. Wild rice was a particularly important food source, and the prevalence of wild rice in northern Minnesota freshwater habitats was one factor that was considered by prehistoric and historic Indians in selecting settlement locations for the summer and fall.

A number of peatland plants provided medicines for the Ojibwe, including *Acorus calamus* (sweet flag), used as an analgesic; *Sagittaria arifolia* (arrowleaf), boiled as a digestive aid; and *Typha latifolia* (cattail) down used as a burn dressing. Another important species of the region was *Cornus stolonifera* (red osier dogwood) which when mixed with tobacco was called kinikinic which was smoked for religious and ceremonial purposes as well as for pleasure. A number of tree species common in peatland areas were also used. Birchbark was a critical resource - used for making canoes, summer house coverings, and containers. Mats for floor coverings were woven from the fibers of a number of plant species including *Scirpus validus* (bullrush). Several kinds of trees were used in the construction of summer lodges and winter tipis including the various *Pinus* species. Pitch from the coniferous trees found in and around peatlands was used as glue and sealant for canoes and containers.

Animal resources, especially those which frequented or inhabited wetlands, were also important to the Indian way of life. Muskrat were particularly important for their pelts during the historic fur trade period in Minnesota

(roughly 1775-1850). Beavers were also an important resource both historically as part of the fur trade and prehistorically. Other small and medium-sized mammals found in peatlands or the surrounding uplands included skunks and otters. These species were used for their pelts as well as their meat. Historic references indicate that otter skin, bear skin, and beaver skin were highly prized representations of wealth for display, exchange, and payment of debts. Other animals utilized included ducks, geese, fish, and turtles. Historians also speculate that prehistoric peoples may have utilized peatlands by driving large animals such as moose, caribou, and bison into boggy areas in order to dispatch them more easily.

The peatlands to the north and east of the Red Lake Reservation are part of a regional water network and play an intrinsic role in filtering the waters entering Upper and Lower Red Lake. Over the course of the past century, Reservation leaders have expressed an understanding of the area they inhabit as an ecosystem central to sustaining their way of life. Despite attempts to privatize their collectively held land base, to ditch and drain the peatlands, and to mine peat for fuel, the Red Lakers have steadfastly maintained their commitment to preserving the integrity of the ecosystem. Peatlands and wetlands have played a key role in that effort.

In defending their resources, the Red Lake leaders sought to protect the quality of their environment as well as their land base. Various state and federal programs throughout the years threatened to alter the water level of Red Lake - the backbone of the Red Lake Ojibwe subsistence economy. Red Lake leaders understood that the long-term survival of their culture rested on their continued ability to adapt their subsistence base successfully to the changing conditions around them.

In 1908, the Red Lake Band was confronted with the Volstead Act which aimed at draining the public swamplands in northern Minnesota. Red Lake leaders expressed a sophisticated understanding of ecological relationships as they protested against both the drainage project and the proposed use of their Tribal funds. Ojibwe leaders explained that, because of its influence on the level and quality of the waters of Red Lake, the swampland supported plant and animal life central to their people's subsistence. The wetlands environment nurtured many of their critical resources. The network of lakes, peatlands, and forest supported the entire Ojibwe subsistence cycle. In the 1920's and 1930's, Euroamericans who had settled downstream toward Thief River Falls favored building a dam at the outlet of Lower Red Lake to regulate the flow of the Red Lake River and stem downstream flooding. Considering problems generated by the drainage of peatlands subsequent to the Volstead Act, Red Lake leaders could support a dam that would also regulate the water level of Red Lake. However, rather than allowing the dredging of the entire length of the Red Lake River within the Reservation and

straightening its sluggish, meandering channel, Red Lake leaders fought to keep their portion of the river intact.

In the 1970's, the Red Lake Tribal Council found itself confronted with yet another threat to the ecosystem when the Minnesota Gas Company (Minnegasco) proposed to mine peat from the lands north of Red Lake as an alternative energy source. Concerned that mining the peatlands would have threatened the water quality of Red Lake, potentially harming the Red Lake fishing industry in particular, Red Lake Tribal leaders passed a resolution to preserve the peatlands untouched. Their action was in keeping with a decades-long commitment to the integrity of their ecosystem.

A map of the surface waters for which the Band proposes to establish water quality standards is attached (Attachment A). Additionally, a list of watersheds containing trust lands (Attachment C) and a map of said watersheds with trust lands is included (Attachment B). These surface waters include any and all waters that are located within or bordering on Red Lake trust lands – including both the Diminished Reservation and the restored ceded lands. Water quality standards will be established for all bodies of water including streams, lakes, and wetlands located within or bordering trust land. Water quality standards will also apply to any waters located on or bordering lands that are taken into trust for the Band in the future. As described in footnote 1, water quality standards will also apply to additional lands identified as having been taken into trust and Reservation status as of February 22, 1945 by the Secretarial Order of the same date. Waters of the reservation for the purposes of this application include the western portion of Upper Red Lake, all of Lower Red Lake, and all waters found within or bordering trust land. Red Lake trust lands currently range from the southernmost point, the Funkley Lake Parcel (Sect-36, Twp-148, Range-35), 19 miles south of Red Lake Village to the northernmost point, a Northwest Angle restored ceded land parcel (Sect-10, Twp-168, Range-35), 104 miles north from Red Lake Village. Trust lands range east to west from a restored ceded land parcel 70 miles east of Red Lake Village (Sect-23, Twp-158, Range-25) to a restored ceded land parcel (Sect-23, Twp-152, Range-42) 46 miles west of Red Lake Village.

### Current Threats to Water Quality on the Red Lake Reservation

While there are real and serious threats to the quality of the Band's waters, overall water quality in Tribal waters is good to excellent. This is partly due to the fact that the majority of the Band's waters are headwaters. It is also due in part to the fact that development has remained minimal in the areas near the Reservation and other trust lands.

The Band depends on high quality natural resources to provide members with subsistence as well as economic viability. Any threats to water quality are therefore threats to the health, economic security, and the sovereignty of the

Band. The primary threats come from five major areas: agriculture, urban development, forestry, mercury deposition, and mining. Some of these major areas are impacting water quality now; some are projected to do so in the future. All of these impacts may be exacerbated by climate change.

## Agriculture

Agricultural land use exists primarily off-reservation in the headwaters of the Battle and Blackduck watersheds. These streams suffer from low dissolved oxygen in the late summer and early fall due to a combination of issues. Agriculture upstream of the reservation is likely resulting in higher nutrient concentrations, higher temperatures, and increased sedimentation. In addition, the water holding capacity of the land is reduced as an effect of historic wetland drainage. The combination of these effects results in warm, higher nutrient, low flow water that holds very little oxygen. Additional threats from agricultural inputs include high concentrations of *E. coli* input to streams from off-reservation feedlots.

## Urban Development

Threats from urban development exist both on and off the Diminished Reservation. On the Diminished Reservation, the population is increasing, and housing is desperately needed. New housing developments are infringing on wetlands and riparian zones. While the impact of an individual home is minimal, the cumulative effect is substantial. The need for housing also amplifies the existing level of impact through the failure of overused septic systems. Current sampling indicates that over 50% of all septic systems on the Reservation are failing. These failing systems result in excessive nutrient and bacterial input to surface water and ground water. Drinking water sources include private wells, municipal water, and a number of artesian wells located throughout the Reservation. The private wells and artesian wells are typically shallow and are closely connected to surface water. Contamination of one has the potential to contaminate the other. This is especially a concern with private wells in close proximity to failing septic systems but may become a major concern in the municipal water system if more extensive groundwater contamination occurs.

Off the Reservation, urban development threatens to impair water quality in a similar manner as some communities in upstream watersheds continue to grow. According to the University of Minnesota Extension Service, Beltrami County (the main upstream county) is expected to see 13.6% growth by 2020. According to a 2004 Minnesota Pollution Control Agency 10-Year Plan to Upgrade and Maintain Minnesota's On-site Treatment Systems, it is estimated that 27% of Individual Sewage Treatment Systems (ISTS) are failing, and 12% are imminent threats to public health and safety. These numbers are likely higher in the rural areas in which Tribal waters are located.

## Forestry

The water quality threats from forestry include impacts related to harvest and impacts related to access. Impacts related to harvest can be minimized by following the Site-level Forest Management Guidelines developed by the Minnesota Forest Resources Council. The Band has adopted these guidelines and requires that they are followed during forest harvest operations. Impacts from soil compaction, riparian damage, and direct water resource damage are minimized and often eliminated when these guidelines are followed. Impacts related to access are generally a result of stream crossings built to improper specifications or with improper materials. Impacts from these activities are often not immediate and are not easy to assess. Long term sedimentation fills spaces in stream beds used for spawning and eliminates habitat for many beneficial species. Use of onsite materials for stream crossings, while cheaper initially, results in excessive costs to the Tribe when expensive restorations are necessary. Overall, forestry on the Red Lake Reservation is practiced in a highly sustainable manner, and impacts are minimized.

## Mining

While active mining in the watersheds upstream of the Red Lake Reservation is not currently occurring, exploratory mining has taken place in and around the Restored Ceded Lands. As markets fluctuate and the value of ore and precious metals increases, it is very likely that mining will occur within watersheds containing Red Lake Band water resources. The effects of mining are many and lasting. The impacts are variable depending upon the type of ore and the technique used. Peat mining is another potential water quality concern in the vast peatlands found north of the Diminished Reservation. Many of these peatlands are located on or around trust land and virtually all of them feed waters entering trust lands. The Band has voiced opposition to the establishment of peat mining operations in the past and remains concerned about the potential effects to water quality in the future. The Band will remain vigilant over mining activities near trust lands.

## Mercury Deposition

As a community highly dependent upon fish as a source of subsistence and an economic resource, the Red Lake Band is very concerned about mercury and other potential bioaccumulative chemicals found in fish tissue. Consumption advisories for fish from Red Lake have already been developed and are distributed regularly. However, those members who rely on fish may be unable or unwilling to alter their diet to meet the guidelines. This is a great water quality and public health concern.



## **IV. Tribal Capability**

### **A. Tribe's Management Experience in Administering Programs and Services**

The Red Lake Band of Chippewa Indians has experience in administering environmental and other programs. The Tribal government currently employs approximately 300 people. This employment number is in addition to the Tribe's employment at its gaming enterprises, hotels, gas stations, foods, and other businesses. The Tribe's management oversees a wide range of programs to service the Tribal population including those authorized by the Indian Self-Determination and Education Assistance Act (ISDEAA), the Native American Housing Assistance and Self-Determination Act of 1996, and the Indian Child Welfare Act. As a Self-Governance tribe under the ISDEAA, the Band operates the full range of services traditionally run by the BIA and other federal agencies.

### **B. Existing Environmental and Public Health Programs**

From a programmatic standpoint, the Tribe operates the Red Lake Department of Natural Resources (RL DNR). The RL DNR was established with a staff of five in 1987 to monitor and protect the Tribe's vast resources. These resources include 59% of the Federal Indian Trust land, water, and wetlands in EPA Region V. It also includes the sixth largest freshwater lake in the United States, just behind the five Great Lakes.

As management successes were achieved, and as needs grew, so did the Department. Today, RL DNR maintains a staff of 75 full-time employees and is one of the largest Tribal natural resource programs in the nation. A Department structure flowchart is attached (Attachment I). In addition to the full-time staff, the RL DNR employs various seasonal staff and contract workers.

The RL DNR includes the following Divisions:

1. Environmental Protection
2. Water Resources
3. Conservation Enforcement
4. Fisheries
5. Wildlife
6. Forestry

The Bureau of Indian Affairs has one employee on the Reservation as a liaison who is housed in RL DNR-provided office space. The RL DNR, in conjunction with the federal government, developed an Integrated Resource Management Plan (IRMP) in 2011 to help guide resource management on Reservation lands. A Plan update and revision is currently underway. Water Quality issues were identified in the 2011 IRMP and will be revisited during the revision process.

The Conservation Enforcement department employs wardens who are empowered to enforce tribal hunting, fishing, and natural resource regulations and laws. They are also able to investigate and cite illegal activities associated with natural resources. Violations are referred to the tribal prosecutor for prosecution in the Red Lake Tribal Court.

The Tribe's general accounting and procurement systems are maintained by tribal accountants who handle all tribal financial activities including payroll, ledgers, accounts payable and receivables and program disbursements in compliance with federal accounting regulations. Additionally, the accounting system and related control systems of the Tribe are examined annually by an independent auditor in accordance with federal accounting regulations.

Other environmental and/or public health programs administered by the Tribal Government include those listed above under governmental duties and functions.

#### C. Executive, Legislative, and Judicial Branches of the Tribal Government

Section II.B of this application discusses the entities that exercise the executive, legislative, and judicial functions of the Tribal Government.

#### D. Red Lake Department Natural Resources as Responsible Entity for Establishing, Reviewing, Implementing, and Revising Water Quality Standards

Red Lake has maintained a General Assistance Program (GAP) grant since 1992 when, at the time, it was referred to as the Multi-media Program. Our initial budget of \$50,000 annually has grown accordingly over the years to its present amount of \$110,000 annually. The GAP grant has allowed the Band to keep a constant environmental presence on the Reservation and provided ample opportunities for planning and developing environmental programs. Red Lake has also managed EPA 106 grants since the early 1990's. These grants have allowed the Water Resources Program to flourish and grow from a staff of one to a staff of eight plus seasonal workers. The program has monitored and protected Tribal water resources through numerous projects and cooperation with other local units of government. Currently, the Water Resources Program manages an EPA 106 grant totaling more than \$400,000 annually (though less in recent years due to sequester cuts). The program has received four Wetland Program Development Grants totaling over \$800,000 since 2008. These grants have allowed for extensive wetland work and the hiring of a Wetlands Specialist. Since FY10, the program has received 319 Nonpoint Source Pollution (NPS) base funding at \$50,000 per year allowing the hiring of an NPS Specialist and two competitive grants for NPS projects totaling \$300,000. Various small grants including an EPA Environmental Education Grant, an EPA Environmental Justice Grant, and BIA Water Resources Grants have allowed the Water Resources Program to expand its reach and maximize its effects.

E. Description of the Technical and Administrative Capabilities of the RL DNR Water Resources Program Staff to Administer and Manage an Effective Water Quality Standards Program, Including How the Tribe Will Fund the Program

The RL DNR Water Resources Program employs eight full-time and various seasonal staff and interns. Current wetland and water resource staff includes 1 program director, 2 biologists, 1 wetland specialist, 1 nonpoint source pollution specialist, 3 full-time technicians, and seasonal technicians and interns. Position descriptions are found in Attachment Q. Current program base activities include lake, stream, and biological monitoring, operation of gauging stations, general waters and wetlands functions (data collection and analysis, reporting, coordination with other local and tribal entities, etc.), public outreach (mercury consumption advisories, NPS education, Annual Water Festival, aquatic invasives education, etc.), Water Quality Standards development, and numerous other wetland and water related projects and responsibilities. The RL DNR Water Resources program is responsible for nearly all data collection and analysis on all of Red Lake (the sixth largest lake in the United States), as well as over 130 small lakes and 371 miles of streams and rivers. The Water Resources Program will carry the responsibility of administering the WQS program. In addition to establishing initial Water Quality Standards, the Water Resources Program will conduct research and monitoring to determine appropriate modifications to future Water Quality Standards and will maintain and refine designated uses when deemed necessary and appropriate.

The Water Resources Program actively participates in partnerships around the watershed to protect and improve water quality. The Beltrami Soil and Water Conservation District holds a supervisor position for the Band which is filled by Water Resources staff. Staff regularly attend Red River Basin Water Quality Team and Red River Basin Monitoring Advisory Committee meetings. Red Lake is a signatory to the International Lake of the Woods Multi-Agency Agreement and has contributed staff time and water quality data to the Lake of the Woods Total Maximum Daily Load Study. Water Resources staff communicate regularly with the Minnesota Pollution Control Agency to monitor and assess water quality in areas of concern. The Band remains dedicated to the protection of water resources in and around the Reservation.

The Water Resources Program has four staff members who have attended the EPA Water Quality Standards Academy in order to gain the skills necessary to establish and maintain Water Quality Standards on the Reservation. Additional training and certifications are added regularly and may be found in the position descriptions.

## **Attachments**

### Those Referenced within Application

- Attachment A: Waters included in application
- Attachment B: Map of watersheds containing Trust Lands
- Attachment C: List of watersheds containing Trust Lands
- Attachment D: Federal Register
- Attachment E: 1863 Treaty (Old Crossing Treaty)
- Attachment F: Agreement of 1889
- Attachment G: Agreement of 1902
- Attachment H: Constitution and By-laws
- Attachment I: RL DNR Organization Flowchart

### Other Supporting Attachments

- Attachment J: Tribal Organization Flowchart
- Attachment K: Statement by Legal Counsel
- Attachment L: 319 TAS Approval Letter
- Attachment M: Water quality and quantity reports for Reservation waters
- Attachment N: Integrated Resource Management Plan
- Attachment O: Natural Resources Codes
- Attachment P: Cover Letter from Chairman addressed to Water Division Director
- Attachment Q: Position descriptions of Water Resources Staff
- Attachment R: Tribal Council Resolution 99-13