



Little Traverse Bay Bands of Odawa Indians
Natural Resource Department
7500 Odawa Circle
Harbor Springs, MI 49740
Phone: (231)242-1670
Fax: (231)242-1690



September 28th, 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 Revising the Definition of “Waters of the United States”

Dear Administrator Regan,

On behalf of The Little Traverse Bay Bands of Odawa Indians (LTBB), please accept these comments regarding the United States Environmental Protection Agency’s (EPA) “Notification of Consultation and Coordination on Revising the Definition of ‘Waters of the United States.’” 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 There is an outdated paradigm which pits economic and social benefit versus environmental integrity.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 perceived economic or social benefit. 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 and our ability to access clean water depend on that environmental integrity to which the federal government bears trust responsibilities to uphold.

LTBB requests that EPA adopt rules pertaining to “waters of the United States” to be as broad as possible and regulate waters to the maximum extent. There is a term used by Odawa here as well as other Anishinaabeg throughout the Great Lakes region, “nibiish naagdowen,” which means “care for the water.” The health of *all water* in our environment is important. It is not culturally acceptable for Anishinaabeg to trade the quality of water for economic or personal gain. If the water is sick, the people will be sick. It is also important to institute rules that provide maximum protection due to unforeseen contaminants or unforeseen negative impacts. The recently discovered contaminations and consequential negative impacts due to PFAS and similar chemicals are only now being understood while mitigation is limited. These “forever chemicals” are toxic in low concentrations and have contaminated drinking water locally, burdening our tribal and non-tribal community members. The origin of contamination was from the ground’s surface, outside the jurisdiction of “waters of the United States,” but subsequently leached into the groundwater. This is a clear example of how the unforeseen movement of contaminated water can negatively affect previously undisturbed critical drinking water sources.

There are many other examples of contaminated drinking water that were not anticipated. The causes of contamination are often for the sake of perceived social or economic benefit. How does a society benefit from water that makes them sick? The waters deemed “waters of the United States” are subject to regulations that other waters are not. Yet, it is clear that critical drinking water sources can be contaminated from sources that are not delegated as WOTUS. The water cycle and the manner in which water moves through the ground or through a watershed does not necessarily partition the spaces in which waters and their contaminants exist. There have even been recent reports of PFAS contamination found in rain water here in the Midwest. Waters not delegated as WOTUS that are contaminated may find their way into WOTUS. EPA must institute rules that provide the greatest amount of protection from contamination as possible. There are no just social or economic benefits from contaminated drinking and recreational waters or waters that provide habitat to plants and animals that tribal members may harvest or have spiritual relationships with.

LTBB would like to reiterate our appreciation for the opportunity to comment such an important proposal. LTBB sees this rule proposal as a step towards the restoration and protection of environmental integrity. We look forward to working with EPA in the future.

Sincerely,

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