

**Leech Lake Band of Ojibwe**  
**Clean Water Act TAS Application**

The Leech Lake Band of Ojibwe (Band) hereby requests authorization pursuant to the Clean Water Act (CWA) Section 518 (33 U.S.C. § 1377(e) and 40 C.F.R. § 131.8) to implement a water quality standards program under the CWA § 303(c) and the certification program found at CWA § 401 (33 U.S.C. §§ 1313, 1341, respectively).<sup>1</sup>

Leech Lake Reservation (Reservation) water resources are a vital component of the Reservation environment, the Band's cultural identity, and its economic well-being. Approximately twenty-five percent of the Reservation is covered by water. Water and water-dependent resources are used by Band members for traditional cultural practices, including wild rice harvesting. The Reservation's water resources also attract many tourists, and this tourism industry comprises an important part of the Reservation economy. The health of these waters is a matter of great concern for the Band as water quality presents substantial public health and safety concerns. Accordingly, the Band seeks to implement Tribal water quality standards for Reservation waters to protect and enhance this vitally important resource.

**I. Federal Recognition**

The Band is included on the Department of the Interior's published list of federally recognized tribes. *See* 82 Fed. Reg. 4915, (January 17, 2017). The Band is a member of the Minnesota Chippewa Tribe (MCT), which is also a federally recognized Tribe. *Id.*

**II. Governmental Body and Its Duties and Powers**

To show that a tribe has a governing body currently carrying out substantial governmental duties and powers over a defined area, 40 C.F.R. § 131.8(b)(2) requires that the tribe submit a descriptive statement that should: (i) describe the form of the tribal government; (ii) describe the types of governmental functions currently performed by the tribal governing body, and (iii) identify the source of the tribal government's authority to carry out the governmental functions currently being performed. A tribe that has previously shown that it meets the "governmental functions" requirement for purposes of another EPA program need not make that showing again. *See* 59 Fed. Reg. 64339, 64340 (Dec. 14, 1994).

---

<sup>1</sup> Attached as Attachment 58 is a copy of EPA's Template for TAS Application – WQS and Water Quality Certification Programs, which cross-references relevant portions of this Application. EPA issued this document while the Band was developing this application. The Band therefore submits this application but includes Attachment 58 to facilitate EPA review and approval of the Band's TAS application.

The Band previously applied for and obtained EPA approval for treatment as a state pursuant to Sections 106 and 314 of the Clean Water Act, 33 U.S.C. §§ 1256, 1324. EPA's approval letter is attached as Attachment 1 and is incorporated herein. The Band's previous TAS approval adequately demonstrated that the Band's governing body is carrying out substantial governmental duties and powers over a defined area. This current submission shows that nothing has occurred in the interim to change that determination. The Band therefore meets the requirements in 40 C.F.R. § 131.8(b)(2).

A. Form of Tribal Government and Government Duties and Functions.

The Band is a signatory to the Treaty of February 22, 1855, 10 Stat. 1165, (Attachment 2) which established Reservations for the Pillager and Winnibigoshish Bands on Cass Lake, Leech Lake and Lake Winnibigoshish. Those three Reservations established by the Treaty of February 22, 1855 (10 Stat. 65) were altered by Treaties with the Mississippi Bands of Chippewa dated May 7, 1864 (13 Stat. 693) (Attachment 3) and May 19, 1867 (16 Stat. 719) (Attachment 4) and were further enlarged by Executive Orders dated October 29, 1873, November 4, 1873, and May 26, 1874 (Attachments 5-7).

The Band is one of six constituent Bands of the MCT.<sup>2</sup> The MCT is organized under a Constitution and Bylaws (the Constitution), adopted under Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984). Adoption of the MCT constitution was duly approved by the Secretary of Interior in 1936, and it was subsequently amended with approval of the Secretary of the Interior. A copy of the Revised Constitution and Bylaws is attached as Attachment 8. The constitution grants the MCT substantial authority for the purpose of conserving and developing tribal resources and promoting the general welfare of Tribal members.

The Band is governed by a Reservation Business Committee, commonly referred to as the Reservation Tribal Council (TC), pursuant to Article III, Section 2 of the Constitution. The TC is composed of five members, three of whom are elected to represent geographic districts and two of whom—the Chairman and Secretary-Treasurer—are elected at large.

Under the MCT constitution, the TC as a whole is vested with, among other things, the following authority and responsibility:

1. To consult, negotiate, and contract and conclude agreements on behalf of its respective Reservation with Federal, State and local governments or private persons or organizations on all matters within the power of the Reservation Business Committee.... (Art. VI, Section 1(c));
2. To manage, lease, permit or otherwise deal with tribal lands, interests in lands or other tribal assets, when authorized to do so by the MCT Tribal Executive Committee but no

---

<sup>2</sup> The other five bands are Grand Portage, Fond du Lac, Mille Lacs, White Earth, and Bois Forte (Nett Lake).

such authorization shall be necessary in the case of lands or assets owned exclusively by the Reservation. (Art. VI, Section 1(c));

3. To delegate to committees, officers, employees or cooperative associations any of its enumerated authorities (Art VI, Section 1(e)).

Pursuant to Article VI, Section 1(c), the MCT Tribal Executive Committee has fully authorized the TC to manage the use of lands, waters and natural resources within the Reservation:

"Each Band government shall retain the inherent authority to protect and manage the use of lands, waters and resources with respect to its Reservation so as to secure the political and economic security of the Band, and the health and welfare of its members. Where the conditions imposed by a provision of this Ordinance are in conflict with a statute, ordinance or regulation of the Band government, this Ordinance authorizes the Band government to follow the provisions of its own law....

...

Pursuant to the Constitution of the Minnesota Chippewa Tribe, all tribal lands shall be managed, conserved and developed so as to promote the general welfare of members of the Tribe.

...

Pursuant to the authority contained in the Constitution of the Minnesota Chippewa Tribe, Article V, Section 1(f) and Article VI, Section 1(c), the Band government shall have the option to manage, lease, permit, or otherwise deal with tribal lands within the Band's jurisdiction."

MCT Land Ordinance No. 3, §§ 102, 301, 302(a) (Attachment 9). The Leech Lake Reservation Tribal Council therefore possesses the necessary authority to implement ordinances and programs that protect Reservation natural resources.

The Leech Lake TC has delegated numerous governmental functions and responsibilities to tribal governmental agencies, which are known as Tribal Council Divisions. These Divisions include: General Administration, Reservation Services, Roads Construction, Education, Health, Tribal Development, Public Safety, Resources Management, Human Services, and Health Services. An organization chart of the Leech Lake tribal government is attached as Attachment 10. The TC has delegated its authority under the MCT Land Ordinance to protect and manage the use of Reservation lands, waters, and resources to the Division of Resources Management (DRM).

The DRM is further broken down into eight subdivisions: Conservation Enforcement; Environmental Lands Department; Fish, Wildlife and Plant Resources Department; Forest Resources; Wildfire Program; Heritage Sites; Tribal Historic Preservation Office; and Ojibwe Fisheries. The Environmental Lands Department encompasses various programs, including but not limited to Air Quality, Brownfields, Superfund, and Water Resources. A DRM organization chart is attached as Attachment 11 and the responsibilities of these programs are described more fully *infra* at Section IV.A.1.

The Band has adopted and administers numerous environmental ordinances as Tribal law, and implements significant federal environmental statutes including the Clean Water Act. The Band has enacted and implements various ordinances to preserve Reservation resources and the environment, including the Leech Lake Conservation Code; the Hazardous Substances Control Act, Pesticide Control Ordinance (Ord. 96-05); Regulation of Surface Use of a Portion of the Bowstring River (Ord. 99-02); Solid Waste Transportation, Disposal and Recycling Ordinance (Ord. 95-01); Protection and Preservation of Wild Rice Beds (Ord. 99-01); a bough harvest ordinance (Ord. 94-01); and the Open Burning, Burn Barrel and Fire Prevention Ordinance (Ord. 2006-02). These laws are implemented by various divisions and programs within the Band's government.

#### B. Source of Authority.

The authority of the Band to govern its members and others' activities within its territory stems from two sources: (1) the historically rooted general recognition of the Tribal government's inherent sovereignty as an Indian tribe, as recognized by the United States government, *see Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 557-59 (1832); *United States v. Mazurie*, 419 U.S. 544, 557 (1975); and (2) the authority vested in the Tribal Council pursuant to the MCT's Constitution and Bylaws (Constitution), adopted under Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984). Adoption of the MCT Constitution was duly approved by the Secretary of Interior in 1936, and it was subsequently amended in 1963 with approval of the Secretary of the Interior. A copy of the Revised Constitution and Bylaws is attached as Attachment 8.

### III. Authority to Regulate Water Quality.

EPA regulations at 40 C.F.R. § 131.8(b)(3) require the Band to provide a descriptive statement of the Band's authority to regulate water quality, including: (1) a map or legal description of the area over which the Band asserts authority to regulate surface water quality; (2) a statement by the Band's legal counsel that describes the basis for the Band's assertion of authority; (3) copies of documents that support the Band's assertion of authority; and (4) an identification of the surface waters for which the Band proposes to establish water quality standards. The Band's demonstration of these requirements are provided below.

#### A. Description of Areas to be Regulated

The area to be regulated is the Leech Lake Indian Reservation.<sup>3</sup> The Reservation consists of 869,320 acres of land and water, portions of which are located in Itasca, Cass, Hubbard and Beltrami counties in Minnesota. A 1973 consent decree signed by the State of Minnesota, Leech Lake Band of Ojibwe, and United States of America resolved the Band's right to hunt and fish

---

<sup>3</sup> The Band reserves the right to assert at a later time regulatory jurisdiction under the CWA over lands outside the extant boundaries of the Reservation and held in trust by the United States.

within the exterior boundaries of the Reservation. The consent decree provides a legal description of the current Reservation boundaries as follows:

Beginning at a point on the Mississippi River, opposite the mouth of the Wanoman River (Vermillion River in Cass County), as laid down on Sewell's map of Minnesota; thence north to a point two miles further north than the most northerly point of Lake Winnibigoshish; thence west to the range line between ranges 25 and 26 West; thence north on said range line to the twelfth standard parallel; thence north on said range line to the twelfth standard parallel; thence west on said standard parallel to the range line between Ranges 28 and 29 West; thence south on said range line to the High-Water Mark on the north shore of Dixon Lake; thence southerly along the High-Water Mark on the easterly shore of Dixon Lake to the High-Water Mark on the right bank (looking downstream) of the Third River at its outlet from Dixon Lake; thence southerly along the High-Water Mark on the right bank (looking downstream) of the Third River to a point two miles further north than the most northerly point of Lake Winnibigoshish; thence west to a point two miles west of the most westerly point of Cass Lake; thence south to the High-Water Mark on the left bank (looking downstream) of the Kabekona River; thence southeasterly along the High-Water Mark on the left bank (looking downstream) of the Kabekona River to its mouth at Kabekona Bay of Leech Lake; thence easterly along the High-Water Mark on the north shore of Kabekona Bay of Leech Lake to Walker Bay of Leech Lake; thence northeasterly along the High-Water Mark of Walker Bay of Leech Lake to the easterly extremity of Sand Point of Leech Lake, thence southerly through Walker Bay of Leech Lake to the most southern point of Leech Lake (said point being the southwest corner of Government Lot 4 of Section 11, Township 141 North, Range 31 West); thence in a direct line to the southeast corner of Government Lot 6 of Section 32, Township 141 North, Range 27 West; thence northerly along the High-Water Mark on the west shore of Inguadona Lake to the High-Water Mark on the right bank (looking downstream) of the Little Boy River at its outlet from Inguadona Lake; thence northerly along the High-Water Mark on the right bank (looking downstream) of the Little Boy River to its inlet into Boy Lake; thence northerly through Boy Lake by the shortest water route to the High-Water Mark on the right bank (looking downstream) of the Little Boy River at its outlet from Boy Lake; thence northerly and westerly along the High-Water Mark on the right bank (looking downstream) of the Little Boy River to its mouth at Boy Bay of Leech Lake; thence in a direct line to the southern extremity of Sugar Point of Leech Lake; thence northeasterly along the High-Water Mark of Boy Bay of Leech Lake to the range line between Ranges 28 and 29 West; thence north on said range line to the High-Water Mark on the southerly shore of Waboose Bay of Leech Lake; thence northerly along the High-Water Mark of Waboose Bay of Leech Lake to the High-Water Mark on the right bank (looking downstream) of the main channel of the Leech Lake River, as it now exists, at its outlet from Waboose Bay of Leech Lake; thence easterly along the High-Water Mark on the right bank (looking downstream) of the main channel of the Leech Lake River, as

it now exists, to its intersection with the original channel of the Leech Lake River, said intersection being approximately 4500 feet west of the inlet of the main channel into Mud Lake as it now exists; thence along the High-Water Mark on the right bank (looking downstream) of the original channel of the Leech Lake River in an easterly and northerly direction to its inlet into Mud Lake; thence southerly and easterly along the High-Water Mark of Mud Lake to the inlet of the Bear River; thence northerly along the High-Water Mark of Mud Lake to the High-Water mark on the right bank (looking downstream) of the main channel of the Leech Lake River, as it now exists, at its outlet from Mud Lake; thence easterly along the High-Water Mark on the right bank (looking downstream) of the main channel of the Leech Lake River, as it now exists, to its junction with the High-Water Mark on the right bank (looking downstream) of the main channel of the Mississippi River; thence along the High-Water Mark on the right bank (looking downstream) of the main channel of the Leech Lake River, as it now exists, to its junction with the High-Water Mark on the right bank (looking downstream) of the main channel of the Mississippi River; thence along the High-Water Mark on the right bank (looking downstream) of the main channel of the Mississippi River to the mouth of the Wanoman River (Vermillion River in Cass County); thence northeasterly across the Mississippi River to the point of beginning.

Also, beginning at a point north of a point on the Mississippi River, opposite the mouth of the Wanoman River (Vermillion River in Cass County) as laid down on Sewell's map of Minnesota, where the section line between Sections 14 and 11, and 10 and 15, of Township 55 North, Range 27 West of the fourth principal meridian, if extended west would intersect the same; thence east on said extended section line to the section corner between Sections 11, 12, 13, and 14; thence north on the section line between Sections 11 and 12, and 1 and 2, all of the same township and range above mentioned; to the township line between Township 55 and 56 North; thence continuing north on the section line between Sections 35 and 36, and 26 and 25 to the northeast corner of Section 26, Township 56 North, Range 27 West; thence west on the section line between Sections 26 and 23, and 27 and 22 to the High-Water Mark on the easterly shore of Big White Oak Lake; thence westerly along the High-Water Mark on the north shore of Big White Oak Lake to a point north of a point on the Mississippi River, opposite the mouth of the Wanoman River (Vermillion River in Cass County), as laid down on Sewell's map in Minnesota; thence south to the point of beginning.

The State and Band have accepted this legal description of the Reservation to the present. This legal description is contained in the unpublished Consent Judgment entered June 18, 1973 in *Leech Lake Band of Chippewa v. Herbst*, Nos. 3-69 Civ. 64 and 3-70 Civ. 228 (D. Minn. 1973). A copy of the Consent Judgment is attached at Attachment 12. A map of the current Reservation boundaries is attached hereto as Attachment 13.

The exterior Reservation boundary bisects several waterbodies, and the Band's authority over these waters extends only to the exterior Reservation boundary. Management of these boundary waters will be shared with appropriate authorities pursuant to the terms of the Clean Water Act and its implementing regulations. Boundary waters bisected by the Reservation boundary are designated in Attachment 57.

**B. Basis of Authority**

The basis for the Band's assertion of authority under this application is the express congressional delegation of authority to eligible Indian tribes to administer regulatory programs over their reservation contained in section 518 of the Clean Water Act. This authority is described in the U.S. Environmental Protection Agency's final interpretive rule, Revised Interpretation of Clean Water Act Tribal Provision, 81 Fed. Reg. 30183, May 16, 2016. There are no limitations or impediments to the Band's authority or ability to effectuate the delegation of authority from Congress as described in this application.

Counsel for the Band has prepared a legal analysis demonstrating that the Band possesses the requisite authority to regulate Reservation water quality based upon both its inherent sovereignty and Congress's express delegation of authority in CWA Section 518(e), 33 U.S.C. § 1377(e). It also provides detailed descriptions of the Reservation's water resources, the threats to those water resources and the actual and potential impacts to the Band and its members. The legal analysis is attached as Attachment 14 and is incorporated by reference herein.

**C. Documents Supporting Assertion of Authority**

Copies of the relevant documents that support the Band's assertion of authority are listed in Appendix No. 1 below and are attached to and incorporated into this application. *See, e.g., Attachments 2-9, 12, 14.*

**D. Surface Waters to be Regulated**

The Band intends to set standards for all surface waters within the Reservation that meet the EPA's regulatory definition of the "Waters of the United States." A listing of surface waters located within the Reservation for which the Band intends to set water quality standards is attached. (Attachment 15). These waters are also delineated on the attached map of the Leech Lake Reservation. (Attachment 16).

**IV. Tribal Capability**

The regulations at 40 C.F.R. § 131.8 require the Band to provide a narrative statement describing its capability to administer an effective water quality standards program. This statement is to include: (1) a description of the existing or proposed agency of the Band that will assume primary responsibility for establishing, reviewing, implementing and revising water quality standards; (2) a description of the technical and administrative capabilities of the staff to administer and manage an effective water quality standards program, including information about how the

Band will fund the program; (3) a description of the Band's previous management experience; (4) a list of existing environmental or public health programs administered by the Band's governing body; and (5) a description of the entity or entities that exercise the executive, legislative, and judicial functions of the Band's government. The Band is capable of administering effective water quality standards and water quality certification program, and address each of these requirements below.

A. Administration of Tribal Water Quality Standards.

The Tribal Water Quality Standards will be administered by the Band's Water Resources Program, currently consisting of a water quality specialist and two water quality technicians. The Water Resources Program currently monitors water quality on the Leech Lake Watershed as part of an ongoing watershed study. The study area includes Leech Lake (Steamboat Bay, Sucker Bay, Waboose Bay, Boy Bay, Walker Bay, Headquarters Bay, and the main basin of Leech Lake) and its tributaries (Sucker Creek, Leech Lake River, Boy River, Cedar Creek, Whipholt Creek, Shingobee River, Lake May Creek, Kabekona River and Steamboat River). The program analyzes numerous physical, chemical, and biological parameters, including temperature, pH, dissolved oxygen, conductivity, Secchi transparency, total phosphorous, TKN, color, turbidity, macroinvertebrates, phytoplankton, zooplankton and chlorophyll-a. Water department staff also monitor area lakes annually, participate in National Lake Assessments, partner with EPA, State and/or counties to monitor, sample, develop and implement water quality projects that are necessary to improve Reservation lakes, rivers, streams, and wetlands, while also working on stormwater, wastewater, and erosion control issues.

This same existing staff will also administer the Section 401 certification program. Upon review of a proposed permit, the Band will certify that the permit is consistent with Tribal water quality standards and goals, or deny the permit, as appropriate. The DRM Director will have authority to certify projects on behalf of the Tribe. The Band will not waive certification. Review procedures will be followed as stated in Section 401 with consultation with involved parties as to timeline requirements. Appeals will be taken to the Tribal Court System.

B. Technical and Administrative Capabilities.

Each staff person in the Band's Water Resources Office has at least the minimum qualifications and technical expertise necessary to accomplish the tasks required by the Band's setting of water quality standards. A copy of the job descriptions and qualifications of current employees is attached in Attachment 21.

The Band has experience successfully administering environmental programs, as described herein. The Band has also successfully obtained and implemented grants to bolster its environmental programs, including work under CWA Section 106 grants. Such work includes the following:

- The Band completed a Quality Assurance Project Plan (QAPP) and Strategic Monitoring Plan (SMP) for collection of baseline water quality data for Reservation



waters. Every year for a period of five years, the Band selects six lakes and a minimum of five streams/tributaries and monitors physical, biological, and chemical data. One goal of the sampling effort is to collect baseline water quality data on lakes and streams that have a substantial amount of fee land available for development but that have not yet been targeted for such development. Data developed through this effort is kept in a database and helps the Band determine the condition, trends, and best management practices for Reservation water resources.

- Due to the high number of individual septic treatment systems (ISTS) on Reservation lands, including on waterfront properties, E. coli is a major water quality concern. Non-compliant septic systems are a leading source of non-point source pollution to surface and ground water resources on the Reservation. The Band is inventorying, inspecting, and monitoring ISTS regularly to ensure compliance and to develop a database that tracks maintenance and installation of ISTS.
- The Band also collects monitoring data for E. coli at swimming beaches on Reservation waters. Due to the high number of shoreline ISTS, E. coli is a major concern for human use of Reservation waters. The Band monitors swimming beaches to provide current water conditions to the community. The Band has implemented several beach closures to date due to high E. coli monitoring results, but there have been no known human health impacts reported.
- The Band reviews and comments on U.S. Army Corps of Engineers and Minnesota Department of Natural Resources notice of permits for discharge and fill activities on and near the Reservation. Historically, the Band has reviewed and commented on the sufficiency of approximately 12-18 permits annually.
- The Band has developed three major watershed assessments.
- The Band has developed an ArcView based wetland assessment model for the Reservation.
- The Band has inventoried and assessed illegal dumps within the Reservation, and cleaned up those dumps most likely to impact water resources.
- The Band has developed, implemented, and enforced the Leech Lake Land Use Plan, which includes standards for shoreline, non-shoreline, wetland, and ISTS of the Reservation.

The Band has a long history of undertaking actions to protect Reservation waters. The Band, in conjunction with the Minnesota Chippewa Tribe Water Research Lab, has conducted field studies and authored reports relating to water quality issues on the Reservation. *See, e.g.,*

Attachment 38 (Leech Lake Division of Resource Management and the Minnesota Chippewa Tribe, A Water Quality Assessment of the Leech Lake Watershed, July, 1997). The Band also successfully fought in the 1970s and 1980s for changes to the upstream Bemidji waste water treatment plant to reduce nutrient loading in waters reaching the Reservation.

The Band intends to fund the water quality standards program through a combination of funds from the Water Resources Office using EPA CWA § 106 and from tribal funds. The existing Water Resources Office staff will administer the Section 303(c) and 401 programs. Tribal Conservation Officers will enforce Tribal water quality standards (as well as related regulations) and will issue citations for violators. Conservation officers are currently funded by BIA self-governance funds. The Band's legal department will prosecute violators as appropriate.

The Band previously adopted water quality standards under its own tribal authority. This experience provided valuable insight and knowledge into what is necessary to develop water quality standards. The Band intends to adopt new Tribal Water Quality Standards and submit them to EPA for review and approval under the CWA. The Band's Water Resources Program will comply with all applicable laws and regulations, which in part require triennial review of the water quality standards it will adopt.

C. Previous Management Experience, Emphasizing Existing Environmental or Public Health Programs Administered by the Band.

The Tribal Council has established and delegated governmental powers to various Tribal Council Divisions to perform governmental duties in the following areas: education, health, housing and community development, planning, resource management, and social services. In addition, the Tribal Council through its various Divisions also administers programs under the Indian Self-Determination and Educational Assistance Act, 25 U.S.C. § 45 (Leech Lake is a self-governance Tribe). All of the Divisions have received, to varying degrees, federal funds for the administration of various activities. These funds come from various federal agencies including the Bureau of Indian Affairs, the Department of Health and Human Services, the Department of Labor, the Department of Education, and the Environmental Protection Agency.

The Band currently employs in excess of 1,800 people, including approximately 800 in the Tribal government (including elected officials, members of commissions, boards, committees, professional and technical staff, and technical personnel). The Band manages a wide range of programs, including those authorized by the Indians Self-Determination and Education Assistance Act.

**1. Existing Environmental and Public Health Programs.**

The Band operates numerous programs that either directly or indirectly impact the environment and the public health of the Reservation. The following is a brief listing and description of these programs:

a. Division of Resource Management

The Division of Resource Management (DRM) is headed by a Division Director with 28 years' experience and has 64 staff members, many of whom have advance degrees including Masters in Hydrology, Biology, and Government Affairs, and various scientific undergraduate degrees. The DRM carries out numerous responsibilities relating to the preservation and improvement of the natural resources located on the Reservation. The DRM operates programs in the following areas: air quality, brownfields, conservation enforcement and licensing, cultural resource and heritage site protection, fish, wildlife and plant management and preservation, forestry, land use and resources, fisheries management, superfund and hazardous wastes, and water resources.

*i. Water Resources Program.*

The Leech Lake Water Resources Program of the Band's Division of Resource Management (DRM) is responsible for ensuring preservation of water resources for future use and retaining water quality and quantity sufficient to support continued practice of traditional cultural and spiritual practices. The Water Resources Program is funded through grants authorized by Section 106 of the CWA, and its activities include, among others: (a) review and comment on permit applications pertaining to land use plan permits, and proposed activities regarding wetlands and shorelands to minimize potential impacts to aquatic resources from proposed projects; (b) environmental outreach and education; (c) water quality planning, assessments, and studies, including land and stream surveys regarding water quality; (d) review of Tribally-permitted Individual Septic Treatment Systems (ISTS) applications and performance of inspections; (e) wild rice management; (f) source water, surface water, ground water and wetland protection; (g) development of watershed-based plans.

The Water Resources Program conducts water quality monitoring on Leech Lake and its tributaries on a monthly basis. Physical, chemical, and biological parameters are analyzed, including temperature, pH, dissolved oxygen, conductivity, Secchi transparency, total phosphorus, TKN, color, turbidity, macroinvertebrates, phytoplankton, zooplankton and chlorophyll-a.

*ii. Fisheries Management*

The Fisheries Section of the DRM's Fish, Wildlife & Plant Resources Program coordinates efforts with the Minnesota Department of Natural Resources in conducting, among other things, assessments of fish populations, age and condition, fish stocking, and fish habitat improvement projects.

The Band also operates a successful fish hatchery, the success of which is tied to the availability of clean water. Since inception of the Fisheries Section in 1973, the Band has reared approximately 4.6 million lake whitefish fingerlings, 168 million walleye fry, 1.6 million walleye fingerlings, in addition to rearing smaller numbers of other fish species. These fish are available for harvest by both member and non-members alike. Water for the fish hatchery is drawn from surface water sources, including the Lake Winnibigoshish gravity-fed ponds and other natural ponds, and from two groundwater wells. The fish hatchery receives funding from the Tribal Council and from the Bureau of Indian Affairs, and has an annual operating budget of

approximately \$100,000. The Band has invested approximately \$1.4 million dollars on construction and rehabilitation of the hatchery, as well as renovation of the Lake Winnie fish ponds.

The Fisheries Section also permits and controls all commercial fishing and the sale of fish from Reservation lakes. It conducts assessments in conjunction with the Minnesota Department of Natural Resources to determine appropriate management techniques, harvest levels, and restocking projects. Additionally, the Fisheries Section operates the Ojibwe Fisheries owned by the Band, which buys rough fish caught by Band members, and processes and markets the catch.

*iii. Wildlife Management*

The Wildlife Section of the DRM's Fish, Wildlife & Plant Resources Program works to protect and enhance wildlife populations on the Reservation. The Wildlife Section has undertaken numerous habitat enhancement programs, conducts studies to monitor wildlife populations, conducts prescribed burns to manage forest health, and manages impoundments located on Reservation waters in conjunction with the Chippewa National Forest in order to provide habitat for waterfowl and other species and promote wetland vegetation. The Wildlife Section took over management of the Winnie Ponds Fish and Wildlife Management Area from the State of Minnesota in the 1990s, and has used the ponds to rear fish and to provide suitable waterfowl habitat.

*iv. Plant and Invasive Species Management*

The Plant Resources Section of the DRM's Fish, Wildlife & Plant Resources Program conducts surveys to identify quality habitat for plants and animals on the Reservation; maps locations of invasive species; and works to protect, enhance, and restore sites to support culturally important native plants as well as rare and threatened species. The section is working to develop an integrated resource management plan for the Band that will inform Band decisions about land use and land management are made using current information regarding potential impacts to the Band's natural resources. In addition, the section works with the USDA Forest Service and Natural Resources Conservation Service on various projects, including conducting surveys for rare plants, combating invasive species, decommissioning roads, and restoring native plant communities along roadsides and in wetlands.

*v. Enforcement of Tribal and State Conservation Laws*

The Conservation Enforcement Department protects the water, land, forest, fish, wildlife, plants and other natural resources present on the Reservation. The department's responsibilities include issuing fire permits, enforcing fish and game laws, regulating logging, and regulating wild rice harvesting. Through an agreement with the State of Minnesota, Tribal conservation officers are empowered to arrest non-Indians for violations of State and Tribal game and fish laws committed on the Reservation. The department currently employs four conservation officers.

*vi. Cultural Resources Protection.*

The Cultural Resources Department comprises the Band's Heritage Sites Program and Tribal Historic Preservation Office (THPO). These two programs work in tandem to preserve the Band's cultural resources and ensure culturally significant properties and artifacts are protected under all state, federal, and Tribal historic preservation laws and regulations.

*vii. Environmental Lands Department*

The Environmental Lands Department comprises several interdisciplinary programs pertaining to air, water, and contaminated lands.

The Leech Lake Water Resources Program is responsible for ensuring the preservation of water resources for future use and retaining water quality and quantity sufficient to support continued practice of traditional cultural and spiritual practices. The Water Resources Program is funded through grants authorized by Section 106 of the CWA, and its activities include: (a) review and comment on permit applications pertaining to land use plan permits, and proposed activities near or adjacent to wetlands and shorelands to minimize potential impacts to aquatic resources from proposed projects; (b) water quality planning, assessments, and studies, including land and stream surveys regarding water quality; (c) review of Tribally-permitted Individual Septic Treatment Systems (ISTS) applications and performance of inspections; and (d) wild rice management.

The Leech Lake Air Program was established in 2001 and has conducted numerous air quality projects including: diesel retrofitting and emissions reduction; alternative energies - passive solar and a wind feasibility study; radon testing and mitigation; implementation of a burn barrel ordinance and recycling; indoor air quality assessments; air site monitoring for PM 2.5, dioxins, toxins, and wet deposition mercury; and meteorological data collection.

The Leech Lake Underground Storage Tank (UST) Program offers compliance assistance and inspections to facilities that are federally regulated by EPA. The UST Compliance Coordinator meets with each UST facility owner at least annually to work with owners/operators to ensure compliance with EPA guidelines, and assists in UST inspections. The Program intends to receive Tribal UST Inspector Credentials, which will enable it to conduct inspections on the Reservation on behalf of the EPA.

*viii. Forestry*

The Forestry Program is responsible for all forestry activities on Band and allotted Indian lands located on the Reservation. These activities include, but are not limited to, coordinating and conducting timber sales, forest regeneration programs, investigation timber trespass, conducting prescribed burns, applying deer repellent, and managing and improving Reservation timber resources to enhance the Reservation wildlife habitat and environment. The department also works closely with the U.S. Forest Service in its management of the forest resources of the Chippewa National Forest, which are largely located within the exterior boundaries of the Reservation. Attachment 17 shows the location of the Chippewa National Forest and the Reservation. The

Forestry Program also operates a Wildland Fire Program, which provides services like wildland fire suppression, hazardous fuels reductions in the urban interface, and conducts prescribed burns.

*ix. Land*

The Land Department is responsible for the administration and management of all Tribal, Band and allotted lands as it relates to surface and subsurface leasing, permitting and rights-of-way, land acquisition and disposal, trust estates planning, and implementation of Tribal land use ordinances. The Band adopted a Land Use Ordinance, which regulates member-owned fee and trust lands within the Reservation, and the Land Use Administrator is responsible for issuing all permits thereunder. Ord. No. 06-01.

*x. Pesticides.*

DRM is charged with implementing the Band's Pesticide Control Ordinance. In order to protect animals, aquatic life, the environment and human health, safety and welfare, and minimize pesticide hazards, the Pesticide Ordinance regulates production, sale, purchase, transportation, handling, storage, application, release, disposal and other use of pesticides by any person "on any land, water or air" in the Reservation. Ord. 96-05 at § 3 (Attachment 18).

**b. Solid Waste and Recycling.**

The Band regulates solid waste transportation, disposal and recycling. Finding that inefficient, inappropriate, and unsanitary disposal of solid waste can seriously adversely impact Reservation land, water, and natural resources, the Band enacted its Solid Waste Transportation, Disposal and Recycling Ordinance. Ord. 95-01, § 1 (Attachment 19). The Leech Lake Solid Waste department provides transfer stations throughout the Reservation and also offers curbside pickup to members and non-members.

**c. Public Health Programs**

The Department of Health and Human Services oversees numerous health-related programs on the Reservation, including food distribution programs, a WIC program, community health clinics, an environmental health program, ambulance and medical transportation services, a nutrition services program, an elderly nutrition program, addiction and dependency treatment, relapse prevention and recovery maintenance, and child abuse and family abuse prevention.

**D. Executive, Legislative, and Judicial Functions.**

Pursuant to the MCT Constitution, the Reservation Tribal Council is vested with executive, legislative, and judicial functions. The TC has retained and exercises primary functions of the executive and legislative branch. Many of the executive and legislative functions are carried out by Band departments created and overseen by the TC. Such delegation provides, at a minimum, a two-tiered level of administrative review of decisions made by the departments and the Council.

*See* MCT Constitution, Art. VI, sec. 1(e) (TC may delegate authority to committees and employees, reserving right to review any action taken pursuant to delegation).

The TC has delegated its judicial functions to the Leech Lake Band of Ojibwe Tribal Court, which consists of a Trial Division and Appeals Division, and provides a fair forum for all to be heard and have decisions affecting them reviewed. *See* Leech Lake Band of Ojibwe Judicial Code, Title 1, Part I, sec. 1 (Attachment 20).

The Band's Tribal court has authority to hear and pass judgment on all alleged violations of Band ordinances, including those of the Conservation Code, Hazardous Substances Control Act, and all other environmental and general Tribal law. The Tribal court comprises a Trial Division and Appeals Division, established under Title 1, Part I, Section 1 of the Judicial Code.

## **V. Conclusion.**

The Leech Lake Band of Ojibwe possesses the requisite authority and capability to administer a Tribal Water Quality Standards program pursuant to Sections 303(c) and 401 of the CWA. This application satisfies the requirements for Tribes to obtain TAS approval under the CWA, as established by 33 U.S.C. § 1377 and 40 CFR § 131.8. Accordingly, the Band requests that EPA promptly approve this application.

**Appendix 1: Documents Supporting Assertion of Authority.**

Attachment 1	EPA Letter Approving Band for Treatment as a State for 33 U.S.C. §§ 1256, 1324, dated June 20, 1995
Attachment 2	The Treaty of February 22, 1855 (10 Stat. 1165)
Attachment 3	The Treaty of May 7, 1864 (13 Stat. 693)
Attachment 4	The Treaty of March 19, 1867 (16 Stat. 719)
Attachment 5	Executive Order of October 29, 1873
Attachment 6	Executive Order of November 4, 1873
Attachment 7	Executive Order of May 26, 1874
Attachment 8	The Revised Constitution and Bylaws of the Minnesota Chippewa Tribe
Attachment 9	Minnesota Chippewa Tribe Land Ordinance No. 3
Attachment 10	Leech Lake Band of Ojibwe Organizational Chart
Attachment 11	Division of Resource Management Organizational Chart
Attachment 12	Consent Judgment entered June 18, 1973 in <i>Leech Lake Band of Chippewa v. Herbst</i> , Nos. 3-69 Civ. 64 and 3-70 Civ. 228 (D. Minn. 1973)
Attachment 13	Map of the current Reservation boundaries
Attachment 14	TAS jurisdictional analysis
Attachment 15	List – Surface waters for which Band intends to establish water quality standards
Attachment 16	Map – Surface waters for which Band intends to establish water quality standards
Attachment 17	Map showing Reservation Boundaries and Chippewa National Forest Boundaries
Attachment 18	Pesticide Control Ordinance
Attachment 19	Solid Waste Transportation, Disposal and Recycling Ordinance
Attachment 20	Leech Lake Band of Ojibwe Judicial Code
Attachment 21	Water Resources Office, job descriptions and resumes for employees implementing program
Attachment 22	Tribal Hazardous Waste Ordinance
Attachment 23	Interim Water Quality Standards Ordinance
Attachment 24	Regulation of Surface Use of a Portion of the Bowstring River Ordinance
Attachment 25	Conservation Code of the Leech Lake Band of Ojibwe
Attachment 26	Protection and Preservation of Wild Rice Beds Ordinance
Attachment 27	Bough Harvest Ordinance
Attachment 28	Open Burning, Burn Barrel and Fire Prevention Ordinance
Attachment 29	Minn. House of Representatives Research Dep't, American Indians, Indian Tribes, and State Government (Feb. 2014) (excerpts)
Attachment 30	MNDNR Wild Rice Study Submitted to the State Legislature February 15, 2008 (excerpts)
Attachment 31	LLBO Wild Rice Reports, 2013-2016
Attachment 32	Minnesota Chippewa Tribe Water Research Lab, Research Report No. 47 (1989) (excerpts)



Attachment 33	Moyle, John, Wild Rice in Minnesota, 8 J. Wildlife Mgmt. 177, 178 (Jul. 1944) (excerpts)
Attachment 34	Bennett et al., <i>Heavy Metal Baselines for Wild Rice from Northern Wisconsin</i> (2000)
Attachment 35	Minnesota Chippewa Tribe Water Research Lab, Research Report No. 28, (1987) (excerpts)
Attachment 36	Map – Reservation land use zoning
Attachment 37	Minnesota Pollution Control Agency, Leech Lake River Watershed Monitoring and Assessment Report (excerpts)
Attachment 38	Leech Lake Division of Resource Management and Minnesota Chippewa Tribe joint report, A Water Quality Assessment of the Leech Lake Watershed (July 1997) (excerpts)
Attachment 39	Stark, J.R., Busch, J.P., and Deters, M.H., Hydrogeology and Water Quality of Glacial-drift Aquifers in the Bemidji-Bagley Area, Beltrami, Clearwater, Cass, and Hubbard Counties, Minnesota, U.S. Geological Survey, Water-Resources Investigations Report 89-4136 (1991) (excerpts)
Attachment 40	Minnesota Dep't Natl. Resources, Aquatic Vegetation of Leech Lake, 2002-2009 (Aug., 2010) (excerpts)
Attachment 41	Cass Cnty. Env't. Servs. and Mn. Bd. of Soil and Water Resources, Cass County Large Lakes Assessment (2012) (excerpts)
Attachment 42	Chippewa National Forest, Annual Reports (2003, 2010, 2011) (excerpts)
Attachment 43	Chippewa National Forest, 2004 Forest Management Plan, Appendix A (excerpts)
Attachment 44	Minnesota Pollution Control Agency, Big Fork River Watershed Monitoring and Assessment Report (Dec. 2013) (excerpts)
Attachment 45	Chippewa National Forest, 2005-2009 Annual Monitoring and Evaluation Reports on Tribal Rights and Interests (excerpts), available at <a href="http://www.fs.usda.gov/main/chippewa/workingtogether/tribalrelations">http://www.fs.usda.gov/main/chippewa/workingtogether/tribalrelations</a>
Attachment 46	City of Cohasset, News Release regarding Itasca Energy Center
Attachment 47	MPCA, Minnesota's Plan to Reduce Mercury Releases (Oct. 2009)
Attachment 48	MPCA, Sources of Mercury Pollution and the Methylmercury Contamination of Fish in Minnesota (Feb. 2013)
Attachment 49	Dodds, W.K., and Bouska, W.W., Eitzmann, J.L., Pilger, T.J., Pitts, K.L., Riley, A.J., Schloesser, J.T., and Thornbrugh, D.J., 2009, Eutrophication of U.S. freshwaters—Analysis of potential economic damages: <i>Environmental Science &amp; Technology</i> , v. 43, no. 1
Attachment 50	Persell, J., A Nutrient Water Quality Assessment of the Lakes: Big Wolf, Andusia, Cass and Winnibigoshish, Leech Lake Band of Ojibwe and Beltrami County (January 2001) (excerpts)
Attachment 51	Enbridge Pipeline map
Attachment 52	Report to Congress On Implementing and Enforcing the Underground Storage Tank Program in Indian County, U.S. EPA 510R07006 (excerpts)

Attachment 53	Ingrid E. Schneider & Raintry J. Salk, University of Minn. Tourism Ctr., Leech Lake Area Summer Visitor Profile: A focus on interest in culture and nature based experiences (Dec. 2004) (excerpts)
Attachment 54	Leonardo Trasande, Phillip J. Landigran and Clyde Schecter, Public Health and Economic Consequences of Methyl Mercury Toxicity to the Developing Brain, 113 Env. Health Perspectives 5 (May 2005)
Attachment 55	Leech Lake Association Lake Management Plan (Aug. 2012) (excerpts)
Attachment 56	Minn. House of Representatives Research Dep't, American Indians, Indian Tribes, and State Government (Jan. 2017) (excerpts)
Attachment 57	List of Boundary Waters
Attachment 58	EPA Template for TAS Applications for WQS and Water Quality Certification Programs, Cross-referencing Sections of this TAS Application