Mille Lacs Band of Ojibwe Indians

Executive Branch of Tribal Government
Office of the Chief Executive

Transmittal via e-mail

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January 21, 2026

The Honorable Amy Klobuchar
United States Senator
425 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tina Smith
United States Senator
720 Hart Senate Office Building
Washington, DC 20510

Re: Impacts of H.R. 3898 (119th Congress) on the Clean Water Act, Tribal Treaty Waters, and Minnesota's Water Resources

Dear Senators Klobuchar and Smith,

I write to you today as Chief Executive for the Mille Lacs Band of Ojibwe (the "Mille Lacs Band") to express profound concerns regarding H.R. 3898, the Promoting Efficient Review for Modern Infrastructure Today Act (PERMIT Act), which as you know passed the House in early December and is pending before the Senate Committee on Environment and Public Works. This legislation would fundamentally undermine the Clean Water Act's protection of waters essential to our Treaty-reserved rights and would violate the Federal government's trust responsibility to our Nation. The Mille Lacs Band urges you to do everything you can to block Senate consideration of this legislation, or, in the alternative, to work with your Republican colleagues to substantially amend its provisions to protect Treaty-reserved rights and preserve the trust responsibility.

Background

The Clean Water Act (33 U.S.C. §§ 1251–1388) has served as the cornerstone of Federal water quality protection for over five decades. Through its definition of "waters of the United States" (WOTUS), the Act has historically protected not only navigable waters but also the wetlands, tributaries, and upstream waters that are hydrologically connected to them—connections that science has demonstrated are essential to maintaining water quality and ecosystem integrity.

In *Sackett v. EPA* (2023), the Supreme Court adopted a narrow interpretation of WOTUS, limiting Federal jurisdiction primarily to relatively permanent waters and wetlands with a continuous surface connection. H.R. 3898 goes far beyond Sackett by legislatively codifying and expanding restrictions on Federal jurisdiction across 21 distinct provisions. The bill systematically narrows Federal jurisdiction, extends permit terms, reduces regulatory oversight, and shifts enforcement burdens to States and Local entities. These changes directly threaten the Treaty-reserved rights of the Mille Lacs Band and other Minnesota Tribal Nations.

Most concerning, H.R. 3898 comes at a time when the Federal government's commitment to protecting Tribal Treaty waters is already under attack. On September 16, 2025, the U.S. Environmental Protection Agency (EPA) announced it would no longer defend its 2024 Tribal Reserved Rights Rule—a regulation that for the first time required States to consider Tribal Treaty rights when setting water quality standards. This abandonment of the Federal trust responsibility, if combined with enactment of H.R. 3898, would create a perfect storm of regulatory withdrawal from waters that are essential to the survival of Tribal sovereignty, our Native cultures and ways of life, and our Native people.

Treaty-Reserved Rights and Federal Trust Responsibility

The Mille Lacs Band's Treaty-reserved rights to hunt, fish, gather, and harvest resources are property rights protected under the Supremacy Clause of the U.S. Constitution. These rights, affirmed by the Supreme Court in *Minnesota v. Mille Lacs Band of Chippewa Indians* (1999), depend entirely on the continued existence and ecological integrity of Treaty waters.

Our Treaty rights are exercised within the ceded territories of the 1837 Treaty of St. Peters (7 Stat. 536) in east central Minnesota and the 1842 Treaty of La Pointe (7 Stat. 591) in Minnesota's portion of Lake Superior. These cession areas encompass thousands of lakes, streams, wetlands, and their surrounding watersheds. The waters within these territories support wild rice (*manoomin*)—a sacred resource central to Ojibwe culture and sustenance—as well as fisheries, waterfowl, and other resources essential to our people's way of life.

The Federal trust responsibility, established through centuries of case law including *Winters v. United States* (1908) and *United States v. Mitchell* (1983), obligates the Federal government to protect Tribal Treaty resources from degradation. Clean Water Act jurisdiction has been a primary mechanism by which the Federal government fulfills this obligation. When the Federal government withdraws protection from upstream waters that feed Treaty waters, it abdicates this responsibility and directly harms the resources our treaties guarantee.

Wild rice is particularly vulnerable to water quality degradation. Minnesota's wild rice sulfate standard—established in 1973 and limiting sulfate to 10 parts per million in wild rice waters—

recognizes that even small changes in water chemistry can devastate entire wild rice beds. Research has demonstrated that when sulfate levels increase, it converts to sulfide in lake sediment, which is toxic to wild rice during its growth phase. High sulfate levels also contribute to toxic methylmercury accumulation in fish, creating a cascading ecological crisis that threatens both the resource itself and the health of Tribal members who depend on these waters for sustenance.

Key Impacts of H.R. 3898

H.R. 3898 would harm Tribal Treaty waters in multiple, interconnected ways. While each provision creates significant individual impacts, the cumulative effect represents a fundamental dismantling of Clean Water Act protections for waters essential to our Treaty rights.

Section 18: Jurisdictional Exclusions

Section 18 of the bill removes entire categories of waters from Federal protection, including isolated wetlands, ephemeral streams, groundwater with surface connections, and prior converted croplands. Such excluded waters are often located upstream from our Treaty-protected waters. When pollutants enter these unregulated waters, they flow downstream directly into the lakes, streams, and wild rice beds protected by our treaties.

The exclusion of prior converted croplands is particularly harmful. With enactment of H.R. 3898, agricultural pollution—nutrients, pesticides, and sediment—from these areas would flow unchecked into Treaty waters. Within the 1837 and 1842 cession areas, large portions of the watershed consist of agricultural lands draining directly to Treaty waters. Wild rice beds, which require exceptionally clean water to survive, are especially vulnerable to this unregulated agricultural runoff.

The groundwater exclusion creates a major gap in protection for waters where surface water and groundwater are hydrologically interconnected. Many Treaty waters are spring-fed or receive significant groundwater inputs. By eliminating Federal authority over groundwater contamination, the bill allows pollution to enter Treaty waters through subsurface pathways with no Federal oversight.

Most troubling, subsection (v) of Section 18 grants EPA and the Corps unlimited authority to exclude additional water categories through agency determination, creating uncertainty and providing a pathway for future administrations to further narrow jurisdiction without Congressional action. This would substantially enlarge Executive power at the expense of Congressional authority.

Sections 9, 10, 11: Categorical Exemptions for Major Polluting Activities

These sections create sweeping exemptions from permit requirements for forest roads, mining exploration activities, and agricultural practices. These activities can cause substantial water quality impacts through sedimentation, chemical runoff, and habitat destruction. Within the 1837 and 1842 cession areas, forestry and agriculture are major land uses, and mining activities—particularly in the Lake Superior watershed—are expanding.

The mining exemptions are particularly concerning given Minnesota's history with sulfate pollution from taconite mining operations. Sulfate is generated throughout taconite mining and processing, and as mines reuse water, sulfate becomes more concentrated. When mines discharge this water into watersheds containing wild rice, the impacts can be catastrophic. The exemptions in H.R. 3898 would allow exploratory mining activities to proceed without the Federal oversight that has historically served as a check on the most damaging practices.

Forest road construction can cause severe erosion and sedimentation in streams. When these roads cross or run parallel to tributaries feeding Treaty waters, the sediment load increases downstream, smothering aquatic habitat and degrading water quality for fish and other Treaty resources. The categorical exemption eliminates Federal review of these impacts, leaving no entity with authority to prevent harm to downstream Treaty waters.

Sections 2–8: Weakened Standards and Extended Permit Terms

These sections fundamentally alter how water quality standards are set and enforced. Section 2 narrows technology-based effluent limitations to only those treatment technologies that are already widely used in the United States, effectively locking in current pollution levels and preventing future improvements. This "freeze" on pollution control technology means that even as our understanding of water quality impacts evolves, permittees will not be required to adopt better treatment methods. To legally ban technological improvement like this is shockingly self-defeating.

Sections 6, 7, and 8 extend permit terms from 5 to 15 years and severely limit the ability of regulatory agencies to revisit outdated permits. Pollution sources that were grandfathered in under old standards will continue operating with minimal oversight for extended periods, even as water quality science evolves and impacts on Treaty resources become apparent. For wild rice waters, where even small changes in water chemistry can devastate entire beds, locking in outdated permits for 15 years is unconscionable.

Section 4 prevents EPA from considering cumulative impacts of pollution sources when setting water quality standards. This is a direct attack on watershed-based management and Total Maximum Daily Load (TMDL) programs that have been essential tools for protecting Treaty waters from the combined effects of multiple pollution sources. When viewed in isolation, individual discharge permits may appear acceptable, but the cumulative loading from multiple

sources can exceed the assimilative capacity of a water body. By prohibiting consideration of these cumulative impacts, the bill ensures that Treaty waters will continue to degrade.

Sections 5, 12, 14, 15, 17: Compressed Review Timelines and Limited Tribal Consultation

These provisions impose rigid deadlines on agency review and severely limit opportunities for Tribal consultation and public participation. Section 5 requires EPA to make permit decisions within 180 days, regardless of complexity. Section 12 limits the scope of Section 401 water quality certifications, preventing States and Tribes from considering the broader impacts of Federal projects on local water quality.

Meaningful Tribal consultation cannot be compressed into expedited timelines designed for project acceleration. Our traditional decision-making processes, cultural considerations, and the technical analysis required to protect Treaty resources demand adequate time. Federal law and policy recognize that Tribal consultation must be meaningful, which requires: (1) early engagement before decisions are made; (2) adequate time for Tribal governments to gather information, consult with elders and cultural experts, and reach consensus; and (3) genuinely substantive consideration of Tribal input in the final decision.

Section 14 further limits Tribal participation by restricting judicial review of permit decisions. This creates a situation where Tribal nations cannot effectively challenge permits that threaten Treaty resources, even when those permits clearly violate water quality standards or fail to protect Treaty rights. Combined with compressed timelines and limited administrative remedies, these provisions effectively exclude Tribal voices from decisions affecting our most fundamental rights.

Section 19: Increased Oil Spill Risks

Section 19 raises the Spill Prevention, Control, and Countermeasure (SPCC) rule thresholds from 20,000 to 42,000 gallons, exempting thousands of facilities from spill prevention and response planning requirements. Facilities with up to 42,000 gallons of oil storage (roughly 1,000 barrels) will no longer be required to maintain SPCC plans or implement spill prevention measures.

Oil spills in watersheds draining to Treaty waters can devastate aquatic ecosystems. A single spill can cause fish kills, contaminate wild rice beds, and destroy gathering areas. The impacts of such spills persist for years, if not decades, and disproportionately harm Tribal communities who depend on these resources for cultural and subsistence purposes. The State of Minnesota lacks authority to impose SPCC-equivalent requirements on facilities exempted by Federal law, leaving a dangerous regulatory gap. So the doubling of the size of exempt spills in Section 19 would expand many times the scope of the spill damage done to Treaty-protected waters and ecosystems.

Section 3: Narrowing State and Tribal Authority Over Federal Projects

Section 3 severely restricts the ability of States and Tribes to use Section 401 water quality certifications to protect their waters from harmful Federal projects. Currently, when a Federal agency proposes to license or permit a project (such as a pipeline, dam, or mining operation), States and Tribes can review the entire project and add conditions or deny certification if it would harm Local water quality.

H.R. 3898 would force States and Tribes to make certification decisions based solely on specific point source discharges, rather than considering the broader impacts of the entire project. This is particularly harmful for projects like pipelines that cross Treaty waters. While the pipeline itself may not have a point source discharge, a spill or leak could devastate downstream Treaty resources. Under H.R. 3898, States and Tribes would lose the authority to consider these foreseeable risks when reviewing Federal permits.

Impacts on Minnesota's Ability to Protect Tribal Treaty Waters

H.R. 3898 not only withdraws Federal protection but also creates regulatory gaps that Minnesota cannot adequately fill. The bill places new burdens on State agencies and local Soil and Water Conservation Districts (SWCDs) without providing corresponding authority or resources.

Minnesota's SWCDs are local units of government that assist landowners with conservation practices but lack independent regulatory authority equivalent to the Clean Water Act. They cannot regulate activities on private lands, enforce pollution standards on newly deregulated waters, or exercise jurisdiction over interstate waters. When Federal jurisdiction is removed, the resulting regulatory vacuum disproportionately harms downstream communities—particularly Tribal communities exercising Treaty rights.

Minnesota also faces political pressure from development interests that oppose stricter State standards. Without Federal baseline protections, the State's ability to protect Tribal Treaty waters becomes subject to changing political winds rather than grounded in the Federal government's trust responsibility and constitutional obligations. This is not a hypothetical concern—Minnesota's history with wild rice sulfate standards demonstrates how commercial industry opposition can stall protective measures for decades, even when the science clearly demonstrates harm to Treaty resources.

The State's jurisdictional limitations are particularly acute for waters that cross State boundaries or involve Federal lands. Many waters in the 1837 and 1842 cession areas have headwaters in Wisconsin or flow into Lake Superior, which is under Federal jurisdiction. When Federal protection is withdrawn, Minnesota has no authority to regulate pollution originating outside its borders, even when that pollution flows directly into Treaty waters within the State.

Furthermore, the State lacks sufficient resources to monitor and enforce standards on the vast number of waters that would lose Federal protection under H.R. 3898. Minnesota's State environmental agencies are already stretched thin, and there is no indication that the State would receive additional funding to assume the expanded regulatory responsibilities contemplated by this bill. The practical result is that many waters will be effectively unregulated, with no entity—Federal, State, or local—exercising meaningful oversight.

Cumulative Impact and Violations of Trust Responsibility

While each provision of H.R. 3898 creates significant individual harms, the cumulative effect represents a fundamental dismantling of Clean Water Act protections for Tribal Treaty waters. The bill operates through interconnected mechanisms that compound each other's impacts:

- Jurisdictional exclusions remove large categories of waters from protection;
- Categorical exemptions eliminate permit requirements for activities that significantly impact water quality;
- Weakened standards ensure that even regulated activities face reduced requirements;
- Extended permit terms lock in outdated protections for extended periods;
- Compressed timelines prevent effective Tribal consultation and oversight;
- Devolution to States shifts responsibility to entities lacking adequate authority and resources; and
- Increased oil spill thresholds expose Treaty waters to greater contamination risks.

The combined effect creates a system where pollution flows freely from unregulated upstream sources into protected Treaty waters, with no entity—Federal, State, or Tribal—possessing adequate legal authority to prevent the harm. This is not merely a technical regulatory change; it is an abrogation of the United States' solemn obligations to Tribal nations and a direct violation of constitutionally protected property rights.

The timing of H.R. 3898 is particularly cruel. Just as EPA was implementing its Tribal Reserved Rights Rule—the first comprehensive framework requiring States to consider Tribal Treaty rights when setting water quality standards—the Federal government has abandoned defense of that rule in litigation. Now, H.R. 3898 proposes to withdraw Federal jurisdiction from the very waters those standards were meant to protect. This legislation would abandon the Federal trust responsibility at precisely the moment when that responsibility has never been more critical.

The impact on wild rice resources illustrates the severity of this regulatory collapse. Wild rice requires pristine water conditions: low sulfate levels, minimal sedimentation, stable water levels, and minimal pesticide contamination. Under current law, Federal Clean Water Act protections provide a baseline defense against these threats. H.R. 3898 would eliminate that baseline, leaving

wild rice beds vulnerable to pollution from agricultural runoff (prior converted croplands exemption), mining discharges (exploratory activity exemptions), forest road construction (categorical exemptions), and oil spills (raised SPCC thresholds). The compounding effects of these unregulated pollution sources would devastate remaining wild rice stands in the cession territories.

The Collapse of Federal Protections for Tribal Treaty Waters

In May 2024, EPA finalized its Tribal Reserved Rights Rule, which for the first time established a clear framework requiring States to consider Tribal Treaty rights when establishing water quality standards. This rule was the result of decades of Tribal advocacy and represented a critical step toward fulfilling the Federal trust responsibility under the Clean Water Act.

However, on September 16, 2025, EPA notified the U.S. District Court for the District of North Dakota that it would no longer defend the rule against States' challenges because after reconsideration EPA had decided its rule exceeded its authority under the Clean Water Act. This reversal came after 12 States filed suit to overturn the rule, and represents a complete administrative abandonment of the Federal government's obligation to protect off-reservation Treaty waters.

If the U.S. Senate were to enact H.R. 3898 as passed by the House, this would combine with EPA's withdrawal from defending Tribal Treaty protections to create a perfect storm of Federal abdication of responsibility and abrogation of Tribal Treaty rights. Not only will States no longer be required to consider Tribal Treaty rights when setting water quality standards, but the waters themselves—including the upstream sources that feed Treaty waters—will lose Federal protection entirely. This leaves Tribal nations with no effective means to protect Treaty resources from degradation occurring on non-Tribal lands.

The Federal government cannot simultaneously claim to honor its Treaty obligations while withdrawing the regulatory mechanisms necessary to fulfill those obligations. Treaties are not mere aspirational documents—they are binding contracts that guarantee our people's ability to sustain our culture and our communities. When the United States signed our 1837 and 1842 treaties, it promised that the people of the Mille Lacs Band could continue to hunt, fish, and gather in the ceded territories in perpetuity. That Treaty promise is meaningless, and the exchange of resources is stripped of all value, if the waters where we exercise these rights are polluted beyond use.

Conclusion and Request

The Mille Lacs Band of Ojibwe respectfully urges you to oppose H.R. 3898 and any similar legislation that may be introduced in the Senate. This legislation would systematically dismantle Federal protections for waters that are essential to our Treaty-reserved rights and would constitute a clear violation of the Federal government's trust responsibility.

The waters of our 1837 and 1842 Treaty cession areas—the lakes where we fish, the streams that feed our wild rice beds, the wetlands that sustain our gathering areas—cannot be protected without robust federal Clean Water Act jurisdiction. State and local authorities lack the legal authority, jurisdictional reach, and political independence necessary to fill the void that H.R. 3898 would create.

Our treaties are not relics of the past but living agreements that guarantee our people's ability to sustain our culture, our communities, and our way of life. We gave up incredibly valuable land and resources in exchange for those guarantees. The waters protected by these treaties belong not only to us but to all Minnesotans. Clean water is a shared resource and a shared responsibility.

We recognize that some may view H.R. 3898 as a reasonable effort to streamline permitting and reduce regulatory burdens. However, the bill goes far beyond streamlining—it systematically dismantles protections for waters that science has proven are essential to downstream water quality. The regulatory 'efficiency' it creates comes at the cost of permanent ecological degradation and the abrogation of constitutionally protected Treaty rights.

We ask you to stand with us in protecting these waters for current and future generations. We would welcome the opportunity to meet with you or your staff to discuss these concerns in greater detail and to provide additional information about the specific impacts this legislation would have on Minnesota's Tribal communities, our Treaty rights, and waters.

Chi-miigwech (thank you) for your consideration of this critical matter.

Respectfully,

Virgil Wind
Chief Executive
Mille Lacs Band of Ojibwe

cc:

Kelly Applegate, Commissioner of Natural Resources, Mille Lacs Band of Ojibwe
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