*Mille Lacs Band of Ojibwe Indians*

*Executive Branch of Tribal Government*
*Office of the Chief Executive*

Virgil Wind, Chief Executive
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May 13, 2026

Administrator Lee Zeldin
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Mille Lacs Band of Ojibwe Formal Comments — Draft FY 2026–2030 EPA Strategic Plan (April 30, 2026)

Dear Administrator Zeldin:

The Mille Lacs Band of Ojibwe (Band) is a Federally-recognized Anishinaabe Tribe, located in east-central Minnesota, with our reservation established under the 1855 Treaty of Washington (10 Stat. 1165) with treaty and reserved rights in the 1837 Treaty of St. Peters (7 Stat. 536) and 1842 Treaty of La Pointe (7 Stat. 591) treaty-ceded territories spanning from east central Minnesota, across northern Wisconsin, and into western portion of the upper peninsula of Michigan, including the portions of Lake Superior in Minnesota, Wisconsin, and Michigan. A portion of our Reservation in Mille Lacs County is within the Minneapolis–St. Paul–Bloomington MN–WI Metropolitan Statistical Area (Twin Cities) containing two of our nine statutory communities, while seven of our other statutory communities are located in Aitkin and Pine Counties, along with our Urban Service Area located in the heart of the Twin Cities. With this diverse perspective of having an urban, suburban, and rural mix of our communities, we thank the U.S. Environmental Protection Agency (EPA) for this opportunity to provide our comments to the Draft FY 2026–2030 EPA Strategic Plan (the "Plan") released April 30, 2026.

## Introduction

The Band writes with serious concern. Our treaty rights—including the rights to hunt, fish, and gather in ceded territories affirmed by the United States Supreme Court in Minnesota v. Mille Lacs Band of Chippewa Indians, 526 U.S. 172 (1999)—depend directly on the

environmental conditions the EPA is charged with protecting. Yet the Plan does not contain the word "treaty" a single time across 35 pages. For a five-year strategic plan that defines how EPA will relate to sovereign Tribal nations, manage environmental programs, and exercise regulatory authority over the land, water, and air on which our treaty resources depend, this absence is not a drafting oversight—it reflects a foundational failure of legal and policy framing.

Our comments identify 28 specific deficiencies organized into six categories: (I) the complete absence of treaty rights from the Plan's framework; (II) inadequate protection of water quality as the most critical treaty resource; (III) a cooperative federalism model that structurally subordinates Tribal sovereignty; (IV) regulatory rollbacks that directly threaten treaty-dependent resources; (V) Superfund, land cleanup, and mining provisions that pose direct risks to treaty resources; and (VI) structural omissions in governance and accountability. We conclude with a discussion of the overarching themes that cut across all six categories.

We respectfully request that EPA revise the final Plan to address each deficiency identified herein and invite government-to-government consultation on the specific remedies necessary to meet the Agency's legal obligations to the Mille Lacs Band and all treaty Tribes.

## I. Treaty Rights Are Entirely Absent from the Plan's Framework

The Plan's most foundational deficiency is the complete absence of any reference to treaty rights—the supreme law of the land—as a driver of EPA's obligations. The following three findings document this failure.

### 1. No mention of "treaty" or "treaty rights" anywhere in the document.

The word "treaty" does not appear once across 35 pages of the Plan. Tribal treaties are the supreme law of the land under the Supremacy Clause of the United States Constitution, and EPA's own regulations and guidance have long recognized that treaty rights impose affirmative obligations on the Agency. A strategic plan governing EPA's relationship with Tribes for five years that never acknowledges the legal foundation of treaty rights cannot serve as an adequate framework for fulfilling those obligations.

### 2. No acknowledgment of reserved Tribal rights to fish, hunt, and gather.

Hundreds of treaties—including the 1837 Treaty of St. Peters (7 Stat. 536) to which the Mille Lacs Band is a party—reserve to Tribes the right to harvest fish, game, and wild plants in ceded territories. These rights are property rights, not privileges, and they depend entirely on the EPA maintaining the environmental quality necessary to sustain the resources subject to those rights. The Plan neither names nor acknowledges these reserved rights as a driver of EPA's environmental protection obligations at any point.

### 3. Federal trust responsibility mentioned only once, narrowly, and without enforcement commitment.

The trust responsibility—under which courts have held the federal government must protect the resources on which treaty rights depend—appears only once in the Plan (Objective 3.2), framed as a procedural obligation to "consider the interests of Tribes." This characterization falls far short of the affirmative, substantive duty the trust responsibility actually imposes. Consideration is not protection. The Plan provides no mechanism, no standard of care, and no commitment to act when trust resources are threatened.

## II. Water Quality—The Most Critical Treaty Resource—Is Treated Inadequately

Clean water is not merely an environmental amenity for treaty Tribes—it is the legal substrate on which treaty fishing, gathering, and subsistence rights are exercised. Five findings document the Plan's failure to protect water quality at a standard commensurate with treaty obligations.

### 4. Objective 1.2 frames water protection primarily around economic and infrastructure goals.

The Plan's clean water objective centers its key strategies on infrastructure investment, economic growth, and reducing regulatory "red tape." It does not identify fishable or swimmable water quality as necessary to meet treaty fishing rights, nor does it establish any standard tied to treaty resource protection. The framing subordinates water quality to economic utility in a manner incompatible with the legal primacy of treaty rights.

### 5. Permit streamlining could degrade habitat protected by treaty without any safeguard.

Objectives 1.2, 3.1, and 3.2 collectively commit the Agency to streamlining and reducing burden in permitting processes. No language in the Plan ensures that this streamlining will be evaluated against its impact on treaty-protected fisheries, shellfish beds, or riparian gathering resources before permits are issued or expedited. Speed of permit issuance is not a legally adequate substitute for protection of treaty resources.

### 6. No water quality standard protective of treaty fisheries is established or referenced.

Federal courts have held that treaty fishing rights implicitly include the right to have fish habitat maintained at a quality sufficient for fish to exist to be caught. The Plan sets no measurable water quality target tied to this standard, references no existing framework for treaty-protective water quality, and makes no commitment to develop one during the Plan period. For the Band, whose members exercise treaty rights in the waters of east-central Minnesota, northern

Wisconsin, and the western Upper Peninsula of Michigan, this absence leaves the environmental baseline for treaty-protected fisheries entirely undefined.

### 7. Tribal water quality standards receive no dedicated protection or priority.

The Plan briefly mentions supporting states and territories in reviewing and implementing water quality standards (Objective 3.2) but provides no equivalent commitment specific to Tribal water quality standards. Tribal water quality standards are frequently more protective than state standards precisely because of treaty obligations—the Plan's failure to prioritize them signals a systemic downgrading of treaty-protective environmental requirements.

### 8. No mention of the "treaty resource" fishing areas doctrine.

Treaty Tribes in multiple regions hold rights to fish as a treaty resource in their treaty-ceded territory that may span broad geographic areas, including waters regulated through EPA's permitting and enforcement authorities. The Plan contains no reference to this well-established legal doctrine and no commitment to protect the specific geographic areas in which treaty fishing rights are exercised. This omission leaves those areas without any plan-level protection.

## III. The Cooperative Federalism Framework Structurally Subordinates Tribal Sovereignty

The Plan's primary structural framework for intergovernmental relations is designed around a federal-state relationship. Its application to Tribes obscures their distinct sovereign status and the supremacy of their treaty rights over state law. Six findings document this structural deficiency.

### 9. Tribes are consistently grouped with states and localities, obscuring their sovereign status.

Throughout the Plan, Tribes appear in lists as "states, Tribes, and local communities" or "state, Tribal, and local partners." This recurring formulation treats Tribes as a subcategory of subnational government rather than as sovereign nations whose treaty rights are the supreme law of the land. Treaty obligations owed to Tribes are legally distinct from cooperative obligations owed to states and cannot be adequately discharged through a cooperative federalism model designed primarily around state relationships.

### 10. State primacy language could override Tribal interests in shared watersheds.

Objectives 1.1, 1.2, and 3.2 emphasize deferring to state discretion and supporting state primacy in environmental programs. In watersheds where Tribal treaty fishing rights are senior and legally paramount to state water rights and environmental standards—as courts have repeatedly

affirmed—deference to states creates a structural conflict with treaty obligations. The Plan contains no mechanism to resolve this conflict in favor of treaty rights when the two come into tension.

**11. Agency Priority Goal 1 on permitting reform contains no Tribal consultation requirement.**

The Plan's first Agency Priority Goal commits EPA to streamlining the permitting process by September 30, 2027. No provision requires that treaty Tribes be meaningfully consulted—consistent with the government-to-government relationship and treaty rights—before permitting decisions affecting their resources are expedited. The omission of consultation as a prerequisite to permitting reform is legally deficient and practically dangerous to treaty resources.

**12. Government-to-government consultation is referenced but not operationalized.**

The Plan states that EPA will work with Tribes "on a government-to-government basis" (Objective 3.2) but provides no mechanism, timeline, trigger condition, or adequacy standard for what meaningful government-to-government consultation requires in practice. A commitment to consult that is nowhere defined is a commitment that cannot be enforced or measured.

**13. No commitment to consult Tribes before regulatory rollbacks that affect treaty resources.**

Goals 2 and 5, and Objectives 2.1 and 5.2, commit EPA to reconsidering and rolling back regulations including greenhouse gas reporting requirements, vehicle emission standards, Mercury and Air Toxics Standards, and other rules. No language anywhere in the Plan commits EPA to consult with treaty Tribes before rescinding regulations that currently protect the resources those Tribes have treaty rights to harvest. Unilateral regulatory rollback without treaty consultation is a violation of the government-to-government relationship.

**14. The Indian Environmental General Assistance Program is framed as capacity-building rather than treaty fulfillment.**

The Plan treats the GAP program (Objective 3.2) as a mechanism to help Tribes "build capacity" to administer their own environmental programs. This framing shifts responsibility to Tribes for the protection of their treaty resources rather than acknowledging the federal government's affirmative, non-delegable obligation to ensure those resources are protected. Treaty rights do not depend on Tribal capacity—they are rights that the United States is independently obligated to honor.

## IV. Regulatory Rollbacks Directly Threaten Treaty-Dependent Resources

The Plan commits EPA to reconsidering and potentially eliminating a range of existing environmental regulations. No provision of the Plan evaluates these rollbacks through the lens of treaty resource impacts. Five findings identify the most acute threats.

**15. Reconsidering greenhouse gas regulations without treaty resource impact analysis.**

Climate change is already causing measurable degradation of treaty resources across the Great Lakes region: warming lake and stream temperatures threatening cold-water fisheries including walleye and lake trout, shifting wild rice habitat, altered migratory patterns of treaty game species, and reduced ice cover affecting winter harvest traditions. Objective 2.1 commits EPA to reconsidering GHG regulations as barriers to energy dominance without any provision requiring an analysis of the treaty resource consequences of doing so. This omission is particularly serious given the documented and accelerating relationship between climate change and treaty species decline in the ceded territories of Minnesota, Wisconsin, and Michigan.

**16. The "energy dominance" framing could enable industrial activity in or near treaty territories without safeguard.**

Goal 2 frames EPA's role as removing barriers to domestic energy production. No provision establishes that ceded territories, usual and accustomed places, or treaty-protected waters and lands will receive any special protection as the energy sector expands under this framework. The Plan contains no treaty resource impact standard that would apply to new extraction or energy infrastructure projects affecting treaty areas.

**17. Reconsidering Mercury and Air Toxics Standards threatens subsistence fishing communities.**

Objective 2.1 explicitly identifies MATS as a regulation to be reconsidered. Treaty Tribes, including the Mille Lacs Band, depend on subsistence fishing of species—particularly large, long-lived freshwater fish—that bioaccumulate mercury at rates that can make consumption dangerous. Weakening MATS without conducting a treaty rights impact analysis could render the exercise of treaty fishing rights hazardous to human health, effectively nullifying those rights through regulatory inaction rather than direct abrogation.

**18. Proposing to end the mandatory GHG Reporting Program eliminates data critical to treaty resource protection.**

Objective 2.1 proposes ending the mandatory GHG Reporting Program, which requires over 8,000 facilities to report emissions annually. This program generates cumulative pollution burden data critical to understanding impacts on Tribal communities and treaty resources. Its elimination would deprive Tribes and the public of the information base necessary to identify and assert treaty-based objections to specific facilities or industrial activities that are degrading treaty resources.

**19. The Endangered Species Act and treaty rights intersection is entirely unaddressed.**

The Plan references the ESA only in the context of minimizing legal jeopardy risk to the Agency itself (Objective 1.4). It does not acknowledge that treaty Tribes have a direct, legally

cognizable stake in the listing, recovery, and protection of treaty species. For the Band, species of treaty significance include walleye, lake trout, muskellunge, wild rice, whitefish, and migratory waterfowl—many of which face climate-driven and pollution-related threats. No commitment is made in the Plan to protect these or any other treaty species in a manner consistent with treaty rights, nor is any coordination mechanism with treaty Tribes on ESA matters established.

## V. Superfund, Land Cleanup, and Mining Pose Direct Treaty Resource Risks

The Plan's land remediation and waste management objectives introduce new activities—accelerated Superfund cleanup, Good Samaritan mining remediation, and critical mineral recovery—that can directly affect treaty territories and resources. Four findings identify the absence of treaty protections in these contexts.

### 20. Objective 1.3's Superfund acceleration contains no Tribal treaty consultation requirement.

Many Superfund sites sit on or adjacent to ceded territories, former reservation lands, or areas with Tribal usual and accustomed rights. The Plan's strategy to accelerate cleanup and consider alternative remediation mechanisms—including cooperative federalism arrangements with states—contains no requirement to consult with treaty Tribes about cleanup priorities, remediation standards, or the selection of alternative mechanisms. Cleanup decisions made without treaty Tribal input may employ methods or standards that are insufficient to restore the resources to treaty-usable condition.

### 21. Good Samaritan Law implementation creates mining activity near treaty waters without Tribal consent or consultation.

The Plan prioritizes implementing the Good Samaritan Remediation of Abandoned Hardrock Mines Act by encouraging private and non-profit entities to conduct remediation at abandoned mining sites. Many such sites drain directly into treaty-protected waters. The Plan includes no requirement to obtain Tribal consent or conduct meaningful government-to-government consultation before remediation activities commence near treaty streams, on ceded territory, or in areas with usual and accustomed rights. Even well-intentioned remediation activities can mobilize contaminants and harm fishery resources if Tribal knowledge and treaty resource standards are not incorporated into project design.

### 22. Critical mineral reclamation from Superfund sites could conflict with treaty rights without any governing standard.

The Plan identifies the reclamation of critical minerals from Superfund and coal combustion residual sites as an "emerging priority" (Objective 1.3), including through public-private partnerships. This creates the potential for renewed industrial activity at sites already located within

or adjacent to treaty territories. The Plan establishes no treaty resource protection standard to govern this emerging activity, leaving treaty-protected waters, lands, and species at risk from an entirely new category of industrial operations operating under an inadequate legal framework.

**23. No RCRA protection specific to treaty territories or treaty resources.**

The Resource Conservation and Recovery Act governs hazardous waste management activities that can contaminate soil, groundwater, and surface water in and adjacent to treaty territories. The Plan references RCRA only in the context of AI-assisted compliance monitoring efficiency (Objective 4.2), with no commitment to protect treaty resources from hazardous waste impacts, no treaty-specific enforcement priority, and no performance standard tied to treaty resource outcomes.

## VI. Structural Omissions in Governance and Accountability

The Plan's internal governance mechanisms—its performance goals, learning agenda, workforce commitments, and resource allocation—contain no treaty-specific accountability structures. Five findings document these structural failures.

**24. No Tribal-specific performance metrics exist anywhere in the Plan.**

The Plan's two Agency Priority Goals focus on permitting speed and PFAS reduction. Not one performance metric in the Plan is tied to outcomes for Tribal treaty resources—not fish population health in treaty waters, not Tribal water quality standard attainment rates, not treaty fishery harvest levels, and not Tribal consultation completion rates. Without measurement there is no accountability, and without accountability there is no enforceable commitment.

**25. The Learning Agenda's three questions ignore treaty rights entirely.**

EPA's Learning Agenda—which will guide the Agency's evidence-building and evaluation activities for five years—poses three questions, focused on grant program effectiveness, permitting efficiency, and AI utilization. None of these questions asks how EPA programs affect Tribal treaty resources, whether treaty rights are being upheld, what evidence is needed to improve treaty-consistent outcomes, or how grant programs specifically serve the communities whose subsistence depends on treaty-protected resources. The Learning Agenda will generate five years of evidence that is structurally incapable of informing treaty resource protection.

**26. NHPA Section 106 consultation for historic and cultural resources is not mentioned.**

The National Historic Preservation Act requires federal agencies to consult with Tribes on effects to historic properties, including sacred sites, traditional cultural properties, and landscapes integral to Tribal cultural identity and treaty resource use. The Plan's commitments to streamline permitting make no reference to maintaining or expediting Section 106 consultation. The

omission raises a direct concern that Section 106 consultation will be characterized as a permitting delay and targeted for elimination, depriving Tribes of a critical procedural protection.

**27. Workforce restructuring could eliminate Tribal program expertise without any protection.**

Objective 3.3 commits EPA to "eliminating non-essential functions" and restructuring the Agency workforce consistent with Executive Orders on federal employment. No carve-out or protection is provided for staff with expertise in Tribal environmental programs, Indian country direct implementation, or treaty resource protection. These functions are not discretionary—they are legally mandated by statute, treaty, and Executive Order. Their elimination through workforce restructuring would impair EPA's legal capacity to fulfill its treaty obligations regardless of what the Plan states as policy.

**28. Real estate optimization could close regional offices that provide the on-the-ground capacity to serve Indian country.**

The Plan commits to consolidating EPA's real estate portfolio to reduce fixed costs (Objective 3.3). EPA's regional offices provide the geographic presence necessary for Tribal consultation, technical assistance, and direct implementation of environmental programs in Indian country. Consolidation or closure of regional offices in proximity to Indian country could effectively eliminate EPA's operational capacity to fulfill treaty-related consultation and program obligations at the local level, regardless of national policy commitments.

## Other: Overarching Themes

The 28 deficiencies identified above are not isolated drafting oversights. They reflect four overarching conceptual and structural themes that pervade the Plan and that must be addressed systematically—not merely corrected item-by-item—if the final Plan is to meet EPA's treaty obligations.

**Theme 1: Treaty Rights Are Treated as Nonexistent.** The most fundamental theme is the Plan's complete conceptual erasure of treaty rights. The word "treaty" never appears. Treaty rights are the supreme law of the land—senior to state law, enforceable against the federal government, and protected by a trust responsibility the courts have repeatedly affirmed. A five-year strategic plan that never acknowledges treaty rights as a legal constraint, a policy driver, or an accountability standard is structurally incapable of fulfilling EPA's treaty-related obligations. This is not a drafting gap; it is a foundational framing failure that must be corrected at the level of the Plan's mission and goals, not merely in subsidiary objectives.

**Theme 2: Cooperative Federalism Is Not Tribal Sovereignty.** The Plan's primary model for Tribal relations is borrowed from the federal-state cooperative federalism framework and applied to Tribes without meaningful modification. This conflation obscures a critical legal

distinction: states are administrative partners in a regulatory system; treaty Tribes are sovereign nations holding enforceable property rights—fishing rights, hunting rights, gathering rights—that are superior to state law and that impose affirmative obligations on the federal government independent of any cooperative arrangement. When the Plan uses "states, Tribes, and local communities" as an interchangeable list, it is not merely imprecise—it applies a legal framework that is structurally incapable of protecting treaty rights to the entities whose treaty rights most need protecting. The final Plan must treat Tribal sovereignty as categorically distinct from subnational administrative partnership.

**Theme 3: Regulatory Rollbacks Proceed Without Treaty Resource Impact Analysis.** Goals 2 and 5 commit EPA to reconsidering, streamlining, and eliminating a range of existing regulations—GHG reporting, MATS, vehicle emission standards, and others—as barriers to economic growth and energy dominance. Not one of these rollback commitments is conditioned on an analysis of the treaty resource consequences of reducing environmental protection. For the Band, whose members exercise treaty rights to fish species that bioaccumulate mercury, whose treaty waters depend on cold temperatures that climate change is already threatening, whose ceded territories span the waters of Minnesota, Wisconsin, and Michigan, and whose subsistence economy depends on fish and wildlife that cannot be substituted by economic alternatives, regulatory rollbacks without treaty impact analysis are not neutral policy choices. They are potential abrogation of treaty rights by regulatory inaction. The final Plan must establish that no regulation will be rescinded or materially weakened without a treaty resource impact analysis conducted in consultation with affected treaty Tribes.

**Theme 4: There Is No Accountability Structure for Treaty Resource Outcomes.** The Plan contains zero performance metrics tied to treaty resource outcomes. Its two Agency Priority Goals concern permitting speed and PFAS reduction. Its Learning Agenda will generate five years of evidence on grant efficiency, permitting reform, and AI deployment—but not on the health of treaty fisheries, attainment of Tribal water quality standards, harvest levels in treaty-protected areas, or completion rates for government-to-government consultation. An accountability structure that does not measure treaty resource outcomes cannot protect them. Vague commitments to government-to-government consultation are not self-executing. The final Plan must establish at least one Agency Priority Goal tied specifically to treaty resource outcomes, and the Learning Agenda must include at least one question directed at how EPA programs affect the resources subject to treaty rights.

## Conclusion and Requested Actions

The Mille Lacs Band of Ojibwe respectfully urges EPA to take the following actions before the final Plan is adopted:

- Incorporate the word "treaty" and an explicit acknowledgment of treaty rights as a foundational legal constraint throughout the Plan's mission, goals, and objectives.

- Establish a Tribal-specific framework within the Plan that is categorically distinct from the cooperative federalism framework applicable to states, reflecting the sovereign status of treaty Tribes and the legal primacy of their treaty rights.
- Require that all regulatory reconsideration actions under Goals 2 and 5 be preceded by a treaty resource impact analysis conducted in government-to-government consultation with affected treaty Tribes.
- Establish at least one Agency Priority Goal tied to treaty resource outcomes, with measurable performance metrics that will be reported publicly on Performance.gov.
- Revise the Learning Agenda to include at least one question directed at how EPA programs affect the health of resources subject to treaty rights.
- Engage in government-to-government consultation with the Mille Lacs Band and other treaty Tribes on the specific Plan revisions necessary to meet EPA's treaty obligations before the Plan is finalized.

The Mille Lacs Band reserves all rights and remedies, including legal remedies, with respect to any EPA strategic, regulatory, or programmatic action that violates, impairs, or fails to adequately protect our treaty rights. We look forward to government-to-government consultation on the substance of these comments and on the revisions necessary to produce a final Plan that is legally sufficient. We appreciate your attention to these matters and look forward to your response. Should you have further questions, please contact Commissioner Kelly Applegate by e-mail at **kelly.applegate@millelacsband.com**.

Miigwech,

Virgil Wind
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