Mille Lacs Band of Ojibwe Indians

Executive Branch of Tribal Government
Office of the Chief Executive

Virgil Wind, Chief Executive
Mille Lacs Band of Ojibwe
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May 20, 2026

Submitted via email to EvidenceAndEvaluation@epa.gov

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 2027 Evidence Plan (Learning Agenda)

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 2027 Evidence Plan, also known as the "Learning Agenda" (Plan), released April 30, 2026.

The Band's treaty rights — affirmed most recently by the United States Supreme Court in *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999) — are not policy

preferences. They are the supreme law of the land, and they depend directly and inextricably on the quality of the waters, air, lands, and natural resources that EPA is charged with protecting across all three treaty-ceded territories and the communities that rely on them. After careful review of the Plan, we find it to be fundamentally and materially deficient with respect to Tribal Treaty Resources. The Plan, as written, omits any mention of treaty rights, fails to consult with tribal nations in its construction, mischaracterizes tribes as generic cooperative federalism partners, and designs evidence-building activities that could actively accelerate harm to treaty-protected natural resources without any mechanism to detect, assess, or prevent that harm.

We request that EPA substantially revise the Plan before finalization to correct the deficiencies identified below.

I. THE PLAN CONTAINS NO MENTION OF TRIBAL TREATY RESOURCES

The most foundational deficiency is also the most straightforward: the Plan does not mention tribal treaty rights, treaty-protected resources, tribal reserved rights, subsistence uses, or the federal trust responsibility to tribes anywhere in its text. This is not a minor oversight. The Plan sets the evidence-building agenda for three priority questions that directly implicate treaty-protected resources:

- Priority Question 1 evaluates whether EPA's grant programs — distributing over $4 billion annually — are achieving environmental and human health outcomes. Many of those grants fund industrial, infrastructure, and land-use activities in or near ceded territories and treaty-protected waterways.
- Priority Question 2 evaluates which permitting improvements should be expanded. Clean Air Act and Clean Water Act permits are the primary regulatory mechanism controlling discharges and emissions that affect treaty-protected fish, wild rice, game, and water quality.
- Priority Question 3 evaluates automation of the NPDES permit program workflow. The NPDES program is the single most consequential permitting system for the water quality that underlies our treaty-reserved fishing rights.

EPA's own Tribal Treaty Rights Guidance, revised in 2023, requires that treaty rights be considered early in any agency action affecting specific geographic areas and natural resources. EPA's Policy on Consultation with Indian Tribes establishes that consultation must occur before EPA takes actions that may affect tribes. The omission of treaty resource considerations from this planning document is not consistent with either of those commitments.

II. NO TRIBAL CONSULTATION WAS CONDUCTED IN DEVELOPING THIS PLAN

The Plan was released for public comment without any record of government-to-government consultation with tribal nations. This is a procedural violation of EPA's own Consultation Policy, which requires EPA to consult with tribes before implementing decisions that may affect them.

A Plan that shapes the evaluation of $4 billion in annual grant expenditures, establishes criteria for permitting reform, and determines how automation will be applied to the NPDES program will unquestionably affect tribal nations. Permitting reform that reduces timeline and cost for industrial applicants, without a corresponding mechanism to protect treaty-reserved water quality and fisheries, directly affects how we exercise our treaty rights. Grants evaluated solely for fiscal return-on-investment, without measuring impacts on treaty-protected natural resources, may actively fund harm to those resources while receiving favorable evaluations under the Plan's proposed metrics.

We call on EPA to:

- Conduct formal government-to-government consultation with federally recognized tribal nations before finalizing the Plan;
- Engage OITA (Office of International and Tribal Affairs) to review all three priority questions for treaty rights implications prior to finalization; and
- Document the results of tribal consultation in the final plan, consistent with EPA's reporting obligations under Cross-Agency Strategy 4 of the EPA Strategic Plan framework.

III. TRIBES ARE MISCHARACTERIZED AS GENERIC COOPERATIVE FEDERALISM PARTNERS

The Plan references tribes in precisely one context: as items in the phrase "State, Tribal, Local, Federal, Congressional, and International Partners" under Strategic Plan Objective 3.2. This framing conflates tribal nations — sovereign governments holding treaty rights under the Constitution — with states, localities, and other partners whose authority derives entirely from delegation of federal law.

This conflation has profound legal and practical consequences. States derive their environmental authority through congressional delegation. Tribal treaty rights predate that delegation, and in many cases supersede it. The Supreme Court has repeatedly held that treaty

rights may be abrogated only by Congress, with clear and explicit intent. No administrative streamlining of permitting, no cooperative federalism initiative devolving authority to states, and no efficiency optimization of NPDES automation changes that constitutional baseline.

When EPA's evidence-building framework treats tribal consultation as one component of a generic stakeholder engagement process — equivalent to engaging with state agencies or industry contractors — it institutionalizes a misunderstanding of tribal sovereignty that will produce evidence-based recommendations that are legally vulnerable and practically harmful. If permitting reforms identified by this Plan's document review and stakeholder interviews are expanded to states without an analysis of how those reforms affect tribal co-regulatory authority and treaty rights, EPA risks designing a regulatory environment that systematically undermines tribal protections while generating evidence that the system is efficient.

We request that EPA revise the cooperative federalism framing throughout the Plan to distinguish clearly between:

- Tribal nations as sovereign governments with treaty rights and federal trust responsibilities owed to them; and
- States, localities, and other delegated partners whose authority derives from and remains subordinate to federal law.

IV. THE GRANT EVALUATION METRICS IGNORE TREATY RESOURCE IMPACTS

Priority Question 1 and Activities A, B, and C propose to evaluate EPA grant programs using metrics that include return on investment, environmental and human health outcomes, and long-term sustainability of funded projects. These are reasonable starting points. But as designed, they will produce fundamentally incomplete — and potentially misleading — evidence about whether EPA's $4 billion annual grant portfolio is achieving its mission.

The proposed evaluation framework contains no metrics for:

- Whether grant-funded activities affect treaty-protected natural resources, including water bodies subject to tribal fishing rights, wild rice beds, and game habitat in ceded territories;
- Contaminant levels in treaty-protected species — fish, wild rice, migratory birds, and game — that tribal members consume at rates far exceeding general population averages;
- Tribal community health outcomes tied to subsistence resource access and quality, which are directly connected to treaty rights;

- Whether grant-funded industrial or infrastructure projects upstream or upgradient of treaty-protected waters impair those resources; and
- Whether grants to states for delegated environmental programs maintain protections at least as strong as required to protect treaty-reserved rights.

The Activity C pilot evaluation is particularly concerning. The Plan proposes to pilot evaluation methods on "at least one EPA grant program" using focus groups with "award recipients or affected industries." Tribal nations whose treaty resources are affected by grant-funded projects are not identified as a category of focus group participant. If the pilot evaluation is conducted without tribal input on treaty resource impacts, it will establish a methodological template that embeds that omission into all future grant evaluations.

The Band requests that EPA:

- Add treaty resource impact metrics to the standardized grant evaluation framework being developed in Activities A and B;
- Include tribal nations as required focus group participants in the Activity C pilot evaluation; and
- Require that the selected pilot grant program be assessed for impacts on treaty-protected resources as part of the evaluation.

V. PERMITTING REFORM ACTIVITIES CONTAIN NO TREATY RIGHTS NEXUS

Priority Question 2 and its associated activities — document review, subject matter expert interviews, and an internal steering committee review — are designed to identify permitting improvements for broader expansion. This is one of the areas of greatest concern to the Band.

Permitting under the Clean Air Act and Clean Water Act is the primary mechanism controlling discharges and emissions that affect treaty-protected waters, fisheries, wild rice, and air quality in our ceded territories. Streamlining permitting processes — reducing time, uncertainty, and cost for permit applicants — without a corresponding framework to ensure that streamlining does not impair treaty-protected resources, will predictably produce outcomes that harm treaty rights.

The specific deficiencies in Activities D, E, and F include:

- Activity D (Document Review) lists OIG audits, GAO studies, and EPA permitting program materials as source documents, but does not include tribal consultation records, treaty rights analyses, or government-to-government consultation outputs. The evidentiary base for identifying "permitting improvements" is being constructed without the category of evidence most relevant to treaty rights protection.
- Activity E (Subject Matter Expert Interviews) identifies EPA partner office staff, academics, and contractors as interview participants. Tribal nations with active permitting interests, NPDES consultations, and treaty rights in the geographic areas affected by permits under review are not identified as a category of interviewee.
- Activity F (Internal Steering Committee Review) is wholly internal. There is no external review mechanism that includes tribal nations in the identification and prioritization of permitting improvements.

EPA has recently proposed revisions to Clean Water Act Section 401 that tribal nations have broadly opposed as undermining their ability to protect treaty-reserved water quality through regulatory review. That controversy illustrates precisely why permitting reform evidence-building cannot proceed without tribal treaty rights analysis embedded in the methodology from the outset. We request that EPA:

- Add tribal consultation records and treaty rights analyses as required source documents for the Activity D document review;
- Add tribal nations with treaty interests in affected geographic areas as a required category of interviewees for Activity E; and
- Establish an external review mechanism for Activity F that includes tribal government representatives.

VI. NPDES AUTOMATION ACTIVITIES OMIT TRIBAL CO-REGULATORY AUTHORITY

Priority Question 3 and Activities G and H propose to map and optimize automation in the NPDES permit program. The NPDES program is the regulatory system most directly affecting the water quality on which our treaty-reserved fishing rights depend. The activities as designed contain no acknowledgment of this connection and no mechanism for tribal input.

The NPDES program intersects with tribal authority in legally complex ways. Tribal nations may obtain Treatment as a State (TAS) status to set their own water quality standards. Where tribes have TAS status or have treaty rights in waters subject to NPDES permits, EPA has established obligations to ensure those rights are not impaired by permitted discharges. The 2022 proposed rule on Water Quality Standards Regulatory Revisions to Protect Tribal Reserved

Rights was specifically designed to codify how NPDES-related water quality standards must account for tribal reserved rights.

The Activities G and H automation mapping exercises rely exclusively on input from EPA subject matter experts via internal email and focus groups. No tribal nations with TAS status, no tribes with active NPDES consultation interests, and no tribes with treaty fishing rights in affected waters are identified as sources of information about the "common requirements" between EPS and NPDES systems. This means the automation framework being developed will be designed without any tribal input on how automation may affect tribal co-regulatory authority, tribal water quality standard application, or the procedural protections tribes rely on to exercise their treaty fishing rights.

We request that EPA:

- Identify tribal nations with TAS status and treaty fishing rights in affected waters as required stakeholders for Activities G and H;
- Assess how automation of NPDES workflows will affect tribal water quality standard review, TAS program participation, and the procedural steps tribes use to identify and protect treaty-reserved resources; and
- Ensure that no automation enhancement is implemented that reduces tribal ability to participate in NPDES permit reviews where treaty rights may be affected.

VII. SPECIFIC REQUESTED REVISIONS TO THE EVIDENCE PLAN

The Band respectfully requests that EPA revise the Plan to incorporate the following changes before finalization:

1. **Add a Fourth Priority Question**
   Add a priority question specifically addressing EPA's federal trust responsibility and treaty rights obligations, such as: "To what extent are EPA's regulatory programs, grant programs, and permitting processes protecting treaty-reserved natural resources, and how can evidence-building activities be designed to measure and improve that protection?"

2. **Conduct Tribal Consultation Before Finalizing the Plan**
   Initiate formal government-to-government consultation with tribal nations before finalizing the Plan, consistent with EPA's Consultation Policy and the Cross-Agency Strategy 4 reporting obligation.

3. **Revise Grant Evaluation Metrics (Activities A and B)**
   Add treaty resource impact as a required evaluation dimension in the standardized metrics framework, including fish tissue contaminant data, wild rice bed health, and water quality in treaty-ceded waters.

4. **Include Tribal Participants in Focus Groups (Activity C)**
   Require that tribal nations with treaty interests in the geographic areas served by the pilot grant program be included as a required category of focus group participants.

5. **Add Treaty Rights Materials to Document Review (Activity D)**
   Require that the document review include tribal consultation records, treaty rights analyses, and court decisions on treaty rights as source documents for identifying permitting improvements.

6. **Add Tribal Nations to Subject Matter Expert Interviews (Activity E)**
   Explicitly identify tribal governments with treaty rights in affected areas as a required interview category for the permitting reform evidence activities.

7. **Include Tribal Representatives in Steering Committee Review (Activity F)**
   Expand the internal steering committee to include tribal government representatives in an advisory capacity for the permitting improvement prioritization process.

8. **Include Tribal Water Rights Holders in EPS/NPDES Activities (Activities G and H)**
   Require input from tribal nations with TAS status and treaty fishing rights in affected watersheds for all NPDES automation mapping and design activities.

VIII. CONCLUSION

The Mille Lacs Band of Ojibwe has spent decades defending our treaty rights in courts, at the negotiating table, and in regulatory proceedings. Our members exercise those rights every day on the waters of Minnesota, as our ancestors have since time immemorial and as the Supreme Court has affirmed we have the legal right to continue doing. Those rights are meaningless if the environmental quality on which they depend is not protected.

The EPA FY 2027 Evidence Plan, as currently drafted, would generate four years of evidence about grant effectiveness, permitting efficiency, and automation capability without once asking whether any of those things protect — or harm — the treaty-protected resources our nation depends on. That is not a neutral omission. It is a structural choice that will shape EPA's

evidence base, its recommendations to Congress, and its program priorities in ways that systematically exclude tribal treaty rights from consideration.

We do not make these comments in opposition to efficiency, evidence-based policymaking, or cooperative federalism. We make them because genuine evidence-based policymaking requires that the evidence base be complete — and it is not complete when it excludes the legal rights of sovereign nations whose treaty resources are directly affected by the programs being evaluated.

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 are prepared to engage constructively with EPA in tribal consultation on these issues and to provide technical assistance in developing treaty resource metrics and evaluation frameworks. 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**.

Respectfully submitted,

Virgil Wind
Chief Executive
Mille Lacs Band of Ojibwe

cc:

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